

בתוליה –**An unmarried woman****OVERVIEW**

discusses the use of the definite article (**ה'** הידיעה); why sometimes it is used and other times (like in our משנה) it is not used.

תוספת anticipates a difficulty:

הא דלא כתני הבתוליה כדתני האשה נקנית היבמה ניקנית (קידושין זר ב, א) –

The reason the does not teach (with the definite article **'ה'**), **as the** **משנה taught elsewhere** – **היבמה נקנית האשה נקנית** **the woman is acquired, the sister-in-law is acquired** (both with the definite article **'ה'** as opposed to here where it merely states **בתוליה** (without a preceding **'ה'**) –

תוספת responds:

משום דהתם אקרא קאי¹ כי יקח איש אשה (דברים כב) **האשה הכתובה וכן היבמה** –

פסק **because there** regarding the **משנה** **is basing** its ruling **on the** **היבמה** (and **יבמה**), therefore it can state **'האשה'** – **the woman**; meaning **the woman which is written in the Torah**, **and similarly the** **יבמה**, which is written³ in the **Torah** –

אבל הבא לא קאי אקרא –

However here (where the teaches a **דין דרבנן** that **משנה** **is to be married**, **היבם** **it is not based on any verse** in the **Torah**, therefore the **does not write** **פסק** in the **batulah** [known] who is getting married. **ליום הרביעי** for there is no [known] in the **batulah** who is getting married.

תוספת anticipates another difficulty:

והא דלא תנן בפרק קמא דקידושין זר י, ב העבד עברי⁴ –

העבד **the reason the in the first of פרך משנה does not teach** **משכחה קידושין** (הידיעה **without the עברי** (and writes instead **עבד עברי** –

אף על פי דכתיב בקרא (שםות כא) **כי תקנה עבד עברי** –

Even though **פסק** **the manner in which an** **is acquired is written in the ע"ז** **as it states** **עבד עברי** **– if you will acquire a Hebrew slave**, so it should be written with a **ה'** **הידיעה** –

¹ The Mishnah teaches us that an **אשה** and a **יבמה** are **משנה** **תורה** **are known**; therefore when the Mishnah teaches these laws it refers to them as **האשה ויבמה** (from the **תורה**) **are acquired** in this manner. See ‘Thinking it over’.

² Seemingly the reference should be to **כד א** (from where we derive the laws of **קידושין**). **פסק** **יג**.

³ The word **יבמה** refers to the **יבמה** with the word **במtoo** twice (in **כלה ז ט** **במtoo**).

⁴ The Mishnah there is discussing the manner in which an **ע"ז** **is acquired** (and acquires his freedom).

⁵ **פסק ב**.

תוספות replies:

משמעותם **כן** **הו** **ליה** **למתני** **העבד** **הברי** **שאינו** **דבק**⁶ **וain** **דרך** **הש"ס** **לדבר** **כן** -
Because for then, if we would add the 'ה', it would be necessary to write **העבד** **הברי**, to inform us that the word is **not attached** to the word **העבד**, and it is **not customary for the משנה** **משנה** **to use such** a syntax.

תוספות offers an observation:⁷

ומיהו גבי איש ואשה רגילים בכל מקום לשנות בה' **אף על גב** **דלא קאי אקרא**⁸ -

However regarding it is customary everywhere to write it with a 'ה' **איש ואשה** **- פסוק** -

כמו האשה שהלכה **(ביבמות ז' קיד, ב)** **האשה שנתארמלה** **(לקמן ז' טו, ב)** -

Like the woman who went overseas, or the woman who was widowed, or -

האיש מדיר את בנו בנזיר **(נזר ז' כח, ב)** :

The man avows his son to be a ⁹**נזר**.

SUMMARY

The 'ה' is added when the references a **משנה**. Once a word is used with a 'ה' for it is added if it is **קאי אקרא** (like **איש** or **אשה**) it is generally used with a 'ה'.

THINKING IT OVER

It is the **דרך התנא** to add a 'ה' if it is **קאי אקרא**¹⁰. It is (also) the **דרך התנא** not to write two consecutive 'ה'.¹¹ When it came to **תנא** why did the choose one (not to write two consecutive 'ה') over the other (to add a 'ה' when it is **קאי אקרא**)?¹²

⁶ If it was written **עבד עברי** (where the word **עבד** is attached to **עברי**) it would mean the **עבד** of the **עברי** (but not necessarily that the **עברי** is an **עבד**). To avoid this misinterpretation it would need to be written **העבד העברי** [as we find in **ט' ז' באה אלי העבד העברי** [וישב לט']]. However the syntax of **העבד** (with a double 'ה') is not used in the **משניות** [see 'Thinking it over']. Therefore the **העבד** left it as **עבד** (**עברי**) which [seemingly] means a Hebrew slave. [See **מהרש"א ורש"ש**.]

⁷ Alternately may be offering another explanation regarding **איש ואשה** (however this explanation will not explain **דרך התנא**), that it is written with a 'ה', because this is the **תנא**.

⁸ Once the wrote **האשה** and **האיש** **תנא** since **אקרא קאי**, it continued to use the term **האיש** and **האשה** even in **משניות** which are not **אקרא קאי**, as **תוספות** enumerates.

⁹ In all these three aforementioned we are not discussing anything which is mentioned in the **תורה** and nevertheless the **ה'** uses the **משניות** because since in other **משניות** the words **איש ואשה** are referencing the **תורה**, therefore the **תנא** continues to use the definite article in other places as well.

¹⁰ See footnote # 1.

¹¹ See footnote # 6.

¹² See **דרור מר**.

נשאת –**She is acquired in marriage****OVERVIEW**

In this the term **נשאין** is used in a passive form (– נפעל) – intransitive verb) ‘the **בתולה** is married’, and not in the active form (פועל), ‘one marries a **בתולה**’. Our **תוספות** discusses this matter.

תוספות responds to an anticipated difficulty:

הא דלא כתני נשאין את הbatולה¹ כמו האיש מקדש (קדושין ז' מא,א) **לפי שעתה מקוצר יותר**² –

The does not teach, ‘one marries a’ (in the active form), like another **משנה**, which reads **האיש מקדש** (also in the active form), but instead states **בתולה** **משנה** (in the passive form), **because now the is more brief**³ –

תוספות offers an alternate explanation:

ועוד דאי תנא וכי הוה אמרינה אפילו בעל כרחה⁴ –

I, (**נשאין** את ה^{batולה}) **would have taught this way** **משנה** **may have thought** that he may marry her **even against her will**, –

כדמשני (שם ז' ב,ב) **గבי הא דבריך וליתני האיש קונה**⁵ –

As the answered regarding that which was asked, and let the say, **משנה** **נקנית** instead of **האיש קונה**?

תוספות offers one more answer:

ועוד זהתם אקרא קאי⁶ **כי יקח איש אשה**:

כי יקח איש of פסוק **האיש מקדש** **he is basing it on the** **משנה** **אשה** (which is written in the active form) therefore the also writes **האיש מקדש** **משנה**; however

¹ The active form of **נשאין** את ה^{batולה} describes more accurately the **בהתולה** process, which requires active participation of the husband who acquires his wife in marriage. The passive form of **נשאת** is seemingly inadequate. **תוספות** cites the **האיש מקדש** **משנה** to prove that the **תנו** uses active language in the marriage process. [Alternately, **tosfos** is basing his question entirely on the **מגילה** of **משנה**.]

² **האיש מקדש** **נשאת** (two words) is more brief than **נשאין את ה^{batולה}** (three words); however **האיש מקדש** is not more lengthy than **האשה מתקיים** (it even has (two) less letters).

³ There is an advantage in teaching **בבלשון קצרה** in a brief manner (see **פסחים ג,ב**).

⁴ See ‘Thinking it over’ # 1.

⁵ The **גמרא** there explained the reason the **האיש קונה** begins with **האשה נקנית** and not **משנה**, because **האשה נקנית** can imply that he can acquire her even against her will (which is not true), therefore the **האשה נקנית** writes **משנה** (which implies that it is dependent on her consent to become married). Similarly here, writing **בהתולה נשאת** instead of **נשאין את ה^{batulner}** assures us that she can be married only with her consent.

⁶ **דברים** (חצ'א) **תוס' ד"ה בתולה** (תצא) **כד,א**. See previous [TIE footnote # 2].

here since there is no basis in the פסוק, the משנה chooses to write בтолה נשאת משנה.⁷

SUMMARY

Three reasons why the משנה writes בтолה נשאת instead of נישאין את הבתוולה; it is briefer, it implies her consent, and there is no פסוק to require otherwise (as opposed to **האיש מקדש**).

THINKING IT OVER

1. second answer is that נישאין את הבתוולה would indicate that it may be בע"כ **תוספות**. Why indeed then does the משנה write **האיש מקדש**, which also seemingly implies that it can be done?!⁸ **בעל כרחה**?

2. third answer is that by **האיש מקדש** we can say that **תוספות** ¹⁰ This seems to explain why the משנה there writes **האיש מקדש**; however it does not seem to explain why here the משנה writes **בтолה נשאת** instead of **נישאין את הבתוולה**?¹¹

⁷ See ‘Thinking it over’ # 2.

⁸ See footnote # 4.

⁹ See **מהרש"א**.

¹⁰ See footnote # 7.

¹¹ See footnote # 1.

On the fourth day

ליום הרביעי –

OVERVIEW

The states that the **חופה נישואין** (entering into the etc.) should take place on the fourth *day*. This explains that this is precise; on Wednesday during the day, and not the following night.

תוספות comments:

ולא בליל חמישי כdadmr בפרק בתרא נדה¹ (ז' טה,ב) דליך כתובה דלא רמו בה תיגרא -

But not on the night preceding Thursday (i.e. Wednesday night), for **as states (in the last of פרך נדה 'that there is no כתובה so in which there is no strife involved'**, so -

כל שכן אם יעשה נושאין בליל ה' דאייכא למיחש שיטרד בנושאין וכתובה ולא יבעול:
Certainly if the will be made, that there is the concern that they will be preoccupied with the and the, and he will not be בועל **ב כתובה נושאין** that night; thus nullifying the purpose of the to be תקנת הכלים. However if the נושאין is during the day, even if they will wrangle regarding the there will be ample time to be בועל like the תק"ח.

SUMMARY

בעילה נושאין must be by day and not the following night, to make sure that the will be in time.

THINKING IT OVER

How does **ה Tosfos** infer from the that it must be by day and not by night, perhaps the meant (even) by day and certainly also by night (since it is closer to **יום ה' ב' י"ד** when the is in session)?²

¹ See the marginal note that in the תגרא it states **שאני כתובה דמהגי בה טפי נדה** and the expression **שאני כתובה דמהגי בה טפי נדה** (they are very particular that it be found in **שבת קל,ג**). We derive from the that since **נדה** in **גמרא** **שנית** (they are very particular that it be written properly), we assume that the **ביאה** takes place at midnight, and in addition since **ליכא כתובה דלא רמי בה** **ביאה** (כ"ש) is the concern that there will be no at all if the **ביאה** is set for **בליל ה'**.

² See מהר"ם שי"ף

שם היה לו טענת וכולי –**For if he had a claim of, etc.****OVERVIEW**

יום **ל' תולא** explains the reason for the תקנת חכמים משנה that a should be married because in case the husband claims that she is not a (and was perhaps מזונה while she was betrothed [which would make them to each other]), he will be able to immediately go to **ב' י"ד** (on Thursday) and state his claim. There is a dispute between **ריש"י** and **תוספות ריש"י** as to what is accomplished by stating the claim in **ב' י"ד**.

תוספות asks:

ואם תאמר הא תינח אשת כהן¹ או פחוותה מבת שלש² –

כהן a **טענת בתולים** in **by the wife of a**, or if he was **מקדש** his wife when she was **less than three years old** -

דליך אלא חד ספיקא³ כדאמרינו בגמרא (לקמן ט,א)⁴ –

For in those cases she will be **אסורה** to him (by his) since **there is only one doubt, as the Gemara states** -

אבל בשאר נשים דאייכא ספק ספיקא⁵ אמאי תנשא ליום ד'⁶ –

¹ If the wife of a girl was forced into against her will (באות), she is permitted to remain with her husband. However if the wife of a girl was (she is considered a **זונה** and she) is forbidden to be with her husband. He is required to divorce her.

² A girl who is less than three years old; even if she had her will return and she will retain her status. If she became **מקודשת** before she was three, and her husband finds her not to be a **בולה**, it must be that she was sometime (after she was three, which is sometime) after she was three and an **אשת איש מקודשת**.

³ Regarding the husband claims she is a **בולה** (when she was still a girl and is not considered a **זונה** and she is after the **קידושין** [see footnote # 1]) and is **ספוק**. Since there is only one **ספוק** as in every (ישראל) when she was less than three years old, there is also only one whether she was **ספוק** (where she is **נשותה לבולה** [see footnote # 1]) or whether she was **אסורה לבולה** (where she is definitely **אסורה** since she was certainly **נשותה** [after the **קידושין** (see footnote # 2)] for otherwise she would still be a **בולה**). Therefore she is **אסורה מספק**.

⁴ In these cases it is understood why the husband were that he marry **ליום ד'**, because if he finds out that she was already she is **אסורה עלייה**, and by going to **ב' י"ד** he will be told to divorce her.

⁵ By an **אשת ישראל** (who was when she was more than three) there is a doubt within a doubt, which should permit them to be together. There is the doubt that perhaps she was (in which case she is **מותר לבולה** **באות** [see footnote # 1]), and even if she was **ברצון** (which would seemingly forbid her to her husband); nevertheless there is the additional doubt that perhaps she was **נשותה** before the **קידושין** (and she is permitted to him). Even if he tells that she is a **בולה**, nonetheless **ב' י"ד** will permit them to be together since there is a **ספק ספיקא** **להיתרא**.

⁶ We cannot say that the **תקנה** was made so that he can claim she is a **בולה** and he does not owe her the (entire) **כתובה**, because for this we do not need a **תקנה**; if he does not want to pay her (full), he can always claim that.

However by the rest of the women (who are not אשת כהן or were not אסורה where there is a ספק ספיקא) and therefore she is not to him, so **why should** those women **get married** 'ליום ד' טעונה בחולין since the will not accomplish anything.

תוספות answers:

ואומר רבינו תם דלא פלוג רבנו בתקנთא -

And the ר'ת answers that the רבנן did not differentiate in their enactment for a woman to marry - ליום ד' בתולה

ומשות אשת כהן ופחות מ' תקנו בכל הנשים שנישאו ביום ד' -

And they enacted that every woman should marry (even though the تعנה ביום ד' creates an **אשת כהן** and a **טהילים** will not prohibit them from being together) **because of an פחוותה מבת ג'** (where the creates an **אייסור** **טהילים**).

תוספות רש"י cites his opinion on this matter:

ובקונטרס פירש שפטוֹן כד יתברר הדבר ויבאו עדים שזינתה בראצון⁷ -

And explained; the purpose of طענת בחוילם by is **that by** his complaining in ב"ד, the situation will be verified and witnesses will come forth that she was **willingly** מזגנה and therefore אסורה לבעלה.

פחותה מבת ג' אשת כהן הותקנה (initially) was only for an כהן and a נבעה ברצון, תקנה the רש"י also.⁸ However according to תקנה שאר נשים לא פלוג was initially for all נשים, for we may find out that נבעה ברצון.⁹

פירושי asks on **תוספות**:

קשה לפירושו דאמרינו בגמרא (שם,ב) אמר אבי אפ' אנו נמי תניינא -

And there is a difficulty with **גמרא פירש"י** **for the states,** said we also learnt in a - ר' אלעזר of **משנה** this rule of

זה אומר פותח מצאתי נאמנו¹⁰ לאוסרה עליו¹¹ -

However regarding איסור ב' י"ד we are concerned that if he does not go immediately to ספק, etc.)

⁷ The words שׁוֹנֵת בְּרִזּוֹן do not appear in our 'רַשָּׁה' text. See 'Thinking it over' # 1.

⁸ If he makes the claim by herself she will be on him; however by them they will not be אסורה עלין.

⁹ However, it is possible that even by פָּהוֹתָה מִבְּטַח she will not be allowed to testify unless (by אֲסּוּרָה פְּנֵי).

¹⁰ The novelty of this ruling is that for **טענה בחולים** it is not necessary to prove that there was no **ב**, but even if there is no proof from the **ב** (for they lost the cloth, etc.), nevertheless if he claims there was an opening (instead of being closed) that is sufficient to render it a valid claim and we do not suspect that perhaps he is mistaken whether it was a **ב** or not. See ‘Thinking it over’ # 2.

¹¹ See the there on the 'עמדו' that he is believed only by לאותה עליון or 'אתה כהן'.

That one who says, ‘I found an open doorway’, he is believed to have her forbidden to him; this rule is indicated in our states - משנה, לשנה, לשנה

בתולה נשאת قول מי לאו דקטעין פתח פتوח¹²

אבי; ’משכימים לב"ז טענת בתולים because if he has continues, is it not so that his claims (indicating, according to (האמר פ"פ מצאתי נאמן לאוסרה עליו, אבי). This concludes the citation from the question on מהר"א continues with his question on - פרש"י

והשתא היכי מיתתי ראייה לפירוש הקונטרס הא אף על גב דעתנו נאמן -

But now, according to אבוי, what proof is bringing to the ruling of פ"פ נאמן, from our; for even if he is not משנה, מצאתי נ爰ן

מכל מקום ישכים לבית דין שמתוך כך יצא הקול ויבאו עדים ויתברר הדבר¹³ -

Nevertheless he should still be פ"פ, for on account of his claim, there will be publicity and witnesses will come and the matter will be clarified that she was ברצון; however his claim alone of פ"פ is not believed.

(רש"י) answers (his question on תוספות:

ויש לומר שלא מיתתי אבוי ראייה לרבי אלעזר אלא שהוא בקי ומכיון אם הוא פתח פטוח¹⁴ -

האומר ר"א that אבוי is not bringing a proof to the ruling of פ"פ (for indeed according to פירש"י there is no proof), but rather אבוי is proving that a person is acquainted and recognizes whether it is a פ"פ or not; he proves it in the following manner -

אדם אינו בקי לא יצא הקול ולא יבא לידי בירור -

For if a ‘regular’ person is not a בקי, there will be no publicity to his claim and nothing will be verified -

כפי יאמרו שהוא טעה וסביר שמצוין פתח פטוח ואינו כן ולא יחושו לדבריו -

For people will say (when they hear his claim, that he is mistaken, for he thinks that he found a פ"פ, but really it is not so, and they will not pay attention to his claim, so there will be no בירור. However, since the לשנה states that there will be a בירור, this proves that his claim of פ"פ is valid.

¹² See there why אבוי assumed that the לשנה is discussing פ"פ, why אבוי (הא') לשנה is discussing אבוי. The refutes the proof of for he may be discussing לשנה (see footnote # 10).

¹³ It is possible that we do not rule like ר"א and (by) he is not פ"פ (טענת פ"פ he is not by an even if he is so that will come. However according to that the reason for the בtolim was for ב"ג and אשחת כהן, for they will be to him if he claims (פ"פ) that תקנה was extended to נשים (שהן נשים תקנה לא פלוג), therefore there is a proper proof from our לשנה that by פ"פ he is אשחת כהן (by נאמן לאוסרה עליו).

¹⁴ See footnote # 10.

פירוש"י offers another explanation of **תוספות**:

ועוד יש לומר¹⁵ דגם לפירוש הקונטרס לא היו מתקנים שתהא נישת ליום ד' -

משמעותם של ידי עדים -

Because that perhaps there will be verification through עדים, for that is too far a stretch (there may not be a קול, the עדים may not come, etc.) -

אבל ביו דבאתה בהן ובՓחותה מבת שלש דנאמו לאוֹסֶרֶה עליו תקנו שתה ניסת בריביעי -

But rather since by פחוֹתָה מִבְּתַת ג' אֲשֶׁת כָּהֵן where he is, the חכמים instituted that she should marry on Wednesday, therefore the נאמן לאוסרה עלייו is -

גם בשאר ושים תגנו משומש שמתווד כד יצא הוביל ויתברר הדבר על ידי עדים -

Also instituted by שאר נשים that they should marry (but not because of ביום ד' פלוגה as said, but rather) **because through this claim there will be publicity and the incident will be verified by witnesses -**

והשתא מ'יתי אבֵי שפיר ממתנייתיו דbastet כהו וב พฤษภาคม מעת שלש נאמנו לאוסריה עליון.

And now (that all [even רשותי] agree that the **תקנה** was [initially] made for an **אשרת ג' ר"א** since he is **אבוי**, **(נאמן לאוסרה עליו כהן ופחותה מבת ג')** brings a proper proof to **from our** that by **אשרת ג'** and **פחותה עליי** he is believed **משנה**.

In summation; according to this last explanation (of רשותי) the was made initially because of **הכמים** נאמן לאוסרעה עליו [as maintains] where he is and **פחוותה מבת ג' אשת כהן** extended this to **תקנה** (not because of פלוגה [explained], but rather) because there is a purpose for **שאר נשים** as well, for through his there will be a **קול** and **תבהיר טענת בתוליהם**. **הבר בעדדים**.

תוספות asks:

¹⁶ ותיימה דהכא משמע דמשום חששא דזנות תקנו שתהא ניסת ברבייעי -

And it is astounding; for it seems from the משנה here that the instituted that she should marry Wednesday because of the concern of promiscuity - זנות -

ונברך ב' דגיטין (בז' ואשע) איבא מאן דאמיר דתבנין זמו בגיטין משום פירוי¹⁷

¹⁵ This explanation disagrees with the assumption mentioned in footnote # 9.

¹⁶ See ‘Thinking it over’ # 3.

¹⁷ When a woman brings property into a marriage (נכסי מלוג) the rule is that (even though she retains the ownership of the property, nevertheless) the husband receives the fruits of the property. This arrangement continues as long as they are married. If however the husband divorces her he loses the rights to the property (from the time of the divorce). If there would be no דין זמן in the בג, it is conceivable that the husband, even after the divorce, will continue consuming the property (without the woman realizing it), and when she will claim that he illegally ate the property, the burden of proof

However in the second מסקנת גיטין of פרק there is one who maintains that the חכמים instituted to write a date in a גט because of פירוי -

אבל משום שאין יחפה על בת אחותו¹⁸ לא חיישינו משום זנות לא שכיח –

However this maintains **that** we cannot say that the reason the **חכמים** were because perhaps he will cover up for his niece, he negates this view and maintains that **we are not concerned** for **זנות** since **is not prevalent**. The question is why there by there is no **תקנה** because of **זנות**, however here by the wedding we make a **תקנה** because of our concern for **זנות**!?

תוספות answers:

ויש לומר דתתם קאמר זנות דעתך לידי מיתה דהינו בתורה¹⁹ ובעדים לא שכיח –

And one can say that says there that a which will carry a death penalty, meaning that it was done with a warning and witnesses, is not common therefore there is no need to be because of **זנות**; however without (for which we are concerned here) is indeed common, and therefore there is a need for the **תקנה** of **יום ד'**.

תוספות offers an alternate answer:

אי נמי הכא שלא תשב עמו באיסור כל ימי חשו אפילו לזרות אף על גב דלא שכיח:

Or you may also answer; that here they were concerned for even though it is not common, in order that she should be with him illegally all his life, however there, since there is no lifelong to be concerned about (merely her wheedling herself out of the death penalty), they were not concerned for **זנות**.

SUMMARY

פחותה מבת ג' אשר כהן was made initially for **תקנה** however it was extended to either because of **תוס'** or because there is the possibility that **רשות** (the view of).

THINKING IT OVER

will be on her as to when the divorce took place (since there is no date in the **גט**). Therefore the **חכמים** instituted to write the date, protecting the woman's rights to her, beginning from the date on the **גט**.

¹⁸ The view of ר' יוחנן there is that there were because it is possible that someone will marry his niece ([not necessarily a niece but rather anyone] of whom he is very fond, regardless of their marital status), and she may be **מזהיב מיתה** so in order to spare her the death penalty her husband (dear uncle) will write her a **גט** and she will claim that she received the **גט** before the **זנות**, so she was not an **אשת איש** and not liable for the death penalty. Therefore they instituted **זמן בגיטין** to avoid this miscarriage of justice.

¹⁹ התורה mentions so the answer will be applicable even according to רשות (without will come and testify that **זיננה ברצון** (for by **זמן** there needs to be as well, to have a **חויב מיתה**)).

1. writes זינתה ברצון that will testify that עדים (פרש"י תוספות) Why is it necessary that they testify that she was מזונה, even if the testify that she was and do not know whether it was or not, she will still be אסורה לבעל her, for the עדים will know whether she was זינתה תחתיו, and once we establish that she was זינתה, she is אסורה לבעל (because now there is only one whether it was תחתיו or באונס ספק); why mention זינתה ברצון?!²¹

2. If it is assumed that a person is פ"פ in בקי²² is there any in the ruling of ר"א²³ that the one who says פ"פ מצאתי נאמן לאסורה עליו?

3. Is there any connection between last question²⁴ regarding זנות, with that mentioned previously?²⁵

²⁰ See footnote # 7.

²¹ See פרדס יצחק אותן צט.

²² See footnote # 10.

²³ See ח"ב מ"ת אותן ו.

²⁴ See footnote # 16.

²⁵ See סוכ"ד אותן כו פנ"י.

מפני מה אמרו בתולה נשאת ליום רביעי לפי ששנינו قولוי –

For what reason did they say that a **בתולה is married on Wednesday; because we learnt in a, משנה, etc.**

OVERVIEW

asked why the **חכמים** enacted that a should marry, and answered based on a that if the time to get married was not on **יום ד'**, the husband is not obligated to feed her. asked that is basing an explicable ruling on an inexplicable ruling. clarifies the flow of the **גמרא**.

אין שואל הטעם למה נשאת ברבעיadam כן לא הוה משנה מיידי¹ –

was not asking for the reason, why a **בתולה is **בתולה**, for if indeed** that was his question, **did not answer anything** by citing the **משנה** of **שמעואל** – **הגיע זמן משנה**

אלא וכי פירושו מפני מה אמרו כלומר מאי נפקא מינה שנשאת ברבעי² –

But rather this is the explanation of s' question why did they enact, etc., meaning what ramification is there as a result of what they enacted that a should marry – בד' –

ומשני נפקא מינה לענייןmezonot ותרומה –

And answered that the ramification is regarding feeding and giving **תרומה to his wife –**

שמעואל responds to an anticipated question:³

ורב יוסף קא מתמה מריה דברהם⁴ זהא נפקותא מפרשה בהדייא שאם היה לו טענת בתולים –

But was astounded, saying, 'Master of Avrohom, there is a ramification which is explicitly stated, that if he has **טענת בתולים, he will go to etc.⁵ –**

והוא מניח נפקותא זו המפורשת וטופס נפקותא אחרות:

And ignored this explicit ramification in our, משנה **שמעואל and mentions another**

¹ He merely mentions (one of) the ramification(s) of the rule, but there is obviously no explanation in the **משנה** of why a **בתולה** is married on **יום ד'**. See 'Thinking it over' # 1.

² It may be necessary to say that asks, now that we have this rule of **שמעואל**, what other ramifications are there as a result of this rule. (Otherwise the question is not understood, the **נפק"מ** is that one must marry 'בבבום ד') See 'Thinking it over' # 2.

³ If we assume the simple meaning of s' question (that he is asking for the reason), the astonishment of **ר' יוסף** is verily understood; however if **שמעואל** is asking what difference does it make, then seemingly **שמעואל** gave a valid answer, so how do we understand the astonishment of "ר'.

⁴ This refers to 'ה; as we would say, 'ר'בונו של עולם'!

⁵ seemingly means to say that the ramification of **בבבום ד'** is that if she was married he will be protected from living with her since he will be under her care. See 'Thinking it over' # 2.

ramification which was taught in another !'משנה'

SUMMARY

The question of מה אמרו מפני means what ramification is there as a result of this enactment. רב יוסף felt that the main ramification is stated in our משנה.

THINKING IT OVER

- 1.explains that שמואל could not be asking for the reason, for if so he did not answer anything.⁶ Why did not point out (more simply), but our משנה gives the reason, so what is asking?!⁷
2. Seemingly the phrase ⁸, מפני מה אמרו and the expression ⁹, בדוחニア דלא מפרש טעמא do not lend themselves respectively to explanation of question and of רב יוסף's astonishment!

⁶ See footnote # 1.

⁷ See Tos' Harav.

⁸ See 'footnote # 2.

⁹ See footnote # 5.

אלא اي אמר ה כי אמר ר' יהודה אמר שמואל – taught, this is what was taught: ר"י said in the name of Shmuel

OVERVIEW

Initially cited a statement of **ר' יוסף** which heard from **ר' יוסוף** challenged this statement that **ר' יהודה** said in the name of **ר' יוסף**, and concluded that we must rephrase this statement that **ר' יהודה** said in the name of **ר' יוסף**. Our **תוספות** (in the heading) offers the correct text reading in our **גמרא**.

ולא גרסינו ר' יוסף זהא ר' יוסף גופיה קאמר¹ אלא اي אמר:

But the text do not read; **ר' יוסף** **אמר ר' יהודה אמר שמואל;** but merely without mentioning **ר' יוסף**, since **it is himself who is stating 'אלא اي אמר'**, that the statement of **ר' יהודה** requires a revision.

SUMMARY

The text reads (**ר' יוסף**) **אלא اي אמר ה כי אמר ר' יהודה וכו'** (without mentioning **ר' יוסף**).

THINKING IT OVER

It is apparent that there were other text which included the name in the **אי** (for otherwise would not have to negate that **גירסה**); how can we explain that **גירסה**?

¹ If an outside party (would ask the question on **ר' יהודה אמר שמואל** and) would conclude that **אלא اي אמר ר' יוסף אמר ר' יהודה אמר שמואל** (that we must revise that which we heard from **ר' יוסף**); however now that it is plausible that the text should read **אלא אמר ה כי אמר ר' יהודה אמר שמואל** (that he heard from **ר' יהודה** [אמר **שמואל**]), in what context is he mentioning his own name. See 'Thinking it over'.

מפני מה אמרו כולי –

Why did they say, etc.

OVERVIEW

After rejected the initial version of the statement, רב יהודה אמר שמואל mentions the revised version, which also begins with מפני מה אמרו וכו'. Our distinguishes between this (of the revised edition) and the original statement.

בניחותא¹ גרסינו לה² ולא בא להקשות אלא ותנשא באחד בשבת:

This is read passively, for did not come to ask, why does a marry on Wednesday, but rather שמואל is asking that she should be allowed to marry (also) on Sunday

SUMMARY

In the revised statement of there is no question why just because she should marry on Sunday, but also on Saturday (as well).

THINKING IT OVER

Can we say that meant to ask with his שמאלי, ³ מפני מה אמרו שמאלי, how can we assume that (solely) because of טענת בתולין, for if that were the case, she should marry on Sunday? ⁴!

¹ It is difficult to say that (also) in this revised statement is asking וכו' שמואל and answers מפני מה אמרו בתולה נשאת וכו', for this is an explicit teaching us! משנה לוטענת בתולין וכו'

² The lead into the real question. It should be understood as follows; [what is] the reason מפני מה 'ן, [it is because of טענת בתולין; therefore the question is that she should marry on 'יום א' (also).

³ That it is not בניחותא.

⁴ See ק' אמרים ללחם שיטמ"

And she should get married on Sunday**וְהַנְשָׁא בְּאֶחָד בְּשִׁבְתָּה –****OVERVIEW**

and טענת בתולים asked since the reason a נשאת ליום ד' is because of שמואל convenes on Mondays and Thursdays, she should be allowed to be married on Sundays as well. The גمرا answered that she is married on יום ד' because שקדו חכמים Our תוספות discusses another answer to this question.¹

טווספה responds to an anticipated difficulty:

לא בעי לשוני דנסאת ברבי עי כדי שתבעל בחמשי,²

The did not want to answer (the question of גمرا that she is married in order that she will be - נבעל בה בד')

משום ברכה שנאמרה בו לדגום³ כדברינו לקמן⁴ (ז' ה, א) –

On account of the blessing which was said by ה' to fish, as states later –

There is an additional difficulty:

ועוד⁵ למה לי טעם דשקדו תיפוק ליה משום ברכה?

The furthermore why do we need the reason of שקדו to explain why the married 'א' and not 'ד', we can derive this ruling because of ברכה, without mentioning שקדו.

טווספה responds:

ואומר רבינו יצחק דעתם דברכה אינה אלא עצה טובה ולא מקרי עברייןא⁶

The says that the reason of ברכה is merely good advice, but he is not considered a transgressor if he does not accept this advice and marries on יום א' –

אבל משום שקדו מקרי עברייןא⁷

¹ The here explains that the husbands were diligent in enacting rules for the benefit of the Jewish daughters (that the chasan will have three days to prepare a proper wedding feast).

² When the wedding takes place on Wednesday, the can take place that night which is Thursday.

³ See that the fifth day of creation. ברכת הארץ א, כב

⁴ cited that a was on ה' because the was on נבעל בה. It is apparent (from this that is a sufficient reason to be married ב' for she will be יום א').

⁵ See ‘Thinking it over’.

⁶ See footnote # 1.

⁷ does mean only because then they should marry יום ה' (see the ברכה לאדם for the was said there on ה' and ג). Rather means we need only the reasons of טענת בתולים (for either 'א' or 'ד') and (to limit it to 'ד' only), but there is no need to mention שקדו.

⁸ Therefore since he is not an עבריינא if הגיע זמן is on Sunday he is obligated to give her, because his benefit of מזונתו is not sufficient reason to exempt him from מזונתו.

⁹ For this reason he is not obligated to give מזונתו, since he cannot marry now for he will be an עבריינא.

However on account of שקדו he is considered a transgressor if he does not marry (and therefore does not spend the three days preparing the feast) – ב' ביום ד'

proves his point that ברכה is not a cause to consider him an עבריינא if he does not marry ליום ד':

וכן משמע لكمן¹⁰ דאמר טעמא משום ברכה אבל משום איקרורי דעתה¹¹ לא חיישין¹² -

And so too it seems later where ברירתא infers from the reason גمرا, saying; **the reason** בעיליה ברכה is because of נבעלהת בה' if not for because we are not concerned for איקרורי דעתה. This concludes the citation from the proof.

ומאי נפקא מינה אלא זראי דמשום ברכה¹³ לא מקרי עבריינא:

But what practical difference is there whether we are or חושש לאקרורי דעתה or not, for in any event she needs to be (because of נבעלהת בה') Rather we must say that there is a difference (whether the reason is because of ברכה or because of אקרורי דעתה), **for on account of one is certainly not considered an עבריינא**, if she is not נבעלהת בה', however if the reason is because of אקרורי דעתה, then he is considered an עבריינא.

SUMMARY

The reason of ברכה is merely good advice but he is not a transgressor if he does not follow it; as opposed to the reasons of שקדו and טענת בתולים where he is considered an עבריינא.

THINKING IT OVER

Seemingly the two questions of חוספות are exactly the same; why answer שקדו, when you could answer טענת בתולים בראכה.¹⁴ What is the difference between these two questions?!¹⁵

¹⁰ בד' גمرا there queries whether the (of a time ליום ד' ביהא) needs to be or can even be.

¹¹ איקרורי דעתה (literally his mind will cool) means that if he does not go immediately to (but there is a time lapse), he will calm down and not report the wife טענת בתולים and may therefore live with his wife באיסור.

¹² The only mentions ברכה as a reason for שקדו, but does not mention טענת בתולים (according to this we are not concerned for דעתה, and were it not for there would be no need to be בראכה even if it is a little bit later).

¹³ The גمرا is therefore saying that according to this that the reason is only because of ברכה and not because of נבעלהת בה', one will not be considered an עבריינא if she is אקרורי דעתה.

¹⁴ See footnote # 5.

¹⁵ מהרש"א האריך.

מציא¹ אמרה ליה נסתהפה שדהו² –

She can say about him, his field was swept away

OVERVIEW

The gemara queried what will be the ruling in a case where the time to marry arrived, but she is sick and cannot marry now; is the husband obligated to give her (because she claims נסתהפה שדהו), or not (since he claims, I am ready). Tosfot explains why נסתהפה is a claim for her benefit and not for his.

תוספות responds to an anticipated difficulty:

ואינו יכול לטעון דאדראבה מזלה גרט³ –

And the husband cannot claim; on the contrary, her bad ‘luck’ caused her to lose the mazone; the reason he cannot claim it, is –

דכיוון דלא מיפקדא אפריה ורבייה לא מייענשא⁴ כדאמרין בהבא על יבמותו⁵ (יבמות זז סד, ב) –

That since a woman is not commanded to observe the mitzva of; she is not punished, as the woman states in gemara states in – פרק הבא על יבמותו

תוספות offers an alternate answer:

ועוד דהאשה היא שדה של הבעל⁶ ואין הבעל שדה⁷ שלו:

And furthermore the woman is the field of the husband, but the husband is not the woman’s field.

SUMMARY

The loss (of not being able to marry) is attributed to the husband for it is his duty (not hers), and she is his property, not the reverse.

¹ This is also on Tos' ד"ה לפיכך (which should precede this), are referencing the Tos' on gemara.

² See Tos' ד"ה ריש"י ע"א (on the פ"ג) that it is your bad ‘luck’, since that from today on, you are obligated to feed me.

³ This would seem more logical, for she became sick; not him.

⁴ Regarding the husband, since he is commanded on the mitzva of פরיה ורבייה, it is understood that he is being punished (for some misdeed) that his observance of this mitzva is being delayed (and [as an additional consequence] he has to pay for her מזונתו); however regarding the wife, since she is not obligated in the mitzva of פור, the fact that their having children is being delayed, is not considered a punishment for her.

⁵ The gemara there states that if a couple has no children, it is the husband who is being punished (for his lack of merit), but not the woman, since she is not obligated in פור (it is not considered a punishment).

⁶ In marriage the man acquired the woman (he is מקדש her), therefore she is considered his field, and if his field does not ‘produce’ it is his loss. However the man is not acquired by the woman, so we cannot say that if there is no produce, it is her loss. The ‘field’ does not lose when there are no crops; the owner loses. See ‘Thinking it over’ # 1.

⁷ See ‘Thinking it over’ # 2.

THINKING IT OVER

1. second answer is that the **אשה** is the **שדָה** of the husband.⁸ Nevertheless the **אשה** is (still considered) the owner of herself (she owns a **שדָה** as well), so why is it (only) **נסתחפה שדייה** (also)?!⁹
2. In second answer, he adds **שהה שלה**; **ואין הבעל**¹⁰ why was it necessary to add this phrase?¹¹

⁸ See footnote # 6.

⁹ See **שיטתה לרangan**.

¹⁰ See footnote # 7..

¹¹ **תוס' ד"ה לפיכך** מירא דעתך (after).

לפייך¹ חלה הוא אינו מעלה לה מזונות –

Therefore, if he became sick, he does not pay for her food

OVERVIEW

In the initial version ר' יוסף concluded that (just as if the marriage time occurred on a Sunday, he is not obligated to give her [since they are to be married on Wednesday], similarly) if he was sick by the wedding day, he is not required to give her מזונות. Our reconciles our with a seemingly contradictory גמרא.

תוספות asks:

קשה לרביינו יצחק דאמר בהחולץ (שם ז' מא,ב ושם) עמד בדיון וברח נזונת مثل יבם² –

The has a difficulty; for the states in מסכת יבמות בריתא ר"י if the court ruled and the ran away, she is fed from the estate of the –

ומפרש בירושלמי³ ברח הוא הדין חלה והכא אמרין דחלה אין מעלה לה מזונות –

And the explains that this same law of applies if the became ill; she is supported from his estate, so why is the ruling here that if he is ill he does not feed her?! What is the difference between a יבם and an אروس?

תוספות answers:

ואומר לרביינו יצחק דהתם חלה או ברח לאחר שעמד בדיון שכבר נתחייב לה במזונות –

And the explained that there (by a יבם), the became sick or ran away after the court ruled, so that he was already obligated to feed her –

אבל הכא בחלה קודם הגעת זמן⁴ –

However here (by a wedding) he became sick before the time arrived for the wedding; therefore he was never obligated to feed her.

תוספות cites פרש"י and disagrees with it:

ובקונטרס פירש שם⁵ דוקא ברח אבל חלה לא ואין נראה כדמשמע בירושלמי –

¹ This should precede the previous גמרא and they are both referencing the on the same topic.

² The there states that for the first three months after her (childless) husband died, the widow (who is קוקה) is fed from the estate of her husband, if after three months she took the to be, saying either be me, or be (so I can remarry), and the ran away, she is fed from the estate of the .

³ פ"ה ז' ב, ב"ד (in our it is on).

⁴ It appears from that if the time arrived (and they did not marry) and then he became sick, the husband is obligated to feed her (even during his sickness), since he was already obligated.

⁵ It does not say so explicitly in our ר' ר' there. However one may infer it, for ר' states that the must pay, because we fine him (for running away); indicating that by חלה (where there is no cause for a fine), he would be פטור.

And explained there that she is **only if he ran away, but not if he became ill; however it does not seem that way, as indicated in the – ירושלמי**

תוספות responds to an anticipated difficulty on:

ולפירושו אין להகשות⁶ מאיכא דבעו לה מיבעית אמאי לא פשוט לה מהתם -

And according to explanation (that by the **meal** is not **is**), **one cannot ask from those that posed this as a query** (whether or not he has to be **meal**, if he was); **why did they not resolve this query from the there**, that the **is required to feed her only if the meal** (even if he was **ברייתא**), **עמד בדיין** and the same will apply here that by the **meal** he is not **meal**?!?

תוספות responds:

דייש לומר דארוסתו אגידא ביה טפי מיבמתו⁷ כדאמרינו ביבמות בכמה דוכתי:

יבמה can say that his betrothed is more attached to the groom, than the **יבמה** is attached to the **groom**, as the **states in** מסכת **יבמות** in many places

SUMMARY

There is no obligation to be **meal** if the **meal** happened before the **zman**. An **ארוסה** is more attached to her, than a **ארוס** to her.

THINKING IT OVER

תוספות explains why there is no difficulty on;⁸ however the same answer is seemingly due on interpretation, for the there rules that if he has to be **meal**, indicating that if there was no **meal**, he is **פטור**, thereby resolving the **tosafot**, Why did not require the same explanation for his interpretation (as he did for **רש"י**)?⁹

⁶ However according to there is no question (as previously explained), for there he was **meal** therefore he has to pay; however in our the query is in a case where he was **meal** before the **zman**. See (however) 'Thinking it over'.

⁷ The reasoning is that the **was** his wife with the intention of marrying her (and even now she is an **אשת איש**); however by the **יבם** he may not intend to be **מיבם** her (and now she is merely a **א"ג**, but not an **א"ג**). Therefore even if the **יבם** is not **meal** to the **zman**, it is reasonable that the **ארוס** is **meal**.

⁸ See footnote # 6.

⁹ See מהרש"א (הארוך).

פשיט רב אחאי –**רב אחאי resolved****OVERVIEW**

רב אחאי discusses the identity of this.

לא כמו שפירש¹ רבינו שמואל בן מאיר דהינו רב אחאי וגאון שעשה שאלות² –

It is not as the who authored the maintained that this is the who authored the – שאלות –

והיה בסוף כל האמוראים ולכ"ז משנה לשונו בכל הש"ס פריך³ רב אחאי פשיט⁴ רב אחאי – ש"ס And he lived after all the syntax in the entire, אמוראים, and therefore the changes when he is mentioned, like; this is not so –

שערי כאן רב אחוי עונה על דבריו –

For here responds to the words of רב אחוי indicating that he lived (at least) during the time of (or earlier) –

אלא אומר רבינו תם שהוא אמורא וכל אמורא היה תופס לשונו –

Rather, says the that this was an, and every had his unique expression; in this case it was פריך ר"א and we find the same by others –

כמו מגזר בה רבבי אבשו (סנהדרין ג, ב) תהיה בה ר' יוחנן (בבא קמא קיב, ב) ליטיט עליה אביי⁵ (ברכות כט, ב):

Like; רבבי אבשו wondered, cursed it.

SUMMARY

שאלות here was an (and it is not of the of the). רב אחאי גאון אמורא

THINKING IT OVER

אמר ליה רב אחוי does not say גمرا, רשב"מ since the (merely) that perhaps this from the was (initially) presented by an anonymous and later it was attributed to רב אחאי גאון אמורא who stated it explicitly?⁶

¹ See זבחים קב, ב ד"ה פריך.

² The Tosa' is a collection of responsa (divided according to the question), each of which begins with the word – שאלתא – it was asked.

³ See later ז, א.

⁴ פשיט פריך ר"א (seemingly) means that the syntax of פשיט ר"א is unusual (or that the words are not usually used in the גمرا instead of, we find or מתיקף מתייב).

⁵ In all these three expressions the respective expressed their disagreement with a particular ruling.

⁶ See פרדס יצחק אות פב

The Mishnah does not read; – לא נשאו¹ לא כתני אלא לא נישאו –
The men did not marry, but rather, the women were not married

OVERVIEW

לא נושא משנה infers from the fact that the delay was because of the women. תוספות גمرا explains how the knew that it should be read נושא, even though that the actual spelling is always (without a י), whether it refers to the men or to the women.²

מקובלינו היה כיצד לקשרות לא נישאו -

It was an accepted tradition by the Amoraim to read it not נישאו (לא נישאו) -
יעוד دائ נישאו אננסים קאי הוה ליה למימר נמי בלשון רביהם ואכלות משליהם:
And furthermore if it reads נישאו and it is referring to the men (that they did not marry the women), the should have also concluded in the plural; ‘and the women eat from them’, the men; instead of stating it in the singular, ‘and they eat from him’.

SUMMARY

There was a tradition to read the משנה as נישאו, and it also fits better with the singular conclusion of משלו. אוכלות משלו.

THINKING IT OVER

Can we perhaps understand the second explanation of תוספות by distinguishing between גשאו, which must mean many men, and נישאו which may mean only one woman (and one man)?⁵

¹ נ"ג חיריק with a קמץ under the נ"ג means the men (did not) marry (the women). נ"ג with a נישא (לא) under the נ"ג means the women were (not) married (to the men).

² See יעב"ץ.

³ If the subject is men – plural; the women should continue in this vein; ‘if the men do not marry, the women (whom these men did not marry) can eat from them,’ in the plural (not from him, in the singular), for the word *משלו* is referring back to the subject – the men. However if we read נישוא (בחריק) the subject is women; if women do not get married they (each one) may eat from him (their respective husband), since the word *משלו* is not referring back to the subject – the women. [Alternately, נישוא can be referring to many women who married one man.]

⁴ The amends this to read אוכלות רשות (instead of).

⁵ See following.

Rather; ‘They (the women) were not married’

אלא לא נישאו –

OVERVIEW

inferred from the which reads **רַב אֲחָת** (which indicates that the delay is caused by the woman), that even if the delay is caused by the women, they can still eat from the husband. **[לא] נישאו** qualifies the inference of [לא].

פירוש¹ דמשמע נמי דמעכבי אינהי² –

The explanation is that לא נישאו indicates that the women are also causing the delay (in addition to cases where the men are delaying) -

אבל אין לומר דמשמע דוקא דמעכבי אינהי אבל לא אינהו –

However one cannot say that לא נישאו indicates that only the women are causing the delay, but not the men; this is incorrect, for -

מדקאמר לעולם דמעכבי אינהו ואיידי דתנה רישא בדידה³ قولוי –

Since states, really the men are delaying (and only then are they **רַב אֲשֵׁי**) (مزונות), **and** the reason we read **נישאו** (which indicates that the women are delaying) **is since the discusses the women, etc.**, the also discusses the women by saying **נישאו**. However if **נישאו** means women exclusively -

דמשום איידי⁴ אין לשנות טעות בסיפה:

There is no justification to insert an erroneous teaching in the because of the ‘since’.

SUMMARY

can refer to both men and women causing the delay

THINKING IT OVER

Why is it not considered a **טעות בסיפה if **נישאו** means women also?⁵**

¹ The word פירוש is used (as usual) to reject an alternate explanation, namely, the which follows.

² **רַב אֲחָת** therefore infers that since the does not read **נישאו** (which refers to the men exclusively) but rather (which refers to delays caused by either the men or the woman), that even if the delay is caused by the woman, nevertheless **מעלה לה מזונות**,

³ See that the is discussing the women by saying **רישא ד"ה ואידי**.

⁴ (or ‘since’) refers to the reasoning of the why the reads **נישאו** if it is referring to the men. If **נישאו** refers to the delay caused by either men or women (as maintains), we can justify the use of (even though it can [erroneously] imply women as well) for here it means only men, and the term **איידי דתנה רישא** was used. However, if **נישאו** means a delay caused by women exclusively, what justification is there to use the term **איידי** (which applies to women exclusively), when we mean men exclusively. The reasoning of **איידי** cannot justify such a blatant error.

⁵ **חי נחלת בן יוסף (חלק טוב עין) בארכיות**.

מה הוא דיןו גט –**It is not a Get, if he died****OVERVIEW**

The **ר' בא** initially wanted to say that (אין אונס בגיטין) he derived his ruling from the provision that if one gave a **גט**, with the proviso that it should take effect if he does not return within twelve months, and he died within that time; it is not a **גט**. The **גמרא** explains the inference; it is not a **גט** if he died (within the twelve months), however if he became ill within the twelve months and did not return because of the illness, it is a valid **גט**; proving that (אין אונס בגיטין). Our **תוספות** explains how this is inferred¹ from that (משנה).

explains; it is not a **גט** if he died within the twelve months -

דאי גט לאחר מיתה² הא חלה הריזה גט –

Since a **גט** cannot be effective **after the death** of the husband; **however** if the husband **became ill**, and he is still alive after the twelve months **it is a valid גט**; proving that (אין אונס בגיטין) -

דאוי חלה נמי איינו גט וטעמא דהכא דין גט משום אונס³ –

For if we will maintain that by **חלה** **it is also not a גט** (like by **and the reason here why it is not a גט**) (by **חלה** and by **אונס**) is **because** it is an **אונס** -

אם כן לישמעין חלה זהוי אונס מועט וכל שכן מה⁴ –

If indeed it is **so**, the **should have taught us** this (of **דין**) **משנה** (which is a **minimal אונס**) (and nevertheless it prevents the **גט** from becoming effective), **and** we would **certainly** know that if he **died** which is a **major אונס**, the **גט** will not be effective –

חלה responds to an anticipated difficulty:⁵

¹ Seemingly if by **חלה** it is a **גט**, since (אין אונס בגיטין) then by **חלה** it should also be a **גט** (and she should not be **זקוקה** (איליבם), since he did not return within the allotted time, and **און אונס**).

² We assume that the **גט** was to become effective when the husband did not return after twelve months. At that point the husband had already died, and cannot issue a **גט**.

³ We will now assume that when he said **הריזה גיטך וכוכ' מכאן ועד י"ב החודש**, he meant that the **גט** should become effective retroactively from the day he gave it, so there is no concern of **מיתה גט**, and the reason the **גט** is not effective is because his not returning was an **אונס** (יש אונס בגיטין) and it applies equally to **חלה** and to **מת**.

⁴ However since the **משנה** did not state its case by **חלה**, but rather by **מת**, this indicates that the **גט** is not effective only on account of **מיתה גט**, but not because of **אונס**, since (אין אונס בגיטין). See 'Thinking it over' # 1.

⁵ Perhaps the reason why it is not a **גט** is because (see footnote # 3), and the reason he did not mention **חלה**, is because if the **משנה** would just state that by **חלה** it is not a **גט** (because (יש אונס בגיטין)), I would not be able to derive that by **מת** it is not a **גט**, because by **מת** (as opposed to **חלה**) he wants the **גט** to become effective (retroactively) so she will not have to go through the process (which does not apply to **חלה**).

דהשתא אכתי לא אסיק אדעתיה דבמת איכא למיימר ניחא ליה⁶ דלא תפול קמי יbam:
For as of now it did not as of yet enter the mind of the idea that by what is possible to say that he prefers that the be effective, in order that she should endure the **יבום** process. Therefore there is no other reason why it should not be a by if it is not a by (on account of **יש אונס בגיטין**).

SUMMARY

It is not a by because at this point the was unaware of the idea that **ניחא ליה דלא תפול קמי יbam**.

THINKING IT OVER

1. Seemingly almost the entire **(דהשתא אכתי וכו')** (until **תוספות**) is a repetition of **why** is repeating it?⁷
2. It seems according to that the only way we can infer from this that **משנה** **דהשתא לא אסיק אדעתיה וכו'**.⁸ However, why cannot we say that it was **ניחא ליה וכו'** that **אסיק אדעתיה**, and nevertheless we can derive from this **משנה** that **אין אונס בגיטין** why does not the mention that it is not a by as well. We cannot derive from even if we are discussing a case of **מעכשיין** (where there is no problem of **אתון גמור**, because it is an **וגם**, but not by which is an **אונס מועט**). We certainly cannot derive from if we are discussing where the **חליה** after **יב הודיע** is **גט** because **אין גט לאחר מיתה**. In short we can know that **משנה** **אין אונס בגיטין**, because if **יש אונס בגיטין**, the should have taught us the **דין** that by **חליה** it is not a **גט**!

⁶ This idea is first entertained later on this **עמוד**, but not as of yet. See ‘Thinking it over’ # 2.

⁷ See **רש"י** **ד"ה מה הא' והב'**.

⁸ See footnote # 6.

וְדַלְמָא לְעוֹלָם אִימָא לְךָ חֶלֶה נֵמֵי אִינּוּ גַּט – – –
really even by becoming sick it is not a Get

OVERVIEW

הר"ז גיטר אמר לא משנה of proof (that אין אונס בגיטין) from the proof גمرا that rejected the proof (that אין אונס בגיטין) instead that by it is a get (since באתי עד יב חדש וכו') (יש טענת אונס בגיטין) saying that by get it is a get (merely) wants to teach us that אין גט לאחר מיתה. Our explanation explains how the refuted the previously mentioned¹ proof that אין אונס בגיטין.

יש טענת אונס ודקאמר ליתני חלה וכל שכן מות –
explains that when the reason is -

Since there is a **יש טענת אונס**, **and as to your proof** that if by it is not a get, so **let the state** that by **חלה** (which is a minor offense) it is not a get, **and** we would know that by **מת** (which is an offense) it is **certainly** not a get; we can refute this proof -

הא דקתני מת הָא קָא מִשְׁמָעָ לֹן דָּאֵין גַּט לְאַחֲרֵ מִיתָּה –

אין גט **For the teaches** by **מת** (**חלה**) **because it is teaching us that** **משנה** **משנה**, which we would not have known if the stated (only) - **חלה** (**משנה**), **לאחר מיתה**
אתא לאשמעין² **תרוייה**³ **דיש אונס**⁴ **ואין גט לאחר מיתה**⁵ –

אין גט **יש אונס בגיטין** **אבל יש גט לאחר מיתה הוה לימייקט חלה** –
לאחר מיתה

explains how we derive both rules from the⁶ **משנה**:

דא ייש אונס גרידא אתה לאשמעין אבל יש גט לאחר מיתה הוה לימייקט חלה –
יש אונס בגיטין, יש אונס בגיטין however **משנה** **משנה**, the should have just mentioned **חלה**, and we would derive with a

¹ See previous תוס' ד"ה מת #.

² This would be in a case where it is not a get but by it is a get, this would prove that אין אונס בגיטין but the same rule applies to (since אין אונס בגיטין), then it should only mention **חלה**. See footnote # 1.

³ It would seem that the **משנה** is ambiguous; it can be discussing a case where he said, meaning that the get is effective retroactively (where there is no issue of מיתה), and it can also be discussing a case where it is not **חלה** but after מיתה (where it is a get).

⁴ This would be in a case of **מעכשי** Where there is no problem of get and so the only issue is whether **יש אונס בגיטין** or not.

⁵ This would be in a case where it is not a get but where it is a get.

⁶ Seemingly one could argue that since there are two reasons why it is not a get (either because אין אונס בגיטין or because get לאחר מיתה), we cannot determine whether either of them is a defining factor, for we can say perhaps it is the other factor that invalidates the get.

ש אונס בגיטין that if by (which is an there is חלה) then certainly there is אונס בגיטין (which is an מועט).⁷ Since it mentioned מה that proves that it is (also) coming to teach us (in a case where he did not say that מעכשייו).⁸

- אין גט לאחר מיתה הוה בעי לאשMOVEDן.⁹ -

But if the only wanted to teach us that משנה but not after מיתה -
לא הוה ליה למינקט הרוי זה גיטך אם לא באתי שעשה תנאי -

The should not have mentioned, הרוי גיטך אם לא באתי משנה a case where he makes a stipulation -

אלא הרוי זה גיטיך לאחר מיתה:

But rather it should have stated **הרוי גיטך לאחר מיתה**, which would teach us that יש אונס בגיטין, the fact the mentions a תנאי משנה proves that it wishes to teach us also that **בגיטין**.⁹

SUMMARY

חליה may be teaching us that אין גט לאחר מיתה (for otherwise just write ברירתא) and יש אונס בגיטין (for otherwise just write והרוי).¹⁰

THINKING IT OVER

In the discussion here, what is seemingly relevant is whether can prove from this that the reason it is not a גט is because of מיתה (and not [necessarily] because of תוספות), then there is no proof for רבא. Why was it necessary for explain that we can derive from this that יש אונס בגיטין also, even if we cannot derive nevertheless (as long as we can interpret the משנה to teach us אין גט לאחר מיתה), there is no proof to רבא?!¹⁰

⁷ According to this, she would not be since the אונס מיתה prevented him from returning (she would be זוקה ליבום). However if he merely gave her a גט without a תנאי that it should be it would be a valid גט.

⁸ We are discussing a case where he did not say מעכשייו.

⁹ That is in a case of מעכשייו. See ‘Thinking it over’.

¹⁰ See בית יעקב.

הרי זה גיטיך אם מתי מהולי זה לאחר מיתה –

This is your Get: if I die; from this sickness; after I die

OVERVIEW

The gemara cites a mishnah which states three cases where a get is ineffective; where the husband either said, this is your get: if I die, or [if I die] from this sickness, or (it should become effective) after my death. Tosfos discusses the structure and the need for this mishnah.

discusses the structure of the mishnah:¹

לאחר מיתה הוא טעמא² דכולחו –

The reason why all these three are invalid is because the husband made them take effect **after death**, and there is no get לאחר מיתה.

Tosfos finds a similar situation:

כמו אתם³ ולא אפוטרופסין⁴ ולא שותפין⁵ ולא אריסין⁶ –

Just like the mishnah which states that the word **אתם** (regarding the separating of truma) excludes; **but not guardians, but not partners, but not sharecroppers -**

ולא כל התורם את שאינו שלו⁷ (גיטין זנ"ב,א) –

but not one who separates for crops **which are not his;** in all these cases the truma is invalid, there too the reason the truma is invalid -

דכולחו הו מושום תורם את שאינו שלו –

In all those cases is because they are all considered as **one who is** crops **which are not his –**

¹ Seemingly once the mishnah taught the first two cases of and אם מותי זה (where it is possible to interpret his intention that it should be get) that it is not a get (presumably because after death אין get), then certainly (where he stated explicitly that it should be effective only after death) it is surely not a get; why mention the last case of after death.

² After death is not merely a third case, but rather it explains why it is not a get in the previous two cases.

³ The Talmud writes (in regards to the separation of truma) that **אתם** (you, who are the owners) is understood to exclude, from separating truma, anyone who is not the owner;

⁴ An apotropos is one who is appointed as a guardian to manage the estates of minors. However he does not own any of their assets and cannot be torah for them.

⁵ A partner cannot be the share of his (other) partner, only his own share.

⁶ A sharecropper does not own the crops; he merely receives his share after they are harvested. He cannot be torah on behalf of the landowner.

⁷ There is the same issue in the cited mishnah. Once we know that apotropos and co' shofetin cannot be torah (even though they have somewhat of an interest in the crops), then certainly a torah שאינו שלו (who has no interest at all in the crops) cannot make it torah; why mention the case of there רשות? See **7. ה אתם**.

תוספות asks

ואם תאמר ה היא משנה גופה⁸ אמאי איצטראיך -

And if you will say; and why is that necessary to teach us that **משנה** (הר"ז גיטין אמ מתי וכו') – אין גט לאחר מיתה –

הא תנן בהדייא בפרק קמא דגיטין (דו יג, א, ושם) דאין גט לאחר מיתה -

Since we already learnt a in the first of **פרק** **משנה**, which states explicitly that **אין גט לאחר מיתה** –

דתנן האומר תננו גט זה לאשתי לא יתנו לאחר מיתה -

For the **משנה** **states**, ‘one who says, ‘give this גט to my wife’, they should not give it to her after his death’. The reason is because אין גט לאחר מיתה why is it repeated in this cited here? –

תוספות responds:

ובפרק קמא דגיטין (שם דבר המתחייב לא) פירשנו⁹:

And in the first of פרק, מסכת גיטין we explained the necessity of both these **משניות**.

SUMMARY

The **תנא** may mention an obvious case to clarify the reason for the other cases. There are different types of ineffective **גיטין** **לאחר מיתה**.

THINKING IT OVER

1. Is there any connection between the opening comment of **תוספות** and the subsequent question?¹⁰
2. Why did not state explicitly the answer to his question (instead of referring us to **גיטין**)?

⁸ The **רישא** just asked why we need the **סיפה** to teach us, since we know it from the **רישא**, and asks that even the **רישא** is seemingly superfluous.

⁹ This is what writes there: **הכא איצטראיך לאשמעין דאע"ג** שמין המגרש בחיו שליח לא חשב להיות כמותו אחר מותו **תוספות** **כאילו הוא עצמו קיים** אלא חשב גט לאחר מיתה והחם **אשמעין דאע"ג** שבאגט ליד האשה מחיים והוא שמע אחר מיתה **שליח** **משנה** **גיטין** teaches us that even though he appointed the while **שליח** the **משנה** **גיטין** is not considered, after the death of the husband, to be in place of the husband, but it is considered a **גט**. The **משנה** (cited) here teaches us that even though the **גט** was in the possession of the woman while the husband was still alive, nevertheless it is considered a **גט**, and it also teaches us which expression **לאחר מיתה** (**זה גיטיך מהוליך וכו'**) is considered.

¹⁰ See **שיטה מקובצת**.

Perhaps it is to reject the view of our Rabbis – דלא מא לאפוקי מדרבותינו –

OVERVIEW

הרי"ז גיטך אם לא באתי וכו' ומה כו' אין גט משנה גمرا is teaching us that we already know that גمرا The asked that we already know that מיתה אין גט לאחר מיתה. אין גט לאחר מיתה from the of this which states משנה רישא responded that גمرا אם מתי אין זה גט perhaps the סיפה who maintain that לאפוקי מדרבותינו is teaching (and therefore in the case of גט, it will be a גט), therefore the משנה teaches that it is not a גט.

תוספות responds to an anticipated question:

אבל מה היא דרישא לא שמעין לאפקוי מדרבותינו דאייכא לאוקמה בשאי כתוב זמן בשטר -
 אם מתי אין זה גט רישיא (namely, משנה states in the) we cannot derive ¹, לאפקוי מדרבותינו for we can establish those cases where there was no date written ² in the גט -

אין בו זמן anticipates a difficulty by establishing the **רישא** in a case where תוספתה:

והא אמריןן (בגיטינו דפ' פוב) שלשה גיטין פסולין וחד מיניניהו שאין בו זמן -

And that which the states, ‘three גיטין משנה are, and one of them is a גט which has no date, so how can we establish the רישא (of azman) by (הר'י"ז גיטך אם מתי)? since it is regardless (even if we maintain מיתה פסול –)

תוספות responds:

הא אמרינו אם נשאת הولد בר -

ג' גיטין פסולין there also states, if she married (with one of these [including a child, **כשר** if she is considered divorced -

ומושוף³ דאיו גט לאחר מיתה קתני הכא לא אמר כלום אפילהו נשאת -

However because of פָּנָים בְּאַחֲרֵי יִתְמַהֵּן the lesson teaches us here that he did not

¹ According to the **הר'ז גיטך** if he said it would be a valid date if there is a date in the **גט**, since the date is that he wants the **גט** to be effective retroactively from the date on the **גט**, and it will not be considered a **מיתה גט**. By saying that it is not a **גט** the **רישא** taught us **אgal מ"מ**. Why do we need the **סיפה**?!

² However since the word **סיפה** is superfluous (for we do not need it to teach us, **אין גט לאחר מיתה**, for we know it already from the word **רישא**), it must be coming to teach us that even if there is **זמן לאפוקי** **מדרבותינו** it is not a date (see **תוה"ר גט**). Alternately, in the case of the word **סיפה** where he writes **אם לא באתי מכאן ועוד יב הודש**, it is evident that there is a date and nevertheless it is considered a date because the word **גט** **לאפוקי** **מדרבותינו** teaches us that **גט** **לאחר מיתה** is a date (see **מהר"ם שם פרט**).

³ There is a purpose in teaching the rule of באתה מכאן ועד יב הודש where there is no גט (for even though she may not marry with this גט [even if he did not return (without an אונס) since it is nevertheless לכתלה] the motherhood היליצה זקקה ליבום and requires to be משנה לשוק.

say anything (the **ט** is ineffective) **even if she remarried** for **אין גט לאחר מיתה**.

רישא offers an alternate suggestion why we cannot derive the from the **תוספות**

אי נמי בשכטוב בו שבוע או שנה או חדש דבר בפרק שני בגיטין זז, יז, ב, זכר -

Or you may **also say that in the was written** only which **ט** was written only which **שmittah**, **or** only which **year** in the **שmittah**, **or** only which **month** (so the date in these cases is not specific enough), **where the states in the second פרק of גמרא גיטין** - **כשר גט is that**

ואין זמנו מוכיח עליו⁴ -

However we cannot say **זmeno של שטר מוכיחה עליו**, since it is so vague and we do not know when it was written.

תוספות offers a final option:

אי נמי במאוחר:

Or you may **also say; it was a post dated** (**ט** (כשר גט⁵), where we certainly cannot say **זmeno של שטר מוכיחה עליו⁶**.

SUMMARY

We cannot derive from the **רישא** because the **ט** may be discussing either an undated **גט**, a vague date, or a post dated **טג**.

THINKING IT OVER

(last) answer is that it was a **ט מאוחר**. The question is when did he die; if he died prior to the date, then it is certainly not a **ט** (even if he did not say **אם מהי גט**), since the **ט** is effective only from the date on the **טג**,⁷ and if he died after the date, why cannot we say that **זmeno של שטר מוכיחה עליו**, that it should take effect on that date?!⁸

⁴ Let us assume that the date of the **ט** was year one of the **שmittah** and he said **הריני גיטן אם מהי גט** and he died before the end of year one. We cannot say **זmeno של שטר מוכיחה עליו**, because we can assume at most (if we maintain **רבותינו**) that he meant that it should become effective by the end of the year but not before, and since he died before the end of the year it is a **ט** even according to **רבותינו**.

⁵ See **כשר גט מאוחר**, **תוט' גיטין ז, א, ז"ה ריש לקיש**.

⁶ See 'Thinking it over'.

⁷ See footnote # 5, where **תוס' דלמא** maintains that the **ט** becomes effective from the date on the **טג**.

⁸ See **פרדס יצחק אות קט רע"א**.

דָלְמָא מֵת דּוֹקָא דְלָא נִיחָא לִיהְ דַתְפּוֹל קְמֵי יְבָם -
Perhaps only by death; for he is not pleased that she should be bound to the *Yovohm*

OVERVIEW

The **גמרא** argues that when the **משנה** states that if he said **חודש** and he died beforehand it is a **ט**, it is limited to the case where he died, for only there does he want the **ט** to be effective so she will not be **ליבומ**, but if he did not return on account of sickness, it is not a **ט** (since **יש אונס בגיטין**), for he does not want the **ט** to be effective. **הוספה** reconciles this (that he wants the **ט** to be effective if he dies) with a contradictory **גמרא**.

תוספות asks:

ואם תאמר בפרק מי שהזו¹ (גייטין דף עג,א ושם) דאמרין אכלו ארוי אין לנו -

And if you will say; in פרק מי שאחزو גمرا rules that if a lion ate him we do not maintain, etc. and -

פירוש אין לנו שיחה גות ואמאי לא הויב גות הא לא ניחא ליה דתפקיד קמי יבס² -

The explanation of אין לנו is that we do not maintain that it is a גם (but rather we maintain that it is not a גם), so the question is why is it not a גם, since he is not pleased that she should be זיקוקה ליבומן as we say here?!³

תוספות answers:

ויש לומר דברו נושא דלא שליח כלל לא אסיק אדעתיה שירצה שהיא⁴ גט:

And one can say that a person does not anticipate an accident which is not common at all, so that he should want that there should be a **ସାଧ**.

SUMMARY

¹ The case there is where someone wrote agett and said 'מתי מחולוי זה if הריר'ז גיטך מהיום', and a lion ate him before he recovered from that sickness.

² The issue (in both *גמראות*) is whether she is *זוקקה ליום* (for the husband is dead). So just as we say here that if he said *יש אונס בגיטין גט* (even though we maintain [at this point] that *אמ לא באתי וכו'* because the husband wants the *גט* to be effective if he dies, so she will not be *למפרען*; similarly there when he said *אם מתי מוחלי זה*, he also wants it to be effective retroactively ([even] if *אכלו ארוי* so she will not be *זוקקה ליום*).
³

³ See ‘Thinking it over’.

⁴ Death is an גיטך אם לא, nevertheless we cannot say that it is גיטך, therefore when a person says אונס גמור, he anticipates the (slight) possibility that he may die, and implicitly desires that if he dies that the גיטך should be effective retroactively (even if we maintain that his wife should not be קורקה ליום יבום), in order that his wife should not be אונס בגיטין. However by an אונס דלא שכיח כלל (such as אכלו ארוי) he does not anticipate that at all; therefore we cannot say that he had in mind that if אכלו ארוי the גיטך should be effective retroactively. Therefore, since he said אונס גמור, he only meant that the גיטך should be effective if he dies from this sickness but not if ארוי. אכלו ארוי.

There is a difference between an אונס סתום (like מיתה) where a person anticipates it and wants the gut to be effective (שלא חזק ליבם), and an אונס גט which is (such as אכלו Ari) which he does not anticipate and we cannot assume that he wanted the gut to be חל למפרע in such a case.

THINKING IT OVER

Seemingly the two cases are (אם מתי מהולי וכו' ואכלו Ari, אם לא באתי וכו' ומת) and, (אם לא באתי עד יב תנאי was and he died during the month יב, he is fulfilling the condition, for he did not return before יב month). That fact that he did not return because of an אונס cannot be considered that his condition was not fulfilled (even if we maintain יש אונס בגיטין), especially since the whole purpose of his condition was to prevent her from leaving him. However in the case of the condition was not fulfilled (for he did not die, but rather because he did not die, rather than because of סברא, the condition was fulfilled like the case of אונס, the condition was fulfilled when it was not fulfilled. In short when the condition is fulfilled like the case of אונס, the condition is sufficient to remove the obstacle of יש אונס, but the condition of סברא does not have the power for us to consider that the condition was fulfilled!⁵

⁵ See (עד ז) in מ"ת כתאות כ וכא (ב"ב).

וסבירה דאיס –

And she thinks he had a mishap**OVERVIEW**

The conclusion was that the ruling of רבא (and if the condition was fulfilled, even because of an אונס, thegett is valid), is based on the logic that (if we would maintain there would be a problem with women who are either כנויות (modest)¹ or פרוצות (promiscuous²).explains why they are referred to as כנויות or פרוצות respectively.

ומן הדין³ לית לו למייחש דלמא אניס הוא דרובן לא אניסי –

For according to the law, we are not obligated to suspect that perhaps he did not return due to an אונס, for the majority of people do not experience כנויות as

ולחכى קרי להו כנויות שמחמירין על עצמן אף על גב דעתם לאינסובי –

And therefore the refers to these women (who will not remarry, unless they verify that the fulfillment of the condition is not due to an אונס, כנויות as, for they are strict with themselves, even though legally they may remarry) (דרובן לא אניסי –)

וגבי פרוצות לא גרשינו וסבירה דלא אניס⁴ אלא אמרה דלא אניס –

And regarding the text do not read, ‘and she assumes that there was no אונס’, but rather the text read ‘and she says, ‘there was no אונס –

פירוש אפילו בשיטת הקול דאיס⁵ אמרה דלא אניס⁶ –

The explanation (why she is called a פרוצת) is that even if there is a rumor that he was אניס, she will say that she knows for sure that he was not (even if she does not know whether he was or not) –

או אפילו בשיטת היא עצמה דאיס ואחרים לא ידעו –

Or furthermore even if she herself knows that he was אניס but others do not

¹ In the case of we are concerned that even though the condition was fulfilled (the husband did not return within the specified time), however the woman (because she is a כנואה) is concerned that perhaps there was an אונס that caused her husband not to return, and if we maintain ייש אונס בגיטין, thegett is not effective, and the woman will not remarry, when in truth (there was no אונס and) she may remarry. See footnote # 3.

² In the case of we are concerned that the woman will remarry (illegally) even if the condition was fulfilled (the husband did not return) only because of an אונס, where (if we maintain ייש אונס בגיטין) she is not permitted to remarry. Since she is a פרוצת, she will remarry regardless of the circumstances.

³ explains why we refer to these (cautious) women as כנויות; since we do not know the reason why the husband did not return, it seemingly behooves us not to permit her to remarry until we verify the circumstances why he did not return and we can ascertain that it was not due to an אונס.

⁴ If she remarries because she assumes there was no אונס, we cannot call her a פרוצת; as just said that if the condition was fulfilled she may remarry legally since דרובן לא אניסי.

⁵ Once there is a קול that ב"ד אניס, the will not permit her to remarry unless we verify the קול.

⁶ If she maintains that she knows he was not אניס, the will not prohibit her from remarrying (because of a קול).

know that he was dead, she will (lie and claim he was not and) remarry illegally (if we assume אונס בגיטין).⁷

תוספות asks:

ואם תאמר מותתו י"ב חדש נמי יהא גט מהאי טעמא⁸ -

And if you will say; in the case where the husband **dies within the twelve months** (where the ruling is that it is not a גט [unless he said מעכשיין], it should also be a גט for the same reason -

דזימניון דלא מות וסבירה דמת ומיעגנא⁹ **ויתבה**¹⁰ -

For occasionally it may be **that he did not die** (and therefore the גט is valid [for there was no אונס, and it was not מיתה]) **and she will assume that he died** (so the גט is invalid [since there was מיתה]), **and she will remain an עגונה** -

תוספות answers:

יש לומר דמיתה קלא אית לה:

And one can say that there is publicity regarding death, and therefore if we do not hear that he died, even the צניעות will assume that he is alive, the תנאי was fulfilled, the גט is valid, and they will remarry.

SUMMARY

There is no חשש for אונס legally, however the צניעות are strict for themselves, while the פ्रוצות may remarry even if (they know) it is legally prohibited. There is no concern for אונס מיתה since there is publicity surrounding a death.

THINKING IT OVER

צניעות asks that by מכאן ועד יב חדש it should be a גט because of the Tosafot. Why did not ask (also) that it should be a גט because of the פ्रוצות as well?!¹²

⁷ This is obviously a much greater פרוצת than the previous case.

⁸ רבא is teaching us that even though legally אונס בגיטין and therefore in a case of it is not a גט, nevertheless on account of צניעות (and), we rule אונס בגיטין and validate the גט. The same should be true in the case of הרי"ז גיטין, that even though legally it is not a גט (since מיתה is גיטין), nevertheless because of צניעות we should validate the גט (even though that it is גיטין). See 'Thinking it over'.

⁹ עגונה which is related to the word means that the woman is 'anchored' in place and cannot remarry.

¹⁰ In our case the issue is בום; if the גט is valid she can remarry, however if the גט is not valid, she is זקונה ליבום, and if for some reason there can be no בום or חיליצה, she will remain an עגונה.

¹¹ See footnote # 8.

¹² Tosafot הרא"ש

אדעתא דרבנן מקדש –

He is based on the approval of the Rabonon

OVERVIEW

The嫁娶explains that notwithstanding the fact that the woman remains an אונס, nevertheless because of the concern of פ्रוצחות וצניעות, we maintain that she is valid (and the woman is no longer an אונס). The husbands have the power to do this since they can uproot the marriage if the husband leaves it up to them to either sustain or nullify his marriage as they choose. This explains how we see that a person is married according to the laws of Moses and Israel.

לכן¹ אומרים בשעת קידושין כדת משה וישראל²:

Therefore the husbands say at the time of the קידושין that they are being performed according to the laws of Moses and Israel.

SUMMARY

מקדש אדעתא by כדת משה וישראל to explicitly acknowledge that we are married according to the laws of Moses and Israel.

THINKING IT OVER

What would be if one did not say כדת משה וישראל would the ruling of אין אונס בגיטין apply to this marriage? What is if he said (at the time of קידושין or later) that he was not married³?
מקדש אדעתא דרבנן

¹ The word **לכן** implies that since כל דעתה דרבנן מקדש, therefore we implement to he should say it, but (seemingly) it does not mean that since he says it therefore he is married. See 'Thinking it over'.

² Seemingly the word 'ישראל', indicates that he is Jewish.

³ See סוכ"ד אהות ה'.

ואפקעינחו רבנן לקידושין מינה –

And the extracted the קידושין from her רבנן

OVERVIEW

The Gemara stated that since the ב"ד can (when they see fit) to be קידושין מפקיע retroactively, that there never was any קידושין and they were never married. This can have serious consequences which need to be addressed.

בריש השולח¹ (גיטין לג.) פירשתי:

I explained this in the beginning of פרק השולח.

SUMMARY

פרק השולח resolves the issues with אפקעינחו תוספות.

THINKING IT OVER

Seemingly the concerns mentioned in השליח apply only to one who will be מבטל (since he can plan to make an אונס by בגיטין; אפקעינחו גט³ however here by בפנוי, one cannot plan on making an אונס, so seemingly the concerns are not relevant here, so why does need to mention here that he addressed the concerns of פרק השולח in אפקעינחו?!)

¹ The Gemara there states that even though one may nullify a גט before a ב"ד (and he need not do it in the presence of the שליח or his wife), nevertheless the חכמים enacted that if one is מבטל גט, not in the presence of the שליח or his wife, the ביטול is invalid and the גט is effective. There too the Gemara states that the חכמים relied on this same concept of (כל המקדש אדעתא דרבנן מקדרש) and therefore אפקעינחו לרבנן לקידושין מינה.

² The difficulty of saying that one who is מבטל בפנוי גט is that he can be אפקעינחו מבטל גט, by writing a גט to his wife and then be מבטל it, so his wife (because of גמורות) was never married to him and she is not זוגה for her and her children from this גזירה will not be מזרים. The תוספות there addresses these and other issues. See ‘Thinking it over’.

³ See footnote # 2.

תינה דקדיש בכספה –**It is reasonable if he was מקדש with money****OVERVIEW**

The states that it can accept the idea of קידושין if the was made with money, however how can we explain the if the was made with money. ביאה קידושין explains the difference¹ between קידושי ביאה and קידושי כספָה.

- קידושי כספָה by אפקענינה explains that we can understand the additional

דהפקר בית דין היה הפקר והוא מעות מתנה³ ומילא⁴ יהו כל בעילותיו זנות -

Since the confiscation of ownerless, and therefore the money of become a gift to the woman (and there was no so, (קידושין no automatically all his subsequent will be considered as however - ביאות זנות;

קידיש בביאה מאין איכא למימר איך יפקיעו ביאה של קידושין⁵ -

What can we say if he was רבן; how can the invalidate the קידושי בביאה – ביאה

anticipates a difficulty with this question:

ואפילו למאן דאמר באשה רבה⁶ (יבמות פטב ושם) דיש כח לחכמים לעקור דבר מן התורה⁷ -

And even according to the החכמים in מ"ד פרק האשה רבה, that the possess the power to uproot something which the תורה ordains –

¹ Seemingly both so if the can invalidate one (קידושי כספָה), they should be able (in the same manner) to invalidate the other (קידושי ביאה)

² Others delete the word 'הו'.

³ The simple understanding is that since הפקר made his money and the woman is now in possession of this money, it is considered as if she received a through the מתנה. [Alternately, since the החכמים have complete jurisdiction over his money (to the extent that they can confiscate it), they decreed that this money should be considered a מתנה to the woman and not קידושין.]

⁴ The that were done after the were not קידושי כספָה, since the husband assumed that she is already through the קידושי כספָה. Therefore since the קידושי כספָה were annulled, automatically the subsequent ביאות זנות of ביאה are, since she is not his wife and he is not her בעילות. However since it is not the who are making his ביאות זנות (which is a forbidden); we are not concerned about it. See footnote # 8.

⁵ The concept of cannot apply by ביאה and it would seem inappropriate that the should cause that the קידושי ביאה should become a ביאות זנות.

⁶ The case there is where one was טבל טמא from תרומה that it is a valid (and תרומה טמאה can use it as fuel, but it is forbidden to be eaten for it is). However the decreed that he must be again. There is a dispute as to what is the status of the original תרומה טמאה that it retains its status, however רב הסדא maintains that it reverts to its status. יש כח ביד החכמים that even though תרומה טמאת that even though it is תרומה, nevertheless the render it and when will be separated from this טבל טמא, the original will be permitted to be eaten (by a זור).

⁷ Seemingly therefore here too we can say that the have the power to nullify the even by הפקר ביאה (without resorting to טבל טמא), just as they were able to render תרומה into טבל טמא.

- יש כח ביד חכמים לע考ר דבר מן התורה responds that when do we say that תוספות
הינו גוון דליך עבירה כההיא דהאה רבה דהדר לטיבלא⁸ -

פרק That is only where for instance there is no transgression, like that case in דיש כח ביד where the תרומה returns to its status, in such a case we can say חכמים וכו'

אבל היכא דאייכא עבירה דמקודשת היא בביהה⁹ מיי אייכא למיימר -

However where there is an עבירה like in our case where she was מקודשת בבייהה, what can we say?!

גמרא's cites and explains the answer:

ומשנני שוויוה רבנן בעילותו בעילת זנות ואין כאן קידושין:

And the answers that the caused that his רבנן גמרא and בעילת זנות are בעילות קידושין here.

SUMMARY

The power of קידושי ביהה is sufficiently strong that (not only can they be through הפקר ב"ד, but) they can even cause to become a מבטל קידושין and invalidate the קידושין.

THINKING IT OVER

1. According to the conclusion of תוספות, is it necessary to resort to קידושי כספ' in הפקר ב"ד order to explain why the חכמים can nullify the?

2. Can our and also follow the view that גמרא nevertheless the מבטל קידושי ביהה can be the חכמים?

3. How can we explain the need for both; seemingly each one can nullify the other?¹⁰

⁸ There the חכמים merely said that the תרומה revert back to طבל. At that point the produce (which is now תרומה on this طbel) continues to be אסור (as it was when it was). The fact that later after one will be the original תרומה will become מותר באכילה is of no concern since it is not done directly by the חכמים (see מהרש"ל). See footnote # 4.

⁹ Here as soon as the חכמים invalidate her, she ceases to be an אישת אשת, and the חכמים are directly permitting an גט. [Alternately, by nullifying the קידושי ביהה are causing directly that this becomes a תינחה which is a ביהה זנות (see סוס' ב"ב מה, ב"ה תינה)].

¹⁰ See סוכ"ד אות ט.

איכא דאמרי אמר רבא וכן לעניין גיטין –

There are those who say; רבא ruled: and similarly regarding Gittin

OVERVIEW

After the cited the initial view of that רבא cites an opposing view that maintains rules that and reconciles it with a seemingly contradictory.

פסק ריבינו חננאל kaliShna קמא דין אונס בגיטין –

- אין אונס בגיטין (of that) רבא ר"ח

והביא ראייה מדקאמר סתמא הש"ס בריש השולח (גיטין לד, א ושם) גבי ההוא דאמר¹ –

And the brought proof to his ruling since the stated anonymously in the beginning of ר"ח, פרק השולח, regarding a person who said –

אי לא נסיבנא עד תلتין יומין ליהוי גיטה כולי ואי משום אונס אין אונס בגיטין –

'If I do not marry until thirty days it should be a', etc. The ruled that it is a valid, because we disregard his claim that it was an, since the ruling is that אין אונס בגיטין; thus proving the ruling of the ר"ח.

ר"ח concurs with the ruling of the:

וכן נראה דאליבא דaicא דאמרி הו פירבי מכל הני דמייתו סייעתא kaliShna קמא –

And so it seems that the that, for according to the there are refutations to this view from all the sources from which the brought as a support to the; ל"ק even though the d"א respond to these difficulties, nevertheless –

ולא סמכין אשינויי דחיקי –

We cannot rely on these inadequate answers.

asks:²

וקשה לריבינו יצחק דמסיק בפרק מי שאחزو (שם עג, א ושם) –

And the has a difficulty with this view that the halacha for the

– פרק מי שאחזו concludes in גمرا

דברין דאמר הרי זה גיטה אם מת מחוליה בין אם אמר אם לא לעמוד מחוליה זה³

¹ He wrote a letter to his wife stating that if he did not make the marriage within thirty days, this should become effective. He did not make the marriage within the allotted time, but wanted to invalidate the marriage claiming that he did whatever he could to make the marriage, but was not able. The ruled that it is a valid marriage for the wife.

² See 'Thinking it over'.

³ One may think that if he said the condition 'if he died before the marriage was fulfilled' (and if he would be

That whether he said; ‘here is your גט if I die from this sickness’, or whether he said, ‘here is your גט, if I do not stand up from this sickness’ -

ונפל עליו הבית או נשכו נחש או אכלו ארוי דלא הוイ גט אלמא דיש אונס בגיטין⁴ -

And the house collapsed on him, or a snake bit him, or a lion devoured him, in all these case it is not a גט (this ends the citation from the גמרא there); it is evident that יש אונס בגיטין (and therefore it is not a גט) –

תוספות anticipates a response to his question:

וליכא למיימר דהתם לא מטעם דיש אונס קאמער דלא הוי גט -

And we cannot answer that there it is not on account of the rules that it is not a גט (as the ר"י would have us understand) -

אלא משום דברין אם מתי מחוליה זה בין אם לא עמוד משמע שיממות זה החולי⁵ -

But rather the reason why it is not a גט is because that whether he said אם מתי or whether he said אם לא עמוד from this sickness, either way his intent was that the גט should be effective only if he dies because of this sickness -

וכשנפל עליו הבית או נשכו נחש איןו גט דאיין זה מחוליה זה -

However when the house collapsed on him or a snake bit him, it is not a גט, because this is not considered that he died from this sickness; but it has nothing to do with the s"d difficulty –

תוספות rejects this response:

זהא מוכח בהדייא התם דמטעם דיש אונס הו -

יש אונס For it is explicitly evident there that the reason it is not a גט is because תנאי was not fulfilled (and not because the גמרא clarifies; for –

גבי ההוא גברא דזבין ארעה לחבריה וקביל⁶ עלייה כל אונסא דאיתיליד בה כולי⁷ -

Regarding that person who sold land to his friend and the seller accepted upon himself to be responsible for any misfortune that will develop, etc.

a valid גט), however if he said תנאי לא אכלו ארוי זה was not fulfilled (since he did not die from this sickness and it would not be a גט (even if און אונס בגיטין), nonetheless the Tosafot maintains that in either case it is not a גט because (as Tosafot understands [now], but not because the גמרא was not fulfilled (for even though מחוליה זה can be interpreted to mean that I will die before I recover from this sickness and indeed he did).

⁴ If we maintain גט then the גט should be valid since he never recovered from the sickness. However if און אונס בגיטין it is understood why it is not a גט, for his lack of recovery was due to an און.

⁵ According to this understanding (of the ר"י), even לא עמוד מחוליה זה means that I will not recover, but I will die from this sickness, which did not happen when אכלו ארוי, and therefore the גט was not fulfilled and the גט is invalid, but not because of און. [See footnote # 3.]

⁶ The seller guaranteed the field and that no matter what will happen the seller will make the sale good to the buyer.

⁷ The king then ordered that the river be diverted and be made to flow in this land which was sold. The buyer whose field was ruined wanted compensation from the seller who accepted responsibility for the גט.

אמר רבא אונס דלא שכיה הוא ומיתוי רבא סייעתא מהא דאכלו ארוי אינו גט⁸ -
רבע ruled that this is an uncommon (the seller cannot be held responsible), and brought proof that one is not responsible for from the previously mentioned case where the lion ate him, where the ruling is that it is not a refuted this alternate explanation and now reiterates his original question -

אלמא אונס דלא שכיה יש טענת אונס לרבע⁹ -

- אונס דלא שכיה by an there is טענת אונס לרבע -
 והכא קאמר רבא גופיה בלישנא קמא שהוא עיקר -
 And here the very same maintains in the accepted version -
 דין אונס אפילו באונס דלא שכיה כדמות הסוגיא¹⁰ -
 That even by an as is evident in the gmarah.

answers: תוספות

ואומר רביינו יצחק דג' ענייני אונס הן¹¹ -

And the said that there are three types of ר"י -
 אונס דלא שכיה כלל כההיא דמי שאחزو¹² אפילו לישנא קמא זרבא זהבאה יש אונס -
 פרק מי שאחזו in אונס which is altogether uncommon like the accepted here (who maintains of רבע ל"ק)
 - יש אונס (אין אונס), we say even according to the here (who maintains of רבע ל"ק)
 דלא שיך התם לתקון משום צנעות ומשום פרוצות¹³ -

For it is not applicable to enact in such a case a ruling of because of the
 because of the and because of the; פרוצות and explains -

دلulos לא סבירי צנעות דנפל עליו הבית או שהכישו נחש כיון דלא שכיה כלל¹⁴ -

⁸ This proves that the reason it is not a גט (when he said גט) is not because the reason was not fulfilled (for if this is the reason how can derive from this that one is גט) but rather it is not a גט (even though the reason was fulfilled) because because of the גט.

⁹ We see it from the way derived from that יש טענת אונס and applied it to the case of the field that רבא

¹⁰ The replies (on the proof from gmarah, which indicates that אין אונס בגיטין) that אין אונס בגיטין (so even if we maintain אין אונס, however there is no גט by an אונס) This proves that when רבא ruled אונס דלא שכיה אין אונס בגיטין.

¹¹ In the question assumed that there are two types of אונס (where all agree) and an אונס דשכיה (where there is the dispute between the two of and) therefore there is the abovementioned contradiction between here and רבא. The answer is that there are three types of אונס.

¹² Being devoured by a lion or having the river diverted into your field is an גט.

¹³ The here maintains that even though אין אונס בגיטין, nevertheless we rule (and the גט is valid) because if we would rule גט the will never remarry because they are concerned that perhaps the reason was fulfilled (the husband did not return) only because of an אונס (so the גט is invalid). The opposite is true of the that even if there was an אונס (unbeknown to us), and the גט is invalid, they will (falsely) argue that there was no גט and they are permitted to remarry. Therefore the enacted that אין אונס and if the גט was fulfilled (regardless of the circumstances; אונס or no אונס) the גט is valid, so the need not be concerned and the are remarrying legally. However if there was a verified אונס דלא שכיה כלל, the גט will be invalid. See footnote # 14.

¹⁴ Even if we rule that by an אונס דלא שכיה כלל גט it is not a גט, there is no concern that the will not remarry (when

For the house will never imagine that the house collapsed on him or that a snake bit him, since it is - לא שכיה כלל

ומושום פרוצות נמי ליכא למיחש כיון דלא שכיה שיעשה כן¹⁵ -

And there is also no concern for the house, since it is not common that this should happen. This is one type of where the rule is (אונס which is called השכיה) (יש אונס).

ואונס דשכיה כגוון היא דפסקיה מברא אפילו לאיכא דברי אין אונס דאייבע לייה לאתנוויי -

And by a common, for instance by the person where the river prevented him from coming, even according to the פסקא מברא (who maintain the ruling would be און אונס בגייטין) (יש אונס בגייטין) (the third type of אונס), אין אונס, for he should have stipulated that in case I do not come because of something similar and common (or something similar and common) it should not be a גט.

אבל אונס דשכיה ולא שפיכח בהא פלייגי תרי לישני דרבא¹⁷ -

However by an which is somewhat common but not very common (the third type of אונס), **that is where the two versions of רבא argue** whether or not there is a dispute between the two versions of אונס.

והלכטה כלישנא קמא דרבא כדפירשנו:

And the ruling is like the ר' ק דרבא as we explained previously that אין אונס בגייטין.

SUMMARY

By an all agree that אונס דלא שכיה כלל אונס, by a common all agree that אונס דלא שכיה כלל אונס, there is the dispute between the two versions of רבא.

THINKING IT OVER

It appears from that the question from is (only) if we maintain that the question from is (only) if we maintain that אונס בגייטין is הלכה. However, even if we do not rule אונס בגייטין, nevertheless a contradiction between the ר' ק of which maintains אונס בגייטין and the ר' ק where maintains אונס בגייטין!

the condition was fulfilled) out of concern that perhaps an אונס דלא שכיה כלל caused the husband to fulfill the condition (and therefore it is not a גט), because since it is they will never assume it. See footnote # 13.

¹⁵ This should be (seemingly) read: 'היו"ד צרואה והעין קמוץ': meaning, 'that it should happen'.

¹⁶ There is also no concern that since we say that by an אונס דלא שכיה כלל it is not a גט, there is the possibility that there was an אונס דלא שכיה כלל (and the גט is not effective) but the will claim that it was not an אונס דלא שכיה כלל. לא שכיה כלל and remarry, for since it is we cannot make a גזירה by something which is לא שכיה כלל.

¹⁷ Therefore there is no contradiction, for the rules of גמרא in גמרא, which rules is discussing an אונס בגייטין (ר' ק), that is discussing an אונס בגייטין (ר' ק), is discussing an אונס בגייטין (ר' ק), which is השכיה ולא אונס בגייטין.

¹⁸ See footnote # 2.

¹⁹ See מהר"ם ש"ר תורה ותורה.

שבתי דיןין קבועים בכל יום –**Where the courts of law are in session every day****OVERVIEW**

רב שמאלי בר יצחק taught that the rule of ב' י"ד is effective from the time of תקנת עזרא onward since the courts are in session only on Mondays and Thursdays; however before ב' י"ד, when the תקנת עזרא was in session every day, a marriage may be performed any day. It seems that the תקנת עזרא instituted that the ב' י"ד should not be in session often. This clarifies what תקנת עזרא accomplished.

תוספות asks:

ואם תאמר וכי תיקן עזרא שלא יהו בתיהם קבועים בכל יום אלא ב' ובה' בלבד¹ -

And if you will say; and did indeed institute that the should not be in session every day, but only on 'ב' ו' מה'?!

תוספות has an additional difficulty:

ועוד קשה דברינו בשבת (ז' כתוב ושמט) מי שיש לו זכות אבות יקייז ב' ובה'² -

And there is an additional difficulty; for the states in general, only 'he who has the merit of his ancestors should have bloodletting on 'ב' ו' מה', but not anyone else -

וכי קודם תקנת עזרא לא היו מקיזין כל עיקר⁴ -

Is it indeed so that before this תקנת עזרא they were not at all?!

תוספות answers:

ואומר רבינו תם דקודם תקנת עזרא לא היו קבועים בכל יום -

And the ר"ה answers; that before ב' י"ד the תקנת עזרא was not in session every day -

אלא כשהיו צריכין לשום דין היו יושבין בכל יום ויום⁵ -

But rather whenever a ruling was necessary the ב' י"ד would convene on

¹ If the prevailing custom was that ב' י"ד was in session every day, why would they enact that they should only be in session on Mondays and Thursdays?!

² One of the medical procedures (in those days) was bloodletting.

³ The Gemara there says because on ב' י"ד שלמעלה ושלמטה (the תקנת עזרא is always in session) and since it is a דין דין his עבירות are remembered (see רשב"י, and unless he has it is dangerous for him to be there).

⁴ Before ב' י"ד the תקנת עזרא was in session every day (as was the case [see footnote # 3]), so every day if one did not have time he would not be able to perform bloodletting. This seems very strange.

⁵ It will be necessary to say that when the תקנת עזרא writes 'every day' it means they would convene any day if necessary, but they were not scheduled to convene every day

whichever day it was; there was no set day when was in session -
ועזרא תיקון⁶ **שייהו קבועין בב' ובה'** וכל הרוצה לדון יבא וידון -

And instituted that should convene on every (regardless if there was anything pending) **and whoever wanted a ruling can come and be judged** -
והיו יכולים להקייז בכל יום קודם תקנת עזרא כיון שלא היו קבועים -

And so therefore before **מקיז דם** **they could be every day, since was not scheduled to convene** (it was not such a severe day and it would not pose a danger).

ורבינו יצחק טירץ שלא היו קבועים תחלה אלא בעיר אחת ועזרא תיקון בכל עיר ועיר בב' ובה':⁷

And the **ר"י answered that initially before** ב' **תק"ע** **would not convene** everywhere, **but rather only in one major city** (every day)⁸,⁹ **and instituted** that the ב' **should convene in every city on '**

SUMMARY

Before ב' **תקנת עזרא** the would either meet (any day) when the need arose, or they would only meet in one city, but not in all cities as it was after **תק"ע**.

THINKING IT OVER

According to the **ר"י** did the **תק"ע** change anything in the city where would convene every day?⁹ If did change it to ב' **וה'**, the question remains why would change it, and if not, then a should be able to marry there every day?!¹⁰

⁶ Since the ב' **תקנת עזרא** had no schedule it took time to convene the ב' **תק"ע**, and it was a bother (for the דין בעילוי), however with the **תק"ע**, the was already in session and no time was wasted.

⁷ See 'Thinking it over'.

⁸ There was therefore no danger to be **מקיז דם** since ב' **תקנת עזרא** was not convened in every city; only in select larger cities.

⁹ See footnote # 7.

¹⁰ See ק"מ טעם.

A woman can be married on every day**אשה נשאת בכל יום –****OVERVIEW**

The said that before תקנת עזרא was ב"ז (when) can get married on any day. explains why she is not like the (where there are no issues of תחולין), who is to be married on Thursday.

asks תוספות:

קשה לרביינו שמישון בן אברהם אמר נשאת בכל יום –

The has a difficulty; why should get married on any day –
תaea כאלמנה¹ ותינשא בה' ותיבעל בששי לפי שנאמר בו ברכה לאדם² –

Let her be like an and get married on ה' נבעל on Friday, since the blessing to אדם was said on Friday?

answers תוספות:

יש לומר דמשום ברכה לא היו קובעים يومCDFRISHIT ליעיל³ –

And one can say; that the would not establish a day to get married because of alone, as I explained previously –

ובאלמנה נמי⁴ לא קבעו שתיבעל בששי משום ברכה גרידא –

ברכה even by they did not establish that אלמנה alone –

אלא משום שקדו⁵ שהיא שמח עמה ג' ימים כדי אמר לךמן⁶ (ז' ה,א) –

But rather the reason an is married is because the persevered that the husband rejoice with his wife for three days, as the states later –

¹ Just as by an (where there are no issues of תחולין, nevertheless) she is married on ה' because of the (קובעים בכל יום is ב"ז טענת בתולין since ברכה לאדם, should also be married on ה' ו' ו').

² See the later on ה' גרא. On Friday blessed (זהו ורבו אדם (זהו) with the blessing of (therefore it is appropriate that the husband take place on ליל[ן] ו' [ליל]).

³ See footnote # 3 that the enactment of שקדו is sufficient to consider them transgressors if they do not marry then. [The however may have assumed that since ברכה לאדם עדיפה than it, it is sufficient to be a day for marriage.]

⁴ The ' נמי' may mean that even though the cites the reason of ברכה as the cause why an nevertheless it is not because of alone, but in conjunction with שקדו.

⁵ See footnote # 3 that the enactment of שקדו is sufficient to consider them transgressors if they do not marry then.

⁶ The were concerned by an that if they were married on any other day of the week he will leave the next day to work and will not spend time with his new wife. Therefore they instituted that he should marry on Thursday (one day) and will be with her on Friday (because of there רשב"א see [חיבת ביתא]). שבת (for a total of three days). See 'Thinking it over' # 1.

ובתולה דלא שיעץ ההוא טעמא דליך למיימר משכימים לאומנתו והולך לו -

However regarding a where that reason (of) ימים is not applicable, for we cannot be concerned that he will arise to his trade and be on his way, as we are concerned by an אלמנה; the reason this is of no concern by a is - בתולה לפि שיש בה שבעת ימי המשתה⁷

Because there is the obligatory seven days of feasting for a בתולה -

הלכך משום ברכה גרידא לא היו קובעים יום:

Therefore on account of alone the would not establish a day on which they should marry.

SUMMARY

ברכה is not a sufficient reason to establish a day for marriage (as opposed to שקדו, which is a valid reason).

THINKING IT OVER

1. ביום ה' writes that the concern of אלמנה מתקן not that an should be married because of alone but rather because of ברכה as well.⁸ However from the later (ה,א) it appears that there are two separate reasons why she marries on יום גمرا one because of the ברכה לאדם (עדיפה), and another reason is because of שקדו. How will answer according to the first explanation (which seemingly does not require שקדו)?!⁹

2. explains that the concern of משכימים לאומנתו והולך לו is applicable only by an בתולה but not by a אלמנה, since there is by a שבעת ימי המשתה¹⁰. However the later (ז,א) states that that by an there is (also) שלשה לשמה, so why are we concerned that אלמנה by an משכימים לאומנתו והולך לו?¹¹ בתולה!

⁷ See ‘Thinking it over’ # 2.

⁸ See footnote # 6.

⁹ See Tos'ה, א, סוף (ד"ה מאי).

¹⁰ See footnote # 7.

¹¹ See Tos'ה, א, בד"ה (שם למח"ט ריב"ב).

If there are courts of law, etc.

אי איכא בתי דינין قولיל –

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.

¹ נראית לרביינו יצחק דמל מכול אין נשאת בששי, ² זהה אין דין בשבת

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 טענת בתולין שבת ב"ד; שבת does not convene on שבת, and he will not be able to present his to שפט on שבת ב"ד.

תוספות notes an exception to the previous ruling:

ועתה נוהגנו לישא אף בששי משום דין בית דין קבועין -

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

ואם יש לו טענת בתולין יכול לקבל בשבט בפניו שלשה³ כמו בשאר ימות השבע⁴ -

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.

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

ועוד לפירוש הקונטרס⁵ דוקא בימיים קבועים הנישואין –

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

משמעותם של ידיים יתברר הדבר ויבואו עדדים מתחומי שמתאפסים העם בבית דין⁶.

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

וain shiin loemer uchshio c:

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

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

² See the note on ביצה לו ב משנה גזירה because of a גזירה that they may write on שבת.

³ It will not be considered that they are **דניין בשבת**.

⁴ See ‘Thinking it over’.

⁵ יתברר הדבר בדבר ר' ש"י, that there is no need for בד"ה השם הו"ט, disagrees with ב, א, במתניתין ד"ה בשני.

⁶ When he comes to claim his wife there will be many people there who will hear about it and witnesses may surface who will testify whether she was and is אסורה מונה תחתיו (ברazon).

SUMMARY

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

THINKING IT OVER

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 חוס' ד"ה אשא and אילת אהבים on the previous page.

ובשנֵי לֹא יָכֹנוּס – And he should not enter into the marriage on Monday

OVERVIEW

The ברייתא taught that from the time of the ‘danger’ and onwards they would marry on Tuesday (instead of Wednesday), but he should not marry on Monday. There is a dispute between חוספות and רשי, whether the phrase 'ובשנֵי לא יָכֹנוּס' is regarding the סכנה (as well), or not.

פירוש הקונטרט¹ אפילו בשעת הסכנה דאיין לעקור בשביילה תקנות חכמים² אלא יום אחד –
explained that even during the time they should not marry on Monday (but only on Tuesday), **for we should not uproot the enactment of the חכמים because of the סכנה, any more than (only) one day.³**

תוספות asks:

וקשה לרביינו יצחק דאמר לקמן⁴ מאי אונס אילימא הא דאמרו הטע קרי ליה قول –
And the ר"י has a difficulty, for the גمرا shortly asks, ‘what does אונס (disaster) mean; if we will say that it means this which we said previously (namely משעת הסכנה), why is it that there (in the רישא) he refers to it, etc. as a סכנה and here (in the סיפא) he refers to it as an אונס. This concludes the citation from the Tosafot; גمرا continues with his question on רשי –

הוה ליה למינך טפי⁵ רישא לסיפה דקתני רישא וובשנֵי לא יָכֹנוּס אפילו בשעת הסכנה –
The סכנה should have rather asked (if we interpret אונס to mean גمرا contradiction between the רישא and the סיפה of the רישא, for in the states, and וובשנֵי לא יָכֹנוּס even during the שעת הסכנה according to רשי) referring to it is permitted to marry on Monday; this contradicts the רישא which stated that even one should not marry on Monday.

תוספות offers a resolution to the question on רשי:

ואומר לרביינו יצחק בן אברהם דמשום הכי לא פרץ ליה מושום דאייכא לפירושי –

¹בד"ה וובשנֵי.

²From רשי it appears that this תקנה is referring to the תקנה that he should prepare the wedding feast for three days.

³Therefore if the wedding is on Tuesday, we are eliminating only one day of the תקנה; however if she would marry on Monday we would be eliminating two days (see footnote # 2).

⁴Later on this עמוד, the גمرا cites the ברייתא which stated (after it ruled that if it is because of an אונס it is permitted (to marry on Monday). The גمرا goes on to inquire what is the nature of this אונס.

⁵The s'g question was merely of terminology; in the רישא we called it סכנה and in the סיפה it is called אונס, but in fact the rulings are contradictory (according to רשי).

And the answers, that this is why the did not pose this contradiction, because we can interpret -

ואם מלחמת האונס פירוש שיש סכנה אף ביום שלישי⁶ מותר לכנס שישי⁷ -

to mean that if there is a new danger on Tuesday as well, it is permitted to marry on Monday.

offers an alternate explanation of the:

ונראה לרביינו יצחק דמלטה באנפי נפשו היא ולא אירוי בסכנה⁸ -

And it is the view of the that the rule of ר"י is an issue by itself, and it is not discussing a time of the, and when the states -

ובשני לא יכנס הוא הדין בג' אלא נקט בבי' משום דברי למייתני ואם מלחמת האונס מותר: the same rule applies to Tuesday (or any other day); the only reason the mentions Monday is because he wants to teach us that if there is an אונס (which prevents from marrying on Wednesday and Tuesday) it is permitted to marry even on Monday (even though we will be uprooting the תקנה (of for two days).

SUMMARY

According to the rule of ר"י is referring to, however according to it refers to any time.

THINKING IT OVER

According to the that one may marry (even) on Monday,⁹ the could have seemingly also asked that there is a contradiction between the (which states סיפה ([בשני ומסכנה ואילך נהגו העם לכנס בשלישי) and the (which states אונס [but not it is מותר [even]?)¹⁰

⁶ However, the maintains that since the said, מי אונס, אילימה כדאמרן, this means that the was only on Wednesday – סכנה כדאמרן – like we said initially, therefore if means אונס, there is a contradiction.

⁷ Therefore there is no contradiction. In the when the was on Wednesday it was permitted to marry on Tuesday, but not on Monday; however the teaches us that if the (or אונס) extended to Tuesday (as well), one is permitted to marry on Monday. The only question the had was the difference of the terms; as opposed to סכנה.

⁸ By a the ר"י can maintain (at least in the ה"ג) that one can marry even on Monday, for once we push off the תקנה, we can push it off even for two days (see מהרש"א). See ‘Thinking it over’.

⁹ See footnote # 8.

¹⁰ See א"ה מהרש"א.

ולדרוש¹ להו דאונס שרי –

And they should teach them that by coercion it is permitted

OVERVIEW

The explained the הסנה (which stated that it was customary to be married on Tuesday) that the סנה was that the would rather die than be by the הגמון. The asked why is there a סנה; we should teach the that if one is threatened with death (to do an עבירה), as by the case of the הגמון, it is permitted to transgress the עבירה, so there will be no סנה.² Our discusses how we can say אונס שרי in a case of forbidden relationships.

תוספת asks:

**ואם תאמר והוא אמרינו בפרק בן סורר ומורה (סנהדרין עז, א ושם) על כל עבירות יעבור ואל ייהרג
And if you will say; but the states in ‘פרק בן סורר ומורה’ states in a person should rather transgress them and not allow himself to be killed -
חוץ מעבודת כוכבים וגילוי עריות ושפיכת דמים³ –**

Except for idolatry, illicit relationships, and murder where one should allow himself to be killed rather than transgress any of these three עבירות.

תוספת answers:

ותירץ רבינו תם זאין⁴ חייבין מיתה על בעילת מצרי⁵ –

**And the ר"ת answered; that a married woman is not obligated to sacrifice her life on account of relationships with a(n Egyptian) gentile -
דרחמנא אפקרייה לזרעה⁶ מצרי דכתיב⁷ (יחזקאל כט) וזרמת⁸ סוסים זרמתם –**

¹ This should be after the following תוס' ד"ה בתולה.

² This is (seemingly) how understood the question of הוספה in ר"י. ולדרוש להו דאונס שרי. However explains that שרי means they are permitted to their husbands since they were נבעלו באונס שרי. See footnote # 14.

³ The question on the גمرا is how can we say that the women are permitted to be by the הגמון since it is an אונס שרי. גילוי עריות, where the ruling is that it is forbidden to transgress it, even if by refusing to transgress the עבירה, one will be put to death.

⁴ In the it reads; דאינה מהויבת למסור נפשה למיתה על וכו'; Alternately, a married woman is not if she was willingly with a גוי and therefore it is not considered where the rule is פני יהושע (See).

⁵ The rule of עבירות by גילוי עריות is only with illicit relationships with Jews, but not with gentiles. There the rule remains即使 she is an איש.

⁶ במוות צח א.

⁷ The two פסוקים read; פליגשיהם אשר זונת קאצץ מצרים. כ ונתענבה על קומת קאצץ מצרים. This may explain why mentions, when he really means all the gentiles.

⁸ This refers to the flow of their seed. And even though one is for relations with an animal; however that is not for it applies even to an unmarried woman (see ריש"ש).

For the Merciful one discarded the seed of a מצרי as it is written, ‘and their flow is the flow of horses’

offers a proof that גילוי עריות does not apply to gentiles:

ומיניית ראייה זפץ בפרק בן סורר ומורה (שם, ב) הא אסתור פרהטייה הויא⁹ -

And the brings a proof, for the asks, but was public knowledge -

ולא פרץ והא אסתור גילוי עריות הוי משמע דמשום עריות לא הוה מחייבא¹⁰ -

יהרג ואל גילוי עריות (where the rule is did not ask, but by it was אסתור גمراה), so how was she permitted to be with (אחשורוש), this indicates that she would not be obligated to sacrifice herself for, עריות, since was a גוי (so it is not considered Achshorosh). (יהרג ואל י עבר, גילוי עריות, for which one is to be).

derives a halachic ruling from this:

ומתוך כך התיר רבינו תם לבת ישראל שהמירה ובה עליה עובד כוכבים¹¹ -

And because of this (that the of a is not considered a גוי in ביאה, the permitted a Jewish woman, who converted (out of her faith), and a gentile lived with her; the permitted -

לקיימה לאותו עובד כוכבים בשנתגיאר -

To have that gentile retain her as a wife, when the converted to Judaism, and she too returned to her faith -

דלא שיך למימר אחד לבעל ואחד לבועל¹² בביאת מצרי דהויא כביאת בהמה -

For the rule of his for his גוי in ביאה is not applicable by the ביאה of an animal.

In summation; the view of the ר"ת is that with a גוי in ביאה (while it is forbidden) is not considered a sufficient reason of ביאה, that would require ביאה even if the woman was married),¹³ and would not forbid her to marry the גוי (the בועל, even if she was married to him).

⁹ On the name of ר' יוחנן there, said in the name of ר' יוחנן that if the sin is performed in public then even for an עבירה קלה that if the sin is performed in public then even for an עבירה קלה there, the rule is otherwise it is a חילול ה' (otherwise it is a חילול השם). The asked, so how was permitted to be with her, for there it was a גוי. The answered that אסתור גمراה קרקע עולם; meaning that she (as a woman) was passive in their relations.

¹⁰ However (if not for the fact that she was קרקע עולם) she should have sacrificed herself on account that it was an עבירה קלה, since that is a גוי and requires even for בפרהטייה.

¹¹ The woman was married to a Israel at this time (he did not divorce her [yet]).

¹² The rule is if a married woman (willingly) had extramarital relations, she is subsequently forbidden to be with her husband and the adulterer. Here too since she was married (to a גוי) when the was גוי (ישראל), so seemingly even after her husband divorced her she should still be אסורה to the בועל (the גוי). However the ר"ת permitted her to marry the convert who was her while she was married to the ישראל.

¹³ Therefore there is no need to say that אסתור קרקע עולם היה life with גוי. Achshorosh

presents a dissenting opinion:

ואין נראה לרביינו יצחק בן מרדי כי דהא על ידי ביאת עובד כוכבים נאסרה לבעלה -

And the does not agree to this ruling of the ר"ת (who was to her, for a woman becomes prohibited to her husband through the her) is to her, for a woman becomes prohibited to her husband through the of a גוי ביאה (if she was willingly) -

כదאמר הכא דאייכא פרוצות¹⁴ -

As the states here, 'for there are', פרוצות who are and therefore we cannot tell them who are גمرا and therefore we cannot tell them who are גمرا that they would become to their husbands since they were with the הגמון גمرا -

offers an additional proof that a woman who was with a גוי גمرا ברצון is גוי גمرا ברצון:

ובפרק האשא שנתארמלת (לקמן כו,ב ושם) גבי האשא שנחbeschה בין העובי כוכבים -

And in the פרך, regarding a woman who was taken into custody by gentiles, the משנה -

אמרין¹⁵ דברצון אסורה לבעלה -

States, if she was willingly she is prohibited to her husband -

offers a final proof that if she was גוי גمرا ברצון to גוי גمرا ברצון is אסורה לבעלה:

ואמר נמי במגילה (זט,א) כאשר אבדתי אבדתי¹⁶ כאשר אבדתי מבית אבא¹⁷ אבדתי ממך¹⁸ -

And the means to mean כאשר אבדתי אבדתי פסוק also explains the מסכת מגילה in גمرا just as I was lost from my father's house I am lost from you - (מרדי) -

אלמא לגבי בעל לא חשיבא בעילת מצרי כביאת בהמה והוא הדין לבועל¹⁹ -

It is evident (from these three proofs) that regarding her husband, the גمرا is not considered like the of a גוי, (for she becomes אסורה לבעל, ביהם, ביאה of a גוי), and the same rule applies to the בעל that even if he is a גוי she is to the בעל as well.

The ריב"מ responds to an anticipated difficulty:

אף על גב דין זנות לבהמה ואין ביאת בהמה פוסלת ואסורה -

¹⁴ This proof is more readily understood according to פרש"י (see footnote # 2), that means that they are permitted to their husbands. However according to that it means that they do not require to be מוסר גפת, the answers that the will do it which is certainly prohibited (even) according to the ר"ת, but there is no proof that they are (see הפלאה אסורת לבעליה).

¹⁵ The there (actually) states that if she was גוי גمرا ברצון, she is אסורה לבעל (See רש"י and there).

¹⁶ אסתר 7,ט.

¹⁷ This means that while she was with אחשורוש she could not keep all the מצות as an ordinary Jew.

¹⁸ For this time went to אחשורוש willingly so she becomes אסורה to her husband.

¹⁹ The ר"ת did not discuss whether she is מותרת לבעל, only that she is מותרת לבעל, therefore the ריב"מ concludes that since she is גוי (from the proofs that were just mentioned) she must also be אסורה לבעל. The אסורה לבעל is either considered a גוי, so she should be אסורה also, and if it is not considered a גוי why is she אסורה לבעל.

Even though there is no ביאה of a בהמה and the זנות in her are not disqualify her from כהונה, and does not forbid her to her husband -

כదמיין בפרק הבא על יבמותו (יבמות ט,ב) ביאת מצרי הוי באיה -

As the גוי a ביאה of rules in ביאה על יבמותו גمرا is considered ביאת a ביאה to prohibit her to her husband and to her בעול even by גוי.

The Rib"m responds to another anticipated difficulty:

וכי אפקריה רחמנא לזרעה הנז מילן לעניין לו חייס זרעו חשוב כזרע בהמה -

And that which we say that the Merciful one was, that is only regarding that he has no lineage and his children are considered like the children of a בהמה, but regarding she becomes even by ביאת גוי אסורה לבעל ולבעול.

The Rib"m offers an alternate answer how we can say since it is a matter of ולדרוש להו דאונס שרי גילוי עריות²⁰:

ויש לומר דהכי פריך ולדרוש להו דאונס שרי לפי שהאשה היא קרקע עולם ולא עבודה מעשה -

And one can say; that this is the question of since the woman is merely like the 'ground of the world', she is passive and does not do any action, therefore she is not required to be even by גילוי עריות²¹, only the man needs to be by יהרג ואל יעבר גילוי עריות -

כדמשני בפרק בן סורר ומורה אסתור קרקע עולם הייתה -

והא אסתור regarding the question of פרק בן סורר ומורה גمرا answered in גילוי עריות here by פראהסיא hoia, similarly there is no difficulty here by גילוי עריות, since the women are קרקע עולם.

הוספה anticipates a difficulty:

והא דלא פריך התם²² גילוי עריות הויא²³ -

And the reason there did not ask (before we answered in קרקע עולם גمرا), but (זה אסתור פראהסיא hoia גילוי עריות was אסתור why did the woman ask instead גילוי עריות was אסתור -)

הוספה responds that regarding the rule of by יהרג ואל יעבר גילוי עריות -

²⁰ According to the Rib"m that the ביאת גוי is considered to prohibit her so therefore having בעול ולבעול say גمرا גילוי עריות where the rule is גילוי עריות; how can the man say גילוי עריות when he is married?

²¹ This is only to exempt her from יהרג ואל יעבר if it was סברא (and permit her to her husband); however when there is no אונס, a woman is equally guilty as the man and they are both גילוי עריות מחייב מיתה.

²² סנהדרין עד, ב.

²³ This would seem to support the view of the Rib"m that there is no גילוי עריות by גוי, not like the view of the Rib"m.

דפשיטה ליה דאייכא לשנוויי קרקע עולם היא ואין לה למסור עצמה -

That it was obvious to the גمرا that we can answer that קרקע עולם was אסתה and is not required to sacrifice herself -

אבל לעניין חילול השם לא היה נראה לו שייעיל טעם דקרקע עולם²⁴ -

However regarding the ‘desecration of the name’ (that she lived with גمرا did not assume that the reason of קרקע עולם is sufficient to allow to transgress the name of איסור, חילול השם, and therefore asked how was she permitted to be since it was – בפרהסיא

ומשנוי קרקע עולם הייתה ואפילו חילול השם לייכא²⁵ -

And the השם גمرا answered that קרקע עולם was אסתה and there is not even חילול השם גمرا.

תוספות anticipates a difficulty:

ובפרק מצות חיליצה (שם קג, א ושם) דפרק גבי יעל²⁶ והוא קמתהニア מעבירה -

And in where the גمرا asks regarding פרך מצות חיליצה ‘but she derived pleasure from the עבירה -

ומשנוי טובתן של רשעים רעה היא אצל צדיקים שהטיל בה זהה מא –

And answered in the name of ר' יוחנן that the goodness of the wicked is evil by the righteous, for he inserted filth into her so therefore she was not.

Mathehnia This concludes the difficulty –

ולא משנוי קרקע עולם הייתה²⁷ –

And the גمرا did not answer that קרקע עולם was יעל (and therefore she was permitted to be with him) –

תוספות responds:

משום דהנתם לא פריך אמאי לא מסרה עצמה דהא לא היה רוצה להמיתה²⁸ -

Because the גمرا there did not ask, ‘why she did not sacrifice herself’; since he

²⁴ The reason why the גمرا thought initially that קרקע עולם can explain but not גילוי עריות is because it is understood that קרקע עולם does not make it entirely permissible (see footnote # 21), rather אונס (by) makes it a lesser than גילוי עריות, and therefore there is no for חיוב; however regarding פרהסיא נפש עבירה one is required to be even for an עבירה קלה, therefore the גمرا initially assumed that קרקע עולם is not a עבירה, but rather גילוי עריות.

²⁵ Since קרקע עולם is אסתה חילול ה' is not a עבירה.

²⁶ The גمرا there states that סירא (when he was escaping from was בועל יעל) was (seven times), with her consent (for she intended to tire him out [see ד"ה בין ר"ש]) and kill him)

²⁷ According to the ר"ת the גمرا there is understood; since ביאת נכרי is not a (to a certain extent) therefore the question was, that even though it is not a ביאת but it is still an עבירה and she was ביאת, and the answer is that there was no הגאה. However according to the ריב"מ, ביאת האסורה, that is a regular question, the question is not merely הגאה, but rather that she was an עבירה עבירה, and the fact that she had no הגאה, does not explain how she was allowed to do it. The only possible explanation would seem to be that she was allowed to do it, which קרקע עולם גمرا does not give; proving that קרקע עולם is not an answer for (see סוכ"ד אות ט חילול ה' גילוי עריות, only for).

²⁸ Therefore, in a certain sense, she was doing an עבירה, by being with him willingly. See later in this Tosaftot.

did not want to kill her -

דאדרבה היה צרייך שתשמרו -

For on the contrary **needed** **that she should watch him** in order that ברק should not capture him -

אלא וכי פירשו והא מתחניא מעבירה למה משבחה הכתוב²⁹ מנשים באהל³⁰ תבורץ -

But rather this is the question of praise פסוק פסוק why does the praise by saying; 'she will be blessed by³¹ the women who are in the tent' (because of their modesty) -

ודרשין נזיר זך מגב ושות גדולה עבירה לשמה מצוה שלא לשמה³² -

And derives from this that a sin for the sake of ה' is greater than a which is performed - **שלא לשמה**

ופריך דיעל נמי הוה עבירה שלא לשמה דהא מתחניא מעבירה -

And asks there that also by it was an גمرا since she derived pleasure from the - **UBEIRA**

ומשני דלא מתחניא ועשתה עבירה לשמה כדי להציל את ישראל:

UBEIRA And the answered that she derived no pleasure and she did the كل ישראל in order to save השמה.

SUMMARY

The view of the ר"ח is that with a גוי is not considered a sufficient בועל גוי, that would require יירג ואל עבר that would not forbid her to marry the (the גוי even if she was ריב"מ. The maintains that with a גוי forbids קראן עולם אונס by the יתר לבעל ולבועל her and the only because of גילוי.

THINKING IT OVER

Our case with הבעל הגמון is a case of פrhsia; why did asks only on account of גילוי עריות, when he could have asked that it is a פrhsia!³³

²⁹ תברך מגשים יעל אשת חבר הקיני מגשים באهل תברך פסוק: the שופטים ה, כד.

³⁰ This refers to the where the תורה writes (regarding all of them) that they were in a tent

³¹ Another interpretation is that she will be blessed 'more than' the women in the tent.

³² The sinful relationship of יעל סיסרא is better (since it was השמה מצוה) than the relationship between the אמותה and the אבותה (since it was השמה לא לשמה), because the derived pleasure.

³³ מהר"מ ש"ג.

בתוליה¹ הנשאת ברבייעי תיבעל –

A who is married on Wednesday should be defiled

OVERVIEW

Initially the explained that there was a decree that meant that there was a decree that סכנה גمرا explained that there was a decree that סכנה גمرا amended this that the decree of סכנה גمرا was the decree of ליום ד' תיירג; Our clarifies the decree and the word ברבייעי תיבעל להגמון תוליה.

לאו דוקא ברבייעי מדריך لكمן בשלישי נמי אתי ובועל² שאינו מתכוין אלא להנאותו –

The word is not precise, since the asks later, ‘the will also come on Tuesday to be’ explains, since the cares only for his pleasure –

אלא אגב דעתך לעיל שנשאת ברבייעי תיירג –

Rather (the reason he mentions, since he mentioned previously that a – (ברבייעי which is married should be killed) (which meant specifically בתוליה – רבייעי)

דחתם מקפידים על קביעות יום כדי להעבירם על דעתם –

For there the specifically minded the fixed day for a wedding in (רבייעי) order to turn them away from their religion; so since the initially mentioned רבייעי –

נקט ליה נמי הכא ברבייעי:

The mentioned here too even though it was not specifically רבייעי.

SUMMARY

The תבעל להגמון תוליה was for any time a married.

THINKING IT OVER

בג' proof that גمرا is רבייעי or is it (also) from the reasoning that since גمرا makes no difference which day it is?³

¹ This should precede the previous תוס' ד"ה ולודרוש.

² This indicates that the decree was not merely that whoever is married בד' should be defiled, but rather any who is married on any day תבעל להגמון תוליה. This is evident since regarding the initially assumed בתוליה גזירה that גمرا did not ask that they will also kill (proving that regarding the decree גזירה, it was only regarding בד'), however regarding the decree גזירה ליום ד' תיירג תוספות גזירה, the does ask that he will come (proving that there was no specific גזירה for בד', but rather the גזירה was for every day, as continues to explain).

³ See אליה רבבה.

ולדרוש להו דאונס שרי -

And they should teach them that by coercion it is permitted

OVERVIEW

The taught that from the onwards the would get married on Tuesday, instead of Wednesday (as the were). The explained that the was the decree that a must be . The asked this is an not a; to which the replied that it is a for the who will sacrifice their lives not to be even . The then asked so let us teach them (the) that by it is permitted (so there will be no). The replied, ‘we are concerned for the (and the)’. Our clarifies this exchange in the .

אין לפרש¹ דפרק ה כי לדרשן כולי דשוב לא יהא סכנה אלא אונס -

We cannot explain that the is asking as follows; let us teach them, etc. that is permissible, **so there will no longer be any danger** (for the women will oblige), **only coercion** (they are being against their will by the) and the question therefore is -

ואמאי קאמר ומסכנה ואילך הוה ליה למימר ומון האונס ואילך -

So why does the state, ‘**and from the onwards** the custom was to marry on Tuesday’, the **should have said**, ‘**and from the onwards** the custom was to marry on Tuesday’ rejects this explanation -

דאם כן מאי משני מושום פרוצות -

For if indeed this is the explanation, **what does the answer** that the did not want to teach that **because of the** (who will [seemingly] be and claim it was);² this is no answer -

זהא אפילו לא דרישין להו דאונס שרי לא מסרי נפשייה³ -

¹ The initially asked, this is an , not a . The reply was it is a (because of the). The asked back ; seemingly this is a refutation to the answer on the initial question; you say it is not an but rather a because of the , that is not so; the should be taught that , there will be no more ; why does the write (which is merely a question of semantics) which negates.

² See ר"ש "ה איכא. Our will argue with this. See footnote # 3.

³ Nothing is accomplished (regarding the) by not teaching them that . If we do not teach them, they will acquiesce (and since they think that is also , they may not distinguish between and , and be [to the] even since [in their mistaken view] are the same). However if we teach that only , even the will realize that there is a difference between and , so perhaps (even though [when they did not distinguish between , and , they were willing even [since they are both the same]) now they will

For even if we do not teach them that אונס שרי they will not sacrifice their lives
(and refuse to be - נבעל ברצון)

דזוקא צנעות אמרין דמסרי נפשייהו -

For the states that only the sacrifice their lives but not the **צנעות** – פרוצות גمرا

An additional difficulty why it is irrational not to teach: אונס שרי:

ועוד וכי משום פרוצות יניחו להרוג הצנעות⁴ -

And furthermore; and can it be that because of the concern for the (that if we will teach נבעל ברצון, they will be אונס שרי, we should allow the to be killed?!

תוספות offers the proper interpretation:

אלא הכי פירושו ולדרוש להו דאונס שרי וכיון דליך סכנה אמאי לא מיחו בידם חכמים -

But rather this is the explanation, ‘and let us teach them that סכנה (even for the they will allow themselves to be אונס, why did not the protest against מנהג to get married on Tuesday -

ומשני⁵ משום פרוצות לא מיחו בידם אי נמי משום כהנות:

And the answered that the **חכמים did not protest** the Tuesday marriages **because of the wives**, or because of the **כהנים**.

SUMMARY

The ask that since גمرا, אונס שרי, they should insist on marrying on Wednesday.

THINKING IT OVER

תוספות explains that the **חכמים** preferred that the should not allow the Tuesday weddings and instead to be married on Wednesday (and be נבעל להגמון in order to uphold the **תק"ח** of נשות ליום ד' **תק"ח**). How can we say that in order to uphold the **תק"ח** we will permit the **תחולות** to be נבעל להגמון **תחלת**?!⁶

not be for an alternate explanation. See [הארוך] **א** שטמ"ק (see נבעל ברצון).

⁴ If we teach אונס שרי, it is possible that will be פרוצות (which may happen even if we do not teach נבעל ברצון) but at least the will be spared (they will acquiesce to be נבעל באונס); however if we do not teach אונס שרי, the will certainly be killed (for they will not agree to be נבעל even **פרוצות** and the will do as they please (perhaps [even] being נבעל ברצון)).

⁵ Had the protested the Tuesday marriages and insisted that they continue being married on Wednesday (and that would be נבעל ברצון), the would be **אשת כהנים** would (sacrifice themselves since they) become even though it was **באונס**.

⁶ See סוכ"ד אות מא.

ותו¹atum –

And furthermore; there, etc.

OVERVIEW

The states, ‘one should not marry on Monday, but if it is on account of, it is permitted’. The asked, ‘what is meant by; if it is referring to the previous case (where the stated; (ומסכה ואילך נהגו העם לכנות בשלישי), etc. And furthermore why there (regarding the states בריתא שלישי) states, and here (by the מותר states בריתא). Our explains the difference between and נהגו states בריתא. Ourexplains the difference between and נהגו states בריתא.

בשלישי נהגו –

- נהגו writes בריתא the (סנה ואילך בשלישי) (from the (בשלישי) – אמרינו בפרק בתרא דעתנית זב כו, מאן דאמר נהגו אורייא לא מוריין² –

And the states in the last ‘the one who said, meant that we do not instruct people to do this, but we do not make them change it’ -

והכא בשני מותר לכתלה –

However, here (regarding marrying the states בריתא (בשני means) מותר (מותר); indicating a much stronger than merely which is only נהגו. בדייעבד לכתלה.

פרש"י cites and negates:

ופירוש הקונטרס דפירוש נהגו רובה דעתם והכא מותר יחידי ולא גרשין לכתלה אינו מיושב: And the explanation³ that means the majority of the people, and מותר means merely an individual, and the text does not read מותר לכתלה (but rather only ריש"י); this explanation of ריש"י is not convincing.⁴

SUMMARY

According to the term תוספות לכתלה is more permissible than מותר and according to ריש"י the reverse is true.

THINKING IT OVER

Is the term לכתלה necessarily or just תוספות גירסת⁵ מותר?

¹ The last two on this, should precede this.

² The there writes; (... and if they did it, they did it and we do not protest against it); indicating the people did it on their own but did not receive explicit permission from ב"ד.

³ ב"הatum ו"ה הכא.

⁴ The difficulty with ריש"י is from the abovementioned that גمرا in question according to ריש"י; we can answer that by 'ג' where the was pushed off for merely one day it was נהגו (רוב העם), however by 'נ' where the was pushed off for two days, there it is merely מותר (לייחיד).

⁵ See Tos' shan.

If he comes and leaves, let us delay

– א"י דאתי וחליף ליעכב –

OVERVIEW

The explained that when the states **ברירתא גمرا** (to marry on Monday) it means if the General is coming to the city on Wednesday.¹ The then asks, If he is coming and leaving let us postpone the wedding (for Wednesday), why should he marry on Monday. There is a dispute between **רש"י** and what is meant by **תוספות**.

פירוש הקונטרס² חלייף לאחר ד' וליעכב עד יום ד' של שבת הבא -

explained that **אתי וחליף** means (we know) he will leave **after Wednesday**; on this the asks, ‘**and let us delay**’ the wedding **until the Wednesday of the following week.**

רש"י disagrees with:

וקשה לרביינו יצחקadam כו מאי משני לא צריכא דאתי וקבע -

And the **ר"י** **has a difficulty** with, **for if** it is **so** that the entertains the idea of postponing the wedding for a week, **what** does the **answer, that it is [not] necessary [but]** for a case where the **גמרא** **שר צבא** **came** on Wednesday **and** (we know) that he is **settling** here, and therefore the wedding is held on the previous Monday; however that is not a sufficient explanation –

אכתי ליעכב חדש³ או חדשים עד שילך -

For let them still wait a month or two until he leaves, and the wedding will take place on the first Wednesday after he leaves –

תוספות offers his explanation:

על כו נראה לרביינו יצחק שם יתעכב כל יום ד' אין לו ליעכב⁴ עד יום ד' אחר אלא יכנס בג' -

It is therefore the view of the **ר"י** **that if** the **שר צבא** **will tarry for the entire Wednesday**, the wedding **should not be delayed until** next Wednesday (as **רש"י** maintains), **but rather he should marry** the previous **Tuesday** –

והכי פריך א"י אתי וחליף בד' גופיה ליעכב עד דחליף⁶ וממשני דאתי וקבע כל יום ד':

¹ The General and his army will confiscate the entire wedding feast.

² בד"ה חלייף ובד"ה לעכב

³ If we can postpone for a week, we can postpone for a month or more.

⁴ We do not push off a wedding because it entails postponing the **מזווה** of **פ"ר**.

⁵ Others amend this to **בב'**.

⁶ See ‘Thinking it over’.

And this is what the גمرا asks; **if** (we know) **he is coming and leaving on Wednesday, let us delay the wedding until he leaves** and marry after he leaves on Wednesday. **And the גمرا answered that he is coming and settling for the entire Wednesday,** therefore it is permitted to marry the previous Monday (because we do not postpone weddings).

SUMMARY

According to רשי the question of **דאתי וחליף ליעכב** is, if he is leaving after Wednesday, let us postpone the wedding till the following Wednesday. Tosfos explains it to mean that if he is leaving on Wednesday, let us postpone the wedding later that day (to when) after he leaves. However we do not postpone the date of a wedding.

THINKING IT OVER

According to Tosfos how can the גمرا even assume that he is leaving on Wednesday;⁷ obviously if he is leaving on Wednesday, the wedding can be held after he leaves.⁸

⁷ See footnote # 6.

⁸ See ק"מ טש.

Let him, at least, marry on Tuesday

בשלישי מיהא לכנס –

OVERVIEW

The explained that when the General is coming on Monday it means that the General is coming on Wednesday and is settling there. The asks, so let them get married on Tuesday, since the General is only coming on Wednesday. תוספות clarifies this question:

תוספות responds to an anticipated difficulty:

ולא בעי למימר דעתך שר הצבא בגין'adam can enter on 'd':¹

And the general did not want to answer that they cannot marry, because the general will come on 'ג; for if that is the concern, they can marry on 'ד.

SUMMARY

A general comes for one day only.

THINKING IT OVER

How will רשות respond to this question of תוספות?²

¹ taught us previously (בדה איז) that the General leaves on the (very end of the) day he comes and does not stay for another day. Therefore if we know he is coming on Tuesday the marriage can be held on Wednesday.

² See מהרש"ל ומהרש"א (הארוך).

His quartermaster comes on Tuesday

איספּרוֹוֹא דִידְיָה בְג' אַתָּא –

OVERVIEW

The general explained that even though the General comes only on Wednesday, nevertheless we make the wedding on Monday (not on Tuesday), because the general comes on Tuesday. This explains the reason for the different postponements for the general and for the bride.

וְאַתָּה תָּמֹה מִשּׁוּם סֻעָדָה עֲקָרֵינוּ תְקִנְתָא דַרְבָנוּ בְיִמִים – anticipates a difficulty:

אין לְתָמוֹה מִשּׁוּם סֻעָדָה עֲקָרֵינוּ תְקִנְתָא דַרְבָנוּ בְיִמִים –

One should not wonder, why is it that regarding the concern for the wedding meal we uproot the **הַקְנָת חַכְמִים for two days** (she marries on Monday instead of Wednesday) – **וּמִשּׁוּם סֻכָנָה לֹא עֲקָרֵינוּ אֶלָא יּוֹם אַחֲרֵי**¹

And regarding the **חַבּוּל לְהַגְמֹן** (of **סֻכָנָה**) we uproot the **תְקִנָה for only one day** (she marries on Tuesday instead of Wednesday) –

וְאַתָּה תָּמֹה responds:

דְבָעֵילָת הַגְמֹן שְׁכִיחַ שְׁרָגִיל לְבָא וּלְבָעוּל וְאֵי עֲקָרֵינוּ שְׁנִי יִמִים אַתָּה לְהַשְׁתָכָח –

בּוּעָל, **בְּעֵילָה** of the common, for he frequently comes to be, and if we will uproot the **תְקִנָה for two days** (to marry, (בב') the (of marrying 'may be forgotten -

אֲבָל אָוֹנֵס שֶׁר צָבָא אִינּוּ אֶלָא אַקְרָאֵי בְעַלְמָא:

However the אָוֹנֵס of the army general is only rarely (and even if we move it two days the will be remembered from the many other weddings which take place). (בד')

SUMMARY

We allow a longer postponement only if it is infrequent.

THINKING IT OVER

How do we know that according² to ר' ש"י the meaning of **יכnos** means even if there is a 'ב' is **סֻכָנָה** if the **יכnos** is **ר' ש"י**, perhaps meant that the **יכnos** is **ג' only?**³

¹ Seemingly (see also מהרש"א) this question is according to ר' ש"י ד"ה ובשנוי (tos' d"ה) that we are more lenient because of a (to marry on 'ב'), than for (that we marry only on 'ג'). However, according to פ' ה"ו there, there is no question since we would marry on 'ב' also if there was a 'ג' on סֻכָנָה. See מהרש"ל ג' וד' סֻכָנָה for an alternate explanation. See 'Thinking it over'.

² See footnote # 1.

³ See הלמה.

(לעיל)¹ **תקנה דרבנן מקמי גורה לא עקרין –**

We do not uproot an enactment of the רבנן on account of a decree

OVERVIEW

גמרא and מסכנה understood to mean 'to abolish' the decree. The asked again, let us abolish the decree. This time the answered that (since therefore discusses why this answer was not offered the first time the asked again; only the second time.

תוספות anticipates a difficulty:

כי פריך לעיל ליעקרוה לא משני תקנה דרבנן מקמי גורה כולי قدמשני הכא² –

When the asked previously (when we assumed that the decree was because of marrying), 'let us abolish' the decree, the did not answer there as it answers here that etc. we do not abolish –

תוספות responds:

משמעות דלעיל פריך וליעקרוה ויקבעו³ יום אחר⁴ –

Because previously when the asked, **and let us uproot** the decree of marrying, it meant that the will establish another day when a should marry, and by doing that we would circumvent the decree of marriage -

כיוון שאין מתכוון אלא להעבירם על ذات שיקבעו יום אחר לא יהושו –

Since the have no other intention except for having the Jews transgress their religion, so when the will establish another day when they should marry, the will not be concerned, for they accomplished what they set out to do, namely to disrupt the religion -

ולא מיakra תקנתא דרבנן הוαι לויה יומם אחד קבוע –

¹ This (as well as the following (ד"ה או תוס' ד"ה ותו) should precede תוס' ד"ה ותו.

² See 'Thinking it over'.

³ See also ריש"י ד"ה ניעקריה.

⁴ This would also (seemingly) require to set up another day when is in session and have them marry the day before. See however that since there is no the next day (and there can be אקרורי דעתא מגנונים), therefore the will not mind, for the decree was abolished. However it will remind us that there is a need for a (because of טענת בתולין) and when the decree will pass, it will be reestablished.

And we will gain that the תק"ח will not be (completely) abolished since there will be another established day when to marry-

אבל הכא פריך וליעקרורה ולא יהיה שום יום קבוע שם יקבעו يوم אתי ובעליל באותו יום⁵ -

However here (where the concern is תבעל להגמון and he is doing it for his pleasure) when the asked, גمرا, it meant and there should be no other set day to marry, for if the will establish another day, the will come and be on that new day, since he is only looking for his pleasure -

ולהכי משני מקמי גזירה לא עקרינו תקנה דרבנן שלא יהיה שום يوم קבוע:

So therefore the answers that we cannot abolish a because of a to the extent that there should be no set day to marry.

SUMMARY

The first question of ניוקריה was that we should establish another date; the second question of ניוקריה was to abolish any fixed dates.

THINKING IT OVER

תקנה דרבנן מקמי גזירה asks why did not the respond to the first ניוקריה that גمرا responds ניוקריה⁶. However there seems to be a major difference, by the first תירוג was גזירה the, therefore to avoid פיקוח נפש where the certainly should abolish the תקנה; however by the second גזירה ניוקריה where the was ('merely') אונס שרי (which is [generally] permitted for חכמים), the did not want to be the תקנה!⁷

⁵ In this instance the prefers a so he will know when to come (as opposed to where the entire intent is just to suppress the authority of the).

⁶ See footnote # 2.

⁷ See footnotes # 2 and ריש"י ד"ה ניוקריה on מהר"מ שי"פ ריטב"א.

(לעיל)¹ **אי ה כי בשלישי נמי אתי ובעיל –**

If so, he will also come and be בעיל on Tuesday

OVERVIEW

תירוג (which was initially interpreted to mean תירוג, and was later interpreted to mean בבעל) states בריתא גمرا (the custom was to marry). The question asked, ‘if it is so, the will come on Tuesday as well. תוספות explains the meaning of אי ה כי.²

פירוש³ אי אמרת בשלמא כדמייקרא דברי בתולה שנשאת בז' תירוג –

ומסנה ואיל נהגו לכנס א"ה is; it is properly understood (why if we learn as we did initially, where the said a גוים ג' – בועל שנשאת בז' תירוג גוים ג' – ואין מתחווין אלא להעבירם לא יחושו אם יעשו ביום ג' –

For then since their only intention is to sway the Jews away from the religion, the will not mind if they marry on Tuesday –

אלא אי אמרת משום בעילת ההגמון כיון שמתכוון להנאותו בשלישי נמי אתי ובעיל:

However if you say that the because of the he is interested in his pleasure he will also come on Tuesday and be בעיל.

SUMMARY

The solution of marrying on ג' is more practical if the concern is rather than תיבעל.

THINKING IT OVER

In this and in the previous⁵ the explanation seems identical (that by there is no concern once it is not; however by the concern remains). Can we say that in our⁶ the differentiation is more valid (that by תיבעל there is no concern if it is not). בז'

¹ This (as well as תוס' ד"ה תקנה) should precede תוספות.

² Generally the term א"ה is used to argue that if we understand it the original way then there are no questions; however if we interpret it the new way there will be a difficulty; how does this apply in our situation.

³ See footnote # 2.

⁴ See previous תוס' ד"ה תקנה.

⁵ ד"ה תקנה.

⁶ See on תוס' ד"ה ותו. פרדר יצחק אוות קד (ובהע' עבר' ערך).

bowel בעלת מצוה ופורש – He performs the **beulat mitzah** and separates

OVERVIEW

The later states¹ that this is supportive of ר' יוחנן who maintains that even though there is no mourning on יו"ט, nevertheless the must observe the laws which affect him privately. The states that we derive this support to ברייתא from ר' יישן בין האנשים וכו' mentions. This discusses why we cannot find support to ר' יישן from other rulings of this ברียתא.

קדום שיקבר המת² אבל לאחר שנקבר לא כדברינו בסמוך³ דברים של צינעה נהוג -

Before the deceased is buried he may perform the **בעלת מצוה**, however, after the burial, he is not permitted to be **bowel בעילת מצוה** (since he is already an **אבל**), as rules shortly that the private rules of mourning apply (even on יי"ט -

ודיק ליה⁴ מדקתי כל אותן הימים הוא ישן בין האנשים⁵ כולי -

דברים שבצנעה ר' יוחנן (regarding בריתא גمرا), concurs with שבעת ימי המשחה and states, all those days (of the following שבעת ימי אבילות), he sleeps among the men, etc.

תוספות responds to a difficulty:

מייהו מרישא דהכא לא הוה מצי למידק דדוקא בשחמת בחדר הוא דשרי בעילת מצוא -

However, from the here (which states רישא בריתתא) we cannot infer⁶ that only when the deceased is in the room (and the did not begin) is he permitted the; however once the buried and began he is not permitted the which (seemingly) supports the view of that ר"י why was it necessary to support from the סיפה (of ר"י) שבענעה נהוג?^{??}

תוספות responds:

דמבי לדחויי דבוקל בעילת מצוה היו אפילו לאחר שחול עליו אבילות -

¹ See footnote # (3 &) 4.

² At this point he is considered an אונן, but not an אבל, which he becomes after the burial.

³ Later on this the cites ר' יוחנן that if someone is an אבל during יומת טוב גمرا that he must observe privately (like refraining from marital relationships) the laws of אבירות (even though that publicly there is no יומת ט). Similarly here, after the burial, even though that it is his (personal) יומת ט, nevertheless he must observe אבירות of דברים and cannot be בעילת מצוה (even the בועל). See ‘Thinking it over’ # 1.

⁴ אמר מר הוא ישן בין האנשים והיא ישנה בין הנשים מסיעו ליה לרבי יוחנן דאמר רבי יוחנן ע"פ שאמרו אין אבילות בעול בעילת מצוה (but not from) והוא ישן וכוי ר"י. במועד אבל דברים של צינעא נהוג (ופירוש).

⁵ We are concerned that if they will be together he will be בועל her; proving that he is אכילהות בדברים שבצגעה. וואג

⁶ The question is why this inference is not valid.

Because the could reject this inference and insist that can be even after the took effect on them.⁷

תוספות asks:

אבל קשה לרביינו שמשוון בן אברהם אמר לא דיקיך מדקתי ופורך -

However the has a difficulty; why cannot the infer the support to even after the took effect on them? – **ובועל בעילת מצוה ופורך, since the states בריתא ר"י**

מכל דנווג דברים של צינעה מדלא התיר אלא בעילת מצוה דוקא⁸ –

בעילת מצוה since he was only permitted the specifically, but afterwards he is in which supports the view of that we are from the of סיפה ר"י! Why do we infer it (only) from the view of סיפה ר"י? **ווכו!**

תוספות answers:

ואומר רבינו יצחק דהוה מצוי למימר פורך משום דם בתולים כדאמרינו בפרק תינוקת (נדה זז סה,ב)

And the answered that we cannot infer from, for we can say that he is because of אבילות, as the states in דם בתולים פורך – but not because of אבילות

אבל מהו ישן בין האנשים דיקיך דהוי משום אבילות –

However there is a proper inference from that the prohibition is because of (and not because of דם בתולים אבילות –

דאוי משום נזות כיוון דבעל אשתו עמו כדאמר רב יוסף בסמוך¹⁰ –

For if the prohibition is because of (of נזות, he would not be required to sleep for since he was already the בעיל) otherwise she would not be a (נדה, his wife may sleep by him (even if she is a rules shortly –

תוספות offers an additional proof that is because of and not because of:

ועוד דכל אותן ממשע דבכלהו הוי חד טעמא דהינו משום אבילות¹¹ –

⁷ We can explain the meaning of מכנין את המת להדר ואת החתן ואת הכללה להופה for the purpose of the wedding feast; then we bury the dead, and afterward the chuppah. The does not state explicitly when the burial takes place. Therefore there is no inference from here to support ר"י.

⁸ Even if we maintain that the burial may take place after the wedding, nevertheless the ruling is limited to the only, but not afterward; proving the ruling of ר"י.

⁹ After the burial (where he is [usually] he must be seven days as if she were a נדה). This is an דין נזות where he is [usually] seven days as if she were a נדה, for איסור מזרבנן.

¹⁰ A husband is permitted to be in the same room with his wife and we are not concerned that they will have relations (therefore נזות cannot be the cause why אבילות נזות, however by אבילות נזות (which is not as strict a prohibition as איסור מזרבנן), even if we are concerned that they will be intimate).

¹¹ By time we reach the seven days of אבילות there is no more נזות (which lasts only seven days); they are

And furthermore the phrase **כל אותן הימים** (which include all fourteen days of **הוּא יישן**, which is because of **אבילות**) indicates that by all of these days **there is one reason** why **הוּא יישן**, which is because of **אabilot**.

תוספות concludes:

והשתא¹² מקילין טפי באניות¹³ דאוריתא מבאבילות דרבנן -

And now it turns out that we are more lenient regarding which is a אניות, than by אbilot, which is only מדרבנן -

מידי זהה אונילת סנדל ועטיפת הראש וכפיפות המטה:

This is similar to the prohibition of **wearing shoes**, the obligation of **wrapping the head with a tallit, and turning over the beds**, which are observed during the period but not during אניות (we are stricter by more than אabilot).

SUMMARY

It is possible to assume that **בורש** is after the burial, and is because of **בדרכם**. It is only because of **הוּא יישן וכו'** that we derive the rule that **בדרכם שבצנעה נהג**. We are stricter by more than **אונילת מצוה**

THINKING IT OVER

1. How does **בעילת מצוה** conclude that the **תוספות** must be before the burial?¹⁴ Perhaps it can be even after the burial and when ר"י rules that **בדרכם שבצנעה נהג!**¹⁵ **בעילת מצוה** refers to the other, but not to the first.

2. **דם אibilot** second proof that **הוּא יישן וכו'** is on account of **אibilot** and not because of **בדרכם**.¹⁶ Perhaps it is because of **דם בתולים** and the reason they are separated in the **שבעת ימי האibilot** is because she cannot go to the **מקווה** since she is in **אibilot**.¹⁷

separated only because of **אibilot** and the same reason is for the **שבעת ימי המשתה** (because of **אונון**). See 'Thinking it over' # 2.

¹² Now that we say that the **בעילת מצוה** can take place only before the **מת** is buried (when he is an **אונן**), but not after the **מת** is buried (when he is an **אבל**), this shows that we are stricter by **אוניות אibilot** than by **אונון**.

¹³ The laws of **אוריתא** (which are effect from when the **מת** dies until he is buried).

¹⁴ See footnote # 3.

¹⁵ See **מהרש"א**.

¹⁶ See footnote # 11.

¹⁷ See **פנ"ז מהריב"ן** and **פנ"ז מהריב"ן**.

בעילת מצווה -

OVERVIEW

בעילת מצווה **explains why the first** is called **ביהא** **because it is written**, ‘**for your husband makes you’** -

קרי לה בעילת מצווה¹ משום דכתיב² כי בועליך עשייך -

The calls the first because it is written, ‘**for your husband makes you’** -

ואמרין (סנהדרין זט נב,ב) אין אשה כורתת ברית אלא למי שעושה אותה כלוי³ -

And regarding this verse, said in the name of רב שמואל בר אוניא, a woman does not strike a covenant only with the one who makes her into a vessel -

על ידי כך מידבק בה⁴ ובאיו לידי פריה ורבייה ולהכי⁵ קרי לה לבעילה ראשונה בעילת מצווה:
And through this the husband cleaves to her and they are able to reproduce, so therefore the first is called בעילה, because it is on account of this that the couple is the makim of פור' מצוות פור' ממצוות פור' ממצוות פור'

SUMMARY

The first causes the woman to dedicate herself to her husband, and consequently fulfill מצות פור'. Therefore it is called בעילת מצווה.

THINKING IT OVER

concludes; Seemingly this is superfluous; began by saying why repeat it again?!⁷

¹ The writes יבמות לד, א in גמרא which cannot cause is called בעילת מצווה. **ביהא** **אין אשה מתעברת מביאה ראשונה בעילת מצווה;**

² ישעה נד, ה.

³ She becomes complete (a completed vessel) after the first, when she can bear children. The (your husband) is (makes you [the woman] complete). She returns the favor in kind and makes a covenant with him.

⁴ This refers to the following ביהות.

⁵ See ‘Thinking it over’.

⁶ See footnote # 5.

⁷ See ח"ב מ"ה אורת מג.

אבל איפכא לא –

OVERVIEW

The ברייתא concluded that this leniency (that we let them first celebrate their wedding and then go into mourning) is only if the father of the חתן or the mother of the כלה died (since they provide the wedding needs of the חתן and respectively), but if it was the reverse (the mother of the חתן or the father of the כלה died) this leniency would not apply. אבילות discusses various rules of marrying after.

והוא הדין אם אבלים מוחמת שאר קרובים -

And the same rule of strictness would apply if they are in mourning for other relatives (neither their father nor their mother); they would also be required to begin the mourning period and have the wedding afterward.

תוספות asks:

תימה דאמר בפרק ג' דמועד קטן (דף ג, א ושם) מטה אשתו אסור לישא עד שייעברו ג' רגלים -

It is astounding! For the states in the third of פרך בריתא 'his wife died, he is forbidden to remarry until three holidays pass -

ואם אין לו בניים מותר לישאلالתר משום פריה ורביה -

However, if he has no children he may remarry immediately in order to fulfill the מצוה of פ"ר. In addition -

הנicha לו בניים קטנים מותר לישאلالתר משום פרנסתם -

If his deceased wife left him over with small children he may also remarry immediately because of the children's needs'. This concludes the ברייתא, which indicates that an אבל may remarry immediately if he has no children (because of פ"ר) -

והכא אמר אבל איפכא לא ומשמע דברין לו בניים עסקיים -

However here the states, 'however by the reverse (or by other relatives) he may not' remarry until after the אבילות, and it seems that here we are discussing someone who has no children -

מדקאמר דליך דטרח להו משמע דברhor איירי¹ -

Since the states, 'for there is no one to work for them'; indicating that he is still a בבחור; he was never married before and was not מקיים פ"ר, so why cannot he continue on with the wedding because of פ"ר as the other stated.

תוספות answers:

¹ One who has grown children, does not need his father to take care of his second wedding; he can do so on his own.

ויש לומר דלא יותר לאו דוקא אלא כלומר מותר לאחר ז' ² -

And one can say that when the ברייתא in מז' ruled that he marry **immediately** if he has no children or he has small children, it **did not actually mean immediately, but rather it meant that** he is **permitted** to remarry **after** the seven days of mourning. There is therefore no contradiction between the ברייתות.

תוספות cautions:

ומיהו לבועל אסור עד לאחר ל' ³ כדמות בת רחבי -

However (even though he may remarry [after seven days] if he has no children or small children), nevertheless **it is forbidden** for him **to have relations** with his wife, **until after the thirty day period of mourning, as is evident later** in that same ברייתא -

במעשה שמתה אשתו של יוסף הכהן ואמר לאחותה **בבית הקברות צאי ופרנסי בני אחوتך** -
Regarding the story, that the wife of יוסף הכהן died, and told his wife's sister in the cemetery, marry me and go and take care of your deceased sister's **children** (meaning that the surviving sister should marry and attend to his children [from her sister]). The concludes -

ואף על פי כן לא בא עלייה עד זמן מרובה שלשים יום מכלל **זכנשה תוך ל'** -
But nevertheless (even though they married within thirty days), **he had no relations with her until a 'long time' passed**. The asked, '**what is a 'long time'**'; רב פפא answered, '**thirty days**' after his wife's death, **indicating that he married her within thirty days.**

ותוך שבעה ודאי אסור כדמות הבא ⁵ -

And within the seven days of it is certainly forbidden to marry as is evident here -

תוספות responds to an anticipated difficulty:

ומה שאמר לה בבית הקברות לא היה זה כניסה אלא שידוכין בעלמא -

And this which he said to her in the cemetery, go and attend to the children (which would seemingly indicate that he married her then), **this was not a**

² Compared to the ג' רגלים which one has to wait normally after the wife's death, waiting only seven days is considered לא יותר.

³ An אבל is permitted to have **תשמש** the matza after seven days; however by a בעלית מצוה where there is a need to wait **ל' יום רביה** (see 'Thinking it over' # 1).

⁴ The meaning of לא בא עלייה and עפ"כ לא בא וכו' is that even though he married her, nevertheless the marriage took place **תוך ל'** 2. See 'Thinking it over' # 2.

⁵ If it is not clear whether the parents are אבלים or not, then the wedding may not proceed since they are אבלים. See 'Thinking it over' # 3.

marriage (for that is forbidden until after the **שבעה**, but rather it was merely an **engagement** to get married after **שבעה**.

In summation: an אבל for one's wife may not marry until three pass (for other רגלים must wait one month), however if he (was not or) has small children that need to be attended, he may marry after the **שבעה**, but may not be until after **ל' ג.**⁶

היתר qualifies this:

ונראה לרביינו יצחק דודאי אותו שיש לו בניים קטנים מותר לישא תוך ל' -

And it is the view of the ר"י that certainly one who has small children is permitted to marry within thirty days so someone will attend to the children -

בדASHMU BEUBDA DIVOSF HAKHON -

As it seems by the story of יוסף הכהן who had small children and married within thirty days -

אבל אותו שאין לו בניים כלל אסור לישא עד לאחר שלשים⁷ -

However one who has no children at all, it is forbidden for him to marry until after thirty days (even though he was not yet the **מץוה** of מקיים פ"ר) -

כיוון שאין יכול לבועל תוך שלשים -

Since he cannot be within thirty days, so there is no purpose in the marriage, as opposed to one who has small children who may marry within the thirty days (after **שבעה**), for even though he cannot be **בעל**, but his wife will attend to the children.

offers proof to this view:

וכן משמע במסכת שמחות (פרק ז) דתניא במה דבריהם אמרוים כשייש לו בניים גזולים -

And so it seems in בריתא, where the teaches, 'when do these laws apply (that one waits three holidays), **if he has older children** -

אבל אין לו בניים או שיש לו בניים קטנים מותר לישא אחר ל' -

However if he has no children (and needs to be **מקיים** פ"ר) **or he has small children** (and needs a wife to attend to them), **he may remarry after thirty' days** -

משמע דאסור אפילו לישא תוך שלשים -

It seems that (one who has no children) **is forbidden even to marry within** **שלשים** (and not only to be **בעל** as the **ר"י** stated -

⁶ See footnote # 11.

⁷ It will be necessary to say according to this ר"י that when the abovementioned states מי"ק in בריתא says that when the abovementioned רגלים three days, מותר לישא לאחר three days, it means that he need not wait three days but can marry after three days (and not like the **לאלתר** of **ללאלתר ז'**, which means **בנימ קטנים**).

⁸ Our text of בתק"ל instead of **בתתק' ל' יומם מס' שמחות**

תוספות anticipates a difficulty:

ואף על גב דעת לו בניים קטנים מותר לישא תוך שלשים -

And even though the ר"י ruled that one who has small children may remarry **within** (and from the case where it seems that both one who has no children and one who has small children may marry only after thirty days) –

תוספות responds:

מכל מקום נקט אחר שלשים משום אין לו בניים⁹ -

Nevertheless we can answer that the mentioned that he marries **after** ברייתא because of the case where **אין לו בניים, שלשים**; however if he has children he may remarry within **שלשים**.

תוספות offers an dissenting view:

ורבינו תם רצה לומר דבריו לאו בניים -

And the ר"ת wanted to say that by one who has no children -

אפילו לבועל שרי תוך שלשים אחר ז' משום פריה ורבייה -

- פו"ר He is permitted even to by because of שבעה within but after שלשים בעול -
והחיא דש machot ainah matiyeshet cfpironosh¹⁰ -

However the ר"ת's view of ברייתא cannot be explained according to the view.

In summation: according to the ר"י one who has small children may remarry, but cannot be until after ל'. However, one who has no children can remarry only after ל'. We are more lenient by than by children. According to the ר"ת the reverse is true; by children than by children. According to the ר"י maintains, but by he may marry and be able to marry again after ל' (as the ר"י maintains), but by he may marry and be able to marry again after ל'. We are more lenient by than by children. ¹¹

תוספות continues to rule on various cases in this matter:

ונראה דעתו לו בניים קטנים שרי לישא ואפילו אם היא נמי אבילה מפני שמספרנת בניו¹² -

And it is the view of that in a case where he has small children he can marry a woman (תו"ל), and even if she is also an אבילה; he may do this since she attends to his children -

⁹ Regarding מותר לישא אחרת לאחר ל' we can interpret that when the ברייתא states בניים קטנים (even though that according to the ר"י he may remarry within ל') it is referring to the wife, which can be done only after ל'.

¹⁰ How can the בניים only mention when it rules אין לו בניים ל' when he may (not only marry but) even be (according to the ר"ת)?! See footnote # 8 & 9.

¹¹ It would seem that both תוספות (before he mentioned these two views) maintains that by both he may marry (see נמק"י בעול לאחר ל' (see תוח' ל')). See footnote # 6.

¹² See 'Thinking it over' # 4.

ואף על פי שאפשר באחרת כדמות בעובדא דיוסף הכהן שהיתה אבילה מאהותה -

And even though it is possible for him to marry another woman who is not an אבילה, nevertheless it is permitted,¹³ as is evident in the story of where (his new wife) was an אבילה because of her sister's death –

תוספות discounts this proof:

ומיהו אין כל כך ראייה דשמא שאני התם לפי שהיא תרחים על בני אחותה יותר מאחרת –

However it is not such a valid proof (that he may marry an אבילה, for perhaps there it is different, since the sister will be more caring for her nephews than another woman. However if the proposed wife is not a relative to the children and is also an אבילה, it may not be permitted (if he can marry another woman).

תוספות anticipates a difficulty with the premise than if he may marry even an אבילה within ל':

ואף על גב דעתנו בפרק החולץ (יבמות ז' מא, אושם) כל הנשים יתארסו חוץ מאלמנה מפני האיבול -
And even though the woman teaches, said ר' יוסי, "פרק החולץ in משנה משותה or a may betroth (immediately after the divorce) except for the mourning' -

ולא מפליג מיידי משמע שאסורה אפילו למי שיש לו בניים קטנים כשהיא אבילה -

And does not distinguish at all, indicating that while she is an אבילה, she is forbidden to marry even to someone who has small children, and here said that he is permitted to marry an אבילה –

תוספות responds:

התם משום דבראו וכי אסורה לצריכה להמתין ג' חדשים¹⁴ משום הבחנה¹⁵ –

There by it is different, because she is forbidden to have regardless נישואין, אבילות, for she is required to wait three months because of הבחנה.

In summation; an אבילה with even if it is for both of them (but he cannot be until after ל').

An additional ruling:

¹³ The reason is he may not find another who is willing to attend to his children (additionally, since he wants her, he will not take another and he will wait until after ל' to the detriment of the children).

¹⁴ Therefore since she cannot marry him, there is nothing gained by having the right away for the sake of the children, for since she is merely an ארסה she is not together with him and cannot attend to his children, who are by him.

¹⁵ הבחנה means distinction. A widow or divorcee has to wait three months before she may have relations with a new husband in order to distinguish whether a child born is from the original husband or the new husband.

ואומר רבינו תם דאפיקו מתו אביו ואמו¹⁶ יכול לכנות אחר ל'¹⁷ -

And the ר"ת ruled that one may marry after ל' even after the death of his parents –

זהanticipates a difficulty:

והא דאמרין במועד קטון (ז"ה נב,ב) על כל המתים נכנס לבית המשתה אחר ל' -

And that which the rules in בריתא 'for mourning after all deceased relatives the mourner may enter a banquet hall after ל', however if he is mourning -

על אביו ועל אמו אחר י"ב חדשם -

For his father or mother he must wait until after twelve months', this concludes the question is how can the rule that he can marry after ל' –

זהresponds:

הני מיili בשאר שמחות אבל לישא אשה שהיא מצוה יתרה¹⁸ מותר -

This ruling of waiting twelve months from participating in a for one's parents is valid by other types of joy, however to marry a woman which is a 'special' it is permitted after ל' -

ואפיקו יש לו בנימ משום שנאמר (קהלת יא) בבקר זרע [את] זרעך ולערב אל תנח ידך¹⁹ -

And even if he has children (so there is no issue of פ"ר), because it says, 'in the morning sow your seed and towards evening do not stay your hand'

והביא ראייה מדתנית²⁰ סתום כל ל' يوم לנישואין ולא מפליג בין אביו ואמו לשאר קרוביים -

And the bought proof that one may marry after thirty days of even for parents, from the which states as a general rule, 'thirty complete days of אבילות must pass before marrying', and the does not distinguish between mourning for his parents or for other relatives -

משמעות דבכלהו לאחר ל' מותר -

Indicating that by all relatives (including parents) one is permitted to marry after ל' of – אבילות –

זהbrings an additional proof to this ruling of the ר"ת:

והרב רבינו יוסף הביא ראייה לדבריו דעתן במסכת שמחות (פרק ט') בהדייא -

¹⁶ It is only by that he is required to wait מהה אשטו (see רגלים ג,א ד"ה עד ל').

¹⁷ This is in a case where he has already children; however if he has no or he has many he may marry ל' (as the stated earlier in this ר"ת).

¹⁸ The of 'big' is referred to (by במתה מג,ב ד"ה שני see תוס' יבמות) as 'Thinking it over' # 5.

¹⁹ It is in פטוק ו. This means that one must engage in not only in his younger years but even in his older years. במתה סב,ב (לערב) and even if he has children already. See פ"ר.

²⁰ מ"ק ג,א.

And brought a proof to the for we learnt explicitly in a in משנה ר"ת ה"ר יוסף - מסכת שmachot

על כל המתים אסור לילך לבית המשתה עד שישלימו ל' יום -

For all deceased relatives it is forbidden to go to a until the completion of thirty days of bereavement -

ועל אביו ועל אמו אסור כל שנים עשר חדש אלא אם כן היה²¹ של מצוה -

However for one's father and mother it is forbidden to enter a the entire twelve months, unless it was a of a משתה מצוה -

אלמא שרי בכל משתה של מצוה -

It is evident that it is permitted to participate in every משתה מצוה, including one's own wedding.

תוספות concludes:

ונדריך עיון אי קאי נמי ארישא ושרי אפילו תוק ל' יום:

And contemplation is needed to decide if the statement applies even to the (where it says רישא, and if it does refer back to the תוק ל' يوم will be permitted even [or even for אביו ואמו]).²²

SUMMARY

An אבל without children may remarry after בועל תוק ל'. An אבל with small children may marry according to the ר"י and may marry according to the ר"ה. An אבל with בנים קטנים may marry an אבל provided she is not within three months of a previous marriage). An אבל for אביו ואמו may marry after ל' (even if he was פיר).²³

THINKING IT OVER

1. During the fact that the was permitted only where the was in the room, but not after he was buried (when the begins).²⁴ However, here distinguishes between (ל' בעילת מצוה which is forbidden during and a regular which is after ז'). How can we therefore prove from בעילה מצוה?

²¹ In our text it reads היתה לשם שם (instead of של מצוה).

²² This view would however be in contradiction with the ר"ת who previously stated that אפשרן מהו אביו ואמו יכול לבנות בעילת מצוה as well as to שאר קרוביים (but not before); indicating that it applies both to אביו ואמו to לאחר ל'

²³ See (the text) there (by) footnote # 6.

²⁴ See footnote # 3.

(which is בעליה regular applies to a that, (אסור באבילות דברים שבצעה²⁵)

2. proves from the story of יוסף הכהן (where he was forbidden (for someone who is permitted to marry because he has בנים until after ג).²⁶ However there is seemingly no proof, for there she was also an אבילה (and the reason of בנים do not apply to her), therefore he could not be an אבילה until if she is not an אבילה, perhaps (if he can marry ג) he can be ג?²⁷

3. writes that it is forbidden to marry ג even for one who has בנים קטנים, as it is evident in our גمرا here.²⁸ However our here is discussing one who has no children, therefore he has to wait until after ג, but how do we know that one who has needs to wait until after ג (for the ר"י differentiates between בנים קטנים לאחר ג) [where he may marry ג and [where he needs to wait until ג]²⁹]³⁰

4. rules that by ג he may marry an אבילה ג. What would be the rule according to the ר"ת if קיים פ"ר, is he also permitted to marry an אבילה ג?³²

5. מצוה יתרה permits marrying after ג even for אבilioת אביו ואמו ג. However later ר"ת states that ה"ר יוסף בכל משתה של מצוה. Why did the need to say that it is a מצוה יתרה?!³⁴

²⁵ See אליה רבבה.

²⁶ See footnote # 4.

²⁷ See מהרש"א.

²⁸ See footnote # 5.

²⁹ See footnote # 7.

³⁰ See חי רע"א.

³¹ See footnote # 12.

³² See סוכ"ד אות כו.

³³ See footnote # 18.

³⁴ See סוכ"ד אות כו.

כגון מהא מהסיא –**For instance; Moso Mechasyoh****OVERVIEW**

ר' חסדא said in the name of ר' הילא that this leniency (that we allow the wedding to precede the meat) is only if water was already poured over the wedding meat (so if it is not used now it cannot be sold and there will be a monetary loss), however if the water was not poured over the meat, the wedding is postponed (because the meat can be sold easily). ר' פפא qualified this ruling that in a large city it can be sold even if the water was poured (so the wedding is always delayed). ר' פפא (also) qualified this ruling (in the opposite manner) that in a village even if no water was poured it cannot be sold (so the wedding is never delayed). The question asked so when is the ruling of ר' חסדא (that there is a difference whether the water was poured or not) applicable (neither in a כרך nor in a כפר [for in those types of cities it makes no difference whether the water was poured or not]). The answer is applicable in a city like גמרא (which is smaller than a כרך and larger than a כפר). תוספות ר' ה"ח discusses the need of to seemingly narrow the scope of the ברייתא.

תוספות asks:

תימה רב חסדא מי דוחקיה לאוקומי בנותן מים על גבי בשר –

It is astounding! What forced to establish the rule in a case where he poured the water over the meat (and then have the difficulty to explain in what type of city the ruling of the ברייתא is effective) –

נוקמה בכפר¹ אף על פי שלא נתן מים על גבי בשר² –

Let establish the rule in a village and it applies in all cases even when he did not pour the water over the meat?³

תוספות answers:

ויש לומר ממש דניחא ליה לר' חסדא לאוקמה ברוב עיירות שהן בין נויות –

¹ We could not establish it by a כרך, for indeed by a כרך the ruling of this does not apply since he can always sell the meat (and the wedding is always delayed). However, we can establish it by a כפר, where the rule of the ברייתא (that the wedding is not delayed) is always valid regardless whether ר' פפא ruled or not (as the ברייתא ruled).

² There will be two advantages if we establish it by a כפר. Firstly the ברייתא does not mention that he was already married, and secondly why narrow the rule to only one city (מתא מהסיא) when it can apply to all the כפרים.

³ We cannot answer that ר' ה"ח established this rule by ברייתא (נתן מים) because of the upcoming תוספות הרא"ש (ברייתא) which mentions נתן מים, because if he knew of the ברייתא he should have cited the ברייתא (see תוספות הרא"ש ברייתא).

And one can say; because רב הсадא prefers to establish the by the majority of cities which are of average⁴ size; neither very large like a כרך, nor very small like a – כרך –

והכי קאמר⁵ כgon מטה מחסיא ורוב עיירות -

And this is what answered; for instance and the majority of cities, which are similar in size to – מטה מחסיא -

ומושם hei נקט נמי בברייתא דמייתי ונתן מים על גביبشر⁶ משום דאיירי ברוב עיירות:

And that also explains why the newly cited mentions ברייתא because that is discussing a majority of cities (which are of average size).

SUMMARY

It is preferable to establish a ברייתא where it covers a majority of cases rather than a limited amount of cases.

THINKING IT OVER

Is the question⁷ on the (second) ברייתא the same as the question on (or is one stronger than the other)?⁸

⁴ There are more (people in) cities like מטה מחסיא (which are in) than there are כפרים (people in).

⁵ מטה מחסיא is not a singular exception to a כפר or a כרך; rather it is representative of a majority of the average size cities that are neither a כרך nor a כפר.

⁶ Seemingly the same question (and answer) that applies to רב הсадא applies to this as well; why mention נתן מים עלبشر when it can be discussing כפרים?

⁷ See footnote # 6.

⁸ See פרדס יצחק אות עד.

This is a support to ר' יהנן etc.

משמעות ליה לרבי יהנן כולי –

OVERVIEW

The ברייתא states that the שבעת ימי המשתה (as well as during the following days) which rules that during the wedding and sleep among the men and women respectively, is a support to ר' יהנן that we practice by אבילות (fasting) on a day before the wedding. Our explanation ¹ explains the connection between the שבעת ימי המשתה and the שבעת ימי המשתה.

מועד וחתן משווה אותן בכמה מקומות בהיא דעתנית בפרק קמא זמור עד כתון (ד"ז, ב' ישט) –

The compares the holiday and the in many places, for example like the first in the first of פרך מוא"ק ברייתא which states regarding –

חתן שנולד בו נגע נוותני לו ז' ימי המשתה לו ולאיצטליתו ² ולכסתונו ³ –

A who developed a 'time off' not to appear before the all the was on his person, on his [house], or on his garment (the continues) –

וכן ברוגל נוותני לו כל ימות הרגל:

And similarly regarding all the days of the . This is an example where the equates and .

SUMMARY

Another example where we equate and is regarding the permission not to show the to the during these two times of .

THINKING IT OVER

The comparison here between and is regarding restricting their (by אבילות) in a case of , however in the example brings they are equated in observing their (in the face of a) but not restricting it.

¹ Seemingly, how can we prove the ruling of ר' יהנן regarding a from the ruling in the regarding a .

² In our text it reads לו ולכסתונו.

³ If the were to appear before the during his and the would pronounce him (or have him secluded) it would ruin entirely his and the same would be if he would appear during .

However, he observes the private rules

אבל דברים של צינעה נוהג –

OVERVIEW

חתן שבעת ימי המשתה, בריתא גمرا states that the rules that during the sleep among the men and women respectively, is a support to that on a we practice by אבילות, meaning that one refrains from תשמש.

פירוש חובה לעשות כן ולא רשאי מדמייתי סייעתא מן הבריתא² -----

The explanation of the phrase is that **he is obligated to do so** and refrain from (יו"ט on) דברים شبצינעה, **but it does not mean that he is permitted** to refrain from (but may engage in them if he so chooses), and the proof for this is since the **brings support to** ר"י, **בריתא**, which states that during this (extended period the and כלה) are not permitted to be together; proving that דברים شبצינעה means that it is forbidden to do the which are prohibited to an אבל.

תוספות asks:

ואם תאמר רב ושמואל דאמר בפרק בתרא דמועד קטון (ז"ו כד,א) –

And if you will say – מסכת מו"ק of פרק rule in the last and who rule in the last רב; רב who – **דתשמש המטה בשבת של ז' ימי אבילות רשות תיקשי להו בריתא דחכא** –

That during the seven days of mourning is optional; this here should contradict them, since it rules that on account of the there can be no relations between the even during the (which we compare to – מועד ז' ימי המשתה חתן וכלה) (which we compare to – מועד ז' ימי המשתה חתן וכלה) –

תוספות rejects a possible answer:

ואין סברא לחלק בין מועד לשבת ומחייב שבת טפי³ –

And it is not logical to differentiate between (when is forbidden) **and** (where it is permitted), **and we will be more lenient on** שבת than on (and by a); this does not seem plausible –

תוספות answers:

אלא נראה לרביינו יצחק דרב ושמואל מפלגי⁴ בין חתן למועד ושבת –

¹ אבל רשות would mean that even if it is the time of עונה [יז"ט] nevertheless he may excuse himself [on] since he is an אבל.

² The equates the ז' ימי אבילות הוא ישן וככ' that in all of them is it is forbidden to have relations; the same applies to ז' ימי המשתה.

³ See ק"ט that שבת is more connected to ז' ימי אבילות than שבת counts as one of the seven days of but not ז' ימי המשתה. If we are lenient on שבת we should certainly be lenient on ז' ימי המשתה.

⁴ This is in contrast to what said in the previous ד"ה מסיע that TosfosInEnglish.com

Rather it is the view of the **ר"י** that **רב ושמואל** differentiate between the **שנה** of a (where he is forbidden from **חנן**) and the **מועד ושבת** (where it is optional).⁵

אבל Tosfos asks:

אבל קשה דכל אותן הוא ישן בין האנשים משמע אפילו בשבת -

However there is still a difficulty, for the expression of ‘all those fourteen days he sleeps among the men’, indicates that he is even on **שבת** אסור (not only during the other days), according to it should be optional on **שבת**. Tosfos does not answer this question.⁶

ופסקו הלכות גדולות⁷ לרבי יוחנן -

- (רב ושמואל יו"ט on דברים שבצינעה וזה ר"י) that **הלכות גדולות** ruled like **רב ושמואל** on **שבת** **המיקל**⁸ אבל **בהתנאי אבל באמוראי לא -**

And the explained; even though (generally) we follow the lenient view in regards to the laws of **mourning**; that is true regarding the differing views of **but not regarding** the differing views of **אמוראים**. Here there is a dispute of **תנאים** between **ר"י** who is strict and **רב ושמואל** who are lenient, and we (generally) follow the rule of **רב** or/and **ר"י**.

ואומר רבינו יצחק זודאי נראה דהלכה לרבי יוחנן מdadmr הש"ס הכא מסיע ליה לר' יוחנן:
And the **ר"י** added that it certainly seems that the **הלכה** is like since the **ר"י** here says that the **בריתא גمرا** supports the view of **ר"י**.

SUMMARY

חנן אבל by **רב ושמואל** maintain that even though there is mandatory nevertheless it does not apply to **ר"י**. However maintains that it applies even to **ר"י** **שבת** and the **הלכה** is like **ר"י**.

THINKING IT OVER

Why did not the **ר"י** use the explanation of the **ר"י** that the **הלכה** is like **ר"י**, since the **ר"י** writes 'מסיע ליה לר'!⁹

to **ר"י**, however **רב ושמואל** will maintains that **חנן** and **מועד** are different.

⁵ **שנה** דברים **שבת** **יו"ט** **חנן** is merely a **שנה** of an individual therefore we are stricter, however **ר"י** is a **שנה** of all the days except for **שבת**.

⁶ Others (**רש"**) answer that **כל אותן הימים** means virtually all the days except for **שבת**.

⁷ The authorship of the **הלכות גדולות** is (usually) attributed to **ר' שמואל קירא**. Others (see **ר' יהודאי**) attribute it to **ר' יהודאי**. The **הכהן גאון סורא**

⁸ See **מו"ק ייח, א**.

⁹ See **גהלה יהושע**.

והצעת המטה –**And making the bed****OVERVIEW**

rules that a נדה may not make the bed for her husband (which normally a woman would do for her husband). תוספות explains what is meant by הצעת המטה.

נראה לרביינו יצחק דהכא הינו פרישת סדיןין שהוא דבר של חיבה¹ –

It is the view of the ר"י, that here refers to spreading out the linen which is an ‘act of endearment’, therefore the נדה is prohibited from doing it for her husband –

אבל הצעת כרים וכסתות שאין דבריהם של חיבה שי לנדה² –

However a is permitted to spread out the pillows and quilts for her husband, since they are not acts of endearment they will not cause forbidden relations –

הצעת כרים וכסתות proves this distinction between הצעת סדיןין and הצעת מטבחה:

והביא ראה מזטנו בפרק אף על פי³ (לקמן ט,ב) הכניסה לו ג' שפחות אינה מצעת לו המטה –

And the bought proof from the פ"ג in משנה which states; if the wife brought into the marriage three maids, she is not required to make his bed –

ואינה עושה בצמר ארבע יושבת בקטדרא –

And is not required to spin wool. If she brought in four maids, **she may sit in a lounge chair;** she is not even required to do the work of a woman who was – הכניסה לו ג' –

ואמרין בגמרא⁴ אף על פי שאמרו ד' יושבת בקטדרא אבל מזוגת לו כוס ומצעת לו המטה –

And משנה **rule in the there, ‘even though the חכמים said** in the גמרא **ר' הנא** if she brought in four maids, **she sits in a katdara, nevertheless** she is still required to pour him a cup of wine and make his bed –

ומרחצת לו פניו ידיו ורגליו –

And washes her husband's face, hands, and feet'. This concludes the גמרא.

ופירש בקונטרס⁵ דהא דתנא ג' אינה מצעת לו המטה –

¹ Therefore, since it is a דבר של חיבה, we are concerned that it may cause them to have marital relations, which are forbidden with a נדה.

² הצעת כרים וכסתות is easy and pleasant and (therefore) constitutes a bothersome דבר של חיבה however; דבר של חיבה is דמיון (therefore) not considered a דבר של חיבה.

³ The משנה there enumerates the types of work a woman is obligated to perform for her husband. The משנה continues that if the woman brings in maids into the marriage, her obligations to her husband progressively diminishes, depending on the amount of maids she brings with her into the marriage. See ‘Thinking it over’.

⁴ ס.א.

לפרום סדין ולבדין דבר שאינו טורה ומשום דמיוני דחיבה נינה כדי שתתחביב עליו ולא דמי למצעת דמתני: ד"ה אבל ס.א, א on רשות, ז. ז. דהוי דבר של טורה ובכפיה הני לא כפי לה אלא חכמים השיאוה עצה טוביה להנהי גזאת בישראלי.

And there explained, regarding that which the stated that by three maids she is not rule that by she is - מצעת לו המטה so how can it be? The explanation is that when the states מצעת לו המטה it is because there are three maids.

הינו הצעת כרים וכסתות דהוי דבר שיש תורה -

Means spreading out the pillows and quilts which is something of a bother; that she is not required even with only three maids (and certainly not with four) -

אבל מצעת לו המטה הינו פרישת סדין ולבדין דמיili דחיבת נינהו שתחביב עליו ואין בו תורה -

However when the ruled (with even four maids) that is referring to the spreading out of sheets and linens which are acts of endearment, in order the she endear herself to her husband and there is no bother in doing it. This concludes גמרא now returns to our פירוש -

וההיא הצעה של חיבה נראה דזוקא אסור -

And it is specifically that of endearment (spreading out the linen) that is forbidden for a נדה; however she is permitted to spread out the pillows and quilts for that is not considered דברים של חיבה.

וכן ממשׁ דמיילה בהדי מזיגת כוס והרחתת פניו ידיו ורגליו כי התם -

And this is also indicated in our where mentions (the prohibition of) הרחתת פניו ידיו ורגליו **and מזיגת הכוס** (the prohibitions of) just as he mentions there all these three items regarding what (even) a wealthy woman must do for her husband; indicating that here it is the same type of הצעת המטה as there.

offers an alternate view:

מיهو לספרים שלא גרסו במשנה אלא ואינה מצעת המטה ולא גרסו לו ובגמרא גרסין לו⁷ -

However according to those text that do not read in the way it was said previously, **ואינה מצעת המטה but rather** their text reads **לו** according to this גירסא; omitting the word **לו**, but in the their text reads **אין ראייה ממשׁ** ⁸ **שיהו תרי גווני הצעה -**

There is no proof from there that there are two types of הצעת המטה (one of spreading the sheets which is and the other of placing the pillows and quilts which is a תורה), but rather there is only one הצעת המטה, which includes both sheets and pillows, etc. and there is no contradiction between the which states **ומצעת לו** גמרא and the which states **ואין מצעת המטה** -

דמתניתין איירי בהצעת שאר מטות ובגמרא איירי בהצעת מטה לבלה לבדוק:

⁶ See ‘Thinking it over’.

⁷ It reads **או"פ** וכו' **ומצעת לו** המטה **א.**

⁸ It is still possible that even this גירסא may maintain that there is a difference between סדיןim and כרים; however we cannot prove that there is this difference.

Because the משנה (which states מטבחה המטה) is referring to making the other beds in the house (but not the husbands); from this she is exempt (with three maids), **however the גמרא (which states למטבחה המטה) is referring only to making her husband's bed** (which she is required to do even with four maids). Therefore according to this גירסא (assuming that all types of הצעת המטה are considered the same), it will be forbidden for a נדה to do any type of הצעת המטה (whether כריכים וכסתות or סדיןיהם), for they are all considered a דבר של חבה.

SUMMARY

סдинין הצעת המטה (according to רש"י) that there are two types of הצעת המטה; one of (which is a דבר של חבה and forbidden for a נדה [and obligatory even for a wealthy woman]) and another of טורה (which is a כריך and permitted for a נדה [and not required from a wealthy woman]). However it is possible that there is no distinction.

THINKING IT OVER

גמרא תוספות brings proof from the פרך ע"פ גמרא later⁹ and another proof from the here,¹⁰ what is each proof proving?¹¹

⁹ See footnote # 3.

¹⁰ See footnote # 6.

¹¹ See ר' מה"ר.

פוקסת –**To apply rouge¹****OVERVIEW**

The **ברייתא** teaches us that if one's father-in-law or mother-in-law passes he cannot force his wife (who is in mourning) to be **פוקסת** or **כוהלת**. Our discussion discusses the meaning of **פוקסת**.

פירש הקונטרס² מעברת שرك על פניה -

explained that **פוקסת** means **she applies rouge on her face** –

תוספות disagrees:

ואין נראה דאמר בפרק ב' ל�מן (דף יז, א) לא שرك ולא פירכוס משמע דתרי מיili נינהו –

And does not agree, for the later **in the second** states, that in Israel they praised the **כלה**, saying that she does not need **neither** **שרכ** (rouge) nor **פירכוס**; **indicating that** **שרכ** and **שרכ** (which is) are **two separate items** –
דפוקסת זהה היאנו פירכוס כדאמרין בסמוך כי קטני אכיהול ואפירכוס³ –

For, which is mentioned **here is the same as**, as the shortly **states** that **when the stated** **ברייתא** **'וכן'** **it was referring to** **and** **פירכוס** **כיהול** **and** **פירכוס** proving that **פירכוס** and **שרכ** are the same. We know that **פירכוס** and **שרכ** are not the same (from the second **פרק**); therefore **שרכ** and **שרכ** (which is) are also not the same, which contradicts **פירש"י**.

מעברת **שרכ** על **פניה** means **פוקסת** **פירוש"י** has another question on that **פירוש"י** **פוקסת** **ומעברת שרכ על פניה** –

ובשייליה המציג (שבת צה, א) קטני פוקסת ומעברת שרכ על פניה⁴ –

And in the end of **פוקסת** **ברייתא**, **פרק המציג** **teaches** **ברייתא** **and applying rouge on her face;** indicating that **פוקסת** and **שרכ** are not the same.

תוספות cites another translation of **רשב"** (regarding):

ולקמן בפרק ב' פירש הקונטרס⁵ פירכוס קליעת שער⁶ –

¹ This is the translation according to **רשב"**.

² **ד"ה פוקסת**.

³ **פירכוס** was not mentioned in the **ברייתא**, only **פוקסת** and **כוהלת** (and), we must therefore conclude that the **גمرا** refers to **פירכוס** (**ברייתא**) (in the **פוקסת** as).

⁴ The fact that initially the **גمرا** discusses **פוקסת** and **שרכ** and then it uses the term **שרכ** indicates that **פוקסת** is not the same as **שרכ**.

⁵ **ין, א ד"ה פירכוס**.

⁶ There also seems to be an inherent contradiction in **פוקסת** (which is) **פוקסת** **רשב"**, for here **explains** that **פוקסת** (which is) **פוקסת** **רשב"** **פוקסת שער** (to mean **פוקסת שער**). See **מהרש"א קידושין מה, א ד"ה בפירש"**.

And later in the second explained to mean pleating of the hair – פרק רש"י, פירוכס

תוספות asks:

וקשה לרביינו יצחק דבשילхи המצניע (שם צד, ושם) כתני גודלה ופוקסת -

פרק ר"י has a difficulty with this translation of **פирוכס** for in the end of **פוקסת** (which is pleating) and **גדלה** (which is as two different things; how can state that **פирוכס** is קליעת שער, since **פוקסת** is גודלה which is different from **פוקסת** (or).

תוספות offers his explanation:

אלא נראה אחד מתייקוני נשים הו:

But rather it seems that (and) **פוקסת** is another one of the women's 'make up' applications.⁷

SUMMARY

According to רש"י the meaning of שرك is **פוקסת** and the meaning of אחד is **פירוכס**. according to both **פוקסת** and **פירוכס** (which are the same) are מתייקוני נשים.

THINKING IT OVER

The second question from פרק המצניע would seem to be stronger than the first question from the second (which requires that we associate **פוקסת** and **פירוכס**). Why did **תוספות** ask first from there and not from here?⁸

...ואין לחש בכך כי אין דרכו לפרש במקומות זה כך ובמקומות אחר שינה פירושו who writes בד"ה כלל

ונראה לי דפוקסת היינו כמו חוטין של בזק ומניהו אותו על פניה כדי להאדים פניה כי, עיי"ש See who writes;

⁸ See Tos' הרא"ש

ומי שניין בין אבילות דידה לאבילות דידה –

And is there a difference between his mourning and her mourning

OVERVIEW

הוא ישן בין האנשים וכוכ' (רבא) qualified the rule of (רבא יוסף [בריה דרבא]) that it applies only if בעל then is where he was already (בבעל). The asked, this cannot be for the rule of the rule is (הוּא ישָׁן וְכֹ' בַּעַל מְצֻוָּה בְּעִילָּה) since the rule is even if (בבעל) is not that strict]. The answered (that by the rule is even if (בבעל) is not that strict), the ruling of (רב יוסף) is very strict they will not transgress it). The challenges this assumption that is stricter than (between the people), and concluded that by his must sleep (even if (בבעל)), however by her there is no concern (if he was), for she will balk at his advances. The then asked is there a difference between (where we are strict) and (where we are lenient) and cites a second (where we are strict) and (where we are lenient) which equates with (between the people) and in both instances they may be together. discusses why could not the have presented the contradiction between the two without mentioning the ruling of (רב יוסף).

תוספת asks:

תימה דבלאו מילתא דבר יוסף הוי מצי למינך ברירות אהדי¹ -

It is astounding! The could have asked regarding the contradiction of the two rules that (הרוי שהיה וכוכ' ברירתה) and in the second (הוּא ישָׁן וְכֹ' והוא ישנה וכוכ' so that חתן וכלה we separate the two instances they may be together. (ונוהג(ת) עמו/עמה אבילות דידה תוספות) discusses why could not the have presented the contradiction between the two without mentioning the ruling of (רב יוסף).

תוספת answers:

יש לומר דאי לאו הוה מילתא דבר יוסף הוה מפליגין בין שעת חופה לשלא בשעת חופה -
And one can say; were it not for the statement of רב יוסף we could have distinguished between an אבילות דידה, חופה which took place during the, and an אabilot chofeh which takes place not during the, but later in their marriage, and we would say -
דבשעת חופה יצרו תוקפו אף על גב צבעל -

That during the (ברירתה) **חוּפה** (which is the case of the first his passion controls him even though he was once; therefore we need to separate them; however in the

¹ See 'Thinking it over' # 1.

second where they were married for a while already, it is not and they need not be separated; this is how we would reconcile the if it were not for ברייתאות -

אבל לרב יוסף לא מצי לפלוגי בהכי דהא בעל חשב ליה אשתו ישנה² -

However according to we cannot differentiate in this manner (that there is a difference between חופה and שעת חופה, because **רב יוסף considers as an ‘old’ wife**, meaning -

דאפילו בשעת חופה אשתו ישנה עמו בנדה ובabilot 디ידה -

That even if he was, his wife may sleep with him whether she is a or whether it is her (this shows that he can control himself even [as long as he was] - [בעל אבילות דידה])

ואפלו ה כי באבילות דידה קתני הוא יישן בין האנשים ולהכי פריך שפיר³ -

So nevertheless if it is his, the teaches that ברייתא, באבילות therefore the correctly asks, ‘is there a difference between באבילות and באבילות דידה?’, and cites the second, which equates with באבילות דידה.

תוספות offers another answer to his original question:

ולרבינו שמושון בן אברהם נראה די לאו דבר יוסף לא הוה קשה מידי⁴ -

And it is the view of the that if not for רב יוסף there would be no difficulty in resolving the two - ברייתאות

דעמו ועמה דקתני בברייתא לאו עמו במיטה אלא עמה⁵ בבית⁶ -

For the term which the second states does not mean ‘with him’ in the same bed, but rather, ‘with (her) [him]’, in the same house, but they need to sleep separately (he by the men and she by the woman) as the first ruled - ברייתאות

אבל לרב יוסף דbabilot דידה אשתו ישנה עמו⁷ -

However since according to רב יוסף regarding her, his wife may sleep with him -

אם כן היא דקתני נהוג עמה אבילות היינו עמה במיטה -

It follows that this which the second states, ‘he conducts with her’

² הש"י"נ והנו"נ קמוצים.

³ See ‘Thinking it over’ # 2.

⁴ The second uses the term 'לא הוה קשה מיד' (there is no question at all), as opposed to the first answer of which states ברייתא 'זהה מפלגין' (we can distinguish). According to the first answer the term 'עם' in the second means 'she is sleeping in the same bed'; however we can reconcile the contradiction by distinguishing between שעת חופה and שעת חופה. According to the second, however the term 'עם' in the second means only that she sleeps in the same house. Therefore it is clear that ברייתא means only that she sleeps in the same house, and not that she sleeps with him.

⁵ In ר"ש"י. All עמן in Girsas is בבית. See #2.

⁶ would mean that she must conduct herself according to the laws of אבילות whenever she is in the house with him, but not that they may sleep together..

⁷ This means they may be alone together (but are not permitted to have relations).

it means with her in the same bed, so -

דומיא דהכא⁸ באבילות דידיה הו עמו במטה -

Similarly here by אבילות דידיה it also means עמו במטה.

גمرا clarifies the continuation of the⁹:

והא דמשני תנוי באבילות דידיה הוא ישן אינו מגיה הברייתה -

And this which the answers, 'read by that he sleeps with the men, etc.', the did not intend to amend the - ברייתה

אלא מפרש עמו דקתני בברייתא דהכי הוא¹⁰ -

But rather to clarify, that when the teaches ברייתה this is what meant that הוא ישן בין האנשים -

ופריך והא עמו קתני מי לאו עמו במטה פירוש דומיא דעמה¹¹ -

And the challenged this answer, saying, 'but the reads, does not that mean means now assumes that means עמו because it is similar to, עמה, which all agree means - עמה במטה, because it is similar to, עמה, which all agree means -

ומשנני לא עמו בבית כוז אמר¹² ליה רב כולי:

And the answered, 'no; means as said to, etc. that there is a difference whether one is in the presence of the (ה) or not.

SUMMARY

We can distinguish between the two, ברייתה either by saying that the first, ברייתה which requires separation is discussing how and the second, ברייתה which does not require separation is discussing how, or by saying that the second means in the house, but they need to be separated. However according to רב יוסף who differentiates between אבילות דידיה and אבילות דידיה these distinctions are not applicable.

⁸ Others amend this to read דהכע (instead of רשי). The question is not (like says רשי) since the does not say 'that means they may be together, but rather that the word עמו implies עמו במטה.

⁹ According to the who explains that without רשב"א we would interpret עמו בيتها to mean nevertheless this maintains that means that means they may be together, but rather that the word עמו implies עמו במטה. Therefore when the gave the answer, תנוי באבילות דידיה הוא ישן וכוי, it seems that the wanted to change the גירסת him. However this is not necessary, for the could have answered that עמו במטה means (and not like עמו, which means עמה. [Additionally, since the assumes עמו to mean עמו במטה makes the self-contradictory.]

¹⁰ Even though that means עמו במטה nevertheless this maintains that means that means they may be together, but rather that the word עמו implies עמו במטה.

¹¹ Regarding אבילות דידיה we agree that it can be עמה במטה, therefore it follows that by it also mean עמו אבילות דידיה since the uses the same term (of).

¹² The intention of the words עמו ועמה is not to discuss whether or not, but rather 'merely' to teach us that the of the non-mourning spouse is only in the presence (עמו עמה) of the mourning spouse.

THINKING IT OVER

1. asks that without **רְבִי יוֹסֵף** there is a contradiction between the two **תוספות**.¹³ Seemingly however without **רְבִי יוֹסֵף** (who distinguishes between **בריותות אבילות**) we would assume the same rule applies by both **abilot d'ida** and **abilot ida**, and the second which states **עמו** (without distinction), means that they are in the same manner that **הוּא יָשַׁן וּכֹ' וְהִיא יִשְׁנֶה** the **נוֹהָג**. What is the question?!¹⁴

2. answers that if not for **רְבִי יוֹסֵף** we can reconcile the two **תוספות** by differentiating between **ירצחו תקפו** (the first where they may be together) and therefore **שעת חופה** (the second where they may be separated). However **רְבִי יוֹסֵף** teaches that even if it is **בעל** (by) it is like **רְבִי יוֹסֵף** that there are three levels, 1) if it is **לא בעל** they are always separated, 2) if he was **בעל** they can be together even **פִּירָשָׂה נִזְהָר** or **abilat d'ida**, and 3) if it is **בעל** then even **shlaa b'shuta chofeh** they can be together. There is no contradiction even according to **רְבִי יוֹסֵף**.¹⁵

¹³ See footnote # 1.

¹⁴ See **מהרש"א**.

¹⁵ See **תורה ר' ופנ"י**.

עד שיסתם הגולל¹ –**Until the coffin is closed up****OVERVIEW**

The Gemara states that according to ר' יהושע the term גולן becomes effective when the coffin is closed up. Tosfos discusses at length the meaning of גולן.

בכמה מקומות פירוש רש"י>Dגולן הוי כסוי ארון ודופק היינו קרשיט שבצדיה הארון - 'דופק' in many places, explains that 'גולן' is the cover of the coffin, and 'דופק' are the side boards of the coffin -

ונקרא דופק על שם שהגולן דופק עליו וכעין זה פירוש עירוך² -

And the sideboards are called 'dopk' because the 'goln' 'knocks' on the 'uruk' (which means knocking), and the offered a similar translation.

Tosfos asks:

וקשה לרביינו תא דאמר בפרק מי שמתו (ברכות יט,ב,וושט) מידליגין היינו על גבי ארונות - And the has a difficulty with this translation, for (who was a said in a briyahah (cahn etc. -

ואיך היו מידליגין והלא הגולן והדופק מטמא באهل³ כדי אמרין בהעור והרוטב (חולין קכו,ב,וושט) - But how were they allowed to skip over the coffins, since (of a coffin) is as a 'tent' as the states in Gemara מטמא – פרק העור והרוטב

Tosfos asks an additional question:

ועוד דברך בהמה המקשה (שם עב,ב) דריש על פני השדה⁵ לרבות גולן ודופק - And furthermore derives from the פסוק in ר"ע that it includes the that they are (if one touches them) –

ולפירוש הקונטרס הלא ארון אינו על פני השדה⁶ -

However, according to Rashi's interpretation, the coffin is not 'on the face of the field', so how can we derive גולן ודופק, which is a part of the coffin, from the words

¹ will discuss the meaning of the word גולן.

² The writes that the stone covering the grave and are two stones on the side of the grave. It seems that according to the the was not buried in a coffin but they put stones overhead and by his sides.

³ One becomes by whether the hovers over him or whether he hovers over the טמא. According to that the is the cover of the coffin, when they skipped over the ארון, they were skipping over the גולן, and so they became through טמא, which is forbidden to a Cohen.

⁴ It is on עב,א.

⁵ The reads; במדבר [חיקת] יט,טו in פסוק.

⁶ A coffin is generally buried in the ground and is not ע"פ השדה.

ע"פ השדה, which indicate something which is open to the air.

פירושי⁷ תוספות justifies:

ואומר הרב רביינו דוד מנצינבורק כי לפירושי [דריש] לרבות גולל ודופק שפירש - ע"פ השדה said that according to we derive from the coffin and is lying 'on the field' include a, which became separated from the coffin and is lying 'on the field' that it is מטמא -

דלא מרביינו מעל פני השדה דמטמא אלא כשפירים -

For we only include from that the השדה ע"פ when it is separated from the coffin and it is in the open -

אבל בעוד שהוא טמון בטל אגב קרקע ולא מטמא באוהל -

However, when the is still hidden and buried in the ground it is nullified (from being part of the ground and is not מטמא באוהל) This explains the לשدة of ר"ע דרשה ע"פ -

והשתא אני נמי שפיר היה דמלגים היינו על גבי ארונות⁷ -

And now according to this explanation, that גمرا of 'we were skipping over the will be properly understood, because those were buried, therefore they are not מטמא.

offers an alternate solution to explain 'הינו מצלגים ע"ג ארונות':

ועוד יש מתרצים אף על גב צגולל מטמא באוהל -

And additionally there are those who answer (the first question of that even though a מטמא באוהל is גולל - מטמא באוהל מטמא באוהל)

מכל מקום יכולין לדלג ולטמאות עצמות בגולל -

Nevertheless the were permitted to jump over and be themselves from the גולל -

דתニア במסכת שמחות (פרק ז) כל טומאה שאין נזיר מגלח עלייה⁸ אין כהן מוזהר עלייה -

For we learnt in a for which any, מסכת שמחות in ברייתא required to shave off his hair for it, a כהן is not prohibited from defiling himself to it.

rejects this answer:

ואמר רביינו תא דמשובשת היא דהא רביעית דם אין נזיר מגלח עלייה -

And the replied that this is erroneous, for we know that a נזיר is not

⁷ It would seem that they were over the graves in which there were מצלגים. However there in ר"ש writes מארון לארון, מצלגנים; which indicates that the ארונות were not buried.

⁸ There are certain טומאות גולל ודופק (including טומאות גולל וטומאה) that even if a נזיר became with these he does not stop his נזירות and does not cut off his hair (but continues with his). See נזיר נד א, נזירות.

מגלה if he comes into contact with only a **רבייעה of blood** -

צדתן נזיר (ז' נ, א ושם) וכחן מזhor עליה⁹ -

As we learnt in a in נזיר, מסכת נזיר in משנה a and nevertheless כהן is prohibited from touching a. Therefore that was an erroneous ברייתא דם. **רבייעת דם** was an erroneous ברייתא.

ארון has an additional question on גולל ודופק that are part of the פרש"י:

ועוד הקשה דעתינו בעירובין (ז' ט, ב) כל דבר שיש בו רוח חיים -

ר"מ, מסכת עירובין in ברייתא ר"ה asked additionally, that we learnt in a said anything which has within it the breath of life (it is alive) -

אין עושים ממנו לא גולל לקבר قولיל¹⁰ -

We do not make it as a גולל for a grave, etc. -

ולפירוש הקונטרא וכי דרך לעשות כסוי ארון מבuali חיים -

However according to ר"י, is it usual to make the cover of a coffin from animals; why is this rule even taught, since it is so unlikely to happen -

תוספות answers:

יש לומר אף על גב דעתך לעשות כסוי ארון מבuali חיים -

And one can say; even though it is unusual to make coffin covers from animals -

מכל מקום כמה דברים אשכחן שלא שכיח ומירוי בהן הש"ס לדרוש ולקבל שכר -

Nevertheless we find many unusual cases which the discusses in order to study and receive a reward, for studying even the most unusual circumstances -

כదאמירין בפרק המקשה (חולין ע, א) בלעתו חולדה והוציאתו והכניסתו וייצא מאליו מהו -

As the queries in 'פרק המקשה'; a weasel swallowed the fetus in the womb, and took the swallowed fetus out of the womb (while it was inside the weasel) and then placed the swallowed fetus back inside the womb and coughed it out into the womb and then the fetus left the womb on its own; what is the ruling regarding whether this fetus it is a (since initially it exited the womb encased by the weasel and did not touch the womb). The there asks another (strange) query -

הבדיק שני רחמים ויצא מזוה לזה מהו אף על פי שלא יבא לעולם -

He attached the openings of two wombs to each other and the fetus emerged from one womb into the other womb; what is the ruling whether the second animal is considered to have had a (since it emerged into the world from the second animal); the asks these unusual queries even though these

⁹ See מהרש"א and the Tosfot ברכות יט, ב ד"ה מדלgin there.

¹⁰ This means that if an animal is used as a גולל מטה מא

two cases **will never happen**, nevertheless the גمرا there discusses it, similarly the can discuss regarding using a חי as a **גולן**.

תוספות offers his translation of **גولן** ו**דופק**:

ורבינו תם מפרש גולן היינו מצבה שהיא אבן גדולה -

And the explained that ר"ת is a tombstone, which is a large stone -

ולשון גולן שיביך על האבן כדכתיב גוללו את האבן¹¹ (בראשית כט¹²) -

And the word גולן applies to a stone as it is written, ‘and they would roll the stone’; using the term for a [large] stone -

וזופק הן שתי אבני אחת לראש ואחת לרגלה של מצבה -

And are two smaller stones one at the head and the other at the foot of the – (מצבה to support the מצבה)

explains according to his interpretation: אין עושין גולן לדבר שיש בו רוח חיים גمرا

ופעמים כאשר המצבה מזומנת מעמידין שם בהמה או דבר אחר לסימן -

For occasionally when the is not ready, people place there an animal or something else for a marker, to show there is grave here –

explains the case of **ארונות** ג' תוספות:

ובהיא דמלגין לא היה שם מצבה ומחמת המת לא היו מיטמאין -

And regarding that story of (גולן 'מלגין', there was no מצבה) by those, and they also did not become טמא because they hovered over the dead body in the coffin -

דרוב ארונות יש בהן פותח טפח¹³ -

Since most have an opening of a טפח, which does not allow the to leave the טומאה. Therefore they did not become טמא.¹⁴

tosfos anticipates a difficulty on:

ולא תקשה לר' יהושע מאימת חל אבילות בשאיו שם מצבה¹⁵ -

¹¹ Presumably the large was called **גולן** because it needed to be rolled on account of its heaviness.

¹² [ויצא פסוק ג'].

¹³ The rule is if there is a covering over the מת, it depends; if there is no space of a טפח between the מת and the covering, the טומאה of the מת 'bursts' through the covering (אחל) and is טמא anything above the מת. However if there is a טפח of space between the covering and the מת, the טומאה is confined in that space and anything above the covering does not become טמא.

¹⁴ However according to ר' that the גולן is the covering of the coffin and, they would have become טמא by hovering over the גולן of the coffin.

¹⁵ "ר' ruled that begins the coffin, the begins as soon as the coffin is covered; however according to the ר' that גולן is a מצבה, what happens when they do not put up a מצבה immediately at the time of burial, when does the אבילות begin? See 'Thinking it over'.

And you should not ask; according to ר' יהושע when does the begin when there is no מצבה?!

replies, that is not difficult -

דייש לומר דברי מהדרי אפייהו דקוברין -

For we can say that when the gravediggers turn their faces away from the grave (they finished the burial process), that is when the begins if there is no מצבה -

כదאמרין במועד קטן יוו נב,א) דהנהו דלא אזלי בתר שכבא מכி מהדרי אפייהו -

As said in ר'ק; 'that those who do not follow after the deceased to the cemetery, as soon as they turn their face away (and begin returning home) the begins for them'.

asks: תוספות

וקשה לרביינו יצחק על פירוש רבינו تم דתניא בתוספתא דאהלות בפרק ז' -

And the has a question on the explanation of the fourth; for we learnt in a - פרק ז' ר'י **תосפתא** in the fourth of ahilot

אמר רבי יהודה שתاي אבני גдолות של ארבעה טפחים שעשאן גולל לקבר -

said; 'two large stones each the size of four that he made both of them into a for one grave -

המאהיל על גבי שתיהם טמא¹⁷ ניטלה אחת מהן המאהיל על גבי השניה טהור -

One who hovers over either of them is טמא; if one of them was removed, whoever is on the second stone is טהור -

מן שיש לטומאה דרך שיצא -

Since the has a way to exit the קבר; in the air space that was provided by removing one of the stones. This concludes the asks -

מה שיעיך דרך שיצא לפירוש רבינו تم¹⁸ -

What meaning is there, that there is 'a way to exit' according to the פר'ת?

The ר' has another question on:

בתוספתא דאהלות סוף פרק ג' תניא מעשה באחד שמת בערב הפסח ולא רצו לקוברו¹⁹ -

And in the end of the third of ahilot פרק ברייתא we learnt in a there

¹⁶ The ר' amends this to read בפרק ג' יהודא (it is in ר'ש).

¹⁷ He is על הגולל.

¹⁸ According to ר' that the is the cover of the coffin, the/tosفتא is understood since one half of the cover is removed, we say that the leaves through that half opening and if one was on מהeil that is still covered part he is טהור. However according to ר' that the גולל that is a מצבה, what difference does it make if part of the missing; how is there a way for the to exit, since the is still covered by the ארון?

¹⁹ They wanted to bring the קרבן פסח that day and did not want to become טמא.

was a story with someone who died on ערב פסח and the people did not want to bury him -

ונכנסו הנשים²⁰ וקשרו החבל בגולל משכו האנשים מבחוץ וקברוהו הנשים -

So the women entered the room where the was, and tied the rope to the גולל, and brought the rope outside. The men who were outside dragged the מה with the rope to the burial place and the women buried him -

והלכו האנשים ועשו פשחין לערב -

And the men went and brought their קרבן פסח that evening. This concludes the Tosfotא.

משמעותה היא יכולין הנשים לקבورو עד שמשכו האנשים מבחוץ את הגולל -

It seems that the women could not bury him until the men outside would pull the גולל; now comes the question on the ר"ת -

ואם גולל הויא מצבה למה לא קברוהו בלי מצבה עד אחר הפסח -

And if מצבה is a גולל why did not the women bury him without a until after (the women were able to bury him as the story indicates, why did they need the ר"ת פסח) - (גולל

אלא זואי הוא כסוי ארון כפירוש הקונטרס ולפי שהיה של אבן היה כבד כל כך :

Rather it is like that the גולל is the covering of the coffin and since it was made of stone it was so heavy that the women could not take it to the cemetery (but once it was there they were able to bury him).

SUMMARY

According to ר"י the גולל is the lid of the coffin and the דופק are its sideboards, while according to the ר"ת the גולל is the מצבה and the דופק are the headstone and the footstone of the מצבה.

THINKING IT OVER

According to the ר"ת²¹ what is the meaning of עד שיסתם הגולל if the גולל is the מצבה it is never covered up?!

²⁰ It would seem that פטורות נשים are from bringing a קרבן פסח.

²¹ See footnote # 15.

Perhaps he will *Shecht* a young bird

שמא ישחוט בן עוף –

OVERVIEW

The **גمرا** explains the reason we do not marry on **שבת**, is out of concern that one may accidentally *shecht* a bird on **שבת** for the wedding meal. **תוספות** discusses the two in the **גمرا** *גירסאות*.

יש גורסים בו עוף אף על גב דשבת לשון נקבה היא דעתם (^{שמות לא'}) מחלליה מות יומת – **Some texts read**; perhaps they will *shecht* a **bird on him** (on **שבת** instead of **עוף**); **שמא ישחוט בן עוף**; **even though שבת is a feminine noun as it is written**, ‘**whoever desecrates her** (**שבת** will surely be put to death’), so how can the text read **בָּה עָפָר** since **בָּה** is a masculine form (it should have rather said – **(בָּה עָפָר) שמא ישחוט בן עוף**) –

שבת replies that the word –

הכי נמי हוי לשון זכר² **כל העושה בו מלאכה** (שם לה³) **שומר שבת מחללו** (יעשה נו⁴) –

Is also used in the masculine form as it is written, ‘**whoever does work in him** (**שבת**), and it is also written, ‘**he who guards the **שבת** from desecrating **him****. This explains the **שבת** of **גירסה** for **שבת** may be used in the masculine form.

גירסה discusses the other **תוספות**:

ושפיר גרשין נמי בן עוף דרך בני אדם לשחוט הרכין והקטנים כדעתם ויקרא ה⁵ **שני בני יונה** – **שמא ישחוט בן עוף** (**instead of** **שבת**), **for it is customary for people to shecht the tender and young birds** (and **עוף**, means a young bird) **as it is written, two young doves** –

ובפרק קמא קידושין (דף לוב ושמט) אמר עוף מה לבן צאן שכן קבוע לו قول:

And in the first קידושין of it states, ‘**we derive a young bird from a young sheep, if by a young sheep where a place was not established, etc.**’ We find that they also use the term ‘**בן**’ to designate a young bird or sheep which was commonly used.

SUMMARY

¹ **פסוק י** [תשא].

² See ‘Thinking it over’ # 1.

³ **ויקלה** [פסוק ב].

⁴ **פסוק ב**.

⁵ **פסוק ז**. See ‘Thinking it over’ # 2.

⁶ Our text there read: **אלא הזאה דבן עוף דאתיא בק"ו** מבן צאן ומה בן צאן שלא קבוע לו כהן לשחיתתו וכו'. The **תוספות** there explains that we derive the rule that only male can make the **הזהה** of the **כהנים**, from the fact that only male can make the **הזהה** by **צאן**.

The **בן עוף** can be **שבת** for **בו עוף** as masculine (as well), and it can be **גירסא**, for it is customary to use a young bird.

THINKING IT OVER

1. Those that are **עוף** (as opposed to **גורס** 'בָּו עֹפֶךְ') why did they choose **עוף** instead of **שבת**, since **שבת** is feminine as well?
 2. brings proof from the **בָּנִי יְוָנָה** of פסוק that it is customary to refer to a young bird as a **עוף** or **בָּנִי יְוָנָה** and that people prefer them younger. It would seem from **בָּנִי יְוָנָה** that the term **שבת** is merely a practical one (that people prefer **יְוָנָה**), however in truth the term **בָּנִי יְוָנָה** is a halachic one which limits our choice of **יְוָנָה** only to young ones,⁷ but not to older ones. What therefore is the proof from **בָּנִי יְוָנָה**??!
 3. Why was it necessary for **שבת** to bring two proofs that **לשון זכר**? And why did **תוספות** find it necessary to bring two proofs regarding **עוף**?

⁷ שוי בני of פסוק chose to cite the later תוספות why. It is also interesting why רשי ויקרא א, יד ד"ה בני יונה וד"ה מן התורמים See יונה (in פסוק א, יד) as opposed to the earlier יונה (in ויקרא א, ה, ז).

אלא מעתה יום הכהרים של להיות שני כולי –

But now; *Yom Kippurim*, which occurs on a Monday, etc.

OVERVIEW

The gemara asks, now that we have concluded that one may not marry on Shabbat out of concern that they may accidentally *shecht* a bird on Shabbat for the wedding meal, it should also be the rule that if Yom Tov falls on out Monday, it should be postponed to Tuesday, for otherwise there is the concern that one may accidentally *shecht* on Shabbat, for the meal. This explains why the gemara is concerned only about the meal, and no other meals.

תוספת asks:

תימה אמר נקט יום כפורים שלא היה אלא לרבי יוסי הגלילי בדתןן (חולין זר פג,א) –

It is astounding! Why mention (only) which is generally not considered a day of excessive eating, except according to ר'יה"ג as we learnt in a משנה –

בד' פרקים¹ בשנה המוכר בהמה לחבירו צריך להודיעו אם מה מכרתי לשחוט² כולי –

During four periods of the year, one who sells an animal to his friend is required to inform the buyer, 'I sold the mother of this animal for slaughter, etc. –

וכדברי רבי יוסי הגלילי³ אף ערב יום הכהרים בגליל –

And according to this rule applies also on ר'יה"ג in the גליל. This concludes משנה –

אמאי לא נקט חד מד' פרקים דהוי לכולי עלמא⁴ –

Why did not the gemara here mention one of these four, which according to everyone is a time of excessive meals, and so there is the concern of שמא ישחת בן עוף?

תוספת answers:

ויש לומר דבר ערב יום הכהרים היו רגילים להרבות בעופות ובדגים –⁵

¹ The four are; ערב ר'יה, שבועות, ערב פסח, ערב שמוא"צ (הושע"ר) פרקים.

² There is a prohibition to *shecht* a mother cow and its offspring on the same day. Since during these days, people make large feasts and if one purchased an animal on these days it is extremely likely that he will *shecht* it, therefore it is necessary for the seller to inform the buyer that this animal's mother (or offspring) was already sold today and therefore the buyer should not *shecht* this animal until the next day.

³ However according to the ח"ק (it seems) there was not that much excessive eating on עי"ב. See footnote # 5.

⁴ The gemara should have asked that if שבועות (for instance) occurs on Sunday it should be postponed; since on Sunday there are large feasts there is the concern of שמא ישחות וכוי, on the preceding שבת. See 'Thinking it over' # 1.

⁵ This also explains why the ח"ק did not mention עי"ב, since by fowl there is no restriction of שמא ישחות. See footnote # 3. However, in גליל (according to ר'יה) they ate animal meat (also) on עי"ב.

And one can say that on עיוה"כ it was customary to increase in the eating of fowl and fish -

בדASHMU BBRASHT RABAH (פרק י"א) גBI HAHOA CHIYTAD ZIBUN NOANA⁶ KOLI -

As is indicated in ר, regarding this tailor who purchased fish, etc. They would be many birds and fish -

משום דהוי يوم סליחה וכפירה -

Because יו"כ is a day of forgiveness and atonement; therefore since they would eat much fowl there is the concern of שמא ישחוט בן עוף -

וננהו ד' פרקים הי מרבים בבהמות דליך למזר⁷ שמא ישחוט:

However in the ד' they would eat more animal meat, where the גזירה of שמא ישחוט is not applicable.

SUMMARY

On ערבי יו"כ people eat (fish and) fowl and therefore there is the concern of שמא ישחוט בן עוף; however by the ד' פרקים they eat animal meat, where there is no concern of שמא ישחוט בהמה.

THINKING IT OVER

1. גمرا asked that if יו"כ falls out on Monday it should be postponed to Tuesday because of the concern of שמא ישחוט בן עוף. However if יו"כ would be postponed to Tuesday, ר"ה would occur on Sunday and we would have the concern of שמא ישחוט on שבת for ר"ה (for ר"ה is one of the ד' פרקים)!⁸
2. Why is it that on ערבי יו"כ they ate fish and fowl and not (that much) animal meat?

⁶ The tailor outbid the minister's servant for the fish (twelve דינרים) and eventually explained to the minister that he agreed to pay so much for the fish since it was for the עיר"כ meal in which we are thankful to ה' for forgiving our sins.

⁷ It is much easier to *shecht* a bird than a cow. Therefore it is possible that one can forget for a moment that it is שבת and *shecht* a bird. However since *shechting* a cow is a long and more complicated process, he will remind himself that it is שבת before he actually *schechts* it.

⁸ See פנ"י.

אי ה'ci אלמנה נמי תיבעל בחמישי –

If so, a widow should also be נבעלת on Thursday

OVERVIEW

ה' on נבעלת is married on and is cited a בר קפרא that a בתרולה is because on a blessing (of) was given to the fish. A widow marries on and is asked; a woman is ברכה (not because of) if so let an also (marry on) be like a (because of the) Our explains why the question of בתרולה נושאת בד' is contingent on the fact that בתרולה נושאת בד' is not because of but rather because of ברכה לדגים¹.

פירוש² בשלים איזה תני בבריתא דבתולה נבעלת בחמישי משום אייקורי דעתא –

בריתא is, everything would be understood if the would have taught that a because of the concern that otherwise his attitude would cool down and he will not go to (unless it is the following morning) –

בדקמיבעיא לו ולא משום ברכה לדגים דלא חשיבא –

ברכה As one side of the query indicated, but she is not because of the since the ברכה לדגים is not important to man, then –

הוי ניחא לו באלמנה דנעבעל בששי משום ברכה –

We would understand why to man, which is important –

אבל השטא דעתמא דבתולה משום ברכה³ אלמנה נמי תיבעל בחמישי:

ברכה לדגים is only because of נבעלת בה' is בתרולה a should also be נבעלת בה' for the same.

SUMMARY

The question that an should be like a נבעלת בה' is valid only if we assume that the only reason a נבעלת בה' is because of; otherwise the concept of נבעלת בה' is insufficient to be then.

THINKING IT OVER

¹ Seemingly regardless why a should not be also an אלמנה נבעלת בה' is בתרולה, the question can be asked why should not an also be an אלמנה נבעלת בה' is בתרולה.

² See footnote # 1. Why is the question dependent on the (that by the [only] reason she is is נבעלת בה' because of ברכה לדגים).

³ This indicates that the should also be for an important, it should also be נבעלת בה' is ברכה לדגים

The term 'אי ה'ci' is applied whenever we establish a certain **משנה**, **ברייתא**, **משנה**, etc. in a specific manner. Then we can ask, that according to the way you established the **משנה**, etc. there is a certain difficulty that would not have been there if we understood the **משנה** as we did initially. However here how can we use the term **אי ה'ci**? No one established the **בריתא** of **בר קפרא** in any manner. It states clearly that a **גמרא** **אי ה'ci** because of **ברכה לדגים נבעלת בה** is **בתולה** what is the meaning of **ה'ci**? The should have merely asked a question on the **בריתא**, why is an **אלמנה** different from a **בתולה**?!⁴

⁴ See קיון דיוינה.

א"י נמי משום שקדו – Or it is also because the *Chachomim* persevered

OVERVIEW

בָּה' explained the reason an גְּמַרְאָה is not נִבְעַלֶת בָּה' but rather (she marries and) insisted that the husband should rejoice with his newly wedded תֹּוסְפּוֹת for three days.explains how this answer does not contradict the בריתא.

תוספות asks:

ואם תאמר והיכי מצי למימר משום שקדו הא בבריתא קתני בהדייה משום ברכה¹ -

נִבְעַלֶת בָּו' is אלמנה גְּמַרְאָה but how can the answer that an because of בריתא states explicitly that she is because of the בָּו' (and does not mention שקדו)?!

תוספות answers:

ויש לומר דלהאי שינויו הוי פירוש הבריתא וכי -

And one can say; that according to this answer of שקדו, the explanation of the because of בריתא is as follows -

אלמנה נשאת בחמשי ונִבְעַלֶת בששי פירוש משום שקדו כמו שمفorsch בבריתא אחרת² -

'An is married on 'ו' on נִבְעַלֶת בָּה' ; the explanation for this ruling is because of as it states explicitly in the other בריתא (quoted here in the גְּמַרְאָה) -

ואם תאמר משום ברכה דזגים היה להם להניח תקנת שקדו³ -

And if you will ask that the חכמים should have set aside their enactment of שקדו in deference to the בָּו', which is אלמנה, and the answer is that the חכמים -

לא חשו לכך הויאל ובשבוי נמי נאמרה ברכה לאדם:

Were not concerned for the adam, since there is also the which was said on 'ו', therefore the בָּו' is אלמנה, therefore the נִבְעַלֶת בָּו'.

SUMMARY

בריתא of the תקנה שקדו was well known (from other sources) and our

¹ See 'Thinking it over' # 1.

² See 'Thinking it over' # 2.

³ taught us previously (ב,א ד"ה ותנשא) that תוס' (ד"ה מא) שקדו is a stronger than תקנה that ברכה (therefore on account of שקדו one is considered an עבריינה if he does not comply, but not because of ברכה), nonetheless here means to say that (perhaps) they never should have instituted the שקדו of תקנה of ברכה, and left it because of ברכה לדגים.

had no need to mention it, it mentioned ברכה לאדם, to explain why we are not concerned for ברכה לדגמים.

THINKING IT OVER

1. שקדו asks how can the reason for נבעלה בו' say the reason for גمرا is because of שקדו, when the reason for ברייתא only mentions the reason of ברכה לאדם.⁴ Seemingly the same question applies to the reason for בתיוליה; the reason for ברייתא merely states the reason of ברכה לדגמים, but there are also the reasons of שקדו and טענת בתולים (as mentioned previously). Why ask only regarding the reason for אלמנה and not regarding the reason for בתיוליה?⁵
2. answers that by the main reason is because of שקדו; however the reason for ברייתא mentions ברכה לאדם, so one should not ask that we should set aside שקדו for ברכה לדגמים.⁶ Why could not have answered in the opposite manner; the main reason she is נבעלה בו' is because of ברכה לאדם and we also need שקדו, so no one should argue and say because of ברכה לדגמים נבעלה בה!⁷

⁴ See footnote # 1.

⁵ See מהר"מ.

⁶ See footnote # 2.

⁷ See מהרש"א.

מַאי אִיכָּא בֵין בְּרָכָה לְשָׁקְדוֹ –

What difference is there between *Brocho* and *Shokdu*

OVERVIEW

The Gemara offered two reasons why an *almuna* is *nishatah b'h*: one because there was a *chaviv*, and also because the *chavim* were *shakdo*. The Gemara asks, is there a difference whether the reason is because of *bracha* or because of *shakdo*? The Gemara answers this question. It explains why the Gemara did not give another difference.

תומסתה anticipates a difficulty:

אַף עַל גַּב דְּמָשׂוֹם בְּרָכָה לֹא מִיקְרֵי עֲבָרִיָּנָה¹ –

And even though that on account of *bracha* alone **he will not be considered a ‘transgressor’** if she is not married, so why did the Gemara ask, ‘what is the difference’ when there is an obvious difference –

תומסתה responds:

מְכֹל מִקּוּם בַּעַי לְמַה לִי טֻמָּא דְבָרָכָה² –

Nevertheless the Gemara asks why the reason of *bracha* is necessary;³ the reason of *shakdo* is sufficient to explain why an *almuna* is *nishatah b'h* and he will be called an *avteriyana* if he does not comply. Seemingly the reason of *bracha* does not add anything –

תומסתה offers an alternate explanation of the question:

אֵי נִמְיָן⁴ בַּעַי מַאי אִיכָּא בֵין לִישְׁנָא דְמָשְׂנִי בְּרָכָה דָאָדָם עֲדִיפָה לִיה⁵ –

Or you may also say; the Gemara asks what is the difference between the view

¹ The reason of *bracha* is merely good advice to marry then (which they may choose to ignore), but it is not an obligation, as opposed to which is an enactment which the Gemara imposed and must be followed.

² This indicates (as the Gemara states later) that the one who maintains the reason of *bracha* also maintains the reason of *shakdo*; otherwise what question is there why do we need *bracha*, it is needed if we do not maintain *shakdo*.

³ See ‘Thinking it over’.

⁴ The second answer of *tosfos* is that the question of *shakdo* is not what is the difference between the two answers (the reason of *bracha* and the reason of *shakdo*), but rather what is the difference between the two answers which the Gemara gave to the question of why an *almuna* is *nishatah b'h* like a *nabulah b'h*.

⁵ This answer (that both agree that there are two causes of *shakdo*) as well as the second answer (of *shakdo*) both agree that the first answer (*bracha*) and the second answer (*shakdo*) both agree with each other [that *shakdo* agrees with *bracha* and the end of this *tosfos* agrees with *shakdo*] (see previous *tosfos* that *shakdo* agrees with *nabulah b'h* [that *shakdo* agrees with *bracha*]), however they argue which is the main reason. The first answer maintains that *bracha* is the main reason, while the second answer maintains that *shakdo* is the main reason. Since both maintain both reasons, the Gemara could not have answered *shakdo*, since according to both answers he will be considered an *avteriyana*, for they both agree to the reason of *shakdo*. Therefore the Gemara offers a different answer.

which answered that the reason of ברכה is preferable than the reason of נבעתה - דגים to ברכה - **ובין לשנה דברייתא מושם שקדו** -

And the view of the second answer (the second answer) **that the reason is because of שקדו** - **ומשנינו**, **דאיכא בגיןיהו אדם בטל אי נמי יומן טוב שחל להיות כולי** -

And the difference between them is regarding an idle person, or when יומן occurs on ערבת שבת, etc.

دلילשנא דעתמא דברייתא מושם שקדו ולא מושם ברכה⁷ -

For according to the view that the reason the rules is because of נבעתה בו' rules ברייתא, but not because of ברכה (the second answer) -

הכא דליקא שקדו נבעתה אם ירצה בחמישי -

Here in the cases of שקדו, יומן where there is no concern of בטלה, or **אדם בטלה** or **יום טוב שחל בער"ש**, where there is no concern of בטלה, she may be if he wants -

אבל לליישנא קמא דעתמא דברייתא מושם ברכה כדמשמע פשطا דברייתא -

However according to the first view that the reason of the reason (why the ברייתא is because of ברכה לאדם as the simple reading of the ברייתא בו' is אלמנה indicates, then -

אפילו באדם בטל או ביום טוב שחל להיות ערבית שבת דליקא מושם שקדו⁸ -

Even by an no where there is ער"ש occurs on יומן or אדם בטל if - **מכל מקום מושם ברכה נבעתה בששי** -

ברכה לאדם נבעתה בו' because of the Nevertheless she should be.

תוספות concludes:

ואפילו להאי לשנה אי לאו שתקנו מושם שקדו -

ברכה because of טעם דברייתא nevertheless were it not that they instituted on account of נבעתה בו' שקדו -

מושם ברכה לחודה לא היי קבועים יומןCDFRISHIT ליעיל גבי ותנשא באחד בשבת:

⁶ The necessity for to explain the answer of the question is more apparent if we assume the second answer of שקדו. According to the first answer that the question was why do we need the reason of ברכה, the answer is self-understood that it is necessary for בטל וכור' since there is no שקדו. However according to the second explanation of שקדו that both answers agree that we need both reasons (of ברכה and נבעתה [see footnote # 5]) it is not so clearly understood what the גمرا means that שקדו. Since both agree to the ברכה סברא of גمرا, therefore it is necessary for שקדו to explain the answer.

⁷ Even though that according to the answer of שקדו they also agree that there is the reason of ברכה (see footnote # 5), however the purpose of שקדו was just to explain why the אלמנה should not be נבעתה like the בטלה (and we should not enact שקדו [see previous Tos' D'h א"נ], but not that שקדו is the main reason why נבעתה בו'). Therefore if there is no reason of שקדו, she may be נבעתה.

⁸ He will not go to work on Friday either because he is an גבי or because it is יומן.

⁹ The reason is that ברכה עזכה טוב and we cannot base a תק"ח on an עזכה טוב alone. See also ג.א. Tos' D'h אהשה.

The חכמים would not have established a day when an נובלת should be alone, as I explained previously regarding גمرا which asked, ‘and let her marry on Sunday’.

SUMMARY

The question of מהי איכא is either why do we need the reason of ברכה, or what is the difference between the two answers of the גمرا (since both maintain both reasons of ברכה and שקדו). The חכמים would never enact a תקנה on the basis of alone.

THINKING IT OVER

תוספות explained (in the first answer) that the question of the גمرا what is the difference, etc., means why is the reason of ברכה necessary.¹⁰ However said previously¹¹ that even if we maintain שקדו we need to the reason of ברכה to explain why she should not be 'like a נובלת בה', so how can Tos' here say that the question is why do we need the reason of ברכה?!¹²

¹⁰ See footnote # 3.

¹¹ ד"ה א"ג.

¹² See מהרש"ל.

דאילו בשמים ובראץ כתיב אף ידי וגומר –

For regarding heaven and earth it states; ‘my hand also’, etc.

OVERVIEW

בר קפרא taught that the handiwork of the righteous is greater than handiwork of heaven and earth, for regarding the **מעשה שמים וארץ** (of) פסוק refers to it as one hand, however regarding the **מעשה צדיקים** (of) פסוק refers to it as two hands. This discusses and explains the difference.

- אף ידי יסדה ארץ

דמשמע חדא אף על גב דמסיים קרא וימני טפחה שמים -

Indicates one hand means my hand in the singular). Even though the verse concludes (and my right hand measured the heavens) -

ואמר בשילוי הקומץ רביה (מנחות לו,ב ושם) דיז הינו שמאל¹ אם כן כתבי כתיב -

And the teaches in that means the left hand, so therefore two hand are written in the פסוק, not just one hand.

תוספות responds:

מכל מקום בחוד מעשה ליכא אלא חד² -

Nevertheless in each individual action there is but one hand -

אבל במעשה צדיקים בחוד מעשה כמו בית המקדש כתיב תרתי ידיים:

However, regarding even in one action, like building the two hands are written. מקדש און-י כוננו ידיך

SUMMARY

By **מעשה צדיקים** each required only one hand, but by **מעשה שמים וארץ** even one **מעשה** requires two hands.

THINKING IT OVER

beginning referring to the word **חדא**³ however is only referring to the left hand. [The **ברייתא** uses this to prove that the word **ידך** refers to the left hand.]

¹ The פסוק reads, 'אף ידי יסדה ארץ וימני טפחה שמים', since (which measured the שמים) refers to the right hand, it follows that (which founded the ארץ) refers to the left hand. [The **ברייתא** uses this to prove that the word **ידך** refers to the left hand.]

² Only the left hand was יסדה ארץ and only the right hand was טפחה שמים.

³ This is the **ה** of **תוס' ד** and he first mentions 'וימני וכו' as part of a question, not the explanation.

⁴ See הפלאה.

זה גודל –**This is the thumb****OVERVIEW**

ביהמ"ק (ברייתא גمرا) cites that each finger has a special purpose in the hand (and therefore the fingers need to be separated). There is a dispute between רשי and Tosfos at to the utility of the thumb.

פירש בكونטרס לענין בהן יד¹ מצורע –

explained that when the states גمرا זה גודל it is referring to the thumb of the hand; on which the blood and oil must be placed.

Tosfos disagrees:

ואין נראה אדם כן היה למייר זה בהן² –

And it does not seem correct; **for if** גודל refers to the thumb, the **should have said** זה גודל, and not זה בהן –

Tosfos has an additional question on: פרש"י:

ועוד צאפילו לא מחלק³ מצי משוי על בהן שהוא קצר מכולם –

And furthermore if גודל refers to the sprinkling on the thumb, **then even if** the thumb would not be separate from the other fingers **it would be possible to place** the blood and the oil **on the thumb, since it is shorter than all the other** fingers.

Tosfos offers his explanation:

ונראה דלענינו קמיצה קאמר⁴ כדתנן⁵ (מנחות ז' יא, א) מוחק⁶ בגודל⁷ מלמעלה –

And it is the view of that was stated in regards to, as the taught, ‘he tamps down with the thumb from above’; therefore the thumb

¹ רשי also mentions the of אהן יד (regarding the thumb).

² By all the other fingers the name for the task for which it is used; the to measure the which the states its size is a, the same with the name, and; why is different?

³ The of explains to us the reason the fingers are separated so that we can do all these different tasks with each finger. However in order to sprinkle on the thumb it need not be separated. See ‘Thinking it over’ #1 & 2.

⁴ We cannot call it קמיצה, however, since that name refers to the finger near the thumb (and it is merely an ancillary act of קמיצה, not the actual).

⁵ This is actually a not a בריתא; it should read כדתנית.

⁶ The was part of the that was removed with the three middle fingers to be offered on the . However some of the were baked and then broken into pieces before the . Invariable while making the some of the pieces stuck out beyond the three fingers (above and below). The thumb and the pinky were used to tamp down the קמיצה so that only three fingers full of were brought on the and no more.

⁷ The thumb (here by as בריתא) is referred to as גודל, therefore the (also) stated and not בהן קמיצה.

needs to be separate in order to do this aspect of - קמיצה -

אבל⁸ בידו אחרת לא יוכל לעשוט דברין עבודה ביוםין:

However he could not do this with his other hand, for the service in the מהק there, while קמיצה is required to be done with the right hand.

SUMMARY

According to רשותי regarding applying the 6 מ there, while גודל maintains that it refers to the מהק of the קמיצה, with the גודל.

THINKING IT OVER

1. asks that according to רשותי the גודל could be attached.⁹ The same question can be asked concerning the אמה; it too need not be detached since it was (only) needed to measure the אמה (of the כלים), it could be done even if it was attached, since it is longer than all the other fingers!¹⁰

2. asks that according to רשותי the גודל could be attached. However if the זרת would be attached, the measurement of the זרת would be too small!¹¹

⁸explains why the גודל cannot be attached and we will do the מהק with the other (left) hand.

⁹See footnote # 3.

¹⁰See ש"ר.

¹¹ The measurement is the distance from the thumb to the pinky when they are spread out. Therefore the גודל must be detached! See סוכ"ד אות כה ד"ה והנה קושית.

מהו לבעול בתוליה בשבת –

What is the ruling, to have the initial ביאה on Shabbos

OVERVIEW

The **tosfos** poses a query whether it is permitted to have the first **ביאה** גمرا, since there is a possibility of violating the **שבת** (as the **גمرا** continues to explain). **תוספות** discusses why we do not resolve this issue from various rulings we learnt [previously].

תוספת anticipates a difficulty:

אף על גב¹ דתקנו שתהא בתוליה נשאת בריביעי² –

Even though that the **חכמים** instituted that a **should be married on Wednesday** –

תוספת responds:

מכל מקום אם אירע לו שלא בעל בלילה חמישי –

Nevertheless if it happened to him that he was not Wednesday night, and presumably –

לא חייבוהו חכמים להמתין³ עד יום חמישי אחר או עד יום ב'⁴ –

The did not obligate him to wait (and perform the **until** בעלית מצוה on Thursday night) (בעילת מצוה until another Thursday or until Monday (for טעונה בתולים; he can make the **on** on Thursday night –

להכי בעי אם מותר לבעול בשבת אם לאו –

Therefore there was the query if it is permitted to be on (בעילת מצוה the **bowel** בועל **שבת or not** (if he was not **bowel** until **שבת**). (ליל שבת **or not** (if he was not **bowel** until **שבת**).

תוספת anticipates a difficulty:

אף על גב דעתינו לעיל⁵ ומפרישין חתן מן הכלה ליל שבת תוליה מפני שהוא חבורה –

Even though the taught us previously, ‘and we separate the from the **חתן** – בעילת מצוה **ברירתא** ‘**because he makes a wound**’ with the **כליה** if the **initial ביאה is ביאה**’

¹ שבת בשבת ביאה in this question assumed that the query was whether the **חתן** can postpone the **שבת**. Therefore טעונה בתולים וכוי asks, we know that one should be on Wednesday night (in case he has **bowel**).

² See (also) the previous on the previous where **בר קפרא עמוד** taught בראיתא נשות רביעי וنبולת חמישי וכוי; indicating that the first **ביאה** should be on Thursday (Wednesday night); what is the query?

³ Regarding the **חכמים** insisted on waiting until יום רביעי; since they are not married yet, it will not cause undue anguish; however once they are already married to postpone the **ביאה** would cause severe agony.

⁴ This means Sunday night, so he will be able to go to **בי"ד** on Monday if he has **טעונה בתולים**.

⁵ ג, ב.

ותניא נמי⁶ באידך ברייתא בין כך ובין כך לא יבעול לא בערב שבת ולא כולי -

בעול the state clearly that the first may not be on ביאה ברייתות not on, etc. Both ברייתאות מזכה; why is there a query?

רשותי's Tosafot cites answers:

פירוש בקונטראס⁷ שלא היה יודע לה -

- ברייתות רשותי explained that the questioner did not know of these רשותי, Ai Nemi Yazu La And he knew the halacha Daiaca⁸ لم יאמר דפליגי בה רבוי יהודה ורבוי שמעון⁹ -

Or you may also say; that the questioner knew of the but he queried what the is; for we can say that this is a dispute between ר"י ור"ש הלכה whether it is permitted to be בריתא גمرا, as the continues to explain. The may be expressing the view of one only of them but not necessarily that the halacha is like this opinion.

(ברייתות comments (on the second of רשותי, Ai Nemi Yazu La that they knew of the):

ומיהו על כרחך נראה שלא ידע הברייתא דחישין¹⁰ שמא ישחוט בן עוף -

However, perforce it seems that the questioner did not know of the (second aforementioned) that we are concerned perhaps he will slaughter a young bird -

דאיה היה יודע מה קמיבועא ליה הא בהא לא פליגי רבוי יהודה ורבוי שמעון -

For if he would know of this what is his query, for in this (concern of there is no dispute between ר"י ור"ש, therefore all agree with its ruling. We must conclude that the questioner did not know of that בריתא.

Tosafot responds to an anticipated question:

והא שלא פשיט מינה לבסוף¹¹ משום דמשכח תנאי דפליגי עליה:

⁶ א,7.

⁷ בד"ה מהו.

⁸ This is explanation of רשותי.

⁹ דבר שאינו מתכוון (ר"י) is forbidden (ר"ש), or permitted (ר"ש). It is possible that the follow ר"י however the may be like ר"ש. See 'Thinking it over' # 1.

¹⁰ See because where explained that the reason the (א on בין כך וכו' בריתא) states ר' זירא because we concerned that he will shecht a bird on מוצש for The there concluded that this concern of שמא ישחוט בן עוף also explains why 'Thinking it over' # 2.

¹¹ The concludes on that גمرا indicate otherwise, and even if the questioner did not know of the בריתות גمرا, however the certainly knew of the (and of the concern that שמא ישחוט בן עוף).

And the reason the did not resolve the query from these is because בריאותה גمرا found¹² **תנאים who argue** with these. בריאותה גمرا

SUMMARY

The query of the questioner should be ביאה לכתלה, however, בדיעד is מהו לבועל בכתלה בשבת. The questioner did not know of the בריאותה (that) בלילה. היישין שמא ישחוט בן עוף

THINKING IT OVER

1. אסור לבועל בשבת state that it is בריאותה nevertheless that may be the opinion of ר"י (that), however perhaps we rule like ר"ש.¹³ Later the states that it is possible that even according to ר"י it may be מותר if we assume it is a גمرا (see the there). However how can the entertain that it is even according to ר"י, for then whose view do the follow?!¹⁴

2. בין כך וכיו' בריאותה¹⁵ There is some difficulty in understanding this; firstly, perhaps he knew of the but learnt that the reason for ער"ש is because of חבורה as the גمرا initially understood (it is only regarding מוצ"ש that we were compelled to say the reason of שמא ישחוט בן עוף)!¹⁶ Secondly, even if he agrees to the reason of בין עוף in that, he still had the query for perhaps he followed the other בריאותה which stated¹⁷ clearly משום חבורה (and is not concerned for!)¹⁸ (בן עוף!)

¹² See ב, ו where there is a בטלנה לא יבעול בכתלה בשבת ותקנים מתירים which states בריאותה.

¹³ See footnote # 9.

¹⁴ See מהרש"א (האריך).

¹⁵ See footnote # 10.

¹⁶ See הפלאה (בד"ה שם בא"ד דאייכא).

¹⁷ See footnote # 5.

¹⁸ See סוכ"ד אות כה.

Is the blood gathered or attached

דם מיפקד פקיד או חבורי מיחבר –

OVERVIEW

The גمرا explains that the query if מוותר לבועל בתחליה בשבת is valid whether we maintain that the 血 is merely encased in the body) or (it is attached and part of the body). The גمرا continues that if we maintain 血 there is reason that it should be אסור since he is making a wound when the 血 is released through his 血. There is a dispute between 血 (here) as to what is the reason of making a wound (it is not listed as one of the reasons).¹

טעמא דחבורה לא כפירים ריש"י דפירוש בפרק שמונה שרכזים¹ (שבת קז,ב) –

The reason that making a wound is prohibited is not like explained it elsewhere, **for** explained in **ריש"י** - **פרק שמונה שרכזים** **ריש"י** -

דחיב משום צובע גבי ח' שרכזים² –

That for causing a wound one is liable because of the **cause of dyeing**, stated this regarding the **eight** - **שרכזים** -

דתנא התם³ נצרך הדם אף על פי שלא יצא⁴ –

For the reason stated there, he is liable for making a wound if **the blood clotted, even if it did not exit** the body. This concludes **ריש"י**.

ריש"י disagrees with:

וקשה לרביינו יצחק דב אלו טריפות (חולין מו,ב) בשמעתא דריאתא –

And the **ソギア** **has a difficulty** with **in** **פרק אלו** **טריפות** **for** **ריש"י** -

תניא ושאר⁵ שקדמים ורמשים עד שי יצא מהם דם –

The teaches, ‘and regarding other he is not liable for making a wound unless the blood exits from their bodies (outside their flesh)’. This concludes the citation. According to **ריש"י** continues with his question. According to **ריש"י** because of 血 - 血

והשתא התם מאי צובע איכא הא לית להו עור –

¹ See there דיש לנו עור נצבע העור בדם הנצרך בו דחיב משום צובע: ד"ה והחובל ריש"י.

² (שקדמים ורמשים as well as 血) are crawling vermin.

³ קז,ב.

⁴ He is dyeing the skin (from underneath) where the blood clotted.

⁵ This refers to the other except for the 血 which the תורה enumerates, where there is a reason for 血 even if the 血 did not leave the body. See footnote # 1 & 3.

But now by the skin what can there be, since they have no skin⁶ (that can be dyed) -

והכא נמי Mai צביעה Aiaca בהז חבורה⁷ -

And here too (by this type of what is there by this type of חבורה)?!

וכו גבי חבורה דמילה לא שייך צביעה⁸ -

And similarly by the concept of חבורה the concept of צביעה is not applicable!

תוספות asks additionally on פרש"י:

ועוד דעת רוחץ לשוואל Aiaca טעמא אחרים נא -

And furthermore, perform according to there is another reason why - צובע and not because of is אסור חבורה

דברך כלל גדול (שבת עה, א וט) אמר דשוחט לא מה חייב משום צובע אלא משום נטילת נשמה -

For in said that for slaughtering an animal, one is not liable because of, but rather because he removes the soul of the animal -

אלמא⁹ טעמא דחבורת הוא משום נטילת נשמה כדקאמר שוואל התם -

It is evident that the reason is forbidden is because of חבורה as נטילת נשמה said there -

תוספות clarifies:

ורב דאמר התם משום צובע אף משום צובע קאמר¹⁰ -

And (even) who said there that חייב is שוחט because of, he meant that he is also because of צובע but he is certainly because of חיב נטילת נשמה.

תוספות clarifies what is meant by נטילת נשמה¹¹:

⁶ The skins of the body (שדי הגוף) are very thin and cannot be utilized and are not considered skin that can be dyed. In addition since they have no skin the blood falls away and does not dye anything. The redness of the body because of the blood is merely a superficial stain but it cannot be considered dyeing.

⁷ No one dyes the skin of a person. See who adds, even if will assume that there is an act of dyeing (the sheets) in order to show that she was a person, there should be no difference whether he should be liable for dyeing!

⁸ The (for) מילא by mentioned later in this states that we are [required to be]شبת קלוגב, גمرا (tosfos) that there is no difference between the skin of a person and the skin of a child. However if it should be since there is no concept at all of dyeing the child.

⁹ [The] Rishonim amend this to read שמוואל. Since by there is no צובע according to חבורה, it follows that by there is also no צובע. The reason he is because of as it is by שוחט because of חיב נטילת נשמה.

¹⁰ The there asks on חייב משום צובע אין משום נטילת נשמה לא; רב (can it be that he is only and not because of) חייב משום צובע; and answers. However it is only by that he is שוחט (according to רב) as the explains there that he wants the area of the skin to be dyed red with blood so people will see that it is fresh and they will buy it. However by such a reason does not exist and therefore the חייב can be only for צובע נטילת נשמה, but not for.

¹¹ Seemingly we cannot compare the חבורה (and call it נטילת נשמה) (which is an actual). נטילת נשמה

ונטילת נשמה אין לפרש דעתמא משום הכחשה שמחלישו ונוטל קצת נשמו -

And we cannot explain the reason that making a **חוורה** is **because of weakening, that** the one making the **חוורה** is **weakening** the victim **and taking away part of his נשמה -**

זה לא צריך לחילשות האשה¹² -

For here by, the husband **does not require a weakening of the woman**, so why would he be for **חוורה**!

החלשה however rejects this proof that **ונטילת נשמה** cannot be on account of **תוספות**:

ומיהו איסורא דקאמר הכא אייכא למיימר דחוירא דרבנן -

But however here when it mentions the prohibition to be **שבת** we, **בועל** **בחילה** **איסור** **משאצל"ג** and therefore one would be prohibited even if the **חוורה** is on account of **החלשה** and it is a **רבני**, but nevertheless it is **אסור**.

offers an alternate proof that **ונטילת נשמה** is not connected with **תוספות**:

אבל גבי מילה ממשען דאייכא איסוריota בהוצאה דם -

However regarding it seems that there is a prohibition for bloodletting -

דאמרינו בפרק רבי אליעזר (שם קלג,ב) **היא אומנא דלא מייצ'** סכנתא הוּא ומעברינו ליה -

For it, מציצה who does not perform **מוּהָל** **rule in** **פרק ר"א** **רב פפא** **danger for the child and we remove** this from his post'. The asked -

פשיטה מדקה מהלין שבת עליה¹³ -

It is obvious that it is a **מציצה to שבת**, since we desecrate the teaching us?! The answered -

מהו דעתמא דם מיפקד פקיד¹⁴ **קא משמע לו דחוירא מיחבר -**

We would have thought that the blood is merely encased (so there is no **איסור** of **חוורה**, therefore **ר"פ** **teaches us that** the blood is **attached** and you are making a **חוורה** and it is permitted on **שבת** only because of **פכוּה נפש**)¹⁵. This concludes the citation from the **גמרא**. **תוספות** continues with his proof -

¹² See later in this (footnote # 17) that if he does not require the **חולשות** [the **אשה**] **תוספות** (**החלשה**) that it would be considered a **מלאה** a **משאצל"ג** **חוירא** (**חוורה**) and one is not for a **גمرا**.

¹³ The there on states that we make **שבת** on **מציצה** even though (as the **גمرا** assumes now) we are violating the **שבת** by removing blood, so obviously the only reason we do it is because otherwise it is a **סכנה**; why is it necessary for **ר"פ** to teach us that if the **מוּהָל** did not make **מציצה** we remove him, he is placing children in danger!

¹⁴ Therefore we can do **דם מילאה** since there is no **איסור** of **חוורה**, but not because of **מציצה**. [This is that **הו"א** **סכנה נפשות** was only concerning the **דם מילאה**, but not the **חוורה**. Otherwise (if the **הו"א** was concerning **דם מיפקד פקיד** as well), why is it necessary for the **תורה** to teach us that **דוחה שבת** is **מילאה**, since there is no **איסור**!] **איסור** **דם מיפקד פקיד** **הו"א**!

¹⁵ Otherwise it would be **איסור**. We cannot say that it would be **איסור** **מדוריתא** because the expression **מhalbין שבת עליה** indicates an **איסור דוריתא** (**פכוּה נפש**), removed on account of **נסמה** (see).

ואי הוה משום החלשה ליכא חילול שבת דהויא מלאכה שאין צריכה לגופה -

And if the prohibition of weakening, there still would be נטילת נשמה is because of weakening,

- מלאכה שאין צריכה לגופה¹⁶ since it is a¹⁶ (even if) דם חיבורו מיחבר חילול שבת no

דאין צורך להחליש התינוק¹⁷ -

For there is no need to weaken the child.

תוספות will now explain why or חיבורה bloodletting is forbidden:

ונראה לרביינו תם לפרש דהוצתת דם חשיבה נטילת נשמה¹⁸ -

And it is the view of the ר"ת that bloodletting is considered נטילת נשמה

כי הדם הוא הנפש¹⁹ וכשנוטל מקצתו נוטל מקצת נשמה²⁰ -

Because the blood is the soul, and when he removes part of the blood he removes part of the נשמה.

תוספות asks:

וקשה לרביינו יצחק דאמרינו בפרק כלל גדול (שם עה, א, ושות) גבי הצד חלזון והפוצעו -

פרק in גמרא has a difficulty with the of ר"ח, הוצאה דם פ"י ר"ח asks in regarding the which states one who captures the

andal squeezing it (to remove the blood/dye) he is only one חייב (capturing). The

גמרא there asks -

ולិחיב נמי משום נטילת נשמה -

And he should be liable also for נטילת נשמה (he is killing the חלזון).

ומשני מתעסך²¹ הוא אצל נטילת נשמה דכל כמה דעת בית נשמה טפי ניחא ליה²² כולי -

And the answers, regarding he is a longer the מתעסך, regarding נשמה he is alive, the happier the person is, etc. This concludes the citation of the there. גמרא

Alternately if it were only an פקוח נפש, perhaps, how do we know it is permitted on account of איסור מדרבנן, because it lessens the pain of the child, and that is sufficient to push aside the איסור דרבנן (see עולת שמואל).

¹⁶ See ‘Thinking it over’.

¹⁷ A means one is doing the act of the child, but does not intend at all to do the purpose of the מלאכה. For instance it is forbidden to dig for it is a 토לה of plowing. However if one digs because he needs some earth, this is considered a מלאכה (he is digging/plowing) however he has no need for ploughing the ground. Similarly here if the החלשה would be the חיבורה, he would be doing the מלאכה (drawing blood) but is not at all interested in weakening the child (on the contrary he does not want the child to be weakened). It is a משאצ"ג.

¹⁸ The intent of the מלאכה is the act of removing life (not weakening the person). Presumably if there is no נטילת נשמה, only if it is part of the life force, ע.צ"ע, רקיע.

¹⁹ See (ראה) יב, כג.

²⁰ Therefore it is not a ג' because he wants to remove the דם (because he wants to remove the life force) and by (because he wants that there should be the חילוץ הדם).

²¹ means he is preoccupied with something else and is not interested in doing the at all. See there חילוץ דהכא הינו דבר שאין מתקין כיון שאין מלאכה כלל למלאכה מותר.

²² See. חילוץ live (dye) than of a dead body. The taken from the live is of a better quality (for extracting the dye) than of a dead body. There who writes: שודם חי טוב מדם המת וכו' וכל עצמו מתכוון וטורה לשומרו שלא ימות בידו אפילו מותן.

תוספות continues -

ולפי זה אפילו הוא חי גמור הרי יש כאן נטילת נשמה²³ -

But according to this which the said that ר"ת is like **הוצאת** קצת דם **is even if the liver is completely alive there is still נטילת נשמה here!** Why is he פטור?!?

תוספות answers:

ואומר רבינו תם כי דם חלזון שצובען בו הוא מifikd פקייד -

And the הג answers that the blood which is used for dyeing is encased in a sac -

ועל אותו אינו חייב משום נטילת נשמה²⁴ ועל שאר הדם שמחובר חשיב ליה מתעסק:

And on that blood/dye he is not liable for, נטילת נשמה, and regarding the rest of the blood which is attached (which is the נפש of the חלזון) **and is also being removed, he is considered a מתעסק**, because he has no interest at all in that blood (in fact he does not want to remove it).

SUMMARY

The חיוב for making a שבת on חבורה is because he is taking away a part of the נשמה.

THINKING IT OVER

החלשה proves from by that the מילה is not because of/tosofot (for otherwise it would be a משאצל"ג).²⁵ Why did not prove that the מילה is not because of the החלשה, since we need a פסוק to permit a שבת, and if making a משאצל"ג on account of the החלשה, it will not apply by מילה for it is a אסור משאצל"ג!²⁶ ?! אסרור מדאורייתא!

²³ He certainly wants to remove the דם חלזון to make the תכלת.

²⁴ That blood/dye is not the blood which sustains the חלזון [it is a dye which he uses to protect himself by squirting it on his pursuers to blind them (like the ink of an octopus)].

²⁵ See footnote # 16.

²⁶ See פנ"י ק"ט שיטמ"ק and פנ"י.

He needs the blood, and it is permitted**לدم הוא צריך ושרי –****OVERVIEW**

הו (when analyzing the query whether it is גمرا, if we assume one side of the query as follows, if he (merely) wants (to extract) the blood, it is permitted to be, because there is no problem of איסור no (since he is not interested in making a cut; he only wants the blood). This explains why there is no problem of בונה, and what is the meaning of לדם הוא צריך ושרי, and בונה).

תוספות asks:

ואם תאמר והוא פסיק רישיה¹ הוא לעניין הפתח² –

And if you will say; but regarding making an opening, it is a פסיק רישיה³!

תוספות answers:

נדרך לומר שיכל להוציא הדם ללא עשיית הפתח⁴ –

And it is necessary to assume that he is capable of extracting the blood without making an opening; so even if he makes a cut, it is not a פסיק רישיה.

תוספות discusses the meaning of לדם הוא צריך:

פירש רבינו تم שצריך להוציא הדם שלא יתלכלך פעם אחרת כшибעול –

The explained that he needs to extract the blood now so that he will not dirty himself when he will be בועל her another time –

תוספות anticipates a difficulty:

ולפירושו לקמן דקאמר דם חבירי מיחבר אי לדם הוא צריך ואסור –

¹ דבר שאין מתכוון literally means ‘chop off its head’. The rule is that a chair across an earthen floor even though it is possible that it will make a furrow in the ground (which is a חולדה of the chair), since he is not intending (אין מתכוון) to make this furrow. However if it is inevitable that he will make the furrow (it is a very heavy chair and the ground is relatively soft), it is forbidden. This is called פסיק רישיה; it is as if someone says I want to play with the head of a chicken, so I will remove it (from a live chicken), but I have no intention or interest in killing the chicken. We say to him rhetorically פסיק רישיה ולא ימותה; can you chop off its head and it will not die! Obviously it will die. The פטור of אין מתכוון does not apply to a פסיק רישיה situation.

² Granted that he has no interest in making a cut (which is the פונה of מלאכה); however since it is inevitable that he will make a cut when extracting the blood, it is a פחח and he should be בונה for חייב!

³ See בקיין בהטיהה ד"ה או כר"ש who asks this same question and answers that since there are those who are later that can be without extracting 血 and without making a cut, therefore it is not a פחח. However this is not satisfied with this answer, for now we are assuming that לדם הוא צריך (he wants to extract 血) so he will not do (this), and therefore it is a פס"ר. The hataihah is that the person who asks this question knows how to be 血 without making a cut.

⁴ There is a minority who know how to be 血 without making a cut and be 血 without making a cut.

And according to the explanation of the ר"ת we have to understand when the דם הוי צריך states later that if we assume that it is forbidden to be (for he is making a חבורה -)

אף על גב דחויה מלאכה שאינה צריכה לגופה⁵ דרישא במקום צער אגב⁶ מורסא⁷ -

Even though according to the this (although it is nevertheless) **it is permitted** to do a **where there is pain**, as we know **concerning** bursting **an abscess**, so here too it should also be permitted to do this – since he is performing a **משאצל"ג** since why is it –

replies that even though a **צער** is **משאצל"ג**, nevertheless –

הכא גבי מצוה אסור⁸

Here regarding a it is forbidden since there is no **צער** to do a **משאצל"ג** nevertheless –

ולקמן נפרש הא דבריך ממפיס מורסא⁹ לפירושו -

מפייס from **רבAMI** we will explain the question of (וב Tos' D"ה ואם) **according to the explanation of the ר"ת**.

offers an alternate explanation of:

ורבינו יצחק מפרש לדם הוי צריך שחייב לראות אם היא¹⁰ בתוליה:

And the ר"י explains that **לدم הוי צריך** means **that he needs to see** the **الدم** in order to verify whether she is a **בתוליה**.

SUMMARY

either means he wants to remove it so it will not dirty him another time (ר"י) **בתוכה** and it is a **משאצל"ג** (ר"ת). There is no **פחה** since it is possible to be **מוחזיא** without making a **פשה**.

THINKING IT OVER

If we consider removing unwanted **מציצה** an **מציצה** **משאצל"ג** a **דם** why is **דם** since he does not want the **דם**?!

⁵ He does not want the **דם** that he is extracting (he would rather that there be no **דם** at all). See ‘Thinking it over’.

⁶ Others amend this to read **גבי ממפיס**. By bursting an abscess to remove the pus, he creates a **פחה**.

⁷ See (and here ב, ג), if he does not want the opening (just to burst the abscess) it is considered a **משאצל"ג**.

⁸ According to the ר"ת this is considered a **משאצל"ג** (if we rule like ר"ש that מדרבן is only אסור to be in the beginning of the **בתוכה**).

⁹ The there asks according to the one who maintains that it is different from **בתוכה** why is it different from **בתוכה** where it is **מותר**. However, according to the ר"ת there is no difficulty, for a **בתוכה** is only **משאצל"ג** where it is **מפייס** (as by **בתוכה**), but not **מפייס** (as by **בתוכה**).

¹⁰ According to the ר"י, **מלאכה** **שצריכה לגופה** because he wants to remove the **דם** in order to see it; he wants the **דם**.

¹¹ See footnote # 5.

¹² See Tos' D"ה דם (בתוכה דם) סוכ"ד אוות מג.

אם תימצى לומר הלכה כרבי יהודה מקלקל הוא אצל הפתה ושרי –

If you choose to say the ruling is like י"ג; is it considered ruining, regarding the opening and it is permitted

OVERVIEW

The question is discussing the query whether one is permitted to make an opening (which can be a hole or a window), which he may cause to be made unintentionally. Even if we follow the view of **ר' יהודה** that a hole is forbidden since his (unintentional) act of making a hole may be ruinous and not constructive, in which case **ר' יוספוס** would agree that it is permitted. This explains what is meant that if he is a **מקלקל** it is permitted.

¹ פירוש דרבי יהודה אית ליה דמקלקל בחבורה² פטור -

The explanation (of that if he is מותר according to ר"י) is that it is מיליכל since ר"י maintains that if one is מיליכל while making a wound he is פטור.

תוספות anticipates a difficulty:

אף על גב דפטור אבל אסור -

Even though that **אסור מדרבנן but פטור מדויריתא is מקולקל בחבורה so ר"י** according to so how can the **גמרא** here say that if it is **מותר מקולקל** it is **מותר**?

תוספות replies;

מייהוanca מותר לכתהלה משום דאייכא תרתי³ מקלל⁴ בחבורה ודבר שאינו מתכוון⁵ -

Nevertheless here (by בעילה בשבת it is permitted initially to be since there are two reasons for being lenient; he is אקלקל בחבורה, and in addition it is a דבר שאין מתכוין, therefore it is permitted לכתהלה.

¹ The term פירוש here (as in most places) is coming to negate what we may have thought that if it is considered a מוקלקל (בחבורה) it is even according to ר' י"י maintains that מותר קלקול this idea. ר' י"י maintains generally that מותר חסיפות פטור אבל אסור מוקלקל (בחבורה), however in this particular case it is as explains.

² See the *כל המקלקלן פטורין* (*of mishne*) in *שבת קו, א* on that the *גמרא* is according to *ר"י*. See ‘Thinking it over’.

³ אין קלוקל היבורה מתכוון if he is according to ר"י פטור אבל אסור is מקלקל (בחבורה) מתכוון.

⁴ We are assuming now that he is פָתֵח אֶצְל מִקְלָקָל.

⁵ He has no intention of making a *פְתַח*, since we are now assuming that *לִדְםָה* is *אֲצִירֵךְ*, for if it is there is no query; for all agree that it is *אָסּוֹר*.

asks:

וקשה דבגירה⁶ אסר רביה יהודה אף על גב דאייא תורה דין מתכוין ומקלקל נמי הו - And there is a difficulty; for regarding 'dragging' prohibits it, even though that by there is also the same two reasons to be lenient, for he has no intention (אין מתכוין) of making a furrow, and in addition he is also a (he is ruining the ground) –

proves that making a hole in the ground is considered a (even if the unintentional):

כదאיין בשילוי פרק קמא דחגיגה (דו,א) דמוקי ה'ך דחופר גומא ואין צרייך אלא לעפרה⁷ - As the states in the end of the first where the establishes that this ruling, where one digs a pit and he only needs the dirt (he has no need for the pit), where the ruling is -

דפטור אפילו כרביה יודה דחייב מלאכה שאין צריכה לגופה⁸ -

That he is even according to who maintains that one is חייב מדורייתא; משאצל"ג however here by ר"י, which is a even, will agree that he is פטור מדורייתא, and אין צרייך אלא לעפרה -

וטעמא דפטור משום דמקלקל הו -

And the reason he is because he is considered to be a מקלקל, since he does not need the pit; he is merely making a hole and (unintentionally) ruining the ground. Similarly by גיריה, it should also be considered a מקלקל, since he does not need this furrow; he is merely making a hole and (unintentionally) ruining the ground.

cites another example where there is nevertheless it is and מתכוין and מקלקל and being תוס' ד"ה הלם אסור לר"י:

ובפרק יומם טוב (ביצה כ,א ושם) אסר רביה יהודה קירוד⁹ אף על גב דין מתכוין¹⁰ ומקלקל¹¹ - And in we find that ר"י prohibits קירוד, even though it is and אין מתכוין is

⁶ See TIE previous Footnote # 1. This is the case of dragging a chair over the ground where it may make a furrow (which can be a of plowing [חוורש]). However he has no intent of plowing; it is a which is according to ר"י and מותר לר"ש.

⁷ If he digs the pit because he needs the pit, he is for; however now that he does not need the pit, only the earth, it is considered a pit. See footnote # 8.

⁸ The case of in which someone takes a dead person out of the house (a רה"י argues that it is considered a קירוד). It writes: תוס' צ,א ד"ה רבי משאצל"ג writes: קירוד כטעשה השם קירוד. Regarding who writes: המשנה קירוד כעין שהוא צרכי לה במשכן אלא לענין אחר קירוד. However, by he is not מקלקל for anything therefore he is according to ר"י.

⁹ קירוד is a certain scraping process for animals, which can make a חבורה. See there רש"י who writes: בערך חבורה. It is done to clean the animals.

¹⁰ There is no intention to wound them or draw blood.

¹¹ The wound caused by this קירוד is detrimental to the animal.

and אין מתכוין even though it is אסור (קירוד and גיריה) where ר"י We have two places. מקלקל why does he permit here to be just because it is בועל. What is the difference between the cases?

תוספות answers:

ויש לומר דהכא שרי טפי משום דאייכא נמי מצוה -

And one can say; that here (by there is more reason to permit it, because there is also a מצוה in this, besides the truth to the exception, and אין מתכוין of truth to the exception, and מקלקל however in the other two cases there is no truth, therefore it is אסור.

תוספות offers an alternate solution:

אי נמי שלא במקום מצוה נמי היכא דאייכא תרתי שרי -

Or you may also say; that wherever there is the it is permitted even if it is not תרתי להיתרא (therefore by it is permitted because of the truth regardless if it is a or not) -

וגבי חריש יש להעמיד כגון שאינו מקלקל למחרי אלא מתכוון קצת דמשוי גומות מצד אחד¹² -

And regarding the furrow (by גיריה we can establish it in a case where for instance he is not totally ruining the ground, but rather he is also improving it somewhat, for he smooths out the indentations on one side -

וגבי קירוד נמי במה שמוציא דם מיקל לבהמה קצת כמו דם הקזה:

And regarding he is also not a קירוד, מקלקל, for by drawing some blood he is somewhat relieving the animal as we see by the therapy of bloodletting.

SUMMARY

במקום מצוה by אין מתכוין if it is also a מתיר is ר' יהודה.

THINKING IT OVER

פטור is מקלקל בחבורה ר"י begins by saying that maintains. ¹³ Seemingly we are now discussing the option that איסור and there is no (and by החבורה פקיד פקיד). Why does he should have all agree that מקלקל is בונה. ¹⁴ Why does mention החבורה that [ר"י maintains] ¹⁵?!

¹² The earth that is being dislodged through his dragging may be filling and smoothing an adjacent furrow nearby. However by where he is digging a deep pit, he is not being מתקן גומא נמא מצד אחד therefore there it is מקלקל.

¹³ See footnote # 2.

¹⁴ See ר"י ד"ה ואת"ל.

¹⁵ See מהרש"א (הארוך).

אם תמצא לו מר הלכה כרבי יהודה מקלקל בחבורה הוא قولוי –

If you choose to say, the ruling is like ר"י, is it considered ruining regarding the wound, etc.

OVERVIEW

The gemara is discussing the query whether if we assume both that there is no interest in extracting blood or making a wound (for he has no interest in extracting blood or making a wound). If we assume that the ruling is like that a non-therapeutic extraction is permitted (since he is not interested); however even if we assume that the ruling is like that a therapeutic extraction is permitted, nevertheless here it may be prohibited if he is considered to be a non-therapeutic extractor. Our discussion discusses the inference of our view regarding the view of ר"ש.

There are three types of inadvertent acts on Shabbat with different rules.¹

שוגג is one who knows that he is doing a melacha (for instance he is harvesting fruit on Shabbat); however he either assumes that it is permitted or he is not aware that today is Shabbat. A korban Chatat is shogeg.

מתעסק is one who intends to do a permissible action (removing grapes from a cut vine)² but inadvertently does a forbidden action (he removes the grapes from an uncut vine). He is only by Shabbat (except for Chovel and Mevuir) according to ר"ש. **אין מתכוין** is where he had no intent of doing any at all (dragging a chair) and as a result a melacha (made a furrow) was done. This is according to ר"ש.

משמעותו של דבר ר' יונה –

It seems (from the flow of the text) that if the ruling is like that if the ruling would be permitted even if he is considered to be a non-therapeutic extractor, since he is in the wound.

Tosfot asks:

וקשה דבשילתי פרק ספק אבל (כרייתא יט,ב,ו שם) אמר⁴ לרבי שמעון⁵ –

¹ See סוכ"ד אות ג-ז.

² See that the ruling is that in this case where the melacha is performed in a case where it is not intended, the melacha is prohibited.

³ The gemara made the distinction between when it is only prohibited (when it is not necessary to assume that he maintains the melacha in order for it to be prohibited) and when it is necessary to assume that he maintains the melacha (therefore in order for it to be prohibited it is necessary to assume that he maintains the melacha). However, no such distinction was made when discussing the ruling (for since he maintains the melacha, it is irrelevant whether he is a non-therapeutic extractor or a therapeutic extractor).

⁴ R' Yonah ruled that the melacha is prohibited in the case where the melacha is performed in a case where it is not intended.

And there is a difficulty; for in the end of ר"ג, פרק ספק אבל said, according to ר"ש -

הואיל ומקלקל בחבורה חייב מתעסק נמי חייב -

Since חייב is מקלקל so, חייב is also מתחשק. This concludes the citation from the Tosefta. The Gemara continues with the question -

ומאי שנא דין מתכוון פוטר רבי שמעון בחבורה טפי ממתעסק⁶ -

And why is there this difference, that ר"ש exempts (that it is more than where he is)??!

תוספות answers:

ויש לומר דמתעסק שמתכוין למלאה לא מיפטר בשבת אלא משום דאיין זה מלאכת מחשבה⁷ -
And one can say that regarding where he has intent to do a, the
only reason is (חויבל ובעיר מלאות) except for מלאכות שבת on פטור is מתעסק because
- מלאכת מחשבה is not considered a מהעסן

ומשם הכו חייב לרבי שמעון מטעסך בחבורה -

חייב is (מלאת מחשבת מהשבת מטעס בחבורה even though it is not a according to ר"ש -

כמו מקלקל בחבורה דמחייב רבי שמעון אף על גב דין זה מלאכת מחשבת⁸ -

Just like according to ר"ש even though that is not a -

ולחבי תלינו ליה במקלקל -

- מקלקל בחבורה to מתעסך בחבורה of חיבוב And therefore we ascribe the

משוות וטעויות שגיאות בפונטיון בשאר מלהכות שבת הוי משווים ובאיו מלאות מחשבת -

שבת שלacula מלאכות פטור (מתעסך ומקלקל) **are by** all the other **other** is because we require a **מלאכת מחשבת** (which is a special requirement only for - שרם -

אבל שאיינו מהכינוי כלל למלאהה לא משווים דברינו מלאכת מחשבת מיפויו -

there were two children to be מֶלֶךְ, one on שבת and one on Sunday, and he was the Sunday baby on שבת, there is a dispute between ר"א (who says חייב) and ר' יהושע (who is ר' בא). פוטר continues that the only reason is because he made a mistake doing a מצווה; otherwise he would be חייב, even though he is a מתחסך. R"g answered that regarding חובל (ומבעיר) [by מתחסך is also מקהל since חובל since מקהל] therefore חייב is מתחסך [only]. See 'Thinking it over' #2.

⁶ הראיל, הויל ומכלך בחבורה חיב מתעסק נמי חיב says כריהות in גمرا Just as we should also say [See 'Overview'.]

שבת of מלאכות means a thoughtful (thought out) action. There is intent to do this. מלאכה means a thoughtful action. We derive the term מלאכה from the word מלאכות which are called מלאכות. See footnote # 8.

⁸ Ruining something (for the sake of ruining) cannot be considered a thoughtful or thought out action (in the manner of the רשות which were a reason). See footnote # 7. See (also) who writes: לשבת מלאכת מחשבת שהיא מלאכת אומנה ארפה מורה שנומכה פרשת שבת ל מלאכת המשנו בזיהול והם מלאכת מחשבת כתיב.

However where he is no intent at all of doing a מלאכה (the case of he is not because we require פטור because we require פטור)

זהא בשאר מקומות נמי מיפטר אין מתכוין -

For in other instances (שבת not is also אין מתכוין)

כגון גבי כלאים דמוכרי כסות מוכרים כדריכן ובלבד שלא יתכוין כולי (כלאים פרק ט' משנה ח') -

For instance regarding wearing המשנה teaches us that the sellers of garments sell in usual manner (where they place it on their shoulders, so that they are wearing שעתנו), **provided that they have no intent, etc.** of deriving benefit (keeping warm or dry) from the garments they are wearing. Their only intent is to show off their wares. We see that אין מתכוין is a universal פטור, which is not limited to מלאכת שבת as מלאכת שבת is מהשבה –

(שבת not by) איסורים פטור אין מתכוין offers another example of תוספות:

ותנן נמי נזיר חוף ומפספס כולי (נזיר זו מב,א) הילך⁹ בחבורה נמי שרוי:

And we also learnt in a that may shampoo and brush his hair, etc. even though that by brushing his hair some hair may fall out (since has no intent of cutting his hair; he is regarding cutting the hair), **therefore** since the of אין מתכוין is universal and not limited to מלאכת שבת like it is permitted even by חייב is מקלקל ומתעסק בחבורה ר"ש (even according to who maintains that even according to).

SUMMARY

מלאכת שבת פטור is מקלקל ומתעסק by all היתר is only by אין מתכוין.

THINKING IT OVER

1. What changed (regarding מתעסק in the answer of תוספות compared to what assumed in his question)?¹⁰

נתכוין לחתוך התלוש וחתק ¹¹, מל considered נתכוין לחתוך מהוחר זה וחתק מהוחר אחר or המחוור ¹²?

⁹ We can say מלאכת מהשבת is only on account of הויאל ומקלקל חייב מתעסק נמי חייב (which is limited to חובל ובעיר), איסורים אין מתכוין is by all, therefore it applies even to and we cannot compare מתעסק מקלקל to אין מתכוין (and).

¹⁰ See סוכ"ד אות ג.

¹¹ See footnote # 4 (and # 2).

¹² See סוכ"ד אות נה קובץ שיעורים אות יח.

האי מסוכריותא¹ דנזיתה אסור להדוקה قولי –

It is forbidden to tighten this barrel stopper, etc.

OVERVIEW

It was said in the name of רב that it is forbidden to tighten a stopper in a beer barrel hole on יו"ט (even according to ר"ש, since it is a גمرا).² The does not state however which מלאכה is being performed by this תוספות. cites and discusses differing opinions in this matter.

פירש בקונטרס וכן רבינו חנナル ובערוך בחז' לישנא³ וכן בסדר תנאים ואמוראים⁴ –
explained and similarly the ר"י and in the one interpretation and similarly in רש", סדר תנאים ואמוראים in they all explained –

דאסור משום סחיטה⁵ –

That it is forbidden to tighten the stopper because of ‘wringing out’.

תוספות asks:

וקשה לרביינו תם דהא סחיטה משום ליבון⁶ ולא שייכא בשאר משקים –

And the ר"ת has a difficulty with this explanation, for it is forbidden on account of ליבון (whitening, or cleaning/laundering), but is not applicable by other liquids except for water. explains why there is no by סחיטה תוספות – שאר משקים

דכל דבר המלכלך את בילעו כגוין יין ושכר ושמן לא שייך ליבון בסחיטתו אלא דוקא במים⁷ –

For anything which stains the material which absorbs it, for instance wine, beer, and oil, there can be no when wringing it out, only by wringing out water can it be considered – ליבון

שאר משקים proves his point that the because of ליבון is only by water but not by סחיטה תוספות
וראה לדבר מדלא גזרין בהו שמא יסחוט כמו גבי מים⁸ –

¹ מסוכريا In our the text reads גמרות.

² תוס' ה,ב ד"ה literally means, ‘chop off its head [and it will not die!!]’. See TIE footnote # 1.

³ Later will cite a different explanation of the ערך (see footnote # 49).

⁴ See סדר תנאים ואמוראים ספר שם וגдолים מערכת ספרים אחת ס' ייח גאנונים.

⁵ By tightening the stopper in the barrel, some of the wine absorbed in the cloth stopper will be squeezed out. See later in this what prohibition there is in סחיטה.

⁶ ליבון is one of the thirty-nine אבות מלכות. It consists of washing and whitening shorn wool.

⁷ When garments are soaked in water and the water is wrung out, the garment becomes clean. However when it is soaked in wine, etc. and then wrung out, the garment remains stained.

⁸ Regarding water the חכמים forbade certain activities out of concern that it may lead to (since there is an איסור סחיטה מדאוריתא by water), however these restrictions do not apply by activities with שאר משקין מדאוריתא (proving that there is no שאר משקין איסור סחיטה מדאוריתא regarding).

And the proof of this is since the חכמים did not decree by שאר משקיהם that certain activities be forbidden for perhaps he may wring it out, as they were גוזר regarding water.

סחיטה first brings examples where the חכמים were concerned for by water:

כదאמリン באלו קשיים (שבת זז קיגג,ב) היה מהלך בשבת ופגע באממת המים כולי -

As states in **פרק אלו קשרים** regarding one who was walking on and came upon a stream of water, etc. where **רבא** said -

היכי ליעבד לינחות במייא אתי לידוי שחיטה⁹ -

What should he do; can he go into the water, but it will cause – סחיטה

גזרת סחיטה by water: offers another example of

ותניא נמי בפרק חבית (שם זו קמוץ, ובו שטף) ומסתפן האלונטי ולא יבאה בידו -

And we also learnt in a בריתא, ‘and one may dry himself on שְׁבָת with a towel but he should not bring the towel with him in his hand’ after he dried himself -

ומפרש בגמרא¹⁰ דאתי לידי סחיטה -

And the there explains the reason for לא יביאה בידו גمرا is because it may come to – סחיטה –

גזרה משומסחיתה by water offers one final example of תוספות:

ובפרק ב' דביצה (דף יח, א ושם) אומר דלבולא עלמא אין מטביליםין את הכלים -

And in the second ברייה states that everyone agrees that we do not immerse clothes in a mikvah - י"ט

ומפרש בגמרא גזירה משום שחיטה -

And explained the reason for this prohibition **in the Gemara there**, for there is a **because of** **סחיטה גזירה**.

תוספות has cited three examples where there is a **גזירה משומסחיטה** by water (only). will now show that by **גזירה שאר משקדים** there is no such:

ואילו בפרק תולין (שבת ד' קלט,ב) תננו מסננין את היין בסודרין -

However in we learnt in a פָּרָק תּוֹלִין; משנה we may strain the wine with cloths - אלמא לוגי יוו לא זערינו מאשומת סחיב� -

It is evident from this *תירוץ* that regarding wine there is no decree on account of

⁹ It is evident that wetting something in water is forbidden when there is a concern of **סחיטה** (as there is when one wets his clothes that he is wearing).

¹⁰ Seemingly the **גמרא** is explaining the **משנה ביזו** where it states **קמץ א** on **יביאם** where it is written **יביאם ביזו**. In any event this is another example of **גזרה אשומת מחייה** by water.

סחיטה; otherwise how can we permit to strain the wine with a cloth when he may wring the wine out of the cloth –

משקין offers another example that we are not by other חוטפה:

ובריש המביא (ביבה זז לא) נמי קאמר ליפורוס סודרא עליה¹¹ ולא קאמר ATI לידי סחיטה -

And in the beginning of also, the states, ‘let him place a cloth on it’, and the does not ask that it may cause סחיטה גمرا and therefore it is not permitted; indicating there is no by גירה משום סחיטה –

והיינו משום דלא שייך ליבון אלא גבי מים -

And that is because the of **livon** is applicable one regarding water, but not by other (since by water where is applicable we are). Therefore by water where is applicable we are (since by water is a stain of (livon no where there is no (since it stains the object) therefore there can be no, since there is no (or (livon (since there is no by water).
שאר משקין.

שאר משקין anticipates a difficulty with this assumption that there is no by חוטפה:

והא דאמירין בפרק מפנין (שבת זז קכח,ב) אם היתה צריכה שמן חבירתה מביאה לה בשערה¹² -

And that which the states in if she (a birthing mother) needs oil, her friend brings it to her in her hair -

ופריך והא ATI לידי סחיטה¹³ ומשני אין סחיטה בשער¹⁴ משמע דשייך סחיטה בשמן -

And the asks, ‘but we are causing; and; סחיטה answer there is no by hair’; indicating that there is by oil, not as just taught –

has an additional question:

וכן בפרק נוטל (שם זז קמג,א) ספוג אם יש לו בית אחיזה מקנחים בו¹⁵ ואם לאו אין מקנחים בו -

And also in the states, ‘a sponge; if it has a handle one may wipe with it, but if it does not have a handle we do not wipe with it’ -

משום דאתה לידי סחיטה שמן¹⁶ הנבלע בו -

Because it causes of the oil which is absorbed in the. We find two places (by the hair and the sponge) where there is an by אסור סחיטה!
שאר משקין

replies:

¹¹ The there (on ב,כט) rules that when carrying on י"ט it should be carried differently than it is carried during the weekdays. The states that when carrying (open) jugs (of wine) they should place a cloth on top of it.

¹² The friend soaks her hair in oil and goes to the mother who then removes it from her hair.

¹³ When the birthing mother will wring the oil out of her friend’s hair it is considered סחיטה.

¹⁴ The hair (is hard and) does not absorb the oil as cloth does, but if the oil was soaked in cloth there would be סחיטה.

¹⁵ He is not wringing out the oil with his fingers (he is holding the handle not the sponge).

¹⁶ See the ר.ש"ר.

ההיא סחיטה אומר רבינו تم דהויא משום מפרק¹⁷ ואסורה¹⁸ כמו סחיטה זיתים ועنبים -
The answers; that (by the hair and the sponge) is forbidden **on account of** **R"t** (ליובן) **and it is forbidden, just as squeezing out the juice from olives and grapes**, which is forbidden because it is a **מפרק** of **תולדה**.

והכא אומר רבינו **תם דליכא למייר דאסור משום מפרק כיון שהנסחת הולך לאיבוד**²⁰ - responds to an anticipated question:¹⁹

However here (by the stopper), **says the**, **R"t**, **we cannot say that it is forbidden to tighten the stopper because of**, **מפרק**, **since the wrung out wine is lost**, and not retained by the **סחיטה** process.

אף²¹ על גב זהוי פסיק²² רישיה²³ וכן פירש בערוך דכל פסיק רישיה דלא ניחאליה שרי²⁴ - clarifies that this permissiveness (to) applies -

Even though that it is a it is permitted, **and so too explains the** that every **פסיק רישיה** where he is not content with the **מלacula** that is being done is **permitted**.

ועיקר ראייתו מפרק כל התזריר (זבחים דצ' בושם) - cites the sources from where the derives the rule that **ערוך** is permitted:

And the s' main proof is from ערוך', where the states that -
אליבא דברי שמעון מזלפין יון על גבי האישים²⁵ -

¹⁷ מפרק (which means to dismantle) is really a **תולדה** of **דש** (threshing) where one removes the kernels from the chaff. Similarly when one is **טוחט** he removes the wine/oil (which he wants) from the grapes/olives. Both by the hair and the sponge he is removing the oil, which he wants, from the hair or the sponge.

¹⁸ גוזר (לפרוס סודרא עליה מסננן את היין) nevertheless in the case which mentioned previously because we do not find anywhere that the **חכמים** were anything **סחיטה** (which is not applicable by **ליובן**, which (according to the **R"t**) is not applicable by water). See **סוכ"ד** אות ג. **See also** **שר משקין**.

¹⁹ Let us say here too (by the **טוכריא**) that there is a prohibition of **סחיטה** for it is a **תולדה** of **פסיק**.

²⁰ סחיטה and **מפרק** are applicable when the squeezed out liquid is being retained and used; however here the wine squeezed out from the stopper is lost. The **סחיטה** of **ליובן** (and the associate with it) is using the liquid and wringing it out to wash the item (which applies only by water). The **איסור** of **מפרק** (and the **סחיטה** associated with it) is drawing out the liquid and retaining it.

²¹ The marginal note inserts here; and even though **ר"ש**, **ואע"ג** **דמשאצל"ג** **אסור** **לר"ש**, **היכא** **דלא ניחא** **ליה** **כלל** **שרי טפי** prohibits a **משאצל"ג**, nevertheless wherever he is totally unhappy about it, it is more readily permissible. See 'Appendix'.

²² פסיק רישיה literally means, 'chop off its head [and will it not die?!]'. See TIE footnote # 1.

²³ Seemingly previous explanation that there is no **סחיטה** **משום מפרק** by the stopper because it is based on the assumption that since it is **הולך לאיבוד** there is no intent here to retain the wine, he is (which is according to **ר"ש**). However the ruling is that if it is a **פסיק רישיה** then there is no **היתר** of **היתר**, and here it is a **פסיק רישיה** for if he tightens the stopper wine will certainly be squeezed out.

²⁴ Here too by the stopper he is not pleased that by tightening the stopper he is losing some of the wine.

²⁵ The **גמרא** discusses there what one does if he donates wine to the **מזבח**. According to **ר"ש** he sprays the wine over

According to ר"ש (who maintains is אין מתכוין) we spray the wine over the fires of the the fire - מזבחה -

אף על גב דפסיק רישיה הוא דוודאי מכבה הוא כיון שלא ניחא ליה בהאי כיובי שרי -

Even though it is a since he is certainly extinguishing (partially) the fire of the the fire, nevertheless, **since he is not pleased with this extinguishing, it is permitted.** This proves that מותר is פס"ר שלא ניחא ליה.

мотר is פס"ר שלא ניחא ליה that ערכך offers another proof of the proof:

ועוד מיתתי ראה מלולב הגזול (טוכה דג, ובשם) דקאמר רבי אלעזר ברבי שמעון -

And the also bring a proof from ערכך rules -

ממעטים ענבים ביום טוב פירוש ענבי הדס²⁶ ופריך והא מתkon מנא -

We may reduce on the amount of (grapes) [berries]; meaning the berries of a. And the asks, 'but he is repairing an object'-

ומוקים לה במתכוון לאכילה סבר לה כאבוה -

So establishes this ruling of ראב"ש in a case where his intention is to eat the berries (but not to be the cause of, and the agrees with his father that ר"ש that a דבר שאינו מתכוין is permitted -

ופריך והא מודה רבוי שמעון בפסק רישיה قولוי -

And the asks but ר"ש agrees by a גمرا etc. that it is forbidden -

ומשני לא צריכא דעתך ליה הושענא אחרית²⁷ -

And the answers that it is in a case where he has another (הדים) גمرا.

concludes with the proof:

אלמא כיון שלא ניחא ליה ולא חיש בהאי תיקון שרי אף על גב דפסיק רישיה הוא -

It is evident from there that since he is not pleased and concerned with this repair (for he has no use for it at all) it is permitted even though it is a פס"ר.

In summation; the view of (the and) the ר"ח is that the is only by water; the halakha provided the liquid is not משקין (also) applies to משקה משום מפרק. Therefore the tightening of (either) משום ליבון (סחיטה cannot be on account of איסור because it is not water, nor since it is because). The also maintains that by אין לאיבוד ערכך.

the fires of the the fire, even though he is extinguishing (somewhat) the fire of the which is prohibited since the מזבחה, nevertheless he is according to ר"ש מותר states לא תכבה (ייקרא צו ו, in פסוק).

²⁶ The teaches that if there are more berries than leaves on a it is פיטול. One may remove the berries (but not on ט"ו since he is מתקן מנא) and it becomes permissible. However, ראב"ש permits the removal of the berries even on ט"ו.

²⁷ In the case where he has a גمرا it is not considered, since he has no intention of using this גمرا for the גمرا for he has another one. Therefore this is ליל נינה"ל; he has no need for it.

מותר is פס"ר שלא ניחא ליה a מתכוון. It is therefore not clear what is the of tightening the stopper.

offers an alternate view, in explaining our הוספה: גמרא

ונראה לרביינו יצחק שלא קשה מידידי דאייכא למימר אסור לשות בשאר משקה משום ליבון -
And it is the view of the that there is no difficulty on ר"י, for we may assume that it is forbidden to wring out other משקין (from a cloth) on account of ליבון - (משקין סחיטה משום ליבון for) ליבון applies to all -

כמו במים ומכל מקום לא חיישין בהו שמא יסחוט²⁸

Just as is forbidden by water, but nonetheless there is no concern by that perhaps he will squeeze it out as we are concerned by water -

כיוון שהטעם והריח נשארים בבגדים ומעט יהיה הננה בסחיטתו -

Because even if he squeezes out the liquid by the water, the taste and the odor of the will remain in the garment, and he will gain little by wringing it out. Therefore there is no סוחט, however if he will be it will be even by water. This is one option.

A second option according to the ר"י:

ומצינן למימר נמי אסור משום מפרק -

And we can also say that אסור לכחה מדרבנן is סחיטה בשאר משקין - מפרק because of גזירה שמא יסחוט שמן - אף על גב זהוי פסיק רישיה שלא ניחא ליה אסור לכתחילה לרבי שמואן -

אסור לכתחילה nevertheless it is still, פס"ר שלא ניחא ליה according to (even) מדרבנן - **ר"ש** כמו במלאה שאינה צריכה לגופה²⁹ -

פס"ר שלא ניחא ליה according to ר"ש, the same will apply to a משאצ"ל a according to מדרבנן. אסור לכתחילה אין מתכוון by ניחא ליה.

וראיות העורך אין ראיות -

And the proofs of the are not convincing proofs that פס"ר שלא ניחא ליה.

The ר"י will now attempt to refute the proofs of the עורך:

דחה היא דמתיר רבוי שמואן לזרף יון על גבי האישים איכא למימר דעתך שאני -

²⁸ The brought examples that by water there is the concern of שמא יסחוט but not by ר"ה.

²⁹ It is possible that the ר"י maintains that a פס"ר שלא ניחא ליה is considered a משאצ"ל. Just as by ר"ג, he is intentionally doing the (digging) but he does not need the pit (אצל"ג), similarly here since it is a פס"ר (where there is no מתקין of פטור), for it is considered (as if he is מתכוון), it is considered (as if he is פס"ר). However since it is it is considered (because he is not retaining the liquid). See ר"ע א.

For in that case were ר"ש permits to spray the wine on the fire, we can say³⁰ by a **מצוה it is different³¹** and we permit even if it is a **מצוה** since it is a **מצוה** – גוזר במקום מצווה were not רבנן –

וכו הhayia da'at liha hoshuna achriyah ai'ca l'miyar d'shi' m'som m'zohah –

And similarly that case where he has another, hoshuna m'zohah because of the m'zohah³² (of 4 minim) –

The ר"י offers an alternate refutation regarding the hoshuna:

אי נמי הcy פירושו והא פסיק רישיה הוא דעתה ליה hoshuna achriyah –

גמריא also say; **this is the explanation** of the discussion there; the asked, ‘how can you remove the berries **for it is a?**’ **פס"ר** answers ‘**that he has another**’. This concludes the citation from the – גמריא

והואיל וכן שרי לרבי שמואל לא יצטרך לה ונמצא שלא תיקון כל' –

And since it is so (that **it is permitted according to ר"ש**) since perhaps he will not need **this** (from which he removed the berries), so it turns out that he did not ‘fix a utensil’ (but not [solely] because of – אין מתקון הדס) –

והלכץ לאו פסיק רישיה הוא³³ –

And therefore it is not a פס"ר **for no מלאכה was done at all –**

abel responds to an anticipated difficulty:³⁴

אבל לרבי יהודה אסור לצטרכ' לה ואגלאי מילתא דכל' עבד –

However according to ר"י it is forbidden (to remove the berries) **for perhaps he will need this and it will turn out that he made a utensil** after all –

³⁰ See ‘Thinking it over’ # 1.

³¹ The person donated wine to the fire; he is obligated to bring it on the fire, and is performing a מצווה when spraying it on the fire (even though he is [partially] extinguishing the fire).

³² When the gmaria there said it is permitted (even though it is a **פס"ר** since he has another, the **הדים** meant to say that since he has another it is a **פס"ר** **ולא ניח"ל**, and a **פס"ר** **ולא ניח"ל** is permitted [The case can be that another person who has no **הדים** may use the one from which he is removing the berries.]

³³ Removing berries from a **הדים** is not making a **כל'** (unless he needs it for a **מצוה**, which in this case he does not). Therefore no **מלאכה** was done at all (it is not merely **ולא ניח"ל** and **אין מתקון הדס** [see footnote # 27]).

³⁴ We are discussing a case where he has a **מצוה**, and we just said that it is not a **מלאכה** at all (see footnote # 33); why is this permitted only according to **ר"ש** (who maintains **מותר** even according to **ר"ב** (who maintains **איסור**)), since no **מלאכה** was done at all.

³⁵ This dispute between **ר"ש** and **ר"ב** is similar to their dispute regarding **הדים**. By we are not sure whether a **מלאכה** will be done or not (otherwise it is a **ר"ש**). **פס"ר** maintains since we are not sure, it is **מותר** (for he is **ר"ב**) and **ר"ש** maintains since there is a possibility of a **מלאכה** being done, it is **איסור**. Similarly by the **הדים** it is possible that he may not need the **הדים**, therefore it is **מותר** according to **ר"ש**. However it is possible that he will need the **הדים** therefore it is **איסור לר"י**.

In summation; the maintains there is an איסור סחיטה here by the stopper, either ר"י (which does apply to מפרק or משומם משקין) (since it is a מפרק, פס"ר, even though it is ניח"ל). (לא ניח"ל)

challenges the ruling of the that a עורך is permitted (ל"ר"ש):

על פירוש העורך קשה דעתן בפרק שמנוה שרצים (שבת זז קו, א)

And there is a difficulty with the העורך (that a פירוש העורך is permitted for we learnt in a **פרק שמנוה שרצים** in **משנה**) (ל"ר"ש)

המפייס מורסא בשבת אם לעשות לה פה חייב³⁶ ואם להוציא ממנה ליה פטור³⁷

One who bursts an abscess on, if he intends to make an opening (in the skin) **he is, but if he merely intends to remove the pus he is** - **פטור**

ודוקא משומם צערא פטור ומוטר אבל אי לאו משומם צערא היה אסור -

And he is and also permitted initially to burst this abscess (in order להוציאו) **only because of the pain** it causes him (if he will not open it up), **however if not for the pain he would be forbidden** to burst the abscess even פטור אבל אסור (for it is [either a or משאצל"ג a] which generally is ממנה ליה according to ר"ש) -

אף על גב דלא ניחא ליה בפה כלל³⁸ דאי ניחא ליה מן הפה כי לא מתכוין נמי חייב -

Even though he is not pleased with the making this at all, for if he would be pleased with the then he should be even if he is not חייב **פה** (but פה to make a פה since it is a פה. This proves that לא ניחא ליה is not a sufficient reason to permit something which is אסור (even מדרבן).

brings an additional proof that לא ניחא ליה is no reason to be מתר לכתהלה (tos' שבת) :

וכו מחת של יד ליטול בה את הקוץ³⁹ דשיי משומם צערא -

And similarly regarding that which the teaches **that one is permitted to take a sewing needle to remove a splinter** from the body (even though he may make a wound) **because of the pain** the splinter causes -

אבל אי לאו הבי אסור אף על גב דלא ניחא ליה כלל⁴⁰ -

However if not for the pain, it is forbidden even though he is completely not pleased with making a wound. Therefore the ר"י concludes that אסור זו is פס"ר דלא ניחא ליה (כלל).

³⁶ He is since he built an opening which serves the same purpose as a doorway.

³⁷ If his intent is only פתח (but a is formed nonetheless) he is considered להוציאו ליה. See Tos' שבת אין מתכוין לעשות פתח Nonetheless a will be made, so it is considered פתח אל לא ניקבה בעלמא קג, א, ד"ה לא. Who writes כל לבני הפחה אל לא ניקבה בעלמא פס"ר דלא ניח"ל. However he is not with this (see shortly in this), so it is a פתח. See "Thinking it over" # 2.

³⁸ לא ניחא ליה כלל perhaps writes to לא ניח"ל בפה כלל which is similar to מפסיקיא (see footnote # 21).

³⁹ קכוב, ב and שבת קו, א.

⁴⁰ According to the it should be even without עורך, since it is a עורך. See 'Thinking it over' # 2.

ר"י asks on the *תוספות*:

אבל קצת קשה אי פסיק רישיה דלא ניחה ליה אסור אמר רב בפרק חבית (שם כמה, א) -
is פס"ר דלא ניחה ליה However, there is a slight difficulty for if we assume that
פרק חבית regarding - why does rule in רב אסור

כבשים שסחטו לגוף פטו וモתר הוואיל ואינו צריך למים היוציאין -

Preserved (pickled) vegetables which he squeezed out the liquid from them, if he intends to eat **the** כבשים פטור he is (not only) (but is also) permitted to do so **לכתחלה**, since he has not need for the squeezed out water -

והשתא אף על גב דאיין צרייך היה⁴¹ להיות אסור⁴² -

But now that the ר"י says that פס"ר דלא ניח"ל אסור is so **even though he has no need** for the water **it should still be** – אסור

תוספות answers:

ואומר רבינו יצחק דמציאין למימר דזוקא כבשים שרי דהוי הנשחט מהש כמו אוכלא ואיפרת -

And the said that we can answer; that only by כבשים is it permitted, because the liquid which is squeezed out is considered like *food* which was separated from another food but not like *liquid* which was squeezed out from food-

ואין שם משקה עלייו כדאמרינו דאפיקלו למימיהם פטור אבל אסור⁴³ -

And that liquid **cannot** be considered as liquid at all, as **ר' ב** states **that even** if he squeezed them out because he wanted **the liquid** he is still (only) but **פטור אבל אסור** (**סחיטה משקין**) here at all, for otherwise if the squeezed out liquid is considered **asmakha**, why is he merely **אסור** it should be **חייב**.

סחיטה (משום ליבורן) will now offer another refutation to the proof of the ערוך that there is no תוספתה by other משקין, since we see that we are permitted to strain wine and there is no גזירה שמא יסחות, proving that there is no תוספתה בשאר משקין. Here תוס' rejects that proof:

ועוד יש לומר דכל דבר שאדם עושה במצויד לא שייך למינימר שהוא יסחוות⁴⁴ -

And in addition one can say; that anything that person does intentionally, it is not applicable to be concerned that perhaps he will wring it out -

⁴⁵ בדסבדה הוא בינו לדעתם בו הילא עוזרת לרבינו גבר משביגנו את פניו לא חמיישנו שם י'שוחט

For it is logical that he will not wring it, since he is doing it (whatever he is doing) **with forethought, and therefore regarding the straining of the wine we**

⁴¹ Others amend this to read **היה צריך להיות**

⁴² See ‘Thinking it over’ # 2.

⁴³ It is because since he considers it (he is squeezing it out **למיימיהם**), the **אין שם משקה עליו** (even though it is prohibited it for it is similar to **סחיטה**).

⁴⁴ See ‘Thinking it over’ # 3.

⁴⁵ He knows he is making it wet (and סחיטה is prohibited) and therefore he is conscious not to be טהור.

are not concerned that he will wring out the cloth since he is concentrating on the straining process -

ואתיא שפיר האי דנדה מערמת וטובלת בגדייה⁴⁶ (ביבר ז, יח, א) -

גゾירה (that we are making this distinction, namely that by there is no מזיד of the **רבה נדה will be understood**, for רב סכת נדה גمرا (סחיטה) since she is immersing her clothes **במזיד**).

שמא ישוחט offers an additional proof that by there is no מזיד of the **גゾירה**:

וכן בפרק ח' דיומא (ז, ע, ב) ההולך להקביל פניו רבו עבר עד צוארו במים -

And similarly in the eighth of פרק יומא teaches 'one who goes to greet his Rebbe on, **יום כפור** on, **he may wade through water up to his neck**' -

ולא גזרינו שמא ישוחט לפי שלדעת בן הוא עשה -

And we do not decree to prohibit it for perhaps he will wring out the water, the reason as mentioned previously is **since he is doing it willfully** there is no – גゾירה

להקביל פניו רבו נדה offers an alternate explanation for the cases of:

ועוד⁴⁷ **איכא למיימר התם מצוה שאני**⁴⁸ -

(And) [However] we can say; there it is permitted, **for a מצוה is different** and therefore there was no גゾירה.

גمرا cites an alternate explanation of our Tosafot:

ובערוך פירש לשון אחר⁴⁹ **מסוכרייתא דנזיותא סתיימת גיגית של שבר -**

And in the there is a different explanation; means the **ערוך** means **the plug of a vat of beer** -

אסור להדוקה דשמא תבטל הסתיימה אצל הגיגית ויעשה כלי בשבת⁵⁰ -

It is forbidden to tighten it for perhaps he will append the plug to the vat and he will make a utensil on **שבת**.

⁴⁶ The case there is where the woman (who is a נדה and has to be טובל but) only has clothes which are טמא (which will make her again after she puts them on after her טבילה), and she cannot be טובל them since it is ט (where it is considered טמא, nevertheless she can be טובל herself while wearing her clothes, and we are not concerned even for סחיטה). [There is no concern for חיקון mana for since she is immersing herself we may assume that she is not טהרה but merely to 'cool off'.]

⁴⁷ The Tosefta amends this to read מהרש"ל (instead of ומיהו).

⁴⁸ It is a מצוה to for a נדה to be טובל and to greet one's Rav.

⁴⁹ See footnote # 3.

⁵⁰ The vat previously had a hole in it and was not a complete vessel. However he may decide that the plug should remain permanently in the vat and become an integral part of the vat. By doing this he is making a utensil on **שבת**.

תוספות disagrees:

ואין נראה לרביינו יצחק דהיכי דמיadam בדעתו לבטל שם בשעת הנחה -

And the ר"י does not agree with this explanation of our; for how is this case, if he initially has intent to leave the plug there permanently when he inserts it -

מאי פסיק רישיה שייך כאן⁵¹ מיד הוא עושה כלי מתכוון לעשותו -

What kind of פ"ר is there here, since he is immediately making the utensil, for he intends to make it part of the vat -

ואם אין בדעתו לבטלה שם אם כן לא הו פסיק רישיה שייעשנה כלי⁵² -

And if he has no intention of leaving it there permanently, there is no that he will make it into a כלי.

uros attempts to justify the:

ויש לומר בדוחק שהוא מתכוון לבטלה ואיןו מתכוון לעשוות כלי⁵³ -

And with difficulty one can answer that he intends to leave it (it is a good storage place) there but does not intend to make a vessel -

ושייך ביה פסיק רישיה הוαιיל ואיןו מתכוון לגמרי לעשוות כלי:

So therefore the term פ"ר is applicable since he does not fully intend to make a vessel.

SUMMARY

According to ר"י there is an סחיטה because of by all ליבון. משקין we are not because it retains the odor even after the סחיטה. Alternately we are not גוזר משום סחיטה when it is done [במזיד]. According to the ר"ת is only by water. According to the ר"ת is איסור סחיטה. מותר is אין מתכוון פס"ר דלא ניח"ל. According to the ר"י איסור is it. According to the ר"ת איסור is. The of בונה according to the ר"ת (ור"ת) is on account of מסוכרייא.

THINKING IT OVER

1. The ר"י explains that (only) if it is a permitted. ⁵⁴ What then is the question on רב (who is a מתיר from the case of מסוכרייא) מזכה (where he prohibits it), for we can distinguish between בעלית מזכה (לבטלו) which is a (לבטלו).

⁵¹ The גمرا here states that the case of מסוכרייא is a מזכה. See 'Thinking it over' # 4.

⁵² He may decide to remove the plug and so no was done at all.

⁵³ See סוכ"ד that he intends to leave it there but he does not intend to append it (for that would be a בניין בידים).

⁵⁴ See footnote # 30.

and the **מִסְכָּרִיא**, where there is no **מִצְוָה**?!⁵⁵

2. The ruling of the ערכך (by our case of **דנזייתא**) is in a case of (he is merely tightening the stopper; he is not [consciously] wringing it out). It is (seemingly) only by פס"ר דלא ניח"ל that the ערכך rules that a אין מתכוון but not by a משאצל"ג. Therefore there is a twofold difficulty; a) what is the question on the ערכך from the cases of **מפוס מורה** and **מהט**,⁵⁶ which are (seemingly) cases of **לא ניח"ל** and **משאצל"ג**,⁵⁷ where (by) it always is (and not **אין מתכוון** nevertheless (all agree) it is)⁵⁸ אסור And b) asks a question on the (who maintains that if **כבשים** is from the case of **פס"ר דלא ניח"ל** it is **סחטן לגופן**) אסור is **פס"ר דלא ניח"ל** seemingly proving that a ערכך as the maintains.⁵⁹ However the case of **כבשים שסחטן** is not a case of **כבשים**, for he is actually squeezing the **משאצל"ג**; it is rather a **כבשים**.⁶⁰

גזירה writes that when someone does something intentionally there is no תוספות. However in the cases which mentioned previously where we are in, (אין מטבילין את הכלים andelongתית and אמת המים) (the case of wetting) גוזר שמא יסחות all these case he is doing (the wetting) בזיז, and nevertheless we are גוזר שמא יסחות?⁶²

4. פס"ר asks on the beginning of the **גמרא** (that it is called **פ' העורך**; why is it called **תוספות**)⁶³. Why did not ask from the beginning of the **גמרא** where it asked, ‘does maintain **רב** that it is called **עורך**?’ **רב** ruled by **דניזיתא מסוכרייה**, but **מושדר** is **אין מתכוון**? What is the question according to the **עורך**, since it is a **מתכוון**, not **מתכוון**?⁶⁴

APPENDIX

The difference between **משאצל"ג** and **אין מתכוין** is that by (even if it is a

⁵⁵ See מהרש"א.

⁵⁶ See footnote # 37 & 40.

⁵⁷ *תונס' שבת קוזא ד"ה וממאי* See.

⁵⁸ סוכ"ד אותן ל" (והלאה) and ח' רע"א.

⁵⁹ See footnote # 42.

⁶⁰ סוכ"דאות לג (והלאה) and אגלי טל (דש) סי' כז. See footnote 22.

⁶¹ See footnote # 44

⁶² See footnote 14.

⁶³ See footnote # 51

⁶⁴ See Toothot אדריש"א.

ר he has no intent to do the **מלאכה שאצל"ג**⁶⁵; however by a **מלאכה** he is doing the act of the **מלאכה** but not for the purpose for which this was used in the **מלאכה**.⁶⁶ משכן In the case of a **פטור מתכוין** by פט"ר, the **אין מתכוין** is no longer there; we consider it to be a **מתכוין** since it is a **פט"ר**. The question arises what happens when it is a **לא ניחא ליה**, does it still remain a **מתכוין** or since it is a **לא ניחא ליה** is it considered **אין מתכוין**.

If we maintain that even though it is **לא ניח"ל**, nevertheless it is still considered **פטור אבל אסור משאצל"ג** which is **מתכוין**, then a **פט"ר שלא ניח"ל** would be similar to a **פט"ר** which is **מתכוין** (this seems to be the view of the ר"י).⁶⁷

However if we maintain that a **פט"ר** removes the **לא ניח"ל** and he remains, there can be no **איסור** based on **משאצל"ג**, since he is **אין מתכוין**.

The marginal note⁶⁸ in **תוספות** may be adding that even if (generally) the **פט"ר** does not remove the **אין מתכוין** and it remains a **מתכוין** (which is **איסור**), nevertheless if it is **מופיס מורה** or **מוסכרא** as in the case of⁶⁹ **כל** [as opposed to a 'regular' **לא ניח"ל**]⁷⁰ [as in the case of the **חדר**]), then it reverts back to **מותר** **אין מתכוין** and it is **מותר**.

⁶⁵ In the case of dragging the chair, he has no intent at all to make a furrow in the ground; he merely wants to move the chair.

⁶⁶ In the case of digging a pit (which is the **מלאכה** of **בונה** because he wants some earth. He is consciously doing the **מלאכה** of **בונה** (like someone else who wants to build a pit), however his need is not for the pit but rather for the dirt.

⁶⁷ See footnote # 29.

⁶⁸ See footnote # 21.

⁶⁹ See footnote # 38.

לעולם רב כרבי יהודא סבירה ליה قولיו –

In truth; רב maintains as ר"י does, etc.

OVERVIEW

bowel initially in that it is permitted to be maintained; with the seemingly contradictory view of that it is forbidden. explains we can reconcile the view of that it is nevertheless with the view (according to רב) that it is maintained that it is allowed (ב"י רב).

לשמואל נמי אילא לשוני¹ לעולם כרבי שמעון סבירה ליה –

We can also present a proper reconciliation according to שמואל in truth; maintains as ר"ש does that it is nevertheless can maintain that it is forbidden to be maintained (as the rabbi maintains); the explanation is –

להך לישנא דעתם מיפקד פקיד לפתח הוא צרייך –

According to the option that the blood is encased (and there is no option), it is nevertheless, אסור, for he requires the opening (so it is because of בונה) –

ולחך לישנא דעתן חברו מחייב לדם הוא צרייך:

And according to the option that the blood is attached (and there is a clot), it is forbidden since he requires the blood, so he is nevertheless, אסור, since he is required to make a clot.

SUMMARY

אסור לבולInitially in that it is permitted to be maintained; nevertheless can maintain that it is forbidden. either because of בונה or חובל.

THINKING IT OVER

1. Why indeed did the גמרא only reconcile the contradiction of רב, and not that of שמואל?²
2. Which of these two resolutions is the more obvious (that of רב or of שמואל)?³
3. Is there a difference between the rabbi of שמואל and the rabbi of רב? **אסר**

¹ See 'Overview'.

² See שלמה.

³ This may answer # 1.

מאי¹ לאו דאי לא בעיל מצוי בעיל –

Is it not so, that if he was not, בעיל he can be בעיל

OVERVIEW

bowel בשבת בתקלה cites a ברייתא in an attempt to prove that one may be allowed for four nights until we allow him to be for four nights until according to ב"ה states that according to ברียתא means that if he was not until בעיל רב הсадא² מוצ"ש assumed that the he may be, including that he may be (for the first time) even ליל שבת בעיל. Our ברียתא explains why רב הсадא states that when we allow him four nights, it means even if he was not בעיל.

دلמא נקט עד מוצאי שבת³ –

Since for what reason does the mention 'until' in ברียתא –

אי לאו דאתא לאשמעין דמצוי בעיל בשבת אף על גב דמשיר בתולים –

If not to teach us that one may be, bowel (בתקלה) בשבת even though he is removing her – דם בתולים –

תוספות responds to an anticipated difficulty:

דליכא למימר דנקט עד מוצאי שבת לאשמעין דבעין רצופין⁴ –

For we cannot say that the four allotted days (which we are) to inform us that the four must be consecutive –

תוספות responds we cannot say the teaches us ברียתא –

זהא לא בעין שיהו רצופין כדתנייה בפרק בתרא דנדזה (דף ס"ב ושם) –

For there is no requirement that these four nights be, as we learnt in a מסכת נדה פרק ב' in the last ברียתא –

מעשה ונתן לה ד' לילות מתוק י"ב חדש –

¹ עמוד ב' references the גמרא on the very beginning of the following Tosfos.

² The simple meaning of the ברียתא is that he may be for four nights and we assume that any blood is מותרת (to him). However will explain why ר"ה assumed that this is not (the only thing) what the ברียתא is teaching us.

³ If the intent of the ברียתא was (merely) to teach us that we are for four nights, the should have just said ארבע לילות. The fact the ברียתא מוצ"ש indicates that the bowel בשבת בתקלה also teaches us that he may be.

⁴ We may assume that one is not permitted to be bowel בשבת בתקלה, and the is merely teaching us that he has four nights which we are. The reason the ברียתא writes מוצ"ש is to inform us that these four nights must be consecutive in order to be bowel. By writing מוצ"ש we know they are four consecutive nights; for בתקלה נשאת ליום הרביעי, ליל ש"ק וליל מוצ"ש, there is therefore there is.

'**There was a story where רבי allowed her four nights within a span of twelve months'**; it is evident that are not required, therefore we must conclude that the teaching us that – מותר לבועל בשבת בתוליה

responds to the difficulty:⁵

והכי פירושו נוגנין לה ד' לילות עד מוצאי שבת –

And this is the explanation of the four nights until ברייתא; we allow her four nights until – שיבעל בכל לילה וישר מקצת בתולים עד מוצאי שבת –

That he could be every night and partially remove her (each night) until – **מוֹצָעַשׁ** –

ואশמוועין דשיiri להשיר בתולים בשבת –

שבת on דם בתולים is informing us that it is permitted to remove ברייתא.

continues with the explanation of the ⁷גמרא:

ומשני לא לבר משבת ומוצאי שבת נקט לאשמוועין דבעינן רצופים –

משיר בתולים and בועל and responded; 'no, except for' (he cannot be **שבת** [רבא] [רביה], and the mentions to inform us that we do require **מוֹצָעַשׁ** ברייתא – **רצופים**) – **שבת** on **דם בתולים**

anticipates a difficulty:

והו מazi למירץ מרהייתא דפרק בתרא דנדזה דמוכה דאפיקו מפוזרים –

And the could have challenged this answer (that from the aforementioned **נדזה** of **פרק**, where it is evident that the **ל' דם בתולים** can be even spread out (over twelve months) –

נדזה in ברייתא responds; the did not ask from the ⁷גמרא

אלא דבריך לייה מגופה דברהייתא והא עד מוצאי שבת ארבעה לילות קתני⁹ –

But rather the preferred to challenge this view (that one may not be בועל **נדזה** of **פרק**, **משיר מקצת בתולים בשבת** ברייתא itself, as asked, 'but the states; four nights until', indicating that one may be as well.

⁵ We concluded that the cannot be just teaching us that she has four nights, for why mention **מוֹצָעַשׁ** ברייתא. On the other hand the cannot be just teaching us that ברייתא, for (then the would not say that all the nights are, and also) it seems that the is stating that one is בועל all the nights (before also).

⁶ There is no difference whether one is or if one is בועל בתוליה בשבת, it is either permitted by both or forbidden by both (see **מהרש"א**).

⁷ Once can, **ביה בשבת** how can inferred from the words **ברהייתא עד מוצאי שבת**, for then the question remains why mention **מוֹצָעַשׁ** at all.

⁸ The four nights end on **מוֹצָעַשׁ** and after that (even if he was not the three times) he can no longer be future blood in **דם בתולים**.

⁹ Since it states both **ל' דם בתולים** and this indicates that one may be all of the including **שבת**.

תוספות asks:

ואם תאמר מעיקרא דמשני לבר משבת מה עלה בדעתו והוא קתני בהדייא ד' לילות¹⁰ -

And if you will say; initially when answered, 'except for', what did he think, since the explicitly states, 'four nights' (which must include שבת)?!

תוספות answers:

יש לומר דהוה סלקא דעתין דהכי פירושו -

And one can say; that thought that this is the interpretation of the רבא - ברייתא נוותנייה לה עד מוצאי שבת לבר משבת שחון בין הכל ד' לילות¹¹ -

We allow her the the first night until, ליל שבת דם בתולים מוצ"ש except for which altogether is four nights from the first night (which is Wednesday night) -

ואיהו פריך דמשמע דעתך דבעיל ד' לילות -

And challenged this interpretation for the seems to mean that he was all four nights - בועל

ומשנוי כשבעל וכא משמע לו כמו שמספרש בתר הבי אף על גב דהוי פירצה דחוקה -

And answered that the case where he made a complete first night and the is informing us, as the shortly clarifies, that it is permitted to be on this even though it is it tight opening – ביאה גמרא

תוספות proves that (since it is a novelty) this is a novelty

דהא אי חזיא תלינו דם בתולין אפילו הבי שרי:

For if she sees by the we assume it to be שבת ביאה (meaning that he removed דם בתולים (by making a [פחה or חבורה], and nevertheless it is permitted.

SUMMARY

The four nights need not be consecutive, and therefore since the משנה mentions it proves that he is still משיר בתולים שבת on nevertheless it is permitted.

THINKING IT OVER

תוספות answers that thought that by there are ד' לילות merely means that by (but not than you can be).¹² However this seems too obvious that from Wednesday to there are מוצ"ש; why would the הנא mention it?!¹³

¹⁰ Even if רבא maintains מוצ"ש (which explains עד מוצ"ש), nevertheless indicates even שבת ד' לילות.

¹¹ See 'Thinking it over'.

¹² See footnote # 11.

¹³ See סוכ"ד אמר נא.

מאי קא משמע לו –**What is he informing us****OVERVIEW**

נוthin לו משנה of גمرا and רבא [רבא] regarding the dispute between אבוי and רבי הсадא (and the teaching us is also) according to בריתא. According to רבי הсадא (the teaching us) is אבוי. However maintains that he was already מותר לבעול בשבת בתקלה (a complete before שבת). The asks, if he was, what is the teaching us. גمرا **תוספות** qualifies the question of the teaching us.

When the asked it did not mean what the in general is teaching us,¹ but rather what is it teaching us -

במאי דנקט עד מוצאי שבת² דלענין רצופים לייכא למימר כדפרישית:³

With the fact that it mentioned why did the find it necessary to mention this, **for we cannot say** that the mentions regarding that the four nights must be consecutive, as I previously explained.

SUMMARY

The question of מאי קמ"ל is, why mention עד מוצ"ש.

THINKING IT OVER

Why does the ask this question (מאי קמ"ל) which according to means why does the mention 'עד מוצ"ש', now. Seemingly this was the whole proof of⁴ ר"ח and for some reason did not accept it,⁵ so why ask⁶ it?⁷

¹ The in general is teaching us that we can attribute all the blood during the first four nights to; that she is טהורה.

² If it is only teaching us the היתר (see footnote # 1), it should have merely stated omitting עד לילות.

³ See גדה in בריתא [TIE footnote # 4]. The teaches that we do not require רצופים.

⁴ See גדה מאי.

⁵ Ibid. maintains that teaches us רצופין עד מוצ"ש and he either did not know of the or felt it was not דהלהכתא, so what is the asking again?!

⁶ Or at least (if did not know of the [see footnote # 5]) mention the גדרה in בריתא.

⁷ See מהרש"א הארוך.

מי לאו דעתיך דברי למי בעל –

Is it not so; that he is preoccupied for he needs to be בעיל

OVERVIEW

ר' יוסף cited a משנה which states that a חתן is exempt from reading the שמע up to if he did not consummate the marriage. ר' יוסף assumed that he is exempt since he is preoccupied with the marriage. Our תוספות explains why previously ר' בא was able to establish a similar משנה that it excludes, but not here.

תוספות responds to an anticipated difficulty:

הכא ליכא לשינוי לבר משבת כדיעיל¹ אדם כן איינו פטור עד מוצאי שבת –

The could not have answered here that when the משנה stated גمرا it עד מוצ"ש meant except for as answered previously, for if indeed this is what the means, then he is not until, since he is obligated to read the שמע on שבעה –

וקא משויית ליה לתנא טועה דפטור ליה עד מוצאי שבת –

And you cause the to be mistaken for the exempted him all the days until – מוצ"ש

אבל לעיל אפיו כי אמרין לבר משבת ולא מצי למי בעל בשבת –

However previously (in the other of משנה even if we assume that it means לבר – שבת on בעיל and he cannot be משבת –

מכל מקום דוקא נקט עד מוצאי שבת ממשום דעתם לмотאי שבת תולין בדם בתולים –

Nevertheless the intentionally states (and we do not make the a תנא טועה by saying תוליה בדם בתולים מוצ"ש because until we are in a case –

היכא דעבר² ובעל:

Where he transgressed and was בעיל שבת on בעיל.

SUMMARY

It is not possible to say here because we make the משבת because we do not make the משבת regarding the טועה a תנא טועה since it can be discussing a case of עבר ובעל.

THINKING IT OVER

¹ Previously, on the top of this עמוד. In a sense it would be easier to interpret this משנה to mean (than the ע"ד מוצ"ש), since in this he does not mention (as in the other), only (ד' לילות) משנה.

² See 'Thinking it over' and 'Appendix'.

עד מוצ"ש states that even if we maintain it is necessary to say **לבר משבת** in a case where **רבא** and **בעל**.³ If indeed this is so then how did we refute that it cannot mean, **בעל ובעל** perhaps that means if he was **לבר משבת** but not that you may be **בעל בשבת בתילה**?⁴

APPENDIX

עד טועה answers that by **דם בחולים** we can say that the **תנא** is not a **טועה** for saying **עד מוצ"ש** since it refers to a case of **בעל ובעל**. Seemingly there is no need for 'tos' to establish it in a case of **בעל ובעל**. There is a difference between the two **משניות**. Regarding the **משנה** of **ק"ש** we cannot say **לבר משבת**, since the **משנה** states that he is **שבת** on **חייב** until **מוצ"ש**; however if it means **לבר משבת** then he is **טועה**, so how can you say **עד מוצ"ש**. In the **משנה** of **פטור עד מוצ"ש** however we can say that we grant the **דם בחולים** for four nights until **מוצ"ש**, except for **שבת**, meaning that for three of these four nights (excluding **שבת**) when he is **בעל** we are **לבר משבת**. Where is the difficulty??!

Perhaps we can say that the view of **(רבא לבר משבת)** assumes that **רוצפים** teaches us that it must be **רוצפים**.⁵ However, it cannot be (which must include **שבת** and disrupts the **לבר משבת**), if it extends until **מוצ"ש**. We are again making the **תנא** a **טועה**. Therefore 'tos' needs to answer that there is a possibility of **(לבר משבת רוצפים)** (even if we maintain because we are discussing a case of **בעל ובעל**).⁶

³ See footnote # 3.

⁴ See מהרש"א האריך.

⁵ See **תוס' ו א ד"ה מי**.

⁶ See (however) **ד' לילות** to mean **חי' בתרא או מה** who interprets **ד' לילות**.

ולא אמר רבי אבא אבל חייב בכל המצוות כולי –

But ר' אבא said a mourner is obligated in all the commandments, etc.

OVERVIEW

yet בעיל explained the reason a חתן from פטור is ק"ש if he was not stressed because he is stressed since he cannot be challenged. stress does not free one from his obligations to observe the commandments, as ruled that an אבל (who is stressed) is nevertheless obligated in all the commandments. Our אבוי explains why rejects the comparison to an אבל.

ואבוי סבר טירדא דלייכא מצוה כלל¹ מחייב –

And אבל maintains that by a stress where there is no obligation at all (as by an אבוי), there is an obligation to observe all the commandments –

אבל טירדא דלא מצי בעיל חשיב טירדא דמצואה² כיון שטרוד במאה שאינו יכול לעשות מצואה:
However the טירדא that he is not permitted to be considered on account of a stress, since he is stressed by the fact that he cannot perform the commandments, and for such a one may be exempted from observing the commandments.³

SUMMARY

differentiates between a personal stress (such as by an אבל), and a stress of not being able to perform a commandment.

THINKING IT OVER

What is the difference between the חתן who (according to Tos' Pesahim) is exempt from ק"ש since he is that he cannot be considered טרוד⁴ and a person who is טרוד since he cannot put on תפילה; would that exempt him from reciting ק"ש?⁵

¹ The stress of an אבל (once his relative has been buried) is of a personal nature; he is not prevented from doing (as in the case of the חתן).

² See ‘Thinking it over’.

³ This may be similar to the case of the man exempt from the commandment of *tzitzit*; here too this stress of not being able to be considered (somewhat) as an *observant* person.

⁴ See footnote # 2.

⁵ See footnotes 4 & 5.

חוין מן התפילין שנאמר בהן פאר –

Except for תפילין; regarding which it states, פאר

OVERVIEW

פסוק taught that an תפילין is obligated in all the מצות except for ר' אבא since the refers to it as תוספות (splendor). פאר discusses how this explains that an אבל is exempt from donning תפילין.

ואמרינו בפרק בתרא דמועד קטן (ז"ט, א) מדאמר ליה רחמנא ליחזקאל¹ פארך חבוש עלייך – And the states in the last of פרק גمرا, since the merciful One said to תפילין ‘put on your splendor’ (meaning your

מכלל דלעלא אסור² –

It is inferred from this that for everyone else it is forbidden –

תוספות cites a seemingly differing opinion:

ובקונטרס דפירוש שנאמר בהן פאר ואבל מעולל בעפר קרנו וראשו³ –

אבל, פאר as תפילין explained that since the verse refers to רש"י should not wear them since the radiance and the head of an אבל is dirtied with dust; seemingly indicating that the reason an אבל does not wear תפילין is because it is not appropriate to expose the עפר on his head (but not that we derive it from the explanation that indeed (even) agrees with פארך חבוש עלייך). פארך חבוש עלייך responds that we derive the reason from the פטור of פסוק ואבל מעולל בעפר קרנו וראשו –

הינו ליתן טעם דלא נילפ' שאר מצות מתפילין –

Is to give a reason why we do not derive other from מצות and say just as the תוספות is תפילין from רש"י, מצות he is also from other תפילין, therefore פטור is אבל unique since it is a and therefore inappropriate to have it on an אבל.

asks:

ואם תאמר ומאי שנא לגב תפילין אמרינו דזוקא ליחזקאל נאמר ולא לשאר אבלים –

¹ מהمد ענייך במגפה told ה' יחזקאל (meaning his נבייא wife), but nevertheless should not mourn. [This was a symbolic prophesy that there will come a time where there will be so many deaths that there will not be a chance to mourn for all of them.] Among the things he was told was פארך חבוש עלייך, the term refers to תפילין, and since told him (that a part of his not mourning is) to wear his תפילין, this indicates that a ‘regular’ mourner is not to wear תפילין (for if every mourner can wear, why the need to instruct that he should wear תפילין).

² According to פארך חבוש עלייך we derive the prohibition for an תפילין to wear from the mere fact that תפילין is referred to as (פאר). See ‘Thinking it over’.

³ See אירב ז, ט.

And if you will say; and why is there this difference; that regarding we assume that the statement of פארך הבוש עלייך was said only to יחזקאל and not to other mourners (for they are forbidden to wear - תפילין) -

וגבי תלמוד תורה לפינן שאר אבלים מיחזקאל -

אבלים from that the other are the same as יחזקאל - **דאמריין** (שם) אבל אסור בתלמוד תורה מדאמר ליה רחמנא ליחזקאל האנק⁴ דום⁵ -

For the states there, 'an אבל is forbidden to study since the merciful One said to יחזקאל, 'refrain (be silent) from sighing'.

תוספות answers:

ויש לומר דלאסור גמרין דמדאסטר רחמנא ליחזקאל לכולי עלמא נמי אסור -

And one can say that regarding a prohibition we derive from, that since the merciful One forbade from ה"ה, it is also forbidden for everyone else -

אבל להתייר לא גמרין דליה לחודיה למשורי אתה:

However to permit wearing we cannot derive from יחזקאל, for the verse comes to permit **יחזקאל** exclusively to wear, but not anyone else.

SUMMARY

פָּסָק פַּאֲרֵךְ הַבּוֹשׁ **תוספות** insists that we derive the אבל of תפילין from the איסור of פארך הבוש (but is obligated in all other cases), since יחזקאל told ה' not to mourn and wear his מצות. However a mourner is just as forbidden in both cases.

THINKING IT OVER

פָּסָק פַּאֲרֵךְ הַבּוֹשׁ insists that we derive the אבל of תפילין from the איסור of פארך הבוש (and interprets רשב"י עלייך to agree with this as well).⁷ However our merely states that an אבל אסור בתפילין because they are called (without mentioning the general rule of יחזקאל in פסוק here)?!⁸

⁴ In our text in מ"ק the word האנק is omitted. (It is mentioned previously in regard to the ruling that an אבל is אסור because he is not allowed to speak during the period of mourning.)

⁵ We derive from the word דום – to be silent – that he may not engage in the study of תורה which requires speech.

⁶ The general thrust of this was that יחזקאל should not mourn (like a regular mourner, see footnote # 1), therefore when ה' instructs him not to mourn by wearing תפילין, it is understood that this refers only to יחזקאל (but other mourners are forbidden from wearing תפינילין); however when the תורה forbids him to study (as part of mourning; meaning that יחזקאל must keep this rule of mourning) it (certainly) applies to all other mourners as well.

⁷ See footnote # 2.

⁸ See footnotes ס"כ דכיא מירא יעקב, ס"כ דכיא מירא יעקב, ס"כ דכיא מירא יעקב.

והני תנאי כי הני תנאי –

OVERVIEW

The Gemara states that the dispute of the two (whether the bridegroom is permitted to be the same as we find in another) (whether it is permitted to be the first to be married on Shabbat) (who does not subscribe to the view of Rav Avi's in light of the fact that there is a related stress on Shabbat whether one is permitted or not).

תוספות anticipates a difficulty:

אף על גב דפלייגי תנאי בהדייה בהכי –

Even though that the **תנאים** argue explicitly regarding whether it is permitted to be the first to be married on Shabbat (and was aware of it) –

מכל מקום דחיק אבי לעיל¹ דחשיב טירדא דמצוה הא דלא מצוי בעיל –

Nevertheless previously persisted that the fact that he cannot be the first to be married on Shabbat is considered a related stress –

תנאים responds; the reason did not establish the ruling according to those is –

דניחא ליה לאקוומי מותניתין² כשמואל³ אסור לבועל –

For it was preferable for to establish that אבי to do the work (of) marriage according to שמואל, who forbids to be the first to be married on Shabbat.

shows how important it was to establish the ruling of Tosafta:

ומוקי נמי פלוגתא דבריתא אי חשיב טירדא הא דלא מצוי בעיל –

And also established that the dispute of the two (whether the bridegroom is dependent on whether we assume that not being able to be the first to be married on Shabbat) (not like him) is preferred that interpretation of the argument of the two, rather than interpreting that they argue whether it is permitted to be the first to be married on Shabbat or not. The reason for this preference is –

¹ The previous on this cited a which stated that a is until פטור מק"ש חתן if made by someone who is not like him; proving that it is permitted to be the first to be married on Shabbat. responded that it is not like him and the reason he is stressed out since he cannot be the first to be married on Shabbat. This answer of אבי is somewhat questionable, since we are not certain whether (a) we can consider this a (חזה ר' טירדא), and (b) whether this can be considered a to the extent that it should exempt the bridegroom from ק"ש [see Tos' ד"ה והוא]. It would have been simpler if just said that this follows the view of those who maintain that the bridegroom follows the view of those who maintain that the bridegroom is the first to be married on Shabbat.

² It is a halacha and the is (usually) like a change of name; the would contradict the view of שמואל.

³ See 'Thinking it over' # 1 & 2.

כדי לאוקמי כשוואל כל מה שיכל:

In order to establish the ruling of (that it is **שוואל) as much as possible.**⁴

SUMMARY

preferred (whenever possible) to offer a dubious answer (of which nonetheless establishes the according to **שוואל** בתקלה בשבת), rather than saying there are (other who disagree with **שוואל** תנאים).

THINKING IT OVER

1. **שוואל** like who prefers to establish the various **תנאים** like **אבי** maintains the **שוואל**, since we know that **הילכתא קרבת איסורי**?⁵ Firstly, why does follow the ruling of **אבי**?⁶ Secondly, previously⁷ the had two versions regarding the views of **אבי**; why does assume one of these versions?⁸
2. There is the version of **רב נהרעדא** who maintain that it is **רב** who is of the opinion that **אסור לבועל בתקלה בשבת**. Would that view also be contradicted from the **משנה** of **חתן פטור מ"ש אם לא עשה מעשה**?⁹

⁴ **אבי** prefers to establish as many **משניות** and **ברייתות** according to the view of **שוואל**, therefore explained (wherever possible, as long as it does not state clearly in the **ברייתא** that it is **שוואל** בתקלה בשבת) that all agree that it is **אסור לבועל בתקלה בשבת** and the respective arguments are whether not being able to be considered a **טרדה דעתה** or not.

⁵ See footnote # 2.

⁶ See (**ג"ד ז**) in the **מהרש"א**.

⁷ **ג, ו** on the top of the **עמוד**.

⁸ See **אילת האביבים**.

⁹ See (**רשות ש פנ"י**).

לא כהלו בבלים שאין בקיין בהטיה¹ –

Not like these Babylonians who are not acquainted with *Hatoyoh*

OVERVIEW

רבא. לבעול בתחום בשחתה הרים cited a ברייתא which stated that the permitted חכמים גمرا explained that refers to ר"ש, who maintains that a חכם asked but it is a רבא, to which responded פסיק רישיה. The continues with the dialogue between אבוי and רבא. Our leads us through this dialogue.

פירוש² אינו פסיק רישיה³ דכל העולם אין כמו בבלים אלא בקיין הוא –

The explanation of this answer is that it is not a for everyone is not like the but rather they are (mostly)⁴ – בקיין בהטיה

הילך שרי והוא למיבעל בלבד שלא יתכונו לבועל בעילה גמורה –

Therefore it is permitted for them to be provided they do not intent to be a complete בעילה בעיל (without which would be a and be אסור פס"ר)

explains the continuation of the question:

ופrisk אם כן טורד למה פירוש⁵ בשבת אמר פטר ליה לעיל מקראית שמע כיון דבקיאין הוא –
'And asked why is there a stress'; the explanation of s' question is why the exempted the בקיין from reciting שבת on ק"ש (not during the weekdays), since they are בקיין בהטיה.

explains אבוי's question:

¹hem in the heat is a certain manner of performing *biahah* without extracting the blood.

²there will be by saying 'פירוש' is perhaps negating an alternate explanation that since people are no at all rejects this (for [there is always the possibility that there will be **dm** and mainly] why therefore is there an opinion that it is since he is **dm** and there will be no **dm**) and explains that since it is not inevitable that there must be **dm**, therefore it is not a **dm** and is even if there is a possibility that there will be **dm** (as long as he does not intend to be **dm**). *בעילה גמורה* a *בעיל*.

³ The phrase is asking rhetorically; can you chop off its head and it will not die?! admits that in a case where the will inevitably be done there is no exemption of *malachah*. However if one is he can be without being **dm**, so it is not inevitable that he will transgress the *chaborah* of *malachah*, therefore since he is **dm** in the heat to be *shabbat* *moher lemtala* it is **ain matcovin lehovza** **dm** is *beuil*.

⁴ See later in the that גمرا.

⁵ The question certainly requires clarification; why should the fact that they are diminish the of טורד [during the weekdays when there is no need for *hatoyoh*]. Therefore offers his *פירוש*.

בשלמה בחול איכא טירדא לפי שמתקיון לבועל בעילה גמורה -

Regarding the (exemption from reciting ק"ש on the) **weekdays it is understood**
that there is stress, since he intends to be בעיל (without) **הтиיה** **ביהא** -
ואף לבקיאין יש טירדא לבועל בעילה גמורה -

And even for the experts (in הטייה there is טרידא) (and therefore he is טריד במצוות פטור מק"ש since he is טריד).

- בעיל בעילה גמורה (בקי טירדא) goes on to prove that there is (even for a **דרבן גמליאל** היה פטור ומחמיר על עצמו - **כదאמר בפרק שני דברכות** (דף טז, שם) **דרבן גמליאל היה פטור ומחמיר על עצמו** -

As the states in the second of **פרק משנה**; that **ק"ש פטור ג' מסכת ברכות** was from **ק"ש חתן** even though he was a stringent on himself -

אף על גב דבקי היה שלא היה בבלוי -

Even though he was a בקי since he was not a בברי, nevertheless he read ק"ש [only] as a but not that he was legally obligated; proving that even for there is a טרדה בקיין otherwise if there is no טרדה for a בקי then he should be obligated (without any חומרא). This explains why on the weekdays the חתן is פטור מק"ש since he is טרוד בעילה גמורה - בעל שבת שאינו מתכוון בעילתה גמורה טרוד למה?

טרדא what is there to exempt him from reciting ש"ג - **שברת** where the חתן has no intent to be בעיל גמורה on however

ומשנינו לשאינו בקי פירוש⁸ לפי שאינו בקי בשעת קריאת שםע -

And the **answered** ‘there is a **טרדא** to the one who is not a **בקי**; the explanation of this answer is **that** even the **בקי** is not a **בקי** at the time when one is obligated in **ק"ש** -

דאפילו הבקיאין בשעת מעשה קודם מעשה יראים שלא יהיה בקיайн הילך טרודים כולם:
For even the time of **בעילה**, however before the act (when it is the time to recite **ק"ש**) they are concerned that they will not be **בקיאין**; therefore **everyone is טרוד** at the time of **ק"ש**.

⁶ One may have assumed that someone who is not well acquainted with the intricacies of will be before his (first) ביאה (even) ביאה should certainly not have any difficulty with a ‘regular’ תוספות. ביאה rejects this notion and maintains that everyone is by a ביאה טרייד גמורם.

⁷ We are now assuming that there is less **בעיל** **בהתיה** **טריד** to be (since it is not a **בעיל** **בהתיה**), than to be **בעיל** a **בעיל** **גמורה** (because he is forbidden to be, it is understood why he is **גמורה**). According to that the **טריד** is because he is forbidden to be, then in any case it is not understood; if he is not a **בעיל**, however according to that he is permitted to be **רבד**, then in any case it is not understood; if he is not a **בעיל** since it is a **פס"ר** and should be required to recite **ש"**, and if he is a **בקי**, and is being **בקי**, he is forbidden to be **בעיל** (which is [presumably] easier than a **בעיל** **גמורה** [see beginning of this footnote]), there is no **טריד** **בהתיה** (**בעיל** **בהתיה** **טריד** **בקי**"**ש"**).

⁸ With the word בקי here, גמרא's answer is rejecting the more obvious explanation of the s' that there is a טרידא (only) for the בקי. See 'Thinking it over'.

SUMMARY

There is no פטור מק"ש (on שבת) since they are still פס"ר (since בקי אין בהטיה); however they are still פס"ר (since they are not confident in their בקיאות). There can be more by a טרדה than בעילה גמורה by the heat.

THINKING IT OVER

explains the answer גمرا' s' to include everyone (even the בקי).⁹ Why did not explain the גمرا' simply that the טרוד is אינו בקי (but not the בקי)?!¹⁰

⁹ See footnote # 8.

¹⁰ See ק"מ שטמ"א מהרש"ג.

רוב בקיין הן –

The majority are experts

OVERVIEW

The question of אב"י's question is (not a continuation of s' question on the view of רבנן) referring to the ruling of the (who follow בעיל בתקלה בשבת that it is permitted to be). The question is why do we permit everyone; we should only permit those who are but not those who are not since it is a **פס"ר**. The first explains how **רוב בקיין הן** answers the question, and then discusses the veracity of this statement that **רוב בקיין הן**.

וכל חד וחדר מספקינו ליה ברוב וכולם מותרים¹

And regarding each individual there is a reasonable doubt that he is part of the majority who are, and therefore all are permitted to be.

poses the grounds for a question:

משמעות הכא דרובן בקיין בהטיה –

It appears from this that the majority of people are in the majority.

asks:

ואם תאמר דאמרינו בפרק ב' דחגיגה (ז' יד, ב' ושם) בתולה שעיברה מהו לכלהונה³ –

And if you will say; for we learnt in the second regarding a known pregnant; what is her status regarding marrying a – כהן גדול

explains how is that we assume that she is still a **בתולה** if she is – מעוברת

כגון שבדקה על פי חבית ולא היה ריחת נוזף⁴ –

For instance that they tested her on the opening of a barrel of wine and there was no scent of wine coming from her mouth. The query –

מי חישין לדשモאל דבר י colonies לבעל כמה בעילות بلا דם או דלמא באבטוי עיברה –

Are we concerned for what many without extracting since she is a or perhaps she became pregnant in a bath without having any relations to a man (and she

¹ See ‘Thinking it over’.

² The term מושע would seem to be inappropriate, since the states clearly that **רוב בקיין הן** גمرا.

³ The there states מהו לכלהן גדול, who must marry only a **בתולה**.

⁴ See later on ב' that we can verify whether a woman is a **בתולה** or not by this test.

⁵ A man may have issued in a bath, and later this **שכבה ורעד** in the bath and became pregnant.

is therefore since she is still a **בתולה** even though she is pregnant).

ומסיק דש mojoal לא שכיח -

דם בוועל **גמרא'** **שמואל** said (that he can be without **什么是**) **uncommon** and we assume that she was; seemingly indicating that it is uncommon to be **without being** **בஹטיה** – מוציאו **דם** **בஹטיה** without being **בஹטיה** –

בעילה בהטיה offers another example testifying to the rarity of **תוספות**:

ובפרק בתרא דעתה (דף ס"ב, שט) **נמי קאמר שאני שמואל**⁶ **דרוב גבריה הוא -**

And in the last also states; **גמרא'** **שמואל**, **分歧 נדה** **מסכת נדה** **פרק** **הו** **different for he is very capable**, indicating again that it is unusual to be **without being** **בஹטיה** – **דם בתולים** **בஹטיה** **הוא אמרינו הכא דרוב בקייןון הו -**

But here the majority of people are; **בקייןון** **גמרא** **states that the majority of people are**; how can we reconcile these seemingly contradictory **גמורות**?!

תוספות answers:

ויש לומר דש mojoal היה יכול לבועל בעילה גמורה שאשה מתעbaraת בו בלי דם -

And one can say; that was able to be a complete that will impregnate a woman without extracting – **דם בתולים** **אבל בהטיה אין אשה מתעbaraת -**

a (**רוב בקייןון** **הן גמרא** **הטיה** (regarding which the here states **הטיה** **with such a woman will not become pregnant** from such a **ביהה** **הטיה** –

ולהכי בהחיה דגיגיה ליכא למיחש בהטיה אלא לדש mojoal:

And therefore by that case in **בתולה** **was pregnant there is no concern** that she became pregnant through a regular **הטיה**; she could become pregnant **only** with the type of **הטיה** **שמואל** **which** was capable, and that is uncommon.

SUMMARY

We assume that each person is part of the **הטיה**. **רוב בקייןון** **בஹטיה** **_only_ was able to impregnate a woman**.

THINKING IT OVER

Can one who does not know⁷ that he is **בקייןון** **בஹטיה** (by assuming he is part of the **הטיה**)?⁸ **(רוב בקייןון** **בஹטיה** **be** **בקייןון** **בஹטיה**)

⁶ The **גמרא'** there cited the aforementioned statement of **שמואל** that he can be **without being**.

⁷ See footnote #2.

⁸ See footnotes 7 and 8.

אלא מעתה שושביניו למה מפה למה –

But now; why the chaperons, why the cloth

OVERVIEW

The asked, now that we say רוב בקיין בהטיה what is the purpose of having theدم (for the חתן וכלה) and what is the purpose of the cloth to check for שושביניין (within the כתולים)? There is a dispute between Tosfot רשי and as to the explanation of thisגمرا.

פירוש בקונטרס כיון שהן בקיין לבועל ולא דם שמא יטה והיא לא تسיק אדעתה שהטה –
בקיין לבועל explained question (of they are), (אלא מעתה since they are) without extractingدم, there is the possibility that perhaps he will be, and it will not enter her mind that he was, so of what avail is the שושביניין and מפה since he can falsely claim טענה בתולים (for he was and there was no) –

ומשנני דשושביניין ומפה הם שאם לא יטה ויבועל בעילה גמורה ויאבذ המפה –

And answered that the purpose of the shushbiniin and mafe is in a case where he was not and was not and he may destroy the shushbiniin; mafe in a case and he may destroy the shushbiniin; mafe will see to it that this does not occur (this concludes the פרש"י גمرا [and the associated with it]).
concludes –

אם יטה ויאמר שלא מצא לה בתולים יכולה לומר עדין בתולה אני –

And if he will be and claim that he did not find mafe, she can claim, 'I am still a batolah'. This concludes פרש"י.

תוספות disagrees:

וקשה לרביינו יצחק דאיינו מתרץ ממה שהקשה לו¹ –

רבא בר רשי has difficulty with the question, for the does not answer what asked of him –

דחווי ליה לשנויי דמסקא אדעתה לומר עדין בתולה אני ועייר התירוץ חסר מן הספר –

For should have answered that she has the presence of mind to claim, 'I am still a batolah' (which mentions and the גمرا does not), so the main answer is lacking in the text!

תוספות offers his interpretation:

¹ The always knew that can help when there was a shushbiniin and mafe; that was not the question. The essence of the question is that cannot protect her from a swindler who will be and will claim 'batolah' (which mentions and the גمرا does not). The answer to that question is that we are not concerned, for she can counterclaim, 'I am still a batolah' (and she can prove it with the chavita shel yin, etc.). This answer is not mentioned in the גمرا.

ונראה לרביינו יצחק כפירוש רביינו تم דזוקא משבת קא פריך דמפה וושוביינן למה -
And the ר"ת prefers the explanation of the why the question of need for ר"י when מפה וושוביינן there is no need for שבת when שבת takes place on שבת.

דציריך לבועל בהטיה³ דמעשה⁴ בכל יום שעושים שוביינן אפילו בשבת -

Since (on it is necessary to be (and there will be no בעיל בנטיה) (שבת שבת; but for what purpose since there will be no for they are בעיל בנטיה!
ומשני שמאiarע שלא יטה ויבועל בעילה גמורה ויאבד דם בתולים -

And answered that perhaps it may happen that he will not be and will be if not for the מפה וושוביינן **דם בתולים a בעיל**

תוספות concludes that it is appropriate that the question is regarding only:⁵

והויא דומיא דטוריך⁶ למה דפריך⁷ נמי משבת:

For then this question of מפה למה is similar to the previous question of בטול בנטיה, which was also asked regarding שבת only.

SUMMARY

The question of מפה was not what the purpose of the מפה is on weekdays (as ר"י explains), but rather why is the מפה necessary for בטול, since the בטול must be done בנטיה.

THINKING IT OVER

writes that on שבת it is necessary to be שבת⁷ From the previous⁸ Tosafot writes that on שבת it appears that even though it is permitted אין בקי since he is considered part of the רוב. However since he is not בקי, perhaps therefore the שוביינן and מפה are necessary!⁹

² However regarding the weekdays there was never a question, for (either) they are always בטול גמורה and the בטול גמורה are necessary (and even if he is בטול there is no difficulty for (as ר"י writes) she can always claim בטול אני).

³ See ‘Thinking it over’.

⁴ Others amend this to דמעשי.

⁵ For seemingly from the גמרא it does not appear that the question of מפה למה is only regarding שבת.

⁶ See on this חות' ד"ה לא [TIE footnote # 5].

⁷ See footnote # 3.

⁸ בד"ה רב.

⁹ See סוכ"ד אות עב מהרש"ל.

אם לעשות לה פה חייב – If in order to make an opening for it, he is liable

OVERVIEW

The Gemara cites a mishnah which states that if someone, when bursting an abscess, intends to make an opening for the abscess; he is liable for transgressing an אסור (prohibited). [However if he only intends to release the pus he is exempt.] Tosfos תוספות לאוריתא explains what is this opening and why he is liable.

דפתח¹ זה עשויה להכניס ולהוציא להכניס אויר² ולהוציא ליהה:

For this opening is made to bring in and to take out; meaning **to bring air into the abscess and to remove the pus** from the abscess.

SUMMARY

An opening must serve a dual purpose; to remove and to bring in, and meets this requirement.

THINKING IT OVER

Do (this) and ³"רש" agree as to the meaning of **לה פה**? ⁴לעשות לה פה

¹ The one who is doing the פה חייב for **לה עשויה למלאכה** is building a **פתח** (an opening). However a proper opening requires a dual purpose; to bring things from the outside, inside into the opening, and to take things out from inside the opening. Tosfos תוספותexplains that this opening (of the מושם) also has a dual purpose, and therefore it is considered a **פתח** and he is חייב.

² His intent (by bursting this מושם) is not merely to remove the pus (as in the case of **לה** **ליהה** **ליהה** **מן** **מן** **מן**), but rather he also wants that air should come into the מושם, in order that it should dry out and heal properly.

³ **בש"ד אם**.

⁴ See סוכ"ד אות ג.

וְאֵם לְהוֹצִיא מִמֶּנָּה לִיחָה פָטוֹר –

And if it is to remove the pus from it, he is exempt

OVERVIEW

(לבעול בהחליה בשחת שמוואל challenged the ruling of that it is forbidden from a **ר' רב אמי** which states that one is permitted to burst an abscess on **שבת** in order to remove the pus. Here too by **בועל בעיליה** he should be permitted to be even though he [either extracts **dem** or] makes an opening, just as he is permitted by **מפייס מורסא** even though he [removes pus and blood, or] makes an opening. **הוספות** clarifies the question and answer in the **גמרא**.

בפרק שמנה שרכיזם (שבת זז, ב' ושם) מוקמינו לה כרבי שמעון¹ -

In ר"ש משנה גمرا פרק שמונה שרצים the establishes this **according to** who maintains that a פטור (אבל אסור) is מלאכה שאינה צריכה לגופה.

² וסלקא דעתיה דרביAMI דמותיב דסם מיפקד פקיד ולודס הוא צרייך ולא לפתח -

And ר"א who challenged שמויאל initially assumed that the דם in בותלים is encased (so there is no issue of חבורה), and he also assumed that the דם requires the בועל, but not the opening; in which case making the opening is a משאצלי"ג -

ואפִילוּ הַכִּי אָסֶר שְׁמוֹאֵל כָּרְבִּי שְׁמַעְנוּ³ דָּהֵי מְלָאָכָה שָׁאִינָה צְרִיכָה לְגֹופָה⁴ -

ר"ש And nevertheless, **prohibits** שמואל following the view of, **because** ביהה בתחלת שבת, **for it is considered** a **משאנצלאג**; this is how **understood** רב אמי - שמואל

¹ אסור ממשום בונה שאצל"ג is for instance where one digs a pit (which is בונה) but he only needs the dirt and not the pit. Here too by פתח he is making a hole (which is בונה) by bursting it; however he does not need the hole but only to rid himself from the pus. According to ר' יהודה who maintains that a g^ר is forbidden משאצל"ג (just as one is forbidden to be a מדאורייתא (just as one is forbidden מדאורייתא). However according to ר' שופר בור וא"צ אלא לעפירה to be a מדאורייתא where he is alleviating his pain, the challenges were harsh but nevertheless permitted it even lenient and permitted it even lenient. In any event since ר' א challenges from this view, which follows the view of ר' ש (by a g^ר משאצל"ג), it will be necessary to assume that (according to ר' א agrees with ר' ש by a g^ר. See however later in this footnote # 12 that agrees with ר' י that one is forbidden משאצל"ג.

² See ‘Thinking it over’ # 2.

³ See that שמואל agrees with וְשָׁ.

ולהכי פריך ממפיס מורסא דכי היכי דלהוציא ממנה ליהה פטור -

So therefore he challenged from the case of מפסיק מורסא that just as by

shmoal if his intent is to remove the pus, the rules that he is מפסיק מורסא

וקיימא לו⁵ דפטור ומותר כיון שאין צריך לפתח -

And we have established that in this case of he is (not only) but also, since he has no need for the pus; it is a משאצל"ג

אף על גב דשאר מלאכה שאינה צריכה לגופה פטור אבל אסור במורסא שרי משום צער -

פטור אבל אסור משאצל"ג even though that by other, the ruling is that it is permitted because of the pain it causes -

הכא נמי משום מצוה הוילו לו למשרי⁶ -

Here too by we should permit it because this בעילה is a מצוה

offers another option:

ועוד אףלו שרין משום צערא טפי משום מצוה כדפירים ובינו תם לעיל⁷ פריך שפיר -

And even if we assume that there is more reason to be on account of, than on account of a ר"א, **מצוה** as the explained previously, nevertheless has a proper challenge to shmoal -

זהכא ודאי זהוי פסיק רישיה לעניין פתח אי לאו משום צערא היה אסור -

For here by where there certainly is a regarding the פס"ר פטח צער if not for the (therefore we need the to be) -

אבל גבי בעילה אית לו למשרי אף על גב דליך צערא -

However regarding בעילה בשבת, we should permit it even though there is no צער -

כיון דלא הוילו פסיק רישיה לעניין פתח -

Since there is no regarding making a פטח (even though פס"ר פטח) -

כיון דאפשר להוציא דם بلا עשיית פתח⁸ כדמות לעיל⁹ (ז"ה, ב) -

For it is possible to remove the without making a as is evident previously גمرا"ג. This was the challenge of ר' אמי.

continues explaining the answer of the גمرا"ג:

ומשנין הכא פקיד ולא עקייר דקסבר דם חבירי מיחבר¹⁰ -

⁵ שבת ג, א.

מתיר משום מצוה (פס"ר פטח) we should similarly be משאצל"ג.

⁷ שבת ד"ה ל"ד [TIE footnote # 8].

⁸ is arguing that if a (where there is a) is permitted, משום צערא (פס"ר פטח) then by a (where there is a) משאצל"ג (where there is a) is permitted, משום צערא (פס"ר פטח) even without the intention of it being permitted. See 'Thinking it over' # 1.

⁹ See [TIE footnote # 4].

¹⁰ According to the ר"ת (there) (ה, ב' ד"ה ל"ד) it is a מלאכה הדריכה לגופה, and according to the ר"י (the) (ה, ב' ד"ה ל"ד) אסור מדאוריתא.

And the blood גمرا **answered; here** בעיליה by the blood is indeed **encased**, however **it is not separated** from the body, **for** שמואל **maintains that the blood** דם **is attached** to the body and there is the issue of חבורה. This concludes the answer of the גمرا.

תוספות comments:

והוא הדין דהוי מצי לשינויו דלפקת הוא צרייך -

And in truth פתח the could have answered that he requires the גمرا (and not [only] the דם) and therefore it is a case of בונה and it is a case of מלאכה הצריכה ל גופה and the body is attached to the body.

אלא לפי מי דקימ ליה דלדים הוא צרייך¹¹ משני ליה -

However, the חתן answered according to the conviction of ר"א that the requires the **blood** and not the **body**.

תוספות asks:

ותימה דהא שמואל במלאה שאינה צריכה לגופה סבר לה רבוי יהודה¹² -

And it is astounding! For regarding that it is agrees with ר"י שמואל, משאצלי"ג - אסור מה"ה

כדאמרינו בפרק הנחנקיין¹³ (ז' פה, א, ושם) ובפרק כל התזריר (זבחים ז' צב, א) -

שמואל states in ר"א how can challenge in פרך הנחנקיין and in פרך התזריר from the ruling of ר"ש, when maintains like?!

תוספות has an additional question:

עוד דמדבר שאין מתכוין דשיiri רבוי שמעון הוה ליה לאקשויי¹⁴ -

דבר דבר should have challenged from the rule of a גمرا - לכתלה it permits ר"ש, שאין מתכוין

ולא מלאכה שאינה צריכה לגופה¹⁵ כיון דרוב בקיאין ולא הוי פסיק רישיה:

בעיליה בשבת (for, משאצלי"ג) שמואל, from a case of גمرا is a case of אין מתכוין, and since פס"ר so there is no and he should be permitted. מותר does not answer these two questions.

it is a a (according to ר"ש) אסור מדרבנן and משאצלי"ג.

¹¹ See 'Thinking it over' # 2.

¹² See footnote # 1.

¹³ A marginal note amends this to (شبת) פרך כירה מב, א.

¹⁴ agrees with ר"ש (when there is no פס"ר).

¹⁵ A means that he is doing the act of the malacha, but not for the purpose for which the malacha was intended (as it is by בניין or by בונה; he is doing an act of החופר גומא וא"צ אלא לעפרה respectively). However here by he is not intent on making a פטה at all since דם (and there is no issue of חבורה since פקיעת קידוד). It is possible that as a result of his action he may make a פטה הואה צרייך inadvertently (but not necessarily, since רוב בקיאין אין מתכוין so it is a regular פס"ר, without a ר' ש, which is מותר לר' ש). See footnote # 4.

SUMMARY

לدم (חברה no) assumed that (so there is no **ר' אמר**) maintains (dem מפקד פקיד). He therefore challenges from the where it is at most either a (but not so it is at most either a **ר' אמר**). (אין מתכוין משאצל"ג). (**ר' אמר** מוכיח משאצל"ג) (because of [even though it is a **ר' אמר**]), similarly here it should be (either because of a or because there is no **ר' אמר**). It would have been more appropriate to challenge based on **ר' אמר** than on **ר' אמר**.

THINKING IT OVER

1. מותר במקום צURA is it פס"ר (a where there is) a rule should be that (by a פס"ר where there is no it should be even without **ר' אמר**).¹⁶ Seemingly if it is not a **ר' אמר** how can it be considered a (at most it is)?¹⁷

2. In said that initially assumed that **ר' אמר** and dem מפקד פקיד. In the answer however we assume that **ר' אמר**. The could have answered that **ר' אמר** קיים ליה that, but it did not want to change the initial view of **ר' אמר**.¹⁸ The obvious question is that we are changing the initial view of regarding dem מפקד פקיד! What is the difference whether we change the view of **ר' אמר** to dem מפקד פקיד or from **ר' אמר** to dem מפקד פקיד?¹⁹

¹⁶ See footnote # 8.

¹⁷ See footnote # 4 & 15.

¹⁸ See footnote # 2.

¹⁹ See footnote # 11.

²⁰ See ק"ט שטמ"ה and **כטא שלמה**.

מתוק שהורתה לצורך –**Since it was permitted for a need****OVERVIEW**

is חבורה since is מותר לבועל בטהלה ביו"ט ruled רב פ"א assumed the reason for a need, it is also permitted when there is no need. תוספות qualifies this leniency of 'מתוק', that there must be some need.

פירוש¹ לצורך אוכל נפש² הורתה נמי שלא לצורך אוכל נפש

The explanation of the phrase 'מתוק שהורתה לצורך הורתה נמי שלא לצורך' is, that since a person is permitted **for the sake of** providing **food** for a **person**, it is also permitted even if there is **no need of** food - **אוכל נפש** -

ובלבך שיהא צורך הנאת היום או צורך קיום מצוה ביום טוב -

Provided that a need of enjoying the day, or a need to fulfil a mitzva, which needs to be done **on** Yom Tov, offers examples of this. - צורך קיום מצוה ביום טוב, יומ"ט

כהחיא דהווצאת³ קטן למולו⁴ וספר תורה לקרות בו ולולב לצאת בו (ביצה זז, יב, א) -

Like those cases of taking out a קטן **into a** רה"ר **in order to circumcise him**, and taking out a **to read it**, or taking out a **to fulfill the mitzva** ס"ת רה"ר **לולב** to a **ב"ה** which the permit -

אבל שלא לצורך היום כלל לא כמו הווצאת אבניים⁵ דמייחיב -

However if there is no need at all, like taking out stones, it is not permitted, and he is liable (מליקות) for doing a חiyib (מליקות) **ב"ה**.

שלא לצורך היום כלל offers another example of this. -

והאופה מיום טוב לחול לרוב חסדא דבר לוקה (שם זז כא, א) משום דלית לייה הואייל⁶

And similarly one who bakes on יומ"ט **for the weekday, according to** ר"ח **who maintains that he receives** ר"ח **מליקות**, since does not agree to the היתר of the **הואייל** of baking, therefore baking is אסור **לזה**. **לוקה** (מליקות), and therefore he is liable.

¹ The term here is negating the view that applies even when there is no need as mentioned shortly.

² These include the likes of מבשר, מושחת, מבער, etc.

³ Carrying on Yom Tov in a place where we utilize the היתר of the **הואייל** unless there is need.

⁴ The there (merely) states that ב"ה is מתר to carry out a קטן, לולב וס"ת (without any qualifications); however this maintains that we may carry them only for the **הואייל** (even though this is not part of קטן [like יומ"ט מצוה]). See later in (footnote # 17) that according to the **ר"י** one may be even liable for carrying a קטן even though there is no need.

⁵ See the there (ביצה זז, א) that all agree that it is אסור.

⁶ רבנן, there, maintains that one who is **אופה** מיום טוב **לזה** (he is cooking after he finished his meal and does not intend to eat any more on Yom Tov) for we say that since some guests may come to him on Yom Tov and he can serve them the food he is baking, and he will not be liable, therefore even though no guests actually came, nevertheless he is liable. This is the היתר of the **הואייל**. However does not subscribe to this, therefore if one is **אופה** there is no need, and he is liable.

ושחיתת עולת נדבה⁷ דשרי לבית הלו (שם זט, כב⁸) -

And regarding the ruling of ב"ה who permit offering an עולת נדבה on י"ט, where there is seemingly no צורך היום –

תוספות responds:

הינו משומש שלא יהיה שלחן מלא ושלחו רבץ חסר⁹.

That (עלות נדבה) **is permitted in order that it should not be** a situation where **your table is full** (there is ample food for all), **and your master's table** (the מזבח) **is lacking** (because there are no – עלות נדבה) –

Another anticipated difficulty (in the opposite direction):¹⁰

ומוצא חמץ בתוך ביתו דאמירין בפרק קמא דפסחים (זז ו, א ושת) דכופת עלייו כלוי -

And regarding one who finds חמץ in his house on פסח, where רב states in the first מסכת פסחים פרה מ. that he covers it with a utensil so he should not eat it -

ולא שריינו לשורבו משום מיתוך ¹¹ -

So why do we not permit him to burn the חמץ on account of מתוק; for there is a tzorach kiyom matzah b'yeretz?

תוספות responds:

הינו משומן דאסור לשורפו מדרבנן משום מוקצתה דאסור לטלטלו¹² -

That is because it is forbidden מדרבן to burn it, for it is מוקצה which is forbidden to be moved –

חוספות rejects an alternate solution to this question:

אבל אין לומר דבר דאיירி בשבייטלו -

However we cannot answer that the case of כופה עלינו כדי is where he was the מבטל and therefore there is no צורך מן התורה to burn it, this is not so - חמץ

⁷ An עולת נדבה is completely consumed on the הנאה for the person, and this of bringing a קרבן ב"ה certainly need not be done today; it can be done another time (as opposed to תינוק למול וכו'). However, this allows to bring the פנוי עולת רג'ל קרבן (the one is required to bring when he is to fulfill the ראייה עולת ראייה) without the need for this קיום מצות היום, so there is no issue regarding דברים (ראה) צ"ז [see ה' ריקם according to ב"ה].

⁸ This is amended to read ב,א.

⁹ Therefore it is permitted even though we do not say in such a case (since it is **אש**). Alternately, since it is inappropriate to have **אשורך** for **רבד חסר**, it becomes a **ש מהת י"ט**.

¹⁰ צורך קיום מסווג ביו"ט מתוך הטענה שמדובר (ולא רק בנסיבות מסוימות) בנסיבות המבוקש.

¹¹ One is obligated to destroy his *rav* (continually) whenever he finds it on *nos* in his possession.

¹² See ‘Thinking it over’ # 1 & 2.

דמכל מקום מדרבן מצוה לשורפו והוא צורך היום -

For nevertheless, even if he was חמצץ מבטל the **מצוה** to burn it and this would be considered a **צורך היום** which would allow us to burn it on account of מהות -

דבמצוה דרבנן נמי שרינו היכא דaicא למיימר מתוק¹³ -

For by a which we are obligated to do on יו"ט, we would also permit doing a **WHERE WE CAN APPLY** the **היתר** of מלאכה.

זהה דפלייגי בית שמאי ובית הלל anticipates an additional difficulty:

ואה דפלייגי בית שמאי ובית הלל (ביצה ז, יב, ב) במבשל גיד הנשה ביום טוב ואכלו -

And that which argues regarding one who cooks a **ב"ש** and **ב"ה** argues where -

דלבית שמאי דלית להו מתוק לוקה ולבית הלל דאית להו מתוק אינו לוקה¹⁴ -

According to who do not agree with **ב"ש**, he is and according to who maintain **מתוק**, he is not; how can we apply here; since this is a forbidden food there is no **צורך היום** -

זהה דפלייגי בית שמאי ובית הלל responds:

צריך לומר אף על גב שלא חשיב אוכל נפש¹⁵ משום איסור רכיב עלייה -

It will be necessary to answer, even though that on one hand it is not considered because of the prohibition which is 'riding' on the **גיד הנשה** (which explains why he is according to **ב"ש**) -

מכל מקום צורך היום הוא כיון דאכילת ליה -

Nevertheless it is considered since he is eating it (it satiates his hunger), so he is not [only] on account of **מתוק** according to the **ב"ה**.¹⁶

זהה דפלייגי בית שמאי ובית הלל discusses various cases whether they are **צורך היום** or not:

ונראה לרביינו יצחק דהוזאת תינוק לטילו הי צורך היום¹⁷

And it is the view of the ר"י that carrying out a child to play with him is a **צורך היום -**

¹³ See ב"ה who explains that one is permitted to carry out a child without any qualifications; meaning even if it is one of the later days of סוכות where the **מצוה** is only מדרבן.

¹⁴ If cooking this is considered since he is eating it, there is no need for (and **ב"ש** should also be מתר, if it is not considered since it is a **אוכל נפש** for it is a **אכילת אסור** **צורך היום**).

¹⁵ That is why it is to cook the **יתר** of **צורך היום**.

¹⁶ He had in mind to eat it when he cooked it. See Tosfot ביצה ז, ב, ד"ה היכא.

¹⁷ The ר"י maintains that the **צורך היום** which is required does not necessarily have to be **צורך שמחה** (as mentioned previously in that it needs to be **לצורך מצוה** [or **לצורך הנאת היום**] **תוספות** but rather any **צורך היום** (as taking out a child **לטטייל שמחה** **יו"ט**). See footnote # 4.

ומיהו הוצאה לצורך נכרי נראה דאסור -

However it seems that carrying out something into a רַחֲרֵךְ for a gentile's need is forbidden¹⁸ –

תוספות finds a discrepancy in this ruling:

ומה שנגנו עתה להוציא לצורך נכרי היה נראה לרבי שמשון בו אברהם -

And initially¹⁹ it was the view of the רשב"ת that the reason for the custom nowadays to carry out something for a gentile is -

משמעות הראשונות דידו לא היו אלא כרמלית²⁰ דאיו רחביו ט"ז אמרה²¹ -

- אמות ברמלה because our is only a ברמלה since they are not wide sixteen

וְגַם יֹם טוֹר לֹא נִזְבֵּן²² -

– שורה גוזר ברכז ה' פ' did not decree not to carry into a (as they were for –

ישנה חופה מ' י"ט offers proof that we are more lenient by than on:

בְּבִיאֵי דָלָא מַפּוֹ רֶבֶנוֹ אַיְרוֹבִי פָּצִיּוֹת²³ **בְּיוֹם גּוֹרָה**²⁴

Just as the רבני עירובי הצירות did not institute יו"ט, similarly they were not the ones who instituted יו"ט.

² יונ"ט או עירובי חזרות offers a proof that the did not institute תוספה רבו.

בדומה בריש פסק שמי דביצה (ז"נ) באמור יט' צוב שול לחייב ערב שבת גולין²⁵

ברייתא מסכת ביצה פרק where the second seems in the beginning of the second states if a ערב שבת occurred on י"ז ט"ו, etc. -

רבי אומר מארביו עירובי חצירות אבל לא עירובי תחומיין²⁶ -

¹⁸ This (minimal) which is sufficient is only if it is לזרר ישראל, but not גוי.

¹⁹ See later in this *tosafot* (by footnote # 34 [in the text]).

²⁰ A רשות כרמלית is a right which does not qualify for either a ר' or a כרמלית. According to law one is permitted to carry in (and out of) a כרמלית that one may not carry from either a ר' or a כרמלית. However, the were that one may not carry from either a ר' or a כרמלית into a כרמלית and vice versa, as well as not carrying in a ד' אמות כרמלית.

²¹ We derive from the word "ברָה" in the verb מִזְבֵּחַ in the times of the משכני that the width of the **ברָה** is (at least) sixteen ס"מ.

²² איסור an סקילה (where there is an איסור) is more stringent than on השם (where it is ‘only’ an שם), therefore the were by a במלmitt only on השם, but not on השם.

²³ עירוב הצירות is the Rabbinic requirement to make an **עירוב** (placing food from all the members of the household in one place) to allow carrying on **שבת** from private domains (an apartment, for instance) to a shared domain (the common hallways of the building) which are all **מדרבנן רה"י**. Otherwise, one may not carry from one to another (**רה"י** which belongs to a different party or parties).

²⁴ עירובי החירות even if no רשות was made.

²⁵ עירובי החומין or עירובי הזרות ק"ה there maintains that in this situation we are not permitted to make either שבתה (which is שבת for the sake of י"ט, because we are preparing something on י"ט, which is not for the sake of י"ט (but rather for the sake of שבת which follows it).

²⁶ עירוב תחומי allows the person to walk an additional two thousand אמות (two thousand), from the place where he placed the עירוב (which must be within a תחום שבת where he is currently residing).

- עירובי החומין but not maintains one may make, עירובי הצירות but not lfpi sheatah osoro b'daber ha'asur lo²⁷ וαι אתה אוסרו בדבר המותר לו²⁸ -

Because you may prohibit him in something which he is already prohibited, but you cannot prohibit him in something which he is already permitted²⁹ -

אלמא לא תקון עירובי הצירות ביום טוב והוא הדין דלא גוזו בכרמלית³⁰ -

It is evident (from the statement that the did not) (ויאי אתה אוסרו בדבר המותר לו) institute the same applies that they did not issue a decree against carrying in a cemetery, therefore nowadays where there is no רה"ר on כרמלית, it is permitted to carry into a cemetery only a cemetery מדרבנן even כרמלית only.

יו"ט on ע"ה anticipates a difficulty with the aforementioned that there is no additional:

והא דקימא לנו בפרק אמרו לו³¹ (כritisot dz, a, osom) ובפרק קמא דבריצה (dz, ib, a, osom) -

And regarding this which we have established in and in the first מסכת ביצה of פרק -

דיש עירוב והוצאה ליום טוב³² -

That there is on עירוב והוצאה; יו"ט presumably referring to ע"ה, which contradicts this which just assumed that there is no (need for) - יו"ט on עירובי הצירות

replies:

נראה דיירי בעירובי החומין³³ -

It seems that the term there means עירובי החומין but not עירובי הצירות.

In summation; the maintains one is permitted to carry on even יו"ט רשב"א, since today there is no cemetery by a gozor אסור הוצאה were not רבן, only a cemetery רה"ר דאוריתא, and the were not cemetery יו"ט on ע"ה just as they did not require יו"ט on ע"ה.

The retracts his previous statement that we may carry for a נזכיר רשב"א:

ושוב חזר בו דמচצר שאינה מעורבת אין למדוד ממנה הכרמלית דחמיר טפי

²⁷ יו"ט on עירובי החומין תחום (שבת) even, therefore one cannot make עירובי החומין.

²⁸ This (seemingly [see later footnote # 40]) means that since on יו"ט one is permitted to carry from one to another without שבת, therefore one is permitted to make for עירובי הצירות.

²⁹ Since עירובי החומין (even for שבת) is considered preparing something (which is אסור); however since there is no need for עירובי הצירות (for שבת) is not considered as one is preparing something substantial, since it is permitted today even without ע"ה.

³⁰ See 'Thinking it over' # 3.

³¹ See רשב"ש who deletes the words 'בפרק אמרו לו' (for there the the discusses, and [additionally] the there concludes אין עירוב והוצאה ליה"כ).

³² There is an ע"ה on יו"ט on אסור הוצאה מדרשות לרשوت.

³³ שמות (in פסוק) תורתה ע"ה are more stringent than עירובי הצירות, since there is some support to עירובי החומין (איסור תחומיין אל יצא איש מקומו) (בשלוח) צ, כט.

And later the retracted, for we cannot derive a leniency by a from כרמלית **since the laws of** החר שאליה מעורבת **are stricter**³⁴ **than the laws of** כרמלית **כמו שפירשתי**³⁵ **במסכת שבת** (ז"ק קייז, א) -

As I explained in מס' שבת.

רישב"א presents an additional difficulty on the הוספה:

עוד נראה זהא דקיימה לנו דיש עירוב והוצאה ליום טוב בעירובי חצירות מיידי³⁶ -

And additionally it seems that this which we have established that there is עירובי החומין **for it is referring to** (and not to **עירובי חצירות** as the claimed previously) -

עירובי חצירות refers to עירוב ליום טוב proves his point that:

מצבעי למיין בפרק אמרו לו (כritisות ז"ק י"א ושות) **דאין עירוב והוצאה ליום הקפורים** -

Since the wanted to derive in, that there is no פרך אמרו לו גمرا **on עירוב והוצאה** (that one may carry on י"ט

מדתנן התם אם היה שבת והוציאו בפי חייב³⁷ -

From the which states there that rules if י"ט ר"מ occurred on a and he carried it out with his mouth, he is liable for an additional for transgressing the this extra if it is a regular, which occurred on a weekday; indicating that there is no איסור הוצאה י"ט on איסור הוצאה -

וכן בבייצה (ז"ק י"ב, א ושות) **בעי למידך דאין עירוב והוצאה ליום טוב** -

עירוב And similarly in where wanted to infer that there is no מסכת ביצה י"ט **on והוצאה** -

מדשו בית הלל להוצאה קטן ולולב³⁸ -

Since permitted to carry out into a a minor or a רה"ר **ב"ה** In both places the even though the discussion is (only) about אין עירוב והוצאה וכו' said גمرا - הוצאה

והיינו עירובי חצירות דהשתא מוכח לה שפיר מדשו הוצאה -

So we must say that the there means עירוב **for then** (if it can be properly proven that there is no for either י"ט or י"ט, since **הוצאה is permitted** it follows that ע"ה are also not required -

³⁴ The case teaches that in the case of a fire one is permitted to carry objects from the fire to a different place. However even though the discussion is (only) about אין עירוב והוצאה וכו' said גمرا, it permits to take it even into a different place; proving the chazur is more stringent than the leniency of the ramah.

³⁵ See there תוס' ד"ה שלש.

³⁶ Therefore there is no basis for the leniency of the ramah (even if the ramah would not be more stringent than the leniency of the ramah), for there is no leniency (even regarding חצירות).

³⁷ The ramah states that it is possible to eat one and be liable to bring four korbanot if he eats a fifth. The ramah adds that he can be liable for a fifth.

³⁸ This is not a valid proof because ב"ה can maintain that it is permitted because of מתוק.

דלא גרו רבנן עירובי חצירות אלא משום הוצאה³⁹ -

For the requirement did not decree the need for רבנן **only because** they were concerned about **הוצאה**. It therefore follows if there is no need for **ויז"ט** or **ויז"כ** (on) איסור הוצאה (there is no need for **הוצאה**). Therefore the says גمرا **אין עירוב חצירות והוצאה וכו'** -

אבל עירובי תחומיין אין עניינה להוצאה -

However the requirement for ע"ת has no connection to הוצאה. So when the lumps together גمرا **עירוב והוצאה** it must be referring to **ע"ת**.

уетו responds to the anticipated difficulty:⁴⁰

והא דקאמר ואי אתה אוסרו בדבר המותר לו היינו משום דמותר להוציא⁴¹ לצורך:

And that which the said (regarding the ruling of that רבי גمرا **ע"ת** 'but you cannot prohibit him in something in which he is permitted', that is because he is permitted to carry out into the **for a need**, because of מותך, but not that there is no need of **ע"ת** **ויז"ט** **ע"ת** **דין** **ויז"ט** (where there is no need at all)).

SUMMARY

לצורך שמחת היום is only if it is not מותך (the day) even if it is מותך according to the **ויז"ט** **ע"ת** **ויז"ט** (R"Y) laws apply to us as well and we are not permitted to carry **לצורך נכרי**.

THINKING IT OVER

1. writes that we cannot burn חמץ on **ויז"ט** since it is מוקצת⁴². However one is permitted to move חמץ, מוקצת **לצורך אוכל נפש** so why do we not say regarding the איסור **שהותרה לצורך אוכל נפש הותרה נמי לצורך מצווה** (that מוקצת (which is only a **דרבן**) as we say regarding **איסור דאוריתא**?!?)⁴³

2. May one burn חמץ on **ויז"ט** if he does not move it,⁴⁴ so there is no איסור of מוקצת?⁴⁵

³⁹ The were concerned if we would allow people to carry from their private residences (which is a רה"י) to a common area where many people have a right to be there (which makes it similar to a רה"ר [even though legally it is a רה"ר], people may mistakenly assume that we may carry from a רה"י to a (real) רה"ר).

⁴⁰ If on **ויז"ט** we are also prohibited from carrying without an רשות לרשות, what did רבי mean when he said one is permitted to make an **ע"ת** on **ויז"ט** since **אי אתה אוסרו בדבר המותר לו ע"ת** (see footnote # 28), since on **ויז"ט** there is also the requirement for **ע"ת**.

⁴¹ See 'Thinking it over' # 4.

⁴² See footnote # 12.

⁴³ See 'ות' ל' סוכ"ד.

⁴⁴ See footnote # 12.

3. According to initial view that there is no גזירת כרמלית **תוספות** is one **יו"ט** on **גזירת כרמלית** even if it is **שלא לצורך כלל** is permitted to carry into a **yo"t** on **כרמלית** ?⁴⁶

4. concludes that the meaning of **ויאי אתה אוסרו בדבר המותר לו** means that it is if it is **לצורך**, for then we say **מזה**.⁴⁷ Seemingly we should also say regarding **עירובי החומין** (for what is the difference); so why does say regarding **ע"ת** that **ע"ת** **אתה אוסרו בדבר האסור לו**, since by **ע"ת** we should also say as we say by **ע"ח ע"ח?!⁴⁸**

⁴⁵ ש"ע אדם"ז שם סעיף ה' ובקו"א שם ס"ק ב in and ש"ע או"ח סי' חמ"א ברמ"א ובמג"א ס"ק ג'. See footnote # 30.

⁴⁶ See footnote # 30.

⁴⁷ See footnote # 41.

⁴⁸ פנ"י מהרש"א האריך and.

אלא מעתה יהא מותר לעשות מוגמר¹ ביום טוב –

But now it should be permitted to make *Mugmor* on *Yom Tov*

OVERVIEW

מותר לבעול בתחלה ביו"ט (who ruled that it is permitted on account of מותך), if you are permitting the on account of בעילה מוגמר, you should also permit on account of מותך. Our discussion *Tosafot* discusses the view of רב פפי regarding מותך.

תוספות asks:

ואם תאמר לדידיה נמי תקשׁי וכי לא סבר דאמירין מתוֹךְ הא טעמא דברת היל הכוי הוּא² -

And if you will say; the same question (which **רַב פְּפִי** asks **רַב פְּפִי**) applies to **מִתְוֹךְ מִתְוֹךְ** הַיְתָר, since **רַב פְּפִי** agrees that we use **מִתְוֹךְ** of **מִתְוֹךְ**, for **רַב פְּפִי** does not agree that we use **מִתְוֹךְ** as well, for the reason **ב"ה** – **י"ט** allow carrying out on **ב"ה**

תשובות answers:

ויש לומר שהיה סובר דעתמא דבית הלל משום דין עירוב והוצאה³ -

And one can say; that thought that the reason ב"ה permits carrying out (א' ב"ה, עירוב הצירות ב"ה maintain there is no need for ב"ה because קטן וכוכ' prohibition against carrying out on ב"ה (ז"ט, however (even - מותק do not agree to ב"ה

צדקה סלקא דעתך מיעיקרא בביאה -

– אין עירוב והזאה בין טהור ורבה, מסקת ביצה that מותר ב"ה only because initially assumed in ביצה

הוספה responds to an anticipated difficulty:

אֵל גֶּבֶדְתָּם פְּרִיךְ עַלְהָ⁴ דְּלָמָא לְרַב פְּפִי לֹא שְׁמִיעָה לָהּ -

Even though there challenged and refuted **this** view of (so how can we say that follows this view?) responds; **perhaps did not hear this** refutation (and/or disagrees that it is a refutation) and (therefore) still assumed that the reason of ב"ה is because of אין עירוב והוצאה, but not on account of מתו"ר.

תוספות offers an additional answer to the original question:

ועוד יש לומר שהיה סובר הותרה שלא לצורך ובלבך שיהא דבר הרגיל -

¹ See רשי"ד "ה מוגמר"; they would burn spices over a fire in order for the clothes to absorb the pleasant scent from the smoke of this fire.

² תוספות ד"ה are the reason because, as in previous cases, the permit carrying out in to the house is מותר [TIE footnote # 3].

³ See ‘Thinking it over’.

⁴ asked if the reason of ב"ה is because one should be permitted to carry out stones (which [presumably] all agree that it is prohibited to carry out stones on ט"ז).

מתוך And additionally one can say; that also assumed that ב"ה maintains that the extra (היתר) is needed (צורך), provided that this applies to something usual as carrying out a child, etc. (but not regarding ב"ט - ביאה בთילה ביז"ט)

ולחכמי פריך זה אין רגיל⁵ טפי ממוגמר:

And therefore is in the beginning ב"ט asked that this רב פפי asked that this רב פפי is not more common than, מוגמר, and just as you permit (the uncommon) in the beginning, you should also permit making יי"ט on מוגמר (which is equally uncommon), which we know is prohibited, so too should also be prohibited.

SUMMARY

Either assumed that רב פפי maintain ב"ה or he assumed that ב"ה is only by something which is common but not by ב"ה ומוגמר.

THINKING IT OVER

According to the first answer that רב פפי assumed the reason to permit the additional reason ב"ה because they do not agree to ב"ט (but they do not agree to ב"ט),⁶ how can we explain the difference between ב"ה and ב"ש regarding ב"ט?⁷ המבשיל גיד הנשה ב"ט⁸

⁵ The gemara responded that we do not require a common צורך (regular) but rather a which is needed by all דבר השווה לכל נפש, regardless if it is common (which applies to ב"ה); however is not מוגמר שווה לכל נפש.

⁶ See footnote # 3.

⁷ See TOSFOS D"HE MATOK and previous BEITZA 14.

⁸ See מהרש"א (הארון).

אמר ליה אנא דבר הצריך לכל נפש קאמינא וצבי צריך לכל נפש –

He said to him; ‘I said something which is necessary for all people, and a deer is necessary for all people’

OVERVIEW

explained to **רְבָא בריה** (slaughtering) a deer for eating is something in which all people are equal, since they all need to eat; however (making a fire for) pampered people and is not **מוגמר**. Our **צְרִיךְ לְכָל נֶפֶשׁ** discusses whether **בֵּיאָה** is a **תֹּוסְפָּה**.

וְכֹן בִּיאָה -

And similarly ביאה מתוֹךְ, therefore we can say regarding and consequently it is מותר לבועל בתולה ביו"ט.

תוספות asks:

וקשה לרביינו יצחק דאמר בסוף פרק ב' דבריצה (דף כב.) מהו לכבות הנר מפני דבר אחר¹ -

And the R"Y has a difficulty with this idea that we say regarding מותך; **for** asked of, what is the ruling whether it is permitted to extinguish a lamp because of בד מרתהא - דבר אחר אביה בפיו;

ומסיק דאסור הא הכא שרי משוען דאריד לכל נפש -

And concluded that it is prohibited to extinguish the light; **but here it is permitted** to be **since** something which is **because** ביאה is something which is בועל ב ת |חלה ביו"ט, and, **צרייך לכל נפש** מותק שהותורה כיובי לצורך² אכילה הותרתה נמי שלא לצורך, similarly there we should also say, מותך since ביאה and it should be permitted!

תשובות **תוספות**:

ויש לומר דהכא דוקא בעילה ראשונה דמצוות היא³ דהוי צורך מצות היום -

And one can say that only here where it is the first ביאה, which is a מצוה, so it is מותך צורך מצווה for this day, that is why we can say - מותך

אבל שאר בעילות אין כל בד אורך היוס⁴ -

However the rest of the בעילות (after the first) is not considered that much of a צורך היום, for he can do it another time.

¹ נדה ז,א is a euphemism for תשMISS המטה. It is forbidden to have תשMISS when there is light (see נדה ז,א); The question was can one extinguish the light on ש"ז in order to have תח"מ.

² See *ירח עקיבא* that one is permitted to roast meat on coals even though he is extinguishing (some of) the coals.

³ **מוס' ד.א ד"ה בעילת מצוה**

offers an alternate answer:

ועוד יש לומר דברי הנור מפני דבר אחר הוи כמו מכשירין⁵ דאפיקו באוכל נפש אסור -

And furthermore one can say; that extinguishing a candle because of like which (regarding it) is forbidden even if it is for אוכל נפש – מכשירין (and we certainly cannot apply the ruling to מותך

proves his point:

וכן מוכח⁶ התם דפרק עלה מהא דתניא דמכביע את הבעת כדי שלא יתעשן הבית -

And this concept is also evident there, for the there challenges the view of that the the which states that we may extinguish a log in order the house should not smoke up, so why cannot we extinguish the candle for -

ומשנוי היה רבי יהודה היא דשרי מכשירי אוכל נפש⁷ כי קאמינא לרבענו:

And answered; that is according to ר"י who permits doing even if it only מכשירי אוכל נפש, however I gave my ruling prohibiting according to the who prohibit רבענו.

SUMMARY

שאר צורך מצות היום (which is a certainty a מצוה (but rather than a בזבילה)) (as opposed to מלאכות which are only מלאכות (and certainly do not say by such which are מלאכות such as מותך). **ד"א** for כבוי הנור, מכשירין for ביאה).

THINKING IT OVER

writes on his second answer that it is מוכח⁸. Why therefore is this (merely) the second answer and not the first (and why is the first answer altogether necessary)?

⁵ אוכל נפש or ‘preparatory’, refers to actions which do not actually provide us with the (such as making a fire or cooking), but rather enable us to prepare the food for eating such as building an oven, chopping wood, etc. These are forbidden on י"ט even for אוכל נפש. [See (however) עיי"ש, Tos' ביצה כב, א, ד"ה ההוא.] Similarly the מלאכה of extinguishing the lamp merely enables one to do the ביאה of מצוה and is considered as opposed to the ביאה מכשירין; as opposed to the מלאכה of making the חבורה where the making is an integral part of the (and not merely a ביאה). מכשירה

⁶ See ‘Thinking it over’.

⁷ Therefore according to ר"י one may extinguish the בקעת so he will be able to be in the house and eat; however this is considered only רבענו, which the prohibit if it requires a מלאכה. [The words do 'דשרי מכשירי אוכל נפש' are not appear in the Tosfos, it is the explanation of .]

⁸ See footnote # 6.

והלכתא מותר לבועל בתקלה בשבת –

And the ruling is; it is permitted to be בועל initially on Shabbos

OVERVIEW

בועל בתקלה בשבת גمرا concluded the discussion whether it is permitted to be with the final ruling that it is permitted. This derives a subsequent ruling from this.

ולא חישין שמא ישחוט בן עוף¹ ואהא סמכוינו למייעבד סעודת שבת:

And we are also not concerned that he may slaughter a bird for the meal, and we rely on this ruling to make a feast on שבת for the wedding (since we derive from this that there is no concern for שמא ישחוט בן עוף).²

SUMMARY

One may make a wedding feast on שבת and there is no concern for שמא ישחוט בן עוף.

THINKING IT OVER

Our merely rules that one is permitted to be בועל בתקלה בשבת; how can one derive from this that it is permitted to make a feast on שבת (for we are not concerned שמא ישחוט בן עוף, perhaps this rule (of מותר לבועל בתקלה בשבת) is limited to the law of ביאה that it is permitted, but it does not (necessarily) allow us to make a feast on שבת, for we are concerned שמא ישחוט בן עוף)?³

¹ See the note on שבת ג, ה, א that one reason why not to be בועל בתקלה בשבת is because שמא ישחוט בן עוף; we are concerned that out of his preoccupation with the wedding feast he may slaughter a bird for the feast. However this גمرا, which rules that מותר לבועל בתקלה בשבת teaches us that we are not concerned for שמא ישחוט בן עוף (as well as that we are not concerned for any in the case whether a חכורה or a פתח).

² See ‘Thinking it over’.

³ See Tosfos' ד"ה מהו on מהרש"ל.

Bless *Hashem* by the gatherings

במקהילות ברכו אליהם –

OVERVIEW

בשורה said that we derive the ruling that ברכת חנינים should be said from the מקהילות require מוקור ברכו אלקים ה' ממקור ישראל of פסוק (or במקהילות), which means ten.¹ discusses the word קהל.

תוספות anticipates a difficulty:

אף על גב דמקהלוֹת תרי קהלוֹת משמע -

Even though the word מקהילות (in the plural) indicates (at least) two congregations (or twenty people; not only ten); responds that nevertheless -

אין סברא לחלק בין עשרה לעשרים לעניין שום מילתא² –

There is no logic to differentiate between ten and twenty people regarding anything, and as far as using the plural term - מקהילות, the פטוק -

ומהלוֹת דָּלָמָא בֵּן לְמִימֵר -

Means to say that Hashem should be praised in the **various congregations**, but not that we require the presence of two congregations (twenty people) –

תוספות cites a differing view:

³ בירושלמי ⁴ חסר ומייהו דריש במקבלת כתיב יונן

However in תלמוד ירושלמי he interprets that the word במקהלה is written without a ו; indicating the singular, not the plural

SUMMARY

There is never a requirement to have more than ten people for an occasion.

THINKING IT OVER

What precisely is the disagreement between הוסכויות ירושלמי and the ?

¹ See "ה במקהלה" רשות.

² Ten is the greatest amount of people needed for a *דבר שבקדושה*; we do not find any requirement for twenty (or more) people. (See, however, following footnote # 3.)

³ ברכת היזימון ר' יוסי הגלילי הגמרא depending on how many people eat; whether it is ten or a hundred or a thousand. He derives it from this פסוק את ה' במקהילות ברכו of ברכת היזימון קהל (במקהילות לשון רביהם) meaning that according to the different sizes of the community, we change the accordingly. The explains that for ten or higher maintain that there is no change in ברכת היזימון רבנן and maintain that there is no change in ברכת היזימון רביה. קהל in the singular; only one. The same can apply here as well.

⁴ See marginal note that in our תהילים it is written במקהלה with a w.

One who grants to a fetus; he acquires it**המזוכה לעובר קנה –****OVERVIEW**

שומראל maintains that if one grants something to a fetus (by delivering it to a third party and asking him to acquire it on behalf of the fetus¹), the עובר acquires the item. reconciles this rulings with another ruling of שומראל regarding granting something which presently does not exist.

תוספות anticipates a difficulty:

אף על גב דשומראל גופיה פסיק הרב יוחנן הסנדר² (לקמן זר נח, ב) –

- ר' יוחנן הסנדר himself rules like השומראל

ד מקדיש מעשה ידי אשתו³ המותר⁴ חולין אין אדם מקדיש דבר שלא בא לעולם –

That one who sanctifies his wife's handiwork; the remainder is unconsecrated, for no one can be something which does not exist. If maintains like ר"י שומראל that one cannot be like the **הסנדר** –

וכל שכן לדבר שלא בא לעולם טפי כדאמרינו בסוף פרק קמא דגיטין (זר יג, ב ושם) –

So certainly will agree that you cannot be **to something which does not exist, which** (being **עובר** **to the** **מקנה**) like being **who is** **גמור** **is much worse** (than being something which is **מקנה** **ללב"**), **as the** **states in the end of the first** **פרק** **פ"ט** –

ד קאמר אפילו לרבי מאיר אדם מקנה דבר שלא בא לעולם הני מיili לדבר שבא לעולם –

אדם מקנה דשלב"ל **דבשלב"ל** **מKENA** **תOSOPHOT** **R"M** **who maintains**, 'even according to R"M that is only if he is to someone who exists –

אבל לדבר שלא בא לעולם לא אמר –

However **'דשלב"ל** **R"M never said** that you can be **מKENA** **to a** **הקדש** **ל'** This shows that **שומראל** is less effective than being **מKENA** **ל'**; how is it then that **שומראל** maintains (like **הסנדר**) that **עובר** **to an** **מKENA** **ל'** (R"i **הסנדר** **א'** **מKENA** **דשלב"ל**), can rule that you can be **מKENA** **ל'** (seemingly) a **דשלב"ל** –

תוספות responds:

מכל מקום שומראל חשיב עובר בא לעולם –

¹ See "ר"ש"י ד"ה המזוכה.

² See **לקמן נט, א.**

³ If one is **מקדיש מעשה ידי אשתו** (what she requires for her sustenance) all agree that it is not **הקדש**, because she needs it for her sustenance (since the husband is not feeding her).

⁴ The refers to the amount she produces that exceeds her needs for sustenance (which belongs to the husband, nevertheless **R"i הסנדר** maintains that it is not **הקדש**, since it is **ר"מ** (and **עיי"ש ברש"י ד"ה המותר argues that it is **הקדש**).**

Notwithstanding all this there is no difficulty, for **শ্মোইল** considered the as a **עובד** שבָא לְעוֹלָם.

(דשלב"ל עובר a offers an alternate solution ([even] if we consider the 힌ע offers an alternate solution ([even] if we consider the 힌ע

אי נמי שמויאל אית ליה טפי אדים מקנה לדבר שלא בא לעולם -

Or you may also say that maintains it is easier to be **শ্মোইল** **than to be** **עובד** **שלא בא לעולם -**

Than to be **עובד** **שלא בא לעולם -** not like רבashi mentioned previously -

וההיא סוגיא דבפרק קמא דגיטין (וגם זה שם) אתיא אליבא דרב הונא -

And we can say, that in the first **פֶּרֶק** **which stated that מסכת גיטין** **is worse than a** **עובד** **follows the view of** **רב הונא** **and argues with him -**

finds support that we find a dispute in this matter:

וכן מצינו⁵ רב נחמן דבחדיא סברתו הפוכה מדרב הונא -

And similarly we find explicitly that logic is the opposite of **רב נחמן's** **דרב הונא אית ליה בפירות דקל**⁶ **משבאו לעולם אין יכול לחזור בו**⁷ -

For maintain regarding the sale of fruits of a date palm that once the fruits were no one can retract from the deal (neither the buyer nor the seller) -

וגבי עובר⁸ קאמר אף לכשתלד לא קנה -

However regarding being to an maintains that even if he says that the should acquire it after she gives birth to the, the does not acquire it (so maintains that ר"ה is worse than a **עובד**) -

ורב נחמן סבר לכשתלד קנה⁹ ובפירות דקל קאמר אף משבאו לעולם יכול לחזור בו:

And maintains that if he says that the should acquire it when she gives birth the sale is void, but by he maintains that even after either can retract the sale (so maintains that a **עובד** is worse than a **ר'ג**). (לדשלב"ל דשלב"ל)

SUMMARY

בא is **עובד** who agrees that can either maintain that an (**א**"א **מקנה דשלב"ל** (**শ্মোইল**)) or that it is easier to be **עובד** **שלא בא לעולם**.

⁵ See 'Thinking it over' # 1.

⁶ יבמות צג, ג. The case there is where he sold someone the dates that will eventually grow (but do not exist yet).

⁷ However if he retracts before the sale is void, for even if we maintain **אדם מקנה דשלב"ל**, nevertheless the becomes effective only when **קנין**.

⁸ ב"ב קמבל.

⁹ However maintains that the **עובד** immediately, even if he did not say **শ্মোইল** **לכשתלד**.

THINKING IT OVER

1. Seemingly ר"ג wants to prove with theתוספות etc.¹⁰ that maintains that ר"ג is easier than a **דבשלב"ל**. However one can argue that the reason Tosafot as, **בא לעולם** is עובר because an **עובר** is stated in the first explanation of **שモאל!**¹¹
2. What are the respective reasons why one would maintain that being **מקנה** is easier than to be **מקנה**, as opposed to maintaining that it is easier to be **מקנה** than to be **מקנה**?¹²

¹⁰ See footnote # 5.

¹¹ See בית יעקב.

¹² See סוכ"ד אות סח.

rule for her**ההורוה בית הלל – (שייך לע"א)¹**

OVERVIEW

ההוראה cites this to prove the term **ההורוה ב"ה** applies to a **change** גمرا (as well as **the more** היתר). Our **clarifies** a difficulty from a historical perspective.

גבי הילני המלכה -

This was **the queen** נזיר in **change** as the **was to** **הילני** states explicitly.

anticipates a difficulty:

אף על גב דמביית חמונאי הייתה שחררי אם מונבז המלך² הייתה כדאמר ביוםא (וז ליא ושם) – Even though was from the house of the mother of King – מסכת יומא states in change as the **was to **הילני** – מלכות הורדוס³ מאה ושלש שנה בפני הבית⁴ –**

And the reign of began one hundred and three years before the **was destroyed** –

והלל לא נהג נשיאותו עד שלוש שנים לאחר מלכות הורדוס –

And did not conduct his ‘presidency’ (over the **until three years after** the beginning of the **reign** – **הורדוס**) –

כదאמרין (שבת טו,א) **הllen ושמעון גמליאל ושמעון נהגו נשיאותם בפני הבית מאה שנה⁵** –

শמעון and his son **הllen**, his son, **שמעון** **conducted their** the last **hundred years** that the **stood**, became a **three years** after the **beginning of the reign** of **הורדוס**.

replies:

מכל מקום כבר היו לו אז תלמידים⁶ שהרו:

Nevertheless, already then (during the time of **הילני המלכה** had students who gave rulings.

SUMMARY

¹ This (as well as the next two) is referencing the **change** (חוספות) גمرا on the **halil**.

² See (however) ריש"ש here. **See** (who states **רשב"י** ב"ב יא,א ד"ה מונבז).

³ **הורדוס killed the entire family** (see ב"ב ג,ב), therefore (who was **הילני חמונאי** lived before **הורדוס**).

⁴ ע"ז ט ג.

⁵ **הילני המלכה** question is; how is it possible that the **halil** (who were students of **הllen**) gave a ruling to **the more** (חווספות) when (even) he began his reign only three years after the beginning of **הורדוס**.

⁶ **ב"ה** before he became a **נהשיא** and they were called **תלמידים** **הllen**.

The ב"ה existed and gave rulings even before became a נושא.

THINKING IT OVER

Why did Tosfot ask this question here, when he should have asked this question on the משנה in מסכת נזיר (יט,ב)? where the source of the story is?

(שייך לע"א)¹ **והא בועז אלמן שנשא אלמנה הוה –**

But בועז was a widower who married a widow

OVERVIEW

ברכת חתנים asked on the ruling that an אלמן שנשא אלמנה does not require from the fact that by, who was an אלמן שנשא אלמנה and they performed there. אלמן שנשא אלמנה clarifies what is meant that was an בועז was an אלמן שנשא אלמנה.

לאו דוקא אלמנה דכשנשת למחlon (וכליון)² הייתה נכricht³ –

הוות the wife of was not exactly an, for when she married (her first husband, who eventually died) she was (as of yet) non-Jewish.⁴ explains why we refer to as an הוות – אלמנה הוות as an אלמנה.

אלא כיון בעולה היא כאלמנה⁵ חשיב לה:

However since she was a בעולה (from מהלון) she is considered as an אלמנה.

SUMMARY

The logic that an does not require אלמנה, applies to a בעולה as well.

THINKING IT OVER

Seemingly it should be obvious that a בעולה is like an אלמנה regarding (since they are the same regarding תוספות; what is teaching us?)⁶

¹ This (as well as the preceding and following references the גمراא on the תוספות) עמוד א' (regarding).

² See marginal gloss that the רות deletes י'כליין י'עב"ץ (since was married to [only]). [See (however the פ' בעלי, who cite a מדרש that died first and then קליין (who was his brother) was, so there is no need to delete קליין).]

³ By a there can be no קדושין and therefore no status as an אלמנה נכricht.

⁴ ארץ ישראאל נמי died and (her mother-in-law) was returning to רות.

⁵ The reason that there is no by an אלמנה is because the שמה is not that great (since she is a בעולה), the same applies (even) to a בעולה (who is not an 'official' אלמנה) that there should be no ברכת חתנים.

⁶ See סוב"ד אות סב.

¹ (ש"י ל"ע"א) באלמנה שנשאה לבחור²

By a widow who became married to a bachelor

OVERVIEW

The explained that when said in the name of requires all seven days) that was in a case of (but not in a case of). Our explains the difference.

דביוו שאינו שגיהם אלמוניים יש לבזר כל שבעה:

That since both of them are not widowed (just the woman is a widow; the man is a בחר, it is proper to make the ברכת חתנים all seven days.

SUMMARY

If they are both not widowed we make the ברכת חתנים all seven days.

THINKING IT OVER

- What was difficulty that required an explanation?
 - What will be the ruling (regarding חתנים) by an **אלמן שנשא בתולה**?
 - How does know that the reason we are by a **elibot שבעה** is because they are not both **אלמוניים**, perhaps the reason is because one of them never received the **ברורת**?³

¹ This (as well as the previous two) references the **תוספות גמרא עמוד א'**.

² באלמנה שנשאת לבוחר (בבבhor שנשא אלמנה) not (גmrות).

³ See הפלאה (on the גمراא זא).

שנאמר¹ ויקח בוועז² עשרה אנשים – As it states; and Boaz took ten people

OVERVIEW

We derive that is made in the presence of ten people from the פסוק ברכת חתנים of ten people from the presence of ten people. Our reconciles this with another source which derives this rule from elsewhere.

----- anticipates a difficulty:

ובמסכת כלה³ דמייתי קרא דוייברכו את רבקה (בראשית כד⁴)

And in where he cites the 'and they blessed, as a source for רבקה; פסוק as a source for ברכת כלה (in by מסכת כלה) (and does not derive it from ברכת חתנים [alone]) –

replies:

אייכא למיימר דהתם ברכת אירוסין⁵ והכא ברכת נישואין⁶

One can say; that there (by it was regarding the blessing of the betrothal, and here (by it is regarding the blessing of the marriage.

continues with a tangential issue:

ויש ללמד משם שיש לברך ברכת אירוסין לאשה המתקדשת על ידי שליח⁷

ברכת we can seemingly derive from there (by), that one can recite the to a woman is being betrothed through an agent -

שהרי אליעזר שליח היה

For ברכת אירוסין מקדש רבקה to be **שליח** was a, and they made.

rejects the previous conclusion:

ונראה דאסמכתא⁸ בעלמא היא ועשרה לא מישתמע מהתם⁹

¹ This may also be referencing the three additions on the 'גמרא' (as the previous three were).

² In the as well as in our the word 'בוועז' does not appear.

³ In the very beginning of (which can be [usually] found in the back of (מ"ע"ז) it states מסכת כלה [כליה בלא ברכה אסורה] [מןין לברכת חתנים מה]"ת שנאמר ויברכו את רבקה ומניין שאפירלו אלמנה וכי שנאמר ויקח בוועז עשרה אנשים וכו'. It would seem that question is why the cites the פסוק of רבקה, since it can all be derived from (and he cites that anyway). See סוכ"ד for an alternate explanation.

⁴ פסוק ס'.

⁵ The beginning of 'Thinking it over' # 1.

⁶ The beginning with (six).

⁷ This expression seemingly indicates a case where the woman is not present and she is becoming through a . It is not clear why did not say this in a case where the , since this is the case by .

⁸ An refers to a derivation from a פסוק, which is not really the source of the ruling. The source is from elsewhere (or even); however we cite the פסוק as a support for the ruling.

⁹ However by it states clearly that there were . See 'Thinking it over' # 2.

is ברכת אירוסין that the derivation from רבקה that the derivation from that required, this derivation is merely a support to the practice but not a source,¹⁰ for it is not understood from there that ten people are required -

ולא אيري פשוטה ذקרה בברכת¹¹ אירוסין:

And the simple interpretation of the verse does not indicate that it is discussing אירוסין, which is על העניות, וצונו but rather merely a blessing from her family that she should be successful, etc.

SUMMARY

ברכת is בועז by ברכת אירוסין is רבקה by ברכה (and by (and by ברכת אירוסין even if the שליה is מקדש, or probably נישואין), and derive that one makes מס' כלה begins for ברכת אירוסין, or probably assume that the פסוק of רבקה was merely an אסמכתא (and we do not derive anything from it).

THINKING IT OVER

1. ברכת אירוסין (initially) states that the רבקה by ברכה refers to ברכה. Seemingly this is difficult, for בלא ברכה אסורה לבעלה וכוי begins מס' כלה; indicating that with a she is permitted. However if we assume that the רבקה of ברכה was נישואין!¹³ then she is still forbidden until the אירוסין!

2. writes that the רבקה from לימוד is merely an אסמכתא, since we cannot derive from it the requirement of עשרה אנשים.¹⁴ However in it merely states that we derive the רבקה from it does not claim that we derive the requirement for עשרה!¹⁵ רבקה!

¹⁰ This answers initial question as well, since we really do not derive from ברכת חתנים; they merely cite it to have an אסמכתא מן התורה (and not only to derive it from כתובים).

¹¹ However by it does indicate as the גמרא states later, if it was merely for the דרש, we do not require ten people, so it must be for ברכת חתנים.

¹² See footnote # 5.

¹³ See שלמה.

¹⁴ See footnote # 9.

¹⁵ See שלמה.

רבי יהודה אומר אף בבית האירוסין¹ מברכין אותה מפני שמתויחד עמה – said, we also make this blessing in the house of betrothal, since he is secluded with her

OVERVIEW

ר"י said that we make even, בית האירוסין (even) in the area of where it was customary for the bride and groom to be secluded even before the wedding. Our clarification clarifies what is the connection of מפני שמתויחד עמה to the need for ברכת חתנים בבית אירוסין.

ואמרינו² כלה بلا ברכה אסורה לבעלה נדה –

- נדה a without a is forbidden to her husband as a ברכה is ברכה a כלה –
ולפי שפעמים בא עליה³ שלא לשם חופה⁴ עושים ברכה מתחלה כדי שתהא כלה בברכה:
And since occasionally he is with her not for the sake of, therefore we initially make the ברכה in order she should be a כלה with a ברכה.

SUMMARY

In we make the ברכה so in case he is not with her she will not be אסורה לו.

THINKING IT OVER

ברכת why is it that we make the ברכה by the נישואין?

¹ The first step in the marriage process (somewhat similar to our ‘engagement’), and even though she is considered a married woman (regarding adultery, etc.; unlike our ‘engagement’), nevertheless the couple lived apart until the נישואין.

² In the beginning of מ"ט ד"ה שנאמר (see previous Tosafot [TIE footnote # 3]).

³ We are discussing where they are secluded before the נישואין therefore there is the concern that בא עליה.

⁴ [See who deletes the words רשות.] See who explains that according to only an infers without a ברכה, however a נישואה is permitted even without a ברכה. If he is for the sake of (for the sake of נישואין), she becomes a נישואה and is without the concern is that he may be not בא עליה, in which case she remains an אורה without a ברכה. Therefore we make the ברכה so in case he is (and she remains an אורה), nevertheless she is not since the ברכה was made. See ‘Thinking it over’.

⁵ See footnote # 4.

מאן דלא חתים מידי דהוה אברכת פירות – – – with a bracha, since it is like the blessing for fruits

OVERVIEW

בא"י of ברכה cites a dispute whether we conclude the ברכת אירוסין גمرا or not (the view of רビ אחא וכו' מקדש עמו ישראל ע"י חופה וקדושין ברכה בר"א and ברכה בר"ב). The explanation is that the one who did not conclude with a ברכה compares it to the one who concluded with a ברכה הפירות והמצות compares it to קידוש. Our clarification clarifies in what way it is similar to קידוש and ברכת הפירות respectively.

שאין בה אריכות והאי נמי אינה ארוכה ולא דמי¹ לקידושא דאריך טפי –

For the blessing that is not lengthy and this is ברכת אירוסין is also not lengthy, and the blessing that is not similar to קידוש, which is a longer blessing that is ברכת אירוסין –

ומאן דחתים מידי דהוה אקידושא דחתים ביה משום דאריך והאי נמי חשיבא ארוכה² –

קידוש which is concluded with a blessing, for it is similar to ב"א which is concluded with a blessing, (בא"י מקדש השבת), since the קידוש is long and this is also considered a long blessing.

ו מה שפירש בكونטרס דמשום דברלשוון קדושה היא חתמי בה כמו בקידושא אינו נראה³ – cites פרש"י Tosfos and rejects it:

ומה שפירש בكونטרס דמשום דברלשוון קדושה היא חתמי בה כמו בקידושא אינו נראה³ –
And that which explained that the reason is because the קידוש is similar to ב"א because we say קדושה (אשר קדשנו) like קידוש (מקדש ישראל וכו') therefore we conclude with a ב"א just as we conclude the קידוש with a ב"א ברכת (מקדש השבת); this explanation is not acceptable.

Tosfos asks:

קצת קשה מאן דלא חתים בה Mai Shna Mibrachat HaTorah D'chattimim Bah Baasher Baruch Beno⁵ –

There is a slight difficulty; the one who does not conclude with a bracha, why is different from the one who concludes with a bracha of אשר בחר בנו of ברכת התורה, which we conclude with a ברכה (בא"י נутן התורה) –

¹ Even though ב"א is longer than קידוש, nevertheless it is not as long as ברכת הפירות and cannot be compared to קידוש.

² See 'Summary'.

³ חותם we are קידוש פירש"י does not explain his disapproval of. The difficulty is seemingly that by because there is a הפסק as states (בד"ה מידי ר"ש), however by ב"א there is no הפסק, so why is there a חתימה.

⁴ Others explain בלאשון קדושה to mean that he is the woman by saying הרוי את מקודשת ליה.

⁵ See 'Thinking it over'.

אף על גב דברכת אירוסין אריפה טפי מינה⁶ -

Even though ב"א is a longer ברכה than ברכה התורה, so we should certainly conclude ב"א with a ברכה!

תוספות replies:

ושמא לא היה חותם בה:

ברכת המורה חותם ב"א מ"ז who is not by was not by.

SUMMARY

ברכת הפיורות is in between קידוש and ברכת הפיורות (since it is shorter than קידוש and is not חותם, and the other compares it to חותם (since it is longer than חותם and is by ב"א, ב"א חותם by ברכה"ת חותם as well.

THINKING IT OVER

When ברכה cites the בחר וכו' of ברכה⁷ did he mean that exclusively (and not the נתן לנו וכו' of ברכה),⁸ or he meant either or both?

⁶ According to the ruling whether to be ברכה (where the הוי depends on the length of the word) is in between ב"א קידוש and ברכת הפירות. However if we see that ברכה"ת which is smaller than ב"א, so חתימה requires a ברכה. However according to ר' מ"ד that חתימה בברוך is because there is no reason why we cannot ask from ברכה"ת perhaps there is another reason why סוכ"ד אות עט is correct.

⁷ See footnote # 4.

⁸ There may be a special reason why the **התימה אשר נתן לנו** of ברכה requires a **התרמה**, which does not apply to the **ברכה of בחר בנו**.

Provided that new faces came**והוא שבאו פנים חדשות –****OVERVIEW**

qualified the ruling of the חתנים (which stated that בריתא is recited for seven days), that it is only if new people came, but not if all the people present were there by a previous 'שבע' (seven). Our רב יהודה qualifies the ruling of רב יהודה

**אמר רביינו יצחק דפניות חדשות אין קורא אלא בני אדם שמרבים בשביבם השמחה יותר –
The rules that are considered only such people, for whose sake, the joy is greatly increased.** However if the presence of this new person does not cause an increase in the שמחה we do not recite ברכת החתנים.

תוספה responds to an anticipated difficulty:

ושבת דחובין פנים חדשות¹ –

And the reason we consider a שבת – פנים חדשות a שבת

דאמרין באגדה מזמור² שיר ליום השבת –

For it is stated in the aggadah on the פסוק of השבת (a psalm of song for the day) –

אמר הקדוש ברוך הוא פנים חדשות באו לכאן³ אמר שירה –

said (to the angels), ‘a new face (שבת) arrived here, let us say a song’ –

תוספה explains:

התם נמי מרביון לכבוד השבת בשמחה ובסעודה:⁴

There too we add in joy and in the festive meal in honor of שבת.

SUMMARY

The פנים חדשות have to cause an additional שמחה, which is the case by as well.

THINKING IT OVER

Initially said that on account of the פנים חדשות the שמחה is greater; however regarding שמחה Tosfos mentions שבת and סעודה.⁵

¹ The rule is that on שבת we do not require a פנים חדשות to recite ברכת החתנים, since it is considered a פנים חדשות.

² תהילים זב.

³ This proves that שבת is called פנים חדשות. However it does not explain why we can say (without the ‘regular’ פנים חדשות), which requires an addition of שמחה on account of the פנים חדשות.

⁴ There is therefore more joy in the wedding celebration on שבת.

⁵ אמר ר' יצחק.

שהכל ברא לכבודו ויוצר האדם –

That He created everything for His honor, and He forms man

OVERVIEW

ברכות חתנים **הו** enumerates the reasons why some of the ברכות discuss why some of the begin with a 'ברוך', while others do not.¹

פוחתת² בברוך אף על פי שכל אחת סמוכה לחברתה³ –

The beginning of ברכה of ברך adam and שהכל ברא of ברכה begin with, even though that each one of these is next to another⁴, nevertheless -

כיוון דקצנות ה⁵ אם לא היה פוחת בברוך היה נראה הכל ברכה אחת –

Since they are short, if they would not begin with, nevertheless, therefore they begin with to differentiate them from each other -

וכן אשר יצר אם לא היה פוחת בברוך היה נראה שהיא מתחילה מבורך יוצר האדם אשר יצר –
And similarly⁶ the which is to סמוכה of ברכה (which is ברך) and should therefore seemingly not begin with, nevertheless) if it would not begin with, it would appear as if it is one which starts from ברוך יוצר adam and continues into⁷. אשר יצר וכו'

אבל שוש תשיש שהיא אחר ברכה ארוכה אין צורך לפתח בברוך –

However the which follows a long (asher yitzar) of ברכה, which ends with a long, does not need to begin with, since it is evident that it is a separate from. אשר יצר.

ואהר ברא פוחתת בברוך –

And the last of the begins with a ברכות ברא (the last of the begins with a ברכות ברא) even though it is a

¹ There is a general rule that a which follows another in a regular sequence such as in ברכה or שמונה עשרה (the second and third do not begin with 'ברוך'). Only the first of ש"ע begins with 'ברוך'.

² Others amend this to פוחתת in the plural (instead of פוחתת), see footnote # 3.

³ The may follows the of ברא of ברכה [and the which follows the of ברא of ברכה may (perhaps) also be considered a since it follows the of ברכה the of ברכה the of ברכה since it follows the of ברכה the of ברכה the of ברכה].

⁴ See footnote # 1. See 'Thinking it over'.

⁵ It would seem (especially from what writes later regarding 흘שׁ and אשר יצר) that means that since the preceding (and), which are (בפה"ג) and (שהכל), respectively), are short, therefore if it would appear that they are a continuation of the previous (which is שהכל ברא and בפה"ג). It would appear as if the [long] one (באה"י אמ"ה שהכל ברא לכבודו יוצר adam is ברכה).

⁶ See 'Thinking it over' for a possible explanation why discusses separately from, even though the question and answer is seemingly the same.

⁷ It would appear as if the when it is really two separate.

ברכה ארוכה (of שם תשמה), so seemingly it should not begin with ברוך, nevertheless it begins with -

לפי שمبرכים אותה בפניה עצמה כשהיא פנים חדשותCDFIRESH בקונטרס⁸ -

Because we make this by itself (not following any other ברכה), ברכה הסמוכה when there are no פנים חדשות as רשות explained. In that instance it is not a ברכה, therefore it begins with ברוך, and needs to begin with ברוך in all cases even when it is סמוכה לחברתה.

ועל שהכל ברא לכבודו ויוצר האדם פירש בקונטרס⁹ טעם אחר -

And regarding the adam who creates the world offers another reason why they begin with ברוך ברוך רשות.

ורבינו חנナル פירש דיווצר האדם פותחת בברוך -

ברכה ברוך האָדָם יִזְכֵּר begins with ר"ה (even though it is a ברכה) - (הסמכה לחברתה -)

לפי שיש שלא היו אומרים אותה¹⁰ כదאמר בסמוך -

For there were those who did not say this, ברכה as the shortly states regarding לוי (that he made only five; omitting יוצר האדם).

תוספות discusses a tangential issue:

ואומר רבינו תם דברך קמא דברכות (ז' יא,ב) גבי ברכת התורה גרשינו -

And the **ר"ת** says that in the first **פרק** of **ברכות** regarding the blessings over the **תורה**, the texts should read -

רבי יוחנן מסיים בה הכי והערב נא דברכה אחת היה¹¹ -

והערב **for**, ו**יו"ו** (הערב נא) (not **'נהערב נא**; **thus** ברכות התורה **ר"י**) concluded the beginning with **באי** and continuing with **ברכה נא** - והערב נא בדברי תורה and continuing with **ברכה נא**

דאי هو שטי ברכות היה צרייך לפתח בברוך אן על גב דסמנוחה לחברתה -

For if הערב נא of ברכה, **ברכות are two** and בדברי תורה **should begin with** – (בדברי תורה to) סמוכה להברהה even though it is ברוך.

כיוון שאוֹתָה שְׁלַפְנִיה הִיא קַצְרָה -

Since the ברכה before **is a short** דברי תורה (the Hebrew נא is part of ברכה), and we may mistakenly assume that the Hebrew נא is part of that. However now that the Hebrew נא is indeed one גירסה (they are indeed one ברוך), so obviously cannot begin with ברוך.

ובתור הכי גרסינו הלא נימריננו לתרוייהו ולא גרסינו לכולחו –

⁸ בד"ה שמה.

⁹ Even though there is addressing the issue why only ר'smith begins and ends with ברכת אשר יציר, nevertheless s' "ר'smith" answer also explains why they are both and nevertheless s' "ר'smith" answer also explains why they are both.

¹⁰ cannot be considered a proper ברכה הסמוכה להברטה, since not all agree that it is included in this sequence. See טוק"ד אות ה'.

¹¹ Therefore we do not answer between **דברי תורה** and **הערב** **אמן**.

And afterwards (there in the text should read,¹² ‘**therefore we should say both of them**’ דברי תורה והערב [as one] and אשר בחר as the second), **but the text do not read**, we should say **all of them**’ -

דאמ כו¹³ הוה משמע דשלש¹⁴ ברכות ה:

For saying ‘all of them’, would indicate that there are three¹⁵. ברכות התורה

SUMMARY

The rule of הסמוכה להברתה (it does not begin with ברוך) does not apply if the preceding are short, if they are said sometimes by themselves, or not in the sequence. ברכה is not a separate והערב.

THINKING IT OVER

ברכה explains to us why begin with אשר יצא ברא (even though they are a short Tosfot¹⁶). Seemingly how else could it be;¹⁷ if they would not begin with a (but we would merely say בראה לנצח) or יוצר האדם or שהכל בראה (but we would not be a at all)?!¹⁸

¹² Mai beruk ar yehuda amer shmoel akb"o l'utsok b'dibri torah, v'r' yochanen misim ba (ברכות התורה reads: הכי העرب נא וכוי בא"י המלמד תורה לעמו ישראל, ורב המונוא אמר אשר בחר בנו וכוי בא"י נוטן התורה, אמר רב המונוא זו היא מעולה תרווייהו with כולחו (and והערב) the Tosfot replaces the שביברכות הלך למירינה לכלהו).

¹³ The term ‘כלהוי’ refers (usually) to more than two. See (however) רשות who questions this assumption. See however here who writes that חוץ שאנץ (it can mean two but is usually means three).

¹⁴ אשר בחר דברי תורה, והערב.

¹⁵ ברוך cannot be a separate ברכה, for then it would need to begin with אשר בחר והערב.

¹⁶ See footnote # 4.

¹⁷ See footnote # 6.

¹⁸ See הפלאה.

חדא יצירה הויא –**There was one creation****OVERVIEW**

The (יווצר האדם of ברכה cites a מחלוקת between (who did not recite the ברכה גمرا) and (lio) (who recited the ברכה of גمرا). Initially the adam wanted to say that (רב אשי) אשר יצר of ברכה חדא יצירה הויא¹ maintains and therefore it was sufficient to say the (רב אשי) (yozer adam) (יצירה one) (יצירה one) and there is no need to add (רב אשי) (yozer adam) (second). However maintains that (two) יצירות הויא, therefore he made two for ברכות (yozer adam) (two). Ourclarifies what is meant by (חדא יצירה הויא).

צריך לומר דהינו במאן דאמר פרצוף אחד –

It is necessary to assume that this view of חדא יצירה הויא is according to the one who maintains that only one face was created –

מדקאמר בת רבי דכלי עלמא חדא יצירה הויא מר סבר בת רמחשה אזלין² –

Since the states shortly that everyone maintains; however one master maintains that we go according to the thought, and the other maintains we go according to the deed –

ובריש פרק שני עירובין (דו' יח, אושט) משמע בהדייא –

And in the beginning of the second, it clearly seems –
דלאן דאמר פרצוף אחד הויה עללה במחשה להבראות שניים –

That (only) according to the that מ"ד, there arose the thought to create two –

אבל למאן דאמר התם שני פרצופים לא סבירא ליה הפי⁴ כי פירש רבינו שמואל בן מאיר:

¹ There is a between how created the 'ה' (ברכות ס,א) (in) (רב ושמואל) (one) maintains that there was one creation of two faces (bodies) attached back to back, and then 'ה' separated them. This is the view (here) of that (חויה) (that 'ה' did not make a separate creation of 'ה'; he merely separated her from 'ה'). The other view is that 'ה' first created alone (with a tail) and from his tail 'ה' later created 'ה'. This is the view of that (שתי רבי אשי) (first created 'ה' and later 'ה' created from his tail). This is s'iy understanding of our גمرا.

² See footnote # 1. 'ה' created alone and created later from 'ה'. It is called since when 'ה' created 'ה'adam יצירה הויא. [The creation of 'ה' was not considered a creation, but merely a תולדה.] However the one who maintains is of the opinion that initially both were created together (back to back), therefore it is; meaning 'ה'adam and 'ה'חויה. This is the exact opposite of in footnote # 1.

³ Since in thought there were two, therefore we make both of ברכות and (yozer adam).

⁴ The there in states: 'ה' זנב מאן דאמר פרצוף הינו כתיב זכר ונקבה בראמ, אלא למאן זנב מאן זכר ונקבה בראמ, דר' אבاهו רמי כתיב זכר ונקבה בראמ וכתיב (ci) בצלם אליהם ברא אותו, בטהלה עללה במחשה לבבראות שנים ולבסוף לא לכדר' אבاهו, (ב') פרצופים there means that 'ה' created back to back (what we call here פרצוף), and the term זנב means that 'ה' first created (with a tail) (זנב) and created from this (what we call here זנב). It is evident from that that the גمرا of דרשה בבראות שנים is only according to the that is מ"ד פרצוף אחד (that is). (במחשה עללה במחשה לבבראות שנים, זכר ונקבה was, however according to the how he explains זכר ונקבה בראמ, but this duality of מ"ד פרצופים).

However according to the פראטזופים, מ"ד שני פראטזופים, he does not agree to that (that it was עליה במחשבה להבראות שניהם). **This is the explanation of the רשב"ם.**

SUMMARY

פרצוף אחד נברא is of the opinion that **חדא יצירה הויא**.

THINKING IT OVER

עליה asks (on פראטזופין נבראו that the that מ"ד that the **פראטזופים** does not maintain **עליה במחשבה**)⁵. Seemingly according to this, it was certainly גمرا, since he created two; the **פראטזופים** means to say that even according to the **פראטזוף אחד נברא**, nevertheless it was to create two. What is question?!

the meaning of זכר ונקבה בראם is literal; there is no discussion of **עליה במחשבה**. [See 'Thinking it over'.] Therefore since the גمرا here concludes that everyone agrees **חדא יצירה הויא**, and the dispute is whether we follow the **עליה במחשבה** or the **מעשה**, it must maintain that we follow the view of **פראטזופים** (not **ב' פראטזופים**). It therefore follows that the view of **פראטזוף אחד** maintains **חדא יצירה הויא**.

⁵ See footnote # 4.

רב תנא הוא ופליג –**Rav is a Tannah, and argues****OVERVIEW**

גמרא מנין both ruled that are not counted as part of the The number of both their rulings from a which states that Regarding the answered that is a and can argue with a Regarding the answered that the was discussing (and not the which was discussing). explains why the same answer was not given for both and.

תוספות anticipates a difficulty:

לא בעי לשוני כי תניא ההיא בברכת המזון כدمני רבי יוחנן –

The did not want to answer the contradiction on from the that the regarding as the resolved the question on – ר"י ברהמ"ז

תוספות responds:

דנראה לו דוחק להעמיד כן ונוח לו טפי לומר דפליג¹ –

For it seemed problematic to the to establish the and limit it to a case of (which the does not mention), and it was preferable for the regarding that argues with the.

תוספות derives something from our:

ומدلא אמר רבי יוחנן תנא ופליג יש להוכיח דברי יוחנן אמרוא היה –

And since the did not answer, is a and argues with the (as it answered regarding that was an and cannot argue with a – ברהמ"ז

דא יהה תנא יהה משני כدمני לרב –

For if 'ר"י תנא הוא ופליג' was a, תנא would have answered, as it answered regarding רב.

תוספות anticipates a difficulty:

וain להקשוט דעתמי לא משני רבי יוחנן אני דעתמי כרב² דתנא הוא³ –

And one cannot ask, but why did not answer I agree with who is a, and argues with the – ברהמ"ז

¹ However regarding ר"י the had no choice (see immediately in this) and had to answer בברהמ"ז.

² See ‘Thinking it over’.

³ previously stated that the answer of ר"י was a; why not say that agrees with רב?!

תוספות responds:

דרבי יוחנן לא היה מחזיק רב כתנא דפליג עליו בכל דוכתא -

For ר"י did not accept רב as a תנא, since ר"י argues with everywhere.

ומיהו אילנא נמי רב יוחנן שהיה תנא -

However, there is another ר"י who was a תנא -

דתניא בשילתי דנזיר (דף סה, א ושם) וכמה שיעור תפיסה⁴ פירש רב יוחנן⁵ כולי:

For we learnt in a end of ברייתא in ברייתא 'and what is the size of תפיסא?
'explained, etc.' It is obvious that this ר"י was a תנא since he is cited in a בריתא ר"י.

SUMMARY

The was ר' יוחנן ברהמ"ז does not seem to be discussing 'ואבלים מן המניין' בבריתא was an אמרה and considered to be an אמרה as well.

THINKING IT OVER

סתמא is the, כי תניא ההיא בברהמ"ז וכור' (ח,ב גמרא) answering it, or is it ר"י (himself) who is giving⁶ this answer?

⁴ The there are discussing that when one moves a body found in the road one must also take (beside the body) the 터פופה (the earth surrounding the body). There are various opinion what this refers to. One cited the view of ר"י (בשם בן עזאי) as to how much the 터פופה is.

⁵ לאו היינו ר' יוחנן האמור אלא רב יוחנן בן נורי who writes: נזיר ד"ה הוא

⁶ See (the by) footnote # 2.

כִּי תְנַיָּא הָהִיא בָּבְרָכַת הַמְזֹון – by *Birkas Hamazon*

OVERVIEW

אין אבלים מן (who maintains גمرا) ר' יוחנן resolved the contradiction between ברייתא (which states that the man is discussing אבלים מן המניין) and בריתא (which states that the man is discussing אבלים מן המניין) ברהמ"ז (R' Yehuda bar Ilai) cites פרש"י as to what is meant by שורה. Our rejects it and offers his explanation.

פירוש בקונטרס להצטוף עם ב' לזמן¹ שהרי הוא חייב בכל המצאות -

can אבל means that an explained regarding אבלים מן המניין that can combine with two other people for זמן, since אבל is obligated to perform all the מצאות.

חופשה disagrees:

ואין נראה לרביינו יצחק דאם כן לא אתה לאশמעין אלא דחייב במצאות -

And the disagrees, for if it is indeed so, it turns out that the is only teaching us that the is אבל - **חייב במצאות אבל**

והו ליה למימר בהדייא דחייב במצאות –

So the should have stated explicitly that in ברייתא why (merely) refer (anonymously) only to specifically –

חופשה has an additional question on: פרש"י;

עווד דאם כן מי פריך ליה² מברכת אבלים בעשרה ואין אבלים מן המניין -

And furthermore; if it is so (that refers to זמן) what does the ask on from another statement of R' Yehuda which reads; 'the blessing of mourners requires ten people but the mourners cannot be counted as part of the ten,' -

דאמר ברכה בשורה מי אייכא³ –

So the asks, 'is there a ברכה by the גمرا' -

אלא על כרחך היינו ברכת המזון –

Rather we must say that R' Yehuda was discussing – בראמ"ז

והדרן קושיא לדוכתינו דקטני ואבלים מן המניין ואוקמיין בברכת המזון -

So our initial difficulty returns to its place, for the stated in בריתא, and we established the by R' Yehuda, and as we just concluded must also be

¹ One leads the for all three and begins with the בברכה, נברך שאכלנו משלו etc.

² The asked on the previous answer that when he was referring to שורה.

³ In this second statement of R' Yehuda, he clearly said, ברכת אבלים ב' but by the consolation no was said. R' Yehuda was in ברכת חתנים ב' and as we just concluded must also be when he ruled that שורה, he must mean בראמ"ז.

discussing בריתא rules ר"י, and, ואין אבלים מן המניין (which is not like the citation and explanation of the question on Tosfos גמרא).

- **ולפירוש הקונטרס לא קשיא מידי** -

However according to there is no difficulty at all -

דכי קתני ואבלים מן המניין היינו להצטרכ לזמן לומר נברך שאכלנו משלו -

For when the taught that means (as explains to have ר"י) **ואבלים מן המניין** ברייתא - **נברך שאכלנו משלו** **join for a able to say** to be able to say זימון אבל

אבל ברכת אבלים⁴ שברכת המזון קאמר רבינו יוחנן דאיינו מן המניין -

ברהמ"ז said that regarding the which is said during the **ברכת אבלים** **is not part of the** **מנין** and we need ten others present to say אבל. There is therefore no contradiction between ר"י and the question?! What is the question??!

offers his explanation of Tosfos:

לכך צריך לפרש⁵ כי תנאי היה בברכת המזון היינו ברכת אבלים שבברכת המזון -

Therefore (because of the aforementioned difficulties with it is necessary to explain that when the answers, גמרא 'כפי תנאי היה בברהמ"ז, it means the ברכת אבלים, which is said during בראמ"ז.

derives a ruling from our:

מכאן מושע שברכת אבלים שבברכת המזון לא חייב אלא עשרה -

It seems from here that we recite the during only if there are ten people -

מדסליק אדעתיה דמקשן⁶ דאיירוי ברכת אבלים שבברכת המזון וקאמר בעשרה -

ברכת אבלים (ר"י) **Since the questioner entertained the idea that** the statement of בראמ"ז **is regarding** which is recited during בראמ"ז **and ruled that** ten are required -

והו ניחא ליה בהכי אם לאו מושם דקתני לעיל בבריתא ואבלים מן המניין אם כן צריך עשרה:

⁴ ברכת אבלים is obviously not (the of) זימון for, בראמ"ז (which is certainly does not require ten; three are sufficient. It is either the which the mentions later on this, עמוד מנחם אבלים גמרא (see also ר"י ד"ה) ברכות אבלים (ברכה which concludes ברכות other mentioned there (or as the states ריטב"א) (ברחה and/or the various other (ברחה).

⁵ שופט בזאת דין האמת (ברהמ"ז) (that it refers to the term בראמ"ז, כי תנאי היה בברכת אבלים writes Tosfos ר"י) (that it refers to ברכת אבלים (ברהמ"ז) (that it refers to ברכות אבלים (ברהמ"ז) (but this contradicts the ruling of the (ברהמ"ז) (Tosfos פ"י) (due to questions), we are forced to accept.

⁶ The proved which states בראמ"ז (which is discussing בראיתא) contradicts the other statement of ר"י (ברכת אבלים בברהמ"ז) (ברכת אבלים בברהמ"ז) (which the understood to also mean ברכות אבלים בראמ"ז). The only question the had was that this statement of ר"י contradicts the ruling of the (since we assume that they are both discussing בראיתא) (ברכת אבלים בברהמ"ז) (but this had no difficulty with the statement of ר"י per se (if there would be no contradictory ruling from a). The felt comfortable that ברכות אבלים (ברהמ"ז) requires ten.

ברייתא was satisfied with this understanding of ר"י, if not for the which stated previously ואבלים מן המניין (which we [also] established to be discussing אבלים בברהמ"ז; therefore ten are required for ברכת אבלים בברהמ"ז).

SUMMARY

ברכת אבלים שבברהמ"ז which stated ואבלים מן המניין is referring to the בריתא (which requires ten people present in order to be recited).

THINKING IT OVER

גמרא (רש"י) asks (the same question he asks on previously? When the brought the initial contradiction between the בריתא (which states ואבלים מן המניין and (ואין אבלים מן המניין why did not the ר"י answer (according to that the בריתא is discussing and is discussing אבלים?!⁷

⁷ See מהרש"א.

אלא כי קאמר רבי יוחנן ברחבה – Rather when did ר"י rule; by the plaza

OVERVIEW

וain (in our there are three statements of ר' יוחנן גمرا (in the following order); a ברכת אבלים כי כל שבעה (c, ברכת אבלים בעשרה וain אבלים מן המניין (b, אבלים מן המניין שורה. Initially the assumed that 'a' was said regarding גمرا. The rejected that because of 'b' (where it mentions ברכה and there is no by ברכה גمرا). The answered (instead) the ר"י was discussing שורה.¹ There are two Tosfosot, whether we are of this or not. Tosfos 'Ala' (as in the ד"ה of this) or not. Girasot discusses both.

אי גרסין אלא² משמע זההיא דלעיל נמי מעמיד ברחבה –

If the text read 'אלא', it indicates that the previous statement of ר"י (statement 'a'; see 'Overview') is also discussing רחבה.

Tosfos asks:

ותימה למה הוצרכו תרי מילוי דברי יוחנן ההיא דלעיל זה³ –

And it is astounding! Why are the two statements of necessary; the previous statement 'a', and this statement 'b', since they both discussing?!?

Tosfos answers:

צרכי לומר חדא מכלל חברתה אמר⁴ היה דלעיל מכללא זה⁵ –

And it is necessary to say (that ר"י said only one statement ['b'] and), that one statement was derived from the other; the previous one 'a' was derived from this one, 'b' –

Girasot continues with the other:

אבל אי לא גרסין אלא ניחא דלעיל איירי בשורה והכא ברחבה بلا פנים חדשות –

However if the text does not read 'אלא', it is preferable, for previously ['a'] is discussing that ten are required but ain אבלים מן המניין, and here ['b'] we are

¹ Statement 'c' of ר"י is also in a case of ברחבה, but in a case of פנים חדשות.

² The word 'אלא', indicates that we are retracting any previous resolution. Therefore we retract the previous answer that statement 'a' of ר"י is regarding שורה, since statement 'b' cannot be regarding שורה.

³ Both statements are saying the same ruling that by ברכת אבלים ברחבה are not permitted.

⁴ ר' יצחק repeated the statement of ר"י ('b') in two ways; statement 'a' and statement 'b'. See 'Thinking it over' # 1.

⁵ It certainly cannot be that 'b' (which states ברכת אבלים כי was derived from 'a' (which merely states ain אבלים מן המניין), which does not mention the requirement of ten).

- פנים חדשות without רחבה -

ומימרא שלישית של רב יוחנן הוצרך להזכירנו⁶ דברנים חדשות אין אבלים מן המניין⁷ -

And the third statement of [‘c’] was necessary to inform us that (even) by

מן המניין are not אבלים the פנים חדשות -

ואין נקט⁸ היה⁹ הוא אמין אייפה -

And if it would only mention that one [‘c’], I may have said the opposite, that -

דוקא מיום ראשון ואילך אבל ביום ראשון שייכי¹⁰ טפי וمبرכים לה بلا יי':

Only from the first day onwards do we require ten besides the, however

on the first day the אבלים have a greater connection and we can make this

blessing without ten non mourners, but rather the mourner can be part of the ten.¹¹ Therefore we have the second statement that even on the first day אין אבלים מן המניין.

SUMMARY

If we are רחבה, there are two statements of ר"י regarding גירסא 'אלא'. If we are not רחבה שורה, there are three statements, one regarding גירסא 'אלא', one regarding פנים חדשות without and the last with.

THINKING IT OVER

1. Why indeed are we גירסא 'אלא', according to the first and have the issue of אבל ביום ראשון שייכי טפי וمبرכים לה¹², when we could have simply said like the second גירסא 'אלא'?¹³

אבל ביום ראשון שייכי טפי וمبرכים לה¹⁴ that when תוספות Rash"l concludes; he means that the אבלים are included. Why could he not learn simply that (we would have thought that) on the first day we do not require a manin at all¹⁵ (however according to the s' explanation, Rash"l should have said חותם ואבלים מן המניין?!¹⁶)

⁶ It certainly teaches us that by חותם there is explaining why it added פנים חדשות; however is explaining why it added אבלים מן המניין as well. This answer would apply to the other גירסא as well.

⁷ We may have thought that only on the first say אין אבלים מן המניין, since the אבל is extremely embittered and in deep mourning, however on the subsequent days when his bitterness has subsided he may be מן המניין.

⁸ This applies to the other גירסא as well.

⁹ This is explaining why it mentions statement ‘b’ at all; we should mention only statement ‘c’ and we would know that if אין אבלים מן המניין all the other days then certainly on the first day (see footnote # 7).

¹⁰ In the ר' and the גירסא 'שייכא' is referring perhaps to the ברכה, not 'שייכי' (in the plural).

¹¹ See 'Thinking it over' # 2.

¹² See footnote # 4.

¹³ See מהרש"א

¹⁴ See footnote # (10 & 11).

¹⁵ This perhaps is the view of ר' וחנוך (see footnote # 10).

¹⁶ See דעת ר' מירא דעתך (ועצ"ע).

האומר פתח פתח מצאתי כולי –

One who said, I found an open passage, etc.

OVERVIEW

We can ascertain that a woman is a ביאה if during the first ביאה the husband verified that her membrane was intact (פתחה סתום) and/or that as a result of the there was blood (דם בתוליהם). Our discusses a case where the husband claimed that at the initial ביאה her was not סתום, but rather it was פתוח. The question arises what is with the additional 血 or 血 in the first ביאה, was there 血 or not. discusses this issue.

פירוש בקונטרס דעתן דמים לא קאמר¹ כגון שנאבדה המפה² –

explained that the husband did not claim a 血, 血, either because the cloth was lost, so we are unsure if there was 血 or not –
או שהיא משפחחת דורקטית³ שאין להם דמים⁴ –

Or because she was from the family, who do not have 血, so there can be no 血, only the 血 of טענה, 血, 血.

offers an alternate explanation why there was no 血:

ורבינו חננאל מפרש דבוגרת⁵ ומוכת עץ⁶ אין להם דמים –

And the explains that a 血 and a 血 have no 血 (therefore there can be no 血) –

אבל אין פתח פתו ויכול לטעון טענה פתח פתוח –

However their is not 表示 (if they are still 表示, therefore he can only claim the 表示 of 表示 that she is not a 表示, for if she were, her would be closed 表示).

asks:

וקשה לפירוש רבינו חננאל דאמירין באלו נערות לכאן לו, וא שם עמו ב –

And there is a difficulty with the 表示 (that a 表示 does not have

¹ It would seem that if there was 血 then she is considered to be a 表示 even if he claims 表示.

² After the initial 表示 they would wipe themselves with a cloth to verify (by the 血 on it) that she was indeed a 表示.

³ See ב, ג.

⁴ However, all other women (including a 表示 表示 have 表示. See later in this 表示 (footnote # 7).

⁵ A woman becomes a 表示 six months after she becomes a 表示 (which is when she brings the 表示 [after her twelfth birthday]).

⁶ 血 means hit with wood; it refers to a woman who received a wound 表示.

ברייתא פָתַח גִמְרָא נָעֲרוֹת אֶלָּו, פרק (but her is closed), for the asks in which states -

ובוגרת איו לה טענת בתוליס⁷ והאמר רב בוגרת גותנית לה לילה ראשונה⁸ -

‘And a has no but said that we ‘give’ the first night for a בוגרת טענת בתולים; if this indicates that a has no, so why does he not have **בוגרת**; **בוגרת – דם**

ומשני אי דקא טענת דמים הכו נמי הכא במא依 עסלאין דקטען טענת פתח פתוּח⁹ -

And the woman answered, if he would claim טענת דמים (that there was no blood), indeed it would be a valid claim (since a woman has **דם בוגרת** as is evident from the ruling of רב), **however the פתח פתחה is discussing a case where he claimed** and that is not a valid claim since a woman has **דם בתולים** (even though she has **דם בוגרת**). This concludes the citation of the Tosafot on פר' ח גמרא -

משמעות דפתחה פתוח וייש לה דמויות –

It is evident from this that a בוגרת גمرا פתחה פتوна (therefore he cannot claim however she has דם בתולין) and therefore he can claim a פתחה פטוна, which is the exact opposite of פר"ח!

תוספות answers:

ויש לומר דברינו חנאל גרייס כגירסא ראשונה שהיתה בספרים -

And one can say; that the original גירסה is like the original גירסה which was in the texts, which is that the answer of לפק טעין וכו' is as follows (the exact opposite of our גירסה -

א' וְהִיא טעינה במתנה פנימית בפי גדי הבה במא' עצמינו דבאה צעינו טעינה גמיב'

If he would claim, indeed it is a valid claim (since by a בוגרת it is, however the which stated that a בריתא, (פתחה סתום), בוגרת אין לה טענה בתולים is discussing a case where he claimed טענת דמים.

והכי פירשו והאמר רב בוגרת נותני לה לילת הראשונה - ^{10: גירסת Tosfot will now explain the question (the question and the answer) according to this}

And this is the explanation of the there, ‘but said that by a we בוגרת גمرا רב’.

⁷ טענת פתח פתוחה here means טענת דמים (not טענת בתולים), as will become clear in the continuation of the Tosafot.

⁸ The בוגרת (as the rabbi ruled) that if he marries all the that is present the first night (even after many nights) is considered נערה (If she is a we give it even more time). However any that is present on any subsequent night may be considered נדה (and may cause an issue if it is determined that she is not a Jewish woman).

⁹ According to this the האומר פתח פתוח מצחתי is discussing a נערה (whose בוגרת is הסתום), but not a נערה since בוגרת פתחה פתוחה; there is no indication at all that she was נבעלה.

¹⁰ The difficulty (even with this) is how can the first rabbi cite that she should have been able to respond that she cannot have been there.

'give' her the first night'; the question was not that she should have had it, but rather - **ומՃתילין כל הלילה בدم בתולים משמע דaicא בוגרת דעתך לה דם בתולים טובא -**

That since we assume that it is that whole first night, this indicates that (occasionally) **there is a who has an abundance**¹¹ **- דם בתולים of בוגרת**

אם כן¹² אי אפשר לשום בוגרת שלא יהא פתחה סתום אפילו אין לה דמים -

Since this is so (that there is a who has an abundance), **it is impossible that any should not be, even if she has no** **- דם בתולים סתום, פתחה סתום בוגרת**

ואם כן יש לה טענת בתולים בפתח פתוחה -

פתח of טענת בתולים there should be (פתחה סתום בוגרת since every is בוגרת by the why does the state that a has no has בוגרת by פתחה -

ומשנני אי זקטען פתח פתוח כי נמי דיש לה טענת בתולים -

And the answered, if he would claim; indeed he would have a טענת בתולים, however -

הכא במאיעס קינון דלית לה טענת בתולים בטענת דמים משום דaicא בוגרת דדמיה כלין -

Here in the where it states that is because we are discussing a case of טענת דמים, and that is no claim because there is a whose are gone (even if she still is a and not a בעולה). She can claim that she is from those who have no בוגרות.

פ"ח finds an additional difficulty with:

ומיהו בירושלמי¹³ משמע לא כפירוש רביינו חנן אל -

However in it seems not like תلمוד ירושלמי -

דקאמר התם רבי יונה בשם רבי קרייספא בוגרת חביתה פתחה של יין¹⁴ -

For said there in the name is like an open barrel of wine' -

תוספות responds:

¹¹ This is obviously an exception, for according to the ה"ר a 'regular' has no בוגרת.

¹² The (generally) comes from the breaking of the סתימה. However it is possible that even if the is broken there will be no דם because she is as it is by a regular. If some of the פתחה there will be minimal or no דם; how is it that there is such a discrepancy in women that by some it is then (it follows) there will be no at all, and by others we allow the entire first night and ascribe it to דם; how can she have so much if the nature of a is that it is a regular. If it is possible that a is a regular then how can we be 톤לה if the nature of a is that it is a regular. Therefore we must conclude that every דם בתולים as this 톤לה (which comes from the breaking of the סתימה, which is found by every). See 'Thinking it over # 1.

¹³ In ב,א (on כתובות פ"א ה"א).

¹⁴ This would seemingly mean that her פתחה is open, like an open barrel of wine. This contradicts the view of the ר"ח that by a it is a.

ויש לישב דלענין דמים קאמר משום דעתם חבית סתוםה לעולם יש בה יין -

And we can resolve this difficulty; that the comparison to a (not regarding the the, but rather) **regarding the** of a **for generally a closed barrel of wine always contains wine** -

שאין דרך לסתום חבית ריקנית אבל חבית פתוחה פעמים יש בה יין פעמים אין בה יין -

Since it is not customary to seal an empty barrel; however an open barrel, sometimes it contains wine and other times there is no wine -

כך בוגרת פעמים אין לה דמים פעמים יש לה -

Similarly with a (who is compared to a **בוגרת** (the housewife)), **sometimes she has no الدم בתוליהם** - **דם בתולים and sometimes she has** -

ומשום הכי אין לה טענת דמים כזפירש רבינו חננאל -

And therefore there is no by **טענת דמים as the explained** because there are who are **בוגרות** - מוסולקות דמים who are **בוגרות** -

ר"ח תוספות brings a support to the view of:

וכדאמר בפרק הבא על יבמותו יבמות נט, א וט פרט לבוגרת שכלו בתוליה:

והא Ashe בבתוליה יקח פסוק פרק הבא על יבמותו states ברירתא (regarding a ¹⁵ Cohen גדויל) excludes a, **בוגרת whose** are gone (a should not marry a); indicating that generally a has no **בוגרת**.

SUMMARY

According to our פתחה פתחה but **דם בתולים** has **בוגרת**, a גירושא, however according to the entire סתום, **דם בתולים** generally has no **בוגרת**, a גירושת ר"ח.

THINKING IT OVER

1. According to the (that generally are **בוגרות** דמים ¹⁶) מוסולקות how are we **בוגרת** ר"ח (the entire first night as **דם נדה**? ¹⁷ perhaps it is?

2. How will explain the **הבא על יבמותו** in גמרא רש"י which seemingly indicates¹⁸ that a **דם** has no **בוגרת**? ¹⁹

¹⁵ ג. אמר (אמור) כא. ויקרא. See 'Thinking it over' # 2.

¹⁶ See footnote # 12.

¹⁷ See [האריך] מהרש"א.

¹⁸ See footnote # 15.

¹⁹ See ר"מ ש"ג מהר"ם.

לא צריכה באשת כהן – It was necessary only for the wife of a Kohain

OVERVIEW

The asked why does rule that if a husband claimed she is forbidden to him, since it is (merely) a **ספק ספיקא**, it may have not been and it may have been. The answered that was discussing an who is even if it was, so therefore, since there is only one, we are **ספק Tosfot**, which explains why we are.

asks:

ואם תאמר ונוקמה אחיקתה שהיא כשרה לכהונה¹ וכן מא לאו תהתיו זינתה²

And if you will say; but let us place her on her presumptive status that she is fit for and therefore let us say that she was not while she was married to him, but rather she was before the marriage, so she is permitted to her husband the Cohen.

answers:

ויש לומר דעתך איתך לא למייר דהשתא נבעלה דאוקמה אחיקת הגוף³ שהיתה בתולה:
And one can say; on the contrary we should assume that she was now (as recently as possible before the marriage) since we should place her on the of her body that she was a batolah.

SUMMARY

The **חזקת כשרות הגוף** is stronger than the **חזקת כשרות לכהונה**.

THINKING IT OVER

1. asks that she should be since she has a **חזקת כשרות לכהונה** to mention the **חזקת כשרות לכהונה**, he could have simply said she has a **חזקת כשרות!**⁵

¹ This woman had a **חזקת כשרות לכהונה** before this claim of (in fact she was **מקדושת לכהן**), therefore since there is a **ספק** whether she was or not, her **חזקת כשרות** should resolve the (**ספק תהתיו מזונה** or **ספק תהתיו לא מזונה**) and) that she should continue to be as her status was before the arose. See ‘Thinking it over’ # 1.

² A woman becomes a **בועל** and is **אסורה לכהונה** only if she is **אסורה** to the **בועל** because she is an **אשה איש** as in our case or because he is a **מן** or her relative, etc.) but not by a **פנוי הבא על הפנואה**.

³ She was born a **batolah**, and since we do not know when this status changed, we assume that until we know for certain that her status changed, she retains her initial status as a **batolah**, therefore since we first became aware of her change in status now (when the husband made this claim), we assume that she retained her **batolah** status up to the last moment when we need to assume that her status changed (some time immediately prior to this claim of **פתח פתוח תהתיו**). See ‘Thinking it over’ # 2.

2. answers that she has a **חזקת הגוף** that she was a **בתולה**.⁶ However there is also a contradictory **חזקת הגוף** that she is now a **בעולה**, we should therefore assume on account of this **חזקת הדשתא** that she was a **בעולה** all the time in the past (even before the **קידושין**) until we know for sure that she was a **בתולה**. This **חזקת הדשתא** (which indicates that she was a **נעולה** before the **קידושין**) should combine⁷ together with the **חזקת הגוף (דמעיקרא)** to override the **חזקת כשרות לכהונה** that she was a **בתולה** (**עד הדשתא**), and permit her to her husband!⁸

⁴ See footnote # 1.

⁵ See footnote # 4. (See following footnote # 4.)

⁶ See footnote # 3.

⁷ Even if we usually maintain that a **חזקת בתולה** (like the **חזקת דמעיקרא**) is stronger than a **חזקת הדשתא** (that **חזקת הדשתא** is stronger than a **חזקת דמעיקרא** **לפנינו**), nevertheless combined with the **חזקת כשרות לכהונה** the **חזקת הדשתא** should overpower the **חזקת דמעיקרא**.

⁸ See פנ"י and **אלית האבים**.

ואי בעית אימא באשת ישראלי דקביל בה אביה קידושין פחותה מבת ג' שנים –
And if you wish I can say; by the wife of a Israel, whose father accepted on her behalf when she was less than three years old

OVERVIEW

The explained that the ruling of ר' אלעזר regarding which prohibits his wife to him, is in a case where it is not a case; either by an where there is no or in a case where she was less than three years old, so there must have been a after she was three years old (to render her a). There is therefore no since she was already when she was three. There is only one whether it was (where she is or (where she is or). Our discusses various arguments why she should still be.

תוספות asks (1):

ואם תאמר אכן איך ספק ספיקא ספק באונס ספק ברצון –

And if you will say; there still is a (and she should be), מותרת לבעלה (and she should be) first there is the of **ספק באונס** or **ספק ברצון** (where she is or (where she is) -

ואם תמצא לומר ברצון ספק כשהיא קטנה¹ ופתוי קטנה אונס הוא² –

But even if you will assume it was (where she is), nevertheless there is an additional that perhaps she was while she was still a, and seducing a is the equivalent of **אונס** (which makes her) -

כదאמירין בהבא על יבמותו (שם סא,ב) –

As the states in פרק הבא על יבמותו גמרא that פתי קטנה אונס הוא. Therefore she should still be ספק ספיקא on account of this מותרת לבעלה.

תוספות answers:

יש לומר דעתם אונס חד הוא³ –

¹ She was an from less than three years old. There is ample time for her to be before she became a. [Even though previously (ד"ה לא) stated that the body which indicates that she was at the latest possible time (when she is a), which would cause her to be , nevertheless there still remains the opposing .] מותרת לבעלה (which is an and)

² A has no דעת, so even though she consented (because of his seduction) it is still considered an.

³ We cannot say perhaps it was and even if it was, maybe she was a which is an . This was the of the original . If we assume that it was then it cannot happen when she was a . [See 'Thinking it over' # 1.]

And one can say that the term אונס is one, there is only one; perhaps it was מזנה she was ברצון and נבעלה כשהיא גדולה באונס (which includes פתו קטנה and perhaps it was that she was גדולה ברצון when she was a woman). Therefore there is no ספק ספיקא.

תוספota asks (2):

ואם תאמר ונוקמה בחזקת היתר לבעה⁴ -

And if you will say; but let us place her to her husband?

תוספota answers:

ויש לומר דאונס קלא אית לה⁵ כדאמרין בירושלמי⁶ [אונסא יש לו קול] -

And one can say; that there is publicity when a woman is, as it states in [קול] אונס has a minority [an תלמוד ירושלמי]

והשתא דליך קלא הויליה רצון רובא ומיעוט אונס ורובה וחזקה⁷ רובא עדיף⁸ -

So now that there is no (that she was נאנסה), the possibility that it was a majority, and the possibility that it was a minority (since there is no קול, presumably the probability of אונס is diminished), **and** the rule is that when **רובה** clashes against **חזקתה**, **רובה** perseveres.

תוספota asks (3):

ואם תאמר אם כן בספק ספיקא נמי תיאסר דעתך אונס כמאן דליתיה דמי⁹ -

And if you will say; if indeed (that the tells us that it was since אונסא יש ברצון) **אונס** she should also be אסורה, since the **ספק** of אונס, is like it does not exist -

ולא נשאר אלא חד ספק תחתיו ובהא לא שייך לאוקמה בחזקת היתר¹⁰ כדפירושית¹¹ -

so there only remains one, and by this we

⁴ Before the claim of she was מזנה to him, now that there is a question whether she was מזנה or נבעלה באונס (she was מזנה to him), the question should resolve this that it was נבעלה לבעה (see previous מותרה לבעה # 1 and footnote # 5).

⁵ When a woman is מזנה she hides it (out of shame), however when she is not (that) ashamed to publicize it (see footnote # 24).

⁶ Here א עמוד ב (פ"א ה"א).

⁷ The tells us that it was מזנה (since there is no קול) and she is ברצון, so even if the חזקת היתר לבעה אסורה, nevertheless we follow the rule and she is אסורה.

⁸ See קידושין פ, א.

⁹ See 'Thinking it over' # 2.

¹⁰ The חזקת היתר לבעה her תוספota is referring to her (mentioned in question # 2 and footnote # 4).

¹¹ The חזקת היתר is referring to that which he explained in the previous question, that opposing this חזקת היתר that she was a woman so we assume that she was נבעלה תחתיו. We may have thought that the חזקת היתר הגורף since there is no opposing ספק הגורף or אונס or רצון; however regarding ספק תחתיו or חזקת הגורף, there is the ספק which indicates לאיסור.

cannot place her on her as I explained previously -

תוספות answers:

ואומר רבינו יצחק דהאי רובא ברצון אינו רוב גמור אלא הוא מדרבן¹² -

And the answers, that this is not a valid which assumes that it was **ר"י** **רוב**, **but rather it is a** **רוב מדרבן** (and there still remains **בדוריתא** **רוב**; **ר"י** **ברצון** or **ר"י** **רבנן**) -

והלכ"ז במקומות ספק ספיקא שרי ובמקומות חד ספיקא חשבי רבנן רצון לגבי אונס רובא¹³ -

So therefore when there is a **ספק ספיקא** (there is another besides **ספק** **החתתו** **ספק** **אינו** **החתתו** like, **ברצון** **רבנן** to make it a **ספק ספיקא** a **however where there is only one** (by the **ספק** **החתתו** **ספק** **רבנן** where the **ספק** **ברצון** is **ספק** **קטנה** **רוב** **a** **ברצון** **רבנן** considered to be a **comparison to** **אונס** **רובה**) (because **אוננס** **קל** **לא יש לו** and it overpowers the **הבעלה** **חזקת** **היתר** **לבעלה**).

proves that there is such a concept as **תוספות**:

ואשכחן כי האי גוונא גבי תינוק שנמצא לצד העיסה (**קדושים ז"פ, א**) **דלא הוילו** **רובא אלא מדרבן** - **And we find something similar regarding a child who was found next to the dough**¹⁴ **where it is a only** **רוב** - **מדרבנן** -

ולהכי אמר רבי יוחנן התם דין שורפין עליו את התרומה¹⁵ -

So (since it is only a **ר"י יוחנן** **therefore** **רובה מדרבן** a **burn the** **on his account** -

תוספות asks (4):

ואם תאמר את כי באשת כהן ובקיים אביה קדושים פחותה מבת שלש לישראל -

And if you will say; nonetheless in the cases of **אשת כהן** **and where her father was from a** **ישראל** **when she was less than three years old** -

aicā ספק ספיקא דספק מוכת עז ספק דרשות איש -

¹² We follow a **להחומרא** whether it is effective only **רובה דרבנן** or **להחומרא** **לקולא** but not **להחומרא**. [See footnote # 15.]

¹³ Even though **רובה גמור**, nevertheless since this is not a **definitive** (if there is only one), even if we combine the **ספק** of **אונס** to oppose the **רובה**, it still remains **אונס**. However as soon as there is an additional **ספק** it becomes a **definitive** (See **ספק דרעך א**).

¹⁴ The case there (as there explains it) is that there was a **תינוק** **טמא** (**ד"ה שדרכו**) **עיסה** - of **תירומה**, and he had a (small) piece of dough - in his hand; the issue is whether he took the **ספק** from the **עיסה** (so the **עיסה** became **טמאה** or did someone give the **עיסה** to the **תינוק** and the **עיסה** remains). The **היכים** maintain that the **עיסה** is **טמאה**, since it is the nature of a child to touch things, so he probably took the **ספק** from the **עיסה**. This is considered to be (sort of) a **רובה**. However it is only a **definitive**, not a **definitive** **רובה מדריביתא**.

¹⁵ We are forbidden to eat this because the **רובה** is effective (see footnote # 12), but we cannot burn this **תרומה** (which is considered **טמאה מדריבן** for **העיסה** of **טמאה מדריביתא** there is no **רובה**; the **עיסה** is not **טמאה מדריביתא** and we can only burn **תרומה** which is **טמאה מדריביתא**).

מוכת עז there still is a **ספק ספיקא**, for there is the **ספק** that perhaps she merely is a **אשה** (so she is **אשרה**)¹⁶ or **perhaps she is a man** (where she is **דרותה איש**)¹⁷ -

[And if we are discussing an **אשת כהן** we can say even if she is not a **woman**, but rather a **man** -

מכל מקום ספק תחתיו ספק אין תחתיו -

Nevertheless there is the **ספק** (where she is **אשרה** or (where she is **מורתה**); and if we are discussing -

אשת ישראל אם תמצא לומר דאית מוכת עז ספק באונס ספק ברצון -

An even if you will say **she is not a woman** (but rather a **girl**), nevertheless **there is** (where she is **דרותה איש**, nevertheless **there is** (where she is **ספק באונס** and **ספק ברצון** (where she is **מורתה**); in any event there is a **ספק ספיקא**, so why is she **אשרה** -

rejects an anticipated resolution to his question:

ואין לומר דמוכת עז לא שכיח¹⁸ **זה אמרינו באלו נערות ל�מן לוב** -

And we cannot say that a states in ר' זירא **מוכת עז is not common**, for **פרק אלו נערות** -

גבוי סומה שאין לה טענת בתולין מפני שנחבטה על גבי קרקע¹⁹ -

Regarding (the ruling of סומכות אמר ר"מ that if one marries) a **blind** woman, the husband **does not have**, the reason is **because she knocks herself on the ground** -

ופריך בולחו נמי חבותי מיחבטן²⁰ **אם כן שכיח**²¹ -

And the **challenged** this explanation; all women are also prone falling; this concludes the citation from the there, concludes his rebuttal, it is

¹⁶ [See footnote # 6.] This (of this **ספק**) is the additional that adds to the **תוס' ד"ה האומר** (פחותה מבת ג' or **אשת כהן**). See 'Thinking it over' # 3.

¹⁷ In the bracketed area reiterates the (either by or **אשת כהן**) mentioned in the gloss attributes this bracketed addition to the **גמרא**. See 'Thinking it over' # 3, footnote # 33.

¹⁸ Therefore it cannot be considered as a **ספק**, so there is no **ספק**, just one **ספק** and therefore **אשרה**. This (that **רוב** **אשרה** **ספיקא** **מזרירות נשים** lose their **זנות** [before **בתולים**] through and not through **טענת בתולים** must be considered a **ספק** **אשרה**, for if it would merely be a **רוב**, it would seemingly still function as a previously stated.

¹⁹ The husband knows that she is blind and prone to falling and hurting herself, which may cause her to lose her rights of **טענת בתולים** (a **מוכת עז**), therefore it is assumed that when he married her he forfeited his rights of **טענת בתולים**.

²⁰ Nevertheless we do not say that there is no **טענת בתולים** on account that she may be a **girl**; why is a **סומה** different. The **גמרא** there answered that when a girl falls she tells her mother and they determine whether she is a **מוכת עז**, however a blind girl does not tell her mother. The **גמרא** however accepts the premise that falling and losing the **בתולים** is a common occurrence.

²¹ And even according to the who argue with **סומכות בתולים** and maintain that a **רaben** **ספיקא** **מוכת עז**, nevertheless the **ספק** should suffice to make it a **ספק** for it is not less than which is also **אונס** **לא שכיח** and nevertheless it allows for a **ספק ספיקא** (see **תוה"ר ספק ספיקא לא שכיח**).

evident that מוכת עז is common since the gemara asks that by all women it is possible that they are מוכת עז.

תוספות offers a partial solution:

ולפירוש רבינו חננאל²² דמוכת עז פתחה סתום אני שפיר -

However according to the interpretation of the that by ר"ח is מוכת עז her, it is properly understood, for here the claim is פתחה מצאתי so it cannot be that she is merely a מוכת עז, since by a פתחה סתום it is מוכת עז. However according to the other interpretation that by a פתחה her מוכת עז the question remains.

תוספות answers:

ויש לומרadam איתא דמוכת עז היא טוענת²³ דאי גנאי בכך כמו בביאת אונס²⁴ -

And one can say; that if indeed she is a מוכת עז, she would have claimed it (after he said פתחה מצאתי), **since there is no shame in being a מוכת עז as there is by a אונס - ביאת אונס**

ומדלא טענה אין להסתפק בכך:

And since she does not claim that she is a מוכת עז, **there can be no doubt about it** that she is a מוכת עז and not a מוכת עז דרשות איש so there is only one and therefore ספק. אסורה.

SUMMARY

There is no שם אונס אחד הווא since (פחותה מבת ג') ספק כשהיא קטנה (by a רוב ברצון) so אונסא יש לו קול. However this since חזקת היתר לבעה effective only by a ספק ספיקא and not by a ספק. There is no (either because a פתחה סתום is מוכת עז or) because she is not claiming מוכת עז אני.

THINKING IT OVER

1. ר' states that שם אונס חד הווא Tosfos²⁵. Why cannot we then say that the ruling of regarding a woman who was נתקdash when she was a קטנה, even after she

²² See previous Tosfos ד"ה האומר.

²³ The rule that בתרלה פתחה מצאתי נאמן לאסורה עליו (only) in a case where she claims I am a בתרלה or that you (the husband) were me during ברישין. In that case it is a בתרלה and he was not before, therefore he is believed. However if she claims נאנשי before בועל (since she is a בתרלה and he is a [he does not know when or how she was)], she is believed and is מותרת לבעה. See שם באנו (and here). Therefore since she is claiming (or you were me) we do not assume that she is a בתרלה, for why did she not say so. However when she does not claim it was (but rather I am a בתרלה etc.) we cannot deduce that it was not (for she should have said נאנשי), since there is more shame in saying מוכת עז אני (בתרלה אני) (and therefore she does not say it) than saying מוכת עז אני.

²⁴ However there is (even) more shame by נאנשי than by בתרלה, therefore See footnote # 5.

²⁵ See footnote # 3.

was three, and there is no ספק בראצון. What will we say; ספק ספיקא maybe it was she was a אינו תהתי or ברצון so there is only one (whether it was or not) since שם אונס חד הוא?!²⁶

2. מיעוט אונס asks (#3) why does the consider it a גمرا since ספק ספיקא is a non-existent compared to רצון so it is the only option that remains.²⁷ Seemingly the idea of a ספיקא is that when there is only one there is an even chance (whether it is or not); however, if we can show that even if we assume the option (in the first), nevertheless it still can be (because of the second), then it is (since there is a greater chance of than). It should make no difference how unlikely the second is, for in any case it diminishes the odds of the first to be less than the second. What is the question?!²⁸

3. מוכת עז asks (#4) that there is always a ספיקא since there is the in addition to the of ספק אשת כהן or (by an or קטנה).²⁹ There is a view³⁰ that a ספיקא is effective only if it is reversible (מתחפה); you can begin with either ספק.³¹ Seemingly this is not true; it works if we start with either ספק (by a or קטנה), then (either) ספק דרומה איש and ספק מוכת עז or (by an). However if we begin by then (seemingly) we cannot continue with ספק (meaning that נבעלה ברצון then ואות"ל ברצון) if she was there is no to be her!³³ Does this prove that ספיקא המתחפה does not require a ספק?³⁴

²⁶ See רעכ"א and רשב"א.

²⁷ See footnote # 9.

²⁸ See פג"י, etc.

²⁹ See footnote # 16.

³⁰ See עמוד ב' (אות ב).

³¹ For instance we can say (by an or we can say ספק אינו תהתי ואות"ל תהתי ספק באונס; אשת ישראל באונס; ספק אינו תהתי). It works either way.

³² The same difficulty applies if we begin ספק אינו תהתי ואות"ל תהתי (meaning that נבעלה תהתי), then ספק מוכת עז?!?

³³ Perhaps that is why the ספיקות added the ספק אינו תהתי and after the ספק מוכת עז to inform us that the ספק must begin with ספק. See footnote # 17.

³⁴ See פרדס יצחק אות נט.

ומי אמר רבי אלעזר ה כי והאמר רבי אלעזר قولיו –

And did say this; but said, etc.

OVERVIEW

The question asks; how can rule that if he claims he is believed, and she becomes אסור to him (if there is only one ספק), when ruled elsewhere that a woman cannot become אסור לבעל, only in restricted circumstances (of קני וסתירה), etc.讨辯 discusses the viewpoint of this questioner (the מקשן).

תוספות asks:

תימה השتا דעתו למיין שלא מהימן אפילו לשוויה עליה חתיכא דאייסורא¹ –

It is astounding! Now that this wants to assert that the husband is not believed, even to ‘make her a forbidden object to him’, therefore –

תיקשי ליה מתניתין דהאומר לאשה קידשתייך אסור בקרובותיה² –

This, which states **that one who says to a woman, ‘I betrothed you’, is forbidden to her relatives; this contradicts him.³**

תוספות answers:

ויש לומר דעתו ליה למקשן דין דבר שבורה⁴ פחות משנים⁵ –

And one can say; that the assumed that no מקשן is effective with less than two witnesses –

ואבילו ראה אדם שזינתה אשתו רק שלא היה שם עדים לא הייתה נאסרת עליו⁶

¹ The believability that grants to his claim of פתח פתחה is limited to the prohibition which he is placing on himself (but not that we actually believe him to deny her payments, for instance). It is generally accepted that if a person claims that (on account of circumstances known to him) a certain item is prohibited to him, he is prohibited from it. This is called שוויה אנטシア החטיכא דאייסורא. A classic example is the משנה (mentioned in our גמרא) which cites immediately. He is forbidden to her relatives not because we know that he was מקדש this woman, but merely since he said he was מקדש her, so automatically he was forbidden to all her relatives.

² A man is forbidden from his wife's relatives; i.e. her mother, sister, or daughter, etc.

³ The question is that just as (according to the מקשן) his wife should not be אסור to him since there were no עדים that she was (as there is by קני וסתירה), similarly (in the משנה) there were no עדים that he was מקדש this woman; why is he אסור בקרובותיה. It cannot be on account of his admission that he was מקדש her, for here too we are not accepting his admission that פתח פתחה מצאתי.

⁴ דבר שבורה (literally of an immoral nature) refers to illicit relationships, marriages and divorces.

⁵ One cannot marry or divorce unless there are two witnesses present. Similarly one cannot be punished for illicit relationships unless two witnesses testify to that effect. [We derive this from the דבר בבר of פסוקים (in כי מצא בה ערות דבר) that דבר שני עדים וגוייקום דבר (דברים [שופטים] יט,טו (in דבר [חצא] כד, א. אין דבר שבורה פחות מב').]

⁶ There was no meaningful act (of), with halachic consequences (according to the מקשן), since did not observe it; just as there can be no meaningful act of קדושין וגיורין unless witnesses observe it. See ‘Thinking it over’.

mezuna (this assumed) **even if a person saw that his wife was**, however if there were no witnesses there to observe this, she would not be prohibited to him (since אין דבר שבعروה פחות מב')⁷ -

והלכ' מתניתין לא קשיא ליה מיידי קדשתיך בעדים קאמר⁸ -

So therefore there is no difficulty at all from the משנה (which states that he is אסור בקרובותיה since when he said, 'I was מקדש you' he meant with witnesses -

proves that he meant with witnesses -

דמקדש אפילו بعد אחד אין חושין לקדשו⁹ -

For if one is even with one; his קדושין are inconsequential (and certainly if there were no עדים), so obviously when he said קדשתיך he meant with -

אבל אהא דאמר רבי אלעזר דנאמן بلا עדים לומר דמצא פתח פתק שפיר:

However regarding that which said that he is believed to claim that he found a even without; עדים asks correctly (that a woman is not אין דבר שבعروה פחות, unless there is given his assumption that קני וסתירה בעדים, נאסרה על בעלה applies even to משנים).

SUMMARY

שוויה applies even to cases where אין דבר שבعروה פחות משנים assumed that מקשן.

אנפשיה חתיכא דאיסורא.

THINKING IT OVER

answered that the since אין דבר שבعروה פחות מב' assumed that therefore there can be no גمرا (without).¹⁰ The answered that השוויה אנטישיה חתיכא דאיסורא maintains (not like the מקשן that there can be גمرا on מי קמ"ל ר"א, why then does the ask, when he is teaching us and rejecting the המקשן?!¹¹

⁷ דבר שבعروה פחות משנים agrees to the concept of השוויה אנטישיה חתיכא דאיסורא generally, however when it comes to a חתיכא דאיסורא (without), the status of being a גירתה הכתוב denies this.

⁸ There were by this (however they are not present now); therefore his admission of קדושין has its inevitable consequence that he is אסור בקרובותיה.

⁹ He would not be אסור בקרובותיה.

¹⁰ See footnote # 6.

¹¹ See [הארוך] "מהרש"א".

קינוי וסתירה אין עדים לא –

Warning and secluding yes; but not witnesses?!

OVERVIEW

The responded to the question, who asked that since ר"א rules that a woman can only be נאסר on her husband with קינוי וסתירה, so how is she by the claim of פתח פתח מצאתי. The answered, can mean only קינוי וסתירה and not if there were עדים who saw theazonot?! Obviously not! This explains how this answers the question of why he is believed by ¹פתח פתח מצאתי.

תוספות explains:

הכי נמי דלא אתהamuoti על פי עצמו בכעדים דמי² כיון דקים³ ליה:

We must also assume that when said that קינוי וסתירה are required, just as he obviously did not exclude, ⁴ so too he did not exclude if the testimony (ofazonot) is given by him (the husband), for this testimony (by him) is like testimony of witnesses, since he is sure that it was ⁵פתח פתח מצאתי.

SUMMARY

ר"א did not exclude עדים (and) the husband's testimony since it is קים ליה.

THINKING IT OVER

1. Seemingly is כעדים דמי is על פי עצמו answer⁵ that is actually stated in the Tosafot, that is adding?⁶
2. Is the husband believed to claim because of ⁷קים ליה or because in the Shvurot we maintain that even by a מסקנה applies?

¹ It is obvious that are believed, but why should he be believed.

² See 'Thinking it over' # 1.

³ See 'Thinking it over' # 2.

⁴ This proves that the statement נאסרת אלא ע"י קינוי וסתירה, is not unequivocal, but there are exceptions to this rule such as עדים, and similarly if he claims פתח פתח מצאתי. Therefore we do not have a contradiction in the rulings of ר"א.

⁵ See footnote # 2.

⁶ See מהרש"א.

⁷ See footnote # 3.

מפני מה לא אסורה –**Why did they not forbid her****OVERVIEW**

The asks why did they not forbid her. **דוד** to בַת שְׁבָע cites הוספות פירוש"י rejects it and offers his interpretation.

פירוש הקונטרס¹ והלא אותו מעשה בעדים הוא² –

דוד is explained the reason the should have forbidden her to בַת שְׁבָע since there were witnesses to that episode.

פירוש"י rejects הוספות:

וain נראת דנהי DIDOU לרבים הוה שבאייה לבתו –

And this is not the view of הוספות, for granted that it was publicly known that **בrought to his house** – **בַת שְׁבָע** **דוד**

מכל מקום לא ראו כמכחול בשופרת³ שבפני בני אדם לא שמש⁴ –

Nevertheless no one saw **בשופרת⁵** since he was not in the presence of people, so why should she be אסורה עליו.

offers his interpretation of the question הוספות: מפני מ לא אסורה

ונראת לרביינו יצחק לפרש ואם תאמר דפתח פתו כ שני עדים דמי⁶ אמרاي לא אסורה לדוד⁷ –

And the ר"י prefers to explain it thus; so if you maintain that the claim of **פתוח** (by the husband) is comparable to the testimony of two witnesses (regarding זנות as the just stated, so why did they not prohibit her to – **דוד** –

דוד היה יודע בודאי שנבעלה ואף על פי שעשה תשובה מכל מקום עיכבה⁸ –

¹ ב"ה מפני.

² People knew that **דוד** brought בַת שְׁבָע to his house (and was secluded with her).

³ מכחול is a dye applicator. It is first inserted into a tube (שפורת) which contains dye, and then applied to the eyes. This is the common euphemism for the act of ביאה.

⁴ It is forbidden to have השמש in the presence of anyone else. See גדה יז, א.

⁵ It seems that maintains that העדי זנות are required to see in כמכחול בשופרת in order that their testimony be accepted. Others maintain (see מכות ז, א) that it is not necessary that the actually see עדים, but it is sufficient if they see them (in a compromising situation). In any event the saw neither since he was not משמש בפני בני נ"א.

⁶ If however we would maintain like the סברת המקשן that since בועל שבעורה פחתה מב' since she is not אסורה to him (see previous footnote # 6), there would be no question on **דוד**, since there were no עדים.

⁷ The should have told **דוד** that if/since you are aware that you were an סנהדרין while she was an אישת איש, so you know that she is forbidden to you, and you need to separate yourself from her. The word אסורה is not that literal according to פרש"י as it is according to סנהדרין.

⁸ is explaining that we cannot say that just as initially did an איסור (with בַת שְׁבָע), so later too he continued

For certainly knew that she was נבעלה (by), and we see that even though nevertheless he retained her by him -

ואם הייתה אסורה לו לא היה אותו צדיק לוקחה לו לאשה:

And if she was forbidden to him, that צדיק would not have taken her as his wife.

SUMMARY

According to ב"ד רשי the should have prohibited to be with, since there were that they were together. According to ב"ד, the should have told דוד, since you know that she is אסורה to you, there is a need for you to separate.

THINKING IT OVER

The rule is if one is אסורה both to her husband (the בעל) and to the בועל. The rule is כשם שאסורה לבעל כך אסורה לבועל. If however she was מותרת לבעל and therefore also מותרת לבעל. Here may not have been (אויריה) אסורה לבעל since he does not know that she was ברצון and even if (בב"ד) would have told them he need not accept their testimony, especially since אין אדם משים עצמו רשע. In our case therefore if she is not אסורה לבעל not אסורה לבעל (to), so what is the question according to תוספות?!⁹

living with her. Therefore says that did תוספות דוד, so how come he continued to live with her if she is אסורה to him.

⁹ See and רשי ט, אות ש.

**כל היוצא למלחמה בית דוד גט כריתות כותב לאשתו – – – – –
All who go out to the wars of would write a writ of divorce to his wife**

OVERVIEW

בת שבע אשת איש איסור גمرا explained that did not transgress the with since all who went to wage the battles of would write a to his wife (and that included the [former] husband of). There is a disagreement between " and how this divorce was effective.

פירש בקונטרס שאם ימות במלחמה¹ יהא גט משעת כתיבתו² –

explained that they would give the with a stipulation, **that if he will die in the war, the גט should be effective retroactively from the time it was written** and delivered to the wife.

תוספות has a difficulty with:

וקשה לרביינו תאם דאם כן³ מייל היוצאה אם לא מהני אלא למי שאין לו בניים ויש לו יבם –

And the ר"ת has a difficulty with, for if indeed it is so, why is it that 'everyone who went out to war' wrote this גט, since it is of no use except for someone who has no children and there is a (the deceased's brother). However anyone who has a child or has no brother there is seemingly no need for them to write a גט כריתות יבם, since there can be no חיוב יבום לאשתו.

תוספות has an additional question on:

ועוד דתנו במי שאחזו (גיטין עג, א ושם) מה היא באותו הימים⁴ –

And in addition, we learnt in a 'what is she in those days – רבי יהודה אומר הרי היא כאשת איש לכל דבריה –

says she is like a married woman regarding everything. now Tosfos explains what is meant by – **אותן הימים –**

וקאי אמאי דקתני לעיל מינה⁵ הרי זה גיטך מהווים אם מתי וכן משמע בתוספתא⁶ –

¹ However if he returns from the war, the גט is void and it is as if there never was a גט at all.

² The reason for enacting this process is to protect these women whose husbands have no children, that if their husbands die in the war, they will not be required to go through the process, since they are divorced prior to their husbands' death. See shortly in Tosfos.

³ Tosfos assumes that since ר"י mentions the stipulation of death, it indicates that the reason for this custom is on account of יבום as explained in footnote # 2.

⁴ will shortly explain that a woman who received a גט באותן הימים refers to a woman who received a גט with this aforementioned type of stipulation. We are discussing the period after the גט was given and before the stipulation was fulfilled.

⁵ מהווים אם מתי מעכשו אם מתי ה"ז גט וכיו' זה גיטיך מהווים אם מתי מחוליך זה וכיו' ה"ז גט עב, א on גיטין in משנה.

⁶ זה גיטיך מהווים אם מתי מחוליך זה ימים שבינתיים בעלה וכי במציאותה וכיו' דברי ר' יהודה גיטין פ"ה ה"ג.

And the phrase אָוֹתָן הַיּוֹם is referring to that which was taught in the previous משנה, where a man said to his wife, ‘here is your גֶּט from today, if I die’; and so it seems in the Tosfotא that refers to a case where he said אָוֹתָן הַיּוֹם אֲמָתִי ר' י"י says that she is -

אלמא אף על גב דעתך מהיום הויא אשת איש גמורה⁷ -

It is evident that even though he said the גֶּט should be effective from today, nevertheless she is a complete נ"א -

כ"א"א לכל דבריה גمرا's explanation why indeed she is:

כדמפרש בגמרא⁸ באומר מעת שאני בעולם -

As there explains the view of ר' י"י, that we understand his statement to mean that the גֶּט should be effective from the (last) moment when I am in this world (while I am still alive) -

פירוש⁹ זהאי דעתך לא שיחול מיד אלא דעתו שיחול שעה אחת קודם מיתתו -

The clarification of this is, that this which he said, ‘from today’, he did not mean it should become effective immediately (today) in the event that I die, but rather it his intent that the גֶּט should become effective one ‘hour’ before his death -

זהינו מעת שהוא בעולם -

For that is what the גمرا means when it states that his intention was from the last moment that he (the husband) is in the world.

תוספות responds to an anticipated difficulty:¹⁰

ולא אמר מהיום אלא למעוטי לאחר מיתה כלומר מאותו יום שאני בעולם יהא גט¹¹ -

For he did not say מהיום to be taken literally, but rather he said to exclude that it should become effective after death, so the meaning of מהיום is that the גט

⁷ This means that even if he eventually dies and the גֶּט became effective, she is only considered divorced as of an hour before he died, however up till that hour she is a נ"א and if she was married with someone during that time she is מוחיב מיתה. According to this, even if she gave birth to this type of גֶּט, she would be considered an נ"א at the time she was with her, even though she died later in battle. At this point Tosaftot assumes that there is no difference whether he said 'מהיום אם מת' (as mentioned in the משנה) or if he said explicitly that it should become effective from the time of writing (as the words the stipulation). In both cases she is כ"א לכל דבריה.

⁸ גיטין עג, ב.

⁹ The term here is rejecting who writes ד"ה אמר מעת שאני that there is rejecting who writes ד"ה אמר מעת שאני. According to פרש"י if he actually said or מהיום if he said פרש"י what agree that she is not an נ"א. א"א באוthon הימים even (even) ר' יודה (even).

¹⁰ How can we interpret his word מהיום to mean מעת שאני בעולם?

¹¹ The husband is merely concerned that if he dies his wife should not be constrained by the process; for this it is sufficient that the divorce take effect a moment before his death. There is no need it should take effect now.

should be effective **from that very last day that I am in the world.**

agitin in gmarat perash"i reconciles with that case:

ומיהו יש לחלק בין מהיום לפירש בהדייא שיחול משעת כתיבה -

However one can distinguish between a case where he said (the case in the case where she is considered an "א" according to ר"י), **to a case where he explicitly specified that it should become effective from the time of writing** (as in the case of ר"י [as mlachmat beth dud suggests]), where it is logical to assume that the will become effective retroactively to the time of writing. The reason for the difference -

דעל כרוח משעת כתיבה קאמר שיהא גט¹² -

For force you must say that in this case **he certainly said that the גט should be effective.** **משעת כתיבה.**

extends his understanding of:

ועוד נראה דאפילו אמר מהיום יש ליישב פירוש הקונטרס -

And it appears, furthermore, that even if he said (and did not explicitly say nevertheless) **we can justify** (פירוש"י, שיחול משעת כתיבה -

דלאו דוקא פירש שאם ימות במלחמה אלא היו מתנים אם לא יחזר מן המלחמה -

For the man does not explicitly say that it should be if he will die in the war, but rather they would stipulate it should be a if he will not return from the war, for whatever reason even if not because of death -

ואגב ריבתיה נקט בקונטרס אם ימות דעתם מי שאינו חוזר מן המלחמה אינו חוזר לפי שמות -

And mentioned אם ימות ר"י, out of habit, for generally one who does not return from war, the reason he does not return is because he died, but is - לאו דוקא

אל הוא הדין אם נשבה¹³ -

And the same stipulation applies if he was captured that it should be a

והשתא מהיום דהכא אין שייך לומר מעת שאינו בעולם¹⁴ כשהוא דמי שאחزو -

And now that the stipulation is not, therefore the word here in this case, cannot be interpreted to mean as the word there in מהיום, where he emphatically said מיהו אם מתי פרק מי שאחزو -

¹² He did not merely say מהיום, which can be interpreted to mean from the last day I am alive, but he especially said it should be effective לשעת כתיבה נתינה; this indicates that it becomes effective retroactively as of לשעת כתיבה.

¹³ This also answers first question on ר"י; how does this help for someone who has children. The answer is apparent; everyone wrote a גט in case they were captured, so their wives would not remain (unable to remarry).

¹⁴ His stipulation is in order to allow her to remarry in case he does not return from war (he was captured, etc.); nothing is accomplished if his stipulation is מאת שאינו בעולם (since he may still be alive). Therefore he means מעכשו.

אלא מהיומ מיום כתיבה קאמר -

But rather here the word **means from the day of writing** the גט.

תוספות asks:

אם תאמר והרי חזר אוריה ונתבטל הגט¹⁵ -

And if you will say; but returned from the battle, so the גט was nullified –

תוספות answers:

ויש לומר שהיה מתנה אם לא יחזור בסוף המלחמה והרי לא חזר לבסוף -

And one can say; that the stipulation was, if he did not return at the end of the war then it should be a גט, and indeed did not return at the end of the war; he merely returned during a battle.

פרש"י finds support for Tosafot:

וניכא לפירוש זה הא דאמרין בפרק הזהב (בבא מציעא נט, א ושם) -

And according to this interpretation it will be more easily understood that which was said in the name of ר' יוחנן - **פרק הזהב in ר' יוחנן**

נוח לו לאדם שיבועל ספק אשת איש ואל ילבין פניו חברו ברבים -

It is preferable that a person should be, than to whiten the face of his friend (to shame him) in public -

ומפיק ליה מהאי מעשה דבת שבע דספק אשת איש הואי¹⁶ דזלםא יחזיר מן המלחמה¹⁷ -

דוד derives it from this episode with ספק א"א, who was a woman, who was with her), for perhaps would return from the war; in which case the גט would be and she would remain an א"א throughout the entire period until his death.

תוספות offers an alternate interpretation:

ורבינו תם מפרש כותב גט כריאות לגמר בלי שום תנאי -

And the ת"ת explains that he would write a complete without any stipulations; the soldiers would divorce their wives, before going to war.

פר"ה asks on Tosafot:

ולפירושו קשה אמרاي קרי לה ספק אשת איש הא הואי גרושה גמורה -

¹⁵ The stipulation was (as amended by Tosafot); this is your גט if I do not return from the war; as soon as returned the גט is Batel. However according to our original understanding that it means only there is no question, since died (מהר"מ שי"ף).

¹⁶ interprets this to mean that the people would ask teasingly what is the rule regarding one who is but would answer Dovid and Ba'al א"א. See Tosafot in the Hilkhot Leuha B'Chalak LaLeuha B'Chalak.

¹⁷ See footnote # 18.

However there is a difficulty with פר"ח, for why does the refer to ספק א"א as a complete, since she was a **גירושה**¹⁸ since she received a **ט**, without any stipulations.

answers: תוספות

ואומר רבינו תם ذكري לה ספק אשת איש לפי שהיה מגרשין בצדינעא -

And the **ר"ת** **answered that the refers to ספק א"א as a** **since they would divorce their wives privately** (without any publicity); the reason was -

שלא יהא נודע ויקפצו עליהם בני אדם לקדשים¹⁹ -

So that it should not be known that these women are divorced, in order to prevent people from jumping at the opportunity to marry these ‘divorcees’.

ask one final question on פירש"י

ולפירוש הקונטרס קשה קצת איך בא עלייה²⁰ למה לא היה ירא²¹ שמא יחזור:

But there is a slight difficulty on ב"ש; how was intimate with, why was he not concerned that perhaps would return, the would then be and would be an א"א.

SUMMARY

According to ריש"י, the was given with a stipulation that it should become effective retroactively as of now if he does not return after the war is over. According to פר"ח it was a final without any stipulations.

THINKING IT OVER

1. How are we to understand that which תוספות states that they were²²?
The states that all who came from the war will be considered guilty for her when she returns²³!
מגרש בצדינעא?

2. writes that **בַּשְׁבָע** was considered a **א"א**, since they would be **מגרש**

¹⁸ However, according to פרש"י it is understood; since there is a whether would return (in which case she always was an א"א) or if he will not return from the war (in which case she was retroactively a **גירושה** when she was with **דו"ד**), therefore she is considered a **ספק א"א**.

¹⁹ The divorcing husbands hoped to return from the war and remarry their former wives. They did not want them to be married to others in the meantime, so as not to lose them. See ‘Thinking it over’ # 1 & 2.

²⁰ See ‘Thinking it over’ # 3.

²¹ According to פר"ח however there is no difficulty for ב"ש was completely as soon as she went to war.

²² See footnote # 19.

²³ See אור החכמה.

ספַק אָא וְדָאִי. ^{בצנעה}²⁴ It is not clear as to who considered her a אָא וְדָאִי; the people who mocked רֹוֹן, assumed she was an אָא וְדָאִי, and רֹוֹן knew she was a גְרוּשָׁה, so by whom was there this ספַק?

3. asks on how was since אָא וְדָאִי may return and she will be an גְמָרָא. ²⁵ How will explain the first answer of the which states that was not to אָא וְדָאִי אָוֹנֵס since it was an אָא וְדָאִי מְאֹנֵס?!

²⁴ See footnote # 19.

²⁵ See footnote # 20.

²⁶ See ש"ר.

If it is to pay her the *Ksuboh*, etc.

אי למתיב לה כתובה כולי –

OVERVIEW

(נאמן לאוסרה עליו he is האומר פ"פ מצחתי ר"א) that אבוי attempted to prove the ruling of (since the sits on ב"ד) כתולה נשאת ליום הרביעי which states that משנה which states that יומם ה' on ב"ד טענת בתולין on the next day). We infer from the that they should not marry on the fifth day, because till the ב"ד is again in session, which is the following Monday, the husband's anger will be diminished and he will not come to ב"ד. We cannot say that we are concerned that since he will not come to ב"ד, he will be liable and eventually pay her, for that is no concern of ours; since he did not make his claim so he pays the כתובה. [We must say, concludes אבוי, that she may be אסורה to him, and we are concerned that if he won't go to ב"ד he will live באיסור תוספות with his wife.] discusses the inference that if he would go to ב"ד, he could make her lose her כתובה.

משמעות¹ אם היה בא לבית דין היה נאמן להפסידה כתובתה² –

It seems from s' statement that if he would come to, he would be believed (with his claim of טענת בתולין to make her lose her payment. This will be true -

אף על פי³ שלאוסרה עליו לא היה נאמן –

Even though that (it is possible) that the husband will not be believed (with טענת פתחה to have her prohibited to him. The reason for this distinction is -

משום דעתך לנ למימר דשמא איינו בקי בפתח פתווח ואוקמה בחזקת היתר⁴ –

Because we can assume that perhaps he is not acquainted as to what is considered a ספק, and since it is a ספק whether he is a קי (and she is or not (and she is not), **we place her with the presumption of** היתר to her

¹ See, however, רשב"י ט, א ד"ה נאמן להפסידה כתובתה.

² If he is not believed, why does אבוי discuss the difference whether he will or will not come to ב"ד (and states that we do not care that he will pay her the כתובה), when in any event she will always receive her כתובה, since he is not believed. Therefore since (we can infer from אבוי that if he comes to ב"ד he is believed, one may have thought that therefore he should marry on יומם ה' so he will not forfeit the payment, by not coming to ב"ד, and explained that if the husband does not care about the כתובה payment, we certainly do not care).

³ אבוי is now trying to prove that he is not believed. He proves it in the following manner, if we will maintain that he is not believed, and the reason for יומם ה' is for כתובה, the משנה is not understood since we do not care if he forfeits his rights; indicating at this point that we entertain the thought that he is not believed and is נאמן לאוסרה עליו (להפסידה כתובתה) (the only problem is that the משנה is not understood).

⁴ Before he claimed פתחה היתר she was מותרת to him. It is this ספק that resolves this and they are מותר to each other. See 'Thinking it over' # 1.

husband -

אבל מכל מקום כתובתה הפסידה אף על פי שיש לנו לומר שהוא טועה בפתח פתוח -
Nonetheless however, she loses her, even though we may argue that he is mistaken regarding his claim of -فتح פתחה

דאית לו למייר אוקי ממונה בחזקת מריה -

For we should say, the money (for the payment) **is placed in the possession of its owner**, namely the husband. The ספק is resolved by the rule. **חזקת ממון**

In summation: if we assume that there is a ספק whether the husband is a בקי (and therefore she receives her or he is not a בקי and therefore she loses her), the rule is that we follow the rule to resolve the ספק. Regarding the additional rule that since there is a בקי the husband is the owner of the money unless she can prove otherwise.

תוספות asks:

וקשה דאמאי מפסידה כתובתה והוא הוה ספק ספיקא⁵ -

- ספק ספיקא since it is a כתובתה why does she lose her -
ספק אי הוא בקי בפתח פתוח אם לאו⁶ -

There is a whether he is, or not (in which case she receives the money) -
אם תמצא לומר פתח הוה ספק באונס ספק ברצון -

And even if we assume that he is a בקי and it was a ספק, there is the additional whether she was or whether it was נבעלה באונס (where she receives her or whether it was her) -
אם תמצא לומר פתח הוה ספק באונס ספק ברצון -

דאפילו אשת כהן⁷ באונס לא מפסדה כתובתה -

נבעלה באונס if כתובתת כהן a does not lose her.

In summation assumes that even though there is a money, nevertheless that can only resolve an equal ספק, but if there is a ספיקא which contradicts the money, it would seem that the money would have to pay.

⁵ ויש מפרשים דהכא לא חשיב ספק ספיקא דין יכולין להתחperf ולומר ברישא ספק באונס ספק ברצון writes: **תוס' ט, א ד"ה וא'** The TIE footnote # 30. perhaps it is mentioned in another place in the Talmud that the wife retains her inheritance even if the husband has a right to it. This contradicts the rule that the husband is the owner of the money. This is a contradiction between the Talmud and the Rishonim.

⁶ At this point we must assume that ספק is a valid ספק, for otherwise how can we maintain (at this point) that the wife retains her inheritance even if the husband has a right to it.

⁷ We cannot answer that the wife retains her inheritance even if the husband has a right to it, because even by this argument she retains her inheritance. See **גדרים צ, א**.

⁸ There is a fifty percent chance that he is not a בקי and she is a כתובה, and even if we assume that she is not a בקי, it could be she was where she still receives her inheritance. There is (sort of) a rule that she should receive the inheritance.

rejects this approach:

ואין לומר דאפיקו בספק ספיקא מפסקה כתובתה משום דሞקמיון ממונה בחזקתייה⁹ -

And one cannot say that even by a she loses her because we place the money by its owner –

rejects this approach:

זהא לקמן (ז"ב,ב) גבי משארטני נאנסטוי -

בתולה regarding the case where the husband realized that she is not a and she claims, 'I was after the', and you owe me for the **איתים נאנס** -

והוא אומר לא כי אלא עד שלא ארסטיך נאנסטוי והיה מקח טעות -

And he claims, 'no; but perhaps your took place before the and it was a mistaken deal, and therefore I do not owe you. Regarding this dispute between husband and wife -

ואיכא¹⁰ מאן דמפרש לקמן (ז"א,ב) מקח טעות ממאתים אבל מנה אית ליה¹¹ -

There is one who later explains that the husband's claim of **מנחה** is that he is not willing to pay **מנחה, but she receives a** regardless -

אלמא משום דברותו מנה הוי ספק ספיקא לא מפסקה -

It is evident that the reason she receives a **מנחה** is that since regarding a there is a in her favor to receive the **מנחה**, therefore **she does not lose it** even though he is the **חזק**. Now explains this in her favor -

דספק קודם שנתארסה ספק אחר שנתארסה -

For there is a whether she was before (where she receives a **מנחה**) or whether she was after (when she receives a **מנחה**) (כńska בחזקת בעוללה ונמצאת בעוללה כתובתה **מנחה** since we assume that she receives nothing) -

ואם תמצא לומר אחר שנתארסה אימור באונס הוה¹⁴ -

רוב וחזק that opposes it. taught us previously that when contradict each other we follow the **רוב**.

⁹ We will need to differentiate between various **חזקות**. When we are discussing a **חזקת היתר לבוללה** (for instance, as in the previously mentioned **חזקות**) the ruling is **רובה וחזקת רובה עדיף**, however when we are discussing a **חזקת ממון** perhaps there the **חזקת ממון** is stronger than **רובה** (similar to **אין הולcin** במון אחר הרוב, but rather we follow the **חזק**).

¹⁰ Others amend this to **אייכא** (instead of **ואיכא**).

¹¹ There is a dispute among **אמוראים** in a case where he married her assuming she is a but it turned out that she was a (from before the marriage) whether she receives a only (**רב ששת מנה**), like a regular (**בעוללה**), or whether she receives nothing at all (**רבא**), since it was a **מקח טעות**.

¹² A known **מנחה** (**గורשה** or **אלמנה**) receives a for her.

¹³ A woman who is while married loses her entire **מנחה**. This is the reason he should not pay her anything. Even though the states that he claims that she was before **איירוסין**; however that is not a **דאי** claim, rather he is saying that I maintain that perhaps you were after the **איירוסין** (**מנחה ברצון** and deserve nothing), and even if you claim it was (and deserve everything), I maintain it could have been **בראנס** and you receive a **מנחה**.

¹⁴ There is a **ספק קודם שנתארסה** in her favor regarding a **מנחה**. She deserves a if she was a **מנחה** (**בעוללה**).

And even if you assume it was אחר שנתארסה perhaps it was (where she retains her כתובה) -

דאי אמרת דאפיקו בספק ספיקא מפסודה אמא' אית לה אפיקו מנה¹⁵ -

For if you will say (as the sages wanted to) that she loses her even by a **ספוק ספיקא, so why does she receive even a **מננה**?!**

In summation; מוחזק proved that a ספק ספיקא can be from the question. The question remains; why can he make her lose the כתובה when he claims ספק מצאתי, since there is a ספק אין בקי, ואילך בקי ספק באונס in her favor; ספק ספיקא.

תוספות answers:

ויש לומר דלא חשיב ספר ספריגא ביהאי גוונא¹⁶

- ספק ספירה א' And one can say; that in this manner it is not considered a

משמעותם דהאי ספיקא שמא באונס היה לא חשיב ספיקא גמורה למיטב לה כתובה -

For this of perhaps it was ספק, is not a sufficient ספק to award her the entire כתובה -

דאימור קודס שנתארסה נאנסה¹⁷ -

For perhaps she was before the נאנסה אירוסין which denies her (at least a מִנה of) her כחורה¹⁸

תומכotta finds support for this last concept that to be considered a פָּקָד it must be a factor in her favor under all circumstances:

ספק באונס if it was כחולה (full) she still deserves a (full). This overpowers the claim of the בעל החזק ממן whose [strongest] claim is that she was after the פקידא אריסון מזינה ברצונו.

¹⁵ The husband is the **מוחזק**; he claims that she was **מזונה** so she should receive nothing. Even though there is the **ספקא** in her favor that perhaps it was **ברצון** and even if it was **ברצון** it could be **קדם אירוסין**, nevertheless, if we maintain that **חזקת ממון** is stronger than a **ספקא** she should receive nothing. [Even if we maintain that **נכלה** before the **נכלה** she receives a **מננה**, that is if we know that she was **ברצון** and **ונמצאת בעולה** before the **ספקא**; however when we do not know she should receive nothing if a **חזקת ממון** is stronger than a **ספקא**. The fact that she receives a **מננה** proves that a **ספקא** is stronger than even a **חזקת ממון**. See ‘Thinking it over’ # 2.

¹⁶ ספק אינו בקי ואת"ל בקי שמא באונס which is ספק ספיקא and she should receive the entire כתובה.

¹⁷ Usually each of ספק ספיקא אינו מותרת to him regardless whether it was מותרת or not. If it was מותרת she is to him regardless if it was בראון or אוונס. However, here קודם if it was כתובה or כתהיון ספק ספיקא אינו בקי or את"ל בקי. However does not guarantee her a full ספק אוונס. ספק אינו בקי or את"ל בקי guarantees her a full ספק אוונס. She receives only amana, for then she is a בעולה who (at most) receives only a שנתארה.

¹⁸ If we assume that it was a פה there are three possibilities as to when she was: 1. Before אירוסין, 2. After כתוּבָה, 3. After אירוסין באונס, אירוסין ברצון. This weakens her strength in the second (of three), for the רוב [two out of three] is in his favor, so that we cannot combine this ספק to the first two. [See TIE תוס' ט,א ד"ה ועי' ספק ספיקא בקי' or ספק ספק 'Thinking it over' # 2, where requires a even ספק by a השקול.]

והשתא את שפיר הא דתנו במתניתין (לקמן דף יג, א) -

And now it will be properly understood this which we learnt in the Talmud: **היא אומרת מוכת עץ¹⁹ אני והוא אומר לא כי אלא דרוסת איש²⁰ אתה -**

She said, 'I am a woman,' and he said, 'no, for you are a man, a woman²¹, and he said, 'no, for you are a woman -

וקאמר רבי יהושע שאינה נאמנת ומפסצת כתובתה - And the Talmud ruled that she is not believed and loses her, for we assume that she is a woman and not a man. The amount she loses depends -

אי לרבי יוחנן מנה²² אי לרבי אלעזר ולא כלום²³ -

Whether we agree with ר' י"י, where she receives a woman, or whether we agree with ר' ר"א, in which case she receives nothing. questions the ruling of ר' יהושע -

ואף על גב זהוי ספק ספיקא ספק מוכת עץ ויש לה כתובה -

And even though it is a favor (in her favor); there is the view that she is a woman and entitled to a woman²⁴ - (منה לרבען or מאתיהם לר"מ כתובות) either she receives a woman and entitled to a woman -

ואפילו אם תמצא לומר דרוסת איש אימור תחתיו נאנסה ונסתחפה שדהו²⁵ יש לה כתובה -

And even if you will say that she is a woman, we can still say that she was before the field was ruined and she receives the entire woman, so why does ר' י"י maintains that she loses (part of) her; this proves -

אלא ודאי ספק באונס לא חשיב ספק²⁶ דאימור קודם שנתארסה נאנסה -

Rather than the (she receives) is certainly not considered a favor in her favor, because we can say that she was before the field was ruined.²⁷

כתובות offers an alternate explanation why she loses her when she claims even though (seemingly) there is a favor in her favor:

ועוד אומר רבינו יצחק דמוכת עץ לא שכיח -

¹⁹ מוכת עץ (literally hit by wood) refers to a woman who lost her in battle on account of a wound, but not through a relationship with a man.

²⁰ דרוסת איש means having relations with a man.

²¹ ר' maintains that if he married her assuming she was a woman and it turns out that she is a woman she (still) receives a woman. A woman always receives (according to ר' מ). We do not believe her that she was a woman (and entitled to receive a woman), but rather we assume that she was a woman and receives a woman. The Talmud follows the view of ר' מ according to ר' יוחנן.

²² ר' maintains that she receives nothing (because it is a field). A field always receives a woman and a woman receives only a woman. We do not believe her that she was a woman (and entitled to receive a woman), but rather we assume that she was a field and she receives nothing.

²³ This is a metaphor; it is as if you bought a field and it became ruined; you have no recourse, here too you married me and there was a field after the field and you too have no recourse but to pay me the entire field.

²⁴ See קטנה לא מיתוקמא מתניתין בפחות מג' שנים. כתובות writes; since by a woman there is no favor of קודם שנתארסה נאנסה, she should not lose her.

²⁵ If she was before the field was ruined she loses (either all or part of) her. See footnote # 21 & 22.

²⁶ This reinforces what said previously that a favor in one's favor must be valid in all circumstances. Here however the favor of a woman is valid only if it was before the field was ruined, but not if it took place after the field was ruined. See footnote # 17.

And in addition says the ר"י that a מוכת עצ is not common,²⁷ therefore it is not a valid ספק and subsequently there is no ספק ספיקא in her favor. There remains only the one of ספק or תחתיו, which is not sufficient to be מוציא from the husband – אין תחתיו.

הוספה responds to an anticipated difficulty:

זהה דאמרין (לקמן לוב) כולהו נמי חשובו מיחבטן²⁸ הינו אליבא דרבנן גמליאל -

For that which the **גמרא** says later, ‘**all woman are prone to falling**’ (which would indicate that **ען שכיה** is **מוכת ען**), **that is only according to ר' ג** -

אבל רבי יהושע שמעינו דלית ליה טעמא דמייחטו -

However we were taught that ר' יהושע does not agree with the reasoning of - חבטא

דקאמר התם²⁹ (לקמן לו, א) חרשת ושויטה יש להן טענת בתולין -

For he maintains there that for a deaf mute and an imbecile there is טענתה - בתולין -

והיינו מושם דסבירא ליה דחבטא לא שכיחה³⁰:

And the reason is because ר' maintains that הבטח is not common; therefore מוכת עז is not שכיה and cannot be considered a valid ספק.

SUMMARY

We may assume that even if טענת פתח is not accepted, nevertheless it is sufficient מוחזק להפזידה כחוותה can be ספק ספיקא, since he is the owner. Generally ספק להוציא from azman, except if the חזקת ממון מוציא according to ר' יהושע, but not according to ר' ג'.

THINKING IT OVER

להפסידה נאמין לאוסרה עליו (even if he is believed writes that he will not be believed) since it is a **ספיק** (כתובת her **מזרחה** **היקת יתר** ³¹). Seemingly she is to him because it is a **ספיק** and she has a **ספיק** (כתובת because it is a **ספיק** and **בקי ספיק** **באונס** perhaps he is not a **ספיק**; **ספיק** **ספיק** a. Why does

²⁷ This explanation does not necessarily agree that the ספק באונס is not a valid ספק (see footnote 17 & 26). See ‘Thinking it over’ # 3.

²⁸ The falling down causes them to become מוכח עז. See previous (footnote # 20).

²⁹ The Gemara there cited two contradictory statements; in one it stated that the heresy and heretic were guilty of a capital offense, and in the other it stated that the heretic was guilty of a capital offense, but the heresy was not. The Gemara explained that the statement which states that the heretic is guilty of a capital offense is according to R' Yehuda who maintains that he should have been stoned, but the statement which states that the heresy is guilty of a capital offense is according to R' Eliezer who maintains that the heresy is still heretical, therefore he has not yet been stoned.

³⁰ Therefore it is presumed that she was נבעלָה.

³¹ See footnote # 4.

32 חזקת היתר תוספות mention the other side's proof?

33. חזקת ממון מוציא ספק ספיקא can be from a תוספה. It appears that maintains that a ספק ספיקא is similar (or identical) to a רוב; first there is an equal chance either way and even if you assume in favor of the there still is a chance that the מוציא is right. How is it that we rule הרוב after the מוציא, and we follow the מוחזק, and on the other hand a ספק ספיקא is מוחזק from a מוציא?!³²

34. (last) answer of the ר' ירושע maintains she loses her. She does not explain the initial question of why is he נאמן להפaza כתובתה, why is he ספק ספיקא since it is a פ"פ. To answer this question we have to assume תוספות פ"פ initial answer, which also explains the עז מוכחת issue. Why was it necessary for the ר' ירושע to give this last explanation?³³

³² See מהרש"א שיטה מקובצת and שיטה מקובצת.

³³ See footnote # 15.

³⁴ See פנ"י.

³⁵ See footnote # 27.

³⁶ See הפלאה.

מאי לאו דקא טעין טענת פתח פתוח –

**Is it not so; that he alleged the claim of
פתח פתוח –**

OVERVIEW

(האומר פ"פ מצאתי נאמן לאוסרה עליו ר"א אבוי) (in his attempt to prove the ruling of that ר"א assumed that the טענה פ"פ is משנה בთולים (and not דמים).¹ Our תוספות explains what led to this assumption

נראה לפרש² דקא סלקא דעתך דבטעת דמים³ ליכא למיחש לאיקורי דעתא –

The explanation seems to be, that we assume that by there is no טענת דמים concern that his mind will be calmed and he will not come to ב"ד if there is a delay -

דכיוון דליך דם⁴ לבו נוקפו ואין מתקרר⁵ אבל בفتح פתוח⁶ איכא למיחש שמא יתקרר:

For since there was no blood, his ‘heart pounds’ with concern and he will not cool down; however by a claim of פ"פ there is concern that he will cool off (and not come to ב"ד). Therefore they were טענת פ"פ מתקן בთוליה נשאת ליום ד' only, to make sure that he comes immediately before he calms down.

SUMMARY

In the ה"א we assumed that there would seemingly be no need to be concerned for טענת פ"פ, טענת דמים by איקורי דעתא only by

THINKING IT OVER

טענת משנה ה"א that the פ"פ is discussing טענת דמים (only); perhaps the גمرا meant we are discussing all including פ"פ (which would still prove that by פ"פ he is טענת פ"פ עלוי נאמן לאוסרה עליו)?⁷

¹ See ‘Thinking it over’.

² See ‘Overview’.

³ טענת דמים (a claim of blood) means that there was no דם בთולים, which (seemingly) proves that she is not a בтолה (as opposed to פ"פ, in which he claims [without proof] that no membrane was broken).

⁴ The lack of דם is the most accurate way to substantiate that she is not a בтолה. There is no doubt in his mind.

⁵ He will come to even after a delay of a few days; since he is certain she is not a בтолה, she may be מזונה (ברצון). Therefore there is no need to institute ליום ד', for no matter when he marries if he has טענת דמים he will certainly come to ב"ד eventually.

⁶ This is not so definite a proof since he may be אינו בקי; therefore if there is any delay there is the possibility that he will not come to ב"ד. It was only for פ"פ, that the חכמים instituted that ב"ד.

⁷ עמוד רב יוסף מאן לאו דקא טען טענת פ"פ מהרש"א האריך (and also how will explain the later on this)

נאמן להפסידה כתובתה –**OVERVIEW**

we (ט,א) ruled that טענת פ"פ is believed that כתובתה is believed. Previously ר"י אמר שמואל learnt that טענת פ"פ is believed that כתובתה is believed. Our discusses whether these two views are contradictory or complementary.

אומר רבינו יצחק דשמואל מודה שפיר דנאמן לאוסרה עליו -

The says that may well agree to that by he is believed that she is forbidden to him (because he is felt - שמואל פ"פ in בקי), however -

ולהפסידה כתובתה איצטריך ליה לאשמעין -

That it is necessary to inform us that he is even believed

דלא תימא דלא יהא נאמן אף על גב דקים ליה בפתח פתוח¹ -

For one should not think that the husband should not be believed even though he is proficient in recognizing a, פ"פ since he is כתובתה nevertheless I may have thought that he is not - נאמן להפסידה כתובתה

דנימא בمزיד משקר² להפסידה כתובתה -

For we may assume that he is lying on purpose in order therefore teaches us that we are not concerned that he is lying.

ר"א discusses the view of:

ורבי אלעזר נמי מצי³ סבר דנאמן להפסידה -

And (who ruled that לאוֹסְרָה עֲלֵיו may also maintain like that he is believed) ר"א - להפסידה כתובתה

ונקט לאוֹסְרָה לִרְבּוֹתָא וְכֹל שְׁכַן דָּנָאֵמָן לְהַפְּסִיד כְּתוּבָתָה⁴ כְּדֻמּוֹת הַסּוּגִיאָה דְּלָעֵילָא⁵ -

And mentioned only as a novelty that he is believed even and he is certainly believed as is evident from the previously. ר"א גمرا

¹ If he would not be he would not be since there is a and a ספק ספיקא חזקת היתר.

² ר"א teaches us that he is (there is no reason to assume he is lying since it will prevent him from being with his wife). teaches us that (in addition to being פ"פ in בקי) he is not suspect to be lying for monetary gain, as the explains later (ט,א) that there is a that there is a that if he dislikes her, why go through the wasted expense of נישואין, he could have divorced her previously.

³ See 'Thinking it over' # 3.

⁴ See previous that regarding the husband has a which empowers him החזקה ממן that regarding כתובתה which may lead us to assume that he is not נאמן לאוֹסְרָה, however regarding she has a החזקה היתר which may lead us to assume that he is not נאמן לאוֹסְרָה עליון, therefore teaches that nonetheless he is even נאמן לאוֹסְרָה עליון.

⁵ See the beginning of the previous [TIE footnote # 3] that according to אבוי it seems that even if he is not נאמן להפסידה כתובתה he will be נאמן לאוֹסְרָה עליון.

[ומייהו בירושלמי⁶ ממשמע⁷ דרבנן אלעזר אינו נאמן להפסיד כתובתה]:
[However from the it appears that according to ר"א he is not believed]
[לאוסרה עליו, להפסיד כתובתה, but only]

SUMMARY

להפסידה נאמן לאוסרה עליו טענת פ"פ may agree that by שמואל and ר"א is he is. Both and נאמן לאוסרה עליו. כתובתה.

THINKING IT OVER

1. Why must we assume that **ר"א** agrees to **שמואל**?⁸
2. According to that the **חידוש** of **חידושים** (seemingly) that we do not assume that he is lying, why was it necessary for **שמואל** to say his ruling by **טענת פ"פ** and not by **טענת דמים**?⁹
3. Regarding **מודה שפיר** **דנאמן לאוסרה עליו** writes **שמואל's** view (indicating a measure of certainty), however regarding the view of **ר"א** we find that **ר"א נמי מצי סבר דנאמן להפסידה** writes more moderately that **חידושים**.¹⁰ Why the difference?¹¹

⁶ כתובה her but he is נאמן לאוסרה is because of the ruling of ר"א that פ"פ **ירושלמי** there (ב,א) mentions various cases where she receives her. The **ירושלמי** (ב,ב on **ירושלמי**) also concludes that the reason why ר"א is allowed to keep her is because of the ruling of ר"א that פ"פ **ירושלמי** (ב,א) also maintains (like the **ירושלמי** that according to ר"א he is not allowed to keep her). **גאנן להפסידה כתובתה** and concludes that the reason why ר"א is allowed to keep her is because of the ruling of ר"א that פ"פ **ירושלמי** (ב,ב on **ירושלמי**) also maintains (like the **ירושלמי** that according to ר"א he is not allowed to keep her).

⁷ See footnote #3.

⁸ See footnote #3.

⁹ See footnote #3.

¹⁰ See footnote #3.

¹¹ See footnote #3.

אבל בגליל מצי טעין –

OVERVIEW

להפזידה כחובתה טענת פ"פ משנה can be used that רב יוסף attempted to derive from a that there is no יهودה in טענת בתולים (since it was customary there טענת משנה for the גליל to be מתייחד), indicating that in (or elsewhere) there is a חתן וכלה. This cannot be referring for then even in לאוסרה עליו there should טענת משנה בתולים. Obviously the challenges and he is presumely even by טענת פ"פ. Our challenges and discusses this proof.

תוספות asks:

ואם תאמר מנא ליה דלמא ביהודה נאמנת לומר שבא עלייה באירוסין ולא בגליל -

And if you will say; how does **רְבִי יוֹסֵף** know that he is believed perhaps what the woman means to say is that **in יְהוּדָה** the woman **is believed to say that he had relations with her while she was an אֲרוֹסָה** (and therefore there is no טענות בחולין, since it is customary for them to be together), **but in גָּלִיל** she is **not** believed to say that **בָּא עַלִּיה בְּאַירּוֹסִין** (since it is not the custom); this is regarding her claim of **בָּא עַלִּיה** where there is a difference between **גָּלִיל** and **יְהוּדָה** -

אבל בשטונת בתולה הייתה בגליל נמי מהימנא¹ -

However when she claims ‘I was a’ בתיוֹלָה נִשְׂוָאֵן at the time of marriage, perhaps she is believed even in גַּלְילָה and he cannot be her מִפְסִיד ever, if she claims ² בתיוֹלָה הִיִּת.

תוספות answers:

ויש לומר דמשמעותו לאינה יכול לטעון טענות בתולמים בכל עניין³ -

אינו יכול לטעון טענה בתולים that the words **רַב יִסְף** in that means that in **טענה בתולים** he cannot claim **in any manner** at all -

בין שאומרת שבא עליה מן האירוסין לבין שאומרת פתח נעול מצא -

Whether she counterclaims that, בא עליה מן האירוסין or whether she counter-claims that he found a פתח נעלן (she was still a virgin), he is not believed. - תוספות explains - **הרבנן נזקנין** **בצורך זהו** **אברהם לא עולגנו** **בא עליה** **ולא גולגל כלגבין מני** -

דיביהודה נאמנת בmeno דאי בעיא אמרה באירוסין בא עלייה⁴ ולא בגיליל דליקא מגו -

¹ There is therefore no proof from that that it was necessary for us to teach them that פ"ט is believed in. Therefore it was necessary for us to teach them that פ"ט is believed in.

² See ‘Thinking it over’ # 1.

³ If the word *משנה* meant that he is not believed only when she claims *בָּא עַלְיָה* but not when she claims *בָּא עַלְמָה* (as maintained in the question) the *משנה* should have specified that, so that there be no mistake.

⁴ When the states claims but she does not mean that he is not only if she claims, but even if she claims since she has the right to do so.

For in מִגּוֹ **she is believed to claim even** בַּתּוֹלָה הִיְתִּי **since she has a** that she could have claimed **גִּילֵל**; **however by** בְּאִירוֹסִין בְּעֶלְיהָ **she is not believed to claim** (גִּילֵל in **בְּאִירוֹסִין בְּעֶלְיהָ**) **of מִגּוֹ** since she has no **מִגּוֹ**, בַּתּוֹלָה הִיְתִּי even.

תוספות asks:

אבל קשה דמייתי מדוקא⁵ והוא יהיה לאתווי מרישא -

However there is another difficulty; for רב יוסף brings his proof (that) is טענת פ"פ that **he could have brought his proof from the משנה of the רישא** (without resorting to inference) - **from an inference** (in the משנה of the רישא) (נאמן להפסידה כתובתה), but he should have brought his proof **from the משנה of the רישא** (without resorting to an inference) -

דקטני (לקמן זנ' יב) בתולה אלמנה מן האירוסין כولي ויש להן טעתת בתולין⁶ -

Where the states, ‘**a** who is an **from the** **etc.** has a **不一样** **from the** **etc.**’, etc. has a **不一样** **from the** **etc.** – **طعنات** **باتولي**, and they have **مأثي** **of** **كتيبة**

על כרחך לעניין כתובה אייריך⁷ דלאוסרה עליו אפילו מן הנושאין⁸ נמי יש לה טענת בתולין -
להפסידה משנה in that the טענה בתולים is regarding that there is even if she is a כתובתת
בתולה מן הנושאין.

- בთוליה מן הנושאין even טענות בתולילים לאויסרעה עליון explains and proves that there is even by a tosifat

כיוון דכנסה בחזקת בתולה כדמותה לberman (ז' יב,א) דפריד⁹ וניהוש שמא תחתיו זינתה:

טענת בתולים לאוסרה עליו, בחזקת בתולה, therefore there is, and as is evident later where the gemara asks regarding a woman, ‘**and let us be concerned that perhaps she was מזונה** while she was **to him**’. It is evident from the ensuing discussion¹⁰ that there can be even by a woman from whom there is a suspicion of adultery, that there can be a valid inference that she was **to him**. Therefore we must conclude that the term **משניות** in these two טענות in these two are referring

⁵ יוסף infers that since in גליל he is not believed we can infer that in יהודה he is believed; and this inference is questionable as pointed out in the initial question.

⁶ The Mishnah there states that an **אזרען** or **గורושה** from the **אלמנה** (there was no yet) who is a presumed wife receives a full **טענה** and the husband can claim as if she was never even an **אלמנה**. There is another **אזרעה** that an **אלמנה** and **గורושה** from the **בתוליה** (she was only [making her a] but **נשואין**) that an **אלמנה** and **గורושה** from the **בתוליה** (she was only [making her a] but **נשואין**) that an **אלמנה** and **గורושה** from the **בתוליה** (she was only [making her a] but **נשואין**) that an **אלמנה** and **గורושה** from the **בתוליה** (she was only [making her a] but **נשואין**). Nevertheless, there is no **טענה** in the **בתוליה** [retaining her status], nevertheless, there is no **טענה** in the **בתוליה**.

⁷ להפיצה כחובתה (טענת פ"פ טענה בתולים (including) proving that he is with her; כחובה טענת בתולים

⁸ This is referring to a בוטחים (see footnote # 6), where the states that **בתולה מן הנושאין** (א,ב) (see footnote # 6), where the states that **בתולה מן הנושאין** (א,ב) (see footnote # 6), where the states that **בתולה מן הנושאין** (א,ב) (see footnote # 6). This cannot be referring to **בחזקת בתוליה**, why should he not be married her **עליו**, for since he married her **עליו**, for since he married her **עליו**, for since he married her **עליו**. Therefore we should conclude that just like the regarding **סיפא** [אין לה] **טענה בתוליהם** is referring to **בתולה מן הנושאין** (א,ב) (see footnote # 6), similarly the regarding **רישא** [יש לה] **טענה בתוליהם** is also referring to **בתולה אלמנה מן האירוסין** (א,ב) (see footnote # 6). See ‘Thinking it over’ # 2.

⁹ See there **ד"ה וניחוש תוספות** for a detailed explanation of this question, **ואכ"מ**.

¹⁰ קדש ובעל לאלתר there explained the reason we are not concerned because he was שמא מהתו זונתא is because he was שמא מהתו זונתא so there is the concern of קדש ובעל לאלתר so there is the concern of קדש ובעל לאסורה עליון.

משניות לשאלה why did not bring direct proof from these that by he is does not answer this question.¹¹

SUMMARY

בתוולה הייתה or בא עלי טענת בתוליהם whether she claims (with the of מגו of גליל); however in he is always believed even if she claims נאמן להפסידה כתובתה proving that. We could prove that נאמן להפסידה כתובתה regarding a מושגין or בתוליה אלמנה מושגין regarding a נישואין.

THINKING IT OVER

1. According to question that in גליל she is believed to claim why should she also not be believed to claim with a מוגו of בא עלי?¹²

להפסידה כתובתה is discussing because תוספות because נושא would apply even by a עלי. Why could not prove that it is not discussing מושגין from that same where it also mentions a אשת נאמן לאוסרה עלי? The only time where he is either an ספק ספיקא since it is a מותרת (for otherwise she is נתקדשה בפחות מג כהן). However this cannot be discussing an אשת כהן, since a קטנה of מושגין cannot be discussing a קטנה since there is no by a חיליצה. Therefore the can only be!¹⁶

3. In first question, what changed in our understanding of the האוכל (מושגין תוספות between the question of תוספות and his answer?)

¹¹ See מהר"ם ש"ג who offers an explanation.

¹² See footnote # 2.

¹³ See מהר"ם ש"ג שיטמ"ק.

¹⁴ See footnote # 8.

¹⁵ See the גמרא on ט, א.

¹⁶ See פנ"י (לקמן יב, א בתוד"ה וניחוש) רע"א and.

מאי לאו דקא טעין טענת פתח פתוח –

**Is it not so; that he alleged the claim of
פתח פתוח –**

OVERVIEW

רב יוסף attempted to show that the האוכל אצל חמיו וכו' of משנה teaches us that the husband is believed with הפשידה כתובתה 투ספות Our discusses why he is not believed in יהודת as well.

וביהודה אף על גב דעתך חזקה¹ לא מהימן כזריר שבקונטרס –

And regarding he is not believed, even though there too there is the of חזקה nevertheless he is not believed as explained³.

תוספות offers an alternate explanation:

אי נמי כיון דמתוייחד עמה ודאי בא עליה דלא מוקי אינני אנפשיה⁴ –

Or you may also say; since he is secluded with her, he certainly had relations since a person cannot contain himself in such a situation.

תוספות anticipates a difficulty:

ואף על גב דגבי יבמה אמרין יבמות ז' קיא,ב) דעת ל' יום מוקי אנפשיה⁵ –

And even though that regarding a states, ‘one can control himself up to thirty days’, and here we assume that he cannot control himself at all –

תוספות responds that nevertheless –

¹ אין (יא, גمرا) because (as the explains on כתובתה להפשידה) that he must be telling the truth, for if we assume that he is lying because he does not like his wife, why go to the bother of making a wedding feast and then losing your wife; it would be easier for him to divorce her while she is still an אරוסה (where she does not receive a).

² Why therefore is he not believed even in יהודת, since the same חזקה applies there??!

³ עיין "ה מא' רש"י ד"ה מא' where he is not believed for perhaps he was while she was an and he forgot. According to this explanation (as opposed to the Tosfot א"ג) there is [merely] a concern that he was.

⁴ According to this explanation it is certain that בא עליה and not merely a concern as it is according to פרש"י (see footnote # 3). See 'Thinking it over' # 1.

⁵ The there states that if a claims within thirty days of יבם that the was not (and he gave her a גט), we force him to give (we believe her that he was not and therefore she is still requires חיליצה). However if she claimed after thirty days that he was (still) not (and he claims he was still and he gave her a גט) then we ask him (but we do not force him) to give (since according to her claim she still requires חיליצה), because we believe him and not her. The explains that we believe him that because עד ל' בא עליה יום מוקי אנפשיה, but no longer, so the was certainly בא עליה.

רוב פעמים לא מוקי אנטישיה אפילו שעה אחת דעתו כו מתייחד [עמה] ואיתרעו חזקה:
Most times he cannot control himself even for one hour,⁶ for it is with this intent that he secludes himself [with her], and therefore the חזקה of אין אדם טורה is weakened in either because we suspect that he was or we are certain that he was.⁷

SUMMARY

The חזקה of אין אדם טורה is weakened in either because we suspect that he was or we are certain that he was.⁷

THINKING IT OVER

1. Is there any difference whether we assume פרש"י that perhaps he was and forgot,⁸ or whether we assume פ"י התוס' that he was? ⁹

2. רוב פעמים לא מוקי when differentiating between יבמה and חוספות offering two differences (a. that דעתו כו מתייחד עמה or merely one¹² difference?¹³ b. that דעתו כו מתייחד עמה and

⁶ It is possible that דעתו כו מתייחד עמה up to thirty days, but not probable; especially in this case that he is telling the truth regarding his טענת בתולין; in this case that he was not during בא עליה but rather during אירוסין.

⁷ The חזקה tells us that he is telling the truth regarding his טענת בתולין; in this case that he was not during בא עליה but rather during אירוסין; however the fact that he was during בא עליה tells us that it is most likely that he was and contradicts the חזקה.

⁸ See footnote # 4.

⁹ See פ"ה בתרא אורח צ"ה.

¹⁰ See footnote # 6.

¹¹ If it is two differences what is the meaning that by יבמה it is דעתו כו מתייחד עמה when he is דעתו כו מתייחד עמה, seemingly by a when he is דעתו כו מתייחד עמה?

¹² If there is only one difference why the need to write both the דעתו כו מתייחד עמה and the דעתו כו מתייחד עמה?

¹³ See פ"ה בתרא אורח צ"ה.

No; for he alleges a claim of blood**לא דקה טעין טענה דמים –****OVERVIEW**

The גمرا concludes that we cannot prove from the כתובה that the husband is believed only כתובה her פ"פ הפסידה כתובתה but rather he can be believed with טענת דמים and טענת פ"פ חיספות. Our discusses the difference between טענת דמים and טענת פ"פ, and what the woman's claim is and why we do not believe her.

- (טענת פ"פ is טענת דמים) explains the reason (as opposed to טענת דמים חיספות)

דחויה טענה ברורה מדאיון סדיינין מלוכלים בדים¹

Because it is a convincing claim, since the sheets are not stained with blood, this proves unequivocally that she is not a בтолה. However, regarding פ"פ we do not know that it is so (perhaps he is lying), and in addition he may not be a בקי.

discusses what does the woman say when the husband claims טענות בתולים²:

ונראה דברטענת פתח פתו וטענת דמים דשמעתין אירוי -

And it is the view of our טענת דמים and טענת פ"פ that regarding חיספות we are discussing a case -

שהיא טעונה שהוא בא עליה באירועין³ או אומרת בתולה היתה⁴ -

Where she either claims that her husband was when she was his, or she maintains that I was a בтолה, by the first and the husband is either making a mistake or lying. However if she would claim משארסתניナンסתי she would be believed.

asks:

ואם תאמר ונחימנא לדידה במגו די בעיא אמרה משארסתניナンסתי -

בתולה or בא עליה באירועין (either that in קדושין with a that she could have said, 'I was forced after the rule' which case had she claimed the ruling would be -

דנאמת לרבע גמליאל דפסקין לקמן ז"י, ג"א כוותיה -

רב יהודה as ר"ג and we rule according to ר"ג

¹ Every טענת דמים is effective (except for certain exceptions [mentioned on י' ב']). The first bleed after the first is effective when it was verified that there is no פרש"י בד"ה לא that there were who verified it; according to the lack of חיספות is sufficient to verify his claim.

² There is a later on that if the husband claims טענת דמים and she claims טענת בתולים (but not by גمرا), so how can the rule here that (by ר"ג) he is believed (according to ר"ג),

³ This can apply to either פ"פ or טענת דמים. She is owed the כתובה since he was בא עליה.

⁴ This would seemingly apply only by פ"פ (but not by טענת דמים, since there is incontrovertible evidence that she is not a בтолה). [See 'Thinking it over' # 2.]

states later.⁵ Let us therefore believe her current claim with this that she could have claimed משארסתני נאנשי where she would be believed.

תוספות answers:

ויש לומר דאיינה מודה בראצון שנבעלה מאחר⁶ -

And one can say that she will not willingly admit that someone had relations with her.

תוספות offers an additional explanation why there is no here: **מגוי זה מיגו⁷ דמיפסלא נפשה מכחונה⁸** -

And furthermore she is not believed, **because this is not a**, since she invalidates herself from marrying into, by claiming **כהונתני נאנשי**.

תוספות asks:

אבל קשה דליהמנה במגו Dai בעיא אמרה מוכת עז⁹ אני¹⁰ -

However there is a difficulty, for let us believe her (that) **בתוכה** or **בא עלי באירוסין** **בתוכה מוכת עז** **because this is not a** **מגוי** **with a** **for she could have claimed**, 'I am a **מגוי**' (**היה**)

- **מגוי לרבנן דלקמן זוז יא,ב דאמריו מוכת עז כתובתה מנה דין זה מגוי** -

Even according to the who argue with (**ר"מ**) **רבנן** (**who maintain later that the** **מוכת עז** **מגוי so** **מגוי מוכת עז** **of a** **so seemingly there is** **מוכת עז כתובת** **דאינה רוצה להפסיד כלום מכתובתה**¹¹ -

Since she does not want to lose anything from her - **כתובת** -

⁵ There is a dispute in this case where she counterclaims his טענת בתולים with **מגוי נאנשי** where he does not believe her and **ר' אליעזר** and **ר' ג' do believe her**. The same rules here that **הכלכה כר"ג** stated **רב יהודה אמר שמואל** is believed!

⁶ A **מגוי** is effective if one can claim the same ease as one claims the actual claim. In that case we say he is certainly telling the truth, for he could have just as easily said the **מגוי** claim and be vindicated. However if it is more difficult to claim the **מגוי** claim; the **מגוי** is ineffective. We say that indeed he may be lying; the reason he did not make the vindicating **מגוי** claim is because it has certain drawbacks (it is embarrassing, etc.). Here too it is easier for her to claim the actual claim of **בתוכה** (**היה**) or **בא עלי באירוסין** (**בתוכה** which is not that embarrassing) than to admit that she was forced upon by a stranger (where she may be [also] concerned that her husband would despise her).

⁷ See previous footnote # 6. See 'Thinking it over' #1.

⁸ The rule is that any woman that had a forbidden **זונה** is considered a **זונה** and is therefore forbidden from marrying a **כהן**. If she would claim **משארסתני נאנשי** she is admitting to have had a **אשת איש** (since she is an **אשת איש**), and therefore she would never claim it, in order not to disqualify herself (in case her current husband dies).

⁹ A **מוכת עז** (literally hit by wood) refers to a woman who lost her **בתוכה** on account of a wound, but not through a relationship with a man.

¹⁰ The two reservations mentioned previously in **תוספות** regarding the **מגוי נאנשי** do not apply here; she has no difficulty in claiming **מוכת עז** (as she has when claiming **מוכת עז** **משארסתני נאנשי**) and she is not **מייפסלה נפשה מכחונה**.

¹¹ Her current claim of **כתובת** (**היה**) or **בא עלי באירוסין** (**בתוכה** if believed) gives her a **מאתים** of **כתובת**; however the claim of **מאתים** gives her a **מאתים** of **מוכת עז**, so we cannot say that she should receive **מאתים**, because she could have claimed **מוכת עז** and received a **מגה**!

מכל מקום נאמנת במגו Dai בעיה אמרה מוכת עז אני תחתיך¹² ונסתחרפה שדהו¹³ -

Nevertheless she should be believed with the that she could have claimed I became a while I was your where we say that **his field was ruined**. The question remains why do we believe his טענה בתולים and make her lose her, let us believe her claim (of either or בא עלי באירוסין since she has a מוכת עז תחתיך מגו of since she has a מוכת עז תחתיך מגו).

תוספות answers:

לכ"נ נראה דהוי מגו במקום חזקה¹⁴ Daiין אדם טורה בסעודה ומפסידה¹⁵ -

Therefore it is the view of that this מוכת עז אני תחתיך (מוֹגָו) **תוספות** [as well as the is considered a which contradicts the of מגו] (משארטני נאנשי מגו אין אדם חזקה טורה בסעודה ומפסידה (a person does not toil for a meal and then ruin it)).

תוספות anticipates a difficulty:

אף על גב דבריא היא בפרק קמא דברא בתרא ז"ה בושם Ai אמרין מגו במקום חזקה או לא מגו Even though that there is this query in the first of פרק whether a מסכת ב"ב במקום חזקה is effective or not,¹⁶ so why do we dismiss this – מגו (במקום חזקה)

תוספות replies:

שמע חזקה דחכא עדיפה¹⁷ -

Perhaps this here is superior to the there and all would agree that it renders the ineffective.

תוספות offers an alternate solution:

ואילא אמרין מגו להוציא אתי נמי שפיר :

¹² The ruling of the that a מוכת עז receives only a מנה is valid if she was a מנה before the רבן. However if she became a מנה after the אירוסין, all agree that כתוּבה מאתים.

¹³ This is a metaphor; it is as if you bought a field and it became ruined; you have no recourse, here too you married me and I became a after the קידושין and you too have no recourse but to pay me the entire כתוּבה.

¹⁴ A means that the actual claim (which we want to believe because of the claim) contradicts the טענה בתולים (for he claims she was not a בтолה הייתי or בא עלי באירוסין). However the of חזקה אין אדם טורה בסעודה ומפסידה tells us that he is not lying. Therefore this מגו which is seeking to support a claim which is contradicted by a חזקה is ineffective.

¹⁵ See previous TIE footnote # 1.

¹⁶ The there cites a חזקה that a person does not pay up his debt before the due date – אין אדם פורע תוק זמנו. Therefore if the came to collect his debt תוק זmeno לוה claims פרעתי, he is not believed. The question arises what is the ruling in a case where the came after the due date and the claimed that he paid it before the due date, do we believe the since he has a מנו that he could have said, 'I paid you after the due date', or we do not believed him since it is a מנו; his claim of פרעתי תוק זmeno מגו במקום חזקה is contradicted by the of חזקה א"א פורע תוק זמו.

¹⁷ The presumption that א"א פורע תוק זמו is more convincing than א"א טורה בסעודה ומפסידה. There is actually a machloket there regarding the the of חזקה, א"א פורע תוק זמו, where disagree with this חזקה. It is ר"ל who maintains this חזקה. No one seems to disagree with the of חזקה א"א טורה בסעודה ומפסידה; indicating that it is a superior חזקה.

And if we will maintain that a מגו להוציאא is ineffective¹⁸ it will also resolve this issue.

SUMMARY

בתולה or בא עלי באירוסין טענת דמים because she is not comfortable with it or because she disqualifies herself. Alternately this as well as מוכת עז תחתיך is ineffective either because it is a מגו במקומ חזקה or it is a מגו להוציאא.

THINKING IT OVER

1. מגו gave two answers why the מושארתני נאנשי מגו is not an effective תוספות. In the second answer (she is writes תוספות נפסקה מכוהנה¹⁹; לדין זה מגו however he does not write this) regarding the first answer that אינה מודה ברצון (דאין זה מגו) Explain!

2. בא עלי writes that the entire סוגיא is discussing a case where she claims האוכל אצל משנה of her husband. It would seem that this also applies to the תוליה ה'יתוי or באירוסין where he has no belief and she is believed. This is seemingly understood when she claims בא עלי באירוסין since שמתיחוד עמה; however why is she believed if she claims בтолיה ה'יתוי (we cannot substantiate her claim מפני שמתיחוד עמה; on the contrary it disproves her claim); why is י'ודה different from ג'יל?²¹

¹⁸ A מגו means that the litigant who has the מגו wants to be believed to the extent that he should be able to collect money from the other litigant. In our case the woman is the מוציא; she wants her husband to pay her the money. The husband is the מוחזק. The money is in his possession. Many authorities rule that Tos' b'm מגו להוציאא לא אמרין (see ג, א ד"ה זה), therefore even though it is a valid מגו but it does not present sufficient proof to be מזמן מוציא from a מוחזק. To be מזמן from a מוחזק we need unqualified proof such as עדים (or a שטר מקומות), etc.

¹⁹ See footnote # 7.

²⁰ See footnote # 4.

²¹ See the previous Tos' ד"ה אבל.

אמר רב נחמן אמר שמואל הכמים תיקנו قولין –

said in the name of רב נחמן said in the name of שמואל; the sages instituted, etc.

OVERVIEW

בთוליה מאתאים כתובה שמואל הכמים instituted a for the name of that the payments are for an obligation, etc. כתובה discusses the inference from this statement which seemingly indicates that the obligation to give payments is only for the husband, where there are indications elsewhere that is כתובה not מדרבנן. מדאוריתא.

משמע¹ דכתובה דרבנן וכן בה האשעה רבה (יבמות פט, אושט) גבי אין לה כתובה קאמර² –

It seems (from the statement of that the obligation for a husband to give a כתובה is מדרבנן, and similarly in פרק תקינו וכו' לבתוליה מאתאים כו' ר"נ אמר שמואל הכמים תיקנו וכו' כתובה regarding the ruling of the that she does not receive her, כתובה her גمرا there comments -

מאי טעמא תקינו לה רבנן כתובה שלא תהא קללה בעיניו להוציאה³ قولין⁴ –

'What is the reason the instituted a payment for a woman, in order that it should not be easy in the eyes of the husband to divorce her, etc.'; it is again apparent from the statement that the מדרבנן is חייב כתובה that the רבנן כתובה מ"ט תקינו לה –

אלמא סתמא דהש"ס סבר דכתובה דרבנן –

רבנן וכו' כתובה is גمرا is that It is evident that the general consensus of the obligation.

תוספות asks:

וקשה דנהגו לכתוב בכתובה כסף זואי מאתון דחוו ליכי מדאוריתא –

And there is a difficulty; for it is customary to write in the document that he is obligating to pay her (if he predeceases her or divorces her) 'two hundred זוזים which you deserve' מדאוריתא כתובה is indicating that!

תוספות answers:

¹ דרבנן כתובה perhaps means (not the it seems from his statement; for his statement is very clear that but rather) that the כתובה קר"נ בדיין הלכה is that since generally there on כתובה דרבנן .

² The there on פ"ג states that if an ע"ז testifies for a woman that her husband died and she remarried (permissibly, based on this testimony), and then her husband returned alive, she is forbidden to be married to either her first or second husband (they are required to divorce her) and she receives no כתובה payment from either husband.

³ The fact the husband is aware that if he divorces his wife he will have to pay her the amount, will force him to reconsider and not be hasty to divorce her.

⁴ In this case she is forbidden to live with them, therefore the ב"ז is eager that they divorce her as soon as possible.

ואומר רבינו תם דסמכינו⁵ ארבע שמעון בן גמליאל דמתניתין דפרק בתרא⁶ (ז"ק קי, ב) -

- פרק says that we depend on cited in the last ר"ת דמייתי לה נמי בסמוך דאמר נוטן לה ממעות קופטיקיא⁷ זksamר כתובה דאוריתא -

Which is also mentioned shortly, who states, 'he pays her with money of - כתובה דאוריתא maintains רשב"ג because 'קופטיקיא

וקיימא לו כרבו שמעון בן גמליאל במשנתנו⁸ -

And we have an established rule that we follow the rulings of where his opinion is mentioned in a משנה.

תוספות offers an alternate explanation:

ועוד אומר רבינו יצחק שלא קיימא לו כרב נחמן⁹ -

ר"ג אמר שמואל says the; that we do not follow the ruling of ר"י (who states that that custom is a כתובה -

דאשכחנא רבashi דהו בא בתראה¹⁰ דפליג עלייה כדמורתך לקמן בריתא¹¹ (ז"ב, א) -

For we find, who is a later, argues with, ר"ג, אמרא, רבashi that -

תני כל שלא מושמש אינו יכול לטעון טענת בתולים -

It should read 'whoever was not checked cannot claim

אלמא דחייב לשמא משקר ולא אמרין חזקה אין אדם טורה בסעודה ומפסידה¹² -

It is evident that he is concerned that perhaps the husband is lying with his טענת, and we do not say as ר"ג does that there is a חזקה, בתולים אין אדם טורה בסעודה

⁵ See where some maintain (based on the expression שטמ"ק, and, דסמכינו ארשב"ג not that the does ר"ה that the does not actually rule like that the custom to write מDAOРИיתא is vindicated since we find an opinion that maintains כתובה to strengthen the power of the כתובה.

⁶ The there is discussing a case where someone married in קופטיקיא and divorced in (or the reverse), is he required to pay the money (which is of greater value) or with א"י money.

⁷ In a case where he married her in (and divorced her in רשב"ג), he must give her money קופטיקיא maintains for the shevudot of like any other כתובה, and since he wrote the קופטיקיא in כתובה, he is obligated to pay her. ממעות קופטיקיא

⁸ See later on where the writes: בכל מקום שנה רשב"ג במשנתנו הלכה כמותו עז, א.

⁹ See 'Thinking it over'.

¹⁰ Generally (as a rule) when there is a later (of we follow the ruling of the later (for they have seen the views of their predecessors and decided how to rule).

¹¹ The mentions two (different) יהודה וכלה before בריתא. 1. In they secluded the חתן and one for the יהודה, but not in גליל. 2. Initially in they would appoint two chaperons (שושבינים) one for the חתן and one for the יהופה when they would enter the (to assure that any claim or rebuttal of טענת בתולים could not be falsified [עיי"ש כלה]). but not in גליל. The concludes and whoever did not follow this custom does not have the rights of the first custom (of being the יהודה), it should state the opposite that whoever follows this custom cannot have (since they were before the יהופה); if it is referring to the second custom (regarding the השובינים) the should have rather said whoever was not checked (that he did not hide the יהופה). עיי"ש בריש"י ד"ה כל (טענת בתולים not whoever did not check), טענת בתולים (dem cannot have even if the husband was not checked he should have since טרור בסעודה ומפסידה).

¹² According to ר"ג even if the husband was not checked he should have

¹³ ומאפסידה

וכן פירש רביינו יצחק בן רביינו מאיר דרבashi פלייג אדרב נחמן¹⁴ -

And the also explained it in this manner that ר"ג argues with ר"א.

וזה אמרינו בהאה רביה (יבמות פט, א, ושמ) מי טעמא תקינו רבנן כתובה -

And that which the states in 'why did the institute a - כתובה דרבנן; indicating that כתובה

הכי פירושו מי טעמא תקינו רבנן כתובה היכא דתקינו -

This is the explanation of that why did the institute a cases where the did institute a - כתובה a

כגון באلمנה¹⁵ שלא תהא קללה בעיניו להוציאה -

- שלא תהא קללה בעיניו להוציאה; האלמנה; the reason was in order

הכא נמי תקינו שלא יהא לה כדי שתהא קללה בעיניו להוציאה:

Here too (by this woman whose husband returned after she remarried the instituted that she should not have a in order שתהא קללה בעיניו כתובה לשנתה להוציאה.

SUMMARY

מצוריתא כתולה of a כתובה.

THINKING IT OVER

ר"ג הלכה like (רשב"ג ר"ת) is the (that we follow) (that he is believed) or like (without he is not believed)?

¹³ See who explains that the reason why א"א טורה בסעודה ומפסידה is effective that we believe the husband; is only in combination with the ruling of ר"ג that כתובה דאוריתא כתובה that חזקה. However if we maintain then the חזקה will be ineffective (for perhaps it is not that strong of a חזקה [see end of this footnote]) and the husband will not be believed (even though he is a טהור), since there is a טהור. Since reads in the ברייתא that if he was not טהור he is not believed (even though there is the חזקה of א), this proves that ר"ג ור"א maintains דאוריתא ר"ג. [This is a preferable way of explaining their as opposed to saying that they argue whether or not א"א טורה בסעודה וכ"ז. See (however) TIE footnote # 17]

¹⁴ The and the ר"י are seemingly just answering why we do not rule like ר"ג, but this does not explain why the מ"ט תקינו רבנן כתובה וכ"ז יבמות states ה"פ תוספות סתמא דגמרא.

¹⁵ All agree that a כתובה אלמנה is מדרנן.

חזקה אין אדם טורה قولי – It is presumed; a person does not toil, etc.

OVERVIEW

explained the reason the husband is believed by **רבא** is because of the طענה בתולין that by claiming this he will lose his wife and would have wasted the entire expense of the wedding. Therefore if it is not true that she is not a **בתולה** he would not make a claim to hurt himself.¹ questions whether indeed in all cases of طענה בתולין does the husband harm himself.

תוספות asks:

תימה תינה באשת כהן או בפחותה מוג' דמייטסרא עליה² הילכ' כיון דמפסידה נאמנו

It is astounding! This line of reasoning is acceptable in a case where she is **the wife of a** (the one claiming طענה בתולין or her father was **מקדש** her when she was less than three years old, in which cases **she is forbidden to him, therefore** it makes sense to say that **since he loses her, he is believed** (with his طענה בתולין -

mentions an additional situation where he loses his wife if he claims طענה בתולין

ולמן דאמר נמי ל�מן³ כניסה בחזקת בתולה ונמצאת בעולה אין לה כתובה כלל ניחא –

And also according to the one who maintains later that if **he married her with the assumption that** she is a **בתולה** and she was found to be a **בתולה**, she receives no at all, it is also understood -

דחתתא נמי מפסידה שחררי מחק טעות הו⁴ –

For in this case as well he loses her, since it is a mistaken deal –

אבל למאן דאמר יש לה כתובה מנה לא מפסיד מיידי –

וכסה בחזקת בתולה ונמצאת מבת ל' כתובה מנה a כתובה of a, the husband is not losing anything with his طענה בתולין -

אלא שבא להפסידה מכתובתה מנה אבל הסעודה לא מפסיד⁵ ומאי מהימן –

¹ Why would he claim that she is not a **בתולה** (if it is not true); if he has remorse and does not want to marry her, he could have divorced her during **אירוסין** and she would not receive a **כתובה**?!

² See the previously (א,ט) that by an **אשת כהן** or **בתולה** if he claims طענה בתולין that she is forbidden to him.

³ יא, ב.

⁴ The reason this is **וכסה בחזקת בתולה ונמצאת בעולה אין לה כתובה כלל** מ"ז is because he maintains that if she is not a **בתולה** then the whole marriage is under false pretenses completely and he can annul the marriage (by divorcing her) and is not obligated to pay her anything. See 'Thinking it over' # 1.

⁵ They remain married (for it is not considered a **מקה** טעות) and (if he is believed) he can reduce her **מנה** a **כתובה** to

But rather his intent is to make her lose a מנה from her, כתובה but he does not lose the expense of the wedding feast, so why should he be believed?!

תוספות concludes:

ונראה דלא⁶ מהימן:

And it is the view of **תוספות** according to the טענת בתולים קבלה אביה קדושין or אשת כהן unless she was an ⁷, כנסה בחזקת בתולה ונמצאת בעוללה כתובתהמנה מ"ד פחותה מבת ג'.

SUMMARY

נסת מ"ד **א"** טורה בסעודה וכו' חזקה is effective only according to the **that** that it is however according to the **מ"ד** that she is effective only when she is **אסורה עלינו**.

THINKING IT OVER

1. If we maintain כנסה בחזקת בתולה וכו' מקה טעות ⁸, does that mean that the marriage is completely annulled (and no גט is required) and if he wishes to remain with her she requires new קדושים, or not?⁹

2. According to the **תוה"ר** (in footnote # 6) there is seemingly no difference whether we maintain כתובתהמנה or כנסה בחזקת בתולה ונמצאת בעוללה אין לה כתובה, for in either case if he wishes to divorce her immediately he is believed (and she either receives nothing or only a מנה), but if he agrees to remain married to her he is not believed (and her כתובה is מאיתים); why then does Tos' differentiate between the two?!¹⁰

⁶ See who states that if he intends to divorce her immediately (because she is not a **בתולה**), he is believed and her is only a **מנה** (since he is losing her). However if he agrees to stay married but wishes to reduce her כתובה to a **מנה** he is not believed because he is not losing anything; he merely wants to make her lose a **מנה**. See (however) **מהרש"א** (who seems to disagree). See 'Thinking it over' # 2.

⁷ It will be necessary to say that when this **מ"ד** states that כנסה בחזקת בתולה כתובתהמנה is in a case where she admits (after the **עדים** (ニישאן) that she was not a **ב"ש**, or **ב"ח** **אבהע"ז** **ס"ח סקכ"ד** came and testified that she was before the **אירוסין** (זונת) (or he intends to divorce her immediately [see footnote # 6]), etc.

⁸ See footnote # 4.

⁹ **אלית אהבים ס"י כז** and **ב"ש אבהע"ז ס"ח סקכ"ד**.

¹⁰ See **סוכ"ד** **אות י**.

הוואיל ותקנת חכמים היא לא תגבה כולי –

Since it is an enactment of the sages she will not collect, etc.

OVERVIEW

The תקנת חכמים states that since the right of a woman to receive a גمرا (and not an obligation on the husband) therefore she collects only from the inferior properties (זיבורית) of the estate. However רשב"ג maintains that the obligation is (כסף ישוקל כמהור הבתולות פסק) ¹ but he does not say whether she collects from or not. זיבורית explains that even if we maintain that כתובה דאוריתא she may not collect her from. עידית

תוספות asks:

תימה דרבי מאיר אית ליה لكمן בפרק אף על פי (נו,ב,ו,ט) דכתובה דאוריתא² –

Torah is כתובה that פרק אע"פ maintains later in ר"מ obligation –

ובפרק הנזקין (גייטין מה,ב,ו,ט) אמרין³ דקסבר רבוי מאיר דכתובה אשא בבינונית משום חינה –

And in the states that collects from the intermediate fields because of 'charm'⁵ –

וכיוון דהויא דאוריתא דינה בעידית כדפקא לו בראש בבא קמא (ז"ה,א) –

But since the obligation is, she should lawfully receive the superior fields, as the derives in the beginning of ב"ק where it states –

וכלון כאבות⁶ לשלם ממייטב דאתיא תחת נתינה ישלם כסף⁷ ואמאי הפקיעו דינה⁸ –

And all of them (who are required to pay) are like אבות in that they need to pay

¹ שמות (משפטים) כב,טו.

² This is in regards to the ruling that כתובה ע"מ שכתובה בתורה תנאו בטל it applies to (as well) since דאוריתא.

³ שם מט,ב.

⁴ There explains that the men will be 'charmed' to marry the (divorced or widowed) woman if the woman has property that is of quality (as opposed to זיבורית). רשב"י explains that the woman will be charmed to marry (initially) if they know they will receive for their. See footnote # 8.

⁵ This indicates that if it were not for חינה, the women would receive.

⁶ נזק אבות here refers to the four prime categories (נזקין) of damages (אבות) where the must pay the נזק (or מייטב).

⁷ This teaches us that wherever the תורה indicates a payment using any one of these four words (תחת, נתינה, גזירה שוה, כסף), the payment must be made with the property of the payer. Here too by we derive the payment (if we maintain דאוריתא from כתובה דאוריתא) since it says it needs to be paid.

⁸ The question becomes even stronger according to חינה of פ' התוס' (see footnote # 4) that the חכמים were looking out for the betterment of the woman (that the men should marry them), why therefore does she collect only from her? בבינונית?

תחת נתינה גזירה שווה of properties, **for we derive** this from the **nullify her legal right to??!** עדית, so why did the **חכמים** יישלם כסף

In summation: if we maintain כתובה דרבנן it is understood why collects from (for this was the ר"מ כתובה דאוריתא however if we maintain (as the payment should be as other payments are, why does maintain that ר"מ כתובה אשא בבינונית בעידית (and not בעידית?!¹⁰)

has an additional question: הוספה

עווד דלא מישתמייט תנא בשום מקום דעתך ליה כתובת אשא ממטלטלי¹¹ אלא לרבי מאיר -
And furthermore we do not find any anywhere, except for who maintains that can be collected from movable assets –

כదאמירין בכל דוכתין יבמות צט,א הא מנוי רבוי מאיר היא דאמיר מטלטלי משטעדי לכטובה -
As the states everywhere, ‘this (ruling that she can collect גمرا according to ר"מ who maintains that are pledged for payments’; the question is -

ולמאן דאמר דאוריתא אמא לא גבי ממטלטלי כמו ניזקין כיוון דמהתם לפינו -
And according to the one who maintains that כתובה (meaning רשב"ג דאוריתא is כתובה or עידית why cannot collect for her just as ניזקין as גمرا can collect from כתובה since we derive from ניזקין?!)

תקנת (מטלטלי) answers that these restrictions (of not collecting from or from עידית are a הוספה: חכמים

ויש לומר דעתם שאלא יפרשו מהן בני אדם אם יצטרכו למוכר¹² עידית או מטלטלים -
And one can say; that the reason (that does not collect כתובה אשא or עידית is in order that people should not avoid marrying women (which they may do), if it will be necessary for them to sell מטלטלי or עידית - כתובה to pay for the

וחשו¹⁴ כדי שיקפצו עליהם בני אדם:
And the were concerned for the women and ruled that the men need not give up their in, כתובה or עידית for the opportunity to marry these women.

⁹ See גיטין מ,ב for the reason.

¹⁰ See ‘Thinking it over’ # 1.

¹¹ All (other) opinions are that she can collect her from קרקע only.

¹² In the it reads; למת עידית או למוכר מטלטלים; חול' שחג"ז.

¹³ People will be reluctant to marry if they know in advance that they will have to relinquish their or their מטלטלי to pay their obligation to their wives. People like to retain these assets for themselves or their heirs.

¹⁴ See ‘Thinking it over’ # 2.

SUMMARY

כתובת even if we maintain כתובה (or מטלטلين) for their עידית, since this may prevent people from wanting to marry.

THINKING IT OVER

1. Could have asked his question on ר"מ תוספות גמרא, since on one hand he maintains כתובה (and on the other he maintains דאוריתא) (and not כתובת אשה בבינונית);¹⁵ why ask the question here?!¹⁶

2. According to the meaning of תוספות מסקנא what is the reason why she does not receive זיבורית;¹⁷ חינה is the reason why she does not receive עידית?¹⁸

¹⁵ See footnote # 9.

¹⁶ פרדס יצחק אות נ מהר"ם שי"ג.

¹⁷ See footnote # 14.

¹⁸ אילת השחר.

נוטן לה ממעות קפוטקיא – He gives her from the money of *Kaputkayo*

OVERVIEW

קפוטקיא ג' argues with the חכמים and maintains that if he married a woman in רשות and maintains that if he married a woman in כתובה and divorced her in א"י he is required to pay her כתובה with the monies of קפוטקיא, which are larger than the monies of א"א. This proves that maintains כתובה שבעוד became effective in קפוטקיא (where they married and he wrote the כתובה) therefore he must pay her ממעות קפוטקיא. Our discussions what difference is there with which money he pays her, that there should be any proof that כתובה דאוריתא.

תוספות asks:

תימה לרביינו יצחק מה ריווח הוא לה שנוטן לה מאותם המעות –

It is astounding to the ר"י! What profit does she gain when he pays her with ממעות קפוטקיא since –

מכל מקום אינם נוטן לה אלא שוה נ' שקלים¹ –

In any event he only pays her the value of fifty?!? שקלים² –

תוספות entertains a possible solution:

ואם היינו אומרים דלulos צרייך ליתן לה שקלים שעומדים שם –

And if we would assume that the husband is always required to pay her with fifty of the place in which they reside, meaning that –

בקפוטקיא נ' שקלים קפוטקיא ובארץ ישראל נ' שקלים של ארץ ישראל הוה ניחא³ –

In fifty, שקלים א"י and in fifty א"י it would be understood –

תוספות shows that there is such a possibility that the payment must be with the local coin:

בדאמירין⁴ גבי ה' סלעים דפדיון בכור בפרק יש בכור (בכורות, נ, וא' וט) –

¹ The obligation of a כתובה is two hundred or fifty (four שקלים to a oz). The שקלים is a fixed amount of silver. If the value of שקלים קפוטקיא are heavier than the value of שקלים א"י, he will pay her with the value of שקלים קפוטקיא not more. (If four שקלים קפוטקיא are worth five שקלים, he will pay her forty שקלים.)

² See who explains that we cannot say that שקלים קפוטקיא are preferable since they exchange easier (עובד לסוחר), because (firstly) she collects only from (and even if she collects he can pay her with any מטלטלין) so she loses the exchange value of the שקלים קפוטקיא. [It is not comparable to the desirability of עידית, for there it is much easier to work with עידית and also much easier to resell it.]

³ In this scenario she is getting a larger payment for her; proving that כתובה דאוריתא.

⁴ זוזים פדה"ב were seventeen according to the old exchange rate that a סלע was three and a third (five would be sixteen and two thirds). (זוזים רב אחא requested that return to him a third of a which רב אחא responded that the increased the value of a סלע to four (so five are twenty) (זוזים רב אחא overpaid.)

As said regarding the five סלעים for the redemption of the first-born in
- פרק יש בכור

ליישדר מר תילתא⁵ אחרינה DAOSETIPO עלייהו ושדר להו⁶ -

Let the master send me three more which they added on the original and sent it to Rab Achai (סלא) – Rab Achai to Rab Ashi

rejects this solution:

מייהו אין נראה דהתם כשהוסיפו בכל מקום הוסיפו -

However it does not seem to apply here; for there in when they added to the size of a סלע, it was added everywhere; the value of a שקל or שקל was increased universally; all payments in the country needed to be increased everywhere –

אבל כמשמעותו במקום אחד אין נראה שבכך תשתנה מידה דאוריתא -

However when one place adds to the size of its it does not seem right that by this action the measurement should change and one should be required to give fifty of the larger שקלים.

reverts to the previous solution:

ומיהו בירושלמי דפирקיין⁷ גרשינו אמרתניטין דכתובה מאתיים -

However in the of our we read regarding our which states⁸ that the two hundred, the comments –

רבי מונא בשם שמואל אמר בשקל הקצש⁹ -

Rabbi Monah in the name of Shmuel ruled that these two hundred need be in the holy שקלים, however –

רבי אבא בר בונא אמר מטבע יוצא¹⁰ וכן מסקי התם כמה אמראים:

Rabbi Abba bar Bunah ruled the two hundred need to be in issued currency, and many there conclude similarly.

SUMMARY

There are opinions that if the שקל is increased in a particular place the

and you therefore still owe me another three זוזים. It is apparent that when the סלע was increased, more money needed to be paid. The same can be said concerning the כתובה שקלים, since they were increased, the payment increases accordingly. See ‘Thinking it over’.

⁵ The third in בוכרות is תילתא (three זוזים), not תילתא (a third [of a זוז]).

⁶ In our בוכרות do not appear.

⁷ (in our הלכה ב').

⁸ ב'.

⁹ The two hundred זוזים must be of equal value to fifty שקלים.

¹⁰ It needs to be fifty of the שקלים in the country they reside, even if it is more (or less?) than שקלים.

payment increases.

THINKING IT OVER

It seems that (regarding the **חכמים** in **גURA** **בכורות** the increased the value of the **שקל** (not any [specific] government).¹¹ How then does compare (even in the case of **בכור** where the **חכמים** dictated that the **שקל** increased and more money is due for **פדה"ב**, etc., to the case of **קפטקיא** where the government issued larger **שקלים**?! Why would that affect the **חייב** **כתובה**?!¹²

¹¹ See footnote # 4.

¹² See ז"ז **עד** **אילת השחר** in **in**.

מברכתא חビיטה ליה –**is pressed down before him****OVERVIEW**

A person came before ר"ג ordered that he should be whipped with palm fronds (כופרי) saying 'מברכתא חビיטה ליה'. The asked but maintains that the claim of פ"פ is believed, why should he be whipped. The replied it is no contradiction he is believed but nevertheless he should be whipped since ר' אהא answered that there is a difference between a who should be whipped and someone who was married previously who is believed. גمرا

פירוש הלקוּתוֹ שמוֹצִיא שֵׁם רָע עַל בַת יִשְׂרָאֵל שֶׁהָרִי מְשֻׁקָּר –

The explanation of this is that said, **smite him for he is spreading a bad name on a Jewish daughter, for he is certainly lying** with his claim of פ"פ -

וכי זוניות חבותות לפניishiיה בקי הלך לא מהימן –

For are before him that he should be acquainted with what is or is not a, **therefore he is not believed** with his claim of פ"פ. The asked -

והא אמר רב נחמן מהימן ומשני מהימן ומסבין ליה כופרי –

But ruled that one who claims **is believed** (how can we say that he is not believed)?! **And the answered that** according to ר' אהא **he is believed and we smite him with, כופרי**, meaning -

ורב נחמן דאמר אסבוחו לא משומ שלא היה מאמיןו –

That when ordered, ‘smite him’, it was not because did not believe him (as we initially assumed) -

אלא היה מאמין ואמיר להלקותו לפי שחשוד על הזנות –

But rather he believed him and ordered to smite him because he was suspect for; זנות; otherwise how would he know whether it is a or not -

ורב אהא משני כדסבירה לנו מעיר קרא דלא מהימן ואיררי בבחור –

And answered as we originally assumed that did not believe him, for we are discussing a בחר **who was never married, however when** ר' אהא rules that is by one who was already married.²

¹ מברכתא חビיטה ליה is the name of a city. The expression מברכתא זנות means; [are] the of of lying down for him, so he knows how to distinguish whether it is or not.

² According to this interpretation we initially assumed that when ר' אהא ordered lashes (it was because he was a and) he did not believe him regarding the פ"פ; saying how could he know of פ"פ; is it then that (in a rhetorical sense), certainly not. The concluded however that indeed ר' אהא did believe him and assumed the reason he knew of פ"פ is indeed because and therefore he received the lashes (because he was החשוד על).

offers an alternate explanation of the תוספות גمرا:

ועוד יש לומר בnihوتא מברכתא חביתא ליה -

We can also interpret the **מברכתא חביתא ליה** as a declarative statement even in the **הו"א** (not as a rhetorical question as in the first explanation), meaning - said ר"ג -

אף על פי שהוא נאמין הלווה לפיו שחשוד על הזנות -

Even though he is believed (with the פ"פ claim), nevertheless smite him because he is suspect of **זנות** (that; otherwise he would not know). The asked גمرا -

והאמר רב נחמן נאמין ולא פירש להלכותו -

But **ר"ג** merely ruled that he is believed (to claim פ"פ and (פ"פ need not be smitten) -

ומשנני מהימן ומסבין ליה ורב נחמן לא אייר במלכות³ -

And the answered, no; **he is believed and he is smitten, but was not discussing lashes** (when he ruled that פ"פ מצאתי נאמין - האומר פ"פ בחר). The answer was no; he is believed and he is smitten, but was not discussing lashes (when he ruled that פ"פ מצאתי נאמין - האומר פ"פ בחר).

רב אחא אמר לעולם נאמין דאמר רב נחמן היינו بلا מלכות ובನשוי:

ר"א answered that indeed the of is without lashes, provided the claimant was previously married; however in this case he was still a boy.

SUMMARY

In the we can learn that **ר"ג** either believed him or not; in the conclusion we maintain that even though פ"פ is believed he still may receive lashes (only if he is a according to בחר).

THINKING IT OVER

1. Is there a difference in the understanding of **רב אחא** between the first interpretation of **הו"א** and the second?⁴

2. What are the relative advantages and disadvantages of each explanation?⁵

(הו"א). However, **רב אחא** understands that **ר"ג** did not believe him since he was a boy, and gave him lashes because he was מוציא ש"ר.

³ According to this explanation, the גمرا always maintained that **ר"ג** believed him, and nevertheless gave him lashes because it was necessary to clarify that when **ר"ג** rules that נאמן טענת פ"פ it does not preclude מלקות.

⁴ See מהרש"ל.

⁵ See מהר"ם ש"ף.

בתוליה אלמנה גירושה חלווצה¹ –

A, who is either a **widow**, a **divorcee**, or a **Chalutzoh**

OVERVIEW

The teaches that a woman who is still a **בתוליה** (even though she was **ארוסה**), since she became widowed, divorced, or received **חליצאה** while she was an **ארוסה**; **מאתים זוז** is **כתובה** **חולוצאה**.² Our explains the need to mention **חולוצאה**.²

נראה לפרש דרבוותא נקט חולוצה –

It seems to that the explanation is that **חולוצאה** **is mentioned for its novelty** –
DSLKA DUTZ AMINA CYON DSOMRAT YBM³ **LA MIHCSRAN CENISA CHOFNA** –

For it may have entered our minds, since a **שומרת יbm** **is not lacking entering into a** **חוופה** –

שהרי יבמה יבא עלייה בעל ברחה –

For based on the **process** **יבם**⁴ **יבמה יבא עלייה** **פסוק** **יבם** can acquire her as his wife even **against her will** (there is no need for the process) –

והו אמין דכמושואה דמייא⁵ **קא משמע לו:**

So I would have thought that she is like a **נשואה** (whose even if she is still a **בתוליה**)⁶, the **teaches us** that nonetheless **כתובה** **מאתים**.

SUMMARY

A receives **חולוצאה**, even though she is not lacking **חוופה**.

THINKING IT OVER

Why is it necessary to mention **חולוצאה** and **אלמנה** (besides)? Why does the **סיפה** mention **חולוצאה**?⁷

¹ This means she was to one brother (**רואובן**) who died while she was an **ארוסה**, and then her husband's brother (**בתוליה** **מן האירוסין**) gave her **חולוצאה** when she remarries (anyone) is, **מאתים זוז** (**שמעון**).

² Seemingly a **חולוצאה** is the same as an **אלמנה** (just that she also received **חליצאה**); there seems to be no in **הידוש** (**מהרש"א**). Others explain that **חולוצאה** is the same as **גירושה**; both of them are not wanted as wives (see **לחם אבירים**).

³ A **שומרת יbm** is a woman whose husband died childless, and she is waiting (for her husband's brother (the **רואובן**) to either be her or release her with **חוליצאה**). He can be her against her will.

⁴ **דברים** (**חצא**) **כה,ה**.

⁵ By a **בתוליה** she completed the **חוופה** process but there was no **ביהה** **מן הנשואין** and nevertheless her similarly this **חולוצאה** (**who was a** **שומרת יbm**) was only lacking (but not **ביהה**), therefore we may have thought that she is like a **נשואה**.

⁶ See **י"א, א, א, א** on **משנה** (at the very bottom).

⁷ See **מהרש"א**.

אלמנה דכתיבא באורייתא¹ מאי איכא למינר –

What can we say regarding אלמנה, which is written in the תורה

OVERVIEW

The חתובה גمرا initially explained that the word **אלמנה** refers to a widow, whose חורה is in the word **אלמנה** גمرا. The then asked but what is the meaning of the word **אלמנה** mana (where seemingly there is no חתובה אלמנה מדאוריתא which is a mana).

הוסףota responds to an anticipated difficulty:

וְהִיא לֵיכָא לְמַיִם דְּתַפְשָׁוֹת מִהָּכָא דְּכַתּוֹבָת אַלְמַנְהָה² מִנָּה מִדְאֲרִיָּתָא³ -

But we cannot say this, that we should prove from here that the payment of a **מן for an **אלמנה** is a **תורה** obligation -**

דְּהָא מִנֶּה⁴ לֹא הָיָה בַּיּוֹם מֵשָׁה דְּלֹא תְזִכֵּרְתָּה תּוֹרָה אֶלָּא כְּכֹרֶת⁵ -

For in the days of משה there was no coin called a מנה, for the תורה only mentions a ככר.

תוספות anticipates a difficulty:

וְהִיא דָּאמֶרְיִינּוֹ בְּבָכָרוֹת⁶ (זע ה. א. ושפ) מֹשֶׁה רַבְיָנוֹ נָאמָן הִיָּה וּבְקִי בְּחַשְׁבוֹנָות -

And that which was said in ‘our master Moses’ words, that he said, ‘trustworthy and versed in accounting** -**

אלא שמנה של קודש כפול היה⁷ -

But the manah of קדש was double the regular manah; indicating that there was a coin בימי מנה קדש, not as just said – תוספות משה

¹ See *ca. id* and *בראשית* (*וישב*) *לհ, יא*. ויקרא (*אמור*)

² On the previous page it was stated that even according to the Gemara the law of *shabbat g* is more lenient than the law of *shabbat a*.

³ Why did not the תורה answer that she calls her an **אלמנה** because she is a **מנה**?! See ‘Thinking it over’ # 1.

⁴ זוזים (or דינרים) is a coin that is worth twenty-five מנה (or שקלים).

⁵ In when the amount of gold collected it states פְּרָשַׁת פְּקוּדִי (כא, כד) that שבע מאות ככר ועשרה שקלים collected תורה. If there was a coin, the should have written, twenty-nine מנה (725/25=29), and five שקלים. Since the broke it down to only שקלים and ככר indicates that there was no other coin (a מנה in between. See 'Thinking it over' # 2.

⁶ The gemara there relates that ריב"ז asked 'was a thief'; regarding the amount of silver collected and disbursed by the בונקרים. It is assumed that there are fifteen hundred מלכים in a ככר שקלים (or three thousand half-שקלים). This means that for every three thousand Jews one ככר of silver was collected for half-שקלים. There would be two hundred ככרים for six hundred thousand Jews ($3000 \times 200 = 600,000$). However משה distributed only one hundred ככרים of silver (approximately); where were the rest??!

⁷ There was therefore really three thousand ככר של קודש in a shul [A for each six thousand Jews (six thousand half שקלים); one hundred ככר for six hundred thousand Jews.]

respects responds:

לא יהיה מנה בימי משה אלא כלומר כמו שמנה של קודש ביום יחזקאל כפול היה⁸ -

Not that there was a **mannah** in the days of **ריב"ז**, but rather **meant to say**, just as the **mannah** of **יקודש** in the days of **חזקאל** was double -

כך היה בכור של קודש כפול ביום משה:

So too the **mannah** was double in the days of **משה**.

SUMMARY

There was no coin **mannah** and in the days of **משה**.

THINKING IT OVER

1. asks that we should prove from the word **אלמנה** that there were **mannah**.⁹ However how can we prove it, perhaps (as the **גדרא** actually states) she is called since in the future the **חכמים** instituted that she receive a **mannah**?¹⁰

2. Instead of saying that **אלמנה** is on account of what the **חכמים** will enact in the future (as the **גדרא** answers), let us say that **אלמנה** teaches us that **תורה** used the term **לדאורייתא** and the **mannah** on account that in the future it will be called a **mannah**. If in any event it is called **עתיד**, why should we not say that it teaches us that **אלמנה**?¹¹ **מדאורייתא** is **כהובת אלמנה**!

⁸ See there in בכרות (at the bottom of the page).

⁹ See footnote # 3.

¹⁰ See הפלאה.

¹¹ See מהר"מ שי"ג מ.

וთנא רב יוסף אשור זו סליקאDMIAMI HOMI HOAI –

And רב יוסף cited a that ברייתא is אשור; סליקא but did it exist

OVERVIEW

The explained that it is possible that the calls her an גمرا on account that in the future the will institute that she receive a מנה for her. The proves this from a which states regarding the פסוק גمرا of סליקא that, even though שמי הולך קדמת אשור did not exist then as of yet. cites, פירש"י rejects it and offers his interpretation.

פירש בקונטרס וממי הואי בבריאת עולם –

explained that the question of סליקא is, did the city of exist when the world was first created; obviously not –

responds to an anticipated difficulty:²

ובלא רב יוסף מאשור וכן מכוש לא מציא למיפורץ –

However the could not have asked this question of גمرا or אשור from וממי הואי is, the reason is – interpretation that סליקא without ר' יוסף's כוש דמצין למיימר דאשור וכוש שם המחו ז לא שם העיר ומימות עולם היה שטם כך⁴ –

For we could answer that and כוש are the names of the area, but not the names of the city, and those areas were called from the beginning of time. However once said that אשור means the city of (not [merely] the area), the question of וממי הואי becomes relevant.

תוספות asks:

אבל קשה דמאי מיתי מאשור דאשור אף על גב דלא הוה בבריאת עולם –

However there is a difficulty (on), **for what proof does the bring from, for even though was not** in existence by nevertheless בריאת העולם –, אשור –, כיוון דהוה בימי משה שפיר הוה למכתב –

Since existed, בימי משה it is proper that it should be written –

¹ בראשית ב, יד.

² אשור is asking why is it necessary to cite רב יוסף and his ברייתא; why cannot we ask, ‘were the countries of and (which were named for people who lived after the creation) in existence by בריאת העולם?’

³ See שמי הולך קדמת אשור which states בראשית ב, יג.

⁴ It would seem that the same explanation should apply to the names of the (four) rivers mentioned in these. This could mean that Hashem or אדם הראשון gave them those names (especially regarding the rivers).

אבל מנה לא היה לו לכתוב כיון שעדיין לא היה בדורו -

However, the **should not have written** תורה, **מנה**, since in the generation of the **מנה did not exist yet!**

וראה לרביינו יצחק לפרש **DSLICKA** בימי משה מי הוא –

- בימי משה **SLICKA** did **exist** – **DSLICKA** prefers to explain that the question was, **did** – **DSLICKA** **did not exist** –

For the had a tradition that the city **did not exist** – **SLICKA** גمرا – **DSLICKA** **did not exist**: **DSLICKA** **did not exist** – **SLICKA** **did not exist** – **DSLICKA** **did not exist**:

And they also had a tradition that **the** river **went around**, **but not around** **which existed**. **DSLICKA** **which existed**:

SUMMARY

The city **did not exist**. It is appropriate for the תורה to mention things that were not there at that time, but existed. **DSLICKA**

THINKING IT OVER

1. **DSLICKA** writes that the **חדר** did not go past **אשור** which was, but rather near, which was after **DSLICKA**. What made assume that there was an **אשור** in **DSLICKA**, that required to negate that the **חדר** did not go near that **אשור**?⁷

2. According to that the **חדר** went near **DSLICKA** and not near **DSLICKA**, it is puzzling why the תורה writes **קדמת אשור**?⁸ **DSLICKA**

⁵ See ‘Thinking it over’ # 1.

⁶ See footnote # 5.

⁷ See ר"ש and מהרש"א (חידושי אגדות ד"ה ותנא).

⁸ See מהר"מ שי"ף.

אמר רב אכל תמרים אל יורה - said; if he ate dates, he should not rule

OVERVIEW

רב said if someone ate dates he should not offer any **תורה** ruling since the dates confuse him as if he were intoxicated.¹ **תוספות** reconciles this statement of **רב** with a seemingly contradictory statement of **רב**.

תוספות asks:

ואם תאמר דברך ג' דבריות (ז' יג, ושם) אמר רב הונא² אמר רב הילכה כרבי אלעזר -

- ר"א הלכה is like said the third of rights פרק רב מסכת said if you will say; that in third דאיינו מהחייב על שאר משכרים אלא על הין בלבד -

Who rules that a **מייתה** is not liable for **עובדת** if he does the **עובדת** while drinking **other intoxicants, except for wine**; he is liable only if he drank wine and did the **עובדת**. Why does **רב** say that if one eats dates one cannot offer a halachic ruling?³

תשובות answers:

ויש לומר אף על גב דלא מחייב על בית מקדש אסור להורות⁴ -

And one can say; even though one is not liable (חייב מיתה for entering the **מקדש** (unless he drank wine), nevertheless **he is forbidden to rule** (and to enter the **מקדש**) even if he had other intoxicants -

בדיעבד proves that there is a difference between **לכתחלה** and **תוספות**:

והכי נמי משמע בסוף פרק אלו מומין (בכורות מה, ב) -

- פרק אלו מומין also indicated in the end of

דפסול לעובודה למאו דלא מחייב אשר משברין או על גב דעבודה לא אחיל⁵.

That according to the one who maintains that a כהן is not liable for other intoxicants; he is nevertheless disqualified for עבودה, even though he does not desecrate the עבودה -

הוּא הַדִּין נָמֵיד אֶל יוֹרָה:

¹ See רש"י ד"ה אל.

² In our **רב הונא** the words **כריות** in **גמרות** do not appear.

³ We derive the law that one is prohibited from ruling while intoxicated since by the prohibition of doing the **עובדת עבודה** while intoxicated the **תורה** (also) writes (ויקרא [שמini], יא) **ולהורות את בני גוי**. It would seem that the rules regarding **הורה** are similar to those regarding **עובדת עבודה**, and since by **עובדת עבודה** the prohibition is only by wine, the same should apply by **הורה**.

⁴ עבודה מיתה בידיהם; שאר משקין המשכרים; however if one did the latter after having these he will not be liable.

⁵ If one does the latter after drinking wine he is however by definition not thinking it over. See ‘Thinking it over’.

The same ruling applies that he should not rule if he had other **משקין המשכרים**.

SUMMARY

One may not **משקין המשכרים** do the **עבודה** or rule if he had **לכתחלה** even according to the **מ"ד** who maintains that he is not **חייב מיתה** for doing the **עבודה** unless he drinks wine

THINKING IT OVER

When **שאר** says that (**עבודה** (לכתחלה) he may not rule (or do the **עבודה**) if he had **תוספות** **משרבנן**⁶; **איסור מדאוריתא** or only?⁷

⁶ See footnote # 5.

⁷ See Tosfos **כריתות יג**, ב' ד"ה אמר.

מטביליםו על דעת בית דין משומד זכות הוא –

We are with him with the consent of ב"ד, because it is beneficial

OVERVIEW

גירות הוספות גור can be effective. This discusses how this can be effective.

תוספות asks:

ותימה זהא זכיה¹ הו מטעם שליחות דביון דזכות הו לא אונ סהדי דעביד ליה שליח -
 And it is astounding! For זכיה is effective because of the rules of שליחות, meaning that since it is beneficial for him, we can testify that the זוכה (would have) appointed the זוכה to be a שליח for this proves that זכיה is effective. -
 כדמות בפרק קמא דבבא מציעא² זי,יב,א) גבי חצר משומ יד איתרובי ולא גרע משליחות³ -
 As is evident⁴ in the first of פרק regarding the statement, the 'yard' was included on account of the 'hand', but the yard is no less than - 'שליחות'

¹ זכיה (or acquiring) refers to the act where one (the 'שלייח') can acquire something on behalf of a recipient (זוכה) if it is beneficial for the recipient to acquire it. For instance if ראובן wants to grant שמעון property, but שמעון is not present; שמעון can write a שטר מתנה to שמעון, and give it to לוי that he should acquire this property on behalf of שמעון. The rule is that שמעון acquires the property (as soon as לוי receives the שטר), even though he has no knowledge of this gift and certainly did not appoint לוי to act on his behalf. Nevertheless since it is beneficial (אלהות) for שמעון to acquire this property, it is assumed (างן סהדי) that לוי agrees that he should be his agent ('שלייח') to acquire the property for him. Similarly here since it is a אלהות for this קטן to become a Jew, even though he is not aware of it and has no mind of his own to consent to this גירושה (since he is a קטן), nevertheless we acquire this גירושה for him (by being and מתביל מזוייר him) on his behalf since it is a זרעה for him.

² The word **מצא בידו** (דברים [חצא כד, א]) derives (from the word **גט** or from **ונתן בידה** (דברים [חצא כד, ב])) that the **חצר** (property) of a person can acquire objects for him; if a gift or a **גט** is placed in the **חצר** (of the recipient), the recipient and the woman acquire the gift and the **גט** respectively. There is a difference however between a **גט** and a **מתנה**; regarding a **גט** the woman must be staying beside the **חצר** to acquire the **גט** (unless she specifies that her **חצר** should acquire the **גט** for her), however by a gift the recipient need not be near the **חצר** (if it is a guarded **חצר**). See the following footnote (# 3) for the reason of this distinction.

³ We derive that a **חצר** can be **קונה**, from the word **ד'** (see previous footnote # 2), therefore just as the **ד'** is next to the person, similarly the **חצר** can be **קונה** (as a **ד'**) only if one is beside the **חצר**. This explains why by a **ט'** she needs to be near the **חצר** to acquire the **ט'**. However the **חצר** besides having the power of **ד'** is not worse than a **שליח**; it can be considered as a (self-appointed) **שליח** of the owner. The **שליח** does not need to be near the **משלה**. Therefore by מהנה where it is a **זכות** for the recipient (the owner of the **חצר**) and the rule is **שליח**, therefore the **חצר** can be considered as the **שליח** of the owner, since it is for his benefit. However by a **ט'**, where it is detrimental to her (she loses her **מצוות**, etc.), and the rule is that **אין חכין לאדם אלא בפניו**, therefore if she is near the **חצר** she is divorced (because the husband may place the **ט'** in her hand against her will; however the **חצר** cannot function as her **שליח** without her specific consent) since it is a **חוב** for her.

⁴ If קונה במתנה is not גמרא, the מטעם שליחות should have merely said that the **חצר** is even if he is not nearby because the fact that the **חצר** says that the **קונה** is גמרא since it is **שלא** בפניו, indicates that the **לא** גרע משליחות.

ואם כן היאך זכין לקטן⁵ והלא אין שליחות לקטן כదאמרינו באיזהו נשך⁶ (שם עא, א) -
And since it is so that זוכה is, m'tum שליחות is זכיה, how can we be behalf of the
פרק קטן, since there is no concept of regarding a קטן as the states in
- איזהו נשך -

continues to ask:

ועוד דאכתי עובד כוכבים הוא ואמרין התם דקטן דעתך לכל שליחות אית ליה זכיה מדרבנן -
קטן a gentile, and there states that a קטן is still a gentile, and who will eventually come into the category of (when he becomes an adult)
can have זכיה מדרבנן (even when he is a קטן), however -
עובד כוכבים שלאathy לכל שליחות⁸ אפילו זכיה מדרבנן לית ליה⁹ -

A gentile who will not come into the category of, does not have even זכיה מדרבנן so how can we be for this now עכו"ם גור קטן זוכה who is an גור?

answers:

ונראה לרביינו יצחק דהכא נמי זכין לו מדרבנן כদאמרין התם דקטן דעתך אית ליה זכיה מדרבנן -
רבינא as קטן מדרבנן for the that here too we are stated there that a קטן has זכיה מדרבנן -
ואף על גב דאכתי עובד כוכבים הוא האathy לכל שליחות¹⁰ -
And even though that the קטן is still an גור (at this point), nevertheless he will come, לכל שליחות גור, for he is becoming a גור.

offers a different version of this answer:

אי נמי כיון דבזה זכיה נעשה ישראל היה כישראל גמור¹¹ לעניין זכיה -

מטעם שליחות is חצר זכיה.

⁵ We are doing this beneficial act (the for the קטן without his consent (since he is not a גור). However the only reason why we are זוכה is because we assume that it is as if the made the זוכה his for this beneficial act. However the קטן cannot make a שליה, so how can we be for him.

⁶ קטן לאו אף על גב דעתך ליה שליחות [אית ליה זכיה מדרבנן] there states; However 'does not initially want to entertain the thought that here it is a חצר, because of the difficulties involved as mentioned later.

⁷ is asking that even if we will say that a קטן has (see footnote # 6), there is still a difficulty.

⁸ We derive the concept of from the פסוק (במדבר [*יח, כה*]) which states 'also' ('וגם') that your שליה may also separate for you. However since the writes פסוק, we interpret this to mean that the (the must be similar to the Jew) must be similar to the (the Jew), excluding an גור who is not a גור.

⁹ A will come into automatically with the passage of time; however this unless there is a automatically come into.

¹⁰ rejects the reasoning in footnote # 9, for since we are capable of being him, it is considered Shliachot.

¹¹ The (and others) explain this to mean that it is as if גירתו זכיה באין כאחת ריב"א (see גיטין ע, ב).

Or you may also say that since through this זכייה (of being him), he becomes a ישראל, therefore regarding this particular זכייה of being him; he is considered a Israel.¹²

תוספות asks:

ואם תאמר היכי הוא גור מדרבנן ושרינו ליה בבת ישראל¹³ וקידושיו קידושין¹⁴ -

గור if you will say; (since the has זכייה only מדרבנן has קטן, and we permit him to marry a Jewish daughter and his קידושין are valid when he becomes an adult) -

הא מן התורה עובד כוכבים הוא¹⁵ -

Since עכו"ם מן התורה he is an.

תוספות answers:

יש לומר דעתך כמאן דאמר באשה רבה יבמות דף ב, ב

And one can say; that agrees to the one who maintains in רב הונא - פרק האשא רבה - דיש כה ביד חכמים לעקור דבר מן התורה בקום ועשה¹⁶ -

That there is power in the hands of the to uproot a ruling even by a (doing something improper) קומ ועשה¹⁷ -

תוספות resolves a possible difficulty:

וכי פריך Mai קא משמע לו הוה מציא לשינוי קא משמע לו

מטבילים דין דין asked, 'what is teaching us' with this רב הונא גمرا - And when the teaching us' with this asked, 'what is teaching us' with this רב הונא גمرا -

דיש כה ביד חכמים לעקור דבר מן התורה בקום ועשה חד מתני טעמי נקט

¹² The גור is limiting the power of זכייה for this potential זכייה. It gives him the right of regarding only, but not for anything else; as opposed to the first answer of Tosfos, that since he is גור, therefore he has זכייה regarding other issues as well (not only the גירות).

¹³ A ב בת ישראל is not permitted to marry an עכו"ם.

¹⁴ If this will be an אשה an מקדש גור will be considered married to this (when in reality she is not married to him). If another Jew will be her (after the קדושין of the גור) she should be מקודשת לשינוי; however since we formally accept this גור she will be living with her husband the גור as an איש (of the second מקדש).

¹⁵ He never consented to be a גור; and the concept of זכייה applies only מדרבנן, meaning that there is no מדרוריתא.

¹⁶ The חכמים have the power to be עוקר דבר מן התורה by a שב ואל תעשה; preventing us from doing something the תורה commands us to do. For instance, we are not to blow on שופר on שבת. We are passive - ר"ה של להיות בשבת. However there is a question whether the חכמים can be עוקר a שב ואל תעשה. In this case we are allowing a גוי to marry a Jew (or allowing him to live with an איש [see footnote # 14]), nevertheless (according to one מ"ד) the חכמים have the power to do so.

¹⁷ This is in a case (for instance) where one was מפריש תרומה על הטמא, where it is valid, however the חכמים ruled that it is an invalid תרומה (since they did not want that the Cohen should lose out by receiving תרומה which he cannot eat) and it reverts to טבל חולין and he must be again תרום. Here the חכמים were תרומה דאוריתא עוקר.

That the have the power to be a עוקר הכהנים ועשה a עוקר however the mentioned one¹⁸ of the two explanations what teaches us. ר"ה גمرا

תוספות anticipates a difficulty:

והא דאמרין בריש בן سورר (סנהדרין זז סח, ב, ושות) גבי גזל הגור¹⁹ -

And that which states in the beginning of regarding פרק בן سورר רבה what was stolen from a גור, where the תורה writes -

אם אין לאיש²⁰ גואל איש אתה צריך לחזר אחורי אם יש לו גואל -

If the person (gor) has no relative; meaning if the is an איש (an adult, who can have children) you have to investigate regarding him, whether he has a relative (if he bore children), before you give his returned to a גזל כהן -

אבל קטן אי אתה צריך לחזר אחורי כולי -

However if the gor is a minor you do not have to investigate him, etc., and you may give his to a immediately proves from this that a minor cannot bear children). The question is since the תורה writes the word 'ish' to exclude a minor (a gor קטן); this means that there is a gor קטן only (since there is no מדרבנן gor קטן תוספות זכיה ושלהות עכו"ם קטן).

תוספות responds:

משכחת לה gor קטן מן התורה במעוברת שנתגירה כדאמרין בפרק העREL (יבמות זז עח, א, ושות) -
רבא as נתגיר by a pregnant woman who was gor קטן מן התורה states in פרך העREL, that -

עובדת כוכבים מעוברת שנתגירה בנה אין צריך טבילה²¹ -

'A gentile pregnant woman who was, נתגיר her son (with whom she was pregnant during the time) does not require immersion in a מקוֹה', this concludes the statement of רבא תוספותcontinues -

והו gor מן התורה דישראל גמור הוא ואית ליה ממון מן התורה כגון שירש את אמו -

¹⁸ ר"ה גור that it is definitely a זכות to become a Jew.

¹⁹ The rule is if one falsely denies owing money and he swears that he does not owe it; when he repents and decides to pay what he owes, he must return the principal plus a fourth (which is actually a fourth of the principal) to the person he owes (and in addition he is required to bring a קרבן [נשא ח, ח]). The תורה writes that ואם (במדבר) קרבן גזילות that the one who was owed died and he has no relatives, the קרן והומש is given to a gor. כהן expounds this, how is it possible that he has no relatives; there is always some relative (albeit distant). We must conclude that we are discussing a case where he owed a gor money, and the gor died. רבה continues as mentioned now in תוספות.

²⁰ The word 'ish' is seemingly superfluous; the תורה could have written ואם אין לו גואל. The word 'ish' teaches us something.

²¹ If we maintain that he is an integral part of his mother) then the טבילה of the mother applies to the gor as well since he is a עובר. Even if we maintain that the fetus is considered as a separate entity), nevertheless the טבילה is effective even for the gor and the mother's body is not considered a חציצה, since (as the גمرا states there on the ב"ע) that this is the manner in which he grows (see [also] ריש"ש).

And this child is a complete Jew,²² and he can have money²³ for instance that he inherited his mother (while he was still a minor),²⁴ the word פסוק in איש teaches us -

ואז אתה צריך לחזור עליו שאין לו יורשין שאינו מולד ואחיו מן האם אין יורשין אותו²⁵ -
that it is not necessary [for you] to investigate this, for he certainly has no heirs, since he cannot bear children (as a minor) and his brothers from his mother do not inherit him. Therefore this money owed is given to a。^{כהן}

offers an alternate response to the initial question(s):

ולפי ספרים דגרסינן בבבא מציעא זכייה מיה אית ליה ולא גרש מדרבנן²⁶ ניחא -
And according to those text in that read, 'but he (the minor) has', and
their texts do not read that he has זכייה מדרבנן²⁷ -

דמאי למי אמר דעתך ליה זכייה מן התורה -

For we can say that a has ישראל קטן -

ועובד כוכבים קטן כיון דבא להtaggir חשבין ליה כישראל קטן²⁸ -

And regarding this minor, since he is coming we consider him to be a קטן, who has זכייה מן התורה -

anticipates a difficulty:

ואף על גב זכייה הוא מטעם שליחות ואין לו שליחות מן התורה -

And even though that has no קטן, and, M'tu'm shelihot is זכייה so, shelihot מן התורה is?!

answers:

הני מיili בדבר שיש בו קצת חובה כגון להפריש תרומתו -

When does this apply that he has no minor, only by something which may be somewhat detrimental to the minor, for instance to separate his on his behalf (which a minor cannot do because it is a קצת חובה to the minor) -

²² See 'Thinking it over' # 1.

²³ This is responding to an anticipated difficulty; this minor must have money that someone stole from him; seemingly as a minor he cannot have any money for he has no זכייה מה"ת. See 'Thinking it over' # 2.

²⁴ A minor (even a day old infant) inherits. Therefore the minor had assets, (from his deceased mother) which were stolen from him, and are being returned after his death.

²⁵ This includes any brothers his mother may have born after the deceased was born (for inheritance is established through the father's side [and his natural father who fathered him as a boy is not considered his legal Jewish father]) and certainly not the brothers his mother bore before the minor, who are totally unrelated to him.

²⁶ See footnote # 6

²⁷ All the questions mentioned previously are resolved; we can be him on account of זכייה מאייר and he is a minor (so there is no need to establish the פסוק לאיש by a מדרוריתא).

²⁸ See footnote # 10, 11.

דשמא היה רוצה לפוטרה בחטה אחת או שמא היה רוצה להעדיין –

For perhaps the wanted to exempt the crop from by separating only one kernel of wheat (which is sufficient (מה"ת or perhaps (the other extreme) the wanted to give more than the is being מפריש on his behalf, therefore in these cases there is no - שליחות לקטן

אבל הכא שזכות גמור הוּא²⁹ לו יש לו שליחות:

However here by where it is a complete for the, קטן זכות גירות even for a (and therefore there is. זכיה מה"ה

SUMMARY

There is (either) זכיה לקטן מדרבנן and this applies even to an and it is effective even to be a עוקר בקום or there is for a שליחות זכיה by something which is a זכות גמור as גירות is.

THINKING IT OVER

1. proves from s' statement that the מעוברת שנותגירה בנה אין צורך טבילה child is a רבא. Seemingly all that is saying is that he needs no additional גר גמור!³⁰ but he does not say that the child is!³¹
2. explains how the has money.³² Seemingly this is irrelevant to our discussion, this has to be explained in the סנהדרין גمرا in which discusses גול גר תוספות; why is involved in this?!³³

²⁹ It may be necessary to say that when stated (see footnote # 6) he means קטן אך ג' שליחות ליה אית' זכיה (רבניה) and there is a difference whether it is merely a where it is not a (where there is no for זכיה or שליחות זכיה). אית' ליה שליחות זכיה – זכות גמור a – זכיה (where it is a where it is a).

³⁰ See footnote # 22.

³¹ See footnotes נ' and ח' רע"א.

³² See footnote # 23.

³³ See א"ר מהרש"א.

מהו דתימא עבד כוכבים בהפקירה ניחא ליה –

We would have thought that a gentile prefers being unrestricted

OVERVIEW

The explained that the **ר' מ'** regarding a **רב הונא** of **היזוש** is that it is for him, even though we may have thought that since perhaps the **עבד בהפקירה ניחא ליה** is also for him to become a **ישראל**, and it is not a **זכות** for him to become a **קטן**. Therefore teaches that since he is still a **קטן** who was not yet **רב הונא**, it is a **טעם אסור** for him. questions and explains the basic assumption of the **גمرا** that **עבד בהפקירה ניחא ליה** is certainly **עובד**.

anticipates a difficulty:

ואף על גב דרבנן פליגי ארבי מאיר בפרק קמא דגיטין¹ (ז' גג, א' ושות) –

- מסכת גיטין of פרק ר"מ רבן argue on in the first

ולית להו טעמא דבהפקירה ניחא ליה² –

And they do not agree with **ר' מ'** **reason of** **עבד בהפקירה ניחא ליה** maintain that it is for the **עבד** to become a (complete) Jew and the **זכות** can the assume that perhaps when the whole foundation is false since even an **עבד** according to the **רבנן**!

responds:

הני מיili גבי עבד שאינו חושש בהפקירה³ שמקיע עצמו מן השעבוד –

עבד **is regarding only an** **הפקירה ניחא ליה** **עבד** **for he is not concerned** that he is losing his **הפקירה** **since he is freeing himself from bondage;** that it more important to him than the advantage of (therefore the **חכמים** maintain **עבד** **הוא לעבד** – **זכות** **הפקירה**)

אבל גבי עבד כוכבים שאינו משועבד ניחא ליה בהפקירה –

However regarding an (adult) who is not in bondage, he is ניחא ליה

¹ The there (on) cites a between a master gave a **שליח** to give it to his **עבד** (in order to free him). maintains that until the **שליח** to the master can change his mind and revoke the **עבד**, since according to **ר' מ'** it is (somewhat of) a detriment for an **עבד** to become free (since he may prefer the uninhibited lifestyle of the **עבד** for **עבד** **ניחא ליה** and **אין חביב לאדם אלא** (see previous footnote # 3)). However the maintain that it is for the **עבד** to be free and since **זכות** **הפקירה** **עבד** **תוס' ד"ה מטבילין** (see previous footnote # 3). As soon as the **עבד** receives the **שליח** on behalf of the **עבד** he is **זוכה** for the **עבד** and the master can no longer retract the **עבד**.

² According to the what is the **היזוש** of **ר' מ'** since there is no concept of **עבד** **בhfekira** **ניחא ליה**.

³ The **עבד** may indeed be **ניחא ליה** (this is what the **גمرا** may mean when it states **עבד** **ודאי בהפקירה ניחא ליה** [even according to the **רבנן**; see (however and) **זרע יצחק** (**מהרש"ל**); however the freedom from bondage supersedes any advantage of the **הפקירה**].

–**רבנן בהפקירא** (even according to the –

וכו"מ (ועבד) בהפקירה ניהא ליה also agree that רבן supports his view that the Tosafot כו"ה דאי לא תימה הכי מייתי סייעתא מההוא דגירות⁵ -

And indeed it seems so that the רבנן also maintain **for if you will not say so**, but rather maintain that only ר"מ rules (עכו"ם) but not the זכות ה (that it is a for the ruling of ר"ה, how does the bring proof from that - גיורת בריתא of גר קטן -

דلمיא רבנו ה'יא⁶ דאפיקלו בגדוֹל לית להו בהפקירא ניחא ליה:

Perhaps that according to בריתא רבען is who maintain that even by an adult there is no such a thing as עכום (עבד).

SUMMARY

All agree to the concept of רבן עבד ועכו"ם בהפקירה ניהא ליה; except that the maintain that by an עבד this is overshadowed by his desire to be free.

THINKING IT OVER

דָהֲא קִיל דַעֲבֵד וְדַאי תּוֹסְפָה דֶה of this to be, why yes and why no?⁷

⁴ The *h* of ר"ה is even according to the *רבנן*.

⁵ The גمرا (seemingly) wants to prove that there is a novelty in the ruling of ר"ה that there is a difference between an adult בריתא גمرا (who is a ניחא לה) and an עכ"מ קטן (for whom it is a זוכה). The cites a מ"ד which discusses a מטבילין אורה ע"ד less than three years old. Initially the גمرا assumed that this is possible only if we maintain that it is a זכות for her.

⁶ One could then argue that according to the רבני הגיורת וכו' (who may be the authors of the ruling of ר' מ"מ perhaps perhaps (עבד בהפקרת נינה ליה, and according to ר' ה"ה who maintains that even a גוי קטן is also disagrees with the ruling of ר' ה"ה. However if we maintain that even the רבני קטן agree that בהפקרת נינה ליה, then there is a that by a גוי קטן it is a זכות.

⁷ פרדס יצחק אותן קסה. See

אבל קטן זכות הוא לו –**However, it is beneficial for a minor****OVERVIEW**

בהתיקרא ניחא ליה even though that by an גمرا stated that even though that by an עכו"ם ועובד it is does not however by a קטן it is a זכות for him to become a Jew for him to become a Jew. Our reconciles this with a seemingly contradictory משנה.

תוספות anticipates a difficulty:

והא דעתנו בפרק קמא דגיטין¹ (גם זה שט) האומר לנו גט זה לאשתי ושחרור זה לעבדי –

And regarding **that which we learnt in a first of** **פרק גיטין** in the first 'one who says, "Give this bill of divorce to my wife or this bill of emancipation to my slave", the rule is –

רצתה לחזור בשנייהם לחזור² דברי רבי מאיר³ –

If he **wants to retract** in both these cases (of an אשה ועובד), **he may retract, this is the view of ר"מ**. This concludes the משנה, and it seemingly does not differentiate between an עובד גדול and an עובד קטן in both instances the master may retract.

תוספות responds:

הינו העובד גדול דבקטו מודה רבוי מאיר זכות הוא לו שלא ניחא ליה בתיקרא –

This ruling of ר"מ is only by an **adult** (who is עובד), **for by a minor**, even עובד ר"מ admits that it is a **for him** to be freed, **since the minor is not ניחא ליה בתיקרא** –

כదאמרינוanca משום שלא טעם טעם דאייסורה –

Since he was not גمرا, טעם טעם דאייסורה, as the states here.

תוספות offers an alternate resolution:

אי נמי⁴ איירי אף העובד קטן וכגון שהוא של כהן חוב הוא לו שיוצא לחירות –

Or may be discussing even an עובד קטן (that the master may retract, for it is a חוב for him), and that is for instance in a case where the slave of a כהן, in which case it is a **חייב to be freed** –

¹ [ב] See previous footnote # 1.

² ר"מ maintains that both a אשה ועובד are for an חוב and a חוב for an אשה respectively.

³ The question is that by an עובד קטן it is not a חוב for him to be freed (as the גمرا states here) for so לא טעם טעם דאייסורה. The rule should be that if he sent a שטר שחרור for his עובד קטן ניחא ליה בתיקרא. The rule should be that if he sent a שטר שחרור for his עובד קטן, the master should not be able to retract. See 'Thinking it over' # 1.

⁴ See 'Thinking it over' # 2.

לפי⁵ שמאפסידו⁶ מלאכול בתרומה:

Since this freedom causes him a loss for it prevents him from eating.

SUMMARY

A master cannot retract if he sent his servant שטר שחרור a عبد קטן even according to ר"מ since it is a זכות for him; unless he is an عبد כהן where he loses his rights.

THINKING IT OVER

1. asks why can the master be by an חזרה عبد קטן since it is a זכות for him.⁷ Why did not זוכה so they cannot be the זוכה אין זכיה לקטן מן התורה than תוספות on his behalf,⁸ and the חכמים did not see fit to make a תקנה for this عبد that he should be זוכה!⁹

2. Do the two answers of תוספות disagree with each other,¹⁰ or do they complement each other?¹¹

⁵ An عبد כהן (whether a عبد or גדור) may eat as long as he is considered ثرومة (the acquisition of the money). See כתין נפש קניון כספו הוא יכול בו וגו' אמר (כב,יא) which states זוכה כי יקנה נפש קניון כספו והוא ויקרא (אמור). This is a great benefit to them, for ثرومة is less expensive than חולין, since the demand for ثرومة is less (for only כהנים and their families and can it) and it is plentiful in the s' house.

⁶ عبد כהן חוב משנה וגمرا there in גיטין יב,ב, where this is the (other) reason why ר"מ maintains that it is a reason for an عبد and therefore the master can retract.

⁷ See footnote # 3.

⁸ See previous הוט' ד"ה מטבילים (especially that he may marry a בת ישראל on account of this).

⁹ See פרדס יצחק אות סז.

¹⁰ See footnote # 4. Perhaps the first answer maintains that even by an عبد קטן it is still a זכות for him; since לא he would rather be a عبد ישראל even if he loses his rights.

¹¹ See כסא שלמה.

When she will grow up

לכוי גדלה –

OVERVIEW

גירות רבי יוסף rules that this who was, מתגיר ע"ד ב"ז, can protest his when he grows up, and he will then revert to being a non-Jew. רבא challenged this from a ברייתא which states that a girl who was before she was three years old, receives קנס (if she was נאנס) like a בתולה. How can we give her קנס if she will revert to being an גمرا? The responded we will give it to her when she grows up.¹ תוספות clarifies this answer.

תוספות asks:

ואם תאמר והלא כבר גדולה היא שחייב נערה כיון שהיא בת קנס² –

And if you will say; what does it mean that we will give her the later when she grows up, **but she is already a גדולה, for she is a נערה since she is receiving!** קנס!

תוספות answers:

ומפרש רבינו יצחק לכי גדלה וננהג³ מנהג יהודית:

And the ר"י explained that means **וכי גדלה** that she will conduct herself in the Jewish customs.

SUMMARY

We give her the קנס when she conducts herself according to מנהג יהודית.

THINKING IT OVER

Is question and answer on the first answer of the תוספות or on the second answer – ?'כיון שהגדילה שעה אחת וכו'?

¹ The תוספות clarified this to mean that once she is a גדולה she can no longer protest. See later in this תוספות.

² The laws of קנס apply only to a נערה but not to a בתולה. See קטנא ד"ה אלו. רש"י כת'

³ Presumably this is what the הגדילה means when it states כיון שהגדילה שעה אחת וכו' that if she was גדולה and now she can no longer be גדולה. It cannot mean that as soon as she cannot be גדולה again she will revert to being a נערה. This is because the moment when she becomes גדולה again cannot be determined. מהותה, how will we know the exact moment when the הגדילה will determine both the גדילה and גדלה again? כיון שהיא למחות שעה אחת וכו' אין יכולה.

אבי לא אמר הרבה שלא יהא חוטא נשכר –

did not say like אבי; הרבה so the sinner should not profit

OVERVIEW

הגדילו יקולין cited separate to challenge the ruling of אבי ורבא (that) רב יוסף (the) ברייתא explains that did not challenge from the ruling of אבי regarding this does not pose a difficulty; she will receive the even if because we do not want the (the) חוטא manus to profit from being this. Our discusses a difficulty from this inference that is not concerned for רבא.

משמעות דרבא ליה טעונה שאין שלא יהא חוטא נשכר¹ –

It seems that הרבה does agree with the reasoning of רבא – שלא יהא חוטא נשכר

חומרה asks

וקשה דאמרין בפרק שור שנגח ד' וה' (בבא קמא דר' לוח, בושם) קסביר רבוי מאיר כוותים גריי אמרת הן – ר"מ; פרק שור שנגח ד' וה' inexplains גمرا that maintains that כוותים are valid –

ויקנס הוא דקניש רבוי מאיר בממוני לעניין שור שנגח³ שלא יטמעו בהן⁴ –

But it is merely a fine that ר"א imposed on their money regarding an ox that gored, in order that the Jews should not intermingle with them' –

ופריך אל⁵ נערות שיש להן קנס הבא על הכותית –

And there challenged this explanation, for we learnt in a 'These are the which receive', קנס one who lives with a etc. – נערות

ואי קניס רבוי מאיר בממוני הכא נמי ניקנות –

שורpunishes the with their money (as was explained regarding כוותים ר"מ קנס ר"מ (קנס here too (by כוותים, של כוותי).

¹ If follows the logic of רב יוסף, by קנס it is different since we wish to punish the who was (see 'Overview').

² The were a nation which brought from and settled them in. שומרון כוותים (who exiled the shabtimim עשרה השבטים). They were later when they were attacked by lions (see מלכים ב, יז, כד-כה). It is questionable whether the were (and are considered as Jews), or whether they were (they converted only because the lions were killing them) and are considered גויים.

³ rules that if a Jewish ox gored a s'ox כוותי must pay a נזק שלם even if he is a (just as the ruling would be regarding a גוי). This is a fine in order to prevent intermingling between the Jews and the כוותים.

⁴ Their original was proper. However they became corrupted later, and were not faithful to תומ"צ.

⁵ סתם משנה ר' מ' ללקמן כת' א. This is a which presumably is according to ר' מ', since

ומשנני זהכה לא בעי למקנס שלא יהא חוטא נשכרכ⁶ -

so, כתית that here by a ר"מ, מאנס did not want to punish the in גمرا in that the חוטא (the) should not gain'. This concludes the citation from the ב"ק תוספה Now concludes his question -

והשתא לרבע דלית ליה הכא טעם דחוטא נשכרכ היכי מצי משני התם⁷ -

But now that we surmised that רבא does not agree to the reasoning of, חוטא נשכרכ how will he explain the view of there?!

תוספות answers:

ויש לומר דתתם אית ליה שפיר האי טעמא כיון דבדין יש להן קנס דגורי אמרת הון -

And one can say; that there (by רבא) מאנס rightfully agrees to this reasoning of כותים deserve being paid the קנס for they are valid - גרים

אלא דברינו למקנס فهو סברא הוא דמשום טעמא שלא יהא חוטא נשכרכ מוקמים לה אדינא - However we wanted to punish them, therefore logic dictates that on account of the reason we revert to the legal status, which is that they receive קנס -

אבל הכא⁸ סבירא ליה לרבע דמשום טעמא שלא יהא חוטא נשכרכ אין ליתן לה -

שלא יהא חוטא נשכרכ maintains that the reason of רבא (גירושת is insufficient to award her the קנס -

כיון דמן הדין לית לה שחררי עובדת כוכבים גמורה היא אם תמחה -

గרות Since legally she does not deserve the payment, for if she protests her, she is a complete gentile.

תוספות resolves an anticipated difficulty:

ובפרק אלו נערות (לקמן זר לו, ב) דעתך ליה לרבע⁹ שלא יהא חוטא נשכרכ גבי שבוייה¹⁰ -

⁶ By rules that the is not a Israel, פטור is Israel where the is not a cow; the did not instigate his ox to gore a cow. See סוכ"ד אות פח.

⁷ Why by we fine the and make them pay (and we do not pay them), and by we make the pay and we do not fine the cow.

⁸ The question of the question is, when she may be and spend the money as a non-Jew. That fact that the will gain is not sufficient reason to give her something which she legally does not deserve. This differentiates her from a who is a valid Jew and deserves her payment; in this instance we will not change the legal ruling and punish her denying her, her legal rights, because we do not want the who is a to gain. לא יהא חוטא נשכרכ prevents us from punishing her and not giving her, her legal due.

⁹ In our text there it reads. רבבה. See however the marginal note there (who amends it to רבא).

¹⁰ The there states if one is מאנס a woman who was a and was redeemed, he does not pay her, because we assume that she was by the גויים when she was a שבואה. However ר' יהודה disagrees and maintains that she receives because she retains her קדושה status.

שלא יהא חוטא נשכר where רבא maintains פרק אלו גערות regarding¹¹ a captive woman¹² -

responds; she receives the קנס payment -

משום דמקמיין לה בקדושתה:¹³

Because (as said in the משנה) **that we place her on her** קדושה status.

SUMMARY

According to רבא the logic of **שלא יהא חוטא נשכר** is not sufficiently powerful to create a legal obligation; however it is sufficiently powerful to prevent the removal of a legal obligation for various reasons.

THINKING IT OVER

שלא יהא חוטא נשכר maintains why regarding a שבואה does תוספות¹⁴. Perhaps said this only according to ר' יהודה that he maintains, שלא יהא חוטא נשכר (as well as תנאים agree!)¹⁵

¹¹ The gamara there initially said that the aforementioned ר' דוסא agrees with ר' יהודה that she can eat (which would render her unfit for marriage). However challenged this comparison; perhaps maintains that a שבואה does not eat (since we assume that she receives קנס because (according to ר' יהודה) is because she receives קנס).

¹² The question is that since seemingly she does not deserve this קנס payment lawfully (for she is seemingly beholden; see previous footnote # 11), how can the תוספות create an obligation to pay her. said that לא יהא חוטא נשכר (according to רבא) is only sufficient to prevent us from removing her legal rights, but not to grant her new rights. See 'Thinking it over'.

¹³ dismisses the assumptions mentioned in footnotes # 11 & 12. maintains that a שבואה is lawfully she should receive קנס payment, the reason she is not is merely a חומרא; however by the we do not implement this חומרא in order מאונס.

¹⁴ See footnote # 12.

¹⁵ See 'Thinking it over'.

וישמואל אמר אין מוכת עץ בבשר –

And said, there is no מוכת עץ through flesh

OVERVIEW

The gemara cites a dispute regarding a minor (less than nine years old) who had relations with a woman, whether she is considered a **בתולה** (the view of רבי יהודה אמר אין מוכת עץ), or not (the view of רבי שמואל הוספות). Our qualification qualifies the ruling of רבי שמואל.

בלא השיר בתולין איירי די בהשיר למה יש לה להיות פחותה ממוכת עץ:

We are discussing a case where the minor did not remove her (she is still a **בתולה**), for if he removed her (and she is no longer a **בתולה**), why should it be (for her) any less³ than a **מוכת עץ**?!?

SUMMARY

The dispute between רבי ושמואל is only when she remains a **בתולה**, however if she lost her **בתולים** all agree that she is a **מוכת עץ**.

THINKING IT OVER

1. How are we to understand (according to רבי הוספות) the view of that she is considered a **בתולה** (but not a **בתויה**) even though her remain?⁴

2. According to that the dispute between רבי ושמואל is where why do they use the phrase of **מוכת עץ** which indicates that she is no longer a **בתולה**?!

3. What would her status be according to רבי השיר בתוליה if?⁵

¹ A **מוכת עץ** (literally hit by wood) refers to a woman who lost her virginity on account of a wound, but not through a relationship with a man. According to ר' מ"ר she still receives a **כתובה** of **חכמים**, while the **מאთים** maintain that a **מוכת עץ** receives a **כתובה** of **מנה**.

² A woman had no **מוכת עץ**, nevertheless she is considered a **בתולה**, this woman too, since she no longer has **קטן** (which removed her) so, nevertheless she is considered a **בתולה**, since she is no different than any other woman (who did not have **קטן** and nevertheless is considered a **בתולה**).

³ The word ‘less’ is to be understood as why the removal of this **קטן** (which removed her) should be any less harmful to her than a **מוכת עץ** which also only removed her. See **מהר"ם שי"ף** בתอลים.

⁴ See **אלת האבים** **רש"ב** א.

⁵ See **רש"ב** א (on the **משנה**).

לרבנן הכיר בה מנה לא הכיר בה ולא כלום –

According to the rule; if he was aware that she is a woman she receives a woman; if he was not aware, she receives nothing

OVERVIEW

is כתובה מנה that a receives a for her that a מוכחת עז that a רבעה taught that the ruling of the husband was aware (הכיר בה) before he married her that she is a woman; מוכחת עז when he married her that she is a woman (לא הכיר בה) however if he was unaware (but rather he assumed that she is a woman), then he owes her no at all when he divorces her. The had just cited a משנה which indicates that a receives a even if ¹ לא הכיר בה Our discusses why chose to interpret the in a manner that they disagree with that משנה.

ומתניתין ² רבבי מאיר היא ³ ולא ربנן ⁴ –

And the משנה (of a woman) is according to ר' מ and not according to the rule.

asks:

ואם תאמר אמאי לא קאמר לרבען בין הכיר בה בין לא הכיר בה מנה כדקאמר בפסקנא ⁵ -

And if you will say; why did not say that according to the rule is that whether as, מנה a is מוכחת עז כתובה or הכיר בה says in the conclusion of our that a always has a (even) according to the rule –

ותיתוי מתניתין לדברי הכל ⁶ –

And (we will gain that) the משנה of a woman will be according to everyone (ר' מ and the rule)!

answers:

¹ See footnote # 2.

² This is referring to the rule which was just cited in our משנה ג,א here. The case is where a man married a woman and found out that she is not a woman. The man claims that she had relations with someone and therefore does not deserve a (full), while she claims she was merely a woman and therefore deserves a (full). It is evident from that a משנה receives (at least) a (partial) even if לא הכיר בה.

³ ר' מ maintains (according to that a receives מוכחת עז) that a whether or הכיר בה maintains that she is claiming. מאותים

⁴ The maintain (according to that a receives nothing) what is she claiming! The which states her claim (and ר' ג' ור' א' נאמנתה) obviously disagrees with the rule.

⁵ See later on this where the states 'גמורה עמוד'.

⁶ Why does feel the necessity to say that the maintains that a receives nothing, when this contradicts a משנה; there is seemingly no reason why he cannot maintain that the agree that a receives a (even) and indeed that is what the rule is!

ויש לומר שלא ניחא ליה למיימר כי דעתן דרבנן מזדווגה לבעהלה⁷ -

כתובה מזכה עז כתובות has a **is not satisfied to say this** (that a **רְבָא** has a **对比** **by since the compare** a **בעולה** **עז** **mochta** (for they rule that a **רְבָן**, **לא הכיר בה** receives a **ר"מ** who maintains that she receives a **עז**; not like **מאתיים** therefore -

הויא بلا הכיר בה כמו כניסה בחזקת בתולה ונמצאת בעולה וסבירא ליה⁸ דלית לה ולא כלום -

By the assumption **is considered to be like** the case where **he married her with the assumption** that she is a **בתולה** **and she was found to be a**, and **maintains that by** **בעולה**, **כגשה בחזקת בתולה ונמצאת בעולה**, **she receives nothing** for her, therefore the same applies to a **רְבָא** (which [according to a **רְבָא**] is similar to a **רְבָן**) that if **כגשה בחזקת בתולה ונמצאת מזכה עז** she receives nothing.

רְבָא explains why ultimately retracted:

ובמסקנא סבר הא מזדווגה לה לבעהלה היינו לעניין מנה אבל מקה טעונה לא הויא כמו בעולה -
And at the conclusion maintains, this which the compared a **רְבָן to **מזכה עז** **רְבָא**, that is only regarding a **בעולה**, that both a **בעולה** and a **מנה** receive a **מקה**; however regarding the rule of **מקה טעונה** a **מקה טעונה** is not like a **בעולה** -**

דאינו מkapid כל כך במזכה עז שייה מאלה מקה טעונה⁹:

For he is not that disappointed when she turns out to be a **that it should be considered a** **מזה עז** **מזכה עז** **כתובה מנה** **בעולה** **as opposed to** **מזה טעונה**; **מזה טעונה** **מזה עז** **כתובה מנה** **בעולה** **she receives nothing if** **לא הכיר בה**.

SUMMARY

A **מזה עז** is like a **מזה טעונה** regarding **בעולה**, but there is not sufficient by a **מזה עז** that it should be considered a **מזה עז**.

THINKING IT OVER

Is a **מזה עז** considered a **מזה טעונה** (**בעולה** so why is it not a **מזה עז**), or is a **מזה עז** **כתובה מנה** (**בעולה** so why **כתובה מנה**)?

⁷ Everyone agrees that a known **מנה** receives only a **מנה** for her **בעולה**.

⁸ See the **גמרא** later on this where **רְבָא** maintains that **כגשה בחזקת בתולה ונמצאת בעולה** it is a **מזה עז** and she receives nothing. Other **אמוראים** argue with **רְבָא** and maintain that she receives a **מנה**.

⁹ **מזה טעונה** means a mistaken deal; a deal made in error, where the rule (usually) is that the entire deal is void. This is not a **מזה**; he is satisfied (**בדיעבד**) with the marriage. See 'Thinking it over'.

הדור ביה רבא מה היא –**Rovo retracted from that ruling****OVERVIEW**

רַבָּא initially stated that according to the רַבָּןִי הַכִּיר בָּה receives no מִочְתָּה עַזְלֵא. The proved that retracted, because insisted on interpreting the כתובה גמרא¹ (instead of reading נִמְצָאת בַּעֲולָה כְּתוּבָה מִנָּה) to read נִמְצָאת בַּעֲולָה כְּתוּבָה מִנָּה בְּרִיְתָא, indicating that a has מִочְתָּה עַזְלֵא הַכִּיר בָּה of a. Our discusses the meaning of this retraction.

תוספות responds to an anticipated difficulty:³

אבל מה לא עוי למייר דהדור ביה משום דמקח טעות לגמרי משמע⁴ -

However the did not wish to entertain that retracted this ruling of גמרא in נסנה because the words which the husband uses⁵ in the claim of the husband, is that it was a mistake, this indicates that it was a total mistake and no money is owed.

תוספות asks:

ואם תאמר מנא לו דהדור ביה ממה שאמר לרבען לא הכיר בה ולא כלום -

And if you will say; how do we know that retracted from that which he ruled that according to the receives nothing -

נאמר שחרז בו ממה שאמר לא הכיר בה לרבי מאיר מאיים -

Let us say instead that retracted from what he said that according to a ר"מ receives מִочְתָּה עַזְלֵא הַכִּיר בָּה - מאיים

אלא נפרש לא הכיר בה מנה ונוקי ברייתא כרבי מאיר -

ונמצאה בריתא instead interpret that which said regarding the that And we will

¹ See previous Tos'.

² See footnote # 6. could not have the state since maintains נמצאת בועלה כתובה ברייתא, and that is what the indicates that there is a case where כתובה מנה (and the בועלה, she receives nothing).

³ How do we know that retracted the ruling that by מוכ"ע, perhaps he retracted his initial ruling that בועלה now maintains that מנה, and that is what the ברייתא means. In בועלה הכיר בה אין לה ולא כלום by מוכ"ע, and that is what the ברייתא meant (as interpreted it). However, he did not retract the ruling of מוכ"ע אין לה ולא כלום that ruling (of ברייתא) was made after initially said that ברייתא meant to say that מִочְתָּה עַזְלֵא אין לה ולא כלום (מוכ"ע אין לה ולא כלום) was meant to say that בועלה, he then retracted and taught that מִочְתָּה עַזְלֵא אין לה ולא כלום. See 'Thinking it over' # 1.

⁴ Tos' initially made two rulings; one that בועלה הכיר בה אין לה ולא כלום (see previous סברא), this is based on the words of the (see לשון המשנה בועלה נמצאת בועלה אין לה ולא כלום (ד"ה לרבען), and secondly that בועלה הכיר אין לה ולא כלום (see סברא), this is based on the words of the (see footnote # 5) of which according to means. Therefore the assumes that גמרא means that retracted from his inference from the words of the (as previously explained) but not from his inference from the words of the. In addition, if would now maintain that נמצאת בועלה כתובה מנה can he maintain that מִочְתָּה עַזְלֵא אין לה (תוה"ר מוקפיד one is more than on a than on a (see previous Tos').

⁵ See the where the husband claims (by ולא מצא לה בתולין וכ"ר) that עד שללא ארטשיך (ולא מצא לה בתולין וכ"ר).

receives a מוכת עז שלא הכיר בה maintains that a ר"מ מוכת עז יש לה מנה, **and the ברייתא will go according to ר"מ מנה**.⁶

תוספות answers:

ויש לומר כדפירים לעיל בקונטרס⁷ דאי זה סברא -

And one can say, as ר"ש explained previously that it is not logical that according to מנה she should receive a – מנה if ר"מ מוכת עז נמצאת מנה –

דאילו חשייב מה קח טעות לא יהא לה כלום⁸ -

For if it is considered a mistake (finding out that she is a נפשך), she should receive nothing (but not a מנה) – מנה

ואילו לא חשייב מה קח טעות למה לא יהא לה מאתים⁹ -

And if (finding out that she is a known מנה is not a why should she not receive מאתים (according to ר"מ who maintains that a known receives מאתים – מאתים)

כיוון¹⁰ דמדונה לה לבוגרת דעתו לבוגרת פוחתין לה מכתובתה:

Since כתובה compares the מוכת עז to a do we then diminish the בוגרת (who always receives [even if he did not realize that she is no longer a נערה]), similarly by a מוכת עז she should also receive מאתים.

SUMMARY

There is no logic in saying that according to ר"מ מוכת עז שלא הכיר בה should receive (only) a מנה.

THINKING IT OVER

1. How can even entertain the thought that according to ר"ב נמצאת בעולה יש לה ר'ב maintains that מוכת עז נמצאת בעולה!¹¹ How can a מוכת עז be worse than a מוכת עז?¹²

⁶ The כתובה מנה cannot be understood as read, we need to find a case where ר'ב ברייתא שם ר'ב cannot be understood as read, we need to find a case where ר'ב states. We can either say that ר'ב נמצאת מוכת עז כתובה מנה (the view of ר'ב) or we can say ר'ב ששה נמצאת בעולה כתובה מנה (the view of ר'ב). However this ruling of ר'ב can either be according to ר'ב (as ר'ב assumes), but it can also be (only) according to ר'ב if ר'ב changed his mind and now maintains that according to ר'ב מוכת עז כתובה מנה if ר'ב did not change his view according to ר'ב and he still maintains that according to ר'ב then מוכת עז if ר'ב maintains that according to ר'ב. אין לה ולא כלום if ר'ב maintains that according to ר'ב. See 'Thinking it over' # 2.

⁷ ה' לא הכיר בה.

⁸ We are following the logic of ר'ב who maintains that מוקח טעות לגמרי משמע.

⁹ However according to ר'ב it is understood why מוכת עז receives a מנה, since a known also receives a מנה.

¹⁰ See 'Thinking it over' # 3.

¹¹ See footnote # 3 (and # 4 [תוה"ר]).

¹² See footnotes # 3 and # 4 [תוה"ר].

גמומי הגרי"ב והרש"ש [האריך] ועוד.

2. asks perhaps רבא retracted from his initial view regarding ר"מ, but how do we know that he retracted regarding the רבן.¹³ What would be gained, by assuming question that the retraction was regarding ר"מ and not the רבן?¹⁴

3. when (citing פרש"י and) answering why did not retract according to ר"מ, concludes, 'כיוון דמדמי לבוגרת וכו' ¹⁵ Why does add this (it is not mentioned in ריש"י)?¹⁶

¹³ See footnote # 6.

¹⁴ See א"ה ריש.

¹⁵ See footnote # 10.

¹⁶ See אילת השחר.

אמר רבא זאת אומרת –**Rabboh said; this teaches us****OVERVIEW**

The cites a ברייתא גمرا which states that if a woman was a נושא, however there were witnesses that they did not consummate their marriage, and the husband died, the second husband who marries her cannot claim טענה בחולין, for she was a נושא (regardless of what the testified), and must pay her a מנה derived from this rule. מנה that she receives a כנסה בחזקת בתולה, and נמצאת בעוללה that she receives a מנה, for the second husband assumed that she was a בתולה and it turned out that she is a בעוללה, and nevertheless he must pay her a מנה. Our讨索討論 discusses who brought this proof; was it רבא or רבבה.

נראה דהכא גרשין רבא דהא רבא קאמר לעיל¹ דמקח טעות² לגמר המשמע -

It is the view of that here the text reads רבא, for רבא ruled previously that by נמצאת בעוללה it is a complete McKah Teuta and she receives nothing –

ואי גרשין הכא רבא אם כן תיקשי מתניתין רישא לסייע responds to an anticipated rejoinder:³

- ואילו גרשין הכא רבא אם כן תיקשי מתניתין רישא לסייע -

And if we are here, there will therefore be a contradiction in the משנה to the סיפה⁴ (בתולה מן הנושאון כתובתן מנה) (יא,א) (רישא) (which states that a מנה is on, which states that a McKah Teuta is on) – (ויהי McKah Teuta –)

דהא זאת אומרת אייכא למידך נמי מתניתין⁶ כדאמרין בסמוך -

For this can, נמצאת בעוללה כתובתה מנה ברייתא that 'זאת אומרת' which proved from the that הגירה as毛泽 גمرا shortly states (therefore the משנה would contradict itself according to רבא; the רישא maintaining that by נמצאת בעוללה her maintaining that by מנה, and the maintaining that by רבא, and the maintaining that by רבא, therefore –

אלא זדי נראה דהכא גרש דין דרבא דאמר לעיל McKah Teuta לגמר משמע יפרש כמו רבashi: We would rather certainly maintain that here the רבא⁷ for who maintains McKah Teuta will explain (both the and the רב like משנה ברייתא לשמען לגמר משמע).

¹יא,ב.

² McKah Teuta means (literally) an erroneous sale. Finding out that your wife is a בעוללה instead of a נושא.

³ Seemingly one can say that we can be here and it is no contradiction, for this maintains that נמצאת ברייתא גרש דין and the continuing טעות. נמצאת בעוללה and the משנה מנה rejects this explanation.

⁴ We can also derive from this the same that 'זאת אומרת' points out נמצאת בעוללה כתובתה מנה as the same that 'זאת אומרת' points out shortly.

⁵ כנסה בחזקת בתולה, and נמצאת בעוללה, and לא כלום (משנה McKah Teuta of the continuing סיפה) drives from the that.

⁶ See 'Thinking it over'.

⁷ משנה is explaining how רבא will deal with the which would seemingly pose a contradiction in the讨索.

מי שהטעות זאת אומרת (and differentiated between a real [where כתובתה מנה or כניסה לחופה] and a case of ראשוני [where אין לה כלום]).

SUMMARY

The text reads, **רבה**, for if it would read **רבעה**, the משנה would contradict itself.

THINKING IT OVER

writes that the inference (the inference from the premise; we can also infer - **ברירתא**) from the **תוספות** writes that the inference (the inference from the premise; we can also infer - **ברירתא**) from the **תוספות** ⁸. Why does 'merely' write 'merely' when indeed the **דיוק** is explicitly made in the **גמרא**; it is not 'merely' an **איך**, it is an actual **דיוק**?!

⁸ See footnote # 6.

⁹ See מהרש"א.

כנסה בחזקת בתולה ונמצאת בעוליה יש לה מנה –

He took her in with the assumption that she was a and it turned out that she was a; בעוליה; she receives a *Monoh*

OVERVIEW

כנסה בחזקת בתולה ונמצאת בעוליה יש ¹, כנסה ראשון וכו' ברייתא proved from the that ¹, כנסה רביה Our resolves a difficulty with this proof. ²

היאanticipates a difficulty:

והא דקחני שהרי כנסה ראשון –

And that which the states; ‘for the first husband took her in’ as his wife, (seemingly as a reason, why there is no *tevuna* in *tahilim*), which would indicate that the reason he has no *tevuna* in *tahilim* is that since the second husband knew that she was not a wife, so we cannot prove from this that she was a wife; for here it was not a case of *Monoh*! ³ This seemingly contradicts the proof of ⁴.

פירוש רבינו יצחק בן מאיר דהכבי משמע ליה אין לשני טענת בתולין לחסירה מכתובתה כלום -

The explained; this is how the seems to; רביה to Rib"m second husband has no *tevuna* in *tahilin* to diminish anything from her – כתובה מהרוי ⁵ כנסה ראשון גורם להיות כתובתה מנה –

For the first person married her and caused through the marriage that her should be a – מנה –

ואינו יכול לחסירה כלום מאותה מנה דלא מהניא טענת בתולין אלא ממנה דבתולין? – טענת בתולין מנה, since, because of that she receives a instead of is only effective to remove the extra of מנה

¹ י"א,ב (on the very bottom).

² See ‘Overview’ for previous Tosa.

³ This, in fact, is the refutation of רבashi.

⁴ According to רביה, the should have said that אין לו *tevuna* in *tahilim* since he should have said that אין לו *tevuna* in *tahilim*.

⁵ See ‘Thinking it over’.

⁶ כנסה רביה is merely telling us that as of now she receives a regardless whether he makes a claim (and [even] regardless if she is still a wife), but it is not the reason why he cannot make a claim. See footnote # 7.

⁷ (כנסה בחזקת בתולה ונמצאת בעוליה יש לה מנה since he depends on the claim). There is no point in his claim that (if we assume that he depends on the claim) she receives a since he depends on the claim; and even according to his claim that nevertheless she still receives a because he depends on the claim. Therefore there is no point in his claim. However if we maintain that he does have a claim for since he depended on the who certified her to be a wife, therefore he wants to pay nothing; why does the state certify her to be a wife? See רבש"א!

(כתובת cannot take away the entire טענת בתולים, מאיים).

SUMMARY

The phrase **שרה כנסה ראשונה** (ברייתא) teaches us that she receives a **מןנה** and so there is no purpose for him to claim, since in any event she will receive a **מןנה** (for **כנסה בחזקת בתולה ונמצאת בעולה יש לה מןנה**).

THINKING IT OVER

מ"ד **כנסה בחזקת בתולה ונמצאת בעולה יש** wrote previously⁸ that according to the **תוספות** **אין לשני** write (here)⁹ that **טענת בתולין** he is not believed in. Why does **טענת בתולין** when the reason simply is that he has no **טענת בתולין** if we maintain that **כנסה ראשונה** wrote **תוספות** as, **כנסה בחזקת בתולה ונמצאת בעולה יש** previously?!¹⁰

⁸ **הזהק** (at the very end) **עיי"ש**.

⁹ See footnote # 5.

¹⁰ **פרדס יצחק** אוות נא.

שאנו הכא שהרי כניסה ראשוני –

Here it is different, for the first one took her in

OVERVIEW

כניסה בחזקת בתולה ונמצאת בעולמה (ברייתא רבashi) refuted the proof of that (from the proof of that) that generally she receives nothing, but here he was not married, for it is possible that generally she receives nothing, but here he was not married since she was already married. This clarifies this rebuttal.

ואדעתא דבעולמה נישאת¹ –

And we assume that he married her knowing that she is a bride and not a woman.

חומרה anticipates a difficulty:

ואף על גב עדדים מעמידים שלא נבעל –

And even though that the witnesses testify that she is not a bride, why should we assume that she is a bride?

חומרה replies:

איינו סומך על זה² מאחר שהיו נישואין³ וסביר דלשבחה⁴ אומרים כן:

He does not rely on the fact that she is a bride, since there was witnesses⁵, and he assumes that when the say that she is not a bride that is only in order to praise her, but not that it is the truth.

SUMMARY

Once a woman is a bride, we assume that she is a bride even if the witnesses testify otherwise.

THINKING IT OVER

Why should we assume that he does not rely on the fact that she is a bride⁵ when we always rely on the witnesses and believe whatever they testify?!⁶

¹ Therefore there is no mistake that she is a bride and the proof of that is a mistake.

² He either assumes they were not telling the truth, or they were not telling the truth. See 'Thinking it over'.

³ Marriage implicitly indicates that there was a relationship.

⁴ The wanted that she should get married so they said that she is a bride, for people prefer brides.

⁵ See footnote # 2.

⁶ See also Reb"z (in Shemot K). See also Sotah 4a.

וניחוש שמא תחתיו זינה –

And let us be concerned that perhaps she was *מזנה* while she was betrothed to him

OVERVIEW

וניחוש שמא תחתיו גمرا asks, רבא ורב אשי the dispute between גمرا and רשי, as to what the question is asking.

negates a purported explanation of the question:¹

אין לומר דבריך² אמאי איינו יכול לטעון טענת בתולים לאוסריה עליו -

We cannot say that the גمرا **is asking, why should he not be allowed to claim** in order to (possibly) **prohibit her to him** -

ניחוש באשת כהן³ שמא תחתיו זינה דיליכא אלא חדא ספיקא ספק אין תחתיו -

Let us be concerned in the case of a s' wife (where he is a s'), that perhaps she was, in which case **there is only one doubt**, namely whether she was *מזנה תחתיו* (and she is), or whether it was not (and she is permitted to him).

explains why this cannot be the גمرا's question:

זהא מצי לשינוי זהא דאיינו יכול לטעון היינו להפסידה מכתובתה⁴ -

איינו יכול לטעון טענת בתולים **גمرا** is regarding making her lose her; this he cannot do -

דאיכא ספק ספיקא דאפילו תחתיו אימור באונס הוּא⁵ -

For there is a firstly it may have been (where she retains her **באונס** and even if it were **perhaps it was** (and even an **אשת כהן** does not lose her if it was (even though she is **כלה** – אסורה לבעלה

stands by his refutation of אין לומר despite an anticipated difficulty:

¹ See footnote # 3.

² The question (according to this) is that he has no monetary claim by saying that he has no monetary claim if he goes to his wife. This in turn may cause him to live with his wife. The question is whether he should indicate that he can claim to verify whether he may continue being with his wife.

³ By an **אשת ישראל** there is no such concern, for even if she is a **כלה** she is still permitted to him, since there is a **ספק** **אשת ישראל**; perhaps it was not (and she is) and even if it was, perhaps it was (and she is still **מורתה לבעל** since an **אשת כהן** who is even if **גננה** there is only one **ספק** of **אשת כהן** or **אשת ישראל** and she should be **מפסקה**. See ‘Thinking it over’.

⁴ He cannot be even if he claims that **כלה** **מפסקה**. If this claim were substantiated she would lose her **כלה**. However since he cannot prove it she retains her **כלה**.

⁵ The answer to the purported question (according to the **רשב"י**) is that even if there is a concern of **זינה**, the still states that he has no monetary claim (as just explained), however he certainly can come to regarding the status of his wife. The was only discussing the monetary issue.

ואין זה דוחק⁶ דלעיל⁷ נמי מפרש אינו יכול לטעון טענת בתולים הci -

And this is not an awkward answer, for previously the also explained the phrase in this manner (that it is discussing only a monetary issue not an issue) -

דקאמר⁸ למאי אי לאסורה עליו⁹ ביהודה אמא לא כולי -

Where the asks, regarding what does the say that there is no change if the in batolim is to forbid her to him, why is there no (only) in reference to there concludes that we must say that can refer only to monetary issues and not to etc. It is evident from that the phrase can refer only to monetary issues and not to; therefore we can also say here the same. There can be no question of why is he not by (at least by) - (ashet haen) for he definitely is -

אלא כתובה פריך אמא אינו מפסיד לה -

But rather we must say that the is asking (only) regarding the why he cannot make her lose her, since she may have been; however the difficulty with interpreting the question in this matter, is that he cannot make her lose the, since it is a perhaps it was not (so she retains her), and even if it was perhaps it was, where she also retains her (even by an [even though she is]).

תוספות answers:

ונראה לרביינו יצחק דרבןashi פריך¹⁰ -

And it is the view of the that the asks on גمرا that we should be concerned to him [if he is a and allow him to dispute her entire -

כיוון דעתלמא אית ליה דין לה כלום והכא יש לה לפי שכנסתña ראשון -

For since generally maintains that **רבashi** receives nothing, and here in the case of the she receives a because (so she is presumed to be a -)

אם כן יבא לידי איסור שזה האיש סבור כיון שזו יש לה אף על גב דעתלמא לית לה -

Therefore there is the concern that the second husband will come to transgress an, for this second husband assumes that since this woman (whom I married

⁶ Seemingly one may argue that it is a refers only to monetary issues and not to issues, since the expression would indicate that there is no at all even for issues of proves that it is not a to say so.

⁷ ט.ב.

⁸ The there cited the which states יב,א here on which claims that he was not her while she was an and he suspects her of being,

⁹ Mazne hahtzi (Bratzon) which would forbid her to him.

¹⁰ According to or רבashi (ברייתא פרש"י) (ד"ה וניהוש).

כתובה (בחזקת בתולה receives a partial, even though generally a woman who was married receives nothing (according to רבashi) - (רבashi thinks the second husband it is obvious that the presumption her to be a from the first husband, and the want to say that I married her with this in mind that she is a, so thinks the second husband - אם כן מחזיקינו אותה ודי בעולה מבעל ראשון ואדעת כן רוצים לומר שנשאתי¹¹ -

Therefore (thinks the second husband) it is obvious that the presumption her to be a from the first husband, and the want to say that I married her with this in mind that she is a, so thinks the second husband - ובחנם אטרח לבית דין שודאי לא יאשרה עלי -

And so it is in vain that I should trouble myself to go to ב"ד and inform them that she is a (to ascertain whether she is for me), for the will certainly not prohibit her from me, since the ב"ד assumes with certainty that she is a from her first husband,¹² and there was no at all. However in truth it is possible that she was not a from the first husband (as the testify), and she was and should be מזנה תחתיו (if he is a אסורה לו - (כהן

ולכך היה לנו להפסיד כתובתה שיבא לבית דין ולא יטעה¹³ לומר שמותרת לו -

And therefore (in order to remedy this mistaken assumption by the husband) we should make her lose the entirely, if he has a טענה בתולים, so he will come to (for the monetary claim) and will not mistakenly assume that she is לו (for he sees that ב"ד does not assume that she was a by the first husband, and therefore ב"ד is granting him to deny her the entirely, since נסנה בחזקת בתולה (ונמצאת בעולה ולא כלום -

takes his argument a step further:

ואפלו באשת ישראל יש לנו להפסידה¹⁴ -

אשת ישראל should make her lose her entirely even if she is an כתובה (where there is no concern of since it is a ספק ספיקא, nevertheless) she should lose her גזירה שיראה כהן שזו לא תאבד כתובתה ויסבור אף בשלו כן ולאiba לבית דין -

On account of a that if a will see that this woman (the does not lose her (that proves they consider her a from the first husband and he will assume that the same applies also in his case, so he will not come to אסורה לו, but really it is possible that she was even) and she is ב"ד, but really it is possible that she was even) and she is ב"ד,

¹¹ Otherwise (if they do not assume that I too realize that she is a for her why are they giving her a mana since כנסה ראשון בעולה?! That proves that the presumption that I too assume her to be a since כנסה בעולה ולא כלום mana.

¹² In fact not only did ב"ד assume it but they presumed that I too realized that she is a from the first husband and that it why they deny me the monetary طענה בתולים and award her a mana.

¹³ His mistake is that he does not realize that there is a difference between איסור ממון and איסור ממון because there is a ספק ספיקא (even by a כהן; see Tos' footnote # 5); however concerning there is no ספק ספיקא regarding an אסורה כהן since she is even if it was (see Tos' footnote # 3).

¹⁴ This is an additional advantage of פ' Tos' on the question of אין לומר אין. For according to the question of is only regarding an אסורה כהן (see Tos' footnote # 3), however according to the question of is even by אשת ישראל וניחוש.

אבל לרוב לא פריך מיד כיון דברלמא נמי יש לה ליכא למיטען:

However according to there is no question at all,¹⁵ for since generally a wife also receives a certain amount, it is certain that she was a first husband (and therefore she was not a second), because the reason she receives now a certain amount is (regardless whether she was a first husband, but rather) because by every woman she (still) receives a certain amount.¹⁶

SUMMARY

השאלה היא האם מותר לשלוח את הלווה בפעם השנייה (to pay nothing) without verifying whether she was a first or second wife. The question is that since we should allow the second husband a certain amount in order not to dissuade him from coming to verify whether she was a first or second wife.

THINKING IT OVER

Seemingly by an שמא there is only one possibility that she was never a second wife (and she is a first wife from her first husband), and even if she was perhaps it was not between the two marriages!¹⁷

¹⁵ When the stated that was referring to monetary issues, but obviously he can go to his permission to remain with his wife (if he is a first). There is no reason why he will be hesitant to go regarding his permission to remain with his wife prior to his marrying her was made. She receives a certain amount, because in all cases where she is a first wife (whether or not she receives a certain amount).

¹⁶ Therefore he will come to and claim that she was a first wife and if it is verifiable she will lose her entire inheritance. This is the case if she was a first wife.

¹⁷ See footnote # 3.

¹⁸ See מהר"מ ש"פ (בתוד"ה בגון).

כגון שקידש ובעל לאalter –

For instance, he was בעל immediately after the *Kidushin*

OVERVIEW

explained the reason there is no concern where she would be שרבביה (where she would be עלייה [and lose her]¹, is that the took place immediately after זינתה תחתיו קידושין, so it is not possible that she was זינתה תחתיו).

וכן צריך נמי להעמיד שהראשון אחר שקידש בנסת לאalter ומית מיד -

And similarly it is also necessary to establish that the first husband took her in immediately after the קידושין and died immediately after - בנסת (ニישואין)

ועדים² מעמידים שלא זינתה תחתיו -

And [or] testify that she was not מזונה תחתיו of the first husband -

דאמ נבעל תחת הראשו הרי נבעל לפסול לה³ ואסורה לכהונה:

For if she was נבעל to a stranger **while** she was **with the first husband, so she was** אסורה כהן **and she is** נבעל לפסול לה (so if the second husband is a she is אסורה כהן to him, and the question of וניהוש still remains regarding that she was by the first husband and is אסורה to the second husband if he is a כהן).

SUMMARY

Both husbands were so מקדש ובעל לאalter so there is no possibility of זינתה תחתיו.

THINKING IT OVER

1. writes that we must also know that there was no by the first husband. Seemingly the already stated this by saying that בריתא ויש לה עדים שלא נסתרה וכו' What is adding to the בריתא תוספות?!

2. Why should we suspect that there was by the first husband, since we do not know that she is a (as we do by the second husband)? We should rely on her בועלה חזקת הגוף and assume that if anything she was נבעל חזקת היתר as late as possible!⁴

¹ See previous תוס' ד"ה וניחוש.

² The ש"ר amends this to read או עדים (instead of העדים).

³ She was an then, and any with a stranger is forbidden to her and makes her a (even if she is an אשת איש פסוק states כי לא יקחו אמרו [כא,ז], whom a is forbidden to marry as the פסוק states אשת ישראל שנאנסה).

⁴ See פרדס יצחק אורות סב מהר"מ שי"ף (בד"ה אבל בזה).

שתי תקנות היו –

There were two enactments

OVERVIEW

כתובת גمرا resolves the contradiction between the ברייתא (which states that the there were two for an **ל碼נה כהן**) and our (which gives her a **למאטימ**). The original ruling that an receives a (**למאטימ**) and the second to revert back to a (**למאטימ**).¹ This explains why we could not have resolved this contradiction differently.

mentions and negates an alternate resolution to the contradiction:

וליכא למיימר דחדא תקנה הויא² –

And the could not have answered that there was one only –

ומתניינו קודם תקנה וברייתא לאחר תקנה שתיקנו לאלמנה מאטימ –

And our is discussing the situation **before the** (where the all is a **למאטימ**) and the **after the** where they instituted a (**למאטימ**) (and there was no second to revert back to a).³ –

The reason this explanation is unacceptable is –

זהא חזינן השטא דלית להו מאטימ –

Because we see nowadays that do not have a אלמנה כתובות כהנים – מאטימ

offers (and negates) an additional resolution to the contradiction:

וליכא למיימר נמי דמעיקרא כי תקינו לבתולה ארבע מאות תקינו גם כן לאלמנה⁴ מאטימ⁵ –

בתולה בת כהן **אלמנה בת כהן**, **do not have a כתובות כהנים – מאטימ**

¹ This (according to the שיטת רשי"י) is (that the original is not a but rather). An alternate explanation is that the first was and the second was (and is not considered a ‘new’ but rather reverting to the original).

² The since (as the states) **למאטימ**.

³ The advantage of this proposed answer is twofold; firstly that there is only one, and secondly since presumably the post-**משנה** therefore it is better to assume that the ברייתא is discussing a later period than the **משנה**; however according to the answer the **משנה** is discussing the later period.

⁴ This proposed solution is suggesting that instead of three phases [1] initially **למאטימ** and finally [3]; there will only be two phases [1] **למאטימ** and [2]. It will therefore be (considered as) one only. This proposed answer is better understood if we assume the alternate view in footnote # 1. See ‘Thinking it over’.

⁵ According to this proposed solution, the reason they gave **למאטימ** was not because of **למאטימ** (**למאטימ** **למאטימ** **למאטימ**). As is evident from later in this see footnote # 6), but rather (as they did by).

negates this suggestion:

דאי סברא לתקון לאלמנה מאתים אם לא אחר שראו צורך דמזולזי בהו⁶ -

For it is not logical to enact that an receive אלמנה (for no apparent reason), unless the saw a need (to give her the same reason) since they were scorned -

[הילכ"ז מעיקרא לא רצוי לשנותה משאר אלמנה -]

אלמנה כהן that initially they did not want that should be different from the other and all received a [Therefore] -

וכיוון דחזו דקא מזלולי בהו ראו שהיה צורך תיקון להם מאתן -

But once the saw that the were scorned, they realized there is a need to protect them and they instituted for them a [מתן of כתובה -

וכיוון דחזו דפרשי מיניהם אהדרינו למילתייהו] -

But one they saw that people are avoiding them, they returned it to their original status of [מנה] -

ולכך הוצרך לומר שתי תקנות הו:

So therefore it was necessary for רב אשוי to state that there were two.

SUMMARY

We cannot say there was only one of קונה, for today it is a. We also cannot say that initially they gave her without the reason of צורך דמזולזי בהו.

THINKING IT OVER

(בתוליה גובה ד' מאות תוספות suggested that initially (when they were they gave an change which would explain the).⁷ However the states an אלמנה מאתים כתובה מנה; היו גובין לבתוליה ד' מאות כתובה מנה and then concludes when גובין ד' מאות!⁸ מנה an אלמנה for a batulah received only a!

⁶ See footnote # 5.

⁷ See footnote # 4.

⁸ See Tosfos Harav "ש".

כיוון דחزو דמזרלזי בהו –

OVERVIEW

(כתובת ד' מאות received בתרולת כהן taught that initially (even after the received only a mana; however when the saw that the enacted that she should receive a mana. There is a dispute between Tosfos and רש"י as to the meaning of מזרלזי בהו.

פירוש בקונטרס¹ שהיו קלות בעיניהם להוציאן לפי שהיא כתובתן מועטת –
explained that it was easy in the eyes of their husbands to divorce these since their amount was small –

פרש"י asks on Tosfos:

וקשה דמעיקרא נמי הו ידע שקלות בעיניהם להוציאן כיוון דמנת חשב דבר מועט² –
And this is difficult, for initially (when they were for an mana of כתובת a matkan) they also knew that it would be easy in their eyes to divorce them since a mana is considered a small amount –

ונראה לרביינו יצחק לפרש דמזרלזי בהו שמקצת בני אדם היו נמנעים מלנושאמ³ –

And it is the view of the that means that some people were refraining from marrying the Cohenim –

לפי שהיו קלות בעיניהם שאין לה כתובת אלא וביע ממה שיש לה לבתולה⁴ –
Since these were deemed insignificant in their eyes, for their was only a fourth of what a received –

ותקינו לה מא頓 –

So the enacted that the should receive two hundred for their כתובת, however –

כיוון דחزو דפרשי מיניהו לגמרי והיו קופצים קודם על בתולות ישראל⁵ –

¹ בד"ה דמזרלזי.

² Why did they first realize this only after they were for a כתובת a matkan (if we assume that a mana is a מזערת, then the people were always not hesitant to divorce the Cohenim [even when the received a mana]), since a mana is a מזערת??!

³ does not mean they would easily divorce them as explains, but rather they would be reluctant to marry them.

⁴ The fact that their was so low (in comparison to כתובת Cohenim) indicated that their value is minimal. However before the the Cohenim were a mana (whose were a mana) were 'worth' half of the Cohenim (whose were a mana) and were not deemed so the people were not reluctant to marry them.

⁵ The people preferred כתובת Cohenim over כתובת Israel since their is the same. The people were willing to marry

Since the **saw** that people **avoided them completely and the people would eagerly give priority to marry the**

- בתולות ישראל -

ולא היה שום אדם קופץ עליהם אהדרינהו למלתיהו -

And no one was eager to marry the חכמים **; אלמנת כהן; the reversed it to the initial ruling that an** receives a **- מנה**

הינו⁶ דנקט מעיקרא מזולזי שהיו נמנעים ולא לגמרי פורשים ובתר ה כי נקט ופרש:⁷

This explains why **initially** the **mentioned** which means **they were reluctant to marry them but they did not avoid them completely, but afterwards** (when their **states** גمرا **מאתים** was כתובה, **ופרש** meaning that they avoided the completely and no one would marry them.

SUMMARY

According to ר"ש⁸ the term **מזולזי** בהוא meant they were quick to divorce them, while according to **תוספות** it means that some were reluctant to marry them.

THINKING IT OVER

Are the different expressions of **'פרשין מיניהו'** and **'מזולזי בהוא'**, more readily understood according to ר"ש⁹ or according to **תוספות**?⁸

בתולות ישראל only if the payment is less than for a **אלמנה**.

⁶ See 'Thinking it over'.

⁷ In summation; initially when the received **אלמנות** מאתים and the received **אלמנת** there were no problems. When the were raised to **ד' מאות** and the remained at **מאה**, fewer people were eager to marry her (so it was difficult for **אלמנת** to get married). They therefore raised the **אלמנת** מאתים (to bolster her status), but that had the opposite effect; now no one wanted to marry them (they would rather marry instead, who also received (only) **אלמנות** מאתים). Therefore they reverted back to **מאה** for the **אלמנות** כהנות.

⁸ See פנ"י.

בית¹ דין של כהנים היו גובין قولוי ולא מיהו בידם חכמים – Kohanim would collect, etc. and the Chachomim did not protest it

OVERVIEW

The משנה teaches us that the ב"ד של כהנים would collect four hundred for the תוספות of a Cohen and the חכמים did not protest this enactment. כתובה (presumably) assumed that they wrote in the כתובה; therefore there is seemingly no problem in collecting it, why would one think that the חכמים should be מוחה; after all the husband agreed to it. תוספות clarifies this issue.

- ד' מאות זוז תוספות explains² that the חכמים were not מוחה to collecting

אף על פי שלא כתב בלשון Tosfot³ אלא ארבע מאות דחזו ליכי -

Even though the husband **did not write** regarding the extra two hundred that it is **an addition** to the initial amount of כתובה, **but rather** he wrote, '**four hundred to which you are entitled**' -

וקא סלקא דעתך דלא תגבה⁴ דלא חזו ובלשון Tosfot לא כתב -

So one would think that she cannot collect four hundred, since she is not entitled to four hundred, but merely to two hundred, **and** (additionally) he did not write that he is adding an additional two hundred (besides the basic two hundred) -

קא משמע לו דמנาง טוב מאי הוא וראוי להיות בכוהנה ובמשפחות המיותיות -

The therefore teaches us that this is a very proper custom and it is fitting for the Cohen and for distinguished families that they should receive כתובה

- ד' מאות זוז מימר דחזו ליכי -

And it is applicable in these cases to write in the כתובה, 'to which you are entitled'.

תוספות adds that this part of the תקנה goes even a step further:

ואפלו לא כתב לה כתובה⁵ גובה ארבע מאות⁶ בתנאי בית דין⁷ -

¹ A marginal note indicates that this תוספה is referencing the משנה on the previous page.

² See 'Overview'.

³ A Cohen is entitled to a כתובה of two hundred זוז (which is based on the פסוק [שמות] משליטים) כתובה (שמות כתובה) כתובה (שמות כתובה). However a husband may add to this any amount he chooses, as long as he indicates that this is an addition to the כתובה.

⁴ She should only collect two hundred to which she is [really] entitled to. See סוכ"ד אות כה והר'.

⁵ This may refer to places where the custom was not to write a כתובה at all (and rely on the תנאי ב"ד).

⁶ See 'Thinking it over'.

⁷ literally, a stipulation of ב"ד refers to obligations that places (as opposed to a self-imposed obligations [such as a loan, etc.]). A prime example of כתובה ב"ד is the תנאי ב"ד. There is an obligation for every married

And even if he did not write a כתובה for her, she still collects the four hundred - תנאי ב"ד זוז as a זוז

כמו בבנות ישראל מאותים⁸ דתקנה גמורה היא:

Just as the rule is regarding the two hundred זוז that is given to (when a כתובה was not written) for this was a binding enactment that receive ד' בחלות כהנים כתובה receive מאות עיקר כתובה as מאות.

SUMMARY

תוספות כתובה receive ד' מאות כתובה even if it was not written as a כתובה and even if no כתובה was written at all.

THINKING IT OVER

How does one derive⁹ that even if he did not write a כתובה, she still collects ד' מאות¹⁰ כתובה?

man to discharge all the obligations of a כתובה, whether he agreed to it and wrote the or not.

⁸ Every person must pay the כתובה (of כתובה מאותים) whether he wrote a כתובה or not. See footnote # 7.

⁹ See footnote # 6.

¹⁰ פרדר יצחק אמר מז See footnote # 6.

והוא אומר לא כי כולי -

OVERVIEW

The prefaces the claim of the husband with the phrase **עד שלא ארכתי נאנסה** (with the phrase **משנה**) (as the states elsewhere) sureness on behalf of the claimant. In our case the husband is not sure at all when the took place. The phrase **לא כי וכו'** seems inappropriate here. **תוספות** will clarify this difficulty.

אף על גב דעתך המניח (ב"ק זז לה, ב, ושם) דליק מזכתני לא כי¹ דמייר בברוי -

Even though that in the end of **פרק המניח** **גمرا** **infers from** the fact **that the** **משנה** **there states** **'לא כי'** (**it is not so, but rather, etc.**) **that we are discussing** a case where the one who states '**לא כי**' **is certain** of his claim; he is not arguing that *perhaps* it is different than the plaintiff alleges, but rather the emphatic phrase **לא כי** denotes that he is certain of his claim. This poses a problem, for in our **משנה**, where the husband uses the phrase **לא כי**, he is merely claiming that *perhaps* the woman was before the **קידושין**. Our **טענה** seems to contradict the inference of the **गمرا** in **המניח**, that the term '**לא כי**' is used only by a **ברוי**.

טענה responds, that there is no difficulty, for -

הכא דличא למיטען² קתני לא כי³ אף על גב דעתך בשמעון:

Here in our **where there is no** possibility to **mistake** the term '**לא כי**' to mean **משנה**; for everyone understands that the husband does not know that the **אונס** took place before the **קידושין**, **משנה** feels free to use the expression '**לא כי**' even though we are obviously **discussing** a case where the claim of the husband is a '**maybe**' claim. No one will mistakenly assume that it is a **ברוי** claim in our **טענה**. It is only where we are not sure whether the claim is a **ברוי** or a **שמעון** that the **טענה** is careful not to use the term '**לא כי**', unless he wants to convey to us that we are discussing a **ברוי**.

SUMMARY

טענה uses the phrase **לא כי וכו'** to denote a **משנה**. This rule is valid only when it is not clear from the case itself, whether it is a **ברוי** or not. In cases where it cannot be a **ברוי**, **טענה** may use the phrase of **לא כי**.

¹ The there is discussing a case where one ox gored another. The claimed that the ox that gored was a **שור** **משנה** there is discussing a case where one ox gored another. The **מזיק** **טענה** that the has a **תם**; while the **ניזיק** **גمرا** **לא כי** **אלא מועذ היזק**. The **גمرا** infers from the phrase **לא כי**, that the has a **תם**.

² The husband certainly did not know of her status as a **בעולה** before the **קידושין**; otherwise he would have brought it up, or by his lack of mentioning it, he is accepting her as a **בעולה** and cannot have any claim.

³ See 'Thinking it over'.

THINKING IT OVER

Why indeed does the משנה choose to use the phrase **לֹא כִי**⁴, even though it is a טענת משם?

⁴ See footnote # 3.

**There is a מנה of mine
in your hand, and he responds 'I do not know'**

מנה לי בידך והלה אומר אני יודע -

OVERVIEW

The גمرا is not specific what it means by the term איני יודע; whether it means I do not know if I borrowed from you, or if it means I do not know if I repaid you. תוספות will clarify the issue.

פירוש איני יודע אם הלויתני מעולם -

The explanation of the response 'איני יודע', is, 'I do not know if you ever lent me money'. It is only in this case that there is a whether he is required to repay the debt -

אבל הלויתני ואני יודע אם פרעתיך תננו בהדייא בהגוזל בתרא (שם קיח,א) דחייב:

However if the would admit that you lent me money, but I do not know if I repaid you; in this instance it is taught explicitly in a משנה in פרק הגוזל בתרא that the loan is חייב to repay the loan.

SUMMARY

If the claims איני יודע אם he is obligated to pay; if he claims איני יודע אם הלויתני, there is a difference between them.

THINKING IT OVER

Why is there a difference between איני יודע אם הלויתני and איני יודע אם פרעתיך?¹

¹ See סוב"ד אות נ.

חייב and **maintain** that he is **ר"י** **ר"ה**

רב הונא ורב יהודה אמרו חייב –

OVERVIEW

בָּרִי וְשֵׁמָא can be from בריה and רב יהודה and רב הונא maintain that in a case of בריה ו שמא, the can be from בריה ו שמא. This will initially discuss what ramifications this ruling has concerning a person who is unable to swear. The remainder of this will attempt to reconcile the ruling of בריה ו ר' ה (ור' ה) that a can be from a מוחזק, and the general rule of המוציא מחבירו עליו הראה; which would seemingly require a more convincing than a ראה בריה ו שמא.

לכוארה נראת דלית להו זרבי אבא דאמר מותך שאינו יכול לישבע משלם -

It seemingly appears that ר"ה ור"י disagree with ר"א who maintains that ‘since he cannot swear he is required to pay’. According to ר"א, in any case where the defendant is required to swear in order not to pay, if for any reason the נחתבע cannot swear he is obligated to pay.¹

ר"א will now explain why (seemingly) ר"ה ור"י cannot agree with תוספות.

דעתםיה דרבי אבא משומן דדריש (שבועות ד' מז' א) **משבועת ה' תהיה בין שנייהם**² -

For the reason that ר"א maintains, מתוך שאינו יכול לישבע משלם, is based on the following where he derives from פסוק זרשה of ‘the oath of ה' should be between both of them’; where seemingly the words בין שניהם are superfluous; it should have merely stated that the שופר is obligated to swear. This פסוק is interpreted³ to mean that an oath is required only when the litigation is between the two principles – (בין שניהם) –

ולא בין שני היורשין -

but not between the heirs of the principles. In a case where the principles died, and the litigation continues between the respective heirs, there is no rule of **שכונה**. The court there continues to clarify this **דרישת** and concludes that the exemption of **ירושם** from a **שכונה** is (only) in the following case, where -

כגון אמר מנה לאבא ביד אביך ואמר חמישין ידענא וחמשון לא ידענא -

² This is a פסוק תורה, שמות (משפטים כב, י) in which the Torah states that if the שׁ claims there was an онס he is required to take an oath to appease the שׁ. Even though the פסוק is discussing השומרין, nevertheless the following שבועות (דורייתא) includes all types of זרשה.

³ This was actually cited by רבי אמי. It is he who claims that this דרשה is the source for the דין of רבא, that מתוד שאיל"מ.

For instance⁴ if the heir of the **לוּה** says to the heir of the **your father owed my father a hundred** **זוז** **and** the heir of the **לוּה** said to the heir of the **I**, “**מלואה** **know that my father owed fifty**; **however the other fifty, I am not certain**”; it is in this case that the **גמרא** of **דרשה** is applicable. The **there** continues to explain that the **פסק** is teaching us that there is a difference between **(בין שניהם)** (where there is a **חייב שבועה** and **ולא בין היורשין**) (where there is no **חייב שבועה**) -

ואבוה כהאי גוונא מתוק שאין יכול לישבע משלם -

For if this would have occurred **to the father in a similar manner**; if the **לוּה** would have told the **rule** that **מלואה ידענא וחמשין לא ידענא**, the rule would be (according to **ר"א**) that **since he cannot swear** the **שבועה** of a **막צת**, since he is unsure if he owes the remaining fifty (and there is a **חייב שבועה**), he is obligated **to pay** the second fifty as well. In a sense the father is a **막צת**; he is willing to pay fifty, but not the other fifty, since he is unsure if he owes it. If the father would have clearly denied owing the other fifty, he would be obligated to take the oath of a **막צת** (if he does not want to pay the second fifty), which means that he has to swear that he does not owe the other fifty. However since in our case he is not certain whether he owes the other fifty, he cannot swear that he does not owe it. On the other hand since he admits to owing fifty, the only way he can exempt himself from paying the second fifty is by taking an oath. **ר"א** maintains that since he cannot take the oath to exempt himself, he is obligated to pay the remaining fifty. This is the ruling if the father would claim **חמשין ידענא וחמשין לא ידענא**. If however it is the **יורשין** who claim **חיבת השבועה** **ה' תהיה בין שניים לא ידענא**, the **פסק** teaches us that **but not between them**; there is no **חייב שבועה** on the **יורשין** of **דין** **יורשים**.⁵ Therefore by the **פסק** the **יורשין** is not applicable, since there is no **חייב שבועה**, and they are exempt from paying the remaining fifty.

This is the explanation of the **钜** that states **דרשה** **between them and not between the heirs**. There is a difference whether we are dealing with the principles or the **יורשים**. Concerning the principles we say **מתוק** (**פסק** **חייב שבועה** **שיל"מ**); however by the **يورשין** (since there is no **חייב שבועה** on account of the **פסק**) there is no **חייב שבועה** to pay. **ר"א** derives the **מתוק** of **דין** **שיל"מ** from the fact that the **תורה** is differentiating between the principles and the **יורשים**. If the **דין** would be that a **פטור** is **שאינו יכול לישבע** from paying, then there would be no difference between the principles and the **יورשים**; in both cases they are from paying. There would be no need for the **פסק** to differentiate between the principles and the **יורשים**. This concludes the quote from [and the explanation of] the **גמרא** in **מט' שבועות**.

⁴ The **גמרא** there maintains that if in the litigation between the **יורשין** there is an executable **חייב שבועה** **דאורייתא** there is no reason why the **יורשין** should not swear. The **פסק** could not be coming to exclude the **יורשין** in such a case. See following footnote # 5.

⁵ In this case the difference between the principles and the **יורשין** is apparent. If the **claims** **לוּה** he is liable to swear since he should know whether he borrowed or not. However the **יורשין** are not obligated to swear since it is understandable that they may have not known if their father owes an additional fifty. See previous footnote # 4. See also later in this **תוספות** the difference between a **טוב** and a **תוב**.

continues with his contention that ר"ה ור"י disagree with ר"א:

ואין מנה לי בידך והלה אומר איני יודע חייב אין שבועה -

And if we maintain like ר"ה **that in a case where the claims you owe me a manah and the responds I do not know** if I owe you a manah, the ruling is that the manah to pay the claim, then **there is no obligation of taking an oath here** in the case of **חמשין ידענא וחמשין לא ידענא**. If the father, the father, would claim **לוה**, there would be no according to ר"ה ור"י.

דאפיקו הוא אומר איני יודע בכלל חייב -

For even if he claims, 'I don't know if I owe anything', he is obligated to pay; certainly in a case of **חמשין ידענא וחמשין לא ידענא**, he will be obligated to pay. He has to pay because he is a manah, and not because of **מתוך שאיל"מ**. Therefore the principle cannot be referring to a case of **ירשין ידענא וחמשין לא ידענא** (and is coming to exclude the **ירשין** from a **חייב** **שבועה**), for in this case there is no (**even**) on the principles.⁶ Once we establish that the **חמשין ידענא וחמשין לא ידענא**, there is no source in the **תנאים** of **פוסק** for the rule of **ר"א**, that **מתוך שאיל"מ**.

(מווחזק do not agree with) who maintain that **בר夷 עדיף** even against a **תנאים** concluded that ר"ה ור"י concerning the rule of **ר"א** is not the case. Rather they maintain that even if he is not maintaining the rule of **ר"א**. The above is a prelude to the upcoming question in:

ותימה דבריך יש נחלין (ב"ב דף קליה, א ושם) גבי האומר זה אחיו⁸ -

And it is astounding! For in concerning the case of one who claims 'this is my brother' -

משמעות דבריכי אית ליה מנה לי בידך והלה אומר איני יודע חייב -

It seems that **אבי** **maintains** that in a case where the claims, 'you owe me a manah', **מןנה**, **and the** claims 'I do not know if I owe you a manah', the ruling is that the **חייב** is **לוה**. This means that **אבי** agrees with **ר"ה ור"י** has previously concluded that if we maintain **מתוך שאיל"מ**, then we disagree with **ר"א** who maintains **בר夷 עדיף**. Therefore **אבי** who maintains **בר夷 עדיף** should disagree with **ר"א**.

ובפרק חזקת הבתים (שם לד, א ושם) משמע דעתך ליה לדרכך אבא -

⁶ At this point it is assumed that **ר"ה ור"י** will maintain that the **תנאים** of **פוסק** is teaching us a different **דרשה** and is not teaching us the **דרשה** of **ירשין**; for it is not applicable.

⁷ See however, footnote # 29.

⁸ The case under discussion there is concerning two brothers who inherited their father's estate. Brother 'A' claims that there is a third brother 'C'. Brother 'B' claims that he does not know if brother 'C' is indeed his brother. The rule is that brother A must give 'brother' C a third of his property; however brother B, who is not sure, is exempt from giving brother C anything; and retains his half share of the estate. It seems from that that a **בר夷 גמורה** (brother A) is not sufficient to extract money from a **בר夷 גמורה** (brother B). **אבי** there however maintains that even if **בר夷 ושם** **בר夷 עדיף** nevertheless this is not a case of **בר夷 ושם**, because 'brother' C himself is not sure that he is a brother. It seems from that that **אבי** maintains that **בר夷 גמורה**.

However in it appears that אבוי agrees with ר"א מtopic שאל"מ that **פרק חזקת הבתים** ⁹. This seems to be a contradiction!

תוספות answers:

ויש לומר דאפיקו למאן דאמר חייב אייכא למיזרץ -

And one can say; that even according to the one who maintains that the is obligated to pay, nevertheless we can still interpret the פסוק of -

שבועת ה' תהיה בין שנייהם ולא בין היורשים -

'**The oath of 'ה shall be between them**', to teach us '**and not between the heirs**'; by the heirs there is no שבועה. However this cannot refer to a case of **חמשין ידענא וחמשין לא ידענא** as explained previously; rather the distinction between the principles and the will be in the following case:

דשניהם לא ידעי אלא שעד אחד מעיד שאחד חייב לחבירו מנה -

That they both do not know for sure; neither the **להה** nor the **מלוה** are sure if a debt is owed; **however one witness testifies that one owes the other a מנה.** The rule is that an עד אחד obligates the opposing litigant to swear. Therefore -

דבאויה מtopic שאינו יכול לישבע משלט -

If this would have taken place **by the father**; if the principles (the heirs and themselves) were involved in such a case (where neither was sure if monies are owed and an ע"ז claims that it is owed), the ruling¹⁰ would be that **since the cannot swear** to contradict the עד אחד (for he says I do not know), the להה is required **to pay**. However by the heirs there is no שבועה in this case (this is what the פסוק of שבועת ה' תהיה בין שנייהם [ולא בין היורשים] is coming to exclude),¹¹ therefore they are פטור. **המחייב**.

תוספת דרשא explains that ר"א can agree with ר"ה ור"י that מישיל"מ argues that we cannot derive the case of **חזקה** from the case of **ר"ג** for they are different. It appears that אבוי agrees with the ruling of ר"ג; otherwise he would (seemingly) not be concerned to refute a proof from the ruling of ר"א.¹²

⁹ The gemara there sought to prove from the ruling of ר"ג (that מtopic שאל"מ concerning a case of **חזקה**) that we cannot derive the case of **חזקה** from the case of **ר"ג** for they are different. It appears that אבוי agrees with the ruling of ר"ג; otherwise he would (seemingly) not be concerned to refute a proof from the ruling of ר"ג.

¹⁰ There is no **חייב** שמא to pay on account that he is a **ברוי**, because there is no opposing him. See 'Thinking it over' # 2.

¹¹ See footnote # 5 above that there is no **חייב** שבועה on the **ירשים**, for their ignorance is acceptable.

¹² We derive it in the same manner as the **גmr'a** derives it in the case of **חמשין ידענא וחמשין לא ידענא**. If the דין would be that a **ירש** is פטור then there is no need to differentiate between the principles and the **ירשים** in the case of an ע"ז. They are both פטור. However if we maintain להה **חייב** then it is understood that the **חייב** is to pay on account of מtopic and the **ירשים** are פטור, for there is no **חייב** שבועה for the **ירשים**.

תוספות asks a different question:

תימה דרב יהודה גופיה אית ליה בראש הפרה¹³ (בבא קמא מו, א ושם) -

It is astounding! For ר"י himself maintains in the beginning of that -
אפיקו נזק אמר ברוי ומזיק אומר שמא המוציא מחייבו עליו הראייה -

Even if the victim (the **claims**) that he is **certain** that the ox caused the miscarriage **and the perpetrator** (the **claims**) that he is **uncertain** whether his ox caused the miscarriage; and seemingly we should say **ברוי ושמא ברוי** **עדיף**, nevertheless the **חכמים** maintain that **he** who wishes **to extract money from his friend, the onus of proof is upon him**; the one who is **moztia mamon** must prove his case (with **עדים**, etc.). Otherwise he cannot collect even if he is a **ברוי** and the **shor** is a **שומא**. We see from that that **רב יהודה** (**אמר שמואל**) maintains that a **ברוי** cannot be **שומא** from a **רבה**. Our **גמרא** states, however that **ברוי ושמא ברוי עדיף** (**רובה הונא**) is of the opinion that **רב יהודה** which is in direct contradiction to the **גמרא** in **ב"ק** ¹⁴.

תוספות anticipates a possible solution to this question, but rejects it:

ואין לומר דרב יהודה כסומכוס דאמור ממון המוטל בספק חולקין -

ברוי (**רב יהודה**) **who says** that follows the opinion of **סומכוס** **who maintains that monies which lie in a questionable state**; we do not know if there is an obligation to pay or not, the rule is that the monies **are divided**; there is an obligation to pay half the claim -

ולא אוזיל בתו חזקת ממון ולהכי כי אייכא ברוי ושמא נוטל הכל -

For does not follow the logic that cases should be resolved by determining who is in **possession of the money**, as the **חכמים** maintain. The **סומכוס** is of the opinion that if there is a realistic doubt¹⁵ to **ב"ד**, then should reward half to the **תובע** and half to the **רבה**, **and therefore**; since **רב יהודה** since

¹³ The משנה there cites a case of an ox that gored a [pregnant] cow, and the cow aborted; however we do not know whether it aborted due to the goring (which would make the owner of the ox responsible to pay for the aborted fetus) or if it aborted prior to the goring (which would absolve the ox owner of any liability). The **רבה** rules that the owner of the ox must pay half (one quarter by a **תמן**) the damages of the fetus. The **רב יהודה** however cites the view of **רב שמואל** (**אמר שמואל**) who states that the **סומכוס** (**יחולקו**) is expressing the view of **משנה**, however the **חכמים** maintain that the **תבואר** is **בעל הפרה** (**ב"ד**), and therefore the **shor** is **זה כל גדול בדין המוציא מחייבו עליו הראייה**, since the **תבואר** cannot prove when the goring took place. The **גמרא** comments on the phrase **זה כל גדול בדין המוציא מחייבו עליו הראייה** and interprets it to mean that the rule of **המע"ה** applies even in a case of **ברוי ושמא** as explained in the text. See footnote # 20.

¹⁴ There is no question on **ר"י** from the fact that the **חכמים** maintain **המע"ה**; for it is possible that the **ר"י** maintain **זה כל גדול בדין המוציא מחייבו עליו הראייה** only by **ברוי ושמא** (**ר"י אמר שמואל**). However, since **ר"י** states clearly that **זה כל גדול בדין המוציא מחייבו עליו הראייה** and the **גמרא** teaches us that this phrase means that the **חכמים** even by **ברוי ושמא** (**המע"ה**), this contradicts the opinion of **ברוי ושמא ברוי עדיף ר"י**.

¹⁵ **דררא דמונא סומכוס** only in cases of **יחולקו** (**ב"ד**), when there is a realistic doubt to (**even if** the parties both admit they are not sure as to what occurred); as in the cases of **המחליף פרה בחמור** or **שור שנגה את הפרה**, etc. However in cases of a **לוֹהָה** where the **כל** is **סומכוס**, **כופר הכל** will definitely agree that **המע"ה**.

agrees with that we prefer the ruling of יילוקו rather than המע"ה, so when there is a case of ברי ושםא, the takes all the money¹⁶, not just half as in a case of ברי ושםא or וברי, for since it is stronger.¹⁷ It is only if we (always) maintain מוחזק a ברי, then the ברי is not sufficiently powerful to extract money from a המע"ה; however if we maintain that a can be half (even) from a מוחזק, then a can extract everything from a שמא.¹⁸ This explains why ר"י maintains that ברי ושםא ברי עדיף, since he agrees with that סומכוס, that the money is taken by the stronger party.

Now חכמים will explain the position of the that ב"ק where ר"י (אמר שמואל) states the position of the that not like ה-סומכים -

והתם ذקאמר אמר רב יהודה אמר שמואל זו דברי סומכוס -

And there in ק' where the states that ר' י' said in the name of this **שׁוֹאֵל** is the opinion of **סומכוס** - משנה

אבל חכמים אומרים זה כלל גדול בדיון כולי -

However, the סומכום חכמים argue with סומכום and maintain that this is a great rule in jurisprudence, etc.; that ר"י המע"ה subscribes to the ruling of the חכמים and disagrees with Tosafot; contrary to what Tosafot suggested. This explains that this is not necessarily so, because there in ר"י, ב"ק -

אליבא דרבנן קאמר וליה לא סבירה ליה -

is saying this according to the חכמים (אמר שמואל) is merely teaching us that there is another opinion besides the opinion of the **חכמים** (even by המ"ה, however he himself) **does not agree with them**; rather he agrees with **סומכים** (בוש), therefore by דין בוש; **ממון המוטל בספק חולקין** that **סומכים** ברי עדיף.

This would seem to resolve the contradiction. **ר' יהודה** agrees with **סומכוס** that **ר' בריה** and the **חולקין** receive payment in full. When **ר' יהודה** stated that the **חכמים** maintain **בריה** and **שמא**, he was just stating the opinion of the **חכמים**, but not his own opinion. According to this proposed answer we may maintain that **סומכוס** is correct, only if we follow the opinion of **ר' יהודה**. However if we follow the opinion of the **רבנן** that **ר' בריה** receives payment in full, then **סומכוס** is correct.

¹⁶ The reason why others maintain that a ברִי cannot be from a שָׁמָא is because the שָׁמָא is מוחזק. However since מבון המוטל בספק חולקין, this indicates that by a ספק (of a דין דמןונא) there is no מוחזק of סומכים. [The reason for this may be that since there is a serious doubt by ב"ד, to whom the money belongs, the fact that someone has possession of the money is not sufficient to render him a מוחזק.] Therefore there is no reason why the ברִי cannot be from a שָׁמָא. See footnote # 26.

¹⁷ This is merely a suggestion on the part of the Tosafot. There is no proof that according to the will be that ברי דין סומכו (according to anyone). The reason makes this assumption is because it will resolve the contradiction in the statements of ר' י.

¹⁸ The fact that the **הוּא** is a **ברִי** and the **נַחֲבָע** is merely claiming **שְׁמָא** would render this a [In addition, the fact that the **הוּא** is the **שְׁמָא** will allow the **הוּא** who is a **ברִי** to receive his claim.]

המע"ה must agree that takes precedence even over ברוי ושםא (according to the חכמים who says that the case is בדין).

סומכים rejects this approach that follows the ruling of ר"י:

דחתם (בב"ב ז' צב,ב¹⁹) משמע דעתך רבנן גבי מוכר שור לחבירו ונמצא נגחן²⁰ -

For there it seems that agrees with the case ר"י, **concerning** the case where one **sold an ox to his friend and the ox turned out to be a goring ox.**

המע"ה will offer an additional proof that must agree with the that the חכמים, and cannot follow the opinion of that ברוי ושםא.

ועוד דתנו בפרק השואל (ב"מ צז,א ושם) המשאיל אומר שאולה מותה²¹ -

And furthermore we learnt in a פרק השואל in משנה in the lender said the borrowed cow died -

והלה אומר אני יודע חייב -

And the other one (the borrower/renter) said I do not know which cow died. The ruling is that the borrower/renter is obligated to pay. It would seem that this משנה maintains ברוי ושםא ברוי עדיף.

וקאמר בגמרא לימה תיהוי תיובתא דבר נחמן ור' יוחנן -

And the there indeed **comments** on this and says can we say that this ר"ג ור' יוחנן is a refutation of which seemingly maintains משנה גמרא who maintain that ברוי עדיף. This concludes the quote of the גמרא.

סומכים continues with his proof that ר"י who maintains ברוי עדיף cannot agree with but must agree with the question of the there in השואל גמרא there is not understood.

ומאי קושיא הא על כרחץ מתניתין בסומכים אפילו לרוב יהודה -

And what is the difficulty! What refutation is there from that on the opinion of השואל משנה (סומכים if ר"י agrees with ר"ג ור' יוחנן); **for you must say that the** השואל in משנה,

¹⁹ See who changes this ר"ש ש to מראה מקום (the we have been discussing all along).

²⁰ The there offers an additional explanation what the phrase (ב"ק מו,א) teaches us (see previous footnote # 13.) It comes to let us know that the המ"ה is stronger (even) than רוב. In the case where a sold ox turned out to be a goring ox, the buyer (according to שמויאל) cannot get his money back, because the seller can claim I sold it to you for slaughtering and not for plowing. This ruling holds true even if the majority of oxen are sold for plowing; the rule of המ"ה is stronger than the רוב. It is evident from this that שמויאל certainly agrees with the חכמים that המ"ה (for according to דין would be דין; see 'Thinking it over' # 3). The fact that ר"י cites this statement of שמויאל, his רב' ברוי, is a strong indication that he too agrees with this ruling of המ"ה.

²¹ The there is discussing a case where 'A' gave 'B' two cows; one was borrowed and the other was rented. Subsequently one of the cows died and there is no proof whether it was the borrowed cow (in which case the borrower 'B' would be liable) or if it was the rented cow (in which case the renter 'B' would be exempt from any liability).

which rules that the **חייב** is **שואל**, follows the opinion of **סומכוס even according to ר' י"י** who maintains that, only because he agrees with (this is the opinion of the previously proposed answer that is attempting to disprove) -

دلרבען מודה רב יהודה דפטור -

פטור is שואל according to ר' י"י, then even would admit that the רבנן are of the opinion that בר' ושםא המע"ה²² takes precedence even over רבנן.

ורב נחמן ורב יוחנן על כרחך כרבען דلسומכוס לכל הפחות חולקין -

And we must say that who maintain **ר' ג' ור' יוחנן** does not collect anything, **agree with the רבנן**; they cannot agree with **סומכוס** in a case of **בר' ושםא** **according to** **they should at least divide;**²³ the should pay half; for it is where according to the **חולקין** is דין. If we were to assume (as the proposed answer assumed) that the **בר' ושםא** are mutually exclusive; and one can maintain **בר' ושםא** only if one maintains **ממון המוטל בספק** from the **ר' ג' ור' יוחנן**. The **השואל** in משנה which maintains **בר' ושםא** while, **בר' עדייף** must follow the opinion of **ר' ג' ור' יוחנן** must follow the **חכמים**. There is no contradiction.

will now conclude his refutation of the proposed answer and explain that if we reject the proposed answer, and accept that **ר' י"י** agrees with the **רבנן**, then the **ר' י"י** understood.

אבל אי פלייגי אליבא דרבנן ולסומכוס לעולם חולקין²⁴ **אפילו בבר' ושםא**²⁵ -

However if; **חכמים** **ר' ג' ור' יוחנן** and **ר' י"י** **argue according to the רבנן**; they all agree that **ממון המוטל בספק** **חולקין** and disagree with **סומכוס** who maintains **בר' ושםא** **according to we always divide** the monies **even in a case of סומכוס** because according to **ר' ג' ור' יוחנן** who claim **בר' עדייף** maintain their respective opinions only because they agree with the **חכמים**, (because according to דין **סומכוס** will always be according to everyone) then -

פריך שפיר ממתניתון דכרבען אתיא דلسומכוס חולקין²⁶ -

²² This is what the phrase **זה הכל גדול** comes to teach us.

²³ In a case of **סומכוס** if it is **מוחזק** then **ממון המוטל בספק** (שםא ובר' or **בר' ושםא**) maintains that the **מוחזק** loses half; we say **בר' ושםא** **חולקין**. Certainly in a case of **ר' ג' ור' יוחנן** the **מוחזק** should lose half. How can maintain that the **מוחזק** retains all the money. Obviously they must disagree with [see footnote # 18 that a ב"ש is considered a **דררא דמנוגא**].

²⁴ **ר' ג' ור' יוחנן** is compelled to say that according to **סומכוס** דין even by **חולקין** (at least according to **ר' ג' ור' יוחנן**). Otherwise can respond by saying the **השואל** in משנה is according to **סומכוס**. See 'Thinking it over' # 4.

²⁵ This is in contrast to the assumption of the previously proposed answer (that according to **סומכוס** the rule is that **בר' עדייף** which is now rejecting).

²⁶ The difference between proposed answer (which is rejected) and the **מסקנה** is as follows. According to the proposed answer the maintain that nothing can be taken away from a **מוחזק** without a **בראה**; even a **בר' החכמים** cannot be maintained that even a **מוחזק** can be taken away from a **מוחזק**. Who maintains that even a **מוחזק** **מושגיא** from the **מוחזק** who is a **מוחזק** **ספק**. **שםא מושגיא** even by a **בר' ובר' A** can therefore be everything from a **מוחזק**. The **שםא** must follow the opinion of **סומכוס**. According to the **מסקנה**, however agrees that one cannot be taken away from a **מוחזק**. However in a case

There is a valid challenge from the משנה follows the view of the רבען and not the view of סומכוס according to דין חולקין.

It is therefore evident that ר"ה ור"ג ור' יוחנן all agree to the הכהנים. However, the original question remains; if ר"י follows the view of the הכהנים that ר"י states that is effective even in a case of ברוי ושםא ברוי עדיף²⁷ how can maintain that ר"י ??ברוי ושםא ברוי גרווע ושםא טוב -

.answers that there are two different types of תוספות:

ויש לומר דהთם ברוי גרווע ושםא טוב -

And one can say that there in ב"ק where we rule that is effective even in a case of ש, the claim of ברוי is defective and the claim of שמא is superior; it is only by this type of ש that the maintain. המע"ה

שור שנגה את הפרה will now explain what is meant by a תוספה. In the case of ברוי גרווע ושםא טוב where the claims that the miscarriage was due to the shor and the claims by the owner of the shor are - ברוי גרווע by the owner of the shor is a ברוי גרווע ושםא טוב דלא הוה ליה למידע -

דלא הוה ליה למידע -

For since the shor was not there by the goring (the claims by the owner of the shor were not there), therefore **this claims I am certain.** His argument is weak, he claims whatever he wants because he knows no one will contradict him;²⁸ **and the שמא of the ניזיק is good;** we cannot fault him for his טענה שמא, there is no reason to infer from his שמא that he is lying, etc. **for he could not have known;** he was not present at the time of the goring. In a case of דין of ברוי גרווע ושםא טוב we maintain the The strength to be from a ברוי גרווע does not have the strength to be from a שמא.²⁹

דררא דמונא, according to סומכוס, both parties are considered as if each one has a certain right to the money. The דין since both are considered מוחזקים (it is like where the דין is דין לכו"ע). Therefore even by סומכוס maintains that we cannot be from a ברוי, on the basis of a מוחזק. The דין of ברוי ושםא מוציא הכהנים agree that (under certain circumstances) a ברוי is stronger than a שמא who is a שמא. See previous footnote # 16.

²⁷ This is based on the interpretation of the phrase זה כל גדול בדיין.

²⁸ The level of the believability of an argument is directly related to the level of difficulty in presenting this argument. A litigant is reluctant to present a (false) claim which the other litigant will certainly deny. He is more comfortable in presenting a (false) claim which the other litigant may not be able to contradict. He will give more weight to the former than to the latter. In the former case there is reason to believe him; for otherwise why is he making such a claim which is open to contradiction; obviously he may be saying the truth. However when his claim cannot be contradicted there are no grounds to support his claim. There is no reservation to his lying. He is saying it because no one can disagree with him.

²⁹ According to this view that by a ברוי עדיף we do not say ברוי גרווע ושםא טוב we can maintain that the דין of ברוי גרווע ושםא טוב mentioned in the beginning concerning the דין בין שנייהם (which is in a case of ב"ש משאל"מ) is in a case of דין בין שנייהם (which is in a case of ב"ש משאל"מ).

אבל מנה לי בידך הברי טוב והשמע גרווע דהוה ליה לידע אם חייב אם לאו -

However by the case of ברִי וְשָׁמָא where ר"ה ור"י maintain that ברִי can be from the weak **is a strong**. There is good reason to accept the claim of the weak; because the weak is aware that the strong can contradict him³⁰ **and** the claim of שָׁמָא by the weak is **inferior, for the should know if he owes the money or not.** The claim of שָׁמָא by the weak leads us to think that he is not being forthright; for how is it that he does not know if he owes the money or not. In this case the claim of the weak is much stronger than the claim of the strong. Therefore the strong can be from the weak.

Thus the contradiction is resolved. In ב"ק it is a טוב; that is why the דין is המע"ה. However here by בידך it is a גרווע; therefore the דין is (according to ר"ה ור"י) מנה ל' (even from a ברוי עדייף). Moreover

תוספות asks an additional question:

אבל קשה דברי לומר הכה לא דרב יהודה דשモאל היא דפסק הרבה גמליאל -

However there is a difficulty, for the woman here attempts to establish that this which ר"ג maintains (that opinion of בריעדיף ב"ו) is the opinion of ר"י; that we believe the woman who is a against the husband who is a. The states that משארסתני נאנsty (בריע) where the woman claims משנה in the case of our rules like ר"ג שמואל and the husband claims (perhaps) (שםא). When the states עד שלא ארסטיך נאנsty that it is understood that the (sole) reason that ר"ג שמואל is on account of הא דבר גمرا. It is however difficult to say that on account of the ruling of ר"י (the ruling of ר"ג). We should maintain in the case of ר"ג as well, that בריע עדיף.

והתס בריך גרע ושמא טוב שהבעל אינו יודע מתי נבעל -

For there, in the case of our משנה, the ברי is defective and the שמא is superior, since the husband does not know (and rightfully cannot know) when she was רבען בעדיף, ברי גרווע ושמא טוב נבעלה. In a case of, on the contrary the contrary the המע"ה maintain.

ואםכו תיקשי דשモאל אדשמואל דפרק הפרה (ב"ק מו, א ושם) -

And if this is so, that the reason שמואל maintains that the reason כר"ג is because here (who maintains that שמואל) there is a contradiction of ברי עדיף, then we rule that from ברי גרווע ושמא טוב even by a who is a בועל מוציא to be ברי עדיף (at least) overrides a who maintains that פרק הפהה of שמואל (who maintains that ברי ושמא המע"ה).

ח' יוב, לאו בר עדייף דין, where the word is ברי גרווע ושמא טוב (seven states in gemara), however it is in a case of דין, therefore there is a שבועה. See footnote # 7.

³⁰ See previous footnote # 28.

by a rules like ר"ג, on account of ב"ש, when maintains that by a דין בגוש"ט is the דין המ"ה. The question is how could have the even entertained this idea that גمرا even responded to the proposition that indeed the could have responded to the proposition that גمرا is it properly understood?! How can you even think that the reason of is connected to the opinion of in the case of ב"ש? There is obviously no connection, for is discussing a, while ברוי טוב וכי even by a ר"ג is agreeing with a שמואל.³¹

תוספות answers:

ויש לומר דהוה מצי למימר וליתעמיד -

And one can say that indeed the could have responded to the proposition that גمرا is it properly understood?! How can you even think that the reason of is connected to the opinion of in the case of ב"ש? There is obviously no connection, for is discussing a, while ברוי טוב וכי even by a ר"ג is agreeing with a שמואל.³²

תוספות offers an additional answer:

ועוד יש לומר דסוגיא דהכא סבירה דזה כלל גדול בדיון -

And furthermore, one can say that our גمرا here maintains that the phrase of שמואל which³³ said in the name of ר"ג, which³³ is the name of ב"ש, is not referring to a case where the victim claims ברוי and the perpetrator claims שמואל as the states in the first explanation in ב"ק. Our does not agree with this interpretation. In fact it maintains that in a case of ברוי ושמואל (even a ברוי טוב ושמואל טוב) we do not say ב"ש. The phrase זה הכלל גדול בדיון is not referring to ב"ש. The phrase זה הכלל גדול בדיון is not referring to ב"ש.

לא לניזיק אומר ברוי ומזיק אומר שמואל -

Is not referring to a case where the victim claims ברוי and the perpetrator claims שמואל as the states in the first explanation in ב"ק. Our does not agree with this interpretation. In fact it maintains that in a case of ברוי ושמואל (even a ברוי טוב ושמואל טוב) we do not say ב"ש. The phrase זה הכלל גדול בדיון is not referring to ב"ש. The phrase זה הכלל גדול בדיון is not referring to ב"ש.

אלא כדקאמר התם אי נמי לכפי הא -

But rather, as the states there in 'or you may say, it may also be referring to this' case of ב"ק that ברוי השם³⁴ is stronger than ברוי. However it is not stronger than ברוי. According to this answer of our גمرا here maintains that even in a case of ברוי ושמואל, שמואל_Ad Shmoel_BD, because according to this interpretation ברוי השם³⁴ is not applicable in a case of ב"ש, only against a ברוי.

תוספות questions this last answer:

וקשה על זה דאפשרו לפי אי נמי דהתם לאathi שפיר -

And there is a difficulty with this explanation that our does not agree that ב"ק in 'אי נמי' there in ב"ש, for even according to the there in ב"ש, that ברוי השם³⁴ is only stronger than a ברוי, but not (necessarily) stronger than a ברוי.

³¹ If the would not have said that גمرا דש mojoal היא, we could have explained (as the eventually does) that the reason of גمرا is not on account of ר"ג, but for different reasons (מגו, חזקת הגוף); then there would be no contradiction. However since the גمرا maintains that the reason of גمرا is on account of ברוי ושמואל, then there is the contradiction from ב"ק.

³² In essence is saying (in this answer) that there is no way to reconcile these two rulings of שמואל.

³³ See footnote # 13.

³⁴ See previous footnote # 20.

nevertheless **it is not properly resolved -**

זהא בסוף המניה³⁵ (שם דף לה, ב ושם) **אית להו לרבען בהדייא דאפיילו ניזק אומר ברוי כולי -**

For in the end of the mania clearly maintain that even if the claims ניזק etc. etc. and the claims ³⁶ שמא מזיק, ³⁷ the rule is - **המע"ה**

ושמואל סובר לרבען³⁸ **קדמוכך בהמוכר שור לחבבו:**

And (generally) **agrees with the rule לרבען as is evident in the case where one sells an ox to his friend** and it was a goring ox. maintains **শמוֹאַל** there that **המע"ה**. This proves that **חכמים** clearly maintain that overrides as is evident in the case of **גمرا**. Therefore in order to avoid the contradiction between **המע"ה** and **শמוֹאַל** (where maintains **המע"ה** and who rules like **ר"ג** purportedly on account of **ש** (that even against a **מוחזק**), we will be forced to say that the **גمرا** could have asked **ברוי עדיף** 'ולטעמיך'. There seems to be no way to reconcile these two **ב"ש** **ברוי עדיף** **শמוֹאַל** according to the **ר"ג** on account of **דינים**.

SUMMARY

Those who maintain **שאיל"מ** can agree with the ruling of **ברוי עדיף** it may only require that the **דרשה** referencing a case of **עד שנייהם ולא בין היורשין** and not a case of **אחד חמישין ידענא וחמשין לא ידענא**.³⁹

ברוי גרווע ושם is only if it is a **ברוי עדיף דין**, however by a **סומכו** (**המע"ה** who maintain **טוב** and **ברוי גרווע**) there is a **חלוקת** [by all types of **חולקין**].⁴⁰

THINKING IT OVER

1. **(ב"ש ברוי עדיף ר"ה ור"י)** initially maintains that (**ר"ה ור"י** who claim **תוספות** disagree with **শמוֹאַל** who maintains that **ר"א**).⁴⁰ Seemingly, this is irrelevant, for both of them will agree in the case of **חמישין ידענא וחמשין לא ידענא** that the **לוּה** is required to pay. According to **ר"ה ור"י** he is required to pay since he is a **שםא** and according to **ר"א** he is required to pay because of **שאיל"מ**. What difference is there whether **ר"ה ור"י** agree with **ר"א** or not?!

³⁵ The there is discussing various cases where oxen of the damaged oxen of the **ניזק** and we are not certain if they were damaged by the oxen who were **מזיק**, etc.

³⁶ In all the cases there, it is a **ברוי גרווע** and **שםא טוב**. The **זיק** was not present at the time of the **הזיק**.

³⁷ It is not necessary to derive from the phrase **זה כליל גדול דין** that the **חכמים** even in a case of **ב"ש** maintain **המע"ה** even in a case of **המע"ה**. It can be derived from this **גمرا** in **המע"ה**. Therefore everyone must agree that according to the **חכמים** the **מע"ה** overrides **ב"ש** (at least a **טב**).

³⁸ See 'Thinking it over # 5.

³⁹ See however, footnote # 29.

⁴⁰ See footnote # 1.

2. states that according to ר"י (who maintains the proof that ב"ש ברி עדיף from the case of **דרשא** and an **שמא** ו**שמא** is in a case of **הירושים** and **לא** בין **הירושים** claims that monies are owed.⁴¹ However if ב"ש בר夷 עדיף then it would seem that the testimony of the ע"א (who is unbiased) should be at least as strong as the claim of the **חובע** (who is biased) and therefore the **שמא** should have to pay even without מתחזק!⁴²

3. How can derive from the fact that **שmaiol** maintains by the case of **המוכר** **חכמים** **שmaiol** agrees to the **דין** **המע"ה** that the **שmaiol** **שור** **להביבו** **ונמצא** **גחן**?⁴³ Seemingly in this case even **המע"ה** would agree that since there is no **דררא** **סומכים** **המע"ה**!⁴⁴ **דמונא**

4. concludes that according to **דין** **סומכים** **הולקין** is that even by **בר夷** **בר夷** and **בר夷** **ושמא**.⁴⁵ Seemingly this is difficult to understand. In a case of the **חולקין** and **סומכים** **המע"ה** maintain that **בר夷** and **בר夷** **ושמא** **הולקין** and **סומכים** **המע"ה** are from the **סומכים** (according to ר"ה ור"י) and say **מוחזק** **מוחזק** (who maintains we are half from the **סומכים** will not agree to be **בר夷** and **בר夷** **ושמא** to be **בר夷** **עדיף**)⁴⁶

5. states⁴⁷ that follows the opinion of the **חכמים**, as is evident from the case of **המניח** in **גמרא**. It is also evident from the **המוכר** **שור** **להביבו** **ונמצא** **גחן** maintain even by **בר夷** **ושמא** **המע"ה**. It follows therefore that **המוכר** **שmaiol** maintains even by **בר夷** **ושמא** **המע"ה**. Seemingly all this is not necessary. The case of **המוכר** **שור** itself appears to be a case of **בר夷** **ושמא**; where the buyer is sure that he purchased it to plow and the seller can only argue that perhaps you bought it to butcher it. **ב"ש** **המע"ה** maintains that even there where it is a **שmaiol**⁴⁸

⁴¹ See footnote # 10.

⁴² See **חידושי ר"ש הלוי**.

⁴³ See footnote # 20.

⁴⁴ See on this **קרני ראם**.

⁴⁵ See footnote # 24.

⁴⁶ See **מהר"מ שי"פ ד"ה בא"ד אבל**.

⁴⁷ See footnote # 38.

⁴⁸ See **קרני ראם**.

אלא דאייכא מיגו -**מיגו a Only because there is a****OVERVIEW**

ברי ר"ג ור' יוחנן cited the between גمرا concerning rules like רבן גמליאל ור'א שמואל. It also stated that the woman is believed and receives the entire כתובה from the בעל. The originally maintained that a) ר'י ור'ה מהלוקה between גمرا that בוש ברוי עדיף¹ and b) the between גمرا in our משנה between ר'ג ור'י. The then rejects this idea, and maintains that the דין of our משנה in not (so) dependent on ר'ג. Even those who maintain can nevertheless, agree with ר'ג (and ר'ג ור'א). The offers two reasons why even will agree that the woman receives her. It is either because she has a חזקה or because her claim is supported by a².

האי שנוא לאأتي אלא לרבי נחמן -

This answer, that since the אשה has a מיגו, therefore even those who usually maintain that a cannot be from a who is a מוחזק, nevertheless they may agree with ר'ג of our משנה, that the אשה could collect her entire כתובה from the בעל, for in the משנה the woman has a מיגו; this answer is **not valid** for all those who maintain that בוש לאו ברוי עדיף – ר'ג to it is valid **only** according to ר'ג.

דלא רבי יוחנן בההיא דמותה עז ליכא מיגו³ כדמוכח لكمן -

¹ That is why he rules like ר'ג ור'א משניות ר'ג ור'א.

² In the case of our חזקה or מיגו, there is no claim of the woman (who is a) is (also) supported by either a or a חזקה. However by our claim of the woman (who is a) is (also) supported by either a or a חזקה.

³ She claims she was merely a עז. He claims that (perhaps) you are a בעולה. דף יא, ג, א.

⁴ A מוכת עז is a woman who lost her due to physical trauma; but she is not a בעולה. The literal translation is 'struck (by) wood'.

⁵ There is a between כתובה of ר'מ and הכתמים (in a משנה on מחלוקת ר'מ), concerning the כתובה of a מחלוקת ר'מ. The maintains that her is (only) a, while maintains that her is the full. There is an additional what the דין is in a case where the husband assumed that his betrothed is a בעולה and it turned out the she was a before the אירוסין. Some maintain that she loses the entire כתובה; while maintains that she receives a (see following footnote # 6).

⁶ ר'ר' maintains that כתובהמנה, she has a בעולה. Therefore he interprets the following of מיניה, that she is claiming a כתובה (following the opinion of ר'מ), while he claims that he owes her only a מוכת עז. According to ר'ר' this woman has no מיגו; there is no other claim she can present, where she would be either more believed or receive more money. Those who maintain that in a case of כתובה ונמצאת בעולה she receives no כתובה at all; they can interpret the מיניה of ר'ר' according to ר'ר' where she is claiming (merely) a מיניה. According to them, the woman has a מיגו for she could have claimed I became a after the אירוסין; in which case she would be owed מיניה. However according to ר'ר' there is no מיניה for (even) as a before the אירוסין she is entitled to receive מיניה.

for according to ר"י who also maintains that this answer is not appropriate, for **in that case** (in the following concerning a **משנה**) for the woman **as is evident later** in the case of ר"ג ור"א;⁷ and nevertheless maintains that the woman is believed (without a **מיגו**). The current answer, that she has a **מיגו**, will not explain how ר' can agree with ר"ג ור"א in the case of ר' יוחנן; for she has no **מיגו**.⁸

הקשה הרוב רבינו יעקב מקורבאי"ל אכתי על כרחך הא דבר יהודה דשモאל היא -

ר"י asked, we still must maintain that the ruling of **קורבאי"ל** of **ר"י** concerning **שМОאל** is identical to the ruling of **ר"י**; ברוי ושמעא ברוי עדיף must agree that he rules like **ר"ג**,⁹ but rather for another reason which continues to explain:

דאיל שМОאל פטור תקשי ליה ממתניתין דהשואל (בבא מציעא דף צ, אשות): –

For if **will** maintains that by **פטור** is **שما**, ב"ש from paying, then **פטור** will be contradicted from the **השואל** in **משנה**, פרק **השואל** in **משנה**, which states¹⁰ that if –

המשאייל אומר שאולה מתה והלה אומר אני יודע חייב –

The lender claimed that the borrowed animal died (and therefore, as a borrower, the borrowed animal that died; it could be that it was the rented animal that died (in which case a renter is liable to pay. It is evident from that **לאו ברוי עדיף** if he would maintain that **משנה** anticipates an obvious answer and rejects it. There are those who clearly maintain that so that it would not contradict their opinion. Let us interpret that **will** in the same manner according to as well. Let us interpret that this is not possible.

دلשМОאל ליכא לשנויי כדמשני לרבע נחמן ולרבינו יוחנן בגין שיש עסק שבואה בגיןה –

For according to **we cannot answer** this question from the **השואל** in **משנה** who maintain that **ר"ג ור"י** who maintain that **שМОאל** answers it for **ר"ג ור"י**. Our answer for **ר"ג ור"י**, and explains why it is not suitable for **שМОאל**. The answer was that the **השואל** in discussing a case where **for instance, there was an entanglement of an oath between them**; the **שואל** was obligated to take an oath for a different claim which the **משאייל** had against him. There is a rule of **גלאיל שבואה**; once a defendant is

⁷ **תוספות** דף ג, ג, ג [it would be advisable to peruse that for a better understanding of this].

⁸ This may be why the **גמרא** gives an additional answer that in these **משניות** the woman is believed because she has a **חזקה**. This answer applies to **ר' יוחנן** as well; that he may agree to **ר' ג ור' א**, even in the case of **מיוען**.

⁹ That can be explained on account of **חזקה** or **מיגו**. See ‘Thinking it over’ # 2.

¹⁰ See previous footnote # 21.

obligated to swear, the plaintiff may ‘roll’ on the defendant an obligation to take additional oaths for other issues between them. In our case, the **משאיל שואל** had to swear to the **משאיל** for another case. The **משאיל** can then make him swear in this case of the borrowed/rented animal (that the rented animal died). The **שואל** however, cannot take the oath that it was the rented animal that died, for he himself agrees that he is not sure which animal died. Therefore, in such a case the ruling is –

ומתוク שאינו יכול לישבע משלם –

And since he cannot swear, he must pay. The **משנה** obligates the **שואל** to pay not because he is a **ברוי**. A **שואל** cannot be **מושטיא** from a **שמא**. The reason the **שואל** has to pay is because there was a **חייב שבואה** on him which he could not discharge. If one cannot take the oath, he suffers the consequences and must pay up.

This is the explanation of the **משנה** according to ר"ג ור"י. However this explanation is not valid for **שמואל** –

דشمואל אית ליה בהדייא בפרק כל הנשביעין (שבועות דף מז, א�שם) –

For clearly maintains¹¹ in **פרק כל הנשביעין** that if the oath cannot be taken for any reason, then (we do not say, but rather) –

דזרזה שבואה לשיני ולא משלם –

That the oath returns to; here סיני; Hashem will deal with it **and** the defendant **does not pay**. Therefore we cannot answer that the **השואל** in **משנה** is discussing a case of **גלאול שבואה**. Even if the **שומר** is obligated to swear on account of the **השואל**, however, since he cannot swear, he is not obligated to pay (according to **שמואל**). The question remains that how can we possibly say that **בוז"ש לאו ברוי עדיף** disagrees with **ר"י** and maintains that **השואל** **שמואל** disagrees with **ר"ה**; how will he then explain the **השואל** in **משנה** where the **השואל** is **ברוי** and the **שמא** is required to pay.

תוספות answers:

ויש לומר דעתך למייר דלעולם מנה לי בידך והלה אומר אני יודע לשמואל פטור –
and one can say that it can be said, that in truth¹² in a case where the **claims you have my** in your possession; you owe me a **מננה** and the **claims I do not know** if I owe you a **מננה**, that **according to** the **השואל** is **פטור** from paying; and concerning the **השואל** in **משנה** –

ומוקי שמואל מתניתין דהשואל בשיש עסק שבואה –

ר"ג ור"י will establish that the **השואל** in **משנה** is discussing a case that there is an entanglement of a **שובהה** between the **השואל** and the **משאיל**; the same answer that **בוז"ש** gives. The reason the **השואל** has to pay, even though **שמואל** does not maintain **משאי"מ**, is because **שמואל** will insist that the **השואל** in **משנה** follows the opinion –

¹¹ See previous footnote # 1.

¹² What follows is not something that we must say (that **שמואל** maintains **שמואל**), but rather what can possibly maintain. In reality though, **שמואל** can just as well maintain that **שמואל** follows the opinion –

דפלוגתא דתנאי היה בפרק כל השבעין (שם).

For it is a dispute among תגאים **in** פֶּרְקָעַ כָּל הַנְשַׁבְעִין,¹³ whether we say or משאיל"מ. Therefore the opinion of the one who maintains the question follows the opinion of the other that we say by שבועה לסיני while follows the opinion of the other that we say by שבועה שבועה לסיני. According to שמואל for פטור nevertheless he may be; for שמואל even if the one is מהוויב שמא, may maintain ברי ושמא that he does not pay. and by שבועה לסיני we say by ב"ש לאו ברי עדיף.

[יעיון ביטר ביאור תוספות בבא מציא צזב סוף דבר המתחיל רב הונא]:

SUMMARY

In the case of a ר' יוחנן, מוכת עז cannot agree with ר"ג ור"א based on the explanation of (alone). השוואל can disagree with the משנה that requires the שמואל to pay (on account of משאיל"מ and גלגול שבועה); for will follow the opinion of those that maintain תנאים שבועה לשינוי.

THINKING IT OVER

1. Is there any connection between the first part of תוספות (concerning ר' יוחנן) and the subsequent question and answer (concerning שמואל)?
 2. The ב"ש ברι עדיף asks that שמואל must maintain ר"י מקורבייל¹⁴. What difficulty is there if we accept that assumption?¹⁵
 3. When the ר"י מקובייל asked the question on שמואל, was he not aware that there is a difference¹⁶ concerning משאיל"מ מהלוקת תנאים?
 4. How can the ר"ה ור' יהודה (who maintain גمراא) have originally assumed that ב"ש ברι follows the opinion of ר"ג ור"א in the משנה? In the previous rules (ברι עדיף) we have learnt that by a תוספות rule, that ר"י בירושט¹⁷ is a good rule, and that it is good to follow it!!!

¹⁴ See footnote # 9.

¹⁵ **חידושי בתרא** אותן קכח. See

¹⁶ See קמ' מ"ת ח"ב.

¹⁷ This question is (more) relevant to the previous חוספות וכפשות!

רב אשי אמר נבעלה -

נבעלה maintains that it means רב אשי

OVERVIEW

נאמנה she is not according to ר' יהושע that when the term מדברת means that there were. Otherwise if there are no only, the woman is. It is not clear what is meant by if there are (only) if she claims? Does it mean she is (even) if she claims נבעלה? will address this issue.

אבל נסתירה מודה רב יهושע דעתה לומר לכשר נבעלתי במגו דאי בעיא אמרה לא נבעלתי -
However if she (merely) secluded herself with this person; there were only נבעלתי ר"י, then would agree that she is believed to say I was to a for she has a, that she could have said, I was not¹.

תוספות asks:

אם תאמר והא רב יهושע לית ליה מגו גבי משארשתני נאנשתי -

And if you will say; but ר"י does not utilize a concerning the case where the woman claims 'I was forced after I was betrothed'. In the case² where the woman claims and the husband claims נאנשתי and the ruling according to ר"י is that she is not believed and cannot collect her (full). Seemingly she has a there, for she could have claimed ר"ג ור"א מוכת עז אני³. It is on the basis of this, that she is מגו and collects her⁴. The fact that ר"י disagrees proves that he maintains that a is insufficient, to believe her. Why is it that here ר"י maintains that if she was (only), she is believed to claim based on the case, that she could have claimed מ"ע מ"ע? Why is this effective and the case not effective?⁵

תוספות answers:

יש לומר דתתם לא هو מגו גמור דהא אפילו אי אמרה מוכת עז אני -

And one can say that there in the case of, משארשתני נאנשתי is מוכת עז, מוכ"ע nevertheless – not an ideal for even if she claimed that she is a –

איןנה נאמנת לרבי יהושע כדעתן במתניתין⁶ -

¹ See 'Thinking it over' # 1.

² משנה יב, ב.

³ Tosfos will shortly explain what the case is.

⁴ See 'Thinking it over' # 2.

⁵ See 'Thinking it over' # 2.

⁶ משנה ז, ג, א, ב, ד, ג.

She is not believed according to ר"י to collect her as we learnt in the כתובה that even if she claims מוכ"ע אני she cannot collect her. **משנה;**

תוספות anticipates a question; If מוכ"ע is not a believable claim why does the refer to it as a תוספות responds:

ולא קרי ליה מינו אלא לפि שהיא טעונה מעולה ביוון:⁷

And the claim of **is not called a**, מינו, like other, where if the claim were used it would be accepted; this is not the case by the claim of מוכ"ע, **rather** it is called a **only because it is a better claim**; but not that it is a believable claim. The claim of מינו however is a believable claim; therefore it is an effective מיגו.

SUMMARY

According to ר"י in a case of נבعلתי, she is believed to claim with מיגו of מיגו. This is a believable claim as opposed to the claim of מוכ"ע, which is merely a better (but not a [more] believable) claim.

THINKING IT OVER

1. maintains that according to רב אשי in a case of נסתרה she is believed to claim תוספות.⁸ It is seemingly not clear, from where derives this.⁹ Perhaps merely maintains that by נסתרה, she is believed to claim נבعلתי; לא נבעלתי (because this is not effective)?

2. asks what is the difference between the of מוכ"ע and מיגו. Seemingly there is a distinct difference; the of מיגו is being used to extract money from the ר"י, בעל, therefore maintains that a לא אמרינו להוציא לא אמרינו. However the of מיגו is concerning (only) נבעלתי, therefore maintains that it is an effective.¹¹ מיגו

3. maintains that the claim of מוכ"ע is not a believable claim (according to

⁷ See פסולה לכהונה משארsty נאנsty she becomes רש"י י,ב ד"ה אלא that when a woman claims מוכ"ע ani; however if she claims מוכ"ע ani, then she remains כהן to marry an אנוסה (באיסור). See 'Thinking it over' # 3.

⁸ See footnote # 1.

⁹ See מהרש"א.

¹⁰ See footnote # 5.

¹¹ See סוכ"ד אות כ"ד and מהר"ם שי"ק, רש"ש.

ר"ג) and the reason the refers to it as a **מיגו גمرا** is because it is a **מעולה** **bijoter**.¹² Seemingly when the **גمرا** refers to **מיגו מוכ"ע**,¹³ it is discussing the opinions of ר"ג ור"א. However, they maintain that according to ר"י **מוכ"ע** is believed!¹⁴ should have (merely) said that according to ר"י the claim is not believable.

¹² See footnote # 7.

¹³ נז' טנ'.

¹⁴ משנה (הא') יג,א.

חדא להכשיר בה וחדא להכשיר בבתה -
One case to approve her and one case to approve her daughter (to marry כהנים).

OVERVIEW

שנבעלה means רואה מדברת who maintains that according to רב אשי, then seemingly the case of רואה מעוברת is the same as in both cases we know she was נבעלה, why is it necessary to mention both cases. The גمرا answers that it is necessary to mention both cases to teach us that not only is the woman herself כשרה (according to ר"ג ור"א) but even her daughter (who has no כשרה) is also כשרה לכהונה. The obvious question is; the mother could have just taught us that (even) the daughter is כשרה (in the case of רואה מעוברת¹)² and I would know that the mother (who has a כשרה) is certainly כשרה תוספות. Our answers this question.

צרכי תרוייהו חדא להודיעיךacho drubon gamliel וחדא להודיעיךacho drubi yosheu -

And it is necessary to inform us of **both** these cases; the case where we are concerned about her status as well as the case where we are discussing the daughter's status; **one** case of רואה מעוברת concerning her daughter, is necessary **to let us know the 'strength' of ר"ג**; that even though the daughter has no כשרה nevertheless the mother is believed, and the daughter is כשרה **and one** case of רואה מדברת concerning her, is necessary **to let us know the 'strength' of ר"י**; that even though she has a כשרה nevertheless she is not believed and is פטולה לכהונה.

SUMMARY

פטולה לכהונה teaches us that even the mother is רישא (according to ר"י); and the רואה מעוברת of סיפא teaches us that even the daughter is כשרה לכהונה (according to ר"ג ור"א).

THINKING IT OVER

חדא להודיעיךacho drubon gamliel explanation, the גمرا should have answered **חדא להכשיר בה וחדא להכשיר בבתה** answer גمرا **חו דרבי?!?**³

¹ The mother has a כשרה לכהונה, because before this incident she was under the suspicion that her father may have been a נתין ומזר, which disqualifies her לכהונה.

² The רואה מעוברת does not actually state that the daughter is כשרה; it merely states that by she is כשרה. However maintains that the term מעוברת and (especially) the phrase מושבות עובר זה indicates that we are discussing the status of the daughter. See מהרש"א. See following Tosfosot ד"ה לדברי מהרש"א.

³ עי' (בש"מ ו[ב██] אות כה

לדברי המכשיר בה פסול בבתה –

According to the opinion that approves her, nevertheless he disqualifies her daughter from marrying into Cohenah.

OVERVIEW

The Gemara mentions that there is an opinion that even only the mother; however the daughter is always disqualified for Cohenah. The question arises; if the daughter is mentioned why mention מועברת (which indicates we are discussing the mother) at all? The Tosafot should have merely said ראה שנבעלה. Our will resolve this issue.

ומועברת דנקט משום לישנא מעלייא:

And the reason the states the term מועברת, when it is not relevant; since the daughter is according to everyone (even עובר), the should have merely said ראה שנבעלה answers because the wanted to use a superior expression; therefore it chose מועברת, which is more refined, rather than גבעלה. However the (according to this מ"ד) is only discussing the status of the mother. The disqualified for Cohenah to כו"ע is עובר.

SUMMARY

The term is used in the that מ"ד (according to the that מ"ד) only as a משנה עובר in the משנה לישנא מעלייא; however we are not discussing the עובר.

THINKING IT OVER

Can agree that רב אשי משום לישנא מעלייא is מועברת דנקט?

¹ See previous footnote # 2.

ואין אוסרין על היהוד לימה דלא כרבי יהושע –

And we do not prohibit a woman on account of seclusion; should we say that this ruling is not according to ר"י.

OVERVIEW

The **גמרא** cites the opinion of **רב**; if a married woman secludes herself with a stranger, she is permitted to return to her husband.¹ We do not assume that she was [ברצון] **נבעלה** (which would have prohibited her from returning to her husband). We derive from the ruling of **רב** that a **יהודים** does not presume a **ביהא**. The **גמרא** claims that this ruling is incompatible with the ruling of **ר"י** according to who maintains that **יהודים** – **נסתרה** means (only) **נבעלה**, and not **נבעלה** (לנתין ולמזור). In this case of **ר"י** it is the opinion of **ר"י** that an unmarried woman becomes **אסורה לכהונה** because we assume that **ר"י** maintains that by a **יהודים** there is a presumption of **ר"י**; not like **רב**.²

תוספות asks:

תימה לרבי שמשון בן אברם דלזעירי (נמי) דאמר נסתירה –

אין אוסרין על היהוד דין גמרא' **רשב"א** is perplexed by the assumption that the **דין** of **רשב"א** is incompatible with the view of **ר"י**, **זעירי**, **for (even) according to** **who maintains** that **נסתירה** means **מדוברת**; nevertheless **עדים שנבעלה** there were no **משנה** – **משנה** –

איירி בגון דמודה היא שנבעלה –

תוספות **נבעלה** (as **נבעלה** will immediately prove). Therefore there is no comparison to the **רב** of **רב**. **רב** maintains that **אין** **ביהא** no (**ביהא** woman maintains that) there was no **יהודים**, merely **אוסרין על היהוד**, and **זעירי** will agree (even according to **ר"י**) that **אין אוסרין על היהוד**. The **משנה** is discussing a case where the (unmarried) woman claims **לבוש נבעלה**; it is (only) then that **ר"י** maintains that she is not believed.³ The **משנה** is not discussing a case of **יהודים**, but rather a case of **ביהא**.

¹ See following **תוספות ד"ה מעלה**, that **רב** is discussing a case of an **אשת איש**.

² The contradiction is (even) somewhat magnified. **ר"י** maintains that not only is there a presumption of **ביהא** by **ר"י**, but also a presumption of **נבעלה** (**לנתין ולמזור**).

³ **תוספות** maintains (originally) that the contradiction between **ר"י** and **רב** is concerning **ר"י** does not want to interpret that the contradiction is concerning how we rule by a **ספק** (**יהודים**) and **רב** is strict by a **ספק** (**ביהא**). **תוספות ספק** asserts later that there is a difficulty in assuming that this is the contradiction. One reason may be that we cannot compare the **ספק** of **ר"י** to the **ספק** of **רב** (**ננתן ומזור**). It should be borne in mind however, that in either case there is only one **ספק**. If there was in the case of **רב** (no matter with whom) she is **אסורה לבעלת**. See later in this **תוספות** (footnote # 9) and 'Thinking it over' # 3.

is it, hari zo בחזקת בעולה וכו' states ר"י when (זעירי) only in a case where she claims נבעלתי, but not in a case where she claims נבעלתי:

דאוי אמרה לא נבעלתי אם כן הוא ספק ספיקא⁴ -

לא נבעלתי she would be believed **for then, this** claim of **makes it a doubt within a doubt**; one doubt is if she was at all (then she is certainly נבעלתי), and even if she was, there still remains a doubt that perhaps she was נבעלתי (כשרה לכהונה). In the case of a נבעלתי (and she is still ספק ספיקא) to a נבעלתי we know –

דמזכיר רבי יהושע כדאמר לךמו⁵ התם ספק ספיקא -

that would approve her marrying into גمرا as the states later ‘there it is a ספיקא ספיקא’ and therefore is ר"י. It is evident from that that in the case of נסתירה the woman claims נבעלתי (otherwise it would be ספק ספיקא and she would be כשרה). The question remains; there is no contradiction between רב and רבי. But in אין אוסרין על היחוד maintains that there was, by her admission that נבעלתי (לכשר). It is not merely a case of יהוד.

תוספות answers:

ויש לומר דלעולם איירי דקאמורה לא נבעלה⁶ -

And one can say that really is discussing a case where she claims that **she was not**, נבעלה, and the reason she is not believed (according to ר"י even though it is (seemingly) a ספק ספיקא because –

וחשייב ליה חזא ספיקא דין אפוטרופוס לעריות -

It is considered as one; not a ספק ספיקא. It is assumed that she was נבעלה. The only is if it was לנתין ולמזור or לכשר נ圯ה. The reason we consider her as **for there is no ‘guardian in regards to illicit relationships’**; we assume that if she was נסתירה, there was a ביאה. The only is if it was ספק ספיקא or לכשר רב and רבי. The contradiction between ביאה, אין אוסרין על היחוד, that does not presume רב. However ר"י maintains that if she was נסתירה it is assumed that she was also נבעלה.

תוספות has a difficulty with this explanation:

אבל קשה דבדידא משמע פרק שני (לקמן טז,א) דאיירי בנבעלת -

However there is a difficulty for it is clearly indicated in the beginning of the second that according to זעירי **משנה** is discussing a case where it is known (through her admission) that **she was** נבעלה –

⁴ See ‘Thinking it over’ # 4.

⁵ The there cites an opinion of ר"י in another (אלמנת עיטה) concerning which (seemingly) contradicts his opinion in our that the woman is נשתירה. The resolves the contradiction by stating that she is נשתירה and therefore even ר"י agrees that she is מותרת. The case of אלמנת עיטה is discussed at length in the [tosfos] there.

⁶ See ‘Thinking it over’ # 2.

דקאמר⁷ הניתן לעיריה דאמר מאוי מדברת נסתרה -

מיגו a there states: ‘according to גمرا it is understood that there is a גمرا (issue) for נסתרה is מדברת; therefore there is a נסתרה in the case of – מדברת –

דמגו דאי בעיא אמרה לא נבעלתי מהימנא⁸ כולי -

For ‘since’ if she would have claimed, ‘I was not she would have been believed, etc.; therefore she is believed when she claims. It is evident from that גمرا that in the case of she is claiming מדברת not גمرا. If she would have claimed נבעלתי she would be נאמנה. The original question of תוספות returns. There is no contradiction between רב (who is discussing a case of ר'י) and the case of רב (who is discussing a case of ר'י) where there was נבעלתי (לבשר) as the woman claims (ביה).

תוספות answers:

לכך נראה דבריך לעיריה דסבירא חדא אסורין לה -

ר'י, לעיריה דסבירא challenge of the גمرا is that according to גمرا forbids her to marry into one (even) on the basis of one (whether she was נבעללה to a or to a); this is incompatible with רב (נתין ומזרע) –

והא ייחוד דاشת איש דסבירא חדא היא ואין אסוריין על הייחוד -

For the of an which is also (only) one; whether or not there was, and we do not forbid her to her husband because of the ייחוד. The contradiction between רב and ר'י invokes an on the basis of a ספק; while invokes no on the basis of a ספק.⁹

תוספות remains somewhat dissatisfied with this answer:

וקצת קשה דלא כוארה נראה דיחוד איזוז פריך -

And it is somewhat difficult to accept this interpretation for it seemingly appears from the גمرا (as will shortly prove) that the challenge was from one case of on another case of ייחוד; from the case of by רב (where ייחוד איסרין וכו' is) to the case of by ר'י (where ייחוד איסר על הייחוד). However, since we have proven that (even) in the case of נסתרה she is claiming (לכשה) נבעלתי; it is not a situation of נבעללה merely by ייחוד, but rather a case of a ספק to whom she was.

⁷ The גمرا there maintains that מנו admits to ר'י that a certain type of (which is mentioned in פרק ב') is effective; but not the type of that maintain in the first פרק. The גمرا then attempts to discern where there is an effective מנו in the first (according to ר'ג ור'א). The גمرا concludes that according to לעיריה, there is an effective מנו in the case of ראה מדברת.

⁸ In our text the גירה is: 'מאוי בעי אמרה לא נבעלתי וקאמרה נבעלתי מהימנא'. The word 'מהימנא' is written adjacent to 'נבעלתי' and not as in 'נבעלתי' and 'מהימנא' near the words 'גירה' and 'קאמרה נבעלתי'.

⁹ In this answer disregards any differences between the types of ספיקות. See footnote # 3.

מספק אספק asked and not מיחוד איחוד גمرا will now explain why it is assumed that the question תוספות

מדפרק לזרעiri ולא לרב אסי:

since the challenges (only) **רב אסי זעירי גمرا** (only and not). If the question is asked according to (as מספק אספק [reluctantly] concluded), then the same question could be asked according to תוספות ר"י. According to ר"י, in a case where there is a ספק as to whom, maintains that she is אסורה. This would seemingly contradict the statement of that we are not on the basis of a ספק. The same question that is asked on can be asked on if the question is מספק אספק. If, however, the question would be understood that the question cannot be on because maintains that means מדברת ר"י, which is certainly not זעירי. The question would be only on who interprets מדברת גבעליה, which mean פרך שני גםרא in גמרא which indicates that she is claiming לא נבעלתי and not לכשר נבעלתי.

SUMMARY

ראוה מדברת תוספות (זעירי in the case of גمرا) assumes that (according to ר"י) the woman claims לא נבעלתי. The conclusion (based on the second פרך) is that she claims גבעלתי. (according to ר"י) concludes that the contradiction between לא נבעלתי and לכשר נבעלתי (according to ר"י) maintains that a ספק (ביהה) maintains that a ספק (ביהה) על היחוד. It is not clear why the same question does not apply to (according to ר"י) רב אסי.

THINKING IT OVER

1. Is there any difference whether we are like גורס that לא נבעלתי or as our גירסה (לכשר נבעלתי מהימנא)?¹⁰

2. Originally maintained that she is claiming לא נבעלתי¹¹. How can we reconcile this with our משנה, where she states 'איש פלוני וכחן הו'א'; she does not say לא נבעלתי!¹²

3. In the question of that the question (on זעירי was הוה אמיןא); why indeed did not the ask a similar question of ספק אספק (even) according to רב אסי?¹³

¹⁰ See footnote # 8. See ר"ש"ד.

¹¹ See footnote # 6.

¹² See footnote # 1.

¹³ See footnote # 3.

4. Initially assumed that she must be saying, **לכשר נבעלתי** תוספות that if she claimed **לא נבעלתי**, since it is a **ספיקא ספיקא**.¹⁴ However if she is believed to claim **לא נבעלתי** then she should also be believed that she has a **מגן** for **לכשר נבעלתי**!¹⁵

¹⁴ See footnote # 4.

¹⁵ See י"ג.

מעלה עשו ביוחסין –

They set higher standards in regards to Kohannic lineage

OVERVIEW

The gemara asked that the ruling of ר' יוחנן על הכהונה (that contradicts the ruling of ר' יוחנן גמרא) contradicts the ruling of ר' יוחנן נאמנה (according to ר' יוחנן). The answer is that there is no contradiction. The ruling of ר' יוחנן is concerning (a subsequent) marriage to כהונה, therefore she is since, however the ruling of ר' יוחנן is not concerning marriage to כהונה. It follows therefore that the leniency of ר' יוחנן is concerning an איש who was אשת איש because פנוייה does not presume that ר' יוחנן is discussing a case even if a פנוייה was נבעלה; the only possible (subsequent) case is to a כהן² and we just concluded that ר' יוחנן is not discussing איסור כהונה.

The complete statement of ר' יוחנן גמרא is that these two rulings are discussing the same case; if there was a will give (for this act of marriage); however there will be no subsequent ramifications. This will ask that it seems from another gemara that these two rulings are discussing different cases, which seems illogical.

תוספות asks:

תימה דמשמע דין אוסרין על היחוד אירי באשת איש ולא בפנוייה –

It is astounding! For this answer of 'מעלה עשו ביוחסין', indicates that the ruling of ר' יוחנן גמרא is discussing a case of a married woman and it is not discussing a case of an unmarried woman. The reconciles the rulings of ר' יוחנן and ר' יוחנן that the reason is strict is because in his case there are ramifications for marrying into (and by we are more strict, since כהונה מעלה עשו ביוחסין); however in the case of ר' יוחנן, there are no such ramifications (therefore ר' יוחנן is lenient). This answer is valid if ר' יוחנן is discussing the case of an איש and the (only) concern is whether she is permitted to return to her husband. However, if ר' יוחנן is discussing the case of a פנוייה, then the concern whether there was or not, is (also only) in reference to whether she may marry a כהן. This is precisely the same concern as in the case of ר' יוחנן! In fact it is (almost³) the exact same case! Why is ר' יוחנן strict and lenient!? We must therefore conclude that ר' יוחנן is discussing an איש על היחוד. However there is a difficulty with this –

ובסוףקידושין (דף פא, ואו שם) מוקי מלקין על היחוד דזוקא בפנוייה –

¹ An example is that a woman who was married to a man was forbidden to marry an איש.

² There is no in marrying a woman who was נבעלה (even outside of marriage). Even a man may marry a woman provided that she was not נבעלה to a נבעלה.

³ In the case of ר' יוחנן she admits that נבעלה (לכשר); in the case of ר' יוחנן she claims that נבעלה.

'מלךין על' there establishes that the ruling of **'מלךין על'** is **only specifically in the case of a woman** – **פנואה** – **אבל באשת איש לא דעתה מוציאה לעז על בנייה**⁴ –

However if there was **by an**, there is no **מלךות**; the reason is as the **אשת איש** there states **for you will be spreading (false) rumors about her children**. The question is since the opening ruling of that **מלךון על היחוד** is discussing a and not an **פנואה**, it would seem obvious that the ruling immediately following, of **אין אסרים על היחוד** is a continuation of the former ruling and is also discussing a **פנואה** and not an **אשת איש**. However our **פנואה** indicates that **אין אסרים על היחוד** is discussing only an **אשת איש** and not a **פנואה**!

תוספות anticipates a possible (partial) solution to this question and rejects it:

ואפילו למר זוטרא דמלךין ומכרייז באשת איש –

רבashi who disagrees with **מר זוטרא** and maintains **that even by an we are**, and in order to prevent **פנואה** that we only know that there was (not). Seemingly according to **מר זוטרא**, there is no difficulty; since refers to an **איש**, so does refer to an **איש**. This is seemingly in agreement with the **תרוץ** of **מר זוטרא**. Nevertheless rejects the solution (even) according to **מר זוטרא**; for even **מר זוטרא** rejects the solution (even) according to **רבashi**.

מודה דבר פנואה נמי איירי –

агrees that the ruling of **מלךון על היחוד** is **also discussing** the case of a as well as an **אשת איש**.⁵ He is only adding to a that not only does **מלךון על היחוד** apply to a, that the **סיפה** of the ruling **מלךון על היחוד** is also discussing a (as well as an **אשת איש**), just like **מלךון על היחוד**. The question remains: if **פנואה** is referring to a (also), then the only concern by a is whether she remains **ר"י** **מעלה עשו ביחסין** for **רבashi**; if we maintain **לכהונה** for **ר"י**, it should apply to the case of **רבashi** as well.

תוספות answers:

ואומר רבינו תם דאך על גב דמלךין על היחוד איירי בפנואה –

And the says that even though that the ruling of **ר"ת** (**CERTAINLY**) **is** **מלךון על היחוד**, however the ruling of – **פנואה**,

אין אסרים על היחוד לא איירי אלא באשת איש –

(זעירי פנואה **is not discussing** the case of a **אשת איש** **but rather** it is discussing a case of an **איש**. It is the view of the **ר"ת** that on account of the difficulty of question, we are forced to split the two rulings of **רבashi**. The first ruling of

⁴ If an **איש** who was with a stranger would receive **מלךות**, it would be perceived that she was **מונת**. If it is assumed that she was **מונת**, then any (ensuing) children will be looked on as **פסילים**. They are either from the **בועל** (in which case they are **בני חיבוי לאוין**) or (even) from her husband (in which case they are **מזרים מה"ת** for she is forbidden to her husband).

⁵ See ‘Thinking it over’.

(מר זוטרא according to פנוייה is definitely concerning a woman (and also an ashet איש על הייחוד however the second ruling of אין אסירין על הייחוד is only concerning an ashet איש. However by a פנוייה of a ruling, according to ר"י (according to זעירי), would be that she is יהוד.⁶) אסורה לכהונה

תוספות has an additional question:

ואם תאמר והוא אמרין בפרק בתרא דנדירים (ז"ח צא,ב) -

**And if you will say; that we have learnt in the last מסקנת נדרים of פרק בתרא דנדירים (ז"ח צא,ב) -
גביה היה נואה⁷ דעתיל לגבה דההיא איתתא -
concerning this adulterer who entered the house of this woman -**

אמר ליה נואה לא תיכול מינהון דעתמינו הוויא -

The said to the husband do not eat from those foods for a snake tasted them and poisoned them. The husband then asked if he is permitted to live with his wife, since the נואה may have had relations with her –

אמר רבא איתתא שרייא אם איתא דעבד איסורא ניחא ליה דליםות -

Rava ruled that the woman is permitted to be with her husband. gave a reason for his ruling, for if it happened that he transgressed with the woman he would have preferred that the husband die; he would not have prevented him from eating the poisonous fruit. This proves that there was no ביהה.

משמעות דיין לאו האי טעמא היה נאסרת על ידייחוד -

It seems from the fact that required a reason to permit the woman to her husband that if there was no such reason she would be, just through the יהוד alone. This contradicts what has been said up to now that אין אסירין על הייחוד refers specifically to an ashet איש. There is no need for any additional proofs to permit the husband and wife to remain together.

תוספות answers:

ויש לומר דנוואף שאני -

And one can say that by a נואה it is different. There is more suspicion by a נואה than by a regular person. Therefore required additional proof that there was no ביהה.

תוספות offers a different interpretation:

והרב רב יוסוף דשליטן תירץ דין אסירים על הייחוד אירוי בפנוייה כמו מלקין על הייחוד -

⁶ The reason why by a נואה she is (for we assume there was פנוייה [לנטין ולמנזר], and by a יהוד (ביהה [ביהה ויהודה]), and by a נואה (ביהה גمرا) that she is (the answer of our מותרת לבבילה that we assume there was no פנוייה). In reality we assume there was no פנוייה by a יהוד; however we will not allow her to marry a Cohen, since she can marry anyone else (besides a Cohen); the Cohen however will become אסורה לבבילה. We do not wish to do this, since it is based only on a ספק.

⁷ The gemara relates that when he was (hiding) in the house he noticed that a poisonous snake ate some of the food in the house. When the נואה realized that the husband returned home the snake appeared.

אין אסרים And **answered ר' יוסף משליטן** original question that the ruling of פנואה is concerning a just like the ruling of מלקין על היחוד is concerning a פנואה. This interpretation removes original question; how is it possible that they are both concerning a פנואה and אשת איש. According to ר' משליטן, they are both concerning a פנואה.⁸ However there still remains the question, that if פנואה is concerning a why is this any different than the case of ר' ביחסין where פנואה is concerning a?

– אין אסרים על היחוד explains that the ruling of תוספות

ולא אירוי לכהונה אלא אין אסרים אותה לבנו כשתתיחד עם אביו –

And we are not discussing her eligibility to marry into; for she is indeed אינן אסרים על היחוד but rather the ruling of that רב since אסורה לכהונה teaches us **that we do not prohibit her** from marrying **his son when she was with the father.** If she was with ר' יעקב מתייחד, she may marry the son of ר' ראובן, for we do not assume that there was ביהה. This rule is necessary (specifically) –

לרב יהודה דאסר באנות אביו (יבמות צ,א):

according to ר' י' who prohibits the relationship of a person with a woman who was (even merely) **forced by his father.** One may not marry his father's wife (מדאוריתא) if they were legally married. However if a father had a forced relationship with a woman; there is no איסור for the father's son (from a different marriage) to later marry her, since she is not the father's wife. ר' however maintains that there is an איסור מDAOРИיתא even by אנות אביו teaching us that if there was merely ייחוד with the father, the son may marry this woman (who was מתייחד with his father). We do not assume that there was any just.⁹

SUMMARY

The ruling of אשת איש according to מלקין על היחוד (and an according to פנואה) is concerning a (and an according to מלקין על היחוד); however the ruling of אשת איש according to זוטרא is concerning only an אשת איש that was נואף מתייחד להתרה לבעלה maintains that הר' ר' יוסף משליטן permits a son to marry a woman who was מתייחד [(even) according to ר' יהודה].

THINKING IT OVER

פנואה refers to a (as well as to an אשת איש).¹⁰ Why does מרא זוטרא assumes that מרא זוטרא agrees that מרא זוטרא maintains that אשת איש על היחוד refers only to an אשת איש?!

⁸ As far as the question from נדרים is concerned, the answer will be the same, that בזאך שאני.

⁹ In this case there is no מעלה עשו ביחסין, since we are not dealing with a כהן (see [however] footnote # 6).

¹⁰ See footnote # 5.

השבתנו על המעוברת –

You have responded to us concerning the pregnant woman.

OVERVIEW

ת"ק cites a בריתא גمرا which quotes a (rather lengthy) dialogue between the ר"ג ור"א. The בריתא גمرا explains the ת"ק; that at one point the ת"ק seems to concede to the ר"ג. The ת"ק states that; ‘you have effectively responded to us concerning a pregnant woman’. It seems inconceivable that the ת"ק actually agrees with ר"ג concerning a pregnant woman, for in the same משנה there is a dispute between ר"ג ור"א and ר"י (even) concerning a pregnant woman.

The בריתא גمرا also states that ר"י maintained that just as a נבלתי is not believed to say שבייה¹, the same applies by a מדברת. This conflicts with other statements made by ר"ג (and the גمرا). Our תוספות addresses these two issues.

פירוש² לדין ניחא דasha מזנה בודקת ומזנה ולא דמיा לשבייה -

The explanation of the phrase תנא קמא השבתנו וכו', is not that we actually agreed to the response of ר"י, but rather what they meant to say is that although we still disagree with you even by a מדברת, for **according to us it is understandable** that a pregnant woman is believed to claim נבלתי, (not as you ר"י) maintain, **for a promiscuous woman verifies** that her consort is **and then she is promiscuous**; she has a choice with whom to consort, therefore she is **כשרה** and the מדברת **is not comparable to a captive**; who has no choice, but must yield to her captors, therefore it is presumed that she was נבללה to her captors, which disqualifies her for כהונה –

אלא לדידך דעתך לך סברא תינח מעוברת -

However according to you (ר"י) **that you disagree with this logic** of pregnant woman and a שבייה maintains that there is no difference between a pregnant woman and a שבייה ר"י; בודקת ומזנה, and both are presumed to have been נבללה, and therefore פסולות לכהונה so, granted by a מדברת, that she will not be believed according to your logic, since she was נבללה. It is the same as שבייה. We appreciate (although we disagree with) your view –

¹ A שבייה is a woman who was held captive by non-Jews. It is assumed that she was held by them. She is subsequently אסורה לכהן (even if she is a פנואה). If her husband was a כהן she is אסורה לבעלה.

² The term פירוש (or קלומר), generally indicates that the meaning is different than what a cursory reading would indicate.

³ See ‘Thinking it over’ #1.

אבל מדברת⁴ אפילו לפי דבריך יש הפרש דלו יש עדים ולזו אין עדים ואיכא מיגו -

however in the case of even according to your opinion there is a difference between a and a, מדברת a and a she was, which presumes, ביהה, since she is a, however by this one (she was) there are no (דברת) therefore she should be believed when she claims to have claimed. In essence the ת"ק says to we can see your point concerning a (even though we disagree with you), however how can you argue with us concerning a??!

גמרה continues quoting and explaining theתוספות.

אמר להם מדברת היינו שבייה וכמו שшибיה אינה נאמנת לומר לא נבעלתי -

He said to them that even is the same as a; they are both equally presumed to have had and just as a is not believed to claim I was not; נבעליה we assume that she was and is נבעלה – אסורה לכהן and is נבעלה and is נבעלה –

הכי נמי מדברת לפי שאין אפוטרופוס לעריות -

The same applies also for a, מדברת, that we assume that she was; even if she claims to have had, נבעלתי, for there is no supervisor concerning illicit relationships. There is no one preventing them from having. The assumption is (as by), that if there was ביהה there was ביהה.

תוספות anticipates a difficulty. According to this explanation; ר"י maintains that in a case of if she claims to have had she is not believed.

ומיהו פירוש זה לא יתכן למי דפרישית לעיל⁵ דרבנן יהושע נאמנת לומר לא נבעלתי -

However this explanation cannot coincide with what I have previously explained that according to ר"י she is believed to claim. לא נבעלתי

תוספות responds:

ופירש רבינו יצחק בדוחק מדברת היינו שבייה -

And the ר"י reluctantly explained that the phrase מדברת היינו שבייה does not mean that just as a is not believed to claim, לא נבעלתי similarly a is not believed to claim, לא נבעלתי this is not true. If there were only, עדי יהוד, she is believed to claim and remains נבעלתי; this is not true. Rather the phrase מדברת היינו שבייה means ביהה לכהונה –

דכמו שшибיה בחזקת בעולה כך מדברת בחזקת בעולה -

⁴ There is a difference between רב אשי and זעירי. מדברת maintained that it means מחלוקת concerning the meaning of זעירי. נסתירה means מדברת is cited to refute רב אשי and prove that רב אשי means נסתירה. This is cited to refute רב אשי while maintaining that it means נסתירה. עדי ביהה there were no נסתירה.

⁵ גמרא ר"י נאמנה is לא נבעלתי brought a conclusive proof that according to דף יג,א תוד"ה (רב, וד"ה) ואין תוד"ה ואין (יג,א). See footnote #8 in פרק שני (טז,א) where it says 'דאי בעי אמר לא נבעלתי מהימנא'.

That just as a woman is presumed to be a woman, so too is a woman presumed to be a woman (before she makes any claim, we presume her to be a woman), this presumption is relevant –

לענין שאם אמרה לכשר נבעלתி שאינה נאמנת במו –

regarding that if she claims that she is not believed even though there is a woman that she could have said (and had she said, she would have been believed [as opposed to a woman]). The reason the woman is not effective, is –

לפי שיראה לומר לא נבעלתி ולהכי אהני דין אפוטרופוס לעיריות דלא חשבין ליה מיגו:
לא נבעלתி because she is ‘afraid’ to claim⁶; **לא נבעלתி** she senses that the claim of is a mockery, no one will believe her, **and this is what** the ruling of **אין אפוטרופוס** **accomplishes that we do not consider** the claim of **לא נבעלתி** as a **מגוי**. The fact is that she was, as she herself admits that (לכשר) נבעלתி, נבעלה. She cannot imagine that people will believe her if she claims, **לא נבעלתி**, since **אין אפוטרופוס לעיריות**. This is considered that she has no, **מגוי**, and therefore she is not believed.⁷

SUMMARY

The phrase **השבתנו על המעוברת** means that you have defended your position concerning even though we disagree with you. The phrase **מדברת היינו שבייה** means that there is a presumption of **ביה** in either case.

THINKING IT OVER

1. The **claims that (even) by a woman** she is believed that **ת"ק**, since **מעוברת** a woman, however, there is a possibility that she was **אשה מזנה בודקת ומזנה**, where she loses the **חזקת כו'** of **חזקה**. Why is she believed?⁸
2. seems to be saying two reasons why there is no **מגוי**. One: because she is **בחזקת בעולה**, and two: because she is reluctant to claim¹⁰. Are two reasons required!?

⁶ See ‘Thinking it over’ # 2.

⁷ The **maintains that even a woman is believed to claim** (although she has no **מגוי**) [of **לא נבעלתி**] (לכשר נבעלתி) since **ת"ק** maintains that even a woman is believed to claim (although she has no **מגוי**) [of **לא נבעלתி**] (לכשר נבעלתி) (although she has no **מגוי**) (although she has no **מגוי**). However **ר"י** maintains that even by **נסתרה**, where there (seemingly) is a woman, she is not believed to claim, for she will not willingly claim (falsely), since **אין אפוטרופוס לעיריות** **לא נבעלתி**.

⁸ See footnote # 3.

⁹ See סוכ"ד אות נב.

¹⁰ See footnote # 6.

מסיע ליה לרבי יהושע בן לוי -**ריב"ל This is a support to****OVERVIEW**

אין, since, רבי יהושע according to שבואה is the same as גمرا. The asks גمرا that there is a difference between a שבואה and a מדברת. By a there are however by a there are מדברת. Why should we assume by a that she was גمرا? The concludes that since (regardless of the previous question) maintains that מדברת הינו שבואה ר"י), this supports the view of רוב פסולים אצלם even by מחייב a מחייב ר"ג ור"א that ריב"ל. Therefore it is understandable that רוב disagrees, for he maintains that a מדברת is different than a שבואה.¹ It would still seem however that a מדברת is equivalent to a שבואה. For by all her captors are גוים. She will be no matter who is her. However by a there are only מדברת; perhaps she should be since it is possible that she was נבעללה לכשר לכהונה. Our will discuss this issue.

תוספת asks:

הקשה רבינו تم אכתי תיפוק ליה דהתם בשבואה כל פסולים והכא בחורבה דברא רוב -

לדברי **questioned** this **that still** (even after it is ascertained that גمرا **Rabbi** nevertheless **should differentiate** between a **פסול** and a **שבואה**; **for there by a**, she is **שבואה**, since **everyone is a**; **פסול** **לכהונה**, all her captors are **גוים** and all are **פושל** through their **ידי**.² It is not merely a **רוב**, **however here by the ruins in the fields**³ there are merely a **majority** of **פסולים**; not everyone is **ר"י**. Perhaps in such a case even **ר"י** should agree that she is **לכשר נבעללה נאמנה** to claim.

תוספת answers:

ותירץ דרוב הכל -

And the **Rabbi answered that a majority is the same as all.** The **תורה** teaches us to follow the **רוב**. The **רוב** has the same power as **כל**. We cannot differentiate between the two.

¹ שבואה actually maintains that ר"י even **פסול** is, where seemingly we cannot compare it to a גمرا. See סוכ"ד אותיות נט-סא who discusses this issue.

² See 'Thinking it over' # 1.

³ ↑ is offering an example of **רוב פסולים** by a גمرا. The previously (on the top of this), cited the **עמוד** **תוספות** between בריתא in a concerning a **הורבה** and explained that by a **הורבה**, people come for all over the world, which makes it most of the world are גוים.

Therefore if by the same holds true by the case of a woman that she is claiming to be true, all the same holds true by the case of a woman that she is claiming to be false. **לכשר נבעלתி**

may all and may anticipates a difficulty. Perhaps there is a difference between all and may be equivalent when there is no one who counters the claim. However when there is a one who counters the claim, then all may not be equivalent to all which pursues this thought, and ultimately rejects it.

וליכא למימר במדברת⁴ דלייא אלא רוב איכא למימר סמוך מיעוטא לחזקה -

And it cannot be said that by a since there is only therefore it is possible to argue, that the minority should support the majority of this woman. The woman had a right (before this incident). There is also the possibility that she was with one of the two factors of this woman. These two factors should be combined to offset the claim -

ואיתרע לה רובא -

And the will be a flawed. **רוב פסולים** is effective (only) against a woman. Here however, in addition to the factors that are present, the woman also possesses a factor; she was born to her, may have been undermined by the factors and the factors combined. In a case of (as by), we must assume that she was born, since there is not even a factor. However by, since there are two factors, this joins with the factors, to disqualify the woman. We should therefore assume that the woman has been neutralized.⁵ The original question remains. We cannot compare which is only a woman against a woman and a woman.

replies:

דאפילו אית להו סמוך מיעוטא לחזקה⁶ לרבע גמליאל⁷ ורבנן יהושע -

סמוך מיעוטא לחזקה agree to the concept of **ר"ג ור"י** if **מכל מקום לא הו אלא פלוגא ופלוגא** -

רוב פסולים nevertheless it will not be as if there is no concern at all, since the was neutralized; it is not so but rather it will be considered as half against half; there is an even chance of as of. The factor may have accomplished that the woman is not exclusively effective; however it is not completely irrelevant. The factor will now be equivalent to the factor -

ודין הוא שתאסר מספק דספק איסורה לחומרא -

⁴ See 'Thinking it over' # 3.

⁵ See later (footnotes # 8&9).

⁶ See **ר"י** that we can derive from a proof (קיטא) in that accepts the concept of **סמוך מיעוטא לחזקה** that subsequently retracts this proof. **ש"י**. There would obviously be no question at all if **ר"י** does not maintain **סמוך מיעוטא לחזקה** (see footnote # 9.).

⁷ See 'Thinking it over' # 2.

And it is the law that she should be forbidden to, כהונה, **for** there is **an** evenly divided **doubt** whether she was נבולה or לפסול, **for a doubt** in matters of **prohibition** is resolved in favor of a **restricting** decision. If it is not known whether she was נבולה or לפסול and it is an evenly divided doubt, she is not permitted to marry a כהן, for it is a ספק איסורה להזמא.

תוספות anticipates a difficulty with this answer:

ולא דמי דעתך שנמצא מצד העיסה⁸ בפרק עשרה יהסין (קידושין זף, א ושם) -

And it is not comparable to the case of a **child that was found beside a dough**, which is mentioned in **פרק עשרה יהסין** -

דמתהדרין⁹ מטעם סמוך מיועטא לחזקה -

where we render the child based on the ruling of עיטה טהור based on the ruling of עיטה טהור. A minority of children will not have separated the dough. There is a חזקת כשרות on the עיטה טהור and it nullifies the minority. We combine the two to the עיטה טהור and it nullifies the minority. This seemingly contradicts what was maintained. That even if we assume סמוך מיועטא לחזקה, it still remains a ספק השkol. Why is the עיטה טהור and the woman פטולה?!?

תוספות responds:

אם אמרו ספק טומאה לטהור יאמרו ספק איסור להתיר כדאמרין בפרק כייסוי הדם (חלייז'ז'פ, ב):

For even if they ruled that a child is ספק טומאה is permitted, as the states in גמרא! Definitely not! We cannot compare a ספק טומאה to a ספק איסור¹⁰. ספק טומאה is more stringent than a ספק איסור.

SUMMARY

רוב and are equivalent (when there is no **חזקה**). According to those who maintain **איסורים** and **פלגא**, that situation is (generally) viewed as **פלגא** and **איסור** by **טהור** and by **טומאה** (under certain circumstances).

⁸ In the case there (according to interpretation there) a תינוק טמא was found next to a (large piece of) dough - עיטה. The boy had a (small) piece of dough - בזק in his hand. The question is whether we follow the רוב children who tend to separate a בזק from an עיטה, which assumes that the תינוק himself separated the בזק from the עיטה, rendering the עיטה טהור together with the fact that the תינוק did not separate the dough, but rather that another אדם טהור separated the בזק and gave it to the תינוק, in which case the עיטה טהור remains. There is a רבנן מחלוקת between the two who are the majority and who is the minority.

⁹ This is the opinion of ר' נסמך who is the majority. Therefore there is a minority which can be attributed to the **חזקה**. However the רוב maintain that the minority is non-existent in the face of the majority. Therefore there can be no סמוך מיועטא לחזקה. See previous footnote # 8; עיי"ש בגמרא.

¹⁰ A boy who is also ספק טומאה ברה"י. טהור מדאוריתא is ספק טומאה מדאוריתא. In our case the majority is the **טהור**, therefore the עיטה is the **טהור**, and it is only a question of ספק השkol; therefore they were lenient by a ספק השkol. However here by a ספק נבולה לפסול. Alternately (states there that) the רוב גמור מטפוחות is not a ספק טומאה מדאוריתא. עיי"ש, ר' גמור מטפוחות.

THINKING IT OVER

גמרא maintains that by a it is **שבואה**, not merely **כל**.¹¹ The reason the **רוב** maintains that a **נבעלה** is considered **שבואה** is because there is however the possibility that all her captors were from the **מייעוט** that are not **פָּרוֹצִים**. It would seem that even by a **פסולה** **לכהן** she is on account of, not **רוב**, but **כל**.¹²

2. Why does mention concerning ר"ג **תוספות** **סמוֹך מֵיעוֹטָא לְחַזְקָה**?¹³ Seemingly all that is relevant is if ר"י maintains **סמוֹך מֵיעוֹטָא לְחַזְקָה** not!¹⁴

3. explains why we cannot say by a **סמוֹך מֵיעוֹטָא לְחַזְקָה**.¹⁵ Why did **מעוברת** omit **תוספות**?¹⁶

¹¹ See footnote # 2.

¹² See סב, ס, סוכ"ד אזהר ש"ש.

¹³ See footnote # 7.

¹⁴ See footnote # 4.

¹⁵ מהרש"א.

מכשיך אפילו ברוב פסולים -
He renders her fit for even in the situation where a majority of disqualifying people are available

OVERVIEW

כשרה לכהונה and נאמנת according to ר'ג ור'א the woman is even in a case of קדושין in general states that it is who maintains that according to ר'ג will resolve this apparent discrepancy.

והא דקאמרין בפרק עשרה יהיחסין (קדושים עד ואושם) גבי אבא שאל -

And that which the states in concerning the which states that – אבא שאל

היה קורא לשtokiy b'doki -

would refer to a as a **בדוקי** is a child whose mother is known, but not his father. When the child refers to anyone as his father, his mother silences him; hence the term שtokiy would refer to this by the name אבא שאל. שtokiy

ומפרש בגمرا שבודקין את אמו ואומרת לכשר נבעלתי -

And the explains what is meant by **בדוקי**. This child can be verified as being a child **for we verify by the mother**; by asking her who fathered this child? **And when she claims that he was fathered by a**, she is believed and the child is **כשר**. We do not suspect that it is the child of a or a **מנזר נתן**.

ופrisk במאן רבנן גמליאל תניינא חדא זמנה היתה מעוברת כולי -

And the challenges this explanation and asks **like whom** does rule; **משנה** **רבנן גמליאל** referring to our **she was pregnant, etc.** maintains that if she claims **לכשר נבעלתי** she is believed –

פירוש³ וזה היה למימר וכן אמר אבא שאל וכן פירש שם בקונטרס -

The explanation of this question in the state this ruling as an independent ruling **when the should have stated, and** **אבא שאל** **אבא שאל also stated** as, that the **אשה** **ר'ג** **ר'ג** **אשה** **אלה שאל**. It seems that

¹ It seems that ר'י derives this from this which is cited in our גمرا. The fact that compares ר'ב ר'ג and ר'י, indicates that the discussion between them was even in a case of קדושים.

² פרק עשרה יהיחסין דף סט.א.

³ The terms (and) are used when the explanation given is different than the apparent explanation. The simple interpretation of the question is why does the question mention this at all, since it was already taught by רבנן גמליאל. Perhaps the reason (and) reject this ('simpler') explanation is because it is not understood why the opinion of אבא שאל should not be added to that of ר'ג and ר'א. Especially if he was a later, as is apparent from the גمرا.

שאול is merely agreeing to the ruling of ר' ג, and so does ר' ש"י there explain it in the same manner as stated.⁴

- ומושני דאבא שאול עדי פא מרבען גמיליאל דאי מהתם הויה אמיינא ברוב בשרים אצלה בולוי

And the reason the **מישנה** cites as an independent view, not merely as agreeing with ר' ג, is **because אבא שאול** teaches us **more than I, נאמנת ר' ג**, for if from there; from our **כהובות** in **מישנה** states that she is **may have thought** that she is believed only when there are **a majority of כשרים by her, etc.** Therefore even if there are **לכשר נבעלת** **אבא שאול** teaches us that she is believed to say even if there are **מסכת קדושים** in **גמרא**. This concludes the citation from the **רrob פסולים**.

תוספות now presents his question:

אף על גב דאמירין הכא דרבון גמליאל מכשיך אפיילו ברוב פסולין -

and אבא שואל is מכשיר ברוב פסולים say there that גمرا. **ר' ג** Why does the addition of גمرا states here in the name of ריב"ל even though the states here in the name of ר"ג even by we do not know this from ר' ג, when our clearly states that ר' ג even by ⁵.

תשובות answers:

אבא שאל קאי אמתניות ומחנויות לא משמע מידי דאייריו ברוב פסולים -

(כחות בוטה per se it is referring to our **משנה** itself and from our **אבא שאל** not indicated at all that it is discussing a case of **רוב פטולים**. It was only (the **אמורא** who maintains (by inferring from the fact that **ר"ג** (**בריתא**) even **מכ Shir** is that **קדושים** in **גמרא** states that by citing **משנה**, this indicates that **הקשר** to be effective even **ברוב פטולים**.

ר"ג concluded that the discussion of the difference between גمراין קדושין concerning the difference between משנה and is only regarding what is apparent from the משנה itself; not how the subsequent interpretation of משנה leads to discuss an additional difficulty. The גمراין there originally stated that even the daughter is adding on to ר"ג that even the daughter is כשרה לכהונה. The גمراין there rejected this interpretation. תוספות continues to discuss that גمراין:

⁴ וכן היה אבא שאול אומר בדבריו כתובות משנה here in משנה should have added: 'וכן היה אבא שאול אומר כדבורי' (and it should not have been mentioned in קדשוין at all).

⁵ מישר ברוב פסולים (דין המשנה) would have no question. The Gemara cannot ask that the משנה should not teach us a question of the משנה itself wants to teach us this דין. However, since the question there was that the משנה (here) should have stated אמורא, the subsequent answer there is not understood. Granted that ש"א wants to teach us that he is ר' ג, but ר' ג agrees to that as well (as inferred it from the בריתא), so why did not the משנה simply state that (See מהר"ם ומהרש"ל).

והא דפְּרִיךְ הַתָּם לְעֵיל לְמַאי דְּהֹה בַּעַי לְמַיְמָר דָּאָבָא שָׁאוֹל אֲתָא לְהַכְּשִׁיר בְּבַתָּה -

And that which the there previously challenged that which the originally wanted to say that is coming to add on, that the daughter is also (even though she has no right as the mother). The challenges this assumption that is adding –, by asking –

הנִיחָה לְמַאן דָאָמֶר לְזֶבֶרְיָה מַכְשִׁיר בָּה פּוֹסֵל בְּבַתָּה -

This answer is appropriate according to the one who maintains that who is the mother, nevertheless he disqualifies the daughter. We can then explain that ש"א is adding that even the daughter is – כשרה

אבל לְמַאן דָאָמֶר מַכְשִׁיר בְּבַתָּה מַאי אַיכָא לְמַיְמָר -

However according to the one who maintains that ר"ג is also what can be said! What is ש"א adding to ר"ג? This concludes the citation from the gemara. According to what was previously said that we do not concern ourselves with other statements; only with the statement of the sages, what is the question. In the statement it is not at all clearly stated that as to what rules concerning the daughter is (in fact it is a between the two) ⁶ as to what rules concerning the daughter is (between the two), therefore it can easily be assumed that ש"א is adding that even the daughter is; for never stated it (clearly) in the statement. It is seemingly exactly the same as what the gemara concludes eventually, that ש"א is adding רוב פסולים, which never clearly stated in the statement (even though ריב"ל derives [from a] that it is so).

מכשיך ברוב פסולים answers that there is a difference between the assumption of (which we cannot assume from the statement) and the assumption of (which we can assume from the statement):

התם פריך שפייר דאפיקו לצעירי⁷ לשון המשנה דקתווי מה טיבו של עובר זה -

There (in the case of it is a proper challenge for even according to who maintains that means and therefore we are not compelled to interpret the duplicity of and to include nevertheless even according to the syntax of the which reads, ‘what is the nature of this fetus’; this syntax of mentioning the

⁶ גمرا immediately following our רבי אלעזר and רבי יהנן.

⁷ The 'stress' of 'אפיקו' is much stronger according to ר"א. פסול בבתה who is goras רבי אלעזר is מהרש"א who clearly maintains that פסול בבתה (and hence how can we say [that even according to ר"א the simple reading of the statement indicates] that the daughter is also as כשרה as ש"א). The 'explanation' according to ר"א, will be that ש"א maintains [clearly in the statement (according to ר' יהנן משנה)] that the daughter is also as כשרה or מכשיך בבתה or מכשיך בבתה, for whom we do not know whether he is. The 'explanation' according to ר"א, will be that ש"א basically agrees that the statement indicates that however there is the שתווי of בריתא, which indicates that ר"א maintains that פסל בבתה, therefore according to ר"א, who interprets that even the שתווי of בריתא agrees that certainly the statement itself indicates that מכשיך בבתה is ר"ג.

child –

משמעותו של הכהן בבתה:

indicates that ר"ג is coming to be even her daughter⁸. Therefore since this is indicative in the הכהן itself (as opposed to ר"ג being פסולים which is not indicative in the הכהן at all), therefore the קדושין there asks properly that according to this, there is no need for א"ש to add because ר"ג already clearly stated it in the הכהן by using the term 'מה טיבו של עובר זה'.

SUMMARY

אבא does not indicate whether we know it from; מכשיך ברוב פסולים is ר"ג משנה (ר' יוחנן to בבטה) מכשיך בבטה is ר"ג משנה קדושין in שאלה since it uses the expression מה טיבו של עובר זה.

THINKING IT OVER

1. רוב פסולים נאמנה even אבא שאלה גمرا states that she is even by Do we know this (only) because otherwise אבא שאלה is redundant (to), or do we know it from the ruling of אבא שאלה itself?
2. ברוב פסולים נאמנה even אבא שאלה גمرا states that she is even, does that meant that (only) ר"ג (even) maintains that or that (even) maintains that?

⁸ Otherwise, the should have stated, or מה טיבו של איש זה.

פשיטה מי ידעין אבוה מנו –**It is obvious! Do we know who the father is!?****OVERVIEW**

שמעאל stated that if one of ten assembled כהנים was a woman, the ensuing child is a שותוקי. The question is; in reference to what do we consider him a ‘father’. It cannot mean that he cannot inherit his ‘father’; that is obvious, for we do not know who his father is! This will explain why indeed we cannot say that שמואל was discussing the inability of the child to inherit, even in special circumstances.

תוספות anticipates a possible solution to the question of גمرا' s; it may be possible that שמואל does need to teach us concerning the inability of this child to inherit:

הכא¹ לא בעי לשינוי לא צריכא² די תפס -

Here, the גمرا' did not want to answer that admittedly, the ruling of שמואל that the child is deprived of the inheritance, is generally not necessary; except for the case if he seized the assets of his purported deceased father.³ In that situation שמואל teaches us that even though the שותוקי is in possession of the assets,⁴ nevertheless we remove him from them, since we are not certain that the deceased is his father. This would seemingly answer the question of גمرا' s!

שמעאל's will initially attempt to prove why this may indeed be a proper explanation of his ruling, for we find this explanation elsewhere –

כדמשני בפרק עשרה יהשין (שם זעה, ואושט) גבי אروسה שעיברה⁵ -

as the גمرا' answers in **פרק עשרה יהשין regarding a betrothed woman who was pregnant.** שמואל stated there that the child of this אروسה שעיברה is denied the inheritance of the estate of his mother's אروس. The גمرا' asked that this is obvious; we do not know who the father of this child is. Why should he inherit the estate of the אروس? The גمرا' answered that שמואל is teaching us that even if the child seized the assets of the estate; nevertheless we remove him from it. We see from that גمرا' that even in a case where it is פשיטה that the child does not initially inherit, nevertheless there is a necessity to teach us that (even) if he took possession of the estate he may not retain it. The גمرا' could have answered the same in our case, that even

¹ This is meant to exclude elsewhere, where such an answer is given, as Tosfos will shortly state.

² We do not even know who the father is.

³ The ‘child’ claims that this person is his father.

⁴ The child is the מוחק. There is a ספק, that possibly this person is the father. Perhaps the ruling should be that המוציא. The other heirs should prove that he is not the child of the deceased. See ‘Thinking it over’ # 1.

⁵ An אروسah is prohibited from having marital relations with anyone, including the אروس, until the time of נישואין. The אروسah, by being promiscuous, placed the paternal lineage of this עבר in question.

though it is obvious that the child does not initially inherit the estate of any of these ten people, nevertheless שמואל is teaching us that even if, **תפס**, he does not retain it.

תוספות answers that the case of an **ארוסה** is different than our case here:

דחתם רגלים לדבר דמאروس נתעbara ואיכא למיiali ביה טפי מבאייניש דעלמא -

for there it is indicative; there are ample grounds to assume **that she was impregnated from the **ארוס** and we can assign the pregnancy to him;** the **ארוס**, **more than from another person.** It is more readily assumable that the child was fathered by the **ארוס**, since the **ארוס** and **ארוסה** were close to each other, and preparing to marry each other. Therefore there is a **חידוש**, that even if the child was **תופס**, nevertheless we remove from him any assets which he took. We do not assume that he is the heir. However, in our case, where one person from ten was **בועל** this woman; there is no reason to even think that if the child was **תופס** the estate of any of these ten, that he has any right to it. This person is in the minority. It is more readily assumable that his father is from the other nine; the majority. Therefore it is **פשיטא** that even if the child was **תפס**, we dispossess him.

SUMMARY

There is more reason to suspect that the **ארוסה** became **מעוברת** from her, than to assume that any specific one of the ten is the father of the child.

THINKING IT OVER

1. Why indeed do we not say if the child was (both in our case and in קדושיםן [especially if he was a **בעל** where he is that **לא מינו** **תפסתי**]⁶)?⁷
2. How can we justify the **תוספות** of **הו"א**, that the child's claim in our case is equal to (or perhaps even stronger than) the child's claim in the case of the **ארוסה** **שנתעbara**?

⁶ See ריטב"א.

⁷ See footnote # 4. See (ח"ב מ"ה).

בעין זרעו מיוחס אחורי - We require that his seed be pedigreed after him

OVERVIEW

Our maintains that the **פָּסָוק** teaches us that in order to be **זרעו אחורי** and **גּוֹי**, a **כהן** must be known. His lineage must be known. **תוספות** will cite a seemingly contradictory and resolve the contradiction.

תוספות responds to an anticipated difficulty:

והא דאמר בהחולץ (יבמות זז,א) ראשון ראוי להיות כהן גדויל¹ גבי ספק בן תשע לראשון -

And concerning that which the **states in פרק החולץ** regarding a child of **questionable** paternity; whether there was a **nine** month pregnancy from the **first** husband, or a seven month pregnancy from the **first**; **the first child is fit to be a g** -

בפרק נושאין על האנושה (שם זז,ב) פריך לה ומני זרעו מיוחס אחורי דברנו -

תוספות replies: the **asks this in the** **פרק נושאין על האנושה** **גمرا** answers that the requirement of **זרעו מיוחס אחורי** is a **rabbinical** requirement; it is not a requirement, for -

קרא אסמכתא² בعلמא הווא וכי גוז רבנן בזנות בנשואין לא גוז -

The **כהן** **is merely an אסמכתא**, and when did the **decree** that the **must be** **זרעו מיוחס אחורי**, only to exclude a child born out of **promiscuity**, however if the child was born **into a valid marriage**, they **did not decree** that it **must be**. Therefore by the case of **יבום** since there was no **znot**; it was a regular marriage (concerning the first born), therefore there is no requirement of **זרעו מיוחס אחורי**.

SUMMARY

The requirement of **כהונה** **זרעו מיוחס אחורי** disqualifies from an offspring of a **znot** relationship; not of a marriage relationship.

THINKING IT OVER

Why does **תוספות** cite a question and answer that is **מפורש** in the **גمرا**?!³

¹ The case there is of a **יבם** who was **מייבם** within three months of his brother's death. It is not clear at that point whether or not she was pregnant with her (original) husband's child. The **יבמה** bore a child after seven months of **יבום** and within nine months of her husband's death. It is not clear whether this is the husband's child (a nine month pregnancy) or the **יבם's** child (a seven month pregnancy). In either case the child is to be a **g** (if the brothers are **ספיק** **מזרירים** for the child is **כשר**). [Any future children from the **יבם** however, are **כהנים** **aszot** **אשרו** **שלא** **במקום** **יבם** as an **אשרה** **בבום**, and any future children are **מזרירים**]. In that case the lineage of the child is in doubt; we do not know who his father is. Nevertheless the **ברייתא** states that he is **ראוי** to be a **g**. This contradicts the **גمرا** here.

² The term **אסמכתא** occasionally used a **פסוק** as a support for their **גזירה**.

³ See **ח"ב מ"ה**.

That betrothed groom and bride

[**ההוא¹ אروس ואروسתו** -

OVERVIEW

The Gemara is discussing a case of an אروس who became pregnant. The issue at hand is the status of the child.² Was the child fathered by the groom and therefore a ولد, or did a stranger father the child and therefore he is a מזוז? Rav Yosef ruled that there is nothing to be concerned about. Firstly the groom admitted that he had relations with the bride (therefore we presume the child is his). Secondly (according to understanding – even if the groom would not be present and claim that he had relations with the bride, there still is no concern), since the woman claims the groom fathered the child (she claims she only had relations with the groom), the child will also be a ولد, since the woman maintains that the child is believed to claim, לכה נבעלתי אישת.

There is another machloket cited in במוות יבמות and קדושים, which records a difference between רב and שמואל in a similar situation; where an אروس bore a child. רב maintains that the child is a מזוז and שטוקי a שטוקי; a ספק. There are differing variations as to the exact nature of this machloket. Our will reconcile various differences between the סוגיות.

קידושין begins by quoting the Tosafot:

והא דאמר בעשרה יהיחסין (קדושים ז עה,א) **איתמר הבא על אروسתו בבית חמיו³** –

And that which the relates in, 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 הولد מזוז⁴ ושמואל אמר הولد שטוקי⁵ –

רב maintains that the child is a מזוז, and שמואל maintains that the child is a שטוקי; he cannot marry a מזוז because he may be a מזוז, and he cannot marry a שטוקי because

¹ The following three Tosafot beginning with ההוא אروس (ה'ב) are bracketed in our text. According to the marginal note these were missing in earlier manuscripts. Many commentaries (including the Tosafot הר"ש, מהרש"מ שי"ף מהרש"א) do not comment on these.

² See later.

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 מזוז. The child cannot marry a יישרל'ית. However the child may marry a מזוז(ת).

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

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

he may be a **כשר**. This concludes the citing of the **מיירא**.

continues that we must say that the **ר' ושמואל** between **מחולקת** is in a case –

בשלא בדקו את אמו דאי בשבדקו קשיא דשמואל אדשומואל -

where they did not inquire of the child's mother, who the father is. Therefore **ר' ושמואל** maintains that the child is a **שתווי**, a **ספוק מזר**; **for if** the **ר' ושמואל** 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** **שומואל** **to גمرا** **שומואל** in our **קדושים**.

תוספות goes on to explain the contradiction:

דהכא אמר שומואל דעתמןת -

For here maintains that she is believed. If the **ארוסה** claims that the child is from the **ארוס** she is believed and the child is **כשר**. **תוספות** continues to explain where says that she is believed: **ר' 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) -

דהלהה רבנן גמליאל דעתמןת -

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

והתם קאמר איפוך⁹ שומואל אמר הولد מזר -

And there in the **גمرا קידושין** **said reverse** the aforementioned opinions of **ר' ושמואל**. According to the reversal maintains **ר' ושמואל** and **maintains that the child is a מזר**. This is in contradiction to our **גمرا** where maintains that the **שומואל** maintains that the child is from the **ארוס**.¹⁰ Therefore in order to avoid this contradiction we are required to assume that in the **גمرا קידושין** (**שומואל**) maintains the **הולד** **שתווי** (since **הולד** **מזר** or **הולד** **מזר**), we are discussing a case where the **ארוסה** 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 **מזר**. If the child is from anyone but the **ארוס** the child is a **שתווי**.

⁸ This does not mean that the **ארוס** claimed that he had no relations with the **ארוסה**; 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 **גمرا** there initially said **איפוך** in order to avoid a contradiction between two rulings of **ר'.**

¹⁰ See **ר' ש"** who explains why it was necessary for **תוספות** to pose the contradiction (only) according to the **ר' ש"** **הולד** **שתווי**, for here he maintains that the **הולד** **כשר**. The **ר' ש"** answers that we could (mistakenly) interpret the term **שתווי** to mean that he cannot inherit the **ארוט**'s estate (but not that he is a legitimate son). For the other heirs can claim, that the **שתווי** cannot inherit the **ארוט** 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 قولך -

And it is so indicated that there is a difference whether **for in the conclusion, the there answers**, ‘**really there is no need for a reversal**’, etc.; we can retain the original text that **ר' מזער שמואל** maintains that the child is a **zmanzur** and **ר' שמואל** maintains that he is a **shatuki** –

ומפרש¹¹ Mai Shatuki Shvodekain At Amo Veomerat Lechsh Nibulati¹² -

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

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

tosfos has an additional difficulty:

ואם תאמר אכתי לשמואל דהתם משמע דזוקא בא על ארוסתו בבית חמיו מהני בדיקה -

And if you will say; that there **is still a difficulty on**, **שמואל** **for there in** **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 **gmera** 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 דנאמנות¹⁵ רבנן גמליאל -

However here from our **gmera** **it seems even if the does not admit** to having

¹¹ According to the new reading in the **gmera** there, it was necessary to explain what meant by **שטוקי** **zmanzur**.

¹² The **gmera** there continues to cite our **gmera** that **zmanzur** maintains **ולא בדקו את amo**.

¹³ To summarize the **shatuki** in **gmera**: According to the original reading **zmanzur** maintained, which means he is a **zmanzur**. We therefore are required to say that it is a case where **אסור בירושלם** and **בבמזרחה ספק מזער**. According to the **opinion of Shmuel** is that he is a **zmanzur**; which certainly requires us to say that **לא בדקו את amo**. According to the **holod shatuki** said **zmanzur**, then when we interpret it to mean; we ask the mother and accept her claim that the child is from the **zmanzur**.

¹⁴ (**mai shatuki**) **בדוקי** **tosfos** is discussing the **zmanzur**, where **לעולם לא תיפוך** maintains that the child is a **zmanzur**.

¹⁵ **הלהgra** **ר' יוסע**, meaning, even if the **zmanzur** is not **מודה**, she is still believed, for **ר' יוסע** claims **שהמואל**.

relations with the other; it is not known whether they lived together, nevertheless ר"ג שמואל maintains that she is believed; for the woman is believed to claim קדושין in general. The question is why does the woman have a relationship, inferring that only in such a situation would she believe her testimony;¹⁶ when in our case it states that שמואל maintains that we always believe her testimony even if we are not sure that they had relations.

תוספות answers:

ויש לומר דהא דנקט בא הינו משום רבותא דבר נקטיה דאפיילוibi אמר הولد ממש - And we can say that the woman in general also agrees that according to she is believed even in a case where we did not know (through his admission, etc.) that he was, but the reason that the woman used the phrase בא, בא על ארוסתו was; indicating that we knew that they had relations, that was mentioned to emphasize the novelty of opinion; that even though we know that the woman had relations, nevertheless רב' maintains that the child is a. However will maintain that if the woman claims the child is from the man, she will always be believed even if it was not 'בָּא'.

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

אי נמי התם הוא דבעינן בא משום דאיירוי בדדיימא מעלמא -

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

תוספות will support his contention that the woman in general is discussing a case of:

כדאמר רבא¹⁸ ביבמות שלמי אלמנה לכחון גדוול מסתברא מילתא דבר בדדיימא מעלמא - as stated in in the end of it is reasonable to assume that the ruling of רב (that the child is a), is in a case when she is promiscuous in general. This indicates that (at least according to the rule of majority) this is in a case of – הבא על ארוסתו קדושין we require that it should be מעלמא.

¹⁶ When it is known for a fact that the man and woman had relations, it is more likely to assume and believe them that the child is fathered by the man, 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.

¹⁷ It is possible that Tosfos is not satisfied with the previous answer that 'הבא' is written that the child is a woman even if it was. For if it would be preferable not to have written 'הבא', and then it would be that nevertheless the child is. There is a rule that עדיף than to be greater than to be. The greater than to be. The greater than to be according to שמואל (which is להיתר) would have been greater than the according to רב (which is לאיסור).

¹⁸ דף סט,ב.

והכא בדלא דיני מא מעלה מא -

And here we are discussing a case where the **ארוסה was not מעלה מא**; therefore she is believed in her claim even if we do not know from the **ארוסה** that he had relations with the **ארוסה**.

תוספות offers a new answer to the contradiction:

ועוד דבר כל הספרים גרש בקדושין ארוסה שעיברה -

And furthermore there is no contradiction at all, **for all the texts in read** (not **הבא על** ארוסתו בבית חמיו **who became pregnant**). Therefore both in our and in קדושין גمرا, all agree that according to שמואל she is believed even if we do not know that the **ארוס וארוסה** had relations.

תוספות anticipates a slight difficulty. From the קדושין גمرا (according to the ר' יוסי), it appears that the child is only after we inquire by the mother; however here stated that **זהא קא מודע** indicating that no **בדיקה** is necessary. explains:

והחיא דוקא קאמר שבודקין אבל בא אינה צריכה בדיקה כלל -

And only in that case did rule that we inquire of her who the father is and we believe her, since it was not known whether they had relations (according to the ר' יוסי, **כל הספרים** of גירסא), **however in** a case where it is known that **בא**; they had relations, as in our where the **ארוס** admits, then **no investigation is required of her at all**. Even if she is not asked, the child is presumed to be **כשר**.

In summation: The second question of **תוספות** and its answers establish that according to **שמואל**, **ארוס וארוסה** is believed even if it was not **בא**; we do not know for certain that the **ארוסה** had relations. When we know that it was (through the admittance of the **ארוס**), then even **בדיקה** is not required and the child is **כשר**.

תוספות has an additional difficulty:

ומיהו קשה ללישנא קמא בייבות בסוף פרק אלמנה דפליגי רב ושמואל בא -

However, there is a difficulty according to the first opinion in the end of בא על, which maintains that **רב ושמואל argue in the case of** **ארוסתו**.¹⁹

ומסיק התם אבי דאך על גב דלא דיני מא מעלה מא פליגי²⁰ -

And concludes there that **דיני מא מעלה מא** and **רב ושמואל** **argue even if she is not אבי**. **ולך** nevertheless the **רב** maintains that even if **לא דיני מא** **אבוי**. **מזור** explains the opinion of **רב** **דילמא מדאפקה נפשה לגבי אروس מפרקה נפשה לגבי עלה מא -**

¹⁹ [See footnote # 18.] This is in opposition to the **איכא** **דאמרי** there, which maintains that **רב ושמואל** argue in a case of **הבא על** **ארוסתו**, not by **ארוסה**.

²⁰ **דיני מא מעלה מא** disagrees with **רב בא** who (as previously cited) maintains that the **מחלוקת** is when **ארוסה** is **אבוי**.

that perhaps since she was wanton with the bridegroom²¹, she was also wanton with anyone else; that is why רב maintains that the child is a **מןזר** and not a **בןזר**.²² This concludes the citation of the **יבמות** in general.

תוספות continues with the question:

הא אמר הכא חדא דקה מודה ומשמע דבר אפילו לרבי יהושע²³ ובא כמודה דמי -

However, states here that there is no reason for concern, **firstly because** the bridegroom **admitted** that he had relations with the bride. The continues and says; **secondly** there is no concern, even if he weren't, since the **halacha** is according to ר' ג' **So this indicates** that according to the ' חדא', the is even according to ר' ג'. It is only when the bride was not **מודה**, that said the is and the child is like ר' ג'. However when the bride is **מודה**, then the **halacha** is like ר' ג'. According to everyone, even ר' ג'. **And** the case of **בא** (**יבמות**) is similar to the case of **מודה** (here);²⁴ in both cases we (only) know that the bride and bridegroom had relations.

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

זה מודה דהכא אינו אלא שהיה אומר שבא עליה -

For when the bride here says the was bride, **modah** it does not mean any more than that he states that he had relations with her –

דפשיטה שלא היה מזב אחראית 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 **הבא** and the case of **מודה** are similar. According to **אבי** the case of **הבא** is even when **לא דימא מעלה** (as is the case here). concludes his question:

²¹ We know she was married because we are discussing a case of **הבא**.

²² See 'Thinking it over' # 1.

²³ If the child is [even] according to רב (and ג'), then how can maintain that the child is **מןזר**.

²⁴ It seems that equates (a case where it is known [perhaps through] that they had relations) with (a case where the states that they had relations). The **halacha** of the bride is more believable than the claim of the bridegroom. The has a vested interest in claiming that she had relations only with the **ארכוס**: otherwise; a. she is **מחויב** to her child, b. she becomes **פסולה** to her child, etc. The however, would not admit to having relations with the 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 **ארכוס**. The however cannot make such a claim concerning the **ארכוס**.

ובין לרוב ובין לשמואל אסור הוא בת בית ישראל -

And according to both is forbidden to marry a (קדושין and יבמות in) **רֵב וּשְׁמוֹאֵל** – אסור ב בת ישראל clearly says that he is שמואל agrees and, הולך מזר, and he is clearly says that he is רֵב; בת ישראל a

דשותקי דעתן שמואל היינו אסור בת בת ישראל לכולו לשוני דברך בתראDKDShiN –

אסור בת is ولד it means that the is ruled that the is, שתוקי a²⁶, שתוקי a²⁷ For when according to all the opinions in the last – מסכת קדושים פרק נמי קשה טפי²⁹ –

ולישנא דבדוקי²⁸ נמי קשה טפי²⁹ –

And according to the opinion that Shattoqui means Shmoel we ask the mother and accept her testimony it is also even more difficult –

דמשמע דאפיקו על ידי בדיקת האם לא מיתכשר אלא לרבע גמליאל אבל לרבי יהושע לא –

for it seems from the there that even through the inquiry of the mother when she claimed that the child the is not except according to R"g³⁰; who is generally of the opinion the is believed, however according to R"i she is not believed and the child is³¹. This is what it seems from the – (R"i) that according to (at least according to קדושים יבמות in גמרות) the child is either a Shattoqui or a Arrosto –

והכא אמר דהא קא מודה וכשר לכולא עלמא –

כשר is ולד מודה and the states there is no concern for he is according to everyone including R"i.

The question in brief is that from the 'חדא' it appears that if we know that there were relations between the mother and the child, the child is even according to ר"י (without examining the mother); however from the 'יבמות וקדושים' it is apparent that even if there were relations (הבא על Arrosto) the child is either a Shattoqui or a Arrosto (if the mother is not examined).

haba ul Arrosto and gamra Tosfos answers that there is difference between our and gamra:

ושמא יש לחלק דבאו דהנתם היינו שפעם אחת בא עלייה –

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

²⁷ The term שתוקי means that he is a Shattoqui. [Even if the is, בדוקי שתוקי means that he is a Shattoqui, unless we ask the mother.]

²⁸ This is according to the last opinion in the that gamra. לעולם לא תיפורgamra.

²⁹ One may have thought that according to the בדוקי לשון there is no such contradiction (compared to the of Shattoqui), because if we examine her and she says here that she is believed; similar to what ר' يوسف says here according to the לשון. However, according to the לשון, she is never believed. will point out that the contradiction is even greater according to the בדוקי לשון of R. See (however) footnote # 31.

³⁰ The gamra there when it states that בדוקין את אמו וכור נאמנה that continues immediately and explains. כמן כר"ג

³¹ According to the בדוקי לשון the gamra is not discussing a case where they are the mother; therefore we cannot clearly state that she would not be believed if she claimed she only had relations with the father. However, according to the בדוקי לשון the gamra states that if the mother claims she was only with the father, she is believed only according to R"g and here we say that even without her testimony the child is even according to R"i. See however אשר אילת השחר who suggests that the word 'טפי' should be omitted.

And perhaps we can differentiate between the two גמרות that when the relates there that he was בָּא עַל אֲרוֹסָתוֹ that means they had relations (only) one time; therefore there is a possibility that she became pregnant from someone else and the פסול is ולד - אבל מוזה דהכא דקאמר מיניה³² הינו שבא עליה ביאות הרבה -

However here where the 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 אצל תמיד וכదאמרין³³ רוב בעילות הלך אחר הבעל:

And they were constantly together; that is why the and as we say concerning an adulteress woman that her children are nevertheless 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, that it is his child.

SUMMARY

According to if the claims she was only נבעיל by the (and the does not claim anything), the. If the claimed he had continual relations with the the האם without (at least when she was not מחלוקת). When the admits to very limited relations, that is the דיימא מעלאה between whether the child is a according to רב ושמואל (if it was בדוקי שתוקי according to אבוי, or even לא דיימא according to רבא or a according to שמואל.³⁴

THINKING IT OVER

מראפרה נפשה רבי's ruling; namely אבוי gave for Tosafot. 1. mentions the explanation how is relevant to our? ³⁵ לגבי אריס מפרקה נפשה לגבי עלאה

2. mentions two reasons why the ולד. Our asks three questions from the קדושים in סוגיות. Which of these questions are (mainly) on the 'חדא' and which are (mainly) on the 'יעוד'??

³² Perhaps it should read מינאי.

³³ סוטה כז,א.

³⁴ See 'Chart' at the conclusion of the following.

³⁵ See footnote # 22.

חדא דקא מודה -**Firstly he admitted****OVERVIEW**¹

ר' יוסף maintains that the wife of the husband is considered married if he is known to have had relations with her. This reconciles our opinion with the Tosafot.

ולישנא קמא דיבמות -

And according to the first opinion in Tosafot; which maintains that the wife of the husband is considered married if it is known that she had a relationship with him. It is difficult therefore to understand why R' Yosef maintains that since the wife was married (which is seemingly the same as the Tosafot), therefore the Tosafot explains that our opinion is discussing a case -

דלא דיימא מעולם -

where she is not generally promiscuous. This will explain why who maintain there (where she is ³דיימא מעולם), that the child is either a natural or a result of adultery, can agree that here the child is natural, since we are discussing a case of marriage.

ולאייכא דאמרי -

And according to the alternate opinion in Tosafot which maintains that the wife of the husband is considered married if we do not know that she had relations, then we can say that our case is -

דאפיילו דיימא מעולם כיון דקא מודה בתיריה דידייה שדין לה -

even when the husband admits to having (continuous) relations with the wife, we ‘cast’ the child after the husband; we assume that it is his child, since he was married; as opposed to the case where we do not know whether they had relations, therefore maintaining that the child is a natural result respectively.

SUMMARY

If the wife of the husband is by definition married, then we have to say that the wife of the husband is in a case of ³דיימא מעולם and our opinion is in a case where we do not know whether they had relations, therefore maintaining that the child is natural. However if the wife of the husband is by definition married, then we can maintain our case even by ⁴דיימא מעולם, since the husband is married.

¹ See ('Overview' to) previous question.

² See Sh"y, who points out that this question was already answered (differently) in the end of the previous question. In our opinion the husband claimed to have a continuous relationship with the wife; as opposed to the case where it occurred only once. See footnotes # 3 & 4.

³ This explanation is valid only according to R' Avraham, who maintains that the wife of the husband is considered married even if she has only one sexual encounter with him. See previous footnote # 2.

⁴ It seems that our opinion is the conclusion of the previous question. The end of the previous question

THINKING IT OVER

Is there an advantage of establishing that our **סוגיא** is discussing a case of ⁵לא דיימא as opposed to establishing that our **סוגיא** is discussing a case of ⁶ביאות הרבה?

This chart illustrates the two **מסכת יבמות** in **לשונות** according to **אבי** and how it is reconciled with our **סוגיא** according to **תוספות ד"ה והוא וד"ה חדא**.

הבא על ארוסתו (מודה) – רبا (ל"ק)				הבא על ארוסתו (מודה) – רبا (א"ד)			
מודה ביאות הרבה ⁷	דיימא מעלמא	לא דיימא מעלמא (דיימא מיניה ⁸)	לא דיימא מעלמא ⁹	דיימא מעלמא מהלוקת	רבה	ממזר	শמוֹאַל
כשר	ממזר	ממזר	כשר	שיינְעָדָה	ממזר	ממזר	שטוּקִי\בְּדוּקִי
כשר	(ממזר?)	שטוּקִי\בְּדוּקִי	כשר	שיינְעָדָה	שיינְעָדָה	שיינְעָדָה	שיינְעָדָה

ארוסה שנתעברה – רبا (א"ד)				ארוסה שנתעברה – רبا (א"ד)			
דיימא מעלמא ודיימא מיניה מהלוקת ¹⁰	לא דיימא כלל	לא דיימא מעלמא ודיימא מיניה ¹¹	דיימא מעלמא ולא דיימא מיניה מהלוקת	רבה	ממזר	שיינְעָדָה	שיינְעָדָה
כשר	ממזר	כשר	שיינְעָדָה	שיינְעָדָה	שיינְעָדָה	שיינְעָדָה	שיינְעָדָה
כשר	שטוּקִי\בְּדוּקִי	כשר	שיינְעָדָה	שיינְעָדָה	שיינְעָדָה	שיינְעָדָה	שיינְעָדָה

our **סוגיא** with the **רבה** and **শמוֹאַל** of **מהלוקת** (by **אבי**). This was accomplished by assuming that here the **ארוס** was continually with the **ארוסה**, while in **יבמות** there was only one known relationship. According to **רבה** however, there is no need to make this distinction. In fact merely stated **רבה דקא מודה'**. He did not seem to indicate that the **הודאה** because of their continuous relationship. Rather the **הודאה** of even one is sufficient. **תוספות** makes different distinctions; either that here we are discussing a case of **לא דיימא מעלמא**, or that here there was a **הודאה**; as opposed to the **הודאה** in **גמרא** where it was either **דיימא מעלמא** or there was no **הודאה**.

⁵ This is the answer our **תוספות** offers.

⁶ This is the answer of the previous **תוספות**.

⁷ Our **סוגיא** is discussing **כשר** and **ולד**; **מודה** ביאות **הרבה**; therefore everyone admits the **הודאה** (א"ד).

⁸ **דיימא מיניה** means that she is suspect of having relationships with the **ארוס**.

⁹ Our **סוגיא** is discussing **כשר** and **ולד**; **לא דיימא** **מודה**; therefore everyone admits the **הודאה** (א"ד).

¹⁰ This will also include a case of **מודה**.

¹¹ Our **סוגיא** is discussing **מודה**, which is even stronger than **דיימא מיניה**; surely the **הודאה** (א"ד).

Firstly, for he admitted

חדא דקא מודה -

OVERVIEW

The is discussing a case of an **ארוסה** who was pregnant. **רב יוסף** ruled that there is no concern; firstly because the **ארוס** was **מודה** and furthermore because she is believed to claim **לכשר נבעלתי**.

It is not clear whether the issue is the child; if he is **כשר** or a **מזוז**, or if the issue is the **ארוס וארוסה**; if they are permitted to rejoin with each other, since she is a **ספק אשת איש שזינתה**.

It is also not clear what is the meaning of 'יעוד' 'and furthermore'. Does it mean even if he is not **מודה**, or does it mean even if his **מודה** is ineffective. **תוספות** will be discussing these issues.

מצין לפרש דאיiri לעניין לאסורה על האروس¹ -

It is possible for us to explain that we discussing whether the **ארוסה is forbidden to marry the **ארוס**.** The issue here is since the **ארוסה** had a child; therefore it is possible that someone other than the **ארוס** fathered the child. If that were the case then the **ארוסה** would be **אסורה** to the **ארוס**. She is a married woman who committed adultery and is therefore forbidden to return to her husband (as well as to the adulterer). **רב יוסף** however ruled that there is no concern and she may return to her husband.

והכי פירושו חדא דקא מודה הלבך אינה נאסרת עליו ועוד הא רב יהודה כולי -

And this is the explanation of the ruling; **firstly**, she is permitted to return to the **ארוס** **for he admits** that he had relations with her and he is the father of the child (and no other), **therefore she is not forbidden to the **ארוס****; we believe him and assume that she had no relations with anyone else, **and furthermore** stated, **etc.** that she is independently believed.

תוספות will now explain what is meant by 'יעוד', 'and furthermore'² –

לא קאמר ועוד אפילו לא מודה -

The meaning of 'יעוד' is not to be understood, that **even if the **ארוס** was not **מודה****, she is still permitted to him. This is not so –

דם אינו מודה פשיטה דעתא רשות עליו -

For if the **ארוס is not **מודה**** that he had relations with her, and she is with child, then

¹ The reason this interpretation is chosen (despite some difficulties) may become apparent at the conclusion of this **תוספות**. See footnote # 14.

² The term 'יעוד', 'furthermore' (generally) means that even if this is not so, nevertheless the ruling is valid.

it is obvious that she is prohibited to him. He is not that he fathered the child; obviously someone else did. This makes her (certainly from the perspective of the an אරוס) adulteress, an שוויה אנפשה החיכא דאסורה, אסורה לבעל her, since איש שזינתה who is.

אלא כלומר³ אפילו ליכא טעמא דמודה -

But rather we are to understand the 'יעוד'⁴ as if it was stated, even if the reason of מודה is not effective; it is not sufficient cause to permit her to rejoin the – אראום.

תוספות continues to explain why 'מודה' may not be sufficient cause to believe him –

כגון לאביי דסוף פרק אלמנה מדאפקרה נפשה לגבי ארוס מפקרה נמי לגבי עלמא⁵

for instance according to אביי mentioned in the end of ר'ג who maintains (according to רב) that even if we know that the had relations the child is still a, for since she was wanton with the she was also wanton with anyone else and the child is a. Similarly itself would not be a sufficient cause to permit her to the – אראום⁶

אפילו הabi אינה אסורת עליו משום דנאנית כרבנן גמיליאל כן פירש לנו רבינו יצחק -

Nevertheless she is not forbidden to the because she is believed that she had relations exclusively with the the as ר'ג maintains that a woman is believed to claim like ר'ג. This is how we could have interpreted the גمرا, and this is how the ר'י actually explained this to us.

In Summation; the ר'י is that 'יעוד' means even if we agree with (אליבא דבר) that the admission of the (ארוסה וכו') in insufficient (מדאפקרה וכו'), nevertheless, since she also maintains that she had relations only with the she will be believed since the הלכה is like ר'ג. It would then turn out that if the woman maintains she was not מזונה, she is believed even according to אביי (אליבא דבר). (See footnote # 7.)

תוספות takes issue with the above interpretation:

ואין אפשר להעמידה דלפי דבריו אם כן הוא דאמר אביי מדאפקרה נפשה -

And it is impossible to sustain this interpretation, for according to the ר'י's

³ The term supplants the simple meaning (that even if he was not מזונה, etc.) with a more complicated meaning (that even if מודה is not effective, etc.). See footnote # 10.

⁴ See footnote # 13.

⁵ Tosfos ד"ה הוהא וד"ה חזא (הא); יבמות ס,ב;

⁶ The term utilizes the of סברא to explain why the is a. Therefore here too (even though the and are already married to each other, nevertheless) the סברא מדאפקרה implies that she was and therefore it is not because we assume positively מדאפקרה, but rather it is a ספק, which can make the child into a שותקי (before בדיקה) it is not because we assume positively שותקי, but rather it is a ספק, which can make the child into a שותקי; however it will not be able to prevent the אראום וארוסה from rejoining. The 'יעוד', therefore is for according to רב only. See: 'Thinking it over'.

words it would therefore follow that when אבִי (אליבא דרב) stated that since she was wanton with the others, she was wanton with others as well –

הינו בשלא בדקו את אמו וזה אינו -

that is limited to a case where the mother was not investigated; for if the mother was asked and she replied I had relations only with the others she is believed,⁷ **and this is not so;** אבִי (אליבא דרב) cannot maintain that if the wife claims that the child is from the others, that she is believed –

זה אפלוגתא דרב ושמואל קאי דמוקמי בקדושיןמאי שתוקי בדוקי -

For, רב ושמואל is referring to the dispute between which is established in מסכת יבמות (in אבִי) **that what** meant when he said that the child is a שתוקי, **is that he is a**; בדוקי meaning that we question the mother and accept her claim that the child is from the others. This implies that רב (who argues with שמואל) maintains that the child (even a מזר) is a בדוקי.⁸

פירוש ר"י qualifies his difficulty with the:

ולמאי דgrossin⁹ בקדושין ארוסה שעיבורה לא קשה מיידי -

However, according to our reading of the text in מסכת קדושים, which is, ‘an אروس who became pregnant’ (indicating that we are not certain that the אروس had relations); and not אروس על אروسתו (which indicates that we know that the אروس had relations), **there is no difficulty at all.** According to this reading the only time maintains (according to רב) that the child is a even if מזר is when we are not aware that the אروس had relations. However in our where the מודה is sufficient to believe them. However according to the other text, that רב ושמואל are disputing (even) in a case of הבא על אروسתו, then the ‘יעוד’ is difficult to understand.

תוספות offers an alternate explanation:

על בן צרייך לפרש זהכא לא איירוי לאוסרה עליו אלא להכשיר את הولد -

Therefore it is necessary to explain that we not discussing here whether to prohibit the אروس from the, but rather to validate the child; that he is not a

⁷ The point of the according to פירוש ר"י 'יעוד' is that even according to אבִי is ineffective nevertheless her testimony is effective; this is tantamount to saying that according to אבִי she is believed.

⁸ The point of the according to פירוש ר"י 'יעוד' is that even according to אבִי who maintains that מודה is insufficient (since אבִי does not accept the מזר) according to רב (who maintains that the child is a מזר). According to רב, however, the child is a מזר even if the אروس corroborates the testimony of the others. This is the between מחלוקת מהולכת when we assume that the אروس is a בדוקי (of שמואל) and nevertheless argues and maintains that he is a מזר. There seems to be no point in the 'יעוד'. See: 'Thinking it over'.

⁹ See previous note.

– כשר לישראל מمز

והשתא הו וועד כפשו¹⁰ וועד דאפיקו לא יודה –

And now the assumes the obvious interpretation; firstly that the wasaron was מזוהה, and ‘furthermore’, meaning, that even if he was not מזוהה immediately interjects to explain what is meant by the statement ‘he was not – מזוהה’ –

ולאו זק אמר דלא מיניה דבאה לא מכשיך רבן גמליאל כיון דהוי ברוי וברוי¹¹ –

And certainly does not mean that he claims the child is not from him, since he had no relations with the woman. It cannot mean that; for in such a case (where the contradicts the bride) does not maintain that the child is, since it is a case of a (of the who claims he did not father the child) which contradicts a (of the who claims that the fathered the child); in a case of then even agrees that we do not believe her –

כדאמר בריש פרק ב'¹² –

as the states in the beginning of the second פרק, therefore cannot mean that he is denying the relationship –

אלא כוונ שמת או דליתיה קמן דליישייליה –

But rather means for instance if the died or that he is not present before us that he can be asked. That is what states ר' יוסף that even if the does not corroborate that he fathered the child, nevertheless the child is according to ר' ג, since she claims that the is the father (and there is no to contradict her).¹³

תוספות anticipates a difficulty:

ואה דחשיב ליה בסמוך דיעבד –

And the reason the shortly considers this to be case of (that it already happened). Seemingly this is a case of the; we are deciding whether this child may marry a Jewish woman, it is not a case of the, where he already married and we want to know if they can remain married (as it is according to the פירש ר' ג).¹⁴

תוספות responds:

¹⁰ See footnote # 3.

¹¹ We were (פרק"י)讨论 the Tosfos does not say here as he did previously; for there (according to the we were discussing the case of the bride and the woman, therefore since he is not מזוהה, she is certainly איסור for איסורה of the woman). However here we are discussing the case of the child, where there is no סברא, nevertheless the will not be כשר, since she is not in a case of ברוי וברוי.

¹² לקמן טז, ג.

¹³ We obviously cannot have this interpretation of 'יעוד' according to the פירוש ר' ג, where we are discussing if she is מותרת לאeson. The is obviously present. We can ask him whether they had relations or not. That is why the ר' ג was forced to interpret the 'יעוד' in the manner he did (that it means according to אבוי).

¹⁴ See footnote # 1.

לפי שלא היה יכול הילד להינשא לבת ישראל –

For the child may not be permitted to ever marry a Jewess (if he is a ספק מזוזר) –
ואפלו למזרת אסור דעתו ר' יוסי' כשר הוא –

And he is even forbidden to marry a Jewess, for מזרת he is a (we are not certain whether he is a מזוזר or not –

זהאי הוイ בדייעבד¹⁵ הלכה כרבנן גמליאל¹⁶] :

Therefore in such a case (where the child may not be able to ever marry anyone), it is considered as a בדייעבד, where the ruling is according to ר' יוסי' that she is גמאל.

SUMMARY

According to the ר' יוסי' the issue at hand is whether the bride and groom are permitted to rejoin. The 'even if' means even if we maintain that his mother is ineffective. The 'means even if' maintains that the issue is whether the child is a Israelite and the 'means even if' means even if the bride is not present to corroborate what the claimed.

THINKING IT OVER

questions the ר' יוסי' תוספות 'even if' refers to אביה, then the fact she is testifying is meaningless, for according to ר' יוסי' ולבך אביה is a (according to רב) even if the mother testified.

The 'however' is according to שמואל (not according to רב)¹⁷ and indeed according to שמואל the child is (even according to אביה) if the mother testifies, and if not he is a שתווקי.¹⁸

¹⁵ In the תורה it reads; זהאי בדייעבד הלכה כר' יוסי'.

¹⁶ As mentioned previously, the last three beginning with הוא are bracketed and are an addendum to the original תוספות.

¹⁷ ועוד הוא אמר ר' יוסי' אמר שמואל וכו' ר' יוסי'.

¹⁸ See בית יעקב וסוכ"ד אות לט.

אלמנה עיטה -

A widow (whose husband's lineage is entangled and is) of a [**dough(y)**] mixture

OVERVIEW

The **ריב"ב** cites a **משנה** in which **ריב"ב ר"י** and **משנה גمرا** testify that the widow of an **יעסה** is permitted to marry into **כהונה**. There is a dispute between **תוספות רש"י** and **אלמנת עיטה** as to what consists an **יעסה**.

פירוש בקונטרס שני פירושים¹ ושניהם דחוקים -

רש"י offers two interpretations as to the meaning of **יעסה** and both of these explanations are lacking. They do not satisfactorily explain the term **תוספות**. **אלמנת עיטה** goes on to explain why they are – **דחוקים** –

זה אמרינו לקמן² איזו היא אלמנה עיטה כל שנטמע בה ספק חלל³ –

For we learn later in a **ברייתא** ‘**who is this?**’ **אלמנת עיטה** replies ‘**all situations in which a ספק חלל was intermingled**’; this concludes the citation from the **ברียתא**.

ומה⁴ טימוע שיך במה שנייהת לספק –

And how is the term **טימוע** (intermingled; mixed in) applicable because she married **this**? **ספק חלל**. He is not **ספק חلال**; it is known that he is a **ספק חلال**. The term means that somewhere in the genealogy there is a **ספק חلال** intermingled; not that a woman married a **ספק חلال**.

תוספות asks an additional question on:

ועוד דאין לשון עיטה נופל על אדם אחד אלא על משפחה שיך לשון עיטה –

¹ In **יעסה** explains that if a person is born from a marriage between a **כהן** and a woman who is a **גרושה**, **ספק גירושה**, etc.) marries and subsequently dies, his widow is the **אלמנת עיטה**. In **ר"ג**, there offers a different explanation (in the name of **ר"ג**). A woman was a **מגורשת** and remarried to a **כהן** within three months of the **.getFirstHusband** (after her first husband died) and bore a child of questionable lineage; whether he is a son of her original divorced husband and therefore he is **כשר**; or if he is a son from her new husband; in which case he is a **ספק חلال** for perhaps the **get** was valid and she is a **גרושה** and the child is a **חיל**, or there was no **get** (and she is an **אלמנה**) and the child is **כשר**. There is a **ספק ספיקא** on this child. The widow of this ‘child’ is an **אלמנת עיטה**. It appears from **רש"י** that the term **יעסה** is referring to the individual who is a **ספק ספיקא** (**חיל**).

² On the top of **מאר"ם** **ש"ג**, **ב'**, **ט'**. See following **ת"ר**; **תוספות ד"ה** here.

³ A **חיל** is an offspring of a relationship between a **כהן** and a woman who is forbidden to a **כהן**, such as a **ספק גירושה**. A **חיל** is someone who is the offspring of a relationship between a **כהן** and a woman, etc.

⁴ In the (bottom) margin there is an additional question (seemingly from **טו"ז** or likewise): ‘**And in addition, on the himself the expression טימוע does not apply**’. According to **רש"י** the term **יעסה** means she married a **חיל**. Therefore means a **חיל** **יעסה**. We cannot refer to the **חיל** by saying that there was **נטמע** in him a **חיל**. **ספק חיל**.

And furthermore, the expression עיסה is not applicable for one person; rather the expression עיסה is appropriate for a family –

בדאמירין (קיידישון סט.ב) כל הארץ עיסיה לאראַץ ישראל וארע, ישראל עיסיה לבעל -

As the term גمرا states all countries are considered as an עיסה (a doughy mixture) compared to "א, and 'א is an עיסה when compared to בבל. All countries have no pure lineage as "א has; but rather their lineage is a 'mixture' of various indiscernible types, like a dough which is a mixture of various ingredients. The term גمرا there continues, the lineage of בבל is purer than even the lineage of "א. This concludes the term גمرا there. It is evident from this that the term עיסה applies to a 'mixture' of different elements that are intermingled among the populace at large and are not (necessarily) discernable. This is in conflict with both of s' interpretations.

רשותה offers an additional difficulty with s'iyah explanation:

ובתוספתא⁵ תניא מפני מה אמרו עיטה פסולה מפני ספיקי חלאין -

And we learnt in a rule that an חכם in the ברייתא was disqualified from marrying into the כהונה? On account of the ספיקי חלلين (plural) which are intermingled in the עיסה –

ומה ספיקי חלין שיעד לאלו הפירושין -

And how is the concern of ספקי חללין (plural) applicable according to these explanations that ר' ש"י offered?! According to both explanations of ר' אלמנה, the married one ספק חללי one; there is no issue with many!

אלמנה עיטה תוספות offers his explanation of:

ונראה לרביינו יצחק ולרבנו יצחק בר אשר⁶ -

And the ר"י and the ריב"א are of the opinion –

דעתה קורא המשפחה שנטמע בהם ספק חלل אחד או הרבה ספיקי חיללים -

That the term **ספק חיל'** applies to a family in which one **עיסה** became intermingled or that many **ספקי חללים** became intermingled with this family. It is known that in a particular family (either one or) some of the people are **ספקי חלליין**; however they cannot be identified with certainty –

ולהבי חשיב ליה لكمו⁷ ספק ספיקא -

And therefore the later considers this ‘family’ as a ספק ספיקא; a doubt within a doubt, meaning –

דכל אחד מבני המשפחה ספק הוא אם הוא אותו ספק שנגנער במו אם לאו

That each one from this עיִשָּׁה family in which a (סְפָקָה) חללו(ים) was intermingled,

קדושים פ"ה ג' ג.

⁶ עי' שה"ג להחיד"א מערכת גدولים אות 291

⁷ On this see פיקא ר"י מהיר הלכה ה' comments that according to **ספק** it is sufficient to be a woman.

there is a doubt (by ב"ד whether he is the that was intermingled with them or not. It is possible that he is not the Cohen and therefore ספק חיל' ספק חיל'. Even if he is the Cohen, it is possible that in fact he is not a Cohen and is therefore (still) permitted. That is why this is merely a ספק ספיקא concerning עיטה.

ולקמן⁸ גרשין איזהו עיטה כל שנטמע בה כולי ולא גרשין אלמנת -

And later the text should read; 'what is an עיטה; in all cases where there was an intermingling, etc.' and the text does not read a 'widow of' an עיטה; but merely the word itself. The mixture is in the family (this particular family); not in the word עיטה - אלמנה -

והכי איתא בירושלמי⁹ ואפילו גרשין אלמנת כל שנטמע בה קאי עיטה -

And this is also how it is rendered in תלמוד ירושלמי **only the word** 'עיטה', not 'אלמנת עיטה'; nevertheless in the following phrase of 'בָּה' the word is referring to the community; and not to the individual such as an Almenah. The term עיטה is fitting only for a community, and not for an individual such as an Almenah.

תוספות asks:

ואם תאמר דברך עשרה יוחסין (שם ז' עה, א) משמע -

And if you will say; that it seems from the statement in גמרא that even the one who permits the Cohen to marry into an Almenah עיטה

דאפילו מאן דמזכיר אלמנת עיטה מודזה בבת דפסולה -

that even the one who permits the Cohen to marry into an Almenah עיטה (which would include nevertheless he admits that the daughter of the Cohen is disqualified from marrying into the Cohen's community). When the Cohen discusses -

גבי הא דאמר רב חסדא הכל מודים באלמנת עיטה שפסולה לכהונה כולי -

פסולה is אלמנת עיטה ר"ח stated; 'everyone agrees that an Almenah עיטה is prohibited, etc.' The Gemara comments that the statement of R"Ch is coming -

ולאפוקי מהני תנאי דעתו העיד רבינו יהושע כולי -

R"Y B"b and R"Y Meshana that we have learnt in a previous section, which we have learnt in a previous section, testified, etc. that an Almenah עיטה is prohibited¹⁰. This concludes the citation from the Gemara concludes his question:

⁸ At [the bottom of this and] on top of the page.

⁹ Here פ"א ה"ט, and elsewhere.

¹⁰ רב חסדא was referencing a previous section taught there, in which there were various opinions. Rav Chisda maintains that all of these opinions (who argue in the previous section) agree (nonetheless) that an Almenah עיטה is prohibited. Rav Chisda proved his statement by citing רבנן ג' (who was the most lenient view in the previous section) who ruled that if you are not permitted to marry someone's daughter, you are also not permitted to marry his widow. Therefore, concludes Rav Chisda that since one may not marry the Cohen, one may not marry the Cohen's widow either. Rav Chisda offered no proof that a universal ruling exists; he merely presumed it as a universally agreed upon ruling. The Gemara then concluded that the ruling of Rav Chisda is rejected as a presumption, and the ruling of R"Y B"b and R"Y Meshana is intended to reject the ruling of Rav Chisda (that were not mentioned in the previous section).

ומה לי אלמנה ומה לי בת דבת נמי هي ספק ספיקא כמו באלמנה -

And what difference is there whether she is the daughter of an or whether she is the daughter of the daughter, for by the daughter there is also the same ספק ספיקא as there is by the!¹¹ אלמנה!

תוספות answers:

ויש לומר דבת העישה אין לה חזקה כשרות -

And one can say; that the daughter of the has עיטה; as opposed to the daughter who has a חזקה from the time before she married into this. However the daughter was born into a situation, therefore since she has no ספק, she is allowed for the priesthood.

תוספות anticipates a difficulty and resolves it:

ואף על גב דעתם מקלין בספק ספיקא -

And even though that generally we are lenient by a, ספק ספיקא and we permit it even without a. Therefore, here too by the העישה חזקה כשרות, she should still be permitted, since it is only a ספק ספיקא; nevertheless –

הכא מעלה עשו ביוחסין -

Here, for the genealogy of the priests, the instituted a higher level of stringency and forbade even a priest from marrying into – priesthood

כפי היבן דמצריך לקמן¹² תרי רובי להכשיר אף על גב דעתם סגי בחד רובה:

Just as later, the requires two pluralities (of to permit marriage to even though generally one is sufficient; nevertheless concerning we are more stringent, and we require two; the same is by a ספק ספיקא, that in addition to the ספק ספיקא, we also require a חזקה כשרות.

SUMMARY

The term ספק חלל (according to a family in which a 'עיטה' refers to a family in which many were intermingled. An offspring of this family is (for she has no חזקה כשרות); however a woman who married into this family and became

previous ר"י ב"ב and ר"י גמרא, who maintain that מותרת is אלמנה. According to that (ברייתא), the ruling of עיטה is that even though that the עיטה is אלמנה (this is a universally agreed upon ruling). This is what even though that the עיטה is אלמנה, since even רשב"ג who is the most lenient view, maintains that עיטה is אלמנה. Therefore since the עיטה is אלמנה, the עיטה is also אסור. However, our מותרת disagrees and maintains that the עיטה is also אסור. Our מותרת asks why should there be a difference between the עיטה and the עיטה.

¹¹ Why does one who maintain that everyone (including ר"י ור"י ב"ב) presumes that everyone agrees that אלמנה עיטה מותרת but the עיטה אסור?! See 'Thinking it over' # 2.

¹² This is regarding a woman who was נאנסה מחוץ לעיר; in order that she remains there is a requirement that both the רוב of the city and the רוב of the caravan, which passed through the city, are even though that generally one רוב is sufficient.

widowed is **_mo'teret le'havna** according to ר"י and ריב"ב (since she has a **zukat ha-kiddushah**). A **mo'teret le'havna** is required in addition to a **sfekh spikha** in order to be **zukat ha-kiddushah**.

THINKING IT OVER

1. **אלמנה עיסה רש"י** and **תוספות** disagree as to the meaning of **רשות**. Is this merely a difference of interpretation; or do they disagree as well? [What will **רש"י** and **תוספות** maintain is the rule in each other's scenario?]
2. asks why there is a difference between the **אלמנה** and the **בנה**.¹³ How will **רש"י** deal with this question?¹⁴

¹³ See footnote # 11.

¹⁴ See מהר"ם שי"ג.

דרבי יהושע אדרבי יהושע לא קשיה

There is no contradiction between the two opinions of ר"י

OVERVIEW

The presented a contradiction between ר"י (where the woman is not believed to claim of her husband) and ר"ג (where the woman is believed to claim of her husband). resolved this contradiction; by since the woman married the 'עיסה', she first investigated and ascertained that he is not a **חולל**. However no such investigation occurs when there is a relationship (as in our case). asked that we have, however, not resolved the contradiction between ר"ג (of our case) and ר"ג (of the contradiction). After resolved that contradiction, he continues to resolve the contradiction between the two (abovementioned) statements of ר"י. Seemingly there is no need to resolve any contradiction by ר"י, since this was resolved previously. will explain why it was necessary for ר"י to resolve the contradiction in ר"י, differently than was previously explained (by ר"ב).

והשתא לא מצי לשינוי בדוקת ונישאת כדמותני לעיל¹ –

And now (according to the answer of ר"ב), we cannot answer as we previously answered to explain that the reason why by an **אלמנה עיסה** is **מכשיר** (as opposed to **כשר**, **ראואה מעוברת**, etc.), is **since she investigates and** when she is certain that he is, only then does **she marry** him. This answer of is not valid according to this – מסקנא בדוקת ונישאת כדמות שמא: ²

Since that now establishes that **אלמנה עיסה** is discussing a case where the merely states that **perhaps** he is; there is then no concept of **אלמנה**.

SUMMARY

According to ר"ב the woman is merely a **שמא**, therefore there is no concept of **אשה בדוקת ונישאת**.

THINKING IT OVER

1. Is there a **ר"ב** between **אליבא דר"י**?

2. Seemingly is stating the obvious. What was concern initially?!

¹ [הה] [ר"ב] earlier on this.

² In order to resolve the discrepancy by ר"ב, ר"ג stated that in the case of **אלמנה עיסה** (in which there is a dispute between ר"י and ר"ג) the woman is merely claiming **שמא**.

תנו רבנן איזו היא אלמנה עיטה.¹

The taught; who is considered a widow of an *Uisa*.

OVERVIEW²

This intends to clarify the term ברייתא 'אלמנה עיטה'. This indicates that the term referencing a previous source where the term was used. According to מסכת עדיות משנה ברייתא, רשי' (ד"ה איזוה) wherein testified that an ריב"ב ר"י. This qualifies³ and limits which is dealing with people who are accused of being פסול and react either by denying the accusation (צוחה) or remaining silent and not reacting (שתק). The maintains that the which is, is one whose only possible is the פסול whom she (may have) married. However there is no involvement in this of anyone who was accused of any and remained silent. Had there been such an incident the ר"מ would be פטולה however disagrees and maintains that even if there was a שתק (according to the ת"ק or ת"ק מזר (according to the רשב"א who is married to the [ספיקא] הלל still be (ספיק) [ספיקא] הלל). The concludes that agrees with one of the opinions of ר"מ. This is the view [and Tosafot (as [seemingly] understands it). Tosafot has difficulties with this and therefore changes the גירסה and the interpretation of this ברייתא.

תוספות asks:

קשה לרביינו שם על גרסת הספרים דגורי אלמנה עיטה -

The has a difficulty with the texts that read אלמנה עיטה (as in our, as גمرا, as opposed to just 'עיטה'; omitting the word ('אלמנה' -

אדם כן אית ליה לרבי יוסי דאלמנה עיטה כשרה -

For this is so (that the גירסה is, ('אלמנה' עיטה' it would turn out that maintains that an *אלמנה עיטה* is permitted to marry into כהונה -

זה מאכשר לךמו⁵ שתק מזר וכל שכן דמזכיר באלמנה עיטה כדמות הסוגיא -

¹ See previous Tosafot for an explanation of the term *אלמנה עיטה*.

² It is advantageous, for a better understanding of Tosafot, to study the entire till the סוגיא.

³ The actual term of was seemingly understood (see previous footnote # 1). It merely required further qualification.

⁴ It seems (from רשי') that this alone (the פטול of שתק) would be that person, even without a marriage to a (known) ספק הלל.

⁵ Rav Avraham Dr. M., עיי"ש before the משנה. This is according to ליקמן עמוד ב'.

For ר"י maintains **later** in the that (even) a **שומר מזור** (one who is silent when (s)he is called a **כהונה**) **is permitted** to marry into **so certainly will permit the widow of the עיטה** (to marry, when there is not even any **שומר**); **as it is evident** from the entire **discussion**; that when there is no **שומר** at all, everyone agrees that an **אלמנה** **שומרה** is **עיטה**.⁶

ובפרק עשרה יוחסין גם זה שם אמר בהזיא דרבנן יוסי אלמנת עיטה פסולה -

אלמנת an ר"י **explicitly states that according to** the **שומר** **is disqualified** from marrying into **עיטה**.⁸ There is an open contradiction between our **עשרה** in **שומר** and the **coder** **ר"י** is **אלמנת עיטה** (goras almenat uisha) which implies (if we are in **שומר** and the **coder** **ר"י** is **אלמנת עיטה** when it is clearly stated that **ר"י** maintains that an **עיטה** is **אלמנת עיטה**!

גירסא offers his and interpretation:

לכך מוחק רבינו תם אלמנת גורס איזוהי עיטה ולענין בת קתני -

Therefore the ר"ת erases the word 'אלמנת', and the text reads, 'who is an **עיטה**'; omitting the word **בורייתא**. **This** is discussing **the daughter** who was born into this **עיטה**; not a woman who married into this **עיטה**.

וקאי אהאי דתנא בשילתי עדיות העיטה נאמנת לטהר ולטמא לרוקן ולקרב לאסור ולהתיר -

And this is referencing that which the משנה teaches us in the end of בורייתא where the states,¹⁰ 'the **עיטה** is believed to purify and defile, to distance and to bring close, to prohibit and to permit'. This is the quote of the משנה in **עדיות**.

והכי פירושו נאמנת לטהר עצמה בציויחה או בשטיקה למור כדאית ליה ולמור כדאית ליה¹¹ -

And this is the interpretation of that **עיטה**:¹² any member of the family is believed to purify itself by either screaming or remaining silent; according to this master as he maintains and according to the other master in the manner that he

⁶ According to the term פסול of a **שומר** is greater than the term **ר"מ** and **חכמים** (in certain instances), but nevertheless are the **钐** **ר"י** stands to reason that who is **שומר** a **מכשיר** should certainly be **שומר**. See 'Thinking it over' # 1.

⁷ The there mentions a three way between the **רשב"ג** and **ר"ק**, **ר' יוסי** and **ת"ה**. The subsequently said that they all agree that **שומרה** is **אלמנת עיטה**; and disagree with the **ר' יהושע** and **רבנן**.

⁸ It is assumable that the term **קדושין** here and in refer to the same situation; the same term is used in both places, in regards to the statement of that **ר' יהושע**.

⁹ This is not referring to the **רשב"ג** (as maintains).

¹⁰ It is actually inserted in the same **פ"ח** **ג**. In our text the **רשב"ג** reads **钐** **ר"י** and **ריב"ב** **על אלמנת עיטה וכ"ו** **משנה**. It does not mention **ללאו** **ולתיר**. See the **פרש המשנה** **תוספות** either had a different or perhaps is (also) alluding to the **תוספות**, which he will cite shortly.

¹¹ Some are deemed **钐** **אליבא דת"ק** even by **שטייה**, as the **רשב"ג** elaborates, **צוויה** that **钐** **ר"מ** maintains that a **ברייתא** **ת"ק** maintains that a **שומר מזור** (**钐** **אליבא דרשב"א** and, **钐** **ר"מ** **אליבא דת"ק**). According to the **钐** of the **ת"ק** however, no **שומר** can be deemed to be **钐**.

¹² will now digress slightly and explain the **עדיות** in **משנה** which the **תוספות** is referencing.

maintains. The various **תנאים** in the **ברייתא** express their views as to when the **עיטה** is **ונאמנה**.

לטהר ולטמא, לרחק ולקרוב, לאסור ולהתיר; משנה will now explain the various categories in the **תוספות** how they apply to an **עיטה** which deals with **איסורי חיתון**. The expression of -

לטהר ולטמא שיביך לעניין ממזרות ונתינות -

לטהר ולטמא, which the states, **is applicable** concerning **the issues of** whether this member has a **פסול** of **עיטה**, which he was accused of –

כדתנן (קדושים ז' עב,ב) ממזרים ונתינים עתידיין ליטהר -

As we learnt in a that **מمزירים** **נתינים** **משנה** **will eventually be purified.** We see from that that the term of **טורה** (and **טומאה**) apply to **ממזירים** **נתינים** – The expression of –

לרחק ולקרוב שיביך אחלוות כדתנן¹³ הכהנים שומעים לכם לרחק ולא לקרוב -

איסור **חלוות** **משנה** **will listen to you** only **distance** certain suspect woman from marrying into; however they **will not** listen to you regarding **bringing** certain woman **closer** and permitting them to marry into. **כהונה**

וכו לקמן ז' צ,א) וריהוקום בני משפחה -

And similarly later cites a **משנה** which states that **the family members distanced her** (a suspected **זונה** from marrying into). **כהונה** We see from these two that the term of **חלוות** is applicable for **לקרוב** **ולרחק** –

ולאסור ולהתיר שיביך עבדים¹⁴ -

And the expression of **לאסור ולהתיר** **is applicable for slaves.** This concludes explanation of the various expressions in the **תוספות**. However, did not conclude his answer as of yet. continues to explain the terminology of the **משנה** in the end of that the **ברייתא** is referencing.

asks on his previous assumption that **לטהר ולטמא** refers to the **tosafot**:

והא דפרייך בפרק ב' (לקמן ז' כח,ב) טמאה וטהורה סלקא דעתך -

And that which the asks in the second ‘**פרק** **how can you think of saying** **טמאה** **and** **טהורה** **?!**’ The there cited a **גמרא** which stated that a child is believed to say that my father stated ‘this family is **טמאה** and this family is **טהורה**’. The asked how you can refer to a family as **טמאה** or **טהורה**?! The term **טומאה** refer to, but not to **טהורה**. This seems to contradict what previously maintained that the term **לטהר ולטמא** applies to **ממזירים** and **נתינים**!

תוספות answers:

התם דכில כל פסולין בחוד לישנא -

¹³ Cited previously on this **עמוד** in the name of **ר"ג**.

¹⁴ This may be because the **טומאה** can become **טהורה** **שחוור** **לכט ישראלי** through **עבדים**. See **שטמ"ק**.

There (in the second **where** the ברייתא **includes all unqualified categories in one expression**; when they said there were alluding to all types of פסולים, families, משפחות, etc., they were alluding to all types of families, פסולים, משפחות, etc. – עבדים and מזרים, נתינים, חללים –

הוה ליה למיתני משפה זו כשרה וזו פסולה –

The **should have taught us** 'this family is כשרה and this family is' ברייתא; this is the universally accepted terminology for 'טמאה קהיל'. That is why there asks 'טמא קהיל' גمرا. And that is why the question asks 'וטהורת ס"ד' –

אבל אמירות ונתינות לחודא שיז שפיר לשון טמאה וטהורה –

However concerning exclusively as in the case of משנה divides the various **terms of reference** into different categories (as previously stated), then it is indeed appropriate to use the **terms of reference** or טמאה to refer to specifically, as previously proved from the case in גمرا. קדוושין גمرا in גمرا.

עדויות continues to explain the case at the end of **תוספות**:

ונאמנת דעתני משומם לטהר לקרב ולהתיר –

And when the taught that the is believed; the there stated עיטה משנה that was used only on account of the phrases נאמנה' 'נאמנה' was used only **on account of** the phrases עיטה, נאמנה' לטרר ולטמא וכו' it is only for these instances that it is appropriate to state that the is נאמנה – נאמנה

אף על גב דלטמא ולרחק ולאסור בצויחה או בשתייקה לא שיז נאמנת –

Even though that concerning the phrases of it is not appropriate to say that the is believed through עיטה or צויחה or שתייקה to be מטמא, נאמנה can be used only when it supports and is a leniency for the claimant as when the will be צויחה or שתייקה results in stringency for the accused. Nonetheless the finds it appropriate to use the term נאמנה, since it applies to the positive terms of לטרר, etc. (even though it does not apply to the negative terms of לטרר, etc).

ברייתא **תוספות** has concluded explaining the case now, משנה בשלבי עדויות which is referencing that:

עליה דעתני בברייתא דהכא איזה עיטה שנאמנת בצויחה או בשתייקה לטהר הבת –

And concerning that cited here teaches, what type of עיטה is believed through שתייקה or צויחה which that stated, that the is believed to be **הטרר**? We are not discussing the עיטה, a woman who married this (where there is a חזקת כשרות for the עיטה), but rather we are discussing the עיטה itself, whether the daughter of the עיטה (the family in which one of its members¹⁵ is being

¹⁵ The fact that it is being called an עיטה would indicate that we are not only dealing with the specific individual who was accused, but rather with the family in which this individual was intermingled. See 'Thinking it over' # 2.

accused) who has no כהונה, is permitted to marry into בריתה. The continues that the עיסה is –

כל שאין בה כולי -

Anyone, where there is no, etc. accusation of the various פסולים which the ברייתא enumerates.¹⁶

אלמנה תוספות brings a proof to his contention that we are discussing the ביהת העיסה, and not the עיסה:

והכי משמע בתוספתא¹⁷ -

And it also seems in the **tosfata** **–** משנה that this is the interpretation of the – **דעתני נאמנת עישה לטהר ולטמא לאסור ולהתיר לרחך ולרבוב** –

It stated there that ‘**an is believed עיסה** **לארסא ולתיר לרחק ולקרב** (and the concludes; however) -

וּבְאַלְמָנָת עִיסָה לֹא נָגַעַן -

They did not touch (or discuss) the status of **an עיסה**. We may derive from this that the **עיסה** is discussing (even) **בַּה** **עִסָּה** **מְשֻׁנָּה** and not (only) **תּוֹסְפָּתָא**.

וְגִירסת הַסּוּפִים will now explain that according to his view (as opposed to גִירסת עִיסָה), there will be no contradiction between ר"י [seemingly] (who maintains that פָסוֹלָה is אלמנת עִיסָה and כְשֻׁרָה לְכַהוֹנָה in ר"י) and (who maintains that עִיסָה is אלמנת עִיסָה).
לְכַהוֹנָה.

There are two משנה cited in our gemara that states גמרא עיטה כשרה שהיא אלמנת על ר' זעירא, and the one that states גמרא עיטה לטהר וכוי' שאלמנת על ר' זעירא cited in our gemara that states גמרא עיטה לטהר וכוי' שאלמנת על ר' זעירא. In addition there is a משנה cited in our gemara that states גמרא עיטה לטהר וכוי' שאלמנת על ר' זעירא interpreting one of these two mishnayot. According to the gemara it is interpreting the משנה of ר' זעירא that states גמרא עיטה כשרה שהיא אלמנת על ר' זעירא. According to the gemara it is interpreting the משנה of ר' זעירא that states גמרא עיטה לטהר וכוי' שאלמנת על ר' זעירא.

There is a difference between the which we are referring to. The of **משנה עיטה** is referring to a woman who married a (ספיקא) חלל; a person who is known to be a (ספיקא) חלל. The (ר"ה) **נאמנה עיטה** is interpreted by our (according to the) ברייתא to be discussing a case of a (שתחוק; someone who was accused of being a) פסול, however we do not know that he is even a (פסול). Therefore according to the (ר"ה), when the term **עיטה** is used we are referring (with the word **עיטה**) to a (ספיקא) חלל; when the term **עיטה** alone is used we are referring to an accused (פסול), but not to a (פסול).

¹⁷ תוספתא דעתיות פ"ג ה"ג.

תוספות continues:

והשתא לא קשה דרבי יוסי אדרבי יוסי -

And now (that the issue of **משנה עיטה** is referring to the issue of **ברייתא** and not to the issue of **ר"י**) (**'אלמנה עיטה'** maintains that an **אלמנה** of this **עיטה** is **עיטה** who maintains that an **אלמנה** of this **עיטה** is **עיטה**). There is no contradiction, for the two are discussing different cases –

זהא דעתך רבבי יוסי בשתוκ מזר אגוף העיטה קאי להכשיר את הבית -

For that which in our **גמרא**, **he was discussing the** **שתוκ מזר a מכשיר was ר"י** **עיטה itself, to be even the daughter** of this to marry into **שתוκ**, since there is no known accused of being a **מזר** on this person; he was merely accused of being a **מזר** and therefore by his **ספק פסול** he exonerates himself, and (even) his daughter may marry into **שתוκ**, and certainly his widow (who has a **חזקת כשרות**). In the **בריתא** we are discussing an **עיטה**. There is no known **ספק פסול** only an accusation of **פסל**.

אבל במקום שמצויר אלמנה עיטה להכשיר אלמנה דוקא ולא הבית -

However in a place where **אלמנה עיטה** is mentioned; where the issue at hand is whether the **אלמנה עיטה** is mentioned, that is an indication that we are discussing specifically whether **the daughter** is permitted but not whether **the daughter** is permitted. The reason why the term **אלמנה עיטה** is used is to indicate that at most we can be the **הכשיר**, but we can certainly not be the **בנה**. This teaches us that the case of **אלמנה עיטה** is where there is a known **ספק** (ספיקא) concerning the **עיטה**. Therefore the **אלמנה עיטה** who has a **חזקת כשרות**; however the **בנה** who has no **בנה** **פსולה** for **כהונה** is **חזקת כשרות** but the **בנה** is **פסול**.

כדמות בקדושים (דף עה, א) ושם ודאי פוסל רבבי יוסי אפילו את האלמנה -

As is evident in (ספיקא) **and there** in a case where there is a **קדושין**, **מסכת קדושים** then **אלמנה** **פוסל ר"י** **from marrying into**; regardless that she has a **חזקת כשרות** and he is certainly the **בנה** of the **עיטה** –

כדמות נמי בקדושים -

as is also evident in ¹⁸ **מסכת קדושים**.

תוספות offers an additional proof to the interpretation of the **ר"ת**:

וכדברי רבינו תם משמע בירושלים ¹⁹ –

And in ר"ת it is also indicated as the stated –

דעתני איזהו עיטה כל שאין בה לא מזר ולא נתין ולא עבדי מלכים -

For it states there in a **בריתא** 'what is an **עיטה**? Anything that has no mixture of a **נתין**, a **מזר**, and no slaves of kings; the **תלמוד ירושלמי** continues –

¹⁸ See previous footnote # 7.

¹⁹ ז, א. **ירושלמי** In our **תלמוד ירושלמי** it is on **פ"א ה"ט**.

רבי מאיר אומר כל שאין בה אחד מכל אלו בתה כשרה -

כשרה is עיטה said any that has none of the above, the daughter of this ר"מ
this concludes the citation from the – ירושלמי 'להונא, **אלמא דבכורות דבת מירוי ולא באלמנה -**

It is evident from the concluding words of ר"מ in this that we are discussing the status of the daughter and not (merely) of the almuna.

פירוש ר"ח presents a difficulty with the תוספות

ומיהו קשה לר宾ו שמשון בן אברהם -

However, the רשב"א has a difficulty with this interpretation –

כיוון דהך ברייתא קיימת לפרשיה היא דסוף עדיות -

Since (as the ר"ת maintains) that the intent of this is to explain that at the end of מסקנת עדיות (עיטה נאמנה לטהר וכו') – מסקנת עדיות (עיטה נאמנה לטהר וכו')

אם כן רבוי מאיר דסביר דחלל בין צוח בין שתק שיר –

If this is correct, then who maintains in this (according to the ר"ת) that a whether he protested or whether he was silent (when he was accused of being a חיל – חיל)

אם כן היכי מפרש האי דקתני לרחק –

If this is so, then how can ר"מ explain that which the states that an will be distanced, which is referring to a חיל. The ר"ת previously explained that the expression in that of one who is accused of being a חיל is referring to one who is accused of being a חיל. Under certain circumstances (if he is it will be and under other circumstances (it will be מותר (מותר) (לקרוב (אסור) (לרחוק. However, concerning a ר"מ maintains that he is always. What did the mean when it states that there is a situation of לקרוב and לרחוק (by a חיל)?!

תוספות answers:

ואומר רבינו יצחק הא דמכשור רבוי מאיר חיל שותק -

And the ר"י answers; that which ר"מ permits a חיל שותק – כהונא to marry into חיל שותק
הני מיili בשחררי כן שואلين ממנו אם הוא חיל אם לא וצוח –

This ruling is valid only in a case where afterwards (after his initial accusation of him being a חיל a he is again asked (by בית דין, if he is indeed or not; and he protests that he is not a חיל. In this case we disregard his initial and say that we accept his ultimate (this is included in the צוויה (this is included in the – (לקרוב

אבל אם לעולם שותק פשיטה דפסול -

However if he always remains silent and does not protest this accusation that he is a חיל a, then obviously he is. פסול. Therefore we can now understand –

והא דקתני נאמנת לרחק אם לעולם שותק:

חָלֵל לְרַחֲק that which the stated that the may be believed to rule by a **לְרַחֲק** and be **אָסּוֹר**; it is in a situation **וְהַיְשֵׁר** always silent, and never denies the accusations that he is a **חָלֵל**.

SUMMARY

משנה ברייתא אלמנת עיטה is referring to the גירושה; then the is referring to the ברייתא (ספיקא) חלל that an العיד ר"י וכו' is (one who was married to a wife). The is limiting this to exclude (certain) cases of شותוק. All the agree that an العيد ר"י without issues of this (ר' יוסי) ברייתא תנאים is that the العיטה is maintaining that ר' יוסי argues that פסוליה is אלמנת עיטה.

therefore is referring to the גירושה (omitting and the different cases of العיטה). According to this, that is discussing cases of accused only (no known פסולים). In those instances even the العיטה is maintaining that even the العיטה is certainly the العיטה.

THINKING IT OVER

by מחייב that since he should certainly be argues²⁰ that if an العיטה is certainly if an العיטה is certainly. The entire indicates (according to understanding of ריש"י) תוספות that if an العיטה is certainly if an العיטה is certainly.

However this may be true for the ר"מ of the العיטה (who is not cited in this case) may maintain that by an العיטה (who was married to a known פועל) there is more reason to be her, than to be a פועל (מזור) who is not a known פועל.²¹

2. According to it seems that the ברייתא is dealing with a person who was accused of being a רשב"א.²² Why then does use the expression (in the ברייתא) נטמע בעה ספק חלל. The term נטמע בעה indicates that a ספק חלל was intermingled in the family,²³ and not merely an accused.²⁴

²⁰ See footnote # 6.

²¹ It is seemingly not sufficient to claim that since the גמרא relates the opinion of ר"מ to the opinion of ר"י then that proves that ר"י agrees with ר"מ (even) concerning עיטה. This is not necessarily so. The גמרא merely connects the versions of ר"י to the two versions of ר"מ regarding מזור (that there are reasons either way). However concerning עיטה, it is possible that ר"י maintains that it is more severe than a פועל שותוק! See סוכ"ד אות סה!

²² See footnote # 15.

²³ See previous תוספות ד"ה אלמנת עיטה.

²⁴ קושית הבואר למחר"ם שי"ר אות (מ)

Nothing on account of, ממזירות etc.

לא משום ממזירות כלל -

OVERVIEW

The ספיקות states that an עיטה is only composed of בריתא; not other Jews are forbidden to marry. The enumerates many, but not all the פסולי קהל. Our will mention and explain why other were not included in the בריתא.

הא דלא חשיב עמוני ומואבי משום דלא פסיקה ذזכרים אסורים ונקבות מותרים -

The reason he did not mention that an (אלמנת) עיטה has no intermingling of an, because there is no set ruling for male members of עמוני ומואבי are forbidden to marry Jewish women; while females are permitted to marry Jewish men. Therefore he could not state that an does not have any מותרת בקהל who are עמוני ומואבי; for indeed they may contain עמוני ומואבי.

ומצרים ואדומי² לא חשיב דלא אסורין אלא עד דור שלישי³ - anticipates a similar question:

And the reason he does not mention that an (אלמנת) has no intermingling of a לבוא בקהל (דלא פסיקה), for they are forbidden only up to the third generation of converted מצרים ואדומים; from מצרי ואדומי onwards they are permitted. Therefore he could not simply state that there is in an מצרי ואדומי no לבוא בקהל, for there can be a מצרי ואדומי שלישי.

SUMMARY

The does not mention, because their prohibition is limited, and not universal.

THINKING IT OVER

עמוני מותרת לכהונה? Is she able to marry? It would seem that in all cases she is, so why not mention it?! Can we connect this to 'עיטה' of תוספות גירסה as opposed to 'אלמנת עיטה'?

¹ The states that בראה (ליעיל ז,ב) that לא יבא עמוני ומואבי בקהל ה' (דברים [ח'א] כג,ד) that רות (המואביה) was able to marry. [This is how women are able to marry; עמוני ומואבי ולא מואבית.]

² In the words are (also) written before תוספות הרא"ש.

³ See which states; דברים [ח'א] כג,ט

וთו רבי שמעון בן אלעזר אומר איזוהי עיסה כל שנטמע בה ספק חלל והאמרת
רישא חלל כשר -
And furthermore:

רשב"א says what is an anything in which a was intermingled; however the stated that a **רישא חלל** is.

OVERVIEW

The has a difficulty with the statement of . It contradicts the . It is not clear whether it contradicts the [the opinion of] or whether it contradicts the himself (). First cites the and their interpretation; followed by and his interpretation.

הכי גרסין בכל הספרים ובפירוש רבינו חננאל -

This is the reading in all the texts as well as in **the commentary of the** as cited in the heading (omitting the words – (מכירין ישראל וכו' שביניהם))

ומפרש כל שנטמע בה ספק חלל הא ודאי חלל פסול -

And the explains the question as follows; stated that an question as follows; which is **any in which a is intermingled**; we may infer from this **that if a definite** was intermingled then the **פסולה עיסה** is; however this poses a difficulty –

ואה אמרת רישא חלל כשר¹ והיינו ודאי חלל -

For you stated in the in the statement of the **רישא** **תנא קמא** if a is intermingled then the **עיסה** is **כשרה**; **which means** that the even when a **ודאי חלל** is intermingled.

rejects this and the ensuing interpretation:

ואין נראה דמאי פריך מותנא קמא דלמא תנא קמא פlige עלייה -

And this interpretation is not plausible; for how can the challenge a statement of **רשב"א **ת"ק**?!** Perhaps the **רשב"א** argues with **ת"ק**?²

concludes:

ופירוש הקונטרס וגירושתו עיקר -

¹ The **ת"ק** stated that for an to be it cannot have any of the enumerated **פסולים**. A was not one of the enumerated **פסולים**. This indicates that even if a **עיסה** was **ונטמע בעיסה** was **ודאי חלל**.

² The **ת"ק** can maintain that even if a **עיסה** was **ונטמע** while **רשב"א** can maintain that it is only if it was with a **ספק חלל** but not with a **ודאי חלל**.

And the explanation of רשב"י and his reading of the text are conclusive.³

SUMMARY

According to the ר"ח, there is a contradiction between רשב"א who maintains that (only) כשר ב夷"ה is ספק חלל and the כשר בעיסה who maintain that (even) a ספק חלל is כשר בעיסה.

רשב"א rejects this, because the כשר בעיסה and כשר ב夷"ה may indeed be arguing.

According to רשב"א the contradiction is that initially maintains that a ספק חלל is כשר בעיסה; however from the expression 'ואין מכירין חללי שביניהם' it seems that even a ספק חלל is כשר בעיסה.

THINKING IT OVER

וain רשב"י asks the same question as ר"ח in סתייה as does. Seemingly פסול would indicate that even a ספק חלל שנטמע would be the case? ⁴ עיסה

³ According to our text reads as in our רשב"י; however at the conclusion it reads ר"ש 'הא אמרת רישא ספק חלל כשר' (and not by a ספק חלל). The contradiction, as it explains it is that in the statement it says ספק חלל by a ספק חללי (only); all שנטמע in the statement of רשב"א's רישא. However from the statement of 'מכירין ישראל וכו' and 'וain מכירין חללים שביניהם' this indicates that even a ספק חלל is ספק חלל the case.

⁴ See מהרא"מ שי"ג, סוכ"ד אות ג.

מමזר צוחה וחלל שותק איכא ביןינו -
The difference between them is by a who protests and a who is silent.

OVERVIEW

פסול argued that all are שותקים (however all are כשר). However all are צוחים (according to the ת"ק that a כשר is שותק). The argument concerning the view of ר"מ; claiming that (only) a כשר maintains that (only) a כשר is שותק. The summation states that the argument between ר"מ and ר"ב concerns the view of (only); the maintains that they are both צוחה and ממלצת. The will argue that the omitted an additional case where and the ר"ב disagrees (concerning the view of ר"מ).

חותפה asks:

תימה דהוה ליה למימר ממלצת צוחה ושותק וחלל שותק איכא ביןינו -

It is astounding! The should have said that the difference between the ת"ק and is by a who either screams or remains silent (to include a ממלצת, and by a who remains silent – שותק), and by a who remains silent –

דבממלצת שותק נמי פליגי¹ דהא מכשר ליה רב שמעון בן אלעזר² -

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

SUMMARY

ממלצת שותק should have mentioned that the ת"ק and ר"ב also argue by a כשר.

THINKING IT OVER

Perhaps we can answer that the reason the ת"ק did not include ממלצת שותק with is that by the latter two is ר"ב and by the former he is כשר.³ In addition is ממלצת שותק (which states שבדיניהם and needs no further elaboration; however are not (that clearly) mentioned in the ת"ק. בריתא.

¹ א' שמייע לך דמכשיר ר"מ בשתייה וכי אלא ذקרו לה ממלצת שותק ר"ב clearly states that the ת"ק (himself, as well as ר"ב) is definitely.

² See who answers that the ת"ק means that they argue even by a כשר.

³ See in the margin.

However אבל מזר צוח וחלל שותק פסול - if the protests and the remains silent, he is disqualified.

OVERVIEW

The statement of **רשב"א** consists of three parts; A. which
 מכירין ישראל (seemingly) teaches the **יתיר** (through)
ספוק חילל שנטמע of a **צוויה**.¹ B. which teaches the **יתיר** of a
מזור ושותק.² C. which teaches the **יתיר** of a **פסול** **חילל ושותק**³ which
 claims an additional ruling that a **פסול** is **מזור וצוה**. The difficulty that will discuss is, from where
 does derive that **רבי יוחנן** **פסול** is **מזור צוה**??!

תוספות asks:

ואם תאמר מمز' צווח מנא ליה דפסל רבי שמעון בן אלעזר⁴ -

מזר צוח רשב"א know that disqualifies a **ר' יהונ** And if you will say; how does ?!

תוספות answers:

ואומר רביינו יצחק מדקתני במלתיה איזוהי עיסה כל שנטמע בה ספק חלל⁵ -

פָּסֹול is מזוז צווח that a derived that ר' יוחנן ר"י says that maintains that from the fact that he mentioned in his statement; ‘what is an עיטה, anything in which a ספק חלל was intermingled’; this phrase is superfluous –

דלא הויה ליה למימר אלא מכירין ישראל ממזרים שביניהם ואין מכירין חלון שביניהם -

He should have only stated; ‘the Jews recognize the **מזרים among them, but they do not recognize the **חלדים** among them**, without mentioning – בְּלֹא שׁוֹמֵן רֶב פָּקַד חֲלָל –

במגבה ואמונו בקהל צוות ⁶ בראובן ⁷ –

הכל Since from this phrase of we derived that a מכירין וכו' ואין מכירין חלין שביניהם. Therefore, seemingly no point in adding ספק חליל שנטמע בה עיטה. איזוהי עיטה כל שנטמע בה ספק חליל שנטמע בה עיטה. **כשר** is צווח. concludes that the reason that mentions לשב"א is to teach us,

¹ It cannot mean a **רשב"א** for according to the **היתר**, **חלל שותק** is **פסול**.

² There is no need for him to be since; מכירין ישראל מזרים שביניהם צווח therefore everyone knows that he is not a Mazor.

³ He is reluctant to be *צוחה*. He would rather be *שותק*, since it is ‘safer’ to be silent than to protest. If he protests they may verify that he is indeed *פסול* (see following note).

⁴ From the statement of "רשב"א" we may only derive that a ממר שותק והל צווח but פסול is חל שותק, while a בשר are (seemingly) not that a פסול is and a בשר is פסול!

⁵ The interpretation of this phrase [according to חוספה] is (seemingly) that it is discussing an "אָגָמָה" (See previous [תודת ה' ב' (ד"ה א')]).

⁶ The phrase is חיל אזרוח נגיד מכבירתי. We derive from it that a mobar is according to מכבירתי it is discussing all נגיד. See previous (§, 1) פ' מכבירתי.

⁷ The phrase בְּמִרְאַת כָּל שׂוֹתֵךְ actually teaches that a בְּמִרְאַת is יְהֹוָה. We derive from it that a בְּמִרְאַת is יְהֹוָה.

A פָּסוֹל חֲלֵל גָּמָרָא states, since he is afraid that if he will be בְּזִיהָוָן, they will investigate and find that he is really קָבוֹל. If he is בְּזִיהָוָן however there is no reason to assume that he is a חֲלֵל גָּמָרָא, therefore he is בְּשִׁיר.

that this applies only to a ספק חלל מזור of היתר and not to a צויהה. ספק מזור is not permitted through צויהה; only through שתיקה.

will now prove that there is no point in mentioning איזוהי וכוי ספק חלל Tosfot for its own sake, unless the intention is that we infer from it that a פסול is מזור צויה.

כפי היכי דלא הוצרך להשמענו כל שנטמע בה ספק מזור -

Just as it was unnecessary to teach us that an עיטה is if כשרה is intermingled in it. could have seemingly also stated (in addition to stating ספק חיל that a ספק מזור is by רשב"א) that a ספק מזור is derived from a מזרין ישראלי מזרים שביניהם. Similarly there is no point in mentioning the חיל וצוה of a היתר since it is inferred from the statement ואין מכירין חללים שביניהם.⁸ Therefore -

אלא ודאי אתה למידך דחלל צוהה דוקא כשר הא מזור צוהה פסול:

It is certain that the **only** reason the phrase **כל שנטמע בה ספק חיל** was mentioned is **in order that we infer** from it that **only a חיל צוהה, כשר is מזור צוהה, however a פסל.**

SUMMARY

We derive that ספק מזור וצוהה is from the extra phrase of ספק מזור צוהה פסול. Only a חיל, but not a ספק מזור צוהה.

THINKING IT OVER

1. ‘proves’ that the phrase **כל שנטמע בה ספק חיל** is extra, from the fact that there is no similar phrase of ספק מזור צוהה.⁹ There seems to be a difference, however. By a מזרין ישראלי מזרים שביניהם, the phrase teaches us overtly that a מזור וצוהה is אסור; therefore there is no need for an additional phrase. However the phrase **כל שנטמע בה ספק מזור צוהה** teaches us that a חיל וצוהה is אסור. A (merely) inferred from this statement. Therefore perhaps רשב"א wanted to state it (more) clearly.

2. If רשב"א maintains that a ספק מזור צוהה, why does he teach it through an inference from a superfluous phrase; when he could have taught it to us directly (with a necessary phrase), as he taught the other rulings?!

⁸ See ‘Thinking it over’ # 1.

⁹ See footnote # 8.

**It is sufficient that
we are not excluding him (me) from the community.**

OVERVIEW

רשב"א maintains that a חלל שותק is חלל לכהונה. The reason given by the accused is that he says, ‘at least they are not excluding me from the community’. The understanding of this explanation would seem to be as follows. If the accused knows that he is not a חלל he would surely protest, for he knows that when an investigation will follow it will absolve him of all חללו. However a (possible) when accused prefers to remain silent. His reasoning is that if I remain silent I will merely (at most) be excluded from כהונת ישראל but not from the community. However if I protest, it is possible they will find out that I am also excluded. The question deals with is why this complicated reasoning to be פסול לכהונה 헬פנות. It seems obvious why he is פסול. He was accused of חללו and did not deny it. That is tantamount to an admission. There is a general rule that שתיקה כהודאה דמיון. Silence is equivalent to admission.

תוספות asks:

ואם תאמר מה צריך להאי טעונה לימא הא דעתך משום דאוודוי קא מודי -

And if you will say; why is this reason necessary? The should say that a reason is needed because his silence indicates that he is admitting to the accuser that he is a חלל. It is seemingly unnecessary to say that a חלל שותק is פסול on account of מסתיה דלא מפקין ליה מקהלה when there is a much simpler explanation.¹

תוספות goes on to prove that the reason of כהודאה שתיקה is valid, for it has already been used.²

¹ According to the current understanding of 'הווענה' to פסלות, the reason is showing his willingness to accept his status (by his silence) as long as he will retain his status. There is an implied reason here in this reasoning. It is asking let that be the entire reason without adding the 'לא מפקין ליה מקהלה'.

² Seemingly one may argue that כהודאה שתיקה is not a reason. Let us assume that the accused woman was becoming engaged to marry a Cohen when she was accused of being a חללה and she was silent. Why is she silent?! If this is an admission that she is a Cohen, then why did she attempt to marry a Cohen initially! And even if she is unsure why is she not married?! The reason may be because she is unconcerned about the accusation. It would therefore seem that the reason she is silent is not on account of the שתיקה by itself, but rather because of the additional support of the Cohen. When the woman is accused of being a Cohen, and is not responding, it is not because she is unconcerned about the accusation, but on the contrary, she is concerned that if the investigation will continue (on account of her status), then she may suffer more dire consequences; she will become פסול לכהן. This concern tells us that she is unsure of her status. It is only the addition of מסתיה that allows her שתיקה to be considered as a reason. According to this reasoning, if there can be no worse consequences, for instance if one is accused of being a Cohen, then the שתיקה should not be פסול. However continues that by a Mazor שתיקה is also

זהא מمزור שותק³ פסול לתנא קמא משום דשטיקה כהוזאה⁴ -

For according to the the same ruling applies by a that he is for the same reason; – הוזאה

והוא הדין שלל שותק לרבי שמעון פסול מהאי טעמא -

And the same ruling applies by a that he is for the same reason; namely that (without the reason of) **שתיקה כהוזאה**.

ואנן anticipates a difficulty and resolves it:

ואף על גב דגבי ממזור שותק לדידיה לא הווי שטיקה כהוזאה -

شتיקה even though that according to we do not apply the rule of concerning a. In fact a **מזיזר** is **כשר** concerning a. This would seemingly indicate that **חלל שותק** does not accept the logic of **שתיקה כהוזאה** (and therefore cannot use it by a **רשב"א**).

rejects this reasoning. In truth **רשב"א** also agrees to the logic of **שתיקה כהוזאה**; it is just that concerning a we cannot utilize the logic of **שתיקה כהוזאה**, and –

הינו משום דבר דמזיזר קלא אית ליה -

That is because **רשב"א** **מזיזר** **maintains that a is publicized**; it is well known who is a **מזיזר**. Therefore this accused sees no need to respond; since it is not known that he is a **מזיזר**, this in itself proves that he is not a **מזיזר**. However by a **חלל** (who is not publicized), where this argument is not applicable, **רשב"א** will follow the logic of **שתיקה כהוזאה**. The question remains why say that a **פסול** is **חלל** and **שותק** because of **משתייה וכו'**, when it is simpler to say that he is **פסול** because **שתיקה כהוזאה**.

תוספות answers:

ויש לומר דהכי פירושא סבר מסתיה דלא מפרקינו ליה מקהיל (כהונת) -

And one can say; that this is the interpretation of the phrase 'he presumes it is sufficient that we will not exclude him from the community (of **כהונה**) –

פירוש אפילו מקהיל כהונת אף על פי שזה מחרפו וקורחו חלל -

The interpretation of the word 'קהיל' is that they will not exclude him **even from the community of**; **כהנים**; he will be accepted. And **even though that this accuser is shaming him and calling him a**, **חלל**, he is not perturbed for –

סביר דאין מוציאין אותו מקהיל כהונת -

He presumes that they are not excluding him from **קהיל כהונת**; people will not pay attention to his accuser, provided that he remains silent –

ושביר אם יצוחח יחזרו לבורר הדבר ויפסלוהו -

³ There is no worse than **משתייה** by a **מזיזר**, for nothing worse can happen to him, concerning **משתייה**.

⁴ We derive from that **שתיקה כהוזאה** even when there is no additional reason of **משתייה וכו'**.

And he assumes that if he will protest and argue with the accuser, they will revisit and investigate the matter and will disqualify him from כהונה.

It seems however that did not answer the original question; why are we not the **חיל פול** (according to the **תוספות**) on account of **מזר שותק** (according to the **ת"ק**) as the **פובל** **שוחט** (**מזר שותק**) explains:

וטעם זה שיעץ גם ב厸זר שותק לתנא קמא ולא נאמר דשתייקה כהודאה -

And this reason applies also by a according to the ת"ק; and that is the reason why a **פובל is **厸זר שותק**. And we do not assume that **שתייקה כהודאה**.**

תוספות maintains that in the case of **חיל ושותק** (according to the **ת"ק**) and **שוחט** (according to the **רשב"א**) the logic of **שתייקה כהודאה** does not apply.⁵ We require more substantial proof to be a **פובל** **שוחט**. The proof may be as follows. When a person is certain that he is a **כשר**, he will definitely deny any and all accusations against him; he has nothing what to fear. However a **פובל** is hesitant to respond to accusations. He is under the impression that there is more to gain by remaining silent than by protesting. If he remains silent, the entire issue may be forgotten and he will retain the status of a complete **כשר** (even **לכהונה**). However if he protests it may turn out that the accuser was correct and he will forfeit his former rights. The reason of **מסתיהה** (combined with his **שוחט**) is what makes the **פובל**.

תוספות concludes:

וכן פירש בקונטרס -

And רשי, also explains it in this manner.⁶

SUMMARY

A **פובל** (according to the **רשב"א**) and a **חיל שותק** (according to the **ת"ק**) are on account of **厸זר שותק** (**מזר שותק**).⁷ They assume that if they remain silent they will retain their original **כשרות** ([even] to **כהונה**).

THINKING IT OVER

1. Is there any difference if the **פובל** is on account of **שתייקה כהודאה**, or on account of **מסתיהה** (in the manner **תוספות** interprets **מסתיהה**)??!

⁵ A person is not required to answer charges brought against him based on hearsay and rumor. See ‘Thinking it over’ # 2.

⁶ **רשי** ד"ה אי refers to **Kohel Cohen** (see), however he seemingly cannot be referring to the interpretation that **פובל** (**מזר שותק**) (according to the **ת"ק**), for **רשי** ד"ה ת"ק states that he is **פובל** on account of **הודאה**.

⁷ See ‘Thinking it over’ # 3.

2. Why indeed do we not say here⁸ ⁹ שתייקה כהודאה?

3. According to that שתייקה מזר by a (according to the רבני) and שתייקה חלל (according to the רש"א פסול) are (not because of כהודאה), but rather because of why therefore is the reason of לא מסתיה וכו' ¹⁰; שתווק מזר (according to רש"א) and not by a שתווק חלל (according to ת"ק)?!¹¹

⁸ See footnote # 5.

⁹ See אבני מלואים סי' ב ס"ק ב.

¹⁰ See footnote # 7.

¹¹ See מהרש"א ומהר"ל.

כמאן אי כרבן גמליאל אפילו ברוב פסולין נמי מכשר -

According to whom is the view of **משנה**? If it follows the view of **ר"ג**, he maintains that she is even if the majority were **פסולין**.

OVERVIEW

The **משנה** tells of an episode concerning a **תינוקת** that was **נאנסה**, and the ruling was that if the people there were **רובה כשרים** she may marry into **כהונה**. The **גמרא** asks why there is a need for **רובה כשרים**. If we agree with **ר"ג**, then even if she is **כשרה**; and if we follow **ר"י** even if she is **כשרה** is insufficient. The **גמרא** answers¹ [(according to ר"י) that we are following the view of ר"י; however here there were two and by agrees that she is **כשרה** **לכהונת רובי** – **רובי** – **רובי**]. The **רבינו הילכה** concludes that the **רב** stated in the name of **רב** is like **רב** **חיא** **בר אשיה** who concluded that she is **כשרה** **לכהונת רובי** if there is **מותרת לכהונת רובי**. It is not clear, however, whether the **משנה** is discussing a case where the **תינוקת** is claiming that she was a **כשרה**, or not; and whether there were **עדים שנאנסו** or not.

תוספות asks:

ואם תאמר והא לא מכשר ברוב פסולין -

And if you will say; but if there were not **מכשר if there were **ר"ג** –**

אלא כשטוענת ברוי ואית לה מיגו דאי בעיא אמרה לא נבעלתי³ –

Unless she claims with certainty that he was a **כשר, and in addition she either has a **מיגו** that she could have claimed I was not **כשר** – נבעללה**

או בלא מיגו הייכא דאייכא למימר בזקמת ומזנה⁴ –

Or she is believed (even) without a **מיגו** in a situation where it is possible to assume that she verifies that her consort is **כשר** and only then is she promiscuous with him –

אבל הכא אפילו טוענת ברוי הא לית לה מיגו⁵ –

However here in the case of the **תינוקת** of our **משנה** even if we are to assume that she has a **claim** that the **ברוי** was a **מאנס**, nevertheless we cannot believe her since she has no **מיגו**; it is presumably known that she was **נאנסה**, therefore she cannot claim

¹ It would be beneficial, for the proper understanding of **תוספות**, to learn the entire **טו,א** on **עמדו**.

² See **§,7** where the **תינוקת** states **ליה ברוי וכמי גמרא**.

³ This is derived from the discussion on **יג,ב** where they said to **ר"י** that the **תינוקת** **השבתו על המעוורת מה תשיבנו על המדברת**. See there **ד"ה השבתנו** and **רש"י ד"ה ולוז**.

⁴ This refers to the case of **יג,ב** (**ד"ה השבתנו** (see **ראה מעוורת**)).

⁵ The reading of the **תינוקת**, which states **נאנסה**, presumably means that there were **עדים שנאנסו**.

- לא נבעלתי

וליכא למיימר בודקת ומזינה דהא נאנסה -

And we cannot assume that she verified first and then was מזונה (and that is why we should believe her), **for she was forcibly** taken. The question is why the gemara assumes that according to ר"ג, the woman would be כשרה even (of מין)? She has no ברכות פטולין! She has no בודקת ומזונה (of חזקה) and no נבעלתה!

חוספה anticipates a possible solution and rejects it:

ואפfilו אם נאמר דהכא לא רואה שנאנסה אלא היא אמרה כן⁶ דעת ליה מגו –

And even if we will assume that here in our משנה no one saw that she was forced, but rather the תינוקת admitted it; whereby she has a מגו. Had she not informed us that anything occurred, she would be כשרה לכהונה, therefore even though she admitted that she was a ברי, nevertheless since she claims that he was a בשר, she should be נאמנת מגו (on account of her). This is what ר"ג maintains that a כשרה לכהונה without the בודקות ומזינה היתר (beyond).

תוספות rejects this solution:

אם כו קשיא הלכתא אהילכתא דליךנו⁷ פסיק רב הלכה כרבי יוסי -

If this is true, that we are discussing a situation where she has a claim, then there is a contradiction between one הילכה and another, since later in the ruling (רבי יושע ר' יי') ruled that the הילכה is like רב גמרא that only if there are two kohanim is it mutza – however –

^{ולעיל}⁸ פסיק רב יהודה אמר שמואל הלכה כרבו גמליאל -

Previously, ר"ג, in the name of הלכה שמואל ruled that the halacha is according to ר"ג; who maintains that the נאמנה even by רוב פסולים (as the gemara mentions here). Therefore if we assume that the story of the חינוקת is in a situation of מוגה and ברוי (similar to the case of ר"ג תרוי רובי) she is נאמנה only by רב, and according to הלכות there will be contradictory. According to רב she is נאמנה even by רוב פסולים (if on the other hand she has no מוגה or טענת ברוי) then how can the claim גمرا be only if she has בודקת ומזונה or מוגה.

תוספה anticipates a possible solution to this contradiction and rejects it:

וְאֵין נֶרֶא לֹמֶר דָּפְלִיגַי -

And it does not seem plausible that **רַב שְׁמוֹאֵל** and **רַב כֶּרֶג** are **arguing** whether the **halacha** is even **רַב פָּסָולִים** by **רַב רֹובִים** only by **רַב מְכַשֵּׂר** and we are to **רַב כֶּרֶג**. If we were to

⁶ We will have to interpret the word **מִשְׁבַּחַת** וְאָנָּסָה in the **משנה** to mean that she informed us that she was **בָּנָה**.

⁷ We will have to interpret the וְעַמּוֹד at the bottom of the עַמּוֹד.

ל' ינואר

assume that they argue, then there would be no contradiction.

however rejects this solution that are arguing what is the הלכה:

דאמן מאוי מיטני אעובדא⁹ דארוס ואראסטו מרבי יהודה אמר שמואל -

כ"י or כר"ג is הלכה and שמואל are in a dispute whether the ruling of שמואל concerning the case of the case of the **ארוס וארוסה??!** The there says that their child is since there rules that will shortly conclude, disagrees with the הלכה כר"ג. However, as maintains that the הלכה כרבי יהושע (as previously mentioned). We know that in a מהלוקה between the rabbi and Shmuel concerning laws ofaisor ויתר.

has an additional difficulty if we assume that are in a dispute:

וכו לעיל (דף יג,א) פריך הלכתא אהילכתא קיימא לנו רבנן בדיני וכולי -

בר"י similarly previously argued that if the הלכה גمرا is like because then there will be a contradiction from one another; הלכה to הלכה ר"ג because there will be a contradiction from one another; הלכה גمرا maintains that the הלכה כר"ג presumably that these two contradict each other.

concludes his question. In these two cases (of and why do we assume that the הלכה כר"ג is ruled (that as the הלכה כר"ג –

ואדרבה הא רב פסיק כרבי יהושע וקיימא לנו רבנן באיסורי¹⁰ -

For on the contrary! rules like ר"ג and we have established that in matters of רב! Why therefore in the previous two cases do we follow the view of רב? We are therefore forced to say that the halacha is like (who rules according to ר"ג?! We are therefore forced to say that רב וশמואל agree that רב וশמואל have no dispute concerning the מהלוקה between רב ור"י. Both כר"ג is the question remains how do we reconcile the question of (מי שטען בר"י ומי שטען רב) that (in this case were she is only by פסק that תרי רובי נאמן) which indicates that the הלכה כרבי יהושע is the case⁹!

answers:

ויש לומר דהכי פירשו כמאן אי כרבנן גמליאלי -

And one can say; that this is the explanation of the סוגיא: according to whom is this משנה? If it is according to ר"ג to and it is a case –

ובטוונת בר"י ובלא ראה שנאנסה דאייכא מגו אפילו ברוב פסולין נמי מכשר -

⁹ דף י"ד, ט, ט.

¹⁰ See 'Thinking it over' # 1.

where the **claims** that the man was a **ברוי**; **and no one saw that she was** **ברוב פסולים** **מן נאנסה**; **thereby giving her a** **מגנו** (of saying nothing at all), **then 'even she is'** according to – ר"ג

תוספות adds a detail:

ואיירדי נמי כשרואה מדברת¹¹ דאי לא רואה מדברת –

And we are discussing a case where (even though there was no **we saw** that she was secluded with the man). **For if no one saw her** then –

מאי פריך אי כרבי יהושע אפילו ברוב כשרים נמי פסול –

What is the challenge of the **then even if there** agrees to **ר"י** if the man **she is**? We find that if there was at least one **פסול** is **ר"י**. However, if there were no **ר"י** maintains that she is believed to claim with a **לכש נאנשי** even **תסיפה** explanation of the question.

תוספות continues to explain the answer of the question:

ומשנני אמר רב בקרונות של צפורי היה מעשה כולי פירוש¹² לעולם דלא טענה ברוי –

And says the answer is; this story took place during the (assemblage of the) caravans of, etc.; the explanation of the answer is that **in truth she does not claim** that the man **ברוי**; for she does not know –

ורבי יוחנן בן נהרי בתרווייה¹³ היכא דלא טענה ברוי לכולא עלמא בעינן תרי רובי –

And rules according to both; that **where she has no claim all maintain that** **תרי רובי** is required.

תוספות anticipates a possible difficulty with this interpretation and resolves it:

והא דלא קאמר בשינויו לעולם דלא טענה ברוי –

ברוי **did not state in this answer that really she has no claim.** Seemingly since initially we assumed that she was claiming (otherwise we could not have argued), and now in the answer we are retracting this assumption, it would have been appropriate for the **גמרא** to emphasize this retraction by stating **לעולם דלא טענה**. The reason the **גמרא** did not make this retraction is –

משום דבראתקפתא לא קאמר אי בטוענת ברוי כולי –

Because in the original challenge the **did not openly state; if she claims, etc.** The **גמרא** never stated overtly that she claimed; it was merely implicit in the discussion. Therefore the **גמרא** felt no need to openly retract this assumption which was never clearly stated.

¹¹ See ‘Thinking it over # 3.

¹² The term **פירוש** indicates that the meaning is different from what we would assume. **is of the opinion that** the answer of the **גמרא** is not that the **משנה** is according to **ר"י**, but rather the **גמרא** **לכו"ע** is **משנה**.

¹³ In the **תשוות הרא"ש**, מהר"ם שי"ף ורש"ש; that **תשוות הרא"ש** is according to both **ר"ג ור"י**.

The answer is that initially we assumed that she was טוענת ברוי (and there were no טענות) and she had a מינו. The conclusion is that she does not claim ברוי; therefore all agree that **there is no contradiction between the two תינוקת לכהונה המזכיר**.

תוספות offers a different answer to the original contradiction:

אי נמי נוכל לפרש דברינויא נמי אייריברוי ודאייכא מגו ולא תקשי הלכתא אהלכתא -

Or we may also explain that even in the answer we are discussing a case where she claims and she has a and nevertheless there is no contradiction between the two הלכות – (תורי רובי, הלכה קר"ג) **דזוקא דיעבד פסיק שמואל רבנן גמליאל כדאמר לעיל**¹⁴ –

For ruled like **ר"ג only if it was already done**; i.e. the woman marries the **רבנן** even though the **ר"ג** said to **רב יהודה** that **שמואל** etc. as was previously stated, nevertheless –

את לא תעביד עובדא עד דאייכא רוב כשרין -

You should not issue a ruling unless there are רוב כשרין. It is evident from this that initially (even) maintains that we do not follow the ruling of **ר"ג** unless there is a **ר"ג** (just one). Therefore here too we do not follow the ruling of **ר"ג** if there is no **ר"ג**.

תוספות anticipates the obvious question. If there is even **ר"ג** stated that we follow **שמואל** (just one). Why do we require here **ר"ג**?

ואף על גב דלעיל משמע דברוב אחד שרי לכתלה -

עד דאייכא רוב (of) **שמואל** **ר"ג** seems that if there is only **one** **ר"ג** she is **permitted initially** to marry into **כהונת** why is it that here we require **ר"ג**!?

תוספות replies that nevertheless –

רב חייא בר איש סבר זלכתלה בעינן תורי רובי -

תורי רובי is of the opinion that initially we require **ר"ג** (he disagrees with this detail, although he agrees that the **הלכה** is **permited**) – (קר"ג אפילו ברוב פסולים בדייעבד **ר"ג**).

ומתניתין כתני הרוי זו תנשא דמשמע לכתלה:

And our which states, she may marry into **כהונה indicates** that she may marry into **כהונה**. Therefore **רובי** is required.

SUMMARY

The initially assumed that the **משנה** is discussing a case of טענת ברוי and a **גمرا**.

¹⁴ דף י"ד, 8.

¹⁵ The phrase **עד דאייכא רוב כשרין** indicates that only one is required; otherwise it would state **עד דאייכא תורי רובי**.

לכו"ע טענת ברי is required; therefore there is no תרי רובי.

Alternately, even though we follow the ruling of ר"ג only שמואל agrees that there is a requirement of תרי רובי (according to רב however לכתילה).

THINKING IT OVER

1. asks, why the הלכתא previously¹⁶ asks that it is גمرا (in the case of משארסתני¹⁷ The case of קשייא since קרב באיסורי, (בו"ש however is a monetary case, where the הלכה is indeed as rules!¹⁸ נאנשי)

2. According to the first answer of that she is not טענת ברי, is the תוספות discussing a case of מודה שנאנסה or a case of רואה שנאנסה?

3. Why does insert the assertion that 'ואירי נמי כשרואה מדברת וכו' in the answer;¹⁹ seemingly he could have stated it in the case of קשייא as well (where says תוספות 'ואפילו וכו' לא רואה שנאנסה)?

4. The second answer maintains that by nevertheless, טענת ברי ואיכא מגו require say that there is no גمرا (for (רואה שנאנסה) (as in the case of אروس)? Why did not the say that there is no גمرا (ר"ג according to)?

Alternately if there is why is there a need for a (as in the case of אروس)? [In summation why by אروس without a מותר (בתרי רובה or בחד רובה) (mag a תרי רובה) and]²⁰

5. What would the second maintain is the ruling in the case of the first תרצן? And vice versa?

¹⁶ דף יג, ג.

¹⁷ See footnote # 10.

¹⁸ מהרש"א ומהר"ם שי"ר (עיין סוכ"ד אוח פט, ז).

¹⁹ See footnote # 11.

²⁰ סוכ"ד סוף אות צג וצד.

Perhaps she will go to them

دلמא אזלא איה לגביהו -

OVERVIEW

The differentiates that when the (unidentified) goes to the woman the rule of גمرا (goes to the woman) applies¹ since he is פריש; however if the woman goes to the (unidentified) then the rule of תוספות applies. will first clarify what is the meaning of going to him or going to her. Then will discuss whether the rule of דפריש applies to people.

פירוש לתוך ביתם דאפילו בתוך העיר לא חשיב קבוע -

The explanation of the term **ازלא איה לגביהו** is that she is going **into their houses**; but not merely into the city; **for even** is she goes to them, but only **into the city, it will not be considered** that the **קבוע** is **איסור** – **קבוע** is **established** –

קבוע proves that **ltoruk haIr** is not considered:

דדמי לנמצא בין החניות דלא חשיב קבוע -

For it is similar to the case where the meat was **found between the butcher stores, where it is also not considered**. **קבוע** is only considered if the person bought the meat in the store. Similarly here in order to consider it, she must enter his house.

קבוע offers an additional proof that **ltoruk haIr** is not considered:

וכן גבי תינוק מושליך בעיר לא חשיב קבוע הויל ולא נמצא בבית -

And similarly concerning the case of a **child** who was **cast away in the city**, it is **not considered** since he was **not found in the house** –

ולכך פירש בקונטרס³ שפירש בועל מביתו -

And therefore ר' רשות explained that the phrase ‘if they went to her’ means **that the left his house**. That is considered פירש (and not **ברוח פירש**). It is not necessary for him to go to her (outside the city). If he leaves his house, it is considered פירש, even if she meets him in the city.

תוספות asks:

¹ Most of the people from where the woman comes are פועל. Some however are the woman. The place of origin of the woman is where the woman is. If the woman leave his place of origin, he is considered פועל and will not disqualify the woman. If the woman goes to the place of origin then the woman is איסור and the woman will be אסור להכנה.

² See further טז, ב. The question there is concerning the status of this castaway child; is he treated as a ישראל or as an עכו"ם. See ‘Thinking it over’ # 3.

³ בד"ה ופרקין.

ואם תאמר דבר זעיר פרק ב' (ז' יב, א ושם) פריך -

And if you will say that in the second challenges -

אהא דאמר צא וקדש לי אישת סתם אסור בכל הנשים שבועלם -

That which said 'whoever says to a go and be for me an (unspecified) woman (the did not specify which woman the should be מקדש), the rule is that the is forbidden to marry any woman in the world'. We assume that was a woman. Any (other) woman whom the wishes to marry now, may be a relative to the woman whom the was; she may be her mother, daughter, sister, etc.⁴ ר"ל challenges this ruling –

مكان סתומה⁵ -

from the of 'an unspecified 'nest'. When the doves fly away from the קניים, we should be concerned that someone else⁶ may use these birds for their own קן. This is not permitted; for these doves were already specified for another individual, and one cannot fulfill his obligation with a קרבן that was already designated for a different obligation. Just as by the woman we are concerned that the woman he wishes to marry may be related to the woman whom his was, here too let us be concerned that the dove he wishes to use was the one that flew away from its original קן.⁷

The גمرا there answers:

ומסיק אמינה לך אישת דלא ניידא ואת אמרת לי איסורה דנייד -

And the גمرا there concludes, 'I am speaking to you about a woman who is not roaming, and you wish to contradict me from an of a which is roaming'. understood the גمرا to mean) The woman whom the man wishes to be מקדש is in her place, she is considered a קבוע; however the bird was פריש and left its place of קביעות. In the case of we follow the רוב, but not in the case of קבוע. Therefore he is אסור to marry any woman for all דפריש, but anyone may use any dove that he finds since כל דפריש קבוע כלהה דמי מרובה פריש.

⁴ If, however, it can be ascertained that from the time the left the woman had no unmarried relatives, then the may marry her.

⁵ There are certain individuals (זבה, זבתה, יוולדת, ומצורע) who are obligated to bring two doves (one עולה and one חטאת) for their purification process. These two birds together are called a קן. There are two types of קנים: where the owner designated which bird is the חטאת and which is the עולה; and a קן סתומה, where the owner did not as yet designate the birds. The will designate them when he performs the עבודה. The חטאת העוף and עולת העוף have different עבודות and cannot be intermingled. If one of the birds of a קן flies away the owner can take another dove and join it with the remaining dove for his קן. However if it was a קן מפרשת, then he must take two new doves for his קן. He cannot use the remaining dove.

⁶ The concern may be that he himself may find the 'lost' bird and use it for a קן of a different obligation, which is also prohibited.

⁷ The thrust of the question is that according to ר"י it will be virtually impossible to bring a קן. There is always the concern that it flew away from another previously designated קן.

The גمرا there continues:

וכי תימא הכא נמי בשוקא אשכחיה וקדיש -

And if you will say, that by קידושין also, the should be permitted to marry her in a situation where he found her in the marketplace and was her. In this situation, seemingly, she is no longer a קבוע but rather a פריש; for she left her place of קביעה מקדשת in the שוק. Nevertheless, even in this instance he may not marry her, for -

התם הדרא לניחותא -

There, in the case of the woman **she returns to her resting** place. When she returns home she is deemed to be a קבוע. The birds however never return to their (original) place, therefore they are considered a פריש. This concludes the גمرا in נזיר.

תוספות surmises:

משמעותו לא שייך כל דפריש מרובה פריש משום זהדר לניחותה -

כל דפריש מרובה פריש גمرا, concerning a person the rule of does not apply, since he returns to his ‘resting’ place’, as that clearly stated concerning the woman. She is not considered even though he was in the שוק, since (eventually) she is in הניחותא. However, here in our case it states that if the (suspected) man leaves his house, he is considered a פריש, even though that later he will be back. What is the difference between our case where the man is considered a פריש, and the case where the woman is considered a קבוע, since הניחותא?!

תוספות answers:

ולאו פירכה היא זהתם בשעת האיסור כשזה בא על שום אשה -

And there is no contradiction between the two, for there at the time of the suspected transgression, which means when this **משלה has relations with any woman**; and we are concerned that perhaps this woman is related to the woman the was a שליח, then at that very same time it is possible that –

הדרא לניחותא האשה שקידש השליה -

The woman whom the was מקדש שליח returned to her resting place, and she retains her status. The woman, that was a שליח, is the source of the איסור. Whenever she is a קבוע we consider the איסור כמחצה על מהצאה like every קבוע. The term הניחותא is used.

⁸ It would seem from the beginning of the question that the question is (also) on the case of גمرا that if she did not go into the house it is not considered even though he is back. However the question is (also) certainly on what the גمرا states that if it is considered a שליח. See 'מהר"ם ש"ג' פריש.

⁹ Let us assume that the wants to marry who has a sister. We are unsure whether the was רחל. The source of the (possible) איסור is רחל on her own would be permitted to the world. Ordinarily we would assume that was not by the world, since all the women of the world were not by the world (save one). However since there is a possibility that the was רחל, and is now at her place. Then the rule of קביעה says that the probability that the was רחל equals the probability that any of the other women of the world combined were מקודש. See ‘Thinking it over’ # 1.

is not concerning the woman whom the משלח wishes to marry, but rather the woman who was קבוע through the time of the שליח. She may be at the time of the איסור מקודשת.

אבל הכא כי אזלי איננה לגבה בשעה שאסורה הרי הוא נייד:

However here, in our גמרא, when the unidentified people go to her he is at the time of the תרי. There is no קבוע at all. We assume that he was from the קביעות איסור. The defining factor is if there is a קביעות at the time of the (suspected) איסור (regardless whether later the פריש will return to his status).

SUMMARY

The בועל is considered קבוע only if the איסור took place in his house.

The concept of הדרא לניחותא is limited to the source of the איסור at the time of the הדרא לניחותא. Otherwise it is considered מעשה איסור, even if after the פריש.

THINKING IT OVER

1. הדרא לניחותא isasha המקדשת ע"י השליח תוספות explains that since the she is considered איסור בכל הנשים קבוע¹⁰. Seemingly it is not understood. In the case of the source of the are the hanuyot. They are קבוע. However if something was found outside the hanuyot, it is regardless that the meat was פיש, since the meat was קבוע hanuyot. The same should apply here. Granted the מקודשת בשוק, however the other woman was; she was קדושין. That should be valid, since she was פיש. What is the difference between תשע hanuyot and the women?!¹¹

2. Is there any connection between the opening remarks of תוספות, and the ensuing question and answer?

3. What would be the ruling if the תינוק is found in a house;¹² is it considered קבוע and he is a ישותם or not?¹³

¹⁰ See footnote # 9.

¹¹ See סוכ"ד אות ט (וילך).

¹² See footnote # 2.

¹³ See אילת השחר.

פרט לזרק אבן לגוי –

It excludes, one who throws a stone in their midst.

OVERVIEW

פסוק וארב לו וקם עלייו derive the rule of from the rule of קבע כמחצה כל ריבנן (as the here explains). However, derives from this if פסוק רבי שמעון גمرا that if he is that he is פטור מミתא להרוג את זה והרג את זה קבע ר"ש derive the rule of.¹

תוספות asks:

תימה דרבנן שמעון קבע מנא ליה –

It is astounding! According to ר"ש, how does he derive the rule of קבע כמחצה ר"ש? The rule of קבע is derived from the rule of פסוק ר"ש. However, interprets the rule of קבע to exclude a murderer, who killed an unintended victim, from מיתה. From which קבע does ר"ש derive the rule of פסוק.

תוספות anticipates a possible solution, and rejects it:

ואין לומר דמסקינן בפרק הנשראפין (סנהדרין ד' עט, א' וט) דרבי שמעון סבר ברבי² –

And one cannot answer that in the agrees with ר"ש – רבי

דיליף נתינה נתינה ואייתר ליה וארב לו לקבע –

Who derives from the rule of קבע כמחצה that **נתינה נתינה** is only that **נתינה נתינה** and therefore the rule of פסוק remains available, to teach us the rule of קבע. This would seemingly answer the question. derives from קבע ר"ש as the do; and he derives the rule of קבע ר"ש from ריבנן. גז"ש **נתינה נתינה וכוי דין** וארב לו.

תוספות rejects this answer:

דאכתי לתנא דבר חזקה מנא ליה קבע דלית ליה דברי דהא באין מתכוון פטור מממוון;
For the question will still remain; according to the of בריתא דבר חזקה⁴, how will

¹ The disagree with ר"ש and maintain that ר"ש ריבנן להרוג את זה והרג את זה החיב.

² See 'Thinking it over' # 1.

³ The states: וכי ינטו אנשים ונגפוasha הרה וגוי ולא יהיה אשון וגוי וננתן בפליליים. ואם אשון יהיה ונחת נפש (mishpatim כא, כב וכ"ג) תורה תחת נפש. The is discussing a case where the person intended to kill another, and instead harmed a pregnant woman causing an abortion. If the woman was not killed, the aggressor must pay the damages of the fetus (נתן נפש תחת נפש). If the woman was killed, however, there is a רבי however, which teaches us that even if the woman was killed; the aggressor is only obligated to pay money (but not to be killed). This in effect teaches us that גז"ש (the other person) נתכוון להרוג את זה (the other person), he is פטור מミתא ר"ש (asher harah), the same ruling that derived from the rule of פסוק ר"ש (asher harah) and he is responsible for killing an animal to.

⁴ It is written in the תורה (יקרא [אמור] כד, כא) ומכה בהמה ישלמנה ומכה אדם יומת

they know that **רבי חזקיה** על מה策ה is קבע, since the **disagree with**, for they maintain that if someone killed another unintentionally (intending to kill another instead) **he is exempt from** paying **monetary** compensation.⁵ Therefore, we cannot interpret חיוב מן to mean (as רבי does); for there is no (according to נתכוין להרוג את זה והרג את זה גז"ש נתינה נתינה אסון if there was an פטור מיתה והיב מן only, נתכוין להרוג זה והרג את זה פטור. According to רבי חזקיה, we derive that if they derive from the rule of דין וארב לו וגוי. The question remains; if they derive from where do they derive the rule of דין קבע?! does not answer this question.⁶

SUMMARY

(נתכוין להרוג וכו' ר"ש cannot derive from קבע (he needs it for). He cannot derive from according to the rule of ר"ש. From where does ר"ש derive the rule of קבע?!

THINKING IT OVER

1. נתכוין להרוג זה initially attempted to answer that ר"ש derives the rule pf/tosפות נתינה נתינה גمرا (like).⁷ However the here states that he derives it from how can assume that he derives it from נתינה נתינה!⁸
2. Explain: a) how we know that **רבי חזקיה** maintain that **רבי חזקיה** is פטור is נתכוין לזוא"ז; and b) how does **רבי חזקיה** know that **ר"ש**!

slaying a person. derive from this that the just as the laws concerning **רבי חזקיה** are universal; there is no difference between אדם and מתכוין, etc. (he is always obligated to pay), so too by there is no difference between מתכוין and מתכוין (concerning payments). We know that if a person kills he is from any monetary damages on account of מיתה. Similarly (even) if he killed (when he is not put to death), he is also פטור מתשלומי.

⁵ The if חיוב תשלומי is necessary to teach us (according to ר"ש) that there is never a היקש of **רבי חזקיה** that there is involved even by **נתכוין להרוג וכו'**. From this we also derive that **רבי חזקיה** maintain that **ר"ש** is פטור מיתה; for if it would be מחייב מיתה, then the היקש of **רבי חזקיה** is unnecessary to exempt him from מיתה. It is a 'regular' קםליה. It is therefore apparent that the **רבי חזקיה** agree with that **ר"ש** is **נתכוין להרוג את זה והרג את זה**.

⁶ **תוה"ר**.

⁷ See footnote # 2.

⁸ See **תוה"ר**.

ספק נפשות להקל –

And a doubt in capital offences is judged leniently.

OVERVIEW

Our states that if a person intended to kill someone out of a group of ten people; then even if there were five **ישראלים** and five in the group he would be פטור מミתא. Since there is a ספק whether he would kill a or not (when he throws the stone in their midst), the rule is that we are lenient by a ספק נפשות להקל.

There is a dispute between ר' יוחנן concerning ר' לוי and ר' יוחנן concerning ר' לוי. If witnesses warn someone not to do a specific act; however there is a possibility that even if he does that act, he will not have transgressed an (to the extent that he should be punished); this warning is called ספק התראה. If the person disregarded the warning, performed the act and transgressed the act, then according to ר' יוחנן who maintains שמייה התראה he will be punished accordingly, while ר' לוי maintains that he will be exempt from punishment, since at the time of warning there was a ספק if he will be liable for this act. will discuss which of these two opinions our גמרא is following.

תוספות asks:

ותימה למן דאמר התראה ספק לא שמייה התראה –

And it is astounding! If we follow the view of the one who maintains that a doubtful warning is not considered a valid warning, then –

אפילו ספק נפשות להחמיר פטור משום דהתראה ספק הוא –

Even if we would maintain that a doubt concerning capital offences are dealt with stringency, nevertheless he would be exempt from receiving capital punishment, since it is a doubtful warning.³ Doubtful warnings are not sufficient to enact any penalty.

ואילו למן דאמר שמייה התראה היכי פטירין ליה כשנמצא שישראל הרוג –

And if we are following the view of the one who maintains that a ספק is a

¹ See טו, ב.

² A classic example is the case of שילוח הקן. The warned him not to take the עדים, which is prohibited. However even if he takes the עדים he is not liable, for he can still send away the עדים. He is liable only when it becomes impossible to send away the עדים (according to one מ"ד). Therefore this is not to take the עדים is a ספק. (In a regular case, even though the עדים do not know whether the warning is a ספק, nevertheless that is not a ספק. We are certain that if he does what the עדים are warning him not to do, then he will certainly be liable.)

³ It is a ספק because even if he will throw the stone we do not know that he will kill a Israel.

valid התראה, then how can we exempt the murderer from the death penalty, when it turns out that he murdered a Jew?!

התראת ספק שמה התראה תוספות will clarify this last point by citing two examples. If we maintain then he should be - **חייב**

הא מיחייב בהכה את זה וחזר והכה את זה⁴ -

for he is sentenced to death when he hit this one and he continued and hit the other one. If he hit both ‘possible fathers’ (and drew blood) [even if it was⁵] one after the other, he is, מהוויב מיתה, if we maintain that **התראה תוספות**⁶ offers another similar case:

ובנouter כאשרמו לו אל תותיר⁷ אף על גב דעתך הוא -

And similarly concerning if the witnesses warned him ‘do not leave over’ the food of the קרבן past the deadline; **even though that** when they warned him **it was doubtful** whether he would leave it over or not,⁸ nevertheless it is considered a valid according to the **התראה מ"ד**. We can derive from these two גמורות that if we maintain that **התראה ספק**, the person who received this **התראה** is punished; regardless that it is a **ספק**. Similarly here too if a **ישראל** was eventually killed, the original **התראה** should be considered a valid to hold the murderer liable.

תוספות answers:

יש לומר דשאני הטע שידוע בודאי שיבא לידי אייסור אם יותיר או יכה שנייהם -

And one can say; that the two cited cases (נותר מכח אביו) are different than our case. For there the transgressor knows with certainty that he will commit a transgression if he will leave over the קרבן; or if he will hit both ‘fathers’

⁴ See גמרא בבמות קא, א מכות טז, א. The there is discussing the case of a woman who remarried within three months of her divorce. The subsequent child (who was born within seven months of the remarriage) is not certain if his father is the first husband (בן תשעה לאחריו) or the second husband (בן תשעה לראשון). This son was warned not to cause a wound to either of his ‘possible fathers’. He did not heed this warning and wounded each one of them after the appropriate warning was given. Wounding one’s father is a capital crime.

⁵ If he hit (and was warned about) both ‘fathers’ simultaneously, then even according to the **התראה מ"ד**, he will be **חייב**. There is no **ספק** in his act of **הכה**.

⁶ Each time that he was warned not to hit his father; it was a **ספק**, for we are not sure that this indeed is his father. However since he hit them both and was warned for each one, he ultimately transgressed a capital crime after a warning was given. One of them was certainly his father. If we were to maintain that **התראה ספק לא שמייה התראה**, then he would not be liable; for there never was a proper **התראה**, merely a **ספק**.

⁷ All (edible) קרבנות must be eaten by a specific time (that day and the following night, or two days and the night in between). Failing to do so is a **תורה** transgression.

⁸ See נימות. The are required to warn him while there is still sufficient time for him to eat the remains; otherwise there is no point in the warning. The could therefore claim that since there was still time left he thought he would eat it shortly, and then he forgot the **התראה**, rendering the **התראה** ineffective. Therefore this is (also) considered a **ספק**.

משמעות הenci של התראה -

Therefore it is considered a התראה. Even though the עדים were not sure (by each that he is committing an איסור; however the transgressor himself knows that his actions (or inaction) will lead to an איסור).

אבל הכא אינו יודע שודאי יבוא לידי איסור שאינו יודע את מי יכה:

However here the murderer **does not know with certainty that he will commit a transgression for he does not know whom he will murder;** it could be a ישראלי but it could be a כנעני. Therefore in our case even if he is פטור (since ספק נפשות ליהקל).⁹

SUMMARY

Even if we maintain that התראת ספק שמי התראה, nevertheless in a case where there מותרה is not certain that his action will lead to an it is not a התראה.

THINKING IT OVER

1. התראת ספק שמי התראה מ"ד תוספות answers that even according to the that however in our case it is not שמי התראה.¹⁰ If that is the case then the original question of תוספות returns; why is it necessary to state that he is on account of פטור because such a התראה is ספק נפשות להקל?¹¹ לא שמי התראה is התראה?
2. התראות תוספות told us the factual difference between the two. Explain why this factual difference should have a bearing whether or not it is a valid התראה.

⁹ See Tosfos In English who adds that since it is a valid התראה. See 'Thinking it over' # 1.

¹⁰ See footnote # 9.

¹¹ See 'AILAT HESHORAH' for an extensive discussion of the matter.

**וליווחין לא בעין תרי רובי ורמיינהו قولוי -
two majorities concerning genealogy?! I will dispute that etc.!**

OVERVIEW

משנה ר' יוסי said in the name of that the הלכה is according to רב חייא בר אשיה understood that to mean that the תינוקת even if there is one רב therefore challenged this ruling from another ruling of ר' ירמיה. concerning a castaway child, that even if the we do not consider this child a in regards to ישראליים. Why is it that by the one תינוקת is sufficient for ? Our argues that this contradiction could be resolved without resorting to the s' answer that תרוי רובי כשר לכהונה is תינוקת גمرا' only by.

תוספות asks:

הוה מצי לשנויו שאני תינוק דלית לייה חזקה לצשות:

The could have answered, that the following case of a castaway child, is different than the case of תינוק in our; for the has no presumption of כשרות. We do not know the lineage of this child, therefore one is insufficient. However in our, the had a חזקת כשרות before she was נבעלה באונס, therefore one may be sufficient.²

SUMMARY

חזקת כשרות no are required only when there is no.

THINKING IT OVER

חזקת no maintains that there is a difference between a case of תוספות and who will shortly ask on תרוי רובי with regard to. The who answers that the need for תרוי רובי by the תינוקת of our was merely a שעה. This is contradicted by the תינוק המושלך of דין were two are required. However according to there is no contradiction; because in the case of תינוק תוספות there is no המושלך!³

¹ See ר"ש"י טו, ב' ד"ה אבל פסול לכהונה (גירושה מ' עכו"ם) that we are concerned that she may be an (or a who are).

² See פסל ליווחין who answers that the by the castaway child is even if he had relations with a she nevertheless becomes, even though she has a חזקת כשרות.

³ See, מהרש"א (הארוך) וכיו' This question is seemingly 'stronger' than question, for the requires that disagrees with the ruling of רב concerning the תינוק המושלך (while according to this this does not seem necessary).

**ולרב חנן דאמר הוראת שעה הייתה -
ר' חי who maintained that it was a provisional ruling –**

OVERVIEW

גמרא תרי רובי concluded that the case of the משנה is that there were משנה asks, that רב חנן, who maintains (in the name of רב) that the ruling of the was פסול ליווחסין is תינוק המושלך, would contradict the ruling of רב, הוראת שעה with one. Our will discuss what רב חנן meant that our ruling is a הוראת שעה, and whether it contradicts the ruling of רב.

תרי רובי explains that the ruling of the משנה was exceptional, in that it required תוספות – אבל לדורות סגי בחז רובה קשיא חז –

However for posterity one is sufficient; therefore there is the difficulty with this ruling of רב by a תינוק המושלך, where רב are required.

הוראת שעה הייתה anticipates that there may be a different understanding of the meaning which would circumvent the difficulty; however rejects it:

ולא מיסתברא ליה לומר דהוראת שעה הייתה שהתיר בתרי רובי –

The did not consider the option to say that it was a to permit גמרא – תרי רובי (just) תינוקת לכהונה with –

אבל לדורות לא סגי אפילו בתרי רובי:¹

However for posterity even תרי רובי would not be sufficient מתייר לכהונה to be.

SUMMARY

רוב is that we required הוראת שעה, however for posterity one sufficient; but not that the הוראת שעה are sufficient, and for posterity even are insufficient.

THINKING IT OVER

תרי states that it is not to say that the הוראת שעה תוספות was to permit with ר' חי because a אינו מיסתבר even are not sufficient. Is it even because a אינו מיסתבר usually denotes a prohibition, not a leniency; or that it is for other reasons (perhaps that תרי רובי is not effective is)?²

¹ Had we interpreted the תינוק המושלך in this matter there would be no contradiction from רב merely says that (even) if there are rob ירושלים in regards to יוחסין. We may understand this statement to mean that he is not considered a rob ירושלים even if there are ירושלים, which would be in agreement with רב. However, הוראת שעה היה is of the opinion that it is not likely that this is what he said when he said רב חנן.

² See רש"י טו, א, ד, ה הוראת שעה.

מאן דמתני הא לא מתני הא –

The one who taught this did not teach the other

OVERVIEW

לכהונה **תינוקת** was permitted (only) as a point [in the name of **רב בב**] that the **חנן בר רבא** stated that the **תינוקת** was assumed that there were **תיר** **הוראת שעה**. At this point (in the question) the **גمرا** interpreted that **רב בב** was the requirement that there be **רובי**; for ordinarily one is sufficient to be **מתיר**. The **רב בב** therefore asked that this ruling contradicts another ruling of **רב בב** that even if there are **רובי**, the **תינוק המושליך** is not considered concerning **ישראל**. The statement of **רובי**, if we assume **יוחסין**, contradicts the statement of **רב בב**. **וליווחסין לא** answered **גمرا**. The one who maintains (in the name of **רב בב**) that it was a **תינוקת** does not agree with the other statement (of **רב בב**). It is not clear which statement (of **רב בב**) is referring to. It can be referring to **רב בב** or it can be referring to **רב בב**. Our will point out that this is a **רשי** between **רבי חננאל** and the **תוספות**.

פירוש בקונטרס דבר חנן לא מתני דבקריםות של צפורי היה מעשה –

משנה **תינוקת** in the **רב בב** explained that the story of the **ר"ח** took place by the caravans of **צפורי**. According to there were no **ר"ח** in the case of the **תינוקת** –

ולא הוה אלא חד רובי –

And there was only one by the story of the **רב בב**. This was the **תינוקת**, that even though there was only one, nevertheless they were **מתיר**. Ordinarily, however, are required.

ולפирשו לא פלייגי דלזרות לכולה עלמא בעיןן רבי רובי –

רב חייא (**רב בב**'s explanation there is no argument, for everyone) **רובי** agrees that for posterity two are required to be **מתיר** – **לכהונה**

ולא פלייגי אלא במעשה היפי הוה –

And they do not argue; rather they merely argue how the story with the took place. **רב חייא** maintains that it happened and there were **רב בב** maintains that it did not take place; while **רב חנן בר רבא** maintains that it did not take place, but nevertheless they were her, based on a **תיר**.

תוספות offers a different explanation:¹

ורבינו חנナル פירש דבר חנן לא מתני אבל ליווחסין לא וסגי לדידיה לזרות בחד רובה -

And the explained that ר'ח did not teach the ruling of ר'ח concerning the child, that even though that in various respects we consider him a **ישראל**, תינוק המושלך, however not in regards to **יוחסין**. Concerning he is not considered a **ישראל**. **ר'ח** does not agree with this statement, rather he maintains that by the child is considered a even for **יוחסין**; **and according to one** (even) **ר'ח** is sufficient for posterity.²

In summation: according to רוב הנ"י (according to the story of תינוקת רש"י), however for posterity two are required. רוב הנ"ן does not agree that בקרונות של צפורי היה מעשה does not agree that רוב הנ"ן does not agree that בקרונות של צפורי היה מעשה, but he does agree that רוב הנ"ן stated רוב הנ"ן, when there is only one.

According to the story of the חננאל (on account of the רובי); however for posterity one agrees that רוב חנן is sufficient. However he disagrees that stated רוב לא ולויוחסין; rather one is sufficient.

פירוש רבינו הננא' has difficulties with the **תוספות**:

אבל קשה לפירושו לרוב חנוך תקשי רבי יוחנן בן נורי דאמר כמאן דסגי בחד רובה -

However there is a difficulty with the explanation; according to ר'חן's explanation, whose ruling was following when he ruled that one is sufficient? ר'חן? ר'ובא ר'יב"ן maintains (according to the **ח) that **ר'ובא ר'יב"ן** rules that one is sufficient (there happened to be a requirement of **תיריה** only because of the **תיריה**). This is not in agreement, with either **רבינו יהושע גמליאל**³ or with **רבנן** –**

כדריך לעיל⁴ -

as the מתר לכהונה גمرا challenged previously. The ruling that one רוב is sufficient to be מתר to the priesthood is not in agreement with ר' ג (who maintains that no רוב is needed), nor with (who maintains that [even] a [single] רוב is). **פסול לכהונה**

פירוש ר' ח has an additional difficulty with the תוספות:

¹ It is possible that תוספה is not satisfied with ר' ש"י's explanation. According to the story of תינוקת (according to ר' ירמיה) just concluded responding to בקרנות that he seemingly forgot that קשיא הא' (and that was also part of the צפורי). [If the גمرا is retracting it should have said מחלוקת.] It is also generally not desirable to have a מחלוקת in the facts of a story. In addition according to מהר"ם ש"פ there is no מחלוקת between רב חנן and רב הירא (see ר' ש"י). Finally what is the point of saying that it was a תרי רובי שעה, but really are required? According to the פירוש ר' ה' however, all these difficulties do not exist.

² According to the story of the ḥorat shua when רב הונן says רבי רובי, it means that there were by the story of the ḥorat shua and they required ḥananel. Ordinarily one is sufficient however there was a ḥorat shua.

³ See ‘Thinking it over’.

דף יד, ב

ועוד דלא מיסתבר דשות אמורא יחולוק אהיה דאבל ליווחסין לא -

And furthermore it is inconceivable that any אמורא should argue whether ruled that 'however concerning' the child is not considered a 'ישראל'. The reason it is inconceivable that (or any other אמורא) would argue whether this is a ruling of – is –
דרב גופיה קאמר לה بلا אמורא⁵ -

For רב himself stated this; הלכה without another אמורא saying it in his name.

תוספות brings a proof to this argument, that none of the later אמוראים would disagree that this is the ruling of רב:

ולחכى אפיקא דרבי ירמיה לא משני מאן דמתני הא לא מתני הא -

And therefore we see that the did not respond to the challenge of גمرا (who contrasted the ruling of רב היליא in the name of רב היליא, with the ruling of רב היליא); by saying the one who taught this (רב היליא did not teach this) (וליווחסין לא). This would have resolved the contradiction. The reason the did not offer this resolution is, for it is inconceivable that any of these later אמוראים would argue on a statement attributed directly to רב.

SUMMARY

תינוקת was maintains that רב היליא disagrees that רב היליא (רשב"י) maintains that בקרנות של צפורי היה מעשה that רב היליא permitted only because of a posterity. However for posterity are required, agreeing that רב stated וליוחסין לא if there is only one. רוב

תיר רובי maintains that בקרנות של צפורי היה מעשה that רב היליא agrees that רב היליא were required only as a posterity. For posterity only one is required. רב היליא disagrees that רב stated וליוחסין לא (with [only]). The difficulties with פ"י are that seemingly ריב"ן is not following either ר"ג or ר"י; and that it is unlikely that רב היליא disagrees that רב stated וליוחסין לא.

THINKING IT OVER

תינוקת asks on the that does not follow either ריב"ן or ר"ג. Seemingly It follows the opinion of ריב"ן; however here the is not claiming ר"ג. Therefore even requires (one) רוב (ר"ג).

⁵ When an says something in the name of רב (as in אמר רב היליא אמר רב), then it is possible that another may have had a different tradition as to what רב actually said, and will therefore disagree with what was said in רב's name. However, here רב himself is saying this הלכה. It is universally accepted that רב maintains this view. How then, can say in the name of רב, רב הוראת שעה הורה, while himself maintains לא אבל ליווחסין לא?!?

⁶ See footnote # 3.

⁷ See מהרש"א (הארוך).

⁸ See Tosfos י"ד, ב (טו, א) ד"ה כמאן.

‘If the majority is gentiles, the child is a gentile’; what is the relevance of this law

OVERVIEW

The גمرا is presently discussing one of the rulings of the משנה concerning the castaway child. The גمرا asks; in regards to what, did the משנה rule that if the city had a majority of עכו"ם, the child is considered an עכו"ם. Seemingly the גمرا could have answered that he is considered an עכו"ם; in that we are not required to support him. חוספות will explain why the גمرا did not answer in this manner.

לא מצי למימר לעניין שלא להחיותו דמאי איריא רוב עובדי כוכבים אפילו מחצה נמי -

The גمرا could not have answered that the child is considered an עכו"ם regards that there is no requirement to sustain him; for if it is in reference to then why teach this rule in a case where a majority are gentiles; even if (only) half are gentiles, we are also not required – להחיותו.

דזוקא ברוב ישראל קאמר רב דהוי ישראל להחיותו:

For only in a case where the majority is רב ישראל did rule that he is considered a מחצה על מחצה להחיותו; but not by a ישראל. ²

SUMMARY

(רוב עכו"ם if עכו"ם could not have said that he is considered an concerning his right to life; for even there is no right to life.)

THINKING IT OVER

1. רב states that when there is only a מחצה that is merely a תוספות; but not by. Can offer proof (from our גمرا) for this assumption; or is it (merely) a סברא?

2. If we assume that רב Israel is (merely) a דין ממון ³ then even by there should be no right to life; for אין הולcin במשפט אחר הרוב ⁴!

¹ See also ריש"י ד"ה לא שננו.

² The reason seems to be that דין ממון is a דין. We are not required to be a דין unless he proves that he is a דין (as the גمرا shortly states concerning דין ל"ש). See אילת השחר (בגמ' ד"ה ל"ש).

³ See footnote # 2.

⁴ See ח"ב אות קפב (ואילך).

To return to him a lost object

להחזיר לו אבידה -

OVERVIEW

The **רובה** stated that the rule of **אם רוב ישראל ישראלי גمرا** requires us to return an object which was lost by this person who was abandoned as a child. **תוספות** will (first) discuss why the **רובה** did not mention a more relevant issue; that since **רוב ישראל ישראלי גمرا**, we are obligated to sustain this person.

הוה מצינו למיין להחיותו כדאמר רב -

The **רובה** **could have answered** that the ruling of **רובה ישראלי גمرا** teaches us that we are obligated to **support him; as רב stated previously -**

אל נקט להחזיר לו אבידה דהוי רבותא טפי -

However the **גمرا** chose to **mention** that the ruling pertains to the obligation **to return a lost object to him; for that is a greater novelty** than **להחיותו** –

דאיסור גדול הוא משום¹ למען² ספות הרואה וגומר³ -

For there is a severe prohibition to return an **אבידה** to one who transgresses the **פסוק** which declares ‘**in order to increase the satiated, etc.**’

אבל להחיותו לא הויב רבותא כל כך דהא מפרנסין עני עובדי כוכבים עם עניי ישראל⁴ -

However the obligation **is no so much of a novelty; for we sustain the gentile poor together with the Jewish poor.** The **גمرا** teaches us that we are permitted to return an **אבידה** to this person, even though there is a possibility that he is a gentile; in which case it would be a grave transgression to return the **אבידה** to him; nevertheless we follow the **רובה** and return the **אבידה**. It follows that we are certainly required to sustain him; for even if he is a gentile, nothing untoward occurred; for it is permissible to support the gentile poor together with the Jewish poor.

אבידה anticipates a difficulty with the ruling that if there is a **רובה ישראלי** then we return an object to this child on account of the **רובה**:

ואפלו לשמו אל דבר אין הולכין בממון אחר הרוב -

And even according to שמואל, who maintains that in monetary matters, we do not follow the majority; therefore even if there is a **רובה ישראלי**, we should seemingly not

¹ See **סנהדרין** טו, ב.

and; והתברך בלבבו לאמר שלום יהיה לי כי בשירירות לבי אלך למען ספות הרואה את הצמאה דברים (נצחנים) כת, ה. The word reads פסוק (נצחנים) continues לא יאהה 'ה' סלה לו. The word refers to צמאה who are thirsty and desirous to do the will of 'ה'.

³ The word refers to ראה who are satiated; and are not thirsty to do the will of 'ה'. When one returns an object to an he is increasing and supporting the **רואה**. The severity of this transgression is evident from the phrase of לא יאהה 'ה' will not be willing to forgive him. See **רש"י** ד"ה להחזיר לו.

⁴ See **עכו"ם גיטין** ס, א, א, ס, א.

return this person's תוספות will agree to this ruling. Nevertheless, אבידה שמואל will differentiate between the ruling here and the ruling of that הרוב שמואל. The ruling of הולכין במנון אחר הרוב נמצא נכון -

That is in the case where one sold an ox to his friend and it turned out to be a goring ox. rules that even if the majority purchase oxen for plowing (for which this goring ox is unfit) nevertheless the seller can claim 'I sold it to you for slaughtering' (since the buyer did not specify that he is purchasing it for plowing) and it is a valid sale. We do not say that since the majority purchase for plowing it is a mistake. The reason why there we do not follow the majority is -

שבהיתר באו המעות לידי ומדעתו נתנים לו הלוκח -

For the money came into the hands of the seller legally; and the buyer gave him the money willingly. Now if the buyer has regrets and wants to extract the money from the seller (who acquired it legally) he must bring evidence that he purchased it for plowing (and made it known to the seller); otherwise we do not follow the rule, and the seller retains the money –

אבל הכא מודי דאזרילין בתיר רובה:

However here in our case of אבידה שמואל (even, השבת אבידה) admits that we follow the rule. In our case we cannot say that the אבידה came to him. ⁵ We certainly cannot say that it was given to him willingly. The finder is not that much of a מוחזק in the אבידה, ⁶ therefore we follow the rule.

SUMMARY

The גمرا prefers to interpret that the rule of הרוב ישראל teaches that we are obligated ליהיות לו אבידה rather than עכו"ם. On the chance that he is an אבידה would be more problematic than ליהיות לו אבידה.

Agrees that the rule of הולכין במנון אחר הרוב applies only where the money came to him; but not by אבידה; but not by בהיית ובבדעת הנוטן.

THINKING IT OVER

Why does not גمرا explain, that the תוספות of חידוש explain, that the גمرا prefers the rule of להחזיר לו אבידה over אבידה במנון אחר הרוב?! ⁷

⁵ It is possible that the person is a אבידה ישראל and the finder must return the to him.

⁶ See who states אבידה לאו מאירה דמנונה הוא רמב"ן. The finder of an אבידה is not the owner of the money.

⁷ See סוכ"ד אות ז'.

לא צריכא דנגהיה תורה דידייה قولוי –

It was only necessary to teach this ruling when his ox gored, etc.

OVERVIEW

נכח תורה דידייה interpreted the ruling of מהצה על מחזה ישראל גمرا in regard to גمرا. The נזק שלם is considered a יישראל and is not required to pay a fine. להורא דין. The issue addresses is that we can just as easily say (but) instead in a different case.

תוספות asks:

תימה דהכי נמי הוה מצי למימר מהצה על מהצה עובד כוכבים -

It is astounding! For the could have just as well ruled that if the city is half (Jews) and half (gentiles), the child¹ is considered an ;עובד כוכבים instead of saying that he is considered a יישראל. The child will be considered an עכו"ם in a case where – ומגח תורה דין ל תורה דידייה –

Our (Jewish) ox gored his (the child's) ox; the child is considered an עכו"ם and the is יישראל. Instead of saying גכח תורה דין ל תורה דידייה (and he is פטור from a case where גכח תורה דין ל תורה דידייה) in a case where גכח תורה דין ל תורה דידייה (unless the child can prove that he is a יישראל!)²

תוספות addresses an additional issue:

[פולה³ מילתא הוי מצי למימר לעניין נגיחה –]

[The entire issue (whether he is considered a יישראל or עכו"ם) **could have been portrayed in regards to goring;** without resorting to the cases of להאכילו נבילות and להזריר אביהה – **אלא ניחא בכל חד למצוא דבר חדש. מוריינו הרב מאיר(?)**⁴ :

However it is desirable to find a novel case for each ruling. מהר"ם Therefore the chose to discuss the cases of להאכילו נbilות and להזריר אביהה in addition to גמרא.]⁵

SUMMARY

¹ The term 'child' is used here as an identifier. It is referring to the person whose lineage is doubtful.

² See 'Thinking it over # 1.

³ This last section ofתוספות is bracketed in the original text.

⁴ מע"מ יישראל concerning דגח תורה דין ל תורה דידייה (see 'Thinking it over' # 2); רוב יישראל concerning דגח תורה דין ל תורה דידייה and the child is only concerning דגח תורה דין ל תורה דידייה. חייב נזק שלם להורא דין and the child is.

⁵ This may be an addendum by the מהר"ם מרוטנבורק. See: 29# (אות ג') זהות מ' ש"ג. He mentions there that theתוספות are from the מהר"ם מרוטנבורק. This [bracketed addendum] is a summation from a summation from a דף פה. וא"ן TosfosInEnglish.com

The rule by **עכו"ם** could be stated that he is considered an **מחצה על מחצה** in a case of **גיהה**. [All three rulings can be explained in terms of **גיהה**. The **גمرا** however desires to offer a different case for each ruling.]

THINKING IT OVER

1. Is question⁶ (first) that instead of saying **מע"מ ישראל** it should have said **מע"מ ישראל**? or is question that since **מע"מ** in certain instances he is considered a **ישראל** and in certain instances he is considered an **עכו"ם**, how can we identify him as either?⁸
2. **נגה** if **רוב ישראל** insinuates (here and states clearly in **תוספות**) that **by** (**מסכת יומא**) **ישראל** would be.⁹ According to the previous **תוספות** **ד"ה** **חיב** **ישראל** **דיין ל תורה דיזיה** **מייק** **הולclin** **בממון אחר הרוב** **owns the money!** Why therefore, should the **ישראל** be obligated to pay, unless the child brings proof that he is a **ישראל**?!¹⁰

הדרן ערך בתולה נשאת
פרק בתולה נשאת You

גמרנו פירושי התוספות לנכון
למסכת כהובות פרק ראשון
בעזרת החונן לאדם דעת והגיון
שגבנו טהרנו אל אדון
לעבדך באמת בהכשר ויתרונו

⁶ See footnote # 2.

⁷ If this option is accepted, a reason is necessary as to why one choice is better than the other.

⁸ See סוכ"ד אות קי.

⁹ See footnote # 4.

¹⁰ Tosfos הרא"ש (מהודרת מוסד הרב [נערך ע"י א. ליכטנשטיין]) העלה 771.