

He cannot marry a שפחה

לישא שפחה אינו יכול –

OVERVIEW

challenged the ruling of ב"ה (regarding a חציו עבד וחציו בן חורין) that he serves his master one day and himself one day. The עבד will not be able to be מקיים the מצוה of פו"ר, since he (cannot marry a בת חורין and) cannot marry a שפחה. It would seem that if the עבד would be able to marry a שפחה, then there ב"ה would have no issue, for he could be מקיים מצות פו"ר with the שפחה. Our תוספות explores this issue.

anticipates a difficulty:

ואף על גב דאמר בהבא על יבמתו (יבמות דף סב,א ושם דיבור המחתחיל הכל)¹ –

And even though רב states in פרק הבא על יבמתו רב –

דהכל מודים בעבד² שאין לו חייס³ ולא קיים פריה ורביה –

That all agree regarding an עבד כנעני that he has no lineage and did not fulfill the מצוה of פו"ר, for the children he bore as an עבד have no relationship to him –

והכא נמי אם ישא שפחה לא קיים כיון שהולד מתייחס אחריה⁴ –

So here too (by the חצי עבד וכו' even if he will marry a שפחה כנענית and have children with her he will not have fulfilled פו"ר since the child is linked to her (and not to him), why therefore do ב"ה say אינו יכול לישא שפחה, since even if he could marry a שפחה he would still not fulfill פו"ר!

rejects a possible solution to this question:

ואפילו שבת⁵ לא קיים כדמשמע התם דשבת תלוי בפריה ורביה⁶ –

And the עבד would not fulfill even the directive of שבת, as it is indicated there in

¹ The גמרא there discusses a גוי who was מתגייר together with his children; if it is considered that he was already מקיים ר"ל argues. and מקיים ר"י maintains he was (גוי) because of the children he had as a פו"ר (מצות פו"ר).

² Regarding an עבד even ר"י agrees that he was not פו"ר with the children he had as an עבד.

³ We derive this from the פסוק (in כה,ה [וירא]) which states עם החמור; שבו לכם פה עם החמור; which we interpret to mean that עבד אברהם was an עם הדומה לחמור (a people similar to a donkey) that he has no יחס.

⁴ The child of a שפחה is always a שפחה even if the father was a ישראל (an עבד עברי), as the תורה writes (משפטים) (שמות) [משפטים] (ע"ע) . Therefore even though the עבד is a חציו בן חורין, nevertheless the child cannot relate even the חציו בן חורין, since he is the son of a שפחה, and the child can certainly not relate to the עבד חציו for חייס. There is no קיום פו"ר for the עבד.

⁵ שבת (לשבת יצרה). The שבת. The ב"ה challenges ב"ה that if the עבד cannot marry anyone he will not fulfill the obligation of שבת. The שבת (לשבת יצרה) is discussing the מצוה of פו"ר. Perhaps we can differentiate that an עבד cannot be מקיים פו"ר (since אין לו מקיים פו"ר) (even) with children from a שפחה. However he can be מקיים שבת (שפחה).

⁶ The גמרא there cites a ברייתא that ב"ה maintain (according to ר' נתן) that one is מקיים פו"ר with having either a son or daughter. רבא explained the reason he fulfills פו"ר is because it states לשבת יצרה and he fulfilled the שבת; indicating that שבת and פו"ר are interdependent with each other. פו"ר is fulfilled when שבת is fulfilled, and when פו"ר is not fulfilled שבת is not fulfilled (for if שבת can be fulfilled without פו"ר; how can we understand רבא).

לישא שפחה. The question remains why mention **פ"ר** **that שבת is dependent on** **מס' יבמות** מקיים (שבת) **פ"ר** he is still not יכול, when even if he is still not יכול.

responds: תוספות

מכל מקום אומר רבינו יצחק לא⁷ כופין לרבו לעשותו בן חורין משום פריה ורביה –
ר"י (if the **עבד** was permitted to have children from a שפחה), **says the** **Nonetheless** **that we would not force the master to free him on account of** **פ"ר** **-**
אם היה יכול לקיים אפילו שבת כל דהו⁸ כיון שהוא אנוס⁹:
If the **עבד** **was capable of fulfilling a minimal שבת, since he is coerced.**

SUMMARY

If the **עבד** would be permitted to marry a שפחה and observe a minimal שבת (for he cannot have a proper שבת), the owner would not be coerced to free him.

THINKING IT OVER

1. Why is it if the child is not מתייחס after the father (like [משפחה] **בן העבד**), he is not properly מקיים שבת, but he is **כל דהו**?¹⁰
2. Is there an example¹¹ of where he is not an אנוס and is **כל דהו** and מקיים שבת **בי"ד** will coerce in order to be **פ"ר** מקיים.
3. Does the exemption of an אנוס mean that for the אנוס there is no מצוה, or that the מצוה remains but he is not punished for transgressing it?¹²

⁷ The הגהות הב"ח amends this to read, **זלא** (instead of לא).

⁸ He cannot marry a בת חורין (since he is a **עבד**), but since (if) he could marry a שפחה and preform a minimal שבת, there would be no obligation on the owner to free him. However, now that he cannot even marry a שפחה and can have no children at all (not even a minimal שבת), we coerce the master to free him.

⁹ It is the duty of **בי"ד** to see that the מצוה (of **פ"ר**) are performed. If the person is not even מקיים then **כל דהו** even מקיים. If the person is not even מקיים (as in the actual case of **ב"ח** **עבד וחצי**), he is an אנוס and is מקיים. If he is an אנוס and is מקיים, then **בי"ד** will not coerce (in the case if the **עבד וחצי** **ב"ח** could have a שפחה). [If he is not an אנוס and is מקיים, then **בי"ד** will coerce him to be **פ"ר** (see 'Thinking it over').]

¹⁰ See סוכ"ד אות מב.

¹¹ See footnote # 9.

¹² See תוס' ד"ה שנאמר. See also 'Thinking it over' # 1 in the following מטא יוסף רצט.