We promote him - אנן מסקינן ליה

Overview

Our גמרא states that if it is a case of תרי ותרי concerning a possible בן גרושה, the ruling is that we elevate him to כהונה status. Our תוספות will discuss and explain the different rulings concerning תרי ותרי.

דאוקי תרי בהדי תרי ואוקי גברא אחזקיה דמוחזק לן דאביו כהן הוא –

For we place the **two** עדים who are פוסל **against** the **two** עדים who are מכשיר; thus effectively negating both groups of עדים **and the person is placed in his** original **presumptive** status; **for it is presumed by** בי"ד **that his father is a כהן כשר;** therefore the son is also a כהן כשר.[1]

תוספות has a difficulty with this resolution of תרי ותרי; that we revert to the חזקת כשרות of the father:

ותימה דאמרינן בפרק האומר בקדושין (דף סו,א) **גבי ינאי המלך ויבוקש ולא נמצא –**

And this is astounding! For the גמרא **states in פרק האומר in** מסכת **קדושין concerning King ינאי.** There was a controversy surrounding the (גדולה) כהונה of ינאי המלך. There were rumors that his mother was in captivity among non-Jews;[2] thereby making ינאי a חלל who is פסול לכהונה. The חכמים 'suggested' to ינאי that he give up the כהונה on account of these rumors. The חכמים there continue to relate that the matter concerning her captivity **was investigated and** the rumor **could not be substantiated.** The גמרא there asks:

היכי דמי אילימא דתרי אמרי אישתבאי ותרי אמרי לא אישתבאי –

How is this that the rumor could not be substantiated, and ינאי was vindicated; **could we say that two** עדים **claimed that she was in captivity and two** other עדים **claim that she was not captured;** this cannot be, for it is –

תרי ותרי נינהו מאי חזית דסמכת אהני סמוך אהני ואמאי לא נמצא –

Two witnesses against **two** witnesses, **why do you see to depend on these** עדים

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[1] The above is (somewhat) excerpted from the interpretation of the רשב"ם here and רש"י in כתובות דף כו,ב. However they maintain that the חזקת כשרות is (also) based on his status after the first עד המכשיר testified; not (only) on the חזקת אביו as תוספות states. See 'Thinking it over' # 1.

[2] A Jewish woman who had relationships with a non-Jew is considered a זונה. She is forbidden to marry a כהן. Any child she has from a כהן is considered a חלל, who is פסול לכהונה. A woman who was held captive among non-Jews is considered מדרבנן as a זונה, regardless whether it is known for sure if they had any relationship with her. See footnote # 10.

who claim לא אשתבאי and are vindicating ינאי, **depend on these** עדים who claim אישתבאי; therefore, continues the s'גמרא question **'so why** did the חכמים say that **nothing could be substantiated'!** Since it is תרי ותרי, it should be considered a ספק and ינאי should be פסול לכהונה. Why did the חכמים insinuate that nothing was found that could invalidate ינאי from the כהונה?! He should be פסול on account of the תרי ותרי. This concludes the citation from the גמרא in קדושין.

תוספות concludes his question:

והשתא מאי קא פריך אדרבה אית לן למימר אוקי תרי בהדי תרי ואוקי גברא אחזקיה –

But now according to the interpretation presented in the beginning of תוספות that by תרי ותרי we maintain the original חזקת כשרות, then **what is the challenge** in מסכת קדושין as to the status of ינאי; that he should be פסול by תרי ותרי, **on the contrary!** It makes sense why ינאי was vindicated, for **we should maintain** there just as we say here, that **we place two** עדים **against two** עדים **and we place the person on his** original חזקה**;** which means –

ואוקי ינאי אחזקת אמו דלא אישתבאי[3] –

And we should place ינאי based **on the חזקה of his mother that she was not in captivity.**

תוספות question is; just as here the עדים concerning בן גרושה cancel out (it is תרי ותרי) and the son is a כהן כשר based on the חזקת כשרות of his father; similarly by ינאי the עדים of אישתבאי cancel out (תרי ותרי). There remains the חזקת כשרות of the mother. ינאי should be כשר on account of the חזקת כשרות of his mother. In both cases neither son (ינאי nor the s'כהן son) has a חזקת כשרות of their own; only from their parents. The ruling should be the same in both cases. If the חזקת כשרות of the parents applies to the son, then ינאי is כשר. If the חזקת כשרות of the parent cannot apply to the son then the s'כהן son should also be פסול.

תוספות will now cite how רש"י explains the גמרא there in קדושין:

ופירש התם בקונטרס דחזקת האם לא מהניא להכשיר את ינאי –

And רש"י **explained there** in מסכת קדושין the reason we do not follow the חזקת האם concerning ינאי, is **that the** חזקה of s'ינאי **mother cannot be applied to validate ינאי** for כהונה -

לפי שאין עדים באין לפסול את האם לכהונה אלא להעיד על ינאי –

Because the witnesses who claimed אישתבאי **are not coming to invalidate the**

[3] s'ינאי mother was certainly not in captivity prior to the date which the rumor alleges she was captured. Therefore, since there is a תרי ותרי whether or not she was in captivity, we place her on her original חזקה that she was never in captivity.

mother for כהונה status **but rather** they came **to testify against ינאי** that he is the son of a שבויה. The status of the mother is irrelevant here. The mother is not present. The עדים are stating that ינאי is a בן שבויה; and ינאי has no חזקת כשרות.[4]

תוספות rejects this interpretation of רש"י:

ואין נראה לרבינו יצחק דלמה לא יועיל חזקת האם לבן –

And the ר"י is not satisfied with this interpretation; **for why should not the חזקת האם apply to the son** as well –

הואיל ואינו יכול להיות שתהא האם כשרה אם לא יהיה הבן כשר –

Since it is impossible that the mother should be a כשרה unless the son is כשר. also If the son is not כשר since he is a בן שבויה, then the mother is automatically a שבויה. תוספות argues that we cannot separate the כשרות האם from the כשרות הבן (ינאי), since they are dependent on each other. Therefore it does not matter what the intent of the עדים are; whether to testify concerning ינאי or his mother, in all cases the status of the אם and the בן are to be the same. The mother has a חזקת כשרות; therefore we cannot be פוסל the son, whose status is linked with his mother.

תוספות does not agree with the reasoning of רש"י and will now show that it also contradicts our גמרא:

ועוד דהכא אף על גב דעל הבן מעידים לפסלו מהניא ליה חזקת האב להכשירו –

And furthermore there is a difficulty with רש"י, **for here** in our גמרא **even though** the עדים **are testifying to be פוסל the son** and not the father (similar to the case of ינאי and his mother), nevertheless **the חזקה of the father helps to be מכשיר the** son. Why therefore should it be any different by ינאי and his mother?![5]

תוספות offers his explanation:

ונראה לרבינו יצחק דהיינו טעמא משום דמסקינן בפרק ד' אחין (יבמות דף לא,א ושם דיבור המתחיל תרי) -

And it seems to the ר"י that this is the reason why there is a difference between our גמרא and the case of ינאי, **because** the גמרא **concludes in פרק ד' אחין -**

דכל תרי ותרי הויא ספיקא דרבנן[6] והאם[7] נמי הוי ספיקא דרבנן –

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[4] רש"י does not attempt to distinguish between our גמרא (where we do follow the original חזקה) and the גמרא in קדושין (where we do not follow the חזקת האם). There is a distinction however, for רש"י maintains that the reason the son of the כהן is assumed to be a כהן (is not merely because of the חזקת כשרות of the father, but rather) because there is (also) a חזקת כשרות for the son, based on the testimony of the first עד המכשיר. See previous footnote # 1.

[5] See previous footnote # 4.

[6] תוספות (seemingly) does not mean that תרי ותרי is a ספיקא דרבנן in the usual sense (where we say ספיקא דרבנן לקולא), but rather that the ספק is מדרבנן. Therefore if the issue at hand is in a דאורייתא it will be לחומרא and by a דרבנן it will be לקולא as תוספות shortly states. See 'Thinking it over' # 2.

That every case of **תרי ותרי is a ספיקא דרבנן, and [there] (by the mother** of ינאי**) it is also a ספיקא דרבנן.** According to תורה law if it is a תרי ותרי we follow the original חזקה; however the חכמים decreed that even if there is a חזקת היתר by a תרי ותרי, and מן התורה it should be מותר, nevertheless we treat it as a ספק and we take the more stringent view (if it is an איסור דאורייתא).

ולהכי פריך התם סמוך אהני –

And therefore the גמרא **there** in קדושין **challenges the** assumption that the rumor could not be substantiated; saying**, depend on these** עדים who testify that אשתבאי –

דנהי דמדאורייתא אמרינן אוקי תרי בהדי תרי ואוקי איתתא אחזקה –

For granted that according to תורה **law we rule that we place the two against the** other **two** (as if they do not exist)[8] **and we place the woman** (s'ינאי mother) **on her חזקת** כשרות; which would make ינאי כשר לכהונה –

מכל מקום מדרבנן יש לפוסלה –

Nevertheless, she should be considered **פסול מדרבנן.** Therefore the גמרא says we should be סמוך אהני; that she is פסול as if we pay attention to the עדים that claim אישתבאי.

The question remains, however, why in our case do we bestow the חזקת האב to the son, even though here it is also תרי ותרי; he should be פסול לכהונה מדרבנן! תוספות explains:

והכא לענין תרומה דרבנן הקילו להתירו בה בתרי ותרי ולאוקמיה אחזקיה[9] –

And here in our גמרא **they were lenient** since the discussion here is merely **concerning a rabbinic תרומה,** not a תרומה דאורייתא therefore **they were lenient to permit him** to eat this תרומה דרבנן **in** a case of **תרי ותרי and to establish** the son as a כהן כשר based on **the חזקה** of the father.

In summation: According to תוספות in a case of תרי ותרי, then מדאורייתא the ruling would be that אוקמי אחזקה. If there is a חזקת היתר then it would be מותר (however if there is a חזקת איסור then it is a ודאי איסור, not a ספק איסור). The רבנן, however, decreed that by תרי ותרי even when there is a חזקת היתר, nevertheless we prohibit it מספק. This ruling applies only if the איסור in question is an איסור דאורייתא (as in the case of ינאי, where a חלל is פסול לכהונה and is forbidden מדאורייתא for all כהונה functions),[10] however when the איסור in question is merely an איסור דרבנן (as in our גמרא,

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[7] Others amend this to **והתם** instead of והאם.

[8] If we were to maintain that by תו"ת it is considered as if both עדים are testifying; it would be quite difficult to understand how the חזקה can outweigh the status of the עדים (that contradict the חזקה). However if we maintain that תו"ת is viewed as if the contradictory עדים are not present, then it is understandable that the חזקה can decide the case (for no עדים contradict it).

[9] See 'Thinking it over' # 3.

[10] In the case of ינאי it may also be considered only an איסור דרבנן, since the איסור שבויה is an איסור מדרבנן (see footnote # 2). Nevertheless on the possibility that she was נבעלה, then (s)he is אסור לכהונה מדאורייתא. In our case of

where we are discussing whether the son may eat תרומה בזמן הזה which is only a תרומה מדרבנן), then we revert back to the תורה ruling, namely that by תרי ותרי we follow the original חזקת כשרות. This follows the general rule that ספיקא דאורייתא לחומרא and ספיקא דרבנן לקולא.

תוספות anticipates a difficulty with the idea that תרי ותרי is merely a ספק דרבנן however מן התורה we follow the חזקה:

והא דאמר לעיל שנים אומרים מת וב' אומרים לא מת כולי –

And concerning **that which** the גמרא **previously stated** in the case where **two** עדים **said that he died and two** עדים **said that he did not die, etc.**, the ruling there is that initially she should not remarry -

אבל נשאת ואחר כך באו עדים לא תצא[11] –

however if she remarried and then the עדים came and claimed that he did not die, then everyone agrees that **she** need **not leave** her new husband –

אף על גב דתרי ותרי ספיקא דרבנן היא –

Even though that תרי ותרי is merely **a ספק מדרבנן**, as previously explained -

ומדאורייתא אית לן לאוקמה אחזקה דהויא אשת איש –

And according to תורה law, however, **it is** required **that we should establish her** status based **on her** original **חזקה; that she was a married woman –**

והיה לה לצאת אף על פי שנשאת לאחד מעדיה –

And she should be required **to leave** the new husband **even though she remarried to one of her witnesses** who is certain (as she is) that her husband died.

If we were to maintain that תרי ותרי is a ספק מן התורה and we do not accept any חזקה to resolve this ספק; but rather the ספק status remains by תרי ותרי,[12] then we can understand that גמרא. There are תרי ותרי; it is a ספק אשת איש, so בי"ד will not permit them to marry מספק. If however they are already married and the new husband and wife both claim that they are sure the husband is dead, then since they were only אסור to marry מספק, therefore this ספק that בי"ד has is not sufficient to revoke their marriage, since they are ודאי that he is dead.
However since we are maintaining that מדאורייתא by תרי ותרי we follow the original חזקה, therefore this woman is בחזקת אשת איש from her first husband and is אסור מן התורה to remarry. How can we allow them to remain married just because they claim בודאי that the husband is dead?! How can their ודאי remove the איסור תורה that was created through the חזקת איסור?![13]

תרומה דרבנן, it is always only a רבנן question, never a דאורייתא issue.

[11] See 'Thinking it over' # 4.

[12] This view may be seen as being supported by the גמרא in קדושין concerning ינאי. The גמרא there says סמוך אהני (on those that are אוסר), even if there is a חזקת היתר.

[13] It is understood that even though the חכמים said that תרי ותרי remains a ספק and we do not rely on the חזקה; however that is only if there is a חזקת היתר. Then the חכמים decree that even though מדאורייתא it is מותר on account of

תוספות answers:

אומר רבינו תם דאתיא חזקה דדייקא ומנסבא ומרעה חזקת אשת איש –

The ר"ת says that here it is different, **for the חזקה that** a woman **is meticulous** in first assuring that her husband is dead **and** only then does she **remarry;** this חזקה **comes and undermines the חזקת אשת איש.** The חזקת אשת איש is not powerful enough to create a חזקת איסור. There is an opposing חזקה. The fact that the woman is remarrying and claiming that she is sure her husband is dead weakens the חזקת אשת איש. A woman will not remarry if she is unsure of her (original) husband's status. She does not want to transgress the איסור אשת איש; she does not want her children to be ממזרים etc.; in short a woman will only remarry after a meticulous search that assures her that her husband died. This חזקה counteracts the חזקת אשת איש. Therefore if she remarried it is only a ספק איסור to בי"ד, therefore לא תצא.

תוספות challenges this previous assumption that there is a חזקת דדייקא ומנסבא:

ואם תאמר כי איכא ב' עדים לא דייקא דליכא חומר בסופה –

And if you will say; if there are two עדים who testify that her husband died, then **she is not meticulous** in verifying that her husband died, **for subsequently there is no stringency –**

כדאמר בהאשה רבה (שם דף פז,ב ושם) נשאת שלא ברשות מותרת לחזור לו –

As the משנה **states in האשה רבה** פרק**, if she remarried without** requiring **permission** from בי"ד (in a case where עדים testified that her husband died), and then her original husband returned **she is permitted to return to** her original husband.

ומפרש התם דהיינו שנשאת בעדים –

And the גמרא **explains there** that the meaning of the term נשאת שלא ברשות **is that she remarried** based on the testimony **of עדים** who claim that her husband died. If only one עד claimed that her husband died then she requires a (special) רשות בי"ד to remarry (since מן התורה two עדים are required to testify). בי"ד grants her this רשות with a provision that if her husband returns then she will not be able to remain married to either of her husbands and will lose her monetary rights, etc. This ensures us that she will be meticulous before she remarries. However if two עדים testify that her husband died, then she is permitted to remarry without any specific רשות בי"ד. If her husband returns we are not that strict with her; including that she may return to her previous husband, and retains her monetary rights.

תוספות question is that since there are two עדים who testify to her husband's death,[14] therefore

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the חזקת היתר, nevertheless מדרבנן it is אסור. However if מדאורייתא it is אסור because of the חזקת איסור, then the רבנן will certainly not say that it is only a ספק (and it should be מותר!??)!

[14] The question (seemingly) becomes stronger since תוספות is discussing the case of נשאת ואח"כ באו עדים, at the time of her remarriage there were only the עדים המתירים. She is certainly not דייקא ומינסבא. See footnote # 11.

there will be no חומר בסופה. If there is no חומר בסופה, then there is no דייקא ומינסבא, since the woman is not that concerned. If there is no דייקא ומינסבא, there remains only the חזקת אשת איש. If there is a חזקת אשת איש, how can she remain married in face of this חזקת אשת איש, since מדאורייתא we follow the חזקה in a case of תרי ותרי?!

תוספות answers:

ויש לומר הואיל ומכחישים זה את זה איכא חומרא אם תעמוד תחת בעלה[15] בטענת ברי שלה-

And one can say that since the two groups of עדים **contradict each other**, therefore **there is the** same **stringency** here as if she would have remarried ברשות בי"ד **if she will remain with her** new **husband based on her claim of certainty** that she knows for sure that her husband died. בי"ד is lenient with her only if she remarries on the basis of the testimony of two uncontested עדים. If however, the עדים are eventually contested, and she remains married on the basis of her assuredness, then she must face the consequences, if it turns out that she is wrong and her 'previous' husband is still alive. Therefore by תרי ותרי she will be דייקא ומינסבא, since there is a חומרא בסוף. This דייקא ומינסבא cancels out the חזקת איש אשת. The woman's status is only a ספק איסור at most. If she claims ברי לי, then בי"ד cannot separate her from her new husband.

תוספות has an additional question:

ואם תאמר ב' אומרים נתגרשה וב' אומרים לא נתגרשה –

And if you will say; in the case where **two** עדים **claim that she was divorced, and two** other **עדים claim that she was not divorced –**

אמאי לא תצא בנשאת ואחר כך באו עדים הא לא דייקא –

Why is she not required **to leave** her new husband, in a situation **where she** first **remarried** based on the testimony of the first group of עדים, **and afterwards** a second group of **עדים came** who claimed that לא נתגרשה. Why does the ברייתא state that she need not leave!? For **she is not meticulous** in the verification process, in a contested divorce case –

דדוקא במת הוא דדייקא שיראה שמא יבא וידעו הכל שלא מת –

For it is specifically only by a claim of **death** that she is **meticulous** in verifying his death; the reason is **for she is afraid that perhaps** her previous husband **may return and everyone will know that he did not die.** Therefore by מיתה she is very meticulous. However by גירושין, she is not that concerned if her husband returns, for even if he claims that he did not divorce her, people will not be sure that it is true. Especially since the woman claims (and two עדים support her contention) that he did divorce her. Therefore since she

[15] See previous footnote # 13.

is not that concerned, there is no דייקא ומינסבא. This leaves us only with the חזקת אשת איש. Why therefore do we permit her to remain with the new husband?!

תוספות anticipates a possible answer, and rejects it:

ואינה נאמנת לומר נתגרשה דשלא בפני בעלה מעיזה ומעיזה[16] –

And she is not believed to claim that she was divorced, for not in the presence of her husband, a woman **is indeed very brazen.** There is no reason to believe her.

תוספות adds an additional point:

ועוד[17] היכא דאיכא עדים דקא מסייעי לה מעיזה ומעיזה –

And furthermore, in a case **where there are** עדים **who are assisting her** and supporting her claim that she is a divorcee **certainly she is brazen.** She is only believed when she says I am divorced, in the presence of her husband; for a woman does not have the העזה to claim in the presence of her husband that she is divorced, unless it is true. However not in the presence of her husband and especially if other עדים support her, a woman has the העזה to claim that she is divorced even if it is not true. Therefore we cannot believe her statement that she is divorced. There is also no דייקא ומינסבא in the case of גירושין**.** Seemingly there only remains the חזקת אשת איש**.** The woman should not be permitted to remain with her husband.

תוספות answers:

ויש לומר דלענין הכי דייקא ומרעא חזקת אשת איש –

And one can say that concerning this issue; whether she can remain with her new husband, **she is meticulous and she weakens the חזקת אשת איש**; the reason for this is –

דלעולם יראה שמא יוזמו או יפסלום בגזלנות –

For she is always concerned that **perhaps** her supporting עדים **will be מוזם or invalidated** by being accused that **they are גזלנים**. She will have nothing to fall back on, since there are עדים who claim that she was never divorced. Therefore she is דייקא ומינסבא.

תוספות has one final question:

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[16] There is a rule that if a woman declares in the presence of her husband, that she is divorced; the woman is believed. There is a חזקה that a wife will not be that brazen to her husband's face. If she claims she is divorced, we assume that she is. תוספות is noting that in this case we cannot say that here too the woman herself is believed that she is divorced, and that her statement counteracts the חזקת אשת איש (just as in a regular case where a wife says to her husband גרשתני)

[17] תוספות may be saying that even if the husband appears and she claims in his presence that she is divorced, nevertheless in this instance she cannot be believed.

ואם תאמר למאי דלא ידע דבאומר[18] ברי לי איירי מאי קאמר היא גופא באשם תלוי קיימא –
And if you will say when the גמרא **did not** yet **know that we are discussing** a situation **where she claims 'I am sure** that he died';[19] before we came to that conclusion and we thought that the woman has no opinion as to the status of her husband **why does** the גמרא **state** as a challenge, that how can she remarry **'she herself needs to bring an אשם תלוי';** why does the גמרא say that; since she does not know the status of her husband -

הוה ליה למימר בחטאת קיימא –
The גמרא **should have stated she has to bring a קרבן חטאת.** According to תוספות our סוגיא maintains that תרי ותרי is a ספיקא מדרבנן. However we follow the חזקה מדאורייתא. In this case of תרי ותרי, the woman is בחזקת אשת איש. Therefore if she does not claim ברי לי, then she is בחזקת אשת איש and is required to bring a קרבן חטאת; not an אשם תלוי!

תוספות answers:

ויש לומר דפריך אפילו נאמר דתרי ותרי הוה ספיקא דאורייתא –
And one can say that the challenge of the גמרא is **even if we were to assume that תרי ותרי is a תורה ספק.** If we assume that תרי ותרי is a ספיקא דאורייתא, then we do not follow any חזקות, but rather it is left as a ספק. If it is a ספיקא דאורייתא, then it is understood why the גמרא cannot claim that she should bring a קרבן חטאת. A קרבן חטאת is brought only if one certainly transgressed an איסור דאורייתא, but not if one is doubtful whether he transgressed an איסור דאורייתא as in our case where it is merely a ספיקא דאורייתא.

כדפירישית בפרק ד' אחין (שם דף לא,א דיבור המתחיל אי) מכל מקום[20] באשם קיימא –
As I explained in פרק ד' אחין, nevertheless even if it is only a ספיקא דאורייתא she is **required** to bring a קרבן **אשם** תלוי for (perhaps) transgressing a ספק איסור.

ואין להאריך ובכתובות (דף כו,א דיבור המתחיל אנן) פירשתי:
And there is no need **to elaborate** any longer, **and I explained** it at greater length **in** מסכת **כתובות.**

Summary

In a case of תו"ת, the ruling מן התורה is, that we follow the חזקה, whether there is a חזקת היתר or a חזקת איסור. The חכמים however instituted that even if there is a חזקת היתר, it should still be treated as a ספק. If the issue is a דאורייתא, we go לחומרא if it is a רבנן, we go לקולא.

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[18] Seemingly it should read 'באומרת'.
[19] See תוספות דף לא,ב ד"ה ואם.
[20] תוספות may be alluding to the issue whether an אשם תלוי is brought only when איתחזק איסורא.

We follow a חזקת איסור לחומרא only if the חזקה is not compromised; otherwise it remains (only) a ספק.
The חזקה of אשה דייקא ומינסבא applies (even) by תרי ותרי; and even by a תו"ת of גירושין it is sufficient to allow her to remain with her (current) husband.

THINKING IT OVER

1. In our גמרא we say that the son has the חזקת כשרות from his father the כהן.[21] Seemingly there is no connection; the father may be a כהן כשר who married a גרושה,[22] thereby disqualifying the son from the כהונה.[23]

2. It is not clear what תוספות is adding by citing the גמרא in יבמות.[24] Seemingly until now we also assumed that תו"ת is a ספיקא דרבנן; otherwise (if it were a ספיקא דאורייתא), we would not follow the חזקה. תוספות should have merely stated the difference between our גמרא and the case of ינאי in מסכת קדושין.

3. תוספות explains that in our גמרא the son is permitted to eat (only) תרומה דרבנן.[25] In a case of a דרבנן (ספק) then by תרי ותרי we follow the חזקת היתר. It seems from תוספות that if there would not be a חזקת היתר, then he would be אסור in this תרומה דרבנן for he is a ספק חלל. The general rule is that by a ספק דרבנן we are lenient (even without a חזקת היתר), Why is it necessary here to rely on the חזקת היתר?[26]

4. תוספות has a difficulty with the ruling that if תצא לא עדים באו ואח"כ נשאת. It seems that תוספות is asking the question according to רמב"י.[27] However the question can certainly be asked according to the ת"ק as well for they maintain that in all cases תצא לא.[28]

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[21] See footnote # 1.
[22] A כהן who marries a גרושה is still a כהן כשר, even though his children are חללים.
[23] See נח"מ (בד"ה הא').
[24] See footnote # 6.
[25] See footnote # 9.
[26] See סוכ"ד אות כא.
[27] See footnote # 11.
[28] See מהרש"א and פני שלמה.