

ואי אמרת קדושיו לאו קדושין יורשין מנא ליה – And if you say his betrothal is not a betrothal; how does he have heirs

OVERVIEW

The גמרא queried in a case where a חצי עבד וחצי בן חורין was מקדש a ישראל, whether the קידושין are valid. The גמרא cited a ברייתא, which stated that if a שור killed a ח"ה, half the קנס goes to his (remaining) master and the other half goes to his heirs. The גמרא infers from this that קידושיו קידושין, for if it is not a valid קידושין, how can he have heirs. Tosfos analyzes this proof.

Tosfos asks:

תימה דמה תולה יורשין בקידושין¹ והלא בנו מן הפנויה יורשו - It is astounding! For why does he associate heirs with קידושין, for is not one's son from an unmarried woman his heir; Tosfos proves this -

כדאמר (יבמות דף ק,ב) גבי עשרה כהנים שפירש אחד מהן ובעל זהולד שתוקי² - כדאמר (יבמות דף ק,ב) גבי עשרה כהנים שפירש אחד מהן ובעל זהולד שתוקי² - As ruled regarding ten כהנים, where one of them (who remains unknown) separated himself from the group, and had relations, that child who is from this relationship, is a שתוקי, meaning

שמשתקין אותו מכנסי אביו משום דלא ידעין אביו מנו - That we silence him from the estate of his father, because we do not know who is father is, however if we would know, the child would inherit, even though there was no (פנויה) (and she is a פנויה) -

ואפילו³ בנו ממזר מערוה דלא תפסי בה קידושין - ואפילו³ בנו ממזר מערוה דלא תפסי בה קידושין - And even if his son is a ממזר from an incestuous relation where קידושין do not take effect, nevertheless -

תנן בפרק שני דיבמות (דף כב,א) דהוי בנו לכל דבר והיינו ליורשו - תנן בפרק שני דיבמות (דף כב,א) דהוי בנו לכל דבר והיינו ליורשו - The second taught in the second פרק of יבמות that this ממזר is considered his son for all matters; this means that the son inherits him -

והכא אי תפסי בה קידושין גרע טפי⁴ דאתי צד עבדות ומשתמש באשת איש - והכא אי תפסי בה קידושין גרע טפי⁴ דאתי צד עבדות ומשתמש באשת איש -

¹ The slave can have heirs even if the קידושין are invalid; if he lived with someone and she bore him a child, this child is his heir regardless if there was קידושין or not.

² שתוקי (silenced one) is the term used to describe a person whose father is unknown to us. Whenever he refers to someone as his father, his mother tells him שתוק שתוק (be quiet); 'he is not your father'.

³ Tosfos is adding that perhaps by the case of the כהן the כהן could have been מקדש the woman and therefore the son inherits; however here by the ח"ה we are assuming that there is no קידושין, therefore perhaps his son will not inherit, therefore Tosfos adds that we see even by a ממזר where לא תפסי קידושין and nevertheless he inherits, so why should not the son of the עבד also inherit.

⁴ It is preferable for the עבד that קידושין קידושין, for if it were קידושין, this woman is married to the בן חורין part

And here by the **עבד** if **קידושין** would be effective it is even worse for the **עבד**,
for the **עבד** part would be in a relationship with an **א"א** -

כדאמרינן [בהחולץ] (שם דף מה, א⁵) -

As the **גמרא** states in **פרק החולץ**.

answers: תוספות

ויש לומר דסבר הש"ס דאם איתא דלאו בר קדושין הוא אין בנו מתייחס אחריו -

And one can say that the **גמרא** maintains that if indeed the **עבד** cannot
perform **קידושין**, his son is not related to him (he is not considered his son and cannot
inherit him) -

ולא דמי לעריות דתפסי בה קדושין לעלמא -

And it is not comparable to incestuous relationships, where **קידושין** is effective
by these people with people in general (they can marry others, therefore their children
inherit them) -

אבל האי דלאו בר קדושין הוא בשום מקום אין הבן⁶ מתייחס אחריו:

However this **עבד** who can never make an effective **קידושין** anywhere, his
child is not related to him.

SUMMARY

If one is not a **בר קידושין** anywhere, his progeny do not inherit him.

THINKING IT OVER

1. What is the reason that if one is not a **בר קידושין** anywhere, his progeny do not inherit him?

2. states that since an **עבד** is not a **בר קידושין** anywhere, therefore his son is not
בר קידושין. We know however that regarding a **נכרי** who is also not a **בר קידושין**,
and nevertheless his children are **מתייחס אחריו**,⁷ and inherit him.⁸ Why is
there a difference between a **נכרי** and the **עבד**?⁹

of the **עבד**, so when the **עבד** is with her he is violating the **איסור** of **א"א** (since she is not the wife of the **עבד**).
Therefore it is better that there is no **קידושין** and no **איסור** of **א"א**; however the child inherits as mentioned previously,

⁵ The expression **איש ומשתמש באשת איש** is actually brought there on ב, מה.

⁶ See 'Thinking it over'.

⁷ יבמות סב, א.

⁸ קידושין יז, ב.

⁹ See **נחלת משה**.