

That betrothed groom and bride

[ההוא¹ ארוס וארוסתו -

OVERVIEW

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

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

קדושין in סוגיא begins by quoting the תוספות:

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

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

רב אמר הולד ממזר⁴ ושמואל אמר הולד שתוקי⁵ –

רב maintains that the child is a ממזר, and שמואל maintains that the child is

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

² See later (הב') תוספות ד"ה חדא.

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

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

⁵ A שתוקי refers to a child whose father is unknown. When the child calls out 'father' to someone, the child is hushed; hence the name שתוקי, the hushed one.

a שתוקי; he cannot marry a ישראל because he may be a ממזר, and he cannot marry a ממזר because he may be a כשר.⁶ This concludes the citing of the גמרא.

— continues that we must say that the מחלוקת between רב ושמואל is in a case —

כשלא בדקו את אמו דאי בשבדקו קשיא דשמואל אדשמואל -

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

goes on to explain the contradiction:

— דהכא אמר שמואל דנאמנת —

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

- דהלכה כרבן גמליאל דנאמנת -

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

- והתם קאמר איפוך⁹ שמואל אמר הולד ממזר -

And there in קידושין the גמרא **said reverse** the aforementioned opinions of שמואל. According to the reversal רב maintains שתוקי הולד, and שמואל **maintains that the child is a ממזר**. This is in contradiction to our גמרא where שמואל maintains that the ארוס is כשר if the ארוס claims that the child is from the ארוס.¹⁰ Therefore

⁶ It is not certain who is the father of this child; it may be the ארוס or it may be another man.

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 ארוס is a שתוקי. If the child is from anyone but the ארוס the child is a ממזר.

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

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

¹⁰ See רש"י who explains why it was necessary for Tosfos to pose the contradiction (only) according to the איפוך; seemingly there is a contradiction even if שמואל maintains שתוקי הולד, for here he maintains that הולד is כשר. The רש"י answers that we could (mistakenly) interpret the term שתוקי to mean that he cannot inherit

in order to avoid this contradiction we are required to assume that in the גמרא קדושין (since (הולד ממזר or הולד שתוקי שמואל maintains ארוסה made no claim as to the status of the child; she did not clearly state that she had no relations with anyone besides the ארוס.

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

וכן משמע דבמסקנא משני התם לעולם לא תיפוך כולי -

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

ומפרש¹¹ מאי שתוקי שבדקין את אמו ואומרת לכשר נבעלתי¹² -

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

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

תוספות has an additional difficulty:

ואם תאמר אכתי לשמואל דהתם משמע דוקא בבא על ארוסתו בבית חמיו מהני בדיקה -
And if you will say; that there is still a difficulty on שמואל, for there in מ'ס
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 ארוס' estate (but not that he is אסור בבת ישראל), for the other heirs can claim, that the שתוקי cannot inherit the ארוס unless he proves that he is a legitimate son. עי"ש.

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

¹² הלכה כר"ג שמואל maintains that גמרא continues to cite our גמרא that אסור בישראל ובממזרת.

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

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

The text of the גמרא there is **הבא על ארוסתו**; this indicates that it is known (whether through their admission or **עדים**) that they had relations –

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

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

תוספות answers:

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

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

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

אי נמי התם הוא דבעינן בא משום דאיירי בדדיימא מעלמא -

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

¹⁵ הלכה כר"ג שמואל claims מודה ארוס is not 'ועוד', meaning, even if the רב יוסף states

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

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

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

כדאמר רבא ביבמות בשלהי אלמנה לכהן גדול מסתברא מילתא דרב בדדימא מעלמא -
as stated in the end of ג'g' it is
reasonable to assume that the ruling of רב (that the child is a ממזר), **is in a**
case when she is promiscuous in general. This indicates that (at least according
to רבא) the מעלמא of ארוסתו is in a case of מעלמא. This explains why in קדושין
we require that it should be על ארוסתו –

והכא בדלא דיימא מעלמא -

And here we are discussing a case where the ארוסה **was not מעלמא**;
therefore she is believed in her claim even if we do not know from the ארוס that he had
relations with the ארוסה.

תוספות offers a new answer to the contradiction:

ועוד דבכל הספרים גרס בקדושין ארוסה שעיברה -

And furthermore there is no contradiction at all, **for all the texts in**
מסכת read (not על ארוסתו בבית חמיו [as we have it in our text]), but
rather, **'an ארוסה who became pregnant'**. Therefore both in our גמרא and in קדושין
agree that according to שמואל she is believed even if we do not know that the ארוסה
had relations.

anticipates a slight difficulty. From the גמרא in קדושין (according to the לא
'לעולם לא (תיפוך'), it appears that the child is כשר only after we inquire by the mother; however here
תוספות explains: stated that רב יוסף indicating that no בדיקה is necessary.

והיא דוקא קאמר שבודקין אבל בבא אינה צריכה בדיקה כלל -

And only in that case did שמואל 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 גירסא of 'כל הספרים'), **however in** a case where it is known
that **בא**; they had relations, as in our גמרא 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, the ארוסה is believed even if it was not בא; we do not know for certain that the ארוס
had relations. When we know that it was בא (through the admittance of the ארוס),
then even בדיקה is not required and the child is כשר.

¹⁸ דף סט,ב.

תוספות has an additional difficulty:

ומיהו קשה ללישנא קמא ביבמות בסוף פרק אלמנה דפליגי רב ושמואל בבא -

However, there is a difficulty according to the first opinion in מסכת יבמות in the end of פרק אלמנה, which maintains that רב and שמואל argue in the case of בא על ארוסתו.¹⁹

ומסיק התם אביי דאף על גב דלא דיימא מעלמא פליגי²⁰ -

דיימא **concludes there that** **רש"י** **argue even if she is not** **מעלמא**; and **רש"י** maintains that even if **לא דיימא** nevertheless the **ולד** is a **ממזר**. **דיימא** explains the opinion of **רש"י** –

דדלמא מדאפקרה נפשה לגבי ארוס²¹ מפקרה נפשה לגבי עלמא -

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

תוספות continues with the question:

הא אמר הכא חדא דקא מודה ומשמע דכשר אפילו לרבי יהושע²³ ובא כמודה דמי -

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

תוספות did not entirely conclude the question yet. However תוספות anticipates a possible

¹⁹ This is in opposition to the דאמרי איכא there, which maintains that רב ושמואל argue in a case of ארוסה הבא על ארוסתו, not by שעיברה.

²⁰ דיימא מעלמא disagrees with רבא who (as previously cited) maintains that the מחלוקת is when

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

²² See ‘Thinking it over’ # 1.

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

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

doubt that בא and מודה are similar. Perhaps מודה here means that the ארוס testifies that the child must be from him, because he knows for certain that the ארוסה had no relations with anyone else. תוספות rejects this view:

דהא מודה דהכא אינו אלא שהיה אומר שבא עליה -

For when the גמרא here says the ארוס was מודה, it does not mean any more than that he states that he had relations with her –

דפשיטא שלא היה מזנב אחריה לאורבה שלא תזנה²⁵ -

For it is obvious that he was not trailing after her to ambush her that she should not commit adultery.

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

ובין לרב ובין לשמואל אסור הוא בבת ישראל -

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

דשתוקי דאמר שמואל היינו דאסור בבת ישראל לכולהו לישני דבפרק בתרא דקדושין -
For when שמואל ruled that the ולד is a שתוקי,²⁶ it means that the ולד is אסור - מסכת קדושין²⁷ of פרק 27 according to all the opinions in the last of פרק 28 נמי קשה טפי²⁹ -

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

דמשמע דאפילו על ידי בדיקת האם לא מיתכשר אלא לרבן גמליאל אבל לרבי יהושע לא -
for it seems from the גמרא there that even through the inquiry of the mother when she claimed that the ארוס fathered the child the ולד is not כשר except according to ר"ג;³⁰ who is generally of the opinion the אשה is

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

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

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

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

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

³⁰ The גמרא there when it states that נאמנת את אמו וכו' continues immediately and explains כ"ג כמאן כ"ג.

believed, **however according to ר"י** she is **not** believed and the child is פסול.³¹
This is what it seems from the גמרות in אסור is וילד the שמואל according to, קדושין ויבמות in גמרות
– (ר"י according to) at least בבת ישראל

והכא אמר דהא קא מודה וכשר לכולא עלמא -

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

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

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

ושמא יש לחלק דבא דהתם היינו שפעם אחת בא עליה -

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

אבל מודה דהכא דקאמר מיניה³² היינו שבא עליה ביאות הרבה -

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

והיה רגיל אצלה תמיד וכדאמרין³³ רוב בעילות הלך אחר הבעל:

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

SUMMARY

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

³² Perhaps it should read מינאי.

³³ סוטה כז,א.

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

THINKING IT OVER

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

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

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

³⁵ See footnote # 22.