

## Perhaps she will go to them

## דלמא אזלא איהי לגבייהו -

### OVERVIEW

The גמרא differentiates that when the (unidentified) בועל goes to the woman the rule of רוב applies<sup>1</sup> since he is פריש; however if the woman goes to the (unidentified) בועל then the rule of קבוע כמחצה על מחצה applies. תוספות will first clarify what is the meaning of going to him or going to her. Then תוספות will discuss whether the rule of כל דפריש applies to people.

פירוש לתוך ביתם דאפילו בתוך העיר לא חשיב קבוע -

**The explanation** of the term לגבייהו 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 איסור is קבוע – **established** –

קבוע proves that לתוך העיר is not considered קבוע:

דדמי לנמצא בין החנויות 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. It is only considered קבוע if the person bought the meat in the store. Similarly here in order to consider it קבוע, she must enter his house.

קבוע offers an additional proof that לתוך העיר is not considered קבוע:

וכן גבי תינוק מושלך בעיר<sup>2</sup> לא חשיב קבוע הואיל ולא נמצא בבית -

**And similarly concerning** the case of a **child** who was **cast away in the city**, it is **not considered** קבוע since he was **not found in the house** –

ולכך פירש בקונטרס<sup>3</sup> שפירש בועל מביתו -

**And therefore רש"י explained** that the phrase ‘if they went to her’ means **that the בועל left his house**. That is considered פריש (and not קבוע). 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:

<sup>1</sup> Most of the people from where the בועל comes are כשר. Some however are פוסל the woman מכהונה. The place of origin of the בועל is where the איסור is קבוע. If the בועל leave his place of origin, he is considered פריש and will not disqualify the woman. If the woman goes to the place of origin then the איסור is הקביעות and the woman will be לכהונה.

<sup>2</sup> See further טו, 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.

<sup>3</sup> בד"ה ופרכינן.

ואם תאמר דבניזיר פרק ב' (דף יב, א ושם) פריך -

And if you will say that in the second פרק of בניזיר, ריש לקיש challenges -

אהא דאמר האומר צא וקדש לי אשה סתם אסור בכל הנשים שבעולם -

That which רבי יוחנן said 'whoever says to a שליח, go and be מקדש for me an (unspecified) woman (the משלה did not specify which woman the שליח should be מקדש), the rule is that the משלה is forbidden to marry any woman in the world'.

We assume that שליח was מקדש a woman. Any (other) woman whom the משלה wishes to marry now, may be a relative to the woman whom the שליח was מקדש; she may be her mother, daughter, sister, etc.<sup>4</sup> ר"ל challenges this ruling -

מקן סתומה<sup>5</sup> -

from the משנה of 'an unspecified 'nest''. When the doves fly away from the קנים, we should be concerned that someone else<sup>6</sup> 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 שליח was מקדש, here too let us be concerned that the dove he wishes to use was the one that flew away from its original קן.<sup>7</sup>

The גמרא there answers:

ומסיק אמינא לך אשה דלא ניידא ואת אמרת לי איסורא דנייד -

And the גמרא there concludes, 'I am speaking to you about a woman who is not roaming, and you wish to contradict me from an איסור of a קן which is roaming'. (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 פריש we follow the רוב, but not in the case of קבוע. Therefore he is אסור to marry any woman for מחצה דמי על מחצה, but anyone may use any dove that he finds since כל דפריש מרובא פריש).

<sup>4</sup> If, however, it can be ascertained that from the time the שליח left the משלה, this woman had no unmarried relatives, then the משלה may marry her.

<sup>5</sup> There are certain individuals (זב, זבה, יולדת, 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: a מפורשת, where the owner designated which bird is the חטאת and which is the עולה; and a סתומה, where the owner did not as yet designate the birds. The כהן 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 סתומה קן flies away the owner can take another dove and join it with the remaining dove for his קן. However if it was a מפורשת קן, then he must take two new doves for his קן. He cannot use the remaining dove.

<sup>6</sup> 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.

<sup>7</sup> 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 גמרא there continues:

**וכי תימא הכא נמי בשוקא אשכחיה וקדיש -**

**And if you will say, that** by קידושין also, the משלה should be permitted to marry her in a situation **where he found her in the marketplace and was מקדש her**. In this situation, seemingly, she is no longer a קבוע but rather a פריש; for she left her place of קביעות and was מקודשת 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 פריש. This concludes the גמרא in נזיר.

surmises: תוספות

**משמע לגבי אדם לא שייך כל דפריש מרובא פריש משום דהדר לניחותיה -**

**It seems from that** גמרא, **that concerning a person** the rule of פריש **does not apply, since he returns to his 'resting place'**, as that גמרא clearly stated concerning the woman. She is not considered פריש even though he was מקדש her, since (eventually) she is הדרא לניחותא. However, here in our גמרא it states that if the (suspected) man leaves his house, he is considered a פריש, even though that later he will be הדר לניחותיה.<sup>8</sup> What is the difference between our case where the man is considered a פריש, and the גמרא in נזיר where the woman is considered a קבוע, since הדרא לניחותא?!

answers: תוספות

**ולאו פירכא היא דהתם בשעת האיסור כשזה בא על שום אשה -**

**And there is no contradiction** between the two גמרות, **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 שליח was מקדש, then at that very same time it is possible that -

**הדרא לניחותא האשה שקידש השליח -**

**The woman whom the שליח was מקדש returned to her resting** place, and she retains her קביעות status. The woman, that was מקודשת ע"י השליח, is the source of the איסור.<sup>9</sup> Whenever she is קבוע we consider the מחצה על מחצה like every קבוע. The term הדרא לניחותא

<sup>8</sup> It would seem from the beginning of תוספות that the question is (also) on the case of לגבייה that if she did not go into the house it is not considered קבוע even though he is הדר לניחותיה. However the question is (also) certainly on what the גמרא states that if אזלי אינהו לגבה it is considered פריש. See מהר"ם שי"ף.

<sup>9</sup> Let us assume that the משלה wants to marry לאה who has a sister רחל. We are unsure whether the שליח was מקדש רחל. The source of the (possible) איסור is רחל, for לאה on her own would be permitted to the משלה. Ordinarily we would assume that רחל was not מקודש by the שליח, since all the women of the world were not מקודש by the שליח (save one). However since there is a possibility that the שליח was מקדש רחל, and רחל is now at her מקום הקביעות, then the rule of קבוע says that the probability that רחל was מקודש, 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 משלה wishes to marry, but rather the woman who was through the שליח. She may be קבוע at the time of the איסור.

**אבל הכא כי אזלי אינהו לגבה בשעה שאסרה הרי הוא ניייד:**

**However here, in our גמרא, when the unidentified people go to her he is ניייד at the time of the איסור.** There is no קבוע at all. We assume that he was פריש from the (תרי) רובי. 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 קבוע 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 איסור. Otherwise it is considered פריש, even if after the איסור it is מעשה איסור.

## THINKING IT OVER

1. explains that since the השליח is אשה המקודשת ע"י השליח, she is considered קבוע and therefore the משלה is הנשים בכל. <sup>10</sup> Seemingly it is not understood. In the case of תשע חנויות the source of the איסור are the חנויות. They are קבוע. However if something was found outside the חנויות, it is מותר regardless that the חנויות are קבוע, since the meat was פירש. The same should apply here. Granted the אשה המקודשת is קבוע, however the other woman was פריש; she was בשוק. That קדושין should be valid, since she was פריש. What is the difference between תשע חנויות and the women?!<sup>11</sup>

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;<sup>12</sup> is it considered קבוע and he is a ישראל לחומרא or not?<sup>13</sup>

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<sup>10</sup> See footnote # 9.

<sup>11</sup> See סוכ"ד אות ט (ואילך).

<sup>12</sup> See footnote # 2.

<sup>13</sup> See אילת השחר.