

**מנין להפה שאסר הוא הפה שהתיר מן התורה שנאמר את בתי נתתי לאיש וגומר –**  
**How do we derive from the תורה, the rule that ‘the mouth that prohibits is the mouth that permits’; for it says: “I gave my daughter to this man’, etc.**

### **OVERVIEW**

The משנה states that if a woman declares אשת איש הייתי וגרושה אני or נשביתי, she is believed; for we say הפה שאסר הוא הפה שהתיר. אסי teaches that we derive this rule of הפה שאסר, from the fact that the father is believed to say I married off my daughter to this person. Otherwise, if we would not say הפה שאסר וכו' then why is the father believed that this individual is the groom. When the father originally stated that he married off his daughter, she become אסור to all men (for she is already married); on what basis is the father believed that he married her off to this individual?! The פסוק teaches us the rule of הפה שאסר וכו', therefore he is believed to specify to which individual he married her.

The believability of a הפה שאסר or מגו (תוספות) is when the claim of היתר was stated immediately and in conjunction with the statement of איסור, without any (significant) interruption between them; otherwise it is not a valid מגו.

There is a difference between the הפה שאסר of אשת איש הייתי וגרושה אני, and קדשתיה לפלוני; in the former, the טענת היתר is in conflict with the admission of איסור,<sup>1</sup> while in the latter the טענת היתר is merely specifying and clarifying the original claim.<sup>2</sup>

תוספות will question whether a מגו is actually required in the latter case.

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**משמע דאין האב נאמן להתיר את בתו כשאסרה אלא מחמת מגו<sup>3</sup> –**

**It seems that the father would not be believed to permit his daughter to remain married to an individual when he initially prohibited her [to be married to anyone (by his declaration that she is betrothed)], only on account of a מגו; however if there is no מגו, once the father stated that his daughter is betrothed, and did not specify to whom, he will not be subsequently believed that he**

<sup>1</sup> אשת איש הייתי וגרושה אני is not an explanation of אשת איש הייתי, it is an addendum.

<sup>2</sup> קדשתיה (קדשתיה) לפלוני is a necessary detail of the טענת היתר; there must be a פלוני.

<sup>3</sup> תוספות uses the terms of הפה שאסר and מגו interchangeably.

betrothed her to any individual.<sup>4</sup> תוספות is assuming this, for since the גמרא states that the father is believed to state that I married her to this man, (only) on account of a הפה שאסר, this indicates that where there is no הפה שאסר, the father will not be believed.

תוספות finds this concept difficult:

**ותימה דאם בא אחד ואמר קדשתי את בתי ולאחר שעה או למחר אמר לפלוני קדשתיה -**  
**And it is incredible to assume that if one came along and stated 'I betrothed my daughter', without specifying to whom, and after a while or on the morrow, the father would state I betrothed her to 'him' -**

**לא יהא נאמן כיון דהשתא ליכא מגו -**

**That the father would not be believed since now there is no מגו!** It is almost impossible to assume this, for many times people may say that I married off my daughter without being specific, and then if he cannot produce the קדושין, she will be forbidden to remain with her husband!!<sup>5</sup>

תוספות answers and explains:

**ואומר רבינו יצחק דבענין זה שאינו סותר דבריו הראשונים -**

**And the ר"י says that in this situation where the father is not contradicting his initial statement** that he married her off to someone; and when he subsequently says that he married her off to this individual -

**ולא בא אלא לפרש דבריו הראשונים מהימן אף על גב דליכא מגו -**

**He is only clarifying his initial statement, then he is believed even though there is no מגו** (meaning even at a later time); how then do we derive the rule of הפה שאסר from this פסוק? תוספות answers -

**והכא דריש מאת בתי הפה שאסר הוא הפה שהתיר כגון דקאי האיש שקידש לו קמיה -**  
**But here we derive from the פסוק of את בתי** that we implement the rule of **הפה שאסר הוא הפה שהתיר** for instance in a case where the man to whom she was betrothed is standing in the presence of the father -

**וקאמר את בתי נתתי לאיש ושתיק דמשמע ודאי שאינו מכיר שזה חתנו -**

**And the father said I gave my daughter to a man, and was silent as to the identity of his son-in-law, which certainly indicates that he does not recognize this person who is in his presence as his son-in-law -**

**מדלא אמר את בתי נתתי לזה או לאיש הזה ביחד בלא הפסק מרובה -**

<sup>4</sup> If the father would be believed to specify the individual even without a מגו (for instance at a later time), then how can we derive from here the rule of הפה שאסר וכי'.

<sup>5</sup> The reason he is believed is since he is initially believed to claim I married her to this man, then this believability is carried over, even if he specifies the individual at a later time; he is not altering his initial statement. Or he is believed as an אחד, for he is not altering her original חזקה. See אות תקפא משכנות הרועים.

**For he did not state concurrently, without a lengthy interruption<sup>6</sup>: 'I gave my daughter to him, or to this man'.** The fact that he did not do this would indicate that he did not betroth her to this man, and -

**הלכך לא יהא נאמן אחר כך אלא תוך כדי דבור<sup>7</sup> דאיכא מגו -**

**Therefore he should not be believed afterwards** to claim that her husband is indeed the person who was standing in his presence, **unless** he made this claim **within** the time of a **כדי דיבור**, **when** the law of **מגו** applies. We assume that the פסוק of 'וגו' applies (even) to a situation where the husband is present,<sup>8</sup> and the only reason the father is believed is on account of the **מגו** (that he said 'וגו');<sup>9</sup> for if there is no **מגו** (if he did not say 'וגו' until after a **כדי דיבור**), then the father would not be believed<sup>10</sup>.

ועוד אומר רבינו יצחק דאיכא למימר אפילו בכהאי גוונא מהימן בלא מגו -

**And furthermore says the ר"י that we can maintain that even in the above mentioned situation** (where the groom was standing in the presence of the father when he made this statement) the father will always **be believed even without a מגו** (when he specified the son-in-law at a later time).<sup>11</sup> The question remains, how can we derive the rule of **הפה שאסר** from this פסוק, when in this instance there is no need for a **הפה שאסר** in order for the father to be believed?

וקרא יתירא קדריש<sup>12</sup> ואם אינו ענין כאן דאפילו לאחר זמן נאמן -

**And we are interpreting an extra פסוק. And if it has no relevance here in**

<sup>6</sup> See 'Thinking it over' # 1.

<sup>7</sup> The time of **כדי דיבור** is the time it takes to say the words 'ושלום עליך רבי (ומורי)'. See עגב, ב"ק.

<sup>8</sup> The פסוק states **לאיש הזה**, indicating that the groom is present.

<sup>9</sup> We derive the rule of **הפה שאסר** from the fact that the father is believed to say **לאיש הזה**, even though, initially, he hesitated (even though the groom was present) and did not say **לאיש הזה** immediately, but rather only after a brief hesitation of **כדי דיבור**; תוך כדי דיבור; he is nevertheless believed on account of **הפה שאסר**. The contradiction caused by the hesitancy (in the presence of the groom) in this case (where he is merely specifying), equates this case with the usual cases of **הפה שאסר** (אשת איש וגרושה וכו') where he renounces the initial claim. In both instances there is a change in his statement. The **נאמנות** is only because of **הפה שאסר**. See 'Thinking it over' # 2.

<sup>10</sup> Even though the father is merely specifying to whom he was מקדש her, nevertheless since there was an indication (by the slight hesitancy) that he was not מקדש her to this individual; therefore the only way he is to be believed, is if there is a **מגו**.

<sup>11</sup> A **מגו** is not required even in this instance, since the father is merely specifying, and not contradicting, his initial statement.

<sup>12</sup> The **פסוק** of **איש הזה** is extra, for it is not required to teach us that the father is believed to identify the son-in-law in any event.

the case of betrothal (that the father is believed to identify the groom) **for** (in all cases) **even after the time** of a **דיבור** (when there is no **מגו**), the father is believed -

**דסברא הוא שיהא נאמן לפרש למי נתנה אף על פי שלא פירש מתחלה -**

**For it is logical that the father should be believed to whom he gave his daughter to, even though he did not initially specify** that individual; and the reason he is believed is because -

**שלא היה חושש לפרש -**

**He felt no concern to specify;** he was merely informing people that he married off his daughter (there is no indication when he does not mention the groom [even in his presence], that he is not the groom), so therefore -

**תנהו ענין להיכא דאינו נאמן לאחר זמן<sup>13</sup> שיהא נאמן בתוך כדי דבור במגו:**

**Apply** the lesson of this **פסוק** concerning **הפה שאסר** **to a situation where** the person **would not be believed at a later time**, that nevertheless **he will be believed** **תוך כדי דיבור** **with a מגו**. The **נאמנות** that the **תורה** gives the father in the case of **הפה שאסר**, is to be understood, that it teaches us that there is a **נאמנות** of **הפה שאסר** when it is needed.

## SUMMARY

The rule of **הפה שאסר** is derived from the **פסוק** of **את בתי וגו'** which is discussing a case where the **חתן** is present and the father is believed to identify him as the **חתן**, even if there was a slight hesitation (less than a **כדי דיבור**). Alternately we derive from this **פסוק** in the manner of **וכו' ענין**. Otherwise, when the **חתן** is not present (or even when he is present), the father is always believed at any time to specify the **חתן**.

## THINKING IT OVER

1. **תוספות** states that if the purported son-in-law was present when the father stated **את בתי נתתי לאיש** (and did not say **הזה**); this is an indication that he is not the groom, since he did not say **'הזה** or **'לאיש הזה**, without a **הפסק מרובה**.<sup>14</sup> This would indicate that if there was not a **הפסק מרובה**, but rather a small

<sup>13</sup> This **אם אינו ענין וכו'** is a common **לימוד**. If we find a **פסוק** that does not teach us anything significant in its particular case, apply it to other cases, where we will derive a novel concept from this **פסוק**. Here too, the **תורה** indicates that the father is believed; nevertheless here it is obvious, therefore we assume that the **תורה** wishes to teach us that in other (somewhat similar) cases where a **מגו** is necessary, they are also believed, with a **מגו**.

<sup>14</sup> See footnote # 6.

הפסק, then there would be no indication that he is not the groom. In this case no מגו should be necessary. Why does תוספות conclude that תוכ"ד (which is presumably a small הפסק), he is believed (only) on account of a מגו?! There should be no need for a מגו!<sup>15</sup>

2. There is a general rule that תוכ"ד one may retract his testimony entirely. How can we derive the rule of הפה שאסר, from the fact that the father may specify who the חתן is;<sup>16</sup> since it is תוכ"ד, the father can even retract the entire statement of קדשתי את בתי, without relying on מגו, etc.!

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<sup>15</sup> See ח"ב אות שלב and רע"א א.

<sup>16</sup> See footnote # 9.