

[מנין¹ לאב שנאמן לאסור וכולי -

From where do we derive that a father is believed to prohibit, etc.

OVERVIEW

The גמרא states that we derive from the פסוק of 'את בתי נתתי לאיש וגו'', that a father is believed to establish his daughter as being married, and effectively preventing her from marrying anyone else.

The קדושין of a נערה or a קטנה can be carried out (מדאורייתא) only by the father. The קדושין of a בוגרת is effected by the woman, not by the father.

תוספות asks:

תימה מה צריך קרא תיפוק ליה דנאמן הואיל ובידו לקדשה² -

It is astounding! Why is a פסוק necessary to teach us that a father may place a prohibition on his daughter and declare her married? **It can be derived that the father is believed to prohibit her since it is in his power to betroth her.** This girl is presently a נערה or a קטנה, therefore the father can betroth her now to whomever he wishes; it follows that if he claims that he betrothed her already, that he should be believed since it is בידו, in his power, to do so now.

תוספות will prove that when it is בידו, then he is believed:

כדאמר ביש נוחלין (ב"ב קלד, ב) בעל שאמר גרשתי את אשתי נאמן הואיל ובידו לגרשה³ -

As the גמרא states in נוהלין; פרק יש נוחלין; **a husband who claims, 'I divorced my wife', he is believed, since it is in his power to divorce her.** Here too the father should be believed since it is בידו; no פסוק is needed!

תוספות answers:

ויש לומר דהכא אין בידו כל כך דשמא לא ימצא אדם שיקדשנה (כדאיתא קדושין סד, א) -

And one can say; that here in the case of קדושין it is not בידו that much, for perhaps he will not find a person who is willing to be מקדש her. By גירושין it is totally ביד הבעל to divorce his wife, therefore it is considered בידו and he is believed; here however it is not solely dependent on him, it also depends on the prospective husband -

להכי איצטריך קרא -

Therefore a פסוק is required to teach us that even though it is not בידו כל כך, nevertheless the תורה accords him this נאמנות.

¹ This תוספות is bracketed and in a smaller type in our texts, seemingly indicating that it is an addendum (from תו"י). Nevertheless it is cited (partially) in the תוספות הרא"ש.

² See לקמן (see ויצאה חנם אין כסף of פסוק בידו לקדשה) who states that we know that it is בידו לקדשה from the פסוק of 'את בתי נתתי וגו'' [not from (מו, ב)]; why do we need the פסוק of בתי נתתי to teach us that he is לאוסרה.

³ See 'Thinking it over' # 1.

באמנות follows up with a limitation on the father's תוספות

ומיהו אם אמר על בתו בוגרת קדשתיה כשהיתה נערה או קטנה נראה דאינו נאמן⁴ -

However if he claims concerning his daughter who is a בוגרת, that I was מקדש her previously when she was either a נערה or a קטנה, it seems that the father will not be believed -

דהשתא אין בידו כלל -

For now when she is a בוגרת, **it is not בידו at all** to be מקדש her. The fact that it was once בידו is not sufficient that we should presently believe him.

anticipates a contradiction to his current assumption: תוספות

דאף על גב דלקמן בפרק נערה שנתפתתה (דף מו.) פריך ואימא הני מילי קטנה -

For even though that later in פרק נערה שנתפתתה, the גמרא asks; **'and let us say when is this so** (that the כסף קדושין belongs to the father), when the מקודשת is a קטנה (for she has no יד to be קדושין) -

אבל נערה איהי תיקדש נפשה⁵ -

However when she is a נערה (why should the father receive the כסף קדושין), **she should be מקדש herself** (accept and keep the קדושין from the בעל), and not the father. This concludes the citation from the גמרא in פרק נערה.

לפי זה היה צריך להיות דנאמן לאסור אפילו בשעה שאין בידו לקדשה דקרא בנערה⁶ כתיב -
According to that, the ruling **should be that** the father is **believed to prohibit her even when it is not in his power to be מקדש her; for the פסוק** of את - **נערה** (from which we derive the נאמנות of the father) **is concerning a נערה -**
ובעי למימר דאין בידו לקדשה -

And the גמרא in פרק נערה **wanted to say that it is not בידו** of the father **to be מקדש** the נערה, and nevertheless the תורה states that the father is לאוסרה. Seemingly this is a contradiction how the father can state בתי נתתי that I was מקדש my daughter who is presently a נערה, when the גמרא now insists that a נערה is מקודשת by herself (not through the father). The answer must be -

ואת בתי נתתי כשהיתה קטנה וגזרת הכתוב הוא דנאמן אף על פי שאין בידו -

That the פסוק of **את בתי נתתי** will be interpreted to mean that the father was מקדש her **when she was a קטנה** (and now [by the episode of שם רע] she is a נערה), **and it is a הכתוב that** the father is **believed to be אוסר even** **even though it is not בידו** to be מקדש her now (but since it was בידו to be מקדש her when she was a קטנה (which is what he claims) therefore he is נאמן). The same should apply (according to the

^{4 4} It may seem that if the נאמנות of the father was based only on בידו (not on a פסוק), then by בוגרת (where it is not בידו) the father would not be believed. However now that even by a נערה וקטנה it is not (כ"כ) בידו, and nevertheless there is a פסוק that the father is נאמן; we might think that even by a בוגרת (where it is (also) אינו to אינו בידו כ"כ), he should also be נאמן. תוספות disabuses us from this notion. We cannot compare כ"כ אינו בידו כלל.

⁵ The גמרא there ultimately refutes this notion.

⁶ The פסוק is in the פרשה of (דברים [תצא] כב, טז) which is applicable only when she is a נערה.

by a בוגרת, that if he claims that he was מקדש her before she became a בוגרת (when it was בידו), he should be נאמן, since it was בידו then, when she was not yet a בוגרת!

replies; that even though there was a אמינא that a father cannot be מקדש a נערה and nevertheless he would be believed to be אוסר her (on account of a הכתוב), if he claims that he was מקדש her when she was a קטנה -

אבל לפי המסקנא לא נאמר כן]:

However according to the conclusion of the גמרא (that a father is מקדש the נערה), **we will not maintain this** (that he can be אוסר a בוגרת by claiming he was מקדש her previously). If presently it is not בידו כלל, then he has no נאמנות.

SUMMARY

It is not כ"כ of a father to be מקדש a נערה or a קטנה, nevertheless the פסוק בתי בתי teaches us that he is נאמן לאוסרה when she is not a בוגרת yet. However once she is a בוגרת, and it is בידו כלל, he is not נאמן לאוסרה.

THINKING IT OVER

1. However, the נאמנות of the בעל to claim גרשתי את אשתי is only for the future (for that is בידו), but not for the past; here we are deriving from מוצש"ר that he the father is נאמן (even) for the past.⁸

2. Does the פסוק בתי בתי וגו' teach us that the father can be מקדש his daughter and therefore we can surmise that since it is בידו, he is נאמן לאוסרה; or does the תורה teach us directly that he is נאמן לאוסרה?!

⁷ See footnote # 3.

⁸ See משכנות הרועים אות תקפ.