

## מסתברא דאביה הוי דאי בעי כולי -

**It is logical that it belongs to the father, for if he wanted, etc.**

### Overview

The גמרא said we know that the בושט ופגם belong to the father, for it is logical that it should be that way. תוספות explains why we cannot derive it otherwise.

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תוספות asks:

ואם תאמר אמאי לא קאמר דאביה הוי מדקא יהיב מפתה כדאמר לקמן בריש נערה<sup>1</sup> (דף מב,א) -  
**And if you will say, why does the גמרא not say that we can know that ב"פ belongs to her father since the מפתה pays ב"פ, as the גמרא states later in the beginning of פרק נערה?**

תוספות answers:

ויש לומר דלמא לא יהיב מפתה<sup>2</sup> דקראי דאביי ורבא באונס כתיבי:  
**And one can say that perhaps a מפתה does not pay ב"פ, for the פסוקים, which cite as a source for the obligation to pay ב"פ, are written by a מאנס, but not by a מפתה. We are not sure (at this stage) that a מפתה pays ב"פ.**

### Summary

Without the מסתברא that it belongs to the father, we would not know that a מפתה pays ב"פ.

### Thinking it over

How can תוספות say that we are not certain that a מפתה pays ב"פ (perhaps it is only a מאנס who pays ב"פ), when we know<sup>3</sup> that we derive one from the other, so just as a מאנס pays ב"פ the same should apply to a מפתה?!<sup>4</sup>

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<sup>1</sup> The גמרא there states that it is obvious that ב"פ belongs to her father (and not to her), since the מפתה pays ב"פ. However, if ב"פ would belong to her, why should he pay her for it, it was consensual (she agreed), so she was מוחל the ב"פ; therefore we must assume that the ב"פ belongs to her father (and she cannot be מוחל the monies due to her father). This is all the proof we need that ב"פ goes to the father..

<sup>2</sup> It is only after we know that ב"פ belong to the father (from the מסתברא), that we can derive מפתה from מאנס that (also) by מפתה he pays ב"פ to the father.

<sup>3</sup> See עמוד ד"ה מיגמר רש"י and לט,ב.

<sup>4</sup> See שיטה מקובצת.