

## בשלמא אירוסין מאירוסין שאני –

**It is understood that *Eirusin* is different from *Eirusin***

### Overview

The גמרא attempted to prove that יעוד אירוסין עושה from a ברייתא which states, that a father may sell his widowed daughter to a גדול. כהן גדול. The difficulty is that he cannot sell his daughter to אחר אישות. The גמרא answered that she was widowed from יעוד (so it is considered שפחות אחר שפחות, but not שפחות אחר אישות). However if יעוד נישואין (יעוד אירוסין עושה), this proves that יעוד אירוסין עושה, how can the father sell her after (נישואין) יעוד, this proves that יעוד אירוסין עושה. The גמרא asks but even if יעוד אירוסין עושה, how can he sell her to אחר אישות? The גמרא answers if יעוד אירוסין עושה we can distinguish between regular אירוסין and יעוד, however if יעוד נישואין עושה, we cannot distinguish regular נישואין from יעוד, however if יעוד אירוסין עושה, we can distinguish between regular אירוסין and יעוד, but not between נישואין. נישואין.

פירוש שאני אירוסין דידה דכיון דהוא לא קדשה יכול למוכרה -

The explanation of אירוסין מאירוסין שאני (יעוד) is that **her אירוסין** (from יעוד) is different from אירוסין which her father made, **for since** her father **was not מקדש her** (by יעוד), **he can sell her**, but when her father was מקדש her, he cannot sell her to אחר אישות - **אלא נישואין מנישואין מי שאני פירש הקונטרס<sup>1</sup> כיון דמדאורייתא נפקא מרשותיה לגמרי<sup>2</sup> -** **However can the נישואין** (of יעוד [if we assume עושה נישואין]) **be different from** regular נישואין (through her father); and רש"י explained that there can be no difference between these two types of נישואין, **since** by נישואין **she leaves her father's רשות entirely**, מן התורה. This concludes פרש"י:

תוספות asks:

וקשה והא אירוסין נמי הוּו דאורייתא כדילפינן לעיל<sup>3</sup> מכי יקח<sup>4</sup> -

**And there is a difficulty** with פרש"י, **for אירוסין is also effective to acquire a woman מדאורייתא**, as we derived previously from the פסוק of **כי יקח** -

תוספות anticipates a response to his question:

<sup>1</sup> יט, א ד"ה מי.

<sup>2</sup> It seems that רש"י is making two distinctions between אירוסין and נישואין; by נישואין it is מדאורייתא (implying that by אירוסין it is not מדאורייתא), and secondly that by נישואין she leaves her father's רשות entirely, as opposed to אירוסין. questions both these assumptions.

<sup>3</sup> ד, ב.

<sup>4</sup> דברים (תצא) כד, א.

וכי תימא דמכל מקום יש לחלק בין אירוסין לנישואין<sup>5</sup> -

And if you will say that (even though both אירוסין ונישואין are דאורייתא), nevertheless one can differentiate between אירוסין and נישואין -

משום דבנישואין נפקא מרשותיה לגמרי<sup>6</sup> בדפירש הקונטרס<sup>7</sup> -

Because by נישואין she leaves the father's רשות entirely, as רש"י explained -

תוספות rejects this explanation:

הא ליתא דהא קטנה אי מסרה נפשה לחופה<sup>8</sup> הכי נמי דנפקא מרשותיה דאב פשיטא דלא<sup>9</sup> -

For this is not so!, because regarding a קטנה, if she would give herself over to חופה (נישואין) without her father's consent would it be also true that she goes out from the רשות of her father; obviously it is not so!

פרש"י resolves תוספות:

לכך יש ליישב פירוש הקונטרס הכי בשלמא אירוסין מאירוסין שאני -

Therefore we should explain פרש"י in this manner; it is understood that אירוסין of the master is different from אירוסין of the father -

דאכתי ברשותיה דאב היא לכל מילי ליורשה<sup>10</sup> וליטמא לה<sup>11</sup> ולהפר נדריה עם בעלה<sup>12</sup> -

Since by אירוסין, the daughter is still in the רשות of her father for all manner of things; regarding inheriting her, being permitted to טמא for her, and to nullify her vow together with her husband (the ארוס) -

<sup>5</sup> אירוסין now assumes that רש"י (when he stated דמדאורייתא) did not mean that נישואין is דאורייתא as opposed to אירוסין (not like footnote # 2), but rather רש"י meant to say that only by נישואין does she leave her father's רשות completely (מדאורייתא).

<sup>6</sup> This seems to mean that the act of נישואין (any type of נישואין [including יעוד]), severs the authority of the father over his daughter. Therefore it is obvious that he cannot sell her, because he has no authority over her.

<sup>7</sup> רש"י meant to say that regarding נישואין, since she leaves her father's רשות entirely, there is no logic to distinguish whether the נישואין was through the father or through the master (see footnote # 6); however by אירוסין, since even after the אירוסין, the daughter does not leave her father's רשות completely (the father still retains certain rights over her [ליורשה וליטמא לה ולהפר נדריה]), we would think that if the father made the אירוסין, then he cannot sell her; however if the master made the אירוסין (through יעוד) the father may still resell her.

<sup>8</sup> This seems to be a hypothetical (rhetorical) question, since a קטנה does not have the power to enter into חופה without her father's consent. תוספות is asking hypothetically even if it were possible for a קטנה to enter into חופה on her own, would she leave her father's רשות?! Obviously no! Because since it was not the father who brought her to the חופה, therefore she is not יוצאת מרשותו, the same is by יעוד that since the father did not make the נישואין she is still ברשותו. We are disproving the assumption (in footnote # 6) that נישואין has the power to sever the relationship between father and daughter.

<sup>9</sup> We see that נישואין does not automatically remove her from her father's רשות, therefore why should we assume that the נישואין, יעוד, takes her out of her father's רשות. We can therefore differentiate between נישואין of the father and the נישואין of the master, just as we differentiate between the אירוסין of the father and the אירוסין of the master.

<sup>10</sup> If the daughter died as an ארוסה and had assets, her father inherits her.

<sup>11</sup> If the father is a כהן he may be מטמא to his daughter at her funeral (even) if she is an ארוסה.

<sup>12</sup> Her father and her ארוס together can nullify her vows.

**חוץ ממכירה שאיננו רשאי למוכרה אחר שקבל כסף קדושה -**

**Except for selling her as an אמה; that he is not permitted to sell her after he received money for her - קידושין**

**אם כן הא מילתא הוי חדוש ואיכא למימר אין לך<sup>13</sup> בה אלא חדושו<sup>14</sup> -**

**Therefore this prohibition of not selling her is a novelty, so we can say ‘the novelty is only where it is’ -**

**ואיכא לאוקמי האי חדוש באירוסין דידיה פירוש כשקיבל אביה קידושין -**

**So we can apply this novelty** (of not being able to sell he ארוסה daughter) **only by his איירוסין**, meaning when the father was **מקבל קידושין** (but not by the יעוד of the master) -

**אבל נישואין גמורין דמפקי לה לגמרי מרשותיה דאב<sup>15</sup> -**

**However by complete גישואין, which remove her completely from the father's רשות -**

אם כן אין לחלק בין נישואין דידה לנישואין דידיה ובנישואין דידה נמי לא מצי מזבין לה<sup>16</sup> -

**So there is no reason to distinguish between her נישואין (through יעוד) to the father's נישואין, and even by her נישואין (יעוד), her father cannot sell her after יעוד –**

תוספות responds to an anticipated difficulty:<sup>17</sup>

**אבל קטנה דממסרה נפשה לחופה לא אשכון דנפקא מרשותיה דאב<sup>18</sup> בהכי:**

<sup>13</sup> The הגהות ה"ה amends this to read לך בו אלא (instead of לך בה אלא).

<sup>14</sup> When the תורה teaches us something unusual (like here where the daughter is her father's רשות for everything except מכירה [the inability to sell her is a חידוש]), we assume that this חידוש is limited to the case where the תורה taught it, and we cannot apply it elsewhere.

<sup>15</sup> When רש"י writes *לגמרי מרשותה* he means to say, that only by *נישואין* where she leaves her *רשות* entirely, we can make no distinction between *האב* *נישואין ע"י האב* (the inability to sell her is not merely a specific *איסור*, but rather it is included in the *האב* *מציאה מרשות האב*); however by *אירוסין* where she does not go out of her father's *רשות*, and there is the exception of *מכירה* (in which she leaves her father's *רשות*), we can say that this exception is limited (אין לך בו אלא חידוש), only to *קידושין אביה* (since he is receiving money for her *קידושין*), but not for *קידושין יעוד* (where he receives nothing).

<sup>16</sup> To summarize; regarding אירוסין the daughter is still ברשות אביה; the fact that nonetheless he cannot sell her is a תורה. We can argue that this חידוש is only if was מקדש her (since he already received her קידושין, so the תורה prohibits him from selling her), however when the master was מייעד – מקדש her, since the father did not participate in the קידושין, he may be allowed to sell her. However by נישואין since the daughter leaves her father's רשות completely without any exceptions, there is no reason then to distinguish between נישואין ע"י האב and נישואין יעוד (if יעוד נישואין), in all cases the father cannot sell her, since she is no longer in his רשות. Therefore if יעוד אירוסין עושה, we can say that even though the father cannot sell her after he was מקדש her, nevertheless he can sell her after יעוד. However if יעוד נישואין עושה, then there is no distinction between נישואין שע"י אביה and נישואין יעוד; in both cases he cannot sell her.

<sup>17</sup> Previously תוספות said that we cannot say that נישואין is מפקה מרשות אביה, because if a קטנה is לחופה (on her own she is not יוצאת מרשות אביה). How can we say now (in the ויש ליישב) that נישואין גמורין דמפקי לה לגמרי מרשותיה (see text by footnote # 15.), when by קטנה she is not מרשות האב??!

<sup>18</sup> Previously our understanding in רש"י was that נישואין *a priori* are מציא מרשות אב (therefore there is no distinction between נישואי האב and נישואי יעוד for since נישואין is מוציא מרשות אב, he can never sell her [see footnote # 6]). תוספות.

However a קטנה who gave herself over to חופה, we do not find that through this רשות she leaves her father's רשות.

### Summary

We can distinguish between אירוסין of the father and אירוסין דיעוד regarding the specific איסור of selling her (for אין לך בו אלא חידושו); however no distinction can be made (regarding מכירה) between נישואין דאב and נישואין דיעוד since she leaves his רשות entirely by נישואין.

### Thinking it over

Why is there a difference between נישואי קטנה ע"י עצמה, where she is not יוצאת מרשות אב, and נישואי יעוד, where she is יוצאת מרשות האב?<sup>19</sup>

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disproved this notion that נישואין are מוציא מרשות אב *a priori*, for נישואי קטנה is not מוציא מרשות אב. However now we are merely saying that wherever נישואין are מוציא מרשות אב completely without exceptions (which it does by נישואי יעוד), there can be no מכירה, since she is no longer ברשות האב. However by נישואי קטנה, we do not find that she leaves ברשות האב, therefore it is not in the category of נישואי יעוד where she leaves ברשות האב.

<sup>19</sup> See מהרש"א (הארוך).