

אומר אדם לבתו קטנה צאי וקבלי קידושין מדרבי יוסי –

We derive from *Rabi Yosi*; A man may say to his minor daughter, 'go out and receive your *Kidushin*'

Overview

ruled that יעוד can take place only if the אמה still 'owes' her master work that is worth at least a פרוטה, otherwise יעוד cannot take place.¹ ר"י בר"י inferred from this ruling of ר"י בר"י (assuming that he maintains that a father may say to his minor daughter, 'go and receive your קידושין')² that a father may say to his minor daughter, 'go and receive your קידושין'.³ Our תוספות discusses how רבא derived it from ר"י בר"י.

תוספות asks:

תימה מאי אתא לאשמועינן⁴ פשיטא למה לא תתקדש -

It is astounding! What is ר"נ coming to teach us; why should she not become מקודשת, for -

אפילו היה אומר תן מנה לפלוני ותתקדש בתי לך היתה מקודשת מדין ערב⁵ כדלעיל (דף ז,א) -

Even if he would say to someone, 'give to so and so a מנה and my daughter shall be מקודשת to you', the rule would be that she would be מקודשת, based on the law of a 'guarantor; as we learnt previously; this is true even if the father did not ask that the money be given to his daughter -

כל שכן שאמר לבתו⁶ -

¹ For קידושין to be effective it is necessary for the groom (in this case the master) to give his bride (in this case the אמה) something which is worth at least a פרוטה, therefore if the אמה still owes her master a פרוטה worth of work and he releases her from this obligation, it is as if she received a פרוטה from her master (husband).

² If the initial money was given by the master to the father with the intent of (eventually being used for) קידושין, then he would be able to be מיעד her even if she owes him no more work, for the owner already paid the קידושין money to the father (who is the one who accepts the קידושין for his minor daughter)

³ The analogy (seemingly) is that just as by an אמה, she becomes מקודשת (or מיועדת) with the money of her work due to the master, even though she is a קטנה and she has no mind of her own, nevertheless it is considered as if the father told the daughter that that if the opportunity arrives you may accept קידושין from the master. The same applies to any case where the father says to his daughter, 'go and accept your קידושין'; she becomes מקודשת.

⁴ It seems that תוספות assumed (in his question) that we are discussing a case where the father spoke to the prospective husband that he should be מקדש his daughter by giving her the money, instead of to the father. We derive this from מהרש"א (האריך) where ר"י בר"י is effective even though the father did not receive any money. See (האריך) where ר"י בר"י.

⁵ An ערב (a guarantor for a loan) becomes obligated to repay the loan if the borrower defaults, because the ערב obligated himself based on the fact that the lender is giving money at his request. Similarly if one gave money to someone else on the say so of the father, the daughter becomes מקודשת because the father (who is the one who accepts קידושין on behalf of his minor daughter) obligates himself to give his minor daughter for קידושין based on the fact that the groom gave money at his request.

⁶ Why should the daughter receiving the money be any less מקודשת than when a stranger receives the money where

How much more so when he says to give it directly to his daughter!

anticipates an answer to his question:

וכי תימא דהכא לא שייך דין ערבות דהא לא דיבר למקדש⁷ -

And if you will say; that here the rule of 'ערבות' (guarantor) is not applicable, for he did not speak to the מקדש (the prospective husband) to give money to his daughter –

negates this answer:

אם כן לרבי יוסי ברבי יהודה דאמר דמקודשת בפרוטה אחרונה -

If indeed this is so (that the father did not speak to the מקדש), so according to ר"י
who says that the אמה is מקודשת with the last פרוטה of work that she owes him -

אטו נילף מינה דאם לא אמר כלום לא לבת ולא למקדש תהא מקודשת⁸ -

Can we then derive from this ruling of ר"י בר"י, that if he said nothing, neither to the daughter nor to the מקדש, she should also be מקודשת?!

אלא על כרחך המכירה חשובה כאילו אמר אביה לבת התקדשי ביעוד⁹ -

Rather perforce we must conclude that the selling of his daughter by her father is considered as if the father told his daughter, 'become מקודשת through יעוד' -

אם כן המכירה נמי תחשב כאילו אמר למקדש¹⁰ -

Therefore the sale should also be considered as if he told the מקדש, her master,
that he can be מקדש her through יעוד, therefore we can only derive that she is מקודשת in the case of יעוד only if he spoke to the מקדש (similar to the case of יעוד where it is implicitly understood that it is considered as if he spoke to the master), but not in a case where he did not

she is מקודשת מדין ערב⁷!! See footnote # 4.

⁷ מקדש is questioning his previous assumption (see footnote # 4) that the father spoke to the מקדש. If the father did not speak to the מקדש, obviously the concept of ערבות cannot apply, therefore we need to derive this rule from the teaching of ר"י בר"י (see footnote # 3).

⁸ In the case of ר"י בר"י the father did not (explicitly) tell neither the master nor his daughter that they should marry, and nevertheless the יעוד is effective, can we then conclude that when someone is מקדש a minor girl (without the father's consent) that she is מקודשת; obviously this cannot be, for a minor daughter cannot be מקודשת only through her father!

⁹ However in a case where the father did not give (an implicit) consent she cannot become מקודשת.

¹⁰ In summation; we need to assume in the case of אמה (according to ר"י בר"י) that it is considered as if the father (implicitly) gave permission to his daughter to be מקבל קידושין from the master; otherwise how is it possible that a קטנה who is under the authority of her father can become מקודשת without his consent. We should therefore conclude that just as it is assumed that the father 'spoke' to the daughter (because the father knew that by selling her for an אמה, the master has a right to be מייעד her and the father gave an implicit consent), similarly we can also understand that when the father sold her to the master, he implicitly told the master that he can be מייעד his daughter. Therefore the case of יעוד is considered as if the father spoke to the master and the daughter. Any case which we wish to derive from יעוד must be similar in that the father spoke to the groom and the daughter; in that case we have no need to derive anything from ר"י בר"י since she is certainly ערב מקודשת מדין ערב. If one wishes to argue that by יעוד it is not considered as if he spoke to both of them (and nevertheless she is מקודשת), we should then be able to derive from יעוד that when a stranger is מקדש a minor girl she is מקודשת, and that is definitely not true!

ר"י (without מקודשת) (and if he did speak to the מקדש it is obvious that she is מקודשת) (בר"י) for it is not any less than the case of ערב as mentioned earlier.

answers: תוספות

ויש לומר דלא הוי לא כאומר לו ולא כאומר לה¹¹ -

And one can say, that by selling her it is not considered, either as if he spoke to him, or as if he spoke to her -

אלא הכי מוכיח על כרחך קטנה יש לה יד לקבל קידושין¹² -

Rather this is how ר"נ רבא אמר ר"נ proves this rule; perforce a קטנה has a 'hand' to receive her קידושין -

מדאשכחן גבי יעוד דאמר רחמנא שתייעד על ידי עצמה -

Since we find regarding יעוד that the 'Merciful one' said she should be מתייעד by herself, that proves the generally a קטנה has a יד to be מקבל קידושין -

שאם לא היה מועיל בעלמא כשנותן לה רשות להתקדש מדעת על ידי עצמה -

For if it would not be effective elsewhere, when the father gives her permission to be become מקודשת consensually by herself -

לא היה אומר הכתוב שיהיה מועיל לענין יעוד¹³ -

The תורה would not have said that her acceptance should be effective regarding יעוד.

asks: תוספות

ואם תאמר היאך היא מתקדשת באומר לה צאי וקבלי קידושין -

And if you will say; how is she מקודשת when her father says to her, צאי וקבלי קידושין -

והלא קטן לית ליה זכייה מן התורה כדמשמע פרק קמא דבבא מציעא (דף יב,א) -

For a minor has no mode of acquisition מן התורה, as it seems in the first פרק of מסכת ב"מ -

דקטנה אין לה יד לזכות בעצמה¹⁴ -

That a קטנה has no 'hand' to acquire by herself -

¹¹ The reason יעוד is effective is because the תורה ruled it so. It has nothing to do with כאומר לו or כאומר לה. The question however is how can we derive the rule of יעוד from צאי וקבלי קידושין, perhaps יעוד is a גזירת הכתוב? תוספות explains.

¹² Nonetheless, even though a קטנה has a יד לקבל קידושין, since she is ברשות אביה she cannot utilize this יד unless her father consents by saying צאי וקבלי קידושין. See 'Thinking it over' # 3.

¹³ The argument of ר"נ רבא אמר ר"נ may be that we try to 'rationalize' a גזירת הכתוב that it should not be so 'outlandish'; therefore they assume that a קטנה has a יד, and normally she requires her father's permission to utilize the יד (see footnote # 12), however by יעוד the תורה decreed that she needs no one's permission to utilize her יד. See 'Thinking it over' # 1.

¹⁴ See ילפינן where תוספות rules that a קטן/ה cannot be זוכה מן התורה.

ואמרינן דמציאת הקטן¹⁵ לרבי יוסי אין בו גזל גמור אלא מדבריהם -

And we also say¹⁶ that (even) according to ר' יוסי there is no actual stealing of a child's findings; it is only prohibited מדרבנן -

responds to an anticipated difficulty:¹⁷

בשלמא גבי יעוד דהתם דין הוא שתזכה בשאר¹⁸ שאינו אלא מחילת שיעבוד בעלמא¹⁹ -

Regarding יעוד it is understood, for there it is justifiable that she acquires the remainder of her work as her קידושין payment, since it is merely only the forgiving of an obligation, however by 'regular קידושין where the woman needs to acquire the money from her groom, how is that possible since a יד לה אין?

answers:

ויש לומר דבדעת אחרת מקנה לה יש לה זכייה מדאורייתא²⁰ -

And one can say; that when another 'mind' (in this case the groom) grants her something (the קידושין) she has זכייה מדאורייתא -

כדמשמע בפרק [האומר]²¹ [גיטין סה,א] דפריך לרב חסדא דאמר--

As it seems from the גמרא in [האומר] פרק, where the גמרא challenges רב חסדא who maintains (on סד,ב) -

אחד זה²² ואחד זה קונה²³ לעצמו ואינו זוכה לאחרים²⁴ -

Whether this type of קטן or whether the other type of קטן, the קטן can acquire for himself, but cannot acquire on behalf of others; the גמרא challenges this ruling of ר"ח -

¹⁵ Others amend this to read הקטן אפילו לרבי (instead of לרבי).

¹⁶ The גמרא there (יב,א) cites a משנה which states, גזל גמור רבי יוסי אומר גזל. And גמור מדבריהם ר' יוסי explained that רב חסדא.

¹⁷ We have previously assumed that a קטנה has a יד לקבל קידושין; how can we differentiate between יעוד and קידושין?

¹⁸ The הגהות הב"ח amends this to read שתזכה בשאר שאינו (instead of בשאר שאינו). See footnote # 1.

¹⁹ The אמה owes her master work (worth at least a פרוטה); she is 'in possession' of that work (she has the capacity to do it); the master merely releases her from that obligation, she is now freed from doing the work, so she gained a value of work, but she did not need to acquire anything, it is merely that she is released from an obligation. This is usually expressed as מחילה אין צריך קנין, because nothing is transferred from one to another; it is merely relinquished.

²⁰ The rule of קטן is when no one is transferring the item to the קטן (he is acquiring it from הפקר [like a זכייה]), however when someone is giving something to a קטן and the קטן (merely) has to receive it, there is זכייה מדאורייתא for a קטן/ה. See 'Thinking it over' # 4.

²¹ The הגהות הב"ח amends this to read בפרק התקבל דפריך (instead of בפרק האומר דפריך).

²² The גמרא there is discussing various stages of maturity by a קטן (when he distinguishes between the value of a pebble or a nut, or when he is more mature to return an object after borrowing it, עיי"ש).

²³ In our text there (סד,ב) it reads זוכה (instead of קונה).

²⁴ This means if someone gives an object to a קטן that the קטן should acquire the object on behalf of a third person (that the third person should own it), this transaction is not effective and no transfer took place.

מההיא²⁵ דאומר אדם לעבדו ולשפחתו העבריים -

From that משנה which states, **that** 'a man may say to his Jewish slave or maidservant

הילך מעות הללו ופדה מהן מעשר שני²⁶ ושפחה עברית קטנה היא--

Take these monies and redeem with them the מעשר שני; This concludes the משנה. **However a Jewish שפחה is a קטנה**, (for once she becomes a נערה [גדולה] she leaves her master). This contradicts the view of ר"ה that no קטן can be זוכה לאחרים, and here we see that the קטנה is זוכה לאחרים regarding the מע"ש -

ודחי בעציץ שאינו נקוב דרבנן²⁷ **מכלל שהיה רוצה להוכיח**²⁸ **שזכה אפילו לאחרים מן התורה** : **And** the גמרא there **dismissed** the question on ר"ה by saying that the משנה is discussing a **non-perforated flower pot** which is only obligated **במע"ש מדרבנן**; **we can infer that** initially (before we answered that the משנה is discussing מע"ש (מדרבנן), **that** the גמרא **wanted to prove that** a קטן **can be זוכה even for others** מה"ת.

Summary

If a קטנה would not have a קידושין (when her father tells her צאי וקבלי זכייה קטן/ה), the תורה would not have sanctioned the יעוד process. A דעת אחרת מקנה אותם if there is a מדאורייתא.

Thinking it over

1. writes that if a קטנה has no right to be קידושין, the תורה would not allow יעוד to be effective.²⁹ However perhaps we can say that even though a קטנה

²⁵ מעשר שני פ"ד מ"ד.

²⁶ needs to be eaten in ירושלים. However if there is too much to bring, one may redeem it and bring the money to ירושלים and spend it there (to buy food). If the owner redeems the מע"ש he must add a fifth (a fourth) of the value to the total; if the מע"ש is worth four he must add one more to make it five. However if anyone else redeems the מע"ש, nothing needs to be added; it is redeemed at its market value. This person did not want to pay the extra fifth, so he gave his slaves money that they should redeem it, for then he saves the fifth, since the slaves are not the owners. The process of this redemption must be that the money belongs to the (minor) slave; otherwise it is considered as if the owner is redeeming it. The slave when he redeems (or exchanges) the מע"ש for money (the money receives the status of מע"ש, and the תבואת מע"ש becomes חולין) must have in mind that the תבואת מע"ש will belong to the master (for if the מע"ש will belong to the slave and the money belongs to the slave he is redeeming his own מע"ש and will be required to pay the fifth). This proves that even a minor has the capacity to be זוכה לאחרים, for the slave is transferring the תבואת מע"ש which he redeemed to the master's ownership. He is acquiring the redeemed מע"ש on behalf of his master. (See 'משנה ראשונה' there).

²⁷ However ר"ה is saying that they have no מדאורייתא, and will agree that מדרבנן they can be זוכה לאחרים.

²⁸ there argues with ר"ה and maintains that a קטן can also be זוכה לאחרים; now that we concluded from the משנה that all agree that קטן זוכה לאחרים (see footnote # 27), it is obvious that the מחלוקת between ר"ה and ר"י is whether a קטן זוכה מדאורייתא, but all agree that he is זוכה מדאורייתא when there is a מקנה. דעת אחרת מקנה אותו.

has no יד to be מקבל קידושין (because it requires a קנין), nevertheless יעוד is effective, as תוספות writes later,³⁰ since it is only a שעבוד בעלמא. and not a קנין?! [Or (the flip side) how can we derive from אומר אדם לבתו צאי וקבלי קידושין, since ר"י בר"י, since by יעוד it is only a מחילה and by צאי וכו' we require a proper קנין?!]³¹

2. Can we say that there are two separate issues; whether a קטנה has a יד to be מקבל קידושין, and a second issue whether a קטן/ה can be מדאורייתא?

3. Are we to understand that a קטנה intrinsically has a יד to be מקבל קידושין (therefore יעוד is effective), however she cannot exercise that right (since she is אביה) unless the father consents (by saying צאי) or by יעוד,³² or are we to understand that a קטנה basically has no יד לקבל קידושין, unless her father consents by saying צאי, so he gives her over his יד (and something similar happens by יעוד)?³³

4. In the case where an item is being transferred from one party to the other (whether through a sale or a gift), who is doing the major share of this transference;³⁴ is it the seller (grantor) who is being מקנה, or the buyer (recipient) who is being קונה?³⁵

²⁹ See (text by) footnote # 13.

³⁰ See (text by) footnote # 19.

³¹ See עצמות יוסף.

³² See footnote # 12

³³ See נחלת משה בד"ה ולכאורה קשה.

³⁴ See footnote # 20.

³⁵ See נחלת משה בד"ה בא"ד דבדעת.