

## **And I will say; these words refer to a minor – ואימא הני מילי קטנה**

### **OVERVIEW**

The גמרא seeks to prove that the כסף קידושין (of [both a קטנה and] a נערה) belongs to the father; for if the father has the right to be מקדש his daughter as it states<sup>1</sup> את בתי נתתי, then certainly he retains the כסף קידושין. The גמרא challenges this proof; perhaps the פסוק of את בתי (which indicates the father's [exclusive] right to be מקדש his daughter) refers to a קטנה, who (because she is a minor) cannot accept כסף קידושין, however a נערה (who is considered an adult) can indeed accept כסף קידושין on her own and therefore keep it as well. תוספות first explains (as does רש"י) what is meant that the פסוק of את בתי refers to a קטנה (when seemingly it does not). In addition תוספות discusses the ramifications if we interpret את בתי to refer to a קטנה.

תוספות anticipates a question:

אף על גב דקרא איירי בנערה דכתיב (דברים כב<sup>2</sup>) וסקלוה<sup>3</sup> –

**Even though the פסוק is referring to a נערה, as it is written, ‘and they shall stone her’;** punishment is never meted out to a minor, so the woman in question must be an adult (a נערה) -

ועוד דמוציא שם רע על הקטנה פטור<sup>4</sup> –

**And furthermore one who is מוציא ש"ר on a קטנה is exempt** from the punishments mentioned in the תורה. Therefore it is obvious that the entire episode of a מוצש"ר (where the פסוק of את בתי is written) is concerning a נערה. How can the גמרא ask that perhaps את בתי refers to a קטנה?!

תוספות replies:

מכל מקום יש לומר דהכי קאמר –

**Nevertheless it is possible to say that this is what the פסוק means -**

את בתי נתתי לאיש הזה כשהיתה קטנה ועתה היא גדולה –

**‘I have given my daughter to this man (through קידושין) when she was a גדולה; however now (when the claim of מוצש"ר was made) she is a קטנה.’**

<sup>1</sup> דברים (תצא) כב, טז. The פרשה there is stating the case of a מוציא שם רע, who claims that his newly married wife was not a בתולה. This פסוק states that the father of the woman tells ב"ד that בתי נתתי וגו'; indicating that it is within the power of the father to marry off his daughter (even against her will).

<sup>2</sup> פסוק כא. The פסוק teaches that if the claim of the מוצש"ר is vindicated and witnesses testify that the woman committed adultery while she was מקודשת, she receives the punishment of סקילה.

<sup>3</sup> See ‘Thinking it over # 1.

<sup>4</sup> If the claim of the מוצש"ר was found to be false he is punished and is required to pay the אבי הנערה מאה. This punishment does not apply if his accused wife is presently a קטנה, in addition to receiving מלקות.

Therefore the question of the גמרא remains valid, that there is no proof that a father can be כשהיא נערה his daughter מקדש.

קטנה continues to challenge the גמרא's question (that the פסוק of את בתי refers to a קטנה [only]):

ואם תאמר הא לקטנה לא איצטריך קרא<sup>5</sup> –

**And if you will say; however there is no necessity for the פסוק to teach us concerning a קטנה**, that the father [is מקדש her, and] receives her כסף קידושין –

דהשתא זבוני מזבין לה כסף קידושין מיבעיא –

**For if he can sell her**, as a maid servant, **it is obvious** that the כסף קידושין belongs to the father –

תוספות cites a source to support this contention:

דכהאי גוונא אמרינן גבי מעשה ידיה<sup>6</sup> בפרק נערה שנתפתתה<sup>7</sup> (כתובות דף מז,א) –

**For the גמרא in פרק נערה שנתפתתה states a similar argument concerning the מעשה ידיה** of a קטנה. We should say the same thing concerning כסף קידושין. Since the father owns her (monetary rights) for he can sell her, hence [he should have the power to be מקדש her, and] any income that is generated [including כסף קידושין] belongs to the father. The question remains, since the פסוק of את בתי וגו' cannot be referring to a קטנה for it does not teach us anything (for we already know it from the abovementioned reasoning), therefore<sup>8</sup> it must apply to a נערה. Hence we now know that the כסף קידושין of a נערה belongs to the father.

תוספות answers:

ויש לומר דלא דמי –

**And one can say; that there is no similarity**, between the logic of the גמרא concerning the מעשה ידיה (of a קטנה) that it belongs to the father, and the logic that תוספות wants us to entertain concerning the כסף קידושין of a קטנה. תוספות explains:

דגבי מעשה ידיה ניחא כי כשמכרה מוכר מעשה ידיה שהרי למלאכתה נמכרת –

**For concerning מעשה ידיה the logic is valid, for when he sells her as an אמה he is actually selling her מעשה ידיה for she is being sold for her work** that she will produce for the owner. Therefore if the father has the right to sell מעשה ידיה, then obviously her מעשה ידיה belong to him; otherwise what right does he have to sell it!

<sup>5</sup> See 'Thinking it over' # 2.

<sup>6</sup> Any income that is generated (by the קטנה) is called מעשה ידיה; literally, the work of her hands.

<sup>7</sup> The גמרא there claims that it is obvious that the father owns the מעשה ידיה of a קטנה, for since he can sell her for an אמה העבריה and keep the money, then certainly he owns whatever income she produces (when she is not sold).

<sup>8</sup> Alternately; how can the גמרא ask קטנה ה"מ ואימא ה"מ, perhaps the פסוק is referring to a קטנה, since there is no need for a פסוק regarding קטנה?!

**אבל קידושין לא שייכא במכר<sup>9</sup> –**

**However the concept of sale is not applicable to קידושין.** The father cannot sell her קידושין (as he can sell her ידיה (מעשה ידיה)). Therefore the fact that he can sell her does not indicate that he owns her קידושין.<sup>10</sup>

anticipates and resolves a difficulty with this previous statement that her קידושין is not up for sale:

**אף על פי שיכול ליעדה<sup>11</sup> היינו בכסף שנמכרה<sup>12</sup> –**

**Even though** the master of the אמה **can be מיעד her** (which would signify that the rights of her קידושין belong to the father); nevertheless **this יעוד** is accomplished **with the money of her sale -**

**אבל בקידושיה ממש לא מצינו שום זכות לאב –**

**However we do not find that the father possesses any right concerning her actual קידושין.**

ask an additional question:

**ואם תאמר הא אמרינן בפרק נערה (שם) שמעשה הבת לאב –**

**And if you will say; this which the גמרא states in נערה that the work of the daughter** (even if she is a נערה) **belongs to the father -**

**מדזכי<sup>13</sup> ליה רחמנא למימסרה לחופה אף על פי שמבטלה ממלאכתה –**

**For the תורה gave the father the right to deliver her to the חופה even though he restrains her from working -**

**ופירש התם בקונטרס דזכי ליה רחמנא –**

**And a רש"י explained there that we know that the תורה gave the father the right** of מסירה לחופה **-**

**מדכתיב את בתי נתתי לאיש דמשמע כל נתינות אפילו מסירה לחופה –**

<sup>9</sup> The fact that the father may sell her, does not indicate that he owns her, but rather that he merely owns her ידיה, therefore he can sell her, for he is selling her [primarily] to work for the אדון. The fact that he can sell her for work is no indication that he owns her right to become מקודשת (and to receive the קידושין). (כסף קידושין)

<sup>10</sup> Therefore a פסוק is necessary to teach us that the כסף קידושין of a קטנה belongs to her father.

<sup>11</sup> יעוד is the process by which the master of the אמה can acquire her for his wife. He informs her that she is betrothed to him with the money he already paid the father to purchase her as his אמה. We might therefore assume that the father has the right to marry her off to the אדון. However, תוספות rejects this notion.

<sup>12</sup> The אדון can be מיעד the אמה because he gave money to the father to purchase her as an אמה. The תורה gave the אדון (not the father) the right to be מיעד her with that money. However the תורה did not give the father any right other than selling her for an אמה, but not to marry her off. תוספות writes that the יעוד is performed with the money with which she was sold, but it is not קידושין. כסף. When a father is לשם מכירה his daughter the money is given קידושין לשם, however here the אדון gives the father money לקדש. This answer applies even if we maintain ניתנו לקידושין (see later ט"א and ב"י [here]).

<sup>13</sup> This was the initial logical argument given there to prove that the מעשה ידיה of a נערה is לאביה.

Since it is written **את בתי נתתי לאיש**; which indicates all types of 'giving'; including delivering her to the **חופה**, even though he is depriving her from working (during this time of **חופה** למסירה); this proves that he owns her **ידיה**. This concludes the citation of that **גמרא** (and **פירש"י**). **תוספות** concludes his question:

**ומאי ראייה אימא הני מילי קטנה אבל נערה לא כדאמר הכא –**

**And what proof is there that the **נערה** of a **מעשה ידה** belongs to **לאביה**; let us say as we say here perhaps this phrase (of **את בתי**) is referring to a **קטנה**, but not to a **נערה**?!**

answers: **תוספות**

**ויש לומר דהאי קרא את בתי נתתי על כרחך איירי בנערה כדפרישית**<sup>14</sup> –

**And one can say; that perforce this פסוק of **את בתי נתתי** is discussing a **נערה** as I previously explained -**

**ונהי דלענין קידושין נוכל לפרש את בתי נתתי כשהיתה קטנה –**

**And granted that concerning the **קידושין** we can explain **את בתי נתתי** to mean that he was מקדש her when she was a **קטנה** -**

**החופה אי אפשר לפרש אלא בנערה –**

**However the delivery to the **חופה** can only be interpreted that it took place when she is a **נערה** -**

**דאי בקטנות אם כן היתה נשואה כשזינתה**<sup>15</sup> **ודינה בחנק ולא בסקילה –**

**for if the **חופה** took place while she was a **קטנה**, then she was a **נשואה** when she was **מזנה** and her punishment is **חנק** and not **סקילה**. The **זנות** had to take place when she was already a **גדולה**, which is after her **נישואין** -**

**דעל זנות של קטנות לא מיחייבה**<sup>16</sup> :

**For she is not liable for **זנות** performed when she was a **קטנה**. Hence if she was a **גדולה** she receives **חנק**. The **תורה** however prescribes **סקילה** indicating that she was **נשואה** before the **חופה** while she was a **גדולה** indicating that the **מעשה ידה** was when she was a **נערה**.**

## **SUMMARY**

The **פסוק** of **את בתי נתתי** indicates the right of the father to be מקדש his daughter and also be מוסר her **לחופה**. The content of the **פסוק** is discussing a woman who is presently a **נערה**; nevertheless we can argue that the **נתינה**

<sup>14</sup> By a **קטנה** there is no **סקילה** and the **מוצש"ר** is מוקדם.

<sup>15</sup> **נשואה** is the process by which a woman becomes a **נשואה**.

<sup>16</sup> The **זנות** by an **אשה המזנה** is only if she is a **גדולה** and an **ארוסה** (not a **נשואה**). If the **חופה** took place while she was a **קטנה** then the **זנות** for **חוב סקילה** must have taken place when she became a **גדולה** after the **חופה**, which makes her a **נשואה**. There is no **חוב סקילה** for a **נשואה**. The only way for her to receive **סקילה** is if she was **מזנה** before the **חופה** while she was a **גדולה**; indicating that by the **חופה** she already was a **גדולה**.

took place while she was a קטנה. However the מסירה לחופה must have been when she was a נערה, otherwise there would not be סקילה (but rather חנק). The מעשה ידיה of השתא מזבין זבין וכו' of ק"ו is appropriate to teach us that מעשה ידיה belongs to לאביה (כסף), but not that the קידושין belongs to לאביה.

### **THINKING IT OVER**

1. <sup>17</sup> וסקלוה since it says נערה since the פסוק is discussing תוספות asks that the פסוק is discussing a נערה since the פסוק states נערה there (many times)?<sup>18</sup>

2. <sup>19</sup> והא לקטנה לא איצטריך קרא asks תוספות מיתורא indicating that we can derive מיתורא that the פסוק is discussing a נערה. However (even if לא איצטריך (קרא), there is no יתורא since the פסוק is necessary to teach us that the אב could be קידושי נערה לאביה!<sup>20</sup> How can we derive that נערה לחופה

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<sup>17</sup> See footnote # 3.

<sup>18</sup> See בל"י אות סב.

<sup>19</sup> See footnote # 5.

<sup>20</sup> See מהרש"א.