

וכי תימא נילף מבושת ופגם¹ –

And if you will say; let us derive from בושת ופגם

OVERVIEW

The גמרא is attempting to derive the rule that the כסף קידושין of a נערה belong to her father. The current suggestion is that we derive it from בושת ופגם. If a person is מאנס a נערה he must pay (in addition to the קנס of כסף) for the בו"פ he caused. This money is paid to the father. We can therefore derive that just as בו"פ is given to the father, so too should the כסף קידושין be given to the father. The difficulty with this is that the only source that בו"פ belongs to the father is from קידושין. Since presently we do not know that קידושין belongs to her father, we cannot know that בו"פ belongs to the father, etc. תוספות will explain this matter.

תוספות asks:

תימה היכי בעי למימר נילף קידושין מבושת ופגם –

It is astounding! How could have the גמרא stated that we should derive קידושין from בושת ופגם (that just as בושת ופגם of a נערה שנאנסה belongs to the father, similarly the כסף קידושין of a נערה belongs to her father); this is inconceivable -

הא בושת ופגם גופה לא ידעינן שהן לאב אלא מקידושין –

Since we do not know even concerning בושת ופגם itself that it belongs to the father, only from קידושין. תוספות now shows that we derive that בושת ופגם belongs to the father from קידושין -

דאמר בסוף אלו נערות (כתובות דף מ,ב) דאי בעי מסר לה למנוול ומוכה שחין² –

For the גמרא states in the end of אלו נערות, פרק אלו נערות, that the reason בושת ופגם of a נערה belongs to the father, **for if he so desired he could have delivered her (married her off) to a מנוול ומוכה שחין** which would have caused her בושת ופגם. It is only after we know that the father has the right to be מקדש her to whomever he chooses, that we can assume that בושת ופגם belongs to the father. Here in the גמרא we do not yet know that the father can be מקדש a נערה, therefore we do not yet know that בושת ופגם (which is derived from קידושין) belongs to the father. How can we say now (at this point) that we derive that קידושין נערה לאביה from בושת ופגם?!

¹ בושת is the shame she endures because she was נאנסה; while פגם is the depreciation in her value since she is no longer a בתולה.

² A מנוול is a disgusting person and a מוכה שחין is one who is smitten with sores and lesions. These people are willing to pay additional money to marry a 'normal' girl. The father can force נערה בתו to marry this person (which causes her בושת ופגם) and the father takes the money (including the extra money paid). This proves that בושת ופגם of a נערה (שנאנסה) belongs to the father. Otherwise the money of her shame and degradation for marrying this מוכה שחין and מנוול should go to her.

attempts to offer a solution:

– וכי תימא דנפקא מינה³ מיהא דאי בעי מסר לה כשהיתה קטנה –

And if you will say that we can derive that בושת ופגם of a נערה belongs to a קטנה **for he could have delivered her when she was a** קטנה to a מנוול ומוכה (no one contests that) -

– והיה עומד לה בושת זה אף בנערות –

And this shame would have continued even in her נערות year. This proves that the father controls the בושת ופגם of a נערה; he can cause her (by marrying her off when she is a קטנה) to suffer בושת when she is a נערה. It therefore follows that if he controls her ב"פ, then if she was באנסה, the ב"פ belong to the father. We can now derive קידושין from ב"פ. This would seemingly resolve the issue.

rejects this explanation; for -

– אם כן גם כשהיא בוגרת⁴ יהא בושת ופגם של אב מהאי טעמא –

If this is so (that we can derive בושת ופגם of a נערה belongs to a קטנה), then **even when she is a בוגרת** and someone was מאנס her, the ב"פ **should belong to the father for the same reason**; the father could have married her off to a מנוול when she was a קטנה and she would suffer the shame into her בוגרת years. The fact that the ב"פ of a בוגרת belongs to her, indicates that the right which the father had to be מקדש her when she was a קטנה does not extend into her בוגרת years; the same applies by a נערה, that even though the father could have married her off בקטנותה, it gives him no right to her בנערותה ב"פ.

answers, defending the previous answer:

– ויש לומר דלא דמי בוגרת לנערות⁵ –

And one can say that בוגרת is not similar to נערות. We can use the argument (that he could have married her off בקטנותה) concerning a נערה (that the ב"פ of a נערה belongs to the father) but not concerning the ב"פ of a בוגרת. The difference is -

– דנהי דלא ילפינן מהפרת נדרים כולה מלתא⁶ –

That granted we cannot derive from הפרת נדרים the entire concept that a בוגרת is ברשות אביה [also] regarding קידושין, however –

– לענין הא ילפינן שלא ימשוך כח האב אלא ימי נערות כי ההיא דלקמן –

³ Others amend this to read מהא.

⁴ A בוגרת is a mature woman; she attains this status six months after she became a נערה. The בושת ופגם of a בוגרת belongs to her for she is a completely independent woman.

⁵ See 'Thinking it over' # 1.

⁶ The גמרא said that we cannot derive that the ב"פ of a נערה belong to the father from הפרת נדרים (where the נערה is ברשות אביה, for ממונא (the money should belong to the father) cannot be derived from איסורא (that the נערה is ברשות אביה for הפרת נדרים). We cannot restrict the נערה based on הפרת נדרים. However we can release the בוגרת from ברשות אביה based on the fact that he cannot be נדריה. The reason he cannot be נדריה is not necessarily a דין איסור but rather it indicates that she is no longer 'his' (daughter).

Concerning this matter that the power of the father should not extend beyond the נערות, this we can derive that from הִפְרַת נְדָרִים, as is indicated later⁷ where the גמרא states this ק"ו -

– ומה סימנין שאין מוציאין מרשות אב מוציאין מרשות אדון בגרות שמוציאה כולי -

And what if סימנין which do not remove the daughter from the possession of her father, nevertheless they remove her from the possession of the master; then בגרות which does remove, etc.

the daughter from the possession of her father, can surely remove her from the possession of her master. This concludes the citation of that גמרא. The גמרא there categorically stated that בגרות is מוציאה from the רשות of the father. תוספות comments -

– ומנא לן הא דבגרות מוציא מרשות אב לקידושין⁸ ולכל דבר -

And indeed how do we know that בגרות is אב מוציא מרשות אב regarding קידושין and all other matters -

– אי לאו דילפינן מהפרת נדרים -

If not that we derive it from הִפְרַת נְדָרִים. Just as concerning הִפְרַת נְדָרִים once the בת becomes a בוגרת she is no longer ברשות האב, the same applies to all other issues. Therefore even though the ב"פ of a שנאנסה belongs to the father since he could have been מוסרה למנוול, however concerning בוגרת this reasoning is invalid since a בוגרת is definitely not ברשות האב.

תוספות is not satisfied with this answer:

– מיהו לא נהירא⁹ כיון דבטעמא תליא מלתא דאי בעי מסר לה בקטנות -

However this reasoning does not appeal to תוספות; since the rule that the father receives ב"פ for נערה בתו is dependent on the reasoning that he could have delivered her to a מנוול וכו' when she was a קטנה and therefore this ב"פ extends to נערות -

– כך שייך דבר זה לבגרות כמו לנערה -

This reasoning is equally applicable to בגרות as it is to נערות. The father's actual right was only when she was a קטנה. If we use the logic that the בושח extends to נערות it should extend to בגרות as well; there is no reason to distinguish between the two. The original question of תוספות remains, how can the גמרא state that we should derive קידושי נערה from ב"פ לאביה if we only know that ב"פ from לאביה נערה.

In summation: The גמרא wants to argue that we should derive קידושי נערה לאביה from the fact that ב"פ from אב שנאנסה belongs לאביה. However, תוספות questions this; since we only know that ב"פ belongs לאביה, after we know that the father can be מקדש בתו נערה to a

⁷ א, ד. The גמרא there cites a ק"ו that an אמה can be יוצא מרשות האדון when she becomes a בוגרת (in the case of an איילוניית, when she never is a נערה)

⁸ The father can longer be מקדש her after she becomes a בוגרת. He also no longer owns her ידה, etc.

⁹ See 'Thinking it over' # 1.

initially attempted to answer that we do know and receive the *מנוול* and *וכי* that the father can be *מנוול* to a *מנוול* which would cause the *נערה* to have *בו"פ* *נערה* *שנאנסה* *בו"פ* of a *נערה* belongs *לאביה*. Therefore the *בו"פ* of a *נערה* belong *לאביה*. We can now derive that *כסף קידושין* of a *נערה* belong *לאביה* from *בו"פ* of a *נערה* *שנאנסה*. However, *תוספות* refutes this reasoning that since he could have married her *בקטנותה* that proves that he owns the *בו"פ* of *נערותה*, for if this reasoning is true it should apply to a *בוגרת* as well. The father should receive the *בו"פ* of a *נערה* *שנאנסה* since he could have married her *בקטנותה*. This is obviously not the ruling; which proves that we cannot extend any right which the father had *בקטנותה* to her period of *נערות* (and *בגרות*). The initial question remains; how can we derive *נערה לאביה* from *בו"פ*, when *בו"פ* is derived from *נערה*.

answers: *תוספות*

לכן נראה לומר לעיל ואימא הני מילי קטנה –

Therefore it seems proper to explain that previously when the *גמרא* asked, ‘and let us say that *these words* apply to a *קטנה*’, the *גמרא* was not referring to the *פסוק* of *וגו' את בתי נחתי* and *את בתי נחתי*, but rather the *גמרא* -

כלומר¹⁰ קטנה שייך לעשות אותו קל וחומר –

Meant to say that regarding a *קטנה* it is possible to utilize that *ק"ו*, namely - *דהשתא אביה מקבל קדושיה איהי תשקול כספא כיון שאין לה כלל יד לקדש עצמה* – ‘That now when her father accepts the *קידושין*, can she take the money!’ this *ק"ו* is valid concerning a *קטנה* since she has no ‘hand’¹¹ at all to be *מקדש* herself (the *גמרא* is referring to this *ק"ו* as *הני מילי* as -

אבל נערה דאית לה יד איהי תקדיש נפשה ותשקול כספא –

However a *נערה* who has a *יד*, let her be *מקדש* herself and take the money for herself -

פירוש כיון דיש לה יד לקדש עצמה יהיו הקידושין שלה –

The explanation of the question is that since she has a *יד* to be *מקדש* herself the *כסף קידושין* is hers -

אבל אמת הוא שגם כשהיא נערה אביה יכול לקדשה –

¹⁰ The word *כלומר* indicates that the explanation is not as we initially assumed. We may have assumed that the phrase of *מקדשה* *ה"מ* *ואימא* *ה"מ* *קטנה* means that the *פסוק* of *את בתי נחתי* refers only to *קטנה*; indicating that only by a *קטנה* does the father have the right to be *מקדש* her and (therefore) receive the *כסף קידושין*, however by *נערה* the father cannot even be *מקדש* her (and therefore is not entitled to *כסף קידושין*). However *תוספות* explains that *השתא אביה* *וכי* *ק"ו* of *וגו' את בתי נחתי* (but the *פסוק* of *את בתי נחתי* refers to a *נערה* [as well]); that only by a *קטנה* can we utilize the *ק"ו* that if he is *מקבל* the *קידושין* he retains the money. However by a *נערה* this *ק"ו* can only apply only if the father is *מקדש* her, but if she is *מקדש* herself (as she has the right, for she has a *יד*), then perhaps she should retain the *כסף*. How can we be sure that even if the *נערה* is *מקדש* herself, nevertheless the *כסף* belongs *לאביה*? This is what the *גמרא* is trying to prove. [See ‘Thinking it over’ # 2.]

¹¹ The concept of a *יד* (hand) is that it can acquire and own. A *קטנה* cannot acquire anything since she is not considered to be a *דעת*.

However truthfully even when she is a נערה the father can also be מקדש her¹² -

וכשאביה מקדשה אז יהיו הקידושין שלו -

And when her father is מקדש her, then the כסף קידושין are his.

now addresses the initial question:

– והשתא ניחא קושיא דלעיל¹³ דקרא איירי כשקדשה אביה -

And now the previous question can be settled; for the פסוק of את בתי נתתי is discussing a case where her father was מקדש her, and in such a case all agree that the כסף קידושין belong to the father, whether she is a נערה or a קטנה.

now explains how the גמרא in כתובות derives that בו"פ לאביה:

– והתם יליף בושת ופגם מקידושין שעל ידי אביה שהם של אביה¹⁴ -

And there in כתובות the גמרא derives that בו"פ of a שנאנסה belongs to the father from the case of קידושין which the father performed, where the כסף קידושין belongs to the father.

now explains that our גמרא derives that even if she was מקדש even if she was מקדש עצמה:

– והכא הכי קאמר וכי תימא נילף מבושת ופגם -

And here in our גמרא this is what the גמרא means; ‘and if you will say, let us derive that קידושין לאביה from בו"פ;’ meaning we will derive that (even) -

– קידושין שעל ידי עצמה שיהא של אביה מבושת ופגם -

קידושין that was performed by her, belong to her father, we can derive that from בו"פ, that just as בו"פ of a שנאנסה belongs to the father, similarly the כסף קידושין that she received also belongs to the father.

explains the advantage of deriving that כסף קידושיה שע"י עצמה goes from בו"פ לאביה from בו"פ, as opposed to deriving it from אביה שע"י אביה

– כי ודאי מקדושי אביה ליכא למילפינהו שאלו על ידה לגמרי הם -

¹² This is derived from the פסוק of את בתי נתתי which is obviously discussing a נערה (in addition to discussing a קטנה as well). We derive from this פסוק that a father may be מקדש בתו when she is a נערה, and by utilizing the abovementioned ק"ו derive that in this case he retains the כסף קידושין.

¹³ See בד"ה ואימא תוספות who interprets קושיא דלעיל to mean the question that תוספות asked. According to this פשוט that question is answered. For the גמרא is not asking that perhaps the פסוק of את בתי is referring to a קטנה. The פסוק of את בתי is indeed discussing a נערה. Rather the גמרא is asking that nevertheless perhaps a נערה can also be מקדש herself and keep the כסף קידושין. It would seem that תוספות is also referring to the question in the beginning of this תוספות.

¹⁴ The father has the right to be מקדש her when she is a נערה (as previously mentioned) to a מנוול, causing her בו"פ. This proves that the father owns her בו"פ. Therefore he collects it if she was נאנסה. See ‘Thinking it over’ # 3.

For we certainly cannot derive עצמה שע"י קידושין should belong **from** לאביה **for** אביה **for** קידושין שע"י אביה, **for** קידושין שע"י אביה **were done completely by her**; she accepted the קידושין, how can you compare that to קידושין שע"י אביה where she did not participate at all!¹⁵

– אבל מתחילה הוה יליף בושת ופגם שאינו על ידה מקדושי אביה –

However initially we derived that בו"פ of a מאנס **which was not done through her**, it was not her choice to be נאנסה, therefore it can be derived **from** קידושי אביה. Both cases have in common that it was not done through the consent of the נערה. Therefore just as by קידושין שע"י אביה, where the נערה did not participate, the כסף belongs to אביה, so too by בו"פ of נאנסה where she also did not participate willingly, the כסף goes לאביה. Once we have established that בו"פ belong לאביה, then

ובתר הכי איכא למילף מה שהוא על ידה ממה שאינו על יד אביה:

Afterwards we can derive that קידושין **which is** ע"י should belong to the father, **from** בו"פ, **in which the father did not participate**. Just as בו"פ belongs to the father even though he did not participate in the acquisition, similarly by קידושין שע"י קידושין שע"י, even though the father did not participate, he is entitled to the כסף קידושין as he is entitled to בו"פ.

SUMMARY

We cannot assume that since the father can marry off his minor daughter to a מנוול, that therefore he owns the בו"פ rights of a נערה.

It is presumed that the father can be מקדש his נערה and retain the כסף. The issue in the גמרא is to prove that he can retain the כסף even if she is מקדש עצמה. We derive from קידושי נערה שע"י אביה that when she is not voluntarily involved in the transaction that the money goes לאביה. Therefore by בו"פ where she is not voluntary involved, the בו"פ belong לאביה. We derive from בו"פ that that the father may retain money even if he is not involved (as in בו"פ of a שנאנסה), therefore it follows that he should also acquire her כסף קידושין even if she was מקדש עצמה and he was not involved.

THINKING IT OVER

¹⁵ It is self understood that the more one is active in acquiring the money, the more right he has to retain those monies. By קידושין שע"י אביה the father was totally active and the נערה not active at all. It is understood that it belongs לאביה. By בו"פ the נערה was not willingly active in acquiring the בו"פ (as she was not active by קידושין שע"י אביה); we therefore can compare the two and derive that בו"פ belong לאביה. One we ascertain that the father receives בו"פ even though he was not active at all, we can then compare it to קידושין שע"י נערה where the father was not active at all and nevertheless he can receive the כסף קידושין.

1. Initially תוספות answered that since the father can be מקדש her בקטנותה to a מנוול, therefore this extends to נערותה (also) but not to בגרותה.¹⁶ Then תוספות rejected this distinction.¹⁷ How can we explain the two sides of this issue?

2. Initially¹⁸ we assumed that the question ואימה ה"מ קטנה is referring to the את בתי of פסוק. Subsequently תוספות concluded that it is referring to the ק"ו of השתא אביה מקבל קידושיה וכי. What are the relative advantages of each interpretation?

3. תוספות stated that the father should receive the ב"פ since he can be מקדש her to a מנוול. However she can also be מקדש herself to a מנוול, so why should he receive the ב"פ rather than her?!²⁰

¹⁶ See footnote # 5.

¹⁷ See footnote # 9.

¹⁸ See footnote # 10.

¹⁹ See footnote # 14.

²⁰ See אמ"ה footnotes # 135-9.