

Is a *Possuk* necessary

קרא בעיא -

Overview

We derive¹ from a פסוק that not only can the father refuse a מפתה from marrying his daughter, but even the daughter can also prevent the מפתה from marrying her. רב said that there is no proof from this פסוק that by a אביה שלא לדעת אביה, that both the father and the daughter can be מעכב, for this פסוק is discussing where he was מפתה her לשם אישות. The גמרא asked if the פיתוי was לשם אישות do we need a פסוק that she can be refuse to marry him. תוספות explains the question and the subsequent answer of the גמרא.

פירוש² שלא תהא אשתו באותה ביאה פשיטא דהא אפילו לא ימאנו אינה אשתו בהך ביאה -
The explanation of the question קרא בעי is, do we require a פסוק that she does not become his wife through this ביאה?! It is obvious that she is not his wife, for even if she does not refuse him, she is not his wife through this ביאה -

כיון שפיתה שלא לשם אישות -

Since he seduced her not for the sake of marriage! There was never a קידושין מעשה, only a זנות ביאה. תוספות explains why the question is only if the פיתוי was לשם אישות:

בשלמא אם פיתה לשם אישות אשמועינן חידוש דבין היא ובין אביה יכולין לעכב -

If he was מפתה her לשם אישות, it is understood that the פסוק is informing us of a novelty that either she or her father can prevent the קידושין from being effective even though he was מפתה לשם קידושין (and there would be a קשיא on רב אסי) -

אבל השתא מאי חידוש אשמועינן -

But now that רב is saying that the פיתוי was לשם אישות, what novelty is the פסוק teaching us?!

anticipates (and rejects) a possible solution to his question:

וליכא למימר דקרא הכי קאמר שאם יבא אביה לקדשה לאותו מפתה שתוכל בתו למאן -

And we cannot say that this is what the פסוק means, that if her father intends to be מקדש her to that מפתה, that the daughter can refuse to marry him against her father's wishes; that is what ימאן מאן is teaching us -

תוספות responds that this is not so -

¹ The פסוקים state (in טו-טז) that (שמות [משפטים] כט, טו-טז) אם מאן ימאן אביה לתתה לו כסף ישקול כמהר הבתולות. The words מאן ימאן teach us that she can also refuse to marry him.

² The term פירוש here indicates (as it usually does) that the question is not the way it may seem; that it is obvious that she can be ממאן (and not be מקודשת), but rather the question is that she is not מקודשת even if she is not ממאן!

דפשיטא שיכול לקדשה בעל כרחה -

For it is obvious that the father can be מקדש her (to that מפתה, or to anyone for that matter), **even against her will.** The s'גמרא question remains; if we are discussing a פיתוי שלא לשם אישות, what is the פסוק teaching us?!

continues with the s'גמרא answer and its explanation:

ומשני לומר שמשלם קנס כמפותה פירוש לעולם מיירי שפיתה שלא לשם אישות -
And מפותה like a קנס teaches us that he pays the קנס ר"נ ב"י answered; the פסוק
- מפתה שלא לשם אישות a case where he was really discussing meaning that we are really discussing
ואפילו הכי אשמועינן רבותא³ דכי מעכבא איהי שמשלם קנס -

And nevertheless the פסוק is teaching us a novelty that even if she refuses to marry him (but her father agrees to the marriage), nevertheless the מפתה pays the קנס -
דכמו דתלה הכתוב קנס דמפותה במיאון האב כך תלאו במיאון דידה⁴ -

For just as the פסוק made the payment of קנס dependent of the מיאון of the father (that if the father does not want him to marry his daughter he must pay the father), **similarly the פסוק made the paying of קנס dependent on her מיאון** (that if she does not want to marry him, he must pay the קנס).

immediately clarifies:

והאי מיאון דידה ודאי אינו מועיל לענין שלא תינשא לו -
And this מיאון of hers, is certainly not effective regarding her not marrying him -
דכיון דאביה רוצה שתהא אשתו אינה יכולה לעכב⁵ -

For since her father wants that she should be his wife (of the מפתה), she cannot prevent it -

- אלא מהני שמשלם קנס כאילו האב ממאן⁶ -

But rather her מיאון is effective that the מפתה has to pay קנס as if the father was ממאן, where he certainly must pay the קנס.

³ There is indeed no חידוש that she is not married to him (even without מיאון), the חידוש is that he is obligated to pay her קנס, even if the refusal to marry him is only from her but not from the father (as it would seem from the פסוק).

⁴ The rule by a מפתה is that he is obligated to marry the woman whom he was מפתה; however if the father refuses that he marry his daughter, the מפתה is obligated to pay קנס. The words מאן ימאן (see footnote # 1) teach us that not only does he pay קנס if the father does not wish for him to marry her, but even if (the father agrees, but) she does not want to marry him, he still is required to pay the קנס. The פירוש of תוספות (excluding the פשט of the י"מ in the following [TIE footnote # 3]) that when the גמרא writes כמפותה קנס משלם it means that just like by a מפותה he pays קנס if the father refuses, the same rule applies if the daughter refuses.

⁵ The father (of a נערה) has the right to marry his daughter (until she is a בוגרת) to whomever he pleases, even if his daughter refuses; she has no say in the matter.

⁶ This is a great חידוש that even though the מפתה marries her (against her wishes), he still is required to pay the קנס. The simple reading of the פסוקים (in כב,טו-טז) [משפטים] שמות indicate that he pays the קנס only if he does not marry her, but not if he marries her. See 'Thinking it over' # 2.

מיאון offers an alternate explanation regarding the effectiveness of her תוספות

אי נמי⁷ נפקא מינה היכא דבא עליה ואחר כך נתייתמה⁸ -

Or we may also say that the difference whether she is ממאן or not is in a case **where he was מפתה her and then she became orphaned** (her father died, before he had a chance to marry her off to the מפתה [which was his intention]) -

דהשתא מהני מיאון דידה לעכב⁹ שלא תהא אשתו:

So now her מיאון is (also) effective to prevent that she will not become his wife.

Summary

It is obvious that if the פיתוי was לשם אישות that she is not married to him (even without any מיאון). The inclusion of her מיאון teaches us that he must pay the קנס even if he marries her as long as she is ממאן. Alternately, he cannot marry her (and must pay the קנס) if her father died and she is ממאן.

Thinking it over

1. פיתוי¹⁰ Why could not second תוספות is that she became a יתומה after the פיתוי?¹¹ (he was מפתה a יתומה) say that she was a יתומה all along (he was מפתה תוספות)?

2. תוספות states that if the father wants she should marry him and the girl does not want, he has to pay the קנס even if he marries her.¹² Why cannot the מפתה say; 'I will either pay the קנס (and not marry her) or I will marry her (and not pay the קנס); How can he be required to do both?!¹³

⁷ The א"נ may disagree with the first interpretation (for it is not reasonable that he is required to pay the קנס if he marries her [see footnote # 6]), or the א"נ agrees with the first פשט; however there is a difficulty, for the simple understanding of the פסוק is that her מיאון is effective regarding not marrying him, however according to the first פשט, she is required to marry him (it is effective only regarding the קנס). Therefore the א"נ explains that it is possible that her מיאון is effective even regarding the marriage (see מהרש"א הארוך בדו"מ אות ג').

⁸ See 'Thinking it over' # 1.

⁹ Therefore he will have to pay the קנס [to her] since her מיאון prevents him from marrying her. [It is obvious that she is not his wife, since the פיתוי was לשם אישות and there is no father to marry her to him כ"ב.]

¹⁰ See footnote # 8.

¹¹ See מהרש"א א.

¹² See footnote # 6.

¹³ See נחלת משה.