



Kiddushin Daf 75

ARUSAH ME'UBERES

בקידושין דף ע"ה. ורמי דרב אדרב, ורמי דשמואל אדשמואל, דאיתמר, ארוסה שעיברה, רב אמר הולד ממזר, ושמואל אמר הולד שתוקי. רב אמר הולד ממזר ומותר בממזרת, ושמואל אמר הולד שתוקי ואסור בממזרת. איפוך, רב אמר הולד שתוקי, ושמואל אמר הולד ממזר וכו'. ואי בעית אימא לעולם לא תיפוך, ומאי ממזר דקאמר רב לאו מותר בממזרת, אלא דאסור בבת ישראל, ושמואל אמר הולד שתוקי דאסור בבת ישראל. אי הכי היינו דרב, אלא מאי שתוקי שמשתיקין אותו מדין כהונה. פשיטא, השתא מדין ישראל משתיקין ליה, מדין כהונה מיבעי. אלא מאי שתוקי שמשתיקין אותו מנכסי אביו. פשיטא מי ידעינן אבוה מנו, לא צריכא דתפס.

ואי בעית אימא מאי שתוקי בדוקי, שבודקים את אמו ואומרת לכשר נבעלתי נאמנת. כמאן כרבן גמליאל, האמר שמואל חדא זימנא, דתנן היתה מעוברת ואמרו לה מה טיבו של עובר זה, מאיש פלוני וכהן הוא, ר"ג ורבי אליעזר אומרים נאמנת, רבי יהושע אומר אינה נאמנת, ואמר רב יהודה אמר שמואל הלכה כרבן גמליאל. צריכא, דאי מהתם הוה אמינא התם רוב כשירים אצלה, אבל הכא דרוב פסולים אצלה אימא לא, צריכא.

- א -

Machlokes Rav and Shmuel

Gemara's three explanations / There is possibly no machlokes Rav u'Shmuel

רא"ש, ריטב"א, עצמות יוסף, המקנה

Let's first review the *gemara's* three explanations of the *machlokes Rav and Shmuel* regarding an *arusah*, a betrothed woman, who is with child and we don't know who the father is. Is it her *arus*, her betrothed, and the child is kosher, or is it another man and the child is a *mamzer*, an illegitimate child.

According to the first explanation, we reverse the opinions. It is *Rav* who holds that the child is a *sh'tuki*, a *safek mamzer*. Therefore, he's forbidden to marry both a *bas yisroel* and a *mamzeres*, as he *paskens* like *Rabi Elazar* that a *safek pasul* may not marry a *vadai pasul*. And *Shmuel* holds that the child is considered a *mamzer*. Therefore, he may marry a *mamzeres*, as *Shmuel* does not *pasken* like *Rabi Elazar*, but like *Rabi Akiva* that a *safek pasul* may marry a *vadai pasul*.

According to the second explanation, the opinions remain as taught originally, *Rav amar ha'vlad mamzer u'Shmuel amar ha'vlad sh'tuki*. However, *Rav* holds that

he's merely a *safek mamzer*, but refers to the child as a *mamzer* to teach that he may not marry a *bas yisroel*. Of course, he also may not marry a *mamzeres* because he's merely a *safek mamzer*. And as the *gemara* points out, *Shmuel* agrees that he may not marry a *bas yisroel*. However, *Shmuel* refers to him as a *sh'tuki* to teach an additional *halachah*, that we do not allow him to inherit his father, even if he already has the assets in his possession, because we cannot be sure that this man was his father. And as the *Rosh*¹ explains, *Rav* agrees with this *halachah* that he does not inherit the *arus*.

According to the third explanation, when *Shmuel* refers to the child as a *sh'tuki*, he means *b'duki*, which means that his lineage can be checked and verified by asking the mother. If she states that the man with whom she cohabited was her *arus*, we believe her, and the child is kosher. As *Raban Gamliel* teaches in the *mishnah* in *Masechet Kesubos*.² If an unmarried woman was found to be with child, and was asked about its status, and she replied that the father was a man of fit lineage, she is believed. *Rav Yehudah* in the name of *Shmuel* there *paskens* like *Raban Gamliel*. Therefore, in our case as

well, she is believed that the father of this child is her *arus*. And as the *gemara* explains, our case is a greater novelty because in the case of *Raban Gamliel*, most men are fit for her, while in our case all other men are not fit for her since she's *mekudshes* to this *arus*. Nevertheless, she is believed that the father is the *arus* and that the child is of fit lineage.

The *Chiddushei HaRitva* there elaborates as follows. Although *Shmuel* in the *gemara* there³ qualifies that although he *paskens* like *Raban Gamliel*, that is only *b'dieved*, that she may marry the *arus*, or if he died and she already married a *kohen*, she may stay with him. But if the *arus* dies, we do not allow her to marry a *kohen l'chatchilah* because it's a *safek*. Perhaps she did cohabit with another man, which renders her a *zonah* and forbids her to a *kohen*. And this is considered *l'chatchilah* because she can just as well marry a *yisroel*. However, regarding the *kashrus* of the child, it is a *shailah* of *b'dieved* because if we disqualify the child, he cannot marry neither a *bas yisroel* nor a *mamzeres* because he's a *safek pasul*. Therefore, we declare the child fit and permit him or her for *kehunah*.

In the above-mentioned *Rosh*, in *Masechet Yevamos*,⁴ he writes that according to this third explanation, there is a *machlokes* between *Rav* and *Shmuel*. *Rav* would disagree and disqualify the child. The *Atzmos Yosef* explains that although in the second explanation the *Rosh* says that there's no *machlokes Rav u'Shmuel*, he does not say so in the third explanation because since *Rav* uses the term *ha'vlad mamzer*, it seems that *Rav* holds that the child is considered a *mamzer* and we do not believe the mother that the *arus* is the father.

The *Makneh* however, writes that although in our *gemara* it apparently seems that *Rav* disagrees with *Shmuel* and he holds that we do not believe her that the *arus* is the father, and that *Rav* does not hold like *Raban Gamliel*; however, in the *gemara* in *Masechet Kesubos* it seems that *Rav* also holds like *Raban Gamliel* that she is believed. If so, we must say that even according to the third explanation there's no *machlokes Rav u'Shmuel*. And that which *Rav* refers to the child as a *mamzer* is only when she does not claim that the *arus* is the father. However, if she claims that the *arus* is the father, she is believed, and the child is declared of fit lineage.

- ב -

Explanation of the mother being believed that the *arus* is the father

She's believed only if the arush does not contradict her / Whether she's believed regarding yerushah, for the child to inherit the arush / Whether she's believed to exempt her from chalitzah / Since she's believed regarding the child's kosher status, she's believed regarding all matters / Even without her claim, he's considered the son of the arush based on her chezkas kashrus /

רמב"ם, ניםוקי יוסף, רמ"א, חלק"מ, ב"ש, בית מאיר, קהלת יעקב

Regarding the above matter, the *Rambam*⁵ *paskens* as follows. If an *arusah* became pregnant while still in her father's home, the child is an assumed *mamzer* and may not marry neither a *bas yisroel* nor a *mamzeres*. However, if the mother was asked, and she claimed that the *arus* is the father, she's believed, and the child is kosher. The

Rambam's p'sak follows *Shmuel* according to the third explanation. And so *pasken* the *Tur* and *Shulchan Aruch*.⁶

The *Rambam* adds that if the *arus* contradicts her and says that he never cohabited with her, the child is a *mamzer*. Because even if the child was considered his son, he would be believed, as any father is believed to claim his son to be a *mamzer*. However, regarding 'her' status, she is believed to claim that she did cohabit with her *arus* and is therefore not a *zonah*. And if she then married a *kohen*, she need not leave him, and their children are kosher. Similarly, the *Shulchan Aruch* writes, that the *halachah* that she is believed that the *arus* is the father of this child is only if the *arus* is not there or if he admits to having cohabited with her. [1]

NOTES

[1] However, the *Tosfos Rid* holds that the mother is believed to claim the child to be the son of the *arus* even if the *arus* contradicts her. Even though, a father is believed to say that his son

is a *mamzer*, as the *gemara* above¹⁷ states, 'יכיר' יכירו לאחרים', from which *Rabi Yehudah* derives that a father is believed to say that his son is a *mamzer*, or a *ben gerushah* or *ben chalutzah*. However, the

The *Poskim* discuss several points regarding the *halachah* of her being believed that she cohabited with her *arus*, as follows.

The *Nimukei Yosef* writes that the *halachah* that she is believed that the *arus* is the father is not only to accept the child as kosher and fit to marry a *bas yisroel*, but also for the child to be considered the son of the *arus* to inherit him. Although in a case where a woman claims that this child is from a given man who is kosher, she is believed only regarding the status of the child being kosher, but she is not believed regarding *yerushah* that this child is the son of this man to inherit him. The *Nimukei Yosef* explains that it's only in that case because this claimed man is a stranger. Therefore, she is only believed, based on her personal *chezkas kashrus*, that this man, whoever it was, was a kosher person. And so, the child is kosher. However, regarding *yerushah*, we must know that it was this particular man. And since she admits to cohabiting with a stranger, it could have been any stranger, not necessarily this man. Therefore, the child does not inherit him. However, in our case where she claims to have cohabited with her *arus*, we believe her even regarding *yerushah* because she never admitted to having cohabited with a stranger. It's more likely that she cohabited with her *arus* than with a stranger. The *Darkei Moshe*⁸ cites this *Nimukei Yosef*, and in *Rama* there writes that the child is considered his son to inherit him.

The *Chelkas M'chokek*⁹ adds that even though the child is only a *safek* whether he's the son of the *arus*, the other sons of the *arus* cannot claim that this child prove that he's also a son of the *arus* in order to receive a portion of the inheritance because since the mother claims that he's certainly his son and nobody is contradicting her, and she has a *chezkas kashrus*, the child too has a *chezkas kashrus* to be considered his son to inherit him.

The *Bais Shmuel*¹⁰ adds that even regarding *yibum*, if the *arus* dies and has no other children, we consider this child to be his son and she's exempt from *yibum*, because if we accept the child as his son regarding that he's not a *mamzer*, we cannot differentiate, and he's considered his son regarding all *halachos*. [2]

However, the *Terumas Hadeshen*¹¹ holds that the *arusah* is only believed that the child is the son of the *arus* regarding the child being kosher, but she is not believed regarding *yerushah* that he's the son of the *arus* to inherit him. And he writes that from the words of the above-mentioned *Rosh*¹² it seems that that which the *gemara* says according to the second explanation that he's not allowed to inherit the *arus* even if he already took possession of the inheritance is even if the mother claims that he's the son of the *arus*.

However, the *Avnei Miluim*¹³ disagrees and writes that this is not indicated in the words of the *Rosh*. Rather, the words of the *Rosh* can be explained that he does not inherit the *arus* only in a case where she did not claim that he's the son of the *arus*. But if she claims that he's the son of the *arus* and the *arus* is not there to contradict her, she is believed even regarding *yerushah*, and he does inherit him.

The *Bais Meir* cites the above-mentioned *Bais Shmuel* that she's believed that he's the son of the *arus* even regarding her not requiring *chalitzah*. However, he writes that 'I don't know the source of even the *Nimukei Yosef*'s opinion that she's believed regarding the child inheriting the *arus*, and certainly not that of the *Bais Shmuel*'s adding that she's believed even regarding her not requiring *chalitzah*.' The *Bais Meir* also cites the above-mentioned opinion of the *Terumas Hadeshen* that she's only believed regarding the *kashrus* of the child, but not regarding *yerushah*.

NOTES

father is believed only when the mother does not contradict him. But if she does contradict him, it is the mother that's believed.

[2] In *sefer Nesivos La'Shabbos*¹⁸ he writes that regarding *yibum* we certainly exempt her from *chalitzah* because she's *patur* from *yibum* either way. If it's true that this is a child of the *arus*, she's exempt from *yibum* or *chalitzah* because the deceased husband has a child. And if it's not true, and he's the child of another man, she is a *sotah* who the *gemara* in *Masechet Yevamos*¹⁹ says is *patur*

min ha'yibum va'chalitzah. And we do not entertain the possibility that she got pregnant by another man by coercion, in which case the *arus* has no child and she's not a *sotah* because it was *b'oiness*, because coercion is uncommon. Plus, it's a *s'fek s'feka* to exempt her from *chalitzah*. Perhaps it's the child of the *arus*, and if it's the child of another man, perhaps it was *b'ratzon* and she's a *sotah*. And so, regarding her being exempt from *yibum* or *chalitzah*, she is believed that it's the child of the *arus*.

However, the *Bais Meir* answers that we must explain it as the *Bais Shmuel* writes that since we accept her claim that he's the son of the *arus* regarding his *kashrus* that he's not a *mamzer*, we cannot differentiate and must consider him the son of the *arus* for all matters. And he further explains with the following distinction. In the case of an unmarried woman's claim that this child is the son of a kosher man, we can say that she's only believed regarding the *kashrus* of the child but not regarding other matters. However, in the case of an *arusah*, a betrothed woman, if we doubt her claim in any way, the child is a *mamzer*. Therefore, we must say that she's believed in all matters, even regarding *yerushah* and *yibum*. [See further in the *Bais Meir*.]

In the *sefer Koheles Yakov*¹⁴ he explains further as follows. We might ask, why would she be believed regarding financial matters? Matters of *yerushah* can only be determined by *eidus*, kosher witnesses. Her *ne'emanus* regarding *issur* does not give her *ne'emanus* regarding *mamon*. As we see that a woman's claim that her husband died is accepted regarding *issur eishes ish* in that she may marry another man, but it's not accepted regarding *mamon* for her to collect her *kesubah*. And so, likewise in our case, why would her claim be accepted for her child to inherit the *arus*?

And he answers, as follows. *Min ha'Torah*, if an *arusah* has a child, he is considered the son of the *arus* even without her claim because she has a *chezkas kashrus* that she did not cohabit with anyone other than the *arus*. As we see in *Tosfos*¹⁵ in the *sugya* of *rov* in *Masechet Chulin*.¹⁶ The *pasuk* states that '*mackeh aviv v'imoi mois yumas*'. A child who wounds his father or mother is liable to the death penalty. And the *gemara* there says that we are not concerned that this man might not be his father because '*rov be'ilos achar ha'ball*'. A married woman cohabits only with her husband. *Tosfos* there comments that we can question this proof because even without the *halachah* of '*rov*' we assume this man to be his father because of his mother's *chezkas kashrus* that she cohabits only with her husband. And so, based on *chazakah* the son is *chayav misah* for *makeh aviv*. Now, if her *chezkas kashrus* is effective regarding *misah*, for her son to get the death penalty, her *chezkas kashrus* is certainly effective regarding *dinei mamonos*, for her son to inherit the *arus*. Her *chezkas kashrus* tells us that she cohabited with the *arus* and not with any other man which would be an *issur eishes ish*. It is only *mid'rabanan* that the *chachamim* were *machmir* to consider him a *sh'tuki* without her claim. But after her claim, he's considered the son of the *arus* even regarding *yerushah*. [3]

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[3] The *Arugas Habosem* on *Even Haezer* questions the *Nimukei Yosef* and the *Rama* who say that the mother is believed that he's the son of the *arus* even regarding *yerushah*, as follows. If the *arus* were there and contradicted her, she would not be believed at all even to consider him kosher. If so, when the *arus* is not there, how can she be believed to extract money from his heirs?

And he adds that we cannot say that she's believed that this is a son of the *arus*, and not someone else, based on her *chezkas kashrus*, because there is a well-known *klal* of '*ruba va'chazakah ruba adif*'. And so, her *chezkas kashrus* is contradicted by the *rov* that most men are forbidden to her. Therefore, we should follow the *rov* that this child is someone else's child.

מראי מקומות

1. בפרק' דיבמות ס'ו' 2. דף י"ג. 3. כתובות דף י"ד. 4. בפרק' דיבמות ס'ו' 5. הלכות איסורי ביאה פט"ו הלכה י"ז 6. אהע"ו ס'ו' ד' סעיף כ"ז 7. ביבמות דף ס"ט: (דף כ"ג: מדפי הרי"ף) 8. אהע"ו ס'ו' ד' סק"ט 9. שם סק"ח 10. שם סקמ"ד 11. ס'ו' שני"ב 12. בפרק' דיבמות ס'ו' 13. שם סק"כ 14. (לבעל נתייה"מ) באהע"ו שם 15. ד"ה כגון 16. דף י"א: 17. לעיל דף ע"ד. 18. (מבעל המקנה) על אהע"ו שם 19. דף י"א.