



לע"נ ברוך בענדיט וברכה גרוס ע"ה
by Mr. & Mrs. Duvy Gross

The Hakuk Edition English Topics on the Daf

Dedicated l'refuah sheleima for Yaakov ben Victoria

By Rabbi Mordechai Papoff

THE FOURTH PEREK OF YEVAMOS IS DEDICATED:

לע"נ ר' שלמה זלמן בן ר' חנוך הכהן עהרנשטרייך ■ לע"נ דוד בן יצחק איסאק

Yevamos Daf 49

Our Mishnah features a machlokes relevant to many sugyos – what makes a mamzer? The Tannaim argue if it's from lavvin, karess or missas beis din.

A major difficulty with this Mishnah is that the Gemara says a different rule – it depends on tefisas kiddushin, if kiddushin is possible! At the bottom of the amud, Abaye asserts that all the Tannaim agree that offspring from a nidva or a sotah are not mamzerim, since kiddushin is applicable. If so, how are we to understand the Mishnah, which gives other parameters?

The same question can be raised from an earlier Gemara, on 45b, in which one opinion holds that a child

born from a non-Jew and a Jewish woman is a mamzer. Tosfos asks how this can be derived from eishes av, when there is neither karess nor missah for it? He answers that mamzerus depends solely on kiddushin!

What is the source for Abayeh's halacha? For that we have to turn to a Gemara in Kiddushin 67b. The Mishnah there states that a child born of a union in which kiddushin isn't possible, but she may have kiddushin with other Jews, is a mamzer. This includes all arayos punishable by karess; she is obviously permitted to marry any other Jew.

The Gemara asks for the source for this. Rashi explains that the question is not how we know the child is a mamzer, but how we know kiddushin isn't possible. He says we know mamzerus from "Lo yikach ish es eishes aviv" which is followed by a possuk of mamzer. The Pnei Yehoshua elaborates that this possuk is extraneous and so is extrapolated to teach us that any similar case results in mamzerus.

Tosfos in Yevamos (44b) uses a different reasoning. He notes that (according to Shimon Hatimni, by us) unions punishable by karess create mamzerus, and such relationships are also not conducive to kiddushin – so we see they are interdependent.

Now, back to our original question. Is mamzerus dependent only upon kiddushin? The Bach (Y.D. 195) cites Rabbeinu Peretz that a woman should be careful not to lie on bed sheets that other men slept on, for fear that semen might be on them and impregnate her. A nidda need not be stringent with her husband's sheet, though, since although they are temporarily forbidden to each other, no forbidden cohabitation occurred. He continues that even if

she becomes pregnant from another man the child is not a mamzer, just there are other issues, since we won't know for sure who the father is. As a case in point, he cites that Ben Sira was conceived in a bathhouse (to Yirmiyahu's wife) from a foreign man, but was not a mamzer. From here we see an important clause in the subject of mamzerus: there must also be a biyas issur.

Not only that, but Teshuvos Oneg Yom Tov (Even Haezer 121) postulates that if two arayos are forced to cohabit, a child born will not be a mamzer! Since one is not held responsible for activities done when forced (an oness), it is also not considered a biyas issur. He compares it to a Gemara about a Jew who was forced to bow down to an animal. Rav Zeira and Rava argue if the animal has the status of avoda zara – but only if it was forbidden for him to do it. Otherwise, we do not regard the action as idol worship! So too here. (He is unsure of his thesis; avoda zara is different anyway since it requires intention to accept it as a deity.)

However, Rabbi Shlomo Zalman Auerbach does not share his

inclination. He challenges the assumption that there has to be a forbidden union to create a mamzer. Maybe the derasha of eishes av just informs us of the general guidelines of mamzerus, but who says there has to actually be a biyas issur? Perhaps even if she is impregnated from a bathtub or artificial insemination the child would be a mamzer!

He further challenges the theory of the Oneg Yom Tov that coerced biyah will not produce a mamzer. As an example, Esther cohabited with Achashverosh in order to save Klal Yisroel, doing a great mitzvah. But their offspring (if Achashverosh would be Jewish) would be a mamzer! She became forbidden to Mordechai thereby. He quotes the Chacham Tzvi, "Even if they are both forced, the child is a mamzer. This is clear... Is mamzerus a form of a penalty," that it should depend on their intentions? "Certainly not."

Tosfos on daf 16b proves it, continues Rav Shlomo Zalman. Discussing the opinion that a child born to a non-Jew and a Jewess is a mamzer, he asks that the prohibition is midirabonon, so why would it result in a mamzer? Tosfos answers

that although midioraisa the biyah is not forbidden, kiddushin is nonetheless not applicable, and that it what defines mamzerus. We see from here that mamzerus does not depend on a forbidden union, but solely on the validity of kiddushin or not. Thus, we do not derive from eishes av that mamzerus depends on a biyas issur, only that the man and woman must be arayos. So too, it would seem, artificial insemination from another man should create a mamzer.

R' Shlomo Zalman concedes that according to Rabbeinu Peretz (quoted by the Bach, above) such a child would not be a mamzer. How would R' Peretz answer Tosfos' question? Tosfos indeed offers another answer – but doesn't prefer it – that the Gemara means he would be a mamzer only midirabonon. Alternatively, some say that cohabiting with a non-Jew is prohibited by the Torah, from the possuk, "You shall not give your daughter to his son" (Devorim 7:3). Thus, mamzerus would indeed require biyas issur, and artificial insemination won't produce a mamzer (see at length Minchas Shlomo Vol. 2:124).