***Tosefta ki-fshutah*, *Bikkurim,* 2, nt. 42, 43**

**42. Whether he is a man or she is a woman.** It would seem from the flow of the language of the Tosefta below (according to the tradition of the Tosefta and the early authorities) that a hermaphrodite (as opposed to a *tumtum* [a person of indeterminate sex because the reproductive organs are covered over and sealed up]) is a separate gender, neither man nor woman. Since the Sages did not discern any definitive signs of either masculinity or femininity, they defined it as a separate gender. R. Yosei disagrees with the first, anonymous *tanna* above, who holds that a hermaphrodite is either a man or a woman; according to R. Yosei, even if *teruma* touched both a white and a red excretion of his simultaneously, it is not burned, as he is neither man nor woman. Similarly, he cannot exempt others from their obligation in Grace after meals, even if they are women (see what I wrote above, p. 82), because he is neither man nor woman. This is the opinion of Nahmanides on Yevamot 83a (final booklet, ibid) and in *Hilkhot Bekhorot* chap. 6, 58. R. Aharon Halevi writes similarly on Niddah 28a (cited by R. Yom Tov ben Avraham Asevilli, ibid. 28a- end). R. Yom Tov ben Avraham Asevilli wrote (ibid.): And I heard that R, Meir Halevi of blessed memory countered the opinion of R. Samson of blessed memory, saying that according to the opinion that holds that a hermaphrodite is a separate gender, he is entirely a distinct gender. But R. Samson explained in his commentary that according to R. Yosei, he is either a man, a woman or a separate gender. Therefore, his mother observes the laws of impurity following in birth in accordance with the possibility of impurity due to the birth of a male child, and in accordance with the possibility of impurity due to the birth of a female child and with the possibility of the impurity of a menstruating woman. Similarly, if one says that he is a nazirite if this is neither a man nor a woman, he is a nazirite. According to his interpretation, there is a doubt involving three possibilities in the case of a hermaphrodite. On the other hand, according to the first, anonymous *tanna*, there is only a doubt involving two possibilities: the possibility that he is a man and the possibility that he is a woman. See further *Turei Even* on Megillah, 20b.

The Tosafists explained in the Tosafot on Yevamot that according to the first, anonymous *tanna*, a hermaphrodite is partly male and partly female; whereas according to R. Yosei, he is either male or female. They further offered an explanation, according to which R. Yosei does not disagree with the first, anonymous *tanna* (see there and the Tosafot on Niddah, ibid.).

The Tosafists explained in the Tosafot that each *tumtum* is either a definite male, or a definite female; but he is covered over. Therefore, if he is cut open and turns out to be male, he has the status of a male retroactively. And if she is cut open and turns out to be female, she has the status of a female retroactively (see Yevamot 83b and Bekhorot 42b- end). By contrast, in the case of a hermaphrodite, the doubt will always remain. According to R. Samson, ibid., the meaning is that a *tumtum* is not in doubt of being a distinct gender; rather, he is either a definitive male or a definitive female.