

14.1.7

8b (אמר ר"א) → 9b (טענת דמים)

1. וְאֵת עֶשְׂרֵת חֲרִיצֵי הַחֶלֶב הָאֵלֶּה תְּבִיא לְשֵׁר הָאֵלֶּף וְאֵת אַחֲדָה תִּפְקֹד לְשֵׁלֹם וְאֵת עֶרְבָתָם תִּקַּח: שמואל א פרק יז פסוק יח

I פתח פתוח מצאתי claim

a ר"א – he is believed to the effect that she is prohibited to him

i assumptions:

- 1 assumption1: we believe him to be telling the truth
- 2 assumption2: we believe him to understand what a פתח פתוח is

ii challenge: should be a ספק ספיקא

1 doubts:

- (a) first doubt: unclear if the ביאה happened after קידושין or before
- (b) doubled doubt: even if it happened after קידושין, perhaps she was raped

2 defense1: if she is an אשת כהן (even if raped – prohibited to him – 1 ספק)

3 defense2: if he betrothed her before the age of 3 (the ביאה must have taken place after קידושין – 1 ספק)

iii challenge: that a man can forbid a woman to him by his own declaration is already taught – if he claims to have been מקדש a woman but she denies it, he is banned from her kin but she is permitted to marry his kin.

1 Answer: in that case, he claims certainty; in our case, we might argue that he doesn't understand a פתח פתוח – קמ"ל – פתח פתוח

iv contradiction: ר"א stated that a woman only become אסורה to her husband through the prerequisites of סוטה (warning, seclusion) – just as happened with דוד ובתשבע

1 internal contradiction: there was no קנוי וסתירה in that case – and she wasn't prohibited to him!

2 Answer: ר"א infers from her not being prohibited to him that without קנוי וסתירה, no איסור can be effected

3 Challenge: there are surely other ways that she becomes prohibited – like 2 עדים to adultery

4 Reformulation: she cannot become אסורה with 1 witness except via קנוי וסתירה – but 2 witnesses are valid; and פתח פתוח::2 witnesses.

(a) Tangent: why wasn't דוד prohibited to בתשבע?

(i) Answer1: it was a case of rape

(ii) Answer2: she was divorced (retroactively – when אוריה died) as per the דרשה on v. 1

5 Support (אביי): our משנה requires marriage just before דין מושב בית דין so that he won't cool down.

(a) Clarification: if he wants to pay her the כתובה – let him do so; rather, he wants to forbid her:

(i) Claim: must be פתח פתוח (and he is believed)

(ii) Counter: perhaps it is a claim that there was no blood (טענת דמים)

b שמואל: he is believed to the effect that she loses the כתובה

i challenge: (רב יוסף) this is an explicit משנה:

1 משנה: if he eats with his father-in-law (before marriage) in יהודה without witnesses, he cannot claim a lack of virginity (at the marriage) since he is allowed to be secluded with her

(a) inference: but in גליל, where they are not secluded until marriage, he is believed

(i) Claim: must be פתח פתוח (and he is believed)

(ii) Counter: perhaps it is a claim that there was no blood (טענת דמים)