

19.02.05; 45a (איתמר נפלה לפני אחיו ליבום) → 46a (צריכה קידושין לדעת אביה)

1. שארית ישראל לא יעשו עולה ולא ידברו קזב ולא ימצא בפייהם לשון תרמית כי המה ירעו ורבעו ואין מחריד: צפניה ג, יג
 2. כחמץ לשנים וכעשן לעינים פן העצל לשלחיו: משלי פרק י פסוק כו
 3. וכי יפתה איש בתולה אשר לא ארשה ושכב עמה מהר ימתנה לו לאשה: אם מאן מאן אביה לתתה לו כסף ישקל כמהר הבתולות: שמות כב: טו-טז

- I Continuation of our discussion of a אביה שלא לדעת שנתקדשה
- a *What happens if:* her husband then dies and she falls to the brother for ייבום:
- i זיקה she performs מיאון to his מאמר but not the זיקה
- 1 explanation: if the brother performed מאמר, she requires ומאון גט, חליצה ומאון
 - (a) גט: perhaps father only agreed to the second marriage (normal marriage, not ייבום)
 - (b) חליצה: perhaps father only agreed to first marriage (מאמר ignored)
 - (c) מאון: perhaps father agreed to neither
 - (i) and: without מאמר, people will think that קידושין with her sister are totally invalid (as above)
 - 2 but: if the brother didn't perform מאמר, she only requires חליצה, not מאון
 - (a) reason: all know that קידושי אחות חלוצה דרבנן (as per ר"ל's recall of רבי's inference from ד:ח: יבמות ד:ח:)
- b story: 2 fathers drinking together, father of boy offered wine to father of girl for קידושין of daughter to son
- i ruling (רבינא): even if we raise the concern that the father may have been agreeable (above), we don't consider that the son may have been agreeable
- 1 question: perhaps son appointed father as שליח
 - (a) answer: noone is so brazen as to appoint his father as his agent
 - 2 question: perhaps son let father know that he was interested (and he acted on son's behalf)
 - (a) answer: חיישינן שמה נתרצה האב ושמאל רבינא explicitly stated that he rejects רב's opinion that האב
- c Further limitations on שמע נתרצה האב
- i Story: man was מקדש a woman with cheap bundle of vegetables in שוק
- 1 Ruling (רבינא): even רב ושמאל only raise the concern if the קידושין were done in a dignified manner
 - (a) Explanation: both the place (שוק) and vehicle (cheap vegetables) are a lack of dignity
- ii Story: dispute between wife and husband as to whose relative would marry their daughter
- 1 Upshot: she forced him to agree that it would be her relative and they made a feast to celebrate
 - 2 In the meantime: one of his relatives gave her קידושין without father's express consent
 - 3 Ruling: we don't raise concern שמע נתרצה האב
 - (a) Reason1: v. 1 – basic commitment to keeping one's word
 - (b) Reason2: a person wouldn't make a party for naught
 - (i) Split the difference: if there had been no feast
- II Related question: אכילת תרומה (קידושין vis-à-vis) נישואין שלא לדעת אביה (after proper קידושין)
- a Case: father accepted her קידושין, went abroad and she married him without his consent
- i רב: she eats until her father returns and protests the marriage
- ii ר' אסי: she doesn't eat – lest her father return and protest (and retroactively she was a (דרבנן) eating זרה (תרומה זרה)
- 1 case: רב disallowed as per ר' אסי's concern (against his own leniency)
 - 2 note: רב agrees that if she dies in the interim, the putative husband doesn't inherit – המע"ה
- b wrinkle: what if father was present and was silent
- i ר' אסי: she certainly eats (even according to ר' אסי) - his silence is implied consent
- ii ר' אסי: she doesn't eat (even according to רב) - his silence is understood as anger
- c twist: what if she accepted קידושין on her own as well as נישואין?
- i ר' אסי: she doesn't eat (!)
- ii ר' אסי: she eats תרומה (!)
- 1 amazement (עולא): read v. 2 in re: רב's rulings– if מקודשת, who eats מה"ת may not eat, certainly here...
 - (a) defense: his silence at קידושין renders her (sort of) a "living orphan" and his consent is no longer needed
- III Related question: can a קטנה who accepted קידושין on her own back out?
- a רב: she (or father) can back out
- b ר' אסי: only father can back out
- i challenge: v. 3 – she can also refuse
- ii answer: case where the פתוי was just זנות (but if לשם אישות, she can't retract)
- 1 support: מהר ימהרנה – she needs new קידושין
 - (a) Rejection (אביי): teaches that she needs לדעת אביה קידושין