

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 כז
 3. וכי יפתה איש בתולה אשר לא ארשה ושכב עמה מהר ימתרנה לו לאשה: אם מאן מאן אביה לתתה לו כסף ישקל כמהר הבתולה: 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 and חליצה
 - (a) *ט:* 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)
- 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 ור"ב's opinion that he rejects ושמואל רבינא explicitly stated that
- 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 ושמואל 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 שלא לדעת אביה (after proper קידושין vis-à-vis נישואין)

- 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 *תרומה זרה (דרבנן):* she doesn't eat – lest her father return and protest (and retroactively she was a (דרבנן) eating 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 *רב:* 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 *רב:* 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