

מאי שנא רישא ומאי שנא סיפא –

What is the difference between the רישא and the סיפא?!

OVERVIEW

The (לא תנשא) ואם נשאת is the דין of ספק קדושין תרי ותרי states that by a ברייתא גמרא. The (ואם נשאת תצא) (even) is the דין of ספק גירושין תו"ת. If it is a תצא. לא תצא challenges this ruling and asks מ"ש רישא ומ"ש סיפא. The דין should be the same by ספק קדושין and ספק גירושין. Our תוספות is puzzled by this comparison; it should seem obvious that by ספק קדושין we should be more lenient (for there is a חזקת פנויה) than by ספק גירושין (where there is a חזקת א"א).

תוספות asks:

ואם תאמר שנא וישא דרישא אית לן לאוקמה בחזקת פנויה וסיפא בחזקת אשת איש -
And if you will ask, it is indeed much different. The רישא and the סיפא are very different. **For in the case of the רישא we should determine her as being in the presumptive status of a פנויה, and in the סיפא we should establish her in the presumptive status of an אשת איש.** In the רישא where the עדים are arguing whether she was נתקדשה or not; if we cancel out the עדים she is בחזקת פנויה. In the סיפא where the עדים are disputing whether she was נתגרשה or not; if we cancel out the עדים she is בחזקת אשת איש. Therefore by a ספק קדושין if תצא (for she is בחזקת פנויה) and by a ספק גירושין if נשאת (for she is בחזקת א"א). What is the question מ"ש רישא ומ"ש סיפא?!

תוספות answers:

ויש לומר דברישא אף על גב דאית לן לאוקמה בחזקת פנויה -
And one can say, that in the רישא (in the case of ספק קדושין), even though that we should establish her בחזקת פנויה (and מדאורייתא she should [even] be permitted [to marry, and certainly] to remain with her new husband) -
מכל מקום תרי ותרי ספיקא דרבנן היא כדמוכח בפרק ד' אחין (יבמות דף לא, א ושם) -
Nevertheless a case of תרי ותרי even when there is a חזקת היתר, remains a - פרק ד' אחין in גמרא as is evident from the ספק איסור לחומרא, מדרבנן
הוה לן למימר תצא מדרבנן -

And therefore we should have ruled in the רישא (in the case of ספק קדושין), that the woman should be תצא from her new husband מדרבנן. Why is it that in

¹ the (מדרבנן at least) רישא, and not in the תצא we rule סיפא.

offers an alternate explanation:

ויש מפרשים כיון דלא מפליג בין באו עדים עד שלא ניסת לבאו עדים משניסת -

And others explain that since the ברייתא did not differentiate (neither in the רישא² nor in the סיפא), whether the האוסרים came and testified before she remarried, or whether they came after she remarried; the rule is always the same -

שמע מינה דלאו רבי מנחם בר יוסי³ היא אלא רבנן⁴ -

We derive from this that the author of the ברייתא is not רמב"י, but rather רמב"י who argue with the רבנן

אם כן סיפא נמי אמאי תצא⁵ הא שמעינן להו דאמרי לא תצא -

If this is so that the ברייתא is according to the רבנן of רמב"י, then in the סיפא as well (the rule should be תצא), why is she תצא?! We know that the רבנן of רמב"י maintain that in a case of ספק גירושין the rule is לא תצא. Why does this rule ברייתא⁶?

SUMMARY

A אסור מספק מדרבנן with a חזקת היתר of תו"ת, is nevertheless אסור מספק מדרבנן. Therefore the גמרא asks that by a ספק of תו"ת by קדושין, the דין should be תצא. Alternately since the רבנן maintained previously that by a ספק of תו"ת by גירושין,

¹ It seems that the question of "יש רישא ומ"ש" is not that they are (exactly) the same; but rather that the דין should be the same.

² See רע"א that the ראייה is from the רישא; however in the סיפא there is no need to be מפליג since the לשון of לא משכנות הרועים אות תשכב indicates that it is in a case of נשאת ואח"כ נשאת ואם נשאת תצא.

³ Previously (on כב, דף) רמב"י ruled that in the case of תרי ותרי (by מת or נגד) if the האוסרים came after she remarried then תצא, but if they came before she remarried then the דין is תצא.

⁴ It appears (at least according to these מפרשים) that the question (that שנא ושנא since by גירושין there is a ר' מנחם בר יוסי of תצא follows the view of יוסי) is only if we assume that this ברייתא of תצא maintains תצא if נשאת ואח"כ נשאת ואם נשאת תצא. However the ברייתא cannot follow the view of the רבנן since they maintain that if נשאת (in any event) the rule is תצא. The י"מ say that the ברייתא cannot follow the view of רמב"י since no distinction is made between נשאת ואח"כ נשאת ואם נשאת תצא. Therefore the גמרא rightfully asks סיפא (בחזקת א"א) since she is א"א (and you cannot answer that in the תצא since she is א"א) since the רבנן disregard this חזקה and maintain תצא by לא תצא גרושה וכו'.

⁵ The גמרא asks סיפא ומ"ש רישא ומ"ש; which indicates they should be the same. It seems that the first פירוש explains why the רישא should be like the סיפא (תצא); and the י"מ explain that the סיפא should be like the רישא. See 'Thinking it over' # 2.

⁶ See וכו' who questions this פירוש. This ברייתא can indeed follow the שיטה of the רבנן; however, in the previous ברייתא she married מעדיה and says לי ברי, therefore תצא; however in this ברייתא she married מן השוק, therefore the דין is תצא. One of the commentaries explains that if she was then the expression לא תצא נשאת ואם נשאת תצא is not appropriate. It is obvious that she cannot remarry, and equally obvious that even if she remarried she must leave her husband. ועי' עוד במפרשים.

לא תצא; the same should apply here.

THINKING IT OVER

1. According to the **יש מפרשים**, if this **ברייטא** would follow the opinion of **מ"ש רישא ומ"ש סיפא**, would there be an answer to the question **רמב"י**? Explain!
2. **תוספות** seems to be contradictory.⁷ In the first answer it is assumed that in both cases the **דין** is **תצא**. However in the **מ"מ** it is assumed that in both case it should be **לא תצא**!

⁷ See footnote # 5.