

## לא צריכא באשת כהן – It was necessary only for the wife of a *Kohain*

### OVERVIEW

The גמרא asked why does ר' אלעזר rule that if a husband claimed she is forbidden to him, since it is (merely) a ספק ספיקא, it may have not been תחתיו and it may have been באונס. The גמרא answered that ר"א was discussing an אשת כהן who is אסורה לבעלה even if it was באונס, so therefore, since there is only one ספק, we are מחמיר. Our תוספות explains why we are מחמיר.

asks: תוספות

ואם תאמר ונוקמה אחזקתה שהיא כשרה לכהונה<sup>1</sup> ונימא דלאו תחתיו זינתה<sup>2</sup> –

And if you will say; but let us place her on her presumptive status that she is fit for כהונה and therefore let us say that she was not מזונה while she was married to him, but rather she was מזונה before the אירוסין, so she is permitted to her husband the כהן.

answers: תוספות

ויש לומר דאדרבה אית לן למימר דהשתא נבעלה דאוקמה אחזקת הגוף<sup>3</sup> שהיתה בתולה:

And one can say; on the contrary we should assume that she was נבעלה now (as recently as possible before the נישואין) since we should place her on the חזקה of her body that she was a בתולה.

### SUMMARY

The חזקת כשרות is stronger than the חזקת הגוף.

### THINKING IT OVER

1. חזקת כשרות לכהונה<sup>4</sup> since she has a מותרת לבעלה כהן תוספות asks that she should be. Why was it necessary for תוספות to mention the לכהונה חזקת כשרות, he could have simply said she has a חזקת כשרות?!<sup>5</sup>

<sup>1</sup> This woman had a חזקת כשרות לכהונה before this claim of פתח פתוח (in fact she was מקודשת לכהן), therefore since there is a ספק whether she was מזונה תחתיו or not, her חזקת כשרות should resolve the ספק (that she was not תחתיו, and) that she should continue to be מותרת לכהונה as her status was before the ספק arose. See 'Thinking it over' # 1.

<sup>2</sup> A woman becomes a זונה and is אסורה לכהונה only if she is נבעלה לפסול לה (if she is אסורה to the בעל because she is an איש as in our case or because he is a ממזר or her relative, etc.) but not by a הפנייה.

<sup>3</sup> She was born a בתולה, and since we do not know when this status changed, we assume that until we know for certain that her status changed, she retains her initial status as a בתולה, therefore since we first became aware of her change in status now (when the husband made this claim), we assume that she retained her בתולה status up to the last moment when we need to assume that her status changed (some time immediately prior to this claim of פתח פתוח while she was תחתיו). See 'Thinking it over' # 2.

2. answers that she has a חזקת הגוף that she was a בתולה.<sup>6</sup> However there is also a contradictory חזקת הגוף that she is now a בעולה, we should therefore assume on account of this חזקה דהשתא that she was a בעולה all the time in the past (even before the קידושין) until we know for sure that she was a בתולה. This חזקה דהשתא (which indicates that she was נבעלה before the קידושין) should combine<sup>7</sup> together with the חזקת כשרות לכהונה to override the חזקת הגוף (דמעיקרא) that she was a בתולה (עד השתא), and permit her to her husband!<sup>8</sup>

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<sup>4</sup> See footnote # 1.

<sup>5</sup> See footnote # 4.) (See following ואי פרדס יצחק אות מה and סוכ"ד אות נה.)

<sup>6</sup> See footnote # 3.

<sup>7</sup> Even if we usually maintain that a חזקה דמעיקרא (like the חזקת בתולה) is stronger than a חזקה דהשתא (that בעולה), nevertheless combined with the חזקת כשרות לכהונה the חזקה דהשתא should overpower the חזקה דמעיקרא.

<sup>8</sup> See אילת אהבים and פנ"י.