

Mishnah: He said, She said

- Introduction: We have many factors to consider, in deciding whom we believe:
 - *Bari v'shema, bari adif* Definite knowledge
 - *Chazakah* Presumed status¹
 - *Migo* They could have made a stronger claim
 - *Oki mammona b'chezkat mareih* Foregoing gain is better than causing loss²
- She says it was rape after kiddushin; he says it was before kiddushin. Whom do we believe?
 - Rabban Gamliel/Rabbi Eliezer – Her claim is believed³
 - Rabbi Yehoshua – She has a *chazakah* of non-betulah projected backward to before the marriage

Gemara: An exploration of *bari v'shema* when they interact with other factors, including *chazakah*

- We start with a case from elsewhere: "You owe me 100". "I don't know."
 - Rav Yehudah/Rav Huna – Obligated to pay, because of *bari*
 - Rav Nachman/Rabbi Yochanan – Exempt from paying, because of *oki mammona*⁴
- Abbaye: The position of Rav Yehudah/Rav Huna, matches Shemuel regarding paternity:
 - Mishnah (13a): She is pregnant and says it's a kohen, Rabban Gamliel/Rabbi Eliezer believe her
 - Rav Yehudah said that Shemuel rules that way.
 - Rav Shemuel bar Yehudah said to Rav Yehudah: Shinina!⁵ Of course; you told us that Shemuel says this even regarding our mishnah (about claiming the ketubah of a betulah); you adopt *bari* over *oki*!
- Can we match up the 100/betulum debates?
 - Would Rav Yehudah/Rav Huna re 100 match Rabban Gamliel on betulum to accept *bari*?
 - Would Rav Nachman/Rabbi Yochanan re 100 match Rabbi Yehoshua on betulum to take *chazakah*?
 - No 1: Rav Nachman could agree with Rabban Gamliel on betulum, because of *migo*
 - No 2: And Rabban Gamliel might agree with Rav Nachman here to take *chazakah*; in the betulum case, there was *chazakah* on both sides
 - And indeed, it makes sense to pair up Rabban Gamliel and Rav Nachman because we follow Rav Nachman on financial issues, and yet Shemuel says to follow Rabban Gamliel in our mishnah.

1. Guthrie, Rachlinski & Wistrich, *Inside the Judicial Mind*, 86 Cornell L. Rev. 778 (2000-2001)

Framing also has influenced the development of legal doctrine. When ownership of a commodity is in doubt, the courts traditionally favor those who hold possession of the good—even when possession is arbitrary. For example, if a seller contracts to sell a car to two different buyers, courts will often award permanent ownership to the party holding possession at the time the suit is brought.

2. Teshuvot haGaonim, Harkavy edition, #405

"שינאנא... פרשו בעל שינים כי אמרו שיניו שלרב יהודה היו גדולות ביותר. ודילמא הוא ידע רב יהודה באותן עתים "שינאנא" והוא ידע רב פפא סודני. ויש שנושאין עצמן לומר דכואת שמואל ורבא לא הו קארו שמי לתלמידיהון כי הני. והאיי שינאנא ששונה הלכות או ששוננין טעמיו. והאיי סודני איש סודי תורה. והני מילי בעלמא אינון. שינאנא ברור בלשוננו אפילו בפי נשים וקטנים שכל גדול שינים כך קוראין אותו. וגם סודני אינו מכוער לקרוא לבן כפר עירני וסודני:

3. Talmud, Shabbat 152a

תנא משמיה דרבי מאיר: דוק בככי ותשכח בניגרי, שנאמר ונשבע לחם ונהיה טובים ורעה לא ראינו. אמר ליה שמואל לרב יהודה: שינאנא, שרי שקיך ועייל לחמך.

¹ Note that there are two relevant kinds of *chazakah*: Extending the known prior state forward, and Applying the current state backward

² This may be a form of *chazakah*, and that is how the gemara will treat it. Another way to look at it is a psychological concept. In that sense, it affects secular jurisprudence as well; see Guthrie, Rachlinski & Wistrich, *Inside the Judicial Mind*, 86 Cornell L. Rev. 778 (2000-2001)

³ We assume at the outset that this is because of *bari v'shema*, but the gemara will expand on this (Rashi)

⁴ The one who says "I don't know" will have a rabbinic obligation to swear that he doesn't know [shevuat heset] (Rashi)

⁵ Shinina may mean "sharp one" or "one with the big teeth"; see Teshuvot haGaonim 405, and Shabbat 152a