

13.2.1

17a (משנה א') → 18b (בכדי לא מקעה)

Note #1: in order to add a measure of צניעות to ייבום, instituted a formal betrothal process, akin to קידושין, which must precede any act of ייבום. This process is known as מאמר and creates an independent legal bond between the יבם and שומרת יבם.

Note #2: the notion of זיקה means "binding" and implies that the נפילה creates a bond between יבם and שומרת יבם (or only the one יבם). The implications of זיקה obtain in עריות, such that a זקוקה may be considered related and her mother, sister etc. may be אסור to the יבם.

1. כי יִשְׁבוּ אֲחִים יַחְדוֹ וּמֵת אֶחָד מֵהֶם וּבֵן אֵין לוֹ לֹא תִהְיֶה אִשְׁתּוֹ הַמֵּת הַחוּצָה לְאִישׁ זָר יִבְמָה יָבֵא עֲלֶיהָ וּלְקַחָהּ לוֹ לְאִשָּׁה וְיִבְמָה: דְּבָרִים כֹּה, ה
2. שְׁנַיִם עֶשֶׂר אֲנָחְנוּ אֲחִים בְּנֵי אָבִינוּ הָאֶחָד אֵינָנוּ וְהַקָּטָן הַיּוֹם אֶת אָבִינוּ בְּאֶרֶץ כְּנָעַן: בְּרֵאשִׁית מִב, לֵב
3. עֲרוֹת אִשְׁתּוֹ אֲחִידָה לֹא תִגְלַה עֲרוֹת אֲחִידָה הוּא: וַיִּקְרָא יִח, טז
4. וְשָׁב הַפֶּהָן בַּיּוֹם הַשְּׂבִיעִי וְרָאָה וְהָנָה פְּשָׁה הַנְּגַע בְּקִירַת הַבַּיִת: וַיִּקְרָא יִד, לט
5. וְבָא הַפֶּהָן וְרָאָה וְהָנָה פְּשָׁה הַנְּגַע בְּבַיִת צְרַעַת מִמְאֲרַת הוּא בְּבַיִת טָמֵא הוּא: וַיִּקְרָא יִד, מד
6. וַיֹּאמֶר אֲבָרָם אֵל לוֹט אֵל נָא תְהִי מְרִיבָה בֵּינִי וּבֵינֶיךָ וּבֵין רַעֲיִי וּבֵין רַעֲיִךָ כִּי אֲנִישִׁים אֲחִים אֲנָחְנוּ: בְּרֵאשִׁית יג, ח

I. (אאשלה"ב) – אשת אחיו שלא היה בעולמו: example of משנה א'

a. Brothers 1&2 coexist: sequence

i. Brother 1: marries wife #1 and brother #2 marries wife #2

1. Then: brother 1 dies
2. Then: brother 3 is born

ii. Option A: brother 2 performs ייבום on wife 1

1. Then: brother 2 dies

2. Subsequently: wife #1 is released as בעולמו, wife #2 is released as צרתה

iii. Option B: brother #2 performs מאמר (see note #1) on wife #1 and doesn't consummate

1. Then: brother #2 dies

2. Subsequently: wife #1 must perform חליצה with brother #3 but may not perform ייבום

iv. Note: wife #1 is called "ראשונה" OR "שנייה"

1. ראשונה: first one to have "fallen"
2. שנייה: was married twice (to brother #1 and to brother #2)

II. Source of limitation of אשת אחיו שלא היה בעולמו

a. VI: also teaches (from יחדו) that they must be united in נחלה, excluding maternal brothers

b. Alternate source: for paternal brothers – v. 2

i. question: why not infer from v. 3 – paternal OR maternal brothers are called אחים

ii. answer: אחים ~ אחיק

1. challenge: vv. 4-5 are seen as same (שיבה, ביאה), why distinguish between אחיק/אחיק?

2. answer: if closer analogue available, we attach to it

iii. question: why not infer from v. 6 (expanding to other family members, e.g. nephew/uncle)?

iv. Answer: v. 2 is most reasonable, since מופנה אחים is

c. Observation: v. 1 (יחדו) and v. 2 (אחים) are both necessary

i. Argument for יחדו: אחים alone might have included e.g. לוט (also מופנה – רעים would be sufficient)

ii. Argument for אחים: יחדו might have required both paternal and maternal brotherhood, קמ"ל

III. יש זיקה או אין זיקה (see note #2)

a. דב: if a שומרת יבם dies, (even) the single יבם may marry her mother

i. Implication: אין זיקה – even with only 1 brother, but only after death of יבם and שומרת יבם

1. reasoning: only after death, in order not to annul יבמין

a. explanation: if he married the mother, the שומרת יבם would then be un-יבם-able

b. דב יהודה: if a שומרת יבם dies, the יבם may not marry her mother

i. implication: יש זיקה – even with multiple brothers, even after death of יבם and שומרת יבם

1. observation: even death doesn't dissolve זיקה (which needs an affirmative act to annul)

c. support/challenge: ד:גי – if his יבמה dies, he may marry her sister

i. possible implication: ...but not her mother (support for יהודה רב, challenge to רב)

ii. rejection: may also allow her mother; since רישא ("sister") refers to a wife, where only her sister becomes permitted after death, the סיפא also mentions a sister

d. challenge to יהודה: ד: our משנה only requires חליצה in case of מאמר; w/o מאמר there should be no צרת אשת אחיו שלא היה בעולמו בזיקה, ייבום

- e. *defense*: (רבה) – even w/o מאמר, there would be a need for חליצה; stands *contra* ב"ש who maintain that מאמר is a full קנין (and would obviate חליצה as ערוה)
- f. *challenge to יהודה* ד' (אביי) brothers #1 coexist; brother #1 dies and then brother #3 is born, brother #2 dies before performing מאמר, wife #1 is פטורה but wife #2 is ייבום-able
- i. *observation*: if יש זיקה, wife #2 should be פטורה as בזיקה
 - ii. *defense*: authored by ר"מ who maintains אין זיקה
 - iii. *challenge*: ר"מ (anonymous author of ג:א) considers זיקת אחיות:
 1. *case*: brothers #1/2 married to sisters #1/2; die and sisters fall to brothers #3/4
 - a. *ruling*: both brothers perform חליצה, not ייבום
 - b. *observation*: if ר"מ holds אין זיקה, ייבום should be allowed
 - c. *defense*: ר"מ is concerned that after ייבום of 1, other brother may die, releasing other sister as אחות אשה and we don't want to annul יבמין מצות
 - d. *Observation*: ר"מ is concerned about ביטול מצוות יבמין even in case of ספק; ר"ג isn't concerned even in case of וודאי (not encouraging מאן in case of sisters)
- g. *אביי's observation*: about רב יהודה's approach: it is sourced in שמואל's ruling:
 - i. *If*: a man betrothes a woman and her sister falls to his brother, ריב"ב rules that we tell the potential husband to wait until his brother acts
 1. *implication*: יש זיקה and the potential wife is זקוקתו
- h. ד' זביד explicitly connected this ruling with שמואל's position that יש זיקה
- i. *Ruling*: if a שומרת יבם dies, no יבם is permitted to marry her mother)
 - ii. *צריכותא*: justification for both rulings of שמואל
 1. *If*: we only had שמואל's statement about שמתה יבמה, we would think that there is only זיקה with one brother
 2. *And if*: we only had שמואל's ruling in favor of ריב"ב, we would assume זיקה only while יבמה is alive