

## 13.2.2

18b (משנה ב') → 20a (דאית ליה היתירא)

1. כי יִשְׁבוּ אֲחִים יַחְדָּו וּמֵת אֶחָד מֵהֶם וּבֶן אִין לוֹ לֹא תִהְיֶה אֲשֶׁת הַמֵּת הַחוּצָה לְאִישׁ זָר יִבְמָה יָבֵא עֲלֶיהָ וּלְקַחָהּ לוֹ לְאִשָּׁה: דְּבָרִים כה, ה  
2. וְאִשָּׁה אֶל אֶחָתָה לֹא תִקַּח לְצָרָר לְגִלוֹת עֲרוּתָהּ עֲלֶיהָ בְּחַיֶּיהָ: וְיִקְרָא יֵת, יח

- I. variation on אשלה"ב (brother #3 is born **after** brother #2 acts but before he dies)
- a. Brother 1: marries wife #1 and brother #2 marries wife #2
  - b. Then: brother #1 dies
  - c. Option A: brother #2 performs **יבום** on wife #1
    - i. Then: brother #3 is born
    - ii. Then: brother #2 dies
    - iii. Subsequently: wife #1 is released as בעולמו שלא היה בועלמה, wife #2 is released as צרתה
  - d. ר"ש disagrees – he may perform חליצה or יבום
    - i. ר"ש disagreed about א' משנה as well (מת, נולד ויבום)
      1. argument: our case is superfluous according to רבנן; must be taught to highlight polarity of positions (ר"ש allows even if ויבום, מת נולד ויבום disallow even if יבום ונולד)
      2. fallout: how does אשלה"ב play out for ר"ש?
        - a. Answer #1 – 1 brother, he dies and then only brother is born
        - b. Answer #2 – 2 brothers coexist, #1 dies, #2 does nothing, then #3 is born
      3. reasoning: ר"ש maintains יש זיקה and זיקה::marriage
        - a. therefore: once wife #1 falls to brother #2, she is considered his wife vis-à-vis brother #3 (who coexisted with #2, but not #1)
        - b. reasoning of רבנן: זיקה לואשה ויבמה – ויבמה דבגנן: first יבום continues beyond ליקוחין
      4. challenge #1: in case where #1 died, #2 did מאמר and then died, ר"ש requires "taking care" of both wives
        - a. inference: מאמר+זיקה do not constitute a clear-cut relationship
        - b. challenge: how can זיקה alone constitute a clear-cut relationship?
        - c. Defense: ר"ש only maintains זיקה::כנוסה with 1 יבום (here there are 2)
      5. challenge #2: 2 sisters who fall from 2 brothers – ר"ש exempts them
        - a. challenge: if ר"ש maintains זיקה::כנוסה, 1<sup>st</sup> one to fall should get יבום, 2<sup>nd</sup> פטורה
        - b. defense: they fell simultaneously (אפשר לצמצם)
    - ii. ר"ש only disagreed about ב' משנה (מת ונולד)
      1. Supporting ברייתא, distinction between מת נולד ויבום (פטורה) and מת נולד ויבום (חייבת)
  - e. Option B: brother #2 performs **מאמר** on wife #1 and doesn't consummate
    - i. Then: brother #3 is born
    - ii. Then: brother #2 dies
    - iii. Subsequently: wife #1 must perform חליצה with brother #3 but may not perform יבום
- II. Dispute between רבי/חכמים about מאמר
- a. יבום is valid if done בעל כרחא – derived from יבום
  - b. קידושין "normal" must be done מדעתה – derived from חכמים
- III. Reassessing position of רבנן – לואשה ויבמה – ולקחה לו לאשה עליה
- a. Challenge: why allow her to be divorced from יבום, should need חליצה?
  - b. Answer: לאשה לו לקחה
  - c. Challenge: our case, as well, she should be a "new wife" (supporting ר"ש)
  - d. Answer: יבמה
  - e. Question: rationale for different application?
    - i. Apply היתר (normal wife): to case of full-היתר (regular יבום)
    - ii. Apply איסור (consider her still connected to 1<sup>st</sup> husband): to case of איסור (אשלה"ב)
  - f. Challenge to ר"ש: if a man's paternal brother is married to his maternal sister, then another paternal brother was born and the man died, since the newborn entered a world where the wife was already liable for יבום, he should מייבם?
  - g. Answer: איסור אחיו has nowhere to "go", unlike איסור אשת אחיו which lifted by נפילה