

13.2.5

23b (משנה ו') → 24b (בבבוחזק)

Note: *מקדש 2 sisters or a woman and her daughter simultaneously. There is a well-known dispute between אב"י ורבא (קידושין נא.) as to whether such קידושין are valid and necessitate a גט (אב"י: valid) and is one of the 6 instances where רבא ורבא disagree and הלכה follows אב"י*

1. אשה זנה וְחַלְלָה לֹא יִקְחוּ וְאִשָּׁה גְרוּשָׁה מֵאִשָּׁה לֹא יִקְחוּ כִּי קֹדֶשׁ הוּא לְאַלְהֵינוּ: וַיִּקְרָא כֹהֵן, ז
 2. וְהָיָה הַבְּכוֹר אֲשֶׁר תֵּלַד יִקְוֶם עַל שֵׁם אָחִיו הַמֵּת וְלֹא יִמָּחָה שְׁמוֹ מִיִּשְׂרָאֵל: דְּבָרִים כֹּהֵן, ו
 3. וּמוֹלְדָתָהּ אֲשֶׁר הוֹלְדָתָהּ אַחֲרֵיהֶם לֹד יִהְיֶה עַל שֵׁם אָחִיהֶם יִקְרָאוּ בְּנִחְלָתָם: בְּרֵאשִׁית מַח, ו
 4. כִּי יֵשְׁבוּ אָחִים יַחְדָּו וּמֵת אֶחָד מֵהֶם וּבֶן אֵין לוֹ לֹא תִהְיֶה אִשְׁתּוֹ הַמֵּת הַחוּצָה לְאִשׁוֹ זָר יִבְמָה יִבֵּא עָלֶיהָ וְלִקְחָהּ לוֹ לְאִשָּׁה וַיִּבְמָה: דְּבָרִים כֹּהֵן, ה

- I. משנה ו' with one of 2 sisters and consequent confusion as to which one
- a. *Must divorce both*: each one could be אחות אשתו
 - b. *If he dies*: and has only 1 living brother, must perform חליצה on both
 - i. *Could not*: perform ייבום even on the 2nd one, since she is אחות חלוצתו
 - c. *Possible implication*: קשואמל"ב are valid (supporting אב"י; see note), since we require גיטין to both
 - i. *Rejection*: in our case, the מודושה was originally identifiable, then then confusion set in
 - d. *Purpose*: to teach ז' משנה – that if there are 2 brothers, only the 2nd one to act may perform ייבום on the one not receiving חליצה (as per below); otherwise, she is אחות זקוקתו מספק
- II. משנה ז' continuation of ו' with multiple actors
- a. *2 men*: were 2 מקדש sisters and then confusion set in (sequence – to avoid taking sides in קשואמל"ב)
 - i. *Both men divorce both women*: if they died childless:
 1. *If each had 1 brother*: each one is חולץ both women
 2. *If A had 1 brother and B had 2*: (A) the single brother perform חליצה on S1, S2
 - a. *Then*: B¹ performs חליצה on S1 and B² may perform ייבום on the S2
 - b. *If*: they performed ייבום (without consultation), we do not force separation
 3. *If each had 2 brothers*: A¹ performs חליצה on S1 and B¹ performs חליצה on S2
 - a. *Then*: A² may be מייבם S2 and B² may be מייבם S1
 - b. *If*: A^{1/2} performed חליצה neither B¹ nor B² may perform ייבום; rather B¹ performs חליצה on S1 then B² may perform ייבום on S2
 - c. *But if*: they performed ייבום (without consultation), we do not force separation
 - i. *Even כהנים*: even though v. 1 extends to חלוצה, this is an אסמכתא and דרבנן is איסור חלוצה לכהן; in case of ספק חלוצה, we don't force separation
 - b. *Needed*: to teach that even though we might have thought to forbid ייבום as a precaution against 1 brother, nonetheless we allow as long as חליצה happened first (→if she is the real wife, she is now מותר לישוק and may marry the other, non-related fellow's brother)
 - c. *Also needed*: to teach that we aren't concerned that he will perform ייבום first. Case distinct from ג:ג, where we forbid either brother #3 or #4 from marrying either sister, either due to זיקה or (לר"מ) because of our concern of nullifying יבמין מצוות

III. משנה חו' Ideal יבם is eldest; if a younger brother acted, it is valid

 - a. *Source*: מדרש הלכה on v. 2:
 - i. *הבכור*: teaches that the eldest should perform ייבום
 1. *Not necessarily*: the בכור, else the הלכה doesn't parse
 2. *Purpose*: for using "בכור"; just as בכור only gets his double portion בבבוחזק, similarly the brother who is מייבם only inherits his dead brother's estate בבבוחזק
 - ii. *אשר תלד*: excludes איילונית
 - iii. *יקום על שם אחיו*: for inheritance (not for naming, as per v. 3)
 1. *דבא*: if not for גז"ש, verse would have held literal meaning → child named after father
 2. *Various possibilities*: entertained to suggest that the only way to read the verse is נחלה
 - iv. *זלא יימחה*: excludes eunuch