

13,3,5

30b (משנה ח') → 32a (שקליה)

1. יגיד עליו רעו מקנה אף על עולה: איוב פרק לו פסוק לג
 2. ...על פי שני עדים או על פי שלשה עדים יקום דבר: דברים פרק יט פסוק טו **מפיהם, ולא מפי כתבם**
 3. כי ישובו אחים יחדו ומת אחד מהם ובן אין לו לא תהיה אשת המת החוצה לאיש זר **יבמה יבא עליה ולקחה לו לאשה יבמה: דברים כה:**

- I. חליצה ולא ייבום – any of the 15 עריות whose קידושין to the dead brother were in doubt – משנה ח'
- a. ספק קרוב לה, ספק קרוב לו) – if he threw קידושין to her but it was unclear to whom it was closer ספק קידושי ספק
 - b. גירושי ספק:
 - i. If he wrote the גט, but there are no עדים
 - ii. There are עדים on the גט, but no זמן
 - iii. There is זמן, but only 1 עד
 - iv. Omission: if he threw her a גט, and it was unclear to whom it was closer (ספק קרוב לה, ספק קרוב לו)
 1. challenge: why this omission? Why shouldn't she also require חליצה?
 2. answer (רבה): originally this woman (הצרת ערוה) was פטורה and available to the שוק – on account of ספק, we won't forbid her
 3. challenge (אבני): why not say the same about קידושי ספק? This woman was originally זקוקה and available for ייבום...
 4. defense: in that case, forbidding her is a חומרא
 5. challenge: this חומרא will lead to a catastrophic קולא:
 - (a) possibility #1: this same fellow will give קידושי ודאי to her sister OR
 - (b) possibility #2: another person will give this same girl קידושי ודאי
 - (c) consequence (of either scenario): since we forbid ייבום here, people will think that the original קידושין were ודאי → the 2nd קידושין were meaningless:
 - (i) either: he was מקדש his wife's sister (nothing)
 - (ii) or: he was מקדש an איש אשת (also nothing)
 - (d) and then: she will leave without a גט or marry that 2nd fellow's maternal brother (thinking there's no relation)
 6. defense: since we force חליצה, everyone knows that it's just a חומרא and the קידושין were ספק
 7. challenge: say the same about גירושי – force חליצה etc.
 8. defense: if we do that, we may end up allowing ייבום (thinking "if she has חליצה, she may do ייבום")
 9. challenge: apply the same concern to קידושין ספק
 - (a) explanation: let's say B1 married W and then had קידושי ספק with S1; we are ruling that if B1 dies, W needs חליצה from B2; aren't we concerned that B2 may then perform ייבום on W?
 10. defense: so what? Let her do ייבום – after all, W was always "set" for ייבום; the doubtful קידושין of S1 shouldn't derail that.
 11. challenge:
 - (a) ruling regarding a cave-in, where a man and his wife (his niece) died and we don't know who died first:
 - (b) possibility #1: he died first, the צרה goes free as צרת ערוה
 - (c) possibility #2: she died first, the צרה is זקוקה since the ערוה predeceased the brother
 - (d) ruling: חליצה
 - (e) Challenge: why don't we say that the צרה had a status of לשוק מותרת, don't derail that מספק
 - (f) Possible defense: חומרא
 - (g) Challenge: why aren't we concerned that it's a קולא לידי חומרא דאתי לידי קולא (ייבום → חליצה)
 - (h) Defense #1: גירושי are common, room for a גזרה
 - (i) Defense #2: in case of גירושי, people will suppose that the rabbis investigated and found the גט to be valid and that's why the צרה needs חליצה (then חליצה → ייבום); regarding the cave-in, everyone knows that noone has access to the sequence of deaths

- v. *Observation*: the omission is contradicted by the משנה in גיטין that notes the results of גירושין, (חולצת ולא מתייבמת) צרה as affecting the ספק קרוב לו/לה
1. *defense*: the context there is 2 sets of עדים, each testifying to different proximities → ספק דאורייתא
 2. *challenges*: perhaps our case is also 2 sets of עדים, in addition – 2 sets of עדים is a double-knockout and leaves status quo (as in נכסי דבר שטיא quo)
- vi. *rather*: אביי (using v. 1 – i.e. context is instructive) says that ספק קרוב לו etc. applies to גירושין just as קידושין
1. *לזבא*: slight variation – some of the items mentioned in גירושין don't apply to קידושין, but all of גירושין (ספק קרוב לו/לה) applies to קידושין
 - (a) "זהר" excludes the issue of זמן – which doesn't exist vis-à-vis קידושין
 - (i) *tangential question*: why is there no תקנת זמן in קידושין?
 - (ii) *Answer*: most of קידושין are done בכסף
 - (iii) *Additionally*: where would we leave the שטר קידושין?
 1. *possibility #1*: with her – but if she is מתחת בעלה, זונה she'll hide the שטר or erase it
 2. *possibility #2*: with him – but if she is family, he'll do the same
 3. *possibility #3*: with עדים – but if they don't remember the זמן and use the שטר to testify, they violate the sense of v. 2
 - (iv) *challenge*: use the same reasoning to reject זמן בגיטין
 - (v) *answer*: in גיטין, they're coming to "save" her (by proving that she was already divorced when she was זונה); in קידושין, they're coming to incriminate her
- II. זיקת שני יבמין: משנה טו
- a. *Setup*: 3 brothers (B1, B2, B3) married to 3 unrelated women (W1, W2, W3)
 - b. *Case*: B1 died, B2 performed מאמר on W1 and died:
 - c. *Ruling*:
 - i. *חליצה ד"ק* to both, on account of v. 3 – only someone with the זיקה from 1 brother has ייבום
 1. *challenge*: if the source is v. 3, then זיקת ב' יבמין is מה"ת and she shouldn't need חליצה
 2. *answer*: it's מדרבנן, as a precaution against giving ייבום to 2 women from one household
 3. *challenge*: if so, give ייבום to 1 and חליצה to the other
 4. *answer*: people will think that if 2 women come from 1 household, 1 needs ייבום and the other – חליצה
 - (a) *challenge*: let them think it (and do it!)
 - (b) *answer*: if the חליצה is first, he is already in the state of לא יבנה, אשר לא יבנה, at which point ייבום is לאו
 - (c)
 - ii. *ל"ש*: he may perform ייבום on either one and must do חליצה on the other
 1. *reason*: ממ"נ – if מאמר is a קנין, she is coming from house of B2; if not, only coming from house of B1
 - iii. *לזבא*: if B2 gave a גט to W1 after מאמר and then died:
 1. *version #1*: the צרה may perform ייבום, since the mini-זיקה was removed
 - (a) *however*: W1 is forbidden, as a precaution against a simple בעלת הגט (without מאמר)
 2. *version #2*: even W1 may perform ייבום
 - (a) *reason*: what he gave, he removed and we're back to earlier status