

13.3.6

32a (משנה ט) → 33b (רשעים גמורים)

Note: there is a general rule **איסור חל על איסור** – to wit, something that is **איסור** cannot become **more איסור**. Therefore, if an animal was a **טריפה** and then died without **שחיטה**, it doesn't also become classified as **נבילה** – it remains “merely” **טריפה**.

There are 2 **possible** exceptions:

- 1) **איסור מוסיף**: when the new condition generates additional **איסורים** on the body of the **איסור**. For instance, when a man's sister becomes married, by dint of her new prohibition on other men, **איסור אשת איש** applies to her brother as well.
- 2) **איסור כולל**: when the new condition generates **איסורים** on other bodies. For instance, $S1 \rightarrow B1$; at this point $S1$ is **אסורה** to $B2$ as **אשת איש** but $S2$ and $S3$ are not. When $B2 \rightarrow S2$, $S1$ now becomes **אסורה** as **אחות אשתו** as well, since that is an **איסור** that obtains vis-à-vis $S3$.

I משנה ט:

- a **setup**: $B1$ and $B2$ married to $S1$ and $S2$
- b **case**: $B1$ dies and then $S2$ dies
- c **ruling**: $S1$ is still **אסורה** to $B2$, since she was once **אסורה**
- d **observation**: this is obvious, compared to previous משנה when she was still included in the house
- e **explanation**: the first case was originally a lenient ruling... ממקומה...

II **איסור חל על איסור** – relations between $B2$ and $S1$ (אשת אח as well as [שלא במקום מצוה] as well as [ר"ש/ר' יוסי

- a **Base dispute**: ר"ש/ר' יוסי
 - i **ר"ש** – whichever **איסור** was generated first applies
 - 1 if $B1 \rightarrow S1$ was first, $B2$ is **חייב** on account of **אשת אח**
 - 2 if $B2 \rightarrow S2$ was first, $B2$ is **חייב** on account of **אחות אשתו**
 - 3 however, even if $B1 \rightarrow S1$ was first, **איסור אחות אשתו** (which is generated at $B2 \rightarrow S2$) is held in abeyance; when $B1$ dies, removing **אשת אח**, **איסור אחות אשתו** kicks in → **יבום** no
 - ii **ר' יוסי** (see note)
 - 1 when it is not **איסור מוסיף** (e.g. **חמותו** that became **אשת איש** or vice-versa), he only finds culpability on the first **איסור** to occur (depends if she married before or after becoming **חמותו**)
 - 2 when it is **איסור מוסיף**:
 - (a) **איסור חל על איסור** ר' יוסי **ד' אבהו**
 - (i) **Challenge**: This only applies if $B2 \rightarrow S2$ first (**איסור אחות אשתו**) then $B1 \rightarrow S1$ – (אשת אחיו) – since $S1$ is now **אסורה** to all the brothers (**מוסיף**); if $B1 \rightarrow S1$ was first, there is no **מוסיף**!
 - (ii) **Possibility #1**: but $S2$ then became **אסורה** to all the other brothers
 - (iii) **Rejection**: that is **איסור כולל** (see note)
 - (b) **ר' יוסי דבא** really rejects **איסור חל על איסור**, we just consider him to be a “**עבריין-דבא**” (for purposes of burying him with the utterly wicked)
 - 3 **Possible alignment**: dispute follows dispute of **בר קפרא** and ר' חייא (students of רבי) re 3 cases:
 - (a) **doing עבודה** in **שבת מקדש**
 - (i) Certainly he is culpable for **זרות** – question re: **שבת** (do we consider the allowance for **שבת** to be a blanket **היתר** or just for **כהנים**?)
 1. **note**: impossible to construct a case where the **שבת** **איסור** is **מה"ת**; **שחיטה** is acceptable if done by a **זר**, **הקטרה** and **איסורי טלטול** are merely **הולכה וקבלה** according to ר' יוסי, is a **לאו**
 - (b) **עבודה** **בהן טמא** who is also a **מום בעל מום** doing **עבודה**
 - (i) certainly culpable for **מום בעל מום** – question re: **טומאה** (do we consider the allowance for **טומאה** to be a blanket **היתר** or only for **תמימים**?)
 - (c) **העוף** **העוף** that went through **הערף** **מליקת הערף** (not **שחיטה**)
 - (i) certainly culpable for **אכילת קדשים** – question re: **נבלה** (do we consider the allowance of eating **שנמלקה** to apply to all, or just **כהנים**?)
 - (d) **ר' חייא** – in all cases, 2 **חיובים**
 - (e) **בר קפרא** – in all cases, 1 **חיוב**

- (i) analyzing their dispute:
1. *possibility #1*: dispute within ר' יוסי as to whether איסור כולל applies (all agree that ר"ש it doesn't)
 - a. *rejection*:
 - i. case (a) is כולל, since he was originally prohibited to do עבודה, but was allowed to do מלאכה; once שבת came, מלאכה generates איסורים towards other things;
 - ii. case (b) is כולל, since he was originally (as a בעל מום) prohibited from performing עבודה but allowed to eat קדשים; once he became טמא, his איסור expands to include אכילה
 - iii. however, case (c) cannot be כולל, איסור, the איסורים are generated simultaneously (with the העוף מליקת)
 2. *possibility #2*: dispute re status of איסור בת אחת (simultaneously occurring איסורים) **according to ר' יוסי** (which could be constructed in all three cases)
 - a. *note*: all agree that according to ר"ש, אין איסור חל על איסור, even בת אחת
 - b. *note*: all agree that all reject איסור כולל
 - c. *rejection*: ר' חייא could have heard רבי say "2" – following ר' יוסי; but how could בר קפרא swear that he heard רבי say "1" – making ר' חייא a liar – since there is no תנא who allows for איסור בת אחת (hence – no "2")
 3. *possibility #3*: dispute re status of איסור בת אחת according to ר"ש
 - a. *note*: all agree that according to ר' יוסי, both בת אחת and איסור כולל apply
 - b. *note*: all agree that according to ר"ש, איסור כולל does not apply
 - c. *challenge*: why does בר קפרא have to take an oath, considering that if the מחלוקת is within ר"ש's opinion, he is merely supporting ר"ש's general approach? (unresolved)
 - d. *analysis*:
 - i. ר' יוסי's perspective: when רבי was teaching, he taught ב"ק following ר"ש (1) and ר' חייא following ר' יוסי (2)
 - ii. ר' חייא's perspective: when רבי was teaching, he taught ר' חייא according to both – but ב"ק couldn't have ever heard (1)
 - iii. ר' חייא's explanation of ר"ש's oath: רבי only taught the first 2 cases, referring to a circumstance of איסור כולל, and אליבא דר"ש – he taught leniently (1); ב"ק identified the 3rd case (מליקה) and added it in, then, when he looked at all 3, saw that #3 could **only** exist בבת אחת and assumed that all 3 were taught that way → ר"ש exempts ר"ש from double-fault
 - iv. rejection of ר"ש's position (in this explanation): ר"ש/ר"ש in which ר"ש disagrees about the first 2 cases, but avoid the third; must be that ר"ש agrees regarding מליקה since it can only occur בבת אחת