

## 13.4.1

35b (משנה א') → 36b (קנה לוקח)

7. כי יִשְׁבוּ אַחִים יַחְדָּו וּמֵת אֶחָד מֵהֶם וּבֶן אֵין לוֹ לֹא תִהְיֶה אֲשֶׁת הַמֵּת הַחֹצֶה לְאִישׁ זָר יִבְמָה יָבֵא עֲלֶיהָ וּלְקַחָהּ לוֹ לְאִשָּׁה וְיִבְמָה: דברים כה-ה

- I 'א משנה – followed by discovery of pregnancy
- a if a live birth – חליצה is meaningless:
    - i he may marry her kin, she may his (non-fraternal) kin,
    - ii she may marry a כהן
  - b if miscarriage – חליצה is meaningful:
    - i he may not marry her kin, she may not marry his kin (קרובת חלוצתו)
    - ii she may not marry a כהן
    - iii requirement of new חליצה:
      - 1 חליצת מעוברת כשרה – ר' יוחנן
        - (a) reasoning: if we knew she would miscarry, it would be valid
        - (b) text: v. 1 – בן אין לו – this isn't called a child
      - 2 חליצת מעוברת פסולה – ר"ל
        - (a) reasoning: "if we knew" is a disregarded consideration
        - (b) text: ובן אין לו – investigate (אין → אין)
- II 'ב משנה – followed by a discovery of pregnancy
- a if live birth – must divorce and bring קרבן
  - b if miscarriage – remain married
    - i requirement for new ייבום (with same brother):
      - 1 ר"י: no need – ייבום מעוברת כשרה – as per above
      - 2 ר"ל (and ר' יוחנן according to אב"י): required
  - c if live birth but unclear from which brother, bring אשם תלוי and must divorce (child is כשר)
- III analysis of dispute between ר"ל/ר"י regarding ייבום מעוברת
- a defending positions against language of משנה:
    - i חומרא – כהונה ד"ל *contra* invalidation from
    - ii *Contra* ד"ל omission of "doesn't need a new חליצה" – parallel construction
    - iii *Contra* ד"ל יקיים - means יחזור ויבעול ויקיים
    - iv *Contra* ד"ל יקיים (without options of יוציא) – parallel construction
  - b Challenge from ברייתא: if, after ייבום, she is found to be pregnant, צרה isn't yet free - she may miscarry
    - i → ביאת מעוברת לאו שמיה ביאה
    - ii אב"י agrees regarding ביאה
    - iii רבא maintains his position (since חליצה::ייבום); read (as original presentation):
      - 1 if, after ייבום, she is found to be pregnant, she may give birth and ביאה ל"ש מעוברת (all agree in case of live birth) and the foetus doesn't release her until it is born
      - 2 ר"ל will respond as per our "repaired" גירסא ("she may miscarry")
      - 3 *anticipated challenge*: (to ר"ל) why not follow רוב נשים – who give birth (without miscarriage)
      - 4 *answer*: nonetheless, the child doesn't exempt the צרה until it is actually born
    - iv *support for* ד"ל משנה ruling about husband and 1 wife who go abroad and husband is reported dead
      - 1 *ruling*: צרה may not remarry or perform ייבום – perhaps traveling wife is pregnant
      - 2 *Proof*: why can't she perform חליצה (מספק) during 1<sup>st</sup> nine months and marry afterwards?
      - 3 *Defense#1*: certainly, she could also perform חליצה and marry afterwards –
        - (a) *Rather*: here, if it turns out that the traveling wife gave birth, she is now מותר לכהונה
          - (i) → we would need an announcement clearing the חליצה; may lead to misunderstanding, people thinking that מותרת לכהונה
      - 4 *defense #2*: text doesn't bar חליצה, only ייבום ונישואין
      - 5 *support for* ד"ל explicit ברייתא
      - 6 *final ruling*: we rule in favor of ר"ל (against ר' יוחנן) in 3 cases:
        - (a) 1: our case – פסולה – חליצת מעוברת וביאת מעוברת
        - (b) 2: pre-death division of property is valid **only** if he uses "מתנה" if he used "ירושה"
        - (c) 3: קנין פירות לאו כקנין הגוף דמי – the one with rights to the פירות (the son) is not considered the "owner"; his sale, if he predeceases his father, is null