

13.4.2

36b (בספק וחולקין) → 38a (אין הוולד של קיימא)

1. אל תחלל את בתך להזנותה ולא תזנה הארץ ומלאה הארץ זמה: ויקרא פרק יט פסוק כט
 2. אל תחריש על רעה ורעה והוא יושב לבטח אתך: משלי פרק ג פסוק כט

- I יוציא בגט – איסור מ"ס – איסור אשת אח דאורייתא – איסור to marry a pregnant or nursing widow/divorcee – and if he did, and may never marry her
- a רבא: synonomous with ר"מ's opinion:
- i אסור to marry a pregnant or nursing widow/divorcee – and if he did, and may never marry her
- ii *contra*: חכמים require divorce, but may return her after pregnancy/nursing period is over
- b אבבי: dissynonymity:
- i ר"א may only require divorce because he risked דאורייתא
- ii ר"מ may only require "never return" because תורה משל **יותר** לדבריהם
- c related ruling: רשב"ג (by implication) if a child dies within 30 days, נפל ספק
- i רבא (as per רבינא): if she's an ישראלית, אשת כהן, חולצת, אשת ישראל (preserve לכהונה) (as per רבא)
- ii רבא (as per משרשיא): in either case, חולצת (this was רבא's original ruling – he later ruled leniently)
- iii *application*: in the case (ר"מ/חכמים) above), would we waive the גט for אשת כהן?
- iv *Response*: dissimilar; in this case, we can rely on חכמים that it's not a נפל; there, all require גט
- v *Tangential ruling*: if he was מקדש an אלמנה/גרופה within 3 months and ran away, he may not need to write a גט and remarry, since his fleeing implied his willingness to wait until after 3 months to marry
- II Analysis of final clause: status of child who may be בן ז' לאחרון or בן ט' לראשון:
- a We don't follow the רוב of full-term pregnancies, since she wasn't "showing" after 3 months as per רוב
- III Status of ספק ממזר (our case)
- a הלכה כראב"י i.e. משנת ר' אליעזר בן יעקב קב ונקי: (premise: "אין ספק ממזר" – ראב"י)
- i ספק ממזר: ספקי יוחסין: הלכה כרב = הלכה כר"א (who maintains כר"א are not allowed to inter/intramarry): רבא may not marry ממזר or even another ספק ממזר (contra ת"ק who is lenient)
- ii ספק ממזר: ספקי יוחסין: הלכה כשמואל=הלכה כהלל (who maintains כהלל are allowed to inter/intramarry): אבבי may marry ממזר or another ספק ממזר (contra ת"ק who is stringent)
- iii observations of ספקות vis-à-vis ראב"י that may shed light on his ruling
- 1 v. 1 applies to someone who has multiple liaisons – ultimately, brother may marry sister, man may marry mother or daughter etc. – because they don't know (רבא interprets זימה differently)
- 2 a person ought not to marry women in different towns (same concern)
- (a) exception: famous people – they know who their father is
- (i) stories of אמוראים who, when traveling, had a "wife du jour" in order to allay the יצה"ר
1. *challenge*: need to wait 7 days from תביעה before ביאה
2. *answer #1*: they sent agents ahead to arrange match
3. *answer #2*: it was only בעלמא ייחוד
- 3 forbidden to marry a women if you intend to divorce her (v. 2) (evidently, unless she knows and is agreeable as per the stories cited above)

IV Inheritance of the **ספק בן אח**, **ספק בן יבם**

- a *Case #1*: If the **ספק** and the **יבם** (performed **יבום** on his mother) come to divide the dead brother's estate:
- i *Claims*: The **ספק** claims he is the son of the **מת**, the **יבם** claims he is his own son:
 - ii *Ruling*: **ממון המוטל בספק** (an unsolvable doubt) – split 50/50
- b *Case #2*: the **ספק** and the sons of the **יבם** come to divide the dead brother's estate:
- i *Claims*: The **ספק** claims he is the son of the **מת**, and the entire estate belongs to him; they claim he is their brother and gets an equal portion
 - ii *Ruling*: **ממון המוטל בספק** (an unsolvable doubt) – split 50/50 (**unlike** an inversion of the later **משנה** about **לאחרון** **ז' ספק בן ט' לראשון**, **ספק בן ז' לאחרון**)
- c *Case #3*: **ספק** and **בני יבם** come to divide **יבם's** estate after he and **ספק** divided dead brother's estate (as per case #1):
- i *Claims*: **ספק** maintains that he is a brother and should get an equal share; **בני יבם** maintain that he is the son of the original **מת** and gets nothing; he responds that if that's so, they should return the ½ that he split with the **יבם** originally
 - ii *Rulings*:
 - 1 **ר' אבא**: original ruling stands and now he is a **ספק** here
 - 2 **ר' ירמיה**: original division is reevaluated
 - 3 *possibly related case*: dispute between **אדמון** and **וחכמים** if someone had a field amidst 4 others and had an easement in one and returned to find that all 4 had been bought by one man and the easement was lost:
 - (a) **חכמים**: he has no claim
 - (b) **אדמון**: he can claim the shortest easement **ממ"נ**
 - 4 *suggestion*: attempt to align **ר' ירמיה** with **אדמון** and **ר' אבא** with **רבנן**
 - 5 *rejection*: **רבנן** have claim of "I could return all fields to original owners"; **אדמון** has claim of certainty that the path was here somewhere
- d *case #4*: **ספק** and **יבם** come to divide grandfather's estate
- i *Claims*: **ספק** claims to be son of dead (**ראשון**) man and they should divide equally; **יבם** claims him to be his son
 - ii *Ruling*: **יבם** gets all – אין **ספק** מוציא מידי וודאי
- e *Case #5*: **ספק** and **בני יבם** come to divide grandfather's estate:
- i *Claims*: **ספק** argues that he is the son of the original dead brother and gets ½; they claim him as a brother and he should divide equally with them (e.g. if there are 2 of them, he gets 1/3)
 - ii *Ruling*: ½ immediately goes to them; 1/3 immediately goes to him, remaining 1/6 is divided as **ממון המוטל בספק**
- f *Case #6*: grandfather and **יבם** vis-à-vis estate of **ספק**; grandfather and **ספק** vis-à-vis the estate of the **יבם**:
- i *Ruling*: **ממון המוטל בספק** - divide 50/50