

13.4.3; 38a (משנה ג') → 39a (קלה בעיניו להוציאה)

Note: when a woman enters a marriage, any assets she brings in are considered **נכסי מלוג** and, from the time of **נישואין**, she and her husband have an equal partnership regarding the value of these assets. If she wishes to "protect" her assets, she may designate some of the assets as **נכסי צאן ברזל**, in which case the husband, upon divorce/death, must return them based on their value at the time of marriage.

1. והביא האישי את אשתו אל הנהן... במדבר פרק ה פסוק טו  
2. כי ישובו אחים יחדו ומת אחד מהם וכן אין לו לא תהיה אשת המת החוצה לאיש זר יבמה יבא עליה ולקחה לו לאשה ויבמה: דברים כה:ה.

- I יבמה: status of the property of the יבמה
- a If she acquires property, she may sell and buy
  - b If she dies (as **שומרת יבם**) – disposition of her property:
    - i **יורשי הבעל, יורשי האב** (יורשי הבעל, יורשי האב) are divided between both houses (נכסי מלוג ב"ש)
    - ii **ב"ה**: everything stays in its place:
      - 1 נכסי מלוג – heirs of the woman (her father's house)
      - 2 כתובה וצאן ברזל – heirs of the husband
  - c If **ייבום** is performed, she is like a full wife – but the **כתובה** comes from the 1<sup>st</sup> husband's estate
    - i Full wife – now requires **גט** and may return her as any wife, (**אח איסור אשת אח** doesn't remain)
    - ii **כתובה** – since he was "given" this wife; but if there isn't enough in the 1<sup>st</sup> brother's estate, it comes from his – **שלא תהא קלה בעיניו להוציאה** – יבמה
- II Explanations for distinction between **רישא וסיפא**
- a **עולא**:
    - i **רישא** – she fell to **ייבום** from **אירוסין** → **זיקת אירוסין** makes her an **ארוסה**-minus; all belongs to her
      - 1 *proof*: **ב"ה** disallow a sale by a regular **ארוסה**; here they allow **לכתחילה**
    - ii **סיפא** – she fell to **ייבום** from **נישואין** → **זיקת נישואין** makes her a **נשואה**-minus; split
      - 1 *proof*: **ב"ש** invalidate a sale of a **נשואה**; here they maintain she splits
  - b **רבה**:
    - i *challenge*: if so, let them disagree about **פירות** while she's alive)
    - ii **רישא** – she's alive; since her status is **וודאי**, her claim is stronger and the sale is valid
    - iii **סיפא** – she's dead; everyone is a **ספק**, therefore it's either split or follows the contours of **חזקה**
  - c **אבוי**:
    - i *challenge*: since when do **ב"ש** maintain **וודאי** מידי **וודאי** וודאי, that they would agree in the **רישא**?
      - 1 *Proof*: man and heirs die, unclear who died first, **ב"ש** maintain that the **יורשים** split with the **בע"ח** (even though the **יורשים** are **וודאי**)
      - 2 *Defense*: **ב"ש** maintain that a **שטר** whose time has come is considered collected (i.e. makes holder of **שטר** considered **בנכסים** מוחזק)
        - (a) *Support*: **ב"ש** maintain that a **סוטה** who may not drink **מי סוטה** collects **כתובה** (v. 1)
      - 3 *Question on challenge*: why doesn't **אבוי** use this **משנה** as a challenge?
      - 4 *Answer*: thinks we may encourage **כתובה** in any case, due to **חינא**
      - 5 *Question #2*: why doesn't **אבוי** challenge from split of **כתובה** in our **משנה**?
      - 6 *Answer*: he reads **משנה** differently, such that the **כתובה** question wasn't addressed, just **נכסים**
        - (a) *Support* (**ר' אשי**): order of division indicates that **כתובה** was ignored in answer
    - ii **רישא**: property came to her as **שומרת יבם** – **יבם** has no claim
    - iii **סיפא**: property came to her while married to her first (now deceased) husband
      - 1 *premise*: **אבוי** must maintain that regarding **מלוג**, they are equal partners (→split)
  - d **רבא**:
    - i *challenge* (**רבא**): all agree that his control is greater than hers
    - ii *premise*: both cases, assets fell to her before **ייבום**
    - iii **רישא**: he didn't perform **מאמר**
    - iv **וודאי ארוסה** וספק **נשואה** makes her **נשואה** – according to **ב"ש**, **מאמר** makes her **נשואה**
  - e **ברייתות**:
    - i supporting **רבא** – in name of **ר"א**
      - 1 *challenge*: **ר"א** minimized **ב"ש**'s assessment of **מאמר**
      - 2 *defense*: perhaps only **vis-à-vis** **גט**, but she still is considered **נשואה** regarding property
    - ii supporting **אבוי** – in name of **בר חנינא**
  - f **רבא** supports **אבוי** (noting problem with **מתה**, as per challenge of **רבא**)
    - i wording of **עמה** ויוצאין **נכסין** indicates that in this case, she was married to **יבם**