

13.4.4

39a (משנה ה') → 40a (שמיר איכפת)

1. (ה) כי יִשְׁבוּ אֲחִים יָחֵדוּ וּמֵת אֶחָד מֵהֶם וּבֶן אֵין לוֹ לֹא תִהְיֶה אֵשֶׁת הַמֵּת הַחוּצָה לְאִישׁ זָר יִבְמָה יָבֵא עֲלֶיהָ וּלְקַחָהּ לוֹ לְאִשָּׁה וְיִבְמָה: (ו) וְהָיָה הַבְּכוֹר אֲשֶׁר תֵּלַד יִקְוֶם עַל שֵׁם אָחִיו הַמֵּת וְלֹא יִמָּחֶה שְׁמוֹ מִיִּשְׂרָאֵל: (ז) וְאִם לֹא יִחְפֹּץ הָאִישׁ לְקַחַת אֶת יִבְמֹתוֹ וְעַלְתָּהּ יִבְמֹתוֹ הַשְּׂעִרָה אֶל הַזְּקֵנִים וְאָמְרָה מֵאֵן יִבְמִי לְהִקְיָם לְאָחִיו שֵׁם בְּיִשְׂרָאֵל לֹא אָבָה יִבְמִי: דְּבָרִים פֶּרֶק כָּה פֶּסוּק הִז־
2. וְהִנּוּתֶרֶת מִמֶּנָּה יֵאָכְלוּ אֶהָרֵן וּבְנָיו מִצֹּת תֵּאָכַל בְּמִקּוֹם קֹדֶשׁ בַּחֲצֵר אֶהָל מוֹעֵד יֵאָכְלוּהָ: וְיִקְרָא פֶּרֶק וּ פֶּסוּק ט
3. וְאָכְלוּ אֲתֶם אֲשֶׁר בְּפֶרֶק בָּהֶם לְמַלֵּא אֶת יָדֶם לְקֹדֶשׁ אֲתֶם וְזָר לֹא יֵאָכַל כִּי קֹדֶשׁ הֵם: שְׁמוֹת פֶּרֶק כֵּט פֶּסוּק לָג
4. לֹא תֵאָפֶה חֲמֵץ חֲלָקִים נִתְתִּי אֶתָּה מֵאֲשֵׁי קֹדֶשׁ קֹדְשִׁים הוּא כְּחֻטָּאת וְכֹאֲשֵׁם: וְיִקְרָא פֶּרֶק וּ פֶּסוּק י

- I ייבום: hierarchy in משנה ה'
- ideally – גדול
 - if not, we continue asking each brother if he's willing to perform ייבום
 - if none of them are willing, we return to גדול for חליצה
- II משנה ו'
- if (one of) the brothers requested to wait until a brother achieved majority, returned from abroad or an incompetent brother – we pay no heed, rather direct him to act immediately
- III possible stand-offs (ריב"ל/ר' יוחנן) (קטן here means "younger", but he is of age)
- possibility #1: ביאת קטן vs. חליצת גדול – which is preferable
 - lemma #1: ביאת קטן is preferable – ideal is ביאה
 - lemma #2: חליצת גדול is preferable – the מצוה rests with the oldest
 - analysis: משנה seems to support ביאת קטן, because after the גדול refuses ייבום, we try the others
 - rejection: perhaps the גדול refused both – then we force him, since he is the "point man"
 - observation: reason we don't wait for the child to grow – not because ביאת קטן לאו כלום, but we don't delay חליצה
 - possibility #2: all agree that any ביאה is preferable; dispute as to whether there is any hierarchy of חליצה
 - lemma #1: חליצת גדול is preferable – the מצוה rests on him
 - lemma #2: no preference – only preference re: ייבום
 - analysis: "returning to גדול" in our משנה seems to support contention that his חליצה is preferred
 - rejection: we return after all of them refuse both וחליצה – as "point man", we force him to act
- IV Evolution of ייבום (ברייתא)
- Originally – ייבום was preferred
 - "nowadays" – since people aren't intending לשם שמים – חליצה is preferred, as per שאול
 - אבא שאול maintains that any ייבום motivated by attraction etc. is close to a violation
 - ייבמה יבא עליה (v. 1) – without regards to motivation
 - בית דינו של רב יהודה from שטר חליצה (as indicated by wording of רב יהודה and רב
 - Tangent: dispute as to whether we require proper עדים or just "informants" to identify parties
 - Enigmatic ברייתא:
 - מצוה – יבמה יבא עליה
 - Originally she was מותרת
 - She married his brother – נאסרה
 - The brother died childless – I might think that she reverts to her original status: יבמה יבא עליה
 - Interpretation #1 (ר' יצחק בר אבדימי): (אבא שאול to ברייתא): she was originally מותרת even as a result of attraction etc.; now she is only מצוה לשם מותרת
 - Interpretation #2 (דבא): (רבנו to ברייתא): she was originally מותרת – מצוה sans; now מצוה to take her in
 - of same ברייתא (as comparison): parallel development regarding מנחה (v. 2)
 - supports רבא – there is no "limited" way of eating – but now there is a מצוה (v. 3)
 - Defense of ריב"א's take: (couldn't be eaten as חמץ due to v. 4)
 - Excludes חלוט (boiled dough, which is baked afterwards) – which is valid as מצוה
- V משנה ז'
- upon חליצה – חלוץ is like every other brother vis-à-vis האח וירושת (i.e. he isn't fined for actively rejecting possibility of maintaining his brother's memory); if father is alive, all come to him
 - Upon ייבום – ייבום inherits entire estate of deceased brother as per v. 1 (לנחלה)
 - ר' יהודה – if father is alive, he also inherits deceased entire estate of deceased brother/son
 - reason: following v. 1 – he inherits like a בכור, who gets nothing if father is alive
 - ruling: against רבי יהודה מייבום – רבי יהודה inherits entire estate, even if father is alive