

13.4.5

40a (משנה ז) → 41a (אפילו רבנן מודו)

- I חולץ וחלוצה vis-à-vis the חליצה משנה ז:
- a he is banned from marrying her kin,
 - i *however*: the brothers (non-חולצים) are not forbidden
 - ii *note*: no mention of שניות
 - b she is banned from marrying his kin
 - c *rules*:
 - i חלוצה: מותר אדם בקרובת צרת חלוצתו
 - 1 *Example*: B1 died childless, leaving W1 and W2. B2 gave חליצה to W1; he may now marry W2's sister
 - ii חלוצה's kin: אסור אדם בצרת קרובת חלוצתו
 - 1 *Example*: B1 died childless, leaving W1&W2. B2 חלק W1; he may not marry W1's sister, nor her צרה
 - iii *Reason for distinction*:
 - 1 *Rule i*: a co-wife doesn't come to ב"ד at חליצה, no one thinks her to be the חלוצה so her sister is מותרת
 - 2 *Rule ii*: a sister comes to ב"ד at חליצה, people may think her to be חלוצה; hence her co-wives are אסורות
- II Discussion re: application of שניות to kin of חלוצה
- a *Con*: no mention in משנה
 - i *Defense*: misleading, אסור brothers are only permitted to שניות of חולץ, not ערווה
 - ii *Challenge*: state explicitly –
 - b *Pro*: mention of איסור of her marrying his father's father – because of בן כלת of the חולץ?
 - i *Defense*: rather, due to בן כלת of the original brother (to whom she was married)
 - c *Pro*: mention of איסור of her marrying his son's son – because of אשת אבי אביו of the חולץ?
 - i *Defense*: rather, due to her being (שניה) אביו אחי אביו of the original husband
 - ii *Challenge*: אממר (above, 21b) permits אביו אחי אביו
 - iii *Defense*: אממר reads the משנה as “בן בנ” of the father; i.e. the nephews of the dead brother
 - iv *Challenge*: the משנה already mentions אחיו וכן אחיו
 - v *Defense*: reference to both maternal and paternal brothers
 - d *Pro*: ר' חייא lists 4 עריות מה"ת and 4 מד"ס that apply to חלוצה, including אמו אביו and בן בנ, which (according to אממר) cannot mean אביו אחי אביו of the original brother, since he permits אממר maintains *pro*
 - e *Pro*: ר' חייא's list includes בן בתו, which cannot be on account of the original (אשת אחי אביו) which is not included in שניות; must be on account of אשת אביו of the חולץ → שניות apply to חלוצה. QED
- III שמואל's ruling re: relations with חלוצה, צרת חלוצה, following our משנה's rules
- a *ruling*: result of such relations is a ממזר
 - i *argument*: צרה is not released from אשת אביו, as evidenced by permission to marry her sister (if she were released she would be parallel to חלוצה and her sister should be אסורה to the חולץ)
 - ii *observation*: challenge to ר"י (1st chapter) who releases חלוצה and her צרות from כרת
 - iii *defense*: אחות גרושה מה"ת, אחות חלוצה מד"ס) רבי, as per מה"ת, אחות חלוצה
- IV משנה ח' further consequences of חליצה
- a If the חולץ's brother married the חלוצה's sister and he died, the חולץ gives חליצה (only) to אחות חלוצתו
 - b *Parallel*: if a מגרש's brother married the גרושה's sister and died, the מגרש is fully exempt
 - c *Reason for distinction*: as per רבי - (אחות גרושה מה"ת, אחות חלוצה מד"ס) - רבי
- V משנה ט' שומרת יבם to the sister of a יבם קידושין:
- a **ריב"ב**: wait until the brother acts:
 - i if he gives חליצה, or performs ייבום, marry
 - ii if the שומרת יבם dies, marry
 - iii If the יבם dies, he must divorce his wife and give חליצה to the שומרת יבם
 - b *Twist*: if his wife dies, may he perform ייבום?
 - i **דב**: permitted - she returns to her original היתר (שמואל: forbidden)
 - 1 *challenge*: case of 3 brothers, B1<->S1, B2<->S2, B3 alone; B1 dies, B3 is מייבם S1, S2 dies and B3 dies – חלוצת!
 - 2 *Defense*: maintain this is ר"א's opinion – once she was אסורה, never מותרת
 - 3 *Challenge*: perhaps ר"א only holds this if she was אסורה at time of נפילה (here, she was מותרת pre-אחותה)
 - 4 *Observation*: שמואל even works with דר"א – since from moment of נפילה, she became אסורה