

13.8.9

79b (משנה ד') → 81a (איילונית זונה היא)

Note1: the תורה obligates a man to pay קנס (זון=200=שקל 50) if he raped or seduced a single בתולה. גמרא is of the opinion that the קנס only applies if she is a נערה, not a קטנה; therefore he exempts in the case of an איילונית who is considered a קטנה at the time, even if she is 12+

.1 לא יבא פצוע דכא וקריות שפכה בקהל ה': דברים פרק כג פסוק ב

.2 ואם לא יחפץ האיש לקחת את יבמתו ועלתה יבמתו השערה אל הזקנים ואמרה מאן יבמי להקים לאחיו שם בישראל לא אבה יבמי שם כה:.

I סריסים: status of משנה ד'

- a סריס's confusion about status of ר' יהושע - do they perform חליצה and is it performed on their behalf or not
 - i ר'ע's solution: סריס אדם (i.e. פצוע דכא) does perform, because he had a moment of כשרות; not so חמה
 - 1 ר'ע testimony supporting ר' יהושע בן בתיא
 - 2 Difficulty: ר'ע equates לאוין חייבי כריתות to חייבי לאוין, none of whom perform חליצה
 - 3 Answer1: the גיורת is שומרת יבם (ר' יוסי must hold like ר'ע)
 - (a) Note: ר'ע would also allow יבום (as per testimony of ר' יב, ריב"ב), he only said חולץ in response to ר' יהושע
 - 4 Challenge: סריס אדם (and others) perform יבום but then divorce because of v. 1 →the issue is ביאה בקהל →the שומרת יבם is a בוראית ישראלית
 - 5 Answer2: he was wounded after נפילתה
 - 6 Challenge: even in such a case, the לאו (e.g. אחות אשה) trumps the דיבום עשה
 - 7 Answer3: follows version of ר'ע that he only equated לאוין של שאר (ממזרז →) כרת, not לאוי גרידי (e.g. פצוע דכא)
 - 8 Challenge: he can't fulfill v.2 -
 - (a) Block: if so, every (most) women are widowed from סריסים, since at their last moment they weren't healthy enough to be מוליד
 - (i) challenge to ר"א in our משנה: having had a "fertile" time isn't good enough
 - (ii) answer: the normal infertility at the end of life is just waning power, not סריס
 - ii ר"א's solution: סריס חמה does perform, because he might be healed; not so אדם
 - 1 definition of סריס חמה: he was never fit; as seen by the impotency of his urinal flow
 - (a) cause: his mother baked bread at noon (too hot) and drank strong mead during pregnancy
 - (b) we aren't concerned that he may have healed in the meanwhile, since he started out impotent and is still impotent.
 - (i) Challenge: ruling that we check a בכור for the מום of blindness 3 times within first 80 days
 - (ii) Answer: for one organ, we consider that it may have healed; not so the whole body
 - 2 Challenge: ר"א ruled that men are considered סריס חמה at 20, women at 18 – and they do **not** perform חליצה
 - (a) Answer1: ר"א changed his mind from that ruling; his final ruling is the one in our משנה (support ברייתא)
 - (b) Answer2: that ruling is only in re עונשין: at what age are boys and girls who didn't show סימנין liable
 - (i) Tangential discussion: status of someone who violates law between ages of majority (12/13) and 18 before bringing סימנים and then brings late סימנים:
 - 1. חייב and סריס retroactive רב
 - 2. פטור was קטן at that point and שמואל
 - 3. challenge (to רב): איילונית should receive קנס for אונס ופתוי even according to ר"מ – since she is judged retroactively to have been גדולה (see note1)
 - 4. answer: she has no נערות – goes straight from קטנות בגרות (supporting ברייתא)
 - (ii) אבהו ר': we withhold all actions re: סריס ואיילונית (and 8-month baby) until they are 20
 - 1. question: 8-month babies don't live
 - 2. answer: if his development was complete →he was a 7-month baby with delayed delivery
 - a. support: רב validated a baby born 12 months after a husband left town – delayed
 - b. Support: רשב"ג (in addition to רבי) agrees to principle of delayed delivery

- iii signs of ואיילונית (who didn't bring סימנים [שתי שערות] by age of 20)
- 1 סריס:
 - (a) no facial hair
 - (b) soft hair
 - (c) high voice so that it is indistinguishable from a woman's voice (רשב"א)
 - (d) skin is hairless
 - (e) various deficiencies in his urine and/or seminal emission (various תנאים)
 - 2 איילונית:
 - (a) no breasts
 - (b) intercourse is painful
 - (c) male-shaped hips (רשב"ג)
 - (d) deep voice, indistinguishable from man's (רשב"א – compare his ruling on סריס above)
 - 3 application:
 - (a) if they brought סימנים (שתי שערות), they must have all איילונית סריס/איילונית to be judged thus
 - (b) if they didn't have סימנים:
 - (i) סריס/איילונית ר' הונא: must show all deficiencies to be considered
 - (ii) סריס/איילונית ר' יוחנן: any one of the deficiencies establishes status as
 - (c) story about ר' נחמן – inconclusive, since he had some (faint) beard hair
- II ר"ע [בידי שמים] איילונית (סריס חמה, parallel to סריס חמה) – follows
- a יבום וחליצה does not perform סריס (חמה)
 - i If a סריס performed חליצה, doesn't invalidate the woman (doesn't count)
 - ii If a סריס performs יבום, it invalidates her as a פסולה (בעילת זנות) ביאה פסולה
 - 1 Also true if she has ביאה with an outsider (ר' המנונא)
 - a יבום וחליצה does not perform איילונית
 - i if the brothers gave her חליצה, it doesn't invalidate her from כהונה (doesn't count)
 - 1 ~ = יהודה – who maintains she is invalid for כהונה in any case as she is a זונה
 - ii if the brothers performed יבום on her, it invalidates her as בעילת זנות