

13.10.4; 92a (משנה ג) → 94a (דפוסל בכהונה)

1. אשה זנה וחללה לא יקחו ואשה גרושה מאישה לא יקחו כי קדש הוא לאלהיו: ויקרא פרק כא פסוק ז
2. כי ישבו אחים יחדו ומת אחד מהם ובן אין לו לא תהיה אשת המת החוצה לאיש זר במה יבא עליה ולקחה לו לאשה ויבמה: דברים כה:ה
3. ואכלת לפני ה' אלהיך במקום אשר יבחר לשכון שמו שם מעשר דגנך... למען תלמד ליראה את ה' אלהיך כל הימים: דברים פרק יד פסוק כג
4. עתה הנה בטחת לך על משענת הקנה הרצון תזה על מצרים אשר יסמך איש עליו ובא בכפו ונקבה כן פרעה מלך מצרים לכל הבטחים עליו: מ"ב יח:בא
5. קנה רצון לא ישבור ופשתה כהה לא יכבנה לאמת יוציא משפט: ישעיהו פרק מב פסוק ג

I משנה ג: further cases of misreported death of husband

a case #1: man and his (only) son go abroad

i report #1: man died first (thus removing possibility of זיקה) then son died – and she married “out”

1 reality #1: reported back that first the son died, then the husband, creating יבום

2 ruling: she must leave new and old husband and the children from both “ראשון” ו”אחרון” are ממזרים

(a) meaning: ראשון = before שמועה; אחרון = after שמועה

(b) Attribution: must be ר”ע who reckons that לאוין generate ממזרות

(c) Related dispute: תפיסת קידושין ביבמה

(i) Clearly negating: רב, following v. 2 – לא תהיה

1. therefore: she has no קידושין, but נישואין is meaningful for our case and requires a גט

(ii) Unclear: שמואל - does לא תהיה mean “may not” or “cannot”? → require גט (מספק)

(iii) Ruling1: follows שמואל → if יבם is ישראל, new husband may give her a גט & she may marry the יבם

(iv) Ruling 2 (ר' ינאי): follows רב

1. challenge (ר' יוחנן): it's an explicit משנה – קידושין given w/delay חליצה are invalid

2. response (ר' ינאי): indeed, that's the reason

3. comment (ר"ל): otherwise, we would have assigned that משנה to ר"ע

a. Challenge: but ר"ע maintains אדם מקנה דשבל"ע (→ קידושין should be valid in any case)

b. Response: ר"ע agrees that אדם מקנה דשבל"ע – side reason given for his ruling in נדרים

c. Contra: ר"ע, ראב"י, ר"מ, רבי, ר' חייא, ר' ינאי, רב, ר' הונא holds that רנב"י

i. Case 1: (ר' הונא) – selling futures on fruit tree

ii. Case 2: (רב) – future, retroactive sale is valid

iii. Case 3: (ר' ינאי) – even if it didn't yet arrive ע"ש – even if it didn't yet arrive

iv. Case 3b: (ר' חייא) – approved of ר"י's ruling, (v. 3), even though he was made to read

קנה רצון in a dream- thought the reference was v. 4 (bad), but it was v. 5 (good)

v. Case 4: (רבי) – ability to buy an לשחררו עבד ע"מ

vi. Case 5: (ר"מ) – קידושין based on future availability – valid

vii. Case 6: (ראב"י) – הפרשת תר"מ based on future ripening – valid

viii. Case 7: (ר"ע) – נדר to prevent husband from her future earnings is a valid נדר

ii report #2: son died first, then father (generating זיקה) and she had יבום

1 reality #2: reported back that first the husband died, destroying זיקה

2 ruling: she must leave both the יבם and her husband and the children from both “ראשון” ו”אחרון” are ממזרים

iii observation: 1 עד is believed to generate יבום

1 proof: since in our case the child is deemed a ממזר → there was only 1 witness (then 2 came and refuted)

2 version: question asked about 1 witness to permit a potential לשוק – same proof

3 alternatively: perhaps it is תרי ותרי – but the latter two are עדי הזמה (automatic trumping of 1st 2)

4 contra: (רב אשי) – 1 witness is not believed (statement implying that he is credited to ר"ע; since ממזר יש ממזר

she would be careful – קמ"ל – מחייבי לאוין);

(a) Reason: she may hate (or love) יבם and be likely to “lightly” believe testimony

b case #2: man went abroad

i report #1: man died, then she married another

1 reality: reported he was alive at time of her remarriage, then he died

2 ruling: she must leave her new husband and children from “ראשון” are ממזרים but not from “אחרון”

ii report #2: man died, then she accepted קידושין from another (no ביאה)

1 reality: he shows up

2 ruling: she may return to her first husband

(a) addendum: even if the 2nd husband gives her a גט, she's לכהונה גט, she's

(b) support: מדרש on v. 1 – must be גרושה מאשה to be a valid גט

(i) Observation: he could have built a more elegant דרשה involving הגט ריח