

13.11.2

98b (משנה ג) → 100a (אפילו רבנן מודו)

Note1: Throughout this שעור, I use the term "swapped" as shorthand for a case where 2 children are born to 2 mothers at the same time and in the same place, and, due to some circumstance, they may have been swapped such that we know that one belongs to each but the identity is unclear.

I משנה ג: the case of the 5 unidentified children

- a scenario: 5 women have sons whose identity is clear, then each gives birth to a son who is "swapped"
- b case: the 5 "known" sons die
- c ruling: any 4 of the "swapped" sons performs חליצה on 1 widow, the other may perform ייבום; same for all
- d rationale: either the מייבם is the brother, or another, who is, released her with חליצה
- e caveat: only 1 יבמה per brother, leaving possibility that מצוות ייבום will actually be fulfilled
- f addendum: quote from יבמות יבג:
 - i 1st: "if some of them are brothers and some aren't, the brothers perform ייבום and the others – חליצה"
 - 1 meaning: if some are paternal brothers, they perform ייבום; maternal brothers must perform חליצה
 - ii 2nd: "if some are כהנים and some aren't, the כהנים perform חליצה and the others may perform ייבום"
 - iii 3rd: "if some are כהנים and the others are maternal brothers, all perform חליצה exclusively"
- g curiosities:
 - i possibilities of giving חליצה to one's mother, sister or daughter מספק (cases of confused identity and must perform חליצה to 2 women, one of whom is his יבם שומרת, the other his mother/sister/daughter)
 - ii ר"מ: it is possible for a man and woman to sire "5 nations":
 - 1 1st: a man purchases a slave and שפחה and they have 2 children (עכ"ם)
 - 2 2nd: he converts one of them – now the slave and שפחה have a גר and עכ"ם (2)
 - 3 3rd: he then is לטמביל them עבדות לשם עבדות and they have a son – he is an עבד (3)
 - 4 4th: he liberates the שפחה (now a גיורת) (but not the עבד) and they have son – he is a ממזר (4)
 - (a) condition: only if we hold that ישראל הוולד ממזר על בת ישראל הוולד ממזר
 - 5 5th: he liberates the עבד (now a גר) and they have a son – he is a ישראל (5)
 - iii it is possible for a man to sell his father to raise money for his mother's כתובה:
 - 1 a man buys an עבד ושפחה who have a son, he converts the son and then liberates the שפחה in order to marry her, then writes all of his property over to her son and then dies...
 - (a) possibility1: this follows ר"מ - chattel are collectible for כתובה and עבד::מטלתי: OR
 - (b) possibility2: עבד::מקרקעי

II משנה ד: another case of confused identity:

- a scenario: 2 children are "swapped" – a woman's (זקנה) and her daughter-in-law's (כלה), each of whom have identifiable sons;
- b case1: the "swapped" sons marry and die childless
 - i ruling: sons of כלה give חליצה only, sons of זקנה may perform חליצה or ייבום
 - 1 rationale for הכלה בני הכלה: otherwise, widow may be אחי אביו
 - 2 rationale for הזקנה בני הזקנה: even if he is a בן הכלה, that makes his widow בן אחיו אשת which is מותר
- c case2: the "known" (called "כשרים") sons marry and die childless
 - i ruling: the "swapped" sons perform only חליצה to the הזקנה, 1 performs חליצה and afterwards the other may perform ייבום to the הכלה בני הכלה
 - 1 rationale for ruling towards הזקנה בני הזקנה: might be אחי אביו
 - 2 rationale for ruling towards הכלה בני הכלה: if the 1st one is the brother, she's released and to the other, she is אחי אביו; if the 1st one isn't the brother, the חליצה is meaningless and the 2nd is proper ייבום

III ה משנה and her שפחה whose sons were "swapped"

(ספס דאורייתא לחומרא, המוציא מחברו עליו הראיה, אין עונשין מספק: משנה presents 3 rules which are the basis of this רמב"ם)

- a As children...(remember, members of the כהן's household, including slaves, eat תרומה)
- i Both eat תרומה but receive their portion only when together;
- 1 Reason: so that we aren't giving the עבד on his own which he may use to claim כהונה
 - 2 Caveat: only true in places (like יהודה ר' יהודה) where they would use חילוק בגורן as proof of כהונה
 - 3 Dissent: ר' יוסי allows giving תרומה to an עבד, since in צפורי they wouldn't use חילוק בגורן as proof
 - (a) Story: ר' אלעזר ב"ר צדוק saw a man getting תרומה in צפורי and testified about him in יהודה ר' יהודה's town and almost errantly allowed an עבד to "ascend" to כהונה
 - (b) Tangent: list of 10 who are not given בגורן תרומה:
 - (i) Incompetence: deaf-mute, imbecile, minor
 - (ii) Degrading to קדשים טומטום, טומא, ערל, טמא, hermaphrodite
 - (iii) Concern of misrepresentation: עבד
 - (iv) Fine: a כהן who marries an inappropriate woman (e.g. גרושה)
 - (v) Unclear: a woman
 1. possibility #1: perhaps the כהן has already divorced her
 2. possibility #2: isolation with the owner of the produce
 3. split the difference:
 - a. only applying to #1: if the granary is busy but far from town (won't know about the גירושין)
 - b. only applying to #2: if the granary is quiet but near town (isolation, but would have heard about divorce)
 - (vi) solution: for all of these, except (iv) and טמא, we send it to the house
 1. reason: (iv) – he is fined; טמא wasn't careful (the ערל was "forced" due to his brothers' dying at circumcision)
 - (c) tagential ruling: if a woman comes to collect עני מעשר, we give it to her immediately, to protect her dignity
 - (i) application: רבא learned from here to hear woman's case first in court

ii neither is מטמא למת (מספק)

iii they may marry neither כשרות or פסולות

b If the "swapped sons" grow up and liberate each other (which they must do),

i they may marry women fit for כהונה (e.g. not a גרושה)

ii are not מטמא למת but if they do there are no מלקות

iii they don't eat תרומה but if they violate this they don't pay

iv they don't receive תרומה but they may sell their own תרומה (from their own produce) and keep the money

v they don't participate in eating קדשים and we don't give them קרבנות to offer, but if they bring a קרבן we can't force them to give the parts (e.g. the pelts of an עולה) to another כהן

vi they are exempt from מתנות כהונה

vii their טהורה בהמה בכור grazes until it becomes a בעל מום

viii we give them all of the stringencies of כהנים וישראל

1 referent is מנחות:

(a) stringency: we eat none of it as כהן מנחת

(b) stringency: we offer a קומץ as מנחת ישראל

(c) problem: anything that has a קומץ may not have its שירים brought on the מזבח

(d) solution: spread the rest over the דשן