

13.13.3

109a (משנה ז) → 111a (לא תני תקנתא לאיסורא)

1.	סור מרע ועשה טוב בקש שלום ונדחה: תהלים פרק לד פסוק טו
2.	רף צדקה וחסד ימצא חיים צדקה וקבוד: משלי פרק כא פסוק כא
3.	רע ירוץ כי ערב זר וישנא תקעים בוטח: משלי פרק יא פסוק טו
4.	...שמע ישראל את החקים ואת המשפטים אשר אנכי דבר באזניכם היום ולמדתם אתם ושמרתם לעשתם: דברים פרק ה פסוק א
5.	הנה מטתו שלשלמה ששים גברים סביב לה מגברי ישראל: כלם אחזי הרב מלמדי מלחמה איש חרבו על ירכו מפחד בעלילות: שרש ג: ח

- I קידושי קטנה within context of אשה אחות: משנה ז'
- a if both brothers were married to קטנות, if one dies, the other is exempt as אשה (same if both חרשות)
- b if one was adult and the other a קטנה
- i if the husband of the קטנה dies, she is exempt as אשה אחות
- ii if the husband of the גדולה dies:
- 1 **ר"א** – we coach the younger one to do מאון (allowing יבום with the יבמה)
 - (a) although normally we avoid coaching מאון – since she may regret later – for מצוה, permissible
 - (i) *tangent*: avoid מאון, ערבות, accepting פקדונית שלום, חליצה ונדרים & הבאת שלום, חליצה
 - 2 **ר"ג** – if she is ממאנת, fine; if not, when she reaches age, the older one is exempt at the younger's majority
 - (a) *explanation1*: hang in the balance; when she reaches majority they “mature” and block the זיקה (→ pre-standing זיקה may not be blocked by קידושין)
 - (b) *explanation2*: קידושין may block pre-standing זיקה – when he has ביאה with her, יבמה is blocked out
 - (c) **רב** affirmed #2;
 - (i) *challenge*: “ר' שש” קידושי קטנה”
 - (ii) *answer*: they hang until ביאה, when they “mature”
 - (iii) *challenge*: **רב** ruled that a קטנה who married another w/o מאון needs no גט (גט requires שמואל)
 - (iv) *answer*: only if there was ביאה
 - (v) *challenge*: why would שמואל require a גט
 - (vi) *answer*: שמואל maintains that all ביאות are based on original קידושין
 1. *challenge*: they already had this dispute regarding conditional קידושין followed by unconditional נישואין (need for both statements justified)
 - (vii) *challenge*: case in נרש where רב's students were present and didn't require a גט from a man who “stole” a girl who had קידושי מאון from her חופה (we assume – before נישואין [pre-ביאה])
 - (viii) *answer1*: in that town, they seat her in that חופה after marriage (post-ביאה)
 - (ix) *answer2*: this fellow behaved badly so they “pulled rank” and uprooted his קידושין
 - 3 **ר' יהושע** – must separate from both (wife via גט, יבמה via חליצה)

II קידושי קטנה=מאון here means there were קטנה) where one (or both) are of diminished capacity: משנה ח'

a Both קטנות – קטנה/חליצה – ביאה/חליצה – of either exempts the other

b Both חרשות – חרשה/חליצה – ביאה/חליצה – of either exempts the other

i Must only refer to ביאה, since a חרשת, even one who was always חרשת, cannot perform חליצה

 - 1 **רבא**'s attempted distinction between חרשת מעיקרא and someone who became a חרשת is rejected

c 1 חרשת – neither can exempt the other

i **ר' נחמן** heard students suggesting that this was only the case if the husband was פקח and we can't know which wife he preferred; if he was חרש, he certainly preferred חרשת (adult and his type) and her ב"ח exempts

ii **ר' נחמן** rejected the distinction – in every case, neither can exempt the other

iii *solution*: **רב** – marry חרשת, give her a גט and when קטנה matures, give her חליצה

 - 1 *observation*: **רב** maintains that קידושי חרשת are partial and קידושי קטנה are either valid or not;
 - 2 *argument*: if the inverse, חרשת could stay with him either way
 - (a) *either*: she is קנויה and the קטנה is exempt
 - (b) *or*: she isn't קנויה at all and is an outsider who may marry him
 - 3 *challenge*: why not say the same about the קטנה – let her remain married to him
 - 4 *answer*: then there is no vehicle for the חרשת to leave (if the קטנה אינה קנויה – how is זיקת החרשת released?)
 - 5 *support*: **ברייתא** – 2 brothers married to 2 sisters, one קטנה, the other חרשת:
 - (a) *Case1*: if the husband of the קטנה died, חרשת is divorced, קטנה matures and gets חליצה
 - (b) *Case2*: if the husband of the חרשת died, קטנה is divorced, חרשת is never permitted – but if he has ביאה with her, divorces her (cannot be פסולה; ביאה פסולה is ברייתא → רבנן דר' נחמיה is ברייתא)

d 1 able, 1 חרשת – only the ביאה/חליצה of the able one exempts the other

e 1 גדולה, 1 קטנה – only the ביאה/חליצה of the older exempts the younger