

13.13.4

111a (משנה ט) → 112b (סיום הפרק)

.1 ואם לא יחפץ האיש לקחת את יבמתו ועלתה בשערה אל הזקנים ואמרה מאן יבמי להקים לאחיו שם בישראל לא אבה בקמי: דברים כה:
 .2 פי לשבו אחים יתנו ומת אחד מהם וכן אין לו לא תהיה אשת המת החוצה לאיש זר יבמה יבא עליה ולקחה לו לאשה ויבמה: דברים כה:

- I ייבום mixed set of wives vis-à-vis משנה ט-יא
- 2 who fell to a יבם; if he had ביאה with 1 and he (or a brother) had ביאה with the other – doesn't invalidate the first; similarly, if both are חרשות
 - if he (or brother) has ביאה with both, 1st is invalidated via the ביאה of the 2nd
 - if ביאה with פקחת 1st, פוסל w/חרשת doesn't; if ביאה with 1st חרשת, פוסל w/פקחת does
 - if ביאה with גדולה 1st, פוסל ביאת קטנה; if ביאת קטנה 1st, גדולה invalidates ביאת גדולה
 - we coach the קטנה to do מאן (הלכה)
 - need for אלעזר 'ר' ruling (הלכה כר' אליעזר) in both places justified
- II הלכות משנה יב-יג
- If a יבם who was a minor performed ייבום with:
 - A קטנה, they should be raised together
 - A גדולה, she should raise him
 - Observation:* cannot be authored by ר"מ, who says that קטן וקטנה cannot perform חליצה
 - Challenge:* perhaps ר"מ only applies that if 1 is of age, due to potential איסור
 - Answer:* if she is of age, she raises him, continuing to have ביאה with him
 - Challenge:* why not apply v. 1 – and the קטן cannot reproduce (yet)
 - Answer:* v. 2 – either (אביי) יבמה – in any case, or אחים (רבא) – of any age
 - If a יבמה claims that she hasn't had the relationship consummated
 - Within 30 days – we force him to perform חליצה
 - Suggestion:* follows ר"מ who allows טענת בתולים until 30 days
 - Rejection:* could even be יוסי ר' who requires it immediately – he only maintains that a man will not withhold himself sexually with his ארוסה, with whom he is intimate, but he has shame in front of his sister-in-law and it may take him 30 days to overcome that
 - Observation:* we force him to perform חליצה, not ייבום – case where she has a גט from him (but claims not to have had consummation → needs חליצה)
 - Challenge:* ruling that if she claims נבעלתי, לא, he must give her חליצה, if she claims נבעלתי, needs גט; if she says לא נבעלתי but he claims בעלתי, need both (→ there was no גט originally)
 - Answer1:* means “needs חליצה in addition to the גט she already has”
 - Answer2:* referent is גט לביאתו (as per his admission); our case – גט לזיקתו (given beforehand)
 - Observation:* these claims do not affect released status of צרה
 - After 30 days – we ask him to perform חליצה
 - If he admits to her claim – even after a year – we force him to perform חליצה
 - If a יבמה vows against getting benefit from her brother-in-law
 - If the vow was made while her husband was alive – we force him to perform חליצה
 - If the vow was made after her husband died – we ask him to perform חליצה
 - Even if made while he was alive, if her intent was to prevent ייבום, we ask him to perform חליצה
 - Application:* originally, 3 statements of the wife automatically generated גט
 - Now:* we force her to prove their veracity or to modify them to keep marriage possible
 - Example:* if she takes a vow of abstinence from “Jews”; he husband's portion is repudiated
 - Question:* is יבם::בעל here?
 - Position1:* רב - not the same (is never permitted to יבם)
 - Position2:* שמואל – same as husband
 - Proof for position1:* our משנה rules that if she took the vow while husband was still alive, it is valid → she wasn't thinking of the possibility of his death/נפילה
 - suggestion:* perhaps this case is when she had children (who all died before husband)
 - challenge:* משנה should have explicated that distinction