

39.5.5

44b (משנה ד) → 45b (לט) (לכשיגידל יבעול ויתן גט)



- I ד משנה ד: Halakhic status of girl at 3 years old (when ביאה is considered a Halakhically meaningful act; beforehand בעין אצבע)
  - a קנין קניין: she may be מתקדשת via ביאה and if her יבם has ביאה with her, that is a valid קנין
  - b עריות: liability for having ביאה with her if she is married to another; partner is killed (but she is exempt)
  - c טומאה: (if she is a נדה or זבה), she generates טומאה to the בועל which affects כעליון
  - d לכהונה: if she marries a כהן, may eat תרומה; if she is נבעלה by a פסול, is excluded from marrying כהן
- II Dispute ר"מ/חכמים about end-point of 3 years
  - a מ"מ: 3 years old is מתקדשת בביאה
  - b חכמים: 3 years and a day
    - i דבי ר' ינאי: they disagree about the one day (must it be 1<sup>st</sup> day of 4<sup>th</sup> year or even on last day of year #3)
    - ii ד' יוחנן: whether we consider 30 days in a year sufficient (ר"מ – we do → בת שלש שנים means 30 days into the 3<sup>rd</sup> year)
      - 1 Challenge: ברייתא – ר"מ rules that a girl is מתקדשת בביאה at 2 years and 1 day; חכמים – after 3 years and 1 day
      - 2 Analysis: this works according to ר' יוחנן; just as there is a תנא who considers 30 days=year; 1 may feel 1 day=year
        - (a) But: this is difficult for ר' ינאי's position – (indeed – קשיא)
- III Discussion re: בתולים before the age
  - a משנה: uses terminology – “like putting a finger in the eye”
  - b Question: do בתולים “go away” and are restored at some later point? Or do they simply not go at all if before 3?
  - c Practical difference: if he had ביאה before 3, found דם, then after 3 and found no דם
    - i If: we consider them to have gone and returned, perhaps there wasn't enough time yet for them to be restored
    - ii But if: we consider them not to have gone at all – this may indicate that another had ביאה w/her in the meantime (after 3)
      - 1 Challenge (ר' חייא בריה דר'א): perhaps a wound is restored immediately and she certainly had relations with another
  - d Rather: if he had ביאה before 3 and found דם, then had ביאה after 3 and again found דם
    - i If: we consider them to have gone and returned, this is בתולים
    - ii But if: we consider them never to have gone at all – then the first דם is נדה
  - e Answer (ר"ח): from wording of משנה (which could have said “beforehand it is nothing”) → they go and are restored
  - f Story: with Roman noble's daughter who asked רבי at what age girls marry (3) and when they conceive (12)
    - i She responded: that she married at 6 and conceived at 7
    - ii Challenge: from ruling of מוך (those who may use) - no need for a girl before 11 to use it, as she can't conceive
      - 1 Note: חכמים disallow מוך and v. 1 applies
      - 2 Answer: either v. 2 (threshold of 12 doesn't apply to them or v. 3 – she was lying about her age of conception)
  - g Story: girl came to ר"ע, stating that she had had ביאה with פסול before age of 3 and he permitted her to לכהונה
    - i When: she added on that she had done this several times, he prohibited her
    - ii Students: protested – הלמ"מ that any ביאה (even multiple) before age 3 doesn't count (he was just testing them)
- IV משנה ה: Halakhic status of boy at 9 (whose ביאה is Halakhically meaningful)
  - a יבם: if he has relations with the יבמה, this is a קנין – but no גט is given until he reaches majority
    - i Challenge: why is a גט sufficient when he reaches majority? – תופסתא יבמות יאי: ביאת בן ט – מאמר for an adult
      - 1 Just as: if he did מאמר, requires גט for his מאמר and חליצה for the זיקה
      - 2 Same here: should require both
      - 3 Answer (דב): means that when he reaches age, should have ביאה with her (completing ייבום) and give her a גט
  - b And: he becomes טמא as נדה בועל נדה (מטמא משכב תחתון כעליון); if he is פוסל לכהונה, his ביאה invalidates girl; but if he is כהן, his ביאה will not empower girl to eat תרומה; if he commits bestiality, that בהמה is now למזבח פסול and is stoned on his account; if he had ביאה with any of the עריות, they are killed on his account, but he is exempt