

## And she is fit for him *M'D'ohraishoh*

## ומדאורייתא<sup>1</sup> חזיא ליה -

### Overview

ואיש אשר ינאף את אשת איש of פסוק explains that the <sup>2</sup> from which we exclude קטן (who was nine years old) was a יבם and he had relations with his יבמה<sup>3</sup>, anyone who has relations with the יבמה afterwards is exempted from מדאורייתא חזיא. The reason we require a פסוק is since אשת קטן, since she is an אשת קטן. There is a dispute between רש"י and תוספות as to the meaning of חזיא ליה.

פירש בקונטרס<sup>4</sup> דזקוקה לו וביאתו ביאה לכל דבר וקנאה ליורשה<sup>5</sup> וליטמא לה<sup>6</sup> -

רש"י explained the meaning of מדאורייתא חזיא ליה, for she is assigned to him, and his ביאה is considered a ביאה for all matters, and the קטן acquired her to inherit her and to become טמא to her -

כדתנן (נדה דף מה, א) בן ט' שבא על יבמתו קנאה -

As we learned in a משנה; 'a nine year old who had relations with his יבמה, he acquired her' (as his wife). This concludes רש"י.

תוספות asks:

וקשה דזה אינו אלא מדרבנן ולפוסלה מן האחין<sup>7</sup> -

And there is a difficulty with רש"י; משנה, which states קנאה, is only מדרבנן that he acquires her, and it is for the purpose to invalidate her from the brothers -

כדתנן<sup>8</sup> בהאשה רבה (יבמות דף צו, ב) עשו ביאת בן ט' כמאמר<sup>9</sup> בגדול -

As we learnt in רבה האשה רבה, 'they made the ביאה of a nine year old by a יבמה,

<sup>1</sup> The text in our גמרא reads; דמדאורייתא (instead of דמדאורייתא).

<sup>2</sup> ויקרא (קדושים) כ"ג.

<sup>3</sup> The קטן had a married older brother who died without children, the קטן was בועל the יבמה (his sister-in-law), the rule is that she is not considered an אשת איש (as she would have been had the יבם been a גדול), and whoever lives with her is not מחויב מיתה, for she is merely considered an אשת קטן.

<sup>4</sup> בד"ה דמדאורייתא

<sup>5</sup> If the יבמה dies the קטן inherits her.

<sup>6</sup> If the קטן is a כהן, he may be מטמא to the יבמה at her funeral (even when he is a גדול and had no additional relations with her [except for this one ביאה when he was a קטן]).

<sup>7</sup> She is considered his wife (only) regarding the other brothers, who initially after her husband passed on, could have been מייבם her; however once the קטן was עליה, they no longer can be מייבם her (all this is מדרבנן).

<sup>8</sup> In our גמרות it is a ברייתא on צו, א, and on צו, ב, there is a מחלוקת between רב and שמואל whether בגדול or כמאמר.

<sup>9</sup> A מאמר (or statement) refers to the קידושין מדרבנן which the יבם gives to the יבמה. The way of the יבם acquiring the יבמה as a wife is only through ביאה; however the חכמים instituted that he should be מקדש her first with כסף; this is called מאמר. The מאמר accomplishes that the other brothers can no longer be מייבם (or חולץ) her. It also accomplishes that the בעל המאמר must give her a גט (also, besides חליצה) if he changes his mind and decides not to be מייבם her.

equal to a **מאמר** by an adult -

אבל ליורשה ולשאר דברים לא היא כאשתו -

However the **יבמה** is not considered the **קטן's wife** regarding inheriting her or for other matters; the same as by **מאמר**.

מדאורייתא חזיא ליה offers his interpretation of תוספות

ולכן נראה לי דמדאורייתא חזיא ליה בעלמא כגון שהיה **היבם גדול** -

And therefore it seems to תוספות that she is potentially fit for him **מזונה**, for instance if he, the **יבם**, was a **גדול** -

וקטן זה ביאתו ביאה כלומר שאם בא על אחת מכל עריות<sup>10</sup> שבתורה מומתים על ידו -

And additionally the **ביאה** of this **קטן** is considered a **ביאה**, meaning that if he had relations with any of the **עריות** mentioned in the **תורה**, they would be executed on account of his **ביאה**, therefore on account of all this -

מהו דתימא הואיל ומדאורייתא כולי -

We may have thought that since ומדאורייתא, etc. she will eventually be fit for him and his **ביאה** is an effective **ביאה** -

כלומר אי לאו האי קרא דמעטיה הוה אמינא מדאורייתא חשובה כאשתו -

Meaning that if not for this **פסוק** of **איש את אשת איש**, אשר ינאף את אשת איש, which excludes **קטן**, אשת קטן, I would have thought that she is considered his wife מדאורייתא, and whoever lives with her is committing adultery and should be executed, therefore the **פסוק** -

קא משמע לן שאינו קונה אותה אלא מדרבנן -

Comes to teach us that he only acquires her מדרבנן, she is not his lawful wife **מזונה** - **כדאמרין בעלמא (שם) עשו ביאת בן ט' כמאמר בגדול:**

As we say elsewhere they made the **ביאה** of a nine year old in his **יבמה** like a **יבמה** by a **גדול** to his **יבמה**.

## Summary

According to רש"י a **קטן בן ט'** **ביאה** is his **קונה** **יבמה** מדאורייתא, while according to תוספות he is **קונה** her only מדרבנן.

## Thinking it over

According to רש"י that the **קטן** is **קונה** **יבמה** מדאורייתא, why indeed is the adulterer **פטור**, and according to תוספות that the **קטן** is not **קונה** **יבמה** מדאורייתא, how is she considered **קטן**?<sup>11</sup>

<sup>10</sup> are the incestual relations mentioned in the **תורה**, such as a father and daughter, (including also adultery, and other forbidden relationships). If a nine year old was **בועל** his mother consensually, the mother would be executed.

<sup>11</sup> See **בית לחם יהודה** אות **תעא** and **נחלת משה**.