

הכל יודעים אחות חלוצה דרבנן דאמר ריש לקיש כאן שנה רבי אחות חלוצה דרבנן –
All know, the sister of a *Chalutoh* is *D'Rabonon*, for ר"ל said; here *Rebi*
taught the sister of a *Chalutzoh* is *D'Rabonn*

Overview

דied קטנה שנתקדשה שלא לדעת אביה ruled that if the 'husband' of this רב הונא אמר רב (without children) and left a brother (where usually there is the obligation of יבום or חליצה), and this surviving brother gave her חליצה (but did not make a מאמר), she does not require מיאון, for everyone knows that אחות חלוצה is only אסור מדרבנן, [as ר"ל stated that רבי taught this in this משנה], and all realize that קידושין are באחותה.

כאן שנה רבי where משנה where tells us תוספות

ששנינו ביבמות (דף מא,א) החולץ ליבמתו ונשא אחיו את אחותה ומת חולצת ולא מתייבמת¹ -

For we learnt in a משנה in יבמות; one who gives חליצה to his יבמה, and his brother married her sister and he died, she requires חליצה, but is not permitted to have יבום. However -

המגרש את אשתו ונשא אחיו את אחותה ומת פטורה מן החליצה ומן היבום² -

One who divorces his wife and his brother married her sister and he died, she is exempt from חליצה and יבום -

דהוה ליה אחות גרושתו שהיא ערוה לו בחייה³ -

Because the widow is the sister of his divorcee, so she is an ערוה to him as long as his divorced wife is living -

ועל משנה זו קאמר ריש לקיש כאן שנה רבי כולי⁴ -

And regarding this משנה, ר"ל stated; 'here, רבי taught, etc. that אחות חלוצה דרבנן, אחות גרושה דאורייתא.

תוספות asks:

¹ לאה לוי married רחל and died childless. שמעון were brothers. ראוּבן and ראוּבן שמעון (the sister of רחל, and died childless. לאה is ליבום to זקוקה, therefore he needs to give her חליצה, however שמעון is not permitted to be מייבם since she is the sister of חלוצתו (who is רחל) and אחות חלוצתו is אסורה (מדרבנן). However since מותרת לשוק לאה requires חליצה to be חלוצתו (which is לאה) is not forbidden to שמעון therefore ראוּבן married רחל and divorced her; לוי married לאה (the sister of רחל) and died childless. לאה is exempt from receiving either חליצה or יבום from ראוּבן.

² A similar case to footnote # 1, where ראוּבן married רחל and divorced her; לוי married לאה (the sister of רחל) and died childless. לאה is exempt from receiving either חליצה or יבום from ראוּבן.

³ ואשה אל אחותה לא תקח (ויקרא [אחרי] יח, יח) as it states (in עריות) that לא תתקח אחות אביה. This prohibition applies even if the husband divorces his wife, nevertheless the sister remains an ערוה to him. Therefore even if his brother לוי dies childless there is no זיקת יבום for ראוּבן to marry לאה the אחות גרושתו who is אלמנה. However אחות חלוצתו is מותרת מה"ת it is only אסור מדרבנן, therefore she is מחויב חליצה מה"ת but אסורה להתייבם מדרבנן.

⁴ רש"י ד"ה כאן (seemingly) taken verbatim from תוספות up to this point is.

ואם תאמר כי לא עשה בה מאמר נמי תבעי מיאון -

And if you will say; even if he did not make a מאמר to her, she still should require מיאון -

דניחוש שמא יאמרו אין קידושין תופסין באביו או בבן אחיו⁵ -

For we should be concerned that perhaps people will say that קידושין will not be effective if his father or his brother's son will be מקדש her; they will say that -

כי יאמרו שנתרצה לראשון⁶ והוא כלתו של אב⁷ או דודתו של בן -

For the people will assume that the father consented to the marriage to the first (deceased) brother, so the חלוצה is the daughter-in-law of the father, or the aunt of the son -

והיה לנו להצריכה מיאון להודיע⁸ שלא נתרצה אף לראשון⁹ -

So we should have required her to make מיאון in order to inform us that the father was not נתרצה even to ראובן, so therefore we will know -

וקידושי דאב או קידושין דבן תופסין בה -

That the קידושין of the father or the nephew are effective.

answers: תוספות

ויש לומר דמילתא דלא שכיחא היא שיקדשנה האב¹⁰ מאחר שהיה לה שום עסק עם בנו -

And one can say; that it is something unusual that the father should be מקדש her, since she was involved with his son -

שאין אדם רגיל אצל כלתו להיות לבו עליה לקדשה -

For it is not usual for a person to associate with his daughter-in-law, thinking about being מקדש her -

⁵ For convention's sake let us assume that יעקב had three sons; and ראובן שמעון ולוי, where קהת לוי had a son; where ראובן married רחל and died childless while she was still a קטנה (who was נתקדשה to אביה by רחל's father). If יעקב did not consent to רחל's קידושין, so יעקב and קהת may marry רחל, for she is not related to them (her marriage to ראובן was meaningless since לא נתרצה האב). However people may mistakenly assume that יעקב and קהת cannot be מקדש רחל, for she is their daughter-in-law and aunt, respectively.

⁶ They will assume that the father of רחל was נתרצה for קידושין ראובן, since they see that שמעון is giving her חליצה. If the father was not נתרצה, why is חליצה necessary since they were never married. The people may not realize that the חליצה was given מפסק, that perhaps the father was נתרצה (and רחל is קהת's daughter), but perhaps not and she is not related to them at all and קידושין are תופסין בה.

⁷ רחל was (perhaps) married to ראובן, which makes רחל the כלה of יעקב (the father of ראובן). It makes her also the aunt (my marriage) of קהת's son לוי (the brother of ראובן).

⁸ Just as in the previous case(s) the מיאון is not necessary per se (for the woman is either מקודשת or not); it is only to inform us that there is a distinct possibility that she is not מקודשת and קידושין may be תופסין by her (relative [sister]). Similarly here too we should institute מיאון to inform us that she may never have been married to ראובן and the קידושין of either יעקב or קהת are תופסין בה.

⁹ See 'Thinking it over'.

¹⁰ The rule is that the חכמים do not institute enactments for unusual situations. This concern is far-fetched, therefore the חכמים did not see it fit to institute מיאון [as opposed to the concern of אהות אשתו (as Tosfos continues to explain)].

אפילו היתה מותרת לו כי האי דלא נתרצה לא לזה ולא לזה¹¹ -

Even if she would be permitted to him, like in this case, where if the father of the כלה **was not נתרצה not to the first brother and not to the** second brother (she would be permitted to him), nevertheless he does not think about it -

לפי שכלתו אסורה לו אפילו אחר מיתה¹² -

Since his daughter-in-law is forbidden to him even after the death of his son (her husband); therefore he never thinks about her as a possible wife -

אבל אחות אשתו המותרת לאחר מיתה דעתו עליה ורגיל אצלה -

However by his wife's sister, who is permitted to him after his wife's death; he thinks about her and associates with her; there is a distinct possibility that he may be מקדש her -

ולכך עשו חכמים תקנה בדבר שמא יארע שיקדשנה:

So therefore the חכמים made an enactment in this matter, for perhaps it might happen that he will be מקדש אחות אשתו.

Summary

A person may contemplate to marry אחות אשתו ([when permitted] since she is permitted to him מיתה (לאחר מיתה), but will not entertain to marry כלתו ודודתו (even if permitted [since they are אסורים even מיתה])

Thinking it over

¹³ להודיע שלא נתרצה אף לראשון מיאון in order we should require תוספות writes that we should require חליצה. However how does that indicate that לא נתרצה אף לראשון? If it is לא נתרצה אף לראשון, why are we making מיאון?¹⁴

¹¹ It is not clear what תוספות means with ולא לזה (the second brother), since the second brother only gave חליצה.

¹² The same applies to the nephew where his aunt is forbidden to him even after his uncle (her husband) passes on.

¹³ See footnote # 9.

¹⁴ In the case of מאמר בה מאמר (supposedly) removes the מאמר (even though there is a גט), and tells us that the מאמר had no validity. Similarly in the case of מאמר has some meaning (even though she receives a גט), but she is at least ממאן to a קידושין. However here where he was מאמר בה מאמר; there is no meaning to the מיאון! [Unless the מיאון is for the first קידושין (to her deceased husband).]