

”אם בגפו יבא בגפו יצא אם בעל אשה הוא ויצאה אשתו עמו” (שמות כא:ג) מאת הרב צבי בערקאוויץ

In the parsha of עבד עברי, the posuk says that if the עבד has a wife- she leaves with him. Rashi comments that the posuk is teaching that the אדון is chayiv to provide for the עבד's family. Ramban discusses this halacha trying to understand where this chiyuv comes from. What makes it more difficult still, is that according to most תנאים, the Torah does not require a husband to supply mezonos to his wife [rather it is a חיוב דרבנן]. So here we have the אדון being chayiv to provide for the עבד's wife when the עבד himself is not מדאורייתא. The Ramban explains that the Torah has רחמנות on the family, since typically a person will provide for his family but now he is sold as an עבד and all of his maaseh yadayim go to the owner, his family is left without anyone to turn to. Therefore, the Torah, b'chemla, puts the responsibility of providing for the family onto the אדון. The Ramban brings a ראייה to this from two בראייתות in the Mechilta that essentially say the same thing. The Mechilta says that “אשתו עמו” in the posuk comes to exclude the Shomeres yavam and Arusa of the עבד (respectively), lest one think the אדון must also provide for them. Ramban says this limud fits very well with the understanding that the Torah is mechayev the אדון to do that which the עבד would typically do himself, because a Shomeres Yavam or Arusa would not depend on the man to provide and the Torah excludes them from the chiyuv on the אדון.

We see a very interesting thing according to this Mechilta. When we read the posuk and it says אם בעל אשה הוא ויצאה אשתו עמו, it means that the אשה he is a בעל to, leaves with her. So, without these exclusions of “אשתו עמו”, בעל would include shomeres yavam and arusa. In the second Mechilta the Ramban brings, it doesn't even split them up, rather “עמו” excludes Shomeres Yavam and Arusa both. The Malbim discusses only the first Mechilta, and explains that אשתו excludes Shomeres Yavam because she is never referred to as אשתו and he explains why the mashmaos of עמו precludes Arusa. We still see that according to the Mechilta, the “בעל אשה” category would include shomeres yavam and arusa. From this we see that the Torah views an Arusa as having a husband, which is pashut because she does have an אסור איש. But more so, we even see that the Torah views a Shomeres Yavam as having a husband.

In the parsha of נדרים, by the parsha of נדרים דף עד ע"ב, מסכת נדרים, there is a machlokes what happens by a shomeres yavam- Rebbe Eliezer says kal vachomer from אשה who I was קונה by myself, certainly a woman who was קונה מן השמים, meaning the shomeres

yavam, is going to have the din of הפרת נדרים. However, Rebbe Akiva holds that she is not "אשתו גמורה" which the gemara explains as having the chiyuv misa for being mezaneh with a woman who is not an אשה גמורה. Their machlokes is whether we can take apply the ishush of an arusa לגבי הפרת נדרים to shomeres yavam, but we do see at the very least that shomeres yavam is a מעין of an arusa to have that conversation. I think this is supported by what we are saying by אשת עבד that "בעל אשה" would have included them both without the מיעוטים.

The gemara in ע"ב סז explains why a yavam does not allow shomeres yavam to eat terumah as follows: Because the posuk which describes being ma'achel terumah to non-kohanim uses the lashon of Kinyan Kaspo, and the shomeres yavam is only a kinyan kaspo of the dead brother, shomeres yavam cannot eat terumah by dint of her Kohen yavam. But תוס' brings a ר"ת who says that this derasha is an אסמכתא בעלמא, because min haTorah a shomeres yavam can indeed eat terumah, and he brings his ra'ayos. If a shomeres yavam can eat terumah from her yavam, then we see that she is somewhat comparable to an arusa who can eat terumah מדאורייתא.

The Ramban adds something that to me is a very interesting chiddush. After he brings these drashos and explains that these women do not depend on the yavam/arus for mezonos, he adds that even an arusa whose arus is compelled מן הדין to provide mezonos is excluded from this parsha of אשת עבד. [We find in the Mishna that there is a zman in which the arus is expected to do נשואין and if he fails to meet the deadline, he is chayiv מדרבנן in mezonos.] But the Ramban feels the need to explain to me why in that case why the אדון is not chayiv in mezonos which means that he would have expected us to think that the אדון would be chayiv if מדרבנן we would make the yavam/arus provide mezonos. This is a chiddush because the Ramban sounds like he's discussing on a דאורייתא level- is the אדון going to be chayiv when they (yavam/arus) are now chayiv mezonos מדרבנן. Now, his answer to why not is because this chiyuv is viewed as just a regular chov and not as a chiyuv mezonos and therefore the אדון is patur, just like he doesn't have to pick up other chovos of the עבד. So initially the Ramban categorizes the chiyuv as what mezonos would be incumbent on the husband to provide but is now calling this last case a regular chov as opposed to a chiyuv mezonos. This last piece of Ramban, I think, needs more clarity.