

Koren Talmud Bavli
THE NOÉ EDITION

YEVAMOT • PART ONE



Shefa



KOREN

תלמוד בבלי

KOREN TALMUD BAVLI

— THE NOÉ EDITION —

יבמות א

YEVAMOT • PART ONE

COMMENTARY BY

Rabbi Adin Even-Israel
Steinsaltz

EDITOR-IN-CHIEF

Rabbi Dr Tzvi Hersh Weinreb

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Supported by the Matanel Foundation

Koren Talmud Bavli, The Noé Edition

Volume 14: Tractate Yevamot, Part One

Standard Size Color Edition, ISBN 978 965 301 575 3

Daf Yomi Size B&W Edition, ISBN 978 965 301 620 0

First Hebrew/English Edition, 2014

Koren Publishers Jerusalem Ltd.

PO Box 4044, Jerusalem 91040, ISRAEL

PO Box 8531, New Milford, CT 06776, USA

www.korenpub.com

Shefa Foundation

Shefa Foundation is the parent organization

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Talmud Design © 2014 Koren Publishers Jerusalem Ltd.

Original Illustrations © 1965, 2014 Shefa Foundation

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הִנֵּה יָמִים בָּאִים, נֹאֵם אֲדֹנָי יְהוִה, וְהִשְׁלַחְתִּי רָעָב בָּאָרֶץ,
לֹא-רָעָב לֶלֶחֶם וְלֹא-צָמָא לַמַּיִם, כִּי אֶם-לִשְׁמֹעַ אֶת דְּבָרֵי יְהוִה.

Behold, days are coming – says the LORD God –
I will send a hunger to the land, not a hunger for bread
nor a thirst for water, but to hear the words of the LORD.

(AMOS 8:11)

*The Noé edition of the Koren Talmud Bavli
with the commentary of Rabbi Adin Even-Israel Steinsaltz
is dedicated to all those who open its cover
to quench their thirst for Jewish knowledge,
in our generation of Torah renaissance.*

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the novice and the savant alike,
as it unites the depth of Torah knowledge
with the best of academic scholarship.*

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words become worlds.*

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in the bookcases of the Beit Midrash,
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and in the offices of professionals and businesspeople
who carve out precious time to grapple with its timeless wisdom.*

For the Student and the Scholar

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*Once upon a time, under pressure of censorship,
printers would inscribe in the flyleaves
of volumes of the Talmud:*

*Whatever may be written herein about gentiles
does not refer to the gentiles of today,
but to gentiles of times past.*

*Today, the flyleaves of our books bear a similar inscription,
albeit an invisible one:*

*Whatever may be written herein about Jews
does not refer to the Jews of today,
but to Jews who lived in other times.*

*So we are able to sit down and study Torah, Talmud,
books of ethics, or books of faith
without considering their relevance to our lives.*

*Whatever is written there
does not apply to us or to our generation,
but only to other people, other times.*

*We must expunge from those invisible prologues
the notion that the words are written about someone else,
about others, about anyone but us.*

*Whether the book is a volume of Torah,
a tractate of the Talmud, or a tract of faith,
the opposite must be inscribed:*

*Whatever is written herein refers only to me;
is written for me and obligates me.*

First and foremost, the content is addressed to me.

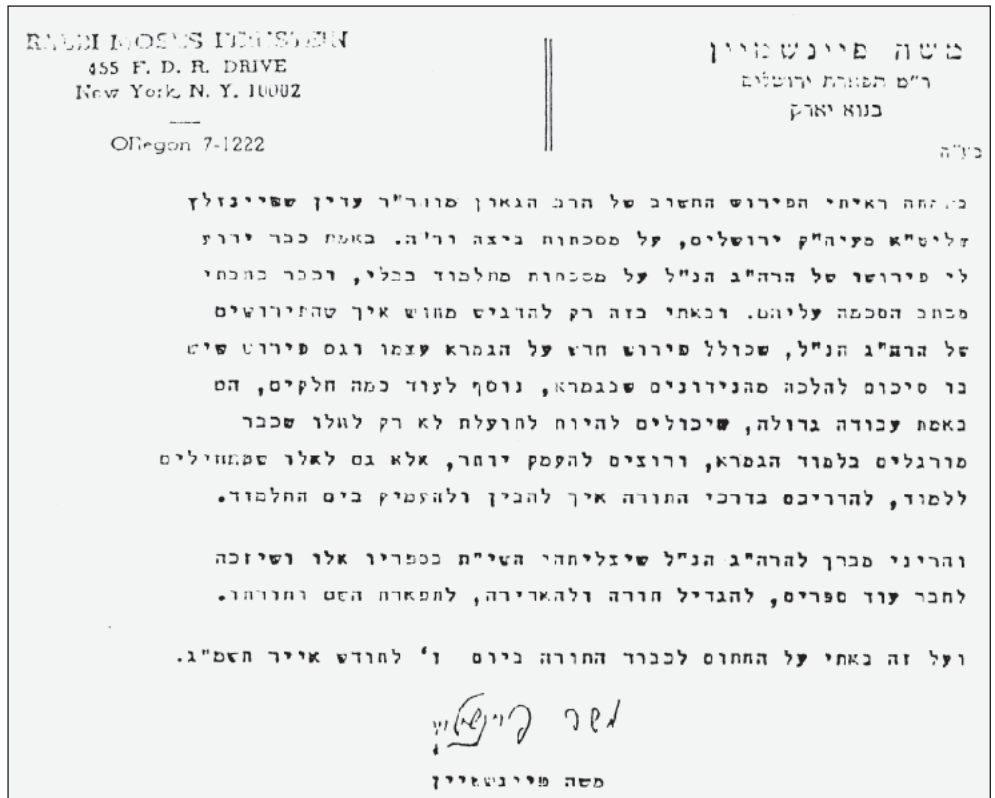
— From a public address by Rabbi Adin Even-Israel Steinsaltz
as quoted in *חיי עולם* (Talks on Parashat HaShavua)
Maggid Books, 2011

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Haskama

Rabbi Moshe Feinstein



... These new commentaries – which include a new interpretation of the Talmud, a halakhic summary of the debated issues, and various other sections – are a truly outstanding work; they can be of great benefit not only to those familiar with talmudic study who seek to deepen their understanding, but also to those who are just beginning to learn, guiding them through the pathways of the Torah and teaching them how to delve into the sea of the Talmud.

I would like to offer my blessing to this learned scholar. May the Holy One grant him success with these volumes and may he merit to write many more, to enhance the greatness of Torah, and bring glory to God and His word...

Rabbi Moshe Feinstein
New York, 7 Adar 5743

ר"מ משה פיינשטיין שליט"א
 הגה ראייתי את מסכת אחת מהש"ס שנקד אותה וגם
 צייר צורות הצמחים וכדומה מדברים שלא ידוע לכמה
 אנשים הרב"ג ר' עדין שטיינזלץ מירושלים שליט"א
 וגם הוסיף שם בגליון פירושים וחידושים וניכר שהוא
 ת"ח וראויין לעיון בהם ת"ח ובני הישיבה וטוב גם
 לקנותם בבתי כנסיות ובבתי מדרשות שיש שיתנו להם
 לתועלת. – ועל זה באיתי עה"ג אדר ב' תש"ל.
 נאם משה פיינשטיין
 ר"מ תפארת ירושלים, ניו יורק, אדר"ב

I have seen one tractate from the Talmud to which the great scholar Rabbi Adin Steinsaltz שליט"א has added *nikkud* (vowels) and illustrations to explain that which is unknown to many people; he has also added interpretations and innovations, and is evidently a *talmid hakham*. *Talmidei hakhamim* and yeshiva students ought to study these volumes, and synagogues and *batei midrash* would do well to purchase them, as they may find them useful.

Rabbi Moshe Feinstein
New York, Adar 5730

"ושמעו כיום ההוא החרשים דברי ספר"

(ישעי' כט' יח')

תרגום ספרי קדמונים לשפת דורות אחרונים – היא משימתם של חכמי דור ודור. ובישראל שטצות "ושננתם לבניך" מקיפה את כל חלקי האומה, ודאי שהיתה זאת המשימה בכל עידן ועידן. בכל דור כך, ובדורנו אשר רבים בו הקרובים שנחקקו וחוזרים ומחקרים – לא כל שכן. כי רבים היום האומרים "מי ישקנו מים מבאר" התלמוד, ומדענים הם הדולים ומסקים. ראוי אפוא להערכה מיוחדת נסיונו הסבור של הצעיר המופלא, הרב עדין שטיינזלץ, לפרט פרקי-תלמוד בהסברה מורחבת-תמציתית. אשר נוסף על המדויק המלולי והענייני הוא מעלה גם את ההגיון של הדברים ומתרגמת אותם לשפת-המודרניים של כן-דורנו. דומה שכל הנבונים אל חומר למודי מחוץ רצון להבינו – התלמיד החרוץ והמבוגר המשכיל – לא יתקלו בשום קושי בבואם ללמוד סוגיא תלמודית לפי פרוש זה. ולא עוד אלא שיש לקוות כי ההסברה הגיונית תעמידה מיד על טוב-הטעם של דף-הגמרא, והם ימסכו יותר ויותר אל הלמוד העיוני הזה אשר טובי המוחות בישראל לנו בעומקו, ואשר מטנו מינה, ממנו יתד לבנין היינו. נועם ד' על המפרש הנמרץ להמשיך במפעלו, וברוכים כל העוזרים להוצאתו לאור-עולם.

ביקר אורייתא

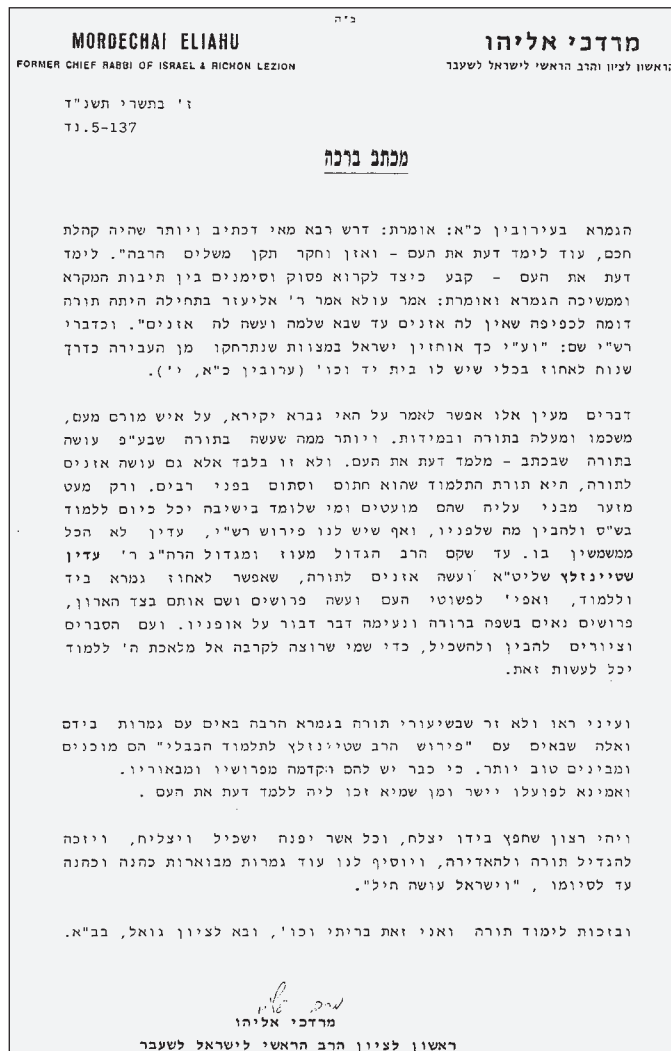
(אתימה)

The translation of the books of our past into the language of the present – this was the task of the sages of every generation. And in Israel, where the command to “teach them repeatedly to your children” applies to all parts of the nation, it was certainly the task of every era. This is true for every generation, and in our time – when many of those who have strayed far are once again drawing near – all the more so. For many today say, “Who will let us drink from the well” of Talmud, and few are those who offer up the waters to drink.

We must, therefore, particularly commend the blessed endeavor of Rabbi Adin Steinsaltz to explain the chapters of the Talmud in this extensive yet succinct commentary, which, in addition to its literal interpretation of the text, also explicates the latter’s underlying logic and translates it into the language of our generation.

It appears that all those who seek to study Talmud – the diligent student and the learned adult – will have no difficulty understanding when using this commentary. Moreover, we may hope that the logical explanation will reveal to them the beauty of the talmudic page, and they will be drawn deeper and deeper into the intellectual pursuit which has engaged the best Jewish minds, and which serves as the cornerstone of our very lives...

Rabbi Moshe Zvi Neria



Haskama

Rabbi Mordechai Eliyahu

The Talmud in *Eruvin* 21b states: Rava continued to interpret verses homiletically. What is the meaning of the verse: “And besides being wise, Kohelet also taught the people knowledge; and he weighed, and sought out, and set in order many proverbs” (Ecclesiastes 12:9)? He explains: He taught the people knowledge; he taught it with the accentuation marks in the Torah, and explained each matter by means of another matter similar to it. And he weighed [*izen*], and sought out, and set in order many proverbs; Ulla said that Rabbi Eliezer said: At first the Torah was like a basket without handles [*oznayim*] until Solomon came and made handles for it. And as Rashi there explains: And thus were Israel able to grasp the mitzvot and distance themselves from transgressions – just as a vessel with handles is easily held, etc.

Such things may be said of this beloved and eminent man, a great sage of Torah and of virtue. And far more than he has done with the Oral Torah, he does with the Written Torah – teaching the people knowledge. And beyond that, he also affixes handles to the Torah, i.e., to the Talmud, which is obscure and difficult for many. Only the intellectual elite, which are a precious few, and those who study in yeshiva, can today learn the Talmud and understand what it says – and even though we have Rashi, still not everyone uses him. But now the great scholar Rabbi Adin Steinsaltz שליט"א has come and affixed handles to the Torah, allowing the Talmud to be held and studied, even by simple men. And he has composed a commentary alongside the text, a fine commentary in clear, comprehensible language, “a word fitly spoken” with explanations and illustrations, so that all those who seek to study the work of God can do so.

Rabbi Mordechai Eliyahu
Former Chief Rabbi of Israel, 7 Tishrei 5754

Message from Rabbi Adin Even-Israel Steinsaltz

The Talmud is the cornerstone of Jewish culture. True, our culture originated in the Bible and has branched out in directions besides the Talmud, yet the latter's influence on Jewish culture is fundamental. Perhaps because it was composed not by a single individual, but rather by hundreds and thousands of Sages in *batei midrash* in an ongoing, millennium-long process, the Talmud expresses not only the deepest themes and values of the Jewish people, but also of the Jewish spirit. As the basic study text for young and old, laymen and learned, the Talmud may be said to embody the historical trajectory of the Jewish soul. It is, therefore, best studied interactively, its subject matter coming together with the student's questions, perplexities, and innovations to form a single intricate weave. In the entire scope of Jewish culture, there is not one area that does not draw from or converse with the Talmud. The study of Talmud is thus the gate through which a Jew enters his life's path.

The *Koren Talmud Bavli* seeks to render the Talmud accessible to the millions of Jews whose mother tongue is English, allowing them to study it, approach it, and perhaps even become one with it.

This project has been carried out and assisted by several people, all of whom have worked tirelessly to turn this vision into an actual set of books to be studied. It is a joyful duty to thank the many partners in this enterprise for their various contributions. Thanks to Koren Publishers Jerusalem, both for the publication of this set and for the design of its very complex graphic layout. Thanks of a different sort are owed to the Shefa Foundation and its director, Rabbi Menachem Even-Israel, for their determination and persistence in setting this goal and reaching it. Many thanks to the translators, editors, and proofreaders for their hard and meticulous work. Thanks to the individuals and organizations that supported this project, chief among them the Matanel Foundation and the Noé family of London. And thanks in advance to all those who will invest their time, hearts, and minds in studying these volumes – to learn, to teach, and to practice.

Rabbi Adin Even-Israel Steinsaltz
Jerusalem 5773

Acknowledgments

We are indeed privileged to dedicate this edition of the *Koren Talmud Bavli* in honor of the generous support of Leo and Sue Noé of London.

The name Noé is synonymous with philanthropy. The family's charitable endeavors span a vast range of educational projects, welfare institutions, and outreach organizations across the globe, with a particular emphasis on the "nurturing of each individual." Among so many other charitable activities, the Noés have been deeply involved with *Kisharon*, which provides the British Jewish community with vital support for hundreds of people with learning difficulties and their families; they provide steadfast support of SEED, which stands at the forefront of adult Jewish education in the UK, and *Kemach*, an organization in Israel that "helps Haredi students sustain themselves in dignity," providing both professional and vocational training for the Haredi community in Israel.

The Noés are not simply donors to institutions. They are partners. Donors think of a sum. Partners think of a cause, becoming rigorously and keenly involved, and giving of their time and energy. We are honored that they have chosen to partner with our two organizations, *Shefa* and *Koren Publishers Jerusalem*, enabling us to further and deepen learning among all Jews.

Leo and Sue are the proud parents and grandparents of five children and their families. The next generation has been taught by example that with life's gifts come the responsibilities to be active within and contribute to society – both Jewish and non-Jewish – as is consistent with the noblest of Jewish values.

Rabbi Adin Even-Israel Steinsaltz
Matthew Miller, Publisher
Jerusalem 5773

Introduction by the Editor-in-Chief

The vastly expanded audience of Talmud study in our generation is a phenomenon of historical proportions. The reasons for this phenomenon are many, and include the availability of a wide array of translations, commentaries, and study aids.

One outstanding example of such a work is the translation of the Talmud into modern Hebrew by Rabbi Adin Even-Israel Steinsaltz. The product of a lifetime of intense intellectual labor, this translation stands out in its uniqueness.

But what can the interested student do if he or she does not comprehend the Hebrew, even in its modern form? Where is the English speaker who wishes to access this instructive material to turn? The *Koren Talmud Bavli* that you hold in your hand is designed to be the answer to those questions.

This work is the joint effort of Rabbi Steinsaltz himself, his closest advisory staff, and Koren Publishers Jerusalem. It is my privilege to have been designated editor-in-chief of this important project, and to have worked in close collaboration with a team of translators and copy editors, artists and graphic designers, scholars and editors.

Together we are presenting to the English-speaking world a translation that possesses all the merits of the original Hebrew work by Rabbi Steinsaltz and provides assistance for the beginner of any age who seeks to obtain the necessary skills to become an adept talmudist.

To date we have published thirteen volumes completing the orders of *Zera'im* and *Moed*. Our work has been enthusiastically received by a broad and diverse audience. Particularly gratifying is the fact that many have chosen to use our text as the basis for the group study of Talmud. We appreciate the comments and suggestions from our readers the world over and are committed to improving future editions of the *Koren Talmud Bavli* on the basis of that input. Indeed, a second edition of our first volume, *Berakhot*, has already been released, incorporating much of the advice brought to our attention by our readers. We encourage you to continue to advise us of your experience with our work.

The order of *Nashim* begins with tractate *Yevamot*, which we are printing in two volumes. *Yevamot*, Part I, is the fourteenth volume of this project. It includes the entire original text, in the traditional configuration and pagination of the famed Vilna edition of the Talmud. This enables the student to follow the core text with the commentaries of Rashi, *Tosafot*, and the

customary marginalia. It also provides a clear English translation in contemporary idiom, faithfully based upon the modern Hebrew edition.

At least equal to the linguistic virtues of this edition are the qualities of its graphic design. Rather than intimidate students by confronting them with a page-size block of text, we have divided the page into smaller thematic units. Thus, readers can focus their attention and absorb each discrete discussion before proceeding to the next unit. The design of each page allows for sufficient white space to ease the visual task of reading. The illustrations, one of the most innovative features of the Hebrew edition, have been substantially enhanced and reproduced in color.

The end result is a literary and artistic masterpiece. This has been achieved through the dedicated work of a large team of translators, headed by Rabbi Joshua Schreier, and through the unparalleled creative efforts of Raphaël Freeman and the gifted staff at Koren.

The group of individuals who surround Rabbi Steinsaltz and support his work deserve our thanks as well. I have come to appreciate their energy, initiative, and persistence. And I thank the indefatigable Rabbi Menachem Even-Israel, whom I cannot praise highly enough. The quality of his guidance and good counsel is surpassed only by his commitment to the dissemination and perpetuation of his father's precious teachings.

Finally, in humility, awe, and great respect, I acknowledge Rabbi Adin Even-Israel Steinsaltz. I thank him for the inspirational opportunity he has granted me to work with one of the outstanding sages of our time.

Rabbi Tzvi Hersh Weinreb
Jerusalem 5774

Preface by the Executive Editor

Toward the beginning of tractate *Pesaḥim* (3a), the Gemara questions the Mishna's use of the term *or* rather than the standard term *leil* when referring to the evening of the fourteenth of Nisan. The Gemara introduces a discussion of the value of euphemism and refraining from the use of crude language. It concludes that despite the importance of euphemism, if the euphemism comes at the expense of clarity and requires a less succinct formulation, it is preferable to speak concisely. Only when the choice is between equally concise phrases is the euphemism preferred.

In his *peirush*, Rabbi Steinsaltz's language is both concise and aesthetic. While explaining often difficult passages, he avoids the temptation to over-explain, inviting the reader to study the Talmud with him rather than doing all the thinking in the reader's place. We have attempted to follow his path in translating and editing the *Koren Talmud Bavli*.

My involvement in the production of the *Koren Talmud Bavli* has been both a privilege and a pleasure. The Shefa Foundation, headed by Rabbi Menachem Even-Israel and devoted to the dissemination of the wide-ranging, monumental works of Rabbi Adin Even-Israel Steinsaltz, constitutes the Steinsaltz side of this partnership; Koren Publishers Jerusalem, headed by Matthew Miller, with the day-to-day management of the project in the able hands of Dena Landowne Bailey, constitutes the publishing side of this partnership. The combination of the inspiration, which is the hallmark of Shefa, with the creativity and professionalism for which Koren is renowned and which I experience on a daily basis, has lent the *Koren Talmud Bavli* its outstanding quality in terms of both content and form.

I would like to express my appreciation for Rabbi Dr. Tzvi Hersh Weinreb, the Editor-in-Chief, whose insight and guidance have been invaluable. The contribution of my friend and colleague, Rabbi Dr. Shalom Z. Berger, the Senior Content Editor, cannot be overstated; his title does not begin to convey the excellent direction he has provided in all aspects of this project. In addition, I would like to thank Rabbi Jason Rappoport, Managing Editor; Rabbi Joshua Amaru, Coordinating Editor; and Rabbi Avishai Magence, Content Curator, whose tireless devotion to this project has been and continues to be crucial to the continued success of this project. The erudite and articulate men and women who serve as translators, editors, and copy editors have ensured that this project adheres to the highest standards.

There are several others whose contributions to this project cannot be overlooked. On the Steinsaltz side: Meir HaNegbi, Yacov Elbert, and Tsipora Ifrah. On the Koren side, my colleagues at Koren: Rabbi David Fuchs, Rabbi Hanan Benayahu, Efrat Gross, Rachel Hanstater Meghnagi, Rabbi Eliahu Misgav, and Rabbi Yinon Chen. Their assistance in all matters, large and small, is appreciated.

At the risk of being repetitious, I would like to thank Rabbi Dr. Berger for introducing me to the world of Steinsaltz. Finally, I would like to thank Rabbi Menachem Even-Israel, with whom it continues to be a pleasure to move forward in this great enterprise.

Rabbi Joshua Schreier
Jerusalem 5773

Introduction by the Publisher

The Talmud has sustained and inspired Jews for thousands of years. Throughout Jewish history, an elite cadre of scholars has absorbed its learning and passed it on to succeeding generations. The Talmud has been the fundamental text of our people.

Beginning in the 1960s, Rabbi Adin Even-Israel Steinsaltz שליט"א created a revolution in the history of Talmud study. His translation of the Talmud, first into modern Hebrew and then into other languages, as well the practical learning aids he added to the text, have enabled millions of people around the world to access and master the complexity and context of the world of Talmud.

It is thus a privilege to present the *Koren Talmud Bavli*, an English translation of the talmudic text with the brilliant elucidation of Rabbi Steinsaltz. The depth and breadth of his knowledge are unique in our time. His rootedness in the tradition and his reach into the world beyond it are inspirational.

Working with Rabbi Steinsaltz on this remarkable project has been not only an honor, but a great pleasure. Never shy to express an opinion, with wisdom and humor, Rabbi Steinsaltz sparkles in conversation, demonstrating his knowledge (both sacred and worldly), sharing his wide-ranging interests, and, above all, radiating his passion. I am grateful for the unique opportunity to work closely with him, and I wish him many more years of writing and teaching.

Our intentions in publishing this new edition of the Talmud are threefold. First, we seek to fully clarify the talmudic page to the reader – textually, intellectually, and graphically. Second, we seek to utilize today's most sophisticated technologies, both in print and electronic formats, to provide the reader with a comprehensive set of study tools. And third, we seek to help readers advance in their process of Talmud study.

To achieve these goals, the *Koren Talmud Bavli* is unique in a number of ways:

- The classic *tzurat hadaf* of Vilna, used by scholars since the 1800s, has been reset for greater clarity, and opens from the Hebrew “front” of the book. Full *nikkud* has been added to both the talmudic text and Rashi's commentary, allowing for a more fluent reading with the correct pronunciation; the commentaries of *Tosafot* have been punctuated. Upon the advice of many English-speaking teachers of Talmud, we have separated these core pages from the translation, thereby enabling the advanced student to approach the text without the distraction of the translation. This also reduces the number of volumes in the set. At the bottom of each *daf*, there is a reference to the corresponding English pages. In addition, the Vilna edition was read against other manuscripts and older print editions, so that texts which had been removed by non-Jewish censors have been restored to their rightful place.

- The English translation, which starts on the English “front” of the book, reproduces the *menukad* Talmud text alongside the English translation (in bold) and commentary and explanation (in a lighter font). The Hebrew and Aramaic text is presented in logical paragraphs. This allows for a fluent reading of the text for the non-Hebrew or non-Aramaic reader. It also allows for the Hebrew reader to refer easily to the text alongside. Where the original text features dialogue or poetry, the English text is laid out in a manner appropriate to the genre. Each page refers to the relevant *daf*.
- Critical contextual tools surround the text and translation: personality notes, providing short biographies of the Sages; language notes, explaining foreign terms borrowed from Greek, Latin, Persian, or Arabic; and background notes, giving information essential to the understanding of the text, including history, geography, botany, archeology, zoology, astronomy, and aspects of daily life in the talmudic era.
- Halakhic summaries provide references to the authoritative legal decisions made over the centuries by the rabbis. They explain the reasons behind each halakhic decision as well as the ruling’s close connection to the Talmud and its various interpreters.
- Photographs, drawings, and other illustrations have been added throughout the text – in full color in the Standard and Electronic editions, and in black and white in the Daf Yomi edition – to visually elucidate the text.

This is not an exhaustive list of features of this edition; it merely presents an overview for the English-speaking reader who may not be familiar with the “total approach” to Talmud pioneered by Rabbi Steinsaltz.

Several professionals have helped bring this vast collaborative project to fruition. My many colleagues are noted on the Acknowledgments page, and the leadership of this project has been exceptional.

RABBI MENACHEM EVEN-ISRAEL, DIRECTOR OF THE SHEFA FOUNDATION, was the driving force behind this enterprise. With enthusiasm and energy, he formed the happy alliance with Koren and established close relationships among all involved in the work.

RABBI DR. TZVI HERSH WEINREB שליט”א, EDITOR-IN-CHIEF, brought to this project his profound knowledge of Torah, intellectual literacy of Talmud, and erudition of Western literature. It is to him that the text owes its very high standard, both in form and content, and the logical manner in which the beauty of the Talmud is presented.

RABBI JOSHUA SCHREIER, EXECUTIVE EDITOR, assembled an outstanding group of scholars, translators, editors, and copy editors, whose standards and discipline enabled this project to proceed in a timely and highly professional manner.

RABBI MEIR HANEGBI, EDITOR OF THE HEBREW EDITION OF THE STEINSALTZ TALMUD, lent his invaluable assistance throughout the work process, supervising the reproduction of the Vilna pages.

RAPHAËL FREEMAN created this Talmud’s unique typographic design which, true to the Koren approach, is both elegant and user-friendly.

It has been an enriching experience for all of us at Koren Publishers Jerusalem to work with the Shefa Foundation and the Steinsaltz Center to develop and produce the *Koren Talmud Bavli*. We pray that this publication will be a source of great learning and, ultimately, greater *Avodat Hashem* for all Jews.

Matthew Miller, Publisher
Koren Publishers Jerusalem
Jerusalem 5773

Introduction to **Yevamot**

Yevamot is the first tractate in the order of *Nashim*. Admittedly, some commentaries place *Yevamot* after *Gittin* (Meiri), but this is not widely accepted. While the tractate focuses mainly on the *halakhot* of levirate marriage, the elucidation of these *halakhot* necessitates an in-depth clarification of the *halakhot* of marriage in general. These include forbidden and disqualified marriages, i.e., those women with whom relations are forbidden with a certain man, whether by Torah law or by rabbinic law, as well as the definition and severity of these prohibitions. Consequently, the comprehensive discussions of tractate *Yevamot* form the basis of the entire order of *Nashim*.

As stated above, in addition to the *halakhot* of levirate marriage, this tractate serves as an important and sometimes the only source for various aspects of forbidden sexual relations, as well as the *halakhot* of converts and conversion, and the definition of separation between man and wife, which concerns mainly the *halakhot* of refusal and the case of a deserted wife. Many of these discussions are complemented in *Kiddushin*, the last tractate in *Nashim*.

The issue of levirate marriage is explicitly stated in the Torah in only one short passage (Deuteronomy 25:5–10). In addition, there are two episodes in the Bible that are connected to the idea of levirate marriage: The incident involving Judah, his sons, and Tamar (Genesis, chapter 38), and the marriage of Ruth and Boaz (Ruth, chapters 3–4). Both early commentaries and later commentaries discuss the relationship between these stories and the *halakhot* of levirate marriage set out in Deuteronomy. In any case, levirate marriage, as well as being a far-from-rare occurrence, is such a fundamental concept that an entire tractate is devoted its many details, on both the theoretical and the practical levels.

Levirate marriage is a novel *halakha*; see the Gemara on 17b. In other words, it deviates from the norms of the legal system of the Torah. Generally, one who engages in relations with the wife of his brother violates a severe prohibition that makes him liable to *karet* (Leviticus 18:16, 20:21). However, if this woman's husband dies childless, not only is she permitted to the brother, it is actually a mitzva for him to marry her. Since forbidden sexual relationships are among the most severe of Torah prohibitions, indeed one of the three cardinal sins for which one must allow himself to be killed rather than transgress, the fact that one is permitted and even commanded to marry his brother's wife renders levirate marriage a highly exceptional case.

Several halakhic discussions in this tractate concern the basic question of whether the mitzva of levirate marriage merely overrides the prohibition with regard to a brother's wife to a limited extent, or whether, in these special circumstances, the prohibition does not apply at all. One of the ways the Sages express this dialectic tension is with the statement that the verses "You shall not uncover the nakedness

of your brother's wife" (Leviticus 18:16) and "Her brother-in-law will have intercourse with her" (Deuteronomy 25:5) were pronounced together (Jerusalem Talmud, *Nedarim* 3:5).

According to this line of reasoning, it is incorrect to say that a forbidden sexual relationship is permitted in the case of levirate marriage. In fact, the opposite is the case: The mitzva of levirate marriage applies only when no prohibition is in effect. If a potential levirate marriage would violate any other forbidden sexual relationship apart from that of a brother's wife, not only is there no mitzva to marry the woman, the obligation of levirate marriage does not apply in this case at all and she is actually forbidden to the brother.

Levirate marriage is unique not only with regard to the performance of the mitzva itself, but also in the fact that the obligation can be released by the act of *ḥalitza*. Typically, the Torah imposes either absolute obligations that every Jew must fulfill at all times, e.g., the love of God; or mitzvot that are incumbent upon certain people part of the time, such as donning phylacteries; or commandments that apply if particular conditions are met, e.g., the *halakhot* of commerce or ritual slaughtering. In all these cases, once the mitzva is in force, one cannot release himself from the obligation.

By contrast, the option of *ḥalitza* effectively provides the brother-in-law with the choice of whether or not he wants to perform levirate marriage. Consequently, the Sages apparently viewed *ḥalitza* not as the negation of levirate marriage but as an alternative mitzva. Accordingly, the Torah allows the brother-in-law in this situation to select between two equivalent mitzvot. Some even maintain that *ḥalitza* is preferable to levirate marriage; see 39b. This issue is also possibly connected to the debate in the Jerusalem Talmud as to whether *ḥalitza* is itself a form of acquisition or simply an act that exempts the brother-in-law and releases the *yevama*.

With these points in mind, these mitzvot can be explained in the following terms. When a man dies childless, he leaves behind a void in a soul that was unable to come to full fruition in the world. Consequently, his surviving brother must replace him by marrying his widow. In this manner the surviving brother is considered to be continuing his late brother's life. For this reason, by Torah law there is no new ritual of betrothal or a wedding ceremony in the case of levirate marriage, as it carries on the previous bond. This consideration also affects the *halakhot* of inheritance and the marriage contract, among other matters. If the brother-in-law bears a child he is viewed as completing his brother's mission.

See the Ramban's Commentary on the Torah with regard to both the episode of Judah and Tamar and the chapter on levirate marriage itself, where he discusses the fundamental idea of levirate marriages in light of these passages. Indeed, the story of Judah and Tamar, among other things, teaches the great responsibility of this task and the punishment of those who refuse to fulfill it in the proper manner.

Conversely, *ḥalitza* is essentially a ritual of atonement and purification, through which the brother-in-law and his *yevama* are released from their mutual bond and from the weighty obligation placed on their shoulders. Moreover, this is the means by which the life cycle of the deceased brother is brought to a close.

Another feature of levirate marriage is that in contrast to a regular marriage, in which the man chooses the woman he wishes to wed, the *yevama* and brother-in-law are tied together by a decree of the Torah. This connection, called by the Sages the levirate bond, is one of the central topics of the tractate. Some Sages view this link as merely

an obligation to marry a particular woman, which in practical terms simply means that she is not permitted to marry anyone else until the obligation has been released by means of *halitza*. This opinion is expressed as: There is no bond. However, the *halakha* is that there is a bond, i.e., the link between a brother-in-law and a *yevama* is virtually akin to a marital bond, as she is considered betrothed to him to a certain extent. One of the ramifications of this ruling is that her close female relatives are forbidden to the brother-in-law.

In light of the above, to preserve the boundaries of modesty and to prevent any miscomprehension of the *halakhot* of marriage, the Sages enacted that a brother-in-law should perform an act of betrothal with his *yevama*. This is called a *ma'amar*, a levirate betrothal. Furthermore, if he gives her a bill of divorce while she is waiting for either levirate marriage or *halitza*, his act is effective to a certain extent. On the one hand, these rabbinic enactments draw levirate marriage closer to a regular marriage, but on the other hand they can cause many problems for the marriage and for *halitza*.

Likewise, other decrees of the Sages involving marriage, such as those concerning the marriage of a minor girl who is an orphan and the annulment of this tie by her refusal of her husband, as well as the marriage of deaf-mutes, also complicate the *halakhot* of levirate marriage, despite the fact that these enactments serve the public welfare. Some of these prohibitions stem from sanctity, i.e., they were enacted in order to preserve the sanctity of the Jewish people or the priesthood, and some of them apply to the entire people, such as having a sexual relationship with a *mamzer* or a man with crushed genitals or other genital wounds, or with converts from different nations. Other forbidden sexual relationships are secondary relationships forbidden by rabbinic law.

All these cases require not only a thorough analysis on their own account, but they must be properly defined before one can establish the relationship between these marriages and levirate marriage, which applies by Torah law. This matter concerns the validity of levirate marriage and *halitza*, the whole range of monetary issues that arise with regard to inheritance and the marriage contract, and the concomitant prohibitions and rights, e.g., the permission to partake of *teruma* and the conditions of the marriage contract.

Furthermore, numerous other problems with levirate marriage can result from various causes, either due to complicated family relationships, e.g., if the *yevama* is permitted to only one of several brothers, or if a few deaths occur in succession, or because of factual or halakhic uncertainties. These might be doubts with regard to the halakhic and family status of a certain person, or unclear and possibly erroneous testimony concerning someone's death.

The debates and analysis of all these problems, both separately and in various combinations, is why tractate *Yevamot* is considered one of the hardest, most complex tractates in the entire Talmud.

Tractate *Yevamot* is comprised of sixteen chapters. Some deal with one clearly defined topic, while others discuss several issues spread over different chapters. The first seven chapters are included in the present volume:

Chapter One focuses on the *halakhot* of women to whom the duty of levirate marriage does not apply, either because they are among those with whom relations are forbidden or for some other reason. Additionally, the chapter discusses the basic halakhic principles of when one mitzva overrides another.

Chapter Two deals with the prohibition with regard to the wife of a brother with whom the *yavam* did not coexist. It also discusses the basic principles of the types of women who are obligated in levirate marriages, and those who have no option but to perform *ḥalitza* due to a prohibition that would be violated by a sexual relationship; whether it is a definite or an uncertain prohibition, and whether it applies by Torah law or by rabbinic law.

Chapter Three discusses those cases in which women who are relatives of each other are liable in levirate marriage, as well as a woman who is bound by an obligation of levirate marriage with two brothers.

Chapter Four contains many topics: The case of erroneous *ḥalitza* and levirate marriage, the *halakhot* of inheritance and the marriage contract of a brother-in-law and his *yevama*, the basic definitions of *mamzer* status, and the *halakhot* of conversion.

Chapter Five discusses a single issue: The validity of a levirate betrothal [*ma'amar*] and the bill of divorce of a brother-in-law to his *yevama*, including all various permutations and combinations of these actions.

Chapter Six deals with the definition and *halakhot* of the act of intercourse, particularly with regard to a *yevama*, but also as it concerns marital relations in general. A portion of the chapter also discusses the prohibitions that apply only to priests, specifically to the High Priest, and the mitzva to be fruitful and multiply.

Chapter Seven focuses on the *halakhot* of partaking of *teruma* as they apply to the daughter or the wife of a priest, and those actions that disqualify them from eating *teruma*.

Explanation of Diagrams in Yevamot

Man



Woman



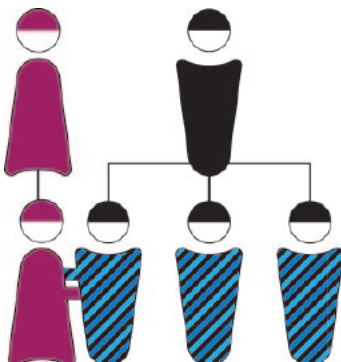
Married couple



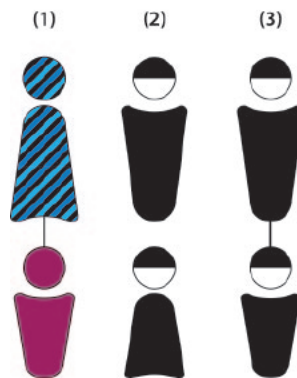
Siblings are indicated by identical patterning:



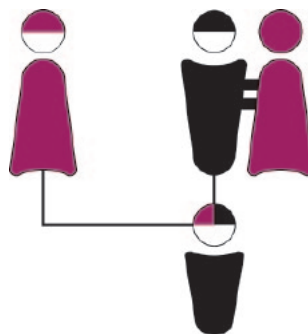
Members of the same generation are usually on the same horizontal row:



Parents and their offspring are either connected by a vertical line, indicated by identical shading on their heads, or both:



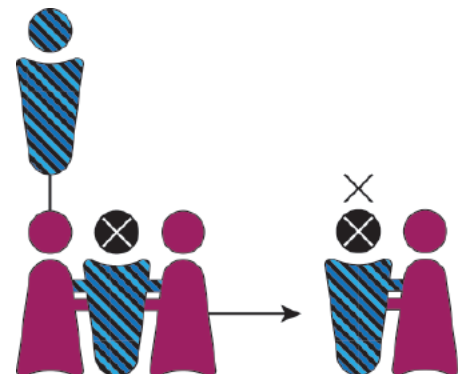
For the offspring of an unmarried couple, the shading on the head reflects that of both the father and the mother:



A deceased individual is indicated by an X on his head:



If more than one individual has died, each subsequent death is indicated by an additional X above the deceased's head. When more than one event is described in a single diagram, an arrow points to the later event.



You shall not uncover the nakedness of your brother's wife; it is your brother's nakedness.

(Leviticus 18:16)

If brothers dwell together and one of them dies and he has no child, the wife of the dead man shall not be married outside of the family to one not of his kin; her brother-in-law will have intercourse with her and take her to him to be his wife and consummate the levirate marriage.

(Deuteronomy 25:5)

Introduction to Perek I

By definition, the commandment of levirate marriage refers to an unusual situation: Generally, it is prohibited to marry one's brother's wife even after their divorce or after his brother's death. However, if the deceased brother did not leave any children, it is a mitzva for the surviving brother to marry his former wife. In other words, the mitzva of levirate marriage overrides the severe prohibition proscribing a brother's wife.

One of the practical questions of levirate marriage is whether this mitzva overrides other sexual prohibitions between the brother-in-law, who is referred to as the *yavam*, and his potential *yevama*, his brother's widow. In this regard, the tradition of the Sages is unambiguous: The mitzva of levirate marriage overrides the prohibition with regard to a brother's wife alone, not those who are forbidden by another prohibition. However, the precise halakhic definition of this tradition must be clarified. Does this mean that the mitzva of levirate marriage does not apply at all in these cases, and the prohibition against marrying a brother's wife remains in force, as in the case of a deceased brother who did have children? Or is this a case in which the mitzva of levirate marriage applies, but due to other prohibitions it cannot be performed in practice, and the *yavam* must perform *ḥalitza* instead?

A related issue is whether in a case of this kind the mitzva of levirate marriage is entirely canceled with regard to this brother, or whether the prohibition affects only his relationship with that particular woman. If so, he would have the option, either practical or at least theoretical, of entering into levirate marriage with another wife of the deceased brother, a so-called rival wife.

To resolve these problems, it is necessary to arrive at a comprehensive understanding of the Torah's resolution of practical cases of conflict between two mitzvot, i.e., cases when the fulfillment of a certain positive commandment entails the violation of a prohibition.

The clarification of these issues and their practical ramifications form the main topics of this chapter.

The Torah law obligating a man whose brother died without children [*yavam*] to marry his deceased brother's widow [*yevama*] or to free her from her levirate bonds through the act of *halitza* applies only when it is permitted for the widow to marry her surviving brother-in-law. However, in cases where the *yevama* is forbidden to her *yavam* due to her status as a close family relative, the mitzva of levirate marriage is not applicable, and she is exempt from both levirate marriage and *halitza*.

The Sages further taught that the exemption of a *yevama* from levirate marriage also exempts her rival wife. In other words, if the deceased brother had two wives, each a so-called rival of the other, and only one wife is a relative of the surviving brother, then the rival wife is also exempt from both levirate marriage and *halitza*. Moreover, if that same rival wife entered into levirate marriage with a different brother of the deceased, one to whom she is not forbidden, then were this third brother also to die childless, so that the obligation of levirate marriage would again be incurred by the second brother, not only is the forbidden rival wife exempt from levirate marriage and *halitza*, her new rival wives from her second marriage are also exempt.

That is to say, any other wife of the third brother is exempt from the mitzva of levirate marriage, as she is the rival wife of that first rival wife, who was exempted from levirate marriage following her first husband's death due the exemption of her original rival wife. The same principle applies if that second rival wife subsequently enters into levirate marriage with another permitted brother, and so on. In summary, every widow who is exempt from marrying her brother-in-law due to her status as rival wife of a forbidden relative is treated as a forbidden relative herself and is therefore exempt from both *halitza* and levirate marriage and causes exemption for future rival wives as well.

מתני' חמש עשרה נשים פוטרות צרותיהן וצרות צרותיהן מן החליצה ומן הייבום, עד סוף העולם.

MISHNA The mishnaⁿ describes various cases that invoke the principles above. **Fifteen** categories of womenⁿ constitute familial relations that are forbidden as incestuous, and consequently, these women exempt their rival wives^b and the rival wives of their rival wives^b from *halitza* and from levirate marriageⁿ forever,ⁿ i.e., they also exempt rival wives of rival wives of rival wives, and so on.

NOTES

The placement of this tractate in the order of *Nashim* – מקומה – שאל המפסקת בסדר נשים: The early authorities ask why *Yevamot* is the first tractate in the order of *Nashim* when it would apparently be more logical to begin with the tractate dealing with marriage contracts, *Ketubot*, or the *halakhot* of betrothals, *Kiddushin*. One explanation is that in no other case is marriage fully obligatory for a man, especially not to a particular woman, whereas levirate marriage is a positive mitzva that is obligatory for a *yavam* (Rambam). Others explain that the discussion of the *halakhot* of levirate marriage serves to clarify the principles of forbidden incestuous or adulterous sexual relations, an explanation that necessarily must precede the *halakhot* of betrothals and marriage contracts (Rosh). Indeed, many tractates begin with complex and complicated *halakhot* rather than opting for a more logical order, to engage the attention of students. The Rosh adds another reason: This tractate immediately follows the last tractate of the order of *Moed*, which in some versions is *Moed Katan*. Since the end of that tractate discussed the *halakhot* of mourning following a misfortune, *Yevamot*, which deals with a man who dies childless, was placed immediately afterward. Alternatively, as the practice of levirate marriage incorporates both *halakhot* specific to levirate marriage as well as general *halakhot* of marriage, it

precedes *Ketubot*, which for the most part discusses only the *halakhot* of marriage (*Tosefot Yom Tov*). However, according to the order of tractates accepted by some commentaries, *Yevamot* comes after tractate *Gittin*, which also deals with marriages that were terminated (Meiri).

From *halitza* and from levirate marriage – מן החליצה ומן הייבום: The Gemara explains that the apparent redundancy of mentioning both *halitza* and levirate marriage, as well as the mention of *halitza* before levirate marriage, serve to emphasize the opinion of this *tanna* that the performance of *halitza* is preferable to the mitzva of levirate marriage.

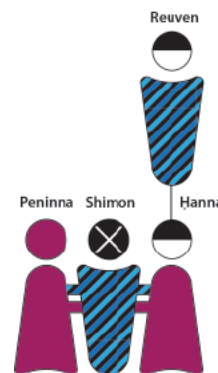
Forever – עד סוף העולם: *Tosafot* ask why this expression is necessary and it is not enough simply to state: The rival wives of the rival wives. The commentaries explain that in light of the fact that according to one of the opinions in the Gemara there is an interpretation that refers to a rival wife and a rival wife's rival wife, it might be thought that the *halakha* applies only to these two and no more (*Tosafot*; *Tosefot HaRosh*). Conversely, others claim that this form of expression is typical of the language in the Mishna, and it indicates a particular emphasis only in special circumstances (Ramban; Rashba).

HALAKHA

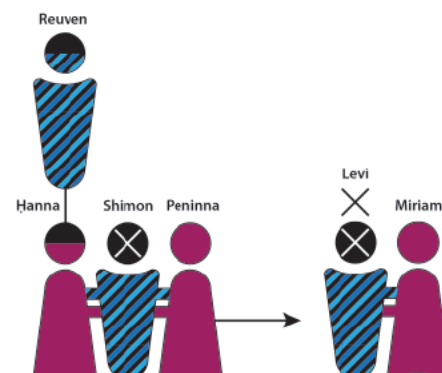
Fifteen women – חמש עשרה נשים: Each of the fifteen women listed in the mishna is exempt from levirate marriage and does not even require *halitza* if her husband dies childless, as she is forbidden to her *yavam* by a prohibition that entails *karet*. Not only is she exempt, but her rival wives are also exempt from levirate marriage. If a rival wife entered into levirate marriage with another brother, to whom she was not forbidden, and this brother also died, which means that she once again comes for levirate marriage before one to whom she is forbidden, then not only is she exempt but so is her new rival wife, who is the rival wife of a rival wife of a woman forbidden in levirate marriage. These rival wives of rival wives are classified as forbidden relatives and in turn render their own rival wives forbidden in levirate marriage (Rambam *Sefer Nashim*, *Hilkhot Yibbum VaHalitza* 6:14; *Shulhan Arukh*, *Even HaEzer* 173:1).

BACKGROUND

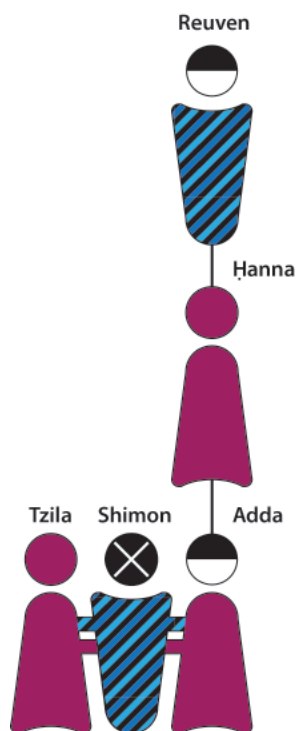
A daughter's rival wife – צרת הבת: Shimon married Hanna, daughter of his brother, Reuven. In addition he had another wife, Peninna, Hanna's rival wife. If Shimon dies childless his wives will come before Reuven for levirate marriage. In this case, not only is Hanna, Reuven's daughter, exempt from *halitza* and levirate marriage, but her rival wife Peninna is as well.



The rival wife of a daughter's rival wife – צרת צרת הבת: In the previous example, after Shimon's death, a third brother, Levi, entered into levirate marriage with his late brother's wife Peninna, as both she and Hanna are permitted to him. If Levi subsequently dies as well, both Peninna and Levi's other wife Miriam come before the surviving brother, Reuven, for levirate marriage. In this case, not only is Peninna, the rival wife of his daughter Hanna, exempt from both *halitza* and levirate marriage, but Miriam, the rival wife of his daughter's rival wife, is as well.



The daughter of the daughter of the *yavam* – בת בתו
Shimon married Adda, the daughter of Hanna, the daughter of Reuven, Shimon's brother. If Shimon dies childless, not only is Adda, his daughter's daughter, exempt both *halitza* and from levirate marriage, but the same applies to her rival wife, Tzila.



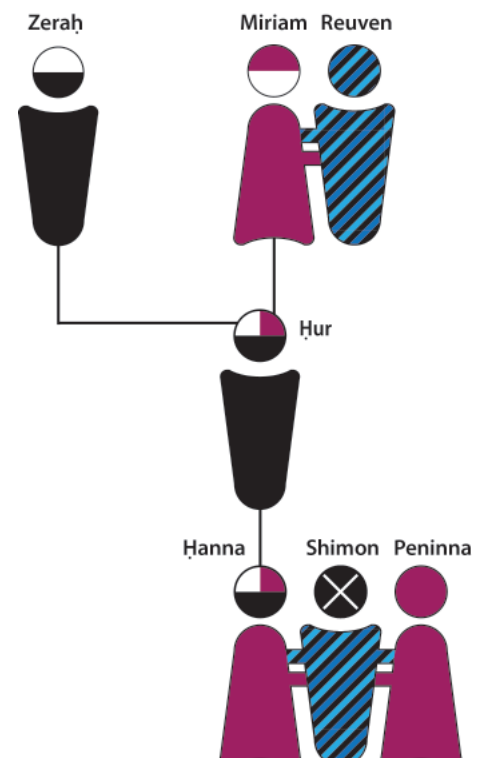
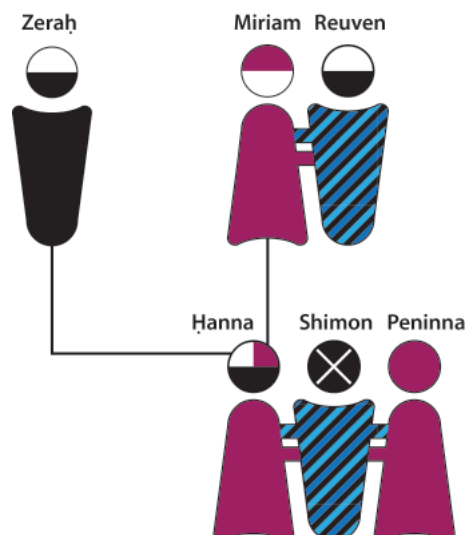
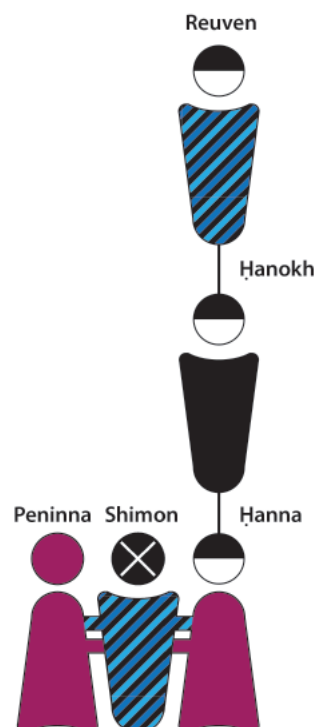
And these women are: The daughter of the *yavam*, i.e., the deceased brother had married a daughter of his brother, which means that when he died childless, his brother's own daughter came before her father for levirate marriage, and therefore she is exempt. **And** the same applies if the deceased brother's widow is **the daughter of the daughter of the *yavam*,**^B or if she is **the daughter of his son,**^B or the **daughter of his wife.**^B

And similarly, if the yevama is the daughter of the son of the wife of her yavam^B or the daughter of his wife's daughter,^B or if she is the mother-in-law of her yavam,^B or his mother-in-law's mother,^B or his father-in-law's mother,^B then she is exempt from *halitza* and levirate marriage.

The daughter of his son – בַּת בְּנוֹ: Shimon married Hanna, daughter of Hanoch, son of Reuven, Shimon's brother. If Shimon dies childless, both Hanna, Reuven's son's daughter, and her rival wife, Peninna, are exempt from both *halitza* and levirate marriage.

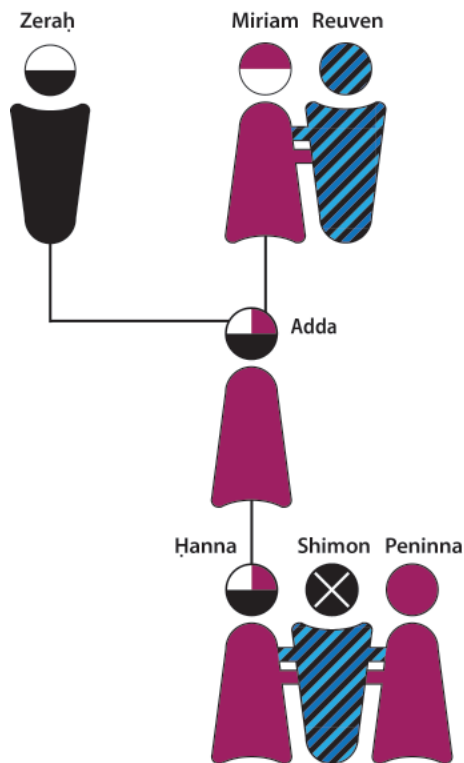
The daughter of his wife – בת אשתו: Shimon married Hanna, the daughter from a previous husband of Miriam, the current wife of Shimon's brother Reuven. If Shimon dies childless, Hanna is exempt from both *halitza* and levirate marriage as the daughter of Reuven's wife, while Peninna is also exempt, because she is the rival wife of his wife's daughter.

The daughter of the son of the wife of her yavam – בְּתַלְמִידָהּ: Reuven's wife Miriam had a son, Hur, from her previous husband, Zerah. Shimon, Reuven's brother, married Hanna, daughter of Hur. If Shimon dies childless, both Hanna, the daughter of Reuven's wife's son, and her rival wife, Peninna, are exempt from both *halitza* and levirate marriage.

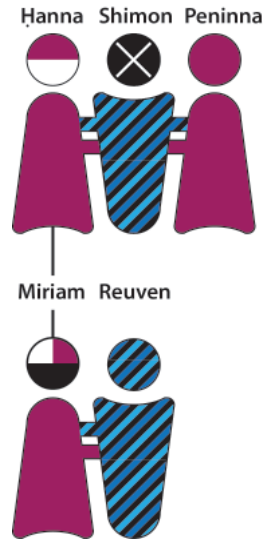


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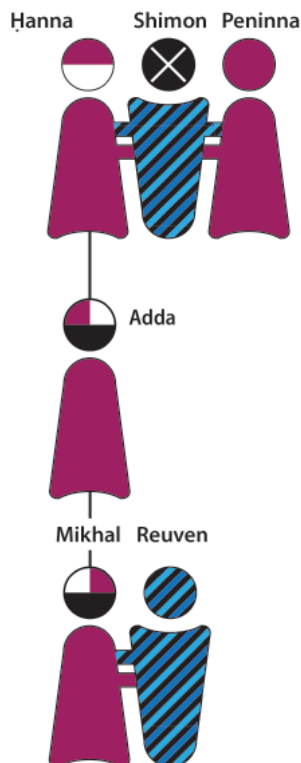
The daughter of his wife's daughter – בת בִּתְהָא: Reuven's wife Miriam had a daughter, Adda, from her previous husband, Zerah. Shimon, Reuven's brother, married Hanna, daughter of Adda. If Shimon dies childless, both Hanna, the daughter of Reuven's wife's daughter, and her rival wife, Peninna, are exempt from both *halitza* and levirate marriage.



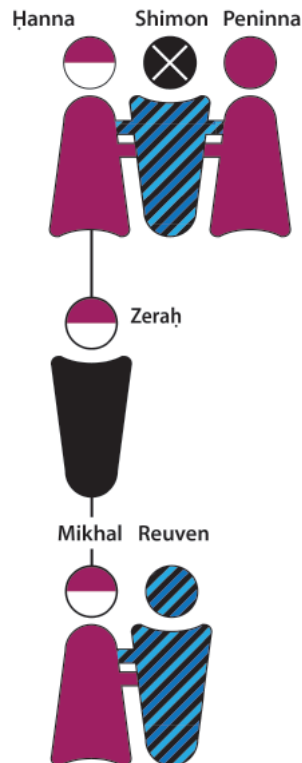
The mother-in-law of her yavam – תַּמְוֶהוּ: Reuven married Miriam, the daughter of Hanna, his brother Shimon's wife. If Shimon dies childless, both Hanna, Reuven's mother-in-law, and her rival wife, Peninna, are exempt from both *halitza* and levirate marriage.



His mother-in-law's mother – אִם תַּמְוֶהוּ: Reuven married Mikhal, daughter of Adda, daughter of Hanna, the wife of his brother Shimon. If Shimon dies childless, Hanna is exempt from *halitza* and levirate marriage as Reuven's mother-in-law's mother, i.e., Adda's mother. Peninna is also exempt as Hanna's rival wife.



His father-in-law's mother – אִם תַּמְוֶהוּ: Shimon married Hanna, while his brother Reuven married Mikhal, daughter of Zerah, son of Hanna. If Shimon dies childless, Hanna is exempt from both *halitza* and levirate marriage as she is the mother of Reuven's father-in-law, Zerah. Peninna is also exempt from *halitza* and levirate marriage as Hanna's rival wife.



NOTES

His wife's sister – אִשְׁתּוֹ אֵשֶׁת: If the mishna includes one's wife's sister, who is in some cases permitted, i.e., if one's wife has died, shouldn't a menstruating woman be listed as well, despite the fact that her prohibition is temporary and therefore differs in kind from the other relationships mentioned in the mishna? Admittedly, there is a difference between a menstruating woman, who will certainly and automatically be permitted later, and his wife's sister, who might remain forbidden to him forever (see *Heshek Shlomo*). Nevertheless, it remains the case that a menstruating woman is also sometimes forbidden. Apparently, most commentaries hold that the principal reason for the exclusion of a menstruating woman is that she is prohibited to all men, even to her own husband, not only to her *yavam*.

The wife of his maternal half brother – אִשְׁתּוֹ אֶחָיו מֵאִמּוֹ: A maternal half brother is in certain respects considered a full brother, while in other cases he is not treated as a brother. With regard to the prohibition against marrying a brother's wife, as well as matters of testimony and the *halakhot* of mourning, a half brother is considered a brother. However, concerning matters of inheritance, and particularly levirate marriage, only a paternal half brother is classified as a brother, not a maternal half brother (Rambam).

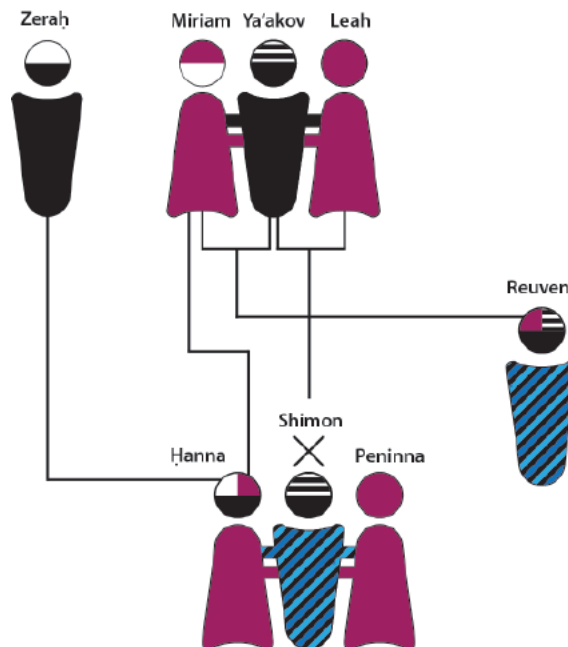
אִשְׁתּוֹ מֵאִמּוֹ, וְאִשְׁתּוֹ אֶחָיו מֵאִמּוֹ, וְאִשְׁתּוֹ אֶחָיו מֵאִמּוֹ, וְאִשְׁתּוֹ אֶחָיו מֵאִמּוֹ.

The mishna continues its list of close relatives. If the *yevama* is the **maternal half sister^B** of the *yavam*, **or if she is the sister of his mother,^B or his wife's sister,^{NB}** then she is exempt from both *halitza* and levirate marriage. **Or if she was the wife of his maternal half brother,^{NB}** and after this brother died or divorced his wife, she married another of his father's brothers, who was not her relative, and this brother died, she is exempt. In this case, the obligation to enter into levirate marriage should be incurred by the surviving brother, but since she was previously the wife of his maternal brother, she is exempt.

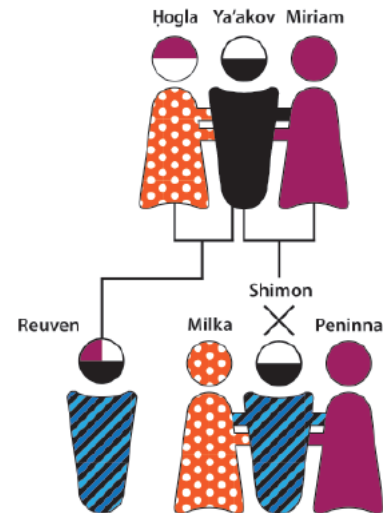
BACKGROUND

His maternal half sister – אִשְׁתּוֹ מֵאִמּוֹ:

Ya'akov and his wife Leah had a son, Shimon. Ya'akov also married Miriam, who had a daughter, Hanna, from her previous husband, Zerah. Ya'akov and Miriam bore a son, Reuven. Shimon, Ya'akov's son, married Hanna, who is not forbidden to him, as she is the daughter of his father's wife. If Shimon dies childless and Hanna falls before Reuven for levirate marriage, she is exempt as Reuven's sister, because they are the children of the same woman, Miriam. Hanna's rival wife, Peninna, is also exempt from *halitza* and levirate marriage.



The sister of his mother – אִשְׁתּוֹ אִמּוֹ: Ya'akov and his wife Miriam had a son, Shimon. Ya'akov also married Høgla, with whom he had another son, Reuven. Shimon married Milka, his father's wife's sister, before dying childless. Milka is exempt from *halitza* and levirate marriage, as she is the sister of Reuven's mother Høgla. Peninna, Milka's rival wife, is likewise exempt.

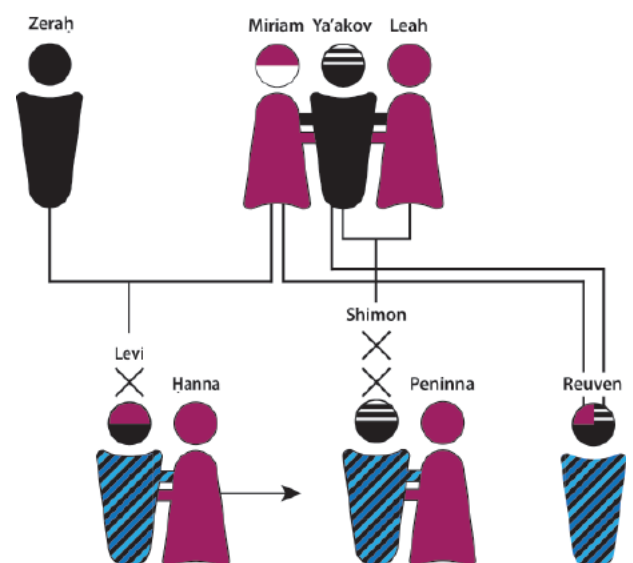


His wife's sister – אִשְׁתּוֹ אֵשֶׁת: Two brothers, Reuven and Shimon, married two sisters, Høgla and Milka. If Shimon dies childless, Milka is exempt from *halitza* and levirate marriage as the sister of Reuven's wife, Høgla. Her rival wife, Peninna, is also exempt.



The wife of his maternal half brother – אִשְׁתּוֹ אֶחָיו מֵאִמּוֹ:

Ya'akov married Miriam, who had a son, Levi, from her previous marriage with Zerah. Ya'akov and Miriam had a son named Reuven. Ya'akov had another wife, Leah, with whom he also had a son, Shimon. Levi married Hanna and died. After his passing, Shimon married Hanna, who is permitted to him, as Levi is the son of his father's wife. If Shimon dies childless, Hanna is forbidden to Reuven because she was his maternal brother's wife, as Levi was the son of Miriam, Reuven's mother. Peninna, Hanna's rival wife, is likewise exempt from *halitza* and levirate marriage.



ואשת אחיו שלא היה בעולם,
ובלתו. הרי אלו פוטרות צרותיהן
וצרות צרותיהן מן החליצה ומן
היבום עד סוף העולם.

And the same applies to the wife of a brother with whom he did not coexist,⁸ i.e., the wife of a man who died before his brother was born. As will be explained, the obligation of levirate marriage does not apply to the *yavam* in this case. Since levirate marriage does not apply to him, the *yevama* remains forbidden to him as his brother's wife. And the last case is if one's *yevama* had previously been his daughter-in-law,⁹ and after his son had died one's brother married her, before he too passed away. These fifteen women exempt their rival wives and the rival wives of their rival wives from *halitza* and levirate marriage forever.

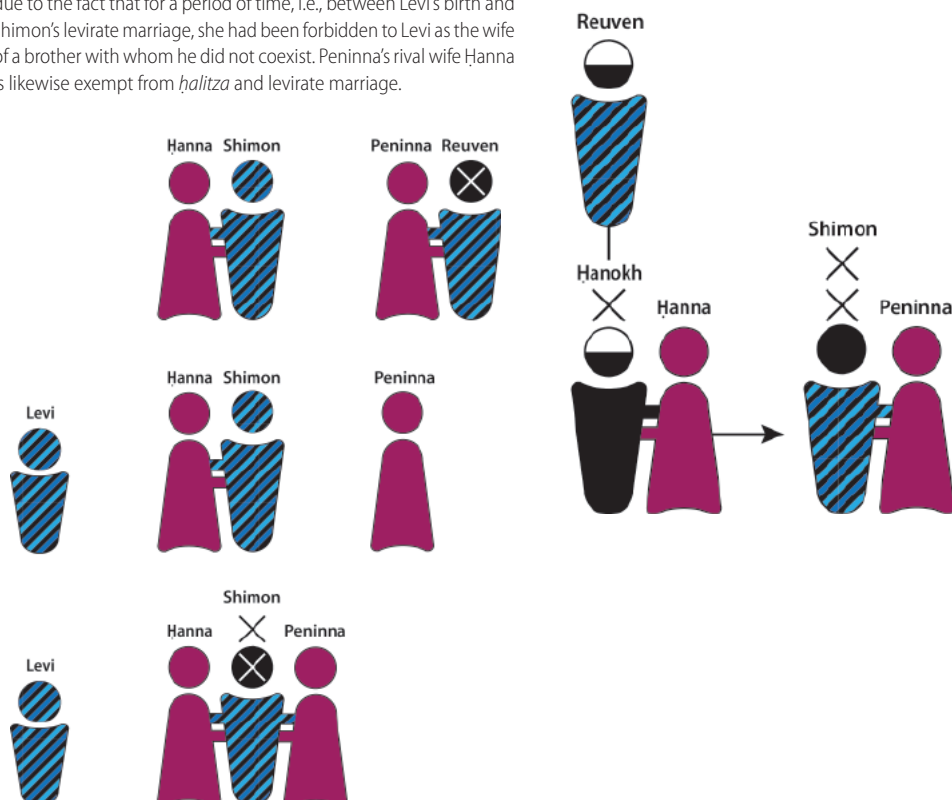
ובולן, אם מתו, או מיאנו,

§ And with regard to all of these women listed as prohibited relations, these *halakhot* apply only if they were married to the deceased brother until the time of his death. However, this is not the case if they died¹⁰ during the deceased brother's lifetime, or if they refused¹¹ their husbands when they were minors. This refusal is referring to the decree of the Sages that a girl under the age of twelve whose father is no longer alive may be married off by her mother or brothers. However, this marriage is not final, as she can terminate it by performing an act of refusal, i.e., by declaring, while still a minor, that she does not desire this marriage. In this case, the marriage is annulled retroactively and she is considered as though she were never married at all.

BACKGROUND

אשת אחיו – שלא היה בעולם: Reuven and Shimon are paternal brothers. Reuven married Peninna and then died. After his death, a third brother, Levi, was born. For Levi, Peninna is the wife of a brother with whom he did not coexist, as he was not alive while she was married to his brother. Consequently, if Shimon entered into levirate marriage with Peninna and subsequently died childless, Peninna remains forbidden to Levi due to the fact that for a period of time, i.e., between Levi's birth and Shimon's levirate marriage, she had been forbidden to Levi as the wife of a brother with whom he did not coexist. Peninna's rival wife Hanna is likewise exempt from *halitza* and levirate marriage.

בבלתו – His daughter-in-law: Reuven's son Hanokh was married to Hanna. After Hanokh's death Reuven's brother, Shimon, married Hanna. If Shimon dies childless, his wives come before Reuven for levirate marriage. As Hanna was previously Reuven's daughter-in-law, she is permanently forbidden to him; she is therefore exempt from *halitza* and levirate marriage and exempts her rival wife as well.



HALAKHA

ובולן אם מתו וכו' – If one's brother was married to two women, one of whom is a forbidden relative to the *yavam*, and the forbidden wife dies, is divorced, or performed refusal during her husband's lifetime, the other rival wife is permitted to enter into levirate marriage (*Shulhan Arukh, Even HaEzer* 173:7).

NOTES

ובולן אם מתו וכו' – The sequence in the mishna is taught in the style of: Not only this but also that. In other words, it moves from the simpler to the more complex cases, beginning with a woman who is no longer alive, continuing to the case of refusal, which involves the retroactive nullification of a marriage, before proceeding to the *halakha* of a divorce, where the husband ends the marriage from a certain point in time. Finally, the mishna addresses the status of a woman who was discovered to be an *aylonit* (*Tosefot HaRosh*).

Refusal – מיאנו: The *halakhot* of refusal are analyzed extensively in this tractate, mainly in the thirteenth chapter. The basic concept is that a minor girl orphaned of her father may be married off by her mother and brothers with her consent. However, since a minor is not legally competent and responsible for her actions, her marriage is valid only by decree of the Sages. Therefore, the Sages instituted an ordinance that if she declares that she does not desire the match she can nullify it retroactively, and it is as though she was never married at all. The early commentaries note that since her father is evidently alive in the cases mentioned in the mishna, it must be referring to a so-called orphan in her father's lifetime. If a minor who was married off by her father, who has the authority to do so by Torah law, is divorced from her husband while still a minor, she returns to her father's household, but her father loses the right to marry her off again. Consequently, for the purposes of marriage she is considered an orphan.

The rival wife of a forbidden relative who is an *aylonit* – **צֶרֶת עֲרוּהָ שֶׁיֵּאֵר אֵילוֹנִית**: If one's *yevama* is a forbidden relative, and is therefore thought to be prohibited to him for levirate marriage, but she is later discovered to be an *aylonit*, then even if her husband was aware of her condition and married her willingly, she does not exempt her rival wife from levirate marriage (Shulḥan Arukh, Even HaEzer 173:9).

And any who could refuse – וְכָל הַיּוֹבֵלָה לְמֵאֵן: If one's *yevama* was a minor who could perform refusal, and she is a forbidden relative to her *yavam*, then because her marriage is valid by rabbinic law the Sages decreed that her rival wife must be released by *ḥalitza* and that she may not enter into levirate marriage (Rambam Sefer Nashim, Hilkhot Yibbum VaḤalitza 6:22).

BACKGROUND

Aylonit – אֵילוֹנִית: An *aylonit* is a woman who is so severely sexually underdeveloped that she is incapable of bearing children. This is a general term for women who have a basic flaw in their reproductive system. Sometimes the secondary reproductive signs of these women is not present at all or in other cases is barely developed. A comprehensive inquiry into the definition of an *aylonit*, from both a biological and halakhic perspective, can be found on 80a–b.

אוּ נִתְגַּרְשׁוּ, אוּ שְׁנִמְצְאוּ אֵילוֹנִית צְרוּתֶיהֶן מוֹתֵרוֹת.

וְאִי אֶתָּה יָכוֹל לִזְמֹר בְּחֻמּוֹתוֹ וּבְאֵם חֻמּוֹתוֹ וּבְאֵם חֻמּוֹ שְׁנִמְצְאוּ אֵילוֹנִית אוּ שְׁמִינִיאוּ.

בִּיצֵד פֻּטְרוֹת צְרוּתֶיהֶן? הִיתָה בְּתוֹ אוֹ אַחַת מִכָּל הָעֲרוּיֹת הָאֵלּוּ נְשׂוֹאוֹת לְאַחִיו, וְלוֹ אִשָּׁה אַחֶרֶת, וּמֵת – בְּשֵׁם שִׁבְתּוֹ פְּטוּרָה כִּךְ צֶרֶתָהּ פְּטוּרָה. הִלְכָּה צֶרֶת בְּתוֹ וְנִשְׂאָת לְאַחִיו הַשֵּׁנִי וְלוֹ אִשָּׁה אַחֶרֶת, וּמֵת – בְּשֵׁם שִׁצְרָתָהּ בְּתוֹ פְּטוּרָה כִּךְ צֶרֶת צֶרֶתָהּ פְּטוּרָה.

אֶפִּילוּ הֵן מֵאָה.

בִּיצֵד אִם מֵתוּ צְרוּתֶיהֶן מוֹתֵרוֹת? הִיתָה בְּתוֹ אוֹ אַחַת מִכָּל הָעֲרוּיֹת הָאֵלּוּ נְשׂוֹאוֹת לְאַחִיו, וְלוֹ אִשָּׁה אַחֶרֶת, מֵתָה בְּתוֹ אוּ נִתְגַּרְשָׁה, וְאַחֵר כִּךְ מֵת אַחִיו – צֶרֶתָהּ מוֹתֵרָה.

וְכָל הַיּוֹבֵלָה לְמֵאֵן וְלֹא מִיָּאָה – צֶרֶתָהּ חוֹלְצָת וְלֹא מִתִּיבֶבֶת.

Or if those women were divorced by their husband, the deceased brother, or were found to be a sexually underdeveloped woman [*aylonit*],^{HN} i.e., a woman who is so underdeveloped that she is not considered a woman in the full sense, these *halakhot* do not apply. Her marriage is considered a mistaken marriage and is null and void. In all these cases **their rival wives are permitted**, as the exemption for rival wives of forbidden relatives applies only when the forbidden relative was the brother's wife at the time of his death, when the *halakhot* of levirate marriage came into effect.

And the mishna comments that the language of this principle is imprecise, as you cannot say^N with regard to his mother-in-law and with regard to his mother-in-law's mother and with regard to his father-in-law's mother that they were found to be an *aylonit*, as an *aylonit* is sterile and therefore cannot become a mother or a mother-in-law. Nor is the mishna precise when it states: Or refused, as refusal applies only to minors, who cannot give birth.

The mishna explains: How do these women exempt their rival wives? If, for example, his daughter or any one of those women with whom relations are forbidden was married to his brother and this brother had another wife, and the brother died, then just as his daughter is exempt from levirate marriage, so too her rival wife is exempt. If his daughter's rival wife subsequently went and married his second brother, to whom she is permitted, and he had another wife, and he died childless as well, which means that his wife comes before the first *yavam*, the daughter's father, for levirate marriage, then just as his daughter's rival wife is exempt, so too the rival wife of her rival wife is exempt.

The mishna adds: **Even if they are one hundred brothers**, the same logic applies. If a woman is exempt from levirate marriage because she is the rival wife of a forbidden relative or the rival wife of a rival wife of this kind, and she herself has an additional rival wife, this rival wife is also exempt and in turn exempts her own rival wives from levirate marriage.

How so? What are the cases in which if they died their rival wives are permitted? If, for example, one's daughter or any one of those women with whom relations are forbidden was married to his brother, and this brother had another wife, and then his daughter died or was divorced and afterward his brother died, her rival wife is permitted to him.

The mishna states another principle: And if any of these forbidden relatives was a minor who could refuse^{HN} her husband, then even if she did not refuse, her rival wife performs *ḥalitza* and does not enter into levirate marriage. The rival wife may not enter into levirate marriage, as she is the rival wife of a forbidden relative. However, she is not entirely exempt from levirate marriage and must be released by *ḥalitza* because the marriage of the forbidden relative was not a fully valid marriage, and therefore, by Torah law, the other woman is not considered a rival wife of a forbidden relative.

NOTES

Who were found to be an *aylonit* – שְׁנִמְצְאוּ אֵילוֹנִית: Rashi, and many other commentaries in his wake, including *Tosafot* and the Rosh, explain that marriage to an *aylonit* is considered a mistaken transaction, as it is certain that one would not marry a woman who could never give birth. Consequently, this marriage is annulled the moment her condition becomes known to the husband. Some commentaries deliberate about whether this refers only to a woman who was discovered to be an *aylonit* during her husband's lifetime, or whether the *halakha* is the same even if her status came to light after his death, as stated explicitly in a *baraita* (*Tosafot*; Meiri). Others maintain that an *aylonit* is not eligible for levirate marriage at all, as she cannot

fulfill the purpose of the mitzva of levirate marriage, which is to continue her deceased husband's family line. Therefore, she has no connection whatsoever with the mitzva of levirate marriage, no matter when her status was discovered, and her rival wife is not forbidden to her *yavam* (Rashba; *Nimmukei Yosef*; Meiri). This is in accordance with the opinion of Rava (12a), a ruling that is accepted as *halakha*. It is also explicitly stated in the Jerusalem Talmud that with regard to all matters involving levirate marriage an *aylonit* is viewed as though she had never been married to the deceased brother at all. Some claim that Rashi's explanation is based on a precise reading of the language of the mishna, which states: Found to be an *aylonit*. This indicates

that the matter was revealed only at a later stage, as a result of which the marriage was annulled (Rabbi Akiva Eiger).

You cannot say – אִי אֶתָּה יָכוֹל לִזְמֹר: This paragraph serves to emphasize that it is never possible for a woman who has given birth to perform a refusal later (*Otzar HaShitot*).

And any who could refuse – וְכָל הַיּוֹבֵלָה לְמֵאֵן: This *halakha* applies to any minor whose marriage is valid only by decree of the Sages, not necessarily one who performs refusal. The mishna does not simply state: A minor, because certain marriages of minors are valid by Torah law.

גמ' מְבַדֵּי, בּוֹלְהוּ מֵאַחֲתוֹ אִשָּׁה יִלְפִינָה, לִיתְנֵי אַחֲתוֹ אִשָּׁה בְּרִישָׁא!

GEMARA The Gemara asks a question with regard to the order of the mishna's list: **Now**, since the *halakha* that **all these** women with whom relations are forbidden are exempt from levirate marriage and exempt their rival wives **is derived from the case of a wife's sister**, as demonstrated later, **let the mishna teach the case of a wife's sister firstⁿ** and only afterward mention the other instances, which are derived from that *halakha*.

וְכִי תֵימָא תַנָּא חוּמְרֵי חוּמְרֵי נֶקֶט, וְרַבִּי שְׁמַעוֹן הָיָא, דְּאָמַר שְׂרִיפָה חֲמוּרָה –

And if you would say that the *tanna* cited the cases in order of severity, then you must say that **it is in accordance with the opinion of Rabbi Shimon, who says that execution by burning is more severe than stoning**. For this reason, the *tanna* began with the cases of one's daughter and his daughter's daughter and his son's daughter and so forth, since one who has relations with these women is punished by burning, after which the *tanna* listed those cases that entail a lesser penalty.

אִי הָכִי, לִיתְנֵי חֲמוּתוֹ בְּרִישָׁא, דְּעִיקָר שְׂרִיפָה בְּחֲמוּתוֹ כְּתִיבָא! וְעוֹד: בְּתֵר חֲמוּתוֹ לִיתְנֵי כְּלָתוֹ, דְּבִתְרֵי שְׂרִיפָה סְקִילָה חֲמוּרָה!

However, the Gemara argues that even so, the order of the mishna remains problematic. **If so, let him teach the case of one's mother-in-law first, as the main transgression that entails burning is written with regard to his mother-in-law**, as it is stated: "And if a man take with his wife also her mother, it is wickedness; they shall be burnt with fire, both he and they" (Leviticus 20:14). **And furthermore, after his mother-in-law let him teach his daughter-in-law,ⁿ as after execution by burning, stoning is the most severe^{HBN} of the other capital punishments imposed by the courts.**

אֲלָא: בְּתוֹ, בֵּין דְּאִתְּיָא מִדְּרָשָׁא – חֲבִיבָא לִיה.

Rather, the Gemara retracts the previous explanation in favor of the following: With regard to **his daughter**, since this prohibition is actually **derived from a homiletical interpretationⁿ** and is not explicitly stated in the Torah, **it is therefore dear to the tanna**. Consequently, he listed this novel case of a daughter first.

HALAKHA

Stoning and burning – סְקִילָה וְשְׂרִיפָה – Rabbi Shimon and the Rabbis dispute whether stoning or burning is the more severe capital punishment. Rabbi Shimon maintains that burning is more severe, while the Rabbis maintain that stoning is more severe. The *halakha* is in accordance with the opinion of the Rabbis (Rambam *Sefer Shofetim*, *Hilkhot Sanhedrin* 14:4).

BACKGROUND

Stoning and burning – סְקִילָה וְשְׂרִיפָה – The four capital punishments prescribed by the Torah and administered by a court of twenty-three members are stoning, burning, decapitation, and strangulation. Generally speaking, stoning is considered the most severe punishment, although, as noted in the Gemara, Rabbi Shimon holds that burning is more severe. The Sages maintain that an accused could be convicted only if he was properly warned beforehand and was fully cognizant of the consequences when performing the forbidden act. This is one reason why capital punishment was rarely carried out in practice.

NOTES

Let it teach a wife's sister first – לִיתְנֵי אַחֲתוֹ אִשָּׁה בְּרִישָׁא – Although the Gemara elsewhere (*Sanhedrin* 49b) states that the Mishna does not typically arrange its subjects in logical order, it is nevertheless proper to seek a rationale for its order even if it has no halakhic implications (Meiri).

After his mother-in-law let him teach his daughter-in-law – בְּתֵר חֲמוּתוֹ לִיתְנֵי כְּלָתוֹ – The commentaries ask why the Gemara states: And furthermore, as this is apparently a new question (*Otzar HaShitot*). Perhaps this phrase indicates that even if some reason is found for why the mishna begins with a daughter, e.g., due to the fact that they are blood relatives, as stated below, nevertheless, with regard to the severity of the prohibition involved, the case of a daughter-in-law should follow that of a mother-in-law.

After burning, stoning is the most severe – דְּבִתְרֵי שְׂרִיפָה סְקִילָה – **חֲמוּרָה** – Some commentaries add that since the other forbidden incestuous relations, apart from a mother-in-law and daughter-in-law, are punishable by *karet* and not court-imposed capital punishment, the mishna should certainly have taught the case of the daughter-in-law before them (*Tosafot*). Others claim that according to the opinion of *Tosafot*, as well as that of many other authorities, relations with a mother-in-law after the death of one's wife are punishable by *karet*, and therefore the above distinction does not apply (*Heshek Shlomo*).

His daughter...is derived from a homiletical interpretation – בְּתוֹ...דְּאִתְּיָא מִדְּרָשָׁא – This homiletical interpretation relates to the status of a man's daughter from a woman he raped. Since her mother was not his wife, the verse: "You shall not uncover the nakedness of a woman and her daughter" (Leviticus 18:17), which refers to a married woman, does not apply to this case. Some commentaries indicate that it is considered as though the prohibition against relations with one's own daughter is explicitly written in the Torah, as it is stated that one's daughter's daughter is forbidden, and this is due to his daughter's status as a forbidden relative. This is not considered an *a fortiori* inference, which would be problematic, as a prohibition cannot be derived by *a fortiori* inference. Rather, it is as though the case of a daughter is explicitly written. Other commentaries ask: How is the prohibition against relations with one's daughter from the woman to whom he is married derived from the *halakha* of a wife's daughter? After all, although the prohibitions of a paternal half sister and a maternal half sister are both explicitly stated, the Gemara elsewhere explains that it was nevertheless necessary to deduce that there is also a prohibition with regard to one's full sister (Rabbi Avraham Av *Beit Din*; *Tosafot*). Some explain that the general instruction: "The nakedness of a woman and her daughter," includes all cases. Others say that since the Torah did not explicitly differentiate between the cases here, as it did with regard to a sister, there is no reason to assume that there is a difference between them.

PERSONALITIES

Rav Yitzhak bar Avdimi – רב יצחק בר אבדימי: The Talmud mentions two Sages of this name (see *Tosafot*). The other Sage lived in the transitional generation between the *tanna'im* and the *amora'im*, whereas the Rav Yitzhak bar Avdimi mentioned here was a Babylonian *amora* from the third and fourth generations. He was probably a disciple-colleague of Rav Hisha, and was famous for his breadth of knowledge of the Bible, as well as for his unique method of study, by which he would seek out and find evidence and allusion to all statements of the Sages in the Bible itself. Rava said of him that any verse that Rav Yitzhak bar Avdimi did not explain cannot be elucidated (*Zevachim* 43b). Rav Yitzhak bar Avdimi's interpretations of verses appear in many places in the Talmud. Occasionally he disagrees with Rav Hisha with regard to the interpretation of a verse. Numerous *halakhot* are also stated in his name. Apparently, both Abaye and Rava were his disciples concerning matters of biblical explication, as they attribute various traditions to him.

בולוהו נמי מדרשא אתו! נהי דלענן ייבום
אתיין מדרשא. עיקר איסורייהו בהדיא
בתיב בהו, בתו – עיקר איסורא מדרשא.

דאמר רבא: אמר לי רב יצחק בר אבדימי:
אתיא "הנה" "הנה",

אתיא "ומה" "ומה".

השתא דאמרית כל מלתא דאתיא
מדרשא חביבא ליה, ליתני לאחות אשה
לבסוף! אידי דאיירי באיסור אחותא
תנא אחות אשתו.

וליתנייא להאי בבא לבסוף! אלא: תנא
קורבי קורבי נקט; תנא בתו ובת ובת
בנו דקורבי עצמו,

ואידי דתנא שלשה דורות למטה דידיה,
תנא נמי שלשה דורות למטה דידיה.
ואידי דתנא שלשה דורות למטה דידיה –
תנא שלשה דורות למעלה דידיה.

The Gemara challenges this conclusion: All of the exemptions from levirate marriage for forbidden relatives listed in the mishna are also derived from a homiletical interpretation. The Gemara responds: Although the matter of levirate marriage is derived from a homiletical interpretation, the main aspect of their prohibition is explicitly written. By contrast, with regard to his daughter from a woman he raped but did not marry, the main aspect of this prohibition is derived by homiletical interpretation, as the prohibition itself is not written explicitly in the Torah.

As Rava said: Rav Yitzhak bar Avdimi^p said to me: This prohibition is derived by means of a verbal analogy between the word *hena*, in the verse: "The nakedness of your son's daughter, or of your daughter's daughter, even their nakedness you shall not uncover; for theirs [*hena*] is your own nakedness" (Leviticus 18:10) and the word *hena* in a different verse: "You shall not uncover the nakedness of a woman and her daughter; you shall not take her son's daughter, or her daughter's daughter, to uncover her nakedness: they [*hena*] are near kinswomen; it is wickedness" (Leviticus 18:17), indicating that every daughter is prohibited, even one from rape, just like one's daughter through his wife.

Furthermore, it is derived from a verbal analogy between the word "wickedness" (Leviticus 18:17) and the word "wickedness" in the verse: "And if a man take with his wife also her mother, it is wickedness; they shall be burnt with fire, both he and they, that there be no wickedness among you" (Leviticus 20:14), that one who has sexual intercourse with a daughter from a rape is liable to burning.

S The Gemara asks: Now that you said that all matters that are derived from a homiletical interpretation are dear to the *tanna*, and he therefore he gives them precedence, let him teach the case of a wife's sister last, as this is the source of the *halakha* and is therefore the most straightforward case. The Gemara responds: Since the *tanna* was dealing with the prohibition with regard to different types of sisters, he also taught together with them the prohibition with regard to his wife's sister.

The Gemara asks: But if so, let him teach this entire section involving sisters at the end, when he mentions a wife's sister. Rather, the Gemara rejects the above answer in favor of an alternative explanation: The *tanna* cited the cases in order of closeness,ⁿ i.e., the mishna is ordered in accordance with the relative closeness of the various incestuous relations. How so? The *tanna* taught the cases of one's daughter, and the daughter of his daughter, and the daughter of his son, who are his own blood relatives.

And since he taught three generations of one's offspring below, i.e., his daughter, his daughter's daughter, and his son's daughter, he also taught three generations of his wife's offspring below, i.e., his wife herself, her daughter, and her daughter's daughter. And since he taught three generations of his wife's offspring below, he also taught three generations of her family above, i.e., from previous generations, namely herself, her mother, i.e., his mother-in-law, and his mother-in-law's mother.

NOTES

אלא – Rather, the *tanna* cited the cases in order of closeness – תנא קורבי קורבי נקט: This answer could have been combined with the previous suggestion by saying that the *tanna* began with one's daughter because it was a novel case, after which he dealt

with one's other blood relatives. However, the Gemara wanted to emphasize that the primary rationale for the sequence of this mishna is the closeness of the relationship, and therefore it rejected the first explanation entirely (*Tosefot HaRosh*).

Should have preceded the case of his daughter-in-law before that of a wife of a brother, etc. – **לִיקְדָּמָה לְכִלְתּוֹ מִקָּמִי** – **אֵשֶׁת אָחִיו וְכִי**: Since none of these are blood relatives, a daughter-in-law should have been listed first, as this prohibition is more severe in that it is never permitted, unlike a brother's wife (Rashi). Alternatively, a daughter-in-law is considered a closer relation than a brother's wife due to the greater closeness of a son than a brother (*Tosafot*). They apparently had before them a version of the Gemara that supports this explanation. However, others explain simply that the prohibition proscribing the wife of a brother with whom one did not coexist is not due to a prohibited incestuous relation at all; rather, it is derived from the *halakhot* of levirate marriage themselves (Ramban; Meiri).

Let him teach: They prohibit – לִיתֵּן אוֹסְרוֹת – Some commentaries note that the term: Exempt, is precise only when there is a single brother, as in that case the *yevama* is entirely exempt from *halitza* and levirate marriage. However, in a case involving several brothers she may be forbidden only to a specific *yavam* but remain obligated to enter into levirate marriage with one of the other brothers to whom she is not considered a forbidden relative (*Meromei Sadeh*).

Let him teach: Exempt from levirate marriage – לִיתֵּן מִן הַיִּיבּוּם: It can be claimed that the term: Levirate marriage, refers both to the specific act of levirate marriage itself as well as to the general obligations and bonds to the *yavam*, including *halitza*. Therefore, the use of the phrase: Exempt from levirate marriage, can be explained as referring to the more general meaning, indicating that none of the *halakhot* of levirate marriage pertain to them at all (Rashash).

וְתָנָא אַחֲוָתָא וְאֶחָתָא אִמּוֹ דְּקָרְבִּי עֲצָמוֹ, וְאֵינִי דִּי דְּאִיִּרִי בְּאִסּוּר אַחֲוָה – תָּנָא אַחֲוָת אִשְׁתּוֹ. וּבְדִין הוּא דְּלִיקְדָּמָה לְכִלְתּוֹ מִקָּמִי אֵשֶׁת אָחִיו שְׁלֵא הִיא בְּעוֹלָמוֹ, דְּלֹא מִשּׁוּם קִרְבָּא הוּא דְּאִסּוּרָא, אֲלָא אֵינִי דְּאִיִּרִי בְּאִסּוּר אַחֲוָה – תָּנָא אֵשֶׁת אָחִיו שְׁלֵא הִיא בְּעוֹלָמוֹ, וְהָדָר תָּנָא בְּכִלְתּוֹ.

וּמַאי אִירֵא דְּתָנָא "פּוֹטְרוֹת", לִיתֵּן "אוֹסְרוֹת"? אִי תָנָא אוֹסְרוֹת הָיָה אֲמִינָא: אִסּוּר לִיבּוּם, אֲבָל מִיִּחְלָץ חֲלָצָה, קָא מְשַׁמַּע לֵן.

וְלִיתֵּן אִסּוּרָה לְחֻץ! מַאי קְעֵבִיד? אֲלֹמָה לֹא? אִם אֲתָה אוֹמֵר חוֹלְצָת – מְתִיבָמָת!

בִּינן דְּבִמְקוֹם מִצְוָה הוּא דְּאִסּוּרָה צָרָה, וְשְׁלֵא בְּמִקּוֹם מִצְוָה שְׁרִיא, מִשּׁוּם הִכִּי תֵּן "פּוֹטְרוֹת".

וּמַאי אִירֵא דְּתֵּן "מִן הַחֲלִיצָה וּמִן הַיִּיבּוּם", לִיתֵּן "מִן הַיִּיבּוּם" לְחֻדְיָה! אִי תָנָא מִן הַיִּיבּוּם הָיָה אֲמִינָא: מִיִּחְלָץ חֲלָצָה, יְבוּמִי לֹא מִיִּיבָמָה, קָא מְשַׁמַּע לֵן: כָּל הָעוֹלָה לִיבּוּם עוֹלָה לְחֻלְצָה וְכָל שְׂאִינוֹ עוֹלָה לִיבּוּם – אֵינוֹ עוֹלָה לְחֻלְצָה.

And afterward he taught the case of his sister and his mother's sister, who are his own blood relatives but less closely related to him than his daughter. And since he was dealing with the prohibition with regard to sisters, he also taught the case of his wife's sister. And by right the *tanna* should have preceded the case of his daughter-in-law before that of a wife of a brother^N with whom he did not coexist, as it is not due to their relationship that she is prohibited but rather because she is excluded from the mitzva of levirate marriage. However, since he was dealing with the prohibition with regard to siblings, he taught the case of a wife of a brother with whom he did not coexist, as this also involves a sibling. And then the *tanna* taught the case of his daughter-in-law.

§ The Gemara continues to analyze the language of the mishna: And why does the *tanna* specifically teach: They exempt their rival wives? **Let him teach: They prohibit^N** them, as ultimately the rival wives are not only exempt from levirate marriage but each is actually forbidden to her *yavam*. The Gemara explains that if he had taught: They prohibit them, I would say that this means it is prohibited to enter into levirate marriage, but she must perform *halitza*. Therefore, it teaches us using the language of exemption to indicate that she is entirely exempt and does not even perform *halitza*.

The Gemara raises a difficulty: If so, let him teach: She is prohibited from performing *halitza*. The Gemara rejects this suggestion: It is impossible to formulate the *halakha* in this manner, as even if they perform *halitza*, what has he really done? What is wrong with a man allowing a woman to take off his shoe, which is the act of *halitza*? Consequently, it is not possible to state: Prohibited from performing *halitza*. The Gemara asks: Why not? There is in fact a prohibited element here: If you say she performs *halitza*, it might be said that she may also enter into levirate marriage and that in this specific instance he performed *halitza* merely because he did not wish to marry her. In that case, it might erroneously be claimed that if another wished to marry the rival wife of his *yevama* he is permitted to enter into levirate marriage.

In light of the previous argument, the Gemara suggests another reason that the mishna does not use the expression: Prohibited. Since it is only in cases where the mitzva of levirate marriage applies that the rival wife is forbidden to him, and where no mitzva applies she is permitted, as it is permitted for the man to marry the widowed rival wife of a non-relative, due to that reason he taught: They exempt their rival wives, and not: They prohibit them. In other words, the *tanna* is teaching that they are not prohibited to him in their own right.

§ The Gemara continues its analysis of the wording of the mishna. And why does the *tanna* specifically teach: Exempt from *halitza* and from levirate marriage? **Let him teach: Exempt from levirate marriage,^N alone.** The Gemara answers: If he were to teach: From levirate marriage, I would say that she must perform *halitza* and she must not enter into levirate marriage. The *tanna* therefore teaches us that every woman who is eligible for levirate marriage is eligible for *halitza*, and anyone who is ineligible for levirate marriage is likewise ineligible for *halitza*,^H as no obligation of *halitza* applies unless there is an obligation of a levirate marriage.

HALAKHA

Every woman who is eligible for levirate marriage is eligible for *halitza*, and anyone who is ineligible for levirate marriage is ineligible for *halitza* – כָּל הָעוֹלָה לִיבּוּם עוֹלָה לְחֻלְצָה וְכָל שְׂאִינוֹ עוֹלָה לִיבּוּם אֵינוֹ עוֹלָה לְחֻלְצָה: There are apparently many cases that do not follow this principle, e.g., those marriages that were a transgression of a prohibition,

which are ineligible for levirate marriage but are eligible for *halitza*; however, one is rendered ineligible for levirate marriage in these cases by rabbinic law, not Torah law. With regard to all matters that apply by Torah law, this principle is accurate (see Meiri; Rambam *Sefer Nashim*, *Hilkhot Yibbum VaHalitza* 1:19).

וְלִיתָנִי מִן הַיִּיבּוּס וּמִן הַחֲלִיצָה, אִי נָמִי מִן הַחֲלִיצָה לְחֻדָּה! אָבָא שְׂאוּל הָיָא, דְּאָמַר: מִצְוַת חֲלִיצָה קוֹדֶמֶת לְמִצְוַת יִיבּוּס.

§ The Gemara further inquires: **And let him teach: From levirate marriage and from *halitza***, as the Torah states the option of levirate marriage first. **Alternatively**, let him teach: **From *halitza*, alone**, as this would indicate that she may not enter into levirate marriage either. The Gemara answers: **This mishna is in accordance with the opinion of Abba Shaul, who said: The mitzva of *halitza* takes precedence over the mitzva of levirate marriage**, as he maintains that one who does not enter into levirate marriage for the sake of Heaven transgresses the prohibition against marrying one's brother's wife, and therefore it would be better in every case to perform *halitza*. Consequently, the *tanna* mentions *halitza* before levirate marriage.

מִנְיָנָא דְרִישָׁא לְמַעוּטֵי מַאי, וּמִנְיָנָא דְסִיפָא לְמַעוּטֵי מַאי?

§ The Gemara asks another question with regard to the language of the mishna: **The enumeration of the first clause** of the mishna: Fifteen women, which indicates that those women alone are included in this list, serves **to exclude what?** Which other cases might have been included? **And the enumeration of the latter clause**, which states: These exempt their rival wives, again meaning these and no others, serves **to exclude what?** Since the mishna specifies only these women and no others, the Gemara asks which other women might have been included in these lists.

Perek I
Daf 3 Amud b

NOTES

To exclude those of Rav and of Rav Asi – **לְמַעוּטֵי דְרַב וְדְרַב אָסִי**: Some commentaries ask: Since, as stated later in the Gemara, Rav and Rav Asi concede that the mishna could not have listed their extra cases because the case of a rival wife of a rival wife does not apply, why do they not simply state that the list is indeed coming to exclude their cases for that reason, despite the fact that the mishna agrees in principle with their halakhic ruling (Ramban)? The Ramban claims that the Gemara could indeed have answered in this manner, but it provided a better resolution. Others commentaries discuss whether Rav and Rav Asi in fact exempt these women from both *halitza* and levirate marriage, or whether they obligate them to perform *halitza*, in which case there is no reason to think that they disagree with the *tanna* of the mishna at all.

To exclude the rival wife of a wife who performed refusal – **לְמַעוּטֵי צֶרֶת מְמָאֲנָתָא**: The Gemara does not state: To exclude the opinion of Shmuel, who is the author of this *halakha* (12a), as the mishna does not in fact dispute Shmuel's *halakha*. The reason is that although Shmuel maintains that the rival wife of a wife who performed refusal is forbidden to the *yavam*, he does not exempt her from *halitza*, whereas the mishna enumerates those cases in which the *yavam* and *yevama* are exempt from both levirate marriage and *halitza* (*Tosefot HaRosh*; see *Tosafot Yeshanim*).

BACKGROUND

One who remarries his divorcée – **מַחְזִיר גְּרוּשָׁתוֹ**: The Torah states (Deuteronomy 24:1–4) that if a divorced woman marries another man, she may not remarry her first husband even after her second husband dies or divorces her. This prohibition is not in the category of adulterous or incestuous relationships for which one is liable to receive capital punishment. Rather, it is a regular prohibition.

לְמַעוּטֵי דְרַב וְדְרַב אָסִי. לְרַב וּלְרַב אָסִי לְמַעוּטֵי מַאי?

The Gemara answers that these enumerations come **to exclude** those additions of **Rav and of Rav Asi**.^N Rav added the rival wife of a woman suspected by her husband of adultery [*sota*], while Rav Asi added the rival wife of an *aylonit*. The Gemara asks: **And according to the opinion of Rav and according to the opinion of Rav Asi**, the enumeration of the mishna comes **to exclude what?**

אִי סְבִירָא לְהוּ דְהֶדְדִּי – חֲדָא לְמַעוּטֵי צֶרֶת מְמָאֲנָתָא, וְחֲדָא לְמַעוּטֵי צֶרֶת מַחְזִיר גְּרוּשָׁתוֹ.

The Gemara responds: **If each maintains** in accordance with the opinion of the other, then **one** enumeration of the mishna comes **to exclude the rival wife of a wife who performed refusal**.^N If the deceased brother had two wives, one of whom was a minor, and she refused the *yavam*, her rival wife is prohibited from levirate marriage with him. However, the latter is not entirely exempt and must perform *halitza*. **And the other one comes to exclude the rival wife of the wife of one who remarries his divorcée**,^B i.e., a woman who was illicitly remarried by her former husband after she had been married to another man.

וְאִי לֹא סְבִירָא לְהוּ דְהֶדְדִּי – חֲדָא לְמַעוּטֵי דְחֻבְרִיה, וְחֲדָא לְמַעוּטֵי אוֹ צֶרֶת מְמָאֲנָתָא אוֹ צֶרֶת מַחְזִיר גְּרוּשָׁתוֹ.

And if Rav and Rav Asi do not each maintain in accordance with the opinion of the other, then **one** enumeration comes **to exclude the opinion of the other**, as they do not agree that the *halakha* stated by the other should be included in the mishna, **and the other one comes to exclude one of the above suggestions, either the rival wife of a wife who performed refusal or the rival wife of the wife of one who remarries his divorcée**.

לְרַב וּלְרַב אָסִי לִיתִינְהוּ!

The Gemara asks: If so, **according to the opinion of Rav and according to the opinion of Rav Asi**, let the *tanna* teach these cases. Since in their opinions there are more than fifteen women to whom the principle of the mishna applies, why weren't they all stated by the *tanna* of the mishna? The Gemara answers: They were not taught because they do not completely fit all of the halakhic rulings here.

לפי שאינה בצורת צרה.

The Gemara elaborates: This is **because they do not** involve the case of a **rival wife of a rival wife**. With regard to the fifteen women listed, the discussion of the mishna concerning rival wives and rival wives of rival wives is appropriate. However, the two cases cited by Rav and Rav Asi do not leave room for such deliberations, as both a *sota* and an *aylonit* are exempt and forbidden equally to all of the brothers, because their prohibition does not result from a familial relation to one of the living brothers but from a personal issue relating to the women themselves. Since none of the brothers may marry her rival wife, there is no possibility of a rival wife of a rival wife, and consequently these cases were omitted from the mishna's list of fifteen women.

מנא הני מילי? דתנו רבנן: "אשה אל אחותה לא תקח לצרור לגלות ערוותה עליה בחייה". "עליה" מה תלמוד לומר?

§ After analyzing the order and language of the mishna, the Gemara discusses the *halakhot* themselves. **From where are these matters,**^N that if one's forbidden relative comes before him for levirate marriage he is prohibited from marrying her or her rival wife, derived? It is as the Sages taught with regard to the verse: "And you shall not take a woman to her sister, to be a rival to her, to uncover her nakedness, with her in her lifetime" (Leviticus 18:18). What is the meaning when the verse states the apparently superfluous phrase: "With her"?

לפי שנאמר "יבמה יבא עליה" שומע אני אפילו באחת מכל ערויות האמורות בתורה הכתוב מדבר, נאמר כאן "עליה" ונאמר להלן "עליה",

The *baraita* explains: Since it is stated with regard to the wife of a deceased brother: "Her brother-in-law will have intercourse with her" (Deuteronomy 25:5), I would derive that when the verse speaks of the mitzva of levirate marriage, it includes even any one of those with whom relations are forbidden, as mentioned in the Torah. Therefore, one derives a verbal analogy: It is stated here, with regard to a wife's sister: "With her," and it is stated there, with regard to a levirate marriage: "With her."

מה להלן במקום מצוה – אף כאן במקום מצוה, ואמר רחמנא "לא תקח".

The *baraita* explains the verbal analogy. Just as there, a levirate marriage involves the performance of a mitzva, so too, here, the statement "uncover her nakedness with her" includes the performance of a mitzva, and the Merciful One states in the Torah: "You shall not take." The phrase "with her" teaches that even in a case where there is an obligation of levirate marriage, the Torah prohibition proscribing forbidden relatives remains in force.

ואין לי אלא היא, צרתה מניין? תלמוד לומר "לצרור". ואין לי אלא צרתה, צרת צרתה מניין? תלמוד לומר "לצרור" ולא "לצור".

The *baraita* continues: And I have derived only that she, his wife's sister, is exempt from levirate marriage; from where do I derive that her rival wife is also exempt? The verse states: "To be a rival to her" (Leviticus 18:18), which indicates that not only is she prohibited, but so too is her rival wife. And I have derived only her rival wife; from where is it derived that the rival wife of her rival wife is also exempt? The verse states: "To be a rival [*litzror*]," using the full spelling with a double *reish*, and not *latzor*;^N this indicates that there are several rival wives, one after another.

NOTES

The source of the prohibition in levirate marriage of women with whom relations are forbidden – מקור איסור ערוה בייבום – Some commentaries cite an alternative source from the Torah for this *halakha* (Rambam). The verse states: "Take her to him to be his wife and consummate the levirate marriage" (Deuteronomy 25:5), which indicates that the *halakhot* of levirate marriage apply only when there is a possibility of taking, i.e., marriage. Marriage is inapplicable in the case of any relationship that is punishable by *karet*, and therefore there is no mitzva of levirate marriage in that case. The Rambam further derives the prohibition with regard to rival wives from the verse: "Build his brother's house" (Deuteronomy 25:9), from which it may be inferred that he must have the ability to build, i.e., he must be able to marry each of his brother's wives. If one of the wives is forbidden to him, he can build only a part of his brother's house.

It has been noted that when the Rambam suggests interpretations that are not found in the Gemara, his intention is not to dispute the statements of the Sages but to suggest an alternative reason that he feels is more straightforward (see *Or HaHayyim*). However, in this case it is possible that the Rambam bases his opinion on the discussion later in the Gemara (6a–8b), in which it is stated that the interpretation mentioned here is groundless because there is no need for a source in the Torah to teach that it is prohibited to marry forbidden relatives. This indicates that there is room to suggest alternative sources for this basic *halakha* (see *Yam shel Shlomo*).

The verse states: To be a rival [*litzror*] and not *latzor* – לצרור – ולא לצור: An alternative version of the text reads: The verse states *tzeror*, i.e., it is a general expression that includes all types of rival wives (Meiri, citing Rif).

The *halakha* with regard to a rival wife applies only due to the brother – אין צרה אלא מאח – This expression explains the aforementioned *halakha*. It means that the Torah renders a rival wife forbidden not due to her status as the rival wife of a forbidden relative, but because she was exempted from levirate marriage along with her rival wife. In other words, she is forbidden to the *yavam* in her own right, as a brother's wife concerning whom there is no mitzva to marry. Consequently, if she were married to someone who does not render her forbidden to the *yavam*, she would not be forbidden at all (*Tosefot HaRosh*).

ואין לי אלא אחות אשה, שאר עריות
מניין? אמרת: מה אחות אשה מיוחדת –
שהיא ערוה, וחייבין על דוניה ברת ועל
שגגתה חטאת, ואסורה ליבם, אף כל
שהיא ערוה, וחייבין על דוניה ברת ועל
שגגתה חטאת – אסורה ליבם.

ואין לי אלא הן, צרותיהן מניין? אמרת:
מה אחות אשה מיוחדת – שהיא ערוה
וחייבין על דוניה ברת ועל שגגתה חטאת,
ואסורה ליבם, וצרתה אסורה – אף כל
שהיא ערוה וחייבין על דוניה ברת ועל
שגגתה חטאת ואסורה ליבם צרתה
אסורה. מכאן אמרו חכמים: חמש עשרה
נשים פוטרות צרותיהן וצרות צרותיהן מן
החליצה ומן היבום עד סוף העולם.

יכול שאני מרבה אף שש עריות חמורות
מאלו שהיו צרותיהם אסורות!

אמרת: מה אחות אשה מיוחדת, שהיא
ערוה, וחייבין על דוניה ברת ועל שגגתה
חטאת, ואפשר לינשא לאחים ואסורה
ליבם – וצרתה אסורה, אף כל שהיא
ערוה, וחייבין על דוניה ברת ועל שגגתה
חטאת ואפשר לינשא לאחים ואסורה
ליבם – צרתה אסורה.

יצאו שש עריות חמורות מאלו, הואיל
דאי אפשר לינשא לאחים – צרותיהן
מוותרות, שאין צרה אלא מאח.

And I have derived from this verbal analogy **only** that the mitzva of levirate marriage does not apply to a wife's sister. From where is it derived that the same applies to the other women with whom relations are forbidden? You can say as follows: Just as the case of a wife's sister is specific in that she is a forbidden relative, and this is a prohibition for whose intentional violation, i.e., for intentional sexual relations with her, one is liable to receive *karet*, and for whose unwitting violation one is liable to bring a sin-offering, and she is prohibited to the *yavam* in levirate marriage; so too, with regard to all women with whom relations are forbidden by a prohibition for whose intentional violation one is liable to receive *karet* and for whose unwitting violation one is liable to bring a sin-offering, they are prohibited to the *yavam* in levirate marriage.

The *baraita* continues: And I have derived **only** the cases of those women themselves with whom relations are forbidden; from where is it derived that their rival wives are also exempt from levirate marriage? You can say as follows: Just as a wife's sister is specific in that she is a forbidden relative and this is a prohibition for whose intentional violation one is liable to receive *karet*, and for whose unwitting violation one is liable to bring a sin-offering, and she is prohibited to the *yavam* in levirate marriage, and her rival wife is likewise prohibited; so too, any woman with whom relations are forbidden and this is a prohibition for whose intentional violation one is liable to receive *karet*, and for whose unwitting violation one is liable to bring a sin-offering, and this woman is one who is forbidden to the *yavam*, her rival wife is likewise forbidden. The *baraita* concludes: From here the Sages stated that fifteen women exempt their rival wives and the rival wives of their rival wives from *halitza* and from levirate marriage forever.

§ One might have thought that I should include in this principle even the six women with whom relations are forbidden that are more severe than these, i.e., one's mother, his father's sister, and so on, as stated in a later mishna (13b), since they too are forbidden by a prohibition entailing *karet*. This would mean that their rival wives should likewise be prohibited to enter into levirate marriage with this *yavam* as forbidden rival wives.

In response, you can say: Just as a wife's sister is specific in that she is a forbidden relative and this is a prohibition for whose intentional violation one is liable to receive *karet* and for whose unwitting violation one is liable to bring a sin-offering, and yet she is permitted to marry one of the brothers but she is prohibited to the *yavam* in levirate marriage, and her rival wife is likewise prohibited in levirate marriage; so too, with regard to any woman with whom relations are forbidden and this is a prohibition for whose intentional violation one is liable to receive *karet* and for whose unwitting violation one is liable to bring a sin-offering, and who is permitted to marry one of the brothers but she is prohibited to the *yavam* in levirate marriage, her rival wife is also prohibited in levirate marriage.

This excludes the six women with whom relations are forbidden by a more severe prohibition than those, since they may not marry the brothers, i.e., they are forbidden to all of the brothers. One's mother may never marry his brother, either because she is also that brother's mother, or because she is his father's wife. Consequently, their rival wives are permitted, as the *halakha* with regard to a rival wife applies only due to the brother.^N In other words, the prohibition against marriage to the rival wife of a forbidden relative is applicable only in instances of levirate bonds. When the levirate bond does not take effect at all, the rival wife is not forbidden.

A positive mitzva comes and overrides a prohibition – אָתִי – עֵשֶׂה וְדָחִי לֹא תַעֲשֶׂה: Whenever both a positive mitzva and a prohibition are applicable, the positive mitzva overrides the prohibition (Rambam *Sefer Nashim, Hilkhot Yibbum VaHalitza* 6:10 and *Sefer Tahara, Hilkhot Tumat Tzara'at* 10:5).

This principle refers to a conflict between a positive mitzva and a regular prohibition. However, some authorities maintain that in cases of a prohibition that entails the punishment of *karet*, the positive mitzva does not override the prohibition. In addition, a positive mitzva does not override both another positive mitzva and a prohibition together.

BACKGROUND

A positive mitzva comes and overrides a prohibition – אָתִי – עֵשֶׂה וְדָחִי לֹא תַעֲשֶׂה: According to this halakhic principle, the obligation to perform a positive mitzva overrides the prohibition against performing a prohibited act when the two come into conflict. As noted by the Gemara, the source for this principle is the mitzva to wear ritual fringes even when it involves a prohibited mixture of wool and linen. However, the principle does not extend to the performance of a mitzva that conflicts with a severe prohibition, e.g., one that entails the punishment of *karet*.

אִתְּהָרָה שְׂמַעְנוּ, עוֹנֵשׁ מִנִּין? אָמַר קָרָא "כִּי כָל (אִישׁ) אֲשֶׁר יַעֲשֶׂה מִכָּל הַתּוֹעֲבוֹת " וְגו'.

The *baraita* adds: We have learned the warning concerning this prohibition that the *yavam* may not marry his forbidden relative from the verse: "And you shall not take a woman to her sister, to be a rival to her, to uncover her nakedness, with her in her lifetime" (Leviticus 18:18). From where^N is the punishment^N that he incurs if he transgresses and marries her derived? The verse states: "For whoever shall do any of these abominations, the souls that do them shall be cut off from among their people" (Leviticus 18:29).

טַעֲמָא דְכָתִיב רַחֲמָנָא "עֲלֶיהָ", הָא לֹא הָיָה הָיָה אֲמִינָא אַחֲוֹת אִשָּׁה מִיִּבְמָת, מֵאִי טַעֲמָא? דְּאֲמַרִּין: אֲתִי עֵשֶׂה וְדָחִי לֹא תַעֲשֶׂה,

§ Up until this point, the Gemara has cited the *baraita* that interprets the biblical basis for the *halakha* of the mishna. The Gemara further analyzes the foundational principles of this topic. The reason that these women are exempt from levirate marriage is that the Merciful One writes "with her," from which it may be inferred that if that was not so, I would say that a wife's sister enters into levirate marriage with her sister's husband. What is the reason that one would have assumed that this is the case? It is as we say, in accordance with a principle, that a positive mitzva comes and overrides a prohibition.^{HB} In this case, the positive mitzva to enter into levirate marriage overrides the prohibition against marrying one's wife's sister.

אִמַּר דְּאֲמַרִּין אֲתִי עֵשֶׂה וְדָחִי לֹא תַעֲשֶׂה – לֹא תַעֲשֶׂה גְרִידָא, לֹא תַעֲשֶׂה שֵׁשׁ בּוֹ כֶּרֶת מִי דָחִי? וְהוּא: לֹא תַעֲשֶׂה גְרִידָא מִנְלָן דְּדָחִי?

The Gemara asks if that principle is applicable in this case. One can say that we said that a positive mitzva comes and overrides a prohibition only when there is a prohibition for which one is punished by lashes alone. However, with regard to a prohibition that includes the punishment of *karet*, does a positive mitzva override it?^N This prohibition is more severe than a regular one, and therefore perhaps a positive mitzva does not override it. And furthermore, with regard to a prohibition for which one is punished by lashes alone, from where do we derive that a positive mitzva overrides it?

NOTES

From where, etc. – מִנִּין וכו' – Rashi explains that the Gemara is asking about the punishment both for one who has intercourse with women with whom relations are forbidden as well as one who has intercourse with the rival wives of those women. This is somewhat puzzling, as the punishment for engaging in intercourse with women with whom relations are forbidden is explicitly stated in the Torah. Others maintain that the question refers only to a rival wife (Meiri).

From where is the punishment – עוֹנֵשׁ מִנִּין – The early commentaries note that the *tanna* merely inquires as to the source of the punishment, and they ask: Why is he sure that this transgression entails a punishment at all? They explain that certain rulings of *halakha* are accepted by tradition, and therefore the question refers only to the source. Matters that are less clear are investigated in a more fundamental manner, by means of phrases such as: Does this commandment override that one, and the like (*Nimmukei Yosef*; Meiri).

A prohibition that includes *karet*, does it override it – לֹא תַעֲשֶׂה שֵׁשׁ בּוֹ כֶּרֶת מִי דָחִי: Some commentaries ask: Doesn't the very concept of levirate marriage itself prove that the positive mitzva to marry one's brother's widow overrides the prohibition against marrying one's brother's wife, which is punishable by *karet* (*Tosafot*)? Their answer is that the mitzva of levirate marriage is applicable solely in the case of a brother's wife, and therefore it necessarily cancels out that prohibition (see Ramah in *Sanhedrin*). This idea is discussed further in the Jerusalem Talmud, where the principle is cited that certain mitzvot were stated simultaneously, i.e., two apparently conflicting mitzvot are actually interdependent. In other words, this is not a case of a positive mitzva overriding a prohibition at all. Rather, from the outset this prohibition was applicable only to a brother's wife who bore children. Consequently, in the case of levirate marriage there is no prohibition whatsoever (see *Kovetz He'arot*).

NOTES

Deriving from juxtaposed verses – דרישת סמוכים: The dispute over deriving homiletic interpretations from juxtaposed verses arises when two verses are stated next to each other. The question is whether or not to draw conclusions based on the proximity of the verses. However, when two *halakhot* appear in the same verse, even if there is no essential connection between them, it is clear that they were brought together so that one would learn from the juxtaposition. This is called the exegetical principle of juxtaposition and is considered nearly as authoritative as an explicit statement in the Torah (Ra'avad).

That one may not muzzle her – שאין חוסמין אותה: In other words, one may not muzzle and ignore her claims. If the *yavam* has a defect that would have been grounds for divorce had she been his wife, he does not first enter into levirate marriage and then divorce her. Rather, her claim is accepted and he must perform *halitza* (Rashba).

The dispute over inferring from juxtaposed verses – המחלוקת בדרישת סמוכים: Some commentaries claim that this dispute with regard to deriving homiletic interpretations from juxtaposed verses is connected to the dispute as to whether the Torah was given at once or scroll by scroll, each at a different time (*Gittin* 60a). If the Torah was given on a single occasion, it stands to reason that conclusions may be drawn from the connections between passages. However, if the Torah was given scroll by scroll, each passage stands on its own, as it is unknown how the scrolls were originally divided (Rabbi Tzvi Hirsch Chajes).

He does derive in Deuteronomy – במשנה תורה דריש: Apparently, Rabbi Yehuda maintains that for a *halakha* to be derived by homiletic interpretation from juxtaposed verses, the matter must be evident, as discussed later in the Gemara. Some commentaries claim that the entire Torah, except for Deuteronomy, is considered one long passage. Consequently, nothing can be proven from juxtapositions, as it all constitutes one single subject (Ramban). Others write that since the rest of the Torah was composed directly by God, one cannot fully understand the reasoning behind its order, whereas Deuteronomy, which was arranged by Moses, was most certainly ordered by subject matter. Therefore, one can derive interpretations from juxtaposed verses in Deuteronomy.

HALAKHA

A yevama who came before a yavam afflicted with boils – יבמה שנפלה לפני מובה שחין: With regard to a *yevama* who came for levirate marriage before a *yavam* who is afflicted with boils, or has any other defect on account of which a wife may demand a divorce, she cannot be forced to enter into levirate marriage. Instead he performs *halitza* and she receives the payment of her original marriage contract from her first husband's estate (*Shulhan Arukh*, *Even HaEzer* 165:4).

The punishment of a sorcerer – עונש מכשף: A sorcerer or sorceress who performed sorcery is punished by stoning (Rambam *Sefer Shofetim*, *Hilkhot Sanhedrin* 15:10).

BACKGROUND

Mediums and wizards – אוב וידעוני: The Torah prohibits all forms of witchcraft, and condemns to death those who practice these arts. Mediums and wizards were people who claimed to have the power to call upon the dead to learn about secrets unknown to ordinary men, including glimpses into the future. Although some of the early commentaries believed that the future could indeed be foretold by these people, the Rambam rejects these opinions and argues that turning to mediums is prohibited specifically because these powers do not exist at all.

דכתיב "לא תלבש שעטנן", "גדלים תעשה לך".

ואמר רבי אלעזר: סמוכים מן התורה מנין – שנאמר "סמוכים לעד לעולם עשויים באמת וישר".

ואמר רב ששת אמר רבי אלעזר משום רבי אלעזר בן עזריה: מנין ליבמה שנפלה לפני מובה שחין שאין חוסמין אותה – שנאמר "לא תחסום שור בדישו" וסמין ליה "כי ישבו אחים יחדיו".

ואמר רב יוסף: אפילו למאן דלא דריש סמוכים בעלמא – במשנה תורה דריש, דהא רבי יהודה בעלמא לא דריש, ובמשנה תורה דריש.

ובעלמא מנלן דלא דריש? דתניא, בן עזאי אומר: נאמר "מכשפה לא תחיה" ונאמר "כל שזכב עם בהמה מות יומת", סמכו ענין לו, מה שזכב עם בהמה בסקילה – אף מכשפה בסקילה.

אמר לו רבי יהודה: וכי מפני שסמכו ענין לו נוציא זה לסקילה?

אלא אוב וידעוני בכלל מכשפים היו, ולמה יצאו – להקיש להם, ולומר לך: מה אוב וידעוני בסקילה – אף מכשפה בסקילה.

As it is written: "You shall not wear diverse kinds of wool and linen together. You shall make for yourself twisted fringes on the four corners of your covering with which you cover yourself" (Deuteronomy 22:11–12). These verses teach that despite the prohibition against wearing diverse kinds of wool and linen, it is permitted to prepare ritual fringes of diverse kinds, e.g., sky-blue dyed threads of wool on linen garments. This shows that the positive mitzva of ritual fringes overrides the prohibition of diverse kinds.

And Rabbi Elazar said: From where in the Torah is it derived that one may draw homiletical interpretations from the juxtapositionⁿ of verses? In other words, from where is it derived that the fact that certain verses are adjacent one to the other is a reason to apply the *halakhot* from one verse to the other? As it is stated: "The works of His hands in truth and justice, all His commandments are sure. Juxtaposed forever and ever, made in truth and uprightness" (Psalms 111:7–8). This verse indicates that it is appropriate to draw inferences from the juxtaposition of God's commandments.

And similarly, Rav Sheshet said that Rabbi Elazar said in the name of Rabbi Elazar ben Azarya: From where is it derived with regard to a *yevama* who came before a *yavam* afflicted with boils^h that one may not muzzle her,ⁿ i.e., she cannot be forced to enter into levirate marriage, and he is compelled to release her by *halitza*? As it is stated: "You shall not muzzle an ox while it treads out the corn" (Deuteronomy 25:4), and, juxtaposed to it, is the verse: "If brothers dwell together" (Deuteronomy 25:5), which begins the passage that deals with the *halakhot* of levirate marriage. This teaches that just as it is prohibited to muzzle the ox, so too, one may not muzzle and ignore the complaints of a *yevama* who does not wish to marry a *yavam* afflicted with boils.

And Rav Yosef said: Even according to the one who does not generally derive homiletic interpretations from juxtaposed verses, nevertheless, he does derive them from Deuteronomy, as Rabbi Yehuda does not generally derive homiletic interpretations from juxtaposed verses,ⁿ and yet he does derive them from Deuteronomy.ⁿ

§ The Gemara asks: And from where do we derive that Rabbi Yehuda generally does not derive homiletic interpretations from juxtaposed verses? As it is taught in a *baraita* with regard to the punishment of a sorceress that ben Azzai says that it is stated: "You shall not allow a sorceress to live" (Exodus 22:17), although the manner of her execution is not specified, and it is stated: "Whoever lies with a beast shall surely be put to death" (Exodus 22:18). The Torah juxtaposed this matter to that so as to say: Just as one who lies with a beast is executed by stoning (see Leviticus 20:16), so too, a sorceress is executed by stoning.^h

With regard to this proof, Rabbi Yehuda said to ben Azzai: And simply due to the fact that the Torah juxtaposed this matter to that one, shall we take this person out to be stoned? Should he be sentenced to the most severe of the death penalties on the basis of a juxtaposition of passages?

Rather, Rabbi Yehuda claims that the source is the following statement: Mediums and wizards^b were included among all sorcerers. And why were they singled out from the rest in the verse: "And a man or a woman who is a medium or a wizard shall surely be put to death; they shall stone them with stones, their blood is upon them" (Leviticus 20:27)? It is to draw an analogy to them and say to you: Just as a medium and a wizard are executed by stoning, so too, a sorceress is executed by stoning. This shows that Rabbi Yehuda does not derive homiletic interpretations from juxtaposed verses.

A woman raped by one's father – אנוסת אביו: It is permitted for one to marry a woman raped or seduced by his father (Rambam *Sefer Kedusha*, *Hilkhot Issurei Bia* 2:13; *Shulhan Arukh*, *Even HaEzer* 15:5; see *Beit Yosef* on *Tur*, *Even HaEzer* 15).

NOTES

The interpretation of the Rabbis with regard to: Shall not uncover – דרשת חכמים בעניין לא יגלה – It is puzzling that the Rabbis, who derive homiletic interpretations from juxtaposed verses throughout the Torah, would not do so here, when even Rabbi Yehuda explains the verses in this manner. The answer is that in fact the Rabbis do interpret the juxtaposition here as well; however, they maintain that it teaches a different matter, namely the definition of a *mamzer*, which is a son born from an incestuous or adulterous relationship. They reject Rabbi Yehuda's explanation because the two matters to which he refers are not truly juxtaposed (Rashba; Ritva).

A woman waiting for her yavam, who is his father – שומרת יבם של אביו: The Rabbis claim that it is evident from the context of the passage that the verse is speaking about a woman awaiting levirate marriage. The reason is that the first part of the verse refers to marriage, and therefore it stands to reason that the second part is referring to some form of marriage as well (Meiri). Others add that there is an allusion to this claim in the book of Ruth (3:9), where it is stated, with regard to a situation similar to a levirate marriage: "Spread your skirt over your handmaid" (Rashash).

When does Rabbi Yehuda derive interpretations from juxtaposed verses – מתי דורש רבי יהודה סמוכים: The commentaries explain that Rabbi Yehuda derives homiletic interpretations from juxtaposed verses only when two conditions are met: It must be evident that the verse is coming for this purpose, as it is out of place, and the verse must be superfluous in the context (*Tosafot* on *Sukka* 31a).

ובמשנה תורה מנלן דדריש – דתנן: נושא אדם אנוסת אביו ומפותת אביו, אנוסת בנו ומפותת בנו. רבי יהודה אוסר באנוסת אביו ומפותת אביו

ואמר רב גידל אמר רב: מאי טעמא דרבי יהודה – דכתיב: "לא יקח איש את אשת אביו ולא יגלה כנף אביו" כנף שראה אביו לא יגלה.

וממאי דבאנוסה כתיב – מעילוייה דקרא, דכתיב: "ונתן האיש השוכב עמה לאביו הנערה חמשים כסף" וסמך ליה "לא יקח איש" וגו'.

ורבנן: אי הוה סמך ליה – בדקאמרת, השתא דלא סמך ליה (דכתיב) "לא יקח איש את אשת אביו" בנתים –

בשומרת יבם הכתוב מדבר, ולעבור עליו בשני לאוין.

ובמשנה תורה מאי טעמא דדריש? איבעית אימא משום דמוכח, ואיבעית אימא משום דמופני.

איבעית אימא משום דמוכח – דאם כן, לכתביה רחמנא גבי ערוות. ואיבעית אימא משום דמופני, דאם כן, לכתוב רחמנא "לא יקח איש את אשת אביו", "לא יגלה כנף אביו" למא לי?

S And from where do we derive that Rabbi Yehuda does derive homiletic interpretations in Deuteronomy? As we learned in a mishna: **A person may wed a woman raped by his father^H and one seduced by his father**, despite the fact that his father's wife is forbidden to him. Similarly, he may marry a woman **raped by his son and one seduced by his son**. Although one is prohibited by Torah law from marrying the wife of his father or the wife of his son, these prohibitions do not apply to a woman raped or seduced by them. **And Rabbi Yehuda prohibits him from marrying a woman raped by his father and a woman seduced by his father.**

And Rav Giddel said that Rav said: What is the reason for Rabbi Yehuda's opinion? As it is written: **"A man shall not take his father's wife, and shall not uncover his father's skirt"** (Deuteronomy 23:1). The latter expression: **"And shall not uncover his father's skirt,"** is referring to a skirt that has been seen by his father, i.e., any woman who has had relations with his father may not be uncovered by his son, meaning that his son may not marry her.

And from where is it known that the verse is written with regard to a woman raped by his father? It is from the previous verse, which deals with the *halakhot* of rape, as it is written: **"And the man who lay with her must give the maiden's father fifty shekels of silver"** (Deuteronomy 22:29), and juxtaposed to it is the verse: **"A man shall not take his father's wife and shall not uncover his father's skirt."** This shows that Rabbi Yehuda does derive homiletic interpretations from juxtaposed verses in Deuteronomy.

S The Gemara asks: And how do the Rabbis,^N who disagree with the opinion of Rabbi Yehuda, respond to this argument? They say: If the two verses were fully juxtaposed, it would be interpreted as you said. However, now that it is not properly juxtaposed, as it is written: **"A man shall not take his father's wife,"** in between the *halakhot* of rape and the pronouncement with regard to uncovering one's father's garment, this serves to break the juxtaposition.

Consequently, this particular verse concerning the uncovering of one's father's garment is speaking of a woman waiting for her *yavam*, in this case one's father.^N In other words, the *yevama* of a father who is waiting for levirate marriage to the father is already considered "his father's skirt," and she is therefore forbidden to the son. Although this woman who is awaiting levirate marriage is in fact his uncle's wife and explicitly prohibited to him in any case, this passage comes to teach that he violates two prohibitions. In other words, were he to engage in relations with her he would be penalized both for relations with his uncle's wife and relations with "his father's skirt."

S The Gemara asks: But as Rabbi Yehuda does not generally derive homiletic interpretations from juxtaposed verses, what is the reason that he derives these interpretations in Deuteronomy?^N The Gemara responds: If you wish, say that it is because it is evident from the context; and if you wish, say instead that it is because this verse is extraneous and is therefore free for this inference.

The Gemara elaborates: If you wish, say it is because it is evident; as, if it is so that the verse did not intend to teach by juxtaposition, let the Merciful One write this *halakha* prohibiting marriage to a father's wife alongside the other women with whom relations are forbidden, in Leviticus. Since this verse is out of place, it is certainly coming to teach by way of juxtaposition. And if you wish, say instead that it is because this verse is free, as, if it is so that the verse is not coming to teach an additional *halakha*, let the Merciful One write only: **"A man shall not take his father's wife."** Why do I need the phrase: **"And shall not uncover his father's skirt"**? This phrase is superfluous, and therefore it teaches by juxtaposition.

NOTES

ציצית נמי – Ritual fringes as well, it is free and it is evident – **נמי**: Some commentaries say that this statement is in accordance with the opinion of Rabbi Yehuda, who derives homiletical interpretations from a juxtaposed verse only if it is free in its context and the juxtaposition is evident. Others maintain that this opinion is unanimous, as it was necessary that this particular case of ritual fringes fulfill both parameters for it to serve as the source of the principle that one derives interpretations from juxtaposed verses in the entire Torah (Ramban).

ואפילו מוכרי כסות – And even sellers of coverings – **ואפילו מוכרי כסות**: Rashi explains that as the sellers of coverings do not intend to derive benefit from their merchandise, they may wear a mixture of linen and wool. Several early commentaries remark that this is correct only according to those authorities who accept the opinion that an unintentional act is not prohibited. However, this opinion is a matter of dispute among the *tanna'im*. Consequently, the Gemara must be referring to sellers of garments during the summer months, when no benefit is derived from the coverings at all.

שמע מינה לאפנויי. וגבי ציצית נמי, איבעית אימא משום דמוכח, ואיבעית אימא משום דמופנה.

איבעית אימא משום דמוכח – דאם כן לכתביה רחמנא גבי פרשת ציצית, למאי הלכתא כתביה הכא. ואיבעית אימא משום דמופנה, מכדי כתב "ובגד כלאים שעטני לא יעלה עליך", "לא תלבש שעטני" למא לי? שמע מינה לאפנויי.

הני מצוד צריכי; דאי כתב רחמנא "לא יעלה עליך" הוה אמנא: כל דרך העלאה אסור רחמנא, ואפילו מוכרי כסות – כתב רחמנא "לא תלבש שעטני" דומיא דלבישה דאית ביה הנאה.

ואי כתב רחמנא "לא תלבש" הוה אמנא: דוקא לבישה דנפיש הנחתה, אבל העלאה לא – כתב רחמנא "לא יעלה עליך" –

אם כן לכתוב רחמנא "לא תלבש שעטני", "צמר ופשתים" למא לי?

Learn from this that this phrase is free to teach an additional *halakha*. And with regard to ritual fringes as well, there is a particular reason to derive a homiletic interpretation from the juxtaposition of verses. If you wish, say that it is because it is evident from the context, and if you wish, say instead that it is because this verse is freeⁿ for this inference.

The Gemara elaborates: If you wish, say it is because it is evident; as, if it is so that no inference should be drawn from the adjacent verses, let the Merciful One write this verse by the portion of ritual fringes (Numbers, chapter 15). With regard to what *halakha* did the Torah write it here? Clearly, the Torah is teaching a *halakha* from the adjacent verses. And if you wish, say it is because this verse is free, since the Torah has already written: "Neither shall there come upon you a garment of diverse kinds mingled together" (Leviticus 19:19). Why, then, do I need the verse: "You shall not wear diverse kinds, wool and linen together" (Deuteronomy 22:11)? Learn from this that the verse is free for the derivation of a homiletic interpretation from juxtaposed verses.

The Gemara rejects this explanation: Both of these verses are necessary, as, had the Merciful One written only: "Neither shall there come upon you," I would say that the Merciful One prohibits every manner by which a garment of diverse kinds comes upon you,ⁿ and this applies even to sellers of coverings,^{nh} who do not wear the garments but merely rest them on their shoulders. Therefore, the Merciful One writes: "You shall not wear diverse kinds," to teach that the prohibition applies only in cases similar to wearing, which provides benefitⁿ and does not simply involve placing the covering upon oneself.

And had the Merciful One written only: "You shall not wear," I would say that this means specifically wearing, which provides significant benefit, both warmth and adornment, but merely placing a garment of diverse kinds upon oneself is not prohibited, even if one is warmed by the clothing. Therefore, the Merciful One writes: "Neither shall there come upon you."

The Gemara challenges: In any case part of the verse is superfluous, as, if so, let the Merciful One write only: "You shall not wear diverse kinds." Why do I need the addition of "wool and linen"? The definition of diverse kinds in clothing is already known from another source.

HALAKHA

The Merciful One prohibits every manner by which a garment of diverse kinds comes upon you – **כל דרך העלאה אסור**: By Torah law it is prohibited only to wear or place upon oneself coverings of diverse kinds of wool and linen, whereas it is permitted to sit or lie upon them. However, the Sages prohibited this practice as well (*Shulhan Arukh*, *Yoreh De'a* 301:1).

Sellers of coverings – **מוכרי כסות**: Sellers of garments may place upon themselves mixtures of wool and linen as they do other garments. The reason for this leniency is that they do not intend to benefit from their protection from sun or the rain, and therefore they are not using the garments in the manner of a covering. Those who are careful in the

performance of mitzvot hang them on a stick. It is prohibited to wear these garments even if one does not intend to derive benefit from the act of wearing itself, e.g., to check measurements (Rambam). However, some authorities permit this (Rema, citing Rosh and Rabbi Shimshon of Saens; *Shulhan Arukh*, *Yoreh De'a* 301:6).

לבישה דאית ביה הנאה – Wearing, which provides benefit: The prohibition of diverse kinds applies only to garments that provide warmth, e.g., a tunic, trousers, or a hat. However, objects that are not made for this purpose, such as a wallet for holding money, are not included in the prohibition against diverse kinds (*Shulhan Arukh*, *Yoreh De'a* 301:14).

מִבְּדֵי כֶּתֶב "וְגִדְּרָם בְּלֹאִים שְׁעֻטָּן לֹא יֵעָלֶה עָלֶיךָ" וְתָנא דְּבִי רַבִּי יִשְׁמָעֵאל: הוֹאִיל וְנֶאמְרוּ בְּתוֹרָה סֵתָם "בְּגָדִים" וּפְרֵט לָךְ הַכְּתוּב בְּאַחַד מֵהֶן "צֹמֶר וּפְשָׁתִים" אִף כָּל צֹמֶר וּפְשָׁתִים. צֹמֶר וּפְשָׁתִים דִּכְתָּב רַחֲמָנָא לָמָּה לִּי שְׁמַע מִינָּה לֹא פְנוּי.

וְאִכְתִּי אִיצְטוּד, סֶלְקָא דַּעְתְּךָ אֲמִינָא: הֵעֲלָאָה הִיא, דְּלֹא נִפְּשִׁי הִנָּאָתָה, אֲבָל לְבִישָׁה דְּנִפְּשִׁי הִנָּיָתָה – כָּל תְּרֵי מִינֵי אֶסֶר רַחֲמָנָא, כֶּתֶב רַחֲמָנָא "צֹמֶר וּפְשָׁתִים".

אִם כֵּן לְשִׁתּוּק קָרָא מִינָּה, וְתִיתִי "שְׁעֻטָּן" "שְׁעֻטָּן" מִהֵעֲלָאָה.

וְתָנא דְּבִי רַבִּי יִשְׁמָעֵאל, טַעֲמָא דְּכֶתֶב רַחֲמָנָא צֹמֶר וּפְשָׁתִים, הָא לֹא הָכִי – בְּלֹאִים בְּצִיצִית הוּא אֲמִינָא דְּאֶסֶר רַחֲמָנָא? וְהַכְּתִיב "וַעֲשׂוּ לָהֶם צִיצִית עַל כַּנְפֵי בְּגֵדֵיהֶם",

How so? Since it is written: "Neither shall there come upon you a garment of diverse kinds mingled together" (Leviticus 19:19), and the school of Rabbi Yishmael taught: Since the word garments is stated in the Torah unmodified, without stating from what materials those garments were made, and the verse specified in one of its references to garments, in the context of the *halakhot* of ritual impurity of leprosy: "A woolen garment or a linen garment" (Leviticus 13:47), the following conclusion can be drawn: Just as when the Torah mentions a garment in the case of leprosy it is referring to one made of wool or linen,^h so too, all garments mentioned in the Torah are those made from wool or linen.^h Other fabrics are not classified as those used for garments. If so, why do I need the phrase: "Wool and linen" that the Merciful One wrote with regard to diverse kinds? Learn from this that the superfluous passage is free.

The Gemara raises a difficulty: But the verse is still necessary, as it could enter your mind to say that it is referring only to placing a garment on oneself, which does not provide great benefit; however, with regard to the actual wearing of a garment, which entails great benefit, the Merciful One prohibits wearing any two types together. Therefore, the Merciful One writes "wool and linen" with regard to wearing garments of diverse kinds as well.

The Gemara responds: If so, let the verse be silent and refrain from mentioning wool and linen at all, and the *halakha* that only wearing wool and linen together is prohibited can be derived by means of a verbal analogy between the terms "diverse kinds" (Deuteronomy 22:11), and "diverse kinds" from placingⁿ a covering of diverse kinds upon oneself (Leviticus 19:19). The repetition of wool and linen must be coming to teach that one should derive a homiletic interpretation from these juxtaposed verses.

The Gemara asks: And according to that which the school of Rabbi Yishmael taught, that the mention of wool and linen is superfluous and teaches that they are not prohibited in the case of ritual fringes, the reason is that the Merciful One specifically writes wool and linen. From here it may be inferred that if that were not so, I would say that the Merciful One prohibits a mixture of diverse kinds in ritual fringes. Can it be considered that this is the case? But isn't it written: "That they make themselves fringes on the corners of their garments" (Numbers 15:38)?ⁿ

HALAKHA

בְּמָה – When does the prohibition of diverse kinds apply – יֵשׁ אִסּוּר שְׁעֻטָּן: The prohibition of diverse kinds applies only to wool mixed together with linen by Torah law. The Sages, however, prohibited several other kinds, due to the appearance of prohibition (Rambam *Sefer Zera'im*, *Hilkhot Kilayim* 10:1).

סוגי בגדים – The types of clothing that require ritual fringes – הַחֲבִיבִים בְּצִיצִית: By Torah law, one is obligated to attach ritual fringes only to garments made of linen or lamb's wool (Rif;

Rambam). This ruling is in accordance with the opinion of Rav Nahman (*Menahot* 39b). However, some authorities claim that the biblical mitzva to place ritual fringes applies to every type of fabric (Rema, citing *Tosafot*; Rosh; *Sefer Mitzvot Gadol*). These commentaries accept the opinion of Rava in tractate *Menahot*.

It is preferable for a God-fearing person to wear a four-cornered garment made of wool, so as to fulfill his obligation according to all opinions *ab initio* (*Mishna Berura*, citing *Eliyahu Rabba*; *Shulhan Arukh*, *Orah Hayyim* 9:1).

NOTES

And it can be derived by means of...diverse kinds from placing – וְתִיתִי...שְׁעֻטָּן מִהֵעֲלָאָה: It could be argued that the phrase "diverse kinds" is not free in one place. As a result, this is a verbal analogy that is not free on both sides, and verbal analogies of this kind can be refuted if there is a logical argument against them. This is certainly the case here, since there is a difference between the benefit of covering and that of wearing, as stated in the Gemara. Some commentaries answer that this passage is in accordance with the opinion of Rabbi Yishmael,

who maintains that one can derive verbal analogies even if they are free on only one side (*Tosefot HaRosh*, citing Maharam of Rothenberg). Some explain that this is not a proper verbal analogy at all but rather an attempt to learn about an unclear case from a more explicit one.

עַל כַּנְפֵי בְּגֵדֵיהֶם וכו' – On the corners of their garments, etc. – Some say that the plural form: "Their garments," alludes to two kinds of garments, both wool and linen (Meiri).

BACKGROUND

Sky-blue – תכלת: The color sky-blue is mentioned several times in the Torah. However, this is not the name of a hue, like red or black, but a certain type of dyed material, similar to wool dyed scarlet or purple.

Sky-blue dye was extracted from a type of snail called a *hilazon*. Already in the talmudic period, the use of sky-blue dye was very rare, and in later generations the identity of the *hilazon* became uncertain. Many contemporary researchers believe that this dye was extracted in a special process from the species *Murex trunculus* found in the Mediterranean Sea. Others have suggested the common cuttlefish, *Sepia officinalis*, and the raft snail, *Janthina*.

Although this is not explicitly stated in the Torah, apparently all of the dyed fabrics to which it refers, i.e., sky-blue, purple, and scarlet, were prepared from wool. It is possible that these dyes could not be absorbed in linen threads at all.



Murex trunculus



Common cuttlefish



Raft snail

NOTES

From the fact that *shesh* means linen, other threads including sky-blue are wool – מִדְּשֵׁשׁ כִּיתָנָא תְּכֵלֶת עֲמָרָא הוּא: Some commentaries cite an additional allusion from the verse: “And no wool shall come upon them” (Ezekiel 44:17), from which it may be inferred that the other priestly clothes are prepared from wool alone.

וְתָנָא דְּבֵי רַבִּי יִשְׁמָעֵאל: כָּל בְּגָדִים צֹמֶר וּפְשָׁתִים הֵם, וְאָמַר רַחֲמָנָא: עֲבִיד לֵיהּ תְּכֵלֶת, וְתֵכֶלֶת עֲמָרָא הוּא. וּמָמַאי דְּתֵכֶלֶת עֲמָרָא הוּא? מִדְּשֵׁשׁ כִּיתָנָא – תְּכֵלֶת עֲמָרָא הוּא.

אֵיצְטְרִיךְ, סֶלֶקָא דְּעֵתָךְ אֲמִינָא בְּדִרְבָּא. דְּרַבָּא רַמִּי: כְּתִיב “הַכֶּנֶף” – מִן כֶּנֶף, וְכְתִיב “צֹמֶר וּפְשָׁתִים”!

הָא כִּיצַד? צֹמֶר וּפְשָׁתִים פּוֹטְרִין בֵּין בְּמִינָן בֵּין שְׁלֹא בְּמִינָן, שְׁאָר בְּמִינָן בְּמִינָן פּוֹטְרִין, שְׁלֹא בְּמִינָן – אֵין פּוֹטְרִין.

And the school of Rabbi Yishmael taught: All garments mentioned in the Torah are of wool or linen, and the Merciful One says, with regard to ritual fringes: Prepare it^a with a sky-blue^b dye,^c and a sky-blue dyed thread is prepared from wool. The Torah explicitly commands that at least one woolen thread of sky-blue dye must be tied even to a linen cloth, which proves that diverse kinds are permitted in the context of ritual fringes. The Gemara establishes the previous claim: And from where is it derived that the sky-blue thread is made of wool? From the fact that the Torah specifies that one of the strands of the priestly garments was made of *shesh*, which means linen, this indicates that the other threads, including the sky-blue thread, are from wool.^d

Returning to the question, the Gemara explains that the mention of wool and linen is necessary, as it could enter your mind to state an argument in accordance with the opinion of Rava. As Rava raised a contradiction from the following verse: It is written: “That they make themselves fringes on the corners of their garments” (Numbers 15:38). The phrase “the corners” indicates that it must be from the same type of thread as the corner, i.e., the threads of the fringes must consist of the same kind of material as the corner of the garment. And yet it is written: “Wool and linen” (Deuteronomy 22:11), which indicates that ritual fringes may be prepared from only those materials and no others.

How so? How can this contradiction be resolved? Fringes made of wool and linen fulfill the obligation of ritual fringes whether the clothing is of the same type of material, i.e., wool or linen, or whether it is not of the same type^e of fabric. Conversely, with regard to all other kinds of material, if the ritual fringes are of the same kind, e.g., silk fringes on silk clothing, they fulfill the obligation, but if the cloth is not of the same type, they do not fulfill the obligation of ritual fringes. Consequently, were it not for the phrase “wool and linen,” it would have been necessary to prepare ritual fringes from the same material as the garment itself, even when using wool or linen.

HALAKHA

Diverse kinds in ritual fringes – כְּלָאִים בְּצִיצִית: In principle, it is permitted to prepare ritual fringes from diverse kinds of wool and linen. However, as nowadays the sky-blue dye has not been identified with certainty, wool fringes may not be used for linen garments, and all the more so, linen fringes, which cannot be used for the sky-blue dye, may not be placed on woolen garments (*Shulḥan Arukh, Oraḥ Ḥayyim* 9:2).

Prepare it with a sky-blue dye – עֲבִיד לֵיהּ תְּכֵלֶת: The Torah commands that one must place a wool thread dyed sky-blue on one's fringes. Nowadays there is uncertainty as to the identity of this sky-blue dye, and therefore this obligation is fulfilled with white threads alone, as stated in tractate *Menahot*. Some later commentaries maintain that it is possible

to prepare the sky-blue dye nowadays as well, and that one is obligated to do so (*Sefunei Temunei Hol*). Some communities, such as the Hasidim of Radzin and others, do act in accordance with this practice; however, most of the Jewish people have not accepted this opinion (see Rambam *Sefer Ahava, Hilkhot Tzitzit* 1:5).

They fulfill the obligation whether of the same type or not of the same type – פּוֹטְרִין בֵּין בְּמִינָן בֵּין שְׁלֹא בְּמִינָן: One may fulfill his obligation of ritual fringes with wool or linen fringes on any garment, with the exception nowadays of wool fringes for linen garments. However, fringes of any other material fulfill the obligation only for a garment of that same material (*Shulḥan Arukh, Oraḥ Ḥayyim* 9:3).

וְהָאֵתְנָא דְּבִי רַבִּי יִשְׁמַעְאֵל לִית לֵיהּ דְּרַבָּא!

אֵיצְטְרִיךְ, סָלָק אֶדְעָתְךָ אֲמִינָא כִּי דִּיּוּקָא דְּרַבָּא "הַכֵּן" – מִין כֵּן, וְהֵכִי קָאָמַר רַחֲמָנָא: עֲבִיד לֵיהּ צִמָּר לְצִמָּר וּפְשָׁתִים לְפְשָׁתִים, וְכִי עֲבִידִת צִמָּר לְצִמָּר – צִבְעִיהּ, אֲבָל צִמָּר לְפְשָׁתִים וּפְשָׁתִים לְצִמָּר – לֹא, כְּתֹב רַחֲמָנָא "צִמָּר וּפְשָׁתִים" דֹּאֲפִילוּ צִמָּר לְפְשָׁתִים, וּפְשָׁתִים לְצִמָּר.

The Gemara asks: **But the *tanna* from the school of Rabbi Yishmael does not maintain** in accordance with this opinion of Rava, since that *tanna* holds that there is no obligation to place ritual fringes on clothing that is not made of wool or linen. The reason is that when the Torah speaks of garments it is referring exclusively to clothes made of wool or linen. Consequently, Rava's interpretation with regard to different types of material does not apply to the opinion of the *tanna* from the school of Rabbi Yishmael.

The Gemara responds: It is nevertheless necessary to state: "Wool and linen," as it could enter your mind to say, in accordance with the inference of Rava, that the phrase "the corners" indicates that it must be from the same type of thread as the corner, but in a different manner: **This is what the Merciful One is saying: Prepare for it wool fringes for a wool garment and linen fringes for a linen garment, and when you prepare wool fringes for wool clothing, dye itⁿ sky-blue.** However, if you prepare wool fringes for linen garments or linen for wool clothing, you need not include a sky-blue thread. Therefore, the Merciful One states: "Wool and linen," which teaches that one fulfills the obligation of fringes even with wool fringes for a linen garmentⁿ or linen fringes for a woolen one.

NOTES

וְכִי עֲבִידִת צִמָּר – לְצִמָּר צִבְעִיהּ: According to this interpretation, the phrase "the corners" means the same type as the corner, i.e., the fringes must be the same color as the corner, regardless of the type of woven material from which the threads are prepared. The Rambam accepts this opinion as *halakha* (Meiri; see *Einayim LaMishpat*).

Even with wool for a linen garment, etc. – אֲפִילוּ צִמָּר לְפְשָׁתִים: The early commentaries deliberate about whether or not the Gemara here disputes the accepted opinion of Reish Lakish that whenever it is possible to fulfill a positive mitzva without violating a prohibition, the positive mitzva does not override that prohibition. Some write that this is indeed a matter of dispute and that the statement of the Gemara here with regard to linen fringes on woolen clothing proves that even in a case of this kind, where it is not necessary to override the prohibition since the Torah has allowed mixtures of wool and linen in fringes, the prohibition is no longer in effect at all. Others maintain that the Gemara is referring to a specific case in which it is impossible in practice to fulfill the mitzva with woolen threads, as none are available. Consequently, the positive mitzva overrides the prohibition (Rambam; Rashba; see *Kovetz He'arot*).

Perek I

Daf 5 Amud a

תֵּינִיחַ לְתַנָּא דְּבִי רַבִּי יִשְׁמַעְאֵל, לְרַבֵּן מִנָּא לְהוּ?

The Gemara comments: **This works out well** with regard to that which the school of Rabbi Yishmael taught, that all garments mentioned in the Torah are composed of linen or wool. However, according to the opinion of the Rabbis, who do not accept this opinion, **from where do they deriveⁿ** the principle that a positive mitzva overrides a prohibition? As stated previously, the conclusion that the positive mitzva to place fringes on a garment overrides the prohibition against mixing linen and wool is derived from a free expression in a biblical verse; however, the expression is free for interpretation only in the opinion of the *tanna* from the school of Rabbi Yishmael.

נִפְקָא לְהוּ מִ"רֹאשׁוֹ". דִּתְנִינָא: "רֹאשׁוֹ" מִהּ תִּלְמוּד לֹמַר? לְפִי שְׁנַאָמַר "לֹא תְקִיפוּ (אֶת) פְּאֵת רֹאשְׁכֶם" שׁוֹמֵעַ אֲנִי אֶף מְצוּרַע כּוֹ.

The Gemara responds: **They derive it from** the verse mentioned with regard to the *halakhot* of the purification of a leper from his leprosy [*tzara'at*]: "And it shall be on the seventh day, that he shall shave all his hair off his head and his beard and his eyebrows, even all his hair he shall shave off" (Leviticus 14:9).ⁿ **As it is taught** in a *baraita*: Since it states "all his hair," what is the meaning when the verse states "his head"? The *baraita* explains that as it is stated: "You shall not round the corners of your heads" (Leviticus 19:27), i.e., it is prohibited to shave the corners of the head, I would derive that even a leper^{bn} is included in this prohibition.

NOTES

לְרַבֵּן – מִנָּא לְהוּ: According to the Rabbis, from where do they derive – Some commentaries maintain that this question refers only to the opinion of Rabbi Yehuda, who does not derive *halakhot* from juxtaposed verses. Consequently, if he agrees with the opinion of the Rabbis, who disagree with Rabbi Yishmael, it is necessary to find an alternative source for the principle that a positive mitzva overrides a prohibition (see *Tosafot*). Others claim that the question applies even according to the opinion of the other Rabbis who disagree with Rabbi Yehuda. The reason is that the passage can be interpreted in accordance with the opinion of Rava that the adjacent verses come to teach a *halakha* concerning ritual fringes, and therefore the general halakhic principle cannot be learned from here (*Tosefot HaRosh*, citing Maharam of Rothenberg; see *Tosafot Yeshanim*). Yet others claim that this deliberation does in fact accord with the view of those Rabbis who dispute Rabbi Yehuda, as for a verse to teach a general principle that applies to the entire Torah, the juxtaposition must be both evident and free, and those who dispute Rabbi Yishmael do not consider this verse free in its context (Rashba; Meiri; see Ritva).

They derive it from: His head – נִפְקָא לְהוּ מִ"רֹאשׁוֹ": According to the opinion of Rabbi Yishmael, this phrase teaches by the exegetical method of generalization and detail that the mitzva of shaving applies only to those places on the body where there is a concentration of hair. The Rabbis derive this *halakha* from the phrase "his eyebrows," which appears in the same verse (*Tosefot HaRosh*).

BACKGROUND

Leper – מְצוּרַע: The *halakhot* of *tzara'at*, traditionally rendered as leprosy but not necessarily identified medically with that illness, are recorded in the Torah in the book of Leviticus in the portions of *Tazria* and *Metzora*. They are detailed in tractate *Nega'im*, which deals exclusively with the different types of leprosy. The *halakha* distinguishes between the impurity of a

quarantined leper, i.e., a suspected leper who is isolated for a period of up to two weeks until his status is clarified, and that of a confirmed leper. A confirmed leper must grow his hair long, rend his garments, and cover his head in a particular way. Part of the purification process involves removing all of his body hair.

HALAKHA

The shaving of a leper – תְּקִיפֹת מְצוּרַע: When purifying himself, a leper shaves by passing a razor over all his visible flesh, including the hair on his head and his entire beard (Rambam *Sefer Tahara*, *Hilkhot Tumat Tzara'at* 11:1).

Shaving of the entire head – הקפת כל הראש: Whether one shaves only the corners of his head or his entire head including the corners, he has violated the prohibition against rounding his head, in accordance with the conclusion of the Gemara in tractate *Nazir*. Some authorities claim that according to the Rambam one is liable only if he shaves with a razor, whereas the Rosh rules that the violation includes shaving the corners with scissors (*Tur; Shulḥan Arukh, Yoreh De'a* 181:2).

Rounding...this prohibition is not equally applicable for all – לא שאין שווה בכל: Since women are not included in the prohibition: “Neither shall you mar the corners of your beard” (Leviticus 19:27), they are not included in the prohibition against rounding the corners of the head either. Some authorities (Ra’avad) say that although a woman is not liable for rounding her own head, by rabbinic decree she may not round the corners of a man’s head. Others (Rif; Rosh) hold that she is not prohibited from doing so, although the man may not permit her to proceed (*Shulḥan Arukh, Yoreh De’a* 181:6).

תלמוד לומר “ראשו”, וקא סבר האי
תנא: הקפת כל הראש שמה הקפה.

איכא למיפרך: מה ללא דהקפה –
שבן לא שאין שווה בכל!

אלא, אתיא מ’וקנו’, דתניא: “וקנו”
מה תלמוד לומר? לפי שנאמר “ופאת
זקנם לא יגלחו” שומע אני אף בהן
מצורע בן – תלמוד לומר “וקנו”.

ואם אינו ענין ללא שאין שווה בכל –
תנהו ענין ללא השווה בכל.

Therefore, the verse states explicitly: “His head,” to teach that the mitzva that a leper must shave overrides the prohibition against rounding the corners of one’s head by shaving. The Gemara adds: **And this *tanna* holds that the shaving of the entire head^h is considered rounding.** Some Sages maintain that one violates the prohibition against rounding the corners of his head only when he leaves some hair intact and removes the corners alone. Conversely, this *tanna* holds that even when one removes all of the hair on the head, as a leper does when he performs his ritual shaving, as this act includes the corners, he thereby transgresses the prohibition against rounding the corners. This demonstrates that a positive mitzva overrides a prohibition.

The Gemara raises an objection against that claim. This proof can be refuted: **What about the fact that the prohibition against roundingⁿ is specific in that this prohibition is not equally applicable for all,^h as it does not apply to women, and therefore other cases cannot be derived from it?** One cannot learn from this *halakha* that a positive mitzva that applies only to some people overrides even a prohibition that applies equally to all people.

Rather, the Gemara provides an alternative suggestion: The principle that a positive mitzva overrides a prohibition is derived from the superfluous phrase: “His beard” (Leviticus 14:9). **As it is taught in a different *baraita*:** What is the meaning when the verse states: “His beard”? After all, a beard is already included in the phrase: “All his hair.” The *baraita* answers: **As it is stated with regard to priests: “Neither shall they shave off the corners of their beard” (Leviticus 21:5),ⁿ I would derive that even a leper who is a priest is included in this prohibition against shaving his beard.** Therefore, the verse states “his beard” in the case of a leper.

However, the shaving of one’s beard is also a prohibition that is not equally applicable for all, as it does not apply to women. Therefore, it is necessary to develop this argument further. **And if this derivation from the term “his beard” is not referring to the matter of a prohibition that is not equally applicable for all,** as the principle that a positive mitzva overrides a prohibition that does not apply equally for all has already been derived from the phrase “his head,” then the repetition of this specific scenario must serve to expand upon the teaching. Consequently, **refer it to the matter of a prohibition that is equally applicable for all, i.e., that a positive mitzva that is not equally applicable for all overrides even prohibitions that apply equally to all people.**

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The prohibition against rounding – לא דהקפה: This prohibition is stated in the Torah in the following terms: “You shall not round the corners of your heads, neither shall you mar the corners of your beard” (Leviticus 19:27). The primary point is that it is prohibited to cut one’s hair in a manner that completely removes all hair from the corners of the head. In other words, the hair of the temples may not be cut so that it is even with the hair behind the ears. The reason for this prohibition may be so as not to mimic the customs of the gentiles who shave in such a manner that the hair on their heads is entirely rounded, without any growing at the temples, in service of idolatry (Rambam). Alternatively, it is simply a statute of the Torah (see

Tur). The Sages dispute whether this prohibition applies only if one shaves off just the corners while leaving hair elsewhere on the head, or whether rounding the entire head and cutting off the corners also constitutes a violation of the prohibition. The fact that this prohibition appears in the same verse as the prohibition against shaving the beard is an indication that it, too, applies only to men.

As it is stated: Neither shall they shave off the corners of their beard, etc. – לפי שנאמר ופאת זקנם לא יגלחו: The early commentaries ask why the *baraita* states that the phrase “his beard” comes to exempt leprous priests from this prohibition.

Why doesn’t it release all Jews from the general prohibition against marring the beard (Leviticus 19:27), as ordinary Israelites and priests are equal in this regard? Some explain that the novelty is that even in the case of a priest, upon whom the Torah conferred additional prohibitions, the mitzva to shave overrides the prohibition (Meiri). Others say that as this precise wording was used only with regard to priests, one might have thought that this exemption includes only them, and not other Jews, for whom the prohibition is not called shaving. This is the case despite the fact that the *halakha* with regard to other Jews is itself derived from the passage dealing with priests (*Tosafot Yeshanim*).

A positive mitzva does not override both a prohibition and a positive mitzva – אין עשה דוחה לא תעשה: Although a positive mitzva overrides a prohibition, it does not override both a prohibition and a positive mitzva together (Rambam *Sefer Zemanim, Hilkhos Yom Tov* 3:8, *Sefer Nashim, Hilkhos Yibbum VaHalitza* 6:11, and *Sefer Hafla'a, Hilkhos Nezirut* 7:15).

A nazirite...can request – נזיר...ישנו בשאלה: One who takes a nazirite vow and regrets doing so may request from a Sage to dissolve it, like any other vow (Rambam *Sefer Hafla'a, Hilkhos Nezirut* 2:1).

ואבתי איצטריך, סלקא דעתך
אמינא: שאני כהנים, הואיל וריבה
בהן הכתוב מצות יתירות, אפילו לאו
שאין שיה בכל לא דחי – קא משמע
לן דדחי.

The Gemara rejects this proof: Still, it is necessary for the verse to state: “His beard.” This phrase is not in fact superfluous at all, as it has a novelty: It could enter your mind to say that priests are different; since the verse includes for them additional mitzvotⁿ it is appropriate to be more stringent with them, and therefore one might think that a positive mitzva should not even override a prohibition that is not equally applicable for all. Consequently, the verse states: “His beard,” and it thereby teaches us that even with regard to priests a positive mitzva overrides a prohibition that is not equally applicable for all. This means that the principle that a positive mitzva overrides even a prohibition that is equally applicable for all cannot be derived from here.

אָלא: אַתאַי מִ“ראשׁוֹ” דְּהַךְ תַּנָּא,
דְּתַנִּיא: “ראשׁוֹ” מִה תְּלִמוד לומר? לְמִי
שְׁנָאמַר “תַּעַר לֹא יַעֲבֹר עַל רֹאשׁוֹ”
שׁוּמַע אָנִי אֶף מִצְוֶה וְנִזְיִר בֵּן, תְּלִמוד
לומר “ראשׁוֹ” –

§ Rather, the Gemara rejects this line of reasoning in favor of an alternative answer. The principle that a positive mitzva overrides a prohibition is derived from a different interpretation of the phrase “his head,” cited by this *tanna*. As it is taught in a *baraita* with regard to the verse: “He shall shave all his hair off his head” (Leviticus 14:9); what is the meaning when the verse states: “His head”? The *baraita* explains: As it is stated with regard to a nazirite: “No razor shall come upon his head” (Numbers 6:5), I would derive that even a leper who is a naziriteⁿ is prohibited from shaving his head upon purification. Therefore, the verse states: “His head.” This teaches that the positive mitzva for a leper to shave overrides the prohibition of a nazirite.

איכא למיפריך: מה לנזיר מצוה –
שכן ישנו בשאלה. דאי לא תימא
הכי, הא דקיימא לן דאין עשה דוחה
לא תעשה ועשה.

The Gemara responds that this proof can be refuted as well: What about the fact that the prohibition of a nazirite is not especially severe, as a leprous nazirite can request to have his nazirite vow dissolved by a Sage? Since he can nullify the prohibition against shaving, this prohibition is evidently not very severe, and therefore one cannot prove anything with regard to all of the prohibitions of the Torah from this case. The Gemara adds: As, if you do not say this, that the prohibitions of a nazirite are not as severe as other prohibitions, that halakhic ruling that we maintain that a positive mitzva does not override both a prohibition and a positive mitzva^h would be negated.

ליגמר מנזיר! אלא, מנזיר מאי טעמא
לא גמרין, דאיכא למיפריך שכן ישנו
בשאלה – הכי נמי איכא למיפריך
שכן ישנו בשאלה.

The Gemara explains the previous claim: Let us derive the opposite of this principle from the case of a nazirite,ⁿ as in this case the positive mitzva for a leper to shave apparently overrides both the positive mitzva for a nazirite to grow hair and the prohibition against shaving. Rather, what is the reason that we do not derive this principle from the case of a nazirite? The reason is that there is room to refute this proof in the aforementioned manner: One cannot learn from a nazirite, as a leprous nazirite can request^h to have his nazirite vow dissolved. So too, there is room to refute the proof from the *halakha* of a nazirite that a positive mitzva overrides a prohibition, as he can request to have his vow dissolved.

אָלא לְעוֹלָם

§ If so, no proof can be brought from the case of a nazirite. Rather, the Gemara offers a different explanation: Actually,

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הואיל – Since the verse includes for them additional mitzvot – וריבה בהן הכתוב מצות יתירות: If the *halakha* is stringent with priests due to the additional mitzvot imposed upon them, shouldn't this reasoning also apply to positive mitzvot, not only prohibitions? In other words, their positive mitzvot should be proportionally stronger as well, and therefore these mitzvot should override prohibitions in the same manner as regular mitzvot. One answer is that in the case of priests one can argue that the stringency of a prohibition that is not equally applicable for all is like that of a prohibition that is equally applicable for all, whereas this halakhic differentiation simply does not apply in the case of a positive mitzva (*Melo HaRo'im*).

The shaving of a leprous nazirite – תגלחת נזיר מצוה: The early

commentaries dispute the reason why the positive mitzva for a leper to shave overrides both the positive mitzva and the prohibition of a nazirite. Some claim that as the nazirite has been rendered ritually impure by leprosy, the positive mitzva of his naziriteship is nullified, and therefore only the prohibition remains intact (Rambam). Conversely, others apply the reasoning of the Gemara here: Since a nazirite can request from a Sage to dissolve his vow, his prohibitions are relatively less severe (Ra'avad; Meiri; see Kovetz *He'arot* and Rambam *Sefer Hafla'a, Hilkhos Nezirut* 7:15, and *Kesef Mishne* there).

Let us derive from a nazirite – ליגמר מנזיר: The early commentaries ask: Why can't one derive the principle that a positive mitzva overrides a prohibition from both the cases of a nazirite

and a priest together, by the exegetical principle of the common factor? In other words, if a *halakha* appears in two cases but with regard to each case there is a particular reason why its *halakha* cannot be extended to other cases, one can derive a general halakhic principle from both cases together, as the unique circumstances of each individual case is not found in the other. That specific *halakha* is the common factor of the two. Some answer that this proof can be refuted, as in the case of a leper his shaving is possibly permitted due to the important mitzva to be fruitful and multiply, as while he is a leper he is separated from all people, including his wife. Likewise, his purification brings peace to his home. Consequently, it can be argued that only a positive mitzva of great importance, like this one, overrides a prohibition (Rashba; Ritva).

NOTES

Why do I need: Twisted fringes – גְּדִילִים לְמֶה לִי – Some commentaries explain that the superfluity is based on the fact that the Hebrew term for twisted fringes, *gedilim*, has one more letter than the synonym *tzitzit*, ritual fringes (Meiri).

Prepare a twisted fringe and double it over – עֲשֵׂה גְדִיל וּפְתִלְהוּ – Some commentaries explain that one should prepare the fringes in such a manner that there is both a portion that is tied and a twisted portion with strings of its own (Rashi; Meiri). Apparently, others derive this from the term *tzitzit*, ritual fringes, which does not have the connotation of being twisted. Some cite support for Rashi's interpretation from the fact that the Gemara first states: Prepare a twisted fringe, before adding: Double it over. Had the Gemara merely been referring to doubling the fringes, it would simply have stated: Prepare a doubled-over fringe (*Otzar HaShitot*).

Diverse kinds [sha'atnez] – שְׂעָטָנוּ – This term is used in the Torah in reference to a mixture of wool and linen, and the Sages could not find a source for it in other languages. Even the interpretation by way of acronym stated here: *Shoa, tavui, noz*, is linguistically obscure. Most commentaries maintain that *shoa* is connected to the root *sh-a-a*, meaning smoothing or to be smooth, referring to the mixture being smoothed by the combing of its fibers. Various interpretations have been suggested for *noz*, from both halakhic and linguistic perspectives. Some suggest that this is a shortened version of *naloz*, which refers to the production of felt. Most commentaries are of the opinion that it is a term coined by the Sages to describe a certain stage in the preparation of fibers for weaving.

A single stitch is not attachment – תְּכִיפָה אַחַת אֵינוֹ – Why is this derivation necessary? It is obvious that an unstable connection is not considered proper attachment. One explanation is that since the Torah prohibited any mixture of wool and linen, it might be thought that any kind of attachment of the two materials is prohibited, even an unstable one (Ritva).

מִקְרָא קָמָא: אִם בֵּן לִימָא קָרָא "צִיצִית תַּעֲשֶׂה לָךְ", גְּדִילִים לְמֶה לִי? שְׂמַע מִינָהּ לְאַפְנוּי.

הָאִי לְשִׁיעוּרָא הוּא דְאַתָּא: "גְּדִיל" – שְׂמַע, גְּדִילִים – אֲרַבְעָה, עֲשֵׂה גְדִיל וּפְתִלְהוּ מִתּוֹכוֹ!

אִם בֵּן לִימָא קָרָא "לֹא תִלְבַּשׁ שְׂעָטָנוּ", צִמְרוּ וּפְשָׁתִים יַחְדָּו לְמֶה לִי? שְׂמַע מִינָהּ לְאַפְנוּי.

וְאַבְתִּי מִיבְעֵי לִיה: לְתוֹכָהּ שְׁתֵּי תְכִיפּוֹת – חִיבוּר, וְתְכִיפָה אַחַת – אֵינוֹ חִיבוּר! אִם בֵּן לְכַתּוּב רַחֲמָנָא "לֹא תִלְבַּשׁ צִמְרוּ וּפְשָׁתִים יַחְדָּו", "שְׂעָטָנוּ" לְמֶה לִי? שְׂמַע מִינָהּ לְאַפְנוּי.

they learn this from the first verse, which permits a mixture of diverse kinds of wool and linen in ritual fringes. As for the previous claim that in the opinion of the Rabbis the phrase "wool and linen" is not superfluous and therefore there is no cause to derive from the juxtaposed verses, the answer is as follows: If so, that no homiletical interpretation can be derived from this source, let the verse say only: **You shall make fringes for yourself. Why do I need the expression "twisted fringes"** (Deuteronomy 22:12)?^N **Conclude from this that this phrase is free**, i.e., a homiletical interpretation can be derived by the juxtaposition of verses due to this superfluous phrase.

The Gemara raises a difficulty: This term, "twisted fringes," comes to teach the measure of ritual fringes, i.e., the requisite number of strings for the fringes, as it is taught: **Twisted fringe**, in the singular, indicates that it is entwined, which requires at least two strings. Consequently, when the verse says "twisted fringes" in the plural, it is referring to four^H strings. This means that one must prepare a twisted fringe and double it over^{NH} from the middle, so that there are eight strings. Consequently, the term "twisted fringes" is not superfluous at all.

The Gemara responds: If so, that this phrase is not extraneous at all, and therefore it cannot be used as a homiletical interpretation by the juxtaposition of verses, let the verse say merely: **You shall not wear diverse kinds [sha'atnez]**.^N Why do I need the verse to add the phrase "wool and linen together"? **Conclude from this that this phrase is free**, and a homiletical interpretation can be derived from the juxtaposition of verses.

The Gemara raises a further difficulty: **And still**, it is necessary for the verse to state "wool and linen together" to teach another *halakha* concerning diverse kinds: When one combines a woolen garment with a linen garment, if he stitches two stitches with a needle, this is considered attachment,^H but a single stitch is not attachment.^N This *halakha* is derived from the term "together," which indicates that they are attached as one. The Gemara answers: If so, let the Merciful One write: **You shall not wear wool and linen together. Why do I need the verse to add the phrase "diverse kinds"**? **Conclude from this that this phrase is free**.

HALAKHA

Twisted fringes is referring to four – גְּדִילִים אֲרַבְעָה – Ritual fringes must be composed of four doubled strings, a total of eight. Any additional strings disqualify the mitzva. This is the opinion of most of the authorities, in accordance with the ruling of the Rambam. Some (Vilna Gaon, citing *Ba'al Halituv*) maintain that any number of additional strings may be added, while others (*Tosafot*) limit the number to sixteen (Rambam *Sefer Ahava*, *Hilkhot Tzitzit* 1:6; *Shulhan Arukh*, *Orah Hayyim* 11:12).

Prepare a twisted fringe and double it over – עֲשֵׂה גְדִיל וּפְתִלְהוּ – Ritual fringes must be partly made of knots, with an addition of separated strings extending from the knots. According to Rashi,

the Gemara here is the source for this *halakha* (*Shulhan Arukh*, *Orah Hayyim* 11:14).

Two stitches is attachment – שְׁתֵּי תְכִיפּוֹת חִיבוּר – If one stitches a single stitch of wool and linen with a needle and ties the ends of the thread together, or stitches two threads without tying, this is permanent attachment and has thereby violated the prohibition of diverse kinds. Some authorities (Rema, citing Rosh) maintain that a single stitch, even tied together, is not considered attachment; rather, one must stitch together the ends of two threads to be liable (Rambam *Sefer Zera'im*, *Hilkhot Kilayim* 10:3; *Shulhan Arukh*, *Yoreh De'a* 300:2).

ואֶתֵּי מִבְּעֵי לֵיהֶ: עַד שֶׁיִּהְיֶה שׁוּעַ טוֹוֹ וְנוֹ!
אֶלָּא בּוּלָה מִ"שֶׁעֲנִי" נִפְקָא.

אֶשְׁבַּחַן דְּאֵתִי עֲשֵׂה וְדָחִי לֹא תַעֲשֶׂה גְרִידָא,
לֹא תַעֲשֶׂה שֵׁשׁ בּוֹ כֶּרֶת הֵיכָא אֶשְׁבַּחַן
דְּדָחִי דְּאִיצְטְרִיךְ "עֲלִיהָ" לְמִסְרָה?

וְכִי תִימָא נִילֵךְ מִמִּילָה – מַה לְמִילָה שְׂכָן
נִבְרָתוֹ עֲלִיהָ שְׁלֹשׁ עֲשָׂרָה בְּרִיתוֹת,

מִפְסָח – מַה לְפִסְחָא שְׂכָן כֶּרֶת,

The Gemara comments: **And still**, it is **necessary** for the verse to state "diverse kinds [*sha'atnez*]," as this is interpreted as an acronym that teaches that the *halakha* of diverse kinds applies only **when it is smooth combed** [*shoa*], **spun** [*tavui*] as a thread, **and attached** [*noz*],^{HN} but without these characteristics the connection is not considered diverse kinds. **Rather**, the Gemara explains that **the entire interpretation is derived from the term "diverse kinds."**^N Since the Torah uses the highly distinctive word "*sha'atnez*," in addition to functioning as the above acronym it serves as the source of the verbal analogy with the term in the verse: "Neither shall there come upon you a garment of diverse kinds [*sha'atnez*] mingled together" (Leviticus 19:19), from which it may be inferred that a positive mitzva overrides a prohibition.

S The Gemara returns to the issue of a mitzva overriding a prohibition: **We have found that a positive mitzva overrides a regular prohibition.** However, **where do we find that a positive mitzva overrides**^a **a prohibition that includes karet**, as the phrase "**with her**" is **necessary to prohibit her**? It was mentioned previously that the superfluous phrase "with her" teaches that the mitzva of levirate marriage does not override the prohibition against taking a wife's sister. However, why is this necessary? Why would it have been assumed that a positive mitzva is so powerful that it overrides even a prohibition that is punishable by *karet*?

And if you suggest an answer and say: Let us derive this claim from the mitzva of circumcision, as there is a positive mitzva to perform circumcision on the eighth day of the boy's life even on Shabbat,^H and this mitzva overrides the prohibition against performing labor on Shabbat, which is punishable by *karet*, one could respond: **What about the fact that circumcision**^a **is an extremely important and severe positive mitzva, as thirteen covenants were established over it?** The term "covenant" is mentioned thirteen times in the chapter of circumcision (Genesis, chapter 17).

The Gemara adds: **And if you say it is derived from the slaughter of the Paschal lamb**, which overrides Shabbat^H and is therefore a positive mitzva that overrides a prohibition punishable by *karet*, this too can be rejected: **What about the fact that the Paschal lamb** is different, as it is a positive mitzva that is so severe that its neglect entails *karet*^H for those who do not bring it, unlike all other positive mitzvot?

Smooth combed [*shoa*], spun [*tavui*], and attached [*noz*] – **שׁוּעַ טוֹוֹ וְנוֹ**: The commentaries and authorities dispute both the meaning of these terms and the manner in which these parameters constitute a violation of the prohibition of diverse kinds. The consensus is that if one mixes wool and linen and smooth-combs them together, or spins them together to weave a garment, or sews together two garments, one containing thread of one kind and one containing thread of the other kind, he violates the prohibition of diverse kinds by Torah law. By rabbinic law it is prohibited to combine wool and linen even if they are not smooth-combed or spun together (*Shulhan Arukh, Yoreh De'a* 300:2).

Circumcision on Shabbat – מִילָה בְּשַׁבָּת: Circumcision at the proper time, on the eighth day of life, overrides Shabbat, and the circumcision is performed just as on any other day of the week (*Shulhan Arukh, Yoreh De'a* 266:2).

The Paschal offering on Shabbat – פִּסְחָא בְּשַׁבָּת: If the fourteenth of Nisan occurs on Shabbat, the Paschal offering is sacrificed as on any other day of the week (*Rambam Sefer Korbanot, Hilkhhot Korban Pesah* 1:16).

Karet for neglecting the Paschal lamb – כֶּרֶת עַל בִּטּוּל: One who deliberately neglects the mitzva to bring the Paschal lamb, without being ritually impure or on a distant journey, is liable to receive *karet* (*Rambam Sefer Korbanot, Hilkhhot Korban Pesah* 1:2).

NOTES

שׁוּעַ – Smooth combed [*shoa*], spun [*tavui*], and attached [*noz*] – **שׁוּעַ טוֹוֹ וְנוֹ**: The commentaries and authorities debate the meanings of these terms extensively. Some explain that *shoa* means sticking together by a type of felt. *Tavui* refers to the spinning of one thread composed of both wool and linen, or the weaving together of two threads. *Noz* means weaving or attaching by stitches (Rav Hai Gaon). Some claim that attaching by stitches is prohibited by rabbinic decree (Meiri, citing *ge'onim*). Others discuss the various opinions at length, whether all three parameters are necessary or each one alone suffices (*Tosafot*). Yet others maintain that *noz* means entwined (Rabbeinu Tam).

The entire interpretation is derived from diverse kinds [*sha'atnez*] – **בּוּלָה מִ"שֶׁעֲנִי" נִפְקָא**: The Torah's use of this unique term teaches that positive mitzvot override prohibitions throughout the entire Torah, in addition to the fact that diverse kinds must be smooth-combed, spun, and attached (Rashi). Other early commentaries reject this interpretation in favor of the claim that the general principle of the juxtaposition of verses in the entire Torah is derived from the superfluous term "together," while the *halakha* that a single stitch is not considered attachment is learned from the word "*sha'atnez*," which indicates that the material is attached

together as one, as it does not state *sha'atnezim*, in the plural (Ramban; Rashba).

הֵיכָא אֶשְׁבַּחַן וְדָחִי – **הֵיכָא אֶשְׁבַּחַן וְדָחִי**: The early commentaries ask: Why doesn't the Gemara derive from the very fact that the phrase "with her" is necessary, that in the rest of the Torah a positive mitzva overrides a prohibition that entails *karet* (*Tosafot*)? One answer is that this indirect proof is not enough to establish a principle that applies throughout the entire Torah. Rather, it must be derived from a superfluity (Ramban).

מַה לְמִילָה וְכוּ' – **מַה לְמִילָה וְכוּ'**: The reason that the Gemara does not answer here, as it does later, that failure to circumcise entails *karet*, is because lack of circumcision specifically on the eighth day does not incur *karet*, as this punishment applies only to one who has reached adulthood (*Tosafot Yeshanim*; Ramban). Later, when the Gemara rejects the possibility of drawing an inference by way of the common factor, it does mention the fact that failure to circumcise incurs *karet*. This is because there is a principle that a proof by way of the common factor between two cases can be rejected by any similar factor. Since the mitzva of circumcision itself does include an element of *karet*, this is considered a common factor with the Paschal lamb (Ritva).

BACKGROUND

Daily offering – תמיד: The daily offering consisted of two lambs, one sacrificed in the morning and one in the afternoon of each day. These served to open and close the daily sacrificial service in the Temple. No offerings were brought either before the morning offering or following the afternoon offering. The single exception was the Paschal lamb, which was sacrificed after the daily afternoon offering on Passover eve.

HALAKHA

תמיד בשבת – The daily offering on Shabbat: The daily offering is brought even on Shabbat, and its limbs are burnt on the altar on the same day (Rambam *Sefer Avoda*, *Hilkhot Temidin UMusafin* 1:7).

Honoring one's parent and Shabbat – כבוד אב ושבֿת: If one was instructed by his father or mother to transgress a mitzva of the Torah, whether it was a positive mitzva or a prohibition, or even a decree of the Sages, he must pay no heed (*Shulhan Arukh*, *Yoreh De'a* 240:15).

מתמיד – מה לתמיד שכן תדיר.

מחֿדא לֹא אֶתִּיא תִּיתִי מִתְּרִי. מִהִי תִּיתִי מִמִּילָה וּפֶסַח – שְׁכֵן כֶּרֶת, מִפֶּסַח וְתִמִּיד – שְׁכֵן צוּרֶךְ גְּבוּהָ.

מִמִּילָה וְתִמִּיד – שְׁכֵן יִשְׁנֵנוּ לִפְנֵי הַדְּבֹר. וְאֵלִיבָא דִּמְאֵן דְּאָמַר עוֹלָה שְׁהִקְרִיבוּ יִשְׂרָאֵל בְּמִדְבָּר עוֹלָת תִּמִּיד הָיָה. וּמְכַוְּלָהּ נָמִי – שְׁכֵן יִשְׁנֵנוּ לִפְנֵי הַדְּבֹר.

אֶלֹא אֵי צִטְרִיד, סִלְקָא דַּעְתָּךְ אֲמִינָא תִּיתִי מִכְּבוֹד אָב וְאִם,

דְּתִנָּא: יָכוֹל יְהֵא כְּבוֹד אָב וְאִם דּוֹחָה שְׁבִתָּה, תִּלְמוּד לִזְמַר "אִישׁ אָמוּ וְאָבִיו תִּירָאוּ וְאֵת שְׁבִתוֹתַי תִּשְׁמֹרוּ" – כּוֹלְכֶם חַיִּיבִין בְּכְבוֹדִי,

מֵאִי לֹא דְאָמַר לִיה: "שְׁחוט לִי" בִּשְׁלִי לִי, וְטַעֲמָא – דְּכָתֵב רַחֲמֵנָא "אֵת שְׁבִתוֹתַי תִּשְׁמֹרוּ" הָא לֹא הָכִי – דְּחִי! לֹא

The Gemara offers yet another suggestion: Perhaps it is derived from the daily offering,⁸ which was slaughtered every day, even on Shabbat.⁹ This is a positive mitzva that overrides the prohibition against performing labor on Shabbat, which is punishable by *karet*. The Gemara rejects this claim as well: **What about the fact that the daily offering is special in that it is frequent?** Since the mitzva of the daily offering is performed every day, it is perhaps especially important, whereas a positive mitzva that applies only at certain times might not be powerful enough to override a severe prohibition.

The Gemara says: Clearly, the principle cannot be derived from any single one of these cases. However, let it be derived from two of these cases combined together, by analyzing their common features. The Gemara asks: **From which two cases can it be derived?** If one would say that it can be derived from circumcision and the Paschal lamb, the factor common to both is their particular severity, as their neglect entails *karet*. If one would seek to derive this from the Paschal lamb and the daily offering, these have a different common factor, as both are a requirement of the altar in the Temple, not for personal benefit.

Likewise, if one would suggest deriving the principle from circumcision and the daily offering, this too must be rejected, as both of these mitzvot were known by the Jewish people before the word¹⁰ of God was revealed at Mount Sinai. And this is according to the opinion of the one who said that the burnt-offering brought by the Jewish people in the desert was the daily offering. And moreover, from all of these together, i.e., circumcision, the Paschal lamb, and the daily offering, it is also not possible to derive a conclusion, as all three of these were known before the word of God was revealed. If so, no principle can be derived from these three mitzvot.

S Rather, the Gemara suggests an alternative explanation: The inference from "with her" is necessary, as were it not for this inference it might be assumed that the mitzva of levirate marriage overrides the prohibition against marrying one's wife's sister despite the fact that this prohibition incurs *karet*, since it could enter your mind to say that this *halakha* is derived from the mitzva of honoring one's father and mother.¹¹

As it is taught in a *baraita*: One might have thought that honoring one's father and mother overrides Shabbat; therefore, the verse states: "You shall fear every man his mother and his father and you shall keep My Shabbatot, I am the Lord your God" (Leviticus 19:3). The *baraita* explains the derivation from the verse: All of you, both parent and child, are obligated in My honor,¹² and therefore honoring one's parents does not override the honor of God, Who commanded the Jewish people to observe Shabbat.

The Gemara analyzes this *baraita*: What, is it not referring to a situation where his father said to him: Slaughter for me, cook for me, or any other labor prohibited on Shabbat on pain of *karet*? And the reason that the Merciful One specifically writes: "Keep My Shabbatot," is to warn against violating the prohibition against performing labor on Shabbat, a transgression which incurs *karet*, for the purpose of honoring one's parents. It may therefore be inferred that if that was not so, the positive mitzva would override Shabbat. It is therefore possible to deduce from here that in general, positive mitzvot override even prohibitions that entail *karet*. The Gemara rejects this proof: No,

NOTES

As they were before the word – שְׁכֵן יִשְׁנֵנוּ לִפְנֵי הַדְּבֹר: One problem with this claim is that it is indicated in the Jerusalem Talmud that a mitzva that existed prior to the revelation at Mount Sinai is less important than one given at Mount Sinai. Some explain that the Gemara here is stating that regardless of the importance of a mitzva, a later mitzva can nullify it only if this is explicitly stated, and provided that it existed previously. Some early commentaries ask: Isn't levirate marriage also a mitzva that pre-dated the revelation at Sinai, as Judah performed this mitzva (see Genesis, chapter 38)? Some explain

that the Patriarchs entered into levirate marriage not as the fulfillment of a mitzva, but as a practical custom. Levirate marriage became an obligatory mitzva only after the giving of the Torah (Ritva; Meiri). Apparently, different *midrashim* dispute this matter (see *Bereshit Rabba* 85, *Vayikra Rabba* 2, and *Yalkut Mishlei*).

Rather...it is derived from honoring one's father and mother – אֶלֹא...תִּיתִי מִכְּבוֹד אָב וְאִם: Although the mitzva to honor one's parents was also given at Mara, before the revelation at Sinai, the mitzva to observe Shabbat was likewise given

at Mara (see Exodus, chapter 16; *Otzar HaShitot*). The commentaries note that the Gemara does not provide an exhaustive discussion of all relevant possibilities, as further questions and answers can be raised (*Tosafot*).

כולֶכֶם חַיִּיבִין בְּכְבוֹדִי – All of you are obligated in My honor: Most of the commentaries maintain that this conclusion is derived from the end of the verse: "I am God" (see *Tosafot*). Some claim that this is learned from the term "keep," which indicates an additional level of stringency with regard to the observance of Shabbat.

לֹא דִמְחָמַר, וְאִפְּלוּ הָבִי לֹא דְחִי.

the reference is not to a situation where a father demanded that his child perform prohibited labor on Shabbat that entails *karet*. Rather, he instructed him to transgress the **prohibition against driving a laden animal**.^N Although it is prohibited to cause animals to work on Shabbat, this does not entail the penalty of *karet*, as it has the status of a regular prohibition. And this shows that if one's father told him to desecrate Shabbat by driving a donkey, even so, the positive mitzva to honor one's parents does **not** override the prohibition against driving a laden animal.

אֵלָּא דְקִיּוּמָא לִן דְּאִתִּי עָשָׂה וְדְחִי לֹא
תַעֲשֶׂה, לִיגְמַר מִהֲכָא דְלֹא לִידְחִי!

§ The Gemara asks: If so, rather than that principle in which we maintain that a positive mitzva comes and overrides a prohibition, let us derive from here that it does not override^N even a regular prohibition. Just as it was inferred above from the case of ritual fringes, in which the positive mitzva overrides the prohibition against diverse kinds, that all other positive mitzvot similarly override any prohibition, perhaps one should infer from the case of honoring one's parents that positive mitzvot do not override prohibitions at all.

וְכִי תִימָא: שְׂאֵנִי לֹאִי דְשִׁבְתַּי דְּחִמְרִי –
וְהָא תֵּנָא בְּעֵלְמָא קָאִי וְלֹא קִפְרִיךְ!

And if you say that one should not infer this from here, as the prohibitions of Shabbat are different in that they are more serious,^N and for this reason the mitzva to honor one's parents does not override these prohibitions, this cannot be the case, as the *tanna* speaks generally of a father who instructs a son to perform a regular prohibition, not to desecrate Shabbat, and he does not raise any difficulty of this kind.

דְּתִנָּא: יָכוֹל אָמַר לוֹ אָבִיו: הִיטָמֵא! אוֹ
שְׂאֵמַר לוֹ: אַל תַּחֲזִיר! יָכוֹל יִשְׁמַע לוֹ,
תִּלְמִיד לִזְמַר "אִישׁ אָמוֹ וְאָבִיו תִּירָאוּ
וְאֵת שְׁבִתוֹתַי תִּשְׁמֹרוּ" – בּוֹלְכֶם חֲיִיבִין
בְּכָבוֹדִי.

As it is taught in a different *baraita*: One might have thought that if one's father said to his son, who is a priest or nazirite: Be rendered ritually impure^N with impurity imparted by a corpse, so as to bring me an item from a ritually impure place, or if he said to him: Do not return this lost item, it might have been supposed that his son should obey him. Therefore, the verse states: "You shall fear every man his mother and his father and you shall keep My Shabbatot, I am the Lord your God" (Leviticus 19:3). This verse teaches: All of you are obligated in My honor.^N This proves that the *tanna* does not differentiate between desecrating Shabbat, which is a severe prohibition, and a priest becoming ritually impure with impurity imparted by a corpse, which is a lighter prohibition.

NOTES

לֹא דִמְחָמַר – The prohibition against driving a laden animal: Although one who drives a laden animal on Shabbat has not performed a prohibited labor himself, his animal has performed work, and therefore he has transgressed the prohibition: "You shall not do any manner of work, neither you... nor your cattle" (Exodus 20:9). However, this transgression does not merit as serious a penalty as one who desecrates Shabbat directly. Some commentaries note that the Gemara could have cited other examples of actions that are prohibited on Shabbat by Torah law according to all opinions, e.g., leaving the Shabbat limit (*Arukh LaNer*).

Some commentaries ask why the Gemara initially thought that the *baraita* is referring to the overriding of a prohibition so severe that it entails *karet*, rather than one of the more minor Shabbat prohibitions. The answer given is that the term "keep" indicates the observance of the fundamental prohibitions of Shabbat, which are punishable by *karet* (*Tosafot Yeshanim*).

לִיגְמַר... דְּלֹא לִידְחִי – Let us derive...that it does not override: The early commentaries ask: Perhaps this case is different, as the use of animals for work on Shabbat violates both a prohibition and a positive mitzva, as derived from the verse: "On the seventh day you shall rest, that your ox and your donkey

may have rest" (Exodus 23:12). One answer given is that as the honoring of one's parents is so important that it is juxtaposed to the honor of God, if it does not override Shabbat, regardless of the positive mitzva of Shabbat, one can indeed conclude from here that a regular positive mitzva does not override a regular prohibition (*Tosafot*). Others state that the positive mitzva to rest on Shabbat applies exclusively to people, whereas the driving of an animal involves only a prohibition, not a positive mitzva (Rashba, citing Rabbeinu Yona).

לֹאִי דְשִׁבְתַּי – The prohibitions of Shabbat are...serious: Some commentaries explain that the severity of Shabbat prohibitions is due to the positive mitzva associated with them (Rambam; Meiri). Rashi, however, explains that the unique severity of Shabbat is due to the *halakha* that one who publicly desecrates Shabbat is likened to an idolater and is treated as though he was a gentile. In comparison with other prohibitions, those associated with Shabbat are also more serious in that their desecration entails the capital punishment of stoning, which is the most severe of the four types of court-imposed executions.

אָמַר – One's father said to him: Be rendered ritually impure –

לֹא אָבִיו הִיטָמֵא: Rashi explains that his father instructed him to become ritually impure so as to return a lost item to its owner, as indicated by the context of this statement in tractate *Bava Metzia*. Others, however, maintain that the father asked him to become ritually impure for his own requirements, e.g., to bring him an object from a cemetery (Rashba; Ritva). It can be inferred from Rashi's opinion that the *baraita* is teaching that not even two positive mitzvot override a prohibition (see *Arukh LaNer*).

בּוֹלְכֶם חֲיִיבִין בְּכָבוֹדִי – All of you are obligated in My honor: This explains why in this particular case the positive mitzva does not override even a minor prohibition, as the father himself has no right to demand an action of this kind. Some commentaries add that this *halakha* is necessary only in a case when the father requires the object in question, or if he needs it for the fulfillment of a mitzva (Rashi), since if he demands that his son transgress a prohibition for no reason he is considered a wicked person, to whom the mitzva to honor one's father does not apply (Meiri). Others argue the opposite: The very fact that there was room to deliberate about whether or not one should obey his father is an indication that the father is not considered wicked simply because he issued an instruction to violate a prohibition (*Haggahot Maimoniyot*).

Preparation for the mitzva – הכשר מצוה: Rashi explains that preparation for the mitzva means that the performance of the mitzva, in this instance honoring one's father, cannot be accomplished without violating a prohibition at the very same moment. This is not the case in levirate marriage, as one can perform *halitza*. The phrase: What about the fact that these, provides a measure of support for his interpretation, as this phrase typically refers back to the previous case, which is that of a father who instructs his son to commit a prohibition, not a son who drives an animal in his father's honor, as claimed by other commentaries.

However, most early commentaries raise difficulties against Rashi's explanation from both linguistic and substantive perspectives. They prefer the interpretation of Rabbeinu Hananel that the Gemara is referring to the prohibition against driving an animal on Shabbat, and the phrase: Preparation for the mitzva, means preparatory work that does not in itself fulfill the mitzva (*Tosafot*; Ramban; Rashba). Some add that as most of the actions one performs for his father do not constitute an actual fulfillment of the mitzva to honor him, as that is achieved only by providing him with food and clothing, it can be argued that even when one is providing his father with food and clothing this positive mitzva does not override a prohibition (*Tosafot*).

יהא – The building of the Temple should override, etc. Although the observance of Shabbat involves both a positive mitzva and a prohibition, it might have been claimed that the positive mitzva to build the Temple, which involves the entire community, is important enough to override even Shabbat (*Arukh LaNer*). One problem that arises here is that the Gemara describes Shabbat as God's honor, and although the Temple is also built in the honor of Heaven, nevertheless, as it is constructed primarily so that the Divine Presence should dwell among the Jewish people and to atone for their sins, it is more to man's benefit than the mitzva of Shabbat.

HALAKHA

Building the Temple on Shabbat – בנין המקדש בשבת: The building of the Temple does not override the Festivals, which are termed Shabbat (Rashi), and all the more so does it not override Shabbat itself (Rambam *Sefer Avoda*, *Hilkhot Beit HaBehira* 1:12).

אלא משום דאיכא למיפרך:

מה להנך – שכן הכשר מצוה.

אלא סלקא דעתך אמינא: תיתי מבנין בית המקדש. דתנא יכול יהא בנין בית המקדש דוחה שבת, תלמוד לומר "את שבתותי תשמורו ומקדשי תיראו" – כולכם חייבין בכבודי.

מאי לאו בבונה וסותר, וטעמא דכתב רחמנא "את שבתותי תשמורו", הא לאו הכי – דחי!

לא, לאו דמחמר, ואפילו הכי לא דחי. ואלא דקיימא לן דאיתי עשה ודחי לא תעשה, ליגמר מהכא דלא דחי!

וכי תימא: שאמי לאוי דשבת דחמירי – והא תנא בעלמא קאי ולא קא פריך! דתנא: יכול אמר לו אביו: היטמא! או שאמר לו: אל תחזיר! יכול ישמע לו, תלמוד לומר "איש אמו ואביו תיראו" וגו' – כולכם חייבים בכבודי.

אלא, משום דאיכא למיפרך: מה להנך – שכן הכשר מצוה. הכשר מצוה תיפוק לי מהתם?

S Rather, the Gemara rejects this line of reasoning and accepts the claim that the *baraita* does not speak of one whose father asked him to desecrate Shabbat by performing a prohibited labor that entails *karet*, but of a father who instructed his son to drive a laden animal. As for the difficulty that this apparently indicates that a positive mitzva does not override any type of prohibition, the reason that this is not the case is **because there is room to refute** this argument.

The Gemara explains how the previous claim can be countered: **What about the fact that these instructions of a father are different, as when one drives an animal on Shabbat in honor of his parents this is merely preparation for the mitzva^N of honoring one's parents, since the son is not actually feeding or clothing his father at the time. Consequently, this is not a proper fulfillment of a positive mitzva, and therefore the case of a father who instructs his son to drive an animal cannot be used as a source with regard to other instances.**

Rather, it could enter your mind to say: The principle that a positive mitzva overrides even a prohibition that entails *karet* is **derived from the building of the Temple. As it is taught in a baraita:** One might have thought that the building of the Temple should override^N Shabbat; therefore, the verse states: "You shall keep My Shabbatot and revere My Sanctuary, I am the Lord" (Leviticus 19:30), which means that **all of you are obligated in My honor.**^H God is honored when Shabbat is observed, and He demands the observance of Shabbat even when the Temple is being built.

The Gemara analyzes this *baraita*: **What, is it not referring to building the Temple by performing prohibited labors on Shabbat whose violation entails *karet*, such as building and demolishing? And the reason the building of Temple does not override Shabbat is that the Merciful One specifically writes: "Keep My Shabbatot,"** from which it may be inferred that **if that were not so, the positive mitzva would override Shabbat.** It is therefore possible to deduce from here that in general, positive mitzvot override even prohibitions that entail *karet*.

The Gemara responds: **No, here too the reference is to the prohibition against driving a laden animal, and even so the positive mitzva to build the Temple does not override the prohibition against driving a laden animal on Shabbat.** The Gemara asks again, as before: If so, **rather than that principle in which we maintain that a positive mitzva comes and overrides a prohibition, let us derive from here that it does not override even a regular prohibition.**

And if you say that prohibitions of Shabbat are different in that they are more severe, this cannot be the case, as the *tanna* speaks generally and he does not raise any difficulty of this kind as it is taught in the aforementioned *baraita*: One might have thought that if one's father said to his son who is a priest or nazirite: **Be rendered ritually impure, or if he said to him: Do not return this lost item, it might have been supposed that his son should obey him.** Therefore, the verse states: "You shall fear every man his mother and his father and you shall keep My Shabbatot, I am the Lord your God" (Leviticus 19:3), which means: **All of you are obligated in My honor.**

Rather, there is no proof from here with regard to all Torah prohibitions, **because there is room to refute** that argument as follows: **What about the fact that these instances of driving an animal on Shabbat are merely a preparation for the mitzva of building the Temple, and is not a mitzva in itself?** The Gemara raises a difficulty: **Let the halakha that preparation for a mitzva does not override a prohibition be derived from there,** the case of honoring one's parents, as stated previously. Why repeat this matter with regard to the building of the Temple?

אין הכי נמי. "ואת שבתותי תשמורו ומקדשי תיראו" למה לי? מיבעי ליה לכתנא: יכול יתיירא אדם ממקדש – תלמוד לומר "את שבתותי תשמורו ואת מקדשי תיראו" – נאמרה שמיירה בשבת ונאמרה מורא במקדש, מה שמיירה האמורה בשבת,

The Gemara responds: Yes, it is indeed so. And why do I need the verse: "You shall keep My Shabbatot, and revere My Sanctuary" (Leviticus 19:30)? After all, the *halakha* that the building of the Temple does not override the prohibition against driving an animal on Shabbat is derived from the case of honoring one's parents. The Gemara answers: It is necessary^N to derive that which is taught in a *baraita*: One might have thought that a person should be in reverence of the Temple and turn the Temple itself into an object of worship. Therefore, the verse states: "You shall keep My Shabbatot, and revere My Sanctuary." The term keeping is stated with regard to Shabbat, and the term reverence is stated with regard to the Temple. Just as in the case of keeping stated with regard to Shabbat,

NOTES

מקדשי תיראו... it is necessary, etc. – מיבעי ליה וכו' *halakha*? After all, the *tanna* already derived from this verse that the building of the Temple does not override Shabbat. The commentaries explain that the derivation brought by the *tanna* with regard to the reverence of the building of the Temple is cited merely in support, while the primary purpose of the verse is to teach a different matter (Ritva).

Perek I

Daf 6 Amud b

לא משבת אתה מתירא, אלא ממני שהזהיר על השבת. אף מורא האמורה במקדש, לא ממקדש אתה מתירא אלא ממני שהזהיר על המקדש.

you do not revere Shabbat^N itself, as reverence is not mentioned in this context, but rather, one reveres He Who warned about the observance of Shabbat, so too, the same applies to the reverence stated with regard to the Temple: You do not revere the Temple^{NH} itself but He Who warned about the Temple.

ואי זו היא מורא מקדש? לא יכנס אדם בהר הבית במקלו, במנעלו, בפונדתו, ובאבק שעל גבי רגליו, ולא יעשנו קפנדריא, ויקיקה מקל וחומר.

The *baraita* explains: And what is the reverence of the Temple?^{NH} In deference to the Temple, a person may not enter the Temple Mount with his staff, his shoes, his money belt [*punda*],¹ or even the dust on his feet. One may not make the Temple a shortcut [*kappendarya*]¹ to pass through it, and through an *a fortiori* inference,^B all the more so one may not spit on the Temple Mount, as no disrespect is meant by the other actions, whereas spitting is repulsive even in one's own private home, and certainly on the Temple Mount.

ואין לי אלא בזמן שבית המקדש קיים, בזמן שאין בית המקדש קיים? מנין תלמוד לומר "את שבתותי תשמורו ומקדשי תיראו", מה שמיירה האמורה בשבת – לעולם, אף מורא האמורה במקדש – לעולם.

And I have derived only that one is obligated to act in this manner when the Temple is standing. From where do I derive that the mitzva to revere the Temple is in force when the Temple is not standing,^{NH} i.e., that it is prohibited to be disrespectful toward the place where the Temple stood? The verse states: "You shall keep My Shabbatot, and revere My Sanctuary" (Leviticus 19:30). Just as the keeping stated with regard to Shabbat applies forever, so too, the reverence stated with regard to the Temple is forever.

NOTES

You do not revere Shabbat – לא משבת אתה מתירא: This statement is cited in support of the claim of *Sefer Yere'im* that there is a special mitzva to revere Shabbat. In other words, one must be respectful and fearful lest he fail to fulfill all of its mitzvot in the proper manner. A similar idea is found in the *Tikkunei HaZohar* (*Gilyonei HaShas*).

You do not revere the Temple – לא ממקדש אתה מתירא: Why is it necessary to stress this point particularly with regard to the Temple rather than, say, in relation to honoring one's parents? One novel answer is that one need not be worried for the safety of the Temple and appoint guards to watch over it. Admittedly, there is a mitzva for priests and Levites to stand as guards over the Temple, but that is performed in honor of God, not to provide protection for the Temple itself. Accordingly, the comparison here is between guarding Shabbat and guarding the physical building of the Temple (*Iyyun Ya'akov*).

What is the reverence of the Temple – אי זו היא מורא מקדש:

The commentaries note that although the term: Temple, in its most precise sense, refers only to the area from the courtyard inward, the mitzva to revere the Temple applies to its entrance as well (*Gilyonei HaShas*). Others claim that the mitzva to revere the Sanctuary applies by Torah law only up to the courtyards, and the Sages extended the mitzva to include the entire Temple Mount.

Reverence for the Temple in its destruction – מורא מקדש – בהרובנו: Some commentaries note that there is a dispute as to whether the sanctity of the Temple applies only when it is standing or whether it lasts forever. If its sanctity is permanent, why is it necessary to derive from a specific verse that there is an obligation to revere it even in its state of destruction? They answer that it is possible to claim that although the sanctity of the Temple Mount remains intact even in its desolation, nevertheless, with its destruction the mitzva of reverence is nullified. Therefore, this special derivation was necessary (*Arukh LaNer*).

HALAKHA

You do not revere the Temple – לא ממקדש אתה מתירא: There is a positive mitzva to revere the Temple, in accordance with the verse: "Revere My Sanctuary" (Leviticus 19:30). However, it is not the Temple itself that is the object of reverence but the One Who commanded that it must be revered (Rambam *Sefer Avoda*, *Hilkhot Beit HaBehira* 7:1).

What is the reverence of the Temple – מורא מקדש: Revering the Temple entails not entering even the Temple Mount with one's walking stick, pouch, shoes on one's feet, or dust on one's feet, coins bundled in one's clothing, and needless to say, it is prohibited to spit anywhere in the Temple Mount. Furthermore, one may not use the Temple Mount as a shortcut for his own needs, and one may enter only for the purpose of a mitzva (Rambam *Sefer Avoda*, *Hilkhot Beit HaBehira* 7:2).

Reverence of the Temple in its destruction – מורא מקדש – בהרובנו: Even after the Temple was destroyed, one must continue to revere it just as when it was standing. One may enter only those places where it was previously permitted, one may not sit in the courtyard, and one may not act with negligence or in a disrespectful manner in the vicinity of the eastern gate (Rambam *Sefer Avoda*, *Hilkhot Beit HaBehira* 7:7).

LANGUAGE

Money belt [*punda*] – פנדה: From the Greek *φοῦνδα*, *funda*, or the Latin *funda*, meaning belt or sling. A *punda*, which is occasionally rendered in the text as *apunda*, is a hollow belt that serves as both a belt and a wallet, with a pocket for money.

Shortcut [*kappendarya*] – קפנדריה: Apparently from the Latin *compendaria*, which means a short way, i.e., a shortcut through a house or courtyard.

BACKGROUND

An *a fortiori* inference – קל וחומר: One of the fundamental principles of rabbinic exegesis, the *a fortiori* inference appears in all of the standard lists of exegetical principles. In essence, it is a principle of logical argumentation in which a comparison is drawn between two cases, one more lenient and the other more stringent. The *a fortiori* assertion is that if the *halakha* is stringent in a case where the ruling is usually lenient, all the more so it will be stringent in a more serious case. Likewise, if the *halakha* is lenient in a case where the ruling is not usually lenient, it will certainly be lenient in a less stringent case. A *fortiori* reasoning appears in the Bible, and the Sages compiled lists of verses that employ the logic of *a fortiori*, e.g., "If you have run with the foot soldiers, and they have wearied you, how can you contend with horses?" (Jeremiah 12:5).

What is the meaning when the verse states this, etc. – **מה תלמוד לומר וכו'.** This section, from the reiteration of: What is the meaning when the verse states this, until: Why do I need the term “habitations” that the Merciful One writes with regard to Shabbat, does not belong to the *baraita* but rather is part of the Gemara’s own analysis of the matter at hand. The *baraita* continues with the answer of Rabbi Yishmael’s student (Rashba).

HALAKHA

Court-imposed capital punishment on Shabbat – מיתת בית דין בשבת: A court may not administer any bodily punishment on Shabbat or a Festival, neither capital punishment nor lashes. Accordingly, capital cases are not tried on the eve of a Shabbat or a Festival, lest the death penalty be pronounced. Since it is not permitted to carry out the sentence on Shabbat or Festivals, this would delay the execution of justice, which is prohibited (Rambam *Sefer Zemanim*, *Hilkhot Shabbat* 24:7 and *Sefer Shofetim*, *Hilkhot Sanhedrin* 11:2).

אֵלָּא סָלְקָא דַּעְתָּךְ אֲמִינָא: תֵּינִי מִהֲבֵעָרָה, דְּתָנָא דְּבִי רַבִּי יִשְׁמַעֵאל: “לֹא תִבְעְרוּ אֵשׁ בְּכָל מוֹשְׁבוֹתֵיכֶם,” מַה תִּלְמוּד לִוְמָר?

מַה תִּלְמוּד לִוְמָר? אִי לְרַבִּי יוֹסִי – לְלֵאוֹ, אִי לְרַבִּי נָתָן – לְחֵלֶק!

דַּעְתָּא: הֲבֵעָרָה לְלֵאוֹ יֵצֵתָהּ, דְּבִרִּי רַבִּי יוֹסִי. רַבִּי נָתָן אוֹמֵר: לְחֵלֶק.

וְאָמַר רַבָּא: תָּנָא – מוֹשְׁבוֹת קָא קִשְׁיָא לֵיהּ: “מוֹשְׁבוֹת” מַה תִּלְמוּד לִוְמָר?

מְבַדֵּי שַׁבָּת חוֹבֵת הַגּוֹף הִיא, וְחוֹבֵת הַגּוֹף נוֹהֶגֶת בֵּין בָּאָרֶץ בֵּין בַּחוּץ לָאָרֶץ, מוֹשְׁבוֹת דְּכֹתֵב רַחֲמָנָא בְּשַׁבָּת לְמַה לִּי?

מִשּׁוּם רַבִּי יִשְׁמַעֵאל אָמַר תִּלְמִיד אֶחָד: לְפִי שְׁנָאֵמַר “וְכִי יִהְיֶה בְּאִישׁ חַטָּא מִשְׁפַּט מוֹת וְהוֹמַת” שׁוֹמֵעַ אֲנִי בֵּין בַּחוּל בֵּין בְּשַׁבָּת, וְמָה אֲנִי מְקַיֵּם “מַחֲלִיךָ מוֹת יוֹמַת” – בְּשָׂאָר מְלָאכּוֹת, חוּץ מִמִּיתַת בֵּית דִּין. אוֹ אֵינוֹ אֵלָּא אֶפִּילוֹ מִיתַת בֵּית דִּין, וְמָה אֲנִי מְקַיֵּם “וְהוֹמַת” – בַּחוּל, וְלֹא בְּשַׁבָּת.

אוֹ אֵינוֹ אֵלָּא אֶפִּילוֹ בְּשַׁבָּת? תִּלְמוּד לִוְמָר: “לֹא תִבְעְרוּ אֵשׁ בְּכָל מוֹשְׁבוֹתֵיכֶם” וְלֵהֲלֹץ הוּא אוֹמֵר “וְהָיוּ אֵלֶּה לָכֶם לְחֻקֹּת מִשְׁפָּט לְדוֹרוֹתֵיכֶם בְּכָל מוֹשְׁבוֹתֵיכֶם.”

§ With regard to the issue at hand, the Gemara has not yet found an explanation as to why a specific inference was required to teach that a positive mitzva overrides a prohibition that incurs *karet*. Rather, it might enter your mind to say that this claim might be derived from the *halakha* of kindling, as the school of Rabbi Yishmael taught with regard to the verse: “You shall kindle no fire throughout your habitations on Shabbat day” (Exodus 35:3). What is the meaning when the verse states this, as the general prohibition against performing labor on Shabbat appears elsewhere?

The Gemara expresses puzzlement at this question: What is the meaning when the verse states this?²⁰ What kind of question is this? If the *halakha* is in accordance with the opinion of Rabbi Yosei, the verse comes to teach that one who kindles fire on Shabbat merely violates a regular prohibition, which does not entail the penalty of stoning, unlike other prohibited labors. If the *halakha* is in accordance with the opinion of Rabbi Natan, kindling was singled out to divide the various prohibited labors of Shabbat and to establish liability for the separate performance of each of them.

As it is taught in a *baraita*: The prohibition against kindling was singled out from the general category of prohibited labors and written explicitly to teach that it is unlike other prohibited labors, as it is a regular prohibition, which does not entail the punishment of stoning. This is the statement of Rabbi Yosei. Rabbi Natan says: Kindling is like any other labor prohibited on Shabbat, and it was singled out to divide. In other words, by stating one prohibited labor separately, the Torah teaches that each labor on Shabbat constitutes its own separate prohibition. Consequently, one who unwittingly violates several categories of labor is obligated to bring as many sin-offerings as the prohibited labors he violated.

And Rava said in explanation of the question asked by the school of Rabbi Yishmael: For this *tanna*, the term “habitations” poses a difficulty with regard to his opinion. The *baraita* should be understood as follows: What is the meaning when the verse states “habitations”? What additional inference is indicated by this term, which might lead to the erroneous conclusion that this Shabbat prohibition applies only in certain places of habitation?

The Gemara explains why “habitations” cannot mean that Shabbat observance applies only in certain places. Since Shabbat is an obligation that applies to the body, i.e., to the individual himself and not to an external object, and there is a principle that obligations of the body apply both in Eretz Yisrael and outside of Eretz Yisrael, then why do I need the term “habitations” that the Merciful One writes with regard to Shabbat?

A student said in the name of Rabbi Yishmael that since it is stated: “And if a man has committed a sin worthy of death, and he is put to death” (Deuteronomy 21:22), I would derive that the death penalty is administered whether on a weekday or on a Shabbat. And how do I establish the verse: “And you shall keep Shabbat, for it is sacred to you; every one who profanes it shall surely be put to death” (Exodus 31:14)? This verse applies to other prohibited labors, except for court-imposed capital punishment, which must be administered even on Shabbat. Or perhaps it is only the case that even court-imposed capital punishment is included in the list of prohibited labors on Shabbat. How, then, do I establish the verse: “And he is put to death”? This is referring to a weekday and not to Shabbat.²¹

Surprisingly, the *tanna* reverts back to his earlier claim: Or perhaps it is only the case that capital punishments may be administered even on Shabbat? Therefore, the verse states by way of a verbal analogy: “You shall kindle no fire throughout your habitations on Shabbat day” (Exodus 35:3) and below it says, at the end of the chapter dealing with murderers: “And these things shall be for you a statute of judgment to you throughout your generations in all your habitations” (Numbers 35:29).

NOTES

Murder – רציחה: It is clear from the context that the Gemara is referring to the punishment that is meted out to a murderer by the court. The term murder in the Torah does not exclusively mean criminal killings, as it is used with regard to an avenger of blood as well: “Whosoever kills any person, the murderer shall be murdered according to witnesses” (Numbers 35:30).

Murder overrides it – רציחה דוחה אותה: Some commentaries add that even if no other priest is available, and the Temple service would be entirely neglected, the obligation to execute a priest who is guilty of murder nevertheless overrides the Temple service. Rashi maintains that if the guilty priest is in the middle of the Temple service, he is allowed to complete it, whereas the Rambam rules that even if the priest merely began his service he is not given the chance to finish it. The commentaries point out that this opinion of the Rambam’s brings the *halakha* of murder closer in line with the cases of levirate marriage and Shabbat in this regard (*Arukh LaNer* on *Mishne LaMelekh*).

ומה עבודה שהיא חמורה ודוחה שבת – רציחה דוחה אותה, שנאמר “מעם מזבחי תקחנו למות”, שבת, שנדחת מפני עבודה, אינו דין שתהא רציחה דוחה אותה?

ומאי “או אינו” דקאמר? הכי קאמר: קבורת מת מצוה תוכנית, שדוחה את העבודה ואין דוחה את השבת. הדר אמר: קבורת מת מצוה תדחה שבת מקל וחומר; ומה עבודה שהיא דוחה שבת, קבורת מת מצוה דוחה אותה,

מולאחותיו, שבת, שנדחה מפני עבודה, אינו דין שתהא קבורת מת מצוה דוחה אותה? תלמוד לומר “לא תבערו”.

ולמאי דסליק אדעתיה מעיקרא דאתי עשה ודחי לא תעשה – מאי “או אינו” דקאמר?

If the Temple service, which includes the sacrifice of offerings, is so severe that it overrides Shabbat, as offerings were brought on Shabbat, and yet the *halakha* of murder^N overrides it,^N i.e., the obligation to execute a sentenced convict overrides the Temple service, as it is stated with regard to one sentenced to death: “You shall take him from My altar, that he may die” (Exodus 21:14), then in the case of Shabbat, which is overridden by the Temple service, is it not right that the *halakhot* of murder should likewise override it?

§ The Gemara analyzes a puzzling statement in the above *baraita*. And what is the meaning of the claim: Or perhaps it is only the case that capital punishments may be administered even on Shabbat, which the *tanna* stated in an unexplained reversion to his previous suggestion? The Gemara explains that this is what he is saying: The *a fortiori* reasoning can be refuted, as the obligation to bury a corpse with no one available to bury it [*met mitzva*]^B can prove otherwise, as the obligation to bury a *met mitzva* overrides the Temple service, and yet it does not override Shabbat. The *tanna* then retracted his statement and said that one can claim that the burial of a *met mitzva* overrides Shabbat by means of the same *a fortiori* inference: If the Temple service overrides Shabbat, and the burial of a *met mitzva* overrides it.

The Gemara pauses in the middle of the *a fortiori* inference to explain this last point. This is derived from the superfluous phrase “or for his sister” in the verse “He shall not make himself ritually impure for his father, or for his mother, for his brother, or for his sister, when they die” (Numbers 6:7), which is referring to a nazirite. This verse teaches that even a nazirite on his way to sacrifice the Paschal lamb must render himself ritually impure to bury a *met mitzva*. The Gemara resumes the *a fortiori* inference: If so, as Shabbat is overridden by the Temple service, is it not right that the burial of a *met mitzva* should override it? Therefore, the verse states: “You shall kindle no fire throughout your habitations on Shabbat day” (Exodus 35:3).

This concludes Rav Shimi bar Ashi’s interpretation of the *baraita*, that the *tanna* suggested that a court-administered death penalty might override Shabbat not because of the principle that a positive mitzva overrides a prohibition, but due to a potential *a fortiori* inference. The Gemara asks: And according to that which entered his mind at the outset, that the assumption of the *tanna* was indeed based on the principle that a positive mitzva comes and overrides a prohibition, what is the meaning of the clause: Or perhaps it is only the case that capital punishments may be administered even on Shabbat, that the *tanna* said? How should the *baraita* be explained according to the initial interpretation?

BACKGROUND

A corpse with no one to bury it [*met mitzva*] – מת מצוה: It is an important religious duty to attend to the burial of the dead. If the deceased has no acquaintances or relatives to bury him, all are obligated to assist in his burial. The *halakha* is that a corpse with no one available to bury it acquires its place, i.e., the body must be interred where it was found. This is the case provided that it is in a dignified location;

otherwise, the body must be buried in the nearest cemetery. This obligation is so important that even priests and nazirites, who are ordinarily prohibited from coming into contact with a corpse, must bury an abandoned corpse if there is no one else available to do so. Likewise, the obligation to bury this corpse takes precedence over nearly all other religious duties.

הכי קאמר: מה אני מקיים "מחלליה מות וימת" בשאר מלאכות, חוץ ממיתת בית דין, אבל מיתת בית דין דחי שבת, דאיתי עשה ודחי לא תעשה.

הדר אומר: אימר דאמרינן דאיתי עשה ודחי לא תעשה – לא תעשה גרידא, לא תעשה שיש בו כרת – מי שמעתי ליה דדחי? הדר אומר: אטו עשה דוחה את לא תעשה, לא לא תעשה חמור מיניה, וקאיתי עשה ודחי ליה.

מה לי חומרא וזוטא, ומה לי חומרא רבא? תלמוד לומר "לא תבערו".

אלא [איצטריך]: סלקא דעתך אמינא, תיהיו האי אשת אח דבר שהיה בכלל ויצא מן הכלל ללמד, לא ללמד על עצמו יצא אלא ללמד על הכלל כולו יצא.

The Gemara explains that **this is what the tanna is saying**: It would have been possible to say the following: **How do I establish the verse "Every one who profanes it shall surely be put to death" (Exodus 31:14)?** This applies to other prohibited labors, except for court-imposed capital punishment. However, court-imposed capital punishment overrides Shabbat,^N as a positive mitzva comes and overrides a prohibition.

The *tanna* then retracted his statement and said: You can say that we stated the principle that a positive mitzva comes and overrides a prohibition, yet this is true for a regular prohibition alone. However, did you hear that it overrides a prohibition that includes *karet*? The *tanna* then said, hinting at a counterclaim: Is that not to say, with regard to the principle that a positive mitzva overrides a prohibition, that the prohibition is more stringent than the positive mitzva?^N After all, the court punishes one who violates a prohibition with lashes, which is not the case for a failure to uphold a positive mitzva. And yet by Torah law the positive mitzva comes and overrides it.

If so, what difference is it to me if it is a case of a minor stringency^N and what difference is it to me if it is a major stringency? Once the Torah has stated that a positive mitzva supersedes a prohibition, there should be no difference between a relatively stringent prohibition and a lenient one. Therefore, the verse states: "You shall not kindle."^N In sum, the Gemara has not found a clear proof for the opinion that a positive mitzva supersedes a prohibition that incurs *karet*.

Consequently, the Gemara suggests a different interpretation. The superfluous phrase "with her" indeed teaches that the obligation of levirate marriage does not override the prohibition with regard to women with whom relations are forbidden. However, this derivation is required not because one might have thought that a positive mitzva supersedes a prohibition that incurs *karet*. Rather, this phrase is necessary because it could enter your mind to say: Let this case of a brother's wife, to whom the mitzva of levirate marriage applies, be treated in accordance with a well-established hermeneutical principle: A matter that was included in a generalization,^N but emerged to teach, emerged to teach not just about itself^N but to teach about the entire generalization.

NOTES

Court-imposed capital punishment overrides Shabbat – מיתת בית דין דחי שבת: Why is this even a consideration? After all, the court can simply postpone the capital punishment until after Shabbat. There is no reason to arrive at a situation where it is necessary for the positive mitzva to override the prohibition. One answer, as stated in tractate *Sanhedrin*, is that if the matter were postponed, the judges might forget the full depth of the reasoning that led to their decision, and consequently, if fresh exculpatory evidence were found, they would be unable to study the issue properly. Therefore, this mitzva must be performed without delay (*Tosefot HaRosh*).

The prohibition is more stringent than the positive mitzva – לא תעשה חמור מיניה: According to Rashi, what makes a prohibition more stringent is that one receives lashes for its violation, which is not the case for a positive mitzva. Some commentaries challenge this explanation, as it is sometimes stated that a prohibition is so severe that one is not given lashes for it, because one cannot make amends for it in this manner. Some write that the various levels of atonement indicate that one who transgresses a positive mitzva can more readily achieve penitence. Others disagree and say that an analysis of this issue from the perspective of the ease of repentance does not constitute conclusive proof (*Iggeret HaTeshuva*). Yet others suggest that one who transgresses a positive mitzva does so merely by refraining from action, whereas one who violates a prohibition actively sins (*Arukh LaNer*). See Ramban's commentary on

Exodus 20:8 and the question of the *Yad Malakhi* there (see *Meshekh Hokhma*).

What difference is it to me if it is a case of a minor stringency, etc. – מה לי חומרא וזוטא וכו': Since the entire discussion of the Gemara has been based on the assumption that there is a difference between ordinary prohibitions and those that incur *karet*, how is it possible for the Gemara suddenly to reverse this assumption without any proof (*Tosafot Yeshanim*)? The answer given is that if the phrase "with her" is not teaching that certain relatives remain forbidden, but rather it is indicating that the previously forbidden relation of a sister-in-law is permitted, this shows that there is no difference between an ordinary prohibition and one that incurs *karet*.

תלמוד לומר לא תבערו – The verse states, You shall not kindle: One could argue that the reason kindling does not override Shabbat is that it is merely a preparation for the fulfillment of the mitzva to perform an execution by burning, whereas an execution by stoning or decapitation, in which the prohibition is violated at the very moment the mitzva is fulfilled, would indeed override Shabbat. The commentaries explain that once the Gemara has stated the argument: What difference is it to me if it is a case of a minor stringency, etc., this differentiation is no longer applicable (*Rashba*).

A matter that was included in a generalization, etc. – דבר דבר: In essence, the principle: A matter that was

included in a generalization, etc., is similar to inferences by analogy or the method of: What do we find with regard to, etc. In other words, it makes use of inductive reasoning, from the detail to the generalization, i.e., that which is correct for the specific case is true for the entire general category. Incidentally, an analogy differs in this regard, as it is not limited to a particular category, whereas here the novel *halakha* of the detail applies only to other cases within the same generalization. The difference between this principle and: A matter specified to discuss a new matter, is that when the detailed case is singled out here from the generalization, the novel *halakha* does not run counter to the generalization but instead adds to it. Conversely, in the case of: A matter specified to discuss a new matter, the additional detail contradicts the generalization to a greater or lesser extent. In these cases the special ruling is not considered part of the general category but a unique case of its own.

To teach not about itself, etc. – לא ללמד על עצמו וכו': Some commentaries note that this case is unlike the other instances of: A matter intended to teach not only about itself, as here the verse does not teach anything new with regard to peace-offerings at all, and therefore it cannot be classified as a matter that teaches about itself. Some explain that the generalization stated with regard to this subject refers exclusively to priests (Leviticus 7:20), and therefore the mention of peace-offerings does teach a novelty about itself, i.e., that this prohibition applies equally to all Jews (*Ritva*).

Until the Torah restores it, etc. – עד שיחזירנו הכתוב – וכו': Since the Torah restored a leper's guilt-offering to its general category, why not learn from it that all guilt-offerings require the placement of blood on the thumb and toe (*Tosafot*)? One answer is that the limiting phrase "This is the law of the guilt-offering" (Leviticus 7:1) serves to exclude this possibility. Furthermore, there is a difference between offerings that provide atonement, e.g., other guilt-offerings, and those that enable their owner to return to his former state of ritual purity, such as the guilt-offering of a leper.

דתנא: דבר שהיה בכלל ויצא מן הכלל וכו' ביצד?

"והנפש אשר תאכל בשר מזבח השלמים וטומאתו עליו, והלא שלמים בכלל קדשים היו, ולמה יצאו – להקיש אליהן, ולומר לך: מה שלמים מיוחדים קדשי מזבח – אף כל קדשי מזבח, יצאו קדשי בדם הבית."

הכא נמי: הא אשת אח בכלל כל העריות היתה, ולמה יצתה – להקיש אליה ולומר לך: מה אשת אח שריא – אף כל עריות נמי שריין.

מי דמי? התם כלל באיסור ופרט באיסור. הכא – כלל באיסור ופרט בהיתר!

הא לא דמי אלא לדבר שהיה בכלל ויצא לידון בדבר החדש, שאי אתה יכול להחזירו לכללו עד שיחזירנו לך הכתוב בפירוש. דתנא: דבר שהיה בכלל ויצא לידון בדבר החדש אי אתה רשאי להחזירו לכללו עד שיחזירנו לך הכתוב בפירוש.

ביצד? "ושחט את הכבש במקום אשר ישחט את החטאת ואת העולה במקום הקדש כי בחטאת האשם הוא לכהן" שאין תלמוד לומר "בחטאת האשם", ומה תלמוד לומר "בחטאת האשם" –

The Gemara explains the application of this principle to the current case. Since the prohibition proscribing a brother's wife is included in the general prohibition with regard to women with whom relations are forbidden, it can be claimed that the *halakha* of levirate marriage renders not only a brother's childless wife permitted, but in this case it renders permitted all women with whom relations are usually forbidden. **As it is taught in a *baraita* that clarifies this hermeneutical principle: A matter that was included in a generalization, but emerged to teach, emerged to teach not just about itself but to teach about the entire generalization. How so?**

The *baraita* provides an example of this principle by citing a verse: "But the soul that eats of the flesh of the sacrifice of peace-offerings that belong to the Lord, with his ritual impurity upon him, that soul shall be cut off from his people" (Leviticus 7:20). **But aren't peace-offerings included in the general category of all consecrated offerings? And why were they explicitly singled out from the rest in the above verse? To draw an analogy between them and to say to you: Just as peace-offerings are unique in that they are consecrated for the altar, so too, this *halakha* that one who eats of them is liable to receive *karet* applies to all food that is consecrated for the altar, which excludes objects that are consecrated for the Temple maintenance.**

The above *baraita* provided an example of the principle that an item singled out from a general category teaches a *halakha* with regard to the entire category. **Here too**, one can argue: **This case of a brother's wife was included in the general category of all women with whom relations are forbidden, and why was she singled out? To compare to her and say to you: Just as a childless brother's wife is permitted, so too, all women with whom relations are forbidden are likewise permitted.**

The Gemara raises an objection: **Is it comparable? There**, in the case cited as an example of this hermeneutical principle, **the generalization**, i.e., all offerings, are included in the prohibition against eating offerings while ritually impure, **and the detailed case** of peace-offerings is also included in the prohibition. Consequently, it can be said that the specific case was singled out to teach about the entire category. By contrast, **here**, in the case of levirate marriage with forbidden relatives, **the generalization** is included in the prohibition against engaging in forbidden relations, **and yet the detailed case is permitted**. Therefore, it cannot be said that the detail has been singled out so as to clarify some aspect of the general category; rather, its *halakha* differs from the rest.

Instead, this case is **comparable only to those that fit a different hermeneutical principle, concerning a matter that was included in a generalization but emerged to discuss a new matter**. If a novel aspect or special ruling is taught with regard to a specific case within a broader general category, **then you cannot return it to its generalization even for other matters**, to the extent that this case has been entirely removed from the general category **until the Torah explicitly returns it to its generalization**. **As it is taught in a *baraita*: With regard to a matter that was included in a generalization but emerged to discuss a new matter, you may not return it to its generalization until the Torah explicitly returns it⁶ to its generalization.**

How so? The *baraita* provides an example of this principle. With regard to the guilt-offering of a leper, the verse states: "And he shall slaughter the sheep in the place where they slaughter the sin-offering and the burnt-offering, in the place of the Sanctuary; for as the sin-offering is the priest's, so is the guilt-offering" (Leviticus 14:13). As there is no need for the verse to state: "As the sin-offering... so is the guilt-offering," since apparently this comparison does not teach anything new because the *halakhot* of guilt-offerings are already stated elsewhere (Leviticus 7:1–10), then **what is the meaning when the verse states: "As the sin-offering... so is the guilt-offering"?**

Placement of the blood for the guilt-offering of a leper – **מתן דמים של אשם מצורע**: Two priests receive the blood of a leper's guilt-offering. One accepts the blood in a vessel and throws it onto the altar, while the other takes the blood in his right hand and pours it into his left hand, and then sprinkles it with his right index finger. He places the blood in his palm on the leper's right earlobe, the thumb of his right hand, and the big toe of his right foot (Rambam *Sefer Korbanot, Hilkhot Meḥusrei Kappara* 4:2).

לפי שיצא אשם מצורע לידון בדבר החדש, בבית יד ובהן רגל הימנית, יכול לא יהא טעון מתן דמים ואימורים לגבי מזבח.

Since the guilt-offering of a leper was specified from the general category of all guilt-offerings to discuss a new matter, i.e., that the blood is placed on the **thumb of the right hand and the big toe of the right foot of the leper**, one might have thought that this guilt-offering **does not require placement of the blood⁴ and sacrificial parts on the altar**, as for this guilt-offering the placement of blood on the leper is sufficient.

Perek I

Daf 7 Amud b

תלמוד לומר "כי כחטאת האשם הוא", מה חטאת טעונה מתן דמים ואימורים לגבי מזבח – אף אשם טעון מתן דמים ואימורים לגבי מזבח.

Therefore, the verse states: "As the sin-offering ... so is the guilt-offering" (Leviticus 7:13), to teach that **just as the sin-offering requires placement of the blood and sacrificial parts on the altar, so too, the leper's guilt-offering requires placement of the blood and sacrificial parts on the altar.**

ואי לא אהדריה קרא הוה אמינא: למאי דנפק נפק, ולמאי דלא נפק – לא נפק. הכא נמי הוה אמינא: אשת אח דאישתרא אישתראי, שאר עריות – לא.

The Gemara comments: **And had the verse not explicitly restored this case of guilt-offering to its generalization, I would say: With regard to that which was excluded from the generalization as a novel ruling in this case, it was excluded, and with regard to that case which was not excluded, it was not excluded, and therefore the halakha would have been different in the various cases. Here, too, I would say: A brother's wife who was permitted is permitted, whereas the other women with whom relations are forbidden were not permitted at all. Consequently, there is no proof from here that one might have thought that women with whom relations are forbidden are in fact permitted in levirate marriage.**

אלא סלקא דעתך אמינא: תיתי במה מצנינו מאשת אח; מה אשת אח מייבמה אף אחות אשה תתייבם.

§ Rather, the suggestion that other women with whom relations are usually forbidden might be permitted for levirate marriage was based on a different argument: It might **enter your mind to say: Let this claim be derived by the hermeneutical principle of: What do we find^N with regard to, which is a principle of inductive reasoning involving a comparison between cases that include similar details. In other words, the halakha of all other women with whom relations are forbidden can be derived from that of a brother's wife: Just as a brother's wife enters levirate marriage, so too, a wife's sister should enter into levirate marriage.**

מי דמי? הוה חד איסורא, הכא – תרי איסורי! מהו דתימא: הואיל ואישתרי – אישתרי.

The Gemara wonders about this: **Is it comparable?** How can one case be derived from the other? **There**, in the case of a brother's wife, only **one prohibition^N** has been permitted, the prohibition with regard to a brother's wife, whereas **here**, we are dealing with **two prohibitions**, both a brother's wife and a wife's sister. The Gemara answers: It is nevertheless necessary to refute this suggestion, **lest you say: Since it is permitted, it is permitted.** In other words, as the Torah permitted a brother's wife in levirate marriage despite the fact that she is ordinarily forbidden, she remains permitted even if the additional prohibition with regard to a wife's sister applies to her.

NOTES

תיתי במה מצנינו – Let this be derived by: What do we find – Since the Gemara has already concluded that this case includes a novel aspect, how can it suggest that the case can serve as a source for the entire generalization (Rabbi Avraham Av Beit Din)? The answer given is that in fact the *halakha* of levirate marriage is not considered a case of: A matter that was included in a generalization but was specified to discuss a new matter, as this possibility was raised in the Gemara only by way of rejection. In other words, the Gemara was saying that this case certainly cannot be treated as: A matter that was included in a generalization. If anything, it is more similar to the other principle of: A

matter that was included in a generalization but was specified to discuss a new matter. The early commentaries discuss why this is not in fact a case of: A new matter. See the Ramban's explanation and the Rashba's objection to his opinion. One opinion is that there is indeed nothing new here, as the entire *halakha* of levirate marriage concerns a brother's wife (Rashba, citing Rabbeinu Yona). Others explain that the principle: A matter that was included in a generalization, is stated only with regard to those subjects that appear in the Torah by way of generalization, after which a certain detail is singled out. With regard to women with whom relations are forbidden, however,

although several generalizations can be drawn from them, each specific case is mentioned individually. Consequently, there is no proper generalization here at all (Ritva; Meiri).

ההם חד איסורא – There, one prohibition – The commentaries question this point in light of the previously stated principle that in this regard there is no difference between a prohibition of major severity and one of minor severity. They answer that this idea was stated only concerning a single prohibition, but it does not apply to two independent prohibitions (Rashba).

A leper whose eighth day occurs on the eve of Passover – **מְצוֹרַע שְׁחָל שְׂמִינִי שְׁלוֹ בַּעֲרֵב הַפֶּסַח**: With regard to a leper whose eighth day of his process of ritual purification occurs on the eve of Passover, if he experienced a seminal emission on that day, he immerses himself in a ritual bath, after which he may enter the Women's Courtyard to bring his offerings. Anyone else who immersed that day is prohibited from entering the courtyard. However, as this prohibition applies only by decree of the Sages, and since if the leper does not bring his offerings of purification he will be unable to sacrifice the Paschal lamb, the performance of this positive mitzva, whose neglect incurs *karet*, overrides a prohibition that applies by rabbinic law (Rambam, *Sefer Korbanot, Hilkhhot Korban Pesah* 6:5).

BACKGROUND

וְרָאָה קָרִי – And he experienced a seminal emission – Whether an emission of semen occurred involuntarily, intentionally, or during sexual relations, the individual who experienced it becomes ritually impure and cannot enter the Temple precincts. To purify himself, he must immerse in a ritual bath, and after nightfall on the day of his immersion he becomes ritually pure (Leviticus 15:16–18).

טָבַל יוֹם – One who immersed himself that day – There are many instances of ritual impurity whose elimination involves the two-step process of immersion in a ritual bath, and waiting until nightfall of the day of his immersion. During the period between immersion and nightfall, a certain measure of impurity remains. Consequently, in most cases, it remains prohibited for one who immersed himself during that day to eat offerings or *teruma* if he is a priest; however, it is permitted for him to eat the second tithe.

וּמִנָּה תִּימְרָא דְאַמְרִינן הוּאִיל וְאִישְׁתְּרִי אִישְׁתְּרִי? דְּתַנָּא: מְצוֹרַע שְׁחָל שְׂמִינִי שְׁלוֹ בַּעֲרֵב הַפֶּסַח וְרָאָה קָרִי בּוֹ בַּיּוֹם וְטָבַל, אָמְרוּ חֲכָמִים: אֵף עַל פִּי שְׂאִין טָבַל יוֹם אַחֵר נִכְנָס, זֶה – נִכְנָס.

מוֹטָב שְׂיָבֵא עֲשֵׂה שֵׁשׁ בּוֹ כֶּרֶת וְיִדְחָה עֲשֵׂה שְׂאִין בּוֹ כֶּרֶת. וְאָמְרוּ רַבֵּי יוֹחָנָן: דְּבַר תּוֹרָה אִפְּלִי עֲשֵׂה לִית בֵּיהּ.

שְׁנָאֵמַר "וַיַּעֲמֹד יְהוֹשָׁפָט בְּקֹהֶל יְהוּדָה לִפְנֵי הַחֵצֵר הַחֲדָשָׁה". מֵאִי חֵצֵר הַחֲדָשָׁה? אָמַר (רַבֵּי יוֹחָנָן): שְׁחָדְשׁוּ בָּהּ דְּבָרִים, וְאָמְרוּ: טָבַל יוֹם לֹא יִכְנָס לְמַחֲנֶה לְוִיָּהּ.

וְאָמַר עוּלָא: מַה טַּעַם – הוּאִיל וְהוֹתֵר לְצַרְעָתוֹ הוֹתֵר לְקָרְוִיו – מִי דְמִי לְדַעוּלָא?

And from where do you say that we state this reasoning of: Since it is permitted, it is permitted? As it is taught in a *baraita*: With regard to a leper whose eighth day, on which he becomes ritually pure from his leprosy and brings his last offerings to the Temple,^N occurs on the eve of Passover,^H and he experienced a seminal emission^B on that eighth day and then immersed in a ritual bath, the Sages said: Although any other individual who immersed himself that day for purification from his ritual impurity may not enter the Temple before sunset, this leper, who saw an emission of semen and immersed, may enter the Temple.

The *baraita* explains the reason for this exception. It is better that a positive mitzva that includes *karet*, i.e., bringing the Paschal lamb at the right time, comes and overrides a positive mitzva that does not include *karet*, i.e., not entering the Temple in a state of ritual impurity. If the leper does not become purified of his leprosy he may not sacrifice the Paschal lamb. And Rabbi Yohanan said:^N By Torah law there is not even the overriding of a positive mitzva in this case of one who immersed himself during the day entering the Temple.

Rabbi Yohanan explains his claim: As it is stated: "And Jehoshaphat stood in the congregation of Judah and Jerusalem, in the House of the Lord, before the new courtyard" (11 Chronicles 20:5). What is the meaning of "the new courtyard"? Rabbi Yohanan said: This is referring to the place where they issued new matters^N and said that one who immersed himself that day^B may not enter the camp of the Levites, which in Jerusalem is the Temple Mount, despite the fact that by Torah law no such prohibition applies.

And with regard to this *halakha* itself, that a leper who experienced a seminal emission may nevertheless sacrifice offerings in the Temple, Ulla said: What is the reason^N that this is permitted to him? Since it is permitted for his leprosy, i.e., the Torah allowed him to enter the Temple Mount while still a leper to achieve full ritual purification, which requires that he sacrifice offerings, it is permitted with regard to his seminal emission as well. This shows that the *tanna* accepts the principle that as one prohibition is permitted, two prohibitions are likewise permitted. The Gemara rejects this argument: Is this assumption comparable to the case of Ulla?

NOTES

The ritual purification of a leper – טְהוֹרַת מְצוֹרַע: This final ritual of the purification of a leper is performed in the following manner: The leper enters the Women's Courtyard and inserts his thumb and big toe through the Gate of Nicanor into the Israelite courtyard, as one who lacks atonement may not enter the Temple. While he stands there, the priest places upon him the blood of the guilt-offering. The purified leper may enter the sacred area of the courtyard and inward only upon the completion of this entire process. See Meiri, who cites various opinions with regard to both the location of the Gate of Nicanor and whether the prohibition against his entry into the Israelite courtyard applies by Torah law or by rabbinic law.

And Rabbi Yohanan said, etc. – וְאָמַר רַבֵּי יוֹחָנָן וכו' – Rashi on *Zevachim* 32b explains that Rabbi Yohanan disputes the opinion of the *tanna* of the *baraita*. According to the *tanna*, the reason for this ruling is that a major positive mitzva overrides a minor positive mitzva, whereas Rabbi Yohanan holds that there is no positive mitzva here at all. Others disagree and maintain that Rabbi Yohanan is actually clarifying the statement of the *baraita* (*Tosafot*). One of their reasons is that since Rabbi Yohanan is an *amora*, it is not possible for him to dispute an explicit ruling of a *baraita*. This is also the opinion of the Ramban, the Rashba, and probably the Rambam. However, others agree with Rashi and explain that Rabbi Yohanan's opinion is supported by the mishna that, he claims, disputes this *baraita* (*Tosefot Rabbi Shimshon of Saens*). Yet others, who also contend that Rabbi Yohanan is explaining the *baraita*, state that although the Sages occasionally strengthened their decrees

to the level of Torah law itself, which is why the *baraita* calls it a positive mitzva, in this case they did not do so in opposition to a positive mitzva that incurs *karet* (Ritva).

Where they issued new matters – שְׁחִידְשׁוּ בָּהּ דְּבָרִים: This is supported by the fact that the verse states: "In the congregation of Judah," as the Sages would gather the community together when they wanted to issue a new halakhic ruling, in an effort to publicize it (*Gilyonei HaShas*).

And Ulla said: What is the reason, etc. – וְאָמַר עוּלָא מַה טַּעַם וכו' – Some commentaries maintain that Ulla disagrees with the opinion of Rabbi Yohanan and suggests an alternative reason for the leniency (Ritva). However, most commentaries hold that Ulla is simply elaborating further on the matter. Consequently, some ask why Ulla requires another explanation, as Rabbi Yohanan has already provided one (*Tosafot Yeshanim*). They answer that there are two aspects to the leniency granted here. First, the leper is allowed to enter the Women's Courtyard. Second, he may extend his thumb and big toe into the sanctified area. With regard to this issue, it cannot be suggested that the positive mitzva does not apply, as Ulla maintains that even partial entrance is classified as entering and is prohibited by Torah law on pain of *karet*. Accordingly, Ulla required the additional reason that once it is permitted with regard to one prohibition, the other prohibition is permitted as well. Some commentaries inquire as to why Rabbi Yohanan's statement is cited here at all, since the discussion focuses solely on the opinion of Ulla (*Otzar HaShitot*; see *Arukh LaNer*).

תִּינַח הֵיכָא דְנִשְׂא מֵת וְאַחֵר כֶּךָ נִשְׂא
חֵי, דְּמַגּוּ דְּאִישְׁתֵּרִי אִיסוּר אִשְׁתֵּי אָח –
אִישְׁתֵּרִי נִמְי אִיסוּר אַחֹת אִשָּׁה.

אֵלָּא, נִשְׂא חֵי וְאַחֵר כֶּךָ נִשְׂא מֵת,
אִיסוּר אַחֹת אִשָּׁה קָדִים!

וְאִפְּלוּ נִשְׂא מֵת נִמְי, תִּינַח הֵיכָא דְנִשְׂא
מֵת וְנִמְת, וְאַחֵר כֶּךָ נִשְׂא חֵי, דְּחֻזָּא לִיה
דְּבִינֵי בִינֵי. אֵלָּא, נִשְׂא מֵת וְלֹא מֵת,
וְאַחֵר כֶּךָ נִשְׂא חֵי – לֹא אִיחֻזָּא לִיה
בְּלִיל!

מִי לֹא מוֹדִי עוֹלָא שְׂאֵם רָאָה קְרִי בְּלִיל
שְׂמִינִי – שְׂאִין מְכַנֵּס יָדָיו לְבִהּוֹנוֹת?
שְׂלֵא יֵצֵא בְּשַׁעָה שְׂהִיא רְאוּיָה לְהִבְיָא
בְּה קֶרְבָּן!

אֵלָּא: בִּי אִיזְטְרִיד "עָלֶיהָ" הֵיכָא דְנִשְׂא
מֵת, וְנִמְת, וְאַחֵר כֶּךָ נִשְׂא חֵי.

This works out well when the deceased brother had first married one of the sisters, who was thereby rendered prohibited to the *yavam* as his brother's wife, and only afterward had the living brother married her sister, which renders his brother's wife forbidden to him on another count, this time as his wife's sister. As in that case one can say that since the first prohibition with regard to a brother's wife was subsequently nullified and thereby permitted by the mitzva of levirate marriage, the prohibition with regard to a wife's sister was also nullified and thereby permitted.

However, if the reverse occurred, and first the living brother had married his wife and only afterward the deceased brother had married her sister, in this case the prohibition with regard to a wife's sister precedes the prohibition proscribing a brother's wife, i.e., she was initially forbidden to him as his wife's sister. Consequently, even when the second prohibition lapses upon the death of his childless brother, the first prohibition should remain intact.

And furthermore, even in a case where the deceased brother had married first, it works out well only when the deceased brother had married the woman and then died, and only afterward the surviving brother married that brother's wife's sister. The reason is that in this case, the sister of the wife of the deceased brother was fit for him in between, i.e., during the period from when the deceased brother died until he married that brother's wife's sister. Therefore, it can be claimed that the second prohibition should not apply. However, if the deceased brother married first, and did not die yet, and afterward, during the deceased brother's lifetime, the living brother married the deceased brother's sister, she was not fit for him at all, as there was no period of time during which she was permitted to him.

The Gemara provides proof for this claim: Doesn't Ulla agreeⁿ that if a leper experienced a seminal emission on the night of the eighth, not on the eighth day but on the previous night, that he may not insert his hands and feet to the thumb and big toe⁸ to receive the blood and oil for his purification? The reason is that in this case he is ritually impure due to the emission and he had not yet emerged from the impurity of leprosy at a time that is fitting to bring an offering, as he cannot sacrifice his offerings until the daylight hours of the eighth day. Since there was not a single moment when he was permitted to enter the Temple in his state of ritual impurity, in this case one cannot apply the principle: Since it is permitted, it is permitted.

§ Rather, the Gemara suggests that the phrase "with her," which teaches the prohibition with regard to a wife's sister in levirate marriage, is necessary for a case where the deceased brother had first marriedⁿ and then died, and only afterward the living brother married the sister of the deceased brother's wife, in which case his brother's wife was permitted to him for a period of time. Accordingly, one might have applied the principle: Since it is permitted, it is permitted. For this reason it was necessary to write "with her," to teach that this second woman is nevertheless forbidden as his wife's sister.

NOTES

Doesn't Ulla agree, etc. – מִי לֹא מוֹדִי עוֹלָא וכו' – The commentaries ask how the Gemara knows that Ulla would agree on this matter (see *Tosafot* on Gemara here and on *Zevahim*). Others say that the Gemara's claim is not based on a derivation of Ulla's opinion in the case of one who experienced a seminal emission, as claimed by *Tosafot*; rather, it is a simple matter of logical reasoning. It was Ulla who stated the principle: Since it is permitted, it is permitted, and therefore where this rationale does not apply, Ulla would not disagree (Rashba).

With her is necessary where the deceased married, etc. – כִּי אִיזְטְרִיד עָלֶיהָ הֵיכָא דְנִשְׂא מֵת וכו' – Some commentaries note that in this case, where the *yavam* married the sister of his *yevama* only after the death of his brother, the *halakha* of a rival wife of a forbidden relation does not apply, as the rival wife in this case was never prohibited to him (*Tosafot Yeshanim*). In other words, although the sister of the surviving brother's wife is indeed forbidden to him, any other wives of the deceased brother remain permitted. *Tosafot Yeshanim* explain that the derivation from "with her" refers solely to the forbidden relation herself, whereas the prohibition proscribing a rival wife applies only when the deceased brother married first, after which the surviving brother married during his brother's lifetime (see *Sefer Ahiezer*).

BACKGROUND

מְכַנֵּס – Insert his hands and feet to the thumb and big toe – יָדָיו לְבִהּוֹנוֹת: The purification process for lepers is detailed in the Torah (Leviticus, chapter 14). This ritual includes the requirement that a priest apply oil that has been sanctified for this purpose,

as well as blood from the guilt-offering, upon the leper's right earlobe, right big toe, and right thumb. For this reason, the leper had to extend his thumb, big toe, and head into the Temple courtyard.

בְּהִיקְשָׁא מְדַרְבֵּי – Rabbi Yona – Rabbi Yona did not establish this juxtaposition with the aim of rendering all women with whom relations are forbidden permitted in levirate marriage. Rather, he said it in relation to a different issue, the first stage of sexual intercourse with a forbidden relation. The juxtaposition teaches that all women with whom relations are forbidden are equivalent to each other in that regard. However, as there is no such thing as a partial juxtaposition, it can be claimed that this juxtaposition teaches additional comparisons between the cases of those with whom relations are forbidden (Rashi; see Ritva).

To a lenient ruling and a stringent ruling, etc. – לְקוּלָּא וְחֻמְרָא וְכוּ: Some commentaries suggest that there is a fundamental distinction between levirate marriage in the case of a brother's wife and all other women with whom relations are forbidden, as the *halakha* itself refers specifically to a brother's wife. If so, one cannot learn from this case with regard to the other women with whom relations are forbidden (Rashba). The Rashba explains that it would indeed have been possible to refute the suggestion in this manner, but the other difficulties raised by the Gemara are preferable.

A positive mitzva does not override a prohibition that includes karet – **אֵין עֲשֵׂה דוֹחֶה לֹא תַעֲשֶׂה שְׁיֵשׁ בּוֹ כֵּרֶת** – This issue of whether or not a positive mitzva overrides a prohibition that incurs *karet* is not thoroughly clarified by the Gemara, nor is the matter clearly decided by the ruling of the Rambam (Rambam *Sefer Zemanim, Hilkhos Shabbat* 19:20). Some commentaries apparently accept Rava's opinion that a positive mitzva does not generally override a prohibition that incurs *karet* (*Tosafot*; Meiri). However, others hold that Rava's statement is not accepted, and a positive mitzva overrides even a prohibition that incurs *karet*, provided that the opposite conclusion is not explicitly stated in that particular case (*Sefer HaKeritut*; see *Yad Malakhi*).

The verse is necessary to prohibit a rival wife – בִּי אֵינְתִּירֶךְ – **קָרָא לְמִסֵּר צָרָה**: In fact, both here and in the continuation of the discussion, the Gemara indicates that no explicit verse was necessary to render a rival wife prohibited, and this verse renders a rival wife permitted in those cases when she is not a forbidden relation. However, as this is derived from a verse that uses an expression of a prohibition, the Gemara states that it serves to prohibit a rival wife in certain cases (Rashba; see Ritva).

וְאִי בְּעִית אֵימָא: אֲתִימָא בְּהִיקְשָׁא מְדַרְבֵּי יוֹנָה. דְּאָמַר רַבִּי יוֹנָה, וְאִתִּימָא רַב הוֹנָא בְּרִיה דְּרַב יְהוֹשֻׁעַ: אָמַר קָרָא "כִּי כָּל אִשָּׁר יַעֲשֶׂה מִכָּל הַתּוֹעֲבוֹת הָאֵלֶּה וְנִכְרְתוּ" הוֹקְשׁוּ כָּל הָעֲרִיזוֹת כּוּלָן לְאִשְׁתִּי אַח; מַה אִשְׁתִּי אַח שְׂרִיָּא אֶף כָּל עֲרִיזוֹת נְמִי שְׂרִיָּין – כְּתִב רַחֲמֵנָא "עֲלֶיהָ".

אָמַר לִיה רַב אַחָא מְדַפְתִּי לְרַבִּינָא: מִכְּדִי, כָּל עֲרִיזוֹת אֵיבָא לְאַקְוִישְׁנָהוּ לְאִשְׁתִּי אַח וְאֵיבָא לְאַקְוִישְׁנָהוּ לְאַחֹת אִשְׁתִּי, מֵאִי חֲזִית דְּאַקְשָׁתָא לְאַחֹת אִשְׁתִּי – אֶקְשִׁינָהוּ לְאִשְׁתִּי אַח!

אֵיבָעִית אֵימָא: לְקוּלָּא וְחֻמְרָא – לְחֻמְרָא מְקִשְׁנִין, אֵיבָעִית אֵימָא: הָכָא תְּרִי אִיסוּרִי וְהָכָא תְּרִי אִיסוּרִי, וְתְּרִי מִתְּרִי יִלְפִינִן; אֲבָל הָכָא תְּחֵדָא אִיסוּרָא – וְתְּרִי מִתְּחֵדָא לֹא יִלְפִינִן.

רַבָּא אָמַר: עֲרֻהָ לֹא צְרִיכָא קָרָא. דְּאֵין עֲשֵׂה דוֹחֶה לֹא תַעֲשֶׂה שְׁיֵשׁ בּוֹ כֵּרֶת. כִּי אֵינְתִּירֶךְ קָרָא – לְמִסֵּר צָרָה.

וְעֲרֻהָ לֹא צְרִיכָא קָרָא? וְהָא תִּנְיָא: אֵין לִי אֶלָּא הֵיא!

מִשּׁוּם צָרָתָהּ.

וְהָא קִתְּנִי: אֵין לִי אֶלָּא הֵיא! מִשּׁוּם צָרָתֶיהָ.

And if you wish, say instead that the suggestion that other women with whom relations are forbidden are permitted in levirate marriage is derived from the juxtaposition of Rabbi Yona.^N As Rabbi Yona said, and some say this was stated by Rav Huna, son of Rav Yehoshua: The verse states: "For whoever shall do any of these abominations, the souls that do them shall be cut off from among their people" (Leviticus 18:29). In this verse all of the women with whom relations are forbidden are juxtaposed with the case of a brother's wife. Consequently, one might say that just as a brother's wife is permitted in levirate marriage, so too, all women with whom relations are forbidden are likewise permitted. Therefore, the Merciful One writes: "With her," which excludes the prohibition with regard to a wife's sister.

Against this proof, Rav Aha of Difti said to Ravina: Since the *halakha* of all women with whom relations are forbidden can be juxtaposed with the case of a brother's wife and thereby rendered permitted in levirate marriage, and these cases can equally be juxtaposed with the *halakha* of a wife's sister, which would mean that they are forbidden, what did you see that you juxtaposed them with a wife's sister? Juxtapose them instead with a brother's wife. If so, the opposite could be derived from the phrase "with her," i.e., not that all women with whom relations are forbidden are prohibited like a wife's sister, but that all these women are permitted in levirate marriage, even a wife's sister.

The Gemara answers: If you wish, say that if one must decide between two possible ways of understanding juxtaposed cases, one of which leads to a lenient ruling and the other to a stringent ruling,^N we juxtapose to reach the stringent ruling, not the leniency. If you wish, say instead: Here, there are two prohibitions, a brother's wife and a wife's sister, and there, in the case of all other women with whom relations are forbidden, there are also two prohibitions. And one may derive a case involving two prohibitions from another case that involves two prohibitions. However, here, in the case of a regular levirate marriage that does not involve any other forbidden relation, there is only one prohibition proscribing a brother's wife, and one may not derive a case involving two prohibitions from a case that involves only one.

S Rava said that this entire *halakha* must be understood differently. With regard to a forbidden relation herself, it is not necessary for a verse to teach that she cannot enter into levirate marriage, as a positive mitzva does not override a prohibition that includes *karet*.^N Rather, the verse "with her" is necessary to prohibit a rival wife,^N as a rival wife is not prohibited to the *yavam* as a forbidden relation.

The Gemara asks: And does the *tanna* in fact maintain with regard to a forbidden relation that it is not necessary for a verse to teach that she is prohibited in levirate marriage? But isn't it taught in that same *baraita*: I have derived nothing other than that this woman is exempt from levirate marriage. From where is it inferred that the same applies to her rival wife? This shows that the case of a forbidden relation does require a special inference from a verse.

The Gemara answers: It is due to her rival wife, i.e., the *baraita* does not mean that the *halakha* of women with whom relations are forbidden is derived from this verse; rather, this case is mentioned only to introduce the case of a rival wife.

The Gemara raises another difficulty: But it is taught in the *baraita*: I have derived nothing other than that these sisters are exempt from levirate marriage, which again suggests that the derivation from the verse applies to all of them. This is similarly rejected: This is also stated due to their rival wives.

Say to prohibit rival wives of those with whom relations are forbidden – אימא לאסור צרות של עריות – This is not an arbitrary adjustment of the text, as the unusual order of the *baraita*, which mentions rival wives before those with whom relations are forbidden, alludes to this interpretation (*Arukh LaNer*).

The mishna is also precisely formulated – מתניתין – נמי דיקא: In other words, the phrasing of the mishna indicates that the *tanna* maintains that there is no need for a special inference to render prohibited those with whom relations are forbidden. Since he did not emphasize the exemption of women with whom relations are forbidden, but assumed that it was understood, it stands to reason that he holds in accordance with the opinion of Rava that no verse is required in this case (Ramban).

With regard to a rival wife too, a verse is not necessary – צרה נמי לא איצטריך קרא – But if no verse is required even for a rival wife, Rav Ashi's earlier comment that the mishna is in accordance with Rava's opinion is no longer valid (*Tosafot*). *Tosafot* note that in any case it is necessary for the mishna to state explicitly that rival wives are prohibited, whereas the prohibition with regard to women with whom relations are forbidden is mentioned in other tractates. Others explain that this *halakha* is indeed unnecessary for the matter at hand, but it serves as an introduction to the next mishna, which deals with the six stringent cases of those with whom relations are forbidden. In those cases a rival wife is permitted, as no levirate marriage at all is involved.

תא שמע: רבי אומר, "ולקח" "ולקחה" "ויבם" "ויבמה", לאסור צרות ועריות!

The Gemara suggests: Come and hear a different *baraita* that contradicts Rava's statement: Rabbi Yehuda HaNasi says that there is a different proof that a forbidden relation and her rival wife are prohibited in levirate marriage. The Torah says: "He will have intercourse with her and take her to him to be his wife and consummate the levirate marriage with her" (Deuteronomy 25:5). Since the verse does not say simply: Have intercourse, but: "Have intercourse with her," this indicates that he takes this woman specifically, not a different woman who is forbidden. Furthermore, the verse does not simply state: And consummate the levirate marriage, but: "And consummate the levirate marriage with her." These additions serve to prohibit rival wives and women with whom relations are forbidden.

אימא: לאסור צרות של עריות. והא תרי קראי קנסיב ליה, מאי לאו: חד לערוה וחד לצרה!

This shows that even the prohibition with regard to women with whom relations are forbidden requires a special inference. The Gemara answers: Amend the language of the *baraita* and say: To prohibit rival wives of those with whom relations are forbidden,^N not the women themselves with whom relations are forbidden. The Gemara raises a difficulty: But he brought two proofs from the verse, both "have intercourse with her" and "and consummate the levirate marriage with her." What, is it not because one phrase is required for the *halakha* of a woman with whom relations are forbidden and the other one for a rival wife?

לא. אידי ואידי לצרה, חד למיסר צרה במקום מצוה, וחד למישרי צרה שלא במקום מצוה.

The Gemara rejects this suggestion: No, this source and that source are necessary for a rival wife, and both phrases are required, for the following reason. One of them comes to prohibit a rival wife in a place where the mitzva of levirate marriage is applicable, and one serves to permit a rival wife in a place where the mitzva is not applicable. If a woman is the rival wife of one of those relatives forbidden to a given man, he is permitted to marry her following the death of her husband, as the prohibition proscribing rival wives of women with whom relations are forbidden pertains only to cases where the *halakhot* of levirate marriage are applicable, i.e., in the case of a brother's wife.

מאי טעמא – "ויבם" "ויבמה", במקום ייבום הוא דאסירא צרה, שלא במקום ייבום – שריא צרה.

The Gemara elaborates: What is the reason for this *halakha*? It is derived from the fact that the verse does not merely state: And consummate the levirate marriage, but instead emphasizes: "And consummate the levirate marriage with her." This comes to teach: It is in a place where levirate marriage applies that a rival wife is prohibited; however, in a place where the levirate marriage is not applicable, a rival wife is permitted.

אמר רב אשי: מתניתין נמי דיקא: דקתני, חמש עשרה נשים פוטרות צרותיהן, ואילו "פטורות ופוטרות" – לא קתני, שמע מינה.

Rav Ashi said: The mishna is also precisely formulated^N in accordance with the opinion of Rava, as it teaches: Fifteen women exempt their rival wives, whereas the phrase: Are exempt and exempt others, is not taught. This indicates that the exemption of these women who are themselves forbidden relations does not necessitate any special inference, as this is not a novel *halakha*, and therefore the mishna does not even state this point explicitly. The novelty is that they exempt their rival wives. The Gemara summarizes: Conclude from this that Rava's opinion is correct.

ומאי שנא ערוה דלא צריכא קרא – דאין עשה דוחה לא תעשה שיש בו כרת – צרה נמי לא תיבעי קרא משום דאין עשה דוחה לא תעשה שיש בו כרת!

The Gemara asks: And if so, what is different about a forbidden relation that a special verse is not necessary to exclude it? The reason must be that a positive mitzva does not override a prohibition that entails *karet*. If so, a rival wife should also not require an additional verse, due to the fact that a positive mitzva does not override a prohibition that entails *karet*. The phrase "to be a rival to her" (Leviticus 18:18) teaches that the rival wife of a wife's sister is prohibited like the wife's sister herself.

אמר ליה רב אחא בר ביבי מר לרבינא: הכי קאמרין משמיה דרבא, צרה נמי לא איצטריך קרא, כי איצטריך קרא

Rav Aha, son of Beivai Mar, said to Ravina that this is what we say in the name of Rava: With regard to a rival wife too, a verse is not necessary,^N as is the case with a forbidden relation herself, since the prohibition in her case as well incurs *karet*, and therefore one would not think that the positive mitzva of levirate marriage overrides that prohibition. The verse is necessary

NOTES

Say that a forbidden relative herself, etc. – אִמָּא – עֲרוּהָ גּוֹפִיָּה וְכוּ': Some commentaries maintain that this does not mean to suggest that all those with whom relations are forbidden should be permitted when no mitzva of levirate marriage applies, but merely that a wife's sister alone, to whom the phrase "with her" applies, should be permitted. In her case it is possible to suggest that the prohibition applies only when the mitzva of levirate marriage is in effect (*Arukh LaNer*).

I can reverse this, etc. – אִיפּוֹךְ אֲנֵא וְכוּ': The commentaries explain that this reversal is based on the reasoning that a prohibition is more likely to be permitted in a situation where there is a mitzva involved, as opposed to when there is no mitzva of levirate marriage (*Tosafot Yeshanim*).

HALAKHA

A wife's sister – אָחוֹת אִשָּׁה: One's wife's sister is forbidden by Torah law during one's wife's lifetime, even after they have divorced. However, after the death of one's wife, her sister is permitted to him (*Shulhan Arukh, Even HaEzer* 15:26).

לְמִישְׁרֵי צָרָה שְׁלֹא בְּמָקוֹם מִצְוָה. מֵאִי טַעְמָא? אָמַר קָרָא "עִלְיָהּ", בְּמָקוֹם "עִלְיָהּ" הוּא דְּאִסְרָא, שְׁלֹא בְּמָקוֹם "עִלְיָהּ" – שְׂרִיא.

אָמַר לִיה רַמִּי בְּרַחֲמָא לְרַבָּא: אִמָּא עֲרוּהָ גּוֹפִיָּה שְׁלֹא בְּמָקוֹם מִצְוָה תִּשְׁתַּרְי! וְלֹא קָל וְחֹמֶר הוּא? בְּמָקוֹם מִצְוָה – אִסְרָא, שְׁלֹא בְּמָקוֹם מִצְוָה – שְׂרִיא!

אָמַר לִיה: צָרָה תּוֹכִיחַ, דְּבְּמָקוֹם מִצְוָה – אִסְרָא, וְשְׁלֹא בְּמָקוֹם מִצְוָה – שְׂרִיא! אָמַר לִיה: עֲלִיךָ אָמַר קָרָא "בְּחַיָּיהָ" – כָּל שְׂבַחָיָהּ.

הָאִי "בְּחַיָּיהָ" מִיִּבְעֵי לִיה לְמַעוּטֵי לְאַחַר מִיתָה! הֵהִיא מְוֹאֶשֶׁה אֶל אָחוֹתָהּ נִפְקָא.

אִי מְוֹאֶשֶׁה אֶל אָחוֹתָהּ? הֵוָה אָמִינָא: נִתְגַּרְשָׁה שְׂרִיא, תִּלְמוּד לומר "בְּחַיָּיהָ" – כָּל שְׂבַחָיָהּ, דָּאף עַל גַּב דְּנִתְגַּרְשָׁה – לֹא.

אֶלָּא אָמַר רַב הוֹנָא בְּרַחֲמָא לְרַבָּא: דְּרַבָּא: תְּרִי קְרָאִי כְּתִיב: בְּתִיב "אִשָּׁה אֶל אָחוֹתָהּ לֹא תִקַּח לְצֹרֵר" וּכְתִיב "לְגִלוֹת עֲרוּתָהּ", דְּחִדָּא מִשְׁמַע, הָא כִּיצַד? בְּמָקוֹם מִצְוָה – שְׂתִיחֶן אִסּוּרוֹת, שְׁלֹא בְּמָקוֹם מִצְוָה – הִיא אִסּוּרָה וְצִרְתָּה מוֹתֶרֶת.

אִיפּוֹךְ אֲנֵא: בְּמָקוֹם מִצְוָה – הִיא אִסּוּרָה וְצִרְתָּה מוֹתֶרֶת, וְשְׁלֹא בְּמָקוֹם מִצְוָה – שְׂתִיחֶן אִסּוּרוֹת! אִם כֵּן, לֹא יֵאמַר "עִלְיָהּ".

to permit a rival wife in a place where the mitzva of levirate marriage is not applicable. What is the reason, i.e., how is this inferred? The verse states: "With her." In other words, it is in a place where the obligation "her brother-in-law will have intercourse with her" is applicable that a rival wife is prohibited, whereas in a place where the obligation "Her brother-in-law will have intercourse with her" is not applicable, a rival wife is permitted.

Rami bar Hama said to Rava: If the phrase "with her" is referring only to a case where levirate marriage is applicable, one can say that a forbidden relative herselfⁿ should be permitted in a place where the mitzva of levirate marriage is not applicable. According to this interpretation, the prohibitions with regard to all those with whom relations are forbidden are in effect only when levirate marriage applies. Rava answered: And is it not an *a fortiori* inference? If these relatives are prohibited in a place where there is a mitzva, could they be permitted in a place where there is no mitzva?

Rami bar Hama said to Rava: That is no proof, as the case of a rival wife herself can prove that this *a fortiori* inference is incorrect, as in a place where there is a mitzva she is prohibited and in a place where there is no mitzva she is permitted. Rava said to Rami bar Hama: With regard to your claim, the verse states: "And you shall not take a woman to her sister... in her lifetime" (Leviticus 18:18). This indicates that all cases in which it is in the lifetime of her sister she is forbidden, even when no mitzva applies.

The Gemara asks: This phrase "in her lifetime" is necessary, as indicated by the plain meaning of the phrase, to exclude the time after death, i.e., to teach that a wife's sister is forbidden only while the wife is still alive, whereas after her death the sister is permitted. The Gemara answers: That *halakha* that a woman is permitted after her sister's death is derived from "and you shall not take a woman to her sister" (Leviticus 18:18), as when one of them is dead it is no longer considered "a woman to her sister."

The Gemara further asks: If this *halakha* is derived from "a woman to her sister," I would say that even if she were divorced, her sister is permitted. Therefore, the verse states: "In her lifetime," which indicates that the prohibition is in effect in all cases that are in her lifetime. This teaches that although she is divorced, her sister is not^h permitted.

Rather, the Gemara suggests a different interpretation. Rav Huna bar Tahlifa said in the name of Rava: Two verses are written, i.e., two separate issues are mentioned in the same verse. It is written: "And you shall not take a woman to her sister, to be a rival [*litzror*]," which indicates that two rival wives are prohibited. And it is written: "To uncover her nakedness" (Leviticus 18:18), in the singular, which means one and not both of them. How is it possible to reconcile this apparent contradiction? In a place where there is a mitzva of levirate marriage, both the forbidden relation and her rival wife are prohibited. In a place where there is no mitzva of levirate marriage, the forbidden relation is prohibited but her rival wife is permitted.

The Gemara raises a difficulty: I can reverse thisⁿ and suggest the opposite. In a place where there is a mitzva, the forbidden relation is prohibited and her rival wife is permitted, and in a place where there is no mitzva, both of them are prohibited. The Gemara answers: If so, let the verse not say "with her," at all, as this superfluous phrase teaches that the prohibition with regard to a rival wife applies only when there is a mitzva of "her brother-in-law will have intercourse with her."

If so, and: To uncover her nakedness, is referring to one, etc. – **אם בן לגלות ערוה דחדא וכו'** – The difficulty raised by Rami bar Hama is evidently based on the assumption that a positive mitzva overrides even a prohibition that incurs *karet*. However, according to the opinion of Rava, the verse is necessary to render permitted a rival wife, and therefore this problem does not arise. Consequently, Rava's response to the difficulty is not in accordance with his own opinion, but in line with the reasoning of the question (*Tosefot HaRosh*).

אמר ליה רב אשי לרב כהנא: ממאי דהאי "עליה" לאיסורא? דלמא להתיירא, והכי קאמר רחמנא: "אשה אל אחותה לא תקח לצרור" – לא היא ולא צרתה, שלא במקום "עליה", אבל במקום "עליה" שיתיהן מותרות!

Rav Ashi said to Rav Kahana: From where is it derived that this superfluous phrase "with her," comes to prohibit, i.e., although there is an obligation that "her brother-in-law will have intercourse with her," a wife's sister remains prohibited? Perhaps it serves to permit, and this is what the Merciful One is saying: "You shall not take a woman to her sister, to be a rival" (Leviticus 18:18), i.e., neither her nor her rival wife. When is this the case? It is in a place where the obligation of "her brother-in-law will have intercourse with her" does not apply. However, in a place where "with her" does apply and there is an obligation of levirate marriage, both of them are permitted.

אם בן לגלות ערוה דחדא היכי משבחת לה? אי במקום מצוה – שיתיהן מותרות, אי שלא במקום מצוה – שיתיהן אסורות.

Rav Kahana replied to Rav Ashi: If the above statement is so, and "to uncover her nakedness" is referring to oneⁿ woman, under what circumstances can you find this case? When is only one of them prohibited? If it is in a place where there is a mitzva, they are both permitted; if it is in a place where there is no mitzva, they are both forbidden. Therefore, the earlier line of reasoning must be accepted: A rival wife is forbidden only in a case where the mitzva of levirate marriage is in effect.

גופא. רבי אומר: "ולקח" ו"לקחה" "ויבם" "ויבמה" – לאסור צרות ועריות. מידי צרות בתיבא הקא ועוד: צרות – מלצור נפקא!

While clarifying the exposition of the phrase "with her," an alternative interpretation attributed to Rabbi Yehuda HaNasi was mentioned. The Gemara discusses the matter itself. Rabbi Yehuda HaNasi says: The verse does not say have intercourse, but "have intercourse with her." And it does not say and consummate the levirate marriage, but "and consummate the levirate marriage with her." These phrases serve to prohibit rival wives and women with whom relations are forbidden. The Gemara asks: Are rival wives written here? In other words, what is the connection between the verse and the topic of rival wives, an issue that is not even mentioned in the verse? And furthermore: The prohibition with regard to rival wives is derived from the phrase "To be a rival wife [*litzror*]," not from this source.

"לצור" מפיק ליה רבי לחדרבי שמעון.

The Gemara answers: Rabbi Yehuda HaNasi derives a different *halakha* from the phrase "to be a rival wife," in accordance with that statement of Rabbi Shimon. In Rabbi Shimon's opinion, the exemption of two sisters from levirate marriage applies not only when the *yavam* is married to one of the sisters, but also if two sisters who come before him for levirate marriage were previously married to two of his brothers. In that case, the levirate bond itself is sufficient for them to be considered rival wives of one another.

צרה הקא בתיב? הכי קאמר: אם בן לימא קרא "ולקח", מאי "ולקחה" – כל היבא דאיבא תרי לקוחין, דאי בעי נסיב האי ואי בעי נסיב האי – שריא ואי לא – תרווייהו אסירין.

And with regard to the previous question: Are rival wives written here? The answer is that this is what he is saying: If so, that the verse does not come to exempt rival wives, let the verse state only: Have intercourse. What is the meaning of "have intercourse with her"? It serves to limit the case to one woman and not two, in the following manner: Anywhere that there are two possibilities of having intercourse, i.e., there is a choice between marrying one of two women in levirate marriage, in such a way that if he wants he may marry this one, and if he wants he may marry that one, then each one is permitted. And if he does not have a choice and is obligated to marry one of them, e.g., if the other is a forbidden relation to him, they are both prohibited, including the rival wife.

"ויבמה", במקום ייבום – הוא דאסירא צרה, שלא במקום ייבום – שריא צרה ורבנן, האי "ולקחה" מאי עבדי ליה?

When the verse states: "And consummate the levirate marriage with her," it comes to teach the following. It is in a place where levirate marriage is applicable that a rival wife is prohibited, whereas in a place where levirate marriage is not applicable, a rival wife is permitted. The Gemara asks: And with regard to the Rabbis, who do not interpret the verse in this manner, what do they do with this emphasis on "have intercourse with her"? How do they interpret it?

That he divorces her with a bill of divorce and he may remarry her – **שֶׁמִגֵּרְשָׁה בִּגְט וּמַחְזִירָהּ**: After a *yavam* takes his *yevama* in levirate marriage she is considered to be his wife for all purposes. Consequently, if he wishes to divorce her he must do so by means of a bill of divorce, and he may subsequently remarry her (*Shulḥan Arukh, Even HaEzer* 168:1).

And consummate the levirate marriage with her, against her will – **וַיִּבְמָהּ עַל כְּרִיחָהּ**: If a *yavam* engages in sexual relations with his *yevama* in a case where the *halakha* of levirate marriage applies, he has taken her as a wife for all purposes, even if he rapes her (*Shulḥan Arukh, Even HaEzer* 166:7).

The obligation of a court that issued an erroneous ruling – **הַיֵּיב בֵּית דִּין בְּהוֹרָאת טְעוּת**: In a case where the Great Sanhedrin issued an erroneous ruling that rendered permitted a matter whose intentional transgression incurs *karet* and whose unwitting transgression entails bringing a fixed sin-offering, if most of the community acted in accordance with the ruling of the court, the court must sacrifice a bull for an unwitting communal sin (Rambam *Sefer Korbanot, Hilkhhot Shegagot* 12:1).

And similarly, the anointed – **וְכֵן הַמָּשִׁיחַ**: If the High Priest issued an erroneous ruling that permitted a matter whose intentional transgression incurs *karet* and whose unwitting transgression entails bringing a sin-offering, if he himself acted according to his own instructions he must bring a bull sin-offering for his atonement. This offering is called the bull of the anointed priest (Rambam *Sefer Korbanot, Hilkhhot Shegagot* 15:1).

מִיִּבְעֵי לֵהוּ לְכַדְרֵי יוֹסִי בַר חֲנִינָא. דְּאָמַר רַבִּי יוֹסִי בַר חֲנִינָא: "וּלְקַחְתָּהּ", מִלְּמִד שֶׁמִּגֵּרְשָׁה בִּגְט וּמַחְזִירָהּ. "וַיִּבְמָהּ" – עַל כְּרִיחָהּ.

וְרַבִּי דְרָבִי יוֹסִי בַר חֲנִינָא מִ"לֹאֲשָׁה" נִפְקָא. עַל כְּרִיחָהּ מִ"יִבְמָה יבֹא עָלֶיהָ" נִפְקָא.

וְרַבִּי הָאֵי "עָלֶיהָ" מֵאֵי עֵבִיד לֵיהּ? מִיִּבְעֵי לֵיהּ לְכַדְתֵּינָא: אֵין חֵיבִין בֵּית דִּין אֶלָּא עַל דְּבַר שְׁזָדוּנוּ כֶּרֶת וְשִׁגְגָתוֹ חֲטָאת, וְכֵן הַמָּשִׁיחַ.

The Gemara responds: **They need this for that which Rabbi Yosei bar Ḥanina said, as Rabbi Yosei bar Ḥanina said: "And have intercourse with her" means marriage, i.e., she is fully his wife from that moment onward. This teaches that he divorces her with a bill of divorce after levirate marriage, and she can no longer be released by *ḥalitza*, and he may subsequently remarry her**^{HN} if he so wishes. And the verse "**and consummate the levirate marriage with her,**" this means **against her will**.^H Although betrothal in general does not take effect without the woman's consent, levirate marriage can be effected against her will.

The Gemara asks: **And from where does Rabbi Yehuda HaNasi derive these widely accepted *halakhot*?** The Gemara responds: **That *halakha* cited by Rabbi Yosei bar Ḥanina, that a woman taken in levirate marriage has the status of a regular wife who may be divorced and remarried, is derived from the verse "and take her to him to be his wife" (Deuteronomy 25:5),^N which means that she will be his wife for all purposes, like any other wife. And the *halakha* that levirate marriage can be effected against her will is derived from "her brother-in-law will have intercourse with her," which indicates that it can be achieved without her consent.**

The Gemara asks: **And what does Rabbi Yehuda HaNasi do with this superfluous phrase, "with her"?** The Gemara responds: **He needs it for that which is taught in a *baraita* with regard to a different matter. The Sages said: The court is obligated to bring a bull as a sin-offering for an unwittingly committed communal sin on account of an erroneous *halakha* they taught only for a matter whose intentional transgression incurs *karet* and whose unwitting violation necessitates the sacrifice of a sin-offering.**^{HN} **And similarly, the anointed^H High Priest, who also brings a bull for an unwittingly committed sin, is obligated to do so only if his mistake involved a matter whose intentional transgression incurs *karet* and whose unwitting transgression necessitates the sacrifice of a sin-offering.**

NOTES

That he divorces her with a bill of divorce and he may remarry her – שֶׁמִּגֵּרְשָׁה בִּגְט וּמַחְזִירָהּ: The commentaries raise a difficulty here: It is apparently necessary to provide a source proving that the *yavam* is permitted to engage in additional sexual relations with his *yevama* after the levirate marriage, as although the first sexual relations are commanded by the Torah, any further relations are merely optional. As stated below, it is for this very reason that one may not take a forbidden relation in levirate marriage (*Tosafot*). *Tosafot* explain that it stands to reason that this is permitted, as the Torah would not say that one should engage in sexual relations with a woman and immediately divorce her. Others suggest that whenever a mitzva overrides a prohibition, provided that the individual continues to perform the mitzva, he is even permitted to add elements that are not essential to the obligation itself (*Meromei Sadeh*).

Derived from: To be his wife – מִלֹּאֲשָׁה נִפְקָא: The commentaries ask what those Rabbis who dispute the opinion of Rabbi Yehuda HaNasi derive from the phrase: "To be his wife." The answer given is that they require two verses, one for the *halakha* that

he divorces her with a bill of divorce and not by *ḥalitza*, and another to teach that he is permitted to remarry her after their divorce (*Arukh LaNer*).

A matter whose intentional transgression incurs *karet* and whose unwitting violation necessitates a sin-offering – דְּבַר שְׁזָדוּנוּ כֶּרֶת וְשִׁגְגָתוֹ חֲטָאת: When there is an obligation to bring a sin-offering for a particular unwittingly committed transgression, intentional performance of that transgression is almost always penalized by *karet*. Still, it is necessary to specify both of these characteristics because there are some exceptions to this principle. These include cases that are penalized by a court-imposed death penalty instead of *karet*, e.g., striking or cursing one's parents, and prohibitions that render one liable to bring a sin-offering but do not incur *karet*, such as taking an oath in vain. For this reason it is necessary to specify that the intentional violation of the prohibitions incurs *karet*. Furthermore, sacrifice of the Paschal lamb and circumcision are both positive mitzvot that incur *karet* for an intentional transgression, but do not obligate the unwitting violator to bring a sin-offering (see *Arukh LaNer*).

ולא בעבודה זרה, אלא על דבר שחייבין על זדונו כרת ושגגתו חטאת. ותנן נמי: כל מצוה שבתורה שחייבין על זדונו כרת ועל שגגתו חטאת – יחיד מביא כשבה או שעירה, נשיא מביא שעיר, משיח וביית דין מביאין פר.

ובעבודה זרה – יחיד, נשיא ומשיח מביאין שעירה. צבור מביאים פר ושעיר, פר לעולה ושעיר לחטאת. מנא הני מילי?

דתנו רבנן: "ונודעה החטאת אשר חטא עליה", רבי אומר: נאמר כאן "עליה" ונאמר להלן "עליה", מה להלן – דבר שחייבין על זדונו כרת ועל שגגתו חטאת, אף כאן – דבר שחייבין על זדונו כרת ועל שגגתו חטאת.

אשכחן צבור, משיח מנלן? דכתיב במשיח "לאשמת העם" – הרי משיח בצבור.

יחיד ונשיא – אתיא "מצות" "מצות".

ולא בעבודה זרה אלא על דבר שחייבין על זדונו כרת ועל שגגתו חטאת. צבור בעבודה זרה יליף "מעני" "מעני".

And a community brings a bull for an unwitting communal sin for idolatrous worship only if the act of idolatry involved a matter that for its intentional violation one is liable to receive *karet* and for its unwitting violation one is liable to bring a sin-offering. And we also learned in a mishna: With regard to any mitzva in the Torah for whose intentional violation one is liable to receive *karet* and for its unwitting violation one is liable to bring a sin-offering, if a private individual sinned unwittingly, he brings a ewe or a she-goat. If it was a *Nasi*, he brings a goat for a sin of this kind, and if the sinner was an anointed High Priest or the court, they bring a bull.

And if they unwittingly sinned in a matter involving idolatrous worship, a private individual, a *Nasi*, and an anointed High Priest bring a she-goat, whereas a community brings a bull and a goat,^h the bull as a burnt-offering and the goat as a sin-offering.^h The Gemara asks: From where are these matters, that one must bring a sin-offering for this transgression, derived?

The Gemara answers: As the Sages taught with regard to an unwitting communal sin offering: "And the sin by which they have sinned is known" (Leviticus 4:14). Rabbi Yehuda HaNasi says: It is stated here, with regard to a sin-offering: "By which [*aleha*]," and it is stated there, with regard to the prohibition with regard to a wife's sister: "Unto [*aleha*]." This teaches by verbal analogy: Just as there, in the case of a wife's sister, it is a matter that for its intentional violation one is liable to receive *karet* and for its unwitting violation one is liable to bring a sin-offering,ⁿ so too here, the offering is brought for a matter that for its intentional violation one is liable to receive *karet* and for its unwitting violation one is liable to bring a sin-offering.

The Gemara continues: We found a source for the *halakha* that the offering brought by the community is a sin-offering; from where do we derive that an anointed High Priest also brings a sin-offering for this transgression? As it is written with regard to an anointed High Priest: "If the anointed priest shall sin so as to bring guilt on the people" (Leviticus 4:3), which indicates that an anointed High Priest brings an offering like the community.

From where is it derived that a private individual and a *Nasi* bring sin-offerings only for a severe transgression of this kind? This is derived by verbal analogy between the words "mitzvot" and "mitzvot" that are stated three times, with regard to the community's sin-offering, a private individual's sin-offering, and the sin-offering of a *Nasi*: "Any of the mitzvot of the Lord that He has commanded not to be done" (Leviticus 4:2, 13, 22).

And it was stated above that this *halakha* applies to idolatrous worship only if it involved a matter that for its intentional violation one is liable to receive *karet* and for its unwitting violation one is liable to bring a sin-offering.^h The *halakha* of a community that was guilty of idolatrous worship is derived by a verbal analogy between the phrases "from the eyes" and "from the eyes." With regard to the bull for an unwitting communal sin, the verse states: "From the eyes of the assembly" (Leviticus 4:13), while concerning an unwitting sin of idol worship, it says: "From the eyes of the congregation" (Numbers 15:24). This verbal analogy teaches that a congregation brings a sin-offering for idolatrous worship only if it involved a transgression that incurs *karet* when performed intentionally.

HALAKHA

The offering of a community for an unwittingly committed sin of idolatrous worship – קרבן ציבור בשגגת עבודה זרה – א"ר: A court that erroneously permitted an idolatrous practice is obligated to bring an offering. This *halakha* applies only if that which they permitted is a prohibition that incurs *karet* when performed intentionally (Rambam *Sefer Korbanot*, *Hilkhot Shegagot* 12:1).

Types of offerings for unwitting violation – סוגי קרבנות – שגגה: With regard to all prohibitions that incur *karet* for their intentional violation and that involve the performance of some action, except for idolatry, an unwitting sinner must bring a sin-offering. However, the offerings differ in accordance with the status of the sinner. If the offender was an ordinary person, he must bring a she-goat or a ewe. If a *Nasi* unwittingly transgressed, he brings a goat. If an anointed High Priest issued an erroneous ruling and acted accordingly, he must bring a bull. Finally, a court that unwittingly transgressed brings a bull (Rambam *Sefer Korbanot*, *Hilkhot Shegagot* 15:1).

An unwitting sin of idol worship – שגגת עבודה זרה – If an individual, whether he is an ordinary person, a *Nasi*, or an anointed High Priest, unwittingly engaged in idolatrous worship, he must bring a one-year-old she-goat as a sin-offering. The court brings a bull as a burnt-offering and a goat as a sin-offering for each tribe that transgressed (Rambam *Sefer Korbanot*, *Hilkhot Shegagot* 12:1, 15:3).

NOTES

Just as there...for its unwitting violation one is liable to bring a sin-offering – מזה להלן...על שגגתו חטאת: The commentaries point out that the fact that one is liable to bring a sin-offering for the unwitting violation of the prohibition with regard to a wife's sister is not actually established, and was mentioned only incidentally (*Tosafot*). Indeed, certain commentaries omit this clause (Rivan). Others explain that as it is explicitly stated that the intentional violation of the prohibition with regard to a wife's sister incurs *karet*, this indicates that its unwitting transgression causes one to be liable to bring a sin-offering (Ritva).

BACKGROUND

Juxtaposed – **הוקשה**: Derivations based on the juxtaposition of biblical texts is an important exegetical principle. When two cases are mentioned together in the same verse, or in adjacent verses, the Talmud usually assumes that they are analogous. Consequently, legal inferences may be drawn by comparing the two cases.

HALAKHA

Individuals and groups with regard to idol worship – **יחידים ורבים בעבודה זרה**: Individuals who intentionally transgressed and practiced idolatry, even if they are only a minority of the city, are sentenced to stoning, but their possessions are spared. However, if an entire city, or most of its residents, engaged in idolatry and was classified as an idolatrous city, each transgressor is executed by the sword, and the entire city, including all of its possessions, is burned (Rambam *Sefer HaMadda*, *Hilkhot Avoda Zara* 4:6).

NOTES

Therefore their money is spared – **לפיכך ממונן פלט**: One explanation is that because the physical punishment of individuals is harsher than that of the many, the ruling is more lenient toward their possessions, whereas in the case of many offenders, the physical punishment is relatively light and therefore a more stringent ruling is stated with regard to their possessions (Rivan). Others claim that the term: Therefore, does not appear in the source of this *halakha* in tractate *Horayot*, and there is no connection between these matters, as these rulings are merely by decree of the Torah. Overall, there are lenient and stringent elements in both the cases of an individual and a community, and consequently it cannot be claimed that one is more lenient than the other (*Yosef Lekah*).

יחיד, נשיא ומשיח – מ'ואם נפש אחת',
אחד יחיד ואחד נשיא ואחד משיח
במשמע, וי' מוסף על ענין ראשון.

וילמד תחתון מן העליון.

ורבנן, האי סברא מנא להו? נפקא להו
מדימקרי ליה רבי יהושע לבריה: "תורה
אחת יהיה לכם לעושה בשגגה... והנפש
אשר תעשה ביד רמה".

הוקשה כל התורה כולה לעבודה זרה,
מה עבודה זרה – דבר שחייבין על
זדונו כרת ועל שגגתו חטאת, אף כל
דבר שחייבין על זדונו כרת ועל שגגתו
חטאת.

אשכחן יחיד ונשיא ומשיח, בין בעבודה
זרה ובין בשאר מצות, צבור בעבודה
זרה ממין? אמר קרא 'ואם נפש', וילמד
עליון מתחתון.

אלא צבור בשאר מצות מנלן? יליף
"מענין" "מענין". ורבי, האי "תורה אחת"
מאי עביד ליה? מיפעי ליה לכדתנא:
לפי שמוצינו שחלק הכתוב בין יחידים
לרובים.

יחידים – בקילה, לפיכך ממונן פלט.
רובין – בסיוף, לפיכך ממונן אבד.

The cases of a private individual, a *Nasi*, and an anointed High Priest are derived from a verse that deals with an unwitting sin of idolatry: "And if one person sin" (Numbers 15:27). All of these, a private individual, a *Nasi*, and an anointed High Priest, are included in this verse. In this case the principle: The letter *vav* adds to the previous matter, applies. When a phrase begins with the conjunction *vav*, meaning: And, it is a continuation of the previous matter rather than a new topic. Based on this principle, these two *halakhot* are connected with one another.

And therefore let the lower, i.e., the second, subject, a private individual, be derived from the upper issue, the community. Just as a community brings this offering only for a transgression whose intentional violation incurs *karet*, the same is true of a private individual. The verbal analogy stated in this *baraita* is Rabbi Yehuda HaNasi's inference from the phrase "with her."

S The Gemara asks: And with regard to the Rabbis, who interpret "with her" with regard to rival wives, from where do they derive this conclusion that one is liable to bring the offering for idolatrous worship only for a transgression whose intentional violation incurs *karet*? The Gemara answers: They derive it from that which Rabbi Yehoshua ben Levi read out to his son to teach him the verses that summarize the case of unwitting idol worship: "You shall have one law [Torah] for him that does unwittingly. But the soul that does with a high hand, whether he be home born or a stranger, he blasphemes the Lord; and that soul shall be cut off from among his people" (Numbers 15:29–30).

In this manner, the entire Torah is juxtaposed⁸ with idolatrous worship. Just as in the case of idolatrous worship there is no obligation to bring an offering unless it is a matter that for its intentional violation one is liable to receive *karet* and for its unwitting violation one is liable to bring a sin-offering, as indicated by the verse: "That soul shall be cut off from among his people," so too, the same applies to any matter that for its intentional violation one is liable to receive *karet* and for its unwitting violation one is liable to bring a sin-offering.

The Gemara comments: We found a source for a private individual, a *Nasi*, and an anointed High Priest, whether with regard to idolatrous worship or with regard to the other mitzvot. From where is it derived that a community is liable only for an unwitting transgression of idolatrous worship of this kind? The verse states: "And if one person sin" (Numbers 15:27). Once again, the letter *vav* teaches that these two cases are connected, and let the upper, the first, issue of a community, be derived from the lower case, that of a private individual.

However, from where do we derive that a community brings an offering for other mitzvot only if the intentional violation of the prohibition incurs *karet*? The Gemara responds: He derives it from the aforementioned verbal analogy between "from the eyes" and "from the eyes." The Gemara asks: And what does Rabbi Yehuda HaNasi do with this verse: "One law"? The Gemara answers: He requires it for that which is taught in a *baraita*: Since we find that the Torah differentiates between private individuals who sinned and the many⁹ who sinned in idol worship.

The *baraita* elaborates: Private individuals who worshipped idols are sentenced to stoning, and therefore their money is spared¹⁰ from destruction. Although the sinner is put to death, his possessions are not destroyed. By contrast, the many are condemned to the lighter death penalty of decapitation by sword, the punishment for those who worshipped idols in an idolatrous city, and therefore their money is forfeited, as by Torah law all possessions belonging to the residents of an idolatrous city must be burned.

מאי ליתו – What would they bring – The commentaries explain that as a special *halakha* applies to the many who worship idols, in that their possessions are destroyed, this case is an exception to the general category of court-imposed death penalties. Therefore it is appropriate to suggest that the sin-offering in this case might also be unique (Ramban). Some commentaries ask why the Gemara does not propose that they bring a sheep or ram as a sin-offering (*Tosefot HaRosh*). The Rosh answers that one may not invent a new type of offering that is not mentioned in the Torah. Accordingly, the real question is: If their offering is like other offerings, then there is nothing different about their case; conversely, the alternative, that one should invent an entirely new offering, is wholly unacceptable. Certain commentaries accept this interpretation, but they ask why the Gemara did not formulate the question accordingly (*Tosafot Yeshanim*).

Alternatively a community must, yet they have no remedy – אי נמי צריך ואין לו תקנה – Some commentaries explain that this does not mean that there is no remedy at all, but simply that the remedy is not stated in the Torah, and therefore one would not know what to do in this situation (*Yosef Lekah*).

מאי איריא דתני – Why does the tanna specifically teach – The fact that Levi posed this question to Rabbi Yehuda HaNasi indicates that this mishna was not formulated by Rabbi Yehuda HaNasi, the redactor of the Mishna; rather, it existed before his time (*Sefer Keritut*). In the Jerusalem Talmud it is likewise stated that contain structured enumerations of *halakhot* date back to a very early source, from the period of the First Temple (Maharatz Hayyut).

PERSONALITIES

לוי – Levi – This is the Sage Levi, son of Sisi, who lived in the transitional generation between the *tanna'im* and the *amora'im*. Levi was the preeminent disciple of Rabbi Yehuda HaNasi and was close to both him and his son Rabbi Shimon. The phrase: It was taught before the Sages, is said to refer to Levi, who would debate halakhic issues with Rabbi Yehuda HaNasi. Although Rabbi Yehuda HaNasi occasionally issued harsh statements toward Levi, this was merely Rabbi Yehuda HaNasi's style of teaching, through which he would assert his authority over his disciples. In fact, Rabbi Yehuda HaNasi held Levi in very high esteem and even called him: A man like myself.

In his time, Levi was considered a Sage who achieved perfection in all areas. He was a master of *halakha* and *aggada*, knowledgeable in the Bible, and an important teacher. It is said of his public prayers that he would hurl his words up toward Heaven, and although his prayers were answered, he paid a price in terms of his health.

After Rabbi Yehuda HaNasi's death, Levi was left without a teacher, and he therefore traveled to Babylonia. He apparently spent most of his time there in the city of Neharde'a, where he befriended Shmuel's father and renewed his ties with Rav. Many sources in the Gemara depict these three, together with Shmuel, engaged in halakhic discussions concerning various issues. It is probable that Levi passed away in Babylonia.

Like Rabbi Yehuda HaNasi's other important disciples, Levi edited an important collection of *baraitot* called by the Gemara: The Mishna of Levi. Some commentaries say that the renowned *amora* Rabbi Yehoshua ben Levi was his son, but this seems unlikely in light of the order of the generations.

יכול נחלוק בקרבנותיהן? תלמוד לומר
"תורה אחת יהיה לכם".

Due to this difference, one might have thought that we should likewise **differentiate between their offerings**, i.e., if an individual and a community unwittingly practiced idolatrous worship, different offerings are brought in the two cases. Therefore, **the verse states: "One law for you."** The word: "you" is in the plural, which indicates that an individual and a community that worshipped idols are subject to the same *halakha*.

מתקין לה רב חלקיה מהגרוניא: טעמא
דכתב רחמנא "תורה אחת יהיה לכם",
הא לאו הכי – הוה אמינא נחלק, מאי
ליתו? ליתו פר – צבור בשאר מצות
הוא דמיתו.

Rav Hilkia from the city of Hagronya strongly objects to this: The reason for this ruling is that the Merciful One specifically writes: "One law for you," from which it may be inferred that if that were not so, I would say that we should differentiate between the offerings of an individual and a community. If so, it is appropriate to ask: **What offering would they bringⁿ** if we were to differentiate? You cannot say **they would bring a bull**, as it is a community that sinned unwittingly in transgressing other mitzvot who bring a bull, and as this case is written separately, clearly its *halakha* is different.

בשבה – יחיד בשאר מצות הוא דמיתו,
שעיר – נשיא בשאר מצות הוא דמיתו,
פר לעולה ושעיר לחטאת – צבור
בעבודה זרה הוא דמיתו. ואלא מאי
שעירה – יחיד נמי היינו קרבנו!

Likewise, you cannot say that they should bring a ewe, as it is an individual who sinned in transgressing the other mitzvot who brings a ewe. Nor can you say that they bring a goat, as it is a *Nasi* who sinned in transgressing the other mitzvot who brings a goat. And you cannot say that they would bring a bull as a burnt-offering and a goat as a sin-offering, as it is the community, i.e., the majority of Jews, who sinned in performing idolatrous worship who bring these. Rather, what might they bring? If one were to suggest a she-goat, that would not be appropriate, because this is the offering of a private individual as well, since an individual brings a ewe or a she-goat as a sin-offering. Apparently there is no need for a special inference in this case, as there are no other possibilities.

איצטריך, סלקא דעתך אמינא: הואיל
וצבור בהוראה מיתו פר לעולה ושעיר
לחטאת – אינהו נמי ניתו איפקא.

The Gemara answers: It is necessary for a verse to teach that there is no difference between the offerings of an individual and a community, as it might enter your mind to say: Since a community that sinned by the erroneous instruction of the court that it is permitted to practice idolatry brings a bull as a burnt-offering and a goat as a sin-offering, then, when a community sins of its own accord they too should bring these animals, but the opposite, i.e., a bull as a sin-offering and a goat as a burnt-offering.

אי נמי צריך ואין לו תקנה, קא משמע
לן.

Alternatively, it could be argued: Theoretically a community must bring a different form of atonement from that of an individual, yet they have no remedy,ⁿ as the Torah did not specify which offering is brought for a sin of the many. Therefore, the verse teaches us by means of the phrase "one law for you" that there is indeed an offering for the many who practiced idol worship.

אמר ליה לוי לרבי: מאי איריא דתני
חמש עשרה? ליתני שש עשרה! אמר
ליה: כמדומה לי שאין לו מוח בקדקדו.

After discussing different interpretations of the relevant verses, the Gemara addresses the details of the *halakhot* of the mishna. It first considers the numbers that comprise the structure of the mishna as a whole. The Sage Levi^p said to Rabbi Yehuda HaNasi: **Why does the tanna specifically teachⁿ** the cases of fifteen women? Let him teach the cases of sixteen women, including the case of a rival wife of a forbidden relation. Rabbi Yehuda HaNasi said to him: Judging by his question, it seems to me that this Sage has no brain in his head.

מאי דעתך – אמו אנוסת אביו?

Rabbi Yehuda HaNasi proceeded to explain the question and the answer himself: **What is your thinking?** Is it that the *tanna* should have included the case of his mother who had been raped by his father? In the opinion of the Rabbis, a woman raped by one's father is permitted in marriage to another of his sons. Consequently, it is possible that she might give birth to a son and later marry one of the other sons of the rapist. If her husband subsequently died childless, this woman would come before the brother of the deceased for levirate marriage, who is in this case her son. If so, there are in fact sixteen women with whom relations are forbidden.

Does not deal with disputed cases – בפלוגתא לא קא מיירי – Some commentaries point out that there is a dispute below with regard to refusal, as Rabbi Yishmael disputes the ruling of the first *tanna* of the mishna (Ritva). The Ritva explains that although there are disagreements with regard to details of these cases, the basic *halakhot* are not in dispute (see *Tosafot*).

Concerning which Rabbi Akiva and the Rabbis disagree – דפליגי רבי עקיבא ורבנן – How does the Gemara know that Rabbi Akiva invariably exempts women forbidden by a regular prohibition even from *halitza*? Various solutions are suggested by the early commentaries (Ramban; Ritva) and the later commentaries (*Arukh LaNer*; *Gilyonei HaShas*). Some explain simply that the *amora'im* had a tradition to this effect, and there is no need to cite further proof (Rashba).

אמו אנוסת אביו פלוגתא דרבי יהודה ורבנן היא, ובפלוגתא לא קא מיירי.

However, continued Rabbi Yehuda HaNasi, this is incorrect, as the case of **his mother raped by his father** is a matter of **dispute between Rabbi Yehuda and the Rabbis**. According to Rabbi Yehuda, a woman raped by one's father could never come before him for levirate marriage, as it is prohibited for her to marry his brothers. **And the *tanna* of this mishna does not deal with disputed cases.**^N The mishna enumerates only those cases that are accepted by all opinions, not those that are a matter of dispute.

ולא? והרי איסור מצוה ואיסור קדושה,

The Gemara asks: **And does the *tanna* really not mention disputed cases? But there are the cases of a prohibition resulting from a mitzva of the Sages, and a prohibition stemming from sanctity.** In other words, the *tanna* does refer to the cases of a woman who one is prohibited to marry by decree of the Sages, e.g., a distant secondary forbidden relation, and one who is prohibited due to a regular prohibition that preserves the sanctity of the Jewish people or the priesthood.

דפליגי רבי עקיבא ורבנן, וקתני!

These are cases concerning **which Rabbi Akiva and the Rabbis disagree**^N whether these women are entirely exempt from both levirate marriage and *halitza* like a forbidden relation, or whether the mitzva of levirate marriage does in fact apply but since the *yavam* may not marry her in practice, she must be released by *halitza*. **And yet these disputed cases are taught** in the mishna.

בפרקין קא אמרין, והא בית שמאי מתירין את הצרות לאחין ובית הלל אוסרין!

The Gemara responds: When **we say** that only accepted *halakhot* are included in the mishna, we are referring only to **our** present **chapter**, whereas the dispute between Rabbi Akiva and the Rabbis is stated in the second chapter. The Gemara raises a difficulty: **But** in this chapter it is stated that **Beit Shammai permit rival wives to the brothers**, as they hold that there is no prohibition against rival wives of those with whom relations are forbidden, **and Beit Hillel prohibit this**. Evidently, the first chapter does deal with disputed cases.

בית שמאי במקום בית הלל – אינה משנה. והרי אשת אחיו שלא היה בעולם,

The Gemara answers: When **Beit Shammai** express an opinion **where Beit Hillel disagree**, their opinion is considered as if it were **not** in the *mishna*, i.e., it is completely disregarded, as it is commonly accepted that the opinion of Beit Shammai is rejected and not ruled as *halakha*. Therefore, this cannot be considered a true dispute. The Gemara raises a further difficulty: **But there is the case of a wife of a brother with whom he did not coexist**, i.e., the *yavam* was not alive at the time of his brother's death.

Perek I

Daf 9 Amud b

דפליגי רבי שמעון ורבנן, וקתני! בנודה,

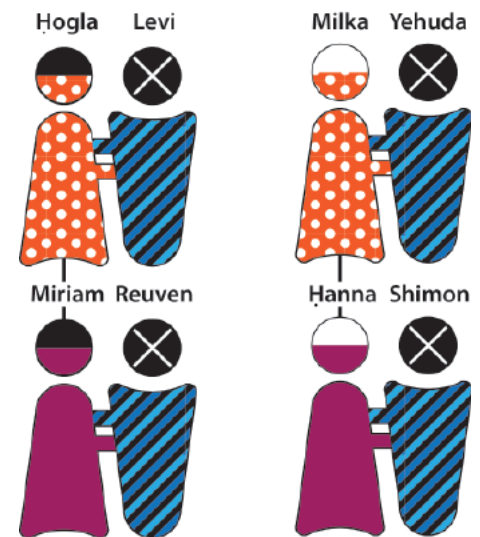
This is a case concerning **which Rabbi Shimon and the Rabbis disagree**, and yet it is **taught**. If this *halakha* is taught, evidently this mishna does deal with matters subject to dispute. The Gemara answers **that** Rabbi Shimon does not disagree with the Rabbis concerning all cases of a wife of a brother with whom he did not coexist. If this *yavam* was **born** after his brother's death, he concedes that the obligation of levirate marriage does not apply to the newborn *yavam*. Rather, the *yevama* is prohibited to him as his brother's wife.

ולבסוף ייבם לא פליגי רבי שמעון.

Furthermore, in a case where he was born **and at the end**, i.e., afterward, a second older brother **entered into levirate marriage** with the *yevama* and subsequently died as well, and the same woman again came before that same younger brother, **Rabbi Shimon did not disagree** with the opinion of the Rabbis here either, as he admits that this woman is permanently forbidden to him because when he was born she was classified as the wife of a brother with whom he did not coexist.

אחותה שהיא יבמתה – Her sister who is her sister-in-law – The brothers Yehuda and Levi married two sisters, Milka and Hōgla, which means that these two sisters became sisters-in-law as well. Two other brothers married their daughters: Shimon married Hānna, daughter of Milka, while Reuven wed Miriam, daughter of Hōgla.

Subsequently, both Yehuda and Levi died childless and their wives came before Shimon and Reuven for levirate marriage. Although Shimon may not enter into levirate marriage with Milka, his mother-in-law, he is permitted to enter into levirate marriage with her sister Hōgla. Likewise, Reuven is forbidden to his mother-in-law, Hōgla, but may enter into levirate marriage with her sister Milka. Consequently, this is a case of a sister who is a sister-in-law who either performs *ḥalitza* or levirate marriage.



In fact, Rabbi Shimon disagreed only with regard to a different case, when there were two brothers, one of whom died, and the second took the *yevama* in levirate marriage. If a third brother was subsequently born and afterward the second brother died, Rabbi Shimon maintains that the youngest brother may enter into levirate marriage with this woman because she was never forbidden to him, as what occurred prior to his birth is of no relevance. Since even in Rabbi Shimon's opinion it is possible to find a case in which the wife of a brother with whom he did not coexist is forbidden to him, it can be claimed that the mishna is taught in accordance with all opinions.

והאמר רבי אושעיא: חלוק היה רבי שמעון אף בראשונה!

The Gemara raises a difficulty: **But didn't Rabbi Oshaya say that Rabbi Shimon disagreed^N even with regard to the first case?** In other words, Rabbi Shimon disagreed not only in the case of a woman who entered into levirate marriage before the young brother was born, but even if the young brother was born before the initial levirate marriage took place.

הא איתותב רבי אושעיא.

The Gemara rejects this suggestion: This statement of **Rabbi Oshaya was conclusively refuted**. Consequently, it remains possible to say that the mishna does not deal with disputes.

The Gemara raises a difficulty from another angle. The third chapter discusses a case involving four brothers, two of whom passed away after they were married to two sisters. As a result, the two sisters simultaneously came before the surviving brothers for levirate marriage or *ḥalitza*. The Sages ruled that in this case the brothers may not enter into levirate marriage with the sisters, as it is as though the two sisters came before each brother individually, and due to the levirate bond each sister was, in a sense, considered married to each brother to a certain extent.

Consequently, for each brother the other sister is viewed as his wife's sister, as it were, and is forbidden to him. Since this occurs to both sisters simultaneously, it is prohibited for both of them to enter into levirate marriage. However, the Sages further said that if one of these sisters was a forbidden relation to one of the surviving brothers, e.g., if he had married her daughter or some other relative, the second sister, to whom he is not a close relative, is permitted to him. If the same applies to the other brother and the second sister, the two brothers could perform *ḥalitza* with the two sisters or even enter into levirate marriage with them.

והאמר רב יהודה אמר רב, וכן תני רבי חייא: בכולן אני קורא בהן האסורה לזה מותרת לזה, והאסורה לזה מותרת לזה, ואחותה שהיא יבמתה חולצת או מתייבמת.

With this in mind, the Gemara states its objection: **And didn't Rav Yehuda say that Rav said, and likewise Rabbi Hīyya taught in a *baraita*: With regard to all of those fifteen women enumerated in the mishna, it is possible to find a scenario in which I would call them: The woman who is forbidden to this brother is permitted to that brother, and the one who is forbidden to this brother is permitted to that brother. And consequently, her sister who is her sister-in-law⁸ performs *ḥalitza* or enters into levirate marriage.** This complex situation can be demonstrated with regard to each of the women enumerated in the mishna, e.g., if one sister is the mother-in-law of one brother, and the second sister is the mother-in-law of the second brother, and so on.

NOTES

⁸חלוק היה רבי שמעון וכו' – Rabbi Shimon disagreed, etc. – The early commentaries ask: Even according to the opinion of Rabbi Oshaya, there is a case of a wife of a brother with whom he did not coexist that Rabbi Shimon would concede is prohibited, i.e., if at first there was only one brother who died childless and then later another brother was born, in

which case the *yevama* would be forbidden to the newborn *yavam*. Some answer that as Rabbi Shimon did not mention a scenario of this kind in the mishna it is not taken into account (*Tosafot Yeshanim*). Others point out that this case does not allow for the possibility of a rival wife of the rival wife of a forbidden relation (*Tosafot HaRosh*).

וְרַב יְהוּדָה מְתַרְגֵּם מִחֻמוֹת וְאֵילָךְ, אֲבָל שִׁיתָא בְּבִי דְרִישָׁא – לָא, מַאי טַעְמָא?

And Rav Yehuda explains^N that this is not true of all of the women listed in the mishna. Only **from the case of his mother-in-law and onward**, until the end of the list, is it possible for one sister to be a forbidden relation to one brother and the other sister not to be forbidden at all. **However, in the first six cases, no**, this option does not apply. **What is the reason** for this?

בֵּינוּ דְּבִתּוֹ,

Since, for example, in the case of **one's daughter**, although it is possible that one of the sisters is the daughter of one of the brothers, her mother is prohibited to all of the brothers as their brother's wife, and therefore she could not possibly have a daughter from another brother. This case is possible only if one brother raped a woman who subsequently gave birth to his daughter. Since the prohibition with regard to a brother's wife applies only in the case of marriage, this same woman is not forbidden to a different brother. If another brother came and raped her as well and she gave birth to his daughter too, and these two daughters later married two other brothers, each of these sisters who are sisters-in-law is forbidden to one of the brothers but permitted to the other.

בְּאוֹנְסִין מְשַׁבְּחָת בְּנִשְׁוֹאִין לָא מְשַׁבְּחָת לָהּ, בְּנִשְׁוֹאִין קַמִּירִי בְּאוֹנְסִין – לָא קָא מִירִי.

Accordingly, **in the case of rape you can find** this scenario, but **in the case of marriage you cannot find it**. However, the mishna cannot be interpreted as referring to a case of this kind, as **it deals with marriage and it does not deal with rape**.^N

וְאַבְיִי מְתַרְגֵּם אִף בִּתּוֹ מְאֻנְסָתוֹ, בֵּינוּ דְּאִשְׁבוּחֵי מְשַׁבְּחָת לָהּ, אִי בְּעִיָּא מִן הָאוֹנְסִין – תִּהְיִי. [אִי בְּעִיָּא מִן הַנִּשְׁוֹאִין – תִּהְיִי], אֲבָל אֶשֶׁת אַחִיו שְׂלֵא הָיָה בְּעוֹלָמוֹ – לָא, מַאי טַעְמָא?

And Abaye explains differently, as he would include in this scenario **even his daughter from the woman he raped**. Why would he include this case? **Since you can find** this possibility, **if you wish it can be by rape, and if you wish it can be by marriage**,^N i.e., regardless of the details, this situation can occur. **However**, the last case, that of a **wife of a brother with whom he did not coexist**, he would not include. **What is the reason** for this?

בֵּינוּ דְּלִרְבִּי שִׁמְעוֹן הוּא דְּמְשַׁבְּחָת לָהּ לְרַבֵּן לָא מְשַׁבְּחָת לָהּ – בְּפִלּוּגָתָא לָא קָא מִירִי.

Since it is only according to the opinion of **Rabbi Shimon that you find this** potential scenario, as he permits a *yevama* to her *yavam* in a case where he was born after she first entered levirate marriage, it is therefore possible that one sister might be forbidden to one brother if he was born before his brother took her in levirate marriage. Likewise, another sister might be forbidden to another brother for the same reason, although the first woman would be permitted to him, as in his lifetime she was never the wife of a brother with whom he did not coexist. **According to the opinion of the Rabbis**, however, **you cannot find this** scenario, and the mishna **does not deal with disputes** but only with those cases that are accepted by all opinions.

וְרַב סַפְרָא מְתַרְגֵּם אִף אֶשֶׁת אַחִיו שְׂלֵא הָיָה בְּעוֹלָמוֹ, וּמְשַׁבְּחָת לָהּ בְּשִׁיתָא אַחִים, וְאֵלִיבָא דְּרַבִּי שִׁמְעוֹן

But Rav Safra explains that the possibility of one brother permitted only to one woman and another brother likewise permitted to only one woman exists **even in the case of a wife of a brother with whom he did not coexist**, and **you can find this** scenario in a case involving **six brothers**, and this is **in accordance with the opinion of Rabbi Shimon**.

NOTES

וְרַב יְהוּדָה מְתַרְגֵּם וכו' – And Rav Yehuda explains, etc.: That is to say, although he transmitted this *halakha* in the name of Rav or Rabbi Hiyya, he himself did not hold that one should interpret the entire mishna in this manner. Rabbi Hiyya, however, did maintain that it is possible to explain the entire mishna in this way.

בְּאוֹנְסִין לָא קָא מִירִי – **It does not deal with rape**: Some commentaries explain that this is referring to the mishna that deals with her sister who is her sister-in-law, whereas the mishna here

is discussing rape as well. They attempt to prove this by means of a close reading of Rashi's commentary (*Arukh LaNer*).

אִי בְּעִיָּא מִן הַנִּשְׁוֹאִין תִּהְיִי – **If you wish it can be by marriage, etc.** – The wording here is imprecise, as this scenario can occur only by means of rape, as explained above. Abaye means to say that as she is his daughter, there is no difference between a daughter through marriage or through other means (Rivan; see Meiri).

וְסִמְנִיךָ: מֵת נִוּלָד וְיָבֵם. מֵת נִוּלָד וְיָבֵם.

And your mnemonic to remember how this might occur is as follows: **Died, was born, entered into levirate marriage, died, was born, entered into levirate marriage.** In other words, there were several brothers, and one, Reuven, **died**, before another, Yissakhar, **was born, and** another brother, Shimon, **entered into levirate marriage** with the deceased's wife, and there was another brother, Levi, who **died** as well, and yet another brother, Zevulun, **was born, and** a sixth brother, Yehuda, **entered into levirate marriage** with the deceased's wife. In this case, if Shimon and Yehuda were to die childless, their wives would come before the surviving brothers, Yissakhar and Zevulun, for levirate marriage. To one of them, Yissakhar, the wife of the first brother, Reuven, is prohibited, and for the other brother, Zevulun, the wife of the second brother, Levi, is likewise prohibited.

This is an example of the type of case analyzed in the third chapter, in which the ruling is that the woman who is forbidden to this brother is permitted to that one, and she who is forbidden to this one is permitted to that one. In any case, Rabbi Ḥiyya incorporates the opinion of Rabbi Shimon into this principle, as he maintains that this scenario can apply to each case stated in the mishna. If so, the mishna evidently does deal with disputed legal rulings. How, then, can Rabbi Yehuda HaNasi claim that the cases of the mishna are unanimous?

אָלָא, לְרַבִּי – הֵנִי בְּלִילִי לִית לִיהּ. רַב אָדָא קְרַחֲינָא קָמִיהּ דְּרַב כְּהֵנָא אָמַר מִשְׁמִיָּה דְּרַבָּא: לְעוֹלָם אֵית לִיהּ לְרַבִּי הֵנִי בְּלִילִי, וְהָכִי קָאָמַר לִיהּ: אָמוּ אָנוּסִת אָבִיו – בְּחָדָא מִשְׁבַּחַת לָהּ, בְּתַרְתֵּי – לֹא קִמְשַׁבַּחַת לָהּ.

⸮ Rather, Rabbi Yehuda HaNasi does not hold in accordance with these general statements applied by Rabbi Ḥiyya, and therefore he maintains that no issue subject to dispute was taught in the mishna. Rav Adda Karḥina, who was sitting before Rav Kahana, said in the name of Rava: Actually, one can explain that Rabbi does hold in accordance with these general statements laid out by Rabbi Ḥiyya. And this is what he said to Levi: In the case of his mother who had been raped by his father, you find this case with only one of the women; however, you cannot find it with two. In other words, the terms mentioned by Rabbi Ḥiyya above: She who is forbidden to this one is permitted to that one, and: A sister who is a sister-in-law performs either *halitza* or levirate marriage, apply only partly to this complex case.

אִי יַעֲקֹב שְׁתֵּי אֲחִיּוֹת אָנֹס, אֲחֻתָּה שְׁהִיא יְבָמָתָה – מִשְׁבַּחַת לָהּ, הָאֲסוּרָה לָּהּ מוֹתֶרֶת לָּהּ – לֹא מִשְׁבַּחַת.

The Gemara elaborates: If Ya'akov, the father, raped two sisters who gave birth to two sons, and he had two other sons who married these raped sisters and died, in this scenario you find a case of her sister who is her sister-in-law, as there is a *yevama* who comes before one of the brothers who is a forbidden relative and also a sister and a sister-in-law of another *yevama*. However, you cannot find the principle of: She who is forbidden to this one is permitted to that one. Although it is possible that one's brother's wife who is one's mother might come before one for levirate marriage, just as he is forbidden to his mother, he is likewise forbidden to his mother's sister.

וְאִי שְׁתֵּי נִבְרִיּוֹת אָנֹס – הָאֲסוּרָה לָּהּ מוֹתֶרֶת לָּהּ מִשְׁבַּחַת לָהּ, אֲחֻתָּה שְׁהִיא יְבָמָתָה – לֹא מִשְׁבַּחַת לָהּ.

And if the father raped two unrelated women, who gave birth to two sons and then married two other sons of the same father who subsequently died, you find the case of: She who is forbidden to this one is permitted to that one, as each of the two raped women comes before one of the brothers for levirate marriage while she is forbidden to the other as his mother. However, you do not find a situation of: Her sister who is her sister-in-law. Therefore, the case of one's mother who was raped by one's father cannot be included in the list of the mishna, as the characteristics stated by Rabbi Ḥiyya do not apply to this case.

רב אשי אמר: לעולם לית ליה לרבי
הני כללי, ובפלוגתא קמיירי. ומאי
”במדומה אני שאין לו מוח בקדקדו”
דקאמר ליה –

הכי קאמר ליה: מאי טעמא לא דייקת
מתניתין? דמתניתין רבי יהודה היא,
[דאסר באנוסת אביו].

דקתני: שש עריות חמורות מאלו
מפני שהן נשואות לאחרים צרותיהן
מותרות: אמו, ואשת אביו, ואחות
אביו. מאי אמו? אילימא נשואת
אביו – היינו אשת אביו!

אלא לאו – אנוסת אביו, וקתני: מפני
שהן נשואות לאחרים, לאחרים – אין,
לאחין – לא. מאן שמעת ליה דאית
ליה האי סברא – רבי יהודה, דאסר
באנוסת אביו, משום הכי לא תני
ליה.

אמר ליה רבנא לרב אשי: לרבי יהודה
נמי משכחת לה. דאי עבר ונסיב!
”דאי” לא קתני.

Rav Ashi stated^N a different explanation: **Actually, Rabbi Yehuda HaNasi does not hold in accordance with these general statements of Rabbi Hiyya, and the mishna does deal with *halakhot* that are in dispute.**^N According to his opinion, **what is the meaning of the phrase: It seems to me that he has no brain in his head, that Rabbi Yehuda HaNasi said to Levi?**

According to Rav Ashi, **this is what Rabbi Yehuda HaNasi said to Levi: What is the reason that you were not precise in your interpretation of the mishna? As the mishna is in accordance with the opinion of Rabbi Yehuda, who prohibited the case of a woman who was raped by one’s father.** Accordingly, the rulings of the mishna cannot be attributed to any opinion that is not in line with that of Rabbi Yehuda. What is the proof that this mishna is indeed in accordance with the opinion of Rabbi Yehuda?

As it teaches in the next mishna: **Six women with whom relations are forbidden^N are more severe than these** enumerated in the previous mishna, **because they may marry only others** and can never be married to any of the brothers, and therefore **their rival wives are permitted.** These women include: **His mother, his father’s wife, and his father’s sister.** Rav Ashi infers: **What is the meaning of: His mother? If we say that this mother is married to his father, then this is the same case as: His father’s wife, which would mean that the mishna lists only five cases, not six.**

Rather, is it not referring to a woman raped by his father? And it is taught in the mishna that the *halakhot* of levirate marriage do not apply to them **because they may marry only others**, which indicates: **Others, yes; the brothers, no.** Since each of the brothers are sons of the same father, each one is prohibited from marrying the mother of one of the other brothers, as although she is not his mother, she is nevertheless a woman raped by his father, whom one may not marry. **Who did you hear who holds in accordance with this conclusion that a woman raped by one’s father is prohibited to all his sons? It is Rabbi Yehuda who prohibits a woman raped by his father.** Due to that reason the case of a woman raped by one’s father was not taught in the first mishna.

Ravina said to Rav Ashi: **Even according to the opinion of Rabbi Yehuda you can find this possibility that a woman raped by a father comes before the son for levirate marriage. What if one of the brothers transgressed and married^N a woman raped by his father?** Even Rabbi Yehuda concedes that this is a violation of a regular prohibition that does not incur *karet*, and therefore the marriage is valid. Consequently, if this brother died childless, this woman would come before her son for levirate marriage. The Gemara rejects this proof: **The *tanna* does not teach cases of what if, i.e., the mishna does not cite an example that could result only from a transgression.**

NOTES

Rav Ashi stated, etc. – רב אשי אמר וכו': This discussion is found in the Jerusalem Talmud as well, although it follows a different logical order and is attributed to other Sages. There, the first explanation is that of Rav Ashi, which is challenged on several accounts and subsequently combined with the answer stated here by Rava.

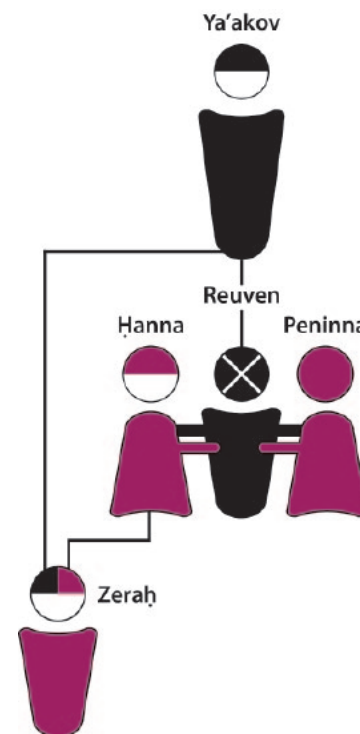
The mishna does deal with *halakhot* in dispute – בפלוגתא – קמיירי: The early commentaries ask: According to this opinion, Levi should have enumerated even more than sixteen cases (*Tosafot*). Several answers are suggested. The consensus opinion is that even Levi did not list all of the possibilities according to all of the various opinions, but only those rulings that the *tanna* of the mishna would accept (*Rashba*).

As it teaches, six women with whom relations are forbidden, etc. – דקתני שש עריות וכו': Rav Ashi’s inference is obvious; clearly none of the especially stringent six cases could be included in the first mishna. How, then, could Levi have thought that he

should add the case of one’s mother to the first mishna (*Tosafot*)? Some early commentaries suggest that Levi maintains that the case of a mother mentioned in that mishna could be referring to a mother who is married to his father, whereas a father’s wife means the wife of his father who is not his mother (*Rashba*; *Ritva*).

What if one transgressed and married – דאי עבר ונסיב – In the Jerusalem Talmud, *Tosafot*, and other early commentaries the point is raised that this can be explained according to the opinion of Rabbi Yehuda even without the hypothetical case cited in the Gemara, e.g., if the brother betrothed the woman raped by his father but did not actually marry her. In this case, no prohibition has been violated. Most early commentaries explain that as the purpose of the betrothal is marriage and ultimately sexual relations, the betrothal itself is prohibited, and therefore it is still considered a case involving a prohibition, which is not discussed by the mishna.

Ya'akov raped his daughter-in-law – יַעֲקֹב אָנֵס בִּלְתּוֹ: Ya'akov had a son Reuven who had two wives, Peninna and Hanna. If Ya'akov raped his daughter-in-law Hanna, who bore him a son, Zerah, this son would be Reuven's paternal brother. If Reuven dies childless, both his wives would come before his brother Zerah for levirate marriage, and yet Hanna, one of these women, is Zerah's mother. This is a case in which a mother comes before her son for levirate marriage.



אמר ליה רב אשי לרב כהנא: בלא דאי נמי משכחת לה: יעקב אנס בליתו והוליד ממנה בן, ומת [ראובן] בלא בנים, ונפלה לה קמי ברה, ומיגו דאיהי אסירה – צרתה נמי אסירה.

Rav Ashi said to Rav Kahana: Even without a hypothetical: What if, you can findⁿ an example of a woman raped by a father who is not forbidden to the son in marriage. How so? Ya'akov, the father, raped his daughter-in-law,^{nb} from whom he fathered a son. And the son, Reuven, the husband of the daughter-in-law, died childless. And as Ya'akov had two sons, the deceased Reuven and a son by Reuven's wife whom Ya'akov had raped, Reuven's wife would then come before her son for levirate marriage. And since she is forbidden, her rival wife is also forbidden. Consequently, a case of this kind is possible without the levirate marriage resulting from an illicit marriage.

אמר ליה: באחותה דהתירא – קמיירי, באחותה דאיסורא – לא קמיירי. ואף על פי כן בדקה לוי במתניתין.

Rav Kahana said to Rav Ashi: The mishna deals with cases of legitimate brothers, whereas it does not deal with cases of illegitimate brothers. The offspring of a man who rapes his daughter-in-law is a *mamzer*, and cases of this kind are not discussed in the mishna. The Gemara comments: Nevertheless, despite Rabbi Yehuda HaNasi's criticism, Levi established this additional possibility of a woman raped by one's father in his *mishnayot*.

דתני לוי: אמו, פעמים פוטרת צרתה ופעמים אינה פוטרת צרתה. כיצד? היתה אמו נשואת אביו, ונשאת לאחיו מאביו ומת – זו היא אמו שאין פוטרת צרתה.

As Levi taught in his *baraita*: With regard to the case of his mother, at times she exempts her rival wife, and at other times she does not exempt her rival wife. How so? If his mother was married to his father and after his father's death she illicitly married her son's paternal brother, who then died, this is a case of: His mother who does not exempt her rival wife. The reason is that her marriage to his brother does not take effect at all, as it was forbidden on pain of *karet*. Since this marriage never occurred, only the other wife, the so-called rival wife, is considered a wife of the brother, and she may enter into levirate marriage.

NOTES

בלא דאי נמי משכחת לה – Even without what if, you can find, etc. – An obvious question arises here: If the mishna does not discuss cases that result from a transgression, the situation of a father who raped his daughter-in-law involves an even more serious transgression. How, then, can this scenario be suggested as part of the answer? Rashi's brief comment: That this deceased individual did not transgress when he married her, alludes to an answer: It is only if the marriage that caused the obligation of levirate marriage involved a transgression that the mishna will omit this case. Others explain that the issue is not merely the existence of a prohibition, as a marriage that

involves a transgression in which both the husband and the wife are sinners is a rare occurrence. In contrast, in cases of rape, only one individual transgresses, and therefore the mishna does discuss examples of this kind (*Arukh LaNer*).

Raped his daughter-in-law – אָנֵס בִּלְתּוֹ: The Gemara specifies that he raped her, because if the act was performed willingly, the woman would be a *sota*, which would mean that the mitzva of levirate marriage does not apply at all. Alternatively, as marriage with one's daughter-in-law is entirely invalid, even a marriage in this situation can be called a rape (*Ritva*).

Perek I

Daf 10 Amud b

היתה אמו אנוסת אביו, ונשאת לאחיו מאביו ומת – זו היא אמו שפוטרת צרתה.

If, however, his mother was a woman who was raped by his father and subsequently married his paternal brother, and the brother died, this is a case of his mother who exempts her rival wife. According to the opinion of the Rabbis this marriage is permitted, and even according to the opinion of Rabbi Yehuda the marriage is valid despite the transgression. Consequently, both the mother and her rival wife come before the son for levirate marriage. Since the mother is a forbidden relation to him, her rival wife is exempt as well.

And although, etc. – **ואף על פי וכו'**: Levi included this sentence in his *mishnayot* as well, in explanation of why he changed his version from the one accepted by Rabbi Yehuda HaNasi (Rivan).

Because the case does not include the possibility of a rival wife of a rival wife – **לפי שאינה בצרת צרה**: Apparently, the reason this case does not include the possibility of a rival wife of a rival wife is that she is equally forbidden to all of the brothers. But if so, she should have been listed alongside the six severe transgressions involving women with whom relations are forbidden, who are exempt from levirate marriage and with regard to whom a situation of a rival wife of a rival wife cannot occur, as they are likewise forbidden to all of the brothers. One answer is that this woman is indeed included in that list, under the heading of: The wife of his paternal brother (Rashba).

And went back and betrothed her – **ותחור וקדשה**: The *baraita* specifies that he betrothed her, not that he engaged in sexual intercourse with her, because this is the more common occurrence, especially as one might assume that after *halitza* he may change his mind and betroth her (*Tosefot HaRosh*).

The liability of a *halutza* and the brothers to receive *karet* – **חייב חלוצה והאחין בכרת**: This dispute between Rabbi Yohanan and Reish Lakish appears in the Jerusalem Talmud as well. However, the Gemara there cites several versions that include intermediate opinions and different halakhic rulings for the *halutza* as opposed to her rival wife, as well as different rulings for the brother who performed *halitza* as opposed to the other brothers.

Some commentaries explain that the fundamental argument according to the opinion of Reish Lakish is apparently that the prohibition proscribing a brother's wife remains intact, although the Torah allowed the *yavam* obligated by the duty of levirate marriage to defer this prohibition (Rashba). After the *halitza*, a new prohibition of: Does not build up, goes into effect. In other words, once a brother has refused to build his deceased brother's house by means of *halitza* he is now prohibited from doing so. According to this interpretation, the prohibition with regard to a brother's wife remains in force for all the brothers except for the one who performed *halitza*. By contrast, Rabbi Yohanan holds that upon the death of the childless brother, the prohibition proscribing a brother's wife is entirely removed from the *yevama*. Although she must still undergo *halitza* to be released from the levirate bond, the penalty of *karet* no longer applies to this situation at all.

It is possible to connect this idea to the opinion cited in the Jerusalem Talmud that the dispute stems from differing concepts of *halitza*. While Rabbi Yohanan maintains that *halitza* merely releases those involved from their obligation, Reish Lakish holds it to be a form of acquisition, in that the performance of *halitza* enables a new prohibition to take effect (see *Mei Neftoah*, *Kovetz He'arot*, and *Einayim LaMishpat*). According to this explanation, Rabbi Yohanan's statement here that the brother who performs *halitza* acts as an agent of the others brothers does not represent his main reasoning. Rather, this statement serves only to clarify why *halitza* by one brother exempts all of the others (see *Kovetz He'arot*).

ואף על פי ששנו חכמים במשנתנו "חמש עשרה", יש לנו להוסיף שש עשרה, כגון זו. אמר ליה ריש לקיש לרבי יוחנן: ללוי דאמר "דאי" נמי קתני, לתני: החולץ ליבמתו וחור וקדשה וימת בלא בנים, דמגו דאידיהי אסורה – צרתה נמי אסירה!

אמר ליה: לפי שאינה בצרת צרה.

וליקא ליה: חייבי לאוין היא, וחייבי לאוין בני חלוצה ויבום ננהו?

לדבריו קאמר ליה: לדידי חייבי לאוין הם, וחייבי לאוין בני חלוצה ויבום ננהו, אלא לדיך חייבי פירות ננהו, לפי שאינן בצרת צרה.

איתמר, החולץ ליבמתו וחור וקדשה. אמר ריש לקיש: הוא אין חייב על החלוצה ברת.

והאחין חייבין על החלוצה ברת. על הצרה – בין הוא ובין האחים חייבין על הצרה ברת.

ורבי יוחנן אמר: בין הוא ובין האחין אינן חייבין לא על החלוצה ברת ולא על הצרה ברת. מאי טעמא דריש לקיש? אמר קרא "אשר לא יבנה" בין שלא בנה – שוב לא יבנה.

And although^N the Sages taught in the mishna: Fifteen women, we must add a sixteenth case, for example, the situation described above. Reish Lakish said to Rabbi Yohanan: According to the opinion of Levi, who said that the mishna teaches even cases of: What if, which involve a transgression, let the mishna also teach the case of one who performs *halitza* with his *yevama* and went back and betrothed her, and then died childless. His betrothal is a transgression, as after *halitza* the *yevama* is permanently forbidden to him. As, in this case, since she is forbidden to all the brothers, due to the *halitza* performed by the deceased *yavam*, her rival wife is also forbidden. This is an additional case of a woman who exempts her rival wife.

Rabbi Yohanan said to Reish Lakish: This example is not cited because the case does not include the possibility of a rival wife of a rival wife.^N All of the other cases listed in the mishna involve both rival wives and rival wives of rival wives. Here, however, this is impossible, as the same prohibition applies equally to all of the brothers, and therefore none of them may marry her.

The Gemara asks: And let Rabbi Yohanan say a different answer to Reish Lakish, as he could simply have pointed out that marriage to a woman who had performed *halitza* is not a violation that incurs *karet*, neither for the one who performed the *halitza* nor for his brothers if they marry her after he dies. Rather, it is an act for which they are liable for violating a regular prohibition, and those liable for violating a prohibition are obligated in *halitza* and levirate marriage. In these cases the mitzva of levirate marriage still applies, and although the woman should be released by *halitza*, she is not entirely exempt from levirate marriage, and therefore her rival wife is not exempt either.

The Gemara responds that Rabbi Yohanan is speaking in accordance with the statement of Reish Lakish, as follows: According to my opinion your question is groundless, as they are liable for violating a prohibition, and those liable for violating a prohibition are obligated in *halitza* and levirate marriage. However, according to your opinion, those brothers who marry a *yevama* who had performed *halitza* are liable to receive *karet*, and therefore you must resolve the difficulty by saying that the mishna did not teach this case because it does not include the possibility of a rival wife of a rival wife.

The Gemara discusses the dispute alluded to in the previous paragraph. It was stated: With regard to one who performs *halitza* with his *yevama* and went back and betrothed her,^N Reish Lakish said: The brother who earlier performed *halitza* is not liable to receive *karet* for returning to the *yevama* who performed *halitza* [*halutza*]. She is no longer forbidden as a brother's wife, although she is forbidden by a regular prohibition.

And the brothers who did not actually perform the *halitza* are liable to receive *karet* for having relations with a *halutza*.^N In their case, the woman retains her status as a forbidden brother's wife even after the *halitza*. With regard to the rival wife of the *halutza*, although she too is released from the levirate bond, since the act of *halitza* itself was not performed with her, both the brother who performed the *halitza* and the other brothers are liable to receive *karet* for having relations with the rival wife, as she retains her forbidden status as a brother's wife.

And Rabbi Yohanan said: Neither he nor the other brothers are liable to receive *karet*, neither for the *halutza* nor for having relations with the rival wife. The Gemara explains: What is the rationale of Reish Lakish? The verse states with regard to one who performs *halitza* with his *yevama*: "Who does not build up his brother's house" (Deuteronomy 25:9), which teaches that since he did not build his brother's house by entering into levirate marriage, opting instead for *halitza*, he shall never build it again. This statement is understood not only as a negative description of events, but also as a prohibition against marrying this woman at any point in the future.

The prohibition proscribing a *ḥalitza* to the man who performed *ḥalitza* and to his brothers – **אִסּוּר – חִלוּצָה לְחֻלִּץ וְאָחָיו**: If a *yavam* performs *ḥalitza* with his *yevama*, she and her rival wives are forbidden to him and the other brothers. However, this prohibition does not incur *karet* but is a regular prohibition. This ruling is in accordance with the opinion of Rabbi Yohanan, as the *halakha* follows his opinion against that of Reish Lakish (*Tur*). According to the Rambam, the prohibition is a decree of the Sages, and that is how he interprets the opinion of Rabbi Yohanan (see *Maggid Mishne*). However, others (*Tosafot*; Ramban) maintain that according to Rabbi Yohanan a marriage between one of the brothers and one of these women constitutes the violation of a prohibition (Rambam *Sefer Nashim*, *Hilkhot Yibbum Vaḥalitza* 1:12; *Shulḥan Arukh*, *Even HaEzer* 162:2).

אִיְהוּ הוּא דְקָאִי בִּלְאִי בְנָה, אֲבָל אָחָיו –
בְּדִקְיָיִמִי קִיִּימִי

However, it is the man who performed the act of *ḥalitza* who stands liable to receive punishment for violating this prohibition of: **Does not build up**, i.e., the prohibition against marrying his *ḥalitza*. For him the prohibition involving *karet* has been replaced by the regular prohibition of: Who does not build up his brother's house. **However**, with regard to his brothers, where they stood before, they stand now. In other words, just as before the mitzva of levirate marriage applied to them this woman was forbidden to them as a brother's wife, once the obligation of levirate marriage has been removed they remain bound by the same prohibition. Consequently, she is forbidden to the brothers on pain of *karet*.

וְעִלָּה דִידָהּ הוּא דְקָאִי בִּלְאִי בְנָה, הָא
צָרָה – בְּדִקְיָיִמִי קִיִּימִי

And furthermore, only with regard to her, the *ḥalitza*, does he stand liable for: **Does not build up**, but as for the rival wife, who did not perform *ḥalitza*, where all the brothers stood before, they stand now. Just as before her rival wife performed *ḥalitza* she was forbidden on pain of *karet*, the same applies after the *ḥalitza*, both for the man who performed *ḥalitza* and his brothers.

וְרַבִּי יוֹחָנָן: מִי אֵיכָא מִיָּדִי דְמַעֲקָרָא, אִי
בְּעִי הָאִי חֲלִיץ וְאִי בְּעִי הָאִי חֲלִיץ, וְאִי בְּעִי
לְהָאִי חֲלִיץ וְאִי בְּעִי לְהָאִי חֲלִיץ, וְהִשְׁתָּא
קָאִי עִלָּה בְכֹרֶת?

And Rabbi Yohanan claims: **Is there anything** of this kind in *halakha*? After all, at the outset, before the *ḥalitza*, if this brother wanted he could perform *ḥalitza*, and if that brother wanted he could perform *ḥalitza*, and if he wanted he could perform *ḥalitza* with this woman and if he wanted he could perform *ḥalitza* with that woman. All the deceased brother's wives were included in the levirate obligation of marriage or *ḥalitza*, and therefore the prohibition proscribing a brother's wife was negated for all of them at that time. **And now**, after the *ḥalitza*, they stand to incur *karet* for having relations with her? How can the prohibition proscribing a brother's wife return after it was nullified by the death of the childless brother?

אֵלָּא: אִיְהוּ שְׁלִיחוּתָא דְאַחִים קְעָבִיד,
אִיְהִי שְׁלִיחוּתָא דְצָרָה קְעָבִיד.

Rather, he who performs *ḥalitza* performs the agency of the other brothers, and therefore he also releases her from the levirate bond of his brothers. Similarly, she who performs *ḥalitza* performs the agency of the rival wife, as the *ḥalitza* of one wife serves to release the other one as well. Consequently, it is as though all of the brothers released all of the wives, and there is no longer any prohibition that incurs *karet*.⁴

אִיְתִיבִיהּ רַבִּי יוֹחָנָן לְרִישׁ לְקִישׁ: הַחֻלִּץ
לִבְמִתּוֹ וְחֹר וְקִדְשָׁהּ, וּמֵת – צָרִיכָה חֲלִיצָה
מִן הָאָחִין. בְּשִׁלְמָא לְרִידֵי דְאַמִּינָא חֲתִיבִי
לְאוּיִן מִנְהוּ, הֵינֵּנוּ דְצָרִיכָה חֲלִיצָה מִן
הָאָחִין.

§ The Gemara cites the ensuing discussion between the two disputing Sages. Rabbi Yohanan raised an objection to the opinion of Reish Lakish from a *baraita*: In the case of one who performs *ḥalitza* with his *yevama* and went back and betrothed her, and then died, she requires *ḥalitza* from one of the brothers. Granted, this makes sense according to my opinion, as I say that brothers who marry a *ḥalitza* are liable only for violating a prohibition, and that is why she requires *ḥalitza* from the other brothers. The principle is that a woman with whom relations are forbidden by a regular prohibition that does not incur *karet* may not enter into levirate marriage, but she must undergo *ḥalitza*.

אֵלָּא לְדִידָךְ, אֲמַאי צָרִיכָה חֲלִיצָה?

However, according to your opinion that the penalty of *karet* does apply here, why does she require *ḥalitza* at all? The penalty of *karet* indicates that the betrothal did not take effect at all, and therefore she is not bound to the brothers with regard to the requirement of *ḥalitza*.

וְלִטְעָמִיךְ, אִימָא סִיפָא: עָמַד אַחַד מִן
הָאָחִין וְקִדְשָׁהּ – אִין לָהּ עָלֶיּוּ בְלוּם. וְאִי
חֲתִיבִי לְאוּיִן מִנְהוּ – אֲמַאי אִין לָהּ עָלֶיּוּ
בְלוּם?

Reish Lakish answered: **And according to your reasoning**, how would you state and explain the latter clause of the *baraita*: If one of the brothers arose and betrothed her, she has no claims on him, i.e., the marriage does not take effect at all and she does not require a bill of divorce from him? But if the brothers are liable only for violating a prohibition, why does she have no claim on him? After all, in cases of regular prohibitions a betrothal is valid. According to my opinion that these brothers are liable to receive *karet* the matter is clear, as the betrothal is invalid. This indicates that there is a contradiction between the first and latter clauses of the *baraita*. How, then, can Rabbi Yohanan cite a proof from an apparently flawed *baraita*?

NOTES

In the latter clause we have come to Rabbi Akiva – סִיפָא – אֵתָאן לְרַבִּי עֲקִיבָא: If this is indeed Rabbi Akiva's opinion, then even if the brother who performed *halitza* subsequently betrothed the *halitza*, she still would not require a bill of divorce. Consequently, Rabbi Akiva must interpret the phrase: One of the brothers, to refer to all the brothers of the deceased, including the one who performed *halitza* (*Tosafot Yeshanim*; *Tosefot HaRosh*).

But let the mishna teach: According to the statement of Rabbi Akiva – וְלִיתֵנִי לְדַבְרֵי רַבִּי עֲקִיבָא: The early commentaries ask: There are many statements of this kind in the Gemara, where the mishna is explained as reflecting the opinions of two different *tanna'im*, and yet elsewhere the Gemara does not insist that the mishna should have mentioned the name of the specific *tanna* who authored the second opinion (*Tosafot*). The answer given is that the difficulty is not the mere omission of the phrase: According to the statement of Rabbi Akiva, but that if indeed this ruling is Rabbi Akiva's, he should have explicitly disagreed in the first case as well by stating that she does not require *halitza* from the brothers (Ramban; Ritva).

אָמַר רַב שֵׁשֶׁת: סִיפָא אֵתָאן לְרַבִּי עֲקִיבָא, דְּאָמַר: אֵין קִידוּשִׁין תּוֹפְסִין בְּחַיֵּיבֵי לְאוּיִן. וְלִיתֵנִי: לְדַבְרֵי רַבִּי עֲקִיבָא אֵין לוֹ עָלֶיךָ כְּלוּם!

Rav Sheshet said in resolution of this contradiction: In the latter clause of the *baraita* we have come to a different opinion, that of Rabbi Akiva,^N who said: Betrothal with those who are forbidden as they are liable for violating a prohibition is not valid. In Rabbi Akiva's opinion there is no difference between regular prohibitions and prohibitions that incur *karet* in this regard, as in both cases the betrothals are invalid. The Gemara raises a difficulty: But if the first clause of the *baraita* is in accordance with the opinion of the Rabbis, while the latter clause is in accordance with a different opinion, let the mishna teach explicitly: According to the statement of Rabbi Akiva^N she has no claims on him, as this represents a different opinion.

Perek I

Daf 11 Amud a

NOTES

The dispute concerning a *yevama* who performed *halitza* – הַמְחַלֶּקֶת בִּיבְמָה שְׁנַחֲלָצָה: In the Jerusalem Talmud several other versions of the same basic dispute between Rabbi Yohanan and Reish Lakish are cited. These versions differ in both the opinions held by the two Sages and the details of their argument.

In accordance with Rabbi Shimon... she requires *halitza* from the brothers – צְרִיכָה חֲלִיצָה מִן הָאֲחִין: The commentaries ask: If the brothers were born only after the betrothal of the widow of their already-deceased brother to their other brother, this woman should be permitted to them in levirate marriage; why, then, must they perform *halitza* (*Tosafot*)? One suggestion is that since the second brother had performed *halitza* with her, she retains a measure of the levirate bond from the first brother. Consequently, even Rabbi Shimon concedes that the newborn brothers are not permitted to marry her (*Keren Or*).

קָשְׁיָא. רַב אֲשִׁי סָבַר לָהּ בְּרִישׁ לְקִישׁ, וּמִתְרַץ לָהּ בְּרַבִּי שְׁמַעוֹן. רַבִּינָא סָבַר לָהּ בְּרַבִּי יוֹחָנָן, וּמִתְרַץ בְּרַבָּנָן.

The Gemara comments: Rav Sheshet's explanation of the contradiction between the first clause and latter clause of the *baraita* is difficult. Consequently, the Gemara cites different resolutions of this contradiction. Rav Ashi holds in accordance with the opinion of Reish Lakish and resolves the *baraita* in accordance with the opinion of Rabbi Shimon. Ravina, in contrast, holds in accordance with the opinion of Rabbi Yohanan and resolves the *baraita* in accordance with the opinion of the Rabbis.^N

רַב אֲשִׁי סָבַר לָהּ בְּרִישׁ לְקִישׁ וּמִתְרַץ לָהּ בְּרַבִּי שְׁמַעוֹן: הַחֹזֵל לִיבְמָתוֹ וְחֹזֵר וְקִדְּשָׁהּ צְרִיכָה חֲלִיצָה מִן הָאֲחִין. מֵאֵין אֲחִין –

The Gemara elaborates: Rav Ashi holds in accordance with the opinion of Reish Lakish and resolves the *baraita* in accordance with the opinion of Rabbi Shimon. This is his interpretation: In the case of one who performs *halitza* with his *yevama* and went back and betrothed her, and then died, she requires *halitza* from one of the brothers.^N Who are the brothers referred to here?

אֲחִין הַיְלֻדִים, כְּמֵאֵין – בְּרַבִּי שְׁמַעוֹן.

Rav Ashi explains that they are the newborn brothers, i.e., those who were born only after the brother betrothed her. Consequently, although this woman was the wife of the first deceased brother before they were born, after their birth she was already the wife of a living brother. Therefore, the prohibition of a wife of a brother with whom he did not coexist never applied, and she requires *halitza*. In accordance with whose opinion is this ruling? It is in accordance with the opinion of Rabbi Shimon, who maintains that in a case of this kind the brothers are not considered to be coexisting.

עַמֵּד אַחַד מִן הַנּוֹלָדִים וְקִדְּשָׁהּ – אֵין לָהּ עָלֶיךָ כְּלוּם, כְּמֵאֵין – בְּרִישׁ לְקִישׁ.

Meanwhile, the latter clause speaks of a case where one of the brothers who was born in the lifetime of the first brother arose and betrothed her, after another brother had performed *halitza*. In this case, she has no claims of a bill of divorce on him. In accordance with whose opinion is this ruling? It is in accordance with the opinion of Reish Lakish, who maintains that the penalty of *karet* applies in this case, and therefore the betrothal is entirely invalid.

מתוך לה אליבא – Resolves it in accordance with the Rabbis – According to Rashi, this means only in accordance with the opinion of the Rabbis, and not in accordance with the opinion of Rabbi Shimon at all. Other commentaries explain that it means: Even according to the opinion of the Rabbis. The reason is that even if the brothers were born after the living brother with whom they coexisted had performed *halitza* with the *yevama*, she would still be prohibited to them, as *halitza* releases one from the obligation of levirate marriage but it is not considered an act of acquisition on the part of the brother with whom they coexisted, as explained in the Jerusalem Talmud (Ramban; Rashba).

ילידים וגלדים – Newborn [yeludim] and born [noladim] – According to the version of the text accepted by Rashi, the *yeludim* are those who were born at some time after the brother had performed *halitza* or betrothal, whereas the *noladim* were born while the first deceased brother was still alive. The version of the Gemara and the explanation found in *Tosafot*, however, indicate the opposite. Support can be found for both versions from a linguistic perspective; however, as pointed out by *Tosafot*, the regular use of language indicates that their version is correct, as *yelud* generally refers to one already born, as in the verse: “Born [yelud] of woman” (Job 14:1). The word *nolad* typically denotes something born at a later point in time, as in the expression: He who anticipates the future [et hanolad], translated literally as: What will be born, and in several other places, e.g., with regard to objects that came into being [nolad], a concept in the *halakhot* of *muktze* in tractate *Beitza*. In all these cases the term refers to items or people that will be born in the future or were only recently born.

The prohibition of the rival wife of a yevama to the brothers – איסור צרת יבמה לאחין – Some commentaries hold that instead of: A positive mitzva, the correct version of the text is: Transgresses a prohibition, i.e., that of the verse: “Does not build up.” Since he released his *yevama* by *halitza* and did not build his brother’s house, he may never do so in the future (Rabbeinu Hananel; *Tosafot*). Conversely, others read: Violation of a positive mitzva, as they maintain that the verse: “Build up his brother’s house” (Deuteronomy 25:9) is a positive mitzva to build only one house (*Ba’al Halakhot Gedolot*; Rashi; Rif). Although one could object that this prohibition apparently applies only to the brother who fulfills the duty of levirate marriage and not to the others, Rashi points out that this brother is considered the agent of the other brothers, meaning that it is as though they all performed the act (Ritva).

Some raise a difficulty against Rashi’s opinion from the verse itself. Since the Torah states: “Does not build up” in the negative, how could this be viewed as a positive mitzva (Rabbeinu Tam)? One answer is that the verse must be read in its entirety: “So shall be done to the man who does not build up his brother’s house.” This shows that the negative formulation of the mitzva does not refer to the action in question, but to the failure to do so. Consequently, the mitzva is actually a positive one (Ritva). Others avoid any potential difficulty with this verse by finding an alternative source for the positive mitzva in the phrase (Deuteronomy 25:5): “Her brother-in-law will have intercourse with her” (Rambam). The Rambam adds that the phrase: “Will have intercourse with her” indicates: Not with another, i.e., the positive mitzva applies to one woman alone (see *Yam shel Shlomo*).

רבינא סבר לה כרבי יוחנן ומתוך לה אליבא דרבנן: החולץ ליבמתו וחזר וקדשה צריכה חליצה מן האחין, מאן אחין – אחין הנולדים, כמאן – כרבי יוחנן.

The Gemara continues its explanation of the opinions. **Ravina holds in accordance with the opinion of Rabbi Yohanan and resolves the *baraita* in accordance with the opinion of the Rabbis.^N** How so? In the case of one who performs *halitza* with his *yevama* and went back and betrothed her and then died, she requires *halitza* from one of the brothers. Who are these brothers? This is referring to the brothers already born in the lifetime of the first brother. **In accordance with whose opinion is this interpretation? It is in accordance with the opinion of Rabbi Yohanan**, who held that this case constitutes a regular prohibition. Consequently, the *yevama* is not exempt from the obligation of *halitza*.

עמד אחד מן הילודים וקדשה – אין לה עליו כלום, כמאן – כרבנן.

If one of the newborn^N brothers, who were born after the death of the first brother, **arose and betrothed her, she has no claim on him.** Since he is considered a brother who did not coexist with his deceased brother, the *yevama* is prohibited to him as a brother’s wife, and as this prohibition entails *karet*, the betrothal is invalid. This is the *halakha* even if he was born after the second deceased brother betrothed her. **In accordance with whose opinion is this ruling? It is in accordance with the opinion of the Rabbis**, who maintain that the prohibition of a wife of a brother with whom one did not coexist applies even to a brother’s widow who entered into levirate marriage before the younger brother was born.

איתמר, הבא על יבמה, ובא אחד מן האחין על צרתה. פליגי בה רב אחא ורבינא, חד אמר: בכרת; וחד אמר: בעשה.

It was stated that there is a similar dispute between *amora'im* with regard to one who had relations with his *yevama* and thereby performed the mitzva of levirate marriage as required, and one of the other brothers had relations with her rival wife.^{NH} **Rav Aha and Ravina disagree with regard to this matter. One said:** The second brother is liable to receive *karet*. **And the other one said that he is in violation of only a positive mitzva.** The verse: “Who does not build up his brother’s house” (Deuteronomy 25:9), is a positive mitzva, as it teaches that one house may be built up, but not two houses, i.e., no more than one wife of a deceased brother may be married by one of his brothers. Any mitzva formulated as a positive injunction has the status of a positive mitzva, even if it is violated by the performance of an action, in the manner of a prohibition.

מאן דאמר בכרת – כריש לקיש, ומאן דאמר בעשה – כרבי יוחנן.

The Gemara explains: **The one who said that he is liable to receive *karet* holds in accordance with the opinion of Reish Lakish**, who maintains that after the mitzva is performed with one *yevama* who required levirate marriage, the prohibition of a brother’s wife is once again fully applicable to her rival wife. **And the one who said that he is in violation of only a positive mitzva holds in accordance with the opinion of Rabbi Yohanan.**

HALAKHA

The rival wife of a *yevama* to the brothers after levirate marriage – **צרת יבמה לאחין לאחר יבום** – After one of the brothers enters into levirate marriage with the *yevama*, neither he nor the other brothers may have relations with the rival wives. If he or one of the other brothers has relations with a rival wife, they have violated a positive mitzva. The *halakha* is in accordance

with the opinion of Ravina, following the principle that in his disputes with Rav Aha the *halakha* is in accordance with the more lenient position. This is certainly the case here, as Ravina accepts the opinion of Rabbi Yohanan (*Beit Yosef; Shulhan Arukh, Even HaEzer* 162:1).

סוֹטָה וְצֵרֶת סוֹטָה – A sota and the rival wife of a sota – In the case of a woman who willingly commits adultery and there are witnesses who testify to that effect, if her husband dies before he can divorce her, she is exempt from *halitza* and levirate marriage. Her rival wife is likewise entirely exempt. This is the ruling of the *Shulḥan Arukh*, in accordance with the opinion of the Rambam (*Sefer Nashim, Hilkhot Yibbum Vaḥalitza* 6:19), and the discussion in the Gemara here indicates that there is no dispute in this regard. Some commentaries claim that even if it is clear that the woman was adulterous, she still requires *halitza* (Ra'avad on *Sota* 5b). It is proper to act in accordance with this more stringent opinion (*Shulḥan Arukh, Even HaEzer* 173:11, and in the comment of Rema).

The prohibition of an uncertain sota to her husband – איסור ספק סוֹטָה לבעלה – In the case of a husband who in the presence of witnesses warns his wife against secluding herself with a specific man, if she disobeys her husband and is observed to be alone with that man long enough to engage in relations, she is forbidden to her husband. Some commentaries maintain that the husband must explicitly declare himself jealous (Rema, citing Rabbeinu Ya'akov Weil; *Shulḥan Arukh, Even HaEzer* 115:8).

אָמַר רַב יְהוּדָה אָמַר רַב: צֵרֶת סוֹטָה – אֶסְדָּרָה,

טוּמְאָה כְּתִיב בָּהּ, כְּעֵרִיּוֹת.

מְתִיב רַב חֲסִדָּא: רַבִּי שְׁמַעוֹן אוֹמֵר: בִּיאָתָהּ אוֹ חֲלִיצָתָהּ מֵאֶחָיו שֶׁל רֹאשׁוֹן פּוֹטֵרֶת צֵרֶתָּהּ!

[אָמַר לָךְ רַב]: אָמִינָא לָךְ אֲנָא סוֹטָה דְּאוֹרֵייתָא. וְאַתָּה אָמַרְתָּ לִּי סוֹטָה דְּרַבְנָן?!

וְדִקְדָּרִי לָהּ מֵאִי קִאָּרִי לָהּ! קְסָבֵר: כָּל דְּתִקְוֹן רַבָּנָן – כְּעֵין דְּאוֹרֵייתָא תִּקְוֹן.

The Gemara further analyzes the list of women exempt from levirate marriage. **Rav Yehuda said that Rav said: The rival wife of a sota is forbidden.**^{HN} In this context, *sota* refers to an unfaithful wife.^H If the husband died, the unfaithful wife and her rival wife are exempt from both *halitza* and levirate marriage.

What is the reason for this? The term **defilement is written in that passage dealing with an unfaithful wife: “She being defiled secretly”** (Numbers 5:13), just as defilement is written with regard to **those with whom relations are forbidden**^N in the verse: “Defile not yourselves in any of these things, for in all these the nations are defiled, which I cast out from before you” (Leviticus 18:24). This teaches that the *halakha* of an unfaithful wife is like that of a woman with whom relations are forbidden; both she and her rival wife are exempt from levirate marriage and *halitza*.

Rav Hisda raised an objection to this from the case of a woman who heard that her husband had died and remarried, only afterward to discover that he had still been alive at that time before dying later. What is the *halakha* in this case? **Rabbi Shimon says: Her relations with or *halitza* from the brother of the first husband exempts her rival wife.** This shows that the obligation of levirate marriage applies to this woman. Although she lived as a married woman with someone else during her husband's lifetime, Rabbi Shimon nevertheless maintains that her sexual intercourse or *halitza* fulfills the mitzva of levirate marriage and exempts her rival wife. This suggests that the rival wife of an unfaithful wife requires levirate marriage.

The Gemara answers that **Rav could have said to you** in response: **I spoke to you about the *halakha* of a sota by Torah law, i.e., a wife who was intentionally unfaithful, and you speak to me of a sota by rabbinic law?** The case you mentioned is an unavoidable accident, as the wife married another man only because she received testimony that her husband was deceased. When the Sages instituted that she was forbidden to both her first and second husbands, this was a penalty designed to ensure that women would examine testimony of this kind very thoroughly. However, this is not a case of a *sota* by Torah law, as she was not intentionally unfaithful, and therefore the mitzva of levirate marriage certainly applies to her.

Since this response is overwhelmingly obvious, the Gemara asks: **And he who asked it, why did he ask it?** There are apparently no grounds for this comparison at all. The Gemara explains: **He held that all ordinances that the Sages instituted, they instituted parallel to Torah law.** Consequently, if a *sota* by Torah law is exempt from levirate marriage and exempts her rival wife as though she were a forbidden relative, the same should apply to a *sota* by rabbinic law.

NOTES

The rival wife of a sota is forbidden – צֵרֶת סוֹטָה אֶסְדָּרָה – This is also the *halakha* with regard to a *sota* herself, which is assumed to be understood (Ramban). This statement is in accordance with the opinion that the rival wife of a *sota* is not only prohibited in levirate marriage but is also exempt from *halitza*, which is the opinion of most commentaries and authorities. However, some authorities apparently maintain that even according to the opinion of Rav, the rival wife of a *sota* does perform *halitza* despite the fact that she may not enter into levirate marriage (Ra'avad). According to this opinion, the Gemara is precise in its wording. Some commentaries demonstrate at length how several difficulties can be resolved by this opinion (*Arukh LaNer*; see Vilna Gaon on *Shulḥan Arukh, Even HaEzer* 173:11).

Defilement is written in that passage, just as it is with regard to those with whom relations are forbidden – טוּמְאָה כְּתִיב בָּהּ, כְּעֵרִיּוֹת – The commentaries ask: Since the defilement in that

context refers only to the woman's husband and the man with whom she was unfaithful, not to the *yavam*, why should she be forbidden to him (*Arukh LaNer*)? Some commentaries explain that this can be derived by an *a fortiori* inference: If she is forbidden to someone to whom she is generally permitted, i.e., her husband, she is certainly forbidden to one to whom she is usually forbidden, her brother-in-law (*Tevuot HaShor; Kovetz He'arot*). Others write, in accordance with the version cited in the Jerusalem Talmud, that the term defilement is actually written three times in connection to a *sota*: Once for the husband, once for the adulterer, and once for the *yavam* (*Kehillot Ya'akov*). Yet others maintain that the term defilement in the chapter of a *sota* refers specifically to the *yavam*, as it is only with regard to him that it is necessary for the verse to teach that she is a forbidden relative. She is not considered a forbidden relative for her husband, as their marriage is not annulled by her unfaithfulness (Ramban).

Prohibited from partaking of *teruma* – אסורה לאכול – בתרומה: In the case of the wife of a priest concerning whom witnesses testified both that her husband warned her against secluding herself with a certain man, and that she was alone with the man in question, she is prohibited from partaking of *teruma* until she undergoes the *sota* procedure (Rambam *Sefer Zera'im, Hilkhot Teruma* 8:15).

An uncertain *sota* and levirate marriage – ספק סוטה בייבום: In the case of a wife who secluded herself with a man despite having been warned by her husband not to do so, if her husband dies before she performs the *sota* procedure, she neither undergoes *halitza* nor is fit for levirate marriage (Rambam *Sefer Nashim, Hilkhot Yibbum VaHalitza* 6:19).

מתיב רב אשי: נכנסה עמו לסתר ושהתה עמו כדי טומאה – אסורה לביתה, ואסורה לאכול בתרומה. ואם מת – חולצת

Rav Ashi raised an objection to Rav's opinion from a different source: The *halakha* is that a wife who was warned by her husband not to be secluded with a specific man and yet entered alone with him in private, and remained with him long enough to be defiled, i.e., sufficient time to have sexual relations, she is forbidden to her house, i.e., her husband, from that moment until she undergoes the *sota* ritual. And likewise, if she was the wife of a priest she is prohibited from partaking of *teruma*,^h as she was possibly disqualified by unfaithfulness. And if he dies,^h she performs *halitza*

Perek I

Daf 11 Amud b

ולא מתייבמת! [אמר לך רב]: אמינא לך אנה סוטה ודאי. ואמרת לי את סוטה ספק! ומאי שנא סוטה ודאי (מאי טעמא), משום דבתיב בה טומאה –

and may not enter into levirate marriage. This indicates that the levirate bond does apply to a *sota*, which contradicts Rav's statement. The Gemara retorts that Rav could have said to you: I spoke to you about a *sota* whose infidelity was definite, and you speak to me of an uncertain *sota*. There is no proof that this wife who secluded herself with another man was actually unfaithful, and due to the uncertainty she must still undergo *halitza*. The Gemara raises a difficulty: And what is different about a definite *sota*? Is it different because the term defilement is written with regard to her?

סוטה ספק נמי טומאה כתיבא בה! דתנא: רבי יוסי בן ביפר אומר משום רבי אלעזר: המחזיר גרושתו מן הנישואין – אסורה, מן האירוסין – מותרת, משום שנאמר "אחרי אשר הטמאה",

But with regard to an uncertain *sota*, who was alone with a specific man enough time to engage in relations, defilement is written as well.ⁿ As it is taught in a *baraita*: Rabbi Yosei ben Keifar^p said in the name of Rabbi Elazar: With regard to one who remarries his divorcée after she had been married to another man, an act prohibited by Torah law, if he remarried her following actual marriage to another, she is forbidden^h to her first husband. However, if he remarried her following mere betrothal to another man, she is permitted, because it is stated: "Her former husband, who sent her away, may not take her again to be his wife, after she was defiled" (Deuteronomy 24:4), and a woman who was merely betrothed was never defiled, as no sexual relations had taken place.

וחכמים אומרים: אחת זו ואחת זו – אסורה. אלא מה אני מקיים "אחרי הטמאה" – לרבות סוטה שנסתרה.

And the Rabbis say: Both this one and that one, i.e., whether she had been fully married or merely betrothed to another, she is forbidden to her first husband. Rather, how do I establish the phrase: "After she was defiled"? This verse does not refer at all to the case of a woman who married another man lawfully, as she is not called "defiled." Rather, it comes to include a *sota* who secluded herself^{nh} with another man, as she is forbidden to her husband due to the concern that she might have committed adultery. This *baraita* shows that a *sota* is termed "defiled," despite the fact that hers is an uncertain case.

HALAKHA

The prohibition of one's divorcée who married another – איסור גרושה שנישאה לאחר: If one divorced his wife and she was subsequently betrothed to another, even if no sexual relations were involved, she is forbidden to her first husband. This ruling is in accordance with the opinion of the Rabbis, who disagree with Rabbi Yosei ben Keifar (Rambam *Sefer Nashim, Hilkhot Geirushin* 11:12 and *Maggid Mishne* there; *Shulhan Arukh, Even HaEzer* 10:1).

The prohibition of a *sota* – איסור סוטה: A married woman who willingly had relations with another man is forbidden to her husband, and he receives lashes if he engages in sexual intercourse with her. In circumstances where she was secluded with the man against whom she was warned, but her adultery was not proven, some authorities apparently maintain that he does not receive lashes (Rambam). Others (*Maggid Mishne; Kesef Mishne*) rule that he has indeed violated the prohibition (Rambam *Sefer Nashim, Hilkhot Geirushin* 11:14).

PERSONALITIES

Rabbi Yosei ben Keifar – רבי יוסי בן ביפר: This Sage from the last generation of *tanna'im* is mentioned in the *Tosefta* and in *baraitot* but not in the Mishna.

He was apparently a primary disciple of Rabbi Elazar ben Shamma, and most of the statements he cites are in this teacher's name. It is related that he was one of the emissaries sent to Babylonia to raise funds for the scholars of Eretz Yisrael. He is grouped together with Rabbi Dostai, son of Rabbi Yehuda, and Rabbi Dostai, son of Rabbi Yannai, who were also among the last of the *tanna'im*.

A Rabbi Yosei ben Keifar is also mentioned in relation to an important mission of the Sages of Eretz Yisrael to quash the attempts of Hananya to determine the calendar outside Eretz Yisrael. However, based on the timeline of these events, this was apparently a different Sage with the same name.

NOTES

With regard to an uncertain *sota*, defilement is written as well – סוטה ספק נמי טומאה כתיבא בה: Several early commentaries deal with this issue, both from the perspective of the wording of the passage as well as its halakhic implications. Many authorities maintain that one who engages in sexual relations with his *sota* wife before she was tested by the *sota* procedure has violated a Torah prohibition. In addition, by secluding herself with the specified man, she is rendered forbidden both to her husband and to that other man, and may not partake of *teruma*. This indicates that her defilement is treated as definite even in an uncertain case, which apparently contradicts the analysis here.

The commentaries explain that although the Torah indeed considers her secret rendezvous as evidence of her certain defilement, this is only for the purposes of stringencies, not leniencies. Consequently, she still requires *halitza* (Rosh; Rashba). Others maintain that the classification of defilement refers solely to definite adultery, whereas in uncertain circumstances she has transgressed a rabbinic decree (Meiri).

To include a *sota* who secluded herself – לרבות סוטה שנסתרה: The commentaries ask how the Rabbis could uproot this phrase from its plain meaning in this manner (*Tosafot*). They explain that as the term "defiled" cannot possibly refer to a woman who

was lawfully married to another man, it must certainly refer to a *sota*. Some suggest that even in the opinion of the Rabbis, the simple meaning of the verse is not entirely disregarded. Rather, they maintain that there is a prohibition involved both in remarrying one's former wife after she had been married to another man, and in taking a woman who had been defiled (Ritva). Yet others state that it stands to reason that a man would not divorce his wife in the first place unless he found in her some sort of infidelity, and therefore there is a double prohibition against him remarrying her after she had already been defiled by her actions while still married to him (*Arukh LaNer*).

ואפילו זנאי – And the same is true even if she fornicated – נמי: A version of the Gemara mentioned by the *ge'onim* and early and later commentaries is cited by the Vilna Gaon in the following form: But if someone engaged in relations with a divorcée, even though she fornicated with that man she is permitted to her husband. This version resolves several difficulties of the standard text (see Rabbi Yehuda bar Natan and Maharshah).

Becoming and matrimony are written in this context – הויה ואישות כתוב בה: Some commentaries explain that this refers to the phrase: “May not take her again to be his wife” (Deuteronomy 24:4), which teaches that one may not remarry his divorcée without a new act of betrothal (Ritva). In addition, the phrase: “Her husband... may not” (Deuteronomy 24:4), indicates that even the second husband may marry her only by means of an act of betrothal.

She is an abomination but her children are not abominations – היא תועבה ואין בניה תועבין: But why would one even consider that her children might be forbidden (Meiri)? After all, her husband violated only a regular prohibition, and the children of a prohibited union of this kind are not disqualified. Some explain that as the term “abomination,” which usually appears only in reference to prohibitions entailing *karet*, is stated in this context, one might have thought that this child is also considered a *mamzer*. Alternatively, there is a principle that in every case of a marriage that involves a transgression the status of the child is generally determined by the parent with the more inferior lineage. Consequently, it is not unreasonable to think that the children themselves might be forbidden (Meiri; see *Tosafot* on 14b).

HALAKHA

The children of a remarried divorcée – בני גרושה שהתוידה – If one remarries his divorced wife after she had been married to another, then although she is forbidden to him the children born of this union are not classified as *mamzerim* (Rambam *Sefer Kedusha*, *Hilkhot Issurei Bia* 15:2).

ומאי נסתרה – נבעלה, ואמאי קרי ליה נסתרה – לישנא מעליא נקט. נבעלה, טומאה בהדיא כתיב בה “ונסתרה והיא נטמאה”!

למיקם עלה בלאו. ורבי יוסי בן ביפר לאו בסוטה לית ליה, ואפילו זנאי נמי.

מאי טעמא – הויה ואישות כתוב בה.

בעא מיניה רב יהודה מרב ששת: המחויר גרושתו משום נסתה, ומת, צרתה מהו? אליבא דרבי יוסי בן ביפר לא תיבעי לך, כיון דאמר רבי יוסי בן ביפר טומאה במחויר גרושתו הוא דכתיבא – צרתה כמותה.

ואי משום דכתיב בה “תועבה היא”, היא תועבה ואין בניה תועבין – הא צרתה תועבה.

כי תיבעי לך – אליבא דרבנן, אף על גב דאמר רבנן טומאה בסוטה הוא דכתיב – אין מקרא יוצא מידי פשוטו,

The Gemara rejects this argument: **And what does: Secluded herself, mean in this context?** It means that she had actually engaged in relations. **And why does the *baraita* call this: Secluded herself,** instead of the more straightforward: Engaged in sexual relations? The *baraita* employed a euphemistic expression, but it actually means that she engaged in intercourse. The Gemara asks: If this is referring to a woman who had engaged in relations, the term defilement is already explicitly written with regard to her, in the chapter that deals with a *sota*. Why is it necessary to derive that she is defiled from a different source, as in the context of a *sota* herself the verse states: “She being defiled secretly” (Numbers 5:13)?

The Gemara explains that “may not take her again to be his wife after she was defiled” does not teach that she is called “defiled,” but rather that the *halakha* establishes upon her a prohibition. In other words, if the husband engages in relations with his wife after she had had intercourse with another, he transgresses a prohibition. **And the Gemara comments that Rabbi Yosei ben Keifar does not hold the opinion that there is a prohibition in the case of a *sota*,** as he maintains that a husband who has relations with his *sota* wife does not transgress any prohibition at all, **and the same is true even if she definitely fornicated^N with another man.**

What is the rationale of Rabbi Yosei ben Keifar? In his opinion, “after she was defiled” does not refer to a *sota* but to a woman who had been legally divorced from her first husband and subsequently married another man. This is indicated by the fact that both becoming, i.e., betrothal, and matrimony are written in this context:^N “Becomes another man’s wife” (Deuteronomy 24:2) and: “Or if the latter husband die, who took her to be his wife” (Deuteronomy 24:3). Here it is clear that the reference is to halakhically valid marriage, whereas a *sota* had never been another man’s wife, as she cannot marry another man while she is still married.

§ The Gemara discusses a similar case. Rav Yehuda raised a dilemma before Rav Sheshet: In the case of one who remarries his divorcée after she had married another, and then he dies childless, what is the *halakha* with regard to the levirate marriage of her rival wife? According to the opinion of Rabbi Yosei ben Keifar, do not raise the dilemma, since Rabbi Yosei ben Keifar said that it is with regard to one who remarries his divorcée that defilement is written, and therefore the status of her rival wife is the same as hers.

And if one would claim that the dilemma does in fact arise because it is written: “That is an abomination” (Deuteronomy 24:4), and the emphasis on “that” serves to limit the range of the prohibition and teaches that this *halakha* applies only to her and not her rival wife, still, the accepted interpretation of this verse is as follows: **She is an abomination, but her children are not abominations.**^{NH} In other words, if he transgressed the prohibition and remarried this woman, their children are not disqualified from marrying priests. If so, the term “that” does not come to exclude her rival wife from this *halakha*, and therefore her rival wife is an abomination for the purposes of levirate marriage, just like the wife herself, and she too is exempt.

Rather, let the dilemma be raised according to the opinion of the Rabbis. Although the Rabbis said that it is with regard to a *sota* that defilement is written, perhaps here they apply the principle that a verse does not depart from its literal meaning. In other words, notwithstanding the fact that the Rabbis derive from here a halakhic ruling concerning a *sota*, the straightforward meaning of the verse should not be entirely disregarded. Accordingly, as the context here is remarriage to one’s divorced wife, this verse would teach that hers is a case of defilement.

או: דלמא, כיון דאיעקר – אייעקר? איבא
דאמרי: אליבא דרבנן לא תיבעי לך, כיון
דאיתעקר – אייעקר.

כי תיבעי לך – אליבא דרבי יוסי בן כיפר,
מאי? אף על גב דאמר רבי יוסי בן כיפר
טמאה במחזור גרושתו הוא דכתיבא –
מיעט רחמנא "היא תועבה" ואין צרתה
תועבה, או: דלמא, היא תועבה ואין
בנה תועבין, הא צרתה – תועבה!

אמר ליה, תניתיה: היתה אחת כשרה
ואחת פסולה, אם היה חולץ – חולץ
לפסולה, ואם היה מייבם – מייבם
לכשרה.

מאי כשרה ומאי פסולה? אילמא
כשרה – כשרה לעלמא, פסולה – פסולה
לעלמא, כיון דלדידיה חזיא מאי נפקא
ליה מינה?

אלא לאו: כשרה – כשרה ליה, פסולה –
פסולה ליה. ומאי ניהו – מחזיר גרושתו.
וקתני: ואם היה מייבם – מייבם לכשרה!

לא, לעולם כשרה – כשרה לעלמא,
פסולה – פסולה לעלמא. ודקאמרת כיון
דלדידיה חזיא מאי נפקא ליה מינה –
משום דרב יוסף.

דאמר רב יוסף, כאן שנה רבי: לא ישפוך
אדם מי בורו ואחרים צריכים להם.

Or perhaps once a verse is uprooted from its context, it is entirely uprooted and no longer teaches anything about the subject matter of the chapter in which it is written. This would mean that the sole significance of this particular verse is in reference to a *sota*. **There are those who say the opposite: According to the opinion of the Rabbis, do not raise the dilemma, as once a verse is uprooted from its context, it is entirely uprooted.** Consequently, there is no defilement when a man remarries his divorcée, neither with regard to her nor concerning her rival wife.

Rather, let the dilemma be raised according to the opinion of Rabbi Yosei ben Keifar. What is the dilemma? Although Rabbi Yosei ben Keifar said that it is with regard to one who remarries his divorcée that defilement is written, one can ask: Does the Merciful One limit this *halakha* by the phrase “that is an abomination,” which indicates: **And her rival wife is not an abomination?** Or perhaps this verse teaches that **she is an abomination but her children are not abominations**, which indicates that **her rival wife is an abomination**.

Rav Sheshet said to him: You learned it in a *baraita* that deals with a case of two *yevamot* who came before a *yavam* for levirate marriage. In a situation where one of the women was^N fit and the other disqualified, if he would like to perform *halitza* he performs *halitza* with the disqualified woman, and if he would like to enter into levirate marriage he enters into levirate marriage with the fit woman.^H

Rav Sheshet analyzes this *baraita*: What is the meaning of fit, and what is the meaning of disqualified? If we say that fit means fit for all men, and disqualified means disqualified in general, e.g., a woman who had already been divorced is disqualified from marrying any priest, despite the fact that she is fit to marry this particular man himself, then since for him she is suitable, what difference does it make for him whether she is disqualified from or fit for marriage to others?

Rather, is it not the case that fit means fit for him, and disqualified means disqualified for him? And what is that case in which a woman is fit or disqualified only with regard to him but not any other man? This is evidently referring to the case of one who remarries his divorcée.^N The deceased brother had remarried his divorced wife after she had married another man, and therefore she is disqualified from entering into levirate marriage with that particular man but she is permitted to other men. And it is taught there that if he would like to enter into levirate marriage, he may enter into levirate marriage even with the fit woman. This indicates that the rival wife of a remarried divorcée is fit for levirate marriage.

The Gemara rejects this argument: No; actually, fit means fit to all men, and disqualified means disqualified in general, e.g., a woman who had already been divorced is disqualified from marrying any priest. And that which you said: Since for him she is suitable what difference does it make for him, this is significant because of the statement of Rav Yosef.

As Rav Yosef said: Here Rabbi Yehuda HaNasi taught a valuable moral lesson, that a person should not pour the water from his well when others are in need of it. That is, one should not cause loss in any situation, even when this relates to his own personal life, if he might thereby cause a future loss to others. The same reasoning applies here: If he intends to perform *halitza* it does not matter to him which of the women he chooses, but if he does so with the one who is fit to others, he thereby disqualifies her from marrying a priest, as the legal status of a woman who underwent *halitza* is like that of a divorcée. It is therefore preferable to perform *halitza* with the one who in any case was disqualified from marrying a priest.

NOTES

תניתיה, היתה אחת וכו' – You learned it, one was, etc. – Some commentaries maintain that this answers only the dilemma according to the first version of the discussion, not the second, as according to the second version the *baraita* can be attributed to the opinion of the Rabbis (*Tosafot*). However, the Rashba cites an explanation of the Gemara according to which Rav Sheshet sought to resolve both difficulties. Some maintain that Rashi interprets the Gemara in a similar manner (*Maharsha*).

And what is that, one who remarries his divorcée – **ומאי ניהו מחזיר גרושתו:** Rashi and others explain that Rav Sheshet maintains that this must refer to one who remarries his divorcée and not to other transgressions, as otherwise there would be nothing novel in this ruling. This claim is somewhat problematic. Others suggest that the reasons this must be referring only to a remarried divorcée is because it states that one performs *halitza* in the proper manner with the disqualified woman, which is not the case with regard to other transgressions (*Mero-me'i Sadeh*; see *Tosafot*).

HALAKHA

He performs *halitza* with the disqualified woman... he enters into levirate marriage with the fit woman – **חולץ לפסולה... מייבם לכשרה**: If two *yevamot* came before a *yavam* for levirate marriage, one of whom was fit to marry a priest while the other was disqualified, if he opts for levirate marriage he may marry whichever he chooses, provided that he is not himself a priest. If he decides to perform *halitza*, he must do so with the one who is already disqualified, so as not to disqualify the other woman from marriage to a priest (Rambam *Sefer Nashim*, *Hilkhot Yibbum VaHalitza* 1:10; *Shulhan Arukh*, *Even HaEzer* 161:2).

Levirate marriage for a remarried divorcée – ייבום מחזיר – גרושתו: If one remarries his divorced wife after she had been married to another man, and then dies childless, she must perform *ḥalitza*, not levirate marriage. Her rival wife performs either *ḥalitza* or engages levirate marriage. This ruling is in accordance with the discussion here and the opinion (12b) of Rabbi Yohanan cited later (Rambam *Sefer Nashim*, *Hilkhot Yibbum Vaḥalitza* 6:13; *Shulḥan Arukh*, *Even HaEzer* 174:2).

NOTES

And did you not resolve, etc. – וְלֹא תִירָוִי וכו': The commentaries note that no actual change was made to the text of the *baraita*, as the letter *vav*, which generally means: And, can often mean: Or (*Tosafot*). *Tosafot HaRosh* explains that this interpretation of the letter *vav* is appropriate only when it is evidently necessary from the context. Here, however, as the matter is not clear, this is indeed considered an adjustment to the text.

She is forbidden to one who was permitted to her, etc. – בְּמִוְתָּר לָהּ אִסּוּרָה וכו': It could be argued that based on this *a fortiori* inference, in every situation where the woman is forbidden by a regular prohibition, her rival wife should be exempt. The commentaries answer that as this prohibition applies to the deceased brother, she has the status of a brother's wife to whom the mitzva of levirate marriage does not apply, and this is considered a prohibition that entails *karet* (Yosef Lekah; see Kovetz He'arot).

Is the *a fortiori* inference strong, etc. – מִי אֵלִים קל וחומר וכו': The commentaries ask: In *Sota* 5b the Gemara states that a wife caught secluding herself with the man about whom she was warned must undergo *ḥalitza* and may not enter into levirate marriage, and the Gemara there proves that ruling by this very *a fortiori* inference. Why, then, is the Gemara here uncertain as to whether the *a fortiori* inference can be applied to the woman herself? The answer must be that in Rabbi Yohanan's opinion that *halakha* is actually derived from the alternative reason mentioned by the Gemara there, that it is by Torah law that a *sota* cannot enter into levirate marriage. If so, no proof can be brought from there with regard to this issue (*Tosafot HaRosh*).

תָּא שְׁמַע: הַמְחֲזִיר גְרוּשְׁתּוֹ מִשְׁנֵשֶׁאֱתָ – הִיא וְצִרְתָּהּ חוֹלָצָה. הִיא וְצִרְתָּהּ סֹלָקָא דְעִתְּךָ? [אֵלָּא] אִימָא: אִי הִיא אִו צִרְתָּהּ.

וְלֹא תִירָוִי קִמְתְּרַצָּה לָהּ? תִּירָוִי הָכִי: הִיא חוֹלָצָה, צִרְתָּהּ – אִו חוֹלָצָה אִו מְתִיבְמָת.

אָמַר רַבִּי חִיטָּא בַר אֲבָא, רַבִּי יוֹחָנָן בְּעֵי: הַמְחֲזִיר גְרוּשְׁתּוֹ מִשְׁנֵשֶׁאֱתָ, צִרְתָּהּ מִהוּ? אָמַר לִיה רַבִּי אֲמִי: וְתִבְעִי לָךְ. הִיא גּוֹפָה! הִיא גּוֹפָה לָא קְמִיבְעִיָא לִי.

דְּאִמְרִינָן: קל וחומר: בְּמִוְתָּר לָהּ אִסּוּרָה, בְּאִסּוּרָה לָהּ – לֹא כָּל שְׂכָן? בִּי קָא מִיבְעִיָא לִי – צִרְתָּהּ מֵאִי? מִי אֵלִים קל וחומר לְמִדְּחֵי צָרָה, אִו לֹא?

רַב נַחֲמָן בַּר יִצְחָק מְתִיב הָכִי: אָמַר רַבִּי חִיטָּא בַר אֲבָא. בְּעֵי רַבִּי יוֹחָנָן: הַמְחֲזִיר גְרוּשְׁתּוֹ מִשְׁנֵשֶׁאֱתָ מִהוּ? אָמַר לִיה רַבִּי אֲמִי: וְתִבְעִי לָךְ צִרְתָּהּ? צִרְתָּהּ לֹא קְמִיבְעִיָא לִי, דְּלֹא אֵלִים קל וחומר לְמִדְּחֵי צָרָה. אֵלָּא, בִּי קְמִיבְעִיָא לִי – הִיא גּוֹפָה מֵאִי, מִי אֵלִים קל וחומר בְּמִקּוֹם מְצוּהָ, אִו לֹא?

The Gemara suggests: **Come and hear a different *baraita*:** With regard to **one who remarries his divorcée after she had married another, she and her rival wife perform *ḥalitza*.**¹⁴ The Gemara first analyzes the wording of the *baraita*: Can it **enter your mind** that both **she and her rival wife** must perform *ḥalitza*? After all, only one wife of a deceased brother undergoes *ḥalitza*, not two. **Rather, say: Either she or her rival wife.** This indicates that both women are unfit for levirate marriage.

The Gemara rejects this claim: **And did you not already resolve**¹⁵ a difficulty in the *baraita* by adjusting its language and not interpreting it as it is? If so, you cannot cite a proof from here, as you can adjust it differently and **answer as follows:** **She performs *ḥalitza*, while her rival wife either performs *ḥalitza* or enters into levirate marriage.** If so, this *baraita* provides no conclusive proof that might resolve Rav Yehuda's dilemma.

On the same issue, Rabbi Ḥiyya bar Abba said that Rabbi Yohanan raised a dilemma: With regard to **one who remarries his divorcée after she had been married to another, what is the *halakha* concerning the levirate marriage of her rival wife?** Rabbi Ami said to him: **And you can raise the dilemma with regard to this woman herself.** Why not ask if she requires levirate marriage when her husband dies? Rabbi Ḥiyya bar Abba replied: The *halakha* of the divorcée **herself is not a dilemma for me**, as she is certainly forbidden.

Rabbi Ḥiyya bar Abba elaborates: **As in this case we state an *a fortiori* inference:** If **she is now forbidden to one who was previously permitted to her**,¹⁶ i.e., her first husband, with regard to **one who was forbidden to her**, the *yavam*, is it **not all the more so** the case that she remains forbidden to him? **Where I raise the dilemma it is with regard to her rival wife.** What is the *halakha* in this case? **Is the aforementioned *a fortiori* inference strong enough to invalidate her rival wife or not?** The divorcée herself is certainly exempt from levirate marriage, but the question is whether the *a fortiori* inference applies to the rival wife as well.

Rav Naḥman bar Yitzḥak would teach a different version of this discussion, as follows: Rabbi Ḥiyya bar Abba said that Rabbi Yohanan raised a dilemma: With regard to **one who remarries his divorcée after she had been married to another, what is the *halakha* concerning her levirate marriage?** Rabbi Ami said to him: **And you can raise the dilemma with regard to her rival wife as well.** Rabbi Ḥiyya bar Abba replied: The *halakha* of her rival wife is **not a dilemma for me**, as the *a fortiori* inference is **not strong enough to invalidate a rival wife.** Rather, where I raise the dilemma it is with regard to the divorcée herself. What is the *halakha*? **Is the *a fortiori* inference strong**¹⁷ enough that it can be accepted even **in place of a mitzva** to enter into levirate marriage, or not?

Perek I

Daf 12 Amud a

אָמַר לִיה: תְּנִיתוּהָ, הִתְּתָה אַחַת בְּשָׂרָה וְאַחַת פְּסוּלָה, אִם הִיא חוֹלִץ – חוֹלֵץ לְפְסוּלָה, וְאִם הִיא מֵיִיבָם – מֵיִיבָם לְבְּשָׂרָה. מֵאִי בְּשָׂרָה וּמֵאִי פְסוּלָה? אֵילִימָא בְּשָׂרָה – בְּשָׂרָה לְעֵלְמָא, פְּסוּלָה – פְּסוּלָה לְעֵלְמָא. בֵּין דְּלִידִיָּה חִיטָּא מֵאִי נִפְקָא לִיה מִיָּה?

Rabbi Ami said to Rabbi Ḥiyya bar Abba: **We learned it in the same *baraita*:** In a case where **one of the women was fit and the other disqualified**, if he would like to perform *ḥalitza* he performs *ḥalitza* with the disqualified woman, and if he would like to enter into levirate marriage, he enters into levirate marriage with the fit woman. What is fit and what is disqualified? If we say that fit means fit to all men, and disqualified means disqualified to all men, since for him she is suitable, what difference does it make for him whether she is disqualified from or fit for marriage to others?

צֶרֶת – The rival wife of a girl who performed refusal – **מִמָּאֲנָת**: If a man's minor wife was a forbidden relative of her *yavam*, and she performed refusal with regard to this *yavam* despite not having refused her husband, her rival wife performs *halitza* but does not enter into levirate marriage. In other words, her refusal of the *yavam* is not considered a refusal of the deceased. However, the rival wife of a girl who is not a forbidden relative of her *yavam* and who performs refusal is permitted in levirate marriage, in accordance with the opinion of Rabbi Yohanan on *daf* 12b (Rambam *Sefer Nashim*, *Hilkhot Yibbum VaHalitza* 6:22; *Shulḥan Arukh*, *Even HaEzer* 173:7).

מִיֵּאֲנָה בָּוּה – She who refused this is permitted to that – **מוֹתֶרֶת בָּוּה**: The wife of a deceased man who refused one of his brothers is permitted to the other brothers, in accordance with the opinion of Shmuel. Although Rav and Rav Asi dispute this matter (107b), the *halakha* is ruled in accordance with the opinion of Shmuel, as Rabbi Yohanan holds accordingly (Rambam *Sefer Nashim*, *Hilkhot Geirushin* 11:17; *Shulḥan Arukh*, *Even HaEzer* 155:11; 173:14).

אֶלֶּא לָאוּ: בְּשִׁרָה – בְּשִׁרָה לִיָּה, פְּסוּלָה – פְּסוּלָה לִיָּה, וּמֵאִי נִיָּה – מִחֲזוֹר גְּרוּשָׁתוֹ, וְקִתְנִי: אִם הָיָה מֵיִיבָם – מֵיִיבָם לְבִשְׁרָה!

לֹא, בְּשִׁרָה לְעֵלְמָא, פְּסוּלָה לְעֵלְמָא. וְדִקְאָמְרָת: בֵּין דְּלִדְיָה חֲזִיא מֵאִי נִפְקָא לִיָּה מִיָּנָה – מְשוּם דְּרַב יוֹסֵף. דְּאָמַר רַב יוֹסֵף: בְּאֵן שְׁנָה רַבִּי לֹא יִשְׁפּוֹךְ אָדָם מִי בּוֹרוֹ וְאַחֲרִים צְרִיכִים לָהֶם.

תָּא שְׁמַע: הַמְחֲזוֹר גְּרוּשָׁתוֹ מְשַׁנֵּי־סֵת. הִיא וְצֵרֶתָּה חוֹלְצָת. הִיא וְצֵרֶתָּה סִלְקָא דְּעֵתָּךְ? אֶלֶּא אִימָא: אוֹ הִיא אוֹ צֵרֶתָּה. וְלֹא תִרְוִצִי קָא מְתַרְצֵת לָהּ? תִּרְוִץ הָכִי: הִיא חוֹלְצָת, צֵרֶתָּה – אוֹ חוֹלְצָת אוֹ מְתִיבְמָת.

אָמַר רַב לִילִי בְּרַם מְמַלְּ אָמַר מִר עוֹקְבָא אָמַר שְׁמוּאֵל: צֵרֶת מִמָּאֲנָת אֲסוּרָה. לְמֵאן? אִילִימָא לְאַחִים – הִשְׁתָּא הִיא גּוֹפָה שְׂרִיא, דְּאָמַר שְׁמוּאֵל: מִיֵּאֲנָה בָּוּה מוֹתֶרֶת בָּוּה, צֵרֶתָּה מִיִּבְעִיא?

אֶלֶּא לְדִידְיָה, וּמֵאִי שְׁנָא מִמָּאֲנָת דְּשְׂרִיא לְאַחִין – דְּלֹא עֲבָדָא בְּהוּ מַעֲשָׂה, צֵרָה נְמִי לֹא עֲבָדָא בְּהוּ מַעֲשָׂה!

Rather, is it not the case that *fit* means *fit for him*, and *disqualified* means *disqualified for him*? And what is that case in which a woman is fit or disqualified only with regard to him but not to any other man? This is referring to the case of **one who remarries his divorcée**. And it is taught that if he would like to enter into levirate marriage, he enters into levirate marriage with the fit woman. This answers Rabbi Yohanan's question.

The Gemara rejects this argument: **No; actually, fit means fit to all men, and disqualified means disqualified in general**, e.g., a woman who had already been divorced is disqualified from marrying any priest. And that which you said: **Since for him she is suitable, what difference does it make for him**, this is significant because of that statement of Rav Yosef. As Rav Yosef said: **Here Rabbi Yehuda HaNasi taught a valuable moral lesson, that a person should not pour the water from his well when others are in need of it.**

Come and hear a different *baraita*: With regard to **one who remarries his divorcéeⁿ after she had married another, she and her rival wife must perform *halitza***. Can it enter your mind that both she and her rival wife must perform *halitza*? Rather, say: **Either she or her rival wife**. This indicates that both women are unfit for levirate marriage. The Gemara rejects this claim: **And did you not already resolve a difficulty in the *baraita***? If so, answer as follows: **She performs *halitza*, while her rival wife either performs *halitza* or enters into levirate marriage**. If so, this *baraita* provides no conclusive proof that might resolve Rabbi Yohanan's dilemma.

§ The Gemara cites another discussion concerning women who are forbidden in levirate marriage. Rav Liliⁿ bar Memel said that Mar Ukva said that Shmuel said: **The rival wife of a girl who performed refusal^h is forbidden.**ⁿ If the deceased brother had two wives, one of whom was a minor who refused the brother who sought to be her *yavam*, not only is she forbidden in levirate marriage, but so too is her rival wife. The Gemara asks: **To whom** is she forbidden? **If we say that she is forbidden to the other brothers**, this cannot be the case, as now that **she herself**, the girl who actually performed refusal, is permitted to them, as Shmuel said: **A minor *yevama* who refused this brother is permitted to that^h** other brother of the deceased husband, is it necessary to state that **her rival wife** is likewise permitted?

Rather, it means that she is forbidden **to him**, i.e., as she refused a specific brother, both she and her rival wife are forbidden to him. The Gemara clarifies: **And in what way is this *halakha* of the rival wife different from that of one who performed refusal, who is permitted to the other brothers**? If the reason is that **she did not perform any act of refusal with them** that might nullify the obligation of levirate marriage, **her rival wife did not perform any act with them either**, and therefore she should be permitted to all of the brothers.

NOTES

תָּא – Come and hear, one who remarries his divorcée, etc. – **שְׁמַע הַמְחֲזוֹר גְּרוּשָׁתוֹ וְכוּ'**: At first the Gemara attempted to resolve the dilemma posed by Rabbi Yohanan in accordance with both versions of his dilemma (see Rashi). This suggestion refers only to the first of the two versions, as the second does not deal with the case of a rival wife at all (*Tosefot HaRosh*; Maharshal).

לִילִי – Lili: Apparently, this is not a proper name but an epithet or a nickname. The full name is Hillel, a common name among the Sages. Lili might be a shortened form of the foreign equivalent of this name, Julianus or Lulianus.

צֶרֶת – The rival wife of a girl who performed refusal is forbidden – **מִמָּאֲנָת אֲסוּרָה**: The commentaries ask why the girl who performed refusal is herself forbidden. Since her refusal retroactively annuls the marriage entirely, she should be considered like any other woman who was never married at all. Some answer in accordance with the reason stated later, that since she first came before the *yavam* for levirate marriage and only later performed refusal she has the appearance of a brother's wife, and therefore the Sages rendered her forbidden (Rabbi Yehuda bar Natan; *Tosafot Yeshanim*; Ritva). Some say that due to her refusal she is similar to a *yevama* who received a bill of divorce from her first husband and who is consequently forbidden to the *yavam* (*Tosefot Rid*).

Due to the rival wife of one's daughter, etc. – משום צרת – בְּתוּ וכו': At first glance this seems to be a decree enacted in addition to another decree, as the rival wife of one's daughter who performed refusal is herself forbidden only by rabbinic decree, as she has the appearance of a fully married daughter's rival wife. Apparently, Shmuel holds that this is all one decree, and he maintains that if the Sages permitted the rival wife of any other girl who refused her husband they allow the rival wife of a daughter who refuses as well. In contrast, Rabbi Yohanan states (12b) that this rabbinic decree was never enacted (Rashba).

One's daughter who performed refusal – בְּתוּ מִמָּאֲנָה: Rashi addresses the question of how a girl could perform refusal during her father's lifetime, as only a fatherless girl married off by her mother and brothers can perform refusal. He explains that the Gemara is referring to a so-called orphan during her father's lifetime, i.e., a minor girl who was married off by her father only to be divorced or widowed. In these circumstances her father can no longer betroth her by Torah law, and she is therefore considered like an orphan. With regard to the refusal itself, Rashi indicates that the girl performs refusal with her own father. Several early commentaries are puzzled by this, as she could never come before him for levirate marriage, which means that there is no opportunity for refusal at all. In their opinion, she refuses one of the other brothers to whom she is permitted. Since there was an act of refusal after the mitzva of levirate marriage came into effect, she has the appearance of a married woman (Ritva).

She uproots the first marriage – נִשְׁאִין קִמָּאֵי קָא עֲקָרָא: This discussion appears in full later in the Gemara (107b). See also the Jerusalem Talmud, in which the matter is explained similarly. The basic question concerns the possibility of refusal with regard to a *yavam*, in light of the fact that the act of refusal annuls the previous marriage retroactively. It is possible that her refusal of her *yavam* is not considered a proper refusal, as it might actually be her first marriage that she seeks to annul. The commentaries also discuss whether the rival wife of a forbidden relative who performed refusal is forbidden to the *yavam*, due to the fact that she was not fit when the mitzva of levirate marriage initially came into effect. They explain that the rival wife remains forbidden, as anyone examining the case at the time when the mitzva of levirate marriage came into effect would have concluded that she is forbidden (*Melo HaRo'im*). Several other later commentaries explain this in a similar manner.

גִּזְרָה מְשֻׁם צָרַת בְּתוּ מִמָּאֲנָה. וְצָרַת בְּתוּ מִמָּאֲנָה מִי אִסְרָא? וְהָתֵנּוּ: וְכוּלָּן, אִם מִתּוֹ אוֹ מִיָּאֲנִי צְרוּתִיהֶן מוֹתְרוֹת!

דְּמִיָּאֲנָה בְּמָאֵן? אִילִּימָא דְּמִיָּאֲנָה בְּבַעַל – הֵיִינוּ גְרוּשָׁה, אֶלָּא לָאוּ בִּיבָם!

לֹא, לְעוֹלָם בְּבַעַל, וְתִי גִוּוּי גְרוּשִׁין, וּמֵאֵי שָׁנָא כִּי מִיָּאֲנָה בְּבַעַל, דְּעֲקָרִינָהּ לְנִשְׁוֹאִין.

כִּי מִיָּאֲנָה בִּיבָם נִשְׁוֹאִין קִמָּאֵי קָא עֲקָרָא!

מְשֻׁם דְּתֵנִי רָמִי בְּרַי יְחֻזְקָאֵל. דְּתֵנִי רָמִי בְּרַי יְחֻזְקָאֵל: מִיָּאֲנָה בְּבַעַל – מוֹתְרָתָ לְאָבִיו, בִּיבָם – אֶסְרָהּ לְאָבִיו.

אֲלֵמָא: מְשַׁעֲת נִפְלָה נְרִיאִית בְּכֻלָּתָהּ,

The Gemara answers: This is a rabbinic decree imposed due to the case of a rival wife of one's daughter^N who performed refusal. If the girl who refused was his daughter or any other forbidden relative, her rival wife would be forbidden as the rival wife of one's daughter. Therefore, the Sages rendered forbidden the rival wives of other women who performed refusal, not only his daughter. The Gemara asks: And is the rival wife of a daughter who performed refusal^N actually forbidden? But didn't we learn in the mishna: And with regard to all of these women, if they died or performed refusal with their husbands, their rival wives are permitted.

The Gemara analyzes this statement: Whom did this girl refuse? If we say that she refused the husband, i.e., the deceased brother before he passed away, this is exactly the same as the case of a divorcée, and the mishna explicitly states that if one's relative who had been married to his deceased brother died, or refused her husband, or was divorced, no prohibition applies to her rival wife. What is the difference between refusal and divorce? Rather, is it not referring to a case where she refused the *yavam*? If she refuses the *yavam*, her levirate bond is broken and her rival wife is no longer considered the rival wife of a forbidden relative. Consequently, the rival wife is fit for levirate marriage. This shows that no prohibition applies to the rival wife of a daughter who performed refusal.

The Gemara answers: No; actually, it means that she refused the husband, and two types of divorce are listed in the mishna: Divorce by Torah law and refusal, which is a form of divorce that applies by rabbinic law. The Gemara asks: And what is different between the two cases? Since refusal is not actually divorce but is a form of annulment that nullifies the matrimonial bond retroactively, when she refuses her husband it must be said that she uproots the marriage, and therefore the rival wife is rendered permitted.

If so, when she refuses the *yavam*, one should also say that she uproots the first marriage.^N The reasoning is that she cannot actually refuse the *yavam*, as she was never married to him. Rather, it must be that she annuls her first marriage, and the bond with the *yavam* is canceled automatically. Consequently, it is as though she were not married at all, and there was never a rival wife.

The Gemara explains that Shmuel's reasoning is due to the statement that Rami bar Yehezkel taught in a *baraita* as Rami bar Yehezkel taught: If a minor refused her husband, she is permitted in marriage even to his father, as refusal completely nullifies the marriage, and it is as though there had never been any earlier marriage with the son. However, if she refused the *yavam*, not her husband, she is forbidden to his father.^H

Apparently, from the moment when she came before the *yavam* for levirate marriage she appears to be his father's daughter-in-law. Since at the time of the husband's death she had not yet performed refusal, to all appearances she was the father's daughter-in-law. Consequently, although the marriage of this minor was not valid by Torah law, any observer would have assumed it was a proper marriage. Therefore, the Sages rendered a girl who refused her *yavam* forbidden to his father, so that people not take lightly the prohibition of those with whom relations are forbidden.

HALAKHA

If she refused the *yavam* she is forbidden to his father – מִיָּאֲנָה... בִּיבָם אֶסְרָהּ לְאָבִיו: Although refusal nullifies a marriage, and the relatives of the husband are therefore permitted to marry the girl who performed refusal, nevertheless, one who refused her *yavam* is forbidden to his father, as she came for levirate marriage when his son died, and therefore she appeared to be his daughter-in-law, as stated by Rami bar Yehezkel. With

regard to the other relatives of the deceased brother, some commentaries say that she is permitted to them (Rambam), while others rule that she is forbidden (Rambam; Rashba). She is permitted to the relatives of the *yavam* (Rema, citing *Beit Yosef*; Rambam *Sefer Nashim*, *Hilkhot Geirushin* 11:17; *Shulḥan Arukh*, *Even HaEzer* 155:11).

צרת אילנית – The rival wife of an *aylonit* is forbidden – **אסורה**: Rav Asi maintains that an *aylonit* whose status was known at the time of her marriage is considered a forbidden relative, as she is unfit for levirate marriage. Accordingly, her rival wife is forbidden as well, as Rav Asi does not distinguish between the reasons for this prohibition. In the Jerusalem Talmud, it is stated that Rav Asi holds in accordance with the opinion of Rabbi Meir that a woman forbidden in levirate marriage exempts her rival wife in all circumstances.

ולא זיקת שני יבמין – And not the bond of two *yevamin* – The Gemara states later (31b) that despite the apparent proof from the Torah, this prohibition applies by rabbinic law. The reason for the decree is so that people not think that two *yevamot* from a single household could both enter levirate marriage.

HALAKHA

To exclude an *aylonit* – **פֶּרֶט לְאִילֹנִית** – An *aylonit* is entirely exempt from levirate marriage and is forbidden to her *yavam* (Rambam *Sefer Nashim*, *Hilkhos Yibbum VaHalitza* 6:8).

הכא נמי – משעת נפילה נראית כצרת בתו.

Here, too, the same reasoning applies: From the moment when the other wife came before the *yavam* for levirate marriage she appears to be the rival wife of his father's daughter. For this reason she is forbidden, despite the fact that she is permitted by Torah law. Shmuel's ruling that the rival wife of a girl who performed refusal is forbidden is therefore a decree due to the case of the rival wife of a daughter who performed refusal.

אמר רב אסי: צרת אילנית אסורה, שנאמר "והיה הבכור אשר תלד" – פרט לאילנית שאינה יולדת.

The Gemara continues to discuss various cases of forbidden women. Rav Asi said: **The rival wife of a sexually underdeveloped woman [*aylonit*] is forbidden.**ⁿ In other words, if one of the wives of the deceased brother was an *aylonit*, who is incapable of giving birth, the mitzva of levirate marriage does not apply. As it is stated with regard to a woman who requires levirate marriage: **"The first-born that she bears"** (Deuteronomy 25:6), which comes to exclude an *aylonit*,ⁿ who cannot give birth. Since the *halakhot* of levirate marriage do not apply to an *aylonit*, she retains her status as a brother's wife who is forbidden, and therefore her rival wife is also exempt from levirate marriage.

מתבי רב ששית: שלשה אחין נשואין שלש נשים נכריות, ומת אחד מהם, ועשה בה שני מאמר,

Rav Sheshet raised an objection to this from a mishna: **Three brothers are married to three unrelated women, and one of the brothers died, and a second brother performed levirate betrothal with the *yevama*.** A levirate betrothal does not have the legal status of a regular betrothal, as the levirate bond between *yavam* and *yevama* is not dependent upon betrothal; rather, it represents a kind of continuation of the previous marriage with her deceased husband. Full marriage with a *yevama* is effected by sexual intercourse alone. However, for reasons of modesty, the Sages instituted that the act of betrothal should apply to a *yevama* as well.

ומת – הרי אלו חולצות ולא מתייבמות, שנאמר "ומת אחד מהם יבמה יבא עליה" – מי שעליה זיקת יבם אחד, ולא זיקת שני יבמין.

And this brother who performed the levirate betrothal died before consummation of the marriage. In this case, both of these, the wife of the first brother, who had already come before the second brother for levirate marriage, and the wife of the second brother, perform *halitza* and may not enter into levirate marriage. As it is stated: **"And one of them dies and he has no child, the wife of the dead man shall not be married outside of the family to one not of his kin; her brother-in-law will have intercourse with her"** (Deuteronomy 25:5). This implies that the option of levirate marriage applies only to one who is subject to the levirate bond of one *yavam*, for only one deceased brother, and not the bond of two *yevamin*.ⁿ Since it is considered as though the first widow has two levirate duties to fulfill, neither she nor her rival wife may enter into levirate marriage.

וקתני עלה, אמר רב יוסף: זו היא צרת אשת אח מאב, שאיסור נפילה גרם לה, שלא מצינו בכל התורה כולה כגון זאת.

And it is taught with regard to this issue that Rav Yosef said: **This is an example of a rival wife of a paternal half brother's wife, i.e., a fully fit *yevama*, for whom coming before the *yavam* for levirate marriage caused her to be forbidden.** In other words, she was fully fit for levirate marriage by Torah law, as all conditions of the mitzva are present in her case. The reason for her prohibition has nothing to do with her particular status but is the result of her having come before a *yavam* for levirate marriage once already. **We have not found in the entire Torah an example like this**, where the fact that she was obligated in a mitzva she was unable to fulfill means that not only she, but her rival wife as well, are both rendered forbidden.

"זו היא" למעוטי מאי? לאו למעוטי צרת אילנית דשריאה?

The Gemara analyzes Rav Yosef's statement: The emphasis of: **This is**, which indicates that it applies to this case and no other, comes to exclude what? Doesn't it come to exclude the rival wife of an *aylonit*, which would mean that she is permitted? Although an *aylonit* herself may marry any man, she is not suitable for levirate marriage. If so, Rav Yosef's comment indicates that only a woman subject to a double levirate bond, not any other case, renders her rival wife forbidden merely by coming before the *yavam* for levirate marriage.

No, it was meant to exclude the rival wife of an *aylonit* – **לֹא, לְמַעוּטֵי צֶרֶת אֵילוֹנִית**: Why should this exclude the rival wife of an *aylonit* at all, rather than a *sota* or a remarried divorcee (*Tosafot*)? One answer is that these two cases each entail an additional prohibition, whereas in the case of a double levirate bond there is no additional prohibition beyond that of a brother's wife. The only analogous case is that of an *aylonit*, who is also forbidden only as a brother's wife (*Tosafot Yeshanim; Tosafot HaRosh*).

לֹא, לְמַעוּטֵי צֶרֶת אֵילוֹנִית דְּאִסְרָא, וּמֵאִי "זוֹ הִיא" – זוֹ הִיא דְּאִסְרוּ נְפִילָה גְרָם לָהּ – צֶרֶתָּהּ בְּעֵינֵי חֲלִיצָה, אֵילוֹנִית – אֶפְּלוֹ חֲלִיצָה לֹא בְּעֵינֵי. מֵאִי טַעְמָא? הָא – דְּאִוְרֵיתָא, הָא – דְּרַבְנָן.

תָּנן: וְכוּלָּן, אִם מֵתוּ אוֹ מֵיָּאֲנוּ אוֹ נִתְּגַרְּשׁוּ אוֹ שֶׁנִּמְצְאוּ אֵילוֹנִית – צֶרֶתֶיהֶן מוֹתְרוֹת! לֹא קִשְׁיָא: כָּאֵן שֶׁהִכִּיר בָּהּ.

כָּאֵן – שֶׁלֹּא הִכִּיר בָּהּ.

דִּיקָא נִמְי, דְּקִתְּנִי: שֶׁנִּמְצְאוּ, וְלֹא קִתְּנִי שֶׁהָיוּ. שְׂמַע מִיָּנָה. אֲמַר רָבָא:

The Gemara rejects this suggestion: **No**, Rav Yosef's statement was meant to **exclude the rival wife of an *aylonit*,^N that she is forbidden.** And what is the meaning of: **This is?** It means that **this is the one for whom coming before the *yavam* for levirate marriage caused her to be forbidden**, and therefore **her rival wife requires *halitza*** and is not entirely exempt. In contrast, in the case of the rival wife of an *aylonit*, she does **not even require *halitza***. What is the reason for this difference between the two cases? **This one**, an *aylonit*, is exempt from levirate marriage by Torah law, while **this one**, who was betrothed by levirate betrothal to the other brother, is forbidden by rabbinic law, and she therefore must perform *halitza*.

§ The Gemara cites another relevant source. We learned in the mishna: **And with regard to all of these women with whom relations are forbidden, if they died, or they refused their husbands, or were divorced, or were found to be *aylonit*, their rival wives are permitted** in levirate marriage. This ruling apparently contradicts the statement of Rav Asi that the rival wife of an *aylonit* is forbidden. The Gemara responds: This is **not difficult**. Here, Rav Asi is referring to a situation in which her husband knew that she was an *aylonit* prior to marriage, and as he married her regardless of her condition their marriage is fully valid. Since the mitzva of levirate marriage does not apply to her because she cannot give birth, her rival wife is also exempt.

There, in the mishna, it is referring to a case where he did not know that she was an *aylonit* at the time of marriage, but only at a later stage. Since in this case it can be said that he would not choose to marry an *aylonit*, hers was a mistaken betrothal, and it is therefore nullified. Consequently, her rival wife is permitted.

The Gemara comments: The language of the mishna is also precise, as it teaches: **Were found to be an *aylonit*, and it does not teach: Were an *aylonit***. This indicates that her condition was not known to the husband at the time of marriage but was discovered by him only later. The Gemara summarizes: **Conclude from this** that this is the correct interpretation of the mishna. Consequently, the mishna does not contradict the opinion of Rav Asi. **Rava said:**

Perek I

Daf 12 Amud b

HALAKHA

The rival wife of an *aylonit* – **צֶרֶת אֵילוֹנִית**: If the deceased brother had two wives, one of whom was an *aylonit*, her rival wife is permitted and must either perform *halitza* or enter into levirate marriage, in accordance with the opinion of Rava and Rabbi Yohanan (Rambam *Sefer Nashim, Hilkhot Yibbum VaHalitza* 6:20; *Shulhan Arukh, Even HaEzer* 172:1).

The rival wife of an *aylonit* who is a forbidden relative – **צֶרֶת עֲרוּהָ אֵילוֹנִית**: If the *yevama* is a forbidden relative of the *yavam* and she is also an *aylonit*, even if her husband knew of her condition and accepted her, only her rival wife performs *halitza* or levirate marriage (Rambam *Sefer Nashim, Hilkhot Yibbum VaHalitza* 6:21; *Shulhan Arukh, Even HaEzer* 173:9).

הִלְכָתָא, צֶרֶת אֵילוֹנִית מוֹתְרָת, וְאֶפְּלוֹ הִכִּיר בָּהּ, וְאֶפְּלוֹ צֶרֶת בִּתּוֹ אֵילוֹנִית.

And the *halakha* is that the rival wife of an *aylonit*^H is permitted,^N and this is the case even if her first husband knew of her status and her marriage was fully valid. The mitzva of levirate marriage does not apply to an *aylonit*, but her rival wife is not forbidden. And even in the case of the rival wife of his *aylonit* daughter^H who was recognized as such, the other wife is not considered the rival wife of a forbidden relative.

NOTES

צֶרֶת אֵילוֹנִית מוֹתְרָת – The rival wife of an *aylonit* is permitted – The differences between the opinions of Rav Asi and Rava are explained in greater detail in the Jerusalem Talmud. Rav Asi maintains that an *aylonit* remains included in the prohibition of a brother's wife, as she may not enter into levirate marriage. Accordingly, her rival wife, like all rival wives of those with whom relations are forbidden, is also forbidden. This is similar to the case of the rival wife of the wife of a brother with whom he did not coexist, as she too is forbidden.

Conversely, according to Rava and Rabbi Yohanan these cases are dissimilar, as there is no prohibition against an *aylonit*

entering into levirate marriage. Rather, the mitzva of levirate marriage simply does not apply to her. This is expressed in the Jerusalem Talmud as: It is as though she is not there. That is, she is considered non-existent with regard to all matters of levirate marriage, and therefore her rival wife is not the rival wife of a forbidden relative. There are numerous other explanations, but the essential idea remains the same: The rival wife of a forbidden relative is forbidden herself only if the mitzva takes effect, whereas for an *aylonit* the mitzva of levirate marriage does not apply at all (Rashi and many others).

Engage in relations with a contraceptive resorbent – **מְשֻׁמָּשׁוֹת בְּמוֹךְ**: The *halakha* is in accordance with the opinion of the Rabbis that these women may not use a contraceptive resorbent. In clearly dangerous situations some permit this in practice in various ways. Later commentaries deliberate with regard to other methods of birth control that do not entail the placement of an actual interposition before the sperm, and there are various halakhic rulings in this regard (*Shulḥan Arukh, Even HaEzer 23; Pitḥei Teshuva 2*).

BACKGROUND

Three women may engage in relations with a contraceptive resorbent – **שְׁלֹשׁ נָשִׁים מְשֻׁמָּשׁוֹת בְּמוֹךְ**: The issue of women using a contraceptive resorbent, or any other contraceptive device, is discussed at length in the halakhic literature; see also 65b. Here the discussion concerns the use of mechanical means for preventing the penetration of sperm into the uterus. The method of placing a contraceptive resorbent after sexual relations, as described by Rabbeinu Tam in *Tosafot*, is of minimal to no effectiveness. The use of these contraceptive methods is permitted only in cases of danger to life, and the dispute between Rabbi Meir and the Rabbis apparently involves the question of how cautious one should be. Nowadays these cases are extremely rare.

Her fetus becomes deformed – **תַּעֲשֶׂה עוֹבְרָה**: In every case of twins or simultaneous pregnancies, which are possible albeit infrequent, one of the embryos occasionally develops more quickly and thereby severely reduces the blood supply to the other embryo. In these situations the undernourished fetus does not develop at all but remains a fleshy mass adjoined to the placenta, similar in shape to the sandal fish.

Sandal fish – **סַנְדַּל**: This fish is referred to today as the species sole, a group of flatfish, a name derived from the Latin solea, referring to both the fish and the sole of a shoe. The common sole, *Solea solea*, possesses an interesting feature: Both of its eyes are on the right side of its body.



Common sole, referred to in talmudic times as the sandal fish

ואֵלֶּא הָא דִּקְתַּנִּי שְׁנַמְצָאוּ תַנִּי שְׁהָיוּ. כִּי אֵתָא רַבִּין אָמַר רַבִּי יוֹחָנָן: אַחַת צֶרֶת מְמַאֲנָתָּה וְאַחַת צֶרֶת אֵילוֹנִית, וְאַחַת צֶרֶת מְחֻזֵּר גְּרוּשָׁתוֹ – כּוֹלֵן מוֹתָרוֹת.

תַנִּי רַב בִּיבִי קָמִיָּה דְרַב נַחְמָן: שְׁלֹשׁ נָשִׁים מְשֻׁמָּשׁוֹת בְּמוֹךְ: קִטְנָה, מְעוּבָּרָה, וּמִנִּיקָה. קִטְנָה – שְׂמָא תַתְּעִיבֵר וְשְׂמָא תָמוּת, מְעוּבָּרָה – שְׂמָא תַעֲשֶׂה עוֹבְרָה סַנְדַּל, מִנִּיקָה – שְׂמָא תַגְמוֹל בְּנָה וְיָמוּת.

וְאִיזוֹ הִיא קִטְנָה – מִבֵּית אַחַת עֶשְׂרֵה שָׁנָה וְיוֹם אֶחָד עַד שְׁתַּיִם עֶשְׂרֵה שָׁנָה וְיוֹם אֶחָד, פָּחוֹת מִכָּאן וְיֵתֵר עַל כֵּן מְשֻׁמָּשׁוֹת כְּדָרְכָּהּ וְהוֹלֶכֶת, דְּבָרֵי רַבִּי מֵאִיר, וְחֻכָּמִים אוֹמְרִים: אַחַת זֹאת וְאַחַת זֹאת מְשֻׁמָּשׁוֹת כְּדָרְכָּהּ וְהוֹלֶכֶת, וּמֵן הַשָּׁמַיִם יִרְחֶמוּ. מִשּׁוֹם שְׁנֶאֱמַר "שׁוֹמֵר פְּתָאִים ה'".

מִדְּקָאֵר שְׂמָא תַתְּעִיבֵר וְשְׂמָא תָמוּת, מִכָּלֵל דְּאִיכָּא קִטְנָה דְּמִיעִבְרָא וְלֹא מִתָּה, אִם כֵּן מְצִינוּ חֻמוֹתָּה מְמַאֲנָתָּה.

The Gemara asks: However, with regard to that which the mishna teaches: Were found to be, from which it was inferred that there is a difference between an *aylonit* whose condition was known by the husband beforehand and one who was recognized by him only later, how is this to be explained? The Gemara answers that one should emend this and teach simply: That were,^N and not: Were found to be. When Ravin came from Eretz Yisrael he said that Rabbi Yohanan said: There is one *halakha* with regard to the rival wife of a girl who refused her husband, and the rival wife of an *aylonit*, and also the rival wife of one who remarries his divorcée: They are all permitted.

Incidental to the case of refusal, the Gemara cites a related *halakha*. Rav Beivai taught a *baraita* before Rav Nahman: Three women may engage in relations with a contraceptive resorbent,^{NHB} a soft fabric placed at the entrance to their wombs to prevent conception, despite the fact that this practice is generally prohibited. They are as follows: A minor, a woman who is already pregnant, and a nursing woman. The *baraita* specifies the reason for each exception: A minor may do so lest she become pregnant and perhaps die; a pregnant woman, lest she be impregnated a second time and her previous fetus becomes deformed^B into the shape of a sandal fish^B by being squashed by the pressure of the second fetus. As for a nursing woman, she does so lest she become pregnant and her milk dry up, in which case she will wean her son too early, thereby endangering him, and he will die.

And the *baraita* continues: Who is considered a minor? It is a girl from the age of eleven years and one day until the age of twelve years and one day. If she was younger than this or older than this,^N she may go ahead and engage in relations in her usual manner. This is the statement of Rabbi Meir. Since it is assumed that a minor who is less than eleven years old cannot become pregnant, she is considered to be in no danger. And the Rabbis say: Both this one and that one, i.e., in all these cases, she may go ahead and engage in relations in her usual manner, and Heaven will have mercy^N upon her and prevent any mishap, since it is stated: "The Lord preserves the simple" (Psalms 116:2).

The Gemara analyzes the *baraita*: From the fact that the *baraita* states: Lest she become pregnant and perhaps die, this indicates by inference that there is a minor who can become pregnant and will not die, although the conditions for this scenario of a minor giving birth and surviving are unclear. If so, that a minor might be impregnated and give birth, we find the case of one's mother-in-law who refused her husband. Since it is possible for a woman to give birth to a daughter while still a minor, if a man betroths this daughter while still an infant, the mother might be a mother-in-law who performed refusal.

NOTES

Teach, that were – **תַנִּי שְׁהָיוּ**: Although the Gemara initially inferred from the wording of the mishna that it is referring to a situation where it was not known at first that the woman was an *aylonit*, Rava nevertheless held that this was not necessarily the case. The reason is the phrase: They were found, might be referring to the court who determined that she was an *aylonit*, and if so there is no essential difference between this phrase and the simple: They were (Ritva).

Three women may engage in relations with a contraceptive resorbent – **שְׁלֹשׁ נָשִׁים מְשֻׁמָּשׁוֹת בְּמוֹךְ**: There is a dispute among the early commentaries both with regard to the meaning of this statement as well as its halakhic implications. Rashi and others maintain that the woman inserts a contraceptive resorbent into the entrance to her uterus to prevent the entrance of sperm. Others hold that she inserts a contraceptive resorbent after sexual relations to prevent the semen from reaching the uterus (Rabbi Yehuda bar Natan; *Tosafot*). They base their opinion on

the fact that sexual relations with a contraceptive resorbent in place would entail the unavoidable destruction of sperm, which is a transgression for the man. However, Rashi contends that provided that the sexual relations take place in the usual manner and there is no intention of destroying the sperm, this is not prohibited (see *Tosefot Rid*).

This dispute extends to the *halakha* as well. Rashi contends that these women are only permitted to use a contraceptive resorbent. Others rule that these women are obligated to do so, while others are merely permitted to engage in this practice (Rabbeinu Tam; Rabbi Yehuda bar Natan; Rashba). This is apparently the explanation of the *ge'onim* as well, who may have been even more lenient on this issue. For an attempt to reconcile all of these opinions, see *Yam shel Shlomo*.

פָּחוֹת מִכָּאן וְיֵתֵר עַל כֵּן – **פָּחוֹת מִכָּאן וְיֵתֵר עַל כֵּן**: Many early commentaries connect this discussion, including the opinions of Rav Safra and Rav Zevid cited later, to the related

matter of signs of puberty that appear in a young woman during this period, between age eleven and twelve. If she develops the sign of pubic hairs before this time, everyone agrees that the hairs are only a mole and she has certainly not reached maturity, while after this period hair is definitely a sign of maturity. The dispute concerns whether this intermediate period is considered like the time before or after (see *Tosafot*, Rashba, Ritva, and Meiri).

And Heaven will have mercy – **וּמֵן הַשָּׁמַיִם יִרְחֶמוּ**: Some commentaries explain that the Rabbis felt that the danger is highly unlikely, and therefore the women are not obligated, or permitted according to certain opinions, to use a contraceptive resorbent (Meiri). Several later commentaries explain similarly, as the phrase: Heaven will have mercy, indicates that one is acting in the usual fashion, without concern for some uncertain danger. If the danger is definitely present, however, this principle does not apply (see *Aḥiezer*).

תוך הזמן – תוך הזמן: During this time she dies and her fetus dies – תוך הזמן: In the Jerusalem Talmud a different version of this statement is cited, which includes a further distinction: If she was impregnated prior to showing signs of puberty and gave birth after showing these signs, she lives and her fetus dies.

But this is difficult – ואלא קשיא הך: Some commentaries explain that this is difficult according to Rabba bar Livai, who said that a minor cannot give birth at all, whereas Rabba bar Shmuel indicates that a minor can give birth (*Tosafot*). However, most of the early commentaries accept Rashi's explanation that it is difficult according to the mishna, which clearly indicates that one's mother-in-law cannot perform refusal (*Rashba; Nimmukei Yosef*).

Children are equivalent to signs – בנים הרי הם כסימנים: The early commentaries dispute the precise meaning of this expression. Apparently, the Rif maintains that the term: Signs, does not necessarily mean hairs. Rather, children themselves are proof of maturity, even if they were born before the mother reached the age of twelve (see *Ramban* and *Rashba*). Others contend that the pregnancy itself, not the birth of children, is a sign of maturity, and therefore from the onset of pregnancy she is considered mature (*Tosafot*). According to this interpretation, children were mentioned to teach that a pregnancy is retroactively considered a sign of maturity from the onset of the pregnancy only if it results in a living child, not a stillborn.

Until the black are more plentiful – עד שירבה השחור: The Gemara in *Nidda* 52a explains that there is no need for the black, hairy, area actually to be more plentiful than the hairless area. Rather, there must be two hairs lying down in such a manner that it appears as though the black area is greater.

HALAKHA

Children and signs – בנים וסימנים: A girl who gives birth after the age of twelve is considered mature even if she has no signs of puberty, as children are equivalent to signs (*Rambam*). This *halakha* is in accordance with the opinion of Rav Safra, who apparently maintains that even if she gave birth as a minor she is not considered mature until the age of twelve years. This has implications for *halitza* and other matters. Some commentaries (*Maggid Mishne*) claim that even the *Rambam* agrees that after a minor has given birth she can no longer perform refusal (*Beit Shmuel*). The *Shulhan Arukh* writes that a minor may refuse her husband until she either develops signs or gives birth. Some rule that she is already considered mature at the time of pregnancy (*Rema*, citing *Or Zarua*). The *Vilna Gaon* contends that according to this opinion she might be considered mature even before the age of twelve, in accordance with the ruling of *Tosafot*.

Some commentaries write that she may not perform refusal even as a minor if she is pregnant, but this does not hold true if she miscarries (*Beit Shmuel*). Others dispute this ruling (see *Pithei Teshuva*). With regard to *halitza*, however, she is not considered mature before the age of twelve (*Rambam Sefer Nashim, Hilkhot Ishut* 2:9; *Shulhan Arukh, Even HaEzer* 155:12, 169:11, and in the comment of *Rema*).

ותנן: אי אתה יכול לומר בחמותו ואם חמותו ואם חמיו שנמצאו אילוניות או שמיאנו! אימא: שמא תתעבר ותמות.

דאמר רבה בר לויא: גבול יש לה: קודם הזמן הזה אינה מתעברת כל עיקר, תוך הזמן הזה היא מתה ועוברת מת, לאחר זמן הזה – היא חיה ועוברת חי.

איני? והא תני רבה בר שמואל: אי אתה יכול לומר בחמותו ואם חמותו ואם חמיו שנמצאו אילוניות או שמיאנו, שדבר ילדו! אלא, לעולם – שמא תתעבר ושמא תמות. ואלא קשיא הך!

אמר רב ספרא: בנים הרי הם כסימנים. ואית דאמרי: בנים עדיפי מסימנים. למאי נפקא מינה? דאפילו לרבי יהודה, דאמר: עד שירבה השחור, בבנים מודה.

And yet we learned in the mishna: You cannot say, i.e., the possibility does not exist, in the case of his mother-in-law, his mother-in-law's mother, and his father-in-law's mother, that they were found to be an *aylonit* or performed refusal, as refusal may be performed only by a minor, who cannot give birth. If so, there is apparently a contradiction between the mishna and the *baraita*. The Gemara answers: Do not say: Lest she become pregnant and perhaps die, which indicates that it is possible for her not to die from the impregnation. Rather, say: Lest she become pregnant and die. In other words, although it is uncertain whether she will be impregnated, if she does become pregnant she will certainly die, which means that there is no case in which a minor could give birth and live.

As Rabba bar Livai said: There is a limit with regard to her pregnancy, i.e., that of a young girl. Before this time, the age of eleven, she cannot be impregnated at all.⁸ During this time, from age eleven to twelve, she dies and her fetus dies.⁹ After this time, from twelve onward, she lives and her fetus lives.

The Gemara raises a difficulty: Is that so? But didn't Rabba bar Shmuel teach: You cannot say in the case of his mother-in-law, and his mother-in-law's mother, and his father-in-law's mother that they were found to be an *aylonit* or performed refusal, as they already gave birth. This indicates that a minor can give birth, as otherwise he should have stated: As they are already mature. Rather, actually, the original version of the *baraita* is correct: Lest she become pregnant and perhaps die. But this is difficult¹⁰ with regard to the mishna, which indicates that this scenario is impossible.

Rav Safra said: Children are equivalent to signs¹¹ of puberty. In other words, a girl who gives birth does not retain the legal status of a minor, as the very fact that she bore children is equivalent to a physical sign of maturity, usually in the form of pubic hairs. And some say: Children are preferable to signs of puberty. The Gemara asks: What is the practical difference that arises from the question of whether bearing children is equivalent or preferable to signs of maturity? The Gemara answers: The difference is that even according to the opinion of Rabbi Yehuda, who said that a minor may perform refusal even after she develops two pubic hairs, until the black hairs of her genitals are more plentiful¹² than the hairless skin, in the case of children he concedes that she is considered mature and may not perform refusal.

BACKGROUND

A minor who gives birth – קטנה שילדת: The question of whether a minor can give birth depends upon the definition of the relevant terms. The appearance of two pubic hairs is one stage in the process of sexual maturation. Apparently, the definition of adulthood as the stage when two hairs appear is based on the fact that this sign of maturity can be checked objectively by witnesses. Generally, the appearance of hairs occurs prior to the advent of ovulation and the menstrual cycle, which allow for the possibility of impregnation and childbirth. Consequently the claim stated later in the Gemara that children are preferable to signs of puberty is accurate, as childbearing occurs at a much later stage in the process of maturation, even if the hairs are not visible.

The Sages determined that the appearance of signs of puberty alone before the appropriate age, twelve for females and thirteen for males, is not sufficient for establishing adulthood. Nevertheless, despite the average age of puberty, physical maturity may be reached earlier depending on nutrition and hereditary factors. There have even been cases of extremely early maturation. It is clear, however, that complications in pregnancy and childbirth are more prevalent among girls than among mature women. Especially in the days of the Talmud, it was consequently assumed that childbirth before full physiological development would likely lead to an inability to give birth or severe tearing of the womb that could cause the death of the mother and baby at birth.

ורב זביד אמר: אין בנים בלא סימנים.
ונבדוק! חיישינן שמא נשרו. הניחא
למאן דאמר חוששין.

אלא למאן דאמר אין חוששין מאי
איכא למימר? אפילו למאן דאמר אין
חוששין, משום צער לידה – חיישינן.

"ביצד פוטות צרותיהן" וכו'. מנהיג
מילי? אמר רב יהודה: דאמר קרא
"לצרור", התורה ריבתה צרות הרבה.

רב אשי אמר: סברא היא, צרה מאי
טעמא אסיקא – דבמקום ערוה קיימא,
צרת צרה נמי – במקום ערוה קיימא.

"ביצד אם מתו הן" כו'. ואפילו כנס
ולבסוף גירש?

§ And Rav Zevid said: There are no children without signs^N of puberty. In other words, if a girl gives birth, she definitely possesses the signs of puberty. The Gemara asks: But if so, let us examine to see whether these physical signs are present, so that there is no need to depend on a presumption. The Gemara answers: We are concerned lest the hairs that constitute the sign have fallen off. The Gemara comments: This works out well according to the one who said that in general we are concerned lest signs fall off, i.e., that there are cases in which she is in fact mature but the hairs have come off.

However, according to the one who said that if there are in fact hairs they will certainly be found, and we are not concerned that they may have fallen out, what is there to say? The Gemara answers: Even according to the one who said that in ordinary circumstances we are not concerned that the hairs may have fallen out, in this case, due to the pain of childbirth we are concerned that they might have fallen out, and therefore it is impossible to examine the matter conclusively.

§ The Gemara returns to the mishna: How do they exempt their rival wives and the rival wives of their rival wives? The Gemara asks: From where are these matters, that not only is a rival wife exempt but the rival wife of a rival wife is exempt as well, derived? Rav Yehuda said that this is as the verse states: "And you shall not take a woman to her sister, to be a rival [*litzror*]^N to her" (Leviticus 18:18). The term *litzror* is written, with the letter *reish* appearing twice, rather than *latzor*, with a single *reish*, which means that the Torah amplified and included many rival wives. In other words, this verse includes not only the rival wife of a forbidden relative, but also the rival wife of a rival wife.

Rav Ashi said: It is a logical inference, which does not require a source from the Torah. What is the reason that a rival wife of a forbidden relative is prohibited? The reason is that she stands in place of a forbidden relative. Since the forbidden relative caused her exemption from levirate marriage, she too is considered a forbidden relative who remains categorized as a brother's wife. Therefore, the rival wife of a rival wife also stands in place of a forbidden relative, as she is like the rival wife of a forbidden relative and is therefore forbidden herself.

§ The mishna taught: How so? If the forbidden relative died, performed refusal, or was divorced, from that moment onward their rival wives are no longer considered the rival wives of a forbidden relative and are permitted. The Gemara remarks: This legal ruling with regard to a divorce is presented as a general principle and is therefore correct even if at the time that the deceased brother married the rival wife he was married to the forbidden relative, and ultimately divorced^H the relative, which means that for a period of time the women were rival wives. Even under these circumstances the prohibition of a rival wife of a forbidden relative does not apply, and she is permitted to enter into levirate marriage.

NOTES

There are no children without signs – אין בנים בלא סימנים: The early commentaries dispute the precise meaning of this statement. Rashi explains that in Rav Zevid's opinion, a minor who gives birth is assumed to have developed signs of puberty, and signs of puberty from eleven to twelve years of age are equivalent to signs after age twelve. Others agree, but for a different reason: Although Rav Zevid maintains that under ordinary circumstances the appearance of signs between the ages of eleven and twelve is equivalent to the earlier appearance of signs, childbirth is considered not a regular sign but an absolute sign of maturity (Rabbeinu Yitzhak in *Tosafot*). Ramban and Rashba explain similarly, albeit with a slight variation.

Yet others contend that childbirth is not possible at any age without prior definite signs of puberty. When the Gemara suggests an examination, it does so not because a physical examination is necessary; rather, it is asking about the presumption itself. In other words, it is saying that if this presumption is correct, the matter could be confirmed by examination (Ramban; Rashba; Ritva). The answer, according to this opinion, is that there are in fact signs, but even if they are not found this would not constitute contradictory evidence, as it is possible that due to the pain of childbirth and the difficulty of performing an examination at the right time, the signs have fallen off (see Rashba).

A completely different opinion is that although there is no childbearing without signs, these signs are efficacious only after the age of twelve (Rabbi Yehuda bar Natan). This is apparently the opinion of Rabbi Avraham Av Beit Din as well (see Ramban).

As the verse states: To be a rival [*litzror*] – דאמר קרא לצרור: Several commentaries omit this statement from the *baraita* cited earlier (3b), since if this opinion is explicitly stated in a *baraita* it does not stand to reason that Rav Ashi would take issue with it (*Tosafot*). Others maintain that this interpretation refers only to the rival wife of a rival wife (*Tosefot HaRosh*). Yet others contend that in the opinion of Rav Ashi the *baraita* does not cite this homiletic interpretation as the true source of the *halakha*, but merely as support, as the ruling that the rival wife of a rival wife is exempt is actually based on logical reasoning (Ritva).

HALAKHA

אפילו כנס ולבסוף – Even if he married and ultimately divorced: With regard to a man who was married both to a woman who was a forbidden relative of her potential *yavam* and to another woman, if during the lifetime of the husband the forbidden relative died or if he divorced her, or if she performed refusal, and he subsequently died childless, her rival wife is permitted

in levirate marriage, as a forbidden relative renders her rival wife forbidden only at the moment when the mitzva of levirate marriage takes effect, in accordance with the opinion of Rava (Rambam *Sefer Nashim, Hilkhos Yibbum VaHalitza* 6:21; *Shulhan Arukh, Even HaEzer* 173:7).

Disjointed [tavra] – תבְּרָא: This expression generally means that various sections of a single mishna or *baraita* reflect disputing opinions. Some commentaries claim that this phrase is used only when the dispute is not explicit (see *Yad Malakhi*). Rashi and others explain that the term *tavra* means broken. In other words, the mishna does not constitute a single unit but is composed of two or more separate sections. Others maintain that this term denotes the taking of an oath, or that it is an expression of special emphasis. In other words: It is clear and evident that such and such is the case. Accordingly, the Gemara should be read as follows: Certainly, he who taught this did not teach that (*Arukh*, citing Rabbeinu Hananel).

Actually, a single tanna – לְעוֹלָם חַד תִּנָּא: According to this interpretation, the phrase: It is with regard to this case that they said, does not come to exclude other examples but simply to include the present case (Rabbi Yehuda bar Natan).

And let her perform refusal now – וְתִמְאָן הַשְׁתָּא: Some commentaries ask: In light of the statement that the mishna is in accordance with the opinion of Abba Shaul that the mitzva of *halitza* is preferable to that of levirate marriage, this question is surprising. Why should she perform an act of refusal to enable levirate marriage rather than *halitza*? They answer that the wording of the mishna: Performs *halitza* and does not enter into levirate marriage, indicates that she must undergo *halitza* and does not have the option of levirate marriage at all. *Tosafot* cite a similar interpretation; however, see Meiri.

This question was also raised in the Jerusalem Talmud, in a slightly different form. The Gemara there explains that the phrase: Who could refuse even if she did not, refers to a minor who died, which means that she can no longer perform refusal at all. The early commentaries write that the Gemara here could have explained likewise, but it preferred to interpret the mishna in a manner that suits all cases rather than limit it to a specific example (see Ramban and Rashba).

Can refuse the levirate betrothal...but she cannot refuse his bond – מִמְאָנֶת לְמֵאֲמֹר וְאִינָהּ מִמְאָנֶת לְזִיקָתוֹ: The main discussion on this matter of the refusal of a *yevama* appears later in the Gemara (107a). According to one opinion, refusal nullifies only an extant connection. Rabbi Oshaya rules in accordance with this opinion when he states that refusal applies solely to marriage, as this is a relationship based on mutual consent. In contrast, refusal does not apply to a levirate bond, which is a duty mandated by Torah law. The dissenting opinion is that the refusal of a *yevama* is in fact the retroactive annulment of the first marriage, which dissolves the levirate bond automatically. In the Jerusalem Talmud other opinions are cited that differentiate between the ways in which a *yevama* can perform the act of refusal.

וְרַמְיָנָהּ: שְׁלֹשָׁה אָחִים, שְׁנֵים מֵהֶן נְשׂוּאִים שְׁתֵּי אֲחִיּוֹת וְאֶחָד נָשׂוּי נְכָרִית, גִּירֵשׁ אֶחָד מִבְּעֻלֵי אֲחִיּוֹת אִשְׁתּוֹ וּמָתָה הַנָּשׂוּי נְכָרִית, וּכְנָסָה הַמְּגֵרֶשׁ וּמָתָה – זֶה הָיָא שְׂאֵמְרוּ: שְׂאֵם מִתּוֹ אוֹ נִתְּגַרְשׁוּ – צְרוּתֵיהֶן מוֹתֵרוֹת.

טַעֲמָא דְגִירֵשׁ וְאַחֲרֵי כֵן כֵּן. אֲבָל כֵּן וְאַחֲרֵי כֵן גִּירֵשׁ – לֹא!

אָמַר רַבִּי יְרֵמְיָה: תִּבְרָא, מִי שֶׁשָּׁנָה זֶה לֹא שָׁנָה זֶה. הָיָא תִּנָּא סָבֵר: מִיתָה מִפְּלֵת,

וְהָיָא תִּנָּא סָבֵר: נְשׂוּאִין הָרְאשׁוֹנִים מִפְּלֵים.

רַבָּא אָמַר: לְעוֹלָם חַד תִּנָּא הוּא, "זֶה וְאִין צְרִיךְ לִדְמוֹר זֶה" קִתְּנִי.

"וְכָל שִׁיכּוּלָהּ לְמֵאֲן". וְתִמְאָן הַשְׁתָּא וְתִתְיַיֵּבִים! לֵימָא מְסִייעָא לִיהּ לְרַבִּי אוֹשְׁיָא.

דְּאָמַר רַבִּי אוֹשְׁיָא: מִמְאָנֶת לְמֵאֲמֹר וְאִינָהּ מִמְאָנֶת לְזִיקָתוֹ!

And the Gemara raises a contradiction from a different mishna (30a), which discusses **three brothers, two of whom are married to two sisters and one is married to an unrelated woman. One of the husbands of the sisters subsequently divorced his wife, and the one who was married to the unrelated woman died, and the one who divorced his wife married the yevama by levirate marriage and afterward died as well**, which means that this *yevama* once again came for levirate marriage before the remaining brother, who was married to one of the sisters. **It is with regard to this case that they said that if they died or were divorced their rival wives are permitted.** This concludes the mishna.

The Gemara infers from this mishna: **The reason** she is permitted is that the *yavam* first divorced the sister and only afterward married the unrelated woman. In this case, the unrelated woman was never actually the rival wife of a sister, despite the fact that they were, at different times, married to the same man. **However**, if the *yavam* first married the unrelated woman and afterward divorced the sister, she would not be permitted to enter into levirate marriage because for a period of time she had been the rival wife of a forbidden relative.

These two *mishnayot* apparently contradict each other. **Rabbi Yirmeya said:** This mishna is **disjointed**,^N i.e., the *mishnayot* are truly incompatible, and the *tanna* who taught this *halakha* did not teach that *halakha*. The reason for the difference in opinions is that this *tanna*, of the mishna here, maintains that death causes her to come before him for levirate marriage. In other words, the decisive moment that determines the obligation in or exemption from levirate marriage is the moment of the childless brother's death. Since in the case of the mishna here she was not the rival wife of a forbidden relative at the time of his death, the prohibition does not apply to her.

And that *tanna* of the mishna dealing with three brothers maintains that the first marriage causes her to come before him for levirate marriage. In other words, the levirate bond is established at the time of the marriage, and since the second wife was the rival wife of a forbidden relative for at least a brief period, her exemption from levirate marriage was determined then.

Rava said: Actually, both *mishnayot* represent the opinion of a single *tanna*,^N but he teaches the mishna employing the style: **This and it is unnecessary to say that.** In other words, the mishna here is referring to a case where he first married and later divorced, while the mishna that deals with three brothers is speaking of a simpler, more obvious case, in which he first divorced and later married the second wife. In that case she is certainly permitted. Accordingly, there is no real contradiction here between the *mishnayot*, as they utilize different styles of teaching.

S The mishna taught: **And if any of these forbidden relatives was a minor who could refuse her husband, then even if she did not refuse him, her rival wife performs *halitza* and does not enter into levirate marriage. The Gemara asks: And let the minor perform refusal now,**^N thereby annulling the marriage retroactively after the death of her husband, **and let her rival wife enter into levirate marriage.** Since this option is not accepted, **let us say that it supports the opinion of Rabbi Oshaya.**

As Rabbi Oshaya said: A *yevama* who is a minor can refuse the levirate betrothal of the *yavam*. In other words, if he betrothed her she is free to say that she does not desire to marry him, a declaration that severs any connection between them. **But she cannot refuse his bond.**^N Provided that he has not performed a levirate betrothal, this minor *yevama* cannot annul the ties between them by a refusal, as theirs is not a bond of marriage, and the institution of refusal was established only with regard to marriage. According to this opinion, it is evident that a minor *yevama* who is a forbidden relative cannot perform refusal so as to enable her rival wife to enter levirate marriage.

Six women with whom relations are forbidden are... severe – שש עריות חמורות – In a case where a woman was apparently married to a relative with whom marriage is actually invalid, and this man died, the *yavam* is permitted to take her rival wife in marriage. If this woman who was forbidden to the deceased brother was permitted to the *yavam*, he may marry her and also enter into levirate marriage with the other woman, the proper wife of the deceased (Rambam *Sefer Nashim*, *Hilkhot Yibbum VaHalitza* 6:12; *Shulhan Arukh*, *Even HaEzer* 173:2).

לא, צרת ערוה שאני. דתני רמי בר יחזקאל: מיאנה בבעל – מותרת לאביו, מיאנה ביבם – אסורה לאביו.

The Gemara rejects this suggestion: No; it is possible that a minor *yevama* can indeed refuse a levirate bond, but **the rival wife of a forbidden relative is different**, as she is not permitted in levirate marriage even if the forbidden relative herself can perform refusal. Why? **As Rami bar Yehezkel taught in a *baraita*: If she refused the husband, thereby annulling the marriage, she is permitted to his father**, as the marriage bond was entirely nullified retroactively and she is not considered his daughter-in-law at all. If, however, **she refused only the *yavam*, she is forbidden to his father.**

אלמא: משעת נפילה נראית ככלתו, הכא נמי משעת נפילה נראית כצרת בתו.

Apparently, the reason is that **at the moment of her coming before him for levirate marriage she had the appearance of his daughter-in-law**. Since people will think she is his daughter-in-law, she is forbidden to the father. **Here, too, at the moment of her coming before him for levirate marriage she had the appearance of his daughter's rival wife.**^N Consequently, the Sages did not permit her to enter into levirate marriage even if the other wife refuses the husband.

מתני' שש עריות חמורות מאלו, מפני שנשואות לאחריהם, צרותיהן מותרות:

MISHNA Six women with whom relations are forbidden who were not enumerated in the first mishna are forbidden by prohibitions that are **more severe^H than those^N** listed in that mishna **because they may be married only to others** and may never be married to any of the brothers, due to the closeness of their relationship. However, this stringency entails a corresponding leniency: Since the *halakha* of levirate marriage is entirely inapplicable in these cases, **their rival wives are permitted**. The rival wife of a forbidden relative is forbidden herself only if the mitzva of levirate marriage is applicable, but where it is not in effect she is permitted.

אמו, ואשת אביו, ואחות אביו, אחותו מאביו, ואשת אחי אביו, ואשת אחי מאביו.

The six women with whom relations are forbidden are as follows: **His mother, and his father's wife, and his father's sister, and his paternal half sister, and the wife of his father's brother, and the wife of his paternal half brother**. Each of these women with whom relations are forbidden is forbidden equally to all of the brothers, and the mitzva of levirate marriage is inapplicable. Therefore, her rival wife is permitted.

בית שמאי מתירין הצרות לאחים, ובית הלל אוסרים.

§ Up to this point, the discussions were based on the assumption that not only may a forbidden relative not enter into levirate marriage, but her rival wife is also exempt. However, this issue is subject to a long-standing dispute. **Beit Shammai permit the rival wives to the brothers**, as they did not accept the interpretation of the verses that indicates that rival wives are prohibited. **And Beit Hillel forbid them**. The previous *mishnayot* are in accordance with the opinion of Beit Hillel.

NOTES

נראית – She had the appearance of his daughter's rival wife – כצרת בתו: Some commentaries maintain that according to the opinion of Rami bar Yehezkel, a refusal indeed annuls the marriage retroactively and cancels the levirate bond entirely. Consequently, if there is no rival wife of a forbidden relative, the levirate bond is nullified by the refusal. In this case, however, as the woman appears to be his daughter's rival wife, there is concern lest a rival wife of a forbidden relative might be mistakenly permitted in other cases, which is a transgression punishable by *karet*. In standard cases of refusal there is no such concern, as even if they mistakenly render the *yevama* permitted to all, this would entail only a regular prohibition (Rid).

Six women with whom relations are forbidden are more severe than those – שש עריות חמורות מאלו: Since these forbidden women may not marry the *yevamin* but only other men, their rival wives should be defined as rival wives of those with whom relations are forbidden where the mitzva does not apply. Yet they are not forbidden at all, but the reason is not because they are forbidden by prohibitions that are more severe than those of the first list. Some commentaries explain that the mishna is teaching that even if a *yavam* did marry one of these women, whether intentionally or unwittingly, the marriage is entirely invalid, and therefore her rival wives are permitted (Rambam's Commentary on the Mishna).

HALAKHA

Halitza for rival wives – תְּלִיעָה לְצֻרוֹת: If one performs the act of *halitza* with a woman exempt from levirate marriage and *halitza*, e.g., the rival wife of a forbidden relative, it is not considered *halitza* and she is fit to marry a priest, in accordance with the opinion of Beit Hillel (Rambam *Sefer Nashim*, *Hilkhot Yibbum VaHalitza* 4:16).

NOTES

If they entered into levirate marriage Beit Shammai deem them fit, etc. – נִתְיַבְּמוּ בֵּית שְׁמַאי מִכְשִׁירִים וְכוּ': Rashi and most commentaries explain that question is whether a rival wife who entered into levirate marriage and was subsequently widowed by the *yavam* is fit to marry a priest. Others claim that the dispute is with regard to the status of the children born to these rival wives. According to Beit Shammai they are legitimate, whereas Beit Hillel maintain that they are disqualified as *mamzerim*.

Beit Shammai did not refrain, etc. – לֹא נִמְנְעוּ בֵּית שְׁמַאי: This observation was stated specifically with regard to this dispute rather than one of the many other disagreements between Beit Shammai and Beit Hillel, because in other cases it is possible simply to act stringently in accordance with the conflicting opinion. Here, however, the adoption of the stringency of the other opinion would constitute a violation of a prohibition of their own ruling, and therefore the conflict could not be resolved in this manner (*Lekah Yosef*; see Ritva).

What is the reason of Beit Shammai – מַאי טַעְמָא דְּבֵית שְׁמַאי: Why doesn't the Gemara simply state that Beit Shammai do not accept Beit Hillel's interpretation of the term *litzor* (*Tosafot*)? Some commentaries explain that the Gemara did not want to say that Beit Shammai merely negate the opinion of Beit Hillel, as it preferred to seek a positive reason for their ruling.

Outside, indicates by inference that there is, etc. – חוּצָה: Some commentaries say that this statement serves to explain why the verse is superfluous. Since the simple meaning of the term: Outside, is not necessary to understand the verse, it is therefore available for interpretation (*Tosefot Rid*). In the Jerusalem Talmud (1:6) a problematic comparison is drawn between the opinion of Beit Shammai and that of the Samaritans, who similarly derived from here that only a woman betrothed, who is outside a proper marriage is fit for levirate marriage.

For that which Rav Yehuda said that Rav said – לְכָדֵב: The commentaries point out that Rav's opinion is not accepted by everyone, as Shmuel disagrees with him (*Tosafot*). They explain that Shmuel requires this verse for a different *halakha*. Some explain that as the Gemara will conclude that a different ruling is derived from this verse, it did not deem it necessary to clarify all of the various opinions (Rashba).

חֲלוּצָה, בֵּית שְׁמַאי פּוֹסְלִין מִן הַכֹּהֲנִים, וּבֵית הֵלֵל מְכַשְּׁרִין. נִתְיַבְּמוּ, בֵּית שְׁמַאי מִכְשִׁירִין וּבֵית הֵלֵל פּוֹסְלִין.

אִם עָלָּה פִּי שְׁאֵלָה אוֹסְרִים וְאֵלּוּ מִתִּירִין, אֵלּוּ פּוֹסְלִין וְאֵלּוּ מְכַשְּׁרִין – לֹא נִמְנְעוּ בֵּית שְׁמַאי מִלְּיָשָׂא נָשִׁים מִבֵּית הֵלֵל, וְלֹא בֵּית הֵלֵל מִבֵּית שְׁמַאי. כָּל הַטְּהוֹרוֹת וְהַטְּמְאוֹת שֶׁהָיוּ אֵלּוּ מִטְּהוֹרִים וְאֵלּוּ מִטְּמֵאִין – לֹא נִמְנְעוּ עוֹשִׂין טְהוֹרוֹת אֵלּוּ עַל גְּבִי אֵלּוּ.

גַּמ' אָמַר רַבִּי שְׁמַעוֹן בֶּן פִּזִּי: מַאי טַעְמָא דְּבֵית שְׁמַאי – דְּכִתְיִב "לֹא תִהְיֶה אִשְׁתְּ הַמֵּת הַחוּצָה לְאִישׁ זֶר", "חוּצָה" מִכָּלל דְּאִיכָּא פְּנִימִית. וְאָמַר רַחֲמָנָא: "לֹא תִהְיֶה".

וּבֵית הֵלֵל: מִיִּבְעֵי לָהּ לְכָדֵב יְהוּדָה אָמַר רַב. דְּאָמַר רַב יְהוּדָה אָמַר רַב מִנֵּן שְׂאִין קִידוּשִׁין תּוֹפְסִין בִּיבְמָה, שְׁנֵאֲמַר "לֹא תִהְיֶה אִשְׁתְּ הַמֵּת הַחוּצָה לְאִישׁ זֶר" – לֹא תִהְיֶה בָּהּ הִנֵּה לָזֶר.

וּבֵית שְׁמַאי: מִיִּבְעֵי "לְחוּץ"? "חוּצָה" כְּתִיב. וּבֵית הֵלֵל: בֵּין דְּכִתְיִב "חוּצָה" כִּמְאֵן דְּכִתְיִב "לְחוּץ" דְּמִי.

If any of the rival wives of the brother performed *halitza*,^h Beit Shammai disqualify her from marrying into the priesthood, as in their opinion these rival wives were fit for levirate marriage, which means that the *halitza* was fully valid. Consequently, they are disqualified from marrying a priest, like all other women who perform *halitza*. And Beit Hillel^p deem them fit, as they maintain that no legal act of *halitza* was performed here at all. If they entered into levirate marriage, Beit Shammai deem them fitⁿ for the priesthood, as in their opinion, this is a fully legal levirate marriage. And Beit Hillel disqualify them, because they engaged in licentious sexual relations as the rival wives of a forbidden relative.

§ The mishna comments: Although Beit Hillel prohibit the rival wives to the brothers and Beit Shammai permit them, and although these disqualify these women and those deem them fit, Beit Shammai did not refrainⁿ from marrying women from Beit Hillel, nor did Beit Hillel refrain from marrying women from Beit Shammai. Furthermore, with regard to all of the disputes concerning the *halakhot* of ritual purity and impurity, where these rule that an article is ritually pure and those rule it ritually impure, they did not refrain from handling ritually pure objects each with the other, as Beit Shammai and Beit Hillel frequently used each other's vessels.

GEMARA Rabbi Shimon ben Pazi said: What is the reason for the opinion of Beit Shammai?ⁿ

As it is written: "The wife of the dead man shall not be married outside of the family to one not of his kin" (Deuteronomy 25:5). The term "outside" indicates by inference that there isⁿ a woman who is considered inside, i.e., a close relative of the *yavam*, who is inside his family. And the Merciful One states: "Shall not be married" and also "to one not of his kin." In other words, even when one of the wives is a forbidden relative, the rival wife who is outside the family of the *yavam* is obligated in levirate marriage.

And how do Beit Hillel respond to this argument of Beit Shammai? They require these passages for that which Rav Yehuda said that Rav said,ⁿ as Rav Yehuda said that Rav said: From where is it derived that betrothal is not effective in the case of a *yevama* who did not perform *halitza*, if the betrothal is performed by an unrelated man and not a *yavam*? This betrothal is not valid at all, as it is stated: The wife of the dead man shall not be married outside of the family to one not of his kin" (Deuteronomy 25:5). This verse indicates that there shall not be in her case the becoming married to one not of his kin.

And how do Beit Shammai respond to this claim? They ask: Is it written: To the outside [*lahutz*], which might indicate betrothal to an unrelated man? It is actually written "outside [*hutza*]," which is an adjective describing this woman as one who is from the outside. And Beit Hillel, what is their response? They maintain that since it is written "outside," it is considered as though it is written: To the outside.

PERSONALITIES

Beit Shammai and Beit Hillel – בֵּית שְׁמַאי וּבֵית הֵלֵל: These refer to the groups of disciples of the Sages Hillel and Shammai. Although there are only three recorded matters of dispute between Hillel and Shammai themselves, their students were constant disputants who served together in the Sanhedrin at the end of the Second Temple period and after its destruction, and disagreed about many points of *halakha*. With regard to the disagreements of these two houses, a mishna (*Avot* 5:20) states: Any controversy waged for the sake of Heaven shall in the end be of lasting worth, but any that is not waged for the sake of Heaven shall in the end lead to no permanent result. Which

controversy was an example of one waged in the service of Heaven? It is the controversy of Hillel and Shammai. And which was not for the sake Heaven? It is the controversy of Korah and his company.

Generally speaking, the disciples of Hillel and Shammai mirrored the positions of their teachers, the open, tolerant Hillel and the harsh, severe Shammai, although there are exceptions to this rule. All of the cases in which the disciples of Shammai were more lenient than the disciples of Hillel are listed in tractate *Eduyyot*. In most disputes between Beit Shammai and Beit Hillel, the *halakha* is in accordance with the opinion of Beit Hillel.

Placed a *heh* at its end – הָטִיל לָהּ...הָא בְּסוּפָהּ: In the Jerusalem Talmud the point is raised that the variation on the term netherworld [*she'ol*] in the verse: “The wicked shall return to the netherworld [*l'she'ol*]” (Psalms 9:18), apparently contradicts this principle, as it includes both a *lamed* at the beginning and a *heh* at the end. The Gemara there explains that this refers to an extra level of depth inside the netherworld, i.e., the lowest chamber in the netherworld (Ritva).

To include a betrothed woman – לְרִבּוֹת הָאִשָּׁה: The commentaries ask why this is not simply derived from the phrase “wife of the dead man” (Deuteronomy 25:5), which includes both married and betrothed women. They answer that since the Torah later states: “His brother’s house” (Deuteronomy 25:9), an expression that apparently refers only to a married woman, a special verse was necessary to include a betrothed woman. Others add that the assumption that a betrothed woman is unfit for levirate marriage is based on the reference to the deceased as having no child, which indicates that he was fully married and could have fathered a child (Rashba).

Beit Shammai apply that a prohibition does not take effect where another prohibition already exists – בֵּית שַׁמַּי דָּאֵין – אִיסוּר חָל עַל אִיסוּר: Despite the apparently straightforward logic of this explanation, it raises many difficulties, which are scrutinized by the early and later commentaries. One difficulty is that this principle, here applied by Beit Shammai, is in fact accepted as *halakha*; many *tanna'im* and *amora'im* hold that a prohibition does not take effect where another prohibition already exists, and it cannot be that they all follow the ruling of Beit Shammai. Evidently, Beit Hillel also accept that principle in most cases, but this instance is an exception, as the term *litzor* indicates a different ruling (*Tosafot Yeshanim*; Ritva).

Some claim that there is a difference between the opinions, as Beit Shammai maintain that a prohibition does not take effect at all where another prohibition already exists, and it is as though there were no prohibition, whereas Beit Hillel maintain that although the second prohibition does not entail any penalty, it is not entirely negated (*Ahiezer*). An additional difficulty is that it does not stand to reason that Beit Shammai would reject the interpretation of *litzor* merely because of their application of the principle that a prohibition does not take effect where another prohibition already exists. Consequently, some commentaries explain that Beit Shammai do not entirely reject the interpretation of the verse, as they hold that this interpretation is valid in cases where the two prohibitions come into effect simultaneously. In these cases, Beit Shammai concede that the prohibition of a rival wife of a forbidden relative applies (*Tosafot Yeshanim*; see Meiri). According to this interpretation the ensuing deliberations of the Gemara with regard to which prohibition came first may be more readily understood (see Rashba).

Tosafot and most early commentaries explain that one further difficulty is that if in fact the principle that a prohibition does not take effect where another prohibition already exists applies to these cases, then even the forbidden relative herself should be permitted. Some commentaries explain that the prohibition of a forbidden relative is suspended until the death of the husband. When he dies, the prohibition of a brother’s wife is nullified, and the other prohibition comes into effect. However, for the exemption of a rival wife the prohibition would have had to have been in effect during his lifetime.

דְּתַנִּי, רַבִּי נְחֵמְיָה אוֹמֵר: כָּל תִּיבָה שְׂצָרִיכָה לְמָד בְּתַחֲלָתָהּ – הָטִיל לָהּ הַכְּתוּב הָא בְּסוּפָהּ. וְתַנָּא דְּבֵי רַבִּי יִשְׁמַעֵאל: כְּגוֹן “אֱלִים” “אֱלִימָה”, “מַחְנִים” “מַחְנִימָה”, “מִצְרַים” “מִצְרִימָה”, “דְּבַלְתִּימָה”, “יְרוּשָׁלַיִמָה”, “מִדְבָּרָה”.

As it is taught in a *baraita*: Rabbi Nehemya says that with regard to any word that requires the letter *lamed* at its beginning, meaning: To, the verse at times placed a letter *heh* at its end,^N but the meaning is the same. And the school of Rabbi Yishmael taught: For example, the term: To “Elim” (Exodus 16:1) can be rendered as “Elima” (Exodus 15:27) instead of *le’Elim*; “Mahanaïm” (1 Kings 2:8) becomes “Mahanaïma” (11 Samuel 17:24); “Mitzraim” (e.g., Genesis 13:1) into “Mitzraïma” (Genesis 12:10); Divlatayim is “Divlataïma” (Numbers 33:46); to Yerushalaim is “Yerushalaima” (Ezekiel 8:3); and “midbara” (Joshua 18:12) means: To the wilderness [*midbar*]. All these words that contain the letter *heh* at the end mean the same as if there were a *lamed* at the beginning.

וּבֵית שַׁמַּי, דְּרַב יְהוּדָה אָמַר רַב מְנָא לְהוּי מִ“לְאִישׁ זָר” נִפְקָא.

The Gemara asks: And Beit Shammai, from where do they derive that *halakha* that Rav Yehuda said that Rav said? The Gemara answers: They derive it from the phrase: “To one not of his kin” (Deuteronomy 25:5). This phrase indicates that marriage is invalid with an unrelated man. However, they learn another matter from the term “outside.”

וּבֵית הִלֵּל נִמְי, תִּיפּוּק לְהוּי מִ“לְאִישׁ זָר”! אֵין הָבִי נִמְי “חֻצָּה” לָמָּה לִי – לְרִבּוֹת הָאִשָּׁה.

The Gemara asks: But if so, let Beit Hillel, too, derive this *halakha* from: “To one not of his kin.” The Gemara answers: Yes, it is indeed so. They, too, infer it from this source. Then why do I need the term “outside”? This word was necessary to include a betrothed woman.^{NH} With regard to a woman who was betrothed but not yet married to the deceased brother, although she is still technically outside his house, she is nevertheless obligated in levirate marriage.

וְאִידֵּךְ: מִ“חֻצָּה” “הַחֻצָּה” – וְאִידֵּךְ: “חֻצָּה” “הַחֻצָּה” לֹא מִשְׁמַע לָהּ.

And the other one, Beit Shammai, infers this halakhic ruling from a single superfluous letter, as instead of “outside” being written as *hutza* it is written as *hahutza*. And as for the other one, Beit Hillel, they do not derive a *halakha* from the linguistic difference between *hutza* and *hahutza*, as they maintain that this is not a significant enough difference.

רַבָּא אָמַר: טַעֲמִייהוּ דְּבֵית שַׁמַּי, דָּאֵין אִיסוּר חָל עַל אִיסוּר.

§ Rava said: The rationale of Beit Shammai for their opinion that rival wives are permitted in levirate marriage is not due to a specific verse. Rather, Beit Shammai apply the well-known halakhic principle that a prohibition does not take effect where another prohibition already exists.^{NH} Since the first wife was already a prohibited relation to her brother-in-law during his brother’s lifetime, the second prohibition of a wife’s sister does not apply to her. Accordingly, her presence is entirely disregarded, as though there is no forbidden relative here to exempt the rival wife.

תִּינַח הֵיכָא דְּנִשְׂא מִת וְאַחַר כֵּן נִשְׂא חֵי – לֹא אֵתִי אִיסוּר אַחֹת אִשָּׁה וְחִיָּיל אִיסוּר אִשָּׁתָּה, אֲלֵא נִשְׂא חֵי וְאַחַר כֵּן נִשְׂא מִת, אַחֹת אִשָּׁה קְדִישָׁה!

The Gemara raises a difficulty: This works out well where the deceased brother had first married one sister and afterward the surviving brother had married another sister, as in this case it is possible to say that the prohibition of a wife’s sister does not come and apply in addition to the prohibition of a brother’s wife. However, if the surviving brother had married one sister and afterward the deceased brother had married another sister, in this case the prohibition of a wife’s sister precedes that of a brother’s wife. How can it be said in this situation that this prohibition of a forbidden relative does not take effect where another prohibition already exists, if actually it came first?

HALAKHA

Levirate marriage with a betrothed woman – יִיבֵים לְאִירֻסָּה: The mitzva of levirate marriage applies whether the *yevama* was married to the deceased brother or betrothed to him (Rambam *Sefer Nashim*, *Hilkhot Yibbum VaHalitza* 1:1; *Shulhan Arukh*, *Even HaEzer* 44:7).

A prohibition does not take effect where another prohi-

bition already exists – אֵין אִיסוּר חָל עַל אִיסוּר: It is an important principle with regard to all prohibitions in the Torah that a prohibition does not take effect where another prohibition already exists, unless both prohibitions came into effect at once, or if one prohibition adds to the other prohibition, or if the second is a more inclusive prohibition (Rambam *Sefer Kedusha*, *Hilkhot Issurei Bia* 17:8).

The time of reading of the Scroll of Esther – **זמן קריאת מגילת** The Scroll of Esther is read on the fifteenth of Adar in cities that has been surrounded by a wall from the days of Joshua, and on the fourteenth in all other places. In earlier generations, it was read in the small villages only on Monday or Thursday, which meant that they would read even on the eleventh, twelfth, or thirteenth of Adar (Rambam *Sefer Zemanim*, *Hilkhot Megilla* 1:4, 7).

Cutting over the dead – חבוה על מת – One who makes a single incision in his flesh in mourning for the dead is liable to receive lashes for violating the prohibition: “You shall not cut yourselves... for the dead” (Deuteronomy 14:1; Rambam *Sefer HaMadda*, *Hilkhot Avoda Zara* 12:12, 13).

NOTES

לֹא תִגְדְּדוּ – You shall not cut yourselves [titgodedu] The root *g-d-d* bears several meanings, two of which can be found in the Torah: the creation of a wound or bruise, or a group or gathering. As a result of this double meaning, the statement in Deuteronomy is interpreted by the Sages as referring to two separate prohibitions.

לִימָא קְרָא לָא – Let the verse state: You shall not cut – **תגודדו** If the verse were stated in this form, it would be evident that there is a prohibition against cutting one's flesh. The meaning of the reflexive form of the verb: “You shall not cut yourselves,” further indicates the division of the people into separate and individual factions (Ritva).

ואימא – But say that the entire verse comes for this – **בוליה להכי הוא דאיתא** According to Rashi, the Gemara is suggesting that the entire verse might come only to prohibit the formation of factions and is not related to the practices of mourning at all. The problem is that it is unlikely that a verse would not refer to its context at all. However, it is possible to explain that as the Torah had just stated: “You are children of the Lord” (Deuteronomy 14:1), it might have been thought that the verse follows this statement with two prohibitions that involve behavior unbecoming for children of God: Gathering into contentious factions and making a bald spot for the dead (Ritva; *Ramat Shmuel*). Other early commentaries cite the interpretation of the *ge'onim* that the question is actually whether the verse might be prohibiting only cutting for the dead.

**בין דלא אתי איסור אשת אח וחיל
אאיסור אחות אשה – הווא לה צרת
ערה שלא במקום מצוה, ושריא.**

**“חלצו, בית שמאי פוסלים” וכו'.
פשיטא!**

**לאפוקי דרבי יוחנן בן נורי, דאמר: בואו
ונתקן להם לצרות שיהיו חולצות ולא
מתניבמות – קא משמע לן דבית הלל
מכשירים.**

**“נתיבמו בית הלל פוסלין” כו'. הא
תו למה לוי? אידי דתנא חלצו, תנא
נמי נתיבמו.**

**תנן התם: מגילה נקראת באחד עשר
ובשנים עשר ובשלשה עשר ובארבעה
עשר ובחמשה עשר, לא פחות ולא
יותר.**

**אמר ליה ריש לקיש לרבי יוחנן: איקרי
כאן “לא תגודדו” – לא תעשו אגודות
אגודות! האי “לא תגודדו” מיבעי
ליה לגופיה, דאמר רחמנא: לא תעשו
חבורה על מת!**

**אם בן לימא קרא “לא תגודדו”, מאי
“תגודדו” – שמע מינה להכי הוא
דאיתא. ואימא בוליה להכי הוא
דאיתא? אם בן לימא קרא “לא תגודדו”
מאי “לא תגודדו” – שמע מינה תרת.**

The Gemara answers: **Since the prohibition of a brother's wife does not come and apply in addition to the prohibition of a wife's sister, the status of a brother's wife does not pertain to her and she is not obligated in levirate marriage with him at all. This means that the other wife is a rival wife of a forbidden relative where no mitzva applies, and she is therefore permitted.**

S The mishna taught: If any of the rival wives of the brother performed *halitza*, Beit Shammai disqualify her from marrying into the priesthood, as they hold that the *halitza* was fully valid. The Gemara asks: If the rival wives are obligated in the mitzva of levirate marriage and they performed *halitza*, it is obvious that the status of a woman who had undergone *halitza* applies to them.

The Gemara answers: This statement comes to exclude the opinion of Rabbi Yohanan ben Nuri, who said: **Come and let us institute for rival wives of women with whom relations are forbidden that they should perform *halitza* and not enter into levirate marriage.** If this ordinance were accepted, these rival wives would be disqualified by rabbinic law, even according to the opinion of Beit Hillel. The mishna therefore teaches us that Beit Hillel deem the rival wives fully fit to marry into the priesthood, as no *halitza* was instituted for rival wives and any *halitza* performed with them is entirely meaningless.

S The mishna further taught: **If they entered into levirate marriage, Beit Shammai deem them fit for the priesthood and Beit Hillel disqualify them.** The Gemara asks: **Why do I need this as well, as this halakha follows logically from the previous statement concerning *halitza*?** The Gemara answers that **since the mishna taught: Performed *halitza*, it also taught the case of: Entered into levirate marriage, despite the fact that this was not necessary, as even without this ruling the matter would have been understood.**

S Apropos the mishna's comments concerning the details of the relationship between Beit Shammai and Beit Hillel, the Gemara discusses the issue of disputes in general. **We learned in a mishna there, in tractate Megilla (2a): The Megilla, the Scroll of Esther, is read^h on the eleventh of Adar, on the twelfth, on the thirteenth, on the fourteenth, or on the fifteenth, in cities surrounded by a wall, no earlier and no later than this.** The obligation to read the Megilla on the fourteenth or fifteenth of Adar is stated in the Megilla itself, while the additional days were instituted by the Sages to allow residents of villages, who would come to the cities on Mondays and Thursdays and supply water and rations to the residents of the cities, to hear the reading of the Megilla at that opportunity.

Reish Lakish said to Rabbi Yohanan: **I should read here the verse: “You shall not cut yourselves [titgodedu]” (Deuteronomy 14:1),ⁿ which is interpreted as meaning: Do not become numerous factions [agudot].** In other words, the Jewish people should be united, rather than divided into disparate groups that act in different ways. Before analyzing this issue, the Gemara asks: **This verse: “You shall not cut yourselves,” is required for the matter itself, as the Merciful One is saying: Do not cut yourselves over the dead.^h How is the halakha concerning factions derived from this apparently straightforward verse?**

The Gemara answers: **If so, that the verse comes to teach only about the practices of mourning, let the verse state only: You shall not cut.ⁿ What is the meaning of: “You shall not cut yourselves”? Learn from this that it comes for this purpose as well, to teach the prohibition against splitting into factions.** The Gemara asks: **But in that case, one can say that the entire verse comes for thisⁿ purpose and does not refer to cutting for the dead at all. The Gemara answers: If so, let the verse state: Lo tagodu, rather than lo titgodedu, both of which mean: You shall not cut. What is the meaning of: “Lo titgodedu”? Conclude two conclusions from it: Both the simple prohibition against making cuts for the dead and the matter of dividing into factions.**

אמר ליה: עד כאן לא שנית מקום שנהגו לעשות מלאכה בערבי פסחים עד חצות – עושין, מקום שנהגו שלא לעשות – אין עושין?

אמר ליה: אמינא לך אנא איסורא, דאמר רב שמן בר אבא אמר רבי יוחנן: “לקיים את ימי הפורים בזמניהם”, זמנים הרבה תיקנו להם חכמים, ואת אמרת לי מנהגא!

והתם לאו איסורא הויא? והתנן: (בבבליה) בית שמאי אוסרין ובית הלל מתירין!

אמר ליה: התם הרוואה אומר מלאכה הוא דלית ליה. והא בית שמאי מתירין הצרות לאחים, ובית הלל אוסרים!

After this incidental discussion, the Gemara returns to the basic question raised by Reish Lakish: Why doesn't the reading of the Scroll of Esther in different places at different times violate the prohibition against breaking into factions? Rabbi Yohanan said to him: Have you not taught until now:^N In a place where the people were accustomed to perform labor on Passover eve^H until midday, one may do so on that day; in a place where the people were accustomed not to perform labor, one may not do so? This shows that different places can have different customs without violating the prohibition against dividing into factions.

Reish Lakish said to Rabbi Yohanan: I speak to you of a prohibition, as residents of villages are prohibited from reading the Megilla with a blessing on the fifteenth of Adar, as Rav Shemen bar Abba said that Rabbi Yohanan said: The verse “to confirm these days of Purim in their appointed times” (Esther 9:31) teaches that the Sages instituted many times for their reading, and it is prohibited to deviate from these dates. And you speak to me about a custom that does not involve a prohibition. How can a prohibition be established in a manner that involves the formation of factions among the people?

Rabbi Yohanan replied: And in that case there, on Passover eve, is there no prohibition involved? But didn't we learn in a mishna: On the night before the fourteenth of Nisan, Beit Shammai prohibit the performance of work and Beit Hillel permit it. Evidently, there is indeed a prohibition involved, and yet some perform work while others do not, which splits the people into factions.

Reish Lakish said to him: In that case there, the different factions are not noticeable, as one who sees another idle says: It is because he has no labor to perform. Therefore, refraining from work does not have the appearance of breaking off into factions. Rabbi Yohanan raises a difficulty: But Beit Shammai permit rival wives to the brothers, and Beit Hillel prohibit this practice. This is an example of a clear prohibition, and yet two different traditions were followed.

NOTES

Have you not taught until now – עד כאן לא שנית: This raises the question: Doesn't Reish Lakish's question apply to this *halakha* as well? If so, this is not an answer but an additional difficulty. Evidently, even Reish Lakish would agree that divergent behavior in different places does not constitute the formation of factions. Rabbi Yohanan is attempting to say that different legal rulings for villages, towns, and cities stem from the disparate customs in these places (Rosh).

HALAKHA

Performing labor on Passover eve – עשיית מלאכה בערב פסח: In a place where it is customary to perform labor on Passover eve, the residents may do so, and in a place where this is not the custom, they may not perform labor (Rambam *Sefer Zemanim*, *Hilkhot Yom Tov* 8:18; *Shulhan Arukh*, *Orah Hayyim* 468:3).

Perek I

Daf 14 Amud a

מי סברת עשו בית שמאי בדבריהם? לא עשו בית שמאי בדבריהם. ורבי יוחנן אמר: עשו ועשו, ובפלוגתא [דרב ושמואל], דרב אומר: לא עשו בית שמאי בדבריהם, ושמואל אמר: עשו ועשו.

אימת? אילימא קודם בת קול – מאי טעמא דמאן דאמר לא עשו? ואלא לאחר בת קול – מאי טעמא דמאן דאמר עשו?

Reish Lakish said to him: Do you hold that Beit Shammai actually acted in accordance with their own statement? Beit Shammai did not in fact act in accordance with their own statement,^N as the dispute was merely theoretical. And Rabbi Yohanan said: Beit Shammai certainly did act^N in accordance with their opinion. The Gemara comments: And this is also reflected in the dispute between Rav and Shmuel, as Rav says: Beit Shammai did not act in accordance with their own statement, and Shmuel said: They certainly did act in that manner.

The Gemara inquires: When does this question apply? If we say that it is referring to the period prior to the Divine Voice that declared that the *halakha* is in accordance with the opinion of Beit Hillel, then what is the rationale of the one who said that Beit Shammai did not act in accordance with their opinion? But rather, if one would say it is referring to after the Divine Voice, what is the reason for the one who said that they did act in accordance with their opinion? After all, the Divine Voice established that the *halakha* is in accordance with the opinion of Beit Hillel.

NOTES

Beit Shammai did not act in accordance with their statement – לא עשו בית שמאי בדבריהם: The suggestion is that Beit Shammai demanded that the rival wives perform *halitza*, which prevented them from coming into conflict with the opinion of Beit Hillel (Ritva). Many early and later commentaries discuss the possibility that Beit Shammai followed their own opinion only with regard to stringent rulings, not leniencies. The same question applies in general to other disputes between Beit Shammai and Beit Hillel.

They certainly did act [asu ve'asu] – עשו ועשו: Although this kind of emphatic language by doubling the word is common, in this case some commentaries explain that the repetition of the word *asu* means: They themselves did so and also instructed others to do the same (Rashba).

You shall not cut yourselves – לא תתגודדו: It is prohibited to maintain two courts in one city if one follows one custom and the other a different custom (Rambam). This ruling is apparently in accordance with the opinion of Abaye. The commentaries on the Rambam question why he accepts the opinion of Abaye against that of Rava, which contradicts both the principle that the halakha is generally ruled in accordance with the opinion of Rava in his disputes with Abaye and the flow of the talmudic discussion here. Some suggest that the *halakha* is in accordance with the opinion of Rava against Abaye only when their dispute concerns their own statements, not when they are explaining other opinions, as is the case here (*Kesef Mishne*). Others resolve the difficulty by changing the wording of the Rambam's ruling so that he actually rules in accordance with the opinion of Rava. In other words, only if some members of the same court issued a different ruling than their colleagues would this be a violation of the prohibition: Do not become numerous factions. However, these commentaries are uncertain about this claim (see *Lehem Mishne*).

Both the Rif and the Rosh rule in accordance with the opinion of Rava that the prohibition applies only when a single court is divided in its rulings. The Rema states that there should not be two different customs in the same city, which is apparently in accordance with the ruling of the Rambam (Rambam *Sefer HaMadda, Hilkhot Avoda Zara* 12:14; *Shulhan Arukh, Orach Hayyim* 493:3, and in the comment of Rema).

אי בעית אימא קודם בת קול, ואי בעית אימא לאחר בת קול. אי בעית אימא קודם בת קול, וכגון דבית הלל רובא, למאן דאמר לא עשו דהא בית הלל רובא.

ומאן דאמר עשו – כי אזלינן בתר רובא היכא דכי הדדי ניהו, הכא – בית שמאי מחדדי טפי.

ואי בעית אימא לאחר בת קול: מאן דאמר לא עשו – דהא נפקא בת קול, ומאן דאמר עשו – רבי יהושע היא, דאמר: אין משגיחין בבית קול.

ומאן דאמר עשו, קרינן כאן "לא תתגודדו" – לא תעשו אגודות אגודות! אמר אביי: כי אמרין "לא תתגודדו" – כגון שתי בתי דינים בעיר אחת, הללו מורים בדברי בית שמאי והללו מורים בדברי בית הלל. אבל שתי בתי דינים בשתי עירות – לית לן בה.

אמר ליה רבא: והא בית שמאי ובית הלל בשתי בתי דינים בעיר אחת דמיא אלא אמר רבא: כי אמרין "לא תתגודדו" – כגון בית דין בעיר אחת, פלג מורין בדברי בית שמאי ופלג מורין בדברי בית הלל. אבל שתי בתי דינים בעיר אחת – לית לן בה.

The Gemara answers: Neither of these options poses a difficulty. If you wish, say that it is referring to the period prior to the Divine Voice, and if you wish, say instead that it is after the Divine Voice. The Gemara elaborates: If you wish, say it is prior to the Divine Voice, and it is referring to the period when Beit Hillel formed the majority of the Sages. Therefore, according to the one who said that Beit Shammai did not act in accordance with their opinion, the reason is that Beit Hillel was the majority, and the *halakha* is in accordance with the majority.

And the one who said that they did act in accordance with their opinion maintains that when do we follow the majority? It is in a case where the disputing parties are equal in wisdom to one another. Here, however, Beit Shammai are sharper than Beit Hillel, and therefore they acted in accordance with their own opinion despite the fact that they were in the minority.

And if you wish, say instead that it was after the Divine Voice. The one who said that Beit Shammai did not act in accordance with their opinion would say that this was due to the pronouncement of the Divine Voice. And the one who said that they did do so, this is in accordance with the opinion of Rabbi Yehoshua, who said, with regard to the Divine Voice that emerged and proclaimed that the *halakha* is in accordance with the opinion of Rabbi Eliezer in the case of the oven of akhnai (*Bava Metzia* 59b), that one disregards a Heavenly Voice. Just as he disregarded the Divine Voice in his dispute with Rabbi Eliezer, so too, one disregards the Divine Voice that proclaimed that the *halakha* is in accordance with the opinion of Beit Hillel.

And yet the question remains: According to the one who said that Beit Shammai acted in accordance with their opinion, we should read here: "You shall not cut yourselves" (Deuteronomy 14:1),^h which is interpreted to mean: Do not become numerous factions. Abaye said: When we say that the prohibition: "You shall not cut yourselves" applies, we are referring to a case where two courts are located in one city, and these rule in accordance with the statement of Beit Shammai and those rule in accordance with the statement of Beit Hillel. However, with regard to two courtsⁿ located in two different cities, we have no problem with it.

Rava said to him: But the dispute between Beit Shammai and Beit Hillel is considered like a case of two courtsⁿ in one city, as these two schools of thought were found everywhere, not in any specific place. Rather, Rava said: When we say that the prohibition: "You shall not cut yourselves"ⁿ applies, we are referring to a case where there is a court in one city, a section of which rules in accordance with the statement of Beit Shammai and another section rules in accordance with the statement of Beit Hillel. However, with regard to two courts located in one city, we have no problem with it.

NOTES

However, two courts, etc. – אבלי שתי בתי דינים וכו': The early commentaries discuss the apparent conflict between Abaye's statement and the custom of villagers to read the Scroll of Esther on various dates in Adar. The problem is that even when these villagers would go to the city they would read in accordance with the custom of their own place. Some answer that the villagers did not, in fact, read in the cities at all, but only in their own locales (*Tosafot; Rav Avraham Av Bet Din*).

Others suggest that the question refers to those who would read on the fourteenth or fifteenth of Adar, as in these cases the people who do not read in accordance with the tradition of a specific place are in violation of a prohibition, as stated in the Megilla itself. With regard to the villagers, however, all agree that they are simply following a custom, and therefore this does not present a difficulty to the opinion of Abaye (*Rashba*).

But the dispute between Beit Shammai...like two courts – והא בית שמאי...בשתי בתי דינים: Some commentaries are puzzled

by this language, as Beit Shammai and Beit Hillel are in fact two courts in one city, not merely comparable to this model (*Ritva*). The answer given is that the question does not refer to the students of later generations but to the original Sages Shammai and Hillel themselves: How could they have allowed their schools to split up into two courts?

Rather, Rava said...you shall not cut yourselves – אלא אמר רבא...לא תתגודדו: Some commentaries explain that Rava does not disagree with Abaye's opinion concerning the prohibition: "You shall not cut yourselves." Rather, he differentiates between a case where one court holds that acting against their opinion entails the transgression of a prohibition, and a case where the dispute involves a custom alone. In his opinion, disputes over customs violate the prohibition against factions only if they occur within a single court, not between two different courts (*Meromei Sadeh*). This resolves the difficulty in the ruling of the Rambam.

Prohibited labor that can be performed on Shabbat eve – **מְלָאכָה שְׁאֵפְשָׁר לַעֲשׂוֹתָהּ מֵעֶרֶב שַׁבָּת**: Any prohibited labor in preparation for a mitzva that could have been performed on the eve of Shabbat may not be performed on Shabbat. This is true even if refraining from performing such labor on Shabbat leads to the neglect of a mitzva, in accordance with the opinion of Rabbi Akiva (Rambam *Sefer Ahava*, *Hilkhot Mila* 2:7; *Shulḥan Arukh*, *Orah Hayyim* 331:6 and *Yoreh De'a* 266:2).

NOTES

Due to the severity of Shabbat – מִשּׁוּם חֻמְרָא דְּשַׁבָּת: Some commentaries explain that the reason for the prohibition against breaking into factions is due to the concern that people might come to disrespect prohibitions if they observe divergent customs in different places. Consequently, as Shabbat is so severe, it stands to reason that the *halakha* should be more stringent in this case, to prevent people from taking it lightly (see *Sukkat David*). The early commentaries discuss whether this difficulty was raised specifically with regard to the opinion of Abaye or whether it is a general question that applies to all opinions.

He would move an oil lamp – הָיָה מְטַלְטֵל שְׂרָגָא: Some commentaries explain that this was an old oil lamp that had not been lit and was therefore *muktze* due to repugnance (Rabbi Yehuda bar Natan; *Tosafot*).

Rabbi Abbahu, how could he act – רַבִּי אַבְבָּהוּ הִכִּי עָבִיד: Some commentaries explain that if one person is permitted to adjust his custom from place to place, it should be likewise be permitted for many people to act in accordance with different customs in the same place (*Tosefot HaRosh*).

But there was a servant – וְהָאִיכָא שְׂמַעָא: Some commentaries note that if the servant were to carry the object in Rabbi Yohanan's locale, it would also be a mark of disrespect to him (*Otzar HaShitot*). Many early commentaries do not accept this explanation. Instead, they claim that the servant would infer from Rabbi Abbahu's behavior that it is permitted to act in accordance with different customs in different places, which would be an erroneous understanding of the prohibition against breaking into factions (Rabbi Yehuda bar Natan; *Tosafot Yeshanim*). Others maintain, based on Rashi's explanation, that the servant might think that Rabbi Abbahu was of the same opinion as Rabbi Yohanan and simply acted more leniently in the presence of Rabbi Yehoshua ben Levi (Rashba).

LANGUAGE

Lamp [sheraga] – שְׂרָגָא: This word was borrowed from Iranian into several Aramaic dialects. In Modern Persian, the form of the word is *chirāgh*, meaning lamp or candelabrum.

תא שמע: במקומו של רבי אליעזר היו בורחים יצאים לעשות פחמים בשבת, לעשות ברזל. במקומו של רבי יוסי הגלילי היו אוכלים בשר עוף בחלב.

The Gemara cites other relevant sources. **Come and hear: In the locale of Rabbi Eliezer, where his ruling was followed, they would cut down trees on Shabbat to prepare charcoal from them to fashion iron tools with which to circumcise a child on Shabbat.** In Rabbi Eliezer's opinion, not only does the mitzva of circumcision override Shabbat, but also any action required for the preparation of the tools necessary for the circumcision likewise overrides Shabbat. The *baraita* adds: **In the locale of Rabbi Yosei HaGelili they would eat poultry meat in milk**, as Rabbi Yosei HaGelili held that the prohibition of meat in milk does not include poultry.

במקומו של רבי אליעזר אין, במקומו של רבי עקיבא – לא. דתנא, כלל אמר רבי עקיבא: כל מלאכה שאפשר לעשותה מערב שבת – אין דוחה את השבת.

The Gemara infers: **In the locale of Rabbi Eliezer, yes, they would act in this manner, whereas in the locale of Rabbi Akiva, for instance, no, they would not do so, as it is taught in a baraita that a principle was stated by Rabbi Akiva: Any prohibited labor that can be performed on Shabbat eveⁿ does not override Shabbat even if it involves a mitzva.** A mitzva whose proper time is on Shabbat overrides Shabbat only if its performance was impossible earlier, e.g., the act of circumcision itself, which cannot be performed earlier.

והאי מאי תיובתא? מקומות מקומות? שמיא! ודקארי לה מאי קארי לה?

The Gemara asks: **And what is this refutation?** As stated above, **it is different when dealing with numerous places**, and the *baraita* explicitly states that this practice was followed in Rabbi Eliezer's locale. Consequently, there is no violation of the prohibition against splitting into factions. The Gemara asks: **He who asked it, why did he ask it**, i.e., what is the basis for the question in the first place? It is obvious that the *baraita* is referring to a specific place.

סלקא דעתך אמינא: משום חומרא דשבת במקום אחד דמי – קא משמע לן.

The Gemara answers: It might **enter your mind to say that due to the severity of Shabbat,ⁿ it**, i.e., the world, **is considered like a single locale.** In other words, one might have thought that the permission to tolerate diverse customs in different places applies only to other prohibitions, whereas the prohibition of Shabbat is so severe that it is unacceptable to allow different customs, as this might lead people to disrespect Shabbat. Therefore, the *baraita* **teaches us** that even in the case of Shabbat there can be different customs in various locales.

תא שמע, דרבי אבהו, כי איקלע לאתריה דרבי יהושע בן לוי הוה מטלטל שרגא, וכי איקלע לאתריה דרבי יוחנן – לא הוה מטלטל שרגא.

The Gemara cites another relevant case involving Shabbat: **Come and hear that Rabbi Abbahu, when he happened to come to the place of Rabbi Yehoshua ben Levi, would move an oil lamp [sheraga]^{nl} after the flame that had been lit for that Shabbat had burned out, as Rabbi Yehoshua accepted the ruling that it is permitted to carry items of this sort that had been set aside. But when he happened to come to the place of Rabbi Yohanan, who prohibited carrying items of this kind that had been set aside on Shabbat, he would not move an oil lamp.** This indicates that divergent customs are followed in different places.

והאי, מאי קושיא? ולא אמרינן מקומות שמיא? אכן הכי קאמרין: רבי אבהו, היכי עביד הכא הכי והיכי עביד הכא הכי?

Again, the Gemara asks: **And what is this difficulty? Didn't we say that it is different when dealing with numerous places?** The Gemara explains that **this is what we are saying:** With regard to Rabbi Abbahu himself, **how could he actⁿ in this manner here and how could he act in that manner there?**

רבי אבהו ברבי יהושע בן לוי סבירא ליה, וכי מקלע לאתריה דרבי יוחנן – לא הוה מטלטל, משום כבודו דרבי יוחנן. והאיכא שמעא! דמודע ליה לשמעא.

The Gemara answers: **Rabbi Abbahu holds in accordance with the opinion of Rabbi Yehoshua ben Levi that it is permitted to carry this item. And when he happened to come to the place of Rabbi Yohanan he would not carry it, in deference to Rabbi Yohanan**, so as not to act contrary to his ruling in the place where he was the authority. The Gemara asks: **But there was a servantⁿ** accompanying Rabbi Abbahu who would see him carrying these types of articles that had been set aside. Wasn't Rabbi Abbahu concerned that the servant might carry them in Rabbi Yohanan's locale? The Gemara explains **that he would inform the servant and explain to him the reason for his change in behavior.**

Who is a mamzer – איזהו ממזר: A child born of a forbidden union that entails either a court-imposed death penalty or *karet*, excluding a union with a menstruating woman, is a *mamzer*. This ruling is in accordance with the mishna in tractate *Kiddushin* and the conclusion of several discussions in the Gemara (*Shulhan Arukh, Even HaEzer* 4:13).

BACKGROUND

Mamzer – ממזר: A *mamzer* is a child born from an adulterous relationship, i.e., relations between a married woman and a man other than her husband, or an incestuous relationship, i.e., relations between relatives who are prohibited from marrying by Torah law where the participants in this relationship are subject to *karet*, apart from the offspring of a menstruating woman. The offspring of an unmarried couple who are permitted to marry is not a *mamzer*. A *mamzer* is halakhically considered his father's son in all respects. A male *mamzer* may marry only a *mamzeret*, i.e., a female *mamzer*, or a convert. The offspring of that union is a *mamzer* as well.

תא שמע: אף על פי שאלו אוסרים ואילו מתירים, לא נמנעו בית שמאי מלישא נשים מבית הלל, ולא בית הלל מבית שמאי. אי אמרת בשלמא לא עשו, משום הכי לא נמנעו. אלא אי אמרת עשו – אמאי לא נמנעו?

בשלמא בית שמאי מבית הלל לא נמנעו – דבני חייבי לאוין נהו.

אלא בית הלל מבית שמאי – אמאי לא נמנעו? בני חייבי כריתות ממזרים נהו!

וכי תימא קסברי בית הלל דאין ממזר מחייבי כריתות – והאמר רבי אלעזר: אף על פי שנחלקו בית שמאי ובית הלל בצרות – מודים שאין ממזר אלא ממי שאיסורו איסור ערוה, וענוש כרת! אלא לאו שמע מינה – לא עשו!

לא, לעולם עשו. דמודעי להו ופרשי.

והכי נמי מסתברא, דקתני סיפא: כל הטהרות וכל הטמאות שהיו אלו מטהרין ואלו מטמאין – לא נמנעו עושים טהרות אלו על גבי אלו.

S The Gemara continues to discuss the question of whether Beit Shammai followed their own rulings. **Come and hear** that which is taught in the mishna: **Although Beit Hillel prohibit and Beit Shammai permit**, and these disqualify the women and those deem them fit, **Beit Shammai did not refrain from marrying women from Beit Hillel, nor did Beit Hillel refrain from marrying women from Beit Shammai. Granted, if you say that Beit Shammai did not act** in accordance with their opinion, it is **due to that reason that they did not have to refrain** from marrying women from Beit Hillel. **However, if you say that they did act** in accordance with their opinion, **why didn't they refrain** from marrying one another?

The Gemara elaborates: **Granted, Beit Shammai did not refrain** from marrying into **Beit Hillel**, as even if Beit Shammai maintain in a certain case that a rival wife required levirate marriage or *halitza*, if she went ahead and married another man their **children are born to a union whose partners are liable by a regular prohibition**: “The wife of the dead man shall not be married outside” (Deuteronomy 25:5). Since this transgression does not entail *karet*, the children of this relationship are not *mamzerim*.

However, why did Beit Hillel not refrain from marrying into **Beit Shammai**? In the opinion of Beit Hillel the **children** of these rival wives who entered into levirate marriage are born of a union whose partners are **liable to receive karet**, as the prohibition of a brother's wife was never nullified in this case, which means that the children are *mamzerim*.⁴ If so, how could Beit Hillel allow these marriages?

And if you would say that Beit Hillel maintain that the child of a union whose partners are **liable to receive karet is not a mamzer**,⁵ as a *mamzer* is only one whose parents violated a prohibition that entails the death penalty, **didn't Rabbi Elazar say: Although Beit Shammai and Beit Hillel disagreed with regard to rival wives, they concede that a mamzer is only from a union whose prohibition is a prohibition of forbidden relations punishable by karet?** Consequently, the children of rival wives are *mamzerim* according to Beit Hillel. **Rather, isn't it correct to conclude from here that Beit Shammai did not act** in accordance with their own opinion?

The Gemara rejects this conclusion: **No; actually, Beit Shammai did act** in accordance with their opinion. As for the problem with these marriages, the answer is **that they would inform** Beit Hillel and Beit Hillel would **withdraw**⁶ from the match. When those who acted in accordance with the opinion of Beit Hillel would come to marry women from those who followed the rulings of Beit Shammai, they would be notified that certain children were born of rival wives and that those people were considered *mamzerim* in the opinion of Beit Hillel, who therefore declared them forbidden in marriage.

The Gemara comments: **And so too, it is reasonable** that this is the case, as the mishna **teaches in the latter clause**: With regard to **all of the disputes concerning the halakhot of ritual purity and impurity, where those, Beit Hillel, rule an article ritually pure and these, Beit Shammai, rule it ritually impure, they did not refrain from handling ritually pure objects each with the other.**

NOTES

מודעי – מודיעי: They would inform them and they would withdraw – **להו ופרשי**: But if Beit Shammai actually notified Beit Hillel, what is novel about this statement? The commentaries explain that Beit Hillel trusted that Beit Shammai would notify them even in a case of a slight concern, and if they were not notified they took this to mean that the person was fully qualified according to all

opinions (Ritva). The early commentaries prove from here that in instances of this kind there is no concern with regard to the testimony of those who have a personal stake in the matter, as provided that they remain faithful to their tradition they can be trusted to inform others who accept a different tradition (Meiri; *Yam shel Shlomo*).

אי אִמְרַתְּ בְּשִׁלְמָא דְּמוֹדְעֵי לָהּ – מְשֻׁם
הָכִי לֹא נִמְנָעוּ. אֲלָא אִי אִמְרַתְּ דְּלֹא
מוֹדְעֵי לָהּ, בְּשִׁלְמָא בֵּית שְׁמַאי מִבֵּית
הֵלֵל לֹא נִמְנָעוּ. דְּטַמְאוֹת דְּבֵית הֵלֵל –
לְבֵית שְׁמַאי טְהוֹרוֹת נִינְהוּ.

אֲלָא, בֵּית הֵלֵל מִבֵּית שְׁמַאי לָמָּה לֹא
נִמְנָעוּ? טְהוֹרוֹת דְּבֵית שְׁמַאי לְבֵית הֵלֵל
טַמְאוֹת נִינְהוּ! אֲלָא לָאוּ דְּמוֹדְעֵי לָהּ –
שְׂמַע מִנֶּהּ.

וּמַאי אוּלְמִיָּה דִּהֵךְ מִהֵךְ? מַהוּ דְּתִימָא:
צָרָה – קָלָא אֵית לָהּ, קָא מְשַׁמַּע לָן.

גּוּפָא, אָמַר רַבִּי אֶלְעָזָר: אֵף עַל פִּי שְׁנַחֲלִיקוּ
בֵּית שְׁמַאי וּבֵית הֵלֵל בְּצֻרוֹת – מוֹדִים
שְׁאִין מִמּוֹר אֲלָא מִמִּי שְׁאִיסוּרוֹ אִיסוּר
עָרוּה וְעָנֹשׁ כָּרַת. מֵאֵן מוֹדִים? אִילִימָא
בֵּית שְׁמַאי לְבֵית הֵלֵל – פְּשִׁיטָא, בְּנִי
חֲיִיבִי לְאוּן כְּשֵׁרִים נִינְהוּ!

אֲלָא בֵּית הֵלֵל לְבֵית שְׁמַאי – הִיא גּוּפָא
חֲיִיבִי פְּרִיטוֹת הִיא!

לְעוֹלָם בֵּית שְׁמַאי לְבֵית הֵלֵל, וְלֹא פּוֹקִי
מִדְּרַבִּי עֲקִיבָא, דְּאָמַר: יֵשׁ מִמּוֹר מִחֲיִיבִי
לְאוּן, קָא מְשַׁמַּע לָן דְּאִין מִמּוֹר מִחֲיִיבִי
לְאוּן.

תָּא שְׂמַע: אֵף עַל פִּי שְׁנַחֲלִיקוּ בֵּית שְׁמַאי
בֵּית הֵלֵל בְּצֻרוֹת, וּבִאֲחֵיוֹת.

Granted, if you say that they notified them, it is due to that reason that they did not need to refrain from using their objects. However, if you say that they did not notify them, granted, it is logical that Beit Shammai¹⁸ did not refrain from handling items belonging to Beit Hillel, as ritually impure objects for Beit Hillel are ritually pure for Beit Shammai, and therefore no special care is necessary.

However, why didn't Beit Hillel refrain from touching articles that belonged to Beit Shammai? After all, ritually pure objects for Beit Shammai are ritually impure for Beit Hillel. Rather, is it not the case that Beit Shammai notified Beit Hillel that these items were ritually pure only in their own opinion, and Beit Hillel separated themselves from them? The Gemara summarizes the discussion: Conclude from here that this is the correct interpretation.

The Gemara asks: In what way is this case stronger than that case? In other words, why is the statement with regard to ritual purity and impurity more conclusive than the one that deals with marriage? Since the practice of notification was not explicitly stated in the case of ritual purity but was merely inferred logically, the same reasoning applies equally to the case of marriage. The Gemara answers: Lest you say that since it is so unusual, a marriage to a rival wife generates publicity and is so widely known that no special notification is required, therefore, the Gemara teaches us that even in this case notification is required.

Since the statement of Rabbi Elazar was mentioned, the Gemara turns to discuss the matter itself. Rabbi Elazar said: Although Beit Shammai and Beit Hillel disagreed with regard to rival wives, they concede that a mamzer is only from a union whose prohibition is a prohibition of forbidden relations punishable by karet. The Gemara asks: Who concedes to whom? If we say that Beit Shammai concede to Beit Hillel, this is obvious, since if they acted in accordance with their own opinion that rival wives who married others without halitza are liable only for violating a regular prohibition, their children are therefore fit and are not mamzerim at all.

Rather, one could say that Beit Hillel concede to Beit Shammai. But in that case she herself, the rival wife of a forbidden relative who married one of the yevamin, is liable to receive karet in the opinion of Beit Hillel, and the child is a mamzer, whereas Rabbi Elazar's statement indicates that they concede with regard to a different case.

The Gemara explains: Actually, Beit Shammai concede to Beit Hillel, and this is not a novelty with regard to their basic dispute. Instead, the statement comes to exclude the opinion of Rabbi Akiva, who said: The offspring from forbidden relations for which one is liable for violating a prohibition is a mamzer. Rabbi Elazar teaches us that Beit Shammai and Beit Hillel agree that the offspring from forbidden relations for which one is liable for violating a prohibition is not a mamzer; rather, one is a mamzer only if he is born of a union punishable by karet.

The Gemara returns to the initial question of whether or not Beit Shammai acted in accordance with their own opinion. The Gemara suggests: Come and hear: Although Beit Shammai and Beit Hillel disagreed with regard to several cases, nevertheless, they did not refrain from marrying women from each other's communities. The cases with regard to which they disagreed include rival wives, and sisters, i.e., if two sisters had been married to two brothers and simultaneously became obligated in levirate marriage, Beit Hillel prohibit both in levirate marriage, and if they violated the prohibition and married regardless, they require a divorce. By contrast, Beit Shammai permit them to remain married.

NOTES

בְּשִׁלְמָא בֵּית שְׁמַאי וכו' – Granted, Beit Shammai, etc. – This version of the text, which is accepted by Rashi, raises one serious difficulty. It indicates that in matters of ritual purity and impurity the opinion of Beit Hillel is invariably more stringent than that of Beit Shammai, yet it is known that this is not always the case. In fact, Beit Shammai are generally more stringent in these cases. Some commentaries explain that this comment refers to the mishnayot of tractate Eduyyot, where all of the stringencies of Beit Hillel are listed (Rivan). Similarly, others state that although Beit Shammai are usually more stringent, the mishna is referring to those cases where the opinion of Beit Hillel is the more stringent (Rashba). However, it is possible that in practice Beit Shammai were more stringent with regard to ritual purity than Beit Hillel, as stated in the Jerusalem Talmud. Due to this difficulty, many early commentaries (Tosafot; Ramban; Rashba) prefer the version of the Gemara cited by Rabbeinu Hananel, which states the exact opposite. In other words, the Gemara is saying that Beit Shammai did not act leniently in opposition to their opinion, and it is equally clear that Beit Hillel acted in accordance with their own opinion, as they were the majority, and yet each school did not refrain from handling the vessels belonging to the other, because they would notify one another.

Some point out that according to this version the Gemara's question: In what way is this case stronger than that case, is unclear, as one can reply that in the first case Beit Hillel did not refrain from marrying into Beit Shammai because Beit Shammai did not insist on acting in accordance with their own opinion, which cannot be said in the case of ritual impurity, where Beit Shammai's opinion is more stringent (see Otzar HaShitot). Indeed, some commentaries omit this question for this very reason. Some suggest that Beit Shammai acted stringently in accordance with their opinion, and yet they did not violate the prohibition against forming factions, as they did not require the vessels or items that were ritually pure in accordance with the opinion of Beit Hillel. The same reasoning applies to marriage: Since they did not necessarily have to marry these particular women, there is no proof from here with regard to forming a faction (Tosefot HaRosh). Accordingly, the question of why this proof is stronger than the other is appropriate according to Rabbeinu Hananel's version as well.

An outdated bill of divorce – גִּט יָשָׁן: If one wrote a bill of divorce for his wife and changed his mind and did not divorce her, and he secluded himself with her after it was written, he may not subsequently divorce her with that same bill of divorce, in accordance with the opinion of Beit Hillel (*Shulḥan Arukh, Even HaEzer* 148:1).

An uncertain married woman – סָפֵק אִשָּׁת אִישׁ: An orphan girl married off by her mother and brothers can refuse either her betrothal or marriage, whether to a regular husband or a *yavam* in levirate marriage, and whether it is her first husband or her second, in accordance with the opinion of Beit Hillel (*Shulḥan Arukh, Even HaEzer* 155:4–6).

Who divorces his wife and she lodged with him – מְגֵרֵשׁ אֶת – אִשְׁתּוֹ וְלָנָה עָמָו: In the case of a man who divorced his wife and later was found by witnesses to have secluded himself with her, there is a concern that he may have retracted and engaged in sexual relations with her for the purpose of marriage. Due to this doubt, she requires a second bill of divorce, in accordance with the opinion of Beit Hillel (*Shulḥan Arukh, Even HaEzer* 149:2).

Betrothal money – בְּקָרָה קִידוּשִׁין: One who wishes to betroth a woman with money must give her either a *peruta* or its equivalent in the presence of witnesses, in accordance with the opinion of Beit Hillel (*Shulḥan Arukh, Even HaEzer* 27:1).

בְּגֵט יָשָׁן, וּבְסָפֵק אִשָּׁת אִישׁ, וּבְמֵגֵרֵשׁ אֶת אִשְׁתּוֹ וְלָנָה עָמָו בְּפִנְיָהּ,

בְּבִקְרָה וּבְשִׁוּיָה בְּסָפֵק, בְּפִרְוּטָה וּבְשִׁוּיָה פְּרוּטָה –

לֹא נִמְנָעוּ בֵּית שַׁמַּי מִלִּישָׂא נָשִׁים מִבֵּית הֵלֵל, וְלֹא בֵּית הֵלֵל מִבֵּית שַׁמַּי, לְלַמֶּדְךָ שְׁחִיבָה וְרִיעוּת נִהְיָה זֶה בְּזֶה, לְקַיֵּים מִה שֶׁנֶּאֱמַר "הָאֵמֶת וְהַשְּׁלוֹם אֶהְיֶה". רַבִּי שִׁמְעוֹן אָמַר: נִמְנָעוּ הֵן מִן הַיִּדּוּאִי, וְלֹא נִמְנָעוּ מִן הַסָּפֵק.

אִי אָמַרְתָּ בְּשִׁלְמָא עָשׂוּ – מִשּׁוּם הֵכִי נִמְנָעוּ, אֲלֵא אִי אָמַרְתָּ לֹא עָשׂוּ – אֲמַאי נִמְנָעוּ? וְתַסְבֵּירָא, נִהְיָ נִמִּי דְעָשׂוּ, בְּשִׁלְמָא בֵּית הֵלֵל נִמְנָעוּ מִבֵּית שַׁמַּי, דְּחִיבֵי כְּרִיתוּת נִינְהוּ, וּמִמְזוּרִים הֵם לְבֵית הֵלֵל.

אֲלֵא בֵּית שַׁמַּי אֲמַאי נִמְנָעוּ מִבֵּית הֵלֵל? בְּנִי חִיבֵי לְאוּיָן נִינְהוּ, וּבְשָׂרִים נִינְהוּ! כְּדָאֵמַר רַב נַחֲמָן בְּרִי יִצְחָק: לֹא נִצְרְכָה אֲלֵא לְצָרָה עֲצָמָה – הֵכָא נִמִּי לֹא נִצְרְכָה אֲלֵא לְצָרָה עֲצָמָה.

Furthermore, Beit Shammai and Beit Hillel disagreed with regard to an **outdated bill of divorce**^H that had been written but not delivered. Beit Shammai maintain that if the husband and wife continued to live together after the writing of the bill of divorce, the same bill of divorce can still be used later, whereas Beit Hillel dispute this. And they likewise **disagreed** with regard to an **uncertain married woman**,^{HN} i.e., whether a minor who was actually married, and not merely betrothed, may perform refusal. And they also **disagreed** with regard to **one who divorces his wife and later she lodged together with him**^H at an inn, as to whether or not this is sufficient grounds for assuming that they remarried.

Additionally, they disagreed with regard to the issue of betrothal by money and with the equivalent value of money, and by a *peruta* or with the equivalent value of a *peruta*.^H According to Beit Shammai, the minimal amount of money effective for betrothal is a dinar or the equivalent of a dinar, whereas Beit Hillel maintain that even the less valuable *peruta* or its equivalent is sufficient.

Despite the fact that these *halakhot* entail important ramifications depending on whether or not these women were married or fit for marriage, or whether their offspring are fit for marriage, Beit Shammai did not refrain from marrying women from Beit Hillel, nor did Beit Hillel refrain from marrying women from Beit Shammai. This serves to teach you that they practiced affection and camaraderie between them, to fulfill that which is stated: "Love truth and peace" (Zechariah 8:19). Rabbi Shimon says: They did refrain in the certain cases, but they did not refrain in the uncertain^N cases. In other words, Beit Hillel were not worried that any ordinary woman from Beit Shammai might be one of those of uncertain status.

The Gemara infers from the opinion of Rabbi Shimon: **Granted, if you say that Beit Shammai did act** in accordance with their opinion, it is **due to that reason that they refrained** in the certain cases. **However, if you say that they did not act** in accordance with their opinion, **why did they refrain** from marriage? The Gemara replies: **And how can you understand** it that way, that Beit Shammai acted in accordance with their opinion? **Even if they acted** in accordance with their opinion, **granted that Beit Hillel refrained** from marrying into Beit Shammai, as those rival wives who entered into levirate marriage are liable to receive *karet* and their children are *mamzerim* according to the opinion of Beit Hillel.

However, why did Beit Shammai refrain from marrying the offspring of rival wives of Beit Hillel? The parents are liable for violating a regular prohibition, and therefore their children are fit. The Gemara answers as Rav Nahman bar Yitzḥak said with regard to a different matter: **This halakha was necessary** not for the children of the rival wife, but **only for the rival wife herself**.^N Here too, it was necessary only for the rival wife herself. The *halakha* was not taught with regard to the children of the rival wives; rather, it is referring only to the rival wives.

NOTES

An uncertain married woman – סָפֵק אִשָּׁת אִישׁ: Rashi, in his first interpretation, and the Meiri explain that this is referring to a married minor who wishes to perform refusal. However, this explanation is linguistically problematic, as that case does not involve any uncertainty at all. Consequently, Rashi provides the alternative explanation that this is referring to a sick man who gave a bill of divorce to his wife and subsequently secluded himself with her. See *Tosafot*, who challenge this interpretation, and *Arukh LaNer*, who further explains Rashi's opinion. Several early commentaries explain, following Rabbeinu Ḥananel, that

the phrase: An uncertain married woman, does not refer to a separate case at all. Rather, it is a heading for the ensuing cases of an outdated bill of divorce and one who divorced his wife and subsequently lodged with her at the same inn, i.e., it is indicating that both these cases involve uncertainty (see *Tosefot HaRosh* and *Ritva*).

Uncertain – סָפֵק: See Rashi and Ramban, cited by Rashba and Ritva, who interpret this as referring to a woman from a family whose status is in doubt. That is, it is unclear whether or not

a forbidden rival wife was married into this family at some point in time.

Necessary only for the rival wife herself – לֹא נִצְרְכָה אֲלֵא לְצָרָה: One can answer that Beit Shammai did need to avoid marrying women from Beit Hillel, as although the child of a woman requiring levirate marriage who married outside the family is not a *mamzer*, nevertheless, he is disqualified from the priesthood. The Gemara, however, preferred a more straightforward explanation (Rivan; see *Tosafot*).

And in what way are uncertain cases different from the certain, etc. – **ומאי שנא מן הודאי וכו'** – Some commentaries maintain that this question does not concern the matter at hand, but since the *baraita* was cited, the Gemara clarified it (*Tosafot*). Conversely, others claim that this statement is the conclusion of the first proof. If it were not proven that the entire *baraita* reflects the opinion of Rabbi Shimon and that they did not refrain from marriage in unspecified cases, one might have thought that due to the affection between the two schools Beit Shammai did not act on their opinions at all, so as not to increase the dispute. However, the statement of Rabbi Shimon clearly indicates that they did in fact act in accordance with their opinion, and that they would notify the other school when a conflict arose (*Tosefot HaRosh*; see *Sukkat David*).

הולד ממזר וכו' – *The offspring will be a mamzer, etc.* – Why does the Gemara refer only to the status of the child and not the actual prohibition involving the rival wife herself? After all, it is the marriage to this woman that entails *karet*, in the opinion of Beit Hillel, or involves the violation of a prohibition if performed by a man outside the family, according to Beit Shammai. It is likely that the Gemara preferred this formulation because although the prohibition with regard to a rival wife is transgressed at the time, the disqualification of a child from marriage bears ramifications for generations (*Rashash*).

ומאי שנא מן הודאי – דאיסורא הוא, ספק נמי איסורא הוא!

The Gemara asks further: **And in what way are uncertain cases different from the certain^N cases**, such as forbidden rival wives? If you say **that** certain cases are undoubtedly **prohibited** in the opinion of Beit Hillel, the cases involving **uncertain circumstances**, e.g., one who divorced his wife and then stayed with her in the same inn, **are also prohibited**. Even if Beit Hillel render these cases prohibited only due to some uncertainty, the ruling is the same.

לא תימא מן הספק, אלא אימא: מן הסתם, דמודעי להו ופרשי.

The Gemara answers: **Do not say: In the uncertain cases**, i.e., that the *halakha* involved doubtful circumstances. **Rather, say: From the unspecified case**. In other words, barring clear knowledge of an uncertain betrothal within a specific family, they would take women from that family in marriage. The reason is **that** Beit Shammai **would notify** Beit Hillel of the prohibition according to their opinion, **and** they would **refrain** from the marriage. If there was no notification, this was a clear sign that no doubt was involved in this case at all.

ומאי קא משמע לן – דאזהבה וריעות נהגים זה בזה – היינו רישא! הא קא משמע לן דכולה רבי שמעון היא.

The Gemara asks: **But if so, what does this come to teach us?** Is it **that** they had **relations of affection and camaraderie between them**, i.e., that each trusted that the other side would never cause them to err with regard to something they held to be prohibited? **This is the same as the first clause of the baraita**. What is Rabbi Shimon adding by his statement? The Gemara answers: This comes to **teach us that the entire baraita is the opinion of Rabbi Shimon**. This is not a dispute between two Sages. Rather, Rabbi Shimon's opinion elucidates the earlier statement.

תא שמע, דאמר רבי יוחנן בן נורי: היאך הלכה זו רווחת בישראל? נעשה בדברי בית שמאי – הולד ממזר לדברי בית הלל, נעשה בדברי בית הלל – הולד פגום לדברי בית שמאי, בואו ונתקן להן לצרות

S The Gemara offers an alternative resolution: **Come and hear, as Rabbi Yohanan ben Nuri said: How should one act with regard to this halakha of rival wives?** In what form should it become widespread among the Jewish people? **If we act in accordance with the statement of Beit Shammai and permit a rival wife in levirate marriage, the offspring will be a mamzer^N according to the statement of Beit Hillel**. **If we act in accordance with the statement of Beit Hillel and grant full exemption to the rival wives, the offspring will be of flawed lineage according to the opinion of Beit Shammai**, as he is the child of a woman prohibited in marriage by a regular prohibition. Although he is not a *mamzer*, his lineage is nevertheless defective. Instead, **let us enact a general decree for rival wives**

Perek I

Daf 15 Amud a

שיהו חולצות ולא מתייבמות, לא הספיקו לגמור את הדבר עד שנטרפה השעה.

that they should perform *halitza* and not enter into levirate marriage. If they act in this manner, they will be permitted to marry others and the problem will be solved according to all opinions. **They were unable to finalize the matter** according to the proposition raised by Rabbi Yohanan ben Nuri **before times of trouble** arrived. Due to the outbreak of war they were unable to gather together to vote and establish an accepted halakhic ruling.

אמר ליה רבן שמעון בן גמליאל: מה נעשה להם לצרות הראשונות מעתה?

Sometime later, when they returned to discuss the issue, **Rabban Shimon ben Gamliel said to the other Sages: What shall we do with those earlier rival wives^N from now onward?** Since in the meantime some rival wives had entered into levirate marriage, if we issue a collective ruling that rival wives may not do so, their children will be declared *mamzerim*. Therefore, it is better not to establish this *halakha* at all.

NOTES

מה נעשה – *What shall we do with those earlier rival wives* – **להם לצרות הראשונות**: There is also a concern for the children of flawed lineage born from these unions (see Maharsha). Some commentaries explain that it is impossible that children born from relations permitted by the ruling of the Sages at the time, as is the case here, would later be deemed of flawed lineage (*Yosef Lekah*). It is likewise stated in *Arza DeVei Rav* that provided that there is no conclusive halakhic ruling, these children cannot be considered definite *mamzerim*, as the status of a *mamzer* cannot be determined solely on the basis of a majority opinion. Rather, an established decision of the court is necessary.

Let them perform *halitza* – לִיחְלֹצוּ: Another reason can be suggested as to why they cannot perform *halitza* at this late stage: This would mean that any of those women who were married to priests would be rendered forbidden to their husbands. The commentaries explain that the Gemara did not mention this reason because it preferred to cite an explanation that applies in all circumstances (*Sukkat David*).

Her ways are ways of pleasantness – דְּרִכֶּיהָ דְּרִכֵּי נֵיעִם: This verse is cited with regard to several halakhic rulings. For example, in the case of a doubt over a *halakha*, if one option entails suffering or unpleasantness, the Gemara will say that “her ways are ways of pleasantness” and the Torah does not desire that its mitzvot be fulfilled through pain and suffering.

Rabbi Tarfon said, I yearn, etc. – אָמַר רַבִּי טַרְפוֹן תִּאֲבָנִי וכו': In *Tosafot Yeshanim* the following question is raised: If one assumes, as Rashi does, that Rabbi Tarfon was a disciple of Beit Shammai, then according to those who maintain that Beit Shammai acted on their opinion, there is in fact no novelty in his marrying a rival wife, as this is precisely in accordance with their ruling. Furthermore, according to this opinion, the solution that he wished to act in opposition to the statement of Rabbi Yohanan ben Nuri is also somewhat problematic, as this is not sufficient reason for him to disobey the ruling of Beit Shammai. Consequently, some commentaries reverse the text so that it first states: I yearn to marry her off, from which the Gemara sought to prove that the disciples of Beit Shammai did not act on their opinions, and the ensuing answer is that he actually said: I yearn to marry her. In other words, he desired to act according to the opinion of Beit Shammai, and although there is nothing novel in his desire to follow the ruling of his masters, his action would serve to exclude the statement of Rabbi Yohanan ben Nuri. Some commentaries raise a different question: How could Rabbi Tarfon yearn for his daughter's rival wife to come before him for levirate marriage, as this effectively means that he desires his brother's death (*Rosh*)? The *Rosh* therefore states in the name of his teacher that Rabbi Tarfon was not referring to his own daughter's rival wife, but rather the rival wife of someone else's daughter. Accordingly, he meant to say that he yearned to act against the opinion of Beit Shammai and marry a daughter's rival wife without levirate marriage or *halitza* (see *Arukh LaNer*).

But he said, I yearn – וְהָאֵתָבָנִי קָאָמַר: Some commentaries explain that this expression is appropriate only with regard to something one performs in person and that provides him with benefit. If Rabbi Tarfon meant that he wished to marry her off to others, this is apparently not something he would do for himself. The Gemara therefore explains that by instructing that she be married off to another he would actually be doing something himself, as he would be actively negating the opinion of Rabbi Yohanan ben Nuri.

אִי אָמַרְתָּ בְּשִׁלְמָא עָשׂוּ – הֵיִינוּ דְּקָאָמַר
“מָה נַעֲשֶׂה”, אֲלָא אִי אָמַרְתָּ לֹא עָשׂוּ –
מֵאִי “מָה נַעֲשֶׂה”?

אָמַר רַב נַחֲמָן בַּר יִצְחָק: לֹא נִצְרָכָה אֲלָא
לְצַרָּה עֲצֻמָּה, וּמָה נַעֲשֶׂה – הֲכִי קָאָמַר:
הֵנָּה צְרוּת דְּבִית הֵלֵל לְבֵית שְׁמַאי הֵיכִי
נַעֲבִיד לָהּ?

לִיחְלֹצוּ – מִימָאֲסִי אֲגַבְרִיָּהּ, וְכִי תִמָּא
לְיִמָּאָן – “דְּרִכֶּיהָ דְּרִכֵּי נֵיעִם וְכָל
נְתִיבוֹתֶיהָ שְׁלוֹם”!

תָּא שְׁמַע, דְּאָמַר רַבִּי טַרְפוֹן: תִּאֲבָנִי, מְתִי
תָּבֵא צֶרֶת הֶבֶת לְיָדִי וְאֶשְׁאֲנָה! אִימָא:
וְאֶשְׁאֲנָה.

וְהָא “תִּאֲבָנִי” קָאָמַר! לְאַפּוֹקִי מִדְּרַבִּי
יִוחָנָן בֶּן נֹרִי.

תָּא שְׁמַע: מַעֲשֶׂה בְּבֶתוֹ שֶׁל רַבִּן גַּמְלִיאֵל
שֶׁהָיְתָה נְשׂוּאָה לְאַבָּא אָחִיו, וּמֵת בְּלֹא
בָּנִים, וַיֵּיבֶם רַבִּן גַּמְלִיאֵל אֶת צֶרְתָּהּ.
וְתִסְבְּרָא, רַבִּן גַּמְלִיאֵל מִתְלַמִּידֵי בֵּית
שְׁמַאי הוּא?

אֲלָא: שְׂאֵנִי בֶּתוֹ שֶׁל רַבִּן גַּמְלִיאֵל
דְּאִילֻנִּית הָוְאִי. הָא מְדַקְתָּנִי סִפָּא:
אֲחֵרִים אֲמָרִים בֶּתוֹ שֶׁל רַבִּן גַּמְלִיאֵל
אִילֻנִּית הָיְתָה, מִכָּלֵל דְּתָנָא קָמָא
סָבֵר לֹא אִילֻנִּית הָיְתָה!

The Gemara analyzes this episode in relation to the matter at hand. **Granted, if you say that Beit Shammai did act in accordance with their own opinion, this is the meaning of what Rabban Shimon ben Gamliel said: What shall we do?** Since these rival wives had already entered into levirate marriage, it was impossible to change the status of their children retroactively. **However, if you say that they did not act in accordance with their opinion, what is the meaning of: What shall we do?** If Beit Shammai did not act upon their ruling, they never actually permitted a *yavam* to take a rival wife in levirate marriage.

Rav Nahman bar Yitzhak said: This amendment was necessary, not for the benefit of the children of rival wives, as Beit Shammai never in fact acted on their ruling; rather, it was necessary only for the rival wife herself. If these rival wives married others, in the opinion of Beit Shammai their marriages were flawed, as they did not perform *halitza*. And as for the question: **What shall we do, this is what Rabban Shimon ben Gamliel is saying:** With regard to those rival wives who were entirely exempt according to Beit Hillel, what should we do with them according to Beit Shammai, as these rival wives had already married others without performing *halitza*?

The Gemara elaborates: If you say let them perform *halitza*,^N they will be repulsive to their husbands, as it will seem to the husband that the woman he has been living with for some time suddenly requires a permit for marriage. **And if you would say, let them be repulsive to their husbands, as that is not our concern, this is not the case, as the Torah says: “Her ways are ways of pleasantness,^N and all her paths are peace” (Proverbs 3:17).**

§ The Gemara suggests further: **Come and hear another source, as Rabbi Tarfon said: I yearn^N for the following scenario: When shall my daughter's rival wife come before me and I will marry her?** In other words, in this hypothetical case I would act in accordance with the opinion of Beit Shammai and take her in levirate marriage. This statement indicates that those who held by the traditions of Beit Shammai did indeed act upon their opinion. The Gemara amends this statement. **Say: And I will marry her off, i.e., I shall act in accordance with the opinion of Beit Hillel and marry her off to others.**

The Gemara asks: **But he said: I yearn^N** and if he meant that he would follow the ruling of Beit Hillel, which is the common practice, what is the novelty of Rabbi Tarfon's statement? The Gemara responds: Rabbi Tarfon comes to exclude the statement of Rabbi Yohanan ben Nuri, who maintains that all rival wives perform *halitza*. Rabbi Tarfon yearned for an opportunity to demonstrate that the *halakha* is not in accordance with the opinion of Rabbi Yohanan ben Nuri.

The Gemara suggests: **Come and hear an incident involving Rabban Gamliel's daughter, who was married to Abba, his brother, and Abba died childless, and Rabban Gamliel entered into levirate marriage with her rival wife.** This is apparently conclusive proof that the rival wife of a daughter may enter into levirate marriage. The Gemara asks: **And how can you understand it that way? Was Rabban Gamliel among the disciples of Beit Shammai?** In fact, Rabban Gamliel, who was a descendant of Hillel himself, certainly followed the opinion of Beit Hillel.

Rather, the case of Rabban Gamliel's daughter is different, as she was a sexually underdeveloped woman [*aylonit*], and therefore the prohibition against marrying her rival wife does not apply, as explicitly stated in the mishna. The Gemara asks: **But from the fact that it is taught in the latter clause of the same baraita: Others say that Rabban Gamliel's daughter was an *aylonit*, it can be derived by inference that the first *tanna* holds that she was not an *aylonit*.**

Collected an *etrog* – לִיקַט אֶתְרוֹג – The *etrog* differs from other fruits in that the decisive moment for the determination of its tithes is the removal of the fruit from the tree, as is the case with vegetables (*Shulḥan Arukh, Yoreh De'a* 331:126).

הַכִּיר בָּהּ וְלֹא הִכִּיר בָּהּ אִיכָּא
בִּינְיָהּ.

The Gemara answers: The dispute between the *tanna'im* was not about whether or not she was an *aylonit*, as she certainly was. Rather, the practical difference **between them** is whether **he knew** that **she** was an *aylonit* at the time of marriage and decided to marry her regardless. Some maintain in general that if the husband was aware of her condition prior to marriage, her rival wife is forbidden, **but if he did not know about her** status, the rival wife is permitted.

וְאִיבְעִית אִימָא: כָּנֶם וְלִבְסוּף גִּירֵשׁ
אִיכָּא בִּינְיָהּ.

And if you wish, say that the practical difference **between them** concerns a different case, that of one who **married and ultimately divorced**. This is referring to an issue discussed above of whether a woman is considered the rival wife of a forbidden relation simply by virtue of her marriage to the specific man or whether she must be married to him at the time when the mitzva of levirate obligation takes effect, i.e., at the time of the brother's death.

אִיבְעִית אִימָא: יֵשׁ תְּנָאִי בְּבִיָּאָה
אִיכָּא בִּינְיָהּ.

And if you wish, say that the practical difference **between them** concerns a case where **there is a condition in sexual relations**.^N In other words, the first *tanna* holds that Rabban Gamliel's daughter was married only conditionally, and since the condition was never fulfilled the marriage was nullified. Consequently, Rabban Gamliel could marry the other wife regardless of his daughter's status as an *aylonit*, as she was never married to his brother at all. However, according to the other *tanna*, even if the marriage was dependent upon a condition that was not fulfilled, because the man engaged in sexual relations with her the act of intercourse itself serves to nullify the condition. Accordingly, he maintains that the only reason Rabban Gamliel could enter into levirate marriage with his daughter's rival wife was not because of the condition, but due to the fact that his daughter was an *aylonit*. Whichever explanation is accepted, this case provides no proof with regard to the issue of whether or not Beit Shammai acted in accordance with their ruling.

מְתִיב רַב מֶשְׁרִישָׁא: מַעֲשֶׂה בְּרַבִּי
עֲקִיבָא שְׁלִיקַט אֶתְרוֹג בְּאַחַד בְּשָׁבָט,
וְנָהַג בּוֹ שְׁנֵי עֲשָׂרִין;

§ Rav Mesharshiyya raised an objection against those who claim that Beit Shammai did not act in accordance with their opinion. It is taught in a mishna: There was an incident involving Rabbi Akiva, who collected an *etrog*^{HN} on the first of the month of Shevat and performed with it two tenths.^N In other words, he separated two tithes from the fruit, as though it belonged to two different tithing years. He removed both the second tithe and the poor man's tithe at the same time, two tithes that should not be separated in the same year.

NOTES

יֵשׁ תְּנָאִי בְּבִיָּאָה – There is a condition in sexual relations – According to some commentaries, this is referring to the dispute as to whether one who betroths a woman by sexual intercourse and not with money can do so conditionally, a dispute that appears in *Ketubot* 74a (Rashba; Ritva, citing Ra'avad).

Collected an *etrog* – לִיקַט אֶתְרוֹג – The commentaries in tractate *Rosh HaShana* and elsewhere explain that the term: Collected, is used with regard to an *etrog* because these fruits do not all ripen at the same time. Consequently, this is comparable to collecting vegetables in a garden. Others state that the tree itself is called an *etrog* and therefore it means that he took the tree's fruits (Rivan).

נָהַג בּוֹ שְׁנֵי עֲשָׂרִין – Performed with it two tenths – In addition to the first tithe, which is given to the Levites and is separated every year, there is also a second tithe, which is removed and taken by the owner to be eaten in Jerusalem in the first, second, fourth, and fifth years of the Sabbatical cycle. In the third and sixth years of the cycle, the poor man's tithe is separated.

Since this incident occurred between the second and third years, it was unclear to Rabbi Akiva which of these additional tithes should be separated. *Tosafot* cite the explanation in the Jerusalem Talmud as to how Rabbi Akiva solved other difficulties arising from this double tithing.

The year of tithes for trees – **שנת מעשר לאילנות** – The fifteenth of Shevat is the beginning of the New Year for the tithing of trees, in accordance with the opinion of Beit Hillel (Rambam *Sefer Zera'im, Hilkhot Teruma* 5:11; *Shulhan Arukh, Yoreh De'a* 331:57, 125).

The Yehu water trough – **שוקת יהוא** – Any body of water mixed with a ritual bath has the status of the ritual bath itself and may be used for immersion in the same manner as the ritual bath (*Shulhan Arukh, Yoreh De'a* 201:57).

BACKGROUND

Removed the mortar [*ma'aziva*] – **פיתת את המעזיבה** – Houses in the mishnaic period were mainly built of stone, but their roofs sat on large wooden logs in between wooden planks fastened and sealed by mortar and pebbles. This covering was called a *ma'aziva*, apparently from the root *a-z-v*, which means to strengthen. When this covering was removed, only the planks remained, and these could easily be converted into the roofing of a *sukka*.

אחד כדברי בית שמאי ואחד כדברי בית הלל, שמע מינה: עשו!

רבי עקיבא גמריה אסתפק ליה, ולא ידע אי בית הלל באחד בשבט אומר או בחמשה עשר בשבט אומר.

מתיב מר זוטרא: מעשה וילדה בלתו של שמאי הזקן ופיתת את המעזיבה, וסיבך על גבי מטה בשביל קטן. שמע מינה: עשו! התם הרואה אומר לאפושיו אויר קעביד.

מתיב מר זוטרא: מעשה בשוקת יהוא שהיתה בירושלים והיתה נקובה למקוה, וכל טהרות שהיו בירושלים נעשים על גבה. ושלחו בית שמאי והרחיבוה, שבית שמאי אומרים: עד שתתפחת ברוכה.

The mishna explains: **One tithe he removed in accordance with the statement of Beit Shammai**, who hold that the new year for trees occurs on the first of Shevat, which means that the *etrog* required tithing according to the regulations of the upcoming year. **And one tithe was in accordance with the statement of Beit Hillel**, who hold the new year for trees is on the fifteenth of Shevat, and therefore the *etrog* required tithing in accordance with the previous year. The Gemara infers: **Conclude from here** that Beit Shammai **did act** in accordance with their opinion, as Rabbi Akiva took care to act in accordance with the ruling of Beit Shammai.

The Gemara answers: **Rabbi Akiva was uncertain as to his tradition, and he did not know if Beit Hillel said that the New Year for trees occurs on the first of Shevat or if they said it is on the fifteenth of Shevat.**⁴ He did not act in accordance with the opinion of Beit Shammai at all; rather, he sought to act in accordance with the ruling of Beit Hillel but was uncertain about their opinion on this matter.

§ Mar Zutra raised an objection to this issue from a different source: There was an incident in which the daughter-in-law of Shammai the Elder⁵ gave birth to a son. In Shammai's opinion this newborn baby is immediately obligated in the mitzva to sit in a *sukka*, and he therefore removed the mortar [*ma'aziva*]⁶ covering the ceiling and he placed *sukka* covering over the bed for the minor. **Conclude from here** that Beit Shammai **did act**^N in accordance with their opinions. The Gemara answers: There is no proof from there, as anyone watching would say that he did it merely to increase the air. Since people would not necessarily think that he removed the mortar as a ruling of *halakha*, this behavior is not considered the formation of a faction.

Mar Zutra raised a further objection: There was an incident involving the Yehu water trough^{HN} in Jerusalem, which had a hole that connected it to a ritual bath, and all the ritual purifications in Jerusalem were performed in it, i.e., people immersed their utensils in this trough. **And Beit Shammai sent messengers and they widened** the opening in the water trough, as in the opinion of Beit Shammai the hole was not large enough for the trough to be considered connected to the adjacent ritual bath as **Beit Shammai say**: The two areas are not connected **unless the majority of it is opened**. In other words, they require the major portion of the barrier between the ritual bath and the nearby trough to be open.

NOTES

שמע מינה – **Conclude from here that Beit Shammai did act** – **עשו**: Since Beit Shammai's decision to act in accordance with their own ruling can be viewed as merely the adoption of a stringency, this does not provide conclusive proof with regard to the basic dilemma of a division into factions, as in a different case they might not have acted leniently in accordance with their own opinion against that of Beit Hillel. One explanation is that as these actions were performed publicly, the concern over

breaking into factions is relevant, despite the fact that their ruling was a stringency (Ritva).

שוקת יהוא – **The Yehu water trough**: Rashi apparently maintains that this trough was connected to a spring. Others raise several difficulties with this interpretation, and most commentaries explain instead that the water trough was attached to a valid ritual bath (Ritva).

PERSONALITIES

שמאי הזקן – **Shammai the Elder**: Shammai, occasionally called the Elder, formed a pair with Hillel; he served as deputy *Nasi* while Hillel was the *Nasi* of the Sanhedrin. Hillel and Shammai, the last of the pairs of Sages, lived about one hundred years prior to the destruction of the Temple, at the beginning of the reign of Herod. Despite the fact that the pair founded two schools, Beit Hillel and Beit Shammai, which lasted for many years after their passing, they themselves disagreed about only three or four issues. The difference between Hillel and Shammai themselves

was mainly one of personality. Hillel treated himself and others in an easygoing manner, avoiding conflict whenever possible. Shammai, in contrast, took a more severe approach, attempting to scrutinize people's motivations and habits. Nevertheless, it was Shammai who coined the phrase: One should receive every person with a pleasant countenance (*Avot* 1:15). Little is known about Shammai's personal life, but he was apparently an architect or builder by trade, as he is portrayed on several occasions standing with a builder's measuring rod in hand.

ותנן: עירוב מקואות כשפופרת הנוד,
בעובייה, ובחללה כשתי אצבעות
חוזרות למקומן. שמע מינה: עשו!
התם

And we learned in a mishna: Beit Hillel hold that a joining of ritual baths⁴ is effective if the hole has the width of the tube used to pour water in and out of a wineskin,⁵ and in its open space there is enough room for about two fingers that can return to their place. In other words, if it is possible to insert into the hole two fingers that can move around on all sides, the cavity is sufficiently large to be considered a connection. According to Beit Shammai, however, the hole must open up the majority of the barrier between the two areas. If so, conclude from this that Beit Shammai did act in accordance with their opinions. The Gemara rejects this contention: There,

HALAKHA

Joining of ritual baths – עירוב מקואות – If one wishes to join an invalid ritual bath and an adjacent valid ritual bath so that both can be used, he must bore a hole between them the size of the tube of a wineskin. This is a size that enables the insertion and freedom of movement for the first two fingers of the hand (*Shulhan Arukh, Yoreh De'a* 42, 50).



Wineskin made from an intact hide

BACKGROUND

The tube of a wineskin – שפופרת הנוד: Wineskin canteens were prepared from whole animal skins. These sacks served various purposes, primarily containing objects of different kinds, but also storing provisions. When these were used as canteens for liquids such as water, wine, or oil, precautions were usually

taken to ensure that the skin of the animal remained whole and did not tear. Furthermore, the skin of the legs was left intact. A tube, usually fashioned from cane, would subsequently be inserted into one of the legs, through which the liquid was poured inside.

Perek I
Daf 15 Amud b

הרואה אומר: לאפשי מיא הוא
דקא עביד.

anyone watching would say that he did it to increase the water flow, and he did not intend to change the *halakha*. Rather, they would think that he widened the water trough only because there was not enough water flow.

תא שמע, דאמר רבי אלעזר בר
צדוק: כשהייתי לומד תורה אצל רבי
יוחנן החורני ראיתי שהיה אוכל פת
חריבה במלח בשני בעצרת. באתי
והודעתי את אבא. אמר לי: הולך לו
ייתים, והולכתי לו. ראה אותן שהן
לחין, אמר לי: אין אני אוכל ייתים.

S The Gemara cites another relevant source. Come and hear, as Rabbi Elazar bar Tzadok said: When I studied Torah with Rabbi Yohanan the Horani,⁶ who was a disciple of Beit Shammai, I saw that he would eat dry bread in salt in years of drought. I went and informed my father of his meager meal, and he said to me: Take olives for him, and I took for him some olives. Rabbi Yohanan saw that they were moist with the liquid that oozes from olives, which renders them susceptible to ritual impurity. Concerned that they had already become ritually impure, he said to me: I do not eat olives.⁷ He spoke politely and stated that he did not eat olives because he did not wish to embarrass his benefactor by disclosing that he feared they had become ritually impure.

PERSONALITIES

Rabbi Yohanan the Horani – רבי יוחנן החורני: Rabbi Yohanan the Horani, or Horonite, is mentioned in several places as one of the important Sages of the generation before the destruction of the Temple. He was highly regarded by both Beit Shammai, of which he was a member, and Beit Hillel. His opinion on the disputes between the schools was similar to that of other Sages from Beit Shammai, e.g., Baba ben Bota from

the previous generation. In general, they sought to act in accordance with the opinion of Beit Hillel. This explains why Rabbi Tzadok of Beit Hillel would send his son to study with Rabbi Yohanan the Horani. Nothing is known of Rabbi Yohanan the Horani's life or activities, although certain sources indicate that he was destitute and lived in conditions of severe poverty.

NOTES

I do not eat olives – אין אני אוכל ייתים – If one receives a gift from an important individual but fears that it may be in some way prohibited, for reasons of courtesy it is not appropriate to say so explicitly. Rather, one should speak indirectly, so as not to insult the giver (Meiri). With regard to this particular matter, some commentaries claim that, according to Rashi, Rabbi Yohanan was concerned that Rabbi Tzadok might not be careful about the ritual impurity of an *am ha'aretz*, a common, uneducated individual (*Tosafot*). This is certainly the interpretation of Rivan, a disciple of Rashi. Since Rashi states that the concern was that the olives had contracted ritual impurity through their earthenware container, which had been touched by an *am ha'aretz*, some later commentaries inquire how that earthenware container itself became ritually impure, as an earthenware vessel cannot contract ritual impurity from the outside; it contracts impurity only if a ritually impure object is placed inside it. Some explain that there is a specific decree that an earthenware vessel can contract ritual impurity through contact with impure liquids. See *Arukh LaNer* and *Sukkat David*, who attempt to explain that Rabbi Tzadok acted in accordance with his own opinion in this regard.

Alternatively, the concern might refer to ritual impurity contracted by movement, which would render both the barrel and its contents impure (Rashash). Some state that since people are generally not careful to crush olives in a state of ritual purity, it is simply assumed that a ritually impure individual touched them (Ritva).

חֲבִית שֶׁל זֵיתִים מְגֻלְגָּלִים – A barrel of preserved olives – If a barrel of preserved olives is not perforated to allow the juices to escape, the olives are rendered susceptible to ritual impurity. If the barrel was pierced and then the hole clogged with sediments, the olives are not rendered susceptible to ritual impurity (Rambam *Sefer Tahara, Hilkhot Tumat Okhalin* 11:7).

BACKGROUND

Clogged by sediments – **סִתְמוּהַ שְׁמֵרִים**: The term sediments is imprecise in this context, as oil does not actually contain sediments. However, the oil that comes out of olives does thicken partially, due to contact with oxygen in the air, particularly when it is not refined. As a result, it can form masses that could clog up the hole in a barrel.

בְּאֵתִי וְהוֹדַעְתִּי אֶת אָבִיא. אָמַר לִי לֶךְ וְאָמַר לוֹ: חֲבִית נִקְוָה הִיא, אֲלֵא שִׁסְתְּמוּהָ שְׁמֵרִים. וְתַנֵּן: חֲבִית שֶׁל זֵיתִים מְגֻלְגָּלִים, בֵּית שְׁמַאי אוֹמְרִים אִין צְרִיכָה לְנָקֵב,

Rabbi Elazar bar Tzadok continued his account. **I went and informed my father. He said to me: Go and say to him that the barrel containing the olives was perforated, but it was clogged by sediments in the oil and therefore some moisture remained inside. However, due to the presence of the hole, the olives were not rendered susceptible to ritual impurity. And we learned this in a mishna: With regard to a barrel of preserved olives,^{NH} Beit Shammai say it does not need to be perforated, as the juice issuing from the olives does not render them susceptible to ritual impurity.**

וּבֵית הֵלֵל אוֹמְרִים: צְרִיכָה לְנָקֵב, וּמוֹדִים שְׁאֵם נִקְבָּה וְסִתְמוּהַ שְׁמֵרִים – שְׁהִיא בְּהוֹרָה.

And Beit Hillel say that it does need to be perforated, as they maintain that the juice of olives is considered oil and it therefore renders the olives susceptible to ritual impurity. And Beit Hillel concede that if the barrel was perforated and subsequently clogged by sediments^B it is ritually pure, despite the moisture on the olives. Since liquids render food susceptible to ritual impurity only if they were placed on them intentionally, the hole in the barrel clearly shows that one did not intend for the juice to be there. By boring a hole in the barrel he has rendered it obvious that he did not desire the presence of the olive juices, and therefore it does not matter that the hole became blocked.

וְאָף עַל פִּי שֶׁתְּלַמִּיד שְׁמַאי הָיָה – כֹּל מַעֲשֵׂיו לֹא עָשָׂה אֲלֵא כְּדִבְרֵי בֵּית הֵלֵל. אִי אִמְרַת בְּשִׁלְמָא עָשׂוּ – הֵינּוּ רְבוּתִיהָ, אֲלֵא אִי אִמְרַת לֹא עָשׂוּ – מֵאִי רְבוּתִיהָ?

The *baraita* adds: **And although Rabbi Yohanan the Ḥorani was a disciple of Shammai, he always acted only in accordance with the statements of Beit Hillel.** The Gemara infers: **Granted, if you say that Beit Shammai acted in accordance with their opinions, this is Rabbi Yohanan the Ḥorani's greatness, i.e., he is praised for acting in accordance with the opinion of Beit Hillel. However, if you say that Beit Shammai did not act in accordance with their own rulings, what is the greatness and uniqueness of Rabbi Yohanan the Ḥorani?** From here it can be inferred that Beit Shammai generally did act in accordance with their opinions.

תָּא שְׁמַע: שְׂאֵלוֹ אֶת רַבִּי יְהוֹשֻׁעַ: צֵרַת הֵבַת מְהוּ? אָמַר לָהֶם: מִחְלֻקַּת בֵּית שְׁמַאי וּבֵית הֵלֵל. וְהִלְכָה כְּדִבְרֵי מִי? אָמַר לָהֶם: מִפְּנֵי מָה אַתֶּם מְכַנְסִין רֹאשִׁי בֵּין שְׁנֵי הָרִים גְּדוֹלִים, בֵּין שְׁנֵי מִחְלֻקוֹת גְּדוֹלוֹת, בֵּין בֵּית שְׁמַאי וּבֵין בֵּית הֵלֵל, מִתְּיָירָא אֲנִי שְׁמַא יִרְצוּ גְלִילָתִי.

S The Gemara adds: **Come and hear a different proof. They asked^N Rabbi Yehoshua: What is the *halakha* with regard to the rival wife of a daughter? He said to them: It is a matter of dispute between Beit Shammai and Beit Hillel. They continued to ask him: And in accordance with whose statement is the *halakha*? He said to them: Why are you inserting my head between two great mountains, i.e., between two great disputing opinions, between Beit Shammai and Beit Hillel? I fear lest these two mountains break my skull.^N**

NOTES

חֲבִית שֶׁל זֵיתִים מְגֻלְגָּלִים – A barrel of preserved olives – The commentaries discuss whether or not the juice that issues from olives is considered a form of liquid that renders foods susceptible to contract ritual impurity (*Tosafot*). Some write that olive juices do not render foods susceptible to ritual impurity at the time of harvest, but only from the moment they are prepared for pressing (Meiri). Since this barrel was filled with preserved olives, it is obvious that the owner wants the juice to be there, as it assists in the pressing of the olives. Others explain that although olive juice generally does render foods susceptible to ritual impurity, these olives were designated exclusively for consumption. Consequently, the juice was undesirable, and a liquid that is not desired by the owner does not render foods susceptible to impurity (Rivan).

תָּא שְׁמַע שְׂאֵלוֹ וכו' – Come and hear, they asked, etc. – Some commentaries inquire about the need for this additional source. After all, the Gemara already proved from the previous story involving Rabbi Yohanan the Ḥorani that Beit Shammai indeed acted in accordance with their rulings. Some explain that the

previous proof can be refuted by saying that Rabbi Yohanan the Ḥorani was praised for acting in all cases in accordance with the rulings of Beit Hillel, not only in those cases in which the opinion of Beit Hillel was the more stringent (*Otzar HaShitot*).

מִתְיָירָא אֲנִי שְׁמַא יִרְצוּ גְלִילָתִי – I fear lest they break my skull – The commentaries ask: By his very admission of fear, Rabbi Yehoshua is indicating that he holds in accordance with the opinion of Beit Hillel, which means the children of rival wives who entered into levirate marriage are *mamzerim*. If so, he did in fact reveal his opinion and harmed those affected by this ruling (Maharsha). The Maharsha suggests that perhaps Rabbi Yehoshua did not answer those who asked him in this manner. Rather, he said this privately to his disciples in explanation of why he did not provide a precise response. Some commentaries explain, in a homiletic vein, that since Rabbi Yehoshua was the Sage who declared that we pay no attention to a Divine Voice (see *Bava Metzia* 59b), if he were to say here that the *halakha* is in accordance with the opinion of Beit Hillel due to a Divine Voice he would be contradicting himself (*Iyyun Ya'akov*).

אֲבָל אֲנִי מְעִיד לָכֶם עַל שְׁתֵּי מִשְׁפָּחוֹת
גְּדוֹלוֹת שֶׁהָיוּ בִירוּשָׁלַיִם: מִשְׁפַּחַת בֵּית
צְבוּעִים מִבֶּן עֲכָמַי, וּמִשְׁפַּחַת בֵּית
קֹפְאֵי מִבֶּן מְקוֹשֶׁשׁ, שֶׁהֵם בְּנֵי צְרוֹת
וּמֵהֶם כֹּהֲנִים גְּדוֹלִים, וְשָׁמְשׁוּ עַל גְּבִי
הַמִּזְבֵּחַ.

אִי אָמַרְתָּ בְּשִׁלְמָא עָשׂוּ – הֵיִינוּ
דְּקָאָמַר מִתִּירָא אֲנִי, אֱלָא אִי אָמַרְתָּ
לֹא עָשׂוּ – אֲמַאי קָאָמַר מִתִּירָא אֲנִי?
וְנִהֵי נָמִי דְּעָשׂוּ, מַאי מִתִּירָא אֲנִי?

הָא אָמַר רַבִּי יוֹשֻעַ: אִין מִמּוֹר אֱלָא
מִחֲיָיְבֵי מִיתוּת בֵּית דִּין! נִהֵי נָמִי דְּמִמּוֹר
לֹא הָיוּ, פָּגוּם מִיְהוּ הָיוּ,

מְקַל וְחוֹמֶר מֵאִלְמָנָה: מָה אִלְמָנָה,
שְׂאִין אִיסוּרָה נוֹהֵג בְּכָל – בְּנָה פָּגוּם,
זוֹ שְׂאִיסוּרָה שְׂוָה בְּכָל כּוֹ.

קָבְעוּ מִיָּנִיה צְרוֹת וְקִפְּשִׁיט לִיה בְּנֵי
צְרוֹת! תִּרְתִּי קָא בְּעֵי מִיָּנִיה: צְרוֹת מַאי,
וְאִם תִּמְצִי לומר צְרוֹת כְּבֵית הֵלֵל – בְּנֵי
צְרוֹת דְּבֵית הֵלֵל לְבֵית שְׁמַאי מִהוּ?

לְמַאי נִפְקָא מִיָּנִיה? לְמִיפְשִׁט וְלֹד מִחוּר
גְּרוּשָׁתוֹ לְבֵית הֵלֵל.

מִי קָאָמְרִין קַל וְחוֹמֶר: וּמָה אִלְמָנָה
לְכֹהֵן גְּדוֹל שְׂאִין אִיסוּרָה שְׂוָה בְּכָל –
בְּנָה פָּגוּם, זוֹ שְׂאִיסוּרָה שְׂוָה בְּכָל –
אִינוּ דִּין שְׁבָנָה פָּגוּם?

However, I shall testify to youⁿ about two great families that were in Jerusalem, the Beit Tzevo'im family who came from the town of Ben Akhmai, and the Beit Kofai family from the town of Ben Mekoshesh: They were the descendants of rival wives who married others, in accordance with the opinion of Beit Hillel, and from them came High Priests who served on the altar. Accordingly, I can testify that this was the accepted halakhic practice throughout the generations.

The Gemara infers from this statement: **Granted, if you say that Beit Shammai acted in accordance with their opinions, this is why Rabbi Yehoshua said: I fear**, since a conclusive halakhic ruling would mean that certain children are *mamzerim*, and the descendants of that family might take vengeance upon him. **However, if you say that they did not act in accordance with their opinions, why did he say: I fear?** The Gemara retorts: **And even if Beit Shammai did act in accordance with their rulings, what is the reason that he said: I fear?**

Didn't Rabbi Yehoshua say that in his opinion a *mamzer* is only someone born from a union of those liable to receive the court-imposed capital punishments,^h not from those liable to receive *karet*. If so, in the opinion of Rabbi Yehoshua, the children of rival wives who entered into levirate marriage would not be *mamzerim* at all, and therefore he had no reason to fear reprisals. The Gemara answers: **Even if this is the case, nevertheless, he had something to fear**, as, although the child of a rival wife would not be a *mamzer*, he would nevertheless be of flawed lineage and disqualified from the priesthood.

The Gemara adds that this can be derived by an *a fortiori* inference from the case of a widow: **Just as in the case of a widow, whose prohibition does not apply to all**, as she is forbidden in marriage only to a High Priest and not to any other man, **and yet the lineage of her son is flawed**, as he is disqualified from the priesthood, the son of this rival wife should certainly be disqualified from the priesthood, as **her prohibition applies equally to all**, even regular Israelites.

Incidentally, the Gemara notes a problem with the above discussion: **They asked Rabbi Yehoshua about rival wives, and he answered them about the children of rival wives.** He did not refer to the rival wives themselves. The Gemara explains: **They asked him questions on two matters:** First, **what is the halakha with regard to rival wives?** And if you say that the *halakha* in the case of rival wives is in accordance with the opinion of Beit Hillel and they are exempt, **what is the halakha according to Beit Shammai in the case of the children of rival wives** who, following Beit Hillel, married others without *halitza*?

The Gemara asks: **What difference does this question make?** Since Rabbi Yehoshua maintains that the *halakha* is in accordance with the ruling of Beit Hillel, why even discuss Beit Shammai's opinion on this matter? The Gemara explains: His answer enables one to resolve a different issue, the case of a **child of one who remarries his divorcée according to the opinion of Beit Hillel**. Is the child of a divorcée who remarried her previous husband after she had been married to another man fit or disqualified from the priesthood?

The Gemara elaborates: **Do we say the following an a fortiori inference:** **And just as with regard to a widow married to a High Priest,^h whose prohibition does not apply to all**, as she is prohibited in marriage only to a High Priest, **and yet the lineage of her son is flawed** as he is disqualified from the priesthood, so too, in the case of this rival wife, **whose prohibition applies equally to all men, is it not right that her son should be of flawed lineage?**

NOTES

אֲבָל אֲנִי מְעִיד לָכֶם וכו' – However, I shall testify to you, etc. This indicates that rival wives who married other men are not disqualified from the priesthood. Clearly, this is not the opinion of Rabbi Yohanan ben Nuri (see 14b), who states that Beit Shammai maintain that the child is disqualified. It is possible that Rabbi Yehoshua witnessed that in practice Beit Shammai were not concerned about disqualification in this case, whereas Rabbi Yohanan ben Nuri was not aware of this fact. Alternatively, Beit Shammai did object to these High Priests, but the opinion of Beit Hillel prevailed. If so, this case provides no conclusive evidence with regard to the actual opinion of Beit Shammai (Ramban).

HALAKHA

Who is a *mamzer* – אִיְהוּ מִמּוֹר: A child born from a forbidden union is a *mamzer*, whether that relationship entails court-imposed capital punishment or *karet*, with the exception of a union with a menstruating woman, in accordance with the opinion of Shimon the Temanite on 49a (*Shulhan Arukh, Even HaEzer* 4:13).

A High Priest to a widow – לְכֹהֵן גְּדוֹל בְּאִלְמָנָה: If a High Priest engages in sexual intercourse with a widow she is disqualified from marrying into the priesthood, and any child born to her, from him or any other man, is likewise disqualified (*Shulhan Arukh, Even HaEzer* 7:12).

NOTES

What about the fact that a widow is different as she herself is disqualified – מה לא למנה שהיא עצמה מתחללת – The Meiri explains that even according to the opinion, which he himself accepts, that every woman who engages in sexual intercourse in violation of a prohibition is disqualified from marrying a priest, including a woman obligated in levirate marriage who marries without *halitza*, she is nevertheless not rendered unfit to eat *teruma* if she is the daughter of a priest. This explains why the Gemara said that she becomes disqualified from marrying a priest, not that she is unfit for eating *teruma* (see *Keren Ora*).

Perek I

Daf 16 Amud a

NOTES

With regard to the children of rival wives, I testify to you – בני צרות אני מעיד לכם – The early commentaries discuss the meaning of this testimony from different perspectives. One interpretation is that as Rabbi Yehoshua testified that the children of rival wives are undoubtedly qualified, he thereby indicated that the *halakha* is entirely in accordance with the opinion of Beit Hillel, including the status of the rival wives themselves (*Tosefot HaRosh*).

LANGUAGE

Harkinas – הרקנים: The form of this name is Greek, perhaps from the name Ἀρχίνος, Archinos, which means great or head. In the Jerusalem Talmud the name appears as Arginas, perhaps from ἀργεννός, *argennos*, meaning white.

או דלמא איבא למיפוך: מה לא למנה – שהיא עצמה מתחללת! ואמר להו: צרות – מתירא אני,

Or perhaps this comparison can be refuted: What about the fact that a widow is different, as she herself is disqualified^N from marrying a priest, i.e., if a High Priest has intercourse with her she is disqualified from marrying any member of the entire priesthood, including common priests, whereas a remarried divorcee herself is not disqualified from marrying into the priesthood? And Rabbi Yehoshua said to them: I fear that if I issue a decisive ruling concerning rival wives this might lead to a conflict,

בני צרות אני מעיד לכם.

whereas with regard to the children of rival wives, I testify to you^N that they are not disqualified, since, as stated, their descendants served as High Priests.

תא שמע: בימי רבי דוסא בן הרקנים הותרה צרת הבת לאחיו. שמע מינה: עשו, שמע מינה.

§ The Gemara states: Come and hear another source that indicates Beit Shammai did act upon their opinions: In the time of Rabbi Dosa ben Harkinas,^{LP} the rival wife of a daughter was permitted to the brothers. Conclude from this that Beit Shammai did act in accordance with their opinions. The Gemara summarizes these proofs: Indeed, conclude from these sources that Beit Shammai did put their rulings into practice.

גופא, בימי רבי דוסא בן הרקנים התירו צרת הבת לאחיו והיה הדבר קשה לחכמים, מפני שחכם גדול היה ועינו קמו מלבא לבית המדרש.

§ Since the last source is only part of a larger incident, the Gemara cites the matter itself. In the time of Rabbi Dosa ben Harkinas the Sages permitted the rival wife of a daughter to the brothers. In other words, it became known that Rabbi Dosa ben Harkinas rendered permitted a daughter's rival wife. And this matter was difficult in the eyes of the Rabbis because he was a great Sage and his decision in favor of Beit Shammai carried great weight. They could not approach him immediately, as he was very old and his eyes had dimmed so much that he was incapable of coming to the study hall.

(אמר: ומי ילך) ויודיעו? אמר להן רבי יהושע: אני אלך. ואחריו מי? רבי אלעזר בן עזריה, ואחריו מי? רבי עקיבא. הלכו ועמדו על פתח ביתו, נכנסה שפחתו, אמרה לו: רבי, חכמי ישראל באין אצלך. אמר לה: יכנסו, ונכנסו.

They said: And who will go and notify him that this matter requires clarification? Rabbi Yehoshua said to them: I will go. They asked: And who shall go after him? They selected Rabbi Elazar ben Azarya, who was one of the great Sages of the generation, notwithstanding his youth. They further inquired: And who after him? Rabbi Akiva.^P They went and stood at the entrance of Rabbi Dosa ben Harkinas's house. His maidservant entered and said to him: Rabbi, the Sages of Israel have come to you. He said to her: Let them enter, and they entered.

PERSONALITIES

Rabbi Dosa ben Harkinas – רבי דוסא בן הרקנים: Rabbi Dosa ben Harkinas was one of the earliest *tanna'im*. He was already considered a Sage of great stature in the period of the Second Temple. He engaged in disputes with Akavya ben Mahalalel and Hananya the deputy High Priest, and he was apparently from the same generation as Rabbi Yohanan ben Zakkai, whom he outlived. As a result of his longevity, he is described as participating in various deliberations during the time of Rabban Gamliel in Yavne, although he would not come to the study hall due to his old age. If this is the case, he lived well over a hundred years. See the Rambam's introduction to the order of *Zera'im*, where his wondrously long life span is recounted. Rabbi Dosa ben Harkinas was universally respected due to his old age and wisdom, and Rabbi Yehoshua asked his advice on several issues. He was apparently an expert in the history of the

Jewish people, and he could recall even small details of events. He possibly preserved for himself relics from earlier eras, such as the mortar of the prophet Haggai. The story recounted here indicates that he was also extremely wealthy, but there are no records of his profession or family, besides the younger brother he himself mentions. His statements, which are also cited in the Mishna, deal with both *aggada* and *halakha*. When the name Rabbi Dosa is mentioned without any qualifiers in the Mishna, the reference is to Rabbi Dosa ben Harkinas.

Rabbi Akiva – רבי עקיבא: Rabbi Akiva, who lived just after the destruction of the Second Temple, was one of the greatest of the *tanna'im*. Unlettered until the age of forty, Akiva was encouraged by his wife, Rachel, to devote himself to the study of Torah. After years of study under the tutelage of Rabbi Eliezer ben Hyrcanus, Yehoshua ben Hananya, and others, he acquired

thousands of students and established his own academy in Benei Berak. Rabbi Akiva systematized and arranged many oral traditions, and it was the tradition of Rabbi Akiva as received by his disciple, Rabbi Meir, that ultimately became the basis of the six orders of the Mishna. Rabbi Akiva was the spiritual leader of the bar Kokheva revolt. He even proclaimed bar Kokheva the Messiah early in the struggle, but he later retracted this opinion. Despite Roman decrees against disseminating Torah, the aged Rabbi Akiva continued to teach. Rabbi Akiva was arrested by the Romans, imprisoned, tried, and sentenced to death. He suffered a martyr's death at the hands of the Romans, and is listed as one of the ten martyrs executed by the Romans. As the Romans were torturing him to death, he explained to his students that he now had the opportunity to fulfill the true meaning of loving God with all of one's soul (*Berakhot* 61b).

Call your other disciple that he may sit – **אָמור לְתַלְמִידְךָ אַחֵר**
וַיֵּשֶׁב: A disciple is not permitted to sit before his master until
 he is instructed to do so (*Shulhan Arukh, Yoreh De'a 242:16*).

תִּפְסֹס לְרַבִּי יְהוֹשֻׁעַ וְהוֹשִׁיבָהוּ עַל
מִטָּה שֶׁל זָהָב. אָמַר לוֹ: רַבִּי, אֲמֹר
לְתַלְמִידְךָ אַחֵר וְיֵשֵׁב. אָמַר לוֹ: מִי
הוּא? רַבִּי אֶלְעָזָר בֶּן עֲזַרְיָה. אָמַר:
וְיֵשׁ לּוֹ בֶן לְעֹזְרִיָּה חֲבִירוֹ?

Rabbi Dosa ben Harkinas **grabbed Rabbi Yehoshua**, with whom he was already acquainted, **and sat him on a bed of gold**, as Rabbi Dosa was extremely wealthy. Rabbi Yehoshua **said to him: Rabbi, call your other disciple so that he may sit.**⁴ He asked him to call the other Sage as well, as it is a mark of respect when speaking to a great scholar to call every other Sage his disciple. **He said to him: Who is it?** Rabbi Yehoshua replied: **Rabbi Elazar ben Azarya.** Rabbi Dosa **said: And does our colleague Azarya have a son?** Due to his old age and prolonged absence from the study hall he had not heard of him.

קָרָא עָלָיו הַמֶּקְרָא הַזֶּה: "נַעַר הָיִיתָ
גַּם זָקְנָתִי וְלֹא רָאִיתִי צָדִיק נִעְזֵב
וְזָרְעוֹ מִבֶּקֶשׁ לֶחֶם". תִּפְסֹף וְהוֹשִׁיבוּ
עַל מִטָּה שֶׁל זָהָב. אָמַר לוֹ: רַבִּי, אֲמֹר
לְתַלְמִידְךָ אַחֵר וַיֵּשֶׁב. אָמַר לוֹ: וּמִי
הוּא? עֲקִיבָא בֶן יוֹסֵף. אָמַר לוֹ: אַתָּה
הוּא עֲקִיבָא בֶן יוֹסֵף, שְׂמִיךְ הוֹלֵךְ
מִסּוּף הָעוֹלָם וְעַד סוּפּוֹ? שָׁב בְּנִי, שָׁב,
בְּמוֹתְךָ יִרְבּוּ בִּישְׂרָאֵל!

Rabbi Dosa ben Harkinas **recited this verse about Rabbi Elazar ben Azarya**: “I have been young, and now am old; yet I have not seen the righteous forsaken,^N nor his seed begging bread” (Psalms 37:25). He interpreted this verse to mean that the son of a Torah scholar also becomes a Torah scholar. **He grabbed him and sat him on a bed of gold.** Rabbi Yehoshua said to him: **Rabbi, call your other disciple so that he may sit.** He said to him: **Who is that?** He said to him: **Akiva ben Yosef.** Rabbi Dosa said to him: **You are Akiva^N ben Yosef, whose name has spread from one end of the world to the other?** Even Rabbi Dosa had heard of Rabbi Akiva’s reputation as a great man. **Sit, my son, sit. May the likes of you multiply in Israel.^N**

הַתְּחִילוּ מִסִּבִּים אוֹתוֹ בְּהִלּוֹת, עַד
שֶׁהִגִּיעוּ לְצֶרֶת הַבַּת. אָמְרוּ לִיה: צֶרֶת
הַבַּת מֵהָאָז אָמַר לָהּ: מִחֲלוֹקֶת בֵּית
שְׁמַאי בֵּית הַלֵּל. הִלְכָה כְּדַבְּרֵי מִי?
אָמַר לָהּ: הִלְכָה כְּבֵית הַלֵּל. אָמְרוּ
לִיה: וְהֵלֹא מִשְׁמַךְ אָמְרוּ הִלְכָה כְּבֵית
שְׁמַאי?

Out of courtesy, they did not wish to broach the subject immediately. Rather, **they began to encircle him with deliberations on different *halakhot*, until they came to the case of the rival wife of a daughter. They said to him: What is the *halakha* with regard to the rival wife of a daughter? He said that it is a matter of dispute between Beit Shammai and Beit Hillel. They asked him: According to whose statement is the *halakha*? He said to them: The *halakha* is in accordance with the opinion of Beit Hillel. They said to him: But didn't they say in your name that the *halakha* is in accordance with the opinion of Beit Shammai?**

אָמַר לָהֶם: דּוֹסָא שְׁמַעְתֶּם, אִו בֶּן הַרְבִּינֵס שְׁמַעְתֶּם? אָמְרוּ לֵיהּ: חַי רַבִּי, סָתֵם שְׁמַעְנּוּ. אָמַר לָהֶם: אַח קָטָן יֵשׁ לִי, בְּכֹר שְׁטָן הוּא, וְיוֹנָתָן שְׁמוֹ, וְהוּא מֵתִלְמִידֵי שְׁמַאי.

He said to them: Did you hear that Dosa ben Harkinas issued this ruling, or did you hear that it was stated by ben Harkinas? They said to him: On your life, Rabbi, we heard simply ben Harkinas. He said to them: If so, it is no wonder, as I have a younger brother who is the firstborn of the Satan,^N i.e., he is extremely sharp and as brazen as a demon. And his name is Yonatan, and he is among the disciples of Shammai. It is he who issued this ruling.

NOTES

I have not seen the righteous forsaken, etc. – לֹא רָאִיתִי צְדִיק – נִעְזָב וכו' Some commentaries note that this quotation also alludes to Rabbi Elazar ben Azarya's great wealth (Rivan).

Rabbi Akiva, and that he wished for more converts of his kind (*Iyyun Ya'akov*).

You are Akiva, etc. – **אַתָּה הוּא עֲקִיבָא וכו'**: In the Jerusalem Talmud the following is added: I am aware that he is a great man in Torah. In some versions an additional verse befitting Rabbi Akiva's personality is added: "A good name is better than precious oil" (Ecclesiastes 7:1). Rabbi Akiva came from a family of converts, and yet the name he made for himself spread far and wide like the fragrance of precious oil (*Ein Ya'akov*).

Who is the firstborn [bekhor] of the Satan – יְבוֹר שָׂטָן הוּא – Those commentaries who accept this version of the text interpret this statement as an expression of both affection and reproof. It is as though he said that his brother is intellectually very sharp but does not know how to arrive at the proper conclusions, or, as some put it: He too readily turns around his proofs (Rivan). Other commentaries cite the version of the text found in *Ein Ya'akov*: Witty firstborn, and some read: Witty youth (Maharatz Hayyut). The version of the text found in several manuscripts states that the number of proofs Yonatan ben Harkinas could provide was equivalent to the numerical value of the Hebrew word Satan: Three hundred and fifty-nine. An entirely different interpretation of the term *bekhor* in this context is that Khor Satan or Bor Satan is the name of the place where Yonatan ben Harkinas lived (*Tosafot Yeshanim*).

May the likes of you multiply in Israel – **בְּמוֹתֶיךָ יִרְבוּ יִשְׂרָאֵל** –
Some commentaries suggest that this too is an allusion to Rabbi Akiva's background from a family of converts (Maharsha). Rabbi Dosa is saying: I wish that there were those like you from the Jewish people itself, not only from converts. Others explain that although the Sages were generally wary of accepting converts, this concern did not include personalities such as

On this mortar Haggai the prophet sat – על מדוכה זו ישב – חגי הנביא: All of the sources indicate that Rabbi Dosa ben Harkinas was exceedingly old, and this is especially clear from the account in the Jerusalem Talmud. Nevertheless, it would be implausible to claim that he was alive at the beginning of the Second Temple period during the prophet Haggai's lifetime. Some explain that precise traditions that referred even to the slightest of details were often passed down in the academies, and therefore specifics of events dating back even hundreds of years were sometimes well-known (Rav Sherira Gaon). This might explain how Rabbi Dosa held such an ancient tradition.

He said three matters – אמר שלשה דברים: The commentaries explain that although it was necessary to mention only the pertinent issue of a daughter's rival wife, and the three matters are not in fact connected to each other, Rabbi Dosa transmitted all three together. The reason is that the Gemara states elsewhere (98a) that if a scholar seeks to strengthen his opinion by citing a tradition, he might be viewed as having a personal stake in the testimony. Consequently, the testimony is better founded if, in addition to the specific *halakha* in question, he relates other rulings that were issued at the same time (*Beit Shlomo*).

He raised against him objections, and he withstood him – אקשי ליה ואקמיה: This entire story is also related in the Jerusalem Talmud, but in a very different form. There, all three Sages met Rabbi Dosa's brother, who lectured them on matters so complex that they were unable to follow his reasoning, until they all eventually fell asleep.

You have not yet reached the level of cattle herders, etc. – עדיון לא הגעת לרועי בקר וכו': See the Maharsha, who interprets this talmudic discussion homiletically. The *Arukh LaNer* writes that Yonatan ben Harkinas was alluding to the fact that Rabbi Akiva was once a mere cattle herder for Kalba Savua.

HALAKHA

Ammon and Moab... in the Sabbatical Year – עמון ומואב: The Sages decreed that *terumot* and tithes must be separated in the Sabbatical Year in the territories adjacent to Eretz Yisrael. Consequently, in the lands of Egypt, Ammon, and Moab, the first tithe and poor man's tithe are set aside, in accordance with the testimony of Rabbi Dosa ben Harkinas (Rambam *Sefer Zera'im*, *Hilkhot Mattenot Aniyyim* 6:5; *Shulhan Arukh*, *Yoreh De'a* 331:1).

והזהירו שלא יקפח אתכם בהלכות. לפי שיש עמו שלש מאות תשובות בצרת הבת שהיא מותרת. אבל מעיד אני עלי שמים וארץ שעל מדוכה זו ישב חגי הנביא ואמר שלשה דברים: צרת הבת אסורה.

עמון ומואב מעשרין מעשר עני בשביעית, ומקבלים גרים מן הקרדוין ומן התרמודים.

תנא: בשנכנסו נכנסו בפתח אחד, בשניצאו – יצאו בשלושה פתחים. פגע בו ברבי עקיבא, אקשי ליה ואקמיה.

אמר לו: אתה הוא עקיבא ששמן הולך מסוף העולם ועד סופו? אשרין שזכית לשם, ועדיין לא הגעת לרועי בקר. אמר לו רבי עקיבא: ואפילו לרועי צאן.

Rabbi Dosa ben Harkinas added: **And beware that he not batter you with *halakhot* in this matter, as he has with him three hundred proofs with regard to the rival wife of a daughter that she is permitted.** However, you need not worry about the issue itself, as I call as witnesses before me the heavens and the earth that on this very mortar, which was preserved in my house due to its historical importance, **Haggai the prophet sat,^N and I have a tradition that he said three matters^N of *halakha*:** First, that the rival wife of a daughter is forbidden.

Second, that the halakhic rulings for the territories of **Ammon and Moab** in Transjordan, although similar to those of Eretz Yisrael, are not exactly the same, as their residents **tithe the poor man's tithe^B in the Sabbatical Year.**^{HB} The total abandonment of fields in the seventh year does not apply in Ammon and Moab, as they are not part of Eretz Yisrael. Instead, in those areas one must bring the poor man's tithe to the paupers of Eretz Yisrael, as there are no tithes in Eretz Yisrael in the Sabbatical Year. Lastly, Haggai testified: **And one accepts converts from the Karduyin and the Tarmodim**, without concern that there might be Jews mingled among them, which could render them *mamzerim* and prohibited from entering the community.

The Sage taught: **When they entered, they all entered through one entrance. When they left, they left through three entrances**, in an effort to try to find Rabbi Dosa's brother. **Rabbi Akiva encountered him.** Yonatan ben Harkinas raised against him all of his objections to the opinion of Beit Hillel, and he withstood him,^N i.e., Rabbi Akiva was able to respond to all of them.

Yonatan ben Harkinas grew angry and said to him: **You are Akiva ben Yosef, whose name has spread from one end of the world to the other? Be happy that you have merited a great name, and yet you have not yet reached the level of cattle herders.**^N Cattle herders were generally simple individuals who were not familiar even with ordinary matters, and certainly not with *halakha*. **Rabbi Akiva said to him with characteristic modesty: And I have not even reached the level of shepherds**, who are considered even worse than cattle herders, as they are unfit for giving testimony.

BACKGROUND

The poor man's tithe – מעשר עני: This is a special tithe set aside from agricultural produce and distributed to the poor. During the third and sixth years of the Sabbatical cycle, after the priests' share of the produce and the first tithe have been set aside, one-tenth of the remaining produce is distributed to the poor. This tithe is called the poor man's tithe. During the other years of the Sabbatical cycle, the second tithe is set aside instead of poor man's tithe. The poor man's tithe is not sacred, but until it has been set aside the produce is deemed untithed produce [*tevel*] and may not be eaten. The poor man's tithe is separated from doubtfully tithed produce [*demail*] but it is not given to the poor, due to the principle that the burden of proof rests upon the claimant. In other words, a pauper who laid claim to the poor man's tithe in this case had to prove that the tithe had not already been separated from this produce.

Sabbatical Year – שביעית: The Sabbatical Year is the last year of the seven-year Sabbatical cycle. The first of these cycles began after the conquest of Canaan by Joshua. It is also known as *Shemitta*, which literally means abandonment, release. The

halakhot of the Sabbatical Year are based on Torah law (Leviticus 25:1–7; Deuteronomy 15:1–6). However, most authorities maintain that the conditions for the mitzva of the Sabbatical Year by Torah law have lapsed, and its present-day observance is based on rabbinic decree. During the Sabbatical Year all agricultural land in Eretz Yisrael must lie fallow. It is prohibited to work the land except for what is necessary to maintain existing crops. All produce that does grow is ownerless and must be left unguarded in the fields so that any creature, including wild animals and birds, can have ready access to it. As long as produce can still be found in the fields, that type of produce may be eaten, although it may not be bought and sold in the normal manner or used for purposes other than food. After the last remnants of a crop have been removed from the field, that crop may no longer be eaten, unless a removal ceremony is promptly performed. It is prohibited by rabbinic decree to consume produce that grew from seeds during the Sabbatical Year, even if it grew by itself; according to some authorities, it is prohibited by Torah law.

קדושה ראשונה – The initial consecration of Eretz Yisrael came into effect upon the conquest of Joshua. It lapsed after the destruction of the First Temple. In contrast, the second consecration, by those who returned from Babylonia, was permanent (Rambam *Sefer Zera'im, Hilkhot Terumot* 1:5).

One accepts converts, etc. – **מקבלים גרים וכו'** – Nowadays converts are accepted from all places without concern that Jews may have intermingled with them or that they might be unfit by Torah law, as all the nations have mixed with each other (Rambam *Sefer Kedusha, Hilkhot Issurei Bia* 12:25; *Shulhan Arukh, Even HaEzer* 4:10).

Stains found – **כתמים הנמצאים** – Garments stained with blood that come from Jews are presumed to be ritually impure, whereas those of gentiles are considered pure, as the blood of gentiles does not have the status of ritual impurity. Those garments found in a public location are ritually pure, as Jews would hide away their stained garments and not discard them (Rambam *Sefer Tahara, Hilkhot Metamei Mishkav UMos-hav* 4:10).

BACKGROUND

Karduyim – **קרדוים** – This apparently refers to the inhabitants of areas of northern Iraq, near the source of the Tigris River, the region known primarily as Kurdistan today. It is probable that the Kartuyim are from the same region, albeit from a different area.

“עמון ומואב מעשרין מעשר עני בשביעית”, דאמר מר: הרבה פרבים כבשו עולי מצרים ולא כבשו עולי בבל, וקדושה ראשונה קדושה לשענה ולא קדושה לעתיד לבא.

והניחום כדי שישמכו עליהן עניים בשביעית.

ומקבלים גרים מן הקרדוים והתרמודים. איני? והא תני רמי בר יחזקאל: אין מקבלים גרים מן הקרדוים! אמר רב אשי: קרתוים אתמר. כדאמר אינשי: קרתוים פסולים.

ואיכא דאמרי, תני רמי בר יחזקאל: אין מקבלים גרים מן הקרתוים. מאי לאו – היינו קרתוים היינו קרדוים? אמר רב אשי: לא, קרתוים לחוד וקרדוים לחוד. כדאמר אינשי: קרתוים פסולים.

רבי יוחנן וסביא דאמרי תרוייהו: אין מקבלים גרים מן התרמודים. ומי אמר רבי יוחנן הכי? והתנן: כל הכתמים הבאים מן הרקם טהורים.

ורבי יהודה מטמא, מפני שהם גרים וטועים, מבין הגוים טהורים. והוינן בה:

Since the *halakhot* of the prophet Haggai were mentioned, the Gemara discusses them here. Haggai said that **Ammon and Moab tithe the poor man's tithe in the Sabbatical Year, as the Master said: Many cities were conquered by those who returned from Egypt, and were not conquered by those who returned from Babylonia after the destruction of the First Temple. And the initial consecration^h of Eretz Yisrael, by those who returned from Egypt, sanctified it for its time and did not sanctify it forever, as the future sanctification of Eretz Yisrael depended on the renewed conquest of the land by the Jewish people.**

And those who returned from Babylonia **left those places** aside and did not consider them part of Eretz Yisrael even after Jewish settlement was renewed there. They would plow and harvest in these places in the Sabbatical Year and tithe the poor man's tithe **so that the poor** of Eretz Yisrael who did not have sufficient income from the previous years **could rely upon them**. Consequently, **in the Sabbatical Year** the poor received help from this tithe.

Haggai also declared: **And one accepts converts^{hN} from the Karduyim^h and the Tarmodim**. The Gemara asks: **Is that so? But didn't Rami bar Yehezkel teach in a baraita: One does not accept converts from the Karduyim?** Rav Ashi said: **Kartuyim**, not **Karduyim**, was stated by Rami bar Yehezkel. As people say in common discourse: **The Kartuyim are unfit.**

And there are those who say a slightly different version of this discussion. **Rami bar Yehezkel taught: One does not accept converts from the Kartuyim.** What, is it not the case that **Kartuyim** is the same as **Karduyim**? If so there is a contradiction between the *baraita* of Rami bar Yehezkel and the statement of Rabbi Dosa ben Harkinas. **Rav Ashi said: No; the Kartuyim are one discrete category and the Karduyim are another discrete category, as people say: Kartuyim are unfit.**^N

Rabbi Yohanan and the Elders both say: **One does not accept converts from the Tarmodim.**^N The Gemara asks: **And did Rabbi Yohanan actually say this**, that one does not accept converts from the Tarmodim due to a concern that Jews may have intermingled with them? **But didn't we learn in a mishna: All clothing with stains^h of blood that might be from a menstruating woman and that come from the city on the border of Eretz Yisrael called Rekem are ritually pure**, as it can be assumed that they belong to gentiles, and the blood of a menstruating gentile woman is not ritually impure.

And Rabbi Yehuda deems it ritually impure because those residents of that place **are converts and are in error**. In other words, some of the inhabitants of Rekem assimilated and no longer observe the *halakhot* of the Torah, and therefore one must be wary lest the stains are in fact from a Jewish menstruating woman. Stains that came from among the gentiles, however, are ritually pure. And we discussed the following problem:

NOTES

One accepts converts, etc. – **מקבלים גרים וכו'** – In the Jerusalem Talmud it is related that two Sages disputed this matter. One Sage rendered children born to a Jewish woman and a slave or a gentile entirely fit, and therefore he would accept converts from Tarmod. Another Sage would also accept converts from Tarmod, not because he rendered them fit as a general halakhic ruling, but because he held that there were in fact no mixed lineages in Tarmod at all.

Kartuyim are unfit – **קרתוים פסולים** – Some commentaries maintain that this quote was habitually cited as an example of those who are rendered unfit on account of their lineage. Others say that Kartuyim is a kind of unclean fowl, and this name was

applied to those who came from places that can be described in terms of this kind (Rivan).

Rabbi Yohanan...one does not accept converts from the Tarmodim – **רבי יוחנן...אין מקבלים גרים מן התרמודים** – Some commentaries ask how Rabbi Yohanan could dispute a testimony cited by Rabbi Dosa in the name of Haggai the prophet (*Tosafot*). Some answer that Rabbi Yohanan doubted the validity of this tradition. The same applies to Yonatan ben Harkinas, and there are in fact other examples of this kind of objection (*Yosef Lekah*). Others explain that Rabbi Yohanan maintained that the statement of Haggai the prophet has the status of a prophecy and is not a binding halakhic ruling (*Arza DeVeil Rav*).

NOTES

They are amora'im – אַמוראי מנהו: The Gemara could have answered that Rabbi Yoḥanan's opinion is based on a different unattributed mishna, as on 69b an unattributed mishna that is not accepted as *halakha* states that the child of a gentile or slave and a Jewish woman is a *mamzer*. However, since this would raise the question of why Rabbi Yoḥanan chose to base his opinion on one unattributed mishna rather than the other, this would in any case lead to the conclusion that there is a dispute with regard to his opinion (*Tosafot Yeshanim; Tosefot HaRosh*).

The servants of Solomon – עבדי שלמה: The servants of Solomon are mentioned in the Bible: "All the people that were left of the Amorites, the Hittites, the Perizzites...even their children who were left after them in the land...from them Solomon raised a levy of bondservants, until this day" (I Kings 9:20–21). There is some evidence that these servants enjoyed a privileged status, as generations later, during the time of Ezra, they are listed as a special group unto themselves, separate from the other descendants of the Gibeonites (see Ezra 2:55–58). Since it is explicitly related that Solomon built the city of Tadmor in the desert, it stands to reason that he used primarily these servants for its construction.

One said...and the other one said – חד אמר...וחד אמר: What is the difference between the two reasons? After all, both are based on the same idea that the offspring of a gentile or a slave and a Jewish woman is a *mamzer*. One answer is that they disagree about when the general disqualification came into effect. If the reason is because of the slaves of Solomon, this dates back to the beginning of the First Temple period, whereas if the cause is the daughters of Jerusalem, this occurred during the destruction of the Second Temple (*Iyyun Ya'akov*).

קפסיק ותני: מבין הגוים – ואפילו מן תרמוד. ואמר רבי יוחנן: זאת אומרת: מקבלין גרים מתרמוד.

וכי תימא: זאת, ולא סבירא ליה – והא אמר רבי יוחנן: הלכה כסתם משנה! אמוראי מנהו, ואליבא דרבי יוחנן.

מתרמוד מאי טעמא לא? פליגי בה רבי יוחנן וסבאי: חד אמר: משום עבדי שלמה, וחד אמר: משום בנות ירושלים.

The *tanna* concluded and taught: All stains from among the gentiles are pure, from which it may be inferred: And even from Tarmod.⁸ This indicates that in all places inhabited by gentiles there is no need to be concerned about stains. And Rabbi Yoḥanan said: That is to say, one accept converts from Tarmod without concern that they might be Jewish, albeit *mamzerim*. This contradicts the previous opinion attributed to Rabbi Yoḥanan that converts from the Tarmodim are not accepted.

And if you would say that Rabbi Yoḥanan specifically emphasized: That is to say, i.e., he meant that this conclusion may be logically inferred from the mishna, and yet he himself does not hold by this opinion, but didn't Rabbi Yoḥanan state a principle that the *halakha* is in accordance with the ruling of an unattributed mishna, as is the case here? The Gemara answers: They are *amora'im*,^N and they disagree in accordance with the opinion of Rabbi Yoḥanan. Some Sages said in Rabbi Yoḥanan's name that the Tarmodim are unfit, while others maintain that they are fit.

S The Gemara asks: And what is the reason that the Sages do not accept converts from Tarmod? Rabbi Yoḥanan and the Elders disagree about this matter. Although they concur that converts from Tarmod are not accepted, they disagree with regard to the reason. One of them said that it is due to the servants of King Solomon.^N Solomon built a city in Tarmod (see I Kings 9:18), and his gentile servants, taking advantage of their status and power, married Jewish women unlawfully. Therefore, it is possible that the inhabitants of Tarmod and their descendants are *mamzerim*. And the other one said^N that it is due to the daughters of Jerusalem, who were taken captive and raped and gave birth to children among the gentiles.

BACKGROUND

Tarmod – תרמוד: The city of Tarmod, more commonly referred to as Tadmor, is located in an oasis in the Syrian desert. Tadmor is an ancient city and was called by this name beginning thousands of years ago. In the Bible, the city is also called Tamar, meaning palm. In other languages it is known as Palmyra, which is derived from the name for palm trees.

For many generations Tadmor was an important center of commerce and served as a crossroads for different trading routes across Syria, Arabia, and Babylonia. The Bible relates that King Solomon built and fortified this city (see I Kings 9:18–19 and II Chronicles 8:4). This is the source for the claim that Solomon's bondservants lived there, as well as the reason for the Jewish influence on the religion and culture of this city.

The kingdom of Tadmor grew powerful in the middle of the third century CE, as its ruler, Odaenathus, called Papa bar Nasser in the Gemara, established Tadmor as a great power under Roman patronage, along with his wife, Zenobia. Papa bar Nasser destroyed the city of Neharde'a, and his wife even reigned over Eretz Yisrael. Apparently, the Jews opposed these rulers and treated them with hostility and contempt. In the year 273 CE the Roman emperor Aurelian conquered Tadmor, and from that point onward its influence waned considerably. However, although it was conquered and partially destroyed several times, the city remains standing to this day.



Location of Tadmor



Ruins of Tadmor

A gentile or slave who had intercourse with a Jewish woman – גוי ועבד הבא על בת ישראל: If a gentile or slave had relations with a Jewish woman, whether she is married or single, their offspring is fit. If she gives birth to a girl, it is prohibited for this daughter to marry a priest, in accordance with the conclusion of the Gemara (Rambam *Sefer Kedusha*, *Hilkhot Issurei Bia* 15:3; *Shulḥan Arukh*, *Even HaEzer* 4:19).

A gentile who betrothed a Jewish woman nowadays – גוי שקידש בזמן הזה: If a gentile performs betrothal with a Jewish woman nowadays, his action is meaningless. If, however, a Samaritan performs betrothal with a Jewish woman, she requires a bill of divorce from him (Rambam *Sefer Nashim*, *Hilkhot Ishut* 4:15; *Shulḥan Arukh*, *Even HaEzer* 44:8, 10).

NOTES

Was stated by the ministering angel appointed over the world – שר העולם אמר: Although this chapter of Psalms was written by David, as stated in its opening verse, the Sages explained that in the writing of his book David adapted the hymns of ten Elders of previous generations. The Gemara here likewise teaches that this particular verse did not originate with David himself (*Iyyun Ya'akov*; see *Yosef Lekah*).

BACKGROUND

Homanya – הומניא: This Babylonian city with a gentile population was located near Pum Nahara. According to an ancient tradition, the population of the city was of Ammonite origin (see *Kiddushin* 72a). It is mentioned among those cities situated adjacent to Jewish settlements that were known for their hostile relationship with the Jews.

בשלמא למאן דאמר משום עבדי שלמה – קסבר: גוי ועבד הבא על בת ישראל הולד ממזר. אלא למאן דאמר משום בנות ירושלים – מאי היא? פליגי בה רב יוסף ורבנן, ותרוייהו משמיה דרבה בר בר חנה.

The Gemara comments: **Granted, according to the one who said that it is due to the servants of Solomon, this is logical, as he holds that in the case of a gentile or a slave who had intercourse with a Jewish woman,^h the offspring is a mamzer.** Accordingly, as the servants of Solomon were slaves and they engaged in intercourse with Jewish women, their children are considered *mamzerim*. **However, according to the one who said that it is due to the daughters of Jerusalem, what is the reason that the concern applied specifically to Tarmod and no other cities? Rav Yosef and the Rabbis disagree with regard to this question, and both stated their opinions in the name of Rabba bar bar Hana.**

חד אמר: תריסר אלפי גברי ושיטא אלפי קשתוני, וחד אמר תריסר אלפי גברי ומנייהו שיטא אלפי קשתוני. בשעה שנכנסו גוים להיכל, הכל נפנו על כסף וזהב, והם נפנו על בנות ירושלים, שנאמר "נשים בציון ענו בתולות בערי יהודה".

The Gemara elaborates: **One of them said that twelve thousand men and six thousand archers came from Tarmod, and the other one said that there were twelve thousand men, of whom six thousand were archers. When the gentiles entered the Sanctuary during the conquest of Jerusalem, they all turned to plunder the silver and the gold they saw there, but the warriors of Tarmod turned to the daughters of Jerusalem, as it is stated: "They have ravished the women in Zion, the maidens in the cities of Judah"** (Lamentations 5:11). According to the opinion that children born of relations between gentiles and Jewish women are *mamzerim*, all the children born to these women are *mamzerim*.

אמר רבי שמואל בר נחמני אמר רבי יונתן, פסוק זה שר העולם אמר: "נער הייתי גם זקנתי", מאן אמריה? אילימא קודשא בריך הוא – מי איבא זקנה קמיה? ואלא דוד אמריה – מי קשיש בולי האי? אלא שמע מינה – שר העולם אמר.

S In relation to a verse cited earlier, Rabbi Shmuel bar Nahmani said that Rabbi Yonatan said: **This verse was stated by the ministering angel appointed over the world:ⁿ "I have been young, and now am old; yet I have not seen the righteous forsaken, nor his seed begging bread"** (Psalms 37:25). **Who said this? If we say that it was the Holy One, Blessed be He, is there old age before Him? Could God possibly say: "I have been young, and now am old"? And rather, one could say that David himself said it, from his own experience; but was he indeed so old? After all, David died at the age of seventy. Rather, conclude from this that the ministering angel appointed over the world said it, as he can speak both of youth and old age, and it is he who reported his observations from around the world.**

ואמר רבי שמואל בר נחמני אמר רבי יונתן, מאי דכתיב: "ידו פרש צר על כל מחמדיה" – זה עמון ומואב. בשעה שנכנסו גוים להיכל הכל נפנו על כסף וזהב, והם נפנו על ספרי תורה. אמרו: זה שכתוב בו "לא יבא עמון ומואבי בקהל ה'!" ישרף באש.

And Rabbi Shmuel bar Nahmani further said that Rabbi Yonatan said: **What is the meaning of that which is written: "The adversary has spread out his hand upon all her treasures; for she has seen that the heathens have entered into her Temple, concerning which You commanded that they should not enter into Your congregation"** (Lamentations 1:10)? **This is referring to Ammon and Moab. How so? When the gentiles entered the Sanctuary, all turned to plunder the silver and the gold, and the soldiers from Ammon and Moab turned to the scrolls of Torah to destroy them. They said: Is this the scroll in which it is written: "An Ammonite and a Moabite shall not enter into the assembly of the Lord"** (Deuteronomy 23:4)? **Let it be burnt by fire.**

"צנה ה' ליעקב סביביו צריו", אמר רב: בגין הומניא לפנים נהרא.

With regard to the Ammonites, the Gemara cites another verse: **"The Lord has commanded against Jacob that they who are round about him should be his adversaries"** (Lamentations 1:17). **Rav said: For an example of this, there is the city Homanya^b in relation to the city Pum Nahara, as the descendants of the Ammonites live in Homanya, and they harass the Jews of Pum Nahara.**

אמר רב יהודה אמר רב אסי: גוי שקידש בזמן הזה – חוששין לקדושתו, שמא מעשרת השבטים הוא. והא כל דפריש מרובא פריש!

S Rav Yehuda said that Rav Asi said: **With regard to a gentile who betrothed a Jewish woman nowadays,^h we are concerned that the betrothal might be valid, despite the fact that a betrothal of a gentile is meaningless, lest he be from the ten tribes of Israel who intermingled with the gentiles. The Gemara raises an objection: But there is an important principle in halakha that any item separated, i.e., not fixed in its place, is presumed to have been separated from the majority. In this case, it can be assumed that any individual singled out from the gentiles belongs to the majority of gentiles and has no Jewish roots at all.**

BACKGROUND

The exile of the ten tribes – גלות עשרת השבטים: The Sages identified the places to which the ten tribes were exiled, all of which were close to the sources of the Tigris and Euphrates Rivers, or in the land of Medes, northeast of the Jewish settlement in Babylonia. Some of the places listed have been identified with near certainty, while the exact names and locations of others remain doubtful.



Places of exile of the ten tribes, relative to cities of Jewish settlement

HALAKHA

A son from a gentile woman – בן מן הנכרית: The son of a Jew from a gentile woman or slave woman is not considered his son (Rambam *Sefer Kedusha*, *Hilkhot Issurei Bia* 12:7).

The son of your daughter from a gentile – בן בתך הבא מן הגוי: The offspring of a gentile man and a Jewish woman is a fit Jew, as he is called: Your son. However, he is disqualified from the priesthood (*Shulhan Arukh*, *Even HaEzer* 4:19).

בְּדוֹכְתָא דְקַבְיֵעַ, דְאָמַר רַבִּי אֲבָא
בַּר כַּהֲנָא: "וַיִּנָּחֶם בְּחִלָּה וּבְחִבּוֹר
נְהַר גּוֹזָן וְעָרֵי מְדִי." חֵלָח – זֶה חִלּוֹן,
וְחִבּוֹר

The Gemara responds: Rav Yehuda means that there is a concern only with regard to those who came from the permanent dwelling places of the ten tribes. As Rabbi Abba bar Kahana said that the verse states about those exiled from Samaria: "And he put them in Halah, and in Habor, on the river of Gozan, and in the cities of the Medes" (1 Kings 18:11). Rabbi Abba bar Kahana proceeded to identify these places. Halah; this is the place called Hazon. And Habor;

זו חַדְיָב, נְהַר גּוֹזָן – זו גִּינְזַק, וְעָרֵי
מְדִי – זו חֲמַדָּן וְחִבְרוֹתֶיהָ, וְאָמַרְי לָהּ:
זו נִיְהַר וְחִבְרוֹתֶיהָ. חִבְרוֹתֶיהָ מֵאֵן?
אָמַר שְׁמוּאֵל: כְּרָךְ, מוֹשְׁכֵי, חִידְקֵי
וְדוֹמְקֵיָא. אָמַר רַבִּי יוֹחָנָן: וְכֻלָּן
לְפָסוּל,

this is Hadyab. The river of Gozan; this is Ginzak. And the cities of the Medes; this is Hamadan and its surroundings.^B And some say: This is Nihar and its surroundings. The Gemara asks: Which are its surroundings? Shmuel said: Kerakh, Mushkhei, Hidkei, and Domakya are the surroundings of Hamadan. Rabbi Yohanan said: And all of them are for disqualification.^N In other words, if someone from one of these places wishes to convert, there is concern that he might be a descendant of a Jew and therefore a *mamzer*. Consequently, they all are disqualified.

כִּי אָמַרְתִּיהָ קַמִּיָּה דְשְׁמוּאֵל: אָמַר
לִי: בִּנְךָ הַבָּא מִן יִשְׂרָאֵלִית קְרוּי בִּנְךָ,
וְאִין בִּנְךָ הַבָּא מִן הַגּוֹיָה קְרוּי בִּנְךָ –
אֵלָּא בְּנָה.

Rav Yehuda continued his recounting: When I said this *halakha*, that there is a concern about the betrothal of gentiles nowadays, before Shmuel, he said to me: One need not worry about this, as your son from a Jewish woman^N is called your son, i.e., he inherits his lineage from you, and your son from a gentile woman is not called your son, but rather her son.^H Consequently, all children born to Jews from gentile women are not considered Jews, as their lineage is determined by their gentile mothers.

וְהָאִיכָא בְּנוֹת, וְאָמַר רַבִּינָא: שְׁמַע
מִנֵּהָ בֵּן בִּתְךָ הַבָּא מִן הַגּוֹי קְרוּי בִּנְךָ!
גְּמִירִי דְבִנְתָּא דְהָהוּא דְרָא אִיצְטְרוּי
אִצְטְרוּ.

The Gemara asks: Aren't there Jewish girls who were captured by gentiles, whose children are considered to be Jews? And Ravina said: Learn from this that the son of your daughter from a gentile^H is called your son. If so, the descendants of Jewish women captured by gentiles would indeed be Jews. The Gemara answers: This is no concern, as it is learned as a tradition that the girls from the ten tribes of that generation became barren^N and did not give birth to any offspring, whereas some of the exiled men of the ten tribes married gentile women. Consequently, all of the children born there were gentiles.

NOTES

And all of them are for disqualification – וְכֻלָּן לְפָסוּל: Rashi explains that those born in these places were not careful about forbidden unions, and their offspring are therefore *mamzerim*. The other commentaries ask why Rashi interpreted the Gemara in this manner. After all, the offspring of a Jewish man and a gentile woman is himself a *mamzer*, as Rashi himself wrote, in accordance with the opinion of Rav Asi (Maharsha). If so, it is enough to state that these tribes intermingled, without having to stipulate that they engaged in sexual intercourse with forbidden relations. Some explain that Rabbi Yohanan issued his statement even in accordance with the opinion that the offspring of a Jewish man and a gentile woman is not a *mamzer*. Rabbi Yohanan is saying that even so, they would all be disqualified as *mamzerim*, due to marriage with women with whom relations are forbidden (*Yosef Lekah*; see Maharsha and Arza DeVeil Rav).

Your son from a Jewish woman, etc. – בִּנְךָ הַבָּא מִן יִשְׂרָאֵלִית: The statements of Shmuel and Ravina refer to a homiletical interpretation of the following verses: "Neither shall you make marriages with them: Your daughter you shall not give to his son, nor his daughter shall you take for your son. For he will turn away your son from following Me, that they may serve other gods" (Deuteronomy 7:3-4). Rashi explains that as the

verse states: "For he will turn away your son," and not: She will turn away, it is evidently referring to the offspring of a gentile man and a Jewish woman. Since the verse does not deal with the fate of the son of a gentile woman, this indicates that he is not considered to be a Jew at all. Others add that it stands to reason that a son raised as a Jew would not turn astray to idol worship, and therefore the verse is certainly referring to the son of one's daughter who was raised among the gentiles (*Tosafot Yeshanim*). Others maintain that the phrase "He will turn away your son" is referring to the father of the gentile wife, who is in fact the subject of the verse. According to this interpretation, the turning away mentioned in the verse actually means that the son of this union will be removed from the continuation of Judaism, as his children will not be considered Jews. The Rambam explains likewise.

Became barren – אִיצְטְרוּי אִצְטְרוּ: Some commentaries explain that they purposely drank a tonic to make themselves barren (Rivan), or that they made themselves repulsive to those who wished to have intercourse with them (Meiri), or that their wombs were damaged from consecutive acts of rape (*Tosafot Rid*). Alternatively, some state that the pain from the long journey and slavery caused them to lose the ability to bear children (Meiri; see Rashi and Rif on *Kiddushin*).

איכא דאמרי: כי אמריתה קמיה דשמואל
אמר לי: לא זוו משם עד שעשאום גוים
גמורים, שנאמר "בה' בגדו כי בנים זרים
ילדו".

יְתִיב רב יוסף אחוריה דרב כהנא, ויְתִיב
רב כהנא קמיה דרב יהודה, ויְתִיב וקאמר:
עתידין ישראל דעבדי יומא טבא כי
תרבי תרמוד. והא חריב! הריא תמוד
הוא. רב אשי אמר: היינו תרמוד היינו
תמוד, אכפולי הוא דמכפל. חריב מהאי
גיסא – אותיב מהאי גיסא, ואי חריב
מהאי גיסא – אותיב מהאי גיסא.

יְתִיב רב המנונא קמיה דעולא וקא הוי
בשמעתא. אמר: מה גברא ומה גברא,
אי לאו דהרפניא מאניה! אכסין. אמר
ליה: כסף גלגלתא להיכא יהבת? אמר
ליה: לפום נהרא. אמר ליה: אם בן – מפום
נהרא את.

מאי הרפניא? אמר רבי זירא: הר שהכל
פוני בו. במתניתא תנא: כל שאין מכיר
משפחתו ושבוטו נפנה לשם, אמר רבא:
והיא עמוקה משאול, שנאמר "מיד
שאול אפדים ממות אגאלם", ואילו פסול
דידהו – לית להו תקנתא.

There are those who say that Rav Yehuda actually related the following: When I said this *halakha* before Shmuel, he said to me: They did not move from there, the place where they deliberated on this matter, until they rendered all of them, including those who intermingled with the ten tribes in different locations, full-fledged gentiles.^N Consequently, there is no concern that their betrothals might be of any effect, as it is stated: "They have dealt treacherously against the Lord, for they have begotten strange children" (Hosea 5:7).

S The Gemara relates: Rav Yosef sat behind⁸ Rav Kahana, and Rav Kahana sat before Rav Yehuda, and he sat and he said this tradition: In the future, the Jews will establish a Festival day when Tarmod is destroyed.^N The Gemara asks: But it has already been destroyed. The Gemara answers: That place that was destroyed was Tamud, not Tarmod. Rav Ashi said: Tarmod is the same as Tamud. However, the city is doubled. In other words, when it is destroyed from this side it is settled on that side, and when it is destroyed from that side it is settled on this side. Consequently, it has not yet been entirely destroyed.

The Gemara relates: Rav Hamnuna^p sat before Ulla and was engaged in the study of *halakha*. Ulla said about him: What a man; what a man. In other words: What a great man this Rav Hamnuna is. If only Harpanya were not his city, as the inhabitants of that place are all of flawed lineage, which indicates that the lineage of Rav Hamnuna is likewise impaired. Rav Hamnuna was ashamed. Ulla said to him: Where do you give the money for payment of the poll tax? He said to him: I pay it to the city of Pum Nahara, as my city is subject to taxation by that city. He said to him: If so, you are from Pum Nahara, not Harpanya, and your lineage is evidently not flawed.

S The Gemara asks: What is the meaning of the name Harpanya? Rabbi Zeira said: It means the mountain to which all turn [*har shehakol ponin bo*]. In other words, it is the destination for all those who could not find wives anywhere else, as most of its population is of flawed lineage. It is taught in a *baraita*:^N All those who do not know their family or tribe turn there. Rava said: This type of flaw is appalling and is deeper than the netherworld, as is stated: "Shall I ransom them from the power of the netherworld? Shall I redeem them from death?" (Hosea 13:14). This verse indicates that it is possible to be ransomed and released from the netherworld, whereas their disqualification cannot be rectified.

BACKGROUND

יְתִיב...אחוריה – Sat behind: In the earlier generations, it was customary for Torah scholars to sit before their masters in a particular order, with the most prominent students in the first rows and the lesser students behind them. A significant portion of the time was dedicated to discussions between the rabbi and the more outstanding students seated in the front row, especially when there was no study hall where the lecture could be transmitted to everyone. Younger students would ask older students for explanations of the rabbi's statements or pose questions to them that they dared not pose directly to the rabbi.

PERSONALITIES

רב המנונא – Rav Hamnuna: Rav Hamnuna was a second-generation Babylonian, a disciple of Rav. There was another Rav Hamnuna in the following generation who was also associated with Rav, although he was primarily a student of Rav Hisha. This Rav Hamnuna perpetuated the tradition of the school of Rav. He was affiliated with Rav Huna, whose halakhic authority he accepted. Rav Hamnuna was also the head of an academy in his own right and taught many of the outstanding Sages of the next generation, including Rabbi Zeira and Rav Yosef.

NOTES

עד שעשאום – Until they rendered them full-fledged gentiles: Some commentaries derive from here that the Sages decreed that someone who is fully assimilated among gentiles is considered a gentile for all intents and purposes, and neither he nor his descendants are Jews at all. This is the opinion of several early commentaries with regard to an apostate, that he is no longer considered a Jew with regard to levirate marriage or *halitza*.

דעבדי – Establish a Festival day when Tarmod is destroyed: Rashi says that this is due to the disqualification of *mamzerim*. Others suggest that the reason is that the inhabitants of Tarmod were sworn enemies of the Jews, and according to tradition they participated in the conquests of

Jerusalem during the destruction of both the First and Second Temples (*Arukh LaNer*).

במתניתא תנא – It is taught in a baraita: Some commentaries ask what this *baraita* adds to the statement of Rabbi Zeira. A different version of the text reads: He should turn there. In other words, this is a recommendation, as they are not strict about lineage in Harpanya, and for this reason their lineage is considered flawed (Rivan). Others differentiate between the opinion of Rabbi Zeira, who maintains that everyone turns to Harpanya, even actual *mamzerim*, which indicates that its residents are definitely disqualified, and the statement of the *baraita*, from which it can be inferred that the inhabitants of Harpanya are merely of uncertain lineage (*Yosef Lekah*).

NOTES

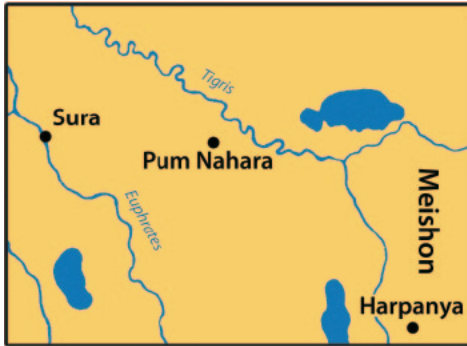
משום פסולי דמישון – Due to the disqualification of Meishon – In the Jerusalem Talmud it is stated that the disqualified residents of Meishon were not *mamzerim* but were priestly families that assimilated and became disqualified from the priesthood [*halalim*] by marrying unfit women. Consequently, they are uncertain *halalim*.

קבא רבא וקבא זוטא – A large ephah and a small ephah – Some commentaries cite a different interpretation: Both great individuals of prestigious lineage, the so-called large ephah, and lesser ones of disqualified lineage, a small ephah, descended to Babylonia, which is a geographically low place and for this reason is dubbed the netherworld. There, these individuals intermarried. A similar expression appears later in the tractate (70a).

BACKGROUND

מישון והרפניא – Meishon and Harpanya – The region of Meishon was east-southeast of the central Jewish settlement in Babylonia and was considered a place bereft of Torah and populated by individuals of unfit lineage. In contrast, Pumbedra, which was apparently considered within the primary Jewish settlement and was home to important Sages, was viewed as pure with regard to the lineage of its residents.

Tadmor, or Tarmod, is located hundreds of kilometers northwest of Meishon, and there is no geographical link between the two places. However, it is possible that there were ties of other kinds between these two cities.



Meishon and Harpanya

פסולי דהרפניא משום פסולי דמישון
ופסולי דמישון משום פסולי דתמוד
פסולי דתמוד משום עבדי שלמה,

והיינו דאמרי אינשי: קבא רבא וקבא
זוטא, מיגנדר ואויל לשאול, ומשאול
לתמוד, ומתמוד למישון, וממישון
להרפניא.

הדרן עלך חמש עשרה נשים

The Gemara comments: **Those who are disqualified from Harpanya are unfit due to the disqualification of the inhabitants of nearby Meishon,^N who were unfit and intermarried with the residents of Harpanya. Those disqualified from Meishon are unfit due to those disqualified from Tarmod, and those disqualified from Tarmod are disqualified due to the servants of Solomon.**

The Gemara comments: **And this explains the folk saying that people say in this regard: A large ephah and a small ephah,^N which are both inaccurate utensils that may not be used for measuring, roll onward to the netherworld, and from the netherworld to Tarmod, and from Tarmod to Meishon, and from Meishon to Harpanya.^B** The same idea expressed by the Sages with regard to the disqualification of lineage was also incorporated into a well-known adage among commoners.

Summary of Perek I

This chapter discussed three problems in detail, all of which pertain to the issue of *yevamot* and their rival wives but have broader ramifications.

It is a principle in *halakha* that a positive mitzva overrides a prohibition. One might think that the mitzva of levirate marriage is a perfect example of this principle, as this positive commandment overrides a prohibition that entails *karet*, i.e., a brother's wife. However, a closer analysis reveals that in fact a positive mitzva overrides a regular prohibition alone, and it does so only in situations when both commandments cannot be fulfilled. Furthermore, a positive mitzva does not override both a prohibition and a positive mitzva.

The discussion of the source for the exemption of the rival wife of a woman who may not enter into levirate marriage led the Gemara to touch upon the question of whether *ḥalitza* merely releases the couple from the obligation of levirate marriage or whether it is a different form of levirate marriage that changes the relationship between the brother-in-law and the *yevama*.

The exemption of rival wives itself is the subject of a dispute between Beit Shammai and Beit Hillel. This chapter discussed various aspects of this disagreement, e.g., whether Beit Shammai acted upon their own ruling or if the dispute was merely theoretical. The Gemara also debated several related issues, including when and to what extent the prohibition against splitting into factions, i.e., different practical implementations of the *halakha*, is in effect.

If brothers dwell together and one of them dies and he has no child, the wife of the dead man shall not be married outside of the family to one not of his kin; her brother-in-law will have intercourse with her and take her to him to be his wife and consummate the levirate marriage.

(Deuteronomy 25:5)

Introduction to Perek II

In the first chapter, the Gemara discussed women who are prohibited from entering into levirate marriage due to their being close relatives of, and therefore severely forbidden to, their *yavam*, together with the rival wives of such women. It was explained that these women are exempt from both levirate marriage and *ḥalitza*. However, there are other problems that can arise in cases of levirate marriage. Some women are not forbidden to their *yavam* with a prohibition of *karet* but are forbidden due to another prohibition or by rabbinic law. In these instances does the mitzva of levirate marriage override the prohibition?

Another issue discussed in this chapter is the definition of some fundamental concepts in levirate marriage. The Torah states that the brother must perform the levirate marriage, but the question of who exactly is considered a brother requires clarification. The first chapter mentioned the concept of: A brother with whom he did not coexist, to whom the *halakhot* of levirate marriage and *ḥalitza* do not apply. In such a case the exemption from levirate marriage is not due to a forbidden union but rather from the *halakhot* of levirate marriage themselves, as the verse states: “If brothers dwell together.” This chapter defines this concept, and clarifies the details and application of the *halakha*.

Another issue discussed in this chapter is what the Torah means when it uses the term “brother.” Does it refer to any brother or only the eldest, and does it apply equally to paternal and maternal half brothers? Must the brother performing levirate marriage be legitimate, or are illegitimate brothers included as well?

Another topic clarified in this chapter is the term “child” used in the verse. Since the Torah uses the masculine word for “child” does it also include a daughter? Does it include grandchildren and descendants? Does it refer only to legitimate children or also to illegitimate children? In cases of doubt as to whether or not there is a surviving child when the *yavam* dies is there an obligation to perform levirate marriage and *ḥalitza*?

These questions, along with several other corollary issues, constitute the primary substance of this chapter.

מתני' ביצד אשת אחיו שלא היה בעולמו? שני אחים, ומת אחד מהן; ונולד להן אה, ואחר כך ייבם השני את אשת אחיו ומת. הראשונה יוצאה משום אשת אחיו שלא היה בעולמו, והשנייה משום צרתה.

עשה בה מאמר ומת – שניה חולצת ולא מתייבמת.

גמ' אמר רב נחמן: מאן דתני ראשונה לא משתבש, מאן דתני שנייה לא משתבש. מאן דתני

MISHNA Each of the women enumerated in the first chapter causes exemption from levirate marriage and *halitza* for her rival wives. This is due to the close family relationship she has with her brother-in-law, making her forbidden to him. The single exception is the case explained in this mishna. What is the case of the wife of a brother^N with whom he did not coexist?^H For example: If there were two brothers, and one of them died childless, and subsequently a brother of theirs was born, after which the second brother, the elder, took his deceased brother's wife in levirate marriage, and then died as well. Consequently, two women require levirate marriage: The widow of the first brother who had been taken in levirate marriage by the second brother, and the widow of the second brother, the first widow's rival wife. **The first** widow, who had been the wife of the first brother to die, goes out without any obligation to be taken in levirate marriage by the youngest brother who was born later, since she is **the wife of a brother with whom he did not coexist**. The first deceased brother never lived at the same time as the newly born brother. **The second** widow, who had been married to the second brother, is exempt due to her rival wife.

The mishna discusses an additional situation: If the second brother had performed only levirate betrothal^B with her, meaning that he had not yet consummated the marriage, and then died, both the wife betrothed by a levirate betrothal to the second brother and the wife of the second brother fall before the youngest brother born after the death of the first brother. In that case, the first wife certainly goes out and is exempt from both *halitza* and levirate marriage, since she is to him the wife of a brother with whom he did not coexist. **The second**, however, was never effectively the rival wife of the first brother's wife, as the first brother's wife had only been betrothed by levirate betrothal and was not fully married to the second brother. Therefore, she performs *halitza* and may not enter into levirate marriage.

GEMARA Rav Nahman said: He who taught the version of the mishna which reads: **The first** widow goes out, is not mistaken in his version, and he who taught a variant version of the mishna which reads: **The second** widow goes out, is not mistaken either, since it is possible to understand the mishna both ways. Both versions of the text can refer to the same woman, i.e., the wife of the first brother, by different titles. The Gemara explains that he who taught:

NOTES

What is the case of the wife of a brother, etc. – **ביצד** – **אשת אחיו וכו'**: The mishna comes to clarify the fundamental principle concerning the *halakha* of the wife of his brother with whom he did not coexist, and not to discuss all of its details, since those were already discussed in the previous chapter (Rashba).

HALAKHA

The wife of a brother with whom he did not coexist – **אשת אחיו שלא היה בעולמו**: The levirate bond does not apply at all to the wife of a brother with whom one did not coexist. Therefore, she is exempt from levirate marriage and consequently forbidden to the *yavam*, and also causes exemption for her rival wives. In fact, she causes exemption for the rival wives of her rival wives as well, as per the ruling concerning all forbidden relations (Rambam *Sefer Nashim*, *Hilkhot Yibbum VaHalitza* 6:16–17; *Shulhan Arukh*, *Even HaEzer* 173:12).

BACKGROUND

Levirate betrothal [*ma'amar*] – **מאמר**: The betrothal performed by a *yavam* based on his levirate bond with his *yevama* is called *ma'amar*. A levirate betrothal does not have the halakhic status of an ordinary betrothal, since the levirate bond between *yavam* and widow is not dependent upon betrothal. Rather, it is a sort of continuation of the previous marriage to her deceased husband. Full marriage with one's sister-in-law comes into effect by intercourse alone. However, the Sages instituted this type of betrothal with a *yevama* for reasons of modesty, so that the *yavam* would not have intercourse with her without betrothal.

ראשונה לא משתבש. מאן דתני שנייה לא משתבש: מאן דתני שנייה – שנייה לנשואין. מי לא עסקינן דיבם ואחר כך בנס? אלא: מאן דתני שנייה – שנייה בנשואין.

The first, is not mistaken, as what is the meaning of first? It means the first to fall before her *yavam* for levirate marriage. And he who taught referring to her as the second is not mistaken either, as what is the meaning of second? It means the second to enter marriage. Since the second deceased brother was already married to one woman, this *yevama* whom he took in levirate marriage was his second wife. The Gemara wonders: Is this the necessary order of events? Are we not also dealing with a scenario in which the second brother took the wife of the first brother in levirate marriage and then later took another wife? Would such a situation not merit the same ruling? Rather, what is the meaning of calling the wife of the first brother the second? It means she who had been married for a second time. She had already been married twice, whereas the wife of the second brother had been married only once.

Wife of a brother with whom he did not coexist – *Tosafot* ask: Why doesn't the Gemara employ the principle that the Torah's ways are pleasant (see Proverbs 3:17), used in several other areas of *halakha*, and say that it would not be appropriate for a woman to wait her entire life for a brother to possibly be born to her late husband? In the Jerusalem Talmud the applicability of this concept is discussed. *Tosafot* answer that the verse comes to exclude even the case where the mother-in-law was pregnant at the time of the husband's death, so that the wait would be finite. The Rashba adds that the verse is necessary to teach the case when several *yevamin* were alive, in which case the principle of the Torah's ways of pleasantness would not apply, as well as to exclude any later born brother from the obligation of levirate marriage.

United in an inheritance – *מיוחדים בנחלה*: The Rashba challenges this explanation, as there are certain situations in which maternal half brothers inherit a common inheritance from their mother. He answers that since such a case occurs only infrequently, that cannot be the criterion used to determine brotherhood with regard to levirate marriage.

HALAKHA

Excludes his maternal half brother – *פֶּרֶט לְאָחִיו מִן הָאֵם*: Maternal half brothers are not considered brothers for purposes of levirate marriage. If a man dies and has brothers only by his mother, then his widow is permitted to marry anyone (Rambam *Sefer Nashim*, *Hilkhot Yibbum VaHalitza* 1:7; *Shulhan Arukh*, *Even HaEzer* 157:1).

אֵשֶׁת אָחִיו שְׁלֹא הָיָה בְּעוֹלָמוֹ הֵיכָא בְּתִיבָא? אָמַר רַב יְהוּדָה אָמַר רַב: אָמַר קָרָא "כִּי יֵשְׁבוּ אָחִים יַחְדָּו" – שְׁהִיְתָה לָהֶם יְשִׁיבָה אַחַת בְּעוֹלָם, פֶּרֶט לְאֵשֶׁת אָחִיו שְׁלֹא הָיָה בְּעוֹלָמוֹ. "יַחְדָּו" – מִיּוֹחָדִים בְּנַחֲלָה, פֶּרֶט לְאָחִיו מִן הָאֵם.

רַבָּה אָמַר: אָחִין מִן הָאֵב – יִלְיָף "אַחִוָּה" "אַחִוָּה" מִבְּנֵי יַעֲקֹב, מִה לְהֵלֶן מִן הָאֵב וְלֹא מִן הָאֵם, אִף כָּאֵן מִן הָאֵב וְלֹא מִן הָאֵם.

וְלִילְיָף "אַחִוָּה" "אַחִוָּה" מִעֲרִיּוֹת! דִּנְן "אַחִים" מִ"אַחִים", וְאֵין דִּנְן אָחִים מִ"אַחִיךָ".

מֵאֵי נִפְקָא מִינָּה? הָא תִּנָּא דְּבִי רַבִּי יִשְׁמַעֲלִי: "וְשָׁב הַכֹּהֵן" וְיָבֵא הַכֹּהֵן זֶה הוּא שִׁיבָה זֶה הוּא בִּיאָה! הֵנּוּ מִלִּי הֵיכָא דְּלִיכָא מִיַּד דְּדָמִי לִיה, אֲבָל הֵיכָא דְּאִיכָא מִיַּד דְּדָמִי לִיה – מִדְּדָמִי לִיה יִלְפִינָן.

וְלִילְיָף "אַחִוָּה" "אַחִוָּה" מִלוֹט, דְּכִתְבִּי "כִּי אֲנָשִׁים אָחִים אֲנַחְנוּ" מִסֵּתִבְרָא. מִבְּנֵי יַעֲקֹב הוּא לִיה לְמִילָה, מִשּׁוּם דְּמִפְנֵי מִדְּהוּה לִיה לְמַכְתָּב "שְׁנַיִם עָשָׂר עֲבָדֶיךָ בְּנֵי אַבְרָהָם" וְכִתְבִּי "אָחִים" – שְׁמַע מִינָּה לְאַפְנוּיָי.

S The Gemara turns from a review of the language used in the mishna to a discussion of the *halakhot* of a wife of a brother with whom one did not coexist. **Where is it written** that the mitzva of levirate marriage does not apply in the case of the wife of a brother with whom he did not coexist?^N Rav Yehuda said that Rav said: **The verse states** "If brothers dwell together and one of them dies" (Deuteronomy 25:5), meaning that they had a common dwelling together in the world. This excludes the wife of a brother with whom he did not coexist. Furthermore, it is derived: "Together" means that they were united together in an inheritance;^N i.e., they are united in that they inherit together. In other words, since property is inherited by sons from their father, it can be inferred that the verse is speaking specifically of brothers from the same father. This excludes his maternal half brother,¹⁴ with whom he is not united by inheritance, since only brothers who share the same father inherit from each other.

Rabba said: One learns the ruling that levirate marriage applies only to brothers from the same father by the verbal analogy between the term brotherhood used in the context of levirate marriage and the term brotherhood from the children of Jacob. Just as there, with regard to the children of Jacob, they are all brothers from the father and not from the mother, since they were from four different mothers, so too, here, in the case of levirate marriage, it is referring specifically to brothers from the father and not from the mother.

The Gemara raises an objection: Why should we learn from the children of Jacob? **Let it derive** the meaning of the term brotherhood by verbal analogy to the term brotherhood from the verses discussing those with whom relations are forbidden. In the *halakhot* of forbidden relations, both paternal and maternal half brothers are considered brothers, and are thereby subject to such prohibitions as those against relations with a brother's wife. The Gemara answers: The first analogy is preferable, as we infer "brothers" from "brothers." The word "brothers" is stated both with regard to the children of Jacob and with regard to the *halakhot* of levirate marriage, whereas with regard to forbidden relations it says "your brother," and one cannot make an inference to "brothers" from "your brother."

The Gemara objects: **What difference does it make** if there is a minor difference between the words being compared? **As the school of Rabbi Yishmael taught** a verbal analogy with regard to leprosy of houses between the verse "and the priest shall return [*veshav*]" (Leviticus 14:39) and the verse "and the priest shall come [*uva*]" (Leviticus 14:44), from which it is derived that this is the *halakha* with regard to returning, i.e., it is after seven days, and this is the same *halakha* with regard to coming, that it is after seven days. Consequently, a less pronounced difference of one letter between the Hebrew words for "brothers" and "your brother" should certainly not prevent the teaching of a verbal analogy. The Gemara responds: **This applies when nothing else was more similar, but where there is something similar we infer from that which is more similar.** In such situations, it is preferable to learn from the word that bears greater similarity.

The Gemara objects on another count: **Let the *halakha* derive** the meaning of the term brotherhood from the term brotherhood from Lot, as it is written that Abraham said to Lot: "For we are brothers" (Genesis 13:8). From here one could conclude that the word brothers means relatives and not necessarily brothers. The Gemara rejects this: **It is more reasonable to derive from the children of Jacob, due to the fact that the word "brothers" is free in its context and is therefore available to be used in a verbal analogy: Since it could have written:** We your servants are twelve children of our father, but instead it writes: "Twelve brothers, the children of one man" (Genesis 42:13), **learn from here** that this comes to render the word "brothers" free so that it may be allocated to another matter, i.e., the definition of brothers.

איצטרך למכתב – איצטרך למכתב. – **איצטרך למכתב**. *Tosafot Yeshanim* raise the question: Would it not have been possible to omit the word “brothers” in reference to Lot and to omit “together” in the verses that discuss levirate marriage? If so, they are both unnecessary. Ramban answers that if the word “brothers” had not been written, the word “brother” might have been interpreted in the widest sense as referring to fellow men and not necessarily to relatives, just as many times in the Torah the words “your brother” refer to any Jewish person. Consequently, it was necessary to write “brothers” in reference to Lot to teach that the “brothers” referred to in the context of levirate marriage are specifically relatives (see Ritva).

Free – מִפְּנֵי: There is a tannaitic dispute with regard to the authority of a verbal analogy [*gezera shava*] where the key words are not superfluous in their respective contexts. In the Jerusalem Talmud, even in the case of a verbal analogy where the key words are not at all superfluous, the analogy may be expounded, with the caveat that it is open to refutation. This type of verbal analogy is really an enhanced analogy [*binyan av*] and is essentially nothing more than a logical connection based on the idea that identical expressions in two *halakhot* indicate that the Torah intended to emphasize the connection between them. However, in the Babylonian Talmud, a verbal analogy may be expounded only if the key word is superfluous in at least one of the verses. According to Rabbi Yishmael, the superfluity of the key word in one verse is sufficient proof that the Torah intended that this verbal analogy should be derived, and it cannot be refuted. The Sages who disagree with him hold that even that type of verbal analogy can be logically refuted.

BACKGROUND

Levirate bond – יִקָּה: This refers to the relationship between a *yevama* and her deceased husband's brothers, from the time of the husband's death until one of the brothers performs levirate marriage or *halitza* with the widow. The precise nature of the relationship between the *yevama* and her *yevamin* during this period is the subject of much talmudic debate. In certain respects they are already considered to be betrothed from the time of the husband's death. For this reason, for example, a *yavam* may not marry a close relative of his *yevama*. The bond is either transformed into marriage by levirate marriage or nullified and severed by *halitza*.

LANGUAGE

Levirate bond [zikka] – יִקָּה: From the root *z-k-k*, meaning connected or tied. The modern Hebrew words *zikim* or *azikim*, meaning handcuffs, come from the same source. While this root is also used literally in certain contexts, most of its usage by the Sages is abstract or metaphorical and represents legal, psychological, or sometimes sexual bonds. The word *zikka* is an abstract noun meaning a tie or a connection, and it indicates that an element is lacking.

ואיצטרך למכתב “אחים”, ואיצטרך למכתב “יחדו”. דאי כתב רחמנא “אחים” הוה אמינא: לילך “אחיה” מלוט. וכי תימא לא מפני – לאי, אפנוי מפני, מדהוה ליה למכתב “רעים” וכתב “אחים”, שמע מינה לאפנוי – כתב רחמנא “יחדו”, המיוחדים בנחלה.

The Gemara comments: **And although Rav Yehuda and Rabba learned the same ruling from two different passages, according to both it was necessary to write “brothers”^N and it was necessary to write “together” in the verses discussing levirate marriage, as, if the Merciful One had written only “brothers,” I would say that one should infer the meaning of the term “brothers” from the term “brothers” from Lot. And if you would say it is not free^N there in the same way that the word “brothers” is free in the passage concerning the children of Jacob, this is not so; in fact, it is free. With regard to Lot it could have written: Friends, as they were not actual brothers but relatives, and yet “brothers” is written. One might learn from here that this is free to be allocated elsewhere and teach that such relatives are called brothers even for levirate marriage. Therefore, the Torah wrote “together” to teach that this applies specifically to those brothers who are united in an inheritance.**

ואי כתב רחמנא “יחדו”, הוה אמינא: דמייחדים באבא ובאמא, צריכא.

And if the Merciful One had written “together” alone and not added “brothers,” I would say that they must have both the same father and mother together, and that otherwise the mitzva of levirate marriage would not apply. Therefore, “brothers” is written to compare this to the children of Jacob, who were brothers from the same father but not the same mother. It is for this reason, then, that it is necessary to write both.

והא מהיכא תיתי? יבום בנחלה תלא רחמנא. ונחלה מן האב ולא מן האם היא! איצטרך, סלקא דעתך אמינא: הואיל וחדוש הוא, דקמשתרי ערוה גביה – אימא עד דמייחדים באבא ובאמא, צריכא.

The Gemara asks about the last supposition: **But from where would it be derived** that perhaps levirate marriage would apply only if they are full brothers, sharing both a father and mother? Why should one assume that maternal brotherhood is also of import here? Doesn't the Merciful One make levirate marriage dependent upon inheritance? The Torah states that the *yavam* who performs the levirate marriage will establish the name of his deceased brother, meaning that he inherits from him, and inheritance comes from the father and not from the mother. Nevertheless, this was necessary, as it could enter your mind to say that since this *halakha* of levirate marriage is a novelty in that a woman who was a forbidden relation to him as a brother's wife is now rendered permitted, say that this permissibility will be limited only to cases of brothers with the same father and same mother together. It is due to this possibility that the verbal analogy to the brothers who were the children of Jacob is necessary.

אמר רב הונא אמר רב: שומרת יבם שמתה – מותר באמה. אלמא קסבר: אין יקָה. ולימא: הלכה כדברי האומר אין יקָה!

S Rav Huna said that Rav said: In the case of a widow whose husband had died childless and who is waiting for her *yavam* to perform levirate marriage or set her free with *halitza*, who then died before her *yavam* could take her in levirate marriage, the *yavam* is permitted to marry her mother. The levirate obligation does not create a familial relation between them. Apparently, Rav Huna says that Rav holds that the levirate bond [*zikka*]^{BL} is not substantial. In other words, the bond formed between the *yevama* and her *yavam* requiring levirate marriage does not create a halakhic connection between the two. The Gemara asks: **Then let him say explicitly:** The *halakha* is in accordance with the statement of he who says that the levirate bond is not substantial, as this issue is in fact a matter of dispute between *tanna'im*. Why did he not simply conclude that the *halakha* is in accordance with the opinion of the *tanna* who held that the levirate bond is not substantial?

אי הוה אמר הכי הוה אמינא: הני מילי בתרי, אבל בחד יש יקָה.

The Gemara answers: **If he had said that, I would say:** This statement that the levirate bond is not substantial applies only in reference to two brothers, each of whom has the possibility to take her in levirate marriage. In such cases the levirate bond between either one of the brothers and the *yevama* is not absolute, as it is always possible for the other brother to marry her instead. **But in cases of one brother, then since the obligation to the *yevama* is exclusively his, I would say that the levirate bond is substantial.**

וְלִימָא: הֲלָכָה כְּדַבְרֵי הָאוֹמֵר אֵין
זִיקָה אֶפְּלוּ בְּחֵד? אִי אָמַר הָכִי הָיָה
אֲמִינָא אֶפְּלוּ מִחַיִּים, קָמְשָׁמַע לָן:
לְאַחַר מִיתָה – אֵין, מִחַיִּים – לֹא, מָשׁוּם
דְּאָסוּר לְבָטֵל מִצְוֹת יְבָמִין.

תָּנן: יְבָמָתוֹ שְׂמִתָּה – מוֹתֵר בְּאַחֻזָּתָה.
בְּאַחֻזָּתָה אֵין, בְּאִמָּהּ לֹא!

הוּא הָדִין דְּאֶפְּלוּ בְּאִמָּהּ, וְאִידֵי דְתִנָּא
רִישָׁא אֲשֶׁתוֹ שְׂמִתָּה מוֹתֵר בְּאַחֻזָּתָה,
בְּאַחֻזָּתָה – אֵין, אֲבָל בְּאִמָּהּ – לֹא.
דְּהוּיָא לָהּ אִיסוּרָא דְאוֹרִייתָא, תִּנָּא
נָמִי סִיפָא מוֹתֵר בְּאַחֻזָּתָה.

וְרַב יְהוּדָה אָמַר: שׂוֹמֶרֶת יָבָם שְׂמִתָּה –
אָסוּר בְּאִמָּהּ. אֲלֵמָא קִסְבֵּר: יֵשׁ זִיקָה.
וְלִימָא: הֲלָכָה כְּדַבְרֵי הָאוֹמֵר יֵשׁ זִיקָה!

אִי הָיָה אָמַר הָכִי הָיָה אֲמִינָא: הֲנִי
מִיָּלִי בְּחֵד, אֲבָל בְּתָרִי אֵין זִיקָה. וְהָא
כִּי פְּלִיגִי – בְּתָרִי פְּלִיגִי! אֲלֵא, אִי אָמַר
הָכִי

The Gemara asks: **Then let him say:** The *halakha* is in accordance with the statement of the one who says that the levirate bond is not substantial, even in the case of one brother. The Gemara answers: If he had said that, I would say: Even if his *yevama* were alive and required levirate marriage with him, he would be allowed to take her mother in marriage. Therefore, **this comes to teach us that after death, yes, he is permitted to marry her mother; but while she is alive, he is not.** Why not? This is because it is prohibited to nullify the mitzva of levirate marriage. Were he to marry her mother, he would no longer be able to take the daughter in levirate marriage because his wife's daughter is forbidden to him. As a result of his marriage, he would cancel the mitzva of levirate marriage so that it could no longer apply to him.

The Gemara raises an objection to the statement of Rav Huna: **We learned in a mishna (49a): If his *yevama* dies, he is permitted to marry her sister.** A precise reading of this phrase leads to the implication that with regard to **her sister, yes**, it is permitted, as even if it had been his wife who had died he would be permitted to marry her sister. But with regard to **her mother, no**, it is not permitted.

The Gemara rejects this: No evidence can be derived from here, as it is possible to say that **the same is true even for her mother**, that she too is permitted. **But since it taught in the first clause of this mishna: If his wife dies he is permitted to take her sister**, and there the language is precise and implies: **Her sister, yes, but her mother, no**, as she is forbidden by Torah law because it is prohibited for a man to marry both a woman and her daughter even after one of them dies, therefore he used the same language when he taught the latter clause of the same mishna that **he is permitted to take her sister**. However, in the latter clause it is not an exact reading, and in actuality one is allowed to marry any of her relatives. This completes the Gemara's explanation of Rav Huna's opinion.

And Rav Yehuda said: In the case of a widow who dies while waiting for her brother-in-law to perform *halitza* or levirate marriage, **he is prohibited from marrying her mother.**¹ The Gemara comments: **Apparently Rav Yehuda holds that the levirate bond is substantial;** this would mean that the attachment between the *yevama* and the *yavam* is like that of marriage and that the *yavam* is therefore prohibited from marrying her relatives. **But** it must be asked: Why does Rav Yehuda say it in such a way? **Let him say: The *halakha* is in accordance with the statement of the one who says that the levirate bond is substantial.**

The Gemara responds: **If he would have said that, I would say that with regard to the levirate bond, this applies in the case of one brother, but if there were two brothers then the levirate bond is not substantial.** The Gemara objects: **But when the *tanna'im* disagree, they disagree in a case of two brothers**, so how could one think that Rav Yehuda is speaking only in the case of a single brother? **Rather**, one must say: **If he were to say that the conclusive halakhic ruling is that the bond is substantial,**

HALAKHA

A widow who dies while waiting for her brother-in-law, he is prohibited from marrying her mother – שׂוֹמֶרֶת יָבָם שְׂמִתָּה – אָסוּר בְּאִמָּהּ: If one's *yevama* dies before he performs *halitza*, then her relatives are forbidden to him as though she had been his wife.

This *halakha* is ruled in accordance with the opinion of Rav Yehuda in the name of Shmuel (18b), because it seems from the talmudic discussion that the *amora'im* made great efforts to resolve the difficulties in accordance with his opinion, and

this implies that the *halakha* is ruled in accordance with his opinion (*Beit Yosef*). Although this contradicts the principle that the *halakha* is ruled in accordance with the opinion of Rav in his disputes with Shmuel, some versions of the text show that Rav Yehuda's statement was in fact said in the name of Rav. In that case, there is an amoraic dispute with regard to his opinion, and the *halakha* is ruled in accordance with the more certain opinion (Rabbeinu Hananel; Rambam *Sefer Nashim*, *Hilkhot Yibbum VaHalitza* 1:13; *Shulhan Arukh*, *Even HaEzer* 159:5).

היה אמינא: מחיים, אבל לאחר מיתה
פקעה לה זיקה, קא משמע לן דזיקה
בבדי לא פקעה. לימא מסייע ליה: יבמתו
שמתה מותר באחותה, באחותה – אין,
באמה – לא.

הוא הדין דאפילו באמה, ואידי דתנא
רישא אשתו שמתה מותר באחותה,
דוקא באחותה אבל באמה לא, דהויא
לה איסורא דאורייתא – תנא נמי סיפא
מותר באחותה.

מתביב רב הונא בר חייה: עשה בה מאמר
ומת – שניה חולצת ולא מתנייבמת.
טעמא – דעבד בה מאמר, הא לא עבד
בה מאמר – שניה נמי יבומי מייבמה, ואי
אמרת יש זיקה, הויא לה צרת אשת אחיו
שלא היה בעולמו בזיקה!

אמר רבה: הוא הדין דאף על גב דלא עבד
בה מאמר – שניה מחלץ חלצה, יבומי
לא מייבמה.

והא דקתני מאמר – לאפוקי מבית שמאי,
דאמרי: מאמר קונה קנין גמור, קא משמע
לן.

איתיביה אבוי: שני אחין בעולם אחד,
ומת אחד מהן בלא ולד, ועמד השני
הזה לעשות מאמר ביבמתו, ולא הספיק
לעשות בה מאמר עד שגולד לו אח,
ומת, הראשונה יוצאה משום אשת אחיו
שלא היה בעולמו, ושניה – או חולצת או
מתנייבמת. ואי אמרת יש זיקה – הויא
לה צרת אשת אחיו שלא היה בעולמו
בזיקה!

I would say that the levirate bond applies as long as the *yevama* requiring levirate marriage is alive but that after her death the bond was terminated. In other words, after the *yevama* died any relationship between the two dissolved. This comes to teach us that the bond is not terminated without cause but instead requires an actual act, such as *halitza* or levirate marriage. Until one of these acts is performed, the bond remains in place. Let us say that it supports Rav Yehuda's opinion from that which was taught: If his *yevama* dies, he is permitted to marry her sister. From here the Gemara deduces: Her sister, yes; her mother, no, in accordance with the opinion of Rav Yehuda.

The Gemara rejects this: The same is true, that even her mother is permitted. And this language was used only since he taught in the first clause of the *baraita*: If his wife dies he is permitted to take her sister; specifically her sister but not her mother, as she is forbidden by Torah law. Therefore, he also taught in the latter clause that he is permitted to marry her sister.

Rav Huna bar Hiyya raised an objection to this from the mishna: If he performed levirate betrothal with her and then died, the second woman performs *halitza* and may not enter into levirate marriage. This implies that the reason is specifically that he performed levirate betrothal with her. Had the brother not performed levirate betrothal with her, the second woman would also be permitted to enter into levirate marriage. And if you say that the levirate bond is substantial, then she would be considered a rival wife of the wife of a brother with whom the third brother did not coexist by that bond.⁴ Since the wife of a brother with whom he did not coexist is prohibited from entering into levirate marriage, her rival wife would likewise be forbidden from doing so.

Rabba said: This should not be read precisely, as the same is true even if the second brother did not perform levirate betrothal; the second woman must perform *halitza* but may not enter into levirate marriage, as the levirate bond renders her a rival wife of the wife of a brother with whom the third brother did not coexist.

And the reason that it teaches the case of levirate betrothal specifically was in order to exclude the opinion of Beit Shammai,⁵ who said: The legal status of levirate betrothal with a *yevama* eligible for levirate marriage is that of a full-fledged acquisition, and it is legally binding to the same degree as an actual betrothal. Therefore, even *halitza* would be unnecessary, similar to the case of a rival wife of a forbidden relation. This is what it comes to teach us: Even if he performed levirate betrothal she is not truly considered the rival wife of a forbidden relation; the prohibition concerning her is by rabbinic law, and she is therefore required to perform *halitza*.

Abaye raised an objection to this from that which was taught: In the case of two brothers who coexisted, and one died childless and the second arose to perform levirate betrothal with his *yevama* but did not manage to perform levirate betrothal before a third brother was born, and then the second brother, who also had a wife, died, whereby both women would fall before the newly born brother for levirate marriage, then the first goes out and is not obligated in levirate marriage because she is the wife of his brother with whom he did not coexist, and the second woman, who was the wife of the second brother, either performs *halitza* or enters into levirate marriage. But if you say that the levirate bond is substantial, then the wife of the second brother would be rendered a rival wife of the wife of a brother with whom he did not coexist by that bond.

HALAKHA

A rival wife of the wife of a brother with whom he did not coexist by that bond – צרת אשת אחיו שלא – היתה בעולמו בזיקה: If there were two brothers and one died childless, and subsequently a third brother was born, then if the second brother dies, even if he had not yet performed levirate betrothal to the widow of the first brother, the third brother must nevertheless perform *halitza* for the wife of the second brother, and she may not enter into levirate marriage with him, since they ruled that the levirate bond is substantial. Accordingly, the levirate bond rendered the wife of the second brother a rival wife of the wife of the first brother, with whom the third brother did not coexist, as per Shmuel's opinion.

Rambam explains that this *halakha* applies only if the second brother had performed levirate betrothal. The author of the *Maggid Mishne* challenges this, since Rambam himself concludes explicitly that there is a levirate bond even if there was no levirate betrothal (Rambam *Sefer Nashim*, *Hilkhot Yibbum VaHalitza* 6:18; *Shulhan Arukh*, *Even HaEzer* 173:12).

NOTES

In order to exclude the opinion of Beit Shammai – לאפוקי מבית שמאי: *Tosafot Yeshanim* raise the question: Isn't it already known that when Beit Shammai express an opinion and Beit Hillel disagree, the opinion of Beit Shammai is considered as though it were not in the mishna at all and is completely disregarded? If so, why would it be necessary to explicitly exclude the opinion of Beit Shammai? The answer given is that in fact, the opinion that levirate betrothal constitutes a fully effective acquisition is not exclusive to Beit Shammai but is actually the opinion of several other *tanna'im*, and so it was necessary to exclude that opinion.

הָא מִנִּי – רַבִּי מֵאִיר הִיא, דְּאָמַר: אֵין
 זִיקָה. וְכִי סָבִירָא לֵיהּ לְרַבִּי מֵאִיר אֵין
 זִיקָה? וְהָתֵנּוּ: אֲרַבְעָה אַחִים, שְׁמֵם
 מִיָּהֶן נִשְׂאִים שְׁתֵּי אַחִיות, וּמִתּוֹ
 הַנִּשְׂאוֹן הָאֶחָת – הָרִי אֶלּוֹ חוֹלְצוֹת
 וְלֹא מִתִּיבָמוֹת.

וְאִי סִלְקָא דַּעְתָּךְ סִבְר רַבִּי מֵאִיר אֵין
זִיקָה - הֵינּי מִתְרִי בְּתֵי קֶאֱתִיין, הָאִי
לֵיבָם חֲדָא וְהָאִי לֵיבָם חֲדָא!

לְעוֹלָם אֵין זִיקָה, מְשׁוּם דְקָסְבֵּר:
אָסור לְבַטֵּל מִצְוַת יְבָמִין, דְּדִלְמָא
אֲדַמְיִיבֵם חַד מִיֵּית אִידֶךָ, וְקָא בְטֻלָת
מִצְוַת יְבָמִין.

וְאִי אֵין זִיקָה - תִּיבְטֵל, דְּהָא רַבֵּן
גַּמְלִיאֵל אָמַר אֵין זִיקָה, וּמוֹתֵר לְבַטֵּל
מִצּוֹת יְבֻמִּין.

דַּתְנָן רַבִּין גְּמְלִיאֵל אוֹמֵר: אִם מֵאֲנָה –
מֵאֲנָה, וְאִם לֹא מֵאֲנָה – תִּמְתֵּין עַד
שֶׁתִּגְדִּיל וְתֵצֵא הֵלֹז מִשּׁוּם אַחֲוֹת
אִשָּׁה!

The Gemara rejects that: In accordance with **whose opinion is this?** **It is the opinion of Rabbi Meir, who said: The levirate bond is not substantial.** The Gemara asks: **Does Rabbi Meir hold that the levirate bond is not substantial?** After all, unattributed *mishnayot* are in accordance with the opinion of Rabbi Meir, and **didn't we learn** in a mishna (26a): In the case of **four brothers, two of whom are married to two sisters,**^h **if those married to the sisters died,** whereby both sisters fall before the surviving brothers for levirate marriage, **then those two sisters must perform *halitza* and may not enter into levirate marriage.** It would seem that the reason for this is that each of the sisters has a levirate bond to both remaining brothers.

And if it enters your mind to say that Rabbi Meir held that the levirate bond is not substantial, didn't these two sisters come from two different houses, as each was married to a different brother? If so, one brother should take one in levirate marriage and the other should take one in levirate marriage.

The Gemara answers: **Actually**, in Rabbi Meir's opinion **the levirate bond is not substantial**. The mishna states that they perform *halitza* and do not enter into levirate marriage **because he held that it is prohibited to nullify the mitzva of levirate marriage**. That is to say, it is prohibited to act in such a way that the mitzva of levirate marriage becomes obviated. Under these circumstances there is concern that **perhaps as one brother performs levirate marriage** to one of the sisters **the other brother dies** before he manages to perform levirate marriage to the other. If that were to happen, **you** would thereby **nullify the mitzva of levirate marriage** since the sister that would now fall before the remaining brother would be his wife's sister and therefore prohibited from entering into levirate marriage with him.

The Gemara objects: **But if the levirate bond is not substantial, then let the mitzva of levirate marriage be nullified.** That is, if the levirate bond does not carry any real obligation, then the mitzva itself never truly came into effect. **As Rabban Gamliel said: The levirate bond is not substantial, and it is permitted to nullify the mitzva of levirate marriage.**

As we learned in a mishna (109a): That mishna discusses a case of two brothers who were married to two sisters. One sister is an adult and therefore her marriage was fully effectual, and one sister is still a minor, and she was orphaned from her father, and her marriage was valid only by rabbinic ordinance. If the brother who was married to the elder sister died, then that sister falls for levirate marriage before the brother married to the minor. Under these circumstances, the Sages suggested directing the minor to refuse her marriage to her husband so that he would be able to take his brother's wife in levirate marriage. If the minor does not do so, he would be unable to take her sister in marriage, as she would be the sister of his minor wife and thereby fully exempt from the levirate obligation. **Rabban Gamliel said:** If the minor refused^N in the meantime of her own accord, then she refused, but if she did not refuse, let her wait until she reaches the age of maturity,^N and then that other adult sister will be exempt from performing *halitza* or levirate marriage **due to** the fact that she is his **wife's sister**. Here it is apparent that Rabban Gamliel is not concerned about nullifying the mitzva of levirate marriage from one of them.

Refusal – זימאן: A girl under the age of twelve can be married off by her father. However, if her father is no longer alive then by Torah law she cannot marry while still a minor. Nevertheless, the Sages ordained that her mother or brothers may marry her off with her consent. Since her consent is not legally valid until she reaches the age of maturity, the girl may terminate this marriage once she reaches twelve years of age by performing an act of refusal, i.e., declaring that she does not desire this marriage. In such cases, no bill of divorce is necessary. When a girl performs

the act of refusal, the marriage is nullified retroactively, and it is considered as though she had never been married at all.

Let her wait until she reaches the age of maturity – **תמתין עד שתגדיל**: Rashi understands this to mean that the adult sister must wait until her minor sister matures before she marries anyone else. *Tosafot* interpret this to mean that the minor must wait and not engage in intercourse until she becomes fully mature.

אמר ליה: דרבן גמליאל אדרבי מאיר קרמית? לא, הכי קאמרין: רבי מאיר חייש אפילו לספיקא, רבן גמליאל – אפילו לודאי לא חייש! דלמא, מאן דלא חייש אפילו לודאי לא חייש, ומאן דחייש – אפילו לספיקא חייש.

Rabba said to Abaye: Do you wish to raise a contradiction between the words of Rabban Gamliel and Rabbi Meir? This would imply that the contradiction needs to be resolved, but statements from two different *tanna'im* do not need to agree or to be resolved. Abaye responded: No, in fact this is what we meant to say: How could one possibly say that Rabbi Meir is concerned lest there be nullification of the mitzva of levirate marriage even when it is uncertain because perhaps the first brother will not die, whereas Rabban Gamliel is not concerned that the mitzva be nullified even when it is certain? It is surprising that there should be such a great difference between the tannaitic opinions. Rabba answered: Perhaps the one who is not concerned about nullification of the mitzva of levirate marriage is not concerned even if nullification is certain, and the one who is concerned is concerned even if nullification is uncertain.

אמר ליה אביי לרב יוסף: הא דרב יהודה – דשמואל היא, דתנן:

With regard to the actual dispute between Rav Huna and Rav Yehuda, Abaye said to Rav Yosef: This *halakha* stated by Rav Yehuda, that even if a woman waiting for levirate marriage dies her mother is still forbidden to the *yavam*, is from his teacher Shmuel and not from Rav, who was also one of his teachers. Evidence for this can be found in that which we learned in a mishna (41a):

Perek II Daf 18 Amud b

שומרת יבם שקדש אחיו את אחותה, משום רבי יהודה בן בתיירה אמרו: אומרים לו, המתן עד שייעשה אחיך מעשה. ואמר שמואל: הלכה ברבי יהודה בן בתיירה.

In the case of a widow waiting for her *yavam* to take her in levirate marriage or perform *halitza*, if his brother betrothed^H her sister^H they said in the name of Rabbi Yehuda ben Beteira: They say to the brother who betrothed her: Wait and do not marry your betrothed until your brother performs the required action, either *halitza* or levirate marriage. This is because until that time the levirate bond is still applicable and the woman betrothed to you is forbidden to you as the sister of a woman bonded to you. And Shmuel said: The *halakha* is in accordance with the opinion of Rabbi Yehuda ben Beteira. From here one may infer that Shmuel holds that the levirate bond is substantial.

אמר ליה: דאי דרב מאי? (אמר ליה): קשיא דרב אדרב! דלמא אמוראי מנהו, ואליבא דרב? בין דאיתמר משמיה דשמואל בהדיא, ומשמיה דרב כאמוראי – לא שבקינן משמיה דשמואל בהדיא ומוקמינן כאמוראי ואליבא דרב.

Rav Yosef said to him: And if it were the opinion of Rav, what problem would there be? Abaye said to him: It is difficult because there would be a contradiction between the opinion of Rav and another statement of Rav, since Rav Huna cited Rav, and the conclusion from his statements was that the levirate bond is not substantial. He said to him: Rav Huna and Rav Yehuda each cited Rav. Perhaps they are *amora'im* and disagree in accordance with the opinion of Rav, i.e., with regard to his opinion? The Gemara answers: Since that which was stated in the name of Shmuel was explicit, while that said in the name of Rav must be explained as an amoraic dispute, we will not leave that statement said explicitly in the name of Shmuel and explain it as an amoraic dispute according to the opinion of Rav.

אמר רב כהנא, אמריתה לשמעיה קמיה דרב זביד מנהרדעא, אמר: אתון הכי מתניתו לה, אפן בהדיא מתנינן: אמר רב יהודה אמר שמואל: שומרת יבם שמתה – אסור באמה. אלמא קסבר: יש זיקה. ואידיא שמואל לטעמיה, דאמר שמואל: הלכה ברבי יהודה בן בתיירה.

Rav Kahana said: I reported this discussion before Rav Zevid of Neharde'a. He said: That is how you teach this, without knowing for certain that Rav Yehuda was stating the *halakha* in the name of Shmuel. We learn it explicitly: Rav Yehuda said that Shmuel said: In the case of a widow waiting for her *yavam* who died before he could perform *halitza* or levirate marriage, he is prohibited from marrying her mother. Apparently Shmuel holds that the levirate bond is substantial.^H And Shmuel conforms to his standard line of reasoning, as Shmuel also said: The *halakha* is in accordance with the opinion of Rabbi Yehuda ben Beteira.

HALAKHA

A widow waiting for her *yavam*, if his brother betrothed, etc. – שומרת יבם שקדש אחיו וכו' – If a woman happened before several brothers for levirate marriage, and one of the brothers betrothed the sister of this woman who was bound to him, he is prohibited from marrying his betrothed until one of the brothers takes the widow in levirate marriage or performs *halitza* for her, in accordance with the opinion of Rabbi Yehuda ben Beteira and Shmuel. Some say that if he already married her he is permitted to engage in intercourse even before another brother releases the widow (*Tosafot*), whereas others disagree (*Nimmukei Yosef*). The later commentaries say that if there is another brother who can perform *halitza*, the brother who is married to the widow's sister should wait to consummate the marriage until after *halitza* has been performed (*Pithei Teshuva*; *Shulhan Arukh*, *Even HaEzer* 159:5).

The levirate bond is substantial – זיקה: Where the mitzva of levirate marriage applies, the relatives of the *yevama* are forbidden to the *yavam* whether there is a single *yavam* or there are many. Even if she dies, her close relatives are forbidden to him (*Shulhan Arukh*, *Even HaEzer* 159:5).

NOTES

קדש אחיו את אחותה – His brother betrothed her sister – The early commentaries discuss the reasons for this *halakha*, as one might have thought that the brother's betrothal of the sister effectively terminated the levirate bond between him and his brother's widow. *Tosafot* explain that the reason that he must wait is as a penalty because it was prohibited for him to betroth the sister of a woman with whom he has a levirate bond. However, Ramban challenges this answer, and suggests that the levirate bond lessens the validity of the betrothal to her sister, as the existence of a levirate bond renders this case similar to that of one who betroths the sister of his betrothed.

Some authorities hold that even if he actually married his betrothed he is told to wait and not engage in intercourse with her (*Ritva*; *Meiri*; *Nimmukei Yosef*; see *Halakha* section).

The wife of a brother with whom he did not coexist – **אִשְׁתֵּי אָחִיו שֶׁלֹּא הָיָה בְּעוֹלָמוֹ**: The wife of a brother with whom a newly born brother did not coexist is forbidden to him, whether this youngest brother was born before or after another brother took her in levirate marriage. This ruling is in accordance with the opinion of the first *tanna* in the mishna (Rambam *Sefer Nashim*, *Hilkhot Yibbum VaHalitza* 6:17; *Shulhan Arukh*, *Even HaEzer* 173:12).

וְצָרִיכִי דְאֵי אֲשַׁמְעִין יֵשׁ וְיָקָה – הָיָה – אֲמִינָא: הֵנִי מִלִּי – בְּחֵד, אֲבָל בְּתָרִי – לֹא, קָא מְשַׁמַּע לָן. וְאֵי אֲשַׁמְעִין הִלְכָה פְּרָבִי יְהוּדָה בֶּן בִּתְיָה – הָיָה אֲמִינָא – הֵנִי מִלִּי מִחַיִּים, אֲבָל לְאַחֵר מִיָּתָה – פְּקָעָה לָהּ וְיָקָה, קָא מְשַׁמַּע לָן: דְּוִיקָה בְּכַדִּי לֹא פְקָעָה.

The Gemara comments: Both statements by Shmuel on the subject are **necessary** and there was no redundancy here, as, if he were to teach us only the principle that the levirate bond is substantial, I would say that this applies only to the case of one *yavam* but not to a case of two *yevamin*, where the levirate bond is not as strong. **This comes to teach us** that even in the case of two *yevamin* there is a bond, and that is the conclusive *halakha* put forth by Rabbi Yehuda ben Beteira. **And if he were to teach us** only that the *halakha* is in accordance with the opinion of Rabbi Yehuda ben Beteira, I would say that this applies only in the case where the woman awaiting levirate marriage is living, but after her death the levirate bond is terminated and he is permitted to marry her relatives. **This comes to teach us** that the levirate bond is not terminated without cause but rather it is necessary to perform some act in order to exempt her from it.

מתני' שְׁנֵי אָחִים וּמָת אֶחָד מֵהֶן, וַיִּבֶם הַשֵּׁנִי אֶת אִשְׁתֵּי אָחִיו, וְאַחֵר כֵּךְ נִוְלַד לָהֶן אֶחָד וּמָת – הָרִאשׁוֹנָה יוֹצֵאָה מִשּׁוּם אִשְׁתֵּי אָחִיו שֶׁלֹּא הָיָה בְּעוֹלָמוֹ, וְהַשֵּׁנִי מִשּׁוּם צָרְתָּהּ, עֲשֶׂה בָּהּ מֵאִמֶּר, וּמָת – הַשֵּׁנִי חוֹלֵצַת וְלֹא מִתְּיַבֶּמֶת.

MISHNA If there were two brothers, and one died, and the second entered into levirate marriage with his brother's wife while he was already married to another woman, and subsequently a third brother was born to them, and the second brother then died, whereby both of his wives happened before the third brother for levirate marriage, then the first woman, who was the wife of the first brother, is exempt due to the fact that she is the wife of a brother with whom the third brother did not coexist,¹ and the second woman, who was the first wife of the second brother, is exempt due to her rival wife. If the second brother had performed only levirate betrothal with her and then died before fully marrying her, the second woman performs *halitza* and may not enter into levirate marriage, as the levirate betrothal is not considered a sufficiently valid marriage so as to render her the rival wife of a relation forbidden to the third brother.

רַבִּי שִׁמּוֹן שֹׁמְעוֹן אוֹמֵר: מֵיִבֶם לְאִיּוֹ מֵהֶן שְׂרִיצָה, אוֹ חוֹלֵץ לְאִיּוֹ מֵהֶן שְׂרִיצָה.

Rabbi Shimon says with regard to the first clause of the mishna: The third brother either enters into levirate marriage with whichever one he wishes, or he performs *halitza* with whichever one he wishes. Since he was born after his second brother had already entered into levirate marriage with the first brother's widow, she is considered the wife of a brother with whom he did coexist, not the wife of a brother with whom he did not coexist. Therefore, he may enter into levirate marriage with her.

גמ' אָמַר רַב אוֹשְׁיָא: חֲלוּק הָיָה רַבִּי שִׁמּוֹן אֶף בְּרִאשׁוֹנָה. מִמָּאִי – מִדִּקְתָּנִי מִשְׁנָה יִתִּירָה –

GEMARA Rav Oshaya^N said: Rabbi Shimon's opinion differed even on the first mishna. That is, Rabbi Shimon disagreed not only in the case stated explicitly in this mishna, in which the newly born brother came into the world after the widow of his first brother had already married his second brother, but he also disagreed in the case of the first mishna in the chapter, where the third brother was born prior to his second brother entering into levirate marriage with the widow. **From where** is this derived? Rav Oshaya came to this conclusion from the fact that it teaches a superfluous mishna.

NOTES

Rav Oshaya – רַב אוֹשְׁיָא: *Masoret HaShas* emends the text here to read: Rabbi Oshaya. The reason for this is that later (19a) the Gemara cites a *baraita* which challenges this opinion, and states: This is a conclusive refutation of the opinion of Rabbi Oshaya. Rabbi Oshaya, also known as Rabbi Hoshaya, was a first generation *amora* who lived in Eretz Yisrael.

However, elsewhere in this discussion, Rav Oshaya is also mentioned. Rav Oshaya, also known as Rav Hoshaya, was a third generation *amora* who was born and lived in Babylonia. He was a student of Rav Yehuda and Rav Huna, and a friend of Rava. He eventually moved to Eretz Yisrael, where he received ordination.

בבא דרישא למאן קתני לה? אילימא
לרבנן – השתא יבם ולבסוף נולד, דכי
אשכחא בהתיירא אשכחא, אסרי
רבנן – נולד ואחר כך יבם מיבעיא?
אלא לאו – לרבי שמעון איצטריך,

How so? In accordance with whose opinion is it teaching the section of the first clause, i.e., the previous mishna? If we say it is the opinion of the Rabbis, who prohibit marriage to the wife of a brother with whom one did not coexist in all cases, then let us look at the second mishna. Now that even in the case where the second brother entered into levirate marriage and afterward the third brother was born,⁸ such that when he found her, i.e., when he was born, she had a permitted status, as she was already married to the second brother, she was never in his lifetime the wife of a brother with whom he did not coexist but was in fact for him the wife of a living brother. Nevertheless, even under such circumstances, the Rabbis prohibit him from entering into levirate marriage with her. Is it necessary, then, to teach the case presented in the first mishna of a third brother who was born and subsequently the second brother entered into levirate marriage with the wife of the first brother?⁹ According to the opinion of the Rabbis, this first mishna is redundant. Rather, is it not that it was necessary to state this first mishna for the opinion of Rabbi Shimon?

ותנא רישא להודיעך כחו דרבי שמעון,
ותנא סיפא להודיעך כחו דרבנן. ובדין
הוא דנפלוג רבי שמעון ברישא, אלא
נטר להו לרבנן עד דמסיימי למילתיהו,
והדר פליג עלייהו.

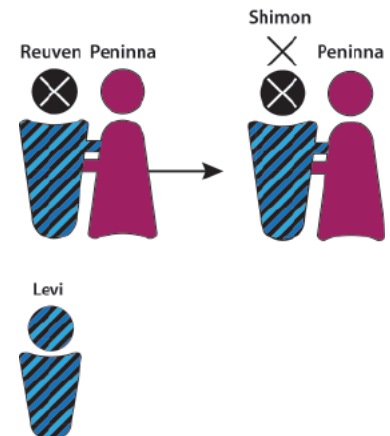
If so, this is how it must be understood: The first mishna was taught in order to convey to you the far-reaching nature of the opinion of Rabbi Shimon, which allows even the case specified in the first mishna, and the latter clause, i.e., the present mishna, was taught to convey the far-reaching nature of the opinion of the Rabbis, that even if the third brother was born after levirate marriage to the second brother she remains forbidden to the third brother. And by right it should have explained that Rabbi Shimon disagrees even in the first mishna, but the author of the mishna waited until the Rabbis finished their words, and then he went back and wrote that Rabbi Shimon disagreed with them.

אלא, אשת אחיו שלא היה בעולמו,
לרבי שמעון היכי משכחת לה? בחד
אחא, ומית, ונולד לו אח. אי נמי:
בתרי, ולא יבם ולא מית.

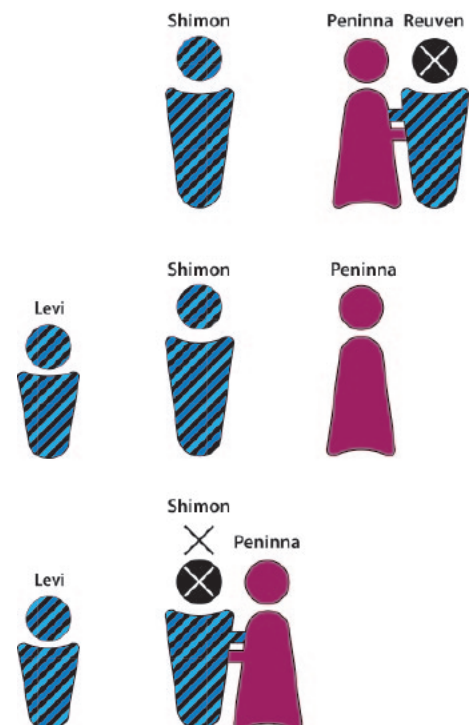
The Gemara asks: But according to the opinion of Rabbi Shimon, how can you find¹⁰ this case of the wife of a brother with whom he did not coexist? The Gemara answers: It is in the case of a single brother who died and subsequently another brother was born to him. Here, the widow would be the wife of a brother with whom he did not coexist, and she would not be required to perform *halitza* or enter into levirate marriage with him. Alternatively, it can be found in the case of two brothers, one of whom died, and the remaining brother did not take the deceased brother's wife in levirate marriage, and did not die,¹¹ and in the meantime a third brother was born. She still has the levirate bond due to the deceased brother, who was a brother with whom the newly born brother did not coexist.

BACKGROUND

מת יבם – Died, then taken in levirate marriage, then born – יבם: Reuven and Shimon were brothers from the same father, and Reuven was married to Peninna. Reuven died childless and Shimon entered into levirate marriage with Peninna. Later, a third brother, Levi, was born. According to Rabbi Shimon, since at the time that Levi was born Peninna was already the wife of Shimon, a brother with whom he did coexist, when Shimon dies Peninna is permitted to Levi.



מת – Died, then born, and then taken in levirate marriage – יבם: Reuven and Shimon were brothers from the same father. Reuven was married to Peninna and subsequently died. After his death, a third brother, Levi, was born. To Levi, Peninna is a wife of a brother with whom he did not coexist. Therefore, even if Shimon later enters into levirate marriage with her and then dies childless, Peninna remains forbidden to Levi. According to most authorities, in the Gemara Rabbi Shimon agrees that in this case, Peninna is forbidden to Levi because for the period of time between Levi's birth and the levirate marriage to Shimon she was forbidden to Levi as the wife of a brother with whom he did not coexist.



NOTES

According to the opinion of Rabbi Shimon how can you find – לרבי שמעון היכי משכחת לה? One may ask how the Gemara knew that Rabbi Shimon holds that the wife of a brother with whom one did not coexist is in fact forbidden. It seems that it was clear to the Gemara that the fifteen women enumerated in the mishna (2a–2b) are agreed on by all opinions, and that even Rabbi Shimon agreed with this *halakha* in principle (Ritva).

Two brothers and the remaining brother...did not die – בתרי...ולא מית: If the levirate bond is like marriage, then the

widow of the first brother should be forbidden to any newly born brother, since she is the wife of the living brother, even if that brother has not yet performed levirate marriage. If so, then in Rabbi Shimon's opinion why was it necessary for the verse to state the word "together" specifically to render the *yevama* forbidden to a newly born brother? Perhaps his reasoning can be explained simply by saying that after another brother is born, the bond with the living brother was retroactively never absolute (see Ritva).

Rav Yosef strongly objects to this – מתקין לה רב יוסף: The early commentaries ask why the Gemara did not state that Rabbi Shimon held the levirate bond to be like marriage specifically in the case where she later entered into levirate marriage, and why it sufficed to mention only that he performed a levirate betrothal. The Ramban answers that the principle that a levirate bond renders her like a married woman fully applies only if she ultimately marries. But if he does not take her in levirate marriage, she is not considered like a married woman (see Meiri). The Ritva explains that the Sages relied here upon the common sense reasoning that a bond to two brothers cannot render her like a married woman, even in Rabbi Shimon's opinion. Additionally, from the continuation of the discussion it would seem that this difficulty was not pertinent to the matter of the levirate bond but rather related to the validity of the levirate betrothal (Meiri).

בשלמא יבם ואחר כך נולד – בי
אשכחה בהתיארא אשכחה, אלא נולד
ואחר כך יבם – מאי טעמא? קסבר:
יש זיקה, וזיקה ככנוסה דמיא.

מתקין לה רב יוסף: השתא זיקה
ומאמר מספקא ליה לרבי שמעון אי
ככנוסה דמיא אי לאו ככנוסה דמיא,
זיקה לחודה מיבעיא?

מאי היא? דתנן: שלשה אחין נשואין
שלש נשים נכריות, ומת אחד מהם
ועשה בה שני מאמר, ומת – הרי אלו
חולצות ולא מתייבמות.

שנאמר "ומת אחד מהם יבמה יבא
עליה" – מי שעליה זיקת יבם אחד,
ולא שעליה זיקת שני יבמין.

רבי שמעון אומר: מייבם לאיזהו מהן
שירצה, וחולץ לשניה. ובומי תרויהו
לא – דדלמא יש זיקה, והו שני יבמות
הבאות

The Gemara proceeds to clarify Rabbi Shimon's position: **Granted**, in the case when the second brother first **performed levirate marriage** and **subsequently** the third brother **was born**, it is possible to explain **that when the third brother found her**, i.e., when he was born, **he found her in a permitted state** because when he was born she was already the wife of a living brother with whom he coexisted. **But if he was born and subsequently the second brother performed levirate marriage**, **what is the reason** that Rabbi Shimon renders her permitted? The Gemara answers: One must say that Rabbi Shimon **holds that the levirate bond is substantial**, and that the bond itself created a tie of kinship. Moreover, a woman with a levirate **bond is considered like a married woman**. Since there is a bond between the *yevama* and the living brother it is as though she were already married to him. Accordingly, she is, for the new brother, like the wife of his brother with whom he coexisted.

Rav Yosef strongly objects to this:¹⁴ Now that in the case of a levirate bond and a levirate betrothal together Rabbi Shimon is uncertain as to whether she is similar to a married woman or an unmarried woman, is it necessary to say that by levirate bond alone she is not like a married woman? If so, how can the Gemara assume that for Rabbi Shimon, the levirate bond alone gives her the status of a married woman?

What is the proof that this is Rabbi Shimon's opinion? As we learned in a mishna (31b): In the case of **three brothers who were married**¹⁵ to **three unrelated women**, and one of the brothers **died**, and the second brother **performed levirate betrothal** with the widow and subsequently **died**, then these women, both the first wife of the second brother and the betrothed widow of the first brother, **must perform *halitza* and may not enter into levirate marriage** with the third brother.

What is the reason that the wife of the first brother is not eligible for levirate marriage? As it is stated: **"And one of them dies... her brother-in-law will have intercourse with her and will take her to him to be his wife and consummate the levirate marriage"** (Deuteronomy 25:5). From here it is derived: **She who is subject to a levirate bond with a single *yavam* enters levirate marriage and not she who is subject to a levirate bond with two *yevamin***. This woman requires levirate marriage due to the death of the first brother, and also, due to the subsequent levirate betrothal, requires levirate marriage following the death of the second brother.

However, Rabbi Shimon says: **Let him enter into levirate marriage with whichever he wishes and perform *halitza* with the second**. Rabbi Shimon does not accept the homiletical interpretation forbidding a woman who is subject to two levirate bonds. The Gemara explains his opinion: Rabbi Shimon does **not allow him to take both in levirate marriage**. Why not? **Perhaps the levirate bond is substantial**, and combined with the levirate bond to the second brother the woman might be considered to be already married to the second brother, **and then these two women would be two *yevamot* who come**

HALAKHA

Three brothers married, etc. – שלשה אחין נשואין וכו' – If three brothers were married to three unrelated women and one died childless, and the second brother performed a levirate betrothal with his *yevama* and then died before he could consummate the marriage, whereby both his wife and the *yevama* fall before the third brother, those women must perform *halitza* and may not enter into levirate marriage. This

is because the wife of the first deceased brother is subject to two levirate bonds and therefore cannot enter into levirate marriage, and the second, as her rival wife, performs *halitza* but may not enter into levirate marriage, as she is forbidden to the third brother by rabbinic law (Rambam *Sefer Nashim, Hilkhot Yibbum VaHalitza* 6:27; *Shulhan Arukh, Even HaEzer* 174:4).

מִבֵּית אֶחָד, יְבוּמֵי חָדָא וְאִפְטוֹר אֵידֶךְ –
לֹא, דְּדִלְמָא אֵין זִיקָה כְּכִנּוּסָה וְהוּוּ לְהוּ
שְׁתֵּי יְבָמוֹת הִבָּאוֹת מִשְׁנֵי בָתִּים. אֲלֵמָא:
מִסְפָּקָא לִיה.

וְכִי תֵימָא: מִדְּאוּרֵייתָא הֵכִי נָמִי דְּמִיבְמָא
חָדָא, וּמִפְטָרָא חָדָא, וּמִדְּרַבְנָן הוּא
דְּאָסוּר, גְּזִירָה מְשׁוּם שְׁמָא יֵאמְרוּ: שְׁתֵּי
יְבָמוֹת הִבָּאוֹת מִשְׁנֵי בָתִּים, חָדָא מִיבְמָא
וְאֵידֶךְ מִפְטָרָא בּוּלָא כְּלוּם.

וְהָא טַעְמָא דְּרַבִּי שְׁמַעוֹן מְשׁוּם מֵאֲמָר
וְלֹא מֵאֲמָר הוּא! דְּתַנְיָא, אָמַר לְהֵם רַבִּי
שְׁמַעוֹן לְחֻכְמִים: אִם מֵאֲמָרוֹ שֶׁל שְׁנֵי
מֵאֲמָר – אִשֶּׁת שְׁנֵי הוּא בּוֹעֵל,

וְאִם מֵאֲמָרוֹ שֶׁל שְׁנֵי אֵינוֹ מֵאֲמָר – אִשֶּׁת
רֵאשׁוֹן הוּא בּוֹעֵל.

אָמַר לִיה אַבְבִּי: וְלֹא שְׁנֵי לָךְ בֵּין זִיקַת יָבָם
אֶחָד לְזִיקַת שְׁנֵי יְבָמוֹת? דְּלֵמָּא, כִּי אָמַר
רַבִּי שְׁמַעוֹן זִיקָה כְּכִנּוּסָה דְּמִיָּא – בֵּיבָבָם
אֶחָד, אֲבָל בְּשְׁנֵי יְבָמוֹת – לֹא.

from a single household, i.e., husband, and everyone agrees that only one wife from each household may be taken in levirate marriage, as the verse states: “To build his brother’s house,” which is interpreted to mean that the remaining brother may perform levirate marriage with only one wife of his late brother and not with two. To take one in levirate marriage and exempt the other without any procedure, he may not do, as perhaps the levirate bond is not substantial enough to make the first brother’s widow like a married woman to the second brother. In that case this woman whose husband died first remains the wife of the first brother, and the second woman is the wife of the second brother. Then there would be two separate levirate obligations, and one could not exempt the other; they would be two yevamot who come from two households. Therefore, apparently even when levirate betrothal was performed Rabbi Shimon is uncertain whether or not the levirate bond is substantial.

And if you would say that by Torah law, indeed, one of them may be taken in levirate marriage and thereby exempt the other, and this was prohibited only by rabbinic law, this would be a rabbinic decree due to the concern lest those who were not aware of the details mistakenly say that in general if two yevamot^N come from two households then one is taken in levirate marriage and the other is exempt without anything. One might have thought that the reason Rabbi Shimon required the other woman to perform *halitza* is to avoid the possibility of such a mistake.

But this cannot be, as Rabbi Shimon’s reason is mentioned explicitly in the *baraita*, and there he does not state that this is a decree of the Sages. Rather, his reason is due to the question with regard to the strength of levirate betrothal, specifically whether the status of marriage is achieved by levirate betrothal or not achieved by levirate betrothal. As it is taught in a *baraita*: Rabbi Shimon said to the Rabbis in explanation of his opinion that one of the women could enter into levirate marriage: If the levirate betrothal of the second brother is indeed levirate betrothal and is considered as a fully valid marriage, then the third brother is engaging in relations with the wife of the second brother when he takes her in levirate marriage. That is, if the levirate betrothal by the second brother has the same status as full marriage, then she becomes the wife of this second brother, and all previous connections are no longer relevant.

But if the levirate betrothal of the second brother is not levirate betrothal, i.e., it does not have the full status of marriage, then there was never in fact any connection between the two. If she is then taken by the third brother in levirate marriage, he would be engaging in relations with the wife of the first brother. From here one can conclude that the basis for Rabbi Shimon’s uncertainty is related to the questions concerning the strength of the levirate betrothal.

Abaye said to him: From here you cannot prove what Rabbi Shimon’s opinion was. Is there no difference to you between a levirate bond to a single yavam and a bond to two yevamim?^N Perhaps when Rabbi Shimon said that a levirate bond is substantial enough to render her like a married woman, this applies only when there is a single yavam. If these were the circumstances of the case discussed, that when one brother died there remained only one yavam, then because the obligation of levirate marriage would apply only to him, she would be considered his wife. But perhaps he held that if there were two yevamin, then no, she would not be considered a married woman, as here the bond would apply to both at once. Accordingly, Rabbi Shimon’s uncertainty is with regard to the case of a levirate bond with two yevamin.

NOTES

שְׁמָא יֵאמְרוּ שְׁתֵּי – Lest those say two yevamot, etc. – יְבָמוֹת וְכִי: Several early commentaries discuss a fundamental question that arises from this Gemara: Since Rabbi Shimon’s opinion is that a woman subject to a levirate bond is considered like a married woman, then if two yevamot came from two households, it would have been appropriate for one to enter into levirate marriage and the second to be exempt. Rashi explains that the case involves two yevamot who fell simultaneously for levirate marriage. Some early commentaries consider this proposal far-fetched, since it is difficult to assume that a decree was made for such a rare occurrence (see Rashba).

זִיקַת יָבָם – A levirate bond to one or to two yevamin – אֶחָד וּשְׁנַיִם: Certainly the opinion that a levirate bond to two yevamin is not substantial is more easily understood, as a woman cannot be married to two brothers simultaneously. However, it is possible to explain that the levirate bond to two yevamin is substantial by saying that provided neither has performed levirate betrothal, both brothers may potentially marry her and the levirate bond applies. If so, all prohibitions connected to marriage apply to both brothers at once (see Ramban).

Three brothers, two of whom...married...sisters – שְׁלֹשָׁה אֲחִין, שְׁנֵים־עָשָׂר נְשׂוּאִין...אֲחִיוֹת: If there were three brothers, two of whom married two sisters, and those brothers died consecutively, then both sisters are forbidden to the third brother, as due to the levirate bond they become rival wives to each other. They must perform *halitza* and may not enter into levirate marriage, in accordance with the opinion of the unattributed mishna and contrary to the opinion of Rabbi Shimon (*Shulhan Arukh, Even HaEzer* 175:6).

ומי שני ליה לרבי שמעון? והתנא, כלל אמר רבי שמעון: כל שהלידה קודמת לנשואין – לא חולצת ולא מתייבמת, נשואין קודם ללידה – או חולצת או מתייבמת.

מאי לאו ביבם אחד, וקתני: לא חולצת ולא מתייבמת! לא, בשני יבמים.

אבל ביבם אחד מאי, הכי נמי או חולצת או מתייבמת? אי הכי, אדתני נשואין קודמין ללידה או חולצת או מתייבמת – ליפלו וליתני בדידה: במה דברים אמורים – בשני יבמים, אבל ביבם אחד – או חולצת או מתייבמת!

בולה בשני יבמין קמיירי. ואלא מאי כללא?

ועוד, מתיב רב אשינא: שלשה אחין, שנים מהן נשואין שתי אחיות, או אשה ובתה, או אשה ובת בתה, או אשה ובת בנה – הרי אלו חולצות ולא מתייבמות, ורבי שמעון פוטר.

ואי סלקא דעתך קסבר רבי שמעון ויקה ככנוסה דמניא – לייבם לקמייתא ותיפטר אידך!

אמר רב עמרם: מאי פוטר נמי – פוטר בשניה. והתנא: רבי שמעון פוטר בשתייהן!

The Gemara challenges: Does Rabbi Shimon differentiate between the case of one *yavam* and the case of two *yevamin* in the matter of a wife of a brother with whom he did not coexist? But it is taught in a *baraita* with regard to the wife of a brother with whom he did not coexist: Rabbi Shimon stated a principle: Whenever the birth of the third brother precedes the levirate marriage of the second brother, if this second brother dies and the *yevama* falls before the third brother, she does not perform *halitza* and she does not enter into levirate marriage. In such circumstances she is the wife of a brother with whom he did not coexist. But if the levirate marriage preceded his birth, she either performs *halitza* or enters into levirate marriage.

What, is it not referring to the case of a single *yavam*, and it is taught in a *baraita*: She does not perform *halitza* and she does not enter into levirate marriage. Even if there is only a single *yavam* this is not considered full marriage, and she remains forbidden as the wife of a brother with whom he did not coexist. Consequently, she who is subject to a levirate bond is not like a married woman. The Gemara answers: No, it refers to a case of two *yevamin*.

The Gemara asks: But what, then, is the ruling for a single *yavam*? So too, one should say she either performs *halitza* or enters into levirate marriage, as the woman who requires levirate marriage is like the wife of the second brother for all purposes. If so, rather than teaching the case when the marriage of the second brother precedes the birth of the third brother, that if this second brother dies and she falls before the third brother, she either performs *halitza* or enters into levirate marriage, let Rabbi Shimon distinguish and teach the distinction within the situation itself and say: In what case is this statement said? When there are two *yevamin*. But if there is one *yavam*, she either performs *halitza* or enters into levirate marriage.

The Gemara rejects this: No, the entire *baraita* is in reference to two *yevamin* and differentiates between various cases involving two *yevamin*, namely, the case where the birth of the third brother preceded the marriage of the second brother and the case where the marriage of the second brother preceded the birth of the third brother. The Gemara asks: Rather, what is the principle in this matter? If Rabbi Shimon is speaking of two *yevamin* and not a single *yavam*, then it makes no sense to speak of a principle, as the *halakha* is different in the case of a single *yavam*.

Moreover, Rav Oshaya raised an objection from that which was taught in a mishna (28b): If there were three brothers, two of whom were married to two sisters,¹¹ or to a woman and her daughter, or a woman and her daughter's daughter, or a woman and her son's daughter, who are, in each case, two women who may not be married to the same person simultaneously, and subsequently these brothers who were married to relatives died, then those two women must perform *halitza* and may not enter into levirate marriage. Since they both have a levirate bond to the third brother at the same time and he is prohibited from marrying both, they cause one another to be unable to perform levirate marriage. And Rabbi Shimon exempts them even from *halitza*.

And if it enters your mind that Rabbi Shimon held that a levirate bond is substantial enough to make her like a married woman, then let the third brother consummate the levirate marriage to the widow of the first husband to die, since as soon as her husband dies she has a levirate bond with the other brothers and should be considered to be like his wife, and let the other be exempt as a result, as her levirate bond began only with the death of the second husband.

Rav Amram said: What is really the meaning of the word exempt used by Rabbi Shimon? Only the second is exempt. The Gemara objects: But it is taught in a *baraita*: Rabbi Shimon exempts both. From here it is clear that in his opinion a woman subject to a levirate bond does not have the same status as a married woman.

אמר רבא: שנייה שבוג זה והשנייה שבוג זה.

קא טעי רבא בארבעה זוגי, חדא ד"או" "או" קתני. ועוד: "רבי שמעון פוטר בארבעתן" מיבעי ליה.

ועוד: תנא, רבי שמעון פוטר בשתייהן מן החליצה ומן היבום, שנאמר "ואשה אל אחותה לא תקח לערו" בשעה שנעשו צרות זו לזו לא יהא לך ליקוחין אפילו באחת מהן.

אלא אמר רב אשי: אי דנפול בזה אחר זה – הכי נמי. הךא במאי עסקין – דנפול בבית אחת, ורבי שמעון סבר לה כרבי יוסי הגלילי, דאמר: אפשר לצמצם.

Rava said: In the case mentioned in that *baraita*, there were three brothers, two of whom died. Each of the deceased brothers had four wives who were related to the wives of the other brother as described in the mishna. One wife of the first brother was the sister of a wife of the second brother. Another wife was the mother of a wife of the second brother. Another was the daughter of the daughter of a wife of the second brother. And another was the daughter of the son of a wife of the second brother. When these brothers died, all eight women happened before the remaining brother for levirate marriage. When Rabbi Shimon deemed both of them exempt, he was referring to the **second from this pair and the second from that pair**. That is, since one of them was bound to the third brother her relative became exempt as a forbidden relative, and the other of the pair was her rival wife in each of the cases.

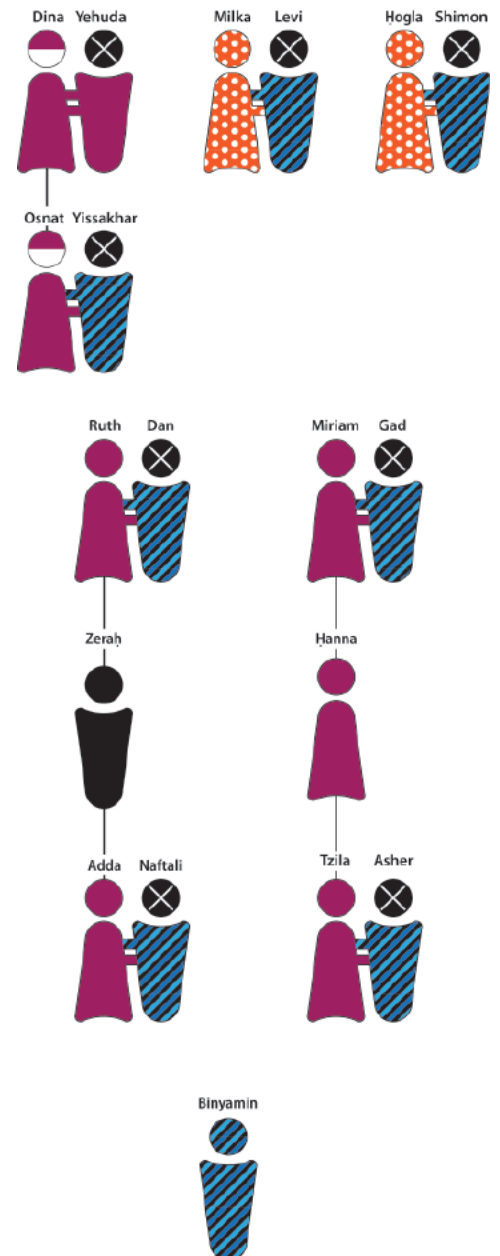
The Gemara comments: Rava was mistaken about there being **four pairs**.⁸ He mistakenly understood that the mishna spoke of two brothers who married four pairs of relatives. Why does the Gemara assume that he was mistaken? **One piece of evidence is that the mishna teaches the case using the expression: Or, or.** The mishna teaches: Or to a woman and her daughter, or to a woman and her daughter's daughter, or a woman and her son's daughter, meaning that not all of the pairs happened before a single *yavam* for levirate marriage. **And further, the *baraita* should have said: Rabbi Shimon exempts all four of them,**⁹ i.e., the four women married to the second brother.

And further, it is taught explicitly in a *baraita* that Rabbi Shimon exempts both of them from both *halitza* and levirate marriage, as it is stated: "And you shall not take a woman to her sister, to be a rival to her" (Leviticus 18:18). From here it is derived that **when two sisters are about to become rival wives one to the other**, that is, at the moment they fall before one brother for levirate marriage, **you do not have the option of taking even one of them**. In other words, levirate marriage to either of them is not permitted, and therefore both are exempt and not only the second. Thus Rava's explanation is rejected.

Rather, Rav Ashi said an alternative answer to the Gemara's challenge: If these *yevamot* happened before him for levirate marriage **one after the other, indeed it is so** that the first woman bound is like a married woman, and she exempts the second, who is her close relative. However, **here we are dealing with a case when both brothers died at once and so both women happened before him at once.** And Rabbi Shimon holds in accordance with the opinion of Rabbi Yosei HaGelili, who said: **It is possible to be precise.**⁹ He held, contrary to the opinion of the Rabbis, that it was possible to be exact about measurements of time. Therefore, it is possible for two things to truly occur at once, and it is possible that both brothers died simultaneously.

BACKGROUND

טעי... בארבעה זוגי – Mistaken about there being four pairs – There were nine brothers by the same father. Shimon and Levi married the sisters Høgla and Milka, respectively; Yehuda married Dina, and Yissakhar married her daughter Osnat; Gad married Miriam, and Asher married Miriam's daughter's daughter, Tzila; Dan married Ruth and Naftali married her son's daughter, Adda. If these eight brothers were to die and all of the women were to fall before Binyamin for levirate marriage, clearly for each pair there are two women who cannot be taken in marriage at once. According to *Tosafot Yeshanim*, this is the description of the case at hand. According to Rashi, however, the situation is that Shimon married Høgla, Dina, Miriam, and Ruth, while his brother Levi married Milka, Osnat, Tzila, and Adda, and all of these women happened before Binyamin for levirate marriage.



NOTES

Exempts all four of them – פוטר בארבעתן: *Tosafot Yeshanim* raise the following objection: In actuality, it is not four wives who are exempt, but seven. He can perform levirate marriage on only one woman from each household, so that three women are exempt from the first household, and the four from the other household include a forbidden relation and her rival wives who are also forbidden. For this reason, an alternate explanation is suggested: The reference here is not to two brothers but to nine brothers, eight of whom were married in such a way that one was married to a woman and another to her daughter, and one was married to a woman and another to her sister, and so on. When they all happened

before the ninth brother for levirate marriage, four were exempt (see *Tosafot HaRosh*).

It is possible to be precise – אפשר לצמצם: This opinion, held by Rabbi Yosei HaGelili, relates to several areas in *halakha* and refers in essence to the question of whether or not in reality two entities can ever be absolutely equal, be it in questions of exact size or time of occurrence. According to the Rabbis, even if it appears that two things occurred simultaneously, this is only because humans are not able to measure precisely; in reality there must have been some gap between them.

רב פפא אמר: בייבם ואחר כך
נולד – פליג רבי שמעון, בנולד ואחר
כך ייבם – לא פליג.

ותרווייהו לרבנן איצטריך, ו"לא זו אף
זו" קתני.

תנא כוותיה דרב פפא, ותיובתא דרבי
אושעיא: שני אחים בעולם אחד, ומת
אחד מהם בלא ולד, ועמד השני הזה
לעשות מאמר ביבמתו, ולא הספיק
לעשות בה מאמר עד שנולד לו אח,
ומת. הראשונה יוצאה משום אשת
אחיו שלא היה בעולמו, ושניה או
חולצת או מתייבמת.

עשה בה מאמר, ואחר כך נולד אח,
או שנולד לו אח ואחר כך עשה בה
מאמר, ומת – הראשונה יוצאה משום
אשת אחיו שלא היה בעולמו, ושניה
חולצת ולא מתייבמת.

Until this point the Gemara dealt with Rav Oshaya's opinion stating that according to Rabbi Shimon's statement, even in the case of one who was born before his brother's levirate marriage the ruling of a wife of a brother with whom one did not coexist would not apply. However, **Rav Pappa said: Rabbi Shimon disagreed** in the case where the second brother performed levirate marriage and after that the third brother was born; however, **where the third brother was born after the death of the first brother and after that the second brother performed levirate marriage Rabbi Shimon did not disagree.** He agreed that in this case she would be forbidden to the newly born brother as the wife of a brother with whom he did not coexist.

As for the question that Rav Oshaya raised with regard to the apparent redundancy of the similar rulings in both the first mishna of the chapter and the mishna on 18b, it can be explained that **both were necessary** for the opinion of the Rabbis who prohibited marriage to the wife of a brother with whom one did not coexist in every case. The difficulty raised concerning the apparent redundancy of the first mishna, given the greater scope of the opinion revealed in the second mishna, can be explained by saying that the *tanna* teaches the mishna employing the style: **Not only this but also that.** That is, the mishna follows the stylistic principle of first teaching the obvious case and continues by saying that this principle applies not only in the obvious case but even in the less obvious case. If so, there is no need to assume that there is an additional dispute with Rabbi Shimon.

The Gemara continues: **It is taught in a baraita in accordance with the opinion of Rav Pappa, and this is a conclusive refutation of the opinion of Rabbi Oshaya:** If there were two coexisting brothers, and one died childless, and the second was about to perform levirate betrothal with his *yevama* but did not manage to perform levirate betrothal before his brother was born, and then the second brother died, then the first woman goes out and is free to remarry without *halitza* or levirate marriage due to the fact that she was the wife of a brother with whom the third brother did not coexist, and the second either performs *halitza* or enters into levirate marriage. She was never the rival wife of the widow of the first brother.

If the second brother performed levirate betrothal with her and afterward his brother was born, or if his brother was born and then he performed the levirate betrothal, and then he died, the first goes out and is free to remarry as the wife of a brother with whom he did not coexist, and the second, the wife of the second brother, must perform *halitza* and may not enter into levirate marriage. This is because, due to the levirate betrothal, she is considered by the Rabbis to be the rival wife of a wife of a brother with whom he did not coexist.

Perek II

Daf 19 Amud b

NOTES

Intercourse or *halitza*, etc. – ביאתה או חליצתה וכו' – The early commentaries asked why the rival wife requires *halitza*. If Rabbi Shimon holds that the levirate bond is significant, she would be considered the rival wife of a wife of a brother with whom he did not coexist through the bond, and therefore totally exempt. *Tosafot* claim that according to Rabbi Shimon's opinion there is no bond. The Meiri explains that the bond is not significant enough to completely exempt the rival wife. Ramban explains that Rabbi Shimon holds that a woman subject to a levirate bond is considered like a married woman retroactively only in cases where she later actually married. But if she did not eventually marry her *yavam*, the bond is not considered significant (see *Tosafot Yeshanim* and *Tosefot HaRosh*).

רבי שמעון אומר: ביאתה או חליצתה
של אחת מהם פוטרת צרתה, חליץ
לבעלת מאמר לא נפטרה צרה. בנסה
ומת, ואחר כך נולד לו אח, או שנולד
לו אח ואחר כך בנסה ומת – שתייהן
פטורות מן החליצה ומן הייבום.

Rabbi Shimon says: Intercourse or *halitza*^N with one of them, i.e., the wife of the second brother, exempts her rival wife, but if he performed *halitza* with the one who received the levirate betrothal, then her rival wife, i.e., the wife of the second brother, is not thereby exempt, since possibly levirate betrothal does not have the same strength as marriage. If the second brother married his deceased brother's wife and then died himself, and afterward a brother was born, or if a brother was born and then he married her and died, the two wives are both exempt from *halitza* and levirate marriage. In this case, one was the wife of a brother with whom he did not coexist and the other her rival wife.

מֵאִמְרָא בְּעַל – A levirate betrothal performed against her will – **בְּרָחָה**: If one performs a non-consensual levirate betrothal, it is wholly ineffectual, The *halakha* is ruled in accordance with the opinion of the Rabbis, who are the majority, against the opinion of Rabbi Yehuda HaNasi (Rambam *Sefer Nashim*, *Hilkhot Yibbum VaHalitza* 2:1; *Shulḥan Arukh*, *Even HaEzer* 166:3).

בְּנִסָּה וְנִלְדָּ לֹא אָח, וְאַחֵר כֵּךְ מֵת – שְׂתִיָּהּ פְּטוּרוֹת מִן הַחֲלִיצָה וּמִן הַיִּבּוּם, דְּבָרֵי רַבִּי מֵאִיר. וְרַבִּי שְׁמַעוֹן אוֹמֵר: הוּאִיל וּבֶאֱמָצָא בְּהִיתָּ, וְלֹא עָמְדָה עָלָיו שָׁעָה אַחַת בְּאִיסוּר – מֵיִבּוּם לֵאמֹר מִהֵן שִׁירָצָה, אוֹ חוֹלֵץ לֵאמֹר מִהֵן שִׁירָצָה.

The *baraita* continues: If he married his *yevama* and then a brother was born, and then he died, both the wife of the first deceased brother and the original wife of the *yavam* are exempt from *halitza* and levirate marriage; this is the statement of Rabbi Meir. And Rabbi Shimon says: Since the third brother came and found her in a permitted state, and she was never for a moment prohibited to him, as when he was born she was already the wife of the second brother, who was still alive, he therefore takes whichever he wishes in levirate marriage, or performs *halitza* with whichever he wishes.

הָא בְּבֹא דְסִיפָא לְמֵאן קִתְּנִי לָהּ? אִילִימָא לְרַבִּי מֵאִיר קִתְּנִי לָהּ – מִכְּדִי, לֹא שֵׁנִי לִיה לְרַבִּי מֵאִיר בֵּין יִיבֻם וְאַחֵר כֵּךְ נִלְדָּ, בֵּין נִלְדָּ וְאַחֵר כֵּךְ יִיבֻם – לְעִרְבִינָהּ וְלִתְנִינָהּ.

The Gemara clarifies: The section of the latter clause of the *baraita*, which refers to the case of a brother born after the levirate marriage, according to whom is it taught? If we say it is taught for the purpose of clarifying the opinion of Rabbi Meir, it does not make sense, since it makes no difference to Rabbi Meir whether the levirate marriage preceded the birth or the birth preceded the levirate marriage. In his opinion under both circumstances she is the wife of a brother with whom he did not coexist. And if this were in fact taught for the purpose of clarifying his opinion it should have combined the cases and taught themⁿ together.

אֵלָּא, לֹא רַבִּי שְׁמַעוֹן, וְכִיִּבּוּם וְאַחֵר כֵּךְ נִלְדָּ – פְּלִיג, בְּנִלְדָּ וְאַחֵר כֵּךְ יִיבֻם – לֹא פְּלִיג, שְׁמַע מִינָּהּ.

Rather, is it not that the latter segment was meant to clarify the opinion of Rabbi Shimon, since the different parts of the *baraita* enumerate different possibilities? And Rabbi Shimon disagrees in the case when the brother first performed levirate marriage and afterward his brother was born, but he does not disagree in the case where the younger brother was born and afterward the second brother performed levirate marriage. The Gemara summarizes: Conclude from this that Rabbi Shimon disagrees only here, as Rav Pappa explained.

אָמַר מֶר: עָמַד הֵשִׁנִּי לַעֲשׂוֹת מֵאִמְרָא בִּיבְמָתוֹ, וְלֹא הִסְפִּיק לַעֲשׂוֹת מֵאִמְרָא בִּיבְמָתוֹ עַד שֶׁנִּלְדָּ לֹא אָח, וְיָמָת – רִאשׁוֹנָה יוֹצֵאָה מִשּׁוּם אֶשֶׁת אָחִיו שְׁלֹא הָיָה בְּעוֹלָמוֹ, וּשְׁנִיָּה – אוֹ חוֹלָצָת אוֹ מְתִיבָמָת. מֵאִי עָמַד וּמֵאִי לֹא הִסְפִּיק? אִי עָבַד – עָבַד, וְאִי לֹא עָבַד – לֹא עָבַד!

§ The Gemara proceeds to discuss the *baraita* itself. The Master said: The second was about to perform levirate betrothal with his *yevama*, but did not manage to perform levirate betrothal with his *yevama* before his brother was born, and then the second brother died. The first woman goes out and is free to remarry without *halitza* or levirate marriage due to the fact that she was the wife of a brother with whom the third brother did not coexist, and the second woman performs *halitza* or enters into levirate marriage. The Gemara asks: What is the meaning of the phrase: Was about to, and what is the meaning of: Did not manage to perform levirate betrothal? The important issue is not his intention but his actions. If he did it, he did it; and if he did not do it, he did not do it.

אֵלָּא: עָמַד – מִדְּעָתָהּ, וְלֹא הִסְפִּיק מִדְּעָתָהּ, אֵלָּא בְּעַל בְּרָחָה. וְלֹא כְּרַבִּי דְתַנְיָא: הָעוֹשֶׂה מֵאִמְרָא בִּיבְמָתוֹ שְׁלֹא מִדְּעָתָהּ, רַבִּי אוֹמֵר: קָנָה, וְחֻכָּמִים אוֹמְרִים: לֹא קָנָה.

Rather, the correct interpretation is: Was about to means that he was about to perform levirate betrothal with her consent. Did not manage means that he did not manage to perform it with her consent, but instead did it against her will. Consequently, it is understood that this *baraita* is not in accordance with the opinion of Rabbi Yehuda HaNasi, as it is taught in a *baraita*: With regard to one who performs levirate betrothal with his *yevama* without her consent, Rabbi Yehuda HaNasi says: He acquired her and the betrothal is fully valid, like a consensual levirate betrothal with his *yevama*; and the Rabbis say: He did not acquire her.¹⁴

NOTES

¹⁴ לְעִרְבִינָהּ – It should have combined and taught them – לְתַנְיָא: This objection could not be derived from the mishna itself, because the mishna detailed each ruling separately, which is the linguistic style of the Mishna. The *baraita*, on the other hand, does combine some rulings, and so the question is based on the fact that not all the rulings were combined here (Rivan; *Tosafot*). Also, it could be said that the *baraita* is clearly

teaching by employing the style of: Not only this but also that, unlike the mishna. Rav Oshaya was of the opinion that it was preferable to explain each phrase in the mishna and not resort to saying that it is employing the style of: Not only this but also that. However, once it is clear that the *baraita* uses that style, it is reasonable to assume that the mishna also employs that style (*Tosefot HaRosh*).

He learned this from the case of intercourse with a *yevama* – גִּמְר מְבִיאה דִּיבְמָה: *Tosafot* ask how Rabbi Yehuda HaNasi can derive the *halakha* pertaining to levirate betrothal, which is by rabbinic law, from the laws of levirate marriage, which is by Torah law. They answer that rabbinic enactments were often established as though they were Torah law. In the Jerusalem Talmud there is an opinion that considers levirate betrothal to be a Torah law itself, and if so, the laws of a levirate betrothal can certainly be derived from the laws of levirate marriage (see *Keren Ora*).

Betrothal in general requires consent – קְדוּשִׁין דְּעֵלְמָא – מְדַעְתָּה: Some early commentaries point out that there is an exception to this rule: A minor may be married off against her will if her father accepts the betrothal. Nevertheless, even in that case the father must give consent, and so it still requires some form of consent (Rivan).

מאי טעמא דרבי? גמר מביאה דיבמה, מה ביאה דיבמה בעל כרחיה, אף קדושין דיבמה בעל כרחיה. ורבנן גמרי מקדושין דעלמא, מה קדושין דעלמא – מדעתה, אף קדושין דיבמה – מדעתה.

במאי קמיפלגי? מר סבר: מיילי דיבמה ממילי דיבמה הוה ליה למילי, ומר סבר: מיילי דקדושין ממילי דקדושין הוה ליה למילי.

עשה בה מאמר ואחר כך נולד לו אח, או שנולד לו אח ואחר כך עשה בה מאמר, ומת, ראשונה יוצאה משום אשת אחיו שלא היה בעולמו, ושניה חולצת ולא מתנייבמת. רבי שמעון אומר: ביאתה או חליצתה של אחת מהן פוטרת צרתה.

רבי שמעון אהניא קאי? אילימא אנוולד לו אח ואחר כך עשה בה מאמר – הא אמרת בנולד ולבסוף ייבם לא פליג רבי שמעון! אלא – אעשה בה מאמר ואחר כך נולד לו אח.

חלץ לבעלת מאמר לא נפטרה צרה, מאי טעמא? משום דהוא צרה ודאי ובעלת מאמר ספק, ואין ספק מוציא מידי ודאי.

יתיב רב מנשה בר זביד קמיה דרב הונא, ויתיב וקאמר: מאי טעמא דרבי שמעון? מאי טעמא דרבי שמעון? בדאמר טעמא: הואיל ובה ומצאה בהיתר, ולא עמדה עליו שעה אחת באיסור!

The Gemara explains: What is the reason for Rabbi Yehuda HaNasi's opinion? He learned this from the case of a *yavam* engaging in intercourse with a *yevama*.^N Just as even non-consensual intercourse with the *yevama* renders her his wife, as the matter does not require her consent, so too, betrothal of a *yevama* can be non-consensual. But the Rabbis learned from the *halakhot* of betrothal in general; just as betrothal in general requires consent^N by the woman, so too, betrothal of a *yevama* for purposes of levirate marriage requires consent.

The Gemara explains: With regard to what principle do Rabbi Yehuda HaNasi and the Rabbis disagree? One Sage, Rabbi Yehuda HaNasi, holds that halakhic matters concerning *yevamot* must be inferred from matters concerning *yevamot* and not from other areas of *halakha*. And one Sage, the Rabbis, holds that halakhic matters concerning levirate betrothal must be inferred from matters concerning betrothal.

The Gemara clarifies another segment of the *baraita*. It is taught: If the second brother performed levirate betrothal with her, and afterward his brother was born, or if his brother was born and then he performed levirate betrothal and died, the first woman goes out and is free to remarry because she is the wife of a brother with whom he did not coexist, and the second, the wife of the second brother, performs *halitza* but does not enter into levirate marriage. Rabbi Shimon says: Intercourse or *halitza* with one of them exempts her rival wife.

The Gemara asks: To which case is Rabbi Shimon referring? If we say that he is referring to the case when his brother was born and then he performed levirate betrothal with her, didn't you already say that Rabbi Shimon did not dispute the case where the brother was born and then ultimately he performed a levirate marriage, and she would be forbidden as the wife of a brother with whom he did not coexist. Rather, one must say that Rabbi Shimon disputed the case where he performed levirate betrothal with her and afterward his brother was born.

Later in the *baraita* it is taught: If the third brother performed *halitza* with the wife of the first brother, to whom the second brother performed levirate betrothal, her rival wife is not exempt. The Gemara clarifies: What is the reason for this? It is because the rival wife, the widow of the second brother, has a definite legal status that requires an act to free her to remarry, as she is the wife of a brother with whom he did coexist, whereas the widow of the first brother with whom the second brother performed levirate betrothal had only an uncertain legal status, as it is not clear if she is to be considered truly the wife of the second brother by means of the levirate betrothal or not. And the principle is that an uncertainty does not override a certainty. Therefore, even if the first brother performs *halitza*, since the status of the first woman's obligation is uncertain, the status of the *halitza* itself is uncertain, as it is possible that she did not require *halitza* at all. Consequently, this *halitza* is not sufficient to exempt her rival wife. This teaches that he must perform *halitza* or levirate marriage with the woman who is definitely obligated, and then the other will be exempt.

Rav Menashe bar Zevid sat before Rav Huna. He sat and said: What is the reason that Rabbi Shimon allows the third brother to marry the wife of his brother with whom he did not coexist where she was taken in levirate marriage prior to his birth? The Gemara also wonders: What is Rabbi Shimon's reason? The reason is as he stated in that same *baraita*: Since the third brother came and found her in a permitted state, and she was never for a moment prohibited to him he may perform levirate marriage with her.

The first levirate bond [*yibbumin*] is still upon her – **עדיין יבומים הראשונים עליה**: The early authorities ask: If the levirate bond remains, why is he allowed to continue to live with his *yevama*? Once he performs *yibbum*, she apparently remains his brother's wife, who is forbidden to him now that he has already performed the mitzva. They answer that the Torah did not intend to prohibit relations with the *yevama* after the act of consummation, as it states: "He will take her to him to be his wife." However, she remains a *yevama* even after she is married, in that if the couple were to divorce, they would not be permitted to remarry (Rashba).

אלא: מאי טעמא דרבנן? אמר קרא "ולקחה לו לאשה ויבמה" – עדיין יבומים הראשונים עליה. אלא, הא דתנן: כנסה – הרי היא כאשתו לכל דבר, ואמר רבי יוסי בר חנינא: מלמד

Rather, the question was as follows: Rabbi Shimon gave such a persuasive explanation of his opinion that it raises the question: **What is the reason for the Rabbis' opinion?** The Gemara answers that the verse states: "Her brother-in-law will ... take her to him to be his wife and consummate the levirate marriage [*veyibbema*]" (Deuteronomy 25:5). This means that **the first levirate bond is still upon her.**ⁿ Even after she is taken as a wife by the second brother, her earlier status as wife of her late first husband is still in effect. The Gemara challenges this: **But what about that which we learn in a mishna (38a): If he took his *yevama* in marriage as his wife, then her legal status is that of his wife in every sense; and Rabbi Yosei bar Hanina said: This teaches**

There, too, let the *halakha* say, etc. – **התם נמי לימא** – **וכי**: Rabbeinu Hananel had a different version of the text here, and many early commentaries preferred his version. According to his text, the Gemara is discussing two challenges to the concept of the first levirate bond still being upon her: First, if a *yavam* performs levirate marriage and subsequently divorces his *yevama*, he may remarry her afterward. Since he has already performed levirate marriage, she is no longer forbidden to him as his brother's wife, even if he divorces her. This indicates that the original levirate bond is completely removed. Second, if he divorces his *yevama* he does so only with a bill of divorce and does not perform *halitza*. This also indicates that the levirate bond is removed. Although Rashi has a different version of the text, his explanation accords with that of Rabbeinu Hananel.

that he must divorce his *yevama* with a bill of divorce and she does not also require *halitza*. **And he may remarry her**, if he wishes, after the divorce; as the *halakha* is not ruled in accordance with the opinion that after he performs the mitzva she is once more forbidden to him as his brother's wife. Why? **There, too, let the *halakha* say**" that the verse states: "And consummate the levirate marriage [*veyibbema*]," as explained above, meaning that **the first levirate bond is still upon her and she should also require *halitza*.**

The Gemara answers: **It is different there, as the verse states: "And take her to him to be his wife" (Deuteronomy 25:5) to teach that once he has taken her, her legal status is that of his wife in every sense.** The Gemara objects: **If so, here too**, in the case of a brother born after the levirate marriage, according to the opinion of the Rabbis this same principle should apply. The Gemara answers that **The Merciful One states: "And consummate the levirate marriage [*veyibbema*],"** that is, even after the marriage she is still considered to be the wife of the deceased brother [*yevama*] with respect to any brothers who are born later.

The Gemara asks: **What did you see** to distinguish in this way and say that once she is married the levirate obligation is totally abrogated with regard to *halitza*, but that she remains prohibited as the wife of a brother with whom one did not coexist with respect to any brothers born in the future? The Gemara answers: **It stands to reason to say: Toss that which is permitted on that which is permitted, and toss that which is prohibited on that which is prohibited.** In other words, in cases where the woman becomes permitted to her *yavam* through levirate marriage, it stands to reason that this permitted state is absolute, but with regard to the prohibition against taking the wife of a brother with whom one did not coexist, it stands to reason that the verse comes to teach that she retains her prohibited status with respect to any brothers born in the future.

The Gemara suggests: **But according to Rabbi Shimon, who said that since he came and found her in a permitted state a brother born subsequently may perform levirate marriage since she was never for a single moment prohibited to him; however, if that is so, consider the case of one's maternal half sister, who married his paternal half brother; their marriage was fully permissible since the husband and wife were in no way related to each other. And then his brother was born and the married brother died; in that case, let the sister enter into levirate marriage with her newly born half brother for the same reason, i.e., since he came and found her in a permitted state, as when he was born she was already his brother's wife.**

Perek II Daf 20 Amud a

שמגרשה בגט ומחזירה, התם נמי לימא: "ויבמה" עדיין יבומין הראשונים עליה, ותיבעי חליצה!

שאני התם, דאמר קרא "ולקחה לו לאשה", כיון שלקחה נעשית כאשתו לכל דבר. אי הכי, הכא נמי! הא כתב רחמנא "ויבמה".

ומה ראית? מסתברא: שדי היתירא אהיתירא, ושדי איסורא איסורא.

ולרבי שמעון, דאמר: הואיל ובא ומצאה בהיתר ולא עמדה עליו שעה אחת באיסור, אלא מעתה, אחותו מאמו שנשא אחיו מאביו, ואחר כך נולד אח, ומת – תתייבם, הואיל ובא ומצאה בהיתר!

NOTES

That prohibition has a case where it is permitted – **איסורא דאית ליה היתירא** – Rashi explains that the case where the prohibition is lifted is when the *yevama* is permitted to marry her *yavam*. According to *Tosafot*, however, the Gemara here is referring to the fact that the prohibition against marrying a brother's wife is totally nullified after levirate marriage, and the *yavam* may remarry her if he divorces her (see Ritva).

HALAKHA

A prohibition resulting from a mitzva or a prohibition stemming from sanctity – **איסור מצוה ואיסור קדושה** – A *yevama* who is forbidden to her *yavam* by a prohibition, or as a secondary forbidden relation, must perform *halitza* and may not enter into levirate marriage, as explained in the mishna (Rambam *Sefer Nashim*, *Hilkhot Yibbum VaHalitza* 6:7, 10; *Shulhan Arukh*, *Even HaEzer* 174:1).

Her sister who is her *yevama* – **אחותה שהיא יבמתה** – If two sisters happened before their *yavam* for levirate marriage and one of them was prohibited to him as a forbidden relation, he may either perform *halitza* with the other or take her in levirate marriage, as stated in the mishna and explained in the Gemara (Rambam *Sefer Nashim*, *Hilkhot Yibbum VaHalitza* 7:1; 10; *Shulhan Arukh*, *Even HaEzer* 175:2).

איסור אחותו להיכן אול? הכא נמי, איסור אחיו שלא היה בעולם להיכן אול? האי, איסורא דלית ליה היתירא. האי – איסורא דאית ליה היתירא.

מתני' כלל אמרו ביבמתה: כל שהיא איסור ערוה, לא חולצת ולא מתייבמת. איסור מצוה ואיסור קדושה – חולצת ולא מתייבמת.

אחותה שהיא יבמתה – חולצת או מתייבמת.

איסור מצוה: שניות מדברי סופרים. איסור קדושה: אלמנה לכהן גדול, גרושה וחלוצה לכהן הדיוט, ממזרת ונתינה לישראל, ובת ישראל לנתין וממזר.

גמ' כלל לאתווי מאי? אמר רפרם בר פפא: לאתווי צרת אילומית, וכדרב אסי.

The Gemara challenges this suggestion: How can you say that? What happened to the **prohibition against marrying his sister, to where did it go?** This widow is the maternal sister of the newly born brother and is therefore forbidden to him. The Gemara objects: If so, **here too**, one could have said: What happened to the **prohibition against marrying the wife of a brother with whom one did not coexist, to where did it go?** In this case as well, the prohibition against marrying the wife of a brother with whom he did not coexist already applied from the first brother, so why does Rabbi Shimon see this as abrogated by marriage? The Gemara answers that the comparison is unsound. **This prohibition against marrying one's sister has no case where it is permitted** and so in this case is also not canceled, whereas **that prohibition against marrying a brother's wife has a case where it is permitted**,ⁿ when the mitzva of levirate marriage applies to a second brother and is therefore removed completely before the third brother is born.

MISHNA The Sages stated a principle about a *yevama*: **Whoever is forbidden by a prohibition of forbidden relations to her *yavam* neither performs *halitza* nor enters into levirate marriage** and is completely exempt. If she is forbidden by a prohibition resulting from a mitzva or by a prohibition stemming from sanctity,^h as will be explained later, then since in these cases the obligation of levirate marriage is not fundamentally nullified **she performs *halitza* in order to become free of the levirate bond, and due to her prohibition she does not enter into levirate marriage.**

The Sages stated another principle: If two sisters who had been married to two brothers who subsequently died happened before the third brother for levirate marriage, and one of those sisters is a close relation to this third brother and is therefore forbidden to him, she is exempt from levirate marriage. But the other, **her sister who is her *yevama***,^h i.e., her sister-in-law, **performs *halitza* or enters into levirate marriage.** In this case, they are not ruled to be two sisters who happened before him simultaneously for levirate marriage, since one of them is prohibited to him as a forbidden relation, and therefore she never actually happened before him at all.

The mishna explains: A prohibition resulting from a mitzva is referring to **secondary forbidden relationships**, which are prohibited by **rabbinic law**. The Sages prohibited marriage to certain women who were not forbidden by the Torah but were nevertheless deemed forbidden incestuous relations. A prohibition stemming from sanctity is referring to marriage of a widow to a High Priest, a divorcée or a woman who has performed *halitza* [*halutza*] to a common priest, a daughter born from an incestuous or adulterous relationship [*mamzeret*] or a Gibeonite woman to an Israelite, and also an Israelite woman to a Gibeonite or to a son born from an incestuous or adulterous relationship [*mamzer*].

GEMARA The Gemara asks: This principle stated in the mishna about *yevamot*, **what other cases does it add?** Since the entire list of cases involving a forbidden relation was already detailed in the first chapter, what is this mishna adding? **Rafram bar Pappa said: It comes to include the case of a rival wife of a sexually underdeveloped woman** [*aylonit*], who is incapable of bearing children. Not only does an *aylonit* herself not enter into levirate marriage, since she is unable to give birth, but her rival wife is exempt as well. **And this is like the principle of Rav Asi**, who said that the rival wife of an *aylonit* is forbidden because the *aylonit* herself remains prohibited to the *yavam* as the wife of his brother, as she was never rendered permitted by the obligation of levirate marriage. Therefore, her rival wife is the rival wife of someone prohibited as a forbidden relation.

The rival wife of a sexually underdeveloped woman [*aylonit*], etc. – **צֶרֶת אֵילוֹנִית**: If the two wives of one man fall before his brother for levirate marriage and one of them is an *aylonit*, then her rival wife may either perform *halitza* or enter into levirate marriage. This is in accordance with the opinion cited in the Gemara as: And there are those who say, and contrary to the opinion of Rav Asi (Rambam *Sefer Nashim*, *Hilkhot Yibbum VaHalitza* 6:20; *Shulhan Arukh*, *Even HaEzer* 172:1).

ואיכא דאמר: "כל שאיסורה איסור ערוה" הוא דאסירא צרתה, הא לא איסורה איסור ערוה – צרתה לא אסירא. למעוטי מאי? אמר רפרם: למעוטי צרת אילונית, ודלא ברב אסי.

And there are those who say that Rafram bar Pappa's statement was made in a different context. It was taught in the mishna: **Whoever is forbidden to her yavam by a prohibition of forbidden relations** is completely exempt, which implies that **it is specifically in such a case that her rival wife is forbidden**. But any case when one wife is **not forbidden by a prohibition of forbidden relations** but is instead forbidden for some other reason, then **her rival wife is not forbidden**. This case comes to exclude what? Rafram said: It excludes the rival wife of an *aylonit*, who requires levirate marriage or *halitza* because the *aylonit* is not prohibited as a forbidden relation.^h And this statement is **not in accordance with the opinion of Rav Asi**.

"אחותה שהיא יבמיתה". אחותה דמאן? אילימא דאיסור מצוה, בין דמדאורייתא רמיא קמיה פגע באחות וקוקתו! אלא: אחותה דאיסור ערוה.

The mishna states: **Her sister who is her yevama** performs *halitza* or enters into levirate marriage. The Gemara clarifies this: **Whose sister? If we say it is the sister of one who is forbidden due to a prohibition resulting from a mitzva, since by Torah law she is cast before him for levirate marriage, then this would in fact simply be a case of two sisters who fell simultaneously before him, both requiring levirate marriage, since according to Torah law there is no prohibition against entering into levirate marriage with such a woman. If so, it turns out that he encounters the sister of the woman with whom he has a levirate bond; but that case has already been taught. Rather, it must refer to the sister of a woman who is forbidden to him by a prohibition of forbidden relations, and since he may not enter into levirate marriage with a forbidden relation, her sister is not considered to be the sister of a woman with whom he has a levirate bond. Therefore, the sister may be taken in levirate marriage.**

"איסור מצוה שניות". אמאי קרי ליה איסור מצוה? אמר אביי: מצוה לשמוע דברי חכמים.

The mishna states that a **prohibition resulting from a mitzva** is referring to **secondary forbidden relationships**, which are prohibited by rabbinic law. The Gemara asks: **Why is this called a prohibition resulting from a mitzva?** Abaye said: This is because **it is a mitzva to listen to and obey the words of the Sages**.ⁿ

"איסור קדושה אלמנה לכהן גדול גרושה וחלוצה לכהן הדיוט", ואמאי קרי ליה איסור קדושה? דכתיב "קדושים יהיו לאלהיהם".

The mishna states: **A prohibition stemming from sanctity** is referring to a marriage of a **widow to a High Priest, a divorcée or a halutza to a common priest**. The Gemara asks: **Why are these called a prohibition stemming from sanctity?** As it is written with regard to the priests: **"They shall be sacred" to their God... they shall not take a woman that is a harlot, or profaned; neither shall they take a woman divorced by her husband**" (Leviticus 21:6–7).

תניא, רבי יהודה מחלין: איסור מצוה – אלמנה לכהן גדול, גרושה וחלוצה לכהן הדיוט. ואמאי קרי ליה איסור מצוה? דכתיב "אלה המצוות".

It is taught in a *baraita*: **Rabbi Yehuda switches the terms: A prohibition resulting from a mitzva** is referring to a **widow to the High Priest, or a divorcée or a halutza to a common priest**. And why is this called a prohibition resulting from a mitzva? As it is written in summarization at the end of Leviticus: **"These are the mitzvot that the Lord commanded Moses for the children of Israel in Mount Sinai"** (Leviticus 27:34).

NOTES

מצוה לשמוע – It is a mitzva to listen to the words of the Sages – **דברי חכמים**: The *Nimmukei Yosef* notes that this mitzva is explicit in the Torah: "And you shall come... to the judge that shall be in those days... and you shall act according to the tenor of the sentence, which they shall declare... do not turn aside from the sentence that they shall declare" (Deuteronomy 17:9–11).

A prohibition stemming from sanctity... they shall be sacred, etc. – **איסור קדושה... קדושים יהיו וכו'**: The Rivan adds that although this verse refers specifically to priests, there is another verse that refers to Israelites: "Sanctify yourselves and be holy" (Leviticus 20:7). From here it is derived that there are prohibitions

stemming from sanctity for Israelites as well, which are those forbidden sexual relations that are pertinent to them.

Some commentaries point out that included among those relationships enumerated as prohibitions due to sanctity is a woman who has performed *halitza* [*halutza*] marrying a priest, which is prohibited by rabbinic law, and a Gibeonite woman marrying an Israelite, which according to many opinions is also prohibited by rabbinic law and not by Torah law. Some commentaries explain that since these women are prohibited to all Jews these relationships can be called prohibitions due to sanctity, and the prohibition in these cases is unlike the safeguards established by the Sages, e.g., secondary forbidden relations (*Yosef Lekah*).

NOTES

Whoever fulfills the words of the Sages – כל המקיים דברי חכמים: The Rivan writes that this is alluded to in the verse: “And it shall come to pass that he that is left in Zion, and he that remains in Jerusalem, shall be called sacred” (Isaiah 4:3).

You must sanctify yourself by refraining from that which is permitted to you – קדש עצמך במותר לך: The Ramban explains that this is the true meaning of the mitzva: “You shall be sacred” (Leviticus 19:2). Sanctity requires one to refrain from even that which the Torah permitted. The Ramban explains that it is possible for one to be vile without violating any other explicit Torah prohibitions. The Torah does not limit how much one may eat or how frequently one may engage in intercourse; a hedonist could spend all his time indulging in sensual pleasures. Therefore the Torah stressed: “You shall be sacred” (see Rashi on *Sanhedrin* 53a; Ritva).

HALAKHA

A widow to a High Priest – אִלְמָנָה לְכֹהֵן גָּדוֹל: If the brother of a High Priest dies childless and leaves a widow, even a widow from betrothal, then she must perform *halitza* and not enter into levirate marriage. If he engages in intercourse with her, her rival wife is not exempt from *halitza* (Rambam *Sefer Nashim*, *Hilkhot Yibbum VaHalitza* 6:11 and *Sefer Kedusha*, *Hilkhot Issurei Bia* 17:12).

איסור קדושה – “שניות מדברי סופרים”, ואמאי קרי ליה איסור קדושה? אמר אביי: כל המקיים דברי חכמים נקרא קדוש. אמר ליה רבא: וכל שאינו מקיים דברי חכמים, קדוש הוא דלא מיקרי, רשע נמי לא מיקרי! אלא אמר רבא: קדש עצמך במותר לך.

“אִלְמָנָה לְכֹהֵן גָּדוֹל”. קפסיק ותני, לא שנא מן הנשואין ולא שנא מן האירוסין.

בשולמא מן הנשואין – עשה ולא תעשה, ואין עשה דוחה לא תעשה ועשה. אלא מן האירוסין, לא תעשה גרידא הוא, יבא עשה וידחה לא תעשה!

אמר רב גידל אמר רב: אמר קרא “ועלתה יבמתו השערה” שאין תלמוד לומר “יבמתו”, מה תלמוד לומר “יבמתו” – יש לך יבמה אחת שעולה לחליצה ואינה עולה לייבום. ואיזו – זו חייבי לאוין.

ואימא חייבי כריתות! אמר קרא “ואם לא יחפוץ האיש לקחת” הא חפץ – מייבם, כל העולה לייבום עולה לחליצה וכל שאין עולה לייבום – אינו עולה לחליצה.

אי הכי, חייבי לאוין נמי! הא רבי רחמנא “יבמתו”. ומה ראית?

A prohibition stemming from sanctity is referring to secondary relationships forbidden by rabbinic law. And why is this called a prohibition stemming from sanctity? Abaye said: Whoever fulfills the words of the Sages¹ is called sacred. Rava said to him: The language you use is not precise, since if so, whoever does not fulfill the words of the Sages is not called sacred, which implies that he is also not called wicked. However, anyone who transgresses the words of the Sages is in fact referred to as wicked. Rather, Rava said that the reason why this is called a prohibition stemming from sanctity is that the term sanctity indicates differentiation or separation, and there is a principle that you must sanctify yourself by refraining from that which is permitted to you² by Torah law. The Sages decreed against secondary forbidden relations so that one would not eventually come to transgress Torah law.

The mishna states that the levirate bond of a widow to a High Priest³ requires her to perform *halitza*, and she may not enter into levirate marriage. The Gemara comments: The *halakha* that a widow does not enter into levirate marriage with a High Priest is taught categorically, merely in a general manner. It is no different whether she is a widow from marriage or she is a widow from betrothal alone.

Granted, she certainly may not enter into levirate marriage if she is a widow from marriage, since she is forbidden to the High Priest by the positive mitzva stated in the verse: “And he shall take a wife in her virginity” (Leviticus 21:13), and by the prohibition stated in the verse: “A widow, or one divorced...these he shall not take” (Leviticus 21:14). And a positive mitzva, levirate marriage, does not override both a prohibition, not marrying a widow, and a positive mitzva, marrying a virgin, together. However, if she is a widow from betrothal, then there is only a prohibition, as she is still a virgin. In that case, why not say that the positive mitzva of levirate marriage should come and override the prohibition against marrying a widow from betrothal?

Rav Giddel said that Rav said in response: The verse states: “His yevama shall ascend to the gate to the Elders and say: My brother-in-law refused to establish a name for his brother in Israel, he did not wish to consummate the levirate marriage” (Deuteronomy 25:7). As there is no need for the verse to state: “His yevama,” since it is clear to whom the verse refers and no new information is added by this word, what is the meaning when the verse states: “His yevama”? It comes to teach that there is one yevama who ascends for *halitza* but may not ascend for levirate marriage, and her brother-in-law is not given a choice. Who is this? This is a woman with whom it is prohibited for her yavam to enter into levirate marriage, as he would be liable for the violation of a prohibition, and the positive mitzva of levirate marriage does not override the prohibition.

The Gemara asks: Say that this is referring to those women who are forbidden and would be liable to receive the penalty of *karet* as well, i.e., that these too may not enter into levirate marriage but nevertheless require *halitza*. The Gemara answers: The verse states: “And if the man does not wish to take his yevama” (Deuteronomy 25:7). This implies that if he wishes, he takes her in levirate marriage; it depends upon his wishes. However, one who is eligible for levirate marriage is eligible for *halitza*. And conversely, one who is ineligible for levirate marriage is ineligible for *halitza* and therefore does not require *halitza* at all. Since those relations that carry a penalty of *karet* have no possibility of entering into levirate marriage, they do not require *halitza* either.

The Gemara asks: If so, those relations who are forbidden as he would be liable for the violation of a standard prohibition also should not require *halitza*, as they may not enter into levirate marriage. The Gemara answers: But the Merciful One included one category of yevama who is eligible for *halitza* alone and not levirate marriage through the term: “His yevama.” The Gemara asks: And what did you see to conclude that the additional term is referring to relations who are forbidden and with whom he would be liable for the violation of a prohibition and not those who are liable to receive *karet*?

מסתברא, חייבי לאוין תפסי בהו
קדושין, חייבי פרישות לא תפסי
בהו קדושין.

מתב רבא: איסור מצוה ואיסור
קדושה, בא עליה או חלץ לה –
נפטרה צרתה. ואי סלקא דעתך חייבי
לאוין מדאורייתא לחליצה רמיא,
לייבום לא רמיא – כי בא עליה אמאי
נפטרה צרתה?

הוא מותב לה והוא מפרק לה:
לצדדין קתני, בא עליה – אאיסור
מצוה, חלץ לה – אאיסור קדושה.

מתב רבא: פצוע דכא וכרות שפכה,
כרים אדם והזקן – או חולצין או
מייבמין. ביצד? מת, ולהם אחים
ולוהם נשים, ועמדו אחין ועשו מאמר
בנשותיהן, ונתנו גט, וחלצו, מה
שעשו עשו, ואם בעלו קנו.

The Gemara answers: That stands to reason, since betrothal takes effect with those women who are forbidden and with whom he would be liable for the violation of a prohibition.^N That is, if a man betroths a woman who is forbidden to him and with whom he would be liable for the violation of a prohibition, then although he violates a prohibition in doing so, the betrothal is valid and cannot be ended without a bill of divorce. Therefore, such a woman also requires *halitza*. In contrast, **betrothal does not take effect** at all with those who are forbidden and would be liable to receive the punishment of *karet*, and therefore in these cases the laws of levirate marriage and *halitza* do not apply at all.

Rava raised an objection to the explanation of Rav: It is taught in a *baraita* with regard to a prohibition resulting from a mitzva and a prohibition stemming from sanctity that if he engages in intercourse with such a woman^H or performs *halitza* with her,^H her rival wife is exempt, even though it was prohibited for him to have engaged in intercourse with her in the first place. If it enters your mind that women who are forbidden, as he would be liable for the violation of a prohibition, require *halitza* by Torah law but do not require levirate marriage, then when he engages in intercourse with his *yevama* why is her rival wife exempt? If there is no biblical mitzva to engage in intercourse with her, his action would carry no halakhic validity and the rival wife should not be exempt.

Rava raised the objection and he resolved it: The *baraita* teaches it disjunctively; it did not all deal with the same case. When the *baraita* says: Engages in intercourse with her, it is referring to a prohibition resulting from a mitzva. If one engages in intercourse with a *yevama* prohibited to him by rabbinic law, since by Torah law levirate marriage with her is valid, then although his act involved the transgression of a rabbinic decree, he nevertheless fulfilled the Torah mitzva and the rival wife is thereby exempt. When the *baraita* says: Performs *halitza* with her, it is referring to a prohibition stemming from sanctity, and by Torah law there is no option of levirate marriage because of the prohibited relation; therefore, only *halitza* exempts her rival wife.

Rava raised an objection from that which was taught in the *Tosefta* (*Yevamot* 11:3): A man with crushed testicles^H or with other wounds to his genitals or one whose penis has been severed, one who is a eunuch^H caused by man and not from birth or by disease, or an elderly man,^H all of whom are incapable of fathering children, one either performs *halitza* or levirate marriage. How so? If any of these infertile men died, and they had brothers and they also had wives, and they then died childless, and the brothers proceeded to perform levirate betrothal with their wives, or gave them a bill of divorce, or performed *halitza*, whatever they did is done; i.e., their act was effective. And if any one of the brothers engaged in intercourse with the widow of one of those infertile men, he thereby acquired the woman as a wife according to the laws of levirate marriage.

HALAKHA

Intercourse with one's *yevama* who is prohibited due to a mitzva or sanctity – **הקא על יבמתו איסור מצוה ואיסור קדושה** – In cases where a *yevama* is forbidden to her *yavam* due to a prohibition or a positive mitzva, or where she is a secondary relation forbidden by rabbinic law, if he transgressed and engaged in intercourse with her she is considered married to him for all purposes; he must divorce her with a bill of divorce, and her rival wife is exempt from levirate marriage and *halitza* (Rambam *Sefer Nashim, Hilkhot Yibbum VaHalitza* 6:10; Arukh *HaShulhan, Even HaEzer* 174:8).

One who performs *halitza* with a *yevama* who is prohibited due to a mitzva or sanctity – **החולץ לאיסור מצוה וקדושה** – In a case where two women were married to a brother and one of them was forbidden to her *yavam* by a prohibition or positive mitzva or by being a secondary forbidden relation, if he performs *halitza* with this forbidden woman, then her rival wife is not exempt from levirate marriage or *halitza* (Rambam *Sefer Nashim, Hilkhot Yibbum VaHalitza* 7:10). However, in the opinion of the *Halakhot Gedolot* and many others, if he wishes to perform levirate marriage he should do so with the woman who is permitted to him, and if he wishes to perform *halitza* he should do so with the woman who is forbidden to him, and her rival wife is thereby exempt; *Shulhan Arukh, Even HaEzer* 170:18, 174:1).

The wife of a man with crushed testicles – **אשת פצוע דכא** – If a woman had been prohibited to marry her husband due to a positive mitzva or prohibition, e.g., if he had been castrated by a person, etc., but this prohibition does not apply to her *yavam*, then she is permitted to enter into levirate marriage (Rambam *Sefer Nashim, Hilkhot Yibbum VaHalitza* 6:13; *Shulhan Arukh, Even HaEzer* 174:2).

A *yavam* who is a eunuch – **יבם כרים** – If a woman falls for levirate marriage before one who was castrated by a person but who had previously been fit to marry, then he must perform *halitza* and may not take her in levirate marriage, as he is prohibited from entering into the congregation, i.e., marrying a Jew. If he transgressed and engaged in intercourse with her he acquires her as his wife, but he must divorce her with a bill of divorce (Rambam *Sefer Nashim, Hilkhot Yibbum VaHalitza* 6:4; *Shulhan Arukh, Even HaEzer* 172:3).

An elderly man – **הזקן** – The Rambam states that if the *yavam* is elderly then he should not take the woman in levirate marriage but rather should perform *halitza* (*Sefer Nashim, Hilkhot Yibbum VaHalitza* 6:4). However, most authorities hold differently, and this ruling does not appear in the *Shulhan Arukh*.

NOTES

Betrothal takes effect with those women who are forbidden, and with whom he would be liable for the violation of a prohibition – **חייבי לאוין תפסי בהו קדושין** – Rashi explains that the inference connecting betrothal to levirate marriage is from the term “to take” in the verse: “And if the man does not wish to take his *yevama*” (Deuteronomy 25:7), which means taking in marriage.

Marriage, even through intercourse, is not valid in cases where one would be liable to receive *karet* for marrying such a woman and is therefore not considered taking in marriage. However, in the case of relations forbidden by a standard prohibition, although one transgresses Torah law, the betrothal nevertheless comes into effect and they are considered married for all purposes (see Rashba and Ritva).

However, if that is so, the wife of a paternal brother, etc. – *Tosafot* explain this section as not referring to typical cases, as that would undermine the entire concept of levirate marriage. Rather, it is referring to particular examples, each of which is similar enough to the topic of the Gemara that it might deserve a rabbinic decree (see Ritva and *Tosafot Yeshanim*). The Ramban sees this explanation as far-fetched and objects on various grounds. He holds that the Gemara must be understood in a straightforward manner, and that the purpose of these challenges is to illustrate the absurdity of issuing a rabbinic decree to defer the mitzva of levirate marriage in favor of *halitza*.

מתו אחים, ועמדו הם ועשו מאמר
בנשותיהן, ונתנו גט, או שחלצו – מה
שעשו עשו. ואם בעלו – קנו ואסור
לקיימן, משום שנאמר "לא יבא פצוע
דבא". ואי סלקא דעתך חייבי לאוין
מדאורייתא לחליצה רמאי, לייבום לא
רמאי, אם בעלו – אמאי קנו?

אלא אמר רבא: אלמנה מן האירוסין נמי
עשה ולא תעשה הוא, דכתיב "קדושים
יהיו לאלהיהם".

ממזרת ונתינה מאי איבא למימר? כתיב
"והתקדשתם"

אי הכי, כל התורה כולה נמי עשה ולא
תעשה הוא, דכתיב "והתקדשתם"! אלא
אמר רבא: גזירה אלמנה מן האירוסין
אטו אלמנה מן הנשואין.

ממזרת ונתינה מאי איבא למימר? גזירה
במקום מצוה אטו שלא במקום מצוה.

אלא מעתה, אשת אחיו מאביו לא
תתייבם, גזירה משום אשת אחיו מאמו!
ייבום בנחלה תלא רחמנא, מידע ידיע.

The inverse is also true: If the brothers died childless, and the infertile men proceeded to perform levirate betrothal with their wives, or gave a bill of divorce, or performed *halitza*, whatever they did is done and took effect. And if they engaged in intercourse with their *yevama*, they thereby acquired the *yevama* as their wife. However, it is forbidden to maintain them, i.e., allow them to continue to live as husband and wife, because it is stated: "One with crushed testicles or whose penis has been severed shall not enter into the assembly of the Lord" (Deuteronomy 23:2); they are prohibited from entering the congregation, i.e., marrying a Jew. And if it enters your mind that women who are forbidden, as he would be liable for the violation a prohibition, require *halitza* by Torah law but do not require levirate marriage, then one could ask: if they engaged in intercourse why are they acquired as wives even though there would be no mitzva of levirate marriage because the men are prohibited from marrying them?

Rather, Rav's opinion is rejected, and Rava said an alternative explanation: The reason why a High Priest does not take a widow from betrothal in levirate marriage is because that relationship is also a violation of both a positive mitzva and a prohibition and therefore a different positive mitzva does not override it. How so? As it is written: "They shall be sacred to their God" (Leviticus 21:6), which teaches that there is a positive mitzva of sanctity associated with all prohibitions applying to priests. Therefore, any such prohibition contains both a positive and a negative mitzva.

The Gemara asks: This resolves the issue of priestly prohibitions, but what is there to say about a daughter born from an incestuous or adulterous relationship [*mamzeret*] or a Gibeonite woman, who are prohibited from entering the congregation due to considerations of sanctity? They too may not enter into levirate marriage despite the positive mitzva, which would ordinarily override a prohibition. The Gemara answers: It is written with regard to all of the mitzvot: "Sanctify yourselves, therefore, and be sacred" (Leviticus 11:44). This teaches that in addition to the prohibition, there is the positive mitzva of sanctity.

The Gemara raises an objection: If so, then every single prohibition in the entire Torah contains both a positive mitzva and a prohibition, as it is written: "Sanctify yourselves" (Leviticus 11:44). Rather, this reasoning must be rejected, and Rava stated a different reason: While in essence the mitzva of levirate marriage does apply here, nevertheless, a widow from betrothal is prohibited from entering into levirate marriage with the High Priest by rabbinic decree, due to the case of a widow from marriage.

The Gemara asks: What is there to say about the case of a *mamzeret* or a Gibeonite woman? There appears to be no reason for a rabbinic decree in such cases. The Gemara answers: There, one must say that intercourse with a *mamzeret* even when the mitzva of levirate marriage applies was prohibited by rabbinic decree due to cases when the mitzva of levirate marriage does not apply. The decree was issued lest one come to think that since in the case of levirate marriage a *mamzeret* is permitted, even in cases when there is no levirate marriage a *mamzeret* is similarly permitted.

The Gemara asks: However, if that is so, and the levirate marriage is prohibited lest it become confused with another case, then the wife of a paternal brotherⁿ should not enter into levirate marriage; i.e., by the same logic, although the Torah allowed it, the Sages should have established a rabbinic decree requiring that she perform *halitza* due to the case of the wife of a maternal brother, who always remains prohibited as a brother's wife. The Gemara answers: The Merciful One made levirate marriage dependent upon inheritance, and it is well known by everyone that only patrilineal relatives inherit, so there is no likelihood of confusion.

The first act of intercourse is prohibited by rabbinic decree – **גְּזֵרָה בִּיאָה ראשונה וכו'**: Although the *halakhot* of levirate marriage apply to a woman whom one is prohibited from marrying due to a positive mitzva or a prohibition, the Sages decreed that she should not be taken in levirate marriage. They prohibited the first act of intercourse, which fulfills a mitzva, due to the second act, which involves a prohibition and no mitzva. Therefore, one who transgressed and engaged in intercourse with a *yevama* who was forbidden to him fully acquired her as his wife. However, he must divorce her with a bill of divorce, in accordance with the opinion of Rava (Rambam *Sefer Nashim*, *Hilkhot Yibbum VaHalitza* 6:10; *Shulhan Arukh*, *Even HaEzer* 174:1).

עֵשָׂה וְלֹא תַעֲשֶׂה – A positive mitzva and a prohibition contradict one another, if it is possible to find a way to fulfill both, this is best. If not, the positive mitzva overrides the negative one, in accordance with the opinion of Reish Lakish (Rambam *Sefer Ahava*, *Hilkhot Tzitzit* 3:6).

NOTES

The Gemara raises an objection: And if one of those *yevamin* engaged in intercourse, etc. – **מִיתִיבִי וְאִם** – **בְּעֵלוֹ וכו'**: *Tosafot* point out that Rava himself cited this *baraita* earlier and ask how it could be that he did not notice this difficulty with his own words. Some commentaries answer that for this reason the Gemara presented alternate versions attributing this *halakha* to different names, to either Rava or Rav Ashi, in order to explain that the Sage who cited the *baraita* is not the same as Rava to whom the objection was directed.

אִשָּׁה שָׂאִין לָהּ בָּנִים לֹא תִתְּיָבֵם, גְּזֵרָה מְשֻׁם אִשָּׁה שֵׁשׁ לָהּ בָּנִים! בְּבָנִים תִּלָּא רַחֲמָנָא, מִידַּע יְדִיעַ.

The Gemara objects further: Then a **childless woman should not enter into levirate marriage** even though the mitzva applies to her; there should be a rabbinic decree due to the case of a **woman who has children**. The Gemara answers: **The Merciful One made levirate marriage dependent upon children**; it is well known by everyone that the entire purpose of levirate marriage is to establish one's brother's name and that levirate marriage applies only when there are no children. Here, too, there is no likelihood of error.

אִשֶּׁת אָחִיו שֶׁהִיא בְּעוֹלָמוֹ לֹא תִתְּיָבֵם, גְּזֵרָה מְשֻׁם אִשֶּׁת אָחִיו שְׁלֹא הִיא בְּעוֹלָמוֹ! בִּישִׁיבָה תִּלָּא רַחֲמָנָא, מִידַּע יְדִיעַ.

The Gemara challenges further: **The wife of a brother with whom one did coexist should not enter into levirate marriage**; there should be a rabbinic decree due to the case of **the wife of a brother with whom he did not coexist**. The Gemara responds: **The Merciful One made levirate marriage dependent upon a common dwelling** together and coexistence of brothers, and this is well known by everyone since the matter is explicit in the Torah.

כָּל הַנָּשִׁים לֹא תִתְּיָבֵם, גְּזֵרָה מְשֻׁם אֵילוֹנִית! לֹא שְׂכִיחָא. מִמּוֹרֶת וְנִתְּיָה נָמִי לֹא שְׂכִיחָא!

The Gemara continues to object: **No woman should enter into levirate marriage**; there should be a rabbinic decree due to the case of an *aylonit*. Since an *aylonit* may not enter into levirate marriage, all other women should be prohibited by rabbinic decree from doing so to avoid confusion. The Gemara answers: The case of an *aylonit* is **not commonplace**, and the Sages did not institute rabbinic decrees on matters that are not common. The Gemara asks: If so, **neither a mamzeret nor a Gibeonite woman is commonplace either**. Therefore, since the likelihood of taking a *mamzeret* in levirate marriage is so small, there is no danger that one might think it is permitted to marry a *mamzeret* even where the mitzva does not apply.

אֵלָּא אָמַר רַבָּא: גְּזֵרָה בִּיאָה ראשונה אִשּׁוֹ בִּיאָה שְׁנִיָּה.

Rather, Rava said that it is necessary to reject the previous suggestion and to offer a different reason: **The first act of intercourse** is prohibited by rabbinic decree^h due to the likelihood of a **second act of intercourse**. Although intercourse the first time with the *yevama* is the fulfillment of a positive mitzva, which does override the prohibition, once the mitzva is fulfilled with that act there is no longer any positive mitzva involved. Afterward, this *yevama* becomes prohibited because there is no longer a positive mitzva to override the prohibition. Therefore, due to the possibility that one might engage in intercourse a second time with this woman, the Sages decreed that even the first act is prohibited.

תֵּנִינָא נָמִי הָכִי: אִם בְּעָלוֹ – קָנוּ בְּבִיאָה ראשונה, וְאִסּוּר לְקַיֵּם בְּבִיאָה שְׁנִיָּה.

The Gemara comments: **This is also taught in a baraita**: If one of those *yevamin* who may not marry their *yevama* due to a prohibition engaged in intercourse with her, he acquired her with the first act of intercourse; however, it is prohibited to retain her for a second act of intercourse.

הֲדָר אָמַר רַבָּא, וְאִיתִימָא רַב אֲשִׁי: לֹא מִלְּתָא הִיא דְּאָמְרִי, דְּאָמַר רִישׁ לְקִישׁ: כָּל מְקוֹם שֶׁאֵתָה מוֹצֵא עֹשֶׂה וְלֹא תַעֲשֶׂה, אִם אֵתָה יָכוֹל לְקַיֵּם שְׁנִיָּהּ מוֹטָב, וְאִם לֹא יָבֹא עֹשֶׂה וְיִדְּחָה אֶת לֹא תַעֲשֶׂה, הֲכָא נָמִי אֶפְשָׁר בְּחִלְצָה דְּמִקְיָם עֹשֶׂה וְלֹא תַעֲשֶׂה.

The Gemara continues with a retraction from Rava: **Rava then said, and some say it was actually Rav Ashi who said: That which I said**, that the reason for the rabbinic decree was to prevent a second act of intercourse, **is not correct**, as there is a simpler explanation. As Reish Lakish said about the same matter: **In every place that you find a positive mitzva and a prohibition^h applying to the same matter, if you can fulfill both of them together, this is best**, and the positive mitzva does not override the prohibition. **And if there is not any possibility of fulfilling both, then let the positive mitzva come and override the prohibition**. Here, too, in the case of levirate marriage, it is possible, by way of *halitza*, to fulfill the positive mitzva and not to transgress the prohibition prohibiting marriage to these women.

מִיתִיבִי: וְאִם בְּעָלוֹ קָנוּ! תִּיּוֹבָתָא.

The Gemara raises an objection to this last statement by Rava from that which is taught in a *baraita*: **And if one of those yevamin engaged in intercourseⁿ, he acquired her as a wife**. This shows that although it is possible to perform the mitzva by way of *halitza*, if he nevertheless performs levirate marriage then the positive mitzva overrides the prohibition and the *yevama* is thereby acquired as his wife. The Gemara concludes: This is a **conclusive refutation**, and Rava's last explanation is rejected. The previous explanation is the correct one: The prohibition is due to rabbinic decree.

איתמר: ביאת כהן גדול באלמנה, רבי יוחנן ורבי אלעזר: חד אמר: אינה פוטרת צרתה, וחד אמר פוטרת צרתה.

§ On the same subject, it was stated with regard to the case of a High Priest who engaged in intercourse with a widow who was his yevama requiring levirate marriage that the *amora'im* Rabbi Yohanan and Rabbi Elazar disputed the matter. One said that intercourse does not exempt her rival wife who had also been married to the High Priest's brother, since the act was prohibited, and one said that it does exempt her rival wife, because although intercourse was forbidden, it is nevertheless a valid enactment of levirate marriage, and so her rival wife is thereby exempt.

Perek II
Daf 21 Amud a

HALAKHA

A High Priest who engaged in intercourse with a widow from marriage – ביאת כהן גדול ביבמתו – איתמר: If a High Priest engaged in intercourse with his yevama who had been widowed from marriage, her rival wife is not thereby exempt, as a positive mitzva does not override both a negative and a positive mitzva together, as the Gemara states here (Rambam *Sefer Nashim, Hilkhot Yibbum VaHalitza* 6:11).

באלמנה מן הנשואין כולי עלמא לא פליגי דלא פטרה, דאין עשה דוחה לא תעשה ועשה. כי פליגי – באלמנה מן הארוסין. מאן דאמר פוטרת, אתי עשה ודחי את לא תעשה, ומאן דאמר אינה פוטרת – לא אתי עשה ודחי את לא תעשה, כיון דאפשר בחליצה.

מיתבי: ואם בעלו – קנו! תיובתא.

As for a widow from marriage,^h everyone agrees that this does not exempt the rival wife, as a positive mitzva does not override a prohibition and a positive mitzva together. When they disagree, it is in the case of a widow from betrothal. The one who said that it exempts the rival wife holds that the positive mitzva of levirate marriage comes and overrides the prohibition against a High Priest marrying a widow. And the one who said that it does not exempt the rival wife held that a positive mitzva does not come and override a prohibition, since it is possible to perform *halitza*.

The Gemara raises an objection to the opinion that the rival wife would not be exempt, from the previously cited *baraita*: If one of those yevamin engaged in intercourse, he acquired her as a wife. This shows that the act of levirate marriage is valid, even when prohibited. If so, in the case of the High Priest and a widow as well, her rival wife should be exempt. This is a conclusive refutation, and that opinion is rejected.

לימא תיהוי נמי תיובתא דריש לקיש! אמר לך ריש לקיש: כי אמיתא אנא – היכא דמקיימי מצוה, אבל הכא, חליצה במקום ייבום לאו מצוה היא.

The Gemara asks: Shall we say that this is also a conclusive refutation of the opinion of Reish Lakish and therefore reject his principle? The Gemara answers: Reish Lakish could have said to you: When I say that in every place that you find a positive mitzva and a prohibition applying to the same matter, if you can fulfill both of them together without transgressing the prohibition, this is best, and the positive mitzva does not override the prohibition, this is applicable only when the mitzva is fulfilled properly; but here, *halitza* in place of levirate marriage is not considered a proper fulfillment of the mitzva.ⁿ

אמר רבא: רמז לשניות מן התורה מניין? שנאמר "כי את כל התועבות האל עשו אנשי הארץ". "האל" קשות, מכלל דאיכא רבות, ומאי ניהו – שניות.

§ Rava said: Where is the prohibition against secondary forbidden relationships hinted at in the Torah? As it is stated at the end of the portion discussing forbidden incestuous relations: "For all these abominations have the men of the land done" (Leviticus 18:27). "These" must be understood to mean the harsh ones, i.e., the severe transgressions. This proves by inference that there are also lesser transgressions that are, as it were, soft ones. And what are those soft ones? They are secondary forbidden relationships.

ומאי משמע ד"האל" לישנא דקשה הוא? דכתיב "ואת אילי הארץ לקח".

The Gemara asks: From where may it be inferred that the word "these" [*ha'el*] is an expression meaning harsh? As it is written: "And the mighty [*eilei*] of the land he took away" (Ezekiel 17:13). The similarity of these words implies that "these" also has connotations of mighty or harsh.

NOTES

חליצה – Halitza in place of levirate marriage is not a mitzva – חליצה: In the *Yosef Lekah* it is explained that *halitza* is a less than ideal option; it is valid but not preferred. Therefore, the positive mitzva of *halitza* is not considered perfect performance of the mitzva. The *Me'a Kesita* explains that the positive mitzva of levirate marriage is similar to a mitzva whose lack of fulfillment can be

rectified by fulfillment of another mitzva, i.e., *halitza*. This is similar to the idea that the positive mitzva of returning a lost item rectifies the prohibition against theft. Therefore, *halitza* is equivalent in importance to levirate marriage, but only when levirate marriage is not possible. Consequently, it is not considered a mitzva when levirate marriage is possible.

עונשין – עונשין – The punishment for using dishonest measures – **של מדות**: The punishment for deception in weights and measures is harsher than the punishment for transgressing the prohibition against forbidden relationships, based on the opinion of Rabbi Levi (Rambam *Sefer Nezikim*, *Hilkhot Geneva* 7:12; *Shulḥan Arukh*, *Hoshen Mishpat* 231:19).

BACKGROUND

Basket [kefifa] – כפיפה: A *kefifa* was generally made from palm leaves and was used for carrying various items. It occasionally served to hold animal feed. These baskets would have handles attached to them after they were woven.



Basket with handles that were added after the initial weaving

לימא פליגא דרבי לוי, דאמר רבי לוי: קשה עונשין של מדות יותר מעונשין של עריות, שזה נאמר בהן "אל" וזה נאמר בהן "אלה". "אל" – קשה: "ואלה" – קשה מ"אל".

The Gemara asks: Shall we say that this statement contradicts the opinion of Rabbi Levi? As Rabbi Levi said: The harshness of the punishment for using dishonest measures⁴ is more than the punishment for transgressing the prohibition of forbidden relationships, as with regard to this, forbidden relations, it is stated only: "These [el]," whereas with regard to that, dishonest measures, it is stated: "These [eleh]" with an additional letter *heh* as a suffix: "For all that do these [eleh] things, even all that do unrighteously, are an abomination unto the Lord your God" (Deuteronomy 25:16). This implies that the word *eleh* indicates harshness and not the word *el*. The Gemara answers: This does not contradict his opinion. The word *el* has the connotation of harsh, but *eleh* has the connotation of even harsher than *el*.

גבי עריות נמי, הא כתיב "אלה". והוא למעוטי מדות מכרת.

The Gemara asks: With regard to forbidden relationships the word *eleh* is also written: "For whosoever shall do any of these [eleh] abominations, even the souls that do them shall be cut off from among their people" (Leviticus 18:29). If so, why is the punishment for using dishonest measures considered harsher? The Gemara answers: That expression meaning these [eleh] in the context of forbidden relations does not emphasize their severity; rather, it comes to exclude one who uses deception in measures from the penalty of *karet*.

אלא, מאי חומריהו? הני אפשר בתשובה, הני – לא אפשר בתשובה.

The Gemara asks: Rather, in what way is deception in measurements more severe than forbidden relations? The Gemara answers: Those who engage in forbidden relations have the possibility of repentance.⁵ If one engaged in relations with a forbidden relative he can rectify the sin through repentance. In the case of those who deceive the public with dishonest measures, it is not possible to repent fully because, having deceived the general public, they have no way of returning the money. Whereas generally a thief can return stolen property to its rightful owner, one who used dishonest measures with multiple customers has no way to track them all down in order to return the money.

רב יהודה אמר מהכא: "ואזן וחקר תקן משלים הרבה" ואמר עולא אמר רבי אלעזר: קודם שבא שלמה היתה תורה דומה לכפיפה שאין לה אזנים, עד שבא שלמה ועשה לה אזנים.

Rav Yehuda said that the prohibition of secondary forbidden relationships is learned from here: As it says with regard to King Solomon: "He weighed [izzen] and sought out,⁶ and set in order many proverbs" (Ecclesiastes 12:9), and Ulla said that Rabbi Elazar said: Before Solomon came, the Torah was like a basket [kefifa]⁷ without handles [oznayim], until Solomon came and made handles for it. By means of his explanation and proverbs he enabled each person to understand and take hold of the Torah, fulfill its mitzvot, and distance himself from transgressions.

רבי אושעיא אמר מהכא: "פרעוהו אל תעבר בו שטה מעליו ועבור".

Rabbi Oshaya said that the prohibition of secondary forbidden relationships is learned from here: "Avoid it, pass not by it; turn from it, and pass on" (Proverbs 4:15). One must distance oneself from any prohibited act and not pass near a place of forbidden objects or situations.

NOTES

הני אפשר בתשובה – Those have the possibility of repentance – In the *Tosafot Yeshanim* it is written that full repentance for such people is possible only if their forbidden union has not produced a *mamzer*. However, if a *mamzer* has been born, this is considered a situation described by the verse: "That which is crooked cannot be made straight" (Ecclesiastes 1:15). However, the *Tosefot HaRosh* and the Meiri explain that even if a *mamzer* is born, repentance is still possible. If, on the other hand, one deceived others about measurements, full repentance is possible only if he returns that which was stolen. Since it is impossible to return the stolen money if he deceived the general public, because the sinner does not know from whom he stole, complete repentance is impossible.

ואזן וחקר – He weighed and sought out – The Rivan explains that the verses were interpreted as stating that King Solomon made safeguards around the Torah, as it says: "The words of the wise are as goads... and more than them, my son, beware" (Ecclesiastes 12:11–12). That is, one must be additionally cautious beyond the words of the Torah themselves.

It would seem from this Gemara that King Solomon instituted the decree against secondary forbidden relationships (see *Tosafot*; *Tosafot Yeshanim*). Alternatively, the author of *Ramat Shmuel* explains that the Gemara here does not propose that it was Solomon who instituted this decree, but that when they made a safeguard around the words of the Torah the Sages acted in accordance with the principle that Solomon laid down.

Mistake [beduta] – בְּדוּתָא: This term appears in several places in the Talmud, usually in the context of a complete rejection of statements attributed to later *amora'im*, e.g., Rav Ashi. There are two versions of the Gemara text. According to the first version, the statement is erroneous and unfounded. In other words, Rav Ashi could never have issued this statement, and it must have been attributed to him erroneously. According to a variant reading found in several sources the word is: External [*berota*]. According to this reading, when the Sages wanted to suggest that a certain opinion was without basis, they would do so in a respectful manner, saying: It is external, indicating that it is an outside opinion and should not be introduced into the study hall (*Arukh*).

Establish a safeguard for My prized possession – עָשׂוּ מִשְׁמֶרֶת לְמִשְׁמֶרְתִּי: The author of the *Sefer Halakhot Gedolot* explains that although the Sages learned from this verse that they should make safeguards around the entire Torah, the verse itself is referring to the *halakhot* of forbidden relations. For this reason they made more safeguards around the *halakhot* of forbidden relationships than any others. This is a fulfillment of the mitzva of: "You shall be sacred" (Leviticus 19:2), which the Sages interpreted to mean: Separate yourselves from forbidden relationships.

BACKGROUND

Mere support – אֶסְמַכְתָּא בְּעִלְמָא: Sometimes the Gemara states that a verse cited as the basis for a *halakha* is merely an allusion to the *halakha* rather than its actual source. In such cases, the verse is called a support for the *halakha*. Since *halakhot* of this kind are not actually derived from the biblical text, which serves instead as a mnemonic device, they are generally rabbinic decrees. This is indicated in the Talmud by the phrase: The law is rabbinic, and the verse is a mere support.

Secondary forbidden relationships – שְׁנִיּוֹת: See diagram following this chapter, p. 160.

אָמַר רַב אֲשִׁי: מִשַּׁל דְּרַבִּי אוֹשְׁיָא לְמָה הִדְבֵּר דּוּמָה – לְאַדָּם מִשְׁמֶר פְּרִידָם, מִשְׁמֶר מִבְּחוּץ – כּוֹל מִשְׁתֵּמֶר, מִשְׁמֶר מִבְּפָנִים – שְׁלִפְנֵי מִשְׁתֵּמֶר, שְׁלֵאֲחֵרִי – אֵינוֹ מִשְׁתֵּמֶר. וְהָא דְרַב אֲשִׁי בְּדוּתָא הִיא: הֵתָם, שְׁלִפְנֵי מִיָּהָא מִשְׁתֵּמֶר, הֵכָא, אִי לֹא שְׁנִיּוֹת – פָּגַע בְּעֶרְוָה גּוּפָה.

רַב כְּהָנָא אָמַר מִהֵכָא: "וּשְׁמֶרְתָּ אֶת מִשְׁמֶרְתִּי" – עָשׂוּ מִשְׁמֶרֶת לְמִשְׁמֶרְתִּי.

אָמַר לִיָּה אֲבִי רַב יוֹסֵף: הָא – דְּאוֹרֵייתָא, הִיא דְּאוֹרֵייתָא וַיִּפְרְשׁוּ רַבְּנָן. כָּל הַתּוֹרָה נִמְי פִּרְשׁוּ רַבְּנָן! אֵלָּא: מִדְּרַבְּנָן, וּקְרָא – אֶסְמַכְתָּא בְּעִלְמָא.

תָּנוּ רַבְּנָן: מִהֵם שְׁנִיּוֹת? אִם אָמֹן, וְאִם אָבִיו, וְאִשְׁתּוֹ אֲבִי אָבִיו, וְאִשְׁתּוֹ אֲבִי אָמֹן, וְאִשְׁתּוֹ אֲחִי הָאָב מִן הָאֵם, וְאִשְׁתּוֹ אֲחִי הָאֵם מִן הָאָב, וְכֵלֶת בְּנוֹ, וְכֵלֶת בָּתוּ. וּמוֹתֵר אָדָם בְּאִשְׁתּוֹ חֲמִי וּבְאִשְׁתּוֹ חוֹרְגוֹ, וְאִסּוּר בְּבֵת חוֹרְגוֹ. וְחוֹרְגוֹ מוֹתֵר בְּאִשְׁתּוֹ וּבָתוּ.

Rav Ashi said a parable: To what is this matter, the opinion of Rabbi Oshaya, comparable? It is comparable to a man guarding an orchard; if he guards it from the outside, all of it is guarded. But if he guards it from the inside, only that which is in front of him that he can see is guarded, while that which is behind him is unguarded. The Gemara comments: And this parable of Rav Ashi is a mistake [*beduta*]^N and is not accurate. There, in his metaphor, that which is in front of him at least is guarded; here, in the case of forbidden relationships, were it not for the rabbinic decree against secondary forbidden relationships one would eventually encounter and transgress the biblically forbidden relationship itself. Guarding from the outside is not only preferable, it is essential.

Rav Kahana said that the prohibition of secondary forbidden relationships is alluded to from here, in the verse stated at the conclusion of the verses discussing the *halakhot* of forbidden relationships: "Therefore shall you protect [*ushmartem*] My prized possession [*mishmarti*], that you do not any of these abominable customs" (Leviticus 18:30). This means: Establish a safeguard [*mishmeret*] for My prized possession.^N

Abaye said to Rav Yosef: If the prohibition against secondary forbidden relationships is learned from here then it would be by Torah law, yet the prohibition against secondary forbidden relationships is by rabbinic law. He answered him: The requirement to add an additional safeguard itself is in fact by Torah law, and the Sages interpreted and defined where and when to apply this law. Abaye objected: But isn't all of the Torah also interpreted by the Sages and yet has the force of Torah law? In that case, why are these laws considered to be rabbinic? Rather, the prohibition of secondary forbidden relationships was decreed by rabbinic law, and the verse is a mere support⁸ but does not indicate a Torah law.

S The Sages taught in a *baraita*: What are the secondary forbidden relationships⁸ that were prohibited? His mother's mother, and his father's mother, and his father's father's wife,^H and his mother's father's wife, and the wife of his father's maternal half brother, and the wife of his mother's paternal half brother,^H and his son's daughter-in-law,^H and his daughter's daughter-in-law.^H A man is permitted to take his father-in-law's former wife,^H provided she is not the mother of his wife, and his stepson's wife,^H if the stepson died or divorced her. And he is prohibited from marrying the daughter of his stepson.^H And it is permitted for one's stepson to marry the stepfather's wife or daughter.^H

HALAKHA

His mother's mother, and his father's mother, and his father's father's wife – אָם אָמֹן, וְאִם אָבִיו, וְאִשְׁתּוֹ אֲבִי אָבִיו: One's mother's mother and one's father's mother and their mothers going back all generations, as well as the wife of his father's father and the wives of his fathers going back all generations are forbidden as secondary forbidden relationships by rabbinic law (Rambam *Sefer Nashim*, *Hilkhot Ishut* 1:6; *Shulhan Arukh*, *Even HaEzer* 15:2, 4–6).

His mother's father's wife and his uncles' wives – אִשְׁתּוֹ אֲבִי וְאִשְׁתּוֹ דְּאָבִי: His mother's father's wife is prohibited as a secondary forbidden relationship, as are the wife of his father's maternal half brother and the wife of his mother's maternal or paternal half brother. This prohibition applies only to these women themselves and not to their progenitors or descendants in accordance with the opinion of Ze'iri (Rambam *Sefer Nashim*, *Hilkhot Ishut* 1:6; *Shulhan Arukh*, *Even HaEzer* 15:7–9, 18).

His son's daughter-in-law – כֵּלֶת בְּנוֹ: The daughter-in-law of one's son is prohibited as a secondary forbidden relationship, as is his son's son's daughter-in-law, and daughters-in-law of all later generations (Rambam *Sefer Nashim*, *Hilkhot Ishut* 1:6; *Shulhan Arukh*, *Even HaEzer* 15:19).

His daughter's daughter-in-law – כֵּלֶת בָּתוּ: The daughter-in-law of one's daughter is prohibited as a forbidden secondary relationship, but this prohibition applies only to her alone and not to her descendants (Rambam *Sefer Nashim*, *Hilkhot Ishut* 1:6; *Shulhan Arukh*, *Even HaEzer* 15:20).

His father-in-law's wife – אִשְׁתּוֹ חֲמִי: One's father-in-law's wife who is not his wife's mother is permitted to him (Rif), based on the conclusion in the Gemara. Some hold that she is forbidden to him (*Sefer Halakhot Gedolot*; *Tosafot*) and follow the Jerusalem Talmud, which prohibits a relationship with her because it appears like a prohibition. Due to this dispute, marriage to her

should not be allowed *ab initio*, but if he takes her in marriage he need not divorce her (*Be'er Heitev on Shulhan Arukh*, *Even HaEzer* 15:24).

His stepson's wife – אִשְׁתּוֹ חוֹרְגוֹ: One is permitted to marry the former wife of his stepson (*Shulhan Arukh*, *Even HaEzer* 15:21).

The daughter of his stepson – בֵּת חוֹרְגוֹ: It is prohibited by Torah law to marry one's stepson's daughter, i.e., the daughter of his wife's son (*Shulhan Arukh*, *Even HaEzer* 15:13).

It is permitted for one's stepson to marry the stepfather's... daughter – חוֹרְגוֹ מוֹתֵר... וּבָתוּ: A woman is permitted to marry her stepbrother, the son of her mother's husband by another woman. So too, a man is permitted to marry the daughter of his mother's husband by another woman, even if they grew up together in the same household, as is stated explicitly in *Sota* 43b (*Shulhan Arukh*, *Even HaEzer* 15:11).

שניות – Secondary forbidden relations that have a conclusion – שיש להם הפסק: The four women listed by Rav and Ze'iri: The wife of one's mother's paternal half brother, the wife of one's father's maternal half brother, the wife of one's mother's father, and one's daughter's daughter-in-law, while forbidden as secondary relations, see an end to their prohibition, as it applies to them alone and not to their descendants. There are other secondary forbidden relations that have a conclusion, but only those listed in the *baraita* were mentioned (*Yam shel Shlomo*; Rambam *Sefer Nashim*, *Hilkhot Ishut* 1:6; *Shulhan Arukh*, *Even HaEzer* 15:18, 20).

ואשת חורגו אומרת לו: אני מותרת לך, ובתי אסורה לך.

Due to these rabbinic decrees concerning stepsons, unusual situations might arise. For example: **And his stepson's wife says to him, i.e., her husband's stepfather, I am permitted to you, but my daughter is forbidden to you**, since she is your stepson's daughter.

בת חורגו – דאורייתא היא, דכתיב: "את בת בנה ואת בת בתה" משום דקבעי למיתני סיפא: אשת חורגו אומרת לו: אני מותרת לך ובתי אסורה לך, ואף על גב דבתי אסורה לך מדאורייתא – בדירי לא גזור ביה רבנן, תנא רישא נמי בת חורגו.

The Gemara challenges that which is stated in the *baraita*: **His stepson's daughter** is not a secondary relation by rabbinic law. **She is forbidden by Torah law**, since the daughter of his stepson is the daughter of his wife's son, as it is written: "You shall not take her son's daughter or her daughter's daughter" (Leviticus 18:17). The Gemara answers: This case was included because the *baraita* wanted to teach the latter clause, which states: **His stepson's wife says to him: I am permitted to you, but my daughter is forbidden to you. And although my daughter is forbidden to you by Torah law, nevertheless the Sages did not issue a decree forbidding me.** Therefore, the case of his stepson's daughter was also taught in the first clause, even though she is forbidden by Torah law and is not a secondary relation.

אי הכי, אשת חמיו נמי תימא: אני מותרת לך ובתי אסורה לך, דהויא אחות אשתו! הא – פסיקא ליה, הא – לא פסיקא ליה.

The Gemara raises an objection: **If so**, that the *baraita* wished to teach this peculiarity, then why did it not teach: **His father-in-law's wife also says: I am permitted to you and my daughter is forbidden to you, as she is his wife's sister.** The Gemara answers: **This matter is conclusive for him.** In other words, his stepson's wife is forever permitted and his stepson's daughter is always forbidden to him. But as for the matter of his father-in-law's wife's daughter, **this is not conclusive for him.** This ruling is not final and might change, since if his wife dies her sister is permitted to him.

אמר רב: ארבע נשים יש להן הפסק. נקיט רב בידיה תלת: אשת אחי האם מן האב, ואשת אחי האב מן האם, וכלתו. וזעירי מוסיף אף אשת אבי אמו. אמר רב נחמן בר יצחק, וסימנך: דעילאי דרב.

Rav said that he received a tradition with regard to secondary forbidden relationships that **four women have a conclusion**;^h i.e., the prohibition does not continue to later generations but applies only to those women who were mentioned explicitly. **Rav held three of them in his hand**; he knew with certainty three of the four categories. They were: **The wife of his mother's paternal half brother, and the wife of his father's maternal half brother, and his daughter-in-law.** And Ze'eri adds: **Also the wife of his mother's father.** Rav Nahman bar Yitzhak said: **And your mnemonic** for remembering who said what is as follows: Ze'eri adds an extra generation **on top** of the prohibitions of Rav,ⁿ i.e., the wife of his mother's father, which Rav did not mention.

ורב, מאי טעמא לא חשיב ליה? מיחלפא ליה באשת אבי אביו.

The Gemara asks: **And what is the reason that Rav did not reckon this category** mentioned by Ze'eri to be among those who have a conclusion? The Gemara answers: In his opinion, this category might be mistakenly **switched with** the category of the wife of his father's father, which does not have a conclusion. With regard to the wife of his father, the prohibition applies equally to the wife of all ancestors in the father's line. Therefore, according to Rav, the Sages also included the ancestors of the mother's father's wife as secondary forbidden relationships.

וזעירי: להתם שכיו ואזיל, להכא – לא שכיו ואזיל.

The Gemara asks: **And why is Ze'eri not concerned that the two categories will become confused?** The Gemara answers: **He is often found there**, in his father's father's home, and goes there frequently, but **here**, to his mother's household, **he is not commonly found to go.** Since he goes to his father's home frequently, he knows that his father's relatives are forbidden to him, and he will not confuse them with his mother's relatives.

בלתו Among the women enumerated by Rav is his daughter-in-law.

NOTES

On top of Rav – עילאי דרב: The mnemonic refers to the names of the Rabbis: The word *rav* means large and the word *ze'ir* means small. Normally a small item is placed on top of a larger one.

HALAKHA

His daughter-in-law and his son's daughter-in-law – **בְּלָתוֹ וְכֵלָתוֹ בְּנוֹ**: One's son's wife is forbidden to him by Torah law, and his son's son's wife is forbidden by rabbinic law. This prohibition has no conclusion (Rambam *Sefer Nashim*, *Hilkhot Ishut* 1:6; *Shulḥan Arukh*, *Even HaEzer* 15:19).

The wife of a mother's brother – **אֵשֶׁת אָחִי הָאֵם**: The wife of one's mother's maternal or paternal brother is forbidden by rabbinic law, as per the conclusion of the Gemara's discussion according to the statement of Rav Yehuda bar Sheila (Rambam *Sefer Nashim*, *Hilkhot Ishut* 1:6; *Shulḥan Arukh*, *Even HaEzer* 15:9, 18).

BACKGROUND

Chaldean – **כַּלְדָּאִי**: The term Chaldean is a synonym for Chasdean, one of the names for the Babylonian people. This term is used in the Bible as a synonym for stargazers or astrologers, as in the following verse: "Then the king commanded to call the magicians, and the enchanters, and the sorcerers, and the Chaldeans, to tell the king his dreams" (Daniel 2:2).

Some Sages prohibited consulting astrologers to discern the future, based on the Torah injunction: "You shall be wholehearted with the Lord your God" (Deuteronomy 18:13). Nevertheless, many people did consult with them. Although the Sages accepted the belief that astrologers had certain powers to foretell the future, they advised that astrologers should be neither consulted nor overly trusted.

NOTES

For example, the daughters-in-law of the house of bar Tzitzai – **בְּנוֹת בְּלָתָהּ דְּבִי בַר צִיטַי**: The *Arukh* explains that Tzitzai was an important man in his generation, and for this reason all his daughters-in-law would boast of their family connection to him, including his son's daughters-in-law and his daughter's daughters-in-law.

דאורייתא היא, דכתיב "ערוֹת בְּלָתֶךָ לֹא תִגְלֶה" (Leviticus 18:15). The Gemara emends: Say instead his son's daughter-in-law.¹⁴ The Gemara asks: And does the prohibition against having a relationship with his son's daughter-in-law indeed have a conclusion? Isn't it taught in a *baraita*: His daughter-in-law is a forbidden relation by Torah law, his son's daughter-in-law is a secondary forbidden relation, and similarly, you say the daughter-in-law of his son and the daughter-in-law of his son's son until the end of all generations are secondary forbidden relationships. Rather, say instead that Rav was referring to his daughter's daughter-in-law.

דאמר רב חסדא: הא מילתא מגברא רבה שמייע לי, ומנו – רבי אמי: לא אסרו בלתי אלא מפני בלתי. ואמרו לי בלדאי: מלפני הוית.

אמינא: אי גברא רבה הויןא – אסברא מדעתא, אי מקרי דרדקי הויןא – אשיילא מרבנן דאתו לבי בנישטא. השתא סברתה מדעתא: לא אסרו בלתי בתו אלא משום בלתי בנ.

אמר ליה אביי לרבא: אסברה לך, בגון בלתי דבי בר ציתאי. רב פפא אמר: בגון בלתי דבי רב פפא בר אבא. רב אשי אמר: בגון בלתי דבי מרי בר איסק.

איבעיא להו: אשת אחי האם מן האם, מהו? אשת אחי האב מן האם, ואשת אחי האם מן האב, דאיכא צד אב – הוא דגורו רבנן, אבל היכא דליכא צד אב לא גזרו בהו רבנן, או דלמא לא שניא?

The Gemara asks: Is this relationship not forbidden by Torah law? As it is written: "You shall not uncover the nakedness of your daughter-in-law" (Leviticus 18:15). The Gemara emends: Say instead his son's daughter-in-law.¹⁴ The Gemara asks: And does the prohibition against having a relationship with his son's daughter-in-law indeed have a conclusion? Isn't it taught in a *baraita*: His daughter-in-law is a forbidden relation by Torah law, his son's daughter-in-law is a secondary forbidden relation, and similarly, you say the daughter-in-law of his son and the daughter-in-law of his son's son until the end of all generations are secondary forbidden relationships. Rather, say instead that Rav was referring to his daughter's daughter-in-law.

As Rav Hisda said: I heard this matter from a great man, and who was that great man? It was Rabbi Ami,¹⁵ and he said: They prohibited a daughter-in-law only due to the daughter-in-law. Rav Hisda heard this in his youth but did not understand the meaning. The Chaldean astrologers¹⁶ said to me: You will be a teacher.

Rav Hisda further said: I said to myself: If the astrologers meant that I will become a great man and one who teaches the public, I will certainly be able to reason and understand this matter with my knowledge. If the astrologers meant that I will become the teacher of children, I will ask it of the Sages who come to the synagogue and in that way I will learn the meaning of Rabbi Ami's teaching. Now I understand the matter on my own. Rabbi Ami meant: They prohibited his daughter's daughter-in-law only due to his son's daughter-in-law, to avoid confusion between these daughters-in-law. The rabbinic decree prohibited one's daughter's daughter-in-law but did not extend to subsequent generations.

Various Sages proceed to give contemporary examples of families where the halakhic status of the daughters-in-law of the sons and the daughters-in-law of the daughters could be confused with each other. Abaye said to Rava: I will explain to you with an example how one might become confused about these daughters-in-law. For example, this would be possible in the case of the daughter-in-law of the house of bar Tzitzai,¹⁷ as there the children of the sons and the daughters of the same family lived together, and it was possible to confuse the halakhic status of the sons' daughters-in-law and the daughters' daughters-in-law. Rav Pappa said: For example, the daughter-in-law of the house of Rav Pappa bar Abba. Rav Ashi said: For example, the daughter-in-law of the house of Mari bar Isak.

§ A dilemma was raised before the Sages: What is the *halakha* with regard to the wife of one's mother's maternal half brother?¹⁸ The Gemara presents the different sides of the question: Both the wife of one's father's maternal half brother and the wife of one's mother's paternal half brother contain some aspect of a father, and perhaps this is the reason that the Sages enacted a prohibition. That is, they were both forbidden rabbinically to avoid confusion with the case of the wife of one's father's paternal half brother, who is forbidden by Torah law. But in the case of the wife of one's mother's maternal half brother, where there is no aspect of a father whatsoever, perhaps the Sages did not make a decree? Or perhaps this case is no different?

PERSONALITIES

A great man... Rabbi Ami – **רבא רבה**: Rabbi Ami was a well-known third-generation *amora* who lived in Eretz Yisrael at the end of the third century CE. He headed the yeshiva in Tiberias together with his colleague Rabbi Asi after the deaths of Rabbi Yohanan and Rabbi Elazar. Rabbi Ami considered Rabbi Yohanan to be his primary teacher, although he also studied under Reish Lakish, Rabbi Elazar, Rabbi Oshaya, and Rabbi Yehoshua ben Levi.

During Rav Huna's lifetime Rabbi Ami deferred to his halakhic decisions, but after his death Rabbi Ami was considered the foremost authority. It may have been for this reason that he was known as a great man. In answer to one of the questions he received, he wrote: From me, Ami bar Natan, Torah emanates to all of Israel (*Gittin* 44a). Among those who sent him their queries were Rabbi Abbahu, Rav Nahman, and Rava.

גזירה – גזירה – The reason that the Sages did not issue decrees to prevent violation of a decree is because although the Torah says that they must establish a fence around the mitzvot, they were not instructed to make a fence around that fence because, if that were to be done, it could continue ad infinitum. In some cases, however, the Gemara discusses a decree to prevent violation of another decree, and in those cases the Gemara explains that all the decrees were part of one original decree.

HALAKHA

אם – אם – His mother's mother and his father's mother – **אמו ואם אביו**: One's mother is forbidden by Torah law, and one's mother's mother is forbidden by rabbinic law. The Sages decreed that one's father's mother is forbidden as well (Rambam *Sefer Nashim, Hilkhot Ishut* 1:6; *Shulhan Arukh, Even HaEzer* 15:2, 4).

אשת אביו האב ואביו האם – The wife of one's father's father and of one's mother's father – **אשת אביו האב ואביו האם**: One's father's wife is forbidden by Torah law, and one's father's father's wife and one's mother's father's wife are forbidden as secondary relations by rabbinic law (*Shulhan Arukh, Even HaEzer* 15:5–7).

אשת אחי האב – The wife of one's father's paternal half brother is forbidden by Torah law, and the wife of one's father's maternal half brother is forbidden by rabbinic law (*Shulhan Arukh, Even HaEzer* 15:18).

חורגתו – חורגתו – His stepdaughter and his stepson's wife – **חורגתו**: One's stepdaughter is forbidden by Torah law, but one's stepson's wife is permitted (*Shulhan Arukh, Even HaEzer* 15:13, 21).

NOTES

Every female relative who is a forbidden relation, etc. – **כל שבנקה ערוהו** – According to the Gemara's conclusion, this principle applies in only a few cases. The Gemara is not stating a principle with regard to all forbidden relations but only with regard to aunts. Since one's father's sisters and mother's sisters and the wife of one's father's paternal half brother are forbidden by Torah law, the Sages decreed that anyone who is called an aunt is also forbidden, to avoid confusion between them (Ritva).

אמר רב ספרא: היא גופה גזירה, ואנן ניקום ונגזור גזירה לגזירה? **אמר רבא:** **אטו בוליהו לאו גזירה לגזירה ניהו?** **אמו – ערוה, אם אמו – שניה, וגורו על אם אביו משום אם אמו. וטעמא מאי?** **בוליהו "דבי אימא רבתי" קרו ליה.**

אשת אביו – ערוה, אשת אביו אביו – שניה, וגורו על אשת אביו אביו משום אשת אביו אביו, וטעמא מאי? **בוליהו "דבי אבא רבה" קרו ליה.**

אשת אחי האב מן האב – ערוה, אשת אחי האב מן האם – שניה, וגורו על אשת אחי האב מן האב משום אשת אחי האב מן האם, וטעמא מאי – משום דבוליהו "דבי דודי" קרי להו.

מאי תא שמע: דבי אתא רב יהודה בר שילא אמר: אמרי במערבא: כל שבנקה ערוה – בזכר גורו על אשתו משום שניה.

ואמר רבא: וכללא הוא? חמותו – ערוה, אשת חמיו מותרת. בת חמותו – ערוה, אשת בן חמותו מותרת. בת חמיו – ערוה, אשת בן חמיו – מותרת. חורגתו – ערוה, אשת חורגו – מותרת. בת חורגתו – ערוה, אשת בן חורגו מותרת.

והא דרב יהודה בר שילא לאיתויי מאי? לאו לאיתויי אשת אחי האם מן האם, דכל שבנקה ערוה – בזכר גורו אשתו משום שניה!

מאי שנא הני ומאי שנא הא? הא – בחד קידושין מקרב לה, הני – עד דאיבא תרי קידושין לא מקרב להו.

Rav Safra said: She herself, the wife of the mother's paternal half brother, is forbidden by rabbinic decree, and will we then proceed to issue a decree to prevent violation of a decree?⁸ Rava said: Is that to say that all of these rabbinic decrees with regard to secondary relations are not decrees to prevent violation of a decree? For example, his mother is a forbidden relation by Torah law, and the Sages decreed that his mother's mother is a secondary forbidden relationship. And they decreed that his father's mother is also a secondary forbidden relationship due to his mother's mother.⁹ And what is the reason? They are all called the house of the grandmother, and therefore people may confuse their halakhic status.

Rava continues: Similarly, his father's wife is a forbidden relation by Torah law, and the Sages decreed that his father's father's wife is a secondary forbidden relationship. And they decreed that his mother's father's wife is also a secondary forbidden relationship due to his father's father's wife.¹⁰ And what is the reason? They are all called the house of the grandfather.

Also, the wife of his father's paternal half brother, his uncle, who is mentioned explicitly in the Torah (Leviticus 18:16), is a forbidden relation by Torah law, and the Sages decreed that the wife of his father's maternal half brother¹¹ is a secondary forbidden relationship. And they decreed that the wife of his mother's paternal half brother is also a secondary forbidden relationship due to the wife of his father's maternal half brother. And what is the reason? It is because they are all called the house of the uncle; it seems that in the realm of forbidden relations the Sages did issue decrees to prevent violation of a decree, and Rav Safra's claim is incorrect.

If so, then what is the *halakha* in this case of the wife of his mother's maternal half brother? Come and hear: As when Rav Yehuda bar Sheila came from Eretz Yisrael to Babylonia, he said: In the West, Eretz Yisrael, they say this principle: For every female relative who is a forbidden relation¹² by Torah law, the Sages decreed on the wife of the equivalent male relative due to her similarity to a secondary forbidden relationship.

And Rava said: Is this really an established principle? Isn't his mother-in-law a forbidden relation by Torah law, while his father-in-law's wife is permitted? Also, his mother-in-law's daughter is a forbidden relation by Torah law, as she is his wife's sister, yet his mother-in-law's son's wife is permitted. His father-in-law's daughter is a forbidden relation by Torah law, yet the wife of his father-in-law's son is permitted. His stepdaughter is a forbidden relation by Torah law, yet his stepson's wife¹³ is permitted. His stepdaughter's daughter, i.e., his wife's granddaughter, is a forbidden relation, yet the wife of his stepson's son is permitted.

The Gemara continues: If so, what did that statement of Rav Yehuda bar Sheila come to include? Since his principle is not true in every case, it must be intended to include a specific *halakha*. Does it not come to include the case of the wife of one's mother's maternal half brother, since for every female relative who is a forbidden relation by Torah law, such as his mother's maternal half sister, the Sages decreed on the wife of the equivalent male relative, in this case his mother's maternal half brother's wife, due to her similarity to a secondary relation.

The Gemara asks: What is different with regard to these cases, the wife of his father-in-law or the wife of his mother-in-law's son, who are permitted, and this case of the wife of a mother's maternal half brother, who is prohibited? The Gemara answers: This, the wife of a mother's maternal half brother, is related by a single act of betrothal. One's mother's brother is a blood relative, and his wife is therefore a secondary relation. In contrast, these other cases with regard to which the Sages did not issue a decree are related only when there are two acts of betrothal. For example, one's father-in-law is related to one through one's marriage to his own wife, and his father in law's wife is related to him through his father-in-law's marriage.

NOTES

The wife of a father's father's brother, etc. – אִשְׁתְּ אָחִי – אָבִי הָאָבִיכִי: The early commentaries ask why the Gemara did not similarly inquire about the sister of one's mother's mother, as she is an equally close relative. They answered that the Gemara did not ask about every possible case, but took these two cases as examples. These specific cases were used because the Gemara's question is based on the fact that one generation below them is a forbidden relation by Torah law.

HALAKHA

The wife of one's father's father's brother, etc. – אִשְׁתְּ אָחִי אָבִי אָבִיכִי: The wife of one's father's father's paternal half brother is permitted as well as both the maternal and paternal half sisters of one's father's father, in accordance with the statement of Ameimar. This is the *halakha* according to *She'iltot deRav Aḥai Gaon* and Rabbeinu Ḥananel and is also the opinion of the Rambam and the Rif. There is an opinion that these relations are forbidden (*Tur*, citing Ri; *Rosh* on *Yevamot* 40b). The *halakha* is ruled in accordance with the first opinion (*Shulḥan Arukh, Even HaEzer* 15:18).

PERSONALITIES

Mar, son of Rabbana – מַר בְּרִיה דְּרַבְנָא: Mar, son of Rabbana, was also known as Mar, son of Ravina. He was one of the outstanding fourth-generation Babylonian *amora'im* and the son of Ravina I. He was renowned in the Talmud as an extremely God-fearing man, and others derived proper behavior for a God-fearing individual from his conduct. He was vigilant in avoiding excessive levity or any matter that lessened the appropriate deference to God. He was particularly careful in his choice of words in order to avoid any possibility of affronting his teachers. He studied primarily with Rav Nahman bar Yitzhak as a disciple-colleague. The Talmud relates that he left halakhic notes that served as the basis for discussion in subsequent generations.

שָׁלַח לִיהָ רַב מִשְׁרָשִׁיָּא מִתּוֹסְנִיָּא
לְרַב פַּפִּי: יִלְמְדֵנוּ רַבִּינוּ, אִשְׁתְּ אָחִי
אָבִי הָאָבִי, וְאֶחָת אָבִי הָאָבִי, מִהוּ?
מִדְּלִמְטָה עֲרוּהָ – לְמַעַלָּה נִמְי וְזוּרֵי בֵּיהָ,
אִי דְלָמָּא, הָאֵל אֵיתְפְּלִיג דְּרִתָּא?

תָּא שְׁמַע: "מִהָ הֵן שְׁנִיּוֹת", וְלֹא קִחְשִׁיב
לְהוּ בְּהִדְיָהּ.

תֵּנָא וְשִׁייר. מַאי שְׁייר דְּהָאֵי שְׁייר?
שְׁייר שְׁנִיּוֹת דְּבִי רַבִּי חִיָּא.

אֲמַיְמַר אֲכֶשֶׁר בְּאִשְׁתְּ אָחִי אָבִי אָבִיכִי,
וּבְאֶחָת אָבִי אָבִיכִי. אָמַר לִיהָ רַב הִלֵּל
לְרַב אֲשִׁי: לְדִידִי חֲזִיָּא לִי שְׁנִיּוֹת
מִרַבִּי בְּרִיה דְּרַבְנָא, וּכְתִיבֵן שִׁיתְסָרִי
לְאִיסוּרָא. מַאי לָאו תִּמְנִי דְּמִתְנִיָּתָא
וְשִׁית דְּבִי רַבִּי חִיָּא. וְהִנֵּן תִּרְתִּי – הָאֵל
שִׁיתְסָרִי!

וְלִטְעֵמִיךְ שִׁיתְסָרִי הָוִין, דְּהָא אִיכָּא
אִשְׁתְּ אָחִי הָאֵם מִן הָאֵם, דְּפִשְׁטִין
לְאִיסוּרָא! הָאֵל לֹא קִשְׁיָא.

S Rav Mesharshiyya from Tusneya sent a message to Rav Pappi: Let our Master teach us: What is the *halakha* with regard to the wife of a father's father's brotherⁿ and the sister of a father's father? Did the Sages prohibit these as secondary forbidden relations? The Gemara presents the different sides of the dilemma: Since one generation below is a forbidden relation, i.e., a father's sister and the wife of a father's paternal brother, who are both forbidden by Torah law, perhaps the Sages also decreed about the women one generation above. Or, perhaps the generations are separate and the women in the generation above are not considered to be forbidden relatives.

The Gemara attempts to answer: Come and hear from that *baraita* cited above, which taught: What are the secondary forbidden relationships that were prohibited? And these women, i.e., the wife of one's father's father's brother and the sister of his father's father were not reckoned among them. This implies that these women are permitted.

The Gemara replies that this is not conclusive. Perhaps the *tanna* of the *baraita* taught some examples and omitted other examples of secondary forbidden relations; i.e., perhaps the list is not exhaustive. The Gemara asks: What else did he omit that he omitted this? It cannot be that the *tanna* had an exhaustive list except for one case. He either left out more than one case or he included all possible cases. The Gemara answers: He omitted the list of secondary forbidden relationships that were enumerated by the school of Rabbi Ḥiyya, which is listed later. Therefore, this *baraita* is not conclusive, as the *tanna* left out many cases.

The Gemara states that Ameimar permitted the wife of one's father's father's brotherⁿ and the sister of one's father's father. Rav Hillel said to Rav Ashi, challenging Ameimar's statement: I myself saw a list of secondary forbidden relationships written by Mar, son of Rabbana,^p and it was written there that sixteen women were forbidden. What, is it not that these sixteen must be the eight cases listed in the *baraita*, and six from the school of Rabbi Ḥiyya, and these two cases of the wife of one's father's father's brother and one's father's father's sister, and this totals sixteen?

Rav Ashi defended Ameimar's opinion: And according to your reasoning, Rav Hillel, that these cases should be included, there are seventeen cases, as there is the additional case of the wife of a mother's maternal half brother, whose status was resolved earlier, concluding that she is forbidden. If it is as you say, then there should be seventeen cases. The Gemara answers on behalf of Rav Hillel: This is not difficult.

Those two, the wife of a father's father's brother and the sister of a father's father, are similar to each other and are counted as a single case, and so there are sixteen. The Gemara restates Rav Hillel's challenge to Ameimar's opinion: But in any case I myself saw them written as prohibited. Rav Ashi said to Rav Hillel: And according to your reasoning, if in the list it was written that they were permitted, would you have relied on that? Is the signature of Mar, son of Rabbana, signed on it? Although you saw the list, you don't know for certain who wrote it. Now too, that it is written that they are prohibited, the same holds true; the signature of Mar, son of Rabbana, is not signed on it, and so it cannot be relied upon to reject the opinion of Ameimar.

הִנֵּן תִּרְתִּי דְּמִיָּין לְהִדְדִּי – בְּחִדָּא
חֲשִׁיב לְהוּ, וְהָאֵל שִׁיתְסָרִי. וְהָאֵל מִכָּל
מְקוֹם לְדִידִי חֲזִיָּין לִן דְּכִתְבֵן לְאִיסוּרָא!
אָמַר לִיהָ: וְלִטְעֵמִיךְ, אִי הָיָה כְּתִיב
לְהִיתִירָא – מִי הָיוּ סְמַכְתָּ עֲלֵיהוּ?
דְּמַר בְּרִיה דְּרַבְנָא – מִי חֲתִים עֲלֵיהוּ?
הִשְׁתָּא נִמְי דְּכְתִיב לְאִיסוּרָא – לָאו מִר
בְּרִיה דְּרַבְנָא חֲתִים עֲלֵיהוּ.

Perek II

Daf 22 Amud a

The third generation from one's son and one's daughter – **שְׁלִישִׁי שְׂבָבָנוּ וְשְׂבָבְתוֹ**: One's great-granddaughter is forbidden as a secondary relation (Rambam *Sefer Nashim*, *Hilkhot Ishut* 1:6; *Shulḥan Arukh*, *Even HaEzer* 15:12).

The third generation from the son and daughter of his wife – **שְׁלִישִׁי שְׂבָבָנוּ וְשְׂבָבְתוֹ אִשְׁתּוֹ**: One's wife's great-granddaughter is forbidden as a secondary relation (*Shulḥan Arukh*, *Even HaEzer* 15:14; and see Rambam *Sefer Nashim*, *Hilkhot Ishut* 1:6 and *Kesef Mishne* there).

The fourth generation from his father-in-law and from his mother-in-law – **רְבִיעִי שְׂבָבָנוּ וְשְׂבָבְתוֹ**: One's wife's great-grandmother is forbidden as a secondary relation (Rambam *Sefer Nashim*, *Hilkhot Ishut* 1:6; *Shulḥan Arukh*, *Even HaEzer* 15:15).

A conclusion for the secondary forbidden relationships of Rabbi Ḥiyya – **הֶפְסֵק בְּשִׁנּוֹת דְּרָבִי חִיָּיא**: The Rosh holds that the secondary relations enumerated by Rabbi Ḥiyya do not end but continue upward and downward for all generations (see Ramban). According to the Rambam they do end, since the Gemara does not give a definitive answer, and in cases of uncertainty with regard to rabbinic decrees, the *halakha* is ruled in accordance with the lenient opinion (Rambam *Sefer Nashim*, *Hilkhot Ishut* 1:6; *Shulḥan Arukh*, *Even HaEzer* 15:15).

תַּנִּי דְּבִי רַבִּי חִיָּיא: שְׁלִישִׁי שְׂבָבָנוּ וְשְׂבָבְתוֹ: וְשְׂבָבָנוּ אִשְׁתּוֹ וְשְׂבָבְתוֹ – שְׁנִיָּה, רְבִיעִי שְׂבָבָנוּ וְשְׂבָבְתוֹ – שְׁנִיָּה.

אָמַר לִיה רַבִּינָא לְרַב אָשִׁי: מַאי שָׁנָא לְמַעְלָה, דְּקָחָשִׁיב לָהּ לְאִשְׁתּוֹ, וּמַאי שָׁנָא לְמַטָּה, דְּלֹא קָחָשִׁיב לָהּ לְאִשְׁתּוֹ? לְמַעְלָה, דְּאִסּוּרָא מִבְּחָ אִשְׁתּוֹ קָא אָתִי, חָשִׁיב לָהּ. לְמַטָּה, דְּאִסּוּרָא לֹא מִבְּחָ אִשְׁתּוֹ קָאָתִי – לֹא קָחָשִׁיב לָהּ.

וְהָא בְּנֵי אִשְׁתּוֹ וּבְתוֹ אִשְׁתּוֹ, דְּאִסּוּרָא מִבְּחָ אִשְׁתּוֹ קָאָתִי וְלֹא חָשִׁיב לָהּ! אֲיִידֵי דְּתַנָּא שְׁלִישָׁה דְּוֵרוֹת לְמַטָּה דִּידֵיהּ, וְלֹא חָשִׁיבָהּ, תַּנָּא נָמִי שְׁלִישָׁה דְּוֵרוֹת לְמַטָּה דִּידֵיהּ וְלֹא חָשִׁיבָהּ.

אָמַר לִיה רַב אָשִׁי לְרַב כְּהֵנָּא: שְׁנִיָּת דְּבִי רַבִּי חִיָּיא יֵשׁ לְהֵן הֶפְסֵק אוֹ אִין לָהֶם הֶפְסֵק?

תָּא שְׁמַע דְּאָמַר רַב: אַרְבַּע נָשִׁים יֵשׁ לָהֶם הֶפְסֵק, וְתוֹ לֹא. דְּלָמָּא, כִּי קָאָמַר רַב – לְהָיִיא מִתְּנִיתָא: תָּא שְׁמַע, שְׁלִישִׁי וּרְבִיעִי, שְׁלִישִׁי וּרְבִיעִי – אִין, טָפִי – לֹא! דְּלָמָּא מְשֻׁלָּשִׁי וְאִילָךְ, מְרַבֵּיעִי וְאִילָךְ.

אָמַר לִיה רַבָּא לְרַב נַחֲמָן: חֲזִי מָר הָאִי מְרַבְּנָן דְּאִתָּא מִמַּעַרְבָא וְאָמַר: בְּעוּ בְּמַעַרְבָא, גְּזֵרוֹ שְׁנִיָּת בְּגֵרִים אוֹ לֹא גְּזֵרוֹ שְׁנִיָּת בְּגֵרִים?

§ One of the Sages of the school of Rabbi Ḥiyya taught: The third generation from one's son and one's daughter,¹⁸ i.e., one's great-grandchildren, and the third generation from his wife's son and his wife's daughter,¹⁹ i.e., one's wife's great-grandchildren, are all forbidden as secondary forbidden relationships. So too, the fourth generation from his father-in-law and from his mother-in-law,²⁰ i.e., his wife's great-grandmothers, are prohibited as secondary forbidden relationships.

Ravina said to Rav Ashi: What is different between the generations above, referring to his wife's great-grandmothers, such that the Sage counts his wife as one of the generations and refers to them as the fourth generation, and what is different with regard to the generations below, referring to his great-granddaughters, such that he did not count his wife and referred to them as only the third generation? The Gemara answers: When counting above, the prohibition stems from his wife, as they are not his blood relatives but his wife's. Therefore, she is counted. When counting below, however, the prohibition does not stem from his wife, as they are his own blood relatives, and so she was not counted.

The Gemara objects: But he includes the granddaughter of his wife's son and his wife's daughter in his list of those forbidden due to his wife, yet he does not count her and refer to this as the fourth generation. The Gemara answers: Since he already taught three generations below himself, i.e., his own great-granddaughter, and there he did not count from his wife because it is his own blood relative, he taught three generations below his wife and did not count her. Instead, he referred to her great-granddaughter also as three generations below to maintain the uniform style of his words.

Rav Ashi said to Rav Kahana: Do those secondary forbidden relationships taught by one of the Sages of the school of Rabbi Ḥiyya have a conclusion,²¹ or do they not have a conclusion? Are those specified cases alone forbidden, or are all generations above and below also forbidden?

Come and hear that which Rav said: Four women have a conclusion. This implies that it is only these four and no more. The Gemara rejects this: Perhaps when Rav said this he was referring only to the relationships listed in the *baraita* and not to all cases of secondary relationships. The Gemara suggests: Come and hear from the *baraita* itself, which states: The third generation from his son and his daughter and the fourth generation from his father-in-law and mother-in-law. This implies that with regard to the third and the fourth generations, yes, they are forbidden; but more than that, no. The Gemara rejects this: Perhaps this means from the third onward and from the fourth onward. The Gemara does not resolve this issue.

§ Rava said to Rav Nahman: Did the Master see this one of the Sages who came from the West, Eretz Yisrael, who said: In the West they asked whether the Sages issued a decree prohibiting secondary forbidden relationships for converts, or whether they did not issue a decree prohibiting secondary forbidden relationships for converts?²²

NOTES

¹⁸שְׁנִיָּת בְּגֵרִים – Secondary forbidden relationships for converts – The reason for the rabbinic prohibition against marriage of converts to their relatives is lest the converts say that they came from a more stringent sanctity as gentiles to a state of lesser sanctity as Jews, since previously forbidden relationships

would then be permitted to them. The Ritva writes that by this rationale, in the case of one who converts to Judaism from a religion that is more stringent with regard to forbidden relationships, these relations should remain forbidden to the convert even after his conversion to Judaism.

Forbidden relations for a convert – איסור עריות בגר – By Torah law it is permitted for a convert to marry any of his relatives who converted, even his mother or sister. However, the Sages decreed it prohibited for converts to marry close relatives so that one who converted would not think that he came from a greater state of sanctity, before he was Jewish, into a state of lesser sanctity (Rambam *Sefer Kedusha*, *Hilkhot Issurei Bia* 14:12; *Shulḥan Arukh*, *Yoreh De'a* 269:1).

Secondary relationships for a convert – שניות בגר – The Sages did not render prohibited secondary relationships of converts. Therefore, a convert may marry his maternal grandmother. Similarly, a born Jew is permitted to marry a converted woman and her maternal grandmother, though marrying a woman and her grandmother who were born Jewish is a rabbinic prohibition (*Shulḥan Arukh*, *Yoreh De'a* 269:8).

Testimony of related converts – עדות גרים קרובים – Once a gentile converts, his biological relations no longer have the legal status of relations. Even if twin brothers convert, they may testify together as a pair of witnesses (Rambam *Sefer Shofetim*, *Hilkhot Edut* 13:2; *Shulḥan Arukh*, *Yoreh De'a* 269:10 and *Hoshen Mishpat* 33:11).

The legal status of a convert who just converted is like that of a child just born – גר שנתגייר כקטן שנולד דמי – A gentile who converts and a freed gentile slave have the legal status of newly born children, and any previous familial relationships are considered nonexistent (Rambam *Sefer Kedusha*, *Hilkhot Issurei Bia* 14:11; *Shulḥan Arukh*, *Yoreh De'a* 269:10 and *Hoshen Mishpat* 33:11).

A brother of any kind – אָח מְבֹלֵ מְקוֹם – Every paternal half brother, even if he is of flawed lineage or a *mamzer*, causes his *yevama* to require levirate marriage or *ḥalitza*. A half brother whose mother is a gentile or a Canaanite maidservant is not considered a brother in this regard (Rambam *Sefer Nashim*, *Hilkhot Yibbum Vaḥalitza* 1:6; *Shulḥan Arukh*, *Even HaEzer* 157:1).

A child of any kind – בֶּן מְבֹלֵ מְקוֹם – If one dies and leaves a child or any descendants, whether of unflawed or flawed lineage, even a *mamzer*, his widow is exempt from levirate marriage. This holds true in all cases except for children from Canaanite maidservants or gentile women (Rambam *Sefer Nashim*, *Hilkhot Yibbum Vaḥalitza* 1:3–4; *Shulḥan Arukh*, *Even HaEzer* 156:2).

NOTES

In what way is this case different from forbidden relations – זמאי שנא מעריות: *Tosafot* ask: The reason just given, i.e., lest it be said that the converts came from a more stringent level of sanctity to a more lenient level, should be sufficient to explain the difference between forbidden relations and testimony. With regard to the *halakhot* of testimony there is no disqualification for gentiles who are related. They explain that the primary reason for the rabbinic decree is to avoid confusion with regard to such relationships between Jews. This rationale fits with the opinion that maternal brothers may not testify together *ab initio*, as in such a case there is also a concern that it may lead to confusion (see Ritva; *Tosafot Yeshanim*).

A brother of any kind – אָח מְבֹלֵ מְקוֹם – The Gemara explains that this expression was adopted in order to teach the additional case of a brother who is a *mamzer*. This discussion is also the basis for those early commentaries who rule that a brother who converts to another religion still causes his *yevama* to require levirate marriage. Some commentaries differentiated between a brother who had already converted to another religion at the time of his brother's marriage and one who converted after the marriage (see *Otzar HaGe'onim*; Ritva).

אמר ליה: השתא, ומה ערוה גופה, אי לאו שלא יאמרו באין מקדושה חמורה לקדושה קלה לא גזרו בהו רבנן – שניות מיבעיא?!

אמר רב נחמן: גרים, הואיל ואתו לידן נמא בהו מלתא: אחין מן האם לא יעידו, ואם העידו – עדותן עדות. אחין מן האב מעידין לבתחלה. אמרימא אמר: אפילו אחין מן האם נמי מעידין לבתחלה.

ומאי שנא מעריות? ערוה לכל מסורה, עדות – לבית דין מסורה, וגר שנתגייר כקטן שנולד דמי.

מתני' מי שיש לו אח מבל מקום – זקק את אשת אחיו ליבום, ואחיו הוא לכל דבר, חוץ ממי שיש לו אח מן השפחה ומן הגויה. מי שיש לו בן מבל מקום – פטר אשת אביו מן היבום, וחייב על מכתו ועל קללתו, ובנו לכל דבר – חוץ ממי שיש לו בן מן השפחה ומן הגויה.

Rav Naḥman did not answer whether he had seen this Sage, but said to him: Now, with regard to all the forbidden relationships themselves, were it not for the fact that if converts would find that as Jews they were permitted to enter into relationships that were forbidden to them as gentiles and would say that they went from a state of more stringent sanctity as gentiles to a state of lesser sanctity as Jews, then the Sages would not have decreed to prohibit these relationships.⁴ Without the rabbinic decree it would have been permitted for a convert to marry even a close female relative, even his twin sister, who also converted. This is because a convert has the legal status of a newborn, with no family ties. Is it necessary to state that the Sages did not extend that decree to include secondary forbidden relationships?⁴ The purpose of the rabbinic prohibitions is to protect the Torah prohibitions, but in the case of converts this particular Torah prohibition does not apply.

Rav Naḥman said: Since the issue of converts and their relatives has come to hand and is the topic of discussion, let us say a matter of *halakha*: Maternal half brothers who both convert may not testify together as a pair of witnesses before the court, but if they did testify, their testimony is valid. Although blood relatives are invalid as witnesses, converts are considered as though they have no relations. Paternal half brothers who both convert may testify together *ab initio*, since the *halakha* does not consider paternal half brothers of gentiles to be true relatives. Ameimar said: Even maternal half brothers may also testify together *ab initio*.⁴

In what way is this case different from forbidden relations,⁴ where a convert may not marry his maternal sister due to rabbinic decree? The *halakhot* of forbidden relations are handed over to all, and every individual chooses his own wife. Therefore, the Sages issued a decree to prevent confusion between the status of a convert and that of a born Jew. However, testimony is handed over to the court, and the court knows to distinguish between the status of a born Jew and that of a convert. And the legal status of a convert who just converted is like that of a child just born,^{4b} and all previous family ties become irrelevant.

MISHNA In the case of anyone who has a brother of any kind,^{4b} that brother creates a levirate bond causing his *yevama* to be required to perform levirate marriage if the first brother dies childless. And he is his brother in all respects, except for one who has a brother born from a Canaanite maidservant or from a gentile woman, as these do not have the legal status of brothers. Similarly, in the case of anyone who has a child of any kind,⁴ that child exempts his father's wife from levirate marriage, since his father did not die childless. And that child is liable to receive capital punishment if he strikes his father or curses him. And he is his child in all respects, except for whoever has a child born from a Canaanite maidservant or from a gentile woman, as these do not have the halakhic status of children.

BACKGROUND

The legal status of a convert who just converted is like that of a child just born – גר שנתגייר כקטן דמי: This is a fundamental principle in *halakha*, and it means that through the act of conversion a convert becomes like a new person and all ties that he had with his previous gentile world are severed. Since he is considered like a newly born child, all his biological relations are consequently not considered by *halakha* to be related to him. Despite this, the Sages decreed that a gentile may not marry one of his blood relatives if they

also converted. There are two reasons for this: (1) A convert might think that he has descended from a greater sanctity to a lesser sanctity. The Sages did not want him to think that what was forbidden to him as a gentile is now permitted. A convert intends to ascend to a higher sanctity and does not seek leniencies. (2) Others may not realize that this individual is a convert, and therefore when they see him marrying a woman who appears to be forbidden to him, this might lead them to erroneous conclusions.

גמ' מכל מקום לאתויי מאי? אמר רב יהודה לאתויי ממזר. פשיטא, אחיו הוא! מהו דתימא: לילף אחיה אחיה מבני יעקב, מה להלן כשרין ולא פסולין, אף כאן כשרין ולא פסולין – קא משמע לן.

GEMARA The Gemara asks: With regard to the statement that a brother of **any kind** causes his *yevama* to be required to perform levirate marriage, **what additional case does this come to add?** Rav Yehuda said: **This adds the case of a *mamzer*, who, notwithstanding his status, is considered a brother.** The Gemara wonders: But isn't that obvious? **He is his brother.** The Gemara explains: This is necessary **lest you say: Let us derive a verbal analogy between the word "brother" stated in the verse with regard to levirate marriage and "brother" stated with regard to the children of Jacob. Just as there, Jacob's children are of unflawed lineage and not of flawed lineage and are not *mamzerim*, so too here, one might think that only brothers of unflawed lineage and not brothers of flawed lineage, i.e., *mamzerim*, obligate the *yevama* in levirate marriage. Therefore, this teaches us that a *mamzer* is considered a brother for the purposes of levirate marriage.**

ואימא הכי נמי! ביון דלעגנן יבום מיפטור נפטור

The Gemara asks: **And say that is indeed the *halakha*.** Perhaps a brother who is a *mamzer* does not obligate his *yevama* in levirate marriage. The Gemara answers: **Since with regard to levirate marriage, if the husband had a child who was a *mamzer* he would exempt the wife from levirate marriage,**

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the husband's brother **also causes a levirate bond** with his *yevama* even if he is a *mamzer*.

"ואחיו הוא לכל דבר". למאי הלכתא? ליודרשו וליטמא לו.

S The mishna stated that **he is his brother in all respects.** The Gemara asks: **With regard to what *halakha* was this said?** The Gemara answers: **To inherit from him,⁴ and to become ritually impure for him⁵ if he is a priest, as a brother is one of the relations for whom a priest is permitted to become ritually impure by attending his funeral.**

פשיטא, אחיו הוא! סלקא דעתך אמינא: הואיל וכתב "כי אם לשארו הקרוב אליו" ואמר מר: שארו – זו אשתו, וכתב "לא יטמא בעל בעמיו להחלו", יש בעל שמתמא ויש בעל שאין מטמא, הא כיצד? מטמא הוא לאשתו בשרה, ואין מטמא לאשתו פסולה.

The Gemara asks: **Isn't this obvious, as he is his brother?** The Gemara answers: It might **enter your mind to say** that a priest does not become impure for his brother of flawed lineage, **since it is written** with regard to priests: "None shall defile himself for the dead among his people except for his kin, that is near unto him" (Leviticus 21:1–2), **and the Master said "his kin"; this is his wife, and a priest may defile himself for his wife. But it is written: "He shall not defile himself, being a husband among his people, to profane himself" (Leviticus 21:4),** implying that he may not defile himself for his wife. This apparent contradiction is resolved as follows: **There is a husband who does become impure for his wife, and there is a husband who does not become impure. How so? He becomes impure for his wife if she was fit and was permitted to a priest, but he does not become impure for his wife if she was unfit⁴ to marry a priest.**

הכי נמי מטמא הוא לאח כשר ואין מטמא לאח פסול, קא משמע לן. ואימא הכי נמי! התם לאפוקי קיימא, הכא – אחיו הוא.

So too, one might have thought that a priest **becomes impure for a brother who is of unflawed lineage and not a *mamzer*, but he does not become impure for a brother of flawed lineage.** Therefore, **this comes to teach us that he does become impure for a brother who is a *mamzer*.** The Gemara asks: **Say this also, that by the same reasoning by which a priest may not become impure for a wife who was unfit for him, he may not become impure for an unfit brother either.** Just as he does not become impure for an unfit wife, he should not become impure for an unfit brother? The Gemara answers: The two cases are different, as **there, with regard to the unfit wife, she stands to be dismissed,⁵ since according to Torah law unfit women must be divorced. For this reason he does not become impure for her. Here, he is his brother.**

HALAKHA

To inherit from him – ליודרשו: All relatives, even those born through transgression, inherit just as those born in accordance with *halakha*. A *mamzer* brother or son inherits just like offspring of unflawed lineage (Rambam *Sefer Mishpatim, Hilkhot Nahalot* 1:7; *Shulhan Arukh, Hoshen Mishpat* 276:6).

To become ritually impure for him – ליטמא לו: A priest becomes ritually impure for his father, his mother, his brother, his unmarried sister, his son, and his daughter, even if they are unfit or *mamzerim* (Rambam *Sefer Shofetim, Hilkhot Evel* 2:9; *Shulhan Arukh, Yoreh De'a* 373:4).

His wife if she was unfit – אשתו פסולה: A priest becomes ritually impure for his wife if she was permitted to marry him, but if it was prohibited for her to marry him he may not become impure for her (Rambam *Sefer Shofetim, Hilkhot Evel* 2:9; *Shulhan Arukh, Yoreh De'a* 373:4).

NOTES

She stands to be dismissed – לאפוקי קיימא: With regard to the exceptions when a priest may become ritually impure, the Torah states: "Except for his kin, that is near unto him" (Leviticus 21:2). The Gemara explains that "his kin" is referring to his wife. A wife who is prohibited to the priest is not considered to be "his kin."

A son of any kind – **בן מכל מקום**: In the Jerusalem Talmud the following point is added: Since he is considered his son in all regards, the father fulfills the mitzva to be fruitful and multiply through this son. Also, he is considered his son with regard to all matters of forbidden relations.

And he has no child, meaning investigate him – **ובן אין**: Rashi explains that the word “no [ain]” could have been written without the letter *yod*. The homiletical interpretation is derived from the additional letter; the word spelled in this way bears similarity to the word for eye [ayyen], which implies investigation (see *Tosefot Yom Tov*). In the *Sma* this interpretation is explained differently: The Torah’s stress on the phrase “has no” indicates that he has absolutely no children of any kind in any place.

One who acts according to the deeds of your people – **עושה מעשה עמך**: Rambam maintains that a *mamzer* son is still obligated to respect his father and to fear him even if he is exempt from punishment for cursing or striking him (*Sefer Shofetim, Hilkhos Mamrim* 6:11). However, other authorities disagree (*Tur, Yoreh De’a* 240).

HALAKHA

He is liable to receive punishment if he strikes his father or curses him – **חייב על מכתו ועל קללתו**: According to the opinion of the Rambam and the Rif, even if parents were totally wicked and transgressors, and even if they were sentenced to death, it is prohibited for the son to strike them or curse them. However, *Tosafot* hold that in such a case there is no prohibition. If he did strike them or curse them in that case, then he is exempt from punishment. If they repented, even if they were sentenced to death, he is liable to receive punishment for striking or cursing them, even if he is acting as the agent of the court carrying out their punishment (Rambam *Sefer Shofetim, Hilkhos Mamrim* 5:12; *Shulhan Arukh, Yoreh De’a* 241:4).

His sister... the daughter of his father’s wife – **אחותו**: If one engages in sexual relations with his sister born of a woman married to his father, he is liable twice, once for his sister and once for the daughter of his father’s wife, in accordance with the opinion of the first *tanna* and against the lone dissenting opinion (Rambam *Sefer Kedusha, Hilkhos Issurei Bia* 2:4).

Prohibition against relations with one’s sister – **אסור**: One’s sister is forbidden to him by Torah law, whether she is his maternal or paternal half-sister, and whether she is fit or unfit for marriage, and even if she is a *mamzeret*, except for a sister born to his father by a gentile woman or a Canaanite maidservant, as then she is not considered his sister at all (*Shulhan Arukh, Even HaEzer* 15:10).

“חופץ ממי שיש לו אח מן השפחה וכן הגויה”, מאי טעמא? אמר קרא “האשה וילדיה תהיה לאדוניה”.

“מי שיש לו בן מכל מקום פטר” וכו’. מכל מקום לאתויי מאי? אמר רב יהודה: לאיתויי ממוזר. מאי טעמא? דאמר קרא “ובן אין לו” – ענין עליו.

“וחייב על מכתו”, אמאי? קרי כאן “ונשיא בעמך לא תאור” – בעושה מעשה עמך!

בדאמר רב פנחס משמיה דרב פפא: בעושה תשובה – הכא נמי בשעשה תשובה.

והאי בר תשובה הוא? והתנן: שמעון בן מנסיא אומר: איזהו “מעוות לא יוכל לתקון”, זה הבא על הערוה והוליד ממנה ממוזר! השתא מיהא עושה מעשה עמך הוא.

תנו רבנן: הבא על אחותו והיא בת אשת אביו – חייב משום אחותו, ומשום בת אשת אביו. רבי יוסי בן יהודה אומר: אינו חייב אלא משום אחותו בלבד, ולא מפני בת אשת אביו.

מאי טעמיהו דרבנן? אמרי: מכדי כתיב “ערוות אחותך בת אביך או בת אמן” “ערוות בת אשת אביך מולדת אביך אחותך היא” למה לי? שמע מינה: לחייבו משום אחותו ומשום בת אשת אביו.

S The mishna says: Except for whoever has a brother born from a Canaanite maidservant or from a gentile woman, as in these cases he is not considered a brother. The Gemara asks: What is the reason for this *halakha*? The Gemara answers: The verse states with regard to a Jewish slave who has children with a Canaanite maidservant: “The wife and her children shall be her master’s” (Exodus 21:4). This means that the children also have the status of Canaanite slaves, which implies that the lineage of a Canaanite maidservant’s child comes from the mother and not from the father.

The mishna states: With regard to anyone who has a son of any kind,ⁿ that son exempts his father’s wife from any levirate bond. The Gemara asks: What is added by the phrase: Of any kind? Rav Yehuda said: It adds a child who is a *mamzer*. What is the reason that a *mamzer* exempts a woman from any levirate bond? As the verse states with regard to levirate marriage: “And he has no [ain lo] child” (Deuteronomy 25:5). The phrase *ain lo* can be understood as *ayyen alav*, meaning investigate him.ⁿ That is to say, investigate whether he is indeed childless, because any child, even a *mamzer*, exempts the widow from a levirate bond.

It states in the mishna that a child who is a *mamzer* is liable to receive punishment if he strikes his father or curses him.^h The Gemara asks: Why should he be liable? Read here the verse: “You shall not curse a ruler of your people” (Exodus 22:27), which is interpreted to imply that the prohibition against cursing applies only to one who acts according to the deeds of your people.ⁿ However, this father must have engaged in sexual relations with a woman who was forbidden to him in order to have a child who is a *mamzer*. Therefore, he did not act according to the deeds of the people. In that case, why should this son be liable to receive punishment for hitting him or cursing him?

The Gemara answers: As Rav Pinehas said in the name of Rav Pappa with regard to a different matter: This is referring to one who performs repentance. Here too, it is referring to one who performed repentance after the *mamzer* was born. He is thereafter considered to be living in accordance with *halakha*, and so his *mamzer* son is liable to receive punishment for cursing him.

The Gemara objects: Is he in fact able to repent after fathering a *mamzer*? Didn’t we learn in a mishna that Shimon ben Menasya says: Which is: “That which is crooked cannot be made straight” (Ecclesiastes 1:15)? This is referring to one who engaged in intercourse with a relative who is forbidden to him and fathered a *mamzer* with her. This implies that he has no possibility of achieving total repentance. The Gemara responds: At least now, after repenting, he is considered as one who acts according to the deeds of your people. Although he cannot totally rectify his transgression, his child is liable to receive punishment for cursing or hitting him.

S The Sages taught: He who unwittingly engages in sexual relations with his sister, who is the daughter of his father’s lawful wife,^h is liable and must bring two sin-offerings. He must bring one sin-offering because she is his sister^h and another because she is the daughter of his father’s wife, which is mentioned in a separate verse in the Torah. Rabbi Yosei ben Yehuda says: He is liable only because she is his sister alone, and not because of the prohibition against engaging in sexual relations with the daughter of his father’s wife.

The Gemara asks: What is the reason for the opinion of the Rabbis, the first *tanna* of the *baraita*? They said: Since it is written in the Torah: “The nakedness of your sister, the daughter of your father, or the daughter of your mother...you shall not uncover” (Leviticus 18:9), then why do I need the verse: “The nakedness of your father’s wife’s daughter, begotten of your father, she is your sister...you shall not uncover” (Leviticus 18:11)? Conclude from this that the additional verse serves to make him liable separately due to the fact that she is his sister and due to the fact that she is his father’s wife’s daughter.

The Sages do not derive an additional prohibition by way of a logical derivation – אין מזהירין מן הדין – Some commentaries explain that according to all opinions, one is permitted in general to draw his own *a fortiori* inferences. Therefore, there is concern that one might err in his considerations on the matter, and consequently these inferences may not be relied upon in cases where it would lead to one being liable to receive lashes. On the other hand, the Maharsha in tractate *Sanhedrin* cites the *Sefer Mitzvot Gadol* and states that it is unknown whether the punishment derived by an *a fortiori* inference is severe enough to atone for the transgression performed. Others explain that this principle is a Torah decree, without reason (*Yosef Lekah*).

ורבי יוסי ברבי יהודה: אמר קרא "אחותך היא", משום אחותו אתה מחייבו ואי אתה מחייבו משום בת אשת אביו –

And Rabbi Yosei, son of Rabbi Yehuda, says: The verse states: "She is your sister," which comes to limit and emphasize that **you hold him liable due to the fact that she is his sister but you do not hold him liable a second time due to the fact that she is also his father's wife's daughter.**

ורבנן, האי "אחותך היא" מאי עבדי ליה? מיבעי ליה לחייבו על אחותו בת אביו ובת אמו, לומר שאין מזהירין מן הדין.

The Gemara asks: **And what do the Rabbis do with this verse: "She is your sister"?** They require it in order to hold him liable to receive punishment for having relations with his sister who is both the daughter of his father and the daughter of his mother, to say that the Sages do not derive an additional Torah prohibition by way of a logical derivation, i.e., an *a fortiori* inference.ⁿ In other words, although it would seem that since he is liable to receive punishment for having relations with his father's daughter and also for his mother's daughter, this must be all the more true in a case where she is the daughter of both his father and his mother, yet nevertheless, there is no new prohibition here. Therefore, the matter was taught explicitly in the Torah, to teach that the Sages may not derive additional prohibitions by way of a *fortiori* inferences.

ורבי יוסי ברבי יהודה: אם כן לכתוב רחמנא "אחותך", "היא" למה לי – משום אחותך אתה מחייבו ואי אתה מחייבו משום בת אשת אביו.

And Rabbi Yosei, son of Rabbi Yehuda, says: If so, that the matter was written for this purpose, **then the Merciful One should have written only: Your sister. Why do I need the phrase "she is"?** This limits the *halakha* and teaches that for unintentional intercourse with his sister who is also his father's wife's daughter **you hold him liable because she is his sister; you do not additionally hold him liable because she is his father's wife's daughter.**

ורבנן? אף על גב דכתיב "אחותך" איצטרך למכתב "היא", שלא תאמר: בעלמא מזהירין מן הדין.

And how do the Rabbis interpret the additional phrase "she is"? Although "your sister" is written, it was necessary to write "she is" so that you not say that generally the Sages may derive additional prohibitions by way of a logical derivation, i.e., an *a fortiori* inference.

וכי תימא: "אחותך" דכתב רחמנא למה לי – מילתא דאתא בקל וחומר טרם וכתב לה קרא – כתב רחמנא "היא".

The Gemara explains how this principle is derived from the text. **As, if you would say: Why do I need the term "your sister" that the Merciful One writes in the Torah, since it is possible to derive this by a *fortiori* inference and it therefore appears redundant? The answer is that the Torah wrote this apparently redundant term to teach the principle that with regard to a matter that could be derived by means of an *a fortiori* inference, the verse unnecessarily wrote it explicitly. The Merciful One writes the term "she is" in order to teach that just as in this case the Sages may not derive additional prohibitions by way of an *a fortiori* inference, so too, in all other cases they may not derive additional prohibitions that are not stated in the text.**

ורבי יוסי ברבי יהודה: אם כן לכתביה רחמנא ל"אחותך היא" באיך קרא.

And Rabbi Yosei, son of Rabbi Yehuda, says: If this is the reason for the verse, **then let the Merciful One write: She is your sister, in the other verse, which states:** "The nakedness of your sister, the daughter of your father, or the daughter of your mother," and not in the verse that speaks of the daughter of one's father's wife.

ורבי יוסי ברבי יהודה, האי "בת אשת אביך" מאי עבדי ליה? מיבעי ליה: מי שיש לו אישות לאביך בה, פרט לאחותו משפחה וגויה, שאין אישות לאביך בה.

The Gemara asks: **And what does Rabbi Yosei, son of Rabbi Yehuda, do with this verse, which states: "The daughter of your father's wife" (Leviticus 18:9)? He requires it to teach that one is liable only for relations with a half-sister whose mother is someone with whom there is no possibility of forging marital ties with your father, even if she was not in actuality his wife. This comes to exclude his sister from a Canaanite maidservant or a gentile woman, with whom your father cannot have marital ties, since betrothal does not take effect with these women.**

ואימא: פרט לאחותו מאנסה? הדין לא מצית אמרה, מדרבא.

The Gemara asks: **So say:** "Your father's wife's daughter" comes to teach specifically the case of a daughter from a woman married to his father, thereby **excluding from the definition of: His sister, his sister from a woman who had been raped.** Perhaps if she was born of a woman who was not married to his father she would not be considered his sister. The Gemara answers: **You cannot say that due to the reason said by Rava.**

אָחותו מאַנטקטו – His sister by a woman his father raped – If a daughter was born from a woman his father raped, rather than married, then as that daughter's paternal half brother he is liable to receive punishment for relations with her only because she is his sister but not as the daughter of his father's wife (Rambam *Sefer Kedusha*, *Hilkhot Issurei Bia* 2:4).

דַּבָּר רָמִי: כְּתִיב "עֲרוֹת בֵּת בִּנְךָ אוֹ בֵּת
בִּתְּךָ לֹא תִגְלֶה", הָא בֵּת בְּנֵה דִידָה וּבֵת
בִּתָּה דִידָה – שָׂרִי, וּכְתִיב "עֲרוֹת אִשָּׁה
וּבִתָּהּ לֹא תִגְלֶה אֶת בֵּת בְּנֵה וְאֶת בֵּת
בִּתָּה". הָא כִּיצַד?

As Rava raised a contradiction: In one verse it is written: "The nakedness of your son's daughter, or of your daughter's daughter, you shall not uncover" (Leviticus 18:10), which implies, consequently, that her son's daughter or her daughter's daughter is permitted. And it is written elsewhere: "You shall not uncover the nakedness of a woman and her daughter; you shall not take her son's daughter or her daughter's daughter" (Leviticus 18:17), which states explicitly that her son's daughter and daughter's daughter are prohibited. How can these texts be reconciled?

כָּאן בְּאוֹנְסִין כָּאן בְּנִשְׁוֹאִין.

Here, it is referring to a daughter by a woman whom one raped, in which case he is allowed to marry her daughter provided she is not also his daughter. There, it is referring to a woman whom one married, in which case it is forbidden to marry her daughter under any circumstances. However, even in a case where one's father raped a woman, one is still permitted to marry the woman's daughter by another man. If one's father had a daughter with this woman, one would be prohibited from having a relationship with that daughter, as she is his paternal half-sister.^h

Perek II

Daf 23 Amud a

HALAKHA

Betrothal comes into effect with women who are forbidden and one would be liable for violating prohibitions – תִּיבִי לְאוּן תַּפְשִׁי בְּהוּ קְדוּשִׁין: If one betroths a woman forbidden to him by a prohibition, the betrothal is nevertheless fully effective (Rambam *Sefer Nashim*, *Hilkhot Ishut* 4:14; *Shulhan Arukh*, *Even HaEzer* 44:7).

Prohibition against union with one's sister – אִיסור אָחות – One's sister is forbidden to him by Torah law, whether she is a paternal or maternal sister, whether she is a sister from her father's marriage or outside of marriage. Even a sister born from a forbidden union is considered a sister and one is liable to receive punishment for having relations with her (Rambam *Sefer Kedusha*, *Hilkhot Issurei Bia* 2:1; *Shulhan Arukh*, *Even HaEzer* 15:10).

וְאִמָּא פֶּרַט לְחִיבִי לְאוּן? אָמַר רַב פָּפָא:
תִּיבִי לְאוּן תַּפְשִׁי בְּהוּ קְדוּשִׁין.

The Gemara raises a challenge: And say that the verse: "The daughter of your father's wife" comes to exclude women who were forbidden, as they are liable for violating prohibitions but were nevertheless married to his father, such as a *mamzeret*. If so, his sister from such a union would not be considered his sister. Rav Pappa said: Betrothal comes into effect with women who are forbidden, and one would be liable for violating prohibitions^h despite the fact that union with them is forbidden, and so she is called the wife of your father.

דְּכָתִיב "כִּי תִהְיֶינָּה לְאִישׁ שְׁתֵּי נָשִׁים
הָאֶחָת אֲהוּבָה וְהָאֶחָת שְׂנוּאָה", וְכִי
יֵשׁ אֲהוּבָה לְפָנֵי הַמָּקוֹם וְיֵשׁ שְׂנוּאָה
לְפָנֵי הַמָּקוֹם? אָלֵא: אֲהוּבָה – אֲהוּבָה
בְּנִשְׁוֹאִיָּה, שְׂנוּאָה – שְׂנוּאָה בְּנִשְׁוֹאִיָּה,
וְאָמַר רַחֲמָנָא: "כִּי תִהְיֶינָּה".

This is derived from the verse in which it is written: "If a man has two wives, the one beloved, and the other hated" (Deuteronomy 21:15). Is there one who is loved by the Omnipresent and one who is hated by the Omnipresent? Rather, "beloved" means her marriage is beloved, as it was permitted for her to be married, in accordance with *halakha*, and "hated" means her marriage is hated because it was not permitted for her to be married, according to *halakha*. And the Merciful One states: "If a man has two wives," meaning that both are considered to be married.

וְאִמָּא פֶּרַט לְחִיבִי בְּרִיתוֹת – אָמַר רַבָּא:
אָמַר קָרָא "עֲרוֹת אֲחוֹתְךָ בֵּת אָבִיךָ אוֹ
בֵּת אִמְךָ מוֹלֶדֶת בֵּית אוֹ מוֹלֶדֶת חוּץ",
בֵּין שְׂאוּמֵרִים לוֹ לְאָבִיךָ: "קַיִּים", בֵּין
שְׂאוּמֵרִים לוֹ לְאָבִיךָ "הוֹצֵא", וְאָמַר
רַחֲמָנָא: "אֲחוֹתְךָ הִיא" –

The Gemara asks: Say that this verse comes to exclude a union between one's father and a woman that is forbidden to him as they are liable to receive *karet*, and that since betrothal does not come into effect with her there is no marriage bond. Perhaps a sister born of such a woman would not be prohibited as the daughter of one's father's wife. Rava said that the verse states: "The nakedness of your sister, the daughter of your father, or the daughter of your mother, whether born at home or born outside" (Leviticus 18:9).^h This includes all daughters, whether from a woman for whom the Sages tell your father: Maintain her within your home, or whether the Sages tell your father she is a woman who is forbidden to him and therefore: Send her out of your home. And the Merciful One states that nevertheless: "She is your sister." Even the daughter of a woman who was forbidden to your father such that both parties are liable to receive *karet* is called your sister.

מִהָאִשָּׁה וְיִלְדֶיהָ וכו' – The wife and her children, etc. Some commentaries explain that the status of the children is derived from a close reading of the text. Instead of stating: The wife and the children, it states: "The wife and her children." This implies that the children have the legal status of her children alone.

Does have a pedigree – אֵיתָ לָהּ חַיִּים – The question of a pedigree here relates to paternal lineage. A child's status does not necessarily follow his father's lineage; rather, it depends on the specific *halakha*. For some realms of *halakha*, lineage follows the mother's family. Consequently, even when it is certain who the biological father is, the *halakha* does not necessarily consider the child a part of that family. The conclusion of the talmudic discussion here that *halakha* takes paternal lineage into account is not agreed upon by all. In the Jerusalem Talmud there is a dispute over whether gentiles follow their father's family lineage or not.

HALAKHA

A son from a Canaanite maidservant or a gentile woman – בֶּן מִשְׁפָּחָה וְנִכְרִית – A son born to a Jewish man from a Canaanite maidservant or from a gentile woman is not considered his son, neither for purposes of levirate marriage, nor inheritance, nor any other matter (Rambam *Sefer Nashim*, *Hilkhot Yibbum Vaḥalitza* 1:4 and *Sefer Mishpatim*, *Hilkhot Nahalot* 1:7).

אִמָּא: בֵּין שְׂאוֹמֵר לוֹ אֲבִיךָ "חַיִּים" בֵּין שְׂאוֹמֵר לוֹ אֲבִיךָ "הוֹצֵא", וְאִמָּר רַחֲמָנָא "אֲחוּתְךָ הִיא" – לְרִבּוֹת אֲחוּתוֹ מִשְׁפָּחָה וְגוֹיָה – אָמַר קָרָא "בֵּת אִשָּׁתְךָ אֲבִיךָ", מִי שֵׁשׁ לוֹ אִשׁוּת לְאֲבִיךָ בָּהּ, פָּדַט לְאֲחוּתוֹ מִשְׁפָּחָה וְגוֹיָה.

וְמָה רָאִיתָ? מִסֵּתֶבְרָא, חַיִּיבֵי בְרִיתוֹת הָיָה לִיָּה לְרִבּוֹת, שְׂכָן תַּפְסִי בְּהֵן קְדוּשִׁין לְעֵלְמָא.

אֲדַרְבָּה, שְׁפָחָה וְגוֹיָה הָיָה לִיָּה לְרִבּוֹת, דְּאֵי מְגִיירָה – לְדִידִיהָ נָמִי תַּפְסִי בָּהּ קְדוּשִׁין! לְכִי מְגִיירָה גּוֹפָא אַחֲרִינָא הִיא.

וְרַבְּנָן, לְמַעוּטֵי שְׁפָחָה וְגוֹיָה מִנָּא לְהוּ? נִפְקָא לְהוּ מִ"הָאִשָּׁה וְיִלְדֶיהָ תִּהְיֶה לְאִדּוּמִיָּה".

וְרַבִּי יוֹסִי בְּרַבִּי יְהוּדָה: חָד – בְּשִׁפְחָה, וְחָד – בְּגוֹיָה. וְצָרִיכִי, דְּאֵי אֲשַׁמְעִינָן שְׁפָחָה – מִשּׁוּם דְּאֵין לָהּ חַיִּים, אֲבָל גוֹיָה דְּאֵיתָ לָהּ חַיִּים – אִמָּא לָא.

וְאֵי אֲשַׁמְעִינָן גוֹיָה – מִשּׁוּם דְּלֹא שְׂוִיָּא בְּמִצְוֹת, אֲבָל שְׁפָחָה, דְּשְׂוִיָּא בְּמִצְוֹת, אִמָּא לָא – צָרִיכָא.

וְרַבְּנָן, אֲשַׁפְּחֵן שְׁפָחָה, גוֹיָה מִנָּא לְהוּ? וְכִי תִימָא: נִילֵךְ מִשְׁפָּחָה – הִנְהוּ מִצְרָךְ צָרִיכִי!

The Gemara asks: **Say that whether the Sages say to your father: Maintain her, or whether they say to your father: Send her out, and the Merciful One states that "she is your sister," this comes to include the additional cases of his sister from a Canaanite maidservant or a gentile woman.** The Gemara rejects this: **The verse states: "The daughter of your father's wife," and this means whoever can enter a marriage bond with your father. This excludes his sister from a Canaanite maidservant or gentile woman, with whom no marital bond is possible.**

The Gemara asks: Since the verse rendering his sister forbidden both includes and excludes cases, **what did you see** as a reason to include a daughter from a woman who is forbidden and both parties are liable to receive *karet*, and to exclude the daughter of a Canaanite maidservant or gentile woman? The Gemara answers: **It stands to reason** that those relationships that are forbidden because they render both parties liable to receive *karet* should be included, since in general betrothal can come into effect with them. This is because although this woman is forbidden to his father, she is nevertheless permitted to other men.

The Gemara rejects this: **On the contrary, it should include a Canaanite maidservant or a gentile woman, as, if she converts, betrothal can come into effect with the father himself.** The Gemara answers: **When she converts, she is considered like a different body, i.e., a new person, but when she was a gentile there was no possibility of marital relations with her. Therefore, the verse excludes her.**

The Gemara asks: **And with regard to the Rabbis, who infer a different matter from the verse "your father's wife's nakedness," from where do they derive the halakha to exclude one's sister from a Canaanite maidservant or gentile woman?** The Gemara answers: **They derive it from that which was said with regard to a Canaanite maidservant who was married to a Hebrew slave: "The wife and her children^N shall be her master's" (Exodus 21:4).** From here they learn that the lineage of the maidservant's children is connected only to their mother and not at all connected to their Jewish father.

The Gemara asks: **And why does Rabbi Yosei, son of Rabbi Yehuda, not learn this from here?** The Gemara responds: **One verse was necessary to teach the case of a Canaanite maidservant, and one verse was necessary to teach the case of a gentile woman. And both verses are necessary, as, if the Torah taught us only about a Canaanite maidservant, one could say she is excluded only because she does not have a pedigree, since the Torah ascribes no family relationships to maidservants, but with regard to a gentile woman who does have a pedigree,^N say no.** It was therefore necessary to say that one's daughter by a gentile woman does not have the legal status of a daughter.

Conversely, if it would teach us only the case of a gentile woman, one might say that this is because she does not have any connection with the mitzvot and therefore her children are in no way Jewish. But since a Canaanite maidservant has a connection with the mitzvot, as she is obligated to observe the prohibitions in the same way as a Jewish woman, say no,^H i.e., her children should be considered children of their Jewish father. Therefore, this additional proof is necessary.

The Gemara asks: **And according to the opinion of the Rabbis, we found a source that the children of a Canaanite maidservant are not considered the children of their Jewish father, but from where do we derive that children born to a Jewish father by a gentile woman are not considered his children? And if you say: Let us derive it from the case of the Canaanite maidservant, it has already been shown that these are both necessary, and one cannot be derived from the other.**

NOTES

A son from a gentile woman – **בֶּן מִן הַנְּכָרִית**: This *halakha* appears to be explicit in the verses: “We have broken faith with our God, and have married foreign women of the peoples of the land... Now therefore let us make a covenant with our God to put away all the wives, and such as are born of them...” (Ezra 10:2–3). Nevertheless, the Gemara sought to find a source for this *halakha* from the Torah (see Jerusalem Talmud).

יִשְׂרָאֵל פָּסוּל מִיִּקְרִי – She is called a Jew who is unfit: According to most commentaries, being unfit refers to disqualification from the priesthood. A daughter of a gentile father and Jewish mother is unfit for marriage to a priest. Others hold that the disqualification mentioned here is not related to the priesthood but relates only to a defect in lineage (Ramban; *Yam shel Shlomo*).

HALAKHA

הַנּוֹלָד מִנְּכָרִי – Offspring from a gentile or slave – **וְנֶעְבֵּד**: If a gentile or slave had relations with a Jewish woman and she gave birth to a child, that child is a Jew and is eligible to enter the congregation. If that offspring is a daughter, then she is unfit to marry a priest (*Shulḥan Arukh, Even HaEzer* 4:19; Rambam *Sefer Kedusha, Hilkhot Issurei Bia* 15:3).

אָמַר רַבִּי יוֹחָנָן מִשּׁוּם רַבִּי שְׁמַעוֹן בֶּן יוֹחִי:
אָמַר קְרָא “כִּי יִסִּיר אֶת בְּנֶךָ מֵאַחֲרִי,”
בְּנֶךָ מִיִּשְׂרָאֵלִית קְרוּי בְּנֶךָ, וְאִין בְּנֶךָ
הָבָא מִן הַגּוֹיָה קְרוּי בְּנֶךָ, אֱלָא בְּנָה.

אָמַר רַבִּינָא שְׁמַע מִינָּה: בֶּן בִּתְּךָ הָבָא מִן
הַגּוֹי – קְרוּי בְּנֶךָ. לֵימָא קִסְבֵּר רַבִּינָא גּוֹי
וְנֶעְבֵּד הָבָא עַל בֵּית יִשְׂרָאֵל הַנּוֹלָד כְּשֶׁר?
נָהִי דְמִמּוֹר לֹא הוּי – כְּשֶׁר נָמִי לֹא הוּי,
יִשְׂרָאֵל פָּסוּל מִיִּקְרִי.

הָאִי בְּשִׁבְעָה אוֹמוֹת כְּתִיב! “כִּי יִסִּיר”
לְרַבּוֹת כָּל הַמְּסִירִים.

הַנִּיחָא לְרַבִּי שְׁמַעוֹן, דְּדָרִישׁ טַעְמָא
דְּקָרָא, אֱלָא לְרַבְּנָא מִנָּה לְהוֹ? מֵאֵן תִּנָּא
דְּפָלִיג עֲלֵיהּ דְּרַבִּי יוֹסִי בְּרַבִּי יְהוּדָה – רַבִּי
שְׁמַעוֹן הִיא.

The Gemara answers: **Rabbi Yoḥanan said in the name of Rabbi Shimon ben Yoḥai: The verse states:** “Neither shall you make marriages with them: Your daughter you shall not give unto his son, nor his daughter shall you take unto your son, **for he will turn away your son from following Me**” (Deuteronomy 7:3–4). This teaches that **your son born from a Jewish woman is called your son, but your son born from a gentile woman is not called your son, but her son.**^N The verse teaches that since the son of a gentile woman is her son alone, he is not considered related at all to his Jewish father.

Ravina said: Conclude from here that the son of your daughter by a gentile father is nevertheless called your son, i.e., grandson. The Gemara asks: **Shall we say that Ravina holds that if a gentile or slave engaged in intercourse with a Jewish woman, the offspring is of unflawed lineage?**^H The Gemara answers: There is no conclusive proof from here, because **granted, she is not a mamzer, but nevertheless she is still not of unflawed lineage; rather, she is called a Jew who is unfit**^N to marry into the priesthood.

The Gemara asks with regard to Rabbi Shimon’s reasoning: Was **this** verse not **written** in relation to **the seven nations** who inhabited the land of Canaan when Joshua entered Eretz Yisrael but not with regard to other nations? The Gemara responds that the words **“He will turn away” comes to include all those who would turn one’s grandson away from God, i.e., any gentile.**

The Gemara asks: **This works out well for Rabbi Shimon, who interprets the rationale behind the mitzva in the verse and draws halakhic conclusions based on that interpretation.** Although the verse is stated with regard to the seven nations, the reason for the verse applies to all other gentile nations. **However, according to the opinion of the Rabbis, who do not draw inferences from the rationale of the verse to apply this ruling to all other nations, from where do they derive this halakha?** The Gemara answers: **Who is the tanna who disagrees with Rabbi Yosei, son of Rabbi Yehuda? It is Rabbi Shimon, who applies the rationale of the verse to all other nations.**

Perek II Daf 23 Amud b

NOTES

קִידָשׁ אֶחָת מִשְׁתֵּי – Betrothed one of two sisters – **אֶחָת**: There are several possible ways in which this could happen. He might have, e.g., betrothed one sister prior to some tumultuous event after which he did not remember which of them he betrothed and others offered conflicting opinions. Such an occurrence is recorded as having taken place and was brought before the *ge'onim* for a decision. If the mishna is referring to a case where the husband never knew to which sister he was betrothed, it must be a case where the two sisters appointed an emissary to accept their betrothals for them, and though the man intended to betroth one of them he did not explicitly designate which of them he desired.

מִתְנִי' מִי שֶׁקִּידָשׁ אֶחָת מִשְׁתֵּי אֶחָת
וְאִין יוֹדַע אִי זֶה מֵהֶן קִידָשׁ – נוֹתֵן גֵּט
לְזוֹ וְגֵט לְזוֹ. מֵת, וְלֹא אֶחָ אֶחָד – חוֹלֵץ
לְשִׁתְּיָהּ.

MISHNA In the case of one who betrothed one of two sisters^{NH} and does not know which of them he betrothed, so that both are forbidden to him, he gives a bill of divorce to this one and a bill of divorce to that one due to the uncertainty. If the man who had betrothed one of these women died^H before he could give a bill of divorce, and he had one brother, that brother performs *halitza* with both of them, but he may not take either in levirate marriage. This is because he does not know which woman is his *yevama* and which is forbidden to him as the sister of a woman with whom he has a levirate bond.

HALAKHA

Betrothed one of two sisters – קִידָשׁ אֶחָת מִשְׁתֵּי אֶחָת: One who betrothed one of two sisters and is uncertain as to which he betrothed may not consummate the marriage with either one of them. Rather, he must give a bill of divorce to each (Rambam *Sefer Nashim, Hilkhot Ishut* 9:3; *Shulḥan Arukh, Even HaEzer* 41:2, 176:1).

One who betroths one of two sisters and subsequently dies – הַמְּקִדָּשׁ אֶחָת הָאֲחֵיּוֹת וּמֵת: If one betrothed one of two sisters and does not know which he betrothed, and then dies, his brother must perform *halitza* with both of them in order to permit them

to remarry. If the deceased had two brothers, one must perform *halitza* with one sister, and the second is permitted to enter a levirate marriage with the other. One must not take one of the women in levirate marriage *ab initio*, as he would thereby encounter the sister of a woman with whom he has a levirate bond, as explained in the Gemara. If the two brothers both entered levirate marriage with the two sisters before consulting the court, they are not required to divorce (Rambam *Sefer Nashim, Hilkhot Yibbum VaHalitza* 8:1; *Shulḥan Arukh, Even HaEzer* 176:1).

Betrothals that cannot ultimately lead to consummation – קידושין שאין מסורין לביאה – Tosafot clarify that this principle does not apply in cases where there is some halakhic obstacle preventing sexual relations, e.g., some prohibition. The Gemara here is referring only to cases where the act of betrothal itself prevents the consummation of the marriage.

היו לו שנים – אחד חולץ ואחד מייבם.
קדמו וכנסו – אין מוציאין מידם.

If the man who betrothed one of these women **had two brothers**, **one of them performs *halitza*** with one of the sisters, but he may not enter into levirate marriage with her due to the possibility that she is the sister of a woman with whom he has a levirate bond. **And one takes the other in levirate marriage** if he so desires. If the two brothers **married** the two sisters **before** consulting the court, the court does not **remove them** from their marriage and they are permitted to remain married. The couple who performed levirate marriage second was even permitted to do so, since there was no longer any doubt about the levirate bond.

שנים שקדשו שתי אחיות, זה אינו יודע אי זו קידש, וזה אינו יודע איזו קידש – זה נותן שני גיטין, וזה נותן שני גיטין. מתן לזה אח ולזה אח – זה חולץ לשתייהן, וזה חולץ לשתייהן.

Furthermore, in the case of **two unrelated men who betrothed two sisters**: If **this one does not know which sister he betrothed and that one does not know which sister he betrothed**, **this one gives two bills of divorce**, one to each of the women, **and that one gives two bills of divorce**. If the two men **died** before they divorced, and **this one had a brother and that one had a brother**, then **this brother performs *halitza* with both of them**, and that brother performs *halitza* with both of them.

לזה אחד ולזה שנים – היחיד חולץ לשתייהן. והשנים – אחד חולץ ואחד מייבם. קדמו וכנסו – אין מוציאין מידם. לזה שנים ולזה שנים – אחיו של זה חולץ לאחת ואחיו של זה חולץ לאחת, אחיו של זה מייבם חלוצתו של זה ואחיו של זה מייבם חלוצתו של זה.

If **this one had one brother and that one had two brothers**, the single brother performs *halitza* with both of them, and of the two brothers, **one performs *halitza* and one performs levirate marriage** if he so desires. If they **married** the sisters **before** consulting the court, the court **does not remove them** from the marriage and they are not told to divorce them. If **this one had two brothers and that one had two brothers**, the brother of this one performs *halitza* with one sister, and the brother of that one performs *halitza* with one sister. The brother of this one who performed *halitza* may take the woman who performed *halitza* [*halutza*] of that other's brother in levirate marriage, and the brother of that second one who performed *halitza* may take the *halutza* of that other's brother in levirate marriage.

קדמו שנים וחלצו – לא ייבמו השנים, אלא אחד חולץ ואחד מייבם. קדמו וכנסו – אין מוציאין מידם.

If the two brothers **performed *halitza* with both wives before** consulting the court, the two brothers of the second man **may not take sisters in levirate marriage** lest one marry the sister of a woman who with whom he had a levirate bond. **Rather, one performs *halitza* and one performs levirate marriage** if he so desires. If they **married** their wives **before** consulting the court, the court **does not remove them** from the marriage.

גמ' שמע מינה: קדושין שאין מסורין לביאה – הוה קדושין!

GEMARA Learn from here in the mishna that betrothals that cannot ultimately lead to consummation^N are nevertheless betrothals. There is a dispute between Abaye and Rava in tractate *Kiddushin* with regard to a case of a betrothal that, due to some halakhic complication, can never be consummated. The cases in this mishna may not be consummated, since each of the two sisters is forbidden due to the uncertainty as to whether she is the woman he betrothed or the sister of the woman he betrothed. Therefore, both are forbidden to him. Nevertheless, the mishna instructs that he must give a bill of divorce to both of them. This implies that such betrothals are valid, in contrast to Rava's opinion that betrothals that cannot ultimately be consummated are not betrothals at all.

הכא במאי עסקינן – כשהוכרו ולבסוף נתערבו. דיקא נמי, דקתני "ואינו יודע", ולא קתני "ואינו יודע", שמע מינה.

The Gemara rejects this: **With what are we dealing here?** We are dealing with a case **when** at first both sisters **were recognized** and at the moment of betrothal he knew whom he betrothed; it was a betrothal destined for consummation. **But later** the two sisters **were mixed up** so that he was no longer certain which he betrothed. If so, there was not any flaw in the betrothal itself initially. The language of the mishna is **also precise**, as it teaches: **And he does not know** which of them he betrothed, **but it does not teach: It is unknown** completely. This implies that the matter was known at some time. The Gemara adds: **Conclude from here** that this is the case.

מאי קא משמע לן? סיפא איצטריכא ליה: מת ולו אח אחד – חולץ לשתייהן, היו לו שנים – אחד חולץ ואחד מייבם. דוקא מיחלץ והדר יבומי, אבל יבומי ברישא – לא, דקא פגע באחות וקוקתו.

“שנים שקדשו שתי אחיות” וכו’. שמע מינה: קדושין שאין מסורין לביאה הו קדושין! הכא נמי: בשוהבין ולבסוף נתערבו. דיקא נמי, דקתני “ואין יודע” ולא קתני “ואין ידוע”, שמע מינה.

ומאי קא משמע לן? סיפא איצטריכא ליה: “מתו, לזה אחד ולזה שנים – היחיד, חולץ לשתייהן. והשנים, אחד חולץ ואחד מייבם”.

פשיטא, היינו רישא! מהו דתימא: ליגזור תרי אטו חד, קא משמע לן.

ודוקא מיחלץ והדר יבומי, אבל יבומי ברישא – לא, דקא פגע ביבמה לשוק.

The Gemara asks: If so, **what is the mishna teaching us** in the segment of the mishna referring to the giving of two bills of divorce? That is obvious. The Gemara answers: **It was necessary to teach the last clause of the mishna**, as there it teaches: **If he died and he had one brother, that brother performs *halitza* with both of them; if he had two brothers, one performs *halitza* and the other one enters into levirate marriage if he so desires. Specifically, one brother must perform *halitza* first, and only subsequently the other brother may perform levirate marriage. But one brother may not enter levirate marriage first, before the other brother has performed *halitza*, as he would thereby encounter the sister of a woman with whom he has a levirate bond.**

The mishna says: In the case of **two unrelated men who betrothed two sisters**:¹⁴ If this one does not know which sister he betrothed and that one does not know which sister he betrothed, this one gives two bills of divorce, one to each of the women, and that one gives two bills of divorce. The Gemara asks: **Learn from here that betrothals that cannot ultimately lead to consummation¹⁵ are valid betrothals.** The Gemara rejects this: **Here too**, this is referring to a case where they were recognized and later mixed up. The language is also precise, as it teaches: **And he does not know**, meaning that he does not know now whom he betrothed, **and it does not teach: It is unknown.** The Gemara summarizes: **Indeed, conclude this from here that this is the case.**

The Gemara asks: If so, **what does it come to teach us** in relating that both of them must give bills of divorce? The Gemara explains: **It was necessary to teach the last clause**, where it says: **If they died and this one had one brother and this one had two, the single brother performs *halitza* with both of them. And of the two, one performs *halitza* and one enters levirate marriage if he so desires.**

The Gemara asks: **That is obvious**, as **this** is identical to the *halakha* taught in the **first clause** of the mishna. Why should this case be different from the previous case of two brothers? The Gemara answers: It is necessary to teach this **lest you say** the Sages should issue a decree in the case of **two brothers due to the case of one brother**. In a case of one brother he may only perform *halitza* but may not enter into levirate marriage. Without this mishna one may have thought the same should be true for two brothers. **This comes to teach us** that they did not issue such a decree, and in this case one of them is allowed to enter into levirate marriage.

And this is specifically if the brother of one man first performs *halitza* and subsequently the brother of the other man consummates the levirate marriage, but if he consummated the levirate marriage first, then no, that is prohibited. And why is that? He might be encountering the prohibition of a *yevama* to a member of the public. Possibly the woman he married was not his *yevama* but someone else’s *yevama*, and until the other man’s brother performs *halitza* with her she is still forbidden to other men.

HALAKHA

שנים שקדשו שתי אחיות – Two who betrothed two sisters: With regard to the case of two unrelated men who betrothed two sisters but do not know who betrothed whom and then both men died, if each had one brother, each brother performs *halitza* with both of the women, and they may not enter levirate marriage.

If one of the deceased had one brother and the other had two brothers, then the single brother performs *halitza* with both sisters, and with regard to the two brothers of the second man, one must first perform *halitza* with one of the wives and then the other may enter levirate marriage with the other if he so desires. However, if these two brothers both entered into levirate marriage with the sisters before consulting the court but after the brother of the other man had performed *halitza*, they need not divorce.

If each of the deceased men had two brothers, then one brother of the first performs *halitza* for one of the women, and one brother of the second performs *halitza* with the other woman. Then the second brother of the first is permitted to enter into levirate marriage with the woman who performed *halitza* with the brother of the second. Similarly, the second brother of the second may marry the woman who performed *halitza* with the brother of the first.

If both brothers of one man performed *halitza* with both sisters, then *ab initio* one brother of the second should perform *halitza* with one of the women and the second may then take the other in levirate marriage. If, however, both brothers of the second entered into levirate marriage with the sisters after the sisters performed *halitza* with the brothers of the first, then the men are not made to divorce them (Rambam *Sefer*

Nashim, *Hilkhot Yibbum VaHalitza* 8:2–3; *Shulhan Arukh*, *Even HaEzer* 176:3).

Betrothals that cannot ultimately lead to consummation – קידושין שאין מסורין לביאה: A betrothal that cannot ultimately be consummated due to a halakhic impediment is nevertheless a valid betrothal, and the bond can be broken only by a bill of divorce. This ruling is against the Gemara here, which attempts to resolve the matter in accordance with Rava’s opinion as well. Rather, this ruling is the conclusion of the talmudic discussion in tractate *Kiddushin* (51b) and is one of six cases where the *halakha* is ruled in accordance with the opinion of Abaye and not Rava (Rambam *Sefer Nashim*, *Hilkhot Ishut* 9:3; *Shulhan Arukh*, *Even HaEzer* 176:1).

לְזֶה שְׁנַיִם וְלִזֶּה שְׁנַיִם וְכו'. הָא תו
לְמַה לִּי, הֵינּוּ הֵךְ! מִהוּ דְתִימָא: לִיגְזֹר
דְּלָמָא מִיֵּיבָם בְּלֹא חֲלִיצָה, קָא מְשַׁמַּע
לִי.

The mishna taught: If **this one had two brothers and that one had two brothers**, the brother of this who performed *halitza* may take the *halitza* of that other's brother in levirate marriage, and the brother of that second one who performed *halitza* may take the *halitza* of that other's brother in levirate marriage. The Gemara asks: **Why do I need this as well? This clause is identical to that previous halakha.** The Gemara answers: It is necessary **lest you say: Let the Sages issue a decree lest he consummate the levirate marriage without the other first performing halitza at all. This comes to teach us** that such a decree is not issued. Rather, one of each pair of brothers can enter a levirate marriage.

מֵאִי שְׁנָא מִהָא דְתַנִּן: אֲרַבְעָה אַחִין,
שְׁנַיִם מֵהֶן נִשְׁוֹאִין שְׁתֵּי אַחִיּוֹת, וּמֵתוּ
הַנִּשְׁוֹאִין אֶת הָאֲחִיּוֹת – הֲרִי אֵלָיו
חֻלְצוֹת וְלֹא מִתְיַבְּמוֹת?

The Gemara asks: In **what way is this case different from that which we learned in a mishna (26a): If there were four brothers, and two of them were married to two sisters, and those married to the sisters died, then those two sisters perform halitza but may not enter into levirate marriage with the remaining brothers, since each woman is the sister of a woman with a levirate bond to each of the brothers. Why not say here as well that each is the sister of a woman with a levirate bond?**

הֲכִי הִשְׁתָּא!?

The Gemara rejects this: **How can these cases be compared?**

Perek II

Daf 24 Amud a

הָתָם אִי לְמֹאן דְּאָמַר יֵשׁ זִיקָה – יֵשׁ
זִיקָה. וְאִי לְמֹאן דְּאָמַר אָסוּר לְבִטֵּל
מִצְוֹת יְבָמִין – אָסוּר לְבִטֵּל מִצְוֹת יְבָמִין.
הֲכָא – כָּל חַד וְחַד, אִימּוֹר דִּידֵיהּ קָא
מִתְרַמֵּי לִיהּ.

There, in that mishna, if it is according to the one who said that the levirate bond is substantial, then there is a bond in that case, as two sisters were certainly married to the brothers and require levirate marriage. And if it is according to the one who said that it is prohibited to nullify the levirate mitzva through marrying the sister of the *yevama*, then the explanation of that mishna is that it is prohibited to nullify the levirate mitzva and for this reason they must perform *halitza* and may not enter into levirate marriage. However, here, in this mishna, there is uncertainty concerning the betrothal such that with regard to each one of the brothers, one could say that possibly he encountered his own *yevama*. Perhaps each brother took his own brother's wife in levirate marriage, and for this reason the Sages did not issue a decree.

“קִדְמוּ וְכִנְסוּ אִין מוֹצִיאִין” כּו'. תַּנִּי
שִׁילָא: וְאַפִּילוּ שְׁנֵיהֶם כֹּהֲנִים. מֵאִי
טַעְמָא? חֲלוּצָה דְרַבְּנָן הִיא, וְסָפֵק
חֲלוּצָה – לֹא גִזְרוּ בִּהּ רַבְּנָן.

The mishna states that if they married their wives before consulting the court, the court does not remove themⁿ from the marriage. Sheila teaches a *baraita* that clarifies the mishna: And this is the case even if both of the brothers were priests.^h A woman who performed *halitza* is normally forbidden to a priest, yet in this case, although the brother of the other man performed *halitza*, they are not required to divorce. What is the reason for this *halakha*? It is as follows: A *halutza* is forbidden to a priest by rabbinic law because her status is similar to that of a divorcee, who is forbidden to a priest by Torah law. And in a case of uncertainty as to whether she is a *halutza*, since it may not have been her *yavam* who performed the ceremony, the Sages did not issue a decree.ⁿ

וְחֲלוּצָה דְרַבְּנָן הִיא? וְהִתְנִיא: “גְּרוּשָׁה”,
אִין לִי אֵלָא גְּרוּשָׁה, חֲלוּצָה מִנִּין?
תְּלִמּוּד לִזְמַר “וְאִשָּׁה”! מִדְּרַבְּנָן הוּא,
וּקְרָא אֶסְמִכְתָּא בְּעִלְמָא הוּא.

The Gemara asks: And is the prohibition against a *halutza* marrying a priest^h really by rabbinic law? But isn't it taught in a *baraita*: “They shall not take a woman that is a harlot, or profaned; neither shall they take a woman divorced from her husband; for he is holy unto his God” (Leviticus 21:7). I have derived only a divorcee; from where do I derive that a priest may not marry a *halutza*? The verse states: “Neither shall they take a woman.” The repetition of the word “woman” extends the *halakha* to include a *halutza*. The Gemara answers: This prohibition is by rabbinic law, and the verse is a mere support.

NOTES

The court does not remove them – אִין מוֹצִיאִין: In this case they are not required to divorce, because it is uncertain whether each woman is the sister of a woman with whom he has a levirate bond or not. However, the early commentaries write that in a case where she is certainly the sister of a woman with whom one has a levirate bond, then although that prohibition is rabbinic, nevertheless, one who transgresses it and marries her is required to divorce her.

In a case of uncertainty whether she is a *halutza* the Sages did not issue a decree – קִפְקַח חֲלוּצָה לֹא גִזְרוּ: *Tosafot* challenge this because later (36b) the Gemara implies that the Sages did indeed render it prohibited for a priest to marry a woman whose *halitza* was uncertain. Ramah, cited by *Tosefot HaRosh*, explains that there is a distinction between a case of *halitza* performed out of uncertainty and a case where it is uncertain whether or not *halitza* was performed. In cases where there was an actual *halitza*, even if it is not certain that the *halitza* was necessary, the Sages decreed that the *halutza* is forbidden to a priest. In the case where it is not certain whether or not there was a *halitza*, the Sages did not decree that she is forbidden to a priest.

HALAKHA

They married their wives before consulting the court... even if both... were priests – אִפִּילוּ שְׁנֵיהֶם – כֹּהֲנִים: Once they are married they are not required to divorce, even if they are priests, as the *halitza* performed by the single brother is an uncertain *halitza*, and the Sages did not apply their decree to such a case (Rambam *Sefer Nashim*, *Hilkhot Yibbum VaHalitza* 8:2 and *Sefer Kedusha*, *Hilkhot Issurei Bia* 17:7; *Shulhan Arukh*, *Even HaEzer* 176:3).

A *halutza* marrying a priest – חֲלוּצָה לִכֹּהֵן: A *halutza* is forbidden to a priest by rabbinic law since she is considered similar to a divorcee (Rambam *Sefer Nashim*, *Hilkhot Yibbum VaHalitza* 8:2; *Sefer Kedusha*, *Hilkhot Ishut* 1:6 and *Hilkhot Issurei Bia* 17:7; *Shulhan Arukh*, *Even HaEzer* 6:1).

It is a mitzva for the eldest to consummate the levirate marriage – **מצוה בגדול לייבם**: The primary obligation to consummate the levirate marriage or perform *halitza* devolves upon the eldest of the brothers (Rambam *Sefer Nashim, Hilkhot Yibbum VaHalitza* 2:6; *Shulhan Arukh, Even HaEzer* 161:4).

If the younger consummated the levirate marriage first, he acquires her as his wife – **ואם קדם הקטן וכה**: Although the mitzva of levirate marriage devolves primarily upon the eldest of the brothers, if one of the others went ahead and entered into levirate marriage, then it is effective (Rambam *Sefer Nashim, Hilkhot Yibbum VaHalitza* 2:6; *Shulhan Arukh, Even HaEzer* 161:7).

Shall be established in the name of his dead brother, with regard to inheritance – **יקום על שם אחיו לנחלה**: The brother who consummates levirate marriage with his brother's widow inherits all of the property that is actually in his brother's possession (Rambam *Sefer Mishpatim, Hilkhot Nahalot* 3:7; *Shulhan Arukh, Even HaEzer* 163:1).

Excludes a eunuch – **פֶּרֶט לְסָרִיס**: A man who became sexually impotent through illness is not eligible for *halitza* or levirate marriage. If he performed *halitza* or if others performed *halitza* with his wife, it has no halakhic significance (Rambam *Sefer Nashim, Hilkhot Yibbum VaHalitza* 6:2, 4; *Shulhan Arukh, Even HaEzer* 172:1).

BACKGROUND

A verse does not depart from its literal meaning – **אין מקרא יוצא מידי פשוטו**: Even when the Bible is interpreted metaphorically, and even when halakhic conclusions are reached by means of a homiletic interpretation of a verse, these conclusions do not negate the literal meaning of the text (*Alfei Menashe*).

Verbal analogy – **גזירה שוה**: This is a fundamental talmudic principle of biblical exegesis appearing in all the standard lists of hermeneutical principles. If the same word or phrase appears in two places in the Torah, and a certain *halakha* is explicitly stated in one of these places, then on the basis of verbal analogy it is inferred that the same *halakha* applies in the other case as well.

Certain restrictions were placed on the use of this principle to prevent unfounded conclusions from being drawn. Most significantly: One cannot infer a verbal analogy on one's own, i.e., only a verbal analogy based on ancient tradition is valid.

NOTES

Remove the verse from its literal meaning altogether – **אפיקתיה מפשטיה לגמרי**: It is a transmitted tradition that there is no requirement to name the firstborn son of a levirate marriage after the deceased. Therefore, the verse cannot be read in accordance with its literal meaning (see Rashi).

The reason the Torah writes that the son will take the name of the deceased brother, even though that is not the *halakha*, is explained by the commentaries based on esoteric teachings. Through levirate marriage the soul of the deceased brother is reincarnated in the newborn son. This idea is elaborated upon in Ramban's Commentary on the Torah (Genesis, chapter 38; see *Sefer HaBoneh*).

מתני' מצוה בגדול לייבם ואם קדם הקטן – וכה.

גמ' תנו רבנן: "והיה הבכור" – מיכן שמצוה בגדול לייבם: "אשר תלד" – פרט לאילומות שאין יולדת: "יקום על שם אחיו" – לנחלה.

אתה אומר לנחלה, או אינו אלא לשם יוסף – קורין אותו יוסף, יוחנן – קורין אותו יוחנן? נאמר כאן "יקום על שם אחיו" ונאמר להלן "על שם אחיהם" יקראו בנחלתם, מה "שם" האומר להלן – נחלה, אף "שם" האומר כאן – לנחלה.

"ולא ימחה שמו" – פרט לסריס, ששמו מחוי.

אמר רבא: אף על גב דבכל התורה בולה אין מקרא יוצא מידי פשוטו, הכא אתאי גזירה שוה אפיקתיה מפשטיה לגמרי.

ואי לא גזירה שוה היה אמינא "שם" שם ממש? למאן קמוזה רחמנא. לייבם – "יקום על שם אחיו" מביעי ליה! אי לבי דינא – "יקום על שם אחי אביו" מביעי ליה!

ודלמא הכי קאמר להו רחמנא לבית דין: אמרו ליה לייבם "יקום על שם אחיו". אלא, אתאי גזירה שוה אפיקתיה לגמרי.

השתא דאמרת קרא בגדול כתיב, אימא: בכור – לייבם, פשוט – לא לייבם.

MISHNA It is a mitzva for the eldest to consummate the levirate marriage,¹ i.e., the eldest takes precedence over the other brothers, though they too are obligated. But if the younger brother consummated the levirate marriage first, he acquires the *yevama* as his wife.²

GEMARA The Sages taught the following interpretation of the verse: "And it shall be that the firstborn that she bears shall be established in the name of his dead brother and his name will not be blotted out of Israel" (Deuteronomy 25:6). From here the Sages derive that the mitzva to consummate the levirate marriage is upon the eldest. The next phrase: "That she bears," is interpreted to exclude levirate marriage in the case of a widow who is an *aylonit*, who cannot bear children. From the next phrase: "Shall be established in the name of his dead brother," it is derived that the same brother who performs the mitzva of levirate marriage is established in his brother's name with regard to inheritance,³ i.e., he inherits his brother's property.

The *baraita* continues and asks: Do you say that he succeeds in the name of his brother for inheritance, or perhaps it is only to inherit his name? If, e.g., the deceased brother was named Yosef, they must call the son born from levirate marriage Yosef, or if his name was Yohanan, then they must call him Yohanan. The *baraita* answers: It is stated here: "He shall succeed in the name of his brother," and it is stated there: "They shall be called after the name of their brothers in their inheritance" (Genesis 48:6). Just as the word "name" stated there in Genesis is referring explicitly to inheritance, so too, the word "name" stated here in Leviticus means with regard to inheritance.

The *baraita* continues to expound the next phrase of the verse: "And his name will not be blotted out of Israel" (Deuteronomy 25:6). This excludes the case where the deceased was a eunuch,⁴ as his name is already blotted out, since it is impossible for him to have children.

Rava said: Even though in the entire Torah a verse does not depart from its literal meaning,⁵ and even if the Sages offer a homiletical interpretation of the verses, the literal meaning remains intact, here the verbal analogy⁶ teaching that the word "name" is referring to inheritance comes to remove the verse from its literal meaning altogether.⁷

The Gemara asks: Were it not for the verbal analogy, would I have said that the meaning of the word "name" is the actual name? The verse would be incomprehensible according to the literal reading. Whom is the Merciful One instructing in this verse? To whom does the possessive pronoun in the phrase "his brother" apply? If He is speaking to the *yavam*, He should have stated: Shall succeed in the name of your dead brother. And if the verse is instructing the court about the *halakha* in general, it should have said: Shall succeed in the name of his father's brother.

The Gemara rejects this question: And perhaps this is what the Merciful One is saying to the court: Say to the *yavam* that the child born to him shall be established in the name of his brother. Were it not for the verbal analogy, the verse could have been understood according to its literal meaning. Rather, the verbal analogy comes to remove it from its literal meaning altogether.

The Gemara challenges the *baraita*: Now that you say that the verse: "And it shall be that the firstborn that she bears" is written in reference to the eldest brother, say that the firstborn brother consummates the levirate marriage but that an ordinary brother, i.e., not the firstborn, may not consummate the levirate marriage, and that if the firstborn son is unable to enter into levirate marriage or is no longer alive, no one else may perform the mitzva.

The Merciful One made levirate marriage dependent upon inheritance – **יָבוּם בְּנִחְלָה תִּלְהֶי רַחֲמָנָא** – Rashi explains that this is referring only to the firstborn son, who inherits a double portion from his father. Therefore the firstborn of only the father has relevance, not the firstborn of the mother. See Rabbi Yehuda bar Natan, *Tosefot HaRosh*, and Rashba, who suggest an alternative explanation.

Just as with regard to the firstborn, his status as firstborn causes him, etc. – **כִּבְכוֹר מֵה בְּכוֹר בְּכוֹרָתוֹ גִּרְמָה לֹא וכו'** – In other words, since the Gemara has explained that with regard to levirate marriage the firstborn status is irrelevant, it is clear that the key factor is that he is the eldest of the brothers. This implies that the eldest takes precedence in matters of levirate marriage (*Tosefot HaRosh*).

HALAKHA

Inheritance from the father – נִחְלָה מִן הָאָב – One's mother's family is not called family with regard to inheritance, and inheritance is received only from one's father's family. Therefore, maternal half brothers do not inherit from one another (Rambam *Sefer Mishpatim*, *Hilkhot Nahalot* 1:6; *Shulhan Arukh*, *Hoshen Mishpat* 276:4).

Order of the obligation to enter levirate marriage – סֵדֶר הַמִּצְוִים בְּיָבוּם – The obligation of levirate marriage falls upon the eldest of the surviving brothers. If he does not wish to fulfill his mitzva, it devolves upon the next eldest. According to the Rambam it devolves equally on all of the remaining brothers. If none of the younger brothers fulfills the obligation, the obligation to perform the mitzva remains with the eldest (Rambam *Sefer Nashim*, *Hilkhot Yibbum VaHalitza* 2:6; *Shulhan Arukh*, *Even HaEzer* 161:4).

אם כן, אשת אחיו שלא היה בעולמו
דמיטע רחמנא – למה לו?

The Gemara answers: **If so** that the mitzva of levirate marriage applies only to the firstborn, then in the case of a **wife of a brother with whom he did not coexist**, which the Merciful One excluded by the verse: “If brothers dwell together,” **why do I need such an exclusion?** If only the firstborn is obligated to perform levirate marriage, then there is no need to separately exclude the case of a wife of one's brother with whom one did not coexist, because by definition one in that position cannot be the firstborn.

Rav Aha refutes the Gemara's answer: **But say that** the verse comes to **exclude** the case of a brother with whom one did not coexist when one is nevertheless **the firstborn of the mother**, e.g., if the father had two wives. The Gemara rejects this: **You cannot say that, as the Merciful One made levirate marriage dependent upon inheritance,^N and inheritance comes from the father^H and not from the mother.**

פריך רב אחא: ואימא: ואימא למעוטי בוכרא
דאמא! הווא לא מצית אמרת, דביום
בנחלה תלה רחמנא, ונחלה מן האב
ולא מן האם.

ואימא: כי איכא בכור תתקיים מצות
יבוים, כי ליכא בכור לא תתקיים מצות
יבוים! אמר קרא: “ומת אחד מהם,” מי
לא עסקינן דמית בכור, ואמר רחמנא
לייבם קטן.

The Gemara again challenges the *baraita*: **Then say that when there is a firstborn the mitzva of levirate marriage can be fulfilled by any of the brothers, but that when there is no firstborn, e.g., if he had already died, the mitzva of levirate marriage may not be fulfilled by any of the younger brothers.** The Gemara answers: **The verse states: “And one of them dies”** (Deuteronomy 25:5), without specifying which brother dies. **Are we not dealing even with the case where the firstborn died, and yet the Merciful One states that the younger brother should consummate the levirate marriage?**

ואימא דמית קטן, ואמר רחמנא לייבם
בכור! הא מיטע רחמנא אשת אחיו
שלא היה בעולמו.

The Gemara refutes this answer: **Say that** the case in the Torah is referring to when **the younger brother died**, and only then the Merciful One states that the firstborn must consummate the levirate marriage. The Gemara answers: **Didn't the Merciful One explicitly exclude the wife of a brother with whom he did not coexist**, which can apply only to a brother who was not the firstborn?

ואימא: כי ליכא בכור – קדם קטן וזה,
ואי איכא בכור – קדם קטן לא וזה!
אמר קרא: “כי ישבו אחים יחדו” –
הוקשה ישיבת אחים זה לזה.

The Gemara challenges the *halakha*: **Say that when there is no firstborn brother, if a younger brother went ahead and consummated the levirate marriage, then he acquires his yevama as a wife. But if there is a firstborn, and the younger brother went ahead and performed levirate marriage first, then he does not acquire his yevama as a wife**, because the Torah specifies that the firstborn brother must perform the mitzva. The Gemara rejects this: **The verse states: “If brothers dwell together”** (Deuteronomy 25:5), implying that **the brothers' dwellings were equated one with the other**, and all the brothers are equally obligated in this mitzva.

ואימא: כי איכא בכור – ליהדר אגדול,
כי ליכא בכור – אין חוזרין אצל גדול!
אלמה תני אבוי קשישא: מצוה בגדול
לייבם. לא רצה – הולכים אצל אחיו
הקטן, לא רצה – חוזרין אצל גדול!

The Gemara challenges the *halakha* again: **Then say: When there is a firstborn, let the mitzva return to the eldest brother if the other brothers refuse to perform levirate marriage. But when there is no firstborn, the court does not return to the eldest**, as the mitzva primarily applies specifically to the firstborn, and if there is no firstborn, none of the brothers take precedence. **Why did Abaye the Elder teach: It is a mitzva for the eldest of the brothers to consummate the levirate marriage? If the eldest did not wish to do so, then the court goes to his younger brother. If he also did not wish to do so, the court returns again to the eldest.** This implies that the eldest, even if he is not the firstborn, has a greater mitzva than the younger brothers.

בבכור, מה בכור – בכורתו גרמה לו,
אף גדול – גדולתו גרמה לו.

The Gemara answers: Since it is derived that the eldest brother takes precedence from the verse about the firstborn, then **just as with regard to the firstborn, his status as firstborn causes him^N to take precedence, so too, with regard to the eldest, his status as eldest causes him to take precedence.^H**

וַיֵּאמָר: כִּי מֵיִיבָם בְּכֹר – לִישְׁקוֹל נַחֲלָה, כִּי מֵיִיבָם פְּשׁוּטָה לֹא לִישְׁקוֹל נַחֲלָה! אָמַר קָרָא: "יָקוֹם עַל שֵׁם אָחִיו" – וְהָרִי קָם.

The Gemara challenges the *halakha* again: **Then say that if the firstborn consummates the levirate marriage he receives his deceased brother's inheritance, but if an ordinary brother consummates the levirate marriage he does not receive the inheritance.** The Gemara answers that **the verse states:** "The firstborn that she bears **shall be established in the name of his dead brother**" (Deuteronomy 25:6), **and if the younger brother performs levirate marriage he has established his brother's name and thereby earns the inheritance.**

וְאֵלָּא בְּכֹר דְּקָרְיָהּ רַחֲמָנָא,

The Gemara asks: **But if there is no difference between the first-born and the eldest, why does the Merciful One call the brother who enters levirate marriage the firstborn?**

Perek II
Daf 24 Amud b

לְמַאי הִלְכְּתָא? לְגַרְעִיּוֹתָא, מַה בְּכֹר אֵינוֹ נוֹטֵל בְּרָאוּי בְּבִמְחֻזָּק – אִף הָאִי אֵינוֹ נוֹטֵל בְּרָאוּי בְּבִמְחֻזָּק.

With regard to what *halakha* was that word written in the Torah? **This is in order to limitⁿ the inheritance. Just as a firstborn does not take in inheritance property due as he does property possessed, but instead receives a double inheritance only from that property already in actual possession of their father, so too, this one who enters levirate marriage, whether firstborn or younger, does not take in inheritance property due as he does property possessed.^h**

מִתְנִי' הִנָּטְעַן עַל הַשְּׁפָחָה וְנִשְׁתַּחֲרָה, אוֹ עַל הַגּוֹיָה וְנִתְּנִיָּהּ, הָרִי זֶה לֹא יִכְנוּס. וְאִם כֵּנֶס – אֵין מוֹצִיאִין מִיָּדוֹ. הִנָּטְעַן עַל אִשֶּׁת אִישׁ וְהוֹצִיאוּהָ מִתַּחַת יָדוֹ, אִף עַל פִּי שְׂכָנִים – יוֹצִיא.

MISHNA One suspected by others of engaging in sexual relations with a Canaanite maid-servantⁿ and she was later set free, or one suspected of relations with a gentile woman^h and she subsequently converted, may not marry that woman, since this will strengthen the suspicions against him. **But if he did marry her, they, the judges of the court, do not remove her from him, i.e., they do not require him to divorce her.** With regard to one who is suspected of illicit relations with a married woman and they, the judges of the court, removed her from her husband, i.e., required them to divorce due to this, even if the man suspected of the illicit relations subsequently married her, he must divorce her.

NOTES

In order to limit – לְגַרְעִיּוֹתָא: *Tosafot* point out that equating the inheritance of one who performs levirate marriage with the inheritance of a firstborn is not solely a limitation, but also gives a benefit, as this additional inherited portion of land is not divided with the other brothers in the Jubilee Year. However, it is described as a limitation because Rabbi Elazar disagrees with regard to the benefit and holds that land inherited through levirate marriage does revert to be shared with the other brothers in the Jubilee Year (*Tosafot on Bekhorot* 52b and *Tosefot HaRosh*; see *Mei Neftoah*).

One suspected of relations with a Canaanite maidservant, etc. – הִנָּטְעַן עַל הַשְּׁפָחָה וכו': This mishna and those following are not directly related to the main topic of this chapter. They appear here because the earlier mishna mentioned the distinction between cases where the court removes a wife from her husband and those where it permits her to remain married to him (*Yosef Lekah*).

HALAKHA

One who enters levirate marriage does not take in inheritance property due – הַמֵּיִיבָם אֵינוֹ נוֹטֵל בְּרָאוּי: One who performs levirate marriage receives the property of his deceased brother and also receives his brother's portion in the inheritance from their father. However, this applies only to property in the brother's possession, as is the case when the father predeceased the brother but the inheritance had yet to be divided when the brother died. However, if the brother died prior to the father, the one who performed levirate marriage does not receive his brother's portion of the inheritance (Rambam

Sefer Mishpatim, Hilkhot Nahalot 3:7; *Shulhan Arukh, Even HaEzer* 163:1).

One suspected of relations with a Canaanite maidservant... or with a gentile woman – הִנָּטְעַן עַל הַשְּׁפָחָה... אוֹ עַל הַגּוֹיָה: One who is suspected of relations with a Canaanite maidservant or a gentile woman may not marry her *ab initio* if the maidservant was set free or if the gentile woman converted. However, if he did marry her, the court does not require him to divorce her (Rambam *Sefer Nashim, Hilkhot Geirushin* 10:14; *Shulhan Arukh, Even HaEzer* 11:5).

שְׁנֵתִי לְשׁוֹם – Who converted for the sake of a woman – **אִשָּׁה**: *Mishpetei Uziel* derives from this Gemara that one can accept a convert *ab initio*, even if he intends to marry a Jewish woman at the time of his conversion, if it becomes clear that he would have married her anyway while remaining a gentile and instead chose of his own accord to become a Jew. He explains that the concern of the Sages is that a gentile who converts for the sake of a woman may still remain attached to his previous religion, and as soon as his love fades he will once again revert to his former religion. However, if it is apparent that he sincerely wants to become a Jew, even if there were other motives involved it can be assumed that the purer motives will prevail and he will maintain his principles even afterward. Moreover, it may be preferable to convert him in such a case so that the Jewish woman will not marry a gentile, since she would have been willing to marry him even if he did not convert. He bases this on the halakhic principle: "It is time to work for the Lord; they have made void Your Torah" (Psalms 119:126; see *Berakhot* 54a), which implies that when one needs to perform God's will, it is occasionally permitted to negate even a biblical precept or, in this case, a rabbinical decree (*Mishpetei Uziel*, *Yoreh De'a* 2:53).

לְשׁוֹם שׁוֹלְחַן מְלָכִים – For the sake of the king's table – In the minor tractate that discusses the *halakhot* of converts, known as tractate *Gerim*, there is a list of four different categories of converts. One of them is a convert for the sake of sustenance, which means that he saw poor Jews receiving sustenance from their brethren and converted so that he too could receive sustenance. He is therefore compared to a pauper, as it is written: "You shall leave them for the poor and the stranger [*ger*]" (Leviticus 19:10). It is possible that the king's table is also referring to this sustenance, as the poor would eat from the king's table (see Meiri).

The so-called minor tractates, some of which are rather long, were also called external tractates by the *ge'onim*. They deal with many subjects, but what they have in common is that their subject matter was generally not discussed in one specific tractate or chapter in the Mishna and Talmud, although many of them do refer to Torah laws and major halakhic principles. These tractates could be an indication that another order of the Mishna once existed.

דָּאֵמַר רַב – רַב אֲסִי: As Rav Asi said, Put away from yourself, etc. Since this is a biblical verse, why is it attributed to Rav Asi? *Tosafot* on *Ketubot* 22b explain that Rav Asi would frequently cite this verse, and it became associated with him. The Maharatz Hayyut writes that there are alternative interpretations of the verse; it is only due to Rav Asi's interpretation that actions are prohibited if they appear to give validity to prior rumors.

Not...in the days of King David or in the days of King Solomon – **לֹא בִימֵי דָּוִד וְלֹא בִימֵי שְׁלֹמֹה**: Rambam explains that in each of these two eras there was a different reason for refusing converts: In the time of King David converts were not accepted lest their conversion stem from fear of King David; in the days of King Solomon the concern was that they may have converted due to his glory and wealth.

Behold, they may gather together – הֵן גּוֹר יְגוֹר: The homiletical interpretation is based on the fact that the word *gather* [*gar*] is similar to the word *convert* [*ger*]. Rabbi Yehuda bar Natan gives an alternative explanation. He writes that the word *gur* also means terror, as in the verse: "For I have heard the whispering of many, terror [*magor*] on every side" (Psalms 31:14). Therefore, if one converted due to fear he is considered "without Me," i.e., not part of God's people.

GEMARA The mishna teaches that one who is suspected of relations with a gentile woman who later converted may never marry her. This implies that she is, however, a convert, although it appears that she converted only in order that he might marry her. The Gemara raises a contradiction from a *baraita*: Both a man who converted for the sake of a woman^N and a woman who converted for the sake of a man, and similarly, one who converted for the sake of the king's table,^N so that he could serve in a prestigious capacity, or for the sake of Solomon's servants, who were also considered prestigious, in all of these cases they are not converts; this is the statement of Rabbi Nehemya.

As Rabbi Nehemya would say: With regard to converts by lions, i.e., forced converts such as the Samaritans [*Kutim*] described in 11 Kings (17:24–25); and converts who convert based on their dreams; and converts of the time of Mordecai and Esther described in the verse, "And many from among the peoples of the land became Jews; for the fear of the Jews was fallen upon them" (Esther 8:17); all of these are not converts until they are converted at this present time.

The Gemara clarifies the meaning of the words: Could it enter your mind to say only at this present time? Since he mentioned the converts of Mordecai and Esther, who were deceased before Rabbi Nehemya made this statement, he therefore cannot possibly mean this phrase literally. Rather, say: Like at this present time, when the Jewish people are in exile and there is no material benefit to conversion.

Returning to the question above: How could a woman who converted for the sake of a man be considered a true convert? The Gemara answers: But wasn't it stated with regard to that *baraita* that Rav Yitzhak bar Shmuel bar Marta said in the name of Rav: The *halakha* is in accordance with the statement of the one who says that they are all converts.^H

The Gemara asks: If so, why is one suspected of relations with such a woman not permitted to enter into marriage with her *ab initio* as well? The Gemara answers: The reason for the prohibition is due to the following statement of Rav Asi. As Rav Asi said with regard to such cases: "Put away from yourself^N a twisted mouth, and perverse lips put far from you" (Proverbs 4:24). If they were to marry, they would give substance to the prior suspicions.

The Sages taught: Converts are not accepted in the days of the Messiah. Similarly, they did not accept converts in the days of King David or in the days of King Solomon.^{NH} Rabbi Eliezer said: What is the verse that hints at this *halakha*? "Behold, they may gather together [*gor yagur*],^N but without Me; whosoever shall gather together [*gar*] with you shall fall on yours" (Isaiah 54:15). The word *gor* implies that only a convert [*ger*] who becomes part of the Jewish people when the Jews are living in exile, at a time when God is not clearly revealed, i.e., "without Me," are considered part of the Jewish people. But another who wishes to convert in a time when God is clearly revealed shall not be accepted.

HALAKHA

They are all converts – כּוֹלֵם גֵּרִים הֵם: The court must examine the motivation of a potential convert to ensure that he wishes to convert solely for the sake of Heaven. If the court did not examine his motivation before converting him, and even if it subsequently became known that he converted for some ulterior motive, since he has been circumcised and immersed in a ritual bath before a court of three, he no longer has the status of a gentile but his status remains in doubt until it becomes clear that he accepted Judaism completely. He does not have the status of a Jew such that he should be trusted, e.g., in declaring food to be permitted, but nevertheless he is not considered a

gentile, and if he marries a Jewish woman the marriage is valid. Even if he reverted to idol worship he is considered an apostate Jew, based on the opinion of Rav and the conclusion of the Gemara's discussion (Rambam *Sefer Kedusha*, *Hilkhot Issurei Bia* 13:14–17; *Shulhan Arukh*, *Yoreh De'a* 268:12).

They did not accept converts in the days of King David or in the days of King Solomon – לֹא קִבְּלוּ גֵרִים לֹא בִימֵי דָּוִד וְלֹא בִימֵי שְׁלֹמֹה: The court did not accept converts in the eras of David and Solomon, as they feared that gentiles might convert due to the strength and glory of the Jewish kingdom (Rambam *Sefer Kedusha*, *Hilkhot Issurei Bia* 13:15).

גַּמְ' הָא גִּיּוֹרָת מִיָּהּ הָיָא, וְרַמְיָהּ: אחד איש שנתגייר לשום אשה, ואחד אשה שנתגיירה לשום איש, וכן מי שנתגייר לשום שולחן מלכים, לשום עבדי שלמה – אינן גרים, דברי רבי נחמיה.

שְׁהִיָּה רַבִּי נְחֵמְיָה אוֹמֵר: אֶחָד גִּירֵי אֲרִיּוֹת וְאֶחָד גִּירֵי חִלּוּמוֹת, וְאֶחָד גִּירֵי מְרָדְכִי וְאֶסְתֵּר – אֵינָן גֵּרִים עַד שִׁתְּגִיירוּ בְּזִמְנָא הַזֶּה.

בְּזִמְנָא הַזֶּה סָלָקָא דַּעְתְּךָ? אֵלָּא, אִמָּא: בְּבִזְמַן הַהוּא.

הָא אֵיתָמַר עֲלֵהּ, אָמַר רַב יִצְחָק בְּרִי שְׁמוּאֵל בְּרִי מַרְתָּא מִשְׁמֵיהּ דְּרַב: הֲלָכָה כְּדִבְרֵי הָאוֹמֵר כּוֹלֵם גֵּרִים הֵם.

אִי הָכִי לְכַתְחֻלָּה נִמְי! מִשּׁוּם דְּרַב אֲסִי: דְּאָמַר רַב אֲסִי: "הָסֵר מִמֶּךָ עֲקָשׁוֹת פֶּה וְלִוְוֹת שִׁפְתֵיךָ" וְגו'.

תִּנּוּ רַבָּנִן: אֵין מְקַבְּלִין גֵּרִים לִימּוֹת הַמָּשִׁיחַ. כִּיּוֹצֵא כּוֹ לֹא קִבְּלוּ גֵרִים לֹא בִימֵי דָּוִד וְלֹא בִימֵי שְׁלֹמֹה. אָמַר רַבִּי אֱלִיעֶזֶר: מֵאִי קָרָא – "הֵן גּוֹר יְגוֹר אָפֶס מֵאוֹתֵי מִי גֵר אֶתְךָ עֲלִיךָ יְפוֹל" אֲבָל אֵיךְ – לֹא.

NOTES

When Rav was dozing or sleeping – **כִּי נִימ וְשָׁכַב רַב** – Some commentaries suggest that this is merely a polite way of saying that Rav's statement is incorrect.

HALAKHA

One who was suspected of adultery with a married woman and later she married someone else – **הַנֶּטֶעַן עַל – אִשֶּׁת אִישׁ וְנִשְׁאָה לְאַחֵר**: If one was suspected of committing adultery with a married woman, and due to this her husband divorced her and she married someone else and was later divorced from him, it is nevertheless prohibited for her to marry the suspected adulterer. However, if she transgressed and married him he need not divorce her, even if she had no children. The ruling applies even if there were witnesses to circumstantial evidence, provided they were not witnesses to the adultery itself, in which case the adulterer would be forced to divorce the adulteress (Rambam *Sefer Nashim*, *Hilkhot Sota* 2:15; *Shulḥan Arukh*, *Even HaEzer* 11:2).

If she has children she is not required to be divorced – **יֵשׁ לָהּ בָּנִים לֹא תֵצֵא**: In the case of a husband who had not made a declaration of jealousy with regard to his wife, yet witnesses came forward and testified that she had been secluded with a man, if the husband then sent her away due to circumstantial evidence, she may not marry the man with whom she is suspected of misconduct. If the divorcée transgressed this *halakha* and married the suspected adulterer, the following distinction applies: If she had no children from the first husband, the court requires him to divorce her; if she had children from him she is not required to be divorced, based on the Rif's interpretation of the Gemara. If the first husband had made a declaration of jealousy with regard to his wife, then she must be divorced from the suspected adulterer even if she had children from him (Rambam *Sefer Nashim*, *Hilkhot Sota* 2:13; *Shulḥan Arukh*, *Even HaEzer* 11:1).

Witnesses to her impurity came and testified – **טוּמְאָה**: If witnesses testify that a married woman committed adultery, and consequently her husband divorces her, she may not marry the adulterer. If she transgressed and married him, even if she had children from the first husband, she must be divorced from him (Rambam *Sefer Nashim*, *Hilkhot Sota* 2:16; *Shulḥan Arukh*, *Even HaEzer* 11:2 and 178:18).

“הַנֶּטֶעַן עַל אִשֶּׁת אִישׁ” וכו'. אָמַר רַב: וּבְעֵדִים.

אָמַר רַב שֵׁשֶׁת: אָמִינָא כִּי נִימ וְשָׁכַב רַב אָמַר לְהָאִי שְׁמַעְתָּתָא. דְּתַנָּא: הַנֶּטֶעַן עַל אִשֶּׁת אִישׁ וְהוֹצִיאוּהָ עַל יָדוֹ, וְנִתְגַּרְשָׁה מִתַּחַת יְדֵי אַחֵר, אִם כֵּן – לֹא יוֹצִיא.

הִכִּי דָמִי, אִי דְאִיכָא עֵדִים – כִּי אָתָּא אַחֵר וְאַפְסָקִיהָ לְקָלָא מָאִי הוּי? אָלָּא לֹא דְלִיכָא עֵדִים, וְטַעֲמָא, דְּאָתָּא אַחֵר וְאַפְסָקִיהָ לְקָלָא, הָא לֹא הָכִי – מִפְּקִינָא!

אָמַר לָךְ רַב: הוּא הָדִין דְּאָף עַל גַּב דְּלֹא אָתָּא אַחֵר וְאַפְסָקִיהָ לְקָלָא. אִי אִיכָא עֵדִים – מִפְּקִינָא, אִי לִיכָא עֵדִים – לֹא מִפְּקִינָא, וְהִכִּי קָאָמַר: דְּאָף עַל גַּב דְּאָתָּא אַחֵר וְאַפְסָקִיהָ לְקָלָא – לְכַתְּחִלָּה לֹא יִכְנוּס.

מִיתִיבִי: בְּמָה דְּבָרִים אָמּוּרִים – בְּשָׂאִין לָהּ בָּנִים, אֲבָל יֵשׁ לָהּ בָּנִים – לֹא תֵצֵא. וְאִם בָּאוּ עֲדֵי טוּמְאָה – אֲפִילוּ יֵשׁ לָהּ בְּמָה בָּנִים תֵּצֵא.

רַב מוֹקִי לָהּ לְמַתְנִיתִין בִּישׁ לָהּ בָּנִים וְיֵשׁ לָהּ עֵדִים. וּמָאִי דּוֹחֲקִיהָ דְּרַב לְאוּקְמִי לְמַתְנִיתִין בִּישׁ לָהּ בָּנִים וְיֵשׁ לָהּ עֵדִים, וְטַעֲמָא דְּאִיכָא עֵדִים – מִפְּקִינָא, וְאִי לִיכָא עֵדִים – לֹא מִפְּקִינָא, לְוָקְמָה בְּשָׂאִין לָהּ בָּנִים, אָף עַל גַּב דְּלִיכָא עֵדִים?

The mishna states that **one who was suspected of relations with a married woman** may not marry her even after she divorces her husband. Even if they marry without permission, they must divorce. **Rav said: This** is only in a case when there were **witnesses** to her infidelity, and because of their testimony the court required her first husband divorce her. However, if her first husband divorced her due to suspicion and rumors but without witnesses, her second husband would not be obligated to divorce her.

Rav Sheshet said: I say that when Rav was dozing or sleeping^N he said that *halakha*, and it is mistaken. As it is taught in a *baraita*: With regard to **one who was suspected of adultery with a married woman** and as a result the court requires her husband to **divorce her**, and later she married someone else^H and was then divorced by this other, if the one who had been suspected of illicit relations with her then married her, **he need not divorce her**.

The Gemara clarifies this: **What are the circumstances of this case?** If it is referring to a case where **there are witnesses** to their adultery, **when another came and put an end to the rumor** of her misconduct by marrying her, **what of it?** If there were witnesses, the adulterers may never marry each other. **Rather, is it not** referring to a case **where there were no witnesses** to the adultery, **and the reason** she does not have to be divorced from her third husband, with whom she committed adultery while married to her first husband, is specifically **because another came** and, by marrying her, **put an end to the rumor?** This implies that **were it not so**, i.e., had she not married someone else before marrying the man suspected of committing adultery with her, the court **would have removed** her from him and required them to divorce, even without witnesses to their adultery. This contradicts Rav's statement above that they must divorce only if there were witnesses to the infidelity.

The Gemara responds: Rav could have said to you that **the same is true even if another did not come and put an end to the rumor** by marrying her. The same principle applies: **If there were witnesses** to the adultery the court **removes her** and requires them to divorce, but **if there were no witnesses**, the court **does not remove her**. **And this is what the baraita is saying:** The novelty in this *baraita* is **that even though another came and put an end to the rumor** by marrying her, nevertheless, the suspected adulterer may **not marry her *ab initio*** due to the original suspicions.

The Gemara raises an objection from a different *baraita* that qualifies the previous one: **In what case is this statement**, that the court removes her from the suspected adulterer, **said?** It is **when she has no children** from her first husband. **But if she has children** from him, **she is not required to be divorced^H** from the suspected adulterer. On the contrary, if they were required to divorce, it could strengthen the original rumor and others might suspect that her children are *mamzerim*. **However, if witnesses to her impurity**, i.e., her adultery, **came and testified^H** that she had relations with this man while she was married, then **even if she has several children** from the first husband, **she is required to be divorced**. This implies that a woman without children from her first husband must separate from a man suspected of illicit relations with her on strength of suspicion alone.

The Gemara answers and explains that **Rav establishes the mishna** as referring only to a case **where she has children** by her first husband **and there are witnesses** to her adultery. In such a situation, she and the adulterer must divorce, but without witnesses they are not required to divorce. The Gemara asks: **What forced Rav to establish the mishna** as referring to a case **where she has children and there are witnesses** and explain that **the reason** that the court removes her from the suspected adulterer is **because there were witnesses**, but that **if there were no witnesses they do not remove her?** Why does he not **establish** the mishna as referring to a case **where there were no children** and that they must divorce **even if there were no witnesses?**

אמר רבא: מתניתין קשייתה: מאי איריא דתני "הוציאוה", ליתני הוציאוה, אלא. כל "הוציאוה" בבית דין, ובית דין – בעדים הוא דמפקי.

ואי בעית אימא: הני מתנייתא – רבי היא, דתניא: רובל יוצא ואשה חוגרת בסניר, אמר רבי: הואיל ומכוער הדבר – תצא. רוק למעלה מן הכילה, אמר רבי: הואיל ומכוער הדבר – תצא.

Rava said: The language of the mishna was difficult for him; due to that he deemed it necessary to interpret it as he did. **Why does the tanna specifically teach: They remove her from him [hotziuha]? Let it teach: He divorces her [hotziah]** in the singular. Rather, every time the plural form: **They remove her**, is used, it is referring to the judges of the court. **And a court removes a woman from her suspected adulterer only if there were witnesses**, and not due to suspicion alone.

If you wish, say a different answer for Rav's explanation: **Those baraitot** that require the wife and the suspected adulterer to divorce even without witnesses to the adultery are taught in accordance with the opinion of **Rabbi Yehuda HaNasi**. **As it is taught in a baraita:** With regard to a case where a husband saw a **peddler leaving^N** the house, and when he entered he found his wife **retying her smock [sinar]**,^L i.e., putting her clothes back on, **Rabbi Yehuda HaNasi said: Since this is a distasteful matter^H** because it looks as though she committed adultery with the peddler, **she must be divorced** by her husband. Alternatively, if the husband entered after the peddler had left and found **saliva above^N the netting of the bed**, implying that someone had lain on the bed and spit upward, although no actual act was witnessed, **Rabbi Yehuda HaNasi said: Since this is a distasteful matter, she must be divorced.**

NOTES

A peddler leaving – רובל יוצא: The Gemara refers to peddlers because they would frequently spend time selling their wares to women. Therefore, their actions were commonly suspected.

Saliva above – רוק למעלה: The Meiri holds that this phrase is a euphemism meaning that signs of semen were found in the bed.

LANGUAGE

Smock [sinar] – סינר: The source of this word is not entirely clear, but some suggest that the word was borrowed from the Greek ζωνάριον, *zonariyon*, which comes from the term for belt and means a strap or girdle worn by women as an undergarment. However, the *sinar* described by the Sages is some kind of trousers worn as an undergarment.

HALAKHA

A distasteful matter – דבר מכוער: What is considered a distasteful matter? It is a case where, e.g., one entered the house of a married woman after some other man had left and found her standing next to the bed in her undergarments, or one saw the couple exiting from a secluded place, or one saw them lock themselves in a room, or any similar circumstance. Each case is judged at the judges' discretion (Rambam *Sefer Nashim*, *Hilkhot Sota* 2:13 and *Sefer Kedusha*, *Hilkhot Ishut* 24:15; *Shulhan Arukh*, *Even HaEzer* 11:1, 178:18).

Perek II Daf 25 Amud a

מנעלים הפוכים תחת המטה, אמר רבי: הואיל ומכוער הדבר – תצא. מנעלים הפוכים? ליתווי דמאן נינהו! אלא: מקום מנעלים הפוכים (תחת המטה). אמר רבי: הואיל ומכוער הדבר – תצא.

The same applies if the husband found **the shoes reversed under the bed**, so that the toe of the shoe faced the bed; this is a sign that a stranger came in and placed them like that. **Rabbi Yehuda HaNasi said: Since this is a distasteful matter, she must be divorced.** The Gemara questions this: **Shoes turned around? Let him see whose they are** and clarify who the stranger was and then find out what he was doing there. **Rather**, the case was that he found the **place of the shoes**, i.e., shoe prints, **reversed^N under the bed** and cannot recognize whose shoe prints they are. **Rabbi Yehuda HaNasi said: Since this is a distasteful matter, she must be divorced.**

NOTES

מקום מנעלים הפוכים – The place of the shoes reversed: According to Rashi and Rabbi Yehuda bar Natan, this means that the husband found prints of shoes that had been turned upside down so that the sole of the shoe faced up. Rashi holds that they were overturned so as to hide the ownership of the shoes. On the other hand, Rabbi Yehuda bar Natan holds that they were upside down due to the peddler's great haste, so that he did not have time to place the shoes in the regular

fashion. According to the Meiri, the shoe prints were not under the bed but at the foot of the bed, indicating that apparently the shoes fell off while they were engaged in adultery. The Meiri also gives a second explanation, that the husband found footprints of his wife's shoes next to his own bed, suggesting that she lay there with someone else. This opinion is similar to Rashi's second explanation.

When does the court require a woman to be divorced from her husband or from a man suspected of adultery – *מתי מוציאין אשה מב'עלה ומנטען* – In a case where the husband did not make a declaration of jealousy, if witnesses came forward that his wife was secluded alone with a certain man, and based on that testimony the husband divorces her, she may not marry the suspected adulterer. If the suspected adulterer ignored the *halakha* and married her anyway, and she bore him children, he is not required to divorce her. They may remain married if they had children together even if there was a persistent rumor in town that she had committed adultery with the suspected individual. This is in accordance with the opinion of Rabbi Yehuda HaNasi. However, if there was no rumor, or if the rumor ran its course and ended, then if she married the suspected individual she need not be divorced, even if she did not bear him any children. Even if a single witness came forward and testified that she had committed adultery with him she need not be divorced, according to the opinion of Rav.

Some say that if there was a persistent rumor along with witnesses to some distasteful matter the court requires her husband to divorce her, even though there are no witnesses that she actually committed adultery (Rema, citing Rashi; *Shulḥan Arukh, Even HaEzer* 11:1).

At what point is it a persistent rumor – איזהו קול שאינו פוסק: A persistent rumor is a rumor about a married woman and a suspected adulterer that is discussed in town continually for a day and a half or longer. Even if the rumor ceased in the middle, if it ceased due to fear, this is not considered a rumor that ended. All of this applies only if neither the woman, nor the suspected individual, nor the husband had any enemies who may have started the rumor (Ran; *Shulḥan Arukh, Even HaEzer* 11:1).

BACKGROUND

Mother told me – אמרה לי אם: Abaye's mother died when he was an infant, and he was raised by a foster mother whom he called mother (*Kiddushin* 31b). He usually quoted her on issues of health and remedies, as she had expertise in these fields.

NOTES

שיטות – The opinions of Rabbi Yehuda HaNasi and Rav: *רבי יורב*: There are many explanations in the commentaries as to the opinions of Rabbi Yehuda HaNasi and Rav. Two main issues remain unresolved in the Gemara: Is the discussion over whether the woman must divorce her husband, or the suspected adulterer if she later married him, or both? Does the matter that is distasteful require witnesses? The following chart summarizes the various opinions:

Commentary	In order to require her to be divorced from her husband		In order to require her to be divorced from the suspected adulterer if she later married him	
	Rav requires	Rabbi Yehuda HaNasi requires	Rav requires	Rabbi Yehuda HaNasi requires
Rashi; Responsa of the Rashba	Witnesses to adultery	A distasteful matter	Witnesses to adultery	A distasteful matter
Rif; Rambam according to the understanding of Rashba	Witnesses to adultery	Witnesses to adultery	Witnesses to adultery	Witnesses to a distasteful matter
Rabbeinu Tam's initial opinion	Witnesses to adultery	Witnesses to adultery	Witnesses to adultery	A distasteful matter
Rabbeinu Tam's revised opinion	Witnesses to a distasteful matter	Witnesses to a distasteful matter	Witnesses to a distasteful matter	Witnesses to a distasteful matter
Ramban; Rambam according to the understanding of <i>Darkhei Moshe</i>	Witnesses to adultery	Witnesses to a distasteful matter	Witnesses to adultery	A persistent rumor
Rosh	Witnesses to adultery	Witnesses to a distasteful matter	Witnesses to adultery	Witnesses to a distasteful matter

והלכתא בנותיה דרב, והלכתא בנותיה דרבי. קשיא הלכתא אהלכתא! לא קשיא: הא – בקלא דפסיק, הא – בקלא דלא פסיק. קלא דלא פסיק וליכא עדים – ברבי, קלא דפסיק ואיכא עדים – ברב.

וקלא דלא פסיק עד כמה? אמר אביי, אמרה לי אם: דומי דמתא יומא ופלגא. ולא אמרן אלא דלא פסק ביני וביני, אבל פסק ביני וביני – הא פסק. ולא אמרן אלא דלא פסק מחמת יראה, אבל פסק מחמת יראה – מחמת יראה הוא. ולא אמרן אלא דליכא אויבים, אבל איכא אויבים – אויבים הוא דאפקו ליה לקלא.

The Gemara concludes: **The *halakha* is in accordance with the opinion of Rav**, that they must divorce only if there were witnesses, **and the *halakha* is in accordance with the opinion of Rabbi Yehuda HaNasi**, that they must divorce if there is a matter that is distasteful.^{HN} The Gemara challenges this: **One *halakha* is difficult**, as it contradicts **the other *halakha***. The Gemara answers: This contradiction is **not difficult**. **This one** relates to a case **where the rumor ceases** and the woman is sent away only if there are witnesses, but **that one** relates to a case **where the rumor does not cease**, in which case he divorces her even if there are no witnesses. The Gemara elucidates the cases: In cases of **a rumor that does not cease**, even if there are **no witnesses** the *halakha* is **in accordance with the opinion of Rabbi Yehuda HaNasi** and he divorces her. If **the rumor ceases and there are witnesses**, the *halakha* is **in accordance with the opinion of Rav**, and he divorces her because there are witnesses.

The Gemara clarifies this: **At what point** is it considered to be a **persistent rumor**?^H Abaye said: **My mother told me:**⁸ **A rumor in the city lasts a day and a half**. The Gemara comments: **We said that this is the length of time only if the rumor did not cease in the meantime**. But if the rumor **did cease in the meantime**, even it was later renewed, **this is considered a rumor that has ceased** and is disregarded. **And we said that a rumor that ceased is not considered persistent only if the reason it ceased was not due to fear of the individual about whom it is said**. But if it **ceased due to fear**, it is **only due to fear** and is still considered a persistent rumor. **And we said that a persistent rumor has validity only if the subject of the rumor does not have any known enemies**, but if **he has enemies** it may be assumed that **it is the enemies who put out the rumor about him**.

One who divorces his wife due to her bad reputation or vows – **המוציא אשתו משום שם רע או נדרים**: One who divorced his wife because she made vows that were unbearable to him, or because she came to have a bad reputation may not remarry her. Some say that this applies only if he told her explicitly that this is the reason for the divorce and if he confirmed that were it not for the vows or the reputation he would not have divorced her (*Tur*, citing Rosh). Some say that even if he did not confirm this explicitly, he may not remarry her (*Tur*, citing Ramah). One opinion (Rambam) holds that even if he did not tell her why he divorced her he may not take her back (*Shulḥan Arukh*, Even HaEzer 10:3).

One who takes back a wife he divorced due to a bad reputation – **המחזיר אשה שגרש משום שם רע**: If one divorces his wife due to her bad reputation or a similar issue, he may not remarry her. However, if he transgressed this prohibition and remarried her, he need not divorce her again, in accordance with the conclusion of the Gemara here (*Shulḥan Arukh*, Even HaEzer 11:5).

One who brings a bill of divorce and wishes to marry the divorcée – **המביא גט ורוצה לשאת הגרושה**: An agent who brings a woman her bill of divorce from a place for which he must testify: It was written in my presence and signed in my presence, may not marry her because this may arouse suspicions. However, if he brought the bill of divorce from a place for which he need not say this, he is permitted to marry the divorcée, based on the mishna and the conclusion of the Gemara (Rambam *Sefer Nashim*, *Hilkhot Geirushin* 10:14; *Shulḥan Arukh*, Even HaEzer 12:1).

One who testifies that the husband died – **המעיד על הבעל**: If a single witness came and testified to a woman that her husband died, she is allowed to marry by virtue of that testimony. However, she may not marry the witness, as this appears suspicious (Rambam *Sefer Nashim*, *Hilkhot Geirushin* 10:14; *Shulḥan Arukh*, Even HaEzer 17:3).

I killed him, we killed him – **הרגתי, הרגנוהו**: The testimony of one who testified that he killed a man, or that he was with the murderers, is accepted, and that man's wife is permitted to marry by virtue of that testimony (Rambam *Sefer Nashim*, *Hilkhot Geirushin* 13:10; *Shulḥan Arukh*, Even HaEzer 17:7).

NOTES

An agent who brought a bill of divorce from a country overseas – **המביא גט ממדינת הים**: Two reasons are given in the Talmud to explain why an agent bringing a bill of divorce from overseas must testify that it was written and signed in his presence (*Gittin* 2a): First, the witnesses who signed the bill of divorce are not present and cannot establish its validity. The agent's testimony consequently prevents the husband from claiming that it is a forgery. Second, there was concern that in the Diaspora the scribes were not experts and might not write the bill correctly. If it was written and signed in the presence of the agent, the court can ask him, and verify, that the document was written correctly.

A witness who... testified: I killed him... his wife may not be married – **הרגתי לא תנשא אשתו**: In Rambam's Commentary on the Mishna it is explained that Rabbi Yehuda does not accept the principle that an individual does not make himself wicked.

§ We learned in a mishna there (Gittin 45b): A man who divorces his wife due to her bad reputation may not take her back again, even if it turns out that the rumor was untrue. Likewise, if he divorced his wife due to a vow^h of hers that is unbearable to him he may not take her back even if she is released from that vow. Rabba bar Rav Huna sent a question to Rabba bar Rav Nahman: Our teacher, instruct us. If one of those men listed in that mishna divorced his wife due to her bad reputation or vow and it was therefore prohibited for him to take her back, yet he nevertheless remarried her, what is the halakha? Must he divorce her?^h

Rabba bar Rav Nahman said to him: We already learned in the mishna (24b): With regard to one who is suspected of committing adultery with a married woman, and he, her husband, divorced her, even if he subsequently remarried her he must divorce her. Rabba bar Rav Huna said to him: Is this comparable to the case I asked about? There, in the mishna, it says: They, the court, remove her from him, whereas here (*Gittin* 45b), the mishna states: He divorced her of his own accord. Perhaps if the court requires them to divorce, the *halakha* is different. The Gemara explains: And Rabba bar Rav Nahman, who held that the two *mishnayot* were comparable, had a text of the mishna that also read: He divorced her, instead of: They remove her.

Rabba bar Rav Huna asks: Still, is this comparable? Here, the question was raised in a case where the first husband remarried her, which will not strengthen the rumors of her bad reputation, but there, the mishna refers to the man with whom she committed adultery remarried her, which strengthens those rumors. He said to him: They are certainly comparable to each other: Here, in the mishna discussing one who is suspected of committing adultery, the Sages said that he may not marry her and if he did marry her he must divorce her. So too, the Sages said in the case of one who divorced his wife due to her reputation or vow that he may not take her back, and if he does remarry her he must divorce her.

The Gemara rejects this: That is not so, as there, when the man suspected of committing adultery marries the woman, he thereby strengthens the rumor of adultery. For this reason he must divorce her. Here, we say that he, the husband, established the facts of the rumor and found that it was not so and the rumor was baseless. Therefore, there is no need for him to divorce her if he remarries her. Rabba bar Rav Huna's question remains unresolved.

MISHNA An agent who brought a bill of divorce from a country overseasⁿ and said: It was written in my presence and it was signed in my presence, as required in order to establish the bill of divorce as valid, may not marry the wife,^h i.e., the divorcée. Since the validity of the bill of divorce is based upon his testimony, marrying the divorcée creates the impression that he had an ulterior motive for his testimony. Similarly, a witness who testified that a certain man died,^h or testified: I killed him, or: We killed him,^h may not marry that man's wife. Rabbi Yehuda says: If he testified: I killed him, his wife may not be marriedⁿ at all based on that evidence, as his testimony is unreliable, but if he said: We killed him, his wife may be married to anyone other than those witnesses.

GEMARA The Gemara clarifies: The reason that the agent may not marry the divorcée applies specifically in a case where he brings the bill of divorce from a country overseas, as in this case we, the court, rely upon his testimony to validate the bill of divorce. But an agent who brings a bill of divorce from Eretz Yisrael need not make any verbal declaration, and since we, the court, do not rely upon his testimony but upon the written bill of divorce alone, he may marry his wife, i.e., the divorcée, since it does not arouse suspicion.

אמר ליה, תנינא: הנתען על אשת איש והוציאה מתחת ידו, אף על פי שפנס יוציא. אמר ליה: מי דמי? התם "הוציאה" והכא "הוציאה"! ורבה בר רב נחמן – מתניתין נמי "הוציאה" תנן.

ואבתי מי דמי? הכא – בעל, והתם – בועל! אמר ליה: שפיר דמי אהדדי: הכא אמור רבנן לא יכנסו, ואם כנס יוציא – הכי נמי אקרי רבנן לא יחזיר, ואם כנס – יוציא.

ולא היא, התם – אלומי אלמיה לקלא. הכא אמרינן קם ביה בקלא וליתייה.

מתני' המביא גט ממדינת הים ואמר "בפני נכתב ובפני נחתם" לא ישא את אשתו. "מת", "הרגתי", "הרגנוהו" – לא ישא את אשתו. רבי יהודה אומר "הרגתי" – לא תנשא אשתו: "הרגנוהו" – תנשא אשתו.

גמ' טעמא דממדינת הים – דעליה קסמכין, אבל מארץ ישראל, דלא עליה קסמכין, ישא את אשתו.

So-and-so sodomized me – פְּלוֹנִי רִבְעָנִי: One who testified that he was sodomized by another may combine his testimony with that of another witness in order to put the sodomizer to death. This is regardless of whether it was an act of rape or whether the witness participated willingly, in accordance with Rava's opinion in the dispute with Rav Yosef that we divide the statement. His statement includes both self-incriminating testimony and other information, so the court divides his assertion, accepting as evidence only information that is not self-incriminating. His report about being a willing partner is discarded, and the court accepts only that another sodomized him (Rambam *Sefer Shofetim*, *Hilkhot Edut* 12:2; *Shulhan Arukh*, *Hoshen Mishpat* 34:26).

A wicked witness – עֵד רָשָׁע: Wicked individuals who willingly violate the words of the Torah are unfit for giving testimony by Torah law (Rambam *Sefer Shofetim*, *Hilkhot Edut* 10:1).

וְהָאֵמַר מֵת, דְּלָאוּ עָלֶיהָ קַסְמִכִּין, דְּאָמַר מֶר: אִשָּׁה דִּיִּקָּא וּמִינְסַבָּא, וְקַתְנִי: לֹא יִשָּׂא אֶת אִשְׁתּוֹ!

הָתֵם לִיכָא כְּתָבָא, הָכָא – אִיכָא כְּתָבָא. דִּתְנִן: מַה בֵּין גִּט לְמִיתָה – שְׁהִכְתָּב מוֹכִיחַ.

”מֵת”, ”הִרְגָתִיו”, ”הִרְגָנוּהוּ” – לֹא יִשָּׂא אֶת אִשְׁתּוֹ. הוּא מֵהוּ דְלֹא יִשָּׂא אֶת אִשְׁתּוֹ, הָא לְאַחַר – תִּנְשָׂא.

וְהָאֵמַר רַב יוֹסֵף: ”פְּלוֹנִי רִבְעָנִי לְאוֹנְסִי” – הוּא וְאַחַר מְצַטְרִפִּין לְהִרְגּוֹ. ”לְרִצּוֹנִי” – רָשָׁע הוּא, וְהַתּוֹרָה אָמְרָה: ”אֵל תִּשֶׁת יָדְךָ עִם רָשָׁע לְהָיִית עִד חָמָס”.

וְכִי תִימָא שְׂאֵנִי עֵדוֹת אִשָּׁה דְּאִקִּילוּ בְּהָ רִבְנָן – וְהָאֵמַר רַב מְנַשֶּׁה:

The Gemara challenges this: **But** also in the case of a witness who said that the husband **died**, **we**, the court, **do not rely solely upon** his testimony. **As the Master said: A woman is exacting** in her investigation of the truth of the testimony that her husband died before she **marries** again, and it is primarily on that basis that she is permitted to remarry. **Yet it is taught that he still may not marry his wife.**

The Gemara answers: The two cases are not comparable, as **there**, in the case when a witness testifies that the husband has died, **there is not anything written** as proof, and therefore he may not marry the widow. However, **here**, in a case where an agent brings a bill of divorce from Eretz Yisrael, **there is a written** document that is valid without any testimony. **As we learned** in a mishna (117a): **What is the difference between a bill of divorce and death?** Why does the court rely upon those men who are not trusted as witnesses to the death of a husband if they act as agents to bring a bill of divorce, even from overseas, such that they must give testimony that it was written and signed in their presence? The difference is **that** with regard to a bill of divorce **the writing proves** their testimony.

The mishna stated that if the witness said with regard to the husband that **he died**, or: **I killed him**, or: **We killed him**, then **he may not marry** the wife of the deceased. The Gemara infers that **he**, the witness **himself**, **may not marry the wife**; this implies that **to another she may be married** on the basis of his testimony.

The Gemara challenges this: **Didn't Rav Yosef say**: With regard to one who testified that **so-and-so sodomized me^h against my will**, then **he** who testified to being the victim of the sexual assault **and another** bystander witness can **combine** as a pair of witnesses in order to **put** the assailant **to death** for homosexual intercourse. But if he testified: I was **willingly** sodomized by so-and-so, then **he is wicked^h** by his own admission, since he willingly transgressed. **And the Torah said**: “**Put not your hand with the wicked to be a corrupt witness**” (Exodus 23:1). If one renders himself unfit as a witness by admitting to murder, how can his testimony be accepted to permit the wife to remarry?

And if you would say that **testimony** that a woman's husband died is **different**, as the Sages ruled **leniently** in such matters and perhaps accepted testimony of a wicked witness in such cases, **didn't Rav Menashe say**:

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NOTES

A robber according to the words of the Sages – גִּזְלוֹן: In tractate *Sanhedrin* (24b), there is a list of those who are unfit by rabbinic decree for giving testimony. This list includes those who take money from others but are not categorized as robbers according to Torah law.

A robber according to Torah law is unfit – גִּזְלוֹן דְּדִבְרֵי: According to the Rif, even though a wicked individual is unfit for testifying that a woman's husband has died, if he were to make an incidental remark about the matter, this evidence would be accepted by the court. In this respect he is no worse than a gentile, who is believed if he makes an incidental remark.

גִּזְלוֹן דְּדִבְרֵיהֶם – כְּשֶׁר לְעֵדוֹת אִשָּׁה, גִּזְלוֹן דְּדִבְרֵי תוֹרָה – פְּסוּל לְעֵדוֹת אִשָּׁה. נִמָּא רַב מְנַשֶּׁה דְּאָמַר בְּרַבִּי יְהוּדָה?

Although one who is considered a **robber according to the words of the Sagesⁿ** is unfit for other forms of testimony, **he is fit** as a witness for testimony that a woman's husband died. **A robber according to Torah law is unfitⁿ** as a witness even for testimony that a woman's husband has died.^h **Should we say** that what Rav Menashe said is **in accordance with** the opinion of Rabbi Yehuda? Rabbi Yehuda said in the mishna that one who is considered absolutely wicked because he admitted that he is a murderer is unfit for testifying to the death of a husband, but one who was merely present among a gang of murderers is not.

HALAKHA

A robber with regard to testimony rendering it permitted for a woman to remarry – גִּזְלוֹן בְּעֵדוֹת אִשָּׁה: One who is unfit for giving testimony by Torah law is not believed when testifying

that a woman's husband died, but one who is unfit by rabbinic law is believed in such instances (Rambam *Sefer Nashim*, *Hilkhot Geirushin* 12:17; *Shulhan Arukh*, *Even HaEzer* 17:3).

אמר לך רב מנשה: אנא דאמרי אפילו לרבנן, וטעמא דרבנן הכא – כדרבא, דאמר רבא: אדם קרוב אצל עצמו, ואין אדם משים עצמו רשע.

The Gemara rejects this: Rav Menashe could have said to you: **I am speaking even according to the opinion of the Rabbis.** Although the Rabbis did not allow one who was wicked by Torah law to testify for a woman, a witness who admitted: I killed him, is nevertheless believed. **And the rationale of the Rabbis here is in accordance with the opinion of Rava, as Rava disputed Rav Yosef's opinion and said:** Even if one said that he was willingly sodomized by this man, he is not believed concerning his own actions, because **a person is his own relative.**^N Consequently, he may not testify about himself, just as the testimony of any relative is disqualified. **And furthermore, a person does not make himself wicked.**^H His testimony with regard to his own actions is inadmissible because he is his own relative, but his testimony is accepted both to put a sodomizer to death or to render it permitted for a woman to remarry by saying that he killed her husband.

לימא רב יוסף דאמר כרבי יהודה? אמר לך רב יוסף: אנא דאמרי אפילו לרבנן, ושאיני עדות אשה דאקילו בה רבנן, ורב מנשה דאמר כרבי יהודה.

The Gemara asks: **Shall we say according to this explanation that the opinion that Rav Yosef spoke is in accordance with the opinion of Rabbi Yehuda?** The Gemara rejects this: **Rav Yosef could have said to you: I am speaking even according to the opinion of the Rabbis, as in my opinion, testimony enabling a woman to remarry is different in that the Rabbis ruled more leniently and they even accept testimony from a completely wicked individual.** However, **Rav Menashe, who renders unfit one who is wicked by Torah law from testimony enabling a woman to remarry, spoke in accordance with the opinion of Rabbi Yehuda, who differentiates even in such testimony between one who is considered wicked according to Torah law and one who is considered wicked by rabbinic law.**

"הרגתיו" כו' "הרגנוהו" תנשא כו'. מאי שנא הרגתיו ומאי שנא הרגנוהו? אמר רב יהודה: באומר "אני הייתי עם הורגיו".

In the mishna it is taught that the court accepts testimony from one who said: **I killed him, or: We killed him,** while Rabbi Yehuda differentiates between one who said: I killed him, whose testimony is not accepted, and one who said: We killed him, whose testimony is accepted and the woman **may be married** to others. The Gemara asks: **What is different between: I killed him, and: We killed him?** Isn't he a murderer by his own admission as well when he testifies: We killed him? **Rav Yehuda said:** Do not understand that by saying: We killed him, he included himself among the murderers. Rather, it is referring to a case **where he said: I was with his murderers,** but he was not an active participant to the murder.

והתניא: אמרו לו לרבי יהודה, מעשה בלסטים אחד שיצא ליהרג במגזית קפוטקיא, ואמר להם "לכו אמרו לה לאשת שמעון בן כהן: אני הרגתי את בעלה בכניסתי ללוד" ואמרי לה "בכניסתו ללוד" – והשיאו את אשתו. אמר להם: משם ראיה? באומר: אני הייתי עם הורגיו –

And it is taught in a *baraita* that this is the basis for Rabbi Yehuda's distinction: **They told Rabbi Yehuda: There was an incident involving an armed bandit [listim]^L who was taken out to be executed in the passage [megizat]^L of Cappadocia,^B and he said to those present: Go and tell the wife of Shimon the Priest that I killed her husband as I entered Lod. And some say that he said: As he entered Lod. And they married off his wife on the basis of this testimony.** This implies that the court accepts testimony from the murderer himself. **Rabbi Yehuda said to them: You derive proof from there? The case was that he said: I was with his murderers, but not that he himself murdered the woman's husband.**



Cappadocian rock formations

NOTES

אדם קרוב אצל עצמו – This concept is connected to the halakhic principle that the court divides the statement of a witness, allowing them to reject the part of the testimony wherein the witness incriminates himself while accepting the rest of his testimony as valid. The court accepts the testimony that the individual he claimed to have murdered is dead, without accepting that this witness is a murderer. The halakhic principle applied is that just as one may not testify about a close relative, one may not testify about oneself.

There are differences of opinion concerning the rationale for the principle of dividing the statement of a witness. According to the Rashba, the court applies this principle only in cases where the witness's testimony could be interpreted in another way without negating its validity. If, e.g., a witness said: I killed him, it could be interpreted to mean that he was with the murderers or that he killed the victim unwittingly, etc. However, if there is no other possible interpretation of his testimony, his testimony is inadmissible. Many commentaries disagree with this and hold that even in such cases the court may divide the statement and accept the testimony (see *Noda Bihuda* and *Kovetz He'arot*).

HALAKHA

אין אדם משים – עצמו רשע – One is not rendered unfit by admitting his own transgression, because an individual does not make himself wicked (Rambam *Sefer Nashim, Hilkhot Geirushin* 13:10 and *Sefer Shofetim, Hilkhot Edut* 12:2; *Shulhan Arukh, Hoshen Mishpat* 34:26).

LANGUAGE

ליסטים – *listim*: From the Greek ληστής, *lestēs*. Several Aramaic and Hebrew forms were based upon this word in the language of the Sages. The written form was corrupted slightly to *listim* rather than *listis*.

מגזית – *megizat*: This word apparently comes from the Arabic مجاز, *majāz*, meaning crossing or way.

BACKGROUND

מגזית קפוטקיא – Cappadocia is a country in Asia Minor west of the Euphrates River and north of the Taurus Mountains. The Hebrew name, Kappotkiyya, comes from the Greek Καππαδοκία, Kappadokia. At the time of the Talmud this was a Roman province with a large Jewish population, and there were Jewish scholars, mentioned in both the Jerusalem and Babylonian Talmuds, who came from Cappadocia to Eretz Yisrael. Today it is a popular tourist site famous for its unique rock formations, referred to as fairy chimneys.



Location of Cappadocia

A Sage who rendered the wife forbidden to her husband by that vow – **הַחֵכֶם שָׁאָסַר אֶת הָאִשָּׁה** – **בְּנָדָר עַל בְּעֻלָּה**: If a woman vowed not to receive any benefit from her husband and the husband did not nullify her vow, and she then came before a Sage but he did not find way to dissolve it, then that Sage may not subsequently marry her after she is divorced from her husband (Rambam *Sefer Nashim, Hilkhhot Geirushin* 10:14; *Shulḥan Arukh, Even HaEzer* 12:2).

Before whom a woman performed refusal or... performed *ḥalitza* – **מִיֵּאֲנָה אוֹ שְׁחָלְצָה בְּפָנָיו**: A woman who performed refusal or performed *ḥalitza* before a court may later marry one of the judges of the court (*Shulḥan Arukh, Even HaEzer* 12:2).

Dissolution of vows requires a court of three – **הַתִּרְתָּ נְדָרִים בְּשָׁלוֹשׁ**: Dissolution of vows must be performed by an expert scholar or, if no expert can be found, by three ordinary men (Rambam *Sefer Hafla'a, Hilkhhot Shevuot* 6:1; *Shulḥan Arukh, Yoreh De'a* 228:1).

וְהָא לְסִטִּים קִתְּנִי! שְׁנַתְּפִס עַל יְדֵי לְסִטִּיּוֹת. וְהָא יֵצֵא לִיהְרֹג קִתְּנִי! בִּי דִינָא דְגוֹיִם דְּלֹא דִיִּיקִי וְקִטְלִי.

מתני' הַחֵכֶם שָׁאָסַר אֶת הָאִשָּׁה בְּנָדָר עַל בְּעֻלָּה – הֲרִי זֶה לֹא יִשְׁאָנָה, מִיֵּאֲנָה אוֹ שְׁחָלְצָה בְּפָנָיו – יִשְׁאָנָה, מִפְּנֵי שֶׁהוּא בֵּית דִּין.

גמ' הָא הַתִּירָה יִשְׁאָנָה, בְּמֵאִי עֲסָקִינָּה? אֵילִימָא בְּחַד – חַד מִי מְצִי מִתִּיר? וְהָאֲמַר (רַב אֲמַר) רַבִּי חִיָּיא בְּרַב אֲבִין אֲמַר רַב עֲמֶרֶם: תֵּנָא, הַתִּירַת נְדָרִים בְּשָׁלוֹשׁ!

וְאֵלֹא בְּתַלְתָּא – מִי חֲשִׁידִי? וְהַתֵּנָּה: מִיֵּאֲנָה אוֹ שְׁחָלְצָה בְּפָנָיו יִשְׁאָנָה, מִפְּנֵי שֶׁהוּא בֵּית דִּין!

לְעוֹלָם בְּחַד, וְכַדְאֲמַר רַב חֲסִידָא אֲמַר רַבִּי יוֹחָנָן: בִּיחָד מוּמָחָה, הָכָא נָמִי – בִּיחָד מוּמָחָה.

"מִיֵּאֲנָה אוֹ שְׁחָלְצָה" וכו'. טַעְמָא דְּבֵית דִּין, הָא בְּתִירֵי – לֹא.

מֵאִי שָׂנֵא מִהָא דְּתֵנָּה: עֲדִים הַחֲתוּמִּים עַל שְׂדֵה מִקָּח וְעַל גֵּט אִשָּׁה – לֹא חֲשׂו חֲכָמִים לְדָבָר זֶה! הִיא גּוֹפָה קִמְשָׁמַע לָן, לְאִפּוּקִי מִמָּאן דְּאֲמַר מִיֵּאוֹן בְּפָנֵי שְׁנִים, קִמְשָׁמַע לָן: מִיֵּאוֹן בְּשָׁלוֹשׁ.

The Gemara challenges: How could Rabbi Yehuda understand the incident in such a way? **But it is taught** in the *baraita* that the witness himself was an **armed bandit**. The Gemara answers: **He was captured for a charge of armed banditry**. The Gemara asks: **But it is taught that he was taken out to be executed**, implying that he was found guilty of murder. The Gemara answers: That was a **gentile court**, and they **execute without being precise**. One who is among a gang of bandits is executed by a gentile court regardless of whether or not he himself was a murderer. This *baraita* therefore provides evidence that Rabbi Yehuda admits the testimony of such a witness only if he says: I was with his murderers.

MISHNA A Sage who refused to release a woman from a vow that rendered the wife forbidden to her husband by that vow,¹ resulting in her being divorced from her husband, may not marry her, so as to avoid suspicion that he rendered her forbidden to her husband in order to marry her himself. However, a judge before whom a woman performed refusal when she was a minor, declaring that she did not desire the husband chosen for her by her family, or before whom she performed *ḥalitza*,² may marry her because he was only one member of the court, thereby alleviating suspicion.

GEMARA The mishna taught that a Sage who rendered a woman forbidden to her husband may not then marry her. The Gemara deduces from here: **This** implies that if he rendered her permitted to her husband and she was later widowed or divorced, then he may marry her. The Gemara clarifies this: **With what are we dealing? If we say that he was a single judge and not part of a court, can a single judge dissolve vows? But didn't Rav say that Rabbi Hiyya bar Avin said that Rav Amram said: It is taught in a baraita: Dissolution of vows requires a court of three³ judges?**

Rather, could it be a case of three judges rather than one? In such a case, would they be suspect of distorting judgment? **But didn't we learn in the mishna: If she performed refusal or performed *ḥalitza* before him, he may marry her because he functioned as a member of a court of three? This teaches that there is no suspicion of a judge in a court of three.**

The Gemara answers: **Actually**, you should explain that this case is **that of a single judge**, and it is as Rav H̥isda said that Rabbi Yohanan said: Vows may be dissolved even by a **single expert**,⁴ and a three-member court is not always necessary. **Here too**, it is referring to a **single expert** refusing to nullify her vow.

It is taught in the mishna that if a woman performed refusal or performed *ḥalitza* before a judge, he may still marry her, as he was part of a court. The Gemara deduces from here: **The reason is specifically that he functioned on the court as one of three judges**. The Gemara deduces: **Then, if there were only two judges, he would not be permitted to marry her.**

If so, in what way is this case different from that which we learned in a *baraita*: **If witnesses signed on the document of sale of a field or on a woman's bill of divorce, the Sages were not concerned about this matter** if one of the witnesses subsequently purchased the field or married the divorcée. Since there are two witnesses, there is no suspicion that they collaborated for the benefit of one of them. The Gemara answers: If there were two judges there would also be no concern; however, **this mishna itself comes to teach us that a refusal must be performed before a full court, to exclude the opinion of the one who said that refusal may be performed before two. This teaches us that refusal must be performed before three judges.**

BACKGROUND

A single expert – **יָחִיד מוּמָחָה**: In general a Jewish court comprises three judges for monetary matters and other cases, aside from cases of capital punishment. This ensures that there will be a majority, as at least two judges will agree on the verdict. In tractate *Avot* (4:10)

it is written: Do not judge alone, as only God can judge alone. However, *Tosafot* explain that this is meant merely as advice, but if an individual judge is an expert in certain matters he may adjudicate on those matters by himself.

כָּנָס אֵינוֹ מוֹצִיא – If he married her, he need not divorce her – If a Sage declared a wife forbidden to her husband due to her vow, that Sage is forbidden from marrying her *ab initio*. If he nevertheless married her he is not forced to divorce her, in accordance with the conclusion of the Gemara (Rambam *Sefer Nashim*, *Hilkhot Geirushin* 10:14; *Shulhan Arukh*, *Even HaEzer* 12:2).

אֵיבָעִיָּא לְהוּ כָּנָס, מְהוּ שְׂוִיעִיא? רַב כְּהָנָא אָמַר: כָּנָס – מוֹצִיא, רַב אֲשִׁי אָמַר: כָּנָס – אֵינוֹ מוֹצִיא. תִּנִּי לְהוּ רַב זוּטִי דְּבִי רַב פַּפִּי כְּדִבְרֵי הָאוֹמֵר כָּנָס אֵינוֹ מוֹצִיא.

S A dilemma was raised before the Sages with regard to one who was prohibited from marrying a certain woman: If he nevertheless married her despite the prohibition, what is the *halakha* with regard to whether he must divorce her? Rav Kahana said: If he married her, he must divorce her. Rav Ashi said: If he married her, he need not divorce her.^h Rav Zuti from the school of Rav Pappi taught the Sages a *baraita* in accordance with the statement of the one who said that if he married her, he need not divorce her.

אָמְרוּ לִיהִי רַבֵּנָּן לְרַב אֲשִׁי: גְּמָרָא אִוְּ סָבְרָא? אָמַר לְהוּ: מִתְּנִיתִין הֵיא: הִנֵּטְעֵן מִשְׁפָּחָה וְנִשְׁתַּחֲרָרָה, מְגוּיָה וְנִתְּגַיְרָה, הֲרִי זֶה לֹא יִכְנֹס, וְאִם כָּנָס – אֵין מוֹצִיא. אֲלֹמָא

The Rabbis said to Rav Ashi: With regard to the *halakha* that you said, that if he married her he need not divorce her, was it based upon tradition or is it your own conclusion? He said to them: It is the *mishna*. I reached this conclusion from the wording of the *mishna*, which taught that one suspected by others of engaging in sexual relations with a Canaanite maidservant and she was subsequently set free, or with a gentile woman and she subsequently converted may not marry that woman. But if he did marry her, they, the judges of the court, do not remove her from him. Apparently,

Perek II

Daf 26 Amud a

בִּרְנָנָה לֹא מִפְּקִינָן, הֲכָא נִמְי בִּרְנָנָה לֹא מִפְּקִינָן.

we do not remove her from her husband owing to suspicion due to rumor alone. Here too, we do not remove her from her husband due to a rumor.

מִתְּנִי' וְכֹלָם שְׂהִיּוּ לָהֶם נָשִׁים וּמֵתוּ – מוֹתֵרוֹת לִינְשָׁא לָהֶם.

MISHNA And for all of theseⁿ who were involved in permitting the wife to remarry, i.e., the judge, the agent who brought a bill of divorce, and the one who testified for a woman that her husband died, if they had wives^{nh} at the time of the ruling or the testimony and their wives died thereafter, then those women they had set free are permitted to be married to them. There is no concern that while their wives were still alive these individuals set their eyes upon another woman.

וְכֹלָן שְׂנִישְׂאוּ לְאַחֵרִים, וְנִתְּגַרְשׁוּ אוֹ שְׂנִתְּלִמְנוּ – מוֹתֵרוֹת לִינְשָׁא לָהֶם. וְכֹלָן מוֹתֵרוֹת לְבִנְיָהֶם אוֹ לְאַחֵיהֶם.

And with regard to all of these women who were prohibited from marrying a certain man due to some suspicion, if they were subsequently married to others^h and then were divorced or widowed from the second husband, they are permitted to be married to them, i.e., to the judge, messenger, or witness who permitted her to remarry. And all of these women who were prohibited from marrying due to some suspicion are permitted to the sons or to the brothers^{nh} of those who set them free.

גַּמ' יָתוּ – אֵין, נִתְּגַרְשׁוּ – לֹא.

GEMARA The *mishna* taught that if any of the men had wives who subsequently died, they may marry those women freed by them. The *Gemara* deduces from here: If the wives of those who rendered the woman permitted died, yes, they are permitted to marry the woman that they freed for marriage; but if the wives were divorced, no, it is prohibited. In such a case, marrying the woman that one had rendered permitted would raise suspicions that he had in fact planned to marry her all along.

HALAKHA

They had wives – הָיוּ לָהֶם נָשִׁים: It is permitted for one who was married when he rendered a woman free to marry that woman if his wife subsequently died (Rambam *Sefer Nashim*, *Hilkhot Geirushin* 10:15; *Shulhan Arukh*, *Even HaEzer* 12:4).

And all of these women, if they were subsequently married to others – וְכֹלָן שְׂנִישְׂאוּ לְאַחֵרִים: It is permitted for all of these women who subsequently married others and were then widowed or divorced to marry one of those men who permitted

them to remarry (Rambam *Sefer Nashim*, *Hilkhot Ishut* 10:15; *Shulhan Arukh*, *Even HaEzer* 12:3).

Permitted to the sons or to the brothers – מוֹתֵרוֹת לְבִנְיָהֶם אוֹ לְאַחֵיהֶם: All of these women are permitted to marry the close relatives of the witness or the Sage who freed them (Rambam *Sefer Nashim*, *Hilkhot Ishut* 10:16; *Shulhan Arukh*, *Even HaEzer* 12:4).

NOTES

And for all of these, etc. – וְכֹלָם וכו': Rashi explains that the term: All of these, is referring only to a Sage or a witness who testified for a woman (see Rid). Rambam, however, interprets this ruling as applying to one who was under suspicion of misconduct with a maidservant or other woman as well.

They had wives, etc. – הָיוּ לָהֶם נָשִׁים וכו': At the time of the *mishna*, bigamy was permitted, yet it was extremely rare, and so there was no concern that one would free a woman in order to marry her as a second wife.

Are permitted to the sons or to the brothers – מוֹתֵרוֹת לְבִנְיָהֶם אוֹ לְאַחֵיהֶם: In the Jerusalem Talmud this is explained by the statement that it is not common for one to sin for the benefit of his relative or his teacher.

They were divorced – נִתְּגַרְשׁוּ: If those who rendered these women permitted were married at the time and subsequently divorced because their wives started a quarrel, it is permitted for them to marry those women. If they themselves started the quarrel, they may not marry those women. There are those who render it prohibited for them to marry these women if their first wives were sick at the time they freed the women (Rema, citing *Nimmukei Yosef*; Rambam *Sefer Nashim*, *Hilkhot Ishut* 10:15; *Shulḥan Arukh*, *Even HaEzer* 12:4).

NOTES

That was when there was no quarrel – הָא דְּלֹא הָוֵא: Rashi explains that if there was a quarrel between the Sage who permitted this woman and his wife before they divorced, it appears that the divorce resulted from the quarrel and not from interest in the other woman. However, in *Yam shel Shlomo* the opposite explanation is suggested: If there was a quarrel between them beforehand, there is suspicion that due to the quarrel he decided to divorce his wife and seek out another wife for himself. Meiri explains that if there was a quarrel, then the reason for the divorce is not clear, and so there is no room for suspicion. However, if he divorced his wife without another clear reason, there is concern that it appears that he did so due to his desire for the other woman.

אָמַר לִי רַב הֵלֵל לְרַב אָשִׁי: וְהִתְנִיא
אֶפְּלוּ נִתְּגַרְשׁוּ! לֹא קָשִׁיָּא; הָא – דְּהָוֵא
קִטְטָה, הָא – דְּלֹא הָוֵא קִטְטָה.

וְאִיבְעִית אֵימָא: הָא וְהָא דְּלֹא הָוֵא
קִטְטָה, וְלֹא קָשִׁיָּא; הָא – דְּאֶרְגִּיל הוּא,
הָא – דְּאֶרְגִּילָהּ הִיא.

”וְכוֹלֵן שְׁמִישָׁאוֹ” וכו’. קָא סָלְקָא דַּעֲתִין
מִיתָה אֶמִּיתָה, וְגִירוּשִׁין אֶמִּירוּשִׁין,

נִימָא מִתְּנִיתִין דְּלֹא כְּרַבִּי, דָּאִי כְּרַבִּי –
הָאִמֹּר: בְּתֵרִי זִימְנִי הוּא חֲזָקָה!

לֹא, מִיתָה אֶמִּירוּשִׁין וְגִירוּשִׁין אֶמִּיתָה.

”וְכוֹלֵן מוֹתֵרוֹת לְבִנְיָהֶם אוֹ לְאֶחֱיָהֶם.”
מֵאִי שְׁנָא מִהָא דְּתַנָּן: הִנֵּטְעָן מִן הָאִשָּׁה –
אֲסוּר בְּאִמָּהּ וּבְבִתָּהּ וּבְאֶחָיוּתָהּ!

נָשִׁי לְגַבֵּי נָשִׁי – שְׂכִיחִין דְּאִזְלוּן, גְּבֵרִי
לְגַבֵּי – גְּבֵרִי לֹא שְׂכִיחִין.

Rav Hillel said to Rav Ashi: Yet it is taught in a *baraita*: Even if they were divorced^H from their first wives they are permitted to marry the women they freed. The Gemara responds: This is not difficult: This mishna is referring to a case when there was a quarrel between the husband and the wife at the time that he freed the other woman, as then there is legitimate concern that he was already interested in her. That case of the *baraita* was when there was no quarrel^N between them at the time, and therefore the divorce clearly resulted from some other reason.

And if you wish, say: Both this and that were said in cases when there was no quarrel between the one who freed the woman and his first wife, and only later did they quarrel and divorce. And this is not difficult: This case of the mishna was when he started the quarrel himself, as then there is legitimate concern that he had an interest in this other woman and therefore sought out a reason to divorce his wife. And that case of the *baraita* was when his wife started the quarrel, as then there would be no reason to suspect him of freeing the other woman in order to marry her.

The mishna stated: And with regard to all of these women, if they were married to others and then were divorced or widowed, it is permitted for them to marry those who caused them to be free to marry in the first place. It enters our mind to say that the case referred to here was one of death after death, i.e., the case of a woman whose first husband’s death had been substantiated by a single witness but whose second husband died as well, and also to the case of divorce following a bill of divorce that had been validated by a single witness.

Based on this, should we say that the mishna, which permits a woman to remarry even after her two previous husbands have died, is not in accordance with the opinion of Rabbi Yehuda HaNasi? As, if it is in accordance with the opinion of Rabbi Yehuda HaNasi, didn’t Rabbi Yehuda HaNasi say: After two times a woman has the presumptive status to cause death to her husbands, and such a woman is considered murderous. Therefore, she may not remarry. Since there is no mention of such concern in the mishna, it appears that the mishna is not in accordance with the opinion of Rabbi Yehuda HaNasi.

The Gemara rejects this: No evidence can be derived from here, as the reference here may be to death after divorce or divorce after death. The mishna could be referring either to a woman who was at first divorced and then later widowed by her second husband’s death, or to a woman whose first husband died and who was subsequently divorced, but not to a case where she was widowed by the death of two husbands.

§ The mishna taught: And all of these women who were prohibited from marrying the man who freed them due to some suspicion are permitted to the sons or to the brothers of those who set them free. The Gemara asks: In what way is this case different from that which we learned in the *Tosefta* (4:5) that one suspected of adultery with a specific woman is prohibited not only from marrying her, but also from marrying her mother, and her daughter, and her sister. Yet here we allow his sons and brothers to marry the woman despite the suspicion.

The Gemara answers: There is a distinction between the situations, for it is common for women to be at the house of other women and to stay overnight. Therefore, there is concern that a relative of the alleged adulterer’s wife, with whom he was suspected of misconduct, might frequent his house and he might be tempted to repeat his transgression. On the other hand, it is not common for men to be at the house of other men, so that even if she was married to his relative, the one suspected of misconduct would not generally sleep at the house of the husband.

Embarrassed [*keziz*] – כְּזִיז: Although this version of the text has *baziz*, the version of the text that reads *keziz* is more correct because it comes from the Aramaic root *k-u-z*, which means to be ashamed or fearful.

אִי נָמִי: נָשִׁי דְלָא אָסְרֵן שְׂכִיבְתָּן אֶהְדְּדִי –
לָא קָפְדִי אֶהְדְּדִי, גְּבִרִי דְאָסְרֵן שְׂכִיבְתָּן
אֶהְדְּדִי – קָפְדִי אֶהְדְּדִי.

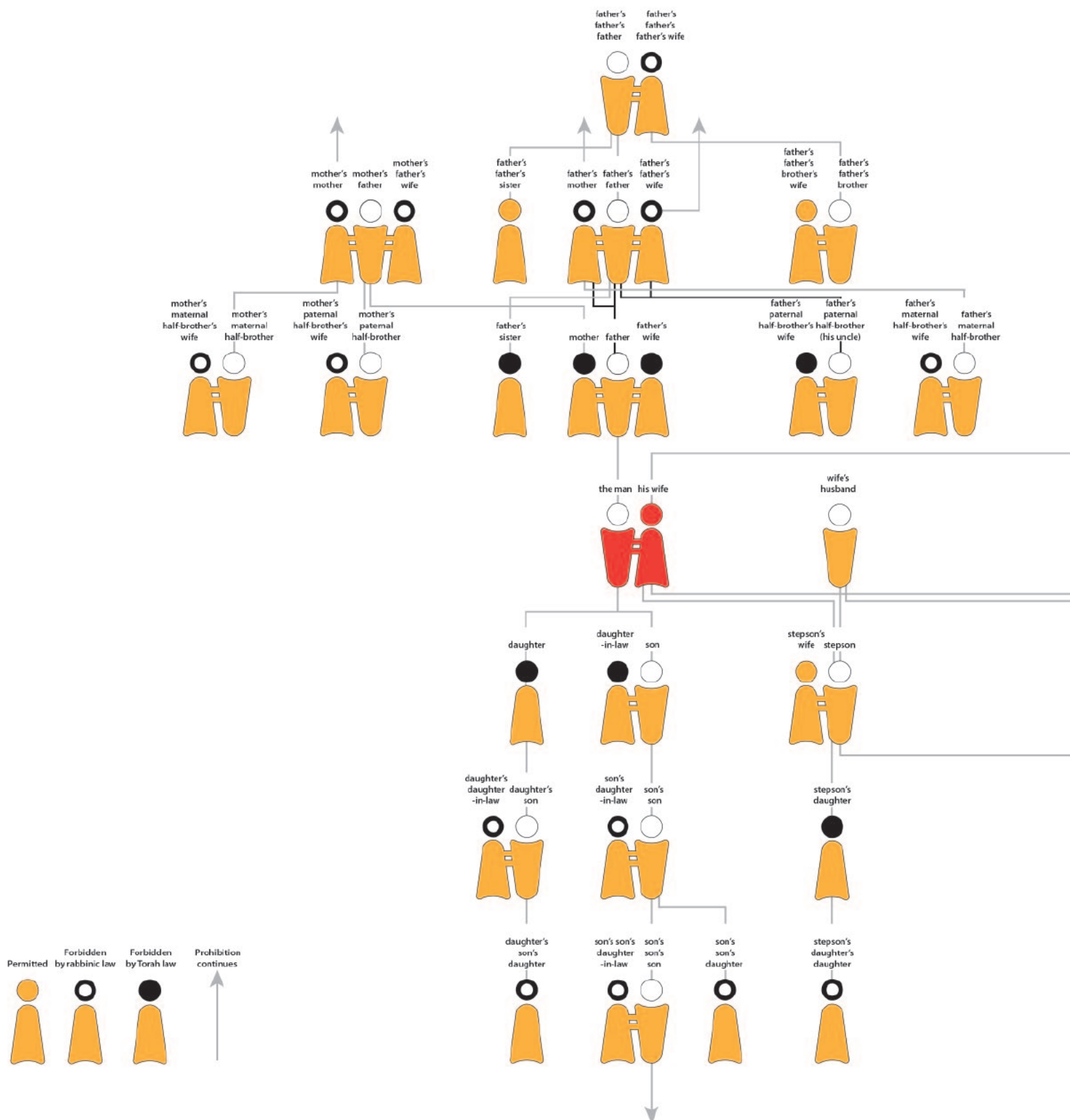
Alternatively, a different argument could be made: **Women are not so strict with one another, as lying with them** and having sexual relations with them **does not render them mutually forbidden**. In other words, if a man commits adultery with his wife's close relative, his wife does not become forbidden to him, so she may not pay attention to his behavior with the woman under suspicion. However, **men are strict with one another, as lying with them** and having sexual relations with the other man's wife **does render them, the husband and wife, mutually forbidden**. In other words, if another man has relations with a married woman, she is forbidden to her husband, and so men pay close attention to what the others are doing.

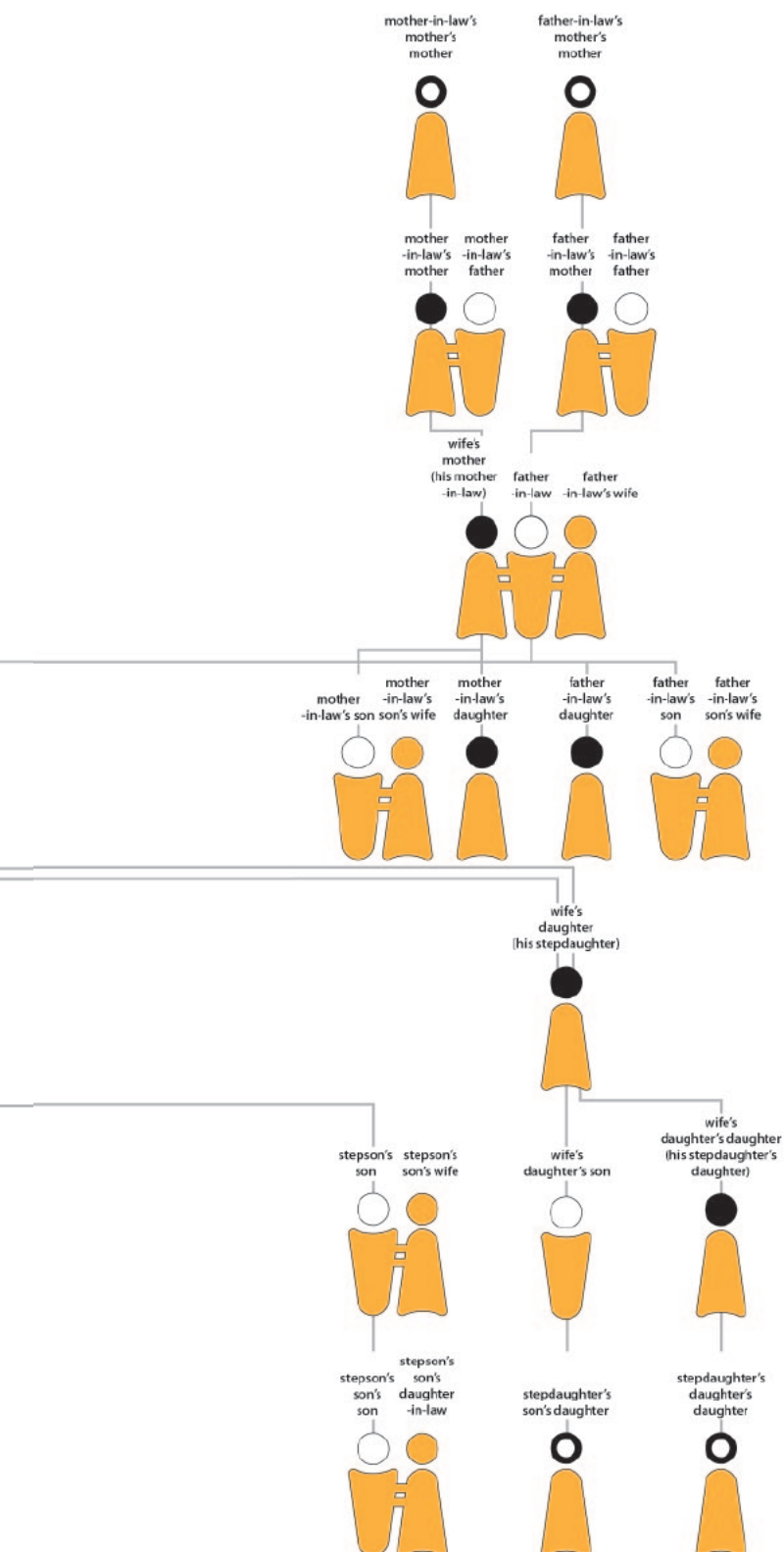
אִי הָכִי אָבִיו נָמִי! לָא מִיבְעִיָא קְאָמֵר, לָא
מִיבְעִיָא אָבִיו – דְּבָזִיז בְּמִיָּה מִיָּמָה, אָבִיל
בְּנוֹ דְלָא בָזִיז אָבִיו מִיָּמָה – אִימָא לָא,
קָא מְשַׁמַּע לָן.

The Gemara asks: **If so, one's father** should be permitted to marry a woman set free by his son **as well**. So why does the mishna say: Their sons or their brothers, and not: Their fathers? The Gemara answers: Certainly his father is allowed as well, but the mishna is speaking utilizing the style of: **It is not necessary. It is not necessary** to mention the case of **his father** because he is most certainly permitted to marry a woman set free by his son, **as his son is embarrassed** [*baziz*]¹ **before him** and so would not come to sleep with his father's wife. **But I might say that since the father is not embarrassed before his son**, she **may not** be married to the son of one for whom there is suspicion. Therefore, **this comes to teach us** that there is no such concern.

הדרן עלך כיצד אשת אחיו

Rabbi Ḥiyya's Description of Forbidden Relationships According to Rambam





Summary of Perek II

This chapter, in addition to touching on a wide range of topics, primarily discusses several difficulties that arise in the *halakhot* of levirate marriage. It also deals with difficulties inherent in the general *halakhot* of marriage.

The *halakha* is that a brother is exempt from levirate marriage with the wife of a brother with whom he did not coexist. This means that if a brother was born after the death of the childless man whose wife requires levirate marriage, this newborn brother is exempt from performing levirate marriage. This applies even if the *yevama* had in the meantime been married to another brother who later died childless as well, whereby she would once again happen before a *yavam* for levirate marriage. She is exempt from both levirate marriage and *ḥalitza* and causes her rival wives to be exempt as well.

Although the eldest brother is specified by the Torah for the mitzva of levirate marriage, all of the brothers are eligible to perform the mitzva. The brother referred to by the Torah for the purposes of levirate marriage is specifically a paternal brother. Any paternal brother is included, even if he was born outside of marriage or is a *mamzer*. However, it does not include a brother whose mother was a gentile or a Canaanite maidservant.

The term “child” in the verse “If brothers dwell together and one of them dies and he has no child...” (Deuteronomy 25:5), is understood in the widest possible sense; it includes any descendants of the deceased brother. Whether it is a son, a daughter, or a grandchild, and whether that child is fit to enter the community or is disqualified, provided the descendant is not the child of a gentile woman or Canaanite maidservant, that child absolves the widow from the obligation of levirate marriage.

The Gemara concludes that in every case where the *yevama* is forbidden to the *yavam*, whether due to a prohibition resulting from a mitzva or a prohibition stemming from sanctity, including those prohibitions specific to the priestly class or those instituted by rabbinic law, even though she may not enter levirate marriage she must undergo *ḥalitza*. This is because the mitzva itself still applies to her by Torah law. If she had a rival wife who was not forbidden, then that rival wife is permitted to enter into levirate marriage. *Ḥalitza* rather than levirate marriage is also required in cases where it is uncertain whether the mitzva applies or to whom it applies.

As part of the deliberations over these issues, the matter of forbidden secondary relatives was also summarized in this chapter. These were defined as closely related women who did not fall under the category of forbidden relatives by Torah law, but were prohibited by rabbinic decree to create a safeguard, so that one not be confused

between them and those women who are forbidden relatives by Torah law. The primary source for these *halakhot* is this chapter, and several issues were left unresolved, leading to disputes among halakhic authorities.

Another subject mentioned in this chapter is the general prohibition against marrying a woman if that marriage would raise suspicions of previous misconduct or cast doubt upon the veracity of testimony or the uprightness of judges.

If brothers dwell together and one of them dies and he has no child, the wife of the dead man shall not be married outside of the family to one not of his kin; her brother-in-law will have intercourse with her and take her to him to be his wife and consummate the levirate marriage.

(Deuteronomy 25:5)

Introduction to Perek III

The first two chapters of this tractate discussed the essential *halakhot* of levirate marriage in and of themselves. From Chapter Three onward, the Gemara's discussion concerns both how these *halakhot* apply to specific combinations of circumstances and the evaluation of different instructive examples. All of this is grounded in the principles that were clarified in the previous chapters. Based on these principles, the rulings are determined for situations where related women who were married to two or more brothers happen before their brothers-in-law, i.e., become candidates for levirate marriage with them, and the various possible relationships between these women and their brothers-in-law are evaluated as well. In the process it becomes clear that the relationship between brothers-in-law and *yevamot*, known in the Gemara as the levirate bond, requires further clarification.

From the verses, it is apparent that a sister-in-law requiring levirate marriage is bound to her brother-in-law and cannot marry another man until he releases her from the levirate bond via levirate marriage or *ḥalitza*. The Torah itself, however, does not provide any definition of this bond. Perhaps the bond can be understood simply as a one-sided obligation, whereby the sister-in-law is compelled to wait for her brother-in-law to perform some act. This opinion asserts that the levirate bond is not substantial. Alternatively, one could explain that the levirate bond is substantial, and the relationship between the parties obligated in levirate marriage is similar to that of those who are engaged, in that it would be prohibited for the *yavam* to marry the relatives of the *yevama*, in the same way that it would be prohibited for him to marry the relatives of his wife. Indeed, this perspective raises a certain difficulty, for there should apparently be some difference between the simple case of a *yevama* who is bonded to a single brother-in-law and the case where she is bonded to two brothers-in-law or more. However, by defining the levirate bond as a relationship that is substantial enough to create prohibitions for the parties involved, a fundamental contradiction arises in the case of a woman who is simultaneously bound to two different men.

Defining the parameters of the levirate relationship is also problematic when complex familial relations exist between the brothers-in-law and sisters-in-law. It must be determined precisely when the levirate bond is formed. Is it formed at the moment of the husband's death, following the opinion that a woman's status at the time of her husband's death determines her status with regard the levirate bond created between her and her brothers-in-law? Or, perhaps the original moment of marriage between the woman and her late husband created a levirate bond between her and her brothers-in-law, following the opinion that marriage determines a woman's status with regard to the levirate bond?

This chapter explores and clarifies these issues along with other questions that arise incidentally within the Gemara's discussions.

מתני' ארבעה אחין, שנים מהם נשואים שתי אחיות, ומתו הנשואים את האחיות – הרי אלו חולצות ולא מתייבמות. ואם קדמו וכןסו – יוצאו. רבי אליעזר אומר, בית שמאי אומרים: וקיים, ובית הלל אומרים: יוצאו.

היתה אחת מהן אסורה על האחד איסור ערוה – אסור בה ומותר באחותה, והשני אסור בשתייהן.

איסור מצוה ואיסור קדושה – חולצת ולא מתייבמת.

היתה אחת מהן אסורה על זה איסור ערוה, והשניה אסורה על זה איסור ערוה – האסורה לזה מותרת לזה, והאסורה לזה מותרת לזה.

וזו היא שאמרו: אחותה כשהיא יבמתה – או חולצת או מתייבמת.

MISHNA In the case of four brothers,^H two of whom were married to two sisters, and the ones married to the sisters died, then those sisters must perform *halitza* and may not enter into levirate marriage.^N Since both sisters require levirate marriage with each of the surviving brothers, a levirate bond exists between each sister and the brothers. Each of them is considered the sister of a woman with whom each brother has a levirate bond and is therefore forbidden to him by rabbinic law. And if they married the sisters before consulting the court, they should divorce them, for the Sages decreed that in this situation they may not remain married. Rabbi Eliezer says that there is a dispute in this matter: Beit Shammai^N say: He may maintain her as his wife, while Beit Hillel say: They must divorce them.

If one of the sisters was forbidden^H to one of the brothers due to a prohibition against forbidden relations because she was a relative of his wife or a relative on his mother's side, then he is forbidden to marry her but permitted to marry her sister. Because she is his close relative, she is exempt from levirate marriage with him, and therefore she is not bound to him with a levirate bond. Consequently, her sister is not considered the sister of a woman with whom he has a levirate bond, and he is permitted to enter into levirate marriage with her. But the second brother, who is not a close relative of either sister, is forbidden to marry both of them. Indeed, for him each woman remains the sister of a woman with whom he has a levirate bond.

If a prohibition resulting from a mitzva^N or a prohibition stemming from sanctity^N will be transgressed when one of the women marries one of the brothers, then her sister must perform *halitza* and may not enter into levirate marriage, as she is considered the sister of a woman with whom he has a levirate bond. In this case, the sister who is forbidden to the brother due to a mitzva or due to sanctity is bound to the brother for the purpose of *halitza*.

If one of those women was forbidden to this one brother due to a prohibition against forbidden relations and the second woman was forbidden to that second brother due to a prohibition against forbidden relations, then she who is forbidden to this brother is permitted to that brother, and she who is forbidden to that brother is permitted to this one.

And this is the case that was referred to when they said: When her sister is also her *yevama*, i.e., in a case where two sisters are also *yevamot* and therefore happened for levirate marriage before two brothers, she either performs *halitza* or enters into levirate marriage. This must be referring to a case where each sister is forbidden to one of the brothers due to a prohibition concerning forbidden relatives. In this case, each sister has a levirate bond only with the one brother to whom she is permitted, and the prohibition against marrying the sister of a woman with whom one has a levirate bond does not apply. Therefore, each brother can either perform the act of *halitza* or consummate the levirate marriage with the sister to whom he is not related.

NOTES

Must perform *halitza* and may not enter into levirate marriage – חולצות ולא מתייבמות: One could suggest that one of the brothers performs *halitza* with one sister and then afterward the second brother consummates the levirate marriage with the second sister, as she would then no longer be the sister of a woman with whom he has a levirate bond. This, however, is not allowed according to both explanations of the mishna. According to the opinion that it is prohibited to negate the mitzva of levirate marriage, there is a concern that they will confuse the order and perform the levirate marriage first. According to the opinion that the levirate bond is substantial, the second brother may not consummate the levirate marriage, as the woman was already forbidden to him once as the sister of a woman with whom he has a levirate bond, and she can no longer be rendered permitted (*Tosefot HaRosh*).

רבי אליעזר אומר, – רבי אליעזר אומר, etc. – בית שמאי וכו': Although it is common for the Gemara to ask why a Sage saw fit to inform us of Beit Shammai's opinion when it does not accord with *halakha*, here there is an explanation. It seems that Rabbi Eliezer states this version of the dispute between Beit Shammai and Beit Hillel in order to exclude the opinion of Abba Shaul (*Yevamot* 28a), which sets forth an opposite tradition with regard to this dispute (*Tosefot HaRosh*).

A prohibition resulting from a mitzva – איסור מצוה: In addition to the sexual relationships prohibited on the basis of Torah prohibitions, there are additional relationships that are prohibited by rabbinic law. These are called prohibitions resulting from a mitzva, because the basis for the authority of rabbinic prohibitions is the Torah mitzva not to deviate from the words of the Sages, as it is stated: "According to the *halakha* that they shall teach you, and according to the judgment that they shall tell you, you shall do" (*Deuteronomy* 17:11).

A prohibition stemming from sanctity – איסור קדושה: This is referring to a marriage that is prohibited not because of the family relationship between the parties but because of the more elevated level of sanctity of one of the marriage partners. These include the prohibition against the marriage of a native-born Israelite to a *mamzer*, a priest to a divorcée, or a High Priest to a widow.

HALAKHA

Four brothers – ארבעה אחין: In the case of four brothers, two of whom were married to two sisters and died childless, these sisters must perform *halitza* and they may not enter into levirate marriage. If the brothers married the sisters before consulting with the court, they must divorce them (*Rambam Sefer Nashim, Hilkhot Yibbum* 7:1; *Shulhan Arukh, Even HaEzer* 175:3).

If one was forbidden, etc. – היתה אחת אסורה וכו': If one of

the sisters was forbidden from marrying one of the brothers due to a prohibition against forbidden sexual relations, then he is permitted to marry her sister, and the other brother is prohibited from marrying both of them. If one of the sisters was forbidden to one brother and the second to another brother, each brother may marry the sister who is not forbidden to him (*Rambam Sefer Nashim, Hilkhot Yibbum* 7:1–2; *Shulhan Arukh, Even HaEzer* 175:4–5).

Levirate bond or negation of the mitzva of levirate marriage – **זיקה או בטול מצות יבום**: Yosef Lekah elaborates on both sides of this ancient dispute. It appears in the Jerusalem Talmud and in other places and is formulated as follows: Is *halitza* a mitzva in and of itself or is its purpose only to release one from the levirate bond?

According to the opinion that *halitza* is indeed the fulfillment of a mitzva, one can understand the rationale against negating the mitzva of levirate marriage. By consummating the levirate marriage with one sister, the *yavam* prevents the other sister from performing both the mitzva of *halitza* and of levirate marriage.

If, however, *halitza* merely releases the woman from the levirate bond, it should not matter if that exemption comes from the act of *halitza* or from his marriage to her relative. According to the opinion that *halitza* serves only to release the woman from the levirate bond, it is apparent that the reason for requiring *halitza* here must be due to the levirate bond. Although there is no mitzva involved in performing *halitza*, it is nevertheless necessary, as there is a prohibition against consummating the levirate marriage due to the levirate bond.

If so, three – אי הוי תלתא: This question is based on the assumption of the Gemara that this case should involve three brothers, as all the cases in the continuation of the chapter involve three brothers. For this reason, the Gemara wonders why the number of brothers was increased to four in this mishna (Rashba; Ritva).

It is not necessary, etc. – לא מבעיא וכו': Many early commentaries ask: Why is this question raised specifically with regard to the opinion that the ruling is based on the prohibition against negating the mitzva of levirate marriage, but not with regard to the opinion that the levirate bond is substantial (see Rashi, Rivan, and *Tosafot*)?

The Ramban, in explanation of Rashi's comments, says: According to the opinion that the levirate bond is substantial, there is a novelty to be learned if the case involves specifically four brothers. This is because there is a dispute with regard to whether the levirate bond is substantial only if there is a single brother or even if there are two brothers. Accordingly, in order to teach that the levirate bond is significant even if there are multiple brothers, the case of four brothers is preferable to the case of three brothers.

However, according to the opinion that there is concern for the negation of the mitzva of levirate marriage, it stands to reason that the same concern should exist regardless of the number of brothers. Therefore, if the reasoning behind the ruling in the mishna is that the levirate bond is not substantial, it would have been appropriate to teach the case of three brothers, in order to indicate that although the levirate bond is not substantial, it is nevertheless prohibited to perform levirate marriage. It would then be clear that the rationale behind the ruling is based specifically on the idea that negating the mitzva of levirate marriage should be avoided. However, when the case involves four brothers the underlying rationale is not as clear (Ramban).

גמ' שמע מינה: יש זיקה. דאי אין זיקה, מבדי הני מתרי בתי קאתיין, האי לייבם תדא והאי לייבם תדא!

לעולם אימא לך: אין זיקה, ומשום דקסבר אסור לבטל מצות יבמין, דלמא אדמייבם חד – מיית אידך, וקמבטל מצות יבמין.

אי הכי, תלתא נמי!

לא מבעיא קאמרין: לא מבעיא תלתא, דודאי בטלה מצות יבמין, אבל ארבעה, למיתה לא חישינן – קא משמע לן.

אי הכי,

GEMARA The Gemara deduces from the *halakha* cited in the mishna: **Conclude from here** that the levirate bondⁿ is substantial. That is, the very obligation of levirate marriage creates a bond that is similar to marriage. **For if the levirate bond were not substantial**, why would these two women not enter into levirate marriage? **After all, these two women come from two households**, as each had a different husband, and they both require levirate marriage. **Let this brother consummate the levirate marriage with one sister and let that brother consummate the levirate marriage with the other sister.** The fact that the mishna requires *halitza* in this situation indicates that the levirate bond is substantial and resembles marriage to the extent that each sister is forbidden to each brother due to the prohibition against marrying the sister of a woman to whom one has a levirate bond.

The Gemara rejects this: **Actually, I could say to you** that according to this *tanna* the levirate bond is not substantial, and yet they are prohibited from entering levirate marriage for a different reason. It is because the *tanna* holds that it is prohibited to negate the mitzva of levirate marriage.ⁿ It is prohibited to act in a way that would lead to a situation where the mitzva to perform levirate marriage is negated. How would this situation arise? **Perhaps before one brother consummates the levirate marriage, the other brother dies**, and only one brother remains. In that case, the second sister would also happen before him for levirate marriage, and by performing levirate marriage with one sister he would thereby negate the mitzva of levirate marriage with the other sister. When the remaining brother marries one of the sisters, the mitzva to enter into levirate marriage or perform *halitza* is automatically negated from the second sister, as she is then forbidden to him as his wife's sister.

The Gemara asks: **If so**, if this is the rationale behind the ruling in the mishna, then the same concern would exist if there were **threeⁿ brothers, as well**. Why did the mishna specify four brothers? It could have cited the case of three brothers, two of whom were married to two sisters. In these circumstances, the concern for negating the mitzva of levirate marriage also exists.

The Gemara answers: Indeed, the ruling would be the same in that case. However, the mishna is speaking utilizing the style of: **It is not necessary. It is not necessaryⁿ** to specify that the women must perform *halitza* in a case involving three brothers, as **certainly the mitzva of levirate marriage is negated** with one of the sisters when the *yavam* marries the other sister. **But** in the case of four brothers, where there is concern only over the possibility that one of the brothers might die, we might have said that **we are not concerned over the possibility of the death** of a brother and therefore allow the brothers to consummate the levirate marriage. The mishna therefore teaches us that even in the case where there is concern only for the negation of the mitzva, they must perform *halitza* and not consummate the levirate marriage.

The Gemara asks: **If so**, i.e., if we are concerned over the possibility that the remaining brother might die,

HALAKHA

The levirate bond – **זיקה**: In accordance with Shmuel's opinion here, the conclusive *halakha* is that the levirate bond is substantial. Although the *halakha* generally follows Rav's opinion in his disputes with Shmuel that pertain to prohibi-

tions, the deliberation of the *amora'im* on Shmuel's opinion indicates that the *halakha* should be ruled according to him (Rosh; Rambam *Sefer Nashim*, *Hilkhot Yibbum* 1:13; *Shulhan Arukh*, *Even HaEzer* 159:5).

הַמִּשְׁחָה נִמְנוּ לְמִיתָה דִּתְרִי לָא
חֵישִׁינָן.

אָמַר רַבָּא בְּרַב הוּנָא אָמַר רַב:
שְׁלֹשׁ אֲחִיּוֹת יָבָמוֹת שָׁנְפְּלוּ לִפְנֵי
שְׁנֵי אַחִין יָבָמִין, זֶה חוֹלֵץ לְאַחַת,
וְזֶה חוֹלֵץ לְאַחַת, וְאַמְצָעִית צְרִיכָה
חֲלִיצָה מִשְׁנֵיהֶם.

אָמַר לִיה רַבָּה: מִדְּקָאֳמַרְתָּ אֲמַצְעִית
צְרִיכָה חֲלִיצָה מִשְׁנֵיהֶם – קִסְבַּרְתָּ
יֵשׁ זִיקָה, וְהוּא לָהּ חֲלִיצָה פְּסוּלָה,
וְחֲלִיצָה פְּסוּלָה צְרִיךְ לַחֲזוֹר עַל כָּל
הָאֲחִין.

אִי הֵכִי, קִמְיָתָא נִמְנוּ!

אִי דִנְפֹּל בְּבֵת אֶחָת – הֵכִי נִמְנוּ, לָא
צְרִיכָא דִנְפֹּל בְּזוֹ אַחֵר זוּ.

נִפְּלָה חֲדָא – חָלַץ לָהּ רְאוּבֵן, נִפְּלָה
אֵידִךְ חָלַץ לָהּ שְׁמֻעוֹן.

then this should also be true in a case of five brothers, two of whom were married to two sisters and died, and their wives happened before the three remaining brothers for levirate marriage. The Gemara answers: **We are not concerned over the possibility of the death of two^N brothers in such a short period of time.**

S Rava bar Rav Huna said that Rav said: In a case where three sisters who were married to three brothers became *yevamot* and happened before two remaining brothers who were their *yevamin* for levirate marriage, then this one brother performs *halitza* with one of the women, and that brother performs *halitza* with another one of the women. And the middle, i.e., third, sister requires *halitza* with both of the brothers.

Rabba said to them: From the fact that you say that the middle one requires *halitza* with both of the brothers, it can be deduced that you hold that the levirate bond is substantial and creates a familial relationship, and similarly this *halitza* performed by each of the brothers with the third sister is invalid *halitza*.^{NH} Since the third woman is the sister of a woman with whom he performed *halitza*, it is not possible to consummate the levirate marriage with her. Therefore, the *halitza* performed with her is not entirely valid and does not release her from the levirate bond between her and the two brothers. And there is a principle that invalid *halitza*^N must be repeated by all of the brothers; each of them must perform an act of *halitza* with this woman.

The Gemara asks: If that is so, the first two women should also require *halitza* from each of the brothers because each act of *halitza* was invalid, as each woman has the status of the sister of a woman with whom the man has a levirate bond, and it is therefore prohibited for the men to consummate the levirate marriage with them.

The Gemara responds: If the case is that they, i.e., the sisters, happened before the brothers simultaneously,^N it is indeed so that the two brothers would each be obligated to perform *halitza* with each of the three sisters. This *halakha* is necessary only in the case where they happened before the brothers, one after the other.

How so? One sister happened before the brothers for levirate marriage and then Reuven, one of the brothers, performed valid *halitza* with her. Another sister happened before the brothers for levirate marriage, and the brother Shimon performed *halitza* with her. In this case, Shimon was allowed to consummate the levirate marriage with her if he so desired, as she had no family relationship to him at all. When Reuven performed *halitza* with the first sister, he removed the levirate bond between her and the other brothers, such that Shimon has no relationship with the first sister at all and is free to marry the second sister. Therefore, when he performed *halitza*, the act was valid.

HALAKHA

Invalid *halitza* – חֲלִיצָה פְּסוּלָה: The early authorities offer two definitions of invalid *halitza*. The most common understanding is that in any case where the *yevama* is prohibited from consummating the levirate marriage but still requires *halitza*, that *halitza* is regarded as invalid and must be performed by all the brothers (Rashi; Rambam; see Vilna Gaon). The Rema,

following *Tosafot*, writes that invalid *halitza* occurs only when the relevant prohibition directly weakens the levirate bond, such as is the case when a *yavam* has a levirate bond with two sisters (Rambam *Sefer Nashim*, *Hilkhot Yibbum* 7:9; *Shulhan Arukh*, *Even HaEzer* 170:5).

NOTES

We are not concerned over the possibility of the death of two – לְמִיתָה דִּתְרִי לָא חֵישִׁינָן: The Ritva writes that even according to those who hold that there might be legitimate concern over the possibility of two deaths, this is a case of a rabbinic decree that prohibits the negation of the mitzva of levirate marriage, where there need not be concerned for such a possibility.

Invalid *halitza* – חֲלִיצָה פְּסוּלָה: The early commentaries dispute what constitutes invalid *halitza*. According to one opinion, *halitza* performed in a case where the *yavam* is prohibited from consummating the levirate marriage and the sister-in-law still requires *halitza* is invalid *halitza*. It must be performed by all the brothers before the *yevama* is permitted to remarry (Rashi; see Rambam).

According to *Tosafot*, however, invalid *halitza* occurs only when the prohibition that precludes the possibility of performing levirate marriage directly weakens the levirate bond. The present case in the Gemara serves as an example: The woman requiring levirate marriage from the *yavam* is the sister of a woman who already underwent *halitza* with him. If consummation of the levirate marriage is prohibited for a reason unrelated to her status as a *yevama*, such as when the initial marriage of the *yevama* was licentious due to her being her husband's remarried divorcee (see 11b), the proposed *halitza* is not termed invalid and she needs to perform it only with one brother. The later commentaries discuss extensively how this dispute reflects a general question about the essence of *halitza* (*Hiddushei Rav Shimon Shkop*; *Arza deVei Rav*).

The Ramban, following the Jerusalem Talmud, explains why invalid *halitza* must be performed with all the brothers: Ordinary *halitza* has two aspects. In one way it is similar to levirate marriage in that it is a mitzva performed with one of the *yevamot* that concludes the levirate bond with both the *halitza* and her rival wives. However, *halitza* also bears resemblance to divorce in that it nullifies the connection between the *yavam* and the *yevama*. Invalid *halitza* is limited in that it only operates in this second way and therefore the woman needs to sever her connection to each *yavam* separately.

The levirate bond is substantial...invalid *halitza*, etc. – יֵשׁ זִיקָה: The Ritva and the Meiri explain that only if one maintains that the levirate bond is substantial is it possible to say that there was invalid *halitza* and the *yevama* must repeat the *halitza* with each of the *yevamin*. If, however, there is no levirate bond, then even invalid *halitza* suffices to release the sister-in-law. However, from a discussion in the Jerusalem Talmud it would seem that these are two separate questions: First, is the *halitza* an act of acquisition or release? Second, is the levirate bond an act of acquisition?

If the case is that they happened simultaneously – אִי דִנְפֹּל: *Tosafot* comment that if the case is indeed referring to a situation where the two sisters became candidates for levirate marriage with the brothers simultaneously, then it would have been sufficient to state this ruling with regard to only two sisters. In this case, they would also need to repeat the *halitza* with both brothers. Therefore, *Tosafot* raise the question as to why the Gemara specifically chose a case with three brothers. The Ramban writes that although, according to Rav's opinion, it would have sufficed to state this ruling with regard to two sisters, the case of three sisters was necessary according to Shmuel's statement later on. *Tosafot Had Mikamma'dei* and the Meiri say that it was necessary to state the case of three sisters in order to inform us of a novel ruling: Even the third middle sister, whose levirate bond was weakened because she is the sister of a woman with whom he performed *halitza*, requires *halitza* from both of the brothers.

In accordance with the statement of the one who says that the levirate bond is substantial – לְדַבְּרֵי הָאוֹמֵר יֵשׁ וְיָקָה – Most of the early commentaries hold that Rav presented an opinion that was not his own and that he does not accept. Rivan, however, says that there is an amoraic dispute as to whether or not Rav holds that the levirate bond is substantial, and the opinion presented here follows that of the *amora* who maintains that Rav is of the opinion that the levirate bond is substantial (see *Yevamot* 18b).

נִפְלָה אִידָךְ חֵלֶץ לָהּ הָאִי מִפְקַע וְיָקָה, חֵלֶץ לָהּ הָאִי מִפְקַע וְיָקָה.

Another third sister then happened before the brothers for levirate marriage. When this first brother performs *halitza* with her, he terminates his levirate bond, and when this second brother performs *halitza* with her, he terminates his levirate bond. However, neither brother can, by performing *halitza*, terminate the other brother's levirate bond because each brother's *halitza* is invalid, as each brother is unable to consummate the levirate marriage in this case. This is due to the woman's status as the sister of a woman with whom he performed *halitza*.

וְהָאֵמֶר רַב: אֵין וְיָקָה! לְדַבְּרֵי הָאוֹמֵר יֵשׁ וְיָקָה קָאָמֵר.

The Gemara asks: How can this statement be cited in the name of Rav? But didn't Rav say: The levirate bond is not substantial. This *halakha*, however, was explained based on the assumption that the levirate bond is substantial. The Gemara answers: Indeed, according to Rav himself it is unnecessary to perform *halitza* with multiple brothers. He, however, states this *halakha* in accordance with the statement of the one who says that the levirate bond is substantial,ⁿ despite the fact that he does not hold this himself.

וּשְׁמוּאֵל אָמַר: אֶחָד חוֹלֵץ לְכוֹלֶן. מִבְּדֵי שְׁמַעֲיָן לִיָּה לְשְׁמוּאֵל דְּאָמַר: חֲלִיצָה מַעֲלִיא בְּעֵינָן, דְּאָמַר שְׁמוּאֵל:

And with regard to the above case Shmuel said a different halakhic ruling: It is sufficient if one brother performs *halitza* with each of the sisters. The Gemara raises a difficulty: But since we have heard that Shmuel said: We require a full-fledged *halitza*, and invalid *halitza* does not result in complete exemption, this ruling is difficult. It is not clear why the invalid *halitza* in this case would be sufficient, as Shmuel said:

Perek III

Daf 27 Amud a

HALAKHA

If he performed *halitza* with the sisters the rival wives are not exempt – חֵלֶץ לְאֶחָיוֹת לֹא נִפְטְרוּ צָרוֹת: In the case of three brothers, two of whom were married to two sisters, where each had a rival wife, and the brothers died and their wives happened before the third brother for levirate marriage, if the *yavam* performs the act of *halitza* with the rival wives then the sisters are thereby exempt as well. However, if he performs *halitza* with the sisters, the rival wives do not become exempt, in accordance with the opinion of Shmuel as explained by Rav Ashi (Rambam *Sefer Nashim*, *Hilkhot Yibbum* 7:9; *Shulhan Arukh*, *Even HaEzer* 170:17, 174:1).

To exempt the woman herself...exempt – מִפְטָרָא נִפְשָׁה, – It would seem that even according to those authorities who rule that in the case of invalid *halitza* the woman must repeat the *halitza* with the other brothers, this is required in order to completely nullify the levirate bond and exempt the rival wives. The woman who performed the invalid *halitza*, however, is free of her bond and is permitted to the general public without repeating the *halitza*. At the very least, she is permitted after the fact (see *Beit Shmuel*; Rambam *Sefer Nashim*, *Hilkhot Yibbum* 5:12; *Shulhan Arukh*, *Even HaEzer* 170:19).

NOTES

Shimon's *halitza*, a valid *halitza* – חֲלִיצָה דְּשִׁמְעוֹן חֲלִיצָה בְּשָׁרָה: Some commentaries say that when Reuven performed *halitza* with the first sister, Shimon's bond with her was completely nullified, and therefore when Shimon performs *halitza* with the second sister it is a completely valid *halitza* (see Rashba). Others explain that even if some aspect of Shimon's original bond with the first sister remains intact, his act of *halitza* with the second sister is nevertheless more efficacious than the *halitza* performed by Reuven (Rivan).

Since most are with him – בִּינְיוֹן דְּרֹבָה גְּבִיָּה – This follows the principle that in any matter, the majority is equivalent to the entirety (Ritva).

חֵלֶץ לְאֶחָיוֹת לֹא נִפְטְרוּ צָרוֹת. הֵיכָא דְקִיָּמָא חֲלִיצָה דְּשִׁמְעוֹן חֲלִיצָה בְּשָׁרָה, חֲלִיצָה לָהּ רְאוּבֵן חֲלִיצָה פְּסוּלָה.

In the case of three brothers, two of whom were married to several women, including two sisters, and the two married brothers later died, and their wives happened before the *yavam* for levirate marriage, if the *yavam* performed *halitza* with the sisters who were among the wives, the rival wives are not thereby exempt.⁴ One can deduce from here that since the *yavam* cannot consummate the levirate marriage with the sisters, as each is the sister of a woman with whom he has a levirate bond, then the act of *halitza* is invalid, and invalid *halitza* is ineffective in exempting their rival wives. It is concluded from here that even Shmuel requires valid *halitza*, i.e., *halitza* that occurs when there is a possibility of consummating the levirate marriage. According to this rationale, however, Shmuel's ruling in the above case is difficult: With regard to the second sister, when there exists the possibility for Shimon's *halitza*, i.e., the *halitza* of the second brother who did not yet perform *halitza*, to be a valid *halitza*,ⁿ would it be allowed for Reuven, the brother who already did *halitza* with one sister, to perform invalid *halitza* with her?

מֵאִי "אֶחָד חוֹלֵץ לְכוֹלֶן" נִמְיָ דְקָאָמֵר – אֶמְצָעִית. וְהָא כּוֹלֶן קָאָמֵר! בִּינְיוֹן דְּרֹבָה גְּבִיָּה קָרִי לִיָּה "כוֹלֶן". וְאִיבְעִית אֵימָא: בִּי קָאָמֵר שְׁמוּאֵל חֲלִיצָה מַעֲלִיא בְּעֵינָן – הֵנִי מִלִּי לְמִפְטָר צָרָתָהּ, אֲבָל מִפְטָרָא נִפְשָׁה – פְּטָרָה.

The Gemara resolves this difficulty by reinterpreting Shmuel's statement. What does it mean that it says: One performs *halitza* with each of them, that Shmuel stated? Shmuel says that with regard to the middle one, i.e., the third sister, one of the two brothers performs *halitza* with her. The Gemara asks: But didn't he say: Each of them, indicating that one brother performs *halitza* with all of the sisters? The Gemara answers: Since the brother who performed *halitza* with one sister repeats the act with another, it turns out that most of the acts of *halitza* are performed with him,ⁿ and this is called: With each of them. And if you wish, say a different answer: When Shmuel said we require a full-fledged *halitza*, this applies only to exempt her rival wife by means of that *halitza*. But to exempt the woman herself, even invalid *halitza* would render her exempt.⁴ In the case above, since no rival wives are involved, it would be sufficient for one brother to perform *halitza* with each of the sisters.

גופא, אמר שמואל: חלץ לאחיות – לא נפטרו צרות, לצרות – נפטרו אחיות. חלץ לבעלת הגט – לא נפטרה צרה, לצרה – נפטרה בעלת הגט.

חלץ לבעלת המאמר – לא נפטרה צרה, לצרה – נפטרה בעלת מאמר.

מאי שנא לאחיות דלא נפטרו צרות – דהויא לו אחות אשה בויקה, חלץ לצרות נמי לא ליפטרו אחיות, דהויא להו צרות אחות אשה בויקה! קסבר שמואל: אין ויקה.

§ Apropos of Shmuel's statement, the Gemara examines the matter itself. **Shmuel said:** In the case of three brothers, two of whom were married to several women, including two sisters, and the two married brothers later died, and their wives happened before the *yavam* for levirate marriage, if the *yavam* performed *halitza* with the sisters,^b the rival wives are not thereby exempt. But if he performed *halitza* with the rival wives, the sisters are exempt.ⁿ Similarly, if he gave a bill of divorce to one of these women, whereby he would no longer be permitted to consummate the levirate marriage with them due to a rabbinic decree, and he then performed *halitza* with the woman who received a bill of divorce, the rival wife is not thereby exempt. Since he was unable to consummate the levirate marriage with her, the *halitza* performed with her was invalid, and invalid *halitza* does not exempt the rival wife. If he performed the act of *halitza* with the rival wife, then the woman who received a bill of divorce is exempt.ⁿ

The ruling is similar with regard to the case where the *yavam* performed *ma'amar*, i.e., levirate betrothal,ⁿ to one of the wives. If he then performed *halitza* with the woman who received his levirate betrothal then the rival wife is not exempt. Indeed, this *halitza* is invalid as well, for once the *yavam* performed levirate betrothal, this act can be rescinded only by means of a bill of divorce. Because the woman needs to receive a bill of divorce in addition to the *halitza* in order to exempt her from her bond, the *halitza* is considered invalid and is not sufficient to exempt the rival wife. But if the *yavam* performed *halitza* with the rival wife, then she who received his levirate betrothal is exemptⁿ from *halitza* and requires only a bill of divorce.^h

The Gemara asks: What is different in the two cases? Why, if he performed *halitza* with the sisters, are the rival wives not exempt? This is because the sister is related to him as the sister of a woman with whom he has a levirate bond. Since, under these circumstances he would not be permitted to consummate the levirate marriage with her, her *halitza* is then considered invalid *halitza*. However, if that is so, when he performed *halitza* with the rival wives, the sisters should not be exempt either, as the rival wives are related to him as rival wives of the sister of a woman with whom he has a levirate bond. If the woman is forbidden to him due to a relationship created by the levirate bond, then her rival wife is forbidden to him in the same way, and her *halitza* would be invalid as well. The Gemara answers: **Shmuel holds that the levirate bond is not substantial**, and therefore the levirate bond does not create a relationship between the *yavam* and the sisters such that the prohibition would be extended to the rival wives as well.

NOTES

לצרות נפטרו – אחיות: Even though there is some small deficiency in the performance of *halitza* with the rival wives, this deficiency is, according to all opinions, negligible (*Tosefot Rid*).

The woman who received a bill of divorce is exempt – נפטרה בעלת הגט: It is preferable to perform *halitza* with the rival wife, although she is not eligible to enter into levirate marriage because the *yavam* did not perform any previous act with her, unlike with the woman who received a bill of divorce (*Tosefot Rid*).

Levirate betrothal – מאמר: The Sages instituted that even in cases of levirate marriage, which can be effected by conjugal relations alone according to Torah law, the *yavam* should first perform betrothal by means of a legal document or a transfer of money accompanied by a verbal declaration of betrothal. As opposed to standard betrothal, this levirate betrothal is not binding by Torah law.

She who received levirate betrothal is exempt – נפטרה בעלת מאמר: Although the rival wife of one who received levirate betrothal is also forbidden to the *yavam*, as he is allowed to build one household and not two, it is still preferable to perform *halitza* with the rival wife. This is because a woman who received levirate betrothal is not exempt from her connection with him by the act of *halitza* alone but would require a bill of divorce as well (see *Tosefot Rid*).

With regard to the deficiency in the *halitza* of a woman who had received levirate betrothal, some commentaries explain that the performance of levirate betrothal renders this woman ineligible for levirate marriage with the other brothers, and even a slight deficiency in the levirate bond renders the *halitza* deficient (see Rivan and Ramban).

Tosafot explain that the woman who received levirate betrothal is somewhat similar to a woman who entered into marriage. Marriage completely nullifies the levirate bond; levirate betrothal weakens the levirate bond.

HALAKHA

Halitza with a woman who received a bill of divorce or levirate betrothal – חליצה לבעלת הגט או מאמר: In the case of one who performed levirate betrothal with his *yevama* or gave her a bill of divorce, if she had a rival wife and he then came to perform *halitza* with one of the women, *halitza* with the woman who received the bill of divorce or levirate betrothal would not exempt her rival wife from performing *halitza*. *Halitza* with the rival wife, however, does render the woman who received a bill of divorce or levirate betrothal exempt from performing *halitza*, in accordance with the statement of Shmuel (*Shulhan Arukh, Even HaEzer* 170:17).

BACKGROUND

חלץ לאחיות – Reuven, Shimon, and Levi are paternal brothers. Shimon married Rachel and Hanna. Levi married Rachel's sister, Leah, and Miriam. When Shimon and Levi die childless, their wives happen before Reuven for levirate marriage. If Reuven first performs *halitza* with Leah and then afterward with Rachel, Rachel's *halitza* is considered invalid. Although Rachel herself is rendered exempt through this *halitza*, her rival wife Hanna is not. However, Leah's *halitza* is valid, and therefore her rival wife Miriam is rendered exempt by it.



In accordance with the statement of those who say that the levirate bond is not substantial – לדברי האומר אין זיקה: The early commentaries raise an objection: The Gemara maintains that the ruling that *halitza* with a woman who received a bill of divorce does not exempt her rival wife was said only in accordance with the opinion that the levirate bond is substantial (Yevamot 51a). If so, how can the Gemara here explain that Shmuel stated this ruling in accordance with the opinion that the levirate bond is not substantial?

Tosafot, Ramban, and others hold that the present discussion is cited for the sake of the talmudic argumentation alone and does not represent a true summary of the issue. However, *Tosafot Yeshanim* say that the two *halakhot* mentioned follow two different opinions: The first *halakha*, which discusses *halitza* with sisters, follows the opinion that the levirate bond is not substantial. The *halakha* that discusses *halitza* with a woman who received a bill of divorce follows the opinion that the levirate bond is substantial.

Rival wives in general – צרות דעלמא: This phrase indicates that this *halakha* applies to any case that is similar to this one. The Sages occasionally employ the plural forms in order to establish a general ruling (Rashi). The Rivon understands that this ruling extends to all instances of a rival wife of a woman who is forbidden to the *yavam* by rabbinic law. This includes not only women prohibited to the *yavam* due to the levirate bond, but also women who are secondary forbidden relationships by rabbinic law.

Shmuel...began, etc. – שמואל...התחיל וכו': Some commentaries explain this passage specifically according to the opinion that the levirate bond is substantial, similar to the next answer suggested by the Gemara in the name of Rav Ashi. If so, the Gemara changes its assumption during the course of its discussion. Although this type of change would normally be noted by the word rather, as that word is generally employed to indicate the retraction of a previous explanation and the introduction of a new suggestion, this practice is not strictly adhered to if the first opinion is presented anonymously and not in the name of a specific *amora* (*Tosefot HaRosh*; Ramban).

והא אמר שמואל: יש זיקה! לדברי האומר אין זיקה קאמר.

אי הכי, חלץ לאחיות אמאי לא נפטרו צרות? בשלמא צרה דרחל לא תיפטר – דכיון דחלץ לה ללאה וחדר חלץ לרחל – הויא לה חליצה דרחל חליצה פסולה. אלא צרה דלאה תיפטר!

מאי "לא נפטרו צרות" נמי דקאמר – אצרה דרחל, והא "צרות" קאמר! צרות דעלמא.

אי הכי, חלץ "לצרות נפטרו אחיות", ואצרות רחל מי מופטרא? והא תנן: אסור אדם בצרת קרובת חלוצתו!

שמואל נמי, התחיל ולא התחיל קאמר: התחיל באחיות – לא יגמור בצרות, דתנן: אסור אדם בצרת קרובת חלוצתו, התחיל בצרות – יגמור אף באחיות, דתנן: מותר אדם בקרובת צרת חלוצתו.

The Gemara challenges: But didn't Shmuel say explicitly that the levirate bond is substantial? The Gemara responds: He stated this *halakha* in accordance with the statement of those who say that the levirate bond is not substantial,^N although he himself maintains the opposite.

The Gemara asks: If that is indeed so, that he stated this ruling in accordance with the opinion that the levirate bond is not substantial, then when the *yavam* performed *halitza* with the sisters, why were their rival wives not exempt? Granted, Rachel's rival wife, i.e., the rival wife of the second sister, would not be exempt, for once he performed *halitza* with Leah, the first sister, and then later performed *halitza* with Rachel, it turns out that Rachel's *halitza* was invalid *halitza*,^H as he could not consummate the levirate marriage with Rachel because she is the sister of a woman with whom he performed *halitza*, and invalid *halitza* does not exempt a rival wife. However, the rival wife of Leah should be exempt because if the levirate bond is not substantial, the *halitza* with the first sister would have been completely valid.

The Gemara explains: What does it mean that it says: The rival wives are not exempt, that Shmuel stated? It is referring only to the rival wife of Rachel, the second sister, who is not exempt. The Gemara challenges: But he said rival wives in the plural, seeming to refer to both rival wives? The Gemara answers: He spoke of rival wives in general.^N In other words, this is a general *halakha*, and for that reason it was stated in the plural. However, it does not mean that both the rival wife of the first sister and the rival wife of the second sister are not exempt.

The Gemara challenges this: If that is so, that when Shmuel chose to speak in the plural he was referring only to the rival wife of Rachel, there arises a difficulty with the second half of the statement: If he performed *halitza* with the rival wives, the sisters are exempt. But would Rachel become exempt by *halitza* performed with her rival wife? But didn't we learn in a mishna: A man is forbidden to marry the rival wife of a close relative of his *halutza*? Once the *yavam* performs *halitza* with one sister, Leah, then her sister's rival wife, i.e., Rachel's rival wife, would be considered the rival wife of the sister of a woman with whom he performed *halitza*. Being as she is forbidden to him, her *halitza* is invalid and should not exempt Rachel.

The Gemara answers: Shmuel also meant to distinguish between a case where he began^N and the case where he did not begin. This is how his statement should be understood: If he began by performing *halitza* with one of the sisters, he may not finish by performing a second act of *halitza* with any one of the rival wives, as we learned in a mishna (40b): A man is forbidden to marry the rival wife of a close relative of his *halutza*.^H Due to this prohibition, *halitza* performed with the second rival wife is invalid *halitza* and would not exempt the second sister. If, however, he began with the rival wives and performed the first *halitza* with the rival wife of Leah, he may finish with the sisters as well and perform the second *halitza* with Leah, as we learned in a mishna (40b): A man is permitted to marry the close relative of the rival wife of his *halutza*.^H Therefore, if he performed *halitza* with Leah's rival wife, then Rachel, who is the sister of the rival wife of his *halutza*, is permitted to him. He can therefore perform a completely valid *halitza* with her and thereby exempt her rival wife.

HALAKHA

Invalid *halitza* must be repeated – חליצה פסולה צריכה לחזור: There are a variety of opinions with regard to this *halakha*. Some authorities determined that in cases of invalid *halitza*, if there are several *yevamin* the woman must repeat the *halitza* with all of the *yevamin*. If, however, there are two sisters-in-law whose *halitza* is considered invalid and only a single *yavam*, he can exempt them both through a single act of *halitza*. Some say that if there are two sisters-in-law he must perform *halitza* with each of them (Ramban). Other authorities hold that invalid *halitza* does not necessitate that the woman repeat the *halitza* with the other brothers, and even in the case of two *yevamin* and a

single *yevama*, a single act of *halitza* would suffice. It seems that most of the halakhic authorities hold in accordance with this opinion (Rambam *Sefer Nashim*, *Hilkhot Yibbum* 5:12; *Shulhan Arukh*, *Even HaEzer* 170:5, 19).

Forbidden to marry the rival wife of a close relative of his *halutza* – אסור...בצרת קרובת חלוצתו: The Sages considered a woman with whom one performed *halitza* to be like his wife, and therefore he is forbidden to marry her close relatives, including her sister, mother, etc. If a close relative of the woman with whom he performed *halitza* is married to his brother, then her rival wife is likewise forbidden to him. If, however, she is

married to another man, her rival wife is permitted to him, as per most halakhic authorities, but not in accordance with Rashi (Rambam *Sefer Nashim*, *Hilkhot Yibbum* 6:20; *Shulhan Arukh*, *Even HaEzer* 162:5).

Permitted to marry the close relative of the rival wife of his *halutza* – מותר...בקרובת צרת חלוצתו: A man is allowed to marry the sister, or any other relatives, of the rival wife of a woman with whom he performed *halitza*, in accordance with the mishna cited here (Rambam *Sefer Nashim*, *Hilkhot Yibbum* 1:13; *Shulhan Arukh*, *Even HaEzer* 162:4).

The levirate bond is not so strong – לֹא אֵלִימָא זִיקָה – This assertion does not mean that the bond does not affect the rival wives at all, as rival wives may not enter into levirate marriage, even according to Rav Ashi's opinion. Rather, this means that the levirate bond is not so strong as to disqualify the rival wives in the same way that it disqualifies the sisters.

It is taught in accordance with the opinion of Rav Ashi – תִּנָּא בְּוִתְיָה דְּרַב אֲשִׁי: It is not possible to interpret this *baraita* as the words of Shmuel were interpreted, by adding: He began, and: He did not begin, since it would have been necessary for the *baraita* to add additional segments clarifying the matter (*Tosafot*; see *Ritva*).

Whose opinion is this? It is Beit Shammai – הָא מְנֵי, בֵּית – This matter is also raised in the Jerusalem Talmud, and there, too, it was suggested that the *baraita* should be interpreted as the opinion of Rabbi Yohanan ben Nuri. There, however, the Gemara does not suggest the hard-pressed explanation that the Sages proceeded to establish this amendment (see *Tosafot*). Instead, the Gemara establishes the *baraita* as one version of the opinion of Beit Shammai, which itself is the matter of a tannaitic dispute.

Summary of the talmudic discussion – סִכּוּמָא דְּהַסְגִּיָּה – In this complicated talmudic discussion, the Gemara assumes that Rav and Shmuel made statements opposing their own opinions and also suggests various interpretations of Shmuel's statements wherein it is unclear whether or not these interpretations concur with one another. This leads the commentaries and especially the halakhic authorities to arrive at vastly different conclusions. The Rema and the Ramban conclude that the *halakha* follows Rav with regard to invalid *halitza*. Since Rav made his statement in accordance with the opinion that the levirate bond is substantial, as is the halakhic conclusion, we must follow the principle that the *halakha* is in accordance with the opinion of Rav in matters of prohibitions. Therefore, according to the Ramban and others, in cases of invalid *halitza*, each sister must repeat the *halitza* with all the other *yevamin*.

According to most authorities, the Rif concludes that the *halakha* is in accordance with the most straightforward explanation of Shmuel, which is the latter explanation of his words. Therefore, one *yavam* performs *halitza* with each of the sisters. The Rif establishes the *halakha* in accordance with the opinion of Shmuel, in opposition to Rav, because the principle that the *halakha* follows Rav applies only if Rav employs his own opinion in the dispute but not when he offers an explanation of another opinion that is not his own (*Nimmukei Yosef*).

The early commentaries were divided over how to understand the Rambam's opinion here, for it would seem that his words support two different opinions. Most commentaries maintain that he establishes the *halakha* in accordance with Shmuel and the latter explanation in the Gemara (Ramban; Rashba; Meiri; Tur).

The Ra'avad, *Tosafot*, and the Rosh all establish the *halakha* in accordance with the opinion of Shmuel, but according to the first formulation. Accordingly, the middle woman does not require *halitza* with all of the brothers but the second sister does require *halitza* from the second brother. They reason that where it is possible to perform valid *halitza*, invalid *halitza* does not suffice to exempt the woman. There are, however, differences of opinion within these commentaries. It would seem that the Ra'avad holds that after the fact the latter explanation can be relied upon (see *Beit Shmuel*). However, *Tosafot* maintain that even after the fact the *halakha* is according to the first explanation.

רב אשי אמר: לעולם בדיקאמרת, ומשום דלא אלימא זיקה לשווי לצרה בערוה.

Rav Ashi said: Actually, Shmuel's statement should be interpreted as you originally said, that Shmuel's rationale for these *halakhot* accords with his opinion that the levirate bond is substantial. As for the objection that was raised as to why the sisters would be exempted by *halitza* performed with the rival wives if these rival wives were considered the rival wife of the sister of a woman with whom the *yavam* had a levirate bond, this can be resolved as follows: This is because the levirate bond is not so strong^N as to render the status of a rival wife like an actual forbidden relative. The levirate bond is sufficient to prohibit levirate marriage with the sister of a woman with whom he has a levirate bond, but not sufficient to prohibit their rival wives to the *yavam*.

The Gemara comments: It is taught in a *baraita* in accordance with the opinion of Rav Ashi:^N If he performed *halitza* with the sisters, the rival wives are not exempt from levirate marriage. From here one can deduce: Consequently, if he performed *halitza* with the rival wives, the sisters are exempt. What is the reason for this? Is it not because this *tanna* held that the levirate bond is substantial, and therefore the rival wives were not rendered exempt by the *halitza* of the sisters, but nevertheless the levirate bond is not so strong as to render the rival wife equivalent to a forbidden relative. Therefore, the prohibition with regard to the rival wives in this case is less severe than the prohibition concerning the sisters themselves, and when they perform *halitza*, the *halitza* is valid and the sisters are exempt.

Rabbi Abba bar Memel rejected this explanation and said: In accordance with whose opinion is this *baraita* taught? It is in accordance with the opinion of Beit Shammai,^N as we learned in a mishna: Beit Shammai permitted the rival wives to marry the brothers; even if they are the rival wives of his actual relatives, they are permitted to enter into levirate marriage. In the case above, where they are merely rival wives of the sister with whom he has a levirate bond, all the more so they are permitted to enter into levirate marriage. The Gemara objects: If that is so, if this ruling is in accordance with the opinion of Beit Shammai, who say that the rival wives are permitted, then the rival wife should enter into levirate marriage as well. Why does it speak here only of *halitza* but not of the possibility of entering levirate marriage?

The Gemara answers: The ruling is in accordance with the opinion of Rabbi Yohanan ben Nuri, who said: Come and let us establish a ruling that the rival wives must perform *halitza* and may not enter into levirate marriage, thereby circumventing the dispute between Beit Shammai and Beit Hillel. Although Beit Shammai permitted the rival wives to perform levirate betrothal, they should perform *halitza* instead in order to conform to Beit Hillel's opinion as well. The Gemara objects: But didn't the Master say that they did not succeed in finalizing the matter and establishing Rabbi Yohanan ben Nuri's amendment before the times of trouble^B came in the form of the anti-Jewish decrees, and so this ruling was never actually established? Rav Nahman bar Yitzhak said: After his time, other Sages returned to this issue and established this amendment in accordance with his opinion.^N

איבעיא להו:

§ Apropos of the statement of Shmuel with regard to a woman who received a bill of divorce and a woman who received levirate betrothal, a dilemma was raised before the Sages:

תנא בותיה דרב אשי: חלץ לאחיות – לא נפטרו צרות, הא לצרות נפטרו אחיות – מאי טעמא, לא משום דקסבר יש זיקה, ולא אלימא זיקה לשווי לצרה בערוה?

אמר רבי אבא בר ממל: הא מני – בית שמאי היא. דתנן: בית שמאי מתירין הצרות לאחין. אי הכי, יבומי נמי תתייבם!

כרבי יוחנן בן נורי, דאמר: בואו ונתקן להם לצרות שיהיו חולצות ולא מתייבמות. והאמר מר לא הספיקו לגמור את הדבר עד שנטרפה השעה! אמר רב נחמן בר יצחק: אחרי חורו ותקנו.

BACKGROUND

Times of trouble – נטרפה השעה: It would seem, according to the chronology of the generations, that this is referring to several times of distress that occurred successively over one period. This period extended from the polemic of Trajan and Kitos, also known as the Diaspora Revolt, which destroyed

the Jewish settlement in several lands adjacent to Israel, through the bar Kokheva revolt, which caused total upheaval in Jewish life. These disturbances completely prevented the Sanhedrin's ability to take organized action, including instituting ordinances, e.g., obligatory *halitza* for rival wives.

HALAKHA

A woman who received a bill of divorce and a woman who received levirate betrothal – **בְּעֵלְתָּ הַגֵּט וּבְעֵלְתָּ מֵאִמְךָ** – **מִשּׁוּם**: If two *yevamot* from a single household happened before a *yavam* for levirate marriage, and he delivered a bill of divorce to one and performed levirate betrothal with the other, then he can perform the act of *halitza* with whichever of them he choose and thereby exempt the second (Shulhan Arukh, Even HaEzer 170:17).

Two sisters, *yevamot*, who happened before one *yavam* for levirate marriage – **שְׁתֵּי אֲחִיּוֹת יָבָמוֹת שֶׁנִּפְּלוּ לִפְנֵי יָבָם** – **אָחֵד**: In the case of two sisters who happened before a *yavam* for levirate marriage one after the other, if the second sister died before he had performed any act the first sister is permitted to him. If, however, the first sister died, the second is forbidden. This ruling is in accordance with the opinion of Rabbi Yohanan, as the *halakha* follows him in disputes with Rav (Rambam *Sefer Nashim*, *Hilkhot Yibbum* 7:4; Shulhan Arukh, Even HaEzer 175:1).

בְּעֵלְתָּ הַגֵּט וּבְעֵלְתָּ מֵאִמְךָ – אִיזוֹ מִתְּחִלָּה
קוֹדֶמֶת? בְּעֵלְתָּ הַגֵּט עֲדִיפָא – מִשּׁוּם
דְּאִתְחִיל בָּהּ בְּחֵלְצָהּ, אוֹ דְּלִמָּא
בְּעֵלְתָּ מֵאִמְךָ עֲדִיפָא מִשּׁוּם דְּקָרֻבָּה
לְבִיאה?

אָמַר רַב אֲשִׁי, תָּא שְׂמַע: וּמוֹדָה רַבֵּן
גַּמְלִיאֵל שֶׁיֵּשׁ גֵּט אַחֵר מֵאִמְךָ, וּמֵאִמְךָ
אַחֵר גֵּט.

אִי גֵט עֲדִיף – לֹא לִיהִי מֵאִמְךָ
אֲבִתְרִיהּ, וְאִי מֵאִמְךָ עֲדִיף – לֹא לִיהִי
גֵּט אֲבִתְרִיהּ! אֲלֵא לֹא שְׂמַע מִינָהּ כִּי
הִדְרִי מִנְהוּ, שְׂמַע מִינָהּ.

אָמַר רַב הוּנָא אָמַר רַב: שְׁתֵּי אֲחִיּוֹת
יָבָמוֹת שֶׁנִּפְּלוּ לִפְנֵי יָבָם אַחֵד, חֲלָץ
לְרֵאשׁוֹנָה – הוֹתֵרָה, חֲלָץ לְשֵׁנִיָּה –
הוֹתֵרָה.

If two women happened before a single *yavam* for levirate marriage, and one is a woman who received a bill of divorce and the other is a woman who received levirate betrothal,^H which has precedence for *halitza*? Is the woman who received a bill of divorce preferred^N because he began the process of *halitza* with her, as presenting a bill of divorce represents the first step separating the woman from him? Or perhaps the woman who received levirate betrothal is preferred, because she is closest to being able to enter into permitted sexual intercourse. The act of levirate betrothal is generally done just prior to levirate marriage and is equivalent to the act of betrothal in non-levirate contexts. As a result, levirate betrothal strengthens the connection between the woman and the *yavam*. For this reason, it may be preferable to perform *halitza* with the woman who received levirate betrothal.

Rav Ashi said: Come and hear: The Sages disputed the ruling with regard to a *yavam* who performed levirate betrothal with one sister-in-law and then performed it with her rival wife as well, or conversely, gave both women a bill of divorce. In such cases, would the second levirate betrothal or bill of divorce be effective? It was taught: **And Rabban Gamliel concedes that a bill of divorce is effective after levirate betrothal.** Therefore, the bill of divorce that the *yavam* gave to one *yevama* after having performed levirate betrothal with the other *yevama* is effective to some degree. Similarly, Rabban Gamliel concedes that **levirate betrothal performed after a bill of divorce is effective.**

If the bill of divorce is preferred to levirate betrothal, then levirate betrothal performed afterward should not be effective. The opposite would hold true as well: **And if levirate betrothal is preferred, then a bill of divorce given afterward should not be effective.** Rather, must one not conclude from this statement that the two are equivalent to each other?^N The Gemara summarizes: Indeed, conclude from this statement that they are equivalent. Therefore, neither the woman who received a bill of divorce nor the woman who received levirate betrothal has precedence for *halitza*.

§ **Rav Huna said that Rav said:** In a case of two sisters who became *yevamot*, i.e., the two sisters were married to two brothers who died, who happened before one *yavam* for levirate marriage,^H if he performed *halitza* with the first sister, then she is permitted to marry any man. If he performed *halitza* with the second sister, then she is permitted to do so as well.

NOTES

Is the woman who received a bill of divorce preferred, etc. – **בְּעֵלְתָּ הַגֵּט עֲדִיפָא וְכוּ'**: The use of the word preferred does not accurately represent the meaning here, and therefore the early commentaries diverge in their interpretation of it. According to the first suggestion of *Tosafot*, the word preferred simply clarifies the question of which woman underwent an act of more importance, and therefore this clarification does not decide the ruling of precedence with regard to *halitza*.

From the words of the Rivan, however, it seems that being preferred indicates precedence for the purposes of *halitza*. According to this explanation, the question at hand is: Once the *yavam* began the process of nullification with the woman who received a bill of divorce, would it be more appropriate for him to continue the process and do *halitza* with her, or would the woman who received levirate betrothal hold precedence because her levirate bond is more complete? Alternatively, *Tosafot Yeshanim* explain that the question is: Which woman is it preferable to release from the levirate bond by performing

halitza with her rival wife; the woman who received a bill of divorce, because her bond was already weakened and therefore *halitza* with her would be less powerful, or the woman who received levirate betrothal, because her levirate bond was weakened by the performance of levirate betrothal?

The two are equivalent to each other – הִדְרִי מִנְהוּ: Some commentaries hold that since the act of *halitza* with either one of the women is equally flawed, both acts are considered invalid *halitza*. Accordingly, the *halitza* would have to be repeated with both women in order to release them from their levirate bonds (*Tosafot HaRosh*; see *Tosafot* and Ramban). However, according to Rashi and most halakhic authorities, since each act of *halitza* is equally flawed, *halitza* with one woman is sufficient to exempt the other. The Meiri adds another reason for this ruling, and states that invalid *halitza* requires repetition only if there was some form of levirate bond in place. In this case, a single act of *halitza* suffices, as there is no levirate bond.

מתה ראשונה מותר בשנייה, ואין צריך לומר מתה שנייה שמוותר בראשונה, משום דהויא יבמה שהותרה ונאסרה וחזרה והותרה – תחזור להיתירה הראשון.

If the first sister died before the *yavam* was able to perform *halitza* with her, then he is permitted to take the second^N sister in levirate marriage, for even if had actually been married to the first sister, one is permitted to marry the sister of his wife after his wife dies. And needless to say, if the second sister died, then he is permitted to take the first sister in levirate marriage because she would be considered a *yevama* who was permitted at the time that she happened before the *yavam* for levirate marriage; and then later forbidden as the sister of a woman with whom he has a levirate bond when the second sister happened before him for levirate marriage; and subsequently became permitted by the death of the second sister. Therefore, she can return completely to her original permitted status.

ורבי יוחנן אומר: מתה שנייה – מותר בראשונה. אבל מתה ראשונה – אסור בשנייה. מאי טעמא – שכל יבמה שאין אני קורא בה בשעת נפילה "יבמה יבא עליה" הרי זו כאשת אח שיש לה בנים, ואסורה.

However, Rabbi Yohanan said: If the second sister dies, he is permitted to take the first. But if the first sister dies, he is prohibited from taking the second sister. What is the reason for this ruling? The reason is that any *yevama* to whom the verse "her brother-in-law will have intercourse with her" (Deuteronomy 25:5) cannot be applied at the time that she happens before him for levirate marriage because she was forbidden to him at that moment, is then forever considered to be like the wife of a brother who has children, and she is forbidden to him. Because the second sister was forbidden to the *yavam* at the time that she happened before him for levirate marriage, being the sister of a woman with whom he had a levirate bond, she can never again be permitted to him.

ורב לית ליה האי סברא? והאמר רב: כל אשה שאין אני קורא בה בשעת נפילה "יבמה יבא עליה" הרי היא כאשת אח שיש לו בנים ואסורה! הני מילי היכא דקאי באפה אסור אחות אשה דאורייתא, אבל הכא – ויקה דרבנן היא.

The Gemara asks: And does Rav not accept that reason?^N Didn't Rav himself say the exact same words: Any woman to whom the verse "her brother-in-law will have intercourse with her" cannot be applied at the time that she happens before him for levirate marriage is then considered to be like the wife of a brother who has children,^N and she is forbidden to him? The Gemara answers: This applies only when the prohibition that stands before her and prevents the levirate marriage is the prohibition against marrying the sister of one's wife, which is prohibited by Torah law. Therefore, if the woman who happens before the *yavam* for levirate marriage is his wife's sister, he is prohibited from performing levirate marriage even if his wife dies afterward. But here the prohibition to marry the sister stems from a relationship created by a levirate bond. This prohibition is by rabbinic law,^N and therefore the bond does not render her forbidden to him forever.

NOTES

Rav said... the first died, he is permitted to take the second – אמר רב... מתה ראשונה מותר בשנייה: There are several different opinions as to how to explain Rav's ruling. Rabbeinu Hananel holds that Rav is consistent with his opinion that the levirate bond is not substantial, and he apparently thought that those who maintain that the levirate bond is substantial hold that the levirate bond has the force of Torah law (see Rashba). Therefore, the *yavam* is not permitted to consummate the levirate marriage with one of the sisters *ab initio* due to the prohibition against negating the mitzva of levirate marriage (see *Tosafot*).

The Meiri analyzes the issue in a similar way. He states that although Rav holds that the levirate bond is not substantial, the *yavam* is nevertheless unable to consummate the levirate marriage with any one of the sisters *ab initio*, since both of them happened before him for levirate marriage, and marrying one would negate the mitzva of levirate marriage with the other. Similarly, the *yavam* cannot perform the act of *halitza* with one sister *ab initio* and then consummate the levirate marriage with the other since, she would be rendered forbidden to him as the sister of a woman with whom he performed *halitza*.

Alternatively, the Ramban says that Rav's ruling is also consistent with the opinion that the levirate bond is substantial.

Accordingly, the reason why the *yavam* is permitted to take the second sister is that a levirate bond has the force of rabbinic law and is therefore not sufficiently binding to cause the *yevama* to be forbidden to him forever.

ורב לית ליה האי סברא – The commentaries ask why the Gemara did not object to Rav based on an explicit mishna that states: She is now forbidden to him forever since she was forbidden to him at one time (*Yevamot* 32a; see *Tosafot*). The Ramban explains that had the Gemara objected based on that mishna, Rav could have resolved the objection by noting that the mishna explicitly refers to a case involving a relationship forbidden by Torah law. Alternatively, he could have said that the *halakha* in the mishna, as later becomes clear, is in accordance with the opinion of Rabbi Eliezer, but that the Rabbis disagree with him.

כאשת אח שיש לו בנים: One must say that this means that she is like the wife of a brother who has children at the time of his death, such that even if the children later died she would not again require *halitza* (see *Meromei Sadeh*).

הכא ויקה דרבנן היא – Here a levirate bond by rabbinic law: According to those who maintain that this ruling of Rav is consistent with his opinion that the levirate bond is not substantial, this resolution proves difficult because, according to this opinion, there should be no bond at all.

The Rashba explains that Rav agrees that there is a prohibition in place. However, it does not stem from the levirate bond, but rather it is a rabbinic prohibition against negating the mitzva of levirate marriage. He would therefore interpret this phrase to mean that there is a rabbinic prohibition not to negate the levirate bond of the second woman.

Tosafot Yeshanim ask about a different aspect of this ruling: Why doesn't Rav prohibit the second woman, as she was forbidden to the *yavam* at the time of her husband's death due to the possibility of negating the mitzva of levirate marriage, as becomes clear later in the Gemara? He answers that one must differentiate between an actual prohibition with regard to a specific woman and a decree stemming from concern lest the mitzva of levirate marriage be negated, for such a concern indeed becomes irrelevant with the death of the other woman.

Raised an objection to Rabbi Yohanan, etc. – **ואיתניה רבי יוסי בר חנינא לרבי יוחנן:** Some commentaries suggest that Rabbi Yosei bar Hanina's objection poses a more significant difficulty to Rav's position, but it was not mentioned as an objection to Rav because Rav held that this mishna is in accordance with the opinion that the levirate bond is substantial, though Rav himself does not maintain that stance (*Tosafot*). The Meiri adds further that since there is a principle that Rav is considered like a *tanna*, in that he can disagree with a mishna, it is less compelling to challenge his ruling from a mishna. *Tosefot HaRosh* explains that in truth this objection applies to Rav as well, but since Rabbi Yosei bar Hanina was close to Rabbi Yohanan and from the same generation as him, he raised it against him specifically. Moreover, this issue is later resolved on its own in the process of the talmudic deliberations in accordance with Rav's opinion, as Rav is concerned lest the mitzva of levirate marriage be negated. Alternatively, the Rivan holds that there is no difficulty for Rav here at all because Rav holds that in cases of invalid *halitza*, the woman must repeat the *halitza* with all of the brothers. In that case, the second woman would be the sister of his *halitza*, which would preclude the possibility of consummating the levirate marriage. The Rashba proves from the fact the Gemara did not resolve the issue in this way, according to Rabbi Yohanan's opinion, that Rabbi Yohanan agrees with Shmuel, both with regard to the question of whether the levirate bond is substantial as well as with regard to the issue of whether a woman who performed invalid *halitza* must repeat it with all of the brothers.

ואיתניה רבי יוסי בר חנינא לרבי יוחנן: ארבעה אחין, שנים מהם נשואים שתי אחיות, ומתו הנשואין את האחיות – הרי אלו חולצות ולא מתייבמות. ואמאי? ליקו חד מיניהו לחלוץ לה לשנייה, ותייהו ראשונה לגבי אידך כיבמה שהותרה ונאסרה וחזרה והותרה – תחזור להיתררה הראשון!

אמר ליה: אחיות איני יודע מי שנאן. **ולימא ליה:** מאי "חולצות" נמי דקתני – חולצת חדא! "חולצות" קתני.

ולימא ליה: מאי "חולצות" חולצות דעלמא! הרי אלו קתני. **ולימא:** דחליץ ליה לראשונה ברישא! "חולצות"

Rabbi Yosei bar Hanina raised an objection to the opinion of Rabbi Yohanan^N from the mishna: In the case of four brothers, two of whom were married to two sisters, and those married to the sisters died, then those sisters must perform *halitza* and may not enter into levirate marriage. And why does the mishna require *halitza*? Let one of the brothers rise and perform *halitza* with the second sister, i.e., the sister whose husband died later. As a result, the first would be like a *yevama* who was permitted at the time of her husband's death but later became forbidden due to the bond that was created with her sister, and she then subsequently became permitted by means of *halitza* performed with her sister, insofar as the other brother, i.e., he who did not perform *halitza*, is concerned. Therefore, she should return to her original permitted status.

Rabbi Yohanan said to him: I do not know who taught: Sisters. Rabbi Yohanan was in doubt as to the correct version of this mishna, as he could not find any reasonable explanation of this mishna according to any known opinion. The Gemara asks: Why did Rabbi Yohanan respond in such an extreme manner. Let him say to him, to Rabbi Yosei bar Hanina, an alternate solution: What is the meaning of the ruling that the sisters perform *halitza*, which the mishna teaches? The meaning is that one sister performs *halitza*. The Gemara answers: Such a solution is untenable, as the mishna teaches the ruling using the words: Perform *halitza*, in the plural.

The Gemara suggests: And let Rabbi Yohanan say to him: What is the meaning of the ruling to perform *halitza*? They perform *halitza* in general. Accordingly, the mishna teaches that in such cases the second women performs *halitza*. The Gemara responds: The mishna teaches: Then those women perform *halitza*. The emphasis on the word: Those, indicates that it is specifically those two women who both perform *halitza*. The Gemara asks further: And let him say that the mishna is referring only to the specific case where the *yavam* performed *halitza* with the first sister first. As a result, there was no longer be any possibility of rendering the second sister permitted, as Rabbi Yohanan permitted levirate marriage only in the case where *halitza* was performed with the second sister first. The Gemara answers: This cannot be suggested either, for the phrase: Perform *halitza*,

Perek III

Daf 28 Amud a

NOTES

And let him say...lest he proceed, etc. – **ולימא:** דלמא קדים וכו': One can ask with regard to this question: Doesn't Rabbi Yohanan himself hold that if the second sister dies the first is permitted? This indicates that he is not concerned that there might be confusion of this kind. This difficulty can be resolved by asserting that Rabbi Yohanan allows the first sister to enter into levirate marriage only in the case where one of the sisters died, as in such a situation there is no concern for confusion. However, in a case where both sisters are alive, perhaps there would be concern, and therefore this rabbinic decree would apply. The Gemara, however, did not assume this distinction when it raised the objection, but rather understood that the fear of confusing the women was a legitimate concern in all cases (Rashba).

It teaches they may not enter into levirate marriage – **ולא מתייבמות קתני** – The Rivan explains that if the matter were prohibited by rabbinic decree, it would have sufficed to say: They perform *halitza*. The fact that the mishna repeated the ruling and stressed that they may not enter into levirate marriage indicates that this matter was a conclusive halakhic ruling.

לכתחלה קתני. ולימא ליה גזירה דלמא קדים וחליץ לראשונה ברישא! "ולא מתייבמות" קתני, דליכא דין ביום הכא בלל.

implies that the mishna teaches a case in which *halitza* is performed *ab initio*. This indicates that this is the first course of action and the only way to resolve the situation. The Gemara asks further: And let him say to him the following: The mishna prohibits levirate marriage *ab initio* in this case, due to a rabbinic decree lest he proceed^N and perform the *halitza* with the first^H sister first, whereby it would be prohibited to consummate the levirate marriage with the second. Perhaps for this reason the Sages decreed that it is prohibited to consummate the levirate marriage even if *halitza* was performed with the second sister. The Gemara answers: It teaches: They may not enter into levirate marriage.^N This indicates that the *halakha* of levirate marriage does not apply here at all. Accordingly, even after the fact, if he performed *halitza* with the second sister, the *halakha* of levirate marriage would not apply to the first sister.

HALAKHA

Lest he proceed and perform the *halitza* with the first, etc. – **דלמא קדים וחליץ לראשונה וכו'**: If there were four brothers, and two of them were married to two sisters, and the two married brothers died one after the other, and one of the surviving brothers proceeded to perform *halitza* with the second sister, then the first

sister is rendered permitted to the other brother. It seems that even Rabbi Yohanan is in agreement with this *halakha*, but he could not find a way to interpret the mishna to accord with this ruling (Rambam *Sefer Nashim*, *Hilkhot Yibbum* 7:1; *Shulhan Arukh*, *Even HaEzer* 175:1).

He was not concerned over the possibility of the death – **לְמִיתָה לֹא חִיִּישׁ**: The early commentaries object to this statement based on several sources, especially the discussion in the beginning of tractate *Yoma*, where the *tanna* Rabbi Yehuda is concerned that the wife of the High Priest might die. They point out that even if Rabbi Yohanan himself is not concerned over this eventuality, he could still interpret this mishna as following the opinion of those who are concerned for the possibility of death.

There are various suggestions as to how to resolve this difficulty. Some commentaries explain that Rabbi Yohanan held that although this opinion exists, it is the opinion of only a single Sage, and therefore it would not be presented in an unattributed manner in the mishna. This answer is similar to the one cited by the Gemara in the continuation of the discussion concerning the opinion of Rabbi Yosei HaGelili. The Gemara does not accept the suggestion that the mishna follows the opinion of Rabbi Yosei HaGelili, as his is the opinion of a single Sage.

Alternatively, since Rabbi Yohanan is not concerned about the possibility of death and because he always concludes the *halakha* follows the unattributed mishna, his opinion is that it is impossible for there to be an unattributed mishna that holds that there is no concern over the possibility of death (see Rashba and Ritva).

The Rashba explains that even if there is a concern over the possibility of death, such a concern would not be significant enough to negate the mitzva of levirate marriage, and this follows the opinion that *halitza* is not considered a fulfillment of the mitzva of levirate marriage.

The Maharsha, in *Mahadura Batra*, states that there is concern about the possibility that the High Priest may die, despite the fact that it is an improbable scenario, only because all of Israel depend upon him for atonement on Yom Kippur. *Mitzpe Eitan* explains that there is concern over the possibility of death in cases where the death will cause the violation of a prohibition for which one is liable to receive the death penalty. This is not a concern in cases where death could prevent one from fulfilling a positive mitzva.

It is possible to be precise – אֶפְשָׁר לְצַמֵּץ: The Sages of the Mishna differ as to whether it is possible for two events to occur at precisely the same moment. The early commentaries differ in their understanding of this dispute. According to Rashi and the Rambam, it is physically impossible for two events to occur at the exact same moment. Therefore, the dispute between the *tanna'im* revolves around the question of how to relate to events that appear to occur simultaneously. According to the opinion that it is not possible to be precise, the assumption is that the events did not occur simultaneously. Because the order in which they took place cannot be ascertained, the instance is related to as a case of uncertainty. According to the opinion that it is possible to be precise, despite the fact that the events did not actually take place simultaneously, the *halakha* relates to them as if they had occurred at exactly the same time.

In contrast, *Tosafot* maintain that events can actually occur simultaneously. The dispute therefore relates to a situation where two events appear to occur simultaneously. In this case, it is assumed that the events indeed took place at the same time, or it is assumed that it is impossible to determine whether or not these events actually occurred simultaneously, and therefore this is a case of uncertainty?

My fellow brother consummated the levirate marriage with the second, etc. – תְּבָרָאִי שְׁנֵיהֶם יִיבֵם וְכוּ': Some point out the following problem: According to this assertion, his brother transgressed and engaged in sexual relations with the sister of a woman with whom he had a levirate bond. However, according to the Gemara on *50b*, licentious relations do not fully consummate levirate marriage, and the *yevama* under such circumstances still requires *halitza*. Accordingly, in the case here, there is still a levirate bond connecting this sister to the second brother and the other sister remains forbidden as the sister of a woman with whom he has a levirate bond. This difficulty can be resolved by saying that the requirement for *halitza* is a rabbinic decree, and even licentious relations between a *yavam* and *yevama* still uproot the levirate bond (*Hazon Ish*).

וְלִימָא לִיה גּוֹרֵדָה שְׂמָא יָמוּת, וְאָסוּר לְבָטֵל מִצְוַת יִבְמִין רַבִּי יוֹחָנָן לְמִיתָה לֹא חִיִּישׁ.

The Gemara asks: **And let him say to him** a different reason for the ruling of the mishna: It is due to a rabbinic decree lest the second brother die, and it is prohibited to negate the mitzva of levirate marriage. Perhaps for this reason it would be forbidden to consummate the levirate marriage in the case where two sisters happened before him for levirate marriage, and not due to the prohibition proscribing the sister of a woman with whom he has a levirate bond. The Gemara answers: **Rabbi Yohanan was not concerned over** the possibility of the death^N of a brother, and in his opinion there is no need to make a decree to address such cases.

וְלִימָא לִיה רַבִּי אֶלְעָזָר הֵיא, דְּאָמַר: כִּינן שְׂעֻמָּדָה עָלָיו שְׂעָה אַחַת בְּאִיסוּר נֶאֱסָרָה עָלָיו עוֹלָמִית! מְדֻסִּיפָא רַבִּי אֶלְעָזָר רִישָׁא לָאוּ רַבִּי אֶלְעָזָר.

The Gemara asks: **And let Rabbi Yohanan say to him** that this mishna is in accordance with the opinion of Rabbi Elazar, who said: **Once the yevama stood before him at one time as forbidden**, even if it was not at the time that she happened before him, she remains forbidden to him forever. Perhaps the mishna could be explained according to Rabbi Elazar's opinion. The Gemara answers: **Since** the opinion of Rabbi Elazar is cited explicitly in the latter clause of the mishna, it can be deduced that the first clause is not according to the opinion of Rabbi Elazar. Therefore, this ruling cannot be attributed to Rabbi Elazar.

וְיִמָּא לָהּ דְּנָפֹל בְּבֵת אַחַת וְרַבִּי יוֹסִי הֶגְלִילִי הֵיא, דְּאָמַר: אֶפְשָׁר לְצַמֵּץ! לֹא סָתַם לָן תֵּנָא כְּרַבִּי יוֹסִי הֶגְלִילִי.

The Gemara asks: **And let him say to him** that here the reference is to a situation where the two brothers died at once, and consequently both of the women happened before the *yevamin* for levirate marriage at the same time. And this mishna is in accordance with the opinion of Rabbi Yosei HaGelili, who says: **It is possible to be precise.**^N It is possible to determine that two events occurred at exactly the same moment, both sisters were forbidden at the time that they happened before the brothers-in-law. The Gemara answers: **The tanna did not teach an unattributed mishna in accordance with** the opinion of Rabbi Yosei HaGelili. Any time the mishna is cited in accordance with Rabbi Yosei HaGelili's opinion, it is always attributed to him explicitly.

וְלִימָא לִיה דְּלֹא יָדְעִין הֵי נָפֹל בְּרִישָׁא!

The Gemara asks: **And let him say to him** a different explanation for the ruling: This mishna is indeed addressing a case where the brothers died one after the other, yet **we do not know which sister happened before the yevamin** for levirate marriage first.^H In that case, it would be impossible to determine which sister would be permitted.

אִי הָכִי, הֵינּוּ דְקָתְנִי "קָדְמוּ וְכִנְסוּ יוֹצִיאֻ?" בְּשִׁלְמָא רַאשׁוֹנָה אֲמַרִּין לִיה: מֵאן שְׂרִיא לָךְ? אָלֹא שְׁנֵיהֶם, אָמַר: תְּבָרָאִי שְׁנֵיהֶם יִיבֵם, אֲנָא רַאשׁוֹנָה מִיִּיבֵם!

The Gemara answers: **If so, that which** the mishna teaches in the latter clause: **And if they married their wives before** consulting the court they should divorce them, is difficult. Why must they divorce their wives in this situation? **Granted**, the brother who took the first sister in levirate marriage must divorce her, as **we say to him: Who permitted her to you?** Indeed, she was forbidden as the sister of a woman with whom he had a levirate bond, and so he must divorce her. **However**, the brother who took the second sister could say: **My fellow brother consummated the levirate marriage with the second^N sister**, but **I am consummating the levirate marriage with the first sister**. It is possible that after the other brother consummated the levirate marriage with the second sister, the first sister would then be permitted to him after the fact, and he is not required to divorce her unless it is certain that he violated a prohibition.

הֵינּוּ דְקָאָמַר לִיה: אַחִיוֹת אֵינִי יוֹדֵעַ מִי שְׁנָאֵן.

The Gemara concludes: Indeed, **this is what** Rabbi Yohanan meant when he said to Rabbi Yosei bar Hanina: **I do not know who taught: Sisters**, for according to these considerations he cannot properly resolve the ruling of this mishna.

HALAKHA

We do not know which sister happened before the *yevamin* first – דְּלֹא יָדְעִין הֵי נָפֹל בְּרִישָׁא – If two brothers who were married to two sisters died, and it is unknown which died first,

then both sisters must perform *halitza* and may not enter into levirate marriage (Rambam *Sefer Nashim*, *Hilkhot Yibbum* 7:1; *Shulhan Arukh*, *Even HaEzer* 175:2).

היתה אחת מהן אסורה – וכו': If one of the sisters was the forbidden relative of one brother, then that brother is permitted to marry the second woman, and the second brother is forbidden to both women. If each was forbidden to a different brother, then she who is forbidden to one is permitted to the other. This applies only in cases of forbidden relatives, but in cases of prohibitions stemming from sanctity or a mitzva, both women must perform *halitza* (Rambam *Sefer Nashim, Hilkhot Yibbum* 7:5; *Shulḥan Arukh, Even HaEzer* 175:1).

A case where the woman who was not his mother-in-law happened before them first – גְּנוּ דְּנִפְלָה הֵךְ דְּאִינָה חֲמוּתוֹ – בְּרִישָׁא: If the first sister who happened before the *yavam* for levirate marriage was a relative forbidden to the *yavam*, such as his mother-in-law, and he consummated the levirate marriage with the second sister, then the first sister is permitted to the other brother (Rambam *Sefer Nashim, Hilkhot Yibbum* 7:5; *Shulḥan Arukh, Even HaEzer* 175:3).

Two brothers who married their wives before consulting the court – קָדְמוּ וְכָנְסוּ: If two sisters happened before two brothers for levirate marriage, and the two brothers proceeded to marry them before consulting the court, they must divorce them, as is stated explicitly in the mishna. This ruling is not in accordance with the statement of Abba Shaul, which opposes both the unattributed mishna and the opinion of Rabbi Eliezer (Rif; Rambam; Rosh).

Some say that they are not required to divorce their wives (*Tur*). They explain that because Beit Hillel is generally the more lenient opinion, we follow the opinion of Rabbi Shimon and Abba Shaul (Rambam's Commentary on the Mishna). The *Bah*, however, holds that this is a scribal error in the *Tur* (Rambam *Sefer Nashim, Hilkhot Yibbum* 7:5; *Shulḥan Arukh, Even HaEzer* 175:3).

NOTES

Let the son-in-law rise and consummate the levirate marriage with the sister, etc. – לִיקוּ חֲתָן לַיִבָּם הֵךְ וכו': This objection could apparently be resolved according to the suggestion that appeared previously in the Gemara, that there is a rabbinic decree in these cases to prevent his brother from consummating the levirate marriage with the wrong woman. This suggestion arose only in passing during the talmudic deliberations and was rejected outright because there is no concern for confusion between the women (Rashba).

This was a matter of leniency for Beit Hillel – קָל הָיָה לָהֶם: In the Jerusalem Talmud, a question is raised about this formulation: Did Abba Shaul intend to speak disparagingly of Beit Hillel by suggesting that they acted leniently where there should have been a prohibition? It is explained there that he intended to say that, according to Beit Hillel, there was not an actual prohibition in place at all, and so it would be permitted to consummate the levirate marriage.

תָּנִן: הִיתָה אַחַת מֵהֶן אֲסוּרָה עַל הָאֶחָד אִיסוּר עֲרוּהָ – אֲסוּר בָּהּ וּמִוֹתֶר בְּאַחֹתָהּ, וְהַשֵּׁנִי אֲסוּר בְּשֵׁתִיָּהּ. סָלְקָא דַּעְתָּךְ דְּנִפְלָה חֲמוּתוֹ תַּחֲלָה.

וְאֵמַאי? לִיקוּ חֲתָן לַיִבָּם הֵךְ דְּאִינָה חֲמוּתוֹ בְּרִישָׁא, וְתַהֲיִי חֲמוּתוֹ לְגַבִּי אִידָךְ בִּיבָמָה שְׁהוּתָהּ וְנֶאֱסָרָה וְחֻזָּה וְהוּתָהּ – תַּחֲזוֹר לְהִיתָרָה הָרִאשׁוֹן.

אָמַר רַב פַּפְּא: גְּנוּ דְּנִפְלָה הֵךְ דְּאִינָה חֲמוּתוֹ בְּרִישָׁא.

רַבִּי אֱלִיעֶזֶר אוֹמֵר: בֵּית שְׁמַאי אוֹמְרִים וְכו'. תַּנְיָא: רַבִּי אֱלִיעֶזֶר אוֹמֵר בֵּית שְׁמַאי אוֹמְרִים: יְקִימוּ, וּבֵית הִלֵּל אוֹמְרִים: יוֹצִיאוּ. רַבִּי שְׁמַעוֹן אוֹמֵר: יְקִימוּ. אָבָא שְׁאוּל אוֹמֵר: קָל הָיָה לָהֶם לְבֵית הִלֵּל בְּדַבְּרִי זֶה, שֶׁבֵּית שְׁמַאי אוֹמְרִים יוֹצִיאוּ וּבֵית הִלֵּל אוֹמְרִים יְקִימוּ.

We learned in the mishna: If one of the sisters was forbidden^h to one of the brothers due to a prohibition against forbidden relatives because she was a relative of his wife or a relative from his mother's side, then he is prohibited from marrying her but permitted to marry her sister. But the second brother, who is not a close relative of either sister, is prohibited from marrying both of them. It enters your mind to say that a forbidden woman, such as his mother-in-law, happened before the *yavam* for levirate marriage first.^b

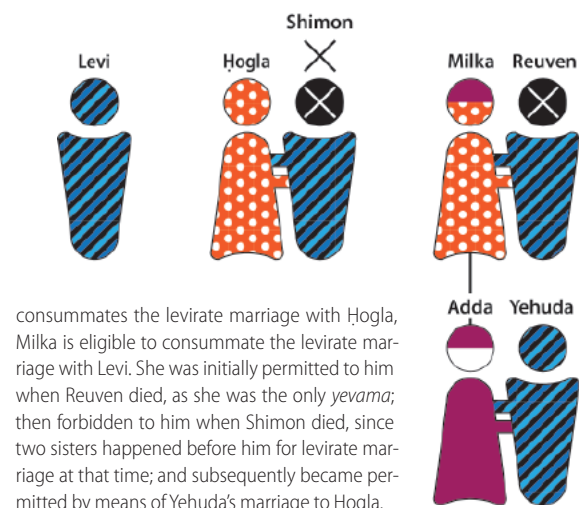
Accordingly, the Gemara asks: And why would both women be forbidden to the second brother? Let the son-in-law rise and consummate the levirate marriage with the sisterⁿ who is not his mother-in-law first. Consequently, with regard to the other brother, his mother-in-law would be considered a *yevama* who was permitted to perform levirate marriage at the time that she happened before him, and then forbidden when her sister happened before him for levirate marriage as well, and then subsequently became permitted when his brother consummated the levirate marriage with her sister. If so, the mother-in-law should return to her original permitted status and may enter into levirate marriage with him.

Rav Pappa said: The mishna is referring to a case where the woman who was not his mother-in-law happened before the brothers for levirate marriage first,^h in which case she was permitted to both of them. When her sister, i.e., the mother-in-law, happened before them for levirate marriage as well, both women were rendered forbidden to the second brother, as each one is the sister of a woman with whom he has a levirate bond. Because the mother-in-law was forbidden from the time that she happened before the *yavam* for levirate marriage, she can never be permitted to him.

With regard to the case of two brothers who married their wives before consulting the court,^h the mishna states that the women should be divorced. Rabbi Eliezer disagrees and says that this is a matter of dispute between Beit Shammai and Beit Hillel, as Beit Shammai say: They may maintain them as their wives, and Beit Hillel say: They should divorce them. An expanded version of this discussion is taught in the *Tosefta* (5:1): Rabbi Eliezer says that Beit Shammai say: They may maintain them as their wives, and Beit Hillel say: They should divorce them. Rabbi Shimon says: They may maintain them as their wives. Abba Shaul disagrees with Rabbi Eliezer and says: This was a matter of leniency for Beit Hillel.ⁿ They were the ones who put forth a lenient ruling, as Beit Shammai say: They should divorce them, and Beit Hillel say: They may maintain them as their wives.

BACKGROUND

His mother-in-law happened before him first – נִפְלָה חֲמוּתוֹ תַּחֲלָה: There were four brothers from the same father: Reuven, Shimon, Levi, and Yehuda. Reuven and Shimon married the sisters Milka and Høgla, while Yehuda married Adda, the daughter of Milka, Reuven's wife. If Reuven and Shimon die childless, the sisters Milka and Høgla happen before the two brothers, Yehuda and Levi, for levirate marriage. With regard to Levi, both Milka and Høgla are sisters who are *yevamot* but are otherwise unrelated to him. Consequently, they are both forbidden to him. With regard to Yehuda, however, Milka is his mother-in-law as well, and he is prohibited from marrying her. This renders her ineligible for levirate marriage with him. If Reuven died before Shimon, Milka was never eligible for levirate marriage with Yehuda because she was forbidden to him as his mother-in-law. His obligation of levirate marriage applies only to Høgla. Consequently, if Yehuda



consummates the levirate marriage with Høgla, Milka is eligible to consummate the levirate marriage with Levi. She was initially permitted to him when Reuven died, as she was the only *yevama*; then forbidden to him when Shimon died, since two sisters happened before him for levirate marriage at that time; and subsequently became permitted by means of Yehuda's marriage to Høgla.

רבי שמעון כמאן? אי בבית שמאי –
היינו רבי אליעזר, אי בבית הלל –
היינו אבא שאול! הכי קאמר לא
נחלקו בית שמאי ובית הלל בדבר
זה.

The Gemara asks about this *baraita*: **In accordance with whose opinion is the statement of Rabbi Shimon?**^N This matter is a dispute between Beit Hillel and Beit Shammai, with different versions of their opinions, and therefore Rabbi Shimon should not have formulated the *halakha* in this manner. Indeed, **if he holds in accordance with the opinion of Beit Shammai, then that is the same as the opinion of Rabbi Eliezer.** He would thereby conclude that the *halakha* is in accordance with the opinion of Beit Shammai, as per Rabbi Eliezer's version. If so, he should have formulated his opinion in that way. **If, however, he holds in accordance with the opinion of Beit Hillel, then that is the opinion of Abba Shaul.** The Gemara responds: **This is what he is saying:** Rabbi Shimon actually maintains a third opinion: **Beit Shammai and Beit Hillel did not dispute this matter;** both agreed that the marriages may be maintained.

"היתה אחת מהם" כו'. הא תנינא
חדא וימנא: אחותה בשעה יבמטה
או חולצת או מתייבמת!

§ The mishna stated: If **one** of the sisters was forbidden to one of the brothers due to a prohibition against forbidden relations, then he is prohibited from marrying her but permitted to marry her sister. The Gemara asks: **We already learned this on one occasion: When her sister, who is a forbidden relative to the yavam, is her yevama as well, she either performs *halitza* or enters into levirate marriage.**

צריכא, דאי אשמועינן התם משום
דליכא למיגזר משום שני, אבל הכא
דאיכא למיגזר משום שני – אימא
לא.

The Gemara answers: It is **necessary** that this be said here as well, **for if it taught us this *halakha* only there** in its more general formulation (*Yevamot* 20a), then I might have said: The *yavam* is permitted to marry the sister **because there is no reason to issue a rabbinic decree due to a second brother.** There, there is only one *yavam*, to whom one sister is permitted and the other is forbidden. **Here, however, in the case of two brothers, where there is reason to issue a rabbinic decree due to the second brother, lest he consummate the levirate marriage as well, I would say that we do not allow even the first brother to perform levirate marriage, and both sisters-in-law should be forbidden to both brothers.**

ואי אשמועינן הכא – משום דאיכא
שני דקא מוכח, אבל התם דליכא
שני – אימא לא, צריכא.

And if the mishna had taught us the *halakha* only here, it would have been possible to say that the permissibility of levirate marriage here is **because there is a second brother who indicates, by refraining from performing levirate marriage, that the sister of a woman bound by a levirate bond is forbidden.** **However, there, where there is not a second brother, I would say no, this *halakha* would not apply, due to a concern that people might wrongly conclude that the sister of a woman bound by a levirate bond is permitted.** Therefore, it is **necessary** to state this *halakha* in both places.

"איסור מצודה" כו'. הא נמי תנינא:

It was taught in the mishna: If one of the sisters was forbidden to one of the brothers due to a **prohibition** resulting from a *mitzva* or due to a prohibition stemming from sanctity, then her sister must perform *halitza* and may not enter into levirate marriage. The Gemara wonders: **We already learned this as well:**

NOTES

רבי – In accordance with whose opinion is Rabbi Shimon – שמועון כמאן: It would be difficult to say that Rabbi Shimon stated his own opinion, as he lived long after the period of Beit Shammai and Beit Hillel and was therefore not in a position to dispute them (Rivan).

In the Jerusalem Talmud, Abba Shaul distinguishes between the opinions of Rabbi Shimon and Beit Hillel. There, it

is explained that Rabbi Shimon allows the brothers to maintain their wives after the fact only when consummation had already taken place and specifically when both brothers had relations concurrently. However, according to Abba Shaul's version of Beit Hillel's opinion, the brothers would be allowed to consummate the levirate marriage even *ab initio* (see *Penei Moshe*).

NOTES

Here there is a prohibition resulting from a mitzva and her sister – **הָכָא אִיסוּר מִצְוָה וְאַחֻתָּהּ** – The question arises: The Gemara has explained the reason for this *halakha* in the current mishna, but the first mishna that states a ruling with regard to a prohibition resulting from a mitzva remains superfluous. Why does the mishna state this ruling earlier (20a)? It would have sufficed to state it here alone?

A similar question arises later on the Gemara, and it is resolved as follows: Were this *halakha* stated only here, one might have thought that the rabbinic decree not to enter into levirate marriage was issued only where there was an additional brother to whom the *yevama* is permitted, for in that case the levirate marriage could be fulfilled with him. If, however, there is no other brother, and the mitzva of levirate marriage will be negated, perhaps the Sages did not issue a decree, and the *yavam* is permitted to consummate the levirate marriage with this woman. Therefore, the *halakha* was necessary in the previous mishna as well (*Arukh LaNer*).

אִיסוּר מִצְוָה וְאִיסוּר קְדוּשָׁה חוֹלָצֶת וְלֹא מִתְּיַבֶּמֶת! הֵתָם אִיסוּר מִצְוָה לְחוּדָהּ. הָכָא אִיסוּר מִצְוָה וְאַחֻתָּהּ.

סָלָק דְּעֵתָךְ אָמִינָא: לִיקוּם אִיסוּר מִצְוָה בְּמָקוֹם אִיסוּר עֲרוּה, וְתִתִּיבֵם, קָא מְשַׁמַּע לָן.

וְתִתִּיבֵם! בֵּינָן דְּמִדְּאוּרֵייתָא רְמִיָּא קָמִיהָ קָא פָּגַע בְּאַחוֹת וְקוֹקְחוֹ, סָלָק דְּעֵתָךְ אָמִינָא: מִשּׁוּם מִצְוָה עֲבוֹד רַבָּנָן – קָא מְשַׁמַּע לָן.

“הִיָּתָה אַחַת מֵהֶן” כו'. הָא תוֹ לָמָּה לִּי? הֵינֵנוּ הֵךְ, מָה לִּי לְאֶחָד מֵהֶן לִי לְתַרְנִי!

צְרִיכָא, דְּאִי אֲשֻׁמוּעִינָן הֵתָם – מִשּׁוּם דְּאִיכָא שְׁנֵי דְּמוֹכָת, אֲבָל הָכָא דְּלִיכָא שְׁנֵי דְּקָא מוֹכָת – אִימָא לֹא.

If a prohibition resulting from a mitzva or a prohibition stemming from sanctity will be transgressed through the levirate marriage, then the woman must perform *halitza* and she may not enter into levirate marriage. The Gemara answers: There is a novelty here: **There**, where the *halakha* is reviewed in general terms, it speaks of a **prohibition due to a mitzva alone**. One woman happened before the *yavam* for levirate marriage and it is only as a result of this prohibition that she is prevented from entering levirate marriage. **Here**, there is a **prohibition resulting from a mitzva and**, in addition, **her sister^N** happened before the *yevamin* for levirate marriage together with her.

It might enter your mind to say: **Let the prohibition resulting from a mitzva stand in the same place**, i.e., level of severity, **as the prohibition against forbidden relatives**. Consequently, the woman who is forbidden to the *yavam* is considered a forbidden relative and her sister is permitted to him. Despite the fact that the prohibition resulting from a mitzva is not as severe, here is it is given equal status, **and** we might say: **Let her sister enter into levirate marriage**. Therefore, **this comes to teach us** that this is not the case.

The Gemara asks: **And why in fact does her sister not enter into levirate marriage?** The Gemara answers: Her sister is forbidden to him **because by Torah law** the prohibited woman is still **set before the yavam** for levirate marriage. Were he to take the sister in levirate marriage **he would essentially be encountering the sister of the woman with whom he has a levirate bond**. It might enter your mind to say that **due to the mitzva** of levirate marriage, **the Sages did as they did** and nullified their decree prohibiting the sister of a woman with whom the *yavam* has a levirate bond from entering levirate marriage, when the original sister is forbidden only as the result of a mitzva. Therefore, **it teaches us** that they did not cancel their decree in this situation.

It was taught in the mishna: If **one of those** women was forbidden to this one brother due to a prohibition against forbidden relatives and the second was forbidden to that second brother due to a prohibition against forbidden relatives, then she who is forbidden to this brother is permitted to that brother, and she who is forbidden to that brother is permitted to this one. The Gemara asks: **Why do I need this halakha as well, for this is identical to that** which was taught earlier, when the mishna stated that if one of the sisters was forbidden to one of the brothers due to a prohibition against forbidden relatives, then he is forbidden to marry her but permitted to marry her sister. However, the second brother, who is not a close relative of either sister, is prohibited from marrying both of them. Once the mishna taught that the *yavam* is permitted to marry the woman to whom he is not related, **what is the difference to me** if there is **one brother or two brothers**? If this happened to both brothers, clearly both should be allowed.

The Gemara answers: It is **necessary** to state this, **for if it taught us the halakha only there**, in the case where only one brother is permitted, one might have said: **This is because there is a second brother who indicates** that the sister of a woman bound by a levirate bond is forbidden to him by refraining from levirate marriage with her. **However, here**, where there is **not a second brother who indicates** this, as both brothers are performing levirate marriage, then **I would say no**; this *halakha* would not apply, due to the concern that people might wrongly conclude that the sister of a woman with whom the *yavam* has a levirate bond is permitted even in cases where the other woman is not a forbidden relative.

ואי אשמועינן הכא – אדרבה, תרומיהו
מוכחי אהדדי. אבל איך לא – צריכא.

And the opposite could also be said: **If it taught us** the ruling only **here**, in the case of two brothers, one might have said: **On the contrary, they both indicate** the nature of **each other's** status. Each of the brothers married a specific sister-in-law, i.e., the woman who was not his close relative, indicating he does not have a levirate bond with the other sister. **But in the other** case, where one brother is allowed to consummate the levirate marriage and the second brother is forbidden to both sisters, I might say that **no**, we would not allow marriage to the first brother either. Therefore, it is **necessary** to state the *halakha* in both instances.

”זו היא שאמר” וכו'. זו היא למעוטי
מאי? למעוטי איסור מצוה לזה ואיסור
מצוה לזה.

It was taught in the mishna: **And this** is the case that was referred to when **they said**: When her sister is also her *yevama*, she either performs *halitza* or enters into levirate marriage. The Gemara asks: **What does** the expression: **This is**, come to **exclude**? The Gemara answers: **It excludes** the case where there is a **prohibition** resulting from a **mitzva for this one** and a **prohibition** resulting from a **mitzva for that one**. Although each woman is forbidden to a different brother due to a prohibition resulting from a *mitzva*, they may not both enter into levirate marriage.

הא תו למה לי? היינו הך, מה לי לחד
מה לי לתרי?

The Gemara asks: **Why do I need this as well?** **This** is identical to **that** which was taught previously, that if one of the sisters was forbidden to the *yavam* due to a prohibition resulting from a *mitzva*, then he is not permitted to consummate the levirate marriage with either of them. **What** difference is there **to me** if she happened before **one brother or two**?

מהו דתימא: בי לא אמרינן אוקי איסור
מצוה במקום איסור ערוה – היכא
דאיכא למיגזר משום שני, אבל היכא
דליכא למיגזר משום שני – אימא:
להאי אוקימנא איסור מצוה במקום
איסור ערוה ולהאי [אוקימנא] איסור
מצוה במקום איסור ערוה, ולייבמו. קא
משמע לן.

The Gemara answers: **Lest you say**: There is only one instance **when we do not say**: Let the prohibition resulting from a *mitzva* stand in the same place, i.e., level of severity, as a prohibition against forbidden relatives. It occurs in a case **where it is appropriate** to issue a rabbinic decree **due to the second brother**, who is prohibited from marrying both sisters. **But in a case where it is not appropriate** to issue a rabbinic decree **due to the second brother**, as the second sister is permitted to the second brother as well, I might say: **For this brother, let us stand the prohibition** resulting from a *mitzva* in the same place as a prohibition against forbidden relatives, and for this brother let us stand the prohibition resulting from a *mitzva* in the same place as a prohibition against forbidden relatives, and as a result both brothers may consummate the levirate marriage. Therefore, it teaches us that this is not so.

אמר רב יהודה אמר רב. וכן תני רבי
חייא: בכולן אני קורא בהן האסורה לזה
מותרת לזה, ואחותה כשהיא יבמתה –
או חולצת או מתייבמת.

Incidental to this *halakha*, the Gemara cites the following statement: Rav Yehuda said that Rav said, and similarly Rabbi Hiyya teaches in a *baraita*: **With regard to all of those women** enumerated in the first mishna of the tractate, who are forbidden to the *yevamin* as forbidden relatives, the following situation could arise: These women could also be two sisters who were married to two brothers who happen before their *yevamin* for levirate marriage while each one is a forbidden relative to one of the *yevamin*. In these situations, I could apply the ruling that **she who is forbidden to this brother is permitted to that brother**, as well as the ruling that **when her sister is also her yevama** she may either perform *halitza* or enter into levirate marriage.

ורב יהודה מתרגם מחמתו ואילך. אבל
שיתא בבני דרישא – לא.

But Rav Yehuda interprets these principles as applying only to those cases found in the list **from the mother-in-law of the yavam and onward**, but not to the six cases at the beginning, which include his daughter, and his wife's daughter, and their descendants.

Does not deal with rape – באונסין לא קא מיירי – The reason why Rav Yehuda held that the mishna does not deal with cases of rape is not elaborated upon here at all. It is also unclear why he and Abaye do not assume that the mishna follows Rabbi Shimon's opinion. It seems that the opinions here relate to a question that was raised in Chapter One: Why was the case of his mother who was raped by his father not mentioned among the fifteen forbidden relatives? One of the answers is that the mishna there discusses only cases of marriage but not cases of rape. Alternatively, the mishna there does not list matters for which there are differing opinions. Therefore, these answers can be applied to the issue here. Rav Safra's opinion is that issues subject to dispute were cited in the mishna. The Gemara there (10a) raises objections to this opinion and proceeds to resolve the issues according to this opinion as well (*Arukh LaNer*).

מאי טעמא? בין דבתו באונסין הוא דמשכחת לה, בנשואין לא משכחת לה.

What is the reason for Rav Yehuda's distinction? This is because you find the scenario where two women who are candidates for levirate marriage are both sisters as well as the daughters of the two *yevamin* only in a case where the women are the daughters of the *yevamin* through rape, but you cannot find it in a case where they are his daughters through marriage. If one brother married a woman and had a daughter with her, then this woman, the wife of a brother who has children, is forbidden to all of his brothers. Therefore, it would be impossible for another brother to have a daughter with that same woman, and therefore the two daughters could never be sisters. The scenario of daughters who are also sisters is possible only when the first brother raped a woman and gave birth to a daughter, such that the woman is not forbidden to his brothers. If one of the brothers then had a daughter with this woman and both daughters married other brothers who then died, it is possible that these daughters would happen before their fathers for levirate marriage.

בנשואין – קמיירי, באונסין – לא קא מיירי.

Rav Yehuda maintains that the current mishna deals with cases of marriage but does not deal with cases of rape,ⁿ and therefore he does not apply the principles governing sisters to those cases.

ואביי מתרגם אף בתו (באָה) מאונסתו, בין דאשכוחי משכחת לה, אי בעיא באונסין – תיהוי, אי בעיא בנשואין – תהוי. אבל אשת אחיו שלא היה בעולמו – לא, בין דאליבא דרבי שמעון הוא דמשכחת לה – אליבא דרבנן לא משכחת לה בפלוגתא לא קמיירי.

And Abaye interprets these principles as applying even to his daughter from a woman he raped. Since you can find this scenario, if the statement wants to deal with cases of rape, let it; if it wants to deal with cases of marriage, let it. It is preferable to explain this matter with regard to cases of marriage, but if that is not possible, it can still be explained as dealing with cases of rape. However, it cannot be explained as referring to the wife of a brother with whom he did not coexist. Even according to the opinion of Abaye, this case cannot be included, since you can find a situation where two sisters happen before two brothers for levirate marriage while each woman is the wife of a brother with whom he did not coexist only according to the opinion of Rabbi Shimon, while such a case cannot be found according to the opinion of the Rabbis. And Rabbi Hiyya does not deal with cases that are subject to dispute.

ורב ספרא מתרגם אף אשת אחיו שלא היה בעולמו, ומשכחת לה בשיתא אחי, ואליבא דרבי שמעון. וסימניך: מת נולד וייבם, מת נולד וייבם;

And Rav Safra interprets these principles as applying to the wife of a brother with whom he did not coexist, and you can find this scenario in the case of the six brothers^b and according to the opinion of Rabbi Shimon. And your mnemonic to remember how this might come about is as follows: Died, born, consummated the levirate marriage; died, born, consummated the levirate marriage.^b

BACKGROUND

Died, born, consummated the levirate marriage; died, born, consummated the levirate marriage – מת נולד וייבם, מת נולד – Originally, there were six brothers that were all the sons of one father: Reuven, Shimon, Levi, Yehuda, Gad, and Asher. Reuven and Shimon married two sisters, Høgla and Milka, and similarly Levi and Yehuda married two sisters, Rachel and Leah. Gad and Asher married women who were not related to each other or to any of the other wives. Gad married Adda and Asher married Miriam.

The order of events is as follows: Reuven dies without children, and his wife, Høgla, happens before the other brothers for levirate marriage. Before any of the brothers consummate the levirate marriage or perform *halitza* with her, another brother, Yissakhar, is born. Yissakhar is prohibited from marrying Høgla, as she is considered the wife of a brother, Reuven, with whom he did not coexist. Consequently, Levi consummates the levirate marriage with Høgla, Reuven's wife. Afterward, Shimon dies without children and his wife, Milka, happens before all the brothers, including Yissakhar, for levirate marriage. Before any of the brothers act, another brother, Zevulun, is born, and

he is prohibited from marrying Milka, as she is considered the wife of a brother to Shimon, with whom he did not coexist. Consequently, Yehuda consummates the levirate marriage with Milka. Afterward, both Levi and Yehuda die without children, and both sets of sisters, Høgla and Milka as well as Rachel and Leah, happen before the brothers for levirate marriage. At this point, Yissakhar is forbidden not only to Høgla, who is the wife of the brother Reuven, with whom he did not coexist, but also to Rachel, as she became the rival wife of Høgla and is therefore forbidden to Yissakhar as the rival wife of the wife of a brother with whom he did not coexist. These women, however, are not forbidden to Zevulun, according to the opinion of Rabbi Shimon, because at the time that he was born, they were both married to Levi, who is a brother with whom Zevulun did coexist. However, Zevulun is prohibited from marrying both Milka, who is the wife of the brother Shimon with whom he did not coexist, and her rival wife Leah.

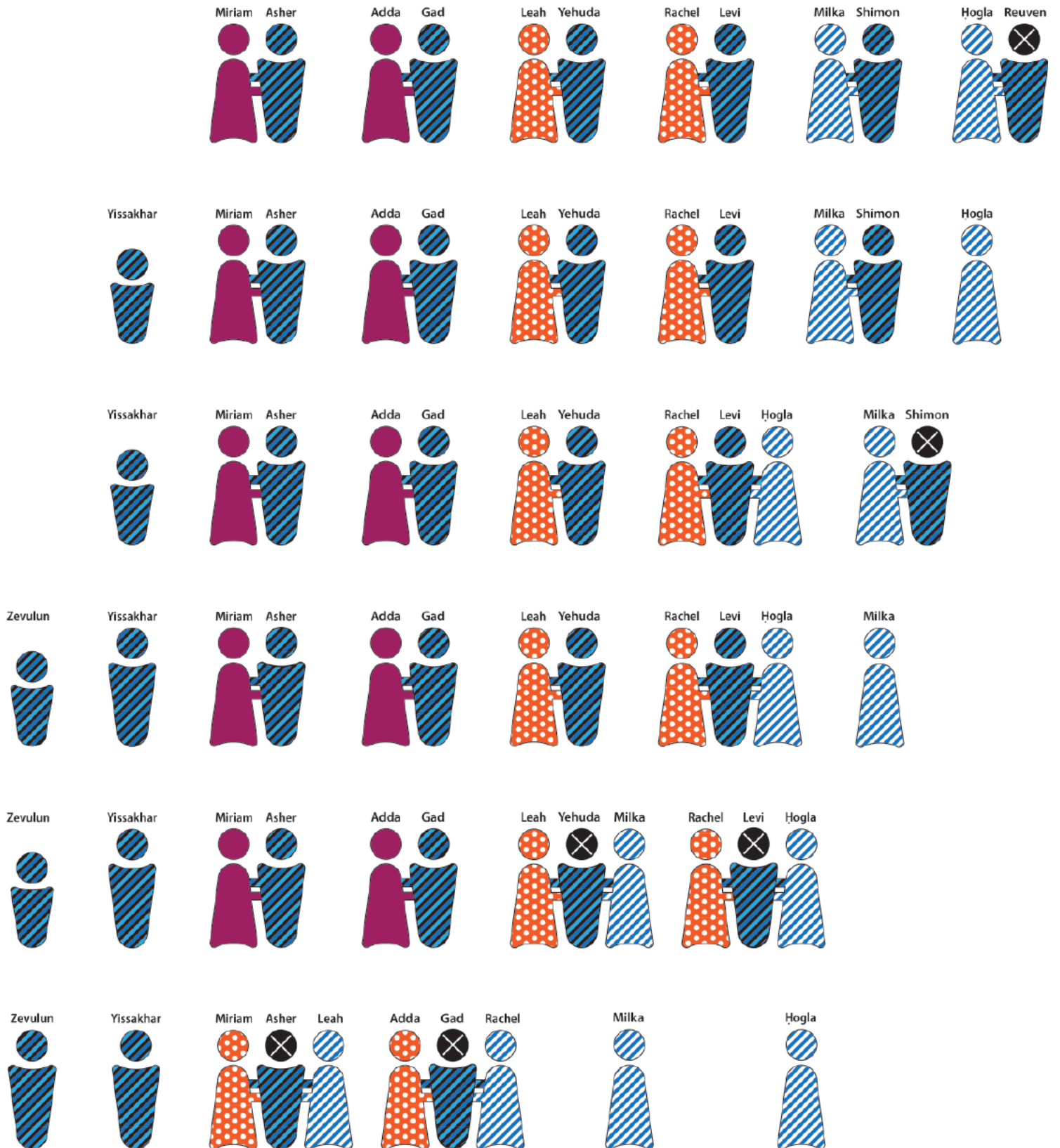
If Gad and Asher consummate the levirate marriage with Rachel and Leah, thereby exempting Høgla and Milka from levirate marriage, and die afterward, it turns out that Adda, the

wife of Gad, is the rival wife of Rachel, who is the rival wife of Høgla. Consequently, in relation to Yissakhar, Adda is considered the rival wife of the rival wife of the wife of a brother, Reuven, with whom he did not coexist. Similarly, Miriam is the rival wife of the rival wife of Milka, and she is forbidden to Zevulun because of Milka, who was the wife of a brother, Shimon, with whom he did not coexist. Therefore, the one who is permitted to this brother, i.e., Adda who is permitted to Zevulun, is forbidden to Yissakhar. Similarly, the one who is permitted to this brother, i.e., Miriam who is permitted to Yissakhar, is forbidden to Zevulun.

Additionally, with regard to Rachel and Leah, the ruling of: When her sister is also her *yevama* she can either perform *halitza* or enter into the levirate marriage, applies as well. This is because Rachel and Leah are sisters who happen before the brothers for levirate marriage, and the one who is forbidden to one brother is permitted to the other. This ruling therefore applies in the case of a rival wife, as well in the case of the rival wife of a rival wife.

BACKGROUND

Six brothers – שִׁשִּׁיתָא אֶחָי:



ראובן ושמעון נשואין שתי אחיות, לוי ויהודה נשואין שתי נכריות. מת ראובן נולד יששכר ויובל, מת שמעון נולד זבולן ויהודה. מתו לוי ויהודה בלא בנים, ונפלו להו קמי יששכר וזבולן.

How could this come about? There were two brothers, **Reuven and Shimon**, who were **married to two sisters**. And there were two other brothers, **Levi and Yehuda**, who were **married to two unrelated women**. Reuven died, Yissakhar was born, and Levi consummated the levirate marriage with Reuven's wife. Afterward, Shimon died, Zevulun was born, and Yehuda consummated the levirate marriage with Shimon's wife. Later, Levi and Yehuda died childless and these two sisters **happened before** Yissakhar and Zevulun for levirate marriage.

האסורה לזה מותרת לזה, והאסורה לזה מותרת לזה, ואחותה שהיא יבמתה.

In this scenario, the woman who had been Reuven's wife is **forbidden to this** brother, Yissakhar, as the wife of a brother with whom he did not coexist, because he was not alive at the same time as Reuven, and yet **she is nevertheless permitted to this** brother, Zevulun, because when Zevulun was born this woman was already the wife of Levi, a brother with whom he did coexist. According to Rabbi Shimon, the fact that she had previously been the wife of Reuven, a brother with whom he did not coexist, is not taken into account. Similarly, with regard to Shimon's wife, we find that **she who is forbidden to this one is permitted to that one**. Shimon's wife is forbidden to Zevulun as the wife of a brother with whom he did not coexist, but she is nevertheless permitted to Yissakhar. Accordingly, the situation of **her sister who is her yevama**, i.e., two sisters who are *yevamot* and yet are allowed to perform levirate marriage, can be applied to this case as well.

למה לי ייבם יהודה? בלא ייבם יהודה נמי משכחת לה!

The Gemara asks: **Why do I** need to assume that this is referring to a scenario where **Yehuda consummated the levirate marriage? You can find this possibility in** a case where **Yehuda did not consummate the levirate marriage as well**. This scenario can also take place with only five brothers and without Yehuda: Reuven and Shimon were married to two sisters, Reuven died, Yissakhar was born, and Levi consummated the levirate marriage with Reuven's wife. Then Shimon died and Zevulun was born. If Levi then dies, Levi's wife is forbidden to Yissakhar as the wife of his brother Reuven, with whom he did not coexist, but she would be permitted to Zevulun because she was already the wife of Levi when Zevulun was born. Shimon's wife would be forbidden to Zevulun but permitted to Yissakhar.

משום צרה. הא תינח צרה, צרה דצרה מאי איבא למימר?

The Gemara responds: This is **due to the rival wife**. It was taught in this way in order to make the principle applicable not only to the wives, but also to their rival wives. In this scenario, Levi and Yehuda were previously married to two sisters who then became the rival wives of a wife of a brother with whom one did not coexist. This allows the ruling to apply to the case of rival wives as well. The Gemara notes: **This works out well** if the mishna comes to include only a **rival wife** herself, but **what can be said** about **the rival wife of a rival wife**? How can this case explained? If one aims to include all of the details of the mishna in Rabbi Hiyya's principle, then the mishna must be referring not only to a case involving the brothers' rival wives, but also to the rival wives of those rival wives mentioned in the mishna.

בגון דהדר ויבמינהו נמי גד ואשר.

The Gemara answers: Therefore, one must include a case **where Gad and Asher subsequently consummated the levirate marriage** with these women **as well**. That is, initially there were two other brothers, Gad and Asher, who consummated the levirate marriage with the previous wives of Levi and Yehuda, each of whom had taken one of the wives of Reuven and Shimon. Later, when Gad and Asher died, their previous wives, who are the rival wives of the rival wives of Reuven and Shimon's wives, happen before Yissakhar and Zevulun for levirate marriage.

And Rabbi Shimon exempts – **רבי שמעון פוטר**: The Gemara here explains the rationale behind Rabbi Shimon's opinion by way of a homiletical interpretation of the verse "And you shall not take a woman to her sister, to be a rival to her" (Leviticus 18:18). From here he learns that if two sisters happen before the *yavam* for levirate marriage, they are both rendered exempt.

In the Jerusalem Talmud, however, Rabbi Oshaya explains that Rabbi Shimon maintains that only the sister who happened before the *yavam* second is exempt from *halitza* and levirate marriage. Accordingly, the rationale behind Rabbi Shimon's opinion is that a woman with a levirate bond is considered to be married to the *yavam*. Therefore, the second sister is exempt from levirate marriage, as she is equivalent to his wife's sister. If this is the rationale behind Rabbi Shimon's opinion, then when the Gemara here asserts that both women are exempt, it must be referring to a situation where both women happened before the *yavam* simultaneously, and it must be in accordance with the opinion that it is possible to determine that two events occur simultaneously (see *Hiddushei Anshei Shem*).

Tosafot explain that this ruling applies specifically in a case where the women happened before a single *yavam*. However, if they happened before two *yevamin*, Rabbi Shimon himself rules that the marriages may be maintained after the fact (*Yevamot* 28a). This must be due to a distinction in the strength of the levirate bond with two *yevamin* and the levirate bond with only one *yavam*. In the case of a levirate bond with only one *yavam*, Rabbi Shimon maintains that the woman is considered married to the *yavam*, while in the case of two *yevamin*, the levirate bond is not exclusive and therefore does not have the strength to render the woman married to the *yavam* (Rabbi Yehuda al-Madari).

MISHNA In the case of three brothers, two of whom were married to close relatives, e.g., two sisters; or a woman and her daughter; or a woman and her daughter's daughter;^h if the two brothers who were married to two close relatives died and their wives happened before a third brother for levirate marriage, then these two women must perform *halitza* and may not enter into levirate marriage, as each of them is a relative of a woman with whom he has a levirate bond. And Rabbi Shimon exemptsⁿ them even from the obligation to perform *halitza*.

If one of them was forbidden to him, the third brother, due to a prohibition against forbidden relatives, then he is prohibited from marrying her but is permitted to marry her sister. Because the woman who is forbidden to him is not considered to be a woman who requires him for levirate marriage, there is only one woman who happens before him for levirate marriage. However, if one of the women was forbidden due to a prohibition resulting from a *mitzva* or a prohibition stemming from sanctity, then they must perform *halitza* and may not enter into levirate marriage. This is because these prohibitions do not completely cancel the levirate bond.

GEMARA It is taught in a *baraita*: Rabbi Shimon exempts both of them from *halitza* and from levirate marriage, as it is stated: "And you shall not take a woman to her sister, to be a rival to her" (Leviticus 18:18). This indicates that at the time that a situation arises wherein they are to become rival wives to each other, e.g., two sisters happen before one *yavam* for levirate marriage, you shall not have the ability to take even one of them in marriage. In his opinion, both women are exempt from both levirate marriage and *halitza* at the moment that they happen before the *yavam*, just as a forbidden relative is exempt from both levirate marriage and *halitza*.

It was taught in the mishna: If one of them was forbidden to him due to a prohibition against forbidden relatives, he is prohibited from marrying her but is permitted to marry her sister. The Gemara asks: **Why do I need this statement as well?** This is identical to that which was taught in the previous mishna.

The Gemara answers: **It was necessary** to state this again here according to the opinion of Rabbi Shimon. **It might enter your mind to say:** Since Rabbi Shimon said that two sisters may not perform *halitza* and may not enter into levirate marriage, as the very fact that they require levirate marriage from the same man and stand to become rival wives to each other renders them forbidden, we should issue a rabbinic decree in this case as well. Although in this case only one of the sisters is eligible for levirate marriage, as the other is a forbidden relative, perhaps there should be a rabbinic decree prohibiting the *yavam* from marrying the permitted sister, due to the similarity to the case of two sisters in general who happen before him for levirate marriage. **This teaches us** that even Rabbi Shimon does not hold that there is a rabbinic decree in this case.

It was taught in the mishna that if the wives are forbidden to the *yavam* due to a prohibition resulting from a *mitzva* or sanctity, they must perform *halitza* and may not enter into levirate marriage.

מתני' שלשה אחין, שנים מהן נשואין שתי אחיות, או אשה ובתה, או אשה ובת בתה, או אשה ובת בנה – הרי אלו חולצות ולא מתייבמות, ורבי שמעון פוטר.

היתה אחת מהן אסורה עליו איסור ערה – אסור בה, ומוותר באחותה. איסור מצוה או איסור קדושה – חולצות ולא מתייבמות.

גמ' תניא: רבי שמעון פוטר בשתייהן מן החליצה ומן הייבום, שנאמר "ואשה אל אחותה לא תקח לצרור" – בשעה שנגעו צרות זו לזו לא יהא להן ליקוחין אפילו באחת מהן.

"היתה אחת מהן" כו'. הא תו למה לי? היינו הך!

לרבי שמעון איצטריך: סלקא דעתך אמינא: הואיל ואמר רבי שמעון שתי אחיות לא חולצות ולא מתייבמות – לגזור משום שתי אחיות דעלמא, קמשמע לן.

"איסור מצוה" כו'.

HALAKHA

שתי – Two close relatives who happened for levirate marriage – **קרובות שנפלו לייבום**: In the case of three brothers, two of whom were married to two sisters, if one of the brothers married to a sister dies, and later the second dies, and both sisters happen before the third brother for levirate marriage, then both women are forbidden to him. This is also the case for any other two women

that he is prohibited from marrying simultaneously, e.g., a woman and her daughter, or a woman and her daughter's daughter. The two women are considered rival wives due to the levirate bond. Consequently, they must perform *halitza* and may not enter into levirate marriage (Rambam *Sefer Nashim*, *Hilkhot Yibbum* 6:25; *Shulhan Arukh*, *Even HaEzer* 175:6).

NOTES

Due to her – משה לְתַא דִּידָהּ – The Sages issued a decree requiring the sister of a woman forbidden as the result of a mitzva to perform *halitza* in order to prevent people from permitting levirate marriage to the forbidden woman herself. This, however, would seem to be a decree to prevent the violation of another decree, which the Sages generally refrained from issuing. However, because this case is dealing with two sisters who are exempt primarily for the same reason, it is considered as if they are both included in one general decree (see Rivan and Rabbi Yehuda al-Madari).

But with regard to a forbidden relative we do not issue a decree – וְהָא גְבִי עֲרוּהָ לֹא גִירִין – Rashi interprets this question in a straightforward manner: Why is there not a similar decree in the cases of sisters of forbidden relatives (see Ritva)? There are, however, early commentaries who interpret the question as follows: If it turned out that the same woman was both a forbidden relative and forbidden as the result of a mitzva, why would the Sages not issue a decree in this case as well, so that others not come to allow cases where the woman is forbidden by a mitzva alone? They explain the Gemara's answer as asserting that everyone knows that she was exempt from levirate marriage as a forbidden relative. They would not come to think that there was also a prohibition resulting from a mitzva involved (Razah; Ramban; Rashba).

And one who was single – וְאֶחָד מוֹפְנָה – As far as the *halakha* is concerned, it makes no difference if the third brother was single or married to a woman who was not related to his brothers' wives. It states that he was single due to the subsequent *mishnayot*, which also include the rulings pertaining to rival wives. In those cases, it is important to mention that the third brother was married to an unrelated woman, which is not the case in the present mishna (Rivan; Rabbi Yehuda al-Madari; *Nimmukei Yosef*). Others explain that this is stated due to the wording: Woe unto him. If he was single at first, he ends up without any wife at all and is therefore unfortunate. This would not be so if he was married (*Tosafot Yeshanim*; Meiri).

וְהָא אָמַר רַבִּי שְׁמַעוֹן: שְׁתֵּי אֲחִיּוֹת
לֹא חוֹלְצוֹת וְלֹא מְתַיִבְמוֹת!

גִּירָה מִשּׁוּם אִסּוּר מִצְוָה דְּעִלְמָא.

הָא תֵּינַח אִידָּהּ, אֲחוֹתָהּ מֵאֵי אִכָּא
לְמִימַר? גִּירָה אֲחוֹתָהּ מִשּׁוּם לְתַא
דִּידָּהּ.

וְהָא גְבִי עֲרוּהָ לֹא גִירִין! שְׂאֵנִי עֲרוּהָ
דְּמַגְמַר גְּמִירִי לָהּ אֵינֶנְשִׁי, וְקֵלָא אֵיתָּ
לָהּ.

מִתְנִי' שְׁלֹשָׁה אֲחִין, שְׁנַיִם נְשׂוּאִים
שְׁתֵּי אֲחִיּוֹת, וְאֶחָד מוֹפְנָה; מֵת אֶחָד
מִבְּעֻלֵי אֲחִיּוֹת וְעָשָׂה בָּהּ מוֹפְנָה
מֵאַחַר, וְאַחֵר כֵּךְ מֵת אֲחִיו הַשֵּׁנִי.

This *halakha* was also taught in the previous mishna (26a), and it is cited in this mishna according to the opinion of Rabbi Shimon. The Gemara asks: **But didn't Rabbi Shimon say: Two sisters neither perform *halitza* nor enter into levirate marriage?** Because these women are eligible for levirate marriage according to Torah law, they are considered the sisters of a woman with whom he has a levirate bond. In this case, Rabbi Shimon exempts them from both *halitza* and levirate marriage. Why, then, does the mishna require them to perform *halitza*?

The Gemara answers: It is a rabbinic decree due to the general case of a prohibition resulting from a mitzva. If they did not perform *halitza* in this case, where they are sisters, there is a concern that people would assume that their exemption from *halitza* stemmed not from their status as sisters but rather due to the prohibition. This would lead to the mistaken conclusion that women who are forbidden due to a mitzva do not require *halitza*. Therefore, the Sages issued a rabbinic decree requiring *halitza* in this case.

The Gemara asks: **This works out well** for her, as she is forbidden due to the prohibition resulting from a mitzva. It is appropriate to require *halitza* with her, to demonstrate that *halitza* is generally applied in cases where there is a prohibition resulting from a mitzva. But with regard to her sister, what is there to say? Why must she perform *halitza* as well? The Gemara answers: There is a rabbinic decree with regard to her sister due to her.^N

The Gemara asks: If Rabbi Shimon issues a decree in this case requiring *halitza* for the sister, out of concern for confusion, then there is a difficulty: **But, with regard to a forbidden relative we do not issue a decree^N** requiring *halitza* due to her sister; why does Rabbi Shimon issue a rabbinic decree requiring *halitza* with a woman forbidden due to a prohibition resulting from a mitzva and not with a woman who is a forbidden relative? The Gemara answers: **Forbidden relatives are different, as people learn the *halakhot* pertaining to them** because they are stated explicitly in the Torah and are well known to all, and the ruling has publicity. Therefore, there is no concern lest people mistakenly confuse this case with cases of *yevamot* who are not sisters. Prohibitions resulting from mitzvot are not, however, explicit in the Torah, nor are they generally known.

MISHNA In the case of three brothers, two of whom were married to two sisters, and one who was single,^N the following occurred: The husband of one of the sisters died childless, leaving behind his wife, and the single brother performed levirate betrothal [*ma'amar*] to this wife.^H The single brother performed an act of betrothal to the *yevama* but did not yet consummate the marriage by engaging in sexual intercourse. Afterward, the second brother died, and therefore the second brother's wife, the sister of the betrothed, happened before the single brother for levirate marriage as well.

HALAKHA

Levirate betrothal and the levirate bond in the case of two sisters – מֵאַחַר וְיִקָּה בְּשְׁתֵּי אֲחִיּוֹת: There is a case of three brothers, two of whom were married to two sisters, and the husband of one of the sisters died. Afterward, the third brother performed levirate betrothal with the widowed sister, but before he could consummate the levirate marriage with her, the other sister's husband died as well, at which point this

sister happened before the third brother for levirate marriage. In this case, the third brother must send both sisters away. She who received levirate betrothal is sent away with a bill of divorce and *halitza*, and her sister must perform *halitza*. This ruling is in accordance with the statement of Beit Hillel (Rambam *Sefer Nashim*, *Hilkhot Yibbum* 7:6; *Shulḥan Arukh*, *Even HaEzer* 175:6).

בית שמאי אומרים: אשתו עמו,
והללו תצא משום אחות אשה. ובית
הלל אומרים: מוציא את אשתו בגט
ובחליצה, ואשת אחיו בחליצה. זו
היא שאמר: אוי לו על אשתו, ואוי
לו על אשת אחיו.

In this case, Beit Shammai say: **His wife remains with him.** The woman he betrothed is considered like his wife, and he is not required to divorce her. **And this other woman leaves the yavam** and is exempt from levirate marriage as the sister of a wife. **Beit Hillel say:** Being as he had not yet entered into marriage with the first woman, he is required to perform levirate marriage with both women. Therefore, **he divorces his wife, i.e.,** the woman to whom he performed levirate betrothal, **with a bill of divorce**, which nullifies levirate betrothal, **and by halitza**, which nullifies the levirate bond. **And, he sends away the wife of his second brother with halitza** as well. They comment: **This is the case that was referred to when the Sages said: Woe unto him^N for his wife and woe unto him for the wife of his brother.** Due to the combination of circumstances, he loses them both.

גמ' "זו היא" למעוטי מאי? למעוטי
הך דרבי יהושע, דלא עבדינן
בנותיה, אלא אי ברבן גמליאל אי
ברבי אלעזר.

GEMARA The Gemara asks: **What** does the mishna's formulation of the term: **This is**, which indicates limitation and exactitude, come to **exclude**? The Gemara answers: **It excludes that statement of Rabbi Yehoshua** (109a). There, Rabbi Yehoshua holds that if a man is married to a minor when her sister happens before him for levirate marriage, he must send both of the women away. He said there: Woe unto him for his wife and woe unto him for the wife of his brother. From the language in the mishna here, we learn **that we do not act in accordance with his opinion. Rather, we act either in accordance with the opinion of Rabban Gamliel^N or in accordance with the opinion of Rabbi Elazar.** According to the opinion of both of these *tanna'im* in the mishna (109a), despite the conflict between the brother's marriage to the minor and the levirate bond with her sister, there is still a way for him to marry one of the women.

אמר רבי אלעזר: לא תימא מאמר
לבית שמאי קונה קנין גמור, דאי
בעי לאפוקי סגי לה בגיטא, אלא:
מאמר לבית שמאי אינו קונה אלא
לדחות בצרה בלבד.

§ With regard to the main issue of levirate betrothal, it would seem from this mishna that Beit Shammai hold that levirate betrothal has the legal force of levirate marriage. However, **Rabbi Elazar said: Do not say that levirate betrothal acquires the woman as a full-fledged acquisition according to the opinion of Beit Shammai,^N such that the first woman becomes his wife to the extent that if he wants to divorce her a bill of divorce would suffice without an act of halitza. Rather, for Beit Shammai, levirate betrothal acquires the woman only insofar as it precludes a rival wife from entering levirate marriage.^N** The legal force of levirate betrothal is limited to preventing the rival wife^N of the sister from performing levirate marriage; she is exempt from both levirate marriage and *halitza*.

NOTES

This is the case when they said woe unto him – **זו היא שאמר** – אוי לו: *Nimmukei Yosef* explains that the phrase: Woe unto him, related to the fact this man acquired at the time of levirate betrothal the usufruct property of the woman as well as his brother's property, but now he must return it all.

Tosafot explain that the phrase: Woe unto him, apply only to a situation where one performed an act that should not have led to complications, but events outside of his control caused him to lose everything he had acquired. The *Mei Naftoah* raises an objection: How did the third brother lose out? Had he not performed levirate betrothal he would have been unable to marry either woman, being as they were sisters who happened before him at the same time. He answers that in a case where the brothers were married to other rival wives, were it not for levirate betrothal, he would have been allowed to marry one of the rival wives. After levirate betrothal, however, he may no longer marry any of them.

אי ברבן גמליאל – Either in accordance with Rabban Gamliel – Although it is later proven that the opinion of Beit Hillel does not accord with that of Rabban Gamliel, and the *halakha* does not accord with his opinion either, here the only deduction that can be made is that the mishna is not in accordance with the opinion of Rabbi Yehoshua. It is only from a different source that

that it can be proven that the *halakha* accords with the opinion of Rabbi Eliezer specifically (Ramban; Rashba).

Do not say that levirate betrothal... according to the opinion of Beit Shammai, etc. – **לא תימא מאמר לבית שמאי וכו'** – The Jerusalem Talmud presents the opinion of Rabbi Elazar ben Arakh, who does assert that levirate betrothal completely acquires the *yevama*. According to his opinion, levirate betrothal completely establishes the relationship between the *yavam* and the *yevama*, just like sexual intercourse. In the course of the discussion in the Jerusalem Talmud, however, it is proven that Beit Shammai do not accord with this opinion.

In the Jerusalem Talmud, it is explained that Beit Shammai's opinion about the strength of levirate betrothal is the same as Rabbi Shimon's opinion concerning the levirate bond: These bonds are sufficiently effective to prevent the creation of a bond with another woman, e.g., the sister of the *yevama*, but are not sufficient to nullify the levirate bond completely. Therefore, if the *yavam* later wants to divorce the *yevama*, she requires *halitza* (see Ramban and Rashba).

Only insofar as it precludes a rival wife from entering levirate marriage – אלא לדחות בצרה בלבד – The question arises: If levirate betrothal cannot establish the union with the same legal

force as sexual relations, how can it completely preclude the rival wife from performing levirate marriage? One commentary explains that levirate betrothal is equivalent to betrothal in the following matter: If the *yavam* betrothed one sister and then the other happened before him for levirate marriage, he need not divorce his betrothed. Rather, her sister is precluded from levirate marriage and is therefore exempt from it. Nevertheless, levirate betrothal does not terminate the levirate bond with the first sister, and she requires *halitza* if the *yavam* later chooses to divorce this woman (*Tosafot Yeshanim*).

Precluding a rival wife from performing levirate marriage – דחית צרה – Rashi explains here and throughout this talmudic discussion that the rival wife that the Gemara is referring to is in fact the sister who happened before the *yavam* for levirate marriage. Although these women are not actually rival wives, as each was married to a different brother, the sister is considered a rival wife in this context. However, *Tosafot* and the Meiri explain that the Gemara is referring to an actual rival wife. If the brother was married to two women and the *yavam* performed levirate betrothal with one of them, the levirate betrothal prevents the other wife from entering levirate marriage with the *yavam*.

אמר רבי אבין, אף אנן נמי תנינא: בית
שמאי אומרים: יקיימו, יקיימו – אין,
לכתחלה – לא.

Rabbi Avin said: We, too, learn in the mishna a proof that levirate betrothal is not a full-fledged act of acquisition, even according to Beit Shammai. The mishna at the beginning of this chapter (26a) teaches that when two sisters who are *yevamot* happen before two brothers for levirate marriage, if the brothers married their wives before consulting the court, then **Beit Shammai say: They may maintain them** as their wives. From here it can be deduced: If they already married them, **yes, they may maintain them**. However, marrying them *ab initio*, **no**, this is prohibited due to the prohibition against marrying the sister of a woman with whom one has a levirate bond.

Perek III
Daf 29 Amud b

NOTES

This brother should perform levirate betrothal – זה – יעשה מאמר: Rashi writes that performing levirate betrothal does not violate a prohibition, but engaging in sexual intercourse does. Similarly, the Rambam holds that there is no prohibition involved in betrothing a woman who is forbidden; the prohibition is only violated by engaging in sexual intercourse. The Rashba adds that only with regard to the special prohibitions relating to priests could an act of betrothal constitute violation of a prohibition. However, the *Smag* and *Sefer HaHinnukh* hold that one violates a Torah prohibition simply by performing betrothal with a forbidden woman. According to their opinion, one must explain that in situations where the mitzva of levirate marriage may be fulfilled, such betrothals are not prohibited (*Keren Ora*). Alternatively, one could explain that betrothals are prohibited only in cases where the sexual intercourse that would follow is forbidden. In this case, however, the sexual intercourse that follows the levirate betrothal would be permitted as the levirate betrothal served to cancel the prohibition (*Yosef Lekah*).

This one should perform levirate betrothal...and that one should perform – זה יעשה מאמר...וזה יעשה: Most of the early commentaries write that it is in fact sufficient for one of the brothers to perform levirate betrothal as this would eliminate the prohibition proscribing the second sister. In *Tosefot HaRosh*, however, it is explained that the Gemara here follows the opinion that we are concerned lest the mitzva of levirate marriage be negated. This concern can be allayed only by both brothers performing levirate betrothal at the same time via an agent. The later commentaries explain that although there is still concern that the levirate marriage may not be consummated, as the fulfillment of the mitzva primarily involves intercourse the levirate betrothal still represents the beginning of the performance of the mitzva, and that is sufficient to allay the concern (*Hiddushei Batra*).

In circumstances where it is forbidden to perform levirate marriage, it does not preclude levirate marriage – דאסורא לא דחי: The question arises: If levirate betrothal is effective by Torah law, and there is no Torah prohibition against performing the levirate betrothal, why should it preclude the rival wife from levirate marriage? This can be resolved by stating that the Sages would not instruct one to perform levirate betrothal in order to preclude the possibility of levirate marriage in a case where rabbinic prohibitions are involved (*Tosefot HaRosh*).

ואי סלקא דעתך מאמר לבית שמאי
קונה קנין גמור – זה יעשה מאמר ויקנה,
וזה יעשה מאמר ויקנה!

And if it enters your mind that according to Beit Shammai levirate betrothal acquires the woman as a full-fledged acquisition, then this matter could potentially have been resolved *ab initio*: **This brother should perform levirate betrothalⁿ and acquire one sister, and that brother should perform levirate betrothal and acquire the other sister.** As there is no prohibition whatsoever involved in performing levirate betrothal, the concern for violating a prohibition by consummating the levirate marriage with a sister of a woman with whom he has a levirate bond is avoided; he only betroths her, but does not engage in sexual intercourse with her. After the betrothal, the levirate bond of her sister is dissolved and he can freely consummate the levirate marriage with her.

אלא מאי – דוחה דחיה גמורה? זה
יעשה מאמר וידחה, וזה יעשה מאמר
וידחה.

The Gemara objects: **Rather, what then?** If levirate betrothal does not serve to fully acquire the woman, what is the alternative? It must be that according to Beit Shammai levirate betrothal **precludes** the rival wife from entering levirate marriage with a **complete preclusion**. If so, there is an additional potential scenario: **This one should perform levirate betrothal with one sister and preclude the second sister from entering levirate marriage, and that one should performⁿ levirate betrothal with the second sister and preclude the first sister from entering levirate marriage.** In this way, the *yevamin* can consummate the levirate marriage with the sisters *ab initio* as well. Yet the mishna does not allow for this possibility.

אלא מאי אית לך למימר: מאמר
דהתירא – דחי, דאסורא – לא דחי –
הכי נמי: מאמר, אפילו למאן דאמר
מאמר קונה קנין גמור, מאמר דהתירא –
קני דאסורא – לא קני.

Rather, what have you to say? One must assert that **levirate betrothal performed in circumstances where it is permitted to perform levirate marriage, i.e. where there is no prohibition with regard to the close relative of a woman with whom the *yavam* has a levirate bond, completely precludes the rival wife from entering levirate marriage.** However, levirate betrothal performed in circumstances where it is **forbidden** to perform levirate marriage, **does not preclude** entering levirate marriage.ⁿ Therefore, in the case of two sisters who happen simultaneously before two brothers for levirate marriage, the sisters cannot be precluded from entering levirate marriage via levirate betrothal. **So too here, with regard to levirate betrothal performed by the third brother, the same distinction can be made. Even according to the one who said that levirate betrothal acquires a woman as a full-fledged acquisition, just like marriage, there is the following difference: Levirate betrothal under permitted circumstances acquires the woman, but levirate betrothal under forbidden circumstances does not acquire the woman.** Therefore, there is no proof as to the nature of levirate betrothal according to the opinion of Beit Shammai from the first mishna in the chapter.

רב אשי מתני הכי, אמר רבי אלעזר: לא תימא מאמר לבית שמיא דחי דחיה גמורה, וצרתה חליצה נמי לא בעיא, אלא דוחה ומשייר הוא.

Rav Ashi teaches this discourse in this manner: Rabbi Elazar said: Do not say that according to Beit Shammai levirate betrothal precludes entering levirate marriage as a complete preclusion, so that the rival wife of the woman who received levirate betrothal does not require even *halitza*. Rather, it precludes entering levirate marriage and yet leaves a remnant of the levirate bond in place. Accordingly, levirate betrothal precludes the rival wife's entering levirate marriage to the degree that the *yavam* is not required to divorce the woman he betrothed, but the levirate bond with the rival wife remains to the extent that he must still perform *halitza* with her.

אמר רבי אבין: אף אנן נמי תנינא: בית שמיא אומרים: יקיימו. יקיימו – אין, לכתחלה – לא. ואי סלקא דעתך מאמר לבית שמיא דוחה דחיה גמורה – זה יעשה מאמר וידחה, וזה יעשה מאמר וידחה! ואלא הא קתני, בית שמיא אומרים: אשתו עמו, והלזו תצא משום אחות אשה!

Rabbi Avin said: We, too, learn this statement from the mishna, where it states: Beit Shammai say: They may maintain them as their wives. From here it can be deduced: Yes, they may maintain them as their wives after the fact; no, they are not allowed to marry them *ab initio*. And if it enters your mind to say that, according to Beit Shammai, levirate betrothal precludes entering levirate marriage as a complete preclusion, then this brother should perform levirate betrothal and preclude one sister from levirate marriage, and that brother should perform levirate betrothal and preclude the other sister from levirate marriage. The Gemara challenges this conclusion: But didn't the mishna teach that Beit Shammai say: His wife remains with him, and this other is sent away due to her status as a sister of his wife? This indicates that she is exempt from levirate marriage and does not even require *halitza*.

אלא: יבמה דחויא לכולהו – חזיא למקצתה. יבמה דלא חזיא לכולהו – לא חזיא למקצתה.

Rather, one must resolve this by asserting that a *yevama* who is suitable for all of the aspects of levirate marriage is also suitable for part of it. If a *yevama* is eligible for both levirate marriage and *halitza* when she happens before the brothers, as in the case cited in the present mishna where the woman who happened before the third brother was permitted to enter into levirate marriage, she is eligible for part of it. This indicates that if the *yavam* does not take her in levirate marriage but performs only levirate betrothal, the levirate betrothal has sufficient legal force to preclude the rival wife completely. However, a *yevama* who is not suitable for all of the aspects of levirate marriage is also not suitable for a part of it. If the *yevama* is not eligible for levirate marriage, such as in the case referred to in the first mishna of this chapter, where both women happened simultaneously so that the *yavam* is not permitted to consummate the levirate marriage with either woman, she is not suitable for part of it. In that case, if the *yavam* performs levirate betrothal, it does not have the legal force to affect a total preclusion.

בעי רבה: מאמר, לבית שמיא נישואין עושה או איירוסין עושה? אמר ליה אבין: למאי הלכתא?

With regard to Beit Shammai's opinion about levirate betrothal, Rabba asks: Does levirate betrothal, according to the opinion of Beit Shammai, create a full-fledged marriage bond? Or, does it merely create betrothal,^N similar to all other acts of betrothal? Abaye said to him: With regard to what *halakha* do you ask this?

NOTES

Does it...create a marriage bond or does it create betrothal – נישואין עושה או איירוסין עושה: The marriage process consists of two steps. The first is the act by which a woman becomes betrothed to a man. The bond created by betrothal is so strong that a betrothed woman requires a divorce before she can marry another man. Similarly, intercourse with other men is considered adulterous and is punishable by death. During the period of betrothal, a

couple may not live together as man and wife, and most of the couple's mutual obligations do not yet apply.

The second step, marriage itself, is effected when the bride and groom enter the bridal canopy. This immediately confers upon the newlywed couple both the privileges and the responsibilities associated with marriage. In modern times, both betrothal and marriage take place during the wedding.

אבלות – אבלות – Mourning and impurity for a betrothed woman – **אבלות**: If a man's betrothed dies, he does not enter the state of acute mourning or regular mourning for her, nor does a woman enter acute or regular mourning over the death of her betrothed. If the man is a priest, he may not become ritually impure for her, and she is not obligated to become ritually impure for him (Rambam *Sefer Shofetim*, *Hilkhot Evel* 2:3; *Shulḥan Arukh*, *Yoreh De'a* 373:4, 374:4, *Even HaEzer* 55:5).

מתה אינו יורשה – מתה אינו יורשה: If a man's betrothed dies, he does not inherit from her (Rambam *Sefer Nashim*, *Hilkhot Ishut* 22:2; *Shulḥan Arukh*, *Even HaEzer* 55:5).

מתה אינו יורשה – מתה אינו יורשה: If one betroths a woman, writes her a wedding contract, and then dies before he is able to bring her under the wedding canopy, then she may collect the primary dues that are a mandatory part of the contract from his available property, but not the voluntary additions that the husband added from his own accord.

Although some say that the Sages established that every betrothed woman should automatically receive a wedding contract, even if one was not actually written for her (Rosh; Ran), it is not the custom to act in accordance with this opinion, but rather according to the opinion that states that the automatic institution of a wedding contract only applies to married women (Rema; Rambam *Sefer Nashim*, *Hilkhot Ishut* 10:11; *Shulḥan Arukh*, *Even HaEzer* 55:6).

אילימא ליה יורשה וליטמא לה ולהפר נדריה – השתא ארוסה בעלמא תני רבי חייא: אשתו ארוסה לא אונן ולא מטמא לה, וכן היא לא אוננת ולא מטמאת לו, מתה – אינו יורשה, מת הוא – גובה כתובתה, עבד בה מאמר מיבעיא?

ואלא לענין מסירה לחופה, מאי? נישואין עושה – ולא בעיא מסירה לחופה, או דלמא אירוסין עושה – ובעיא מסירה לחופה!

If we say it pertains to inheriting from her when she dies, and to becoming ritually impure for her^N if he is a priest, and to nullifying her vows,^N all of which are rights and obligations acquired by marriage, this is difficult. Now, with regard to a betrothed woman in general, i.e., a woman who was betrothed by Torah law, Rabbi Hiyya teaches in a *baraita*: One does not enter acute mourning^N on the day of the death of his betrothed wife, nor can he become ritually impure for her if she dies if he is a priest. Similarly, she does not enter acute mourning for him and is not obligated to become ritually impure for him.^{NH} If she dies, he does not inherit from her;^H if he dies, she collects the payment of her marriage contract;^H In a case where he performed only levirate betrothal with her, is it necessary to say^N that he does not inherit from her, nor does he become ritually impure for her? Therefore, this *halakha* is obvious and Rabba's question seems superfluous.

Rather, the question must relate to the matter of delivery of the woman to the husband under a wedding canopy.^N What is the ruling with regard to this? Is the *yavam* obligated to enter the wedding canopy in the manner that he would with any other betrothed woman, or not? This is the dilemma: Does levirate betrothal create a full-fledged marriage bond, whereby the *yevama* would not require further delivery to a wedding canopy? Or, does levirate betrothal perhaps create only betrothal, whereby she would require delivery to a wedding canopy?

NOTES

To becoming ritually impure for her – ליטמא לה: Priests are prohibited from contracting ritual impurity through proximity with a corpse. The exception to this principle is the funeral of certain relatives, including wives.

To nullifying her vows – להפר נדריה: The Torah authorizes a husband to nullify vows made by his wife (see Numbers, chapter 30). The vow must be nullified on the same day on which the husband hears of it. A husband is empowered to nullify only those vows which either directly or indirectly affect the personal relationship between him and his wife.

Enter into acute mourning – אונן: The period of acute mourning begins on the day of the death of a close relative, i.e., a spouse, father, mother, son, daughter, brother, or sister. The mourner is exempt from all positive mitzvot from the time of the death of the close relative until after the burial. At that point, his status changes from that of an acute mourner to that of a mourner.

Not obligated to become ritually impure for him – לא ליטמא לה: There is a halakhic difficulty here, as there is no prohibition against a priestly woman becoming ritually impure for the dead. Why would she not become impure for her husband? Rashi maintains that this phrase is only cited in order to create a parallelism between the obligations of the man and the woman. Additionally he suggests perhaps this is referring to the period of the Festivals, where there is a general prohibition to become impure. The Ritva and other commentaries concur with the *Tosafot*, suggesting that this phrase indicates that the woman is not obligated to become impure for him.

He performed levirate betrothal with her, is it necessary to say – עבד בה מאמר מיבעיא: It would seem from Rashi that even according to Beit Shammai levirate betrothal only has the force of rabbinic law. Many commentaries challenge this opinion from several different sources. For example, it is stated in the Jerusalem Talmud that Beit Shammai derive the obligation to perform levirate betrothal from an explicit verse in the Torah: "And he shall take her" (Deuteronomy 25, 5). The Rashba, therefore, understands that Rashi did not intend to propose that Beit Shammai held levirate betrothal to have the force of rabbinic law, but rather that even according to their opinion that levirate betrothal has the force of Torah law, it is still not equivalent to actual betrothal. For example, a *yevama* who received levirate betrothal is not sentenced to stoning if she commits adultery.

To the matter of delivery to a wedding canopy – לענין מסירה לחופה: *Tosefot HaRosh* explains, in accordance with *Tosafot*, that this discussion does not refer to a case where the *yavam* performed levirate betrothal alone, but rather to a case where he performed levirate betrothal and also engaged in sexual intercourse. Since a woman is normally not considered to be married unless she willingly enters the wedding canopy, a question arises: When the *yavam* engages in intercourse with her against her will, is there no longer any need for her to willingly enter the wedding canopy, as levirate marriage is effective even without the woman's consent? Or perhaps, as Rabba asserts, once she received levirate betrothal consensually, she is now rendered like any other woman and cannot become his full wife without consenting to marriage?

Nullification of vows for a widow waiting for her *yavam* – **הַפֶּרֶת נָדָרֵי שׁוֹמֶרֶת יָבָם**: With regard to a woman awaiting levirate marriage, the *yavam* may not nullify her vows, whether she is waiting for several *yevamin* or just one, in accordance with the statement of Rabbi Akiva (Rambam *Sefer Hafla'a*, *Hilkhot Nedarim* 11:23; *Shulḥan Arukh*, *Yoreh De'a* 234:7).

Nullification of vows for a betrothed young woman – **הַפֶּרֶת נָדָרֵי נַעֲרָה מְאוּבָּקָה**: With regard to a betrothed young woman, her father and betrothed nullify her vows together (Rambam *Sefer Hafla'a*, *Hilkhot Nedarim* 11:9; *Shulḥan Arukh*, *Yoreh De'a* 234:5).

NOTES

Rabbi Akiva holds that the levirate bond is not substantial – **רַבִּי עֲקִיבָא קָבַר אֵין זִיקָה** – According to Rashi, Rabbi Akiva holds that the levirate bond is not substantial on any level, and therefore this woman is not considered to be the wife of the *yavam*. Others explain that even Rabbi Akiva agrees that the levirate bond has the force of rabbinic law, but since the nullification of vows is a Torah law, the levirate bond is not effective with regard to these *halakhot* in this case (Rabbi Avraham min HaHar).

לְתַרֵּי אֵין – With two the levirate bond is not substantial – **זִיקָה**: Rashi states that in the case of multiple *yevamin*, the levirate bond is weakened. Other commentaries differ and explain that this ruling is due to the fact that nullification of vows entails a clear knowledge of the identity of the husband at the time of the nullification, as retroactive designation does not apply to the *halakhot* of vows. Even if the *yevama* is later married to the brother-in-law who nullified her vows, this clarification is not effectual after the fact.

אֵלֶּא אֵי – However, if you say it creates betrothal, etc. – **אֲמַרְתָּ אִירֹסִין עוֹשֶׂה וְכוּ'**: Although Abaye and Rabba discussed only whether levirate betrothal is equivalent to a betrothal by Torah law, here the Gemara seems to entertain the notion that levirate betrothal might be more powerful than standard betrothal, in that the *yavam* would be able to nullify vows on his own (*Tosefot HaRosh*; see Rashba).

אָמַר לִיה: הַשְׁתָּא, לֹא עָבַד בָּהּ מֵאֲמֵר כְּתִיב "יְבֻמָּה יָבֵא עָלֶיהָ", בְּעַל כְּרַחֲהּ, עָבַד בָּהּ מֵאֲמֵר מִיְבֻעֵינָא?

אָמַר לִיה: שְׂאֵנִי אוֹמֵר כָּל הָעוֹשֶׂה מֵאֲמֵר בִּיבְמִתּוֹ – פְּרַחָה מִמֶּנּוּ זִיקָתָּ יְבֻמִּין, וְחָלָה עָלֶיהָ זִיקָתָּ אִירֹסִין. מֵאֵי?

תָּא שְׁמַע: שׁוֹמֶרֶת יָבָם, בֵּין יָבָם אֶחָד בֵּין שְׁנֵי יְבֻמִּין, רַבִּי אֱלִיעֶזֶר אוֹמֵר: יִפְרָ, רַבִּי יְהוֹשֻׁעַ אוֹמֵר: לְאֶחָד וְלֹא לְשֵׁנִים, רַבִּי עֲקִיבָא אוֹמֵר: לֹא לְאֶחָד וְלֹא לְשֵׁנִים.

וְהוֹיֵנָּה בָּהּ: בְּשִׁלְמָא רַבִּי עֲקִיבָא סָבַר: אֵין זִיקָה אֶפְּלִילוּ לְחַד, לְרַבִּי יְהוֹשֻׁעַ: לְחַד – יֵשׁ זִיקָה, לְתַרֵּי – אֵין זִיקָה. אֵלֶּא לְרַבִּי אֱלִיעֶזֶר, נָהִי נִמִּי דְקָסָבַר יֵשׁ זִיקָה. בְּשִׁלְמָא לְחַד – מִיפֵּר, אֵלֶּא לְתַרֵּי – אֲמַאי?

וְאָמַר רַבִּי אֲמִי (בַּר אֶהֱבָה): הֵכָא בְּמַאי עָסְקִין – כְּגוֹן דְּעָבַד בָּהּ מֵאֲמֵר, וּבֵית שְׁמַאי הֵיא, דְּאָמַר: מֵאֲמֵר קוֹנָה קִנְיָן גָּמוּר.

אֵי אֲמַרְתָּ בְּשִׁלְמָא נִשְׁוֹאִין עוֹשֶׂה – מְשׁוּם הָכִי מִיפֵּר, אֵלֶּא אֵי אֲמַרְתָּ אִירֹסִין עוֹשֶׂה – הֵיכִי מִצִּי מִיפֵּר? וְהִתְנָה: נַעֲרָה הַמְּאוּבָּקָה אֲבִיהָ וּבַעֲלָהּ מְפִירִים נְדָרֶיהָ! אָמַר רַב נַחֲמָן בַּר יִצְחָק: מֵאֵי מִיפֵּר – מִיפֵּר בְּשׁוֹתְפוֹת.

Abaye said to him that this question is not necessary, as well: **Now, if he did not perform levirate betrothal with her at all, it is written: "Her brother-in-law will have intercourse with her"** (Deuteronomy 25:5). It is deduced from this verse that he can take her even against her will. Is it necessary to say that if he performed levirate betrothal with her, even without a wedding canopy, that he is allowed to engage in sexual intercourse with her?

Rabba said to him: This question is relevant, as I say that **anyone who performs levirate betrothal with his *yevama* causes the levirate bond to be removed from him**, and he is no longer considered subject to the *halakhot* of levirate marriage. Instead, a standard **bond of betrothal applies to him**. Therefore, it is appropriate to ask if this act of levirate betrothal is similar to a standard betrothal insofar as the wedding canopy is concerned, and consequently the woman would be required to enter the wedding canopy. Alternatively, perhaps the *halakhot* of levirate marriage still apply somewhat, in which case the woman would not be required to enter a wedding canopy in order to become married, similar to a standard *yevama* to whom levirate betrothal was not performed. Does the performance of levirate betrothal weaken the capacity of intercourse to establish levirate marriage on its own? **What is the halakhic ruling here?**

The Gemara suggests: **Come and hear** an answer from what is taught in a mishna (*Nedarim* 74a): What is the ruling with regard to the nullification of vows for a widow who is waiting for her *yavam*,^h whether she is waiting for a single *yavam* or two *yevamin*? **Rabbi Eliezer says: Let him nullify her vows.** The *yavam* may nullify her vows as though he were her husband. **Rabbi Yehoshua says:** This holds true only if she is bonded to a single *yavam*, but not to two. **Rabbi Akiva says:** It does not hold true, neither to one *yavam* nor to two *yevamin*. They may not they nullify her vows.

And we discussed this issue, interpreting the various opinions: **Granted, Rabbi Akiva holds that the levirate bond is not substantial,ⁿ even in the case of one *yavam*.** In his opinion, the levirate obligation does not create a marriage bond at all, even if there is only a single *yavam*. And according to **Rabbi Yehoshua, the levirate bond with one *yavam* is substantial.** The *yevama* undoubtedly requires this *yavam* for levirate marriage, and therefore she is considered to be like his wife. **But with two *yevamin*, the levirate bond is not substantial,ⁿ since it is not clear which brother will consummate the levirate marriage with her.** However, **Rabbi Eliezer, if he indeed holds that the levirate bond is substantial, his opinion is difficult.** **Granted, if there is one *yavam*, he can nullify her vows, but if there are two, why should only one of them suffice to nullify her vows, as it is not yet clear which of them will eventually marry her?**

And Rabbi Ami bar Ahava said: **With what are we dealing here?** This is a case where one of them performed levirate betrothal with her, and this is in accordance with the opinion of Beit Shammai, who say: **Levirate betrothal acquires her as a full-fledged acquisition.**

This interpretation can resolve Rabba's question. **Granted, if you say levirate betrothal creates a full-fledged marriage, it is due to that reason that the *yavam* can nullify her vows just as a full-fledged husband does.** However, **if you say that levirate betrothal merely creates betrothal,ⁿ how can he nullify the vows?** Even in standard cases of betrothal by Torah law the husband cannot nullify her vows, for didn't we learn in a mishna: With regard to a betrothed young woman, only her father and her husband together can nullify her vows?^h How could a *yavam* nullify the vows without the father of the *yevama*, if he is not considered a full-fledged husband? **Rav Nahman bar Yitzḥak said that this proof can be rejected by interpreting the mishna as follows: What is the meaning of the phrase: He nullifies? That he nullifies her vows only in conjunction with her father.**

Any woman who makes a vow, etc. – כל הנודדת וכו' – The commentaries ask: If providing a woman's sustenance is reason enough to justify the husband's ability to nullify his wife's vows, then why was it necessary for the Torah to write the passage on nullification of vows? It must be that this halakhic rationale was established after the Torah explicitly stated the primary ruling with regard to the nullification of vows (*Tosafot Yeshanim*). This idea can be found in a slightly different form in the Responsa of the Rosh, where he says that even though one does not generally interpret the *halakha* based on the underlying rationale of the verses, in the case of nullification of vows, one does utilize the underlying rationale in order to determine how to apply the *halakhot*.

ולרבי אלעזר, דאמר: מאמר לבית
שמאי אינו קונה אלא לדחות לצרה
בלבד, אמאי מיפר בשותפות? אמר
לך רבי אלעזר: אימר דאמרי אנא אינו
קונה אלא לדחות לצרה בלבד – דלא
סגי לה בגיטא אלא בעי נמי חליצה,
להפר נדריה – מי אמרינן?

ואיבעית אימא, אמר לך רבי אלעזר:
ולרב נחמן בר יצחק מי נחא? מי קתני
"יפרו"? "יפר" קתני. אלא הכא במאי
עסקינן – שעמדה בדין ופסקו לה
מוזנות משל.

וכדרב פנחס משמיה דרבא, דאמר רב
פנחס משמיה דרבא: כל הנודדת – על
דעת בעלה היא נודדת.

The Gemara questions this reading of the mishna: **And according to the opinion of Rabbi Elazar, who said that for Beit Shammai levirate betrothal acquires the woman only insofar as it precludes a rival wife from entering levirate marriage, and it is not a full-fledged acquisition, why should the yavam nullify her vows, even if he does so in conjunction with her father?** The Gemara answers: **Rabbi Eliezer could have said to you:** One can say that when I said that levirate betrothal acquires the woman only insofar as it precludes the rival wife from entering levirate marriage, it was to emphasize that a bill of divorce would not suffice for her, but rather she also requires *halitza*. However, with regard to the matter of nullifying her vows, do we say that levirate betrothal is not effective, and that he cannot nullify her vows alone?

And if you wish, say an alternate explanation: Rabbi Elazar could have said to you: **And as for Rav Nahman bar Yitzhak, does this resolution that the mishna is only referring to a case where the father and the yavam can nullify her vows together work out well? Did the mishna teach that they can nullify her vows? It teaches that he can nullify her vows in the singular, implying that he nullifies the vows alone and not in conjunction with anyone else. Rather, the mishna must be explained differently: With what are we dealing here?** It is a case where the yavam, regardless of whether or not he performed levirate betrothal, did not want to consummate the levirate marriage or perform *halitza*. Therefore, the yevama stood in court so as to compel him to consummate the levirate marriage or perform *halitza*, and it ruled that he must supply her sustenance. Because she is bound to him and cannot marry another, the court ruled that he was responsible for her livelihood.

And this is in accordance with the statement that Rav Pinehas said in the name of Rava, as Rav Pinehas said in the name of Rava: Any woman who makes a vow,ⁿ makes her vow with the consent of her husband. Because she is dependent upon her husband for her livelihood, she does not act without his consent. In this case, because the yavam is responsible to supply the yevama with sustenance, it is assumed that her vows are also made with his consent. It is for this reason that he can nullify her vows without her father. Consequently, no conclusive proof can be derived from here with regard to the strength of acquisition through levirate betrothal.

Perek III

Daf 30 Amud a

מתני' שלשה אחין, שנים מהם
נשואים שתי אחיות ואחד נשוי נכרית.
מת אחד מבני אחיות, וכנס נשוי
נכרית את אשתו, ומת – הראשונה
יוצאה משום אחות אשה, ושניה
משום צרתה. עשה בה מאמר ומת –
נכרית חולצת ולא מתייבמת.

MISHNA In the case of three brothers, two of whom were married to two sisters and one who was married to an unrelated woman, the following occurred: **The husband of one of the sisters died childless, and the brother who was married to the unrelated woman married, i.e., performed levirate marriage with, the deceased brother's wife and later died himself, childless.** In this situation, both women happen for levirate marriage before the other, remaining, brother. **The first woman is dismissed due to the prohibition proscribing the sister of one's wife, as she is the sister of this brother's wife, and the second woman is dismissed due to her status as the first woman's rival wife.** Following the first levirate marriage, this second woman became the rival wife of the sister, and is therefore exempt from levirate marriage as well. If, however, the brother married to the unrelated woman performed only levirate betrothal, but had not yet consummated the levirate marriage with the sister, and he died, the unrelated woman, whose halakhic status with regard to *yibbum* is similar to that of a sister's rival wife, must perform *halitza* and may not enter into levirate marriage.

גמ' טעמא דעבד בה מאמר, הא לא עבד בה מאמר – נכרית יבומי נמי מייבמה. אמר רב נחמן: זאת אומרת אין זיקה, ואפילו בחד אחא.

GEMARA The Gemara deduces the following *halakha* from the second clause of the mishna: **The reason that the mishna requires *halitza* is specifically because he, the brother who was married to the unrelated woman, performed levirate betrothal with the sister.^N Consequently, had he not performed levirate betrothal with her, the unrelated woman would be permitted to enter into levirate marriage as well.** This is true despite the fact that the levirate bond could potentially render her the rival wife of his wife's sister. **Rav Nahman said: That is to say, the levirate bond is not substantial;^N the woman requiring levirate marriage is not considered married to the *yavam*.** And this is true even if the levirate bond was with a single brother, as this widowed sister happened for levirate marriage only before the brother who was married to the unrelated woman; her levirate bond was with him alone.

מתני' שלשה אחים, שנים מהם נשואים שתי אחיות ואחד נשוי נכרית. מת הנשוי נכרית, וכנס אחד מבני אחיות את אשתו ומת – הראשונה יוצאת משום אחות אשה, ושניה משום צרתה. עשה בה מאמר ומת – נכרית חולצת ולא מתייבמת.

MISHNA In the case of three brothers, two of whom were married to two sisters and one who was married to an unrelated woman, the following occurred: **He who was married to the unrelated woman died, and one of the husbands of the sisters married his wife, and then died childless as well.** The first woman, i.e., the sister who was originally married to the brother who performed levirate marriage, is dismissed and is exempt from levirate marriage due to her status as the sister of his wife. **And the second woman, i.e., the unrelated woman who had entered into levirate marriage, is dismissed as her rival wife.^H If, however, he performed levirate betrothal with the unrelated woman, and then died, then this unrelated woman must perform *halitza* and may not enter into levirate marriage, as levirate betrothal rendered her status with regard to *yibbum* as similar to the rival wife of his wife's sister.**

גמ' הא תו למה לי? היינו הך! השתא, ומה התם דאחות אשה הויא צרה לנכרית אמרת: נכרית אסורה, הכא, דנכרית הויא צרה לאחות אשה – לא כל שכן?

GEMARA The Gemara asks: **Why do I need this mishna as well? This principle is identical^N to the principle behind the ruling in the previous mishna, and therefore this ruling can easily be deduced from the previous ruling. Now, just as there,^N when his wife's sister became rival wife of the unrelated woman^N who was already the brother's wife, you say that the unrelated woman is forbidden despite the fact that the forbidden relative joined later, here, where the unrelated woman became the rival wife of his wife's sister afterward, is it not all the more so clear that she is exempt as a rival wife?**

Exemption for the rival wife of a forbidden relative – פטור צרת ערוה: In the case where there were three brothers, two of whom were married to two sisters and one who was married to an unrelated woman, the following occurred: The brother who was married to the unrelated woman died, and the husband of the first sister married his wife, the unrelated woman, and then died childless as well. Two women now happen before the third brother, the husband of the second sister, for levirate marriage, and both are exempt from levirate marriage and *halitza*, one as a sister of his wife and the other as the rival wife of that first sister. If the husband of a sister did not enter into marriage with the unrelated woman, whether or not he performed levirate betrothal with her, then the unrelated woman must perform *halitza* and may not enter into levirate marriage, for she would be the rival wife of his wife's sister by levirate bond. This is the opinion of the Rif, the Rosh, and other halakhic authorities who conclude that the *halakha* is in accordance with the opinion of Rav Ashi, who states that the levirate bond is substantial, as appears later.

The Rambam, however, cites the language of the mishna, specifying that the husband performed levirate betrothal. According to the *Tur*, the Rambam holds that specifically if he performed levirate betrothal with the unrelated woman would she be required to perform *halitza* (see *Or Same'ah*). The *Beit Yosef* holds, however, that the Rambam accepted the Rif's opinion but merely opted to copy the formulation found in the mishna rather than be precise (Rambam *Sefer Nashim*, *Hilkhot Yibbum* 7:7; *Shulhan Arukh*, *Even HaEzer* 175:7).

NOTES

The reason is because he performed levirate betrothal with the sister – טעמא דעבד בה מאמר – In the Jerusalem Talmud as well, both this mishna and the following one are understood as referring specifically to cases where he performed levirate betrothal. They explain there that the ruling in the mishna conforms with both the opinion of Rabbi Shimon, who is in doubt as to whether levirate betrothal effects a full-fledged acquisition or does not bring about acquisition at all, as well as according to the opinion of the Rabbis, who hold that levirate betrothal effects a partial acquisition. According to both opinions, albeit for different reasons, the woman performs *halitza* but may not enter into levirate marriage.

זאת אומרת – אין זיקה: *Tosafot* wonder: Why did Rav Nahman not deduce this from the first mishna of the second chapter of the tractate? One commentary explains that it could be said that the purpose of that earlier mishna was only to exclude the statement of Beit Shammai with regard to levirate betrothal, and therefore one could not deduce the status of the levirate bond from there.

However, it was necessary to say this only once, such that when the mishna repeated this ruling it perforce indicated that the levirate bond is not substantial (Rabbi Akiva Eiger). Additionally, since the previous mishna in this chapter mentioned the dispute between the houses of Shammai and Hillel with regard to the issue of levirate betrothal, it would not be appropriate for the next mishna to categorically exclude the opinion of Beit Shammai (*Melo HaRo'im*).

This is identical, etc. – היינו הך וכו': *Tosafot* point out that in other cases the Gemara might have resolved this question by invoking the structural principle: This, and it is unnecessary to say that. There are times when the mishna states two *halakhot* and the second one seems to be unnecessary and obvious once the first one is stated. This redundancy is resolved by attributing the repetition to the style of: this, and it is unnecessary to say that. In this case, however, that explanation does not suffice, because the entire mishna is superfluous. Furthermore, if that were the case it would have been possible to unite the two *mishnayot* with a single opening (*Ritva*).

השתא ומה התם וכו' – Now just as there, etc. Rashi and most of the commentaries hold that the question and answer revolve primarily around the fact that he performed levirate betrothal. However, the Rashash holds that this could be referring to the principal *halakha* itself: Is the rival wife of a forbidden relative prohibited only if she was the second wife, married after the forbidden relative herself?

His wife's sister became rival wife of the unrelated woman – אחות אשה הויא צרה לנכרית: The later commentaries explain in various ways why there might be a difference between rulings in these cases. One commentary explains that if he married the forbidden relative first, the prohibition with regard to a wife's sister was already in place, and there was never any possibility for the rival wife to become eligible to enter into levirate marriage. If, however, he had married the rival wife first, it could be said that she was, by her very marriage, eligible to enter into levirate marriage, and that a forbidden relative cannot negate that original permitted status once it is in place (*Hiddushei Batra*; see *Or Same'ah*).

BACKGROUND

A mishna does not move from its place – מִשְׁנָה: There is a dispute among the early commentaries, as well as among modern scholars, as to whether Rabbi Yehuda HaNasi actually wrote the Mishna or if he merely edited it into its final form for the purposes of oral study. In either case, even according to those who say that he fixed the Mishna in writing, it was not commonly available, and its study primarily continued orally. Since students learned the *mishnayot* orally in their proper order, omitting a particular mishna and replacing it with a similar one, or combining two *mishnayot* into one, could cause confusion in the students' learning. It is for this reason that Rabbi Yehuda HaNasi left the original mishna in place, even if it was unnecessary (see Ritva).

NOTES

The sister is forbidden to him – הָרִי זוֹ אֶסְוֶה עָלָיו: The Rambam in his Commentary on the Mishna writes that while the *halakha* with regard to a sister was explicit, the *halakha* with regard to the unrelated woman, her rival wife, was not, and in his opinion she must perform *halitza* but may not enter into levirate marriage due to uncertainty. In contrast, the Rambam himself concludes in *Mishne Torah*, in accordance with the opinions of all the early commentaries, that this woman is released without *halitza*. If we decide, as does Rav, that the sister is forbidden like the wife of a brother who has children, then her rival wife is the rival wife of a forbidden relative and is exempt. The later commentaries attempt to explain Rambam's uncertainty in this matter.

HALAKHA

She was forbidden to him at one time – נֶאֱסְוָה עָלָיו: In the case of three brothers, two of whom were married to two sisters and one who was married to an unrelated woman, the following occurred: One of the husbands of the sisters died, and the brother who was married to the unrelated woman married his wife. Later, the wife of the other brother, i.e., the sister of the woman who entered into levirate marriage, died. Afterward, the brother who was married to the unrelated woman died. In this case, the widowed brother is not permitted to take his deceased brother's wife in levirate marriage because she was forbidden to him the first time she happened before him for levirate marriage. As she was forbidden to him at one time, she is forbidden to him forever (Rambam *Sefer Nashim*, *Hilkhot Yibbum* 7:11; *Shulhan Arukh*, *Even HaEzer* 175:1).

תָּנָא הֵךְ תָּנָא בְּרִישָׁא, וְהֵךְ חֲזִינָא לְהַתִּירָא, וְשִׁרְיָא. וְהֵךְ חֲזִינָא לְאִיסּוּרָא.

וְאִינְדִּי דְחִבִּיבָה לִיָּה – אֶקְדָּמָה, וּמִשְׁנָה לֹא זָוָה מִמְקוֹמָהּ.

מתני' שלשה אחין, שנים מהם נשואים שתי אחיות ואחד נשוי נכרית. מת אחד מב' אחיות, ונכנס נשוי נכרית את אשתו, ומתה אשתו של שני, ואחר כך מת נשוי נכרית – הרי זו אסורה עליו עולם, והואיל ונאסרה עליו שעה אחת.

גמ' אמר רב יהודה אמר רב: כל יבמה שאין אני קורא בה בשעת נפילה "יבמה" בא עליה הרי היא כאשת אח שיש לה בנים, ואסורה. מאי קא משמע לן? תנינא: הרי זו אסורה עליו עולם, והואיל ונאסרה עליו שעה אחת!

מהו דתימא: הני מילי – היכא דלא איחויא לה בנפילה ראשונה, אבל היכא דאיחויא לה בנפילה ראשונה – אימא תישתרי, קא משמע לן.

The Gemara answers: This mishna was unnecessary, and this is how the duplication occurred: **The tanna taught this mishna at first, and with regard to that previous case saw it fitting to render her permitted, and he permitted her to the brother, for he held that if the forbidden relative joined the man's household later, then she would not render the first wife prohibited as the rival wife of a forbidden relative. And then the tanna subsequently retracted and saw it fitting to render the woman forbidden.** He decided that this woman should be considered the rival wife of a forbidden relative as well, and therefore rendered her forbidden to the brother.

And since that case was novel, it was beloved to him and he taught it earlier. In truth, it would have now been possible to eliminate the present mishna, for there was no longer any novelty in it; its ruling could be derived by an *a fortiori* argument from the previous ruling. However, a mishna does not move from its place.⁸ Since this version of the mishna had already been fixed, it was deemed inappropriate to remove it completely, and it remained in place despite the fact that it was no longer necessary.

MISHNA In the case of three brothers, two of whom were married to two sisters and one who was married to an unrelated woman, the following occurred: One of the husbands of the sisters died, and he who was married to the unrelated woman married the deceased husband's wife, and then the wife of the second brother, the other one of the sisters, died. Afterward, the brother who was married to the unrelated woman died, leaving two women for levirate marriage before the remaining brother: The unrelated woman and the woman who was previously prohibited as the sister of his deceased wife. In this case, the sister is forbidden to him⁹ forever. She is not forbidden due to her status as his wife's sister, as his wife already died and one's wife's sister is permitted after the wife's death. However, since she was already forbidden to him at one time,¹⁰ she is forbidden to him forever. When she first happened before the brothers for levirate marriage, before the third brother married her, she was forbidden to the second brother as his wife's sister. Therefore, she is forbidden to him forever. In addition, she exempts her rival wife, the unrelated woman, from levirate marriage.

GEMARA Rav Yehuda said that Rav said a principle on this matter: Any *yevama* to whom the verse "Her brother-in-law will have intercourse with her" (Deuteronomy 25:5) cannot be applied at the time that she happens before him for levirate marriage because she was forbidden to him at that moment, is then forever considered to be like the wife of a brother with whom she has children, and she is forbidden to him. The Gemara asks: What is Rav teaching us with this statement? We already learned this in the mishna: She is forbidden to him forever, since she was forbidden to him at one time.

The Gemara answers: This was necessary lest you say that this ruling applies only in cases where she was not eligible at all during the first time that she happened before the brothers for levirate marriage. Such is the case in the mishna, when she was forbidden to the *yavam* as his wife's sister the entire time that she was eligible for levirate marriage. Even though his wife died after the other *yavam* married this woman, because she was forbidden to him that entire time, she is forbidden to him forever. But in cases where she was eligible at some point during the first time she happened before the brothers for levirate marriage, such as in the scenario where the brother's wife died prior to the time when his other brother married her, one could say that she would be permitted. In that case, since the prohibition had in the meantime been canceled and she was indeed rendered eligible for levirate marriage with him during the period of the first time she happened before him, one might think that she would now be permitted. It is for this reason that Rav teaches us that even in this scenario she would be forbidden to him forever.

הא נמי תנינא: שני אחיו נשואין שתי אחיות, מת אחד מהם ואחר כך מתה אשתו של שני – הרי זו אסורה עליו עולמית, הואיל ונאסרה עליו שעה אחת!

מהו דתימא: הָתָם הוּא דְאִידְחִי לָהּ מֵהָאֵי בֵּיתָא לְגַמְרִי. אֲבָל הָכָא, דְּלֹא אִידְחִי לָהּ מֵהָאֵי בֵּיתָא לְגַמְרִי, אֵימָא: מִיגו דְּחֻזָּא לְהָאֵי נָשׁוּי נְכָרִית חֻזָּא נָמִי לְהָאֵי, קָא מְשַׁמַּע לָן.

מתני' שלשה אחים, שנים מהם נשואין שתי אחיות ואחד נשוי נכרית. גירש אחד מבעלי אחיות את אשתו, ומת נשוי נכרית, ובכנסה המגרש ומת – זו היא שאמרו: וכולן שמתו או נתגרשו – צרותיהן מותרות.

The Gemara raises an objection: **We learned this as well**, as a later mishna (32a) states: In the case of **two brothers who were married to two sisters**, if **one of them**, i.e., one of the brothers, **died and afterward the wife of the second brother died, then she**, the surviving wife, **is forbidden to him**, the surviving brother, **forever, since she was forbidden to him during the period she happened before him at one time**.

The Gemara answers: One cannot learn the halakhic principle from that case. **Lest you say that there** she is forbidden forever because of the following argument: When she was forbidden to the brother, **she was precluded from entering this household completely**, i.e., from the entire obligation of levirate marriage. She received total exemption from the mitzva of levirate marriage because this obligation applied only to the one remaining brother, and she was forbidden to him at the time that she happened before him for levirate marriage. But **here, however**, in the case Rav is referring to, **where she was not completely precluded from entering this household** because she still required levirate marriage with another brother, one could say: **Since she is eligible and permitted to this brother, who was married to the unrelated woman, she is eligible for this second brother following the death of his wife as well**, in other words, she was not rendered completely exempt from the obligation of levirate marriage. **Lest one make this argument**, Rav **teaches us** that under any circumstances she who was forbidden at one time is forbidden forever.

MISHNA In the case of **three brothers**,^B **two of whom were married to two sisters and one who was married to an unrelated woman**, the following occurred: **Shimon, the husband of one of the sisters, divorced^{NH} his wife**, and then **Levi, who was married to the unrelated woman, died**, and **Shimon, the man who divorced his wife, married**, i.e., performed levirate marriage with, **her**,^N i.e., this unrelated woman. **And then Shimon himself later died**, so that the unrelated woman happened for levirate marriage before Reuven, the third brother, who is married to the second sister. In this scenario, Reuven is allowed to consummate the levirate marriage with the unrelated woman. **This is the case that was referred to when they said: And with regard to all those fifteen forbidden relatives who died or were divorced, their rival wives are permitted to enter into levirate marriage**. This is because at the time that they happened before the *yavam* for levirate marriage they were no longer the rival wives of a forbidden relative.

NOTES

שלשה אחים...גירש וכו' – **Three brothers...divorced, etc.** – *Tosafot* ask why it was necessary to state that there were three brothers, for this *halakha* could have been taught in a case with only two brothers. They explain this according to several different opinions. The Rashba writes that according to Rava's opinion cited later it was indeed not necessary to describe a case with three brothers. However, as the entire chapter is referring to cases of three brothers, that number was used in this case as well despite the fact that it is not necessary.

המגרש – כנסה – **The man who divorced his wife married her** – *Tosafot* ask how the man who divorced his wife could possibly marry this woman, for is she not the rival wife of his wife's sister due to the levirate bond with the third brother? They explain that while the husband who divorced his wife is alive, it is not relevant to consider the unrelated woman as the rival wife of his wife's sister. The issue of the rival wife of his wife's sister by levirate bond is relevant only when the other brother dies and both women happen before the third brother for levirate marriage (see *Tosefot HaRosh*).

HALAKHA

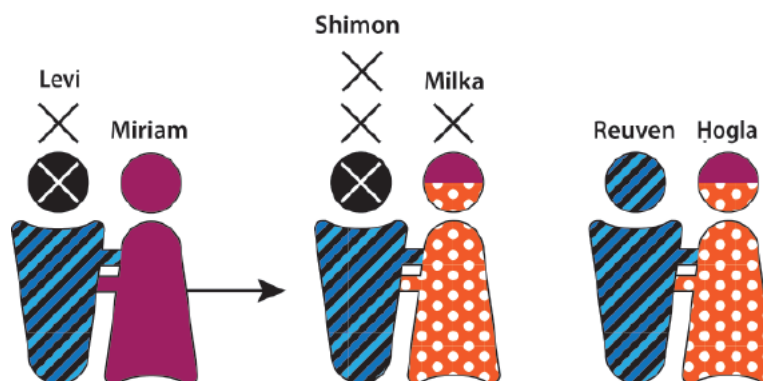
המגרש – כנסה – **He who divorces the close relative of his yevama** – *In the case of three brothers, two of whom were married to two sisters and one of whom was married to an unrelated woman, the following occurred: The husband of one of the sisters divorced his wife, and the one married to an unrelated woman died, and the man who divorced his wife married this unrelated woman and then died. This woman would be permitted to the third brother, as she had never been the rival wife of his wife's sister.*

If, however, the brother who was married to the unrelated woman died first, and then the husband of one of the sisters divorced his wife, even if he did not manage to marry the unrelated woman, she would nevertheless be forbidden to the remaining brother because she was the rival wife of his wife's sister by levirate bond, prior to the divorce.

And if the husband of one of the sisters entered into marriage with the unrelated woman and divorced the sister (whether the divorce took place before or after the marriage to the unrelated woman), if this brother dies as well then the unrelated woman is permitted to the husband of the other sister, for he takes her in levirate marriage as a consequence of the latest marriage, and at the time that she happened before him she was no longer the rival wife of his wife's sister (Rambam *Sefer Nashim*, *Hilkhot Yibbum* 7:12; *Shulhan Arukh*, *Even HaEzer* 175:8).

BACKGROUND

שלשה אחים – **Three brothers** – There were three paternal brothers, Reuven, Shimon, and Levi. Reuven and Shimon married two sisters, Hoga and Milka, respectively, while Levi married Miriam, who was not related to either of them. Eventually, Milka died, after which Levi died childless, and Shimon took Miriam in levirate marriage. If Shimon then dies childless, Reuven is allowed to take Miriam in levirate marriage, since she was never the rival wife of his wife's sister.



גמ' טעמא דגירש ואחר כך מת, אבל מת ואחר כך גירש – אסורה. אמר רב אשי, זאת אומרת יש ויקה, אפילו בתרי אחי.

GEMARA The Gemara deduces from here that the reason for this *halakha* is specifically that Shimon divorced his wife and after that Levi died and Shimon married the unrelated woman. But if Levi had died first, and later Shimon divorced his wife, then the unrelated woman would be forbidden to Reuven due to the levirate bond that existed between her and Shimon prior to the latter's divorce. She would be considered the rival wife of the divorced woman who is the sister of Reuven's wife. **Rav Ashi said: That is to say, the levirate bond is substantial, even with two brothers.** Although the unrelated woman required levirate marriage with two brothers, the levirate bond is substantial enough to create a relationship between the unrelated woman and Shimon such that the unrelated woman is considered the rival wife of the divorced woman, i.e., the sister of Reuven's wife.

ולרב אשי קשיא דרב נחמן! אמר לך רב אשי: הוא הדין דאף על גב דלא עבד בה מאמר נכרית – מיחלץ חלצה, יבומי לא מייבמה. והא דקתני מאמר – לאפוקי בית שמאי, דאמרי: מאמר קונה

The Gemara asks: And according to Rav Ashi, that which Rav Nahman said is difficult, as Rav Nahman deduced from the earlier mishna that the levirate bond is not substantial even in the case of a single brother. The Gemara answers: **Rav Ashi could have said to you:** Rav Nahman's deduction in the first mishna was not logically necessary. With regard to that mishna, one could have said that when the mishna requires *halitza* in the case of levirate betrothal, the same is true even in the case where he who was married to the unrelated woman did not perform levirate betrothal with her. In that case as well, the unrelated woman must perform *halitza* and may not enter into levirate marriage since she was the rival wife of his wife's sister by levirate bond. And the reason that it teaches the ruling in the case of levirate betrothal was not in order to inform us that she was forbidden due to levirate betrothal, but rather to exclude the statement of Beit Shammai,ⁿ who say that through the act of levirate betrothal one acquires the *yevama*

NOTES

לֹאֲפֻקֵי בֵּית – שְׁמַאי To exclude the statement of Beit Shammai – The question arises: If this mishna comes to exclude the statement of Beit Shammai, then why was it necessary to teach this twice, both here and in the second chapter? Alternatively, why was it necessary to teach in both places that the levirate bond is not substantial? Some commentaries explain that according to Rav Ashi, it is more reasonable to hold that the levirate bond is not substantial, and there-

fore it was necessary to repeat this in order to emphasize that the mishna is not teaching that the levirate bond is not substantial but rather that the mishna is excluding Beit Shammai's statement. Similarly, according to the opinion of Rav Nahman, it is more reasonable to maintain that the levirate bond is substantial, and therefore the matter was taught twice in order to emphasize that it is not (*Tosefot HaRosh*; *Tosafot Yeshanim*).

קנין גמור, קא משמע לן דלא בבית
שמאי.

ולרב נחמן קשיא דרב אשי! וכי תימא:
הוא הדין דאפילו מת ואחר כך גירש
צרתה מותרת, אלא "זו היא" למעוטי
מאי - למעוטי כנס ואחר כך גירש,

הניחא אי סבר לה ברבי ירמיה, דאמר:
תברא, מי ששנה זו לא שנה זו,

והאי תנא סבר מיתה מפלת, והאי תנא
סבר נישואין הראשונים מפילים.

"זו היא" למעוטי כנס ולבסוף גירש.
אלא אי סבר לה ברבא, דאמר לעולם
חד תנא הוא, ו"זו ואין צריך לומר זו"
קתני - "זו היא" למעוטי מאי? על כרחך
ברבי ירמיה סבירא ליה.

as a full-fledged acquisition. According to that opinion, the unrelated woman does not even require *halitza*, since she is considered to be a rival wife of a forbidden relative. This mishna teaches us that the *halakha* is not in accordance with the opinion of Beit Shammai.

The Gemara raises a question from the opposite perspective: **And according to Rav Nahman**, who deduced from the earlier mishna that the levirate bond is not substantial, the deduction of Rav Ashi that the levirate bond is substantial is **difficult**. **And if you would try to resolve this in a similar manner and say:** With regard to the ruling in the present mishna, which states that the sister's rival wife, i.e., the unrelated woman, **is permitted, the same is true even if Levi had died and then afterward the brother married to the other sister divorced his wife**, there is a difficulty. If that is the case, then **what does the phrase this is**, cited at the end of the mishna, **come to exclude?**^N If we follow this explanation then the same ruling would hold true in all cases. The Gemara responds: **It excludes** the case where Shimon first **married** the unrelated woman **and only afterward divorced** the sister, as in such circumstances the unrelated woman is most certainly a rival wife of Reuven's wife's sister and is therefore not permitted.

The Gemara states: **This works out well if he holds in accordance with the opinion of Rabbi Yirmeya, who said with regard to a seeming contradiction between this mishna and an earlier mishna (13a): The mishnayot are disjointed; he who taught this mishna did not teach that mishna.** The earlier mishna established the principle that if a man was married to two women, one of whom was a forbidden relative, and he divorced the forbidden relative before he died, then the rival wife is no longer prohibited to the brothers.

This dispute is based upon the following: **This tanna** from the earlier mishna **holds that death determines** her status when **she happens** before the brothers, i.e., the crucial moment for determining whether the prohibition relating to rival wives applies is the moment at which the brother dies. In other words, whether the *yevama* is permitted to the *yavam* is determined by the status of the *yevama* at that given moment. Therefore, in the case where he had married a forbidden relative and later divorced her, the rival wife would be permitted. **And this tanna** of our present mishna **holds that the original marriage determines** her status when **she happens** before the brothers. If, at the time the woman was married to the deceased brother she was forbidden as a close relative, and her rival wife was likewise forbidden as the rival wife of a forbidden relative, then even though the status of the relative had changed at the time of the death of the brother, both she and her rival wife remain forbidden.

According to this opinion, it is indeed possible to state that the phrase **this is comes to exclude** the case where **he married** one woman **and ultimately divorced** the other. According to this mishna, in that case, the rival wives would be prohibited. **However, if he holds in accordance with the opinion of Rava, who said: Actually, understand this to be the opinion of a single tanna, and he teaches** the mishna employing the style: **This, and it is unnecessary to say that**, a difficulty remains. According to Rava, both *mishnayot* maintain the position that in the case where the *yavam* married one woman and ultimately divorced the other, the rival wife would be permitted. If that is the case, **what does the phrase this is come to exclude?** In what case would the rival wife be prohibited to the *yavam*? The Gemara responds: **Perforce Rav Nahman holds in accordance with the opinion of Rabbi Yirmeya** with regard to his interpretation of the *mishnayot*.

NOTES

זו היא – This is, come to exclude – **למעוטי מאי**: The commentaries held different opinions as to the meaning of this passage and its practical implications. According to Rashi, both Rav Nahman and Rav Ashi hold in accordance with the opinion of Rabbi Yirmeya that this mishna follows the opinion that the original marriage determines the status of the woman when she happens before the brothers for levirate marriage. Therefore, according to Rav Ashi, the phrase: **This is, comes to exclude** the case where one of the husbands married to a sister divorces his wife after the brother married to the unrelated woman dies. If he subsequently marries the unrelated woman and dies, this woman is forbidden upon his death to his other brother because she became the rival wife of his wife's sister by levirate bond. This is all the more true in the case where he married her prior to divorcing his wife. For Rav Nahman, the phrase: **This is, comes to exclude** specifically the case where he married and then later divorced. Rava, however, holds that: **This is, comes to exclude** the case where he dies without divorcing his wife at all.

The Rif's opinion on this matter is complicated. He rules in accordance with Rav Ashi's opinion that if Levi, the brother married to the unrelated woman, dies before Shimon divorces the sister to whom he is married, then when Shimon also dies the unrelated woman is forbidden to his brother Reuven as the rival wife of his wife's sister through the levirate bond. He also rules that the time of death of the husband determines the woman's status with regard to levirate marriage. It is unclear why it should matter whether the divorce took place before or after Levi died. As long as Shimon had already divorced the sister before he died, the unrelated woman should not be regarded as the rival wife of a forbidden relative.

The Rif offers two explanations as to why she is nevertheless forbidden to Reuven under such circumstances. According to the first explanation, this is a special stringency that is an extension of the rabbinic decree that the levirate bond creates substantial relationships. Since at the time of Levi's death she was the rival wife of Reuven's wife's sister due to the levirate bond, she is forbidden to Reuven after Shimon's death. This is despite the fact that in the parallel case, where Shimon was actually married to her and to Reuven's wife's sister, and then Shimon divorced the sister and subsequently died, she would be permitted to Reuven, because at the time of Shimon's death she was not the rival wife of a forbidden relative.

The Rif's second, preferred explanation is that in this case, at the moment of Levi's death, the unrelated woman becomes the rival wife of Reuven's wife's sister due to the levirate bond. She is therefore rendered forbidden to Reuven as such. Even though she loses this status after Shimon divorces his wife, once she was rendered forbidden to Reuven the first time she happened before him for levirate marriage, she can no longer be rendered permitted to him.

Uncertainty with regard to the rival wife of a forbidden relative – ספק צרת ערוה: If a woman underwent a betrothal whose status is uncertain or a divorce whose status is uncertain with the deceased brother, and she was a forbidden relative to her brother-in-law, and the deceased brother had another wife, then that rival wife must perform *halitza* and may not enter into levirate marriage (Rambam *Sefer Nashim*, *Hilkhot Yibbum* 6:22; *Shulhan Arukh*, *Even HaEzer* 173:3).

Uncertainty with regard to betrothal – ספק קדושין: If both the man and the woman were standing in the public domain, or in a domain that did not belong to either, and he threw her the betrothal item but it was lost before it reached her hand, if it fell in a place that was possibly closer to him and possibly closer to her in such a way that both could have guarded the object, or both could equally have not guarded the object, then this is a case of betrothal whose status is uncertain (Rambam *Sefer Nashim*, *Hilkhot Ishut* 4:22; *Shulhan Arukh*, *Even HaEzer* 30:5).

וְלִרְבָּא, הֵנִיחָא אִי סָבֵר לָהּ כְּרִב
אֲשִׁי – "זוֹ הִיא" לְמַעוּטֵי מַת בְּלֵא
גִּיּוּשׁ, אֶלָּא אִי סָבֵר לָהּ כְּרִב נַחֲמָן:
"זוֹ הִיא" לְמַעוּטֵי מֵאִי? עַל כְּרִיחַ כְּרִב
אֲשִׁי סְבִירָא לִיהָ.

מתני' וכולן שהיו בהן קדושין
או גרושין בספק – הרי אלו הצרות
חולצות ולא מתייבמות. כיצד ספק
קדושין? זרק לה קדושין, ספק קרוב
לו ספק קרוב לה – זהו ספק קדושין.

ספק גרושין – כתב בכתב ידו ואין
עליו עדים, יש עליו עדים ואין בו זמן,
יש בו זמן ואין בו אלא עד אחד – זהו
ספק גרושין.

גמ' ואילו בגרושין ספק קרוב לו
ספק קרוב לה – לא קתני,

The Gemara raises a question from a different perspective: **And according to Rava**, who maintains that in both cases the rival wife is permitted, **this works out well if he holds in accordance with the opinion of Rav Ashi** that the levirate bond is substantial. In that case the phrase **this is** comes to exclude the case where he died without divorcing his wife. In this case the rival wife is forbidden because the entire time she was the rival wife of a forbidden relative by levirate bond. **If, however, he holds in accordance with the opinion of Rav Nahman** in this matter, **what** does the phrase **this is** come to exclude? The Gemara answers: **Perforce Rava holds in accordance with the opinion of Rav Ashi**. Accordingly, with regard to this *halakha* there is a connection between the various opinions as to how to interpret the *mishnayot* and the dispute.

MISHNA And if any of these fifteen women who are prohibited as forbidden relatives had undergone a betrothal or divorce whose status is uncertainⁿ with the deceased brother, then those women who were their rival wives must perform *halitza* and may not enter into levirate marriage since they are possibly the rival wives of forbidden relatives. The mishna elaborates: **How** could there be a situation of uncertainty with regard to betrothal?ⁿ If in the public domain he threw her an item for the purpose of betrothal and there were eight cubits between them, and the item was possibly closer to himⁿ and did not enter into her domain, and possibly closer to her, i.e., within four cubits of her, whereby she could acquire the object, **this is a case of uncertainty with regard to betrothal.**

Uncertainty with regard to divorce occurs when, for instance, **he wrote a bill of divorce in his handwritingⁿ but there are no signatures of witnesses on the document, or there are the signatures of witnesses on the document but there is no date written in it, or the date is written in it but there is only the signature of a single witness.** Since there is doubt as to whether these three kinds of bills of divorce are valid, a woman who was divorced through them is only possibly divorced, and so **this case is called uncertainty with regard to divorce.**ⁿ

GEMARA The Gemara remarks: **But yet when discussing divorce, it does not teach** the case where it is uncertain if the bill of divorce is closer to him, and uncertain if it is closer to her. It would have been appropriate to describe this case, as it parallels the case involving the object of betrothal. He could have tossed it in such a way that it was not clear to whom the bill was closer.

NOTES

ספק קרוב לו – Rashi interprets this *halakha* as pertaining to the specific instance where there were exactly eight cubits between the two (see *Gittin* 78a). The Rashba, however, maintains that those conditions were stated specifically in the case of a bill of divorce, as it is required that the bill of divorce be delivered either into the woman's hand or into her domain. In contrast, with regard to betrothal, this condition is not necessary. Therefore, it is possible to establish that in this case there were more than eight cubits between them but there was doubt as to whether the item of betrothal was close enough to her that she could successfully guard it.

כתב בכתב ידו – Rashi derives proof that a handwritten document is considered authoritative from the *halakhot* of documents where a bill of debt handwritten by the debtor is effectual even without witnesses, allowing the collection of payment of the debt from his available property. *Nimmukei Yosef* claims that these are not similar cases, since in monetary law a bill serves merely as evidence as to what had transpired, whereas a bill of divorce in

fact creates the divorce itself. Accordingly, he offers an alternative reason. Since the verse states: "And he writes her a bill of divorce," if the man divorcing his wife himself writes the bill, this sufficiently fulfills the primary requirements of the *halakha*. The opinion in the Jerusalem Talmud, however, accords with that of Rashi, as a comparison is drawn between a handwritten bill of divorce and the *halakhot* of monetary documents.

זהו ספק גרושין – In truth, there is no actual doubt with regard to the divorce itself, since by Torah law these bills of divorce are effective. If she were to remarry subsequent to such a bill she would not require a divorce from her second husband. Rather, the Sages rendered these bills of divorce disqualified for various reasons, some of which are elucidated later. In any case, since they are not to be used *ab initio*, the Sages judged a woman who was divorced through them to be a divorcée whose status is uncertain. This is how the mishna is explained in the Jerusalem Talmud (see *Penei Moshe* there).

מאי טעמא? אמר רבא: אשה זו בחזקת
היתר לשוק עומדת, ומספק אתה בא
לאוסרה – אל תאסרנה מספק.

The Gemara asks: **What is the reason** the mishna did not present this situation as well? **Rabba said:** When this type of uncertainty exists, the performance of *halitza* is not mandatory, as **this woman**, the rival wife, **has the presumptive status of being permitted to marry a man from the general public.**^N At the time of her marriage she was rendered a rival wife of a forbidden relative. **And due to an uncertainty alone would you render her forbidden** to the general public until she performs *halitza*, simply because it is unclear to us whether or not the forbidden relative had indeed been divorced? **Do not render her forbidden due to an uncertainty.** This is not, however, the case with the various bills of divorce mentioned in the mishna, for they are all certainly considered effective bills of divorce, even if the circumstances involved raise some questions or doubts.

אמר ליה אביי: אי הכי בקדושין נמי,
נימא: אשה זו בחזקת היתר ליבם
עומדת, ומספק אתה בא לאוסרה –
אל תאסרנה מספק!

Abaye said to him: **If that is so, let us say** in the case of betrothal as well that **this woman**, the rival wife, **has the presumptive status of being permitted to the yavam**^N before he betrothed the forbidden relative, **and due to the uncertainty** whether she is the rival wife of a forbidden relative **would you come and render her forbidden?** **Do not render her forbidden due to an uncertainty.** Consequently, you should permit her to enter into levirate marriage.

- הָתָם לְחִוּמָא.

The Gemara explains: **There**, with regard to betrothal, the *halakha* follows **the stringent ruling**, because the rival wife is certainly his wife and requires levirate marriage. As there is uncertainty with regard to the betrothal with the forbidden relative, the ruling is stringent; she may not enter into levirate marriage and must only perform *halitza*.

האי - חומרא דאתי לידי קולא הוא;
זמנן דאזיל הוא ומקדש לה לאחותה
קדוש ודאי,

The Gemara objects: Yet **this is a stringency that might bring about a leniency**^N in another scenario. How so? **Sometimes** that same man who betrothed the forbidden relative might **go and betroth her sister** with a **betrothal** whose status is **certain**. If one says that due to a stringency the rival wife may not enter into levirate marriage due to her possible status as the rival wife of a forbidden relative, people might come to assume that the betrothal with the forbidden relative was a valid betrothal, and that the subsequent betrothal with her sister was not valid, since she is his wife's sister. This would be assumed because they would not know that the status of the first betrothal was itself uncertain and that only due to a stringent ruling is the rival wife not allowed to enter into levirate marriage. In fact, the status of the betrothal with the sister of the forbidden relative is also uncertain. As a result of this ruling, however, people might be led to think that a man's wife, i.e., the sister of the forbidden relative, is in fact permitted.

NOTES

Has the presumptive status of being permitted to a man from the general public – בחזקת היתר לשוק עומדת – *Tosafot* raise two issues with regard to this *halakha*. The first relates to the woman's presumed permitted status: If the forbidden relative was his first wife, and later he married this other woman, only after which he performed a divorce whose status is uncertain with the forbidden relative, then clearly the rival wife is presumed to be permitted to the general public. However, if he first divorced the forbidden relative with a divorce whose status is uncertain and later married the rival wife, what reason could there be for the rival wife to have the presumptive status of being permitted? *Tosafot* explain that even here it makes sense for her to have the presumptive status of being permitted, since the marriage to the forbidden relative was certain and the divorce was uncertain. Therefore, at the time of the rival wife's marriage, due to the marriage whose status was certain that had previously taken place, the rival wife was rendered a rival wife of a forbidden relative. The Ramban, on the other hand, explains that this passage was said only with regard to the case where he married the rival wife and then later divorced the forbidden relative, but in the opposite case there would be no presumption of permissibility.

The second issue is more fundamental. It says that this woman is presumed to be permitted to the general public.

However, it would seem that she had not yet merited such a status, as she was formerly married and therefore should have the status of a married woman who is forbidden to the public; only when her husband dies is there doubt with regard to the obligation of levirate marriage, and the question arises as to whether she should be permitted to the general public or not. This question is strengthened in light of the point some commentaries add that in the context of other *halakhot*, such as when there is doubt as to whether an animal was slaughtered properly, we presume from prohibition to prohibition. In other words, the prohibition against eating the animal in its life was not nullified even after it was slaughtered before us. Similarly, the woman should remain prohibited to the general public as a man's wife until we are certain that this prohibition no longer applies. The Ramban resolves this by saying that it is possible for an animal to remain prohibited, for certain reasons, even after its death, and therefore the prohibition is not automatically terminated with its death. This is different from the case of a woman, whose prohibited status ceases upon the death of her husband. The Rashba explains that an animal does not lose its prohibited status until some act is done, i.e., the appropriate slaughtering rituals, in order to render it fit for consumption. For a woman, however, the death of her husband suffices without any additional action (see *Tosafot Yeshanim*).

Has the presumptive status of being permitted to the *yavam* – בחזקת היתר ליבם עומדת – *Tosafot* ask: This *halakha* is understandable in circumstances where he was first married to the rival wife and then later performed a betrothal whose status is uncertain with the forbidden relative, as it is clear that betrothal whose status is uncertain is not strong enough to nullify the rival wife's status as being permitted to the *yavam*. If, however, the betrothal whose status is uncertain took place first, then why would one assume the rival wife was permitted to the *yavam*? They explain that because the forbidden relative was originally single, and there is a doubt whether she lost this status, she maintains her presumed status as unmarried, and her rival wife cannot be rendered forbidden due to a betrothal whose status is uncertain (*Tosafot Yeshanim*).

A stringency that might bring about a leniency – דאתי לידי קולא – *Tosafot*: Often the Sages are stringent in places of doubt in order to prevent individuals from transgressing, and this is generally the reason for the tendency toward stringency. Occasionally, however, such as here, it is possible that stringency in one place will lead to a leniency in another. In such cases, it is best to leave the matter alone.

ואי נמי זימנין דאָתא אַחַר וּמִקְדָּשׁ לָהּ
לְדִידָה קְדוּשֵׁי וְדאִי, וְכִינן דְּאָסֵר לָהּ מִר
לְצָרָה לְיִיבּוּמִי, אֲמַרִי: דְּקָמָא – קְדוּשֵׁין
וּדְבִתְרָא – לֹא קְדוּשֵׁין.

Alternatively, sometimes another man might come and betroth the forbidden relative herself with a betrothal whose status is certain, and since the Master rendered it prohibited for the rival wife to enter into levirate marriage, people would say that the betrothal of the first man, i.e., the deceased brother, was a fully effective betrothal, and that the betrothal of the latter man was not a valid betrothal. If she was married to the first man, then she is forbidden to the second as the man's wife, and betrothal cannot take effect with her. However, since the status of her betrothal to the first man was uncertain, then she is also considered possibly betrothed to the second man and would require a divorce from him as well. As a result, one can find a situation that would lead people to think that a man's wife is in fact permitted.

Perek III

Daf 31 Amud a

NOTES

ומידע – All will know that this is merely a stringency – ידעי דחומרא בעלמא הוא: The Rosh raises an objection: How would they know that this is a stringency? With regard to the case where there is a betrothal whose status is uncertain, if the rival wife is required to perform *halitza* because she is not exempt from levirate marriage, it would be known that this is a stringent measure. With regard to divorce, however, they might think that the man is performing the *halitza* simply because he does not wish to marry her for some other reason, and so there is no proof from here that there is a stringency involved. He resolves this by saying that Abaye is objecting to Rabba's line of reasoning, where it was suggested that requiring *halitza* would constitute a stringency that could lead to a leniency. In that context it was clear that Rabba assumed that people were aware of why *halitza* was being performed (*Tosefot HaRosh*).

If she performs *halitza* she might also enter into levirate marriage – אם חולצת מתנייבמת: The following objection could be raised: Since in several places the Sages declared that a woman must perform *halitza* due to some doubt, why did they not fear that she might mistakenly enter into levirate marriage in those cases as well? The commentaries resolve this by saying that if the concern and the doubt are general, then there is no reason to assume that they might make this mistake. Here, however, a new decree is being introduced by requiring *halitza* for this woman, and therefore it is necessary to check that in fact all of the problems are solved thereby (*Yosef Lekah*).

Let her enter into levirate marriage and there is no problem with that – תתניבם ואין בכך כלום: The talmudic discussion is as follows: Initially, the Gemara assumed that the concern lest she enter into levirate marriage was that this would nullify the rabbinic decree requiring the woman to perform *halitza* in this case. This response indicates that the concern is not for the rabbinic ordinance, but rather for the status of the woman, and since here she is presumed permissible, there is no reason to be concerned lest she enter into levirate marriage (*Ritva*; see *Melo HaRo'im*).

כִּינן דְּקָא מְצָרְכָּת חֲלִיצָה – מִידַע יָדַעִי
דְּחֻמְרָא בְּעִלְמָא הוּא. אִי הָכִי גִירוּשֵׁין
נָמִי לִיתָנִי, וְלִצְרָכָה חֲלִיצָה, וּמִידַע יָדַעִי
דְּחֻמְרָא בְּעִלְמָא הוּא!

אם אתה אומר חולצת – מתנייבמת.
הכא נמי: אם אתה אומר חולצת –
מתנייבמת! ותנייבם, ואין בכך כלום –
אחזקה קא קיימא.

אִיתִיבֵיהּ אַבְיִי: נָפַל הַבַּיִת עָלָיו וְעַל בֵּת
אָחָיו, וְאֵין יָדוּעַ אִיָּהּ מֵהֶם מִתְּרַשּׁוּן –
צָרָתָהּ חֻלְצָת וְלֹא מִתְּנִיבָמָת.

אמאי? הכא נמי נימא: אשה זו בחזקת
היתר לשוק עומדת, ומספק אתה בא
לאסרה – אל תאסרנה מספק!

Rabba answered: Since you require *halitza* and you do not exempt her completely, all will know that this is merely a stringency^N and that the Sages did not decide with certitude that the first betrothal was fully valid. Consequently, they would not come to disregard the other betrothal. Abaye raised a challenge: If so, let the mishna teach the case where it is uncertain whether the item is closer to him or closer to her with regard to divorce, and stipulate that she requires *halitza*. And they would know that this is merely a stringency and not make a mistake.

He answered him: A mistake could in fact be made here, as, if you say that she must perform *halitza* then she may also enter into levirate marriage. People might mistakenly think that if she is suitable for *halitza* then she is also suitable for levirate marriage, and as a result the woman might enter into levirate marriage, despite the fact that it is forbidden for her to do so. Abaye objected: Here too, in the case of uncertain betrothal, the concern exists that if you say that she performs *halitza* then she might also enter into levirate marriage.^N Rabba answered: So let her enter into levirate marriage, and there is no problem with that.^N In this instance she remains with her presumptive status as permitted because she was originally assumed to be permitted and was rendered forbidden only due to our concern. However, there would be no actual transgression involved even if she were to enter into levirate marriage.

Abaye raised an objection to Rabba by citing a case where even in places of doubt, the woman requires *halitza*. As we learned in a mishna (67b): A house fell on him, on a certain man, and on his brother's daughter to whom this man was married, and he was childless, and it is unknown which of them died first. If the deceased wife had a rival wife, then her rival wife must perform *halitza* but may not enter into levirate marriage. If the man had died first, then at the time of his death the rival wife was forbidden to the *yavam* as the rival wife of his daughter and exempt from levirate marriage. If, however, the daughter had died first, then at the time of the husband's death the second wife was not the rival wife of a forbidden relative, and requires levirate marriage. It is due to this doubt that she must perform *halitza* and may not enter into levirate marriage.

And according to Rabba's opinion, why is that so? Here too, let us say: This woman, the rival wife, has the presumptive status of being permitted to marry a man from the general public. This is because she was exempt from levirate marriage for the entire period of her marriage as the rival wife of a forbidden relative. And due to the uncertainty whether her rival wife was the first to die you come to render her forbidden and require that she perform *halitza*. Do not render her forbidden due to an uncertainty.

A bill of divorce about which it is uncertain if it was closer to her – **גַּט שֶׁסֶפֶק קְרוֹב לָהּ** – If a man and his wife were standing in the public domain, or in a domain that did not belong to either of them, and the husband threw her a bill of divorce, the *halakha* is as follows: If it was closer to her, she is divorced. If it was closer to him, she is not divorced. If it was midway between them, she is both divorced and not divorced. In such a case, if her husband was a priest she would be forbidden to him, and if she herself was a forbidden relative with regard to her brother-in-law, then her rival wife must perform *halitza* and may not enter into levirate marriage (Rambam *Sefer Nashim*, *Hilkhot Geirushin* 5:13; *Shulhan Arukh*, *Even HaEzer* 139:13).

וכי תימא: הכא נמי לחומרא – חומרא דאית לידי קולא הוא, שאם אתה אומר חולצת – מתניבמת! גירושין דשכיחי גזרו בהו רבנן, מפולת דלא שכיחי – לא גזרו בהו רבנן.

And if you would say: Here too, we rule more stringently due to the uncertainty. Nevertheless, this would be a stringency that brings about a leniency, for if you say that she must perform *halitza*, she may also enter into levirate marriage. However, it is forbidden for her to enter into levirate marriage, because she is possibly forbidden to the *yavam* as the rival wife of his daughter and therefore forbidden just like the daughter herself. Rabba replied: In cases of divorce, which are common, the Sages issued a rabbinic decree preventing her from performing *halitza* due to a concern that if she were required to perform *halitza* then she may enter into levirate marriage as well. In cases of collapse, which are not common,^N the Sages did not issue a rabbinic decree, because they did not introduce decrees with regard to uncommon matters.

אי נמי: גירושין דקיימא ערוה דקא מוכת, וצרתה קמצרכת לה חליצה – אמרי: קמו ביה רבנן בגיטא דגיטא מעליא הוא, ואתו לייבומי לצרה. מפולת – מי קמו בהו רבנן במפולת?

Alternatively, there is another reason to differentiate between the cases. In the case of divorce where there is a forbidden relative who indicates that the rival wife is forbidden due to her status as the rival wife of a forbidden relative, and you require that her rival wife perform *halitza*, people will say: The Sages determined that this bill of divorce is a full-fledged bill of divorce. Consequently, they required her rival wife to perform *halitza*, and people may come to consummate the levirate marriage with the rival wife based on this mistaken assumption. In cases of collapse, however, could the Sages have determined who died first in the collapse? As it is known to all that there was a doubt that could not be clarified, it is clear that the Sages required the rival wife to perform *halitza* only due to this uncertainty. Therefore, there is no concern that she would come to enter into levirate marriage because of this *halitza*.

וגבי גירושין מי לא תנן? והתנן: היתה עומדת ברשות הרבים וזרקו לה, קרוב לה – מגורשת, קרוב לו – אינה מגורשת. מחצה על מחצה – מגורשת ואינה מגורשת.

The Gemara asks: But did we not learn in a mishna about the case where it is uncertain whether the bill of divorce is closer to him or closer to her with regard to situations of divorce whose status is uncertain? And didn't we learn in a mishna: In a case where his wife was standing in the public domain and he threw her the bill of divorce, if the bill landed closer to her, she is divorced. If it was closer to him, she is not divorced. If it was half and half, i.e., if the bill of divorce landed midway between the man and the woman, there is uncertainty whether she is divorced or whether she is not divorced.^H

ואמרינן: למאי הלכתא – דאי בהן הוא אסורה ליה, ואי ערוה היא – צרתה בעיא חליצה. ולא אמרינן שאם אתה אומר חולצת מתניבמת!

And we say: With regard to what *halakha*^N was the ruling said that she is both divorced and not divorced? The Gemara explains that this affects two areas of *halakha*. The first is that if the man divorcing his wife is a priest, then his wife is forbidden to him due to the uncertainty that she may in fact be divorced through that bill of divorce. Consequently, he would then be unable to remarry her. The second ramification is that if the woman being divorced was a forbidden relative to her husband's brother, and her husband died childless, then her rival wife would require *halitza*. The mishna indicates that in this type of divorce whose status is uncertain as well, the Sages require the rival wife to perform *halitza*, and we do not say that if you say that she must perform *halitza*, she may enter into levirate marriage. Here there is no such concern.

NOTES

מפולת דלא שכיחי – Cases of collapse, which are not common: The Rashash raises an objection: If the Sages did not enact rabbinic decrees for matters that were not common, then why did they nevertheless issue a decree for the woman in this case, i.e., that she must perform *halitza*? He responds that they decreed that she must perform *halitza* for a different reason that is common: They were concerned that others might conclude that any time a forbidden relative dies, the rival wife does not require *halitza*. In *Hiddushei Batra* this is resolved by the explanation that in cases where the woman's presumptive status cannot be conclusively determined, it cannot be relied upon with regard to Torah law. In this case, as there is no way to determine whether the rival wife was the rival wife of a forbidden relative at the time of death, her presumptive status cannot be relied upon and she must perform *halitza*. However, the concern that others might mistakenly take

her in levirate marriage is not commonplace, and therefore the Sages did not enact a decree on the basis of such a concern.

ואמרינן למאי הלכתא – And we say: With regard to what *halakha*: One could object to this interpretation of the mishna in light of the fact that it was asserted by the *amora'im*. How can the Gemara then object to Rabba, an *amora* himself, from their statement? In *Hiddushei Batra* the answer is given that perhaps this interpretation of the mishna was an authoritative tradition that had been passed down. *Arukh LaNer* writes that this interpretation could be deduced from the language of the mishna itself, since it does not state that she is a divorcée whose status is uncertain but rather that she is both divorced and not divorced, implying that the matter must be ruled stringently, as though she were both divorced and not divorced.

The mishna... is referring to one set – **בְּכֵת**. **מִתְנִיתִין**: The commentaries have differing opinions as to what is meant by uncertainty with one set of witnesses. According to Rashi and those who follow his opinion, this is a case where one witness says that the bill of divorce was closer to him and one witness says that it was closer to her. According to Rabbeinu Hananel and the Rashba, the witnesses themselves are uncertain with regard to the facts (see *Beit Shmuel* and the later commentaries).

Uncertainty in matters of Torah law...uncertainty in matters of rabbinic law – סְפִיקָא דְאִוּרִיָּתָא. **סְפִיקָא**: In cases of uncertainties that arise either because the exact circumstances cannot be ascertained or because no clear halakhic decision has emerged, the principle is: In cases of Torah law, one adopts the stringent practice; in cases of rabbinic law, one adopts the lenient practice.

Place two against two – אוֹקִי תְּרִי לְבִהְדִּי תְּרִי: Although it seems here that the Gemara concludes that whenever two witnesses contradict another two witnesses it is considered an uncertainty in matters of rabbinic law, there are nevertheless those who disagree with this opinion and hold that this is considered a case of uncertainty in matters of Torah law. There are also those who differentiate between cases of prohibitions and monetary cases. The basis for this debate lies primarily in the question of whether both testimonies, despite the contradiction between them, nevertheless negate fully the previously existing presumptions altogether, or perhaps, since there is no definitive testimony on the matter, the original presumption remains in place (see *Derush VeHiddush* on marriage contracts).

HALAKHA

The property of Bar Shatya – נִכְסֵי דְּבַר שְׁטִיָּא: With regard to one who is sometimes sane and sometimes insane, when he is sane he is like a fully responsible agent for all matters, and all of his actions are binding. When he is insane, all of his actions are null and void.

If two witnesses come forth and say that he made a sale while insane, and two others testify that he made the sale while sane, any real estate remains in the possession of the seller, and movable property remains in the possession of the possessor (Rema, in accordance with *Tosafot* and *Rosh*; Rambam *Sefer Kinyan*, *Hilkhot Mekhira* 29:5; *Shulhan Arukh*, *Hoshen Mishpat* 235:21).

הָא אִיתְמַר עָלֶיהָ, רַבָּה וְרַב יוֹסֵף דְּאָמְרִי תְּרוּוּיָהּ: הֲכָא בְּשֵׁתִי בִּיתִי עֲדִים עֲסָקִין, אַחַת אוֹמֶרֶת: קְרוֹב לָהּ, וְאַחַת אוֹמֶרֶת: קְרוֹב לוֹ, דְּהִוָּה לִיָּה סְפִיקָא דְאִוּרִיָּתָא. וּמִתְנִיתִין דְּהָכָא בְּכֵת אַחַת, דְּהִוָּה לִיָּה סְפִיקָא דְרַבָּנָן.

וּמָמַאי דְּמִתְנִיתִין דְּהָכָא בְּכֵת אַחַת? דּוּמְיָא דְּקְדוּשִׁין, מַה קְדוּשִׁין בְּכֵת אַחַת – אִף גְּרוּשִׁין בְּכֵת אַחַת. וְקְדוּשִׁין גּוֹפְיָהּ מִמָּא דְּבִכְתּ אַחַת, דְּלָמָּא בְּשֵׁתִי בִּיתִי עֲדִים? אִי בְּשֵׁתִי בִּיתִי עֲדִים – תְּתִיבָם, וְאִין בְּכָךְ בְּלוּם.

קִיָּמִי עֲדִים וְקָאֲמְרִי "קְרוֹב לָהּ" וְאַתְּ אֲמַרְתָּ תְּתִיבָם וְאִין בְּכָךְ בְּלוּם? וְתוֹ: בְּשֵׁתִי בִּיתִי עֲדִים נָמִי סְפִיקָא דְרַבָּנָן הִיא. דְּאָמְרִין: אוֹקִי תְּרִי לְבִהְדִּי תְּרִי, וְאַשְׁהּ אוֹקְמָה אַחְזָקָה.

מִיָּדִי דְּהִוָּה אֲנִכְסִי דְּבַר שְׁטִיָּא. דְּבַר שְׁטִיָּא זְבִין נִכְסִי, אֶתּוּ בִּי תְּרִי וְאָמְרִי: בְּשָׂהוּא חָלִים זְבִין, וְאַתּוּ בִּי תְּרִי וְאָמְרִי: בְּשָׂהוּא שׁוֹטֵט זְבִין. וְאָמְרִי רַב אֲשִׁי: אוֹקִי תְּרִי לְהָדִי תְּרִי

The Gemara responds: **But wasn't it stated with regard to that mishna that this is referring to a very specific set of circumstances?** It is **Rabba and Rav Yosef who both say**: The doubt here does not result from the facts of the case themselves, but from conflicting testimonies and an inability to decide between them. **Here, we are dealing with two sets of witnesses, one of which says that the bill fell closer to her, and one of which says that it fell closer to him.** This, then, is an **uncertainty in matters of Torah law**, for in this case there are two testimonies, each one complete by itself, yet they contradict one another. Such instances are deemed to have the status of an uncertainty with regard to Torah law, and therefore the ruling is stringent. **But the mishna here is referring to one set^N of witnesses who were divided in their testimony or who could not clarify exactly what had occurred.** This is considered to be an **uncertainty in matters of rabbinic law^N** alone, as there is only a single uncorroborated testimony, and in cases of uncertainty in matters of rabbinic law the ruling is lenient.

The Gemara asks: **And from where is it known that the mishna here is referring to a case of uncertainty with one set of witnesses?** The Gemara responds: **It is similar to that of betrothal.** Just as with regard to betrothal it is referring to a case of uncertainty with one set of witnesses, so too, with regard to divorce it is referring to a case of one set of witnesses. The Gemara wonders: **And with regard to betrothal itself, from where is it known that the mishna is referring to a case of uncertainty that involves one set of witnesses?** Perhaps it is referring to a case of two sets of witnesses? The Gemara answers: **If the mishna is referring to a case of two sets of witnesses who contradict one another, then let her enter into levirate marriage, and there is no problem with that, as there are two witnesses testifying that there was never a betrothal.** Therefore, both the cases of betrothal and divorce must be referring to a situation where there is one set of witnesses.

The Gemara challenges: How can one say that? After all, **there are witnesses who are standing before us and saying that the object of betrothal fell closer to her.** Accordingly, she was betrothed and her rival wife is the rival wife of a forbidden relative. **And yet you say to let her enter into levirate marriage and there is no problem with that? And furthermore, with regard to the fundamental difference between two pairs of witnesses and a single pair, the case of two pairs of witnesses is also considered an uncertainty in matters of rabbinic law.** This is not considered to be uncertainty with regard to the reality of what actually happened, which would be a case of uncertainty in matters of Torah law, but rather a contradiction between two opposing testimonies. In these cases **we say: Place two witnesses against two^N witnesses, and let the two testimonies cancel each other out.** Therefore, the *halakha* would be to **let the woman remain in her original presumptive status.** Accordingly, this type of uncertainty stems only from rabbinic law and not from Torah law.

The Gemara cites a proof for this: This is **just as it is in the case concerning the property of a man named Bar Shatya,^{HB}** who was referred to by this name because he would occasionally go insane. The case is as follows: **Bar Shatya sold property. Two witnesses came forward and said that he sold it when he was healthy and therefore the sale was valid. And two others came forward and said that he sold it when he was insane, and so the sale was void. Rav Ashi said with regard to this matter: Place two witnesses against two witnesses and let the testimonies cancel each other out.** As there is no valid testimony to rely on,

BACKGROUND

Bar Shatya – בַּר שְׁטִיָּא: Bar Shatya was a man who suffered from a psychological ailment that caused him to suffer periodic fits, but who nevertheless had his wits about him between bouts. In other words, he was sometimes sane and sometimes insane. With some of these ailments the fits occur with relative regularity, and with some they are caused by specific circumstances, but there can most certainly be periods when the individual is sane, lacking any abnormalities in his behavior whatsoever. It is for this

reason that the *halakha* concludes that at times of sanity he is considered a normal individual, both with regard to his obligation to fulfill mitzvot and the legal validity of his actions. However, since the bouts of insanity occur at various times, and not always in a manner that is immediately recognizable to all, it is important to determine his mental state at the relevant times in order to ascertain the legal validity of specific actions.

וְאֶרְעָא אִוקְמָא בְּחֻקָּתָא בְּרִי שְׁטִיָּא.

let the land remain in the possession of Bar Shatya. Since no substantiated proof was brought forth, the land remains in the hands of its current possessor. As such, the same should be true with regard to cases of betrothal and divorce whose status is uncertain; the woman should remain in her former presumptive status.

אָלָא אָמַר אַבְי: "יָגִיד עָלָיו רִיעוֹ"; תִּנָּא בְּקִידוּשִׁין – וְהוּא הָדִין לְגִירוּשִׁין, תִּנָּא בְּגִירוּשִׁין – וְהוּא הָדִין לְקִידוּשִׁין.

Rather, Rabba's understanding of the mishna must be rejected, and Abaye said: The mishna should be understood according to that which is written: "His fellow speaks of him" (Job 36:33). This principle teaches that a related case can be inferred from the single case cited. The mishna teaches the case where it is uncertain whether the item is closer to him or closer to her with regard to betrothal, and the same is true with regard to divorce if it is uncertain whether the bill of divorce fell closer to him or closer to her. Similarly, the mishna teaches the case of bills that were written in a questionable manner with regard to divorce, and the same is true with regard to betrothal.

אָמַר לִיה רַבָּא: אִי יָגִיד עָלָיו רִיעוֹ – מָאִי "וְהוּא" דְּקִתְנִי?

Rava said to him: If you understand that the legal ruling in all of these cases is the same, and the mishna was written in the style of: His fellow speaks of him,ⁿ then what is the meaning of the term: This is, that the mishna teaches? The mishna in fact emphasizes that this is a betrothal whose status is uncertain and this is a divorce whose status is uncertain, which indicates this case alone and no other.

אָלָא אָמַר רַבָּא: כָּל שֵׁשׁ בְּקִידוּשִׁין – יֵשׁ בְּגִירוּשִׁין, וְיֵשׁ בְּגִירוּשִׁין מִה שְׁאִין בְּקִידוּשִׁין. וְ"וְהוּא" דְּגִירוּשִׁין לֹא דִּוְקָא, אָלָא מִשּׁוּם דְּתִנָּא "וְהוּא" בְּקִידוּשִׁין – תִּנָּא נָמִי "וְהוּא" בְּגִירוּשִׁין. וְ"וְהוּא" דְּקִידוּשִׁין לְמַעוּטֵי מָאִי? לְמַעוּטֵי זְמַן, דְּלִיכָא בְּקִידוּשִׁין.

Rather, Rava said: All of the cases that exist with regard to betrothal whose status is uncertain exist in cases of divorce as well. However, there are some cases of uncertainty with regard to divorce that do not exist with regard to betrothal, as betrothal performed with a questionable bill is not disqualified. Accordingly, the term: This is, utilized in the mishna with regard to divorce, is not specific and does not imply exclusion of the case where it is possibly closer to him and possibly closer to her. Rather, because the mishna teaches the ruling of: This is, with regard to betrothal, where it is specific it teaches the phrase: This is, with regard to divorce as well. The Gemara asks: And what does the phrase: This is, mentioned with regard to betrothal, come to exclude? The Gemara answers: It comes to exclude the matter of the date, which is not essential with regard to betrothal, as when one betroths a woman by means of a document the date need not be written.

וּמִפְנֵי מַה לֹּא תִקְנוּ זְמַן בְּקִידוּשִׁין? הֲנִיחָא לְמַאן דְּאָמַר מִשּׁוּם פִּירִי – אֲרוּסָה לִית לָהּ פִּירִי.

The Gemara asks about this matter itself: And for what reason did they not institute that the date must be included in the betrothal document? This policy works out well according to the one who says that the reason the Sages instituted that the date must be written on a bill of divorce is due to the profits. As the husband receives the profits from the wife's properties during the period of their marriage, it was necessary to write a date on the bill of divorce in order to know at what point his right to receive or sell these items was terminated. However, it was not necessary to include a date on a deed of betrothal, as this document serves only to create a bond of betrothal, and there are no profits from a betrothed woman.^h A husband does not have the right to receive profits from his betrothed's property until she is his full-fledged wife.

NOTES

If it was written in the style of his fellow speaks of him, etc. – *Tosafot* suggest a different difficulty with this solution: If the Gemara was using this style, it could have listed all the examples in the context of the first betrothal, and only one in the context of divorce. Similarly, the Rivan points out that Abaye was not precise in his explanation of the mishna, because according to all opinions there is no requirement to include the date in betrothals, and therefore it is clear that not all matters stated with regard to divorce are relevant to cases of betrothal. These issues can be resolved by suggesting that the Gemara raised only a single difficulty among several possible difficulties that could have been raised.

HALAKHA

אֲרוּסָה – There are no profits from a betrothed woman – לִית לָהּ פִּירִי: The husband receives the profits from his wife's property following their marriage, but not the profits from

the property of a woman to whom he was only betrothed (Rambam *Sefer Nashim*, *Hilkhot Ishut* 12:1, 3; *Shulhan Arukh*, *Even HaEzer* 69:1, 3).

Due to the daughter of his sister – משום בת אחותו: The Sages instituted that one must include the date of the writing in the bill of divorce just as in other legal documents. This is in order that he not come to cover for his wife if she were licentious, giving her an undated bill so that she might claim that her misdeeds took place after she received the bill of divorce (Rambam *Sefer Nashim*, *Hilkhot Geirushin* 1:24; *Shulhan Arukh*, *Even HaEzer* 127:1).

אֵלָא לְמַאן דְּאָמַר מְשׁוּם בֵּת
אֲחֹתוֹ – לִיתְקִין זְמַן!

However, according to the one who says that the Sages instituted the requirement of including the date in the bill of divorce **due to** a case where a man is married to **the daughter of his sister**,^{HN} then **they should institute** that he must include **the date** in a deed of betrothal as well. Occasionally a man might marry the daughter of his sister, whom he loves all the more because she is his close relative in addition to being his wife. If he knows that she acted licentiously while she was married to him, he might grant her a bill of divorce without a date so as to save her from the death penalty. Were witnesses to come forth and testify to her behavior, she could claim that at the time of her licentious act she was already a divorced woman. If this was indeed the reason for the Sages' instituting the requirement of including the date in a bill of divorce, then the date should be included in a deed of betrothal as well, for an undated document of betrothal could be utilized equally well to prove the innocence of the daughter of his sister. If she acted licentiously in the period prior to her betrothal, she would not be penalized. Therefore, the date should be written on this document as well.

מְשׁוּם דְּאִיכָּא דְּמַקְדֵּשׁ בְּכֶסֶּפָּא
וְאִיכָּא דְּמַקְדֵּשׁ בְּשִׁטְרָא – לֹא תִקֵּן
רַבֵּנּוּ זְמַן.

The Gemara answers: **Because there are those who betroth by means of money and those who betroth by means of a deed**,^N the Sages did not institute that the date must be written in the document. As the date of the betrothal has no place in the act of betrothal by means of money, the Sages did not distinguish between the various modes of betrothal.

אָמַר לִיהוּבָא רַב אֲחָא בְּרִיהּ דְּרַב יוֹסֵף
לְרַב אֲשִׁי: וְהָא עֲבָדָא, דְּאִיכָּא דְּקִנְיָ
בְּכֶסֶּפָּא וְאִיכָּא בְּשִׁטְרָא, וְתִקֵּן רַבֵּנּוּ
זְמַן! הֲתָם רַבֵּיכֶם בְּשִׁטְרָא, הֲכָא –
רַבֵּיכֶם בְּכֶסֶּפָּא.

Rav Aha, son of Rav Yosef, said to Rav Ashi: **But with regard to a slave**,^N where there are those who acquire them with money and there are those who acquire them with a deed, the Sages nevertheless **instituted** that the date must be written in a slave's deed of purchase. He responded: **There**, with regard to slaves, **the majority** of people purchase them **by means of a deed**. **Here**, with regard to betrothal, **the majority** of people perform betrothal **by means of money**.

אִיבְעִיתִי אִימָא: מְשׁוּם דְּלֹא אֶפְשָׁר.
הֵיכִי לִיעֲבִיד? לִינְחָה גְּבִי דִידָהּ –
מִחֻקָּה לִיהוּבָא. לִינְחָה גְּבִי דִידָהּ – זְמַנָּה
דְּבֵית אֲחֹתוֹ הִיא, וּמִחֻפָּה עָלֶיהָ.

If you wish, say a different reason why the Sages did not institute that the date must be included in a deed of betrothal. This is **due** to the fact that it is **not possible** to institute this in a manner that will ensure that no problems will result. **How would we do this?** If we leave the deed of betrothal with her, she will erase the date, and so it would remain impossible to prove the juncture at which her licentious behavior took place. If we leave the deed with him, then there are times when she is his sister's daughter and he might cover for her by erasing the date himself.

NOTES

Due to the daughter of his sister – משום בת אחותו: Marriage to any relative, and not only to the daughter of one's sister, is cause for concern in this regard, because a man is apt to show additional favor to her since she is part of his family. Moreover, since she is his relative, he may wish to save his family from disgrace and would therefore tend to cover for her misbehavior (see Rivan). The daughter of his sister was mentioned specifically because the Sages recommended marrying the daughter of one's sister, and therefore this phenomenon was relatively common.

There are those who betroth by means of money and those who betroth by means of a deed – וְאִיכָּא דְּמַקְדֵּשׁ בְּכֶסֶּפָּא וְאִיכָּא דְּמַקְדֵּשׁ בְּשִׁטְרָא: There are three ways of betrothing a woman. The first is with money or its equivalent, such as a ring, which the bridegroom gives to the bride. The second is with a document in which he attests that he is betrothing the woman. The third is by engaging in sexual intercourse for the explicit purpose of betrothal. The third method, though legally valid, was banned by the Sages to prevent licentiousness.

But with regard to a slave – וְהָא עֲבָדָא: Rashi and those who follow his line of reasoning comment that the issue being discussed is the deed of purchase for a slave, and the date is required in order to know at what moment ownership of all of the slave's possessions was transferred to his master. According to this opinion, the reasoning applies not only to the case of a slave but also to all deeds of purchase. This interpretation is supported by the use of the term: Who acquire.

However, *Tosafot* and most other early commentaries object to this interpretation for various reasons. They explain that the issue at hand is a slave's bill of release, which requires a date in order to determine at what point he is allowed to marry a Jewish woman, or at what point a maidservant would be allowed to marry a Jew. Indeed, the master might have an interest in covering for children born to his slave so as to render them eligible for marriage. These commentaries interpret the word: Acquisition, as referring to the slave acquiring himself, i.e., acquiring his freedom, despite the linguistic difficulties with such a reading.

They see what is written and come forth to testify – **הָיוּ רְאוּ וְעָמְדוּ לְתַלְּמוּ**: Some early commentaries ask: Why not leave the document with the witnesses who signed it and let its validity be established by the ratification of legal documents, just as would happen with any other bill? See *Tosefot HaRosh*, who explains why there is more reason for concern here than with other documents. The Rashba writes that since this document is not ratified in the usual manner and it merely serves as a form of reminder, the *halakhot* relevant to other bills do not apply to it. The Meiri explains that the ratification of a document is legally sufficient only in monetary cases; in cases involving prohibitions the Sages were reluctant to rely upon this.

From their mouths and not from their writings – **מִפִּיהֶם וְלֹא מִכְתָּבָם**: There are several different opinions among the early commentaries as to how to understand this ruling, as well as how to understand the principle that any document that has had the signatures of the witnesses confirmed is considered valid, regardless of whether the witnesses themselves remember the testimony.

The reason that written testimony is invalid depends on how one views its role. According to Rashi and the Razah, since a bill of debt is not written without the borrower's explicit knowledge, its validity does not rest upon what is written by the witnesses but rather upon the statement of obligation expressed by the one who wrote the document. According to the Ramban, however, testimony written as a deed falls under a legal category of its own, and is considered as though the testimony were checked and affirmed by the court. Therefore, the disqualification of written testimony expressed by the principle of: From their mouths, applies only in cases where there is no legal document.

In the opinion of Rabbeinu Tam, the disqualification of: From their mouths, applies only where the witnesses are incapable of testifying orally, but if they are capable of testifying, then their testimony is admissible in written form as well. The Rambam is of the opinion that according to Torah law there is no legal validity to written testimony, but the Sages nevertheless ordained that validity of documents could be legally established by the signatures of witnesses (see Rif and his commentaries; *Tosafot*; Ramban).

It comes to save her – **לְהַצִּילָהּ דִּידָהּ קָאָתִי**: Most of the commentaries explain according to the opinion of *Tosafot*, who hold that since the bill of divorce renders her an unmarried woman, she is fearful that if she erases any part of it, it might be disqualified. This is not the case with a deed of betrothal, which renders her a married woman. The same explanation is mentioned by the Ramban, Rashba, and the Ritva. See also Rashi's interpretation.

Married to three unrelated women – **נְשֻׂאֵין שְׁלֹשׁ נָכְרִיּוֹת**: The early commentaries, among them the Rivan, point out that the *tanna* could have taught here that one of the brothers was single, as the marital status of the third brother does not impact the *halakha*. The *Tiferet Yisrael* explains that because the status of the third brother has no legal implications, the *tanna* opted to teach this in the most concise fashion.

A double levirate relationship – **זִיקַת שְׁנֵי יָבָמִין**: The early commentaries remark that this really means that she requires two levirate marriages and not a levirate bond with two *yevamin*. The concern here is that she has two levirate obligations from two different husbands, which is referred to in other sources as: A wife of two deceased men.

לִינְחָה גְּבִי עֲדִים, אִי דִּזְכִּירִי – לִיתּוֹ לְיִסְהוּד, וְאִי לֹא – זְמַן דְּחֻז מְכַתְּבָא, וְאִתּוֹ מְסַהֲרִי. וְרַחֲמֵנָא אָמַר: "מִפִּיהֶם", וְלֹא מִכְתָּבָם.

If we leave it with the witnesses who signed the document, if they remember themselves the date when the deed was given to the woman, the date need not be written in the document itself, for let them come forth and testify from their memory. And if they do not remember by themselves, then there are times when they see the date that is written and come forth to testify^N on that basis. And the Merciful One states: "By the mouth of two witnesses, or at the mouth of three witnesses, shall a matter be established" (Deuteronomy 19:15). From this verse it is derived: **From their mouths, and not from their writings**,^{NH} indicating that testimony is proper only if the individual stated it of himself, and not on the basis of what is written.

– אִי הָכִי בְּגִירוּשֵׁין נָמִי יִנְמָא הָכִי! הָתָם לְהַצִּילָהּ דִּידָהּ קָאָתִי, הָכָא – לְחֻבָּה דִּידָהּ קָאָתִי.

The Gemara asks: If that is so, let us say that with regard to divorce as well. In cases of divorce there should also be a concern lest the woman erase the date on the bill of divorce in her possession. The Gemara responds: **There**, in the case of a bill of divorce, the date comes to save her,^N since the bill of divorce removes her status as a man's wife. She therefore would fear erasing anything lest she disqualify the bill altogether, thereby possibly rendering herself a married woman again (Ramban). **Here**, however, when dealing with a deed of betrothal, the date comes to her disadvantage, since until now she was presumed to be a single woman, and if there is no date on the document then she clearly cannot be punished.

מִתְנִי' שְׁלֹשָׁה אַחִין, נְשֻׂאִין שְׁלֹשׁ נָכְרִיּוֹת, וּמֵת אֶחָד מֵהֶן, וְעָשָׂה בָּהּ הַשְׁנִי מֵאִמֶּר וּמֵת – הָרִי אֵלּוּ חֻלְצוֹת וְלֹא מְתִיבָמוֹת.

MISHNA In the case of three brothers who were married to three unrelated women,^N and one of the brothers died, the following occurred: The second brother performed levirate betrothal with the wife of the deceased brother and before he was able to consummate the levirate marriage he died as well, leaving behind two women who happen before the third brother for levirate marriage. Then those two women must perform *halitza* and may not enter into levirate marriage.

שְׁנֵי אֶחָד מֵהֶן יָבָמָהּ יָבָא עָלֶיהָ שְׁעָלֶיהָ זִיקַת יָבָם אֶחָד וְלֹא שְׁעָלֶיהָ זִיקַת שְׁנֵי יָבָמִין. רַבִּי שְׁמַעוֹן אָמַר: מֵיִבָּם לְאִיזוֹ שְׁרִיצָה, וְחֻלְץ לְשִׁנְיָהּ.

As it is stated: "If brothers dwell together and one of them dies and he has no child, the wife of the dead man shall not be married outside of the family to one not of his kin; her brother-in-law will have intercourse with her" (Deuteronomy 25:5). This teaches that a woman eligible for levirate marriage is one who has one levirate relationship and not one who has a double levirate relationship.^{NH} In this case, the wife of the first deceased brother requires levirate marriage due to both the marriage with her first husband as well as the levirate betrothal with the second brother. Rabbi Shimon says: He may consummate the levirate marriage with whichever woman he wishes and then perform *halitza* with the second.

HALAKHA

From their mouths and not from their writings – **מִפִּיהֶם וְלֹא מִכְתָּבָם**: By Torah law, in monetary cases, and all the more so in capital cases, testimony is inadmissible unless it is received orally from the witnesses. It may not be handwritten. If their testimony is sent to the court in written form it is inadmissible.

The *Sma* states that it is customary to receive written testimony when the witnesses remember and are fit for oral testimony (see *Tosafot*, Rosh, *Tur*, and *Mordekhai*). In the opinion of the Rambam, in cases where the witnesses are signed on a document and they come to the court and confirm their signatures but state that they do not recall the event itself, the document is ruled invalid. *Tosafot* and others disagree and hold that their signatures are efficacious in this case. Even the later commentaries were divided over this matter: The Maharshah rules in accordance with *Tosafot*, while the

Shakh rules in accordance with the Rambam (Rambam *Sefer Shofetim*, *Hilkhot Edut* 3:4, 8:5; *Shulhan Arukh*, *Hoshen Mishpat* 28:11–12, 46:10).

A double levirate relationship – **זִיקַת שְׁנֵי יָבָמִים**: In the case of three brothers married to women who were not related to one another, if one brother died and his brother performed levirate betrothal with the deceased's wife but died prior to entering into marriage with her, then both the wife of the brother who died first as well as the wife of the brother who died second must perform *halitza* and may not enter into levirate marriage. The Sages decreed that they may not enter into levirate marriage due to a concern lest others come to consummate the levirate marriage with two women from a single household (Rambam *Sefer Nashim*, *Hilkhot Yibbum* 7:27; *Shulhan Arukh*, *Even HaEzer* 174:4).

גוֹזֵרָה שְׁמָא יֹאמְרוּ – A rabbinic decree lest people say – This explanation of the ruling in the mishna is difficult, as the mishna explicitly states that the reason for this ruling is due to a double levirate bond and not due to a rabbinic decree. This can be resolved by explaining that the primary question of the Gemara is not about this woman, but rather about her rival wife. If the woman with a double levirate bond is not eligible for levirate marriage, then why is her rival wife not exempt from the obligation of *halitza* as the rival wife of a forbidden relative?

The Gemara therefore answers that the prohibition proscribing the woman in the mishna is due to a rabbinic decree. Based on this assertion, the Gemara asks: If the woman is prohibited based on a rabbinic decree, why does the rival wife require *halitza* as well, as the rival wife of a woman prohibited due to a mitzva is generally permitted to enter into levirate marriage? Consequently, they state that there is an additional decree requiring the rival wife to perform *halitza*, and accordingly the suggestion: Let him enter into levirate marriage with one, in fact means that he should take the rival wife in levirate marriage and perform *halitza* with the wife of the first brother (*Melo HaRo'im*).

גמ' ואי זיקת שני יבמין דאורייתא.
חליצה נמי לא תיבעי! אלא מדרבנן,
וגוֹזֵרָה שְׁמָא יֹאמְרוּ שְׁתֵּי יבמות
הבאות מבית אחד מתייבמות.

GEMARA The Gemara asks: If the *halakha* that a woman who has a **double levirate relationship** is exempt from levirate marriage is by Torah law, as indicated by the proof offered in the mishna, **she should not require *halitza* as well**, but be completely exempt. Rather, it is by rabbinic law. The restriction on levirate marriage in this case is not by Torah law, as by Torah law the brother is allowed to consummate the levirate marriage with both of these women since each was the wife of a different brother. The requirement for *halitza* in this case was instituted as a rabbinic **decree lest people say^N that two *yevamot* who come from a single household can enter into levirate marriage**. Since the second brother had performed levirate betrothal, people might come to think that both were actually married to him. If the third brother consummates the levirate marriage with both women, it would lead people to think that it is permitted to take two of a brother's wives in levirate marriage, when in fact the Torah allows the *yavam* to marry only a single wife of the deceased.

ומיבם לחדא ומחלוץ לחדא! גוֹזֵרָה
שְׁמָא יֹאמְרוּ: בֵּית אֶחָד, מִקְצָתוֹ
בְּנוֹי

The Gemara asks: **So let him consummate the levirate marriage with one woman and perform *halitza* with the other one**, and this would eliminate our concern. The Gemara responds: We do not do this due to a rabbinic decree **lest they say**: When there are two women from a single household, part of it must be built

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and part of it must be released by *halitza*. That is, if two women were married to a single man, one of these women must enter into levirate marriage and the other must perform *halitza*.

ויאמרו! אי דמייבם והדר – חליץ
הכי נמי,

The Gemara wonders: **So let them say it**. Why would it be problematic if people thought that? Even were they to act upon this mistaken assumption it would cause no harm, as there is no transgression involved in performing *halitza*. The Gemara answers: **If he were to consummate the levirate marriage with one and then later proceed to perform *halitza*^N with the other, then indeed there would be no reason for concern**.

אלא גוֹזֵרָה דילמא חליץ ברישא
והדר מיבם, וקם ליה ב"א שור לא
יבנה, ורחמנא אמר: כיון שלא
בנה – שוב לא יבנה.

Rather, the requirement to perform *halitza* with both women is a rabbinic decree that was instituted **lest he first perform *halitza*^N with one of his brother's wives and subsequently consummate the levirate marriage with the other**. Under such circumstances, he would in fact be violating a prohibition. Once he performs *halitza* with the first woman **he is subject to the prohibition indicated by the verse "So shall it be done to the man who does not build his brother's house"** (Deuteronomy 25:9). In this verse **the Merciful One states that once he did not build his brother's house but rather opted to perform *halitza* with one of his brother's wives, he may not proceed to build it by consummating the levirate marriage with a different wife**.

NOTES

If he were to consummate the levirate marriage and proceed to perform *halitza* – אי דמייבם והדר חליץ: From the commentaries it seems that this statement is referring to any case where two rival wives happen before a brother for levirate marriage, as there would be no harm were he to consummate the levirate marriage with one and then perform *halitza* with the other. This is because there is no prohibition against performing *halitza* that does not fulfill a mitzva. Rather, the rabbinic decree was ordained due to the possibility of reversing the order and performing the *halitza* prior to consummating the levirate marriage. It is clear, however, from the words of the author of the *Halakhot Gedolot*, that he holds that the Gemara is referring specifically to a case involving both a wife of two deceased men and another woman, such that it would be permitted for him to consummate the levirate

marriage with the rival wife first and then perform *halitza* with the wife with whom levirate betrothal was performed. It is only in this case that the Sages issued a decree lest he first perform *halitza* with the woman with whom levirate betrothal had been performed. It would seem that these two opinions are based on different textual versions of the Gemara.

גוֹזֵרָה דילמא חליץ – A rabbinic decree lest he...perform *halitza* – In the Jerusalem Talmud as well the question of why the rival wife should not enter into levirate marriage is raised, and there it states that the mishna follows Rabbi Meir's opinion, which establishes the principle: So long as you cannot take me in levirate marriage, you cannot take my rival wife in levirate marriage. Accordingly, in every case where one of the wives is forbidden to enter into levirate marriage, her rival wife is likewise forbidden.

Gave a bill of divorce in order to nullify his levirate betrothal – נתן גט למאמרו: In the case where a woman whose husband died childless happened before the *yavam* for levirate marriage and he performed levirate betrothal but later gave her a bill of divorce explicitly nullifying that levirate betrothal, the levirate betrothal is null and void, and it is permitted for her to enter into levirate marriage with his brothers. However, as per Rashi and Rambam, it is not permitted for her to enter into levirate marriage with him. If this *yavam* died and she happened before a different brother, she is allowed to enter into levirate marriage and is not considered a wife of two deceased men, in accordance with the latter formulation of Rava, which generally signifies the definitive legal ruling (Rambam *Sefer Nashim, Hilkhos Yibbum* 6:29; *Shulhan Arukh, Even HaEzer* 174:5).

שני אחין נשואין שתי אחיות: If two brothers were married to two sisters and one of the brothers died, even if the surviving brother's wife later died, the first wife remains exempt from levirate marriage, because she was forbidden to him at one time, i.e., during her sister's life (Rambam *Sefer Nashim, Hilkhos Yibbum* 7:12; *Shulhan Arukh, Even HaEzer* 175:1).

NOTES

הויתרה צרתה – Her rival wife is rendered permitted: Most of the commentaries follow Rashi in understanding the term rival wife to refer to the full wife of the second brother, who by virtue of levirate betrothal became a rival wife of sorts to the wife of two deceased men. However, the Rashba, along with *Nimmukei Yosef*, holds that the term rival wife refers to her actual rival wife. The case would therefore be one where the first brother had two wives, one of whom received levirate betrothal and later a bill of divorce from the second brother, and the other was her rival wife. Rava's statement permitting the rival wife is referring to her actual rival wife.

Even she is permitted – הויתרה אפילו היא: The commentaries and legal authorities were in dispute over to whom, in fact, such a woman would be permitted. Some said that in cases where a *yavam* both performed levirate betrothal and gave a bill of divorce to a woman, she is even permitted to marry that *yavam*. As the levirate betrothal was completely canceled by the bill of divorce, she reverts to her status as a woman with whom he has a levirate bond (Rivan). Others say that she is never again permitted to the man who gave her the bill of divorce but she is permitted to the other brothers (Ramban).

The Ritva explains the difference between the two formulations of Rava's statement. According to the latter version, the prohibition against consummating the levirate marriage with the woman who received the bill of divorce is by rabbinic law. Consequently, the Sages did not institute a decree in the case where the bill of divorce was issued in order to rescind the levirate marriage, which would prevent the violation of another decree due to the possibility of confusion with a woman who only received a bill of divorce. According to the first formulation, however, no special distinction was made for the woman who received a bill of divorce after levirate betrothal, so that there is in fact only one single decree for all *yevamot* who received bills of divorce under any circumstances.

אמר רבא: נתן גט למאמרו – הויתרה צרתה, אבל היא אסורה, דמחלפה בבבול גט.

Rava said: If the brother who performed levirate betrothal in the case described in the mishna subsequently gave a bill of divorce to that wife in order to nullify his levirate betrothal¹⁴ before he died, her rival wife is rendered permitted^N to the third brother. The third brother is allowed to consummate the levirate marriage with the wife of the second brother because this wife is no longer considered to be the rival wife of a woman with a double levirate relationship. The bill of divorce serves to nullify the act of levirate betrothal completely. However, the woman with whom the brother performed levirate betrothal and then received the bill of divorce is forbidden to the third brother. Why is this? She might be confused with a woman who receives a bill of divorce. In general cases where levirate betrothal was not performed, if a man gives a *yevama* a bill of divorce, he is no longer allowed to consummate the levirate marriage with her. If it were permitted to consummate the levirate marriage in this case, people might mistakenly do so in other cases of divorce as well.

There are those who say an alternative formulation of Rava's statement. Rava said: If the second brother gave a bill of divorce to the wife of the first deceased brother in order to nullify his levirate betrothal to her, then even she herself is permitted^N to enter into levirate marriage with the third brother. What is the reason for this? That which he performed with her, he removed. The levirate betrothal was completely nullified by the bill of divorce, and it is as though he had done nothing at all. Therefore, as far as the third brother is concerned, she remains with her original, single levirate bond, as though her status had never been changed by the second brother.

MISHNA In the case where two brothers were married to two sisters,¹⁵ and one of the brothers died, the widow at this point would be exempt from levirate marriage as the sister of his wife. And afterward the wife of the second brother died. Although the *yevama* is no longer the sister of his wife, this woman is nevertheless forbidden to him forever, since she had already been forbidden to him at one time.

איכא דאמרי, אמר רבא: נתן גט למאמרו – הויתרה אפילו היא, מאי טעמא? מאי דעבד בה – שקליה.

מתני' שני אחין נשואין שתי אחיות, ומת אחד מהן, ואחר כך מתה אשתו של שני – הרי זו אסורה עליו עולם, הויתרה ונאסרה עליו שעה אחת.

BACKGROUND

שני אחין נשואין שתי אחיות – Two brothers and two sisters: The brothers Reuven and Shimon married two sisters, Milka and Hogla, respectively. When Shimon died childless, his wife Hogla happened before Reuven for levirate marriage, but was rendered exempt from both levirate marriage and *halitza*, as she was the sister of his wife Milka. Even were Milka to later die, Hogla would never again be permitted to Reuven.



Where she is disassociated from this household, etc. – דְּקָא מִיִּדְחָיָא מֵהָאֵי בֵּיתָא וְכוּ'. It would seem that the opposite conclusion could have been drawn as well. The Gemara could have suggested that in the case at hand, the sister reverted to being eligible for levirate marriage during the original period in which she happened before this brother for levirate marriage, whereas in the case of two *yevamin*, she was forbidden to the *yavam* for the entire period following the death of her first husband. Accordingly, it would be more likely to render her permitted in this case. One must conclude that once she was rendered disqualified to enter into levirate marriage with the brother at one time during the period when she happened before the brothers as a forbidden relative, she can never again revert to a permitted status (Ritva).

For violating the prohibition against marrying a brother's wife and... a wife's sister – מִשּׁוּם אִשֶּׁת אָח וּמִשּׁוּם אָחוֹת אִשָּׁה – Rashi explains that this refers to a case where the relations took place during his wife's lifetime, for then he would be liable to receive punishment for marrying a wife's sister. Rabbeinu Hananel, however, holds that the case here is the same as that of the mishna, i.e., a situation where the wife died. The early commentaries (Rashba) were perplexed by this opinion, for even though the language in the *Tosefta* seems to support Rabbeinu Hananel's interpretation, it is difficult to understand how he might be held liable to receive punishment for marrying his wife's sister after his wife's death (see Meiri).

גמ' פשיטא! השתא, ומה התם דלא מידחיא מהאי ביתא לגמרי – אמרת לא. הכא דקא מידחיא מהאי ביתא לגמרי – לא כל שבין? תנא הא תנא ברישא, והך חזיא להיתירא ושריא, והדר חזיא לאיסורא. ואידי דתביבה ליה – אקדמה, ומשנה לא זזה ממקומה.

תנו רבנן: בא עליה – חייב עליה משום אשת אח, ומשום אחות אישה, דברי רבי יוסי. רבי שמעון אומר: אינו חייב אלא משום אשת אח בלבד. והא תנא, רבי שמעון אומר: אינו חייב אלא משום אחות אישה בלבד!

לא קשיא: כאן – שנשא חי ואחר כך נשא מת, כאן – שנשא מת ואחר כך נשא חי.

ורבי שמעון, היכא דנשא מת ואחר כך נשא חי, בין דאיסור אחות אישה לא חייל – תתייבס יבומי!

אמר רב אשי: איסור אחות אישה מיתלא תלי וקאי, אי פקע איסור אשת אח – אתי איסור אחות אישה וחייל, והילכך לא פקע.

GEMARA The Gemara asks: Isn't this obvious? Now, just as there, in the earlier *mishnayot*, where there was a third brother and so the woman was not disassociated from this household completely, as the levirate obligation existed between her and the third brother to whom she was permitted, you said that she may not enter into levirate marriage because she was forbidden at one time, here, in the case of only two brothers, where she is disassociated from this household^N completely, is it not all the more so clear that it should be prohibited for her to enter into levirate marriage? The Gemara answers: The *tanna* taught this mishna at first, at which time he saw it fitting to rule that those other cases are permitted, and therefore he permitted them. And then he subsequently saw it fitting to rule that they are forbidden. And since that case was novel, it was beloved to him, he taught it earlier. But despite the fact that this mishna was no longer necessary, the mishna does not move from its place.

§ The Sages taught: If he engaged in sexual intercourse with this woman who was forbidden to him, he is liable to receive punishment for violating the prohibition against marrying a brother's wife, because she was never rendered permitted by the levirate mitzva, and he is liable to receive punishment for violating the prohibition against marrying a wife's sister;^N this is the statement of Rabbi Yosei. Rabbi Shimon says: He is liable to receive punishment only for violating the prohibition proscribing a brother's wife. Rabbi Shimon holds that one prohibition does not take effect where another prohibition is already in place, and since she was already forbidden as his brother's wife, the additional prohibition cannot take effect. The Gemara asks: But isn't it taught in a *baraita*, Rabbi Shimon says: He is liable only due to the prohibition against marrying a wife's sister?

The Gemara answers: This is not difficult. Here, in the second *baraita*, it is referring to a case where the living brother married his wife first and afterward the brother who is now deceased married her sister. In that case, the first prohibition to take effect on the *yevama* was that of a wife's sister, and only later, when she was married to his now-deceased brother, did the additional prohibition proscribing a brother's wife take effect. There, in the first *baraita*, it is referring to a case where the brother who is now deceased married his wife first, whereby she became forbidden to the brother as a brother's wife, and afterward the living brother married her sister, rendering her forbidden as his wife's sister as well.

The Gemara asks: And according to the opinion of Rabbi Shimon, in a case where the deceased brother married one of the sisters first, in which case she was forbidden to his brother as a brother's wife, and afterward the living brother married her sister, the only prohibition in place is that of a brother's wife. Therefore, since the prohibition with regard to a wife's sister never took effect, then after her husband died she should now enter into levirate marriage. As the prohibition proscribing a brother's wife is canceled in the face of the levirate mitzva, she should indeed enter into levirate marriage.

Rav Ashi said: The prohibition with regard to a wife's sister remains suspended. If the prohibition proscribing a brother's wife is terminated, the prohibition proscribing a wife's sister comes and takes effect. Therefore, it is clear that the prohibition proscribing a wife's sister is not completely terminated. Accordingly, when a man dies and the prohibition proscribing a brother's wife is overridden by the levirate mitzva, the prohibition proscribing a wife's sister takes effect and she is forbidden to him due to that. The moment the first prohibition ceases to exist, the second immediately takes effect.

A prohibition takes effect where another prohibition already exists – **איסור חל על איסור**: The Meiri comments that the question whether a prohibition takes effect where another prohibition exists is not a matter that relates to the essence of the prohibitions themselves but rather to the penalties that are incurred by them. Therefore, the principle that a prohibition does not take effect where another prohibition already exists expresses the idea that a transgressor is not doubly penalized for two violations, so that if he committed two transgressions requiring sin-offerings, he need bring only one sin-offering.

The later commentaries deliberated over how to understand the Gemara's question both with regard to the opinion of Rabbi Shimon and in light of Rav Ashi's novel idea. It would seem that the discussion revolves around the question of how to view the additional prohibition: Does it actually not take effect, or is there simply no practical possibility of applying it when another prohibition already exists?

נידון בהמורה – נידון בדין: There are four forms of capital punishment prescribed by the Torah and administered by a court of twenty-three members. They are, in diminishing order of harshness: Stoning, burning, decapitation by sword, and strangulation. The punishment for engaging in intercourse with one's mother-in-law is burning, whereas the punishment for engaging in intercourse with a married woman is strangulation. Therefore, according to this opinion in the *baraita*, one who engaged in intercourse with his mother-in-law who is also a married woman is sentenced to death by burning (Rashi).

HALAKHA

One who committed a transgression deserving of two death penalties – **עבר עבירה שיש בה שתי מיתות**: One who committed a single transgression deserving of two death penalties, such as engaging in relations with his mother-in-law while she was a married woman, is sentenced to the harsher penalty (Rambam *Sefer Shofetim, Hilkhot Sanhedrin* 14:4).

וסבר רבי יוסי איסור חל על איסור?
והא תנא: עבר עבירה שיש בה
שתי מיתות – נידון בהמורה, רבי
יוסי אומר: נידון בזיקה הראשונה
הבאה עליו.

The *baraita* indicates that Rabbi Yosei holds that if the brother consummated the levirate marriage with this woman he violated two prohibitions. The Gemara asks: **And does Rabbi Yosei hold that a prohibition takes effect where another prohibition already exists?**^N But isn't it taught in a *baraita*: **One who committed a transgression deserving of two death penalties^H is sentenced to the harsher of the two deaths?**^N One would be guilty of such a transgression if he engaged in intercourse with a forbidden relative who was also a married woman, as he would incur one death penalty due to her being a forbidden relative and one death penalty due to her being a married woman. **Rabbi Yosei says: He is sentenced according to the first relationship that applied to him with regard to this woman.**

ותנא: כיצד אמר רבי יוסי נידון
בזיקה הראשונה הבאה עליו?
חמותו ונעשית אשת איש – נידון
בחמותו, אשת איש ונעשית
חמותו – נידון באשת איש.

And it is taught in a *baraita*: **In what case did Rabbi Yosei say that he is sentenced according to the first relationship that applied to him?** If this woman was his mother-in-law who was widowed or divorced, and therefore forbidden to him only due to her status as his mother-in-law, and later she married and became forbidden as a married woman and he engaged in sexual relations with her, then he is sentenced for violating the prohibition proscribing his mother-in-law, since this was the first prohibition to apply. Alternatively, if she was a married woman and then he married her daughter so that she then became his mother-in-law, and then had sexual relations with her, he is sentenced for violating the prohibition proscribing a married woman.

Perek III

Daf 32 Amud b

אמר רבי אבהו: מודה רבי יוסי
באיסור מוסקי.

Rabbi Abbahu said: Rabbi Yosei concedes that a prohibition takes effect where another prohibition already exists **when it is an expanded prohibition.**^N An expanded prohibition is a prohibition that has a greater scope than the original prohibition, either because it applies with greater severity or because it applies to additional individuals. Rabbi Yosei holds that if the second prohibition incorporates additional individuals into the list of those for whom the original item is prohibited, then it takes effect in addition to the previous prohibition that had a more limited range.

NOTES

An expanded prohibition and a more inclusive prohibition – **איסור מוסקי ואיסור כולל**: Even though both an expanded prohibition and a more inclusive prohibition are similar in that for both, the scope of the original prohibition is enlarged in some way, they nevertheless differ both in their fundamental natures as well as in their details. An expanded prohibition is defined as a prohibition that adds an additional element of prohibition to the item that is already prohibited. A more inclusive prohibition, on the other hand, occurs when the prohibition now includes other items, even if for the original item there is no actual addition to the prohibition itself.

An expanded prohibition comes about in two ways, either because it applies with greater severity or because it applies to additional individuals. The first might come about, for instance, when a prohibition against deriving benefit takes effect where a prohibition against consumption already exists, since here the second prohibition, against deriving benefit, is of greater severity. The second occurs when, as in the present talmudic discussion, the prohibition applies to a greater number of individuals, when it is not only prohibited for the original subject to perform

an activity with a specific item, but it comes to be prohibited for others to perform that activity as well (Ritva), e.g., this woman was forbidden to one brother, and she is subsequently forbidden to all the brothers. A more inclusive prohibition occurs when the same prohibition applies to the same individual but with more items, e.g., it becomes prohibited for one brother to marry all the sisters of a woman instead of just the woman herself. The later commentaries examined these distinctions, since, e.g., with regard to the *halakhot* of forbidden relatives, the difference between a more inclusive prohibition and an expanded prohibition depends on the individual in question. That which is an expanded prohibition for a man is at the same time a more inclusive prohibition from the woman's perspective, and the opposite holds true as well (see *Yosef Lekah*). According to the *Hazon Ish* it is clear that the ruling goes according to the perspective of the man and not according to the woman.

In addition to these fundamental differences, the details of these two categories differ as well. It would seem from *Tosafot* that a more inclusive prohibition does not take effect where

another prohibition exists unless it is more severe, but never where it is more lenient (*Keren Ora*). Moreover, according to *Tosafot*, a more inclusive prohibition takes effect only where the prohibition is for a single category. In other words, those to whom the prohibition applies must all be included within a single category of the prohibition. This is not the case, for example, when a man marries a woman, for even though all of her relatives are rendered forbidden to him it is nevertheless for different reasons: One is her mother, the other her sister, etc. The Rashba, however, disagrees on this point.

The *Hazon Ish* writes that an expanded prohibition takes effect only when it actually causes additional prohibitions, i.e., there must in fact be additional people in the world who become subject to this prohibition. So, for example, where a man engages in relations with his wife's sister who became his brother's wife, the second prohibition would take effect only if there were in fact additional brothers who were incorporated into the prohibition by the marriage. Therefore, if there were only two brothers in the family, the prohibition of a brother's wife would not apply.

תִּינַח – הִיכָא דְנִשְׂא חַי וְאַחֵר כְּדָּ נִשְׂא
מֵת, מְגוּ דְאִתּוּסְף אִיסוּר לְגַבֵּי אַחִים –
אִתּוּסְף אִיסוּר לְגַבֵּי דִידֵיהּ.

אֵלָּא, הִיכָא דְנִשְׂא מֵת וְאַחֵר כְּדָּ נִשְׂא
חַי, מַאי אִיסוּר מוֹסִיף אִיכָּא?

וְכִי תִימָא: מְגוּ דְאִיתְסַר בְּכוּלָּהּ
אֲחֵרוֹתָא – הָאִי אִיסוּר כּוֹלֵל הוּא!

אֵלָּא אָמַר רַבָּא: מַעֲלָה אֲנִי עָלְיוּ כְּאִילוּ
עָשָׂה שְׁתֵּי, וְאִינוּ חַיִּיב אֵלָּא אַחַת. וְכֵן
כִּי אֲתָא רַבִּין אָמַר רַבִּי יוֹחָנָן: מַעֲלָה אֲנִי
עָלְיוּ כְּאִילוּ עָשָׂה שְׁתֵּי, וְאִינוּ חַיִּיב
אֵלָּא אַחַת. מַאי נִפְקָא מִנֵּיהּ? לְקַבְּרוּ
בֵּין רְשָׁעִים גְּמוּרִים.

The Gemara asks: This **works out well** in cases **where the living brother married** his wife first, and her sister became forbidden to him as a wife's sister, **and then afterward the brother** who was subsequently **deceased married** his wife's sister. In that case it is possible to say: **Since a prohibition was added for all the brothers,**^N **a prohibition was added** for the living brother as well, and he is liable due to both prohibitions, as this prohibition is more wide-ranging than the previous one. In other words, at first this sister was permitted to the other brothers, and when the second brother married her she was rendered a brother's wife and so she was additionally forbidden to the other brothers.

However, **where the deceased brother married first and afterward the living brother married** her sister, **in what way is there a prohibition that adds?** No additional individuals were incorporated into the prohibition as a result of the marriage of the living brother with the sister, since the prohibition here proscribing a wife's sister applies to him alone.

And if you would say: Since he himself now married a sister **he became prohibited to all of the other sisters**, as opposed to the prior state of affairs where only his brother was married to one of the sisters and all of the other sisters were permitted to him, and therefore an additional prohibition now applies to him, this is difficult. In this case the new prohibition is not considered an expanded prohibition, but rather **it is considered a more inclusive prohibition.**^N It is more inclusive and more comprehensive in that it adds additional aspects to the prohibition for the same individual. This is not called an expanded prohibition, as it does not add prohibitions to additional individuals.

Rather, Rava said^N that when Rabbi Yosei stated in the *baraita* that the man is liable due to both prohibitions, for a brother's wife and for a wife's sister, he meant to say: **I ascribe to him liability as though he transgressed twice**, since indeed he violated two prohibitions, **yet he is liable** to receive punishment in human courts **on only one count**. **And likewise, when Ravin came from Eretz Yisrael to Babylonia, he said that Rabbi Yohanan said: I ascribe to him liability as though he transgressed twice, yet he is liable** to receive punishment **on only one count**. The Gemara asks: **What difference does it make** if we consider it as though he transgressed twice? The Gemara answers: It affects the decision whether or not **to bury him among the completely wicked.**^N Just as a righteous individual is not buried among the wicked, so too, a wicked individual is not buried among those more wicked than himself. He who violated this prohibition is considered as though he committed two transgressions and not one, and so he would be buried accordingly.

NOTES

מְגוּ דְאִתּוּסְף – מַאי אִיסוּר לְגַבֵּי אַחִים: The Gemara could have suggested that there is a different expanded prohibition; a prohibition was added to the entire populace since previously this woman was available for marriage but now she is a married woman. Nevertheless, the Gemara preferred to mention the prohibition proscribing a brother's wife, since it is not always nullified following the death of the husband (Ritva).

הָאִי אִיסוּר – This is considered a more inclusive prohibition: The Rivan asks: Could not Rabbi Abbahu have said that Rabbi Yosei also concedes in cases of more inclusive prohibitions? He answers that since an expanded prohibition is more severe, it stands to reason that Rabbi Yosei concedes in that case specifically. Other commentaries point out that since Rabbi Yosei disagrees in the case of a married woman who became his mother-in-law, which is a more inclusive prohibition because he became forbidden to her and to her relatives, we can conclude that Rabbi Yosei does not in fact agree in these cases (see Ritva).

אֵלָּא אָמַר רַבָּא – Rather Rava said: Some commentaries maintain

that Rava's statement serves only to resolve Rabbi Yosei's opinion with regard to a wife's sister. However, most of the commentaries agree with the opinion of Rashi and assert that the word *rather* here indicates a fundamental dispute with Rabbi Abbahu, in that Rava holds that Rabbi Yosei does not concede that an additional prohibition can take effect where a prohibition already exists.

בֵּין רְשָׁעִים גְּמוּרִים – Among the completely wicked: Many early commentaries had a version of the text that read: Among the severely wicked, and therefore did not interpret this like Rashi, who explains this as meaning that he should be buried with those who had been stoned to death. They point out that he did not commit a crime so heinous as to deserve such a burial place. Rather, they state, he should be buried among those who were wicked like himself. *Tosefot HaRosh* explains that Rabbi Yosei holds that this man should be buried together with someone who committed sins with two different women, such as a brother's wife and a wife's sister, since he committed both of these transgressions as well. On the other hand, Rabbi Shimon holds that another prohibition cannot take effect where a prohibition already exists, so it is considered as though he committed a single transgression.

זר ששמש – בְּשַׁבָּת וכו': A non-priest who served in the Temple on Shabbat was liable to receive punishment both for violating Shabbat and for serving as a non-priest. Similarly, a blemished priest who served in the Temple service while ritually impure was liable both for serving while ritually impure as well as for serving as a blemished priest (Rambam *Sefer Avoda*, *Hilkhot Biat HaMikdash* 9:12).

NOTES

He is liable on two counts – חַיִּיב שְׁתֵּים: According to Rashi and other commentaries, this means that he transgressed two prohibitions, the repercussions being that he is considered completely wicked. Ramban explains that this refers to the sets of lashes he would receive, according to the opinion that one receives lashes even for a prohibition for which one is punished with execution by the courts. One who violates such a prohibition is punished with lashes if certain factors prevent the court from administering the death penalty. One commentary explains that with regard to the three questions over which Rabbi Ḥiyya and Bar Kappara disagree, they differ from one another on precisely this point; the first is referring to a negative mitzva and court-administered capital punishment, the second to a negative mitzva and *karet*, and the third is referring to two negative mitzvot (Re'em Horowitz).

קפץ רבי – חִיָּיא וְנִשְׁבַּע וכו': It is possible that Rabbi Yehuda HaNasi changed his mind, and so both of them could indeed hear the words of Rabbi accurately, but at different times (*Ramat Shmuel*).

The Temple service – הַעֲבוּדָה: According to the Maharsha, this form of oath, which is used on numerous occasions in the Babylonian Talmud, is not in fact referring to the Temple service, since at that time there was no Temple. The word service refers to divine service in accordance with the statement by the Rambam that an oath taken with the divine name is a form of service. The vowels of the word *avoda* are identical to the vowels of the four-letter divine name.

A non-priest on Shabbat, a blemished priest while ritually impure – בְּעַל מוֹם בְּטוּמְאָה: The Ramban writes that the Gemara could have asked many different questions, one of which was with regard to a blemished priest who served on Shabbat, yet it chose to use one example of many. However, it did not ask about a non-priest who served while ritually impure, because non-priests were never warned against performing the Temple service while ritually impure (Rivan; *Tosafot*). The Meiri contends that this question could have been asked as well.

התחיל רבי חייא – לָדוֹן: As later becomes clear, the essence of the dispute between these two Sages revolves around the question of whether a prohibition takes effect where another prohibition already exists. Nevertheless, it was important to clarify the opinion of Rabbi Yehuda HaNasi in these cases. Accordingly, the choice of the words: Began to deliberate, is precise, since this served only as a preliminary clarification of the opinions but did not constitute the heart of the discussion (*Rashba*).

S The Gemara comments that the issue of a prohibition taking effect where another prohibition already exists is taught in the dispute found in a *baraita*, where it was stated: With regard to a non-priest who served in some capacity in one of the Temple services, such as the burning of a burnt-offering on the altar on Shabbat,^H Rabbi Ḥiyya says: He is liable to receive punishment on two counts,^N both because he was a non-priest serving in the Temple and because he desecrated Shabbat. Bar Kappara^P says: He is liable on only one count. Rabbi Ḥiyya jumped up and swore:^N I swear by the Temple service^N that this I heard from Rabbi Yehuda HaNasi: He is liable on two counts. Bar Kappara jumped up and swore: I swear by the Temple service that this I heard from Rabbi Yehuda HaNasi: He is liable on one count.

Since the matter could not be decided by tradition, Rabbi Ḥiyya began to deliberate and analyze the question logically. Prohibited labor on Shabbat was prohibited to all. When prohibited labor was permitted in the Temple for the purposes of the Temple service, it was permitted only for priests. This indicates that it was permitted for priests and not for non-priests. Therefore, when a non-priest serves in the Temple on Shabbat, there is a transgression here due to his serving as a non-priest and there is a transgression here due to his desecrating Shabbat. Bar Kappara began to deliberate in a different manner: Shabbat was prohibited to all. When it was permitted it was permitted in the Temple, so that if it was permitted for one to serve in the Temple, it was permitted for him to serve on Shabbat. Therefore, there is a transgression here only for his serving as a non-priest, since if this man were a priest his service would have been permitted. Therefore, he is not liable to receive punishment for desecrating Shabbat.

They disagreed over a similar issue as well, the case of a priest with a blemish who served in the Temple by sacrificing a public offering, which overrides ritual impurity, while he was ritually impure.^N Rabbi Ḥiyya says: He is liable on two counts, both for serving with a blemish and for being ritually impure. Bar Kappara says: He is liable on only one count, for serving with a blemish. Rabbi Ḥiyya jumped up and swore: I swear by the Temple service that this I heard from Rabbi Yehuda HaNasi: He is liable on two counts. Bar Kappara jumped up and swore: I swear by the Temple service that this I heard from Rabbi Yehuda HaNasi: He is liable on one count.

Rabbi Ḥiyya began to deliberate.^N Ritual impurity was prohibited to all, as it was prohibited for all individuals who are ritually impure to enter into the Temple. When it was permitted in the Temple in circumstances where the entire public was impure, it was permitted for unblemished priests. Therefore, it was permitted only for unblemished priests and not for priests with blemishes. Consequently, if that priest with a blemish served while impure, there is a transgression here due to his status as a blemished priest and there is a transgression here due to ritual impurity. Bar Kappara began to deliberate in a different manner: Ritual impurity was prohibited to all. When it was permitted in the Temple, it was permitted for all. Therefore, the only problem was that this priest was blemished, and so there is a transgression here only due to his status as a blemished priest.

PERSONALITIES

Bar Kappara – בַּר קַפָּרָא: This Sage was among the last of the *tanna'im*, a leading pupil of Rabbi Yehuda HaNasi, and a colleague of Rabbi Shimon ben Rabbi Yehuda HaNasi and Rabbi Ḥiyya. His first name is unknown, although some say that he was the son of Rabbi Elazar HaKappar, and, being born after his father's death, was named Elazar as well.

Bar Kappara was among the greatest halakhic authorities of his generation, who even compiled a collection of *baraitot* called *Mishnat bar Kappara*. Excerpts from this compilation are cited several times throughout the Talmud. Bar Kappara was also famous for his sermons, and he was a master of language as well. Several proverbs, poetic phrases, and words of prayer are recorded in his name.

As he had a sense of humor and a sharp wit, he would often aim amusing criticism at the Sages, including the members of Rabbi Yehuda HaNasi's household. For this reason, and despite his closeness to his teacher, bar Kappara was never ordained. Bar Kappara was well versed in general wisdom and was therefore often sent to represent the Jewish community before the Roman authorities.

The majority of prominent *amora'im* of the first generation were among his students. The prominent *amora* Rabbi Yehuda ben Pedaya (bar Padda) was his nephew. He was among the Sages in the southern part of Eretz Yisrael, and active in the city of Parod, where he is buried.

ובפְּלוּגָתָא, דְּאִיתְּמַר: זֶר שְׁשִׁימַשׁ בְּשַׁבָּת, רַבִּי חִיָּיא אָמַר: חַיִּיב שְׁתֵּים, בַּר קַפָּרָא אָמַר: אֵין חַיִּיב אֱלָא אַחַת. קִפֵּץ רַבִּי חִיָּיא וְנִשְׁבַּע: הָעֲבוּדָה! כִּךְ שְׁמַעְתִּי מֵרַבִּי: שְׁתֵּים. קִפֵּץ בַּר קַפָּרָא וְנִשְׁבַּע: הָעֲבוּדָה! כִּךְ שְׁמַעְתִּי מֵרַבִּי: אַחַת.

הַתְּחִיל רַבִּי חִיָּיא לָדוֹן: שֶׁבֶת לְכָל נֶאֱסָרָה, בְּשָׁהוּתָהּ בְּמִקְדָּשׁ – אֲצֵל כְּהֻנִּים הוֹתֵרָה, לְכַהֲנִים הוֹתֵרָה וְלֹא לְזֹרִים. יֵשׁ כָּאֵן מְשׁוּם זְרוּת, וְיֵשׁ כָּאֵן מְשׁוּם שְׁבֶת. הַתְּחִיל בַּר קַפָּרָא לָדוֹן: שֶׁבֶת לְכָל נֶאֱסָרָה, בְּשָׁהוּתָהּ – בְּמִקְדָּשׁ הוֹתֵרָה, אֵין כָּאֵן אֱלָא זְרוּת.

בְּעַל מוֹם שְׁשִׁימַשׁ בְּטוּמְאָה, רַבִּי חִיָּיא אָמַר: חַיִּיב שְׁתֵּים, בַּר קַפָּרָא אָמַר: אֵין חַיִּיב אֱלָא אַחַת. קִפֵּץ רַבִּי חִיָּיא וְנִשְׁבַּע: הָעֲבוּדָה! כִּךְ שְׁמַעְתִּי מֵרַבִּי: שְׁתֵּים. קִפֵּץ בַּר קַפָּרָא וְנִשְׁבַּע: הָעֲבוּדָה! כִּךְ שְׁמַעְתִּי מֵרַבִּי: אַחַת.

הַתְּחִיל רַבִּי חִיָּיא לָדוֹן: טוּמְאָה לְכָל נֶאֱסָרָה, בְּשָׁהוּתָהּ בְּמִקְדָּשׁ – אֲצֵל כְּהֻנִּים תְּמִימִים הוֹתֵרָה, לְכַהֲנִים תְּמִימִים הוֹתֵרָה וְלֹא לְבְּעָלֵי מוּמִין, יֵשׁ כָּאֵן מְשׁוּם בְּעָלֵי מוּמִין, וְיֵשׁ כָּאֵן מְשׁוּם טוּמְאָה. הַתְּחִיל בַּר קַפָּרָא לָדוֹן: טוּמְאָה לְכָל נֶאֱסָרָה, בְּשָׁהוּתָהּ בְּמִקְדָּשׁ – הוֹתֵרָה, אֵין כָּאֵן אֱלָא מְשׁוּם בְּעַל מוֹם,

זר שאכל מליקה – A non-priest who ate a bird killed by pinching – **מליקה**: A non-priest who ate from a bird sin-offering is liable to receive punishment on two counts, one as a non-priest who ate consecrated animals, and one for eating an unslaughtered animal carcass (Rambam *Sefer Avoda, Hilkhhot Ma'aseh HaKorbanot* 11:9).

NOTES

Pinching – מליקה: Turtledoves and young pigeons sacrificed as offerings in the Temple were killed not by ritually slaughtering them with a knife like other offerings, but rather by pinching their necks. This was considered an especially difficult activity to perform. The priest would hold the bird in his left hand with its legs and wings between his fingers, and the back of its neck stretched out and facing upward. With his right fingernail, which he grew especially long for this purpose, the priest would cut the bird's neck and spine from the back until he reached and severed its windpipe and gullet. If the bird was to be sacrificed as a burnt-offering, the priest would completely sever its head. If it was to be sacrificed as a sin-offering, he would leave the head partially attached. A bird killed by pinching and sacrificed as a sin-offering was permitted to be eaten by the priests, while a bird that was killed by pinching but not intended for sacrificial use was considered an unslaughtered carcass, and it was not permitted to eat it. The pinching could be performed only by a priest, whereas the slaughtering of animal offerings in the Temple could be performed by a non-priest.

זר שאכל מליקה, רבי חייא אומר: חייב שתיים, בר קפרא אומר: אין חייב אלא אחת. קפץ רבי חייא ונשבע: העבודה! כך שמעתי מרבי: שתיים. קפץ בר קפרא ונשבע: העבודה! כך שמעתי מרבי: אחת.

התחיל רבי חייא לדון: נבלה לכל נאסרה, בשוהתרה במקדש – אצל כהנים הותרה, לכהנים הותרה ולא לזרים. יש כאן משום זרות, ויש כאן משום מליקה. התחיל בר קפרא לדון: נבלה לכל נאסרה, בשוהתרה במקדש – הותרה, אין כאן אלא משום זרות.

They disagreed over a similar issue as well. This dispute is with regard to a **non-priest who ate a bird sin-offering** that was killed by **pinching**^H the back of its neck. It is permitted for priests to consume such an offering, but it is prohibited to consume any other bird killed in such a manner, since it was not ritually slaughtered. **Rabbi Hiyya says: He is liable to receive punishment on two counts**, both for being a non-priest who ate a priestly offering and for eating something that was not properly slaughtered. **Bar Kappara says: He is liable on only one count.** **Rabbi Hiyya jumped up and swore: I swear by the Temple service that this I heard from Rabbi Yehuda HaNasi: He is liable on two counts.** **Bar Kappara jumped up and swore: I swear by the Temple service that this I heard from Rabbi Yehuda HaNasi: He is liable on one count.**

Rabbi Hiyya began to deliberate. An unslaughtered animal carcass was prohibited to all. When it was permitted in the Temple, it was permitted to priests alone. Since it was permitted to priests and not to non-priests, there is a transgression here due to his status as a non-priest who ate of the sin-offering and there is a transgression here due to eating an animal killed by pinching.^N **Bar Kappara began to deliberate: An unslaughtered animal carcass was prohibited to all. When it was permitted in the Temple, it was permitted to all.** Therefore there is a transgression here only for being a non-priest, since if he were a priest there would be no prohibition at all.

Perek III

Daf 33 Amud a

במאי קמפלגי? באיסור בולל, ואליבא דרבי יוסי: רבי חייא סבר, רבי יוסי באיסור בולל מיתחייב תרתין, בר קפרא סבר, לא מיתחייב אלא חדא.

ומאי איסור בולל איכא הכא? בשלמא זר, מעיקרא שרי במלאכה ואסור בעבודה, אתיא לה שבת – מגו דקא מיתסר במלאכה מיתסר נמי בעבודה.

The Gemara asks: **With regard to what principle do they disagree?**^N The Gemara suggests that they disagree with regard to the issue of a **more inclusive prohibition**, and this dispute pertains to the status of a more inclusive prohibition specifically according to the opinion of Rabbi Yosei. **Rabbi Hiyya holds that Rabbi Yosei is of the opinion that in the case of a more inclusive prohibition, one is liable on two counts.** **Bar Kappara holds that Rabbi Yosei is of the opinion that one is liable only on one count.**

The Gemara asks: **And what more inclusive prohibition is there here in these cases?** **Granted**, in the case of a non-priest who served in the Temple on Shabbat, **initially he was permitted to perform labor every day and was prohibited from engaging in the Temple service.** When Shabbat came, since he is now prohibited from engaging in prohibited labor in all contexts due to Shabbat, **he is also prohibited from engaging in labors related to the Temple service due to Shabbat.** Indeed, the additional prohibition of Shabbat was added to the previously existing prohibition against performing service in the Temple. This is a more inclusive prohibition since it also includes prohibited labor outside of the Temple.

NOTES

במאי קמפלגי – With regard to what do they disagree – Both the early and later commentaries ask: Why did the Gemara see fit to repeat this question when Rabbi Hiyya and bar Kappara explicitly stated the reasoning behind their positions? *Tosefot HaRosh* states that the Sages of the Talmud held a tradition that the root of the dispute was not based upon the previously suggested interpretation. The Rivan, however, states that this question is directed specifically toward bar Kappara, since his reasoning does not seem sufficient. Others say that because

the two Sages demonstrated that each of these issues could be viewed from two different angles, they would not have depended solely upon their explicit explanations (*Tosafot Yeshanim*). The Rashba writes that there must be an alternate rationale behind this dispute, as otherwise one of the Sages would be telling a falsehood. Moreover, the words: Began to deliberate, indicate that this was not their primary reasoning, but that they intended to present further proofs of their statements (see *Tosafot*).

מליקה – Pinching...takes effect simultaneously – *Tosafot* ask: Why is this case considered a case of prohibitions that take effect simultaneously, when the prohibition with regard to an unslaughtered animal carcass takes effect before the prohibition for a non-priest to eat consecrated food? Rabbi Avraham Av Beit Din explains that the case of eating a bird killed by pinching is also a case of a minor who grew two pubic hairs. He maintains that from that moment of maturity both prohibitions take effect at once. Indeed, the person in this case is both a non-priest and he is prohibited from eating from the pinched bird. This cannot, however, be said with regard to the case of ritual impurity, since the prohibition cannot apply unless one was actually rendered impure. The early commentaries discussed this opinion. Some rejected it (Rashba), while others showed how it could be supported (Ramban; Ritva).

A prohibition that takes effect simultaneously and according to Rabbi Yosei – איסור בבית אחת ואליבא דרבי יוסי – All agree that it is more reasonable for two prohibitions to take effect in cases where the prohibitions take effect simultaneously, as opposed to cases where an additional prohibition takes effect after the first has already taken effect. *Tosefot HaRosh* adds, however, that there is still a certain deficiency in cases where two prohibitions take effect at once. He maintains that in these cases the less severe prohibition would not take effect together with a more severe prohibition. However, in cases of additional prohibitions that take effect one after another, one could maintain that any additional prohibition would take effect, no matter how minor.

Where he grew two pubic hairs, etc. – דאיתיי – *The Hazon Ish* says that one cannot explain the case of a brother's wife and a wife's sister as prohibitions that take effect simultaneously when one grows two pubic hairs. This is because there is a distinction between prohibitions that apply to a person himself, which apply immediately upon reaching adulthood, and prohibitions that apply to an object (see Ramban and Rashba).

Where he cut off his finger with a ritually impure knife – שחתך אצבעו בסכין טמא – *Tosafot* point out a difficulty with this explanation: While impurity is contracted immediately upon contact, the blemish appeared only afterward, and therefore this is not a case of simultaneous prohibitions. They resolve this by explaining that the situation is one where the finger was only loosely attached, so that by a single cut both the impurity was transferred and the blemish appeared at once. The Meiri adds that it must be that another individual cut one's finger off, for if one had himself wielded the knife, he would have been rendered impure already at the moment of contact with the knife. In contrast, *Tosafot Yeshanim* hold that since these two occurrences were so close in time, they are in fact considered a single act, and therefore both prohibitions took effect simultaneously.

HALAKHA

A prohibition that takes effect where another prohibition exists – איסור תל על איסור – There is a general principle of prohibitions in the Torah that states that a prohibition cannot take effect where another prohibition exists unless both of the prohibitions take effect simultaneously or one prohibition makes additions to the previous prohibition or if it comes to include other matters that were not in the original prohibition (Rambam *Sefer Kedusha*, *Hilkhot Issurei Bia* 17:8, *Hilkhot Ma'akhalot Assurot* 8:6, and *Sefer Korbanot*, *Hilkhot Shegagot* 4:1).

בעל מום, מעיקרא שרי באכילה ואסור בעבודה, איטמי ליה, מגו דקא מיתסר באכילה מיתסר נמי בעבודה, אלא מליקה – בבית אחת היא דמשפחת לה, באיסור כולל לא משפחת לה!

The same is true with regard to a blemished priest who served in the Temple while ritually impure: **Initially**, prior to his becoming ritually impure, **he was allowed to eat from the consecrated animals but was prohibited from performing the Temple service**, like all blemished priests. When he was rendered ritually impure, since he is now prohibited from eating of the consecrated items, he is also prohibited from performing the Temple service due to that same ritual impurity. There is, then, a more inclusive prohibition here. **However**, with regard to the case of a bird that was killed by pinching, you find that the prohibition against the eating of consecrated items by a non-priest and the prohibition against eating an unslaughtered animal carcass take effect **simultaneously**.^N You do not, however, find a more inclusive prohibition here as there was no original prohibition that took effect beforehand. Instead, this is a case of two prohibitions that take effect simultaneously.

Rather, the previous explanation is rejected and the Gemara suggests instead that **they disagree with regard to an additional prohibition that takes effect simultaneously**, and this dispute pertains to the status of these prohibitions specifically according to the opinion of Rabbi Yosei.^N Rabbi Hiyya holds that Rabbi Yosei is of the opinion that **one is liable on two counts in cases of prohibitions that take effect simultaneously**. And bar Kappara holds that Rabbi Yosei is of the opinion that **one is liable only on a single count**.

The Gemara challenges this explanation: **But here**, in the first two instances, **what case of simultaneous prohibitions is there here?** In the two previous cases the prohibitions took effect one after the other, and not simultaneously. The Gemara answers that these cases can also be interpreted as occurring simultaneously as follows: With regard to **the non-priest who served on Shabbat**, this would be in a case where a minor grew two pubic hairs,^N signaling adulthood on Shabbat. Before that point he was considered a minor and therefore not liable for his actions. Therefore, **this is a case where the prohibition against serving as a non-priest and the prohibition against violating Shabbat took effect together**.

With regard to the case of **one who was blemished**, this can be explained as well: This is referring to a case where a minor grew two pubic hairs and was immediately rendered ritually impure. This is a case where the prohibition with regard to a blemished priest and the prohibition with regard to ritual impurity took effect together. Alternatively, it could be a case where he cut off his finger with a ritually impure knife.^{HN} Here, the cut and removal of his finger rendered him simultaneously blemished and ritually impure.

Following this clarification of the dispute, the matter is now considered from a different angle: **Granted**, according to the opinion of Rabbi Hiyya, the dispute between his version of Rabbi Yehuda HaNasi's ruling and that of bar Kappara can be explained as follows: **When Rabbi Yehuda HaNasi taught Rabbi Hiyya**, he taught him according to the opinion of Rabbi Yosei, and Rabbi Yosei holds that there are cases where two prohibitions can both take effect. And **when Rabbi Yehuda HaNasi taught bar Kappara**, he did so according to the opinion of Rabbi Shimon who holds that a new prohibition can never take effect where another prohibition already exists. Therefore, Rabbi Hiyya could understand why bar Kappara insisted on his opinion. Rabbi Hiyya thought that bar Kappara was in fact relating an accurate statement of Rabbi Yehuda HaNasi, as Rabbi Yehuda HaNasi was relating to the opinion of Rabbi Shimon. Rabbi Hiyya assumed that bar Kappara did not understand that Rabbi Yehuda HaNasi's statement was not in accordance with Rabbi Yosei's opinion. **According to bar Kappara**, however, was Rabbi Hiyya then telling a falsehood? How would bar Kappara relate to Rabbi Hiyya's oath? Did he think that Rabbi Hiyya would swear that he heard words from Rabbi Yehuda HaNasi that were never said?

אלא קמפלגי באיסור בבית אחת ואליבא דרבי יוסי: רבי חייא סבר, רבי יוסי באיסור בת אחת מיתייב תרת, ובר קפרא סבר, לא מיתייב אלא חדא.

והכא – מאי איסור בת אחת איבא הקא? ור שטימש בשבת, כגון דאיתיי שתי שערות בשבת, דהווא להו זרות ושבת בהדי הדדי.

בעל מום נמי – כגון דאיתיי שתי שערות ואיטמי ליה, דהווא ליה בעל מום וטמא בהדי הדדי. אי נמי: שחתך אצבעו בסכין טמא.

בשלמא לרבי חייא, כי אתנייה לדידיה – אליבא דרבי יוסי, כי אתנייה לבר קפרא – אליבא דרבי שמעון, אלא לבר קפרא – רבי חייא שקורי קא משקר?

אָלֶא: קִמְפִּלְגִּי בְּאִסּוּר בֵּת אַחַת, וְאֵלִיבָא דְרַבִּי שְׁמַעוֹן. בְּשִׁלְמָא לְרַבִּי חִיָּיא, קָא מִישְׁתַּבֵּעַ לְאַפּוֹקִי לְרַבִּי שְׁמַעוֹן מִחוּזְקִיהּ, אָלֶא לְבֵר קַפְרָא – לָמָּה לִּיהּ לְאַשְׁתַּבּוּעִי? קִשְׁיָא.

Rather, this must be explained differently: Rabbi Ḥiyya and bar Kappara **disagree** with regard to cases where two **prohibitions** take effect **simultaneously**, and this dispute pertains to the status of these prohibition specifically **according to the opinion of Rabbi Shimon**. It could be suggested that when the two prohibitions take effect simultaneously, Rabbi Shimon would concede that they both take effect. However, this explanation raises a difficulty as well: **Granted, according to Rabbi Ḥiyya** it is clear why **he was swearing**. He did so in order to **exclude** the understanding of **Rabbi Shimon's** opinion that was based on **his presumed** opinion. As it was known that Rabbi Shimon holds that a new prohibition cannot take effect where another prohibition exists; this is the default understanding of his opinion. Therefore, it was incumbent upon Rabbi Ḥiyya to take an oath in order to emphasize that despite Rabbi Shimon's general opinion, in cases where the prohibitions take effect simultaneously, he would concede that both prohibitions can take effect. **However, according to bar Kappara, why was it necessary to swear?** It would have sufficed for him simply to make his statement, as it concurs with the default understanding of Rabbi Shimon's opinion. The Gemara comments: Indeed, this is **difficult**.

בְּשִׁלְמָא לְבֵר קַפְרָא, כִּי אֲתַנְיָיָה רַבִּי לְדִידְיָה – אֵלִיבָא דְרַבִּי שְׁמַעוֹן, כִּי אֲתַנְיָיָה לְרַבִּי חִיָּיא – אֵלִיבָא דְרַבִּי יוֹסִי. אָלֶא לְרַבִּי חִיָּיא, בֵּר קַפְרָא שְׁקוּרִי קָא מְשַׁקֵּר?

One can raise a difficulty with this explanation from a different angle as well: **Granted, according to bar Kappara, when Rabbi Yehuda HaNasi taught him**, he taught him **according to the opinion of Rabbi Shimon**, who holds that two prohibitions cannot take effect even in cases when they occur simultaneously, and **when he taught the ruling to Rabbi Ḥiyya** it was **according to the opinion of Rabbi Yosei**. Accordingly, Rabbi Ḥiyya did in fact swear that he heard that one is liable only on one count, but he wrongly understood that this was Rabbi Shimon's opinion. **However, according to Rabbi Ḥiyya**, who holds that Rabbi Shimon concedes that in cases where the prohibitions take effect simultaneously one is liable for both, was **bar Kappara lying**? His statement would accord neither with Rabbi Shimon nor with Rabbi Yosei.

אָמַר לָךְ רַבִּי חִיָּיא: כִּי אֲתַנְיָיָה רַבִּי לְדִידְיָה – תַּרְתִּי לְפָטוּר אֲתַנְיָיָה,

The Gemara answers: **Rabbi Ḥiyya** could have **said to you** that this is what transpired: **When Rabbi Yehuda HaNasi taught him**, bar Kappara, **he taught him two** cases involving **exemptions**, i.e., the cases of a non-priest who served in the Temple on Shabbat and that of the blemished priest who served while ritually impure. Both of these are cases of more inclusive prohibitions, and he was informing bar Kappara that Rabbi Shimon holds them liable on only one count, because Rabbi Shimon holds that a prohibition takes effect where another prohibition already exists only if the prohibitions take effect simultaneously, but not in cases of more inclusive prohibitions.

Perek III
Daf 33 Amud b

וְאִסּוּר בּוֹלֵל אֲתַנְיָיָה, וְאֵלִיבָא דְרַבִּי שְׁמַעוֹן, וְחוּזָא לְבֵר קַפְרָא לְזֹר שְׂאֵכֵל מְלִיקָה, וְאִידִי דְדַמִּיָּא לָהּ – עֲרֵבָה בְּהַדְיָיָהּ, וְעֵינִין בָּהּ, וְלֹא אֶשְׁבַּח אֶלֶא בְּבֵת אַחַת.

And he taught him the ruling with regard to a **more inclusive prohibition**, that in such cases there is an exemption, and this ruling is in accordance with the opinion of **Rabbi Shimon**. And bar Kappara then saw the case of a **non-priest who ate a bird killed by pinching**, and since it was similar to the previous cases, he **mixed them together**. Then, sometime later, it seemed to him as though he had in truth heard all of these cases together from Rabbi Yehuda HaNasi, but when he **examined this last case**, he found that it could exist **only** if the events occurred **simultaneously**.

וסבר: מִדָּהָא בְּבֵת אַחַת – הָא נָמִי
בְּבֵת אַחַת, וּמִדָּהָנָךְ לְפָטוֹר – הָנָךְ
נָמִי לְפָטוֹר.

And he concluded that since the case of a non-priest eating a bird killed by pinching can occur only in a scenario where the prohibitions take effect **simultaneously**, the other cases are instances of **simultaneous prohibitions as well**. And similarly, since he was taught to **exempt** one individual from a second prohibition in **those cases, these cases were taught to exempt** one individual from a second prohibition **as well**. Therefore, according to Rabbi Hiyya, bar Kappara did not knowingly speak falsely. Rather, he heard certain matters from Rabbi Yehuda HaNasi and then mistakenly merged with them other matters. As a result, he confused the issue.

מִיִּתְיָבִי: זֶר שֶׁשָּׁיִמַּשׁ בְּשַׁבָּת, וּבִעַל מוֹם
שֶׁשָּׁיִמַּשׁ בְּטוֹמְאָה – יֵשׁ כָּאֵן מְשׁוּם
זְרוּת, וּמְשׁוּם שַׁבָּת, וּמְשׁוּם בִּעַל מוֹם,
וּמְשׁוּם טוֹמְאָה, דְּבָרֵי רַבִּי יוֹסִי. רַבִּי
שְׁמַעוֹן אוֹמֵר: אֵין כָּאֵן אֱלָא מְשׁוּם
זְרוּת וּבִעַל מוֹם בְּלִבְדָּ. וְאֵילוּ מְלִיקָה
שִׁירָה.

The Gemara raises an objection to the statement of bar Kappara from a *baraita*: In the case of a **non-priest who served on Shabbat** and the case of a **blemished priest who served while ritually impure, there is liability here, due to the prohibition against serving as a non-priest; and due to the prohibition against desecrating Shabbat; and due to the prohibition against serving as a blemished priest; and due to the prohibition against serving after contracting ritual impurity**. This is the statement of Rabbi Yosei. Rabbi Shimon says: **There is liability here only due to the prohibition against serving as a non-priest and due to the prohibition against serving as a blemished priest**. The Gemara notes: **And yet the case of a non-priest who ate a bird killed by pinching was left out^N** and not mentioned among the cases subject to this dispute.

לְמַאן שִׁירָה? אֵילִימָא לְרַבִּי יוֹסִי –
הֲשֵׁתָא רַבִּי יוֹסִי בְּאִיסוּר כּוֹלֵל מִיִּתְיָב
שְׁתֵּים, בְּאִיסוּר בֵּת אַחַת מִיִּבְעָא?
אֱלָא לָאוּ – לְרַבִּי שְׁמַעוֹן וּבְאִיסוּר
כּוֹלֵל הוּא דְּפָטוֹר – אֲבָל בְּאִיסוּר בְּבֵת
אַחַת מִיִּתְיָב, תִּיּוֹבְתָא דְּבַר קַפְרָא!
תִּיּוֹבְתָא.

The Gemara asks: **According to whom was this left out?** That is, according to the opinion of which *tanna* would this question arise? If we say that this was left out according to the opinion of Rabbi Yosei, it is difficult. Now that Rabbi Yosei holds, even in cases of a **more inclusive prohibition, that one is liable on two counts^N**, as was stated with regard to a non-priest who served on Shabbat, is it necessary to state that in the case **where the additional prohibition takes effect simultaneously** one would be liable on two counts? Rather, is it not according to the opinion of Rabbi Shimon that this case was left out, as Rabbi Shimon would concede that in this case one is liable on two counts? Therefore, Rabbi Shimon **exempts** one from liability for the second prohibition in cases of **more inclusive prohibitions, but in cases of simultaneous prohibitions** he would **deem** one **liable** on two counts. The Gemara summarizes: **The refutation of the opinion of bar Kappara is indeed a conclusive refutation**, and his statements are rejected.

זֶר שֶׁשָּׁיִמַּשׁ בְּשַׁבָּת, בְּמַאי? אִי
בְּשִׁחְטָה – שְׁחִיטָה בְּזֶר שִׁירָה, וְאִי
בְּקַבְלָה וְהוֹלָכָה – טְלָטוּל בְּעֵלְמָא
הוּא.

The Gemara raises a question with regard to one of the laws mentioned above. The *baraita* mentioned the case of a **non-priest who served on Shabbat**. The Gemara wonders: **In what form of service did he perform in the Temple?** If this is referring to a case where a non-priest performed the **slaughtering** of the sacrificial animal, there would be no prohibition, as the **slaughtering by a non-priest is valid**. And if it is referring to **receiving the blood and carrying the blood to the altar**, while this is a case where he would be liable as a non-priest performing the service of a priest, insofar as Shabbat is concerned **this is a case only of moving**, and it does not entail a violation of any prohibited labor.

NOTES

And yet the case of a non-priest who ate a bird killed by pinching was left out – וְאֵילוּ מְלִיקָה שִׁירָה: The question arises: How can evidence be derived from the fact that this *halakha* is absent? Must the *tanna* teach all of the cases? The commentaries answer that were the case of eating a bird killed by pinching indeed included in this dispute, it would have been appropriate to state it here because it would teach the novel ruling that Rabbi Shimon dissents even in cases of simultaneous prohibitions. Moreover, if the dispute was indeed about simultaneous prohibitions, then in the case of a non-priest who served on Shabbat, Rabbi Shimon would hold that the more

severe prohibition of Shabbat would apply, not the prohibition against being a non-priest. The fact that Rabbi Shimon states that one would be liable only for serving as a non-priest indicates that the case is one of two prohibitions that take effect one after another, where one is liable only for the first prohibition (*Arukh LaNer*).

One is liable on two counts – מִיִּתְיָב שְׁתֵּים: According to all opinions, this does not refer to two sin-offerings but rather the transgression of two prohibitions, each according to its own ruling (Ramban; Rashba).

If by burning – אי בהקטרה: Rashi and others explain that this refers to the burning of the sacrificial portions on the altar. However, the Ritva seems to hold that this refers to the burning of incense. It is stated in the Jerusalem Talmud, in tractate *Shabbat*, that Rabbi Yosei does not deem one liable for kindling but rather for cooking. Although this seems to support Rashi's understanding, it can also be interpreted according to the Ritva's opinion.

The slaughtering of the High Priest's bull – פרו של בהן גדול: *Arukh LaNer* notes that this phrase in the Gemara indicates that the term Shabbat here is not referring to actual Shabbat but rather Yom Kippur, which is also called Shabbat. This is not a certain proof, however, since it could also be referring to a Yom Kippur that occurred on Shabbat. The Rivan writes that this suggested resolution of the Gemara is inexact, for even if the slaughtering of the High Priest's bull by a non-priest is prohibited, it is still not a prohibition that incurs *karet*, nor is it a negative mitzva. It would seem that the Gemara itself did not raise this objection because the suggestion is not sustained in the end.

The High Priest's bull – פרו של בהן גדול: On Yom Kippur, the High Priest sacrifices a bull as a sin-offering for himself, his family, and all the members of the priesthood (see Leviticus, chapter 16).

אלא – Rather he merely enumerates the prohibitions: Rashi explains that according to this conclusion, Rabbi Yosei must be referring to receiving and carrying the blood. However, *Tosafot Yeshanim* explains that it is possible that he is even referring to burning. Although this does not entail the bringing of a sin-offering according to Rabbi Yosei, it is nevertheless prohibited by Torah law.

And if they were brothers, etc. – ואם היו אחין וכו': The commentaries note: If the mishna wanted to demonstrate cases where several prohibitions are violated by a single act, it could have enumerated more prohibitions. For example, it could have taught that these men were already married, and that the women that they inadvertently married were the daughters of their wives from a previous marriage. They therefore conclude that the mishna served to teach us only the different types of prohibitions that might be mutually applicable, each on the basis of the other's actions. Although according to this understanding it would have been unnecessary to mention the prohibition with regard to a menstruating woman, this case teaches a novelty in that it pertains to something that is presently prohibited but will eventually become permitted (*Tosefot HaRosh*).

אי בהקטרה – והאמר רבי יוסי:
הבערה ללאו יצאתה!

אמר רב אחא בר יעקב: בשחיטת פרו של בהן גדול, ובדברי האומר: שחיטת פרו של בהן גדול בור – פסולה. אי הכי מאי איריא זר, אפילו בהן הדיוט נמי שזר אצלו קאמר.

מתקיף לה רב אשי: מדי חטאות קתני, או לאוי קתני? אלא: איסורי בעלמא קא חשיב. למאי נפקא מינה – לקוברו בין רשעים גמורים.

מתני' שנים שקידשו שתי נשים, ובשעת כניסתן לחופה החליפו את של זה לזה ואת של זה לזה – הרי אלו חייבין משום אשת איש. ואם היו אחין – משום אשת אח, ואם היו אחיות – משום אשה אל אחותה, ואם היו נדות – משום נדה.

If he served by burningⁿ the sacrificial portions on the altar, then this discussion follows the opinion of Rabbi Yosei, **but didn't Rabbi Yosei say that the prohibition against kindling on Shabbat was singled out to teach that one who lights a fire on Shabbat merely violates a prohibition?** This is as opposed to the other prohibited labors, which incur death penalties when violated willfully and entail the bringing of a sin-offering when violated unintentionally. Why, then, would Rabbi Yosei deem one liable for two sin-offerings?

Rav Aha bar Yaakov said: The service referred to in this case is the slaughtering of the High Priest's bullⁿ on Yom Kippur, and this is in accordance with the statement of the one who says that the slaughtering of the High Priest's bullⁿ is disqualified if performed by a non-priest, for this service is designated specifically for the High Priest alone. The Gemara asks: **If so**, that this is referring to the slaughtering of the High Priest's bull, then **why specifically state a non-priest?** The same would hold true even for a common priest as well. The Gemara answers: **This is referring to one who is as a non-priest in relation to the High Priest and not to an actual non-priest.** The Hebrew word *zar* literally means foreigner, and this type of service is considered foreign to a common priest as well as a non-priest.

Rav Ashi strongly objects to this: The previous rejection that was based on the idea that the act of burning was not a full-fledged prohibited labor is in fact groundless. Is the *tanna* teaching how many sin-offerings would be incurred, or is he teaching how many negative mitzvot are being violated? Rather, he merely enumerates the prohibitionsⁿ violated by a certain action, without detailing their severities, and therefore the desecration of Shabbat involved in the Temple service can be any Shabbat violation. The Gemara asks: **What practical difference does it make** how many prohibitions are involved? The Gemara answers: It affects the decision whether or not to bury him among the completely wicked. If he violated two prohibitions, he is considered wicked on two counts and consequently must be buried accordingly.

MISHNA In the case of two men who betrothed two women, and at the time that they entered the wedding canopy, after the betrothal, the men switchedⁿ this wife with that wife and that one with this one, then these two men are liable for engaging in forbidden sexual relations with a married woman, since each of them had intercourse with his fellow's wife. The act of betrothal is sufficient to prohibit a woman to all other men as a married woman. Therefore, when the women were switched, both men transgressed this violation. **And if they were brothers,**ⁿ then they are also liable for forbidden sexual relations with a brother's wife. **And if these women were sisters,** then they are liable for taking a wife and her sister as well. **And if they were menstruating women,** they would be liable for intercourse with a menstruating woman as well.

HALAKHA

Switched women – נשים שהוחלפו: If two men betrothed two women, who were then switched when they entered the wedding canopy, they are liable for having intercourse with a married woman. If they are brothers, they are also liable for intercourse with a brother's wife. If the women are sisters,

they are also liable for intercourse with a wife's sister. If the women were menstruating, they are also liable for intercourse with a menstruating woman (Rambam *Sefer Korbanot, Hilkhot Shegagot* 4:1).

מפרישין אותן – שולחן ארוך: We separate them for three months – **שולחן ארוך:** In cases where a woman was mistakenly married in a forbidden manner, if she engaged in sexual intercourse, she is then separated for three months to check if she became pregnant. This is in order to distinguish between an illegitimate child and one who was conceived lawfully. If she was a minor, she is not separated, since the Sages did not make decrees for impossible eventualities (Rambam *Sefer Nashim, Hilkhot Geirushin* 11:18; *Shulhan Arukh, Even HaEzer* 13:8).

אם נאנסה אישה – שולחן ארוך: After rape a woman is permitted to return to an Israelite – **אם נאנסה אישה:** If the wife of an Israelite was raped, she is permitted to her husband but forbidden to priests, such that if she is widowed, she is prohibited from marrying a priest (Rambam *Sefer Kedusha, Hilkhot Issurei Bia* 18:7–8; *Shulhan Arukh, Even HaEzer* 6:11).

NOTES

אי במויד – שולחן ארוך: Are we dealing with wicked individuals, etc. – **אי במויד:** Although there are several *halakhot* in the Mishna that deal with cases of wicked individuals such as these, were the reference here to an intentional act, this particular mishna would not have taught anything especially novel. The only novel teaching would be the need to bury them among the completely wicked. If, however, the mishna is referring to a case where the men acted unintentionally, the novel element is the number of sin-offerings that they are obligated to bring (Rashash).

אי במויד – שולחן ארוך: If intentionally, would there be an offering – **אי במויד:** Although it could be suggested that the husbands acted intentionally while the women were unaware and therefore acted unwittingly, such an explanation is not reasonable as the Mishna does not generally refer to two different types of behavior within a single case (Ramban).

HALAKHA

אם נאנסה אישה – שולחן ארוך: A prohibition takes effect where another prohibition already exists – **אם נאנסה אישה:** A prohibition takes effect where another prohibition already exists only if both prohibitions take effect simultaneously, or if the second prohibition is a more inclusive prohibition or an expanded prohibition (Rambam *Sefer Korbanot, Hilkhot Shegagot* 4:1).

ומפרישין אותן שלשה חדשים, שמה מעוברות הן, ואם היו קטנות שאינן ראויות לילד – מחזירין אותן מיד, ואם היו פהגות – נפסלו מן התרומה.

And following these forbidden sexual relations, we separate these women from their husbands for three months,⁴ lest they were impregnated by that forbidden act of intercourse. Doing so makes it possible to distinguish a child born of these relations, so that he could be rendered a *mamzer*. And if they were female minors and unable to bear children, then we immediately return them to their original husbands. And if they were daughters of priests, they are thereby disqualified from eating of *teruma*. By engaging in illicit sexual acts, they were rendered forbidden to priests and disqualified from eating *teruma*.

גמ' "החליפו" מדי בשיעור עסקינן! ותו: הא דתני רבי חייא: הרי כאן שש עשרה חטאות. אי במויד – מי איכא קרבן? אמר רב יהודה, תני: הוחלפו.

GEMARA In the mishna it states: They switched this one with that one. Are we dealing with such wicked individuals^N that they would intentionally switch their wives? And furthermore, consider that which Rabbi Hiyya taught on this subject: There are sixteen sin-offerings here, four sin-offerings for each of the men and four for each of the women. Yet, if they had acted intentionally would there be an offering?^N Sacrifices are brought only for unintentional acts. Rav Yehuda said: Teach instead they were switched, which indicates that the switching was not done intentionally; rather, the women were accidentally mixed up.

הכי נמי מסתברא, דקתני סיפא: אם היו קטנות שאינן ראויות לילד – מחזירין אותן מיד. ואי במויד – מי שריא? הא לא קשיא: פיתוי קטנה – אונס ונדה, ואונס בישראל מותר שרי.

The Gemara comments: This, too, stands to reason from the fact that the latter clause teaches: If they were female minors and unable to bear children, then we immediately return them. And if this had been done intentionally, would it be permitted to return a woman who had engaged in illicit sexual acts to her husband? The Gemara comments: This is not difficult and does not disprove the notion that the act was intentional. Even if the act was intentional, these women would be permitted to return to their husbands. This is because the seduction of a minor girl is considered rape, and after rape a woman is permitted to return to an Israelite^H husband.

אלא דקתני: מפרישין אותן שלשה חדשים שמה מעוברות הן, הא לא מעוברות – שריין, ואי במויד – מי שרי? אלא לאו שמע מינה: הוחלפו, שמע מינה.

However, this can be derived from a different point that the mishna teaches: We separate these women from their husbands for three months, as perhaps they became pregnant. From here it can be deduced: Were it to become clear after three months that they are not pregnant, they are permitted to return to their husbands. And if they had acted intentionally, would this be permitted? Rather, must one not conclude from here that the mishna is referring to a case where they were switched inadvertently? The Gemara summarizes: Indeed, conclude from here that this is the case.

Perek III
Daf 34 Amud a

ומאן האי תנא דאית ליה איסור בולל ואיסור מוסקי ואיסור בת אחת?

The Gemara asks: According to Rabbi Hiyya, who teaches that this case incurs sixteen sin-offerings, who is this *tanna* who holds that a prohibition takes effect where another prohibition already exists^H for a more inclusive prohibition, an expanded prohibition, and a simultaneous prohibition? If these men are brothers, the moment that one betrothed a woman, that woman was immediately rendered forbidden to the second brother both as a married woman and as his brother's wife. When the second brother betrothed her sister, this added the prohibition pertaining to his wife's sister. This is a more inclusive prohibition because, as a result of this betrothal, the second brother is prohibited from engaging in sexual intercourse not only with his wife's sister, who is his brother's wife, but also with all of her other sisters. When this woman becomes a menstruating woman, she is forbidden to her husband as well, which is an expanded prohibition. Consequently, the mishna includes examples of all three types of prohibitions and asserts that they all take effect in this case. Therefore, the Gemara wonders which *tanna* holds that in each of these cases the prohibition takes effect even where another prohibition exists.

Obligation to bring four sin-offerings and one guilt-offering for a single eating – חייב ארבע חטאות ואשם – אחד באכילה אחת: One who was ritually impure and ate an olive-bulk of prohibited fats that were leftover from a consecrated animal on Yom Kippur is obligated to bring four sin-offerings: One for eating prohibited fat, one for eating *notar*, one for eating consecrated food while ritually impure, and one for eating on Yom Kippur. This ruling applies in a case where one had previously eaten other food, so that altogether he ate a total of a date-bulk. In addition, he is obligated to bring a guilt-offering for deriving benefit from consecrated property (Rambam *Sefer Korbano*, *Hilkhot Shegagot* 6:4).

אמר רב יהודה אמר רב: רבי מאיר היא. דתנא: יש אוכל אכילה אחת וחייב עליה ארבע חטאות ואשם אחד.

טמא שאכל חלב והוא נותר מן מקדשין ביום הכפורים.

רבי מאיר אומר: אם היתה שבת והוציאו בפיו – חייב. אמרו לו: אינו מן השם.

Rav Yehuda said that Rav said: This is the opinion of Rabbi Meir,^N as it is taught in a *baraita*: There is one who performs a single act of eating^N an olive-bulk of food, and he is liable to bring four sin-offerings and one guilt-offering.^H

How so? This *halakha* applies to one who is ritually impure who ate forbidden fat^N that was *notar* from a consecrated offering, i.e., it remained after the time when it was permitted to eat it, and this occurred on Yom Kippur. One who did this is liable to bring one sin offering for eating consecrated food while impure, one for eating forbidden fat, one for eating *notar*,^N and one for eating on Yom Kippur. He is also liable to bring a guilt-offering for misuse of consecrated items. In this case, it was prohibited to eat the fat from the moment the animal was born. When the animal was consecrated, the prohibition against deriving benefit from it took effect on the entire animal, rendering this an expanded prohibition. When the priest became ritually impure and thereby prohibited from partaking of all sanctified foods, a more inclusive prohibition took effect. The moment the fat was rendered *notar*, it became prohibited to offer it on the altar as well, so that that is another instance of an expanded prohibition. Lastly, on Yom Kippur, an additional, more inclusive prohibition took effect because on Yom Kippur it is prohibited to eat all food, even that which is not consecrated.

Rabbi Meir says: There is one more sin-offering for which he may be liable. If it was Shabbat and he carried this olive-bulk of food from one domain to another in his mouth,^N he is liable for carrying out on Shabbat. The Rabbis said to Rabbi Meir: Liability for the sin-offering that you added is not incurred from violation of the same type of prohibition. He is liable for carrying out the food, not for eating it. In this example, the prohibitions of Shabbat and Yom Kippur take effect at the same moment, and therefore this last case would be an instance of simultaneous prohibitions, and Rabbi Meir holds that they take effect as well. Therefore, this *baraita* demonstrates that Rabbi Meir holds that prohibitions take effect where other prohibitions already exist in all of these instances: More inclusive prohibitions, expanded prohibitions, and simultaneous prohibitions.

NOTES

This is the opinion of Rabbi Meir – רבי מאיר היא: From the fact that the Gemara ascribes this opinion to Rabbi Meir, some infer that Rabbi Yosei does not hold that more inclusive prohibitions take effect where another prohibition already exists (see *Keren Or*). Many early commentaries, however, suggest that Rabbi Yosei maintains that more inclusive prohibitions take effect as well, and here the Gemara simply sought out a source where a *tanna* explicitly states that all three types of prohibitions do, in fact, take effect (*Tosafot Yeshanim*; Ritva; Meiri).

There is one who performs a single act of eating, etc. – יש אוכל אכילה אחת וכו': Rabbeinu Hananel explains that the simultaneous prohibitions here involve one who was rendered ritually impure and then grew two pubic hairs, indicating that he reached maturity. Under such circumstances, both the prohibition against eating consecrated food while ritually impure and the prohibition against eating forbidden fats take effect at once. Accordingly, the first *tanna* also holds that these three types of prohibitions, i.e., expanded prohibitions, more inclusive prohibitions, and simultaneous prohibitions, all take effect where another prohibition already exists. The Gemara, however, preferred to attribute this opinion to Rabbi Meir because unattributed *mishnayot* are generally considered to follow Rabbi Meir's opinion (see Rivan).

The Rif quotes this opinion and disagrees on several counts. He explains that the instance of simultaneous prohibitions

referred to here is specifically in the addition cited in the name of Rabbi Meir: Carrying on Yom Kippur and carrying on Shabbat. Because Yom Kippur occurred on Shabbat, these prohibitions took effect simultaneously. According to this opinion, it is clear why the mishna was attributed to Rabbi Meir and not to the first *tanna*, for even if the first *tanna* agrees in principle with the ruling of simultaneous prohibitions, the ruling was stated explicitly only by Rabbi Meir. Rashi also explains that the ruling with regard to simultaneous prohibitions is derived from Rabbi Meir's statement. However, according to Rashi's opinion, there is no prohibition against carrying from domain to domain on Yom Kippur. Therefore, he explains that the two simultaneous prohibitions are the prohibition against eating on Yom Kippur and the prohibition against carrying on Shabbat (see Ramban and Rashba).

Fat – חלב: This refers to the animal fats that are prohibited by Torah law. Intentionally eating these fats from kosher domesticated animals incurs *karet* (see Leviticus 7:22–25), while one who does so unwittingly is liable to bring a sin-offering. The fats of non-domesticated kosher animals and of kosher birds may be eaten. Among the signs differentiating forbidden fats from permitted fats is that the forbidden fats lie above the meat and are not entwined with it. They are enclosed by a thin membrane and are easily peeled away from the meat. Most of the forbidden fats of a sacrificial animal were sacrificed on the altar.

Notar – נותר: This refers to parts of an offering left over after the time permitted for it to be eaten. One who eats the leftover portion of an offering is liable for punishment by *karet*. The Sages decreed that the leftover portion should be considered ritually impure, so that the priests would be prompt and meticulous in its removal.

And he carried it in his mouth – והוציאו בפיו: Some early commentaries had a variant text that read only: And carried it out. This version raises a question: If there is no connection between this last activity and the eating previously mentioned, why did Rabbi Meir add this prohibited labor in particular when he could have cited any other prohibited labor performed at the same moment? His choice is understandable according to the version that reads: He took it out in his mouth, because eating can be considered a form of placing an item, which is a requisite element of the prohibition against carrying. Without it, there is no liability.

According to a different version, however, this choice would seem arbitrary. In truth, even according to the current version, there is difficulty, as the Sages debated the question of whether carrying in one's mouth would indeed be considered carrying, as this is not the normal way to carry food. Nonetheless, in this case, since one is doing so as part of the act of eating, it is considered normal to carry in one's mouth and he would be liable.

וְרַבִּי מֵאִיר אֵלִיבָא דְמָאן? אִי אֵלִיבָא
דְרַבִּי יְהוֹשֻעַ – הָאֵמֵר: טַעָה בְּדִבְרֵי
מִצְוָה פְטוּר. אֲלָא אֵלִיבָא דְרַבִּי
אֱלִיעֶזֶר.

אִיבְעִית אִימָא: לְעוֹלָם אֵלִיבָא דְרַבִּי
יְהוֹשֻעַ, כִּי קָאֵמֵר רַבִּי יְהוֹשֻעַ: טַעָה
בְּדִבְרֵי מִצְוָה פְטוּר – הֲנִי מִלִּי גַבִּי
תִּנּוּקוֹת, דְּזָמְנֵי בְּהוּל. אֲבָל הָאִי,
כִּינּוּ דָאִין זְמַנּוּ בְּהוּל – לֹא.

וְהִי תְרוּמָה דָאִין זְמַנּוּ בְּהוּל, וְקִפְטָר!
דְתַנּוּ: הִיָּה אוֹכֵל בְּתְרוּמָה, וְנוֹדַע
שֶׁהוּא בֶן גְּרוּשָׁה אוֹ בֶן חִלּוּצָה –
רַבִּי אֱלִיעֶזֶר מְחַיֵּב קָרֵן וְחֹמֶשׁ, וְרַבִּי
יְהוֹשֻעַ פּוֹטֵר.

הָאֵיתָמֵר עָלֶיהָ, אָמַר רַב בִּיבִי בְרִי
אֲבִי: הָכָא בְּתְרוּמָה בְּעֶרֶב הַפֶּסַח
עֲסָקִין, דְּזָמְנָהּ בְּהוּל.

וְאִיבְעִית אִימָא: בְּאִיסוּר בֵּת אַחַת,
וְאֵלִיבָא דְרַבִּי שְׁמַעוֹן.

בְּשִׁלְמָא כּוֹלְהוּ – מִשְׁבַּחַת לְהוּ,
דְּשׁוּינְהוּ שְׁלִיחַ, וְשׁוּי אִינְהוּ שְׁלִיחַ,
וּפְגַע שְׁלִיחַ בְּשְׁלִיחַ. אֲלָא נָדוּת –
הִכִּי מִשְׁבַּחַת לָהּ?

The Gemara continues to clarify the opinion of Rabbi Meir: **And in accordance with whose opinion is the statement of Rabbi Meir?**^N If you say that it is in accordance with the opinion of Rabbi Yehoshua, this is difficult. **Didn't Rabbi Yehoshua say that one who erred with regard to a mitzva is exempt** from bringing a sin-offering, i.e., one who unwittingly performed a transgression while intending to perform a mitzva is exempt from punishment?^H In the case in the mishna as well, the men intended to perform the mitzva of marriage but unwittingly violated a transgression because the wives were switched. Therefore, according to the opinion of Rabbi Yehoshua, they should be exempt from a sin-offering. **Rather**, this must be **in accordance with** the opinion of Rabbi Eliezer, who holds that even if one mistakenly transgressed while attempting to perform a mitzva, he is still obligated to bring a sin-offering.

If you wish, resolve this differently and say: **Actually**, this can be explained even according to the opinion of Rabbi Yehoshua. **When Rabbi Yehoshua says that one who erred with regard to a mitzva is exempt**, this applies only to the case of babies who were mixed up in such a way that on Shabbat the *mohel* mistakenly circumcised a baby whose time had not yet come for circumcision. Since the *mohel* did not fulfill the mitzva of circumcision, he should be liable for performing prohibited labor on Shabbat. However, Rabbi Yehoshua exempts him from a sin-offering **since he is pressed for time**. Because circumcision must be performed only on the day specified, he was rushed and anxious to perform the circumcision, and due to this sense of urgency he erred and thought that the proper time was on Shabbat. **In this case** in the mishna, **however**, where the mistake involved marriage, **since the brothers were not pressed for time** Rabbi Yehoshua does **not** deem the brothers exempt.

The Gemara objects: **And yet** in the case of eating *teruma*, where **one is not pressed for time** and nevertheless Rabbi Yehoshua exempts him if the act involved a mitzva, **as we learned** in a mishna (*Pesahim* 72b): If a priest was partaking of *teruma* and it became known that he was the son of a divorced woman^N or the son of a *halutza* and thereby disqualified from the priesthood and prohibited from eating *teruma*,^H **Rabbi Eliezer deems him liable** to pay the value of the **principal** and an additional **fifth**, like any non-priest who unwittingly ate *teruma*. However, **Rabbi Yehoshua exempts** him because at the time of consumption he intended to perform a mitzva, for he thought that he was a priest eating of the *teruma*.

The Gemara responds: **But wasn't it stated with regard to that mishna: Rav Beivai bar Abaye said: Here we are dealing with leavened teruma that was being eaten by the priest on the eve of Passover, for he is pressed for time.** In this case, he would rush to eat it so that it would not have to be burned.

The Gemara offers a different attribution of the mishna: **And if you wish**, say a different explanation: The mishna is not according to the opinion of Rabbi Meir, who deems one liable in cases of more inclusive prohibitions and expanded prohibitions. Rather, the mishna is referring only to cases of **simultaneous prohibitions**, and **in accordance with** the opinion of Rabbi Shimon.

The Gemara asks: **Granted**, with regard to **all of** the prohibitions in the mishna, **you can find that they take effect simultaneously** in the case where the men **appointed** a single **agent** to betroth the women for them, **and the women appointed an agent** to accept the betrothals for them, **and one agent encounters the other agent**. In this scenario, all the men become betrothed to all the women the moment that the agents meet, and the prohibitions all take effect simultaneously. **However**, with regard to the prohibition pertaining to **menstruating women**, **how can you find** the case where both women become menstruating women at the exact time of betrothal?

NOTES

And in accordance with whose opinion is the statement of Rabbi Meir – וְרַבִּי מֵאִיר אֵלִיבָא דְמָאן: Most commentaries explain, like Rashi, that this question relates to the present mishna, which was attributed to Rabbi Meir. However, Rabbeinu Hananel explains that this question relates to the mishna pertaining to the eating of prohibited fats. Because the latter mishna is dealing the prohibition of *notar*, it could be said that one was attempting to perform a mitzva, for he intended to remove the leftover foods to be burnt. The Rif and early commentaries disagree with this ruling.

And it became known that he was the son of a divorced woman – וְנוֹדַע שֶׁהוּא בֶן גְּרוּשָׁה: Some later commentaries wonder: Why should this priest be held liable? Since it was impossible for him to know beforehand that he would be disqualified, this should be considered a circumstance beyond his control, and he should therefore be exempt. The Ritva explains that the mishna is referring to a situation where a public rumor had been spread that this priest was disqualified, and so he should have acted with more caution.

HALAKHA

An unwitting violation in a matter that involved a mitzva – שָׁגַג בְּדִבְרֵי מִצְוָה: One who performs a transgression that requires the bringing of a sin-offering in the course of performing a mitzva is exempt from the obligation to bring an offering. This ruling applies only when one was both obligated to perform the mitzva and pressed for time (Rambam *Sefer Korbanot, Hilkhot Shegagot* 2:8).

A priest who was partaking of *teruma* and it became known that he was disqualified – כִּהֵן אוֹכֵל תְּרוּמָה וְנוֹדַע – שֶׁהוּא פָסוּל: If a priest was eating *teruma* and was informed that he was the son of a divorced woman or the son of a *halutza*, he must pay the principal alone but does not need to add a fifth of the sum that is the usually a penalty for unintentionally eating *teruma*. If at the time of eating he was pressed for time, such as is the case of eating leavened *teruma* on the eve of Passover, then he is exempt from payment, in accordance with the opinion of Rabbi Yehoshua and the conclusion in the Gemara (Rambam *Sefer Zera'im, Hilkhot Terumat* 10:12).

Continually discharge blood – **שופעות**: Generally, the flow of blood during a menstrual cycle continues several days. Although there are differences between the days insofar as the amount of blood is concerned, a woman is considered to be continually discharging blood during the entirety of her menstruation, generally five to seven days.

אמר רב אמר רב: בשופעות מתוך שלשה עשר לאחר שלשה עשר לאחיבי אינה, מתוך שנים עשר לאחר שנים עשר – לחיבי אינה.

Rav Amram said that Rav said: This is referring to a situation where the women **continuously discharge menstrual blood⁸ from within the thirteenth^N year of the brothers until after** they reached the age of thirteen, in order to deem the men liable for the prohibition pertaining to a menstruating woman. At the moment that the boys reached maturity and the betrothals went into effect, the sisters were forbidden as menstruating women. And the women were continuously discharging blood from within the twelfth year of the women until after the age of twelve, in order to deem the women liable for engaging in relations as a menstruating woman. Therefore, if this took place in such a way that on the exact day when the men reached maturity, i.e., their thirteenth birthday, the women reached maturity, i.e., their twelfth birthday, and at that moment they were menstruating, then all of the prohibitions would take effect simultaneously and they would be liable on all counts, according to Rabbi Shimon as well.

”מפרישים אותן”. והא אין אשה מתעברת בביאה ראשונה! אמר רב נחמן אמר רבה בר אבבה: שבועלו ושנו. ואלא הא דתנא רבי חייא: הרי כאן שש עשרה חטאות, תלתין ותרתי הויין!

§ The mishna taught that **we separate** these women from their husbands for three months, as perhaps they became pregnant. The Gemara asks: **But isn’t it known that a virgin woman does not become pregnant^N from her first sexual act?** Rav Nahman said that Rabba bar Avuh said: This is referring to a situation where they engaged in intercourse and then repeated the act, so that it is possible that the women were impregnated during the second act of intercourse. The Gemara asks: **But if this is so, how can one explain that which Rabbi Hiyya teaches:^N Here, then, are sixteen sin-offerings?** If there were indeed two acts of intercourse, then there should be thirty-two sin-offerings, since each prohibition was violated twice.

ולמעמד, לרבי אליעזר, דמחייב על כל כח וכח, טובא הויין! אלא, דבכח ראשון קחשיב – הכי נמי דביאה ראשונה קחשיב.

The Gemara answers: **And according to your reasoning, that Rabbi Hiyya’s enumeration of sin-offerings applies to all acts of intercourse, then according to the opinion of Rabbi Eliezer, who deems one liable to bring a sin-offering for each and every thrusting movement during a single act of intercourse, there would be many prohibitions that were violated.** This would greatly multiply the number of sin-offerings required. **Rather, it must be that Rabbi Hiyya, with regard to Rabbi Eliezer’s opinion, is enumerating only the first thrusting movement in the intercourse. And so too, with regard to the Rabbis’ opinion, he is enumerating only the first act of intercourse.** If there were two acts of intercourse, however, the number of sin-offerings would be doubled.

אמר ליה רבא לרב נחמן:

Rava said to Rav Nahman:

NOTES

Where they continuously discharge blood from within the thirteenth, etc. – **בשופעות מתוך שלשה עשר וכו’**: Rashi posits that this is a case where male minors betrothed female minors prior to maturity, so that the betrothals and the prohibition with regard to a menstruating woman took effect simultaneously. *Tosafot*, the Ramban, and the Rashba question this explanation: Since there is no legal efficacy to an act performed by minors, how could these betrothals later take effect? Even if one were to suggest that this explanation follows Rabbi Meir’s opinion, that it is possible to perform betrothal to effect acquisition with an item that has not yet come into being, it is still unclear whether this principle would apply to this a case, where the one performing the betrothal is in fact a minor himself. Rivan and *Tosefot HaRosh* explain that if the betrothal was conditional and previously agreed upon, it could take effect upon their arrival at maturity (see *Mishne LaMelekh*).

Due to this difficulty, many early commentaries preferred Rabbeinu Hananel’s version of the text which reads: They were continuously discharging blood from within three until after three. This indicates that the situation is one of female minors betrothed by their fathers to adult males. Before the age of three, any intercourse that takes place has no legal status, so that none of the prohibitions mentioned could apply. When they reached the age of three all of the prohibitions took effect simultaneously. This would create a situation where the males

would be liable for all of the prohibitions. However, when the Gemara states: Continuously discharging blood from within twelve, this is a separate scenario. It is a case where the women reached maturity and would therefore be liable for these prohibitions. According to this opinion, all of the prohibitions did not affect both the men and women at the same time. Rather there are two different scenarios: One in which all the prohibitions affected the men at the same time, and one where all the prohibitions affected the women at the same time. As a result, there is no need to adopt Rashi’s unlikely description that this refers to two twin brothers who betrothed two twin sisters who were exactly one year younger than them.

But isn’t it known that a virgin woman does not become pregnant, etc. – **הא אין אשה מתעברת וכו’**: The early commentaries ask: Why does the Gemara assume that this case refers to virgins? Perhaps it refers to women who had previously engaged in permissible intercourse, such as widows, or even women who had engaged in illicit intercourse. According to Rabbeinu Hananel’s reading, which states that this is a case of three-year-old girls, this question is irrelevant. However, according to Rashi’s version of the text, this is difficult. *Tosefot HaRosh*, citing the name Maharam MiRotenburg, states that these women were necessarily virgins because the mishna was particular in stating that these prohibitions took effect only following entrance into the wedding canopy. Had these women

been previously married, they would have already been subject to the prohibition pertaining to a married woman. Additionally, the Ritva explains the following: Given that neither the men nor the women were aware that the mix-up took place, it stands to reason that the women were modest virgins who would not be suspected of illicit sexual acts.

But if this is so, how can one explain that which Rabbi Hiyya teaches, etc. – **ואלא הא דתנא רבי חייא וכו’**: Rashi explains that since the Gemara, in its previous discussion of Rabbi Meir’s opinion, already established that the mishna is in accordance with Rabbi Eliezer’s opinion, it was necessary to explain the *baraita* about the number of potential sin-offerings in the mishna in accordance with Rabbi Eliezer’s opinion as well. Moreover, only according to Rabbi Eliezer is one obligated to bring more than one sin-offering for acts of intercourse performed in one lapse of awareness (see 92a and *Karetot* 15a). Rashi argues that the notion that each thrusting movement obligates one in a separate sin-offering is an extension of this idea.

According to the Vilna Gaon, the attempt to resolve Rabbi Hiyya’s *baraita* in this context is a textual corruption, and both the question and the answer should be omitted (*Haggahot HaGra*). Once the Gemara explained that the mishna could be understood in accordance with Rabbi Shimon’s opinion, in a case where all the prohibitions took effect simultaneously, it was unnecessary to further posit that it follows Rabbi Eliezer.

וְהָאֵתָּמָר בְּבִיאָהּ רִאשׁוֹנָה אֵינָהּ עֹבְרָא!
אָמַר לִיהָ: תָּמָר בְּאַצְבָּע מַעֲכָה. דָּאָמַר
רַבִּי יִצְחָק: כָּל מוֹעֲבֹת שֶׁל בֵּית רַבִּי
תָּמָר שָׁמֶן, וְלָמָּה נִקְרָא שָׁמֶן תָּמָר?
עַל שֶׁשׁ תָּמָר שִׁמְעָה בְּאַצְבָּעָהּ. וְהָאֵתָּמָר
הוּא עֵר וְאוֹנָן! עֵר וְאוֹנָן שִׁמְשׁוּ שְׁלֹא
בְּדֹרְכָן.

מִיָּתִיבִי: כָּל עֲשָׂרִים וָאַרְבָּעָה חֳדָשׁ
דִּשׁ מִבְּפִנִּים וְזוֹרָה מִבְּחוּץ. דְּבַרִּי רַבִּי
אֶלְעָזָר. אָמְרוּ לוֹ: הֲלָלוּ אֵינוּ אֶלָּא
בְּמַעֲשֵׂה עֵר וְאוֹנָן!

בְּמַעֲשֵׂה עֵר וְאוֹנָן, וְלֹא בְּמַעֲשֵׂה עֵר
וְאוֹנָן. בְּמַעֲשֵׂה עֵר וְאוֹנָן – דְּכֵתִיב
”וְהָיָה אִם בָּא אֶל אִשְׁתּוֹ אַחֲיוֹ וְשָׁחַת
אֶרְצָה”, וְלֹא בְּמַעֲשֵׂה עֵר וְאוֹנָן,
דְּאִילוּ הָתֵם – שְׁלֹא בְּדֹרְכָהּ, וְהֵכָא –
בְּדֹרְכָהּ.

בְּשִׁלְמָא אוֹנָן – דְּכֵתִיב בֵּיהּ ”וְשָׁחַת
אֶרְצָה”, אֶלָּא עֵר מַלְלָן? אָמַר רַב נַחֲמָן
בְּרִי יִצְחָק: דְּכֵתִיב ”וַיָּמָת גַּם אוֹתוֹ”,
אֵיךְ הוּא בְּאוֹתוֹ מִיָּתָהּ מֵת. בְּשִׁלְמָא
אוֹנָן – מִשּׁוֹם ”לֹא לוֹ יִהְיֶה הָזֶרַע”,
אֶלָּא עֵר מֵאֵי טַעְמָא עֲבָד הֵכִי? בְּדִי
שְׁלֹא תִתְעַבֵּר וְיִכְחֹשׁ יָפִיָּהּ.

But didn't Tamar become pregnant from the first act of intercourse,^{NB} despite the fact that she was a virgin at the time of her sexual act with Judah? Rav Nahman said: Tamar broke her hymen with her finger prior to intercourse, and it is due to this that she became pregnant from the first act of intercourse, as Rabbi Yitzhak said: All of those women from the household of Rabbi Yehuda HaNasi who break their hymens^N are named Tamar by nickname. And why are they named Tamar? They are called this on account of Tamar, who broke her hymen with her finger. The Gemara wonders about the proof from Tamar itself: But weren't there Er and Onan, her previous husbands, who presumably engaged in sexual intercourse with her? The Gemara responds: Er and Onan engaged in sexual intercourse in an atypical manner, i.e., anal intercourse, and therefore she was still a virgin.

The Gemara raises an objection from the *Tosefta* (*Nidda* 5:6): After a woman gives birth, her husband penetrates inside and spills his semen outside^H for the entire twenty-four months during which the baby is breastfeeding, so that his wife not become pregnant, as that would terminate her milk production and the child might die. This is the statement of Rabbi Eliezer. They said to him: These acts are nothing other than acts similar to those of Er and Onan, which are prohibited. Regardless, it can be deduced from here that Er and Onan engaged in normative sexual intercourse with Tamar, only they did not fully complete the sexual act.

The Gemara answers: The *Tosefta* actually means that what they did was similar to the act of Er and Onan in some ways, but not similar to the act of Er and Onan in other ways. The Gemara elaborates: It was similar to the act of Er and Onan in that there was a spilling of semen, as it is written: “And it came to pass when he had intercourse with his brother's wife, that he spilled it on the ground” (Genesis 38:9). Yet it was not similar to the act of Er and Onan, as there Er and Onan engaged in sexual intercourse in an atypical manner, i.e., anal intercourse, while here the *Tosefta* is referring to sexual intercourse in a typical manner.

The Gemara continues to clarify what took place: Granted, Onan engaged in unnatural sexual intercourse with her, as it is written with regard to his act: “That he spilled it on the ground” (Genesis 38:9). However, from where do we derive that Er engaged in unnatural sexual intercourse with her? Rav Nahman bar Yitzhak said: As it is written with regard to Onan: “And He slew him also” (Genesis 38:10). This indicates that he, too, died the same death for performing the same transgression as his brother. The Gemara asks: Granted, Onan engaged in anal intercourse because he did not want Tamar to give birth as “he knew that the seed would not be his” (Genesis 38:9). However, with regard to Er, what is the reason he acted in this way? The Gemara responds: He did so in order that she not become pregnant and become less beautiful as a result of her pregnancy.

BACKGROUND

בְּבִיאָהּ – Become pregnant from the first act of intercourse רִאשׁוֹנָה אֵינָהּ עֹבְרָא: According to contemporary medical knowledge, the fact that a woman is a virgin does not prevent her, in purely physiological terms, from becoming pregnant. However, it may be presumed that the pain that accompanies her first act of intercourse along with the accompanying

psychological factors can cause tension and other effects. These could render the possibility of impregnation minimal. The women of Rabbi Yehuda HaNasi's house prepared themselves both physically and emotionally for intercourse and were therefore able to become pregnant.

NOTES

But didn't Tamar become pregnant from the first act of intercourse – וְהָאֵתָּמָר בְּבִיאָהּ רִאשׁוֹנָה אֵינָהּ עֹבְרָא: The Maharsha raises a challenge: Why did the Gemara assume that Tamar was impregnated by her first act of intercourse, so that it was necessary to entertain far-fetched ideas in order to explain how she became pregnant? Indeed, according to the simple understanding of the biblical narrative, Tamar's first husbands had typical sexual intercourse with her (see Genesis, chapter 38, and Rashi's commentary there; see *Midrash Rabba*).

The Maharsha suggests that perhaps support for the idea that Er and Onan did not engage in typical intercourse can be found in an interpretation of the verses in the Torah. Indeed, the Rashash presents evidence from Ibn Ezra's commentary, which cites the interpretation that the phrase “and he spilled it on the ground” is referring to unnatural intercourse. Ibn Ezra ultimately rejects this interpretation.

The various commentaries challenge this suggestion based on the fact that this verse is stated only with regard to Onan, not Er. *Ramat Shmuel* tries to resolve this problem by invoking the opinion that Judah, after the entire ordeal became known to him, did not cease his relations with her. It interprets the verse that reads: “And he knew her again no more” (Genesis 38:26) to mean: He did not cease to know her, i.e., to engage with her sexually. This was permitted because Tamar had engaged only in unnatural intercourse with her previous husbands, and according to the Noahide laws she was never considered to be married to his sons. Accordingly, this opinion serves as a support for the idea that Er and Onan did not engage in natural intercourse.

All of those from the household of Rabbi Yehuda HaNasi who break their hymens – כָּל מוֹעֲבֹת שֶׁל בֵּית רַבִּי: Some early commentaries cite a version of the text that reads: The household of David. The commentaries explain the rationale behind the women's behavior according to both readings. The Ritva states these women were so upright that they did not want any act of intercourse to be in vain, and therefore they wished to become pregnant even from the first act. The Meiri points out that the disciples of the household of Rabbi Yehuda HaNasi were exceedingly pious in their separation from women and the soldiers of David's household were often off in battle. Therefore, their wives wanted to ensure that they would become pregnant from the first act of intercourse.

HALAKHA

דִּשׁ מִבְּפִנִּים וְזוֹרָה מִבְּחוּץ – Penetrates inside and spills outside – אִם בָּא אֶל אִשְׁתּוֹ מִבְּחוּץ: A man is prohibited from engaging in intercourse with his wife in a way that entails the spilling of his seed outside her body. One who does so has emitted semen in vain, which is a great sin (Rambam *Sefer Kedusha*, *Hilkhot Issurei Bia* 21:18; *Shulhan Arukh*, Even *HaEzer* 23:1).

טומאת – טומאת הערצה – טומאת הערצה: If one engages in anal intercourse with his wife, she remains ritually pure because the Torah ruled there to be ritual impurity in the concealed parts of the body only from typical intercourse (Rambam *Sefer Tahara*, *Hilkhot Avot HaTumot* 5:9).

Ritual impurity in the initial stage of sexual intercourse – **טומאת הערצה**: If one engages in the initial stage of sexual intercourse with a woman, or even full intercourse but did not emit semen, then both the man and woman are ritually pure (Rambam *Sefer Tahara*, *Hilkhot Avot HaTumot* 5:10).

PERSONALITIES

Hon – הון: This Sage, one of Rav Nahman's sons, is rarely mentioned. It may be assumed that he is identical with Huna, son of Rav Nahman, and that Hon is a nickname or a Hebrew form of the same name.

תנו רבנן: "אותה" פֶּרַט לְכֹלָהּ, דְּבִרֵּי רַבִּי יְהוּדָה. וְחֻכְמִים אֲמָרִים: פֶּרַט לְשֵׁלָא בְּדִרְכָּהּ. אָמַר לִיהּ הֵן בְּרִיָּה דְּרַב נַחֲמָן לְרַב נַחֲמָן: לִימָא קָא סָבַר רַבִּי יְהוּדָה הַתּוֹרָה חֲסָה עַל תְּכַשְׁיֵי כְּלָהּ? אָמַר לִיהּ: לִפִּי שְׂאִין אִשָּׁה מִתְּעַבְּרַת מִבִּיאָה רִאשׁוֹנָה.

בְּמֵאֵי קָמִיפְלִיג? רַבֵּן סָבַר "שְׂכַבְתָּ זֶרַע" פֶּרַט לְהֶעֱרָאָה: "אותה" פֶּרַט לְשֵׁלָא בְּדִרְכָּהּ. וְרַבִּי יְהוּדָה סָבַר: שְׂלָא בְּדִרְכָּהּ וְהֶעֱרָאָה – מִ"שְׂכַבְתָּ זֶרַע" נִפְקָא: "אותה" פֶּרַט לְכֹלָהּ.

כִּי אֶתָּא רַבִּין אָמַר רַבִּי יוֹחָנָן: כָּל שִׁשְׁהָתָה אַחֲרֵי בִּעּוּלָהּ עֶשֶׂר שָׁנִים וְנִשְׂאָת – שׁוֹב אִינָהּ יוֹלֶדֶת. אָמַר רַב נַחֲמָן: לֹא שָׁנִי אֲלֵא שְׂאִין דַּעְתָּהּ לְהַנְשֵׂא, אֲבָל דַּעְתָּהּ לְהַנְשֵׂא – מִתְּעַבְּרַת. אָמַר לִיהּ רַבָּא לְבַת רַב חֲסִידָא: קָא מְרַנֵּי רַבֵּנָא אֲבַתְרִיךְ. אָמְרָה לִיהּ: אֲנָא דַּעְתָּאִי עֲלֶיךָ הָוְאִי.

הָיָא דַּאֲתֵי לְקַמֵּיָּה דְּרַב יוֹסֵף, אָמְרָה לוֹ: רַבִּי, אֲנָא שְׁהִיתִי אַחֲרֵי בִּעּוּלִי עֶשֶׂר שָׁנִים וְיֹלְדִתִּי. אָמַר לָהּ: בְּתִי, אַל תּוֹצִיאִי לַעֲזָא עַל דְּבִרֵּי חֻכְמִים. אָמְרָה לִיהּ: לִגּוּי נִבְעֵלְתִי.

The Sages taught: The verse states: "And the woman, with whom a man shall lie giving seed, they shall both bathe themselves in water, and be unclean until the evening" (Leviticus 15:18). The extra term "with whom" comes to exclude a bride who does not become ritually impure; this is the statement of Rabbi Yehuda. **And the Rabbis say:** It excludes the case of sexual intercourse performed in an atypical manner.¹⁴ Hon,¹⁵ son of Rav Nahman, said to Rav Nahman: Shall we say that Rabbi Yehuda holds: The Torah spared a bride's adornments, including her make-up, and therefore exempted her from submersion in water, as that might cause them ruin? Rav Nahman said to him: That is not the reason. Rather, it is because a woman does not become pregnant from the first act of intercourse. Therefore, that act of intercourse would not cause ritual impurity, as it is not considered intercourse that can result in the implanting of seed.

The Gemara asks: With regard to what do Rabbi Yehuda and the Rabbis disagree? The Rabbis hold that the phrase "giving seed" excludes the initial stage of intercourse,¹⁶ during which there is no emission of semen.¹⁷ And the extra phrase "with whom" excludes intercourse that is performed in an atypical way. Rabbi Yehuda, on the other hand, holds that the exclusion of both atypical sexual intercourse and the initial stage of intercourse were derived from the phrase "giving seed," as neither of these are sexual acts that might bring about the birth of a seed, i.e., a child. The phrase "with whom" then excludes a bride.¹⁸

On the topic of intercourse that cannot result in conception, the Gemara relates the following: When Ravin came from Eretz Yisrael to Babylonia, he said that Rabbi Yohanan said: Any woman who waits after her husband has died or divorced her for ten years without intercourse and is then married can no longer bear children. Rav Nahman said: They taught this principle only with regard to cases where she did not intend to get married at a later time, but if she intended to get married at some point, she can become pregnant later on. Rava said to his wife, the daughter of Rav Hisda:¹⁹ The Sages are gossiping about you. From the time she was widowed from her first husband until the time that she was married to Rava, more than ten years passed, yet she bore him children. It seemed as though she had engaged in intercourse in the meantime. She said to him: My mind was on you. Indeed, it is told that already as a young girl she prophesized that she would marry Rava.

The Gemara relates: A certain woman who came before Rav Yosef said to him: My teacher, I waited after my husband's death for ten years, and nevertheless I gave birth. He said to her: My daughter, do not cast aspersions on the statement of the Sages. She said to him in confession: I had sexual intercourse with a gentile during those ten years.

NOTES

Initial stage of intercourse – הערצה: The Gemara presents a dispute as to the definition of the initial stage of intercourse (55b). One opinion maintains that the initial stage of intercourse occurs at the moment of external contact of the sexual organs. The other holds that the initial stage of intercourse is defined by the penetration of the corona. With regard to forbidden relations, one is liable for violating a prohibition if one engaged in this initial stage of intercourse, even if one did not complete the act of intercourse.

With whom excludes a bride – אותה פֶּרַט לְכֹלָהּ: This Torah law, which requires both the man and the woman to immerse following intercourse, is understood to be a special decree stated by the verses, as it does not follow the usual laws of ritual impurity.

It overrides the principle that an emission of semen causes ritual impurity only upon touch, which does not include contact with concealed parts of the body. This decree of ritual impurity is imparted even though intercourse applies only to acts of full-fledged intercourse that can lead to childbirth.

The daughter of Rav Hisda – בת רב חסדיא: The daughter of Rav Hisda was married to Rami bar Hama. Over ten years after he died, she married Rava. The Gemara relates an incident that took place when she was a young girl (*Bava Batra* 12b). She was sitting in her father's lap when Rava and Rami bar Hama, both students of Rav Hisda, were sitting before him. Rav Hisda asked his daughter which of the two she desired, and she answered: Both. Rava responded: I will be the last.

Waiting period for a female minor who performed refusal – **המתנה בממאנת:** A female minor who refused her husband is not required to wait three months before marrying another man, as the rabbinic decree did not include her (Rambam *Sefer Nashim, Hilkhoh Geirushin* 11:22; *Shulhan Arukh, Even HaEzer* 13:6).

המתנה בגרושה – Every woman who was divorced must wait three months before marrying another man. The Sages did not distinguish between divorced women, so that even a minor divorced woman who cannot bear children must still wait three months (Rambam *Sefer Nashim, Hilkhoh Geirushin* 11:20; *Shulhan Arukh, Even HaEzer* 23:1).

אמר שמואל: וכולן צריכות להמתין שלשה חדשים, חוץ מגיורת ומשוחרת קטנה. אבל קטנה בת ישראל – צריכה להמתין שלשה חדשים.

Shmuel said: And all of those women who had sexual intercourse, and there is therefore a concern that they might be pregnant, **must wait three months** before marrying so as to differentiate between a child born from the previous intercourse and a child born from this marriage, **except for a female convert who is a minor and a female released slave who is a minor.** Although it is possible that they had sexual intercourse, they cannot become pregnant in any case. **However, a female Israelite who was a minor and had intercourse must wait three months** like all other women.

ובמאי? אי במיאון – והאמר שמואל דלא בעיא. ואי בגט – האמרה שמואל חדא זימנא. דאמר שמואל: מיאנה בו – אינה צריכה להמתין שלשה חדשים, נתן לה גט – צריכה להמתין שלשה חדשים! אלא בזנות.

The Gemara asks: **And with regard to what situation is this statement referring?** If it is referring to a minor who was released from her marriage by refusal, as a minor girl who was married to a man by her mother or brothers may refuse to remain married to her husband until reaching majority, **but didn't Shmuel say that she is not required to wait three months?** And if it is referring to a woman who received a bill of divorce as a minor, **didn't Shmuel already state this halakha one time?** Why would he repeat this ruling, as **Shmuel said: A female minor who refused her husband need not wait three months** before her second marriage,^h but if he gave her a bill of divorce, **she must wait three months,**^h so as not to make a distinction between an adult divorcée and a minor divorcée. **Rather,** it must be that this is referring to a female minor who was involved in licentious sexual intercourse.

Perek III
Daf 35 Amud a

וגזרו רבנן קטנה משום גדולה.

And, although there is no possibility for her to become pregnant, **the Sages issued a rabbinic decree** requiring the three month waiting period for a female minor due to this requirement for a female adult who engaged in promiscuous sexual acts.

ומי גזרין קטנה משום גדולה? והתנן: אם היו קטנות שאינן ראויות לילד – מחזירין אותן מיד! אמר רב גידל אמר רב: הוראת שעה היתה. מבבל דהוא? אלא בהוראת שעה היתה, וחילוף לא שבית.

The Gemara asks: **And do we issue a decree with regard to a female minor due to the ruling for a female adult?** But didn't we learn in the mishna: **If they were female minors who could not bear children, we return them^h immediately** to their husbands? This indicates that there is no concern for pregnancy, and the Sages did not issue a decree in this case. **Rav Giddel said that Rav said: This was a provisional edict** issued in exigent circumstances, and therefore one cannot extrapolate from the case in the mishna to other situations. The Gemara wonders: Can one assume **by inference that there was** such an occurrence? It would seem from the mishna that this was merely a possibility and not an actual occurrence, for if it actually happened it would have been appropriate for the mishna to relate the actual case. **Rather,** the ruling in the mishna is **like a provisional edict in that switching of wives,** such as described in the mishna, is **uncommon,** and in cases that are not common, the Sages do not issue a decree. Therefore, in the case of the mishna, the female minors were not required to wait.

HALAKHA

אם היו – If they were female minors...we return them – **קטנות...מחזירין אותן** In situations where a woman was mistakenly married and then removed from her husband by a court, if she was a minor at the time, she is allowed to marry

another man. She need not wait because this is an uncommon occurrence and was not included in the rabbinic decree (Rambam *Sefer Nashim, Hilkhoh Geirushin* 11:23; *Shulhan Arukh, Even HaEzer* 13:8).

Shmuel's opinion – שיטת שמואל: Clarification of Shmuel's opinion, according to both formulations, and the relationship between his statement and the various tannaitic opinions on this issue is crucial to the understanding of the progression of the discussion here as well as the final halakhic conclusions (see 40a and onward).

According to Rabbeinu Hananel, Rashi, and other commentaries, Shmuel does not rule in accordance with Rabbi Yosei's opinion in all cases. Rather, in some situations he rules in accordance with the opinion of Rabbi Yehuda and holds that a woman who was raped or seduced requires a waiting period. Because Shmuel maintains that the primary reason for allowing a woman to marry immediately is the use of a contraceptive resorbent, in cases of rape and seduction he is concerned that the post-intercourse contraceptive will not be sufficient. Converts and released maidservants, however, would certainly protect themselves prior to intercourse (*Tosefot Rid*; see Responsa of the Radbaz 1:196).

Alternatively, Shmuel ruled that it is appropriate to issue a rabbinic decree in cases of rape and seduction, but not for converts, since occurrences of conversion are uncommon (Ramban; Rashba; see Razah).

However, according to the Rif, the Rambam, and other commentaries, Shmuel rules in accordance with the opinion of Rabbi Yosei on all issues. When he said: Except for female converts and released maidservants who were adults, he did not intend to imply that raped and seduced women require a waiting period for the purpose of distinction. On the contrary, he meant to say that even those who were not so cautious, since they nevertheless intended to convert, take steps to prevent pregnancy. If so, this is all the more true for women who were raped or seduced (Ramban).

The Ra'avad explains a different rationale for Shmuel's distinction with regard to converts and released maidservants. In these cases, there are two uncertainties: First, there is uncertainty as to whether the woman engaged in intercourse at all. Second, even if you say that she did engage in sexual intercourse, she might not have become pregnant. This is not the case for a raped or seduced woman. Since she certainly had intercourse, the only uncertainty that remains is whether or not she became pregnant. Therefore, she should be required to observe the waiting period.

In order to distinguish between children conceived in sanctity and children conceived out of sanctity – להבחין בין זרע שנוצר בקדושה ובין זרע שנוצר שלא בקדושה: Although when a pregnant woman converts, her fetus is converted along with her and does not need to immerse after birth, it is necessary to know the child's status at the time of his conception. As a child who converts no longer maintains the familial connections that he had before his conversion, it is important to know at what point he converted in order to establish his family status vis-à-vis children in that family who are conceived later.

A woman who was raped and a woman who was seduced – אנוסה ומפונה: With regard to this issue, in the Jerusalem Talmud there is also a ruling that women who were raped or seduced need not wait. There the question is raised as to why the mishna requires the women who were mistakenly switched, which is a type of rape, to nevertheless have a waiting period. This question is sharpened by the assertion that it is inappropriate to issue a rabbinic decree in cases of switched wives since this is an uncommon occurrence. The Gemara there answers that the ruling in the mishna comes to rectify the child's status. The Vilna Gaon explains that there is a distinction between the purposes of the separation period in different cases. In cases of rape and the like, the decree was made in order to know with certainty who was the father of the child. In this case, the rabbinic decree was not applied. However, in the case of the mishna, the separation is necessary in order to determine whether or not the child is a *mamzer*, and therefore the rabbinic decree was issued.

לִישָׁנָא אַחֲרֵינָא אָמְרִי לָהּ, אָמַר שְׁמוּאֵל: כּוֹלֵן צְרִיכוֹת לְהַמְתִּין שְׁלֹשָׁה חֳדָשִׁים, חוּץ מִגִּיּוֹרָת וּמִשׁוּחָרְרָת גְּדוּלָּה. [אֲבָל] קֵטְנָה בֵּת יִשְׂרָאֵל – אֵינָה צְרִיכָה לְהַמְתִּין שְׁלֹשָׁה חֳדָשִׁים. בְּמֵאֵי? אִי בְּמֵיּוֹן – הָאִמְרָה שְׁמוּאֵל חָדָא וְיִמְנָא, אִי בִּגְט – הָא קָאֲמַר שְׁמוּאֵל דְּבַעֲיָא, דָּאֲמַר שְׁמוּאֵל: מֵאֲנָה בּו – אֵינָה צְרִיכָה לְהַמְתִּין שְׁלֹשָׁה חֳדָשִׁים, נָתַן לָהּ גֵּט – צְרִיכָה לְהַמְתִּין שְׁלֹשָׁה חֳדָשִׁים! אֶלָּא בְּנוֹת, וְזוֹת בְּקֵטְנָה לָא שְׂכִית.

גִּיּוֹרָת וּמִשׁוּחָרְרָת, דְּשָׂכִית בְּהוּ זְנוּת, לִגְזוּר! הוּא דָאֲמַר כְּרַבִּי יוֹסִי. דְּתַנְיָא: הַגִּיּוֹרָת וְהַשְּׁבוּיָה וְהַשְּׁפָחָה שְׁנֵפְדוּ וְשִׁנְתְּגִיּוּרָא וְשִׁנְתְּהַחֲרָו – צְרִיכוֹת לְהַמְתִּין שְׁלֹשָׁה חֳדָשִׁים, דְּבָרֵי רַבִּי יְהוּדָה. רַבִּי יוֹסִי מְתִיר לֵאמֹרס וְלִינְשָׂא מִיד. אָמַר רַבָּה: מֵאִי טַעְמָא דְּרַבִּי יוֹסִי – קָסַבְר: אִשָּׁה מִזְנָה מְשֻׁמָּשֶׁת בְּמוֹךְ כֵּדִי שְׁלָא תִתְעַבֵּר.

אָמַר לִיה אֲבֵי: בְּשִׁלְמָא גִיּוֹרָת, בֵּין דְּרַעְתָּהּ לְאִינוּרֵי – מְנַטְרָה נַפְשָׁה. כֵּדִי לְהַבְחִין בֵּין זֶרַע שְׁנוּרָה בְּקִדּוּשָׁה וּבֵין זֶרַע שְׁנוּרָה שְׁלָא בְּקִדּוּשָׁה. שְׁבוּיָה וְשְׁפָחָה נְמִי, דְּשִׁמְעִי מִמַּרְיָהוּ וּמִנְטָרִי נַפְשִׁיהוּ. אֶלָּא יוֹצֵאת בִּשְׁן וְעֵין – הִכִּי מְשַׁבְּחָת לָהּ?

וְכִי תִימָא: כָּל דְּמִמְלָא מוֹדָה רַבִּי יוֹסִי – וְהָתַנְ: אֲנוּסָה וּמְפֻנָּה צְרִיכָה לְהַמְתִּין שְׁלֹשָׁה חֳדָשִׁים, דְּבָרֵי רַבִּי יְהוּדָה. רַבִּי יוֹסִי מְתִיר לֵאמֹרס וְלִינְשָׂא מִיד!

Some say another version of what was taught: Shmuel said:^N All women must wait three months, except for a female convert who is an adult and a freed maidservant^H who is an adult; these women need not wait. However, an Israelite female minor need not wait three months in any case. The Gemara clarifies: With regard to what situation is this statement referring? If it is referring to a female minor released from her marriage by refusal, it would be superfluous, as didn't Shmuel already state this *halakha* one time? If it is referring to a woman released by a bill of divorce, but didn't Shmuel say that in that case she is required to wait, as Shmuel said: If she refused him she need not wait three months, but if he gave her a bill of divorce, she must wait three months? Rather, this is referring to cases of promiscuous sexual intercourse, and an occurrence of promiscuous sexual intercourse with female minors is uncommon, and the Sages did not issue rabbinic decrees in uncommon instances.

The Gemara suggests: Let the Sages issue a decree requiring a female convert and a released maidservant to wait three months, as at the time that one was a gentile and the other a maidservant, promiscuous sexual intercourse was common for them. The Gemara responds: Shmuel stated his *halakhic* ruling in accordance with the opinion of Rabbi Yosei, as it is taught in a *baraita*: In the case of the female convert; and the captured woman, who is suspected of having been raped during her imprisonment; and the maidservant, who were redeemed or who were converted or who were released, must wait three months prior to marriage. This is the statement of Rabbi Yehuda. Rabbi Yosei allows them to be betrothed and married immediately. Rabba said: What is the reasoning of Rabbi Yosei? He holds that a woman who engages in promiscuous sexual intercourse uses a contraceptive resorbent that she places at the opening of her womb so as not to become impregnated. Therefore, there is no concern that she might be pregnant.

Abaye said to him: Granted, a female convert does this. Since she is determined to convert, she guards herself so as not to be impregnated while still a gentile in order to distinguish between children conceived in sanctity, i.e., after her conversion, and children conceived out of sanctity.^N A captured woman and a maidservant would also be cautious because they hear from their masters that they are about to be redeemed or that they are about to be released, and they guard themselves so as not to be impregnated. However, with regard to a maidservant who is released due to damage caused her by her masters, i.e., loss of one of her extremities such as a tooth or an eye, how can you find a case where there is no concern for her becoming impregnated? Since she could not have known in advance that she would be released, she would have had no reason to be careful not to become pregnant.

And if you would say that in any case where the situation occurs by itself, as in the case where a woman was unaware of her pending release, Rabbi Yosei concedes that she must indeed wait, this is difficult. But didn't we learn in a mishna: A woman who was raped and a woman who was seduced^{NH} must wait three months as perhaps she became pregnant; this is the statement of Rabbi Yehuda. Rabbi Yosei permits her to be betrothed and to be married immediately. Clearly, a woman who was raped could not have prepared herself ahead of time so as not to become pregnant.

HALAKHA

גִּיּוֹרָת וּמִשׁוּחָרְרָת – אֲנוּסָה וּמְפֻנָּה: A female convert and a freed maidservant – Women who were raped or seduced, etc. – אֲנוּסָה וּמְפֻנָּה וְכוּ': Women who were raped or seduced, and indeed any woman who engaged in promiscuous sexual acts, as well as a woman who was captured, need not wait three months. This ruling is in accordance with the opinion of Rabbi Yosei (Rambam). Some say that if the females are adult women and fit to become pregnant they must wait, in accordance with the opinions of Rabbi Yehuda and Shmuel (Rema; Rambam *Hilkhot Geirushin* 11:22; *Shulḥan Arukh, Even HaEzer* 13:5).

אֲנוּסָה וּמְפֻנָּה וְכוּ': Women who were raped or seduced, and indeed any woman who engaged in promiscuous sexual acts, as well as a woman who was captured, need not wait three months. This ruling is in accordance with the opinion of Rabbi Yosei (Rambam). Some say that if the females are adult women and fit to become pregnant they must wait, in accordance with the opinions of Rabbi Yehuda and Shmuel (Rema; Rambam *Hilkhot Geirushin* 11:22; *Shulḥan Arukh, Even HaEzer* 13:6).

Turns over – מתהפכת: According to *Tosafot Yeshanim*, there is room to differentiate between a maidservant who is released due to the loss of a tooth or an eye and a woman who was raped or seduced because an ordinary maidservant is not concerned with becoming pregnant. In fact, she might even desire it. According to this explanation, even Rabbi Yosei would agree that she requires a waiting period. On the other hand, the *Hazon Ish* holds that the primary dispute between Rabba and Abaye is not over the type of preventive measure chosen, i.e., the resorbent and turning over, respectively, as it might seem, but rather over the following question: Does a woman who is not married desire to become pregnant? In Abaye's opinion, she never desires this.

Disqualified from the priesthood – פסולה לכהונה: The primary reason for this ruling is that any woman who engaged in intercourse, willingly or unwillingly, with a man for whom she incurs *karet* is considered a *zona*. Although a *zona* is not forbidden to an Israelite, except for in some special cases, she is nevertheless disqualified from marrying into the priesthood or partaking of *teruma* (see Rashi and *Tosafot*).

BACKGROUND

Turns over – מתהפכת: Medically speaking, turning over after intercourse is not an effective method of pregnancy prevention. However, it would seem that the Gemara is not referring specifically to the act of turning over, but rather to the fact that a woman who does not desire to become pregnant will take any measures necessary in addition to turning over, including taking drugs and the like. The Gemara's concern that she might not have turned over sufficiently therefore seems justified, since no measure taken following intercourse can fully ensure that a woman will not conceive.

HALAKHA

אשת איש שנאנסה – A married woman who was raped: While a woman who was married to an Israelite and raped is permitted to her husband, she nevertheless may not marry a priest if her husband dies, as the act of prohibited intercourse disqualified her from marrying into the priesthood. This ruling is in accordance with the statement of Rav Sheshet (Rambam *Sefer Kedusha*, *Hilkhot Issurei Bia* 18:7; *Shulhan Arukh*, *Even HaEzer* 13:6, 11).

Daughters of priests disqualified from partaking of *teruma* – בנות נפסלות לתרומה: If the daughter of a priest was married to an Israelite and was raped by another man, she is permitted to her husband. If she is divorced or widowed, she is prohibited from partaking of the *teruma* from her father's household, even if she has no children from her Israelite husband. This ruling is in accordance with the statement of Rava (Rambam *Sefer Zera'im*, *Hilkhot Teruma* 6:10).

אלא אמר אביי: אשה מזנה
מתהפכת, שלא תתעבר. ואידך:
חיישינן שמא לא נתהפכה יפה
יפה.

Rather, Abaye said: A woman who engages in promiscuous sexual intercourse turns over^{N8} following intercourse, trying to prevent the absorption of the semen, so as **not to become pregnant**. Maidservants act in a similar manner. The Gemara asks: If indeed she tries not to become pregnant, how then would the other opinion, that of Rabbi Yehuda, explain why she must wait three months? The Gemara responds: **We are concerned that perhaps she did not turn over well enough** and therefore became pregnant.

ואם היו בנות כו'. בנות – אין,
ישראלית – לא! אימא: אם היו
נשי כהנים. נשי כהנים – אין, נשי
ישראלים – לא?

§ With regard to the case of two betrothed women who were switched at the time they entered the wedding canopy, the mishna states: **And if they were daughters of priests, they are disqualified from partaking in *teruma***. The Gemara asks: Does this indicate that with regard to the **daughters of priests, yes, they are disqualified from partaking in *teruma***, but with regard to the **daughter of an Israelite, no, she would not be disqualified?** It would seem that an Israelite woman married to a priest should most certainly be disqualified from eating of her husband's *teruma*. The Gemara answers: **Rather, say: If they were the wives of priests then they are disqualified**. The Gemara questions this formulation: Does this indicate that with regard to the **wives of priests, yes, they are disqualified**, but with regard to the **wives of Israelites, no, they are not disqualified**, and if their husbands died, they would be suitable for marriage to the priests?

והאמר רב עמרם: הא מילתא אמר
לן רב ששת, ואנהרינןהו לעינין
ממתניתין: אשת ישראל שנאנסה,
אף על פי שמוותרת לבעלה – פסולה
לכהונה!

The Gemara objects to this: **But didn't Rav Amram say: Rav Sheshet said this matter to us, and he lit our eyes by showing us that this ruling is indicated from what was stated in the mishna** (*Yevamot* 53b). He said: **The wife of an Israelite who was raped, even though she is permitted to return to her husband, she is nevertheless disqualified from the priesthood.**^{N9} If her husband later dies, she may not marry a priest, for although she is permitted to her husband the rape disqualified her for matters of priesthood.

אמר רבא, הכי קאמר: אם היו
בנות נשואות לישראל – נפסלו
מן התרומה דבי נשיהו.

Rava resolved this and said: **This is what the *tanna* is saying in the mishna: If they were daughters of priests who were married to an Israelite, they are disqualified from the *teruma*^H that is from the household of their fathers**, so that if their husbands die while they are childless, they may not go back to eat of the *teruma* in the house of their fathers. While other childless daughters of priests are again qualified to eat of the *teruma* the moment they leave their Israelite husbands, these women were disqualified by their act of forbidden sexual intercourse.

הדרן עלך ארבעה אחין

Summary of Perek III

The nature of the levirate bond is not conclusively defined in this chapter. It is clear that the issue, which is disputed among the *amora'im*, is in fact a matter of dispute among the *tanna'im* as well. The various opinions and their conclusions on this matter are found within the many *mishnayot* of this chapter and in disputes pertaining to related fields that touch upon the status of women requiring levirate marriage.

The general halakhic conclusion is that the levirate bond is substantial, and it begins at the moment of the husband's death. The bond created is of a unique nature, at once similar in effect to the bond of betrothal yet with clear differences. Due to its unique status, the levirate bond can exist between a single woman and several *yevamin* at once, and need not be limited to a single *yavam*.

The problems that arise from combinations of possible situations involving different relatives led to discussion of a wider question in this chapter: To what extent might a prohibition take effect where another prohibition already exists? All of the different opinions were clarified, from those that maintain that prohibitions do take effect where others already exist to those that propose that they can take effect only under special circumstances, e.g., when there are more inclusive prohibitions, expanded prohibitions, or simultaneous prohibitions.

This chapter also discussed halakhic rulings in cases involving uncertainties. For example, the status of a woman who happens before a *yavam* is unclear because her betrothal or divorce is in doubt. In such cases, it was determined that the woman, and sometimes it is two women, require the act of *ḥalitza* in order to resolve the situation.

Introduction to Perek IV

The chapter begins with a consideration of cases in which there was no requirement to perform levirate marriage or *ḥalitza* but nevertheless they were mistakenly performed, e.g., if they were performed with a pregnant woman who later gave birth to a viable offspring. When *ḥalitza* is performed in such cases, the question arises of how to relate to it. Does such an act of *ḥalitza* have any significance? Does it effect any change in the woman's status? Does it render the woman unfit to marry a priest, and will it impact the levirate bond of her rival wife?

If the *yavam* and *yevama* engaged in relations together under the assumption that doing so would achieve the consummation of a levirate marriage, the situation is far more serious. This is because in cases where there is no requirement of levirate marriage, the two are prohibited from engaging in relations with each other by an explicit Torah prohibition. The Gemara discusses their liability for doing so and then further considers the status of a child born from such relations. Is it considered a *mamzer*? Will it be permitted to marry into the priesthood?

In many cases, if a child is born several months after the relations, there could be an uncertainty whether the child is actually the offspring of the original husband or of the *yavam*. If so, the child's status will be subject to uncertainty that will possibly render him a *mamzer*. Moreover, this uncertainty raises issues with regard to the legal status of the child vis-à-vis inheritance. The Gemara considers these issues in depth and discusses what the *halakha* is in various cases that might arise. Following this, the Gemara discusses the steps that should be taken to ensure such uncertainties never arise.

Another central issue discussed in the chapter is the relationship between a *yavam* and his *yevama* before any action has been taken, when there is only a levirate bond between them. In such cases, what rights does the *yavam* have over the property of the *yevama*? Is there a distinction between different categories of property, e.g., property that was bequeathed to her or her previous husband's property? This leads into a discussion of the legal obligations of a *yavam* to a *yevama* following the levirate marriage, especially with regard to the marriage contact.

The chapter concludes with a discussion of the *halakhot* of slaves and of conversion. Upon purchase, a slave must immerse in a ritual bath for the sake of becoming a slave. This is a process similar to conversion, and the Gemara discusses the similarities and the distinctions between the two.

מתני' החולץ ליבמתו ונמצאת מעוברת. וילדה. בזמן שהולד של קיימא – הוא מותר בקרובותיה והיא מותרת בקרוביו, ולא פסלה מן הכהונה.

MISHNA When a man who has a brother dies childless, his widow [*yevama*] and one of his brothers [*yavam*] may perform a ritual through which she is freed of her levirate bonds [*halitza*]. It is then considered, with regard to forbidden relationships, as though they had been married and divorced. Therefore, he is forbidden to her relatives, and she to his. However, with regard to **one who performs *halitza* with his *yevama* and then she is found to have been pregnant^H at the time of the *halitza* and she gave birth, in the event that the offspring is viable**, the deceased husband has been survived by offspring and so there was never any levirate bond; consequently, the *halitza* that was performed was entirely unnecessary and a meaningless act. As such, **he remains permitted to her relatives and she remains permitted to his relatives**. Furthermore, since the *halitza* was meaningless, she is not afforded the status of a *halutza*, i.e., a *yevama* who performed *halitza*, a status akin to that of a divorcée. Therefore, the *halitza* **does not disqualify her from marrying into the priesthood**.

אין הולד של קיימא – הוא אסור בקרובותיה והיא אסורה בקרוביו, ופסלה מן הכהונה.

If the offspring is not viable, then it emerges that the *halitza* was indeed necessary. Therefore, **he is forbidden to engage in relations with her relatives and she is forbidden to engage in relations with his relatives**, as though they had been married and divorced, and the *halitza* **disqualifies her from marrying into the priesthood**, as she is afforded the status of a *halutza*.

הכונים את יבמתו ונמצאת מעוברת וילדה, בזמן שהולד של קיימא – יוציא, וחיבין בקרבן.

With regard to **one who consummates the levirate marriage with his *yevama*, i.e., he had intercourse with her under the assumption that there is a levirate bond and so there is a mitzva to do so, and then she is found to have been pregnant at the time of the intercourse and she gave birth, in the event that the offspring is viable^H** the deceased brother has been survived by offspring and it is evident that there was never any levirate bond. In that case, the relations they had, rather than being a mitzva, were a violation of the prohibition against engaging in relations with one's brother's wife. Therefore, the *yavam* **must send her out**, i.e., they must separate, as she is forbidden to him as his brother's wife, and to atone for the forbidden relations that they had, **they are each obligated to bring a sin-offering**, as is the *halakha* for all who inadvertently transgress a prohibition that, when performed intentionally, is punishable by *karet*.

ואם אין וילד של קיימא – יקיים.

And if the offspring is not viable,^H and therefore there was in fact a levirate bond, **he may maintain her as his wife** since his intercourse with her was a valid consummation of levirate marriage.

HALAKHA

One who performs *halitza* with his *yevama* and then she is found to have been pregnant – **החולץ ליבמתו ונמצאת מעוברת** – With regard to one who performs *halitza* with his *yevama* and then she is found to have been pregnant at the time, if she later gives birth to viable offspring, the *halitza* is considered of no significance. Therefore, he is permitted to her relatives and she is permitted to his relatives, and the *halitza* does not disqualify her from marrying into the priesthood. If the pregnancy did not result in viable offspring, either because she miscarried or because the child died within thirty days of birth, then the *halitza* is valid. Therefore, he is forbidden to her relatives and she to his, and the *halitza* disqualifies her from the priesthood (Rambam *Sefer Nashim*, *Hilkhot Yibbum VaHalitza* 1:20; *Shulhan Arukh*, *Even HaEzer* 164:2).

One who consummates a levirate marriage with his *yevama* and then she is found to have been pregnant with viable offspring – **הכונים יבמתו ונמצאה מעוברת בבן קיימא** – If one had intercourse with his *yevama* and then she was found to have been pregnant at the time, she must separate from him, although there is no need for a bill of divorce, and they are both obligated to bring a sin-offering (Rambam *Sefer Nashim*, *Hilkhot Yibbum VaHalitza* 1:22 and *Sefer Korbanot*, *Hilkhot Shegagot* 1:1; *Shulhan Arukh*, *Even HaEzer* 164:5).

One who consummates a levirate marriage with his *yevama* and she miscarries – **הכונים יבמתו והפילה** – In the case of one who consummates a levirate marriage with his *yevama* and then she is found to have been pregnant at the time, if she

later miscarries then he is permitted to retain her as his wife. Some say that he is permitted to remain with her only if he married her before her pregnancy was recognizable, but if the pregnancy was already recognizable when he married her, then he is obligated to divorce her (Rema, citing *Tosafot*). In cases where he is permitted to maintain her as his wife, he must repeat the act of intercourse in order to consummate the marriage. This is in accordance with the conclusion of the Gemara that intercourse with a pregnant woman is not considered a valid consummation of levirate marriage (*Nimmukei Yosef*, citing *Rabbeinu Yeruham*). However, if he wishes to separate from her, he must both give her a bill of divorce and perform *halitza* (Rambam *Sefer Nashim*, *Hilkhot Yibbum VaHalitza* 1:22; *Shulhan Arukh*, *Even HaEzer* 164:5).

There is uncertainty whether the child is nine months old and is the offspring of the first husband – ספק בן – תשעה לראשון: If one consummates a levirate marriage with his *yevama* and seven months later she gives birth, then there is an uncertainty whether the child is nine months old, counting from conception, and is the offspring of the first husband, or whether the child is only seven months old and is the offspring of the *yavam*. Therefore, the *yavam* must separate from her and give her a bill of divorce. The lineage of the child is certainly unflawed; however, any future children that he has with her will have the status of an uncertain *mamzer* (Rambam *Sefer Nashim*, *Hilkhot Yibbum VaHalitza* 1:23; *Shulhan Arukh*, *Even HaEzer* 164:6).

A guilt-offering for uncertainty – אֶשֶׁם תָּלוּ: If one consummates a levirate marriage with his *yevama* and she gives birth, and there is an uncertainty whether the child was born after nine months of gestation and is the offspring of the first husband, or after seven months of gestation and is the offspring of the latter husband, the *yavam* is not required to bring a guilt-offering for uncertainty. The *halakha* on this issue is not as ruled in the mishna because the mishna is in accordance with the opinion of Rabbi Eliezer, who holds that a guilt-offering for uncertainty may be brought whenever there exists the possibility that a transgression was performed. However, the Gemara in tractate *Karetot* rejects his opinion and rules that a guilt-offering for uncertainty is brought only in specific cases involving an uncertainty (Rambam *Sefer Korbanot*, *Hilkhot Shegagot* 8:1–2 and *Lehem Mishne* and *Mishne LaMelekh* there).

Halitza with a pregnant woman – חֲלִיצַת מְעוּבֶרֶת: In the case of one who performs *halitza* with his *yevama* and then she is found to have been pregnant at the time, even if the offspring is not viable the *halitza* is considered ineffective and another *halitza* must be performed. Some say it may be performed either with the brother who originally performed *halitza* with her or with any of the brothers. Others argue that this *halitza* may be performed only with one of the other brothers (Rambam *Sefer Nashim*, *Hilkhot Yibbum VaHalitza* 1:20; *Shulhan Arukh*, *Even HaEzer* 164:2, and in the comment of Rema).

NOTES

צְרִיכָה חֲלִיצָה מִן – רַבִּי יוֹחָנָן: The commentaries debate who should perform the additional *halitza* following the miscarriage. Some suggest, in accordance with the plain reading of Reish Lakish's words, that the additional *halitza* cannot be performed by the brother who originally performed it; rather, one of the other brothers should do so. Others suggest the intention is only that she requires an additional *halitza*, but this may be performed by any of the brothers, even the one who originally performed it (see *Tosafot*). The Ramban holds that the original *halitza* is classified as an invalid *halitza* that is partially effective to the extent that the *halitza* of one of the brothers will no longer release her from the levirate bond she has with the other brothers. Consequently, she must now perform a separate *halitza* with each and every one of the brothers.

BACKGROUND

A guilt-offering for uncertainty – אֶשֶׁם תָּלוּ: The guilt-offering for uncertainty is mentioned in the Torah (Leviticus 5:17–19) and its various *halakhot* are delineated in tractate *Karetot*. The standard case of a guilt-offering for uncertainty is where there is uncertainty whether or not a transgression warranting a sin-offering was committed. For example, if a piece of forbidden fat and a piece of permitted fat were mixed together and one thought that they were both permitted and ate one of them, he must bring a guilt-offering for uncertainty. The offering protects him from punishment until he determines whether or not he actually sinned, and if he did, he must bring a sin-offering.

ספק בן תשעה לראשון, ספק בן שבעה לאחרון – יוציא, והולד כשר, וחיבין באשם תלוי.

גמ' איתמר, החולץ למעוברת והפילה. רבי יוחנן אמר: אינה צריכה חליצה מן האחים, ריש לקיש אמר: צריכה חליצה מן האחים.

If they consummated the levirate marriage and seven months later she gave birth, there is **uncertainty whether the child is nine months old**, i.e., counting from conception, and is the offspring of the first husband,^H and as such there was no levirate bond, or **whether the child is only seven months old** and is the offspring of the latter husband, i.e., the *yavam*, and not of the deceased, in which case there was a levirate bond. In that case, due to the possibility that she is forbidden to him as his brother's wife, **he must send her out**. However, the lineage of the child is **unflawed**, since regardless of whether it was born of the first or second husband, there was no transgression involved in its conception. Furthermore, to atone for the possibility that they had forbidden relations **they are both obligated to bring a guilt-offering for uncertainty**,^{HB} as is the *halakha* for anyone who is uncertain whether they inadvertently transgressed a prohibition that would require one to bring a sin-offering.

GEMARA An amoraic dispute was stated with regard to **one who performs halitza with a pregnant woman^H and she later miscarried**. Since she miscarried, she was certainly bound to the *yavam* by a levirate bond and may not marry anyone else; rather, she is obligated to consummate the levirate marriage or perform *halitza*. The question is whether the *halitza* that was performed while she was still pregnant is effective in releasing her from the levirate bond. **Rabbi Yohanan^P said: She does not require another halitza from the brothers.** **Reish Lakish^P said: She requires another halitza from the brothers.**^N

PERSONALITIES

Rabbi Yohanan – רַבִּי יוֹחָנָן: This is Rabbi Yohanan bar Nappaha, one of the greatest *amora'im*, whose teachings are fundamental components of both the Babylonian Talmud and the Jerusalem Talmud. He resided in Tiberias and lived to an advanced age. Rabbi Yohanan was orphaned at a young age, and although his family apparently owned considerable property, he spent virtually all of his resources in his devotion to the study of Torah and eventually became impoverished. In his youth, he had the privilege of studying under Rabbi Yehuda HaNasi, the redactor of the Mishna, but most of his Torah study was accomplished under Rabbi Yehuda HaNasi's students: Hizkiya ben Hiyya, Rabbi Oshaya, Rabbi Hanina, and Rabbi Yannai, who lavished praise upon him. In time, he became the head of the yeshiva in Tiberias, at which point his fame and influence increased greatly.

For many years Rabbi Yohanan was the leading rabbinic scholar of the entire Jewish world, not only in Eretz Yisrael but in Babylonia as well, where he was respected by the Babylonian Sages. Many of them immigrated to Eretz Yisrael to become his students. A master of both *halakha* and *aggada*, Rabbi Yohanan's teachings in both disciplines are found throughout the Babylonian and Jerusalem Talmuds. As a testament to his intellectual and spiritual stature, the *halakha* is in accordance with his opinion in almost every case, even when Rav or Shmuel, the preeminent *amora'im* of Babylonia, whom he treated deferentially, disagree with him. Only in disputes with his teachers in Eretz Yisrael, such as Rabbi Yannai and Rabbi Yehoshua ben Levi, is the *halakha* not in accordance with his opinion.

Rabbi Yohanan was renowned for being handsome, and much was said in praise of his good looks. However, his life was full of suffering; ten of his sons died in his lifetime. There is a geonic tradition that one of his sons was the Babylonian *amora* Rabbi Mattana, who did not predecease him. The death

of Rabbi Yohanan's disciple-colleague and brother-in-law, Reish Lakish, for which he considered himself responsible, hastened his own death. Rabbi Yohanan had many students. In fact, all the *amora'im* of Eretz Yisrael in succeeding generations were his students and benefited from his teachings, to the extent that he is often referred to as the author of the Jerusalem Talmud. His greatest students were his brother-in-law Reish Lakish, Rabbi Elazar, Rabbi Hiyya bar Abba, Rabbi Abbahu, Rabbi Yosei bar Hanina, Rabbi Ami, and Rabbi Asi.

Reish Lakish – רַבִּי שְׁמַעוֹן בֶּן לָקִישׁ: The name Reish Lakish is actually a contraction of Rabbi Shimon ben Lakish. Reish Lakish was among the greatest *amora'im* in Eretz Yisrael. He was the friend and brother-in-law of Rabbi Yohanan.

Reish Lakish lived an extraordinary life. He studied Torah from a young age, but, perhaps due to dire financial straits, he sold himself to a Roman circus as a gladiator. There are many stories in the Talmud that attest to his great strength. Some time later, in the wake of a meeting with Rabbi Yohanan, he resumed his Torah study, first as a student of Rabbi Yohanan, then as a friend and colleague. He ultimately married Rabbi Yohanan's sister.

Many halakhic disagreements between Reish Lakish and Rabbi Yohanan concerning central issues of *halakha* are recorded in the Talmud. His objective was not to disagree with Rabbi Yohanan but rather to help him hone his opinion through debate. Rabbi Yohanan related to him with great respect, often saying: My peer disagrees with me. He was well known for his strict piety, to the extent that one with whom Reish Lakish was seen conversing in public was said to be able to borrow money without guarantors, as Reish Lakish associated only with people beyond reproach. When he died he was survived by his wife and son, who was a child prodigy.

Halitza performed with a pregnant woman is not considered effective *halitza* – חֲלִיצַת מְעוּבֶרֶת לֹא שָׂמָה חֲלִיצָה – The commentaries debate whether according to Reish Lakish the *halitza* performed with a pregnant woman has any significance. Some suggest that while the *halitza* does not release her from being bound to her *yevamin*, it does preclude her from performing levirate marriage, either specifically with the brother who originally performed *halitza* with her or with any of the brothers. Therefore, her only recourse is to perform another *halitza* following the miscarriage (see Ritva).

If you wish, say a verse, etc. – אִיבְעִית אִימָא קָרָא וכו' – Normally, in cases where the Gemara suggest that a *halakha* could be based on logical reasoning, if a verse also exists that can teach that same *halakha* the Gemara will ask why the biblical source is necessary at all; does the force of logical reasoning not suffice? Often the justification for the biblical source is based on the fact that if the *halakha* is based on the verse, then some of the details of the *halakha* will be different than if it were solely based on logical reasoning. In this case, as well, there is such a distinction: Were the *halakha* to be purely based on logical reasoning, then Reish Lakish would agree that were Elijah the prophet to actually reveal beforehand that the woman will ultimately miscarry, then the *halitza* would be effective. However, according to his biblical source, the possibility of performing *halitza* with a pregnant woman is entirely precluded, even if it were already known that she will miscarry (*Keren Ora*).

If Elijah were to come and say – אִם יָבֵא אֵלֵיהּ ויאמר – The mishna in tractate *Eduyyot* rules that when Elijah the prophet appears, he will neither inform the people as to what is prohibited or permitted nor introduce new *halakhot*. This is based on the principle that a prophet is neither permitted to legislate *halakha* nor even to resolve halakhic dilemmas. Despite this principle, the Gemara here and elsewhere appears to state that halakhic dilemmas will be resolved by Elijah. Apparently a distinction should be made between deciding halakhic principles, which cannot be done through prophecy, and clarifying questions of fact utilizing his prophetic powers, which is permitted (*Mishne LaMelekh*).

We do not say that the matter will be revealed retroactively – תִּגְלִי מִלְתָּא לְמַפְרַע לֹא אֶמְרִינן: Despite Reish Lakish's claim here, the principle that the facts of a matter can be revealed retroactively is used throughout the Talmud, and it would appear that even Reish Lakish agrees in those instances. What, then, is different about this case? The Ritva suggests that in this case, it is unsound to deduce from the ultimate miscarriage that the pregnancy had always been unviable. It is possible that at the time of the levirate marriage or *halitza* the pregnancy had in fact been viable, and therefore the *yevama* had not been obligated to perform levirate marriage or *halitza* at the time, and it was only afterward that some additional event occurred that caused the miscarriage.

Tosafot suggest that a distinction should be made between cases in which the future is undeterminable based on the current situation and cases where the outcome could be reasonably calculated from the outset. In the former, the facts of the future are considered halakhically meaningless to the extent that even were a prophet to reveal the future, such information would have no relevance to the *halakha* as it is practiced in the present. So too, in the case of *halitza*, since the ultimate miscarriage is not something that could be known in the present, one cannot say the matter is revealed retroactively (see *Gilyonei HaShas*). Rabbi Avraham min HaHar suggests that the principle is applied only in cases of rabbinic law, but not where it would affect a Torah law, as in this case.

Another explanation is cited by the Ritva: According to the verse cited by Reish Lakish, the reason that levirate marriage and *halitza* cannot be performed during pregnancy is because the very existence of the fetus itself is sufficient to exclude this case from the obligation to perform levirate marriage or *halitza*, since it does not fulfill the basic condition that the *yavam* "has no child." If so, the ultimate demise of the fetus is of no relevance.

רבי יוחנן אמר: אינה צריכה חליצה מן האחים – חליצת מעוברת שמה חליצה, וביאת מעוברת שמה ביאה. וריש לקיש אמר: צריכה חליצה מן האחים – חליצת מעוברת לא שמה חליצה, וביאת מעוברת לא שמה ביאה.

The Gemara elaborates: Rabbi Yohanan said that she does not require another *halitza* from the brothers because he holds: *Halitza* performed with a pregnant woman who later miscarries is considered effective *halitza* in order to release her from the levirate bond. And similarly, intercourse with a pregnant woman who later miscarries is considered a valid consummation of levirate marriage through intercourse, such that she and the *yavam* are considered to be married. And Reish Lakish said she requires another *halitza* from the brothers because he holds: *Halitza* performed with a pregnant woman is not considered effective *halitza*,^N and intercourse with a pregnant woman is not considered a valid consummation of levirate marriage through intercourse. Therefore, after she miscarries, another *halitza* must be performed in order to release her from the levirate bond.

With regard to what principle do they disagree? If you wish, say that they disagree over the interpretation of a verse.^N And if you wish, say that they disagree on a point of logical reasoning.

If you wish, say that that they disagree over a point of logical reasoning in that Rabbi Yohanan holds: If Elijah the prophet were to come at the moment of the *halitza* and say^N that this woman who is pregnant will miscarry, is she not eligible for *halitza* or levirate marriage, even though she is currently pregnant, since her husband died and will not be survived by offspring? Now, too, even though when the *halitza* or levirate marriage is performed it is not known whether or not she will miscarry, the matter will be revealed retroactively, i.e., if she ultimately miscarries then it is apparent the *halitza* or levirate marriage was always necessary and is therefore valid.

And Reish Lakish said: We do not say that the matter will be revealed retroactively^N in order to validate the levirate marriage or *halitza*. Since at the time of the levirate marriage or *halitza* it was still unknown whether she would miscarry, the act is considered premature and ineffective.

And if you wish, say that they disagree over the interpretation of a verse in that Rabbi Yohanan holds: The Merciful One states in the Torah: "If brothers dwell together, and one of them dies, and he has no child" (Deuteronomy 25:5), i.e., the obligation to consummate a levirate marriage or perform *halitza* applies whenever a husband dies and is not survived by offspring. And this man, whose wife is currently pregnant, does not have any children who will survive him. Therefore, there is an obligation to consummate a levirate marriage or perform *halitza*, and if done, they will be effective. And Reish Lakish holds: The phrase "and he has no [ein] child" is expounded by the Sages to teach that one should inspect [ayein] him carefully to determine if he is survived by offspring of any form, and currently he is in fact survived by the fetus. Therefore, there is currently no obligation to consummate a levirate marriage or perform *halitza*, and consequently, even if done, they are ineffective.

Rabbi Yohanan raised an objection to the opinion of Reish Lakish from the mishna: If *halitza* was performed with a pregnant woman, and the offspring is not viable, then he is forbidden to her relatives and she is forbidden to his relatives, and the *halitza* disqualifies her from the priesthood. Rabbi Yohanan explains the challenge: Granted, according to my opinion, as I say that *halitza* performed with a pregnant woman who later miscarries is considered effective *halitza*, it is due to that reason that the *halitza* disqualifies her from the priesthood. However, according to your opinion, as you say that *halitza* performed with a pregnant woman is not considered effective *halitza*, why should the *halitza* disqualify her from the priesthood? According to your opinion, shouldn't the *halitza* be entirely disregarded?

במאי קמפלגי? איבעית אימא קרא. ואיבעית אימא סברא.

איבעית אימא סברא. רבי יוחנן סבר: אם יבא אליהו ויאמר דהא דאיבערא מפולי מפלה – מי לאו בת חליצה ויבוס היא? השתא נמי תגלי מילתא למפרע.

וריש לקיש אמר: תגלי מילתא למפרע לא אמרינן.

ואיבעית אימא קרא; רבי יוחנן סבר "ובן אין לו" אמר רחמנא, והא לית ליה. וריש לקיש סבר: "ובן אין לו" עיין עליו.

אייתיביה רבי יוחנן לריש לקיש: אין הולד של קיימא – הוא אסור בקרובותיה, והיא אסורה בקרוביו. ופסלה מן הכהונה. בשלמא לדידי, דאמינא חליצת מעוברת שמה חליצה – משום הכי פסלה. אלא לדידך, דאמרת חליצת מעוברת לא שמה חליצה – אמאי פסלה מן הכהונה?

By rabbinic decree and is merely a stringency – מדרבנן ולחומרא בעלמא – The Rashba notes that ostensibly, a similar decree should have been introduced in a case where the offspring was viable. Had an observer only witnessed the *halitza* and been unaware that the offspring ultimately proved to be viable, then if he later saw that the *yavam* and *yevama* were permitted to marry each other's relatives, he might mistakenly conclude that relatives are permitted even in a case where the offspring was not viable and the *halitza* was genuinely required. The Rashba explains that in truth, there is no need to be concerned for such a misunderstanding. The Gemara later explains that in cases where *halitza* was unnecessarily performed, a public announcement is made. This, coupled with the continuing living presence of the offspring, should be sufficient to prevent any misunderstanding.

The Meiri suggests an entirely different approach to this statement of the Gemara and a correspondingly different understanding of the entire talmudic discussion: When the Gemara claims that, according to Reish Lakish, the *halakha* in the mishna is true only by force of a rabbinic decree, it is referring not to the disqualification from the priesthood, but rather to the actual requirement to repeat the *halitza*. According to the Meiri, even Reish Lakish holds that the original *halitza* is valid by Torah law, and consequently he also assumes that it is by Torah law that she is disqualified from the priesthood.

אמר ליה: מדרבנן, ולחומרא בעלמא.

איכא דאמרי, איתביה ריש לקיש לרבי יוחנן: אין הולד של קיימא – הוא אסור בקרובותיה, והיא אסורה בקרוביו, ופסלה מן הנהונה. בשלמא לדידי, דאמינא חליצת מעוברת לא שמה חליצה – היינו דקתני פסלה מן הנהונה לחומרא, ולא קתני: אינה צריכה חליצה מן האחין.

אלא לדידך, אינה צריכה חליצה מן האחין מיבעי ליה! – אמר ליה: אין הכי נמי, ואידי דתנא רישא לא פסלה – תנא סיפא פסלה.

איתביה רבי יוחנן לריש לקיש: אין הולד של קיימא – יקיים. בשלמא לדידי דאמינא חליצת מעוברת שמה חליצה וביאת מעוברת שמה ביאה – משום הכי קתני יקיים.

אלא לדידך, דאמרת חליצת מעוברת לא שמה חליצה, וביאת מעוברת לא שמה ביאה – יחזור ויבעול ויקיים מיבעי ליה! – מאי יקיים – יחזור ויבעול ויקיים, דלא סגי.

איכא דאמרי, איתביה ריש לקיש לרבי יוחנן: אין הולד של קיימא – יקיים. בשלמא לדידי, דאמינא חליצת מעוברת לא שמה חליצה וביאת מעוברת לא שמה ביאה, היינו דקתני יקיים – יחזור ויבעול ויקיים, דלא סגי בלאו הכי.

Reish Lakish said to Rabbi Yohanan: Indeed, by Torah law the *halitza* is to be entirely disregarded. The mishna's ruling that she is disqualified from the priesthood is by rabbinic decree and is merely a stringency^N lest people not realize that she was pregnant and think that a *halutza* is permitted to marry a priest.

There are those who say an alternate version of the dispute: Reish Lakish raised an objection to the opinion of Rabbi Yohanan from the mishna: If *halitza* was performed with a pregnant woman and the offspring is not viable, then he is forbidden to her relatives and she is forbidden to his relatives, and the *halitza* disqualifies her from the priesthood. Reish Lakish explains the challenge: Granted, according to my opinion, as I say that *halitza* performed with a pregnant woman is not considered effective *halitza*, this is consistent with that which is taught in the mishna: The *halitza* disqualifies her from the priesthood, which should be understood as a rabbinic stringency, and it is understandable that the mishna does not teach: She does not require another *halitza* from the brothers, because according to my opinion, once she miscarries, she does indeed require another *halitza* from the brothers.

However, according to your opinion that *halitza* performed with a pregnant woman is an effective *halitza*, the mishna should have taught the full extent of her permissible status, i.e., that she does not even require another *halitza* from the brothers after she miscarries because the original *halitza* was effective. Rabbi Yohanan said to Reish Lakish: Yes, it is indeed so that she does not require another *halitza* from the brothers, but since the first clause taught: The *halitza* does not disqualify her from the priesthood, therefore the latter clause taught: The *halitza* disqualifies her from the priesthood, in order to directly contrast with the first clause rather than teach the greater novelty.

Rabbi Yohanan raised an objection to the opinion of Reish Lakish from the mishna: If a *yavam* had intercourse with his *yevama*, who was pregnant, and the offspring is not viable, and therefore she was bound by a levirate bond, he may maintain her as his wife. Rabbi Yohanan explains the challenge: Granted, according to my opinion, as I say *halitza* performed with a pregnant woman is considered effective *halitza*, and similarly, intercourse with a pregnant woman is considered a valid consummation of levirate marriage through intercourse, it is due to that reason that the mishna teaches: He may maintain her as his wife, because the levirate marriage was indeed valid.

However, according to your opinion, as you said that *halitza* performed with a pregnant woman is not considered effective *halitza*, and intercourse with a pregnant woman is not considered a valid consummation of levirate marriage through intercourse, the mishna should have taught that he should proceed to engage in intercourse with her again in order to consummate the levirate marriage and only then may he maintain her as his wife. Reish Lakish responded: What is the intention of the mishna when it teaches: He may maintain her as his wife? Perforce it means that he should proceed to engage in intercourse again with her and then he may maintain her as his wife, as any other way is insufficient to release her from the levirate bond. Therefore, it is unnecessary for the mishna to teach this explicitly.

There are those who say an alternate version of the dispute: Reish Lakish raised an objection to the opinion of Rabbi Yohanan from the mishna: If a *yavam* had intercourse with his *yevama*, who was pregnant, and the offspring is not viable, and therefore she was bound by a levirate bond, he may maintain her as his wife. Reish Lakish explains how the mishna poses a challenge to Rabbi Yohanan's opinion: Granted, according to my opinion, as I say that *halitza* performed with a pregnant woman is not considered effective *halitza*, and intercourse with a pregnant woman is not considered a valid consummation of levirate marriage through intercourse, this is consistent with that which is taught in the mishna: He may maintain her as a wife, which perforce means he should proceed to engage in intercourse with her again and then he may maintain her as his wife, as any other way is insufficient to release her from the levirate bond without this additional intercourse.

בביאה – With regard to intercourse everyone agrees – **בביאה**: The commentaries explain that Abaye assumes that the opinion initially ascribed to Rabbi Yohanan was never actually said by him. Rather, it was mistakenly assumed to be his opinion by some of his disciples, and it was the disciples of Rabbi Yohanan and Reish Lakish, not Rabbi Yohanan and Reish Lakish themselves, who then proceeded to debate the viability of that opinion.

When they disagree it is with regard to *halitza* – **בביאה**: *Tosafot* explain the logic of differentiating between the efficacy of performing a levirate marriage with a pregnant woman and performing *halitza* with a pregnant woman: Rabbi Yohanan agrees that the levirate marriage cannot be consummated through intercourse while the *yevama* is still pregnant because there still exists the possibility that the offspring will be viable. Were that to be true, the standard prohibition against engaging in relations with one's brother's wife would remain in force. Consequently, it is certainly forbidden to attempt to consummate the levirate marriage, and therefore doing so is ineffective. In contrast, the act of *halitza* itself is never forbidden, even were it to be unnecessary. Therefore, if it is ultimately revealed that it was necessary, it should certainly be effective. The Rivan suggests that with regard to intercourse, even if it is ultimately revealed that there was an obligation to perform levirate marriage, it is possible for the Sages to retroactively declare the intercourse to have been an illicit act and therefore ineffective in consummating the levirate marriage. However, similar logic could not be applied to invalidate an act of *halitza*.

אלא לדידך, רצה – יוציא, רצה – יקים, מיבעי ליה! – אין הכי נמי, אידי דתנא רישא יוציא – תנא נמי סיפא יקים.

However, according to your opinion that intercourse with a pregnant woman is considered a valid consummation of levirate marriage and therefore she is certainly considered to be his wife, the mishna should have taught: If he wishes he may send her out, through divorce, or if he wishes he may maintain her as a wife. Rabbi Yohanan replied: Yes, it is indeed so, but since the first clause taught: He should send her out, therefore the latter clause taught: He may maintain her as a wife, in order to directly contrast the first clause, rather than teach the full *halakha* with all its details.

מיתבי: הבנים את יבמתו ונמצאת מעוברת – הרי זו לא תנשא צרתה, שמה יהא ולד בן קיימא. אדרבה, כי הוי הולד בן קיימא מופטרה צרתה! אלא אימא: שמה לא יהא הולד בן קיימא.

The Gemara raises an objection to the opinion of Rabbi Yohanan from a *baraita*: In the case of one who consummates the levirate marriage with his *yevama*, and he does so under the assumption that there is a levirate bond and he is obligated to consummate a levirate marriage with her, and then she is found to have been pregnant at the time of the intercourse, a rival wife of this *yevama* may not marry, lest the offspring be viable. Before explaining the challenge, the Gemara notes that the reasoning of the *baraita* appears flawed: On the contrary, when the offspring is viable, that is a reason for her rival wife to be released from the levirate bond, and she should be able to marry any man. Rather, emend the *baraita* and say: Lest the offspring not be viable.

ואי סלקא דעתך ביאת מעוברת שמה ביאה – אמאי לא תנשא צרתה? תיפטר בביאה של חבריתה!

The Gemara now explains how the *baraita* poses a challenge to Rabbi Yohanan's opinion: And if it enters your mind to say that intercourse with a pregnant woman is considered a valid consummation of levirate marriage through intercourse, why should her rival wife not be permitted to marry? Indeed, her rival wife should be released from the levirate bond by virtue of the intercourse of her fellow wife. If the deceased had several rival wives, all of them become bound by the levirate bond. However, it is sufficient for one of them to either consummate a levirate marriage or perform *halitza* in order to release the rest of them from their bond and thereby permit them to marry any man.

אמר אביי: בביאה – כולי עלמא לא פליגי דלא פטרה, כי פליגי – בחליצה.

The Gemara defends Rabbi Yohanan's opinion: Abaye said that the opinion ascribed to Rabbi Yohanan above is not an accurate portrayal of his opinion. Rather, with regard to intercourse with a *yevama* who is pregnant at the time, everyone agreesⁿ that it does not release her and her rival wives from the levirate bond; when they disagree it is only with regard to whether *halitza*ⁿ performed with a *yevama* who is pregnant at the time is effective in releasing her and her rival wives from the levirate bond.

רבי יוחנן סבר: חליצת מעוברת שמה חליצה, ביאת מעוברת לא שמה ביאה. ריש לקיש סבר: ביאת מעוברת – לא שמה ביאה, וחליצת מעוברת – לא שמה חליצה.

Abaye continues to explain his opinion: Rabbi Yohanan holds that *halitza* with a pregnant woman is considered effective *halitza*, but intercourse with a pregnant woman is not considered a valid consummation of levirate marriage through intercourse and therefore does not release her and her rival wives from the levirate bond. And Reish Lakish holds that intercourse with a pregnant woman is not considered a valid consummation of levirate marriage through intercourse, and *halitza* with a pregnant woman is not considered effective *halitza*. Therefore, the *baraita* cited above does not pose a challenge, since all agree that intercourse with a pregnant woman will not free her or her rival wives from the levirate bond.

אמר ליה רבא: מה נפשך: אי ביאת מעוברת שמה ביאה – חליצת מעוברת שמה חליצה, ואי ביאת מעוברת לא שמה ביאה – חליצת מעוברת נמי לא שמה חליצה. דהא קיימא לן

Rava said to him: Whichever way you look at it, one cannot differentiate between the validity of consummating the levirate marriage through intercourse and the validity of *halitza*. If intercourse with a pregnant woman is considered a valid consummation of levirate marriage through intercourse because if she miscarries it is apparent that there was always an obligation to perform levirate marriage or *halitza*, then perforce *halitza* with a pregnant woman should also be considered effective *halitza*. And if intercourse with a pregnant woman is not considered a valid consummation of levirate marriage through intercourse because in her currently pregnant state there is no obligation to perform levirate marriage or *halitza*, then perforce *halitza* with a pregnant woman should also not be considered effective *halitza*. As we maintain

HALAKHA

Anyone who is eligible for levirate marriage, etc. – כָּל הָעוֹלָה לִבְיוֹם וְכוּ': Whenever a woman is ineligible to consummate a levirate marriage, she is also ineligible to perform *halitza* (Rambam *Sefer Nashim*, *Hilkhot Yibbum VaHalitza* 1:19).

The rival wife of a pregnant *yevama* – צֶרֶת יָבֵמָה מְעוּבֶרֶת: If a *yevama* who is pregnant with a child from her deceased husband consummates a levirate marriage or performs *halitza*, her rival wife is prohibited from remarrying until the child is born (Rambam *Sefer Nashim*, *Hilkhot Yibbum VaHalitza* 1:22; *Shulhan Arukh*, *Even HaEzer* 164:3).

NOTES

Anyone who is not eligible for levirate marriage is not eligible for *halitza* – כָּל שֶׁאֵין עוֹלָה לִבְיוֹם אֵינוֹ עוֹלָה לְחִלּוּץ: This principle is generally taken to mean that anyone who is precluded from consummating levirate marriage is not bound by a levirate bond and therefore does not need to perform *halitza*. However, this poses a difficulty, as there are some cases where although it is forbidden to consummate levirate marriage, *halitza* is nevertheless still required in order to release the *yevama* from the levirate bond. This is the case, for example, when the *yavam* is prohibited from engaging in relations with the *yevama* by force of a negative mitzva that does not carry the punishment of *karet*. The Meiri suggests that the principle is indeed sound because, by Torah law, when the levirate marriage is prohibited only by force of a negative mitzva that does not carry the punishment of *karet*, the mitzva to consummate levirate marriage overrides the prohibition. As such, by Torah law, she is in fact eligible to consummate a levirate marriage and therefore is also eligible to perform *halitza*. Therefore, although the Sages decreed that one should not consummate the levirate marriage in such a case, there is still a need to perform *halitza*.

The Ritva suggests a different approach. He explains that even when levirate marriage in such cases is forbidden by Torah law, *halitza* is nevertheless required. He cites the Gemara elsewhere that provides a biblical source that teaches that in cases where the relationship between the *yavam* and the *yevama* is forbidden only by force of a negative mitzva, *halitza* is required. The Gemara's principle here, however, relates exclusively to cases in which the relationship is forbidden by force of a negative mitzva that does carry the punishment of *karet*. In contrast to the above opinions, the Rambam appears to understand the principle in a more limited fashion. According to him, the principle states only that if at any point in time the option to consummate the levirate marriage is proscribed, then at that time, one cannot perform *halitza* either. However, that does not necessarily mean that the *yevama* will be released from the levirate bond. Rather, she will have to wait until, if ever, it is possible to consummate the levirate marriage, at which point she may perform *halitza* if she wishes.

This principle is unanimously accepted. However, in the Gemara, Rava adduces it as support for his understanding of Rabbi Yohanan's opinion. How does Abaye justify his understanding in light of the principle? The Ritva explains: Abaye assumes that if it emerges that the offspring is not viable, then it emerges in retrospect that in fact the woman was always eligible for levirate marriage. As such, it is incorrect to automatically consider a pregnant woman as ineligible. Therefore, if she performs *halitza* it will be valid. However, according to Rava, while she is actually pregnant, even should the fetus not survive, she is deemed ineligible to consummate a levirate marriage at that time. Therefore, there is no possibility of performing *halitza* either.

דָּכַל הָעוֹלָה לִבְיוֹם עוֹלָה לְחִלּוּץ, וְכָל שֶׁאֵין עוֹלָה לִבְיוֹם – אֵינוֹ עוֹלָה לְחִלּוּץ!

אֵלֶּא אֲמַר רַבָּא, הָכִי קָאָמַר: הַכּוֹנֵם יְבָמָתוֹ וְנִמְצְאָת מְעוּבֶרֶת – הָרִי זֶה לֹא תִנָּשֵׂא צֶרֶתָּהּ, שָׂמָּה יֵהָא וְלֹד בֶּן קִיּוּמָא, וְבִיאָת מְעוּבֶרֶת לֹא שָׂמָה בִּיאָהּ, וְחִלּוּצָת מְעוּבֶרֶת לֹא שָׂמָה חִלּוּצָהּ, וְהוּלָד אֵינוֹ פּוֹטֵר עַד שֶׁיֵּצֵא לְאוּרֵי הָעוֹלָם.

תֵּנִי כְּוֹתִיָּה דְּרַבָּא: הַכּוֹנֵם יְבָמָתוֹ וְנִמְצְאָת מְעוּבֶרֶת – הָרִי זֶה לֹא תִנָּשֵׂא צֶרֶתָּהּ, שָׂמָּה יֵהָא וְלֹד בֶּן קִיּוּמָא, וְאֵין בִּיאָהּ וְחִלּוּצָהּ פּוֹטֵרָהּ, אֵלֶּא וְלֹד פּוֹטֵר, וְהוּלָד אֵין פּוֹטֵרָהּ עַד שֶׁיֵּצֵא לְאוּרֵי הָעוֹלָם.

טַעֲמָא – דְּשָׂמָה יֵהָא וְלֹד בֶּן קִיּוּמָא הוּא, הָא לֹא הָיִי וְלֹד בֶּן קִיּוּמָא – מִפְּטֵר צֶרֶתָּהּ. לִימָא תִּיהִי תִּיּוּבָתָא דְּרִישׁ לְקִישׁ!

אָמַר לָךְ רִישׁ לְקִישׁ, הָכִי קָתַנִּי: הַכּוֹנֵם יְבָמָתוֹ וְנִמְצְאָת מְעוּבֶרֶת – הָרִי זֶה לֹא תִנָּשֵׂא צֶרֶתָּהּ, שָׂמָּה לֹא יֵהָא הוּלָד בֶּן קִיּוּמָא, וְחִלּוּצָת מְעוּבֶרֶת לֹא שָׂמָה חִלּוּצָהּ, וְבִיאָת מְעוּבֶרֶת לֹא שָׂמָה בִּיאָהּ.

וְאִם תֹּאמַר: הַלָּךְ אַחֵר רֹב נָשִׁים, וְרֹב נָשִׁים וְלֹד מַעֲלִיא יִלְדָּן? – וְלֹד אֵין פּוֹטֵר עַד שֶׁיֵּצֵא לְאוּרֵי הָעוֹלָם.

that anyone who is eligible for levirate marriage^H is eligible for *halitza* and anyone who is not eligible for levirate marriage is not eligible for *halitza*.^N Therefore, the original understanding of Rabbi Yohanan's opinion, that both the intercourse and the *halitza* of a pregnant woman are valid, was accurate.

Rava therefore provides a different defense of Rabbi Yohanan's opinion: Rather, Rava said that this is what the *baraita* is saying: In the case of one who consummates the levirate marriage with his *yevama* under the assumption that there is a mitzva to do so, and then she is found to have been pregnant at the time of the intercourse, a rival wife^H of this *yevama* may not marry lest the offspring be viable, and intercourse with a woman pregnant with viable offspring is not considered a valid consummation of levirate marriage through intercourse, and *halitza* of a woman pregnant with viable offspring is not considered effective *halitza*. And furthermore, even if the offspring is viable, it does not release her and her rival wives from the levirate bond until it comes into the air of the world, i.e., until it is actually born.

It is taught in a *baraita* in accordance with the opinion of Rava: In the case of one who consummates a levirate marriage with his *yevama*, and then she is found to have been pregnant at the time of the intercourse, a rival wife of this *yevama* may not marry lest the offspring be viable. This is because intercourse or *halitza* with a woman pregnant with viable offspring does not release a *yevama* from the levirate bond; rather, the offspring releases her. And furthermore, even if the offspring is viable, it does not release her and her rival wives from the levirate marriage bond until it comes into the air of the world.

The Gemara explains that the *baraita* appears to contradict Reish Lakish's opinion: According to the *baraita*, the only reason that levirate marriage with the pregnant *yevama* does not permit the rival wife to marry is as the *baraita* stated: Lest the offspring be viable. By inference, were the offspring not viable, her rival wife would be released from the levirate bond. If so, let us say that this *baraita* is a conclusive refutation of the opinion of Reish Lakish.

The Gemara defends Reish Lakish's opinion: Reish Lakish could have said to you: This is what the *baraita* is teaching: In the case of one who consummates a levirate marriage with his *yevama*, and then she was found to have been pregnant at the time of the intercourse, a rival wife of this *yevama* may not marry lest the offspring not be viable, which would mean that all the rival wives are bound by the levirate bond. And even if one of those wives has intercourse or preforms *halitza* with the *yavam*, it would be ineffective in releasing them from the levirate bond because *halitza* with a pregnant woman is not be considered effective *halitza*, and intercourse with a pregnant woman is not considered a valid consummation of levirate marriage through intercourse.

Reish Lakish explains the need for the final clause of the *baraita*: And even if you say: Let the wives marry without the need for any levirate marriage or *halitza* because one should follow the majority of women, and the majority of women give birth to a full-fledged, i.e., viable, offspring, and therefore one should presume no levirate bond exists, to counter this claim the *baraita* concludes: Even if the offspring will be viable, an offspring does not release a *yevama* and her rival wives from the levirate bond until it comes into the air of the world.

אמר רבי אלעזר: אפשר, איתא להא דריש לקיש ולא תנן לה במתניתין? – נפק, דק ואשכח, דתנן: האשה שהלך בעלה וצרתה למדינת הים, ובאו ואמרו לה: "מת בעלך" – הרי זו לא תנשא ולא תתייבם, עד שתדע שמא מעוברת היא צרתה.

בשלמא יבומי לא – שמא יהא ולד בן קיימא, ויפגע באיסור אשת אח דאורייתא. אלא לא תחלוץ, אמאי? בשלמא תחלוץ בתוך תשעה ותנשא בתוך תשעה – לא, היינו ספק.

אלא תחלוץ בתוך תשעה, ותנשא לאחר תשעה!

ולטעמיה: תחלוץ ותנשא לאחר תשעה!

אלא: בר מינה דהיא, דאבוי בר אבא ורב חנינא בר אבא דאמרי תרווייהו: שמא יהא ולד בן קיימא, ונמצא אתה מצריכה ברוז לכהונה.

Rabbi Elazar said: Is it possible that there is halakhic acceptance of thisⁿ opinion of Reish Lakish and it was not hinted to by something taught in the Mishna? He went out of the study hall, carefully checked the *mishnayot*, and found one that supported Reish Lakish's opinion, as we learned in a mishna: In the case of a woman whose husband and rival wife went overseas,^h and then witnesses came and said to her: Your husband died, and her husband had a brother, this woman may neither marry someone other than his brother, nor may she enter into levirate marriage with that brother, until she knows whether perhaps her rival wife is pregnant. If she discovers that her rival wife is not pregnant, she would then be able to perform levirate marriage or *halitza*. If she discovers her rival wife is pregnant, she would have to wait to see if the pregnancy is viable. If it is found to be viable, only at that point would she be permitted to marry someone else.

Rabbi Elazar explains how this mishna supports Reish Lakish's opinion: **Granted, she may not enter levirate marriage as perhaps her rival wife is pregnant and the offspring will be viable, and therefore by consummating the levirate marriage the *yavam* would encounter the Torah prohibition against engaging in relations with one's brother's wife. But why may she not perform *halitza*? Granted, she may not perform *halitza* during the first nine months following her husband's death and then proceed to also marry during those nine months; this is prohibited due to the fact that there is the uncertainty whether her rival wife is pregnant with viable offspring, in which case she would be released from the levirate bond.**

But let her perform *halitza* during the first nine months following her husband's death and then wait to marry until after those nine months. By that point in time, even if the rival wife was pregnant she would have already given birth. If the offspring was viable, then it emerges that there was never a levirate bond, and if it is not viable, then she was released from her levirate bond through the *halitza* she performed. Either way, she would now be permitted to remarry. Why, then, does the mishna not consider this possibility? Rabbi Elazar claims that the only explanation for this is if the mishna assumes that *halitza* performed while one of the wives of the deceased is pregnant is not effective. As such, the mishna is a proof for Reish Lakish's opinion.

The Gemara rejects Rabbi Elazar's proof: **But even according to your reasoning that *halitza* with a pregnant woman is not effective, the mishna should have considered an additional possibility: Let her perform *halitza* and marry, doing both after nine months have passed since the death of her husband.** Doing so should be effective according to both Reish Lakish and Rabbi Yohanan.

Rather, the discussion of this topic should be held apart from that mishna, as the true reason for that mishna's ruling is as it is Abaye bar Abba and Rav Hinnana bar Abaye who both say that she is prohibited from performing *halitza* while one of the wives of the deceased is pregnant because **perhaps the offspring will be viable**, in which case any *halitza* performed would be entirely unnecessary and therefore meaningless, and she would remain permitted to marry into the priesthood, as the opening mishna of the chapter rules. However, in this situation people might not realize that the *halitza* she performed was meaningless, and they would think she is a *halutza*, who is prohibited from marrying a priest. **And it would therefore emerge that if she were allowed to perform *halitza* while pregnant, it is possible that you will ultimately require a public announcement to be made for herⁿ to attest to the fact that she is in fact still permitted to marry into the priesthood.**

NOTES

Is it possible that there is halakhic acceptance of this – אפשר איתא להא: The Rivan notes that since ultimately the *halakha* is ruled in accordance with Reish Lakish's opinion, it would be peculiar if his opinion was not hinted to somewhere in the Mishna.

It would emerge that you will require a public announcement for her – ונמצא אתה מצריכה ברוז – *Tosafot* and other early commentaries note that a public announcement is made only if the woman is otherwise suitable for the priesthood, in order to indicate that despite the fact that she performed *halitza*, it does not disqualify her, since it was meaningless. Therefore, had she been divorced or had some other disqualification, since no public announcement is made, it should follow that she should not need to wait for nine months before performing *halitza*. The Meiri notes that this is stated explicitly in the Jerusalem Talmud, and the Ramban suggests that this is indicated by the precise formulation of the mishna, which chooses to refer to her simply as: A woman, as opposed to: The *yevama*, which suggests that the mishna relates to a standard woman who had not been previously divorced.

HALAKHA

A woman whose husband and rival wife went overseas – האשה שהלך בעלה וצרתה למדינת הים: In the case of a woman whose husband and rival wife went to a country overseas, and then witnesses came and said to her: Your husband died, the woman may neither perform *halitza* nor consummate levirate marriage until it is established whether the rival wife has given birth (Rambam *Sefer Nashim*, *Hilkhot Yibbum VaHalitza* 3:16; *Shulhan Arukh*, *Even HaEzer* 156:13).

The *halakha* is in accordance with the opinion of Reish Lakish – הלכתא כוותיה דריש לקיש: According to Reish Lakish, if a woman is pregnant at the time of her husband's death, then at that moment she is ineligible to consummate a levirate marriage. The early commentaries raise the following question: If so, she should be entirely released from any levirate bond based on the principle, developed in the Gemara elsewhere, that the levirate bond is formed at the moment of the husband's death; therefore, if she is not subject to the requirement to consummate a levirate marriage at that point, then no bond is formed at all. Why, then, is she obligated to perform levirate marriage or *halitza* if the offspring proves not to be viable? The early commentaries explain that even according to Reish Lakish, the requirement to consummate a levirate marriage does apply to a pregnant woman from the moment of her husband's death, and therefore a levirate bond is formed. However, since she is pregnant, she must first wait until the viability of the offspring is determined before she is able to act upon it (Rashba).

In these three – בהני תלת: Generally, in disputes between Rabbi Yohanan and Reish Lakish the *halakha* is ruled in accordance with the opinion of Rabbi Yohanan. Therefore, it was necessary to delineate those cases in which the *halakha* is atypically decided in accordance with the opinion of Reish Lakish.

Many of the early commentaries note that there are many other cases in which the *halakha* is ruled in accordance with the opinion of Reish Lakish. Why, then, did Rava list only three cases? The Meiri suggests that Rava meant only to clarify the *halakha* in those three cases but never to suggest that these are the only cases in which the *halakha* is ruled in accordance with the opinion of Reish Lakish. Others suggest that Rava considered only those disputes about actions whose actual performance is never prohibited, e.g., *halitza* (Tosefot Had MiKamma'e; Rabbi Avraham min HaHar; see Arukh LaNer).

ולצרכה! דלמא איבא איניש דהוי בחליצה ולא הוי בהכרזה, ואיתי למימר: קשרי חלוצה לכהן.

אמר ליה אביי: מידי לא תחלוץ ולא תתייבם קתני? לא תנשא ולא תתייבם קתני, בלא חליצה, אבל אי חליץ לה – הכי נמי דשריא.

תנא כוותיה דריש לקיש: החולץ למעוברת והפילה – צריכה חליצה מן האחין.

אמר רבא: הלכתא כוותיה דריש לקיש בהני תלת: חדא – הא דאמרן. אידיך – דתנן: המחלק נכסיו על פיו, ריבה לאחר ומיעט לאחר, והשוה להם את הבכור – דבריו קיימין.

ואם אמר משום ירושה – לא אמר כלום. כתב, בין בתחלה בין בסוף בין באמצע, משום מתנה – דבריו קיימין.

The Gemara wonders why this poses a problem: But why not let her perform *halitza* while still pregnant, and then if it becomes necessary, require a public announcement to be made for her? The Gemara explains why one should avoid having to rely on a public announcement: Perhaps there were some people who were present at the *halitza* and were not present at the public announcement, and when that the courts permit her to marry a priest they might come to say that they are permitting a *halutza* to marry a priest.

Abaye suggests another rejection of Rabbi Elazar's proof from that mishna: Abaye said to Rabbi Elazar: The very formulation of the mishna refutes Reish Lakish's opinion, as does the mishna teach that she may neither perform *halitza* nor enter into levirate marriage? No, the mishna teaches only that she may neither be married nor enter into levirate marriage, which implies only that she may not marry without first performing *halitza*, but if the yavam performs *halitza* with her, she would indeed be permitted to marry after nine months have passed since her husband's death. This understanding of the mishna undermines the basis of Rabbi Elazar's proof from the mishna.

Even if that mishna does not support Reish Lakish's opinion, nevertheless it is taught in a *baraita* in accordance with the opinion of Reish Lakish: In the case of one who performs *halitza* with a pregnant woman and she miscarries, she requires another *halitza* with the brothers in order to release her from the levirate bond. The *baraita* assumes that the original *halitza* is ineffective because it was done while she was still pregnant, which is accordance with the opinion of Reish Lakish.

Rava said: The *halakha* is in accordance with the opinion of Reish Lakishⁿ in these threeⁿ disputes: One, this dispute that we already stated with regard to the *halitza* of a pregnant woman. The other dispute concerns that which we learned in a mishna: In the case of one who verbally divides up his possessions^h among his descendants, stating how he wishes his estate to be divided after his death, if he increases the proportion of his estate that should go to one of his children or decreases the proportion of his estate that should go to another one of his children, or if he equally distributes between them the double portion of the firstborn, then his words are binding.

But if he said explicitly that the receipt of those portions should be considered as an inheritance, then it as though the verbal division of his property that he said is nothing, i.e., it is non-binding, since his words directly contradict the *halakhot* of inheritance as they are written in the Torah.^b However, if he wrote a will and somewhere therein he wrote, whether at the beginning, whether at the end, or whether in the middle, that the receipt of the portions should be considered as a gift, as opposed to an inheritance, then his words are binding.

HALAKHA

One who verbally divides up his possessions – המחלק נכסיו – על פיו: In the case of one who is mortally ill who divides up his possessions, if he increases or decreases the proportion of his estate that should go to each child, or if he equally distributes the double portion of the firstborn between them, then his words are binding. However, if he states explicitly that the receipt of those portions should be considered an inheritance, then it as though he did not say anything and the

inheritance is allotted according to the standard conventions. If he wrote a will and somewhere therein he wrote, whether at the beginning, middle, or end, that the receipt of the portions should be considered a gift, then even if he also referred to the portions as an inheritance, his words are binding (Rambam *Sefer Mishpatim*, *Hilkhot Nahalot* 6:5; *Shulhan Arukh*, *Hoshen Mishpat* 281:7).

BACKGROUND

The laws of inheritance – דיני ירושה: The basic *halakhot* of inheritance are stated in Numbers 27:8–11 in the following manner: If one dies without sons, the inheritance is given to his daughter. If he has no daughters, the inheritance passes to his father. If the father is no longer alive, then it passes to the father's heirs. In addition, the firstborn son receives a double

portion of the inheritance (Deuteronomy 21:17). The *halakhot* of inheritance apply only to property that the deceased had not already given away. During his lifetime he is entitled to divide up his possessions in whatever way he wishes, and he may even write a will just prior to his death dividing them up in whatever way he desires.

ואמר ריש לקיש: לעולם לא קנה עד שיאמר "פלוגי ופלוגי ירשו שדה פלוגית ופלוגית שנתתם להם במתנה וירשו".

ואידך – דתנן: הכותב כל נכסיו לבנו לאחר מותו, האב אינו יכול למכור – מפני שנתנו לבנו, והבן אינו יכול למכור – מפני שהן ברשות האב – מכר האב מכורין עד שימות הוא. מכר הבן – אין ללוקח כלום עד שימות האב.

ואיתמר, מכר הבן בחי האב, ומת הבן בחי האב, רבי יוחנן אומר: לא קנה לוקח, וריש לקיש אומר: קנה לוקח.

רבי יוחנן אומר: לא קנה לוקח, קנין פירות בקנין הגוף דמי.

וריש לקיש אומר: קנה לוקח, קנין פירות לאו בקנין הגוף דמי.

Reish Lakish and Rabbi Yohanan dispute whether one must state that the receipt of the portions should be considered as a gift with regard to each recipient, or whether stating it with regard to one of them is enough to indicate that it is true for all. **And Reish Lakish said:** The inheritors will only ever acquire the portions as defined by the owner of the possessions **once he says: So-and-so and so-and-so shall inherit such and such a field and such and such a field that I have given to them as a gift, and they shall inherit them**, i.e., he must state explicitly for each recipient that their receipt of the portions should be considered a gift.⁴ Rava ruled that in this dispute as well, the *halakha* is in accordance with Reish Lakish.

And the other dispute concerns that which we learned in a mishna: In the case of **one who writes a bill transferring ownership of all of his possessions to his son** stating that the transfer should take effect immediately so that the son should gain the rights to use the possessions **after his death**,⁴ then although the father retained for himself the right to use the possessions until his death, he is **unable to sell the possessions due to the fact that he gave them to the son, and the son is unable to sell the possessions due to the fact that they are still in the father's possession**. If the father sold⁴ the possessions, then they are sold to the extent that the purchaser may use them **until the father dies**. If the son sold⁴ the possessions during his father's lifetime, the purchaser does not receive any rights to use the possessions **until the father dies**.

And an amoraic dispute was stated in the case in which the son sold the possessions during the father's lifetime, and then the son died during the father's lifetime,⁴ following which the father died as well. **Rabbi Yohanan said:** The purchaser does not acquire anything, and **Reish Lakish said:** The purchaser does acquire the possessions.

The Gemara explains their reasoning: **Rabbi Yohanan said that the purchaser does not acquire anything**, because he holds that the ownership of the rights to an item and its produce is tantamount to the ownership of the item itself,⁵ i.e., the actual title to it. Since the father retained the rights to use the possessions until his death, as long as he lives he is considered to hold the title to them. Therefore, the son's sale can be effective only after the father's death, at which point the son becomes the title owner. However, if the son dies first, then since he never gained the title to the items, his sale can never come to fruition.

And Reish Lakish said: The purchaser does acquire the possessions, as Reish Lakish holds that the ownership of the rights to an item and its produce is not tantamount to the ownership of the item itself, i.e., the actual title to it. Therefore, although the father is still alive, the son immediately gains the full title to the possessions, which he may sell to someone else. Nevertheless, since the father retains the rights to use the possessions, the purchaser may use the possessions he acquired only when the father dies.

HALAKHA

Inheritance and gift – ירושה ומתנה: With regard to one who is mortally ill, who divides up his possessions in a manner that departs from the standard conventions: If he expresses his wishes in a single unbroken statement, then as long as he refers to the receipt of those portions as a gift, even if he also refers to them as an inheritance, his words are binding. This is true even if he mentions that the portions should be considered a gift with respect to only one of the recipients or one of the possessions; provided he mentioned at some point in the statement that it should be considered a gift, it is all considered a gift. However, if he made two or more separate statements, then he must make it explicitly clear that his intention is that each part of the division should be considered a gift. This is in accordance with the opinion of Reish Lakish (Rambam *Sefer Mishpatim*, *Hilkhot Nahalot*, 6:6; *Shulhan Arukh*, *Hoshen Mishpat* 281:7).

One who writes a bill of all of his possessions to his son after his death – הכותב כל נכסיו לבנו לאחר מותו: If a father wrote a bill stating that the son should be able to use his possessions following the father's death, it is prohibited for both the father and the son to sell those possessions (Rambam *Sefer Kinyan*, *Hilkhot Zekhiya* 12:13; *Shulhan Arukh*, *Hoshen Mishpat* 257:1).

The father sold – מכר האב: If the father transgressed and sold the possessions that he had promised to his son, then the sale takes effect to the extent that the purchaser has the rights to the use and produce of those possessions until the death of the father. However, upon the father's death, the son becomes the owner of those rights. If at the time of the father's death there was produce that was still attached to the possessions, e.g., produce that grew on the land and was not yet harvested, the son must pay the purchaser its value. Any produce that was already detached belongs to the purchaser. Some (Rema; see *Tur* and *Beit Yosef*, citing Rashbam) argue with this and claim that upon the father's death, the son becomes the owner even of the produce that has already been detached (Rambam *Sefer Kinyan*, *Hilkhot Zekhiya* 12:13; *Shulhan Arukh*, *Hoshen Mishpat* 257:3).

The son sold – מכר הבן: If the son transgressed and sold the possessions promised to him by his father, then the purchaser has no rights to them until the death of the father (Rambam *Sefer Kinyan*, *Hilkhot Zekhiya* 12:13; *Shulhan Arukh*, *Hoshen Mishpat* 257:4).

The son sold the possessions and then died during the father's lifetime – מכר הבן ומת בחי אביו: If the son sold the possessions promised to him by his father and then died during the father's lifetime, following which the father died, the purchaser acquires the possessions upon the death of the father. This is because the father retained only the rights to the use and produce of the possessions, and the ownership of the rights to an item and its produce is not tantamount to the ownership of the item itself. This is in accordance with the opinion of Reish Lakish (Rambam *Sefer Kinyan*, *Hilkhot Zekhiya* 12:13; *Shulhan Arukh*, *Hoshen Mishpat* 257:5).

BACKGROUND

Ownership of the rights to an item and its produce is tantamount to the ownership of the item itself – **קנין פירות** – **בקנין הגוף דמי:** If an item was acquired for its produce, one may derive benefit from it, but according to some authorities one cannot perform actions that require actual ownership of

the item, e.g., bringing first fruits or selling the item to others. However, other authorities maintain that even if an item is acquired for its produce, this is akin to the purchase of the item itself, and it may be used for these activities.

יוציא בגט – He must send her out with a bill of divorce – Although Rabbi Eliezer's statement is not accepted as the *halakha*, the early commentaries discussed the meaning and rationale of his claim and thereby clarified important principles that lie at the heart of the Gemara's discussion.

Rashi's version of the Gemara text is the same as that which appears in the standard Vilna edition: He must send her out with a bill of divorce. This suggests that nothing more than a bill of divorce is necessary in order to permit her to remarry. The early commentaries note that, ostensibly, this is true only according to the opinion of Rabbi Yohanan that the consummation of a levirate marriage with a pregnant woman who later miscarries is valid. Since the marriage is valid, only a divorce is needed to dissolve it. However, according to the opinion of Reish Lakish, the consummation of the levirate marriage performed while the woman was pregnant was invalid, and therefore the couple was never actually married. As such, the levirate bond still exists, and it should be necessary to either repeat the consummation or perform *halitza*. Some commentaries suggest that Rashi's version of the text may be resolved according to the conclusion of the Gemara that the mishna is referring to a case in which, following the miscarriage, the *yavam* indeed repeated the consummation. As such, all would agree that the couple was actually married and that only a bill of divorce is necessary (*Tosafot Yeshanim*; *Tosafot HaRosh*). Other commentaries explain that Rabbi Eliezer's intention was not to suggest that a bill of divorce is sufficient, as certainly according to Reish Lakish it is necessary to perform *halitza*, since the levirate bond remains. Rather, the intention is that in addition to the *halitza*, a bill of divorce is also required (Rambam; Rid; Maharam MiRotenburg).

The Rashba had a different version of the Gemara's text that merely states: He must send her out. According to this version, the Rashba explains, *halitza* alone is sufficient and there is no need for a bill of divorce. The Ritva suggests further that the ambiguity provided by this version of the text means that it can be interpreted as meaning through a bill of divorce, according to the opinion of Rabbi Yohanan, or as referring to *halitza*, according to the opinion of Reish Lakish.

The Rivan claims that Rabbi Eliezer's statement was never meant to explain how she should be permitted to remarry; rather, the intention was to teach that a penalty is imposed upon the *yavam* for unlawfully consummating the levirate marriage. He is therefore required to hand her a bill of divorce; by doing so it becomes prohibited for him to repeat the consummation, and therefore his only recourse is to perform *halitza* (see *Bah*).

Reinforced their pronouncements – *עשו חיווק לדבריהם*: *Tosafot* note that in many cases throughout the Gemara, Rabbi Meir is of the opinion that the Sages reinforced their pronouncements to be equally as severe as Torah law, but not to have greater severity. They raise various distinctions between the case here and those cases. Most commentaries suggest a simple distinction should be drawn between cases involving rabbinic prohibitions and those involving rabbinic enactments in monetary matters. In the former, Rabbi Meir is very strict and holds that in order to prevent laxity it was necessary for the rabbinic prohibitions to be more severe than Torah law. This is also the reason that in many cases, Rabbi Meir rules that when the Sages provided specific formulations to be used in the fulfillment of mitzvot or in creating a bill of divorce, if one deviates from those formulations, the entire matter is null and void even if the change does not affect the essential meaning. However, in monetary matters, the Sages deemed it sufficient if the rabbinic law was applied with equal severity to that of Torah law (Ramban).

אין הולד של קיימא כו' תנא:
משום רבי אליעזר אומר: יוציא בגט.

אמר רבא: רבי מאיר ורבי אליעזר
אמרו דבר אחד. רבי אליעזר – הא
דאמרן.

רבי מאיר – דתנא: לא ישא אדם
מעוברת חבירו ומינקת חבירו, ואם
נשא – יוציא, ולא יחזיר עולמית,
דברי רבי מאיר. וחכמים אומרים:
יוציא, ולכשיגיע זמנו לכנוס –
יכנס.

אמר ליה אביי: ממאי? דלמא לא
היא, עד כאן לא קאמר רבי אליעזר
הכא – אלא משום דקפגע באיסור
אשת אח דאורייתא, אבל התם
דרבנן – כרבנן סבירא ליה.

אי נמי: עד כאן לא קאמר רבי מאיר
התם – אלא משום דרבנן, וחכמים
עשו חיווק לדבריהם יותר משל
תורה. אבל הכא – מדאורייתא,
מפּרש פּרשי מִינָה.

S The mishna states that if a *yavam* consummates a levirate marriage with his *yevama* while she is pregnant, if it emerges that the offspring is not viable then he may maintain her as his wife because his intercourse with her was a valid consummation of levirate marriage. An opposing opinion is taught in a *baraita*: **In the name of Rabbi Eliezer they said: He must send her out with a bill of divorce.**ⁿ Although it emerged that the levirate marriage took effect, since at the time he consummated the levirate marriage it was prohibited to do so because the *yevama* was pregnant, he is therefore penalized and required to separate from her.

Rava said: Rabbi Meir and Rabbi Eliezer said the same thing, i.e., they both expressed the same opinion that if one marries a woman whom he is prohibited from marrying, he is penalized and required to divorce her, even if the reason for the prohibition no longer applies. **Rabbi Eliezer's opinion was expressed in this ruling we have just stated.**

Where was Rabbi Meir's opinion expressed? **As it is taught in a baraita: A man may not marry a woman who is pregnant with the child of another man, nor a woman who is nursing the child of another man.**^h **And if he transgressed and married her, he is penalized for violating the prohibition, and he must divorce her with a bill of divorce, and he may never take her back;**^h **this is the statement of Rabbi Meir. And the Rabbis say: He must send her out, and when the time comes in which it is permitted to marry her, i.e., after the child is weaned, he may then marry her again.**

Abaye said to him: From where do you deduce that they are of one opinion? Perhaps that is not so, as it is possible that **Rabbi Eliezer states his ruling only here,** in the case of a *yavam* who consummated a levirate marriage with his *yevama* while she was still pregnant, **due to the fact that by doing so he risks the possibility that the offspring will be viable, in which case he encounters the Torah prohibition against engaging in relations with one's brother's wife. However, there,** in the case where one married a woman who is pregnant with the child of another man, **which is a rabbinic prohibition, it is possible that he holds in accordance with the opinion of the Rabbis who argue with Rabbi Meir.**

Alternatively, it is also possible that **Rabbi Meir states his ruling only there,** in the case where one married a woman who is pregnant with the child of another man, **due to the fact that doing so is a violation of a rabbinic prohibition, and therefore it is possible that this is one of the cases in which the Sages reinforced their pronouncementsⁿ with greater severity than prohibitions of Torah law so that people would not treat them lightly. However, here,** in the case of a *yavam* who consummated a levirate marriage with his *yevama* while she was still pregnant, where there was a risk of transgressing a prohibition written in the Torah, since people are generally careful to **distance themselves from a Torah prohibition, there is no need to further penalize someone who nevertheless transgressed.**

HALAKHA

A woman who is pregnant with the child of another man nor a woman who is nursing the child of another man – *מעוברת חבירו ומינקת חבירו*: It is prohibited to marry a woman who is pregnant with the child of another man or a woman who is nursing the child of another man, until the child reaches twenty-four months of age. It makes no difference whether the woman is a widow, divorced, or became pregnant out of wedlock. Some are more lenient in the latter case (Rema, citing Maharai Mintz). If the child died within that time, or if the child had already been weaned while the mother was still married to the child's father, or if the mother had never been able to nurse, it is permitted to marry her (Rambam *Sefer Nashim*, *Hilkhot Geirushin* 11:25; *Shulhan Arukh*, *Even HaEzer* 13:11).

One who married a woman who is pregnant with the child of another man or a woman who is nursing the child of another man – *הנשא מעוברת ומינקת חבירו*: If one transgressed and married a woman who is pregnant with the child of another man or a woman who is nursing the child of another man, he is ostracized until he divorces her with a bill of divorce, even if he is a priest and would thereby be prohibited from remarrying her. If he is an Israelite, then he is allowed to later remarry her once the child reaches twenty-four months of age. This is in accordance with the opinion of the Rabbis (Rambam *Sefer Nashim*, *Hilkhot Geirushin* 11:28 and in the comment of Ra'avad; *Shulhan Arukh*, *Even HaEzer* 13:12).

If she became the wife of a priest she does not perform *halitza* – אם אשת כהן היא אינה חולצת: The Gemara will explain that since her performance of *halitza* would prohibit her from remaining married to her husband, the Sages were willing to rely on the opinion of the Rabbis who disagree with Rabban Shimon ben Gamliel and hold that even if the child does not survive for thirty days it is considered viable. This is especially reasonable because both opinions agree that by Torah law the child is considered viable; the dispute is only whether, by rabbinic law, the case should be treated as one of doubt.

Some question why the *halitza* should not be performed in this case. The *halakha* is that if a *halitza* is performed and it is uncertain whether it was valid, it does not disqualify the *yevama* from marrying a priest. In the case here, too, the *halitza* is performed only to satisfy the possibility that the child was not viable. If so, why does Rava rule that she should not perform *halitza*? To resolve this difficulty, a distinction must be drawn between two cases of uncertainty. The *halakha* that an uncertain *halitza* does not disqualify a woman from marrying a priest applies only to cases where there is clearly a levirate bond, but it is uncertain whether the man who performed the *halitza* was actually the *yavam*. However, in this case, the *halitza* was certainly performed by the *yavam*, and the only question is whether it was necessary. Therefore it is treated like any other case of uncertainty in Torah law, in which one must be stringent, and so if *halitza* was performed, the couple would have to divorce (Rid).

אמר רבא: ולדברי חכמים יוציאה בגט. אמר מר זוטרא: דיקא נמי, דקתני יוציא, ולא קתני יפריש, שמע מינה.

Rava said: According to the statement of the Rabbis who dispute Rabbi Meir and require one who married a pregnant woman to send her out, the intention is that **he must send her out with a bill of divorce** and not merely separate from her. **Mar Zutra said: The language the Rabbis used is also precise, as they teach: He must send her out, and they do not teach: He must separate himself from her. Conclude from here that Rava's claim is correct.**

אמר ליה רב אשי לרב הושעיא בריה דרב אידי: התם תנן, רבן שמעון בן גמליאל אומר: כל ששהא באדם שלשים יום – אינו נפל. הא לא ששהא – ספיקא הוי.

Rav Ashi said to Rav Hoshaya, son of Rav Idi: **We learned in a baraita there that Rabban Shimon ben Gamliel says: Any human baby that survives for thirty days^h after its birth is not to be considered a stillbirth.** Rather, the baby is considered to be viable, and so the wife of the baby's father is never subject to any obligation of levirate marriage. **But, by inference, were it not to survive for thirty days, there would be uncertainty whether the baby was viable or not.**

ואיתמר, מת בתוך שלשים יום, ועמדה ונתקדשה.

And an amoraic dispute was stated in the case in which the only offspring of a man died during the first thirty days of its life, and the widow, under the misconception that she was exempt from any obligation of levirate marriage, **arose and was betrothed.**^h

רבנא משמיה דרבא אמר: אם אשת ישראל היא – חולצת, ואם אשת כהן היא – אינה חולצת.

Ravina said in the name of Rava: **If she became the wife of an Israelite, i.e., the man who betrothed her was not a priest, then she performs *halitza* with the *yavam* due to the uncertainty whether or not the offspring was viable, and then they may remain married. But if she became the wife of a priest, she does not perform *halitza*ⁿ with him because if she were to do so, she would become a *halutza* and would therefore be prohibited from remaining married to her husband, who is a priest. Therefore, in this case, in order to allow her to remain married to her husband, the Sages did not require her to be concerned for the possibility that the offspring was not viable.**

רב משרשיא משמיה דרבא אמר: אחת זו ואחת זו חולצת.

The Gemara cites a different version of Rav's opinion: **Rav Mesharshiyya said in the name of Rava: Both this woman and that woman perform *halitza*, even though by doing so, if she was betrothed to a priest, she would become forbidden to him.**

אמר ליה רבנא לרב משרשיא:

Ravina said to Rav Mesharshiyya:

HALAKHA

כל ששהא – באדם שלשים יום: Any child of whom it is known that he completed nine months in the womb is considered viable from the moment of birth. If it is not known whether he completed a full nine months, then once he lives for thirty days he is considered viable, and only then will the child's existence free his father's wives from the obligation to perform levirate marriage or *halitza*. Some say that this is true only when his fingernails and hair have grown, as this is proof that he has reached his ninth month (Rema, citing *Tur*). If the child survived thirty days and then died, and no one checked whether his fingernails and hair had grown, one may rely upon the first opinion (*Beit Shmuel*; *Taz*; Rambam *Sefer Nashim*, *Hilkhot Yibbum* 1:5; *Shulhan Arukh*, *Even HaEzer* 156:4).

מת בתוך שלשים יום, ועמדה ונתקדשה: In the case of a

yevama who gave birth to a child and it was not known whether he reached his ninth month, and then he died within thirty days of his birth, including on the thirtieth day, the *yevama* must perform *halitza* since it is uncertain whether the child was viable. This is in accordance with the opinion of the Rabbis. Even if she was betrothed or married, she must still perform *halitza*, and only then is she permitted to her husband. In the event that the *yavam* was not available to perform the *halitza*, she may remain with her husband until the *yavam* becomes available (Rema, citing Mahari Mintz). However, if she was betrothed to a priest, she is not required to perform *halitza* because if she were to do so she would become prohibited to her husband. In the event that the priest divorced her or died, ideally she should then perform *halitza* in order to become permitted to non-priests. This is in accordance with the opinion of Ravina (Rambam *Sefer Nashim*, *Hilkhot Yibbum* 2:21; *Shulhan Arukh*, *Even HaEzer* 164:7).

NOTES

That you will even permit fats [tarba] – דַּתְּשִׁיתוּ אֶף תִּרְבָּא: Why did Rav Mesharshiyya specifically refer to the prohibition of forbidden fats? The *Arukh LaNer* suggests that Rav Mesharshiyya was hinting at the practice of the priests in the Temple to rely upon the opinions that it is permitted to eat the fats lining the stomach of an animal (see *Hullin* 49a). Accordingly, Rav Mesharshiyya was suggesting that since Rava's intention was to issue a ruling that would assist the priesthood, he should continue on that path and also rule that the fats lining the stomach are permitted.

Some early commentaries had a different version of the Gemara's text. In place of the word *tarba*, meaning fats, their text had *tarka*, meaning a divorcée. Accordingly, Rav Mesharshiyya was saying that if one permits a *yevama* to marry without *halitza* then one will eventually also permit other types of forbidden marriages, even a divorcée to a priest (*Tosefot HaRosh*; Ritva on *Shabbat* 136b).

His flight is sufficient for him – עִירוּקִיָּה מְסַתִּיָּה: The early commentaries discussed why the fact that he fled should save him from being excommunicated. The discussion surrounds the question of why he is excommunicated if he does not flee. Rashi, Ra'avad, and others explain that he is excommunicated in order to compel him to divorce his wife, so that he will not engage in intercourse before the appropriate time. Therefore, if he flees and it is clear that he has no intention of doing so in the immediate future, there is no need to excommunicate him. Accordingly, it is even appropriate to advise the husband in such a situation to flee rather than divorce his wife or suffer excommunication (Rosh). According to other opinions, the reason he is excommunicated is as a punishment for violating the pronouncements of the Sages (Rambam; see Ritva and *Maggid Mishne*). If so, it would seem that when he flees from his wife, he is not excommunicated because the very fact that he is unable to return to her until the appropriate time is itself considered a sufficient punishment.

בְּאוֹרְתָא אָמַר רַבָּא הָכִי, וּבִצְפָרָא הָדָר בִּיה. אָמַר לִיה: שְׁרִיתוּ? יְהֵא רַעְוָא דַּתְּשִׁיתוּ אֶף תִּרְבָּא.

הָכָא גַּבִּי מְעוּפֶרֶת חֲבִירוּ וּמִינְקַת חֲבִירוּ הִנְשׂוּאָה לְכֹהֵן, מֵאִי? מִי עֲבוּד רַבָּנָן תִּקְנִתָּא לְכֹהֵן, אוּ לֹא?

אָמַר לִיה: הָכִי הִשְׁתָּא! בְּשִׁלְמָא הָתֵם, כִּיּוֹן דְּאִיכָא רַבָּנָן דְּפָלְגִי עֲלֵיהּ דְּרַבָּנָן שְׁמַעוֹן בֶּן גַּמְלִיֵּאל, דְּאָמְרִי: אֶף עַל גַּב דְּלֹא שָׁהָא וְלֹד מַעֲלִיא הָוִי, גַּבִּי אִשְׁתְּ כֹהֵן, כִּיּוֹן דְּלֹא אִפְשָׁר, עֲבָדִין בְּרַבָּנָן.

אָבֵל הָכָא, כִּמָּאן נַעֲבִיד? אִי בְּרַבִּי מֵאִיר – הָא אָמַר יוֹצִיא וְלֹא יִחְזוּר עוֹלָמִית, וְאִי בְּרַבָּנָן – הָאֲמִירִי בָּגֵט.

אִיתָמַר, קִדְּשָׁה בְּתוּךְ שְׁלֹשָׁה וּבָרַח פְּלִיגִי בָּהּ רַב אַחָא וְרַפְרָם, חַד אָמַר: מִשְׁמַתִּינָן לִיה, וְחַד אָמַר: עִירוּקִיָּה מְסַתִּיָּה. הָדָא עוֹבְדָא, וְאָמַר לְהוּ וּפְרָם: עִירוּקִיָּה מְסַתִּיָּה.

In the evening Rava stated this ruling in accordance with the way you cited him, but in the morning he retracted his opinion and ruled as I cited him. Rav Mesharshiyya said to him: Do you really permit her to marry without *halitza*? He added sarcastically: May it be God's will that you will even permit forbidden fats [*tarba*]^N as well. In Rav Mesharshiyya's opinion, the prohibition against the widow remarrying without *halitza* was as obvious as the prohibition of forbidden fats.

After citing this dispute, Rav Ashi said to Rav Hoshaya, son of Rav Idi: According to Rava's citation of Rav, when a woman is married to a priest, the Sages were more lenient in order to allow the couple to remain married. Here, with regard to a woman who is pregnant with the child of another man or a woman who is nursing the child of another man, who is married to a priest, what is the *halakha*? Did the Sages enact an ordinance for the benefit of a priest and say that it is sufficient for him to separate from his wife and he does not need to divorce her, or not?

He said to him: How can these cases be compared? Granted, there, in the case where the offspring died during its first thirty days of life, since there are the Rabbis who disagree with Rabban Shimon ben Gamliel concerning it, as they say that although the offspring did not survive for thirty days it is nevertheless considered a full-fledged, i.e., viable, offspring, therefore, with regard to the wife of a priest, since it is not possible for her to perform *halitza* and remain permitted to her husband, we will be lenient and act in accordance with the opinion of the Rabbis.

However, here, in the case of a woman who is pregnant with or nursing the child of another man, in accordance with whose opinion should we act? If we act in accordance with the opinion of Rabbi Meir, it will be of no benefit to the priest because Rabbi Meir said even with regard to the wife of an Israelite that he must divorce her and may never take her back. And if we act in accordance with the opinion of the Rabbis, it will also be of no benefit to the priest because they say he must send her out with a bill of divorce and only remarry her at a later point. Since there is no opinion that does not require a bill of divorce to be given, there is no possibility to be lenient in this case by not requiring a bill of divorce to be given.

A pregnancy is generally noticeable only after three months have passed. Therefore, during the first three months after a woman is divorced or widowed, she may not remarry due to the possibility that she is pregnant. The Sages decreed that even betrothing her during that time is prohibited, lest one also marry her (see 41a). Concerning this, an amoraic dispute was stated: In a case in which a man betrothed a woman during the three months following her divorce or her husband's death, and then he fled,^H Rav Aha and Rafram disagree over what should be done. One said: We excommunicate him for violating the prohibition. And the other one said: His flight is sufficient for him,^N since it proves that he does not intend to marry her until it is determined that she is not pregnant. Therefore, there is no need to penalize him further. The Gemara relates: There was an incident like that, and Rafram said to those who asked what to do: His flight is sufficient for him.

HALAKHA

He betrothed her during the three months, and then he fled – קִידְּשָׁה בְּתוּךְ שְׁלֹשָׁה וּבָרַח: One who betroths a woman during the three months following her divorce or her husband's death is excommunicated. Some say that he must divorce her, and then, if he is an Israelite and she is not pregnant, he may remarry her after three months. However, if he is a priest, he will be prohibited from remarrying her (*Tur*). Some say that

if he betrothed her and was unaware of the fact that this was prohibited, he need not divorce her, and it is sufficient for the couple to separate (Mahari Weil). Others argue that even such a case requires a divorce (*Terumat HaDeshen*). In a case where the man is a priest, one may rely on the lenient opinion (Rema).

If he betrothed her and then fled, he is not excommunicated.

This is in accordance with the opinion of Rafram in the Gemara. Furthermore, he even may be advised to flee *ab initio* (*Tur*). In a case in which not only did he betroth her, but he also married her, the Rambam rules that it is still sufficient for him to flee, whereas others (*Beit Shmuel*) rule that in such a case he must divorce her (Rambam *Sefer Nashim*, *Hilkhot Geirushin* 11:28; *Shulhan Arukh*, *Even HaEzer* 13:10).

”ספק בן תשע” וכו’. אמר ליה רבא לרב
נחמן: לימא הלך אחר רוב נשים, ורוב
נשים לתשעה ילדו!

§ The mishna states that if a *yevama* consummated the levirate marriage and gave birth seven months later, there is an **uncertainty whether the child is nine months old**, counting from conception, and is the offspring of the first husband, i.e., the deceased brother, or whether the child is only seven months old and is the offspring of the second husband. If it is the child of the first husband, then there was never any obligation of levirate marriage, and the supposed consummation was in fact forbidden by penalty of *karet*. Due to that possibility, both the man and the woman are obligated to bring a guilt-offering for uncertainty. **Rava said to Rav Nahman:** How can they bring a guilt-offering for uncertainty? **Let us say: Follow the majority of women**, and since the **majority of women give birth after nine months**, it should be presumed that the child is the offspring of the deceased brother. Accordingly, the couple would be obligated to bring a certain sin-offering, not a guilt-offering for uncertainty.

אמר ליה: נשי דידן – לשבעה ילדו. אמר
ליה: נשי דידכו הוו רובא דעלמא?

Rav Nahman said to him: The women of our family regularly give birth after seven months. Therefore, how can you presume that this woman gave birth after nine months? Rava said to him: Do the women of your family constitute the majority of the women of the world? Ultimately, the majority of women give birth after nine months, and one should therefore presume accordingly in a case of uncertainty.

אמר ליה: הכי קאמינא, רוב נשים ילדו
לתשעה ומיעוט לשבעה, וכל היולדת
לתשעה – עוברא נכר לשליש ימיה. וזו,
האיל ולא הובר עוברא לשליש ימיה –
איתרע ליה רובא.

Rav Nahman said to him: This is what I am saying: Although it is true that the **majority of women give birth after nine months and only a minority give birth after seven**, still, in the case of every woman who gives birth after nine months, her fetus is already recognizable after a third of her days, i.e., in the third month of her pregnancy. Accordingly, in the case of this woman, since her fetus was not recognizable after a third of her days, as were it already recognizable at that point then it would be obvious that the child was the offspring of the first husband, therefore, the ability to presume she is like the **majority of women is compromised**, and the uncertainty as to who the father of the child is remains. Consequently, the *yavam* and *yevama* should each bring a guilt-offering for uncertainty.

אי כל היולדת לתשעה עוברא נכר
לשליש ימיה, הא מדלא הובר לשליש
ימיה – עוברא ודאי בר שבעה לבתרא
הוא! אלא אימא: רוב היולדת לתשעה
עוברא נכר לשליש ימיה, והאי מדלא
הובר לשליש ימיה – איתרע ליה רובא.

The Gemara asks: If it is true that in the case of every woman who gives birth after nine months, her fetus is already recognizable after a third of her days, then with regard to this woman, from the fact that her fetus was not recognized after a third of her days, it follows that her fetus was certainly only seven months old and is the offspring of the latter husband, i.e., the *yavam*. If so, it is clear the *yavam* is father of the child and there should be no need to bring an offering at all. **Rather**, one must emend Rav Nahman's words and say: In the **majority of cases**, with regard to a woman who gives birth after nine months, her fetus is already recognizable after a third of her days, and with regard to this woman, from the fact that her fetus was not recognized after the a third of her days, the ability to presume she is like the **majority of women is compromised**.

תנו רבנן: ראשון ראוי להיות כהן גדול,
ושני ממזר מספק. רבי אליעזר בן יעקב
אומר: אין ממזר מספק.

§ The mishna states that the child of the *yevama* has unflawed lineage since regardless of whether it is the offspring of the deceased husband or the *yavam*, there was no transgression involved in its conception. With regard to this case, the Sages taught in a *baraita*: The first child is even fit to become a High Priest. However, since it is possible that the child is the offspring of the deceased husband, in which case the widow remains forbidden to the *yavam* as his brother's wife, if she has a second child with her *yavam* then that child is a *mamzer* due to an uncertainty with regard to his status. **Rabbi Eliezer ben Ya'akov says: One is not rendered a mamzer due to uncertainty.**

He is definitely a *mamzer* due to the uncertainty concerning his status – **מִמּוֹר וְדַאי מִסְפֵּק**: In tractate *Kiddushin*, Rava is cited as saying that one whose status as a *mamzer* is uncertain is permitted to marry an Israelite woman of unflawed lineage. However, this would appear to conform to neither opinion in the *baraita*, according to the way Rava explains it. Some have suggested that a distinction should be drawn between different cases of uncertainty. The *baraita* here concerns a case where there is a specific reason to be concerned that the child is a *mamzer*; if the first child is the son of the previous husband then the second one will be a *mamzer*. Therefore, Rava rules stringently. However, in tractate *Kiddushin*, Rava is considering the cases of a child whose father is entirely unknown and that of a foundling. In those cases, there are no specific indications that the child might be a *mamzer*; rather, there is simply a total lack of knowledge about the child's lineage. Rava therefore rules leniently that there is no need to open a Pandora's box of possibilities, and therefore in such a case there is no prohibition preventing him from marrying an Israelite woman of unflawed lineage (*Mei Naftoah*). Alternatively, one could suggest a resolution based on the opinion of the Rambam that according to Torah law, one whose status as *mamzer* is uncertain is actually permitted to marry an Israelite woman of unflawed lineage. Accordingly, it can be explained that Rava in tractate *Kiddushin* was referring to Torah law, whereas here he is referring to the fact that according to rabbinic law it is prohibited.

HALAKHA

He is not definitely a *mamzer* due to an uncertainty, rather his status as a *mamzer* is uncertain – **אֵין וְדַאי**: **מִמּוֹר מִסְפֵּק אֵלֶּי סֶפֶק מִמּוֹר**: If a *yevama* and her *yavam* consummate the levirate marriage within three months of her husband's death, and then she gives birth to a viable child and there is an uncertainty whether the child was born after nine months of gestation and is the offspring of the first husband, or whether it was born after only seven months of gestation and is the offspring of the *yavam*, that child has unflawed lineage. If the *yavam* does not divorce her, and they have another child together, the second child's status as a *mamzer* is uncertain. He is therefore prohibited from marrying an Israelite woman of unflawed lineage, since he might be a *mamzer*; and he is also prohibited from marrying a *mamzeret*, as he might not be a *mamzer*. This is in accordance with the opinion of Rabbi Eliezer ben Ya'akov, as explained by Rava (Rambam *Sefer Nashim*, *Hilkhot Yibbum* 1:23; *Shulhan Arukh*, *Even HaEzer* 4:25; 164:6).

Certain and uncertain disqualifications from marriage – **פְּסוּלֵי חֵיתוּן וְדַאי וְסֶפֶק**: By Torah law one whose status as a *mamzer* is uncertain is permitted to marry an Israelite of unflawed lineage. However, by rabbinic law it is prohibited. Only one who is definitely a *mamzer* is permitted to marry a *mamzeret*; if the status of the man, the woman, or both is uncertain, then they are prohibited from marrying one another (Rambam *Sefer Kedusha*, *Hilkhot Issurei Bia* 15:21; *Shulhan Arukh*, *Even HaEzer* 4:24).

Uncertainties with regard to one's status as a *mamzer* – **סֶפֶקִי מִמּוֹר**: An uncertainty whether one is a *mamzer* can be created in various ways, e.g., whenever a child is born to a woman from a man who is not her husband in a case where her marital status is uncertain. This can occur either when there is uncertainty concerning the validity of the original betrothal or when there is uncertainty concerning the divorce from, or death of, her husband. A child whose father's identity is not known is also considered to be one whose status as a *mamzer* is uncertain (Rambam *Sefer Kedusha*, *Hilkhot Issurei Bia* 15:21; *Shulhan Arukh*, *Even HaEzer* 4:24, 31, 36).

מֵאֵי קָאָמַר? אָמַר אַבְיִי: הָכִי קָאָמַר, ראשון ראוי להיות כֹּהֵן גָּדוֹל, וְשֵׁנִי – סֶפֶק מִמּוֹר, וְאִסּוּר בְּמִמּוֹרֶת. רַבִּי אֱלִיעֶזֶר אָמַר: אֵינוּ סֶפֶק מִמּוֹר אֲלָּא וְדַאי מִמּוֹר, וּמוֹתֵר בְּמִמּוֹרֶת.

רַבָּא אָמַר, הָכִי קָאָמַר: ראשון – ראוי להיות כֹּהֵן גָּדוֹל, וְשֵׁנִי – מִמּוֹר וְדַאי מִסְפֵּק, וּמוֹתֵר בְּמִמּוֹרֶת. וְרַבִּי אֱלִיעֶזֶר בֶּן יַעֲקֹב אָמַר: אֵין וְדַאי מִמּוֹר מִסְפֵּק, אֲלָּא סֶפֶק מִמּוֹר, וְאִסּוּר בְּמִמּוֹרֶת.

וְקָמִיפְלֵי בְּדַרְבֵּי אֱלִיעֶזֶר. דַּתְנָן, רַבִּי אֱלִיעֶזֶר אָמַר: וְדַאֵן בּוֹדְאָן – מוֹתֵר. וְדַאֵן בְּסֶפֶקוֹ, וְסֶפֶקוֹ בּוֹדְאָן, וְסֶפֶקוֹ בְּסֶפֶקוֹ – אִסּוּר.

וְאֵלּוּ הֵן סֶפֶקוֹ: שְׁתוּקִי וְאִסּוּפִי וְכוּנִי,

וְאָמַר רַב יְהוּדָה אָמַר רַב: הֲלָכָה כְּרַבִּי אֱלִיעֶזֶר. כִּי אִמְרִיתָה קָמִיָּה דְּשִׁמּוּאֵל אָמַר לִי: הֲלַל שְׁנֵה עֶשְׂרֵה יוֹחֲסִין עָלַי מִבְּבָלָא: כְּהֵנִי, לוֹיִי וְיִשְׂרָאֵלִי, חֲלָלִי, גֵּירִי, חֲרוּרִי, מִמּוֹרִי, נְתִינִי, שְׁתוּקִי, וְאִסּוּפִי. וְכוּלָּן מוֹתֵרִין לְבָא זֶה בְּזֶה.

The meaning of Rabbi Eliezer ben Ya'akov's statement and how he differs from the first *tanna* is unclear. The Gemara clarifies: **What is the *baraita* saying? Abaye said: This is what it is saying:** The first child is even fit to become a High Priest. And if she has a second child, his status as a *mamzer* is uncertain and therefore he is both prohibited from marrying an Israelite woman of unflawed lineage, since he might actually be a *mamzer*, and he is also prohibited from marrying a *mamzeret*, since he might not be a *mamzer*. **Rabbi Eliezer ben Ya'akov says: He is not treated like one whose status as a *mamzer* is uncertain; rather, due to the uncertainty concerning his status he is treated like one who is definitely a *mamzer*, and he is permitted to marry a *mamzeret*.** In other words, Rabbi Eliezer ben Ya'akov holds that even one whose status as a *mamzer* is uncertain is permitted to marry one who is definitely a *mamzeret*.

Rava said: **This is what the *baraita* is saying:** The first child is even fit to become a High Priest. And if she has a second child, he is treated as though he is definitely a *mamzer* due to the uncertainty concerning his status,^N and therefore he is permitted to marry a *mamzeret*, i.e., this *tanna* holds that even one whose status as a *mamzer* is uncertain is permitted to marry one who is definitely a *mamzeret*. **And Rabbi Eliezer ben Ya'akov says: He is not treated as though he is definitely a *mamzer* due to an uncertainty concerning his status; rather, his status as a *mamzer* is uncertain^H and he is treated accordingly, and therefore he is both prohibited from marrying an Israelite woman of unflawed lineage since he might be a *mamzer*, and he is also prohibited from marrying a *mamzeret* since he might not be a *mamzer*.**

The Gemara explains: **And Abaye and Rava disagree with regard to whether the *halakha* is decided in accordance with the opinion of Rabbi Elazar. As we learned in a mishna (*Kiddushin* 74a):** With regard to the prohibition against marrying people with certain types of flawed lineage, **Rabbi Elazar said:** The marriage of those people whose flawed lineage status is certain to those whose status is certain is permitted, but the marriage of those whose status is certain to those whose status is uncertain, and the marriage of those whose status is uncertain to those whose status is certain, and even the marriage of those whose status is uncertain to those whose status is uncertain, is prohibited.^H

The mishna concludes: **And these are those who are considered to have an uncertain status:^H A child of unknown paternity [*shetuki*], although his mother's identity is known; and a foundling who was found abandoned in the streets; and a Samaritan [*Kuti*],^B who is possibly a *mamzer* since the Samaritans do not accept and abide by the *halakhot* of marriage.**

And with regard to this mishna Rav Yehuda said that Rav said: The *halakha* is in accordance with the opinion of Rabbi Elazar. But when I said this *halakha* of Rav's in the presence of Shmuel, he said to me: Hillel taught in a *baraita* that ten categories of lineage came up from Babylon to Eretz Yisrael: Priests; Levites; and Israelites; priests disqualified due to flawed lineage [*halallim*]; converts; freed slaves; *mamzerim*; Gibeonites; *shetukei*; and foundlings. And it is permitted for all men and women in these categories to marry one another, i.e., the list is arranged such that the marriage between people in any two categories that are adjacent to one another is permitted. This is possible only if one assumes that it is permitted for one whose flawed lineage status is uncertain to marry one whose flawed lineage status is certain.

BACKGROUND

Samaritan [*Kuti*] – כּוּתִי: This term is used to describe the non-Jews who settled in Samaria and the surrounding territory after the exile of the ten tribes. Though they converted to Judaism, they had ulterior motives for doing so (see II Kings, chapter 17), and were not scrupulous in their observance of the mitzvot.

Accordingly, it was a matter of debate among the Sages whether or not they were to be considered as Jews. In later generations, they abandoned Jewish practices entirely, and the Sages decreed that they should be treated as non-Jews.

ואת אמרת הלכה כרבי אלעזר?

After citing the baraita taught by Hillel, which assumes that it is permitted for one whose flawed lineage status is uncertain to marry one whose flawed lineage status is certain, Shmuel concluded: The *halakha* is certainly decided in accordance with the opinion of Hillel, and yet you, Rabbi Yehuda, said the *halakha* is in accordance with the opinion of Rabbi Elazar, which states that a marriage between two people whose flawed lineage status is uncertain is prohibited; your ruling is incorrect.

אביי סבר לה כשמואל דאמר הלכה כהלל, ומוקי לה רבי אליעזר בן יעקב אליבא דהלכתא כי היכי דלא תקשי הלכתא אהלכתא.

The Gemara proceeds to explain the dispute between Abaye and Rava: Abaye holds in accordance with the opinion of Shmuel, who said that the *halakha* is decided in accordance with the opinion of Hillel that it is permitted for one whose flawed lineage status is uncertain to marry one whose flawed lineage status is certain. Therefore, Abaye establishes that opinion of Rabbi Eliezer ben Ya'akov to be in accordance with this *halakha*, in order that there should not be a contradiction between one *halakha*, i.e., that the *halakha* is always decided in accordance with the opinion of Hillel, and another *halakha*, i.e., that the *halakha* is always decided in accordance with the opinion of Rabbi Eliezer ben Ya'akov.

רבא סבר לה כרב, דאמר הלכה כרבי אלעזר, ומוקי לה לרבי אליעזר בן יעקב אליבא דהלכתא, כי היכי דלא תקשי

Rava, however, holds in accordance with the opinion of Rav, who said: The *halakha* is decided in accordance with the opinion of Rabbi Elazar that the marriage of those whose status is certain to those whose status is uncertain is prohibited. Therefore, Rava establishes that opinion of Rabbi Eliezer ben Ya'akov to be in accordance with this *halakha*, so that there should not be a contradiction between

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one *halakha*, i.e., that the *halakha* in this case is in accordance with the opinion of Rav, and another *halakha*, i.e., that the *halakha* is always decided in accordance with the opinion of Rabbi Eliezer ben Ya'akov.

אמר אביי מנא אמינא לה דכל ספיקא לרבי אליעזר בן יעקב כודאי משיי ליה –

Abaye said: From where do I say that concerning anyone whose status as a *mamzer* is uncertain, according to the opinion of Rabbi Eliezer ben Ya'akov they are treated equivalently to one who is definitely a *mamzer*?

דתנא, רבי אליעזר בן יעקב אומר: הרי שבא על נשים הרבה ואין יודע על איזהו מהן בא. וכן היא, שבאו עליה אנשים הרבה ואינה יודעת מאיזה מהן קבלה, נמצא אב נשוא את בתו ואח נשוא את אחותו, ונתמלא כל העולם בולו ממזרין, ועל זה נאמר "ומלאה הארץ זמה".

As it is taught in a *baraita* that Rabbi Eliezer ben Ya'akov says: With regard to one who engaged in intercourse with and impregnated many women, but he does not know with which women he had intercourse, and similarly, with regard to a woman, if many men had intercourse with her and she became pregnant, but she does not know from which man she received the seed that caused her to become pregnant, since the identities of the parents of those children are not known, it could emerge that a father marries his daughter, and a brother marries his sister. And in this way, the entire world could become filled with *mamzerim*. And concerning this, it is stated: "And lest the land become full of lewdness" (Leviticus 19:29). Abaye demonstrates his claim from the fact that even though it is not certain that the children in this situation are *mamzerim*, nevertheless, Rabbi Eliezer ben Ya'akov labels them as *mamzerim* and not as those whose status as a *mamzer* is uncertain.^N

ורבא אמר לך: הכי קאמר: "זו מה היא".

And Rava could have said to you: This is what the verse is saying: The word "lewdness [*zima*]" can be understood as an acronym of the words: *Zo ma hi*, meaning: What is this.^N It is plausible to say that Rabbi Eliezer ben Ya'akov's citation of this verse indicates that he regards their status to be uncertain.

NOTES

One whose status as a *mamzer* is uncertain is treated the same way as one who is definitely a *mamzer* – ספיקא כודאי: Rashi explains that Abaye derives his proof from the fact that Rabbi Eliezer ben Ya'akov relates to the children whose *mamzer* status is uncertain as though they were definitely *mamzerim*. Another possible interpretation is that Abaye's proof is derived from Rabbi Eliezer ben Ya'akov's extended formulation. It would have been sufficient if he had highlighted the possibility that a father might marry his daughter and a brother his sister; why did he continue to emphasize: The entire world will become filled with *mamzerim*? Apparently, Rabbi Eliezer ben Ya'akov was also concerned that the children in these cases, whose status as a *mamzer* would be uncertain, would later marry people who are definitely *mamzerim* and in that way the number of *mamzerim* in the world would be greatly increased. The only reason to be concerned for that possibility is if one holds that one whose status as a *mamzer* is uncertain is permitted to marry one who is definitely a *mamzer*. From here Abaye derives his proof (Yosef Lekah).

What is this – זו מה היא: According to Rava, the verse should not be understood as labeling the children in such cases as *mamzerim*; rather, that if one is not careful the world could become filled with people whose lineage status is not known (Rivan).

Which will be for the day – מאן הוּיָא לְיוֹמָא: The commentaries discuss why Rav and Rav Nahman required a wife for one day, as there are many instances recounted in the Talmud where the same Sages went to different places, and they did not take a wife on those occasions. Moreover, if they intended to divorce these wives, they would be in violation of the dictum that one may not marry a woman with the intention of divorcing her. Indeed, the Rif and the Rosh do not quote this practice, and it appears that they do not consider it to be *halakha*.

Some later authorities suggest that Rav and Rav Nahman were traveling to meet with the non-Jewish ruler, and it was the custom of the ruler to provide a mistress for those who visited him (see *Avoda Zara* 76b). Therefore, Rav and Rav Nahman asked to marry a wife so that they would not be offered a mistress by the ruler, since the custom was to offer a mistress only to one who came without his wife (*Imrei David*).

יתר על כן אמר רבי אליעזר בן יעקב: לא ישא אדם אשה במדינה זו, וילך וישא אשה במדינה אחרת, שמה יודוּגוּ וזה לזה ונמצא אח נושא את אחותו.

איני? והא רב, כי איקלע לדרדשיר [מכריו] ואמר: מאן הוּיָא לְיוֹמָא. ורב נחמן, כי איקלע לשכנציב [מכריו] ואמר: מאן הוּיָא לְיוֹמָא!

שאני רבנן דפקיע שמייהו.

והאמר רבא: תבעיה לנישא ונתפייסה – צריכה לישב שבועה נקיים!

The Gemara cites the continuation of the *baraita*: Furthermore, Rabbi Eliezer ben Ya'akov said that even in marriage, one should be careful not to create a situation that could lead to the birth of *mamzerim*. Therefore, a man should not marry a woman in this country and then go and marry another woman in a different country,^h lest a son from one marriage and a daughter from the other, unaware that they are both children of the same father, unite with one another, and it could emerge that a brother marries his sister, the children of whom would be *mamzerim*.

The Gemara asks: Is that so; is there really such a prohibition? But didn't Rav, when he happened to come to Dardeshir, make a public announcement saying: Which woman will be my wife for the day, i.e., for the duration of his visit? Since his wife did not accompany him to Dardeshir, he wished to be married to another woman while he was there, in order to avoid a situation that could lead him to having forbidden thoughts. And also Rav Nahman, when he happened to come to Shakhnetziv, made a public announcement saying: Which woman will be my wife for the day?ⁿ It would appear, from the fact that both Sages married wives in two different places, that there is no prohibition in doing so.

The Gemara rejects the proof: Sages are different, as their names are renowned, and therefore their children are always identified by their connection to their father. Therefore, Rabbi Eliezer ben Ya'akov's concern does not apply to them.

The Gemara examines Rav and Rav Nahman's actions: But didn't Rava say: With regard to a woman who had an offer of marriage and accepted, the emotional excitement may have caused her to have a flow of menstrual blood, which would make her ritually impure and prohibit her from engaging in intercourse. Even if she was unaware of any flow, she must consider the possibility that it occurred. To purify herself, she needs to wait seven consecutive days that are clean^b from any flow of menstrual blood^h and then immerse in a ritual bath. Only then may she marry. If so, how could Rav and Rav Nahman marry women on the day they arrived?

HALAKHA

לא ישא – לא ישא: One should not marry women in different countries – לא ישא: A man should not marry a woman in one country and then go and marry another woman in a different country, lest a son from one marriage and a daughter from the other unite with one another and have children, who would be *mamzerim*. This is in accordance with the ruling of Rabbi Eliezer ben Ya'akov. However, if the man is renowned such that any children he has will be identified by their connection to their father, then it is permissible. This is in accordance with the Gemara's initial explanation of the actions of Rav and Rav Nahman. The *Beit Shmuel* notes that the Rif and Rosh do not refer to this exception, and it would seem that they hold that the Gemara retracted this explanation in its conclusion. This is possible if one assumes that according to the conclusion of the Gemara, Rav and Rav Nahman never actually married the women in the towns they visited (Rambam *Sefer Kedusha*, *Hilkhot Issurei Bia* 21:29; *Shulhan Arukh*, *Even HaEzer* 2:11).

A woman who has an offer of marriage must wait seven clean days – תבעיה לנישא וישבת שבועה נקיים: A woman who had an offer of marriage and accepted may not marry immediately; rather, she must count seven clean days since she may have experienced a flow of blood without being aware of it. She must check herself during those seven days to ensure she has not experienced any additional flow. Ideally, this should be done each day (Rema, based on the *Beit Yosef*). The Rambam rules that if the husband is a Torah scholar then she may marry him immediately, since he can be trusted to be careful not to engage in sexual relations with her. This ruling is based on the Gemara here. The Ra'avad disagrees and rules that the prohibition applies to a Torah scholar as well. It would appear that the majority of halakhic authorities concur with the opinion of the Ra'avad (Rambam *Sefer Kedusha*, *Hilkhot Issurei Bia* 11:9; *Shulhan Arukh*, *Yoreh De'a* 192:1).

BACKGROUND

Seven clean days – שבועה נקיים: When a woman accepts an offer of marriage, the emotional excitement can bring on early menstruation. This is especially true for a woman whose cycle is not totally regular. Furthermore, it is possible that out of her desire for her future husband, she may have experienced other vaginal secretions that masked the sensation of the flow of

blood; therefore, even if she did not see or feel the release of blood, she must consider the possibility that there was blood. Consequently, she must observe the purification process for a menstruating woman and wait seven clean days before immersing in a ritual bath.

A man should not marry his wife when at the same time his intention is to divorce her – **לֹא יִשָּׂא אָדָם אִשְׁתּוֹ וְדַעְתּוֹ לְגֵרֶשָׁה**: It is prohibited for a man to marry a woman if at the same time his intention is to divorce her, because it is stated: “Do not devise evil against your neighbor, as he dwells securely with you” (Proverbs 3:29). This is in accordance with the ruling of Rabbi Eliezer ben Ya’akov. The Rambam and *Shulḥan Arukh* rule that if he informs her in advance that his intention is only to be married for a short time, then it is permissible. It would appear that this ruling is based on the Gemara here (*Beit Yosef*; see *Derisha*; Rambam *Sefer Kedusha*, *Hilkhot Issurei Bia* 21:28 and *Sefer Nashim*, *Hilkhot Geirushin* 10:21; *Shulḥan Arukh*, *Even HaEzer* 2:10; 119:1).

The son of uncertain descent and the *yavam* who came to divide up the possessions of the deceased brother – **סֶפֶק וְיָבָם שְׂבָאוֹ לְחֵלּוֹק בְּנִכְסֵי הַמֵּת**: If a *yavam* consummated the levirate marriage within three months of his brother’s death and seven months later the *yevama* gave birth, then there is an uncertainty whether that child is the offspring of the deceased brother or of the *yavam*. If that child and the *yavam* come to divide up the possessions of the deceased, the possessions are to be divided up equally between them (Rambam *Sefer Mishpatim*, *Hilkhot Nahalot* 5:4; *Shulḥan Arukh*, *Even HaEzer* 163:3).

רַבֵּנּוּ שְׁלֹחֵיהֶוּ הָיוּ מְשֻׁדְּרִי, וּמוֹדְעֵי לְהוֹ, וְאִיבְעִית אִימָא: לְרַבֵּנּוּ יְחֻדִּי בְּעֵלְמָא הוּא דְּמִיחְדִּי לְהוֹ, דְּאָמַר מַר: אֵינוּ דּוֹמָה מִי שֵׁשׁ לוֹ פֶּת בְּסֻלּוֹ לְמִי שְׂאִין לוֹ פֶּת בְּסֻלּוֹ.

The Gemara explains: These Sages would send messengers seven days ahead of their arrival and they would inform the women of the Sage’s arrival. In this way, the woman who agreed to marry the Sage would have time to count the seven clean days. And if you wish, say that the Sages’ intentions were merely to be in seclusion [*meyahadi*] with the woman^N but not to engage in intercourse with her. Therefore, it was permitted to marry her even if she became ritually impure. Being in seclusion with a woman was sufficient to help the Sages avoid any forbidden thoughts, as the Master said: **One who has bread in his basket^N is incomparable to one who does not have bread in his basket**, i.e., just as the knowledge that food is readily available is sufficient to psychologically alleviate one’s feelings of hunger, so too, the knowledge that one’s sexual desires could be met lessens the strength of the desire itself.

תִּנָּא, רַבִּי אֱלִיעֶזֶר בֶּן יַעֲקֹב אָמַר: לֹא יִשָּׂא אָדָם אִשְׁתּוֹ וְדַעְתּוֹ לְגֵרֶשָׁה, מִשּׁוּם שְׂנָאֵמַר “אַל תַּחְרֹשׁ עַל רֵעֲךָ רָעָה וְהוּא יוֹשֵׁב לְבֶטֶח אֶתְךָ.”

The Gemara cites an additional statement of Rabbi Eliezer ben Ya’akov: It is taught in a *baraita* that Rabbi Eliezer ben Ya’akov says: **A man should not marry his wife when at the same time his intention is to divorce her,^{NH} because it is stated: “Do not devise evil against your neighbor, as he dwells securely with you”** (Proverbs 3:29). It is wrong for one to intend to undermine the feelings of security that another has with him.

סֶפֶק וְיָבָם שְׂבָאוֹ לְחֵלּוֹק בְּנִכְסֵי מֵיתָא.

S The mishna raises a case in which a *yavam* consummated the levirate marriage with his *yevama* and seven months later she gave birth. With respect to that child, there is an uncertainty whether he is the child of the deceased brother or whether he is the child of the *yavam*. The Gemara discusses the ramifications of this uncertainty in a dispute concerning inheritance. The case concerns one whose identity as the son of the deceased is uncertain, and a *yavam* who consummated the levirate marriage with the *yevama*, who both came to divide up^N the possessions of the deceased brother^H and each one claims to be the sole heir.

NOTES

Their intentions were merely to be in seclusion [*meyahadi*] with the woman – **יְחֻדִּי בְּעֵלְמָא הוּא דְּמִיחְדִּי לְהוֹ**: This statement of the Gemara raises numerous difficulties: If a newlywed bride became impure from experiencing a menstrual flow before the couple had managed to consummate their marriage, it is prohibited for them to be in seclusion together, even if they do not engage in relations. Why, then, was it permitted for these Sages? Furthermore, since it was actually prohibited to engage in relations with these women, how was the Sages’ seclusion with them considered like the case of one who has bread in his basket? Rabbi Avraham min HaHar raises an additional question: According to the opinion of the Rambam, one may not marry a woman who is ritually impure following her menstruation since there is no immediate possibility of engaging in relations with her. Why, then, was it permitted for these Sages to marry in such a manner?

With regard to the prohibition against being secluded with a bride who experienced a menstrual flow, numerous resolutions have been offered: *Tosafot* on *Yoma* 18b suggest that the prohibition does not actually apply to a newlywed couple but only to an unmarried man and his future bride. However, once they are married, there is no prohibition. The Rambam suggests that the prohibition is only due to the concern that the couple will not be able to withstand their desires and will engage in relations. This concern does not apply to a Torah scholar, and therefore he may be secluded with his newlywed wife in all circumstances.

The Rid interprets the prohibition as being limited to being in the same room; however, it is permitted for the couple to be in the same house. *Tosafot* here explain that from the outset the Sages would inform the women that their intention was only to be secluded with them, but not to engage in relations. Therefore, the excitement of marriage was not so great that it would lead to the women experiencing a flow. Accordingly, it was actually perfectly permissible for them to marry these

women, and therefore the Sages could certainly be considered like one who has bread in his basket.

Other commentaries read the Gemara in a way that avoids the questions altogether. The Ra’avad and Meiri claim that these Sages never actually married these women. When the Gemara says *meyahadi*, the intention is not that the Sages were in seclusion with them; rather, they would merely designate them to be available to marry. Therefore, there was no question of any prohibition involved. Alternatively, the Ramban explains that the statement that they would merely be in seclusion with the women is not an alternative answer but a continuation of the first answer: They would inform the women of their arrival ahead of time, and even so, due to Rabbi Eliezer ben Ya’akov’s concerns, they would not actually engage in relations with them. This answer also resolves a further difficulty raised by some of the early commentaries: If the Gemara’s original suggestion that the Sages’ names are renowned was rejected, then what would happen if these new wives did become pregnant and give birth to a child? Couldn’t this lead to the eventual creation of *mamzerim*? However, according to the Ramban’s explanation there was never any possibility of actually having children.

מִי שֵׁשׁ לוֹ פֶּת בְּסֻלּוֹ – **One who has bread in his basket**: The term: Bread in one’s basket, is used literally to explain why the manna caused suffering to the Jews in the desert, as they did not have bread in their basket for the next day (*Yoma* 74b). However, bread is also a euphemism for a wife, as the Torah says with regard to Potiphar that he did not deny Yosef anything “save the bread that he did eat” (Genesis 39:6), and the Sages understand this to be a reference to his wife (*Bereshit Rabba* 86:6). Rashi also uses the same euphemism to explain Jethro’s words with regard to Moses: “Call him, that he may eat bread” (Exodus 2:20) as a reference to the possibility that Moses will marry one of his daughters (*Menuḥat Aharon*).

A man should not marry his wife when at the same time his intention is to divorce her – **לֹא יִשָּׂא אָדָם אִשְׁתּוֹ וְדַעְתּוֹ לְגֵרֶשָׁה**: The reason for the prohibition is that doing so undermines the woman’s trust, as indicated by the biblical source of the prohibition. Therefore, if the man would first inform the woman of his intentions to divorce her, it would be permitted (see HALAKHA). Therefore, it must be that in the cases of Rav and Rav Nahman cited in the Gemara, they would make their intentions clear before marrying the women for the duration of their visits, as is already hinted to by the concluding phrase of their requests: Which woman will be my wife for the day (Rid; see Meiri).

One whose identity is uncertain and a yavam who came to divide up – **סֶפֶק וְיָבָם שְׂבָאוֹ לְחֵלּוֹק**: The Rashba asks: Since the *yavam* consummated the levirate marriage, the possessions are considered to be under his control. Therefore, even if an uncertainty arises concerning who has a right to those possessions, that uncertainty should not be significant enough to allow the possessions to be removed from his control and divided up between the two sides. In resolution of this difficulty, the Rashba explains that the fact that in the majority of cases a woman gives birth after nine months supports the claim of the son of uncertain descent that he is in fact the son of the deceased, since he was born less than nine months after his mother remarried. The Gemara later explains that the force of this majority is not sufficient to award the inheritance to him; since her pregnancy was not noticeable after three months, the ability to presume that she is like the majority of women is compromised. Nevertheless, the force of the majority is still sufficient to allow the possessions to be removed from the control of the *yavam* and then, due to the uncertainty, to be divided up between them.

This is property of uncertain ownership – **הוּ מִזְמֵן הַמוֹטֵל** – **בְּסִפְקָא**: Normally, in cases of property of uncertain ownership the *halakha* is that the property is left with the one who currently has control of it, based on the principle: The burden of proof rests upon the claimant. However, since in this case neither litigant has stronger control over the possessions, they are divided equally between the two sides (*Tosafot*; see the comments of Rashba cited on the previous page). The Ritva adds that since the case is one of inheritance, each side is considered to be equally in control of the possessions. He explains that this is why it is not appropriate in this case to remove the possessions from the parties and then award them based upon the discretion of the court, or alternatively to allow the parties to settle their differences by themselves and award the possessions according to their resolution. Furthermore, the court only ever resorts to using these methods when there is a possibility that the uncertainty will be resolved; however, in this case, the uncertainty is intractable.

HALAKHA

The son of uncertain descent and the sons of the *yavam* – **סִפְקָא וּבְנֵי יָבָם**: If the son of uncertain descent and the sons of the *yavam* come to divide up the possessions of the deceased, then since the sons of the *yavam* concede that at the very least the son of uncertain descent has a right to a portion as one of the brothers, he takes that portion. The rest of the possessions are then divided into two, half going to the son of uncertain descent and the other half being split between the sons of the *yavam* (*Rosh*; *Tur*, citing *Rashi*). The Rambam rules that all of the deceased's possessions are to be split equally between the son of uncertain descent and the sons of the *yavam* (Rambam *Sefer Mishpatim*, *Hilkhot Nahalot* 5:4; *Shulhan Arukh*, *Even HaEzer* 163:4).

סִפְקָא אָמַר: אֲנִי בֶר מִיתָנָא הוּא, וְנִבְסִי דִידִי הוּא. וְיָבָם אָמַר: אֶת בְּרָאִי דִידִי אֵת, וְלִית לָךְ וְלֹא מִידִי בְנִבְסִי. הוּי מְמוֹן הַמוֹטֵל בְּסִפְקָא, וּמְמוֹן הַמוֹטֵל בְּסִפְקָא – חוֹלְקִין.

סִפְקָא וּבְנֵי יָבָם שָׁבְאוּ לְחִלּוּק בְנִבְסִי מִיתָנָא. סִפְקָא אָמַר: הֵהוּא גְבֵרָא בֶר מִיתָנָא הוּא, וְנִבְסִי דִידִי הוּא. בְנֵי יָבָם אָמְרוּ: אֶת אֲחִינוּ אֵת, וּמִנְתָּא הוּא דְאִית לָךְ בְּהֵדֵן.

סְבוּר וּבְנֵי קָמִיָּה דְרַב מִשְׁרָשִׁיא לְמִימְרוּ מִתְנַתִּין הֵיא, דְתֵנָן: הוּא אִינוּ יוֹרֵשׁ אוֹתָם, וְהֵם יוֹרְשִׁין אוֹתוֹ.

וְהָכָא אִיפְכָא, הָתָם אָמְרִי לֵיה: אֵייתִי רָאִיָּה וּשְׁקוּלָא.

הָכָא אָמַר לָהּ: אֵייתִי רָאִיָּה וּשְׁקוּלָא.

The one of uncertain descent said: I am the son of the deceased, and therefore, as the only heir, his possessions are mine. And the *yavam* said to him: You are my son, and you have absolutely no rights to the possessions; rather, by virtue of the fact that I consummated the levirate marriage with the widow of the deceased, I should inherit him. The Gemara rules on this case: This is a case of property of uncertain ownership,ⁿ as there is no way to determine who is the rightful heir, and the *halakha* is that property of uncertain ownership the claimants divide up between them.

The Gemara brings another case, that of one concerning whom there is uncertainty whether he is the son of the deceased or of the *yavam* and the sons of the *yavam*,ⁿ who consummated the levirate marriage with the *yevama* and has since died, who came to divide up the possessions of the deceased, and each one makes claim to the inheritance. The one of uncertain descent said: That man, referring to himself, is the son of the deceased, and therefore, as his sole heir, his possessions are mine. And the sons of the *yavam* said to him: You are our brother, and our uncle, the deceased, was not survived by any offspring and so by virtue of our father's levirate marriage he inherited our uncle's possessions, and now that our father has died and we are dividing up his possessions you have a right to inherit only a portion of the inheritance together with us.

The Rabbis who studied before Rav Mesharshiyya thought to say: This case is analogous to a case in a *mishna*, as we learned a similar case in a *mishna* (100a) in which a woman gave birth shortly after remarrying and there is uncertainty whether the child's father is the first or second husband. The *mishna* considers a case in which the husbands died and were each survived by a set of sons: If a son from either set died, the other sons of that set will inherit from him because as brothers they have an uncontested claim to the inheritance. However, he, the son of uncertain descent, does not inherit from them because his claim as a brother is uncertain and is therefore not powerful enough to allow him to take part of the inheritance from the other sons. However, if the son of uncertain descent died, they, the sons of both husbands, will jointly inherit from him. The claims of each set of sons to be his brothers are equally uncertain; therefore, since there is no one who has a definite claim to his inheritance, his possessions are split between them.

The Rabbis qualify their comparison of the cases: But here, the positions are in reverse, as follows: There, in the case of the *mishna*, when one of the sons dies, they, the other sons of that set, can say to him, the son of uncertain descent: Bring proof that you are actually a son of our father and only then can you take a portion. Since he cannot prove this, he will not receive any of the inheritance.

However, here, in the case where the son of uncertain descent is in dispute with the sons of the *yavam*, he, the son of uncertain descent, can say to them: Bring proof that I am not the son of the deceased, and only then can you take a portion together with me. The Rabbis claim that the principle in both cases is identical: When one party has an uncontested claim to the inheritance, and another party advances a claim to receive part of the inheritance that is based on an uncertainty, the uncertain claim is not accepted. In the *mishna*'s case, it is the son of uncertain descent who has an uncertain claim. The Rabbis suggest that the reverse is true in the Gemara's case: The son of uncertain descent has an uncontested claim to the inheritance because whether he is the son of the first or second husband, he certainly has a right to some inheritance. It is the sons of the *yavam* who have an uncertain claim because they have a right to the inheritance only if the son of uncertain descent is actually their brother.

אידי ואידי ספק – Each party has only an uncertain claim – Ostensibly, Rav Mesharshiyya's claim that in the Gemara's case each party has only an uncertain claim is difficult, because, as the Rabbis explained, whether the son of uncertain descent is the son of the first or second husband, he has a claim to the possessions. Why then does Rav Mesharshiyya's state that his claim is considered uncertain? Rashi explains that the key issue in defining a claim as certain is whether the potential heir can substantiate the nature of his relationship with the deceased. Since in this case he cannot, his claim is defined as uncertain. The later commentaries explain that this is uniquely true of inheritance rights. In regular monetary disputes, it is indeed sufficient to demonstrate that whatever the situation is, one has a right to the possessions. This is because the basis of one's rights to the possessions is one's acquisition of them, which exists even if unverified. However, in the *halakhot* of inheritance, one's rights to the possessions are merely a function of having the status of an heir, which is based on one's relationship to the deceased. That status can be established only once the relationship is verified. Therefore, as long as one cannot substantiate the precise nature of one's relationship with the deceased, one's claim is always defined as uncertain.

הָאֵלֶּה הָיוּ בְּיָמֵינוּ – The Gemara does not consider what the *halakha* would be had the possessions of the deceased not yet been divided between the son of uncertain descent and the *yavam*. The Rashba, *Tosafot*, and others assume that in such a case, the claim of the son of uncertain descent would certainly be accepted.

The Rashba notes that since the *yavam* consummated the levirate marriage, it would seem that at that time he had an undisputed claim to the possessions. If so, this case should be dependent on the dispute between Admon and the Rabbis cited later in the Gemara, yet the Gemara does not connect the two. Therefore, it would seem that a distinction should be drawn between the two cases. The dispute between Admon and the Rabbis concerns a case where one's rights to the possessions were achieved through an act of acquisition. Only in this case is it possible to say that his act of acquisition strengthens his claim to the extent that it can withstand certain future developments that would have otherwise undermined his rights. However, in a case of inheritance, the fact that someone claimed to have a right to the inheritance and took control of those possessions does not strengthen his claim in any way.

אמר להו רב משרשייא: מי דמי?
התם – אינהו ודאי, ואיהו ספק.
הכא – אידי ואידי ספק.

Rav Mesharshiyya said to them: Is the case in the mishna really comparable? There, in the mishna's case, when one of the sons dies, they, the other sons in that set, have a **definite claim** to the inheritance, since their claim is based on the fact that they are the dead son's brothers, which is certainly true, and he, the son of uncertain descent, only has an **uncertain claim**. However, here, each party has only an **uncertain claim**.^N Although the son of uncertain descent claims that ultimately, whatever the nature of his relationship with the deceased is, he should have the right to inherit, nevertheless, since it is not actually known what that relationship is, his claim in reality is merely a composite of uncertain claims.

אלא, אי דמיא למתניתין – [להא]
דמיא: לספק ובני יבם שבאו לחלוק
בנכסי יבם גופיה, דהתם אמרי ליה:
אייתי ראיה דאחונא את ושקול.

Having rejected the analogy offered by the Rabbis, Rav Mesharshiyya offers his own analogy to the case in the mishna that the Rabbis cited: **Rather, if there is a case that is analogous to the case in the mishna, then it is to this following case that it is analogous:** It is comparable to a case in which following the levirate marriage a son was born, and there is uncertainty whether he is the son of the deceased or of the *yavam*, and that son of uncertain descent and the sons of the *yavam* come to divide up the possessions of the *yavam* himself. As there, those who are unquestionably the sons of the *yavam* have a definite claim; therefore, they can say to him, the son of uncertain descent: **Bring proof that you are actually our brother and only then can you take a portion.** Since he cannot prove this, he will not receive any of the inheritance.

ספק ובני יבם שבאו לחלוק בנכסי
יבם, לבתר דפלג יבם בנכסי מיתנא.

The Gemara brings yet another case, that of one concerning whom there is an **uncertainty** whether he is the son of the deceased or of the *yavam* and the sons of the *yavam*, i.e., the sons of the man who consummated the levirate marriage with the *yevama* and has since died, **who came to divide up the possessions of the *yavam*¹ after the *yavam* had already divided up^N the possessions of the deceased brother between himself and the son of uncertain descent, as per the Gemara's ruling in the first case above.**

בני יבם אמרי: אייתי ראיה דאחונא
את ושקול. אמר להו ספק: מה
נפשייכו, אי אחוכון אנא – הבו לי
מנתא בדייכו, ואי בר מיתנא אנא –
הבו לי פלגא דפלג אבוכון בדיאי.

The *yavam* then died and his sons and the son of uncertain descent each made a claim to the inheritance: **The sons of the *yavam* say to the son of uncertain descent: Bring proof that you are our brother, and only then can you take a portion.** The son of uncertain descent said to them: **Whichever way you look at it, I should receive a portion of the inheritance. If you assume that I am your brother, then give me a portion of the inheritance together with all of you, and if you assume that I am the son of the deceased, then give me the half of the possessions that your father took when he divided up the possessions with me upon the deceased's death, because if you assume I am his son, then I am his sole heir and your father never had any rights to his possessions.**

HALAKHA

The son of uncertain descent and the sons of the *yavam*, with regard to the possessions of the *yavam* – **ספק ובני יבם** – **בנכסי יבם**: If the son of uncertain descent and the sons of the *yavam* come to divide up the possessions of the *yavam* after the *yavam* had previously divided up the possessions of his deceased brother between himself and the son of uncertain descent: If the son of uncertain descent claims that he is either willing to return the portion of the possessions of the deceased that he originally received and instead receive an portion equal to the sons of the *yavam*, or he will insist on receiving all of the possessions of the deceased, his claim

is not heeded. This is in accordance with the opinion of Rav, who holds that the original verdict stands. However, the *Taz* and others rule that the original verdict is reconsidered (based on the *Tur*, citing Rosh). According to the *Beit Shmuel*, if the possessions of the deceased had not yet been divided up between the *yavam* and the son of uncertain descent, then the claim would be successful. Furthermore, if the son of uncertain descent had already obtained control of the possessions, they would not be removed from him (Rambam *Sefer Mishpatim*, *Hilkhot Nahalot* 5:4; *Shulhan Arukh*, *Even HaEzer* 163:5).

The verdict stands – קִס דִּינָא: The *Terumat HaDeshen* suggests a rationale for this opinion: At the time of the original verdict to split up the possessions, it is assumed that the parties accepted the verdict and gave up any rights to those possessions awarded to the other party. This is true even though they believe the verdict to have been in error. Therefore, it is obvious that they cannot come later and try to regain those rights. See the Jerusalem Talmud for further discussion of this topic. From the discussion there it would appear that in the case of the sons of *yavam*, they would be able to offer a claim based on a reconsideration of the original verdict.

I will return the bills of purchase of the land to their previous owners – מִהֲדִרְנָא שְׁטָרָא לְמִרְיָהוּ: *Tosafot* ask: Why doesn't the field owner respond: True, if you actually return the surrounding land to the previous owners then I would not be able to make a claim to my path; however, until you actually do so, my claim is valid and you should provide me with a path? The early commentaries answer that the statement of the owner of the surrounding land is not to be taken as a threat. Indeed, it is possible that the previous owners will not be interested in repurchasing the land. Rather, his statement is simply his way of highlighting the fact that the land was originally in the possession of four previous owners who could have easily deflected the field owner's claim to a path. He therefore claims that since they could have done so, and he purchased the land from them, he also has the right to do so (*Ritva; Nimmukey Yosef*).

PERSONALITIES

Admon – אֲדֹמֹן: The Admon cited here is Admon ben Gaddai, one of the Sages of Jerusalem in the generation before the destruction of the Temple. Admon was one of two edict judges in Jerusalem who stood at the head of the city judges. It was their responsibility, and part of their authority, to establish amendments and pass permanent public edicts in matters of robbery or damages. Several halakhic rulings are presented in Admon's name in tractate *Ketubot* (108b–110a).

HALAKHA

One whose path to his field was lost – מִי שְׁאֵבְדָה דֶּרֶךְ: **שָׂדֶהוּ:** With regard to one who owns a field and has the rights to a path leading to his field that passes through land belonging to another, and he traveled to a country overseas and when he returned the path to his field was lost, if the surrounding land currently belongs to a single owner and had always belonged to a single owner, then the field owner may demand that the owner of the surrounding land provide him with at least the shortest path to his field. This is in accordance with the conclusion of the Gemara that in such a case everyone agrees with the ruling of Admon. However, if the surrounding land is currently owned by numerous individuals, even if they purchased their pieces of land from a single previous owner, then the owner of the field has no right to claim a path, and if he wants one, he must purchase it. This is also the ruling if the land is currently owned by a single individual who purchased it from numerous previous owners. This is in accordance with the opinion of the Rabbis (*Rambam Sefer Mishpatim, Hilkhos To'en VeNitan* 15:11; *Shulhan Arukh, Hoshen Mishpat* 178:1–2).

רַבִּי אֲבָא אָמַר רַב: קִס דִּינָא. רַבִּי יִרְמְיָה אָמַר: הֲדַר דִּינָא.

לֵימָא בְּפִלְגֵּתָא דְּאֲדִמּוֹן וְרַבֵּנּוּ קְמִיפְּלִיגִי, דִּתְנִן: מִי שֶׁהָלַךְ לְמִדִּינַת הָיִם וְאֵבְדָה לוֹ דֶּרֶךְ שְׂדֵהוּ, אֲדִמּוֹן אָמַר: יֵלֶךְ בְּקֶצֶרֶה. וְחֻכְמִים אוֹמְרִים: יִקַּח לוֹ דֶּרֶךְ בְּמֵאָה מָנָה, אוֹ יִפְרַח בְּאֵיזֵר.

וְהוּיֵינן בָּהּ: לְרַבֵּנּוּ, שְׁפִיר קָאִמַר אֲדִמּוֹן! וְאָמַר רַב יְהוּדָה אָמַר רַב: הֵכָא בְּמֵאֵי עֶסְקִינן – כְּגוֹן שֶׁהִקִּיפוּהָ אַרְבַּעַה בְּנֵי אָדָם מֵאַרְבַּעַה וָחוּת.

אִי הָכִי, מַאי טַעְמָא דְּאֲדִמּוֹן? וְאָמַר רַבָּא: בְּאַרְבַּעַה דָּאִתּוּ מִכָּח אַרְבַּעַה, וְאַרְבַּעַה דָּאִתּוּ מִכָּח חֵד – כּוּלִי עֲלָמָא לֹא פְּלִיגִי, דְּמִצּוּ מִדְּחֵי לִיה.

כִּי פְּלִיגִי – בְּחֵד דָּאִתִּי מִכָּח אַרְבַּעַה. אֲדִמּוֹן סָבַר: מִצִּי אָמַר לִיה: מְבַל מְקוֹם דְּרַבִּי גִבְרָה הוּא. וְרַבֵּנּוּ סָבְרִי, דְּאָמַר לִיה: אִי שְׁתַּקֶּת – שְׁתַּקֶּת, וְאִי לֹא – מִהֲדִרְנָא שְׁטָרָא לְמִרְיָהוּ, וְלֹא מִצִּית לְאַשְׁתַּעֲוִי דִּינָא בְּהִדְיָהוּ.

The son of uncertain descent's claim assumes that the original verdict to divide up the possessions of the deceased between the two sides may be reexamined in light of later developments. This assumption, however, is subject to a dispute: **Rabbi Abba said that Rav said: The original verdict stands,**^N i.e., the original division of the deceased's possessions is considered a closed matter, and the new dispute concerning the possessions of the *yavam* is considered independently of it. Accordingly, the son of uncertain descent's claim cannot succeed, and so he receives no portion of the inheritance of the *yavam*. **Rabbi Yirmeya said: The original verdict is reconsidered** in light of the new circumstances, and therefore in this case the son of uncertain descent can put forward his undeniable claim to some of the possessions of the *yavam* based on the original uncertainties that existed with regard to the division of the deceased's possessions.

Let us say that Rabbi Abba and Rabbi Yirmeya disagree over the dispute between Admon^P and the Rabbis. As we learned in a mishna (*Ketubot* 109b): With regard to one who owns a field and has the rights to a path that passes through land belonging to another, and he traveled to a country overseas, and when he returned the path to his field was lost,^H i.e., he forgot where the path was located, **Admon says: He may go only on the shortest path** to his field, as although it is not known where the path is, he definitely did have a path, and therefore at the very least he has a right to the shortest path. **The Rabbis say: He must either purchase for himself a new path** for whatever price is asked, even if it is one hundred dinars, or he will have to fly through the air to reach his field, i.e., as long as he cannot prove where the original path was, he has no rights to any other path.

And we discussed the mishna and thereby established the parameters of the dispute as follows: It is difficult for the Rabbis because **Admon is saying well,** i.e., the logic of his opinion would seem to be compelling. **And in defense of the Rabbis' opinion, Rav Yehuda said that Rav said: With what are we dealing here?** It is with a case where his field was surrounded by four individuals who owned the land on each of its four sides. Therefore, he cannot demand a path from any one of the surrounding owners, since each one can deflect his claim by suggesting that the path might have passed through one of the other owners' land.

However, this creates a further difficulty: **If so,** that the surrounding land is owned by different people, **what is Admon's rationale** for ruling that the owner of the field has a claim to the shortest path? **And in order to justify Admon's opinion, Rava said: With regard to a case in which there are four current owners who came to own their land on the basis of purchase from four previous owners,** i.e., each of the current owners acquired their land from a different previous owner, **and also in a case in which there are four current owners who came to own their land on the basis of purchase from one previous owner who originally owned all four pieces of land, everyone agrees that the current owners are able to deflect him** and his claim to a path.

When they disagree, it is in a case in which there is only one current owner of all four pieces of land, who came to own his land on the basis of purchase from four previous owners. Admon holds that the owner of the field can say to the current owner of the surrounding land: Whichever way you construe the case, my path to my field is somewhere with you in the surrounding land. And the Rabbis hold that the owner of the surrounding land can deflect this claim because he can say to him: If you do not press your claim and are silent, then be silent, and I will sell you a path at a reasonable price. But if not, and you insist on pressing your claim, then I will return the bills of purchase of the land to their previous owners,^N and then you will not be able to successfully engage in a legal dispute with them, as each one could claim that the path went through one of the other pieces of land not owned by them.

לִימָא רַבִּי אָבָא דְאָמַר בְּרַבְנָן,

Having established the parameters of the dispute, the Gemara suggests: **Let us say** that the statement of **Rabbi Abba, who said** that the original verdict stands, **is in accordance with the opinion of the Rabbis**. When the owner of the field forgot where his path was located, the surrounding land was owned by four different owners, and therefore at that time the verdict was that he had no ability to successfully claim his path. The Rabbis apparently assume that that verdict stands, and therefore the field owner is considered to have lost any rights to the path. Consequently, even if the surrounding pieces of land are later purchased by a single person, the owner of the field cannot make a claim for his path.

וְרַבִּי יִרְמְיָה דְאָמַר בְּאֲדָמוֹן?

The Gemara continues: **And** the statement of **Rabbi Yirmeya, who said** that the original verdict is repealed, **is in accordance with the opinion of Admon**. Admon apparently assumes that although the original verdict was that the field owner has no ability to successfully claim his path, nevertheless, that does not mean he loses his rights to the path. Rather, once the situation changes and the surrounding pieces of land are purchased by a single person, the original uncertainty is revived to allow him to make a claim for at least the shortest path to his field.

אָמַר לָךְ רַבִּי אָבָא: אֲנָא דְאָמַרִי אֶפִּילוּ
בְּאֲדָמוֹן. עַד כָּאֵן לֹא קָאָמַר אֲדָמוֹן
הֵתָם – אֱלֹא מִשּׁוּם דְאָמַר לִיה: מִמָּה
נִפְשָׁךְ.

The Gemara rejects the comparison: **Rabbi Abba could have said to you: When I stated** my ruling, it was **even in accordance with the opinion of Admon**. **Admon states** his ruling **only there**, in the case of the lost path, **because** the field owner **said to the owner of the surrounding land: Whichever way you look at it,**

Perek IV

Daf 38 Amud a

דְּרַבִּי חֲדָ גִבְרָךְ הוּא, אֲבָל הֵכָא – מִי
אֵיכָא לְמִימַר הֵכָּי?

my one path is with you^N in one of your pieces of land. Since his claim is based on facts that are clear and certain, his claim is successful. **However, here**, in the dispute over the inheritance, **is the son of uncertain descent able to state** a claim like **this**? Although the son of uncertain descent claims that ultimately, whatever the nature of his relationship with the deceased is, he should have the right to inherit, nevertheless, since it is not actually known what that relationship is, his claim in reality is merely a composite of uncertain claims.

וְרַבִּי יִרְמְיָה אָמַר לָךְ: אֲנָא דְאָמַרִי
אֶפִּילוּ לְרַבְנָן, עַד כָּאֵן לֹא קָאָמַרִי
רַבְנָן הֵתָם אֱלֹא מִשּׁוּם דְאָמַר לִיה: אִי
שְׁתַּקֵּת – שְׁתַּקֵּת, וְאִי לֹא – מִהֲדַרְנָא
שְׁטָרָא לְמַרְיָהּ, וְלֹא מִצִּית לְאַשְׁתַּעֲוִי
דִּינָא בְּהַדִּיָּה. אֲבָל הֵכָא – מִי אֵיכָא
לְמִימַר הֵכָּי?

And Rabbi Yirmeya could have said to you: I stated my ruling **even in accordance with the opinion of the Rabbis**, since perhaps **the Rabbis state** their ruling **only there**, in the case of the lost path, **because** the owner of the surrounding land **said to the field owner: If you do not press your claim and are silent, then be silent** and I will sell you the path at a reasonable price; **but if not**, then **I will return the bills of purchase of the pieces of land to their previous owners and then you will not be able to successfully engage in a legal dispute with them**. He is successful with this claim because it is within his power to return the fields and thereby recreate the original circumstances in which the owner of the field would forfeit the path. **However, here**, are the sons of the *yavam* **able to state** a claim like **this**? The original circumstance, in which the inheritance of the deceased had still not been divided, cannot be recreated. Therefore, a claim based on that circumstance will be unsuccessful.

NOTES

My one path is with you – דְּרַבִּי גִבְרָךְ הוּא: The commentary here is in accordance with the explanation of Rashi that the distinction between the two cases is whether or not the claim is definite or uncertain. Other commentaries suggest a different interpretation: The distinction lies in whether it is possible to offer a claim based on the current situation. In the case of the path, the field owner's claim is tendered irrespective of any dealings he had with the previous owners of the surrounding pieces of land; it is made against the current owner of the surrounding land based on his ownership of it. However, in the dispute over the inheritance, the claim relates to the original situation, before the inheritance was divided; a situation that no longer exists (Rid; Rabbi Avraham min HaHar).

One of uncertain descent and the *yavam* with regard to the possessions of the grandfather – ספק ויבם בנכסי סבא: In a case where the *yavam* and one of uncertain descent, who is either the son of the deceased or the son of the *yavam*, came to divide up the possessions of the grandfather, i.e., the father of the *yavam*, and the son of uncertain descent claims that he is the son of the deceased and therefore a portion of the possessions should be awarded to him, his claim is not accepted and all of the property is awarded to the *yavam* (Rambam *Sefer Mishpatim*, *Hilkhot Naḥalot* 5:5; *Shulḥan Arukh*, *Even HaEzer* 163:6).

One of uncertain descent and the sons of the *yavam* with regard to the possessions of the grandfather – ספק ויבם יבם: In a case in which the sons of the *yavam* and one of uncertain descent, who is either the son of the deceased or the son of the *yavam*, came to divide up the possessions of the grandfather, i.e., the father of the *yavam*, the portion that each party concedes to the other side is awarded to that side, and then the remaining possessions are divided up between them, half given to the son of uncertain descent and the other half divided between those who are definitely sons of the *yavam* (Rambam *Sefer Mishpatim*, *Hilkhot Naḥalot* 5:5; *Shulḥan Arukh*, *Even HaEzer* 163:7).

LANGUAGE

One-sixth [*danka*] – דנקא: *Danka* is a Persian monetary unit that appears in Middle Persian sources as *dāng*. This unit was equal to one-sixth of a dinar. The term was then borrowed to refer to one-sixth of anything, as in this passage.

ספק ויבם שבאו לחלוק בנכסי סבא,
ספק אמר: האי גברא בר מיתנא הוא,
ופלגא ידידי הוא. יבם אמר: את בראי
ידידי את, ולית לך ולא מיד, ויבם
אמר: את בראי ידידי את, ולית לך ולא מיד.

הוי יבם ודאי, וספק ספק – ואין ספק
מוציא מיד ודאי.

ספק ויבם יבם שבאו לחלוק בנכסי
סבא, ספק אמר: ההוא גברא בר
מיתנא הוא, ופלגא ידידי הוא. ויבם
אמר: אחונא את, ומנתא אית
לך בהדן.

פלגא דקמודי להו – שקלי, תילתא
דקא מודו ליה – שקל. פש להו דנקא,
הוי ממוז המושל בספק – וחולקין.

The Gemara brings another case, that of one of uncertain descent, who is either the son of the deceased or the son of the *yavam*, and the *yavam* who came to divide up the possessions of the grandfather,^h i.e., the father of the *yavam* and the deceased, and each one made a claim to the inheritance. The son of uncertain descent said: That man, referring to himself, is the son of the deceased, and therefore half of the possessions are mine because the inheritance should be split between the two sons, i.e., the deceased and the *yavam*, and since I am the sole heir of the deceased, I should receive his portion. The *yavam* said to him: You are my son, and therefore you have absolutely no rights to the possessions; rather, I should receive all the inheritance. One half is mine because I am the grandfather's son, and the other half, which would have gone to my deceased brother, I should receive by virtue of the fact that I consummated the levirate marriage with his widow.

The Gemara rules on this case: This is a case in which the *yavam* has a definite claimⁿ because he is the grandfather's son, and the son of uncertain descent has only an uncertain claim, and the *halakha* is that one with an uncertain claim cannot extract property from one who has a definite claim to it. Therefore, the *yavam* receives all the inheritance.

The Gemara raises yet another case, that of one of uncertain descent, who is either the son of the deceased or the son of the *yavam*, and the sons of the *yavam* who came to divide up the possessions of the grandfather,^h and each one made a claim to the inheritance. The son of uncertain descent said: That man, referring to himself, is the son of the deceased, and therefore half of the possessions are mine because the inheritance should be split between the two sons, i.e., the deceased and the *yavam*, and since I am the lone heir of the deceased I should receive his portion. And the sons of the *yavam* said: You are our brother, and therefore you should receive only a portion together with us.

The Gemara rules on this case: The half of the grandfather's possessions that the son of uncertain descent concedes belongs to them, the sons of the *yavam*, they take for themselves. By claiming to be the son of the brother who died first, he forfeits any rights to the other brother's portion. The third of the grandfather's possessions that the sons of the *yavam* concede belong to him, the son of uncertain descent, he takes for himself. By claiming he is their brother, they admit that he should at least receive an equal portion to them, which would mean one-third if they are three. This leaves them with one-sixth [*danka*]^l of the possessions that is property of uncertain ownership, and so they should divide it up between them.

NOTES

The *yavam* has a definite claim – הוי יבם ודאי: Rashi and Rivan explain that his claim is deemed to be definite because he will definitely receive at least some portion of the inheritance. Therefore, he is considered to have control over the property, and the son of uncertain descent, whose claim is uncertain, is not able to extract any of that property from him. *Tosafot* question Rashi's opinion: Why should the fact that he definitely has a right to a portion of the inheritance grant him control over all of it? *Tosafot* therefore reject Rashi's explanation and suggest that the *yavam* is considered to have a definite claim because he indisputably has the status of an

heir of the deceased; the only question is how much of the inheritance he should receive. However, the son of uncertain descent may not be an heir at all. Therefore, since the very basis of his right to inherit is uncertain, it is inappropriate that he should receive anything in the presence of one who is certainly an heir. The *Arukh LaNer* defends Rashi's explanation. He suggests that with regard to inheritance, the fact that one has a definite right to part of an inheritance proves that ultimately he has the basis for a claim to all the inheritance. Therefore, his claim is considered to be definite.

The grandfather and the son of uncertain descent – סָבָא וְיָבָם בְּנֵיכִי סָפֵק: The grandfather in this case is unquestionably the father of the *yavam*; it is only the son whose identity is uncertain. If so, ostensibly, this is an additional case in which one party, in this case the grandfather, has a definite claim to the inheritance, whereas the other party, in this case the son of uncertain descent, has only an uncertain claim. Why, then, does the Gemara not adduce the *halakha* it cited above that in such cases the inheritance is awarded to the party with the definite claim? The early commentaries explain that whenever one is survived by a son, the other relatives are not considered to have the status of heirs at all. Therefore, although the grandfather's identity is unquestioned, his status as an heir is uncertain. Since both parties have equally uncertain claims, the possessions are divided between them (see Rid and Ramban).

A widow waiting for her *yavam* – שׁוֹמֶרֶת יָבָם: The Hebrew term for this woman is a *shomeret yavam*. The root *sh-m-r* usually denotes the concept of guarding. However, Rashi here and elsewhere notes that in this context the word denotes waiting, in this case for her *yavam*. Rashi cites proof for this from other instances in the Gemara (*Ketubot* 62b) and the Bible (Genesis 37:11; see *Tosefot Yom Tov*).

The property retains its previous ownership status – נָכְסִים בְּחֻקָּתָן: According to this version of the mishna's text, which is the version cited by the *ge'onim*, it would appear that Beit Hillel first present a principle: The property retains its previous ownership status, and then proceed to demonstrate its application to the marriage contract and to the property that enters and leaves the marriage with her. This version does not mention explicitly what should be done with guaranteed property, i.e., property that the wife brings with her into the marriage that is explicitly recorded in the marriage contract and whose value the husband guarantees will be returned to her in the event of payment of the marriage contract. However, since such property is written as part of the marriage contract, it is assumed that it is treated in the same way as the marriage contract itself. This is how Rabbeinu Tam, the Rashba, and many other early commentaries rule.

Other early commentaries have a different version of the mishna's text that states: The property retains its previous ownership status and the marriage contract remains in the possession of the husband's heirs. The addition of the conjunctive: And, before: The marriage contract, indicates that the *halakha* cited concerning the marriage contract is not an elaboration of a previous principle but a new case. Accordingly, the opening clause: The property retains its previous ownership status, should not be taken as a principle but as an independent case. Therefore, according to this version the mishna actually presents three different cases: First it states what should be done with: The property, which is a reference to her guaranteed property; then it states what should be done with her marriage contract, which refers to both its principal value and any additional sums the husband may have promised; and finally it states what should be done with her property that enters and leaves the marriage with her. Although this version does explicitly make reference to her guaranteed property, it does not state what precisely should be done with it. However, the Gemara elsewhere (see *Bava Batra* 158a) elaborates on this point and rules that the property should be split between the parties. This is how Rashi on *Ketubot* 80a explains the mishna, and the Rambam rules accordingly.

סָבָא וְיָבָם בְּנֵיכִי סָפֵק, אוֹ סָבָא וְסָפֵק
בְּנֵיכִי יָבָם –

The Gemara presents two additional cases. One is a case where a son of uncertain descent, who is either the son of the deceased or the son of the *yavam*, died, and the grandfather and the *yavam* come to divide up the possessions of the son of uncertain descent. In the absence of any children, a father inherits from his son. The grandfather claims that the son of uncertain descent was actually the son of the deceased, and since the deceased has already died, the grandfather should be next in line to inherit from him. The *yavam* claims that the son of uncertain descent was his own son, and therefore he should inherit from him. Or, the second case is one in which the *yavam* died and the grandfather and the son of uncertain descentⁿ come to divide up the possessions of the *yavam*. The son of uncertain descent claims to be the lone son of the *yavam* and therefore he should inherit, whereas the grandfather claims that the son of uncertain descent was the son of the deceased and that the *yavam* died childless, and therefore the grandfather, who is the father of the *yavam*, should inherit from him.

הוּי מְמוֹן הַמוֹטֵל בְּסָפֵק, וְחוֹלְקִין.

The Gemara rules in these cases: This is a case of **property of uncertain ownership**, and so they should divide up the possessions between them.^h

מתני' שׁוֹמֶרֶת יָבָם שֶׁנִּפְלְוָהּ לָהּ נָכְסִים,
מוֹדִים בֵּית שְׁמַאי וּבֵית הֵלֵל שֶׁמוֹכֶרֶת
וְנוֹתַנָּה יָקִים.

MISHNA With regard to a widow waiting for her *yavam*ⁿ to either consummate a levirate marriage or perform *halitza* with her, i.e., a *yevama*, to whom property was bequeathed:^h Beit Shammai and Beit Hillel both agree that she may sell or give away that property *ab initio*, and that if she did, the transfer is valid. Since she has only a levirate bond with the *yavam*, she retains total control of the property. This is in contrast to a betrothed woman, concerning whom Beit Hillel rule that she may not sell such property because her betrothed also has rights to it (*Ketubot* 78a).

מֵתָהּ – מִהַ יַּעֲשֶׂה בְּכַתּוּבָתָהּ וּבְנָכְסִים
הַנִּכְנָסִים וְיוֹצֵאִין עִמָּהּ? בֵּית שְׁמַאי
אוֹמְרִים: יִחְלֹקוּ יוֹרְשֵׁי הַבֵּעַל עִם יוֹרְשֵׁי
הָאָב, וּבֵית הֵלֵל אוֹמְרִים: נָכְסִים בְּחֻקָּתָן;
כְּתוּבָהּ בְּחֻקָּת יוֹרְשֵׁי הַבֵּעַל, נָכְסִים
הַנִּכְנָסִים וְיוֹצֵאִין עִמָּהּ בְּחֻקָּת יוֹרְשֵׁי
הָאָב.

If she died, what should be done with the money assured to her in her marriage contract by her deceased husband and with her property that enters and leaves the marriage with her, in which a husband only ever has a usufructuary interest?^h Beit Shammai say: The husband's heirs, i.e., the *yavam*, who stands to inherit from the husband when he consummates the levirate marriage, should divide up the property together with her father's heirs, i.e., the woman's family. And Beit Hillel say: The property retains its previous ownership status.ⁿ Therefore, money assured to her in her marriage contract remains in the possession of the husband's heirs. Since it was to be paid from the husband's own property, the money is retained by his estate and passes to his heirs. And her property that enters and leaves the marriage with her remains in the possession of the father's heirs. Since those properties belonged to her, upon her death they are inherited by her father or his heirs.

HALAKHA

The grandfather and the *yavam*, the grandfather and the son of uncertain descent – סָבָא וְיָבָם, סָבָא וְסָפֵק: If a son of uncertain descent, who is either the son of the deceased or the son of the *yavam*, died, and the grandfather claims that the son of uncertain descent was actually the son of the deceased, and so the grandfather should inherit from him, and the *yavam* claims that the son of uncertain descent was his own son, and so he should inherit from him, then they should divide up the possessions equally between them. The same *halakha* would apply if the *yavam* died and the grandfather and the son of uncertain descent both claimed the possessions of the *yavam* (Rambam *Sefer Mishpatim*, *Hilkhot Nahalot* 5:5; *Shulḥan Arukh*, *Even HaEzer* 163:8).

A widow waiting for her *yavam* to whom property was bequeathed – שׁוֹמֶרֶת יָבָם שֶׁנִּפְלְוָהּ לָהּ נָכְסִים: If a widow waiting for her *yavam* is bequeathed property after she already happened before the *yavam* for levirate marriage, she is in full possession of that property; she may sell or give away the property *ab initio*. The Ran rules that this is the *halakha* even if the *yavam* had performed

levirate betrothal with her (Rambam *Sefer Mishpatim*, *Hilkhot Nahalot* 3:10 and *Sefer Nashim*, *Hilkhot Ishut* 22:10; *Shulḥan Arukh*, *Even HaEzer* 160:5).

Inheritance of a widow waiting for her *yavam* – יְרוֹשַׁת שׁוֹמֶרֶת יָבָם: If a widow waiting for her *yavam* dies, her heirs inherit the property that enters and leaves the marriage with her, and the husband's heirs inherit the money assured to her in the marriage contract. With regard to her guaranteed property, some say it is divided up equally between her heirs and her husband's heirs (Rashi; Rambam). Others say that the guaranteed property is awarded to the husband's heirs (Rabbeinu Tam; Rosh). Even according to the first opinion, if the husband's heirs had already taken control of the property, it is not to be removed from their possession (Ran). Some rule that in places where the custom is always to perform *halitza* and never to allow levirate marriage, the husband's heirs gain no entitlement to the property (Rema, citing Maharik; Rambam *Sefer Nashim*, *Hilkhot Ishut* 22:10; *Shulḥan Arukh*, *Even HaEzer* 160:7).

If the *yavam* consummated the levirate marriage with her then her legal status is that of his wife – **כְּנֵסָה הִיא** – **כְּאִשְׁתּוֹ**: If a *yavam* consummated a levirate marriage with his *yevama*, then her legal status is that of his wife in every sense and he is able to separate from her only by means of a bill of divorce; afterward, if he wishes, he may remarry her (Rambam *Sefer Nashim, Hilkhot Ishut* 22:10; *Shulḥan Arukh, Even HaEzer* 168:1).

Her marriage contract is payable from the property of her first husband – **כְּתוּבָהּ עַל נְכָסֵי בַּעֲלָהּ הָרִאשׁוֹן** – The marriage contract that a *yavam* gives to his *yevama* has to be paid only from the possessions he inherits from her first husband (Rambam *Sefer Nashim, Hilkhot Ishut* 22:10 and *Hilkhot Yibbum* 1:1; *Shulḥan Arukh, Even HaEzer* 166:4, 168:3).

כְּנֵסָה – הִיא הִיא בְּאִשְׁתּוֹ לְכָל דָּבָר,
וּבְלִבְדָּ שֶׁתִּהְיֶה כְּתוּבָהּ עַל נְכָסֵי
בַּעֲלָהּ הָרִאשׁוֹן.

גַּמְ' מֵאֵי שָׁנָא רִישָׁא דְלֵא פְּלִיגִי,
וּמֵאֵי שָׁנָא סִיפָא דְפְּלִיגִי?

אָמַר עוּלָא: רִישָׁא – דְּנִפְלָה בְּשָׂהִיא
אֲרוּסָה, וְסִיפָא – דְּנִפְלָה בְּשָׂהִיא
נְשׂוּאָה.

וְקָסְבַּר עוּלָא: זִיקַת אֲרוּסָה – עוֹשָׂה
סָפֵק אֲרוּסָה,

If the *yavam* consummated the levirate marriage with her, then her legal status is that of his wife^H in every sense, and therefore the *yavam* has the same rights to her property as in a regular marriage. And the only exception to this is that her marriage contract will still be payable from the property of her first husband^H and not from the property of the *yavam*.

GEMARA The Gemara asks: What is different about the first clause, concerning a *yevama* who is still alive, that Beit Shammai do not disagree with Beit Hillel that the woman has full possession of the property since there is only a levirate bond but no marriage, and what is different about the latter clause that Beit Shammai disagree with Beit Hillel and rule that the *yavam* does take a share of the property, which would imply that the levirate bond alone is sufficient to afford the *yavam* rights over her property?^N

Ulla said: The two clauses concern different cases: The first clause concerns a case where she happened before her *yavam* for levirate marriage at a time when she was a betrothed woman^N and only then did she come into the possession of property. Since when she was betrothed her husband did not have any rights to the property, neither does the *yavam*. And the latter clause concerns a case where she happened before her *yavam* at a time when she was a married woman. In such a case, were her husband still alive, he would have full rights to the property; therefore, so does the *yavam*.

The Gemara explains: And Ulla holds that a levirate bond formed with a betrothed woman affords her a status equivalent to a woman about whom there is an uncertainty whether she is betrothed,^N

NOTES

Interpretations of the mishna – פִּירוּשֵׁי הַמִּשְׁנָה: The Gemara presents four different interpretations of the mishna in the name of Ulla, Rabba, Abaye, and Rava. The commentaries discuss the principal differences between the various opinions, as well as the question of which opinion was accepted as the *halakha*. In a responsum, Rav Hai Gaon claims that all of the opinions here are only explications of Beit Shammai's opinion. Accordingly, the entire talmudic discussion is irrelevant to the *halakha* since the *halakha* is in accordance with the opinion of Beit Hillel recorded in the mishna (see Ramban).

Where she happened before her *yavam* when she was a betrothed woman – דְּנִפְלָה בְּשָׂהִיא אֲרוּסָה: This version of the Gemara text, which is also the version cited by Rashi, states: Where she happened. Accordingly, the mishna concerns a case where the property fell to her only after her husband had already died and she was awaiting levirate marriage. The distinction between the clauses lies in the strength of the levirate bond, which is dependent upon her status when her husband died. The *ge'onim*, however, had an alternate version that states: Where they fell to her, with the word they being a reference to the property. According to this version, the property fell to her when she was still married to her previous husband, and the distinction between the cases is due to whether her husband gained ownership of that property. If she was already married at the time, then when the property fell to her, her husband instantly gained rights to it, and those rights will pass over to the *yavam*. However, if she was still only betrothed to her

husband at the time, the property would remain fully in her possession (see Rashba and Ritva).

Affords her a status equivalent to a woman about whom there is an uncertainty whether she is betrothed – עוֹשָׂה סָפֵק אֲרוּסָה: Rashi questions why it is necessary to afford her such a status; in truth, the *yavam* has no rights to property that is bequeathed to his *yevama* while she is still awaiting levirate marriage. Accordingly, the Gemara could have simply stated: A levirate bond formed with a betrothed woman is nothing. Rashi explains that the Gemara avoided describing her levirate bond in this way because doing so could have given the incorrect impression that there is no levirate bond at all and that she does not even require *ḥalitza*. By describing the bond in the way it did, the Gemara clarifies that although the bond indeed exists, nevertheless it does not afford the *yavam* with any rights.

The Rashba takes issue with Rashi's assertion that the *yavam* has no rights to her property. See his commentary for a resolution of Rashi's opinion. He notes that in the mishna in *Ketubot* 78a, Beit Hillel rule that a betrothed woman may not sell property that was bequeathed to her *ab initio* because her husband also has rights to it. As such, it is clear why the Gemara could not have stated: The levirate bond is nothing, because were she to have already come into the possession of the property while betrothed to her previous husband, the levirate bond formed with the *yavam* would also prevent her from selling that property *ab initio*.

זיקת נשואה עושה ספק נשואה.

and a levirate bond formed with a married woman affords her a status equivalent to that of a woman for whom there is an uncertainty whether she is married, i.e., when her husband dies, the same level of relationship that existed with the first husband is created with the *yavam*. However, since the new relationship exists only by virtue of a levirate bond, it exists to a lower degree, and so the rights afforded to the *yavam* are more limited than those the first husband would have enjoyed; the rights granted to the *yavam* are equivalent to the rights of husband in a case where there is uncertainty whether that level of relationship exists at all.

זיקת ארוסה עושה ספק ארוסה.
דאי סלקא דעתך ודאי ארוסה –
מודים בית הלל שמוכרת ונותנת
וקיים!?

The Gemara proceeds to demonstrate this: It must be that a levirate bond formed with a betrothed woman affords her a status equivalent to that of a woman for whom there is an uncertainty whether she is betrothed, because if it enters your mind to suggest that her status is equivalent to that of a definitely betrothed woman, would Beit Hillel concede that she may sell or give away her property *ab initio*, and that if she does the transfer is valid?

והתנן: נפלו לה נכסים משנתארסה,
בית שמאי אומרים: תמכור, ובית
הלל אומרים: לא תמכור. אלו ואלו
מודים שאם מכרה ונתנה – קיים.
אלא שמע מינה: זיקת ארוסה –
עושה ספק ארוסה.

But didn't we learn in a mishna (*Ketubot* 78a): If property was bequeathed to a woman after she was betrothed,¹¹ Beit Shammai say: She may sell that property, and Beit Hillel say: She may not sell that property. However, both agree that if she sold it or gave it away, the transfer is valid. The mishna clearly states that according to Beit Hillel, a woman who is definitely betrothed may not sell the property *ab initio*. Rather, conclude from here, from the fact that here Beit Hillel permit the *yevama* to sell her property *ab initio*, that a levirate bond formed with a betrothed woman affords her a status equivalent to that of a woman for whom there is an uncertainty whether she is betrothed.

זיקת נשואה עושה ספק נשואה.
דאי סלקא דעתך ודאי נשואה בית
שמאי אומרים יחלוקו יורשי הבעל
עם יורשי האב!?

Similarly, it must be that a levirate bond formed with a married woman affords her a status equivalent to that of a woman for whom there is an uncertainty whether she is married, because if it enters your mind to suggest that her status is equivalent to that of a definitely married woman, would Beit Shammai say that the husband's heirs should divide up the property together with the father's heirs?

והתנן: נפלו לה נכסים משננשאת –
אלו ואלו מודים שאם מכרה ונתנה
שהבעל מוציא מיד הלקוחות. אלא
שמע מינה: זיקת נשואה עושה ספק
נשואה.

But didn't we learn in a mishna (*Ketubot* 78a): If property was bequeathed to a woman after she was married,¹¹ both Beit Hillel and Beit Shammai agree that if she sold the property or gave it away, then the husband repossesses it from the purchasers. Rather, conclude from here, from the fact that here Beit Shammai assume the rights of the *yavam* are limited, that a levirate bond formed with a married woman affords her a status equivalent to a woman for whom there is an uncertainty whether she is married.

אמר ליה רבה: אדמפלגי בגופה
ולאחר מיתה, לפלגו בחייה ולפירות!

Rabba challenges Ulla's understanding of the mishna: Rabba said to him: If your explanation is correct, then in the latter clause, instead of disagreeing with regard to who has the rights to the property itself, which necessitates considering the case after her death, let Beit Hillel and Beit Shammai disagree with regard to the more immediate case when she is still alive and dispute who has the rights to the use and produceⁿ of the property.

NOTES

Let them disagree with regard to the case when she is alive and dispute the rights to the produce – לפלגו בחייה – ולפירות: The early commentaries already note that this is certainly not the halakhic conclusion, as it is undisputed that the *halakha* is that before he consummates the levirate

marriage the *yavam* has no rights to the use and produce of the property of the *yevama* (see Rashba). Rather, this statement of Rabba is only in accordance with the opinion of Ulla (see *Yosef Lekah*).

A betrothed woman's property – נכסי ארוסה: A betrothed woman may not sell property belonging to her *ab initio*, but if she does so, the sale is valid (Rambam *Sefer Nashim*, *Hilkhot Ishut* 22:8; *Shulhan Arukh*, *Even HaEzer* 90:11, 160:5).

A married woman's property – נכסי נשואה: If a married woman sold her property of which the husband has a usufructuary interest, even if that property fell to her as an inheritance prior to her betrothal, then her husband continues to have rights to the use of that property as long as they are married. If she dies, he may also repossess the property from the buyer and need not compensate the buyer monetarily. Some (*Tur*; *Rosh*) say that he may repossess the property even while she is still alive (Rambam *Sefer Nashim*, *Hilkhot Ishut* 22:7; *Shulhan Arukh*, *Even HaEzer* 90:9).

One who has an uncertain claim cannot extract property from one who has a definite claim to it – אין ספק מוציא – מידוי ודאי: The Gemara discusses this principle in tractate *Pesahim* (9a) and suggests based on various sources that an uncertainty can override even a certainty. One example given is that of one who leaned over a pit, and it is known that at some point a corpse lay at the bottom of the pit. If the corpse was still there when he leaned over the pit, then he would be rendered ritually impure. However, there is uncertainty whether the corpse is in fact still there, since an animal may have dragged it away. The existence of that uncertainty is sufficient to undermine the certainty that there was a corpse there, and accordingly the person who leaned over the pit may be deemed ritually pure (see the Gemara there).

Why, then, does the Gemara here state unequivocally that an uncertainty cannot override a certainty? It would seem that with regard to monetary claims the *halakha* is different, due to the principle that the burden of proof rests upon the claimant. The later authorities explain that in the case in the Gemara here, although the woman presents a definite claim, since her status is uncertain that impacts her claim and prevents her from being able to lay claim to the property.

אלא אמר רבא: אידי ואידי דנפלה
בשהיא נשואה, וזיקת נשואה – עושה
ספק נשואה. רישא דאיהי קיימא –
היה לה איהי ודאי ואינהו ספק ואין
ספק מוציא מידוי ודאי.

סיפא דמתה – הללו באין לירש והללו
באין לירש, ויחלוקו.

איתיביה אביי: ולבית שמאי אין ספק
מוציא מידוי ודאי? והתנן: נפל הבית
עליו ועל אביו, עליו ועל מורישיו, והיו
עליו כתובת אשה ובעל חוב,

ירשי האב אומרים: הבן מת ראשון
ואחר כך מת האב. ובעל חוב אומר:
האב מת ראשון ואחר כך מת הבן.

בית שמאי אומרים: יחלוקו, ובית הלל
אומרים: נכסים בחזקתו.

והא הך, ירשי האב – ודאי, ובעל
חוב – ספק, וקאתי ספק ומוציא מידוי
ודאי!

Rather, Rabba said a different resolution to the apparent inconsistency in Beit Shammai's rulings: Both **this** first clause **and** that latter clause of the mishna concern a case in **which she happened** before her *yavam* for levirate marriage **once she was already a married woman, and a levirate bond formed with a married woman** affords her a status equivalent to that of a woman about whom there is an **uncertainty** whether she is **married**. The distinction between the two clauses is as follows: In the **first clause, where she is alive, she has a certain claim** to the property, **while they, i.e., the yavam, are considered to have only an uncertain claim** to the property, as she has the status of a woman for whom there is an uncertainty whether she is married. **And** since one who has an **uncertain claim cannot extract property from one who has a definite claim** to it,¹⁸ she therefore retains full possession of the property.

In the **latter clause, however, where she died**, neither party has a definite claim; rather, **these heirs of the father come to inherit, and those heirs of the husband come to inherit, and therefore they should divide up** the property.

Abaye raised an objection to Rabba's opinion: **But** is it true that according to Beit Shammai, one with an **uncertain claim cannot extract property from one who has a definite claim** to it? Didn't we learn in a mishna (*Bava Batra* 157a): In a case where a house collapsed upon a person and upon his father,¹⁹ or upon him and upon those from whom he stood to inherit, and there were outstanding debts against that person from his wife's marriage contract and to a creditor, but he had no money with which to pay those debts, and it is not known who died first, the following situation arises: If the father died first, then before the son died he had already inherited the father's property and therefore the son's creditors gained a lien over that property and have the rights to collect their debts from that property even after the son's death.

Accordingly, the father's heirs and the creditor offer opposing claims: **The father's heirs say: The son died first and only afterward the father died.** Therefore, the creditor never gained any rights to collect from the property. **And the creditor says: The father died first and only afterward the son died.** Therefore, the father's property was liened to the son's debts, and the creditor has a right to collect.

The mishna continues: **Beit Shammai say: They should divide up** the property between them. **And Beit Hillel say: The property retains its previous ownership status**, which in this case means that since the last known possessor was the father, so the father's heirs gain full rights to it.

Abaye explains his proof: Isn't it the case **here** that **the father's heirs have a definite claim and the creditor has only an uncertain claim**? Therefore, since Beit Shammai rule that the property should be divided up, it is apparent that they hold that one with an **uncertain claim can extract property from one who has a definite claim** to it.

HALAKHA

נפל – אבית שמאי אומרים: יחלוקו, ובית הלל אומרים: נכסים בחזקתו. **נפל – אבית שמאי אומרים:** If a house collapsed upon a person and his father or anyone else from whom he stood to inherit, and it was unknown whether that person or his father died first, and there were outstanding debts against that person from his wife's marriage contract and to a creditor, this gives rise to the following situation: The father's heirs can claim that the son died first and since he had no properties of his own any debts against him became void, and the wife and the creditors can

claim that the father died first, and so the son inherited from him before dying, and they therefore have a right to collect their debts from that money. The *halakha* in this case is that the property remains in the possession of the father's heirs, and the burden of proof rests upon the wife and the creditors. This ruling is in accordance with the opinion of Beit Hillel (Rambam *Sefer Mishpatim*, *Hilkhot Nahalot* 5:8; *Shulhan Arukh*, *Hoshen Mishpat* 280:12).

שְׁטַר הָעוֹמֵד לְגָבוֹת – A bill of debt that is awaiting collection, etc. – **וכר**: Rav Hai Gaon raises a difficulty with Rabba's claim. Even if one concedes that in general a bill of debt that is awaiting collection is considered as though it was already collected, it is unreasonable to apply that principle in a case such as this, where the son did not have any property. Therefore, he claims that the Gemara's question was not resolved by the Gemara.

And Abaye, let him object to Rabba's opinion based on this – **ואבבי לותביה מהא**: Rashi explains that the Gemara's difficulty is with the fact that Abaye raised his objection from a mishna in tractate *Bava Batra*, a tractate in the order of *Nezikin*, when he could have raised his objection from a mishna in tractate *Sota*, which, like tractate *Yevamot*, is in the order of *Nashim*. *Tosafot Yeshanim* explain differently: Since the Gemara had not yet demonstrated that according to Beit Shammai a document awaiting collection is considered as though it is already collected, the mishna in tractate *Sota* presents a more immediate difficulty: Why indeed should those women receive their marriage contracts, since isn't it the *halakha* that one with an uncertain claim cannot extract property from one who has a definite claim to it?

Tosafot note further that in any case the mishna proves difficult for Abaye's opinion because it states that she receives the entire marriage contract, whereas according to Abaye, Beit Shammai should hold that she should receive only half (see *Tosefot HaRosh*). *Tosafot* suggest that since the woman is able to present a definite claim that she was not unfaithful, whereas her relatives' claims are only uncertain, she is therefore in a stronger position and so she is awarded her entire marriage contract. Ramban offers an additional answer: Since Beit Shammai hold that one with an uncertain claim can extract property from one who has a definite claim to it, it would appear that they regard an uncertain claim to be like a definite claim. Therefore, it is possible that one follows the principle that unless proven otherwise, one presumes the original status remains unchanged and therefore one should presume the woman was not unfaithful. Consequently, she should receive the entire value of her marriage contract. It is also possible that Abaye holds that the mishna in tractate *Sota* does not actually mean that she collects the entire marriage contract but only that she collects from it; she would never actually receive more than half.

Due to desirability – **משום הינא**: *Tosafot* on *Ketubot* 84a cite the explanation of Rabbeinu Hananel that reinforcing the marriage contract makes women more attractive to men since it ensures that a woman will bring some money with her into a new marriage. Rashi on *Ketubot* 84a and *Arakhin* 22a suggests a different explanation: Reinforcing the marriage contract is not designed to make women more desirable to men but to make the institution of marriage more desirable to women. The existence of a strong marriage contract reduces the likelihood that the husband will divorce the wife without careful consideration, as the divorce would create a financial burden upon him.

This explanation would appear to assume that a woman is reluctant to marry and the Sages therefore needed to take steps to encourage her. However, this would seem to contradict another statement of the Sages that a woman wishes to marry as she cannot bear to be alone (*Kiddushin* 41a), and based on this concept the Sages ruled that a marriage contract is collected from the husband's lowest-quality possessions in order to make the institution of marriage more appealing to men. *Tosafot* raise this difficulty to Rashi's opinion but claim that it does not pose a full refutation because one cannot draw comparisons between different rabbinic decrees. The reason for this is that often, in one instance the Sages will favor one party while in another instance they may favor the other party.

HALAKHA

מתו בעליהן עד שלא – **שתי**: Their husbands died before they drank – **שתי**: If a woman secluded herself with another man after her husband had warned her not to do so and her husband then died, she may not drink the bitter waters and does not receive her marriage contract. This is in accordance with the opinion of Beit Hillel, according to the conclusion of the Gemara (Rambam *Sefer Nashim*, *Hilkhot Sota* 2:7).

קסברי בית שמאי: שטר העומד לגבות כגבוי דמי.

Rabba rejects the proof: Beit Shammai's ruling in this case cannot be adduced as a proof because **Beit Shammai hold: A debt recorded in a bill of debt that is awaiting collectionⁿ is as though it was already collected** to the extent that the creditor is considered to be in possession of the debt. Therefore, the creditor is considered to be in possession of the property to the same extent as the father's heirs; consequently, the property is divided between them.

And from where do you say that Beit Shammai hold this opinion? **As we learned** in a mishna (*Sota* 24a): A married woman who secluded herself with another man after her husband had warned her not to do so is suspected of having committed adultery. To establish her guilt or innocence she is brought to the Temple, where she drinks the bitter waters. With regard to such women, if **their husbands died before they drank^h** the bitter waters, **Beit Shammai say: They collect the money assured to them in their marriage contracts and do not drink the waters.** **And Beit Hillel say: Either they drink**, and if they survive they collect their marriage contracts, **or they do not drink and they cannot collect their marriage contracts**, and all the husband's property passes to his heirs.

The Gemara clarifies the statement of Beit Hillel: Did Beit Hillel really mean: **Either they drink**, which implies they may actually choose to drink? But doesn't **the Merciful One state: "And the man shall bring his wife"** (Numbers 5:15), which indicates that the ritual of drinking the bitter waters applies only when the husband is still alive, and in this case **there is no husband** to do so; consequently, she should not be able to drink. **Rather**, Beit Hillel's intent is as follows: The only means by which a suspected adulteress is able to collect her marriage contract is by drinking the bitter waters and proving her innocence. Therefore, where this is not possible due to the death of the husband, **since the wives do not drink, they cannot collect their marriage contracts.**

Rabba explains his proof from this mishna: **Isn't it the case here that the wife's claim to her marriage contract is uncertain** because there is **uncertainty whether she was unfaithful or whether she was not unfaithful**, and so it would appear that one with an **uncertain claim is coming and undermining the definite claim** of the husband's heirs? This is untenable, as even were one to hold that someone with an uncertain claim can extract property from someone who has a definite claim to it, that would only allow for the money to be divided between the two sides, whereas in this case Beit Shammai rule that the creditor collects the entire debt. **Rather, conclude from that mishna that Beit Shammai hold that a debt recorded in a bill of debt that is awaiting collection is considered as though it were already collected** to the extent that the one who is owed the money is considered to be in possession of the debt. It is due to this reason that she is empowered to be able to collect her marriage contract.

The Gemara asks: **And why did Abaye object to Rabba's opinion based on the mishna in tractate Bava Batra? Let him object to Rabba's opinion based on thisⁿ** mishna in tractate *Sota* since based on Abaye's assumption that a bill of debt is not considered as though it were already collected, this mishna perforce demonstrates that Beit Shammai hold that one with an uncertain claim can extract property from one who has a definite claim to it. The Gemara answers: Abaye did not object based on this mishna because he reasoned that **perhaps a woman's marriage contract is different** from a regular bill of debt in that the Sages uniquely reinforced a woman's hold over the debt in her marriage contract **due to the increased desirabilityⁿ** that this would bring her when trying to remarry. This would ensure that she would bring some money with her into a new marriage.

ומנא תימרא – דתנן: מתו בעליהן עד שלא שתי, בית שמאי אומרים: נוטלות כתובתן ואינן שותות, ובית הלל אומרים: או שותות או לא נוטלות כתובתן.

או שותות? "והביא האיש את אשתו" אמר רחמנא, וליכא אלא: מתוך שלא שותות לא נוטלות כתובתן.

והא הכא, דספק הוא, ספק ונאי ספק לא ונאי, וקאמי ספק ומוציא מידי ודאי! אלא שמע מינה: שטר העומד לגבות כגבוי דמי.

ואבבי, לותביה מהא! דלמא כתובת אשה שאני, משום חנא.

The Gemara asks again concerning Abaye's decision to object to Rabba's opinion based on the mishna in *Bava Batra*: **Let him object to Rabba's opinion based on the case of the marriage contract in the mishna here** (38a). In its latter clause, the mishna states that if a widow waiting for her *yavam* dies, Beit Shammai rule that her marriage contract and other property are divided between her father's heirs and the *yavam*. In that case, the *yavam* has certain possession of that property, and the father's heirs come with an uncertain claim to collect the value of the marriage contract. The fact that Beit Shammai rule that they should divide up the value of the marriage contract between them demonstrates that they hold that one with an uncertain claim can extract property from one who has a definite claim to it.

לא פליגי. ולא? והא קתני: מתה, מה יעשה בכתובתה ובנכסים הנכנסים ויוצאים עמה? בית שמאי אומרים: יחלקו יורשי הבעל עם יורשי האב, ובית הלל אומרים: נכסים בחזקתו!

The Gemara responds: In truth, Beit Shammai **do not disagree** on that point. The Gemara challenges this claim: Do they **not disagree**? But it is explicitly **taught** in the mishna that they disagree in that case: If the widow waiting for her *yavam* died, **what should be done with the money assured to her in her marriage contract, and with her property that enters and leaves the marriage with her?** Beit Shammai say: **The husband's heirs should divide up the property together with the father's heirs.** And Beit Hillel say: **The property retains its previous ownership status.**

הכי קאמר: מתה, מה יעשה בכתובתה, ושבקה. נכסים הנכנסים והיוצאים עמה, בית שמאי אומרים: יחלקו יורשי הבעל עם יורשי האב ובית הלל אומרים: נכסים בחזקתו.

The Gemara answers: **This is what that mishna is saying:** If she died, **what should be done with the money assured to her in her marriage contract?** And the *tanna* then left this question unanswered, and addressed an additional case: What should be done with her **property that enters and leaves the marriage with her?** Beit Shammai say: **The husband's heirs should divide up the property together with the father's heirs.** And Beit Hillel say: **The property retains its previous ownership status.**

אמר רב אשי: מתניתין נמי דיקא, דקתני: יחלקו יורשי הבעל עם יורשי האב, ולא קתני יורשי האב עם יורשי הבעל – שמע מינה.

Rav Ashi said: The language of the mishna is also precise according to this interpretation, **as it teaches:** Beit Shammai say that **the husband's heirs should divide up the property together with the father's heirs**, which implies that the father's heirs had *de facto* possession of the property and the husband's heirs then came and divided that property with them. This is true with regard to her property that enters and leaves the marriage with her. **And** the mishna **does not teach** using the reverse formulation: Beit Shammai say that **the father's heirs should divide up the property together with the husband's heirs**, which would imply that the husband's heirs had *de facto* possession of the property; this is true with regard to the payment of the marriage contract. **Conclude from here** that Beit Shammai did not rule what should be done with the payment of the marriage contract, as the Gemara claimed.

אביי אמר: רישא דנפלו לה כשהיא שומרת יבם, סיפא דנפלו לה כשהיא תחתיו דבעל.

The Gemara presents a third resolution to the apparent inconsistency in Beit Shammai's rulings in the mishna: **Abaye said:** The first clause concerns a case in which property was bequeathed to her when she was still a widow waiting for her *yavam* to perform levirate marriage or *halitza*, and the latter clause concerns a case in which property was bequeathed to her when she was still under, i.e., married to, her first husband,^N before he died.

NOTES

The latter clause concerns a case in which property was bequeathed to her when she was under her husband – סיפא – דנפלו לה כשהיא תחתיו דבעל. Most commentaries claim that the present version of the Gemara's text is the correct version: When she was under her husband. Rav Hai Gaon had another version that states: When she was under him. This allows for Rav Hai Gaon's unique explanation that the reference is not to being married to her husband, but to being under the *yavam*,

i.e., being bound to him through a levirate bond. Accordingly, the dispute between Beit Hillel and Beit Shammai is, in Abaye's opinion, whether the *yavam* is entitled to at least a portion of the property that enters and leaves the marriage with the woman, of which the husband has a usufructuary interest. Do the rights of the *yavam* fully parallel those of her husband, in which case he would have rights, or does he have weaker rights, in which case he should not be entitled to them at all?

וְקָסְבֵּר אַבְיִי יָדוֹ בִּידָהּ.

And Abaye holds that according to Beit Hillel, with regard to the husband's rights to his wife's property, **his hand is like her hand**, but not any stronger. Accordingly, the *yavam* has a weaker hand in her property than she does, because the rights of a *yavam* are always weaker than those of the husband himself. Therefore, she is considered to be in possession of the property, and when she dies, her heirs, i.e., her father and his heirs, inherit it. However, Beit Shammai assume that the husband's hand is stronger than his wife's hand. Therefore, the hand of the *yavam*, which is weaker than the husband's hand, is nevertheless equally as strong as the hand of the *yevama*, and therefore they rule that if she dies, the *yavam* and her heirs divide up the property.

אָמַר לִיהוּ רַבָּא: אִי דְנִפְלִי לָהּ בְּשָׂהִיא
תַּחְתָּיו דְּבַעַל – דְּכֹלִי עֲלָמָא לָא
פְּלִיגִי דִּידוֹ עֲדִיפָא מִיָּדָהּ.

Rava^N said to him: I hold that if the property was bequeathed to her when she was still under the first husband, everyone, i.e., both Beit Hillel and Beit Shammai, agrees that his hand is stronger than her hand, and therefore the hand of the *yavam* will be equally as strong as that of the *yevama*, and if she dies the property will be divided between the two sides.

אָלָא: אִידִי וְאִידִי דְנִפְלִי לָהּ בְּשָׂהִיא
שׁוּמְרֵת יָבֵם, רִישָׁא – דְּלֹא עֶבֶד בָּהּ
מֵאֲמֵר, סִיפָא – דְּעֶבֶד בָּהּ מֵאֲמֵר.

Therefore, Rava presents his own resolution to the apparent inconsistency in Beit Shammai's rulings in the mishna: **Rather, both this first clause and that latter clause concern cases in which property was bequeathed to her when she was a widow waiting for her *yavam*. The first clause concerns a case in which the *yavam* had not performed a levirate betrothal with her,^N and the latter clause concerns a case in which he had performed a levirate betrothal with her.**

וְקָסְבֵּר רַבָּא: מֵאֲמֵר לְבֵית שַׁמַּאי
עוֹשֶׂה וְדֹאֵי אֲרוּסָה וְסָפֵק נִשְׁוָאָה,
וְדֹאֵי אֲרוּסָה – לְדָחוֹת בְּצִרָה, וְסָפֵק
נִשְׁוָאָה – לְחָלוֹק בְּנִכְסִים.

The Gemara explains the rationale behind Rava's explanation: **And Rava holds that according to Beit Shammai a levirate betrothal with a *yevama* affords her a status equivalent in some aspects to a woman who is definitely betrothed and in other aspects to a woman about whom there is uncertainty whether she is married.** The Gemara elucidates: She is similar to a woman who is **definitely betrothed** with regard to nullifying the levirate bond of her rival wife, so that the rival wife need not perform levirate marriage or *ḥalitza*. **And** she is similar to a woman about whom there is **uncertainty** whether she is married with regard to empowering the *yavam* to divide up the property that she attained while she was waiting for her *yavam*.

NOTES

The opinions of Abaye and Rava – שִׁטוֹת אַבְיִי וְרַבָּא: The commentaries offer various interpretations of the dispute between Abaye and Rava (see Ramban and Rashba, who elucidate them). According to Rashi, Abaye assumes that Beit Hillel hold that a husband's hand over the possessions is equally as strong as his wife's, while in a case where a *yevama* is still awaiting levirate marriage, the hand of the *yavam* is weaker than that of the *yevama*. Therefore, in the latter case, if she dies, any property that fell to her will remain in her and her heirs' possession. Beit Shammai, however, hold that a husband's hand is stronger than the hand of his wife, and therefore the hand of a *yavam* is equally as strong as that of the *yevama*. Accordingly, in the latter case, if she dies, any property that fell to her should be divided up between the heirs of the *yevama* and the *yavam*. According to Rava, all agree that the husband's hand is stronger than that of his wife, and that if property fell to a woman awaiting levirate marriage then the hand of the *yavam* and that of the *yevama* are equally strong, and therefore they divide up

the property between them. The dispute between Beit Hillel and Beit Shammai lies in the case where the *yavam* performed levirate betrothal. In that case, Beit Shammai hold that the betrothal affords her a status of a fully betrothed woman.

The Rif holds that according to Abaye, all agree that a husband's hand and his wife's are equally strong. Beit Shammai hold that when a woman happens before her *yavam* for levirate marriage, all of the husband's rights are transferred to the *yavam*, and so upon her death her heirs and the *yavam* or his heirs divide up the property equally between them. Beit Hillel hold that the husband's rights are not transferred to the *yavam*, and therefore the woman's property is awarded to her heirs. Rava claims that all agree that the hand of the *yavam* is actually stronger than that of the woman, and therefore upon her death her property that was bequeathed to her while she was married to her husband will go to his heirs. However, the Gemara here is discussing only property that she received once she was already awaiting levirate marriage.

The Rambam, Razah, and Ramban assume that the dispute between Abaye and Rava relates only to the opinion of Beit Shammai, but according to Beit Hillel the levirate bond does not render her equivalent even to a betrothed woman, and therefore the property is certainly fully in her possession and will pass to her heirs.

The first clause concerns a case in which he had not performed a levirate betrothal with her – רִישָׁא דְּלֹא עֶבֶד בָּהּ – מֵאֲמֵר: The Ritva explains that the distinction between the cases applies in cases in which property was bequeathed to her before the levirate betrothal was performed. Other commentaries differ, suggesting that in that case, even Beit Shammai would hold that the husband's heirs would have rights to the property. Instead, they explain that the dispute lies only in cases where she died, as then there would indeed be a difference if the levirate betrothal had taken place (*Keren Ora*).

And it was stated in the name of Rabbi Yosei, son of Rabbi Hanina – ואיתמר משמיה דרבי יוסי ברבי – חנינא: The Jerusalem Talmud also records an analysis of the distinction between the first and latter clauses of the mishna. There, Rabbi Yosei explains that the first clause concerns a case where the woman inherited property prior to her happening before her *yavam* for levirate marriage, and the latter clause concerns a case where the property was bequeathed to her after she was already awaiting levirate marriage. However, the *Penei Moshe* suggests modifying the text in a way that renders Rabbi Yosei bar Hanina's explanation consistent with Abaye's explanation in the Gemara here. Rabbi Zeira explains there that according to Beit Shammai, the *yavam* is afforded a status similar to that of a man concerning whom it is uncertain whether he is the husband. The *halakha* in such a case is that the property is divided equally between the parties. According to Beit Hillel, the status of the *yavam* vis-à-vis the inheritance is the same as that of any husband. Even so, since even a regular husband does not have full ownership of his wife's property but only a usufructuary interest in it, the *yavam* cannot lay claim to her property either. According to this opinion, Beit Shammai and Beit Hillel dispute what should be done with the value of the marriage contract as well, as is implied by the straightforward reading of the mishna, as opposed to Abaye's interpretation on 38b.

And there is nothing more – ותו לא מדי: Other commentaries explain that the Gemara's intention is to say that the inference from the formulation of the mishna is very convincing and no objection can be raised against it (Rabbi Avraham min HaHar).

HALAKHA

If he consummated the levirate marriage with her then her legal status is that of his wife in every sense – כנסה הרי היא כאשתו לכל דבר: Once the *yavam* consummates the levirate marriage with his *yevama*, she is considered to be his wife in every sense. Therefore, the only way to divorce her is to by means of a bill of divorce, and following the divorce he is permitted to remarry her (Rambam *Sefer Nashim*, *Hilkhot Yibbum* 1:15; *Shulhan Arukh*, *Even HaEzer* 168:1).

איתמר משמיה דרבי אלעזר ברותיה דרבא ואיתמר משמיה דרבי יוסי ברבי חנינא ברותיה דאביי.

ומי אמר רבי אלעזר הכי? והא אמר רבי אלעזר: מאמר לבית שמאי אינה קונה אלא לדחות בצרה בלבד!

איפוך. ואי בעית אימא: לעולם לא תיפוך, אמר לך רבי אלעזר: כי אמרי אנא – דלא סגי לה בגט, אלא דבעי נמי חליצה, לחלוק בנכסים דלא קני – מי אמרי?

אמר רב פפא: דיוקא דמתניתין ברותיה דאביי, ואף על גב דקשיא מתה,

דקתני: "נכסים הנכנסים ויוצאים עמה", מאי נכנסין ומאי יוצאין? לאו נכנסין: לרשות הבעל, ויוצאים: מרשות הבעל לרשות האב.

ואף על גב דקשיא מתה, אדמפלגי בגופה ולאחר מיתה לפלגו בחייה ולפירות.

ותו לא מדי.

"כנסה הרי היא" כו'. למאי הלכתא? אמר רבי יוסי בר חנינא: לומר שמגרשה בגט ומחזירה.

The Gemara notes: An interpretation of the mishna was stated in the name of Rabbi Elazar that is in accordance with the opinion of Rava. And an interpretation of the mishna was stated in the name of Rabbi Yosei, son of Rabbi Hanina^N that is in accordance with the opinion of Abaye.

The Gemara objects: And did Rabbi Elazar actually state this interpretation that is in accordance with the opinion of Rava? But didn't Rabbi Elazar say: According to Beit Shammai a levirate betrothal acquires the *yevama* only with regard to nullifying the levirate bond of a rival wife so that she need not perform levirate marriage or *halitza*? This implies that it does not acquire her with regard to enabling the *yavam* to inherit from her. This, then, stands in contrast to Rava's interpretation.

The Gemara offers two possible solutions: Reverse the opinions, so that Rabbi Elazar is in accordance with Abaye, and Rabbi Yosei, son of Rabbi Hanina, is in accordance with Rava. And if you wish, say instead: Actually, do not reverse the opinions, since Rabbi Elazar can be understood to be in accordance with the opinion of Rava, as Rabbi Elazar could have said to you: When I said the statement that implies that a levirate betrothal acquires in a very limited sense, the intention was only that its acquisition is limited in that giving her a bill of divorce is still insufficient for her in order to release her from the levirate bond; rather, she also needs to perform *halitza*. But to suggest that he does not acquire her with regard to dividing up the property she attained, did I say that? Certainly not, as in fact a levirate betrothal acquires her to that extent as well, as Rava assumes.

Rav Pappa said: The precise formulation of the mishna is in accordance with the opinion of Abaye, even though according to his opinion it is difficult that the mishna discusses the case in which she died.

The Gemara explains Rav Pappa's statement: The precise formulation of the mishna is in accordance with the opinion of Abaye, as it teaches: Her property that enters and leaves the marriage with her. What is the meaning of: That enters, and what is the meaning of: That leaves? Is it not: That enters into the domain of the husband and leaves the domain of the husband when she dies, and then enters into the domain of the father? Interpreted in this way, the mishna explicitly considers the period in which she was still married to her first husband, and likewise, the case in which she came into the possession of property should be understood as referring to a case in which she did so while still married. This is consonant with Abaye's interpretation, but not with Rava's.

And when Rav Pappa said: Even though according to his opinion it is difficult that the mishna discusses the case in which she died, he meant as follows: Instead of disputing who has the rights to the property itself, which necessitates considering the case after her death, let Beit Hillel and Beit Shammai dispute the more immediate case when she is still alive and dispute who has the rights to the use and produce of the property.

The Gemara concludes: And there is nothing more^N to say concerning this matter, i.e., as Rav Pappa noted, while it is undeniable that the mishna's formulation supports Abaye's interpretation, it is equally true that the case discussed by the mishna would appear to challenge his interpretation.

S The mishna states: If the *yavam* consummated the levirate marriage with her, then her legal status is that of his wife in every sense.^H The Gemara asks: With regard to what *halakha* is this said? Rabbi Yosei bar Hanina said: It is to say that once they have consummated the levirate marriage, the only way to legally dissolve the marriage is if he divorces her with a bill of divorce, but *halitza* is of no avail, and after divorcing her, he is permitted to take her back to be his wife, as the prohibition against engaging in relations with one's brother's wife does not apply to her.

מַגִּרְשָׁה בְּגִט פְּשִׁיטָא! סְלָקָא דְּעֵתָךְ
אֲמִינָא: הוּאִיל וּבְתִיב "וּלְקַחְהָ לָךְ
לְאִשָּׁה וּיְבַמָּה" אָמַר רַחֲמֵנָא, וְעֵדִין
יְבוּמֵי הָרָאשׁוֹן עָלֶיהָ. בְּחִלְצָה – אֵין,
בְּגִט – לֹא. קָא מְשַׁמַּע לָן.

The Gemara examines the first clause of Rabbi Yosei bar Hanina's statement: **Isn't it obvious** that to sever his relationship with her, **he divorces her with a bill of divorce?** The Gemara explains: It is necessary to teach this because **it could enter your mind to say that since it is written: "And take her to him to be his wife and consummate the levirate marriage with her"** (Deuteronomy 25:5), continuing to refer to the marriage as a levirate marriage even after the verse has stated that he took her as a wife, one might claim **the Merciful One is saying that the original levirate bond continues to be upon her**, and therefore, **with halitza, yes**, they can sever the relationship, but **with a bill of divorce, no**, the relationship would not be severed. Therefore, the mishna **teaches us** that she is considered to be his wife to the extent that the relationship can be severed with a bill of divorce alone.

"מִחֲזִירָה". פְּשִׁיטָא! סְלָקָא דְּעֵתָךְ
אֲמִינָא: מִצְוָה דְּרַמֵּיָא רַחֲמֵנָא עָלֶיהָ
עֲבָדָה. הִשְׁתָּא תִּיקוּם עָלֶיהָ בְּאִיסוּר
אֶשֶׁת אַח – קָא מְשַׁמַּע לָן.

The Gemara examines the second clause: **Isn't it obvious** that after divorcing her, he is permitted to **take her back** to be his wife? The Gemara explains: It is necessary to teach this because **it could enter your mind to say that the mitzva that the Merciful One imposes upon him, he has performed**, and therefore **now that there is no longer any mitzva to marry her, she should once again be established as forbidden to him by the prohibition against engaging in relations with one's brother's wife**. To dispel this notion, the mishna **teaches us** that she is considered to be his wife to the extent that there is no longer any prohibition against remarriage with her.

וְאִמָּא הָכִי נִמְי! אָמַר קָרָא: "וּלְקַחְהָ
לָךְ לְאִשָּׁה", בֵּין שְׁלֻקְתָּהּ – הָרִי הִיא
בְּאִשְׁתּוֹ לְכָל דְּבָר.

The Gemara challenges this ruling: **But why not say that this is indeed so**, that she should be forbidden to him? The Gemara explains: **The verse states: "And take her to him to be his wife"** (Deuteronomy 25:5), indicating that **once he has taken her, her legal status is that of his wife in every sense**.

"וּבְלִבָּד שְׁתֵּיהָ בְּתוּבָתָהּ" כו'. מֵאֵי
טַעמָא? אִשָּׁה הָקֵנוּ לָן מִן הַשָּׁמַיִם.

§ The mishna states: The **only** exception to this is **that her marriage contract will still be payable from the property of her first husband and not from the property of the yavam**. The Gemara asks: **What is the reason for this?** The Gemara explains: **A wife was acquired to him by Heaven**, and since he did not choose her as a wife, he did not obligate himself to pay her marriage contract.

וְאִי לִית לָהּ מִן הָרָאשׁוֹן – תִּקְיָנוּ לָהּ
מִשְׁנֵי, בְּדִי שְׁלֵא תִהְיֶה קִלְיָה בְּעֵינֵי
לְהוֹצִיאָהּ.

The Gemara qualifies the mishna's ruling: **And if she has no ability to collect her marriage contract from the first husband,**^h since he died without leaving any property with which to pay it, the Sages **instituted an ordinance for her benefit that she must receive a new marriage contract from her second husband, i.e., the yavam**. This was instituted **so that she will not be demeaned in his eyes such that he will easily divorce her**, since doing so would incur a financial burden on his part.

מִתְנִי' מִצְוָה בְּגִדוֹל לְיִיבָם, לֹא
רָצָה – מְהֻלְכִין עַל כָּל הָאֲחִין, לֹא
רָצוּ – חוֹזְרִין אֶצֶל גְּדוֹל, וְאֹמְרִים
לֹא: עֲלִיךְ מִצְוָה, אוֹ חִלוּץ אוֹ יִיבָם.

MISHNA The mitzva of levirate marriage is for the **eldest of the brothers to consummate the levirate marriage**.^h If the **eldest does not want to do so**,^h the court goes to each of the other brothers and requires them to do so. If they do not want to do so, the court **returns to the eldest brother and says to him: The mitzva is incumbent upon you; either perform halitza or consummate the levirate marriage**.

תִּלְהָ בְּקָטָן עַד שִׁיגְדִיל. אוֹ בְּגִדוֹל
עַד שִׁיבָא מִמְּדִינַת הַיָּם, אוֹ חֲרָשׁ
אוֹ שׁוֹטֵה – אֵין שׁוֹמְעִין לוֹ, אֶלָּא
אֹמְרִים לוֹ: עֲלִיךְ מִצְוָה, אוֹ חִלוּץ אוֹ יִיבָם.

If a brother **made his decision dependent** upon the possibility that one of his other brothers will eventually consummate the levirate marriage, saying that he will do so only if they do not, then whether he makes it dependent **upon a brother who is currently a minor**,^h meaning that the yevama should wait **until he matures, or upon his eldest brother, who is not currently present**, meaning the yevama should wait **until he comes from overseas, or upon a brother who is a deaf-mute or an imbecile**,ⁿ as perhaps they will recover from their disability, the court **does not listen to him; rather, the judges of the court say to him: The mitzva is incumbent upon you; either perform halitza or consummate the levirate marriage**.

HALAKHA

And if she has no ability to collect her marriage contract from the first husband – וְאִי לִית לָהּ מִן הָרָאשׁוֹן: If the deceased brother had no property, the yavam must give the yevama a marriage contract for one hundred dinars payable from his property, so that she will not be demeaned in his eyes such that he will easily divorce her (Rambam *Sefer Nashim, Hilkhot Ishut* 22:14; *Shulhan Arukh, Even HaEzer* 168:9, and in the comment of Rema).

The mitzva is for the eldest to consummate the levirate marriage – מִצְוָה בְּגִדוֹל לְיִיבָם: The mitzva of levirate marriage is for the eldest of the brothers to consummate the levirate marriage or perform *halitza*. If he does not wish to do so or is incapable of doing so (Rivash), then the other brothers, starting with the next oldest and proceeding in descending order of age, are required to do so. If they refuse, the eldest brother is again required to either consummate the levirate marriage or perform *halitza* (Rambam *Sefer Nashim, Hilkhot Yibbum* 2:6, 7; *Shulhan Arukh, Even HaEzer* 161:4).

The eldest does not want to consummate the levirate marriage – לֹא רָצָה לְיִיבָם: If the eldest brother refuses to either consummate the levirate marriage or perform *halitza*, he is forced to perform *halitza*. This is true even though there is a younger brother who could do so, and even if the eldest brother had taken an oath not to do so, because since there is a mitzva incumbent upon him, the oath does not take effect (Rema). Nevertheless, to avoid a situation where it would appear as though he is violating his oath, he is first to be released from his oath (Rivash; Rambam *Sefer Nashim, Hilkhot Yibbum* 2:7; *Shulhan Arukh, Even HaEzer* 161:4).

He made it dependent upon a minor – תִּלְהָ בְּקָטָן: If a brother does not wish to consummate the levirate marriage or perform *halitza* immediately, but instead says that he wishes to wait for a brother who is a minor to mature, or for a brother who is a deaf-mute to heal, or for an older brother to return from overseas, this is not accepted, and he must consummate the levirate marriage with her or perform *halitza* immediately (Rambam *Sefer Nashim, Hilkhot Yibbum* 2:8–9; *Shulhan Arukh, Even HaEzer* 161:5).

NOTES

A deaf-mute or an imbecile – אוֹ חֲרָשׁ אוֹ שׁוֹטֵה: Rambam, in his Commentary on the Mishna, along with most of the other commentaries, explains that the intention here is that the eldest brother wished to wait for the possibility that a brother who is a deaf-mute or imbecile will be healed. It would appear, however, that *Tosafot* understand that his request is that the deaf-mute or imbecile should consummate the levirate marriage in their current disabled state. Accordingly, *Tosafot* assume that a levirate marriage with such an individual is valid. Nevertheless, a yevama is never compelled to enter into levirate marriage in such a case.

The consummation of a younger brother [katan] – ביאת קטן: The Gemara here uses the term *katan*, which normally refers to a minor. However, Rashi explains that in this case the reference is not to a minor but to a younger brother who is already an adult and therefore fully capable of consummating the marriage according to all opinions. Others explain that the reference here is to an actual minor, but one who is above nine years of age, from which point his act of sexual intercourse has legal significance (Rivan; Meiri; see Rashba and Ritva).

Why should they return to the eldest brother – אמאי חוזרין אצל הגדול: Ostensibly, it would seem that the very fact that the younger brothers are considered demonstrates that the consummation of a younger brother is preferable to the *halitza* of the eldest, as if that were not the case, why wouldn't the eldest brother immediately be forced to perform *halitza*? The reason that a proof cannot be drawn from here is because compulsion is always considered a last resort. Therefore, even if the *halitza* of the eldest brother is preferable to the consummation of a younger brother, the consummation of a younger brother is nevertheless preferable to the forced *halitza* of the eldest brother (Yosef Lekah).

Perhaps he will come and perform *halitza* – דלמא אתי וחליץ: The Gemara mentions the possibility that the eldest brother might perform *halitza* to emphasize that the eldest brother is preferred even if he does not intend to consummate the marriage (Rashba; Meiri; see *Haggahot Rav Yeshaya Pick-Berlin*).

We do not delay the performance of any mitzva – כל שהיו מצוה לא משהינן: The *Hayyei Adam* cites the *Terumat HaDeshen*, who infers from the mishna here that one may delay the performance of a mitzva if doing so will enable one to perform it in its optimal manner later. This is derived from the fact that the mishna states only that one does not wait for the older brother to return from overseas in order to perform levirate marriage. By implication, if he were in the same country but merely not available immediately, then one should wait. Apparently, this is because the short delay is acceptable in order to perform a mitzva in its optimal manner. However, the *Sefer Hasidim* cites the verse: "I made haste and did not delay to observe Your commandments" (Psalms 119:60), and interprets it to mean that one should not delay performing a mitzva even if it could be performed in a more complete manner later. The *Hayyei Adam* notes that this is also implied by the straightforward reading of the Gemara, which states without qualifications that one should not delay the performance of a mitzva.

גמ' איתמר, ביאת קטן וחליצת גדול, פליגי בה רבי יוחנן ורבי יהושע בן לוי, חד אמר: ביאת קטן עדיפה, וחד אמר: חליצת גדול עדיפה.

מאן דאמר ביאת קטן עדיפה – דהא מצוה בייבום, ומאן דאמר חליצת גדול עדיפה – במקום גדול – ביאת קטן לא כלום היא.

תנן: לא רצה – מחזירין על כל האחים. מאי לאו: לא רצה לייבם אלא לחלוץ, וקתני: מהלכין אצל האחים, שמע מינה ביאת קטן עדיפה –

לא, לא רצה לחלוץ ולא לייבם, דכוותה גבי האחים לא רצו – לא לחלוץ ולא לייבם, אמאי חוזרין אצל הגדול, למיכפיה – לכפיה לדידהו! כיון דמצוה עליה דידיה רמא – לדידה בייבם.

תנן: תלה בקטן עד שיגדיל – אין שומעין לו. ואי ביאת קטן עדיפה, אמאי אין שומעין לו? ננטר דלמא גדיל ומייבם!

וליסעמך, ובגדול עד שיבא ממדינת הים אין שומעין לו, אמאי ננטר, דלמא אתי וחליץ! אלא: כל שהיו מצוה לא משהינן.

GEMARA An amoraic dispute was stated: Rabbi Yohanan and Rabbi Yehoshua ben Levi disagree with regard to a case in which there is the choice between consummation of the levirate marriage by a younger brother [katan]^N or *halitza* performed by the eldest brother. One said: The consummation of the levirate marriage by a younger brother is preferable, and the other one said: *Halitza* performed by the eldest brother is preferable.^H

The Gemara explains: With regard to the one who said that consummation of the levirate marriage by a younger brother is preferable, this is due to the fact that the mitzva of levirate marriage is through the actual consummation of the levirate marriage, and therefore preference is always given to consummation over the performance of *halitza*. And the one who said *halitza* performed by the eldest brother is preferable, this is because in the presence of the eldest brother, the consummation of the levirate marriage by a younger brother is considered nothing.

The Gemara suggests proof for the first opinion: We learned in the mishna: If the eldest does not want to consummate the levirate marriage, the court goes to each of the other brothers and requires them to do so. The Gemara suggests: What, is it not that he does not want to consummate the levirate marriage but is willing to perform *halitza*? And yet the mishna teaches: The court goes to each of the other brothers and requires them to consummate the levirate marriage. If so, conclude from here that the consummation of the levirate marriage by a younger brother is preferable.

The Gemara rejects the proof: No, the mishna might concern a case where the eldest does not want either to perform *halitza* or to consummate the levirate marriage, and it is only because he is unwilling to do either that the other brothers are considered. The Gemara asks: If this is so, then in the corresponding situation in the mishna in which the brothers do not want to do so, the case must be that they do not want either to perform *halitza* or to consummate the levirate marriage. But if so, why should the court invest the extra effort to return to the eldest brother^N to force him to fulfill his duty? Let the court force the other brothers to fulfill their duty. The Gemara responds: Since the mitzva is incumbent upon the eldest brother *ab initio*, it is he who is forced.

The Gemara suggests another proof: We learned in the mishna: If a brother makes his decision dependent upon a brother who is currently a minor, the court does not listen to him. The Gemara suggests: And if the consummation of the levirate marriage by a minor is preferable, why shouldn't the court listen to him? Let the court wait, as perhaps he will mature and consummate the levirate marriage. Rather, it would appear that the mishna assumes that consummation by a younger brother is not preferable.

The Gemara responds: But even according to your reasoning that *halitza* performed by an elder brother is preferable, what about the next case in the mishna, where a brother asks to wait until the eldest brother comes from overseas? In that case, as well, the mishna rules: They do not listen to him; but why shouldn't they listen to him? Let the court wait, as perhaps he will come and at the very least perform *halitza*.^N Rather, it is clear that the reason for the mishna's ruling is that we do not delay the performance of any mitzva;^N therefore, if one of the brothers is currently unable to perform the mitzva, he is not considered at all. Consequently, no proof can be derived from the mishna.

HALAKHA

The consummation of a younger brother and the *halitza* of the eldest brother – ביאת קטן וחליצת גדול: If the eldest brother does not wish to consummate the levirate marriage but only to perform *halitza*, and a younger brother is willing to consummate the levirate marriage, then the consummation of the younger brother is preferable. Whenever *halitza* is performed, preference is given to the eldest

brother. This is the case today, as according to many opinions levirate marriage is never performed nowadays. Even those authorities who hold that levirate marriage is still performed agree that if the *yevama* does not wish to enter into levirate marriage then *halitza* is performed, giving preference to the eldest brother (Rema, citing *Terumat HaDeshen*; *Shulhan Arukh*, Even HaEzer 161:6).

Levirate marriage and *halitza* – **ביום וְחִלּוּצָה**: The mitzva to consummate levirate marriage takes precedence over the mitzva of performing *halitza* (Rif; Rambam). This is in accordance with the opinion of the Rabbis and the statement of Rami bar Hama. Others say that the mitzva of performing *halitza* takes precedence (Rashi). This is in accordance with the opinion of Abba Shaul and the assumption of Rav Nahman bar Yitzhak. According to the first opinion, in a case where the *yavam* wishes to consummate the levirate marriage and the *yevama* does not, if she does not have a sufficiently valid reason to refuse, then she is categorized as rebellious and does not receive the money allotted to her in her marriage contract. According to the second opinion, she is not categorized as rebellious for refusing to consummate the levirate marriage, and so when she performs *halitza* she receives the payment of her marriage contract. According to this opinion, although the *yavam* is not forced to perform *halitza*, he can be tricked into doing so (*Tur*, citing Rabbeinu Tam and Rosh). If the *yavam* falls into the category of one who, were he to be married, would be forced to divorce his wife, then he is also forced to perform *halitza* (*Tur*, citing *Smag*).

Some say that even if both the *yavam* and the *yevama* wish to consummate the levirate marriage, they are not permitted to do so unless it is clear that they are doing so for the sake of the fulfilling the mitzva (*Tur*, citing Rabbeinu Tam; see *Yam shel Shlomo*). The custom is not to force *halitza* unless the *yavam* refuses both to consummate the levirate marriage and to perform *halitza* (Maharam Padua). In recent generations, especially in Ashkenazic communities, the custom is not to allow levirate marriage under any circumstances, although there have been some questionable exceptions to this principle. This has also become the accepted practice in Eretz Yisrael (Rambam *Sefer Nashim*, *Hilkhot Yibbum VaHalitza* 1:2, 3:7; *Shulhan Arukh*, *Even HaEzer* 165:1).

Bill of *halitza* – **גַּט חִלּוּצָה**: Although there is no requirement for the *halitza* to be documented in writing, it was nevertheless customary for the court to grant the *yevama* a document as proof that she performed *halitza* and that she is now permitted to marry a man from the general public. There was a standard formulation for this document, as is clear from the statements of Rav Yehuda and Rabbi Hiyya bar Avya. In some places it is not customary to write a bill of *halitza*; however the better custom is to write one (*Be'er Heitev*; Rambam *Sefer Nashim*, *Hilkhot Yibbum* 4:30; *Tur*, *Even HaEzer* 169; *Shulhan Arukh*, *Even HaEzer* 169:56).

BACKGROUND

The order of *halitza* – **סֵדֶר חִלּוּצָה**: A mishna in Chapter Twelve describes the order of the *halitza* ceremony and stresses that the ceremony was performed in Hebrew. The bill of *halitza* mentioned here is a later addition, written in Aramaic and designed to enable the woman to later prove that she has performed the mitzva of *halitza* and is therefore allowed to remarry. The Rif formulated a complete version of the bill of *halitza*, including the details mentioned, e.g., the requirement that the witnesses see the woman's saliva and that they recognize both the woman as the wife of the deceased and the man as his brother. The Rif also adds which phrases from the Torah must be said by the man and which by the woman and by the court, as well as describing the type of shoe required for the performance of *halitza*.

וְלִטְעֵמִיד, בְּקֶטֶן עַד שִׁנְיָדִיל אֵין שׁוּמְעִין
לֹא, אִמְאֵי? נִיטֵר דְּלָמָּא גְּדִיל וּמִיִּיבָם,
(אֵי נָמִי אֵתִי אִיהוּ וּמִיִּיבָמָה). אֲלָּא כָּל
שְׁהוּי מִצְוָה לֹא שְׁהִינִי.

תֵּנִן הֵתָם: מִצְוֹת יְבוֹם קוֹדֶמֶת לְמִצְוֹת
חִלּוּצָה – בְּרֵאשׁוֹנָה שְׁהִי מִתְּכוּוֹנִין
לְשֵׁם מִצְוָה, עַכְשָׁן שְׁאִין מִתְּכוּוֹנִין לְשֵׁם
מִצְוָה – אִמְרוּ: מִצְוֹת חִלּוּצָה קוֹדֶמֶת
לְמִצְוֹת יְבוֹם.

אָמַר רַב: אֵין בּוֹפִין: בִּי אֵתוּ לְקִמְיָה דְּרַב
אָמַר לְהוֹ: אֵי בְעִית – חִלּוּץ, אֵי בְעִית –
יִיבָם, בְּדִידָךְ תֵּלֵא רַחֲמֵנָא, "וְאִם לֹא
יִחְפוֹץ הָאִישׁ", הָא אִם חָפֵץ – אֵי בְעִי
חִלּוּץ, אֵי בְעִי יִיבָם.

וְאִף רַב יְהוּדָה סָבַר אֵין בּוֹפִין. מִדְּאִתְקִין
רַב יְהוּדָה בְּגִיטָא דְּחִלּוּצָה: אֵין פְּלוּנִית
בֵּת פְּלוּנִי אֲקָרְבַת יֵת פְּלוּנִי יְבָמָה
קְדָמָנָא לְבִי דִּינָא, וְאִשְׁתַּמּוּדְעִינָהּ
דְּאִחוּהָ דְּמִיתָנָא מֵאֲבָא נִיהוּ, וְאָמְרִי
לִיהָ: אֵי צְבִית לִיבָם – יְבָם, וְאֵי לֹא –
אִיטְלַע לָהּ רַגְלִיהָ דִּימִנָא.

The Gemara challenges this: But even according to your reasoning, you certainly agree that the possibility of consummating the levirate marriage is always preferable. If so, what about the previous case in the mishna, where the eldest brother asks to wait until his brother who is a minor will mature? In that case as well the mishna rules: The court does not listen to him; but why shouldn't the court listen to him? Let the court wait, as perhaps he will come and consummate the levirate marriage. Alternatively, in the case where the eldest brother is overseas, let the court wait, as perhaps he will come and consummate the levirate marriage with her. Rather, it is clear that the reason for the mishna's ruling is that we do not delay the performance of a mitzva. Therefore, if one of the brothers is currently unable to perform the mitzva, he is not considered at all. Consequently, no proof can be derived from the mishna.

S We learned in a mishna there (*Bekhorot* 13a): The mitzva of consummating the levirate marriage takes precedence over the mitzva of performing *halitza*;^h this applied initially, when *yevamin* would have intent for the sake of fulfilling the mitzva. Now, that they do not have intent for the sake of fulfilling the mitzva, the Sages say: The mitzva of performing *halitza* takes precedence over the mitzva of consummating the levirate marriage.

Rav said: Nevertheless, the court does not forceⁿ a *yavam* to perform *halitza*, and if he wishes it is still permitted to consummate the levirate marriage. The Gemara relates: When a *yavam* and a *yevama* would come before Rav, he would say to them: If you want, perform *halitza*, and if you want, consummate the levirate marriage, as the Merciful One makes the matter dependent upon your will, as it is stated: "And if the man does not wish to take his *yevama*" (Deuteronomy 25:7) then he should perform *halitza*. This implies that the Torah requires him to perform *halitza* only if he does not wish to consummate the levirate marriage, but if he wishes to do so, then the matter is dependent upon him, and if he wants, he performs *halitza*, or if he wants, he consummates the levirate marriage.

The Gemara notes: And even Rav Yehuda holds that the court does not force a *yavam* to perform *halitza* if he wishes to consummate the levirate marriage. This is apparent from the fact that Rav Yehuda enacted in his court that the following formulation should be used in the bill of *halitza*:^h That so-and-so, daughter of so-and-so, brought so-and-so, her *yavam*, before the court; and we identified him, that he was indeed the paternal brother of the deceased, and we said to him: If you desire to consummate the levirate marriage, then consummate the levirate marriage, and if not, extend your right foot toward your *yevama* so that she may perform *halitza* by removing your shoe.⁸

NOTES

The court does not force – **אֵין בּוֹפִין**: This statement of Rav can be understood in different ways. Rashi and most of the other commentaries understand it to mean that a *yavam* is not to be forced to perform *halitza* if he wishes to consummate the levirate marriage, and that this is true even if one asserts that the mitzva of *halitza* takes precedence. Rabbeinu Hananel and Rabbeinu Tam explain Rav's statement in the opposite manner: The *yavam* will not be forced to consummate the levirate marriage, even in cases where one assumes his motives will be pure.

It is similarly unclear to whom Rav's statement applies; who is not to be forced? Rashi explains that where both the *yavam* and the *yevama* are willing to consummate the levirate marriage, they cannot be forced to perform *halitza* even if *halitza* is considered preferable. Others explain that Rav was referring only to the *yavam*, meaning that he cannot be forced

to consummate the levirate marriage; alternatively he was referring only to the *yevama*, meaning that she is never forced to consummate the levirate marriage.

The *Gilyonei HaShas* cites a geonic responsum that explains that the dispute with regard to compulsion is dependent upon the broader issue as to whether or not *halitza* is valid if not agreed to by both parties. If the *halitza* requires mutual consent, then there can be no forced *halitza*. According to that opinion, the opinions that do allow for a forced *halitza* must be explained as one of the cases in which the Sages retroactively annulled the original marriage, consequently obviating any need for a valid *halitza*. Nevertheless, an act of *halitza* is still required because otherwise it would be appear as though the *yevama* had been released from her levirate bonds without performing an act that would release her.

הַכֵּרֶת – Identification of the yavam and the yevama – הַיָּבָם וְהַיְבָמָה: The court must substantiate that the man coming to perform *halitza* is the paternal brother of the deceased, that the two brothers coexisted, and that this woman was the wife of the deceased. There is no need for two qualified witnesses to testify in this matter; rather, any testimony suffices, even that of a close relative, a woman, or anyone else generally disqualified from giving testimony. Even written testimony is acceptable if the parties can be recognized thereby (*Be'er Heitev*, citing Maharshdam). Some (*Be'er Heitev*, citing Rivash) say that a disqualified witness may not testify at the time of the *halitza* itself; rather, the court must first confirm the identities of the yavam and the yevama and only then may the *halitza* be performed (Rambam *Sefer Nashim*, *Hilkhot Yibbum VaHalitza* 4:31; *Shulhan Arukh*, *Even HaEzer* 169:8; 157:2; *Seder Halitza* 38).

וְאִיטְלַע לָהּ רִגְלָא דִּימִנָּא, וְשֵׁרֶת סִינְיָה מַעַל רִגְלוֹהִי, וְיִרְקַת בְּאַנְפּוֹהִי וְיִקָּא דְּמַתְחוּזָא לְבִי דִּינָא עַל אַרְעָא.

The bill of *halitza* would continue with the account of what transpired: **And he extended [itla] his right foot^N toward her and she removed his shoe from upon his foot and she spat toward his face spittle, which was visible to the court, and which landed upon the ground.**

וְרַבִּי חִיְיָא בַּר אַוּיָא מְסִיִּים בְּהַ מְשִׁמְיָה דְּרַב יְהוּדָה: וְאַקְרִינְהוּ מִה דְּכְתִיב בְּסִפְּרֵי אֲוִרִיתָא דְּמִשָּׁה.

And Rabbi Hiyya bar Avya in the name of Rav Yehuda would conclude the formulation of the bill of *halitza* with an additional sentence: And we dictated to the yavam that which is written in the book of the Torah of Moses, i.e., those declarations that the yavam and the yevama are required to make.

אֲשֶׁתְּמוּדֵינְהוּ פְּלִיגִי בְּהַ רַב אַחָא וְרַבִּינָא. חַד אָמַר: בְּעֵדִים, וְחַד אָמַר: אֶפִּילוּ קְרוֹב, אֶפִּילוּ אִשָּׁה. וְהַלְכְּתָא: גְּלוּיִי מִלְּתָא בְּעֵלְמָא הוּא, וְאֶפִּילוּ קְרוֹב וְאֶפִּילוּ אִשָּׁה.

The Gemara clarifies the intention of the phrase: **And we identified him^H as the brother of the deceased. Rav Aha and Ravina disagree concerning this phrase: One said that this identification must be made through legally valid witnesses, and the other one said that even the testimony of a relative^N and even the testimony a woman is accepted in this case.** The Gemara concludes: **And the halakha** is that the identification of the brother is considered to be **merely revealing the facts of the matter**, and therefore, **even a relative and even a woman may tender this information.**

בְּרֵאשׁוֹנָה שְׁהָיוּ מְתַבְּוִינִי לְשֵׁם מִצְוָה – מִצְוַת יְבוּם קוֹדֶמֶת לְמִצְוַת חֲלִיצָה, וְעַכְשָׁיו שְׂאִין מְתַבְּוִינִי לְשֵׁם מִצְוָה – אָמְרוּ: מִצְוַת חֲלִיצָה קוֹדֶמֶת לְמִצְוַת יְבוּם.

The Gemara paraphrases the mishna from tractate *Bekhorot*: **Initially, when yevamin would have intent for the sake of fulfilling the mitzva of consummating the levirate marriage, the mitzva of consummating the levirate marriage took precedence over the mitzva of performing *halitza*. And now that they do not have intent for the sake of fulfilling the mitzva, the Sages say: The mitzva of performing *halitza* takes precedence over the mitzva of consummating the levirate marriage.**

אָמַר רַמִּי בַּר חֲמָא אָמַר רַבִּי יִצְחָק: חֲזוּרוּ לִימֵר מִצְוַת יְבוּם קוֹדֶמֶת לְמִצְוַת חֲלִיצָה. אָמַר לֵיהּ רַב נַחֲמָן בַּר יִצְחָק: אַכְשָׁיו דְּרִי?

Rami bar Hama said that Rabbi Yitzhak said: In later generations they went back to once again saying that the mitzva of consummating the levirate marriage takes precedence over the mitzva of performing *halitza*. Rav Nahman bar Yitzhak said to him in wonderment: Could it be that the later generations improved their spiritual level and now intend to consummate the levirate marriage solely for sake of fulfilling the mitzva?

מַעֲיָקְרָא סָבְרִי לָהּ כַּאֲבָא שְׂאוּל, וְלִבְסוֹף סָבְרִי לָהּ בְּרַבְּנָן.

The Gemara explains that this does not mean that the later generations improved themselves; rather, **initially they held in accordance with the opinion of Abba Shaul**, and so the mitzva of performing *halitza* took precedence, **and in the end they held in accordance with the opinion of the Rabbis^N**, and so the mitzva of consummating the levirate marriage took precedence.

NOTES

איטלע... רגלא דימנא – Rashi interprets the word *itla* as meaning incline. Accordingly, the phrase means that the yavam presented his foot to his yevama by extending it toward her. The commentaries explain that Rashi understood that the Aramaic word is related to the Hebrew word *tzela*, which can mean a side; Rashi similarly translates the phrase: “*Tzela hamishkan*” (Exodus 26:26) as being the side of the Tabernacle (Rabbi Yehuda al-Madani; *Noda Bihuda*). Rabbi Avraham min HaHar cites Rashi as explaining *itla* to mean prepare. The *Arukh* writes that the word means remove. Clearly the intention is not that he should remove his shoe; rather, it must mean that he should allow his shoe to be removed by her. Later commentaries note that it appears that the *Arukh* had a variant text of the Gemara that could support such a meaning. Other commentaries explain that the word means limp, and the intention is that the yavam should forcefully plant his foot on the ground to the point that he appears like one with a limp, who distributes his weight unequally by supporting himself on one leg (Meiri; Rabbi Avraham min HaHar; *Noda Bihuda*).

אפילו קרובו – The early commentaries, based on the comments of the Rif, explain that this is certainly not to say that the court actually relied entirely

on the testimony of a close relative or woman. Rather, in all cases the court would allow for the performance of *halitza* only if they were certain of the identities of the parties involved. The novelty of the ruling is that it allows the court not to follow the standard protocol by which facts are established only through formal testimony supplied by independent valid witnesses (Meiri; *Tosafot*; see HALAKHA).

מחלוקת – אבא שאול והרמבם – The Gemara never explicitly rules on the dispute between the Rabbis and Abba Shaul as to whether nowadays one may consummate a levirate marriage even though there are reservations concerning one’s purity of motives. The Gemara here appears to be inclined toward the opinion of the Rabbis; however, in other places the Gemara appears to accept the opinion of Abba Shaul. Already during the period of the *ge’onim* different communities followed different opinions. In Neharde’a the practice was to act in accordance with Abba Shaul, and in Sura the opinion of the Rabbis was followed. In later generations, the Sephardic commentaries generally permitted the consummation of the levirate marriage, while Ashkenazic commentaries permitted only *halitza*.

The mitzva of levirate marriage – מצות יבום: If one's paternal brother died childless, one is commanded to take his brother's widow in levirate marriage, whether she was married or only betrothed to his brother (Rambam *Sefer Nashim*, *Hilkhot Yibbum* 1:1; *Shulḥan Arukh*, *Even HaEzer* 156:1).

דַּתְנָא, אָבָא שְׁאוּל אָמַר: הַבִּנִּים אֶת יְבָמָתוֹ לְשֵׁם נָוִי, וְלְשֵׁם אִישׁוֹת, וְלְשֵׁם דְּבָר אַחֵר – כְּאִילוּ פּוֹנֵעַ בְּעֶרְוָה, וְקָרוֹב אֲנִי בְּעֵינֵי לֵהִיּוֹת הוֹלֵד מִמּוֹ. וְחֻכָּמִים אָמְרִים: "יְבָמָה יָבֵא עָלֶיהָ" – מְכַל מְקוֹם.

As it is taught in a *baraita*: Abba Shaul says that one who consummates a levirate marriage with his *yevama* for the sake of her beauty, or for the sake of marital relations,^N or for the sake of another matter,^N e.g., he wishes to inherit her husband's estate, it is considered as though he encountered a forbidden relation, and I am inclined to view the offspring born from such a union as a *mamzer*. Since the prohibition against engaging in relations with one's brother's wife is overridden only for the sake of fulfilling the mitzva of consummating the levirate marriage, when one does not have the intention to fulfill that mitzva, the baseline prohibition applies, and so any offspring from the union will be *mamzerim*. The Rabbis say: The Torah states: "Her brother-in-law will have intercourse with her" (Deuteronomy 25:5), which indicates that he should do so in any case, even if his intentions are not solely for the sake of fulfilling the mitzva.^N

מֵאֵן תַּנָּא לֵהָא דַּתְנֵנוּ רַבִּנָּן: "יְבָמָה יָבֵא עָלֶיהָ" מִצְוָה. שְׁבַתְחָלָה הִיתָה עָלָיו בְּכָלֵל הֵיטֵר, נֶאֱסָרָה, וְחֻזְרָה וְהוֹתָרָה, כְּכֹל תַּחֲזוֹר לְהַתִּירָה הָרִאשׁוֹן – תִּלְמוֹד לִדְמוֹר "יְבָמָה יָבֵא עָלֶיהָ" מִצְוָה.

The Gemara asks: Who is the *tanna* who taught the following *baraita* that the Sages taught: The Torah states: "Her brother-in-law will have intercourse with her" (Deuteronomy 25:5); this is to be considered a mitzva, as initially, before she was married to his brother, she was among all other women who are permitted to him, and then when she married his brother she became forbidden to him, and when his brother died without offspring she reverted from her forbidden status and became permitted to him. One might have thought that she would revert to her original permitted status; therefore, the verse states: "Her brother-in-law will have intercourse with her" to teach that it is in fact a mitzva to do so.^H

NOTES

For the sake of marital relations – לְשֵׁם אִישׁוֹת: *Tosafot* explain that the use of the term: For the sake of marital relations, as it is used here differs from its use later in the Gemara. In the present context, such motivation is presented as being contemptible. Accordingly, the phrase means either that he desires to gain the status of a married man (*Tosafot*), that he desires the woman (Rivan), or that he wishes for her to serve him (*Otzar HaShitot*). However, later in the Gemara the phrase is used in contrast to the phrase: For the sake of her beauty. This implies that the phrase: For the sake of marital relations, indicates a more noble intention, i.e., that he wishes to have children with her. Nevertheless, even such motivation is still deficient in a case of a levirate marriage, where one must have intention for the specific goals of the levirate marriage (see *Otzar HaShitot*).

For the sake of another matter – לְשֵׁם דְּבָר אַחֵר: Rivan and others offer that the reference is to a case where the *yavam* is motivated by financial gain, either that he had his eye on her possessions or that he wants to inherit from his brother. Others interpret this to mean illicit sexual relations (*Hokhmat Manoah*). Both positions find support in earlier sources.

The opinions of Abba Shaul and the Rabbis – שְׁיִטוֹת אָבָא: The early commentaries are divided as to what extent Abba Shaul intended to say that lack of appropriate motives would actually result in the violation of a prohibition, the offspring of which would be *mamzerim*. The Ramban understands Abba Shaul's opinion in the most extreme sense, i.e., when the *yavam* lacks the appropriate motives he does not acquire the *yevama* at all, and the children of such a union would actually be *mamzerim*. Others suggest that under all circumstances the *yavam* certainly acquires the *yevama*; Abba Shaul's point is that if the *yavam* lacks pure motives, then he transgresses a Torah prohibition by engaging in intercourse with her (*Keren Ora*). Still others hold that even Abba Shaul agrees that since the *yavam* is obligated to consummate the levirate marriage, there can be no Torah prohibition involved

in doing so, even if he has impure motives. Nevertheless, the Sages prohibited the consummation of the levirate marriage unless his motives were pure. This interpretation explains why Abba Shaul specifically stated: As though he encountered a forbidden relation, and: I am inclined to view the offspring as a *mamzer*, instead of simply stating that the *yavam* encountered a forbidden relation and the offspring is a *mamzer* (*Nimmukei Yosef*).

Some commentaries explain that the dispute between Abba Shaul and the Rabbis hinges on the question of why it is permitted to consummate a levirate marriage in the first place, given that generally one is prohibited from engaging in relations with his brother's wife. They explain that Abba Shaul understood that in every case of levirate marriage there is a clash between two factors: The mitzva to consummate the levirate marriage and the prohibition against engaging in relations with one's brother's wife. The principle in such a case is that by performing the mitzva, one is permitted to disregard the prohibition. Accordingly, if one does not intend to fulfill the mitzva, one necessarily encounters the prohibition without permission to do so. This is readily understandable based on the comments of the Ramban that a mitzva overrides a prohibition because the former is an expression of one's love for God and the latter of one's awe, and when there is a choice between them, one should express one's love. As such, when one performs the mitzva not out of love but for some ulterior motive, the basis for permitting the prohibition is undermined. The Rabbis disagreed with the entire basis of this argument. They understood that it is not that the mitzva of levirate marriage overrides the prohibition against engaging in relations with one's brother's wife; rather, the scope of the prohibition itself is limited and does not apply to any case in which there is the possibility of consummating a levirate marriage. As such, the permission to consummate the levirate marriage is entirely unrelated to the intentions of the *yavam*, since there is simply no prohibition to speak of (*Kovetz He'arot*).

מֵאֵן תָּנָא? אָמַר רַבִּי יִצְחָק בַּר אֲבָדִימִי: אָבָא שְׁאוּל הִיא, וְהָכִי קָאָמַר: "יְבֻמָּה יָבֵא עָלֶיהָ" מִצְוָה, שְׁבִתְחַלְהָ הֵיתֵה עָלֶיהָ בְּכָלֵל הֵיתֵה, רָצָה לְשֵׁם נָוִי – בּוֹנֶסָה, רָצָה לְשֵׁם אִישׁוֹת – בּוֹנֶסָה.

Who is the *tanna* who taught this *baraita*? Rav Yitzhak bar Avdimi said: It is Abba Shaul, and this is what the *baraita* is saying: "Her brother-in-law will have intercourse with her" teaches that it is permitted to engage in intercourse with her only when his intention is to fulfill a *mitzva*, as initially, before she was married to his brother, she was among all other women who are permitted to him, and so, if he wished, then even for the sake of her beauty he was permitted to marry her, or similarly, if he wished, then even for the sake of marital relations he was permitted to marry her.

נֶאֱסָרָה, חֲזָרָה וְהוֹתֵרָה, יָכוֹל תַּחֲזוֹר לְהֵיתֵרָה הָרִאשׁוֹן – תִּלְמוּד לומר "יְבֻמָּה יָבֵא עָלֶיהָ", לְמִצְוָה.

When she married his brother she became forbidden to him, and when his brother died without offspring she reverted from her forbidden status and became permitted to him. One might have thought that she would fully revert to her original permitted status; therefore, the verse states: "Her brother-in-law will have intercourse with her" to teach that he is permitted to marry her only when his intention is for the *mitzva*.

רַבָּא אָמַר: אֶפְיָלוּ תִּימָא רַבְנָן, וְהָכִי קָאָמַר: "יְבֻמָּה יָבֵא עָלֶיהָ" – מִצְוָה. שְׁבִתְחַלְהָ הֵיתֵה בְּכָלֵל הֵיתֵה. רָצָה – בּוֹנֶסָה, רָצָה – אֵינוֹ בּוֹנֶסָה.

Rava said: You can even say that the *baraita* is in accordance with the Rabbis, and this is what the *baraita* is saying: "Her brother-in-law will have intercourse with her" indicates that it is a *mitzva* to consummate the levirate marriage, as initially, before she was married to his brother, she was among all other women who are permitted to him, and so if he wished, he was permitted to marry her, or if he wished, he was permitted to choose not to marry her.

נֶאֱסָרָה, חֲזָרָה וְהוֹתֵרָה, יָכוֹל תַּחֲזוֹר לְהֵיתֵרָה הָרִאשׁוֹן: רָצָה – בּוֹנֶסָה, רָצָה – אֵינוֹ בּוֹנֶסָה. רָצָה אֵינוֹ בּוֹנֶסָה?

When she married his brother she became forbidden to him, and when his brother died without offspring she reverted from her forbidden status and became permitted to him. One might have thought that she would fully revert to her original permitted status, so that if he wishes, he may marry her, or if he wishes, he may choose not to marry her.

הָא אֲגִידָה בֵּיהּ, בְּכִדִּי תִּפּוּק? אֵלֶּא אִימָא: רָצָה – בּוֹנֶסָה, רָצָה – חוֹלֵץ לָהּ. תִּלְמוּד לומר: "יְבֻמָּה יָבֵא עָלֶיהָ" – מִצְוָה.

The Gemara interjects that the logic of this last statement seems implausible: Does he really have the option to do as he wishes? Isn't she bound to him with a levirate bond? Could it be that she will be released from that bond without doing anything? Rather, emend the previous argument and instead say: One might think that if he wishes, he may marry her, or if he wishes not to do so, he performs *halitza* with her. Therefore, the verse states: "Her brother-in-law will have intercourse with her," to teach that it is now a *mitzva* to consummate the marriage, and doing so is preferable to performing *halitza*.

אִימָא רִישָׁא: "מִצּוֹת תֹּאכַל בְּמָקוֹם קָדוֹשׁ" – מִצְוָה.

The *baraita* under discussion also presents another case that follows a similar model of initially being permitted, then prohibited, and then once again permitted. The Gemara analyzes the explanations of Rav Yitzhak and Rava based on that clause of the *baraita*: Say the first clause and try to explain it in a way consistent with the various explanations of the latter clause: The Torah states concerning the meal-offerings eaten by the priests: "It shall be eaten unleavened in a sacred place" (Leviticus 6:9); this indicates that doing so is a *mitzva*,

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שְׁבִתְחַלְהָ הֵיתֵה עָלֶיהָ בְּכָלֵל הֵיתֵה, נֶאֱסָרָה, וְחֲזָרָה וְהוֹתֵרָה, יָכוֹל תַּחֲזוֹר לְהֵיתֵרָה הָרִאשׁוֹן – תִּלְמוּד לומר "מִצּוֹת תֹּאכַל בְּמָקוֹם קָדוֹשׁ" מִצְוָה.

as initially, before the flour was consecrated, it was among all other foods that are permitted to him, and then when the flour was consecrated as a meal-offering, it became forbidden to him, and then once a handful of the offering was brought on the altar, it reverted from its forbidden status and became permitted to him. One might have thought that it would revert to its original permitted status; therefore, the verse states: "It shall be eaten unleavened in a sacred place" (Leviticus 6:9), which indicates that it is a *mitzva*^h to eat it.

HALAKHA

It shall be eaten unleavened... indicates that it is a *mitzva* – מִצְוָה... מִצְוָה תֹּאכַל. After the handful has been taken from the meal-offering and burned on the altar, it is a positive *mitzva* for the priests to eat the remainder of the offering (Rambam *Sefer Avoda*, *Hilkhot Ma'aseh HaKorbanot* 10:2).

What two manners are there – מאי תרי גוויי איכא – One could suggest that according to the opinion that in general the fulfillment of mitzvot is achieved only when one has intention to fulfill them, there is a very simple way of explaining the clause concerning the meal-offering: If it is eaten with intention to fulfill the mitzva, then it is permitted; otherwise it would be prohibited due to the general prohibition against benefiting from consecrated items. The *Keren Ora* suggests that the Gemara did not raise this option because even if in general one requires intention for the fulfillment of mitzvot, this might not apply to the consumption of sacred foods. The reason for this would be that their consumption by the priesthood is referred to as being given “for anointment” (Numbers 18:8), which the Gemara in *Zevahim* interprets elsewhere as meaning that it is to be eaten in grandeur, as kings eat. As such, it is possible that when eating it the priests are not required to focus on the fact that doing so is a mitzva but instead may eat it for their own purposes; provided they eat it with appetite, they fulfill what is required of them. Another resolution can be offered based on the opinion of *Tosafot* and *Ran* in tractate *Pesahim*. They explain that mitzvot that require one to eat never require specific intent to fulfill the mitzva, since the benefit of eating perforce defines the act as one of intention.

One who eats through an act of excessive eating on Yom Kippur – האוכל אכילה גסה ביום הכיפורים – From the statement of Reish Lakish alone it would appear that the reason for the exemption is because the prohibition against eating on Yom Kippur is expressed by the Torah as one of affliction, which suggests that only acts that alleviate one's affliction are prohibited. Therefore, excessive eating, which causes one discomfort, should not be prohibited. This is the interpretation of Rabbi Avraham min HaHar. Accordingly, although excessive eating might be considered an unusual act of eating, it certainly has the legal status of an act of eating, and therefore one who eats forbidden foods in such a manner would be liable for doing so. The Meiri disagrees and claims that Reish Lakish's teaching is not unique to Yom Kippur; rather, it is a principle that an excessive act of eating does not have the legal status of an act of eating. Therefore, it applies to all cases in which an act of eating is necessary. This is also the opinion of the *Maggid Mishne* and the *Ran*. Accordingly, even if one were to eat forbidden foods through an act of excessive eating, one would be exempt.

Tosafot note that the Gemara states elsewhere that one who eats the Paschal lamb through an act of excessive eating does fulfill one's obligation, even though doing so is not the proper way to fulfill the mitzva. This would appear to imply, contrary to the Gemara here, that an act of excessive eating does have the legal status of an act of eating. To resolve this difficulty, *Tosafot* differentiate between two levels of excessiveness. The Gemara here discusses the case of one who has eaten to the point at which eating anything else would be repulsive to him. At that point, any further eating does not have the legal status of an act of eating; one in that state would not fulfill his obligation to eat the Paschal lamb. The Gemara that states that one does fulfill one's obligation of eating the Paschal lamb concerns an earlier stage, where one has already eaten to satiation, but further eating is still not repulsive. Eating in this manner, while inappropriate for the Paschal lamb, is certainly considered an act of eating.

The Ramban suggests a different distinction. The Gemara concerning the Paschal lamb does not actually discuss a case of excessive eating at all; rather, it concerns the motivation for eating the offering and discusses the case of one who, although he has still not achieved satiation, eats the Paschal lamb as part of an attempt to gorge himself. This is apparent from the precise formulation of the Gemara there, which states that he ate the Paschal lamb: For the stage of gorging. The Ramban offers an additional resolution that since the mitzva of the Paschal lamb is primarily fulfilled through its sacrifice and not through its consumption, the requirement to eat does not demand the same strict standards for an act of eating that apply elsewhere, and therefore even an act of excessive eating is sufficient. A similar approach is also suggested by *Tosafot Yeshanim*.

בשלמא לרבא, דאמר הא מני רבנן היא – הכא הכי קאמר: “מצות תאכל במקום קדוש” מצוה. שבתחלה היתה עליו בכלל היתר, רצה – אוכלה, רצה – אינו אוכלה. (נאסרה, חזרה והותרה, יכול תחזור להיתרה הראשון) – רצה אוכלה, רצה אינו אוכלה.

רצה אינו אוכלה?! והכתיב “ואכלו אתם אשר כפר בהם” מלמד שהכהנים אוכלים ובעלים מתכפרין!

אלא: רצה – הוא אוכלה, רצה – כהן אחר אוכלה, תלמוד לומר “מצות תאכל במקום קדוש” – מצוה.

אלא לרב יצחק בר אבדימי, דאמר אבא שאול היא – הכא מאי תרי גוויי איכא?

וכי תימא: רצה – לתאבון אוכלה, רצה – אכילה גסה אוכלה, אכילה גסה מי שמה אכילה? והאמר ריש לקיש: האוכל אכילה גסה ביום הכיפורים – פטור מלא תענה!

The Gemara asks: Granted, according to Rava, who said: In accordance with whose opinion is this *baraita*? It is in accordance with the opinion of the Rabbis; according to him, here, in the first clause, this is what the *baraita* is saying: “It shall be eaten unleavened in a sacred place” indicates that it is a mitzva for the priest who prepares the offering to eat it himself. As, initially, before the flour was consecrated, it was among all other foods that are permitted to him: If he wishes, he may eat it, and if he wishes, he may choose not to eat it. When the flour was consecrated, it became forbidden to him, and then once a handful was brought on the altar, it reverted from its forbidden status and became permitted to him. One might have thought that it would revert to its original permitted status, so that if he wishes, he may eat it, and if he wishes, he may choose not to eat it.

The Gemara interjects that the logic of this last statement seems implausible: Could it be that if he wishes, he may choose not to eat it? But isn't it written: “And they shall eat those things through which atonement is attained” (Exodus 29:33), which teaches that the priests eat portions of the offering and by their doing so the owners who brought the offering attain atonement?²¹ Clearly, then, the eating of the offerings is not volitional.

Rather, the *baraita* should be understood as saying: One might have thought that if he wishes, he may eat it, and if he wishes, another priest may eat it; therefore, the verse states: “It shall be eaten unleavened in a sacred place” (Leviticus 6:9), to teach that it is a mitzva for the priest who prepares the offering to eat it himself. This explanation of the first clause of the *baraita* is entirely consistent with Rava's explanation of the latter clause concerning the mitzvot of levirate marriage. In his opinion, both clauses demonstrate that there is a mitzva to perform an action in a case where one might have thought there was none.

However, according to Rav Yitzhak bar Avdimi, who said that the *baraita* is in accordance with the opinion of Abba Shaul and explained the *baraita* accordingly as teaching the correct manner in which the mitzva is to be performed, here, in the first clause concerning the meal-offering, what two manners of eating are thereⁿ of which one would be prohibited?

And if you would say that the *baraita* might refer to two types of eating and is saying: One might have thought that if he wishes he may eat it with an appetite, and if he wishes he may eat it though an act of excessive eating, forcing himself to eat despite already being fully satiated; perforce this is not correct, as does excessive eating have the legal status of an act of eating? Didn't Reish Lakish say: One who eats through an act of excessive eating on Yom Kippur^{NH} is exempt from the punishment of *karet* indicated in the verse: “For whatever soul it be that shall not be afflicted in that same day shall be cut off from his people” (Leviticus 23:29)? From this it is apparent that excessive eating does not have the legal status of an act of eating.

HALAKHA

The priests eat and the owners attain atonement – הכהנים האוכלים ובעלים מתכפרין: There is a positive mitzva for the priests to eat the meat of sin-offerings and guilt-offerings, and through their doing so the owners of those offerings attain atonement. Similarly, the consumption of other offerings by the priests is also a positive mitzva (Rambam *Sefer Avoda, Hilkhoh Ma'aseh HaKorbanot* 10:1).

Excessive eating on Yom Kippur – ביום הכיפורים: If

one eats excessively on Yom Kippur, e.g., if one continues to eat in addition to that which he ate prior to the onset of Yom Kippur to the point that he is repulsed by his food, he is exempt. Some rule that he would still be liable for eating sweet foods, since one continues to have an appetite for such foods even after one is fully satiated (Rema, citing *Kol Bo*). However, even for such foods, if one reached a point where he found even them to be repulsive, he would be exempt (*Bah*; Rambam *Sefer Zemanim, Hilkhoh Shevitah Asor* 2:7; *Shulhan Arukh, Oraḥ Hayyim* 612:6).

אֶלֶּא: רָצָה – מִצָּה אוֹכְלָהָ, רָצָה – חֶמֶץ אוֹכְלָהָ,

The Gemara therefore suggests a different interpretation of the *baraita* that is consistent with Rav Yitzhak's opinion: **Rather**, say the *baraita* is referring to two different manners in which the meal-offering was prepared: **If he wishes he may eat it unleavened, and if he wishes he may eat it leavened.**

וְהַכְּתִיב "לֹא תֹאֲפֶה חֶמֶץ חֶלֶקֶם", וְאָמַר רִישׁ לְקִישׁ: וְאִפְּלוּ חֶלֶקֶם לֹא תֹאֲפֶה חֶמֶץ! אֶלֶּא: רָצָה – מִצָּה אוֹכְלָהָ, רָצָה – חֶלֶט אוֹכְלָהָ.

The Gemara interjects that the logic of this last statement seems implausible: Could it be that if he wishes, the offering could be leavened? **But isn't it written: "Their portion shall not be baked leavened"** (Leviticus 6:10),^H and Reish Lakish said that both the handful brought on the altar and even the priest's portion shall not be baked leavened? **Rather**, the *baraita* should be understood as saying: One might have thought that if **he wishes he may eat it unleavened**, and if **he wishes he may eat it even if it was prepared by being boiled.**^H Therefore, the verse taught that one must eat it unleavened. Understood in this way, this clause of the *baraita* is also consistent with Rav Yitzhak's opinion.

הֲאִי חֶלֶט הֵיכִי דְמִי? אִי מִצָּה הִיא – הָא מִצָּה הִיא, וְאִי לֹא מִצָּה הִיא – "מִצּוֹת" אָמַר רַחֲמָנָא!

The Gemara asks: With regard to **this possibility of eating the meal-offering boiled, what are the circumstances**, i.e., how is it classified? **If it is considered to be unleavened** because it is presumed that the flour never managed to rise before it was cooked, **then it is unleavened** and there is no reason to prohibit its use; **and if it is not considered to be unleavened** because it is presumed that the flour managed to rise before it was cooked, then it is certainly disqualified from use because **the Merciful One states that the offering must be "unleavened"** (Leviticus 10:12).^N How, then, could one ever have questioned whether it is permitted to eat the meal-offering if it was boiled?

לֹא, לְעוֹלָם אֵימָא לָךְ מִצָּה הִיא, וְלִהְיֵי תִנְיָא בֵּיה קָרָא – לְעֵבֶב.

The Gemara explains: **No; actually, I could say to you that the boiled meal-offering is considered to be unleavened, and nevertheless it is disqualified because it is for this very reason that the verse repeated the requirement that it be unleavened, in order to invalidate a meal-offering that was boiled.**

אֶלֶּא חֶלֶט מִצָּה הִיא דְקָאֻמְרִין, לְמֵאִי הִלְכְּתָא? לֹאֲמַר שְׂאָדָם יוֹצֵא בֶּה יְדֵי חוֹבָתוֹ בְּפֶסַח, אִךְ עַל פִּי דְחֻלְטִיָּה מְעִיקָרָא, כִּיּוֹן דְּהָדָר אֶפְיֵיה בְּתִנּוּר – "לֶחֶם עוֹנִי" קָרִינָא בֵּיה, וְאָדָם יוֹצֵא בֶּה יְדֵי חוֹבָתוֹ בְּפֶסַח.

The Gemara asks: **But if boiled flour is invalid as a meal offering, then with regard to this statement that we said that boiled flour is unleavened, for what halakha is it relevant?** The Gemara answers: It is to say that a person fulfills his obligation with it on Passover. This is because **even though he initially boiled it, since he subsequently baked it in an oven, it is called "bread of affliction"** (Deuteronomy 16:3),^N and therefore a person fulfills his obligation with it on Passover.

מִתְנִי' הַחֹלֵץ לִיבְמִתּוֹ – הֲרֵי הוּא בְּאֶחָד מִן הָאֲחִין לְנִחְלָה, וְאִם יֵשׁ שָׁם אָב – נִכְסִים שֶׁל אָב. הַכּוֹנֵס אֶת יְבִמְתּוֹ זָכָה בְּנִכְסִים שֶׁל אָחִיו. רַבִּי יְהוּדָה אוֹמֵר: בֵּין כֶּךָ וּבֵין כֶּךָ, אִם יֵשׁ שָׁם אָב – נִכְסִים שֶׁל אָב.

MISHNA One who performs *halitza* with his *yevama* is like any one of the other brothers with respect to the inheritance^H of the deceased brother's estate, i.e., each of the brothers takes an equal share of the inheritance. **And if there is a father of the deceased, who is still alive, the property of the deceased belongs to the father.** One who consummates levirate marriage with his *yevama*^H thereby acquires his deceased brother's property solely for himself. **Rabbi Yehuda says: In either case, whether he consummated the levirate marriage or performed *halitza*, if there is a father who is still alive, the property belongs to the father.**

גַּמ' פְּשִׁיטָא! סְלָקָא דַּעְתָּךְ אֲמִינָא: חֲלִיצָה בְּמָקוֹם יְבוּם קִיּוּמָא, וְנִשְׁקוּל בּוֹלְהוּ נִכְסֵי, קָא מְשַׁמַּע לֵן.

GEMARA The Gemara asks with regard to the opening clause of the mishna: The fact that one who performs *halitza* does not gain any special rights to the inheritance of the deceased brother is obvious; why did the mishna teach it? The Gemara answers: **It could enter your mind to say that the *halitza* takes the place of the levirate marriage and therefore the brother who performs *halitza* should take all the property in the same way as one who consummates the levirate marriage. Therefore, the mishna teaches us that this is not the case.**

לֹא תֹאֲפֶה חֶמֶץ – חֶלֶקֶם: Although the priests are permitted to eat the remainders of the meal-offerings together with other foods prepared in any manner, it is nevertheless prohibited to eat them leavened. If the remainders of the meal-offerings became leavened, the priests responsible for doing so would transgress a negative mitzva and receive lashes. This is in accordance with the opinion of Reish Lakish (Rambam *Sefer Avoda*, *Hilkhot Ma'aseh HaKorbanot* 12:14).

Boiled unleavened bread – מִצָּה חֻלְטָה: Flour scalded in boiling water and then baked is regarded as unleavened, and consequently one could fulfill one's obligation to eat *matza* on Passover by eating it. However, nowadays, no one knows how to scald the flour with enough speed and care to ensure it does not rise and become leavened. Therefore, flour boiled in water is considered to be leavened and is forbidden (*Tur*, citing the *ge'onim*; Rambam *Sefer Zemanim*, *Hilkhot Hametz UMatza* 6:6; *Shulhan Arukh*, *Orah Hayyim* 454:3).

The status of one who performs *halitza* is like any one of the brothers with respect to the inheritance – הַחֹלֵץ דִּינוֹ בְּאֶחָד – תְּאֵחִים לְנִחְלָה: One who performs *halitza* with his *yevama* is like any one of the other brothers with respect to the inheritance of the deceased brother's estate. Each of the brothers takes an equal share of the inheritance. If the father is still alive, then he alone inherits from his son. The Rema notes that even if the *yavam* wishes to consummate the levirate marriage but the *yevama* refuses him, he still does not attain any rights to the deceased brother's estate. In some communities the custom has developed that the one who performs *halitza* receives half of the brother's estate (*Shulhan Arukh*, *Even HaEzer* 163:2).

One who consummates levirate marriage with his *yevama* – הַכּוֹנֵס אֶת יְבִמְתּוֹ: One who consummates levirate marriage with his *yevama* thereby acquires his deceased brother's property and any property that the brother was already due to inherit at the time of his death. However, he does not gain the rights to inherit the property that his brother would have inherited, were he still alive, if it only becomes available after his brother's death. This is in accordance with the opinion of the Rabbis (Rambam *Sefer Mishpatim*, *Hilkhot Nahalet* 3:7; *Shulhan Arukh*, *Even HaEzer* 163:1).

NOTES

מִצּוֹת אָמַר רַחֲמָנָא – The Merciful One states "unleavened" – Rashi claims the Gemara is citing the verse: "And eat it unleavened beside the altar" (Leviticus 10:12), which, although it concerns only one specific type of meal-offering, is understood to be true for all meal-offerings (see *Tosafot*). Other commentaries suggest that the Gemara is not citing a verse but is referring to the *halakha* that is established from the verse previously cited by the Gemara: "Their portion shall not be baked with leaven" (Leviticus 6:10), which teaches the requirement that all meal-offerings must be unleavened (*Tosafot Yeshanim*). The Rashba questions why, according to Rashi's understanding, there is a need for a verse to teach the requirement that the meal-offering be unleavened, given that there is already another verse prohibiting one from baking a leavened meal-offering. He explains that the additional verse is required to emphasize that it is not sufficient if the meal-offering is not leavened; rather, it must be baked such that it is clearly unleavened.

Bread of affliction – לֶחֶם עוֹנִי: Some commentaries explain that by describing the *matza* that one is required to eat on Passover as bread of affliction, the Torah indicates that it should be of an inferior quality, similar to the bread eaten by the poor. When *matza* is boiled its texture is enhanced, and it is no longer similar to the bread eaten by the poor (Razah and Ra'avad; see Rashi on *Pesahim* 36b). Others explain that dough boiled in water cannot be classified as bread (Rabbeinu Yehonatan of Lunel on *Pesahim* 36b). However, if it is baked again in an oven its original texture is restored, and in that case it may be used for the mitzva.

Since he caused her to forfeit the possibility of levirate marriage – הואיל ואפסדה מיבום: Some commentaries question why one who performs *halitza* should be penalized. They note that *halitza* is performed only after it is clarified that none of the brothers are willing to consummate the levirate marriage. If so, the one who ultimately performs *halitza* is not preventing her from consummating the levirate marriage, as that possibility had already been ruled out. They explain that the case here must be one in which a younger brother performed *halitza* before his older brothers had been given the opportunity to consummate the levirate marriage. As such, his *halitza* actually precluded the possibility of her consummating the levirate marriage with the brothers he preempted, and therefore there is reason to assume that he should be penalized (see Arukh LaNer and Yosef Lekah).

It is written: He shall succeed in the name of his dead brother, but not in the name of his father – יקום על שם אחיו כתיב ולא על שם אביו: The underlying principle indicated by this inference is that despite the fact that he consummated the levirate marriage, the *yavam* does not become entitled to the portion of his father's estate that would have been awarded to his deceased brother were he still alive. Therefore, according to Rabbi Yehuda, if the father is still alive at the time of the brother's death then the father takes full ownership of his estate, and when the father subsequently dies, the *yavam* who consummated the levirate marriage has no more claim to the estate than any of the other brothers. Many commentaries assume that this principle is similarly true according to the Rabbis. They explain that the Rabbis dispute Rabbi Yehuda's opinion only in their claim that even if the father is still alive when the brother dies, the *yavam* inherits the brother's estate at that time. However, even the Rabbis agree that when the father subsequently dies, the *yavam* does not become entitled to the portion of his father's estate that would have been awarded to his deceased brother (Rambam; Ramban). Other commentaries claim that the Rabbis do in fact dispute this principle and that according to them, when a *yavam* consummates the levirate marriage he becomes entitled not only to the estate of his deceased brother as it exists at that time, but also to his brother's inheritance rights, which will become germane only at a later date. Therefore, when the father subsequently dies, the *yavam* does receive both the portion that is due to him as a son, and the portion that would have been awarded to his brother (see *Yam shel Shlomo*).

HALAKHA

The father of the deceased take precedence over all the father's descendants – האב קודם לכל יוצאי חלציו: If one dies without descendants, then his father is entitled to his inheritance. If the father is not alive, the inheritance passes on to the father's descendants, e.g., the deceased's brothers; if they are not alive, the inheritance passes on to their descendants (Rambam *Sefer Mishpatim*, *Hilkhot Nahalot* 1:2; *Shulhan Arukh*, *Hoshen Mishpat* 276:1).

אי הכי הרי הוא באחד מן האחים? אינו אלא באחד מן האחים מיבעי ליה!

אלא, סלקא דעתך אמינא: הואיל ואפסדה מיבום לקנסיה, קא משמע לן.

אם יש שם אב. דאמר מר: אב קודם לכל יוצאי ירכו.

הבונים את יבמתו וכו'. מאי טעמא? יקום על שם אחיו אמר רחמנא. והרי קם.

רבי יהודה אומר וכו'. אמר עולא: הלכה ברבי יהודה. וכן אמר רבי יצחק נפחא: הלכה ברבי יהודה.

ואמר עולא ואיתימא רבי יצחק נפחא: מאי טעמא דרבי יהודה – דכתיב ויהיה הבכור אשר תלד, בבכור: מה בכור אין לו בחי האב – אף האי נמי אין לו בחי האב.

אי מה בכור נוטל פי שנים לאחר מיתת האב – אף האי נוטל פי שנים לאחר מיתת האב!

מידי יקום על שם אביו? כתיב: יקום על שם אחיו כתיב, ולא "על שם אביו"!

The Gemara asks: If so, that the mishna's point is to teach that by performing *halitza* one is not afforded any additional rights to the inheritance, why is the mishna formulated as: He is like any one of the other brothers, placing the emphasis on what he gains? It should have instead taught: He is still only like one of the other brothers, which would emphasize the mishna's point that by performing *halitza* he does not gain any additional rights.

Rather, the mishna needs to teach the opening clause in this manner because it could enter your mind to say that since by performing *halitza* with his *yevama* he caused her to forfeit the possibility of consummating the levirate marriage,^N he should be penalized and should forfeit any entitlement to his brother's property. Therefore the mishna teaches us that this is not so.

§ The mishna states: If there is a father of the deceased, who is still alive, the property of the deceased belongs to the father. The Gemara explains: As the Master said with regard to the laws of inheritance (*Bava Batra* 115a): A father of the deceased takes precedence over all the father's descendants.^H Therefore, since the father is still alive, the brothers do not inherit at all.

The mishna states: One who consummates levirate marriage with his *yevama* thereby acquires his deceased brother's property. The Gemara asks: What is the reason for this? The Merciful One states in the Torah: "He shall succeed in the name of his dead brother" (Deuteronomy 25:6), and he has succeeded him by marrying his wife; consequently, he succeeds him by acquiring his property as well.

§ The mishna continues by citing an opposing opinion. Rabbi Yehuda says: In either case, whether he consummated levirate marriage or performed *halitza*, if there is a father who is still alive, the property belongs to the father. The Gemara cites a ruling on this dispute: Ulla said: The *halakha* is in accordance with the opinion of Rabbi Yehuda. And similarly, Rabbi Yitzhak Nappaha said: The *halakha* is in accordance with the opinion of Rabbi Yehuda.

And Ulla said, and some say that it was Rabbi Yitzhak Nappaha who said: What is the reason for the opinion of Rabbi Yehuda? As it is written: "And it shall be that the firstborn that she bears shall succeed in the name of his dead brother" (Deuteronomy 25:6). The term "firstborn" is understood to be a reference to the *yavam*. By referring to him in this way the Torah indicates that his rights to his brother's estate are like those of a firstborn child's rights to his father's estate: Just as a firstborn has no rights to any of his father's estate during the lifetime of the father, and he may take his double portion only upon the father's death, so too, this *yavam* as well has no rights to any of his brother's estate during the lifetime of the father.

The Gemara asks: If there is truly a comparison between the *yavam* who consummated the levirate marriage and a firstborn, then one should also say that just as the firstborn takes a double portion of his father's estate after the death of the father, so too, this *yavam* should become entitled to take a double portion of the father's estate after the father's death, i.e., the portion due to him as a son, and that portion that would have been awarded to his brother. However, this is not the case; if the *yavam* is not actually the father's firstborn then he receives only an equal portion of the inheritance together with the other brothers.

The Gemara explains: Is it written in the Torah: He shall succeed in the name of his father? No, it is written: "He shall succeed in the name of his dead brother," which indicates that he succeeds his brother but not in the name of his father,^N i.e., the Torah never granted him any special entitlement to his father's estate, and so he should not receive a double portion of it.

Does the Merciful One make levirate marriage dependent upon inheritance – **מִיָּדֵי יְבוּם בְּנִחְלָה תִּלְהֶי רַחֲמָנָא** – The Gemara elsewhere (see 17b) does appear to link the mitzva of levirate marriage with the ability to inherit the deceased brother's property. However, in truth, there is a clear distinction between the two discussions. The Gemara that links the two concerns the question of which fraternal relationships qualify for the mitzva to apply and establishes that only brothers who can inherit from one another are obligated in the mitzva of levirate marriage toward each other's wives. The Gemara here that states that the mitzva is not dependent on whether the *yavam* can inherit the deceased brother's property is discussing a case where the *yavam* has the appropriate fraternal relationship, but in the present circumstances he will not actually inherit from the deceased brother because the father is still alive. In summary, the relationship which creates the possibility of inheritance must exist in order for the mitzva to apply, but there is no need for the *yavam* to actually inherit from his brother (*Tosefot HaRosh*; *Tosafot Yeshanim*).

Tanna – תַּנָּא: The *tanna* referred to here is not a Sage from the tannaitic period. Rather, the term refers to those who memorized large numbers of *mishnayot* and *baraitot* to be able to quote them for the Sages who were engaged in analysis. Occasionally, the Sage had to emend the versions of these sources that had become corrupted or that represented minority opinions that had been rejected.

It is obvious, as in a dispute between one and many, etc. – פְּשִׁיטָא, יַחֲיד וְרַבִּים וכו' – The early commentaries point out that apparently it is not so obvious that the *halakha* should be decided in accordance with the opinion of the Rabbis because the Gemara itself cites many Sages who in fact ruled in accordance with the opinion of Rabbi Yehuda, and many more rulings to this effect are cited in the Jerusalem Talmud. They explain that what truly troubled Rav Nahman was not the actual ruling in accordance with the opinion of the Rabbis but the roundabout formulation of the *baraita*: If the *halakha* is indeed in accordance with the opinion of the Rabbis, why didn't it simply say so explicitly, since the reason to rule in accordance with their opinion is not because of some issue with Rabbi Yehuda's opinion but simply because they represent the majority (*Rashba*; *Ritva*).

אימא: היכא דליכא אב דלשקול נחלה – תתקיים מצות יבום, היכא דאיכא אב, [דלא] שקיל נחלה – לא תתקיים מצות יבום!

The Gemara asks: Since Rabbi Yehuda holds that the *halakha* that the *yavam* inherits from his brother, which is stated in the verses describing levirate marriage, applies only when the father is no longer alive, perhaps the other *halakhot* in those verses also apply only when the father is no longer alive, and accordingly one should say: **When there is no father who is still alive, which means that the *yavam* takes the inheritance, only then should the mitzva of levirate marriage apply, but when there is a father who is still alive, which means that the *yavam* does not take the inheritance, in that case the mitzva of levirate marriage should not apply.**

מידי יבום בנחלה תלה רחמנא? יבומי מבמי, ואי איכא נחלה – שקילי, ואי לא – לא שקילי.

The Gemara rejects the possibility of saying this: **Does the Merciful One make the mitzva of levirate marriage dependent upon inheritance?**^N Certainly not; rather, in all cases the *yavam* should consummate the levirate marriage, and then if there is an inheritance to which he is entitled, he takes it, and if not, he does not take it.

יתיב רבי חנינא קרא קמיה דרבי ינאי, ויתיב וקאמר: הלכה ברבי יהודה. אמר ליה: פוק קרי קרייך לברא, אין הלכה ברבי יהודה.

Rabbi Hanina Kara, the Bible expert,^P was sitting before Rabbi Yannai, and he was sitting and saying: **The *halakha* is in accordance with the opinion of Rabbi Yehuda.** Rabbi Yannai said to him: **Leave the study hall and recite your verses outside, as you are incorrect in your ruling; in fact, the *halakha* is not in accordance with the opinion of Rabbi Yehuda.**

תני תנא קמיה דרב נחמן: אין הלכה ברבי יהודה. אמר ליה: אלא קמאן, ברבנן? פשיטא, יחיד ורבים הלכה ברבים!

In another incident, a *tanna*^N who would recite *baraitot* in the study hall taught a *baraita* before Rav Nahman: **The *halakha* is not in accordance with the opinion of Rabbi Yehuda.** Rav Nahman said to him: **But then it follows that in accordance with whose opinion is the *halakha*?** It is the opinion of the Rabbis. The Gemara asks: But this fact is obvious, as in a dispute between one individual Sage and many^N other Sages, the *halakha* is always decided in accordance with the opinion of the many.

אמר ליה: אסמיה? אמר ליה: לא, אתי "הלכה" אתנייד, ומוקשה הוא דאקשי לך, ואפכת, ולמאי דאפכת – שפיר אפכת.

The *tanna* said to him: Are you saying that this statement in the *baraita* is unnecessary and so I should remove that ruling from the *baraita* when I recite it in the future? Rav Nahman said to him: **No, do not remove it, as although the statement is unnecessary, it is correct.** Rav Nahman explained further: It must be that originally the *baraita* that you were taught stated: **The *halakha* is in accordance with the opinion of Rabbi Yehuda, and that ruling was difficult for you** because you knew that the *halakha* is always decided in accordance with many, and so you reversed the statement of the *baraita* to say, as you presently recited it, that the *halakha* is not in accordance with the opinion of Rabbi Yehuda. And with regard to the manner in which you reversed it, you reversed it well, and therefore you should leave it in its current form.

מתני' החולץ ליבמתו – הוא אסור בקרובותיה, והיא אסורה בקרוביו.

MISHNA In the case of one who performs *halitza* with his *yevama*, by rabbinic decree it is as though she had been married to him and then he divorced her. Consequently, he is forbidden to engage in relations with her relatives^H and she is forbidden to engage in relations with his relatives.

PERSONALITIES

Rabbi Hanina Kara, the Bible expert – רבי חנינא קרא: A second-generation *amora* in Eretz Yisrael, Rabbi Hanina was a disciple of Rabbi Hanina bar Hama, Rabbi Hanina the Great, and Rabbi Yannai. Apparently, Rabbi Hanina not only taught young

children but was also a Bible expert, which is why he was called *Kara*, meaning: The reader. He is mentioned in the Talmud and the midrash in discussions with his two teachers, both on matters relating to his work and on other halakhic matters.

HALAKHA

One who performs *halitza* with his *yevama* is forbidden to engage in relations with her relatives – החולץ ליבמתו: One who performs *halitza* with his *yevama* is forbidden to her relatives, i.e., her mother, her mother's mother,

etc., since by rabbinic decree it is considered as though she was actually married to him and then he divorced her. Similarly, she is forbidden to his relatives (Rambam *Sefer Nashim*, *Hilkhot Yibbum VaHalitza* 1:13; *Shulhan Arukh*, *Even HaEzer* 162:3).

HALAKHA

He is permitted to a relative of a rival wife of his *ḥalutza* – מותר בקרובת צרת חלוצתו: It is permitted to marry a sister or any other relatives of a rival wife of one's *ḥalutza* (Rambam *Sefer Nashim*, *Hilkhot Yibbum Vaḥalitza* 1:13; *Shulḥan Arukh*, *Even HaEzer* 162:4).

He is forbidden to engage in relations with a rival wife of a relative of his *ḥalutza* – אסור בצרת קרובת – חלוצתו: If one performed *ḥalitza* with his *yevama*, and her sister or other relative was married to another brother, who also died, such that the relative and her rival wife happened before him for levirate marriage, then just as the relative of the *ḥalutza* is forbidden to him, so too, her rival wife is forbidden to him, and they must perform *ḥalitza* but may not consummate the levirate marriage. This is in accordance with the ruling of the Rambam and most of the commentaries (Rambam *Sefer Nashim*, *Hilkhot Yibbum Vaḥalitza* 6:20; *Shulḥan Arukh*, *Even HaEzer* 162:5, 174:3).

הוא אסור באמה, ובאם אמה, ובאם אביה, ובבתה, ובבת בתה, ובבת בנה, ובאחותה בזמן שהיא קיימת, והאחין מותרין.

והיא אסורה באבי, ובאבי אבי, ובבנו, ובבן בנו, באחיו, ובבן אחיו.

מותר אדם בקרובת צרת חלוצתו, ואסור בצרת קרובת חלוצתו.

גמ' איבעיא להו: גזרו שניות בחלוצה או לא?

Accordingly, he is forbidden to engage in relations with her mother,^N and with her mother's mother, and with her father's mother, and with her daughter, and with her daughter's daughter, and with her son's daughter, and with her sister while his *yevama* is still alive. However, the other brothers who did not perform *ḥalitza* are permitted to her relatives.

And she is forbidden to engage in relations with his father,^N and with his father's father, and with his son, and with his son's son, and with his brother, and with his brother's son.

The mishna states an additional principle: A man is permitted to engage in relations with a relative of a rival wife of his *ḥalutza*,^H i.e., his *yevama* with whom he performed *ḥalitza*. Since he did not perform *ḥalitza* with her, she is not regarded as though she had actually been married to him. However, he is forbidden to engage in relations with a rival wife of a relative of his *ḥalutza*,^{HN} i.e., in addition to being forbidden to the relatives of his *ḥalutza*, he is also forbidden to their rival wives.

GEMARA A dilemma was raised before the Sages: In addition to the Torah prohibition against engaging in relations with one's wife's close relatives, the Sages decreed that it is also prohibited to engage in relations with one's wife's secondary relatives, i.e., those who are less closely related and so are permitted by Torah law. Since the Sages decreed that a *ḥalutza* is to be regarded as though she had actually been married to the one who performed *ḥalitza*, such that her close relatives are forbidden to him, did they also decree that the prohibition of secondary forbidden relationships should also apply in the case of a *ḥalutza*, or not?

NOTES

He is forbidden to engage in relations with her mother, etc. – הוא אסור באמה וכו': The prohibition against engaging in relations with the relatives of one's wife continues to remain in force even should the couple divorce. By Torah law this prohibition applies only in a case of a true marriage. However, by rabbinic law the prohibition is also applied to a *yavam* and *yevama* by virtue of the levirate bond between them, which, in certain respects, is akin to a marriage. It is explained in the Jerusalem Talmud that although the levirate bond is sufficient to generate a prohibition while the bond exists, nevertheless, unlike a true marriage, that prohibition does not continue once the bond is dissolved. Therefore, if the *yevama* dies, the prohibition ends immediately and the relatives of the *yevama* are again permitted to all of the brothers; this is also true in a case in which one of the brothers performs *ḥalitza*, since *ḥalitza* dissolves the levirate bond. However, in that case, the Sages decreed that with respect to the brother who actually performed *ḥalitza*, the prohibition continues. This is due to the fact that *ḥalitza* is viewed as equivalent to a divorce, and therefore the Sages decreed that with respect to the brother who actually performed *ḥalitza* the prohibition continues as though he had actually been married to the *yevama* and then divorced her.

And she is forbidden to engage in relations with his father, etc. – והיא אסורה באבי וכו': The commentaries note that some of the relatives listed in the mishna are forbidden irrespective of the fact that the *yavam* performed *ḥalitza*. For example, the *yevama* is forbidden to the father of the one who performed *ḥalitza* by virtue of the fact that he is also the father of her deceased husband, and therefore she is forbidden to him as his daughter-in-law. Therefore, while conceding that in fact it was not necessary to list all of the relatives in the mishna, the commentaries explain that for the sake of completeness the mishna chose to list them all (*Gilyon Maharsha*, citing Responsa of Rabbi Shmuel Abuhav).

He is forbidden to engage in relations with a rival wife of a relative of his *ḥalutza* – אסור בצרת קרובת חלוצתו: Rashi describes

the case very simply: If the *ḥalutza* had a relative, e.g., a sister, and that relative was married to a man who had another wife, then that wife would also be forbidden. However, the Ramban, the Rashba, and many others question Rashi's explanation (see *Tosafot* on 41a): If Rashi is correct, it emerges that the *halakha* is stricter with regard to the relatives of a *ḥalutza*, who are forbidden by rabbinic decree, than with the relatives who are forbidden by Torah law, since the *halakha* permits one to engage in relations with the rival wives of relatives forbidden by Torah law. Therefore, many of the early commentaries (see the *Halakhot Gedolot*, Rambam, and Rid) explain that the mishna's prohibition applies only in a case in which both the relative and her rival wife are also bound by a levirate bond to the same brother. This could occur if a brother performed *ḥalitza* with his *yavam* and then his brother married a female relative of the first brother's *ḥalutza* and an additional wife, and then he died. The relative and her rival wife would then be bound by a levirate bond to the first brother. Since it is prohibited for the first brother to consummate the levirate marriage with the relative, since she is the relative of his *ḥalutza*, it is also prohibited for him to consummate the levirate marriage with her rival wife.

The *Yam shel Shlomo* defends Rashi's opinion and notes that it would appear that both the Rif and Rabbeinu Hananel also understood this in the same manner. He explains that it is true that according to this opinion a unique stringency exists in the case of a *ḥalutza* but suggests that this is the meaning of the Gemara's question at the end of this *amud*: What is different about this woman, the relative of the rival wife, who is permitted, and what is different about that woman, the rival wife of a relative, who is forbidden? The Gemara explains there that this stringency is necessary because since the case is very complex, people might not appreciate all of the nuances of the case and draw incorrect conclusions from it. To prevent any misunderstanding, the Sages decreed that the rival wife should be forbidden as well, similar to the standard case of a levirate bond with a forbidden relative and a rival wife (see *Arukh LaNer*).

שניות – *ḥalutza* – בחלוצה: Just as the Sages prohibited relations with secondary relatives in the case of relatives who are forbidden by Torah law, they also prohibited relations with secondary relatives in the case of a *ḥalutza*. This is in accordance with the conclusion of the Gemara (Rambam *Sefer Nashim, Hilkhot Yibbum Vaḥalitza* 1:12; *Shulḥan Arukh, Even HaEzer* 162:3).

בערוה דאורייתא גזרו רבנן שניות,
בחלוצה לא גזרו רבנן שניות, או דלמא
לא שנא?

The Gemara presents the sides of the dilemma: Did the Sages decree that the prohibition of secondary forbidden relationships applies only in a case where there is a relative with whom relations are forbidden by Torah law, but in the case of a *ḥalutza*, whose relatives are forbidden only by rabbinic decree, they did not decree that there should be a prohibition of secondary forbidden relationships? Or perhaps the case of a *ḥalutza* is no different,¹¹ and since the basis of the rabbinic prohibition applying to her relatives is that it is considered as though she had actually been married to her *yavam*, the prohibition should extend to her secondary relatives as well?

תא שמע: "הוא אסור באמה ובאם
אמה", ואילו "אם אם אמה" – לא
קתני.

The Gemara suggests: Come and hear a proof from the mishna: A *yavam* is prohibited from engaging in relations with the mother of his *ḥalutza* and with her mother's mother. However, the mishna does not teach that it is prohibited to engage in relations with her mother's mother's mother, which is one of the secondary relationships. This would suggest that the prohibition of secondary relationships does not apply in this case.

דלמא היינו טעמא דלא תני – משום
דקבעי למיתני סיפא "והאחין מותרין",
ואי תנא "אם אם אמה" הוה אמינא:
האחין מותרין דוקא באם אם אמה,
אבל באם אמה ובאמה לא.

The Gemara rejects the proof: Perhaps this is the reason that the mishna does not teach that case, because it needs to teach in the latter clause: However, the other brothers who did not perform *ḥalitza* are permitted to her relatives. And if it had taught the prohibition of her mother's mother's mother in the first clause, I would mistakenly say that the brothers are permitted specifically to her mother's mother's mother, but not to her mother's mother. Therefore, no proof can be adduced from that case of the mishna.

וליתני "אם אם אמה" וליתני "האחין
מותרין" כבולין! קשיא.

The Gemara objects: But if he is forbidden to the great-grandmother, then let it teach: Her mother's mother's mother in the first clause, and then let it teach: The brothers are permitted to all of them, in the latter clause. This would avoid the concern stated above. The fact that the mishna did not do so would suggest that he is not forbidden to the great-grandmother, or any other secondary relatives. The Gemara concludes: Indeed, this is difficult, but still inconclusive.

תא שמע: היא אסורה באבי ובאבי
אביו. קתני מיהא אבי אביו, מאי לאו –
משום חולץ, דהויא לה פלת בנו!

The Gemara suggests: Come and hear another proof from the mishna: She is prohibited from engaging in relations with his father, and with his father's father. The Gemara explains the proof: In any case, the mishna teaches that she is forbidden to his father's father. What, is it not that she is forbidden to him due to the rabbinic decree that it is considered as though she had actually been married to the one who performed *ḥalitza* with her, and therefore she is forbidden to the grandfather because she is considered to be the grandfather's son's daughter-in-law, i.e., the wife of one of the grandfather's grandsons, which is a secondary relationship? If so, the mishna explicitly demonstrates that the prohibition of secondary relationships also applies in the case of a *ḥalutza*.

לא, משום מיתנא, דהויא לה פלת בנו.

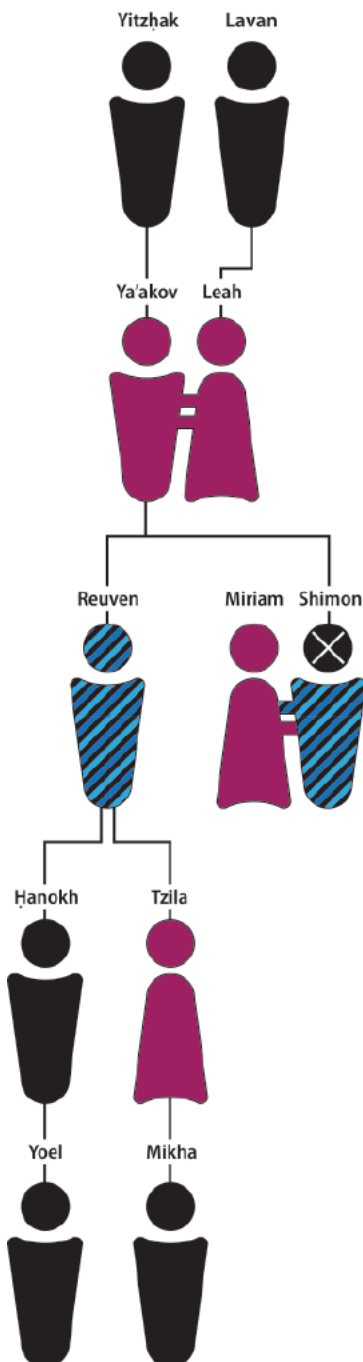
The Gemara rejects the proof: No, she is forbidden to his grandfather due to her previous marriage with the deceased, whose relatives are forbidden to her by Torah law, and it is due to that relationship that she is considered the grandfather's son's daughter-in-law. Therefore, no proof can be adduced from that case of the mishna.

תא שמע: ובבן בנו. מאי לאו – משום
חולץ, דהויא לה (משום) אשת אבי
אביו!

The Gemara suggests: Come and hear another proof from the mishna: And she is prohibited from engaging in relations with his son's son. The Gemara explains the proof: What, is it not that she is forbidden to him due to the rabbinic decree that it is considered as though she had actually been married to the one who performed *ḥalitza* with her, and she is therefore forbidden to his grandson because she is considered to be the wife of that grandson's father's father, which is a secondary relationship? If so, the mishna explicitly demonstrates that the prohibition of secondary relationships also applies in the case of a *ḥalutza*.

BACKGROUND

She is forbidden to his son's son – אסורה בֶּבֶן בְּנוֹ – For example, Reuven and Shimon are the sons of Ya'akov and Leah. Shimon married Miriam and died childless, so that Miriam happened before Reuven for levirate marriage. Reuven performed *halitza* with Miriam. Accordingly, Miriam is forbidden to Reuven's relatives as follows: She is forbidden to Reuven's paternal grandfather, Yitzhak, since she is the daughter-in-law of his son, and she is forbidden to Reuven's maternal grandfather, Lavan, since she is the daughter-in-law of his daughter. She is also forbidden to Yoel and Mikha, the sons of Reuven's son and daughter, respectively. The reason she is forbidden to Yoel is both because it is considered as though she had actually been married to Reuven and therefore she is considered to be the wife of Yoel's paternal grandfather, and also because she was married to Shimon and therefore she was the wife of Yoel's paternal grandfather's brother. She is forbidden to Mikha due to the fact that it is considered as though she had actually been married to Reuven and therefore she is considered to be the wife of Mikha's maternal grandfather, which is a secondary forbidden relationship. However she would not be forbidden due to the fact that she was married to Shimon, because that renders her the wife of the brother of Mikha's maternal grandfather, which is a permitted relationship.



לֹא, מִשּׁוּם מִיתָנָא, וְהוּא לָהּ אִשָּׁת
אָחִי אָבִי אָבִיו.

הָא אַמַּיִמַר מְכַשֵּׁר בְּאִשָּׁת אָחִי אָבִי
אָבִיו!

אַמַּיִמַר מוֹקִי לָהּ בֶּבֶר בְּרָא דְסָבָא.

אִי הָכִי, הֵינּוּ אָחִיו וְבֶן אָחִיו! תָּנָא
אָחִיו מִן הָאָב, וְקִתְנִי אָחִיו מִן הָאִמָּה

תָּא שְׁמַע, דְּתַנִּי רַבִּי חִיָּיא: אַרְבַּע
מִדְּבַרֵי תוֹרָה, וְאַרְבַּע מִדְּבַרֵי סוֹפְרִים.
אָב וּבֶנּוּ, אָחִיו וְבֶן אָחִיו – מִדְּבַרֵי
תוֹרָה, אָבִי אָבִיו וְאָבִי אִמּוֹ, בֶּן בְּנוֹ,
וְבֶן בִּתּוֹ – מִדְּבַרֵי סוֹפְרִים.

קִתְנִי מִיָּהָא אָבִי אָבִיו, מֵאִי לֹא
מִשּׁוּם חוֹלֵץ, וְהוּא לָהּ כֶּלֶת בְּנוֹ!

The Gemara rejects the proof: **No**, she is forbidden to his grandson **due** to her previous marriage with **the deceased**, whose relatives are forbidden to her by Torah law, and it is due to that relationship that **she is considered to be the wife of a brother of that grandson's father's father**, which is also a forbidden secondary relationship. Therefore, no proof can be adduced from that case of the mishna.

The Gemara asks: **But Ameimar rules permissible** the marriage of a man **to the wife of a brother of that man's father's father**. Accordingly, the prohibition in the mishna cannot be due to that relationship.

The Gemara explains: **Ameimar would establish** the mishna's case of: His son's son, as referring to engaging in relations **with a son of a son of the grandfather**. The mishna states that she is forbidden to his father, to his father's father, to his son, and to his son's son. The Gemara assumed that antecedent of the pronoun: His, in the phrase: To his son and to his son's son, is the one who performed *halitza*. As such, the mishna teaches that she is forbidden to the son and grandson of the one who performed *halitza* with her, which are secondary relationships. Ameimar, however, would claim the antecedent of this pronoun is the father's father, which immediately precedes it in the mishna. As such, the mishna is teaching that she is forbidden to the grandfather of the one who performed *halitza* with her, to that grandfather's sons, i.e., the brothers of the deceased, and to the grandfather's sons' sons, i.e., the nephews of the deceased. The *yevama* is forbidden to these relatives by Torah law. Therefore, no proof can be derived from that case of the mishna.

The Gemara challenges this understanding of: His son and his son's son: But if so, these relatives are none other than **his brother and the son of his brother**, who are already explicitly mentioned in the mishna. The Gemara explains: This is not a case of unnecessary repetition because the mishna first **teaches** that she is forbidden to **his paternal half brother** and then **teaches** that she is forbidden to **his maternal half brother** as well.

The Gemara suggests: **Come and hear** a proof from a *baraita* that Rabbi Hiyya taught: Of the relatives who are forbidden to a *halutza*, four are forbidden by Torah law and four by rabbinic law, as follows: **The father of the deceased husband, and his son,ⁿ his brother, and his brother's son** are forbidden by Torah law; **his father's father, and his mother's father, his son's son,^b and his daughter's son** are forbidden by rabbinic law.

In any case, the *baraita* teaches that she is forbidden to **his father's father**. What, is it not that she is forbidden to him **due to** the rabbinic decree that it is considered as though she had actually been married to **the one who performed halitza** with her, and therefore she is forbidden to the grandfather because **she is considered to be the grandfather's son's daughter-in-law**, which is a secondary forbidden relationship? This would prove that the prohibition of secondary relationships applies in the case of a *halutza*.

NOTES

The father and his son, etc. – אָב וּבֶנּוּ וכו' – Most commentaries explain that the phrase: The father and his son, in the *baraita* is referring to the father and son of the one who performed *halitza*. The difficulty with this understanding is that the *baraita* continues to mention the prohibition of the brother of the one who performed *halitza* and the brother's son, even though both the son of the one who performed *halitza* and the son of his brother are forbidden to the *halutza* for the identical reason that they are the sons of her deceased husband's brother. The commentaries concede this point and explain that the mishna wished to organize those forbidden to the *halutza* by their

relationship to the one who performed *halitza*. The Maharam MiRotenburg suggests an explanation that avoids this difficulty. He interprets the reference: His son, not as a reference to the son of the one who performed *halitza* but to the son of the father of the one who performed *halitza*, who is mentioned immediately before. As such, it refers to the paternal half brother of the one who performed *halitza*. He then proceeds to explain that when the *baraita* continues to refer to the brother of the one who performed *halitza*, the reference is to his maternal half brother (*Tosefot HaRosh*).

לֹא, מִשּׁוּם מִיתְנָא, דְּהוּיָא לָהּ בִּלְתָּ
בְּנֹ.

The Gemara rejects the proof: **No**, she is forbidden **due to** her previous marriage with **the deceased**, whose relatives are forbidden to her by Torah law, and it is due to that relationship that **she is considered** the grandfather's **son's daughter-in-law**. Therefore, no proof can be adduced from that case of the *baraita*.

תָּא שְׁמַע: אָבִי אִמּוֹ – מֵאִי לֹא מִשּׁוּם
חוּלְעִי, דְּהוּיָא לָהּ בִּלְתָּ בִּתּוֹ!

The Gemara proceeds to consider whether proof may be adduced from each of the other secondary relationships listed in the *baraita*: **Come and hear** a proof from that which the *baraita* teaches: She is forbidden to **his mother's father**. The Gemara explains the proof: **What, is it not** that she is forbidden to him **due to** the rabbinic decree that it is considered as though she had actually been married to **the one who performed *halitza*** with her, and therefore she is forbidden to the grandfather because **she is considered to be** the grandfather's **daughter's daughter-in-law**, which is a secondary relationship? This would prove that the prohibition of secondary relationships applies in the case of a *halutza*.

לֹא, מִשּׁוּם מִיתְנָא, דְּהוּיָא לָהּ בִּלְתָּ
בִּתּוֹ.

The Gemara rejects the proof: **No**, she is forbidden **due to** her previous marriage with **the deceased**, whose relatives are forbidden to her by Torah law, and it is due to that relationship that **she is considered** the grandfather's **daughter's daughter-in-law**. Therefore, no proof can be adduced from that case of the *baraita*.

תָּא שְׁמַע: וּבֶן בְּנֹ, מֵאִי לֹא מִשּׁוּם
חוּלְעִי, דְּהוּיָא לָהּ אִשְׁתִּי אָבִי אָבִיו!

Come and hear a proof from that which the *baraita* teaches: **And** she is forbidden to **his son's son**. The Gemara explains the proof: **What, is it not** that she is forbidden to him **due to** the rabbinic decree that it is considered as though she had actually been married to **the one who performed *halitza*** with her, and so she is forbidden to his grandson because **she is considered to be the wife of** that grandson's **father's father**, which is a secondary relationship? If so, the *baraita* explicitly demonstrates that the prohibition of secondary relationships applies in the case of a *halutza*.

לֹא, מִשּׁוּם מִיתְנָא, וְהוּיָא לָהּ אִשְׁתִּי
אָחִי אָבִי אָבִיו.

The Gemara rejects the proof: **No**, she is forbidden to his grandson **due to** her previous marriage with **the deceased**, whose relatives are forbidden to her by Torah law, and due to that relationship **she is considered to be the wife of a brother of** that grandson's **father's father**, which is also a forbidden secondary relationship. Therefore, no proof can be adduced from that case of the *baraita*.

וְהָא אֲמַיְמַר מִכְשִׁיר בְּאִשְׁתִּי אָחִי אָבִי
אָבִיו! אֲמַיְמַר מוֹקִים לָהּ מִשּׁוּם חוּלְעִי,
וְקַסְבֵּר גּוֹרֵי שְׁנִיּוֹת בְּחֻלּוּצָה.

The Gemara asks: **But didn't Ameimar rule permissible** the marriage of a man **with the wife of a brother of his father's father**? Accordingly, the prohibition in the mishna cannot be due to that relationship. The Gemara concedes: **Ameimar** would **establish** the mishna's case of: His son's son, as being **due to** the rabbinic decree that it is considered as though she had actually been married to **the one who performed *halitza*** with her, and as such it is evident that **he holds** that the Sages decreed that the prohibition of **secondary forbidden relationships** should apply in the case of a *halutza*.

תָּא שְׁמַע: וּבֶן בְּנֹ, מֵאִי לֹא מִשּׁוּם
חוּלְעִי, דְּהוּיָא לָהּ אִשְׁתִּי אָבִי אִמּוֹ!

The Gemara continues to seek proof for those who disagree with Ameimar: **Come and hear** a proof from that which the *baraita* teaches: **And** she is forbidden to **his daughter's son**. The Gemara explains the proof: **What, is it not** that she is forbidden to him **due to** the rabbinic decree that it is considered as though she had actually been married to the **one who performed *halitza*** with her, and so **she is forbidden** to his grandson because **she is considered to be the wife of** that grandson's **mother's father**, which is a secondary relationship? If so, the *baraita* explicitly demonstrates that the prohibition of secondary relationships applies in the case of a *halutza*.

לֹא, מִשּׁוּם מִיתְנָא, דְּהוּיָא לָהּ אִשְׁתִּי
אָחִי אָבִי אִמּוֹ. וְהָא גַּבִּי שְׁנִיּוֹת דְּעֶרְוָה
לֹא גּוֹרֵי!

The Gemara rejects the proof: **No**, she is forbidden to his grandson **due to** her previous marriage with **the deceased**, whose relatives are forbidden to her by Torah law, and due to that relationship **she is considered to be the wife of a brother of** the grandson's **mother's father**. The Gemara challenges this: **But** the Sages did **not decree** that such a person is included **among** those relatives who are forbidden as **secondary forbidden relationships**.

Rav Tovi bar Kisna – רב טובי בר קיסנא: A second-generation *amora* who lived in Babylonia, Rav Tovi was a disciple of Shmuel, and most of his statements cite his teacher as their source. He is also known as Rav Tavi bar Kisna (*Eiruvin* 104b) and Rav Tavyomi bar Kisna (*Menaḥot* 70a).

אֵלָא לֹא מְשֻׁם חוֹלֵץ, וְשָׁמַע מִיְנָה:
גִּזְרוּ שְׁנֵי חֲלוּצָה, שָׁמַע מִיְנָה.

”מוֹתֵר אָדָם” וכו'. אָמַר רַב טוֹבִי בֶר
קִיסְנָא אָמַר שְׁמוּאֵל: הֵבֵא עַל צֶרֶת
חֲלוּצָה – הוֹלֵךְ מִמּוֹר. מֵאִי טַעְמָא –
בְּאִיסוּרָה קִיָּמָא.

אָמַר רַב יוֹסֵף: אִף אֲנִי נִמִּי תִּנְיָנָא:
מוֹתֵר אָדָם בְּקִרְוֹבֵת צֶרֶת חֲלוּצָתוֹ.
אִי אִמְרֵת בְּשִׁלְמָא צֶרֶת אֲבָרָא –
מְשֻׁם הֵכִי מוֹתֵר בְּאַחֻזָּתָה.

אֵלָא אִי אִמְרֵת צֶרֶת בְּחֲלוּצָה דְּמִיָּא –
אִמְאִי מוֹתֵר?

לִימָא תִּיהִי תִּיּוֹבְתָא דְּרַבִּי יוֹחָנָן,
דְּאָמַר: בֵּין הוּא בֵּין אַחִין אִין חִיבִין
לֹא עַל הַחֲלוּצָה בִּרְתָּה, וְלֹא עַל צֶרֶתָה
בִּרְתָּה!

Rather, is it not, as the Gemara initially assumed, that she is forbidden to him due to the rabbinic decree that it is considered as though she had actually been married to the one who performed *ḥalitza* with her, and therefore must one not conclude from this case that the Sages decreed that the prohibition of secondary forbidden relationships should apply in the case of a *ḥalitza*? The Gemara confirms: One should indeed conclude from it that this is so.

§ The mishna states: A man is permitted to engage in relations with a relative of a rival wife of his *ḥalitza*; however, he is prohibited from engaging in relations with a rival wife of a relative of his *ḥalitza*. The Gemara cites a ruling: Rav Tovi bar Kisna^p said that Shmuel said: With regard to one who engages in intercourse with a rival wife of his *ḥalitza*, the offspring of that union is a *mamzer*. What is the reason for this ruling? It is that she remains in her original prohibition.

Normally, it is prohibited to engage in relations with one's brother's wife. However, when there is a mitzva to consummate levirate marriage, that prohibition does not apply, due to the levirate bond between the *yavam* and *yevama*. Although following *ḥalitza* the levirate bond is dissolved, the woman's status as a *ḥalitza* means that only the lesser prohibition against marrying a *ḥalitza* applies to her, and she does not return to her original forbidden status. Shmuel claims that the rival wives of the *ḥalitza* are not considered to be represented in her act of *ḥalitza*; consequently, they are not afforded a status similar to that of the *ḥalitza* herself. Therefore, he assumes that following *ḥalitza* the rival wives once again become subject to the original prohibition against marrying a brother's wife. Since that prohibition entails *karet*, any offspring born from such a union is a *mamzer*.

Rav Yosef said: We, too, learned this though an inference from the mishna: A man is permitted to engage in relations with a relative of a rival wife of his *ḥalitza*. Rav Yosef explains the inference: Granted, if you say that a rival wife is outside, i.e., she is not represented in the *ḥalitza* of the *ḥalitza* and so she is not afforded a status similar to that of the *ḥalitza* herself, then it is due to that reason that he is permitted to engage in relations with her sister and other relatives, because since they are not the relatives of his *ḥalitza*, there is no reason for them to be forbidden.

However, if you say that a rival wife is afforded a status similar to that of the *ḥalitza* herself, why is he permitted to her relatives? Rather, from the fact that the relatives of the rival wives are permitted, it is apparent that the rival wives are not represented in the *ḥalitza*. As such, it follows that they should return to their original forbidden status of a brother's wives, as Shmuel claims.

The Gemara suggests: Shall we say, then, that this mishna is a conclusive refutation of the opinion of Rabbi Yohanan?ⁿ As Rabbi Yohanan said: Neither he who performed the *ḥalitza* nor his brothers are liable to receive *karet*; they are neither liable to receive *karet* on account of engaging in relations with the *ḥalitza*, nor are they liable to receive *karet* on account of engaging in relations with her rival wife.

NOTES

Shall we say that this is a conclusive refutation of the opinion of Rabbi Yohanan – לִימָא תִּיהִי תִּיּוֹבְתָא דְּרַבִּי יוֹחָנָן – An objection to Rabbi Yohanan's opinion could be raised on different grounds: According to his opinion a rival wife is considered as though she herself had performed *ḥalitza*, since the *ḥalitza* is considered to have represented her in the act of *ḥalitza*, and furthermore, all of the brothers are considered as though they had themselves performed the *ḥalitza* since they were all represented by the brother who actually performed the act of *ḥalitza*. In that case,

why aren't all of the brothers forbidden to the relatives of all of the rival wives? The commentaries explain that clearly the suggested explanation for the prohibition with regard to the rival wives of the relatives of the *ḥalitza*, i.e., that the relatives accompany her to court, does not exist when it comes to the brothers, who do not accompany each other to court (see Ritva). Moreover, since the prohibition is only rabbinic in nature, the Sages were not so stringent as to render the relative of a rival wife like the *ḥalitza* herself (*Tosafot*; Meiri).

אמר לך רבי יוחנן: ותסבירא אחות
חלוצה דאורייתא? והאמר ריש
לקיש: כאן שנה רבי: אחות גרושה –
מדברי תורה, אחות חלוצה – מדברי
סופרים.

The Gemara responds: **Rabbi Yoḥanan** could have said to you: **But** how can **you understand** it that way? Why do you assume that if the rival wives are considered to be represented in the *ḥalitza* that perforce means that their relatives should be forbidden to the *yavam*? Is a **sister of one's ḥalitza** forbidden by Torah law? Didn't **Reish Lakish** say with regard to another mishna (41a): **Here, Rabbi Yehuda HaNasi taught:** Engaging in relations with a **sister of one's divorcée** is forbidden by Torah law, whereas engaging in relations with a **sister of one's ḥalitza** is forbidden by rabbinic law. Since the prohibition with regard to the relatives of one's *ḥalitza* is rabbinic, it is reasonable to assume that it was applied to only the wife who actually performed *ḥalitza* and not extended to her rival wives, even if they are considered to be represented in her *ḥalitza* to the extent that they do not return to their original forbidden status.

מאי שניא האי, ומאי שניא האי?

§ The Gemara questions the distinction indicated by the mishna: **What is different** about **this** woman, the relative of a rival wife of one's *ḥalitza*, that she is permitted, **and what is different** about **that** woman, the rival wife of a relative of one's *ḥalitza*, that she is forbidden?

Perek IV

Daf 41 Amud a

הך דאולא בהדה לבי דינא – גורו
בהו רבנן, האי דלא אולא בהדה לבי
דינא – לא גורו בהו רבנן.

The Gemara explains: With regard to **that** woman, the relative of the *ḥalitza*, **who often goes together with the ḥalitzaⁿ to court**, since she is present in the court during the *ḥalitza*, people might mistakenly assume that it was she who actually performed *ḥalitza*. Were the *yavam* permitted to marry her rival wife, people might incorrectly conclude that it is permitted to marry the rival wife of one's *ḥalitza*. To preclude this possibility, **the Sages decreed with regard to her** that her rival wife should be forbidden. However, with regard to **this** woman, the rival wife of the *ḥalitza*, **who does not go together with the ḥalitza to court**, since she is never present in the court during the *ḥalitza*, there is no concern that people will mistake her for the *ḥalitza* herself. Consequently, **the Sages did not see any reason to decree with regard to her** that her relatives should be forbidden.

מתני' החולץ ליבמתו, ונשא אחיו
את אחותה, ומת – חולצת ולא
מתיבמת. וכן המגרש את אשתו,
ונשא אחיו את אחותה ומת – הרי
זו פטורה.

MISHNA In the case of a *yavam* who performed *ḥalitza* with his *yevama* and then his brother married her sister¹ and died, the sister performs *ḥalitza* with the *yavam*, but she may not enter into levirate marriage with him, since as a sister of his *ḥalitza* she is forbidden to him. **And similarly, in the case of one who divorced his wife and his brother married her sister and died,² then that woman is exempt both from ḥalitza and from consummating levirate marriage, since as the sister of his former wife she is forbidden to him.**

HALAKHA

One who performed *ḥalitza* with his *yevama* and then his brother married her sister – **החולץ ליבמתו ונשא אחיו את אחותה**: If a *yavam* performed *ḥalitza* with his *yevama* and then his brother married her sister or one of her other relatives, and then the brother died, the sister or other relative happens for levirate marriage before the *yavam* who originally performed the *ḥalitza*. However, as a relative of his *ḥalitza*, she is forbidden to him. Therefore, she performs *ḥalitza* but may not consummate the levirate marriage. Similarly, her rival wife performs *ḥalitza* but may not enter into levirate marriage (Rambam *Sefer*

Nashim, *Hilkhot Yibbum Vaḥalitza* 6:20; *Shulḥan Arukh*, *Even HaEzer* 174:3).

The sister of his divorcée – אחות גרושתו: If one divorces his wife and then her sister falls before him for levirate marriage, she is exempt from both *ḥalitza* and from levirate marriage because, as long as his former wife is alive, her sister is prohibited by Torah law from engaging in relations with him (Rambam *Sefer Nashim*, *Hilkhot Yibbum Vaḥalitza* 6:9; *Shulḥan Arukh*, *Even HaEzer* 173:1).

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הך דאולא בהדה לבי דינא: The version of the Gemara cited here has: That woman who goes together with her. Based on this version, Rashi, Rabbeinu Ḥananel, and the Rif explain that: Goes with her, is referring to people that accompany the *ḥalitza* to court. Based on this, they explain that since the relative of the *ḥalitza* accompanies her to court, some people might mistakenly think that it was the relative who performed *ḥalitza*. Therefore, it is necessary to render the rival wife of the relative of the *ḥalitza* forbidden, just as the rival wife of the *ḥalitza* herself is forbidden. However, since the rival wife never accompanies the *ḥalitza*, there is no concern that people might mistakenly think she performed the *ḥalitza*, and so there is no need to render her relatives forbidden.

Tosafot and other early commentaries challenge this explanation; *Yam shel Shlomo* suggests a defense of Rashi's opinion. *Tosafot* themselves suggest that a different version of the Gemara is preferable, which states: That woman who goes with him, where him refers to the *yavam* who performed the *ḥalitza*. Accordingly, the Gemara's distinction is simply between the *ḥalitza*, who actually underwent the *ḥalitza*, and her rival wives, who did not. The Sages expanded the prohibition only to the relatives of the former. The Ramban writes that this version is to be preferred but he questions the authenticity of this version of the text.

Based on the present version of the Gemara, the Maharam MiRotenburg suggests a third interpretation. He understands that the Gemara is referring to a point in time after the *ḥalitza* has already been performed, when the relatives of the *ḥalitza* go to court to inquire as to their status. At that point, the relatives of the *ḥalitza* are instructed that they may not marry the *yavam*. The Gemara states that since the relatives are accompanied by their rival wives, and there is a possibility that people will confuse them, the Sages also rendered the rivals wives of the relatives forbidden (*Tosefot HaRosh*).

A widow waiting for her *yavam* and the brother of the *yavam* betrothed her sister – שומרת יבם שקדש אחיו את אחותה: It is prohibited for one to marry a relative of a woman to whom one is bound by a levirate bond. Therefore, if a woman happens for levirate marriage before a number of brothers, and one of them betroths her sister, it is prohibited for him to proceed to marry the relative he betrothed until after one of the other brothers either consummates the levirate marriage with the *yevama* or performs *halitza* with her, thereby dissolving the levirate bond between her and the other brothers. Some say that if the brother who betrothed the sister transgressed and proceeded to marry her, then the levirate bond to him is thereby dissolved, and so he is allowed to engage in relations with his wife even before his brother performs levirate marriage or *halitza* (*Tosafot*; *Rosh*). Rabbeinu Gershom Meor HaGola issued a ban prohibiting a man from being married to two women. Some say that included in the ban is the case of a *yavam* who is bound by a levirate bond to a *yevama*, such that it is prohibited for the *yavam* to marry any other woman until he has first performed *halitza* with the *yevama* (*Mahari Mintz*). However, if the woman he wishes to marry had committed herself to marry him before the *yevama* happened before him for levirate marriage, then he is permitted to marry her even before he performs *halitza* (*Haggahot Mordekhai*; *Rambam Sefer Nashim*, *Hilkhot Yibbum VaHalitza* 1:14; *Shulhan Arukh*, *Even HaEzer* 159:5).

The *yavam* died, etc. – מית יבם וכו': With regard to a *yavam* who is bound to his *yevama* through a levirate bond, who transgressed and betrothed the sister of his *yevama*, if his other brothers die, since the woman is then bound to him alone, he must divorce the betrothed sister with a bill of divorce and release his *yevama* by performing *halitza* (*Rambam Sefer Nashim*, *Hilkhot Yibbum VaHalitza* 1:14; *Shulhan Arukh*, *Even HaEzer* 159:7).

שומרת יבם שקדש אחיו את אחותה, משום רבי יהודה בן בתירא אמרו: אומרים לו: המתן עד שינעשה אחיך מעשה.

חלץ לה אחיו או בנסה – יבנוס את אשתו. מתה היבמה – יבנוס את אשתו. מית יבם – יוציא את אשתו בגט, ואשת אחיו בחליצה.

In the case of a widow waiting for her *yavam* to consummate levirate marriage or perform *halitza* with her, and the brother of the *yavam* betrothed her sister,^h they said in the name of Rabbi Yehuda ben Beteira: They say to the brother: Wait and do not marryⁿ the woman you betrothed until your brother performs an act,ⁿ either of *halitza* or of consummating the levirate marriage, as until he does there remains a levirate bond between the *yevama* and each of the brothers, and it is prohibited to marry the sister of a woman to whom one is bound by a levirate bond.

If a brother of the one who betrothed the sister of the *yevama* performed *halitza* with the *yevama* or consummated a levirate marriage with her, since by doing so the levirate bond between the *yevama* and the one who betrothed her sister is dissolved, he may then enter into marriage with his wife, who until that point was only betrothed to him, as she is no longer the sister of a woman to whom he is bound by a levirate bond. Similarly, if the *yevama* died, since his levirate bond to her is dissolved upon her death, he may proceed to enter into marriage with his betrothed wife. However, if the *yavam* died^h without performing an act that would have dissolved the levirate bond, he must divorce his wife with a bill of divorce,ⁿ as she is forbidden to him as the sister of a woman to whom he is bound by a levirate bond, and his brother's wife he must send out with *halitza*,ⁿ as she is forbidden to him as the sister of his divorcée.

גמ' מאי "וכן"? אימא: אבל המגרש.

GEMARA The mishna considers two cases in which there is no possibility of consummating levirate marriage with a *yevama*. In the first case the reason is that she is the sister of one's *halutza*, and in the second it is that she is the sister of one's divorcée. The mishna appears to compare the two cases by introducing the second case with: And similarly. The Gemara questions this: What is the meaning of: And similarly? The two cases are not similar; in the first case the *yevama* must perform *halitza*, and in the second she is entirely exempt from the need to do anything. The Gemara answers: Emend the mishna and say: However, one who divorces.ⁿ

NOTES

Wait and do not marry – המתן: The marriage process consists of two distinct stages. In the first stage, termed *kiddushin* or *eirusin*, a legal bond is formed between the couple that defines the woman as a wife to the extent that the dissolution of that bond requires a divorce, and sexual relations with other men are considered adulterous and are punishable by death. However, the couple may still not yet live together as man and wife, and most of the couple's mutual obligations do not yet apply. This stage is usually translated as "betrothal," even though that term fails to convey the fact that this stage is not a precursor to a marriage, but actually the first stage of the marriage.

The second stage of marriage, termed *nissuin*, and translated simply as "marriage," is usually effected by having the couple stand under a marriage canopy together or being secluded together. At this stage, the couple may live together as man and wife and all of the various mutual obligations apply.

The mishna discusses various situations in which one of a number of brothers, who were all bound through a levirate bond to a *yevama*, proceeded to betroth her sister. Due to the bond he has with the *yevama* he is forbidden to engage in relations with the sister. As such, he may not continue to complete the second stage of his marriage with her since the purpose of that stage is for him to live together as man and wife. Nevertheless, should another one of his brothers either consummate levirate marriage with the *yevama*, or perform *halitza* with her, since that will dissolve the levirate bond between her and the other brothers, there will no longer be any impediment to completing the marriage with her sister.

Wait until your brother performs an act – המתן עד שינעשה אחיך מעשה: The commentaries explain that Rabbi Yehuda ben

Beteira holds that the levirate bond is substantial, meaning that to a certain extent it is as though he is already married to her. Accordingly, the woman he betrothed is regarded as though she is his wife's sister, and therefore it is forbidden for him to now proceed to marry her. However, the commentaries explain that despite this, Rabbi Yehuda ben Beteira does not demand that he divorce the woman he betrothed; there is no need to take such drastic action because there is a possibility that she will be rendered entirely permissible through an action of his brother (*Tosefot HaRosh*).

Some commentaries raise the following question: Even if one holds that the levirate bond is substantial, shouldn't the brother's levirate bond to the *yevama* be entirely dissolved by virtue of his betrothal of her sister, since by doing so he renders the *yevama* forbidden to him by Torah law? They explain that since the levirate bond was in place before the betrothal, the strength of betrothal itself is deficient, and so it is not sufficiently efficacious to negate the bond (*Rid*; see *Rashba*).

He must divorce his wife with a bill of divorce, etc. – יוציא: The mishna on 29a discusses a similar case in which ultimately, he is prohibited from living with either his wife or his *yevama*, and expresses the lament: Woe is him on account of his wife, and woe is him on account of his brother's wife. *Tosafot* question why that expression of lament does not appear in this case as well. They suggest that the expression is used only where no prohibition was involved in the man's marriage to his wife, as in the case on 29a. However, in this case the situation was created due to the *yavam* marrying a woman whom he was forbidden to marry. Therefore, it is inappropriate to lament the situation. The Rivan explains that the

lament is appropriate only in a case in which he had already lived together with his wife. However, in this case, the woman was only betrothed to him; therefore, since the couple is not as closely bound as was the couple in the first case, the pain of the ruling is less pronounced.

And his brother's wife with *halitza* – ואשת אחיו בחליצה: This act of *halitza* is required only by rabbinic decree, since as his wife's sister, the *yevama* is forbidden to her *yavam* by Torah law, and therefore by Torah law the *halitza* is unnecessary. Alternatively, since he betrothed the sister of the *yevama* after the levirate bond to the *yevama* was already in place, the strength of betrothal itself is deficient, and so the bond is compromised, but only partially. As such, it is no longer possible to consummate the levirate marriage, but *halitza* is necessary to fully dissolve the bond (*Rashba*; *Ritva*).

Say: However, one who divorces – אימא אבל המגרש: One later commentary explains that the use of the phrase: And similarly, suggests only that there is some connection between the prohibitions with regard to the sister of one's divorcée and the sister of one's *halutza*. When the Gemara suggests the emendation to: However, it is not rejecting that assumption and suggesting that the mishna should be emended; rather, it is simply explaining the correct interpretation of the phrase: And similarly, used in the mishna. The phrase should not be understood as implying that the *halakha* in both cases is the same; rather, it indicates only that the reason for the rabbinic prohibition with regard to the sister of one's *halutza* is on account of the Torah prohibition with regard to the sister of one's divorcée (*Mei Naftaah*).

אמר ריש לקיש: כאן שנה רבי: אחות גרושה – מדברי תורה, אחות חלוצה – מדברי סופרים.

The Gemara explains the reason for the difference between the two cases: **Reish Lakish said: Here**, through this mishna, **Rabbi Yehuda HaNasi taught that a sister of one's divorcée^H is forbidden to him by Torah law**, and that is why she is entirely exempt, whereas **a sister of a *halutza*^H is forbidden to him only by rabbinic law**, and therefore, since there is still a levirate bond between her and the *yavam*, she requires *halitza* to release her from it.

”שומרת יבם שקידש וכו’. אמר שמואל: הלכה בדברי רבי יהודה בן בתיארא.

S The mishna states that in the case of a **widow waiting for her *yavam*** where the brother of the *yavam* betrothed her sister, Rabbi Yehuda ben Beteira said that the brother may not proceed to marry his betrothed. The Gemara cites a ruling on this matter: **Shmuel said: The *halakha* is in accordance with the statement of Rabbi Yehuda ben Beteira.**

איבעיא להו: מתה אשתו, מהו ביבמתו? רב ורבי חנינא דאמרי תרוייהו: מתה אשתו מותר ביבמתו, שמואל ורב אסי דאמרי תרוייהו: מתה אשתו אסור ביבמתו.

A dilemma was raised before the Sages: If a *yavam* is betrothed to the sister of his *yevama*, then since the *yevama* is his betrothed wife's sister, it is forbidden for him to consummate a levirate marriage with her. However, if his betrothed wife died, what is the *halakha* with regard to his *yevama*; is he then permitted to consummate a levirate marriage with her? It is **Rav and Rabbi Hanina who both say: If his wife died, he is permitted to consummate a levirate marriage with his *yevama*.**^H Their opinion is disputed by **Shmuel and Rav Asi, who both say: If his wife died, he is forbidden to his *yevama*.**

אמר רבא: מאי טעמא דרב? משום דהוא יבמה שהותרה, ונאסרה, ויתורה והותרה – תחזור להיתירה הראשון.

Rava said: What is Rav's reasoning?^N She is permitted due to the fact that **she is a *yevama* who**, when her husband died, **was permitted to the *yavam***, and then when the *yavam* betrothed her sister **she became forbidden to him as his wife's sister**, and then when his wife died the *yevama* **reverted to her original status and was permitted to him**. As such, **she should also revert to her original permitted status** with regard to levirate marriage and be permitted to consummate a levirate marriage with the *yavam*.

מתביב רב המנונא: שלשה אחין, שנים נשואין שתי אחיות ואחד מופנה, מת אחד מבעלי אחיות ועשה בה מופנה מאמר, ואחר כך מת אחיו השני,

Rav Hamnuna raised an objection from that which was taught in a *baraita*: With regard to a case of **three brothers, two of whom are married to two sisters and one of whom is a bachelor**, if **one of the sisters' husbands died and the bachelor performed levirate betrothal with that sister**, and afterward the **second brother who was married to the other sister died**, and so his wife also happened before the bachelor for levirate marriage, the bachelor is then bound to each of the sisters through a levirate bond. In such a case it is prohibited for the bachelor to consummate a levirate marriage with either one, as it is prohibited to marry the sister of a woman to whom one is bound through a levirate bond.

ואחר כך מתה אשתו אחריו – אותה יבמה חולצת ולא מתבבמת.

And if afterward the wife of the second brother died after him, i.e., after her husband had already died, which restored the original situation in which the bachelor was bound by a levirate bond only to the widow of the first brother, then in such a case **that *yevama*, the widow of the first brother, performs *halitza* but may not enter into levirate marriage.**

A sister of one's divorcée – אחות גרושה: If one divorces his wife, then her sister is forbidden to him by Torah law as long as the divorcée remains alive, irrespective of whether the sister is only a paternal or maternal half sister and irrespective of whether she was born in or out of wedlock (Rambam *Sefer Nashim*, *Hilkhot Issurei Bia* 2:7; *Shulhan Arukh*, *Even HaEzer* 15:26).

A sister of a *halutza* – אחות חלוצה: The sister of one's *halutza* is forbidden to him by rabbinic law (Rambam *Sefer Nashim*, *Hilkhot Yibbum VaHalitza* 1:13; *Shulhan Arukh*, *Even HaEzer* 162:3).

If His wife died he is permitted to his *yevama* – מתה אשתו, מותר ביבמתו: With regard to one who betrothed the sister of his *yevama*, if the woman betrothed to him died, then he is permitted to consummate a levirate marriage with his *yevama*, or if he wishes he may perform *halitza*. This is in accordance with the opinion of Rabbi Hanina (Rambam *Sefer Nashim*, *Hilkhot Yibbum VaHalitza* 7:8; *Shulhan Arukh*, *Even HaEzer* 159:7).

NOTES

What is Rav's reasoning – מאי טעמא דרב: The later commentaries explain that the dispute between Rav and Shmuel here is not limited to the specific principle of whether a woman who is permitted, then forbidden, and then permitted again may consummate a levirate marriage. Rather, it is a fundamental dispute concerning the very nature of the allowance to marry one's brother's wife in a case of levirate marriage. Normally, one is prohibited from engaging in relations with the wife of one's brother. However, in the case of a levirate marriage it is permitted and a mitzva to do so. Rav assumes that in the case of a *yevama* who is permitted, then forbidden, and then permitted again, one may proceed to consummate the levirate marriage; he understands that the prohibition against engaging in relations with one's brother's wife is itself limited in that it does not apply in a situation where there is a mitzva of levirate marriage. Therefore, once any addi-

tional reason to prevent the levirate marriage is removed, the *yavam* may proceed to consummate the levirate marriage with the *yevama* without any concern about that prohibition. Shmuel, however, assumes that the prohibition against engaging in relations with one's brother's wife does fundamentally apply even in a situation where there is a mitzva of levirate marriage, but that in order to enable the fulfillment of the mitzva, the prohibition is waived. Therefore, should an additional prohibition be applied to his brother's wife that will inhibit the fulfillment of the mitzva, then since there is no longer a mitzva of levirate marriage, the original prohibition against engaging in relations with one's brother's wife is reinstated. Consequently, even should the additional prohibition be removed, the prohibition with regard to one's brother's wife will remain in force and the couple may not consummate the levirate marriage (*Mei Naftoah*; *Yosef Lekah*).

Rav Hamnuna explains the challenge from the *baraita*: **But why** may she not consummate the levirate marriage? **She should be like a *yevama* who was initially permitted** to her *yavam*, **and then became forbidden to him, and then reverted** to her original status **and was permitted, and so in this case she should also revert to her original permitted status** with regard to levirate marriage and be permitted to consummate a levirate marriage with him. The fact that the *baraita* rules that she is prohibited from consummating the marriage demonstrates that she does not revert to her original permitted status.

Rava was silent, as he had no immediate answer. After Rav Hamnuna left the study hall, Rava said to himself: Why did you not say to him that the *baraita* does not pose a challenge because it is in accordance with the opinion of Rabbi Elazar,^N who said in a mishna (108b) with regard to the case of a man who divorced his wife, remarried her, and then died childless, that the *yevama* may not consummate levirate marriage with her *yavam* because once a *yevama* has stood before her *yavam* in a forbidden state, even for a single moment, she remains forbidden to him forever, and in that case, during the period she was divorced from her husband she was forbidden to her *yavam*. The Rabbis, however, disagree with his opinion, and the *halakha* is ruled in accordance with their opinion.

He then said to himself: It is not certain that the *baraita* is in accordance with the opinion of Rabbi Elazar because one could say^N that Rabbi Elazar said his opinion only **where she was not suitable** for the *yavam*, i.e., she was forbidden to him, already from **the time of her happening** before her *yavam* for levirate marriage at the moment of her husband's death. **However, where she was suitable** for her *yavam* **at the time of her happening** before him and became forbidden to him only at some later point, as in the case of a *yavam* who betrothed the sister of his *yevama*, **did he** actually **say** that if the reason for the prohibition is removed then she does not return to her permissible state? If the *baraita* does not represent the opinion of Rabbi Elazar, then it must be unanimously agreed upon, and therefore it indeed poses a challenge.

He then said: Yes, actually, Rabbi Elazar did state his opinion even in such a case, **and so it is taught** in a *baraita*: With regard to a *yavam* who betrothed the sister of his *yevama*, **Rabbi Elazar says:** If his *yevama* dies, he is permitted to his wife. If his wife dies, that *yevama* performs *halitza* but may not enter into levirate marriage with him. Therefore, the challenge from the *baraita* can be dismissed since it represents only Rabbi Elazar's opinion.

The Gemara suggests: **Shall we say that Shmuel and Rav Asi, who say that she may not consummate the levirate marriage, hold in accordance with the opinion of Rabbi Elazar?**

NOTES

must be based upon an additional, unanimously agreed-upon principle. If so, it can provide a halakhic basis for the opinion of Shmuel and Rav Asi, since otherwise this *baraita*, which is the only support for their opinion, is in accordance only with an opinion that is not accepted as the *halakha*. In fact, Shmuel and Rav Asi themselves would have to explain the *baraita* in this way. However, Rava concludes that the *baraita* is in accordance only with the opinion of Rabbi Elazar, and therefore the *baraita* is not to be accepted as the *halakha* (*Tosefot HaRosh*: Rashba).

He then said, say, etc. – **הָדָר אֶמֶר אִימור וכו'**: The advantage of this suggestion is that if the *baraita* is not in accordance with the opinion of Rabbi Elazar, as taught in the mishna on 108b, then it is not subject to his dispute with the Rabbis and perforce it

A *yevama* may not perform *halitza* until she has waited three months – **הַיְבָמָה לֹא תִחְלוֹץ עַד שְׁלֹשָׁה חֳדָשִׁים**: A woman who happened before her *yavam* for levirate marriage may neither perform *halitza* nor enter into levirate marriage before first waiting ninety days, excluding the day of her husband's death and the day of her levirate marriage or *halitza* (Rambam *Sefer Nashim*, *Hilkhot Yibbum VaHalitza* 1:19; *Shulhan Arukh*, *Even HaEzer* 164:1).

כָּל שָׂאָר – All other women may not be betrothed, etc. **הַנָּשִׁים לֹא יִתְאַרְסוּ וְכו'**: Any woman who was divorced or widowed is forbidden to be betrothed or enter into levirate marriage with her *yavam* until she first waits ninety days, excluding the day of her husband's death or her divorce and the day of the betrothal. This is in accordance with the opinion of the first *tanna*, who is Rabbi Meir, and Rabbi Meir's opinion concerning decrees is also accepted as the *halakha*. However, it is permitted during this ninety-day period for the woman to commit herself to marry another man without actual betrothal (*Beit Yosef*, citing *Rosh* and *Terumat HaDeshen*; Rambam *Sefer Nashim*, *Hilkhot Geirushin* 11:18; *Shulhan Arukh*, *Even HaEzer* 13:1).

אֶפִּילוּ תִּמְאָה בְּרַבֵּנּוּ, עַד כָּאֵן לֹא קָמִיפְלִי רַבֵּנּוּ עָלֶיהָ דְּרַבִּי אֶלְעָזָר – אֲלֵא מִשּׁוּם דְּמִנְפִּילָהּ וְאֵילָךְ לֹא מִיִּתְסֵר עָלֶיהָ, אֲבָל הָכָא דְּאִיתְסֵר – אֶפִּילוּ רַבֵּנּוּ מוֹדוּ.

The Gemara rejects this: You can even say that they hold in accordance with the opinion of the Rabbis, as perhaps the Rabbis disagree with Rabbi Elazar in the case of a man who divorced and remarried his wife and then died childless only due to the fact that in that case, from the time of her happening for levirate marriage and onward she was not forbidden to them, i.e., her *yevamin*. The fact that the prohibition between her and her *yevamin* ended before she ever happened before them for levirate marriage means it has no bearing on her current eligibility for levirate marriage. However, here, in the case where the *yavam* betrothed the sister of his *yevama*, since she became forbidden after she had already happened before him for levirate marriage, even the Rabbis would agree that she remains permanently ineligible to consummate levirate marriage with him.

מִתְנִי' הַיְבָמָה לֹא תִחְלוֹץ וְלֹא תִתְיַבֵּם עַד שְׁשִׁשׁ לַה שְׁלֹשָׁה חֳדָשִׁים. וְכֵן כָּל שָׂאָר הַנָּשִׁים לֹא יִתְאַרְסוּ וְלֹא יִנְשָׂאוּ עַד שִׁיָּהוּ לָהֶן שְׁלֹשָׁה חֳדָשִׁים אַחֲדָה בְּתוּלוֹת וְאַחֲדָה בְּעוֹלוֹת, אַחֲדָה גְרוּשׁוֹת וְאַחֲדָה אֶלְמָנוֹת, אַחֲדָה נְשׂאוֹת וְאַחֲדָה אַרְסוֹת.

MISHNA A *yevama* may neither perform *halitza* nor enter into levirate marriage until she has waited three months^H from the time of her husband's death. And similarly, all other women may not be betrothed^H and may not marry until they have waited three months since their previous marriage ended. This waiting period is necessary so that, should a woman give birth shortly after remarrying, it will be obvious who the father of the child is. This applies both to virgins and non-virgins, both to divorcees and widows, and both to women who were married to their previous husbands and women who were only betrothed. All of these women must wait three months before remarrying even though for some of them the reason for doing so does not apply.

רַבִּי יְהוּדָה אוֹמֵר: הַנְּשׂאוֹת יִתְאַרְסוּ, וְהָאֲרוּסוֹת יִנְשָׂאוּ, חוּץ מִן הָאֲרוּסוֹת שֶׁבִּיהוּדָה, מִפְּנֵי שְׁלֵבָן גַּם בָּהּ.

Rabbi Yehuda says: The women who were married to their previous husbands may be betrothed, and the women who were only betrothed to their previous husbands may marry without waiting three months. This is true except for the betrothed women that are in the area of Judea,^B due to the fact that the groom is familiar with her. The custom in Judea was for the couple to be secluded together before the marriage so that they would become familiar with each other. This led to the possibility that they might cohabit even during their betrothal period. Rabbi Yehuda holds that one does not need to wait three months whenever the reason for doing so does not apply.

רַבִּי יוֹסֵי אוֹמֵר: כָּל הַנָּשִׁים יִתְאַרְסוּ, חוּץ מִן הָאֶלְמָנָה.

Rabbi Yosei says: All of the women^N may be betrothed within three months even if they were previously married, except for a widow,

BACKGROUND

The betrothed women that are in Judea – **הָאֲרוּסוֹת שֶׁבִּיהוּדָה**: Tractate *Ketubot* (12a) recounts that it was the custom in Judea for a couple to be secluded together before the marriage so that they would become familiar with each other. This was done despite the fact that this involved a certain compromise on the standards of modesty, as doing so could result in the couple engaging in sexual relations. The reason for the custom was that, at the time, the local gentile ruler would often force brides-to-be

to first engage in sexual relations with him before entering their marriage. Although the communities would do everything in their power to prevent this, it was not always possible to avoid it. When it did occur, it could often lead to disharmony between the couple. Therefore, it was decided that before a couple would marry, they should first be secluded together and thereby develop a close relationship between them that could help them withstand an assault from the local ruler.

NOTES

Rabbi Yosei says: All of the women, etc. – **כָּל יוֹסֵי אוֹמֵר**: רַבִּי יוֹסֵי אוֹמֵר: Rashi explains that Rabbi Yosei fundamentally accepts the opinion of Rabbi Yehuda that the need for a waiting period applies only when there is both the possibility that the woman might already be pregnant from the previous husband and the possibility that she could become pregnant from the new husband. He disagrees only in the case of a widow. He would agree that a woman who was only betrothed to her previous husband is permitted to marry a new husband without waiting. However,

other early commentaries argue that from the Gemara there is no indication that Rabbi Yosei agrees with Rabbi Yehuda on this point. Furthermore, the simple import of his words: All of the women may be betrothed, implies that he permits women to be betrothed without waiting, but never to marry during that three-month period. Therefore, they suggest that Rabbi Yosei actually represents a third opinion, and that his ruling concerning a widow is an additional, but independent, stringency (Rashba; Ritva; *Nimmukei Yosef*).

מפני האיבול.

due to the mourning period she must observe for her deceased husband.

גמ' בשלמא לא תתייבם – שםא יהיה הולד בן קיימא, וקא פגע באיסור אשת אח דאורייתא. אלא לא תחלוץ – אמאי?

GEMARA The Gemara questions the mishna's opening clause: **Granted, she should not enter into levirate marriage,**^N as she might already be pregnant, which would still not be noticeable during the first three months, and **perhaps the baby will be viable.** In that case it would emerge that she was never subject to the mitzva of levirate marriage, and therefore, if the *yavam* consummates a levirate marriage **he will have encountered the Torah prohibition against engaging in relations with one's brother's wife. However, why should she not perform *halitza*?**

לימא תיהוי תיובתא דרבי יוחנן דאמר: חליצת מעוברת שמה חליצה! ולא מי אותביניה לרבי יוחנן חדא זימנא? לימא מהא נמי תיהוי תיובתא!

The Gemara suggests: **Let us say that this mishna, which states that a pregnant woman should not perform *halitza*, is a conclusive refutation of the opinion of Rabbi Yohanan, who said that a *halitza* performed with a pregnant woman who later miscarries is considered a valid *halitza*.** The Gemara asks: **But didn't they already conclusively refute the opinion of Rabbi Yohanan one time previously from other sources?** The Gemara rephrases the suggestion: **Let us say that from this mishna as well there is a conclusive refutation of the opinion of Rabbi Yohanan.**

לא, הכא היינו טעמא שםא יהא ולד בן קיימא, ונמצאת אתה מצריכה כרוז לכהונה.

The Gemara deflects this suggestion: **No, it is possible that in the mishna here, this is the reason that she may not perform *halitza*:** Perhaps the offspring will be viable, in which case although she performed the act of *halitza*, it is entirely meaningless since it was completely unnecessary, and she would remain permitted to marry into the priesthood. However, this could lead to a problem: People might not realize that the *halitza* she performed was meaningless, and they would think she is a *halutza* who is prohibited from marrying a priest. **It would therefore emerge that if you permit her to perform *halitza* even though it is possible that she is pregnant, it could be that you will ultimately require a public announcement to be made for her to attest to the fact that the *halitza* she performed was meaningless and she is in fact still permitted to marry into the priesthood.**

ונצרכה! דלמא איכא דהואי בחליצה ולא הוי בהכרוז, ומפסליה מן הכהונה.

The Gemara wonders why this poses a problem: **But why not let her perform *halitza* even though it is possible she is pregnant, and then, if it becomes necessary, require a public announcement to be made for her?** The Gemara explains why one should avoid having to rely on a public announcement: **Perhaps there will be some people who are present at the *halitza* but were not present at the public announcement, and those people will incorrectly disqualify her from marrying into the priesthood.** To avoid this situation, the mishna rules that she should wait three months before performing *halitza*.

NOTES

בשלמא – Granted, she should not enter into levirate marriage – לא תתייבם: The waiting period is required only due to the possibility that the *yevama* might be pregnant from her previous husband. Therefore there should be no requirement to wait for a *yevama* who was only betrothed to her previous husband, as it can be assumed she is not pregnant since it is forbidden to engage in relations during the betrothal period. Nevertheless, the Sages required the waiting period in all cases. Were they not to have required it a

case in which the *yevama* had only been betrothed, people could have made a mistaken comparison and incorrectly concluded that even where the *yevama* was in fact pregnant from her deceased husband, it is permitted for her to consummate a levirate marriage immediately, which would be violation of a prohibition that entails *karet*. Therefore, to avoid any confusion, the Sages required the waiting period in all cases (Ritva).

כל העולה – **כל העולה** – One who is eligible for levirate marriage, etc. – **ליבום וכו'**: A *yevama* may not consummate levirate marriage until she has waited ninety days from the day of her husband's death. Since she is ineligible for levirate marriage, she is also ineligible for *halitza* (Rambam *Sefer Nashim, Hilkhot Yibbum VaHalitza* 1:19).

A woman whose betrothal is uncertain with regard to levirate marriage – **ספק מקודשת לענין יבום**: If a woman's betrothal to her husband was uncertain and her husband died, and the woman happened before her *yavam* for levirate marriage, he may consummate the levirate marriage with her since there is no reason to prohibit it (Rambam *Sefer Nashim, Hilkhot Yibbum VaHalitza* 6:7; *Shulhan Arukh, Even HaEzer* 173:15).

תינח אלמנה, גרושה מאי איכא למימר? משום דמפסיד לה מזונות.

The Gemara asks: This answer **works out well** with regard to a **widow** because as a widow she is currently still permitted to marry into the priesthood, but with regard to a **divorcée**, who is already prohibited from marrying into the priesthood, **what is there to say**; why shouldn't she perform *halitza* immediately? The Gemara provides an alternative reason to delay the *halitza*: The reason is **because by performing *halitza* immediately she will forfeit the sustenance payments** from her deceased husband's estate, which she otherwise would have been entitled to for the first three months. Since she is not permitted to remarry during those three months, she will have no means of support. Therefore, she should wait until after three months have passed before performing *halitza*.

תינח נשואה, ארוסה גרושה מאי איכא למימר?

The Gemara asks: This answer **works out well** with regard to a **woman who was married** to her previous husband and who is therefore entitled to sustenance payments, but with regard to a **divorcée who was only betrothed** to her previous husband, **what is there to say**? She is neither entitled to receive sustenance payments nor is she permitted to marry into the priesthood. Why, then, shouldn't she perform *halitza* immediately?

אלא משום דרבי יוסי. דתנא: מעשה באדם אחד שבא לפני רבי יוסי, אמר לו: מהו לחלוץ בתוך שלשה? אמר לו: לא תחלוץ. ותחלוץ ומה בכך?

The Gemara therefore provides an alternative reason to delay the *halitza*: Rather, it is **due to that** which Rabbi Yosei stated, as it is taught in a *baraita*: There was an incident involving a certain man who came before Rabbi Yosei. The man said to him: What is the *halakha* with regard to performing *halitza* within three months of the husband's death? He said to him: She may not perform *halitza*. He asked him: Let her perform *halitza*; what would be the problem with that? Even if she is pregnant, no prohibition will have been transgressed.

קרא עליו מקרא זה: "ואם לא יחפץ" הא אם חפץ – יבם, כל העולה ליבום – עולה לחליצה כו'.

To explain his ruling, Rabbi Yosei recited this verse about him: "And if the man does not wish to take his *yevama*" (Deuteronomy 25:7) in levirate marriage, then he must perform *halitza*. By inference, the possibility of performing *halitza* exists only in a case in which if he wishes he may consummate the levirate marriage. This teaches the principle that **one who is eligible for levirate marriage^h is eligible for *halitza***, and one who is ineligible for levirate marriage is ineligible for *halitza*. This includes even a woman who is temporarily prohibited from marrying, e.g., a woman in the first three months following a previous marriage.

מתב רב חנינא: הספקות חולצות ולא מתבמות.

Rav Hinnana raised an objection from the following *baraita*: Those women whose status as a *yevama* is uncertain perform *halitza* but may not enter into levirate marriage. According to this *baraita*, there are in fact cases in which a woman is eligible for *halitza* but may not enter into levirate marriage.

מאי ספקות? אילימא ספק קדושין אמאי לא מתבמות? תתייבם ואין בכך כלום!

The Gemara clarifies the case: **What is the case of women whose status as a *yevama* is uncertain? If we say it is referring to a woman whose betrothal to her previous husband is uncertain, then why does she not enter into levirate marriage? Let her enter into levirate marriage, and there is no problem with that**, because if the betrothal was never valid, then she is permitted to the *yavam* as she is not his brother's wife; and if it was valid, then she is now obligated to enter into levirate marriage with him.^h

אלא לאו – ספק שקידש אחת משתי אחיות ואינו יודע איזו מהן קידש, וקתני: חולצת!

Rather, is it not referring to a case of **uncertainty in which a man betrothed one of two sisters and he does not know which one of them he betrothed**? If that man then died childless, the *yavam* may not consummate the levirate marriage with either sister because it is possible that he will do so with the sister who was not betrothed to his brother, who is therefore forbidden to him as the sister of a woman who is bound to him by a levirate bond. This is in fact the case of the *baraita*, and the *baraita* teaches that **she performs *halitza***, even though she is not permitted to enter into levirate marriage.

For three months she receives sustenance payments from the husband's estate – **שְׁלֹשָׁה חֳדָשִׁים נוֹזֶנֶת מִשָּׁל בַּעַל**: One of the conditions of the marriage contract is that in the event of the husband's death, the widow may remain in her husband's home and be sustained from his estate. This right continues to exist as long as the woman maintains her connection to her deceased husband and refrains from attempts to remarry. However, this is not true of a *yevama*. Since there is a mitzva to either consummate the levirate marriage or perform *halitza*, she is automatically considered as though she is in the process of remarrying and therefore loses the right to be sustained from her husband's estate. However, during the first three months following her husband's death she is not permitted to proceed due to the rabbinic decree. Therefore, during that period she is not considered to be in the process of remarrying, and consequently she retains the rights to be sustained from her husband's estate.

עַמֵּד בְּדִין – He was brought to judgment and he ran away – **וְכָרַח**: Rashi explains that the *yavam* ran away to avoid complying with the court's ruling, and his obligation to provide subsistence for her is a penalty for neglecting his duty. However, most of the other early commentaries explain that the *baraita* is referring to a man who was forced to run away due to circumstances beyond his control. Nevertheless, since when he was brought to court, the court fixed a date by which he was expected to consummate the levirate marriage, when that date arrives he automatically takes on the financial responsibilities of a husband to support his wife. The *halakha* is the same in any case of a man who betrothed a woman and a date is set for them to be married; when the date arrives he takes on financial responsibility for her irrespective of whether he actually marries her (Ramban).

מִשְׁמַעַי קָנְסוּהָ – She was penalized by Heaven: Despite the Gemara's conclusion, several *ge'onim* ruled that in cases such as this, especially where the woman is unable to sustain herself through her own efforts, she should receive sustenance payments from the dowry that she brought with her to her previous marriage. Later, when the *yavam* matures, if he consummates the levirate marriage with her, he will take whatever is left of the dowry, and if he performs *halitza* then she receives the remainder of the marriage contract.

הָכִי הִשְׁתַּאֲזָה?! הֵתָם, אִם יָבֵא אֶלְיָהוּ
וְיֹאמֶר דָּהָא קִידֵּשׁ – בֵּת חֲלִיצָה
וְיִיבֹם הִיא,

הָכָא אִם יָבֵא אֶלְיָהוּ וְיֹאמֶר דָּהָא
לֹא אֵיעֲבָדָה – מִי מִשְׁגָּח בֵּיהּ וְיִבְמִין
לָהּ? הָא קִטְנָה דְּלֹא בֵּת אֵיעֲבָדָה
הִיא, וְאִפִּילוּ הָכִי צְרִיכָה לְהַמְתִּין
שְׁלֹשָׁה חֳדָשִׁים,

תִּנּוּ רַבָּנִי: יְבָמָה, שְׁלֹשָׁה חֳדָשִׁים
הָרָשׁוּמִים – נוֹזֶנֶת מִשָּׁל בַּעַל, מִכָּאן
וְאֵילָךְ – אֵינָה נוֹזֶנֶת לֹא מִשָּׁל בַּעַל
וְלֹא מִשָּׁל יָבָם.

עַמֵּד בְּדִין וְכָרַח – נוֹזֶנֶת מִשָּׁל יָבָם.

נִפְלָה לִפְנֵי יָבָם קָטָן (מֵאִי)? מֵיָבָם –
לִית לָהּ, מִבְּעַל – מֵאִי?

פְּלִיגִי בֵּהּ רַב אַחָא וְרַבִּינָא; חָד
אָמַר: אֵית לָהּ, וְחָד אָמַר: לִית לָהּ,
וְהִלְכְתָּא: לִית לָהּ, מִשְׁמַעַי קָנְסוּהָ.

תִּנּוּ רַבָּנִי: יְבָמָה שְׁחָלְצוּ לָהּ אֲחֵים
בְּתוֹךְ שְׁלֹשָׁה – צְרִיכָה לְהַמְתִּין
שְׁלֹשָׁה חֳדָשִׁים,

The Gemara rejects the proof: **How can these cases be compared?** **There**, in the case of uncertainty, **if Elijah were to come and say that the man betrothed this one of the sisters, then she would be eligible for *halitza* and levirate marriage**. It is clear, then, that fundamentally the sister who was betrothed is actually eligible for levirate marriage, and it is merely a lack of knowledge that prevents her from entering into it.

However, **here**, with regard to a woman during the first three months following her previous marriage, **if Elijah were to come and say that this woman is not pregnant, would one pay heed to him and would we allow the *yavam* to consummate levirate marriage?** Certainly not, as is evident from the fact that **a minor girl, who cannot become pregnant, must also wait three months**.¹¹ Evidently, the requirement to wait three months applies in all situations, even those in which the reason for the requirement is irrelevant. Therefore, by virtue of that decree the *yevama* is considered to be fundamentally ineligible for levirate marriage and similarly is ineligible for *halitza*.

S The Gemara mentioned that a *yevama* is supported from her deceased husband's estate. It now proceeds to cite a *baraita* that teaches this *halakha*: **The Sages taught: A *yevama* during the first three months following her husband's death receives sustenance payments¹² from the husband's estate.**¹³ This is because her previous marriage to him is the cause of her current unmarried state, since it is due to that marriage that she must first wait three months before remarrying. **From this point forward, she does not receive sustenance payments, neither from the husband's estate nor from the *yavam*, as he has not yet consummated a levirate marriage with her.**

The *baraita* continues: **If the *yavam* was brought to judgment and it was decided that he was obligated to either consummate the levirate marriage with her or perform *halitza*, and he ran away¹⁴ to avoid doing so, she receives sustenance payments from the estate of the *yavam*, which is his penalty for neglecting his duty.**

The Gemara asks: **If she happened before her *yavam* who is a minor¹⁵ for levirate marriage, what is the *halakha*? From the *yavam* she does not have any right to sustenance payments because, as a minor, he is unable to consummate a levirate marriage, but as to payments from her husband's estate, what is the *halakha*?** Since his death placed her in a situation that forces her to remain in an unmarried state, does his estate have to take the responsibility of supporting her?

Rav Aha and Ravina disagree with regard to this matter: **One said she does have rights to sustenance payments, and the other one said she does not have any rights. And the *halakha* is that she does not have any rights to sustenance payments.** This is because the husband is not considered to be responsible for her situation; rather, it is thought that **she was penalized by Heaven**.¹⁶

S The Sages taught: **In the case of a *yevama* with whom the brothers of her deceased husband performed *halitza* within three months of her husband's death, she still needs to wait three months before remarrying.**

HALAKHA

A minor girl must wait – **קִטְנָה צְרִיכָה לְהַמְתִּין**: When the Sages decreed that no woman may marry until she has first waited three months since the end of her previous marriage, they did not distinguish between cases, and therefore even a woman who is unfit for childbirth, e.g., a minor, is included in the decree (Rambam *Sefer Nashim*, *Hilkhot Geirushin* 11:20; *Shulhan Arukh*, *Even HaEzer* 13:1).

Sustenance payments for a *yevama* – **מִזִּנְוֹת יְבָמָה**: A *yevama* receives sustenance payments from her husband's estate, like

any other widow, for the first three months following his death. From this point onward, she does not receive sustenance payments either from the husband or from the *yavam*. If, after three months, she demanded that the *yavam* consummate levirate marriage and he agreed to do so, or even if he did not agree (Rambam), then even if he was ultimately prevented from doing so due to circumstances beyond his control he becomes obligated to provide her with sustenance payments. If he ran away to avoid doing so, it would seem that he is obligated to provide for her according to all opinions (*Beit Shmuel*;

Rambam *Sefer Nashim*, *Hilkhot Ishut* 18:15; *Shulhan Arukh*, *Even HaEzer* 160:1).

She happened before her *yavam* who is a minor – **נִפְלָה לִפְנֵי יָבָם קָטָן**: In the case of a *yevama* who happened before a *yavam* who is a minor, after three months she no longer receives sustenance payments from the estate of the husband or that of the *yavam* until the *yavam* reaches maturity (*Beit Shmuel*; Rambam *Sefer Nashim*, *Hilkhot Ishut* 18:17; *Shulhan Arukh*, *Even HaEzer* 160:3).

לְאַחַר שְׁלֹשָׁה – אִין צְרִיכָה לְהַמְתִּין שְׁלֹשָׁה חֳדָשִׁים.

הָיָה הַשְׁלֹשָׁה חֳדָשִׁים שְׂאָמְרוּ – מִשְׁעַת מִיתָת הַבַּעַל, וְלֹא מִשְׁעַת חֲלִיצַת הַיָּבָם.

מֵאִי שָׁנָא מִגֵּט, דְּרַב אֲמַר מִשְׁעַת נְתִינָה וְשִׁמְוָאֵל אֲמַר מִשְׁעַת כְּתִיבָה?

אֲמַר רַבָּא: קָל וְחוֹמֶר: אִיסוּר כְּרַת הַתֵּרֶת, אִיסוּר לָאוּ לֹא כָּל שָׁבֶן?

”וְכֵן שְׂאָר כָּל הַנָּשִׁים.” בְּשִׁלְמָא יָבְמָה – כְּדָאֲמֵר. אֲלֵא שְׂאָר כָּל הַנָּשִׁים אֲמַאי?

אֲמַר רַב נַחֲמָן אֲמַר שְׁמוּאֵל: מִשּׁוּם דְּאֲמַר קָרָא “לְהִיּוֹת לְךָ לֵאלֹהִים וְלִזְרֹעַךָ אַחֲרֶיךָ” לְהַבְחִין בֵּין זֶרַעוֹ שֶׁל רִאשׁוֹן לְזֶרַעוֹ שֶׁל שֵׁנִי.

מֵתִיב רַבָּא: לְפִיכָךְ גַּר וְגִיּוֹרֵת צְרִיכִין לְהַמְתִּין שְׁלֹשָׁה חֳדָשִׁים, הֲבֵא מֵאִי לְהַבְחִין אִיכָא?

If they performed the *halitza* after three months, she does not need to wait three months and may marry immediately.

The Gemara infers from the latter clause of the *baraita*: It must be that the three months that are stated throughout the *baraita* are counted from the time of the husband's death and not from the time of the *halitza* of the *yavam*.^h

The Gemara asks: In what way is this case different from the case of a bill of divorce,^h where Rav said that the three months are counted from the time of the giving of the bill of divorce, and Shmuel said that the count is from the time of the writing of the bill. If a couple is secluded together after the bill of divorce is written, the bill of divorce is invalid. Therefore, there is no concern that they were secluded from that time. This is why Shmuel holds that the three months are counted from the writing. Rav apparently assumes that even so, the count always begins from the formal end of the marriage and not from the point from which there was no possibility of her becoming pregnant. Why, then, does the *baraita* not rule also in the case when a woman happens for levirate marriage, that the count should begin from the point of *halitza*, since the marriage is only fully severed at that point?

Rava said: With regard to a *yevama*, all agree that the count begins from the time of her husband's death. This can be derived through an *a fortiori* inference, as follows: If a prohibition that entails *karet*, i.e., the prohibition against engaging in relations with one's brother's wife in the event she is pregnant and not subject to levirate marriage, you have permitted after three months from the husband's death, then in the case of a standard negative prohibition, such as the prohibition against engaging in relations with a woman within three months of the death of her previous husband, is it not all the more soⁿ clear that she should be permitted to remarry after three months from her husband's death? Therefore, even Rav agrees that in this case, the count begins from the husband's death.

§ The mishna states: And similarly, all other women may not be betrothed or marry until they have waited three months. The Gemara asks: Granted, a *yevama* has to wait, in accordance with the reason that we said, that if she is pregnant with viable offspring, consummating the levirate marriage would violate the prohibition against engaging in relations with one's brother's wife. But with regard to all other women, why shouldn't they remarry immediately even if they are pregnant?

Rav Nahman said that Shmuel said: It is due to the fact that the verse states with regard to Abraham: “To be a God to you and your seed after you” (Genesis 17:7), which indicates that the Divine Presence rests with someone only when his seed can be identified as being descended from him, i.e., there are no uncertainties with regard to their lineage. Therefore, to prevent any uncertainties concerning the lineage of her child, the woman must wait so that it will be possible to distinguishⁿ between the seed of the first husband and the seed of the second husband. After three months, if she has conceived from her previous husband, the pregnancy will already be noticeable.

Rava raised an objection from a *baraita*: Therefore, on account of the requirement to wait three months, a male convert and a female convert who were originally married to each other and converted need to wait three months^h before they may remarry following their conversion. Rava asks: Here, in this case, what reason is there to distinguish? Even if they do not wait and she is found to be pregnant, it is clear who the child's parents are.

HALAKHA

מֵתִי מִמְתִּינָה – From when does a *yevama* wait – הַיָּבָמָה: A *yevama* who performed *halitza* within three months of her husband's death must still complete the three-month wait after her husband's death before remarrying. If she performed *halitza* after three months had already passed, she need not wait any longer (Rambam *Sefer Nashim*, *Hilkhot Yibbum VaHalitza* 1:19; *Shulhan Arukh*, *Even HaEzer* 164:1).

מֵתִי מִמְתִּינָה – From when does a divorcée wait – גְּרוּשָׁה: A divorcée must wait three months from the writing of her bill of divorce before remarrying. This applies even if the bill was made conditional or was given only some time later. This is in accordance with the opinion of Shmuel. Most halakhic authorities rule in accordance with his opinion because in tractate *Ketubot* Rav Ashi, one of the latest of the *amora'im*, rules in accordance with his opinion (*Kesef Mishne*). This is also the final ruling in the Jerusalem Talmud. However, the Rema (citing *Tur* and *Rosh*) rules that it is correct to be stringent and count from the time that the bill of divorce was given (Rambam *Sefer Nashim*, *Hilkhot Geirushin* 11:19; *Shulhan Arukh*, *Even HaEzer* 13:1).

הַפְּרָשָׁת – Separation of male and female converts – גֵּר וְגִיּוֹרֵת: A maidservant or female convert who was married prior to conversion must wait ninety days before remarrying. This applies even to a husband and wife who converted together; they must separate from each other for that period. This is required so that it will be possible to distinguish between seed that was sown in sanctity and seed that was not sown in sanctity (Rambam *Sefer Nashim*, *Hilkhot Geirushin* 11:21; *Shulhan Arukh*, *Even HaEzer* 13:5).

NOTES

A standard negative prohibition, all the more so – אִיסוּר לָאוּ לֹא כָּל שָׁבֶן: This reasoning cannot be applied in the case of a divorcée since she is still considered fully married until she has actually received a bill of divorce (Rivan).

To distinguish – לְהַבְחִין: The later commentaries deliberate whether the fact that a biblical source is cited renders this a true exegetical inference, which would mean that the need to distinguish is by Torah law, or whether the requirement is a rabbinic decree and the verse is cited merely as support for it. The *Keren Ora* states that the need to distinguish is a rabbinic decree, while *Arukh LaNer* cites the *Targum Yerushalmi* and certain formulations of the Rambam that suggest that the requirement is by Torah law.

Yosef Lekah writes that although the concern of being unable to distinguish between the seed of the first and second husbands might seem unlikely, nevertheless, since remarriage for women is so common it is reasonable to assume that even this unusual situation will eventually arise.

Between seed that was sown in sanctity – בין זרע שנוער בקדושה – If the child was conceived before his parents' conversions, the child would also have the status of a convert. As such, if the child was a female she would be prohibited from marrying into the priesthood (Rivan). Furthermore, as a convert, the child would not inherit from his convert father. Some assume that halakhically, the child would be considered as though he were not descended from his father for all other matters as well.

רבא אמר גזירה שפא ישא את אחותו מאביו, ויביים אשת אחיו מאמו, – **רבא אמר גזירה וכו'.** – An additional reason for the decree is cited in the *She'iltot deRav Aḥai Gaon*, and it is possible that this reason actually appeared in the author's version of the Gemara: Lest he set slaves free. The *Gilyonei HaShas* explains the concern: When one owns slaves and dies, his mastery over his slaves is inherited by his children. If the child in this case incorrectly identified who his father was, and then upon that father's death the son frees the father's slaves, his release of the slaves would be entirely ineffectual since he is not truly that father's son and does not actually inherit from him. This would create a situation where those slaves, assuming that they had been lawfully freed, might proceed to marry Jewish women, when in fact they would be prohibited from doing so because they remained slaves. A similar explanation can be offered for the requirement to distinguish between seed in the case of a maidservant, which requires her to wait three months after her release. Since her offspring conceived before her release would have the status of slaves, whereas those conceived after her release would be fully Jewish, there is a concern that her offspring might actually be slaves but will act as though they are free.

The Rivash notes that based on all the reasons that the Gemara provides, it would appear that when a man remarries his divorcee without her having since remarried in the interim, there is no reason to require her to wait three months.

In all of those cases I identify – בכולן אני קורא בהן – According to *Tosafot*, the phrase: All of those cases, refers to all *yevamot* who are prohibited from marrying. However, Rashi and the Meiri explain that it refers to all cases of women who are prohibited from remarriage. This includes even cases such as those in which the evidence of a husband's death is not sufficient to allow a woman to remarry; even in such cases, the ultimate reason for the prohibitions is to prevent people from engaging in forbidden relations.

BACKGROUND

Born after eight months of pregnancy – אי נמי לתמנא ילדה – During talmudic times conventional wisdom held that a child born during the eighth month of pregnancy had no chance of survival, while a child born during the seventh month, and even one born during the sixth month, was more likely to survive. Nowadays, a baby born in the eighth month is considered to have greater chances of survival than one born earlier. Accordingly, despite the fact that the Gemara says that one may not desecrate the Shabbat to save a child born during the eighth month (*Shabbat* 135a), nowadays, since the child is likely to survive, the later authorities maintain that one may desecrate Shabbat to save him or her (*Minḥat Yitzhak* 4:123; *Hazon Ish*, *Yoreh De'a* 155:3).

הכא נמי: איכא להבחין בין זרע שנוער בקדושה לזרע שלא נזרע בקדושה.

רבא אמר: גזירה שפא ישא את אחותו מאביו, ויביים אשת אחיו מאמו,

ויזיצא את אמו לשוק, ויפטור את יבמתו לשוק.

מתב רב חנניה: בכולן אני קורא בהן משום תקנת ערוה, וכאן משום תקנת ולד. ואם איתא – בולחו משום תקנת ערוה!

האי משום תקנת ולד דלא לפגע בהו ערוה.

בשלמא תמתין שני חדשים ותנשא, לא – דהיינו ספיקא, אי בר תשעה לקמא אי בר שבועה לבתרא.

אלא, תמתין חדש אחד ותנשא: ואי לשבעה ילדה – האי בר שבועה לבתרא הוא, ואי לתמנא ילדה – האי בר תשעה לקמא הוא.

The Gemara explains: **Here, too, there is a need to distinguish between seed that was sown in sanctity,^N i.e., a child conceived by a Jewish parents, and seed that was not sown in sanctity, i.e., a child conceived by gentile parents.**

Rava stated a different reason for the need to wait: It is a rabbinic decree^N lest a child be born and be incorrectly identified as the son of his mother's second husband when he is fact the son of her first husband. This could result in him **marrying his paternal sister**, unaware of the true relationship between them, **or consummating a levirate marriage with the wife of his maternal brother** under the misconception that his maternal brother was also his paternal brother. This would be prohibited because the prohibition to engage in relations with one's brother's wife is waived only in the case where there is a mitzva of levirate marriage, which applies only to paternal brothers.

Or in the event that his mother's second husband died and he was assumed to be his only offspring, **he would cause his mother to go out** and be permitted to the general public because, under the misconception that he was the offspring of the deceased, he assumed that there was no mitzva of levirate marriage. Or, in the event that his maternal brother died childless and the brother's widow became subject to levirate marriage, under the misconception that he was the paternal brother of the deceased he might perform *halitza* and **permit** his supposed *yevama* to marry a man from the general public. To avoid these problems, the Sages decreed that a woman must wait before remarrying.

Rav Ḥananya raised an objection from a *baraita*: **In all of those cases where the Sages prohibit a woman from marrying or consummating a levirate marriage, I identify^N that the prohibition is due to an ordinance instituted to prevent a violation of forbidden relations, and here, with regard to the prohibition against marrying within three months, it is due to an ordinance for the benefit of the offspring.** Rav Ḥananya explains the challenge: **And if it is so** that Rava's understanding of the prohibition against marrying within three months is correct, then **all of the cases of forbidden marriages are due to an ordinance to prevent violation of forbidden relations.** However, the *baraita* indicates otherwise.

The Gemara defends Rava's opinion and explains that the *baraita* can be interpreted in a way that is consistent with his understanding: When the *baraita* says that **this prohibition is due to an ordinance for the benefit of the offspring**, it means that due to the prohibition the offspring **will not encounter** a prohibition of forbidden relations.

S The Gemara analyzes the prohibition against marrying before three months have passed: **Granted, she should not wait for only two months and then marry, as this is still a case that could give rise to an uncertainty whether the child born to her seven months after remarriage is nine months old, i.e., counting from conception, and it is the offspring of the first husband, or whether the child is only seven months old and is the offspring of the latter husband.**

However, let her wait only **one month and then marry, and then, since it is presumed that a baby born during its eighth month since conception is not viable^B but a baby born during its seventh or nine month is viable, if after seven months since remarriage she gives birth, then the child is clearly seven months old and is the offspring of the latter husband, and if after eight months since remarriage she gives birth, then this child is clearly nine months old and is the offspring of the first husband.** Why, then, is there a need to wait three months?

One could say that the child is the offspring of the latter husband, etc. – איבא לַמִּימָר דְּבִתְרָא הוּא וכו' – Why didn't the Gemara reject the possibility of waiting one month also due to the possibility that she had become pregnant from her previous husband one month before the end of the marriage? In that case, if a baby boy was born after eight months that child would actually be nine months old and the offspring of the first husband. Rashi suggests that Gemara could have considered this possibility; however, since in any case the Gemara rejects the possibility of waiting one month for the reasons it mentions, it was not necessary to state another reason. Others suggest that the Gemara considered it preferable to provide reasons that pertain to all cases, even to a case where she had been married to her previous husband for only a single day (Ramban; Tosefot HaRosh).

But let her be examined through the way she walks – וְנִבְדְּקָהּ בְּהִלּוּכָהּ: Rashi and Rivan cite the *ge'onim*, who explain that the fetus of a pregnant woman rests on one side of the womb and causes her steps to be uneven.

BACKGROUND

Let her be examined through the way she walks – וְנִבְדְּקָהּ בְּהִלּוּכָהּ: Rashi cites the explanation of the *ge'onim* that the woman's footprints are examined. There is also an additional change in pregnant women: Their posture becomes less stable in that the upper body begins to arch back more and more as the pregnancy progresses. This small change is discernible already in the first months of pregnancy. A woman who wishes to hide her state can do so by purposefully altering her posture. If she does so, her pregnancy will not be evident for some time.

HALAKHA

Pregnant and nursing women – מְעוּבָּרָת וּמִנִּיקָת – A man may not marry a woman who is pregnant with the child of another man. He may also not marry a woman who is nursing the child of another man within twenty-four months of its birth. If he transgressed and married such a woman, he must divorce her with a bill of divorce. This applies even if he is a priest. If he is a non-priest he is permitted to remarry her after the nursing period has ended (Rambam *Sefer Nashim*, *Hilkhot Geirushin* 11:25; *Shulhan Arukh*, *Even HaEzer* 13:11).

אי נמי לתמנא ילדה – איבא לַמִּימָר דְּבִתְרָא הוּא, דְּלִמָּא אִישְׁתַּהוּי אִישְׁתַּהּא חֲדָשׁ אֶחָד וְאַיְעָבֵר.

The Gemara explains: Even if she gave birth after eight months since remarrying one could say that the child is the offspring of the latter husband,^N as perhaps she waited one month after remarrying and conceived only then. As such, the baby would be only seven months old, and that would explain its viability.

ותמתין שני חדשים ומחצה ותנשא, דאי לשבעה ילדה – האי בר שבעה לבתרא הוא. ואי לשיטתא ופלגא ילדה – האי בר תשעה לקמא הוא, דאי בר בתרא הוא – בר שיטתא ופלגא לא חיי!

The Gemara asks further: But let her wait for two and a half months and then marry, as, if after seven months since remarrying she gives birth, then this child is clearly seven months old and is the offspring of the latter husband. And if after six and a half months since remarrying she gives birth, then this child is clearly nine months old and is the offspring of the first husband, because if one would suggest it is the offspring of the latter husband, in that case it would be six and a half months old, at which age it cannot survive.

אי נמי לשיטתא ופלגא ילדה – איבא לַמִּימָר דְּבִתְרָא הוּא, דְּאִמְרַי מִר זוטרא: אפילו למאן דאמר יולדת לתשעה אינה יולדת למקוטעין – ילדה לשבעה יולדת למקוטעין.

The Gemara objects: Even if after six and a half months since remarrying she gave birth, one could say that the child is the offspring of the latter husband, as Mar Zutra said: Even according to the one who says that a woman who gives birth after nine months does not give birth after an incomplete number of months, i.e., she carries for a full nine months, nevertheless, a woman who gives birth after seven months can give birth after an incomplete number of months, and therefore it is possible that the baby was actually born after six and a half months.

שנאמר "ויהי לתקפות הימים", מעוט "תקופות" – שתיים, מעוט "ימים" – שנים.

This fact is derived from the verse concerning the birth of Samuel the prophet, as it is stated: "And it came to pass, when the seasons of the days had come, that Hannah conceived, and bore a son" (1 Samuel 1:20). How much time is indicated by the phrase "the seasons of the days"? The minimal sense of the word "seasons" is two, and since each season of the year is three months, that indicates six months. The minimal sense of the word "days" is two. Accordingly, one may conclude that Samuel the prophet was born after six months and two days.

ותמתין משנה ותנשא, וכי מלו שלשה חדשים לבדקה!

The Gemara suggests further: But let her wait any minimal amount of time, less than a month, and then marry, and then when three months after the end of her first marriage are complete, examine her body to see if she is noticeably pregnant. If she is, then perforce the baby is the offspring of her previous husband because a pregnancy is not noticeable until three months.

אמר רב ספרא: אין בודקין את הנשואות, שלא יתגנו על בעליהן. ונבדקה בהלוכה?

Rav Safra said: This solution is not possible because one does not examine the bodies of married women so as not to shame them before their husbands. The Gemara suggests: But let her be examined through the way she walks,^{NB} since after three months a pregnant woman walks differently than a woman who is not pregnant.

אמר רמי בר חמא: אשה מחפה עצמה, כדי שיירש בנה בנכסי בעלה.

Rami bar Hama said: A woman who conceived from her previous husband would mask herself by purposefully walking in a manner in which her pregnancy will not be discerned, so that her child will be identified as the son of her new husband in order that her child will ultimately inherit her new husband's property. Therefore, it is impossible to rely upon a test of this kind. In summary, the Gemara has demonstrated that it would be ineffective to wait any less than three months.

היבא דקים לן דמעוברת היא תנשא, אלמא תנאי: לא ישא אדם מעוברת חבירו ומינקת חבירו, ואם נשא יוציא ולא יחזיר עולמית.

§ The Gemara asks: In cases where we are convinced that she is pregnant, let her marry immediately, as the reason to wait three months does not apply. Why, then, is it taught in a *baraita*: A man may not marry a woman who is pregnant with the child of another man, nor a woman who is nursing the child of another man;^H and if he transgressed and married her, he is penalized for violating the prohibition, and he must divorce her and may never take her back?

NOTES

מן השמים ירחמו – Heaven will have mercy upon her – This concept, based on the verse: “The Lord preserves the simple” (Psalms 116:6), applies only when one acts normally and does not take unusual risks. When there is definite danger involved, one is not permitted to take the risk and rely on God’s protection. In the case here, there is only a very slight risk involved, and therefore this concept can be applied (Meiri; Ridvaz 3:596; *Ahiezzer* 1:23).

Due to the pressure – משום דחקה: Usually when the Gemara challenges the logic of a given answer and proceeds by saying: Rather, it indicates that the given answer is rejected. Accordingly, it would appear that the Gemara here rejects the suggestion that the concern that the man might damage the fetus by applying too much pressure could be the reason for the prohibition. However, the Rambam does cite this reason when he codifies the *halakha*. Some suggest that the Rambam understood that the Gemara never meant to reject the reasons it raised; it merely held that they were insufficient. It is also possible that the Rambam had a different version of the Gemara text and that in his version the Gemara never stated: Rather. Alternatively, it is possible that the Rambam drew a distinction between the case of a pregnant woman and that of a nursing woman, and different reasons apply to each case (see *Kesef Mishne* and *Ha’amek She’ala*).

גזירה שמא תעשה עוברת סנדל, אי הכי – דידיה נמי,

אי למאן דאמר במוך – במוך, ואי למאן דאמר מן השמים ירחמו – מן השמים ירחמו,

הכא נמי: אי למאן דאמר במוך – במוך, אי למאן דאמר מן השמים ירחמו – מן השמים ירחמו!

אלא משום דחקה. אי הכי דידיה נמי! דידיה חיים עילויה. הכא נמי חיים עילויה!

אלא: סתם מעוברת למניקה קיימא,

The Gemara explains: This prohibition is a rabbinic decree lest she become pregnant a second time and her original fetus will be deformed into the shape of a sandal fish. The Gemara asks: If so, even if his wife is pregnant with his own child, the same concern applies.

The Gemara responds: She is permitted to engage in relations, both if one holds in accordance with the one who said that a young girl, for whom it is dangerous to become pregnant, is permitted to engage in relations using a contraceptive resorbent placed at the entrance to her womb, then also a woman pregnant with her husband’s child may engage in relations using a resorbent, and similarly if one holds in accordance with the one who said a young girl is permitted to engage in relations in her usual manner and Heaven will have mercy upon her^N and prevent any mishap, then in this case as well a pregnant woman should continue to engage in relations and Heaven will have mercy upon her.

The Gemara objects: But here, too, in the case of a woman who is pregnant with the child of another man, these solutions could be employed: Both if one holds in accordance with the one who says that a young girl may engage in relations using a resorbent, in this case as well she may do so using a resorbent, and similarly if one holds in accordance with the one who says that Heaven will have mercy upon her, in this case as well Heaven will have mercy upon her.

The Gemara suggests a different reason for the prohibition against marrying a woman who is pregnant with the child of another man: Rather, it is due to the damage that could be caused to the fetus by the pressure^N applied to it at the time of intercourse. The Gemara asks: If so, even if his wife is pregnant with his own child, the same concern applies. The Gemara explains: When it is his own child, he has mercy upon it and tries not to apply too much pressure. The Gemara asks: But here, too, when it is the child of another man, he will have mercy upon it, as certainly one is careful not to cause harm to any human life and will be careful not to press down too hard.

The Gemara suggests a different reason: Rather, the reason for the prohibition is that a typical pregnant woman is poised to nurse her child once it is born;

Perek IV

Daf 42 Amud b

BACKGROUND

She will become pregnant and her milk will dry up – איעברה ומיעבר חלבא: The hormone responsible for producing milk in the mother’s body also substantially hinders ovulation. As such, women generally do not become pregnant while nursing. However, if a nursing woman does become pregnant, the hormones that are then released into her body can affect the mother’s milk and produce a change in the quality of the milk.

LANGUAGE

She will feed [memasmesa] – ממסמסא: This verb apparently has two meanings: It can mean to soften or mash, which fits well with the current version of the Gemara, as the verb is applied to eggs. It can also mean to calm or give encouragement. Accordingly, in the Gemara here it would mean to calm the hungry infant by providing him with these foods. Indeed, Rashi translates the word here to mean that she feeds her child.

דלמא איעברה, ומיעבר חלבא, וקטלה ליה. אי הכי דידיה נמי! דידיה ממסמסא ליה בבצים וחלב. דידיה נמי ממסמסא ליה בבצים וחלב! לא יהב לה בעל. וליתבעיניה ליורשים! אמר אביי: אשה בושה לבא לבית דין, והורגת את בנה.

therefore, one should be concerned that perhaps she will become pregnant and her milk will dry up⁸ during pregnancy, and the lack of milk will kill her newborn child. The Gemara asks: If so, even if his wife is pregnant with his own child, the same concern applies. The Gemara explains: For his own child, she will feed [memasmesa]^L him^N with eggs and milk as a substitute for the mother’s milk. The Gemara asks: Even if the child is not his, it is still the mother’s child, and for her child she will also feed him with eggs and milk. The Gemara answers: The husband will not give her money to procure food for a child that is not his. The Gemara asks: But she could sue her first husband’s heirs to provide subsistence for the child. Abaye said: A woman is embarrassed to come to court, and therefore she will not obtain enough sustenance for him. Consequently, she effectively kills her son as a result.

NOTES

She will feed him – ממסמסא ליה: Rashi explains the word as a reference to feeding. The Rivan explains it refers to preparing the food. Both of them assume that the food is for the baby. However, the *Ha’amek She’ala* cites the Rambam’s version of the text, which

implies that the eggs were not for the child but for the mother. He explains that sexual relations can affect a woman’s milk, causing it to dry up, but consuming eggs can help restore the flow.

Which are virgins – הי ניהו בתולות – Rashi assumes that the case of a virgin *yevama* is one in which she was widowed from betrothal. Accordingly the Gemara's question is that the cases of virgins and women who were betrothed are synonymous; why then are they listed as though they are two distinct cases? However, other early commentaries highlight that it is also possible that a married woman might be a virgin if she had not yet had the opportunity to consummate her marriage. Therefore, the *Arukh LaNer* explains the Gemara's question differently: A betrothed woman is certainly a virgin, and as such the additional reference to a virgin is superfluous.

That an individual opinion disagrees with him – ד'יחידא פליג עליה – In his Commentary on the Mishna, the Rambam explains that even in those places where the Mishna mentions the opinion of a single Sage, it does not necessarily mean that it was only that Sage who held that opinion. Rather, many other Sages held that opinion; the Sage mentioned was merely the leading exponent of it. However, when the Mishna cites an unattributed opinion or states: The Rabbis said, this is an indication that Rabbi Yehuda HaNasi maintained that the majority of the Sages held in accordance with that opinion.

Barren – עקרה – The Rivan and other commentaries explain that this refers to a woman whose womb had been removed. They explain that although the term barren is typically used in a more general sense, since the list here concludes with reference to a woman who is unsuited to give birth, which is a general statement, the earlier reference to a barren woman must be understood as referring to a specific case.

She was unsuited to give birth – ש'אינה ראויה לילד – Rashi explains that this is referring to a woman who took a drug that rendered her barren. The Rif writes that this is referring to a woman above the age of forty, or to a woman who had been married for ten years without children, since in such cases the Gemara states elsewhere that such women are no longer suitable for childbirth.

BACKGROUND

The vineyard of Yavne – כפר בבינה – According to an ancient tradition, the Sanhedrin in Yavne was called a vineyard because when it was in session, the Sages themselves, along with their students, would sit in rows, like the rows of a vineyard (Jerusalem Talmud). It is also possible that the Sanhedrin may have been situated near vineyards, lending the name a double meaning.

“אחת בתולות ואחת בעולות.” הי ניהו בתולות והי ניהו ארוסות, הי ניהו בעולות והי ניהו נשואות?

אמר רבי יהודה הכי קאמר: אחת בתולות ואחת בעולות שנתארמלו או שנתגרשו, בין מן הארוסין בין מן הנשואין.

רבי אלעזר לא על לבי מדרשא, אשכחיה לרבי אסי, אמר ליה: מאי אמור רבנן בבי מדרשא? אמר ליה, הכי אמר רבי יוחנן: הלכה ברבי יוסי.

מכלל דיחידא פליג עליה? אין, והתנא: הרי שהיתה רדופה לילך לבית אביה, או שהיה לה כעס בבית בעלה, או שהיה בעלה חבוש בבית האסורין, או שהיה בעלה זקן או חולה, או שהיתה היא חולה,

או שהפילה אחר מיתת בעלה, או שהיתה עקרה, או זקנה, או קטנה, או אילומית, או שאינה ראויה לילד – צריכה להמתין שלשה חדשים, דברי רבי מאיר. רבי יהודה מתיר ליארוס ולינשא מיד.

אמר רבי חייא בר אבא: תור בו רבי יוחנן. אמר רב יוסי: אי הדר ביה – ממתניתין דכרמא הדר ביה. דתנא, אמר רבי ישמעאל בנו של רבי יוחנן בן ברוקה: שמעתי מפי חכמים בכרם ביבנה: כולן צריכות להמתין שלשה חדשים.

S The mishna states: The requirement to wait three months before remarriage applies **both to virgins and non-virgins**, both to divorced and to widows, and both to women who were married to their previous husbands and to women who were only betrothed. The Gemara asks: **Which women are referred to as virgins^N and which are referred to as those who were betrothed?** Although the two terms appear to be synonymous, since a virgin will be subject to levirate marriage only if she was betrothed, they must certainly refer to two different categories of women. Similarly, **which women are referred to as non-virgins and which are referred to as married**, as a married woman is always considered to be a non-virgin?

Rabbi Yehuda said this is what the mishna is saying: The requirement to wait applies **to both virgins and non-virgins who were widowed or divorced, whether from betrothal or from marriage**, i.e., the mishna does not list different categories of women but instead establishes a general principle.

The Gemara relates: **Rabbi Elazar did not enter the study hall one day. He found Rabbi Asi and said to him: What was said by the Sages in the study hall today? He said to him: This is what Rabbi Yohanan said: The halakha is in accordance with the opinion of Rabbi Yosei** that a woman is permitted to be betrothed even before three months have passed, since the reason for waiting does not apply in that case.

Rabbi Elazar said: **From the fact that Rabbi Yohanan needed to state this, it would seem that there is an individual opinion that disagrees with him,^N even though no such opinion is mentioned in the mishna.** Rabbi Asi answered: **Yes, that is correct, and so it is taught in a baraita in the Tosefta (Yevamot 6:6):** With regard to a woman who is certainly not pregnant, for example, a woman who, at the time of her husband's death, had not lived with her husband for some time because she always eagerly hurried, like **one pursued, to go to her father's house, or because she had been subject to anger in her husband's house, or because her husband had been incarcerated in prison, or because her husband was elderly or infirm, or because she was infirm.**

Or a woman who could not be pregnant because she miscarried after her husband's death, or because she was barren,^N or elderly, or a minor, or a sexually underdeveloped woman [aylonit], or if for some other reason she was unsuited to give birth;^N even though the reason for the decree to wait three months does not apply to such a woman, nevertheless, she must wait three months. This is the statement of Rabbi Meir. **Rabbi Yehuda permits such women to be betrothed or to marry immediately.** It is apparent from the *baraita* that the question of whether a woman is required to wait the three months when the reason to do so does not apply is subject to a dispute.

Rabbi Hiyya bar Abba said: Rabbi Yohanan retracted his statement that the halakha is in accordance with the opinion of Rabbi Yosei. **Rav Yosef said: Even if he wanted to retract his statement, would he retract from the baraita that records the opinions of the Sages of the vineyard of Yavne?** **As it is taught in a baraita: Rabbi Yishmael, son of Rabbi Yohanan ben Beroka, said: I heard from the mouth of the Sages in the vineyard of Yavne^B that all those women enumerated in the baraita above need to wait three months.^H** If the great Sages of Yavne held in accordance with the opinion Rabbi Yosei, then the *halakha* is certainly in accordance with his opinion.

HALAKHA

Which women require a waiting period for the purposes of distinguishing – איז נשים צריכות הבקנה – The rabbinic decree that any woman who had been married must wait three months until she remarries is applied irrespective of whether the reason to wait is relevant. Therefore, a woman must wait even if it is clear that she is not pregnant, e.g., if she did not have the opportunity

to engage in sexual relations with her husband, or if she is elderly, or a minor, or an *aylonit*, or if for some other reason she is unsuited to give birth. This is in accordance with the opinion of Rabbi Meir, as the *halakha* is ruled in accordance with his opinion in all cases of rabbinic decrees (Rambam *Sefer Nashim, Hilkhhot Geirushin* 11:20; *Shulhan Arukh, Even HaEzer* 13:1).

אמר ליה רבי ירמיה לרבי זריקא: כי עיילת לקמיה דרבי אבהו רמי ליה: מי אמר רבי יוחנן הלכה כרבי יוסי? והאמר רבי יוחנן: הלכה כסתם משנה, ותנן: כל הנשים לא ינשאו ולא יתארו עד שיהו להם שלשה חדשים, אחת בתולות ואחת בעולות!

אמר ליה: דרמא לך הא – לא חש לקמחיה; סתם ואחר כך מחלוקת היא, ואין הלכה כסתם. דאמר רב פפא ואיתימא רבי יוחנן: מחלוקת ואחר כך סתם – הלכה כסתם, סתם ואחר כך מחלוקת – אין הלכה כסתם.

מסתמין ואזיל רבי אבהו אפתיה דרבי נחום שמעיה, מנקיט ואזיל הלכתא מיניה. בעא מיניה: מחלוקת ואחר כך סתם מאי? אמר ליה: הלכה כסתם. סתם ואחר כך מחלוקת מאי? אמר ליה: אין הלכה כסתם.

סתמא דמתניתין ומחלוקת בבביתא מאי? אמר ליה: הלכה כסתם. מחלוקת במתניתין וסתמא בבביתא מאי? אמר ליה:

Rabbi Yirmeya said to Rabbi Zerika: When you come before Rabbi Abbahu, raise the following contradiction: Did Rabbi Yohanan actually say that the *halakha* is in accordance with the opinion of Rabbi Yosei? Didn't Rabbi Yohanan say that the *halakha* is always established in accordance with the ruling of an unattributed mishna? And we learned in the mishna an unattributed ruling: All women may not marry and may not be betrothed until they have waited three months since their previous marriage ended; this applies to both virgins and non-virgins.

When Rabbi Zerika went and asked, Rabbi Abbahu said to him: The one who raised this contradiction to you is clearly not concerned for his flour;^N this is a case of an unattributed ruling followed by a dispute^N on that ruling, and in such cases the *halakha* is not necessarily in accordance with the unattributed opinion. As Rav Pappa said, and some say it was Rabbi Yohanan who said the following principle: When the Mishna first records a dispute, and afterward it records only one side of that dispute as an unattributed opinion, then the *halakha* is in accordance with the unattributed opinion. However, when the Mishna first records an unattributed opinion and afterward records that the ruling is subject to a dispute, the *halakha* is not necessarily in accordance with the unattributed opinion. In each case, the later reference is considered to be a summary of the matter.

S The Gemara relates: Rabbi Abbahu would walk while leaning upon the shoulder of Rabbi Nahum, his attendant, and along the way Rabbi Nahum would walk and gather halakhic rulings from him. Once, Rabbi Nahum asked him: When the Mishna first records a dispute, and afterward it records only one side of that dispute as an unattributed opinion, what is the *halakha*? Rabbi Abbahu said to him: The *halakha* is in accordance with the unattributed opinion. Rabbi Nahum then asked: When the Mishna first records an unattributed opinion and afterward records that the ruling is subject to a dispute, what is the *halakha*? Rabbi Abbahu said to him: The *halakha* is not necessarily in accordance with the unattributed opinion.^N

Rabbi Nahum asked: When a ruling is recorded in the Mishna as unattributed and it is subject to a dispute in a *baraita*, what is the *halakha*?^N Rabbi Abbahu said to him: The *halakha* is in accordance with the unattributed opinion in the Mishna. Rabbi Nahum then asked: When the Mishna records that a matter is subject to a dispute, and only one side is recorded as an unattributed opinion in a *baraita*, what is the *halakha*? Rabbi Abbahu said to him:

NOTES

He is not concerned for his flour – לא חש לקמחיה: Rashi explains the analogy as referring to one who does not show care and concern for the items that he himself produces. *Arukh* interprets it as a reference to one who is not wary of wasting his flour; here, he wasted the energy he gained from the bread he had eaten because he did not study thoroughly enough. Rabbi Avraham min HaHar explains the reference is to one who is not sufficiently aware of his own flour, i.e., one who does not taste his own food, which in this case is referring to one not paying attention to the words he says. The *ge'onim* had a different version of the text, which states: He does not fear that which is before him, meaning that he does not perceive that which is found directly before him.

An unattributed ruling followed by a dispute – סתם ואחר כך מחלוקת: The early commentaries engaged in a detailed clarification of this principle. For example, does it apply only to cases where named Sages are in dispute, or also to cases where an individual Sage disagrees with an unattributed opinion? The Meiri cites an opinion, also mentioned in *Sefer HaKeritut*, that

whenever the Mishna cites a dispute between a named Sage and an unattributed opinion, the *halakha* is not necessarily in accordance with the unattributed opinion, irrespective of whether the unattributed opinion is cited first or last in the mishna. The commentaries also discuss whether this principle applies only when the opinions appear together within a single mishna or even when they appear in different *mishnayot* within the same tractate. The Gemara states in one place that the tractates of the Mishna are not ordered sequentially, so that if in one tractate a dispute is cited and in another tractate one of the opinions is cited as unattributed, one cannot claim that the opinions in one tractate were recorded before the other in order to determine what the *halakha* should be. However, some claim that there is a specific sequencing of the orders of the Mishna, and therefore if the two *mishnayot* appear in different orders, the principle can be applied (see *Tosefot Yom Tov on Sota*, chapter 9, *Sha'ar HaMelekh*, and *Arukh LaNer*).

The *halakha* is not in accordance with the unattributed opinion – אין הלכה כסתם: Ramban, Rashba, Ritva, and *Nimmukei*

Yosef all note that the only intent of this statement is that in such a case Rabbi Yohanan's principle that the *halakha* is always established in accordance with the ruling of an unattributed mishna does not apply. It does not mean to state positively that the *halakha* is never in accordance with the unattributed opinion, but only that it is not necessarily so. Therefore, in such cases, the dispute must be analyzed based on the standard principles of halakhic decision-making.

A ruling recorded in the Mishna as unattributed and subject to a dispute in a *baraita* – סתם במשנה ומחלוקת בבביתא: The essence of this question lies in the fact that it was the disciples of Rabbi Yehuda HaNasi, the redactor of the Mishna, who taught the *baraitot*. It is therefore possible that they received Rabbi Yehuda HaNasi's final opinion on a matter and that he may have retracted his ruling recorded in the Mishna. The Rashba writes (*Bava Kama* 102a) that although the Gemara here states that one disregards the *baraita* in such a case, there are other *amora'im* who hold that the *baraita* does indeed carry greater authority than an unattributed mishna.

וכי רבי לא שנאה רבי חייא מנין לו?

If Rabbi Yehuda HaNasi had not taught that ruling in the Mishna,^N from where would Rabbi Hiyya, his disciple and redactor of the *baraitot*, have known it? Since the source of the unattributed ruling in the *baraita* is certainly the dispute recorded in the mishna, its lack of attribution in the *baraita* only reflects the fact that Rabbi Hiyya ruled in accordance with that opinion, but that cannot be used to indicate that it is the accepted *halakha*.

אמר ליה: והא תנן: מִסְרָק שֶׁל פֶּשֶׁתַּן שְׁנֵיטְלוּ שִׁינָיו, וְנִשְׁתַּיְרוּ בוֹ שְׁתֵּים – טְמֵאוֹת, וְאַחַת – טְהוֹרָה. וְכוּלָּן שְׁנֵיטְלוּ אֶחָת אַחַת בְּפָנֵי עֶצְמָן – טְמֵאוֹת.

Rabbi Nahum questioned the principle that the *halakha* is always in accordance with an unattributed ruling in a mishna and said to Rabbi Hiyya: Didn't we learn in a mishna (*Kelim* 13:8): A comb made for combing beaten flax^H in preparation for spinning, from which its teeth were removed^N and only two of its teeth remained in it, is still suitable for combing. It is therefore considered a utensil and will become ritually impure if it comes in contact with ritual impurity. However, if only one tooth remained, so that the comb was no longer suitable for combing, it is no longer considered a utensil and so will remain ritually pure even if it comes in contact with ritual impurity. And with regard to any of the teeth that were individually removed on their own, since they do serve a purpose, e.g., they may be embedded and used as hooks, they are considered utensils and can become ritually impure.

שֶׁל צִמְרָן שְׁנֵיטְלוּ שִׁינָיו אֶחָת מִבִּינֵיהֶם – טְהוֹר, וְנִשְׁתַּיְרוּ בוֹ שְׁלֹשׁ בְּמָקוֹם אֶחָד – טְמֵא, הִיתָה הַחֲצִיצוֹנָה אֶחָת מֵהֶן – טְהוֹר. נִשְׁטְלוּ שְׁנֵים וְעֶשְׂרֵן לְמַלְקָט – טְמֵאוֹת, אֶחָת וְהִתְקִינָה לְגֵר אוֹ לְמִיתוּת – טְמֵאָה.

A comb made for combing wool^{BHN} from which every other one of its teeth were removed, so that no two consecutive teeth remained in place, is no longer suitable for combing and so will remain ritually pure. If three teeth remained in it in a single place so that it could still be used for combing, then it could become ritually impure. However, if one of those teeth was the external frame of the comb itself, then it could not function as a comb, and so it will remain ritually pure. If two of the teeth were removed and made into small pincers, then they could become ritually impure. Alternatively, if one of the teeth was removed, and it was prepared in a manner that made it suitable for use in cleaning an oil lamp^N or for stretching^N ropes, then it would be considered a utensil and could become ritually impure.^H

HALAKHA

A comb made for flax – מִסְרָק שֶׁל פֶּשֶׁתַּן: With regard to a comb made for combing flax, from which the teeth were removed: If two teeth remain, the comb remains susceptible to ritual impurity, but if only a single tooth remains it is no longer susceptible to ritual impurity (Rambam *Sefer Tahara*, *Hilkhot Kelim* 11:4).

A comb made for wool – מִסְרָק שֶׁל צִמְרָן: With regard to a comb made for combing wool, from which the teeth were removed, if three teeth remain in a single place, the comb remains susceptible to ritual impurity. However, if one of the three was the external frame, it would not be susceptible to ritual impurity. The *Kesef Mishne* questions why the Rambam

rules in accordance with this mishna even though the Gemara states that it is not ruled as *halakha* (see NOTES; Rambam *Sefer Tahara*, *Hilkhot Kelim* 11:3).

The teeth of the comb – שִׁינֵי הַמִּסְרָק: If two teeth of a comb were removed and made into pincers, or if a single tooth was removed and prepared for an oil lamp or for stretching, then they are susceptible to ritual impurity. If that tooth was large and thick, then even if it was not specially prepared, it is susceptible to ritual impurity. This is in accordance with the resolution suggested by Rav Pappa (Rambam *Sefer Tahara*, *Hilkhot Kelim* 11:3).

NOTES

If Rabbi Yehuda HaNasi had not taught it, etc. – וכי רבי לא: The Gemara assumes that since Rabbi Hiyya was Rabbi Yehuda HaNasi's disciple, it does not stand to reason that he would formulate an opinion as though it were the conclusive *halakha* when Rabbi Yehuda HaNasi clearly decided not to teach that opinion in such a way (Rav Sherira Gaon). The Maharik adds that Rabbi Yehuda HaNasi had a far greater breadth of knowledge than Rabbi Hiyya, and so it is improbable that Rabbi Hiyya would be aware that a certain opinion had been accepted as the *halakha* if Rabbi Yehuda HaNasi was not.

A comb whose teeth were removed, etc. – מִסְרָק שְׁנֵיטְלוּ שִׁינָיו: Utensils are susceptible to ritual impurity only when they serve a useful purpose. Even if they break and no longer serve their original purpose, if they serve some other useful purpose they can still become impure. The import of this mishna is to define at which point a comb is considered broken to the extent that it no longer serves any useful purpose and therefore is no longer susceptible to ritual impurity.

Combs made for wool and flax – מִסְרָקֵי צִמְרָן וּפֶשֶׁתַּן: The early commentaries describe the differences between the two types of combs: The Rivan explains that the teeth of a flax comb are

BACKGROUND

Combs for wool and flax – מִסְרָקֵי צִמְרָן וּפֶשֶׁתַּן: From the various descriptions in the Mishna and Talmud, it would appear that the comb made for flax was a large instrument with which the stalks of flax were combed in order to prepare them for spinning. The body of the comb and its external teeth were constructed from wood, while the internal teeth were metal nails. It is for this reason that no combs of this kind remain from that period, because wood generally decomposes, at which point any nails fall out.

There are differing opinions concerning the structure of the comb made for wool. Some explain that it was made in a similar fashion to the one for flax, the only difference being its thickness and the proximity of the teeth. Others, however, explain that the comb made for wool was an entirely different tool. It was constructed from a wooden board, or a pair of wooden boards, also known as cards, upon which several rows of metal nails were fastened. The combing was achieved by dragging the wool over the boards. According to this description, the Gemara's distinction between internal teeth and external teeth refers to the different rows of teeth.



Dried flax with threshing comb



Pair of wool cards

narrower than those of a wool comb. However, the Meiri claims the opposite to be true and adds that they are also distinct in their form and structure.

It was prepared for an oil lamp – הִתְקִינָה לְגֵר: Rashi suggests that this means that the tooth of the comb can be used to clean out the lamp. The Rivan suggests that a wax candle could be attached to it.

For stretching – לְמִיתוּת: The Rambam, in his commentary on the Mishna on *Kelim* 13:6, explains that this term refers to wrapping a thread around a stick to make the thread easier to use.

NOTES

But we maintain that the *halakha* is not in accordance with that *mishna* – וְקִיַּמָּא לָן דְּאִין הִלְכָּה כְּאוֹתָהּ מִשְׁנָה – Despite the Gemara's claim, the Rambam rules in accordance with this *mishna*. In addition, it appears that Rabbi Shimon Shimshon also rules in this manner. The *Yam shel Shlomo* explains that although the Gemara identifies the various difficulties inherent in the *mishna*, the *mishna* is nevertheless ruled as *halakha*, and ultimately the Rabbis disagree with Rabbi Shimon only on a single point, i.e., the question of ritual impurity for the teeth removed from the comb. Rabbi Shimon holds that these do not require preparation in order to be susceptible to ritual impurity, while the Rabbis hold that they do require preparation (see *Keren Ora* and *Arukh LaNer*).

BACKGROUND

Those who are exact – דְּיוֹקְנֵי: Apparently, there were a number of Sages who were relied upon to establish the precise formulation of the *mishna*. Rav Sherira Gaon explains in his famous letter concerning the composition of the *Mishna* that this is why the Gemara is often willing to delete parts of a *mishna* or even an entire *mishna* on occasion, as sometimes the current version is erroneous or was not transmitted reliably.

וְקִיַּמָּא לָן דְּאִין הִלְכָּה כְּאוֹתָהּ מִשְׁנָה!
אָמַר לֵיהּ: בְּרַמְיָה דְּהֵיא, דְּרַבִּי יוֹחָנָן
וְרִישׁ לְקִישׁ דְּאָמְרֵי תְרוּוּיָהּ: זֶה אֵינָה
מִשְׁנָה.

מֵאֵי טַעְמָא? אָמַר רַב הוּנָא בְּרַמְיָה
מִשְׁמִיָּה דְּרַב אִידִי בְּרִיה דְּרַב אִיקָּא:
מִשּׁוּם דְּקָשְׁיָא רִישָׁא לְסִיפָּא. דְּקָתְנִי:
שֶׁל צֶמֶר שְׁנִיטְלוּ שִׁינָיו אַחַת מִבִּינָתָם –
טָהוֹר, הָא נִשְׁתַּיֵּירוּ בּוֹ שְׁתֵּים בְּמָקוֹם
אֶחָד – טָמֵא, וְהָדָר תֵּנִי: נִשְׁתַּיֵּירוּ בּוֹ
שְׁלֹשׁ – טָמֵא, שְׁלֹשׁ – אֵין, שְׁתֵּים –
לֹא!

וּמֵאֵי קוּשְׁיָא? דְּלָמָּא הָא בְּגוּיִיתָא הָא
בְּבִרְיָתָא!

אֶלָּא מִהֲכָא, דְּקָתְנִי: וְכוּלָּן שְׁנִיטְלוּ
אַחַת אַחַת בְּפִנֵּי עֶצְמֵן טָמְאוּת, וְאֵף עַל
גַּב דְּלֹא הִתְקִינָה. אִימָא סִיפָּא: אַחַת
וְהִתְקִינָה לִינָר אוֹ לְמִיתוּחַ – טָמְאָה.
הִתְקִינָה – אֵין, לֹא הִתְקִינָה – לֹא!

אָמַר אַבְי: וּמֵאֵי קוּשְׁיָא? דְּלָמָּא הָא
בְּקִתְיָהּ, הָא בְּלֹא קִתְיָהּ.

אָמַר רַב פָּפָא: וּמֵאֵי קוּשְׁיָא? וְדָלְמָא
הָא – בְּקִטְיָתָא, הָא – בְּאֵלִימָתָא.

אֶלָּא: מִשּׁוּם דְּמִסִּימֵי בָּהּ דְּיוֹקְנֵי: זֶה
רַבִּי שְׁמַעוֹן.

שָׁלַח רַבִּי חִיָּיָא בְּרַב אָבִין: מֵאֶרְסִין תּוֹךְ
שְׁלֹשָׁה, וְכֵן עוֹשִׂים מִעַשָּׂה.

Rabbi Naḥum posed his question: **But we maintain that the *halakha* is not in accordance with that *mishna*.**ⁿ This would seem to contradict the principle that the *halakha* is always in accordance with an unattributed opinion. Rabbi Ḥiyya said to Rabbi Naḥum that the principle applies to all cases **apart from this *mishna***, as with regard to this particular *mishna* there are **Rabbi Yoḥanan and Reish Lakish who both say: This is not an authoritative *mishna***, and so it cannot be relied upon for a halakhic ruling.

The Gemara asks: **What is the reason** to say that the *mishna* is not authoritative? Rav Huna bar Manoah said in the name of Rav Idi, son of Rav Ika: **It is because the first clause** of that *mishna* **contradicts the latter clause**, as it teaches: A comb used for wool from which every other one of its teeth were removed is no longer considered a utensil, and so it will remain ritually pure. This implies that **were two teeth to remain in it in one place**, it could become ritually impure. **And then the *mishna* continues and teaches:** If **three teeth remained in it in a single place** it is still considered a utensil and so it could become ritually impure. This indicates that if there are **three, yes**, it could become ritually impure, but if there are **two, no**, it would not become ritually impure.

The Gemara asks: **But what is the difficulty?** Perhaps this ruling that if two teeth remain it is considered a utensil is referring to **the internal teeth**, found in the middle of the frame, while **that** ruling that it is not considered a utensil is referring to **the outer teeth**, which are adjacent to the frame of the comb, which makes them unsuitable for use.

Rather, the difficulty with the *mishna* is **from here**, as it teaches: **And any of the teeth that were individually removed on their own**, since they can serve a useful purpose they are considered utensils and can become ritually impure. **And the implication is that this is true even though the tooth was not prepared** for that purpose. **But say the latter clause** as follows: If **one** of the teeth was removed, **and it was prepared** in a manner that rendered it suitable for use in cleaning an oil lamp or for stretching ropes, then it would be considered a utensil and could become ritually impure. The implication is that if **it was prepared** for use, then **yes**, it would be considered a utensil, but if **it was not prepared** for use, then **no**, it would not be considered a utensil.

Abaye said: **But what is the difficulty?** Perhaps this ruling, that further preparation is not required before it is considered a utensil, is referring to a case where the teeth were removed **with their base**, which allows them to be used immediately for various functions, whereas **that** ruling, that it is considered a utensil only once it is prepared for use, is referring to a case where the teeth were removed **without their base** and therefore require further preparation before they can be used.

Rav Pappa stated an alternative resolution: **But what is the difficulty?** Perhaps this ruling that further preparation is not required is referring to a case where the teeth were **narrow**, whereas **that** ruling that it is considered a utensil only once it is prepared for use is referring to a case where the teeth were **thick**.

Rather, the reason that the *mishna* is not accepted as authoritative is not due to some difficulty in the formulation of the *mishna*, but **because those who are exact^b** in their rendition of the tradition **conclude** this *mishna* with: **This is the statement of Rabbi Shimon**. In other words, this *mishna* is not unattributed but presents the minority opinion of a single Sage, and it is for this reason that it is not accepted as authoritative.

§ Rabbi Ḥiyya bar Avin sent a message from Eretz Yisrael with regard to the *halakha* cited in the *mishna*: **One may betroth a woman, but not marry her, within three months of her previous marriage; and so one acts in practice.**

רבי חנינא הגדול – Rabbi Ḥanina the Great: This is Rabbi Ḥanina bar Ḥama, who is labeled this way because he was one of the outstanding Sages of his generation. In the Jerusalem Talmud he is known as Rabbi Ḥanina Rabba, which bears the same meaning. This epithet is generally used when Rabbi Ḥanina is mentioned alongside another Sage of that name, in this case Rabbi Ḥanina Kara, to differentiate between them.

וכן היה רבי אלעזר מלמדנו משום רבי חנינא הגדול: רובו של ראשון, ורובו של שלישי, ואמצעי שלם.

אממר שרא לרארם ביום תשעים. אמר ליה רב אשי לאממר: והא רב ושמואל דאמרי תרוייהו: צריכה להמתין שלשה חדשים, חוץ מיום שמת בו וחוץ מיום שנתארסה בו! ההוא לענן מינקת איתמר. דרב ושמואל דאמרי תרוייהו: צריכה להמתין עשרים וארבעה חדש, חוץ מיום שגולד בו וחוץ מיום שנתארסה בו.

והא ההוא דעבד סעודת אירוסין ביום תשעים, ואפסדיה רבא לסעודתיה! ההיא סעודת נשואין הוא.

והלכתא: צריכה להמתין עשרים וארבעה חודש, חוץ מיום שגולד בו וחוץ מיום שנתארסה בו. וצריכה להמתין שלשה חדשים, חוץ מיום שמת בו וחוץ מיום שנתארסה בו.

”חוץ מן האלמנה” וכו'. אמר רב חסדא: קל וחומר, ומה במקום שאסור לכבס – מותר ליארס, מקום שמוותר לכבס – אינו דין שמוותר ליארס!

And so Rabbi Elazar would teach us in the name of Rabbi Ḥanina the Great^p that the three months are counted as follows: One counts the majority of the days of the first month,ⁿ and the majority of the third month, and the entire middle month.

Ameimar permitted one to betroth a woman on the ninetieth dayⁿ itself. Rav Ashi said to Ameimar: Didn't Rav and Shmuel both say that she needs to wait three full months, excluding the day on which the husband died and excluding the day on which she is betrothed? It is apparent that it is still prohibited to betroth a woman on the ninetieth day itself. Ameimar said to him: That which you heard, that the days of the husband's death and of the betrothal are not included, was stated only with regard to a nursing woman, as it was Rav and Shmuel who both said: A nursing woman needs to wait twenty-four months before being betrothed, excluding the day on which the baby was born and excluding the day on which she is betrothed.

The Gemara asks: Wasn't there an incident concerning a certain person who prepared a betrothal feast on the ninetieth day following the death of the woman's first husband, and Rava caused him to forfeit his feast by prohibiting the betrothal on that day? The Gemara answers: That feast was actually a marriage feast, but had it been a betrothal feast it would have been permitted.

The Gemara summarizes: The *halakha* is that a nursing mother needs to wait twenty-four months,ⁿ excluding the day on which the baby was born and excluding the day on which she is betrothed. And if she was widowed but was not nursing, then she needs to wait only three months, excluding the day on which her previous husband died and excluding the day on which she is betrothed.^h

S The mishna states that Rabbi Yosei says: All women may be betrothed within three months **except for a widow**, due to the mourning period she must observe for her deceased husband. Rav Ḥisda questioned the mishna's ruling and said: Based on an *a fortiori* inference, it should be permitted for a woman to be betrothed during the thirty-day mourning period for her husband: If during another period of mourning, which the Gemara will specify, **when it is prohibited to launder clothes, it is permitted to be betrothed**, then during the thirty-day morning period for a husband, **when it is permitted to launder clothes, isn't it logical that it should also be permitted to be betrothed?**

NOTES

The majority of the first month – רובו של ראשון: The Rivan claims that this novel ruling is limited and applies only to a woman who was merely betrothed to her previous husband. However, even Rabbi Ḥanina would concede that a woman who was married would have to wait three complete months.

Some commentaries suggest the basis for Rabbi Ḥanina's ruling is to be found in the narrative of Tamar, where it states that her pregnancy was discernible “about three months after” (Genesis 38:24), which they interpret to mean that there was not three full months but some part of them.

On the ninetieth day – ביום תשעים: In the *She'iltot de Rav Aḥai Gaon* it is written that the reason that the woman is permitted to

marry on the ninetieth day itself is based on the principle that in many cases, once a portion of the day has passed it is considered as though the entire day had passed.

Twenty-four months, etc. – עשרים וארבעה חודש וכו': The geonic responsa and several *midrashim* see an allusion to this *halakha* in the verse: “You shall not cook [*tevashel*] a kid in its mother's milk” (Exodus 23:19). The numerical value of the Hebrew word *tevashel* is 732, which is exactly the number of days in two solar years plus two additional days. However, the later commentaries discuss whether the twenty-four months referred to here are based on the solar or the lunar calendar, as well as what the *halakha* would be if one of the years were a leap year.

HALAKHA

זמן – זמן: The time of betrothal following the waiting period – **האירוסין אחר המתנה**: Pregnant women and nursing mothers may not be betrothed, and certainly not married, until the period of nursing has ended. The time established by the Sages for this period is twenty-four months, excluding the day of the child's

birth and the day of the betrothal. A woman who is widowed or divorced and is not pregnant or nursing must wait ninety days, excluding the day of the husband's death or the divorce and the day of the betrothal (Rambam *Sefer Nashim*, *Hilkhot Geirushin* 11:26; *Shulḥan Arukh*, *Even HaEzer* 13:1, 11).

שבֿת שֿחֿל – The week in which the Ninth of Av occurs – **תשעה באב בתוכה**: It is prohibited to cut hair and to launder clothing during the week in which the Ninth of Av occurs. Laundered clothes may be worn only on Shabbat. There are several opinions with regard to which activities are classified as laundering and are therefore prohibited. This is the Sephardic custom. The Rema explains that it was customary to be more stringent and to adopt all of these restrictions from the first day of the month of Av. This is the Ashkenazic custom (Rambam *Sefer Zemanim*, *Hilkhot Ta'anit* 5:6; *Shulḥan Arukh*, *Orah Ḥayyim* 551:3).

Prior to this time – **קודם הזמן הזה**: Business transactions are reduced from the first day of the month of Av, and joyful building or planting is not performed unless it is done for the sake of a mitzva (Ran). This is in accordance with the Gemara in tractate *Ta'anit* (Rambam *Sefer Zemanim*, *Hilkhot Ta'anit* 5:6; *Shulḥan Arukh*, *Orah Ḥayyim* 551:2).

Betrothal and marriage in the month of Av – **בחדש אב**: It is prohibited to marry from the first day of Av until after the fast of the Ninth of Av, and betrothal feasts are also not permitted. However, it is permitted to perform a betrothal without a feast even on the Ninth of Av itself. This is in accordance with the Gemara in tractate *Ta'anit* (Rambam *Sefer Nashim*, *Hilkhot Ishut* 10:14; *Shulḥan Arukh*, *Orah Ḥayyim* 551:2).

NOTES

On Thursday it is permitted – **ובחמישי מותר**: This ruling is not cited in the various codifications of *halakha*. The commentaries explain that this is because this *halakha* applies only when the Ninth of Av occurs on a Friday, in which case it is necessary to prepare for Shabbat on Thursday. However, once the calendar was fixed so that the Ninth of Av never occurs on a Friday, this *halakha* became obsolete (*Maggid Mishne*).

From business transactions – **מלישא וליתן**: This *halakha* is not cited by many of the early halakhic authorities. The commentaries explain that those authorities hold that refraining from business transactions was only a custom of the especially pious, or a regional custom limited to some places. The *Yam shel Shlomo* explains that there is an established ruling that since it was often very difficult for Jews in exile to earn a livelihood in any way other than business, it is improper to prohibit it (see *Tosafot* and *Tosafot Yeshanim*).

מאי היא דתנן: שבת שחל תשעה באב בתוכה – **אסור לספור ולכבס, ובחמישי מותר מפני כבוד השבת. ותנאי: קודם הזמן הזה העם ממעטין בעסקיהם מלישא ומליתן, מלבנות ולנטוע, ומארוסין אבל לא בונסין, ואין עושין סעודת אירוסין.**

בי תנאי ההיא – קודם דקודם (תנאי).

אמר רבא: וקודם דקודם נמי, קל וחומר: ומה במקום שאסור לישא וליתן – מותר ליארס, מקום שמוותר לישא וליתן – אינו דין שמוותר ליארס?

לא תימא דרבי יוסי אומר כל הנשים יתארוסו, אלא אימא: כל הנשים ינשאו.

The Gemara explains the cases involved: **What is the period of mourning to which Rav Ḥisda is referring? As we learned in a mishna (*Ta'anit* 26b): During the week in which the Ninth of Av occurs,^h it is prohibited to cut hair and to launder clothes, but on Thursday it is permittedⁿ in deference to Shabbat. And it is taught in a *baraita*: Prior to this time^h the public reduce their activities, refraining from business transactions,ⁿ from building and planting, and they may betroth women but may not marry them,^h and they may not make a betrothal feast.** The Gemara assumes that the *baraita* is referring to the days immediately preceding the Ninth of Av. Accordingly, during the days prior to the Ninth of Av it is prohibited to launder clothes, but it is permitted to be betrothed. It was upon this period of time that Rav Ḥisda based his *a fortiori* inference.

To defend Rav Yosei's ruling in the mishna, the Gemara explains: **When that *baraita* is taught, it is taught with regard to the period prior to the period that is prior to the Ninth of Av, i.e., the days prior to the week in which the Ninth of Av occurs. It is only then that it is permitted to be betrothed, but during the week in which the Ninth of Av occurs it is prohibited. Therefore, the basis of Rav Ḥisda's *a fortiori* inference is undermined.**

Rava said: From the period prior to the period that is prior to the Ninth of Av, a challenge to Rabbi Yosei's ruling can also be advanced based on an *a fortiori* inference, as follows: If in a period of mourning when it is prohibited to conduct business transactions, it is permitted to be betrothed, then during the thirty-day morning period for a husband, when it is permitted to conduct business transactions, isn't it logical that it should also be permitted to be betrothed?

The Gemara accepts the conclusion of this *a fortiori* inference and therefore concludes: **Do not say that Rabbi Yosei says: All women may be betrothed within three months; rather, emend his statement to say: All women may be married within three months except for a widow. However, even Rabbi Yosei agrees that it is permitted for a widow to be betrothed during this period.**

Perek IV

Daf 43 Amud b

ולית ליה לרבי יוסי להבחין?

The Gemara asks: **But does Rabbi Yosei not accept** that there is a decree to wait three months in order to distinguish between the seed of the first and second husbands? According to the Gemara's emendation of his statement, it would appear there is no case in which Rabbi Yosei applies the decree.

לית ליה. ואיבעית אימא: לעולם אית ליה, ואימא, רבי יוסי אומר: כל ארוסות גרושות ינשאו.

The Gemara answers: Indeed, **he does not accept** the decree. **And if you wish, say that actually, he does accept** the decree and applies it in the case of a married woman who was divorced. **And** with regard to the challenge to his opinion from the *a fortiori* inference, emend the mishna and say: **Rabbi Yosei says that all women who were only betrothed to their previous husbands and then divorced may be married within three months, since the reason to wait does not apply in this case.**

אי הכי היינו רבי יהודה! איבא בינייהו
נשואה ליארוס; רבי יהודה סבר: נשואה
מותרת ליארוס, ורבי יוסי סבר: נשואה
אסורה ליארוס.

The Gemara asks: If so, then this opinion of Rabbi Yosei is identical to the opinion of Rabbi Yehuda. What difference is there between them? The Gemara answers: There is a practical difference between them in the case of a woman who was married to her previous husband and seeks to be betrothed. Rabbi Yehuda holds that it is permitted to betroth a woman who was married to her previous husband without first waiting three months. And Rabbi Yosei holds that it is prohibited to betroth a woman who was married to her previous husband without first waiting three months.

וסבר רבי יוסי נשואה אסורה ליארוס?
והתנא, רבי יוסי אומר: כל הנשים
יתארוסו, חוץ מן האלמנה מפני האיבול,
ובמה איבול שלה – שלשים יום.
ובולן לא ינשאו עד שיהיו להן שלשה
חדשים!

The Gemara asks: But does Rabbi Yosei really hold that it is prohibited to betroth a woman who was married to her previous husband without first waiting three months? Isn't it taught in a *baraita*: Rabbi Yosei says that all women may be betrothed without waiting except for a widow, due to the mourning period she must observe for her deceased husband; and how long is her mourning period? It is thirty days. And none of them may be married until they have waited three months.

האי מאי קושיא? אלימא דקתני, רבי
יוסי אומר: כל הנשים יתארוסו – מי
אלימא ממתניתין דאוקימנא בארוסות
גרושות ונשאו – הקא נמי כל ארוסות
גרושות ונשאו.

The Gemara clarifies the question: What difficulty does this *baraita* pose? If we say that the *baraita* teaches: Rabbi Yosei says that all women may be betrothed without waiting, is the *baraita* stronger than the *mishna*ⁿ that was established as teaching that women who were only betrothed to their previous husbands and then divorced may be married within three months? Here, too, the *baraita* could be established as teaching that all women who were only betrothed to their previous husbands and then divorced may be married within three months.

אלא מסיפא, דקתני: ובולן לא ינשאו
עד שיהיו להן שלשה חדשים. אינסובי
הוא – דלא, הא איתרוסי – שפיר דמי.

Rather, the difficulty arises from the latter clause that teaches: And none of them may marry until they have waited three months. This implies that Rabbi Yosei holds that it is specifically marrying that is not permitted, but betrothing seems well and is permitted. This challenges the Gemara's original claim that Rabbi Yosei disagrees with Rabbi Yehuda on this point.

אמר רבא, תריץ ואימא הכי: רבי יוסי
אומר כל ארוסות גרושות ונשאו,
חוץ מן האלמנה מפני האיבול, ובמה
איבול שלה – שלשים יום. ונשואות לא
יתארוסו עד שיהיו להן שלשה חדשים.

Rava said: Resolve the difficulty and emend Rabbi Yosei's statement to say this: Rabbi Yosei says that all women who were only betrothed to their previous husbands and then divorced may marry within three months except for a widow, due to the mourning period she must observe for her deceased husband. And how long is her mourning period? It is thirty days. And women who were married to their previous husbands may not be betrothed until they have waited three months.

ואלמנה מן הארוסין מי אית לה איבול?
והתני רבי חייא בר אמי: אשתו ארוסה –
לא אוינן ולא מיטמא לה, וכן היא לא
אוננת ולא מיטמאה לו. מתה – אינו
יורשה, מת הוא – גובה כתובתה.

The Gemara asks: But does a woman who became a widow from betrothal have to observe a mourning period for her husband? Didn't Rabbi Hiyya bar Ami teach in a *baraita*: If one's wife to whom he was betrothed died, he does not observe a period of acute mourning for her, and if he is a priest he is not permitted to become ritually impure for her. And similarly, if he dies, she does not observe a period of acute mourning for him and she does not become ritually impure for him.ⁿ If she dies, he does not inherit from her. If he dies, she collects payment of her marriage contract. The *baraita* demonstrates that a widow is required to mourn her husband only if she was married to him and not merely betrothed. If so, clearly Rabbi Yosei's ruling in the *mishna* is referring to married women. Accordingly, all of the Gemara's emendations of Rabbi Yosei's statement, in order to defend his statement from Rav Hisda's *a fortiori* inference, are refuted.

NOTES

מי אלימא ממתניתין – Is the *baraita* stronger than the *mishna* – Since the language of the *Mishna* is assumed to be more exact than that of the *baraitot*, being that the latter were not proofread and examined to the same extent, it often happens that the Gemara revises the language found in a *baraita* or assumes that its formulation is not exact. Consequently, if the same expression is found in both a *mishna* and in a *baraita*, and it is revised or understood to be imprecise in the *mishna*, then it stands to reason that the same expression must be revised in the *baraita* as well.

לא מיטמאה – She does not become ritually impure for him – ל: The early commentaries note that this clause of the *baraita* is strange because a woman is never prohibited from becoming ritually impure, even if she is the daughter or wife of a priest. Rashi apparently avoided this difficulty by explaining that the intention of the *baraita* is just that a betrothed woman is not obliged to involve herself with his burial, which will usually result in her becoming ritually impure.

Betrothal without a feast – איורסין בלא סעודה – In the time of the Talmud formal betrothal would take place long in advance of marriage, often a year beforehand. Following the betrothal, the bride and groom are still not permitted to live together. Consequently, betrothal alone does not lead to a sense of joy unless a celebratory feast to mark the event is prepared, in which fine foods, meat, and wine are available. In contrast, the marriage represents the beginning of the couple's life together, and therefore it is a joyous occasion even if it is not celebrated with a feast.

New mourning is different, etc. – שאני אבילות חדשה – Rashi explains that the mourning for the Ninth of Av is less severe than the mourning of a private individual on two counts, both because it is public and because it is old. Rabbeinu Tam raises a challenge to this in *Tosafot*: If this is so, then the *a fortiori* objection raised earlier by Rav Hisha is indeed valid. Ramban suggests a further objection, pointing out the repetitive language utilized in the Gemara, which states: New mourning is different from old mourning and the mourning of the public is different from the private mourning of the individual. This seems to imply that there is not a single difference, but rather two differences. The commentaries suggest that the aspects of some rulings on the Ninth of Av may be more lenient, while others must be more stringent, and therefore it is not possible to draw inferences from these *halakhot* to matters concerning private individuals.

Rabbeinu Tam holds that the *halakha* must be ruled stringently with regard to actions performed in the public sphere in matters of public mourning, as were it not so, it would appear that there is no need to be concerned over displays of mourning at all. However, in private matters such as betrothals, there is no reason to be stringent. The Ramban explains differently: Since the mourning on the Ninth of Av is old, people might tend to treat it lightly. Therefore, a stringent ruling was put in place with regard to laundering clothes, a restriction that does not exist in cases of new mourning. On the other hand, were the Sages to permit betrothal in cases of private mourning, people might end up preparing feasts to celebrate the event, and no one would stop them, whereas in cases of public mourning others would certainly prevent the one performing the betrothal from performing any prohibited actions.

The Meiri explains that public mourning is less intense, and so to emphasize the period, the Sages were more stringent in the matter of laundering clothes. However, they were concerned that if they were to impose a rabbinic decree against betrothals during periods of public mourning, people might not obey, and so they did not do so.

Mourning of the public – אבילות דרבים – Rivan explains that public mourning is less intense because in such cases people comfort one another. Similarly, the Meiri explains that this type of mourning is in itself a partial consolation.

אלא תנאי היא. דתנאי: מראש חדש ועד התענית העם ממעטין מעסקיהן, מלישא ומליתן, מלבנות ולנטוע, ומליארים ומלישא. שבת שחל תשעה באב בתוכה – אסור לספר ולכבס (ולאסור ליארים). ויש אומרים: כל החדש אסור.

מתקין לה רב אשי: ממאי דליארים – ליארים ממש? דלמא למיעבד סעודת איורסין הוא דאסור, הא ליארים – שפיר דמי.

אי הכי, מלישא? לינשא נמי למיעבד סעודת נשואין הוא דאסור, הא לישא – שפיר דמי! הכי השתא! בשלמא נשואין בלא סעודה – איכא שמחה, אלא איורסין בלא סעודה – מי איכא שמחה?

אלא אמר רב אשי: שאני אבילות חדשה מאבילות ישנה, ושאני אבילות דרבים מאבילות דייחיד.

מתני' ארבעה אחין נשואין ארבע נשים. ומתו. אם רצה הגדול שבהם לייבם את כולן – הרשות בידו.

מי שהיה נשוי לשתים נשים ומת – ביאתה או חליצתה של אחת מהן פוטרת צרתה.

Rather, it must be that the question of whether it is permitted to betroth a woman during the period prior to the week of the Ninth of Av is subject to a dispute between *tanna'im*. As it is taught in a *baraita*: From the New Moon of Av and until the fast on the ninth, the public reduces its activities, refraining from business transactions, from building and planting, and from betrothing and marrying. During the week in which the Ninth of Av occurs, it is prohibited to cut hair and to launder clothes, and it is prohibited to be betrothed. And some say: It is prohibited for the entire month. The Gemara's challenge to Rabbi Yosei's opinion that it is prohibited for a widow to be betrothed during her mourning period was based on an *a fortiori* inference that assumes that it is permitted to be betrothed during the mourning period preceding the week of the Ninth of Av. However, since this ruling is subject to a dispute, Rabbi Yosei could reject the *a fortiori* inference by stating that he holds in accordance with the opinion that it is in fact prohibited to be betrothed during that period.

Rav Ashi strongly objects to this: From where is it known that when the *baraita* prohibits one to be betrothed, it is referring to actually betrothing? Perhaps it is only to make a betrothal feast that is prohibited, but merely to be betrothed seems well and is permitted.

The Gemara questions Rav Ashi's objection: If so, then with regard to the prohibition against marrying as well one could make the same claim: With regard to the prohibition to marry, too, it is only to make a marriage feast that is prohibited, but merely to marry seems well and is permitted. The Gemara rejects its question: How can these cases be compared? Granted, from a marriage, even without a feast, there is joy, but from a betrothal without a feast,ⁿ is there any joy? It is merely a legal ceremony.

Rather, Rav Ashi stated a different resolution of Rav Yosei's opinion: New mourning, i.e., the mourning for a relative who has just passed away, is differentⁿ from old mourning, i.e., the mourning over historic events such as the destruction of the Temple, and it is appropriate to be more lenient in the latter. And the mourning of the publicⁿ is different from the private mourning of the individual, and it is appropriate to be more stringent in the latter. As such, it is not possible to form an *a fortiori* inference from the *halakhot* of mourning for the Temple to those of a wife mourning for her husband.

MISHNA In a case of four brothersⁿ married to four women and some of the brothers died childless, their wives thereby become *yevamot*. If the eldest of the brothers who survived wished to consummate the levirate marriage with all of his *yevamot*, he has permission to do so.

In the case of one who was married to two womenⁿ and died childless, the intercourse or *halitza* of either one of the wives with the *yavam* releases her rival wife from the levirate bond, and the rival wife need not enter into levirate marriage or perform *halitza*.

HALAKHA

Four brothers, etc. – ארבעה אחין וכו' – In a case where one had a number of brothers who died childless, so that their wives happened before him for levirate marriage, then if he has the means to do so, he must consummate levirate marriage with all of them, or he may perform *halitza* with all of them, or he may consummate levirate marriage with some and perform *halitza* with the others. However, he may do so with only one wife from each brother (Rambam *Sefer Nashim*, *Hilkhot Yibbum VaHalitza* 1:11; Shulhan Arukh, *Even HaEzer* 161:8).

One who was married to several women – מי שהיה נשוי לכמה נשים – If a man married to several women died childless and was survived by his brother, then once that brother either consummates levirate marriage or performs *halitza* with one of the wives, all of her rival wives are thereby released from their levirate bond (Rambam *Sefer Nashim*, *Hilkhot Yibbum VaHalitza* 1:9; Shulhan Arukh, *Even HaEzer* 161:7).

הִיָּתָה אֶחָת בְּשָׂרָהּ וְאַחַת פְּסוּלָהּ, אִם הִיא חוֹלֵץ – חוֹלֵץ לְפִסּוּלָהּ, וְאִם הִיא מֵיִיבָם – מֵיִיבָם לְבִשְׂרָהּ.

גמ' ארבעה אחין סלקא דעתך? אלא אימא: ארבעה מאחין.

”הַרְשׁוּת בִּידּוֹ” וְשִׁבְקִי לָיָהּ? וְהַתְנִיָּא: ”וְקָרְאוּ לוֹ זִקְנֵי עִירוֹ” – הֵן וְלֹא שְׁלוּחָן, וְדָבְרוּ אֵלָיו – מִלְּמֹד שִׁמְשִׁיאִין לוֹ עֲצָה הוֹגֵנָת לוֹ.

שֶׁאִם הִיא הוּא יָלֵד וְהִיא זָקְנָה, הוּא זָקֵן וְהִיא יָלֵדָה – אוֹמְרִין לוֹ: מִה לָךְ אֶצֶל יָלֵדָה, מִה לָךְ אֶצֶל זָקְנָה? כָּלֶךְ אֶצֶל שְׂכֵמוֹתֶיךָ, וְאֵל תִּשָּׂם קִטְטָה בְּבֵיתֶךָ.

לֹא צְרִיכָא, דְּאִפְשָׁר לָיָהּ. אִי הָכִי, אִפְּיֵלוּ טוֹבָא נִמְי! עֲצָה טוֹבָה קָא מְשַׁמַּע לָן: אַרְבַּע – אִין, טַפִּי – לֹא. כִּי הִיכִי דְנִמְטִייה עוֹנָה בְּחֻדְשִׁי.

If one of these women was fit to marry into the priesthood and one was unfit,^h then if he performs *halitza*, he should perform *halitza* with the unfit woman rather than with the one who is fit for the priesthood, since doing so with the woman who is fit would needlessly disqualify her from marrying into the priesthood. But if he consummates the levirate marriage, he may consummate the levirate marriage with the one who is fit.

GEMARA The simple reading of the mishna's first clause implies that all four brothers died. The Gemara questions this: Can it enter your mind to say that all four brothers died? If they all died, then who remains to consummate the levirate marriage? Rather, emend the mishna and say instead: Four married men of a set of more than four brothers died.

The mishna continues: If the eldest of them wished to consummate the levirate marriage with all of his *yevamot*, he has permission to do so. The Gemara asks: Do they actually leave himⁿ to do so? Isn't it taught in a *baraita*: The verse states: “And the Elders of his city shall call him” (Deuteronomy 25:8), which indicates that they, the Elders, and not their agent, should call him. The verse continues: “And they speak to him”;^h this phrase teaches that they offer him advice that is appropriate for him.

The *baraita* explains: Appropriate advice means that if he was a young man and she an elderly woman or if he was an elderly man and she a young woman, they say to him: What do you want with a young woman when you are elderly? Or: What do you want with an elderly woman when you are young? Go after your own kind, i.e., a woman of a similar age, and do not place discord in your household that could be caused by marrying a woman of a significantly different age. From the *baraita* it is apparent that if consummating the levirate marriage will ultimately lead to contention between the couple, it is preferable to perform *halitza*. Similarly, in the case of the mishna, marrying four women will likely lead to contention since it is difficult to support so many people, and poverty will lead to strife. Therefore, the *yavam* should not be allowed to consummate levirate marriages with all of them.

The Gemara qualifies the mishna's case: No, it is necessary to teach that he has permission to consummate the levirate marriage with all of his *yevamot* in the case where it is possible for him to provide for all four women. The Gemara asks: If so, then the same should be true even if there are many more women as well; why does the mishna specifically discuss a case of four women? The Gemara explains: The mishna teaches us good advice; in a case of up to four women, yes, if he can provide for them then it is acceptable to marry all of them. But if there are any more than that, no,^h he should not, in order that he will be able to meet the conjugal rights of each woman at least once in each month.ⁿ A Torah scholar is expected to provide conjugal relations once a week. If he marries no more than four women, then that will ensure that each of his wives will receive their conjugal rights at least once a month.

HALAKHA

הִיָּתָה אֶחָת בְּשָׂרָהּ וְאַחַת – פְּסוּלָהּ: In a case of several widows of the same man who happen before their *yavam* for levirate marriage, and some of them are fit to marry into the priesthood and some are not, if the *yavam* wishes to consummate the levirate marriage, he may do so with whichever one he chooses. However, if he wishes to perform *halitza*, he should do so with one of the ones who are unfit. Some (*Beit Shmuel*, citing *Beit Yosef*) say that if he willingly violated this *halakha* after having been warned not to do so, then he is excommunicated or receives lashes (Rambam *Sefer Nashim*, *Hilkhot Yibbum VaHalitza* 1:10; *Shulhan Arukh*, *Even HaEzer* 161:2).

And they shall call him...and they speak to him – וְקָרְאוּ לוֹ...וְדָבְרוּ אֵלָיו: When *halitza* is to be performed, the norm is for the *yavam* and *yevama* to go to the court in the town of the *yavam*, at which point that court advises them whether it is more appropriate for them to consummate the levirate marriage or to perform *halitza* (Rambam *Sefer Nashim*, *Hilkhot Yibbum VaHalitza* 4:1; *Shulhan Arukh*, *Even HaEzer* 166:1).

Four wives – אַרְבַּע נָשִׁים: By Torah law a man is permitted to marry as many women as he is able to provide for, i.e., to fulfill his legal obligation to provide them with food, clothing, and conjugal relations. However, the Sages said that one should not marry more than four women, so that he will be able to provide each of them with their conjugal rights at least once in each month. Some (*Beit Shmuel* and *Helkat Mehokek*) rule that if one belongs to a category of people who are obligated to provide conjugal relations more than once a week, then it would be permitted to marry even more than four women (Rambam *Sefer Nashim*, *Hilkhot Ishut* 14:1; *Shulhan Arukh*, *Even HaEzer* 76:7).

NOTES

Do they leave him – וְשִׁבְקִי לָיָהּ: The early commentaries explain that the mishna's formulation: He has permission to do so, suggests that not only is he not forced to perform *halitza*, but in fact it is entirely acceptable for him to consummate the levirate marriage with all of the *yevamot* and he would not be advised otherwise. The Gemara therefore challenges this understanding because the Gemara considers such a course of action to be inappropriate (Ritva).

Conjugal rights in each month – עוֹנָה בְּחֻדְשִׁי: The obligation of a husband to provide his wife with conjugal relations varies based on the husband's occupation. Torah scholars are obligated to provide relations once a week, while men in other

professions have a more or less frequent obligation dependent on their availability. The commentaries question why the number of women one marries should be based upon the expectations placed on a Torah scholar, when the mishna is certainly not referring only to Torah scholars. Some explain that the limitation of four women is true only in a case of levirate marriage; since the situation was brought about by Heaven and not by the free choice of the *yavam*, he is not expected to provide any more than the more minimal frequency of conjugal relations expected of a Torah scholar (Ritva; *Nimmukei Yosef*). This opinion was not accepted as the *halakha*. One commentary suggests that this number in fact applies only to a Torah scholar and is merely an example of the principle

(*Tosefot Yom Tov*). Others suggest that the *halakha* is not based upon the Torah scholars' requirement to provide relations once a week but upon the fact that a Torah scholar is permitted to be absent from the house for up to thirty days without his wife's permission. From that *halakha* it is apparent that it is not considered overly distressing for a woman if she is provided with relations once a month (Rivan). Another commentary explains that the *halakha* is based on the fact that the average woman completes a cycle of menstruation and subsequent ritual purification once a month. At that point she has rights to conjugal relations (*Beit Shmuel*; see *Tosefot Yom Tov*).

Two wives from a single house – שְׁתֵּי נָשִׁים מִבֵּית אֶחָד – A man is not permitted to consummate levirate marriage with two women who were both married to his brother, as the verse states: “His brother’s house,” which indicates he may build one house for his brother, but not two (Rambam *Sefer Nashim, Hilkhot Yibbum VaHalitza* 1:9).

NOTES

And furthermore that people should not say – שְׁלֹא יֹאמְרוּ: *Tosafot* challenge the validity of this section of the Gemara. They assert that if it were indeed permitted by Torah law to consummate levirate marriage with one *yevama* and perform *halitza* with the other, then the Sages would not have issued a decree prohibiting it. The Rivan adds further that since the Torah explicitly prohibits such a practice, it is superfluous for the Gemara to suggest additional reasons that it is prohibited. Therefore, they advocate removing this section entirely from the text of the Gemara.

The Ramban, however, presents a defense of this section. He explains that although by Torah law a *yevama* is released through the levirate marriage of her rival wife, one might have thought that it would be appropriate for the Sages to require that *yevama* to perform *halitza* to avoid the appearance of a *yevama* being permitted without taking any action. The reason suggested here by the Gemara explains why the Sages did not do so. A different defense is offered by Rabbi Avraham min HaHar, who suggests that one might have assumed that the principle derived from the verse refers only to women who are forbidden by prohibitions entailing *karet*; however, if the *yevama* was forbidden by a prohibition punishable by lashes, one might have thought she would require *halitza*. Therefore, the Gemara provides an additional reason to cover this case as well.

When there are two wives the mitzva of levirate marriage does not exist – כִּי אִיכָא תְּרֵינִי לֹא תִתְקַיֵּם מִצְוַת יָבוֹם: The Gemara above derived from the verse “The man who does not build his brother’s house” (Deuteronomy 25:9) that a *yavam* may build only one house by consummating a levirate marriage with one of his brother’s wives, but he may not build two houses. Some commentaries note that the underlying assumption of this derivation is that the mitzva of consummating levirate marriage does exist even in a case where there are two wives. Why, then, does the Gemara question that fact here? They explain that were it not for the derivation mentioned later, which proves that the mitzva applies even in a case where the deceased had two wives, the verse “The man who does not build his brother’s house” would have been expounded in a different manner, possibly to teach that the mitzva applies only where there is one “house,” i.e., wife, but not where there are two (*Tosefot HaRosh; Tosafot Yeshanim*).

מִי שֶׁהָיָה נָשׁוּי וְכוּ'. וְנִיבֵם לְתַרְוִייהוּ!
אָמַר רַבִּי חִיָּיא בַּר אֲבָא אָמַר רַבִּי יוֹחָנָן: אָמַר קָרָא “אֲשֶׁר לֹא יִבְנֶה אֶת בֵּית אָחִיו” – בֵּית אֶחָד הוּא בּוֹנֶה, וְאִין בּוֹנֶה שְׁנֵי בָתִּים.

וְנִחְלוּץ לְתַרְוִייהוּ! אָמַר מַר זוּטְרָא בַּר טוֹבִיָּה: אָמַר קָרָא “בֵּית חֻלּוץ הַנֶּעֱלָ” – בֵּית אֶחָד הוּא חוֹלֵץ, וְאִין חוֹלֵץ שְׁנֵי בָתִּים.

וְנִיבֵם לְחֵדָא וְנִחְלוּץ לְחֵדָא! – אָמַר קָרָא “אֵם לֹא יִחְפֹּץ” הָא חֲפֵץ – יִיבֵם, כָּל הָעוֹלָה לְיָבוֹם – עוֹלָה לְחֵלִיצָה, כָּל שְׂאִין עוֹלָה לְיָבוֹם – אִין עוֹלָה לְחֵלִיצָה.

וְעוֹד: שְׁלֹא יֹאמְרוּ בֵּית מִקְצָתוֹ בָּנוּי וּמִקְצָתוֹ חֻלּוץ. וְיֹאמְרוּ! אִי דְמִיבֵם וְהָדָר חֻלּוץ – הָכִי נָמִי, אֶלָּא [דְּלִמָּא] חֻלּוץ וְהָדָר מִיבֵם, וְקָם לִיה בִּלְיָא יִבְנֶה.”

וְאִימָא: כִּי אִיכָא חֵדָא – תִּתְקַיֵּם מִצְוַת יָבוֹם, כִּי אִיכָא תְּרֵינִי – לֹא תִתְקַיֵּם מִצְוַת יָבוֹם!

אִם כֵּן, צֵרַת עֲרוּה דְאָסֵר וְחִמְנָא לָמָּה לִּי הַשְׁתָּא, תְּרֵינִי בְּעֵלְמָא אֲמַרְתָּ לֹא בְּנֵי חֵלִיצָה וְיָבוֹם מִנְהוּ, צֵרַת עֲרוּה מִיבְעִינָא?

S The mishna states: In the case of one who was married to two women^h and died childless, the intercourse or *halitza* of either one of them with the *yavam* releases her rival wife from the levirate bond. The Gemara questions why the mishna considers only the possibility that he would do so with only one of the women: **But let him instead consummate levirate marriages with both of them.** Rabbi **Hiyya bar Abba** said that **Rabbi Yohanan** said: The verse states that a *yavam* who performs *halitza* is referred to as: “The man who does not build his brother’s house” (Deuteronomy 25:9). The fact that the word “house” appears in the singular indicates that even had he instead chosen to consummate a levirate marriage, only one house may he build, by consummating a levirate marriage with one of his brother’s wives, but he may not build two houses.

The Gemara suggests: **But let him perform halitza with both of them;** why does the mishna state that he does so with only one woman? **Mar Zutra bar Toviya** said: The verse states that following the *halitza* the man is called: “The house of him who had his shoe removed” (Deuteronomy 25:10). The fact that the word “house” appears in the singular indicates that he performs *halitza* with only one house, i.e., only one of his brother’s wives, and he does not perform *halitza* with two houses.

The Gemara suggests: **But let him consummate the levirate marriage with one and perform halitza with the other.** The Gemara explains that the verse states: “If the man does not wish to take his *yevama*” (Deuteronomy 25:7), which implies that with regard to anyone who performs *halitza*, were he to wish to, he could consummate the levirate marriage. This teaches the principle that only one who is eligible for levirate marriage is eligible for *halitza*, but one who is ineligible for levirate marriage is ineligible for *halitza*. And since, in the case of the mishna, if the *yavam* consummated the levirate marriage with one of his brother’s wives he may not do so with the second, consequently he may not perform *halitza* with her either.

And furthermore, an additional reason that one may not do so is so that people should not sayⁿ that the brother’s house was partially built through levirate marriage and partially released through *halitza*. The Gemara asks: **And even if they will say that, what of it?** The Gemara explains: **If he first consummated the levirate marriage with one wife and subsequently performed halitza with the other, indeed, there is no reason not to do this. However, perhaps he might first perform halitza with one wife and subsequently consummate levirate marriage with the other, and by doing so he is liable for a violation of the prohibition of: “He does not build his brother’s house” (Deuteronomy 25:9).** The verse indicates that one who performs *halitza* has not built his brother’s house and is therefore subsequently prohibited from attempting to do so by consummating a levirate marriage with either the *halutza* or any of her rival wives.

The Gemara asks. **But since the Torah’s description of levirate marriage mentions only a case in which the deceased brother had only one wife, say: When there is only one wife, the mitzva of levirate marriage exists, but when there are two wives, the mitzva of levirate marriage does not exist.**ⁿ

The Gemara suggests a proof: **If that were so, why do I need the halakha concerning a rival wife of a forbidden relation, which is forbidden by the Merciful One in the Torah?** Now that even in the case of two women in general, where neither woman is a forbidden relation, you say that they are not eligible for *halitza* and levirate marriage, is it necessary to say a rival wife of a forbidden relation is also forbidden? The fact that the Torah does prohibit a rival wife of a forbidden relation indicates that the mitzva of levirate marriage does exist in a general case of two wives in which neither are a forbidden relation.

אלמה לא? אצטריך, סלקא דעתך
אמינא ערוה אבראי קיימא, ותתייבם
צרתה – קא משמע לן דאסירא.

The Gemara objects: **Why not?** Even if one assumes that there is no mitzva of levirate marriage when the deceased brother had two wives, it is still **necessary** to teach the *halakha* concerning a rival wife of a forbidden relation because it could **enter your mind to say** that since there is no possibility of consummating the levirate marriage with her, **the forbidden relation stands outside** the calculation such that her presence is disregarded, **and her rival wife should enter into levirate marriage** as though she were the only wife. Therefore, the verse needs to **teach us that the rival wife is forbidden**.

אלא: "יבמתו... יבמתו" – ריבה.

Rather, the repeated use of the phrase "**his yevama**," "**his yevama**" in the verses concerning levirate marriage **amplifies** the mitzva of levirate marriage so that it applies even when the deceased brother had more than one wife.

"היתה אחת בשרה". אמר רב יוסף:
כאן שנה רבי: לא ישפוך אדם מי בורו
ואחרים צריכים להם.

§ The mishna states: If **one** of these wives of the deceased brother was fit for the priesthood and one was unfit, *halitza* should not be performed with the fit woman since doing so would needlessly disqualify her from the priesthood. Rav Yosef said that **here**, through this mishna, Rabbi Yehuda HaNasi **taught** the principle that one should not perform an action that will needlessly disadvantage others, and so **a person should not spill out water collected in his pit^N** that he does not need **when others are in need of it**.

מתני' המחזיר גרושתו, והנושא
חלוצתו, והנושא קרובת חלוצתו –
יוציא, והולד ממור, דברי רבי עקיבא.

MISHNA With regard to **one who remarries his divorcée** after she had been married to another man from whom she was then widowed or divorced, **or one who marries the woman with whom he performed *halitza* [*halutza*], or one who marries a relative of his *halutza***, since all such marriages are forbidden he **must divorce her, and the offspring born from such unions is a *mamzer***; this is **the statement of Rabbi Akiva**. He holds that even the offspring from relations forbidden by a prohibition punishable by lashes is a *mamzer*.

וחכמים אומרים: אין הולד ממור.
ומודים בנושא קרובת גרושתו, שהולד
ממור.

The Rabbis say: **The offspring in those cases is not a *mamzer*, but they concede with regard to one who marries a relative of his divorcée**, a union forbidden by a prohibition entailing *karet*, **that the offspring is a *mamzer***. They hold that only the offspring from relations forbidden by a prohibition entailing *karet* is a *mamzer*.

גמ' וסבר רבי עקיבא הנושא קרובת
חלוצתו הולד ממור? והאמר ריש
לקיש, כאן שנה רבי: אחות גרושה –
מדברי תורה, אחות חלוצה – מדברי
סופרים! תני: קרובת גרושתו.

GEMARA The Gemara asks: **But does Rabbi Akiva actually hold that with regard to one who marries a relative of his *halutza*, the offspring is a *mamzer***? Didn't Reish Lakish say that through the mishna **here**, Rabbi Yehuda HaNasi **taught** that a sister of one's divorcée is forbidden by Torah law whereas a sister of one's *halutza* is forbidden by rabbinic law? If a relative of one's *halutza* is forbidden by rabbinic law, how can the offspring of that union be a *mamzer*? The Gemara concedes: **Emend the mishna and teach instead: A relative of his divorcée.**^N

NOTES

א – לא יספוך אדם מי בורו: The Rid writes that this imperative should not be confused with the principle that one compels another to refrain from behavior characteristic of Sodom. That principle teaches that if one denies another the use of his possessions even though doing so would incur no loss or damage to himself, then he should be forced to waive his rights to those possessions. The Rid explains that that principle is limited to cases where there is a specific individual who wishes to use the possessions. The imperative here goes much further in demanding that one not perform an action that could theoretically disadvantage an unidentified person in the future. Accordingly, it would appear that one would not be forcibly compelled to act in this manner. This is also how the *Keneset HaGedola* rules; he explains the Gemara to be indicating the proper course of behavior for ethical living but not a strict requirement. In contrast, Rabbeinu Yeruham (cited in *Beit Yosef*) understands the Gemara to actually require such behavior, and he therefore rules that one who refuses to a way that will avoid needlessly causing disadvantage to others should be excommunicated and flogged.

Teach: A relative of his divorcée – תני קרובת גרושתו: According to this emended version of the mishna, Rabbi Akiva states that the offspring resulting from one's union with a relative of his divorcée is a *mamzer*. While Rabbi Akiva certainly holds that this is true, one could question why he would choose to mention such a case. The novelty of Rabbi Akiva's opinion is that he holds that even the offspring from relations forbidden by a prohibition punishable by lashes is a *mamzer*, even though that prohibition is not punishable by *karet*. The prohibition against engaging in relations with a relative of one's divorcée, however, is punishable by *karet*. Therefore, even the Rabbis would agree that the offspring would be a *mamzer*. As such, what advantage is there for Rabbi Akiva to mention this case? One could suggest that Rabbi Akiva's entire statement is directed toward the Rabbis. He mentions the case of a relative of one's divorcée because he knows that the Rabbis agree with him in that case, and then he says that just as they agree in that case, they should agree in the other cases he goes on to enumerate.

הכי נמי מסתברא, דקתני סיפא:
ומודים בנושא קרובת גרושתו שהולד
ממזר. אי אמרת בשלמא איירי בה –
היינו דקתני "ומודים", אלא אי אמרת
לא איירי בה – מאי "ומודים"?

ודלמא הא קא משמע לן: דיש ממזר
מחייבי כריתות. הא קתני לה לקמן:
איזהו ממזר – כל שאר בשר שהוא
ב"לא יבא" דברי רבי עקיבא, רבי
שמעון התימני אומר: כל שחייבין עליו
כרת בידי שמים, והלכה כדבריו.

ודלמא קסתים לן תנא כרבי שמעון
התימני. אם כן ליתני שאר חייבי
כריתות, קרובת גרושתו למה לי? אלא
שמע מינה איירי בה.

[ודלמא] לעולם לא איירי בה, ואידי
דתנא מחזיר גרושתו ונושא חלוצתו
וקרובת חלוצתו – תני נמי קרובת
גרושתו.

אלא קרובת חלוצתו לרבי עקיבא הוי
ממזר. אמר רבי חייא בר אבא אמר
רבי יוחנן: היינו טעמא דרבי עקיבא,
דאמר קרא "בית חלוץ הנעל" – הכתוב
קראו ביתו.

אמר רב יוסף אמר רבי שמעון בר רבי:
הכל מוּדִים במחזיר גרושתו

The Gemara notes: So, too, it is reasonable that this is the correct version of the mishna, as the latter clause teaches: But they concede in the case of one who marries a relative of his divorcée that the offspring is a *mamzer*. Granted, if you say that Rabbi Akiva was talking about that case, this is consistent with that which the mishna teaches: They concede, which implies that they agree to a case already mentioned. However, if you say that he was not talking about that case, what could the phrase: They concede, possibly be referring to?

The Gemara objects: But perhaps this phrase teaches us that the Rabbis concede that the offspring from forbidden relations for which one is liable to receive *karet* is a *mamzer*. The Gemara rejects this option: This is already taught later on in a mishna (49a): Which offspring of forbidden relations has the status of a *mamzer*? It is the offspring of a union with any next of kin that is subject to a Torah prohibition that one should not engage in sexual relations with them; this is the statement of Rabbi Akiva. Rabbi Shimon HaTimni says: It is the offspring of a union with any forbidden relative for which one is liable to receive *karet* at the hand of Heaven. And the *halakha* is in accordance with his statement. Since the mishna explicitly rules in accordance with Rabbi Shimon HaTimni, it would be unnecessary for the mishna here to teach that fact.

The Gemara persists: But perhaps the *tanna* taught us as unattributed a mishna that is in accordance with the opinion of Rabbi Shimon HaTimniⁿ to indicate that this is indeed the accepted *halakha*. The Gemara rejects this: If so, then let him teach other cases of forbidden relations for which one is liable to receive *karet*; why do I need the mishna to specifically consider the case of a relative of one's divorcée? Rather, conclude from this that Rabbi Akiva indeed was talking about that case.

The Gemara persists: But perhaps he was not actually talking about that case, but since Rabbi Akiva taught the cases of one who remarries his divorcée, or one who marries his *halutza* or a relative of his *halutza*, the mishna also taught in the name of the Rabbis the case of one who marries a relative of his divorcée because it is a similar case. The Gemara concedes that this would be an acceptable reading of the mishna.

Rather, the mishna should not be emended, and with regard to the Gemara's original question as to how Rabbi Akiva could claim that the offspring from one's union with a relative of his *halutza* is a *mamzer* if that union is forbidden only by rabbinic law, one must conclude that a relative of one's *halutza* is forbidden by Torah law according to Rabbi Akiva and therefore the offspring is a *mamzer*. Rabbi Hiyya bar Abba said that Rabbi Yohanan said that this is Rabbi Akiva's reasoning: As the verse states: "The house of he who had his shoe removed" (Deuteronomy 25:10). The verse called his relationship with the *halutza* his house, indicating that the *halutza* is considered as though she had been married to the *yavam*, and therefore her relative is forbidden to him by Torah law.

Rav Yosef said that Rabbi Shimon bar Rabbi Yehuda HaNasi said: All agree in the case of one who remarries his divorcée

NOTES

The *tanna* taught us as unattributed a mishna in accordance with the opinion of Rabbi Shimon HaTimni, etc. – קסתים לן – תנא כרבי שמעון התימני וכו' What advantage is there in having an unattributed mishna in accordance with the opinion of Rabbi Shimon HaTimni when the mishna on 49a already explicitly states: The *halakha* is in accordance with his statement? The

advantage is in that there is an accepted principle that the *halakha* may not be derived from the Mishna. Therefore, even when a mishna explicitly states what the *halakha* should be, that statement is not necessarily relied upon as the final *halakha*. This is because that statement might well have been only the opinion of an individual Sage that Rabbi Yehuda HaNasi

preserved in his redaction of the Mishna. However, when there is an unattributed mishna in accordance with one opinion, that clearly indicates that the opinion was held by the majority of Sages, and therefore the *halakha* is to be fixed in accordance with that opinion (Ritva).

שהולך פגום לכהונה. מאן "הכל מודים" – שמעון התימני. דאף על גב דאמר שמעון התימני: אין ממזר מחייבי לאוין – נהי דממזר לא הוי, פגום – מיהא הוי.

מקל וחומר מאלמנה. ומה אלמנה לכהן גדול, שאין איסורה שוה בכל – בנה פגום, זו שאיסורה שוה בכל – אינו דין שבנה פגום?

איכא למיפרך: מה לאלמנה – שכן היא עצמה מתחללת,

ועוד: "היא תועבה" בתיב, ואין בניה תועבין.

ועוד, תניא: המחזיר גרושתו, והנושא חלוצתו, והנושא קרובת חלוצתו. רבי עקיבא אומר: אין לו ביה קדושין, ואינה צריכה הימנו גט, והיא פסולה וולדה פסול, וכופין אותו להוציא. וחכמים אומרים: יש לו ביה קדושין, וצריכה הימנו גט, והיא כשרה וולדה כשר.

למאן – לאו לכהונה? לא. לקהל. אי הכי, היא כשרה – למאן? אילימא לקהל – פשיטא, משום דניא אפסלה לקהל אלא לאו – לכהונה,

that the offspring, even if not a *mamzer*, has flawed lineage and, if the offspring is a girl, is unfit to marry into the **priesthood**. The Gemara clarifies: **Who is included by saying: All agree?**^N It is Shimon HaTimni, as although Shimon HaTimni said that the offspring of relations for which one is liable for violating a prohibition is not a *mamzer*, nevertheless, granted that Shimon HaTimni holds that he is not a *mamzer*; he would agree, however, that he is of flawed lineage.

This is derived through an *a fortiori* inference from the *halakha* pertaining to a widow, as follows: **Just as in the case of a widow who is married to a High Priest, where the prohibition that pertains to her is not equally applicable to all, i.e., only a High Priest is prohibited from marrying a widow, and nevertheless her child from that union will have flawed lineage, then so too with regard to this divorcée, who married another man and is therefore prohibited from marrying her original husband, where the prohibition that pertains to her is equally applicable to all Jews, as the prohibition to remarry one's divorcée after she was married to another man applies to all Jews, isn't it logical that her child from that union will have flawed lineage?**

The Gemara raises a number of objections: The logic of this *a fortiori* inference can be refuted: **What is true with regard to a widow, where her union with a High Priest is what makes her herself disqualified from subsequently marrying any priest and, if she is the daughter of a priest, from eating *teruma*, is not true with regard to a remarried divorcée, where her remarriage to another man is permitted and is not the cause of any further disqualification. Therefore, one case cannot be deduced from the other.**

And furthermore,^N "She is an abomination" (Deuteronomy 24:4) is written with regard to remarrying with one's divorcée, and the emphasis on the word "she" teaches that only she is considered so, **but her children are not abominations** and they have unflawed lineage.

And furthermore, it is taught in a *baraita*: With regard to one who remarries his divorcée,^H and one who marries his *halutza*, and one who marries a relative of his *halutza*, Rabbi Akiva says that one's betrothal of such women is not effective. And therefore, even if he attempts to do so, it is meaningless and **she does not require a bill of divorce from him** in order to separate from him. And if she has relations with him **she is rendered unfit and her child is unfit, and we force him to send her away. The Rabbis say that one's betrothal of such women is effective, and therefore if he betrothed her she requires a bill of divorce from him, and if she has relations with him she remains fit and her child is fit.**^N

The Gemara clarifies: When the *baraita* states she and her child are rendered unfit, **to whom** are they unfit to be married? **Is it not to the priesthood?** No, it is to the congregation of Israel. **If so, when the *baraita* states she is fit, to whom** is she fit to be married? **If we say it is to the congregation of Israel, this is obvious;** could it be that **because she engaged in forbidden sexual relations that she is rendered unfit from marrying into the congregation of Israel?** Although by doing so she is rendered a *zona*, that can disqualify her only from marrying a priest. **Rather, is it not that the intention is that she is fit to marry into the priesthood?**

NOTES

Who is included by saying: All agree – מאן הכל מודים – The Gemara does not need to mention that Rabbi Yehoshua agrees with this, because that was already made explicit on 15b. There, Rabbi Yehoshua testifies to the fact that such children are fit even to marry into the priesthood (Ritva).

This can be refuted...and furthermore – איכא למיפרך...ועוד –

The Maharsha notes that it would appear that these two objections stand in direct contradiction to one another. If the objection derived from the *halakha* of a widow were truly compelling, then it would be unnecessary to have a scriptural derivation from the phrase "she is an abomination" to teach that her children have unflawed lineage; that derivation is necessary only to counter the import of the *a fortiori* inference. The Maharsha suggests that it is possible that the one who raised these objections did in fact believe that the objection derived from the *halakha* of a widow is conclusive. He understood that the objection is not contradicted by the subsequent derivation from the phrase: "She is an abomination" because, as the Gemara later suggests, there are other ways to expound the verse. Nevertheless, he cites the derivation from the verse because he reasoned that even if the derivation from the *halakha* of a widow were flawed, then it is still possible to raise the objection from the verse. The *Keren Ora* suggests that the *a fortiori* inference teaches in general about all cases for which one is liable for violating a prohibition, not only the case of one who remarries his divorcée. With regard to one who remarries his divorcée there is an independent reason to assume that the offspring would have flawed lineage because the verse describes the union as "impure" (Deuteronomy 24:4). Therefore, it was necessary to refute both reasons in order to prove that the offspring's lineage would be unflawed.

היא כשרה וולדה כשר – היא כשרה וולדה כשר –

Some of the early commentaries claim that in all these cases, the woman and her daughter from the forbidden union would even be fit to eat *teruma* if they were to marry a priest or are the daughters of a priest. This is because the verse describing the qualification to eat *teruma* excludes only a woman who had relations with a "common man" (Leviticus 22:12), meaning one who was always forbidden to her, whereas in these cases the man was not initially forbidden to her (*Tosafot*; Rid). However, Rabbeinu Hananel claims that in the case of one who remarries his divorcée, the woman and her daughter are rendered unfit to eat *teruma*. This opinion is also found explicitly in the Jerusalem Talmud. The Maharam MiRotenburg explains that this is because the verse describes that union as "impure" (Deuteronomy 24:4).

HALAKHA

One who remarries his divorcée – המחזיר גרושתו – It is prohibited to remarry one's divorcée after she had been married or betrothed to another man. This applies even if she had not engaged in intercourse with the other man. If one violates the prohibition, he is flogged and forced to divorce his wife. Nevertheless, she remains fit and her children are fit. This is in accordance with the opinion of the Rabbis (Rambam *Sefer Nashim*, *Hilkhot Geirushin* 11:12).

She is an abomination but her rival wife is not an abomination – היא תועבה ואין צרתה תועבה – The commentaries ask: How would Rabbi Akiva interpret the restrictive implication of the word “she” in the verse: “She is an abomination” (Deuteronomy 24:4)? He is unable to interpret it in either manner suggested by the Gemara: It cannot be teaching about a rival wife because according to Rabbi Akiva, betrothal of a woman forbidden by a standard prohibition does not take effect. Therefore, she cannot have the status of a wife herself, and consequently she cannot have a rival wife. Furthermore, it cannot come to teach that the lineage of the offspring is unflawed, because according to Rabbi Akiva they are *mamzerim*. Some suggest that since the Gemara uses this verse to derive the *halakhot* of a *sota* as well, Rabbi Akiva could claim that the verse comes to exclude the case of a rival wife of a *sota* (*Tosafot Yeshanim*) or to exclude the offspring of a *sota* from having flawed lineage (*Tosafot HaRosh*).

ומדריהא לכהונה – ולדה נמי לכהונה.
מידי איריא? הא כדאיתא והא
כדאיתא.

הכי נמי מסתברא. דקתני רישא: היא
פסולה ולדה פסול. היא פסולה למאן?
אילימא לקהל – משום דזניא אפסלה
ליה לקהל? אלא לאו – לכהונה.

ולדה פסול, למאן? אילימא לכהונה –
הא לקהל כשר? האמר רבי עקיבא
הולד ממזר! אלא פשיטא – לקהל.

ומדרישא הא כדאיתא והא כדאיתא –
סיפא נמי הא כדאיתא והא כדאיתא.

והיא תועבה נמי, היא תועבה – ואין
צרתה תועבה, אבל בניה – תועבין.

אלא אלמנה קשיא: מה לא למנה שכן
היא עצמה מתחללת!

אלא אי אתמר הכי אתמר: אמר רב
יוסף אמר רבי שמעון ברבי: הכל מודים
בבא על חייבי כריתות שהולד פגום.
מאן “הכל מודים” – רבי יהושע, דאף
על גב דאמר רבי יהושע אין ממזר
מחייבי כריתות, נהי דממזר לא הוי –
פגום מיהא הוי.

The Gemara suggests: **And since** in reference to her the word fit in the *baraita* means fit for the priesthood, it follows that for the child as well, the word fit means fit for the priesthood. The Gemara objects: **Are these cases comparable? This case is as it is, and that case is as it is**, and although the two cases are juxtaposed in the *baraita* they need not be relating to the same issue. Rather, when referring to the mother the *baraita* mentions fitness for the priesthood, and when referring to the child it mentions fitness for the congregation of Israel.

The Gemara notes: **So, too, it is reasonable** to assume that the two clauses concern different issues, as the first clause teaches in the name of Rabbi Akiva: **She is unfit and her child is unfit**. When that first clause states: **She is unfit, to whom** is she unfit to be married? **If we say it is to the congregation of Israel**, could it be that **because she engaged in forbidden sexual relations she is rendered unfit to marry into the congregation of Israel? Rather, is it not** that the intention that she is rendered unfit to marry into the priesthood?

And then when the first clause continues and states: **And her child is unfit, to whom** is she unfit to be married? **If we say that it is to the priesthood**, that would imply that the child is fit to marry into the congregation of Israel. However, this is untenable because **didn't Rabbi Akiva himself say** in the mishna here that **the offspring is a mamzer** and is unfit from entering the congregation of Israel? **Rather, it is obvious** that the intention of the *baraita* is that the child is unfit even to marry into the congregation of Israel.

And since in the first clause of the *baraita* it is apparent that, although two cases are juxtaposed, **this case is as it is and that case is as it is**, in the latter clause as well one should assume that **this case is as it is and that case is as it is**.

Having resolved the objection raised from the *baraita*, the Gemara returns to its preceding objection: **And** the objection raised from the verse: “**She is an abomination**,” in which the Gemara suggested that the emphasis on “she” teaches that only she is an abomination but her children are not, can also be resolved, as the emphasis on “she” could be interpreted differently to teach: “**She is an abomination**” but her rival wife is not an abomination,^N and if they both fell together for levirate marriage, the *yavam* may consummate the levirate marriage with her rival wife. **However**, it is possible that her children are in fact abominations and are unfit to marry into the priesthood.

The Gemara concludes: **However**, although two of the objections were resolved, the objection to the logic of the *a fortiori* inference from the case of a widow remains difficult, as the Gemara noted earlier: **What** is true with regard to a widow, where her union with a High Priest is what makes her herself disqualified from subsequently marrying any priest and, if she is the daughter of a priest, from eating *teruma*, is not true with regard to a remarried divorcee, where her remarriage to another man is permitted and is not the cause of any further disqualification. Therefore, there is no basis for assuming that the child of one who remarries his divorcee after she had been married to another man will have flawed lineage.

Rather, if this was stated, it was stated as follows: Rav Yosef said that Rabbi Shimon, son of Rabbi Yehuda HaNasi, said: All agree with regard to one who engages in intercourse with a forbidden relation for which one is liable to receive *karet* that the offspring has flawed lineage. The Gemara clarifies: **Who** is included by saying: All agree? It is Rabbi Yehoshua, as although Rabbi Yehoshua said in the mishna (49b) that the offspring born from a union for which one is liable to receive *karet* is not a *mamzer*, nevertheless, granted that Rabbi Yehoshua holds that he is not a *mamzer*; he would agree, however, that he is of flawed lineage.

הכל מודים – All agree with regard to a slave, etc. – **בעבד וכו'**: The early commentaries point out that the inclusive phrase: All agree, should not be understood as including Rabbi Yehoshua. This is because even if it could be proven that Rabbi Yehoshua holds that betrothal is ineffective when performed with relatives who are forbidden by a prohibition for which one is liable to *karet*, nevertheless, he would still hold that the offspring of such unions are not *mamzerim*. Accordingly, in the case of a union with a gentile or a slave, who are entirely excluded from the possibility of betrothal, he would certainly hold that the offspring would not be *mamzerim* (see *Tosafot Yeshanim*, and Ramban).

מקל וחומר מאלמנה. ומה אלמנה לכהן גדול, שאין איסורה שזה בכל – בנה פגום, זו שאיסורה שזה בכל – אינו דין שבנה פגום?

וכי תימא: מה לאלמנה שכן היא עצמה מתחללת – הכא נמי, בין שבעלה – עשאה זונה.

אמר רבה בר בר חנה אמר רבי יוחנן: הכל מודים בעבד וגוי הכא על בת ישראל שהולד ממזר.

מאן "הכל מודים" שמעון התימני. דאף על גב דאמר שמעון התימני אין ממזר מחייבי לאוין – הני מילי

This is derived through an *a fortiori* inference from the *halakha* of a widow, as follows: Just as in the case of a widow who is married to High Priest, where the prohibition that pertains to her is not equally applicable to all, i.e., only a High Priest is prohibited from marrying a widow, and nevertheless her child from that union will have flawed lineage, then so too with regard to this woman, where the prohibition that pertains to her is equally applicable to all Jews, isn't it logical that her child from that union should have flawed lineage?

And if you would say that the logic of this *a fortiori* inference could be refuted in a manner similar to the suggestion above that what is true with regard to a widow, who is herself disqualified from marrying a priest, is not true with regard to a woman who is forbidden by a prohibition for which one is liable to *karet*, that is not correct because here, too, once he has engaged in intercourse with her he renders her a *zona*, and as such she is disqualified from marrying into the priesthood.

§ The Gemara considers the status of other children born from forbidden unions: Rabba bar bar Hana said that Rabbi Yohanan said: All agree with regard to a slave^N or a gentile who engaged in intercourse with a Jewish woman that the offspring born from such a union is a *mamzer*.

The Gemara clarifies: Who is included by saying: All agree? It is Shimon HaTimni, as although Shimon HaTimni said that the offspring of relations for which one is liable for violating a prohibition is not a *mamzer*, this applies only

Perek IV

Daf 45 Amud a

מחייבי לאוין דתפסי בהו קדושין, אבל הכא – גוי ועבד, בין דלא תפסי בהו קדושין – בחייבי בריתות דמי.

מיתבי: גוי ועבד הכא על בת ישראל – הולד ממזר, רבי שמעון בן יהודה אומר: אין ממזר אלא ממי שאיסורו איסור ערוה, וענוש כרת.

אלא אמר רב יוסף: מאן "הכל מודים" – רבי. אף על גב דרבי אומר: אין הדברים הללו אמורים אלא לדברי רבי עקיבא, שהיה עושה חלוצה בערוה, וליה לא סבירא ליה – בגוי ועבד מודה. דכי אתא רב דימי אמר רב יצחק בר אבודימי משום רבינו: גוי ועבד הכא על בת ישראל – הולד ממזר.

to forbidden relations for which one is liable for violation of a prohibition concerning which a betrothal between the couple would take effect. However, here, with regard to a gentile and a slave, since their betrothal of a Jewish woman would not take effect,^{NH} a union with them is comparable to forbidden relations for which one is liable to receive *karet*, and therefore the offspring of such a union will be a *mamzer*.

The Gemara raises an objection from a *baraita*: In the case of a gentile or a slave who engaged in intercourse with a Jewish woman, the offspring born from such a union is a *mamzer*. Rabbi Shimon ben Yehuda says: The offspring is a *mamzer* only if born from relations with one who is forbidden by a prohibition of forbidden relations that are punishable by *karet*. It is apparent from the *baraita* that one who holds, as does Shimon HaTimni, that only the offspring from forbidden relations for which one is liable to receive *karet* is a *mamzer*, nevertheless holds that the offspring of a slave or gentile and a Jewish woman is not a *mamzer*.

Rather, Rav Yosef said: Who is included by saying: All agree? It is Rabbi Yehuda HaNasi, as although Rabbi Yehuda HaNasi says in a *baraita* (52b) concerning the mishna (50a–51b) that states that a levirate betrothal between a *yavam* and a *yevama* with whom he had already performed *halitza* is ineffective: This statement was said only according to the statement of Rabbi Akiva, as he would consider a *halutza* like a forbidden relative such that if the *yavam* betrothed her it would not take effect. And although Rabbi Yehuda HaNasi himself does not hold accordingly with regard to that issue, with regard to the offspring of a union with a gentile or a slave he concedes that the offspring is a *mamzer*. As, when Rav Dimi came from Eretz Yisrael, he said that Rav Yitzhak bar Avudimi said in the name of our Master, i.e., Rabbi Yehuda HaNasi: With regard to a gentile or a slave who engaged in intercourse with a Jewish woman, the offspring is a *mamzer*.

NOTES

The betrothal of a gentile or a slave with a Jewish woman does not take effect – **נכרי ועבד לא תפסי בהו** – קדושין: The early commentaries offer various proofs that the betrothal of a gentile or a slave with a Jewish woman is ineffective. With regard to a slave, Rashi cites the homiletic derivation of the verse in which Abraham instructs his slave attendants to "remain here with [im] the ass" (Genesis 22:5), to indicate that slaves are considered to be a people [*am*] that is comparable to an ass in that their betrothal is entirely ineffective. With regard to a gentile, he cites the case of the gentile female prisoner of war (see Deuteronomy 21:10–14), from which it is clear that there is no possibility of betrothing her prior to her conversion. See Rashi for additional proofs that he cites in the name of the *She'iltot de Rav Achai Gaon*. The Ramban also cites an additional proof from the *Mekhilta*: A gentile maidservant may be given to a Hebrew slave in order for them to bear children for their master. When eventually the Hebrew slave goes free, he does not take the gentile maidservant with him; rather, she remains as a slave. The *Mekhilta* demonstrates from here that no marital bond could have existed between them. Through a verbal analogy, the *Mekhilta* derives that the same is true of a gentile.

HALAKHA

בetrothal does not apply to a gentile or a slave – **אין קדושין בנכרי ועבד**: If a gentile or a slave betroths a Jewish woman, the betrothal does not take effect at all. Similarly, if a Jew betroths a gentile woman or a maidservant, the betrothal does not take effect (Rambam *Sefer Nashim, Hilkhos Ishut* 4:15; *Shulhan Arukh, Even HaEzer* 44:8).

Rabbi Aḥa, lord of the capital – רבי אחא שר הביקה – This Rabbi Aḥa was a third-generation *amora* of Eretz Yisrael, and very little is known about his teachers. Apparently there was also a fifth-generation *tanna* in Eretz Yisrael of the same name; they may have been related.

Some explain that the title: Lord of the capital, was based on a family legacy, and that one of his ancestors had been the minister appointed over the capital, i.e., the Temple Mount in Jerusalem.

BACKGROUND

Armon – ארמון: Some say that Armon is the name of a place in Eretz Yisrael, possibly Kadesh Naftali. Others suggest that Armon is the Hebraic rendition of the country Armenia. It is reasonable to assume that these captives came from a distant place because it is known that captors would bring Jewish captives from remote locations to Tiberias, at that point the main city of Eretz Yisrael, since the Jewish community there would take great efforts to redeem them.

NOTES

The offspring has flawed lineage and is prohibited from marrying into the priesthood – הולד פגום לכהונה – The early commentaries debate whether this ruling is accepted as *halakha*. Most commentaries hold, based on the Gemara's *a fortiori* inference from the *halakha* of a widow, that a daughter of a gentile or slave with a Jewish woman would certainly be unfit to marry into the priesthood. This also appears to be the conclusion in the Jerusalem Talmud. However, a son from such a union would not be rendered unfit in any way, such that even if he were to father a daughter with a Jewish woman, that daughter would be fit to marry into the priesthood.

Other commentaries disagree and claim that even the daughter of the gentile or slave would be considered fit to marry into the priesthood. They bring support for their opinion from the conclusion of the Gemara's discussion, which states simply that the offspring of a gentile or slave and a Jewish woman is considered fit, without making any further distinctions. They reject the implication of the *a fortiori* inference because according to it, the woman should be rendered a *ḥalala*, who is unfit to marry a priest, and they hold that ultimately the *halakha* is that a woman can be rendered a *ḥalala* only in cases where there is a violation of one of the prohibitions that are unique to the priesthood (see *Yam shel Shlomo*). Some explain that even if the woman who engaged in intercourse with the gentile or slave is disqualified by doing so, the offspring will not be, because the offspring of a gentile with a Jewish woman is never halakhically recognized as relating to him. Since the offspring is not considered to be descended from him it cannot be disqualified on his account (Ritva).

Isn't it logical that her child [*benah*] from that union will have flawed lineage – אינו דין שבעה פגום – Rashi and Rivan both note that although the Gemara says *benah*, which literally means: Her son, it should be taken as meaning her child, and the intention is actually a daughter who will be rendered unfit to marry into the priesthood. However, others suggest that the Gemara can be understood as referring to a son. Although normally the status of *ḥalal*, one whose flawed lineage disqualifies him from the priesthood, is applied only to a descendant of a priest, in this case the son would be rendered unfit to the same extent as a *ḥalal* such that if he were to father a daughter with another Jewish woman, that daughter would be unfit to marry into the priesthood.

רבי אחא שר הביקה ורבי תנחום בריה דרבי חייא איש כפר עכו פרוק הנהו שבוייתא דאתו מארמון לטבריא. הוה חדא דאעברא מגוי, ואתו לקמיה דרבי אמי. אמר להו: רבי יוחנן ורבי אלעזר ורבי חנינא דאמרי, גוי ועבד הבא על בת ישראל הולד ממזר.

אמר רב יוסף: רבותא למחשב גבירי! הא רב ושמואל בבבלי, ורבי יהושע בן לוי ובר קפרא בארץ ישראל, ואמרי לה: חלופי בר קפרא ועיילי זקני דרום, דאמרי: גוי ועבד הבא על בת ישראל – הולד כשר.

אלא אמר רב יוסף: רבי היא. דכי אתא רב דימי אמר רבי יצחק בר אבדימי משום רבינו אמר: גוי ועבד הבא על בת ישראל – הולד ממזר.

רבי יהושע בן לוי אומר: הולד מקולקל. למאן? אילימא לקהל – הא אמר רבי יהושע הולד כשר, אלא לכהונה – דכיוהו אמוראי דמכשרי מודו שהולד פגום לכהונה.

מקל וחומר מאלמנה: מה אלמנה לכהן גדול, שאין איסורה שוה בכל – בנה פגום, זו שאיסורה שוה בכל – אינו דין שבעה פגום.

מה לאלמנה לכהן גדול שכן היא עצמה מתחללת! הכא נמי, כיון שנבעלה פסלה.

The Gemara cites a related incident: Rabbi Aḥa, lord of the capital,^p and Rabbi Tanḥum, son of Rabbi Ḥiyya, the man of Akko village, redeemed those captives who came from Armon^b to Tiberias. One of them had been impregnated by a gentile, and they came before Rabbi Ami to ask what the offspring's status would be when born. He said to them that Rabbi Yohanan and Rabbi Elazar and Rabbi Hanina all say: With regard to a gentile or a slave who engaged in intercourse with a Jewish woman, the offspring is a *mamzer*.

Upon hearing this, Rav Yosef said: Is it so great to enumerate men? The fact that several great Sages held this opinion does not prove that their opinion is the accepted *halakha*. But there are Rav and Shmuel in Babylonia, and Rabbi Yehoshua ben Levi and bar Kappara in Eretz Yisrael, and some say to remove bar Kappara from this list and insert instead the Elders of the South, who all say: With regard to a gentile or a slave who engaged in intercourse with a Jewish woman, the lineage of the offspring is unflawed, and he or she may marry into the congregation of Israel.

Rather, Rav Yosef said the *halakha* is in fact that the offspring is a *mamzer* because this is Rabbi Yehuda HaNasi's opinion, as when Rav Dimi came from Eretz Yisrael he said that Rav Yitzḥak bar Avudimi said in the name of our Master, i.e., Rabbi Yehuda HaNasi, that they say: With regard to a gentile or a slave who engaged in intercourse with a Jewish woman, the offspring is a *mamzer*.

Rabbi Yehoshua ben Levi says: The lineage of the offspring is sullied, and if the child is a girl she is restricted in whom she may marry. The Gemara asks: To whom is she prohibited from marrying? If we say it is to the congregation of Israel, but didn't Rabbi Yehoshua himself say that the lineage of the offspring is unflawed and he or she may marry into the congregation of Israel? Rather, the offspring is prohibited to marry into the priesthood, as all of the *amora'im* who render the offspring fit to enter the congregation of Israel agree that the offspring has flawed lineage and is forbidden to marry into the priesthood.^{NH}

This is derived from an *a fortiori* inference from the *halakha* of a widow, as follows: Just as in the case of a widow who is married to a High Priest, where the prohibition that pertains to her is not equally applicable to all Jews, i.e., only a High Priest is prohibited from marrying a widow, and nevertheless her child from that union will have flawed lineage, then so too with regard to this woman who engaged in relations with a gentile or slave, where the prohibition that pertains to her is equally applicable to all Jews, isn't it logical that her child from that union will have flawed lineage?^N

And if one would say that the logic of this *a fortiori* inference could be refuted by claiming that what is true with regard to a widow who is married to a High Priest, where her union with him is what makes her herself disqualified from subsequently marrying any priest and, if she is the daughter of a priest, from eating *teruma*, is not true with regard to the prohibition against a Jewish woman engaging in relations with a gentile or a slave. This is not correct, because here, too, once he has engaged in intercourse with her,^H he thereby renders her unfit to marry into the priesthood.

HALAKHA

The offspring has flawed lineage and is prohibited from marrying into the priesthood – הולד פגום לכהונה – Although the offspring of a gentile or slave who engaged in intercourse with a Jewish woman is fit to marry into the congregation of Israel, if the offspring is a daughter then she is prohibited from marrying a priest. This is in accordance with the Gemara here and several other places where it is stated that this fact is unanimously accepted. Some (Rif; Ramban; Rambam, as explained by *Maggid Mishne*) rule that she is not unfit to marry into the priesthood. Therefore, later commentaries (*Beit Shmuel*; *Helkat Meḥokek*) rule

that if the daughter went and married a priest then this lenient opinion may be relied upon, and they need not divorce (Rambam *Sefer Kedusha*, *Hilkhot Issurei Bia* 15:4; *Shulḥan Arukh*, *Even HaEzer* 4:4–5, 19; 7:17).

A gentile who engaged in intercourse with a Jewish woman – נכרי הבא על בת ישראל – If a gentile or slave engaged in intercourse with a Jewish woman, she becomes a *zona* and is therefore prohibited from marrying into the priesthood (Rambam *Sefer Kedusha*, *Hilkhot Issurei Bia* 18:2; *Shulḥan Arukh*, *Even HaEzer* 6:8).

A gentile or slave who engaged in intercourse with a Jewish woman – **גוי ועבד הבא על בת ישראל** – With regard to a gentile or slave who engaged in intercourse with a Jewish woman, the offspring of such a union is fit to enter into the congregation of Israel, irrespective of whether the woman was married or unmarried and whether the intercourse was consensual or forced (Rambam *Sefer Kedusha*, *Hilkhot Issurei Bia* 15:3; *Shulhan Arukh*, *Even HaEzer* 4:5, 19).

NOTES

A camel in Medes, etc. – **גמל במדי וכו'** – The Rivan interprets this to mean that the camels there are so well trained that they can stand with all four legs on a space that holds one *kav*. The Meiri explains that it means that the camels there are so small that they can stand inside of a space that holds one *kav*. See the *Arukh LaNer*, who explains how this imagery alludes to a deeper meaning.

הא קבא... ולא רקדא – **למלא במדי** – This is a *kav*... and it is not dancing – One commentary explains that the man who asked the question was himself a Torah scholar and that is why Rav Shimi bar Ḥiyya wanted to intervene on his behalf. He brings support for his claim from the fact that Rav compared the man to the biblical Joshua, which, at the very least, suggests that he was an important figure in his own right (Ya'avetz).

I would not give him – לא יתבנא ליה – Some explain that Rav's hesitance was because he did not want to introduce anyone with flawed lineage into his family. Possibly he believed that the son of a gentile is unfit for the priesthood; alternatively, Rav considered the very fact that one is descended from a gentile to be a flaw, even if there are no associated prohibitions with that flaw (see Rivan). Others explain that his concerns had nothing to do with the man's lineage but were due to an entirely unrelated issue.

BACKGROUND

A camel in Medes – **גמל במדי** – In talmudic literature, Medes is often used as an example of a distant, unknown land. This example was first used in the period of the Mishna, when Medes was far from the Jewish center of life in Eretz Yisrael. Later, when the Jewish community was centered in Babylonia, the example continued to be used despite the fact that Medes is actually near Babylonia.

דאמר רבי יוחנן משום רבי שמעון: מנין לגוי ועבד הבא על הבהמה ועל הלוי? ועל הישראלית שפסלוה – שנאמר "ובת כהן כי תהיה אלמנה וגרושה", מי שיש לו אלמנות וגרושות בה, יצאו גוי ועבד שאין להם אלמנות וגרושות בה.

As Rabbi Yohanan said in the name of Rabbi Shimon: From where is it derived with regard to a gentile or a slave who engaged in intercourse with a daughter of a priest or with a female Levite or with a female Israelite that they thereby render her unfit to marry into the priesthood? As it is stated: "But a priest's daughter when she will become a widow, or a divorcee, and have no child, she returns to her father's house as in her youth" (Leviticus 22:13). The verse indicates that she returns to her father's house and enjoys the rights of the priesthood only in a case where she engaged in intercourse with one to whom widowhood and divorce can apply, i.e., one with whom her marriage would be valid and would be broken only through death or divorce. Excluded from this is a union with a gentile or a slave, to whom neither widowhood nor divorce can apply, as no marriage bond can be formed with them.

אמר ליה אבוי: מאי חזית דסמכת אדרב דימי? סמוך אדרבין! דכי אתא רבין אמר: רבי נתן ורבי יהודה הנשיא מורים בה להיתירא, ומאן רבי יהודה הנשיא – רבי.

Abaye said to Rav Yosef: What did you see that you rely upon Rav Dimi and his tradition that Rabbi Yehuda HaNasi holds that the offspring of a gentile or a slave and a Jewish woman is a *mamzer*? Rely instead upon Ravin, as when Ravin came from Eretz Yisrael he said that Rabbi Natan and Rabbi Yehuda HaNasi both rule that the offspring is permitted to marry into the congregation of Israel. And who is the Rabbi Yehuda HaNasi referred to in Ravin's report? It is the one who is simply referred to as Rabbi, the redactor of the Mishna, whose opinion is accepted as the *halakha*.

ואף רב מורה בה היתירא, דההוא דאתא לקמיה דרב, אמר ליה: גוי ועבד הבא על בת ישראל מהו?

The Gemara notes: And even Rav rules that the offspring is permitted, as is evident from an incident involving a certain individual who came before Rav and said to him: With regard to the offspring of a gentile or a slave who engaged in intercourse with a Jewish woman,⁴ what is its halakhic status?

אמר לו: הולך כשר. אמר ליה: הב לי ברתך! לא יתבנא לך.

Rav said to him: The lineage of the offspring is unflawed. The individual who asked the question was himself such a child, and he said to Rav: If so, give me your daughter in marriage. He said to him: I will not give her to you.

אמר שימי בר חייא לרב: אמרי אינשי: גמלא במדי אקבא רקדא, הא קבא והא גמלא והא מדי – ולא רקדא!

Shimi bar Ḥiyya,⁵ Rav's grandson, said to Rav: People often say that a camel in Medes^{NB} can dance upon a small space that holds only a single *kav* of produce. However, clearly that is an exaggeration, since if one would go to Medes one could demonstrate that this is a space that holds a *kav*, and this is a camel, and this is Medes, and yet the camel is not dancing,^N i.e., the truth of a statement becomes apparent when it is put to the test. So too, it would appear that you do not truly believe in your ruling because when put to the test, you are unwilling to rely on it.

אמר ליה: אי נהוי ביהושע בן נון לא יתבנא ליה ברתא. אמר ליה: אי הוה ביהושע בן נון, אי מר לא יתבנא ליה – אחרני יתבנא ליה. הא, אי מר לא יתבנא ליה – אחרני לא יתבנא ליה.

He said to him: Even if he were as great as Joshua, son of Nun, I would not give him^N my daughter in marriage. My refusal to give her to him in marriage is not that I do not stand by my ruling; it is for other reasons. He said to him: If he were as great as Joshua, son of Nun, then even if the Master would not give him his daughter, others would still give him their daughters. However, with regard to this man, if the Master does not give him his daughter, others will not give him their daughters either out of fear of damaging the family lineage. Nevertheless, Rav remained unwilling to give his daughter to that individual.

PERSONALITIES

Shimi bar Ḥiyya – **שימי בר חייא** – Rav Shimi bar Ḥiyya was among the second-generation *amora'im* of Babylonia. He was a grandson of Rav and apparently his preeminent disciple and much beloved by him. Even during his grandfather's lifetime, Rav Shimi was recognized as a significant Torah scholar. The Talmud records

numerous halakhic teachings of his, both those he transmitted in the name of his grandfather and those of his own. In certain cases he even disagreed with the rulings of his grandfather. Given their close familial relationship, it is clear why here he allowed himself to address Rav in such an informal manner.

He placed his eyes upon him and he died – **יָהִיב בְּיָה עֵינָיו** – **וְשָׁכַיב**: This concept is mentioned in the Talmud on a number of occasions. The *Or HaHayyim* on Exodus 11:5 and 23:23 explains that when a righteous person looks at others he can draw out the sparks of holiness that each individual has, and if that individual does not have any other merits to stay alive, he might die as a result. This explanation might be challenged from the fact that the Talmud cites a similar event with Rav Sheshet (*Berakhot* 58b), despite the fact that he was blind. In the *Iggeret HaKodesh* (attributed to the Ramban) it is explained that the word eyes does not literally refer to eyes but rather to the thought process of a righteous person, which can affect other people for good or bad.

לֹא הָיָה קְאָוִיל מִקְמִיָּה, יָהִיב בֵּיה עֵינָיו וְשָׁכַיב.

וְאִף רַב מַתָּנָה מוֹרָה בָּה לְהִתְיָרָא, וְאִף רַב יְהוּדָה מוֹרָה בָּה לְהִתְיָרָא. דְּכִי אֲתָא לְקַמִּיָּה דְּרַב יְהוּדָה אָמַר לֵיה: זֵיל אִיטְמַר, אוֹ נְסִיב בֵּת מִינְךָ. וְכִי אֲתָא לְקַמִּיָּה דְּרַבָּא אָמַר לֵיה: אוֹ גִלִּי, אוֹ נְסִיב בֵּת מִינְךָ.

שְׁלַחוּ לֵיה בְּנֵי בֵי מִיכְסֵי לְרַבָּה: מִי שְׁחָצִיו עֶבֶד וְחָצִיו בֶּן חוֹרִין הֵבֵא עַל בֵּית יִשְׂרָאֵל מָהוּ? אָמַר לָהּ: הִשְׁתָּא עֶבֶד כּוֹלֹ אֲמַרִּינן כָּשָׁר – חָצִיו מִיבְעִיָּא?

אָמַר רַב יוֹסֵף: מָרָא דְשִׁמְעֵתָא

That individual would not go from standing before Rav and continued to plead with him. Rav placed his eyes upon him and he died.⁸

The Gemara adds: **And even Rav Mattana rules that the offspring is permitted, and even Rav Yehuda rules that the offspring is permitted, as is evident from the fact that when a child of a gentile or slave and a Jewish woman came before Rav Yehuda, he said to him: Go and conceal your paternal lineage^N so that people will not refrain from giving you their daughters in marriage, as it is permitted for you to marry into the congregation of Israel, or otherwise, marry a woman of your own kind, i.e., a woman of similar lineage. And similarly, when such a person came before Rava, he said to him: Either go into exile^N to a place where your lineage is unknown, so that others will give you their daughters in marriage, or marry a woman of your own kind.**

The residents of Bei Mikhsei sent the following question to Rabba: With regard to the offspring of one who is a half-slave half-freeman, who engaged in intercourse with a Jewish woman, what is its halakhic status? He said to them: Now that with regard to the offspring of a full slave we say that his lineage is unflawed, is it necessary to ask about a half-slave?

Rav Yosef said: The Master who is responsible for dissemination of this *halakha* that the offspring of a slave and a Jewish woman is not a *mamzer*,

NOTES

Go and conceal your paternal lineage – זֵיל אִיטְמַר: Evidently, Rav Yehuda maintains that the child of a gentile and a Jewish woman is fit to marry even a priest, as if this were not the case his advice might lead to a prohibited marriage, since the daughter of this man might mistakenly think that she is eligible to marry a priest as her father did not disclose his lineage (Rashba). However since the *halakha* is that such a child is considered to be of flawed lineage and may not marry a priest (see *Even HaEzer* 4:5 and 4:19), a father would not be allowed to conceal his lineage.

Another issue that arises from Rav Yehuda's advice is the propriety and ramifications of deceptive behavior between potential marriage partners, which Rav Yehuda appears to be encouraging. Apart from the ethical issues involved, doing so might render the betrothal as mistaken, thereby undermining its validity. The *Tzitz Eliezer* (17:48) suggests that Rav Yehuda's suggestion was permitted only at that time, as it was not universally accepted that the offspring of a gentile and a Jewish woman was of unflawed lineage, and there was a need to establish this *halakha* so that such people would be able to marry and would not be rejected even though

they are permitted. However, the *Kehillot Ya'akov* (Yevamot 44) maintains that not revealing one's flawed lineage is not considered deceptive whenever the marriage itself is permitted. He rationalizes that even if one would respond unfavorably to certain information concerning lineage before the couple is married, it is obvious that once they are happily married they would not divorce over such an issue. Therefore, it cannot be considered a mistaken betrothal, and so the deception should be permitted for the sake of the mitzva to marry. Alternatively, it is possible that Rav Yehuda was merely advising him to go to a place where people do not examine lineage so closely, where he would have a better chance of marrying (see *Tosafot* on 47a).

Go and conceal your lineage...go into exile – זֵיל אִיטְמַר... גִּלִּי: The later commentaries attempted to explain why these Sages differed in their choice of language. One explains that the man who asked this question of Rava was famous in his locale and therefore could not conceal his lineage (*Melo HaRo'im*).

מנו – רב יהודה, והאמר רב יהודה:
מי שחציו עבד וחציו בן חורין הבא
על בית ישראל – אותו ולד אין לו
תקנה.

כי איתמר דרב יהודה כגון דקדיש
בית ישראל, דנמצא צד עבדות שבו
משתמש באשת איש.

והאמר נהרדעי משמיה דרבי יעקב:
לדברי הפוסל – פוסל אפילו בפניויה,
לדברי המכשיר – מכשיר אפילו
באשת איש.

ושניהם לא למדוה אלא מאשת
אב – מאן דפסיל סבר: מה אשת אב
דלא תפסי בה קדושין [הולד ממזר] –
אף כל דלא תפסי בה קדושין הולד
ממזר.

who is he? He is Rav Yehuda, as the Gemara cited above. But didn't Rav Yehuda himself say: With regard to one who is a half-slave half-freeman^H who engaged in intercourse with a Jewish woman, that offspring of that union has no recourse^N to be able to marry? It is apparent, then, that even one who permits the offspring of a slave to marry into the congregation of Israel does not permit the offspring of a half-slave to do so, contrary to Rava's assertion.

The Gemara resolves the difficulty: When this ruling of Rav Yehuda was stated, it was referring to a case where the half-slave betrothed a Jewish woman.^N Since a slave's betrothal does not take effect, the result of that betrothal is that the woman is married to only the free half of the half-slave half-freeman, such that it emerges that when he has relations with her, the slave side of him is engaging in relations with a married woman to whom that side of him is not married, and so the offspring of that union is a *mamzer*.

The Gemara raises an objection: But didn't the Sages of Neharde'a say in the name of Rabbi Ya'akov: According to the statement of the one who renders the child of a gentile or slave and a Jewish woman unfit to marry into the congregation of Israel, he renders the child unfit even when the mother is an unmarried woman. And according to the statement of the one who renders the child fit, he renders the child fit even when the mother is a married woman.

And both of them derived their opinions only from the *halakha* of one's father's wife,^N as follows: The one who renders the child unfit holds that just as with regard to one's father's wife, one's betrothal of her does not take effect even after she is widowed or divorced, and so the offspring of such a union is a *mamzer*, so too, with regard to any one for whom betrothal of her does not take effect, including a gentile or a slave, the offspring is a *mamzer*.

HALAKHA

A half-slave half-freeman – חציו עבד וחציו בן חורין: If a half-slave half-freeman engaged in intercourse with a married woman, then the offspring is forbidden both to a Jewish woman and to a maidservant. If the offspring marries a convert, his children will share his status (Rambam *Sefer Kedusha*, *Hilkhot Issurei Bia* 15:5; *Shulḥan Arukh*, *Even HaEzer* 4:17).

NOTES

He has no recourse – אין לו תקנה: Most of the early commentaries explain that there is no one whom this offspring is permitted to marry because his status is half-*mamzer* and half-fit. He is therefore prohibited from marrying a Jewish woman on account of his *mamzer* status but he may also not marry a *mamzeret* due to his fit status. Furthermore, since he is not a gentile or a slave he is forbidden to a maidservant. However, Rashi appears to explain that the offspring will have full *mamzer* status, and therefore he would be permitted to marry a *mamzeret* or a maidservant. Some explain that Rashi's opinion is based on the *halakha* that the status of a *mamzer* status is transferred to his son, even when there is no transgression involved in his conception, e.g., where a *mamzer* married a female convert. It is apparent from that *halakha* that the *mamzer* status is considered dominant and therefore always defines the offspring. So too, in the case here, if the factors necessary to define the offspring as a *mamzer* exist, even if they exist only with regard to one side of his father, that is sufficient to render the offspring a full *mamzer* (*Mei Naftah*).

A case where he betrothed a Jewish woman – כגון דקדיש בן חורין: The Gemara in *Gittin* (43a) considers the status of a betrothal performed by a half-slave and remains in doubt as to

whether it is at all effective (see *Tosafot* here). From the fact that the Gemara here establishes the case as one where the half-slave betrothed a Jewish woman, apparently the Gemara here assumes that such a betrothal is effective. Nevertheless, it would appear that even if it is effective, the bond between the couple is still incomparable to the bond formed by a standard betrothal. Rather, the betrothal will be effective only to render the woman partially betrothed, a state that is similar to the marital status of a designated maidservant, i.e., a half-free half-slave maidservant who was betrothed to a Hebrew slave (see *Leviticus* 19:20–22; *Keren Ora*).

They derived their opinions... from a father's wife – למדה... מאשת אב: In the Torah, the prohibition against engaging in relations with one's father's wife is juxtaposed to the prohibition against allowing a *mamzer* to enter the congregation of God (*Deuteronomy* 23:1–3). Based on that juxtaposition, the Gemara derives that only unions that are similar to that of a man with his father's wife will result in the offspring having the status of a *mamzer*. The various opinions concerning who is a *mamzer* are all based on the issue of how to define whether a case is considered to be similar or dissimilar to the case of one's father's wife.

To the exclusion of a gentile and a slave, for whom betrothal does not take effect – **לֹא־פָקִי גוֹי וְעֶבֶד** – **דָּלָא תַּפְסִי בְּהוּ קְדוּשִׁין**: The commentaries question the logic of this opinion that when the father of the offspring is a gentile or slave, the marital status of the woman is irrelevant. Ultimately the relations were adulterous and forbidden both for the Jewish woman herself and for the gentile, since adultery is included as one of the Noahide laws; why doesn't that automatically render the offspring a *mamzer*? Because of this difficulty, the Ramban and others prefer an alternative version of the text held by Rav Hai Gaon and the other *ge'onim*. According to that version, the reason that the offspring is not a *mamzer* is not solely dependent on the forbidden status of the union. Rather, it is based on the offspring being descended from a father and mother between whom betrothal is ineffective. The uniqueness of this case, then, is due to the fact that the offspring of a gentile father is never halakhically recognized as relating to him. Consequently, with regard to issues of lineage, the offspring is halakhically considered as having no father, and therefore it cannot be rendered a *mamzer*.

כל – from among your brethren... **מִשְׁמִימוֹת**: The Gemara states that for this *halakha* it is sufficient even if only one's mother is of Jewish lineage. However, *Tosafot* and the other early commentaries note that the Gemara in tractate *Sota* appears to contradict this when it states that although Agrippas's mother was Jewish, since his father was not, he was not halakhically qualified to be king. See *Tosafot* for one resolution of this question. The Ramban suggests that a distinction be made between appointing one to be the king and appointing him to other positions of authority. To be a king one must indeed have both a Jewish mother and father; however, for other positions of authority it is sufficient if only the mother is Jewish. Some suggest that this distinction can be identified in the verse that provides the source of this *halakha*, by splitting it up into two clauses, as follows: "From among your brethren shall you place a king over you" (Deuteronomy 17:15) refers specifically to a king, and the phrase "among your brethren" implies that both parents must be Jewish. However, the continuation of the verse: "You may not put a foreigner over you, who is not your brother," refers to any position of authority where one individual is placed in charge of others, and for that position only someone who is "not your brother" is excluded. One is defined as "not your brother" only if he does not have a Jewish mother (see *Yam shel Shlomo*).

LANGUAGE

Officials [pursei] – **פּוֹרְסֵי**: From the Greek ἑφορος, *eforos*, meaning a governor or appointee. In certain locations this became the title of city governors or officials appointed over large populations.

HALAKHA

From among your brethren – **מִקְרֵב אֲחִיךָ**: It is prohibited to appoint a king over the Jewish people if he descends from a line of converts. It is likewise prohibited to appoint such a man to any position of authority over the Jewish people. If, however, either his father or mother are not from a line of converts, he is eligible (Rambam *Sefer Shofetim*, *Hilkhot Melakhim* 1:4).

ומאן דמכשר סבר: מה אשת אב, דלדידיה לא תפסי בה קדושין לאחריני תפסי בה קדושין – לאפוקי גוי ועבד דלא תפסי בהו קדושין כלל.

אלא, כי איתמר דרב יהודה – בגון שבא על אשת איש ונמצא צד חירות שבו משתמש באשת איש.

אמר רבינא אמר לי רב גזא: איקלע רבי יוסי בר אבין לאתרי, והוה עובדא בפניה – ואכשר, באשת איש – ופסיל. אמר רב ששת: לדידי אמר לי רב גזא: לא רבי יוסי בר אבין הוה, אלא רבי יוסי ברבי ובידא הוה, ואכשר בין בפניה בין באשת איש. אמר ליה רב אחא בריה דרבה לרבינא: איקלע אמימר לאתרי. ואכשר בין בפניה בין באשת איש.

והלכתא: גוי ועבד הפא על בת ישראל – הולד כשר, בין בפניה בין באשת איש.

רבא אכשריה לרב מרי בר רחל ומניה בפורסי דבבל. ואף על גב דאמר מר "שום תשים עליך מלך", כל משימות שאתה משים אל יהו אלא מקרב אחיך. האי בין דאמו מישראל – "מקרב אחיך" קרינן ביה.

And the one who renders the child fit holds that the derivation from the *halakha* of one's father's wife is more limited, and it is derived that the offspring is a *mamzer* only in a case just like one's father's wife, in that although his betrothal of her does not take effect, with someone else his betrothal of her does take effect. This is to the exclusion of a gentile and a slave, for whom betrothal of any Jewish woman does not take effectⁿ at all, and so the offspring of such a union will not be a *mamzer*. It is apparent from this statement of the Sages of Neharde'a that according to the lenient opinion, the offspring of a slave is never a *mamzer*, irrespective of the marital status of the Jewish woman. Therefore, the Gemara's resolution is undermined.

The Gemara offers a different resolution: **Rather, when this statement of Rav Yehuda was stated, it was referring to a case where the half-slave half-freeman engaged in intercourse with a married woman who was married to someone else, and it therefore emerges that although the woman's union with the slave side of him will not render the offspring a *mamzer*, the free side of him is engaging in relations with a married woman to whom he is not married, and due to that side of him the offspring is a *mamzer*.**

Ravina said: Rav Gazza said to me that Rabbi Yosei bar Avin^p once happened to come to our place, and there was an incident involving an unmarried woman who had engaged in intercourse with a slave, and Rabbi Yosei bar Avin rendered her offspring fit to marry into the congregation of Israel. And there was another incident involving a married woman who had engaged in intercourse with a slave, and he rendered her offspring unfit to marry into the congregation of Israel by ruling the offspring was a *mamzeret*. Rav Sheshet said: Rav Gazza told me that it was not Rabbi Yosei bar Avin; rather, it was Rabbi Yosei, son of Rabbi Zevida, and he rendered the offspring fit both in the case of an unmarried woman and in the case of a married woman. Rav Aha, son of Rabba, said to Ravina: Ameimar once happened to come to our place and rendered the offspring fit both in the case of an unmarried woman and in the case of a married woman.

The Gemara concludes: **And the *halakha* is that with regard to a gentile or slave who engaged in intercourse with a Jewish woman, the lineage of the offspring is unflawed, whether she was an unmarried or a married woman.**

The Gemara cites a related *halakha*: **Rava ruled that Rav Mari bar Raḥel^p, who was the son of a gentile father and a Jewish mother, was fit to marry into the congregation of Israel, and furthermore he appointed him as one of the officials [pursei]^l of Babylonia. And although the Master said that from the verse, "You shall place a king over you whom the Lord your God shall choose; from among your brethren shall you place a king over you" (Deuteronomy 17:15) it is derived that not only with regard to the kingship but also with regard to all positions of authority that you appoint, the incumbents may be selected only from among your brethrenⁿ who share your Jewish lineage. Nevertheless, with regard to this one, i.e., Rav Mari bar Raḥel, since his mother is of Jewish lineage, we call him "from among your brethren,"^h and so he is eligible.**

PERSONALITIES

Rabbi Yosei bar Avin – **רבי יוסי בר אבין**: An *amora* from Eretz Yisrael, Rabbi Yosei appears frequently in the Jerusalem Talmud as Rabbi Yosei bar Bun. In the Jerusalem Talmud he is usually the final *amora* mentioned on each topic, and some see his role as similar to that of Rav Ashi in the Babylonian Talmud, who edited and organized the subject matter. In a number of places his name appears with that of Rabbi Yosei bar Zevida, who was apparently his colleague but who does not appear in the Jerusalem Talmud, even though he, too, lived in Eretz Yisrael.

Rav Mari bar Raḥel – **רב מרי בר רחל**: It would seem that Rav Mari bar Raḥel is the same person referred to various times in the Gemara as Rav Mari, son of Issur the convert. During the wars that took place

in Neharde'a, the daughters of the great *amora* Shmuel, the leading Sage of that city, were captured. One of them, Raḥel, was taken by a gentile named Issur, who later became a righteous convert. Nevertheless, since Mari was conceived while his father was not yet Jewish, he was referred to by his matrilineal descent.

Rav Mari grew to become a Torah scholar and was considered one of the leading scholars in his generation. He even debated the great Sages Abaye and Rava, who also lived in his generation. The Gemara often refers to his virtues and to the fact that he was careful to act beyond the requirements of the *halakha*. He was also very wealthy and influential. Two of his sons, Mar Zutra and Rav Ada Saba, were also considered to be among the great scholars of their generation and were contemporaries of Rav Ashi.

אֶטְבְּלָהּ – He immersed her for the sake of intimate relations – *Tosefot Had Mikamme'ei* and many other early commentaries explain that the woman had already completed all of the various stages of conversion; however, her original immersion was invalid because it had not been done under the direction of a court, and therefore it was not clear that it had been done with the necessary intention. When she later immersed for the sake of purifying herself, in accordance with the *halakha*, that intention itself was sufficient to deem the later immersion as one for the sake of conversion. This is because she performed the immersion as an expression of her commitment to Judaism, and therefore that immersion completed her conversion process (see *Nimmukei Yosef*). However, many other commentaries explain that it was not the actual immersion for the sake of purifying herself that completed her conversion; rather, it merely served as proof that when she had originally immersed as part of her conversion, she had the necessary intentions.

מִי – Didn't she immerse for the sake of her menstruation – *Tosafot* and the other early commentaries question how this immersion, which was presumably done in private, could possibly be valid, since the Gemara states later (46b) that the conversion process must be done in the presence of a court of three. Some suggest that in fact, a court of three is necessary only when the potential convert formally accepts upon himself to observe the mitzvot, since that is the primary act of conversion. However, the immersion itself may be performed in private. Others suggest that provided it is known to the court that she immersed, that is sufficient, even if they do not actually see the immersion. The Rif rules that a court of three is only ever necessary *ab initio*. Accordingly, the difficulty does not arise, since the Gemara's case here is clearly after the fact.

קָרוּ – Whom people would call: Son of an Aramean man – *ליה בר ארמא*: Some commentaries ask: If his mother was Jewish, then he would be a full Jew. Furthermore, according to the Gemara's conclusion, with which Rabbi Yehoshua himself concurs, the offspring of a gentile and a Jewish woman is not a *mamzer*. If so, of what significance is it whether his father was a gentile? Some suggest that it is still significant according to the opinions that although he would not be a *mamzer*, he would be unfit for the priesthood (Maharsha). Others suggest that the case was not of the son of a questionable convert, but of a Jew who took a gentile woman in marriage, and it was the conversion of the son himself that was questionable. In support of this suggestion they cite an alternative version of the text that has: Son of an Aramean woman (*Arukh LaNer*; see Meiri).

One who purchased a slave...and the slave preempted him, etc. – *הלוקח עבד...וקדם וכו'*: The commentaries explain the connection between this section of the Gemara and the previous one: From the previous Gemara it is apparent that even if a convert immersed in private, not in the presence of the court, the immersion can still be valid because his intention was clear. The main issue in the following section of the Gemara is the very issue of the significance of one's intentions at the time of immersion (*Yosef Lekah*).

§ A gentile slave purchased by a Jew must be circumcised and then immersed in a ritual bath. By being immersed for the sake of slavery, he takes on the status of a full slave, which, among other things, obligates him to keep certain mitzvot. However, if the slave, or any gentile, is immersed for the sake of conversion, he then becomes a full Jew and fully obligated in mitzvot like any other Jew.

The Gemara considers the result of different intentions accompanying an immersion: **Rabbi Hiyya bar Ami's slave immersed a certain gentile woman for the sake of having intimate relations**,^N i.e., to purify her from her menstrual impurity. **Rav Yosef said: I am able to render both her and her daughter fit to marry into the congregation of Israel.**

With regard to her, I can render her fit in accordance with the opinion of Rav Asi, as Rav Asi said concerning a woman whose status as a convert was unclear but who lived as a part of the Jewish people and acted like all other Jewish women: Didn't she immerse^H for the sake of purifying herself from her menstruation?^N Therefore, even if the original immersion was invalid, her intention in subsequent immersions was sufficient to be considered for the sake of conversion, since ultimately she immersed as an expression of her commitment to Judaism. She is therefore fully Jewish.

And with regard to her daughter, she is the daughter of a gentile or slave who engaged in intercourse with a Jewish woman, and the halakha is that the lineage of the offspring is unflawed.

The Gemara details the circumstances of Rav Asi's ruling: There was a **certain man whom people would call: Son of the Aramean woman**, as they cast aspersions on the validity of his mother's conversion. With regard to that case, **Rav Asi said: Didn't she immerse for the sake of purifying herself from her menstruation?** A similar incident is recounted: There was a **certain man whom people would call: Son of an Aramean man**,^N as they cast aspersions on the validity of his father's conversion. **Rabbi Yehoshua ben Levi said: Didn't he immerse for the sake of purifying himself from his seminal emission?** That intention is sufficient to consider the immersion an immersion for the sake of conversion.

Rav Hama bar Gurya said that Rav said: In the case of a Jew who purchased a slave from a gentile, and before he managed to immerse him for the sake of slavery the slave preempted him^N and immersed for the sake of conversion to render himself a freeman,^H he thereby acquired himself and becomes a freeman, i.e., his immersion effects a full conversion and he is no longer a slave. What is the reason for this halakha?

עבדיה דרבי חייא בר אמי אטבלה להאי גויה לשם אנתתא. אמר רב יוסף: יכולנא לאכשורי בה ובברתה.

בה – כדרב אסי, דאמר רב אסי: מי לא טבלה לנדויתה?

בברתה – גוי ועבד הבא על בת ישראל הולד כשר.

ההוא דהו קרו ליה בר ארמא. אמר רב אסי: מי לא טבלה לנדויתה? ההוא דהו קרו ליה בר ארמא, אמר רבי יהושע בן לוי: מי לא טבל לקריו?

אמר רב חמא בר גוריא אמר רב: הלוקח עבד מן הגוי, וקדם וטבל לשם בן חורין – קנה עצמו בן חורין. מאי טעמא?

HALAKHA

Didn't she immerse, etc. – *מי לא טבלה וכו'*: In order to become Jewish, a convert is required to declare that he accepts upon himself to observe the mitzvot, and he must then be circumcised and immersed, all in the presence of a court of three. If a convert did not declare his acceptance of the mitzvot or was not immersed in the presence of a court of three, then the conversion can still be valid if it is apparent that he had continued to observe the mitzvot and Jewish customs and had immersed for the sake of purifying himself from a discharge of semen, or, in the case of a female convert, that she had immersed to purify herself from menstruation. In any case, if the convert married a Jewish woman, a child born from that union is not

rendered unfit (Rambam *Sefer Kedusha*, *Hilkhot Issurei Bia* 13:9; *Shulhan Arukh*, *Yoreh De'a* 268:3).

One who purchased a slave...and he immersed for the sake of rendering him a freeman – *וטבל לשם בן*: If a Jew purchased a slave from a gentile, and the slave immersed for the sake of conversion, then that immersion effects a full conversion and he becomes a freeman. He must then compensate his previous master with the monetary value of himself when he was a slave (Rema, citing *Nimmukei Yosef*; Rambam *Sefer Kedusha*, *Hilkhot Issurei Bia* 13:11 and *Sefer Kinyan*, *Hilkhot Avadim* 8:9; *Shulhan Arukh*, *Yoreh De'a* 267:9).

HALAKHA

הקדש, חמץ – חקדש, חמץ: Consecration, leavened bread abrogate a lien – **מפקיעין מידי שעבוד:** With regard to consecration, Rabbeinu Tam and the Rambam hold that even consecrating an item with sanctity that inheres only in its value is effective to abrogate a lien upon it, whereas Rashi and the Ra'avad hold this applies only when one consecrates an item to the extent that the item is endowed with inherent sanctity. The abrogation caused by the onset of the prohibition of leavened bread is also true of the onset of any prohibition that prohibits one from gaining any benefit from the item. Even in a case where the lien is abrogated, the debt supported by the lien still exists, and the creditor may still attempt to collect it (Rambam *Sefer Hafl'a'a*, *Hilkhot Arakhin* 7:14, and *Sefer Mishpatim*, *Hilkhot Malve VeLoveh* 18:6–7; *Shulhan Arukh*, *Hoshen Mishpat* 117:7).

שחרור מפקיעין מידי שעבוד – Emancipation abrogates a lien: If one designated his slaves to be the sole property from which repayment of his debt may be collected and he then emancipated the slave, then the emancipation is effective and the lien is thereby abrogated. The debtor must still repay the creditor. Although the slave is no longer bound to the debt, the creditor is forced to write a bill of emancipation for him so that he will not later try to claim that the slave should be considered his own due to the lien that once existed upon him (Rambam *Sefer Kinyan*, *Hilkhot Avadim* 8:16; *Shulhan Arukh*, *Yoreh De'a* 267:68).

לפניה ואחריה – Before her and after her: In a case where a Jew purchases a slave from a gentile and the slave preempts the owner and immerses on his own accord, if he immersed in the presence of his owner then he becomes a freeman, and if the immersion was not in the presence of his owner then he becomes free only if it was explicitly stated that the immersion was for the sake of becoming a freeman. This is according to the opinion of Rambam, based on the version of the text by which the Rif held. The *Shulhan Arukh*, following the version of the text by which Rashi held, rules: In a case where a convert has owned a slave since before his conversion, if the slave immersed prior to the owner's conversion, the slave would thereby become a freeman, but if he immersed only after the owner's conversion, then he becomes free only if it was explicitly stated that the immersion was for the sake of becoming a freeman (*Tur*, citing Rosh; Rambam *Sefer Kinyan*, *Hilkhot Avadim* 8:19; *Shulhan Arukh*, *Yoreh De'a* 267:9).

א גופו קנה – A gentile's body is acquired: If a gentile sells himself as a slave, of his own volition, to a Jew, then the Jew acquires his body, and if the slave immerses, he cannot unilaterally define that immersion as one for the sake of becoming a freeman (*Shulhan Arukh*, *Yoreh De'a* 267:9).

PERSONALITIES

בלוריא הגיורת – Beloreya the female convert: The name Beloreya is probably a variant of the name Valeria, a name used in Rome for women of the gens Valeria, which was one of the most celebrated and wealthy families in Rome. Beloreya converted during the Second Temple period, and the Talmud relates several questions that she posed to Rabban Gamliel concerning the meanings of various verses in the Bible.

רב אביא – Rav Avya: A fourth-generation Babylonian *amora*, Rav Avya was a prominent disciple of Rav Huna but also studied in Eretz Yisrael with Rabbi Ami and Rabbi Yohanan. Rav Huna respected him greatly and valued his comments and questions. He married the sister of Rami bar Pappa, and some of his children became *amora'im* themselves. The most famous of these children, Rav Aha, son of Rav Avya, is quoted many times in the Talmud as a disciple of Rav Ashi.

גוי גופא לא קני ליה, מאי דקני ליה – הוא דמקני ליה לישראל, וכיון דקדם וטבל לשם בן חורין – אפקיעיה לשעבודיה,

בדרבא. דאמר רבא: הקדש, חמץ, ושחרור – מפקיעין מידי שעבוד.

מתביב רב חסדא: מעשה בבִּלְרִיָּא הגיורת שקדמו עבדיה וטבלו לפניה. ובא מעשה לפני חכמים ואמרו: קנו עצמן בני חורין. לפניה – אין, לאחריה – לא!

אמר רבא: לפניה – בין בסתם בין במפורש. לאחריה, במפורש – אין, בסתם – לא.

אמר רב אביא: לא שנו אלא בלוקח מן הגוי, אבל גוי גופיה – קני.

His previous gentile owner **did not have ownership of the slave's body**, since a gentile is unable to have ownership of another's body; rather, he had rights to only the slave's labor. And only **that which he owned in him was he able to sell to the Jew**. Therefore, before immersion, the Jew had rights to only the slave's labor, but not ownership of his body, **and therefore, once the slave preempted his owner and immersed for the sake of conversion to make him a freeman, he abrogates his master's lien upon him.**

The Gemara notes: This explanation is **in accordance with the opinion of Rava**, as **Rava said: Consecration of an item to the Temple, the prohibition of leavened bread^h taking effect upon a leavened food, and the emancipationⁿ of a slave abrogate any lien^h that exists upon them.**

Rav Hisda raised an objection from a *baraita*: There was an incident involving Beloreya the female convert^p in which her slaves preempted her and immersed before herⁿ own immersion for her own conversion. And the details of the incident came before the Sages, and they said: The slaves acquired themselves and became freemen. Rav Hisda explains how the *baraita* poses a challenge: The *baraita* implies that only because the slaves immersed **before her**, while she was still a gentile, that **yes**, they became freemen; however, had they immersed **after her**,^h i.e., after she had already converted, then **no**, they would not have become freemen. The reason for this is presumably that upon her conversion she attains the rights to her slaves' bodies, and therefore their immersion for the sake of becoming freemen would be ineffective. However, this contradicts the Gemara's explanation above that when a Jew gains ownership of a slave from a gentile, he has a right to only the slave's labor.

To resolve the challenge **Rava said: When the baraita says that because they immersed before her they acquired themselves, that is whether they immersed without a specified intention or whether they immersed with explicit intention to convert and become freemen**. However, had they immersed **after her**, if they did so **with explicit intention to convert, then yes**, the immersion would achieve that end, but if they did so **without a specified intention, then no**, their immersion would, by default, be considered for the sake of slavery and they would not become free.

Rav Avya^p said: **They taught that one acquires only the rights to the slave's labor only with regard to a Jew who purchased a slave from a gentile slave owner, but if a gentile sold his own body as a slave directly to a Jew, then the Jew acquires^h his body.**

NOTES

Consecration, leavened bread, and emancipation, etc. – הקדש, חמץ, ושחרור וכו': In the present case, the slave's owner never actually emancipated him. Nevertheless, the slave's immersion rendered him a freeman, and in that way he effectively emancipated himself (*Tosafot Yeshanim*).

And immersed before her – וטבלו לפניה: The early commentaries record two different versions of the Gemara's text here that lead to two fundamentally different conclusions.

The text of the *Halakhot Gedolot*, Rif, and Rambam reads: Immersed in her presence. According to this version, when slaves immerse in the presence of their owner, unless the owner explicitly states otherwise, it is assumed that the owner consents to the fact that their immersion should be for the sake of conversion, and so they become freemen. However, if slaves immerse not in the presence of their owner, they cannot unilaterally define their immersion to be for conversion, and therefore they remain slaves. Essentially, only the owner has the ability to define the nature of her slaves' immersion.

The present text, which is the version by which Rashi and the Razah held, reads: Immersed before her, meaning their immersion preceded her own. According to this version, the ability for the slaves' immersion to effect their conversion is dependent on whether it took place while their owner was a Jew or a gentile. As a gentile, she would have rights to only their labor, and so their immersion could abrogate her lien upon them. However, if she immersed first and was already Jewish, then she would have already attained ownership of their bodies, and therefore they would not be able to immerse for the sake of conversion without her consent.

An underlying assumption of both explanations is that in some cases an immersion whose purpose was unspecified is considered, by default, to be for the sake of conversion. The *Yosef Lekah* explains the rationale for this. In truth, the very act of immersion demonstrates an acceptance of the system of mitzvot; why else would the slaves be immersing? Therefore, unless it is made explicit that the immersion is for the sake of slavery, it is considered for the sake of conversion.

Then one needs to hold him tightly – **צריך לתקפו** – Rashi explains that this is necessary to demonstrate the owner's dominance over the slave. However, Rabbeinu Hananel and the Rif simply write that the slave must be held tightly in order to ensure the validity of the immersion. Simply read, it would appear that they mean only that the owner should ensure the slave is fully immersed in the water. Based on this understanding of their statements, the Razah rejects their explanation, seemingly because he assumes that it is such an obvious point that it should be unnecessary to state it. However, the Ramban in *Milhamot HaShem* claims that the Rif's intention is similar to that of Rashi; if the owner is in physical control of the slave's immersion, it is clear that it is the owner who is in charge of the immersion, and therefore the nature of the immersion is defined by his intentions.

He passed him to them – **מסרה מיהליהו** – Some commentaries suggest that from the fact that the Gemara mentions the involvement of only two Sages in this incident, it would appear that it is sufficient to have two judges preside over the immersion. The Ramban rejects this possibility outright, insisting that three judges are always required. He explains that even in this incident, there was certainly an additional judge present at the time. Presumably, the third judge was not of equal stature as Ravina and Rav Aha, and so he was not mentioned out of deference to them.

They placed a bucket of clay – **אנחו ליה וזלטא דטינא** – This act was not halakhically significant. It was done only in order to demonstrate and publicize the fact that the man was still a slave so that no one could later suggest that the immersion might have been for the sake of making him a freeman (Rashba; *Nimmukei Yosef*).

LANGUAGE

Bridle [*arvisa*] – **ארזיסא** – From the Middle Persian *arwēs*, meaning a rope or bridle.

דכתיב "וגם מבני התושבים הגרים עמכם מהם תקנו" – אתם קונים מהם, ולא הם קונים מהם, ולא הם קונים מהם. מזה.

ולא הם קונים מהם, למאי? אילמא למעשה ידיו – אטו גוי לא קני ליה לישראל למעשה ידיו? והכתיב "או לעקר משפחת גר" ואמר מר: "משפחת גר" – זה הגוי! אלא לאו – לגופיה, וקאמר רחמנא "אתם קונים מהם" – אפילו גופיה.

פריך רב אחא: אימא בכספא ובטבילה! קשיא.

אמר שמואל: וצריך לתקפו במים.

כי האי דמנמינן, עבדיה דרב אשי, בעא לאטבולי, מסרה מיהליהו לרבנא ולרב אחא בריה דרבא, אמר להו: תזו דמיניכו קבעית ליה. רמו ליה ארוסא בצואריה, ארפו ליה. וצמצמו ליה.

ארפו ליה – כי היכי דלא להוי חציצה, צמצמו ליה – כי היכי דלא לקדים ולימא להו: לשם בן חורין אני טובל. בהדי דדלי רשיה ממא, אנחו ליה וזלטא דטינא ארישיה. ואמרו ליה: זיל אמטי לבי מרד.

As it is written: "Moreover, of the children of the strangers that sojourn among you, of them you may acquire" (Leviticus 25:45). The verse states only that you, i.e., Jews, can acquire a slave from them, i.e., a gentile slave, but they cannot acquire a slave from you, i.e., a Jewish slave, and they cannot acquire a slave from one another.

When it is derived that: But they cannot acquire slaves from you, to what type of acquisition is it referring? If we say it is for his labor, is that to say that a gentile cannot acquire a Jew for his labor? Isn't it written: "And if a stranger who is a settler with you becomes rich, and your brother becomes poor beside him, and he sells himself to the stranger who is a settler with you, or to the offshoot of a stranger's family" (Leviticus 25:47), and the Master said in explanation of the phrase "a stranger's family" that this is referring to a gentile. If so, the verse explicitly states that a Jew can sell himself as a slave to a gentile. Rather, is it not that the reference is to selling his body, and the Merciful One states that you, i.e., Jews, can acquire a slave from them, which means even his body. Accordingly the verse indicates that a Jew can acquire a gentile slave's body, but a gentile is unable to acquire ownership of another's body, even that of another gentile.

Rav Aha refutes Rav Avya's explanation: Say that the verse is referring to acquiring a gentile slave by both purchasing him with money and then by immersing him for the purpose of slavery, and only in that case does it teach that a Jew acquires the gentile slave's body. However, until he has been immersed the acquisition is not fully complete, and therefore if the slave immerses himself with the intention to become free, then his immersion would achieve that end. The Gemara concedes: This is difficult.

Shmuel said: And if one wishes to ensure that one's slave does not declare the immersion to be for the sake of conversion, then one needs to hold him tightly^{NH} in the water in a way that demonstrates the owner's dominance over the slave at that time, thereby defining the immersion as one for the sake of slavery.

That is as demonstrated in this incident involving Minyamin, Rav Ashi's slave: When he wished to immerse him, he passed him to^N Ravina and Rav Aha, son of Rava, to perform the immersion on his behalf, and he said to them: Be aware that I will claim compensation for him from you if you do not prevent my slave from immersing for the sake of conversion. They placed a bridle [*arvisa*]^L upon his neck, and at the moment of immersion they loosened it and then immediately tightened it again while he was still immersed.

The Gemara explains their actions: They initially loosened it in order that there should not be any interposition between the slave and the water during the immersion, which would invalidate it. They immediately tightened it again in order that the slave should not preempt them and say to them: I am immersing for the sake of becoming a freeman. When he lifted his head from the water they placed a bucket of clay^N upon his head and said to him: Go and bring this to the house of your master. They did this in order to demonstrate that the immersion had been successful and that he was still a slave.

HALAKHA

A Hebrew slave sold to a gentile – **עבד עברי הנמכר לגוי** – A Jew may be sold as a slave only to either a born Jew or to a convert, but it is not permitted to sell him to a gentile. This applies both in the case where the court sold the Jew or where the Jew sold himself. Nevertheless, if a Jew sold himself to a gentile, the transaction is valid, even if he sold himself directly into the services of idolatry (Rambam *Sefer Kinyan*, *Hilkhot Avadim* 1:3).

One needs to hold him tightly – **צריך לתקפו** – One who immerses his slave needs to perform some act of enslavement at the same time. For example, he could hold him tightly in the water. By doing so he prevents the slave from immersing for the sake of becoming a freeman and thereby acquiring himself (Rambam *Sefer Kinyan*, *Hilkhot Avadim* 8:19 and *Sefer Kedusha*, *Hilkhot Issurei Bia* 13:11; *Shulhan Arukh*, *Yoreh De'a* 267:9).

PERSONALITIES

Pappa bar Abba – פַּפָּא בַר אַבָּא: Also known as Rav Pappa bar Abba, he was a well-respected and wealthy man who lived during the same time as Rav Pappa (see 21b). It seems that there were close relations between Rav Pappa and the house of Rav Pappa bar Abba; apparently the members of that household related to Rav Pappa as their rabbi and master, asking him various questions in *halakha*. The sons of Rav Pappa bar Abba were Torah scholars and are found participating in talmudic discussions concerning matters of *halakha* together with Rav Pappa and Ravina.

LANGUAGE

Poll tax [karga] – כֶּרְגָא: Related to the Middle Persian word *harg*, meaning tribute.

Writ of slavery [moharka] – מוֹהַרְקָא: From the Middle Persian *muhrak*, which means a document.

Treasury [tafsa] – טַפְסָא: The correct reading of this word, preserved in some manuscripts and commentaries, is *sefata*. It apparently is related to the New Persian term *safad*, meaning basket.

HALAKHA

The writ of slavery of these, etc. – מוֹהַרְקֵיהוּ דְּהֵי וְכוּ': If a gentile king declares that all of those who do not pay their taxes shall be sold to those who do, that law is halakhically binding, and a slave acquired in this matter is considered a Canaanite slave in every respect (Rambam *Sefer Kinyan, Hilkhot Avadim* 1:8; *Shulḥan Arukh, Yoreh De'a* 267:18).

אָמַר לֵיהּ רַב פַּפָּא לְרַבָּא: חָזִי מַר הֵי דְּבִי פַפָּא בַר אַבָּא דִּיהֵבִי זִוְי לְאִינְשֵׁי לְכַרְגֵּיהוּ, וּמִשְׁעַבְדֵי בְּהוּ. בִּי נִפְקִי, צְרִיכִי גִיטָא דְּחִירוּתָא אִוּ לָא?

אָמַר לֵיהּ: אִיבּוּ שְׂכִיבִי לָא אָמְרִי לְכוּ הָא מִלְתָּא, הֲכִי אָמַר רַב שִׁשֶׁת: מוֹהַרְקֵיהוּ דְּהֵי בְּטַפְסָא דְּמַלְכָּא מִנָּת, וּמַלְכָּא אָמַר: מֵאֵן דְּלָא יְהִיב כְּרָגָא – מִשְׁתַּעֲבָד לְמֵאֵן דִּיהֵיב כְּרָגָא.

Rav Pappa said to Rava: Has the Master seen those of the house of Pappa bar Abba^p who give money to the tax-collectors on behalf of poor peopleⁿ to pay for their poll tax [*karga*],^l and as a result they would enslave them. Anyone who did not pay the tax would be taken as a slave for the king. By paying for such people's taxes, the members of the house of Pappa bar Abba essentially purchased those people, who had become the king's slaves, for themselves. Rav Pappa asked: **When those slaves go free, do they require a bill of emancipation,**ⁿ because the members of the house of Pappa bar Abba actually attained ownership of the slaves' bodies, **or not**, as they were owned only for the sake of their labor?

He said to him: Were I deadⁿ I could not say this matter to you, so it is good that you have asked me while I am still alive, as I know that this is what Rav Sheshet said with regard to the matter: **The writ of slavery [moharkayehu]^l of theseⁿ residents of the kingdom rests in the treasury [tafsa]^l of the king,** and in fact all the residents of the kingdom are considered to be full slaves of the king, i.e., he owns their bodies, irrespective of whether they pay their taxes. **And so when the king says: One who does not give the poll tax is to be enslaved to the one who does give the poll tax** on his behalf, the king's decree is fully effective in making those residents full slaves of those who paid for them. As such, they will require a bill of emancipation when they are freed.

NOTES

יְהִיבִי זִוְי לְאִינְשֵׁי וְכוּ' – Give money on behalf of people, etc. – The Gemara does not state who these people were. Most commentaries assume that they were gentiles. Accordingly, Rav Pappa's question is whether they were enslaved only for the sake of their labor or even to the extent that their bodies were owned. However, Rabbeinu Ḥananel explains that these people were *gerei toshav*, i.e., gentiles who reside in Eretz Yisrael and observe certain mitzvot. In many regards, the status of a *ger toshav* is not similar to that of other gentiles. Rav Pappa therefore inquired whether or not their bodies can be fully owned as slaves in the same way as a gentile slave. Others explain that these people were Jews. According to this opinion, the question is whether it is possible to become a Hebrew slave in this manner; normally the status of a Hebrew slave is attained only if the Jew either sells himself or is sold as a slave by the court. Although Rav Pappa lived in a generation in which the status of a Hebrew slave could no longer be attained in the standard manner, it is possible that they might still be considered Hebrew slaves since the law of the land defined them as such (Ritva).

צְרִיכִי גִיטָא דְּחִירוּתָא – Do they require a bill of emancipation – According to the opinions that these people were gentiles, various questions are raised: Why did Rav Pappa ask only about the need for a bill of emancipation? Would such slaves also require immersion for the sake of slavery? Why didn't Rav Pappa ask about that as well? The Ramban explains that the issue of immersion is directly dependent on whether there is a need for a bill of emancipation; therefore, there was no need to ask about it. If a bill of emancipation is required, that is because even the slaves' bodies were owned. Therefore, it would also be necessary to immerse them. If there is no need

for a bill of emancipation, then it is apparent that they were acquired only for the sake of their labor, and so no immersion would be necessary.

The Gemara above explains that one gentile cannot acquire the body of another. If so, since these slaves were acquired from the gentile king, how is it possible for their new owners to have gained ownership of their bodies, a state which consequently requires a bill of emancipation? The commentaries explain that although it is true that under normal circumstances one gentile cannot acquire the body of another, in the present case the law of the land afforded the king such rights, and such rights are recognized as halakhically binding. This is because the king's ownership is not based on a mutual agreement but on the power of the king over his subjects.

Based on this discussion, some suggest that there may be a further example where one gentile can own the body of another in a case where one gentile takes another as a prisoner of war. In such a case it is possible that since the ownership of the captive is similarly not based on mutual agreement but due to the power of the captor over his captive, in that case as well the captor would acquire ownership of his captive's body (see *Tosefot HaRosh* and *Rashba*).

Were I dead – אִיבּוּ שְׂכִיבִי: This strange expression was also used once by Rava's teacher Rav Naḥman with regard to his own teacher Shmuel (*Shabbat* 152b), as well as by Rav Yehuda with regard to his teacher Rav (*Avoda Zara* 55a). *Ben Yehoyada* on *Shabbat* 152b suggests that the teachers of these *amoraim* had whispered various teachings to them, and they therefore assumed that no one else had heard them and that if they died, the statements would have been lost forever.

גבלא – Gavla: Gavla is apparently a reference to the area of the Golan in the northern part of Eretz Yisrael. Despite the fact that it was relatively close to the centers of the Jewish settlement in Tiberias and its environs, it was nevertheless not considered a place of Torah scholars, and it was populated by both Jews and gentiles.

Lupines – תורמוסין: Lupine is the name of several plants from the legume family, of the *Faboideae* subfamily. White lupine, *Lupinus albus*, and yellow lupine, *Lupinus luteus*, are the most commonly grown kinds. The seeds of lupines, which can grow to a diameter of up to fifteen centimeters, are edible. However, due the presence of alkaloids, the natural taste of the seeds is extremely bitter. In order to prepare them for consumption one must cook them repeatedly in water. To this day the cooked seeds of lupines are sold as a delicacy.



White lupine



European yellow lupine



Lupine seeds

LANGUAGE

Lupine [turmus] – תורמוס: From the Greek *θήρμος*, *thermos*, meaning lupine, the lupine plant from the legume family.

רבי חייא בר אבא איקלע לגבלא. חזא בנות ישראל דמעברין מגרים שְׂמְלוּ וְלֹא טָבְלוּ, וְחִזָּא חֲמָרָא דְיִשְׂרָאֵל דְּמוֹנֵי גוֹיִם וְשִׁתּוּ יִשְׂרָאֵל, וְחִזָּא תוֹרְמוֹסִין דְּשִׁלְקֵי גוֹיִם וְאָכְלוּ יִשְׂרָאֵל, וְלֹא אָמַר לָהּ וְלֹא מִידֵּי.

S The Gemara relates: Rabbi Hiyya bar Abba once happened to come to Gavla.⁸ He saw Jewish women there who had become pregnant from converts who were circumcised but had still not immersed to complete their conversion process; and he saw wine of Jews that gentiles were pouring,⁹ and Jews were drinking it; and he saw lupines [turmusin]¹⁰ that gentiles were cooking, and Jews were eating them; but he did not say anything to them.

אָתָּא לְקַמֵּיהּ דְּרַבִּי יוֹחָנָן. אָמַר לֵיהּ: צֵא וְהִכְרֵז עַל בְּנֵיהֶם שֶׁהֵם מְמוּזְרִים, וְעַל יַיִנָם מְשׁוּם יַיִן נֶסֶךְ, וְעַל תוֹרְמוֹסִין מְשׁוּם בִּישׁוּלֵי גוֹיִם, לִפִּי שְׂאִינָן בְּנֵי תוֹרָה.

Later, he came before Rabbi Yohanan and told him what he had witnessed. Rabbi Yohanan said to him: Go and make a public declaration concerning their children that they are *mamzerim*, and concerning their wine that it is forbidden because it is like wine poured as an idolatrous libation, and concerning their lupines that they are forbidden because they are food cooked by gentiles. One should be stringent and make such a declaration because they are not well-versed in Torah, and if they are left to be lax in this regard they will eventually transgress Torah prohibitions.

עַל בְּנֵיהֶן שֶׁהֵם מְמוּזְרִים – רַבִּי יוֹחָנָן לְטַעֲמֵיהֶן, דְּאָמַר רַבִּי חֵיְיָא בְּרַ אָבָא אָמַר רַבִּי יוֹחָנָן: לְעוֹלָם אֵין גֵּר עַד שְׂיִמּוּל וְיִטְבּוּל, וְכֵין דְּלֹא טָבִיל – גוֹי הוּא. וְאָמַר רַבָּה בְּרַ בְּרַ חֲנָה אָמַר רַבִּי יוֹחָנָן: גוֹי וְעַבְדֵּי הֶבְאָ עַל בֵּית יִשְׂרָאֵל – הוֹלֵד מְמוּזָר.

The Gemara explains: With regard to the declaration concerning their children that they are *mamzerim*, Rabbi Yohanan conforms to his standard line of reasoning in two *halakhot*: The first is as Rabbi Hiyya bar Abba said that Rabbi Yohanan said: One is never considered to be a convert until he has been circumcised and has immersed.¹¹ And since the convert in the case in Gavla had not immersed, he is still considered a gentile. And the second *halakha* is as Rabba bar bar Hana said that Rabbi Yohanan said: With regard to a gentile or a slave who engaged in intercourse with a Jewish woman, the offspring of that union is a *mamzer*.

וְעַל יַיִנָם מְשׁוּם יַיִן נֶסֶךְ – מְשׁוּם "לֶךְ לֶךְ", אֲמַרְיִן נְזִירָא, "סְחֹר סְחֹר, לְכָרְמָא לֹא תִקְרַב".

And the reason to declare concerning their wine that it is forbidden because it is like wine poured as an idolatrous libation¹² is that although their wine was not actually poured as an idolatrous libation, it was prohibited by rabbinic decree due to the maxim that: Go, go, we say to a nazirite, go around and go around, but do not come near to the vineyard. Although a nazirite is prohibited only from eating produce of the vine, he is warned not even to come into close proximity of a vineyard as a protective measure to ensure that he will not transgress this prohibition. So too, in many cases, the Sages decreed certain items and actions to be prohibited because they understood that if people would partake of them, they would eventually transgress Torah prohibitions.

NOTES

That gentiles were pouring – דְּמוֹנֵי גוֹיִם: Rashi explains that the gentiles did not actually touch the wine itself but merely poured it; nevertheless, that was sufficient to render it forbidden. Apparently, according to Rashi it was this point that provided the novelty of the case, which Rabbi Hiyya bar Abba was initially unaware of. Rabbi Avraham min HaHar argues that it was unanimously understood that if a gentile actually pours wine, the wine is thereby rendered forbidden.

The novelty in this case was that although the gentiles in fact merely diluted the wine by pouring water into it, the wine was nevertheless forbidden because by pouring the water, they caused the wine to be moved. This is sufficient to render the wine forbidden because the rabbinic prohibition is on account of the fact that idolaters sometimes worship their deity by simply swirling the wine around, and so it applies in any case where a gentile causes the wine to move.

HALAKHA

When is one considered a convert – מִתֵּי נִחְשָׁב גֵּר: One is considered to be a convert only once he has both been circumcised and immersed in a ritual bath. This is in accordance with the opinion of Rabbi Yohanan (Rambam *Sefer Kedusha*, *Hilkhot Issurei Bia* 13:6).

Their wine because of wine poured as a libation – יַיִנָם מְשׁוּם: It is forbidden to derive benefit from wine touched by gentiles. This is due to a rabbinic decree that was issued on account of wine poured as a libation offering to idols. The

Rema cites opinions that nowadays, since idolaters do not pour libation offerings of wine to their idols, it is permitted to derive benefit from their wine, and so it is permissible to take wine from them in exchange for repayment of a debt or in other cases of possible loss (*Tur*, citing Rashbam and Rosh). Nevertheless, one may not trade in it *ab initio* (*Haggahot Maimoniyot*). There are those who are lenient even in this regard, but it is proper to be stringent (*Smag*; Rambam *Sefer Kedusha*, *Hilkhot Ma'akhalot Assurot* 11:3; *Shulhan Arukh*, *Yoreh De'a* 123:1).

Food cooked by gentiles – בישולי גוים: The prohibition against eating foods cooked by gentiles does not stem from concern that some forbidden foods might have been mixed in. Rather, it is an independent rabbinic decree, issued by the Sages, to prevent Jews from intermingling with gentiles. It is for this reason that the prohibition is limited to items of significance, i.e., those that would appear on a king's table, and for which the act of cooking was significant, i.e., the food would not be eaten raw. In such cases, the fact that the gentile provided such foods to the Jews demonstrates a level of devotion and honor that could lead to an undesirable closeness between them.

Because they were not well versed in Torah – שְׂאִינְ בְּנֵי תוֹרָה: This justification for a stringent ruling is offered in several places in the Talmud. It is used in places in which the correct practice requires a nuanced understanding of the *halakha* and the ability to distinguish between permitted practices and similar prohibited ones. In places in which Torah scholars lived, the Sages were lenient based on the assumption that they would know how to maintain the appropriate halakhic distinctions.

Circumcision of our forefathers – מִילָה בְּאַבּוֹתֵינוּ: Although the Torah does not explicitly record the fact that the children of Israel were circumcised prior to the revelation at Sinai, this may be inferred in several ways. The simplest way, suggested by the Rambam, is that they must have circumcised themselves before leaving Egypt in preparation for the Paschal lamb that they brought there, since there is an explicit Torah prohibition prohibiting an uncircumcised male from partaking of the Paschal lamb. Since that circumcision was performed for the sake of observing a mitzva, it was also valid as a preparation for the national conversion that was effected by the revelation at Sinai (see also Ramban).

HALAKHA

Food cooked by gentiles – בישולי גוים: Any food item that is not eaten raw and appears on the table of kings in order to eat bread with it is subject to the rabbinic prohibition of food cooked by gentiles. This prohibition applies even to food cooked by a gentile in a Jew's house with his utensils. Most commentaries rule that a food is subject to the prohibition only if both the above stated conditions are fulfilled (Rambam *Sefer Kedusha*, *Hilkhot Ma'akhalot Assurot* 17:14; *Shulhan Arukh*, *Yoreh De'a* 113:1).

The Paschal lamb...is brought...from non-sacred animals – פֶּסַח...בָּא מִן הַחֹלִין: All offerings brought by an individual, including the Paschal lamb, may be brought only from non-sacred animals (Rambam *Sefer Kedusha*, *Hilkhot Ma'aseh HaKorbanot* 16:15).

וְעַל תּוֹרְמוֹסָן מִשּׁוּם בִּשּׁוּלֵי גוֹיִם – לְפִי שְׂאִינְ בְּנֵי תוֹרָה, הָא בְּנֵי תוֹרָה שְׂרִיז וְהָאֵמֵר רַב שְׁמוּאֵל בְּרַב יִצְחָק מְשַׁמֵּיָה דְרַב: כָּל הַנֶּאֱכָל כְּמוֹת שְׁהוּא חֵי – אֵין בּוּ מִשּׁוּם בִּשּׁוּלֵי גוֹיִם, וְהָא תּוֹרְמוֹס אֵינוּ נֶאֱכָל כְּמוֹת שְׁהוּא חֵי, וְיֵשׁ בּוּ מִשּׁוּם בִּשּׁוּלֵי גוֹיִם!

רַבִּי יוֹחָנָן בְּאִידֶךְ לִישְׁנָא סְבִירָא לֵיהּ דְּאָמֵר רַב שְׁמוּאֵל בְּרַב יִצְחָק מְשַׁמֵּיָה דְרַב: כָּל שְׂאִין עוֹלָה עַל שׁוּלְחַן מַלְכִים לֶאֱכֹל בּוּ אֵת הַפֶּת – אֵין בּוּ מִשּׁוּם בִּשּׁוּלֵי גוֹיִם. וְטַעְמָא דְּאֵינוּ בְּנֵי תוֹרָה, הָא בְּנֵי תוֹרָה – שְׂרִי.

And the final declaration concerning their lupines that they are forbidden because they are food cooked by gentiles^{NH} is issued because they are not well versed in Torah.^N The Gemara expresses astonishment: Does this imply that were they students of the Torah their lupines would be permitted? Didn't Rav Shmuel bar Rav Yitzhak say in the name of Rav: Any food item that is eaten as it is, raw, is not subject to the prohibition of food cooked by gentiles, even when cooked by them? But a lupine is not eaten as it is, raw, and therefore it is subject to the prohibition of food cooked by gentiles.

The Gemara explains that Rabbi Yohanan holds in this matter in accordance with the opinion of the other version of what Rav Shmuel bar Rav Yitzhak said in the name of Rav: Any food item that lacks sufficient importance such that it does not appear on the table of kings in order to eat bread with it is not subject to the prohibition of food cooked by gentiles. Lupines lack importance and are therefore permitted even if cooked by gentiles. And consequently, the only reason to make a declaration prohibiting the residents of Gavla from eating them is because they are not well versed in Torah, and if they are left to be lax in this regard they will eventually become lax in actual Torah prohibitions; by inference, to those well versed in Torah, it is permitted.

During their sojourn in Egypt, the children of Israel had the halakhic status of gentiles. At the revelation at Sinai they entered into a national covenant with God in which they attained their status of the Jewish people. This transformation was essentially the mass conversion of the people, and so their preparation for the revelation provides a paradigm of the process required for conversion for all generations. The *tanna'im* disagree as to which aspects of that original conversion are to be derived for all generations.

תְּנוּ רַבְנָן: גֵּר שְׂמַל וְלֹא טָבַל, רַבִּי אֱלִיעֶזֶר אוֹמֵר הָרִי זֶה גֵּר, שֶׁכֵּן מְצִינוּ בְּאַבּוֹתֵינוּ שְׂמָלוֹ וְלֹא טָבַלוּ. טָבַל וְלֹא מָל, רַבִּי יְהוֹשֻעַ אוֹמֵר: הָרִי זֶה גֵּר, שֶׁכֵּן מְצִינוּ בְּאַמְהוֹת שְׂטָבְלוֹ וְלֹא מָלוּ. וְחֻכְמִים אוֹמְרִים: טָבַל וְלֹא מָל, מָל וְלֹא טָבַל – אֵין גֵּר עַד שְׂיִמּוּל וְיִטְבּוֹל.

ורבי יהושע נמי – מִלָּךְ מֵאַבּוֹת, ורבי אליעזר נמי – מִלָּךְ מֵאַמְהוֹת! וְכִי תֵימָא: אֵין דְּנִין אֶפְשָׁר מִשְׁאֵי אֶפְשָׁר –

The Sages taught in a *baraita*: With regard to a convert who was circumcised but did not immerse, Rabbi Eliezer says that this is a convert, as so we found with our forefathers following the exodus from Egypt that they were circumcised^N but were not immersed. With regard to one who immersed but was not circumcised, Rabbi Yehoshua says that this is a convert, as so we found with our foremothers that they immersed but were not circumcised. And the Rabbis say: Whether he immersed but was not circumcised or whether he was circumcised but did not immerse, he is not a convert until he is circumcised and he immerses.

The Gemara questions the opinions in the *baraita*: But let Rabbi Yehoshua also derive what is required for conversion from our forefathers; why didn't he do so? And let Rabbi Eliezer also derive the *halakha* from our foremothers; why didn't he do so? And if you would say that Rabbi Eliezer did not derive the *halakha* from our foremothers because he holds one cannot derive the possible from the impossible, i.e., one cannot derive that men do not require circumcision from the *halakha* that women do not require it, because for women it is a physical impossibility, that claim may be refuted.

וְהִתְנַא, רַבִּי אֱלִיעֶזֶר אוֹמֵר: מִנֵּין לְפֶסַח דּוֹרוֹת שְׂאִין בָּא אֶלְא מִן הַחֹלִין – נֶאֱמַר פֶּסַח בְּמִצְרַיִם וְנֶאֱמַר פֶּסַח בְּדוֹרוֹת, מַה פֶּסַח הָאֵמֵר בְּמִצְרַיִם – אֵין בָּא אֶלְא מִן הַחֹלִין, אֶף פֶּסַח הָאֵמֵר לְדוֹרוֹת – אֵין בָּא אֶלְא מִן הַחֹלִין.

It would appear that Rabbi Eliezer does not accept that principle, as isn't it taught in a *baraita* that Rabbi Eliezer says: From where is it derived with regard to the Paschal lamb brought throughout the generations that it may be brought only from non-sacred animals?^H A Paschal lamb is stated in the Torah in reference to the lamb that the Jewish people brought prior to the exodus from Egypt, and a Paschal lamb is stated in reference to the yearly obligation throughout the generations. The association between them teaches that just as the Paschal lamb stated in reference to Egypt was only brought from non-sacred animals, since prior to the giving of the Torah there was no possibility to consecrate property, so too, with regard to the Paschal lamb stated in reference to the obligation throughout the generations, it may be brought only from non-sacred animals.

אפשר משהי אפשר – The possible from the impossible – This issue is present in every system of logical thought with regard to logical constructs that are based on inductive reasoning. In fact, in certain areas of mathematics there are proofs based on inducing the possible from the impossible.

אמר ליה רבי עקיבא: וכי דמין אפשר
משאי אפשר? אמר ליה: אף על פי
שאי אפשר – ראיה גדולה היא,
ונלמד הימנה.

Rabbi Akiva said to him: But can one derive the possible, i.e., the *halakha* for the Paschal lamb throughout the generations, where a possibility exists to bring it from consecrated animals, **from the impossible**,ⁿ i.e., from the Paschal lamb in Egypt, where it was not a possibility? Rabbi Eliezer said to him: **Although it was impossible** to bring the Paschal lamb in Egypt from consecrated animals, nevertheless, it is still a great proof, and we may learn from it. It is apparent, then, that Rabbi Eliezer holds that one can derive the possible from the impossible. Therefore the original question stands: Why didn't Rabbi Eliezer derive from the foremothers that circumcision is not essential for conversion?

אלא

The Gemara concedes: **Rather**, the *baraita* must be reinterpreted as follows:

Perek IV

Daf 46 Amud b

בטבל ולא מל – בולי עלמא לא
פליגי דמהני. כי פליגי – במל ולא
טבל. רבי אליעזר יליף מאבות, ורבי
יהושע: באבות נמי טבילה הוה.

With regard to one who immersed but was not circumcised, **every-one**, i.e., both Rabbi Yehoshua and Rabbi Eliezer, **agrees** that the *halakha* is derived from the foremothers that immersion alone is effective. Where they disagree is with regard to one who was circumcised but had not immersed; Rabbi Eliezer derives that it is effective **from the forefathers**, and Rabbi Yehoshua disagrees because he maintains that in the conversion of the forefathers there was also an immersion.

מנא ליה? אילימא מדכתיב "לך אל
העם וקדשתם היום ומחר ובכסו
שמלתם", ומה במקום שאין טעון
כבוס – טעון טבילה, מקום שטעון
כבוס – אינו דין שטעון טבילה?

The Gemara asks: **From where did he derive this?** If we say that he derived it **from the fact that it is written** that in preparation for the revelation at Sinai, God commanded Moses: "Go unto the people and sanctify them today and tomorrow, and let them wash their garments" (Exodus 19:10), as Rabbi Yehoshua understands that the washing mentioned in this verse is the ritual immersion of clothes, this leads to the following *a fortiori* inference: **Just as in a case where one became impure through contact with some source of impurity, washing, i.e., immersion, of clothes is not required but immersion of one's body is required, then in a case where washing of clothes is required, as in the preparation for the revelation at Sinai, isn't it logical that immersion of one's body should also be required?**

ודלמא נקיית בעלמא?

The Gemara rejects the proof: **But perhaps** when the verse states that they had to wash their clothes, it was **merely for cleanliness** and not for the sake of ritual purity. If so, no *a fortiori* inference can be drawn from it to the case of immersion for ritual purity.

אלא מהכא: "ויקח משה את הדם
ויוזק על העם" וגמרי דאין הוהא
בלא טבילה.

Rather, Rabbi Yehoshua derived it **from here**, where the verse states with regard to the formation of the covenant at Sinai: "And Moses took the blood" and sprinkled it upon the people" (Exodus 24:8), and it is learned as a tradition that **there is no ritual sprinkling without immersion**. Therefore, our forefathers also must have immersed at Sinai, and consequently that is also an essential requirement for all conversions.

NOTES

And Moses took the blood, etc. – **ויקח משה את הדם וגו'** – The commentaries note that Onkelos translates this verse as: Moses took the blood and sprinkled it upon the altar to atone for the people, which explicitly assumes that the sprinkling of the blood was not upon the people but upon the altar. Rabbi Eliezer of Metz explains that the Gemara here differs with Onkelos on this matter. However, *Tosafot Yeshanim* suggests that Onkelos's translation might be in accordance with the opinion of Rabbi Eliezer, who does not accept the opinion of Rabbi Yehoshua and

could therefore interpret the verse differently. Indeed, Maharatz Hayyut notes that elsewhere the Gemara explicitly states that Onkelos's translation is always in accordance with the opinions of Rabbi Eliezer and Rabbi Yehoshua, and if so, it makes sense that it renders the verse here according to one of them. If Rabbi Eliezer does not interpret the verse as Onkelos does, he could explain that it is referring to an act of sprinkling that took place after the giving of the Ten Commandments, as is suggested by the sequence of the verses in the Torah.

Immersion of the foremothers – טבילה באמהות: The Gemara here is clearly referring to the women who were present at the revelation at Sinai as our foremothers. The Ritva questions the propriety of referring to them as such when the Gemara elsewhere states decisively that only four women are privileged with this title: Sarah, Rebecca, Rachel, and Leah. To resolve this difficulty, the Ritva suggests that the restrictions on the title foremother are limited to its use in prayer. Another resolution is suggested by the *Ahavat Eitan*, who suggests that since the Gemara here is referring to the entire generation and not to any specific individuals, it is acceptable to refer to them as foremothers. The Meiri cites a novel interpretation that the Gemara here is actually referring to the original four Patriarchs. This interpretation assumes that the three Patriarchs and four Matriarchs all required some act of conversion to become the forebearers of the Jewish people. The Patriarchs underwent circumcision, whereas the Matriarchs immersed.

As, if so, with what were they brought – דאם בן במה נכנסו: The Rashba asks why the Gemara does not consider the possibility that the sprinkling of blood upon them is what effected their conversion. He answers that even if one were to claim that the sprinkling of the blood was part of the process, one cannot escape the conclusion that there was an immersion, since there is no ritual sprinkling without immersion, and therefore it is reasonable to assume that the immersion itself is part of the process of conversion. Furthermore, it is not certain that the blood was actually sprinkled upon the women; perhaps it was only sprinkled upon the men (see *Tosafot*). In fact, *Tosafot Yeshanim* explain the phrase “upon the people” as excluding the women.

Ultimately, the *halakha* is ruled in accordance with the understanding that the sprinkling was upon both men and women. There is therefore general agreement that full conversion actually involves four requirements: Acceptance of the mitzvot, circumcision, immersion, and sacrifice of a bird as a burnt-offering. The requirement to sacrifice an offering parallels the sprinkling of the blood at Sinai. Nowadays, when it is no longer possible to bring offerings, the conversion is considered valid even without it, as is explained in *Karetot* (9a) and elsewhere.

The court may not immerse a convert on Shabbat – אין מטבילין גר בשבת: This ruling stands in contradistinction to the *halakha* that one may immerse on Shabbat in order to purify himself from a state of ritual impurity. Various distinctions have been offered between the two cases: *Tosafot* explain that immersing in order to purify oneself from a state of ritual impurity is a private matter. However, a conversion is performed in the presence of three judges and is therefore considered a public event. Since it is performed in public, the Sages prohibited it since it might appear in the eyes of the public to be similar to preparing a vessel for use. *Tosafot Yeshanim* suggest that immersing in order to purify oneself from a state of ritual impurity is permitted because the change in status is considered minor and is therefore not considered similar to preparing a vessel for use. However, the change effected by conversion is significant and is therefore prohibited. According to the Rambam, the question does not even arise. The Rambam explains that the reason to prohibit the immersion is not because it might resemble preparing a vessel for use but because presiding over conversion is considered to be an act of judgment and it is prohibited for a court to issue judgments on Shabbat.

HALAKHA

Immersion of a convert on Shabbat – טבילה גר בשבת: Since the immersion of a convert is an act of judgment performed by the court, a convert may not be immersed on Shabbat or on a Festival. Nevertheless, if he does immerse, he is thereby rendered a convert (Rambam *Sefer Kedusha*, *Hilkhot Issurei Bia* 13:6; *Shulhan Arukh*, *Yoreh De'a* 268:4).

ורבי יהושע, טבילה באמהות מנלן? סברא הוא, דאם בן – במה נכנסו תחת כנפי השכינה?

אמר רבי חייא בר אבא אמר רבי יוחנן: לעולם אינו גר עד שימול ויטבול. פשיטא. יחיד ורבים הלכה כרבים!

מאן חכמים – רבי יוסי.

דתנא: הרי שבא ואמר מלתי ולא טבילתי – מטבילין אותו, ומה בכך, דברי רבי יהודה. רבי יוסי אומר: אין מטבילין.

לפיכך מטבילין גר בשבת, דברי רבי יהודה. ורבי יוסי אומר: אין מטבילין.

אמר מר: לפיכך מטבילין גר בשבת, פשיטא, כיון דאמר רבי יהודה בחדא סגיא, היכא דמל לפנינו – מטבילין, מאי לפיכך?

מהו דתימא: לרבי יהודה טבילה עיקר, וטבילה בשבת – לא, דקא מתקן גברא, קא משמע לן דרבי יהודה או הא או הא בעי.

The Gemara asks: **And with regard to the opinion of Rabbi Yehoshua, from where do we derive that also in the case of our foremothers there was immersion?**^N The Gemara answers: **It is based on logical reasoning, as, if so, that they did not immerse, then with what were they brought^N under the wings of the Divine Presence?** Therefore, they also must have immersed.

Rabbi Hiyya bar Abba said that Rabbi Yohanan said: A man is never considered a convert until he is both circumcised and has immersed. The Gemara asks: **Isn't this obvious?** In all disputes between an individual Sage and many Sages the *halakha* is in accordance with the opinion of the many Sages; it is therefore obvious that the *halakha* is in accordance with the Rabbis.

The Gemara explains: **Who are the Rabbis referred to in the baraita?** It is **Rabbi Yosei**. Since Rabbi Yosei is merely an individual Sage, it was necessarily for Rabbi Yohanan to state explicitly that the *halakha* is ruled in accordance with his opinion.

Rabbi Yosei's opinion is as it is taught in a *baraita*: With regard to a convert who came and said: **I was circumcised for the sake of conversion but I did not immerse, the court should immerse him, as what would be the problem with that;** this is the statement of Rabbi Yehuda. Since in any case the court immerses him, Rabbi Yehuda does not require proof of the convert's claim that he was circumcised for the sake of conversion because he holds that it is sufficient to be either circumcised or immersed for the sake of conversion. **Rabbi Yosei says:** The court does not immerse him. He holds that both circumcision and immersion must be performed specifically for the sake of conversion and are indispensable parts of the conversion process. Therefore, since it is impossible to verify the convert's claim with regard to his circumcision, there is no benefit to having him immerse.

The *baraita* states a ramification of their dispute: **Therefore, the court may immerse a convert who was already circumcised on Shabbat;** this is the statement of Rabbi Yehuda. Since he holds that circumcision alone effected conversion, the immersion will not effect any further change in his status, and so it is permitted on Shabbat. **And Rabbi Yosei says:** The court may not immerse him.^{NH} Since he holds that both circumcision and immersion are necessary to effect a conversion, the immersion will effect a change in his status by making him Jewish. Therefore it is prohibited to do so on Shabbat by rabbinic decree, because it appears similar to preparing a vessel for use.

The Gemara analyzes the latter clause: **The Master said in the baraita: Therefore, the court may immerse a convert who was already circumcised on Shabbat.** The Gemara asks: **Isn't this an obvious extension of his opinion; since Rabbi Yehuda said that either one of circumcision or immersion is sufficient, where a convert was circumcised in our presence the court may certainly immerse him, even on Shabbat. What, then, is the need for the baraita to include the clause that begins with: Therefore?**

The Gemara explains: It is necessary to explicitly teach this ramification lest you say that according to Rabbi Yehuda the immersion is in fact the principal act that effects conversion, and when he said in the first clause that a convert who claims to have been circumcised should be immersed since there is no problem with that, his reasoning was that he holds it is only immersion that effects the conversion. **And therefore performing the immersion on Shabbat would not be permitted, as it establishes the person with a new status and so would be prohibited by a rabbinic decree because it appears similar to preparing a vessel for use. The latter clause is therefore necessary to teach us that Rabbi Yehuda requires either this or that, i.e., either immersion or circumcision alone is sufficient to effect a conversion.**

גר צריך שלשה – The commentaries explain that this is derived from the fact that Rav Safra taught that the case involved three Sages. *Tosafot* explain that this must certainly have been Rav Safra's intention because the third scholar mentioned was not of the same caliber as the first two, and therefore it does not stand to reason that he would name him together with them unless his intention was to teach the need for a court of three. Furthermore, some note that Rav Yosef and Rav Safra would not have been particular to mention the names of the additional Sages who were present just so that the record of events would be more accurate. Rather, they clearly sought to teach a ruling by doing so. This is also suggested by the Gemara's formulation: And Rav Yosef taught, which indicates that he was adding to the statement of Rabba and was not in dispute with him (*Ramat Shmuel*).

מי שבא – I am a convert – **אמר: גר אני** – This discussion applies only to one who is known to have been a gentile. If he had not been known originally as a gentile he would be accepted even without proof that he had converted, because he could just as easily have passed himself off as a Jew (Rabbeinu Tam; Ramban; Rashba), or because it is a fact that could easily be verified later and therefore it can be assumed he would not lie about it (Ritva). However, the Rambam writes that this applies only in Eretz Yisrael, whereas elsewhere a convert should never be accepted based on his own testimony without witnesses (Rambam *Sefer Kedusha*, *Hilkhot Issurei Bia* 13:10).

The Gemara analyzes the next statement in the *baraita*: **Rabbi Yosei says: The court may not immerse him.** The Gemara asks: **Isn't this an obvious extension of his opinion? As, since Rabbi Yosei requires two acts, both circumcision and immersion, to effect conversion, we may certainly not establish that person with a new status on Shabbat by completing his conversion by immersing him.**

The Gemara explains: It is necessary to explicitly teach this ramification lest you say that according to Rabbi Yosei circumcision is in fact the principal act that effects conversion, and it is only there, in the first clause of the *baraita*, where the circumcision was not performed in our presence and so there is no way to verify whether it was done for the sake of conversion, that Rabbi Yosei states that the court should not proceed to immerse him; however, where the circumcision was performed in our presence, one might say that the conversion was already effected by the circumcision, and therefore let us immerse this convert on Shabbat. The latter clause is therefore necessary to teach us that Rabbi Yosei requires two acts, both circumcision and immersion, to effect conversion.

Rabba said: There was an incident in the house of Rabbi Hiyya bar Rabbi, and as Rav Yosef teaches it, Rabbi Oshaya bar Rabbi was also present, and as Rav Safra teaches it, a third Sage, Rabbi Oshaya, son of Rabbi Hiyya, was also present, in which a convert came before him who was circumcised but had not immersed. He said to the convert: Remain here with us until tomorrow, and then we will immerse you.

Rabba said: Learn from this incident three principles: Learn from it that a convert requires a court of threeⁿ people to preside over the conversion, as Rav Safra taught that the case involved three Sages. And learn from it that one is not considered to be a convert until he has been both circumcised and immersed. And learn from it that the court may not immerse a convert at night, as they instructed him to remain there until the following day. The Gemara suggests: And let us say that one should also learn from it that we require a court of experts to preside over the conversion, as Rav Safra identified that three expert Sages were present. The Gemara rejects this: Perhaps they simply happened to be there, but in fact three laymen would suffice.

Rabbi Hiyya bar Abba said that Rabbi Yoḥanan said: A convert requires a court of three to preside over conversion, because "judgment," is written with regard to him, as the verse states: "And one judgment shall be both for you and for the convert that sojourns with you" (Numbers 15:16), and legal judgments require a court of three judges.^h

The Sages taught in a *baraita*: With regard to someone who came and said: I am a convert,ⁿ one might have thought that we should accept him; therefore, the verse states: "And if a convert sojourns with you in your land, you shall not oppress him" (Leviticus 19:33). The emphasis on "with you" suggests that only someone who was already presumed by you to be a valid convert should be accepted as a convert. If he came and brought witnesses to his conversion with him, from where is it derived that he is to be accepted? It is from the beginning of that verse, which states: "And if a convert sojourns with you in your land."

רבי יוסי אומר אין מטבילין. פשיטא, דבין דאמר רבי יוסי תרתי בעינן – תקוני גברא בשבת לא מתקנינן!

מהו דתימא: לרבי יוסי מילה עיקר, והתם הוא דלא הואי מילה בפנינו, אבל היכא דהויא מילה בפנינו – אימא ליתבול זה בשבתא. קא משמע לן דרבי יוסי תרתי בעי.

אמר רבה: עובדא הוה בי רבי חייא בר רבי, ורב יוסף מתני רבי אושעיא בר רבי, ורב ספרא מתני רבי אושעיא ברבי חייא, דאתא לקמיה גר שמואל ולא טבל אמר ליה שהי כאן עד למחר ונטבלינך.

שמע מינה תלת: שמע מינה גר צריך שלשה, ושמע מינה: אינו גר עד שימול ויטבול, ושמע מינה: אין מטבילין גר בלילה. ונימא: שמע מינה נמי בעינן מומחין! דלמא דאינקלעו.

אמר רבי חייא בר אבא אמר רבי יוחנן: גר צריך שלשה "משפט" כתבי ביה.

תנו רבנן: מי שבא ואמר: "גר אני", יכול נקבלנו – תלמוד לומר "אתך" – במוחזק לך. בא ועדיו עמו מנין – תלמוד לומר "וכי יגור אתך גר בארצכם".

HALAKHA

Conversion in a court – **נייר בבית דין** – One is considered to be a convert only after he accepts upon himself the yoke of mitzvot, undergoes circumcision, and immerses in a ritual bath. These acts must be performed before three individuals suitable for

sitting in judgment and must be done during the day. After the fact, if one immersed at night, the conversion is still valid (Rambam *Sefer Kedusha*, *Hilkhot Issurei Bia* 13:6; *Shulḥan Arukh*, *Yoreh De'a* 268:3).

NOTES

I have derived only that a convert is accepted in Eretz Yisrael – אין לי אלא בארץ – *Tosafot* explain that the Gemara here considers the possibility that conversion would be possible only in Eretz Yisrael. *Tosefot HaRosh* suggests a rationale for such an opinion. In Eretz Yisrael a convert stands to gain from the bounty of the land and the other benefits of living there. Therefore, it is less likely that a convert would revert back to his previous ways if he lives in Eretz Yisrael than if he lives elsewhere. Due to the concern that exists with a convert outside Eretz Yisrael, it is conceivable that the possibility of converting there is entirely precluded.

HALAKHA

מי ששב ואמר – I converted – *נתיגייתי*: If one presumed to be a gentile comes and claims to have converted in accordance with the *halakhot* of conversion, whether in Eretz Yisrael or outside Eretz Yisrael, he is not accepted as a convert and may not marry in the congregation of Israel until he brings witnesses to his conversion. This ruling is in accordance with the opinion of the Rabbis (Rambam *Sefer Kedusha*, *Hilkhot Issurei Bia* 13:7; *Shulhan Arukh*, *Yoreh De'a* 268:10).

אין לי אלא בארץ. בחוץ לארץ מניין?
תלמוד לומר "אתך" – בכל מקום שאתך.
אם כן מה תלמוד לומר "בארץ" – בארץ
צריך להביא ראיה, בחוץ לארץ – אין
צריך להביא ראיה. דברי רבי יהודה.
וחכמים אומרים: בין בארץ בין בחוץ
לארץ – צריך להביא ראיה.

בא הוא ועדיו עמו – קרא למה לי? אמר
רב ששת, דאמר: שמענו שנתגייר בבית
דין של פלוני. סלקא דעתך אמינא: לא
ליהמנייהו. קא משמע לן.

"בארץ", אין לי אלא בארץ. בחוץ
לארץ מניין? תלמוד לומר "אתך" – בכל
מקום שאתך. והא אפיקתי! חדא
מ"אתך" וחדא מ"עמך".

וחכמים אומרים: בין בארץ בין בחוץ
לארץ צריך להביא ראיה. ואלא. הא
כתיב "בארץ"!

ההוא מיבעי ליה דאפילו בארץ מקבלי
גרים. דסלקא דעתך אמינא: משום
טיבותא דארץ ישראל קמגיירי, והשתא
נמי דליכא טיבותא – איכא לקט שכחה
ופאה ומעשר עני. קא משמע לן.

אמר רבי חייא בר אבא אמר רבי יוחנן:
הלכה, בין בארץ בין בחוץ לארץ – צריך
להביא ראיה. פשיטא, יחיד ורבים הלכה
כרבים! מהו דתימא: מסתבר טעמא
דרבי יהודה, דקמסייעי ליה קראי, קא
משמע לן.

I have derived only that a convert is accepted in Eretz Yisrael;^N from where do I derive that also outside of Eretz Yisrael he is to be accepted? The verse states "with you," which indicates that in any place that he is with you, you should accept him. If so, what is the meaning when the verse states: In the land? This indicates that in Eretz Yisrael he needs to bring evidence that he is a convert, but outside of Eretz Yisrael he does not need to bring evidence that he is a convert; rather, his claim is accepted. This is the statement of Rabbi Yehuda. And the Rabbis say: Whether he is in Eretz Yisrael or whether he is outside of Eretz Yisrael, he needs to bring evidence.

The Gemara analyzes the *baraita*: In the case when he came and brought witnesses to his conversion with him, why do I need a verse to teach that he is accepted? In all cases, the testimony of witnesses is fully relied upon. Rav Sheshet said: The case is where they say: We heard that he converted in the court of so-and-so, but they did not witness the actual conversion. And it is necessary to teach this because it could enter your mind to say that they should not be relied upon; therefore, the verse teaches us that they are relied upon.

As cited above, the latter clause of the *baraita* states: "With you in your land" (Leviticus 19:33). I have derived only that a convert is accepted in Eretz Yisrael; from where do I derive that also outside of Eretz Yisrael he is to be accepted? The verse states: "With you," which indicates that in any place that he is with you, you should accept him. The Gemara asks: But didn't you already expound that phrase in the first clause of the *baraita* to teach that one doesn't accept the claims of an individual that he is a valid convert? The Gemara explains: One of these *halakhot* is derived from the phrase "with you" in the verse cited, and the other one is derived from the phrase "with you" in a subsequent verse (Leviticus 25:35).

The *baraita* states: And the Rabbis say: Whether he is in Eretz Yisrael or whether he is outside of Eretz Yisrael, he needs to bring evidence. The Gemara asks: But isn't "in your land" written in the verse? How can the Rabbis deny any distinction between the *halakha* inside and outside of Eretz Yisrael?

The Gemara explains: That phrase is necessary to teach that even in Eretz Yisrael, the Jewish people should accept converts, as it could enter your mind to say that it is only for the sake of benefiting from the goodness of Eretz Yisrael, and not for the sake of Heaven, that they are converting, and therefore they should not be accepted. And it could also enter your mind to say that even nowadays, when God's blessing has ceased and there is no longer the original goodness from which to benefit, one should still suspect their purity of motives because there are the gleanings, the forgotten sheaves, and the corners of fields, and the poor man's tithe from which they would benefit by converting. Therefore, the verse teaches us that they are accepted even in Eretz Yisrael.

Rabbi Hiyya bar Abba said that Rabbi Yohanan said: The *halakha* is that whether a convert is in Eretz Yisrael or whether he is outside of Eretz Yisrael, he needs to bring evidence.^H The Gemara asks: Isn't this obvious; in all disputes between an individual Sage and many Sages the *halakha* is in accordance with the opinion of the many Sages. The Gemara explains: It is necessary to state this lest you say that Rabbi Yehuda's reason is more logical, being that the verse supports him when it states: "In your land." Therefore, it is necessary for Rabbi Yohanan to teach us that the *halakha* is not in accordance with his opinion.

Do you have witnesses – יֵשׁ לְךָ עֵדִים: *Tosafot* ask how the convert could possibly have had witnesses if he had converted in private. *Tosafot HaRosh* explains that from here it is apparent that the need for a court of three to be present at the conversion is essential, and if three are not present, the conversion is invalid even after the fact. Accordingly, even if two witnesses were present, the conversion would still be defined as being in private. Other commentaries assume that a conversion can be valid even if performed in the presence of a single judge. If so, the question raised by *Tosafot* remains. One commentary suggests that Rav Yehuda's question was whether the individual had witnesses that he converted before he had children (*Yam shel Shlomo*). Alternatively, the Ra'avad suggests that it had previously been assumed that the individual here had always been a Jew. Rav Yehuda therefore asked him to provide witnesses that he was once a gentile (see Ramban and Rabbi Avraham min HaHar).

You are deemed credible in order to render yourself unfit – נֶאֱמָן אֶתָּה לְפָסוּל אֶת עַצְמְךָ: The commentaries explain that since the testimony about his children was inadmissible, none of it could be accepted. Rav Yehuda's ruling that the convert was able to render himself unfit is based on the principle that if one claims that an item or action is prohibited to him, he is thereafter obligated to relate to that item or action as though it were indeed prohibited, irrespective of whether that claim could have been accepted as testimony in court (see *Tosafot* and *Nimmukei Yosef*).

You are not deemed credible in order to render your children unfit – אֵין אֶתָּה נֶאֱמָן לְפָסוּל אֶת בְּנֶיךָ: The early commentaries ask: Even if that man was deemed credible with regard to his children, why would that render them unfit, since the *halakha* is that the offspring of a gentile and a Jewish woman is a Jew of unflawed lineage? The commentaries note that it is insufficient to resolve this question by assuming that this statement in accordance with the opinions that the offspring of a gentile and a Jewish woman is unfit for the priesthood, because according to Rabbi Yehuda, even the daughter of a valid convert is unfit to marry into the priesthood (see *Tosafot*, Ra'avad as cited by Ramban, and Rashba). Some explain that Rabbi Yehuda holds in accordance with the opinion of Rabbi Akiva, which is not accepted as *halakha*, that the offspring of a gentile father is actually a *mamzer* (see *Tosafot* and Ramban). Others explain that the case here was that both parents were converts who testified that they had not converted properly, and therefore according to their claim the children were not actually Jewish (Ramban; see *Yam shel Shlomo*). One commentary suggests that the disqualification referred to here is not a halakhic one; rather, it refers to the harm caused to the children's name by virtue of the fact they would be considered to be the children of gentiles (Rabbi Avraham min HaHar).

Ravina said that this is what he said to him, etc. – רַבִּינָא אָמַר: הֵכִי: Rav Nahman bar Yitzhak and Ravina appear to disagree over whether or not a gentile is deemed credible to testify about his son. One commentary explains that their dispute concerns the essential nature of the unique credibility that is afforded to a father with respect to his son. Rav Nahman bar Yitzhak holds that this credibility is an extension of the standard *halakhot* of testimony. Therefore, just as a gentile is disqualified from providing testimony in a standard case, he is also not deemed credible with respect to his son. Ravina holds that the credibility that is afforded to a father is a unique *halakha* that is not based on the standard *halakhot* of testimony. Accordingly, there is no reason that a gentile should be excluded (*Hiddushei Batra*).

You are not deemed credible in order to render your grandchildren unfit – וְאֵי אֶתָּה נֶאֱמָן לְפָסוּל בְּנֵי בְנֶיךָ: Most commentaries follow the understanding of this statement suggested by *Tosafot*: Since he is not deemed credible with regard to his grandchildren, then if he has any grandchildren from the children he is testifying about he is not deemed credible with regard to those children either, because rendering his children unfit will perforce have an effect on the status of his grandchildren. In contrast, the *She'iltot deRav Aḥai Gaon* does differentiate between children and grandchildren. He explains that a father is given the unique ability to render his children unfit; however, his power is limited so that no ramifications of his claims will be passed down to affect his grandchildren.

תָּנוּ רַבָּנִי: "וּשְׁפֹטֶתָם צֶדֶק בֵּין אִישׁ וּבֵין אֶחָיו וּבֵין גֵּר" מִכָּאן אָמַר רַבִּי יְהוּדָה: גֵּר שֶׁנִּתְגַּיֵּיר בְּבֵית דִּין – הֲרִי זֶה גֵּר, בֵּינוּ לְבֵין עַצְמוֹ – אֵינוֹ גֵּר.

מַעֲשֵׂה בְּאֶחָד שֶׁבָּא לִפְנֵי רַבִּי יְהוּדָה, וְאָמַר לוֹ: נִתְגַּיֵּירְתִּי בֵּינוּ לְבֵין עַצְמִי. אָמַר לוֹ רַבִּי יְהוּדָה: יֵשׁ לְךָ עֵדִים? אָמַר לֵיהֶ: לֹא. יֵשׁ לְךָ בְּנִים? אָמַר לֵיהֶ: הֵן. אָמַר לוֹ: נֶאֱמָן אֶתָּה לְפָסוּל אֶת עַצְמְךָ, וְאֵי אֶתָּה נֶאֱמָן לְפָסוּל אֶת בְּנֶיךָ.

[וְיָמִי] אָמַר רַבִּי יְהוּדָה אֲבָנִים לֹא מַהֲמִין? וְהִתְנַחֵם: "יָכִיר" – יָכִירְנוּ לְאַחֲרֵיכֶם. מִכָּאן אָמַר רַבִּי יְהוּדָה: נֶאֱמָן אָדָם לומר: זֶה בְּנִי בְכוֹר. וְכִשֶּׁם שֶׁנֶּאֱמָן לומר: זֶה בְּנִי בְכוֹר כִּךָ נֶאֱמָן לומר: בְּנִי זֶה בֶּן גְּרוּשָׁה הוּא, אוֹ בֶּן חֲלוּצָה הוּא. וְחֻכָּמִים אומרים: אֵינוֹ נֶאֱמָן.

אָמַר רַב נַחֲמָן בֶּר יִצְחָק, הֵכִי קָאָמַר לֵיהֶ: לְדַבְּרֶיךָ גוֹי אֶתָּה, וְאֵין עֵדוֹת לְגוֹי. רַבִּינָא אָמַר: הֵכִי קָאָמַר לֵיהֶ: יֵשׁ לְךָ בְּנִים? הֵן. יֵשׁ לְךָ בְּנִי בְנִים? הֵן. אָמַר לֵיהֶ: נֶאֱמָן אֶתָּה לְפָסוּל בְּנֶיךָ, וְאֵי אֶתָּה נֶאֱמָן לְפָסוּל בְּנֵי בְנֶיךָ.

The Sages taught: The verse states that Moses charged the judges of a court: "And judge righteously between a man and his brother, and the convert with him" (Deuteronomy 1:16). From here, based on the mention of a convert in the context of judgment in a court, Rabbi Yehuda said: A potential convert who converts in a court is a valid convert. However, if he converts in private, he is not a convert.

The Gemara relates: There was an incident involving one who was presumed to be Jewish who came before Rabbi Yehuda and said to him: I converted in private, and therefore I am not actually Jewish. Rabbi Yehuda said to him: Do you have witnesses^N to support your claim? He said to him: No. Rabbi Yehuda asked: Do you have children? He said to him: Yes. Rabbi Yehuda said to him: You are deemed credible in order to render yourself unfit^{MH} to marry a Jewish woman by claiming that you are a gentile, but you are not deemed credible in order to render your children unfit.^N

The Gemara asks: But did Rabbi Yehuda actually say that with regard to his children he is not deemed credible? But isn't it taught in a *baraita*: The verse states: "He shall acknowledge [*yakir*] the firstborn, the son of the hated, by giving him a double portion of all that he has" (Deuteronomy 21:17). The phrase "he shall acknowledge" is apparently superfluous. It is therefore expounded to teach that the father is deemed credible so that he can identify him [*yakirenu*] to others. From here Rabbi Yehuda said: A man is deemed credible to say: This is my firstborn son,^H and just as he is deemed credible to say: This is my firstborn son, so too, a priest is deemed credible to say: This son of mine is a son of a divorced woman and myself, or to say: He is a son of a *halutza* and myself, and therefore he is disqualified due to flawed lineage [*halal*]. And the Rabbis say: He is not deemed credible.^H If Rabbi Yehuda holds that a father is deemed credible to render his children unfit, why did he rule otherwise in the case of the convert?

Rav Nahman bar Yitzhak said that this is what Rabbi Yehuda said to him: According to your statement you are a gentile, and there is no testimony for a gentile, as a gentile is a disqualified witness. Consequently, you cannot testify about the status of your children and render them unfit. Ravina said that this is what Rabbi Yehuda said to him:^N Do you have children? He said: Yes. He said to him: Do you have grandchildren? He said: Yes. He said to him: You are deemed credible in order to render your children unfit, based on the phrase "he shall acknowledge," but you are not deemed credible in order to render your grandchildren unfit,^N as the verse affords a father credibility only with respect to his children.

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Deemed credible in order to render himself unfit, etc. – נֶאֱמָן לְפָסוּל עַצְמוֹ וְכו': With regard to one who was presumed to be Jewish who comes and says that he converted in private, he is deemed credible in order to render himself unfit and is therefore prohibited from marrying a Jewish woman until he converts in the presence of a court. If he has children, he is not deemed credible in order to render his children unfit. This is in accordance with the opinion of Rabbi Yehuda as explained by Rav Nahman bar Yitzhak (Rambam *Sefer Kedusha*, *Hilkhot Issurei Bia* 13:8; *Shulḥan Arukh*, *Yoreh De'a* 268:11).

He is deemed credible to say: This is my firstborn son – נֶאֱמָן אָדָם לומר: זֶה בְּנִי בְכוֹר: A father is deemed credible to say concerning one of his sons, or even concerning someone who was presumed not to be his son at all, that he is in fact his firstborn son. He is likewise deemed credible to say that someone who was presumed to be his firstborn son is not actually his firstborn. The Rema writes that once a father has claimed that a certain person is his firstborn, he can no longer claim that someone else is (*Tur*, citing Ramban; *Beit*

Yosef, citing Ran; Rambam *Sefer Mishpatim*, *Hilkhot Naḥalot* 2:14; *Shulḥan Arukh*, *Hoshen Mishpat* 277:12).

Credibility to render a son unfit – נֶאֱמָנוּת לְפָסוּל בֶּן: A father is deemed credible to render his son unfit, e.g., if he were to say that the son of his wife is not actually his own son and is therefore a *mamzer*. This is true only if that son does not have any children. If the son does have children, then the father is not believed even with regard to his own son. This is in accordance with the opinion of Ravina. The Rema, citing the Ramah, writes that if the son was presumed to be legitimate based on the testimony of his father, then the father is no longer able to render him unfit. In addition, a man is deemed credible to render unfit only someone who was always presumed to be his son, e.g., the child born to his wife. Therefore, if a single woman announces that her son is actually the child of so-and-so, that man is not deemed credible to claim that the child is a *mamzer* (*Terumat HaDeshen*; Rambam *Sefer Kedusha*, *Hilkhot Issurei Bia* 15:16; *Shulḥan Arukh*, *Even HaEzer* 4:29).

תנא נמי הכי, רבי יהודה אומר: נאמן
אדם לומר על בנו קטן, ואין נאמן על
בנו גדול. ואמר רבי חייה בר אבא אומר
רבי יוחנן: לא קטן קטן ממש, ולא גדול
גדול ממש, אלא, קטן ויש לו בנים – זהו
גדול, גדול ואין לו בנים – זהו קטן.

והלכתא כוותיה דרב נחמן בר יצחק.
והתנא כוותיה דרבינא! הווא לענן
"יכיר" איתמר.

תנו רבנן: גר שבא להתגייר בזמן הזה
אומרים לו: מה ראית שבאת להתגייר?
אי אתה יודע שישיראל בזמן הזה
דוויים, דחופים, סחופים ומטורפין,
ויסורין באין עליהם? אם אומר: יודע
אני ואיני כדאי – מקבלין אותו מיד.

ומודיעין אותו מקצת מצוות קלות,
ומקצת מצוות חמורות, ומודיעין אותו
עון לקט שכחה ופאה ומעשר עני,
ומודיעין אותו ענשן של מצוות, אומרים
לו: הוי יודע שעד שלא באת למדה
זו, אכלת חלב – אי אתה ענוש כרת,
חללת שבת – אי אתה ענוש סקילה.
ועבשיו, אכלת חלב – ענוש כרת,
חללת שבת – ענוש סקילה.

ובשם שמודיעין אותו ענשן של מצוות,
כך מודיעין אותו מתן שכר. אומרים
לו: הוי יודע שהעולם הבא אינו עשוי
אלא לצדיקים, וישיראל בזמן הזה אינם
יכולים לקבל

This opinion of Ravina is also taught in a *baraita*: Rabbi Yehuda says: A man is deemed credible to say about his minor son that he is unfit, but he is not deemed credible to say about his adult son that he is unfit. And in explanation of the *baraita*, Rabbi Hiyya bar Abba said that Rabbi Yohanan said: The reference to a minor son does not mean one who is literally a minor, who has not yet reached majority, and the reference to an adult son does not mean one who is literally an adult, who has reached majority; rather, a minor who has children, this is what the *baraita* is referring to as an adult, and an adult who does not have children, this is what the *baraita* is referring to as a minor.

The Gemara concludes: And the *halakha* is in accordance with the opinion of Rav Nahman bar Yitzhak. The Gemara asks: But isn't it taught in the *baraita* in accordance with the opinion of Ravina? If there is a *baraita* that supports his opinion, the *halakha* should be in accordance with his opinion. The Gemara explains: That *baraita* was stated concerning the matter of "he shall acknowledge," that a father is deemed credible to render his son unfit; however, if one claims he is a gentile, he is not deemed credible to say the same about his son.

§ The Sages taught in a *baraita*: With regard to a potential convert who comes to a court in order to convert, at the present time, when the Jews are in exile, the judges of the court say to him:¹⁴ What did you see that motivated you to come to convert? Don't you know that the Jewish people at the present time are anguished, suppressed, despised, and harassed, and hardships are frequently visited upon them? If he says: I know, and although I am unworthy of joining the Jewish people and sharing in their sorrow, I nevertheless desire to do so, then the court accepts him immediately to begin the conversion process.

And the judges of the court inform him of some of the lenient mitzvot¹⁵ and some of the stringent mitzvot, and they inform him of the sin of neglecting the mitzva to allow the poor to take gleanings, forgotten sheaves, and produce in the corner of one's field, and about the poor man's tithe. And they inform him of the punishment for transgressing the mitzvot, as follows: They say to him: Be aware that before you came to this status and converted, had you eaten forbidden fat, you would not be punished by *karet*, and had you profaned Shabbat, you would not be punished by stoning, since these prohibitions do not apply to gentiles. But now, once converted, if you have eaten forbidden fat you are punished by *karet*, and if you have profaned Shabbat, you are punished by stoning.

And just as they inform him about the punishment for transgressing the mitzvot, so too, they inform him about the reward granted for fulfilling them. They say to him: Be aware that the World-to-Come is made only for the righteous, and if you observe the mitzvot you will merit it, and be aware that the Jewish people, at the present time, are unable to receive their full reward in this world;

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מה אומרים לבא – מודיעין אותו ענשן של מצוות, אומרים לו: הוי יודע שישיראל בזמן הזה אינם יכולים לקבל

mitzvot, and informs him of the punishment for not observing the mitzvot. The judges should not overwhelm him, nor are they exacting with him, and they inform him of the reward given for performance of the mitzvot in the World-to-Come (Rambam *Sefer Kedusha*, *Hilkhot Issurei Bia* 13:14; *Shulhan Arukh*, *Yoreh De'a* 268:2).

NOTES

Some of the lenient mitzvot – מקצת מצוות קלות: The Meiri explains that since the gentile system of law does not relate to less serious issues and does not demand a commitment to minutiae, it is necessary to teach him some of the more

lenient mitzvot and thereby demonstrate that the halakhic system is all-encompassing and relates to every detail of life. If he is unable to commit to this, he is given the opportunity to withdraw.

לֹא רוֹב טוֹבָה וְלֹא רוֹב פּוֹרְעָנוֹת. וְאִין מִרְבִּין עָלָיו, וְאִין מְדַקְדְּקִין עָלָיו.

קִיבֵּל – מְלִין אוֹתוֹ מִיָּד. נִשְׁתַּיֵּירוּ בּוֹ צִיּוֹן הַמַּעֲבָדִין אֶת הַמִּלָּה – חוֹרִים וּמְלִין אוֹתוֹ שְׁנֵיהֶם. נִתְרַפָּא – מְטַבֵּילִין אוֹתוֹ מִיָּד. וְשְׁנֵי תַלְמִידֵי חֲכָמִים עוֹמְדִים עַל גְּבִיו, וּמוֹדִיעִין אוֹתוֹ מִקְצַת מִצְוֹת קְלוֹת וּמִקְצַת מִצְוֹת חֲמוּרוֹת. טָבֵל וְעָלָה – הִרִי הוּא בִּישְׂרָאֵל לְכָל דְּבָרָיו.

אֶשָּׁה – נָשִׁים מוֹשִׁיבוֹת אוֹתָהּ בַּמִּים עַד צוּאָרָה, וְשְׁנֵי תַלְמִידֵי חֲכָמִים עוֹמְדִים לָהּ מִבַּחוּץ, וּמוֹדִיעִין אוֹתָהּ מִקְצַת מִצְוֹת קְלוֹת וּמִקְצַת מִצְוֹת חֲמוּרוֹת.

אֶחָד גֵּר וְאֶחָד עֶבֶד מְשׁוּחָר. וּבְמָקוֹם שְׁנֵיהֶם טוֹבֵלֶת – שֵׁם גֵּר וְעֶבֶד מְשׁוּחָר טוֹבֵלִין. וְכָל דָּבָר שְׁחוּצָץ בְּטַבִּילָה – חוּצָץ בְּגֵר וְעֶבֶד מְשׁוּחָר וּבִנְדָה.

they are **not** able to receive either an abundance of good nor an abundance of calamities,ⁿ since the primary place for reward and punishment is in the World-to-Come. And they do not overwhelm him with threats, and they are not exacting with him about the details of the mitzvot.

If he accepts upon himself all of these ramifications, then they circumcise him immediately. If there still remain on him shreds of flesh from the foreskin that invalidate the circumcision, they circumcise him again a second time to remove them. When he is healed from the circumcision, they immerse himⁿ immediately,ⁿ and two Torah scholars stand over him at the time of his immersion and inform him of some of the lenient mitzvot and some of the stringent mitzvot. Once he has immersed and emerged, he is like a born Jew in every sense.

For the immersion of a woman: Women appointed by the court seat her in the water of the ritual bath up to her neck, and two Torah scholars stand outside the bath house so as not to compromise her modesty, and from there they inform her of some of the lenient mitzvot and some of the stringent mitzvot.

The procedure applies for both a convert and an emancipated slave^{HN} who, upon immersion at the time of his emancipation, becomes a Jew in every sense. And in the same place that a menstruating woman immerses, i.e., in a ritual bath of forty se'a of water, there a convert and an emancipated slave also immerse. And anything that interposes between one's body and the water of the ritual bath with regard to immersionⁿ of a ritually impure person, in a manner that would invalidate the immersion, also interposes and invalidates the immersion for a convert, and for an emancipated slave, and for a menstruating woman.

NOTES

Nor an abundance of calamities – וְלֹא רוֹב פּוֹרְעָנוֹת: This is a continuation of the explanation with regard to the reception of reward for the performance of the mitzvot. Although the Jewish people suffer in exile, the calamities will never dominate to such an extent that the nation might cease to exist completely, as has occurred with other nations (Rabbi Avraham min HaHar).

When he is healed, they immerse him – נִתְרַפָּא מְטַבֵּילִין אוֹתוֹ: The Ramban asks why the convert does not first immerse and only then undergo circumcision; doing so would avoid the delay in the conversion process while the convert waits for his wound to heal. The Ramban suggests that since the circumcision is difficult and painful, the insistence that he perform it first provides another opportunity for him to withdraw from the process.

The basic assumption of the Ramban is that even if the immersion would precede the circumcision, the conversion would be valid. The Ramban adduces proof for this assumption that the order of the two rituals is not essential from the case of a pregnant convert. The Gemara elsewhere states that the immersion of a pregnant woman counts for her fetus as well. However, if the fetus is a male, it will require circumcision once it is born. It would appear, then, that even if the immersion precedes the circumcision the conversion is still valid.

The Rashba and the Ritva reject the Ramban's claim and dismiss his proof. They claim that the immersion must always be the final stage of the process. They bring an analogy to support their claim from the *halakha* of immersing vessels purchased from gentiles, which requires that the vessels first be purged of any non-kosher substances and only then may they be immersed.

With regard to the Ramban's proof, the commentaries suggest various alternative ways to interpret that Gemara. Some claim that the immersion can count for the fetus despite the fact it has not yet been circumcised only because at the time of the immersion the fetus was still unfit for circumcision (*Tosafot*). Others explain that the immersion is effective only according to the opinions that a fetus is halakhically considered to be an extension of the mother's body. Consequently, the immersion alone effects the fetus's conversion (*Rid*). Other commentaries claim that the immersion is valid for the fetus only if it emerges that the fetus was female, but if the fetus turns out to be male, once it is born it will require first circumcision and then immersion in the correct order (see *Rashba*).

Immersion of an emancipated slave – טַבִּילֶת עֶבֶד מְשׁוּחָר: The early commentaries debate whether the immersion of a slave upon his emancipation is required by Torah law and effects the full conversion of the slave, rendering him a Jew, or whether it is only a rabbinic requirement and in actual fact the conversion process was completed when he was initially immersed upon becoming a slave, and the emancipation is only to remove his slave status (see *Tosafot*, *Tosefot HaRosh*, and *Meiri*).

And anything that interposes with regard to immersion – וְכָל דָּבָר שְׁחוּצָץ בְּטַבִּילָה: Rashi explains that the Gemara compares the case of a ritually impure person immersing to purify himself to the case of conversion. The present version of the Gemara text supports this. However, other commentaries had a variant text in which the comparison is to the immersion of a woman who is ritually impure due to menstruation, who immerses in order to be permitted to her husband (see *Ramban* and *Ritva*).

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Circumcision and immersion – מִילָה וְטַבִּילָה: Once a convert has been made aware of the ramifications of conversion and he nevertheless commits to undergo the process, he is circumcised immediately. As soon as his wound heals, he is immersed to complete the process (Rambam *Sefer Kedusha*, *Hilkhot Issurei Bia* 14:5; *Shulḥan Arukh*, *Yoreh De'a* 268:2).

Immersion of a convert and an emancipated slave – טַבִּילֶת גֵּר וְעֶבֶד מְשׁוּחָר: A convert or an emancipated slave requires immersion in a ritual bath that is valid for the immersion of a menstruating woman. Any substance that is considered an interposition and would invalidate the immersion of a menstruating woman also invalidates the immersion of a convert or slave (Rambam *Sefer Kedusha*, *Hilkhot Issurei Bia* 13:13 and *Sefer Tahara*, *Hilkhot Mikvaot* 2:22; *Shulḥan Arukh*, *Yoreh De'a* 268:2).

Converts are as harmful to the Jewish people as a leprous scab – קשים גרים לישראל כספחת. Many different interpretations have been suggested in explanation of this statement. *Tosafot* suggest four different explanations. One explanation, also suggested by the Rambam, is that it is common for converts to revert to their old ways and beliefs, and when they do they exert a corrupting influence on other Jews. This is similar to the mixed multitude of peoples who accompanied the Jewish people in the exodus from Egypt and caused the sin of the Golden Calf. *Tosafot* on *Kiddushin* 70b cite the Gemara elsewhere that the continuing exile and dispersion of the Jewish people occurs in order to provide an opportunity for converts to join them. Consequently, it emerges that converts are actually part of the cause of the exile. *Tosafot* there also cite the opinion of Rabbi Avraham the convert. He claims that converts are generally punctilious and strict with regard to the mitzvot, and therefore their behavior casts aspersions on the practice of those born Jews who are not as vigilant.

And they inform him of the sin of gleanings, forgotten sheaves, etc. – ומודיעין אותו עון לקט. Some commentaries connect this statement to the Gemara above (47a), where it is stated that a gentile might seek to convert in order to benefit from gleanings and forgotten sheaves. Consequently, he must be informed that there is a sin involved in denying these items to poor people, and it is not merely a right that the poor have (*Arukh LaNer*).

It is prohibited for us to go beyond the Shabbat limit – אסור לן תחום שבת. The Maharsha explains that Naomi informed Ruth of this *halakha* in fulfillment of the requirement to inform a potential convert of some of the lenient mitzvot, of which the Shabbat limit is one.

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A gentile is executed on account of stealing less than the value of a *peruta* – בן נח נהרג על פחות משה פרוטה. A gentile is liable for theft and is punished with execution, even for stealing an item whose value is less than a *peruta* (Rambam *Sefer Shofetim*, *Hilkhot Melakhim* 9:9).

אמר מר: גר שפא להתגייר אומרים לו: מה ראית שפאת להתגייר? ומודיעים אותו מקצת מצות קלות ומקצת מצות חמורות. מאי טעמא? דאי פריש – נפרוש. דאמר רבי חלבו: קשים גרים לישראל כספחת, דכתיב "ונלוה הגר עליהם ונספחו על בית יעקב".

ומודיעים אותו עון לקט שכחה ופאה ומעשר עני. מאי טעמא? אמר רבי חייה בר אבא אמר רבי יוחנן: בן נח נהרג על פחות משה פרוטה, ולא ניתן להשביו.

(ומודיעים אותו עון שכחה ופאה). ואין מרבים עליו ואין מדקדקים עליו. אמר רבי אלעזר: מאי קראה – דכתיב "ותרא כי מתאמצת היא ללכת אתה ותחדל לדבר אליה".

אמרה לה: אסור לן תחום שבת – באשר תלכי אלך, אסור לן יחדו – באשר תליני אליך.

The Gemara analyzes the *baraita*. The Master said in the *baraita*: With regard to a potential convert who comes to a court in order to convert, the judges of the court say to him: What did you see that motivated you to come to convert? And they inform him of some of the lenient mitzvot and some of the stringent mitzvot. The Gemara asks: What is the reason to say this to him? It is so that if he is going to withdraw from the conversion process, let him withdraw already at this stage. He should not be convinced to continue, as Rabbi Helbo said: Converts are as harmful to the Jewish people as a leprous scab [*sappahat*]^N on the skin, as it is written: "And the convert shall join himself with them, and they shall cleave [*venispehu*] to the house of Jacob" (Isaiah 14:1). This alludes to the fact that the cleaving of the convert to the Jewish people is like a scab.

The *baraita* continues: And they inform him of the sin of neglecting the mitzva to allow the poor to take gleanings, forgotten sheaves,^N and produce in the corner of one's field, and about the poor man's tithe. The Gemara asks: What is the reason to specifically mention these mitzvot? Rabbi Hiyya bar Abba said that Rabbi Yohanan said: Because a gentile is executed even on account of stealing less than the value of a *peruta*,^H since gentiles are particular about even such a small loss, and an item that a gentile steals is not subject to being returned, i.e., he is not obligated to return it to its owner. Since gentiles are unwilling to separate even from items of little value, a potential convert must be made aware that he if converts, he will be required to relinquish some of his property to others.

The *baraita* continues: And they inform him of the sin of neglecting the mitzva to allow the poor to take gleanings, forgotten sheaves, and produce in the corner of one's field. And they do not overwhelm him with threats, and they are not exacting with him about the details of the mitzvot, i.e., the court should not overly dissuade the convert from converting. Rabbi Elazar said: What is the verse from which this ruling is derived? As it is written: "And when she saw that she was steadfastly minded to go with her, she left off speaking with her" (Ruth 1:18). When Naomi set out to return to Eretz Yisrael, Ruth insisted on joining her. The Gemara understands this to mean that Ruth wished to convert. Naomi attempted to dissuade her, but Ruth persisted. The verse states that once Naomi saw Ruth's resolve to convert, she desisted from her attempts to dissuade her. The Gemara infers from here that the same approach should be taken by a court in all cases of conversion.

The Gemara reconstructs the original dialogue in which Naomi attempted to dissuade Ruth from converting: Naomi said to her: On Shabbat, it is prohibited for us to go beyond the Shabbat limit.^{NB} Ruth responded: "Where you go, I shall go" (Ruth 1:16), and no further. Naomi said to her: It is forbidden for us to be alone together^B with a man with whom it is forbidden to engage in relations. Ruth responded: "Where you lodge, I shall lodge" (Ruth 1:16), and in the same manner.

BACKGROUND

Shabbat limit – תחום שבת: By rabbinic decree, and some say by Torah law, on Shabbat one is not permitted to travel more than a certain distance away from the place where he established his residence at the onset of Shabbat. That distance is known as the Shabbat limit. Even animals and inanimate objects have a limit, determined by the limit of the person to whose care they are entrusted, beyond which they may not be taken. Generally, the Shabbat limit is defined as two thousand cubits outside of one's city in every direction.

Being alone together – יחדו: A man and a woman between whom sexual relations are forbidden are forbidden to be alone together in a manner in which it would be possible for them to engage in intercourse. Typically this means that they may not be secluded in a closed room together. According to tradition, in the era of King David this prohibition was extended to prohibit a man from being alone with an unmarried woman. Exceptions to these rules include a father and daughter and a mother and son. A man is also forbidden to be alone with two women.

We are commanded to observe six hundred and thirteen mitzvot, etc. – **מִפְקְדִינָם שֵׁשׁ מֵאוֹת וּשְׁלֹשׁ עֶשְׂרִים מִצְוֹת וְכוּ'** – Some commentaries explain Naomi's statement and Ruth's response in the following manner: There are many mitzvot that apply only to certain segments of the community, e.g., only to men, priests, etc. Therefore, it is not possible for a single individual to fulfill all six hundred and thirteen mitzvot on his own; rather, their fulfillment is only fully achieved by the collective efforts of the entire people. This is the meaning of Ruth's response: "Your people are my people" (*Iyyun Ya'akov*; *Arukh LaNer*).

Idolrous worship is forbidden to us – אָסִיר לָן עֲבוֹדָה זָרָה – The commentaries question why Naomi had to inform Ruth of the prohibition against idolrous worship when it was already prohibited to Ruth as one of the seven Noahide laws. One commentary suggests that it was necessary because the punishment for a Jew is more severe than the punishment for a gentile (*Shevut Ya'akov*). Others suggest that it was necessary because the prohibition for a Jew is more encompassing: It includes any expression of veneration toward a deity, such as embracing or kissing (*Maharsha*); it prohibits a Jew from even possessing an object of idolrous worship in his home (*Riaf*); a Jew is punished for having idolrous beliefs even if he never expresses them in action (*Iyyun Ya'akov*); and a Jew is prohibited from associating a deity together with God (*Arukh LaNer*).

We do not delay the performance of a mitzva – שְׁהִי מִצְוָה לֹא מְשַׁהֲיִן – Although the Gemara states immediately that converts are as harmful as a leprous scab, and on 109b it is stated: Evil after evil will befall those who accept converts, *Tosafot* explain that this refers only to converts who were not initiated according to the process described in the Gemara or were encouraged to convert even though they were unwilling. However, if a gentile sincerely wishes to convert then there is a mitzva to accept him immediately, and one must not delay the performance of this mitzva. This may be seen from the midrash's comment that Abraham was punished for not accepting Timna when she wished to convert and join his family, and she eventually married Esau's son and gave birth to Amalek. Some early authorities write that the mitzva of converting gentiles is derived from the verse: "And you shall love the convert" (*Deuteronomy 10:19*), implying that one who desires to convert should be loved and encouraged (*Rabbi Yehuda of Barcelona*). Others derive the mitzva from the general mitzva to love God, which the *Sifrei* interprets to include Abraham's actions in encouraging people to worship God. In the same way, accepting converts enables them to enter a deeper relationship with God (*Rabbi Yeruham Fishel Perla*).

HALAKHA

Shreds that invalidate the circumcision – צִיצִין הַמַּעֲכָבִין הַמִּילָה: If following circumcision, some of the flesh of the foreskin remains upon the greater part of the height of the corona, even in a single spot, and certainly if it surrounds the entire circumference (*Shakh*), then the circumcision is invalid and the extra flesh must be removed (*Rambam Sefer Ahava, Hilkhos Mila 2:3; Shulhan Arukh, Yoreh De'a 264:5*).

He has immersed and emerged, he is a Jew – טָבַל וְעָלָה – הָיָה הוּא כִּישְׂרָאֵל: Once the conversion process has been completed as required the convert is considered to be a Jew in every sense. Therefore, even if he reverts back to his old ways and engages in idolrous worship, he is still considered to be a Jew, albeit an apostate Jew, and so if he betroths a Jewish woman, the betrothal takes effect (*Rambam Sefer Kedusha, Hilkhos Issurei Bia 13:17; Shulhan Arukh, Yoreh De'a 268:2*).

Naomi said to her: **We are commanded to observe six hundred and thirteen mitzvot.**^N Ruth responded: "Your people are my people" (*Ruth 1:16*). Naomi said to her: **Idolrous worship is forbidden to us.**^N Ruth responded: "Your God is my God" (*Ruth 1:16*). Naomi said to her: **Four types of capital punishment^B were handed over to a court with which to punish those who transgress the mitzvot.** Ruth responded: "Where you die, I shall die" (*Ruth 1:17*). Naomi said to her: **Two burial grounds^B were handed over to the court, one for those executed for more severe crimes and another for those executed for less severe crimes.** Ruth responded: "And there I shall be buried" (*Ruth 1:17*).

Immediately following this dialogue, the verse states: "And when she saw that she was steadfastly minded she left off speaking with her" (*Ruth 1:18*). Once Naomi saw Ruth's resolve to convert, she desisted from her attempts to dissuade her.

The *baraita* continues: If he accepts upon himself all of these ramifications, then **they circumcise him immediately.** The Gemara asks: **What is the reason to act immediately?** It is that **we do not delay the performance of a mitzva.**^N

The *baraita* continues: If there still remain on him shreds^B of flesh from the foreskin that invalidate the circumcision,^H he is circumcised a second time to remove them. The Gemara explains: This is as we learned in a mishna (*Shabbat 137a*): **These are the shreds of flesh that invalidate the circumcision if they are not cut:** Any fragments of the flesh that cover the greater part of the corona. If such shreds remain, the child is considered uncircumcised, and he may not partake of *teruma*. And in explanation of this mishna, Rav Yirmeya bar Abba said that Rav said: This also includes the flesh that covers the greater part of the height of the corona.

The *baraita* continues: When he is healed from the circumcision, **they immerse him immediately.** The Gemara infers from the precise formulation of the *baraita* that when he has healed, then yes, he is immersed, but as long as he has not healed, then no, he is not. **What is the reason for this?** It is because water agitates a wound.^B

The *baraita* continues: **And two Torah scholars stand over him at the time of his immersion.** The Gemara asks: **But didn't Rabbi Hiyya say that Rabbi Yohanan said that a convert requires a court of three to be present at his conversion?** The Gemara answers: In fact, **Rabbi Yohanan said to the tanna** reciting the mishna: Do not teach that there are two Torah scholars; rather, **teach that there are three.**

The *baraita* continues: Once he has immersed and emerged he is a Jew^H in every sense. The Gemara asks: **With regard to what halakha is this said?** It is that if he reverts back to behaving as a gentile, he nevertheless remains Jewish, and so if he betroths a Jewish woman, although he is considered to be an apostate Jew, his betrothal is a valid betrothal.

BACKGROUND

Four types of capital punishment – אַרְבַּע מִיתוֹת...בֵּית דִּין: These capital punishments are prescribed by the Torah and administered by a court of twenty-three members. They are, in diminishing order of severity: Stoning, burning, decapitation, and strangulation.

Two burial grounds – שְׁנֵי קְבָרִים: According to *halakha* one may not bury a wicked person adjacent to a righteous person (*Sanhedrin 47a*). Even one who transgressed a severe prohibition must be buried separately from one who transgressed a less severe prohibition. For this reason, the court maintained two separate burial grounds, one for those executed for more serious crimes and one for those executed for less serious crimes.

Shreds – צִיצִין: Circumcision involves two stages: First, the foreskin covering the corona is removed, and then the underlying

membrane is ripped and folded back. Occasionally, and especially if this second stage is not performed in the proper manner, part of the membrane remains in its place, covering the corona. These are the shreds the Gemara refers to here.

Water agitates a wound – מֵיָּא מְרוּז מַכָּה: Submerging a wound in water for an extended period can occasionally result in a light renewal of bleeding. In the Gemara here, however, the reference seems to be to a different phenomenon related specifically to ritual baths. In the Talmudic period, ritual baths were formed from collections of rain water that had been gathered, often in caves and the like. Such water can be presumed to contain different micro-organisms such as bacteria and algae. These could certainly cause the wound to become infected, even severely so.

מִפְקְדִינָם שֵׁשׁ מֵאוֹת וּשְׁלֹשׁ עֶשְׂרִים מִצְוֹת – אָסִיר לָן עֲבוֹדָה זָרָה – "וְאֵלֶּיךָ אֱלֹהִי", אַרְבַּע מִיתוֹת נִמְסְרוּ לְבֵית דִּין – "בְּאֶשׁ תִּמּוּתִי אָמוֹת", שְׁנֵי קְבָרִים נִמְסְרוּ לְבֵית דִּין – "וְשָׁם אֶקָּבֵר".

מִיד – "וְתֵרָא כִּי מִתְאַמְצֶת הִיא וְגו'".

"קִיבֵּל – מָלִין אוֹתוֹ מִיד." מֵאִי טַעְמָא? שְׁהִי מִצְוָה לֹא מְשַׁהֲיִן.

"נִשְׁתַּיֵּירוּ בּוֹ צִיצִין הַמַּעֲכָבִין הַמִּילָה" וְכו'. בְּדִתָּנָן: אִלּוּ הָיוּ צִיצִין הַמַּעֲכָבִין הַמִּילָה: בְּשֶׁר הַחוּפָּה אֶת רוֹב הָעֶטְרָה, וְאֵינוֹ אוֹכֵל בְּתֵרוּמָה. וְאָמַר רַב יְרֵמְיָה בְּרַ אֲבָא אָמַר רַב: בְּשֶׁר הַחוּפָּה רוֹב גּוֹבָהָ שֶׁל עֶטְרָה.

"נִתְרַפָּא מִטְּבִילִין אוֹתוֹ מִיד," נִתְרַפָּא – אִין, לֹא נִתְרַפָּא – לֹא. מֵאִי טַעְמָא? מִשּׁוֹם דְּמִיָּא מְרוּז מַכָּה.

"וְשְׁנֵי תַלְמִידֵי חֲכָמִים עוֹמְדִים עַל גְּבוּיָו." וְהָא אָמַר רַבִּי חִיָּיא אָמַר רַבִּי יוֹחָנָן: גַּר צָרִיךְ שְׁלֹשָׁה! הָא אָמַר רַבִּי יוֹחָנָן לְתַנָּא: תַּנִּי שְׁלֹשָׁה.

"טָבַל וְעָלָה הָיָה הוּא כִּישְׂרָאֵל לְכָל דְּבָרָיו." לְמָאי הִלְכְּתָא? דָּאִי הָדָר בֵּיהּ, וּמִקְדָּשׁ בֵּת יִשְׂרָאֵל – יִשְׂרָאֵל מוֹמָר קָרִינָא בֵּיהּ, וְקִידּוּשׁוֹ קִידּוּשִׁין.

An emancipated slave does not need to accept upon himself – עֶבֶד מְשֻׁחָר אֵין צָרִיךְ לְקַבֵּל – At the time of his emancipation, a slave must immerse in the presence of three judges. However, he need not be informed of the basic beliefs and mitzvot and he need not accept these upon himself, since he was already informed of them and accepted them at the time that he was immersed for the sake of becoming a slave (Rambam *Sefer Kedusha*, *Hilkhot Issurei Bia* 13:12; *Shulḥan Arukh*, *Yoreh De'a* 267:7).

A beautiful female prisoner of war who accepted the mitzvot upon herself – יִפֶּת תּוֹאֵר שֶׁקִּבְּלָה עָלֶיהָ מִצְוֹת – A beautiful female prisoner of war who accepts the mitzvot upon herself may be immersed for the sake of conversion, upon which she becomes a Jew. In such a case, the procedures described by the Torah do not apply. If she does not initially accept the mitzvot upon herself, then the procedures described by the Torah must be fulfilled. Her captor then resides with her until she agrees to accept the mitzvot upon herself, at which point she may be immersed for the sake of conversion (Rambam *Sefer Shofetim*, *Hilkhot Melakhim* 8:5).

“אֶחָד גֵּר וְאֶחָד עֶבֶד מְשֻׁחָר.”
קִסְלָקָא דִּיעָתָךְ לְקַבֵּל עָלֶיךָ עוֹל מִצְוֹת,
וְיִמְנָהוּ: בְּמַה דְּבָרִים אֲמֹרִים – בִּגְר,
אֲבָל בְּעֶבֶד מְשֻׁחָר – אֵין צָרִיךְ
לְקַבֵּל!

אֲמַר רַב שֶׁשֶׁת: לֹא קָשִׁיָא, הָא – רַבִּי
שְׁמַעוֹן בֶּן אֶלְעָזָר, הָא – רַבָּנָן.

דִּתְנִיא, “וּבִכְתָּהּ אֶת אָבִיהָ וְאֶת אִמָּהּ”
וְגו’ בְּמַה דְּבָרִים אֲמֹרִים – שְׁלֵא
קִבְּלָה עָלֶיהָ, אֲבָל קִבְּלָה עָלֶיהָ –
מִטְבִּילָהּ, וּמוֹתֵר בָּהּ מִיָּד.

רַבִּי שְׁמַעוֹן בֶּן אֶלְעָזָר אָמַר: אִף עַל פִּי
שְׁלֵא קִבְּלָה עָלֶיהָ – בּוֹפָה, וּמִטְבִּילָהּ
לְשֵׁם שְׁפָחוּת, וְחוֹזֵר וּמִטְבִּילָהּ לְשֵׁם
שְׁחִירוֹת, וּמוֹתֵר בָּהּ מִיָּד.

The *baraita* continues: This applies **both for a convert and for an emancipated slave**. The Gemara considers the meaning of this clause: **If it enters your mind to interpret the *baraita* to mean that a convert and an emancipated slave are the same with regard to accepting upon oneself the yoke of mitzvot, then one could raise a contradiction** from that which is taught in another *baraita*: **In what case is this statement that there is a need to accept the yoke of mitzvot said? It is with respect to a convert; however, an emancipated slave does not need to accept upon himself^f the yoke of mitzvot when he immerses for the sake of emancipation. Rather, the immersion alone is sufficient to emancipate him and thereby render him a Jew.**

Rav Sheshet said: This is **not difficult**, as **this *baraita*** that states that an emancipated slave is not required to accept the yoke of mitzvot is in accordance with the opinion of **Rabbi Shimon ben Elazar**, whereas **that *baraita*** that implies he is required to do so is in accordance with the opinion of **the Rabbis**, the first *tanna* of the following *baraita*.

As it is taught in a *baraita*: The Torah permits a Jewish soldier to take a beautiful female prisoner of war out of her captivity in order to marry her. Before he may do so, she must first undergo the process that the Torah describes: “And she shall shave her head, and do her nails; and she shall remove the raiment of her captivity from upon her, and she shall remain in your house and bewail her father and her mother a month of days” (Deuteronomy 21:12–13). She may then be immersed for the sake of conversion, even though she does not accept upon herself the yoke of mitzvot. At that point it is permitted to marry her. The *baraita* asks: **Under what circumstance are these matters stated? It is when she did not accept upon herself the yoke of mitzvot; however, if she willingly accepted upon herself^f the yoke of mitzvot, he may immerse her for the sake of conversion, and he is permitted to marry her immediately** without the need for her to undergo the process described in the Torah.

Rabbi Shimon ben Elazar says: **Even if she did not accept upon herself the yoke of mitzvot, the need for the process can still be circumvented if he forces her and immerses her for the sake of slavery, and then he again immerses her for the sake of emancipation and thereby emancipates her**, rendering her a Jewess. Rabbi Shimon ben Elazar holds that the immersion of a slave for the sake of emancipation is effective even if the slave does not accept upon himself the yoke of mitzvot.

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וּמוֹתֵר בָּהּ מִיָּד.

And he is permitted to marry her immediately afterward, without the need for her to undergo the process described in the Torah. The fact that the Rabbis do not suggest this course of action is evidently because they hold that even if she were to be rendered a slave and then immersed for the sake of emancipation, she would become Jewish only if she also accepted upon herself the yoke of mitzvot. Rav Sheshet assumes that the Rabbis would similarly rule that a regular slave who was immersed for the sake of emancipation becomes Jewish only if he also accepts upon himself the yoke of mitzvot.^N

NOTES

The dispute between Rabbi Shimon ben Elazar and the Rabbis – מַחֲלֻקַּת רַבִּי שְׁמַעוֹן בֶּן אֶלְעָזָר וְחֻכְמֵיהֶם – Rabbi Shimon ben Elazar and the Rabbis dispute whether or not a slave who immersed upon his emancipation must accept the yoke of mitzvot in order to become Jewish. The Ramban discusses this dispute at length and suggests three possible interpretations of its parameters (see Rashba).

According to Rashi, all agree that the initial immersion of the slave for the sake of entering into slavery, after he is first

purchased from a gentile, may be performed against his will. The dispute here concerns the immersion upon a slave's emancipation: Must that immersion be accompanied by the slave's acceptance of the yoke of mitzvot? The Ramban cites passages in the Jerusalem Talmud and *Pirkei deRabbi Eliezer* that support this interpretation.

A different interpretation, which appears consistent with the rulings of the Rif and Rambam, also assumes that the dispute concerns only the immersion upon a slave's emancipation.

However, this interpretation assumes with regard to the initial immersion for the sake of slavery that everyone agrees that it requires the slave's consent.

A third interpretation, suggested by *Tosafot*, is that the dispute concerns both the original immersion for the sake of slavery and the immersion upon emancipation. The Rabbis assume that in both cases the immersion must be performed with the consent of the slave.

המפקיר – One who renounces ownership of his slave – **עבדו**: If one renounces ownership of his slave, the slave is set free but still requires a bill of emancipation. This is in accordance with the conclusion of the Gemara in tractate *Gittin* (Rambam *Sefer Kinyan, Hilkhot Avadim* 8:13; *Shulḥan Arukh, Yoreh De'a* 267:64).

One who purchases a slave from a gentile or a Jew – הלוקח מן הגוי ומישראל: If a slave is purchased from a gentile, before the slave is immersed for the sake of slavery, he must willingly accept the yoke of mitzvot upon himself. However, if he was purchased from a Jew, he need not do so (Rambam *Sefer Kedusha, Hilkhot Issurei Bia* 14:9; *Shulḥan Arukh, Yoreh De'a* 267:3).

NOTES

ואין צריך – And he does not require a bill of emancipation – **גט שחרור**: This opinion of Shmuel is subject to a debate on *Gittin* 38b. The Gemara there cites the opinion of Rav that although when one renounces ownership of his slave, the slave is no longer subjugated to his master, he still requires a bill of emancipation in order to fully modify his status from a slave to a freeman in order to permit him to marry a Jewish woman.

אמר רבא: מאי טעמא דרבי שמעון בן אלעזר – דכתיב "כל עבד איש מקנת כסף", עבד איש ולא עבד אשה? אלא: עבד איש אתה מל בעל כרחו, ואי אתה מל בן איש בעל כרחו.

ורבנן? אמר עולא: כשם שאי אתה מל בן איש בעל כרחו כך אי אתה מל עבד איש בעל כרחו. ואלא, הכתיב "כל עבד איש" – ההוא מיבעי ליה לכד שמואל.

דאמר שמואל: המפקיר עבדו וצא לחירות, ואין צריך גט שחרור, שנאמר "כל עבד איש מקנת כסף", עבד איש ולא עבד אשה? אלא: עבד שיש לו רשות לרבו עליו – קרוי עבד, ושאינ רשות לרבו עליו – אין קרוי עבד.

מתקיף לה רב פפא: אימור דשמעת להו לרבנן ביפת תואר, דלא שייכא במצות. אבל עבד דשייך במצות – הכי נמי דאפילו רבנן מודו.

דתנאי: אחד גר ואחד לוקח עבד מן הגוי צריך לקבל. הא לוקח מישראל – אין צריך לקבל.

מנ? אי רבי שמעון בן אלעזר – האמר לוקח מן הגוי נמי אין צריך לקבל. אלא לאו – רבנן, ושמע מניה: דלוקח מן הגוי צריך לקבל, אבל לוקח מישראל – אין צריך לקבל.

Rava said: What is the rationale for Rabbi Shimon ben Elazar's opinion? As it is written with regard to the Paschal lamb: "Every slave of a man that is bought for money, when you have circumcised him, then he may eat of it" (Exodus 12:44). Could the use of the phrase "slave of a man," rather than just: Slave, possibly indicate that the verse applies only to a man's slave but not a woman's slave? Certainly not; rather, the phrase "slave of a man" means that the slave himself is a man, i.e., an adult, and teaches that a slave who is a man you may circumcise against his will, and there is no need for him to accept upon himself the yoke of mitzvot, but you may not circumcise a gentile's son who is a man, i.e., an adult who is not a slave, against his will.

The Gemara asks: And how would the Rabbis counter this argument? Ulla said that the Rabbis reason that just as you may not circumcise a son who is a man against his will, so too, you may not circumcise a slave who is a man against his will. The Gemara asks: But isn't it written: "Every slave of a man"? The Gemara explains: The Rabbis require that verse for that which Shmuel said.

As Shmuel said: With regard to one who renounces ownership of his slave,^H the slave is emancipated, and he does not even require a bill of emancipation,^N as it is stated: "But every slave of a man that is bought for money." Could the use of the phrase "slave of a man," rather than just: Slave, possibly indicate that the verse applies only to a man's slave but not a woman's slave? Certainly not; rather, the use of the phrase indicates that only a slave whose master has possession of him, and can rightfully be described as: a slave of a man, is called a slave, but a slave whose master does not have possession of him is not called a slave, and therefore he is considered a freeman and does not require a bill of emancipation.

Rav Pappa strongly objects to Rav Sheshet's claim that the Rabbis of the *baraita* would hold that a regular slave who was immersed for the sake of emancipation becomes Jewish only if he also accepts upon himself the yoke of mitzvot: Say that you heard that the Rabbis insist on the acceptance of the yoke of mitzvot with regard to the case of a beautiful female prisoner of war, who was not involved in any mitzvot before being emancipated; however, with regard to a slave, who was initially involved in mitzvot before his emancipation, since as a slave he was obligated to observe certain mitzvot, perhaps even the Rabbis would agree that there is no need for the slave to accept upon himself the yoke of mitzvot.

As it is taught in a *baraita*: Both in the case of a convert and in the case of one who purchases a slave from a gentile whom he is now emancipating, the convert and the slave need to accept upon themselves the yoke of mitzvot in order to become Jewish. The Gemara infers: The *baraita* states the need to accept the yoke of mitzvot only in the case where one purchases a slave from a gentile, but if one purchases a slave from a Jew, then the slave does not need to accept upon himself the yoke of mitzvot, since he was involved in mitzvot before his emancipation.

In accordance with whose opinion is this taught? If one suggests that it is in accordance with the opinion of Rabbi Shimon ben Elazar, that is incorrect because didn't he say that also in the case of one who purchases a slave from a gentile, the slave does not need to accept upon himself the yoke of mitzvot? Rather, must it not be in accordance with the opinion of the Rabbis? And so, conclude from this *baraita* that in the case of one who purchases a slave from a gentile, the slave needs to accept upon himself the yoke of mitzvot, but in the case of one who purchases a slave from a Jew,^H the slave does not need to accept upon himself the yoke of mitzvot.

One may maintain, etc. – **מְקַיְמִין עֲבָדִים וְכוּ** – *Tosafot* explain that Rabbi Akiva's opinion is based on the fact that Abraham was commanded to circumcise everyone in his household including his slaves; if so, clearly one is not allowed to leave them uncircumcised. *Tosafot* conclude, therefore, that it is apparent that Rabbi Akiva's prohibition to maintain a slave without circumcision is by Torah law. This also explains why Rabbi Yishmael had to adduce biblical support for his claim that it is permitted to do so (see *Tosafot HaRosh* and *Mekhilta*).

בְּלוֹקֶחַ עֶבֶד בֵּין – הַשְׁמָשׁוֹת – *The Ritva* explains that one should not conclude that the verse is referring only to this specific case. Rather, it refers to all cases where, due to some unavoidable circumstances, the master was unable to circumcise his slave before the onset of Shabbat, e.g., if no one who could perform the circumcision was available.

זֶה גֵר תוֹשָׁב – וְהָיָה לְךָ עֶבֶד – *The status of a ger toshav*, and which mitzvot he is required to observe, is subject to significant debate both in the Gemara and the early commentaries. In order to explain the Gemara here, Rashi cites the opinion that a *ger toshav* must observe the prohibitions of Shabbat in the same manner as a Jew. *Tosafot* and the Ramban object to this explanation and explain that even if he is not obligated to observe Shabbat, it is prohibited by Torah law for him to perform any labor on behalf of a Jew. This is in contrast to the general prohibition against benefiting from labor that a gentile performed for a Jew, which is a rabbinic prohibition. The Ramban also cites an opinion that a *ger toshav* is prohibited from performing labor on Shabbat to the same extent that a Jew is prohibited from performing labor on a Festival. Accordingly, certain labors that are necessary for the preparation of food are permitted.

לֹא פָקַדָּהּ לְמִילְתָּיה – הִיא עֲבֵדָה – *Rashi* suggests two interpretations. According to the first, the phrase refers to the slave: As long as the slave does not explicitly state that he will not consent to be circumcised, the master is permitted to maintain him. According to the second interpretation, the phrase refers to the slave owner and should be translated as: He did not fix a time for the matter. Accordingly, it means that it is permitted for an owner to maintain his uncircumcised slave only if he set a time by which he will circumcise him. This time would have to be set at the moment of purchase. *Tosafot* cite the interpretation of Rabbeinu Yitzhak, which is also the explanation of Rav Hai Gaon, that, on the contrary, once the slave has agreed to be circumcised it is then prohibited to maintain him in an uncircumcised state; rather, he must be circumcised and immersed immediately. However, if the slave refuses to be circumcised, then one is allowed to maintain him as such.

HALAKHA

One who purchases a slave from a gentile and he does not wish to be circumcised – וְלֹא רָצָה – *לְמוֹל*: If one purchases a slave from a gentile and the slave does not wish to be circumcised, then he abides with him up to twelve months. If, after this period, the slave still refuses to be circumcised, the master then sells him on to gentiles. This is in accordance with the opinion of Rabbi Yehoshua ben Levi (Rambam *Sefer Ahava*, *Hilkhot Mila* 1:6 and *Sefer Kedusha*, *Hilkhot Issurei Bia* 14:9; *Shulhan Arukh*, *Yoreh De'a* 267:4).

תָּנוּ רַבָּנֵי: מְקַיְמִין עֲבָדִים שְׂאִינָם מְלוּן, דְּבָרֵי רַבִּי יִשְׁמָעֵאל. רַבִּי עֲקִיבָא אָמַר: אֵין מְקַיְמִין. אָמַר לֵיהּ רַבִּי יִשְׁמָעֵאל: הֲרֵי הוּא אָמַר "וַיִּנְפֹּשׁ בֶּן אֲמָתְךָ" אָמַר לֵיהּ: בְּלוֹקֶחַ עֶבֶד בֵּין הַשְׁמָשׁוֹת וְלֹא הִסְפִּיק לְמוֹלָהּ הַכְּתוּב מְדַבֵּר.

דְּכֹלִי עֲלָמָא מִיְהַת "וַיִּנְפֹּשׁ בֶּן אֲמָתְךָ" בְּעֶבֶד עֵרֶל כְּתִיב, מֵאִי מְשַׁמְעָ? דְּתַנָּא: "וַיִּנְפֹּשׁ בֶּן אֲמָתְךָ" – בְּעֶבֶד עֵרֶל הַכְּתוּב מְדַבֵּר. אֲתָה אָמַר בְּעֶבֶד עֵרֶל, אוֹ אֵינוֹ אֵלָא בְּעֶבֶד מֵהוּל? כִּשְׁהוּא אָמַר: "לְמַעַן יָנוּחַ עַבְדְּךָ וְאֲמָתְךָ כְּמוֹךָ" – הֲרֵי עֶבֶד מֵהוּל אָמַר, הָא מָה אֵין מְקַיְמִין "וַיִּנְפֹּשׁ בֶּן אֲמָתְךָ"! – בְּעֶבֶד עֵרֶל.

"וְהָיָה" – זֶה גֵר תוֹשָׁב, אֲתָה אָמַר זֶה גֵר תוֹשָׁב. אוֹ אֵינוֹ אֵלָא גֵר צִדֵּק? כִּשְׁהוּא אָמַר "וְגֵרְךָ אֲשֶׁר בְּשַׁעְרֶיךָ" – הֲרֵי גֵר צִדֵּק אָמַר, הָא מָה אֵין מְקַיְמִין "וְהָיָה" – זֶה גֵר תוֹשָׁב.

אָמַר רַבִּי יְהוֹשֻׁעַ בֶּן לֵוִי: הַלּוֹקֶחַ עֶבֶד מִן הַגּוֹי וְלֹא רָצָה לְמוֹל, מְגַלְגֵּל עִמּוֹ עַד שְׁנֵים עָשָׂר חֹדֶשׁ. לֹא מָל – חוֹזֵר וּמוֹכְרוֹ לְגוֹיִם.

אָמְרוּהוּ רַבָּנֵי קַמְיָה דְּרַב פַּפָּא: כְּמָאן – דְּלֹא כְּרִבֵּי עֲקִיבָא, דְּאִי רַבִּי עֲקִיבָא – הָאֵמַר אֵין מְקַיְמִין, אָמַר לְהוּ רַב פַּפָּא: אֲפִילוּ תִימָא רַבִּי עֲקִיבָא, הֵנִי מִילִי – הֵיכָא דְלֹא פָּסְקָא לְמִילְתָּיה, אֲבָל הֵיכָא דְפָּסְקָא לְמִילְתָּיה – פָּסְקָא.

אָמַר רַב כְּהָנָא: אֲמַרְיָתָא לְשַׁמְעֵתָא קַמְיָה דְּרַב זְבִיד מִנְהַרְדְּעָא, אָמַר לִי: אִי הָכִי, כִּי אָמַר לֵיהּ רַבִּי עֲקִיבָא בְּלוֹקֶחַ עֶבֶד בֵּין הַשְׁמָשׁוֹת – לִישְׁנֵי לֵיהּ הָא! תְּדָא מִתָּרִי טַעְמִי קָאֻמַּר.

S The Sages taught in a *baraita*: One may maintainⁿ slaves that are not circumcised under one's control; this is the statement of Rabbi Yishmael. Rabbi Akiva says: One may not maintain such slaves, even for a moment. Rabbi Yishmael said to him: But it says with regard to Shabbat: "And the son of your maidservant will be refreshed" (Exodus 23:12). The verse prohibits a Jewish master from allowing his slave to perform labor on Shabbat. The Gemara will explain that this is referring to an uncircumcised slave. It is therefore apparent that it is permitted to keep such a slave. Rabbi Akiva said to him: The verse speaks of one who purchases a slave at twilightⁿ on the eve of Shabbat and therefore does not have the opportunity to circumcise him before the onset of Shabbat.

The Gemara notes: In any event, in the opinion of everyone the verse: "And the son of your maidservant will be refreshed," is written with regard to an uncircumcised slave. From where is this inferred? As it is taught in a *baraita*: "And the son of your maidservant will be refreshed"; the verse speaks of an uncircumcised slave. Do you say it speaks of an uncircumcised slave, or perhaps it is speaking only of a circumcised slave? When it says elsewhere: "And the seventh day is a Shabbat to the Lord your God, you shall not do any labor, you, and your son, and your daughter, and your slave, and your maidservant... so that your slave and your maidservant may rest like you" (Deuteronomy 5:13), a circumcised slave is already mentioned; how, then, do I uphold the verse "And the son of your maidservant will be refreshed"? It must refer to an uncircumcised slave.

The verse continues: "And the stranger [ger] (Exodus 23:12). This is referring to a gentile who observes certain mitzvot [ger toshav].ⁿ Do you say that this is a *ger toshav*, or perhaps it is only a righteous convert [ger tzedek], who is a Jew in every sense? When it says elsewhere: "And your stranger [ger] that is within your gates" (Deuteronomy 5:13), a righteous convert is already mentioned. How, then, do I uphold the verse "And the stranger [ger]"? It must be that this is a *ger toshav*.

Rabbi Yehoshua ben Levi said: In the case of one who purchases a slave from a gentile and the slave does not wish to be circumcised,ⁿ he abides with him up to twelve months. If, after this period, he will still not be circumcised, he then sells him on to gentiles.

The Sages said this *halakha* before Rav Pappa and asked: In accordance with whose opinion is it? It seems that it is not in accordance with the opinion of Rabbi Akiva, as, if it were in accordance with the opinion of Rabbi Akiva, didn't he say: One may not maintain an uncircumcised slave even for a moment? Rav Pappa said to them: You can even say that it is in accordance with the opinion of Rabbi Akiva, since perhaps that *halakha* of Rabbi Yehoshua ben Levi applies only where the slave did not make his refusal to be circumcised explicit;ⁿ however, where he did make his refusal to be circumcised explicit, since he has made it explicit, it is prohibited to maintain him, as Rabbi Akiva rules.

Rav Kahana said: I said this *halakha* before Rav Zevid from Neharde'a. He said to me: If so, that Rabbi Akiva agrees that one may temporarily maintain a slave who has not explicitly refused to be circumcised, then when Rabbi Akiva said to Rabbi Yishmael that the verse with regard to an uncircumcised slave is referring to one who purchases a slave at twilight on the eve of Shabbat, let him instead answer him that the verse is referring to this case of a slave who has not explicitly refused to be circumcised. The Gemara explains: Rabbi Akiva said only one out of two possible reasons why it would be permitted to be in possession of such a slave.

שֶׁלַח רַבִּין מִשְׁמִייה דְּרַבִּי אֵילְעָא, וְכָל רַבּוּתֵי
אָמְרוּ לִי מִשְׁמוֹ: אֵיזְהוּ עֶבֶד עָרַל שְׁמוּתָּר
לְקַיָּמוֹ – זֶה שֶׁלְקָחוּ רַבּוֹ עַל מִנַּת שְׁלָא
לְמוֹלוֹ. אָמְרוּ רַבֵּנּוּ קָמִייה דְּרַב פָּפָא: כִּמְאֵן –
דְּלֹא פְרַבִּי עֲקִיבָא, דְּאִי רַבִּי עֲקִיבָא – הָאֵמַר:
אֵין מְקַיָּמִין! אָמַר לְהוּ רַב פָּפָא: אֲפִילוּ תִימָא
רַבִּי עֲקִיבָא, הֵינִי מִיָּלִי – הִיכָא דְּלֹא אֲתִינִי
בְּהַדְיָה, אֲבָל הִיכָא דְּאֲתִינִי – אֲתִינִי.

Ravin^p sent a message citing a *halakha* in the name of Rabbi Ilai: And all of my teachers said to me in his name: What is the case of an uncircumcised slave whom it is permitted to maintain? This is one whose master purchased him on condition not to circumcise him.¹⁴ The Sages said this *halakha* before Rav Pappa and asked: In accordance with whose opinion is it? It seems that it is not in accordance with the opinion of Rabbi Akiva, as, if it were in accordance with the opinion of Rabbi Akiva, didn't he say: One may not maintain an uncircumcised slave even for a moment? Rav Pappa said to them: You can even say it is in accordance with the opinion of Rabbi Akiva, since perhaps that ruling of Rabbi Akiva applies only where the master did not make a condition with regard to the slave that he would not be circumcised; however, where he did make such a condition, since he made a condition, even Rabbi Akiva would concede it is permitted to maintain him.

אָמַר רַב כְּהָנָא: אָמְרִיתָא לְשִׁמְעָתָא קָמִייה
דְּרַב זְבִיד מִנְהַרְדֵּי'א, וְאָמַר לִי: אִי הָכִי, בִּי
קָאֵמַר לִי רַבִּי עֲקִיבָא בְּלוֹקָח עֶבֶד בֵּין
הַשְּׁמִשּׁוֹת וְלֹא הִסְפִּיק לְמוֹלוֹ – לִישְׁנֵי לַיָּה
הָאֵ!

Rav Kahana said: I said this *halakha* before Rav Zevid from Neharde'a and he said to me: If so, that Rabbi Akiva agrees that one may maintain a slave who was purchased on condition that he would not be circumcised, then when Rabbi Akiva said to Rabbi Yishmael that the verse with regard to an uncircumcised slave is referring to one who purchases a slave at twilight on the eve of Shabbat and therefore does not have the opportunity to circumcise him before the onset of Shabbat, let him instead answer him that the verse is referring to this case of a slave who was purchased on condition that he would not be circumcised.

וְלִישְׁנֵי עֵמֶךְ – לִישְׁנֵי לַיָּה הָךְ! אֵלֶּא: חַד מִתְּרִי
וְתַלְתָּ טַעְמֵי קָאֵמַר.

The Gemara responds: But even according to your reasoning that Rabbi Akiva disagrees, since you do agree with Rav Pappa's resolution of Rabbi Akiva's opinion with the *halakha* of Rabbi Yehoshua ben Levi, let Rabbi Akiva answer him that the verse is referring to that case of a slave who has not explicitly refused to be circumcised. The Gemara answers: Rabbi Akiva said only one out of two or three possible reasons that it would be permitted to be in possession of such a slave.

יְתִיב רַבִּי חֲנִינָא בְּרַ פְּפִי וְרַבִּי אֲמִי וְרַבִּי יִצְחָק
נִפְחָא אֶקִּילְעָא דְּרַבִּי יִצְחָק נִפְחָא, וְיִתְבִּי
וְקָאֵמְרִי: עִיר אַחַת הָיְתָה בְּאַרְצָא יִשְׂרָאֵל וְלֹא
רָצוּ עֲבָדֶיהָ לְמוֹל, וְגִלְגְּלוּ עִמָּהֶם עַד שְׁנִים
עָשָׂר חֹדֶשׁ, וְחִזְרוּ וּמִכְרוּם לְגוֹיִם. כִּמְאֵן –

Rabbi Hanina bar Pappi, and Rabbi Ami, and Rabbi Yitzhak Nappaḥa were sitting in the courtyard of Rabbi Yitzhak Nappaḥa. They were sitting and saying: There was one city in Eretz Yisrael whose slaves did not wish to be circumcised. Their masters abided with them until twelve months had passed and then sold them to gentiles. In accordance with whose opinion did they act?

PERSONALITIES

Ravin – רַבִּין: Ravin was a fourth-generation *amora* who studied in Eretz Yisrael under Rabbi Abbahu, Rabbi Zeira, and Rabbi Ilai. He is known in the Jerusalem Talmud as Rabbi Avin or Rabbi Bun. He is best known for all of the traditions that he brought with him from Eretz Yisrael to Babylonia, which are frequently quoted in the Talmud with the introductory phrase: When Ravin came.

The source of many of the traditions that Ravin brought with him was Rabbi Yoḥanan, and they were considered to be very precise. Apparently, Ravin also returned to visit his teachers in Eretz Yisrael and sent messages, possibly by letter, back to Babylonia, containing the traditions he learned from them (see *Ketubot* 49b and *Bava Metzia* 114a).

HALAKHA

He stipulated not to be circumcised – הִתְנָה שְׁלָא לְמוֹל: If a slave stipulated from the outset that he does not wish to be circumcised, and similarly, in times and places when the government prohibited conversion (*Mordekhai*), it is permitted to maintain

the slave in one's house for as long as he wishes. This is in accordance with the opinion of Rabbi Yehoshua ben Levi and Rav Pappa (Rambam *Sefer Ahava*, *Hilkhot Mila* 1:6; *Shulḥan Arukh*, *Yoreh De'a* 267:4 and in the comment of Rema).

כי האי תנא. דתנא: הלוקח עבד מן הגוי ולא רצה למול – מגלגל עמו עד שנים עשר חדש, לא מל – חוזר ומוכרו לגוים. רבי שמעון בן אלעזר אומר: אין משהין אותו בארץ ישראל מפני הפסד טהרות. ובעיר הסמוכה לספר – אין משהין אותו כל עיקר, שמא ישמע דבר, וילך ויאמר לחברו גוי.

It is in accordance with the opinion of this *tanna*, as it is taught in a *baraita*: In the case of one who purchases a slave from a gentile and the slave does not wish to be circumcised, the master abides with him for up to twelve months. If, after this period, the slave will still not be circumcised, the master then sells him to gentiles. Rabbi Shimon ben Elazar says: One may not allow him to remain in Eretz Yisrael due to the loss of ritually pure items he could cause. As long as the slave remains uncircumcised, he is considered to be a gentile; therefore, by rabbinic decree, ritually pure items that he touches are considered to be impure. And in a city that is near to the border^N he may not be allowed to remain at all, lest he hear some secret matter concerning security and go and say it over to his fellow gentile in an enemy country. However, once he has been circumcised and accepted the yoke of mitzvot, this concern no longer exists.

תנא, רבי חנניא בנו של רבן גמליאל אומר: מפני מה גרים בזמן הזה מעונים, ויסורין באין עליהן – מפני שלא קיימו שבע מצות בני נח. רבי יוסי אומר: גר – שנתגייר בקטן שנולד דמי. אלא מפני מה מעונים – לפי שאין בקיאים בדקדוקי מצות בישראל, אבא חנן אומר משום רבי אלעזר: לפי שאין עושין מאהבה אלא מיראה.

It is taught in a *baraita*: Rabbi Hananya, son of Rabban Gamliel, says: For what reason are converts at the present time^N tormented and hardships come upon them? It is because when they were gentiles they did not observe the seven Noahide mitzvot. Rabbi Yosei says: They would not be punished for their deeds prior to their conversion because a convert who just converted is like a child just born^N in that he retains no connection to his past life. Rather, for what reason are they tormented? It is because they are not as well-versed in the intricacies of the mitzvot as a born Jew, and consequently they often inadvertently transgress mitzvot. Abba Hanan says in the name of Rabbi Elazar: It is because they observe mitzvot not out of love of God, but only out of fear of the punishments for failing to observe them.

אחרים אומרים: מפני ששהו עצמם להכניס תחת כנפי השכינה. אמר רבי אבהו ואיתימא רבי חנינא: מאי קראה – "ישלם ה' פעלך ותהי משכרתך שלמה מעם ה' אלהי ישראל אשר באת להסות" וגומר.

Others say: It is because they waited^N before entering under the wings of the Divine Presence, i.e., they are punished for not converting sooner than they did. Rabbi Abbahu said, and some say it was Rabbi Hanina who said: What is the verse^N from which it is derived that one should convert at the earliest opportunity? Boaz said to Ruth: "The Lord shall recompense your work, and your reward shall be complete from the Lord, the God of Israel, under whose wings you have come to take refuge" (Ruth 2:12).

NOTES

A city that is near to the border – עיר הסמוכה לספר: The Gemara in tractate *Eiruvin* maintains that if marauders attack a border city, one may desecrate the Sabbath to confront them even if their sole intention is to steal produce. The early commentaries explain that that reason for this is because if they would succeed in entering into a border city, that would pose a significant security risk as it would allow them to penetrate further into the country. Similarly, the requirement to decimate an idolatrous city in Eretz Yisrael does not apply if that city is on the border, as doing so might encourage the enemy to attack other cities nearby. In the Gemara here, the concern is that the slave might know the language of the enemies, and since he lives adjacent to the border he would be able to direct them as to how to conquer the border cities (*Meshekh Hokhma*).

It remains unclear why, when discussing the fact the slave could disqualify ritually pure items, the *baraita* states: One may not allow him to remain, but when discussing the danger of leaving him near a border city, it states more emphatically: He may not be allowed to remain at all.

Rabbi Moshe Feinstein suggests that it is easier to protect ritually pure items in the short term until one finds a buyer for the slave, and therefore one may delay before selling the slave. However, in a border city, where there is imminent danger that the slave will undermine the security of the city, he must be sold to gentiles immediately.

Converts at the present time – גרים בזמן הזה: The commentaries note that the Gemara emphasizes that this question applies specifically to the present time because those who convert at times when the Jews are of superior status are suspected of having chosen to convert not for the sake of Heaven. At the present time, however, when the Jews are downtrodden, it is certain that the

conversion is for the sake of Heaven and so the question of why they suffer so much arises (*Iyyun Ya'akov*).

מעונים, ויסורין באין – עליהן: The Ritva explains that the question is asked specifically about converts. Born Jews might naturally conclude that they suffer due to the sins of their fathers. Converts, on the other hand, have no apparent reason to be suffering.

Like a child just born – בקטן שנולד דמי: A convert is absolved of sins he committed while he was still a gentile only in cases where the punishment is in the hands of Heaven. However, if he was liable to be punished by the courts, converting will not exempt him from his liability (*Tosafot Yeshanim*).

Because they waited – מפני ששהו עצמן: One commentary explains that this cannot refer to the fact that they did not decide to convert earlier, as gentiles are not commanded to convert. Rather, it refers to the time between the decision to convert and the actual act of conversion itself; once a convert has decided to convert he should act quickly to complete the process (*Ya'avetz*).

What is the verse, etc. – מאי קראה וכו': Rashi and *Tosafot* explain that this verse is cited in support of the opinion attributed to: Others. The Maharsha explains that the proof is derived from the fact that Boaz gave Ruth a double blessing. The blessing: "God shall recompense your work," is for the act of conversion itself, and "Your reward shall be complete" is for the promptness involved. Re'em Horowitz, however, suggests that this verse is cited only to provide a source for the phrase: To enter under the wings of the Divine Presence. The Ritva holds that the verse is adduced to prove the statement of Rabbi Yosei that a convert is like a child just born. See *Arukh LaNer*, who explains how the verse provides proof for all of these positions.

HALAKHA

Which offspring have the status of a mamzer – איזהו ממזר: The offspring born of a forbidden union for which one is liable to *karet* or a court-imposed death penalty is a *mamzer*, irrespective of whether the sexual relations were engaged in willfully or otherwise. This is true with the exception of the offspring of a union with a menstruating woman, which is not a *mamzer*. This is in accordance with the opinion of Shimon HaTimni, since the Gemara rules in accordance with his opinion (Rambam *Sefer Kedusha*, *Hilkhot Issurei Bia* 15:1; *Shulhan Arukh*, *Even HaEzer* 4:13).

If a man's wife died he is permitted to her sister – אשתו נפטרה: A man's wife's sister is forbidden to him throughout his wife's lifetime, even if they are divorced. After his wife's death, however, he is permitted to marry her sister. It is all the more true that the sister of a *yevama* is permitted to the *yavam* after the death of the *yevama* (Rambam *Sefer Kedusha*, *Hilkhot Issurei Bia* 2:9; *Shulhan Arukh*, *Even HaEzer* 15:26).

PERSONALITIES

Shimon HaTimni – שמעון התימני: Shimon HaTimni was a *tanna* during the generation of Rabbi Akiva whose title was derived from his home city of Timna in Judea. He was one of the important Sages of the Sanhedrin in Yavne. He numbers among those few Sages who understood seventy languages. However, due to his young age, he was never ordained, and so he is instead referred to as one who deliberated before the Sages. Despite his young age, and even though he was connected to the disciples of Rabbi Akiva, he was nevertheless not his preeminent disciple. In fact, he occasionally disputed Rabbi Akiva's opinions.

Most statements cited in his name in the Mishna and *baraitot* involve matters of *halakha*, and he seldom comments on issues of *aggada*.

מתני' איזהו ממזר? כל שאר בשר שהוא ב'לא יבא', דברי רבי עקיבא. שמעון התימני אומר: כל שחייבים עליו פרת בידי שמים. והלכה כדבריו. ורבי יהושע אומר: כל שחייבין עליו מיתת בית דין.

אמר רבי שמעון בן עזאי: מצאתי מגילת יוחסין בירושלים וכתוב בה: איש פלוני ממזר מאשת איש, לקיים דברי רבי יהושע.

אשתו נפטרה – מותר באחותה, גרושה ומתה – מותר באחותה. נשאת לאחר ומתה – מותר באחותה. יבמתו נפטרה – מותר באחותה, חלץ לה ומתה – מותר באחותה, נשאת לאחר ומתה – מותר באחותה.

גמ' מאי טעמא דרבי עקיבא? דכתיב "לא יקח איש את אשת אביו ולא יגלה כנף אביו" – כנף שראה אביו לא יגלה.

MISHNA Which offspring of forbidden relations have the status of a *mamzer*?^{NH} It is the offspring of a union with any next of kin^N that is subject to a Torah prohibition that he should not engage in sexual relations with them; this is the statement of Rabbi Akiva. Shimon HaTimni^P says: It is the offspring of a union with any forbidden relation for which one is liable to receive *karet* at the hand of Heaven. And the *halakha* is in accordance with his statement.^N Rabbi Yehoshua says: It is the offspring of a union with any forbidden relation for which one is liable to receive court-imposed capital punishment.

Rabbi Shimon ben Azzai said: I found a scroll recording people's lineages in Jerusalem, and it was written in it that so-and-so is a *mamzer*^N from an adulterous union with a married woman, a sin punishable by court-imposed capital punishment. The only reason for the scroll to state the reason that this individual is a *mamzer* is in order to support the statement of Rabbi Yehoshua.

The mishna delineates the circumstances in which it is prohibited to engage in relations with the sister of one's wife and the sister of one's *yevama*: If a man's wife died, he is permitted to her sister.^H If he divorced her and then she died, he is permitted to her sister. If he divorced his wife and then she was married to another and then died, he is permitted to her sister. If his *yevama* died, he is permitted to her sister. If he performed *halitza* with her and then she died, he is permitted to her sister. If after *halitza* she was married to another and then died, he is permitted to her sister. The principle underlying all these cases is that the prohibition against engaging in relations with her sister only applies while the wife or *yevama* remain alive, irrespective of their current relationship to the man.

GEMARA What is Rabbi Akiva's reasoning? As it is written: "A man shall not take his father's wife, and he shall not uncover his father's cloak" (Deuteronomy 23:1). This teaches that a cloak that his father saw,^N i.e., a woman with whom his father engaged in sexual relations, the son may not uncover.

NOTES

Which offspring have the status of a mamzer – איזהו ממזר: This mishna is not directly related to the general subject matter of this chapter. However, since the previous mishna cites the dispute between Rabbi Akiva and the Rabbis as to whether or not the offspring from various forbidden unions are *mamzerim*, this mishna cites the basic principles behind that dispute (Meiri).

Any next of kin – כל שאר בשר: The mishna here appears to state that Rabbi Akiva regards only the offspring of forbidden unions between next of kin as *mamzerim*; however, the offspring of other forbidden unions would not be *mamzerim*. This would seem to contradict the mishna on 44a that states that Rabbi Akiva holds that with regard to one who remarries his divorcee after she had been married to another man, the offspring from that union is also a *mamzer*. Rashi suggests that the two *mishnayot* reflect the two different opinions with regard to Rabbi Akiva's position, and the mishna on 44a is in accordance with the understanding of Rabbi Simai. Others reject this suggestion because it would be highly unseemly for the Mishna to cite two statements in the name of a single Sage based on two opposing opinions of what his position is, especially when the two statements are cited in close proximity to each other. The Rashba therefore explains that one must conclude that one's divorcee who remarried is also considered next of kin because the prohibition is based on his close relationship to her.

From the Rambam's Commentary on the Mishna it would appear that he read Rabbi Akiva's statement in this mishna as comprising two clauses: The offspring of a union with any next of kin, or of a union that is subject to a Torah prohibition, is a *mamzer*. His interpretation is supported by the discussion of this mishna in the Jerusalem Talmud. According to this reading, there is no contradiction at all to the previous mishna.

And the halakha is in accordance with his statement – והלכה כדבריו: Some early commentaries, including the Rif and Rabeinu Hananel, note that there is a principle, cited in the Jerusalem Talmud on tractate *Pe'a*, that the *halakha* is not decided based on rulings in a mishna. Therefore, despite the fact that this mishna explicitly states that the *halakha* is in accordance with the opinion of Shimon HaTimni, that itself has no force in deciding the ultimate ruling. Some explain that the reason for this is that when Rabbi Yehuda HaNasi redacted the Mishna, he collected and arranged many tannaitic statements that already existed. He would sometimes cite those statements without modification, even if they included claims about what the *halakha* should be. Accordingly, when a mishna includes a statement about the ruling of a *halakha*, it cannot be assumed that it reflects Rabbi Yehuda HaNasi's own opinion, and therefore it does not carry any halakhic weight.

And it was written in it that so-and-so is a *mamzer*, etc. – וכתוב בה: איש פלוני ממזר וכו'. The purpose of keeping a record of lineages is so that people are aware of whom they may marry and whom they may not. Therefore, it is unnecessary for the scroll to detail the circumstances that led to one gaining a certain status. Accordingly, the fact that this scroll explicitly stated why a certain individual was a *mamzer* suggests that it meant to teach something about who is to be regarded as a *mamzer* (Yosef Lekah; see *Tosafot*).

A cloak that his father saw, etc. – כנף שראה אביו וכו': The Gemara explains that this refers to a woman raped by his father. However, it is difficult to understand why the offspring from a union with her would be a *mamzer*, since Rabbi Akiva states in the mishna that only the offspring of a union with a next of kin is a *mamzer*. Some resolve this question by saying that the essence of the condition that the union be with a next of kin is that the prohibition is a function of one's relationship to her. If so, even though a woman his father rapes is not actually a next of kin, since ultimately the prohibition against engaging in relations with her is due to the father's relationship to her, Rabbi Akiva will agree that the offspring of a union with her will be a *mamzer* (Rashash).

And in close proximity to that verse is: “A *mamzer* shall not enter” – וְסָמֵךְ לִיה לֹא יָבֵא מִמּוֹר. Generally, when a derivation is based on the fact that two verses are in close proximity to each other, the two verses are actually juxtaposed with nothing between them. However, in this case, the two verses are separated by a verse that states that a man whose sexual organs have been damaged is prohibited from marrying into the congregation. *Tosafot* note this difficulty and explain that since a man whose sexual organs have been damaged is unable to father any children, that verse can certainly not be utilized to identify which kinds of forbidden unions result in the offspring being a *mamzer*. Therefore, in this case it is acceptable to base the derivation on the proximity of the verse about a *mamzer* to the verse about a woman with whom one's father engaged in relations (see Ritva and *Nimmukei Yosef*).

The opinion of Shimon HaTimni – שִׁיטַת שְׁמוֹנֵן הַתִּימְנִי: From an opinion in the Jerusalem Talmud, as well as from many early commentaries (see Ramban and Rashba), it would appear that Shimon HaTimni arrived at his opinion based on the hermeneutical principle that if a case was included as part of a general category but was singled out to teach something, what it teaches is to be applied not only to that case but to all of the cases in that general category. As applied to this case, it indicates that since the prohibition with regard to one's father's wife appears in Leviticus as part of the general category of incestuous relationships for which one is liable to receive *karet*, and then it is mentioned alone in Deuteronomy in order to teach that the offspring of a union with one's father's wife is a *mamzer*, it therefore teaches that this is true of all the cases in Leviticus, i.e., that the offspring from any one of those relationships is a *mamzer*.

Rabbi Yehoshua's proof – הִוכַּחַת רַבִּי יְהוֹשֻׁעַ: The commentaries suggest different interpretations of Rabbi Yehoshua's proof here. Rashi explains that since it is unnecessary to state both: “he shall not take” and “he shall not uncover,” it is apparent that only the offspring of relations with the woman mentioned in between those phrases, i.e., one's father's wife, is a *mamzer*, as well as all similar cases where one would be liable for a court-imposed death penalty. The *ge'onim*, based on a different version of the text also cited by *Tosafot*, explain that since it is repetitious to state both “he shall not take” and “he shall not uncover,” it must be that one should derive the *halakha* of a *mamzer* from the more stringent of the two.

Rabbeinu Hananel appears to have had a version of the Gemara in which the continuation: Rather is it not, etc., does not appear at all. Based on that version, he explains that since the expressions “he shall not take” and “he shall not uncover” are repetitious, their use must come to teach that only those prohibitions that are formulated in these ways are included.

All agree with regard to one who engages in sexual relations with a menstruating woman, etc. – הַכֹּל מוּדִים בְּבֵא עַל הַנְּדָה – וְכִי: In the Jerusalem Talmud it is explained that the offspring from relations with a menstruating woman is not a *mamzer* because the woman is not forbidden on account of being a next of kin, which the mishna here states is one of the conditions for the offspring to be a *mamzer*. This fits well with the explanation found in the Jerusalem Talmud that the specific case of one's father's wife teaches about the entire category of forbidden relations recorded in Leviticus. The prohibition against engaging in relations with a menstruating woman is not included in that category. Furthermore, that category of cases is introduced by the statement: “None of you shall approach to any that is next of kin to him, to uncover their nakedness” (Leviticus 18:6), which serves to emphasize that only the offspring from relations with those who are next of kin is a *mamzer*.

Rabbi Yehuda al-Madari notes that in addition to the Gemara's reasoning that betrothal with a menstruating woman takes effect, further proof can be derived from the fact that when a woman menstruates, the betrothal bond is not dissolved. This point, already mentioned by *Tosafot*, serves to prove that a menstruating woman is not to be fully classified in the same manner as other forbidden relations.

וְסָבֵר לָהּ כְּרַבִּי יְהוּדָה, דְּאָמַר: בְּאֲנוּסָתָא אֲבִיו הִכְתוּב מִדְּבַר, דְּהוּיָא לָהּ חֵיבִי לְאִוִּין.

And in this interpretation of the verse, Rabbi Akiva holds in accordance with the opinion of Rabbi Yehuda, who said: The verse states only that such relations are forbidden, but they would not render him liable to receive *karet*; perforce the verse speaks of a woman raped by one's father, since she is one of the women with whom relations render one liable for violating a prohibition. The verse could not refer to one's father's wife since relations with her render one liable to receive *karet*.

וְסָמֵךְ לִיה לֹא יָבֵא מִמּוֹר בְּקֹהֶל הָ". אֶלְמָא: מִהֵנָּה הוּי מִמּוֹר.

The Gemara completes its explanation of Rabbi Akiva's opinion: And in close proximity to that verse is the verse: “A *mamzer* shall not enter^N into the congregation of the Lord” (Deuteronomy 23:3). Apparently, even from these forbidden relations, which render one liable for the violation of a prohibition, the offspring is a *mamzer*.

וְלִרְבִּי סִימַאי דְּמַרְבָּה שְׁאָר חֵיבִי לְאִוִּין דְּלֹא דִ"שְׁאָר", וְלִרְבִּי יִשְׁבֵּב דְּמַרְבָּה אֶפְיֻלוֹ חֵיבִי עֲשֵׂה –

The Gemara asks: But according to Rabbi Simai, who holds that Rabbi Akiva includes as a *mamzer* the offspring of all other forbidden relations for which one is liable for violation of a prohibition, even those that are not with his next of kin; and also according to Rabbi Yesheavav,^P who holds that Rabbi Akiva includes even the offspring of relations for which one is liable for the violation of a positive mitzva; since according to them, Rabbi Akiva includes cases that are not similar to the case a woman raped by his father, what is his source?

נִפְקָא לְהוּ מִ"וִּלְאָ".

The Gemara answers: They derive it from the verse that states: “And he shall not uncover his father's cloak” (Deuteronomy 23:1). The word “and” is superfluous and serves to include additional cases.

וְשִׁמְעוֹן הַתִּימְנִי סָבֵר לָהּ כְּרַבִּנָּן, דְּאָמְרִי: בְּשׁוּמְרַת יָבֵם שֶׁל אֲבִיו הִכְתוּב מִדְּבַר, דְּהוּיָא לָהּ חֵיבִי כְּרִיתוֹת, וְסָמֵךְ לִיה לֹא יָבֵא מִמּוֹר, אֶלְמָא: מִחֵיבֵי כְּרִיתוֹת הוּי מִמּוֹר.

And Shimon HaTimni^N holds in accordance with the opinion of the Rabbis, who say: It is with regard to the widow waiting for his father to perform levirate marriage that the verse is speaking, and it indicates that she is one of the women with whom relations render one liable to receive *karet*. And in close proximity to that verse is the verse: “A *mamzer* shall not enter into the congregation of the Lord” (Deuteronomy 23:3). Apparently, only the offspring of a union for which one is liable to receive *karet* is a *mamzer*.

וְרַבִּי יְהוֹשֻׁעַ: לְכַתּוּב רַחֲמֵנָא "לֹא יִגְלֶה", "לֹא יִקַּח" ("וְלֹא יִגְלֶה") לְמָה לֵּי: אֶלְא לֹא הָכִי קָאָמַר: מִ"לֹא יִקַּח" עַד "לֹא יִגְלֶה" – הוּי מִמּוֹר, טַפִּי – לֹא הוּי מִמּוֹר.

And how does Rabbi Yehoshua^N derive his opinion? If the verses should be derived as Rabbi Akiva and Shimon HaTimni suggest, let the Merciful One write only: “He shall not uncover his father's cloak.” It is unnecessary for the verse to mention the prohibition with regard to one's father's wife, as the fact that the offspring of that union is a *mamzer* would be known through an *a fortiori* inference, since that prohibition is more stringent than the one derived from the verse: “And shall not uncover his father's cloak.” Why do I need both the clause “a man shall not take his father's wife” and the clause “and shall not uncover his father's cloak”? Rather, is it not that this is what the Torah is saying: Only the offspring of relations with the woman mentioned in the verse after the words “a man shall not take” until the words “he shall not uncover,” i.e., his father's wife, is a *mamzer*, but the offspring of relations with the woman mentioned beyond that point, i.e., the woman referred to as “his father's cloak,” is not a *mamzer*.

אָמַר אֲבִי: הַכֹּל מוּדִים בְּבֵא עַל הַנְּדָה

Abaye said: All *tanna'im* in the mishna agree with regard to one who engages in sexual relations with a menstruating woman,^N

PERSONALITIES

Rabbi Yesheavav – רַבִּי יִשְׁבֵּב: Rabbi Yesheavav was a third-generation *tanna* and scribe who was a disciple of Rabbi Yehoshua and a contemporary of Rabbi Akiva. He was exceedingly generous, and Rabbi Akiva criticized him for giving too much of his money to charity. Rabbi Yesheavav was one of the

ten martyrs who were killed by the Romans during the bar Kokheva rebellion, and according to tradition (*Midrash Eleh Ezkera*), the ninety-year-old Sage told his disciples to support each other and uphold justice and peace. He was then thrown to the dogs and did not merit to be buried.

HALAKHA

The offspring of a menstruating woman – וְלִדְ הַנְּדָה: All agree that a child born from a menstruating woman is not a *mamzer* and is even permitted to marry into the priesthood (*Beit Shmuel*). However, he is considered to be of a sullied status and his family is not held to be of distinguished lineage (Rambam *Sefer Kedusha*, *Hilkhot Issurei Bia* 15:1; *Shulhan Arukh*, *Even HaEzer* 4:3).

Betrothal of a menstruating woman – קידושי נדה: If one betroths one of the forbidden relations whom, were he to engage in relations with them, he would be liable to receive *karet* or a court-imposed death penalty, then the betrothal does not take effect. The exception to this principle is a menstruating woman, in whose case the betrothal does take effect. Nevertheless, it is not appropriate to betroth a menstruating woman. The *Taz* writes that nowadays, due to the significant monetary loss involved in rescheduling a wedding if the bride is menstruating, people are not particular about avoiding this situation, but nevertheless one should try to prevent the situation *ab initio* (Rambam *Sefer Nashim*, *Hilkhot Ishut* 4:12; *Shulhan Arukh*, *Even HaEzer* 44:6).

וְעַל הַסּוֹטָה שָׂאִין הַיֶּלֶד מִמּוֹזֵר.

נדה – דהא תפסי בה קידושין, שנאמר "ותהי נדתה עליו" – אפילו בשעת נדתה – תפסי בה קידושין.

סוטה נמי – דהא תפסי בה קידושין.

תניא נמי הכי: הכל מודים בבא על הנדה, ועל הסוטה, ועל שומרת יבם – שאין הולד ממזר.

ואביי: שומרת יבם מספקא ליה, אי ברב אי בשמואל.

"אמר רבי שמעון בן עזאי" כו'. תני, שמעון בן עזאי אומר: מצאתי מגילת יוחסין בירושלים, וכתוב בה: איש פלוני ממזר מאשת איש. וכתוב בה: משנת רבי אליעזר בן יעקב קב ונקי. וכתוב בה: מנשה הרג את ישעיה.

or with a *sota*,^N that the offspring is not a *mamzer*.^H

With regard to a menstruating woman the offspring is not a *mamzer* because one's betrothal of her takes effect,^H as it is stated: "And her impurity shall be upon him" (Leviticus 15:24). The phrase "shall be" alludes to the fact that a betrothal with her takes effect. The verse teaches that even at the time of her menstrual impurity, betrothal with her takes effect.

With regard to a *sota*, too, the offspring is not a *mamzer* because one's betrothal of her takes effect.

The Gemara notes: This teaching of Abaye is also taught in a *baraita*: All agree with regard to one who engages in sexual relations with a menstruating woman, or with a *sota*, or with a widow waiting for her *yavam* to perform levirate marriage, that the offspring is not a *mamzer*.

The Gemara explains: And Abaye did not mention the case of a widow waiting for her *yavam* because he is uncertain^N whether, if someone other than the *yavam* betrothed her, the *halakha* is in accordance with the opinion of Rav that it does not take effect or in accordance with the opinion of Shmuel that it might take effect.

S The mishna states: Rabbi Shimon ben Azzai said: I found a scroll recording people's lineages. The Gemara cites an expanded version of the contents of the scroll. It is taught in a *baraita* that Rabbi Shimon ben Azzai said: I found a scroll recording people's lineages, in Jerusalem, and it was written in it^N that so-and-so is a *mamzer* from an adulterous union with a married woman. And it was also written in it: The teachings of Rabbi Eliezer ben Ya'akov measure only a *kav* but are clean and accurate, and so the *halakha* is decided in accordance with his opinions. And it was written in it: Manasseh, king of Israel, killed Isaiah the prophet.

NOTES

Sota – סוטה: The term *sota* is used to describe both a wife who was suspected by her husband of having been unfaithful and a wife who is known to have been unfaithful. In both cases, she is prohibited from engaging in relations with her husband.

Rashi explains that the Gemara here is referring to a case where it is known that she was unfaithful and nevertheless she remained married to her husband. Rashi explains that in this case the reason that everyone agrees that the offspring is not a *mamzer* is because the marriage bond is not abrogated despite the fact that the marriage is prohibited. *Tosafot* argue that the fact that the marriage bond is not abrogated is itself insufficient to explain why the offspring is not a *mamzer*. Therefore, they explain that the case here is where the husband divorced his adulterous wife and then remarried her. It is therefore apparent that his betrothal of her takes effect, and it is this fact that explains why the offspring is not a *mamzer*. Apparently, *Tosafot* assume that the key factor in defining whether the offspring will be a *mamzer* is whether or not the prohibition is a function of the familial relationship between them, i.e., only the offspring of forbidden relations between next of kin is a *mamzer*, and it is this factor that expresses itself in the fact that one cannot effect a betrothal between these relatives.

Rabbeinu Hananel writes that although the Gemara here states clearly that the offspring is not a *mamzer*, that is true only according to Torah law. However, by rabbinic law, the offspring is rendered a *mamzer*. He draws proof for his claim from the case of a woman who remarries after a single witness testified that her husband had died. In such a case, if it later emerges that in fact her original husband is still alive, she is prohibited by rabbinic decree from returning to him. If she does

return to him and has a child by him, the Sages decreed that it is considered a *mamzer*. Rabbeinu Hananel understands that this provides a paradigm for other cases where the marriage is forbidden by rabbinic decree, and that in those cases as well the offspring is rendered a *mamzer* by the Sages. *Tosafot* cite the opinion of Rabbeinu Hananel and explain that this decree is a penalty on the couple for ignoring the rabbinic prohibition against their marrying.

Other authorities disagree with Rabbeinu Hananel's opinion and claim that the case of a woman who remarried based on the testimony of a single witness is unique because in that case she married her new husband under the assumption that it was a valid course of action. Since the new marriage has the appearance of a valid one, the Sages prohibited her from returning to her original husband. However, in the case of adultery, no such concern exists, and therefore there is no need to render the offspring a *mamzer* (*Tosafot Had MiKamma'e*; Meiri; see Rashi, *Tosafot*, and Ramban).

He is uncertain, etc. – מספקא ליה וכו': The connection made by the Gemara between whether to rule in accordance with Rav or Shmuel and the status of the offspring as a *mamzer* is far from simple because the prohibition against a *yevama* engaging in relations with someone other than her *yavam* is of an entirely different nature than other forbidden relations (see *Tosafot*). Some explain that even according to the opinion of Rav the betrothal does not take effect; there is no actual negative mitzva against the *yevama* engaging in relations with someone other than her *yavam*. Rather, the reason that betrothal does not take effect is because she is already bound to the *yavam* through a levirate bond, and that bond prevents any other

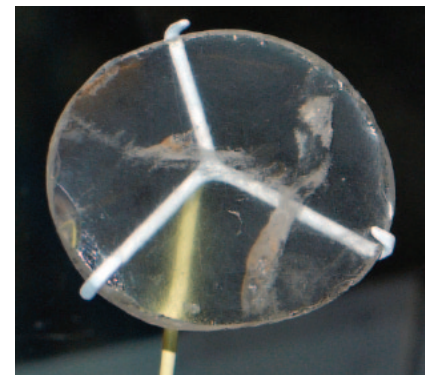
marital bond from taking effect upon her. The offspring of such a union is a *mamzer* for the same reason that some opinions hold that the offspring of a gentile and a Jewish woman is a *mamzer*: Whenever it is not possible to effect a betrothal between two people, the offspring from a union between them is a *mamzer* irrespective of the nature of the prohibition that applies to them.

One commentary suggests that neither Rav nor Shmuel themselves would hold that the offspring is a *mamzer*, since they hold that only the offspring of forbidden relations for which one is liable to receive *karet* is a *mamzer*. Abaye's uncertainty was in accordance with the opinion of Rabbi Akiva that even the offspring of less stringent forbidden relations is a *mamzer* (see Ramban and Rabbi Avraham min HaHar).

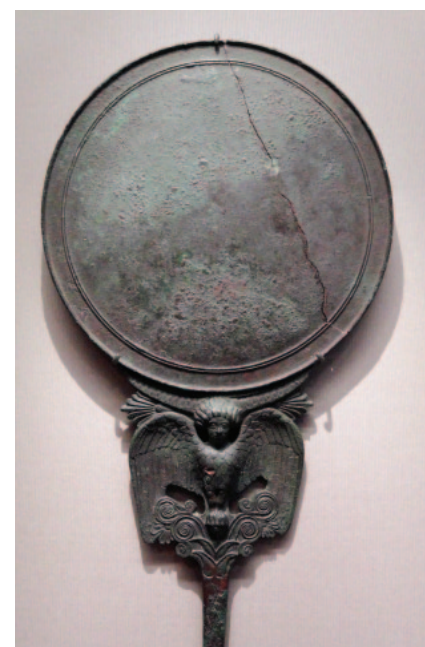
A scroll recording people's lineages...and it was written in it, etc. – מגילת יוחסין...וכתוב בה וכו' – Ostensibly, the other matters that were written in the scroll were of no relevance to the scroll's main purpose of recording people's lineages. However, some suggest that a connection may be drawn: The statement that the *halakha* is in accordance with Rabbi Eliezer ben Ya'akov could be understood to refer specifically to the fact that the *halakha* is decided in accordance with his opinion with regard to the *halakhot* of lineages. In fact, the Gemara in *Kiddushin* 77a cites a case of lineages where his opinion was followed. With regard to the statement about Manasseh, the relevance may have been related to the fact that Manasseh was the grandson of Isaiah. The scroll wished to proclaim that although lineage may be of some importance, good lineage it is not necessarily a guarantee for success (*Arukh LaNer*).

Looking glass [*aspaklaria*] – אֶסְפַּקְלָרְיָא: Either from the Latin speculum, which is a mirror made of metal, or from the Latin specularis, meaning transparent, i.e., a transparent window. The word apparently entered Hebrew through the Greek σπεκλάριον, *speclarion*, meaning a small mirror.

In the Gemara, the word has two connotations: It can mean either a mirror made of metal, or a glass window or looking glass. In the context here, the reference is to the latter.



Ancient optical lens possibly used as a magnifying glass



Ancient Greek mirror

אמר רבא: מידן דיינייה וקטליה. אמר ליה: משה רבך אמר "כי לא יראני האדם וחי" ואת אמרת "ואראה את ה' וישב על כסא רם ונשא", משה רבך אמר "מי כה' אלהינו בכל קראנו אליו" ואת אמרת "דרשו ה' בהמצאו". משה רבך אמר "את מספר ימיך אמלא" ואת אמרת "והוספתי על ימיך חמש עשרה שנה"!

אמר ישעיה: ידענא ביה דלא מקבל מה דאמא ליה, ואי אמא ליה – אישויה מזיד. אמר שם, איבלע בארזא. אתויה לארזא ונסרוה. כי מטא להדי פומא – נח נפשיה, משום דאמר "ובתוך עם טמא שפתים אנכי יושב".

מכל מקום קשו קראי אהדדי!

"ואראה את ה'" – כדתינא: כל הנביאים נסתכלו באספקלריא שאינה מאירה, משה רבינו נסתכל באספקלריא המאירה.

The Gemara expands on the events surrounding Isaiah's death: Rava said: Manasseh judged him as a false witness for issuing statements contradicting the Torah and only then killed him. Manasseh said to Isaiah: Moses your master said in the Torah: "And He said: You cannot see My face, for man cannot see Me and live" (Exodus 33:20), and yet you said: "I saw the Lord sitting upon a high and lofty throne" (Isaiah 6:1). Moses your master said: "For which great nation is there, that has God so near to it, as the Lord our God is, whenever we call upon Him?" (Deuteronomy 4:7), and yet you said: "Seek the Lord while He may be found, call upon Him while He is near" (Isaiah 55:6), which implies that God is not always near. Moses your master said: "I will fulfill the number of your days" (Exodus 23:26), which implies that each individual has a preordained allotted lifespan that he cannot outlive, and yet you said in a prophecy to King Hezekiah: "And I will add to your days, fifteen years" (II Kings 20:6).

Isaiah said to himself: I know him, i.e., Manasseh, that he will not accept whatever explanation that I will say to him to resolve my prophecies with the words of the Torah. And even if I say it to him,^N I will make him into an intentional transgressor since he will kill me anyway. Therefore, in order to escape, he uttered a divine name and was swallowed within a cedar tree. Manasseh's servants brought the cedar tree and sawed through it in order to kill him. When the saw reached to where his mouth was, Isaiah died. He died specifically as this point due to that which he said: "In the midst of a people of unclean lips,^N I dwell" (Isaiah 6:5). He was punished for referring to the Jewish people in a derogatory manner.

The Gemara asks: In any case, as Manasseh pointed out, these verses contradict each other; how are these contradictions to be resolved?

The Gemara resolves the first contradiction: "I saw the Lord" is to be understood as it is taught in a *baraita*: All of the prophets observed their prophecies through an obscure looking glass [*aspaklaria*],^{LN} i.e., their prophecies were given as metaphoric visions but were not a direct perception of the matter. However, Moses our master observed his prophecies through a clear looking glass, i.e., he gained a direct and accurate perception of the matter.

NOTES

If I say it to him, etc. – אי אמא ליה וכו': *Tosafot* cite the interpretation of Rabbeinu Hananel that Isaiah could have easily responded that the Torah itself states with regard to the Elders at the revelation at Sinai: "And they saw the God of Israel" (Exodus 24:10), which justifies the use of the verb: See, with regard to God. The *Otzar HaShitot* explains that the Gemara chose not to raise this issue because ultimately the root of the issue is, as the Gemara explains, due to the difference in the level of prophecy between Moses and others. This, then, also explains the verse: "And they saw the God of Israel," which also describes the prophetic vision of the Elders, whose prophecy was not at the level of Moses'. Isaiah could not explain this matter to Manasseh because it would have been damaging to his mission to state that his level of prophecy was comparable to looking through an obscure looking glass, which Manasseh would have taken to mean that his prophecy was unreliable and inaccurate.

Due to that which he said: In the midst of a people of unclean lips – משום דאמר ובתוך עם טמא שפתים: Although Isaiah issued prophetic warnings to the Jewish people that contained much harsher statements, the commentaries explain that there was no claim against him for that because those statements were simply relaying what God had told him to say. He was punished only for expressing his own opinion about the nature of the Jewish people. See the Meiri and *Yam shel Shlomo* who discuss the halakhic conclusions that can be drawn from this Gemara.

The Ritva points out that in that same chapter in Isaiah, God's angels said to Isaiah: "Your iniquity is taken away and your sin shall be expiated" (Isaiah 7:6). This would seem to imply he was forgiven for his sin; why, then, was he later punished? The Ritva explains that Isaiah was forgiven only for expressing his sentiments before God, but he still had no right to later publicly recount what he had said, and he was punished for that. He also suggests another explanation: The phrase "and your sin shall be expiated" is stated in the future tense; it is not saying that he was already forgiven but that ultimately his sin would be expiated through his unseemly death.

Obscure looking glass – באספקלריא שאינה מאירה: The commentaries (*ge'onim*; Rabbeinu Hananel; Rambam) wrote at length to explain this matter. Primarily they cite passages from *Vayikra Rabbah* that include different tannaitic explanations of the subject. The essential idea is that one who does not see with sufficient clarity mistakenly sees things that do not exist or sees distorted forms. The Rambam, in *Sefer HaMadda* and in his Commentary on the Mishna, explains that only Moses could see God "face to face" (Deuteronomy 34:10) without any intervening imagery. The Ramban hints at a different understanding, according to which the other prophets experienced their prophecies as a mental image, whereas the prophecy of Moses was at such a high level that he gained an intimate understanding of the prophecy without the need for it to be diluted and encapsulated in a prophetic vision.

NOTES

This is with regard to the individual and this is with regard to a community – **הָא בְּחִידָא הָא בְּצִבּוֹר**: This distinction is evident in the verses themselves as well. The verse: “Whenever we call upon Him” clearly refers to a group of people, i.e., the community of the Jewish people, and the verse: “Seek the Lord while He may be found” continues “and let the wicked one forsake His way” (Isaiah 55:7), which clearly refers to an individual (Maharsha).

HALAKHA

Ten days of repentance – **עֲשֻׂרַת יְמֵי תְשׁוּבָה**: While repentance is always effective, repentance of the individual is especially well received during the ten days between Rosh HaShana and Yom Kippur (Rambam *Sefer HaMadda*, *Hilkhot Teshuva* 2:6).

דְּרָשׁוּ ה' בְּהִמָּצְאוֹ – הָא בְּחִידָא הָא בְּצִבּוֹר. וְיָחִיד אֵימַת? אָמַר רַב נַחֲמָן אָמַר רַבָּה בְּרַב אֲבוּה: אֵלּוּ עֲשָׂרָה יָמִים שְׁבִין רָאשׁ הַשָּׁנָה לְיוֹם הַכְּפוּרִים,

The Gemara resolves the second contradiction: Isaiah’s prophecy: “Seek the Lord while He may be found,” does not contradict the verse in the Torah that God is near to His nation “whenever we call upon Him,” because this prophecy of Isaiah was made **with regard to the individual** and this verse in the Torah is stated **with regard to a community**,^N as the prayer of the community is always accepted. The Gemara asks: **And when** is the time that God is to be found near the individual? Rav Nahman said **Rabba bar Avuh said: These are the ten days between Rosh HaShana and Yom Kippur.**^H

אֶת מִסְפַּר יְמֵיךָ אֲמַלֵּא – תִּנָּאִי הִיא. דְּתִנָּאִי אֶת מִסְפַּר יְמֵיךָ אֲמַלֵּא

The resolution of the third contradiction from the verse: “I will fulfill the number of your days,” is subject to a dispute between *tanna'im*, as it is taught in a *baraita*: The verse states: “I will fulfill the number of your days”;

Perek IV

Daf 50 Amud a

אֵלּוּ שְׁנֵי דוֹרוֹת, זָכָה – מְשַׁלְּמִין לוֹ, לֹא זָכָה – פּוֹחֲתִין לוֹ. דְּבִרֵּי רַבִּי עֲקִיבָא. וְחֻכְמִים אוֹמְרִים: זָכָה – מוֹסִיפִים לוֹ, לֹא זָכָה – פּוֹחֲתִין לוֹ.

these are the years of the generations,^N i.e., the allotted lifespan that is preordained for each individual before birth. If he is deserving, God completes his allotted lifespan. If he is not deserving, God reduces his lifespan; this is the statement of Rabbi Akiva. Rabbi Akiva assumes one cannot outlive one’s preordained allotted lifespan. **The Rabbis say: If he is deserving, God adds years to his lifespan.**^N If he is not deserving, God reduces his lifespan. According to the Rabbis, Isaiah’s prophecy is referring to one who deserved to have extra years added to his allotted lifespan, and the verse in the Torah is referring to one who deserved to merely complete his lifespan.

אָמְרוּ לוֹ לְרַבִּי עֲקִיבָא: הֲרִי הוּא אוֹמֵר “וְהוֹסַפְתִּי עַל יְמֵיךָ חֲמִשׁ עֶשְׂרֵה שָׁנָה!” אָמַר לָהֶם: מְשַׁלְּלוּ הוֹסִיפוּ לוֹ. תִּדְעוּ, שְׁהָרִי נִבְיָא עוֹמֵד וּמִתְנַבֵּא “הִנֵּה בֶן נוֹלָד לְבֵית דָּוִד יֵאֻשְׁיָהוּ שְׁמוֹ” וְעַדִּין לֹא נוֹלָד מִנְשָׁה.

The Rabbis said to Rabbi Akiva: How can you claim that one cannot outlive one’s allotted lifespan when there is a verse that states that Isaiah prophesied to Hezekiah as Hezekiah lay on his deathbed: “And I will add unto your days fifteen years”? Rabbi Akiva said to them: Those additional years that God added to his lifespan are from his own allotted lifespan. When Hezekiah sinned God decreed that his lifespan be shortened, but when he repented God allowed him to live out those years. **Know** that this is so, as a prophet during the reign of King Jeroboam stood and prophesied:^N “Behold, a son shall be born unto the House of David, Josiah is his name” (1 Kings 13:2). Josiah was the grandson of Manasseh, Hezekiah’s son, and at the time Hezekiah lay on his deathbed, **Manasseh had not yet been born.** Evidently, Hezekiah’s preordained allotted lifespan had still not been completed.

NOTES

The years of the generations – שְׁנֵי דוֹרוֹת: Rashi and others interpret this as a reference to the years of life allotted to each generation, which are then divided and are allotted to each individual in that generation. *Tosefot HaRosh* explains that when God makes an accounting of people’s lifespans He does so as part of a general decree relating to the lifespans of the entire generation. This is alluded to by the verse: “He that calls the generations from the beginning” (Isaiah 41:4). The *ge'onim* explain that the reference is to the number of years one should live based on his physical structure and health (see Meiri and Rabbi Avraham min HaHar). The Rambam wrote an important treatise in Arabic in which he summarized the various opinions on this subject, from both the philosophical and the medical perspectives.

If he is deserving, God adds years to his lifespan – זָכָה: **מוֹסִיפִים לוֹ**: What is the significance of being given a preordained lifespan if one can merit additional years or lose years

based on one’s actions? The *Tzlah* on *Yoma* 86b suggests that each day has its own unique goals to be fulfilled, and if one did not utilize each day correctly he will be called to account in the World-to-Come. However, if he merits it, he will receive additional days and consequently he will be able to complete the goals that he did not achieve during the amount of time that had been allotted to him.

שְׁהָרִי נִבְיָא עוֹמֵד – וּמִתְנַבֵּא וכו': In a responsum written by Rav Hai Gaon on this matter he proves from here, as well as from Isaiah’s prophecy concerning King Hezekiah’s impending demise, that such prophecies are always conditional on one’s actions and so one can change his fate by amending his ways and through prayer. See the Rambam, who discusses this subject at length when dealing with prophecy in *Mishne Torah* and elsewhere (see also in *Tosafot*).

An unnecessary mishna – משנה שאינה צריכה: From Rashi's commentary it is clear that he holds that at the very least, the clause referring to the permissibility of one's wife's sister after the wife's death is superfluous, since the matter is stated explicitly in the Torah. However, *Tosafot Yeshanim* suggest that even that clause of the mishna hints at a novelty that is not explicit in the Torah. They explain the novelty is in the case where one's previous wife married another man: Unless she dies, the prohibition with regard to her sister still remains in effect. One might have claimed that since, by marrying another man, the woman was rendered forbidden to her first husband, therefore her sister would become permitted to him. To dispel this notion the mishna teaches that the prohibition remains in force until the wife actually dies. Therefore, *Tosafot Yeshanim* suggest that it is the latter clause, which states that if one's *yevama* died one is permitted to her sister, which is entirely superfluous. Once the mishna has stated the *halakha* in the case of one's wife's sister, it is obviously true in the case of one's *yevama* through an *a fortiori* inference.

However, from an opinion in the Jerusalem Talmud it would appear that the primary novelty in the mishna is to be found specifically in the clause concerning the sister of one's *yevama*. The novelty does not lie in the case itself but in the fact that it implies that even after one's *yevama* dies, the levirate bond continues to exist to the extent that relatives of one's *yevama* will remain forbidden to him. The mishna states that the sister of one's *yevama* is an exception to this principle, but by inference the prohibition to other relatives, e.g., her mother or daughter, continue to apply. *Tosafot Yeshanim* and *Tosefot HaRosh* reject this suggestion.

The Ramban claims that only the clause that relates to the basic case of the sister of one's wife or *yevama* being permitted upon the death of one's wife or *yevama* are considered unnecessary because those cases are explicit in the Torah. However, although the principle is the same in the other cases, since they are not stated explicitly there is value in mentioning them here.

In contrast, the Ritva claims that the entire mishna is unnecessary and rejects the suggestion that the cases were taught to indicate some subtle novelty that may be inferred from them. Rather, the mishna was written to reemphasize matters that are already known; doing so is considered "making the Torah great and glorious" (Isaiah 42:21).

ורבנן: מי כתיב מחזקה? "לבית דוד"
כתיב, אי מחזקה נולד, אי מאינש
אחרינא.

And what would the Rabbis respond to Rabbi Akiva's proof? They could counter: **Is it written** that Josiah was to be born specifically from the descendants of Hezekiah? **It is written** only that he would be born "unto the House of David," so he could be born either from the descendants of Hezekiah or from a different person of the House of David. Accordingly, no proof concerning Hezekiah's allotted lifespan can be deduced from that verse.

"אשתו שמתה וכו' יבמתו שמתה"
וכו'. אמר רב יוסף: כאן שנה רבי
משנה שאינה צריכה.

S The mishna details the prohibition with regard to one's wife's sister in various cases: If a man's wife died, he is permitted to her sister; if his *yevama* died, he is permitted to her sister. **Rav Yosef said: Here Rabbi Yehuda HaNasi taught an unnecessary mishna,**^N since the prohibition with regard to one's wife's sister and the fact that the prohibition exists only in the lifetime of one's wife is stated explicitly in the Torah, and there is no additional novelty in this mishna's ruling.

הדרן עלך החולץ

Summary of Perek IV

The chapter began with a discussion of a case in which a woman performed *ḥalitza* or entered into levirate marriage under the assumption that she was required to do so, but it eventually emerged that she was pregnant at the time. The Gemara concludes that the validity of the *ḥalitza* or levirate marriage depends on whether she ultimately required them or not. Therefore, if she ultimately miscarries, in which case it is apparent that she did require them, they are valid. However, if she ultimately gave birth to viable offspring, then the levirate marriage or *ḥalitza* is of no significance.

As part of that discussion, the Gemara considered cases in which a child is born to the *yevama* following levirate marriage and it is unclear whether the child is the offspring of her first husband or the *yavam*. The Gemara then considered the steps that must be taken in all marriages to prevent such uncertainties from arising and to ensure that the lineage of the Jewish people is clear and apparent. The Gemara explained that for this purpose the Sages decreed that no woman should remarry until three months have passed since the end of her previous marriage and it is clear whether or not she is pregnant. With regard to a pregnant or nursing woman the Sages likewise decreed that she should wait a certain period before remarrying.

The Gemara proceeded to examine which cases of forbidden relations produce offspring with *mamzer* status. Although many views on the issue were presented, the accepted opinion is that only offspring from forbidden relations for which one is liable to receive *karet* are *mamzerim*, with the exception of a child born from a union with a menstruating woman, for which the punishment is not *karet*.

The chapter also considered the issues relating to the property of the *yevama* and of her deceased husband. As long as the *yevama* is still awaiting levirate marriage, her property remains her own and under her control. If she dies during that period then that property is bequeathed to her heirs, while the money promised to her in her marriage contract is inherited by her husband's heirs. However, after the levirate marriage the *yevama* is considered to be the wife of the *yavam* in every sense, and therefore the *yavam* has the same level of control over her property as any other husband has over his wife's property. The only exception to this principle is that her marriage contract remains payable from her first husband's estate.

The Gemara also discussed the *halakhot* of conversion and concluded that in order to convert it is necessary to be both circumcised and immersed for the sake of conversion before a court of three judges. A similar process is required for a slave; however, the Gemara examined whether there might be a distinction between the case of a convert and that of a slave with regard to whether it is necessary to willingly accept upon oneself the yoke of the mitzvot.

Introduction to Perek V

This chapter deals exclusively with one issue: The relationship between the various acts that a *yavam* might perform with a *yevama*. In total, there are four options: Intercourse or *ḥalitza*, which are effective by Torah law, and levirate betrothal [*ma'amar*] or a bill of divorce [*get*] by rabbinic law. This chapter clarifies the nature of the relationship between these options by discussing the relative efficacy of the modes of acquisition, i.e., intercourse or levirate betrothal, on the one hand, and the modes of release, i.e., *ḥalitza* or a bill of divorce, on the other. These issues come to the fore when two or more of these acts are performed successively, whether they are performed by a single *yavam* with a single *yevama*, a single *yavam* with two *yevamot* who are co-wives, several *yevamin* with one *yevama*, or several *yevamin* with several *yevamot*.

Examination of these various combinations helps clarify the relative legal validity of each of these acts. Does a given act conclusively determine the relationship between the *yavam* and the *yevama*, or does it leave room for a further act that might, if performed, alter matters?

This clarification proves especially important with regard to the two acts that are of rabbinic ordinance: The levirate betrothal and the bill of divorce for a *yevama*. Indeed, the Sages were in dispute with regard to the exact nature of levirate betrothal and its power of acquisition: Does it constitute a fully valid act of acquisition like regular betrothal, does it grant only partial acquisition, or is it merely symbolic and bereft of any legal validity whatsoever? Similarly, with regard to a bill of divorce given to a woman requiring levirate marriage, in what way is this bill similar to an ordinary bill of divorce? To what extent does it serve only as a symbol and merely resemble standard bills of divorce?

The clarification of these relationships and the various rabbinic ordinances involved constitute the subject matter for this chapter.

מתני' רבן גמליאל אומר: אין גט אחר גט, ולא מאמר אחר מאמר, ולא בעילה אחר בעילה, ולא חליצה אחר חליצה. וחכמים אומרים: יש גט אחר גט, ויש מאמר אחר מאמר, אבל לא אחר בעילה, ולא אחר חליצה כלום.

ביצד? עשה מאמר ביבמותו, ונתן לה גט – צריכה הימנו חליצה. עשה מאמר וחליצה – צריכה הימנו גט. עשה מאמר ובעל – הרי זו כמבוצתה.

MISHNA Rabban Gamliel says:^N A bill of divorce [*get*]^B is not effective when given after a bill of divorce was previously given to a *yevama*. Once a *yevama* receives a bill of divorce from a *yavam*, no bill of divorce given by that *yavam* to her rival wife or a bill of divorce given to her by a different *yavam* is of any effect. And levirate betrothal^B is not effective after a previous levirate betrothal was performed, and intercourse with a second *yevama* is not effective after intercourse with the first one, and *halitza*^B is not effective after *halitza* was previously performed. But the Rabbis say: A bill of divorce is effective when given after a bill of divorce,^N and levirate betrothal is effective after levirate betrothal,^H but nothing is effective after intercourse^N or after *halitza*.^H If a *yavam* has relations with the *yevama* or performs *halitza* with her, no other action performed afterward is effective, whether performed by that *yavam* toward a different *yevama* or by any *yavam* with the original *yevama*.

The mishna elaborates: How^N do these laws work in practice? If a *yavam* performed levirate betrothal^N with his *yevama*, and he later gave her a bill of divorce,^H she nevertheless requires *halitza* from him. The bill of divorce does not fully exempt her from levirate marriage, as the levirate bond remains intact. If he performed levirate betrothal and then *halitza*, she requires a bill of divorce from him in order to cancel the levirate betrothal. If the *yavam* performed levirate betrothal and then engaged in intercourse with the *yevama*, this is the way to perform levirate marriage in accordance with its mitzva, as the Sages instituted this as the proper procedure for a *yavam* to perform levirate marriage.

NOTES

Rabban Gamliel's opinion – שיטת רבן גמליאל – Some early commentaries maintain that Rabban Gamliel's statement with regard to levirate betrothal follows Rabbi Akiva's opinion that betrothal does not take effect on a woman who is forbidden due to a regular prohibition. Accordingly, after the *yavam* performs levirate betrothal with the first *yevama*, the second *yevama* would be forbidden due to the prohibition indicated by the verse: "So shall it be done to the man who does not build his brother's house" (Deuteronomy 25:9); he may build one house, in the singular, but he may not build two houses. Therefore, a second levirate betrothal would not be effective. The Rambam explains that if this is true in cases where the *yavam* consummated the levirate marriage with the first *yevama*, it is true in cases where he merely performed levirate betrothal. *Tosafot*, however, explain that Rabban Gamliel's statement accords with the opinion of the Rabbis, who disagree with Rabbi Akiva and state that betrothal does take effect on a woman forbidden due to a regular prohibition. If the *yavam* had consummated the levirate marriage with the first *yevama*, then betrothal would indeed be effective with the second *yevama*. However, in this case only levirate betrothal was performed, and the Sages did not institute a ruling allowing levirate betrothal to be effective in cases where it was already performed with one *yevama*.

A bill of divorce is effective after a bill of divorce, etc. – יש גט אחר גט וכו': The latter act of giving a bill of divorce or

performing levirate betrothal is of legal consequence. Admittedly, such actions do not acquire the *yevama* or nullify the levirate bond completely, but they do serve to connect the *yavam* to the *yevama* and render him forbidden to her relatives (see the *Meleket Shlomo*).

But nothing is effective after intercourse, etc. – אבל לא אחר וכו': As the Gemara will explain, this broad statement is imprecise, for most Sages agree that in certain situations his actions are effective even after intercourse or *halitza*. It is possible that this principle is only according to the opinion of Rabbi Akiva, or that it is stated in a comprehensive manner because it will later be qualified and elucidated.

How – כיצד: Rashi and *Tosafot* state that this question does not refer particularly to the dispute at the beginning of the mishna. Rather, the mishna details all the various combinations of a bill of divorce, *halitza*, levirate betrothal, and intercourse. This explains why several cases mentioned by the mishna teach us nothing new, or something we easily could have deduced from the other cases, as the *tanna* lists all possibilities.

How...performed levirate betrothal, etc. – כיצד עשה מאמר וכו': The mishna first mentions a *yavam* who performed levirate betrothal or gave a bill of divorce because the levirate betrothal and bill of divorce of a *yevama* are rabbinical decrees. Afterward it turns to actions prescribed by the Torah – intercourse and *halitza* (*Nimmukei Yosef*).

BACKGROUND

Bill of divorce [*get*] – גט: Although the term *get* is sometimes applied to all legal documents, it is commonly used to refer specifically to a bill of divorce. The basic text of a bill of divorce includes the declaration of the husband that he divorces his wife and that she is permitted to marry any other man. He is identified by his name and his father's name, and his wife is identified by her name and her father's name. The document must contain the date it was written and the signatures of two witnesses. In talmudic times a bill of divorce could be written privately by a scribe at the request of the husband. In later generations it became customary for a bill of divorce to be written in a rabbinical court that had expertise in this field, so that no halakhic difficulties would arise that might lead to the invalidation of the document.

Levirate betrothal – מאמר: In the context of the *halakhot* of levirate marriage, levirate betrothal refers to an ordinary act of betrothal that is performed prior to the actual levirate marriage. According to the mishna (*Kiddushin* 1:1), betrothal can be performed with money or its equivalent, e.g., a ring, a legal document, or sexual intercourse. According to Torah law levirate marriage can be consummated only by means of sexual intercourse. The Sages ruled that when the *yavam* gives the *yevama* money and states that he is betrothing her and fulfilling the mitzva of levirate marriage by means of this money, they are betrothed by rabbinic law.

Halitza – חליצה: When a man dies without children, the Torah obligates his brother to perform levirate marriage with the deceased man's wife. The woman is not permitted to marry out of the family until this obligation is performed. If the brother does not wish to marry the woman he may perform the *halitza* ceremony and thereby release the widow from her bond and allow her to remarry (see Deuteronomy 25:7–10). The term *halitza* is derived from the central element of this ceremony, which involves the widow removing a special sandal from the foot of one of her deceased husband's brothers. *Halitza* must be performed before a rabbinical court.

HALAKHA

גט אחר גט וכו' – A bill of divorce after a bill of divorce, etc. – Levirate betrothal does not serve to completely acquire the *yevama*, nor does a bill of divorce serve to nullify the levirate bond entirely. Therefore any action performed with the *yevama* after levirate betrothal or a bill of divorce is effective, whether it is a bill of divorce, levirate betrothal, intercourse, or *halitza*. This *halakha* applies both to situations of one *yavam* and two *yevamot*, one *yevama* and two *yevamin*, as well as two *yevamot* and two *yevamin*, in accordance with the opinion of the Rabbis (Rambam *Sefer Nashim, Hilkhot Yibbum* 5:14; *Shulhan Arukh, Even HaEzer* 170:3).

Nothing is effective after intercourse and *halitza* – לא אחר וכו': A *yavam* who has intercourse with a *yevama* has acquired her fully, and similarly *halitza* serves to completely nullify the levirate bond. Consequently, any act performed after intercourse or *halitza* is of no halakhic consequence (Rambam *Sefer Nashim, Hilkhot Yibbum* 5:14; *Shulhan Arukh, Even HaEzer* 170:12).

If he performed levirate betrothal and gave a bill of divorce – יצא מאמר ונתן גט: If a *yavam* performed levirate betrothal with his *yevama* and gave her a bill of divorce, she still requires *halitza*. If he performed levirate betrothal and *halitza*, she requires a bill of divorce to cancel his levirate betrothal (Rambam *Sefer Nashim, Hilkhot Yibbum* 5:4; *Shulhan Arukh, Even HaEzer* 170:2).

If he gave a bill of divorce and performed levirate betrothal – **נָתַן גִּט וְעָשָׂה מֵאָמֶר** – If a *yavam* gave a bill of divorce to his *yevama*, and he or his brother subsequently performed levirate betrothal with her, she requires a bill of divorce to cancel the levirate betrothal, and *halitza* to nullify the levirate bond. Similarly, if he gave her a bill of divorce and afterward engaged in intercourse with her, she needs a bill of divorce to cancel the betrothal accomplished by intercourse, and *halitza* to nullify the levirate bond (Rambam *Sefer Nashim*, *Hilkhot Yibbum* 5:7; *Shulḥan Arukh*, *Even HaEzer* 170:9).

נָתַן גִּט וְעָשָׂה מֵאָמֶר – צְרִיכָה גִּט וְחִלּוּצָה. נָתַן גִּט וּבִעַל – צְרִיכָה גִּט וְחִלּוּצָה. נָתַן גִּט וְחָלַץ – אֵין אַחֵר חִלּוּצָה כָּלוּם.

If the *yavam* gave the *yevama* a bill of divorce and afterward performed levirate betrothal^H with her, she requires another bill of divorce to cancel the levirate betrothal, as well as *halitza* to nullify the levirate bond. If he gave her a bill of divorce and then engaged in intercourse with her, she requires a bill of divorce to cancel the betrothal that took place via intercourse, and *halitza* to nullify the levirate bond; the intercourse did not affect the levirate bond because once he gave her a bill of divorce she was forbidden to him. If he gave her a bill of divorce and performed *halitza*, nothing is effective after *halitza*, as the levirate bond was completely nullified.

חָלַץ וְעָשָׂה מֵאָמֶר, נָתַן גִּט וּבִעַל, אוֹ בִעַל וְעָשָׂה מֵאָמֶר, נָתַן גִּט וְחָלַץ – אֵין אַחֵר חִלּוּצָה כָּלוּם.

Similarly, if he performed *halitza* with her and then either performed levirate betrothal, or gave a bill of divorce, or engaged in intercourse with her; alternatively, if he engaged in intercourse with her and then either performed levirate betrothal, or gave a bill of divorce, or performed *halitza* after they engaged in relations, nothing is effective after *halitza* or intercourse. Any action performed afterward is unrelated to the levirate bond.

Perek V
Daf 50 Amud b

NOTES

Levirate betrothal with this one and levirate betrothal with that one – **מֵאָמֶר בָּזוּ וּמֵאָמֶר בָּזוּ**: *Tosafot* ask: Why can't the *yavam* give a bill of divorce for his levirate betrothal and thereby permit the second woman to perform levirate marriage, as this is an effective way of revoking the levirate betrothal according to the Gemara in the third chapter (32a). The Rivan answers that the ruling in the third chapter only applies after the fact; it is forbidden to do so *ab initio*. The *Tosafot HaRosh* holds that there the Gemara is referring only to a case where the brother who performed the levirate betrothal and gave the bill of divorce subsequently died, and therefore that ruling cannot be applied to the case in this mishna. The Ramban cites an explanation of this mishna that maintains that it is speaking only of a man who does not want to perform levirate marriage, but the Ramban rejects this answer. He himself explains that the *tanna* here is stating the basic *halakha*, without mentioning the option instituted by the Sages. Alternatively, this mishna follows the more stringent opinion found in the Gemara there, whereby a bill of divorce given by one of the brothers to the *yevama* disqualifies the levirate betrothal of the other women involved.

She requires a bill of divorce and *halitza* – **צְרִיכָה גִּט וְחִלּוּצָה**: *Tosafot* point out that this is correct only according to the opinion that invalid *halitza* serves to exempt the rival wife. According to the opinion that invalid *halitza* must be repeated for both rival wives, one must say that the mishna used the more common singular form, but it actually means that he must perform *halitza* twice. This principle of the singular form of *halitza* used in place of the plural applies here and in similar cases.

אַחַת יִבְמָה אַחַת לִיבָם אֶחָד, וְאַחַת שְׁתֵּי יִבְמוֹת לִיבָם אֶחָד. בִּיגְדוֹ עָשָׂה מֵאָמֶר בָּזוּ וּמֵאָמֶר בָּזוּ – צְרִיכוֹת שְׁנֵי גִטִּין וְחִלּוּצָה. מֵאָמֶר בָּזוּ וְגִט לָזוּ – צְרִיכָה גִּט וְחִלּוּצָה. מֵאָמֶר בָּזוּ וּבִעַל אֶת זוֹ – צְרִיכוֹת שְׁנֵי גִטִּין וְחִלּוּצָה. מֵאָמֶר בָּזוּ וְחָלַץ לָזוּ – הִרְאֵנוּהָ צְרִיכָה גִּט.

The above principles apply both in cases of one *yevama* to one *yavam*, as well as in cases of two *yevamot* to one *yavam*. How so? If he performed levirate betrothal with this *yevama* and levirate betrothal with that one,^{NH} i.e., her rival wife, they require two bills of divorce, each for her own levirate betrothal, and *halitza* with one of them, to release them both from the levirate bond. If he performed levirate betrothal with this one and gave a bill of divorce to that one,^H the first woman requires a bill of divorce to cancel the levirate betrothal, and one of them must receive *halitza*.^N If he performed levirate betrothal with this one and engaged in intercourse with that one,^H they require two bills of divorce and he must perform *halitza* with one of them. If the *yavam* performed levirate betrothal with this one and performed *halitza* with that one,^H the first woman requires a bill of divorce.

HALAKHA

Levirate betrothal with this one and levirate betrothal with that one – **מֵאָמֶר בָּזוּ וּמֵאָמֶר בָּזוּ**: If a *yavam* performed levirate betrothal with one *yevama* and then he, or one of his brothers, performed levirate betrothal with her rival wife, each of the women requires a bill of divorce for the levirate betrothal, and the *yavam* must also perform *halitza* with one of them in order to exempt them both from levirate marriage (Rambam *Sefer Nashim*, *Hilkhot Yibbum* 5:14; *Shulḥan Arukh*, *Even HaEzer* 170:6).

Levirate betrothal with this one and a bill of divorce to that one – **מֵאָמֶר בָּזוּ וְגִט לָזוּ**: If a *yavam* performed levirate betrothal with one *yevama*, and subsequently he, or one of his brothers, gave a bill of divorce to her rival wife, he must give a bill of divorce for his levirate betrothal, and he or one of his brothers must perform *halitza* with one of them. Some authorities (*Tur*, citing *Tosafot*) rule that both require *halitza*

(Rambam *Sefer Nashim*, *Hilkhot Yibbum* 5:6; *Shulḥan Arukh*, *Even HaEzer* 170:7).

Levirate betrothal with this one and engaged in intercourse with that one – **מֵאָמֶר בָּזוּ וּבִעַל אֶת זוֹ**: If a *yavam* performed levirate betrothal with one *yevama* and he, or one of his brothers, engaged in intercourse with her rival wife, they both require a bill of divorce, and the *yavam* must perform *halitza* with one of them (Rambam *Sefer Nashim*, *Hilkhot Yibbum* 5:6; *Shulḥan Arukh*, *Even HaEzer* 170:8).

Levirate betrothal with this one and performed *halitza* with that one – **מֵאָמֶר בָּזוּ וְחָלַץ לָזוּ**: If a *yavam* performed levirate betrothal with one *yevama* and he, or one of his brothers, performed *halitza* with the other one, the first woman requires a bill of divorce (Rambam *Sefer Nashim*, *Hilkhot Yibbum* 5:6; *Shulḥan Arukh*, *Even HaEzer* 170:7).

Performed *halitza* and then proceeded to perform levirate betrothal – **חֵלֶץ וְעָשָׂה מֵאָמֶר** – According to Rashi, the mishna here returns to discuss the case of a single *yavam* and *yevama*, and it repeats this case in order to introduce the dispute between Rabbi Nehemya and the Rabbis. The Rashba and other commentaries claim that it is not necessary to define the case in this way, as this statement can apply to the cases of multiple *yevamin* and *yevamot* as well.

Halitza in the middle – חֵלֶץ בְּאֶמְצַע – Rashi explains that this refers to a *yavam* who gave a bill of divorce to one *yevama* and performed *halitza* with another *yevama*. If he afterward performs levirate betrothal to either of the women, it is not effective. *Tosefot HaRosh* takes issue with this example, as this *halitza* should not be considered in the middle, for there is nothing that must take place afterward. Instead, this is referring to a case where a *yavam* performed levirate betrothal followed by *halitza*. In that case he must afterward give a bill of divorce to cancel his levirate betrothal. Despite the fact that the *halitza* is considered to be in the middle as further action is demanded on his part, no other actions are effective after the *halitza*.

Nothing is effective after it – אֵין אַחֲרֶיהָ כָּלִים – According to Rashi's comments on the mishna, in cases where the *yavam* engaged in intercourse at some stage, nothing is required after it, and she can be released with a bill of divorce without the need for *halitza* (see Maharsha). Other commentaries disagree and maintain that even according to Rabbi Nehemya, she needs *halitza* to release her from the levirate bond after invalid intercourse. The statement: There is nothing after it, only means that subsequent actions do not create a bond that would forbid him to marry her relatives. Rashi, in his commentary on the Gemara, concurs with this alternate explanation (Ramban).

גַּט לָזוֹ וְגַט לָזוֹ – צְרִיכוֹת הַיָּמִינוּ חֲלִיצָה.
גַּט לָזוֹ וְבָעַל אֶת זוֹ – צְרִיכָה גַּט וְחֲלִיצָה.
גַּט לָזוֹ וּמֵאָמֶר בָּזוֹ – צְרִיכָה גַּט וְחֲלִיצָה.
גַּט לָזוֹ וְחֵלֶץ לָזוֹ – אֵין אַחֵר חֲלִיצָה
כָּלִים.

If the *yavam* gave a bill of divorce to this *yevama* and a bill of divorce to that one,^h they require *halitza* from him. If he gave a bill of divorce to this one and engaged in intercourse with that one,^h the latter requires a bill of divorce and *halitza*. If he gave a bill of divorce to this one and performed levirate betrothal with that one,^h the latter requires a bill of divorce and he must perform *halitza* with one of them. If the *yavam* gave a bill of divorce to this woman and performed *halitza* with that one,^h nothing is effective after *halitza*, and he cannot betroth the rival wife.

חֵלֶץ וְחֵלֶץ, אוֹ חֵלֶץ וְעָשָׂה מֵאָמֶר, נָתַן
גַּט וְבָעַל, אוֹ בָעַל וְבָעַל, אוֹ בָעַל וְעָשָׂה
מֵאָמֶר, נָתַן גַּט וְחֵלֶץ – אֵין אַחֵר חֲלִיצָה
כָּלִים. בֵּין יָבֵם אֶחָד לְשֵׁתֵי יָבָמוֹת. בֵּין
שְׁנֵי יָבָמִין לְיָבָמָה אַחַת.

If he performed *halitza* with one *yevama* and then performed *halitza* with a second *yevama*, or he performed *halitza* with one *yevama* and then proceeded to either perform levirate betrothal,ⁿ give a bill of divorce, or engage in intercourse with a second; alternatively, he engaged in intercourse with one *yevama* and engaged in intercourse with the second *yevama*, or he engaged in intercourse with one *yevama* and proceeded to either perform levirate betrothal, give a bill of divorce, or perform *halitza* with the second, nothing is effective after *halitza* or intercourse. These *halakhot* apply both in cases of one *yavam* to two *yevamot*, as well as two *yevamin* to one *yevama*.

חֵלֶץ וְעָשָׂה מֵאָמֶר, נָתַן גַּט וְבָעַל, אוֹ
בָעַל וְעָשָׂה מֵאָמֶר, וְנָתַן גַּט וְחֵלֶץ –
אֵין אַחֵר חֲלִיצָה כָּלִים. בֵּין בִּתְחִלָּה
בֵּין בְּאֶמְצַע בֵּין בְּסוֹף.

If he performed *halitza* with one *yevama* and then proceeded to either perform levirate betrothal, give a bill of divorce, or engage in intercourse with a second *yevama*; alternatively, he engaged in intercourse with one *yevama* and then proceeded to perform levirate betrothal, or give a bill of divorce, or perform *halitza* with a second *yevama*, nothing is effective after *halitza*, whether the *halitza* took place at the beginning, in the middle,ⁿ or at the end. All of these *halakhot* accord with the opinion of Rabbi Akiva, who maintains betrothal does not take effect on a woman who is forbidden due to the prohibition against betrothing a *yevama* after *halitza*.^h

וְהַבְעִילָהּ, בְּזִמְנָה שְׁהִיא בִּתְחִלָּה – אֵין
אַחֲרֶיהָ כָּלִים. בְּאֶמְצַע וּבְסוֹף – יֵשׁ
אַחֲרֶיהָ כָּלִים. רַבִּי נְחֶמְיָה אוֹמֵר: אַחַת
בְּעִילָהּ וְאַחַת חֲלִיצָה, בֵּין בִּתְחִלָּה בֵּין
בְּאֶמְצַע בֵּין בְּסוֹף – אֵין אַחֲרֶיהָ כָּלִים.

But with regard to intercourse, when it is at the beginning, i.e., the first act the *yavam* performed with his *yevama*, nothing is effective after it and any subsequent action is void. However, if it was performed in the middle, and similarly if it was performed at the end, i.e., after some other action that impairs the validity of his intercourse, something is effective after it.^h Rabbi Nehemya says: Both with regard to intercourse and *halitza*, whether performed at the beginning, in the middle, or at the end, nothing is effective after it.ⁿ If the *yavam* performed a valid action according to Torah law, any subsequent action is of no consequence according to *halakha*.

HALAKHA

A bill of divorce to this one and a bill of divorce to that one – גַּט לָזוֹ וְגַט לָזוֹ: If a *yavam* gave a bill of divorce to one *yevama* and he, or one of his brothers, gave a bill of divorce to her rival wife, he must perform *halitza* with one of them, and each *yavam* is forbidden to the relatives of the women to whom he gave a bill of divorce (Rambam *Sefer Nashim*, *Hilkhot Yibbum* 5:15; *Shulḥan Arukh*, *Even HaEzer* 170:1, 5).

A bill of divorce to this one and engaged in intercourse with that one – גַּט לָזוֹ וְבָעַל אֶת זוֹ: If a *yavam* gave a bill of divorce to one *yevama* and he, or one of his brothers, engaged in intercourse with her rival wife, the latter requires a bill of divorce, and he must perform *halitza* with one of them (Rambam *Sefer Nashim*, *Hilkhot Yibbum* 5:7; *Shulḥan Arukh*, *Even HaEzer* 170:14).

A bill of divorce to this one and levirate betrothal with that one – גַּט לָזוֹ וּמֵאָמֶר בָּזוֹ: If a *yavam* gave a bill of divorce to one *yevama* and he, or one of his brothers, performed levirate

betrothal with her rival wife, the latter requires a bill of divorce, and he must perform *halitza* with one of them (Rambam *Sefer Nashim*, *Hilkhot Yibbum* 5:9; *Shulḥan Arukh*, *Even HaEzer* 170:11).

A bill of divorce to this one and performed *halitza* with that one – גַּט לָזוֹ וְחֵלֶץ לָזוֹ: If a *yavam* gave a bill of divorce to one *yevama* and he, or one of his brothers, performed *halitza* with her rival wife, nothing is necessary after *halitza* (Rambam *Sefer Nashim*, *Hilkhot Yibbum* 5:14; *Shulḥan Arukh*, *Even HaEzer* 170:14).

Actions after *halitza* – מַעֲשֵׂה לְאַחֵר חֲלִיצָה: If a *yavam* performed *halitza* with his *yevama* and afterward he, or one of his brothers, performed *halitza* with her rival wife or gave her a bill of divorce, this last action is of no consequence; the second *halitza* or bill of divorce does not render her relatives forbidden to him. However, if he or one of his brothers performed levirate betrothal with her rival wife or engaged in intercourse with her,

she requires a bill of divorce. The *halakha* does not follow the mishna, which is in accordance with the opinion of Rabbi Akiva (*Shulḥan Arukh*, *Even HaEzer* 170:13).

מעֲשֵׂה לְאַחֵר בִּיאָה – Actions after intercourse with a *yevama* – **בִּיבָמָה**: If one of the brothers has relations with the *yevama*, any further nullifying action he or one of his brothers performs with her rival wife is of no effect; it does not render her relatives forbidden to him. However, if any disqualifying action preceded the intercourse, for example if he performed levirate betrothal with the rival wife or gave her a bill of divorce, the act of intercourse does not fully acquire the *yevama*, and she requires a bill of divorce. If at this stage a *yavam* performs levirate betrothal with another rival wife, it serves to forbid him to her relatives. The *halakha* is not in accordance with Rabbi Nehemya (Rambam *Sefer Nashim*, *Hilkhot Yibbum* 5:9; *Shulḥan Arukh*, *Even HaEzer* 170:12, 14).

One bill of divorce or one levirate betrothal – **גט אחד** – **ימאמר אחד**: Everyone agrees that a bill of divorce given to one *yevama* or levirate betrothal performed with one *yevama* serves to forbid the *yavam* to her rival wife and to render the relatives of the *yevama* prohibited to the one who gave the bill of divorce (Rambam *Sefer Nashim*, *Hilkhot Yibbum* 5:7; *Shulhan Arukh*, *Even HaEzer* 170:1).

NOTES

Halitza is also ineffective – **חליצה נמי לא מהני**: *Tosafot* point out that the Sages did not decree that women in general should require *halitza* when being divorced from their husbands out of a concern that people will confuse the cases, as everyone knows that *halitza* is not relevant for most women. In the Jerusalem Talmud the *halakha* that only a bill of divorce is effective for a married woman, and not *halitza*, is derived from specific verses.

Because it is effective in general – **משום דמהני בעלמא**: The Gemara does not suggest that people will mistakenly conclude that if levirate betrothal is not effective, regular betrothal is also not effective. Even according to the opinion that betrothal by money is not from the Torah, people betroth in this manner all the time and will not doubt its efficacy (Ritva).

A decree with regard to intercourse after a bill of divorce, etc. – **גזירה ביאה אחר הגט**: Even though the Sages already prohibited intercourse after a bill of divorce and required the *yavam* to perform *halitza*, they also saw fit to decree that invalid intercourse should not be completely effective, for otherwise the initial prohibition would not be upheld (Rashba; see Ritva).

In any situation like these let her continue performing *halitza* – **כל כי הני תחלוץ ותיזיל**: Rashi explains this as a straightforward statement: It is of no concern to us if she performs *halitza* several times. The Rashba and the Ritva explain this as a question: Would a woman really perform *halitza* multiple times? With regard to intercourse it makes sense to institute a decree, lest he engage in intercourse after performing *halitza* with her rival wife, but with regard to *halitza* there is no reason to suppose one will want to perform *halitza* again; the *Nimmukei Yosef* offers a slightly different version of the same approach. These different interpretations have halakhic ramifications with regard to the issue of whether it is permitted to perform *halitza* with two *yevamot* (see *Beit Shmuel* and *Arukh LaNer*).

גמ' עד כאן לא פליגי אלא בגט אחר גט ומאמר אחר מאמר, אבל גט אחד ביבמה [ומאמר אחד ביבמה] – מהני.

מאי טעמא אמור רבנן גט ביבמה מהני – משום דמהני בעלמא. דאי אמרת לא מהני, אמרי: גט להוציאה וחליצה להוציאה ומדגט לא מהני – חליצה נמי לא מהני, ואתי למיבעל אחר חליצה.

ומאי טעמא אמור רבנן מאמר ביבמה מהני – משום דמהני בעלמא. דאי אמרת לא מהני, אמרי: מאמר לקנות וביאה לקנות, ומדמאמר לא מהני – ביאה נמי לא מהניא ואתי למיבעל אחר ביאה.

ומאי טעמא אמור רבנן ביאה פסולה יש אחריה כלום?

אמרי: אי ביאה אחר הגט היא – גזירה ביאה אחר הגט משום ביאה אחר חליצה, ואי ביאה אחר מאמר היא – גזירה ביאה אחר מאמר משום ביאה אחר ביאה.

ומאי טעמא אמור רבנן האי חליצה פסולה אין אחריה כלום – אמרי: מאי לגזור? נגזור חליצה אחר הגט משום חליצה אחר חליצה – כל כי הני תחלוץ ותיזיל!

GEMARA Rabban Gamliel and the Rabbis disagree only with regard to the efficacy of a bill of divorce performed after a bill of divorce and levirate betrothal performed after levirate betrothal, but one bill of divorce given to a single *yevama*, or one levirate betrothal performed with a single *yevama*,¹ is effective. The bill of divorce prevents him from performing levirate marriage, and the levirate betrothal requires a bill of divorce to cancel it, in addition to *halitza*.

The Gemara elaborates: What is the reason that the Sages said that a bill of divorce is effective for a *yevama*, despite the fact that she is not his wife? This is because it is effective in general in cases of married women. For if you say that it is not effective in the case of a *yevama*, there are some who might mistakenly say the following: A bill of divorce is given to a woman in order to remove her from her husband, and *halitza* likewise serves to remove her from the *yavam*; since a bill of divorce is ineffective for this *yevama*, *halitza* is also ineffective^N and does not sever their relationship completely. And perhaps the *yavam* will come to engage in intercourse after *halitza*, which is forbidden by the Torah prohibition derived from the verse: "So shall it be done to the man who does not build his brother's house" (Deuteronomy 25:9).

And what is the reason the Sages said that levirate betrothal is effective for a *yevama*? Because it is effective in general,^N as levirate betrothal is essentially an act of betrothal. For if you say that it is not effective, there are some who might mistakenly say: Levirate betrothal serves to acquire a woman and intercourse serves to acquire a woman in general, as women can be betrothed by intercourse; since levirate betrothal is ineffective in the case of a *yevama*, intercourse is also ineffective, i.e., it does not acquire a *yevama* completely. And he will therefore come to engage in intercourse with a rival wife after intercourse with the first *yevama*.

And what is the reason the Sages who disagree with Rabbi Nehemya said that invalid intercourse, i.e., intercourse that follows any disqualifying action with the rival wife of a *yevama*, does not fully acquire the *yevama*, such that something is effective after it? In this case the invalid intercourse does not cancel the levirate bond, and therefore further action with the *yevama* is effective.

The Sages say: If this is intercourse performed after a bill of divorce, then it is considered invalid due to a rabbinic decree with regard to intercourse after a bill of divorce^N because of its potential confusion with a case of intercourse after *halitza*. The Sages established that invalid intercourse of this kind should not cancel the levirate bond completely, for if it did, then people might come to engage in intercourse after *halitza*, which would violate a Torah prohibition. And if this is intercourse performed after levirate betrothal, then it is considered invalid due to a rabbinic decree with regard to intercourse after levirate betrothal because of its potential confusion with a case of intercourse with the second *yevama* after intercourse with the first. If intercourse after levirate betrothal is effective, people might come to engage in intercourse with a second *yevama* after intercourse with a first, and this is forbidden as the woman is considered his brother's wife who is not eligible for levirate marriage.

And what is the reason the Sages said with regard to this invalid *halitza* that nothing is effective after it? For they say: What is the reason that we should we issue a decree in that case? Should we issue a decree with regard to *halitza* performed after a bill of divorce due to a concern for *halitza* performed after *halitza*? In this case there is no concern, as there is no prohibition involved in repeating *halitza*. In any situation like these, let her continue performing *halitza*,^N for no harm is done if *halitza* is performed unnecessarily.

לְיָגוֹר חֲלִיצָה אַחֵר מֵאִמֶּר מִשּׁוּם חֲלִיצָה
אַחֵר בִּיָּאָה – אִטּוּ חֲלִיצָה אַחֵר מֵאִמֶּר
מִי לֹא בְּעֵינָא גֵט לְמֵאִמְרוּ? חֲלִיצָה אַחֵר
בִּיָּאָה נָמִי – בְּעֵינָא גֵט לְבִיָּאָתוּ.

Alternatively, **should we issue a decree** stating that other actions are effective after *halitza* is performed **after levirate betrothal due to the concern for confusion with the case of *halitza* performed after intercourse?** In this case there is a concern that people will assume that no bill of divorce is required after intercourse so long as the *yavam* performed *halitza*. The Gemara challenges this concern: **Is that to say that in the case of *halitza* after levirate betrothal she does not require a bill of divorce for his levirate betrothal**, such that one would conclude the same for *halitza* after intercourse? In the case of *halitza* after levirate betrothal, the woman requires a bill of divorce, and similarly in the case of *halitza* after intercourse **she likewise requires a bill of divorce for his intercourse**. Thus, the same action performed following *halitza* after levirate betrothal is also performed following *halitza* after intercourse, and therefore there is no need to issue a further decree.

אָמַר רַבָּא: § Rava said:

Perek V
Daf 51 Amud a

מֵאִי טַעְמָא דְּרַבִּין גַּמְלִיאֵל – דְּמִסְפָּקָא
לִיה: גֵּט, אִי דָּחִי אִי לֹא דָּחִי, מֵאִמֶּר, אִי
קָנִי אִי לֹא קָנִי. גֵּט אִי דָּחִי אִי לֹא דָּחִי,
אִי קָמָא דָּחִי – בְּתָרָא מֵאִי קָעִבִּיד? אִי
קָמָא לֹא דָּחִי – בְּתָרָא נָמִי לֹא דָּחִי.

What is the reason for the ruling of Rabban Gamliel that a bill of divorce is not effective after a bill of divorce? It is **because he is uncertain with regard to a bill of divorce whether it effectively precludes levirate marriage or whether it does not preclude levirate marriage**. Similarly, he is uncertain with regard to **levirate betrothal, whether it effectively acquires the *yevama* or does not acquire her at all**. The Gemara clarifies: With regard to a **bill of divorce**, he is uncertain as to **whether it precludes levirate marriage or does not preclude it**. If the first bill of divorce **precludes levirate marriage, what did he do by giving the latter bill of divorce, as it has no substance?** Alternatively, **if the first bill of divorce does not preclude levirate marriage, neither does the latter preclude levirate marriage**.

מֵאִמֶּר אִי קָנִי אִי לֹא קָנִי, אִי קָמָא קָנִי –
בְּתָרָא מֵאִי קָעִבִּיד? וְאִי קָמָא לֹא קָנִי –
בְּתָרָא נָמִי לֹא קָנִי.

Likewise, with regard to **levirate betrothal**, he is uncertain as to **whether it acquires the *yevama* or does not acquire her**. If the first levirate betrothal **effectively acquires the *yevama*, what does the last one accomplish?** And if the first one **does not acquire her, the last one also does not acquire her**. For this reason Rabban Gamliel maintains that a bill of divorce is not effective after a bill of divorce was given, and similarly levirate betrothal is not effective after levirate betrothal was performed.^N

NOTES

שִׁיתוּת – The opinions of Rabban Gamliel and the Rabbis – רַבִּין גַּמְלִיאֵל וְחֲכָמִים: The Jerusalem Talmud provides an analysis of Rabban Gamliel's opinion that is similar to the one found here. There it compares Rabban Gamliel's opinion to that of Rabbi Shimon, who maintains that levirate betrothal either acquires the *yevama* completely or it does not acquire her at all. The Jerusalem Talmud goes on to demonstrate, as Abaye argues here, that Rabban Gamliel must be of the opinion that levirate betrothal and a bill of divorce acquire her to a certain extent. The Rashba and others note that the Gemara here does not inquire into the reason behind the opinion of

the Rabbis. Despite the fact that the Gemara briefly states subsequently that the effects of levirate betrothal and a bill of divorce were instituted by the Sages, this sentence does not appear in all versions of the text and is mentioned only incidentally rather than as a full explanation. These commentaries explain that this is because the reasoning of the Rabbis is clear; it is Rabban Gamliel's opinion that requires elucidation. The Rabbis' opinion is that since levirate betrothal is a rabbinic institution, its effect is not complete, and thus both levirate betrothal and a bill of divorce can be effective even after levirate betrothal.

איתביה אביי: ומודה רבן גמליאל
שיש גט אחר מאמר, ומאמר אחר
הגט, וגט אחר ביאה ומאמר, ומאמר
אחר ביאה וגט.

Abaye raised an objection to his opinion from a *baraita*: And Rabban Gamliel concedes that a bill of divorce is effective after levirate betrothal and levirate betrothal is effective after a bill of divorce. If a *yavam* gave a bill of divorce to one *yevama* and then performed levirate betrothal with the other, or the reverse, both actions would be effective. And he also concedes that a bill of divorce is effective after intercourse and levirate betrothal such that if the *yavam* engaged in levirate betrothal with one *yevama*, engaged in intercourse with a second, and gave a bill of divorce to a third, the bill of divorce is effective and he is prohibited from marrying the relatives of the third *yevama*. And he concedes that levirate betrothal is effective after intercourse and a bill of divorce, such that if he gave a bill of divorce to one woman, engaged in intercourse with a second, and performed levirate betrothal with a third, the levirate betrothal is effective and the third woman requires a bill of divorce.

ואי מספקא ליה לרבן גמליאל –
תהוי בביאה דלכתחלה, ותקני דהא
תנן: הבעילה, בזמן שהיא בתחלה –
אין אחריה כלום.

And if Rabban Gamliel is uncertain^N with regard to the efficacy of levirate betrothal or a bill of divorce, then the third action should never be effective. Either the initial levirate betrothal or bill of divorce was completely effective, in which case any subsequent action is not effective, or these actions are not effective at all and the intercourse that followed them should be like intercourse performed at the beginning, and it should serve to acquire the *yevama* completely, and any actions performed afterward with the rival wife should be of no account. For we learned in the mishna: With regard to intercourse, when it is at the beginning, nothing is effective after it. Consequently, Rabban Gamliel's ruling is difficult.

אלא אמר אביי: לעולם פשיטא ליה
לרבן גמליאל בגט דדחי, ומאמר
דקני. מיהו, אמור רבנן: הא יבמה,
בחד צד מהני ביה גט, ובחד צד מהני
בה מאמר. גט אחר גט – לא דחי,
דהא דחה ליה קמא, ומאמר אחר
מאמר – לא קני, דהא קני ליה קמא.
גט אחר מאמר, ומאמר אחר הגט –
האי מילתא קא דחי, והאי מילתא
קא קני.

Rather, Abaye said: Actually, it is obvious to Rabban Gamliel that a bill of divorce precludes levirate marriage, and that levirate betrothal acquires the *yevama*. Nevertheless, the Sages said that with regard to this *yevama*, in one respect a bill of divorce is effective for her, and in another respect levirate betrothal is effective for her, but they are not effective in the same manner. Therefore, a bill of divorce given after a bill of divorce does not preclude levirate marriage, as the first bill of divorce has already precluded it for him as much as he can preclude it by means of a bill of divorce. And levirate betrothal performed after levirate betrothal does not acquire her, as the first levirate betrothal has acquired her for him as much as possible. However, with regard to a bill of divorce after levirate betrothal, and levirate betrothal after a bill of divorce, this action precludes levirate marriage and that action acquires the *yevama*. Since the acquisition of levirate betrothal and the nullification of a bill of divorce work in different ways, there can be both an acquisition and a nullification, and therefore one can be effective after the other.

ורבנן: כל חד וחד תקינו ליה רבנן גט
ומאמר ביבמה.

However, the Rabbis maintain that the Sages instituted for each and every one of the brothers-in-law both the nullification of a bill of divorce and the acquisition of levirate betrothal for a *yevama*, and they decreed that these should be effective for each of the *yevamot*. Therefore the strength of the first bill of divorce or levirate betrothal is equal to that of the second one, and both are effective.

NOTES

ואי מספקא ליה לרבן – And if Rabban Gamliel is uncertain, etc. – Rashi explains this proof in the following manner: If Rabban Gamliel maintains that levirate betrothal either acquires the *yevama* fully or not at all, either way he should not concede in the case of a bill of divorce after intercourse and levirate betrothal. If levirate betrothal acquires her completely the subsequent intercourse and bill of divorce are of no consequence, and if levirate betrothal does not acquire her at all then the intercourse should acquire her fully, and any further action should be ineffective. The early commentaries note that according to Rashi's explanation, Abaye's statement is truncated, as he only mentions

one side of the issue (Rashba; Ritva). They therefore prefer the following interpretation of Rabbeinu Hananel: If Rabban Gamliel is uncertain as to whether levirate betrothal acquires the *yevama*, how can something that only uncertainly acquires her nullify an act, i.e., intercourse, that definitely acquires her according to Torah law? Therefore, when the intercourse takes place after the levirate betrothal it should acquire her completely and the subsequent bill of divorce should not be effective. However, it has been pointed out that this argument is explained in the Jerusalem Talmud in precisely the manner suggested by Rashi.

This invalid intercourse is superior to levirate betrothal – **הָאֵי בִּינְיָה פְּסוּלָה עֲדִיפָא מִמַּאמְרָא**: It would appear that one could similarly argue that a bill of divorce is also preferable to levirate betrothal, as it too is effective after levirate betrothal. However, the only reason a bill of divorce takes effect after levirate betrothal is that a bill of divorce works on a different plane than levirate betrothal, i.e., its effectiveness is not related to that of the levirate betrothal. In contrast, the power of acquisition of intercourse is certainly of the same type as levirate betrothal (*Tosafot Yeshanim*).

Acquires the entire remainder left by the bill of divorce – קָנִי לְכוּלֵּיהּ שְׂוִירָא דְּגֵט: No further levirate betrothal is possible after levirate betrothal and a bill of divorce, as even Rabban Gamliel agrees that in the case of levirate betrothal after levirate betrothal and a bill of divorce, the second levirate betrothal is not effective (*Ritva*).

Shall we say that this is a conclusive refutation of Shmuel – לִימָא תִּהְיֵי תִּיּוּבְתָא דְּשְׁמוּאֵל: Most early commentaries follow Rashi's explanation that the difficulty only stems from Rabban Gamliel's opinion, as Rabban Gamliel maintains that even though the *yavam* can perform a superior *halitza* with the rival wife, he can nevertheless exempt the rival wife by means of this invalid *halitza*. The opinion of the Rabbis, however, presents no difficulty, for they maintain that the *halitza* of the two rival wives is equally invalid. *Tosafot Yeshanim*, however, claim that the Gemara could have raised the difficulty according to the opinion of the Rabbis, but it preferred to cite Rabban Gamliel, who states this *halakha* explicitly.

HALAKHA

A bill of divorce to this one and a bill of divorce to that one – גֵּט לְזוֹ וְגֵט לְזוֹ: If two rival wives required levirate marriage, and the *yavam* gave a bill of divorce to each of them, he is forbidden to the relatives of both. Similarly, if two *yevamin* gave a bill of divorce to one *yevama*, they are both forbidden to her relatives, and likewise two *yevamin* who gave bills of divorce to two different rival wives, each is prohibited to the relatives of the woman to whom he gave the bill of divorce, in accordance with the opinion of the Rabbis (*Rambam Sefer Nashim, Hilkhos Yibbum* 5:15; *Shulhan Arukh, Even HaEzer* 170:4).

Levirate betrothal with this one and levirate betrothal with that one – מַאמְרָא בְּזוֹ וּמַאמְרָא בְּזוֹ: If two rival wives happened before one *yavam*, and he performed levirate betrothal with both of them, he is forbidden to marry the relatives of both. Likewise, if two *yevamin* performed levirate betrothal with one *yevama*, they are both forbidden to marry her relatives, and if the two *yevamin* performed levirate betrothal with two different rival wives, each is forbidden to the relatives of the woman with whom he performed the levirate betrothal, as stated by the Rabbis (*Rambam Sefer Nashim, Hilkhos Yibbum* 5:15; *Shulhan Arukh, Even HaEzer* 170:6).

וְהָאֵי בִּינְיָה פְּסוּלָה עֲדִיפָא מִמַּאמְרָא, וְגִרְעָא מִמַּאמְרָא. עֲדִיפָא מִמַּאמְרָא, דְּאִילוּ מַאמְרָא אַחֵר מַאמְרָא לֹא מְהִינִי, וְאִילוּ בִּינְיָה אַחֵר מַאמְרָא – מְהִינִי. וְגִרְעָא מִמַּאמְרָא, דְּאִילוּ מַאמְרָא אַחֵר הֵגֵט קִנְיָ לְכוּלֵּיהּ שְׂוִירָא דְּגֵט, וְאִילוּ בִּינְיָה אַחֵר הֵגֵט – לֹא קִנְיָ לִיהּ לְכוּלֵּיהּ שְׂוִירָא דְּגֵט.

תָּנוּ רַבָּנִי: כִּיצַד אָמַר רַבֵּן גַּמְלִיאֵל אֵין גֵּט אַחֵר גֵּט? שְׁתֵּי יְבָמוֹת שִׁנְפְּלוּ לְפָנֵי יָבָם אַחֵר, וְנָתַן גֵּט לְזוֹ וְגֵט לְזוֹ – רַבֵּן גַּמְלִיאֵל אוֹמֵר: חוֹלֵץ לְרֵאשׁוֹנָה וְאֶסוּר בְּקִרְבוּתֶיהָ, וּמוֹתֵר בְּקִרְבוֹת שְׁנֵיהּ.

וְחֻכָּמִים אוֹמְרִים: נָתַן גֵּט לְזוֹ וְגֵט לְזוֹ – אֶסוּר בְּקִרְבוֹת שְׁתֵּיהֶן, וְחֻלִּיצָה לְאַחַת מֵהֶן. וְכֵן אֵתָּה אוֹמֵר בְּשֵׁנֵי יְבָמִים וּבְקִמָּה אַחַת.

כִּיצַד אָמַר רַבֵּן גַּמְלִיאֵל אֵין מַאמְרָא אַחֵר מַאמְרָא? שְׁתֵּי יְבָמוֹת שִׁנְפְּלוּ לְפָנֵי יָבָם אַחֵר וְעָשָׂה מַאמְרָא בְּזוֹ וּמַאמְרָא בְּזוֹ, רַבֵּן גַּמְלִיאֵל אוֹמֵר: נֹתֵן גֵּט לְרֵאשׁוֹנָה, וְחוֹלֵץ לָהּ, וְאֶסוּר בְּקִרְבוּתֶיהָ, וּמוֹתֵר בְּקִרְבוֹת שְׁנֵיהּ. וְחֻכָּמִים אוֹמְרִים: נֹתֵן גֵּט לְשְׁתֵּיהֶן, וְאֶסוּר בְּקִרְבוֹת שְׁתֵּיהֶן, וְחֻלִּיצָה לְאַחַת מֵהֶן. וְכֵן אֵתָּה אוֹמֵר בְּשֵׁנֵי יְבָמִים וּבְקִמָּה אַחַת.

אָמַר מֶר: נֹתֵן גֵּט לְזוֹ וְגֵט לְזוֹ, רַבֵּן גַּמְלִיאֵל אוֹמֵר: חוֹלֵץ לְרֵאשׁוֹנָה וְאֶסוּר בְּקִרְבוּתֶיהָ, וּמוֹתֵר בְּקִרְבוֹת שְׁנֵיהּ. לִימָא תִּהְיֵי תִּיּוּבְתָא דְּשְׁמוּאֵל, דְּאָמַר שְׁמוּאֵל: חֹלֵץ לְבַעֲלַת הֵגֵט – לֹא נִפְטְרָה צָרָה!

Abaye proceeds to explain the rest of Rabban Gamliel's teaching in the *baraita*: **And this invalid intercourse**, i.e., intercourse that was performed after a disqualifying action, such as levirate betrothal or a bill of divorce, is **superior to levirate betrothal^N** and also **inferior to levirate betrothal**: It is preferable to levirate betrothal in the following respect: **whereas levirate betrothal after levirate betrothal is not effective at all, intercourse after levirate betrothal is effective**, because intercourse acquires a *yevama* according to Torah law. **And it is inferior to levirate betrothal**, for **whereas levirate betrothal after a bill of divorce according to Rabban Gamliel acquires the entire remainder of the woman left by the bill of divorce^N**, such that any further levirate betrothal would be ineffective, **intercourse after a bill of divorce does not acquire the entire remainder of the woman left by the bill of divorce**, as it is not considered valid intercourse, and a subsequent levirate betrothal is effective.

S The Sages taught: How, i.e., in what case, did Rabban Gamliel say that a bill of divorce is not effective after a bill of divorce? In the case of two *yevamot* who happened before one *yavam* and he gave a bill of divorce to this one and a bill of divorce to that one. Rabban Gamliel says: He performs *halitza* with the first one and is forbidden to marry her relatives, as she is his *halutza*, and he is permitted to marry the relatives of the second one. Because the bill of divorce he gave the second woman is of no consequence at all, she is merely the rival wife of his *halutza*, and he is therefore permitted to marry her relatives.

But the Rabbis say: If he gave a bill of divorce to this one and a bill of divorce to that one^H, he is forbidden to marry the relatives of both of them, and he must perform *halitza* with one of them. And you would say the same with regard to two *yevamim* and one *yevama*. If the two *yevamin* gave one *yevama* a bill of divorce, one after the other, Rabban Gamliel maintains that the bill of divorce of the second *yavam* is of no account, and he is therefore permitted to marry her relatives, whereas the Rabbis hold that it is effective in that it renders him forbidden to her relatives.

How, with regard to what circumstance, did Rabban Gamliel say that there is no levirate betrothal after levirate betrothal? In a case of two *yevamot* who happened before one *yavam*, and he performed levirate betrothal with this one and levirate betrothal with that one,^H Rabban Gamliel says: He gives a bill of divorce to the first one and performs *halitza* with her, and is forbidden to her relatives, but he is permitted to the relatives of the second one, as the levirate betrothal performed with the rival wife is ineffective. **But the Rabbis say: He gives a bill of divorce to both of them**, as the levirate betrothal is effective for both women, and he is forbidden to the relatives of both of them; and as for *halitza*, he must perform it with one of them. And you would say the same with regard to two *yevamim* and one *yevama*. If the first *yavam* performed levirate betrothal with the *yevama*, and the second *yavam* consequently performed levirate betrothal with her, they are both required to give her a bill of divorce and both are forbidden to marry her relatives.

The Master said above in the baraita: He gives a bill of divorce to this one and a bill of divorce to that one. Rabban Gamliel says: He performs *halitza* with the first one and is forbidden to marry her relatives, and he is permitted to marry the relatives of the second one. The Gemara asks: **Shall we say that this is a conclusive refutation of the statement of Shmuel?**^N For Shmuel said: If he performed *halitza* with the woman who received a bill of divorce, the rival wife is not exempted by this invalid *halitza*. The *yavam* must therefore repeat the *halitza* with the rival wife as well. This appears to contradict the *baraita*, where Rabban Gamliel rules that he has to perform *halitza* with only one of the *yevamot*.

NOTES

The levirate bond is substantial...the levirate bond is not substantial – **יֵשׁ זִיקָה...אֵין זִיקָה**: Although the Torah (Deuteronomy 25:5) forbids a widow requiring levirate marriage from remarrying until *ḥalitza* has been performed, the nature of the connection between her and her *yavam* is not clear. Is this connection seen as a form of betrothal, i.e., the levirate bond is substantial, or is it seen as a unilateral obligation upon the widow to wait for her brother-in-law's action, i.e., the levirate bond is not substantial.

אָמַר לָךְ שְׂמוּאֵל: כִּי אָמַרְי אֲנִי –
אֲלִיבָא דְמֵאן דְּאָמַר יֵשׁ זִיקָה, וְרַבֵּן
גַּמְלִיאֵל סָבַר אֵין זִיקָה.

The Gemara answers: Shmuel could have said to you: When I said my above teaching, it was in accordance with the opinion of the one who said that the levirate bond is substantial, and he must therefore perform a valid *ḥalitza* in order to cancel this bond. A *ḥalitza* performed with a woman who received a bill of divorce is not powerful enough to completely cancel the bond of the rival wife who did not performed *ḥalitza*. But Rabban Gamliel holds that the levirate bond is not substantial,^N and therefore any *ḥalitza* that releases one of the women also serves to release the other.

וּמְדַרְבֵּן גַּמְלִיאֵל סָבַר אֵין זִיקָה

The Gemara asks: But if so, from the fact that Rabban Gamliel holds that the levirate bond is not substantial,

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NOTES

The Rabbis hold that the levirate bond is substantial – **רַבֵּן** **יֵשׁ זִיקָה**: Rashi explains that this inference cannot be proven from the mishna, but rather it is logical to assume that just as Rabban Gamliel and the Rabbis disagree with regard to the strength of levirate betrothal, they similarly disagree about the nature of the levirate bond itself. The Ramban and the Rashba, on the other hand, maintain that there is an inherent connection between the nature of the levirate bond and the strength of levirate betrothal. Rabban Gamliel maintains that the levirate bond is not substantial, and therefore levirate betrothal or a bill of divorce performed by one *yavam* is sufficient to nullify the levirate bond between this *yevama* and the other *yevamin* and between him and the other *yevamot* entirely. The Rabbis, however, maintain that the levirate bond is substantial, and therefore no one act of levirate betrothal or bill of divorce can completely cancel this bond. Therefore, all of the actions performed by all the *yevamin* and *yevamot* are effective.

And the latter clause teaches: And you would say the same, etc. – **וְקָתְנִי סִפָּא וְכֵן אֲתָה אוֹמֵר וכו'**: The early commentaries ask: Why does the Gemara cite the latter clause in the *baraita* when it could have equally questioned the statement of Rabba bar Rav Huna by citing a proof from the first part of the *baraita*? With regard to one *yavam* and two *yevamot* the Rabbis rule that a single *ḥalitza* is enough. One could deduce that if a woman requires *ḥalitza* from all the brothers when her *ḥalitza* was invalid, then similarly in a case of one *yavam* and two *yevamot*, he should have to perform *ḥalitza* with all the *yevamot*. They answer that the Gemara could indeed have asked in this manner, but it preferred to raise a difficulty from a source that explicitly states that she does not require *ḥalitza* from all the brothers (*Tosefot HaRosh*; *Tosefot Yeshanim*). However, some authorities learn from the fact that the Gemara specifically cites the latter clause that in the case of invalid *ḥalitza*, it is not necessary to perform *ḥalitza* with all the *yevamot* (*Tosefot Had MiKamma'e*; Meiri).

Levirate betrothal acquires her as a full-fledged acquisition – **מֵאֲמָר קוֹנֶה קָנָה גָּמוּר**: *Tosefot* point out that these *tanna'im* are not in complete agreement, as they disagree over the particulars of the acquisition. The common denominator is that they consider levirate betrothal to be very powerful. Rashi also notes that this does not mean that all these Sages maintain that levirate betrothal is a full-fledged acquisition, but rather it is at least a significant acquisition. The *Keren Ora* suggests that the shared feature of all these opinions might be that they all view levirate betrothal as having a certain validity from the Torah, not merely as a rabbinical institution.

רַבֵּן סָבַר יֵשׁ זִיקָה. וְקָתְנִי סִפָּא:
וְכֵן אֲתָה אוֹמֵר בְּשֵׁנִי יָבְמִין וְיָבְמָה
אֶחָת. לֵימָא תִּיהִי תִּיּוּבָתָא דְרַבָּה
בִּר רַב הוּנָא אָמַר רַב. דְּאָמַר רַבָּה בִּר
רַב הוּנָא אָמַר רַב: חֲלִיצָה פְּסוּלָה –
צְרִיכָה לְחֻזּוֹר עַל כָּל הָאֲחֵינָן!

it can be inferred that the Rabbis hold that the levirate bond is substantial,^N as it is assumed that they disagree with Rabban Gamliel in this regard as well. And the latter clause of that *baraita* teaches: And you would say the same^N with regard to two *yevamin* and one *yevama* such that if the two *yevamin* gave one *yevama* a bill of divorce, she is exempted by the *ḥalitza* of one of them. If so, let us say that it is a conclusive refutation of the statement that Rabba bar Rav Huna said that Rav said. For Rabba bar Rav Huna said that Rav said: In cases of invalid *ḥalitza*, the *yevama* is required to repeat the *ḥalitza* with all the brothers. If the *ḥalitza* was invalid for some reason, all the brothers must perform *ḥalitza* with the *yevama*, as her bond with them is not canceled by an invalid *ḥalitza*.

אָמַר לָךְ רַבָּה בִּר רַב הוּנָא: בֵּין לְרַבֵּן
גַּמְלִיאֵל בֵּין לְרַבֵּן סָבַר אֵין זִיקָה,
וְהָכָא בְּגֵט אַחֵר גֵּט וּמֵאֲמָר אַחֵר
מֵאֲמָר קָמִיפְלִיגִי.

The Gemara responds: Rabba bar Rav Huna could have said to you: Both Rabban Gamliel and the Rabbis hold that the levirate bond is not substantial, whereas my statement is in accordance with the opinion that the levirate bond is substantial. And here the dispute does not concern the topic of the levirate bond at all, but rather it only involves the explicitly mentioned issue: They disagree with regard to the efficacy of a bill of divorce after a bill of divorce and levirate betrothal after levirate betrothal.

אָמַר מַר: עֲשֵׂה מֵאֲמָר בּוֹ וּמֵאֲמָר בּוֹ,
רַבֵּן גַּמְלִיאֵל אוֹמֵר: נוֹתֵן גֵּט לְרֵאשׁוֹנָה
וְחוֹלֵץ לָהּ, וְאִסּוּר בְּקִרְבּוֹתֶיהָ, וּמוֹתֵר
בְּקִרְבּוֹת שְׁנֵיהֶם. מִכְּדִי קִסְבֵּר רַבֵּן
גַּמְלִיאֵל אֵין מֵאֲמָר אַחֵר מֵאֲמָר –
רֵאשׁוֹנָה נִמְי תִּתִּיבֵם! גִּזְרָה דְלִמָּא
אֲתִי לִיבּוּמִי לְשִׁנְיָה.

The Master said above in the *baraita*: If he performed levirate betrothal with this one and levirate betrothal with that one, Rabban Gamliel says: He gives a bill of divorce to the first one and performs *ḥalitza* with her and is forbidden to her relatives, but he is permitted to the relatives of the second one. The Gemara poses a question: Since Rabban Gamliel holds that levirate betrothal is not effective after levirate betrothal, and the second levirate betrothal is of no consequence, the first woman should also be permitted to enter into levirate marriage. Why must he perform *ḥalitza* with her? The Gemara answers: It is prohibited due to a rabbinic decree lest he perform levirate marriage with the second woman. The Sages were concerned that in cases where the *yavam* performed levirate betrothal with both women, if he were permitted to consummate the levirate marriage with the first woman, he might do so with the second woman as well.

אָמַר רַבִּי יוֹחָנָן: רַבֵּן גַּמְלִיאֵל, וּבֵית
שְׁמַאי, וְרַבִּי שְׁמַעוֹן, וְבֵן עֲזַאי וְרַבִּי
נְחֵמְיָה – כּוֹלֵהוּ סְבִירָא לָהּ: מֵאֲמָר
קוֹנֶה קָנָה גָּמוּר. רַבֵּן גַּמְלִיאֵל – הָא
דְּאָמַרְן.

§ Rabbi Yohanan said: Rabban Gamliel, and Beit Shammai, and Rabbi Shimon, and ben Azzai, and Rabbi Nehemya, they all hold that levirate betrothal acquires the *yevama* as a full-fledged acquisition,^N like a regular betrothal. The source for Rabban Gamliel's opinion is that which we said above, that levirate betrothal is not effective after levirate betrothal. Rabbi Yohanan maintains that the second levirate betrothal is not effective because she was already fully acquired by the first one.

רבי – Rabbi Shimon, as it is taught...if the intercourse, etc. – **שְׁמַעוֹן דִּתְנָא...אִם בִּיאַת וכו'** The Ramban asks: Why is it necessary for the Gemara to derive a proof from invalid intercourse, by comparing it to levirate betrothal, when Rabbi Shimon explicitly makes the same claim with regard to levirate betrothal itself (see 19a). He answers, and the Rashba explains similarly, that it is possible that when Rabbi Shimon stated his argument there, he was speaking in accordance with the opinion of the Rabbis only in order to argue against their opinion, whereas he himself does not maintain that opinion (see Arukh LaNer and Yosef Lekah for a different resolution).

The intercourse of a nine-year-old boy is like levirate betrothal – בִּיאַת בֶּן תֶּשַׁע כְּמֵאָמֶר – Some commentaries are puzzled by this *halakha*: Since any type of intercourse acquires a *yevama*, whether it is performed intentionally or unwittingly, why should the intercourse of a nine-year-old not acquire her as well, being that the Sages considered this intercourse to be full-fledged intercourse with regard to forbidden relations? They answer that it is an established *halakha* that the wife of a minor is not fully acquired by him. Although his cohabitation has the status of intercourse, it is not considered an act of acquisition (*Tosefta HaRosh*; see Ramban, who attributes this response to Rabbi Avraham Av Beit Din and questions it).

The Sages considered invalid intercourse to be like levirate betrothal – בִּיאָה פְּסוּלָה דְּכִמְאָמֶר שְׁוִיָּה רַבָּנָן – The early commentaries raise a serious difficulty: Surely Rabbi Nehemya distinguishes between invalid intercourse, after which no action is effective, and levirate betrothal, where subsequent action is effective. But if so, how can he prove that invalid intercourse is like levirate betrothal? Rabbeinu Hananel cites a proof from a *Tosefta* that states the following: When did they say that nothing is effective after intercourse? When it is at the beginning; but if it is not at the beginning it is like levirate betrothal. He adds that the principle is that an unattributed *Tosefta* follows the opinion of Rabbi Nehemya, but the Ramban retorts that it is clear from the context that this particular *Tosefta* is not in accordance with Rabbi Nehemya.

Rabbi Avraham Av Beit Din writes that invalid intercourse is like levirate betrothal in that neither of them enables the wife of a priest to eat *teruma*. However, the Ramban and the Rashba question this answer as well. They are similarly dissatisfied with the resolutions offered by *Tosafot*, as they do not fit the wording of the Gemara. The Ramban himself answers that Rabbi Nehemya maintains that invalid intercourse is like levirate betrothal in that this type of intercourse does not exempt a *yevama* with whom an action had previously been performed. However, Rabbi Nehemya disagrees with the Rabbis with regard to a different issue, as he maintains that no action is effective after invalid intercourse. His reasoning is that the decrees of the Sages are unnecessary in the case of intercourse, as intercourse is an effective method of acquisition from the Torah, and people will therefore not be confused with regard to its efficacy. The Rashba and the Ritva accept the basic premise of this opinion.

בֵּית שְׁמַאי – דִּתְנָן: שְׁלֹשָׁה אֲחִין, שְׁנֵים מֵהֶם נְשׂוּאִין לְשִׁתִּי אֲחִיּוֹת וְאֶחָד מוֹפֵנָה, מֵת אֶחָד מִבְּעֻלִי אֲחִיּוֹת וְעָשָׂה בָּהּ מוֹפֵנָה מֵאָמֶר, וְאַחֵר כָּךְ מֵת אֲחִיו הַשֵּׁנִי, בֵּית שְׁמַאי אוֹמְרִים: אֲשֶׁתוֹ עֲמוּ, וְהָלְזוּ תֵּצֵא מִשּׁוּם אֲחֻת אִשָּׁה.

The source for the opinion of Beit Shammai is as we learned in a mishna: In the case of three brothers, two of whom were married to two sisters, and one who was single, the following occurred: The husband of one of the sisters died childless, leaving behind his wife, and the single brother performed levirate betrothal with this wife. Afterward, the second brother died, whereby the second brother's wife, the sister of the betrothed, happened before him for levirate marriage as well. In this case, Beit Shammai say: His wife remains with him, i.e., the woman he betrothed is considered like his wife, and he is not required to divorce her. And this other leaves the *yavam* and is exempt from levirate marriage due to the fact that she is the sister of a wife. This indicates that Beit Shammai hold that the levirate betrothal performed with the first woman makes her fully betrothed, thereby nullifying the levirate bond with her sister.

רְבִי שְׁמַעוֹן – דִּתְנָא, אָמַר לְהוּ רְבִי שְׁמַעוֹן לְחֻכְמִים: אִם בִּיאַת ראשון בִּיאָה – בִּיאַת שְׁנֵי אֵינָה בִּיאָה, אִם בִּיאַת ראשון אֵינָה בִּיאָה – בִּיאַת שְׁנֵי נָמִי אֵינָה בִּיאָה. וְהָא בִּיאַת בֶּן תֶּשַׁע, דְּכִמְאָמֶר שְׁוִיָּה רַבָּנָן, וְקֵאָמֶר רְבִי שְׁמַעוֹן אֵינָה בִּיאָה.

The source for the opinion of Rabbi Shimon is based on the following case cited in a mishna (96b): In the case of a boy aged nine years and one day old who had relations with his *yevama*, and afterward his brother, who is also nine years and one day old, had relations with her, the second brother disqualifies her from performing levirate marriage with the first one. Rabbi Shimon says he does not disqualify her. As it is taught in a *baraita* that Rabbi Shimon said to the Rabbis: If the intercourseⁿ of the first brother is considered effective intercourse, the intercourse of the second brother is not considered effective intercourse such that it would disqualify her from performing levirate marriage with the first brother, as the first brother has already acquired her through his intercourse. If the intercourse of the first brother is not considered effective intercourse, the intercourse of the second brother is also not effective intercourse. And the Sages considered the intercourse of a nine-year-old boy^b to be like levirate betrothal,ⁿ and Rabbi Shimon says that the intercourse of the second boy is not considered intercourse. This proves that in his opinion the intercourse of a nine-year-old fully acquires the *yevama*, and similarly, so does levirate betrothal.

בֶּן עֹזַי – דִּתְנָא, בֶּן עֹזַי אוֹמֵר: יֵשׁ מֵאָמֶר אַחֵר מֵאָמֶר בְּשֵׁנִי יְבָמִין וְיָבָמָה אַחַת, וְאִין מֵאָמֶר אַחֵר מֵאָמֶר בְּשִׁתִּי יְבָמֹת וְיָבָם אֶחָד. רְבִי נְחֵמְיָה – דִּתְנָן, רְבִי נְחֵמְיָה אוֹמֵר: אַחַת בְּעִלָּה וְאַחַת חֲלִיצָה, בֵּין בְּתַחֲלָה בֵּין בְּאַמְצַע בֵּין בְּסוֹף – אִין אַחֲרֵיהּ בָּלוּם. וְהָא בִּיאָה פְּסוּלָה, דְּכִמְאָמֶר שְׁוִיָּה רַבָּנָן וְקֵתְנִי: אִין אַחֲרֵיהּ בָּלוּם.

This source for ben Azzai's opinion is as it is taught in a *baraita* that ben Azzai says: Levirate betrothal is effective after levirate betrothal in the case of two *yevamin* and one *yevama*, but levirate betrothal is not effective after levirate betrothal in the case of two *yevamot* and one *yavam*. Because the latter case involves only one *yavam*, his levirate betrothal fully acquires the *yevama*, and therefore the levirate betrothal he performs with the second woman is of no account, as he is already betrothed to the first *yevama*. The source for Rabbi Nehemya's opinion is as we learned in a mishna that Rabbi Nehemya says: With regard to both intercourse and *halitza*, whether at the beginning, in the middle, or at the end, nothing is effective after it. And the Sages considered invalid intercourse to be like levirate betrothal,ⁿ and Rabbi Nehemya teaches that nothing is effective after it. This indicates that he maintains that no form of acquisition is effective after levirate betrothal, as levirate betrothal completely acquires the *yevama*.

“כִּיצַד עָשָׂה מֵאָמֶר” כו’.

§ The mishna states: How so? If he performed levirate betrothal with his *yevama* and gave her a bill of divorce, etc.

BACKGROUND

בִּיאַת בֶּן תֶּשַׁע – The intercourse of a nine-year-old boy According to the Sages, sexual intercourse cannot be performed by a boy who is less than nine years old, and therefore

it has no halakhic significance. From that age and onward such an act of intercourse is recognized as significant, even prior to the advent of physical maturity.

האי גט אחר גט הוא! אמר רב יהודה, הכי קאמר: גט אחר הגט ומאמר אחר מאמר בדאמרן, יבם אחד ויבמה אחת כיצד התרתן? עשה מאמר ביבמתו ונתן לה גט – צריכה הימנו חליצה.

”עשה מאמר ובעל הרי זו במצותה.” לימא מסייע ליה לרב הונא, דאמר רב הונא: מצות יבמה – מקדש ואחר כך בועל. אימא: אף זה במצותה.

פשיטא! סלקא דעתך אמינא: כיון דאמר מר: העושה מאמר ביבמתו – פריחה הימנו ויקת יבמין, וחלה עליו ויקת ארוסין ונשואין, אימא לאו מצוה קעביד – קא משמע לן.

גופא אמר רב הונא: מצות יבמין מקדש ואחר כך בועל, ואם בעל ועשה מאמר – קנה. אם בעל ועשה מאמר – פשיטא, דהא קניה בביתא! אלא אימא: אם בעל בלא מאמר – קנה.

The Gemara is puzzled: Is this case upon which the mishna elaborates the case of a bill of divorce after a bill of divorce that is mentioned first in the mishna? The mishna first is referring to a bill of divorce after a bill of divorce, but when it comes to the specifics, it mentions a bill of divorce after levirate betrothal. Rav Yehuda said: This is what the *tanna* is saying: With regard to a bill of divorce after a bill of divorce, and levirate betrothal after levirate betrothal, it is as we said and these cases were explained in the *baraita*, but with regard to one *yavam* and one *yevama*, how is their complex bond released? He then proceeds to delineate: If he performed levirate betrothal with his *yevama* and gave her a bill of divorce, she requires *halitza* from him.

§ The mishna teaches: If the *yavam* performed levirate betrothal and engaged in intercourse, this is done in accordance with its mitzva.¹¹ The Gemara suggests: Let us say that this mishna supports the statement of Rav Huna. As Rav Huna said: The mitzva of a *yevama* is properly performed when the *yavam* betroths the *yevama* and only afterward engages in intercourse. This statement indicates that the levirate betrothal is a necessary component of the mitzva, and the mishna seems to imply the same. The Gemara refutes this claim: This is not necessarily the case, as you can read the mishna as stating that this also is in accordance with its mitzva. If he performed levirate betrothal and then engaged in intercourse, this too is a proper manner to proceed, but we do not have to interpret the mishna as indicating that this is the only way to fulfill the mitzva.

The Gemara asks: Isn't this obvious? If one can fulfill the mitzva without performing levirate betrothal, why would one think that levirate betrothal is detrimental? The Gemara answers: It was indeed necessary for the mishna to teach us this, for it might enter your mind to say that since the Master said above (29b): One who performs levirate betrothal with his *yevama* causes the levirate bond to dissipate from himself, and a standard bond of betrothal and marriage takes effect on him, you might say that he no longer performs a mitzva when he carries out levirate marriage, as the levirate bond is no longer in place. The *tanna* therefore teaches us that we consider the levirate betrothal and the subsequent intercourse as part of the same process, which constitutes a mitzva.

The Gemara continues: With regard to the matter itself, Rav Huna said: The mitzva of levirate marriage is properly performed when the *yavam* betroths the *yevama* and afterward engages in intercourse, and if he engaged in intercourse and later performed levirate betrothal, he has acquired the *yevama*. The Gemara is puzzled: If he engaged in intercourse and then performed levirate betrothal it is obvious that he has acquired her, as he has already acquired her by intercourse. The levirate betrothal does not affect the issue one way or another. Rather, say as follows: If he engaged in intercourse without prior levirate betrothal, even in that case he has acquired her.

HALAKHA

The levirate betrothal of a *yevama* – מאמר יבמה: With regard to regular women, the process of marriage involved two stages. The first was betrothal, in which a man would give a woman money or a document or engage in consensual relations with her. This last method was abolished by the *amora* Rav. Through this act of betrothal the man acquired the woman and she was forbidden to all other men. At a later stage, usually a year later, the man would bring the woman into his home as his full-fledged wife. This was done through conjugal relations

and was symbolized by the marriage canopy. With regard to a *yevama*, however, the Torah states that a *yavam* can acquire his *yevama* by intercourse alone. Nevertheless, the Sages instituted that he should betroth her with money or a document and that she requires a marriage canopy like all other women (Rema, citing the Rivash). Only afterward should they engage in intercourse (Rambam *Sefer Nashim*, *Hilkhot Yibbum* 2:1–2; *Shulhan Arukh*, *Even HaEzer* 166:2).

But isn't it taught that he is flogged – וְהִתְנָא לֹקָה – According to Rashi, the assumption of the Gemara at this stage is that he is lashed for transgressing a Torah law. The Rashba and other commentaries support this idea by citing the following homiletic interpretation of the verse that is cited in the Jerusalem Talmud. The Gemara there expounds the verse: “And he shall take her to him to be his wife and consummate the levirate marriage” (Deuteronomy 25:5), in the following manner: “And he shall take her to him to be his wife” by means of betrothal, and afterward he shall “consummate the levirate marriage” through intercourse. It is further explained in the Jerusalem Talmud that this line of reasoning follows the opinion that the action of one who transgresses a Torah law is not effective (see *Arukh LaNer*).

However, the Ritva points out that even according to this opinion the *yavam* should not be liable to lashes, as he has only transgressed a positive mitzva. Furthermore, it is Beit Shammai, not Beit Hillel, who maintain that levirate betrothal acquires the *yevama* by Torah law, and therefore, as the halakha does not accord with Beit Shammai's opinion, it is an established *halakha* that levirate betrothal is only effective by rabbinic decree. *Tosafot* suggest that the Gemara never considered that levirate betrothal is effective by Torah law, but merely that he should be lashed for transgressing a rabbinic ordinance. By not performing levirate betrothal, it is considered as though he had relations with his brother's wife without performing a mitzva. The Ramban explains that the question of the Gemara is not how he can acquire the *yevama* in this way if he receives lashes for his actions, but rather the Gemara is suggesting that he perhaps should be obligated to perform levirate betrothal before he has intercourse with the *yevama* again.

מֵאֵן דְּפָקִיר שְׁלִיחָא דְרַבָּנָן – **One who betroths a woman in the marketplace, etc.** – **דְּמַקְדֵּשׁ בְּשׁוּקָא וְכוּ'** The objection to this behavior is because the man acted in a disrespectful manner by betrothing in a marketplace or without prior preparation or appeasement of the woman and her family. Betrothing in the market gives the impression of an impromptu decision and is therefore considered licentious, as it is not dissimilar to soliciting a prostitute.

Marriage agreement [shiddukhei] – שְׁדוּכִי – The Aramaic root *sh-d-kh*, which is apparently the source of the Hebrew word, bears a variety of meanings. It seems that its chief meaning is to silence, from which several other meanings developed, such as to appease or to persuade. This is the likely etymology of the word as an appeasement and agreement between a woman and a man, or two families, as a preparation for marriage.

וְהִתְנָא: לֹקָה! מִכֶּת מִרְדּוֹת מְדֻרְבָּנָן.

The Gemara challenges this: **But isn't it taught in a baraita** that a *yavam* who has intercourse without levirate betrothal is **flogged?**^{nh} The Gemara answers: The lashes are not because he transgressed by not performing levirate betrothal, but rather they are **lashes for rebelliousness** given for transgressing a rabbinic law, namely for acting in an immodest manner.

דְּרַב מְנַגִּיד מֵאֵן דְּמַקְדֵּשׁ בְּבִיּאָה, וּמֵאֵן דְּמַקְדֵּשׁ בְּשׁוּקָא, וּמֵאֵן דְּמַקְדֵּשׁ בְּלֹא שְׁדוּכִי,

The Gemara cites other instances where the Sages administered lashes for immodest behavior. **As Rav would flog one who betroths a woman by intercourse,**^h despite the fact that betrothal is effective by this method, because he acted in a promiscuous manner. **And he would likewise flog one who betroths a woman in the marketplace,**ⁿ rather than at home, as this too is loose behavior, **and he would also administer lashes to one who betroths a woman without a prior marriage agreement [shiddukhei],**ⁿ as this too is an act of permissiveness.

וּמֵאֵן דְּמַבְטֵל גִּטָּא, וּמֵאֵן דְּמַסֵּר מוֹדָעָא אֲגִיטָא.

And he would further lash one who nullifies a bill of divorce^h he had earlier sent by declaring in the presence of witnesses that the bill of divorce is nullified. This action is effective, but by doing so he transgresses the rabbinic ordinance of the Sages that bans such an action as it might lead his wife to unlawfully wed another. **And he would also flog one who delivers a declaration preemptively invalidating a bill of divorce,** by informing three people before giving a bill of divorce that he is not doing so of his own free will and he wants to cancel it ahead of time. Here too he will mislead his wife, who will assume it is a valid bill of divorce.

וּמֵאֵן דְּפָקִיר שְׁלִיחָא דְרַבָּנָן, וּמֵאֵן דְּשָׂהִי שְׁמִתָּא דְרַבָּנָן עָלֶיהָ תְּלָתִין יוֹמִין וְלֹא אָתִי לְבִי דִּינָא וְתַבַּע לְשִׁמְתִּיהָ,

And he would lash one who behaves irreverently toward a messenger of the Sages,^h even if the messenger is not a scholar, as he thereby shows disrespect to the Sages themselves. **And he would administer lashes to one who remained under an excommunication**^h of the Sages for thirty days and did not go to the court and petition for the removal of his excommunication after correcting the sin that led to the excommunication in the first place. This behavior demonstrates that he does not care about the excommunication, and is therefore deserving of lashes.

HALAKHA

If he engaged in intercourse without levirate betrothal he has acquired her and is flogged – **בְּעַל בְּלֹא מֵאִסְרָה קִנְהָ וְלֹקָה** – One who has relations with his *yevama* without performing levirate betrothal acquires her, but he receives lashes for rebelliousness from the Sages for acting in an immodest manner (Rambam *Sefer Nashim*, *Hilkhot Yibbum* 2:2; *Shulḥan Arukh*, *Even HaEzer* 166:2).

מֵאֵן דְּמַקְדֵּשׁ – One who betroths a woman by intercourse – **בְּבִיּאָה**: One who betroths a woman by intercourse, or betroths her in the marketplace, or without a prior marriage agreement, receives lashes for rebelliousness but she is nevertheless betrothed. The Rema (based on *Tur* citing Rosh) writes that the custom is not to lash one who betrothed in the marketplace or without a marriage agreement (Rambam *Sefer Nashim*, *Hilkhot Ishut* 3:21–22 and *Sefer Kedusha*, *Hilkhot Issurei Bia* 21:14; *Shulḥan Arukh*, *Even HaEzer* 26:4).

מֵאֵן דְּמַבְטֵל גִּטָּא וְכוּ' – One who nullifies a bill of divorce, etc. – One who sends a bill of divorce to his wife and subsequently retracts and nullifies it in the presence of witnesses, and similarly one who delivers a declaration preemptively invalidating

a bill of divorce, receives lashes for rebelliousness, as stated by Rav (Rambam *Sefer Nashim*, *Hilkhot Geirushin* 6:26; *Shulḥan Arukh*, *Even HaEzer* 141:67).

One who behaves irreverently toward a messenger of the Sages – מֵאֵן דְּפָקִיר שְׁלִיחָא דְרַבָּנָן – With regard to one who harasses or derides a messenger of the court who is carrying out his duty, if the messenger reports that he was belittled, the messenger is believed like two witnesses, and we place the offender under an excommunication. If there were witnesses to the event, the offender receives lashes for rebelliousness (Rambam *Sefer Shofetim*, *Hilkhot Sanhedrin* 25:5; *Shulḥan Arukh*, *Hoshen Mishpat* 8:5).

One who remained under an excommunication of the Sages – מֵאֵן דְּשָׂהִי שְׁמִתָּא דְרַבָּנָן עָלֶיהָ – If one was obligated to take an oath by the Sages but he refused to swear, the court places him under an excommunication for thirty days. If he does not come to the court to have the excommunication annulled, the court administers lashes for rebelliousness (Rambam *Sefer Mishpatim*, *Hilkhot To'en VeNitan* 1:5; *Shulḥan Arukh*, *Hoshen Mishpat* 87:9).

התנא – A son-in-law who lives in his father-in-law's house – דדאיר בבי חמוהי: The *ge'onim* state that there is a concern that the mother-in-law might develop an attraction to her first son-in-law. In addition to the concern with regard to forbidden relations, there is also a concern with regard to the monetary aspects of the arrangement (Rabbi Avraham min HaHar). In this context the Rif cites a saying from *Sefer Ben Sira* quoted in tractate *Bava Batra* (89b): I have found no substance lighter than bran; yet, lighter than bran is a son-in-law who lives in the house of his father-in-law.

A document of betrothal – שטר קידושין: The early commentaries explain that an act of using a document to perform levirate betrothal is also called a *ma'amar*, a saying. Admittedly, one who gives a woman a document of betrothal does not have to say anything, but since most betrothals were performed with money, when the man is required to speak, it was called *ma'amar*.

HALAKHA

התנא – A son-in-law who lives in his father-in-law's house – דדאיר בבי חמוהי: The Sages forbade a son-in-law to live in his father-in-law's house. The Ra'avad writes that if a special area is set aside for him and his wife, it is permitted. It appears that we rely on this opinion in order to be lenient in this area (*Maggid Mishne*; see *Tosafot*). In addition, the early commentaries state in tractate *Kiddushin* that nowadays we are less concerned with regard to this issue (Rambam *Sefer Kedusha*, *Hilkhot Issurei Bia* 21:15).

He was suspected, etc. – מידם הוה דייס וכו': If one is suspected of involvement with a forbidden relation, or if there are rumors circulating with regard to them, he may not live in the same alleyway as her, nor may he be seen in the same neighborhood, in accordance with Rav Sheshet. The Ra'avad claims that this *halakha* only applies to one's mother-in-law, as she is particularly close to him due to her daughter (Rambam *Sefer Kedusha*, *Hilkhot Issurei Bia* 2:12).

A document of betrothal – שטר קידושין: If one writes a document on paper or any other material, even on something worth less than a *peruta*, that states: You are hereby betrothed to me, and gives it to a woman in the presence of witnesses, she is betrothed. The document must, however, be written in the name of that particular woman (Rambam *Sefer Nashim*, *Hilkhot Ishut* 3:3; *Shulhan Arukh*, *Even HaEzer* 32:1).

The marriage contract of levirate marriage – כתובת יבמין: A *yavam* is also required to write a marriage contract for his *yevama*, but the wording of his contract differs from that of a regular marriage contract. The main difference is that the fiscal responsibility for the marriage contract is upon the property of the deceased brother (Rambam *Sefer Nashim*, *Hilkhot Yibbum* 4:32).

The bill of divorce of a yevama – גט יבמה: If the *yavam* gives a bill of divorce to the *yevama* he disqualifies her and her rival wives from levirate marriage, both to himself and his brothers. Any bill of divorce that disqualifies a woman for marrying into the priesthood also disqualifies her from levirate marriage (Rambam *Sefer Nashim*, *Hilkhot Yibbum* 5:1; *Shulhan Arukh*, *Even HaEzer* 170:1).

PERSONALITIES

The Sages of Neharde'a – נהרדעי: The Gemara states elsewhere that anonymous statements attributed to the Sages of Neharde'a refer to Rav Hama from Neharde'a, who served as the head of the yeshiva of Neharde'a for several years following the passing of Rav Nahman bar Yitzhak. Apparently, Rav Hama was related to the house of the Exilarch, and for a time was its official scholar. It is also possible that he was the same Rav Hama who met with the king of Persia and discussed Torah matters with him.

ועל חתנא דדאיר בבי חמוהי. דדאיר – אין, דחליף – לא. והא ההוא דחליף אבבא דבי חמוהי, ונגדיה רב ששת! ההוא – מידם הוה דייס מחמתיה.

נהרדעי אמרי: בכולהו לא מנגיד רב אלא למקדש בביתא ובלא שדוכי. ואיכא דאמרי: אפילו בשדוכי נמי, משום פריצותא.

תנו רבנן: כיצד מאמר – נתן לה כסף או שוה כסף, ובשטר כיצד? בשטר כיצד? בדאמרן: כתב לה על הנניר או על החרס, אף על פי שאין בו שוה פרוטה: "הרי את מקודשת לי!" אמר אביי, הכי קאמר: שטר כתובת יבמין כיצד –

כתב לה: אנא פלוני בר פלוני קבילית ית פלונית יבמתי עלי לזון ולפרנסה פראוי, ובלבד שתהא כתובתה על נכסי בעלה הראשון. ואי לית לה מראשון – תקינו לה רבנן משני, כדי שלא תהא קלה בעיניו להוציאה.

בעא מיניה אביי מרבא: נתן לה גט, ואמר: הרי את מגורשת הימני, ואי את מותרת לכל אדם, מהו? גט יבמה דרבנן הוא. גט דמהני באשת איש מהני ביבמה. גט דלא מהני באשת איש – לא מהני ביבמה. או דלמא אתי לאחלופי בגיטא?

And he would also lash a son-in-law who lives in his father-in-law's house,^{NH} as this is likely to lead to temptation between the younger couple and older couple who share the same house. The Gemara asks: With regard to **one who lives in his father-in-law's house, yes**, he would lash him, but with regard to **one who only passed through his father-in-law's house at regular intervals, no**, he would not lash him? But an incident occurred involving a certain man who passed by the entrance to his father-in-law's house and Rav Sheshet lashed him. The Gemara explains: There was a special set of circumstances in that case, as **that man was suspected^H with regard to his mother-in-law**, and therefore he was lashed merely for passing near her house, as he thereby gave credence to the rumors.

The Sages of Neharde'a^P would say: In all these cases Rav would not flog, apart from the case of one who betrothed by intercourse and without a prior marriage agreement. And there are those who say he would flog a man who betrothed by intercourse even if he did so with a prior marriage agreement, due to the immorality involved, as he must invite witnesses to observe the act.

S The Sages taught: How is levirate betrothal performed? He gives her money or the equivalent value of money and declares: You are hereby betrothed to me. The Gemara asks: **And with a document,^N how does he betroth her?** The Gemara is puzzled by this question: **With a document, how does he betroth her?** It is as we have said by the *halakhot* of a regular document of betrothal: **If he wrote to her on paper or on earthenware, even though it is not worth a peruta, the words: You are hereby betrothed to me,^H it is effective.** As a document is not effective as a means of betrothal due to its monetary value but rather due to the words it contains, there is no requirement that it be of a minimum value. However, because the *halakhot* of betrothal by a document were already taught, the Gemara is puzzled as to the nature of this question. Abaye said that **this is what the baraita is saying: With regard to the document of a marriage contract for levirate marriage, how is it written?** Abaye understands that the question did not refer to the document of betrothal but rather to the marriage contract of a levirate marriage.

The Gemara explains that **he writes to her: I, so-and-so, son of so-and-so, have accepted so-and-so, my yevama upon me, to feed and maintain her in a fitting manner, provided that her marriage contract will still be payable from the property of her first husband and not from the property of the yavam.^H** The Gemara adds: **But if the first husband does not have property, the Sages instituted for her that she should receive her marriage contract from the second husband, i.e., the yavam, for the same reason that they instituted the marriage contract in the first place: So that she will not be demeaned in his eyes such that he will easily divorce her.** If he will suffer no financial penalty, he is likely to divorce over the smallest argument.

S Abaye inquired of Rabba: If a yavam gave his yevama a bill of divorce, and said the following formula: You are hereby divorced from me but you are not permitted to any other man, what is the status of such a bill of divorce? Is the bill of divorce of a yevama^H a bill of divorce based on rabbinic law and therefore subject to the halakhot of a regular bill of divorce; and consequently, a bill of divorce that is effective for a married woman is also effective for a yevama, and a bill of divorce that is not effective for a married woman is not effective for a yevama? Since this type of a divorce is invalid in the case of a married woman, it is similarly ineffective in the case of a yevama. Or perhaps the Sages were concerned that perhaps people will come to confuse this bill of divorce with an unqualified bill of divorce given by a yavam and they therefore decreed that it should affect the levirate bond, preventing the yavam from marrying the yevama.

Scribe [lavlar] – לַבְלָר: The root of the word is from the Latin *librarius*, a writer, especially of contracts. *Lavlar* was another name for a scribe or an expert in writing. His field of expertise was not only the writing itself but also the wording of various kinds of contracts.

[אמר ליה: חיישינן דלמא אתי לאחלופי בגיטא]. מתקיף לה רבה בר חנן: אלא מעתה, יהיב לה גיטא בעלמא הכי נמי דפסלה? אמר ליה: התם לא פסיל בכהונה, הכא – קפסיל בכהונה.

Rabba said to him: We are concerned that perhaps they will come to confuse this bill of divorce with a regular bill of divorce, and it therefore disqualifies a *yevama*. Rabba bar Ḥanan strongly objects to this: However, if that is so, that we are stringent with the bill of divorce of a *yevama* out of concern that people might confuse the two types of bills of divorce, if he gives her a mere piece of paper, which does not mention divorce, so too will it disqualify her? He said to him: There it is different, as a mere piece of paper has no effect on any other woman, for it does not disqualify her for marrying into the priesthood. If a husband gives his wife a piece of paper that contains nothing about divorce, even if he says: This is a bill of divorce, his action is of no consequence, not even to forbid her to a priest. Here, however, a bill of divorce of this kind at least disqualifies a woman from marrying into the priesthood.^h

דתנאי: וְאִשָּׁה גְרוּשָׁה מֵאִשָּׁה לֹא יִקְחוּ אֶפֶּילוּ לֹא נִתְּגַרְשָׁה אֲלֵא מֵאִשָּׁה – לֹא יִקְחוּ, וְהֵינּוּ רִיחַ הַגֵּט שְׂפוּסֵל בְּכֹהֵנָה.

As it is taught in a *baraita*: “They shall not take a woman that is a harlot, or profaned; and a woman divorced from her husband they shall not take, as he is holy to his God” (Leviticus 21:7). This verse lists the women whom a priest is prohibited from marrying. From this verse it can be inferred: Even if she was only divorced from her husband who said when giving her a bill of divorce: You are divorced from me, but did not permit her to other men, even such a woman they may not take in marriage. Although a bill of divorce of this kind does not permit the woman to others, it does suffice to prohibit her from marrying a priest. And this is what is referred to as the trace of a bill of divorce, which disqualifies a woman from marrying into the priesthood.^N Since this bill of divorce is valid to a certain extent, it also disqualifies a *yevama*.

אמר רמי בר חמא: הרי אמרו, אמר אחד ללבלר “כתוב גט לארוסתי, לכשאכנסנה אגרשנה” הרי זה גט, מפני שבדיו לגרשה.

Rami bar Ḥama said: They said that if one said to a scribe [lavlar]:^L Write a bill of divorce for my betrothed now, such that when I marry her I will divorce her with the bill of divorce, if he indeed gave her this bill of divorce after their marriage it is a valid bill of divorce.^H Why? Because it is already in his power to divorce her while she is betrothed to him, and therefore the bill of divorce written during their betrothal is valid.

HALAKHA

A bill of divorce that disqualifies her from marrying into the priesthood – גֵּט הַפּוּסֵל בְּכֹהֵנָה: A woman who receives a bill of divorce is disqualified from marrying into the priesthood, even if the bill of divorce is invalid because it is an uncertain bill of divorce or if the bill of divorce stated: You are hereby divorced from me, but you are not permitted to any man (Rambam *Sefer Nashim*, *Hilkhot Geirushin* 10:1; *Shulḥan Arukh*, *Even HaEzer* 6:1).

כתב גט – If he wrote a bill of divorce to his betrothed, etc. – לְאִרוּסָתוֹ וְכִי: If one wrote a bill of divorce to his betrothed in order to divorce her with it after he marries her, it is a valid bill of divorce. This applies only if the bill of divorce includes the date on which it was given, but if he wrote the date on which it was written, it is invalid (Ra’avad; Rabbeinu Tam; Rambam *Sefer Nashim*, *Hilkhot Geirushin* 3:6; *Shulḥan Arukh*, *Even HaEzer* 132:1).

NOTES

The trace of a bill of divorce, which disqualifies for the priesthood – רִיחַ הַגֵּט שְׂפוּסֵל בְּכֹהֵנָה: The trace of a bill of divorce refers to a divorce which is lacking in some way and therefore does not effect a full divorce. Despite the fact that the woman is not divorced, in some cases the trace of a bill of divorce is enough to consider her a divorcée for the purposes of disqualifying her from marrying into the priesthood. In these cases, should her husband subsequently die, she would be considered a divorcée and not a widow who would be permitted to the priesthood. The question of which bills of divorce disqualify a woman for marrying into the priesthood

is a matter of dispute among the authorities. The Rambam maintains that any bill of divorce about which the Sages said: It is not a bill of divorce, does not even disqualify a woman for marrying into the priesthood. Only this particular bill of divorce, expressed with the formula: You are divorced from me but you are not permitted to any man, disqualifies her due to its status as the trace of a bill of divorce. The Ra’avad disagrees and claims there are other invalid bills of divorce that prevent her from marrying a priest, depending on their similarity to a proper bill of divorce. The *Migdal Oz* writes that this dispute dates back to Rashi and *Tosafot* as well.

HALAKHA

If he wrote a bill of divorce to one who is not his wife – **בְּעֵלְמָא אֵין גֵּט לְמִי שְׂאִינָה אִשְׁתּוֹ**: If a man wrote a bill of divorce to a woman who is not his wife, with the intention of divorcing her with it after their marriage, the bill of divorce is ineffective. However, if he wrote it to his *yevama* before he married her, it is an uncertain bill of divorce (Rambam *Sefer Nashim*, *Hilkhot Geirushin* 3:6; *Shulḥan Arukh*, *Even HaEzer* 132:2).

A bill of divorce for levirate betrothal and a bill of divorce for a levirate bond – **גֵּט לְמֵאִמְרָא וְגַט לְיֻזְקָה**: If a *yavam* performed levirate betrothal with his *yevama* and afterward gave her a bill of divorce for her levirate bond, he has thereby disqualified her for levirate marriage, both with himself and with the other brothers. If he does not specify the nature of the bill of divorce it is considered to have been written for her levirate bond. In order to permit her to marry any other man she requires another bill of divorce for her levirate betrothal, and *halitza* to release the levirate bond. If he gave her a bill of divorce for her levirate betrothal and not for her levirate bond, she is permitted to the brothers, but not to him. Some say (*Tosafot*; Ra'avad; Rosh) that she is even permitted to him (Rambam *Sefer Nashim*, *Hilkhot Yibbum* 5:4; *Shulḥan Arukh*, *Even HaEzer* 170:15).

וְלֹאֲשֶׁה בְּעֵלְמָא – אֵין גֵּט. מִפְּנֵי שְׂאִין בִּידּוֹ לְגִרְשָׁה. בְּעֵי רָמִי בַר חֲמָא: לִיבְמָתוֹ מִהוּ? בֵּין דְּאִגִּידָא בֵּיהּ – כְּאַרוּסָתוֹ דְּמִיָּא, אוֹ דְּלָמָּא: בֵּין דְּלָא עֵבֶד בָּהּ מֵאִמְרָא – לָא? תִּיקוּ.

בְּעֵי רַב חֲנַנְיָה: כְּתַב גֵּט לְיֻזְקָתוֹ וְלֹא לְמֵאִמְרוֹ, לְמֵאִמְרוֹ וְלֹא לְיֻזְקָתוֹ, מִהוּ? מֵאִמְרָא עֵילוּי זִיקָה קָא רָמִי, וְהוּהוּ לִיהּ כְּמִגְרִישׁ חֲצִי אִשָּׁה, וְהִמְגִּישׁ חֲצִי אִשָּׁה לֹא עָשָׂה וְלֹא כְּלוּם, אוֹ דְּלָמָּא: הֲאִי לְחֻדְיָה קָאִי וְהֲאִי לְחֻדְיָה קָאִי?

וְתַפְשׁוּט לִיהּ מִדְּרַבָּא, דְּאִמְרָא רָבָא: נָתַן גֵּט לְמֵאִמְרוֹ – הוֹתֵרָה צִרְתָּהּ! לְרָבָא – פְּשִׁיטָא לִיהּ, לְרַב חֲנַנְיָה – מִיבְעִינָא לִיהּ, מֵאִי? תִּיקוּ.

But if he wrote a bill of divorce for a regular woman who has no connection to him, even if he later married her, it is **not** a valid bill of divorce.^{HN} This is because at the time of the writing of the bill of divorce, it is **not in his power to divorce her**, and therefore the bill of divorce is of no consequence. All this is evident, but in light of the above *halakhot* Rami bar Hama inquires: If he wrote a bill of divorce for his *yevama* and did not give it to her immediately, but only after they were married, **what is the halakha?**^N Is it a valid bill of divorce or not? The Gemara clarifies the options: On the one hand, **since she is tied to him she is considered like his betrothed; or perhaps, since he has not yet performed levirate betrothal with her, she is not even considered the equivalent of his betrothed**, and the bill of divorce is not effective? The Gemara does not have a resolution for this and states that the question **shall stand** unresolved.

Rav Ḥanania inquires: If he wrote a bill of divorce for his levirate bond, by specifying in the bill of divorce that he is thereby severing the levirate bond between them, **but not for his levirate betrothal**, or if he wrote a bill of divorce for his levirate betrothal and stated that it is **not for his levirate bond**, what is the *halakha*?^H Is the levirate betrothal superimposed upon the levirate bond, so that they are considered a single, continuous link, and he is like one who divorces half a woman, and one who divorces half a woman has done nothing; or perhaps this stands on its own and that stands on its own, and he can therefore cancel either the levirate bond or the levirate betrothal separately.

The Gemara asks: **And why do you not resolve the dilemma from a teaching of Rava? For Rava said: If a yavam gave a bill of divorce for his levirate betrothal, her rival wife is permitted.** The levirate betrothal he had previously performed is thereby canceled, which leaves the bond intact, and the rival wife of this *yevama* remains available for levirate marriage. This indicates that levirate betrothal and the levirate bond are not connected. The Gemara answers: **To Rava it is obvious, but to Rav Ḥanania it is a dilemma. What, then, is the halakha?** Since no other proof is forthcoming, and Rav Ḥanania does not accept the teaching of Rava, the question remains undecided. The Gemara states that the dilemma **shall stand** unresolved.

NOTES

But for a regular woman it is not a bill of divorce – **וְלֹאֲשֶׁה בְּעֵלְמָא אֵין גֵּט**: Most early commentaries (see *Tosafot*) explain that since he appointed an agent to write the bill of divorce on his behalf, the agent cannot perform something the husband does not have the power to do, and at the time of the appointment he could not have written the bill of divorce himself. Rabbi Avraham min HaHar raises several difficulties with this explanation. He explains that the Rambam has a different opinion: As the woman could not be divorced at that time, the bill of divorce is considered like one that was not written for the sake of a particular woman, and such a bill of divorce is invalid.

For his *yevama* what is the *halakha* – **לִיבְמָתוֹ מִהוּ**: Rashi understands this question in a straightforward manner: Is this bill of divorce that she receives when still a *yevama* effective for their divorce after they are married? The Rambam understands the question in a similar vein. *Tosafot*, however, claim that it is obvious that such a bill of divorce cannot be used for divorce after their marriage. Consequently, they explain that the question is whether a bill of divorce written before levirate betrothal can

cancel that levirate betrothal. Alternatively, the reference is to the trace of a bill of divorce, i.e., does a bill of divorce of this kind disqualify her for marrying into the priesthood? *Tosafot Yeshanim* note that one might have thought it is evident that this bill of divorce disqualifies her for marrying into the priesthood, as a bill of divorce is effective for a *yevama* even before he has performed levirate betrothal. Nevertheless, there is a difference between the cases, as he does not give her the bill of divorce immediately, but only after their marriage. It is therefore possible that the decree of the Sages with regard to the bill of divorce of a *yevama* no longer applies to a married woman.

Tosafot HaRosh explains that the dilemma is whether his *yevama* is considered like his betrothed, since he can have intercourse with her, even against her will, and then divorce her; or perhaps there is no relationship between them as of yet, since they have yet to engage in relations. A different point is raised by the Ramban: If the question concerns the validity of the bill of divorce according to Torah law, including its ability to effect a regular divorce, why is the rabbinical levirate betrothal mentioned in this connection at all? He concludes that the

question concerns the efficacy of this bill of divorce on a rabbinic level, such that if he divorced her with it after their marriage, would she be considered divorced by rabbinic law. Do we say that the fact that he can give her a bill of divorce when she is a *yevama* and thereby disqualify her indicates that there is a connection between them, or perhaps this bill of divorce is completely ineffective after their marriage, as stated by *Tosafot Yeshanim*? All this refers to the stage before levirate betrothal, for once he has performed levirate betrothal with her she is certainly considered his betrothed according to rabbinic law.

The Rashba continues the line of reasoning suggested by the Ramban, but he explains somewhat differently. In his opinion the Gemara is asking a pair of questions that involve two distinct possibilities. First, does the fact that he can perform *halitza* with his *yevama* mean that it is as though he can give her a bill of divorce, and she is considered his betrothed with regard to the validity of this bill of divorce? Second, if we say that *halitza* is dissimilar to a bill of divorce, perhaps this bill of divorce is strong enough to disqualify her from marrying into the priesthood before he performs levirate betrothal.

This is the statement of Rabbi Akiva – **אמר רבי עקיבא** – **זו דברי רבי עקיבא**: In the Jerusalem Talmud, this conclusion is not accepted by all, as there are alternate ways to explain the mishna. For example, Reish Lakish maintains that a woman who performed *halitza* is forbidden to the brothers due to a prohibition for which they are liable to *karet*, as are her rival wives, and therefore betrothal is not effective even according to the Rabbis. Another possibility is that the mishna is in accordance with Rabbi Yehuda HaNasi, and it is discussing a situation where the *yavam* betrothed the *yevama* for the purpose of levirate marriage.

After sending her away – **אחר שילוח**: Rabbi Akiva maintains that the words “who sent her away” are superfluous, and therefore he reads the verse as speaking of two separate mitzvot. One would therefore read the verse as having two subjects, as follows: “Her former husband” and similarly he “who sent her away,” i.e., the *yavam*, “may not return to take her as a wife.”

HALAKHA

The validity of a bill of divorce for levirate marriage – **תקור גט יבמין**: The Sages decreed that the bill of divorce of a *yavam* to his *yevama* is effective, and it disqualifies her and her rival wives from levirate marriage, both with him and his brothers (Rambam *Sefer Nashim*, *Hilkhot Yibbum* 5:1; *Shulhan Arukh*, *Even HaEzer* 170:1).

One who performs *halitza* with his *yevama* and then betroths her – **החולץ ליבמתו וחרו וקדשה**: If one performed *halitza* with his *yevama* and then betrothed her, whether he did so for the purpose of regular marriage or levirate marriage, he is forbidden to marry her; but the betrothal is effective to the extent that she requires a bill of divorce from him (Rambam *Sefer Nashim*, *Hilkhot Yibbum* 5:13; *Shulhan Arukh*, *Even HaEzer* 170:13).

“חלץ ועשה מאמר.” אמר רב יהודה: אמר רב: זו דברי רבי עקיבא, דאמר: אין קדושין תופסין בחייבי לאוין. אבל חכמים אומרים: יש אחר חליצה כלום.

ומי מצית מוקמת לה כרבי עקיבא? והא קתני רישא: נתן גט ועשה מאמר – צריכה גט וחליצה, ואי רבי עקיבא – כיון דיהב לה גט מי מהני בה מאמר?

והתנא, רבי עקיבא אומר: מנן לנותן גט ליבמתו שנאסרה עליו עולמית – שנאמר “לא יוכל בעלה הראשון אשר שלחה” אחר שילוח.

אמר רב אשי: גט יבמין מדרבנן. וקרא – אסמכתא בעלמא.

תניא נמי הכי, אמר רבי: אין הדברים הללו אמורים אלא לדברי רבי עקיבא, שהיה עושה חלוצה בערוה. אבל חכמים אומרים: יש אחר חליצה כלום. ואני אומר: אימתי – בזמן שקדשה לשום אישות, אבל קדשה לשום יבמות – אין אחר חליצה כלום.

תניא אידך: החולץ ליבמתו, וחרו וקדשה. רבי אומר: אם קדשה לשום אישות – צריכה הימנו גט, לשום יבמות – אין צריכה הימנו גט וחכמים אומרים: בין שקדשה לשום אישות, בין שקדשה לשום יבמות – צריכה הימנו גט.

It was taught in the mishna: If the *yavam* performed *halitza* and then performed levirate betrothal, nothing is effective after *halitza* and this levirate betrothal is not valid. Rav Yehuda said that Rav said: This is the statement of Rabbi Akiva,ⁿ who says that betrothal does not take effect on those who are forbidden as they are liable for violating a prohibition. Once he has performed *halitza*, the woman is forbidden to him due to the prohibition derived from the verse “So shall it be done to the man who does not build his brother’s house” (Deuteronomy 25:9), and betrothal is ineffective. But the Rabbis say something is effective after *halitza*. Although the woman who performed *halitza* is forbidden to him, if he does betroth her, his betrothal is effective, as with any regular prohibition.

The Gemara asks: And can you establish that the mishna is in accordance with the opinion of Rabbi Akiva? But doesn’t the first clause of the mishna teach: If he gave a bill of divorce and performed levirate betrothal, she requires a bill of divorce and *halitza*. Now if this is in accordance with Rabbi Akiva’s opinion, once he gave her a bill of divorce, is levirate betrothal effective for her?

But isn’t it taught in a *baraita* that Rabbi Akiva says: From where is it derived that if one gives a bill of divorce to his *yevama*, she is forbidden to him forever and he no longer has the option of marrying her? As it is stated with regard to a woman who was divorced and married another man who subsequently died or divorced her: “Her former husband, who sent her away, may not take her again to be his wife” (Deuteronomy 24:4). Rabbi Akiva emphasizes the words “who sent her away,” implying that he may not remarry her after sending her away.ⁿ This indicates that there is an instance where a husband may not remarry his wife even if she has not married another, merely because he has given her a bill of divorce. This applies to the case of a *yevama* where the bill of divorce she receives renders her permanently prohibited to him. According to Rabbi Akiva, once she is rendered prohibited to him, no further action performed by the *yavam* is effective, so why does the levirate betrothal performed require a bill of divorce?

Rav Ashi said: This is not difficult because the bill of divorce for levirate marriage was established by the Sages and only has the force of rabbinic law,^h and the aforementioned verse is not a Torah prohibition, but rather a mere support. Therefore there is no Torah prohibition against marrying a *yevama* who received a bill of divorce, and the levirate betrothal performed afterward is effective according to Rabbi Akiva as well.

With regard to the *halakha* of betrothal after *halitza*, the Gemara notes: This *halakha* is also taught in a *baraita* as Rabbi Yehuda HaNasi said: These matters were only stated in accordance with the statement of Rabbi Akiva, who considers a *yevama* who underwent *halitza* to be prohibited like a forbidden relation. Therefore, any further betrothal is not effective with her, as is the case with forbidden relations. But the Rabbis say something is effective after *halitza*. And I say: When is betrothal effective after *halitza*? It is effective when he betrothed for the purpose of marriage, like the regular betrothal of any ordinary woman. But if he betrothed her after *halitza* and specified that he is doing so for the purpose of levirate marriage, in that case nothing is effective after *halitza*.

It is taught in another *baraita*: With regard to one who performs *halitza* with his *yevama* and then betroths her,^h Rabbi Yehuda HaNasi says: If he betrothed her for the purpose of regular marriage she requires a bill of divorce from him; if he betrothed her for the purpose of levirate marriage she does not require a bill of divorce from him. And the Rabbis say: Whether he betrothed her for the purpose of regular marriage, or whether he betrothed her for the purpose of levirate marriage, she requires a bill of divorce from him, as this betrothal is effective.

One who hoes in the property of a convert – העוֹדֵר בְּנִכְסֵי הַגֵּר: If one hoes the property of a convert who died without leaving heirs, under the mistaken impression that the land belonged to him, he has not acquired it. However, if he thought it belonged to a particular convert and it actually belonged to a different one, and he intended to acquire the ownerless property, the acquisition is effective (Rambam *Sefer Kinyan, Hilkhot Zekhiya UMattana* 2:13; *Shulḥan Arukh, Ḥoshen Mishpat* 275:25–26).

Levirate betrothal and a levirate bond – מאָמֶר יְבָמִין וְזִיקָתָהּ – יְבָמִין: If a *yavam* performed *ḥalitza* with his *yevama* and then betrothed her, whether he said he was doing so with levirate betrothal or with the levirate bond, his betrothal is effective. The *Beit Shmuel* claims that it is only valid by rabbinic law. She then requires a bill of divorce, in accordance with the opinion of the Rabbis (*Shulḥan Arukh, Even HaEzer* 170:14).

אָמַר רַב יוֹסֵף: מַאי טַעְמָא דְרַבִּי – עֲשָׂאוּהָ כְּעוֹדֵר בְּנִכְסֵי הַגֵּר וְכִסְבּוֹר שְׁלֹוֹ הֵן דְּלֹא קָנִי.

Rav Yosef said: What is the reason for Rabbi Yehuda HaNasi's distinction between one who betroths his *ḥalitza* for the purpose of levirate marriage and one who does so for the purpose of regular marriage? It is because the Sages considered him like one who **hoes the property of a convert**^H who died without leaving heirs. The property of such a convert is ownerless, and whoever takes possession of it acquires its title. As one of the methods of taking possession of land is hoeing, if one hoed the property of this convert with the intention of acquiring it, it belongs to him. However, if he hoed the convert's property **while mistakenly thinking** that the land was his own, even though he performed an act of acquisition, since he lacked the requisite intention **he has not acquired** the land. Here too, since the *yavam* intended to betroth her for the purpose of levirate marriage, and the levirate bond no longer exists, his action is not effective.

אָמַר לִיה אַבְיִי: מִי דְמִי? הֵתָם – לֹא קָא מְבוִין לְמִיקְנִי, הָכָא – קָא מְבוִין לְמִיקְנִי. הָא לֹא דְמִי אֶלָּא לְעוֹדֵר בְּנִכְסֵי גֵר זֶה, וְכִסְבּוֹר שְׁלֹוֹ גֵר אַחֵר הוּא, דְּקָנִי.

Abaye said to him: Are the two situations comparable?^N There, in the case of hoeing, **he does not intend to acquire** the land as he works, as he thinks that it is already his, whereas **here he does intend to acquire** the woman. This case is similar only to the one who hoes the property of this deceased convert while thinking it is that of a different convert. The *halakha* in that case is that **he acquires** the land, despite his imprecise knowledge of what he is acquiring. Here too the betrothal should take effect regardless of his error.

אֶלָּא אָמַר אַבְיִי: הָכָא בְּמֵי אֶסְקִינָן – כְּגוֹן דְּאָמַר לָהּ "הִתְקַדְּשִׁי לִי בְּמֵאמֶר יְבָמִין". רַבִּי סָבַר: מֵאמֶר עִלּוּי זִיקָה קָא רְמִי, וְאֵתָא חֲלִיצָה אֶפְקַעְתָּהּ לְזִיקָה. וְרַבֵּנּוּ סָבְרִי: הָאִי לְחוּדִיָּה קָאִי וְהָאִי לְחוּדִיָּה קָאִי. מַעֲיָקְרָא, אִילוּ אָמַר לָהּ "הִתְקַדְּשִׁי לִי בְּמֵאמֶר יְבָמִין" מִי לֹא מֵהֵנָּה הִשְׁתָּא נְמִי מֵהֵנָּה.

Rather, Abaye said that the dispute between Rabbi Yehuda HaNasi and the Rabbis cannot be explained in the above manner. Instead, he suggests: **With what are we dealing here?** It is a case where he said to his *ḥalitza*: **Be betrothed to me with levirate betrothal**. Rabbi Yehuda HaNasi holds that **levirate betrothal is superimposed upon** the levirate bond, and is therefore only possible when the bond exists, and since *ḥalitza* comes and releases the levirate bond, levirate betrothal is not effective for her. And the Rabbis hold: **This, the levirate bond, stands on its own, and that, levirate betrothal, stands on its own**. Although the bond has been canceled, the formula of: **Be betrothed to me with levirate betrothal**, is effective. **At the outset**, before *ḥalitza*, if he had said to her: **Be betrothed to me with levirate betrothal**,^N would this not be an effective betrothal despite the lack of connection between the levirate betrothal and the levirate bond? **Now too** it should be effective, even though she performed *ḥalitza*.

רַבָּא אָמַר: אִי דְּאָמַר לָהּ "בְּמֵאמֶר יְבָמִין" כּוּלִי עֲלֵמָא לֹא פְלִיגִי דְּמֵהֲנֵיא, וְהָכָא בְּמֵי אֶסְקִינָן – כְּגוֹן דְּאָמַר לָהּ "הִתְקַדְּשִׁי לִי בְּזִיקָתָהּ יְבָמִין". רַבִּי סָבַר:

Rava said: If he said to her: **Be betrothed to me with levirate betrothal**, everyone agrees that it is effective, and she is acquired. And with what are we dealing here? It is a case where he said to her: **Be betrothed to me with the levirate bond**,^H and the dispute is as follows: Rabbi Yehuda HaNasi holds

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אָמַר לִיה אַבְיִי מִי דְמִי – Abaye said to him, Are they comparable – The early commentaries are puzzled by Abaye's opinion: After questioning Rav Yosef's comparison to one who hoes a field by asserting that a *yavam* acquires his *yevama* when he betroths her for the purpose of levirate marriage, he himself proceeds to claim that he cannot acquire her by levirate betrothal.

Tosafot offer two explanations, also cited, with slight variations, by *Tosafot Yeshanim*. The Ra'avad explains that Rav Yosef explains Rabbi Yehuda HaNasi's case as one where the *yavam* says he is betrothing so-and-so, his *yevama*. Abaye responds that there is no proof from the wording that he is acquiring her with levirate marriage in mind, as he might merely be mentioning that she was previously his *yevama*. Abaye

therefore explains that Rabbi Yehuda HaNasi was referring specifically to one who said that he is acquiring her with levirate betrothal.

If he had said to her, Be betrothed to me with levirate betrothal – אִילוּ אָמַר לָהּ הִתְקַדְּשִׁי לִי בְּמֵאמֶר יְבָמִין: The Ritva indicates that a statement of this kind would be effective even with regard to a regular woman, despite the fact that it is not a precise expression of betrothal. Levirate betrothal is in essence an act of betrothal, and there is no reason to distinguish between them. For example, the Gemara in tractate *Kiddushin* 6a states that if one says to a woman: You are hereby tied to me by a bond, she is betrothed.

יש ויקה, ואתאי חליצה אפקעתיה
לויקה. ורבנן סברי, אין ויקה. מעיקרא
אילו אמר לה "התקדשי לי בויקת
יבמין" מי לא מהני? השתא נמי
מהני.

רב שרביא אמר: בחליצה כשירה, אי
דאמר לה "התקדשי לי בויקת יבמין"
כולי עלמא לא פליגי דלא מהני. והכא
בחליצה פסולה קמיפלגי. מר סבר:
חליצה פסולה פוטרת, ומר סבר:
חליצה פסולה אינה פוטרת.

רב אשי אמר: דכולי עלמא חליצה
פסולה אינה פוטרת. והכא ביש
תנאי בחליצה קמיפלגי. מר סבר: יש
תנאי בחליצה, ומר סבר: אין תנאי
בחליצה.

רבנא אמר: דכולי עלמא יש תנאי
בחליצה. והכא בתנאי כפול קמיפלגי;
מר סבר: בעינן תנאי כפול, ומר סבר:
לא בעינן תנאי כפול.

that the levirate bond is substantial, and this betrothal is based on the levirate bond. And in this case, the *halitza* comes and releases the levirate bond. Therefore this type of betrothal does not acquire the *halitza*. But the Rabbis hold that the levirate bond is not substantial,^N that is, the bond itself does not create a connection between the *yavam* and *yevama*, and that in general, levirate betrothal acquires a *yevama* as a form of betrothal unrelated to the levirate bond.^N And consequently, at the outset, if he had said to her: Be betrothed to me by the levirate bond, would this not be effective? Now too, after *halitza*, even without the bond, it should likewise be effective.

Rav Sherevya suggested a different point of dispute and said: In a case when the woman performed valid *halitza*, if he later said to her: Be betrothed to me by the levirate bond, everyone agrees^N that it is not effective, as there is no longer any bond. And here, they disagree with regard to one who performed invalid *halitza*. One Sage, Rabbi Yehuda HaNasi, holds that invalid *halitza* exempts her from the levirate bond and disqualifies her from betrothal as a *yevama*. And one Sage, i.e., the Rabbis, holds that invalid *halitza* does not fully exempt her,^N and some element of the levirate bond remains intact and she can therefore be betrothed with the levirate bond.

Rav Ashi said: Everyone agrees that invalid *halitza* does not exempt her and does not entirely nullify the bond. And here they disagree as to whether a condition is effective with regard to *halitza*. When the *yavam* states he is performing *halitza* on the condition that the *yevama* give him one hundred dinars, for example, is this condition effective and therefore the *halitza* is nullified if the condition is not fulfilled? One Sage, i.e., the Rabbis, holds that a condition is effective with regard to *halitza*. If the *yevama* fails to comply with the condition, the *halitza* is ineffective and she can still be betrothed with the levirate bond. And one Sage, Rabbi Yehuda HaNasi, holds that a condition is not effective with regard to *halitza*,^N and therefore the *halitza* is always effective as is the subsequent levirate betrothal.

Ravina said: Everyone agrees that a condition is effective with regard to *halitza*, and here they disagree with regard to a compound condition.^{HB} One Sage, Rabbi Yehuda HaNasi, holds that we require a compound condition. The man must explicitly stipulate that the *halitza* should be effective if the condition is upheld, and that it should not be effective if she does not fulfill the condition. If he did not state both the positive and negative sides of the condition it does not take effect, and the *halitza* is effective and the levirate bond is canceled. Consequently, betrothal by the levirate bond is ineffective. And one Sage, i.e., the Rabbis, holds that we do not require a compound condition. Therefore, the condition applies and cancels the *halitza*, which leaves the levirate bond intact.

BACKGROUND

A compound condition – תנאי כפול: This refers to conditions set out when creating contractual obligations. A simple condition merely states the positive side of a commitment: If X, then Y. A compound condition states its negative side, as well: If X, then Y, and if not X, then not Y. Some authorities, basing

themselves on the agreement made between Moses and the tribes of Gad and Reuben (see Numbers 32:20–24), maintain that compound conditions are required so that violation of a simple condition, where the negative side of the case is not stated, does not nullify the agreement.

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But the Rabbis hold that the levirate bond is not substantial – ורבנן סברי אין ויקה – It is not that the Rabbis maintain that the levirate bond is not significant at all, as the *yevama* certainly requires levirate marriage. Rather, it means the bond does not have the halakhic force with regard to creating prohibitions, as it is does not create a family connection that would forbid the *yavam* from marrying the relatives of the *yevama* (*Tosefot HaRosh*). Rabbi Avraham min HaHar explains that this opinion holds the levirate bond is not substantial by Torah law but rather by rabbinic law.

The explanations of the dispute between Rabbi Yehuda HaNasi and the Rabbis – פירושי מחלוקת רבי ורבנן: The early commentaries were puzzled by the variety of interpretations of this dispute, as they are based on assumptions that are not accepted as *halakha*. The Rif states, and the Rid writes similarly, that all these explanations of the Gemara are merely hypothetical exercises to sharpen the mind, and it is a mistake to analyze them too closely, as they are not meant as rulings for *halakha*.

Be betrothed to me by the levirate bond, everyone agrees, etc. – התקדשי לי בויקת יבמין כולי עלמא לא פליגי וכו' – The *Milhamot HaShem* had an alternate version of the text that reads: If he said: Be betrothed to me by the levirate bond, everyone agrees that it is effective, as they did not disagree with regard to the levirate bond at all. According to this opinion, which is implied somewhat by Rashi as well, all the suggested interpretations of the dispute are in logical order, in the manner usually signaled by the words: And if you say, etc.

Invalid *halitza* does not exempt her – חליצה פסולה אינה פוטרת: This suggestion is problematic, as the accepted principle throughout our chapter is that invalid *halitza* exempts the woman and that anything afterward is ineffective. How, then, can the Gemara propose that such a *halitza* does not exempt her? For this reason the Rif claims that this statement refers to the requirement to repeat the *halitza* with the other brothers; and therefore, according to the opinion that invalid *halitza* does not exempt her, she must perform *halitza* with all the brothers. A different interpretation is cited by Rabbi Avraham min HaHar. He contends that invalid *halitza* does not refer to *halitza* performed after another action. Instead, it means *halitza* performed with a pregnant woman, which is ineffective according to Reish Lakish.

HALAKHA

A condition with regard to *halitza* – תנאי בחליצה: No conditions are effective with regard to *halitza*, and therefore a mistaken *halitza* is valid. For example, if the *yavam* was told to perform *halitza* on condition that the *yevama* should give him a large sum of money, even if it was stated as a compound condition, the *halitza* is valid whether or not she paid him the stipulated amount (Rambam *Sefer Nashim*, *Hilkhot Yibbum* 4:24; *Shulhan Arukh*, *Even HaEzer* 169:50).

A compound condition – תנאי כפול: Every condition must include the following four features: It must be double in the sense that he must specify what will happen both if the condition is fulfilled and if it is not fulfilled; the formulation of its positive aspect, i.e., its fulfillment, must precede the negative formulation of the condition; the condition must be stated before the action itself; and the fulfillment of the condition must be feasible. Any condition that lacks one of these elements is discounted (Rambam *Sefer Nashim*, *Hilkhot Ishut* 6:2; *Shulhan Arukh*, *Even HaEzer* 38:2).

Nothing is effective after intercourse – אין אחר ביאה כלום – If a *yavam* engaged in valid intercourse with the *yevama*, i.e., the intercourse was not preceded by any action that would invalidate it, no action performed afterward is of any effect, whether performed by any other *yavam* with her, or by the *yavam* or one of his brothers with her rival wife, as stated by Abaye and Rava (Rambam *Sefer Nashim*, *Hilkhot Yibbum* 5:14; *Shulḥan Arukh*, *Even HaEzer* 170:12).

”חלץ ועשה מאמר ונתן גט ובעל” וכו’. וניתני נמי אין אחר ביאה כלום! אביי ורבא דאמרי תרויהו, תני: אין אחר ביאה כלום. ותנא דידן – התרת יבמה לשוק עדיפא ליה.

”אחד יבמה אחת אחד שתי יבמות.” מתניתין דלא בבן עזאי. דתנא. בן עזאי אומר: יש מאמר אחר מאמר בשני יבמין ויבמה אחת, ואין מאמר אחר מאמר בשתי יבמות ויבם אחד.

”ביצד מאמר לזו” וכו’. לימא מסייע ליה לשמואל, דאמר שמואל: חלץ לבעלת מאמר לא נפטרה צרתה.

S The mishna teaches: If the *yavam* performed *halitza* and then either performed levirate betrothal, or gave a bill of divorce, or engaged in intercourse, nothing is effective after *halitza*. The Gemara asks: And let the *tanna* likewise teach that nothing is effective after intercourse,^H for he also mentioned the case of one who engaged in intercourse and then proceeded to perform other actions such as levirate betrothal, divorce and *halitza*. Indeed, Abaye and Rava both say that the mishna should teach: Nothing is effective after intercourse, as this clause is fit to be inserted into the mishna. The Gemara asks: And the *tanna* of our mishna;^N why did he not state this? The Gemara explains: The permission for a *yevama* to marry a member of the public is preferable to him. He preferred to teach cases in which the *yevama* is permitted to marry any man from the general public as opposed to a situation where she is married to the *yavam*.

The mishna teaches that all the *halakhot* with regard to levirate betrothal after levirate betrothal and the like apply both in cases of one *yevama* to one *yavam*, as well as in cases of two *yevamot* to one *yavam*. The Gemara comments: The mishna is not in accordance with the opinion of ben Azzai. As it is taught in a *baraita*: Ben Azzai says: Levirate betrothal is effective after levirate betrothal in the case of two *yevamin* and one *yevama*, but levirate betrothal is not effective after levirate betrothal in the case of two *yevamot* and one *yavam*. The *tanna* of the mishna, in contrast, does not differentiate between the cases.

The mishna further teaches: How so? If he performed levirate betrothal with this one and performed *halitza* with that one, the first woman requires a bill of divorce to cancel the levirate betrothal. The Gemara suggests: Let us say that this teaching supports the opinion of Shmuel.^N As Shmuel said: If a *yavam* performed *halitza* with the woman who received levirate betrothal, then the rival wife is not exempt as this *halitza* is invalid. The fact that the Gemara does not state that the *halitza* be performed with the woman who received levirate betrothal indicates that this *halitza* is not a valid *halitza* and would not be sufficient to exempt the rival wife.

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And the *tanna* of our mishna, etc. – ותנא דידן וכו’. The wording here is confusing, for Abaye and Rava just stated that mishna should be adjusted, which means that in their opinion our *tanna* did in fact include this teaching in the mishna. *Tosafot Yeshanim* suggest that Abaye and Rava were pointing out a *baraita* that explicitly says that nothing is effective after intercourse, as indeed, such a *baraita* is found in the *Tosefta*. After noting that source, the Gemara inquires about the *tanna* of our mishna.

Let us say that this supports Shmuel, etc. – לימא מסייע ליה. *Tosafot* are puzzled by the assertion that this statement is both a support for the opinion of Shmuel and a refutation of the statement of Rav Yosef, for the opposite would appear to be the case; accepting Shmuel’s opinion should remove any difficulty with the statement of Rav Yosef. Once it is established that *halitza* with the woman who received levirate betrothal does not exempt the rival wife, it is clear that Rav Yosef’s insistence on not performing *halitza* when unnecessary is not relevant to this case, as here it is necessary. They answer that this line should be read as support for Shmuel or a refutation of Rav Yosef. However, the early commentaries point out that the letter *vav* usually means “and” and only rarely means “or” in the Gemara. Some commentaries therefore explain that the Gemara is saying that even according to Shmuel’s opinion, if Rav Yosef’s

opinion is accepted the *yavam* should be obliged to perform *halitza* with the first woman, such that when he later performs *halitza* with the second one he should at least not disqualify her by Torah law (*Tosefot HaRosh*).

Rabbeinu Hananel has a very different opinion. He claims that the Gemara is not referring to Rav Yosef’s opinion with regard to: He should not pour out the water of his pit, when others require them (12a), indicating that one should not needlessly disqualify a woman, but rather his opinion that: One who hoes the property of a convert... has not acquired it (52b). According to this interpretation, if the *yavam* performed levirate betrothal under the mistaken impression that it fully acquires her as a wife, the acquisition is considered an error, and it should therefore be entirely discounted.

The Ramban objects to this interpretation, as it would mean that the difficulty does not refer to this particular section of the mishna, but to multiple clauses of the mishna, and there was no reason to raise it at this juncture. The Ramban himself suggests that the Sages of the Gemara had a tradition that Rav Yosef disagrees with Shmuel. The *Tosefot HaRosh* similarly explains that the reference here is to Rav Yosef’s assertion in tractate *Megilla* (18b) that Shmuel’s opinion with regard to the levirate bond is a minority opinion. Therefore, if this mishna supports Shmuel it automatically presents a difficulty to that statement of Rav Yosef.

Let us say that it supports Rabba bar Rav Huna, etc. – **לימא מסייע ליה לרבה בר רב הונא וכו'**: Rashi and other commentaries maintain that the proof is not from this precise section of the mishna that states that both *yevamot* must perform *halitza*, but rather from the continuation: And similarly two *yevamin*, etc., from which we learn that another *halitza* is required even when there are two *yevamin*. The Ritva claims that it is not necessary to explain in this manner, for if invalid *halitza* must be repeated with all the women, it must certainly be repeated with multiple brothers.

The entire household is liable due to a prohibition – **בזלה ביתא בלאו**: The Ramban notes that according to Rabbeinu Hananel's version of the text (11a), which states that Rabbi Yohanan maintains that if one of the brothers has relations with one of the rival wives after *yibbum* has been performed, he violates a prohibition, the Gemara can be read in a straightforward manner. But according to our reading of the text there, which states that in that situation the entire house is liable due to a positive mitzva, the Gemara here is difficult. It must be interpreted as saying that Rabbi Yohanan holds that this prohibition is certainly no more than a regular prohibition, and there is a novel ruling being taught if there is a prohibition and all the more so if there is merely a positive mitzva. The novelty in that case would be that betrothal is ineffective for those liable for violating a positive mitzva, as claimed by Rabbi Yesheivav (49a).

HALAKHA

חליצה פסולה – צריכה לחזור: The dispute as to whether a woman who performed invalid *halitza* must repeat the *halitza* with all the brothers is left unresolved by the Gemara here. Indeed, some commentaries claim that according to the opinion that one who performed invalid *halitza* is required to repeat it with all the brothers, the same *halakha* applies to all her rival wives, as they all require *halitza* as well. According to the opinion that she does not require *halitza* from all the brothers, however, a single *halitza* is sufficient, whether we are dealing with two *yevamot* or two *yevamin* (Rambam *Sefer Nashim*, *Hilkhot Yibbum* 5:11; *Shulhan Arukh*, *Even HaEzer* 170:5).

ותיובתא דרב יוסף! מי קתני "חולץ"?
"חולץ" קתני, דיעבד.

And this would constitute a **conclusive refutation** of Rav Yosef's opinion, for he holds that it is preferable to perform *halitza* with the woman who received levirate betrothal and thereby exempt the second woman. As the first woman requires a bill of divorce and therefore is necessarily disqualified from marrying into the priesthood, it is preferable to perform *halitza* with her as well and consequently leave the second woman eligible to marry a priest. The Gemara refutes this claim: **Does the mishna teach: He should perform *halitza***, which would imply that the *yavam* should do so *ab initio*? It teaches that he performed *halitza*, implying that the ruling in the mishna is **after the fact**. Therefore, there is no indication in the mishna that the *yavam* should perform *halitza* with the second woman, and it is possible that if he were to perform *halitza* with the first woman he would thereby exempt the second one. It is simply that the particular case discussed by the mishna here concerns a man who performed levirate betrothal with this woman and *halitza* with that one.

It is further taught in the mishna: If he gave a **bill of divorce to this one and a bill of divorce to that one**, they require *halitza* from him. The Gemara suggests: **Let us say that it supports the statement of Rabba bar Rav Huna.**^N **As Rabba bar Rav Huna said:** In cases of invalid *halitza*, the *yevama* is required to repeat the *halitza*^H with all of the brothers, as that single invalid *halitza* is insufficient. Similarly, in this case of invalid *halitza*, it would be necessary to perform *halitza* with all of the *yevamot*. The Gemara rejects this suggestion: **What is the meaning of require** in this context? It means that such women **require in general**. The plural form does not refer to all the *yevamot* mentioned in the mishna, but rather it means that all *yevamot* in similar situations require *halitza*.

It was taught in the mishna: If he gave a **bill of divorce to this one and performed *halitza* with that one**, nothing is effective after *halitza*. The Gemara suggests: **Let us say that this supports the opinion of Shmuel**, as it indicates that the *yavam* should perform *halitza* with the rival wife rather than the woman who received a bill of divorce. **And it would likewise be a conclusive refutation of the opinion of Rav Yosef**, who prefers performing *halitza* with the disqualified woman. The Gemara again rejects this proof: **Does it teach: He should perform *halitza***, a ruling *ab initio*? **It teaches: He performed *halitza***, which is only **after the fact**, meaning he acted in that manner in this particular case.

The mishna taught that if he performed *halitza* with one woman and then performed *halitza* with another one, or he performed *halitza* and then proceeded to perform levirate betrothal, nothing is effective after *halitza*. The Gemara suggests: **And let the *tanna* also teach: Nothing is effective after intercourse**, as this is indicated in the mishna as well. The Gemara answers: Indeed, **Abaye and Rava both say that it should teach: Nothing is effective after intercourse**. The Gemara comments: **And the *tanna* of our mishna did not state this because the permission for a *yevama* to marry a member of the public is preferable to him**, and he therefore specified a case that involves *halitza*.

S It was taught in the mishna: Nothing is effective after *halitza*, both in cases of **one *yavam* to two *yevamot***, as well as cases of two *yevamin* to one *yevama*. The Gemara comments: **Granted, according to the opinion of Rabbi Yohanan, who said that once a *yavam* has performed *halitza* with his *yevama*, the entire household, the woman who performed *halitza* as well as her rival wives, is liable due to a prohibition^N derived from the verse "So shall it be done to the man who does not build his brother's house" (Deuteronomy 25:9), but the women are not liable to *karet* due to the prohibition with regard to a brother's wife. In light of Rabbi Yohanan's ruling, it was necessary to teach us that betrothal does not take effect on the rival wife of the woman who performed *halitza*, despite the fact that she is only liable for violating a prohibition, in accordance with the opinion of Rabbi Akiva.**

"גט לזו וגט לזו" כו'. לימא מסייע ליה
לרבה בר רב הונא. דאמר רבה בר רב
הונא: חליצה פסולה – צריכה לחזור
על כל האחים. מאי "צריכות" צריכות
דעלמא.

"גט לזו וחולץ לזו". לימא מסייע ליה
לשמואל ותהוי תיובתא דרב יוסף! מי
קתני "חולץ"? "חולץ" קתני, דיעבד.

"חולץ וחולץ או חולץ וכו'. וליתני נמי
אין אחר ביאה כלום! אבני ורבא
דאמרי תרווייהו, תני: אין אחר ביאה
כלום. ותנא דידן – התרת יבמה לשוק
עדיפא ליה.

"בין יבם אחד לשתי יבמות" כו'.
בשלמא לרבי יוחנן, דאמר: בולה ביתא
בלאו קאי, איצטרך לאשמועני דאין
קדושין תופסין בחיבי לאוין.

אֶלֶּא לְרִישׁ לְקִישׁ, דְּאָמַר: כּוֹלָה בֵּיתָא בְּכֶרֶת
קָאִי – אִיצְטְרִיךְ לְאַשְׁמוּעִינָן דְּאִין קְדוּשִׁין
תּוֹפְסִין בְּחֵיבֵי כְּרִיתוֹת?!

אָמַר לָךְ רִישׁ לְקִישׁ: וְלִיטְעַמִּיד, סִיפָא דְקֶתְנִי:
בְּעַל וְעֵשָׂה מֵאָמֶר, אִיצְטְרִיךְ לְאַשְׁמוּעִינָן
דְּאִין קְדוּשִׁין תּוֹפְסִין בְּאַשְׁתִּי אִישׁ?

אֶלֶּא: אִיִּידִי דְתִנָּא הִתְרַת יָבֵם אֶחָד וְיָבָמָה
אַחַת – תִּנָּא נָמִי שְׁתֵּי יָבָמוֹת וְיָבֵם אֶחָד,
וְאִיִּידִי דְתִנָּא שְׁתֵּי יָבָמוֹת וְיָבֵם אֶחָד – תִּנָּא
נָמִי שְׁתֵּי יָבָמִין וְיָבָמָה אַחַת.

However, according to Reish Lakish, who said that the entire household, apart from the woman who received *halitza*, is liable to receive *karet*, was it necessary to teach us that betrothal does not take effect on forbidden relations for which one is liable to receive *karet*? According to Reish Lakish, after the *yavam* performs *halitza*, the mitzva of levirate marriage is canceled and the *karet* prohibition against marrying a brother's wife is once again in force. As all agree that betrothal does not take effect on those liable to receive *karet*, it is unnecessary for the mishna to teach this ruling.

The Gemara answers: Reish Lakish could have said to you: And according to your reasoning, that the mishna would not be teaching us an apparently obvious *halakha*, consider the latter clause of the mishna, which teaches that if a *yavam* engaged in intercourse and another *yavam* performed levirate betrothal with the same woman, the levirate betrothal is not effective. Now was it necessary to teach us that betrothal is not effective for a married woman? Once a *yavam* has engaged in relations with a *yevama* she is his full-fledged wife, and certainly no other betrothal is effective.

Rather, it must be that not every clause in the mishna teaches a novel *halakha*, and the reasoning of the *tanna* is as follows: Since he teaches the release of the bond between one *yavam* and one *yevama*, he also teaches the case of two *yevamot* and one *yavam*, and since he teaches the case of two *yevamot* and one *yavam*, he also teaches the case of two *yevamin* and one *yevama*. The *tanna* therefore listed all possible cases even though we do not learn a novel *halakha* from each and every one.

Perek V
Daf 53 Amud b

NOTES

It was necessary to teach the case of one who performed *halitza* and then performed levirate betrothal, etc. – חֲלָץ וְעֵשָׂה מֵאָמֶר אִיצְטְרִיךְ וכו'. The Rosh asks why this justification is necessary as the Gemara could simply have explained as it did on the previous *amud*, that the mishna is emphasizing Rabbi Akiva's opinion that betrothal is ineffective for those liable due to regular prohibitions. He answers that the Gemara preferred to state an alternative explanation than to say that several sections of the mishna teach us the same thing.

We should issue a decree with regard to a bill of divorce that is given after intercourse, etc. – נְגוּזָר גֵּט – דִּבְתֵּר בְּעִילָה וכו'. The Rashba and the Ritva explain this statement differently from Rashi. Rashi explains that the decree would require the woman who received a bill of divorce after *halitza* to perform *halitza* again so that it not be confused with a bill of divorce given initially. The others explain that one might have thought that since a bill of divorce given to a *yevama* before intercourse permanently disqualifies her from levirate marriage, we should therefore decree that the bill of divorce she receives after intercourse likewise disqualifies her, and she should once again be considered forbidden to the *yavam* as his brother's wife. The *tanna* therefore teaches that in this case they left the Torah law as it is and did not decree further. The *ge'onim* read: Since a bill of divorce before intercourse is effective, a bill of divorce after intercourse is also effective, a version of the text that supports the Rashba's interpretation.

”חֲלָץ וְעֵשָׂה מֵאָמֶר וְנָתַן” וכו'. בְּשִׁלְמָא
חֲלָץ וְעֵשָׂה מֵאָמֶר אִיצְטְרִיךְ, סֵלְקָא דְעֵתָךְ
אָמִינָא: נְגוּזָר מֵאָמֶר דְּבִתֵּר חֲלִיצָה אִשּׁוּ
מֵאָמֶר דְּקָמִי חֲלִיצָה – קָא מְשַׁמַּע לֹן דְּלֹא
גְּזָרִינָן. אֶלֶּא חֲלָץ וְנָתַן גֵּט לְמָה לִּי?

וְלִיטְעַמִּיד אִימָא סִיפָא: בְּעַל וְעֵשָׂה מֵאָמֶר,
בְּעַל וְנָתַן גֵּט – בְּשִׁלְמָא בְּעַל וְנָתַן גֵּט
אִיצְטְרִיךְ, סֵלְקָא דְעֵתָךְ אָמִינָא: נְגוּזָר גֵּט
דְּבִתֵּר בְּעִילָה אִשּׁוּ גֵט דְּקָמִי בְּעִילָה, קָא
מְשַׁמַּע לֹן דְּלֹא גְּזָרִינָן. אָבֵל בְּעַל וְעֵשָׂה
מֵאָמֶר לְמָה לִּי?

It was taught in the mishna: If he performed *halitza* and then proceeded to either perform levirate betrothal, or give a bill of divorce, or engage in intercourse with a second woman, nothing is effective after *halitza*. The Gemara asks: Granted, it was necessary to teach that in the case of one who performed *halitza* and then performed levirate betrothal^N the levirate betrothal is not effective. For it might enter your mind to say that we should issue a decree with regard to levirate betrothal that takes place after *halitza* due to levirate betrothal that takes place before *halitza*, and rule that all levirate betrothal is effective. The mishna therefore teaches us that we do not issue a decree in this case. However, the case of one who performed *halitza* and gave a bill of divorce, why do I need this case? What novelty is there in the teaching that a bill of divorce after *halitza* is not effective?

The Gemara answers: And according to your reasoning, that each new case must teach something new, say the latter clause of the mishna: If he engaged in intercourse and then proceeded to perform levirate betrothal, or give a bill of divorce, or perform *halitza* with a second woman, nothing is effective. In this case the same question can be asked: Granted, it was necessary to teach the case of one who engaged in intercourse and gave a bill of divorce. This is because it might enter your mind to say that we should issue a decree with regard to a bill of divorce that is given after intercourse,^N due to a bill of divorce that is given before intercourse, and decree that this bill of divorce alone is insufficient and she requires *halitza* as well. The mishna therefore teaches us that we do not issue such a decree. But the case of a *yavam* who engaged in intercourse and performed levirate betrothal, why do I need to state it? Once he has engaged in intercourse with her she is his wife in all regards; what difference does levirate betrothal make?

אָלס: אַידי דַּתְנָא חֲלֵץ וְעָשָׂה
מֵאִמֶּר – תְּנָא נְמִי בְּעַל וְעָשָׂה מֵאִמֶּר,
וְאִידי דְּבַעֵי לְמִיתְנִי בְּעַל וְנָתַן גֵּט –
תְּנָא נְמִי חֲלֵץ וְנָתַן גֵּט.

Rather, one must say that since the *tanna* taught the case of one who performed *halitza* and then performed levirate betrothal, he also taught the case of one who engaged in intercourse and then performed levirate betrothal, due to the similarity between them. And since he wished to teach the case of one who engaged in intercourse and then gave a bill of divorce, he also taught the case of one who performed *halitza* and then gave a bill of divorce. We should therefore not infer anything from these superfluous cases, as they are merely stated for stylistic reasons.

בְּזִמְנֵי שְׁהִיא וכו'. מִתְּנִיתִין דְּלֵא
כִּי הָאִי תְנָא. דְּתַנִּיא, אָבָא יוֹסִי בֶן
יוֹחָנָן אִישׁ יְרוּשָׁלַיִם אוֹמֵר מְשׁוּם רַבִּי
מֵאִיר: אַחַת בְּעִילָה וְאַחַת חֲלִיצָה,
בְּתַחֲלָה – אֵין אַחֲרֶיהָ כְּלוּם, בְּאַמְצַע
וּבְסוֹף – יֵשׁ אַחֲרֶיהָ כְּלוּם.

§ The mishna taught: With regard to intercourse, when it is at the beginning nothing is effective after it, but if it was in the middle or at the end, something is effective after it. The Gemara comments: The mishna is not in accordance with the opinion of this *tanna*. As it is taught in a *baraita*: Abba Yosei ben Yohanan, a man of Jerusalem, says in the name of Rabbi Meir: With regard to both intercourse and *halitza*, if one of them were performed at the beginning, nothing is effective after it, but if they were done in the middle or at the end, i.e., they were preceded by some other action, something is effective after it. According to the mishna, however, nothing is effective after *halitza* regardless of when it was performed.

וְשָׁלַשׁ מַחֲלוּקֹת בְּדָבָר, תְּנָא קַמָּא
סָבֵר: בִּיאָה דְּאִיכָא לְמִיגוֹר – גְּזֵרִין,
חֲלִיצָה דְּלִיכָא לְמִיגוֹר – לֹא גְזֵרִין.

And therefore it can be concluded that there are three disputes with regard to this matter, i.e., three opinions on this issue. The first *tanna* holds: In the case of intercourse that is preceded by a disqualifying action, where there is a reason to issue a decree, lest one violate a prohibition by engaging in intercourse after *halitza* or intercourse was performed, we issue a decree establishing that invalid intercourse should not be as effective as valid intercourse. With regard to *halitza*, however, where there is no reason to issue a decree as there is no concern of a prohibition even if an action is performed after *halitza*, we do not issue a decree.

וּרְבִי נְחֵמְיָא סָבֵר: בִּיאָה נְמִי לִיכָא
לְמִיגוֹר. וְדִקְאֻמְרָתָא: לִיגוֹר בִּיאָה אַחֵר
הֵגֵט מְשׁוּם בִּיאָה אַחֵר חֲלִיצָה – בִּיּוֹן
דְּחֲלִיצָה דְּאוֹרֵייתָא, מִידַּע יָדְעִי.
וְדִקְאֻמְרָתָא לִיגוֹר בִּיאָה אַחֵר מֵאִמֶּר
מְשׁוּם בִּיאָה אַחֵר בִּיאָה – בִּיּוֹן
דְּבִיאָה דְּאוֹרֵייתָא, הָא מִידַּע יָדְעִי.
וְאָבָא יוֹסִי בֶן חֲנַן סָבֵר לָהּ כְּרַבָּנָן
דְּגִזְרִי בְּבִיאָה, וְגִזְרִי חֲלִיצָה מְשׁוּם
בִּיאָה.

And Rabbi Nehemya holds that with regard to intercourse there is also no reason to issue a decree. And as for what you said in justification of your ruling, that we should issue a decree in a case of intercourse after a bill of divorce due to intercourse after *halitza*, there is no cause for such a concern. Since *halitza* is effective by Torah law, people know that it is fully effective and cannot be followed by anything, and they will not confuse it with laws instituted by the Sages. And as for what you said that we should issue a decree with regard to intercourse after levirate betrothal due to intercourse after intercourse, since the acquisition of intercourse is by Torah law, this matter is known by people, and they will not err in this regard. And Abba Yosei ben Hanan holds in accordance with the opinion of the Rabbis, who issue a decree with regard to intercourse, but he adds and issues a decree with regard to *halitza* due to intercourse. He therefore does not differentiate between *halitza* and intercourse at all.

הדרן עלך רבן גמליאל

Summary of Perek V

From the discussion in this chapter it became clear that neither performing levirate betrothal nor giving a bill of divorce is a completely efficacious act for a woman requiring levirate marriage. While levirate betrothal effects some degree of acquisition and a bill of divorce effects some degree of release, there is room for subsequent acts to be applied, and if performed they are legally binding. This is true regardless of whether the act was performed by the original *yavam* with a different *yevama* or by a different *yavam* with the original *yevama*.

Insofar as intercourse and *ḥalitza* are concerned, we find that their *halakhot* are not identical. On the one hand, intercourse with a *yevama* is completely efficacious, and so long as the intercourse occurred first, i.e., before any other act that might invalidate it, any subsequent act is halakhically insignificant. However, if the act of intercourse followed a different previous act, the intercourse is considered invalid and other subsequent acts have legal implications. On the other hand, with regard to *ḥalitza*, it makes no difference whether it was performed first or after another act; after *ḥalitza* no other act of nullification, neither *ḥalitza* nor a bill of divorce, holds any legal validity. However, acts of acquisition, i.e., intercourse or levirate betrothal, are still efficacious.

In practice, it makes no difference whether any one of these combinations was performed by a single *yavam* with a single *yevama* or two *yevamot*, or by two *yevamin* with a single *yevama* or two *yevamot*. However, if a single *yavam* performed levirate betrothal and engaged in sexual relations with a single *yevama*, this is the proper way to perform the mitzva of levirate marriage. If he engaged in intercourse and then gave her a bill of divorce, then he performed the mitzva of levirate marriage and subsequently divorced the woman.

Halakhic conclusions of this chapter:

First act	Second act	Validity of subsequent acts	What must be done next
Levirate betrothal	Levirate betrothal	All acts are valid	Two bills of divorce and <i>ḥalitza</i>
	Bill of divorce	All acts are valid	Bill of divorce for the levirate betrothal and <i>ḥalitza</i>
	Intercourse	All acts are valid	Two bills of divorce and <i>ḥalitza</i>
	<i>Ḥalitza</i>	Intercourse and levirate betrothal are valid	Bill of divorce
Bill of divorce	Levirate betrothal	All acts are valid	Bill of divorce and <i>ḥalitza</i>
	Bill of divorce	All acts are valid	<i>Ḥalitza</i>
	Intercourse	All acts are valid	Bill of divorce and <i>ḥalitza</i>
	<i>Ḥalitza</i>	Intercourse and levirate betrothal are valid	
Intercourse	Levirate betrothal	All acts are invalid	
	Bill of divorce	All acts are invalid	
	Intercourse	All acts are invalid	
	<i>Ḥalitza</i>	All acts are invalid	
<i>Ḥalitza</i>	Levirate betrothal	Levirate betrothal and intercourse are valid	Bill of divorce
	Bill of divorce	All acts are invalid	
	Intercourse	Levirate betrothal and intercourse are valid	Bill of divorce
	<i>Ḥalitza</i>	All acts are invalid	

If brothers dwell together and one of them dies and he has no child, the wife of the dead man shall not be married outside of the family to one not of his kin; her brother-in-law will have intercourse with her and take her to him to be his wife and consummate the levirate marriage.

(Deuteronomy 25:5)

Introduction to Perek VI

By Torah law it is the act of intercourse itself by which the *yevama* is acquired by the *yavam* in fulfillment of the mitzva of levirate marriage. Therefore, it is necessary to determine the exact parameters of the act defined as intercourse for this purpose; both the objective definition of the act as well as the required intentions of the parties involved. Must they intend that the act be for the sake of performing a mitzva, or for the sake of validating the legal transaction? Or are their intentions irrelevant?

The clarification of what is considered a sexual act is useful for other areas of *halakha* as well. With regard to forbidden sexual relations, which acts constitute full-fledged violation of a prohibition? What is the severity of the punishment for a given act? Furthermore, when does a forbidden act of intercourse disqualify a woman from marrying a priest? In the case of marriage, when is a marriage considered to be consummated? These issues are discussed at the beginning of this chapter.

The chapter then turns to address the details governing women disqualified from marrying priests, especially the High Priest. How do these disqualifications come about? Who is included in these categories? Finally, the institution of marriage is addressed, with a particular emphasis on the mitzva to be fruitful and multiply. What is necessary in order to fulfill this mitzva? Who is included in the obligation to have children?

These matters form the bulk of this chapter, but, as is the way of the Talmud, several secondary matters stemming from these primary questions are also discussed.

מתני' הבא על יבמתו, בין בשוגג בין במזיד בין באונס בין ברצון, אפילו הוא שוגג והיא מזידה, הוא מזיד והיא שוגגת, הוא אנוס והיא לא אנוסה, היא אנוסה והוא לא אנוס. אחד המערה ואחד הגומר – קנה, ולא חילק בין ביאה לביאה.

וכן הבא על אחת מכל העריות שבתורה, או פסולות, כגון: אלמנה לכהן גדול, גרושה וחלוצה לכהן הדיוט, ממזרת ונתנית לישׂראל, בת ישׂראל לממזר ולנתין – פסלה, ולא חילק בין ביאה לביאה.

גמ' מאי אפילו?

לא מיבעיא קאמר: לא מיבעיא הוא שוגג והיא קמפונה למצוה, אי נמי הוא מזיד והיא קמפונה למצוה, אלא אפילו הוא שוגג והיא מזידה, דתרויהו לא קמפוני לשם מצוה – אפילו הכי קנה. תני רבי חייא: אפילו שניהם שוגגים, שניהם מזידים, שניהם אנוסים.

אנוס דמתניתין היכי דמי? אילימא בשאנסוהו גוים ובא עליה – והאמר רבא: אין אונס לערוה, לפי שאין קישוי אלא לדעת.

אלא בישן – והאמר רב יהודה

MISHNA One who had intercourse with his *yevama*, whether unwittingly, i.e., he thought he was having intercourse with someone else, or intentionally,^N i.e., he knew she was his *yevama* and nevertheless had intercourse with her without intent to perform levirate marriage; whether due to coercion or willingly; even if he was unwitting and her participation was intentional, his participation was intentional and she was unwitting, he was coerced and she was not coerced, or she was coerced and he was not coerced; both one who merely engages in the initial stage of intercourse^N and one who completes the act of intercourse has thereby acquired his *yevama*.^H And similarly, the Torah did not distinguish between an act of intercourse in an atypical manner, i.e., anal intercourse, and intercourse in a typical manner.

And so too, with regard to a man who had intercourse with any one of those with whom relations are forbidden [*arayot*] by the Torah or with those who are unfit for him even though they are not in the category of *arayot*, for example, a widow with a High Priest; a divorcee and a *yevama* who performed *halitza* [*halutza*] with a common priest; a *mamzeret*, i.e., a woman born from an incestuous or adulterous relationship, or a Gibeonite woman with an Israelite; the daughter of an Israelite with a *mamzer* or a Gibeonite; he has disqualified her from marrying into the priesthood through this act no matter how it was performed, and the Torah did not distinguish between the act of intercourse in an atypical manner, i.e., anal intercourse, and intercourse in a typical manner.^H

GEMARA The Gemara asks: What is the significance of the word *even* in the statement that begins with: Even if he was unwitting and her participation was intentional? Since the mishna has already said that there is no halakhic difference whether the act of intercourse was performed intentionally, what is added by that statement?

The Gemara answers: The mishna is stated in the style of: **Needless to say. It is needless to say that if he was unwitting and she intended to fulfill the mitzva, or alternatively, he acted intentionally without intent to fulfill the mitzva and she intended to fulfill the mitzva, he has acquired her. However, even if he was unwitting and she acted intentionally, where both of them did not intend to act for the sake of the mitzva, he nevertheless acquires her.** Similarly, Rabbi Hiyya taught: Even if both of them acted unwittingly, intentionally, or were coerced, he acquires the *yevama* through the act of intercourse.

S The Gemara asks: What are the circumstances the mishna is referring to when it mentions a man who was coerced? If we say that it is when gentiles coerced him by threatening to kill him if he did not have intercourse with her and he therefore had intercourse with her, didn't Rava say that there is no such thing as coercion of a man to have intercourse with a woman with whom relations are forbidden,^{NH} because there is no erection of the male organ without intent?^B Consequently, even if he acted due to the threat, his action is considered intentional.

Rather, the mishna must be referring to one who was sleeping and became erect, and his *yevama* drew him onto herself. However, didn't Rav Yehuda say that

NOTES

בין בשוגג בין – Whether unwittingly or intentionally, etc. – *Tosafot* inquired why the mishna specified both the case of one who had intercourse intentionally and the case of one who had intercourse willingly. What is the difference between these cases? They explain that the term willingly indicates that one does so with intention to fulfill the mitzva, whereas the term intentionally means that one acts purposefully but without intent to fulfill the mitzva.

One who engages in the initial stage of intercourse – המערה: This term is subsequently explained in the Gemara on 55b.

There is no coercion of a man to have intercourse with a woman with whom relations are forbidden – אין אונס לערוה – The Ramban cites a dispute with regard to this principle. Some explain that if a man is threatened with death unless he engages in an act of forbidden relations, and he commits the act, he is punishable in court for the forbidden relations due to Rava's principle that there is no coercion of a man with regard to intercourse. Others say that the man is not punishable in court because he is considered to be coerced, despite the fact that, *ab initio*, he is obligated to give up his life rather than engage in forbidden relations. Rather, Rava's principle applies to a case in which a woman or a third person coerced him to engage in intercourse, but not under pain of death. In this case, Rava's principle determines that it is as though he intentionally committed the act and he is not considered coerced. Nevertheless, the Gemara did not explain that the case of coercion in the mishna is one where the man's life has been threatened, as, since he engages in the act of intercourse willingly but for a purpose other than the mitzva, it is no different from the case the mishna refers to as having intercourse intentionally. See also *Tosafot*.

HALAKHA

כל ביאה קונה ביבמה – Any act of intercourse acquires a *yevama* – If one has intercourse with his *yevama*, whether intentionally or unwittingly, regardless of whether either party was coerced or willing, he has thereby acquired her and they are married. Furthermore, it makes no difference whether it was a typical act of intercourse or anal intercourse, nor whether he completed the act or merely began it (Rambam *Sefer Nashim, Hilkhot Yibbum* 2:3; *Shulhan Arukh, Even HaEzer* 166:7).

ביאה אסורה ופסולת – Prohibited and disqualifying intercourse – A prohibited act of intercourse is considered to have occurred as soon as the act has begun, regardless of whether the act was completed or whether it was a typical act of intercourse or anal intercourse. Furthermore, the woman is disqualified from marrying a priest regardless of whether she or the man engaged in the act intentionally or willingly, as long as she is at least three years old and he is at least nine years old (Rambam *Sefer Kedusha, Hilkhot Issurei Bia* 18:6; *Shulhan Arukh, Even HaEzer* 6:9; 20:1, and in the comment of Rema).

There is no coercion of a man to have intercourse with a woman with whom relations are forbidden – אין אונס לערוה – A woman who was coerced to engage in forbidden relations is exempt from all penalties. However, a man who is coerced is liable to receive punishment. Since Rava ruled that erection occurs willingly, he is not considered to have been coerced at all. The Ra'avad adds that even a man can be coerced and therefore exempt from punishment if he became erect while intending to have intercourse with his wife, and then someone forcibly coerced him to engage in a prohibited act of intercourse. The *Maggid Mishne* writes that even the Rambam would agree that in this rare case, the man would be considered coerced and would be exempt from punishment (Rambam *Sefer Nashim, Hilkhot Issurei Bia* 1:9).

BACKGROUND

Intentional erection – קישוי לדעת: The nerves that cause erection are usually activated voluntarily. Although it is possible that an erection could be caused by a kind of mechanical stimula-

tion, the assumption here is that a man's desire is largely in control of these nerves, and emotional causes are the decisive factor in the arousal of erection. The conclusion implied by

the Gemara that erections are necessarily intentional is to be understood in the sense that there has to be some cooperation on the part of the man for it to occur.

HALAKHA

A sleeping man has not acquired his *yevama* – **שֵׁן לֹא קָנָה בִּיבְמָתוֹ**: One who did not intend to perform an act of sexual intercourse, e.g., one who was asleep, drunk, or completely unaware of his actions, does not acquire his *yevama* even if they did engage in sexual intercourse (Rambam *Sefer Nashim*, *Hilkhot Yibbum* 2:4; *Shulḥan Arukh*, *Even HaEzer* 166:8).

One who fell from a roof and was inserted into a woman is liable to pay four types of indemnity – **נָפַל מִן הַגֵּג וְנִתְקַע חַיִּיב בְּאַרְבַּע דְּבָרִים**: One who fell from a roof due to the force of a normal wind and hurt someone is liable to pay four types of indemnity: Indemnity due to injury, pain, medical costs, and loss of livelihood. However, he is exempt from paying for the victim's shame (Rambam *Sefer Nezikin*, *Hilkhot Hovel* 1:12; *Shulḥan Arukh*, *Hoshen Mishpat* 421:11).

And if she is his *yevama*, he has not acquired her – **וְבִיבְמָתוֹ לֹא קָנָה**: One who became erect while intending to have intercourse with his wife and then fell onto his *yevama* has not acquired her (Rambam *Sefer Nashim*, *Hilkhot Yibbum* 2:4; *Shulḥan Arukh*, *Even HaEzer* 166:8).

Sexual intercourse completes...but money or a marriage document do not – **בִּיאָה גִּמְרָתָא...וְאֵין – כֶּסֶף וְשֵׁטֶר**: A *yevama* can be fully acquired by her *yavam* only through sexual intercourse, but not by other means that generally effect betrothal, i.e., money or a marriage document. However, the Sages decreed that one should not have intercourse with his *yevama* without betrothing her first (Rambam *Sefer Nashim*, *Hilkhot Yibbum* 5:9; *Shulḥan Arukh*, *Even HaEzer* 166:2, 170:2).

NOTES

Her brother-in-law will have intercourse with her, etc. – **יִבְמָה יָבֹא עָלֶיהָ וכו'**: The Gemara here cites several expositions of this verse and attempts to demonstrate that only one *halakha* is derived from each expression in the verse. Some of these expositions, as well as additional ones, are also cited in the Jerusalem Talmud, but there the Gemara sees no reason to avoid using a single phrase as the source of multiple expositions.

יִשָּׁן לֹא קָנָה בִּיבְמָתוֹ! אֶלֶּא – בְּנִתְקַע?
וְהָא אָמַר רַבָּה: נָפַל מִן הַגֵּג וְנִתְקַע – חַיִּיב
בְּאַרְבַּע דְּבָרִים, וְבִיבְמָתוֹ לֹא קָנָה!

אֶלֶּא: כְּגוֹן שְׁנִיתְכּוּן לְאִשְׁתּוֹ, וְנִתְקַתָּ
בִּבְמָתוֹ, וְכֹא עָלֶיהָ, שְׁנִיָּהם אֲנוּסִים
דְּבִי רַבִּי חִיָּיא הֵיכִי דְמִי? כְּגוֹן שְׁנִיתְכּוּן
לְאִשְׁתּוֹ, וְנִתְקַפּוּדוֹ גּוֹיִם וְדְבָקוּם וְהָ בּוֹה,
וְכֹא עָלֶיהָ.

מִנָּא הָנִי מִלִּי? דְּתַנּוּ רַבְנֵי: "יִבְמָה יָבֹא
עָלֶיהָ" מִצְוָה. דְּבַר אַחֵר: "יִבְמָה יָבֹא
עָלֶיהָ" בֵּין בְּשׁוּגֵג בֵּין בְּמֻזִּיד, בֵּין בְּאוּסָם
בֵּין בְּרָצוֹן.

וְהָא אֲפִיקְתִּיהָ לְמִצְוָה! לְמִצְוָה מִיָּאָם
לֹא יִחַפּוּץ הָאִישׁ נִפְקָא. הָא חֲפִץ – יָבֵם,
וְכִי אֶתָּא קָרָא – בֵּין בְּשׁוּגֵג בֵּין בְּמֻזִּיד בֵּין
בְּאוּסָם בֵּין בְּרָצוֹן.

תַּנָּא אֵידִךְ: "יִבְמָה יָבֹא עָלֶיהָ" כְּדִרְכָּה,
וְלִקְחָהּ שְׂלֹא כְּדִרְכָּה. "וְיָבֵם" בִּיאָה
גִּמְרָתָה בְּהָ וְאֵין כֶּסֶף וְשֵׁטֶר גִּמְרִין בְּהָ.
וְיִבְמָה בְּעַל כְּרָחָה. דְּבַר אַחֵר: "יִבְמָה
יָבֹא עָלֶיהָ" בֵּין בְּשׁוּגֵג כו'.

וְהָא אֲפִיקְתִּיהָ לְכְּדִרְכָּה! הֵהוּא מִלֵּהָקִים
לְאִחֵיו שֵׁם נִפְקָא. בְּמָקוֹם שְׁמִיקָם שֵׁם.
וְכִי אֶתָּא קָרָא – בֵּין בְּשׁוּגֵג בֵּין בְּמֻזִּיד בֵּין
בְּאוּסָם בֵּין בְּרָצוֹן.

a sleeping man has not acquired his *yevama*,^h as he did not intend to perform the act of intercourse at all? **Rather**, the mishna was referring to one who was inserted into his *yevama* by accident. But didn't Rabba say: One who fell from a roof and was inserted into a woman due to the force of his fall is liable to pay four of the five types of indemnity^h that must be paid by one who damaged another: Injury, pain, medical costs, and loss of livelihood. However, he is not liable to pay for the shame he caused her, as he did not intend to perform the act, and if she is his *yevama*, he has not acquired her^h in this manner.

Rather, it is a case where he intended to have intercourse with his wife and became erect, and his *yevama* forcefully grabbed hold of him and he had intercourse with her. The Gemara further asks: If so, what are the circumstances of the case when both of them were coerced that was mentioned by the school of Rabbi Hiyya? The Gemara answers: It is a case where he intended to have intercourse with his wife, and gentiles grabbed hold of him and pressed him and his *yevama* against each other, and he thereby had intercourse with her.

S The Gemara inquires as to the source of these *halakhot*: From where are these matters derived? As the Sages taught with regard to the verse "Her brother-in-law will have intercourse with her" (Deuteronomy 25:5),ⁿ that this indicates that the act of intercourse in this circumstance is a *mitzva*, i.e., it is preferable to the alternative, which is *halitza*. Alternatively, the verse "Her brother-in-law will have intercourse with her," indicates that it does not matter how he had intercourse with her, whether unwittingly or intentionally, whether due to coercion or willingly.

The Gemara asks: Didn't you derive from this phrase that the act of intercourse in this case is a *mitzva*? How can the same phrase also indicate that it does not matter what the intentions of the two parties were during the act of intercourse? The Gemara answers: The fact that it is a *mitzva* is derived from the verse: "And if the man does not wish to take his *yevama*" (Deuteronomy 25:7), which indicates that if he wishes, he performs levirate marriage, which is preferable to *halitza*. Therefore, when the verse cited above came, it indicated that levirate marriage has occurred whether the parties acted unwittingly or intentionally, whether due to coercion or willingly.

It is taught in another *baraita* that the phrase: "Her brother-in-law will have intercourse with her" indicates that levirate marriage has been performed if they engage in typical sexual intercourse. The next phrase, "and take her," includes even atypical, i.e., anal, sexual intercourse. The concluding phrase of the verse, "and consummate the levirate marriage," indicates that sexual intercourse completes her acquisition, but money and a marriage document do not^h complete her acquisition to him as his fully betrothed wife, in contrast to the regular *halakhot* of marriage. By emphasizing "and consummate the levirate marriage with her," the verse teaches that he acquires her even if he acted against her will. Alternatively: "Her brother-in-law will have intercourse with her" indicates that levirate marriage has occurred whether the parties acted unwittingly or intentionally, whether due to coercion or willingly.

The Gemara asks: Didn't you derive from this phrase that levirate marriage has been performed if they engage in typical sexual intercourse? How can it also indicate that it does not matter what the intentions of the two parties were during the act of intercourse? The Gemara answers: That *halakha* is derived from a different verse: "To establish a name for his brother" (Deuteronomy 25:7), which indicates that intercourse must occur in the place where he establishes a name, i.e., where it can lead to childbirth. Therefore, when the verse cited above came, it indicated that levirate marriage has occurred whether the parties acted unwittingly or intentionally, whether due to coercion or willingly.

גופא, אָמַר רַב יְהוּדָה: יִשָּׁן לֹא קָנָה בִּיבְמָתוֹ, דָּאָמַר קָרָא "יִבְמָה יָבֵא עָלֶיהָ" עַד דְּמַכְוִין לָהּ לְשֵׁם בִּיאָה. וְהִתְנַאי: בֵּין עַר [בֵּין יִשָּׁן] אִימָא: בֵּין עָרָה בֵּין יִשְׁנָה.

§ The Gemara addresses the matter itself cited in the previous discussion. Rav Yehuda said: **A sleeping man has not acquired his yevama, as the verse states: "Her brother-in-law will have intercourse with her"** (Deuteronomy 25:5), which indicates that he does not acquire her **unless he intends to act for the sake of sexual intercourse**. Since a sleeping man does not intend to engage in sexual intercourse, he does not acquire his yevama. The Gemara asks: **Isn't it taught** in a *baraita* that one acquires his yevama through sexual intercourse regardless of **whether he was awake or asleep**? The Gemara answers: **Say the baraita in the following emended form: Whether she was awake or asleep.**^H The woman's awareness is not a necessary component in order to perform levirate marriage.

וְהִתְנַאי: בֵּין עַר [הוּא בֵּין יִשָּׁן הוּא. בֵּין עָרָה הִיא בֵּין יִשְׁנָה הִיא! הָכָא בְּמֵאֵי עֲסָקִין – בְּמִתְנַמְנֵם. הִכִּי דְּמִי מִתְנַמְנֵם? אָמַר רַב אֲשִׁי: נִים וְלֹא נִים, תִּיר וְלֹא תִיר, כְּגוֹן דְּקָרוּ לִיהָ וְעָנִי, וְלֹא יָדַע לְאַהֲדוּרֵי סְבָרָא. וְכִי מְדַבְּרֵי לִיהָ מְדַבֵּר.

The Gemara asks further: **Wasn't it taught** in another *baraita* that one acquires his yevama through sexual intercourse regardless of **whether he was awake or he was asleep** and regardless of **whether she was awake or she was asleep**? The Gemara answers: **With what are we dealing here** when the *baraita* says that a sleeping man acquires his yevama? It is referring to a man **who is dozing**. The Gemara asks: **What are the circumstances of dozing?** Rav Ashi said: **One is asleep but not asleep, awake but not awake, when, if they call him, he will answer, but he is unable to provide a reasonable answer. And when they later inform him of what happened, he remembers it.**

גופא, אָמַר רַבָּה: נָפַל מִן הַגֵּג וְנִתְקַע חַיִּיב בְּאַרְבַּעָה דְּבָרִים, וּבִיבְמָתוֹ לֹא קָנָה: בְּגִזָּק, בְּצַעַר, בְּשִׁבְתָּהּ, בְּרַפּוּי, אֲבָל בּוֹשֶׁת לֹא מִיחְיִיב, דָּאָמַר מָר: אִין חַיִּיב עַל הַבוֹשֶׁת עַד שְׁתִּיבָתוֹ.

The Gemara returns to the statement of Rabba cited earlier in order to discuss the matter itself that Rabba addressed. Rabba said: **One who fell from a roof and was inserted into a woman due to the force of his fall is liable to pay four of the five types of indemnity that must be paid by one who damaged another, and if she is his yevama he has not acquired her in this manner.** He is liable to pay for injury, pain, loss of livelihood, and medical costs. However, he is not liable to pay for the shame he caused her, as the Master said: **One is not liable to pay for shame unless he intends to humiliate his victim.**^H Consequently, one who fell from a roof accidentally is not liable to pay for the shame he caused the woman.

אָמַר רַבָּא: נִתְכַּוֵּין לְהִטִּיחַ בְּכוֹתֵל וְהִטִּיחַ בִּיבְמָתוֹ – לֹא קָנָה. לְהִטִּיחַ בְּבִהְמָה וְהִטִּיחַ בִּיבְמָה – קָנָה, דִּהָא קְמַכְוִין לְשֵׁם בִּיאָה בְּעוֹלָם.

Rava said: **If he intended to press his sexual organ into a wall, and he accidentally pressed it into his yevama, he has not acquired her, as he did not intend to engage in an act of sexual intercourse.** However, if he intended to **press his sexual organ into an animal, and he pressed it into his yevama, he has acquired her, as he at least intended to act for the purpose of sexual intercourse in general**,^H i.e., for some form of sexual intercourse.

"אֶחָד הַמַּעֲרָה". אָמַר עוּלָא: מִנֵּין לְהַעֲרָאָה מִן הַתּוֹרָה? שְׁנָאֵמַר "וְאִישׁ אֲשֶׁר יִשְׁכַּב אֶת אִשְׁהּ דָּוָה וְגִלָּהָ אֶת עֶרְוָתָהּ אֶת מִקְרָהּ הָעֶרָה" מִכָּאֵן לְהַעֲרָאָה מִן הַתּוֹרָה.

§ We learned in the mishna that **both one who merely begins the act of intercourse and one who completes it has acquired the yevama through this act.** Ulla said: **From where** is it derived that the **initial stage of intercourse** is considered an act of sexual intercourse by Torah law? As it is stated: **"And if a man shall lie with a woman having her sickness and shall uncover her nakedness, he has made naked [he'era] her fountain"** (Leviticus 20:18). The verse is referring to the first stage of intercourse, and **from here** it is derived that the **initial stage of intercourse [ha'ara'a]** is considered sexual intercourse by Torah law.

אֲשַׁכְּחֵן נָדָה, שְׂאָר עֲרִיזוֹת מִנֵּין? וְכִי תִימָא: נִילְף מִנָּדָה – מִה לְנָדָה שְׁכָן מִטְּמֵאָה אֶת בּוֹעֵלָה!

The Gemara asks: **We have found** a source for this *halakha* in the case of a **menstruating woman**, the subject of the verse cited above. **From where** is it derived that the initial stage of intercourse is considered sexual intercourse with regard to **the rest of those with whom relations are forbidden**? And if you say we should derive it from the *halakha* with regard to a **menstruating woman**, what comparison can be made to a **menstruating woman**, concerning whom the *halakha* is more stringent than others with whom relations are forbidden, in that she causes one who has intercourse with her to become ritually impure?^H

Whether she was awake or asleep – בין ערה בין ישנה – One who had intercourse with his yevama has acquired her regardless of whether she was awake or asleep (Rambam *Sefer Nashim*, *Hilkhot Yibbum* 2:3; *Shulhan Arukh*, *Even HaEzer* 166:7).

One is not liable to pay for shame unless he intends to humiliate his victim – **אין חייב על הבושת עד שיתכוין** – One is not liable to pay for shaming another individual unless he intended to do so. One who unintentionally shames another individual is exempt from monetary liability (Rambam *Sefer Nezikin*, *Hilkhot Hovel* 1:10; *Shulhan Arukh*, *Hoshen Mishpat* 421:1).

As he at least intended to act for the purpose of sexual intercourse in general – **דְּהָא קְמַכְוִין לְשֵׁם בִּיאָה בְּעוֹלָם** – If one intended to perform an act of sexual intercourse, and he happened to have intercourse with his yevama, he has acquired her. However, if he did not mean to engage in sexual intercourse at all and nevertheless had intercourse with his yevama, he has not acquired her, as stated by Rava (Rambam *Sefer Nashim*, *Hilkhot Yibbum* 2:4; *Shulhan Arukh*, *Even HaEzer* 166:8).

A menstruating woman... causes one who has intercourse with her to become ritually impure – **נָדָה... מִטְּמֵאָה אֶת** – One who had intercourse with a menstruating woman becomes a primary source of ritual impurity with the same *halakhot* as the menstruating woman herself. He transmits impurity to vessels or individuals that come in contact with him or carry him as well as to items that he causes to move. Additionally, if he sits or lies upon an item that is designated for this purpose, it becomes impure even if he did not have direct contact with it or cause it to move (Rambam *Sefer Tahara*, *Hilkhot Metamei Mishkav UMoshav* 3:1).

It is within his power to increase – שָׁכַן בִּידוֹ לְרִבּוּת – The argument is that since this prohibition is stringent in that the number of individuals to whom it applies can be increased, perhaps it is also stringent with regard to the manner in which it can be violated. Therefore, it cannot be derived that if the initial stage of intercourse is considered an act of sexual intercourse in this case, it is always considered sexual intercourse (Ritva).

Let it come by deriving the *halakha* in any one case from two of the sources mentioned above – תִּיתִי הֶדְא – מתירתי: Rashi and *Tosafot* understood that the *halakha* is derived from the common denominator between two of the sources mentioned above. However, the *Tosafot HaRosh* apparently understood that the *halakha* with regard to some forbidden relations would be derived from one source, and that other *halakhot* would be derived from the other source. The *Arukh LaNer* notes that the *Tosafot HaRosh* must have had a slightly different version of the Gemara text, as the phrase: Let it come by deriving the *halakha* in any one case from two of the sources mentioned above, implies that both sources are needed to derive a single prohibition.

אֵלֶּא: אֶתִּיא מֵאִשָּׁת אָח, דְּכִתִּיב "וְאִישׁ אֲשֶׁר יִקַּח אֶת אִשְׁתּוֹ אָחִיו נָדָה הִיא", וְכִי אִשְׁתּוֹ אָחִיו [לְעוֹלָם] נָדָה הִיא? אֵלֶּא: כִּנְדָה, מִה נָדָה בְּהֶעֱרָאָה – אִם אִשְׁתּוֹ אָח בְּהֶעֱרָאָה.

מִה לְאִשְׁתּוֹ אָח שָׁכַן בִּידוֹ לְרִבּוּת, דְּאִי בְּעִי מְקַדֵּשׁ וְאִזְוִיל כִּי אֶלְפָּא!

אֵלֶּא אֶתִּיא מֵאִחּוֹת אָב וְאִחּוֹת אִם, דְּכִתִּיב "וְעֶרְוַת אִחּוֹת אִמְךָ וְאִחּוֹת אָבִיךָ לֹא תִגְלֶה כִּי אֶת שְׂאֵרֵי הָעֵרָה". אִיכָּא לְמִיפְרֹךְ: מִה לְאִחּוֹת אָב וְאִחּוֹת אִם – שָׁכַן אִיסוּר הֶבֶא מֵאִלּוּ!

מִחֲדָא לֹא אֶתִּיא, תִּיתִי [הֶדְא] מִתִּירִי. מִהִי תִיתִי? תִּיתִי מֵאִשְׁתּוֹ אָח וְאִחּוֹת אָב וְאִחּוֹת אִם – מִה לְהִנָּךְ, שָׁכַן אִיסוּרִין מִשּׁוּם שְׂאֵר!

אֵלֶּא תִיתִי מִנְדָה וְאִחּוֹת אָב וְאִחּוֹת אִם – מִה לְהִנָּךְ, שָׁכַן אִיסוּר הֶבֶא מֵאִלּוּ! אֵלֶּא תִיתִי מִנְדָה וְאִשְׁתּוֹ אָח, דְּמֵאִי פְּרִכְתָּ?

מִתְקִיף לֵה רַב אֶחָא בְּרִיה דְּרַב אִיקָא: מִה לְנָדָה וְאִשְׁתּוֹ אָח – שָׁכַן אִין לְהֵם הִיתֵר בְּחַיִּי אוֹסְרִין, תֹּאמַר בְּאִשְׁתּוֹ אִישׁ שָׁכַן יֵשׁ לֵה הִיתֵר בְּחַיִּי אוֹסְרֵה!

Rather, the *halakha* in other cases comes from a verse about a brother's wife, as it is written: "And if a man shall take his brother's wife, it is impurity [*nidda*]" (Leviticus 20:21). The word *nidda* generally refers to a menstruating woman, and so the Gemara asks: Is his brother's wife always menstruating? Rather, it means that the *halakha* with regard to her is like that of a menstruating woman: Just as one is liable to receive punishment for violating the prohibition against engaging in sexual intercourse with a menstruating woman through the initial stage of intercourse, so too, one is liable to receive punishment for violating the prohibition against engaging in sexual intercourse with a brother's wife through the initial stage of intercourse.

The Gemara asks: What comparison can be made between a brother's wife and other women with whom relations are forbidden? The prohibition with regard to a brother's wife is more stringent in that it is within his power to increase^N the number of women forbidden by this prohibition, as, if he wishes, he can go on betrothing a thousand women, all of whom would be forbidden to his brother. Consequently, the prohibition with regard to a brother's wife cannot serve as a model for other prohibitions.

Rather, the *halakha* in other cases comes from a verse with regard to a father's sister and a mother's sister, as it is written: "And you shall not uncover the nakedness of your mother's sister nor of your father's sister; for he has made naked [*he'era*] his kin" (Leviticus 20:19). The Gemara asks: It is possible to refute this source as follows: What comparison can be made between other women with whom relations are forbidden and a father's sister and a mother's sister, which are unique in that they are prohibited due to a prohibition that comes on its own? The prohibition with regard to a father's sister and a mother's sister does not stem from marriage, but from the biological fact that she is his father's or mother's sister. It is therefore dissimilar to prohibitions that result from marriage.

The Gemara states: The principle that the initial stage of intercourse is considered sexual intercourse does not come from any one of the sources cited above. Let it come by deriving the *halakha* in any one other case from the common denominator of two of the sources mentioned above.^N The Gemara asks: From which two sources could this principle come to be derived? If you say it can come to be derived from the combination of the source with regard to a brother's wife and the source with regard to a father's sister and a mother's sister, what comparison may be drawn from these cases, which are unique in that they are prohibited because they are kin?

Rather, let it come from the prohibition proscribing a menstruating woman and the prohibition with regard to a father's sister and a mother's sister, as a menstruating woman is not prohibited as a family relative. The Gemara raises a difficulty: What comparison may be drawn from these cases, which are each a prohibition that comes of its own accord, as neither one is created through marriage? Rather, let it come from the prohibition proscribing a menstruating woman and the prohibition proscribing a brother's wife. As, what can you say to refute this teaching? These two cases do not share any unique features that might be cause for stringency.

Rav Aha, son of Rav Ika, strongly objects to this: What comparison may be drawn based upon the precedent of a menstruating woman and a brother's wife, which are stringent in that they cannot be permitted to others for the duration of the existence of the factor that renders them prohibited? A menstruating woman is forbidden as long as she experiences a flow of menstrual blood, while a brother's wife is forbidden for the duration of the brother's lifetime. Can you say the same with regard to a married woman, who can become permitted during the lifetime of the one who renders her prohibited, i.e., if her husband divorces her?

Rav Aha of Difti said to Ravina: Is that to say that it is only during the existence of the factor that renders them prohibited that a menstruating woman and a brother's wife cannot be permitted to others, but afterward, when the prohibiting factor has been resolved, they can be permitted? In the case of a menstruating woman,

One who has intercourse with a menstruating woman is liable to *karet* – נדה בכרת – One who intentionally had intercourse with a menstruating woman is liable to receive *karet*, as is similarly the case with any other forbidden relation, even if they merely perform the initial stage of intercourse (Rambam *Sefer Kedusha*, *Hilkhot Issurei Bia* 4:1).

A brother's wife... during her husband's lifetime – אחשת – אח: One who has intercourse with his brother's wife while his brother is alive is liable to receive *karet*, even if his brother has already divorced her (Rambam *Sefer Kedusha*, *Hilkhot Issurei Bia* 1:1, 2:1).

One who performs the initial stage of intercourse with another male – המערה בנכור: One who performs the initial stage of intercourse with another male is liable to receive the punishment of stoning (Rambam *Sefer Kedusha*, *Hilkhot Issurei Bia* 1:14).

One who performs the initial stage of intercourse with an animal – המערה בבמה: A man or woman who performs the initial stage of intercourse with an animal is liable to receive the punishment of stoning. The animal is likewise stoned (Rambam *Sefer Kedusha*, *Hilkhot Issurei Bia* 1:16).

ודלמא: לאחר מיתת בעלה – מצוה, בחיי בעלה – רשות? אי נמי: לאחר מיתת בעלה – אין, בחיי בעלה – לא, ולא הבא מכלל עשה – עשה!

אמר קרא: "ואיש אשר יקח את אחת אחיו נדה היא", וכי אחת אחיו נדה היא? אלא כנדה, מה נדה, אף על פי שיש לה היתר לאחר מכאן – בשעת איסורא בכרת, אף אחת אח [נמי], אף על פי שיש לה היתר לאחר מכאן – בחיי בעלה בכרת.

אלא הערצה דכתיבא גבי אחות אב ואחות אם למה לי?

לכדבעא מיניה רבינא מרבא: המערה בנכור, מהו? בנכור – "משכבי אשה" כתיבא!

אלא: המערה בבמה מהו? אמר ליה: אם אינו ענין להערצה, דכתיבא גבי אחות אב ואחות אם, דאיתא בהקישא מדרבי יונה – תנהו ענין להערצה דבמה.

מכדי בהמה חייבי מיתות בית דין היא, מאי טעמא כתיב להערצה דידה גבי חייבי פירות? לכתוב גבי מיתת בית דין, ונולף מיתת בית דין ממיתת בית דין!

אידי דכוליה קרא לדרשא אתי – כתיב ביה נמי הא מילתא לדרשא.

The Gemara refutes this argument: Perhaps after her husband's death it is a mitzva for her brother-in-law to marry her, whereas during her husband's lifetime their marriage is optional. Alternatively, perhaps after her husband's death, yes, she is permitted to him, while during her husband's lifetime, no, they are not permitted to marry, but there is no punishment of *karet* if they do. This is because the source of the prohibition is the mitzva for them to marry after the husband's death, and a prohibition that stems from a positive mitzva has the status of a positive mitzva, but nothing more.

Therefore, the verse states: "And if a man shall take his brother's wife, it is impurity [*nidda*]" (Leviticus 20:21). Is his brother's wife necessarily a menstruating woman [*nidda*]? Rather, she is like a menstruating woman in the following manner: Just as with regard to a menstruating woman, although she has a permitted stage afterward, at the time that she is forbidden, one who has intercourse with her is liable to receive the punishment of *karet*,^h so too, with regard to a brother's wife, although she has a permitted stage afterward, during her husband's lifetime^h marriage to her brother-in-law is punishable by *karet*.

The Gemara asks: But if the source of the *halakha* that the initial stage of intercourse is considered sexual intercourse is as stated above, why do I need this *halakha* to be indicated by the word *he'era* (Leviticus 20:19) in the case of a father's sister and a mother's sister?

The Gemara answers that it is needed for the dilemma that Ravina raised before Rava: With regard to one who performs the initial stage of intercourse with another male,^h what is the *halakha*? Is it considered to be a forbidden act of homosexual intercourse? The Gemara is puzzled by this dilemma: With regard to a male, it is written explicitly: "You shall not lie with a man as with a woman" (Leviticus 18:22), which indicates that anything considered an act of sexual intercourse with a woman is also considered an act of sexual intercourse with a man.

Rather, the word *he'era* in the case of a father's sister and a mother's sister is needed to resolve the following dilemma: With regard to one who performs the initial stage of intercourse with an animal,^h what is the *halakha*? Rava said to Ravina: If the word *he'era* does not refer to the matter of the initial stage of intercourse in the context where it is written, i.e., the prohibition with regard to a father's sister and a mother's sister, as this *halakha* is derived from a comparison based upon the statement of Rabbi Yona, refer it to the matter of the initial stage of intercourse with an animal. The superfluous expression written in the case of a father's sister and a mother's sister teaches that the initial stage of intercourse is considered sexual intercourse even with an animal.

The Gemara asks: Since intercourse with an animal is a prohibition for which one is liable to receive capital punishment from the court, what is the reason that the *halakha* of the initial stage of intercourse that applies to it is written with regard to the prohibitions proscribing a father's sister and a mother's sister, for which one is liable to receive *karet*? Let the word *he'era* be written with regard to prohibitions for which one is liable to receive capital punishment from the court, and let us derive the *halakha* with regard to a prohibition punishable by capital punishment from the court, i.e., the case of bestiality, from another prohibition punishable by capital punishment from the court.

The Gemara answers: Since the entire verse of a father's sister and a mother's sister comes for the purpose of an exposition, as the Gemara is about to explain, this matter, i.e., that the initial stage of intercourse is considered intercourse, is also written for the purpose of an exposition, i.e., to indicate that this principle holds true in a different context, i.e., that of bestiality.

A father's sister – אֲחוֹת הָאָב: One's father's sister is a forbidden relative and he is liable to receive *karet* for having intercourse with her, regardless of whether she is his father's paternal sister or maternal sister (Rambam *Sefer Kedusha*, *Hilkhot Issurei Bia* 2:5; *Shulḥan Arukh*, *Even HaEzer* 15:16).

His sister – אֲחוֹתוֹ: One's sister is forbidden to him by Torah law, regardless of whether she is his paternal sister or maternal sister, or whether she was born in or out of wedlock. He is liable to receive punishment for engaging in intercourse with her even if she is a *mamzeret* (Rambam *Sefer Kedusha*, *Hilkhot Issurei Bia* 2:2; *Shulḥan Arukh*, *Even HaEzer* 15:10).

His aunt – דּוּדָתוֹ: The wife of one's father's paternal brother is forbidden by Torah law. However, the wife of one's father's maternal brother is forbidden only by rabbinic law (Rambam *Sefer Kedusha*, *Hilkhot Issurei Bia* 2:2; *Shulḥan Arukh*, *Even HaEzer* 15:8).

מאי דרשא – דתנא: "ערוֹת אֲחוֹת אֲבִיךָ לֹא תִגְלֶה" בֵּין מִן הָאָב בֵּין מִן הָאִם. אֵתָּה אוֹמֵר בֵּין מִן הָאָב בֵּין מִן הָאִם, אוֹ אֵינוֹ אֶלָּא מִן הָאָב וְלֹא מִן הָאִם?

וְדִין הוּא: חַיִּיב בָּאֵן – וְחַיִּיב בְּאֲחוֹתוֹ. מִה אֲחוֹתוֹ – בֵּין מִן הָאָב בֵּין מִן הָאִם, אֵף כָּאֵן – בֵּין מִן הָאָב בֵּין מִן הָאִם.

אוּ כְּלָךְ לְדֶרֶךְ זֶה: חַיִּיב בָּאֵן וְחַיִּיב בְּדוּדָתוֹ, מִה דּוּדָתוֹ – מִן הָאָב וְלֹא מִן הָאִם, אֵף כָּאֵן – מִן הָאָב וְלֹא מִן הָאִם.

נִרְאָה לָמִי דוֹמָה: דְּמִין אִיסוּר הֶבֶא מֵאֵלֵיו מֵאִיסוּר הֶבֶא מֵאֵלֵיו, וְאֵל תּוֹכִיחַ דּוּדָתוֹ – שְׂאִין אִיסוּר הֶבֶא מֵאֵלֵיו.

אוּ כְּלָךְ לְדֶרֶךְ זֶה: דְּמִין קְרוֹבֵי הָאָב מִקְרוֹבֵי הָאָב, וְאֵל תּוֹכִיחַ אֲחוֹתוֹ שְׂקִירוֹבֵי עֲצוּמוֹ?

תִּלְמוּד לֹאִמַר "עָרוֹת אֲחוֹת אֲבִיךָ לֹא תִגְלֶה" בֵּין מִן הָאָב בֵּין מִן הָאִם. "עָרוֹת אֲחוֹת אֲמִיךָ לֹא תִגְלֶה" בֵּין מִן הָאָב בֵּין מִן הָאִם.

לְמַה לִּי לְמַכְתֵּבָא בְּאֲחוֹת אָב, לְמַה לִּי לְמַכְתֵּבָא בְּאֲחוֹת אִם? אָמַר רַבִּי אֲבָהוּ: צְרִיכִי, דְּאִי כְּתִב רַחֲמֵנָא בְּאֲחוֹת אָב – שְׁכֵן יֵשׁ לָהּ חַיִּים, אֲבָל אֲחוֹת אִם – אֵימָא לָא.

וְאִי כְּתִב רַחֲמֵנָא בְּאֲחוֹת אִם – שְׁכֵן וְדְאִית, אֲבָל אֲחוֹת אָב – אֵימָא לָא, צְרִיכָא.

The Gemara asks: **What is the exposition** that the rest of the verse introduces? **As it is taught in a *baraita***, the verse "**You shall not uncover the nakedness of your father's sister**" (Leviticus 18:12) indicates that the prohibition applies **whether** she is your father's sister **from his father, or from his mother.**⁴ **Do you say** that she is forbidden **whether** she is your father's sister **from his father or from his mother, or perhaps it is only a sister from his father** who is forbidden, **but not from his mother?**

It may be inferred **logically** from the fact that the Torah **rendered him liable here and rendered him liable with his sister: Just as with regard to his sister**⁴ he is liable to receive punishment **whether** she is his sister **from his father or from his mother, so too here, he is liable whether** she is his father's sister **from his father or from his mother.**

Or perhaps **go this way** and compare a father's sister and a mother's sister to a different *halakha*: The Torah **rendered him liable here and rendered him liable with his aunt**,⁴ i.e., the wife of his father's brother: **Just as concerning his aunt**, he is liable to receive punishment only with regard to the wife of his father's brother **from his father**, i.e., the wife of his father's paternal brother, **and not** for the wife of his father's brother **from his mother**, i.e., the wife of his father's maternal brother, **so too here**, he is liable only with regard to a father's sister or a mother's sister **from their father**, i.e., a paternal sister, **and not from their mother**, a maternal sister.

The Gemara analyzes these two possibilities: **Let us see to which case it is more similar**, i.e., which is a better comparison. **We should derive the *halakha* with regard to a prohibition that comes on its own**, i.e., a father's sister and a mother's sister, **from a prohibition that also comes on its own**, i.e., a sister, **and the *halakha* with regard to his aunt cannot be used to prove otherwise**, as it is **not a prohibition that comes on its own**, but through marriage.

The Gemara counters this argument: **Or perhaps go this way** and claim that **we should derive the *halakha* with regard to the relatives of his father**, i.e., his father's sister, **from the *halakha* with regard to the relatives of his father**, i.e., his father's brother's wife, **and the case of his sister cannot be used to prove otherwise**, as she is **his own relative**. Consequently, there is no conclusive proof based on reasoning alone.

Therefore **the verse states**: "**You shall not uncover the nakedness of your father's sister**," which teaches that this prohibition applies **whether** she is your father's sister **from his father or from his mother**. Similarly, the verse "**You shall not uncover the nakedness of your mother's sister**" indicates that the prohibition applies **whether** she is your mother's sister **from her father or from her mother**. These prohibitions are stated twice (Leviticus 18:12–13 and 20:19), and the superfluous verse indicates that the prohibition applies even to the maternal sister of one's father or mother.

The Gemara asks: **Why do I need the Torah to write this *halakha* with regard to a father's sister, and why do I need the Torah to write it again with regard to a mother's sister?** Rabbi Abbahu said: Both verses are necessary. **If the Merciful One had written this *halakha* only with regard to one's father's sister**, one might say that it is limited to that case, **as she has common lineage with her nephew**, since lineage goes through one's father. **However**, with regard to one's **mother's sister** you might say that she is **not prohibited**, as she is not considered to share common lineage with him.

And conversely, if the Merciful One had written this *halakha* only with regard to one's mother's sister, one might say that it is limited to that case, **as she is certainly his relative**, since one's biological relationship with his mother is absolutely certain. **However**, with regard to one's **father's sister**, one might say **no**, that she is not forbidden, as paternity can never be established beyond doubt. It is therefore **necessary** for this *halakha* to be stated in both cases.

וְדֹדָתוֹ, דְּפָשִׁיטָא לִיהּ לְתַנָּא דְּמִן הָאָב וְלֹא מִן הָאִמָּה, מִנָּא לִיהּ?

אָמַר רַבָּא: אֲתֵינָא "דָּוִד" "דָּוִד", כְּתִיב הָכָא "עֲרוֹת דָּוִד גִּלְיָה" וְכִתִּיב הָתֵם "אוֹ דָּוִד אוֹ בֶן דָּוִד יִגְאָלְנוּ" מִהּ לְהֵלֶן מִן הָאָב וְלֹא מִן הָאִמָּה – אִךְ כָּאֵן מִן הָאָב וְלֹא מִן הָאִמָּה.

וְהָתֵם מְנַלֵּן? אָמַר קְרָא "מִמְשַׁפְּחָתוֹ יִגְאָלְנוּ", מְשַׁפְּחָת אָב – קְרוּיָה מְשַׁפְּחָה, מְשַׁפְּחָת אִמָּה – אִינָה קְרוּיָה מְשַׁפְּחָה.

וְהִדְתָּנִי: אָמְרוּ לוֹ: מִתָּה אֲשֶׁתְּךָ, וְנִשְׂא אֲחוּתָה מֵאִבִּיךָ. מִתָּה, וְנִשְׂא אֲחוּתָה מֵאִמָּה. מִתָּה, וְנִשְׂא אֲחוּתָה מֵאִבִּיךָ. מִתָּה, וְנִשְׂא אֲחוּתָה מֵאִמָּה –

מִוֹתֵר בְּרֵאשׁוֹנָה וּבְשִׁלִּישִׁית וּבְחִמִּישִׁית, וּפּוֹטְרוֹת צְרוּתֶיהָ. וְאִסּוּר בְּשִׁנְיָה וּבְרִבִּיעִית, וְאִין בִּיאַת אַחַת מֵהֶן פּוֹטֵרֶת צְרָתָה.

וְאִם בָּא עַל הַשְּׁנִיָּה לְאַחַר מִיתַת הָרֵאשׁוֹנָה – מִוֹתֵר בְּשִׁנְיָה וּבְרִבִּיעִית, וּפּוֹטְרוֹת צְרוּתֶיהָ, וְאִסּוּר בְּשִׁלִּישִׁית וּבְחִמִּישִׁית.

The Gemara asks: And with regard to his aunt, where it is obvious to the *tanna* that the prohibition includes only the wife of his father's brother from his father and not from his mother, from where does he derive this *halakha*?

Rava said: It is derived through a verbal analogy between the terms "his uncle" and "his uncle." It is written here: "He has uncovered his uncle's nakedness" (Leviticus 20:20), and it is written there, with regard to the redemption of a Jew who has been sold to a gentile: "Either his uncle or his uncle's son shall redeem him" (Leviticus 25:49). Just as there, in the case of redemption, it must be a relative from the side of his father and not from the side of his mother, so too here, with regard to forbidden relations, the prohibition applies to the wife of his father's brother from his father, i.e., the wife of his father's paternal brother, and not from his mother.

The Gemara asks: And there, with regard to the *halakhot* of redemption, from where do we derive that a maternal relative is not included? The verse states: "Or any that is near of kin to him of his family shall redeem him" (Leviticus 25:49), and it is an established principle that only the family of one's father is called family, while the family of one's mother is not called family,¹ as lineage is determined based upon one's father.

And with regard to that which we learned in a mishna: If they said to him: Your wife is dead, and he then married her sister from her father. He was subsequently informed that his second wife died, and he married her sister from her mother, i.e., his second wife's maternal sister. He was then informed that his third wife died, and he married her sister from her father, i.e., his third wife's paternal sister. He was then informed that his fourth wife died, and he married her sister from her mother, i.e., his fourth wife's maternal sister. It later became apparent that all these rumors were unfounded and all the women were still alive. Consequently, since one cannot marry his wife's sister during his wife's lifetime, some of the marriages are void.

The *halakha* in this case is that it is permitted for him to marry his first, third, and fifth wives, as they are not related to each other. Consequently, these marriages are valid, and these women exempt their rival wives from levirate marriage if they all became subject to levirate marriage and one of them performed levirate marriage or *halitza*. However, it is prohibited for him to marry his second and fourth wives, as they are both sisters of one of his previous wives, and their marriages are therefore void. Consequently, sexual intercourse between one of them and his brother, if he has died childless, does not exempt her rival wife, i.e., the real wives of the deceased, from levirate marriage.

And if the first wife indeed died, and he had intercourse with the second woman after the death of the first one, it is permitted for him to marry the second and fourth women, who are not related to each other, and they exempt their rival wives from levirate marriage if they perform levirate marriage or *halitza*, and it is prohibited for him to marry the third and fifth women, as they are sisters of his previous wives, who are still alive, and consequently these marriages are void.

HALAKHA

מְשַׁפְּחָת אִמָּה – מְשַׁפְּחָת אִמָּה: The family of one's mother is not considered family with regard to inheritance. Therefore, maternal brothers are not considered heirs; each one is an heir of his paternal relatives

only. Even if the identity of one's father is unknown, his maternal relatives are still not considered his heirs (*Terumat HaDeshen*; Rambam *Sefer Mishpatim*, *Hilkhot Nahalot* 1:6; *Shulhan Arukh*, *Hoshen Mishpat* 276:4).

אלמא אחות אשתו בין מן האב
בין מן האם אסורות. מנלן? יליף
מאחותו, מה אחותו – בין מן האב
בין מן האם, אף כאן בין מן האב
בין מן האם.

ולילף מדודתו, מה דודתו – מן האב
ולא מן האם, אף כאן – מן האב
ולא מן האם! מסתברא, מאחותו
היה ליה למילף, שכן קרובי עצמו
מקרובי עצמו.

אדרבה, מדודתו היה ליה למילף
שכן דבר על ידי קדושין מדבר שעל
ידי קדושין אלא: מאשת אח ילפין,
דשכן דבר על ידי קדושין, וקרובי
עצמו.

ואשת אח גופה מנא לן? דתנא:
"ערוה אשת אחיך לא תגלה" בין
מן האב בין מן האם.

אתה אומר בין מן האב בין מן
האם, או אינו אלא מן האב ולא
מן האם? ודין הוא: חייב כאן, וחייב
באחותו, מה אחותו – בין מן האב
בין מן האם, אף כאן – בין מן האב
בין מן האם.

או כלך לדרך זו: חייב כאן וחייב
בדודתו, מה דודתו – מן האב ולא
מן האם, אף כאן – מן האב ולא מן
האם?

נראה למי דומה; דנין קרובי עצמו
מקרובי עצמו, ואל תוכיח דודתו
שקרובי האב, או כלך לדרך זו: דנין
דבר שעל ידי קדושין מדבר שעל ידי
קדושין, ואל תוכיח אחותו שאיסור
הבא מאליה?

Apparently, this mishna indicates that **his wife's sister**,^{NH} **whether from the father, i.e., a paternal sister, or from the mother, i.e., a maternal sister, is forbidden. From where do we derive this halakha** that the prohibition applies even to his wife's maternal sister? The Gemara responds: **It is derived from the prohibition proscribing his sister. Just as his sister is forbidden whether she is his sister from his father or from his mother, so too here, a wife's sister is forbidden whether from the father or from the mother.**

The Gemara challenges the validity of this source: **And let it be derived from the halakha with regard to his aunt: Just as the prohibition with regard to his aunt applies only to the wife of his father's brother from his father but not from his mother, i.e., the wife of his father's paternal brother but not the wife of his father's maternal brother, so too here, the prohibition with regard to his wife's sister should apply only to her sister from her father but not to her sister from her mother.** The Gemara answers: **It is reasonable that he should derive the halakha in this case from the case of his sister, as the tanna thereby derives the halakha of one's own relatives from another case of his own relatives, whereas his aunt is forbidden as his father's relative.**

The Gemara counters: **On the contrary, he should derive the halakha in this instance from the case of his aunt, as he thereby derives the halakha in a matter prohibited through betrothal from another matter prohibited through betrothal.** The Gemara concludes: **Rather, the halakha of a wife's sister is derived from that of a brother's wife,^{NH} as they are both something forbidden by means of betrothal and they are his own relatives.**

The Gemara asks: **And in the case of a brother's wife itself, from where do we derive that the prohibition applies to the wife of both a paternal and a maternal brother? As it is taught in a baraita: "You shall not uncover the nakedness of your brother's wife" (Leviticus 18:16), which indicates: Whether from the father or from the mother.**

The baraita elaborates: **Do you say the prohibition applies whether she is the wife of one's brother from his father or from his mother, i.e., whether she is the wife of one's paternal brother or maternal brother? Or perhaps it is only the wife of one's brother from his father and not from his mother? It may be inferred logically from the fact that the Torah rendered him liable here and rendered him liable with regard to his sister: Just as with regard to his sister he is liable to receive punishment whether she is his sister from his father or from his mother, so too here, he is liable to receive punishment whether she is the wife of his brother from his father or from his mother.**

Or perhaps go this way and compare this case to the case of an aunt. The Torah rendered him liable here and rendered him liable with regard to his aunt, i.e., the wife of his father's brother: **Just as with regard to his aunt, he is liable to receive punishment only for the wife of his father's brother from his father and not for the wife of his father's brother from his mother, so too here, he is liable to receive punishment only for the wife of his brother from his father and not from his mother.**

The Gemara analyzes these two possibilities: **Let us see to which case it is more similar. We should derive the halakha with regard to his own relatives, i.e., his brother's wife, from another case of his own relatives, i.e., his sister, and the halakha with regard to his aunt cannot be used to prove otherwise, as she is his father's relative. Or perhaps go this way: We should derive the halakha of a matter prohibited through betrothal, i.e., a brother's wife, from another matter prohibited through betrothal, i.e., his father's brother's wife, and the halakha with regard to his sister cannot be used to prove otherwise, as it is a prohibition that comes on its own.**

NOTES

אלמא אחות אשתו וכו' – Apparently, his wife's sister, etc. The proof that his wife's maternal sister is forbidden is from the ruling that the third woman is permitted to him. The implication is that she is permitted only because the marriage of the second woman was void. However, if that marriage had been valid, the woman would be forbidden because she is the maternal sister of the second woman (Rashi; see *Tosefot HaRosh*).

The *halakha* of a wife's sister is derived from that of a brother's wife – מאשת אח ילפין – The Ramban, who perhaps had a slightly different version of the text, explains as follows: The definition of brotherhood can be derived from the case of a brother's wife, as it is clear from the verses that the relationship is the same whether they are paternal or maternal brothers (see *Tosafot*). By extension, a maternal sister is also considered a sister. Furthermore, although one cannot administer corporal punishment for prohibitions derived from logical analysis, in this case the prohibition itself is written explicitly in the Torah, and it is the definition of the term sister that is derived on the basis of the comparison to a brother's wife.

HALAKHA

The prohibition proscribing a wife's sister – איסור אחות – אשתו: The sister of one's wife is forbidden to him as long as his wife is alive. This applies both to paternal and maternal sisters, including those born out of wedlock (Rambam *Sefer Kedusha*, *Hilkhot Issurei Bia* 2:9; *Shulhan Arukh*, *Even HaEzer* 15:26).

A brother's wife – אישת אח – The wife of one's brother is forbidden to him. This applies to both paternal and maternal brothers, including brothers born out of wedlock (Rambam *Sefer Kedusha*, *Hilkhot Issurei Bia* 2:2; *Shulhan Arukh*, *Even HaEzer* 15:22).

תלמוד לומר "ערוֹת אֶחֶיךָ הִיא" בֵּין מִן
הָאָב בֵּין מִן הָאִם.

וְאִימָא: אִידִי וְאִידִי בְּאַשְׁתִּי אֶחָ מִן הָאָב,
חֲדָא – דִּישׁ לָהּ בְּנִים בְּחַיֵּי בַּעֲלָהּ, וְחֲדָא –
דִּיאִין לָהּ בְּנִים בְּחַיֵּי בַּעֲלָהּ. אִין לָהּ בְּנִים
בְּחַיֵּי בַּעֲלָהּ – מְדַרְבּ הוֹנָא נִפְקָא!

וְאִימָא: אִידִי וְאִידִי בְּאַשְׁתִּי אֶחָ מִן הָאָב,
חֲדָא – דִּישׁ לָהּ בְּנִים בְּחַיֵּי בַּעֲלָהּ, וְחֲדָא –
דִּישׁ לָהּ בְּנִים לְאַחֵר מִיתַת בַּעֲלָהּ!

יֵשׁ לָהּ בְּנִים לְאַחֵר מִיתַת בַּעֲלָהּ לָא
צְרִיכָא קְרָא, מְדַאֲמַר רַחֲמֵנָא שְׂאִין לָהּ
בְּנִים מוֹתֶרֶת – הָא יֵשׁ לָהּ בְּנִים אֲסוּרָה.

וְדִלְמָא: אִין לָהּ בְּנִים – אֲסוּרָה לְעֵלְמָא
וְשְׂרִיא לִיבָם. יֵשׁ לָהּ בְּנִים – שְׂרִיא לְעֵלְמָא
וְשְׂרִיא לִיבָם! אִי נְמִי: אִין לָהּ בְּנִים – מְצוּה,
יֵשׁ לָהּ בְּנִים – רְשׁוּת,

אִי נְמִי: אִין לָהּ בְּנִים – אִין, יֵשׁ לָהּ בְּנִים –
לָא, וְלֹא הָבָא מְכַלֵּל עֲשֵׂה – עֲשֵׂה!

כְּתַב קְרָא אַחֲרֵינָא: "עָרוֹת אֶחָיו גִּלָּהּ".

Since it is impossible to prove which *halakha* should serve as the model for the case of a brother's wife, the verse states a second time in the same verse: "It is your brother's nakedness" (Leviticus 18:16), in order to emphasize that she is forbidden whether she is the wife of his brother from his father or from his mother.

The Gemara challenges this interpretation of the extra phrase in the verse: Say that both this first part of the verse and that latter part refer to the wife of a brother from the father, i.e., the wife of one's paternal brother. As for the repetition, one part of the verse renders prohibited a woman who has children, who is prohibited from marrying her husband's brother during her husband's lifetime even after they are divorced, and the other one renders prohibited a woman who does not have children, who is also prohibited from marrying her husband's brother during her husband's lifetime, even after she is divorced. The Gemara responds: The prohibition proscribing a woman who does not have children for the duration of her husband's lifetime is derived from the statement of Rav Huna (54b), and it requires no further source.

The Gemara presents another challenge: Say that both this first part of the verse and that latter part refer to the wife of a brother from the father, i.e., the wife of one's paternal brother. As for the repetition, one part of the verse renders a woman who has children prohibited from marrying her husband's brother for the duration of her husband's lifetime, even after she is divorced, and the other one renders prohibited a woman who has children and indicates that it is prohibited for her to marry her husband's brother even after her husband's death.

The Gemara responds: The *halakha* that it is prohibited for a woman who has children to marry her husband's brother even after her husband's death does not require a verse. From the fact that the Merciful One says that one who has no children is permitted to marry the brother after her husband's death, it can be inferred that if she has children, it is prohibited for her to marry her husband's brother.

The Gemara raises another challenge: But perhaps if she does not have children it is prohibited for her to marry everyone else and permitted for her to marry her *yavam*, as specified by the Torah. However, if she does have children it is permitted for her to marry everyone and it is permitted for her to marry her *yavam* as well. Alternatively, perhaps if she does not have children it is a *mitzva* for her husband's brother to marry her, and if she does have children it is optional. Consequently, the extra phrase in the verse should be necessary in order to indicate that the prohibition against marriage applies in all of these cases.

Alternatively, if she does not have children, yes, she is permitted to her husband's brother, and if she does have children, no, she is not permitted to him, but the punishment of *karet* does not apply to this prohibition. This is because the source of the prohibition is the *mitzva* for them to marry after the husband's death, and a prohibition that stems from a positive *mitzva* has the status of a positive *mitzva*, but nothing more. Consequently, the extra phrase in the verse should be necessary in order to indicate that the punishment of *karet* is still applicable.

The Gemara responds: The Torah wrote a different verse to teach that the prohibition against marrying one's brother's wife is in full force, including the punishment of *karet*, in these cases: "He has uncovered his brother's nakedness; they shall be childless" (Leviticus 20:21). Therefore, the extra phrase mentioned in the *baraita* can indicate that the prohibition against marrying one's brother's wife applies both to the wife of a paternal brother and to the wife of a maternal brother.

She shall remain after her husband's death as she is during his life – **היא בהוייתה תהא** – The mitzva of levirate marriage applies only to the wife of one's paternal brother. The wife of a maternal brother remains forbidden forever (Rambam *Sefer Kedusha*, *Hilkhot Yibbum* 2:2; *Shulhan Arukh*, *Even HaEzer* 157:1).

ואימא אשת אח מן האם באשת אח מן האב: מה אשת אח מן האב – לאחר מיתת בעלה שריא, אף אשת אח מן האם – לאחר מיתת בעלה שריא! אמר קרא "היא" בהוייתה תהא.

The Gemara suggests: Say that the *halakha* of the wife of a brother from one's mother should be just like that of the wife of a brother from his father: **Just as the wife of a brother from one's father is permitted, i.e., one can marry her, after her husband's death, so too, the wife of a brother from his mother should be permitted after her husband's death.** The Gemara responds: **The verse states: "She is your brother's nakedness,"** thereby emphasizing that **she shall remain after her husband's death as she is during his life.**⁴

אחותו דכתב בה כרת למה לי?

§ The Gemara above stated that all of the instances of forbidden intercourse are compared to one another. Therefore, since there is already a verse that states: "For whoever shall do any of these abominations, the souls that do them shall be cut off from among their people" (Leviticus 18:29), the Gemara asks: **Why do I need the phrase written with regard to one's sister** that states that intercourse is punishable by *karet*?

לכדרכי יוחנן. דאמר רבי יוחנן: שאם עשאן פולס בהעלם אחת – חייב על כל אחת ואחת.

The Gemara answers that it is necessary for that which Rabbi Yohanan said, as Rabbi Yohanan said that if he performed all of them, i.e., he violated every prohibition against engaging in forbidden intercourse in a single lapse of awareness, he is liable to receive punishment for each and every one. One might have thought that there is one prohibition against engaging in forbidden intercourse, and many different ways to violate the prohibition. Therefore, if one violated the prohibition in different ways during one lapse of awareness, one is liable to bring only one sin-offering. This verse therefore indicates that each act of intercourse with a relative with whom intercourse is forbidden is a violation of an independent prohibition.

ולרבי יצחק, דאמר: כל חייבי כריתות בכלל היו, ולמה יצתה כרת באחותו – לדונן בכרת ולא במלקות, לחלק מנלן?

The Gemara asks: **And according to Rabbi Yitzhak, who said that all forbidden relations for which one is liable to receive *karet* were included in the verse: "The souls that do them shall be cut off from among their people," why was the punishment of *karet* with regard to one's sister singled out?** In order to sentence him to *karet* and not to flogging. Although he has violated a prohibition, which generally carries a punishment of flogging, he is not flogged due to the fact that he is liable to receive the more severe punishment of *karet*. Since he has used the verse to teach this *halakha*, from where do we know to divide the prohibitions against engaging in forbidden intercourse and consider each an independent prohibition?

נפקא ליה: מ'ואל אשה בגדת טומאתה' לחייב על כל אשה ואשה.

The Gemara answers: **He derives it from the verse "And you shall not approach a woman to uncover her nakedness as long as she is impure by her uncleanness" (Leviticus 18:19), which serves to render him liable to receive punishment for each and every woman.**

דודתו דכתב בה רחמנא "עריצים יהיו" למה לי? לכדרכה. דרבה רמי: בתיב "עריצים יהיו" וכתוב "עריצים ימותו"! הא ביצד? יש לו בנים – קוברן, אין לו בנים – הולך ערירי.

The Gemara poses another question: **Why do I need the phrase that the Merciful One writes with regard to one's aunt,**⁵ which states: **They shall be childless?**⁶ The death of one's children is included in the punishment of *karet*, and it has already been established that all of the forbidden intercourse is punishable by *karet*. The Gemara answers that it is necessary for that which Rabba said, as Rabba raised a contradiction: **It is written with regard to one who had intercourse with his brother's wife: "They shall be childless" (Leviticus 20:22), and it also states with regard to one who had intercourse with his aunt: "They shall die childless" (Leviticus 20:21). How so? If he already has children, he will eventually bury them; if he does not have children, he will go childless.**

NOTES

The phrase the Merciful One writes with regard to one's aunt, etc. – דודתו דכתב בה רחמנא וכו' – Many commentaries have noted that the phrase "They shall be childless" (Leviticus 20:21) does not appear in the context of an aunt, but rather in the context of a brother's wife. In the context of an aunt, the Torah states: "They shall die childless" (Leviticus 20:20). In fact,

there were medieval commentaries whose texts of the Gemara stated: Why do I need the phrase the Merciful One writes with regard to one's aunt that states: "They shall die childless."

עריצים – Why do I need the phrase... They shall be childless – יהיו עריצים לך: The commentaries note that this supports Rashi's

opinion that being childless is included in the punishment of *karet*, whereas it is difficult to explain this according to the opinion of the Riva, who maintains that being childless is a special punishment in addition to *karet*, which simply consists of the offender's life being cut short (see *Tosafot* on 2a and *Yam shel Shlomo*).

NOTES

A designated maidservant – שפחה חרופה: Rashi explains that a designated maidservant is a Canaanite maidservant betrothed to a Hebrew servant. A Hebrew servant is permitted to marry such a woman, but she is forbidden to all other Jews.

HALAKHA

The initial stage of intercourse with regard to those liable for violating prohibitions and positive mitzvot – העראה בחייבי: The initial stage of intercourse is considered sexual intercourse with regard to all forbidden relations, including those prohibited due to both negative and positive mitzvot. The one exception is the case of a designated maidservant (Rambam *Sefer Kedusha, Hilkhot Issurei Bia* 1:10).

ואיצטויך למכתב "עריים יהיו"
ואיצטויך למכתב "עריים ימותו".
דאי כתב רחמנא "עריים יהיו" הוה
אמינא: עד חטאיה, אבל מחטאיה
ואילך – לא, כתב רחמנא "עריים
ימותו". ואי כתב רחמנא "עריים
ימותו" הוה אמינא: מחטאיה ואילך,
אבל מעיקרא – לא, צריכא.

העראה בחייבי לאוין מנלן?

מדגלי רחמנא "שכבת זרע" גבי
שפחה חרופה – מכלל בחייבי לאוין
בהעראה.

אדרבה, מדגלי רחמנא העראה
בחייבי כריתות – מכלל בחייבי לאוין
בגמרא ביארה! אמר רב אשי: אם כן
לשתוק קרא משפחה חרופה.

העראה בחייבי לאוין דכהונה מנלן?
אתיא "קייחה" "קייחה".

דחייבי עשה מנלן?

The Gemara comments: **And it is necessary to state: They shall be childless, and it is also necessary to state: They shall die childless.** As, if the Merciful One had written only: **They shall be childless, I would have said that only those children he had before his sin will die, but those born to him from the time of his sin and on, no, they will not die.** The Torah therefore states: **They shall die childless**, indicating that even if he has children afterward they will die and he will remain childless. **And similarly, if the Merciful One had written only: They shall die childless, I would have said that this is referring to children born from the time of his sin and on, but those born from the beginning, before he sinned, no, they will not die.** It is therefore necessary to mention both expressions.

S The Gemara above (54a–54b) derived that the initial stage of intercourse is considered an act of sexual intercourse with regard to prohibitions that are punishable by capital punishment or *karet*. The Gemara asks: **From where do we derive that the initial stage of intercourse is considered an act of sexual intercourse with regard to those liable to receive punishment for violating ordinary Torah prohibitions?**

The Gemara answers: **From the fact that the Merciful One reveals with regard to a designated maidservantⁿ that the prohibition has been violated only through an act of cohabitation with seed, i.e., a complete act of sexual intercourse, in the verse "And whoever lies with a woman in cohabitation with seed, and she is a bondmaid designated to a man" (Leviticus 19:20), by inference, those liable to receive punishment for violating ordinary prohibitions are liable even through the initial stage of intercourse.**

The Gemara responds: **On the contrary, from the fact that the Merciful One reveals that the initial stage of intercourse is considered sexual intercourse with regard to forbidden relationships for which one is liable to receive *karet*, then, by inference, those liable for violating ordinary prohibitions are liable only through the completion of the act of sexual intercourse and not merely for the initial stage of intercourse.** Rav Ashi said: **If so, let the verse remain silent in the case of a designated maidservant, and it would be assumed that one is liable to receive punishment only for completing the act of sexual intercourse.** The fact that the Torah specified that in this case one is liable to receive punishment only for completing the act of sexual intercourse indicates that with regard to other ordinary prohibitions one is liable even for the initial stage of intercourse.

The Gemara asks: **From where do we derive that the initial stage of intercourse is considered an act of sexual intercourse with regard to those liable to receive punishment for violating prohibitions specific to the priesthood?** Since these prohibitions are unique in that they apply only to priests, their parameters cannot be derived from prohibitions that apply to the entire population. The Gemara answers: **It is derived from a verbal analogy between the words *taking* and *taking*.** This verb appears in prohibitions punishable by *karet*, e.g., "And if a man shall take his sister" (Leviticus 20:17), and in prohibitions of the priesthood, where it states: "They shall not take a woman that is a harlot" (Leviticus 21:7).

The Gemara asks further: **From where do we derive that the initial stage of intercourse is considered an act of sexual intercourse with regard to those liable to receive punishment for violating a positive mitzva,ⁿ e.g., one who has intercourse with an Egyptian or Edomite convert?** The verse states: "The children that are born to them of the third generation may enter into the assembly of the Lord" (Deuteronomy 23:9). It is therefore a positive mitzva that only the grandchildren of these converts may have intercourse with a Jew.

אֲתִיא "בִּיאָה" "בִּיאָה".

It is derived from a verbal analogy between the terms **entering** and **entering**. The verse states in the context of a prohibition: "A *mamzer* shall not enter into the assembly of the Lord" (Deuteronomy 23:3), and in the context of a prohibition derived from a positive mitzva: "The children that are born to them of the third generation may enter into the assembly of the Lord" (Deuteronomy 23:9). Consequently, these types of prohibitions are equated.

יְבָמָה לְשׁוּק מְנַלֵּן? אִי לְמֵאן דְּאָמַר
לְאוֹ – לְאוֹ, אִי לְמֵאן דְּאָמַר עֲשֵׂה –
עֲשֵׂה.

The Gemara poses another question: **From where do we derive that the initial stage of intercourse is considered sexual intercourse with regard to the prohibition against a *yevama* having intercourse with a man from the general public?** The Gemara answers that there is no need for an independent source in this case: **If you are asking according to the one who said that this is an ordinary prohibition, it is a prohibition like any other. If you are asking according to the one who said that this is a positive mitzva,^N it is a positive mitzva like any other.**

אֲלֹא יְבָמָה לִיבָם מְנַלֵּן? אֲתִיא
"בִּיאָה" "בִּיאָה".

Rather, the question is as follows: **From where do we derive that a *yevama* is acquired by her *yavam* via the initial stage of intercourse?** The Gemara answers: **It is derived from a verbal analogy between the words *entering* and *entering*.** This verb is used with regard to ordinary Torah prohibitions, as mentioned above, and also with regard to levirate marriage, in the verse "Her brother-in-law will have intercourse with her" (Deuteronomy 25:5).

אִשָּׁה לְבַעֲלָהּ מְנַלֵּן? אֲתִיא "קִיחָה"
"קִיחָה".

The Gemara asks further: **From where do we derive that a woman is betrothed to her husband through the initial stage of intercourse?**^N The Gemara answers: **It is derived from a verbal analogy between the words *taking* and *taking*.** With regard to betrothal, the verse states: "When a man takes a wife and marries her" (Deuteronomy 24:1). This verb is also used with regard to forbidden intercourse, as in the verse: "And if a man shall take his sister" (Leviticus 20:17).

אָמַר רַבָּא: לְמָהּ לִי דְכְתִיב רַחֲמָנָא
"שָׁכַבְתָּ וְרַע" בְּשִׁפְחָה חֲרוּפָה,
"שָׁכַבְתָּ וְרַע" בְּאִשְׁתִּי אִישׁ, "שָׁכַבְתָּ
וְרַע" בְּסוֹטָה.

§ Rava said: Now that it has been established that the initial stage of intercourse is considered an act of sexual intercourse, **why do I need the expression "cohabitation with seed" (Leviticus 19:20) that the Merciful One writes with regard to a designated maid-servant; the expression "cohabitation with seed" (Leviticus 18:20) written with regard to a married woman; and the expression "cohabitation with seed" (Numbers 5:13) written with regard to a *sota*?^B**

דְּשִׁפְחָה חֲרוּפָה – בְּדִאֲמָרוֹן. דְּאִשְׁתִּי
אִישׁ – פֶּרֶט לְמִשְׁמֵשׁ מֵת.

The Gemara explains that the expression is necessary with regard to a **designated maidservant as we said above (55a)**, because it indicates that one is liable to receive punishment only for a complete act of intercourse with a designated maidservant^H but not for the initial stage of intercourse. With regard to a **married woman**, the word **seed** **excludes one who has intercourse with a dead organ,^H i.e., one that is not erect, as this cannot lead to childbirth.**

הִנֵּחָה לְמֵאן דְּאָמַר מִשְׁמֵשׁ מֵת
בְּעֵרִיּוֹת פָּטוּר, אֲלֹא לְמֵאן דְּאָמַר
חַיִּיב – מֵאִי אִיכָא לְמִימַר? אֲלֹא
פֶּרֶט לְמִשְׁמֵשׁ מֵת. דְּסִלְקָא דְּעֵתָךְ
אָמְינָא: [הַזֵּי] לְאַחֵר מִיֵּתָה נָמִי
אִיקָרִי שְׂאֵרוֹ, אִימָא לִיחַיִּיב עָלָהּ
בְּאִשְׁתִּי אִישׁ – קָא מְשַׁמְעֵ לִי.

The Gemara questions this resolution: **This works out well according to the one who said that one who has intercourse while his organ is dead with those with whom relations are forbidden, is exempt, as this is not considered an act of intercourse. However, according to the one who said that he is liable, what is there to say?** Rather, according to this opinion, the verse **excludes one who has intercourse with a dead woman.^H As it might enter your mind to say: Since after death she is also called her husband's kin, say that one who had intercourse with her should be liable to receive punishment for committing adultery with a married woman. It therefore teaches us that intercourse with a dead woman is not considered intercourse at all.**

NOTES

If you are asking according to the one who said that this is a positive mitzva, etc. – *Tosafot* omit this sentence, as they maintain that everyone agrees that a *yevama* who has intercourse with another man has transgressed a prohibition. Rabbeinu Hananel and most medieval commentaries concur. See the Ramban for an attempt to explain Rashi's opinion, which maintains this sentence.

From where do we derive that a woman is betrothed to her husband through the initial stage of intercourse – אִשָּׁה לְבַעֲלָהּ מְנַלֵּן: The commentaries point out an apparent contradiction between this passage and the Gemara in tractate *Kiddushin* (10a), which states that in the case of betrothal via intercourse, since the man is focused on the completion of the act, betrothal takes effect only at completion and not after the initial stage of intercourse (see Rif and *Tosafot*).

BACKGROUND

Sota – סוֹטָה: The Torah describes the procedure governing such a woman (Numbers 5:11–31). First, her husband warns her in the presence of witnesses against being alone together with a specific man about whom he is suspicious. If she disobeys this warning and is observed alone with that man, even though there is no concrete evidence that she actually committed adultery, she and her husband may no longer live together as man and wife until she has undergone the following ordeal to determine whether she has committed adultery. The woman, accompanied by her husband and two Torah scholars, is taken to the Temple in Jerusalem and forced by the priests to stand in a public place while holding the special meal-offering that she is required to bring. There she is again questioned about her behavior. If she continues to protest her fidelity and takes an oath to that effect, a scroll is brought and the curses of the *sota* mentioned in the Torah passage cited above are written on it. The scroll is submerged in a clay vessel filled with water taken from the Temple basin and some earth from the Temple floor, and the scroll's writing is dissolved in the water. She is then forced to drink that water. If she has committed adultery, in the words of the Torah, "her belly shall swell and her thigh shall fall away" (Numbers 5:27), until ultimately she dies from the water's curse. If she is innocent, the water will bring her blessing and she is permitted to resume normal marital relations with her husband.

HALAKHA

ביאָה בְּשִׁפְחָה – **Intercourse with a designated maidservant** – חֲרוּפָה: The unique *halakha* of a designated maidservant is that one is liable to receive punishment only for a complete act of intercourse and only if it is performed in a typical manner (Rambam *Sefer Kedusha*, *Hilkhot Issurei Bia* 3:15; *Tur*, *Even HaEzer* 20).

מִשְׁמֵשׁ מֵת – **One who has intercourse with a dead organ** – If one engages in a prohibited act of intercourse without an erection, but rather with a completely limp organ that he inserts manually, he is not liable to receive *karet* or lashes and he is certainly exempt from capital punishment. However, in accordance with the opinion of Rava in tractate *Shevuot* (18a), he is flogged by rabbinic decree (Rambam *Sefer Kedusha*, *Hilkhot Issurei Bia* 1:11; *Tur*, *Even HaEzer* 20).

מִשְׁמֵשׁ מֵתָה – **One who has intercourse with a dead woman** – One who has intercourse with the corpse of a woman with whom relations are forbidden is exempt (Rambam *Sefer Kedusha*, *Hilkhot Issurei Bia* 1:12; *Tur*, *Even HaEzer* 20).

BACKGROUND

The initial stage of intercourse – העראָה: The definition of the term intercourse is problematic in virtually all legal systems. One of the missing features in this discussion with regard to the initial stage of intercourse, discussed by later halakhic commentaries, is the exact definition of the female sexual organ. Regardless, it seems that the halakhic conclusion concerning the first stage of sexual contact is, to a great extent, a minimal degree of penetration of the penis into the vagina.

NOTES

A kiss, i.e., external contact of the sexual organs – נשיקה: It is noted in the Jerusalem Talmud that even according to Shmuel the contact must include a slight insertion of the organ.

דסוּטָה לְמָה לִי? לְכַדְתִּנָּא: "שְׂכַבְתָּ זֶרַע" פֿרַט לְדָבָר אַחֵר. מַאי דָּבָר אַחֵר? אָמַר רַב שִׁשְׁתִּי: פֿרַט לְשִׁקְיָנָא לָהּ שְׁלֹא בְדַרְכָּהּ. אָמַר לִיה רַבָּא: "מִשְׁכָּבִי אִשָּׁה" בְּתִיב!

אָלָא אָמַר רַבָּא: פֿרַט לְשִׁקְיָנָא לָהּ דֶּרֶךְ אֲבָרִים. אָמַר לִיה אֲבִי: פְּרִיעוּתָא אֶסְרֵי רַחֲמָנָא?

אָלָא אָמַר אֲבִי: פֿרַט לְשִׁקְיָנָא לָהּ בְּנִשְׁיָקָה. הִנִּיחָא לְמָאן דְּאָמַר הָעֵרָאָה זֶה הִכְנַסְתָּ עֵטְרָה, אָלָא לְמָאן דְּאָמַר זֶה נִשְׁיָקָה – מַאי אֵיכָא לְמִימַר?

אָלָא, לְעוֹלָם לְשִׁקְיָנָא לָהּ דֶּרֶךְ אֲבָרִים, וְאֵינְטֵרִיךְ: סִלְקָא דַּעְתָּךְ אֲמִינָא: בְּקִפְיָדָא דְּבַעַל תִּלְהֵי רַחֲמָנָא, וְהָא קָא קָפִיד, קָא מִשְׁמַע לָן.

אָמַר שְׁמוּאֵל: הָעֵרָאָה זֶה נִשְׁיָקָה, מִשְׁלֵל לְאָדָם שְׁמוּנִיחַ אֶצְבָּעוֹ עַל פִּיו – אֵי אֶפְשָׁר שְׁלֵל יְדִחוּק הַבָּשָׂר.

כִּי אָתָּא רַבָּה בַּר בַּר חֲנָה אָמַר רַבִּי יוֹחָנָן: גָּמַר בִּיאָהּ בְּשִׁפְחָה חֲרוּפָה – זֶה הִכְנַסְתָּ עֵטְרָה. מִתִּיב רַב שִׁשְׁתִּי: "שְׂכַבְתָּ זֶרַע" אֵינִי חַיִּיב אָלָא עַל בִּיאַת הַמִּירוּק. מַאי לָאוּ – מִירוּק גִּיד? לָא, מִירוּק עֵטְרָה.

The Gemara addresses the third case: **Why do I need the expression cohabitation with seed in the context of a *sota*?** It is needed **for that which is taught in a *baraita***, that the expression **a cohabitation with seed excludes something else**. The Gemara asks: **What is this something else?** Rav Sheshet said: **It excludes a case where the husband was jealous with regard to her** and warned her not to seclude herself and have **atypical**, i.e., anal, sexual intercourse with another man. Rava objected to this explanation and **said to him: It is written: "The cohabitations of a woman"** (Leviticus 18:22), indicating that there are two types of intercourse with a woman, and the same *halakha* applies to both.

Rather, Rava said: It excludes a situation where the husband was jealous with regard to her and warned her not to seclude herself with another man and engage in intimate contact by way of other limbs. The verse indicates that the wife does not become prohibited to her husband if she secludes herself with the man after this warning. Abaye said to him: Does the Merciful One prohibit a woman to her husband due merely to licentious behavior without sexual intercourse? Since this behavior would not render a woman prohibited to her husband, it is obvious that a warning that explicitly mentions this behavior is insufficient to cause the woman to become a *sota* if she then secludes herself with the man.

Rather, Abaye said: It excludes a case where he was jealous with regard to her and warned her not to seclude herself with another man and kiss, i.e., have external contact of the sexual organs. The Gemara asks: **This works out well according to the one who said that the definition of the initial stage of intercourse is the insertion of the corona**; therefore, mere external contact is not considered sexual intercourse. **However, according to the one who said that the definition of the initial stage of intercourse is a kiss, what is there to say?**

Rather, the expression: Something else, in the *baraita*, is actually referring to a case where the husband was jealous with regard to her and warned her not to seclude herself with another man and engage in intimate contact by way of other limbs. And it is necessary to state that the woman does not become prohibited to her husband as a *sota* in this case, as it might enter your mind to say that the Merciful One made this *halakha* dependent on the husband's objection, as it is his decision to warn his wife, and since he objects to contact of this nature, she becomes a *sota* if she secludes herself after this warning. The Torah therefore teaches us that this is not considered a warning.

§ The Gemara returns to the precise definition of the initial stage of intercourse. Shmuel said: The definition of the initial stage of intercourse⁸ is a kiss, i.e., external contact of the sexual organs.⁹ Shmuel explains: This is comparable to a person who places his finger on his mouth; it is impossible that he not press the flesh of his lips. Similarly, when there is contact of the sexual organs, there will certainly be at least a small amount of penetration, and this is considered an act of sexual intercourse.

When Rabba bar bar Hana came from Eretz Yisrael, he said that Rabbi Yohanan said: The completion of intercourse stated with regard to a designated maidservant is the insertion of the corona, and no more. Rav Sheshet raised an objection based upon the following *baraita*: The phrase cohabitation with seed indicates that one is liable to receive punishment only for a complete act of sexual intercourse. What, does this not refer to the complete insertion of the member? The Gemara responds: No, it is possible that it is referring to the complete insertion of the corona.

כִּי אֶתָּא רַב דִּימִי אָמַר רַבִּי יוֹחָנָן:
הָעֲרָאָה – זֶה הַכְּנָסֶת עֲטָרָה. אָמַר
לֵיהּ: וְהָא רַבָּה בַּר בְּרַחְמֵי לֹא אָמַר
הַכִּי אָמַר לָהּ: אוֹ אֵיהּ שְׁקָרָא אוֹ
אֲנָא שְׁקָרִי.

כִּי אֶתָּא רַבִּין אָמַר רַבִּי יוֹחָנָן: הָעֲרָאָה
זֶה הַכְּנָסֶת עֲטָרָה. אֲדִרְבֵּה בַּר בְּרַחְמֵי
חָנָה – וְדַאי פְּלִיג, אֲדִשְׁמוּאֵל מִי לִימָא
פְּלִיג?

לֹא, מִנְשִׁיקָה וְעַד הַכְּנָסֶת עֲטָרָה –
הָעֲרָאָה קָרִי לָהּ.

כִּי אֶתָּא רַב שְׁמוּאֵל בַּר יְהוּדָה אָמַר
רַבִּי יוֹחָנָן הָעֲרָאָה – זֶה הַכְּנָסֶת עֲטָרָה,
גָּמַר בִּיאָה – גָּמַר בִּיאָה מִמֶּשׁ.

Perek VI Daf 56 Amud a

מִכָּאן וְאֵילָךְ אֵינוֹ אֶלָּא נְשִׁיקָה, וּפְטוּר
עָלֶיהָ. וּפְלִיג אֲדִשְׁמוּאֵל.

”אֶחָד הַמַּעֲרָה וְאֶחָד הַגּוֹמֵר קֵנָה.”
מֵאֵי קֵנָה? רַב אָמַר: קֵנָה לְכָל. וּשְׁמוּאֵל
אָמַר: לֹא קֵנָה אֶלָּא לְדִבְרִים הָאֻמּוּרִים
בַּפְּרָשָׁה: לִירֵשׁ בְּנִכְסֵי אָחִיו, וּלְפֻטְרָהּ
מִן הַיֵּיבּוּם.

When Rav Dimi came⁸ from Eretz Yisrael he said that Rabbi Yoḥanan said: The definition of the initial stage of intercourse is the insertion of the corona. They said to him: But Rabba bar bar Ḥana did not say so, as he taught that Rabbi Yoḥanan said that the insertion of the corona constitutes a complete act of sexual intercourse and is not considered merely the initial stage of intercourse. He said to them: Either he lied or I am lying. There is clearly a contradiction, and one of us cited Rabbi Yoḥanan's opinion incorrectly.

When Ravin came from Eretz Yisrael he said that Rabbi Yoḥanan said: The definition of the initial stage of intercourse is the insertion of the corona. The Gemara comments: He certainly disagrees with Rabba bar bar Ḥana, who cited Rabbi Yoḥanan as stating that insertion of the corona constitutes a complete act of sexual intercourse. Shall we say that he also disagrees with Shmuel, who defined the initial stage of intercourse as external contact of the sexual organs?

The Gemara responds: No; it is possible that there is no dispute between them, and Ravin said that Rabbi Yoḥanan calls the entire process from a kiss until the insertion of the corona the initial stage of intercourse, while anything beyond that point is a complete act of sexual intercourse.

When Rav Shmuel bar Yehuda came from Eretz Yisrael he reported that Rabbi Yoḥanan said: The definition of the initial stage of intercourse is the insertion of the corona,⁹ whereas a complete act of sexual intercourse is literally a complete act of sexual intercourse, i.e., insertion of the male organ beyond the corona.

From this point forward, insertion of anything less than the corona is only considered a kiss, for which he is exempt. And this statement disagrees with that of Shmuel, who maintains that one is liable to receive punishment for external contact of the sexual organs.

It was taught in the mishna that both one who merely engages in the initial stage of intercourse and one who completes the act of intercourse have thereby acquired the *yevama*. The Gemara asks: What does it mean that he has acquired his *yevama*?¹⁰ Rav said: He has acquired her for everything. In other words, she is considered his wife in all regards. Therefore, if he is a priest, she may partake of *teruma*. And Shmuel said he has only acquired her with regard to the matters stated in the chapter of levirate marriage, i.e., to inherit his brother's property and to exempt her from levirate marriage if he then dies and leaves behind children from another wife.

NOTES

מֵאֵי – yevama What does it mean that he has acquired his *yevama*? The commentaries disagree over the meaning of this passage. According to *Tosafot*, the Ramban, and the Rashba, the discussion concerns a case in which his intercourse was deficient because he did not intend thereby to perform levirate marriage. However, if he intended to perform levirate marriage and engaged only in the initial stage of intercourse, all agree that they are fully married, as this is considered a complete act of intercourse.

Conversely, the Rif apparently understood that the discussion also applies to anyone who performs only the initial stage of intercourse. The Rambam explicitly endorses this opinion as well.

According to this opinion, when the Gemara mentions unwitting and intentional intercourse, it is merely citing examples, but does not mean to exclude the case of one who performs only the initial stage of intercourse (Rabbi Avraham min HaHar). The *Arukh LaNer* claims that the Rif is consistent with his opinion above (see NOTES to 55b) that the initial stage of intercourse consummates a marriage only if the woman had previously been betrothed to the man. Consequently, the *amora'im* here dispute whether the levirate bond is sufficiently strong to allow the levirate marriage to be consummated via the initial stage of intercourse.

BACKGROUND

When Rav Dimi came – כִּי אֶתָּא רַב דִּימִי – Rav Dimi was one of the Sages who would often travel from Eretz Yisrael to Babylonia, primarily to transmit the Torah of Eretz Yisrael to the Torah centers of the Diaspora, although occasionally he traveled on business as well. Consequently, many questions, particularly those concerning the Torah of Eretz Yisrael, remained unresolved until the messenger from Zion, Rav Dimi, would arrive and elucidate the *halakha*, the novel expression, or the unique circumstances pertaining to a particular statement that required clarification.

HALAKHA

מֵהָ הֵיא הָעֲרָאָה – What is the initial stage of intercourse? The initial stage of intercourse is the insertion of the corona. Anything less than this is called mere external contact, for which one is exempt. The *halakha* is in accordance with the opinion of Ravin and Rav Shmuel bar Yehuda in the name of Rabbi Yoḥanan (Rambam *Sefer Kedusha*, *Hilkhot Issurei Bia* 1:10; *Shulḥan Arukh*, *Even HaEzer* 20:1, and in the comment of Rema; see *Beit Shmuel*).

HALAKHA

מֵאֵי קֵנָה – What does it mean that he has acquired his *yevama*? If a priest performed a deficient act of intercourse with his *yevama*, meaning that he did not intend to thereby perform levirate marriage, and she had merely been betrothed to the deceased brother, she may not partake of *teruma* and they are not considered fully married. Some say that the same applies if he intended to perform levirate marriage, but performed only the initial stage of intercourse. However, if she had been not only betrothed but also married to the deceased brother, even a deficient act of intercourse effects levirate marriage, and she may partake of *teruma*, as she had in the past. The *halakha* is in accordance with the opinion of Rav as presented in the second interpretation of the dispute between Rav and Shmuel (Rambam *Sefer Zera'im*, *Hilkhot Terumat* 8:6; *Shulḥan Arukh*, *Even HaEzer* 166:9).

Say as follows: If he did not have a chance, etc. – **אימא הכי: ולא הספיק וכו'** Shmuel does not mean to say that the *baraita* is incomplete. Rather, he understands that when the *baraita* states that the woman may partake of *teruma* if her first husband died and the woman happens before her *yavam* for levirate marriage, it means that if she had already been married to her first husband before he died, she may partake of *teruma* after performing levirate marriage with her deaf-mute *yavam*. The case is not comparable to one where she had merely been betrothed to her first husband (Ritva).

מן הנשואין לדברי הכל אכלה, דהא הוה קאכלה מעיקרא. כי פליגי – מן האירוסין. רב אמר: אוכלת, דהא רבי רחמנא ביאת שוגג במזיד.

ושמואל אמר: כי רבי רחמנא – לאוקמיה במקום בעל, לאילומי מבעל – לא.

ואזדא שמואל לטעמיה, דאמר רב נחמן אמר שמואל: כל שהבעל מאכיל – יבם מאכיל, וכל שאין הבעל מאכיל – יבם אינו מאכיל.

מיתבי: בת ישראל פקחת שנתארסה לכהן פקח, ולא הספיק לבנוסה עד שנתחרש – אינה אוכלת. מת, ונפלה לפני יבם חרש – אוכלת. ובזו יפה כח היבם מכח הבעל.

בשולמא לרב – נחא, אלא לשמואל – קשיא!

אמר לך שמואל: אימא הכי: ולא הספיק לבנוסה עד שנתחרש – אינה אוכלת בתרומה. כנס ואחר כך נתחרש – אוכלת. מת ונפלה לפני יבם חרש – אוכלת.

וימאי "בזו" דאילו בעל חרש מעיקרא – לא אוכלת, ואילו יבם חרש מעיקרא – אכלה.

ואיבא דאמר: מן האירוסין – דברי הכל לא אכלה, דהא לא אכלה בחיי בעל.

The Gemara adds: If she was a *yevama* from marriage, everyone agrees that she may partake of *teruma* after the initial stage of intercourse, as she was already partaking at the outset, when she was married to the deceased brother. Therefore, even a minimal act of intercourse is enough to allow her to continue to partake of *teruma*. When they disagree it is with regard to a *yevama* from betrothal. Rav said: She may partake, as the Merciful One includes unwitting intercourse and the other forms of intercourse listed in the mishna, and considers them like intentional intercourse.

And Shmuel said: When the Merciful One includes these forms of intercourse, He does so only to establish the *yavam* in place of the husband, but to strengthen him more than the husband, no. Since she was merely betrothed to the deceased brother, she was not permitted to partake of *teruma*, and therefore she may not partake of *teruma* at this point either.

The Gemara comments: And Shmuel follows his regular line of reasoning, as Rav Nahman said that Shmuel said: In any case where the woman's marriage to her original husband entitles her to partake of *teruma*, intercourse with the *yavam* in any of the manners described in the mishna also entitles her to partake of *teruma*, and any case where her relationship with her original husband does not entitle her to partake of *teruma*, i.e., if she had been betrothed but not married, intercourse with the *yavam* in the manners described in the mishna also does not entitle her to partake of *teruma*.

The Gemara raises an objection from the following *baraita*: In the case of a mentally competent daughter of an Israelite who was betrothed to a competent priest, and he did not have a chance to marry her before he became a deaf-mute and was no longer mentally competent, she may not partake of *teruma*, as marriage to a deaf-mute does not enable a woman to partake of *teruma*. If the deaf-mute husband subsequently died and the *yevama* happened before a deaf-mute *yavam* for levirate marriage, she may partake of *teruma*. And in this regard the strength of the *yavam* is greater than the strength of the husband.

Granted, according Rav, this works out well, as intercourse with the deaf-mute *yavam*, which is comparable to the unwitting intercourse mentioned in the mishna because the deaf-mute is not mentally competent, effects the levirate marriage and allows her to partake of *teruma* despite the fact that she could not do so during the lifetime of her first husband. However, according to Shmuel, this is difficult, as he maintains that a *yavam* cannot have more rights than the deceased husband due to intercourse undertaken without intent to perform levirate marriage.

The Gemara answers: Shmuel could have said to you: Amend the *baraita* and say as follows: If he did not have a chanceⁿ to marry her before he became a deaf-mute, she may not partake of *teruma*. If he married her and afterward became a deaf-mute, she may partake of *teruma*. If he then died, and she happened before a deaf-mute *yavam* for levirate marriage, she may partake of *teruma*.

And what is the meaning of the phrase: In this regard the strength of the *yavam* is greater than the strength of the husband? It means to say that if the original husband was a deaf-mute from the outset, i.e., before consummating the marriage, she would not have been allowed to partake of *teruma*, whereas if the *yavam* was a deaf-mute from the outset she may partake of *teruma* once they perform levirate marriage, because she had been fully married to the deceased brother.

And some say a different version of the dispute between Rav and Shmuel: If she was a *yevama* from betrothal, i.e., her marriage with the deceased brother had never been completed, and she and the brother-in-law engaged in an inferior form of intercourse as described in the mishna, everyone agrees that she may not partake of *teruma*, as she did not partake of *teruma* in her husband's lifetime.

A mentally competent woman who married a priest and he became a deaf-mute, etc. – פקחת שְׁנִישָׁא – לכהן ונתחרש וכו': If a woman from a non-priestly family was betrothed to a priest, and before they were fully married he became a deaf-mute and was no longer mentally competent, she may not partake of *teruma*. If he died and she performed levirate marriage with her deaf-mute *yavam*, she still may not partake of *teruma*. However, if her first husband married her and only then became a deaf-mute, she may partake of *teruma*. If he then died and she performed levirate marriage with her deaf-mute *yavam*, she may partake of *teruma* (Rambam *Sefer Zera'im, Hilkhot Terumot* 8:10).

If a son was born to her – גולד לה בן – If a priest was a deaf-mute when he married, his wife may not partake of *teruma*. Nevertheless, if she has a child, she may partake of *teruma* on his account (Rambam *Sefer Zera'im, Hilkhot Terumot* 8:10).

NOTES

אָלָא – However, according to Shmuel it is difficult – לְשִׁמוּאֵל קָשִׁיָּא: Even so, Shmuel's opinion is not entirely refuted, as even according to Rav, the text of the *baraita* must be adjusted or interpreted in a manner that is not immediately obvious. Therefore, Shmuel's opinion cannot be rejected by dint of a *baraita* of questionable reliability (Ritva; see *Keren Ora*).

כִּי פְלִיגִי – מִן הַנְּשׂוּאִין. רַב אָמַר: אוֹכֵלֶת, דְּהָא הָיְתָה אֹכֶלֶת מֵעִיקְרָא. וְשִׁמוּאֵל אָמַר: אֵינָהּ אוֹכֵלֶת, כִּי רַבִּי רַחֲמָנָא בִּיאַת שׁוּגְגָא כְּמוּיָד – לְדַבְרִים הָאֻמְרִים בְּפִרְשָׁהּ, אֲבָל לְכָל מִילִי – לֹא.

וְהָאֵמַר רַב נַחֲמָן אָמַר שִׁמוּאֵל: כָּל שֶׁהִבְעֵל מֵאֲכִיל – יָבֵם מֵאֲכִיל! אֵימָא: כָּל בִּיאָה שֶׁהִבְעֵל מֵאֲכִיל בָּהּ – יָבֵם מֵאֲכִיל בָּהּ – וְכָל בִּיאָה שֶׁאֵין הִבְעֵל מֵאֲכִיל בָּהּ – אֵין הֵיבֵם מֵאֲכִיל בָּהּ.

מִיתִיבִי בֵּת יִשְׂרָאֵל פְּקַחַת שְׁנִישָׁא אֲרָסָה לְכַהֵן פְּקַח, וְלֹא הִסְפִּיק לְבִנְיָנָהּ עַד שְׁנִיתְחַרְשׁ – אֵינָהּ אוֹכֵלֶת. מֵת וְנִפְלָה לְפָנֵי יָבֵם חֲרֹשׁ – אוֹכֵלֶת, וּבִזּוּ יָפָה כַּח יָבֵם מִכָּח בַּעַל. בְּשִׁלְמָא לָרַב – מִתְרַץ בְּדִתְרִיץ מֵעִיקְרָא. אֲלָא לְשִׁמוּאֵל קָשִׁיָּא! קָשִׁיָּא.

תְּנוּ רַבָּנִן: בֵּת יִשְׂרָאֵל פְּקַחַת שְׁנִישָׁא אֲרָסָה לְכַהֵן פְּקַח, וְלֹא הִסְפִּיק לְבִנְיָנָהּ עַד שְׁנִיתְחַרְשׁ – אֵינָהּ אוֹכֵלֶת, גִּלְדָּהּ בֵּן – אוֹכֵלֶת. מֵת הַבֵּן, רַבִּי נָתָן אָמַר: אוֹכֵלֶת, וְחֻכְמִים אֻמְרִים: אֵינָהּ אוֹכֵלֶת.

מֵאִי טַעְמָא דְרַבִּי נָתָן? אָמַר רַבָּה: הוּאִיל שֶׁבָּבֶר אֹכֵלֶת. אָמַר לִיה אַבְיִי: אֲלָא מֵעַתָּה בֵּת יִשְׂרָאֵל שְׁנִישָׁת לְכַהֵן וּמִית לִיה – תִּיכּוּל, שֶׁבָּבֶר אֹכֵלֶת! אֲלָא, בִּין דְּמִית לִיה פִּקֵּעַ לִיה קְדוּשְׁתִּיהּ מִינָהּ – הֲכֵא נָמִי, בִּין דְּמִית לִיה פִּקֵּעַ קְדוּשְׁתִּיהּ מִינָהּ!

אֲלָא אָמַר רַב יוֹסֵף: קָסֶבֶר רַבִּי נָתָן נִשְׁוִיא חֲרֹשׁ מֵאֲכִילִין בְּתִירוּמָה, וְלֹא גִזְרִין נִשְׁוִיא חֲרֹשׁ אֲטוּ קְדוּשֵׁי חֲרֹשׁ. אָמַר לִיה אַבְיִי: אֵי הָכִי, גִּלְדָּהּ בֵּן לְמָהּ לִי מִשּׁוּם רַבָּנִן.

When they disagree, it is with regard to a *yevama* from marriage. Rav says: She may partake of *teruma* as she was permitted to partake of *teruma* initially, while married to the deceased brother. And Shmuel says she may not partake of *teruma*, because when the Merciful One includes unwitting intercourse and considers it like intentional intercourse, it was only with regard to the matters stated in the chapter of levirate marriage, but for every other issue, no.

The Gemara raises a difficulty: Didn't Rav Nahman say that Shmuel himself said: In any case where the woman's marriage to her original husband entitles her to partake of *teruma*, intercourse with the *yavam* in one of the manners listed in the mishna also entitles her to partake of *teruma*? The Gemara answers: Emend the wording and say as follows: With regard to any act of intercourse through which the husband entitles her to partake of *teruma*, a *yavam* also entitles her to partake of *teruma*; and with regard to any act of intercourse through which the husband does not entitle her to partake of *teruma*, a *yavam* also does not entitle her to partake of *teruma*. Just as betrothal cannot be performed via an unwitting act of intercourse, this act does not entitle a *yevama* to partake of *teruma*.

The Gemara raises an objection from the following *baraita*: In the case of a mentally competent daughter of an Israelite who was betrothed to a competent priest, and he did not have a chance to marry her before he became a deaf-mute and was no longer mentally competent, she may not partake of *teruma*. If the deaf-mute husband subsequently died, and the *yevama* happened before a deaf-mute *yavam* for levirate marriage, she may partake of *teruma*.¹ And in this regard the strength of the *yavam* is greater than the strength of the husband. Granted, according to Rav, he can answer as Shmuel answered initially, i.e., according to the first version of the dispute between Rav and Shmuel. However, according to Shmuel, it is difficult.² The Gemara concludes: Indeed, it is difficult.

§ The Sages taught: In the case of a mentally competent daughter of an Israelite who was betrothed to a mentally competent priest, and he did not have a chance to marry her before he became a deaf-mute and was no longer mentally competent, she may not partake of *teruma*. If a son was born to her³ from this priest, she may partake of *teruma* on account of her son. If the son died, Rabbi Natan says she may continue to partake of *teruma*, and the Rabbis say she may not continue to partake of *teruma*.

The Gemara asks: What is the reasoning of Rabbi Natan? Rabba said: Since she has already partaken of *teruma* in a permitted manner, she may continue. Abaye said to him: However, if that is so, in the case of the daughter of an Israelite who was married to a priest, and he died childless, she should be allowed to partake of *teruma*, as she has already partaken of it in the past. Rather, it must be that since he has passed away, his priestly sanctity has left her, and she is considered a regular Israelite in all regards. Here too, since the son has passed away, his priestly sanctity has left her, and therefore she should not be entitled to partake of *teruma*. Rabba's explanation should consequently be rejected.

Rather, Rav Yosef said: Rabbi Natan holds that the marriage of a deaf-mute who was competent when he betrothed his wife entitles her to partake of *teruma*, and we do not issue a decree against the wife partaking of *teruma* through marriage to a deaf-mute due to the case of betrothal to a deaf-mute. Although the betrothal of a deaf-mute does not take effect, his consummation of a marriage does take effect and entitles his wife to partake of *teruma*. Abaye said to him: If so, why do I need the *baraita* to specify that a son was born to her? She should be entitled to eat *teruma* even if she did not have a son. Rav Yosef responded: That case is mentioned due to the opinion of the Rabbis, who hold that she is entitled to partake of *teruma* only if she has a child.

וְלִפְלוֹג רַבִּי נָתַן עֲלֵיהֶוּ בְּרִישָׁא – שְׂבִיק
לְהוּ לְרַבָּנָן עַד דְּמַסִּימֵי מִלְתִּיהוּ, וְהֵדֵר
פְּלִיג עֲלֵיהֶוּ. אִי הָכִי לִיתָנִי: מִתְּ הֵבֵן
אֵינָה אוֹכֵלֶת, רַבִּי נָתַן אוֹמֵר: אוֹכֵלֶת!
קָשָׁיָא.

”וְכֵן הָבָא עַל אַחַת מִכָּל הָעֲרִיּוֹת.”
אָמַר רַב עֲמֵרָם: הָא מִלְתָּא אָמַר לֵן רַב
שֶׁשֶׁת,

Abaye asks further: **And let Rabbi Natan disagree with them in the first clause of the *baraita* as well.** Rav Yosef responds: **Rabbi Natan left the Rabbis until they finished their statement, and then disagreed with them with regard to their entire statement.** The Gemara asks: **If so, let the *baraita* first teach that if the son died she may not partake of *teruma*, and subsequently state: Rabbi Natan said she may eat.** Why is Rabbi Natan’s opinion mentioned before the Rabbis finished stating their opinion? The Gemara concludes: **Indeed, this is difficult according to Rav Yosef.**

It was taught in the mishna: **And so too, one who had intercourse with any one of those with whom relations are forbidden by the Torah in any form is liable to receive punishment.** Rav Amram said: **This matter was said to us by Rav Sheshet,**

Perek VI
Daf 56 Amud b

NOTES

אֵשֶׁת יִשְׂרָאֵל – The wife of an Israelite who was raped – שְׂנֵאנֶסָה: Several of the dilemmas raised in this passage are related to defining who is considered a *zona* and is therefore forbidden to a priest. It was clear to the Sages that the halakhic category of *zona* does not refer to a prostitute, as it does in both biblical and modern Hebrew. It refers instead to a woman who had intercourse with a man whom it is prohibited for her to marry, and with whom an act of betrothal would be ineffective. There is room to suggest a difference in this regard between a married woman and other forbidden relationships. In the case of other forbidden relationships, the woman is prohibited to the man due to her personal status, either because she is his close relative or because she is Jewish and he is not. In the case of a married woman, the prohibition stems from the marital bond, which is itself initially dependent upon her consent. Furthermore, this tie can be broken through the death of the husband or their divorce. Consequently, adultery is an act of infidelity on the part of a woman toward her husband, and a married woman who was raped is not prohibited to her husband, as she was not unfaithful to him. One might therefore have assumed that just as the woman is permitted to her husband, she is not considered a *zona*, and it is permitted for her to marry a priest if she becomes a widow (see *Tosafot* and *Tosafot Yeshanim*).

HALAKHA

אֵשֶׁת יִשְׂרָאֵל – The wife of an Israelite who was raped – שְׂנֵאנֶסָה: If the wife of an Israelite was raped, she is permitted to her husband. However, if her husband dies, she is forbidden to a priest, in accordance with the ruling of Rav Sheshet (Rambam *Sefer Kedusha*, *Hilkhot Issurei Bia* 18:8; *Shulhan Arukh*, *Even HaEzer* 6:11).

וְאִנְהִירִנְהוּ לְעֵינֵינוּ מִמִּתְנִיתִין: אֵשֶׁת
יִשְׂרָאֵל שְׂנֵאנֶסָה, אֵף עַל פִּי שְׁמוּתָתָהּ
לְבַעֲלָהּ – פְּסוּלָהּ לְכַהֲנָה. וְתֵנָּא
תֵּנָּא: וְכֵן הָבָא עַל אַחַת מִכָּל הָעֲרִיּוֹת
הָאֻמוֹרוֹת בְּתוֹרָה, אוֹ פְּסוּלוֹת.

מָאִי “וְכֵן”? מָאִי לָא: לָא שְׂנָא בְּשׁוּגָה
וְלֹא שְׂנָא בְּמִזְדָּן וְלֹא שְׂנָא בְּאוֹנֶסָה וְלֹא
שְׂנָא בְּרָצוֹן. וְקָתְנָי “פְּסוּלָה”.

לָא, מָאִי “וְכֵן” – אֵהֱעֲרָא. הִעֲרָא
דְּמֵאן? אֵילִימָא דְּעֲרִיּוֹת – לְמִימָרָא
דְּעֲרִיּוֹת יִלְפִינָן מִיבְּמָה? אֲדַרְבָּהּ, יְבֻמָּה
יִלְפִינָן מִעֲרִיּוֹת, דְּעִיקָר הִעֲרָא בְּעֲרִיּוֹת
בְּתִיב!

אֵלָא מָאִי “וְכֵן” – אֵשְׁלָא כְּדִרְכָּה
דְּעֲרִיּוֹת – אֲדַרְבָּהּ, עִיקָר “מִשְׁכְּבֵי אִשָּׁה”
בְּעֲרִיּוֹת בְּתִיב?

אֵלָא מָאִי “וְכֵן” אֵשְׁלָא כְּדִרְכָּה דְּחִיבֵי
לֵאמֹר.

and he illuminated our eyes from the mishna, i.e., he demonstrated that the mishna serves as the basis for his opinion: With regard to the wife of an Israelite who was raped,^{NH} although she is permitted to her husband, she is disqualified for the priesthood. Therefore, if her husband dies, she may not marry a priest. And the *tanna* of our mishna also taught: **And so too, in the case of one who had intercourse with any one of those with whom relations are forbidden [*arayot*] by the Torah or with those who are unfit to marry him even though they are not in the category of *arayot*, the woman is disqualified from marrying a priest.**

What is the meaning of the phrase: **And so too?** What, is it not that it is no different whether they have intercourse unwittingly or intentionally, and it is no different whether they have intercourse due to coercion or willingly? And it is taught that he has rendered her disqualified from marrying a priest.

The Gemara refutes this proof: **No, what is the meaning of the phrase: And so too?** It is referring to the initial stage of intercourse, as this too invalidates her. The Gemara asks: **The initial stage of intercourse of whom?** If we say it is referring to those with whom relations are prohibited and carry a punishment of *karet* or death [*arayot*], is this to say that the *halakha* with regard to those with whom relations are prohibited is derived from the *halakha* with regard to a *yevama*, as implied by the phrase: **And so too?** On the contrary, we derive the *halakha* of a *yevama* from the *halakha* with regard to those with whom relations are prohibited, as the main source that indicates that the initial stage of intercourse is considered intercourse is stated in the context of those with whom relations are prohibited and not in the context of a *yevama*.

Rather, what is the meaning of the phrase: **And so too?** It is referring to atypical, i.e., anal, sexual intercourse with those with whom relations are prohibited [*arayot*]. The Gemara rejects this suggestion: **On the contrary, the main source that atypical intercourse is considered intercourse, which is based upon the verse “The cohabitations of a woman” (Leviticus 18:22) is written with regard to those with whom relations are prohibited [*arayot*].**

Rather, what is the meaning of the phrase: **And so too?** It is referring to atypical intercourse by those liable for violating an ordinary prohibition not punishable by *karet*, with regard to whom the expression: The cohabitations of a woman, does not appear. In any event, Rav Sheshet’s proof from the mishna is not conclusive.

Rava said – אִמְרֵי רַבָּא: Other versions of the text attribute this statement to Rabba, which seems to be more consistent with the Gemara's ensuing discussion.

Due to ritual impurity – מִשּׁוּם טוּמְאָה: This prohibition is derived from two sources. The first is a verse with regard to a *sota*: "And she was made ritually impure" (Numbers 5:13). Second, the Torah states with regard to a divorced woman who was remarried and then divorced from her second husband: "Her former husband, who sent her away, may not return to take her to be his wife after she was made ritually impure" (Deuteronomy 24:4). The Sages explain (see *Nidda* 11b) that this verse also renders prohibited a married woman who had intercourse with another man (see *Tosefot HaRosh*).

All married women who engaged in extramarital intercourse were included in the category of *zona* – הַכֹּל הָיוּ בְּכֵלֵל וּזְנוּה: The commentaries are puzzled by this statement. Since a *zona* is forbidden only to a priest, what does it mean that initially the wife of an Israelite who was raped would also have been considered a *zona*, implying that she would have been prohibited to her husband, had the verse not excluded her from this prohibition? The *Tosefot HaRosh* explains that initially the wife of an Israelite was considered a *zona*, and was also prohibited to her husband due to becoming ritually impure. The Torah indicates that she is not prohibited to him if she was raped, but she remains classified as a *zona* and is prohibited to a priest. Consequently, the wife of a priest is also classified as a *zona* if she was raped, and therefore she is forbidden to her husband (see *Rashba*).

HALAKHA

אִשֶּׁת כֹּהֵן שֶׁנֶּאֱנָסָה – אִשֶּׁת כֹּהֵן שֶׁנֶּאֱנָסָה: The wife of a priest who was raped is forbidden to her husband. If he engages in intercourse with her, he is flogged for violating the prohibition against having intercourse with a *zona* (*Mishne LaMelekh*), in accordance with the first version of Rabba's statement (Rambam *Sefer Kedusha*, *Hilkhot Issurei Bia* 18:7; *Shulhan Arukh*, *Even HaEzer* 6:10).

אִמְרֵי רַבָּא: אִשֶּׁת כֹּהֵן שֶׁנֶּאֱנָסָה – בַּעֲלָהּ לֹקְחָהּ עָלֶיהָ מִשּׁוּם זִנְיָהּ. מִשּׁוּם זִנְיָהּ – אֵין, מִשּׁוּם טוּמְאָה – לֹא? אִימָא: אֵף מִשּׁוּם זִנְיָהּ.

Rava said:^N With regard to the wife of a priest who was raped,^H her husband is flogged if he later has intercourse with her, due to the fact that it is prohibited for a priest to have intercourse with a *zona*.^B The Gemara expresses surprise: Due to the prohibition proscribing a *zona*, yes; due to ritual impurity,^N no? The Torah refers to a married woman who has had intercourse with another man as ritually impure, and she is forbidden to her husband. The Gemara emends Rava's statement: Say that he is also flogged due to the prohibition with regard to a *zona*.

מִתִּיב רַבִּי זִירָא: "וְהָיָא לָא נִתְפָּשָׁה" – אִסּוּרָה, הָא נִתְפָּשָׁה – מוֹתֶרֶת, וְיֵשׁ לָךְ אַחֲרֵת שְׂאֵף עַל פִּי שְׁנִתְפָּשָׁה – אִסּוּרָה, וְאִיזוּ זוּ – זוּ אִשֶּׁת כֹּהֵן.

Rabbi Zeira raised an objection based upon a verse with regard to a *sota*: "And neither was she taken" (Numbers 5:13) indicates that she is forbidden to her husband because she willingly committed adultery, but if she was forcibly taken, i.e., raped, she is permitted to her husband. The term "And...she" indicates that although these principles apply in this case, you have another case of a woman who is prohibited even though she was forcibly taken. And which is this? This is the wife of a priest.

וְלֹא הָבָא מִכְּלָל עֲשֵׂה – עֲשֵׂה!

And a prohibition that stems from a positive mitzva, e.g., the prohibition proscribing a priest's wife to her husband if she has been raped, which is derived from the fact that the Torah indicates that the wife of an Israelite remains permitted, has the status of a positive mitzva, not a prohibition. Consequently, one should not be flogged for this offense, as one is flogged only for violating a prohibition.

אִמְרֵי רַבָּא: הַכֹּל הָיוּ בְּכֵלֵל וּזְנוּה, בְּשִׁפְטֵי לָךְ הַכְּתוּב גְּבִי אִשֶּׁת יִשְׂרָאֵל "וְהָיָא לָא נִתְפָּשָׁה" אִסּוּרָה, הָא נִתְפָּשָׁה – מוֹתֶרֶת, מִכְּלָל דְּאִשֶּׁת כֹּהֵן – בְּדִקְיָמָא קִימָא.

Rabba said in response: All married women who engaged in extramarital intercourse were included in the category of *zona*.^N When the verse specified with regard to the wife of an Israelite: "And neither was she taken," as it is only in that case that she is forbidden, it thereby indicates that if in fact she was forcibly taken, she is permitted. By inference, unlike the wife of an Israelite, the wife of a priest remains as she was. Since the Torah does not limit the category of *zona* with regard to the wife of a priest, she is considered a *zona* even if she was raped.

וְאִיכָא דְאִמְרֵי, אִמְרֵי רַבָּא: אִשֶּׁת כֹּהֵן שֶׁנֶּאֱנָסָה – בַּעֲלָהּ לֹקְחָהּ עָלֶיהָ מִשּׁוּם טוּמְאָה. מִשּׁוּם טוּמְאָה – אֵין, מִשּׁוּם זִנְיָהּ – לֹא, אִלְמָא: בְּאֻנָּס לֹא קְרִינָא בֵּיהּ זִנְיָהּ.

And some say a different version of this discussion. Rabba said: With regard to the wife of a priest who was raped, her husband is flogged for having intercourse with her due to her ritual impurity. The Gemara asks: Due to ritual impurity, yes; due to the prohibition proscribing a *zona*, no? Apparently, in a case of rape, the victim is not called a *zona*.

מִתִּיב רַבִּי זִירָא: "וְהָיָא לָא נִתְפָּשָׁה" – אִסּוּרָה, הָא נִתְפָּשָׁה – מוֹתֶרֶת, וְיֵשׁ לָךְ אַחֲרֵת שְׂאֵף עַל פִּי שְׁנִתְפָּשָׁה – אִסּוּרָה, וְאִיזוּ זוּ – זוּ אִשֶּׁת כֹּהֵן, וְלֹא הָבָא מִכְּלָל עֲשֵׂה – עֲשֵׂה!

Rabbi Zeira raised an objection from the verse: "And neither was she taken" indicates that she is forbidden to her husband because she willingly committed adultery, but if she was forcibly taken, she is permitted to her husband. The term: "And...she," indicates that although these principles apply in this case, you have another case of a woman who is forbidden even though she was forcibly taken. And which is this? This is the wife of a priest. And a prohibition that stems from a positive mitzva has the status of a positive mitzva, not a prohibition. Consequently, one should not be flogged for this offense, as one is flogged only for violating a prohibition.

אִמְרֵי רַבָּא: הַכֹּל הָיוּ בְּכֵלֵל "אַחֲרֵי אֲשֶׁר הִטְמֵאָה", בְּשִׁפְטֵי לָךְ הַכְּתוּב גְּבִי אִשֶּׁת יִשְׂרָאֵל "וְהָיָא לָא נִתְפָּשָׁה" אִסּוּרָה, הָא נִתְפָּשָׁה – מוֹתֶרֶת, מִכְּלָל דְּאִשֶּׁת כֹּהֵן בְּדִקְיָמָא קִימָא.

Rava said: All were included in the verse "Her former husband, who sent her away, may not take her again to be his wife after she was made ritually impure" (Deuteronomy 24:4). When the verse specified with regard to the wife of an Israelite: "And neither was she taken," as it is only in that case that she is forbidden, it thereby indicates that if she was forcibly taken she is permitted. By inference, the wife of a priest remains as she was, and she is forbidden.

BACKGROUND

Zona – זִנְיָהּ: In halakhic terms, the category of *zona* refers to a woman who has had sexual relations with a man forbidden to her by the Torah, with whom she cannot establish a marriage bond. Furthermore, it is prohibited for a woman who is catego-

rized as a *zona* to thereafter marry a priest or remain married to one (Leviticus 21:7). There is no connection between the halakhic definition of this term and its everyday usage in modern Hebrew.

A widow to a High Priest, etc. – אֶלְמָנָה לְכֹהֵן גָּדוֹל וְכו' – If a widow is betrothed to a High Priest, or a divorcée is betrothed to a priest, even if they are daughters of priests, they may not partake of *teruma*. This is in accordance with the opinion of Rabbi Meir. If they were then widowed or divorced before completing the marriage, they may once again partake of *teruma*. However, if their marriage to the priest was consummated, they are *halalot* and are permanently disqualified from partaking of *teruma* (Rambam *Sefer Zera'im, Hilkhot Terumot* 7:21).

A priest with crushed testicles who betrothed a valid woman – פְּצוּעַ דָּכָא כֹהֵן שֶׁקִּדְּשׁ בִּשְׂרָה – If a priest with crushed testicles betrothed a woman, even if she is the daughter of a priest, she may not partake of *teruma* (Rambam *Sefer Zera'im, Hilkhot Terumot* 7:14).

NOTES

Halala – חֲלָלָה – If it is forbidden for a woman to marry a regular priest or a High Priest and she engages in sexual intercourse with him, she is rendered a *halala*. A woman is also considered a *halala* if she is born from the union of a priest and a woman who is forbidden from marrying a priest; or if she is the wife or daughter of a *halal*, which is a son born from the union of a priest and a woman who is forbidden from marrying a priest. It is prohibited for a *halala* to marry a priest or partake of *teruma*.

A priest with crushed testicles who betrothed the daughter of an Israelite – פְּצוּעַ דָּכָא כֹהֵן שֶׁקִּדְּשׁ בִּתּוֹת יִשְׂרָאֵל – Virtually all the commentaries prefer Rabbeinu Hananel's reading: A priest with crushed testicles who betrothed the daughter of a priest (see *Tosafot*).

מתני' אֶלְמָנָה לְכֹהֵן גָּדוֹל, גְּרוּשָׁה וְחִלּוּצָה לְכֹהֵן הַדִּיּוֹט מִן הָאִירוּסִין – לֹא יֵאָכְלוּ בְּתֻרֻמָּה, רַבִּי אֶלְעָזָר וְרַבִּי שְׁמַעוֹן מְכַשְׁרִין.

נִתְאַרְמְלוּ אוֹ נִתְגַּרְשׁוּ, מִן הַנִּשְׁוּאִין – פְּסוּלוֹת, מִן הָאִירוּסִין – כְּשֻׁרוֹת.

גמ' תנאי, אמר רבי מאיר: קל וחומר, ומה קדושי רשות – אין מאכילין, קדושי עבירה – לא כל שבין?

אָמְרוּ לוֹ: לֹא, אִם אָמַרְתָּ בְּקִדּוּשֵׁי רְשׁוֹת – שֶׁבֶן אֵין לוֹ לְהַאֲכִיל בְּמָקוֹם אֲחֵר, תֹּאמַר בְּקִדּוּשֵׁי עֲבִירָה – שֶׁבֶן יֵשׁ לוֹ לְהַאֲכִיל בְּמָקוֹם אֲחֵר.

אָמַר רַבִּי אֶלְעָזָר אָמַר רַבִּי אוֹשְׁיָא: פְּצוּעַ דָּכָא כֹהֵן שֶׁקִּדְּשׁ בִּתּוֹת יִשְׂרָאֵל – בָּאֵנוּ לְמַחְלוּקַת רַבִּי מֵאִיר וְרַבִּי אֶלְעָזָר וְרַבִּי שְׁמַעוֹן.

לְרַבִּי מֵאִיר דָּאֵמַר מִשְׁתַּמְרַת לְבִיָּאָה פְּסוּלָה דְּאוֹרֵייתָא לֹא אָכְלָה – הָא נִמִּי לֹא אָכְלָה, לְרַבִּי אֶלְעָזָר וְרַבִּי שְׁמַעוֹן דָּאֵמְרִי מִשְׁתַּמְרַת לְבִיָּאָה פְּסוּלָה דְּאוֹרֵייתָא אָכְלָה.

MISHNA A widow to a High Priest,^H a divorcée, or a *halutza* to a common priest, even if they had only engaged in betrothal and had not yet had intercourse, **may not partake of *teruma***. Since they are forbidden to the men who betrothed them, the betrothal itself disqualifies them from the privileges of priesthood even if they are the daughters of priests. **Rabbi Elazar and Rabbi Shimon declare them fit to partake of *teruma***. Since the prohibition is violated through the act of intercourse and not betrothal, the women are disqualified only once they have intercourse.

In a case where these women were widowed or divorced, if it was from marriage, they are disqualified from the priesthood and may not partake of *teruma*. This is because a woman prohibited from marrying a priest who has intercourse with a priest becomes a *halala*,^N and is thereby disqualified from partaking of *teruma*. However, if they were widowed or divorced from their state of betrothal, they are once again fit to partake of *teruma* according to all opinions.

GEMARA It is taught in a *baraita* that Rabbi Meir said: This is an *a fortiori* inference: Just as optional betrothal, e.g., in the case of an Israelite who betroths the daughter of a priest, does not entitle her to partake of *teruma*, as her betrothal to a non-priest disqualifies her from partaking of her father's *teruma*, is it not all the more so true in a case of betrothal that constitutes a transgression, as in the cases in the mishna?

They said to him: No, if you say that this is true with regard to an Israelite, whose status cannot entitle her to partake of *teruma* in another case, as one betrothed to an Israelite may never partake of *teruma*, shall you also say that this is the case with regard to betrothal to a priest that constitutes a transgression, where his status does entitle her to partake of *teruma* in a different case, as marriage to a priest entitles a woman to partake of *teruma* in a case where it is permitted for them to marry?

Rabbi Elazar said that Rabbi Oshaya said: In the case of a priest with crushed testicles or with other wounds to his genitals who betrothed the daughter of an Israelite,^{HN} which is prohibited by the verse "He that is crushed or maimed shall not enter into the congregation of the Lord" (Deuteronomy 23:2), we have arrived at the dispute between Rabbi Meir on the one hand and Rabbi Elazar and Rabbi Shimon on the other.

According to Rabbi Meir, who said that a woman who is reserved for intercourse that is invalid, i.e., prohibited, by Torah law may not partake of *teruma*, this one may also not partake of *teruma*, as it is prohibited by Torah law for her to have intercourse with a man with crushed testicles. According to Rabbi Elazar and Rabbi Shimon, who say that a woman who is reserved for intercourse that is invalid by Torah law may partake of *teruma* until she actually engages in the prohibited act of intercourse,

Perek VI

Daf 57 Amud a

הָא נִמִּי אָכְלָה. מִמָּאִי? דְּלִמָּא עַד כָּאן לֹא קֵאֲמְרִי רַבִּי אֶלְעָזָר וְרַבִּי שְׁמַעוֹן הָתָם אֵלֹא דִּישׁ לוֹ לְהַאֲכִיל בְּמָקוֹם אֲחֵר, אָכֵל הָכָא, דְּאֵין לוֹ לְהַאֲכִיל בְּמָקוֹם אֲחֵר – לֹא.

this one may also partake of *teruma* until that time. The Gemara refutes this argument: From where do we know that this is correct? Perhaps Rabbi Elazar and Rabbi Shimon stated their opinion there only with regard to a priest whose status can entitle her to partake of *teruma* in another case, but here, in the case of a priest with crushed testicles, whose status cannot entitle her to partake of *teruma* in another case, as it is forbidden for him to marry a woman who was born Jewish, no, they did not state their opinion.

Rabbi Oshaya – רבי אושעיא Rabbi Oshaya was one of the greatest of the first generation of *amora'im* in Eretz Yisrael. Due to his prominence and influence, he was known as Rabbi Oshaya the Great, and was also given the honorific title Father of the Mishna.

His family came from the south, where he was apparently born and raised. At some point he moved to the Galilee and settled in Tzippori and Caesarea. The verse "A threefold cord is not quickly broken" (Ecclesiastes 4:12) was used to describe him, as his father, Rabbi Hama, and his grandfather, Rabbi Bisa, were also renowned Sages.

Rabbi Oshaya was originally a disciple of bar Kapara, and later, probably after his move to the Galilee, he became a disciple of Rabbi Hiyya. Like Rabbi Hiyya, Rabbi Oshaya authored a collection of *baraitot* that is considered highly authoritative and reliable, to the extent that the Sages stated a principle that any collection of *baraitot* other than that of Rabbi Hiyya and Rabbi Oshaya is of questionable validity.

It seems that as a young man Rabbi Oshaya was a member of the rabbinical court of Rabbi Yehuda HaNasi. However, his most active years came during the time of Rabbi Yehuda HaNasi's students, and especially during the time of Rabbi Yehuda HaNasi's grandson, Rabbi Yehuda Nesia, when Rabbi Oshaya was considered the outstanding scholar of the generation. Rabbi Oshaya's family maintained close ties with the house of the *Nasi*.

All the important *amora'im* in Eretz Yisrael viewed themselves as Rabbi Oshaya's students, including the illustrious Rabbi Yohanan. Together with his greatness in Torah, Rabbi Oshaya was also known for his exemplary behavior and for his consideration in tending to the physical and emotional needs of those in distress. It seems that he was also well versed in worldly wisdom, as his masters occasionally sent him to explain issues to various individuals from other nations.

It is not known what Rabbi Oshaya's occupation was, but it is clear that he barely made a living. He lived a long life, as his students' students were prominent scholars in Eretz Yisrael during his own lifetime. His son, Rabbi Marinos, is mentioned in the Jerusalem Talmud.

וכי תימא: הכא נמי יש לו להאכיל בבת גרים – והא מבעיא בעי לה רבי יוחנן מרבי אושעיא, ולא פשיט ליה.

And if you say that here too, his status can at least entitle his wife to partake of *teruma* if he marries the daughter of converts, wasn't it already raised as a dilemma by Rabbi Yohanan before Rabbi Oshaya^p whether the daughter of converts who married a priest with crushed testicles may partake of *teruma*, and he was unable to resolve it for him? Therefore, there is a difference between a priest with crushed testicles and other priests who betroth women who are disqualified by their intercourse.

איתמר, אביי אמר: הואיל ומאכילה בלא ידעה,

It was stated that Abaye said: Women betrothed to a priest with crushed testicles may eat *teruma* since his status entitles his wife to partake of *teruma* in a case where he has not known her. If a priest was properly married and then his testicles became crushed, as long as he has not known his wife, i.e., engaged in intercourse with her, after that point in time, she may continue partaking of *teruma* as his wife.

רבא אמר: הואיל ומאכילה בעבדיו ושפחותיו הבגננים.

Rava said she may continue to partake of *teruma* for a different reason: She may eat *teruma* since the status of this priest entitles his Canaanite slaves and maidservants to partake of *teruma*. Because he has the power to enable others to partake of *teruma*, the case of a woman betrothed to a priest with crushed testicles is comparable to the cases in the mishna, and Rabbi Elazar and Rabbi Shimon would permit the woman to partake of *teruma*.

אביי לא אמר כרבא, קנין דאישות מקנין דאישות – ילפינן, ולא ילפינן קנין דאישות מקנין דעבדים.

The Gemara clarifies the two opinions. Abaye did not say in accordance with the opinion of Rava because he claims that we derive the *halakhot* related to the acquisition of marriage from the acquisition of marriage, and we do not derive the *halakhot* related to the acquisition of marriage from the acquisition of slaves.

ורבא לא אמר כאביי – שאני התם שפבר אכלה. ואביי: שפבר אכלה לא אמרין, דאי לא תימא הכי – בת ישראל שניסת לכהן ומית – תיבול, שפבר אכלה. ורבא: התם – פקע קניניה, הכא – לא פקע קניניה.

And Rava did not state his opinion in accordance with the opinion of Abaye, as he maintains that it is different there, as she had already partaken of *teruma*ⁿ before her husband's testicles were crushed and therefore she may continue to partake of it. And Abaye would respond that we do not say that the case is different because she had already partaken of *teruma*, as, if you do not say so, the daughter of an Israelite who was married to a priest who died childless should be allowed to partake of *teruma*, as she had already partaken of *teruma* while her husband was alive. And Rava replies that there is no comparison between the two cases: There, his acquisition lapses upon his death; here, his acquisition does not lapse, as she is still his wife.

גופא, בעא מיניה רבי יוחנן מרבי אושעיא: פצוע דכא בהן שנשא בת גרים, מהו שיאכילה בתרומה? אישתיק ולא אמר ליה ולא מיד. לסוף אתא גברא רבה אחרינא, ובעא מיניה מילתא [אחריתא], ופשט ליה. ומנו – ריש לקיש. אמר ליה רבי יהודה נשיאה לרבי אושעיא: אטו רבי יוחנן לאו גברא רבה הוא? אמר ליה: דקבעי מינאי מילתא דלית לה פתרי.

S The Gemara earlier mentioned a question that Rabbi Yohanan posed to Rabbi Oshaya, and it now turns its attention to that matter itself. Rabbi Yohanan raised a dilemma before Rabbi Oshaya: With regard to a priest with crushed testicles or with other wounds to his genitals who married the daughter of converts, what is the *halakha* concerning whether his status entitles her to partake of *teruma*? Rabbi Oshaya was silent and said nothing to him. Eventually another great man came and raised a different dilemma before Rabbi Oshaya, and he resolved his question. And who was this great man? Reish Lakish. Rabbi Yehuda Nesia said to Rabbi Oshaya: Is Rabbi Yohanan not a great man? Why didn't you address his dilemma? Rabbi Oshaya said to him: I did not respond because he raised a dilemma before me that has no resolution.

NOTES

It is different there, as she had already partaken of *teruma* – שאני התם שפבר אכלה – According to the text of Rabbeinu Hananel and many others, the case under discussion is about a priest with crushed testicles who betrothed the daughter

of a priest. In that case, the woman has already partaken of *teruma* due to the fact that she is the daughter of a priest. Consequently, why should there be a distinction between that case and the case of the priest whose wife was entitled

to partake of *teruma* before his testicles were crushed? The Ritva explains that by getting married she has left her father's household, and therefore her earlier consumption of *teruma* is no longer relevant.

The congregation of converts is not called the congregation of the Lord – קהל גרים לא איקרי קהל: It is permitted for a convert to marry a *mamzeret*, and it is permitted for a female convert to marry a *mamzer* or a man with crushed testicles. The children of converts may also marry these individuals, even if they were conceived and born after their parents' conversion. This is true even after the passage of several generations, as long as they are still known as converts and neither of their parents is a natural-born Jew. The *halakha* is in accordance with the opinion of Rabbi Yosei (Rambam *Sefer Kedusha*, *Hilkhot Issurei Bia* 15:7–8; *Shulḥan Arukh*, *Even HaEzer* 4:22).

A woman who is the daughter of converts...into the priesthood – אשה בת גרים...לכהונה: A woman who is the daughter of two converts may not marry a priest. If she nevertheless married a priest, they are not forced to divorce if she was conceived after her parents converted. This is based upon the conclusion of the Gemara in tractate *Kiddushin* (78b) that, after the fact, the *halakha* is in accordance with the opinion of Rabbi Yosei. If one of her parents was a natural-born Jew, she may marry a priest even *ab initio*, as stated by Rabbi Eliezer ben Ya'akov (Rambam *Sefer Kedusha*, *Hilkhot Issurei Bia* 19:12; *Shulḥan Arukh*, *Even HaEzer* 7:21).

A priest with crushed testicles or with other wounds to his genitals – פצוע דכא ביהן: If a priest with crushed testicles married a daughter of converts she may partake of *teruma* on his account, in accordance with the opinions of Rabbi Yosei and Rabbi Eliezer ben Ya'akov (*Kesef Mishne*; Rambam *Sefer Zera'im*, *Hilkhot Terumot* 7:13).

NOTES

A woman who is the daughter of converts may not marry into the priesthood – בית גרים לא תנשא לכהונה: As explained in tractate *Kiddushin* (78a), this *halakha* is based on the verse "Neither shall they take for their wives a widow...but they shall take virgins from the seed of the house of Israel" (Ezekiel 44:22). See the Gemara there for other reasons that apply to a female convert herself.

למאן? אי לרבי יהודה – בין בקדושתיה קאי בין לאו בקדושתיה קאי – לא אכלה. אי בקדושתיה קאי לא אכלה, דהא אמר מר: בת גר זכר כבת חלל זכר.

אי לאו בקדושתיה קאי – לא אכלה, דהא אמרין: קהל גרים איקרי קהל.

ואי לרבי יוסי, בין בקדושתיה קאי בין לאו בקדושתיה קאי – אכלה. בקדושתיה קאי אכלה – דהא אמר: אף גר שנשא גיורת בתו בשרה לכהונה. אי לאו בקדושתיה קאי אכלה – דהא אמר: קהל גרים לא איקרי קהל.

אלא אליבא דהאי תנא. דתנן, רבי אליעזר בן יעקב אומר: אשה בת גרים לא תנשא לכהונה עד שתהא אמה מ ישראל.

והכי קמבעיא ליה: בשרות מיתוספא בה ואכלה, או דלמא קדושה מיתוספא בה ולא אכלה?

תא שמע: כי אתא רבי אחא בר חיננא מדרומא, אתא ואיתי ממתנתא בידיה: מנין לפצוע דכא כהן שנשא בת גרים שמאכילה בתרומה – שנאמר "וכהן כי יקנה נפש קנן כספו וגו' יאכל בו",

The Gemara explains: According to whom did he raise his dilemma? If it was in accordance with the opinion of Rabbi Yehuda, then, whether the priest with crushed testicles retains his priestly sanctity or whether he does not retain his priestly sanctity and may marry women forbidden to priests, she may not partake of *teruma*. The reasoning is as follows: If he retains his priestly sanctity she may not partake of *teruma*, as the Master said: The status of the daughter of a male convert is like that of the daughter of a male *halal*. They are both prohibited from marrying a priest, and therefore even if they marry a priest, it is prohibited for them to eat *teruma*.

Even if he does not retain his priestly sanctity she may not eat, as we say that according to Rabbi Yehuda, the congregation of converts is called the congregation of the Lord. Therefore, when the Torah renders it prohibited for a man with crushed testicles to marry into the congregation of the Lord (see Deuteronomy 23:2), it renders it prohibited for him to marry converts.

And if he raised his dilemma in accordance with the opinion of Rabbi Yosei, then, whether he retains his priestly sanctity or whether he does not retain his priestly sanctity, she may partake of *teruma*. If he retains his sanctity she may partake, as Rabbi Yosei said: Even if a convert married a convert, his daughter is fit for marrying into the priesthood. If he does not retain his sanctity she may partake, as Rabbi Yosei said: The congregation of converts is not called the congregation of the Lord,^h and therefore even those forbidden from entering the congregation may marry converts. Consequently, it is certainly permitted for the priest with crushed testicles to marry the daughter of converts.

Rather, Rabbi Yohanan raised his dilemma in accordance with the opinion of this *tanna*, as we learned in a mishna (*Bikkurim* 1:5) that Rabbi Eliezer ben Ya'akov says: A woman who is the daughter of converts may not marry into the priesthood^{NH} unless her mother was Jewish from birth.

And his dilemma was as follows: Is the reason she may marry a priest if her mother was Jewish from birth that fitness to marry a priest has been added to her, but she is not considered a member of the congregation of the Lord and may therefore marry a man with crushed testicles? If so, since she may marry a priest, she may partake of *teruma* once she does so. Or perhaps sanctity has been added to her and she is considered a member of the congregation of the Lord. Consequently, she may not marry a man with crushed testicles, and if she does, she may not partake of *teruma* even if he is a priest.

The Gemara suggests an answer to this dilemma. Come and hear: When Rabbi Aḥa bar Hinnana came from the south,⁸ he came and brought this *baraita* in hand: From where is it derived that a priest with crushed testicles or with other wounds to his genitals^h who married the daughter of converts entitles her to partake of *teruma*? As it is stated: "But if a priest buys any soul, the purchase of his money, he may eat of it" (Leviticus 22:11). In this context, a wife is also considered his monetary acquisition, and therefore she may partake of *teruma*.

BACKGROUND

From the south – מדרומא: From the time of the bar Kokheva revolt, the center of Jewish life in Eretz Yisrael was in the Galilee. Judea was mostly desolate, as the majority of the population, and the Sanhedrin, were in the Galilee. However, some important centers of Jewish life in Judea remained, including Lod

and other cities. There were some Sages who lived south of the Galilee and preserved ancient traditions. At times, these Sages would travel north to the Galilee and report halakhic traditions, *baraitot*, or statements of earlier Sages that were not known to the Sages in the Galilee.

למאן? אילימא לרבי יהודה –
האמר: בין בקדושתיה קאי בין לאו
בקדושתיה קאי – לא אכלה. ואי
לרבי יוסי – למה לי קרא? האמר: בין
בקדושתיה קאי בין לאו בקדושתיה
קאי – אכלה. אלא לאו – לרבי
אליעזר בן יעקב, ושמע מינה: בשרות
איתוספא בה, ואכלה. שמע מינה.

The Gemara analyzes this source: According to whom is this *baraita* stated? If we say it is in accordance with the opinion of Rabbi Yehuda, didn't he say that whether this priest retains his sanctity or whether he does not retain his sanctity, she may not partake of *teruma*? And if it is in accordance with the opinion of Rabbi Yosei, why do I need a special verse to teach this *halakha*? Didn't he say that whether he retains his sanctity or whether he does not retain his sanctity, she may partake of *teruma*? Rather, is it not in accordance with the opinion of Rabbi Eliezer ben Ya'akov? And you can learn from this *baraita* that fitness was added to her, and therefore she may partake of *teruma*. The Gemara concludes: Indeed, learn from this that it is so.

איתמר, רב אמר

§ The Gemara cites a dispute with regard to an issue related to the previous discussion. It was stated that the *amora'im* disagreed about the following question. Rav said:

Perek VI

Daf 57 Amud b

יש חופה לפסולות, ושמא לא אמר: אין
חופה לפסולות.

There is significance to a priest entering a wedding canopy^{NB} with women who are unfit to marry a priest.^{NH} If a priest's daughter who is unfit to marry a priest enters the wedding canopy with a priest, she becomes disqualified from partaking of *teruma* from her father's household. This is the case even if the priest did not betroth her and they did not engage in sexual intercourse. And Shmuel said: There is no significance to a priest entering the wedding canopy with women who are unfit to marry a priest. Only sexual intercourse disqualifies her from the privileges of priesthood.

אמר שמואל: ומודה לי אבא בתינוקת
פחותה מבת שלש שנים ויום אחד,
הואיל ואין לה ביאה – אין לה חופה.

Shmuel said: And Abba, i.e., Rav, whose first name was Abba, concedes to me,^N with regard to a girl less than three years and one day old, that she is not disqualified by merely entering the wedding canopy. Since there is no legal significance to an act of intercourse with her, there is no legal significance to entering the wedding canopy with her.

NOTES

Wedding canopy [*huppa*] – חופה: There are differences of opinion as to what constitutes a wedding canopy. Some maintain that it refers to the ceremony where a shawl is spread over the heads of the bride and groom. Others say that *huppa* requires them to be secluded for the amount of time necessary to engage in intercourse. Still others contend that *huppa* occurs when the groom brings his bride into his home as his wife (see *Shulhan Arukh, Even HaEzer* 55).

A wedding canopy with women who are unfit to marry a priest – חופה לפסולות: Among the commentaries, there are many opinions with regard to the meaning of this passage. According to Rashi, the reference is to entering the wedding canopy without betrothal. Rav and Shmuel agree that the couple is not considered married. Nevertheless, Rav holds that the woman becomes disqualified from partaking of *teruma* because entering the wedding canopy is a preparatory stage for sexual intercourse.

Most medieval commentaries, however, maintain that this is a case where they entered the wedding canopy after betrothal. Rabbeinu Tam, cited in *Tosafot*, claims that Rav and Shmuel disagree about whether a priest and a woman unfit to marry him are considered married once they enter the wedding canopy, so that she would be disqualified from partaking of *teruma* from her father's house, or if they are not considered married in this regard until they engage in intercourse (see *Tosafot; Tosefot Had MiKamma'ei; Ramban; Ritva; Yam shel Shlomo*).

Abba concedes to me – מודה לי אבא: Rashi and Rabbi Avraham min HaHar explain that Abba was an honorific title. However, *Tosafot* provide proofs that it was Rav's first name. It is possible that both explanations are correct, and Rashi is explaining why it was not disrespectful to call Rav by his first name. Halakhic commentaries address the question of whether it is permitted to call one's father by his first name if that name is also an honorific title, such as *Abba*, which means father, or *Morenu*, which means our master.

BACKGROUND

Wedding canopy – חופה: In the talmudic era, the wedding canopy was a kind of small, decorated room, sometimes constructed from braided myrtle branches, where the bride and groom would be left alone together. It was a closed space that afforded enough privacy for the couple to engage in intimate relations. In later generations, when the wedding canopy took on a more symbolic function, the Sages debated whether entering the wedding canopy still fulfills the halakhic requirements of marriage, as mentioned in the Talmud.

HALAKHA

A wedding canopy with women who are unfit to marry a priest – חופה לפסולות: If the widowed daughter of a priest enters the wedding canopy in order to marry a High Priest, or if a divorcee enters the wedding canopy in order to marry a common priest, she becomes disqualified from partaking of *teruma*. With regard to ritual *halakha*, the *halakha* is in accordance with Rav in his disputes with Shmuel (Rambam *Sefer Zera'im, Hilkhot Terumat* 7:21).

אמר רבא: אף אנן נמי תנינא. בת שלש שנים ויום אחד מתקדשת בביתא ואם בא עליה יבם קנאה, וחיבין עליה משום אשת איש, ומטמאה את בועלה לטמא משכב תחתון בעליון.

נשאת לכהן – אוכלת בתרומה, בא עליה אחד מכל הפסולין – פסלה.

בת שלש שנים ויום אחד הוא דמפסלה בביתא – מפסלה בחופה, היא פחותה מבית שלש שנים ויום אחד, דלא מפסלה בביתא – לא מפסלה נמי בחופה, שמע מינה.

אמר רמי בר חמא: יש חופה לפסולות – באנו למחלוקת רבי מאיר ורבי אלעזר ורבי שמעון.

Rava said: We, too, learn in the following *baraita* that there is no legal significance to an act of intercourse with a girl less than three years old: A girl three years and one day old can be betrothed via sexual intercourse;^h and if she was a *yevama* and her *yavam* had intercourse with her, he has acquired her;^h and a man who has intercourse with her while she is married to someone else is liable on her account because of the prohibition of intercourse with a married woman;^h and if she experiences a menstrual discharge she renders ritually impure a man who has intercourse with her,^h so that he renders impure the object upon which he lies like the upper one.ⁿ

If she is married to a priest she may partake of *teruma*.^h If one of those who render women unfit for marrying a priest had intercourse with her, he has disqualified her^h from being able to partake of *teruma*.

Rava infers from this *baraita* that it is a girl three years and one day old who is disqualified via intercourse, and consequently she is also disqualified via the wedding canopy. However, a girl who is less than three years and one day old, who is not disqualified via intercourse, is also not disqualified via the wedding canopy. The Gemara concludes: Indeed, learn from this that it is so.

Rami bar Hama said: With regard to the question of whether there is legal significance to a priest entering the wedding canopy with women who are unfit to marry a priest, we have arrived at the dispute cited in the mishna between Rabbi Meir on the one hand and Rabbi Elazar and Rabbi Shimon on the other.

NOTES

So that he renders impure the object upon which he lies like the upper one – לטמא משכב תחתון בעליון: The Torah states that if a man has intercourse with a menstruating woman, “her impurity shall be upon him” (Leviticus 15:24). This indicates that he is not merely impure with a first-degree level of impurity, as one who touches a menstruating woman; rather, he becomes a primary source of impurity, similar to the woman herself. Nevertheless, there is a difference between the impurity of a menstruating woman and that of a man who has intercourse with her. If a menstruating woman or a *zav* sits or lies upon

objects that are designated for that purpose, even if she does not make direct contact with those objects because there is something else covering them, the objects are rendered a primary source of impurity.

A man who has intercourse with a menstruating woman also renders these items impure, but only at the level of first-degree impurity, similar to the upper cover, i.e., the blanket on top of him, which is impure due to contact. Consequently, these items can render only food and drink impure, but not people or vessels.

HALAKHA

A girl three years and one day old can be betrothed via sexual intercourse – בת שלש שנים ויום אחד מתקדשת בביתא: An act of intercourse with a girl younger than three years and one day is not considered an act of intercourse and therefore, even if it is performed with her father’s consent, betrothal cannot be accomplished. However, technically, in the case of a girl who is three years and one day old, betrothal can be accomplished by means of intercourse (Rambam *Sefer Nashim*, *Hilkhot Ishut* 3:11; *Shulḥan Arukh*, *Even HaEzer* 37:1).

If her *yavam* had intercourse with her he has acquired her – בא עליה יבם קנאה: Intercourse with a *yevama* aged less than three years and one day does not accomplish levirate marriage (*Shulḥan Arukh*, *Even HaEzer* 167:4).

Liable on her account because of the prohibition of intercourse with a married woman – חיבין עליה משום אשת איש: An adult male who engaged in intercourse with a married minor less than three years and one day old is exempt from punishment for adultery with a married woman (Rambam *Sefer Kedusha*, *Hilkhot Issurei Bia* 3:2).

She renders ritually impure a man who has intercourse with her – מטמאה את בועלה: One who has intercourse with a menstruating woman attains the status of a primary source of impurity, even if she is a minor, provided she is at least three years and one day old. If he sits or lies on an object that is designated for this purpose, the object attains first-degree impurity, even if he did not touch it directly. Therefore, it can render food and drink impure, but not people or vessels (Rambam *Sefer Tahara*, *Hilkhot Metamei Mishkav UMoshav* 3:1–3).

She may partake of *teruma* – אוכלת בתרומה: If a girl at least three years and one day old is married to a priest, she is permitted to partake of *teruma* (Rambam *Sefer Zera’im*, *Hilkhot Terumat* 6:3).

If one of those who render women unfit had intercourse with her, he has disqualified her – בא עליה אחד מכל הפסולין פסלה: If a man who renders a woman unfit for the priesthood, such as a *ḥalal*, a gentile, a Canaanite slave, or one of her relatives, has intercourse with her when she is at least three years and one day old, she is thereby disqualified from the priesthood (Rambam *Sefer Kedusha*, *Hilkhot Issurei Bia* 19:1–2; *Shulḥan Arukh*, *Even HaEzer* 6:9; 7:12).

לְרַבִּי מֵאִיר דָּאֵמַר קְדוּשֵׁין פְּסָלִי – חוּפָּה נִמְי פְּסָלָהּ, לְרַבִּי אֶלְעָזָר וְרַבִּי שְׁמַעוֹן דָּאֵמְרִי קְדוּשֵׁין לֹא פְּסָלִי – חוּפָּה נִמְי לֹא פְּסָלָהּ.

According to Rabbi Meir, who says that betrothal to a priest disqualifies a woman who is unfit to marry him from partaking of *teruma* even if she is the daughter of a priest, entering the wedding canopy with a priest also disqualifies her. Conversely, according to Rabbi Elazar and Rabbi Shimon, who say that betrothal does not disqualify her, entering the wedding canopy also does not disqualify her.

וּמִמָּאִי? דְּלִמָּא עַד כָּאֵן לֹא קָאֵמַר רַבִּי מֵאִיר הָתֵם אֵלָּא בְּקְדוּשֵׁין דְּקָנִי לָהּ. אֲבָל חוּפָּה דְּלֹא קָנָה לָהּ – לֹא.

The Gemara refutes this claim: **And from where** do we know that these *tanna'im* would apply their opinions with regard to betrothal to entering the wedding canopy? Perhaps Rabbi Meir only stated his opinion there, with regard to betrothal, which acquires her. However, in the case of a wedding canopy, which does not acquire her, no, she is not disqualified.

אִי נִמְי, עַד כָּאֵן לֹא קָאֵמְרִי רַבִּי אֶלְעָזָר וְרַבִּי שְׁמַעוֹן הָתֵם – אֵלָּא בְּקְדוּשֵׁין, דְּלֹא קָרִיבִי לְבִיָּאָה, אֲבָל חוּפָּה דְּקָרִיבִי לְבִיָּאָה – הִכִּי נִמְי דְּפְסָלָהּ.

Alternatively, perhaps Rabbi Elazar and Rabbi Shimon stated their opinion only there, with regard to betrothal, as it is not close to an act of sexual intercourse. However, with regard to entering the wedding canopy, which is close to an act of sexual intercourse, as it is the place where the bride and groom are secluded together and symbolizes the woman's entrance into her husband's home, it is possible that it also disqualifies her from partaking of *teruma*.

אֵלָּא אִי אֵיכָא לְמִימַר – בְּפִלּוּגָתָא דְּהָנִי תַנָּאִי, דְּתַנָּא: נִשְׂאוּ זֶז וְזוֹ, בְּשִׁרּוֹת וּפְסוּלוֹת, אוֹ שְׁנַכְנְסוּ לְחוּפָּה וְלֹא נִבְעְלוּ – אוֹכְלוֹת מִשְׁלוֹ וְאוֹכְלוֹת בְּתֵרוּמָה.

Rather, if it can be said that this issue was already discussed by earlier Sages, it was in the dispute between these other *tanna'im*, as it is taught in a *baraita*: If they married one another, i.e., either a woman who is fit or a woman who is unfit married a priest, or they entered the wedding canopy and did not yet have intercourse with him, they are entitled to eat of his food and to partake of *teruma*.

נִכְנְסוּ, מִכְּלָל דְּנִשְׂאוּ – נִשְׂאוּ מִמַּשֵּׁ?

The Gemara interrupts its presentation of the *baraita* to examine its wording. The fact that the *baraita* mentions a case where they entered the wedding canopy but did not yet have intercourse proves by inference that the earlier case, where they married, is referring to actual marriage. However, this is difficult because if they were actually married and had engaged in intercourse, the woman who was unfit to marry a priest is certainly disqualified from partaking of *teruma* due to the prohibited act of intercourse.

אֵלָּא לֹא – בְּגוֹן שְׁנַכְנְסוּ לְחוּפָּה וְלֹא נִבְעְלוּ. וְקָטְנוּ: אוֹכְלוֹת מִשְׁלוֹ וְאוֹכְלוֹת בְּתֵרוּמָה.

Rather, is it not that the *baraita* is referring to a single case: Where they were married, and they entered the canopy, and had not had intercourse? And it is taught in the *baraita* that they are entitled to partake of his food and to partake of *teruma*. This indicates that entrance into the wedding canopy does not disqualify a woman who is unfit to marry a priest from eating *teruma*, although the act of intercourse does.

רַבִּי יִשְׁמַעֵאל בְּנוֹ שֶׁל רַבִּי יוֹחָנָן בֶּן בְּרוּקָה אוֹמֵר: כָּל שֶׁבִּיָּאתָה מֵאִכְלִיתָה – חוּפָּתָה מֵאִכְלִיתָה, וְכָל שֶׁאֵין בִּיָּאתָה מֵאִכְלִיתָה – אֵין חוּפָּתָה מֵאִכְלִיתָה.

The *baraita* continues: Conversely, Rabbi Yishmael, son of Rabbi Yohanan ben Beroka, says: Any woman whose act of intercourse entitles her to partake of *teruma*, her wedding canopy also entitles her to partake of *teruma*; and any woman whose act of intercourse does not entitle her to partake of *teruma*, her wedding canopy also does not entitle her to partake of *teruma*. Consequently, it appears that the *tanna'im* cited in this *baraita* disagree over the very question of whether the entry of a priest and a woman unfit to marry him into the wedding canopy has legal significance.

מִמָּאִי? דְּלִמָּא רַבִּי יִשְׁמַעֵאל בְּנוֹ שֶׁל רַבִּי יוֹחָנָן בֶּן בְּרוּקָה בְּרַבִּי מֵאִיר סְבִירָא לֵיהּ, דָּאֵמַר: קְדוּשֵׁין לֹא אֲכָלָהּ.

The Gemara refutes this claim: From where do we know that this is correct? Perhaps Rabbi Yishmael, son of Rabbi Yohanan ben Beroka, holds in accordance with the opinion of Rabbi Meir, who said that in the case of the betrothal of a woman unfit for a priest she may not partake of *teruma*?

Amen that I did not go astray while betrothed – אָמֵן שְׁטִיתִי אַרוֹסָה: These *halakhot* are apparently derived from the repetitive usage of the term amen in the phrase (Numbers 5:22): “And the woman shall say: Amen, amen” (see Rashi, Rivan, and *Tosafot*).

הָאִי כָּל שְׂאִין בִּיאָתָהּ מֵאֲכִילָתָהּ אֵין חוּפָּתָהּ מֵאֲכִילָתָהּ? כָּל שְׂאִין בִּיאָתָהּ מֵאֲכִילָתָהּ אֵין כְּסָפָהּ מֵאֲכִילָתָהּ מִיִּבְעֵי לִיָּהּ! דְּלִמָּא, אֵיִדִּי דְאִמְר תְּנָא קִמָּא חוּפָּה – אִמְר אִיהוּ נִמִּי חוּפָּה.

אָמַר רַב עֲמֶרֶם: הָא מִלְתָּא אָמַר לָן רַב שִׁשְׁתִּי, וְאִנְהִירִנְהוּ לְעֵינֵינוּ מִמַּתְנִיתִין: יֵשׁ חוּפָּה לְפִסּוּלוֹת, וְתֵנָא תוֹנָא: “אָמֵן שְׁלֹא שְׁטִיתִי אַרוֹסָה, וְנִשְׁוָאָה, שׁוֹמֶרֶת יָבָם, וְכִנּוּסָה.”

הָאִי אַרוֹסָה הֵיכִי דְמִי? אִילִימָא דְקָנִי לָהּ כְּשֶׁהִיא אַרוֹסָה, וְקָא מְשָׁקָה לָהּ כְּשֶׁהִיא אַרוֹסָה – אַרוֹסָה בֵּת מְשִׁתִּיא הִיא? וְהָא תֵּנָן: אַרוֹסָה וְשׁוֹמֶרֶת יָבָם לֹא שׁוֹתוֹת וְלֹא נוֹטְלוֹת כְּתוּבָה!

אֲלֹא דְקָנִי לָהּ כְּשֶׁהִיא אַרוֹסָה, וְאִיסְתַּתְרָהּ, וְקִמְשָׁקָה לָהּ כְּשֶׁהִיא נִשְׁוָאָה – מִי בְּדָקִי לָהּ מִיָּא? וְהִתְנִיָּא: “וְנִקָּה הָאִישׁ מִעֵוֹן בְּזִמְנָא שְׁהָאִישׁ מְנוּקָה מִעֵוֹן הַמִּים בּוֹדְקִין אֶת אִשְׁתּוֹ, אֵין הָאִישׁ מְנוּקָה מִעֵוֹן – אֵין הַמִּים בּוֹדְקִין אֶת אִשְׁתּוֹ!”

The Gemara expresses surprise: According to this suggestion, **this** expression in the *baraita* is difficult: **Any woman whose act of intercourse does not entitle her to partake of *teruma*, her wedding canopy also does not entitle her to partake of *teruma*. It should have said: Any woman whose act of intercourse does not entitle her to partake of *teruma*, her betrothal money also does not entitle her to partake of *teruma***, as it was the betrothal that disqualified her. The Gemara counters this argument: **Perhaps** it can be suggested that **since the first *tanna* said** his ruling with regard to a wedding canopy, Rabbi Yishmael, son of Rabbi Yohanan ben Beroka, **also said** his ruling with regard to a wedding canopy, even though he holds that she was already disqualified from the time of her betrothal.

§ Rav Amram said: This matter was said to us by Rav Sheshet, and he illuminated our eyes from the mishna, i.e., he demonstrated that the mishna serves as the basis for his opinion. Rav Sheshet's statement was as follows: **There is significance to a priest entering the wedding canopy with women who are unfit to marry a priest. And the *tanna* of the mishna also taught this *halakha* with regard to a *sota* (*Sota* 18a–b): When a *sota* is brought to the Temple to drink the bitter waters, she affirms the oath imposed on her by a priest that she has not committed adultery. The mishna explains that when she says **amen**, it is as though she herself states that: **I did not go astray while betrothed,^{NH} or married, or as a widow waiting for her *yavam*, or as a fully married woman.****

The Gemara inquires: **This case of a betrothed woman, what are the circumstances? If we say that he was jealous of her and warned her not to seclude herself with a particular man when she was betrothed, and he also causes her to drink the waters when she is betrothed, is a betrothed woman fit to drink the waters of a *sota*? Didn't we learn in a mishna (*Sota* 23b): A betrothed woman and a widow waiting for her *yavam* do not drink,^H as the *halakha* of the *sota* waters applies only to married women; and they do not collect their marriage contract if they secluded themselves after being warned, as they have acted in a licentious fashion?**

Rather, the case in the first mishna cited above is **that he was jealous of her and warned her not to seclude herself with a particular man when she was betrothed, and she secluded herself with that man, and her husband causes her to drink when she is already married.** However, in that case **do the waters examine her? Isn't it taught in a *baraita* with regard to the verse: “And the man shall be clear from iniquity, and that woman shall bear her iniquity” (Numbers 5:31), that when the man is clear of iniquity^H the waters examine his wife, but if the man is not clear of iniquity the waters do not examine his wife?** By secluding herself with the other man when she was betrothed, the woman rendered herself forbidden to her husband. If he then married her, he cannot be described as clear of iniquity, and therefore the *sota* waters are ineffective.

HALAKHA

Amen that I did not go astray while betrothed, etc. – אָמֵן שְׁלֹא שְׁטִיתִי אַרוֹסָה וְכוּ: When a husband makes his wife drink the waters of a *sota*, he can extend her oath beyond the man he originally specified in his warning. Therefore, she must swear that she did not have intercourse with anyone other than her husband, including during the period of her betrothal. However, she may not be forced to swear that she was faithful while waiting for her *yavam* (Rambam *Sefer Nashim*, *Hilkhot Sota* 4:17).

A betrothed woman and a widow waiting for her *yavam* do not drink, etc. – אַרוֹסָה וְשׁוֹמֶרֶת יָבָם לֹא שׁוֹתוֹת וְכוּ: A betrothed

woman and a woman awaiting levirate marriage do not drink the bitter waters, even if they were warned about a particular man and they secluded themselves with him. Even if they want to drink the waters and their husbands also want them to, they may not do so. Rather, their husbands must divorce them, and they do not collect their marriage contract (Rambam *Sefer Nashim*, *Hilkhot Sota* 2:2).

בְּזִמְנָא שְׁהָאִישׁ מְנוּקָה מִעֵוֹן – The waters examine the woman only if her husband is clear of iniquity. If he has engaged in relations prohibited by rabbinic law, the waters are ineffective (Rambam *Sefer Nashim*, *Hilkhot Sota* 2:8, 3:17).

שְׂקָדָמָה – The cohabitation of the adulterer preceded – **שְׂכִיבַת בּוֹעֵל**: If a woman who was warned by her husband secluded herself with the man in question before she had intercourse with her husband, she does not drink the *sota* waters. Her husband divorces her and she does not collect her marriage contract, as stated in the *baraita* cited by Rav Aḥa bar Ḥanina (Rambam *Sefer Nashim, Hilkhot Sota* 2:5).

אֵלָּא דְּקָנִי לָהּ בְּשֶׁהִיא אַרוּסָה, וְאִסְתַּתְרָה וְנִכְנְסָה לְחוּפָה וְלֹא נִבְעֵלָה, וְשָׁמַע מִיָּנָה: יֵשׁ חוּפָה לְפִסּוּלוֹת.

Rather, it must be that he was jealous of her when she was betrothed, and she secluded herself with the other man anyway, and she had entered the wedding canopy but did not yet have intercourse with her husband when he brought her to the priest. Consequently, she is made to drink the *sota* waters as a married woman, and her husband has not committed a transgression, as he has not had intercourse with her. **Learn from this that there is significance to a priest entering the wedding canopy with women who are unfit to marry a priest, as demonstrated by the fact that the *sota* waters will examine her in these circumstances.**

אָמַר רַבָּא: וְתַסְבְּרָא דְּהָא מִתְרַצָּתָא הֵיא? וְהָא כִּי אָתָּא רַבִּי אַחָא בְּרַחֲמִינָא מִדְּרוּמָא, אָתָּא וְאִיִּיתִי מִתְנִיתָא בִּידֶיהָ: "מִבְּלַעֲדִי אִישׁךְ" מִי שְׂקָדָמָה שְׂכִיבַת בְּעַל לְבוּעֵל, וְלֹא שְׂקָדָמָה שְׂכִיבַת בּוֹעֵל לְבַעֵל.

Rava said: Do you hold that this *baraita* is sufficiently accurate to rely upon? But when Rabbi Aḥa bar Ḥanina came from the South, he came with this *baraita* in hand: The verse states with regard to the oath of the *sota*: "And some man has lain with you besides your husband" (Numbers 5:20), which indicates that it applies only when the cohabitation of the husband preceded that of the adulterer, but not when the cohabitation of the adulterer preceded⁴ that of the husband. Consequently, in the case under discussion, drinking the *sota* waters would not be effective.

אָמַר רַמִּי בְּרַחֲמִי בְּרַחֲמִי: מִשְׁכַּחַת לָהּ כְּגוֹן שָׂבָא עָלֶיהָ אַרוּסָה בְּבֵית אָבִיהָ.

Rami bar Ḥama said: You find it in a case such as where her betrothed had intercourse with her licentiously when she was a betrothed woman in her father's house. Since the act of intercourse was committed licentiously rather than for the purpose of consummating the marriage, the woman is still considered betrothed. Subsequently, her betrothed warned her not to seclude herself with a particular man, and she disobeyed. Then, they entered the wedding canopy together, despite the fact that they are forbidden to one another. Once they entered the wedding canopy, the woman can be made to drink the bitter waters. This proves that there is significance to entering the wedding canopy with a woman that is unfit for one to marry.

דְּכוּתָהּ גְּבִי שׁוֹמֶרֶת יָבָם – שָׂבָא עָלֶיהָ יָבָם בְּבֵית חָמֶיהָ,

The Gemara asks: If so, in the corresponding case with regard to a widow waiting for her *yavam*, in which the *yavam* had licentious intercourse with her in her father-in-law's house,

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שׁוֹמֶרֶת יָבָם קָרִית לָהּ? אִשְׁתּוֹ מַעֲלִיא הֵיא! דְּהָא אָמַר רַב: קָנָה לְכָל בְּשִׁמוּאֵל דְּאָמַר: לֹא קָנָה אֵלָּא לְדִבְרֵי הָאֲמֹרִים בְּפֶרֶשָׁה.

do you call her a widow waiting for her *yavam*? Once they have engaged in intercourse, she is his proper wife, as Rav said that one who has intercourse with his *yevama*, even without intending to thereby perform levirate marriage, has acquired her for all matters. The Gemara responds: This is in accordance with the opinion of Shmuel, who said that he has acquired her only with regard to the matters stated in the chapter of levirate marriage, but not with regard to other matters, and therefore she is not considered his wife with regard to the *halakhot* of *sota*.

מִיָּדִי הוּא טַעֲמָא – אֵלָּא לְרַב, הָא אָמַר רַב קָנָה לְכָל! הָכָא בְּמֵאֵי עֲסָקִינָּהּ, כְּגוֹן דְּעֵבֶד בָּהּ מֵאֲמֹר, וּבֵית שְׁמַאי הֵיא, דְּאָמְרִי: מֵאֲמֹר קוֹנָה קָנָה גָּמֹר.

The Gemara responds: The only reason this proof was presented is to support the opinion of Rav, who is the one who holds that there is legal significance to a priest entering the wedding canopy with a woman who is unfit to marry him. Didn't Rav say he has acquired her for all matters? The Gemara answers: With what are we dealing here? For example, a case where the *yavam* performed levirate betrothal with her and afterward had intercourse with her for the sake of promiscuity. And this is in accordance with the opinion of Beit Shammai, who say: Levirate betrothal acquires a *yevama* in a full-fledged manner and removes the levirate bond. Therefore, when they have intercourse, they do not become fully married.

By means of extension – על ידי גלגול: Rashi notes that this *halakha* is the source of the Torah law of the extension of oaths. This means that if an individual is required to take an oath in court due to a claim made by the opposing party, the latter can force him to extend his oath to include cases for which he would not otherwise have been liable to take an oath.

If he has a brother who is a *halal* – יש לו אח חלל וכו': The relationship between the woman and the *halal* is not invalid in the normal sense of the term, as it is entirely permitted for them to marry. Nevertheless, since a *halal* is considered like a regular Israelite, if she marries him she is disqualified from partaking of her father's *teruma* (Ritva).

He gave her a bill of divorce – שניתן לה גט: Rashi explains that the *yavam* gave the *yevama* a bill of divorce, which makes her unfit to marry him by rabbinic law. Nevertheless, since by Torah law the levirate bond still exists, she is considered reserved for a prohibited act of intercourse. Rabbeinu Hananel explains differently, that he gave her a bill of divorce and subsequently performed levirate betrothal with her. In that case, he is prohibited from having intercourse with her, and yet she is considered to be reserved for him. This fits in well with the continuation of the discussion, as a priest who divorced his wife and betrothed her once again certainly does not entitle her to partake of *teruma* (see Rashba).

HALAKHA

By means of extension – על ידי גלגול: Although a betrothed woman who secluded herself with another man does not drink the *sota* waters or take an oath, if she becomes liable to do so for having secluded herself after marriage, she must extend her oath and confirm that she did not commit adultery while she was betrothed, as stated by Rav Nahman bar Yitzhak (Rambam *Sefer Nashim*, *Hilkhot Sota* 4:17).

One of the *yevamin* was a *halal* – אחד היבמים שהיה – חלל: If the daughter of a priest was married to a priest who died without children, and one of his brothers was a *halal*, she may not eat *teruma* due to the levirate bond she has with the *halal*. Even if one of the other brothers performed levirate betrothal with her, she may not partake of *teruma* until after she is married to him (Rambam *Sefer Zera'im*, *Hilkhot Terumat* 7:22).

He gave her a bill of divorce – נתן לה גט: If a priest gave a bill of divorce to his *yevama* who is the daughter of a priest, although she is forbidden to him and yet bound to him by the levirate bond, as she has not undergone *halitza*, she is nevertheless permitted to partake of *teruma*. This is because relations between them are prohibited by rabbinic law but not Torah law. The *halakha* is in accordance with the opinion of Rabbi Yohanan as opposed to that of Reish Lakish (Rambam *Sefer Zera'im*, *Hilkhot Terumat* 7:23).

אי הכי, היינו ארוסה! ולטעמך, נשואה וכנוסה לאו חדא מילתא היא? אלא: נשואה – ידיה, וכנוסה – דחבריה. הכא נמי: ארוסה – ידיה, ושומרת יבם – דחבריה.

רב פפא אמר: האי תנא הוא, דתנא: אין מקנין לה לארוסה להשקותה כשהיא ארוסה, אבל מקנין אותה להשקותה כשהיא נשואה.

רב נחמן בר יצחק אמר: על ידי גלגול.

שלח רב חנינא משימיה דרבי יוחנן: העושה מאמר ביבמתו, [ויש לו אח], אפילו הוא כהן והיא כהנת – פסלה מן התרומה.

למאן? אילימא לרבי מאיר, אימר דאמר רבי מאיר משתמרת לביאה פסולה לא אכלה – מדאורייתא, דרבנן מי אמר? ואלא לרבי אלעזר ורבי שמעון, השתא משתמרת לביאה פסולה דאורייתא אכלה, דרבנן מיבעיא?

אלא כי אתא רבין אמר: עשה כה מאמר ביבמתו – דברי הכל אכלה, יש לו אח חלל – דברי הכל אינה אוכלת. לא נחלקו אלא שניתן לה גט, רבי יוחנן אמר: אוכלת, ריש לקיש אמר: אינה אוכלת.

The Gemara raises a difficulty: If so, the case of the *yevama* who was betrothed is the same as the case of a betrothed woman. What is the difference between the two cases? The Gemara responds: And according to your reasoning, are the examples in the mishna of a married woman and a fully married woman not a single matter? Rather, the mishna must be referring to two very similar cases, with the following difference: A married woman means his own wife and a fully married woman is referring to that of his fellow, i.e., his brother's wife who became his wife through levirate marriage. Here too, the case of a betrothed woman is referring to his own wife and the case of a widow waiting for her *yavam* is that of his fellow, i.e., his *yevama*, who is now betrothed to him.

Rav Pappa said: Rava's question can be resolved in a manner unrelated to the question about a priest entering the wedding canopy with a woman unfit for him. The *baraita* he cited is in accordance with this *tanna*, who does not require the man to be clear of iniquity, as it is taught in a *baraita*: One cannot be jealous over a betrothed woman and warn her not to seclude herself with a particular man in order to cause her to drink the *sota* waters when she is betrothed, but one can be jealous over her to cause her to drink the *sota* waters when she is married, even if she secluded herself with the man when she was still betrothed.

Rav Nahman bar Yitzhak said: The question never arises at all, as the oath is formulated by means of extension.^{NH} The woman cannot be forced to drink the *sota* waters for events that took place while she was betrothed. However, if she is obligated to drink due to events that took place when she was married, the oath may be extended to include any possible acts of infidelity when she was betrothed.

Rav Hanina sent in the name of Rabbi Yohanan: One who performs levirate betrothal with his *yevama* and he has a brother, even if he is a priest and she is the daughter of a priest, he has disqualified her from partaking of *teruma*. By Torah law, the other brother may still have intercourse with her and thereby perform levirate marriage, but by rabbinic law only the brother who betrothed her may perform levirate marriage. Due to the fact that she is considered to be waiting for levirate marriage even vis-à-vis the brother who is rabbinically prohibited from marrying her, she is classified as a woman who is waiting for an invalid act of intercourse. Consequently, she may not partake of *teruma* until the consummation of the levirate marriage.

The Gemara asks: According to whom did Rabbi Yohanan make this statement? If we say it is in accordance with the opinion of Rabbi Meir, say that Rabbi Meir said that a woman who is reserved for an invalid act of intercourse may not eat *teruma* when the act of intercourse is prohibited by Torah law. However, if the act of intercourse is prohibited by rabbinic law, did Rabbi Meir actually say that the woman is disqualified from eating *teruma*? Rather, if we say it is in accordance with the opinions of Rabbi Elazar and Rabbi Shimon, now that they hold that even a woman who is reserved for intercourse prohibited by Torah law may partake of *teruma*, is it necessary to state that she may partake of *teruma* if she is reserved for intercourse prohibited by rabbinic law?

Rather, when Ravin came from Eretz Yisrael he said an accurate version of Rabbi Yohanan's statement: If a *yavam* who performed levirate betrothal with his *yevama* has a brother, all agree that the *yevama* may partake of *teruma*. If he has a brother who is a *halal*,^{NH} e.g., his mother was a divorcée and therefore unfit to marry his father, who was a priest, all agree that the *yevama* may not partake of *teruma*, as she is considered reserved for an invalid act of intercourse. They disagreed only in a case when he gave her a bill of divorce.^{NH} Rabbi Yohanan said she may partake of *teruma*, as she is considered to have returned to her father's house, while Reish Lakish said that she may not partake of *teruma*.

Her father's house [*bei nasha*] – בֵּי נִשָּׂא: Meaning literally a woman's house, this term is used in the general sense of a woman's family's house. Some explained, apparently in a homiletical sense, that the term comes from the from the root *n-sh-h*, meaning forget, as a woman forgets her father's house upon marriage.

רבי יוחנן אמר: אוכלת, אפילו לרבי מאיר דאמר אינה אוכלת – הני מילי משתמרת לביאה פסולה דאורייתא, אבל דרבנן – אכלה.

The Gemara analyzes the two opinions: Rabbi Yohanan said she may eat *teruma* because even according to Rabbi Meir, who said in the mishna that she may not partake of *teruma*, this applies only when she is waiting for intercourse that is invalid by Torah law, but if the intercourse is prohibited by rabbinic law, she may partake of *teruma*. In this case, since they have not yet performed *halitza*, the levirate bond still applies by Torah law, but they are prohibited by rabbinic law from consummating the levirate marriage.

וריש לקיש אמר: אינה אוכלת, אפילו לרבי אלעזר ורבי שמעון דאמרי אוכלת – הני מילי דיש לו להאכיל במקום אחר, אבל הכא, כיון דאין לו להאכיל במקום אחר – לא.

And Reish Lakish said: She may not partake of *teruma* because even according to Rabbi Elazar and Rabbi Shimon, who say in the mishna that she may partake of *teruma*, this applies only to a case of betrothal, as a priest can entitle a woman to partake of *teruma* in another case via betrothal. But here, where he gave her a bill of divorce, since he cannot entitle a woman to partake of *teruma* in any other case by giving her a bill of divorce, no.

וכי תימא: הכא נמי יש לו להאכילה בחזרה – חזרה פסקה מיניה, וקרוכה לבי נשא, אבל היא אגידא ביה.

And lest you say here too, in the case of a bill of divorce, he can entitle her to partake of *teruma* when she returns to her father's house, this case is different for the following reason: A woman who returns to her father's house has been severed from her husband and she is close to her father's house [*bei nasha*],^N and therefore she may once again partake of *teruma* on her father's account. However, this *yevama* who has received a bill of divorce is still bound to her *yavam* until they perform *halitza*, and she is therefore disqualified from eating *teruma*.

”נתארמלו או נתגרשו” וכו'. בעא מיניה רבי חייה בר יוסף משמואל: בהן גדול שקדש את הקטנה ובגרה תחתיו.

It was taught in the mishna that in the case of women who married priests despite the fact that they were unfit to do so, if they were widowed or divorced from that marriage, they are disqualified from eating *teruma*, but if they were widowed or divorced while they were only betrothed, they are fit to partake of *teruma*. Rabbi Hiyya bar Yosef raised a dilemma before Shmuel: In the case of a High Priest who betrothed a minor and she matured under him, i.e., while betrothed to him,

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מהו? בתר נישואין או בתר אירוסין או בתר אירוסין או בתר נישואין?

what is the *halakha*? The Gemara clarifies the dilemma: Do we follow the time of marriage,^N at which point she was unfit for him according to most *tanna'im*, who hold that a High Priest may not marry a grown woman, as she is no longer called “a wife in her virginity” (Leviticus 21:13)? Or do we follow the time of betrothal,^B at which point she was of suitable age?

אמר ליה: תניתיה, נתארמלו או נתגרשו, מן הנשואין – פסולות, מן האירוסין – בשרות.

Shmuel said to him: You learned it in the mishna: If they were widowed or divorced from marriage, they are disqualified from partaking of *teruma*, but if they were widowed or divorced from betrothal, they are fit to partake of *teruma*. This indicates that disqualifications from the privileges of priesthood are determined based upon marriage rather than betrothal.

BACKGROUND

Betrothal and marriage – אירוסין ונישואין: A Jewish wedding is divided into two distinct parts. Betrothal is the first stage of the marriage process. The bond created by betrothal is so strong that, after betrothal, a woman requires a divorce before she can marry another man. Similarly, sexual relations with other men are considered adulterous and are punishable by death. At this stage, the betrothed couple may not yet live together as husband and wife, and most of the couple's mutual obligations do not yet apply.

The second stage of the marriage occurs when the bride

and groom come under the bridal canopy, and it immediately confers both the privileges and the responsibilities associated with marriage upon the newlywed couple. After marriage, if one spouse dies, all the *halakhot* of mourning for a close blood relation apply to the surviving spouse. If the wife of a priest dies, he is permitted to make himself ritually impure to bury her. All the monetary rights and obligations applying to married couples take effect after marriage. Today, betrothal and marriage are both performed in a single ceremony, but in talmudic times there was usually a year-long gap between the two.

NOTES

What is the *halakha*? Do we follow the time of marriage, etc. – מהו? בתר נישואין וכו': According to Rashi and others, Shmuel's initial understanding of Rabbi Hiyya bar Yosef's question was the same as the Gemara's final interpretation: Is a High Priest permitted to marry a young woman who matured while she was betrothed to him? Others question this opinion based upon the continuation of the discussion recorded in the Gemara (see *Tosafot*). They explain that Shmuel initially thought that the question was whether the woman is considered to be designated for an invalid act of relations, in which case she would be prohibited from partaking of her father's *teruma* if she is the daughter of a priest (*Ritva*). The *Rashba* explains that the question was whether she should be permanently disqualified from the priesthood as a *halala* if this High Priest died (*Rashba*).

He betrothed a widow and was subsequently appointed to be High Priest – **אִירָם אֶת אֶלְמֶנָה וְנִתְּמָנָה לְהִיּוֹת כֹּהֵן גָּדוֹל** – If a priest was appointed High Priest after he had betrothed a widow he is permitted to marry her (Rambam *Sefer Kedusha*, *Hilkhot Issurei Bia* 17:12).

Her body has changed – **אִישְׁתֵּי גִּוְפָה**: If a High Priest betrothed a minor and she matured before their marriage he may not marry her *ab initio*. However, if he did marry her, he is not forced to divorce her. This is because a High Priest is not forced to divorce his wife even if she was a grown woman when he betrothed her (Rambam *Sefer Kedusha*, *Hilkhot Issurei Bia* 17:17 and *Maggid Mishne* there).

A High Priest may not marry a widow – **כֹּהֵן גָּדוֹל לֹא יִשָּׂא** – A High Priest may not marry a widow, whether she was widowed from betrothal or marriage (Rambam *Sefer Kedusha*, *Hilkhot Issurei Bia* 17:1, 11).

He may not marry a grown woman – **לֹא יִשָּׂא אֶת הַבּוֹגֶרֶת** – It is a mitzva for a High Priest to marry a young woman who is a virgin. He is prohibited from marrying a grown woman (Rambam *Sefer Kedusha*, *Hilkhot Issurei Bia* 17:13).

He may not marry a woman whose hymen was torn accidentally – **לֹא יִשָּׂא אֶת מוֹכֶת עֵץ** – A High Priest may not marry a woman whose hymen was torn accidentally (Rambam *Sefer Kedusha*, *Hilkhot Issurei Bia* 17:14).

NOTES

A wife in one case but not two – **אִשָּׁה אַחַת וְלֹא שְׁתֵּים**: In context, the simple meaning of this statement, as explained by Rashi and other commentaries, is that since there is only one superfluous usage of the word “wife” only one case can be permitted on the basis of this derivation. The Rambam however, understands the Gemara’s statement literally, as reading: One wife and not two, and consequently rules that it is prohibited for a High Priest to marry two women (see *Maggid Mishne* and *Yam shel Shlomo*). The Ra’avad disagrees and offers proofs to the contrary, including the fact that Jehoiada the High Priest was righteous and had two wives (see II Chronicles 24:3).

And what did you see – **וּמָה רָאִיתָ**: It would seem to have been equally possible to arrive at the opposite conclusion, that it is permitted for the High Priest to marry the woman who matured while betrothed and prohibited for him to marry a widow he had betrothed before being appointed High Priest. This is especially reasonable given that the prohibition for a High Priest to marry a widow is more severe than the prohibition for him to marry a grown woman (Ritva).

In this case of the grown woman her body has changed – **וְהָאִישְׁתֵּי גִּוְפָה**: Apparently, since her body has changed, she is no longer viewed as the same person but as a different being, and therefore she is now forbidden to him (see *Keren Ora*).

Similar to the case of a divorcee – **דִּוְמִיָּא דְּגִּוְשָׁה**: *Tosafot* ask why the opposite cannot be stated: Just as the prohibition for a High Priest to marry a widow applies only to a woman who has been married, as indicated by the precedent of Tamar, so too a divorcee is prohibited only if she had been married. See the answers of *Tosafot*. *Tosefot HaRosh* and the Meiri explain that since a common priest is prohibited from marrying a divorcee but is permitted to marry a non-virgin, it must be the divorce itself that causes the prohibition regardless of whether her marriage had been consummated. The Ritva presents an alternative explanation, accepted by many later commentaries. He claims that although the case of Tamar is a biblical precedent, it is not a full-fledged verbal analogy and consequently cannot serve as a model for other *halakhot*.

אִמְרָ לִיהִ: לְשׁוּיָהּ חִלְלָה – לֹא קָמִיבִיעִיָּא לִי דְּבִיָּאָה הִיא דְּמִשׁוּיָהּ חִלְלָה. כִּי קָמִיבִיעִיָּא לִי “וְהוּא אִשָּׁה בְּבִתּוּלִיָּה יִקַּח” מֵאִי? קִיחָה דְּקִדּוּשִׁין בְּעִינָן, אוֹ קִיחָה דְּנִשְׁוֹאִין בְּעִינָן?

אִמְרָ לִיהִ, הָא נִמְי תְּמִיתוּהָ: אִירָם אֶת הָאֵלְמֶנָה וְנִתְּמָנָה לְהִיּוֹת כֹּהֵן גָּדוֹל – יְכַנּוּם. שְׂאֵי הֵתָם, דְּכָתִיב “קַח אִשָּׁה”.

הָכָא נִמְי כְּתִיב “אִשָּׁה”. אַחַת וְלֹא שְׁתֵּים.

וּמָה רָאִיתָ? הָא אִישְׁתֵּי גִּוְפָה, וְהָא לֹא אִישְׁתֵּי גִּוְפָה.

מִתְנִי כֹהֵן גָּדוֹל לֹא יִשָּׂא אֶלְמֶנָה, בֵּין אֶלְמֶנָה מִן הָאִירוּסִין בֵּין אֶלְמֶנָה מִן הַנִּשְׁוֹאִין. וְלֹא יִשָּׂא אֶת הַבּוֹגֶרֶת, רַבִּי אֶלְעָזָר וְרַבִּי שִׁמְעוֹן מְכַשְׁרִין בְּבִגְדֵיהֶם. [וְלֹא יִשָּׂא אֶת מוֹכֶת עֵץ].

גַּם תֵּנוּ רַבָּנִן: “אֶלְמֶנָה לֹא יִקַּח”, בֵּין אֶלְמֶנָה מִן הָאִירוּסִין, בֵּין אֶלְמֶנָה מִן הַנִּשְׁוֹאִין. פְּשִׁיטָא! מִהוּ דְּתִימָא: לִילֵךְ אֶלְמֶנָה אֶלְמֶנָה מִתְמַר, מִה לְהֵלֶן – מִן הַנִּשְׁוֹאִין, אִף כָּאן – מִן הַנִּשְׁוֹאִין, קָא מְשַׁמְעֵן לָן.

וְאִימָא הֵכִי נִמְי! דִּוְמִיָּא דְּגִּוְשָׁה, מִה גְּרוּשָׁה בֵּין מִן הַנִּשְׁוֹאִין בֵּין מִן הָאִירוּסִין, אִף אֶלְמֶנָה בֵּין מִן הָאִירוּסִין בֵּין מִן הַנִּשְׁוֹאִין.

Rabbi Hiyya bar Yosef said to Shmuel: With regard to causing her to become a *halala* I did not raise a dilemma, as it is clear that it is intercourse that causes her to become a *halala*. When I raised a dilemma, it was with regard to the verse pertaining to a High Priest: “And he shall take a wife in her virginity” (Leviticus 21:13). What does “take” mean in this verse? Do we require that only the taking of betrothal must occur when she is in her virginity, i.e., when she is a minor or a young woman, or perhaps we require even the taking of marriage to be performed when she is a minor or young woman?

Shmuel said to him: This, too, you learned in a mishna (61a): If he betrothed a widow and was subsequently appointed to be High Priest,^h he may marry her, despite the fact that a High Priest is prohibited from marrying a widow. This indicates that her permissibility to him is determined according to the time of the betrothal rather than the time of marriage. The Gemara refutes this proof: There it is different, as it is written: “He shall take for a wife” (Leviticus 21:14). The superfluous expression “for a wife” indicates that he is permitted to marry the widow in this case.

The Gemara objects: Here, too, with regard to a woman who matured after betrothal, it is written: “And he shall take a wife in her virginity,” and this should indicate that he may marry the grown woman in this case. The Gemara answers that the term “wife” allows for the inclusion of one case but not two.ⁿ Consequently, since a High Priest may marry a widow he had betrothed before he was appointed High Priest, it cannot also be derived that he may marry a grown woman that he had betrothed before she matured.

The Gemara asks: And what did you seeⁿ that led you to include the case of a widow and exclude that of a grown woman? The Gemara answers: In this case, of the grown woman, her body has changed,^{nh} and therefore she is forbidden to him even though she was betrothed before she matured. In that case, of the widow, her body has not changed. It is the priest’s personal status that has changed, and therefore she remains permitted.

MISHNA A High Priest may not marry a widow,^h whether she is a widow from betrothal or a widow from marriage. And he may not marry a grown woman.^h He may marry only a minor or a young woman. Rabbi Elazar and Rabbi Shimon declare a grown woman fit to marry a High Priest. And he may not marry a woman whose hymen was torn accidentally.^h

GEMARA The Sages taught: The verse states with regard to a High Priest: “A widow... he shall not take” (Leviticus 21:14), which prohibits him from marrying any widow, whether she is a widow from betrothal or a widow from marriage. The Gemara is surprised by this statement: This is obvious, as the verse is referring to a widow without further specification. The Gemara answers: It is necessary; lest you say that one should derive a verbal analogy between the words “widow” and “widow,” based upon the usage of that term in a verse with regard to Tamar, Judah’s daughter-in-law (Genesis 38:11), as follows: Just as there, Tamar was a widow from marriage, so too here the verse is referring only to a widow from marriage. The *tanna* therefore teaches us that this is not the case.

The Gemara asks: And say that it is indeed so, that the suggested verbal analogy is correct. The Gemara answers: It is similar to the case of a divorcee:ⁿ Just as a divorcee is forbidden to a priest whether she was divorced from marriage or from betrothal, so too a widow is forbidden to a High Priest whether she is a widow from marriage or from betrothal.

A grown woman, whose hymen has worn away – **בוגרת שכלי לה בתוליה**: As *Tosafot* point out, this does not mean that the hymen has worn away completely, as it usually remains intact as long as it has not been forcibly broken. However, before the onset of adolescence the hymen is more prominent and relatively larger. As a girl matures, the size of the hymen decreases in relation to the vagina.

NOTES

בתולה, בתוליה, in her virginity – **בתוליה**: It appears that the dispute concerns the meanings of the terms virgin and virginity. Do these words refer to the physical sign of virginity, i.e., a fully intact hymen, or are they abstract terms that refer to the status of a woman who has never experienced any form of sexual intercourse? In *Arukh LaNer*, it is explained how these *halakhot* are derived based upon the hermeneutical principle that one restrictive expression after another amplifies the *halakha* in regard to which the verse employs these expressions.

Let him derive this *halakha* from the fact that she is now a non-virgin – **תופוק ליה משום דהיא בעולה**: One might argue that since mitzvot that are limited to specific individuals are generally considered less stringent than those that apply equally to all, the requirement that a rapist marry his victim should override the requirement that a High Priest marry a virgin. The Rashba explains, based upon tractate *Ketubot* (40a), that since the obligation for a rapist to marry his victim is not absolute, as the victim or her father have the right of refusal, it does not override the positive mitzva for a High Priest to marry a virgin.

HALAKHA

If she had atypical sexual intercourse – **נבעלה שלא כדרכה**: A High Priest may not marry a woman who has had atypical, i.e., anal, sexual intercourse (Rambam *Sefer Kedusha*, *Hilkhot Issurei Bia* 17:14).

Excluding a widow for a High Priest – **פרט לאלמנה לכהן**: One who raped a woman who is forbidden to him, even if she was forbidden to him by rabbinic decree, may not marry her despite the general requirement that a rapist marry his victim if she consents. Consequently, if a priest raped a divorcee or a *halutza*, or if a High Priest raped a widow, he may not marry his victim (Rambam *Sefer Nashim*, *Hilkhot Na'ara Betula* 1:5; *Shulhan Arukh*, *Even HaEzer* 177:4).

“ולא ישא את הבוגרת.” תנו רבנן: “והוא אשה בתוליה יקח,” פרט לבוגרת שכלי לה בתוליה, דברי רבי מאיר. רבי אלעזר ורבי שמעון מכשירין בבוגרת.

It was taught in the mishna: **And a High Priest may not marry a grown woman. The Sages taught that the verse: “And he shall take a wife in her virginity” (Leviticus 21:13) excludes a grown woman, whose hymen has worn away,** i.e., it is no longer as complete as that of a minor or a young woman; **this is the statement of Rabbi Meir. Rabbi Elazar and Rabbi Shimon declare a grown woman fit to marry a High Priest.**

במאי קא מיפלגי? רבי מאיר סבר: “בתולה” אפילו מקצת בתולים משמע, “בתוליה” עד דאיכא כל הבתולים, “בבתוליה” בכדרכה אין, שלא כדרכה לא.

The Gemara asks: **With regard to what do they disagree?** The Gemara explains: **Rabbi Meir holds that were the verse referring simply to a virgin it would have indicated that even a woman with partial signs of virginity, i.e., a grown woman, is permitted.** Since the verse states “**her virginity**,” it means that she is fit to marry a High Priest only if **all of the signs of her virginity are intact**, which excludes a grown woman. The full expression “**in her virginity**”ⁿ indicates that if she has experienced sexual intercourse in a **typical** manner, which takes place in the area of her virginity, i.e., her hymen, **yes**, she is disqualified from marrying a High Priest; but if she has experienced sexual intercourse in an **atypical** manner i.e., anal intercourse, **no**, she is not disqualified.

ורבי אלעזר ורבי שמעון סברי: “בתולה” בתולה שלימה משמע, “בתוליה” ואפילו מקצת בתולים, “בבתוליה” עד שיהיו כל בתוליה קיימין, בין בכדרכה בין שלא כדרכה.

And Rabbi Elazar and Rabbi Shimon hold that were the verse referring simply to a virgin, it would have indicated that only a complete virgin is fit to marry a High Priest, but not a grown woman. When it states “**her virginity**,” it indicates that **even a woman with partial signs of virginity, i.e., a grown woman, is fit to marry the High Priest.** The full expression “**in her virginity**” indicates that she is not fit to marry a High Priest **unless all of her virginity is intact**, i.e., she has not engaged in intercourse of any kind, **whether typical sexual intercourse or atypical sexual intercourse.**

אמר רב יהודה אמר רב: נבעלה שלא כדרכה – פסולה לכהונה. מתיב רבא: “ולו תהיה לאשה” באשה הראויה לו, פרט לאלמנה לכהן גדול, גרושה ויחלוצה לכהן הדיוט.

Rav Yehuda said that Rav said: If she had atypical sexual intercourse,^h she is disqualified from the High Priesthood, i.e., from marrying the High Priest. Rava raised an objection based upon a *baraita*: The verse states with regard to rape: “**And she shall be his wife**” (Deuteronomy 22:19), and the Sages explained that this is referring only to a **woman suitable for him, excluding a widow for a High Priest^h and a divorcee or a halutza for a common priest.** In these cases, the rapist is not permitted to marry his victim.

הכי דמי? אלימא בכדרכה – מאי איריא משום אלמנה? תופוק ליה משום דהיא לא בעולה. אלא לאו שלא כדרכה. ומשום אלמנה – אין, משום בעולה – לא.

The Gemara clarifies: **What are the circumstances of this halakha?** If we say that the High Priest raped her by engaging in **typical** intercourse, **why does the baraita specifically state that she is forbidden to him because she is a widow?** Let him derive this *halakha* from the fact that she is now a **non-virgin**.ⁿ Rather, is it not that he had atypical intercourse with her, and **due to the fact that she is a widow, yes**, that is the reason she is forbidden, but **due to the fact that she is a non-virgin, no**, that is not the reason she is forbidden? This indicates that a woman who had intercourse in an atypical manner is not considered a non-virgin and is not disqualified from marrying a High Priest.

Perek VI

Daf 59 Amud b

הא ממ – רבי מאיר היא, ורב דאמר רבי אלעזר.

The Gemara refutes this proof: In accordance with **whose opinion is this baraita?** It is in accordance with the opinion of **Rabbi Meir**, who maintains that a woman who engaged in atypical intercourse is permitted to a High Priest, **and when Rav said his statement, it was in accordance with the opinion of Rabbi Elazar**, who holds that such a woman is disqualified from marrying a High Priest.

One who refused – מִמָּאֲנָת: If a young girl was married off by her mother or brother and then refused to remain with her husband, she is permitted to a priest. This is the *halakha* even if he wrote her a bill of divorce, they subsequently married again, and she again refused to remain married to him (Rambam *Sefer Kedusha*, *Hilkhot Issurei Bia* 17:18).

A woman who had intercourse with an animal – נִבְעֵלָה לְבִהֶמָּה: A woman who had intercourse with an animal is liable for capital punishment. However, she is not considered a *zona* and is not disqualified from marrying a priest. If she had only atypical intercourse with an animal, she is permitted even to a High Priest (Rambam *Sefer Kedusha*, *Hilkhot Issurei Bia* 18:1, 17:14; *Shulhan Arukh*, *Even HaEzer* 6:8).

אִי בְּרַבִּי אֶלְעָזָר, מֵאִי אִירִיא מְשֻׁם בְּעוּלָה?
תִּפּוּק לִיה דְּהוּיָא לָהּ זֹנָה, דְּהָא אָמַר רַבִּי
אֶלְעָזָר: פָּנִי הָבָא עַל הַפְּנוּיָה שְׁלֹא לְשֵׁם
אִישׁוֹת עֲשָׂאָה זֹנָה!

אָמַר רַב יוֹסֵף: בְּגוֹן שֶׁנִּבְעֵלָה לְבִהֶמָּה,
דְּהֵתָם, מְשֻׁם בְּעוּלָה – אֵיכָא, מְשֻׁם
זֹנָה – לִיכָא.

אָמַר לִיה אַבְיִי: מִמָּה נִפְשָׁךְ, אִי בְּעוּלָה
הָיָא – זֹנָה נִמְי הָיָא, וְאִי זֹנָה לֹא הָיָא –
בְּעוּלָה נִמְי לֹא הָיָא. וְכִי תִמָּא: מִיָּדִי דְּהוּיָא
אֲמוּבָת עַץ שְׁלֹא בְּדֹרְכָה – אִם בֵּן אִין לָךְ
אִשָּׁה שֶׁכְּשֶׁרָה לְכַהוֹנָה שְׁלֹא נַעֲשִׂית מוֹבָת
עַץ עַל יְדֵי צָרוֹ.

אָלָא אָמַר רַבִּי זִירָא: בְּמִמָּאֲנָתָ.

אָמַר רַב שִׁמִּי בַר חִיָּיא: נִבְעֵלָה לְבִהֶמָּה –
בְּשֶׁרָה לְכַהוֹנָה. תִּנְיָא נִמְי הָכִי: נִבְעֵלָה לְמִי
שְׂאִינוּ אִישׁ, אָף עַל פִּי שֶׁכְּסָקִילָהּ – בְּשֶׁרָה
לְכַהוֹנָה.

The Gemara asks: If Rav's statement is in accordance with the opinion of Rabbi Elazar,^N why did he specifically state that she is forbidden to him because she is a non-virgin? Let him derive it from the fact that she is a *zona*,^N as Rabbi Elazar said: Even in the case of an unmarried man who had intercourse with an unmarried woman not for the purpose of marriage, he has thereby caused her to become a *zona*.

Rav Yosef said: When Rav said that a woman who had anal intercourse is disqualified from marrying a High Priest, he was referring to a woman who had intercourse with an animal, as there she is disqualified because she is a non-virgin,^N but she is not disqualified because of the prohibition of a *zona*.

Abaye said to him: Whichever way you look at it, there is a difficulty with this answer: If she is considered a non-virgin, she is also a *zona*, and if she is not a *zona* she is also not a non-virgin. And lest you say that it is analogous to a case of a woman who lost her virginity via penetration by a foreign object atypically, i.e., anally, whose hymen was therefore not damaged and she is not forbidden as a *zona*, yet she is no longer considered a virgin, that is not correct: If so, if such a woman is considered a non-virgin and forbidden to a High Priest, you would have no woman who is fit for the High Priesthood, who has not lost her virginity via penetration by a foreign object atypically, i.e., by a pebble used to clean herself in the lavatory.

Rather, Rabbi Zeira said that Rav was referring to one who refused^{HN} her husband after having only atypical intercourse with him. Although the act of intercourse was not licentious, as she was married at the time, she is nevertheless disqualified from marrying into the priesthood because she is not a virgin.

S Rabbi Shimi bar Hiyya said: A woman who had intercourse with an animal^H is like one whose hymen was torn accidentally. Consequently, she is not a *zona* and is fit for the priesthood. This is also taught in a *baraita*: If a woman had intercourse with one who is not a man,^N i.e., an animal, although she is liable to stoning if she did so intentionally and in the presence of witnesses who forewarned her of her punishment, she is nevertheless fit for the priesthood.

NOTES

If Rav's statement is in accordance with the opinion of Rabbi Elazar, etc. – אִי בְּרַבִּי אֶלְעָזָר וְכוּ': The commentaries raise the following difficulty with this question: Even if Rav agrees with Rabbi Elazar with regard to atypical intercourse, how does the Gemara know that Rav accepts his opinion with regard to the effect of intercourse between an unmarried man and an unmarried woman? In fact, there is a *tanna*, Rabbi Shimon, who agrees with Rabbi Elazar only with regard to atypical intercourse, and it is possible that Rav agrees with Rabbi Shimon. Some commentaries explain that the Gemara could have answered its question by making this point but chose instead to give a better answer (see Ramban and Rashba). Alternatively, as *Tosafot* explain, the Gemara's primary concern is not with the opinion of Rav himself but with the opinion of Rabbi Elazar (see Ritva).

Let him derive it from the fact that she is a *zona* – תִּפּוּק לִיה: The commentaries wonder why the Gemara assumes that Rav does not hold that the woman is a *zona*. Perhaps Rav actually holds that she is prohibited for two reasons, because she is a non-virgin and also because she is a *zona*. The Rashba and Ritva answer that since there would be significant ramifications to such an opinion, as a *zona* is forbidden to all priests and not just the High Priest, Rav would have mentioned that she is considered a *zona*. The fact that he does not men-

tion this point indicates clearly that he does not consider it to be correct.

The Maharsha explains that it was known that Rav made his statement with regard to the mishna, and therefore his *halakha* was stated only with regard to the High Priest, the subject of the mishna. Alternatively, if Rav were of the opinion that an unmarried man who had intercourse with an unmarried woman has caused her to become a *zona*, his *halakha* with regard to atypical intercourse would be obvious and unnecessary, as the mishna states at the beginning of the chapter that there is no difference between typical and atypical intercourse with regard to causing a woman to become disqualified from marrying into the priesthood (*Arukh LaNer*).

She is disqualified because she is a non-virgin – אֵיכָא: The Rashba and others note that this issue appears to involve two separate factors: The prohibition against a High Priest marrying a non-virgin and his obligation to marry a woman "in her virginity." They explain that it is possible for a woman to have an intact hymen and yet not meet the criteria of a woman in her virginity.

One who refused – מִמָּאֲנָת: This refers to a girl under the age of twelve whose father is no longer alive. The Sages instituted that the girl's mother or brother may marry her off, but she may

terminate the marriage by a process called refusal, whereby she announces that she is not interested in the marriage. The Ritva points out that, upon refusal, the girl is considered retroactively never to have been married. Therefore, this should be a case of intercourse between an unmarried man and woman, and according to Rabbi Elazar she should be considered a *zona*. He explains that Rabbi Elazar considers the woman to be a *zona* only if the act of intercourse was performed outside of the context of marriage, but in this case, at the time when the act was performed, they were considered married.

If a woman had intercourse with one who is not a man – נִבְעֵלָה לְמִי שְׂאִינוּ אִישׁ: The *baraita* is precise in its wording, which includes any form of living being. Rashi notes that a woman who had intercourse with an animal is not any more fit to marry a High Priest than a woman whose hymen was accidentally torn. Consequently, according to the opinions that hold that a woman whose hymen was accidentally torn is prohibited from marrying a High Priest, this statement about a woman who had intercourse with an animal must refer to one who had anal intercourse. Alternatively, if the woman had typical intercourse that broke her hymen, it means to say that she is permitted to an ordinary priest but not to a High Priest (see Meiri and *Yam shel Shlomo*).

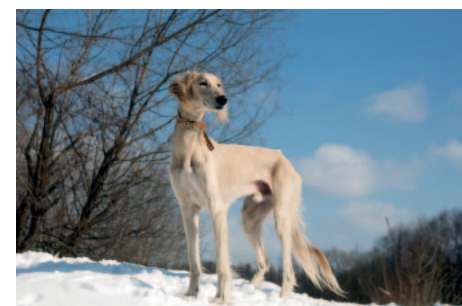
Hitlu – הִיטְלוּ: According to versions found in manuscripts and different sources, it seems that Hitlu is Ayatlu, a village known from other sources as the home of a group of priests. Ayatlu was a town in the Galilee, which is referred to today as Illut. It is about 4 km west of Nazareth. The fact that most if not all of its inhabitants were priests explains the need to determine whether this girl was halakhically permitted to marry a priest.



Location of Illut

Village [kufri] dog – כִּלְבֵּי כּוּפְרִי: The *kufri* is a special breed of dogs whose name is derived from the word *kefar*, village, that is to say, a dog raised in villages.

The mishna in tractate *Kilayim* (1:6) indicates that this kind of dog is similar to a fox, and it is therefore likely, in accordance with the explanation of the *Arukh* and others, that it was a small dog, similar in form to a jackal or a fox. These kinds of dogs were used to hunt mice, cats, and the like, and perhaps they also served as pets. The Rambam, in his commentary on that mishna, refers to a breed identified by some scholars today as the *Saluki*, a hound whose ancestors date back thousands of years. Some versions of the Talmud read monkey instead of dog.



Male Saluki

Halal – הָלָל: A *halal* refers to one disqualified from priesthood, usually the offspring of a priest and a woman forbidden to the priest, e.g., a divorcee or a *zona*. Even though the priest is considered the father of the *halal*, the son does not have the legal status of a priest but a status similar to that of an Israelite. A daughter born of such a forbidden relationship may not marry a priest.

כִּי אֶתְאָרְבִּי דִּימִי אָמַר: מַעֲשֵׂה בְרִיכָה אַחַת בְּהִיטְלוּ שְׁהִיטָהּ מְכַבֶּדֶת אֶת הַבֵּית, וְרִבְעָה כָּלֵב כּוּפְרִי מֵאַחֲרֶיהָ, וְהַכְשִׁירָהּ רַבִּי לְכַהֲנָה. אָמַר שְׁמוּאֵל: וְלִכְהֵן גְּדוֹל. בְּיָמֵי רַבִּי בְּהֵן גְּדוֹל מִי הָיָה? אָלֹא: רֹאוּיָהּ לְכַהֵן גְּדוֹל.

When Rav Dimi came from Eretz Yisrael he said: There was an incident involving a certain girl [*riva*]^N in the village of Hitlu⁸ who was sweeping the house, and a village [*kufri*] dog⁸ used for hunting sodomized her from behind. And Rabbi Yehuda HaNasi permitted her to the priesthood, as she was not considered a *zona*. Shmuel said: And Rabbi Yehuda HaNasi permitted her even to a High Priest, as she was still considered a virgin. The Gemara is puzzled by this comment: Was there a High Priest in the days of Rabbi Yehuda HaNasi?^N Rather, Shmuel meant that she is fit for a High Priest.

אָמַר לִיה רַבָּא מִפְּרָקִין לְרַב אָשִׁי: מִנָּא הָא מִלְּתָא דְאַמּוֹר רַבְנֵן אִין זְנוּת לְבָהֳמָה – דְּכָתִיב “לֹא תִבְיֵא אֶתְנֵן זֹנָה וּמַחִיר כָּלֵב,”

Rava of Pirkin said to Rav Ashi: From where is this matter derived that the Sages stated that there is no harlotry with regard to an animal? Rav Ashi responded that it is as it is written: “You shall not bring the hire of a harlot or the price of a dog into the House of the Lord your God for any vow; for both of them are an abomination to the Lord your God” (Deuteronomy 23:19). This verse prohibits one from sacrificing an animal as an offering if that animal was ever used to pay a harlot for her services, or if it was ever used as payment in the purchase of a dog.

וְתֵנָּה: אֶתְנֵן כָּלֵב וּמַחִיר זֹנָה מוֹתְרִין, (מְשׁוּם) שְׁנֵי אֲמָר “גַּם שְׁנֵיהֶם” שְׁנֵים וְלֹא אֶרְבָּעָה.

And we learned in a mishna (*Temura* 30a): The hire of a dog,^N i.e., a kosher animal that a man or woman gave as payment to the owner of a dog in order to have sexual intercourse with it, and similarly the price of a prostitute,^H a kosher animal used to purchase a prostitute as a maidservant, are permitted to be sacrificed as offerings. This is because it is stated that both of them, the specific items listed in the verse, are abominations. Consequently, only two items are prohibited, i.e., the payment given to a prostitute for her services, and the payment used in the purchase of a dog, and not four, as the reverse cases are excluded from this *halakha*.

תֵּנוּ רַבְנֵן: אֲנוּסִת עֲצָמוּ וּמִפּוֹתֵת עֲצָמוּ – לֹא יִשָּׂא, וְאִם נָשָׂא – נָשׂוּי. אֲנוּסִת חֲבִירוֹ וּמִפּוֹתֵת חֲבִירוֹ – לֹא יִשָּׂא, וְאִם נָשָׂא, רַבִּי אֱלִיעֶזֶר בֶּן יַעֲקֹב אָמַר: הַיּוֹלֵד חָלָל, וְחֻכְמֵם אוֹמְרִים: הַיּוֹלֵד כָּשֵׁר.

S The Sages taught: A High Priest may not marry a woman that he himself raped and a woman that he himself seduced,^H as he is commanded to marry a virgin. And if he married her, he is married. With regard to a woman who was raped by another man and a woman seduced by another man,^H he may not marry her. And if he married her, Rabbi Eliezer ben Ya’akov says that the child born from this union is a *halal*,^B and the Rabbis say the lineage of the offspring is unflawed.

NOTES

Girl [riva] – רִיבָה: This word is usually understood as parallel to *roveh*, a child, young man. According to this interpretation, the word was influenced by or borrowed from the Aramaic word for child, *ravya*.

Others explain that *riva* is the diminutive of *rava*, in the sense of a lady, with *riva* meaning a young lady. Similar terms are found in other languages.

Was there a High Priest in the days of Rabbi Yehuda HaNasi – בְּיָמֵי רַבִּי בְּהֵן גְּדוֹל מִי הָיָה: The same question can be asked with regard to Rav, who stated that a woman who had intercourse with an animal is still fit to marry a High Priest. It is explained in *Arukh LaNer* that the Gemara does not refrain from discussing *halakhot* that do not apply in practice. However, Rabbi Yehuda HaNasi issued a halakhic ruling for an incident that actually

occurred, and therefore there was no reason for him to say something of no relevance to the case at hand.

The hire of a dog – אֶתְנֵן כָּלֵב: Some commentaries point out that it is prohibited to sacrifice the kosher animal as an offering, even if the animal was used to pay for an act of intercourse that causes one to be liable to capital punishment. The principle that multiple punishments are not meted out for one transgression does not apply here. Nevertheless, some say that it is due to the aforementioned principle that Rashī interprets the case as one where a man said to a woman: Take this lamb and have intercourse with my dog.

In that case, the individual who gave the present did not personally violate a prohibition for which he is liable for capital punishment (Meiri).

HALAKHA

The hire of a dog and the price of a prostitute – אֶתְנֵן כָּלֵב וּמַחִיר זֹנָה: Kosher animals given as payment for the services of a prostitute or as payment for the purchase of a dog are unfit to be sacrificed as offerings in the Temple. However, kosher animals given as payment for the purchase of a prostitute as a maidservant, or as payment to a dog’s owner for permission to have intercourse with the dog remain fit for use as an offering (Rambam *Sefer Avoda*, *Hilkhot Issurei Mizbe’ah* 4:18).

A woman that he himself raped and a woman that he himself seduced – אֲנוּסִת עֲצָמוּ וּמִפּוֹתֵת עֲצָמוּ: A High Priest who raped or seduced a young woman who was a virgin is not

permitted to marry her, even if the incident occurred before he was appointed High Priest. If he did marry her, he is forced to divorce her, in accordance with Rav Huna’s explanation of the *baraita* (Rambam *Sefer Nashim*, *Hilkhot Na’ara Betula* 1:6 and *Sefer Kedusha*, *Hilkhot Issurei Bia* 17:16).

The child of a woman raped or seduced by another man – יוֹלֵד אֲנוּסִת וּמִפּוֹתֵת חֲבִירוֹ: If a High Priest had intercourse with a woman who had previously been raped or seduced by another man, he has rendered her a *halala*. Furthermore, any child born from the relationship is a *halal* (Rambam *Sefer Kedusha*, *Hilkhot Issurei Bia* 19:3).

HALAKHA

A grown woman and a woman whose hymen was torn accidentally, etc. – **בוגרת ומוכת עץ וכו'**: A High Priest may not marry a grown woman or a woman whose hymen was torn accidentally. Still, if he married one of these women, he is not forced to divorce her (Rambam *Sefer Kedusha*, *Hilkhot Issurei Bia* 17:13–15).

“אם נשא – נשוי”. אמר רב הונא אמר רב: ומוציא בגט. ואלא הא דקתני: “אם נשא – נשוי”? אמר רב אחא בר יעקב: לומר

The Gemara analyzes this *baraita*. It states that if he married the woman that he himself raped or seduced, he is married. Rav Huna said that Rav said: And he must divorce her with a bill of divorce. The Gemara asks: But consider that which the *baraita* teaches: If he married her, he is married. Since it is obvious that the marriage is technically valid, it must be saying that they are permitted to remain married. Rav Aḥa bar Ya’akov said: No, it means to say

שאין משלם קנס במפותה.

that he does not pay the fine of a seduced woman.^N One who seduced a woman and does not wish to marry her must pay a fine (see Exodus 22:14–15). Since in this case he did marry her, he is not liable to pay the fine even though he is required to divorce her.

אמר רב גביה מבי כתיב, אמרה לשמעתי קמיה דרב אשי. אמר ליה: והא רב ורבי יוחנן דאמרי תרוניהו: בוגרת ומוכת עץ – לא ישא, ואם נשא – נשוי.

The Gemara relates that when Rav Geviha went from Bei Ketil he stated this *halakha* before Rav Ashi, who said to him: Isn’t it Rav and Rabbi Yoḥanan who both say: A High Priest may not marry a grown woman and a woman whose hymen was torn accidentally,^H but if he married one of them he is married?^N

אלמא: סופה להיות בוגרת תחתיו, סופה להיות מוכת עץ תחתיו, הכא נמי – סופה להיות בעולה תחתיו! קשיא.

Apparently, the reason for this *halakha* is that since she will eventually be a grown woman under him, i.e., while married to him, and she will eventually be a woman whose hymen was torn under him, as she will not remain a virgin, they are permitted to remain married after the fact. Here too, in the case of a High Priest who married a woman he raped or seduced, since she will eventually be a non-virgin^N under him, the *baraita* should be understood as stating that they may remain married. The Gemara concludes: Indeed, this is difficult for Rav Huna.

“אנוסת חבירו ומפותת חבירו – לא ישא, ואם נשא, רבי אליעזר בן יעקב אומר: הולד חלל, וחכמים אומרים: הולד כשר”. אמר רב הונא אמר רב: הלכה כרבי אליעזר בן יעקב. וכן אמר רב גידל אמר רב: הלכה כרבי אליעזר בן יעקב.

S The *baraita* cited above taught: With regard to a woman who was raped by another man and a woman seduced by another man, the High Priest may not marry her. And if he married her, Rabbi Eliezer ben Ya’akov says that the child born from this union is a *ḥalal*, and the Rabbis say the lineage of the offspring is unflawed. Rav Huna said that Rav said: The *halakha* is in accordance with the opinion of Rabbi Eliezer ben Ya’akov. And, so too, Rav Giddel said that Rav said: The *halakha* is in accordance with the opinion of Rabbi Eliezer ben Ya’akov.

NOTES

That he does not pay the fine of a seduced woman – **שאין משלם קנס במפותה**: *Tosafot* ask: Since he is obligated to divorce her he must in any case pay her marriage contract. If so, what difference does it make whether he pays the sum as a fine or for the marriage contract? *Tosafot* offer several answers, one of which is that the Gemara is addressing Torah law, whereas the requirement that he divorce her and pay her marriage contract is by rabbinic law.

that a High Priest may not marry a woman whose hymen was accidentally torn.

Rav Huna explained the phrase: If he married one of them he is married, to mean that he is exempt from the fine but must divorce his wife. However, that interpretation is not applicable to the ruling of Rav and Rabbi Yoḥanan, as it does not address a case of rape or seduction, and therefore there is no fine involved. Consequently, the statement must be understood to mean that it is permitted for them to remain married (Rivan).

A grown woman and a woman whose hymen was torn accidentally, but if he married one of them he is married – **בוגרת ומוכת עץ**: The Rashba asks what the source is for this ruling, as the mishna indicates simply that it is prohibited for a priest to be married to one of these women. He answers that Rav and Rabbi Yoḥanan rely on the *baraita* that states that a woman who had intercourse with an animal remains fit to marry a High Priest. This indicates that the definition of a virgin is one who has not had intercourse with a man. Consequently, a grown woman and a woman whose hymen was torn accidentally are also considered virgins.

סופה להיות בעולה, etc. – **וכי**: According to this reasoning, why should there be a distinction between a woman that he himself raped or seduced and a woman who was raped or seduced by another man? The argument that she would eventually have become a non-virgin while married to him is equally relevant to both cases. The Ritva answers that there is a difference between the cases due to the greater level of disgrace when the woman has been raped or seduced by another man. He adds that perhaps the reason that some halakhic authorities ruled in accordance with the statement of Rav Huna, despite Rav Ashi’s question, is because they hold that there is disgrace even in the case of a woman that the priest himself raped or seduced.

It should also be noted that there is an alternate version of the mishna which is cited in the Jerusalem Talmud. According to that version, there are *tanna'im* who disagree with the ruling

Measures a kav, but is clean – קב ונקי: This statement appears in several places in the Talmud. The commentaries discuss whether this principle is applied in every instance or if certain distinctions should be specified. Should one apply this principle only in the case of a mishna, or can it be applied to a *baraita* as well? Is Rabbi Eliezer ben Ya'akov's opinion accepted only in disputes with a single authority, or even when it is contrary to the majority opinion? The consensus is that the opinion of Rabbi Eliezer ben Ya'akov is accepted in all instances, even in a *baraita* and even contrary to the majority opinion, except where the Gemara explicitly rules otherwise. There is an ancient tradition that statements ascribed to Rabbi Eliezer ben Ya'akov are mentioned in 102 places, the numerical value of the word *kav*, and that his opinion is accepted in all of these cases. Consequently, the Sages have an aphorism that his teaching measures a *kav*, a common unit of measurement, but is clean (see *Yad Malakhi; Seder HaDorot*).

There is a *halal* from a relationship for which the man and woman are liable for violating a positive mitzva – **יש חלל מחייבי עשה:** Since there appears to be only one relationship included in this category, i.e., a High Priest who marries a non-virgin, why does the Gemara use the plural form: Those? One answer is that the woman herself becomes a *halala* and her children also become *halalim*. Furthermore, this ruling may impact other cases as well. If a woman has relations with a second-generation Egyptian convert, which constitutes the violation of a positive mitzva, she becomes a *zona*. If she then marries a priest, their children are *halalim*, based upon the violation of that original positive mitzva (*Arukh LaNer*).

But you do not cause your offspring to be a *halal* by having a child with a menstruating woman – **ואי אתה עושה חלל מנדה:** The Ramban and Rashba point out that everyone agrees that the child of a menstruating woman is not a *halal*, as only prohibitions specific to priests cause this status. They explain that the question here is merely related to the source of this *halakha*, as Rabbi Eliezer ben Ya'akov derives it from the word "these," while the Rabbis have a different source for the *halakha* (see *Tosafot*).

HALAKHA

But you do not cause a *halal* by having a child with a menstruating woman – **ואי אתה עושה חלל מנדה:** One who has intercourse with a menstruating woman does not thereby cause her to become a *zona*. A child conceived by this act is not considered a *halal* (*Rambam Sefer Kedusha, Hilkhos Issurei Bia 19:6; Shulhan Arukh, Even HaEzer 6:8*).

איכא דאמרי, אמר רב הונא אמר רב: מאי טעמא דרבי אליעזר בן יעקב – סבר לה דרבי אליעזר.

ומי סבר לה כותיה? והא קיימא לן: משנת רבי אליעזר בן יעקב קב ונקי, ואילו בהא אמר רב עמרם אמר רב: אין הלכה כרבי אליעזר! קשיא.

רב אשי אמר: ביש חלל מחייבי עשה קמיפלגי. רבי אליעזר בן יעקב סבר: יש חלל מחייבי עשה, ורבנן סברי: אין חלל מחייבי עשה.

מאי טעמא דרבי אליעזר בן יעקב – דכתיב "אלמנה וגרושה וחללה וזונה את אלה לא יקח כי אם בתולה" וגו', וכתיב "ולא יחלל זרעו בעמיו" אכולהו.

ורבנן "אלה" הפסיק הענין. ורבי אליעזר בן יעקב – אמר "אלה" למעוטי נדה.

במאן אולא הא דתנא: מ"אלה" אתה עושה חלל, ואי אתה עושה חלל מנדה, במאן – דרבי אליעזר בן יעקב. ורבי אליעזר בן יעקב, נכתביה ל"אלה" לבסוף! קשיא.

תנו רבנן: אחותו ארוסה, רבי מאיר ורבי יהודה אומרים: משמא לה, רבי יוסי ורבי שמעון אומרים: אין משמא לה. אנוסה ומפוצה – דברי הכל אין משמא לה, ומוכת עץ – אין משמא לה, דברי רבי שמעון. שהיה רבי שמעון אומר: ראוייה לכהן גדול משמא לה, שאין ראוייה לכהן גדול – אין משמא לה.

Some say a different version of this statement. Rav Huna said that Rav said: What is the reason of Rabbi Eliezer ben Ya'akov? He holds in accordance with the opinion of Rabbi Elazar, that an unmarried man who has intercourse with an unmarried woman has thereby caused her to become a *zona*. Consequently, since the other man had intercourse with this woman outside of the context of marriage, she is a *zona*.

The Gemara asks: Does he really hold in accordance with the opinion of Rabbi Elazar? Don't we maintain that the teaching of Rabbi Eliezer ben Ya'akov measures a *kav* but is clean,ⁿ i.e., not many of his rulings have been recorded, but those that have been recorded are considered authoritative, and the *halakha* is always in accordance with his opinion? However, with regard to this ruling of Rabbi Elazar, Rav Amram said that Rav said that the *halakha* is not in accordance with Rabbi Elazar. The Gemara comments: This is indeed difficult.

Rav Ashi said: This is not the reason for the dispute. Rather, they disagree with regard to whether there is a *halal* from a relationship for which the man and woman are liable for transgressing a positive mitzva. The marriage of a High Priest to a non-virgin is a violation of the mitzva that a High Priest marry a virgin, but it is not expressed in the Torah as a prohibition against a High Priest marrying a non-virgin. Rabbi Eliezer ben Ya'akov holds that there is a *halal* from a relationship for which the man and woman are liable for violating a positive mitzva,ⁿ and the Rabbis hold that there is no *halal* from a relationship for which the man and woman are liable for violating a positive mitzva.

What is the reason of Rabbi Eliezer ben Ya'akov? As it is written: "A widow, or one divorced, or a *halala*, or a *zona*, these shall he not take; but a virgin of his own people shall he take for a wife" (Leviticus 21:14), and it states subsequently: "And he shall not profane his seed among his people" (Leviticus 21:15). Rabbi Eliezer ben Ya'akov maintains that this profanation is referring to all of them, i.e., he profanes his seed by marrying any woman unfit for him, including a non-virgin.

And what do the Sages hold? The word "these" concluded discussion of that matter. Consequently, only the prohibitions listed before the phrase "these shall he not take" result in the offspring being a *halal*. And Rabbi Eliezer ben Ya'akov said: The word "these" comes to exclude a menstruating woman. If a priest has relations with a menstruating woman, the offspring is not a *halal*, as this is not a prohibition specific to priests.

The Gemara asks: In accordance with whose opinion is that which is taught in the following *baraita*: From the prohibitions preceding the phrase "these shall he not take" you cause your offspring to be a *halal*, but you do not cause your offspring to be a *halal* by having a child with a menstruating woman.^{nh} In accordance with whose opinion is it? It is in accordance with the opinion of Rabbi Eliezer ben Ya'akov. The Gemara asks: And according to Rabbi Eliezer ben Ya'akov, let the verse write the word *these* at the end, after stating that a High Priest must marry a virgin, in order to make it clear that if he marries a non-virgin their child is a *halal*. The Gemara responds: Indeed, this is difficult.

S The Sages taught: With regard to a priest's betrothed sister, Rabbi Meir and Rabbi Yehuda say: He must become impure for her upon her death. Rabbi Yosei and Rabbi Shimon say: He may not become impure for her. With regard to his sister who has been raped or seduced, all agree that he may not become impure for her upon her death. With regard to his sister whose hymen was torn accidentally, he may not become impure for her; this is the statement of Rabbi Shimon, as Rabbi Shimon would say the following principle: If his sister was fit for a High Priest, he must become impure for her, but if she was not fit for a High Priest, he may not become impure for her.

הקדושה – **Who is near**, this is to include a betrothed sister – **לרבות הארוסה**: Both the *tanna'im* who hold that a priest must become impure for his sister even if she was betrothed, and those who hold that he may not, agree that the phrase: Who has had no man, would naturally be understood to mean that a priest becomes impure only for a sister who was never even betrothed. The dispute is whether there is another part of the verse that specifically includes any woman who had been betrothed, because she remains near to her brother. It should be noted that there are Sages cited in the Jerusalem Talmud who held that a sister is presumed to remain a part of one's family unit until proven otherwise, whereas a betrothed woman is presumed not to be included in her husband's family unit until proven otherwise.

To include a betrothed woman who was then divorced – לרבות ארוסה שנתגרשה: The commentaries disagree about the status of a woman who was married but had not yet had intercourse with her husband: Is her status comparable to that of a betrothed woman with regard to whether her brother becomes impure for her if he is a priest, or is her status comparable to that of a fully married woman? The Ramban rules that she has the status of a betrothed woman and that consequently, Rabbi Meir and Rabbi Yehuda hold that her brother must become impure for her. He explains further that if she is divorced without having intercourse, even Rabbi Yosei and Rabbi Shimon would agree that her brother must become impure. The Rashba holds that as long as she is married, all would agree that her brother does not become impure for her. However, if she is divorced without having intercourse, her brother must become impure for her (see Ritva and Arukh LaNer).

HALAKHA

A woman whose hymen was torn accidentally and a grown woman – בוגרת ומוכת עץ: A priest becomes impure for his sister who never had intercourse with a man, whether she was a minor or an adult. Similarly, he becomes impure for his sister if her hymen was accidentally torn. The *halakha* is not in accordance with Rabbi Shimon, as his is a lone opinion opposed by the majority (Rambam *Sefer Shofetim*, *Hilkhot Evel* 2:10–11; *Shulhan Arukh*, *Yoreh De'a* 373:4).

Raped or seduced – אנוסה ומפונה: If the sister of a priest was raped or seduced, he does not become impure for her upon her death (Rambam *Sefer Shofetim*, *Hilkhot Evel* 2:10–11; *Shulhan Arukh*, *Yoreh De'a* 373:4).

Betrothed sister – אהות ארוסה: A priest may not become impure for his betrothed sister, even if she was betrothed to a priest. If she was betrothed and then divorced, he does become impure for her. The *halakha* is in accordance with the opinion of Rabbi Yosei and Rabbi Shimon, as the *halakha* generally follows the opinions of Rabbi Yosei over those of a colleague (Rambam *Sefer Shofetim*, *Hilkhot Evel* 2:10–11; *Shulhan Arukh*, *Yoreh De'a* 373:4).

ובוגרת מטמא לה – דברי כל אדם.

מאי טעמא דרבי מאיר ורבי יהודה?
דרשי הכי: "ולאחותו הבתולה" פרט
לאנוסה ומפונה.

יכול שאני מוציא אף מוכת עץ – תלמוד לומר "אשר לא היתה לאיש", מי שהייתה על ידי איש, יצאה זו שאין הוייתה על ידי איש. "הקדושה" לרבות הארוסה. "אליו" לרבות הבוגרת.

הא למה לי קרא? והאמר רבי מאיר: "בתולה" אפילו מקצת בתולה משמע! איצטריך, סלקא דעתך אמינא: גילך "בתולה" "בתולה" מהתם, מה להלן נערה – אף כאן נמי נערה, קא משמע לן.

ורבי יוסי ורבי שמעון, מאי טעמיהו?
דרשי הכי: "ולאחותו הבתולה" פרט
לאנוסה ומפונה ומוכת עץ, "אשר לא
היתה" פרט לארוסה, "הקדושה" לרבות
ארוסה שנתגרשה, "אליו" לרבות את
הבוגרת. "הקדושה" לרבות ארוסה
שנתגרשה?

And if his sister was a grown woman, he must become impure for her according to everyone. Even those who hold that a High Priest may not marry a grown woman because her hymen is no longer whole agree that with regard to a priest becoming impure, she is considered a virgin and he must therefore become impure for her upon her death.

The Gemara analyzes this *baraita*: **What is the reason of Rabbi Meir and Rabbi Yehuda? They expound the verse as follows:** “And for his virgin sister, who is near to him, who has had no man, for her must he defile himself” (Leviticus 21:3). **“And for his virgin sister” excludes one who has been raped or seduced, as they are not virgins.**

One might have thought that I should exclude even a woman whose hymen was torn accidentally via a foreign object. The verse therefore states: **“Who has had no man,”** to include only one whose becoming a non-virgin was caused by a man, i.e., through intercourse. This case of a woman whose becoming a non-virgin was not caused by a man but rather by an object is thereby excluded from the category of a non-virgin, and her brother does become impure for her. **“Who is near”;** this is to include a betrothed sister.^N **“To him”;** this is to include a grown woman.^H

The Gemara asks: **Why do I need a verse to include a grown woman? Didn't Rabbi Meir say that the word “virgin” indicates even a woman who is partly a virgin, i.e., a grown woman, whose hymen is partially intact?** Consequently, when the verse states that the priest becomes impure for his virgin sister, a grown woman is included. The Gemara answers: The derivation from the verse is necessary, as it might enter your mind to say that we should derive a verbal analogy from the word “virgin” in this context and the word “virgin” from there, the context of a High Priest: In the analogy, just as there the virgin referred to is a young woman and not a grown woman, so too here she must be a young woman. The verse therefore teaches us that a priest becomes impure for his sister even if she is a grown woman.

And Rabbi Yosei and Rabbi Shimon, what is their reason? They expound as follows: “And for his virgin sister” excludes a woman who was raped or seduced^H and a woman whose hymen was torn accidentally, who is also not considered a virgin. **“Who has had no man” excludes a betrothed sister,^H** although she is not yet fully married. **“Who is near”;** this is to include a betrothed woman who was then divorced,^N as she is once again near to her brother. **“To him”;** this is to include a grown woman. The Gemara asks: Can the term “who is near” come to include a betrothed woman who was divorced?

Perek VI

Daf 60 Amud b

והא אמר רבי שמעון: ראוייה לכהן גדול – מטמא לה, שאין ראוייה לכהן גדול – אין מטמא לה! שאני התם דרבי רחמנא קדושה.”

Didn't Rabbi Shimon say: If she was fit for a High Priest, her brother must become impure for her, and if she was not fit for a High Priest, her brother may not become impure for her? A divorced woman is not fit for a High Priest even if she had been only betrothed before her divorce. The Gemara answers: **It is different there, as the Merciful One includes her by the term: Who is near,** which includes any sister who is close to him, even if she is unfit for a High Priest.

And what did you see – **יִמָּה רְאִיתָ** – Since the verses are not conclusive, it would seem logical that one who was betrothed and divorced is more distant from her brother and the rest of her father's household than a woman whose hymen was torn accidentally (Ritva).

Female convert – גִּיּוֹרָת: The primary discussion of a female convert's eligibility to marry a priest is in the final chapter of tractate *Kiddushin*. Some commentaries maintain that female converts are forbidden to priests because they have the status of a *zona*, as implied later in the Gemara here. This appears to be the opinion of Rashi and the Rambam.

Others commentaries question this explanation: If the definition of a *zona* is one who has had forbidden intercourse, how can any *tanna* disagree with Rabbi Shimon and hold that one who converted when she was less than three years old is prohibited from marrying a priest? Even if someone would have had intercourse with her before she converted, intercourse with a girl less than three years old is not halakhically recognized as intercourse. Furthermore, even if she converted as an adult it is not clear that she would still be considered a *zona* afterward, as one who converts is considered to be starting a new life.

Consequently, these commentaries explain that the prohibition is based upon a command of the prophet Ezekiel: "Neither shall they take for their wives a widow... but they shall take virgins of the seed of the house of Israel" (Ezekiel 44:22), as explained in tractate *Kiddushin* (78a).

The dispute among the *tanna'im* is over which type of convert is included in this verse. According to this opinion, despite the fact that this mitzva does not appear in the Torah, it is not a mere injunction of a prophet. Rather, the prophet only indicated that a Torah law was in existence (Ra'avad; Rashba). The Ritva combines these opinions and explains that the verse in Ezekiel indicates that the category of *zona* includes not only one who has engaged in forbidden relations but also anyone who is not from the seed of the house of Israel (see *Tosafot Yam shel Shlomo* and *Beit Shmuel*). Later commentaries attempt to prove from here that the prohibition for a priest to marry a convert is from Torah law, even if she converted when she was less than three years old.

A female convert less than... is permitted to the priesthood – גִּיּוֹרָת פְּחוּתָה... בְּשִׁירָה לְכַהֲנָה – The fact that this is cited here, in the context of a discussion of whom the High Priest may marry, indicates that according to Rabbi Shimon, this convert is permitted to marry even a High Priest. The Gemara's proof from the story of Pinehas is consistent with this conclusion, as he was the priest anointed for war, and this priest has the same *halakhot* as a High Priest with regard to the prohibition against marrying a non-virgin (*Keren Ora*).

אִי הָכִי מוֹכֶת עַץ נָמִי [רַבִּי]! "קְרוּבָה" אַחַת וְלֹא שְׁתֵּימָּ. וּמָה רְאִיתָ? הָאֵתְעִיד בָּהּ מַעֲשֶׂה, הָאֵל לֹא אֶתְעִיד בָּהּ מַעֲשֶׂה.

The Gemara asks: **If so, a woman whose hymen was torn accidentally should also be included.** The Gemara responds that the term: Who is **near**, which is written in the singular, includes only one additional case and **not two**. The Gemara asks: **And what did you see^N** to render forbidden a woman whose hymen was accidentally torn and permit a divorcee who had previously been only betrothed, and not the opposite? The Gemara answers: In **this** case of the women whose hymen was torn, **an action has been performed on her body**, whereas in **that** case of the divorcee, **no action has been performed on her body**.

וּרְבִי יוֹסִי, מִדְּשִׁבְקָהּ לְבַר וּזְגִיָּה – מִכָּלֵל דְּבִמְוֹכֶת עַץ כְּרָבִי מֵאִיר סְבִירָא לֵיהּ, מִנָּא לֵיהּ? מִ"לֹא הָיְתָה לְאִישׁ".

The *baraita* cites Rabbi Yosei and Rabbi Shimon as holding that a priest may not become impure for his sister who was betrothed and then divorced, and it cites only Rabbi Shimon as holding that he may not become impure for his sister who was a grown woman. Based on this, the Gemara asks: **From the fact that Rabbi Yosei left his partner, Rabbi Shimon, it may be inferred that with regard to a woman whose hymen was torn accidentally he holds in accordance with the opinion of Rabbi Meir**, that a priest does become impure. **From where** does he derive this *halakha*? The Gemara explains that he derives it from the phrase: "Who has had no man," as a woman whose hymen was torn accidentally has not been with a man.

וְהָאֵתְעִידָהּ! חֹד מִ"לֹא הָיְתָה" וְחֹד מִ"לְאִישׁ".

The Gemara asks: **Haven't you already derived the *halakha* of a betrothed woman from that phrase?** The Gemara answers: Rabbi Yosei learns **one *halakha* from the phrase "has had no,"** which indicates that she has not even been betrothed, **and he derives one *halakha* from the term "man,"** which indicates that only a woman who was with a man is no longer considered a virgin with regard to this *halakha*, but not one whose hymen was torn accidentally.

"אֵלִיו" לְרִבּוֹת הַבּוֹגֶרֶת. וְהָאֵמֵר רַבִּי שְׁמַעוֹן: "בְּתוּלָה" בְּתוּלָה שְׁלִימָה מִשְׁמַע! טַעַמָּא דִּידֵיהּ נִמְי הֵתֵם מִהֶכָּא, דְּדִרִישׁ הָכִי: מִדְּ"אֵלִיו" לְרִבּוֹת הַבּוֹגֶרֶת, מִכָּלֵל דְּ"בְּתוּלָה" בְּתוּלָה שְׁלִימָה מִשְׁמַע.

It was stated previously that according to Rabbi Shimon, the term "to him," comes to include a grown woman. The Gemara asks: **Didn't Rabbi Shimon say with regard to a High Priest that the term virgin indicates a complete virgin**, which does not include a grown woman? The Gemara answers: **His reason there is also derived from here**, as he expounds as follows: **From the fact that the expression "to him" is needed to include a grown woman**, it may be inferred that the term virgin by itself indicates a complete virgin.

תִּנָּא, רַבִּי שְׁמַעוֹן בֶּן יוֹחָי אוֹמֵר: גִּיּוֹרָת פְּחוּתָה מִבֵּית שְׁלֹשׁ שָׁנִים וְיוֹם אֶחָד בְּשִׁירָה לְכַהֲנָה, שְׁנָאֵמֵר "וְכָל הַטָּף בְּנָשִׁים אֲשֶׁר לֹא יָדְעוּ מִשְׁכַּב זָכָר הֵחָיו לָכֵם" וְהִרִי פָּנָחָם עִמָּהֶם.

S The Gemara cites another ruling of Rabbi Shimon ben Yohai, also related to the discussion of defining who is considered a virgin. It is taught in a *baraita* that Rabbi Shimon ben Yohai says: **A female convert^N who converted when she was less than three years and one day old^H is permitted to marry into the priesthood,^N as it is stated: "But all the women children that have not known man by lying with him, keep alive for yourselves"** (Numbers 31:18). This verse indicates that these women were fit for all of the warriors, and since Pinehas the priest was with them (see Numbers 31:6), it is clear that young converts are permitted to priests.

וּרְבִנָּן: לַעֲבָדִים וְלִשְׁפָחוֹת. אִי הָכִי – בֵּית שְׁלֹשׁ שָׁנִים וְיוֹם אֶחָד נִמְי!

The Gemara asks: **And how do the Rabbis, who disagree with Rabbi Shimon, interpret this verse?** The Gemara responds: They understand the phrase "keep alive for yourselves" to mean that they could keep them as slaves and as maidservants, but they could not necessarily marry them. The Gemara asks: **If so**, if the source for Rabbi Shimon's ruling is this verse, a girl who converted at the age of three years and one day old should also be permitted to a priest, as long as she has never had intercourse, as stated by the verse.

HALAKHA

גִּיּוֹרָת – גִּיּוֹרָת – A female convert less than three years and one day old – **פְּחוּתָה מִבֵּית שְׁלֹשׁ שָׁנִים** – A priest may not marry a convert, even if she converted when she was less than three years old, as the

halakha does not follow the opinion of Rabbi Shimon ben Yohai. If he married her, he is forced to divorce her (Rambam *Sefer Kedusha*, *Hilkhot Issurei Bia* 18:3; *Shulhan Arukh*, *Even HaEzer* 6:8).

LANGUAGE

Hidrokan – הדְרוֹקָן: From the Greek ὑδρωπικός, *hydropikos*, meaning one who suffers from ascites.

BACKGROUND

Hidrokan – הדְרוֹקָן: The illness *hidrokan*, identified as ascites, has several causes, the most common being a dysfunction of the liver or the heart. Its symptoms are caused by a large accumulation of water under the skin, which causes significant swelling. Due to this accretion of water, and, occasionally, due to the effects of the illness itself, the faces of individuals suffering from this disease turn a pale yellow.

בְּדֶרֶב הוֹנָא. דְּרַב הוֹנָא רְמִי: כְּתִיב "כָּל אִשָּׁה יָדַעַת אִישׁ לְמִשְׁכַּב זָכָר הָרוּג". הָא אִינְה יוֹדַעַת – קַיִימוּ, מִכְּלָל דְּהַטָּף בֵּין יָדְעוּ בֵּין לֹא יָדְעוּ – קַיִימוּ, וְכַתִּיב "וְכָל הַטָּף בְּנָשִׁים אֲשֶׁר לֹא יָדְעוּ מִשְׁכַּב זָכָר הָחַי לָכֶם", הָא יָדְעִי – הָרוּג.

הוּי אוֹמֵר: בְּרֵאוּיָה לִיבְעֵל הַכְּתוּב מְדַבֵּר.

תִּנְיָא נְמִי הָכִי: "וְכָל אִשָּׁה יוֹדַעַת אִישׁ" בְּרֵאוּיָה לִיבְעֵל הַכְּתוּב מְדַבֵּר. אֵתָה אוֹמֵר בְּרֵאוּיָה לִיבְעֵל, אוֹ אִינוּ אֵלָא נִבְעֵלָה מִמֶּשׁ? בְּשָׁהוּא אוֹמֵר "וְכָל הַטָּף בְּנָשִׁים אֲשֶׁר לֹא יָדְעוּ מִשְׁכַּב זָכָר" הוּי אוֹמֵר בְּרֵאוּיָה לִיבְעֵל הַכְּתוּב מְדַבֵּר.

מִנָּא יָדְעִי? אָמַר רַב הוֹנָא בְּרֵאוּיָה אָמַר רַבִּי שְׁמַעוֹן חֲסִידָא: הָעֲבִירוּם לִפְנֵי הַצִּיץ, כָּל שְׁפָנִיָּה מוֹרִיקוֹת – בִּידוּעַ שְׁהִיא רֵאוּיָה לִיבְעֵל, כָּל שְׁאִין פְּנִיָּה מוֹרִיקוֹת – בִּידוּעַ שְׁאִינָה רֵאוּיָה לִיבְעֵל. אָמַר רַב נַחֲמָן: סִימָן לַעֲבִירָה הַדְּרוֹקָן.

כִּיּוֹצֵא בְּדֶבֶר אֵתָה אוֹמֵר: "וַיִּמָּצְאוּ מִיּוֹשֵׁבֵי יִבְשׁ גִּלְעָד אַרְבַּע מֵאוֹת נַעֲרָה בְּתוּלָה אֲשֶׁר לֹא יָדְעוּ אִישׁ לְמִשְׁכַּב זָכָר". מִנָּא יָדְעִי? אָמַר רַב כְּהָנָא: הוֹשִׁיבוּם עַל פִּי חֲבִית שֶׁל יַיִן, בַּעֲוִלָה – רִיחָה נוֹדֵף, בְּתוּלָה – אִין רִיחָה נוֹדֵף.

וְנַעֲבְרִינְהוּ לִפְנֵי צִיץ! אָמַר רַב כְּהָנָא בְּרִיה דְּרַב נָטָן: "לְרִצּוֹן לָהֶם" כְּתִיב, לְרִצּוֹן וְלֹא לְפֹרְעָנוֹת. אִי הָכִי בְּמִדִּין נְמִי! אָמַר רַב אֲשִׁי: "לָהֶם" כְּתִיב, לָהֶם לְרִצּוֹן וְלֹא לְפֹרְעָנוֹת, וְלִגּוּיִם – אֲפִילוּ לְפֹרְעָנוֹת.

אָמַר רַבִּי יַעֲקֹב בְּרִי אִידִי אָמַר רַבִּי יְהוֹשֻׁעַ בֶּן לֹוי: הֲלִכְהָ כְּרַבִּי שְׁמַעוֹן בֶּן יוֹחָאִי. אָמַר לִיה רַבִּי יוֹרְאִי לְרַבִּי יַעֲקֹב בְּרִי אִידִי: בְּפִירוּשׁ שְׁמִיעַ לָךְ, אוֹ מִכְּלָלָא שְׁמִיעַ לָךְ?

The Gemara replies: His reasoning is as stated by Rav Huna, as Rav Huna raised a contradiction: It is written in one verse: "Kill every woman that has known man by lying with him" (Numbers 31:17), which indicates that a woman who has not known a man in this way you may keep alive. This proves by inference that the female children, who are not classified as women, you may keep alive regardless of whether they knew a man or they did not know a man. And it is written in a different verse: "But all the women children that have not known man by lying with him, keep alive for yourselves" (Numbers 31:18), which indicates that if they have known men, you must kill them. This is an apparent contradiction.

Rav Huna explains: You must say that the verse is speaking of a woman who is fit for intercourse. The verse does not mean to distinguish between women who have actually engaged in sexual intercourse and those who have not. Rather, it distinguishes between a girl over the age of three, with whom an act of intercourse is recognized as such, and a girl below the age of three.

This is also taught in a *baraita*: "Every woman that has known man"; the verse is speaking of a woman who is fit for intercourse. The *baraita* proceeds to discuss this *halakha*: Do you say it is referring to one who is fit for intercourse, or perhaps it is referring only to one who has actually had intercourse? When the verse states: "But all the women children that have not known man by lying with him, keep alive for yourselves," which indicates that grown women must be killed even if they have not had intercourse with a man, you must say that the verse is speaking of a woman who is fit for intercourse.

The Gemara asks a practical question with regard to the events described by the Torah: From where did they know whether a particular girl was already three years old and fit for intercourse? Rav Huna bar Bizna said that Rabbi Shimon Hasida said: They passed them before the frontplate of the High Priest. Any girl whose face miraculously turned sallow, it was known that she was fit for intercourse, and any girl whose face did not turn sallow, it was thereby known that she was not fit for intercourse. Similarly, Rav Nahman said: A sign of transgression in the area of sexual morality is the disease *hidrokan*,¹⁸ which causes one's face to turn sallow.

Similarly, you can say with regard to the verse: "And they found among the inhabitants of Jabesh-gilead four hundred young virgins that had not known man by lying with him" (Judges 21:12). From where did they know that they were virgins? Rav Kahana said: They sat them on the opening of a barrel of wine. If she was a non-virgin, her breath would smell like wine; if she was a virgin, her breath did not smell like wine.

The Gemara suggests: They should have passed them before the frontplate, as described previously with regard to the daughters of Midian. Rav Kahana, son of Rav Natan, said: The verse states with regard to the frontplate: "And it shall be upon Aaron's forehead... that they may be accepted before the Lord" (Exodus 28:38), which indicates that the frontplate is worn for acceptance but not for calamity. The Gemara raises a difficulty: If so, the frontplate should also not have been used with regard to the women of Midian. Rav Ashi said: The word "they" is written in the verse, indicating that for them, the Jewish people, the frontplate is for acceptance but not for calamity; but for gentiles it can be used even for calamity.

Rabbi Ya'akov bar Idi said that Rabbi Yehoshua ben Levi said: The *halakha* is in accordance with the opinion of Rabbi Shimon ben Yohai. Rabbi Zeira said to Rabbi Ya'akov bar Idi: Did you hear Rabbi Yehoshua ben Levi say this explicitly or did you learn it by inference?

מאי בללא? דאמר רבי יהושע בן לוי: עיר אחת הייתה בארץ ישראל שקרא עליה ערער, ושגר רבי את רבי רומנוס ובדקה, ומצא בה בת גיורת פחותה מבית שלש שנים ויום אחד – והכשירה רבי לכהונה. אמר ליה: בפירוש שמיע לך.

ואי מבללא מאי? דלמא שאני התם, הואיל ואנסב – אנסיב. דהא רב ורבי יוחנן דאמרי תרוניהו: בוגרת ומופת עץ – לא ישא, ואם נשא – נשוי.

הכי השתא? בשלמא התם – סופה להיות בוגרת תחתיו, סופה להיות בעולה תחתיו. הכא – סופה להיות זונה תחתיו?

רב ספרא מתני לה מבללא, וקשיא ליה, ומשני ליה הכי.

ההוא כהנא דאנסב גיורת פחותה מבית שלש שנים ויום אחד. אמר ליה רב נחמן בר יצחק: מאי האי? אמר ליה: דאמר רבי יעקב בר אידי אמר רבי יהושע בן לוי: הלכה ברבי שמעון בן יוחאי. אמר ליה: ויל אפיק, ואי לא – מפיקנא לך רבי יעקב בר אידי מאונך.

תניא וכן היה רבי שמעון בן יוחאי אומר

The Gemara asks: **What inference** was Rabbi Zeira hinting at? The Gemara explains: **As Rabbi Yehoshua ben Levi said: There was a certain city in Eretz Yisrael where they contested the lineage^N of a particular family. And Rabbi Yehuda HaNasi sent Rabbi Romanus, and he examined the family's lineage and found that it included the daughter of a convert who had converted when she was less than three years and one day old, and she had married a priest. And Rabbi Yehuda HaNasi permitted her to the priesthood.** This indicates that Rabbi Yehoshua ben Levi ruled in accordance with Rabbi Shimon. Rabbi Ya'akov bar Idi said to him: **I heard explicitly** that Rabbi Yehoshua ben Levi ruled in this manner.

The Gemara asks: **And if** Rabbi Yehoshua ben Levi's opinion had been derived by inference, what of it? The Gemara answers: Perhaps it was different there, because since she had already married a priest, she could remain married after the fact, but it would not be permitted for her to marry a priest *ab initio*, as it is Rav and Rabbi Yohanan who both say: A High Priest may not marry a grown woman and a woman whose hymen was torn accidentally, but if he married one of them he is married and not required to divorce her.

The Gemara refutes this claim: **How can** these cases be compared? Granted, there, in the case of a grown woman, it is reasonable for her to be permitted after the fact, as a young woman will eventually be a grown woman under him, i.e., while married to him, and she will eventually be a non-virgin under him. However, here, in the case of a convert, will she eventually be a *zona* under him? If she is forbidden to a priest *ab initio* it is because she has the status of a *zona*, in which case she should be prohibited after the fact as well. Consequently, it can be proven from the incident cited previously that Rabbi Yehoshua ben Levi rules in accordance with the opinion of Rabbi Shimon.

The Gemara comments: Rav Safra taught this *halakha* after deriving Rabbi Yehoshua ben Levi's ruling by inference, although he had never heard this ruling explicitly. And the question mentioned above was difficult for him, and he resolved it in this same manner.

The Gemara relates another incident related to this *halakha*: A certain priest married a convert, who had converted when she was less than three years and one day old. Rav Nahman bar Yitzhak said to him: What is this? Why are you violating the *halakha*? He said to him: It is permitted for me to marry her, as Rabbi Ya'akov bar Idi said that Rabbi Yehoshua ben Levi said that the *halakha* is in accordance with the opinion of Rabbi Shimon ben Yohai. He said to him: Go remove her, i.e., divorce her. And if not, I will remove Rabbi Ya'akov bar Idi from your ear [*me'unekh*]^N for you. In other words, I will take the necessary action to ensure that you obey and divorce her, so that you can no longer follow Rabbi Ya'akov bar Idi's opinion.

§ It is taught in a *baraita*: And similarly, Rabbi Shimon ben Yohai would say:^N

NOTES

שקרא עליה ערער – Where they contested the lineage, etc. – The Gemara indicates that a priest from that town married a woman who had converted when she was less than three years old. The Jerusalem Talmud offers an alternative account, in which the ruling follows the opinion of the Rabbis as well as that of Rabbi Shimon. According to that account, it was a regular Israelite who married the convert, and Rabbi Yehuda HaNasi permitted their descendants to marry priests.

From your ear [*me'unekh*] – מאונך: *Unekh* comes from the word *una*, a shortened form of *udna*, meaning ear. Some

explain that he meant he would punish him until he removed the words of Rabbi Ya'akov bar Idi, so that his ears would no longer listen to him. Others maintain that he claimed he would make him forget Rabbi Ya'akov bar Idi until he would no longer mention his name (*Arukh*).

וכן – And similarly, Rabbi Shimon ben Yohai would say, etc. – היתה רבי שמעון בן יוחאי אומר וכו': What is the connection between the following statement and the previous discussion? Rabbi Shimon must have taught many other *halakhot* that are not cited here. The Rivan explains that the *tanna* wanted to quote

another case in which Rabbi Shimon ruled more leniently than the Rabbis. It is suggested in the *Yam shel Shlomo* that this statement is cited here in order to emphasize that just as the *halakha* does not follow the opinion of Rabbi Shimon with regard to the previous discussion, it does not follow his opinion with regard to the upcoming discussion, although this is subject to a dispute between the early commentaries. The *Keren Ora* and the *Arukh LaNer* explain simply that these two *halakhot* are cited together because Rabbi Shimon derived both of them from verses with regard to the war against Midian.

BACKGROUND

The tent of a corpse – אהל המת: The *halakhot* of the impurity imparted by a corpse, including the *halakhot* of a tent covering a corpse, are cited in great detail in tractate *Oholot*. The essential *halakhot* of the tent over a corpse are detailed in the Torah (Numbers, chapter 19). The Sages derived that any structure that has a cavity that is at least one cubic handbreadth in volume and contains a corpse or part of a corpse, e.g., its flesh, bones, or limbs, becomes a tent over a corpse. Not only do all articles subject to ritual impurity contained within it become ritually impure themselves, but they also become a primary source of ritual impurity, capable of imparting ritual impurity to people and objects.

HALAKHA

The impurity of a corpse of gentiles – טומאת המת של נכרים: Some commentaries maintain that the corpses of gentiles do not convey impurity via a tent, in accordance with the opinion of Rabbi Shimon ben Yoḥai. Others disagree (*Tosafot*; *Rosh*). It is proper for a priest to act stringently in this regard. The corpse of a gentile certainly conveys impurity to one who touches or carries it (Rambam *Sefer Tahara*, *Hilkhot Tumat Met* 1:13 and *Sefer Shofetim*, *Hilkhot Evel* 3:3; *Shulḥan Arukh*, *Yoreh De'a* 372:2).

קברי גוים אינן מטמאין באהל, שנאמר
“ואתם צאני צאן מרעיתי אדם אתם”
קרויין “אדם”, ואין הגוים קרויין “אדם”.

מיתבי: “ונפש אדם ששה עשר אלף!”
משום בהמה.

“אשר יש בה הרבה משתים עשרה רבוא
אדם אשר לא ידע בין ימינו לשמאלו
(ובהמה רבה)”. משום בהמה.

“כל הורג נפש וכל נוגע בחלל תתחטאו!”
דלמא איקטיל חד מישאאל. ורבנן: “לא
נפקד ממנו איש”. ורבי שמעון בן יוחי:
“לא נפקד ממנו איש” לעבירה.

רבינא אמר: נהי דמעטינהו קרא מאטמוי
באהל, דכתיב “אדם כי ימות באהל”,
ממגע ומשא מי מעטינהו קרא?

The graves of gentiles do not render items impure though a tent,^b as it is stated: “And you My sheep, the sheep of My pasture, are men [adam]” (Ezekiel 34:31), from which it is derived that you, the Jewish people, are called men [adam]ⁿ but gentiles are not called men [adam]. Since the Torah introduces the *halakha* of ritual impurity of a tent with the words: “When a man [adam] dies in a tent” (Numbers 19:14), this *halakha* applies only to corpses of Jews but not those of gentiles.^h

The Gemara raises an objection based upon the verse with regard to captives taken during the war against Midian: “And the persons [nefesh adam] were sixteen thousand” (Numbers 31:40), which indicates that gentiles are also referred to as *adam*. The Gemara answers: They are given this title due to the need to distinguish the people taken captive from the animals that were taken as spoils of war.

The Gemara raises another difficulty based upon a verse with regard to the city of Nineveh: “Wherein are more than one hundred and twenty thousand men [adam] that cannot discern between their right hand and their left hand, and also much cattle” (Jonah 4:11). The Gemara answers: There, too, the gentiles are given this title due to the need to distinguish them from the animals mentioned in the verse.

The Gemara continues to question Rabbi Shimon’s ruling based upon a verse pertaining to the war against Midian: “Whoever has killed anyone, and whoever has touched any slain, purify yourselves” (Numbers 31:19). This indicates that gentile corpses convey ritual impurity. The Gemara answers: Perhaps a Jew was killed, and the concern was for impurity caused by his corpse. And the Rabbis reply that the verse attests: “Not one man of us is missing” (Numbers 31:49). No Jewish soldiers fell in battle, and therefore the concern for impurity must have been due to the corpses of gentiles. And Rabbi Shimon ben Yoḥai responds: The intent of that verse is that not one man of us is missing due to transgression, i.e., none of them sinned.

Ravina said that the explanation above is unnecessary: Granted, the verse excluded gentiles from rendering items impure through a tent, as it is written: “When a man [adam] dies in a tent” (Numbers 19:14); but did the verse exclude them from rendering items impure via touching and carrying?ⁿ Since gentile corpses convey impurity in these ways, they could have rendered impure the Jews involved in the war with Midian, even according to Rabbi Shimon ben Yoḥai.

NOTES

You are called men [adam] – אתם קרויים אדם: Since the Torah was given to the Jewish people, it is assumed that whenever it refers to men [adam], it is referring to its primary audience, the Jewish people. If a wider meaning is intended the verse so specifies (see Maharatz Hayyut).

The commentaries analyze many instances where the Torah uses the term *adam*. Their conclusion is that the word *adam* is sometimes stated with regard to gentiles, but only when the verse must use this word, e.g., a verse that distinguishes between man and animal or between a commoner and a man of social standing.

Tosafot cite the opinion of Rabbeinu Meshullam that the Torah uses the term *adam* instead of referring directly to the Jewish people in the context of punishment or tragedy, while it refers directly to the Jewish people in more positive contexts. Rabbeinu Tam contends that the term: Man [adam], always refers to the Jewish people, whereas the term: The man

[*ha’adam*], refers to the entire human race. Some commentaries note that the numerical value of: The man [*ha’adam*], is the same as the numerical value of the word impure [*tamei*]. See Rabbi Avraham min HaHar’s response to this exposition. Later commentaries suggest other homiletic explanations of this idea (see *Iyyun Ya’akov*).

Did the verse exclude them from rendering items impure via touching and carrying – ממגע ומשא מי מעטינהו קרא: Ezekiel prophesies that in the future any place that contains the bones of the corpses of Gog and Magog will be marked off (Ezekiel 39:15), which seemingly indicates that gentile corpses also convey impurity through a tent. The Ramban offers two answers: First, it is always possible that any corpse found is that of a Jew. Moreover, purity will be so widespread in the future that any source of impurity will be marked, even if it does not convey impurity through a tent (see Meiri).

Betrothed a widow and was appointed to be High Priest – **אִירָם אֶת הָאֵלֶמְנָה וְנִתְמַנָּה לְהִיּוֹת כֹּהֵן גָּדוֹל** – If a priest is appointed High Priest after betrothing a widow, he is permitted to marry her (Rambam *Sefer Kedusha*, *Hilkhot Issurei Bia* 19:12).

A widow waiting for her *yavam* should also be permitted to a High Priest – **שׁוֹמֶרֶת יָבָם נָמִי** – A High Priest must perform *halitza* and not enter into levirate marriage. This applies even if the obligation to perform *halitza* or levirate marriage took effect before he was appointed High Priest (Rambam *Sefer Kedusha*, *Hilkhot Issurei Bia* 19:12 and *Sefer Avoda*, *Hilkhot Kelei HaMikdash* 5:10).

A widow from marriage – **אֵלֶמְנָה מִן הַנִּשְׁתָּאִין** – If a *yevama* was widowed from marriage and her *yavam*, the High Priest, had intercourse with her, they have not fulfilled the mitzva of levirate marriage because a positive mitzva does not override both a positive mitzva and a prohibition. Therefore, the rival wives of a *yevama* are not permitted to marry anyone else until they have performed *halitza* (Rambam *Sefer Nashim*, *Hilkhot Yibbum* 6:11).

PERSONALITIES

Yehoshua ben Gamla – **יְהוֹשֻׁעַ בֶּן גַּמְלָא** – Yehoshua ben Gamla, referred to by Josephus as Yehoshua ben Gamliel, was apparently one of the last High Priests in the Second Temple. He was appointed by King Agrippa II and was killed during the destruction of the Second Temple. Although the Sages criticized the way he became High Priest, they also noted his good deeds. He was praised for donating golden lots for the Yom Kippur service and was especially commended for expanding the circle of Jewish education by establishing an extensive network of schools in every town in Eretz Yisrael. It is even said that were it not for him, the Torah would have been forgotten from the Jewish people. However, some claim that there were two men with the same name, and the Yehoshua ben Gamla mentioned here is not the one who established the network of schools (see *Tosafot Yeshanim*).

Marta bat Baitos – **מָרְתָא בַת בַּיְתוֹס** – Marta bat Baitos is mentioned in several places in the Talmud. Due to her great wealth, she has served throughout the ages as the archetype of a very wealthy woman. The house of Baitos was one of the most powerful and wealthy families of priests in Jerusalem, and many members of this household served as High Priest or in other important positions in the Temple. According to the Jerusalem Talmud, Marta married Yehoshua ben Gamla as a result of trickery on his part, yet after becoming betrothed to him, she sought to secure him the most elevated position possible.

The Talmud relates that during the siege of Jerusalem all her wealth was to no avail and she died of starvation.

King Yannai – **יָנָאי מַלְכָּא** – As *Tosafot* note, it is inconceivable that this could have been Yannai the Hasmonean king, as he himself was High Priest and would not have given up the position to someone else. The Sages referred to several kings from the second Temple era as Yannai, to indicate their disapproval of these kings' actions.

מִתְנִי אִירָם אֶת הָאֵלֶמְנָה וְנִתְמַנָּה לְהִיּוֹת כֹּהֵן גָּדוֹל – יָכֻנּוּס. וּמַעֲשֵׂה בִיהוּשָׁע בֶּן גַּמְלָא שִׁקְדֵשׁ אֶת מָרְתָּא בַת בַּיְתוֹס, וּמִנְהוּ הִמְלִיךְ לְהִיּוֹת כֹּהֵן גָּדוֹל, וּכְנָסָהּ. שׁוֹמֶרֶת יָבָם שֶׁנִּפְלָה לִפְנֵי כֹהֵן הַדְּיוֹט, וְנִתְמַנָּה לְהִיּוֹת כֹּהֵן גָּדוֹל, אֵף עַל פִּי שְׁעִשָּׂה בָּהּ מֵאִמֶּר – הֲרֵי זֶה לֹא יָכֻנּוּס.

גַּמ' תָּנוּ רַבֵּנָּן: מִנֵּין שְׂאֵם אִירָם אֶת הָאֵלֶמְנָה וְנִתְמַנָּה לְהִיּוֹת כֹּהֵן גָּדוֹל שְׂיָכֻנּוּס – תַּלְמוּד לומר "יקח אשה". אִי הָכִי שׁוֹמֶרֶת יָבָם נָמִי! "אשה" וְלֹא יָבָמָה.

"מַעֲשֵׂה בִיהוּשָׁע" וכו'. מִנְהוּ – אֵין, נִתְמַנָּה – לֹא. אָמַר רַב יוֹסֵף: קָטִיר קָחוּנָא הָכָא. דָּאִמַר רַב אֲסִי: תִּרְקָבָא דְדִינְרֵי עֵיילָה לִיה מָרְתָּא בַת בַּיְתוֹס לִינְאִי מַלְכָּא, עַד דְּמוֹקִי לִיה לִיהוּשָׁע בֶּן גַּמְלָא בְּכַהֲנֵי רַבְרָבִי.

מִתְנִי כֹּהֵן גָּדוֹל שָׂמַת אָחִיו – חוֹלֵץ וְלֹא מֵיָבָם.

גַּמ' קָא פָּסִיק וְתִנִּי, לֹא שָׁנָא מִן הָאִירוּסִין וְלֹא שָׁנָא מִן הַנִּשְׁתָּאִין. בְּשִׁלְמָא מִן הַנִּשְׁתָּאִין – עֲשֵׂה וְלֹא תַעֲשֶׂה הוּא, וְאֵין עֲשֵׂה דּוּחָה לֹא תַעֲשֶׂה וְעֲשֵׂה. אֵלֹא מִן הָאִירוּסִין, יָבָא עֲשֵׂה וְיִדְחָה אֶת לֹא תַעֲשֶׂה!

MISHNA If a priest betrothed a widow^N and was subsequently appointed to be High Priest,^H he may marry her. And there was an incident with Yehoshua ben Gamla,^P who betrothed Marta bat Baitos,^P a widow, and the king subsequently appointed him to be High Priest, and he nevertheless married her. Conversely, in the case of a widow waiting for her *yavam* who happened before a common priest, i.e., the priest was her *yavam*, and he was subsequently appointed to be High Priest, then even if he had already performed levirate betrothal with her, he may not marry her, because she is a widow.

GEMARA The Sages taught: From where is it derived that if a priest betrothed a widow and was subsequently appointed to be High Priest, that he may marry her? The verse states: "Shall he take for a wife?"^N (Leviticus 21:14), an inclusive phrase that indicates that he may marry her in this situation despite the general prohibition for a High Priest to marry a widow. The Gemara asks: If so, a widow waiting for her *yavam* should also be permitted to a High Priest.^H The Gemara answers: The word "wife" indicates that this does not include a *yevama*,^N who was not initially his wife but his brother's.

The mishna related an incident with Yehoshua ben Gamla. The Gemara notes that the mishna states that the king appointed him, yes, but not that he was worthy of being appointed. Rav Yosef said: I see a conspiracy here,^N as this was clearly not a proper appointment by the priests and the Sanhedrin but rather a political appointment, as Rav Asi said: Marta bat Baitos brought a vessel the size of a half-*se'a* [*tarkav*] full of dinars to King Yannai^P until he appointed Yehoshua ben Gamla High Priest.

MISHNA A High Priest whose brother died without children performs *halitza* and he does not perform levirate marriage, as he may not marry a widow.

GEMARA The Gemara comments: The mishna teaches this *halakha* categorically, indicating that it is no different if she is his brother's widow from betrothal, and it is no different if she is his widow from marriage.^H The Gemara analyzes this *halakha*: Granted, she is forbidden to him if she was widowed from marriage, as, if he were to marry her, it would be a violation of both the positive mitzva that the High Priest marry a virgin and the prohibition for him to marry a widow. And a positive mitzva, i.e., levirate marriage, does not override a prohibition and a positive mitzva together. However, if she was a widow from betrothal and is therefore still a virgin, the positive mitzva of levirate marriage should come and override the prohibition for a High Priest to marry a widow.

NOTES

If a priest betrothed a widow, etc. – **אִירָם אֶת הָאֵלֶמְנָה וכו'** – This policy does not extend to a case where a man betrothed a woman and then his testicles became crushed. The reason for the distinction is that the Torah expresses the prohibition to marry a man with crushed testicles by stating that he "shall not enter into the congregation of the Lord" (Deuteronomy 23:2). Conversely, with regard to a High Priest, the verse states that "he shall not take" a widow (Leviticus 21:14), which indicates that it is only the taking, i.e., the betrothal, that is prohibited (Yosef Lekah).

Shall he take for a wife – **יִקַּח אִשָּׁה** – Since the word wife is entirely superfluous in this verse, the Sages derived that despite the requirement that the High Priest marry a virgin, there are instances where he may take even a woman who is not a virgin as a wife (Rivan).

The word wife indicates that this does not include a *yevama* – **אִשָּׁה וְלֹא יָבָמָה**: The Gemara does not employ the exposition cited earlier, that "wife" is written in singular and includes only one

case but not two, because there is no legal difference between a woman waiting for her *yavam* and any other widow (Ritva).

I see a conspiracy here – **קָטִיר קָחוּנָא הָכָא** – In tractate *Bava Batra* (21a), the Gemara praises Yehoshua ben Gamla for strengthening Torah observance among the Jewish people; how does that fit in with the account here? In the *Tosafot Yeshanim*, it is suggested that the two passages are actually referring to two different individuals who had the same name. However, *Tosafot* on *Bava Batra* 21a and the *Tosafot HaRosh* explain that he was indeed great, but there were others who were more righteous and worthy of being appointed High Priest. Furthermore, he should not have accepted a royal appointment without the approval of the Sanhedrin. In the Jerusalem Talmud, it is stated that Yehoshua ben Gamla craftily spread a rumor that he had betrothed Marta bat Baitos. Once the rumor took hold, no one else would have agreed to marry her unless she obtained a bill of divorce from him. She therefore agreed to marry him and used her influence to have him appointed High Priest, as befitting her honor.

It is because he is obligated to fulfill the mitzva to be fruitful and multiply, etc. – **מִשּׁוֹם פְּרִיָּה וְרִבְיָה וכו'** – The Gemara could also have pointed out that if the reason was due to the mitzva to have children, the mishna should also have mentioned that it is prohibited for him to marry any barren or elderly woman. In any case, Rav Huna's answer resolves these difficulties as well (*Arukh LaNer*).

גִּיּוּרָה בִּיָּאָה רִאשׁוֹנָה אֶטּוּ בִּיָּאָה שְׁנִיָּה.

The Gemara answers: By Torah law, levirate marriage is permitted in this case. However, there is a rabbinic **decree** prohibiting their **first act of intercourse due to their second act of intercourse**.^H After they have engaged in intercourse once, they have fulfilled the mitzva of levirate marriage, and any subsequent act of intercourse would constitute a violation of the prohibition without the fulfillment of a mitzva.

מִתְנִי' בְּהֵן הָדִיּוֹט לֹא יִשָּׂא אִילּוֹנִית, אֶלְלָא אִם כֵּן יֵשׁ לוֹ אִשָּׁה וּבָנִים. רַבִּי יְהוּדָה אוֹמֵר: אֵף עַל פִּי שֵׁישׁ לוֹ אִשָּׁה וּבָנִים – לֹא יִשָּׂא אִילּוֹנִית, שֶׁהִיא זֹנָה הָאֲמוּרָה בִּתְוֹרָה. וְחֻכָּמִים אוֹמְרִים: אֵין זֹנָה אֶלְלָא גִיּוּרָתָא, וּמְשֻׁחָרְרָתָא, וְשֹׁנְבַעְלָה בְּעִילַת זָנוֹת.

MISHNA A common priest may not marry a sexually underdeveloped woman [aylonit],^H who is incapable of bearing children, unless he already has a wife and children. Rabbi Yehuda says: Even if he has a wife and children, he may not marry a sexually underdeveloped woman, as she is the *zona* about whom it is stated in the Torah that a priest may not marry her. Intercourse with her is considered a licentious act because she is incapable of bearing children. And the Rabbis say: The only women in the category of *zona*,^H who are therefore forbidden to a priest, are a female convert, a freed maidservant, and any woman who engaged in licentious sexual intercourse with a man she is prohibited from marrying.

גַּמ' אָמַר לִיה רִישׁ גְּלוּתָא לְרַב הוּנָא: מָאי טַעְמָא – מִשּׁוֹם פְּרִיָּה וְרִבְיָה, אֶפְרִיָּה וְרִבְיָה בְּהֵנִים הוּא דְּמִפְקָדִי, וְיִשְׂרָאֵל לֹא מִפְקָדִי! אָמַר לִיה: מִשּׁוֹם דְּקָא בְּעִי לְמִיתְנִי סִיפָא, רַבִּי יְהוּדָה אוֹמֵר: אֵף עַל פִּי שֵׁישׁ לוֹ אִשָּׁה

GEMARA The Exilarch said to Rav Huna: What is the reason for the *halakha* that a priest may not marry a sexually underdeveloped woman? It is because he is obligated to fulfill the mitzva to be fruitful and multiply.^N Is it only priests who were commanded to be fruitful and multiply, but Israelites were not commanded? Why does the mishna specify that a priest may not marry a sexually underdeveloped woman? Rav Huna said to him: This *halakha* does in fact apply even to Israelites, and the *tanna* mentions priests because he wants to teach it in a way that would parallel the latter clause of the mishna, which states that Rabbi Yehuda says: Even if he has a wife

HALAKHA

There is a rabbinic decree prohibiting their first act of intercourse due to their second act of intercourse – **גִּיּוּרָה בִּיָּאָה רִאשׁוֹנָה אֶטּוּ בִּיָּאָה שְׁנִיָּה**: If a *yevama* was forbidden to her *yavam* due to an ordinary Torah prohibition, i.e., one that does not carry with it a punishment of *karet* or the death penalty; due to a positive mitzva; or due to a rabbinic decree, they must perform *halitza* and not enter into levirate marriage. Although the mitzva of levirate marriage should override the prohibition, the Sages prohibited the first act of intercourse due to the possibility that they would engage in a further act of intercourse, in which case they would violate the prohibition without fulfilling the mitzva. If they entered into levirate marriage nevertheless, they are considered fully married, and the woman's rival wives are exempt from *halitza*. However, the *yavam* is required to divorce her (Rambam *Sefer Nashim*, *Hilkhot Yibbum* 6:10).

He may not marry a sexually underdeveloped woman **לֹא יִשָּׂא אִילּוֹנִית – [aylonit]**: A man may not marry a sexually underdeveloped woman or any other woman incapable of bearing children, unless he has already fulfilled the mitzva of procreation or unless he has another wife who can bear children (Rambam *Sefer Nashim*, *Hilkhot Ishut* 15:7; *Shulḥan Arukh*, *Even HaEzer* 1:8).

Who is considered a *zona* – אִילּוֹנִית זֹנָה: A woman who had intercourse with a man she is prohibited from marrying, a gentile, or a slave is classified as a *zona* and is forbidden to a priest. However, if she was prohibited from marrying only a priest but permitted to marry other Jewish men, and she had intercourse with a priest, she is not classified as a *zona*. The category of *zona* also includes a female convert and a freed maidservant (Rambam *Sefer Kedusha*, *Hilkhot Issurei Bia* 18:2; *Shulḥan Arukh*, *Even HaEzer* 6:8).

וַיֵּשׁ לוֹ בָּנִים לֹא יִשָּׂא אִילָנוּת, שְׂהִיא
זוֹנָה הָאִמּוּרָה בְּתוֹרָה. דְּאִזְוָנָה כְּהֵנִי
הוּא דְּמִפְקָדִי, וַיִּשְׂרָאֵל לֹא מִפְקָדִי,
מִשּׁוּם הֵכִי קִתְּנִי כֹהֵן.

אָמַר רַב הוּנָא: מַאי טַעְמָא דְּרַבִּי
יְהוּדָה – דְּכָתִיב “אֲכָלוּ וְלֹא יִשְׁבְּעוּ
הוֹנוּ וְלֹא יִפְרְצוּ”, כָּל בִּינְיָה שְׂאִין בָּהּ
פִּרְצָה – אֵינָה אֶלָּא בְּעִילַת זְנוּת.

תִּנְיָא, רַבִּי אֱלִיעֶזֶר אָמַר: כֹּהֵן לֹא
יִשָּׂא אֶת הַקִּטְנָה. אָמַר לִיה רַב הִסְדָּא
לְרַבָּה: פּוֹק עֵינִי בָּהּ, דְּלֹאֲוֹרְתָא בְּעִי
לָהּ רַב הוּנָא מִינְךָ. נִפְקַע עֵינִי בָּהּ: רַבִּי
אֱלִיעֶזֶר סָבַר לָהּ כְּרַבִּי מֵאִיר, וְסָבַר
לָהּ כְּרַבִּי יְהוּדָה.

סָבַר לָהּ כְּרַבִּי מֵאִיר – דְּחִיִּישׁ
לְמַעֲוֵטָא, וְסָבַר לָהּ כְּרַבִּי יְהוּדָה –
דְּאָמַר: אִילָנוּת זוֹנָה הוּא.

וְכְרַבִּי מֵאִיר מִי סָבַר לָהּ? וְהִתְנַיָּא:
קִטְנָה וְקִטְנָה – לֹא חוֹלְצִין וְלֹא מִבְּמִין,
דְּבְרֵי רַבִּי מֵאִיר. אָמְרוּ לוֹ לְרַבִּי מֵאִיר:
יִפָּה אֲמֹרֶת שְׂאִין חוֹלְצִין “אִישׁ” כְּתִיב
בְּפִרְשָׁה, וּמִקְשִׁינָא אִשָּׁה לְאִישׁ. אֶלָּא
מַאי טַעְמָא אִין מִבְּמִין?

and he has children, he may not marry a sexually underdevel-
oped woman, as she is the *zona* about whom it is stated in the
Torah that a priest may not marry her. It is priests who were
commanded not to marry a *zona*, but Israelites were not com-
manded this. It is due to that reason that he taught the first
clause of the mishna about a priest, even though that *halakha*
applies equally to Israelites.

Rav Huna said: What is the reason for the opinion of Rabbi
Yehuda? As it is written: “And they shall eat, and not have
enough, they shall commit harlotry, and shall not increase”
(Hosea 4:10). He expounds the verse as follows: Any intercourse
that does not have the possibility to increase the population
because the woman is incapable of having children, is nothing
other than licentious sexual intercourse.

It is taught in a *baraita* that Rabbi Eliezer says: A priest may
not marry a minor. Rav Hisda said to Rabba: Go and investi-
gate this *halakha*, as in the evening Rav Huna will ask you the
reason for Rabbi Eliezer’s ruling. He went and investigated it,
and arrived at the following conclusion: Rabbi Eliezer holds in
accordance with the opinion of Rabbi Meir, and he also holds
in accordance with the opinion of Rabbi Yehuda.

Rabba explains: He holds in accordance with the opinion of
Rabbi Meir, who says that one must be concerned for the
minority. Rabbi Meir does not allow one to assume that an
unknown case is similar to the majority of cases. Consequently,
one must take into account the possibility that a minor will turn
out to be sexually underdeveloped, although this will not be
true of most individuals. And he also holds in accordance with
the opinion of Rabbi Yehuda, who said that a sexually under-
developed woman is a *zona* and therefore forbidden to a priest.

The Gemara challenges Rabba’s explanation: And does Rabbi
Eliezer hold in accordance with the opinion of Rabbi Meir?
Isn’t it taught in a *baraita*: A boy minor and a girl minor may
not perform *halitza*^h or levirate marriage; this is the statement
of Rabbi Meir. The Rabbis said to Rabbi Meir: You spoke
well when you said that they may not perform *halitza*, as the
term “man” is written in the passage of *halitza* (Deuteronomy
25:7–10), which limits the *halakha* to an adult male, and we com-
pare a woman to a manⁿ and therefore limit *halitza* to an adult
woman. However, what is the reason that they may not perform
levirate marriage?

HALAKHA

The *halitza* of a minor – תְּלִיצַת קָטָן: A minor boy cannot per-
form *halitza*. If he was nine years and one day old and had
intercourse with his *yevama*, he has partially acquired her and
she must wait until he matures, at which point he must either
marry her fully or perform *halitza* and also write her a bill of
divorce. Similarly, a girl may not perform *halitza* until she is
twelve years old and develops two pubic hairs, at which point
she is considered an adult (Rambam *Sefer Nashim*, *Hilkhot*
Yibbum 1:16–18; *Shulḥan Arukh*, *Even HaEzer* 167:3–4).

NOTES

וּמִקְשִׁינָא אִשָּׁה לְאִישׁ – according to the opinion of Rashi, this *halakha* is derived
Rashi explains that a minor girl may not perform
halitza is because the actions of a minor have no legal
standing. Later commentaries question the need for Rashi
to mention this: Since this has been derived from a verse,
why would further explanation be necessary? It seems that

according to the opinion of Rashi, this *halakha* is derived
from the verse only according to Rabbi Meir. However, the
Rabbis, who hold that a minor may perform levirate marriage,
do not exclude minors based upon the verse, and therefore
they must have another reason to exclude them from *halitza*
(see *Arukh LaNer*).

Who is considered a *zona* – איזוהי זונה: This dispute between the *tanna'im* relates to the meaning of this term with regard to the prohibition for a priest to marry a *zona* and with regard to the prohibition against sacrificing as an offering an animal used as payment for a *zona*. The word *zona* appears many times in the Bible, usually in reference to a prostitute. However, since these verses do not refer to halakhic topics, they cannot serve as proof of the halakhic meaning of the term, as it is possible that the term is borrowed from its precise legal meaning and used in other contexts. Therefore, it was necessary to clarify the precise legal definition of this term.

As the name *zona* implies – זונה בשמה: The commentaries explain that according to Rabbi Eliezer a *zona* is a married woman who committed adultery. The Meiri states that the word is understood as in the verse: "And they shall go astray [vezanu] after foreign gods" (Deuteronomy 31:16). In other words, she strays from her husband to another man.

Even if her husband went to make her drink, etc. – אפילו – הלך בעלה להשקותה וכו': Her status as a *zona* would be significant only if her husband died and she then wanted to marry a priest. However, even if she did not engage in intercourse with her husband once she became a *sota*, if he died before she drank the waters, she no longer drinks the waters and therefore has no way to prove her innocence. Consequently, she would be forbidden to a priest in any event, due to the possibility that she is a *zona* because she committed adultery. Rabbi Akiva Eiger explains that intercourse between the husband and wife on her way to drink the *sota* waters is still significant, as it would cause the woman to be a definite *zona*, not merely an uncertain one. Consequently, if a priest marries her he is liable by Torah law to receive lashes.

Without reason [mekhalei lev] – מכילי לב: According to the versions of the Gemara text recorded by the *ge'onim* and many of the early commentaries, this expression should read *mibeli lev*, i.e., something said without understanding or knowledge. The version of the text printed in the Vilna edition of the Talmud, which was also Rashi's version, is difficult to understand, but is interpreted in the same manner, in accordance with one of the connotations of the root *k-l-a*.

Is this Rabbi Eliezer's opinion and not that of the Rabbis – רבי אליעזר היא ולא רבנן: The Rashba asks how Rava can be certain that the Rabbis would agree with Rabbi Eliezer. Perhaps, according to the Rabbis, if the High Priest marries her he is not required to divorce her, in accordance with the reasoning mentioned earlier in the Gemara, that she would have become a non-virgin while married to him anyway. Rabbi Eliezer, on the other hand, holds that he would have to divorce her. The Rashba answers that since all agree that the High Priest may not marry her *ab initio*, the ruling prohibiting their marriage would not have been stated in the name of Rabbi Eliezer alone.

[אמר להם]: קטן – שמה ימצא
כרים, קטנה – שמה תמצא אילנות,
ונמצאו פוגעין בערוה, ותנא: קטנה –
מתניבמת ואינה חולצת, דברי רבי
אליעזר.

ורבי יהודה מי סבר לה? והתנא:
"זונה" זונה בשמה, דברי רבי אליעזר.
רבי עקיבא אומר: "זונה" זו מופקרת.
רבי מתאבן בן חרש אומר: אפילו הלך
בעלה להשקותה, ובא עליה בדרך –
עשאה זונה.

רבי יהודה אומר: "זונה" זו אילנות.
וחכמים אומרים: אין זונה אלא
גיוורת ומשוחרות ושנבעלה בעילת
זנות. רבי אליעזר אומר: פנוי הבא על
הפנויה שלא לשם אישות – עשאה
זונה.

אלא אמר רב אדא בר אבהו: הבא
בכהן גדול עסקינן, לאימת קמי לה –
לכי גדלה, בעולה היא.

אמר רבא: מכילי לב! אי דקדשה
אבוה – מה היא שענתא הוא דקני
לה, ואי דקדשה נפשה – הא רבי
אליעזר היא ולא רבנן!

אלא אמר רבא: לעולם בכהן הדיוט,
וחיישין שמה תפתה עליו. אי הכי
ישראל נמי! פתויי קטנה אונס הוא,
ואונס בישראל מישרא שרי.

Rabbi Meir said to them: A boy minor may not perform levirate marriage lest he be found to be a eunuch, i.e., one who is incapable of fathering children for his late brother. Similarly, a girl minor may not perform levirate marriage lest she be found to be sexually underdeveloped when she grows up. In either case, the mitzva of levirate marriage does not apply, and they turn out to have encountered a forbidden relative. And it was taught in a different *baraita*: A girl minor enters into levirate marriage but does not perform *halitza*; this is the statement of Rabbi Eliezer. This proves that Rabbi Eliezer disagrees with Rabbi Meir and is not concerned that a girl may turn out to be sexually underdeveloped.

The Gemara continues to challenge Rabba's explanation of Rabbi Eliezer's ruling. And does Rabbi Eliezer hold in accordance with the opinion of Rabbi Yehuda? Wasn't it taught in a *baraita*: The *zona*^N forbidden to a priest is as the name *zona* implies,^N i.e., a married woman who committed adultery; this is the statement of Rabbi Eliezer. Rabbi Akiva says: A *zona* is a woman, even an unmarried woman, who is available to all, i.e., she has intercourse with whoever is interested. Rabbi Matya ben Harash says: Even if her husband went to make her drink^N the bitter waters after she disregarded his warning not to seclude herself with a certain man, and he had intercourse with her on the way, he has thereby caused her to become a *zona* because she was forbidden to him at the time, despite the fact that she is his wife.

Rabbi Yehuda says: A *zona* is a sexually underdeveloped woman. And the Rabbis say: The term *zona* applies only to a female convert, a freed maidservant, and one who engaged in licentious sexual intercourse. Rabbi Elazar says: Even in the case of an unmarried man who had intercourse with an unmarried woman^N not for the purpose of marriage, he has thereby caused her to become a *zona*. This *baraita* proves that Rabbi Eliezer does not agree with Rabbi Yehuda.

Rather, Rav Adda bar Ahava said that Rabbi Eliezer's ruling that a priest may not marry a minor must be explained differently: Here we are dealing with a High Priest, and the problem is as follows: When can he acquire her as his wife? Only when she is grown up. However, if they had started living together as husband and wife when she was a minor, then when she is grown up and the marriage can legally take effect, she is already a non-virgin, and a High Priest is commanded to marry a virgin.

Rava said: This explanation is without reason.^N If her father betrothed her to her husband, her husband acquired her from that time, as betrothal that a father carries out on his daughter's behalf when she is a minor is effective by Torah law. And if the minor betrothed herself, is this Rabbi Eliezer's opinion and not that of the Rabbis?^N The Rabbis would certainly agree that a High Priest may not marry a minor under these circumstances.

Rather, Rava said: Actually, Rabbi Eliezer's ruling includes a common priest, and the reason he cannot marry a minor is that we are concerned lest she be seduced by another man, due to her tender age and naiveté, while married to him. The Gemara asks: If so, the same concern should apply to an Israelite also. The Gemara answers: The seduction of a minor is considered rape, and a rape victim remains permitted to her husband in a case where she is married to an Israelite, but not if she is married to a priest.

HALAKHA

An unmarried man who had intercourse with an unmarried woman – פנוי הבא על הפנויה: If an unmarried man had intercourse with an unmarried woman not for the purpose of marriage, she does not thereby become a *zona*, even if she has made herself available to all for licentious purposes. The

halakha is in accordance with the opinion of the Rabbis, that only the following women have the status of a *zona*: A female convert, a freed maidservant, and a woman who has had intercourse with a man she is not permitted to marry (Rambam *Sefer Kedusha*, *Hilkhot Issurei Bia* 18:2).

עֲרֵה לְבָנוֹ גִּדּוּל – A High Priest must marry a maiden – **עֲרֵה לְבָנוֹ גִּדּוּל**: A High Priest may not marry a minor or a grown woman. He must marry a maiden, i.e., a young woman in the first six months of adulthood (Rambam *Sefer Kedusha*, *Hilkhot Issurei Bia* 17:13).

A man may not neglect the mitzva to be fruitful and multiply – **לֹא יִבְטֵל אָדָם מִפְּרִיָּה וּרְבִיָּה**: A man may not neglect the mitzva to be fruitful and multiply. Rather, he must marry and have children. Even if his wife foregoes her conjugal rights, he may desist from fulfilling them only if he has already fathered children (Rambam *Sefer Nashim*, *Hilkhot Ishut* 15:1; *Shulḥan Arukh*, *Even HaEzer* 1:7).

וּבֵית הֵלֵל אוֹמְרִים – And Beit Hillel say, a male and a female – **וְכִרְ וְנִקְבָּה**: A man who has a daughter and son who are capable of bearing children has fulfilled the mitzva to be fruitful and multiply, in accordance with the opinion of Beit Hillel (Rambam *Sefer Nashim*, *Hilkhot Ishut* 15:4; *Shulḥan Arukh*, *Even HaEzer* 1:5).

אִסּוּר לְעֵמּוּד בְּלֹא – It is prohibited to remain without a wife – **אִשָּׁה**: Even if a man has fulfilled the mitzva to be fruitful and multiply, the Sages nevertheless said that he should not remain without a wife. If he can, he should marry a woman who can bear children. If he has not fathered children and is in need of money in order to marry a wife, he may even sell a Torah scroll for this purpose. If he already has children he may not sell a Torah scroll in order to marry, although some authorities permit him to do so even in this case (Rambam *Sefer Nashim*, *Hilkhot Ishut* 15:16; *Shulḥan Arukh*, *Even HaEzer* 1:8).

NOTES

אֵלֶּיךָ אִם כֵּן יֵשׁ לוֹ בָּנִים – *Tosafot* ask: why is it necessary to state this point if it was already made clear in the previous mishna? The *Arukh LaNer* contends that the precise formulation of this mishna adds a new element to what was stated earlier. The previous mishna said that one may not marry a sexually underdeveloped woman unless he has a wife and children. In this mishna, it states that one may not neglect the mitzva to procreate unless he has children. This emphasizes that unless one already has children, it is not sufficient to be married; one must actively try to have children.

בֵּית שַׁמַּי אוֹמְרִים וְכוּ' – Beit Shammai say, etc.: The commentaries dispute whether Beit Shammai and Beit Hillel insist on these combinations of children. Many early commentaries cite Rashi as holding that Beit Shammai agree that one fulfills the mitzva if he has a son and daughter, and merely add that one can also fulfill the mitzva by fathering two sons. Conversely, some hold that it is Beit Hillel who are lenient and hold that one fulfills the mitzva with a son and daughter or with two sons (*Rid*; *Tosefot Had Mikamma'eir*). This latter view is stated explicitly in the Jerusalem Talmud. However, most commentaries assume that according to Beit Hillel one must father a son and a daughter in order to fulfill the mitzva, and according to Beit Shammai one must father two sons.

אִסּוּר לְעֵמּוּד – בְּלֹא אִשָּׁה: On a basic level, the reason for this is so that one will not fall prey to sinful thoughts (*Nimmukei Yosef*). Alternatively, the verse indicates that mankind is complete only through marriage (see Maharsha).

רַב פַּפָּא אָמַר: בְּכֹהֵן גִּדּוּל, וְהָיָה תִּנְאָה – הוא, דִּתְנָא: "בְּתוּלָה" יָכוֹל קִטְנָה – תִּלְמוּד לומר "אִשָּׁה". אִי "אִשָּׁה" יָכוֹל בּוֹגֶרֶת – תִּלְמוּד לומר "בְּתוּלָה". הָא כִּיצַד? יִצְתָּה מִכָּל קִטְנוּת, וְלִכְלֹל בְּגִירוּת לֹא בְּאִתָּה.

רַב נַחֲמָן בְּרִי יִצְחָק אָמַר: הָאִי תִּנְאָה הוּא, דִּתְנָא "בְּתוּלָה" אֵין בְּתוּלָה אֱלָא נַעֲרָה, וְכֵן הוּא אוֹמֵר "וְהַנַּעֲרָה טוֹבַת מִרְאָה מֵאִד בְּתוּלָה".

רַבִּי אֱלֶעָזָר אוֹמֵר: פְּנוּי הָבֵא עַל הַפְּנוּיָה שְׂלֹא לְשֵׁם אִישׁוּת – עֲשָׂאָה זִוְנָה. אָמַר רַב עֲמֵרָם: אֵין הִלְכָּה פְּרִבִּי אֱלֶעָזָר.

מִתְנִי' לֹא יִבְטֵל אָדָם מִפְּרִיָּה וּרְבִיָּה אֱלָא אִם כֵּן יֵשׁ לוֹ בָּנִים. בֵּית שַׁמַּי אוֹמְרִים: שְׁנֵי זָכָרִים, וּבֵית הֵלֵל אוֹמְרִים: זָכָר וְנִקְבָּה, שְׁנֵי זָכָרִים וְנִקְבָּה בְּרָאָם.

גַּמ' הָאִי יֵשׁ לוֹ בָּנִים, מִפְּרִיָּה וּרְבִיָּה – בְּטִיל, מֵאִשָּׁה – לֹא בְּטִיל. מְסִייעָא לִיה לְרַב נַחֲמָן אָמַר שְׂמוּאֵל, דָּאֵמַר: אֵף עַל פִּי שֵׁשׁ לוֹ לְאָדָם כְּמָה בָּנִים – אִסּוּר לְעֵמּוּד בְּלֹא אִשָּׁה, שְׁנֵי זָכָרִים לֹא טוֹב הֵיוֹת הָאָדָם לְבַדּוֹ.

וְאִיכָא דְאָמְרִי: הָאִי יֵשׁ לוֹ בָּנִים – בְּטִיל מִפְּרִיָּה וּרְבִיָּה, וּבְטִיל נְמִי מֵאִשָּׁה. נִימָא תִּיהִי תִּיּוּבָתָא דְרַב נַחֲמָן אָמַר שְׂמוּאֵל! לֹא. אֵין לוֹ בָּנִים – נוֹשָׂא אִשָּׁה בֵּת בָּנִים, יֵשׁ לוֹ בָּנִים – נוֹשָׂא אִשָּׁה דְלֹא בֵּת בָּנִים. נִפְקָא מִיָּנָה – לְמַבּוּר סִפּוֹר תּוֹרָה בְּשָׁבִיל בָּנִים.

"בֵּית שַׁמַּי אוֹמְרִים שְׁנֵי זָכָרִים. מֵאִי טַעֲמֵיהוֹ דְּבֵית שַׁמַּי – יִלְפִין מִמֶּשֶׁה, דְּכָתִיב "בְּנֵי מֹשֶׁה גֵרְשׁוֹם וְאֶלְיָזָר", וּבֵית הֵלֵל – יִלְפִין מִבְּרִייתוֹ שֶׁל עֹזֶרֶם. וּבֵית שַׁמַּי, לִילְפִי מִבְּרִייתוֹ שֶׁל עֹזֶרֶם! אֵין דִּנְן אֶפְשָׁר

Rav Pappa said: Rabbi Eliezer's ruling applies specifically to a High Priest, and it is the opinion of this *tanna*, as it is taught in a *baraita* that when the verse states: "A virgin of his own people shall he take for a wife [*isha*]" (Leviticus 21:14), one might have thought a High Priest may marry a minor; the verse therefore states that he must marry a woman [*isha*], i.e., an adult. If he must marry a woman, one might have thought it means a grown woman. The verse therefore states that he must marry a virgin, which excludes a grown woman, who is considered only a partial virgin because her hymen is not fully intact. How so? He must marry a woman who has left the class of minority but who has not yet reached the class of grown womanhood, i.e., he must marry a maiden.^H

Rav Nahman bar Yitzhak said: It is the opinion of this *tanna*, as it is taught in a *baraita*: The High Priest must marry a virgin, and the term virgin refers only to a maiden. And a verse similarly states: "And the maiden was very fair to look upon, a virgin, and no man had known her" (Genesis 24:16).

The *baraita* cited above mentioned that Rabbi Elazar says: In the case of an unmarried man who had intercourse with an unmarried woman not for the purpose of marriage, he has caused her to become a *zona*. Rav Amram said: The *halakha* is not in accordance with the opinion of Rabbi Elazar.

MISHNA A man may not neglect the mitzva to be fruitful and multiply^H unless he already has children.^N Beit Shammai say:^N One fulfills this mitzva with two males, and Beit Hillel say: A male and a female,^H as it is stated: "Male and female He created them" (Genesis 5:2).

GEMARA The Gemara infers from the mishna's wording that if he already has children he may neglect the mitzva to be fruitful and multiply, but he may not neglect the mitzva to have a wife. This supports what Rav Nahman said in the name of Shmuel, who said: Even if a man has several children, it is prohibited to remain without a wife,^{HN} as it is stated: "It is not good that the man should be alone" (Genesis 2:18).

And some say a different version of the inference from the mishna: If he already has children, he may neglect the mitzva to be fruitful and multiply and he may also neglect the mitzva to have a wife. Shall we say this is a conclusive refutation of what Rav Nahman said that Shmuel said? The Gemara responds: No, it means that if he does not have children he must marry a woman capable of bearing children, whereas if he has children he may marry a woman who is not capable of bearing children. A practical difference between a man who has children and one who does not is whether he is permitted to sell a Torah scroll in order to marry a woman capable of having children. This is permitted only for one who does not yet have children.

S The mishna states that Beit Shammai say that one fulfills the mitzva to be fruitful and multiply when he has two males. The Gemara asks: What is the reason of Beit Shammai? The Gemara answers: We learn this from Moses as it is written: "The sons of Moses, Gershom and Eliezer" (1 Chronicles 23:15). Since Moses did not have any other children, two sons must be sufficient to fulfill the mitzva. And the reason of Beit Hillel is that we learn from the creation of the world, as mankind was created male and female. The Gemara asks: And Beit Shammai, let them learn from the creation of the world as well. The Gemara answers that Beit Shammai could say to you: We do not derive a case where it is possible

NOTES

משה מדעתה – Moses acted based on his own perception – *Tosafot*, *Tosefot HaRosh*, and other commentaries attempt to prove that Moses' *a fortiori* inference with regard to separating from his wife is not irrefutable. Had it been a perfectly valid argument, the Gemara would not have said that he acted based on his own perception, as *a fortiori* inferences are a valid method of deriving *halakha*, and *halakhot* derived in this manner have the same status as those written explicitly in the Torah itself. The Gemara's point here is that the reason it was permitted for Moses to separate from his wife was not because he had already fulfilled the mitzva to be fruitful and multiply. His case was exceptional, and therefore it cannot serve as halakhic precedent with regard to the definition of the mitzva to be fruitful and multiply (Meiri; Rabbi Avraham min HaHar).

He separated from his wife – *פירש מן האשה*: *Tosafot* ask how the Sages knew that Moses separated from his wife on his own accord; perhaps he did so only once God commanded him: "And you, stand here with Me" (Deuteronomy 5:27). The Ramban (*Shabbat* 87a) explains that this verse is stated after the revelation at Sinai. If God had wanted Moses to separate from his wife but Moses did not do so on his own, God would not have waited until after the revelation at Sinai to issue His command; He would have issued the command when He began to communicate regularly with Moses.

As it is written, The first tablets that you broke [*asher shibbarta*] – *דכתיב, אשר שברת*: The commentaries are puzzled by this proof, as the word *asher* appears many times in the Torah, and it is not generally understood to indicate approval of an action that a particular individual performed. The Maharsha explains that the phrase "that you broke" is entirely superfluous, as it had already been stated that Moses broke the tablets. Therefore, it must be taken to mean that God affirmed Moses' decision. The Ramban and the Ritva maintain (*Shabbat* 87a) that the proof that God approved of Moses' actions is from the verse in Deuteronomy (10:2) that states *asher shibbarta*, and continues: "And you shall place them in the Ark," which is understood to mean that the broken tablets were placed in the Ark together with the second, whole tablets. The fact that God commanded Moses to preserve the broken tablets demonstrates that He approved of his actions.

מִשְׁאֵי אֶפְשָׁר. וּבֵית הַלֵּל נִמְי, לִילְפוּ מִמִּשְׁה! אֲמַרִי לָךְ: מִשְׁה מִדַּעְתָּהּ הוּא דַּעְבָּד. דְּתַנֵּינָא: שְׁלֹשָׁה דְּבָרִים עָשָׂה מִשְׁה מִדַּעְתּוֹ, וְהִסְכִּימָה דַּעְתּוֹ לְדַעַת הַמָּקוֹם: פִּירֵשׁ מִן הָאִשָּׁה, וְשִׁיבֵר הַלּוּחוֹת, וְהוֹסִיף יוֹם אֶחָד.

פִּירֵשׁ מִן הָאִשָּׁה, מֵאֵי דְרִשׁ? אָמַר: וּמָה יִשְׂרָאֵל שְׁלֹא דְבִרָה עִמָּהּ שְׂכִינָה אֵלָּא לְפִי שְׁעָה, וְקָבַע לָהֶם זְמַן – אָמְרָה תּוֹרָה "אַל תִּגְשׁוּ אֶל אִשָּׁה", אֲנִי שְׂמִינִיחָד לְדְבוֹר בְּכָל שְׁעָה וְשְׁעָה, וְלֹא קָבַע לִי זְמַן – עַל אַחַת בְּמָה וּבְמָה. וְהִסְכִּימָה דַּעְתּוֹ לְדַעַת הַמָּקוֹם, שְׁנֵאמַר "לָךְ אָמַר לָהֶם שׁוּבוּ לָכֶם לְאֹהֲלֵיכֶם וְאִתָּהּ פֹּה עֹמֵד עֲמָדִי".

שִׁיבֵר אֶת הַלּוּחוֹת, מֵאֵי דְרִשׁ? אָמַר: וּמָה פֶּסַח, שְׁהוּא אֶחָד מִשֵּׁשׁ מֵאוֹת וּשְׁלֹשׁ עָשָׂר מִצְוֹת, אָמְרָה תּוֹרָה "כָּל בֶּן נֹכֵר לֹא יֹאכַל בּוֹ", הַתּוֹרָה בּוֹלָה וְיִשְׂרָאֵל מְשׁוּמְדִים – עַל אַחַת בְּמָה וּבְמָה.

וְהִסְכִּימָה דַּעְתּוֹ לְדַעַת הַמָּקוֹם, דְּכִתִּיב "אֲשֶׁר שִׁבַּרְתָּ", וְאָמַר רִישׁ לְקִישׁ: אָמַר לִיה הַקָּדוֹשׁ בְּרוּךְ הוּא לְמִשְׁה: יִישַׁר בְּחִיךְ שִׁשְׁבַּרְתָּ.

הוֹסִיף יוֹם אֶחָד מִדַּעְתּוֹ, מֵאֵי דְרִשׁ? דְּכִתִּיב "וְקִדְשְׁתֶּם הַיּוֹם וּמָחָר" הַיּוֹם בְּמָחָר, מֵה מָחָר לִילּוֹ עֲמוֹ – אִף הַיּוֹם לִילּוֹ עֲמוֹ. וְלִילָה דְּהֵאִידָנָא נִפְק לִיה. שְׂמַע מִינָּה: תִּרִי יוֹמִי, לְבֵר מִהֵאִידָנָא. וְהִסְכִּימָה דַּעְתּוֹ לְדַעַת הַמָּקוֹם – דְּלֹא שְׂרִיא שְׂכִינָה עַד שְׁבַתָּא.

from one that is **not possible**. Mankind was initially created with a male and female because otherwise reproduction would not have been possible. However, this fact cannot serve as a source that the mitzva to be fruitful and multiply is fulfilled only once one has a son and a daughter. The Gemara asks: **And Beit Hillel, let them also learn from Moses**. Beit Hillel could say to you: **Moses acted based on his own perception**^N when he separated from his wife, but this does not mean that a man is permitted to neglect the mitzva to be fruitful and multiply after fathering two males, as it is taught in a *baraita*: **Moses did three things based on his own perception, and his perception agreed with the perception of the Omnipresent: He separated from his wife,^N he broke the tablets, and he added one day to the days of separation before the revelation at Sinai.**

The Gemara clarifies: When Moses **separated from his wife** after the revelation at Sinai, **what did he interpret** that led him to do so? **He said: If in the case of Israel, with whom the Divine Presence spoke only temporarily and for whom God set a specific time for revelation, the Torah stated: "Do not approach a woman"** (Exodus 19:15), **I, Moses, who am set aside for divine speech all the time and for whom God did not set a specific time, all the more so I must separate from my wife. And his perception agreed with the perception of the Omnipresent, as it is stated after the revelation at Sinai: "Go say to them: Return to your tents; and you, stand here with Me"** (Deuteronomy 5:26–27). This indicates that whereas others could return to their homes and normal married life after the revelation at Sinai, Moses was to stay with God and not return to his wife.

Moses **broke the tablets** following the sin of the Golden Calf. **What did he interpret** that led him to do so? **Moses said: If in the case of the Paschal lamb, which is only one of 613 mitzvot, the Torah states: "No alien shall eat of it"** (Exodus 12:43), excluding not only gentiles but apostate Jews as well, then here, in the case of the Golden Calf, where the tablets represent **the entire Torah** and where the **Jewish people** are apostates, as they are worshipping the calf, **all the more so** must they be excluded from receiving them.

And his perception agreed with the perception of the Omnipresent, as it is written: "The first tablets that you broke [*asher shibbarta*]"^N (Exodus 34:1), and Reish Lakish said: The word *asher* is an allusion to the fact that the Holy One, Blessed be He, said to Moses: **May your strength be true** [*yishar kohakha*] that you broke the tablets.

When Moses **added one day** to the days of separation before the revelation at Sinai **based on his own perception, what did he interpret** that led him to do so? He reasoned that since it is written: "And sanctify them today and tomorrow" (Exodus 19:10), the juxtaposition of the words "today" and "tomorrow" teaches that **today is like tomorrow: Just as tomorrow** the men and women will separate for that day **and the night** preceding it, **so too, today** requires separation for the day **and the night** preceding it. Since God spoke to him in the morning, **and the night of that day** already passed, Moses said: **Conclude from this that separation must be in effect for two days aside from now**, i.e., not including the day of the command. Therefore, he extended the mitzva of separation by one day. **And his perception agreed with the perception of the Omnipresent, as the Divine Presence did not rest upon Mount Sinai until Shabbat morning, as Moses had determined.**

כִּי שֵׁת לִי – For God has appointed me another seed – **אֱלֹהִים זָרַע אַחֵר**: In order to prove that one must have two sons and two daughters this verse is also necessary. If only the first verse had been written, one might have thought that the Torah was merely relating how many children Adam and Eve had. This verse, however, indicates that it was necessary for them to have Seth as a replacement for Abel. Furthermore, one might have thought that one must father two daughters but that one son is sufficient, as a single male can father children through multiple females. The Gemara therefore cites a verse indicating that Adam required an additional son (*Hokhmah Shlomo*; see Maharsha).

הָיוּ לוֹ בָּנִים – If a man had children when he was a gentile – **בְּגוּיּוֹתוֹ**: According to the Rambam and other commentaries, Rabbi Yohanan stated his opinion only in a case where the children also converted, so that the father has Jewish offspring. Others, however, maintain that he has fulfilled the mitzva even if his children do not convert (Maharil; see *Tosafot*). This dispute depends upon the meaning of the Gemara's statement that gentiles are subject to the mitzva to be fruitful and multiply.

Gentiles are also subject to the mitzva to be fruitful and multiply – **בְּנֵי פְרִיָּה וּרְבִיָּה מִנְהוּ**: Some commentaries cite this statement as proof that gentiles are commanded to be fruitful and multiply. This is indicated by the Torah as well, as the command to be fruitful and multiply was issued to Adam (Genesis 1:28) and Noah (Genesis 9:1). Others disagree, pointing to the fact that the mitzva to be fruitful and multiply is not listed as one of the seven Noahide mitzvot. This is consistent with the general principle that any mitzva mentioned in the Torah that is not repeated in Deuteronomy was given only to the Jewish people. They interpret the Gemara here as stating that gentiles fulfill the will of God by having children, although they do not fulfill an actual mitzva, as God created the world for it to be inhabited, and therefore it is praiseworthy for them to have children (see Meiri).

HALAKHA

הָיוּ לוֹ בָּנִים – If a man had children when he was a gentile – **בְּגוּיּוֹתוֹ**: If a gentile had children and subsequently converted to Judaism, he has fulfilled the mitzva to be fruitful and multiply through them if his children converted as well, in accordance with the opinion of Rabbi Yohanan. According to many authorities, he has fulfilled the mitzva even if his children did not convert (Rambam *Sefer Nashim, Hilkhot Ishut* 15:6; *Shulhan Arukh, Even HaEzer* 1:7; Vilna Gaon).

בְּבוֹר לְנַחֲלָה – A firstborn with regard to inheritance – If a gentile who already had children converted and then fathered another son, the latter is not considered a firstborn with regard to the *halakhot* of inheritance, in accordance with the opinion of Rabbi Yohanan (Rambam *Sefer Mishpatim, Hilkhot Nahalot* 2:12; *Shulhan Arukh, Hoshen Mishpat* 277:9).

BACKGROUND

בְּבוֹר לְנַחֲלָה – A firstborn with regard to inheritance – A father's firstborn son receives an extra share in the inheritance (Deuteronomy 21:17). This privilege is granted even if he is not the mother's firstborn son and even if he is illegitimate. The firstborn son receives a share twice as great as that received by each of the other sons. This double share is, however, given only from property actually possessed by the estate at the time of the father's death, not from property accruing to the estate later. The latter property is divided equally among the heirs.

תַּנְיָא, רַבִּי נָתָן אוֹמֵר, בֵּית שְׁמַאי אוֹמְרִים: שְׁנֵי זָכָרִים וּשְׁתֵּי נְקֻבוֹת, וּבֵית הֵלֵל אוֹמְרִים: זָכָר וְנִקְבָּה.

אָמַר רַב הוֹנָא: מָאִי טַעְמָא דְּרַבִּי נָתָן אֲלִיבָא דְּבֵית שְׁמַאי – דְּכַתִּיב "וְתוֹסֵף לָלֶדֶת אֶת אָחִיו אֶת הָבֶל" הֵבֶל וְאָחוֹתוֹ, קִיּוֹן וְאָחוֹתוֹ. וְכַתִּיב "כִּי שֵׁת לִי אֱלֹהִים זָרַע אַחֵר תַּחַת הָבֶל כִּי הָרָגוּ קָיִן". וְרַבִּנּוּ אוֹדִינִי הוּא דְּקָא מוֹדִית.

תַּנְיָא אִידְךָ, רַבִּי נָתָן אוֹמֵר: בֵּית שְׁמַאי אוֹמְרִים: זָכָר וְנִקְבָּה, וּבֵית הֵלֵל אוֹמְרִים: אוֹ זָכָר אוֹ נְקֻבָּה. אָמַר רַבָּא מֵאִי טַעְמָא דְּרַבִּי נָתָן אֲלִיבָא דְּבֵית הֵלֵל – שְׁנָאֵמַר "לֹא תְהִי בְרָאָה לְשִׁבְתָּ יִצְחָר" וְהָא עֲבַד לָהּ שְׁבֻתָּה.

אֵיתִימַר, הָיוּ לוֹ בָּנִים בְּגוּיּוֹתוֹ וְנִתְגַּיֵּיר, רַבִּי יוֹחָנָן אָמַר: קַיָּים פְּרִיָּה וּרְבִיָּה, וְרִישׁ לָקִישׁ אָמַר: לֹא קַיָּים פְּרִיָּה וּרְבִיָּה. רַבִּי יוֹחָנָן אָמַר: קַיָּים פְּרִיָּה וּרְבִיָּה, דְּהָא הוּא לִיָּהּ. וְרִישׁ לָקִישׁ אָמַר: לֹא קַיָּים פְּרִיָּה וּרְבִיָּה – גַּר שְׁנִתְגַּיֵּיר כְּקָטָן שְׁנוּלֵד דְּמִי.

וְאוֹדוֹ לְטַעְמִייהוּ, דְּאֵיתִימַר, הָיוּ לוֹ בָּנִים בְּגוּיּוֹתוֹ וְנִתְגַּיֵּיר, רַבִּי יוֹחָנָן אָמַר: אֵין לוֹ בְּבוֹר לְנַחֲלָה, דְּהָא הוּא לִיָּהּ "וְרִישׁ לָקִישׁ אָמַר: יֵשׁ לוֹ בְּבוֹר לְנַחֲלָה, גַּר שְׁנִתְגַּיֵּיר כְּקָטָן שְׁנוּלֵד דְּמִי.

וְצִירְכָא, דְּאִי אֲשַׁמְעִין בְּהֵיא קְמִיִּיתָא – בְּהֵיא קְאָמַר רַבִּי יוֹחָנָן, מִשּׁוּם דְּמַעֲיָקְרָא נִמְי בְּנֵי פְרִיָּה וּרְבִיָּה נִינְהוּ, אֲבָל לְעִנְיַן נַחֲלָה, דְּלֹא בְנֵי נַחֲלָה נִינְהוּ, אִימָא מוֹדִי לִיָּהּ לְרִישׁ לָקִישׁ.

וְאִי אֵיתִימַר בְּהָא – בְּהָא קְאָמַר רִישׁ לָקִישׁ, אֲבָל בְּהֵיא – אִימָא מוֹדִי לִיָּהּ לְרַבִּי יוֹחָנָן, צִירְכָא.

It is taught in a *baraita* that Rabbi Natan says that Beit Shammai say: The mitzva to be fruitful and multiply is fulfilled with two males and two females. And Beit Hillel say: A male and a female.

Rav Huna said: What is the reason of Rabbi Natan, in accordance with the opinion of Beit Shammai? It is as it is written: "And again she bore his brother [*et ahiv*] Abel [*et Hevel*]" (Genesis 4:2). The use of the superfluous word "et" indicates that she gave birth to Abel and his sister, in addition to Cain and his sister. And it states: "For God has appointed me another seed^N instead of Abel; for Cain slew him" (Genesis 4:25). This indicates that one must have at least four children. And the Rabbis, how do they understand this verse? In their opinion, Eve was thanking God for granting her another child, but one is not obligated to have four children.

It is taught in another *baraita* that Rabbi Natan says that Beit Shammai say: The mitzva to be fruitful and multiply is fulfilled with a male and a female. And Beit Hillel say: Either a male or a female. Rava said: What is the reason of Rabbi Natan in accordance with the opinion of Beit Hillel? It is as it is stated: "He did not create it a waste; He formed it to be inhabited" (Isaiah 45:18), and one has made the earth inhabited to a greater degree by adding even one child to the world.

It was stated that *amora'im* disagreed over the following issue: If a man had children when he was a gentile^{NH} and he subsequently converted, Rabbi Yohanan said: He has already fulfilled the mitzva to be fruitful and multiply, and Reish Lakish said: He has not fulfilled the mitzva to be fruitful and multiply. Rabbi Yohanan said he has fulfilled the mitzva to be fruitful and multiply, as he already had children. And Reish Lakish said he has not fulfilled the mitzva to be fruitful and multiply, as the legal status of a convert who just converted is like that of a child just born, and it is considered as though he did not have children.

The Gemara comments: And they follow their regular line of reasoning, as it was stated: If one had children when he was a gentile and he subsequently converted, Rabbi Yohanan said: He does not have a firstborn with regard to inheritance,^{H8} i.e., the first son born to him after his conversion does not inherit a double portion, as this man already had "the first of his strength" (Deuteronomy 21:17), the Torah's description of the firstborn in this context, before he converted. And Reish Lakish said: He does have a firstborn with regard to inheritance, as the legal status of a convert who just converted is like that of a child just born.

The Gemara adds: And it is necessary to state their opinions in both cases. As, had it only been taught to us with regard to that first case of the mitzva to be fruitful and multiply, one might have said that it is only in that case that Rabbi Yohanan said his opinion, because from the outset, gentiles are also subject to the mitzva to be fruitful and multiply.^N However, with regard to inheritance, since they are not subject to the *halakhot* of inheritance, one might say that Rabbi Yohanan concedes to Reish Lakish.

And conversely, if their dispute was stated only with regard to this issue of inheritance, I would have said that it is only in this case that Reish Lakish said his opinion, as the *halakhot* of inheritance do not apply to gentiles. But with regard to that case, the mitzva to be fruitful and multiply, one might say that he concedes to Rabbi Yohanan. Consequently, it is necessary for both disputes to be recorded.

A Canaanite slave, that he does not have family lineage – **עֶבֶד שְׂאִין לוֹ חַיִּים**: If a Canaanite slave and his children were freed and thereby become Jewish, the father has not fulfilled the mitzva to be fruitful and multiply because his children are not halakhically recognized as his offspring. Similarly, if a Jew fathers a son from a Canaanite maidservant, the boy is not considered his son, and therefore the first son born to him from a Jewish mother is considered his firstborn with regard to inheritance (Rambam *Sefer Nashim*, *Hilkhot Ishut* 15:6 and *Sefer Mishpatim*, *Hilkhot Nahalot* 2:12; *Shulhan Arukh*, *Even HaEzer* 1:7 and *Hoshen Mishpat* 277:9).

If a man had children and they died – **הָיוּ לוֹ בָּנִים וּמָתוּ**: If a man's children died without leaving descendants, he has not fulfilled the mitzva to be fruitful and multiply, in accordance with the opinion of Rabbi Yohanan (Rambam *Sefer Nashim*, *Hilkhot Ishut* 15:5; *Shulhan Arukh*, *Even HaEzer* 1:6).

אֵיתִיבִיהּ רַבִּי יוֹחָנָן לְרִישׁ לָקִישׁ: "בְּעֵת הָהִיא שָׁלַח בְּרָאדָךְ בְּלָאָדָן בֶּן בְּלָאָדָן מֶלֶךְ בָּבֶל" וְגו'! אָמַר לֵיהּ: בְּגוּיִיתָ – אֵיתָ לָהּ חַיִּים, נִתְגַּיֵּירוּ – לֵית לָהּ חַיִּים.

אָמַר רַב: הַכֹּל מוֹדִין בְּעֶבֶד שְׂאִין לוֹ חַיִּים, דְּכָתִיב "שְׂבוּ לָכֶם פֶּה עִם הַחֲמוֹר", עִם הַדּוֹמָה לַחֲמוֹר. מִיִּתְיָב: "וְלִצִּיבָא חֲמִשָּׁה עָשָׂר בָּנִים וְעֶשְׂרִים עֲבָדִים!" אָמַר רַב אֲחָא בְּרַיָּא: "כִּפְרָן בֶּן בְּקָר".

אִי הָבִי, הֲכָא נָמִי! שְׂאִין הָתֵם דִּיחֲסִינְהוּ בְּשִׁמְיֵיהּ וּבְשִׁמְאָ דְּאֲבוּהוֹן, וְהָכָא לֹא מְפָרֵשׁ. וְאִיבְעִית אִימָא: יִחֲסִינְהוּ בְּדוּכְתָא אַחֲרִיתִי בְּאֲבוּהוֹן וּבְאֲבָא דְּאֲבוּהוֹן, דְּכָתִיב "וַיִּשְׁלַח הַמֶּלֶךְ אֲסָא אֶל בֶּן הָדָד בֶּן טַבְרִימּוֹן בֶּן חֲזִיוִן מֶלֶךְ אֲרָם הַיּוֹשֵׁב בְּדַמְשֶׁק לֵאמֹר".

אֵיתָמַר, הָיוּ לוֹ בָּנִים וּמָתוּ, רַב הוֹנָא אָמַר: קָיִים פְּרִיָּה וּרְבִיָּה, רַבִּי יוֹחָנָן אָמַר: לֹא קָיִים.

רַב הוֹנָא אָמַר: קָיִים – מְשׁוּם דְּרַב אֲסִי, דְּאָמַר רַב אֲסִי: אֵין בֶּן דָּוִד בָּא עַד שֶׁיִּכְלֹוּ כָּל נְשָׁמוֹת שְׂבָגוּף, שְׁנָאֵמַר "כִּי רוּחַ מִלְּפָנֵי יַעֲקֹב" וְגו'. וְרַבִּי יוֹחָנָן אָמַר: לֹא קָיִים פְּרִיָּה וּרְבִיָּה, "לְשֶׁבֶת יִצְחָר" בְּעֵינֵן – וְהָא לֵיכָא.

Rabbi Yohanan raises an objection to Reish Lakish based upon the verse: "At that time Berodach-baladan, son of Baladan, king of Babylon, sent a letter" (II Kings 20:12), which indicates that gentiles are considered to be the children of their parents. Therefore, when they convert, they should already have fulfilled the mitzva to be fruitful and multiply. Reish Lakish said to Rabbi Yohanan: When they are gentiles they do have family lineage, but when they convert they do not have lineage, as they now belong to the family of the Jewish people and their previous lineage is disregarded.

Rav said: Everyone agrees with regard to a Canaanite slave, that he does not have lineage,¹ as it is written that Abraham said to his slaves: "Remain here with the donkey" (Genesis 22:5). This verse is interpreted to mean that they are a nation comparable to a donkey,² which has no lineage. The Gemara raises an objection based upon a verse pertaining to Jonathan's Canaanite slave: "And Ziba had fifteen sons and twenty servants" (II Samuel 9:10), which indicates that a slave's sons are in fact considered his sons. Rav Aha bar Ya'akov said: This is like the expression: A bullock, son of a bull. The word son in this context merely denotes progeny, not lineage.

The Gemara asks: If so, here too, with regard to gentiles, there is no proof from the verse about Berodach-baladan that they have family lineage. The Gemara answers: There it is different, as the Bible identified him by his name and by his father's name,³ thereby emphasizing the family connection. But here, it does not specify the names of Ziba's children. And if you wish, say instead that the Bible identified gentiles elsewhere by their father and their father's father, as it is written: "And King Asa sent them to Ben-hadad, son of Tabrimmon, son of Hezion, king of Aram, who dwelled in Damascus, saying" (I Kings 15:18). This indicates that there is lineage for gentiles.

It was stated that *amora'im* disagreed over the following issue: If a man had children and they died,⁴ Rav Huna said: He has fulfilled the mitzva to be fruitful and multiply through these children. Rabbi Yohanan said: He has not fulfilled the mitzva.

The Gemara clarifies the reasons for their opinions: Rav Huna said he has fulfilled the mitzva due to a statement of Rav Asi, as Rav Asi said that the reason for this mitzva is that the Messiah, son of David, will not come until all the souls of the body⁵ have been finished, i.e., until all souls that are destined to inhabit physical bodies will do so, as it is stated: "For the spirit that enwraps itself is from Me, and the souls that I have made" (Isaiah 57:16). Consequently, once a child has been born and his soul has entered a body the mitzva has been fulfilled, even if the child subsequently dies. And Rabbi Yohanan said he has not fulfilled the mitzva, as we require "He formed it to be inhabited" (Isaiah 45:18), and this is not fulfilled when the children have passed away and no longer inhabit the earth.

מִיִּתְיָבִי

The Gemara raises an objection with regard to the opinion of Rav Huna based upon the following *baraita*:

NOTES

1. עם הדומה לחמור – **עַם הַדּוֹמָה לַחֲמוֹר**: A nation [*am*] comparable to a donkey – This interpretation is based on reading the word "with [*im*]" as though it were vocalized *am*, meaning nation. Furthermore, the Sages often interpret the word *im* in the Bible as indicating that a comparison can be drawn between two items (*Gilyonei HaShas*; see *Kiddushin* 76b).

2. בְּשִׁמְיֵיהּ וּבְשִׁמְאָ – **בְּשִׁמְיֵיהּ וּבְשִׁמְאָ**: By his name and by his father's name – The *Keren Ora* asks: Why does the Gemara choose the particular example of Berodach-baladan when there are many

other instances where the Torah mentions the name of a gentile and his father, e.g., the list of Edomite kings in Genesis, chapter 37? The Ritva notes that this verse does not merely mention the name of Berodach-baladan's father, it demonstrates that his father's name was incorporated into his own name. It may be explained that this fact emphasizes the significance of the father-son relationship.

3. נְשָׁמוֹת שְׂבָגוּף – **נְשָׁמוֹת שְׂבָגוּף**: See NOTES on 63b for an explanation of this term.

בְּנֵי בָּנִים הָרִי הֵן כְּבָנִים! כִּי תִנָּא
הֵיאָה – לְהַשְׁלִים.

מִיִּתְבִּי: בְּנֵי בָּנִים הָרִי הֵם כְּבָנִים,
מֵת אֶחָד מֵהֶם, אוֹ שְׁנַמְצָא סְרִיס,
לֹא קָנִים פְּרִיָּה וְרִבְיָה. תִּיּוֹבְתָא דְרַב
הוּנָא! תִּיּוֹבְתָא.

“בְּנֵי בָּנִים הָרִי הֵם כְּבָנִים.” סָבַר אַבְי
לְמִימַר: בְּרָא לְבָרָא וּבִרְתָּא לְבִרְתָּא,
וְכָל שְׁכֵן בְּרָא לְבִרְתָּא. אֲבָל בִּרְתָּא
לְבָרָא – לֹא. אָמַר לִיה רַבָּא: “לְשֶׁטֶת
יֵצֵה” בְּעֵינָא, וְהָא אִיכָא.

דְּכֹלֵי עֲלָמָא מִיֵּהֶת תִּרִי מַחֲד לֹא.
וְלֹא! וְהָא אִמְרִי לִיה רַבֵּן לְרַב שֶׁשֶׁת:
נְסִיב אִיתָתָא וְאוֹלִיד בְּנִי! וְאִמְרִי לֵהּ:
בְּנֵי בִרְתִּי בְנֵי נִינְהוּ.

הָתָם דְּחֻוֵי קַמְדְּחִי לֵהּ, דְּרַב שֶׁשֶׁת
אֵיעָקַר מִפְּרִיקָה דְרַב הוּנָא.

אָמַר לִיה רַבָּא לְרַבָּא בִּר מַאֲרִי: מָנָא
הָא מִלְּתָא דְאִמְרִי רַבֵּן בְּנֵי בָּנִים הָרִי
הֵן כְּבָנִים? אִילִימָא מִדְּכִתִּיב “הַבָּנוֹת
בָּנוֹתֵי וְהַבָּנִים בָּנֵי” אֶלָּא מִעֲתָה,
“וְהָעֶזְרָאן צֶאֱנִי” הֲכִי נִמְי? אֶלָּא – דְּקִנִּית
מִינָא, הֲכָא נִמְי – דְּקִנִּית מִינָא!

Grandchildren are considered like children.^h This indicates that if one's children have passed away, he has fulfilled the mitzva to be fruitful and multiply only if they had children of their own, as they are considered like his own children. The Gemara responds: **When that baraita is taught** it is with regard to **completing** the required number of children, e.g., if he had only a son, but his son had a daughter, he has fulfilled the mitzva to be fruitful and multiply.

The Gemara raises an objection to the opinion of Rav Huna from another *baraita*: **Grandchildren are considered like children.** If one of a man's children died or was discovered to be a eunuch,^h the father has **not fulfilled** the mitzva to be fruitful and multiply. This directly contradicts Rav Huna's statement that one fulfills the mitzva even if his children die. The Gemara concludes: **The refutation of the opinion of Rav Huna is indeed a conclusive refutation.**

It was taught in the *baraita* that **grandchildren are considered like children.** Abaye thought to sayⁿ that if one's children die, he fulfills the mitzva to be fruitful and multiply through grandchildren, provided a son was born to his son and a daughter to his daughter, and all the more so if a son was born to his daughter, as his grandchildren take the place of his children in these cases. **However, if a daughter was born to his son, no, she cannot take the place of her father.** Rava said to him: We require merely fulfillment of the verse: “**He formed it to be inhabited,**” and there is fulfillment in this case, as the earth is inhabited by his descendants.

The Gemara comments: **In any event, everyone** agrees that if one has two grandchildren from one child, **no, he has not fulfilled** the mitzva to be fruitful and multiply, even if he has both a grandson and a granddaughter. The Gemara asks: **And has he not? Didn't the Rabbis say to Rav Sheshet:**^p **Marry a womanⁿ and have sons,** as you have not yet fathered any sons, and Rav Sheshet said to them: **The sons of my daughter are my sons?** This indicates that one can fulfill the mitzva through grandchildren even if he did not have a son and daughter of his own.

The Gemara answers: **There, Rav Sheshet was merely putting them off.** The real reason he did not want to get remarried was **because Rav Sheshet became impotent from Rav Huna's^p discourse.** Rav Huna's discourses were so lengthy that Rav Sheshet became impotent after waiting for so long without relieving himself.

Rabba said to Rava bar Mari: **From where is this matter that the Sages stated derived, that grandchildren are considered like children?** If we say it is derived from the fact that it is written in Laban's speech to Jacob: “**The daughters are my daughters and the children are my children**” (Genesis 31:43), which indicates that Jacob's children were also considered to be the children of their grandfather Laban, if that is so, does the continuation of Laban's statement: “**And the flocks are my flocks**” (Genesis 31:43), indicate that so too, Jacob's flocks were considered as belonging to Laban? **Rather, Laban was saying that you, Jacob, acquired them from me. Here too, with regard to the children, Laban was saying: You acquired them from me, i.e., it is only due to me that you have children.**

NOTES

Abaye thought to say, etc. – סָבַר אַבְי לְמִימַר וכו' – An opinion is cited in the Jerusalem Talmud that limits the possibility of fulfilling the mitzva to be fruitful and multiply through grandchildren to an even greater degree than Abaye had thought to say. According to this opinion, only the daughter of a daughter and the son of a son are counted as one's own children, but not a son of a daughter or a daughter of a son.

Marry a woman, etc. – נְסִיב אִיתָתָא וכו' – Rav Sheshet's response

does not appear to be sufficient, as Rabbi Yehoshua, cited below, holds that even if one has fulfilled the mitzva to be fruitful and multiply he should still have more children. Even according to the Gemara's statement that Rav Sheshet became impotent, he still should have gotten married, in accordance with the opinion of Shmuel that it is always preferable for a man to be married. It is possible that since he was constantly involved in Torah study it was permissible for him to remain unmarried, similar to the case of ben Azzai (see 63b; Ramban).

HALAKHA

Grandchildren are considered like children – בְּנֵי בָּנִים If a man had a son and a daughter and both died, but one of them had a son and one of them had a daughter, since his surviving descendants include a male and a female, he has fulfilled the mitzva to be fruitful and multiply. However, if they were both the offspring of only one of his children, he has not fulfilled the mitzva (Rambam *Sefer Nashim, Hilkhot Ishut* 15:5; *Shulhan Arukh, Even HaEzer* 1:6).

Or was discovered to be a eunuch – אוֹ שְׁנַמְצָא סְרִיס If a man had a son who turned out to be a eunuch, or a daughter who grew up to be a sexually underdeveloped woman, he has not fulfilled the mitzva to be fruitful and multiply through them (Rambam *Sefer Nashim, Hilkhot Ishut* 15:4; *Shulhan Arukh, Even HaEzer* 1:5).

PERSONALITIES

Rav Sheshet – רַב שֶׁשֶׁת A prominent third-generation Babylonian *amora*, Rav Sheshet was the primary student of Rav Huna, even though he also served and studied under the rest of the Sages of Rav Huna's generation. Rav Sheshet was famous for his unsurpassed expertise in Mishna and *baraita*. Many of the Sages of his generation came to study under him, as they knew that his teachings were always based on early sources. In his later years Rav Sheshet became blind, but remained involved in all aspects of life and was a frequent visitor to the house of the Exilarch. He was characteristically extremely forceful, hard as steel, and did not defer even to eminent political leaders. Apparently, He supported himself as a garment merchant and earned enough to live comfortably.

Rav Huna – רַב הוּנָא One of the great second-generation Babylonian *amora'im*, Rav Huna was most closely associated with his teacher, Rav. Rav Huna was of aristocratic descent, from the house of the Exilarchs, but despite that lineage, he lived in abject poverty for many years. Later in life he became wealthy and lived comfortably, and distributed his resources for the public good. Rav Huna was the greatest of Rav's students, to the extent that Shmuel, Rav's colleague, used to treat him deferentially and direct questions to him. After Rav's death Rav Huna became the head of the yeshiva of Sura and filled that position for forty years. His prominence in Torah and his loftiness of character helped make the yeshiva of Sura the preeminent center of Torah for many centuries. Because of Rav Huna's extensive Torah knowledge, the *halakha* is almost invariably ruled in accordance with his opinion in disputes with his colleagues and contemporaries. The only exception is in civil *halakha*, where the rulings are in accordance with the opinion of Rav Nahman.

Rav Huna had many students, some of whom studied exclusively with him. Moreover, Rav's younger students remained to study with Rav Huna, his disciple, after Rav's death. Rav Huna's son, Rabba bar Rav Huna, was one of the greatest Sages of the following generation.

BACKGROUND

The students of Rabbi Akiva – תלמידי רבי עקיבא – It appears from the Gemara that most of Rabbi Akiva's disciples died in a plague. However, Rav Sherira Gaon explains in his letter that this was a *shemada*, meaning their death was due either to governmental persecution or to war. If so, this would appear to be related to the bar Kokheva revolt, of which Rabbi Akiva was an ardent supporter. It is reasonable to surmise that Rabbi Akiva's students served as soldiers under bar Kokheva and when the Romans suppressed the revolt with great brutality, these students were killed.

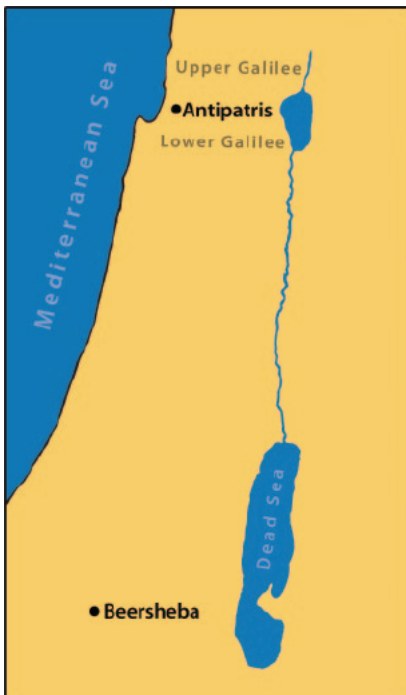
The image depicts an engraving that was prepared by the Roman senate in honor of Hadrian after he succeeded in suppressing the bar Kokheva revolt. It is currently at the Israel Museum in Jerusalem.



Engraving in honor of Hadrian after he suppressed the bar Kokheva revolt

From Gevat to Antipatris – מִגֵּבַת עַד אֲנִיפָטְרִיס: The location of Gevat is not entirely clear. Some identify it with a hill just north of Beersheba. According to some sources, Gevat is located on the border of the desert. Antipatris is the city of *Ἀντιπατρίς*, built by Herod in northern Judea. The city was located close to the source of the Yarkon River and near modern-day Rosh HaAyin. It served as a landmark, as it was the northernmost point in Judea, with Samaria continuing to the north.

The expression from Gevat to Antipatris means that the area stretched along the entire length of the land of Judea, from its southernmost edge to its northernmost edge.



Location of Antipatris



Antipatris

אֵלֶּא מִהֵבָא: "וְאַחֲרַיִם בָּא חֲצֹרֹן אֶל בֵּית מִכִּיר אָבִי גִלְעָד... וַתֵּלֶד לוֹ אֶת שְׁגֹב", וְכָתִיב: "מִנִּי מִכִּיר יִרְדּוּ מַחֲזִיקִים" וְכָתִיב: "יְהוּדָה מַחֲזִיקִי".

מִתְנַתֵּן דְּלֹא כְּרַבִּי יְהוֹשֻׁעַ. דְּתַנְיָא, רַבִּי יְהוֹשֻׁעַ אָמַר: נָשָׂא אָדָם אִשָּׁה בִּילְדוּתוֹ – יִשָּׂא אִשָּׁה בְּקִנּוּתוֹ, הָיָה לוֹ בָּנִים בִּילְדוּתוֹ – יִהְיוּ לוֹ בָּנִים בְּקִנּוּתוֹ, שְׁנָאֵמַר "בְּבֹקֶר זֶרַע אֶת זֶרְעֶךָ וּלְעֶרֶב אַל תִּנֵּחַ יָדְךָ כִּי אֵינְךָ יוֹדֵעַ אִי זֶה יִכְשֹׁר הַזֶּה אוֹ זֶה וְאֵם שְׂנֵיהֶם כְּאַחַד טוֹבִים".

רַבִּי עֲקִיבָא אָמַר: לָמַד תּוֹרָה בִּילְדוּתוֹ – יִלְמֹד תּוֹרָה בְּקִנּוּתוֹ, הָיָה לוֹ תַלְמִידִים בִּילְדוּתוֹ – יִהְיוּ לוֹ תַלְמִידִים בְּקִנּוּתוֹ, שְׁנָאֵמַר "בְּבֹקֶר זֶרַע אֶת זֶרְעֶךָ" וְגו'. אָמַר: שְׁנֵים עָשָׂר אֲלֵף זִוגִים תַּלְמִידִים הָיוּ לוֹ לְרַבִּי עֲקִיבָא מִגֵּבַת עַד אֲנִיפָטְרִיס, וְכוּלָן מֵתוּ בְּפֶרֶק אֶחָד, מִפְּנֵי שְׁלֹא נִהְגּוּ כְּבוֹד זֶה לַזֶּה.

וְהָיָה הָעוֹלָם שָׁמֶם, עַד שֶׁבָּא רַבִּי עֲקִיבָא אֶצְל רַבּוֹתֵינוּ שְׁבָדְרוֹם וּשְׁנָאֵה לָהֶם: רַבִּי מֵאִיר, וְרַבִּי יְהוּדָה, וְרַבִּי יוֹסִי, וְרַבִּי שְׁמַעוֹן וְרַבִּי אֶלְעָזָר בֶּן שְׁמוּעַ. וְהֵם הֵם הָעֵמִידוּ תּוֹרָה אוֹתָהּ שָׁעָה.

תָּנָא: כּוֹלָם מֵתוּ מִפֶּסַח וְעַד עֶצְרָת. אָמַר רַב חֲמָא בְּרַ אֲבָא וְאִתִּימָא רַבִּי חֵיָא בְּרַ אֲבִין: כּוֹלָם מֵתוּ מִיָּתֶה רָעָה. מֵאִי הִיא? אָמַר רַב נַחֲמָן: אֶסְפֵּרָה.

אָמַר רַב מַתְנָא: הִלְכָה כְּרַבִּי יְהוֹשֻׁעַ.

Rather, the proof is from here: "And afterward Hezron went in to the daughter of Machir, the father of Gilead... and she bore him Segub" (1 Chronicles 2:21), and it is written: "Out of Machir came down governors" (Judges 5:14), and it is written: "Judah is my governor" (Psalms 60:9). Consequently, the governors, who were from the tribe of Judah, were also called the sons of Machir, who was from the tribe of Manasseh. This must be because they were the children of Machir's daughter and Hezron, indicating that grandchildren are considered like children.

S The Gemara comments: The mishna is not in accordance with the opinion of Rabbi Yehoshua. As it is taught in a *baraita* that Rabbi Yehoshua says: If a man married a woman in his youth, and she passed away, he should marry another woman in his old age. If he had children in his youth, he should have more children in his old age, as it is stated: "In the morning sow your seed, and in the evening do not withhold your hand; for you do not know which shall prosper, whether this or that, or whether they both alike shall be good" (Ecclesiastes 11:6). This verse indicates that a man should continue having children even after he has fulfilled the mitzva to be fruitful and multiply.

Rabbi Akiva says that the verse should be understood as follows: If one studied Torah in his youthⁿ he should study more Torah in his old age; if he had students in his youth he should have additional students in his old age, as it is stated: "In the morning sow your seed, etc." They said by way of example that Rabbi Akiva had twelve thousand pairsⁿ of students^b in an area of land that stretched from Gevat to Antipatris^b in Judea, and they all died in one period of time, because they did not treat each other with respect.

And the world was desolate of Torah until Rabbi Akiva came to our Rabbis in the South and taught his Torah to them. This second group of disciples consisted of Rabbi Meir, Rabbi Yehuda, Rabbi Yosei, Rabbi Shimon, and Rabbi Elazar ben Shamua. And these are the very ones who upheld the study of Torah at that time. Although Rabbi Akiva's earlier students did not survive, his later disciples were able to transmit the Torah to future generations.

With regard to the twelve thousand pairs of Rabbi Akiva's students, the Gemara adds: It is taught that all of them died in the period from Passover until *Shavuot*. Rav Hama bar Abba said, and some say it was Rabbi Hiyia bar Avin: They all died a bad death. The Gemara inquires: What is it that is called a bad death? Rav Nahman said: Diphtheria.

Rav Mattana said: The *halakha* is in accordance with the opinion of Rabbi Yehoshua, who said that one must attempt to have more children even if he has already fulfilled the mitzva to be fruitful and multiply.

NOTES

Studied Torah in his youth, etc. – לָמַד תּוֹרָה בִּילְדוּתוֹ וְכוּ': The commentaries questioned the necessity of this exposition. Since Torah study is a mitzva that applies at all times, why is it necessary to derive from this verse that even if one studied in his youth he should study more in his old age? The *Keren Ora* suggests that this is referring to the additional toil in Torah that one must undertake in order to weaken his sinful inclinations. It might have been thought that since the evil inclination is not as strong in old age, he does not have to follow such a regimen. The *Iyyun Ya'akov* explains that even if one studied and fully clarified a particular issue in depth when he was young, he should not rely on this but should review the matter when the matter arises in his later years. He might change his mind or add new insights in his maturity.

Twelve thousand pairs, etc. – שְׁנֵים עָשָׂר אֲלֵף זִוגִים וְכוּ': Most commentaries read this passage in a straightforward manner, offering various reasons for the fate that befell Rabbi Akiva's students. Rav Sherira Gaon, however, writes in a letter that the disciples perished in a time of persecution by the government. According to this opinion, the events are connected to the contemporaneous bar Kokheva rebellion. The Meiri writes that it is customary to observe certain customs of mourning during the period between Passover and *Shavuot* due to the fact that Rabbi Akiva's students died during this time. Following the tradition of the *ge'onim* that the students ceased dying on *Lag BaOmer*, the thirty-third day of that time period, mourning customs are not observed on that day.

A man is obligated to visit his wife when he is about to depart on a journey – **חייב אדם לפקוד** – **אֶת אִשְׁתּוֹ בְּשָׁעָה שֶׁהוּא יוֹצֵא**: One who is about to depart on a journey that does not involve a mitzva must have intercourse with his wife, if she so desires, before he departs. This is permitted even if it is the time when she expects the onset of menstrual bleeding. However, some say that if he can accommodate her in some other manner instead, he is praiseworthy. Some say that if his wife is forbidden to him but will become permitted if he postpones his journey by a day or night, he must delay his departure (*Shulhan Arukh, Orach Hayyim* 240:1 and *Yoreh De'a* 184:10, and in the comment of Rema).

אָמַר רַבִּי תַנְחוּם אָמַר רַבִּי חֲנִילַי: כָּל אָדָם שָׁאִין לוֹ אִשָּׁה שְׂרוּי בְּלֹא שְׂמֻחָה, בְּלֹא בְרָכָה, בְּלֹא טוֹבָה. בְּלֹא שְׂמֻחָה – דְּכֵתִיב: “וְשִׂמְחַת אֶתְּהָ וּבֵיתָךְ”, בְּלֹא בְרָכָה – דְּכֵתִיב: “לְהִנִּיחַ בְּרָכָה אֶל בֵּיתְךָ”, בְּלֹא טוֹבָה – דְּכֵתִיב: “לֹא טוֹב הָיִיתָ הָאָדָם לְבַדּוֹ”.

בְּמַעֲרֹבָא אָמְרִי: בְּלֹא תוֹרָה, בְּלֹא חוֹמָה. בְּלֹא תוֹרָה – דְּכֵתִיב “הָאֵם אֵין עֲזָרְתִּי בִּי וְתוֹשִׁיָּה נִדְחָה מִמֶּנִּי”, בְּלֹא חוֹמָה – דְּכֵתִיב: “נִקְבָה תְּסוּבִב גָּבְר”.

רַבָּא בַר עוּלָא אָמַר: בְּלֹא שְׁלוֹם, דְּכֵתִיב: “וְיָדַעְתָּ כִּי שְׁלוֹם אֶהְיֶה וּפְקַדְתָּ נֹדֶךְ וְלֹא תִחַטָּא”.

אָמַר רַבִּי יְהוֹשֻׁעַ בֶּן לֹוִי: כָּל הַיּוֹדֵעַ בְּאִשְׁתּוֹ שֶׁהִיא יִרְאֶת שָׁמַיִם, וְאֵינוֹ פּוֹקְדָהּ – נִקְרָא חוֹטֵא, שְׁנֵאמַר “וְיָדַעְתָּ כִּי שְׁלוֹם אֶהְיֶה” וגו'. וְאָמַר רַבִּי יְהוֹשֻׁעַ בֶּן לֹוִי: חַיִּיב אָדָם לְפָקֹד אֶת אִשְׁתּוֹ בְּשָׁעָה שֶׁהוּא יוֹצֵא לְדֶרֶךְ שְׁנֵאמַר “וְיָדַעְתָּ כִּי שְׁלוֹם אֶהְיֶה” וגו'.

הָא מִהֲבָא נִפְקָא? מִהֲתָם נִפְקָא: “וְאֵל אִשְׁךָ תִּשְׁוֹקֶנָּה” מְלִמַּד שֶׁהָאִשָּׁה מִשְׁתַּוָּקֶת עַל בַּעֲלָהּ בְּשָׁעָה שֶׁהוּא יוֹצֵא לְדֶרֶךְ! אָמַר רַב יוֹסֵף: לֹא נִצְרָה אֶלָּא סְמוּךְ לְוִוְסָתָהּ.

Ⓢ Apropos the discussion with regard to the mitzva to have children, the Gemara cites statements about marriage in general. **Rabbi Tanḥum said that Rabbi Hanilai said: Any man who does not have a wife is left without joy, without blessing,ⁿ without goodness.** He proceeds to quote verses to support each part of his statement. He is **without joy**, as it is written: “**And you shall rejoice, you and your household**” (Deuteronomy 14:26), which indicates that the a man is in a joyful state only when he is with his household, i.e., his wife. He is **without blessing**, as it is written: “**To cause a blessing to rest in your house**” (Ezekiel 44:30), which indicates that blessing comes through one’s house, i.e., one’s wife. He is **without goodness**, as it is written: “**It is not good that man should be alone**” (Genesis 2:18), i.e., without a wife.

In the West, Eretz Yisrael, they say: One who lives without a wife is left without Torah, and without a wall of protection. He is **without Torah**, as it is written: “**Is it that I have no help in me, and that sound wisdom is driven from me?**” (Job 6:13), indicating that one who does not have a wife lacks sound wisdom, i.e., Torah. He is **without a wall**, as it is written: “**A woman shall go round a man**” (Jeremiah 31:21), similar to a protective wall.

Rava bar Ulla said: One who does not have a wife is left without peace, as it is written: “**And you shall know that your tent is in peace; and you shall visit your habitation and shall miss nothing**” (Job 5:24). This indicates that a man has peace only when he has a tent, i.e., a wife.

On the same verse, **Rabbi Yehoshua ben Levi said: Whoever knows that his wife fears Heavenⁿ and she desires him, and he does not visit her, i.e., have intercourse with her, is called a sinner**, as it is stated: **And you shall know that your tent is in peace; and you shall visit your habitation. And Rabbi Yehoshua ben Levi said: A man is obligated to visit his wife for the purpose of having intercourse when he is about to depart on a journey,^h as it is stated: “And you shall know that your tent is in peace, etc.”**

The Gemara asks: Is this last statement derived from here?ⁿ It is derived from there: “**And your desire shall be to your husband**” (Genesis 3:16), which teaches that a wife desires her husband when he is about to depart on a journey. **Rav Yosef said:** The additional derivation cited by Rabbi Yehoshua ben Levi is **necessary only near the time of her set pattern,ⁿ i.e., when she expects to begin experiencing menstrual bleeding.** Although the Sages generally prohibited intercourse at this time due to a concern that the couple might have intercourse after she begins bleeding, if he is about to depart on a journey he must have intercourse with her.

NOTES

Without blessing – **בְּלֹא בְרָכָה**: The *Beit Yosef* cites this statement as a source for the custom that an unmarried priest does not recite the Priestly Benediction, as one who is without a blessing cannot bless others. The *Zohar* states a similar opinion. Nevertheless, the common practice is that unmarried priests do recite the Priestly Benediction.

Whoever knows that his wife fears Heaven – **שֶׁהִיא יִרְאֶת שָׁמַיִם**: The meaning here is that since she is God-fearing she is reluctant to express her desire openly. If he realizes from her behavior that she desires him, it is a mitzva for him to have intercourse with her.

Is this derived from here – **הָא מִהֲבָא נִפְקָא**: Although the verse “And your desire shall be to your husband” does not refer specifically to a woman whose husband is about to depart on a journey, once it has been established that a woman desires her husband, and it is well known that this desire increases before a departure, no additional verse is necessary to teach that a man must satisfy his wife when she desires him (see *Tosafot*).

Near the time of her set pattern – **סְמוּךְ לְוִוְסָתָהּ**: According to Rashi and others, this Gemara indicates that although it is generally

forbidden to have intercourse at a time when a woman expects the onset of menstrual bleeding, in this case it is permitted. This is based upon the assumption that the general prohibition is by rabbinic decree, and the Sages did not apply this decree in cases where it would cause the woman suffering. However, other commentaries assert that intercourse at this time is forbidden even under these circumstances. *Tosafot* explain that the term visit referred to in the Gemara does not refer to intercourse, but to spending time together.

A different explanation is cited by the Ritva and the *Nimmukei Yosef*. They claim that this passage does not address the case of a woman who expects the onset of menstrual bleeding. Rather, the case is where the woman has already experienced menstrual bleeding, and the time for her to immerse herself in the ritual bath, and thereby become permitted to her husband, has almost arrived. In this case, the traveler must wait to leave home until it is permitted for him to have intercourse with his wife. It is with regard to this *halakha* that the Gemara states that the period of waiting is a night or a day, meaning that he must delay his trip if all he will have to wait is this amount of time. The next statement of the Gemara would then be understood as saying that if he is departing to fulfill a mitzva he should not delay his journey.

וְכַמָּה? אָמַר רַבָּא: עוֹנָהּ. וְהֵי מִלֵּי –
לְדַבֵּר הָרְשׁוּת, אֲבָל לְדַבֵּר מַצְוָה –
מִטְרִידִי.

The Gemara asks: **And how much** before the expected onset of menstrual bleeding is considered near the time of her set pattern? **Rava said: An interval of time,**^H i.e., half a daily cycle, either a day or a night. The Gemara comments: **And this** statement that a man must have intercourse with his wife before he departs on a journey **applies** only if he is traveling for an **optional matter**, but if he is traveling in order to attend to a **matter** pertaining to a **mitzva**, he is not required to have intercourse with his wife so that he not become **preoccupied** and neglect the mitzva.

תֵּנוּ רַבָּנִי: הָאוֹהֵב אֶת אִשְׁתּוֹ כְּגֹפוֹ,
וְהַמְכַבֵּדָה יוֹתֵר מִגּוּפוֹ, וְהַמְדִּירָךְ בְּנֵיו
וּבָנוֹתָיו בְּדֶרֶךְ יִשְׂרָאֵל, וְהַמְשִׂיאָן סְמוּךְ
לְפִירְקָן – עָלָיו הַכֶּתֹּב אוֹמֵר "וַיִּדְעַת
כִּי שְׁלוֹם אֶהְיֶה". הָאוֹהֵב אֶת שְׂכִינִיו,
וְהַמְקָרֵב אֶת קְרֹובָיו, וְהַנוֹשֵׂא אֶת בֵּת
אָחוֹתוֹ,

§ The Sages taught: One who loves his wife as he loves himself,^H and who honors her more than himself,^N and who instructs his sons and daughters in an upright path, and who marries them off near the time when they reach maturity,^{HN} about him the verse states: **And you shall know that your tent is in peace.** As a result of his actions, there will be peace in his home, as it will be devoid of quarrel and sin. One who loves his neighbors, and who draws his relatives close, and who marries the daughter of his sister,^{NH} a woman he knows and is fond of as a family relative and not only as a wife,

HALAKHA

Separating from one's wife for an interval of time – פְּרִישַׁת – עוֹנָה: It is prohibited for a husband and wife to have intercourse at the time when the onset of menstrual bleeding is expected to occur. If this is expected to occur during the night they are forbidden to each other from the beginning of the night, and if it is expected to occur during the day they are forbidden to each other from the beginning of the day (Rambam *Sefer Kedusha*, *Hilkhot Issurei Bia* 4:12; *Shulḥan Arukh*, *Yoreh De'a* 184:2).

One who loves his wife as he loves himself – הָאוֹהֵב אֶת אִשְׁתּוֹ – כְּגֹפוֹ: The Sages said that a man should love his wife as he loves himself and honor her more than himself. If he is a wealthy

man, he should provide for her in accordance with his means (Rambam *Sefer Nashim*, *Hilkhot Ishut* 15:19).

Marries them off near the time when they reach maturity – מְשִׂיאָן סְמוּךְ לְפִירְקָן: The Sages advised a man to marry off his sons and daughters near the time when they reach maturity so that they not be tempted by sinful thoughts (Rambam *Sefer Kedusha*, *Hilkhot Issurei Bia* 21:25; *Tur*, *Even HaEzer* 1).

The daughter of his sister – בֵּת אָחוֹתוֹ: The Sages counseled that a man should marry his sister's or his brother's daughter (Rambam *Sefer Kedusha*, *Hilkhot Issurei Bia* 21:4; see *Mishne LaMelekh*).

NOTES

And who honors her more than himself – וְהַמְכַבֵּדָה יוֹתֵר מִגּוּפוֹ: With regard to all matters of honor a man must put his wife before himself. An example is with regard to clothing; a husband must make sure that his wife is dressed in a more respectable manner than himself (*Nimmukei Yosef*). Rabbi Yehuda al-Madari explains that the shame felt by a woman when her dignity is not upheld is greater than that of a man, and therefore upholding her dignity takes precedence.

Who marries them off near the time when they reach maturity – הַמְשִׂיאָן סְמוּךְ לְפִירְקָן: Most commentaries explain that this means that he marries them off before they reach adulthood. See *Tosafot*, who discuss how it is possible for a boy to get married at this age. Some say that the *baraita* is referring to a father who makes sure his son gets married as soon as he reaches the age of thirteen (see *Yam shel Shlomo*). The Meiri cites a different interpretation according to which the *baraita* is referring to a father who ensures that his son gets married near the usual age of marriage, eighteen.

And who marries the daughter of his sister – וְהַנוֹשֵׂא אֶת בֵּת אָחוֹתוֹ: Some commentaries claim that this does not refer only to his sister's daughter but includes a brother's daughter as well (Rambam; *Tosafot*, citing Rashbam). The *Mishne LaMelekh* explains that family affection is a more natural feeling than the contingent, albeit stronger, love for a woman, and therefore a combination of these two emotions will ensure the success of the marriage.

Rabbeinu Tam and the Meiri maintain that this statement applies only to the daughter of a sister, because she is likely to be more compatible with him than the daughter of his brother. Rashi states that a man has stronger feelings for a sister than for a brother, and therefore he is closer to her daughter. Others contend that he should not marry his brother's daughter, as she would be unable to fulfill the mitzva of levirate marriage (*Tosafot Yeshanim*; Rivan). Yet others suggest that this is referring to a case of a sister's daughter who is fatherless, and it is a particular mitzva to marry her as an act of kindness, in order to provide for her (Rid). The *Yad Rama* explains in a similar fashion.

והמלוה סלע לעני בשעת דחקו – עליו
הכתוב אומר “אז תקרא ויהי יענה
תשוב ויאמר הנני”.

סימן אש”ה וקרקע עזר וא”ת שתי
הברכות תגרי פחתי. אמר רבי
אלעזר: כל אדם שאין לו אשה – אינו
אדם, שנאמר “זכר ונקבה בראם ויקרא
את שמם אדם”. ואמר רבי אלעזר:
כל אדם שאין לו קרקע – אינו אדם,
שנאמר “השמים שמים לה’ והארץ
נתן לבני אדם”.

ואמר רבי אלעזר: מאי דכתיב “אעשה
לו עזר כנגדו”, זכה – עזרתו, לא זכה –
כנגדו. ואיכא דאמרי: רבי אלעזר רמי,
כתיב “כנגדו” וקרינן “כנגדו”, זכה –
כנגדו, לא זכה – מנגדו.

אשכחיה רבי יוסי לאלהה, אמר ליה:
בתיב “אעשה לו עזר”, במה אשה
עוזרתו לאדם? אמר ליה: אדם מביא
חטים – חטים בוסס? פשתן – פשתן
לובש? לא נמצאת מאירה עיניו
ומעמידתו על רגליו?

and who lends a *sela* to a pauper^N at his time of need, about
him the verse states:^N “Then shall you call, and the Lord
will answer; you shall cry, and He will say: Here I am”
(Isaiah 58:9).

§ The Gemara provides a mnemonic device^B for a series of
statements cited in the name of Rabbi Elazar: **Woman; and
land; helper; this; two; the blessings; merchants; lowly.** The
Gemara presents these statements: **Rabbi Elazar said: Any
man who does not have a wife is not a man,^H as it is stated:
“Male and female He created them...and called their name
Adam” (Genesis 5:2). And Rabbi Elazar said: Any man who
does not have his own land is not a man,^N as it is stated: “The
heavens are the heavens of the Lord; but the earth He has
given to the children of men” (Psalms 115:16).**

And Rabbi Elazar said: What is the meaning of that which
is written: “I will make him a helpmate for him [*kenegdo*”]
(Genesis 2:18)? If one is worthy his wife helps him; if he is **not**
worthy she is against him.^N And some say a slightly different
version: Rabbi Elazar raised a contradiction: It is written in
the Torah with a spelling that allows it to be read: **Striking him**
[*kenagdo*], and we read it as though it said: **For him** [*kenegdo*].
If he is worthy she is for him as his helpmate; if he is **not** worthy
she strikes him.

The Gemara relates that Rabbi Yosei encountered Elijah the
prophet and said to him: **It is written: I will make him a
helpmate. In what manner does a woman help a man?**^N Elijah
said to him: When a man brings wheat from the field, does he
chew raw wheat? When he brings home flax, does he wear
unprocessed flax? His wife turns the raw products into bread
and clothing. Is his wife **not** found to be the one who lights up
his eyes and stands him on his feet?

BACKGROUND

Mnemonic device – סימן: Because the Talmud was studied orally for many generations, mnemonic devices were necessary to remember a series of *halakhot* and the order in which they were taught.

HALAKHA

Is not a man – אינו אדם: The Rema cites this teaching in the name of the *Tur*, in order to emphasize the importance of marriage (*Shulhan Arukh, Even HaEzer* 1:1).

NOTES

Who lends a *sela* to a pauper, etc. – המלוה סלע לעני וכו': The *Tosafot* raise an apparent contradiction between this statement and the statement in tractate *Hagiga* (5a) that providing money to a pauper at his time of need brings trouble for the pauper. The Ritva explains that he is praised if he lends the pauper money for food. However, if the pauper's creditors force him to sell his belongings in order to pay his debt, which is not to his benefit, it is improper to provide the pauper with money by purchasing those belongings at reduced rates. Others explain that one is criticized if he covets the pauper's property and lends him money with the aim of taking something for himself when the loan is due. The *Iyyun Ya'akov* explains homiletically that the expression: His time of need, is referring to the lender. A lender who himself has fallen on troubled times and yet does not refrain from giving the pauper a loan is praiseworthy.

About him the verse states – עליו הכתוב אומר: According to many commentaries, an earlier verse: “When you see the naked and you cover him, and you do not hide yourself from your own flesh” (Isaiah 58:7), is an important part of this proof, as it demonstrates that the context of the verse cited in the Gemara is helping the poor and taking responsibility to help one's relatives and neighbors (see *Yad Rama* and Maharsha).

Is not a man, etc. – אינו אדם וכו': The Maharsha explains that in order to be complete, a man must participate in creation, either by raising children or by growing crops from the land.

Against him – כנגדו: This is derived from the fact that the term *kenegdo* is superfluous, as the verse could simply have said: I will make him a helpmate. Alternatively, the Meiri explains that the word *kenegdo* itself can be interpreted to mean: Against him, i.e., opposed to him.

In what manner does a woman help a man – במה אשה עוזרתו לאדם: The commentaries express surprise at both this question and its answer. Was Rabbi Yosei unaware of the assistance a wife provides her husband? And what is the point of such a simple response? The Riaz explains that the question was based upon the fact that although the main purpose of marriage is in order to have children, a woman is not merely man's helpmate in this regard, and therefore the verse does not refer to this aspect of their relationship. The Meiri explains that the main thrust of the answer is that the help a man receives from his wife provides him with his basic needs so that he has time for Torah study. Consequently, her assistance is not merely practical but enables him to achieve the ultimate goal of a Jewish man.

From Galia to Hispania – מגליא לאספמא: Galia, or Gaul, is essentially modern-day France, while Hispania is Spain. Ships sailed back and forth frequently between the ports of France and Spain, especially when these two lands were Roman colonies. Commerce in the western Mediterranean serves here as an example of a matter that would seem to have no direct relevance to the Jewish people.

Conducting business – הפוכי בעסקא: In the talmudic era most Jews still worked in agriculture, although this occupation was becoming harder, as farmers were laden with heavy tax burdens. In addition, the potential profit margin of commercial transactions was higher than anything that could be garnered from farming land in which one had invested a comparable sum of money.

ואמר רבי אלעזר: מאי דכתיב "זאת הפעם עצם מעצמי ובשר מבשרי" מלימד שבא אדם על כל בהמה וחיה ולא נתקרה דעתו עד שבא על חיה.

ואמר רבי אלעזר: מאי דכתיב "ונברכו בך כל משפחת האדמה" אמר ליה הקדוש ברוך הוא לאברהם: שתי ברכות טובות יש לי להברוך בך: רות המואביה ונעמה העמונית. כל משפחות האדמה אפילו משפחות הדורות באדמה אין מתברכות אלא בשביל ישראל. כל גוי הארץ – אפילו ספינות הבאות מגליא לאספמא אינן מתברכות אלא בשביל ישראל.

ואמר רבי אלעזר: עתידים כל בעלי אומנות שיעמדו על הקרקע, שנאמר "וירדו מאניותיהם כל תפשי משוט מלחים כל חבלי הים על הארץ יעמדו". ואמר רבי אלעזר: אין לך אומנות פחותה מן הקרקע, שנאמר "וירדו". רבי אלעזר חזיא לההיא ארעא דשדי ביה כרבא לפותיא, אמר ליה: אי תשדייה לאורבין – הפוכי בעסקא טב מינך.

רב על לביני שיבלי, חונה דקא נייפן. אמר להו: אי נייפת איתנופי, הפוכי בעסקא טב מינך. אמר רבא: מאה זוזי בעסקא – כל יומא בשרא וחמרא, מאה זוזי בארעא – מילחא וחפורה. ולא עוד אלא מגנאי ליה אארעא ומרמיא ליה תיגרי.

And Rabbi Elazar said: What is the meaning of that which is written: "This is now bone of my bones and flesh of my flesh" (Genesis 2:23)? This teaches that Adam had intercourse^N with each animal and beast in his search for his mate, and his mind was not at ease, in accordance with the verse: "And for Adam, there was not found a helpmate for him" (Genesis 2:20), until he had intercourse with Eve.

And Rabbi Elazar said: What is the meaning of that which is written: "And in you shall all the families of the earth be blessed [nivrekhu]" (Genesis 12:3)? The Holy One, Blessed be He, said to Abraham: I have two good shoots^N to graft [lehavrikh] onto you: Ruth the Moabite, the ancestress of the house of David, and Naamah the Ammonite, whose marriage with Solomon led to the ensuing dynasty of the kings of Judea. "All the families of the earth" means: Even families that live in the earth, i.e., who have land of their own, are blessed only due to the Jewish people. Similarly, when the verse states: "All the nations of the earth shall be blessed in him" (Genesis 18:18), it indicates that even ships that come from Galia to Hispania^B are blessed only due to the Jewish people.

And Rabbi Elazar said: All craftsmen are destined^N to stand upon and work the land, as it is stated: "And all that handle the oar, the mariners, and all the pilots of the sea, shall come down from their ships, they shall stand upon the land" (Ezekiel 27:29). And Rabbi Elazar said: There is no occupation lowlier^N than working the land, as it is stated: "And they shall come down," implying that one who works the land is of lower stature than even a sailor. The Gemara similarly relates: Rabbi Elazar saw land that was plowed across its width.^N He said to it: Even if they plow you once more lengthwise, for further improvement, conducting business^B is better than farming with you, as the potential profits gained by selling merchandise are far greater than those from working the land.

The Gemara relates a similar incident: Rav entered between the sheaves in a field and saw them waving in the wind. He said to them: If you want to wave go ahead and wave, but conducting business is better than farming with you. Rava similarly said: One who has a hundred dinars that are invested in a business is able to eat meat and wine every day, whereas he who has a hundred dinars worth of land eats only salt and vegetables. And what is more, working the land causes him to lie on the ground^N at night in order to guard it, and it draws quarrels upon him with other people.

NOTES

This teaches that Adam had intercourse, etc. – מלימד שבא אדם: According to an interpretation cited by the Maharsha, this does not mean that he literally engaged in sexual intercourse with the animals but rather that he conducted an investigation in order to find a suitable creature to be his mate, without success. *Akedat Yitzhak* explains this statement along the same lines, in greater detail.

Two good shoots, etc. – שתי ברכות טובות וכו': This exposition is based on the fact that the Torah uses the unusual expression *venivrekhu* to mean: They shall be blessed, as opposed to the more proper term *vehitbarkhu*. The Sages associated the word used in the Gemara with grafting [*havrakha*], as these women were grafted onto Abraham's family, i.e., they joined the Jewish people (Riaf; see Maharsha).

All craftsmen are destined, etc. – עתידים כל בעלי אומנות וכו': Rabbi Elazar's opinion toward working the land appears to be contradictory; previously he stated that one who does not own land is not a man, whereas here he stated that working the land is a lowly occupation. *Tosafot* explain that according to Rabbi Elazar, everyone should own land in order to grow food and build a house, but this does not mean that farming is a profitable occupation. The Maharsha interprets his comments about the future in this vein: Nowadays people seek a profession through which they can make money, but in the future they will be satisfied with little and will return to the land.

There is no occupation lowlier, etc. – אין לך אומנות פחותה: The proof is from the phrase "They shall come down," as it is more common to describe those who go to sea as descending to the sea. Consequently, it is clear that the unusual use of

descent in this verse to refer to returning to land is referring not a physical descent on the part of the sailors but rather to their social status (*Arukh LaNer*).

Land that was plowed across its width – ארעא דשדי ביה כרבא: The Meiri cites a different version of the text, according to which a large pile of produce covered the entire width of the field. In this version Rabbi Eliezer said that even if the pile were large enough to cover the entire field lengthwise as well, farming the field would still not be a profitable enterprise.

Causes him to lie on the ground, etc. – מגנאי ליה אארעא: The Meiri explains that these are descriptions of poverty, as he lies on the ground because he cannot afford a bed, a sorry financial state that then causes constant arguments in his home (see Rashi).

Weave [teizul] – תיזול: The versions of Gemara cited by the *ge'onim* and Rabbeinu Hananel read *teidul* or *teidvil*. In Syriac this word means weaving, which ties in well with the idea that one should buy an item ready-made.

Mats [bistarkei] – ביסתרקי: Apparently a loanword from the Middle Iranian *bistarak*, meaning bedding, mattress, or cover.

Friend [shushevina] – שושבינא: This word is originally Akkadian, from where it was adapted into both Aramaic and Hebrew. Its primary meaning is the one who accompanies the groom to the wedding canopy and helps with some of the technical arrangements of the wedding, and so forth. Its meaning was broadened to a general term for a close friend.

NOTES

טום וְלֹא – Close it up and do not enlarge it and plaster it – תְּשַׁפֵּץ: According to the Meiri this is an injunction to fix things quickly before they get worse, as it is easier to close up a hole than to plaster an entire wall. Similarly, he should replaster the wall in order to ensure that he will not have to build it again from scratch.

Calamity befalls...only, etc. – אֵלֶּיָּא וכו': This complements the previous teaching: Just as the fate of the world depends on the Jewish people with regard to blessing, the same applies with regard to misfortune. Consequently, the Jewish people should know that their own fate as well as that of other nations lies in their hands (see Meiri and *Iyyun Ya'akov*).

Is there anything that is worse than death – וְכִי אֵיכָא מִיּוֹדִי – דְּקִשָּׁה מְמוּתָא: Elsewhere the Sages list numerous problems that are worse than death, including captivity and famine. The *Iyyun Ya'akov* explains that it was due to these different possibilities that Rav sought to discover the precise nature of his mentor's blessing. Since he realized that Rabbi Hiyya had presumably also been giving him advice along with his blessing, he concluded that Rabbi Hiyya was referring to a bad wife. Furthermore, knowing that Rabbi Hiyya's own wife caused him to suffer, Rav realized that this must have been what he meant.

You should not do so – אַתָּ לֹא תַעֲבִיד הָכִי – Admittedly, it is permitted to depart from the truth for the sake of peace, but since in this case there is another way of achieving the same result, it is better not to grow accustomed to telling lies (Meiri; Rabbi Avraham min HaHar).

אָמַר רַב פָּפָא: זֶרַע וְלֹא תִזְבִּין. אַף עַל גַּב דְּכִי הִדְדִּי מִנְהוּ – הֲנִי מְבָרְכָן. וְזִבִּין וְלֹא תִזְוֹל, הֲנִי מִילִי – בִּיסְתָרְקִי. אֲבָל גְּלִימָא – לֹא מִיתְרַמְיָא לֵיהּ.

טום וְלֹא תְשַׁפֵּץ, שְׂפוּץ וְלֹא תִיבְנִי, שְׂכַל הָעוֹסֵק בְּבִנְיָן מִתְמַסְכֵּן. קְפוּץ וְזִבִּין אֶרְעָא, מִתּוֹן נָסִיב אִיתְתָּא, נְחִית דְּרָעָא נָסִיב אִיתְתָּא, סָק דְּרָעָא בְּחַר שׁוּשְׁבִינָא.

אָמַר רַבִּי אֶלְעָזָר בַּר אֲבִינָא: אֵין פּוֹרְעָנוֹת בָּאָה לְעוֹלָם אֶלָּא בְּשִׁבְלֵי יִשְׂרָאֵל, שְׁנָאֵמַר "הַכְרַתִּי גּוֹיִם נִשְׁמוֹ פְּנוּתָם הַחִירְבְּתִי חוּצוֹתָם" וּכְתִיב "אֲמַרְתִּי אֶךְ תִּירָאִי אוֹתִי תִקְחִי מוֹסֵר".

רַב הוּהּ מִפְטֵר מִרְבִּי חֵיָּא, אָמַר לֵיהּ: רַחֲמֵנָא לִיעֲלֹךְ מִמִּידִּי דְקִשָּׁה מְמוּתָא. וְכִי אֵיכָא מִיּוֹדִי דְקִשָּׁה מְמוּתָא? נִפְקֵי, דִּק וְאֶשְׁכַּח "וּמוֹצֵא אֲנִי מִרְ מְמוּתָא אֶת הָאִשָּׁה" וְכו'. רַב הוּהּ קָא מְצַעֵרָא לֵיהּ דְּבִיתָהּ, כִּי אָמַר לֵהּ "עֲבִידִי לִי טְלוּפָחִי" עֲבָדָא לֵיהּ חִמְצִי, "חִמְצִי" – עֲבָדָא לֵיהּ טְלוּפָחִי.

כִּי גָדַל חֵיָּא בְּרִיהּ, אֶפְיֹךְ לֵהּ. אָמַר לֵיהּ: אֵיעֲלִיא לָךְ אֲמִךְ! אָמַר לֵיהּ: אֲנָא הוּא דְקָא אֶפְיִכְנָא לֵהּ. אָמַר לֵיהּ: הֲיִינוּ דְקָא אֲמִרִי אֵינִשִׁי: דְּנִפְקִי מִיָּךְ – טַעֲמָא מִלְפָּנֶיךָ. אֶתָּ לֹא תַעֲבִיד הָכִי, שְׁנָאֵמַר "לְמַדּוּ לְשׁוֹנֵם דְּבִר שְׁקֵר הָעוֹה" וְכו'.

Rav Pappa^b said: Sow your own produce and do not buy it. Even though they are equal to each other in value, these that you sow will be blessed. Conversely, buy your clothes rather than weave [teizul]¹ them yourself. The Gemara comments: This applies only to mats [bistarkei],¹ but with regard to the cloak one wears, perhaps he will not find it precisely to his liking, and therefore he should make his own cloak, which fits his measurements.

Rav Pappa further advised: If there is a hole in your house, close it up and do not enlarge it and then plaster it,ⁿ or at least plaster it and do not knock it down and build it again. As, whoever engages in construction becomes poor. Hurry to buy land so that you do not lose the opportunity. Be patient and marry a woman who is suitable for you. Descend a level to marry a woman of lower social status, and ascend a level to choose a friend [shushevina].¹

Rabbi Elazar bar Avina said: Calamity befalls the world onlyⁿ due to the sins of the Jewish people, as it is stated: "I have cut off nations, their corners are desolate; I have made their streets waste" (Zephaniah 3:6), and it is written: "I said: Surely you will fear Me, you will receive correction" (Zephaniah 3:7). This indicates that other nations were punished so that the Jewish people would mend their ways.

The Gemara cites more statements with regard to wives. When Rav^p was taking leave of his uncle and teacher, Rabbi Hiyya, upon his return from Eretz Yisrael to Babylonia, Rabbi Hiyya said to him: May the Merciful One save you from something that is worse than death. Rav was perplexed: Is there anything that is worse than death?ⁿ He went, examined the sources, and found the following verse: "And I find more bitter than death the woman, etc." (Ecclesiastes 7:26). Rabbi Hiyya was hinting at this verse, and indeed, Rav's wife would constantly aggravate him. When he would say to her: Prepare me lentils, she would prepare him peas; if he asked her for peas, she would prepare him lentils.

When Hiyya, his son, grew up, he would reverse the requests Rav asked him to convey to her, so that Rav would get what he wanted. Rav said to his son Hiyya: Your mother has improved now that you convey my requests. He said to Rav: It is I who reverse your request to her. Rav said to him: This is an example of the well-known adage that people say: He who comes from you shall teach you wisdom; I should have thought of that idea myself. You, however, should not do so,ⁿ i.e., reverse my request, as it is stated: "They have taught their tongue to speak lies, they weary themselves to commit iniquity, etc." (Jeremiah 9:4). If you attribute such a request to me, you will have uttered a falsehood.

PERSONALITIES

Rav Pappa – רַב פָּפָא: Rav Pappa, from the fifth generation of Babylonian *amora'im*, was a student of both Abaye and Rava in Pumbedita. After Rava's death Rav Pappa established an academy in Neresh, where he was joined by his close friend, Rav Huna, son of Rav Yehoshua, who was appointed chief lecturer. Many of Rava's students came to study under Rav Pappa, who had more than two hundred students attending his lectures.

Rav Pappa's father was a wealthy merchant and supported him throughout many years of Talmud study. Rav Pappa became a wealthy businessman in his own right and a successful brewer of date beer. He also prospered in other business ventures. The Talmud records that he engaged in trade with both Jews and gentiles and had a reputation for fairness and generosity in his business dealings. Rav Huna became his partner in many such undertakings and became wealthy as well.

Rav Pappa had great respect for the Sages, and upon entering a city he would immediately call upon the rabbinic head of the community. Once, Rav Pappa felt that he had spoken inappropriately about one of the Sages, and he took upon

himself a personal fast as penance for his act. He was reluctant to offer final rulings in various areas of *halakha*, and he often chose to be stringent in accordance with both opinions in the Talmud rather than rule in accordance with a single opinion.

Rav Pappa was blessed with ten sons, all of whom were Torah scholars. Traditionally, the names of the ten sons of Rav Pappa are recited as part of the ceremony at the completion of the study of a tractate. While the source of this tradition is unclear and the identities of the sons are uncertain as well, the Rema suggests that it commemorates the celebrations made by Rav Pappa with his sons upon completing a course of study.

Rav – רַב: Rav, whose full name was Rabbi Abba ben Ayvu, was the first, and perhaps the greatest, of the Babylonian *amora'im*. Known as Abba Arikha because of his great height, Rav established the academy in Sura which lasted eight hundred years, through the period of the *ge'onim*. In addition to the visiting students who attended the academy only during the *kalla* months of Adar and Elul, the Gemara reports that twelve hundred full-time students studied in the academy throughout the year.

In his youth, Rav traveled to Eretz Yisrael with his uncle, Rabbi Hiyya, where he studied under Rabbi Yehuda HaNasi, the editor of the Mishna. He traveled back and forth between Israel and Babylonia until he settled in Babylonia in the year 219 CE. Rav's greatness is apparent not only in the large number of *amora'im* who were his students and who quote him throughout the Talmud, but also by the fact that in addition to his status as the first *amora*, he is recognized as the last of the *tanna'im* and consequently was permitted to disagree with tannaitic rulings.

Rav's teachings are found throughout both the Jerusalem and the Babylonian Talmuds. Among his many rulings are several that concern issues of marriage, such as his ruling that a man should not marry a woman without first meeting her, and that underage girls should not be married until they are old enough to state whom they want to marry. His rulings in the area of ritual *halakha* were invariably accepted, although the rulings of his colleague Shmuel were accepted in criminal and financial matters. Rav's son, Rabbi Hiyya, followed in his father's footsteps and became a great scholar; his other son, Ayvu, was a merchant.

רבי חייה הוה קא מצערא ליה דביתהו.
כי הוה משכח מידי – צייר ליה בסודריה,
ומייתי ניהלה. אמר ליה רב: והא קא
מצערא ליה למו! אמר ליה: דינו
שמגדלות בנינו, ומצילות אותנו.

The Gemara relates a similar story. Rabbi Ḥiyya's wife would constantly aggravate him. Nevertheless, when he would find something she would appreciate, he would wrap it in his shawl and bring it to her. Rav said to him: Doesn't she constantly aggravate you? Why do you bring her things? Rabbi Ḥiyya said to him: It is enough for us that our wives raise our children and save us

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NOTES

עוונותיו מתפלקין – *mitpakekin*: According to Rashi, *mitpakekin* means sealed. Riaf explains that Rashi means not that his sins are entirely forgiven, but that they are sealed up, pending his behavior after marriage. The *Arukh*, however, understands *mitpakekin* as meaning to become loosened.

Matza or *motze* – מצא או מוצא: Some commentaries explain that in addition to alluding to the two verses this phrase is a question on its own: *Matza* means a good find, while *motze* refers not to someone who finds an item, but to the author of the book of Ecclesiastes, King Solomon, who found, i.e., realized and publicized, that a bad wife is more bitter than death. The *Arukh LaNer* explains the fact that the word *matza* is in past tense indicates an unusual occurrence, whereas *motze* is the more common usage.

Her rival is at her side – צרתה בצדה: The Meiri explains that he should threaten to marry another woman.

A day of heavy rain – יום סגריר: Just as one cannot escape the continual dripping in a leaky house by escaping outside on a rainy day, this husband suffers from a continuous downpour of abuse from which he cannot escape (Maharsha).

מן החטא. מקרי ליה רב יהודה לרב יצחק
בריה: "ומוצא אני מר ממנות את האשה".
אמר ליה: בגון מאן? בגון אמך.

from sin. We should therefore show our gratitude to them. The Gemara cites a related incident: Rav Yehuda was teaching Torah to Rav Yitzhak, his son, and they encountered the verse: "And I find more bitter than death the woman" (Ecclesiastes 7:26). His son said to him: For example, whom? His father replied: For example, your mother.

והא מתני ליה רב יהודה לרב יצחק בריה:
אין אדם מוצא קורת רוח אלא מאשתו
ראשונה, שנאמר "יהי מקורך ברוך ושמח
מאשת נעורך". ואמר ליה: בגון מאן? בגון
אמך. מתקיף תקיפא. ועבדי מי עברא
במלה.

The Gemara asks: Didn't Rav Yehuda teach Rav Yitzhak, his son, the following *baraita*: A man finds peace of mind only with his first wife, as it is stated: "Let your fountain be blessed, and have joy from the wife of your youth" (Proverbs 5:18), and his son said to him: For example, whom, and his father responded in this case as well: For example, your mother. This indicates that Rav Yehuda did find peace of mind with his wife. The Gemara answers: She was aggressive and forceful, but she was easily appeased.

הכי דמי אשה רעה? אמר אבי: מקשטא
ליה תבא, ומקשטא ליה פומא. רבא אמר:
מקשטא ליה תבא, ומהדרא ליה גבא.

The Gemara asks: What are the circumstances when a woman is considered a bad wife? Abaye said: She arranges a table for him and arranges her mouth for him at the same time. In other words, although she prepares food for him, she verbally abuses him while he eats. Rava said: She arranges a table for him and then turns her back to him, displaying her lack of interest in his company.

אמר רבי חמא בר חנינא: כיון שנשא
אדם אשה – עוונותיו מתפלקין, שנאמר
"מצא אשה מצא טוב ויפק רצון מה".
במעברא, כי נסיב אינש איתתא אמרי
ליה הקי: מצא או מוצא? מצא – דכתיב
"מצא אשה מצא טוב", "מוצא" – דכתיב
"ומוצא אני מר ממנות את האשה".

Rabbi Ḥama bar Ḥanina said: Once a man marries a woman his iniquities crumble [*mitpakekin*],^N as it is stated: "Whoever finds a wife finds good, and obtains [*veyafek*] favor of the Lord" (Proverbs 18:22). In the West, i.e., Eretz Yisrael, when a man married a woman they would say to him as follows: *Matza* or *motze*?^N In other words, they would ask the groom if the appropriate passage for his wife is that verse, which begins with the word *matza*, as it is written: Whoever finds [*matza*] a wife finds good, or whether the more appropriate verse is the one beginning with the word *motze*, as it is written: "And I find [*motze*] more bitter than death the woman" (Ecclesiastes 7:26).

אמר רבא: אשה רעה מצוה לגרשה,
דכתיב "גרש לך ויצא מדון וישובות דין
וקלון". ואמר רבא: אשה רעה וכתובתה
מרובה – צרתה בצדה, דאמרי אינשי:
בכתבתה ולא בסילתא. ואמר רבא: קשה
אשה רעה כיום סגריר, שנאמר "דלף טורד
ביום סגריר ואשת מדינים נשתה".

Rava said: It is a mitzva to divorce a bad wife, as it is written: "Cast out the scorner and contention will depart; strife and shame will cease" (Proverbs 22:10). And Rava said: A bad wife whose marriage contract settlement is too large for her husband to pay in the event of a divorce, her rival wife is at her side.^N In other words, the only way for him to improve matters is to take another wife. As people say in the well-known adage: The way to trouble a woman is with her peer and not with a thorn. And Rava said: A bad wife is as troublesome as a day of heavy rain,^N as it is stated: "A continual dropping on a very rainy day and a contentious woman are alike" (Proverbs 27:15).

ואמר רבא: בא וראה כמה טובה אשה טובה – וכמה רעה אשה רעה. כמה טובה אשה טובה – דכתיב "מצא אשה מצא טוב". אי בגויה משתעי קרא – כמה טובה אשה טובה שהכתוב משבח, אי בתורה משתעי קרא – כמה טובה אשה טובה שהתורה נמשלה בה. כמה רעה אשה רעה – דכתיב "ומוצא אני מר ממות את האשה". אי בגויה משתעי קרא – כמה רעה אשה רעה שהכתוב מגנה, אי בגויה משתעי קרא – כמה רעה אשה רעה, שהיה נמשלה בה.

"הנני מביא רעה אשר לא יוכלו לצאת ממנה". אמר רב נחמן אמר רבה בר אבבה: זו אשה רעה וכתובתה מרובה. "נתנני ה' בידי לא אוכל קיום" אמר רב חסדא אמר מר עוקבא בר חיאיא: זו אשה רעה וכתובתה מרובה. במערבא אמרו: זה שמוזנותיו תלוין בכספו.

"בניך ובנותיך נתונים לעם אחר" אמר רב חנן בר רבא אמר רב: זו אשת האב. "בגוי נבל אכעיס" אמר רב חנן בר רבא אמר רב: זו אשה רעה וכתובתה מרובה. רבי אליעזר אומר: אלו המינים. וכן הוא אומר "אמר נבל בלבו אין אלהים" וגו'.

במתניתא תנא: אלו אנשי ברבריא ואנשי מרטנאי, שמהלכין ערומים בשוק. שאין להם משקל ומתועב לפני המקום יותר ממי שמהלך בשוק ערום. רבי יוחנן אמר: אלו חברים. אמרו ליה לר' יוחנן: אתו חברי לבבל, שגא נפל. אמרו ליה: מקבלי שוחדא. תריץ יתיב.

And Rava said: Come and see how good a good wife is and how bad a bad wife is. How good is a good wife? As it is written: Whoever finds a wife finds good. If the verse speaks of her, a wife, this demonstrates how good a good wife is, as the Bible praises her. If the verse speaks metaphorically of the Torah, it nevertheless indicates how good a good wife is, as the Torah is compared to her. Conversely, how bad is a bad wife? As it is written: "And I find more bitter than death the woman." If the verse speaks of her, this demonstrates how bad a bad wife is, as the Bible condemns her. If the verse speaks metaphorically of Gehenna, it still demonstrates how bad a bad wife is, as Gehenna is compared to her.

The Gemara cites further statements on the same issue. The verse states: "Behold, I will bring evil upon them, which they shall not be able to escape" (Jeremiah 11:11). Rav Nahman said that Rabba bar Avuh said: This is a bad wife whose marriage contract is large. Similarly, with regard to the verse: "The Lord has given me into the hands of those against whom I cannot stand" (Lamentations 1:14), Rav Hisda said that Mar Ukva bar Hiyya said: This is a bad wife whose marriage contract is large. In the West, Eretz Yisrael, they said this verse is referring to one whose food is dependent on his money.^N He is forced to purchase his food with cash, as he does not possess land of his own.

With regard to the verse: "Your sons and your daughters shall be given to another people" (Deuteronomy 28:32), Rav Hanan bar Rava said that Rav said: This is a reference to the children's father's wife, their stepmother. With regard to the verse: "I will provoke them with a vile nation" (Deuteronomy 32:21), Rav Hanan bar Rava said that Rav said: This is a bad wife whose marriage contract is large. Rabbi Eliezer says that these are apostates, and so too the verse states: "The vile man has said in his heart: There is no God, they have dealt corruptly" (Psalms 14:1), which proves that an apostate is called vile.

It was taught in a *baraita* with regard to the verse: "I will provoke them with a vile nation," that these are the inhabitants of Barbarya and the inhabitants of Martenai,^B who walk naked in the marketplace, as none is more despised and abominable before the Omnipresent than one who walks naked in the marketplace. Rabbi Yoḥanan said: These are the *Ḥabbarim*,^L a sect of Persian priests. The Gemara relates: When they said to Rabbi Yoḥanan: The *Ḥabbarim* have come to Babylonia,^B he shuddered and fell of his chair, out of concern for the Jews living there. They said to him: There is a way to deal with their persecution, as they accept bribes. Upon hearing that not all was lost, he straightened himself and sat in his place once again.

BACKGROUND

Barbarya and Martenai – ברבריא ומרטנאי: Barbarya is a land in northern Africa, called Βαρβαρία in Greek, meaning foreign place. Their language sounded to the Greeks as though they were saying *barbarbar*, and consequently, the Greeks considered them to be uncivilized and primitive. The term has been used in various forms through the generations and in different languages, and it is still used today as the name for the local tribe, the Berbers as well as in the term barbarian, referring to uncivilized people.

Martenai is a version of the Roman province Mauritania, also in northern Africa, roughly corresponding to modern-day Morocco.

The Gemara is apparently referring to members of tribes from those two areas who were unaccustomed to wearing clothing, or who wore merely loin cloths.

אתו חברי לבבל – The *Ḥabbarim* have come to Babylonia – The *Ḥabbarim*, also called the *Amgoshim* in the Talmud, were priests of the Persian religion, Zoroastrianism. While the Parthians controlled Persia and Babylonia the *Ḥabbarim* did not enjoy important status, but at the beginning of the period of the *amora'im* the Sassanid dynasty rose to power, and as devout adherents to their religion they gave the *Ḥabbarim* great control. Apparently, it was the *Ḥabbarim* who initiated harsh decrees against the Jews. Rabbi Yoḥanan was therefore shocked and dismayed when he heard that they had reached Babylonia, then the largest Jewish center in the Persian Empire, with the new rulers. Nevertheless, it seems that this tribe of priests was corrupt and foolish, and through bribery and negotiations the Jews were able to withstand their decrees.

NOTES

Whose food is dependent on his money [*kaspo*] – שמוזנותיו תלוין בכספו: The version of the text cited by the Meiri reads: Whose food is dependent on his palm [*kappo*]. In other words, although manual labor is laudable, if it is one's only source of income, he will not earn a comfortable living.

LANGUAGE

Ḥabbarim – חבברים: This designation for Zoroastrian priests comes from the term "*ḥover ḥaver*" (Deuteronomy 18:11), referring to acts of sorcery. It implies that these priests were seen as involved in various magic rituals.

Issue decrees against the Jewish people with regard to three matters – גזרו על שלשה: Some commentaries maintain that information about the decrees was included in the report delivered to Rabbi Yohanan, who proceeded to explain the reason for each decree. The Maharsha asks how it was possible that Babylonian Jews committed these transgressions. He explains that in the case of the priestly gifts, they would take on a gentile partner in order to be exempt, as one is exempt from giving the gifts to a priest if the animal was owned jointly by a Jew and a gentile. Furthermore, they actually performed ritual immersion, just not in precise accordance with halakhic requirements. Finally, they rejoiced on the gentiles' holidays on the pretext that the gentiles in their vicinity were not really idol worshippers.

Because the Jews rejoice on the holidays of the gentiles – מִפְּנֵי שְׂמֵחוֹת בְּיוֹם אֲדָם: The Maharsha, the Maharshah, and other commentaries attempt to explain how this punishment fits the crime. The Meiri explains that idols are considered dead, and therefore the Jews were punished for celebrating a festival of the dead by having their own deceased relatives mistreated.

A plague to her husband – צָרַעַת לְבַעֲלָה: The Maharsha explains that as a man's wife is considered like his own flesh, a bad wife is like a plague on his own body. The *Arukh LaNer* suggests that this is a hint that just as a plague is a personal affliction that distances one from others, the same is true of a bad wife.

גזרו על שלשה מפני שלשה; גזרו על הבשר – מפני המתנות, גזרו על המרחצאות – מפני הטבילה,

קא מחטטי שכבי – מפני ששמחים ביום אידם, שנאמר "והייתה יד ה' בכם ובאבותיכם", אמר רבה בר שמואל: זו חטוטי שכבי, דאמר מר: בעון חיים – מתים מתחטטין.

אמר ליה רבא לרבה בר מארי: בתיב "לא יאספו ולא יקברו לדומן על פני האדמה יהיו" וכתוב "ונבחר מות מחיים". אמר ליה: נבחר מות לרשעים, שלא יחיו בעולם הזה ויחטאו ויפלו בגיהנם.

כתוב בספר בן סירא: "אשה טובה – מתנה טובה לבעלה". וכתוב "טובה בחיק ירא אלהים תנתן". אשה רעה – צרעת לבעלה. מאי תקנתיה – יגרשנה ויתרפא מצרעתו. "אשה יפה אשרי בעלה, מספר ימיו כפלים".

"העלם עיניך מאשת חן פן תלכד במצודתה. אל תט אצל בעלה למסוך עמו יין ושכר, כי בתואר אשה יפה רבים הושחתו, ועצומים כל הרוגיה". "רבים היו פצעי רוכל המרגלים לדבר ערוה, בניצוץ מבעיר גחלת, ככלוב מלא עוף בן בתייהם מלאים מרמה",

Apropos the *Habbarim*, the Gemara cites the following statement of the Sages: The *Habbarim* were able to issue decrees against the Jewish people with regard to three matters,^{NB} due to three transgressions on the part of the Jewish people. They decreed against meat, i.e., they banned ritual slaughter, due to the failure of the Jewish people to give the priests the gifts of the foreleg, the jaw, and the maw. They decreed against Jews bathing in bathhouses, due to their neglect of ritual immersion.

Third, they exhumed the dead from their graves because the Jews rejoice on the holidays of the gentiles,^N as it is stated: "Then shall the hand of the Lord be against you and against your fathers" (1 Samuel 12:15). Rabba bar Shmuel said: This verse is referring to exhuming the dead, which upsets both the living and the dead, as the Master said: Due to the iniquity of the living, the dead are exhumed.

Rava said to Rabba bar Mari: It is written: "They shall not be gathered nor buried; they shall be for dung upon the face of the earth" (Jeremiah 8:2), and it is written: "And death shall be chosen rather than life" (Jeremiah 8:3). If death will be so indecent that their bodies will not even be buried, why would people choose death over life? Rabba bar Mari said to him: The latter verse does not refer to the previously described state of affairs, but rather it means: Death is preferable for the wicked, as it is better that they not live in this world and sin and consequently descend into Gehenna.

The Gemara cites more statements concerning women. It is written in the book of Ben Sira:^B A good wife is a good gift for her husband. And it is written: A good one will be placed in the bosom of a God-fearing man; a bad wife is a plague to her husband.^N What is his remedy? He should divorce her and he will be cured of his plague. A beautiful wife, happy is her husband; the number of his days are doubled. His pleasure in her beauty makes him feel as though he has lived twice as long.

Turn your eyes from a graceful woman who is married to another man, lest you be caught in her trap. Do not turn to her husband to mix wine and strong drink with him, which can lead to temptation. For on account of the countenance of a beautiful woman many have been destroyed, and her slain is a mighty host. Furthermore, many have been the wounded peddlers. This is referring to men who travel from place to place to sell women's jewelry. Their frequent dealings with women lead their husbands to harm the peddlers. Those who accustom themselves to licentious matters are like a spark that ignites a coal. As a cage is full of birds, so are their houses full of deceit.

BACKGROUND

Issue decrees against the Jewish people with regard to three matters – גזרו על שלשה: It is possible that the decrees mentioned here are linked to the beliefs of the *Habbarim*, which included a complex set of laws concerning ritual purity. According to this cult, land possesses special sanctity; therefore, in addition to not burying their dead, they made every effort to remove corpses from their places of burial. Perhaps the decree barring Jews from bathhouses was due to the fact that the *Habbarim* considered the Jews impure. Furthermore, it is reasonable to suggest that the ban against ritual slaughter was also related to these laws.

However, it is also possible that these decrees were promulgated in Eretz Yisrael as well, which would indicate that they were not promulgated by the *Habbarim*, but were rather part of a general campaign to suppress Judaism.

The book of Ben Sira – סֵפֶר בֶּן סִירָא: The book of *Ben Sira*, also called the *Wisdom of Sira* and *Ecclesiasticus*, was one of the first works composed after the closing of the biblical canon. It was written before the Hasmonean period by Shimon ben Yehoshua ben Sira, a resident of Jerusalem and a younger contemporary

of Shimon HaTzaddik. The book was widely available and very popular. The author's grandson, who lived in Alexandria, translated it into Greek in 132 BCE, making it available to those who could not read the original Hebrew.

In the Septuagint, and consequently in many other translations, *Ecclesiasticus* is one of the books of the Bible. The Sages considered it apocryphal and even criticized those who read it, both because its council is uneven in value and due to the fact that people confused it with the *Alphabet of Sira*, a book of folk wisdom of dubious worth. In any case, the Sages quotes the book of Ben Sira on many occasions, and sometimes even treated it as one of the sacred writings. They certainly did not refrain from citing its good advice in their sermons, or from making use of its wisdom.

For centuries, the book was known only through translations, but recent discoveries on Masada, among other places, have unearthed large portions of the work in Hebrew. As it was not a sacred book, copyists apparently allowed themselves certain liberties, which accounts for the different versions of the text. Moreover, it seems that the Sages of the Talmud were able to cite it from memory.

The souls of the body – הנשמות שבגוף: Many early commentaries explain that the body is referring to the place where the souls are kept. The *Arukh* states that it is a curtain before the Divine Presence with the images of all people destined to be born. Rabbi Avraham min HaHar cites a homiletic explanation that the final redemption will not arrive until all mankind's physical powers are worn out, and he is ready to become a receptacle for the spiritual.

As my soul yearns for Torah – שִׁנְפְּשִׁי חֶשְׁקָה בְּתוֹרָה: Rabbi Avraham min HaHar explains that ben Azzai claimed he had such desire and fervor for Torah that he had no room left for other passions. He adds that this is why the Rambam says that this claim can be made only by one who is not troubled by his evil inclination.

HALAKHA

The mitzva of marriage – מצות נשואין: A man who does not marry is considered like one who sheds blood, diminishes the Divine Image, and causes the Divine Presence to depart from the Jewish people. Upon his marriage, his transgressions vanish, as per the Gemara (*Shulḥan Arukh, Even HaEzer* 1:1).

My soul yearns for Torah – נִפְשִׁי חֶשְׁקָה בְּתוֹרָה: One whose soul yearns for Torah like ben Azzai, to the extent that his constant attachment to Torah study prevents him from getting married, is not considered a sinner, provided that he is not tempted by his evil inclination. Even so, he should not proceed in this manner *ab initio* (*Taz*; Rambam *Sefer Nashim, Hilkhot Ishut* 15:3; *Shulḥan Arukh, Even HaEzer* 1:4).

“אל תצר צרת מחר כי לא תדע מה ילך
יום, שָׁמָּה מחר בא ואִיננו, נִמְצָא מִצְטָעַר
עַל הָעוֹלָם שָׁאִין שְׁלוֹ.” “מִנֶּעַ רַבִּים מִתּוֹךְ
בֵּיתְךָ, וְלֹא הִכַּל תִּבְיֵא בֵּיתְךָ. רַבִּים יִהְיוּ
דוֹרְשֵׁי שְׁלוֹמְךָ, גִּלְהָ סוֹד לְאַחַד מֵאַלְפִי.”

אָמַר רַבִּי אֲסִי: אִין בֶּן דָּוִד בָּא עַד שִׁכְלֹו
כָּל הַנְּשָׁמוֹת שֶׁבְּגוֹף שְׁנֵאֵמַר “כִּי רוּחַ מִלְפָּנֵי
יַעֲזוּבֹן וְנִשְׁמוֹת אֲנִי עֲשִׂיתִי.” תִּנְיָא, רַבִּי
אֱלִיעֶזֶר אוֹמֵר: כָּל מִי שָׁאִין עוֹסֵק בְּפִרְיָה
וּרְבִיָּה – כְּאִילוֹ שׁוֹפֵךְ דָּמִים שְׁנֵאֵמַר “שׁוֹפֵךְ
דָּם הָאָדָם בְּאָדָם דְּמוֹ יִשְׁפֹּךְ” וְכֵתִיב
בְּתִרְיָה “וְאַתָּם פְּרוּ וּרְבוּ.”

רַבִּי יַעֲקֹב אוֹמֵר: כְּאִילוֹ מִמַּעַט הַדְּמוּת,
שְׁנֵאֵמַר “כִּי בְצַלֵּם אֱלֹהִים עָשָׂה אֶת
הָאָדָם” וְכֵתִיב בְּתִרְיָה “וְאַתָּם פְּרוּ” וְגו’.
בֶּן עֲזַאי אוֹמֵר: כְּאִילוֹ שׁוֹפֵךְ דָּמִים, וּמִמַּעַט
הַדְּמוּת, שְׁנֵאֵמַר “וְאַתָּם פְּרוּ וּרְבוּ.”

אָמְרוּ לוֹ לְבֶן עֲזַאי: יֵשׁ נָאָה דוֹרֵשׁ וְנָאָה
מְקַיִים, נָאָה מְקַיִים וְאִין נָאָה דוֹרֵשׁ.
וְאַתָּה – נָאָה דוֹרֵשׁ וְאִין נָאָה מְקַיִים!
אָמַר לָהֶן בֶּן עֲזַאי: וּמָה אַעֲשֶׂה שְׁנִפְשִׁי
חֶשְׁקָה בְּתוֹרָה, אֶפְשָׁר לְעוֹלָם שִׁיתְקַיִים
עַל יְדֵי אַחֵרִים.

תִּנְיָא אִידֵךְ, רַבִּי אֱלִיעֶזֶר אוֹמֵר: כָּל מִי
שָׁאִין עוֹסֵק בְּפִרְיָה וּרְבִיָּה – כְּאִילוֹ שׁוֹפֵךְ
דָּמִים, שְׁנֵאֵמַר “שׁוֹפֵךְ דָּם הָאָדָם” וְסִמְנֵי
לִיה “וְאַתָּם פְּרוּ” וְגו’. רַבִּי אֱלִיעֶזֶר בֶּן עֲזַרְיָה
אוֹמֵר: כְּאִילוֹ מִמַּעַט הַדְּמוּת, בֶּן עֲזַאי
אוֹמֵר: וְכו’. אָמְרוּ לוֹ לְבֶן עֲזַאי יֵשׁ נָאָה
דוֹרֵשׁ וְכו’.

תִּנְיָ רַבִּנִּי: “וּבִנְחָה יֹאמַר שׁוֹבָה ה’ רַבְבוֹת
אֱלֹהֵי יִשְׂרָאֵל”

The Gemara quotes additional statements from the book of Ben Sira: **Do not suffer from tomorrow’s trouble**, that is, do not worry about problems that might arise in the future, **as you do not know what a day will bring**. Perhaps when tomorrow comes, the individual who was so worried will not be among the living, and he was consequently upset over a world that is not his. Prevent a crowd from inside your house, do not let many people enter, and do not even bring all your friends into your house. Make sure, however, that a crowd seeks your welfare, and that you have many allies. Reveal a secret to only one in a thousand, since most people are unable to keep a secret.

Rabbi Asi said: The Messiah, son of David, will not come until all the souls of the bodyⁿ have been finished, i.e., until all souls that are destined to inhabit physical bodies will do so. As it is stated: “For the spirit that enwraps itself is from Me, and the souls that I have made” (Isaiah 57:16). It is taught in a *baraita* that Rabbi Eliezer says: Anyone who does not engage in the mitzva to be fruitful and multiply is considered as though he sheds blood, as it is stated: “Whoever sheds the blood of man, by man shall his blood be shed” (Genesis 9:6), and it is written immediately afterward: “And you, be fruitful and multiply” (Genesis 9:7).

Rabbi Ya’akov says: It is as though he diminishes the Divine Image, as it is stated: “For in the image of God He made man” (Genesis 9:6), and it is written immediately afterward: “And you, be fruitful and multiply” (Genesis 9:7). Ben Azzai says: It is as though he sheds blood and also diminishes the Divine Image,^h as it is stated: “And you, be fruitful and multiply,” after the verse that alludes to both shedding blood and the Divine Image.

They said to ben Azzai: There is a type of scholar who expounds well and fulfills his own teachings well, and another who fulfills well and does not expound well. But you, who have never married, expound well on the importance of procreation, and yet you do not fulfill well your own teachings. Ben Azzai^p said to them: What shall I do, as my soul yearns for Torah,^{nh} and I do not wish to deal with anything else. It is possible for the world to be maintained by others, who are engaged in the mitzva to be fruitful and multiply.

It is similarly taught in another *baraita* that Rabbi Eliezer says: Anyone who does not engage in the mitzva to be fruitful and multiply is considered as though he sheds blood, as it is stated: “Whoever sheds the blood of man,” and it is stated near it: “And you, be fruitful and multiply.” Rabbi Elazar ben Azarya says: It is as though he diminishes the Divine Image. Ben Azzai says: It is as though he both sheds blood and diminishes the Divine Image. They said to ben Azzai: There is a type of scholar who expounds well, etc.

The Sages taught with regard to the mitzva to be fruitful and multiply: “And when it rested, he would say: Return, Lord, to the ten thousands of the thousands of Israel” (Numbers 10:36).

PERSONALITIES

Ben Azzai – בֶּן עֲזַאי: This is Shimon ben Azzai, one of the *tanna'im* of Yavne. Despite the fact that he was never ordained, which is why he is known by name alone, and usually simply as ben Azzai, he was considered among the greatest of the Sages and was renowned for his wisdom.

It appears that he did not study Torah in his youth, but only after he met Rabbi Akiva’s daughter, who promised to marry him if he would become a scholar. Ben Azzai indeed went and studied under Rabbi Yehoshua, Rabbi Yishmael, and principally Rabbi Akiva. He was one of Rabbi Akiva’s outstanding students and was eventually considered a disciple-colleague of Rabbi Akiva’s, whom he considered to be the foremost scholar of his generation.

It is unclear whether he married Rabbi Akiva’s daughter at all,

or whether he married and separated from her a short while later. Due to his great passion for Torah he dedicated himself entirely to its study. It is therefore said about him that when ben Azzai died diligence in Torah study ceased (*Sota* 49a). His teachings of *halakha* and *aggada* are cited in the Mishna, in *baraitot*, and in the Talmud. It seems that he even established a body of students of his own in his hometown of Tiberias.

Ben Azzai also studied esoteric wisdom, and is listed as one of the four Sages who entered the orchard, i.e., the deepest secrets of Torah knowledge. He is said to have: Glimpsed at the Divine Presence and died (*Hagiga* 14b), and the verse “Precious in the eyes of the Lord is the death of His pious ones” (Psalms 116:15) is applied to him.

HALAKHA

If he divorced her she is permitted to marry another man – גירשה, מותרת לינשא לאחר: If a woman was divorced because she failed to bear a child, she is permitted to marry another man. This second husband may stay with her ten years, but if she has not had children at this point he too must divorce her or marry an additional wife (Rambam *Sefer Nashim, Hilkhot Ishut* 15:14; *Shulhan Arukh, Even HaEzer* 154:16).

A wife who did not give birth – אשה שלא ילדה: If a man remained with his wife for ten years without having children, he must divorce her and pay her marriage contract in order to marry another woman who can bear children. Even if he does not want to divorce her, he is compelled to do so. Some commentaries say that if the man has already fathered a viable child, he is not compelled to divorce his wife even if he has not fulfilled the mitzva to be fruitful and multiply (Rema, citing Rivash). The Rema adds that nowadays the custom is not to force the couple to divorce in any situation (Rambam *Sefer Nashim, Hilkhot Ishut* 15:7; *Shulhan Arukh, Even HaEzer* 154:10 and in the comment of Rema).

BACKGROUND

He did not merit to be built from her – לא זכה להבנות ממנה: From a medical standpoint it is possible for both a man and a woman to be fertile and yet be unable to have children together. Certain antibodies in the woman might destroy the sperm of a particular man and prevent pregnancy, or the genetic combination of the two could create a situation in which the fetus dies before it has a chance to develop.

מלמד שאין השכינה שורה על פחות משני אלפים ושני רבבות מישראל. הרי שהיו ישראל שני אלפים ושני רבבות חסר אחד, וזה לא עסק בפריה ורבייה – לא נמצא זה גורם לשכינה שתסתלק מישראל!?

אבא חנן אמר משום רבי אליעזר: חייב מיתה, שנאמר "ובנים לא היו להם" הא היו להם בנים – לא מתו. אחרים אומרים: גורם לשכינה שתסתלק מישראל, שנאמר "להיות לך לאלהים ולורעך אחריו", בזמן שזרעך אחריו – שכינה שורה, אין זרעך אחריו – על מי שורה, על העצים ועל האבנים!?

מתני' נשא אשה ושהה עמה עשר שנים ולא ילדה – אינו רשאי לבטל גירשה – מותרת לינשא לאחר, ורשאי השני לשהות עמה עשר שנים. ואם הפילה – מונה משעה שהפילה.

גמ' תנו רבנן: נשא אשה ושהה עמה עשר שנים ולא ילדה – יוציא ויתן כתובה, שמה לא זכה להבנות ממנה.

This teaches that the Divine Presence does not rest upon less than two thousands and two ten-thousands^N of the Jewish people, as the terms thousands and ten-thousands are both in the plural. Consequently, if there were two thousands and two ten-thousands of the Jewish people, less one, and this man did not engage in the mitzva to be fruitful and multiply, is he not found to have caused the Divine Presence to be depart from the Jewish people?

Abba Hanan said in the name of Rabbi Eliezer: A man who does not engage in procreation is liable to death,^N as it is stated with regard to the sons of Aaron: "And Nadav and Avihu died ... and they had no children" (Numbers 3:4). This indicates that if they would have had children they would not have died. Others say: He causes the Divine Presence to depart from the Jewish people, as it is stated: "To be a God to you and to your seed after you" (Genesis 17:7). When your seed is after you, i.e., when you have children, the Divine Presence rests upon the Jewish people, but if your seed is not after you, upon whom can the Divine Presence rest? Upon wood and stones?

MISHNA If a man married a woman and stayed with her for ten years and she did not give birth,^N he is no longer permitted to neglect the mitzva to be fruitful and multiply. Consequently, he must either divorce her and marry someone else, or take another wife while still married to her. If he divorced her she is permitted to marry another man,^H as it is not necessarily on her account that she and her first husband did not have children, and the second husband is permitted to stay with her for ten years. And if she had a miscarriage, he counts the ten years from the time of the miscarriage.

GEMARA The Sages taught: If a man married a woman and stayed with her for ten years and she did not give birth,^H he should divorce her and pay her marriage contract, because perhaps he did not merit to be built,^N i.e., to have children, from her.^B It is not certain that their failure to have children is due to her, as it is possible that they are not a suitable match for bearing children.

NOTES

שני אלפים ושני – Two thousands and two ten-thousands: The Maharsha notes that the verse states: "The chariots of God are ten-thousands, thousands" (Psalms 68:18), and the Jewish people are worthy of serving as a chariot for the Divine Presence by this same number. Similarly, there were twenty-two thousand Levites in the wilderness who did not participate in the sin of the Golden Calf, and in whose merit the Divine Presence rested upon the Jewish people.

חייב מיתה – Liable to death: This is similar to the statement cited earlier that one who is not occupied with the mitzva to be fruitful and multiply is considered a bloodshedder, and is therefore liable to death (see *Iyyun Ya'akov*).

נשא אשה...and she did not give birth – לא ילדה: The commentaries debate whether this means that she has not given birth to any children at all, or perhaps, as

explained in the Jerusalem Talmud, it even includes a case where she had a child and the child died, and then she did not have another child for ten years. A third possibility is that this applies even to a woman who had only one child, even if that child lived, and ten years have passed since then (see Ramban and Rashba). The *Nimmukei Yosef* summarizes these opinions.

Perhaps he did not merit to be built – לא זכה להבנות: Even if he had children from a former wife, and therefore it is clear that he is capable of having children, perhaps his present wife is also capable of having children but the two simply did not merit to have children together (Ritva). The commentaries note that this consideration is strong enough to serve as the basis for a monetary claim, and he cannot withhold the payment of her marriage contract by claiming that there is at least a doubt as to whether she is fertile (*Gilyonei HaShas*).

If he was sick, etc. – תלך הוא וכו' – The ten years that one may remain married before divorcing his wife if she has not borne him children do not include periods of time when one of them was sick, even if they engaged in intercourse during this period, or time when they were imprisoned, or when one of them was out of the country, as mentioned in the Jerusalem Talmud (Rambam Sefer Nashim, Hilkhos Ishut 15:11; Shulhan Arukh, Even HaEzer 154:11).

אף על פי שאין ראיה לדבר – וכו' לדבר: "מקץ עשר שנים לשבת אברהם בארץ כנען" ללמדך שאין ישיבת חוץ לארץ עולה לו מן המניין. לפיכך, חלה הוא או שחלתה היא, או שניהם חבושים בבית האסורים – אין עולין לו מן המניין.

Although there is no explicit proof^N for the matter that one must take another wife if he has not had children after ten years of marriage, there is an allusion to the matter, as the verse states: "And Sarai, Abram's wife, took Hagar... after Abram had dwelled ten years in the land of Canaan, and gave her to Abram her husband to be his wife" (Genesis 16:3). Incidentally, this verse also comes to teach you that the years spent dwelling outside of Eretz Yisrael do not count as part of his tally.^N Consequently, if he was sick^{NH} during this period or she was sick, or if one of the two of them was imprisoned in jail, it does not count as part of his tally.

אמר ליה רבא רבא נחמן: ויליף מיצחק, דכתיב "ויהי יצחק בן ארבעים שנה בקחתו את רבקה" וגו' וכתיב "ויצחק בן ששים שנה בלדת אותם!" אמר ליה: יצחק עקור היה.

Rava said to Rav Nahman: Let us derive from Isaac that one may wait a longer period of time, as it is written: "And Isaac was forty years old when he took Rebekah... to be his wife" (Genesis 25:20), and it is written with regard to the birth of Jacob and Esau: "And Isaac was sixty years old when she bore them" (Genesis 25:26). This indicates that one may wait twenty years. Rav Nahman said to him: Isaac knew that he was infertile, and therefore there was no reason for him to marry another woman, as Rebekah was not the cause of their infertility.

אי הכי, אברהם נמי עקור היה! והוא מיבעי ליה לכדרבי חייא בר אבא. דאמר רבי חייא בר אבא אמר רבי יוחנן: למה נמנו שנותיו של ישמעאל – כדי לייחס בהן שנותיו של יעקב.

The Gemara responds: If so, Abraham also should not have married another woman, as he was also infertile. Rather, the *tanna* requires that verse that states when Jacob and Esau were born for that which Rabbi Hiyya bar Abba taught. This is because Rabbi Hiyya bar Abba said that Rabbi Yohanan said: Why were Ishmael's years counted in the Torah, as they do not appear to be relevant to its narrative? In order to determine through them the years of Jacob, i.e., Jacob's age at the time that various events took place, as explained in tractate *Megilla* (17a). The verse concerning Jacob's birth was not meant to allude to a *halakha* about remaining married before having children, but to make it possible to determine Jacob's age by relating it to the age of Ishmael.

NOTES

אף על פי שאין ראיה – See the explanations of *Tosafot* and the *Tosefot HaRosh* as to why this source is considered to merely be an allusion and not an explicit proof. Rabbi Yehuda al-Madani states that the verse does not prove he is obligated to divorce her or marry another woman, because in the case of Avraham it was Sarah who freely chose to give Hagar to her husband.

Years spent dwelling outside of Eretz Yisrael do not count as part of his tally – אין ישיבת חוץ לארץ עולה לו מן המניין – The commentaries discuss this issue at length. Rashi's comments that the sin of living outside Eretz Yisrael may have prevented them from having children implies that the *halakha* that one must take another wife after ten years applies only in Eretz Yisrael. Some commentaries indeed write that a husband is not compelled to divorce his barren wife outside Eretz Yisrael, due to the possibility that the reason they have no children is because they are living outside the land (*Or Zarua*). Most commentaries, however, reject this opinion, arguing that there is no reason why the mitzva to be fruitful and multiply, which is not connected to the land, cannot be fulfilled properly outside of it.

One alternative explanation is that if a man whose permanent residence is in Eretz Yisrael leaves the country, the sin of his departure might prevent him from having children (Ramban, citing Rabbi Avraham Av Beit Din). The majority of the commentaries

explain that one who did not have children outside Eretz Yisrael and subsequently immigrated to Eretz Yisrael must wait an additional ten years, as the merit of living in Eretz Yisrael might help him bear children (see Ritva). Rabbi Avraham min HaHar states that the expression: Count as part of his tally, is referring specifically to Abraham. He lived in sorrow over the fact that he was not in Eretz Yisrael, which might have led to his failure to have children.

לפיכך חלה הוא – Consequently if he was sick – Rashi explains the use of the word consequently in this context: The fact that the time Abraham and Sarah spent outside of Eretz Yisrael did not count toward the ten years indicates that whenever there is an external factor that may have been responsible for the couple's childlessness, the time when that factor applied is not taken into account. Consequently, if one of them was sick or incarcerated for a period of time, that time is not included in the ten years. The Rosh explains that the Gemara's statement is not limited to situations where the couple was unable to engage in intercourse, in which case there would have been no need to state that the time does not count toward the tally. Rather, the sin for which they were punished with their illness or incarceration may also be responsible for the fact that they have not conceived, and therefore the time does not count even if they were able to engage in intercourse.

NOTES

Concerning [lenokhah] his wife – לְנוֹכַח אִשְׁתּוֹ: Rashi explains that the term *lenokhah* indicates that Isaac and Rebekah stood opposite each other and prayed. The Maharsha states that *lenokhah* can mean corresponding to. Consequently, just as Rebekah required this prayer, so did Isaac, as his status was similar to hers.

Because the prayer...is not similar, etc. – לִפְנֵי שְׂאִינוּ דּוֹמָה: This means not that the prayer of a righteous individual who is the son of a righteous individual is always answered, but that it is more likely to be answered. See the *Iyyun Ya'akov*.

Abraham and Sarah were originally *tumtumin* – אֲבָרָהִם – וְשָׂרָה טוּמְטָמִין הָיוּ: The Meiri writes that this informs us of the power of prayer, which can change even one's physical nature.

אָמַר רַבִּי יִצְחָק: יִצְחָק אָבִינוּ עָקוֹר הָיָה, שְׁנֵאָמַר "וַיַּעֲתֶר יִצְחָק לַה' לְנוֹכַח אִשְׁתּוֹ," עַל אִשְׁתּוֹ לֹא נֶאֱמַר, אֲלָא "לְנוֹכַח" מִלְּמִד שְׁשֵׁנֵיהֶם עָקוֹרִים הָיוּ. אִי הָכִי "וַיַּעֲתֶר לוֹ" וַיַּעֲתֶר לָהֶם מִיִּבְעֵי לֵיָּהּ! לִפְנֵי שְׂאִינוּ דּוֹמָה תְּפִלַּת צְדִיק בֶּן צְדִיק לְתִפְלַת צְדִיק בֶּן רָשָׁע.

אָמַר רַבִּי יִצְחָק: מִפְּנֵי מָה הָיוּ אֲבוֹתֵינוּ עָקוֹרִים – מִפְּנֵי הַקְּדוּשׁ בְּרוּךְ הוּא מִתְאַוָּה לְתִפְלַתָּן שֶׁל צְדִיקִים. אָמַר רַבִּי יִצְחָק: לָמָּה נִמְשְׁלָה תְּפִלַּתָּן שֶׁל צְדִיקִים כְּעֵתֶר – מָה עֵתֶר זֶה מִהֶפֶךְ הַתְּבוּאָה מִמָּקוֹם לְמָקוֹם, כֵּךְ תְּפִלַּתָּן שֶׁל צְדִיקִים מִהֶפֶכֶת מְדוּתָיו שֶׁל הַקְּדוֹשׁ בְּרוּךְ הוּא מִמַּדַּת רָגוֹנוֹת לְמַדַּת רַחֲמָנוּת. אָמַר רַבִּי אָמִי: אֲבָרָהִם וְשָׂרָה טוּמְטָמִין הָיוּ, שְׁנֵאָמַר "הִבֵּיטוּ אֶל צוּר

Rabbi Yitzhak said: Isaac our father was infertile, as it is stated: "And Isaac entreated the Lord concerning [lenokhah] his wife^N because she was barren" (Genesis 25:21). It is not stated that he entreated the Lord for [al] his wife, but *lenokhah*, which can mean opposite, against, or corresponding to; this teaches that they were both infertile. The Gemara asks: If so, why does the verse continue: "And the Lord let Himself be entreated of him"? The verse should say: And the Lord let Himself be entreated of them. The Gemara answers that their prayers were answered due to Isaac, because the prayer of a righteous individual who is the son of a righteous individual is not similar^N to the prayer of a righteous individual who is the son of a wicked individual, and Rebekah's father was the wicked Laban.

Rabbi Yitzhak said: For what reason were our forefathers initially infertile? Because the Holy One, Blessed be He, desires the prayers of the righteous, and He therefore wanted them to pray for children. Similarly, Rabbi Yitzhak said: Why are the prayers of the righteous compared to a pitchfork [eter],^B as in the verse: "And He let Himself be entreated [vaye'ater]"? This indicates that just as this pitchfork turns over produce from one place to another, so the prayer of the righteous turns over the attributes of the Holy One, Blessed be He, from the attribute of rage to the attribute of mercy. Rabbi Ami said: Abraham and Sarah were originally *tumtumin*,^{NB} people whose sexual organs are concealed and not functional, as it is stated: "Look to the rock

BACKGROUND

Pitchfork [eter] – עֵתֶר: Rashi explains here that *eter* means a shovel, but *Tosafot* (*Sukka* 14a) prove from various sources that an *eter* is a pitchfork used to dig the earth or turn over produce in the process of winnowing, which is the way Rashi explains the word in tractate *Sukka* (14a).



Tumtum – טוּמְטָמִין: A *tumtum* is one whose external sexual organs are concealed or otherwise indeterminate, and it is therefore unclear whether this person is male or female. In certain cases, the gender of the *tumtum* is later established, which is described in the language of the *halakha* as: A *tumtum* who was torn, revealing his or her gender, at which point this person is considered a full-fledged member of that gender.

Farmer winnowing with a pitchfork

חֲצֵבֶתְךָ וְאֶל מְקֶבֶת בּוֹר נִקְרָתָם וְכִתְבִּי
”הֵבִיטוּ אֶל אַבְרָהָם אֲבִיכֶם וְאֶל שָׂרָה
בְּחֻלְלֵכֶם.”

אָמַר רַב נַחֲמָן אָמַר רַבָּה בְּרַב אָבוּהִי: שָׂרָה
אֲמַנּוּ אֵילֻנִּית הִיתָה, שְׁנָאָמַר ”וְתִהְיֶי
שְׂרֵי עֲקָרָה אֵין לָהּ וָלֵד” אֲפִילוּ בֵּית וָלֵד
אֵין לָהּ.

אָמַר רַב יְהוּדָה בְּרִיה דְּרַב שְׁמוּאֵל
בְּרַ שִׁילַת מִשְׁמִיחָה דְּרַב: לֹא שָׁנוּ אֶלָּא
בְּדוֹרוֹת הָרִאשׁוֹנִים, שְׁשָׁנוּתִיהֶן מְרֻבּוֹת.
אֲבָל בְּדוֹרוֹת הָאַחֲרֹנִים שְׁשָׁנוּתִיהֶן
מוֹעָטוֹת – שְׁתֵּי שָׁנִים וּמַחֲצָה, כְּנֶגֶד
שְׁלֹשָׁה עֵיבּוּרִים. רַבָּה אָמַר רַב נַחֲמָן:
שְׁלֹשׁ שָׁנִים, כְּנֶגֶד שְׁלֹשׁ פְּקִידוֹת.
דָּאָמַר מַר: בְּרֹאשׁ הַשָּׁנָה נִפְקְדוּ שָׂרָה
רָחֵל וְחַנָּה.

אָמַר רַבָּה: לִיתְנָהוּ לְהֵנִי כְּלָלִי. מִכְּדִי
מִתְנִיתִין מֵאֵן תִּקֵּין – רַבִּי, וְהָאֵל בִּימֵי דּוֹד
אִימָעוּט שָׁנִי, דְּכִתְיִב ”יְמֵי שְׁנוֹתֵינוּ בָּהֶם
שִׁבְעִים שָׁנָה.”

וְהָאֵי ”שְׁמָא לֹא זָכָה לְהַבְנֹת הַיִּמֶנָּה”
וְדִלְמָא אִיהִי דְּלֹא זָכָא: אִיהִי, כִּיּוֹן דְּלֹא
מִפְקֵדָא אַפְרִיָּה וְרַבִּיָּה – לֹא מֵעֵנְשָׁה.

from where you were hewn, and to the hole of the pit from where you were dug” (Isaiah 51:1), and it is written in the next verse: “Look to Abraham your father and to Sarah who bore you” (Isaiah 51:2), which indicates that sexual organs were fashioned for them, signified by the words hewn and dug, over the course of time.

Rav Nahman said that Rabba bar Avuh said: Our mother Sarah was initially a sexually underdeveloped woman [*aylonit*], as it is stated: “And Sarah was barren; she had no child” (Genesis 11:30). The superfluous words: “She had no child,” indicate that she did not have even a place, i.e., a womb, for a child.

Rav Yehuda, son of Rav Shmuel bar Sheilat, said in the name of Rav: They taught that he waits ten years only with regard to the people who lived in former generations, whose years were numerous, i.e., they lived longer. However, with regard to the people who live in later generations, whose years are few, he waits only two and half years⁸ before divorcing her, corresponding to the time period of three pregnancies.⁹ Rabba said in the name of Rav Nahman: He waits three years, corresponding to the three remembrances of barren women by God, as the Master said: On Rosh HaShana Sarah, Rachel, and Hannah were remembered, i.e., God gave them children. Since God determines on Rosh HaShana whether barren women will conceive that year, one may remain married until three such opportunities have passed.

However, Rabba himself said: These principles are not accepted as *halakha*. Why not? Now consider, who established the content of the mishna? Rabbi Yehuda HaNasi. Yet, in the days of King David, many years before the time of Rabbi Yehuda HaNasi, the years of an average lifespan were already diminished, as it is written: “The days of our years¹⁰ are seventy years, and if with strength eighty years” (Psalms 90:10). Consequently, if Rabbi Yehuda HaNasi included in the mishna the statement that one remains married for ten years, that must apply even nowadays.

The Gemara asks about the language of the *baraita*. And what about this expression: Perhaps he did not merit to be built from her; perhaps it was she who did not merit¹¹ to build a family. The Gemara answers: She, since she is not commanded to be fruitful and multiply, is not punished. Their worthiness therefore depends on him, not her.

NOTES

Two and a half years – שְׁתֵּי שָׁנִים וּמַחֲצָה: Since the duration of three pregnancies is twenty-seven months, why does Rav say that one remains married for two and a half years, which is thirty months? One suggestion is that the thirty months include one month for the woman to become ritually pure and permitted to her husband between each of the three time periods corresponding to a pregnancy (Rabbi Avraham min HaHar). Alternatively, Rav was not particular about the exact duration, and allowed extra time (Rabbi Yehuda al-Madani).

The days of our years – יְמֵי שְׁנוֹתֵינוּ: *Tosafot* note that even though this psalm is entitled “A prayer of Moses,” it was in fact composed by David. The phrase “A prayer of Moses,” means a prayer for Moses (*HaKotiv in Ein Yaakov*).

Perhaps it was she who did not merit, etc. – וְדִלְמָא אִיהִי דְּלֹא זָכָא: Rashi explains that the point of this question is that

therefore she should not be entitled to the payment of her marriage contract (see *Rid*). Rabbi Avraham min HaHar explains similarly that since she is not obligated to have children, their inability to have children is considered a punishment for the husband, not the wife. Consequently, although it is not known whether she is fertile, she nevertheless receives payment for her marriage contract.

However, some commentaries (Ramban; Rashba; *Tosafot Had Mikamma’ei*) question the connection between not being obligated to have children and receiving payment of the marriage contract. The Ramban suggests that the Gemara’s initial statement that he did not merit to have children through her is meant to explain that since they are not presumed to necessarily be infertile, he must divorce her in order to marry someone else. The Gemara’s question here is simply linguistic; it asks why this statement was phrased from the perspective of the husband rather than the wife (see Rashba).

BACKGROUND

Three pregnancies – שְׁלֹשָׁה עֵיבּוּרִים: It is possible for a woman to become pregnant and give birth three times in a period of two and a half years, and this phenomenon occasionally takes place.

שני אין, – שני אין: A second husband yes, but a third one no – שלישי לא: If a woman had been married twice for ten years each without bearing a child by either husband, she may not marry a third time. If she does, her husband must divorce her unless he has another wife or has already fulfilled the mitzva to be fruitful and multiply. If he divorces her, he is required to pay her marriage contract only if he was aware of her background before he married her, in which case he must pay it even if he does not have another wife and has not fulfilled the mitzva to be fruitful and multiply (Rambam *Sefer Nashim, Hilkhhot Ishut* 15:14; *Shulhan Arukh, Even HaEzer* 154:17; *Beit Shmuel*).

מלה – מלה: Circumcised her first son and he died, etc. – הראשון ומת וכו': If a woman circumcised her first son and he died as a result of the circumcision, and she circumcised her second son and he too died, her third son is not circumcised at the usual time; rather, he is given time to grow and to become stronger. This applies regardless of whether the sons shared the same father. The same principle applies also to the sons of one father from different mothers. Some authorities disagree, but the *halakha* is in accordance with the lenient opinion in cases of potential danger (Rambam *Sefer Ahava, Hilkhhot Mila* 1:18; *Shulhan Arukh, Yoreh De'a* 263:2 and in the comment of Rema).

אחיות מחקות – אחיות מחקות: If a woman circumcised her son and he died as a result, and her sister also circumcised her son and he too died, their other sisters do not circumcise their sons at the proper time (*Shulhan Arukh, Yoreh De'a* 263:3).

BACKGROUND

The first sister circumcised her son and he died, etc. – מלה ראשונה ומת וכו': Apparently, this is referring to a hereditary disease that prevents the blood from clotting, e.g., hemophilia. It is transmitted through the female, who carries the offending gene, although it affects primarily males. In this case it is certain that sisters establish a presumption, as they are all likely to pass on the disease.

איני? והא אמרו ליה רבנן לרבי אבא בר זבדא: נסיב איתתא ואוליד בני! ואמר להו: אי זכאי – הו לי מקמייתא. היתם דחוי קא מדחי להו לרבנן. דרבי אבא בר זבדא אישקרו מפרקיה דרב הונא,

רב גידל אישקרו מפרקיה דרב הונא, רבי חלבן אישקרו מפרקיה דרב הונא, רב ששת אישקרו מפרקיה דרב הונא. רב אחא בר יעקב אחדמיה סוכנינתא, תלוייה בארזא דבי רב ונפק מיניה כהוצא יקא. אמר רב אחא בר יעקב: שיתין סבי הונא, וכלהו אישקרו מפרקיה דרב הונא, לבר מאנא דקיימי בנפשי "החכמה תחיה בעליה".

גרשה מותרת וכו'. שני – אין, שלישי – לא.

מתניתין מני – רבי היא. דתנא: מלה הראשון ומת, שני ומת, שלישי – לא תמול, דברי רבי. רבן שמעון בן גמליאל אומר: שלישי – תמול, רביעי – לא תמול.

והתנא איפכא, הי מיניהו אחריניתא?

תא שמע, דאמר רבי חייא בר אבא אמר רבי יוחנן: מעשה בארבע אחיות בצפורי, שמלה ראשונה ומת, שניה ומת, שלישית ומת, רביעית באת לפני רבן שמעון בן גמליאל, אמר לה: אל תמולי.

ודלמא אי אתיא שלישית – נמי היה אמר לה? אם כן מאי אסדהותיה דרבי חייא בר אבא. ודלמא הא קא משמע לן דאחיות מחקות!

The Gemara challenges the mishna's statement that if one did not have children after ten years he should marry a different woman. **Is that so? Didn't the Sages say to Rabbi Abba bar Zavda: Marry a woman and have children, and he said to them: If I had merited, I would already have children from my first wife?** This indicates that there is no obligation to remarry if one did not have children with his first wife. The Gemara answers: **There, Rabbi Abba bar Zavda was merely putting the Rabbis off with an excuse, as the real reason why he would not marry was because Rabbi Abba bar Zavda became impotent from Rav Huna's discourse.** Rav Huna's students would hold back from relieving themselves until his lengthy sermons were finished, which caused them to become sterile.

The Gemara similarly relates that Rav Giddel became impotent from Rav Huna's discourse, Rav Helbo became impotent from Rav Huna's discourse, and Rav Sheshet became impotent from Rav Huna's discourse. The Gemara relates: Rav Aha bar Ya'akov was afflicted by *suskhinta*, a disease caused by holding back from urinating. **They suspended him from the cedar column that supported the study hall, and a substance that was as green as a palm leaf emerged from him, and he was healed.** Rav Aha bar Ya'akov said: **We were sixty elders present at the time, and they all became impotent from Rav Huna's discourse, aside from me, as I fulfilled with regard to myself the verse: "Wisdom preserves the life of he who has it" (Ecclesiastes 7:12).** I used the above cure to avoid becoming impotent.

S It was taught in the mishna that if a man divorced his wife after ten years without children, **she is permitted** to marry a second man, who may remain married to her for ten years. The Gemara comments: **A second husband, yes, but a third one, no.**¹⁴ Once she has been married to two men without children for ten years each, it is presumed that she is unable to have children.

The Gemara comments: **Who is the tanna of the mishna? It is Rabbi Yehuda HaNasi, who holds that a legal presumption [hazaka] is established after two occurrences. As it is taught in a baraita:** If a woman circumcised her first son and he died¹⁵ as a result of the circumcision, and she circumcised her second son and he also died, **she should not circumcise her third son**, as the deaths of the first two produce a presumption that this woman's sons die as a result of circumcision. **This is the statement of Rabbi Yehuda HaNasi. Rabban Shimon ben Gamliel says: She should circumcise her third son**, as there is not considered to be a legal presumption that her sons die from circumcision, but **she should not circumcise her fourth son** if her first three sons died from circumcision.

The Gemara asks: **Isn't the reverse taught in a baraita**, that Rabbi Yehuda HaNasi holds that the woman's third son must be circumcised and Rabban Shimon ben Gamliel holds that he is not circumcised? **Which of them was composed later** and is therefore presumed to be more reliable?

The Gemara suggests: **Come and hear, as Rabbi Hiyya bar Abba said that Rabbi Yoḥanan said: An incident occurred involving four sisters in Tzipori, that the first sister circumcised her son and he died,¹⁶ and the second sister circumcised her son and he died, and the third one circumcised her son and he too died. The fourth sister came before Rabban Shimon ben Gamliel, who said to her: Do not circumcise him.** This indicates that according to Rabban Shimon ben Gamliel a presumption is established only after three occurrences.

The Gemara refutes this proof: **Perhaps if the third sister had come before him he would also have said to her the same ruling.** The Gemara asks: **If so, what is the purpose of Rabbi Hiyya bar Abba's testimony?** Why would he have related this incident if it does not teach us anything? The Gemara answers: **Perhaps he comes to teach us that sisters establish a presumption¹⁷ in a case like this even though the children who died were not from the same mother.**

אֲחֵיות מְחֻקּוֹת – Sisters establish a presumption – Although Rava himself maintains later in the discussion that one must be concerned that a presumption has been established after only two occurrences in the case of marriage to a woman whose previous husbands died, in this case of the sisters he admits that three occurrences are required in order to establish a presumption. The reason for the difference is that in the case of a woman whose husbands died, the presumption relates to the woman herself. Conversely, in this case the presumption is based on the experiences of other family members, and therefore more evidence is required in order to establish a legal presumption (Rashba).

אֵימֶר דְּפִלְיָי לְעֵנֵן מִלָּה וְכוּ – Say that they disagree with regard to circumcision, etc. – The difference between the cases is twofold. First, the presumption in the case of circumcision does not pertain to the same child, but to his brother. Secondly, the merit of the mitzva may prevent the tragedy. Therefore, even if three occurrences are required in order to establish a presumption in the case of circumcision, all should agree that if two husbands of a particular woman have died, one should not marry her (Rabbi Avraham min HaHar).

לְשָׁלִישִׁי – She may not get married to a third husband – The Rambam rules that if she did get married, or even betrothed, her husband is not forced to divorce her. Other commentaries struggle to find a rationale for this opinion and support for it in the Gemara. The Rambam himself, in a responsum, explains that marrying a woman whose two previous husbands have died is not actually dangerous; however, if her husband thinks he is at risk, his own worry will in fact cause him to suffer a greater likelihood of harm. Therefore, if he is not concerned, he is not in danger and has committed no transgression by marrying this woman.

HALAKHA

A man should not marry a woman from a family of epileptics – **לֹא יִשָּׂא אָדָם אִשָּׁה לֹא מִמְשַׁפַּחַת נִכְפִּין** – A man should not marry a woman from a family of epileptics, lepers, or the like. This applies only if three cases from the same family have been documented (Rambam *Sefer Kedusha*, *Hilkhot Issurei Bia* 21:30; *Shulḥan Arukh*, *Even HaEzer* 2:7).

Her constellation is the cause of her husbands' deaths – **מִזֵּל גּוֹרֵם** – If a woman was married or betrothed twice and her husbands died she may not marry a third time, as there is a presumption that she was the cause of her husbands' deaths. However, if a third man married her he is not required to divorce her. Even if he has only betrothed her, he may marry her. If he was not aware of her previous history and wants to divorce her due to the fact that her previous husbands died, he is not required to pay her marriage contract.

The Rema writes that some authorities rule in accordance with the opinion that her spring is the cause, and therefore the presumption that she is the cause of her husbands' deaths is established only when they died on their own; however, if they died in accidents or due to an epidemic, no presumption is established. Therefore, many are lenient in regard to this *halakha*, and no objection to their practice is raised (Rambam *Sefer Kedusha*, *Hilkhot Issurei Bia* 21:31; *Shulḥan Arukh*, *Even HaEzer* 9:1 and in the comment of Rema).

אָמַר רַבָּא: הַשְׁתָּא דְּאִמְרַת אֲחֵיות מְחֻקּוֹת – לא יִשָּׂא אָדָם אִשָּׁה לֹא מִמְשַׁפַּחַת נִכְפִּין, וְלֹא מִמְשַׁפַּחַת גְּזֵרִים, וְהוּא דְּאִתְחַזַּק תְּלָתָא זִמְנִין.

מֵאִי הוּא עֲלֵה? כִּי אֵתָּא רַב יִצְחָק בְּרִי יוֹסֵף אָמַר: עוֹבְדָא הוּא קָמִיה דְּרַבִּי יוֹחָנָן בְּכַנְיָשָׁתָא דְּמַעוֹן בְּיוֹם הַכְּפּוּרִים שְׁחַל לְהוֹיֹת בְּשַׁבָּת, וּמְלָה רַאשׁוֹנָה וּמָת, שְׁנִיָּה וּמָת, שְׁלִישִׁית בָּאָה לְפָנָיו. אָמַר לָהּ: לְכִי וּמוֹלִי.

אָמַר לִיה אַבִּי: חַזֵּי דְקִשְׁרִית אִיסוּרָא וְסִכְנָתָא!

סִמְךָ עָלֶיהָ אַבִּי, וְאִלּוּ נִסְבָּה לְחוּמָה בְּרֵיתָא דְּאִסִּי בְּרִיה דְּרַב יִצְחָק בְּרִיה דְּרַב יְהוּדָה. דְּנִסְבָּה וְחָבָא דְּפּוּמְבִידִיתָא וּשְׁכִיב, רַב יִצְחָק בְּרִיה דְּרַבָּה בְּרִי בְרִי חָנָה וּשְׁכִיב, וְנִסְבָּה הוּא וּשְׁכִיב.

אָמַר רַבָּא: וּמִי אִיכָא דְּעֵבִיד עוֹבְדָא בְּנִפְשֵׁיהּ כִּי הָאִי, וְהָאִי אִיהוּ דְּאָמַר: אָבִין – דְּסִמְכָא, יִצְחָק סוּמְקָא – לֹא בְּרִי סִמְכָא. אָבִין – יִשְׁנֵנוּ בְּחוּרָה, יִצְחָק סוּמְקָא – אֵינוּ בְּחוּרָה. וְעוֹד: אֵימַר דְּפִלְיָי לְעֵנֵן מִלָּה, בְּנִישׁוּאִין מִי פְּלִיגִי?

אֵין, וְהִתְנַיָּא: נִישֵׁת לְרַאשׁוֹן וּמָת, לְשֵׁנִי וּמָת, לְשֵׁלִישִׁי – לֹא תִנְשָׂא, דְּבְרִי רַבִּי. רַבִּין שְׁמַעוֹן בֶּן גַּמְלִיאֵל אָמַר: לְשֵׁלִישִׁי תִנְשָׂא, לְרַבִּיעִי לֹא תִנְשָׂא.

בְּשִׁלְמָא גְבִי מִלָּה – אִיכָא מִשְׁפָּחָה דְּרַפִּי דְּמָא וְאִכָּא מִשְׁפָּחָה דְּקִמִּיט דְּמָא. אֵלָּא נִישׁוּאִין מֵאִי טַעְמָא? אָמַר לִיה רַב מְרִדְכִי לְרַב אֲשִׁי, הֲכִי אָמַר אֲבִימִי מִהַגְרוֹנְיָא מִשְׁמִיָּה דְּרַב הוֹנָא: מַעֲנִן גּוֹרֵם. וְרַב אֲשִׁי אָמַר: מִזֵּל גּוֹרֵם.

Rava said: Now that you have said that sisters establish a presumption,^N a man should not marry a woman from a family of epileptics^{HB} or from a family of lepers, as these diseases might be hereditary. The Gemara adds: And this applies only if it was established three times, i.e., three members of the family are afflicted with the disease.

The Gemara asks: Which halakhic conclusion was about this matter? Is a presumption established after two occurrences or only after three? When Rav Yitzḥak bar Yosef came from Eretz Yisrael, he said: An incident occurred before Rabbi Yohanan in the synagogue of the town of Maon on a Yom Kippur that occurred on Shabbat. The first sister had circumcised her son and he died; the second sister circumcised her son and he also died. The third sister came before him, and he said to her: Go and circumcise your son, as a presumption is not established after only two occurrences.

Abaye said to Rav Yitzḥak: See to it that your report is accurate, as you are permitting an action that would otherwise constitute a prohibition and a danger. If the third baby should not be circumcised, doing so would be a prohibited labor and would endanger the life of the child.

The Gemara comments: Abaye relied on this report and went and married Huma, the daughter of Isi, son of Rav Yitzḥak, son of Rav Yehuda. Huma had previously married Raḥava of Pumbedita, and he died, and then she married Rav Yitzḥak, son of Rabba bar Hana, and he died; and he, Abaye, married her nevertheless, without concern that she had been established to be a woman whose husbands die; and he died as well while married to her.

Rava said: Is there anyone who performs an action like this and endangers himself by marrying such a woman? Wasn't it he, Abaye, who said that Avin is reliable but Yitzḥak the Red, i.e., Rav Yitzḥak bar Yosef, is not reliable? He proceeds to explain the difference between them: Avin returns to Eretz Yisrael and hears whether the Sages there rescind their previous rulings, whereas Yitzḥak the Red does not return to Eretz Yisrael and never finds out if the Sages there rescind their rulings. And furthermore, say that they disagree with regard to whether a presumption is established by two or by three deaths due to circumcision,^N but do they necessarily argue with regard to marriage?

The Gemara responds: Yes, and it is taught in a *baraita*: If a woman was married to her first husband and he died, to a second one and he also died, she may not get married to a third husband.^N This is the statement of Rabbi Yehuda HaNasi. Rabban Shimon ben Gamliel says: She may get married to a third husband, but if he also dies, she may not get married to a fourth husband.

The Gemara asks: Granted with regard to circumcision a presumption of death due to circumcision can be established because there are families whose blood is thin and does not clot well, and there are families whose blood clots. However, in the case of marriage, what is the reason for concern that a subsequent husband will die? Rav Mordekhai said to Rav Ashi: Avimi of Hagronya said in the name of Rav Huna as follows: Her spring is the cause.^B In other words, the woman has some sort of condition that causes those who have intercourse with her to die. And Rav Ashi said that her constellation is the cause of her husbands' deaths.^H

BACKGROUND

A man should not marry a woman from a family of epileptics – **לֹא יִשָּׂא אָדָם אִשָּׁה לֹא מִמְשַׁפַּחַת נִכְפִּין** – This is one of the earliest mentions in the history of medicine of the recognition that certain hereditary diseases are transmitted through a carrier. Consequently, although the woman displays no signs of the disease, the very occurrence of the hereditary disease in the family raises the possibility that she could pass it on to her children.

Contemporary medicine knows of numerous such diseases, of which epilepsy is a prime example.

Her spring is the cause – **מַעֲנִן גּוֹרֵם** – It is possible for bodily fluids to transmit infectious diseases. This applies especially to sexually transmitted illnesses, but it is true of other infectious diseases as well. It is also possible for a woman to carry a disease that does not threaten her but is deadly for a man.

Rav Yosef – רב יוסף: When the Gemara refers to Rav Yosef without further identification, it is referring to Rav Yosef bar Hiyya.

Marriage and lashings, etc. – נישואין ומלקיות וכו': The commentaries discuss why the *halakha* distinguishes between different cases. They explain that with regard to marrying a woman whose previous husbands have died, since there is a concern of danger, the *halakha* is in accordance with the more cautious opinion of Rabbi Yehuda HaNasi. Although it is not mentioned in the Gemara, the same is true in a case of circumcision; if two brothers have already died as a result of circumcision, the third is not circumcised. In the case of lashings, the *halakha* is in accordance with the opinion of Rabbi Yehuda HaNasi due to the court's responsibility to protect society from evildoers.

Conversely, the *halakhot* of set patterns of menstrual bleeding are rabbinic, and therefore the *halakha* is in accordance with the lenient opinion of Rabban Shimon ben Gamliel. In the case of a forewarned ox, which involves monetary payment, the burden of proof rests upon the claimant and therefore he is not awarded the extra payment unless he can prove that a presumption has been established. Since he cannot prove that the *halakha* is in accordance with the opinion of Rabbi Yehuda HaNasi, he is awarded the extra payment of a forewarned ox only if its owner had been warned on three separate occasions.

HALAKHA

One who was flogged and repeated the same transgression – מי שלקה ושנה: If one was flogged for committing a transgression that carries a punishment of *karet* and repeated the sin and was flogged again, if he repeats the sin a third time he is not flogged. Rather, he is placed in a narrow, vaulted chamber until he dies (Rambam *Sefer Shofetim*, *Hilkhot Sanhedrin* 18:4).

Perek VI

Daf 65 Amud a

HALAKHA

A set pattern of menstrual bleeding is established after three occurrences – יקט בשלש פעמים: A woman establishes a set pattern if she experiences menstrual bleeding at a particular interval of days, or on a particular day of the month, or after a particular physiological phenomenon, on three consecutive occasions. She must assume that she will continue to experience menstrual bleeding according to her set pattern unless it is uprooted, which occurs if she does not experience menstrual bleeding according to her pattern on three consecutive occasions (Rambam *Sefer Kedusha*, *Hilkhot Issurei Bia* 8:5; *Shulhan Arukh*, *Yoreh De'a* 189:2).

A forewarned ox – שור המועד: An ox becomes forewarned only if witnesses testify that it caused damage by goring or biting on three consecutive days. If witnesses testified about three separate incidents on the same day, it is questionable whether the ox becomes a forewarned ox. However, if fewer than three incidents occurred during a three-day period, the ox certainly maintains its status as an innocuous ox, whose owner is liable to pay only half the value of damage that it caused intentionally (Rambam *Sefer Nezikin*, *Hilkhot Nizkei Mammon* 6:1).

מאי בינייהו? איכא בינייהו דאירסה ומית, אי נמי דנפל מדילקא ומית.

אמר ליה רב יוסף בריה דרבא דרבא: לא באי מיניה מרב יוסף, הלכה ברבי? ואמר לי: אין. הלכה ברבן שמעון בן גמליאל? ואמר לי: אין. אחובי אחיך בי?

אמר ליה: לא. סתמי היא, ופשיט לך: נישואין ומלקיות – ברבי, וסתות ושור המועד ברבן שמעון בן גמליאל.

נישואין – הא דאמרן, מלקיות – דתנן: מי שלקה ושנה – בית דין בונסין אותו לכיפה, ומאכילין אותו שעורים עד שתהא כריסו נבקעת. וסתות – דתנן: אין האשה

The Gemara asks: **What is the practical difference between them?** The Gemara answers: **There is a difference between them in a case where a man betrothed her and died before the wedding; alternatively, in a case where he fell off a palm tree and died.** If the concern is due to intercourse, then in these cases the husband's death cannot be attributed to his wife. Conversely, if the concern is due to her bad fortune, the husband's death can be attributed to his wife even in these cases.

Rav Yosef, son of Rava, said to Rava: I inquired of Rav Yosef^N whether the *halakha* is in accordance with the opinion of Rabbi Yehuda HaNasi, and he said to me: Yes. I subsequently asked him if the *halakha* is in accordance with the opinion of Rabban Shimon ben Gamliel, and he said to me: Yes. Was he mocking me by issuing contradictory rulings?

Rava said to him: No, there are unattributed *mishnayot* in accordance with each opinion, and he resolved for you that the *halakha* is in accordance with each opinion in particular cases. With regard to marriage and lashings^N the *halakha* is in accordance with the opinion of Rabbi Yehuda HaNasi that two occurrences are sufficient for a presumption. Concerning set patterns of menstrual bleeding and a forewarned ox, the *halakha* is in accordance with the opinion of Rabban Shimon ben Gamliel that a presumption is established after three occurrences.

The Gemara identifies the aforementioned *halakhot*. **Marriage** is referring to that which we said with regard to a woman whose husbands have died. The case of lashings is as we learned in a mishna (*Nidda* 63b): **One who was flogged** for transgressing a Torah law, **and repeated** the same transgression^H and was flogged again, if he then repeats the sin a third time, the court places him in a narrow, vaulted chamber and they feed him barley until his stomach bursts. Once he has sinned and been flogged twice he has established a presumption of wickedness, and when he sins again he is caused to die so that he will not continue to sin. The case of set patterns of menstrual bleeding is as we learned in a mishna (*Nidda* 63b): **A woman does not**

קובעת לה וסת עד שתקבענה שלש פעמים, ואין מטהרת מן הוסת עד שתעקר ממנה שלש פעמים. ושור המועד – דתנן: אין השור נעשה מועד עד שיעידו בו שלשה פעמים.

establish a set pattern of menstrual bleeding for herself, so that it can be assumed that she will start bleeding at a particular time, until she has established it three times.^H Similarly, she is not purified from her set pattern until it is uprooted from her three times, i.e., until she did not experience menstrual bleeding at the expected time according to her pattern on three occasions. And the case of a forewarned ox^{HN} is as we learned in a mishna (*Bava Kamma* 23b): **An ox does not become forewarned until witnesses testify that it has gored three times.** Consequently, in the cases of set patterns and a forewarned ox, a legal presumption is created only after three occurrences, in accordance with the opinion of Rabban Shimon ben Gamliel.

NOTES

A forewarned ox – שור המועד: *Tosafot* contend that Rabbi Yehuda HaNasi did not disagree with regard to a forewarned ox, as this *halakha* is explicitly stated in the Torah. Rather, the Gemara is saying that in certain cases a legal presumption is established only after three occurrences, which is consistent with the general principle stated by Rabban Shimon

ben Gamliel. The Ramban, however, claims that Rabbi Yehuda HaNasi disagrees in the case of a forewarned ox as well, and holds that the third time the ox gores its owner must pay for the full value of the damages caused, because after the first two occurrences it is already considered a forewarned ox.

If she was married to a third husband and she did not have children – **נִשְׂאָת לְשָׁלִישִׁי וְלֹא הָיוּ לָהּ בָּנִים** – If a woman was married to two husbands for ten years each without children, and then marries a third husband for ten years without children, she does not have to return the money that her first two husbands paid for her marriage contract. However, if she had not yet collected the money she is no longer entitled to it. Her claim that she was fertile in her younger years is not strong enough to enable her to claim money from others (*Shulhan Arukh, Even HaEzer* 154:18).

If she was married to a fourth husband and she had children – **נִשְׂאָת לְרִבְעִי וְהָיוּ לָהּ בָּנִים** – If a woman's third husband divorced her without paying her marriage contract because she did not have children after ten years of marriage, and she married a fourth husband and did bear children, she cannot claim her marriage contract from the third, as it is possible that she became fertile only after they were divorced (*Shulhan Arukh, Even HaEzer* 154:19).

BACKGROUND

הַשְׂתָּא הוּא דְּכַחֲשִׁי – It is now that I have become weak – This statement is easily understandable, as the woman has already been married three times, for ten years each. Even if she married the first time at a very young age, she is likely to be approaching menopause. Furthermore, there is a significant drop in fertility for women in their thirties, and this weakening, as it is called here, is an expected occurrence.

תנו רבנן: נִסְתָּ לְרֵאשׁוֹן וְלֹא הָיוּ לָהּ בָּנִים, לְשֵׁנִי וְלֹא הָיוּ לָהּ בָּנִים, לְשָׁלִישִׁי – לֹא תִנָּשֵׂא אֶלָּא לְמִי שֵׁינִי לוֹ בָּנִים. נִשְׂאָת לְמִי שֵׁאִין לוֹ בָּנִים – תֵּצֵא בְּלֹא כְּתוּבָה.

The Sages taught: If a woman was married to her first husband^N and she did not have children, and then she was married to her second husband and she did not have children, she may not get married to a third husband unless it is to one who already has children and has fulfilled the mitzva to be fruitful and multiply, as it is presumed that she is unable to have children. If she got married to one who does not have children and he had been unaware of her presumptive status, she is divorced without receiving payment for her marriage contract,^N as he married her erroneously.

A dilemma was raised before the Sages: If she was married to a third husband and she did not have children^H for ten years, what is the *halakha* with regard to whether those first husbands can demand the return of the money they paid for her marriage contracts? Can they say to her: It has been revealed retroactively that it was you who caused our inability to have children, and therefore we entered our marriages erroneously, or perhaps she can say to them: It is now that I am older that I have become weak, but in my youth I could have had children with a different husband. The Sages answer: It is reasonable that she can say to them: It is now that I have become weak.^{BN}

אִיבְעִיָּא לָהּ: נִשְׂאָת לְשָׁלִישִׁי וְלֹא הָיוּ לָהּ בָּנִים, מָהוּ דְּלִיתְבָּעִיָּה הֵנָּךְ קִמְאִי? מִי מְצֹו אִמְרֵי לָהּ: אִיגְלֵאִי מִלְּתָא דְּאִתָּהּ הוּא דְּגִרְמָתָהּ, אִוּ דְּלִמָּא מְצִית אִמְרָה לָהּ: הַשְׂתָּא הוּא דְּכַחֲשִׁי? מִסְתַּבְּרָא מְצִית אִמְרָה לָהּ: הַשְׂתָּא הוּא דְּכַחֲשִׁי.

Another dilemma was raised before the Sages: If she was married to a fourth husband and she had children^H with him, what is the *halakha* with regard to whether she can demand the payment of her marriage contract from her third husband by claiming that it is now evident that she was capable of having children? The Gemara answers: We say to her: Your silence is preferable to your speech, i.e., you are better off not making this claim, as he can say to her: I did not divorce you with this understanding, and now that I know you are capable of having children, I regret divorcing you. This would invalidate her divorce and, consequently, her marriage to her fourth husband, and would render her child a *mamzer*.

אִיבְעִיָּא לָהּ: נִשְׂאָת לְרִבְעִי וְהָיוּ לָהּ בָּנִים, מָהוּ דְּתִיתְבָּעִיָּה לְשָׁלִישִׁי? אִמְרֵינָן לָהּ: שְׁתִּיקוּתֵיךְ יָפָה מְדִיבִירֵיךְ, דְּמִצְוֵי אִמְרָה לָהּ: אֲנָא אֲדַעְתָּא דְּהָכִי לֹא גִרְשִׁיתִיךְ.

Rav Pappa strongly objects to this: If she was silent^N do we remain silent? If there is room for concern that the divorce might be invalid, the concern exists regardless of her claim, and therefore the bill of divorce should be found invalid and her children from her fourth husband should be rendered *mamzerin*. Rather, we say that it is now that she has become healthy. In other words, she was previously incapable of bearing children, but she has since recovered from that disability.

מִתְקִיף לָהּ רַב פַּפָּא: אִי אִיהִי שְׁתִּיקָא אֲנִי מִי שְׁתִּיקִינָּה? נִמְצָא גִט בְּטֵל וּבְנֵיהּ מְמוּזְרִין! אֶלָּא אִמְרֵינָן: הַשְׂתָּא הוּא דְּבִרְיָתָא.

NOTES

נִסְתָּ לְרֵאשׁוֹן – If a woman was married to her first husband, etc. – The commentaries point out that this *baraita* is in accordance with the opinion of Rabbi Yehuda HaNasi. A different opinion is cited in the Jerusalem Talmud which maintains that she is permitted to marry a third husband and forbidden to marry only a fourth husband.

She is divorced without receiving payment for her marriage contract – **תֵּצֵא בְּלֹא כְּתוּבָה** – The reason for this *halakha* is that the husband entered the marriage erroneously, as stated in the *Tosefta*. However, the Ramban writes that the marriage is not considered to have been entirely erroneous, because if it were, the woman would not even require a bill of divorce. He explains that with regard to this issue it is considered uncertain whether the woman is fertile, and if she is fertile, her current marriage is not erroneous, and entering a new marriage would constitute adultery. Consequently, she requires a bill of divorce before marrying someone else. However, since there is a presumption that she is infertile, he does not have to pay her marriage contract, in accordance with the general principle that in monetary law, the burden of proof is upon the claimant.

It is now that I have become weak – **הַשְׂתָּא הוּא דְּכַחֲשִׁי** – The commentaries ask: If this is a valid claim, why doesn't she receive payment for her marriage contract from her third husband as well,

as she can claim that she was capable of having children at the time they got married? The *Tosefot HaRosh* and *Tosafot Yeshanim* explain that this claim is effective only to prevent her from having to pay back her previous husbands, but is not convincing enough to bolster claims on her part for additional money. Consequently, if for some reason her previous husbands have not yet fulfilled their obligation to pay her marriage contract, she is no longer able to force them to do so. Conversely, the Ritva explains that she cannot collect payment for her marriage contract from her third husband due to a rabbinically imposed penalty for marrying a man unsuitable for her.

If she was silent, etc. – **אִי אִיהִי שְׁתִּיקָא וכו'** – The commentaries ask why this is a reason to deprive the woman of her marriage contract; it would seem that the husband can make this claim only if he explicitly stated at the time of the divorce that he was divorcing her because she was infertile. It is explained in the *Tosefot HaRosh* that in fact the case under discussion concerns only a situation when he made such a statement at the time of the divorce. The Ramban explains that since at the time of the divorce it was not known with absolute certainty that she was infertile, as she had no external signs of infertility, he divorced her with the understanding that she might actually be fertile. Therefore, the divorce cannot be retroactively nullified.

Shoots like an arrow – יורה כחץ: As far as fertilization is concerned, it does not matter how the sperm enters the womb. Nevertheless, if his semen does not shoot like an arrow, which is an unusual predicament, there are grounds to suspect that it is a symptom of some other problem that prevents pregnancy, even if a small chance of conception still remains.

הוא אָמַר: מִיָּנָה, וְהִיא אָמְרָה: מִיָּנָה – אָמַר רַבִּי אָמִי: דְּבָרִים שֶׁיֵּשׁוּ לְבִינָה נֶאֱמָנִת. וְטַעֲמָא מֵאִי? הִיא – קִיּוּמָא לָהּ בְּיֹרֶה כְּחָץ, הוּא – לֹא קִים לִיה בְּיֹרֶה כְּחָץ.

אָמַר אִיהוּ: אֵיזִיל אֵינְסִיב אִיתְתָּא וְאִיבְדּוֹק נִפְשָׁא. אָמַר רַבִּי אָמִי: אִף בּוֹ יוֹצִיא וְיִתֵּן כְּתוּבָה, שְׂאֵנִי אֹמֵר: כָּל הַנּוֹשֵׂא אִשָּׁה עַל אִשְׁתּוֹ – יוֹצִיא וְיִתֵּן כְּתוּבָה. רַבָּא אָמַר: נוֹשֵׂא אָדָם כְּמָה נָשִׁים עַל אִשְׁתּוֹ, וְהוּא דְאִית לִיה לְמִזְוִינָהּ.

§ The Gemara addresses a related case. If he said that the cause for their failure to have children is **from her**,^{NH} i.e., it is she who is infertile, and she said it is **from him**, Rabbi Ami said: With regard to such matters between him and her, she is believed. The Gemara inquires: What is the reason for this ruling? She is certain whether his semen shoots like an arrow,^B whereas he is not certain whether his semen shoots like an arrow.

If he says: I will go and marry a different woman and examine myself^N to see if I am indeed the cause, Rabbi Ami said: Even in this case he must divorce his first wife and give her the payment for her marriage contract, as I say that whoever marries a woman in addition to his first wife must divorce his first wife and give her the payment for her marriage contract. Conversely, Rava said that a man may marry several women^I in addition to his first wife, and there is nothing wrong with this practice as long as he has enough to support them all.

NOTES

He said it is from her – הוא אָמַר מִיָּנָה: The commentaries offer many conflicting interpretations of this passage in light of the fact that it seems to contradict the Gemara in tractate *Nedarim* (91a), in which the Sages declared that a wife who claims that her husband's semen does not shoot like an arrow is not believed, due to the possibility that she is merely trying to force him to divorce her because she has set her eyes upon another man. Some *ge'onim* claim that the Gemara here is referring to the time before the rabbinic decree mentioned in tractate *Nedarim*, and the statement of the Gemara here is not accepted as *halakha*. The Rid writes that the Gemara in tractate *Nedarim* means that the court requests of the woman to withdraw her demand for a divorce and to try again, whereas the Gemara here states that if she insists on a divorce, her claim is accepted.

The Ra'avad explains that there is no contradiction because the Gemara in tractate *Nedarim* is referring to a case where she claims that her husband is completely unable to engage in intercourse, whereas here she claims that he does not ejaculate forcefully. Others explain that she is believed in the case here because there is circumstantial support to her claim, from the fact that they have been married for ten years without children. The Rif adds that in this situation it is the court that initiates the

divorce process rather than the woman, and therefore there is no concern that she has set her eyes upon another man. See the Meiri, who cites several of these explanations and explains the differences between them.

An entirely different opinion is suggested by the Razah: The wife in the Gemara here does not want to be divorced from her husband, and her claim is that since he is the cause for their failure to have children there is no point in forcing him to divorce her, as he cannot father children in any case.

I will go and marry a different woman and examine myself – אֵיזִיל אֵינְסִיב אִיתְתָּא וְאִיבְדּוֹק נִפְשָׁא: According to most commentaries, this is a continuation of the previous case: Hearing his wife's claim that he is infertile, the husband suggests that he might try and have children with another woman. However, *Tosefot Had Mikamma'dei* cites an alternative explanation, according to which this is a different case: The couple has not had children, and neither side is interested in a divorce. The husband claims that he wants to delay divorcing his wife until he determines that she is in fact the cause of their inability to have children. Rabbi Ami states that even in this case he must divorce her, and Rava disagrees.

HALAKHA

He said it is from her, etc. – הוא אָמַר מִיָּנָה וכו': With regard to a woman who sues for divorce with the claim that she is unable to conceive because her husband does not ejaculate forcefully, if they have already been married for ten years without children and she has no other reason for demanding a divorce, then she is believed. Even if he had children from a previous marriage, it is possible that he has since become dysfunctional, and he is obligated to divorce her; however, he is required to pay only the main part of her marriage contract. This is two hundred dinars for a woman who was a virgin at the time of her marriage or one hundred dinars for a woman who was not a virgin when she married, which the Sages required a husband to include in the marriage contract. He is not required to pay any additional sum that he voluntarily included in the marriage contract. He may declare a ban on one who makes unsubstantiated claims of this kind.

If he wants to marry an additional woman in order to determine the veracity of his wife's claim before divorcing her he is permitted to do so, and if his second wife bears children he may divorce the first one without paying her marriage contract. Some commentaries state that if the second wife confirms the claim of the first wife, he must divorce them both and pay them their marriage contracts.

If the husband knows that he is infertile and his wife demands a divorce on these grounds, he must grant it at once. This is the opinion of the Rambam and the *Shulhan Arukh*. However, the Rema rules in accordance with the opinion of the Ra'avad and the *Tur*, who contend that this *halakha* applies only to a third husband or in a case where the husband has children from a previous marriage. In other cases, the woman receives payment for her marriage contract even if she does not claim that they have been unable to have children due to her husband's dysfunction. See the *Beit Shmuel*, who cites the various opinions of the earlier halakhic commentaries on this matter (Rambam *Sefer Nashim*, *Hilkhot Ishut* 15:8–9; *Shulhan Arukh*, *Even HaEzer* 154:6 and in the comment of Rema).

A man may marry several women – נוֹשֵׂא אָדָם כְּמָה נָשִׁים: A man is permitted to be married to several women at once, on condition that he can provide for their sustenance, clothing, and conjugal rights. However, in a place where the custom is not to marry more than one wife he may not do so. The ban on polygamy of Rabbeinu Gershom Meor HaGola is generally accepted, and this is the binding custom of Ashkenazic Jews to this day (Rambam *Sefer Nashim*, *Hilkhot Ishut* 14:3; *Shulhan Arukh*, *Even HaEzer* 1:9, 76:7).

הוא אמר: אפלת בגו עשר, והיא אמרה: לא אפליה. אמר רבי אמי: אף בזו היא נאמנת, דאם איתא דהפילה – נפשה בעקרתה לא מחזקה.

הפילה, וחזרה והפילה, וחזרה והפילה – החזקה לנפלים. הוא אמר: אפליה תרי, והיא אמרה: תלת. אמר רבי יצחק בן אלעזר: עובדא הוה בי מדרשא, ואמרו: היא מהימנא, דאם איתא דלא אפלה – נפשה בניפלי לא מחזקה.

מתני' האיש מצווה על פריה ורביה, אבל לא האשה. רבי יוחנן בן ברוקה אומר: על שניהם הוא אומר "ויברך אותם אלהים ויאמר להם [אלהים] פרו ורבו".

גמ' מנא הני מילי? אמר רבי אילעא משום רבי אלעזר ברבי שמעון: אמר קרא "ומלאו את הארץ וכבשוה" איש דרבו לכבש, ואין אשה דרבה לכבש.

אדרבה, "וכבשוה" תרתי משמע! אמר רב נחמן בר יצחק: "וכבשוה" קתיב. רב יוסף אמר: מהכא, "אני אל שדי פרה ורבה" ולא קאמר "פרו ורבו".

The Gemara addresses another case in which the court forces a man to divorce his wife who has not had children after ten years. If he said: You miscarried^{NH} within the ten years of our marriage, and since less than ten years have elapsed since that time he should not have to divorce her, and she said: I did not miscarry, Rabbi Ami said: Even in this case she is believed, because if it is so that she miscarried she would not establish herself as barren through denying his claim.

If she miscarried, and then miscarried again,^N and miscarried again, she has been established to be a woman who is prone to miscarriages,^{NB} and her husband must divorce her so that he can have children with another woman. If he said she miscarried twice,^H and she said it occurred three times, Rabbi Yitzhak ben Elazar said: There was an incident of this kind that was adjudicated in the study hall and they said that she is believed, because if it is so that she had not miscarried a third time she would not establish herself as one who is prone to miscarriages.

MISHNA A man is commanded with regard to the mitzva to be fruitful and multiply,^H but not a woman.^H Rabbi Yohanan ben Beroka says that a woman is also commanded, as the verse states with regard to both of them: "And God blessed them, and God said to them: Be fruitful and multiply" (Genesis 1:28).

GEMARA From where are these matters derived, that a woman is not obligated in the mitzva to be fruitful and multiply? Rabbi Ile'a said in the name of Rabbi Elazar, son of Rabbi Shimon: The verse states: "Be fruitful and multiply, and fill the land and conquer it" (Genesis 1:28). It is the manner of a man to conquer and it is not the manner of a woman to conquer. Consequently, it is evident that the entire command, including the mitzva to be fruitful and multiply, was given only to men and not to women.

The Gemara raises a difficulty. On the contrary, the plural term: "And conquer it [vekhivshuha]," indicates that the two of them are included. Rav Nahman bar Yitzhak said: It is written in the Torah without the letter vav, so that it can be read: And conquer it [vekhivsha],^N in the singular. Rav Yosef said: The proof is from here: "And God said to him: I am God Almighty, be fruitful and multiply [perei urvei]" (Genesis 35:11), which is in singular, and it does not state: Be fruitful and multiply [peru urvu] in the plural.

HALAKHA

He said, you miscarried, etc. – הוא אמר אפלת וכו': If a husband claims that his wife had a miscarriage during their ten years of marriage without children, and she denies it, she is believed (Rambam Sefer Nashim, Hilkhot Ishut 15:13; Shulhan Arukh, Even HaEzer 154:13).

He said she miscarried twice, etc. – הוא אמר אפליה תרי וכו': If a husband claims that his wife miscarried only twice and she says she miscarried three times, she is believed (Rambam Sefer Nashim, Hilkhot Ishut 15:13; Shulhan Arukh, Even HaEzer 154:14).

A man is commanded...to be fruitful and multiply – האיש מצווה על פריה ורביה: Every man is obligated to marry in order to fulfill the mitzva to be fruitful and multiply (Rambam Sefer Nashim, Hilkhot Ishut 15:2; Shulhan Arukh, Even HaEzer 1:1).

But not a woman – אבל לא האשה: Women are not obligated to be fruitful and multiply, and therefore they do not have to marry. Some say that a woman should not remain unmarried, in order to avoid suspicions of indecent behavior (Rambam Sefer Nashim, Hilkhot Ishut 15:2; Shulhan Arukh, Even HaEzer 1:13 and in the comment of Rema).

NOTES

הוא אמר אפלת וכו' – He said, you miscarried, etc. The commentaries disagree over the context of this halakha. According to the *She'iltot deRav Ahai Gaon* and other *ge'onim* it includes even a case where she is demanding a divorce. There is no concern that she is making this statement because she has set her eyes on another man, as she would presumably not publicize negative information about herself for this purpose. Others, however, claim that this halakha applies only if the wife did not ask for a divorce; rather, the court wanted to force the husband to divorce her and she informed them of her version of events (see Ramban; Rashba; Meiri).

הפילה – הפילה, וחזרה והפילה, וחזרה והפילה וכו': In this case the halakha is not in accordance with the opinion of Rabbi Yehuda HaNasi, and the presumption is established only after three miscarriages. Although it was stated above (64b) that the halakha is in accordance with the opinion of Rabbi Yehuda HaNasi with regard to marriage, since in this case it was permitted for them to marry, he is not obligated to divorce her after only two miscarriages. Furthermore, it is possible that Rabbi Yehuda HaNasi himself agrees that in this case he is obligated to divorce her only after three miscarriages (Ramban; Rashba).

She has been established to be a woman who is prone to miscarriages – החזקה לנפלים: In this case there is no need to wait ten years, and he must divorce her immediately (*ge'onim*; see Rid). However, just as in the case of a woman who was married for ten years without children, the woman may marry another man. This is because it has been established only that she miscarries after conceiving from her first husband; it is possible that she is capable of bearing children, but is incompatible with that man (see Meiri).

וכבשוה קתיב – וכבשוה קתיב: It is written, and conquer it [vekhivshah]. There is a general dispute among the *tanna'im* whether the written form of the Torah's text is considered authoritative or whether it is the manner in which it is vocalized that is authoritative. Nevertheless, in this case all would agree that the written form is authoritative, because the verse implies that the purpose of procreation is for humankind to conquer the earth, and it is men who engage in conquest (Ritva).

BACKGROUND

She has been established to be a woman who is prone to miscarriages – החזקה לנפלים: Nowadays as well, the phenomenon of recurring miscarriages exists. While there are different reasons for this, it is clear that some women are prone to miscarry.

וְאָמַר רַבִּי אֵילֵעָא מְשׁוּם רַבִּי אֶלְעָזָר
בְּרַבִּי שְׁמַעוֹן: כְּשֶׁם שְׁמִיצָה עַל אָדָם
לֹא לִמְרֹךְ הַנִּשְׁמָע – כִּךְ מִצְוָה עַל אָדָם
שֶׁלֹא לִמְרֹךְ דָּבָר שְׂאִינוּ נִשְׁמָע. רַבִּי אַבְבָּי
אָמַר: חֻבָּה, שְׁנֵאמַר "אַל תּוֹכַח לְעַץ פֶּן
יִשְׁנֹאֲךָ הַכּוֹחַ לְחֹכֶם וַיֵּאָהֲבֶךָ".

וְאָמַר רַבִּי אֵילֵעָא מְשׁוּם רַבִּי אֶלְעָזָר
בְּרַבִּי שְׁמַעוֹן: מוֹתֵר לוֹ לְאָדָם לְשַׁנּוֹת
בְּדָבָר הַשְּׁלוֹם, שְׁנֵאמַר "אֲבִיךָ צִוָּה" וְגו'.
"כֹּה תֹאמְרוּ לְיוֹסֵף אֲנֵנָּה שָׂא נָא" וְגו'.

רַבִּי נָתַן אָמַר: מִצְוָה, שְׁנֵאמַר "וַיֹּאמֶר
שְׁמוּאֵל אֵיךְ אֵלַיךְ וְשָׁמַע שְׂאוֹל וַהֲרִגְנִי"
וְגו'.

דְּבִי רַבִּי יִשְׁמַעְאֵל תֵּנָּה: גְּדוֹל הַשְּׁלוֹם
שְׂאֵף הַקְּדוֹשׁ בְּרוּךְ הוּא שִׁנְיָה בּו'.
דִּמְעִיקְרָא כְּתִיב "וַאֲדוֹנִי זָקֵן" וּלְבִסּוּף
כְּתִיב "וַאֲנִי זָקֵנְתִּי".

"רַבִּי יוֹחָנָן בֶּן בְּרוּקָה אָמַר". אֲתַמַּר,
רַבִּי יוֹחָנָן וְרַבִּי יְהוֹשֻׁעַ בֶּן לֵוִי, חֵד אָמַר:
הִלְכָה כְּרַבִּי יוֹחָנָן בֶּן בְּרוּקָה, וְחֵד אָמַר:
אֵין הִלְכָה כְּרַבִּי יוֹחָנָן בֶּן בְּרוּקָה.

תַּסְתֵּיִם דְּרַבִּי יוֹחָנָן הוּא דְאָמַר אֵין
הִלְכָה דִּיתֵיב רַבִּי אַבְבָּי וְקָאֻר מְשֻׁמֵּיהּ
דְּרַבִּי יוֹחָנָן הִלְכָה, וְאֵהֲדַרְיֵיהּ רַבִּי אֲמִי
וְרַבִּי אֲסִי לְאַפִּיְהוּ.

The Gemara cites other statements made by Rabbi Ile'a in the name of Rabbi Elazar, son of Rabbi Shimon. And Rabbi Ile'a said in the name of Rabbi Elazar, son of Rabbi Shimon: Just as it is a mitzva for a person to say that which will be heeded, so is it a mitzva for a person not to say^N that which will not be heeded. One should not rebuke those who will be unreceptive to his message. Rabbi Abba says: It is obligatory for him to refrain from speaking, as it is stated: "Do not reprove a scorner lest he hate you; reprove a wise man and he will love you" (Proverbs 9:8).

And Rabbi Ile'a further said in the name of Rabbi Elazar, son of Rabbi Shimon: It is permitted for a person to depart from the truth^N in a matter that will bring peace, as it is stated: "Your father commanded before he died, saying: So you shall say to Joseph: Please pardon your brothers' crime, etc." (Genesis 50:16–17). Jacob never issued this command, but his sons falsely attributed this statement to him in order to preserve peace between them and Joseph.

Rabbi Natan says: It is a mitzva to depart from the truth in order to preserve peace, as it is stated: "And Samuel said: How can I go, and Saul will hear and kill me" (1 Samuel 16:2). God responded in the next verse that Samuel should say he went to sacrifice an offering, indicating that God commands one to lie in order to preserve peace.

It was taught in the school of Rabbi Yishmael: Great is peace,^N as even the Holy One, Blessed be He, departed from the truth for it. As, initially it is written that Sarah said of Abraham: "And my lord is old" (Genesis 18:12), and in the end it is written that God told Abraham that Sarah said: "And I am old" (Genesis 18:13). God adjusted Sarah's words in order to spare Abraham hurt feelings that might lead Abraham and Sarah to quarrel.

§ It is taught in the mishna that Rabbi Yoḥanan ben Beroka says that women are also included in the mitzva to be fruitful and multiply. It was stated that two *amora'im*, Rabbi Yoḥanan and Rabbi Yehoshua ben Levi, disagreed concerning this matter. One said that the *halakha* is in accordance with the opinion of Rabbi Yoḥanan ben Beroka, and one said that the *halakha* is not in accordance with the opinion of Rabbi Yoḥanan ben Beroka.

The Gemara comments: Conclude that it was Rabbi Yoḥanan^N who said that the *halakha* is not in accordance with the opinion of Rabbi Yoḥanan ben Beroka, as Rabbi Abbahu sat and said in the name of Rabbi Yoḥanan that the *halakha* is in accordance with the opinion of Rabbi Yoḥanan ben Beroka, and Rabbi Ami and Rabbi Asi, who were sitting across from him, turned their faces as an indication that they disagreed with this report of Rabbi Yoḥanan's opinion, but did not want to explicitly contradict Rabbi Abbahu's statement out of respect for him.

NOTES

כִּךְ מִצְוָה עַל אָדָם – So is it a mitzva for a person not to say – The commentaries question why it is permissible to remain silent when there is a mitzva to rebuke wrongdoers (see Leviticus 19:17). The Ritva answers that the Gemara is referring to addressing a group of people, whereas one is always obligated to rebuke an individual. The *Shela* explains that if the offender knows that he is acting improperly it is proper to rebuke him, but if he does not think he has transgressed the criticism is better left unsaid. Alternatively, if one rebukes another who does not accept reproof, this will only cause the latter to act willfully in the future, and it is preferable for him to remain an unwitting sinner (Iyyun Ya'akov).

מוֹתֵר – It is permitted for a person to depart from the truth – The Gemara does not cite Sarah's reaction: "And Sarah denied, saying I did not laugh" (Genesis 18:15), as proof that one may depart from the truth, as she did so only when faced with an accusation, whereas the other verses prove that one may take the initiative in stating falsehoods for the sake of peace (Arukh LaNer).

מִצְוָה... – great is peace – The commentaries point out that God did not command Samuel to tell an outright lie, but rather to take an animal with him and sacrifice it. In this way he would not be lying if he said that he was traveling to sacrifice an offering, even though he would be omitting the main purpose of his journey, which was to anoint David as the next king of the Jewish people. A similar claim can be made with regard to God's report to Abraham that Sarah said: And I am old; as she herself did say: "After my withering shall I have youth" (Genesis 18:12). God simply left out her additional comment: "And my lord is old" (Meiri; see *Tosafot Yeshanim*).

תַּסְתֵּיִם דְּרַבִּי יוֹחָנָן – Conclude that it was Rabbi Yoḥanan, etc. – It would appear that the Gemara does not prove what Rabbi Yoḥanan's opinion is, as it merely cites a dispute among his students about the matter. Perhaps that is why the Gemara continues by citing Rabbi Abbahu in the name of Rabbi Asi with regard to the incident in Caesarea; it is an attempt to prove that they actually both agree that Rabbi Yoḥanan held in accordance with the opinion of Rabbi Yoḥanan ben Beroka (Arukh LaNer).

תאומים שנולדו בפרשי – זמן: Although rare, it is possible for twins to be born at different times, occasionally with a significant interval between the births. There have been documented cases of the birth of twins separated by a gap of over fifty days, and even up to eighty-five days.

One more belly – חדא כרסא אחרתא: There is a hereditary tendency among certain women to give birth to twins, and therefore a woman who gave birth to two sets of twins has a considerable likelihood of having an additional set of twins. The birth of twins, and in particular the unusual occurrence of a lengthy interval between their births, explains why Rabbi Hiyya's wife was worried about significant labor pains.

PERSONALITIES

Rabbi Hiyya and his family – רבי חייא ומשפחתו: Rabbi Hiyya ben Abba, who was from the city of Kafri, Babylonia, was among the last of the *tanna'im* and was a disciple-colleague of Rabbi Yehuda HaNasi. Rabbi Hiyya descended from a family of distinguished lineage that traced its ancestry back to King David and produced many Sages. While he was still in Babylonia, Rabbi Hiyya was considered a Torah luminary. When he ascended with his family from Babylonia to Eretz Yisrael, some, engaging in hyperbole, said that the Torah was about to be forgotten in Eretz Yisrael until he came from Babylonia and reestablished it. When he came to Eretz Yisrael, he became a disciple and a colleague of Rabbi Yehuda HaNasi, with whom he had a very close relationship. He was especially close with Rabbi Yehuda HaNasi's son Shimon, who was also his business partner.

All of the students of Rabbi Yehuda HaNasi were Rabbi Hiyya's colleagues, and he was close with the *tanna* Rabbi Shimon ben Halafta. The younger disciples of Rabbi Yehuda HaNasi, e.g., Rabbi Hanina, Rabbi Oshaya, Rabbi Yannai, and others, studied Torah from Rabbi Hiyya and were, to a certain degree, his disciples as well. His brothers' sons, Rabba bar bar Hana, and above all, the great *amora*, Rav, were his primary disciples. In addition to his prominence as a Torah scholar, Rabbi Hiyya was outstanding in his piety, as reflected in several anecdotes throughout the Talmud. Rabbi Hiyya also appears as a central figure in the *Zohar*. He was buried in Tiberias and his two sons were later buried alongside him.

Rabbi Hiyya's sons, Yehuda, son-in-law of Rabbi Yannai, and Hizkiyya, were both among the leading Torah scholars in the transitional generation between the *tanna'im* and the *amora'im*. They apparently succeeded Rabbi Hiyya at the head of his private yeshiva in the city of his residence, Tiberias.

The *geonim* had a tradition, also cited in *Tosafot* (*Bava Batra* 149a), that Rabbi Hiyya's daughter Pazi was the mother of a large family that included several important Sages such as Rabbi Shimon ben Pazi and his son, Rabbi Yehuda. Out of respect for Rabbi Hiyya, they were referred to by Pazi's name rather than that of her husband. It is possible that the family of Hiyya's other daughter Tavi was also renowned, and for this reason the two sisters, Pazi and Tavi, are mentioned alongside their brothers, Yehuda and Hizkiyya, to explain why Rabbi Hiyya was so upset that his wife did not give birth to another set of twins.

ואיכא דאמר: רבי חייא בר אבא אמר, ואהריניהו רבי אמי ורבי אסי לאפניהו. אמר רב פפא: בשלמא למאן דאמר רבי אבהו אמרה – משום כבוד בי קיסר לא אמרו ליה ולא מידי, אלא למאן דאמר רבי חייא בר אבא אמרה – לימרו ליה: לא אמר רבי יוחנן הכי!

And some say a different version of the incident, that it was Rabbi Hiyya bar Abba who said this statement, and Rabbi Ami and Rabbi Asi turned their faces. Rav Pappa said: Granted, according to the one who said that Rabbi Abbahu said it, it makes sense that due to the honor of Caesar's court, where Rabbi Abbahu maintained close ties, Rabbi Ami and Rabbi Asi did not say anything to him and merely hinted at their disagreement. However, according to the one who said that Rabbi Hiyya bar Abba said it, let them say to him explicitly: Rabbi Yohanan did not say this. In any event, it is clear that according to Rabbi Ami and Rabbi Asi, Rabbi Yohanan disagreed with the opinion of Rabbi Yohanan ben Beroka.

The Gemara asks: What conclusion was reached about this issue?

The Gemara suggests: Come and hear, as Rabbi Aha bar Hanina said that Rabbi Abbahu said that Rabbi Asi said: There was an incident that came before Rabbi Yohanan in the synagogue of Caesarea involving a woman who wanted a divorce from her husband after ten years of childless marriage, and he said that the husband must divorce her and give her the payment for her marriage contract. If it enters your mind to say that she is not commanded to be fruitful and multiply, what is payment for a marriage contract doing here? Why does she have a right to demand to be divorced and to receive the payment for her marriage contract?

The Gemara responds: Perhaps that was in a case when she came to demand a divorce due to another claim, i.e., she wanted children for a reason other than the fulfillment of the mitzva to be fruitful and multiply. Since this claim has merit, her husband must divorce her and pay her marriage contract.

This is like the case of a certain woman who came before Rabbi Ami and requested a divorce due to her husband's inability to father children. She said to her husband: Give me the payment for my marriage contract. He said to her: Go away, as you are not commanded to be fruitful and multiply and have no right to demand a divorce. She said to him: In her old age, what will be with this woman, i.e., if I have no children, who will take care of me when I grow old? Rabbi Ami said: In a situation such as this, we certainly force the husband to divorce and her and pay her marriage contract.

The Gemara relates a similar incident: A certain woman came before Rav Nahman and requested a divorce due to her husband's inability to father children. He said to her: You are not commanded to be fruitful and multiply. She said to him: Does this woman not require a staff for her hand and a hoe for her burial? In other words, the woman said that she wanted children so that they could care for her in her old age and bury her when she would die. Rav Nahman said: In a case such as this, we certainly force the husband to divorce her.

The Gemara relates that Rabbi Hiyya's sons, Yehuda and Hizkiyya, were twins, but one of them was fully developed after nine months of pregnancy and one was fully developed at the beginning of the seventh month, and they were born two months apart.⁸ Yehudit, the wife of Rabbi Hiyya,⁹ had acute birthing pain from these unusual deliveries. She changed her clothes to prevent Rabbi Hiyya from recognizing her and came before Rabbi Hiyya to ask him a halakhic question. She said: Is a woman commanded to be fruitful and multiply? He said to her: No. She went and drank an infertility potion.

Eventually the matter was revealed, and Rabbi Hiyya found out about what Yehudit had done. He said to her: If only you had given birth to one more belly⁸ for me, i.e., another set of twins. As the Master said: Yehuda and Hizkiyya were twin brothers and became prominent Torah scholars, and Pazi and Tavi, Rabbi Hiyya's daughters,

מאי הוה עלה? תא שמע, דאמר רבי אחא בר חנינא אמר רבי אבהו אמר רבי אסי: עובדא הוה קמיה דרבי יוחנן בכנישתא דקיסרי, ואמר: "יוצא ויתן כתובה". ואי סלקא דעתך לא מפקדה – כתובה מאי עבידתה?

דלמא בבאה מחמת טענה.

כי ההיא דאתאי לקמיה דרבי אמי, אמרה ליה: הב לי כתובה. אמר לה: זיל, לא מפקדת. אמרה ליה: מסיבו דילה מאי תיהיו עלה דהך אתתא? אמר: כי הא – ודאי כפינן.

ההיא דאתאי לקמיה דרב נחמן, אמר לה: לא מפקדת. אמרה ליה: לא בעינא הך אתתא חוטרא לידה ומרה לקבורה? אמר: כי הא – ודאי כפינן.

יהודה וחזקיה תאומים היו, אחד נגמרה צורתו לסוף תשעה ואחד נגמרה צורתו לתחלת שבועה. יהודית, דביתהו דרבי חייא, הוה לה צער לידה, שנאי מנא ואיתי לקמיה דרבי חייא, אמרה: אתתא מפקדא אפריה? אמר לה: לא. אלא אשתי סמא דעקרתא.

לסוף איגלאי מילתא. אמר לה: איכו ילדת לי חדא כרסא אחריתא? דאמר מר: יהודה וחזקיה – אחי, פזי וטוי

NOTES

Who was half-slave, etc. – שְׁחָצִיָּה שְׁפָחָה וְכוּ': This case can occur when a Canaanite maidservant is jointly owned by two people and one then releases her from bondage. With regard to the case discussed here, some commentaries hold that the master is forced to free only a half-slave who acts in a promiscuous fashion, because her actions are due to the fact that she cannot marry (see *Tur*; *Shakh*). Others hold that the same would be true with regard to a full maidservant who acts promiscuously. They argue that the fact that the incident cited in the Gemara involved a half-slave does not indicate that the *halakha* is limited to this case (Rabbeinu Yeruham; Rambam).

A similar *halakha* applies in a case of a man who is half-Canaanite slave and half-free, and therefore cannot marry. His master is therefore forced to free him. However, in this case the reason given is so that he can fulfill the mitzva expressed in the verse: "He did not create it a waste; He formed it to be inhabited" (Isaiah 45:18).

And they forced her master – וְכָפוּ אֶת רַבָּהּ: The novelty here is twofold: First, the Sages required the master to forfeit his slave, who is considered his property. Additionally, it is generally prohibited to free a Canaanite slave unless one is doing so for the sake of a mitzva. Therefore, the Gemara assumed that they must have forced her master to release her so that she could fulfill a mitzva by marrying and having children. The Gemara answers that the mitzva involved was preventing people from sinning, not the mitzva to be fruitful and multiply.

HALAKHA

They treated her in a loose manner – מִנְהֵג הִפְקֵר נְהֵגוּ בָּהּ: If a maidservant is involved in widespread promiscuous activity, her master is forced to release her so that she can marry, thereby removing the stumbling block from the community (Rambam *Sefer Kinyan*, *Hilkhot Avadim* 9:6; *Shulḥan Arukh*, *Yoreh De'a* 267:79).

אֲחֻזָּתָא.

were twin sisters, and became the matriarchs of families of distinguished Torah scholars.

וְלֹא מִיִּפְקְדִי? וְהָאִמֹר רַב אֲחָא בְרַ
רַב קֵטִינָא אָמַר רַבִּי יִצְחָק: מַעֲשֵׂה
בְּאִשָּׁה אֶחָת שְׁחָצִיָּה שְׁפָחָה וְחָצִיָּה
בֵּת חוֹרִין, וְכָפוּ אֶת רַבָּהּ וַעֲשָׂאָה בֵּת
חוֹרִין! אָמַר רַב נַחֲמָן בְּרַי יִצְחָק: מִנְהֵג
הִפְקֵר נְהֵגוּ בָּהּ.

The Gemara asks: **Are women not commanded** to be fruitful and multiply? Didn't Rav Aḥa bar Rav Ketina say that Rabbi Yitzḥak said: There was an incident with a certain woman who was half-slave^N and half-free woman and therefore could marry neither a Canaanite slave nor a Jew, and they forced her master^N and he made her a free woman. Presumably, the reason the court forced her master to free her was so that she could fulfill the mitzva to be fruitful and multiply. Rav Naḥman bar Yitzḥak said: The reason they forced her master to free her was because others treated her in a loose manner.^H Since she knew that she could not marry she engaged in promiscuous activity, and the court forced her master to free her in order to save her and others from sin.

הדרן עלך הבא על יבמתו

Summary of Perek VI

The Torah decrees that a woman is acquired by her *yavam* in levirate marriage through sexual intercourse. This chapter clarified that as long as they intended to engage in an act of intercourse it makes no difference whether they did so willingly or whether they intended only to fulfill the mitzva of levirate marriage; the very act itself serves to consummate and validate the levirate bond. With regard to the definition of the sexual act, even the first stage of sexual intercourse is considered an act of intercourse and consummates the levirate marriage.

With regard to other forbidden sexual relations, the intention of the parties involved is relevant with regard to punishment, as one is not punished unless he intentionally violates a prohibition. However, other ramifications of forbidden relations apply regardless of intent. This includes the disqualification of a *zona*, i.e., a woman who had relations with a man whom she is forbidden to marry, from marrying a priest.

With regard to women disqualified from the priesthood, the Gemara clarified that even if a woman is considered reserved for an invalid act of intercourse, she is, at least temporarily, disqualified from partaking of *teruma*. A common priest may not marry a *zona*, a divorcée, a woman who underwent *halitza*, or a convert. The High Priest may marry only a minor or a maiden, i.e., a woman within the first twelve months of adulthood, who is a virgin and has never been betrothed. However, if a priest betrothed a widow and was then appointed to be High Priest, he may marry her.

All Jewish men are obligated by Torah law to marry and have children in order to fulfill the mitzva to be fruitful and multiply. One has fulfilled this mitzva if he has both a son and a daughter. If his children die after bearing children of their own, he may still be in fulfillment of the mitzva through his grandchildren. One is even required to divorce his wife in order to marry another woman and fulfill the mitzva to be fruitful and multiply, if his wife is unable to bear children. This chapter further clarified when this obligation applies, when a woman is presumed to be unable to bear children, and what the rights of a woman who cannot bear children are when she is divorced from her husband. Also included were aggadic statements pertaining to marriage in general, and the mitzva to be fruitful and multiply in particular.

Introduction to Perek VII

They [the priests] shall not take a woman who is a harlot, or profaned; neither shall they take a woman divorced from her husband, for he is holy to his God.

(Leviticus 21:7)

A widow, or one divorced, or a profaned woman, or a harlot, these he shall not take; but a virgin of his own people he shall take as a wife.

(Leviticus 21:14)

But if a priest buys any soul, the purchase of his money, he may eat of it; and such as are born in his house, they may eat of his bread. And if a priest's daughter be married to a common man, she shall not eat of that which is set apart from the sacred. But if a priest's daughter be a widow, or divorced, and have no child, and is returned to her father's house, as in her youth, she may eat of her father's bread; but there shall no common man eat of it.

(Leviticus 22:11–13)

One of the topics discussed in the previous chapter is the *halakha* that a woman who has intercourse with a man who is unfit for her is rendered disqualified from marrying a priest. If she is the daughter of a priest, she may no longer partake of *teruma*. This chapter discusses the matter at length, although it is connected only tangentially to the main subject of the tractate.

The Torah states that all the members of a priest's household, i.e., his wife, his sons and daughters, and their slaves, may partake of *teruma*. If the priest dies or divorces his wife, she may continue to partake of *teruma* only if she has children from him. Conversely, a priest's daughter who is married to a non-priest may not partake of *teruma*. If she is widowed or divorced from him, and has no children from him, she resumes partaking of *teruma*.

These principles raise questions with regard to different types of unions between a priest and an Israelite woman or between the daughter of a priest and an Israelite man: If a priest betroths a woman who is unfit for him but whose betrothal to him is nevertheless valid, are she and her slaves entitled to partake of *teruma*? If not, are the slaves that she brings into the marriage considered his or hers? Also, what is the ruling with regard to a levirate bond between a priest and an Israelite woman?

Precisely what constitutes the definition of a woman's having children from her husband is also discussed. Is a pregnant woman considered one who already has children from her husband, or is she still considered childless? Does the term children here refer specifically to their children, or does it apply to all of their descendants? Do children who are unfit to marry into the assembly of Israel qualify, or do only unflawed children count?

This chapter discusses these issues both in principle and in detail.

מתני' אֶלְמָנָה לְכֹהֵן גָּדוֹל, גְּרוּשָׁה וְחִלּוּצָה לְכֹהֵן הַדְּיוּט, הַכְּנִסָּה לוֹ עֲבָדֵי מְלוֹג וְעֲבָדֵי צֶאֱן בְּרוּל, עֲבָדֵי מְלוֹג – לֹא יֵאָכְלוּ בְּתֻרֻמָּה, עֲבָדֵי צֶאֱן בְּרוּל – יֵאָכְלוּ.

וְאֵלּוּ הֵן עֲבָדֵי מְלוֹג: אִם מֵתוּ – מֵתוּ לָהּ, וְאִם הִוְתִּירוּ – הִוְתִּירוּ לָהּ, אֵף עַל פִּי שְׁהוּא תַּיִב בְּמוֹנוֹתָן הָרִי אֵלּוּ לֹא יֵאָכְלוּ בְּתֻרֻמָּה. וְאֵלּוּ הֵן עֲבָדֵי צֶאֱן בְּרוּל: אִם מֵתוּ – מֵתוּ לוֹ, וְאִם הִוְתִּירוּ – הִוְתִּירוּ לוֹ, הִוְאִיל וְהוּא תַּיִב בְּאַחֲרֵיוֹתָן הָרִי אֵלּוּ יֵאָכְלוּ בְּתֻרֻמָּה.

בֵּת יִשְׂרָאֵל שְׁנִיֶּסֶת לְכֹהֵן וְהַכְּנִסָּה לוֹ עֲבָדִים, בֵּין עֲבָדֵי מְלוֹג בֵּין עֲבָדֵי צֶאֱן בְּרוּל, הָרִי אֵלּוּ יֵאָכְלוּ בְּתֻרֻמָּה. וּבֵת כֹּהֵן שְׁנִיֶּסֶת לְיִשְׂרָאֵל וְהַכְּנִסָּה לוֹ עֲבָדִים, בֵּין עֲבָדֵי מְלוֹג בֵּין עֲבָדֵי צֶאֱן בְּרוּל, הָרִי אֵלּוּ לֹא יֵאָכְלוּ בְּתֻרֻמָּה.

גמ' וְעֲבָדֵי מְלוֹג לֹא יֵאָכְלוּ בְּתֻרֻמָּה, אֲמַאי? לְהִיבִי קִנְיָנוּ שְׁקָנָה קִנְיָנוּ דְּתַנְא: מִמֵּין לְכֹהֵן שְׁנִיֶּסֶת אִשָּׁה אֲשֶׁה וְקָנָה עֲבָדִים שְׁיֵאָכְלוּ בְּתֻרֻמָּה – שְׁנֵאֲמַר "וְכֹהֵן כִּי יִקְנֶה נֶפֶשׁ קִנְיָנוּ כֶּסֶף הוּא יֵאָכֵל בּוֹ".

MISHNA A widow married to a High Priest, and a divorcée or a *yevama* who performed *halitza* [halutza] married to a common priest are all unions prohibited by Torah law. If one of these women brought with her into the marriage slaves of usufruct [melog]¹ property or slaves of guaranteed investment,^N then the slaves of usufruct property do not partake of *teruma* but the slaves of guaranteed investment do partake of *teruma*.^H

And these are slaves of usufruct property: They are those with regard to whom the couple stipulated that if the slaves die, their death is her loss, and if they increase in value, their increase is her gain. Although the husband is obligated in their sustenance,^H they do not partake of *teruma*, as they belong to her, not to him. He owns only the right of their use while he is married to her. And these are slaves of guaranteed investment:^H They are those with regard to whom the couple stipulated that if they die, their death is his loss,^N and if they increase in value, their increase is his gain. Since he bears financial responsibility for compensating her in the event of their loss, they partake of *teruma*, as they are considered his property.

In the case of an Israelite woman who married a priest in a halakhic marriage and who brought slaves with her into the marriage, whether they are slaves of usufruct property or slaves of guaranteed investment, they partake of *teruma*.^H And in the case of the daughter of a priest who married an Israelite^H and who brought slaves with her into the marriage, whether they are slaves of usufruct property or slaves of guaranteed investment, they do not partake of *teruma*, although, as she is the daughter of a priest, it is permitted for her and her slaves to partake of *teruma* beforehand.

GEMARA The mishna states that if a priest married a woman forbidden to him, his wife's slaves of usufruct property do not partake of *teruma*. The Gemara asks: Why is this so? Let this case be like that of his acquisition who acquired an acquisition, as it is taught in a *baraita*: From where is it derived with regard to a priest who married a woman^H and acquired slaves^H that they partake of *teruma*? As it is stated: "But if a priest buys any soul, the purchase of his money, he may eat of it" (Leviticus 22:11).

HALAKHA

The slaves of usufruct property do not partake of *teruma* but the slaves of guaranteed investment do partake of *teruma* – עֲבָדֵי מְלוֹג לֹא יֵאָכְלוּ בְּתֻרֻמָּה, עֲבָדֵי צֶאֱן בְּרוּל יֵאָכְלוּ: If a widow married to a High Priest or a *halutza* married to a common priest brought slaves with her into the marriage, her slaves of usufruct property do not partake of *teruma*. However, her slaves of guaranteed investment partake of *teruma* (Rambam *Sefer Zera'im*, *Hilkhot Terumat* 7:20).

The husband is obligated in their sustenance – תַּיִב בְּמוֹנוֹתָן: The husband is obligated to sustain his slaves of usufruct property, and he must fulfill all of their needs. They must work for him, and the profits earned through their work are his (Rambam *Sefer Nashim*, *Hilkhot Ishut* 22:25; *Shulhan Arukh*, *Even HaEzer* 85:16).

And these are slaves of usufruct property... And these are slaves of guaranteed investment – וְאֵלּוּ הֵן עֲבָדֵי מְלוֹג... וְאֵלּוּ הֵן עֲבָדֵי צֶאֱן: If a husband does not accept financial responsibility for property a woman brings with her into a marriage, that property remains hers. As a result, if its value has increased or decreased at the conclusion of the marriage, the loss or gain is hers. On the other hand, if the husband accepts financial responsibility for this dowry, it is entirely in his possession. He must pay her the original value of the property upon the dissolution of the marriage (Rambam *Sefer Nashim*, *Hilkhot Ishut* 16:1; *Shulhan Arukh*, *Even HaEzer* 85:2).

The slaves of a priest's wife – עֲבָדֵי אִשֶּׁת כֹּהֵן: If an Israelite or Levite woman is halakhically married to a priest and brought slaves with her into the marriage, whether they are usufruct or guaranteed property they partake of *teruma* (Rambam *Sefer Zera'im*, *Hilkhot Terumat* 7:18).

The daughter of a priest who married an Israelite – שְׁנִיֶּסֶת לְיִשְׂרָאֵל: If the daughter of a priest married an Israelite and brought slaves with her into the marriage, they may no longer partake of *teruma*, whether they are slaves of usufruct property or slaves of guaranteed investment (Rambam *Sefer Zera'im*, *Hilkhot Terumat* 7:19).

The wife of a priest partakes of *teruma* – אִשֶּׁת כֹּהֵן אוֹכֶלֶת בְּתֻרֻמָּה: An Israelite woman who married a priest partakes of *teruma* as well as the breast and right hind leg of animal offerings that belong to the priests. By Torah law, she partakes of these from the time of betrothal, but the Sages decreed that she not partake of them until her marriage (Rambam *Sefer Zera'im*, *Hilkhot Terumat* 6:3).

The slaves of a priest partake of *teruma* – עֲבָדֵי כֹהֵן אוֹכְלִים בְּתֻרֻמָּה: The slaves and animals of a priest partake of *teruma* and the *teruma* of the tithe (Rambam *Sefer Zera'im*, *Hilkhot Terumat* 6:1).

LANGUAGE

Usufruct [melog] – מְלוֹג: The search after the origin of this word dates back to the early commentaries. Some claim that it stems from the root *m-l-g*, which means to scald the skin of an animal in order to remove its hair. Here too, the husband removes, so to speak, the profits from his wife's assets. Others suggest that it is derived from the Greek *λόγος*, *logos*, which means word or speech, indicating that the husband receives rights to these properties as the result of verbal stipulation. However, it is apparently an original Akkadian term that means assets that a woman brings with her into the marriage.

NOTES

Guaranteed investment [tzon barzel] – צֶאֱן בְּרוּל: This idiom existed in Roman law as well. It literally means iron sheep. The proprietorship of guaranteed property is like that of something that never dies or gets damaged, as another individual has taken upon himself responsibility for its value. This metaphor is also appropriate in the sense that these assets bring no profit to their owners; rather, they remain at a fixed value.

אִם מֵתוּ, מֵתוּ – אִם מֵתוּ: The question was raised: What is the husband's responsibility for guaranteed property in a case where a slave does not die but merely decreases in value? Most early commentaries rule that the husband does not need to reimburse his wife unless the slave dies or is incapacitated. As long as the slaves are able to work, the husband returns them to his wife without compensation for their loss in value. This *halakha* is inferred from the use of the expression: If they die, their death is his loss, i.e., he must compensate her only in cases where the guaranteed property no longer exists in its original form. This *halakha* applies not only to slaves but to any sort of guaranteed property (Rabbeinu Hananel; Rif).

And a priest's slaves who acquired slaves – ועבדיו שקנו – עבדים: If whatever a slave acquires is acquired by his owner, how can a slave buy a slave for himself? This question was raised by Rashi and many other early commentaries, and it is also addressed in the Jerusalem Talmud. Rashi explains that a slave may acquire a slave when he buys him with money that was given to him under the stipulation that his master will have no access to it. *Tosefot HaRosh* adds that according to the opinion that such a stipulation is ineffective, and whatever a slave acquires always belongs to his owner, the verse from which this *halakha* is derived must be understood as referring only to wives who buy slaves. The *halakha* that whatever a wife acquires is acquired by her husband is a rabbinic ordinance, and by Torah law it is possible for a wife to acquire slaves independently. The verse teaches that such slaves would be permitted to partake of *teruma*.

Their mouths hurt – פומיהו כאיב להו: Rashi offers an explanation different from the commentary here: Although in those cases the priests are disqualified, their disqualifications are only temporary, as they can potentially be rectified, whereas the woman is disqualified permanently.

But isn't there the case of a son born from an incestuous or adulterous relationship [*mamzer*] – ויהי ממזר: The *halakha* is that the widow of a priest with any living descendant from the priest is permitted to partake of *teruma*. The Gemara's question is therefore not related to the fact that the descendant is specifically a *mamzer* but uses the *mamzer* as an example of a descendant who is not a priest. Rabbi Avraham min HaHar adds that the Gemara uses *mamzer* to allude to the mishna later on (69b) that elaborates on this *halakha* using the example of a *mamzer*.

Is referring to the case of an acquisition who partakes of *teruma* – קנו אוכל קאמר: It appears that Ravina derived his interpretation of the principle directly from the verse that is its source: "The purchase of his money, he may eat of it." The verse is referring to an acquisition who may himself partake of *teruma*, and only if that is so does he enable his own acquisition to do so.

And it was the Sages who issued a decree – ורבנן הוא: The Rambam rules in accordance with Ravina's assertion that it is Torah law that slaves of usufruct property belonging to a priest's forbidden wife do not partake of *teruma*. Other commentaries follow the other opinions in the Gemara and maintain that it is a rabbinic decree.

In the Jerusalem Talmud, both possibilities are cited, and then it is pointed out that whether or not it is a Torah law has a practical difference: If by Torah law, one who cannot partake of *teruma* cannot enable his property to do so, then slaves belonging to the uncircumcised slave of a priest will not be allowed to partake of *teruma*. If the property of property that traces back to a priest may partake of *teruma*, and the Sages restricted the slaves of an unlawful wife from doing so as a penalty, then the slaves of this slave should be allowed to partake of *teruma*. Their master did nothing wrong.

Her husband will therefore come to divorce her – הלך: The woman's realization will lead to a quarrel between her and her husband, which will presumably result in divorce (Meiri).

ומנין לאשה שקנתה עבדים, ועבדיו שקנו עבדים, שיאכלו בתרומה – שנאמר "וכהן כי יקנה נפש קנו כסף הוא יאכל בו". קנינו שקנה קנו – אוכל!

כל האוכל – מאכיל, כל שאין אוכל – אינו מאכיל.

ולא? והרי ערל וכל הטמאים, שאין אוכלין ומאכילין! התם פומיהו כאיב להו.

והרי ממזר, שאין אוכל – ומאכיל!

אמר רבינא: קנו אוכל קאמר, קנו אוכל – מאכיל, שאינו אוכל – אינו מאכיל.

ורבא אמר: מדאורייתא מיכל אכלי, ורבנן הוא דגזרי בהו, כדי שתאמר: אני איני אוכלת, עבדי אינן אוכלין, וזה היא אצלו! הלך אתי לאפוקה.

רב אשי אמר: גזירה שמא תאכיל לאחר מיתה.

And from where is it derived with regard to both the wife of a priest who acquired slaves and a priest's slaves who acquired slaves,^N that the acquired slaves may also partake of *teruma*?^H As it is stated: "But if a priest buys any soul, the purchase of his money, he may eat of it," which is interpreted to mean: If his acquisition acquired an acquisition, the latter partakes of *teruma*. Here too, since the slaves of usufruct property belong to his wife, it should be permitted for them to partake of *teruma*.

The Gemara answers: The principle is that **anyone who is fit to partake of *teruma* can enable others to partake of *teruma*, and anyone who does not partake of *teruma* cannot enable others to partake.** Since the priest's wife in this case does not partake of *teruma*, as her marriage is forbidden, her slaves do not partake of *teruma* either.

The Gemara asks: **And is it so that one who does not partake of *teruma* cannot enable others to partake? But aren't there the cases of a priest who is uncircumcised because it was considered too dangerous for him and all impure priests, who do not partake of *teruma*, and yet they enable their wives and slaves to partake of *teruma*?** The Gemara answers: The difference is that **there**, in those cases, there is no inherent disqualification rendering them unfit to partake of *teruma*. The hindrance to their partaking of *teruma* is tantamount to a situation where **their mouths hurt**,^N and that is why they refrain from eating *teruma*. They retain, however, the fundamental right to partake of *teruma*, and therefore they can enable others to partake as well.

The Gemara asks: **But isn't there the case of a son born from an incestuous or adulterous relationship [*mamzer*],^N who does not partake of *teruma* yet enables others to partake?** If an Israelite woman was married to a priest and was subsequently widowed or divorced, and a child from that union married a *mamzer* and then had a child, in that case, even if the woman's child is dead, she partakes of *teruma* due to her grandchild, as she has a living descendant from a priest, although that descendant is a *mamzer*. Although this child does not partake of *teruma*, he enables his grandmother to partake of it.

Ravina said that the above principle is referring to the case of an acquisition who partakes of *teruma*.^N If the acquisition of a priest partakes of *teruma*, he enables others to partake,^H whereas an acquisition who does not partake, e.g., his forbidden wife, cannot enable others to partake.

And Rava said a different solution. By Torah law, the forbidden wife's slaves indeed partake of *teruma*, as they are included in the category of: His acquisition who acquired an acquisition. **And it was the Sages who issued a decree^N prohibiting them from partaking of *teruma*, so that the woman unlawfully married to a priest would say: I do not partake of his *teruma* and my slaves do not partake of it either, so that she will realize that she is not a valid wife, but rather she is like a prostitute to him.** Her husband will therefore come to divorce her,^N which is the desired outcome.

Rav Ashi said a different reason for the prohibition: It is a rabbinic decree lest she have those slaves partake of *teruma* even after the death of her husband the priest. As long as he is alive, they are permitted to partake of *teruma*, as she is considered his acquisition and they belong to her. Once he dies, she is no longer his acquisition.

HALAKHA

The slaves of a priest's acquisition – עבדי קנו בהו: The slaves of a priest and the slaves of the wife of a priest who themselves acquired slaves partake of *teruma* (Rambam *Sefer Zera'im*, *Hilkhot Terumat* 7:18).

Anyone who is fit to partake of *teruma* can enable others to partake of *teruma* – כל האוכל מאכיל: A priest's acquisition can enable others to partake of *teruma* only if he partakes of *teruma* himself (Rambam *Sefer Zera'im*, *Hilkhot Terumat* 7:18).

אֶלָּא מֵעַתָּה, בֵּית יִשְׂרָאֵל שְׁנִשְׂאֵת לְכַהֵן
לֹא תֹאכִיל גְּזִירָה שְׂמָא תֹאכִיל לְאַחֵר
מִיָּתָהּ!

אֶלָּא אָמַר רַב אֲשִׁי: בְּאַלְמָנָה כְּהֹנֶת,
דְּאַתְיָא לְאוֹרוּי: מְעִיקָרָא אֲכִיל בְּתֵרוּמָה
דְּבִי נָשָׂא, אִינְסָבִי לִיה לְהָאִי – אֲכִיל
בְּתֵרוּמָה דְּגִבְרָאִי, וְהִשְׁתָּא הִדְרִי לִי
לְמִילְתִּיהָ קִמְיִיתָא, וְלֹא יָדְעָה דְּמְעִיקָרָא
לֹא שְׂוִיתָה לְנַפְשָׁהּ חֲלָלָה, הִשְׁתָּא
שְׂוִיתָה לְנַפְשָׁהּ חֲלָלָה.

תֵּינַח אֲלֻמָּנָה כְּהֹנֶת, אֲלֻמָּנָה בֵּית יִשְׂרָאֵל
מֵאִי אִיכָא לְמִימֵר – בְּאַלְמָנוּתָהּ לֹא
פְּלִיגִי רַבָּנָן.

אֵיתָמַר: הַמְכַנְסֵת שׁוֹם לְבַעֲלָהּ, הִיא
אוֹמֶרֶת: בְּלִי אֲנִי נוֹטְלָתָהּ, וְהוּא אוֹמֵר:
דְּמִים אֲנִי נוֹתֵן, הֲדִין עִם מִי? רַב יְהוּדָה
אָמַר:

The Gemara asks: **However**, if that is **so**, that the decree is lest she have those slaves partake of *teruma* after her husband's death, any **Israelite woman who marries a priest should not enable her slaves of usufruct property to partake^N of *teruma*** either, due to the same rabbinic decree, lest she have them partake of *teruma* after her husband's death.

Rather, Rav Ashi said that the decree is dealing with a **widowed priestess**, the daughter of a priest, who then married the High Priest, as she is likely to rationalize enabling her slaves to partake of *teruma* after the death of the High Priest as follows: **Initially**, my slaves partook of the *teruma* of my father's house. I then married this man, and they partook of the *teruma* of my husband. And now that my husband died, I have returned to the original circumstance, and therefore they may once again partake of my father's *teruma*. And she does not realize that this is not so, as initially she did not render herself a woman disqualified from marrying a priest [*halala*], but now, by marrying a High Priest unlawfully, she rendered herself a *halala*, and both she and her slaves do not partake of *teruma* even upon returning to her father's house.

The Gemara asks: This works out well as an explanation of the mishna, with regard to a **widowed priestess**. However, if that widow who married a High Priest was an **Israelite woman, what can be said?** There is no reason for the decree in that case. The Gemara answers: **With regard to widowhood, the Sages did not distinguish** between one type of widow and another. Once they issued a decree due to one widow, they applied it to all widows.

It was stated: With regard to a woman who brings appraised, guaranteed property into her marital contract with her husband, he is obligated to return it at the conclusion of the marriage. Upon collection of her marriage contract, e.g., following divorce, if she says: I am taking my belongings,^H and he says: I am willing to give you only their monetary value, the *halakha* favors whom?^N Rav Yehuda said:

NOTES

Any Israelite woman who marries a priest should not enable her slaves of usufruct property to partake [ta'akhil] – בֵּית יִשְׂרָאֵל שְׁנִשְׂאֵת לְכַהֵן לֹא תֹאכִיל – A textual variant mentioned by the early commentaries reads: Should also not partake [tokhal], lest she partake after her husband's death. While Rashi reads ta'akhil, and Tosafot defend Rashi's reading, the Ramban and the Rashba contend that the alternative reading is preferable, as it renders the difficulty raised by the Gemara more sensible and more pronounced.

The *halakha* favors whom – הֲדִין עִם מִי – The early commentaries addressed the opposite case: What if the husband wants to return the guaranteed assets while the wife demands their value in money? Some say that the property is in his possession and therefore she can refuse to accept it; it is her right to have the property returned to her but not her obligation (Tosefot Had MiKamma'eit). Rivash claims that the husband may return the assets against her will, as they are not entirely in his possession, but are like a deposit. The Meiri maintains that he can compel her to accept them only if he lacks the funds to pay his debt.

HALAKHA

A wife who wants to receive her belongings – אִשָּׁה – הָרוּצָה לְקַבֵּל בְּלִיָּהּ: If a wife brought guaranteed property with her into the marriage, and upon divorce she demands to receive the actual assets she brought with her, her demand is accepted, as they are the assets of her paternal family (Shulhan Arukh, Even HaEzer 88:3).

Perek VII Daf 66 Amud b

הֲדִין עֲמָדָה, וְרַב אָמִי אָמַר: הֲדִין עָמוּ.

רַב יְהוּדָה אָמַר: הֲדִין עָמָה, מִשּׁוּם
שִׁבְחַת בֵּית אָבִיָּה – דִּידָהּ הָיָה רַבִּי אָמִי
אָמַר: הֲדִין עָמוּ, בֵּין דְּאָמַר מָר: אִם
מָתוּ לוֹ, וְאִם הוֹתִירוּ – הוֹתִירוּ לוֹ,
הוֹאִיל וְחַיִּיב בְּאַחֲרִיּוּתָן – יֹאכְלוּ. אָמַר
רַב סָפְרָא: מִי קָתַן "וְהָן שְׁלוֹ"? הוֹאִיל
וְחַיִּיב בְּאַחֲרִיּוּתָן קָתַן, וְלַעוֹלָם לֹא
דִּידָהּ נִינְחוּ.

The *halakha* favors her; she may take the belongings. And Rav Ami said: The *halakha* favors him; he may retain the items and return their value.

The Gemara explains that Rav Yehuda said that the *halakha* favors her because they are the assets of her paternal family,^N whose prestige will suffer if they aren't returned. Therefore, they are hers. Rabbi Ami said that the *halakha* favors him, since the Master said in the mishna, with regard to guaranteed property: If they die, their death is his loss, and if they increase in value, their increase is his gain. Since he bears financial responsibility for their loss, they partake of *teruma*. Apparently, the slaves belong to the husband. Therefore, he is obligated to return only their monetary value. Rav Safra said in rejection of Rabbi Ami's reasoning: Does the mishna teach that they are his? It teaches only that he bears financial responsibility for their loss, but actually they are not his.

NOTES

The assets of her paternal family – שִׁבְחַת בֵּית אָבִיָּה – The Rid explains that her family gave her these belongings for her own use, not for the use of others after her divorce.

BACKGROUND

Vetches [*karshinin*] – כְּרִשִּׁינִין: The vetch, *Vicia*, is an annual of the legume family. It grows to 10–50 cm in height. Its seeds are brown, round, or oblong, and 0.25–0.5 cm in diameter. Like other legumes, vetches are high in nutritional value and are easily digested by animals.

Vetches are a winter crop in the spring fields of Mediterranean lands and are still grown nowadays in Arab villages.

The plant and its seeds are usually used as animal fodder. In order to soften the seeds, they are sometimes soaked overnight in water. Although the vetch is consumed mostly by animals, its seeds are edible for humans as well. They were eaten during years of famine and other times of need. As it is edible for humans, the vetch must be tithed, although its *teruma* was usually fed to the animals of priests.



Vetch

NOTES

Who appraised a cow upon renting it from a priest – שָׁשָׁם פְּרָה מִבְּהֵן: Rashi explains that the Israelite rented a cow from the priest and appraised it due to his guarantee to return the full value of the cow. *Tosafot*, however, contend that a rental agreement of this sort is prohibited as a form of interest. Since the renter has obligated himself to give the owner its present value no matter what, his receiving the cow is viewed as a loan, and the rental fee is considered interest (see *Bava Metzia* 70a). *Tosafot* therefore contend that the case of appraisal is one where the cow is merely borrowed from the owner, and there is no rental fee.

Go free at the loss of a tooth or an eye – יוֹצֵאִין בְּשׁוֹנֵעִין: A gentile slave is set free if his owner strikes him causing his tooth to fall out; his eye to be blinded; or other extremities, e.g., his fingers and toes, to be destroyed (Exodus 21:26–27).

וְכָל הַיָּכָא דְחֵיב בְּאַחֲרֵינֵיהּ אֲכָלִי בְּתֵרוּמָה? וְהֵתֵּן: יִשְׂרָאֵל שֶׁשָּׂכַר פְּרָה מִבְּהֵן – הֲרֵי זֶה יֹאכִילָנָה בְּרִשְׁיֵי תְרוּמָה. כֹּהֵן שֶׁשָּׂכַר פְּרָה מִיִּשְׂרָאֵל, אֵף עַל פִּי שְׂמוֹנוֹתֶיהָ עָלָיו – לֹא יֹאכִילָנָה בְּרִשְׁיֵי תְרוּמָה!

וְתִסְבְּרָא? נְהִי נָמִי דְמַחֲיִיב בְּגִנְבָה וְאִבְדָּה – בְּאֻנְסִיָּה, בְּכַחֲשָׁה, וּבְנִפְחָת דְּמִיָּה מִיִּמְחִיב? הָא לֹא דְמִיָּה אֵלָּא לְסִיפָא: יִשְׂרָאֵל שֶׁשָּׂם פְּרָה מִבְּהֵן – לֹא יֹאכִילָנָה בְּרִשְׁיֵי תְרוּמָה, אֲבָל כֹּהֵן שֶׁשָּׂם פְּרָה מִיִּשְׂרָאֵל – יֹאכִילָנָה בְּרִשְׁיֵי תְרוּמָה.

יְתִיב רַבָּה וְרַב יוֹסֵף בְּשִׁילָהִי פְּרָקִיָּה דְּרַב נַחֲמָן, וְיִתְבִּי וְקָאֲמְרִי: תִּנְיָא בְּתִיָּה דְּרַב יְהוּדָה, וְתִנְיָא בְּתִיָּה דְּרַבִּי אֲמִי. תִּנְיָא בְּתִיָּה דְּרַבִּי אֲמִי עֲבָדִי צֹאן בְּרוּל יוֹצֵאִין בְּשׁוֹן וְעֵין לְאִישׁ, אֲבָל לֹא לְאִשָּׁה.

תִּנְיָא בְּתִיָּה דְּרַב יְהוּדָה: הַמְכַנְסֵת שׁוֹם לְבַעֲלָהּ, אִם רָצָה הַבֵּעַל לְמִכּוֹר – לֹא יִמְכּוֹר, וְלֹא עוֹד אֵלָּא אֲפִילוּ הַכֵּנִים לָהּ שׁוֹם מִשּׁוּלּוֹ, אִם רָצָה הַבֵּעַל לְמִכּוֹר – לֹא יִמְכּוֹר. מִכּוֹר שְׁנֵיהֶם לְפִרְסָהּ, זֶה הִיא מַעֲשֶׂה לְפָנֶי רַבֵּן שְׁמַעוֹן בֶּן גַּמְלִיאֵל, וְאָמַר: הַבֵּעַל מוֹצִיא מִיֵּד הַלְקוּחוֹת.

The Gemara asks: And do they partake of *teruma* wherever he bears financial responsibility for their loss, even if they are not his actual possession? But didn't we learn in a mishna (*Terumat* 11:9): An Israelite who rented a cow from a priest may feed it vetches [*karshinin*]⁸ of *teruma*, since the animal belongs to a priest? With regard to a priest who rented a cow from an Israelite, although its feed is incumbent upon him, he may not feed it vetches of *teruma*, as it does not belong to him.⁹ This indicates that the requirement for enabling an acquisition to eat *teruma* is possession, not responsibility.

The Gemara rejects this proof: And how can you understand that the case of the rented cow is parallel to the case of guaranteed property? Though the renter is indeed liable for theft and loss, is he liable for unavoidable accidents, for emaciation, i.e., the cow became thinner or weaker for any reason, or for any other decrease in its value? Certainly he is not. In fact, the case of guaranteed property is similar only to the latter clause of that mishna: In the case of an Israelite who appraised a cow upon renting it from a priest¹⁰ under an arrangement where he guaranteed its value to the owner, he may not feed it vetches of *teruma*, as it is considered his own. However, a priest who appraised a cow upon renting it from an Israelite may feed it vetches of *teruma*.¹¹ This indicates that guaranteed property is considered the acquisition of its recipient with regard to enabling it to eat *teruma*.

Rabba and Rav Yosef sat at the conclusion of Rav Nahman's sermon, and they sat and said: It is taught in a *baraita* in accordance with the opinion of Rav Yehuda, and it is taught in another *baraita* in accordance with the opinion of Rabbi Ami. It is taught in accordance with the opinion of Rabbi Ami in the following *baraita*: If a slave's owner strikes him and knocks out his tooth or blinds him in an eye, he is set free. Slaves of guaranteed investment go free at the loss of a tooth or an eye¹² caused by the husband, but not at such loss caused by the wife. This indicates that they belong to the husband.

Conversely, it is taught in a *baraita* in accordance with the opinion of Rav Yehuda: When a woman brings appraised, guaranteed property into her marriage to her husband, if the husband wishes to sell it, he may not sell it, as it belongs to her. And not only that, but even when her husband brought property into the marriage and added it to her dowry as an appraised, guaranteed gift of his own,¹³ even if the husband wishes to sell that gift he may not sell it. With regard to a case in which either the husband or wife unlawfully sold this property for subsistence, there was an incident like this that came before Rabban Shimon ben Gamliel, and he said: Although the husband executed the sale, he may repossess the property from the purchasers, as the sale is void.¹⁴

HALAKHA

Feeding *teruma* to a rented cow – לִפְרָה שְׂכוּרָה: An Israelite who rented a cow from a priest may feed it *teruma*. On the other hand, a priest who rented a cow from an Israelite may not because it does not belong to him, even though he is responsible for its sustenance (Rambam *Sefer Zera'im*, *Hilkhot Terumat* 9:7).

Feeding *teruma* to an appraised cow – לִפְרָה שֶׁנִּשְׁוּמָה: If an Israelite received a cow from a priest and appraised it, guaranteeing its value to the original owner, in order to fatten it and share the profits, he may not feed it *teruma*, although the priest has a share in the profits. If a priest received a cow from an Israelite under the same stipulation, he may feed it *teruma* (Rambam *Sefer Zera'im*, *Hilkhot Terumat* 9:8).

Slaves of guaranteed investment go free at the loss of a tooth or an eye – עֲבָדֵי צֹאן בְּרוּל יוֹצֵאִין בְּשׁוֹן וְעֵין: Slaves of guaranteed investment brought into a marriage by the wife are set free at the

loss of a tooth or an eye, if the injury was caused by the husband, not by the wife (Rambam *Sefer Kinyan*, *Hilkhot Avadim* 5:16).

Even brought property into the marriage... as an appraised, guaranteed gift of his own – אֲפִילוּ הַכֵּנִים לָהּ שׁוֹם מִשּׁוּלּוֹ: In addition to her own possessions, a wife's guaranteed property includes the gifts she received from her husband (Rambam *Sefer Kinyan*, *Hilkhot Mekhira* 30:5; *Shulhan Arukh*, *Even HaEzer* 90:15).

Selling guaranteed property – מְכִירֵת נִכְסֵי צֹאן בְּרוּל: If a woman brought movable property into her marriage as guaranteed property, the husband does not have the right to sell it. However, if he violates this *halakha* and sells it, the sale is valid (Rav Hai Gaon). Some commentaries disagree, maintaining that the sale is void (Ramban; Rashba; Rosh; Rambam *Sefer Kinyan*, *Hilkhot Mekhira* 30:5 and *Sefer Nashim*, *Hilkhot Ishut* 22:15; *Shulhan Arukh*, *Even HaEzer* 90:14).

Robe [itztela] – אייטזעל: From the Greek *στολή*, *stolē*, meaning garment or robe.

Fine wool [meileta] – מיליטא: Some assert that this means fine wool, named after the city *Mίλητος*, *Milētos*, where it was manufactured (Rabbi Ovadya MiBartenura). Others explain that the source of the word is the Greek *μηλωτή*, *mēlotē*, meaning wool.

NOTES

And spread it over the corpse as a shroud – ופרסוה אמתא: The Gemara relates that at first taking the dead out for burial was more difficult for the relatives than the actual death, because it was customary to bury the dead in expensive shrouds, which the poor could not afford (*Moed Katan* 27b). The problem grew to the point that relatives would sometimes abandon the corpse. This lasted until Rabban Gamliel left instructions that he be taken out for burial in simple linen garments, waiving his honor. Afterward, the entire Jewish people adopted this practice and had themselves taken out for burial in linen garments.

The dead has acquired it – קנייה מיתנא: It is prohibited to derive benefit from a human corpse or from any object that serves its burial. Therefore, it is prohibited to use any object designated for a corpse or its burial that has been used to that end, e.g., a robe spread over the corpse as a shroud. However, one cannot render prohibited an object that belongs to someone else, even by using it for a human corpse.

Consecration of property, the prohibition against benefiting from leavened bread on Passover, etc. – הקדש, חמץ וכו': The Meiri explains that the *halakha* that these cannot release the property from a lien applies not only to items consecrated for the Temple, but to items consecrated for a corpse as well. The Ritva maintains that this *halakha* is a principle that applies to all items from which it is prohibited to derive benefit. In his opinion, consecrated property, leavened bread, and manumission (see 67a) are merely examples.

NOTES

And the manumission of a slave – ושהחרו: The Ramban points out that according to this ruling, the *baraita* cited by the Gemara in support of Rabbi Ami's opinion does not in fact lend his opinion any support. The *halakha* that slaves of guaranteed investment go free at the loss of a tooth or an eye by the husband can be explained by the fact that the wife's possession of them is nullified through their manumission, and therefore it cannot prove that the slaves belong to the husband.

If the wife brought with her into the marriage two belongings, etc. – הכניסה לו שני כלים וכו': A controversy between Babylonian *amora'im* is cited in the Jerusalem Talmud with regard to this issue. However, the conclusion is the same as in this Gemara.

אמר רבא אמר רב נחמן: הלכה כרב יהודה. אמר ליה רבא לרב נחמן: והתניא בותיה דרבי אמי! אף על גב דתניא בותיה דרבי אמי, מסתברא טעמא דרב יהודה, משום שבח בית אביה.

Rava said that Rav Nahman said: The *halakha* is in accordance with the opinion of Rav Yehuda. Rava said to Rav Nahman: But isn't it taught in a *baraita* in accordance with the opinion of Rabbi Ami? He replied: Although it is taught in accordance with the opinion of Rabbi Ami, Rav Yehuda's rationale, that the wife may take the objects in question because they are assets of her paternal family and their complete removal from her domain would hurt the family's prestige, is more reasonable.

היא איתתא דעיילה ליה לגברא אייטזלא דמילתא בכתובתה, שכיב, שקלוה יתמי ופרסוה אמתא.

The Gemara relates an incident: A certain woman brought into her marriage to her husband a robe [itztela]¹ of fine wool [meileta]¹, which was deemed guaranteed property by her marriage contract. Her husband subsequently died, and the orphans took that robe and spread it over the corpse as a shroud.^N The woman demanded that the robe be returned to her.

אמר רבא: קנייה מיתנא. אמר ליה נאנאי, בריה דרב יוסף, בריה דרבא, לרב כהנא: והאמר רבא אמר רב נחמן: הלכה כרב יהודה! אמר ליה: מי לא מודה רב יהודה דמחוסר גוביינא? וכיון דמחוסר גוביינא – ברשותיה קאי.

Rava said: The dead has acquired it,^{NH} as deriving benefit from anything consecrated for the dead is prohibited. Nanai, son of Rav Yosef, son of Rava, said to Rav Kahana: But didn't Rava say that Rav Nahman said that the *halakha* is in accordance with the opinion of Rav Yehuda? Accordingly, the woman's robe must be returned. He said to him: Doesn't Rav Yehuda admit that the robe has not yet been collected? And since it has not yet been collected, it remains in his possession, and his inheritors can render its use as a burial shroud prohibited.

רבא לטעמיה, דאמר רבא: הקדש, חמץ.

The Gemara adds that in this regard Rava conforms to his standard line of reasoning, as Rava said: Consecration of property, the prohibition against benefiting from leavened bread on Passover,^N

HALAKHA

Guaranteed property that was consecrated to the Temple or used for the dead – נכסי צאן ברזל שהוקדשו או נתנו למת – If a dead man's inheritors consecrate his widow's guaranteed property or place an object of that property on the corpse,

rendering it prohibited to derive benefit from the property or item, the woman's lien is released and she receives only its value (*Shulhan Arukh, Even HaEzer* 88:5).

Perek VII

Daf 67 Amud a

ושהחרו – מפקיעין מידי שיעבוד.

and the manumission of a slave^N release the property from a lien. If someone placed an asset under a lien for his debt and subsequently consecrated it; or if the asset under lien is leavened bread and the festival of Passover arrived; or if the asset is a slave and he freed him, the lien is released, and the creditor must claim his debt from the debtor's other property. In the case of the robe as well, because it was placed over the corpse, it was consecrated for the dead. Consequently, it is prohibited to derive benefit from it. Therefore, it is released to the woman from under the lien.

אמר רב יהודה: הכניסה לו שני כלים בארץ זוז, ושבחו ועמדו על שני אלפים – אחד נוטלתו בכתובתה, ואחד נותנת דמים ונוטלתו, מפני שבח בית אביה.

Rav Yehuda said: If the wife brought with her into the marriage two belongings^{NH} of guaranteed investment worth one thousand dinars, and they appreciated until they stood at two thousand, one of them she collects as payment of her marriage contract, as it is now worth her dowry of one thousand dinars. And as for the other one, she pays its monetary value and takes it from her husband because it is an asset of her paternal family.

HALAKHA

If the wife brought with her into the marriage two belongings, etc. – הכניסה לו שני כלים וכו': If the wife brought with her into her marriage two belongings or two maidservants of guaranteed investment, and they were appraised at one thousand dinars, and over the course of the marriage their value

increased to two thousand dinars, upon her divorce she takes one of them for her one thousand dinars. If she wishes, she has the right to receive the other at its price at the time of her divorce, in accordance with Rav Yehuda's ruling (*Rambam Sefer Nashim, Hilkhot Ishut* 22:26; *Shulhan Arukh, Even HaEzer* 88:3).

Her slaves may not partake of *teruma* – לא יאכלו: An emendation to the text is suggested in the Jerusalem Talmud, so that it reads: His slaves may not partake of *teruma*. This is because the slaves under discussion must be slaves of guaranteed investment, which belonged to the husband, and therefore belong to the fetus after his death. On the other hand, slaves of usufruct property, who belong to the woman, partake of *teruma* if she does, i.e., in a case where the woman has other children from the husband besides the fetus. A different opinion cited there suggests that according to Rabbi Yosei, the woman does not partake of *teruma* even if they had other children, due to her pregnancy, and neither do her slaves of usufruct property. Therefore, the emendation is unnecessary.

Where the Israelite husband died the fetus disqualifies her from partaking, however in the current case the fetus does not enable them to partake – שהעובר – פוסל ואינו מאכיל: Rashi explains that a fetus disqualifies its mother in the opposite case, i.e., the daughter of a priest married to an Israelite man, but does not enable her to partake of *teruma* in the case of the mishna. *Tosafot*, however, explain that in the case mentioned in the mishna, the fetus disqualifies the slaves of guaranteed investment from partaking of *teruma* but does not enable its mother or her slaves of usufruct property to partake. This explanation is supported by the fact that the principle that a fetus can disqualify its mother but cannot enable her to partake is stated in the next mishna (67b), so its mention in both *mishnayot* is superfluous unless here it carries a slightly different meaning.

Only one who was born enables others to partake of *teruma*, whereas one who is not yet born does not enable others to partake – ילוד מאכיל, שאין ילוד אינו: This principle is derived by the Gemara (*Nidda* 44b) from the verse “And such as are born in his house, they may eat [yokhlu] of his bread” (Leviticus 22:11). One who was not born may not, so to speak, feed [ya’akhilu] others either (Rashi).

The former case I heard, but with regard to this one I did not hear such a thing – זו שמעתי וזו לא שמעתי: According to Rashi, Rabbi Yosei means that he heard from his teachers that in this case the slaves do partake of *teruma*. However, the Ritva raises several problems with this explanation and prefers a simpler understanding of Rabbi Yosei’s statement: He did not hear what the *halakha* is in the latter case, and therefore he has nothing to say on the matter.

HALAKHA

A fetus does not enable others to partake of *teruma* – עובר אינו מאכיל: If an Israelite woman married a priest, and he subsequently died and left her pregnant, her slaves may not partake of *teruma*, as only one who was born enables others to partake of *teruma*, but a fetus does not. Conversely, a fetus does not disqualify its mother from partaking of *teruma*. Therefore, if the fetus is categorized as a priest disqualified due to flawed lineage [*halal*], and it has non-*halal* brothers, the mother partakes of *teruma* until it is born. This ruling apparently follows the Rabbis’ opinion (Rambam *Sefer Zera’im*, *Hilkhot Terumot* 8:4; *Tur*, *Yoreh De’a* 331).

מאי קא משמע לן, שבבית אביה ידעה הוי – הא אמרה רב יהודה חדא זימנא! מהו דתימא: הני מילי – היכא דמטיא למשקל בכתובתה, אבל מיתן דמי ומישקל לא – קא משמע לן.

מתני' בת ישראל שנספת לכהן ומת, והניחה מעוברת, לא יאכלו עבדיה בתרומה, מפני חלקו של עובר. שהעובר פוסל ואינו מאכיל, דברי רבי יוסי.

אמרו לו: מאחר שהעדת לנו על בת ישראל לכהן – אף בת כהן לכהן ומת, והניחה מעוברת – לא יאכלו עבדיה בתרומה, מפני חלקו של עובר.

גמ' איבעיא להו: טעמא דרבי יוסי משום דקסבר עובר במעי ורה זר הוא, או דלמא: ילוד – מאכיל, שאינו ילוד – אינו מאכיל?

למאי נפקא מינה – לעובר במעי כהנת, מאי? אמר רבה: היינו טעמא דרבי יוסי: דקסבר עובר במעי ורה – זר הוא. רב יוסף אמר: ילוד – מאכיל, שאין ילוד – אינו מאכיל.

מיתיבי, אמרו לו לרבי יוסי: מאחר שהעדת לנו על בת ישראל לכהן – בת כהן לכהן מהו? אמר להם: זו שמעתי, וזו לא שמעתי.

אי אמרת בשלמא עובר במעי ורה זר הוא – היינו דקאמר להו: “זו שמעתי, וזו לא שמעתי”. אלא, אי אמרת ילוד – מאכיל, שאין ילוד – אין מאכיל, מאי “זו שמעתי וזו לא שמעתי” אידיה היא! קשיא.

The Gemara asks: What is he teaching us? Is it that assets of her paternal family are hers? Rav Yehuda already said this once, in his previous statement. The Gemara answers: The latter statement was necessary as well, lest you say that this applies only where she comes to collect her marriage contract, which is rightfully hers, but to give money and take assets that are worth beyond what her husband owes her, you might say that she may not do so, although the property in question is an asset of her paternal family. Rav Yehuda therefore teaches us that she may take all of the assets of her paternal family and pay for what they are worth beyond her husband’s debt to her.

MISHNA With regard to an Israelite woman who married a priest and he died and left her pregnant, her slaves of guaranteed investment may not partake of *teruma*^N during her pregnancy, due to the share of the fetus, as an inheritor of his father, in the ownership of the slaves. In the opposite case, where the Israelite husband of a priest’s daughter died and left her pregnant, the fetus disqualifies her from partaking of *teruma*. However, in the current case, the fetus does not enable its mother or the slaves to partake^N of *teruma*,^H despite the fact that it is the child of a priest. This is the statement of Rabbi Yosei.

The Rabbis said to him: Since you testified before us about the case of an Israelite woman who was married to a priest, in the case of the daughter of a priest who was married to a priest and he died and left her pregnant, her slaves should not partake of *teruma* either, due to the fetus’s share. The same *halakha* should apply whether the woman is an Israelite or the daughter of a priest.

GEMARA A dilemma was raised before the scholars: Is the reason for the ruling of Rabbi Yosei because he holds that a fetus in the womb of a non-priest is a non-priest, as it is considered part of its mother’s body and it becomes a priest only upon birth, and therefore the slaves in which it owns a share will be allowed to eat *teruma* only at that stage? Or, is Rabbi Yosei perhaps of the opinion that only one who was born enables others to partake of *teruma*, whereas one who is not yet born does not enable others to partake, although it is considered a priest?

What is the practical difference between the two possible reasons? It is the case of a fetus in the womb of the priestess, the daughter of a priest. If Rabbi Yosei’s rationale is that the fetus in the womb of a non-priest is a non-priest, that is not the case here, and therefore the slaves should partake of *teruma*. What is the *halakha* in this case? Rabba said that this is Rabbi Yosei’s reasoning: He holds that a fetus in the womb of a non-priest is a non-priest. Rav Yosef said: His rationale is that only one who was born enables others to partake of *teruma*, whereas one who is not yet born does not enable others to partake.^N

The Gemara raises an objection to Rav Yosef’s opinion from a *baraita* that continues the last clause of the mishna: The Rabbis said to Rabbi Yosei: Since you testified before us about the case of an Israelite woman married to a priest, in the case of the daughter of a priest married to a priest, what is the *halakha*? He said to them: With regard to the former case, I heard from my teachers that the slaves do not partake of *teruma*, but with regard to this one, I did not hear such a thing.^N

Granted, if you say that Rabbi Yosei’s reasoning is that a fetus in the womb of a non-priest is a non-priest, this is the reason that he said to them: This case I heard but this case I did not hear. There is a logical distinction between the two cases, as in the latter case the fetus is not in the womb of a non-priest. However, if you say that his rationale is that only one who was born enables others to partake of *teruma*, whereas one who is not yet born does not enable others to partake, what does he mean by saying: This case I heard but this case I did not hear? It is the same case with regard to this principle. The Gemara concludes: This is a difficult objection.

רב חנה בן גדתא – Rav Ḥana of Baghdad [Bagdata'a] – Rav Ḥana of Baghdad was a second-generation Babylonian *amora*. He was Shmuel's preeminent disciple and transmitted several *halakhot* in his teacher's name. He was also a colleague of Rav Yehuda, another disciple of Shmuel.

Rav Ḥana was apparently from the city of Baghdad, called in those days Bagdat, which was on the border of the Jewish settlement in Babylonia, and a small city at the time.

NOTES

אֵייתִי לִי בֵּי עֶשְׂרֵה – Bring me an assembly of ten men – Although it is a legal principle that anything said in the presence of three is considered publicized, making a statement in front of a gathering of ten constitutes a special declaration before a bona fide assembly, which serves to emphasize the importance of the announcement.

One who transfers ownership of an object to a fetus, it acquires it – **הַמְּזַכֵּה לְעוֹבֵר קָנָה** – The Gemara in several places reaches the conclusion that a fetus cannot acquire or own anything. The early commentaries discuss the apparent contradiction between that ruling and the *halakha* that one may grant property to his child while the latter is still a fetus. One opinion is that a parent's grant carries more weight than an ordinary acquisition or inheritance, due to the emotional closeness of a parent to his child. The Ramban, on the other hand, claims that the *halakha* that a parent may grant property to a fetus is not Torah law but a rabbinical ordinance that applies only to someone on his deathbed, as it is designed to calm the mind of such an individual.

Does that baraita state: And the Rabbis accepted his testimony, etc. – **מִי קִתְּנִי וְקִבְּלוּ וכו'** – If the Rabbis acknowledged Rabbi Yosei's testimony, why didn't they accept his ruling? The Ritva explains that while the Rabbis conceded that Rabbi Yosei's opinion is both reasonable and an accepted tradition, they had their own conflicting tradition, which they were unwilling to disregard in favor of his. Others explain that although they accepted his opinion, the wording indicates that they had initially disagreed with him (Rabbi Avraham min HaHar). Another explanation is that while they acknowledged Rabbi Yosei's tradition, they interpreted it differently than he did (*Tosafot*).

HALAKHA

If the priest who died left children – **הַיִּזְחַב בָּנִים** – If a priest married an Israelite woman and subsequently died, and she has descendants from him and is not pregnant, she and her slaves, both slaves of usufruct property and of slaves of guaranteed investment, partake of *teruma* (*Tur*, *Yoreh De'a* 331).

If he left children and left her pregnant – **הַיִּזְחַב בָּנִים** – The Rambam rules that if a priest married an Israelite woman and died, leaving her pregnant, if she has other children from him she and her slaves of usufruct property may partake of *teruma*. However, her slaves of guaranteed investment may not, due to the fetus's share in their ownership. Alternatively, the Rosh follows Rabbi Shimon's ruling that if they had sons, both types of slaves may partake of *teruma*. However, if they had only daughters, the slaves of guaranteed investment may not partake of *teruma* due to the fetus's share. The *Tur* concurs with this ruling (Rambam *Sefer Zera'im*, *Hilkhot Terumat* 8:4; *Yoreh De'a* 331).

אמר רב יהודה אמר שמואל: זו דברי רבי יוסי, אבל חכמים אומרים: יש לו בנים – אוכלים משום בנים, אין לו בנים – אוכלים משום אחים. אין לו אחים – אוכלים משום משפחה כולה.

“זו” ולא סבירא ליה? הא אמר ליה שמואל לרב חנא בגדתא: פוק אייתי לי בי עשרה, דאימא לך באנפיהו: המזכה לעובר – קנה! אלא: “זו” וסבירא ליה. מאי קא משמע לן, דפליגי רבנן עליה דרבי יוסי.

ומי פליגי? מתביר רבי זכאי: זו עדות העיד רבי יוסי מפי שמעיה ואבטליון והודו לו. אמר רב אשי: מי קתני “וקבלו”? והודו לו קתני, דמסתבר טעמיה.

תנו רבנן: היזחב בנים – אלו ואלו אוכלים. היזחב מעוברת – אלו ואלו אין אוכלים. היזחב בנים והיזחב מעוברת, עבדי מלוג אוכלים, בדרך שהיא אוכלת. עבדי צאן ברזל לא יאכלו, מפני חלקו של עובר, שהעובר פוסל ואינו מאכיל, דברי רבי יוסי.

רבי ישמעאל ברבי יוסי אומר משום אביו: הבת – מאכלת, הבן – אינו מאכיל. רבי שמעון בן יוחי אומר: זכרים – יאכלו, בולן נקבות – לא יאכלו, שמה ימצא עובר זכר, ואין לבנות במקום הבן כלום.

מאי איריא שמה ימצא עובר זכר? תיפוק ליה דנקבה נמי פסלה! חדא ועוד קאמר: חדא – דנקבה נמי פסלה, ועוד: שמה ימצא עובר זכר, ואין לבנות במקום הבן כלום.

Rav Yehuda said that Shmuel said: This is the statement of Rabbi Yosei. However, the Rabbis say that if the dead husband has children, the slaves partake of *teruma* due to the children, as they inherit the slaves. If he does not have children, they partake of *teruma* due to his brothers, who inherit his property. If he does not have brothers either, they partake due to the entire family, which inherits his property. The fetus does not disqualify them, as it does not yet own its share of the inheritance.

The Gemara asks: By saying that this is only Rabbi Yosei's stance, Shmuel seemingly indicates that he himself does not maintain that opinion. However, Shmuel said to Rav Ḥana of Baghdad:^p Go and bring me an assembly of ten menⁿ and I will say to you before them a *halakha* that I seek to disseminate: One who transfers ownership of an object to a fetus, the fetus acquires it.ⁿ Consequently, according to Shmuel, a fetus can own property, which is the premise of Rabbi Yosei's stance that a fetus shares the inheritance even before he is born. The Gemara answers: Rather, although Shmuel said that this is only Rabbi Yosei's stance, he holds likewise. What is Shmuel teaching us by saying so? He is teaching us that the Rabbis disagree with Rabbi Yosei.

The Gemara asks: But do they really disagree? Rabbi Zakkai raised an objection to this statement from a *baraita*: This was a testimony that Rabbi Yosei testified that he heard from the mouths of She-maya and Avtalyon, and the Rabbis acknowledged his testimony. Apparently, they accepted his opinion. Rav Ashi said: Does that *baraita* state: And the Rabbis accepted his testimony?ⁿ It states: And they acknowledged his testimony, which indicates that his opinion is reasonable. However, they did not accept his ruling.

The Sages taught in a *baraita*: If the priest who was married to an Israelite woman and died left children,^h both the slaves of usufruct property and the slaves of guaranteed investment may partake of *teruma*. The slaves of guaranteed investment are owned by the children, who are priests, and the slaves of usufruct property are owned by the woman, who partakes of *teruma* due to her children. If he left his wife pregnant and did not leave children, both these slaves and those slaves may not partake of *teruma*. If he left children and left her pregnant,^h the slaves of usufruct property who belong to her partake of *teruma* just as she partakes due to her children. However, the slaves of guaranteed investment, who are inherited by the children, may not partake, due to the fetus's share, as it too inherits them, as a fetus can disqualify one from partaking of *teruma* but it cannot not enable one to partake. This is the statement of Rabbi Yosei.

Rabbi Yishmael, son of Rabbi Yosei, says in the name of his father: If the priest left behind a daughter, she enables the slaves to partake of *teruma*; however, a son does not enable them to partake. Rabbi Shimon ben Yoḥai says: If among the priest's children there are males, the slaves partake of *teruma*. But if they are all females, they do not partake, lest the fetus be found to be a male, and daughters do not receive any of the inheritance where there is a son. The male fetus would be the sole inheritor, and it does not enable slaves to partake of *teruma*.

The Gemara asks: Why does Rabbi Shimon ben Yoḥai specifically explain that if the children are females, the slaves may not partake of *teruma*, lest the fetus be found to be a male? Derive the ruling that the slaves do not partake of *teruma* from the *halakha* that a female fetus also disqualifies its slaves from partaking of *teruma*. Since the priest has only daughters, they inherit from him, and the female fetus receives a share in the inheritance too. The Gemara answers: Rabbi Shimon ben Yoḥai stated one reason and another. One reason is that a female also disqualifies its slaves from partaking of *teruma*, and another reason is lest the fetus be found to be a male, and daughters have no share in the inheritance at all in a place where there is a son.

זָכְרִים יֹאכְלוּ. וְהָאִיכָא עוֹבֵר! קָסָבְר:

The Gemara asks with regard to the first clause of Rabbi Shimon's statement, that if among the priest's children there are **males**, the slaves **may partake of teruma**: **But** even though sons inherit from their father, **isn't there a fetus** to be accounted for, as perhaps he too is a male, and therefore has a share in the inheritance? The Gemara answers: Rabbi Shimon **holds**

Perek VII
Daf 67 Amud b

HALAKHA

Minor orphans who came to court to divide up their father's property, etc. – יתומים שבאו לחלוק בנכסי אביהם – זכרי: With regard to sons, some of whom are adults and others of whom are minors, whose father dies and who want to divide up their father's property so that the adults can receive their share, the court appoints a steward for the minors, who selects for them a suitable share. The minors cannot object, even when they come of age, as the division was performed under the auspices of the court. This ruling follows Rav Nahman's own opinion. However, the Ritva rules in accordance with Shmuel (*Shakh*; Rambam *Sefer Mishpatim*, *Hilkhot Nahalot* 10:4; *Shulhan Arukh*, *Hoshen Mishpat* 289:1).

LANGUAGE

Steward [*apotropos*] – אפטרופוס: From the Greek ἐπίτροπος, *epitropos*, meaning one with the power of attorney, a trustee. It generally refers to anyone who has the right to run the properties or affairs of another.

אין חוששין למיעוטא. ואיבעית אימא:
לעולם קסבר חוששין למיעוטא,
דעבדינן ליה תקנתא ברב נחמן אמר
שמואל.

that we are not concerned about the minority^N of cases. Only a minority of fetuses are male inheritors, as roughly half are female, and some are stillborn. Therefore, the majority of fetuses will not become male children. **And if you wish, say that actually he holds that we are concerned about the minority.** However, we make an arrangement for the slaves, in accordance with what Rav Nahman said that Shmuel said.

דאמר רב נחמן אמר שמואל: יתומים
שבאו לחלוק בנכסי אביהם, בית דין
מעמידין להם אפטרופוס ובורר להם
חלק יפה. הגדילו – יכולין למחות. ורב
נחמן דידיה אמר: הגדילו – אין יכולין
למחות. דאם בן – מה בתי בית דין יפה?

This is as Rav Nahman said that Shmuel said: With regard to minor orphans who came to court to divide up their father's property,^H the court appoints for each of them a steward [*apotropos*],^{LN} and he selects for them a fine share. When the orphans have grown up, they may object to the manner in which the property was divided and redistribute it. **And Rav Nahman himself said that when they have grown up they may not object, as, if they may object, what good is the power of the court?** Here too, an appointed steward selects a share of the inheritance on behalf of the fetus, and this share does not include any of the slaves. Therefore, the slaves may partake of *teruma*. However, if all of the children are females, this arrangement is impossible because if the fetus is a son all the property belongs to him.

לימא. דרב נחמן תנאי היא! לא, דכולי
עלמא אית להו דרב נחמן, והכא
בחוששין למיעוטא קמיפלגי.

Based on the use of Rav Nahman's ruling to explain Rabbi Shimon's opinion, the Gemara suggests: **Let us say that Rav Nahman's opinion is corresponding to one side of a dispute between tanna'im**, as the Rabbis disagree with Rabbi Shimon. The Gemara rejects this suggestion: **No**; it is possible that everyone in the dispute accepts Rav Nahman's ruling, and here they disagree only with regard to whether we are concerned about the minority, as previously suggested, in a case where the arrangement was not made.

רבי ישמעאל ברבי יוסי אומר משום
אביו: הבת – מאכיל, הבן – אינו מאכיל.
מאי שנא בן דלא מאכיל – משום חלקו
של עובר, בת נמי לא תאכיל – מפני
חלקו של עובר!

It was taught in the previous clause of the *baraita* that Rabbi Yishmael, son of Rabbi Yosei, says in the name of his father: If the priest left behind a daughter, she enables the slaves to partake of *teruma*; however, a son does not enable them to partake of it. The Gemara asks: **What is different about a son, who does not enable them to partake, due to the fetus's share**, as it owns a share of the property if it is a male? **A daughter should not enable them to partake either, due to the fetus's share.**

NOTES

אין חוששין – למיעוטא: With regard to Rabbi Yosei's opinion toward less probable possibilities, the early commentaries raise a contradiction between the Gemara here, which indicates that Rabbi Yosei is not concerned about the minority of cases, and other statements of his that indicate that he does take such possibilities into account.

Some commentaries claim that what is indicated here should be seen as a local ruling and not a principle (Meiri). Others differentiate between uncertainties with regard to the present reality, as is the case here, and uncertainties with regard to the future (see Ramban; *Tosefot HaRosh*). A third opinion distinguishes between ritual and monetary matters, as the

former field often demands stringency, whereas with regard to monetary matters there is no such thing as stringency, since a stringent ruling for one party is a lenient one for the other.

בית דין מעמידין להם – אפטרופוס: According to Rashi, the court appoints a private steward for each orphan to select his share. The Ritva argues that there is no need to divide up the property between the minor orphans at this stage. Rather, a steward is appointed only if there are both minor and adult orphans, and the adults demand to receive their share. In that case, the court appoints one steward for all the minors. He selects a fine share for all

of them, and when they come of age they can divide it up among themselves.

There is also a dispute as to whether a steward has the authority to select property according to its monetary value, or whether he may participate only in the distribution of identical items. The Gemara here apparently supports the opinion that lends him the authority to select property according to its monetary value, as the steward here selects land for the fetus in exchange for slaves. Those who hold otherwise explain that a steward should prefer land for the orphan that he is representing, as the value of slaves is likely to depreciate over time. Therefore, this is an exchange that he may perform (*Nimmukei Yosef*).

חלוקת ירושה – The distribution of an inheritance – According to Torah law, if a man passes away, leaving sons and daughters, only the males inherit from him. Daughters inherit from him only if there are no sons. However, the Sages instituted as one of the stipulations of a marriage contract that the daughters of the married couple receive their sustenance from their father's property until they come of age or marry. As a marriage contract is essentially a promissory note, this stipulation places a lien on the inheritance. Consequently, the daughters' right to the property takes precedence over the sons', to the extent that if the property is meager and is sufficient only for the daughters' sustenance, the sons get nothing, not even their own sustenance. Nevertheless, since the sons are the inheritors, if they unlawfully sell the property, the sale is valid.

לא עדיף – It is no better than this son who already exists – **מהאי דקאי**: The Rashba asks how it is possible that a rabbinical ordinance overrules the Torah law that the slaves do not partake of *teruma*. He leaves this difficulty unresolved. In the Jerusalem Talmud, it is answered that according to Rabbi Yosei, by Torah law there is no obligation to separate *teruma* and tithes after the destruction of the First Temple; rather, the obligation is by rabbinic law.

חרש – Deaf-mute [heresh]: When the unmodified term *heresh* is employed, the reference is to one who can neither hear nor speak. In earlier times, these deaf-mutes were considered uneducable and were often placed in the same category as imbeciles and minors, who are exempt from all of the mitzvot in the Torah. In contemporary times, great strides have been made in the education of the deaf. Consequently, many rabbinic commentaries rule that those who can communicate intelligently are considered obligated in mitzvot like any Jew.

פוסלין ולא – Disqualify but do not enable to partake – **מאכילין**: Rabbi Shimon is cited in the Jerusalem Talmud as claiming that this principle is unjust, as any sexual relationship that disqualifies the daughter of priest from partaking of *teruma* should enable the wife of a priest to partake of *teruma*, and vice versa.

HALAKHA

An inheritance of insufficient property goes to the daughters – **נכסים מועטים לבנות** – If a person died and left property, his daughters receive their sustenance from the estate until they come of age, and the rest is divided up among the sons. If the inheritance is sufficient only for the daughters' sustenance, they receive their sustenance from the property until they come of age or get betrothed, even if the sons are forced to beg for their livelihood (Rambam *Sefer Nashim*, *Hilkhot Ishut* 19:19; *Shulhan Arukh*, *Even HaEzer* 112:14).

If the male orphans proceeded to sell the insufficient property, etc. – **יתומין שקדמו ומכרו בנכסים מועטים וכו'** – If the father left only a meager inheritance and the sons proceeded to sell it, their sale is valid (Rambam *Sefer Nashim*, *Hilkhot Ishut* 19:17; *Shulhan Arukh*, *Even HaEzer* 112:14).

A fetus disqualifies but does not enable to partake – **עובר פוסל ואינו מאכיל**: An Israelite woman who is pregnant from a priest may not eat *teruma* due to the fetus, and the daughter of a priest who is pregnant from an Israelite does not partake of *teruma* either, even if she has no other child from him (Rambam *Sefer Zera'im*, *Hilkhot Terumat* 8:2).

The fetus and a...yavam, etc. – **העובר והיבם וכו'** – With regard to a fetus, a *yavam*, betrothal, a married deaf-mute, and a nine-year-and-one-day-old boy who engaged in intercourse with a woman, if any of these are Israelites and the woman is the daughter of a priest, they disqualify her from partaking of *teruma*. If they are priests and she is an Israelite, they do not enable her to partake of *teruma* (Rambam *Sefer Zera'im*, *Hilkhot Terumat* 8:1).

Abaye said: Here we are dealing with a case of an inheritance of insufficient property that is enough only to sustain the daughters until they come of age. With regard to this case, the Sages instituted that the daughters receive their sustenance while the sons get nothing.^{NH} This is also a case where there is a surviving son together with the daughter.

Therefore, no matter what, the slaves do not partake of *teruma*. If this fetus, with which she is pregnant, is a son, it is no better than this son who already exists.^N Just as the existing son does not inherit the insufficient property, the same applies to the male fetus. If it is a daughter, it does not yet receive a share of the inheritance. This can be explained: Why does the daughter partake of the inheritance? It is by virtue of a rabbinic ordinance. Therefore, as long as the fetus has not emerged into the atmosphere of the world, the Sages did not establish that it should receive the inheritance. Consequently, the slaves partake of *teruma* by virtue of the existing daughter, as only she inherits them.

The Gemara asks: In what manner did you establish the *baraita*? You established it as referring to insufficient property. However, say the latter clause of the *baraita*: Lest the fetus be found to be a male, and daughters do not receive any of the inheritance where there is a son. Yet according to Abaye's explanation, on the contrary, the insufficient property is the daughters', whether or not there are any sons. The Gemara answers: In the latter clause we have come to a different case, in which there is sufficient property.

The Gemara raises another objection to Abaye's explanation: Does an inheritance of insufficient property belong to the daughters? Didn't Rabbi Asi say that Rabbi Yohanan said: If the male orphans proceeded to sell the insufficient property,^H although by rabbinic ordinance it is designated for the daughters' sustenance, what they sold was sold. Apparently, the Sages did not expropriate the properties from the male inheritors, but merely designated them for the daughters' sustenance. How, then, can the sons' ownership be disregarded with regard to the slaves' partaking of *teruma*?

Rather, what is the meaning of the word *daughter* in the context of the ruling that is taught by Rabbi Yishmael? It means female and is referring to the mother of the fetus. She enables her slaves of usufruct property to partake of *teruma*, as her husband's heirs have no share in them, whereas the son does not enable the slaves guaranteed investment to partake, due to the fetus's share. The Gemara asks: If so, this is the same as Rabbi Yosei's statement in the first clause. What was added by Rabbi Yishmael? The Gemara answers: Indeed, the entire *baraita* is taught by Rabbi Yishmael, son of Rabbi Yosei. There are not conflicting versions of Rabbi Yosei's opinion. Rather, Rabbi Yishmael is clarifying that he is the author of that *baraita*.

MISHNA With regard to the fetus^H of a divorcee or a widow whose husband left her pregnant; and a man whose married brother died childless [*yavam*];^H and betrothal; and a married deaf-mute;^N and a nine-year-and-one-day-old boy^B who engaged in intercourse with a woman; if any of these men are Israelites and the woman is the daughter of a priest, they disqualify her from partaking of *teruma*. But if she is an Israelite and they are priests, they do not enable^N her to partake of *teruma*.

BACKGROUND

אמר אביי: הכא בנכסים מועטים עסקינן, וכגון דאיכא בן בהדי בת,

מה נפשך: אי האי דמעברא בן הוא – לא עדיף מהאי דקאי, אי בת היא – אמאי אכלה, בתקנתא דרבנן – כמה דלא נפק לאויר העולם לא תקינו רבנן.

במאי אוקימתא – בנכסים מועטים, אימא סיפא: שמא ימצא העובר זכר, ואין לבנות במקום בן פלוס, אדרבה, נכסים מועטים דבנות ניהו! סיפא אתאן לנכסים מרובין.

ונכסים מועטים דבנות ניהו? והאמר רבי אסי אמר רבי יוחנן: יתומין שקדמו ומכרו בנכסים מועטים, מה שמכרו מכרו!

ואלא מאי בת דקתני – אם – אי הכי, היינו רבי יוסי! בולה רבי ישמעאל ברבי יוסי קתני לה.

מתני' העובר, והיבם, והאירוסין, והחרש, ובן תשע שנים ויום אחד – פוסלין ולא מאכילין.

בן תשע שנים ויום אחד – A nine-year-and-one-day-old boy – Although most boys do not experience a significant bodily change at the age of nine, the development of the testicles begins to accelerate at around this time, with the attending

increase in the capacity for intercourse. Though it roughly corresponds to the average age of this development, this specification, like other specific ages the Sages established for different levels of maturity, is somewhat arbitrary.

There is uncertainty as to whether he is nine years and one day old, etc. – ספק שהוא בן תשע שנים ויום אחד וכ' – The commentaries point out that this cannot be referring to a case where it is currently uncertain whether or not the boy is nine years old, as in such a case the court would have had to follow his presumptive physical status, i.e., that of a minor under the age of nine. Rather, the reference is apparently to a case where he is currently at least nine years old, and the court must determine in retrospect what his age was at the time of the incident. Since he no longer has the presumptive status of a minor under the age of nine, his status at the time of the incident is deemed uncertain (see Maharshal, Rabbi Ovadya MiBartenura, and *Tosafot Yom Tov*).

If the house fell, etc. – נפל הבית וכ' – This clause appears unrelated to the rest of the mishna. One suggestion is that since the mishna includes cases of uncertainty in which the ruling is stringent, it adds this similar case as well (Rid; Rabbi Avraham min HaHar). In the Jerusalem Talmud, it is explained that the previous case of uncertainty, i.e., a boy whose adulthood is in doubt, is taught with regard to both the matter discussed in the first clause of the mishna, i.e., the partaking of *teruma*, and the rival wife's issue of her levirate bond, which is discussed in the latter clause. If there is uncertainty as to whether the first wife was betrothed before or after the husband reached adulthood, then after the husband's death the rival wife performs *halitza* and does not enter into levirate marriage. Therefore, the mishna cites this clause as well.

And this woman is his brother's acquisition – והיא קנתו דאחיו – The early commentaries disagree whether the *halakha* that the *yevama* of a priest may not partake of *teruma* is Torah law (*Tosafot Yeshanim*) or rabbinic law (*Tosafot*, citing Rabbeinu Tam). According to the latter opinion, the verse that is cited is not a proper derivation from the Torah, but rather a support of the rabbinic law.

ספק שהוא בן תשע שנים ויום אחד ספק שאינו, ספק הביא שתי שערות וספק שלא הביא.

נפל הבית עליו ועל בת אחיו ואין ידוע אי זה מית ראשון – צרתה חולצת ולא מתייבמת.

גמ' "העובר". אי בת ביהן לישראל היא פסיל לה, "בנעוריה" – פרט למעוברת. אי בת ישראל לכהן היא לא מאכיל לה, ילוד מאכיל, שאינו ילוד אינו מאכיל.

"היבם". אי בת ביהן לישראל היא פסיל לה, "ושבה אל בית אביה" – פרט לשומרת יבם, אי בת ישראל לכהן היא לא מאכיל לה, "קנן בספו" – אמר רחמנא, והיא קנן דאחיו הוא.

"והאירוסין". אי בת ביהן לישראל היא, פסיל לה,

Likewise, in the case of a boy with regard to whom there is uncertainty as to whether he is nine years and one day old^{NH} and uncertainty whether he is not, who engaged in intercourse with a woman; and in the case of a boy who betrothed a woman, with regard to whom there is uncertainty as to whether he has grown two pubic hairs and is considered an adult and uncertainty whether he has not grown, they too can disqualify the woman from partaking of *teruma* and cannot enable her to partake, as in the previous cases.

If the house fell^N upon a man and upon his brother's daughter,^H to whom he was married, and it is unknown which of them died first, her rival wife performs *halitza* and does not enter into levirate marriage. Entering into levirate marriage is not possible, as, if the wife died after her husband, the surviving wife would be rendered the rival wife of a forbidden relative, since the *yavam* is the father of the wife who died. This status prevents the creation of a levirate bond between him and the surviving wife as well. On the other hand, *halitza* is necessary in case the wife died before her husband, thereby allowing the creation of a levirate bond between her rival wife and her father, the *yavam*.

GEMARA It is taught in the mishna that the fetus disqualifies its mother from partaking of *teruma* and does not enable her to do so. The Gemara explains: If she is the daughter of a priest married to an Israelite, and her husband died and left her pregnant, the fetus disqualifies her from partaking of *teruma*, as it is stated: "But if a priest's daughter be a widow, or divorced, and have no child, and is returned to her father's house, as in her youth, she may eat of her father's bread" (Leviticus 22:13). The phrase "as in her youth" excludes a pregnant woman, whose body has changed from her youth. If she is an Israelite woman married to a priest, the fetus does not enable her to partake, as one who was born enables others to partake of *teruma*, whereas one who is not yet born does not enable others to partake.

It is taught in the mishna that the same principle applies to a *yavam*. The Gemara explains: If she is the daughter of a priest who has a levirate bond to an Israelite, he disqualifies her, as it is stated in the verse cited above: "And is returned to her father's house," which excludes a widow waiting for her *yavam*, who has not returned to her father's house, as a levirate bond was created with her *yavam*. If she is an Israelite woman with a levirate bond to a priest, he does not enable her to partake of *teruma*, as the Merciful One states in the Torah: "The purchase of his money, he may eat of it" (Leviticus 22:11), and this woman is his brother's acquisition.^N The bond with her *yavam* ensued from his late brother's marriage to her, not through any action of his own.^H

The mishna teaches that the same principle also applies to betrothal. The Gemara explains: If she is the daughter of a priest betrothed to an Israelite, he disqualifies her,

HALAKHA

Uncertainty as to whether he is nine years and one day old, etc. – ספק שהוא בן תשע שנים ויום אחד וכ' – In the case of a boy with regard to whom there is uncertainty as to whether or not he is nine years old who engaged in intercourse with a woman, and similarly in the case of one who married a woman and with regard to whom there is uncertainty as to whether or not he has grown two pubic hairs, they disqualify the woman from partaking of *teruma* and cannot enable her to partake of it (Rambam *Sefer Zera'im*, *Hilkhot Terumat* 8:11).

If a house fell upon a man and upon his brother's daughter – נפל הבית עליו ועל בת אחיו – If a man had two wives, one

who was related to the *yavam* and the other who was not, and the man and the wife related to the *yavam* both died and it is unknown which of them died first, the rival wife performs *halitza* and not levirate marriage (*Shulhan Arukh*, *Even HaEzer* 173:8).

A *yavam* disqualifies and does not enable to partake of *teruma* – יבם פוסל ואינו מאכיל – An Israelite widow waiting for her *yavam*, who is a priest, does not partake of *teruma*, despite their bond. The daughter of a priest waiting for an Israelite *yavam* does not partake of *teruma* either, due to their bond (Rambam *Sefer Zera'im*, *Hilkhot Terumat* 8:5).

דְּהָא קְנִיָּה בְּהוּיָה, וְאִי בֵּת יִשְׂרָאֵל
לְכַהֵן הִיא – לֹא מֵאֲכִיל לָהּ מִשּׁוּם
דְּעוּלָא.

”וְהַחֲרָשׁ.” אִי בֵּת כְּהֵן לְיִשְׂרָאֵל הִיא –
פְּסִיל לָהּ, דְּהָא קְנִיָּה בְּתַקְנִיתָא דְּרַבָּנָן,
וְאִי בֵּת יִשְׂרָאֵל לְכַהֵן הִיא – לֹא
מֵאֲכִיל, ”קִנְיָן כְּסָפוֹ” אֲמַר רַחֲמָנָא,
וְהָאִי לֹא בְּרַקְנִין הוּא.

”וּבִן תִּשְׁעַ שָׁנִים” וכו'. קָא סְלָקָא
דְּעֵתֵן בְּשׁוּמְרֵת יָבָם לְבִן תִּשְׁעַ וְיוֹם
אֶחָד. לְמַאי? אִי לְמִפְסָל – קִטְּנָן נָמִי
מִיפְסָל פְּסִיל, אִי לְאִכּוּלִי – גְּדוּלָּה נָמִי
לֹא מֵאֲכִיל!

אֲמַר אֲבִי. הָכָא בִּיבָם בֵּן תִּשְׁעַ שָׁנִים
וְיוֹם אֶחָד הֵבֵא עַל יְבָמָתוֹ עֶסְקִינָן,
דְּמִדְּאוּרֵיָתָא קְנִיָּה לִיהָ. סְלָקָא דְּעֵתֵן
אֲמִינָא: הוּאִיל וּמִדְּאוּרֵיָתָא קְנִיָּה
לִיהָ, וּבִיָּאתוֹ בִּיָּאָה, אִימָא לֹכִיל – קָא
מִשְׁמַע לָן: עֲשׂוּ בִיָּאת בֵּן תִּשְׁעַ שָׁנִים
וְיוֹם אֶחָד בְּמִאֲמַר בְּגִדּוּל.

as he acquired her by means of betrothal.^N And if she is an Israelite woman betrothed to a priest, he does not enable her to partake of *teruma* due to the reason given by Ulla.^N Although by Torah law a priest's betrothed partakes of *teruma*, the Sages rendered it prohibited for her to do so, lest she allow other members of her family to eat it.¹⁴

It is also taught in the mishna that a deaf-mute^N disqualifies a woman from partaking of *teruma* and does not enable her to do so.^H The Gemara elaborates: **If she is the daughter of a priest married to a deaf-mute Israelite, he disqualifies her, as he acquired her through marriage sanctioned by an ordinance of the Sages.** Although the marriage of a deaf-mute is invalid by Torah law, the Sages instituted an ordinance validating this type of marriage. **And if she is an Israelite woman married to a deaf-mute priest, he does not enable her to partake of *teruma*, as the Merciful One states in the Torah: “The purchase of his money, he may eat of it” (Leviticus 22:11), and this deaf-mute is not capable of acquisition by Torah law, as he is not legally competent.**

S It is also taught in the mishna that a nine-year-old boy disqualifies a woman from partaking of *teruma* and does not enable her to partake. **It enters our mind** that the mishna is referring to a widow waiting for her *yavam*, who is nine years and one day old. The Gemara therefore inquires: With regard to what is this taught? If it is with regard to disqualifying her from partaking of *teruma*, a younger *yavam* also disqualifies her, as a levirate bond was created and she cannot return to her father's house. And if it was with regard to enabling her to partake of *teruma*, an older *yavam* does not enable her to partake either, as discussed above.

Abaye said: Here we are dealing with a nine-year-and-one-day-old *yavam* who already engaged in intercourse with his *yevama*,^N as she was thereby acquired by him by Torah law.^N It might enter your mind to say that since by Torah law she was acquired by him, as the legal status of his act of intercourse is that of intercourse, perhaps he enables her to partake of *teruma*. The mishna therefore teaches us that the Sages rendered the legal status of the intercourse of a nine-year-and-one-day-old boy like that of levirate betrothal by means of money or a document performed by an adult man,^H which is not sufficient for her to partake of *teruma*. Since levirate betrothal is effective only by rabbinic law, the *yevama* is not considered the acquisition of his money by Torah law and may not partake of *teruma*.

HALAKHA

Betrothal disqualifies and does not enable her to partake – תַּיִתּוּלָא דְּכַהֵן: The daughter of a priest who is betrothed to an Israelite is disqualified from partaking of *teruma*, as she is considered like his wife. Although an Israelite woman betrothed to a priest may partake of *teruma* by Torah law, the Sages decreed that she not do so, lest she allow other members of her family to partake of *teruma*, as stated by Ulla (Rambam *Sefer Zera'im*, *Hilkhot Terumat* 8:7).

A deaf-mute disqualifies and does not enable her to partake – חֲרָשׁ פְּסִיל וְאִינוּ מֵאֲכִיל: The daughter of a priest who married a deaf-mute Israelite is disqualified from partaking of

teruma due to this marriage, as it is valid by rabbinic ordinance. An Israelite woman married to a deaf-mute priest does not partake of *teruma*, as he has not acquired her by Torah law (Rambam *Sefer Zera'im*, *Hilkhot Terumat* 8:9).

ביאת יבם בן – תִּשְׁעַ: If a minor *yavam* aged nine years and one day engaged in intercourse with his *yevama*, the intercourse does not fully consummate the levirate marriage. Rather, it is equivalent to an adult's betrothal to his *yevama* (Rambam *Sefer Nashim*, *Hilkhot Yibbum* 5:18; *Shulhan Arukh*, *Even HaEzer* 167:1).

NOTES

דְּהָא – [havaya] – **קְנִיָּה בְּהוּיָה:** *Tosafot* note that the use of the word *havaya* indicates that this *halakha* is derived from the verse “And if a priest's daughter be [tihiye] married to a common man” (Leviticus 22:12). However, it appears from the Gemara later on that it is derived from a different verse. *Tosafot* conclude that the Gemara hints to this verse because it is a clearer source. The Gemara is not particular about referring to the accurate source because it is inconsequential here. The Ramban discusses the Gemara's tendency to cite inaccurate sources from the Torah for incidentally mentioned *halakhot* when the quoted source is clearer than the actual one.

Due to the reason given by Ulla – מִשּׁוּם דְּעוּלָא: Ulla's rationale is that the woman is not yet accustomed to the priesthood, as she is still living in her father's house, and she is likely to forget that she may not allow members of her Israelite family to partake of the *teruma*. It should be noted that another *amora* suggests a different rationale for this ordinance (see *Ketubot* 57b): The priest might discover a blemish in the woman following their marriage, which would render the betrothal mistaken and annul it retroactively. However, Ulla's rationale is the one usually quoted.

And a deaf-mute – הַחֲרָשׁ: The Jerusalem Talmud explains this case differently. It says that the mishna is referring to a woman who engaged in intercourse with a deaf-mute who is either her *yavam* or who is unfit to enter the assembly. Accordingly, he disqualifies her by Torah law, and not by rabbinic law as is explained by the Gemara.

The difference between the explanations in the Babylonian Talmud and the Jerusalem Talmud with regard to the case of a deaf-mute corresponds to the dispute between Abaye and Rava with regard to the case of a nine-year-old boy.

A nine-year-and-one-day-old *yavam* who engaged in intercourse with his *yevama* – יָבָם בֵּן תִּשְׁעַ שָׁנִים וְיוֹם אֶחָד הֵבֵא עַל – יְבָמָתוֹ: By Torah law, an act of intercourse performed by a boy is recognized from the age of nine. Any adult who engaged in forbidden intercourse with him is liable, but he is exempt from punishment, as he is a minor. He is also unable to acquire property or betroth a woman, as he is not legally competent. The complexity of a minor's levirate marriage stems from the fact that levirate marriage is an acquisition created exclusively through intercourse.

As she was thereby acquired by him by Torah law – דְּמִדְּאוּרֵיָתָא קְנִיָּה לִיהָ: Most commentaries maintain that the levirate marriage of a minor *yavam* is invalid by Torah law and is no more effective than betrothal of a *yevama*, which is a rabbinic institution (see *Tosafot*). Therefore, they claim that this phrase is inaccurate and refers not to acquisition but to the preexisting levirate bond between them (Ritva). Accordingly, the rationale that the mishna rejects is that the combination of the levirate bond, which exists by Torah law, and the levirate betrothal might enable the woman to partake of *teruma*.

Rashi (*Kiddushin* 19a) and Rabbi Avraham min HaHar, however, hold that a *yavam* who is a minor can perform levirate marriage by Torah law, and it was the Sages who instituted that it should be equivalent only to levirate betrothal.

The first clause is dealing with those unfit to enter the assembly, etc. – רִישָׁא פְסוּלֵי קְהָל וְכוּ'. According to Rabbeinu Hananel's version of the text, which is accepted by most early commentaries, the Gemara states the opposite: The first clause is dealing with those unfit for the priesthood, and the latter clause is referring to those who are unfit to enter the assembly.

Most commentaries agree with Rashi's interpretation that the expression: Those unfit for the priesthood, is referring only to a *halal*, whereas the expression: Those unfit to enter the assembly, is referring to all those who are unfit.

An Ammonite or a Moabite convert – גֵּר עַמּוֹנִי וּמוֹאָבִי: Torah law prohibits a male convert from these nations and his male descendants to ever marry freely among the Jewish people (see Deuteronomy 23:4).

An Egyptian or an Edomite convert – גֵּר מִצְרִי וְעֵדוּמִי: A convert of Egyptian or Edomite descent, whether male or female, may not marry a Jew by birth. This restriction applies for two generations (see Deuteronomy 23:8–9).

Samaritan – כּוּתִי: The Samaritans are the descendants of the nations displaced by Sennacherib, King of Assyria, and brought to settle in Eretz Yisrael. Eventually, they accepted upon themselves several mitzvot (11 Kings, chapter 17). At the beginning of the Second Temple period, during the times of Ezra and Nehemiah, relations between the Samaritans and the Jews deteriorated. Later, the Samaritans established a center of worship on Mount Gerizim, as they claimed that the sanctity of that mountain was established by one of the Ten Commandments. Some generations of Sages recognized Samaritans as half-Jewish. They went so far as to say that the Samaritans are extremely exacting in the fulfillment of the mitzvot they adopted, even more so than Jews. Ultimately, as the Samaritans continued to distance themselves from the Jewish people in virtually every regard, they were accorded the legal status of gentiles.

Gibeonite – גִּבְעוֹנִי: A Gibeonite is a descendant of the nation that tricked the Jewish people into making a covenant with them in the time of Joshua. According to most commentaries, by Torah law, the Gibeonites could have been treated as ordinary converts, but first Joshua and then King David decreed that they be treated as *mamzerim*, and therefore it became prohibited for Jews to marry them.

אָמַר לִיה רָבָא: אִי הָכִי, סִיפָא דְקֶתְנִי: סָפֵק בֶּן תִּשְׁעֵי שָׁנִים וְיוֹם אֶחָד סָפֵק שְׂאִינוּ, הִשְׁתָּא וְדָאִי בֶּן תִּשְׁעֵי לֹא מֵאֲכִיל – סָפֵק מִיבְעִיא?!

אָלָא אָמַר רָבָא: בֶּבֶן תִּשְׁעֵי שָׁנִים וְיוֹם אֶחָד דְּהֵנָּה פְסוּלִים קֶתְנִי, דְּפִסְלִי בְּבִיאָתוֹ. וְכִדְתֵּינָא: בֶּן תִּשְׁעֵי שָׁנִים וְיוֹם אֶחָד גֵּר עַמּוֹנִי וּמוֹאָבִי, מִצְרִי וְעֵדוּמִי, כּוּתִי, נָתִין, חָלָל וּמְמוּזָר, שְׂבָאוֹ עַל כְּהֻנַּת לוֹיָהּ וְיִשְׂרָאֵלִית – פְסוּלָהּ.

וְהָא מִדְּקֶתְנִי סִיפָא: אִם אֵינֶן רְאוּיִן לְבֵא בְּיִשְׂרָאֵל הָרִי אֱלֹו פְסוּלִים, מְכַלֵּל דְּרִישָׁא לֹא בְּפְסוּלִים עֲסָקִינָא רִישָׁא פְסוּלֵי קְהָל, סִיפָא פְסוּלֵי כְהוּנָה.

גּוֹפֵא, בֶּן תִּשְׁעֵי שָׁנִים וְיוֹם אֶחָד גֵּר עַמּוֹנִי וּמוֹאָבִי מִצְרִי וְעֵדוּמִי כּוּתִי נָתִין חָלָל וּמְמוּזָר שְׂבָאוֹ עַל כְּהֻנַּת לוֹיָהּ וְיִשְׂרָאֵלִית – פְסוּלָהּ.

רַבִּי יוֹסֵי אוֹמַר: כָּל שְׂזָרוֹ עָסוּל – פּוֹסֵל, כָּל שְׂאִין וְרָעוּ פּוֹסֵל – אֵינֶן פּוֹסֵל. רַבִּן שְׁמַעוֹן בֶּן גַּמְלִיאֵל אוֹמַר: כָּל שְׂאִתָּה נּוֹשֵׂא בְתוֹ – אִתָּה נּוֹשֵׂא אֶלְמָנָתוֹ, וְכָל שְׂאִין אִתָּה נּוֹשֵׂא בְתוֹ – אִי אִתָּה נּוֹשֵׂא אֶלְמָנָתוֹ.

Rava said to him: If so, consider the latter clause of the mishna, which teaches that a boy with regard to whom there is uncertainty whether he is nine years and one day old and uncertainty whether he is not, disqualifies a woman from partaking of *teruma*, and he does not enable her to partake. Now that, according to your explanation, one who is definitely nine years old does not enable her to partake of *teruma*, is it necessary to teach the same concerning a boy with regard to whom there is uncertainty as to whether or not he reached that age?

Rather, Rava said that the mishna is teaching this *halakha* with regard to a nine-year-and-one-day-old boy who is one of those unfit males listed in a *baraita*,^h who disqualify a woman from marrying a priest by their intercourse, as they are unfit to enter the assembly of Israel through marriage, as it is taught in a *baraita*: A nine-year-and-one-day-old boy who is an Ammonite or a Moabite convert; or who is an Egyptian or an Edomite convert; or who is either a Samaritan [*kuti*], a Gibeonite, a *halal*, or a *mamzer*, when he engaged in intercourse with a priestess, i.e., the daughter of a priest, a Levite, or an Israelite, he thereby disqualified her from marrying a priest,^h and, in the case of the daughter of a priest, from partaking of *teruma*.

The Gemara raises a difficulty from the fact that the latter clause, the next mishna (69a), teaches that if men who are unfit to enter the assembly of Israel by marriage engage in extramarital intercourse with women, they disqualify them from marrying into the priesthood: It may be inferred that in the first clause, the mishna above, we are dealing not with unfit individuals but with men fit to marry Jews of unflawed lineage. The Gemara answers: That inference is incorrect. The first clause of the mishna is dealing with those unfit to enter the assemblyⁿ of Israel by marriage, while the latter clause is dealing with those who are merely unfit for the priesthood. That is why the mishna is referring to them separately. Accordingly, Rava's explanation that the mishna is referring to an unfit nine-year-old boy is viable.

S The Gemara addresses the matter itself and cites the complete *baraita*. A nine-year-and-one-day-old boy who is an Ammonite or a Moabite convert;ⁿ or who is an Egyptian or an Edomite convert;ⁿ or who is either a Samaritan,ⁿ a Gibeonite,ⁿ a *halal*, or a *mamzer*, when he engaged in intercourse with a priestess, or a Levite, or an Israelite, he thereby disqualified her from marrying into the priesthood.

Rabbi Yosei says: Of the individuals mentioned above, anyone whose offspring is unfit to enter the assembly of Israel, disqualifies a woman with whom he engaged in intercourse from marrying into the priesthood. However, anyone whose offspring is not unfit does not disqualify a woman through intercourse. Rabban Shimon ben Gamliel says: Anyone whose daughter you may marry, you may marry his widow, even if you are a priest. Anyone whose daughter may marry a Jew of unflawed lineage does not disqualify a woman with whom he engaged in intercourse from marrying into the priesthood. And anyone whose daughter you may not marry, you may not marry his widow if you are a priest.

HALAKHA

ביאת פסול – The intercourse of an unfit nine-year-old boy – בֶּן תִּשְׁעֵי: If the intercourse of a male disqualifies a woman from marrying into the priesthood, it does so from the time the male is nine years and one day old. The woman with whom he engaged in intercourse is thereby disqualified from marrying a priest, and if she is the daughter of a priest she may no longer partake of *teruma* (Rambam *Sefer Zera'im*, *Hilkhot Terumat* 8:11).

Individuals who disqualify women from marrying into the priesthood – הַפְסוּלִים לְכַהֲנָה: If a woman engaged in inter-

course with a gentile; a Gibeonite, a *mamzer*, an Ammonite or a Moabite convert, an Egyptian or an Edomite convert of the first or second generation, or a *halal*, she is disqualified from marrying into the priesthood, and if she is the daughter of a priest she may no longer partake of *teruma*. Some commentaries claim that she is disqualified from marrying into the priesthood only if she engaged in forbidden intercourse that renders her liable to receive *karet* (*Tosafot*; *Rosh*; Rambam *Sefer Kedusha*, *Hilkhot Issurei Bia* 18:3; *Shulhan Arukh*, *Even HaEzer* 6:8).

Since she engaged in intercourse with one who is unfit for her, he disqualified her – פסלה – פסלה לה, פסלה לה. Most commentaries maintain that any man unfit to enter the assembly of Israel who engaged in intercourse with a woman rendered her a *zona*, and it is prohibited for a priest to marry her, as the verse states: “They shall not take a woman who is a harlot [*zonal*]” (Leviticus 21:7). The commentaries therefore ask why the Gemara derives this *halakha* from Leviticus 22:12. The Rashba answers that the *halakha* under discussion relates to a woman who was raped and therefore cannot be deemed a harlot. He adds that the derivation is clearly necessary according to an opinion mentioned previously, that only a woman who engaged in forbidden intercourse that renders her liable to receive *karet* has the status of a *zona* (61a).

מנא הני מילי? אמר רב יהודה אמר רב: אמר קרא “ובת כהן כי תהיה לאיש זר,” בין שנבעלה לפסול לה – פסלה.

The Gemara asks: **From where are these matters derived**, that intercourse with an unfit man renders a woman unfit to partake of *teruma* and marry a priest? Rav Yehuda said that Rav said: **The verse states: “And if a priest’s daughter be married to a common man [*ish zar*], she shall not eat of that which is set apart from the sacred”** (Leviticus 22:12). It may be derived that **since she engaged in intercourse with one who is unfit for her, he disqualified her**^a from marrying into the priesthood, as the literal meaning of the expression *ish zar* is a man who is excluded.

האי מיבעי ליה דקאמר רחמנא: בת כהן דמינסבא לזר לא תיכול!

The Gemara asks: **That verse is necessary** to teach the *halakha* that **the Merciful One says: The daughter of a priest who marries a non-priest**, even one that she is permitted to marry, **may not partake of *teruma***. Therefore, it cannot be the source for the *halakha* that intercourse with an unfit man renders a woman unfit to partake of *teruma* and marry a priest.

ההיא מ’ושבה אל בית אביה כנעוריה מלחם אביה תאכל” נפקא, מדקאמר רחמנא: “ושבה אל בית אביה תאכל” מכלל דמעיסקרא לא אכלה!

The Gemara answers: **That prohibition is derived from the verse** “But if a priest’s daughter be a widow, or divorced, and have no child, and is returned to her father’s house, as in her youth, she may eat of her father’s bread” (Leviticus 22:13). **From the fact that the Merciful One says: “And is returned to her father’s house ... she may eat,” it may be inferred that initially, while married to a non-priest, she was not permitted to eat.** Therefore, the prohibition against a woman who engaged in intercourse with an unfit man partaking of *teruma* may be derived from the former verse, as it is not necessary for this *halakha*.

אי מההיא הוה אמינא לאו הבא מכלל עשה – עשה, כתב רחמנא האי ללא. [לא] מ’וכל זר לא יאכל קדש” נפקא.

The Gemara rejects this answer: **If the prohibition against the daughter of a priest who married a non-priest partaking of *teruma* had been derived only from that latter verse, I would have said** that it is a prohibition that stems from a positive mitzva, as it is stated in positive form, and according to the principle that **a prohibition that stems from a positive mitzva is a positive mitzva**, she would not be liable to receive a court-imposed punishment. **The Merciful One therefore writes that former verse, to establish an explicit prohibition.** The Gemara counters: The prohibition against the wife of a non-priest partaking of *teruma* is derived from a different verse: **“No common man may eat of the sacred”** (Leviticus 22:10).

Perek VII

Daf 68 Amud b

ההוא מיבעי ליה לגופיה! תרי “וכל זר” כתובי.

The Gemara rejects this assertion: **That verse is necessary** to teach **its own basic *halakha***, that a non-priest is prohibited from partaking of *teruma*. The Gemara responds: **Two prohibitions with regard to a “common man” are written**, one in the verse previously cited and the other in Leviticus 22:13: “But there shall no common man eat of it.” One of them prohibits a non-priest from partaking of *teruma*, while the other is referring to the daughter of a priest married to a non-priest.

ואפתי מיבעי ליה לכדדבי יוסי ברבי חנינא. דאמר רבי יוסי ברבי חנינא: “וכל זר” – זרות אמרתי לה, ולא אמינות! דרבי יוסי ברבי חנינא מן “זר” “וכל זר” נפקא.

The Gemara asks: One of these verses is still necessary to teach another *halakha* that is taught by **Rabbi Yosei, son of Rabbi Hanina**, as **Rabbi Yosei, son of Rabbi Hanina, said** that the phrase “no common man” indicates that **I, God, said to you that commonness**, i.e., non-priesthood, renders one unfit to partake of *teruma*, but **acute mourning**, i.e., mourning on the day when one’s close relative died, does **not** render one unfit to eat *teruma*. The Gemara answers: This teaching of **Rabbi Yosei, son of Rabbi Hanina, is derived from a superfluous word in the verse**, as it could have stated: **A common man** may not eat of the holy thing, and it actually states: **“No common man.”**

If so, let the verse merely write, etc. – אם כן לכתוב קרא – *Tosafot* explain this statement as follows: If the verse intended to disqualify the woman only from partaking of *teruma*, it should have simply referred to the sacred, and it would have been clear that this expression is referring to *teruma*, as that is the topic under discussion. Therefore, the expression “that which is set apart from the sacred” indicates that the prohibition pertains to other consecrated foods as well.

Derivation of *halakhot* from the prefix *vav* – דרישת ווין – Apparently, all the Sages derived *halakhot* from the prefix *vav* in various contexts. The Rabbis that the Gemara is referring to must therefore be Rabbis who interpret the prefix *vav* as only connecting between a phrase and the statement previous to it, whereas Rabbi Akiva maintains that it also implies the inclusion of additional cases relevant to the subject at hand (see *Tosafot*).

ואבתי מיבעי ליה לכתנא: כשהיא חוזרת – חוזרת לתרומה, ואינה חוזרת לחזה ושוק, ואמר רב חסדא אמר רבינא בר רב שילא: מאי קרא? דכתיב: “ובת כהן כי תהיה לאיש זר היא בתרומת הקדשים לא תאכל” – לא תאכל במזרם מן הקדשים.

אם כן לכתוב קרא “היא בקדשים לא תאכל”, מאי “בתרומת הקדשים” – שבעת מינה תרתי.

אשכחן כהנת, לוייה וישראלית מנלן? כדאמר רבי אבא אמר רב: “בת” “ובת”, כהן נמי “בת” “ובת”.

כמאן – כרבי עקיבא, דדריש ווין! אפילו תימא רבנן, כוליה “ובת” קרא יתירא הוא.

The Gemara asks: The verse “And if a priest’s daughter be married to a common man” (Leviticus 22:12), from which Rav derived the *halakha* being discussed, that intercourse with an unfit man renders a woman unfit to partake of *teruma* and marry a priest, is still necessary for that which is taught in a *baraita*: When a priest’s daughter returns to her father’s house after the death of her Israelite husband, she resumes partaking of *teruma*, but she does not resume partaking of the breast and the right hind leg^h of sacrificial offerings. And Rav Hisda said that Ravina, son of Rav Sheila, said: What is the verse from which this is derived? As it is written: “And if a priest’s daughter be married to a common man, she may not eat of that which is set apart from the sacred” (Leviticus 22:12). This implies that even after her husband’s death, she may not partake of the portion separated from consecrated offerings. Therefore, the verse cannot be the source for the above *halakha*.

The Gemara answers: If so, if this is the only *halakha* derived from this verse, let the verse merely write:ⁿ She may not eat of the sacred. What is the significance of the seemingly superfluous expression “that which is set apart from the sacred”? Conclude from this that the prohibition is referring to two deeds:^h The daughter of a priest who engaged in intercourse with an unfit man may not partake of *teruma*, and if she weds a non-priest she may not partake of the priestly portion of offerings, the breast and right hind leg.

The Gemara asks: We found a source for a priestess; from where do we derive the same *halakha* with regard to a Levite or an Israelite woman^h who engaged in intercourse with an unfit man, i.e., that they do not partake of *teruma* even if they marry a priest? The Gemara answers that it is as Rabbi Abba said that Rav said: The verse states: “But if a priest’s daughter be a widow, or divorced” (Leviticus 22:13). It could have begun: If a priest’s daughter. The word “but,” the prefix *vav*, is seemingly superfluous, and therefore it may indicate the expansion of the prohibition to include additional women. Here too, it may be derived from the distinction between the phrase: If a priest’s daughter, and the phrase: “And if a priest’s daughter,” which utilizes the prefix *vav*, that Levite and Israelite women are subject to the prohibition as well.

The Gemara asks: In accordance with whose opinion is this exposition possible? It is in accordance only with the opinion of Rabbi Akiva, as he derives *halakhot* from the prefix *vav*, which means “and” or “but.” The Gemara responds: Even if you say it is in accordance with the Rabbis, who do not derive *halakhot* from the prefix *vav*,ⁿ the entire phrase: “And if a priest’s daughter,” is superfluous in the verse, as the previous verse already mentioned the priest’s daughter. Therefore, the inclusion of Levite and Israelite women in the prohibition may be derived from the entire expression.

HALAKHA

But she does not resume partaking of the breast and the right hind leg – ואינה חוזרת לחזה ושוק: If the daughter of a priest married a non-priest and was widowed or divorced without any surviving children from her husband, she may resume partaking of *teruma*. However, she may not partake of the breast and the right hind leg of offerings (Rambam *Sefer Zera’im, Hilkhhot Terumat* 6:8–9).

Conclude from this that the prohibition is referring to two deeds – שבעת מינה תרתי: Two prohibitions are derived from the verse “And if a priest’s daughter be married to a common man, she may not eat of that which is set apart from the sacred” (Leviticus 22:12). The first is that a woman who engaged in sexual intercourse with a man forbidden to her is rendered a *zona* or

a *halala*, and she is permanently prohibited from partaking of *teruma*. The second is that the daughter of a priest who was married to a priest and subsequently widowed or divorced may resume partaking of *teruma*, but she may not eat the breast and the right hind leg of offerings (Rambam *Sefer Zera’im, Hilkhhot Terumat* 6:7).

From where do we derive the same *halakha* with regard to a Levite or an Israelite woman – לוייה וישראלית מנלן: Not only is the daughter of a priest prohibited from partaking of *teruma* if she engaged in intercourse with a man unfit for her, but even a Levite or an Israelite woman who has a child from a priest is prohibited from eating *teruma* if she engaged in intercourse with a man forbidden to her (Rambam *Sefer Zera’im, Hilkhhot Terumat* 6:10).

An *a fortiori* inference from a divorcée – קל וחומר – מן הדין: The *Tosefot HaRosh* argues that the case of an Israelite or a Levite woman should serve as a rebuttal of this inference, as she does not partake of *teruma* but she may marry a priest. He answers that the latter woman's unfitness to partake of *teruma* is inherent, and it is therefore irrelevant to the discussion. The case under discussion is a woman who was disqualified from marrying into the priesthood by an action. He continues to argue that the inference can be rebutted with the case of a daughter of a priest who was widowed by a non-priest and has children from him, as she does not partake of *teruma* but she may marry a priest. He answers that the prohibition against her partaking of *teruma* is only circumstantial; if her Israelite descendants die, she may resume partaking of *teruma*.

It is merely a revelation – גילוי מילתא בעלמא הוא: The commentaries offer various interpretations of this answer. The *Hazon Ish* explains that the prohibition against this woman partaking of *teruma* shows that she is rendered a *zona*. Once that has been established, all *halakhot* pertaining to a *zona* apply to her as well, e.g., her unfitness to marry a priest.

And perhaps you should say that it...applies only to those liable to receive *karet* – ואימא...חייבי כריתות: The *Ritva* explains that since the verse does not identify this "common man," perhaps it is referring to the type of man least suitable for her. Although those liable to receive the death penalty for their acts of intercourse are presumably less suitable than those liable to receive *karet*, they are not considered a separate legal category from those liable to receive *karet*.

Those liable to receive *karet* are not fit for marriage – חייבי כריתות לאו בני הוייה: If so, what is the source of the *halakha* that those liable to receive *karet* also disqualify the woman from marrying a priest? *Tosafot* answer that the primary meaning of the phrase *ish zar*, translated as common man, refers to a man who renders a woman liable to receive *karet* through intercourse. The Gemara merely proves from the wording of the verse that the verse is referring to less severe acts of intercourse as well. Rashi, on the other hand, maintains that the source is Rabbi Yishmael's teaching that any man who cannot render a woman a widow or a divorcée, i.e., his marriage to her is invalid, also disqualifies her from marrying into the priesthood.

אשכחן לתרומה, לכהונה מכלל? אטו לוייה וישראלית לא לכהונה מרבין להו? דאי לתרומה – בנות מיכל תרומה ניהו?

The Gemara asks: We found a source for the woman's disqualification from partaking of *teruma*; from where do we derive that she is disqualified from marrying into the priesthood? The Gemara counters: Is that to say that we did not include a Levite and an Israelite woman in the verse "But if a priest's daughter be a widow, or divorced, etc." (Leviticus 22:13), with regard to their marriage to a member of the priesthood? The derivation that a Levite and an Israelite woman are included in this verse was clearly with regard to their marriage to a priest; as if the inclusion was with regard to *teruma*, are these women fit to partake of *teruma* at all, regardless of their having engaged in intercourse with an unfit man? Clearly, their inclusion pertains to their marriage to a priest and their partaking of *teruma* as his wife.

אלמא לא? משפחת לה דקאכלה בשביל בנה!

The Gemara rejects this assertion: Why not? Why can't the inclusion be referring to the partaking of *teruma* exclusively? You find that possibility when she partakes of *teruma* due to her son. If an Israelite woman has a son from a priest, she may partake of *teruma*. Therefore, it is necessary to include a Levite or Israelite woman in the prohibition against partaking of *teruma* if she engaged in intercourse with an unfit man.

בשביל בנה – קל וחומר: ומה כהנת, דבקדושה דנפשה אכלה, פסיל לה, לוייה וישראלית דלא אכלה אלא בשביל בנה – לא כל שכן?

The Gemara responds: The *halakha* that this woman does not partake of *teruma* due to her son is deduced through an *a fortiori* inference: If a priestess, who partakes of *teruma* by virtue of her own sanctity, is disqualified from partaking of *teruma* by an unfit man who engaged in intercourse with her, then with regard to a Levite or Israelite woman, who partakes of *teruma* only due to her son, is it not all the more so that it should be prohibited for her to partake of *teruma* after this act?

והיא הנותנת: כהנת דקדיש גופה – פסיל לה, הא דלא קדיש גופה – לא פסיל לה. אלא לכהונה, קל וחומר מגדושה! ומה גרושה שמוותרת בתרומה – אסורה לכהונה, זו שאסורה בתרומה – אינו דין שפסולה לכהונה?

The Gemara rejects that response: But that provides support for the contrary reasoning. It is logical that a priestess, who is herself sacred, is disqualified by intercourse with an unfit man. However, with regard to this woman, who is not sacred herself, and who eats *teruma* only due to her son, intercourse with an unfit man should not disqualify her. Rather, the prohibition against these women marrying into the priesthood is derived by an *a fortiori* inference from the case of a divorcée.^N If a divorcée who is the daughter of a priest, who is permitted to partake of *teruma*,^H is nevertheless prohibited from marrying into the priesthood, as is written in the Torah (Leviticus 21:7), then with regard to this woman, for whom it is prohibited to partake of *teruma*, is it not right that she should be disqualified from marrying into the priesthood?

וכי מזהירין מן הדין? גלוי מילתא בעלמא הוא.

The Gemara raises an objection to that inference: But do we warn, i.e., do we deduce a prohibition through logical derivation? The Gemara answers: This is not a new prohibition; rather, it is merely a revelation^N of the above prohibition's scope. In other words, the prohibition against marrying a priest is subsumed under the prohibition against partaking of *teruma*.

ואימא: נבעלה לפסול לה – חייבי כריתות! "כי תהיה" אמר רחמנא, הנך דאית בהו הוייה, חייבי כריתות – לאו בני הוייה.

Now that the source has been established, the Gemara asks: And perhaps you should say that this *halakha* pertaining to a woman who engaged in intercourse with a man unfit for her applies only to those liable to receive *karet*^N for their act of intercourse, but not to intercourse with a man who is unfit to marry into the assembly of Israel. The Gemara answers that the Merciful One states in the Torah: "If a priest's daughter be married" (Leviticus 22:12), indicating that this *halakha* is referring to those who can have a valid marriage, while those liable to receive *karet* for their act of intercourse are not fit for marriage.^N

HALAKHA

A divorcée who is permitted to partake of *teruma* – גרושה שמוותרת בתרומה: The daughter of a priest who got divorced from

a non-priest and does not have children with him is permitted to partake of *teruma* (Rambam *Sefer Zera'im*, *Hilkhot Terumot* 8:8).

אי הכי, גוי ועבד לא ליפסלו! הנך פסלי מדרבי ישמעאל. דאמר רבי יוחנן משום רבי ישמעאל: מנין לגוי ועבד שבא על בת ישראל, ועל כהנת ולויה, שפסלוה – שנאמר "ובת כהן כי תהיה אלמנה וגרושה" וגו'.

The Gemara asks: **If so, a gentile or a slave who engaged in intercourse with a Jewish woman should not have disqualified her from marrying into the priesthood, as they cannot marry her.** The Gemara answers: **These disqualify her, as derived by Rabbi Yishmael, as Rabbi Yohanan said in the name of Rabbi Yishmael: From where is it derived with regard to a gentile or a slave who engaged in intercourse with an Israelite woman, or with a priestess, or a Levite woman, that they have disqualified her?** As it is stated: **"But if a priest's daughter be a widow, or divorced, and have no child, and is returned to her father's house, as in her youth, she may eat of her father's bread"** (Leviticus 22:13).

Perek VII
Daf 69 Amud a

NOTES

ואימא מי – But perhaps you should say, one who has, etc. *Tosafot* ask why the Gemara suggests a lenient interpretation, contrary to the principle that whenever a Torah juxtaposition can be interpreted in either a stringent or a lenient manner, the stringent interpretation is accepted. *Tosefot HaRosh* writes that since a Jewish woman's marriage to a gentile or a slave is invalid, and any child of theirs is considered the child of his mother only, it makes sense that the child should not cause her to be disqualified.

מי שיש לו אלמנות וגרושין בה, יצאו גוי ועבד שאין לו אלמנות וגרושין.

This verse is referring to a man who has potential widowhood and divorce with her, excluding a gentile and a slave, who do not have widowhood and divorce with her, as they cannot marry Jews at all. Therefore, they disqualify a woman from marrying into the priesthood through sexual intercourse, even if she does not have a child with them.

אשכחן כהנת, לויה וישראלית מנא לן? דאמר רבי אבא אמר רב: "בת" "ובת" הקא נמי "בת" "ובת".

The Gemara asks: **We have found a source for the halakha that a gentile and a slave disqualify a priestess. From where do we derive this with regard to a Levite and an Israelite woman?** The Gemara answers: It is as **Rabbi Abba** said that **Rav** said: The verse **"But if a priest's daughter be a widow, or divorced"** (Leviticus 22:13) could have begun with the words: If a priest's **daughter**. The word **"but,"** the prefix *vav*, expands the prohibition to include additional women. **Here too,** it may be derived from the distinction between the phrase: If a priest's **daughter**, and the phrase as it actually appears in the verse: **"But if a priest's daughter,"** that Levite and Israelite women are subject to the prohibition as well.

במאן, ברבי עקיבא, דדריש ווי? אפילו תימא רבנן, כולה "ובת" קרא יתירא הוא.

The Gemara asks: **In accordance with whose opinion is this exposition possible?** It is in accordance only with the opinion of **Rabbi Akiva**, as he derives *halakhot* from the prefix *vav*. The Gemara responds: **Even if you say it is accordance with the Rabbis, the entire phrase: "But if a priest's daughter," is superfluous in the verse, as the previous verses had already mentioned the priest's daughter. Therefore, the inclusion of Levite and Israelite women in the prohibition may be derived from the entire expression.**

ואימא: מי שיש לו אלמנות וגרושין בה, כי לית ליה זרע – קאכלה, כי אית ליה זרע – לא אכלה, מי שאין לו אלמנות וגרושין בה, אף על גב דאית ליה זרע – נמי תיכול!

The Gemara suggests: **But perhaps you should say a different interpretation of the mention of widowhood and divorce in the verse: In the case of one who hasⁿ potential widowhood and divorce with her, if he does not have offspring from her she may partake of *teruma* upon her widowhood or divorce, whereas if he does have offspring from her she does not partake.** However, in the case of **one who does not have widowhood and divorce with her, even if she has offspring from him, she should be allowed to partake of *teruma*, as the offspring is not considered his.**

אם כן רבויי לויה וישראלית למה לך?

The Gemara answers: **If so, why do I need to include a Levite and an Israelite woman?** If the daughter of a priest is not disqualified from *teruma* due to intercourse with a gentile or slave, certainly a Levite or Israelite woman is not. The fact that the verse indicates inclusion of Levite and Israelite women proves that the *halakha* that is derived from it is a stringency and not a leniency.

And the meaning of, If a priest's daughter be [*tihye*] to a common man is: If she engages in intercourse with him – **ומאי "כי תהיה לאיש זר"**, **כי תיבעיל**: Some commentaries ask why the verse must be interpreted according to Rabbi Akiva as referring to intercourse alone, as there is an amoraic opinion that even according to Rabbi Akiva's opinion, there are several forbidden unions with regard to which betrothal does take effect, such as those that do not involve close relatives and those prohibited only due to positive mitzvot. The Rashba and the Ritva answer that the Gemara's question applies only to the amoraic opinion that, according to Rabbi Akiva, betrothal never takes effect in any forbidden union.

מקיש זרעו לו – The *Shela* explains that in the case discussed by the verse, the priest has not yet fathered a child. Therefore, the phrase "his seed" is superfluous.

HALAKHA

A *halal* disqualifies – **הלל פוסל**: Although it is permitted for any Jewish woman, even the daughter of a priest, to marry a *halal*, their intercourse permanently disqualifies her from marrying into the priesthood and from partaking of *teruma* (Rambam *Sefer Kedusha*, *Hilkhot Issurei Bia* 18:1; *Shulhan Arukh*, *Even HaEzer* 6:8).

A High Priest who engaged in intercourse with a widow – **כהן גדול באלמנה**: A High Priest who engages in intercourse with a widow is liable to receive lashes even if he did not betroth her beforehand. As for her, she becomes a *halala* and is disqualified from marrying into the priesthood (Rambam *Sefer Kedusha*, *Hilkhot Issurei Bia* 17:3).

ולרבי עקיבא, דאמר: אין קדושין תופסין בחיבי לאוין, ומאי "כי תהיה לאיש זר" כי תיבעיל, "אלמנה וגרושה" למה לי?

The Gemara asks: And according to Rabbi Akiva, who said that betrothal of those who may not engage in intercourse, as they are liable for violating a prohibition, does not take effect, and therefore the meaning of the phrase "And if a priest's daughter be [*tihye*] to a common man" (Leviticus 22:12) is not: If she marries him, but rather: **If she engages in intercourse with him,** why do I need the Torah to mention the phrase "a widow, or divorced" in the verse: "But if a priest's daughter be a widow, or divorced... she may eat of her father's bread" (Leviticus 22:13)? It is not necessary for this phrase to teach that a gentile and a slave disqualify a woman from marrying into the priesthood through sexual intercourse, as suggested by Rabbi Yishmael, as they are included in the prohibition proscribing a woman who engaged in intercourse with a man who is unfit for her.

אלמנה להחמיר עליה, וגרושה להקל עליה. וצריכא, דאי אשמעינן אלמנה – אלמנה הוא דכי לית לה זרע אכלה, משום דחזיא לכהונה, אבל גרושה דלא חזיא לכהונה – אימא אף על גב דלית לה זרע לא אכלה. ואי אשמעינן גרושה – גרושה הוא דכי אית לה זרע לא אכלה, משום דלא חזיא לכהונה, אבל אלמנה, דחזיא לכהונה, אימא: אף על גב דאית לה זרע נמי תיכול – צריכא.

The Gemara answers: A widow is mentioned to be stringent with her, and a divorcée to be lenient with her, and both are necessary. As, had the Torah taught us only the case of a widow, you might have assumed that specifically if this daughter of a priest is a widow she partakes of *teruma* when she does not have offspring because she is fit for the priesthood, as she may marry a common priest, but with regard to a divorcée, who is not fit for the priesthood at all, you might say that even if she does not have offspring she does not partake of *teruma*. And had it taught us only the case of a divorcée, you might have assumed that only a divorcée does not partake of *teruma* when she has offspring from a non-priest because she is not fit for the priesthood, but with regard to a widow, who is fit for the priesthood, you might say that even if she has offspring she should also partake of *teruma*. It is therefore necessary for both cases to be stated.

ואימא: נבעלה לפסול לה – אף מחזיר גרושתו! "לאיש זר" אמר רחמנא, מי שזר אצלה מעיקרא, לאפוקי האי דלא זר אצלה מעיקרא הוא.

The Gemara asks: And perhaps you should say that the category of a woman who engaged in intercourse with a man who is unfit for her and is therefore disqualified from the priesthood applies even to the case of a man remarrying his divorcée after she had been married to another man in the meantime, which is prohibited. The Gemara answers: The Merciful One states in the Torah: "To a common man [*ish zar*]," literally, a man who is a stranger, "she shall not eat of that which is set apart from the sacred." The Gemara understands the notion of a stranger to be one whom she was forbidden to marry and interprets homiletically: Only marriage to one who was a stranger, i.e., forbidden, to her from the outset precludes her from partaking of *teruma*, to the exclusion of one who was not a stranger to her from the outset, such as her ex-husband.

אי הכי, חלל דלאו זר הוא מעיקרא, לא לפסול! אמר קרא: "לא יחלל זרעו בעמיו", מקיש זרעו לו: מה הוא פוסל, אף זרעו נמי פוסל.

The Gemara asks: If so, a *halal*, who was not excluded at the outset, as he may marry even the daughter of a priest, should not disqualify a woman from marrying into the priesthood. The Gemara answers that the verse states, with regard to a priest who marries a woman unfit for the priesthood: "He shall not profane his seed among his people" (Leviticus 21:15), thereby juxtaposing his seed to him.⁴ Just as he, a priest who married a woman forbidden to him, disqualifies her from the priesthood, so too, his seed, the *halal*, also disqualifies a woman with whom he engaged in intercourse.⁴

ואימא: משעת הויה? דומיא דכהן גדול באלמנה, מה כהן גדול באלמנה – בביתא, אף האי נמי – בביתא.

The Gemara asks: And perhaps you should say that a woman who engaged in intercourse with a man unfit for her is disqualified from the time of their betrothal, even before they engaged in intercourse. The Gemara answers that this is similar to a High Priest who engaged in intercourse with a widow: Just as a High Priest who engaged in intercourse with a widow⁴ has disqualified her through intercourse, not betrothal, so too, this unfit man has also disqualified her through intercourse.

A second-generation Egyptian and a second-generation Edomite – מצרי שני ואדומי שני – It is prohibited for an Egyptian or Edomite convert and his son to enter the assembly of Israel by marriage, however, his grandson may marry an Israelite (Rambam *Sefer Kedusha*, *Hilkhot Issurei Bia* 12:19).

ואימא: עד דאיכא הויה וביאה!
דומיא דכהן גדול באלמנה, מה כהן
גדול באלמנה – בביתא לחודה, אף
האי נמי בביתא לחודה.

ורבי יוסי אומר: כל שזרעו פסול –
פוסל, וכל שאין זרעו פסול – אינו
פוסל. מאי איכא בין תנא קמא
לרבי יוסי?

אמר רבי יוחנן: מצרי שני ואדומי שני
איכא ביניהו.

ושניהם לא למדוה אלא מכהן גדול
באלמנה. תנא קמא סבר: מה כהן
גדול באלמנה, שביאתו בעבירה –
ופוסל, אף האי נמי פוסל.

ורבי יוסי סבר: ככהן גדול, מה כהן
גדול – שזרעו פסול ופוסל, אף כל
שזרעו פסול פוסל, לאפוקי מצרי
שני דאין זרעו פסול, דכתיב: "בנים
אשר יולדו להם דור שלישי יבא
להם בקהל ה'".

"רבן שמעון בן גמליאל אומר: כל
שאשה נושא בתו אשה נושא
אלמנתו" וכו'. מאי איכא בין רבי
יוסי לרבן שמעון בן גמליאל?

אמר עולא: גר עמוני ומואבי איכא
ביניהו. ושניהם לא למדוה אלא
מכהן גדול באלמנה. רבי יוסי סבר:
מה כהן גדול באלמנה – שזרעו פסול
ופוסל, אף כל שזרעו פסול – פוסל.

The Gemara asks: And perhaps you should say that he does not disqualify her until there is both betrothal and intercourse. The Gemara again answers that this is similar to a High Priest who engaged in intercourse with a widow: Just as a High Priest who engaged in intercourse with a widow disqualifies her through intercourse alone,¹ so too, this man also disqualified her through intercourse alone.

It was taught in the *baraita* under discussion (68a) that Rabbi Yosei says: Of the men unfit to enter the assembly of Israel, anyone whose offspring are also unfit disqualifies a woman with whom he engaged in intercourse from the priesthood. However, anyone whose offspring are not unfit does not disqualify her. The Gemara asks: What difference is there between the first *tanna* of the *baraita* and Rabbi Yosei?

Rabbi Yohanan said: The practical difference between them pertains to a second-generation Egyptian and a second-generation Edomite.¹ The children of these men, i.e., the third generation, may marry Jews of unflawed lineage. Therefore, according to Rabbi Yosei, they too do not disqualify a woman from the priesthood through intercourse with them. The first *tanna*, however, holds that they have the same status as a first-generation Egyptian or Edomite convert, in that they disqualify a woman from the priesthood through intercourse.

And both *tanna'im* derived their respective opinions only from the case of a High Priest who engaged in intercourse with a widow, although they reached different conclusions. The first *tanna* reasoned: Just as with regard to a High Priest who engaged in intercourse with a widow, his act of intercourse with her is a transgression, and therefore he disqualifies her from the priesthood, so too, this man, a second-generation Egyptian or Edomite, also disqualifies her.

And Rabbi Yosei also reasoned: This is like a High Priest who engaged in intercourse with a widow. Just as the High Priest's children are unfit for the priesthood, and he himself disqualifies the widow from marrying into the priesthood, so too, any man whose children are unfit to marry Jews of unflawed lineage disqualifies a woman with whom he engaged in intercourse from marrying into the priesthood. This inference comes to exclude a second-generation Egyptian, whose children are not unfit, as it is written: "The children of the third generation that are born to them may enter into the assembly of the Lord" (Deuteronomy 23:9).

It is taught in the *baraita* under discussion that Rabban Shimon ben Gamliel says: Anyone whose daughter you may marry, you may marry his widow; anyone whose daughter you may not marry, you may not marry his widow. The Gemara asks: What difference is there between Rabbi Yosei and Rabban Shimon ben Gamliel? They appear to be stating the same principle, that a man disqualifies a woman from the priesthood only if his children are unfit to marry Jews of unflawed lineage as well.

Ulla said: The practical difference between them is in the case of an Ammonite and a Moabite convert. And both of them derived their respective opinions from none other than the case of a High Priest with a widow. Rabbi Yosei reasoned: Just as with regard to a High Priest who engaged in intercourse with a widow, his children are unfit for the priesthood and he himself disqualifies the widow, so too, any man whose children are unfit disqualifies a woman with whom he engaged in intercourse.

NOTES

Just as a High Priest who engaged in intercourse with a widow disqualifies her through intercourse alone – מה כהן גדול באלמנה – *Tosefot HaRosh* asks why the Gemara assumes that a High Priest disqualifies a widow through intercourse, even if he did not betroth her. It is answered that from the juxtaposition in the verse (Leviticus 21:14–15) between the prohibition

against a High Priest marrying a widow and the disqualification of his child from the priesthood as a result, it is derived that just as the child is disqualified whether or not his parents were betrothed, so too, the High Priest transgresses the prohibition and disqualifies the widow through intercourse alone, even without betrothal.

רבן שמעון בן גמליאל סבר: מה בהן גדול באלמנה – שכל זרעו פסול ופוסל, אף שכל זרעו פסול ופוסל, לאפוקי עמומי ומואבי דאין כל זרעו פסול, דאמר מר: עמומי ולא עמונית, מואבי ולא מואבית.

Rabban Shimon ben Gamliel reasoned: Just as in the case of a High Priest who engaged in intercourse with a widow, where all of his children from her are unfit for the priesthood and he disqualifies her as well, so too, in the case of a man all of whose children are unfit, he disqualifies a woman with whom he engaged in intercourse. This is to the exclusion of an Ammonite or a Moabite convert, as not all of his children are unfit to marry Jews of unflawed lineage, as the Master said: An Ammonite man is unfit to enter the assembly but not an Ammonite woman; a Moabite man is unfit but not a Moabite woman.^{NH} Since only the sons of an Ammonite or Moabite convert are unfit, they do not disqualify a woman with whom they engaged in intercourse from marrying into the priesthood.

מתני' האונם והמפתה והשוטה – לא פוסלין ולא מאכילין, ואם אינן ראויין לבא בישראל – הרי אלו פוסלין. כיצד? (היה) ישראל שבא על בת בהן – תאכל בתרומה.

MISHNA In the case of one who rapes a woman without marrying her; or one who seduces a woman^H without marrying her; or an imbecile^N who engages in intercourse with a woman, even if he did marry her, if they are non-priests they do not disqualify the daughter of a priest from partaking of *teruma*, and if they are priests they do not enable an Israelite woman to partake of *teruma*. And if they are not fit to enter the assembly of Israel through marriage, they disqualify the daughter of a priest from partaking of *teruma*. How so? If it was an Israelite who engaged in extramarital intercourse with the daughter of a priest, she may partake of *teruma*, as this act of intercourse does not disqualify her.

NOTES

An Ammonite man but not an Ammonite woman, a Moabite man but not a Moabite woman – מואבי ולא עמומי: This ruling was introduced upon Ruth the Moabite's arrival in Bethlehem. It was not well known and was a cause of her rejection by her relatives before Boaz, the head of the Sanhedrin, married her (Yalkut Shimoni).

One who rapes, or one who seduces, or an imbecile, etc. – האונם והמפתה והשוטה וכו': *Tosafot* ask why the mishna does not list a minor as well, as he too does not disqualify a woman from partaking of *teruma* through intercourse, nor can he enable her to partake of *teruma* if he is a priest. They answer that since the mishna subsequently discusses the case of a pregnant woman, it cannot list a minor, as he is incapable of impregnating a woman.

HALAKHA

An Ammonite man but not an Ammonite woman, a Moabite man but not a Moabite woman – מואבי ולא עמומי: Ammonite and Moabite men are permanently prohibited from entering the assembly of Israel by marriage. This includes their sons and their sons' sons until the end of time. However, an Ammonite or Moabite female convert is permitted to marry into the assembly immediately, just like converts from other nations (Rambam *Sefer Kedusha*, *Hilkhot Issurei Bia* 12:18; *Shulhan Arukh*, *Even HaEzer* 4:2).

One who rapes or one who seduces a woman, etc. – האונם והמפתה וכו': If the daughter of a priest was raped or seduced by an Israelite man, or if she engaged in intercourse with an imbecile Israelite, she is not disqualified from partaking of *teruma*, unless the intercourse was prohibited. If an Israelite woman had one of those experiences with a priest, the priest does not enable her to partake of *teruma* (Rambam *Sefer Zera'im*, *Hilkhot Terumot* 8:13).

Perek VII

Daf 69 Amud b

עיברה – לא תאכל בתרומה, נחתך העובר במעייה – תאכל. היה בהן שובא על בת ישראל – לא תאכל בתרומה, עיברה – לא תאכל, ולדה – תאכל. נמצא בחו של בן גדול משל אב.

If he impregnated her, she may not partake of *teruma*,^N as she is carrying an Israelite fetus. If the fetus was cut in her womb,^H i.e., she miscarried, she may partake of *teruma*. If the man was a priest who engaged in intercourse with an Israelite woman, she may not partake of *teruma*. If he impregnated her, she still may not partake of *teruma*, as a fetus does not enable its mother to partake. If she gave birth she may partake due to her child, a priest.^H It is therefore found in this case that the power of the son is greater than that of the father, as the father of this child does not enable the woman to partake of *teruma*, but the son does.

NOTES

If he impregnated her she may not partake of *teruma* – עיברה לא תאכל בתרומה: This is not because the fetus is a non-priest, but because she partakes of *teruma* only as long as her body doesn't change due to pregnancy, as derived by

the Gemara (67b) from the verse "As in her youth, she may eat of her father's bread" (Leviticus 22:13). Her body cannot be described as being "as in her youth" if she is pregnant (see Ritva).

HALAKHA

If the fetus was cut in her womb – נחתך העובר במעייה: If the daughter of a priest married an imbecile Israelite, or if she was raped or seduced by an Israelite, and she was impregnated, she may not partake of *teruma* due to the fetus. If she miscarried, she may partake of *teruma* (Rambam *Sefer Zera'im*, *Hilkhot Terumot* 8:14).

An Israelite woman impregnated by a priest – מעיברת מכהן: If an Israelite woman married an imbecile priest, or if she was raped or seduced by a priest, she may not partake of *teruma*, even if she is impregnated by him. However, once she has borne him a child, she may partake of *teruma* due to her child (Rambam *Sefer Zera'im*, *Hilkhot Terumot* 8:14).

A slave disqualifies, etc. – **הַעֲבֵד פּוֹסֵל וְכוּ** – A slave disqualifies a woman with whom he engaged in intercourse from partaking of *teruma*, but he does not disqualify his Jewish mother. This principle applies to a gentile as well. In addition, both a slave and a gentile whose paternal grandparents are a priest and an Israelite woman do not enable their grandmother to partake of *teruma*. Why, then, is this principle stated specifically with regard to a slave? The novel element of this case is explained in *Arukh LaNer*: Even the slave of a priest, who partakes of *teruma* himself, does not enable his Israelite grandmother to partake of *teruma*.

A *mamzer* disqualifies and enables a woman to partake of *teruma* – **מִמְזוֹר פּוֹסֵל וּמַאֲכִיל**: The commentaries disagree as to whether a *mamzer* who is the son of a priest partakes of *teruma* himself. The Rambam holds that he is a *mamzer* priest. Others maintain that his mother became a *halala* due to the forbidden intercourse through which he was conceived, and he is therefore rendered a *halal*, who is unfit for the priesthood (Rosh; Ritva).

This son is a *mamzer* – **הָרִי זֶה מִמְזוֹר**: This mishna is of the opinion that the child of an Israelite woman and a slave or a gentile man is a *mamzer*. The commentaries do not follow this opinion. However, the principle that a *mamzer* whose maternal grandfather is a priest enables his maternal grandmother to partake of *teruma* is accepted unanimously (Rambam's Commentary on the Mishna).

הַעֲבֵד פּוֹסֵל מִשּׁוּם בִּיאָה, וְאֵינוֹ פּוֹסֵל מִשּׁוּם זֶרַע. בִּיצֵד? בֵּת יִשְׂרָאֵל לְכֹהֵן. בֵּת כֹּהֵן לְיִשְׂרָאֵל, וְיִלְדָּהּ הַיִּמְנוּ בֵּן, וְהִלָּךְ הַבֵּן וְנִכְבֶּשׂ עַל הַשְּׂפָחָה, וְיִלְדָּה הַיִּמְנוּ בֵּן – הָרִי זֶה עֲבֵד. הֵיטָה אִם אָבִיו בֵּת יִשְׂרָאֵל לְכֹהֵן – לֹא תֹאכֵל בְּתוּמָהּ, בֵּת כֹּהֵן לְיִשְׂרָאֵל – תֹּאכֵל בְּתוּמָהּ.

מִמְזוֹר פּוֹסֵל וּמַאֲכִיל. בִּיצֵד? בֵּת יִשְׂרָאֵל לְכֹהֵן, וּבֵת כֹּהֵן לְיִשְׂרָאֵל, וְיִלְדָּה הַיִּמְנוּ בֵּת, וְהִלָּכָה הַבֵּת וְנִישְׂאָתָא לְעֲבֵד אוֹ לְגוֹי וְיִלְדָּה הַיִּמְנוּ בֵּן – הָרִי זֶה מִמְזוֹר. הֵיטָה אִם אָמוֹ בֵּת יִשְׂרָאֵל לְכֹהֵן – תֹּאכֵל בְּתוּמָהּ. בֵּת כֹּהֵן לְיִשְׂרָאֵל – לֹא תֹאכֵל בְּתוּמָהּ.

כֹּהֵן גָּדוֹל, פְּעָמִים שֶׁהוּא פּוֹסֵל, בִּיצֵד? בֵּת כֹּהֵן לְיִשְׂרָאֵל וְיִלְדָּה הַיִּמְנוּ בֵּת, וְהִלָּכָה הַבֵּת וְנִישְׂאָתָא לְכֹהֵן וְיִלְדָּה הַיִּמְנוּ בֵּן – הָרִי זֶה רֹאשׁ לְהִיט בֵּת כֹּהֵן גָּדוֹל עוֹמֵד וּמְשִׁימֵשׁ עַל גְּבִי הַמִּזְבֵּחַ, מַאֲכִיל אֶת אָמוֹ, וּפּוֹסֵל אִם אָמוֹ. זֹאת אוֹמֶרֶת: לֹא כִבְנֵי כֹהֵן גָּדוֹל שֶׁהוּא פּוֹסֵל לִי מִן הַתְּרוּמָה.

גַּמ' תֵּנִינָא לְהָא דְתַנּוּ רַבֵּנּוּ: שׁוּטָה וְקָטָן שְׁנֵשְׂאָו נָשִׁים וּמָתוּ – נִשְׁוִיתֵיהֶן פְּטוּרוֹת מִן הַחֲלִיצָה וּמִן הַיִּיבּוּם.

A slave disqualifies^N a woman from partaking of *teruma* due to his engaging in intercourse with her, and he does not disqualify a woman because he is her offspring. How so? In what case would a slave theoretically disqualify a woman because he is her offspring? If an Israelite woman was married to a priest, or the daughter of a priest was married to an Israelite; and she bore him a son; and the son went and pressed himself onto a maidservant, an epithet for intercourse used in this context due to the shame involved in having intercourse with a maidservant; and she bore him a son, then this son is a slave. If the latter's father's mother was an Israelite who was married to a priest, and her husband died, she may not partake of *teruma* due to her grandson, as he is not a priest but a slave. On the other hand, if she was the daughter of a priest married to an Israelite, and he died, leaving only this grandson, she may partake of *teruma*, as the grandson is not considered his father's offspring.^H

A *mamzer* disqualifies a woman from partaking of *teruma*, and he also enables a woman to partake of *teruma*.^{NH} How so? If an Israelite woman was married to a priest, or the daughter of a priest was married to an Israelite, and she bore him a daughter, and the daughter went and married a slave or a gentile and bore him a son, this son is a *mamzer*.^N If his mother's mother was an Israelite woman married to a priest, even if her husband died, she may partake of *teruma*, as she has surviving offspring from a priest. Conversely, if she is the daughter of a priest married to an Israelite, she may not partake of *teruma*, even after her Israelite husband's death, as she has offspring from him.

Even with regard to a High Priest, sometimes he disqualifies^H his grandmother from partaking of *teruma*. How so? If the daughter of a priest was married to an Israelite, and she bore him a daughter, and the daughter went and married a priest and bore him a son, this son is fit to be a High Priest, who stands and serves on the altar. This son enables his mother to partake of *teruma*, as he is a priest. And yet, he disqualifies his mother's mother from partaking of *teruma*, as he is her offspring from her Israelite husband. This grandmother can say in disapproval: Let there not be many like my daughter's son, the High Priest, as he disqualifies me from partaking of *teruma*.

GEMARA We already learned that the marriage of an imbecile is invalid, as the Sages taught in a *baraita*: With regard to an imbecile and a minor boy who married women and died, their wives are exempt from *halitza* and from levirate marriage.^H

HALAKHA

בֵּן הַעֲבֵד אֵינוֹ – The son of a slave is not considered his offspring – **נִחָשֵׁב לְזֶרַע**: If an Israelite woman was married to a priest, or the daughter of a priest was married to an Israelite, and she bore a son, and that son engaged in intercourse with a maidservant and fathered a son, the son is rendered a slave. If the woman's son died and her grandson, the slave, is still alive, he is not considered his father's offspring. Therefore, if the woman is an Israelite who was married to a priest, she may not partake of *teruma* due to this grandson; if she is the daughter of a priest who was married to an Israelite, she is not disqualified from partaking of *teruma* because of him (Rambam *Sefer Zera'im*, *Hilkhot Terumat* 6:16).

A *mamzer* disqualifies and enables a woman to partake of *teruma* – **מִמְזוֹר פּוֹסֵל וּמַאֲכִיל**: If the daughter of a priest was married to an Israelite, or an Israelite woman was married to a priest, and she bore him a daughter, and that daughter engaged in forbidden intercourse that renders her child a *mamzer*, the child is still considered the offspring of his grandparents. Therefore, if

she is an Israelite woman married to a priest, she may partake of *teruma*; if she is the daughter of a priest married to an Israelite, she may not partake of *teruma* (Rambam *Sefer Zera'im*, *Hilkhot Terumat* 6:13–14).

כֹּהֵן גָּדוֹל פְּעָמִים שֶׁהוּא – A High Priest, sometimes he disqualifies – **פּוֹסֵל**: If the daughter of a priest married an Israelite and bore him a daughter, and the daughter later married a priest and bore him a son, even if the daughter dies, her mother may not partake of *teruma* due to her grandson, who is her offspring from an Israelite. This is so even if the grandson becomes the High Priest (Rambam *Sefer Zera'im*, *Hilkhot Terumat* 6:15).

אִשְׁתּוֹ שׁוּטָה וְקָטָן – The wife of an imbecile or a minor whose husband died is exempt from *halitza* and levirate marriage, as their marriage was invalid (Rambam *Sefer Nashim*, *Hilkhot Yibbum* 6:8; *Shulhan Arukh*, *Even HaEzer* 172:16).

This is your bill of divorce, etc. – **הָרִי זֶה גִּטּוֹתְךָ וְכוּ'**: If a priest said to his Israelite wife: This is your bill of divorce one hour before my death, it is prohibited for her to partake of *teruma* immediately, lest he die within the hour (Rambam *Sefer Zera'im*, *Hilkhot Terumat* 9:1).

BACKGROUND

Until forty days – עד ארבעים: The Sages established this date as the definitive point in time from when a fetus is considered a human being, not only a growth of tissue. From the fortieth day onward, the human fetus no longer resembles that of animals, as the tail disappears, and the head, arms, and legs have a human shape to them. Although it is still very small and undeveloped, it can be visually recognized as human, and it can therefore be considered a human being. At one month, the human embryo has no visible, distinctly human characteristics.



Digital rendering of a human embryo at one month

ביצד? הֲיָהּ יִשְׂרָאֵל שֶׁבָּא עַל בֵּת כֹּהֵן – תֹּאכַל בְּתֻרֻמָּה. עֵיבָרָה – לֹא תֹאכַל. כִּיִּן דְּעֵיבָרָה לֹא תֹאכַל – לִיחֻשׁ שְׂמָא עֵיבָרָה! מִי לֹא תִּנּוּן מִפְּרִישִׁין אוֹתָן שְׁלֹשָׁה חֳדָשִׁים שְׂמָא מְעוֹבְרוֹת הֵן!

S It is stated in the mishna: **How so? If an Israelite engaged in extramarital intercourse with the daughter of a priest, she may partake of *teruma*. If he impregnated her, she may not partake of *teruma*.** The Gemara asks: **Since if he impregnated her she may not partake, let us be concerned in any case of intercourse between an Israelite and the daughter of a priest lest he impregnated her,**ⁿ thereby rendering it prohibited for her to partake of *teruma*. **Didn't we learn** in a mishna that if two men betrothed two women, and then at the time that they entered the wedding canopy, they accidentally switched wives, and engaged in relations with each other's wives that night, in this case, after the accident is discovered, the court removes the wives from their husbands for three months, lest they are pregnant from the men they presumed to be their husbands and the fetus is therefore a *mamzer*, although they engaged in intercourse only once (33b)?

The Gemara answers that **Rabba, son of Rav Huna, said: About lineage the Sages were concerned**, and they therefore decreed a three-month separation of the husbands and wives, to prevent the possibility of a child being of uncertain lineage. However, **about the prohibition against a non-priest eating *teruma* they were not concerned.**ⁿ The Gemara asks: **And for *teruma* were they not concerned? Isn't it taught** in a *baraita* that if a husband says to his wife: **This is your bill of divorce^h one hour before my death**, if she is an Israelite woman married to a priest it is prohibited for her to partake of *teruma* immediately, as the Sages were concerned that her husband might die within the hour?

Rather, **Rabba, son of Rav Huna, said: About impregnation through an act of marriage they were concerned**, but **about impregnation through licentious intercourse they were not concerned,**ⁿ as the woman generally takes precautions to ensure that she will not become pregnant.

The Gemara asks: **And about marriage were they concerned? Isn't it taught** in a *baraita*: In the case of the daughter of a priest who married an Israelite and her husband died on that same day, **she immerses** to purify herself, as she is ritually impure due to their intercourse, **and she may partake of *teruma* that same evening?** Evidently, the Sages were not concerned that she became pregnant from the initial act of intercourse, even that of marriage.

Rav Hisda said: She immerses and partakes of *teruma* only until forty days after her husband's death, when there is still no reason for concern, as if she is not pregnant then she is not pregnant. **And if she is pregnant, until forty days⁸ from conception** the fetus is merely water. It is not yet considered a living being, and therefore it does not disqualify its mother from partaking of *teruma*.

אָמַר רַבָּה בְּרַב הוּנָא: לְיֻחָסִין חֲשָׁשׁוּ, לְתֻרֻמָּה לֹא חֲשָׁשׁוּ. וְלִתְרוּמָה לֹא חֲשָׁשׁוּ? וְהִתְנַחֵם: "הָרִי זֶה גִּטּוֹתְךָ שְׂמָא אַחַת קוֹדֶם לְמִיתוּתִי" – אֲסוּרָה לִאֲכוֹל בְּתֻרֻמָּה מִיָּד!

אָמַר רַבָּה בְּרַב הוּנָא: בְּנִשְׁוֹאִין – חֲשָׁשׁוּ, בְּנֻת – לֹא חֲשָׁשׁוּ.

וּבְנִשְׁוֹאִין מִי חֲשָׁשׁוּ? וְהִתְנַחֵם: בֵּת כֹּהֵן שֶׁנִּשְׁאָת לְיִשְׂרָאֵל וּמֵת – טוֹבֶלֶת וְאוֹכֶלֶת בְּתֻרֻמָּה לְעֶרֶב!

אָמַר רַב חֲסִדָּא: טוֹבֶלֶת וְאוֹכֶלֶת עַד אַרְבָּעִים, דְּאִי לֹא מֵיעֲבָרָא – הָא לֹא מֵיעֲבָרָא, וְאִי מֵיעֲבָרָא – עַד אַרְבָּעִים מִיָּא בְּעָלְמָא הִיא.

NOTES

ליחוש שָׂמָא – Let us be concerned lest he impregnated her – **עֵיבָרָה**: The Ritva asks why the Gemara raises this question with regard to this clause of the mishna and not with regard to the first clause, which states that a man who rapes or seduces a woman does not disqualify her from partaking of *teruma*. He answers that the first clause can be interpreted as referring to a virgin, as that is the case of rape and seduction that is discussed in the Torah, and the Sages did not factor into their ruling the possibility of a virgin becoming pregnant from her first experience of intercourse.

About lineage the Sages were concerned, about *teruma* they were not concerned – **לְתֻרֻמָּה לֹא חֲשָׁשׁוּ** – Apparently, temporary problems relating to *teruma* were less of a concern than the lasting stain of defective lineage. A principle is indicated in the Jerusalem Talmud that the Sages were not concerned about possible occurrences that would disqualify

a woman from partaking of *teruma*. For example, an Israelite woman married to a priest whose husband went overseas may continue to partake of *teruma* in his absence, without worrying that he might have passed away.

About impregnation through licentious intercourse they were not concerned – **בְּנֻת לֹא חֲשָׁשׁוּ** – Why does the mishna permit the wife of an imbecile to partake of *teruma*? *Tosafot* maintain that she also takes precautions to avoid pregnancy, and therefore the Sages were not concerned that she might be pregnant. The Maharsha infers from Rashi that perhaps there is concern that she is pregnant, and therefore she should partake of *teruma* only if she knows that she is not. However, it is stated in the Jerusalem Talmud that since the marriage of an imbecile is invalid, she is considered unmarried for all intents and purposes.

בת כהן – The daughter of a priest who might be pregnant – ספק מעוברת: If the daughter of a priest engaged in intercourse with an Israelite, there is no concern that she might have been impregnated, and she may immerse herself and eat *teruma* that evening, as stated by Rabba, son of Rav Huna. However, if she was married to an Israelite and her husband died, she may immerse and partake of *teruma* only for forty days. If she continues to partake of *teruma* after the forty days and it becomes noticeable that she is pregnant, she is retroactively considered to have sinned from after the forty days. However, during those forty days the fetus is considered merely water and does not disqualify her from partaking of *teruma* (Rambam *Sefer Zera'im*, *Hilkhot Terumot* 8:3).

A man who engaged in intercourse with his betrothed in his father-in-law's house – הבא על ארוסתו בבית חמיו: If a betrothed woman became pregnant while still living with her parents, and the couple agrees that the betrothed is the father, or if the woman claims that he is the father and he is unavailable for comment or says that he does not remember, the child is unflawed (Rema). This ruling follows the second version of the dispute between Rav and Shmuel, according to which Rav agrees with Shmuel in this case (Rambam *Sefer Kedusha*, *Hilkhot Issurei Bia* 15:17; *Shulhan Arukh*, *Even HaEzer* 4:27).

אמר ליה אביו: אי הכי, אימא סיפא: הובר עוברת במעיה – תהא מקולקלת למפרע! מאי מקולקלת: עד ארבעים.

איתמר, הבא על ארוסתו בבית חמיו. רב אמר: הולד ממזר, ושמואל אמר: הולד שתוקי. אמר רבא: מסתברא מילתיה דרב – דדיימא מעלמא. אבל לא דיימא מעלמא – בתרא דידיה שדינן ליה.

אמר רבא: מנא אמינא לה – דקתני: ילדה תאכל. היכי דמי? אילימא דדיימא מעלמא – ילדה אמיא תאכל? אלא לאו – מיניה דיימא ולא דיימא מעלמא.

ומה התם, דלהאי איסורא ולהאי איסורא – בתרא דידיה שדינן ליה, הקא, דלהאי איסורא ולהאי היתירא – לא כל שכן?

Abaye said to him: If so, say the latter clause of the *baraita*: Once her fetus in her womb is noticeable, she is ruined retroactively.^N Her prior consumption of *teruma* is retroactively prohibited. Evidently, pregnancy immediately disqualifies her from partaking of *teruma*. Therefore, the reason that she may partake of *teruma* immediately after her husband's death is that the Sages were not concerned that she became pregnant. Rav Hisda responded: What is the period in which she is retroactively ruined? It is from the moment the fetus is noticeable and back in time until forty days from the beginning of her pregnancy. During the first forty days of the pregnancy, she is not retroactively ruined, as the fetus is not yet considered a living being.^H

It was stated: With regard to a man who engaged in intercourse with his betrothed in his father-in-law's house,^H i.e., before they got married, Rav said that the offspring is a *mamzer*,^N as the future husband is not considered his father. And Shmuel said that the offspring is a *shetuki*,^N a child of unknown paternity. Rava said: Rav's statement stands to reason in a case where she is rumored to have engaged in intercourse with others. However, if she is not rumored to have engaged in intercourse with others, we cast the child after him, i.e., we assume that the child is the betrothed's son.

Rava said: From where do I say that? What is the source for my assertion? The source is the mishna, which teaches that if a priest engaged in extramarital intercourse with an Israelite woman and she gave birth, she may partake of *teruma* due to her child, who is a priest. What are the circumstances? If we say that she is rumored to have engaged in intercourse with others, even if she gave birth, why may she partake of *teruma*? Shouldn't there be concern that the child's father is not the priest? Rather, is it not a case where she is rumored to have engaged in intercourse with him and is not rumored to have engaged in intercourse with others?

And if there, in the case of the mishna, where for her to engage in intercourse with this priest is a prohibition, and to engage in intercourse with that non-priest, with whom she is not rumored to have engaged in intercourse, is a prohibition of the same degree, nevertheless, we cast the child after the priest, then here, where for her to engage in intercourse with that man who is not her betrothed is a Torah prohibition, and to engage in intercourse with this man, her betrothed, is permitted by Torah law, is it not all the more so that her betrothed should be considered the father? Therefore, Rav's statement stands to reason only if the woman is rumored to have engaged in intercourse with others as well.

NOTES

Ruined retroactively – מקולקלת למפרע: In what way is she ruined? Rashi explains that she must pay for the *teruma* she consumed and add a fifth. Rabbi Avraham min HaHar and other commentaries argue that the daughter of a priest is never obligated to pay for consumption of *teruma*, even *teruma* that she consumed unlawfully, as stated in *Torat Kohanim*. Accordingly, her ruin must be her transgression of a Torah prohibition.

The offspring is a *mamzer* – הולד ממזר: According to Rashi, the child is rendered a definite *mamzer*. However, the Rashba

cites the Gemara in *Kiddushin* (75b), which indicates that Rav meant that the child is rendered a *mamzer* of uncertain status, who may not marry a Jew of unflawed lineage or a *mamzeret*.

A child whose father's identity is unknown [*shetuki*] – שתוקי: A child whose father's identity is not known is referred to as a *shetuki*, from the Hebrew root *sh-t-k*, which means to silence. The Gemara explains that when a *shetuki* calls his father, his mother silences him (*Kiddushin* 70a).

אמר ליה אביי: לעולם אימא לך: כל
היכא דדיימא מיניה אף על גב דלא
דיימא מעלמא – אמר רב הולד ממזר,
מאי טעמא? דאמרין: מדאפקרא
נפשה לגבי ארום – אפקרא נפשה
לעלמא. ומתניתין – שהיו שניהם
חבושים בבית האסורין.

איכא דאמרי: בבא עליה – כולי
עלמא לא פליגי דבתריה דידה שדינן
ליה, והכי איתמר: ארוסה שעיברה,
רב אמר: הולד ממזר, ושמואל אמר:
הולד שתוקי. אמר רבא: מסתברא
מילתיה דרב – דלא דיימא מיניה
ודיימא מעלמא.

Abaye said to him in rejection of his proof: **Actually, I could say to you that anywhere that she is rumored to have engaged in intercourse with him, her betrothed, even if she is not rumored to have engaged in intercourse with others, Rav said that the offspring is a mamzer. What is the reason? It is that we say that since she exposed herself to her betrothed,^N although they were not married yet, she apparently exposed herself to others as well. And the mishna that you cited as support for your assertion is referring to a situation where they were both incarcerated alone together in prison.** Therefore, there is no concern that she engaged in intercourse with another man. This is one version of the dispute between Rav and Shmuel.

Some say that **when the betrothed admits that he engaged in intercourse with her, everyone agrees that we cast the child after him.** Rather, their dispute was stated as follows: In the case of a betrothed woman who became pregnant,^H if her betrothed denies that he engaged in intercourse with her, Rav said that the offspring is a mamzer, and Shmuel said that the offspring is a child whose father's identity is not known. Rava said: Rav's statement stands to reason in a case where the woman is not rumored to have engaged in intercourse with him and she is rumored to have engaged in intercourse with others. Therefore, it is assumed that the child is a mamzer.

NOTES

Since she exposed herself to her betrothed – **מדאפקרא**: Sexual intercourse between a betrothed couple is prohibited only by rabbinic law. Accordingly, the blessing over betrothal: Blessed are You... Who prohibited us from incest, and forbade the betrothed to us, and permitted those married to us through a canopy and betrothal, is referring both to Torah and rabbinic prohibitions.

Early commentaries question Abaye's rationale, as intercourse between a betrothed couple is prohibited but the lineage of the child conceived through this act is completely untainted. This leads some commentaries to accept Rava's distinction and others to accept Shmuel's opinion.

HALAKHA

A betrothed woman who became pregnant – ארוסה שעיברה: If a betrothed woman became pregnant while still living with her parents, and her betrothed denies having engaged in intercourse with her, the child is rendered a definite mamzer. If she is unavailable for questioning, or if she says that she does not know the father's identity, the child is rendered a mamzer of uncertain status.

If there are rumors that a betrothed woman engaged in licentious intercourse with her betrothed and with others, the child is rendered a mamzer of uncertain status, even if her betrothed admits that he engaged in intercourse with her. If she is questioned and says that she engaged in intercourse only with her betrothed, the child is rendered unflawed. It goes without saying that the child is unflawed if it is known that she engaged in intercourse with her betrothed and there are no rumors with regard to others. This ruling follows Shmuel's opinion as cited in the second version of the dispute. Some commentaries (Rosh; Rashba; Beit Shmuel) add that even if there were rumors that she engaged in intercourse with others, if it is known that she engaged in intercourse with her betrothed, or if he acknowledges the same, the child is unflawed, as stated by Rava (Rambam Sefer Kedusha, Hilkhos Issurei Bia 15:17–18; Shulhan Arukh, Even HaEzer 4:27–28).

Perek VII

Daf 70 Amud a

אבל דיימא מיניה, אף על גב דדיימא
מעלמא, בתריה דידה שדינן ליה,

אמר רבא: מנא אמינא לה, דקתני:
ילדה – תאכל. היכי דמי? אילימא
דיימא מיניה ולא דיימא מעלמא –
צריכא למימר דתיכול? אלא לאו –
דיימא נמי מעלמא.

ומה התם, דלהאי איסורא ולהאי
איסורא, בתריה דידה שדינן ליה,
הכא דלהאי איסורא ולהאי היתירא –
לא כל שכן?

However, if she is rumored to have engaged in intercourse with him,^N even if she is also rumored to have engaged in intercourse with others, we cast the child after him.

Rava said: From where do I say that? My source is the mishna that teaches that if a priest engaged in extramarital intercourse with an Israelite woman and she gave birth, she may partake of teruma due to her child. What are the circumstances? If we say that she is rumored to have engaged in intercourse with him and she is not rumored to have engaged in intercourse with others, need it be said that she may partake of teruma? It can easily be assumed that the priest is the father. Rather, is it not a case where she is rumored to have engaged in intercourse with others as well?

And if there, where for her to engage in intercourse with this priest is in violation of a prohibition and to engage in intercourse with that non-priest is in violation of a prohibition of the same degree, and she is rumored to have engaged in intercourse with both, nevertheless, we cast the child after the priest, then here, where for her to engage in intercourse with that man who is not her betrothed is in violation of a Torah prohibition and to engage in intercourse with this man, her betrothed, is permitted by Torah law, is it not all the more so that he should be considered the father?

NOTES

Rumored to have engaged in intercourse with him – דיימא: Tosafot explain that she is known to have engaged in intercourse with him. Otherwise, Rava's proof from the mishna, which discusses a case of definite sexual intercourse with an Israelite, is problematic. However, the wording of Rava's statement is difficult according to this opinion. Rabbi Avraham min HaHar explains that she is rumored to have had an extensive affair with him, which raises the probability that the child is his in the mishna's case.

Her child and her child's child – זרעה וזרע זרעה – If an Israelite woman has a child from a priest she may partake of *teruma*, whether the child is male or female, or even if the child is a *tumtum*, one whose sexual organs are concealed, or a hermaphrodite. She may likewise partake of *teruma* due to her child's child, even if he is not a priest, or even if he is unfit to marry into the assembly of Israel (Rambam *Sefer Zera'im*, *Hilkhot Terumot* 6:12–13).

NOTES

From where do I derive that an unfit child disqualifies her – זרע פסול מנין – The commentaries ask how the mother of one who is unfit to marry into the assembly of Israel could possibly be allowed to partake of *teruma* as the daughter of a priest; the intercourse through which she conceived of him was prohibited, and it therefore rendered her a *zona*. In *Tosefot HaRosh*, it is answered that the *baraita* is referring to a grandchild. In *Tosafot Yeshanim*, it is suggested that the reference is to a woman who engaged in intercourse with an Egyptian or Edomite convert, which does not render her a *zona*.

I am hereby atonement, etc. – הרני כפרתי וכו' – The *ge'onim* explain that this is an expression of affection. Rabbi Avraham min HaHar associates it with the expression one uses in relation to the deceased that he is mourning: I am hereby atonement for his resting-place. He therefore interprets the woman's statement to mean that she will mourn only her grandson the *mamzer* after his death and not the High Priest.

In *Arukh LaNer*, it is explained how a woman can partake of *teruma* due to one grandson and then be disqualified from partaking of *teruma* due to another grandson: She marries a priest and they have a son, and the son engages in forbidden intercourse, rendering his son a *mamzer*. After the woman is widowed, she marries an Israelite, and they have a daughter who marries a priest, and the couple's son is appointed as the High Priest. Before her daughter is born, she partakes of *teruma* due to her *mamzer* grandson. Afterward, even if her daughter dies, she does not partake of *teruma* due to her grandson the High Priest.

LANGUAGE

Small jug [*kuza*] – כוזא: Apparently from the Middle Persian *kūz*, jug. In Hebrew and Arabic, it is called a *kūz*.

The sources that mention this term indicate that it is referring to a small jug, as opposed to a *kada*, which is a barrel, used mainly for storing drinks. A *kuza* was occasionally made out of metal but was usually ceramic, and it was used for drinking wine or water.

אמר ליה אביי: לעולם אימא לך, כל היכא דדיימא מעלמא, אף על גב דדיימא מניה אמר רב הולד ממזר, ומתניתין בדלא דיימא כלל.

העבד פוסל משום ביאה" כו'. מאי טעמא? אמר קרא "האשה וילדיה תהיה" וגו'.

"ממזר פוסל ומאכיל". תנו רבנן: "זרע אין לה", אין לי אלא זרעה, זרע זרעה מנין? תלמוד לומר "זרע אין לה", מכאן מקום.

אין לי אלא זרע כשר, זרע פסול מנין? תלמוד לומר "זרע אין לה" – ענין עולה.

והא אפיקתיה לזרע זרעה! זרע זרעה לא איצטריך קרא, בני בנים הרי הן בבנים, כי איצטריך קרא – לזרע פסול.

אמר ליה ריש לקיש לרבי יוחנן: כמאן, כרבי עקיבא, דאמר: יש ממזר מחייבי לאוין? אפילו תימא רבנן, בעובד כוכבים ועבד מודו. דכי אתא רב דימי אמר רבי יצחק בר אבדימי משום רבינו: גוי ועבד הבא על בת ישראל – הולד ממזר.

"בהן גדול פעמים שפסול". תנו רבנן: הרני כפרת בן בתי כוזא – שפאכילי בתרומה, ואיני כפרת בן בתי כדא – שפסול מן התרומה.

Abaye said to him: Actually, I could say to you that anywhere that she is rumored to have engaged in intercourse with others, even if she is also rumored to have engaged in intercourse with him, Rav said that the offspring is a *mamzer*. And the mishna, which you cited as support for your claim, is referring to a situation where she is not rumored to have engaged in intercourse with anyone at all. Therefore, if they both concur that he is the father, the child is considered his.

It is stated in the mishna that a slave disqualifies a woman from partaking of *teruma* due to his engaging in intercourse with her, but not due to his being her offspring. The Gemara asks: What is the reason that he does not disqualify a woman whose offspring he is? The verse states with regard to a maidservant married to a Hebrew slave, that when he is released, "the wife and her children shall be her master's" (Exodus 21:4). This indicates that the maidservant's children are considered her own and are not considered their father's offspring at all. Therefore, a maidservant's child does not disqualify his paternal grandmother from partaking of *teruma*.

It is stated in the mishna that a *mamzer* disqualifies a woman from partaking of *teruma*, and he also enables a woman to partake of *teruma*. The Sages taught: The Torah states, "But if a priest's daughter be a widow, or divorced, and have no child ... she may eat of her father's bread" (Leviticus 22:13). I have derived only that her own child disqualifies her from partaking of *teruma*; from where do I derive that her child's child disqualifies her as well? The verse states: "And she has no child [*zera*]" at all, indicating that even her grandchild disqualifies her, as *zera* means offspring.^h

I have derived only that an unflawed child disqualifies her; from where do I derive that an unfit child disqualifies herⁿ as well? The verse states: "And she has no [*ein la*] child," which can be homiletically interpreted as examine her [*ayyein ala*] to check if she has any offspring, fit or unfit.

The Gemara asks: But didn't you already derive from that phrase that her child's child disqualifies her? The Gemara answers: To derive the *halakha* with regard to her child's child, no verse was necessary, as the children of children are considered like children. The verse was therefore necessary for deriving the *halakha* of an unfit child.

Reish Lakish said to Rabbi Yohanan: In accordance with whose opinion is the assumption of the mishna that the child of a Jewess and a slave or a gentile is a *mamzer*? Is it in accordance only with the opinion of Rabbi Akiva, who said that the offspring of relations for which one is liable for violating a prohibition is a *mamzer*? The Gemara answers: You can even say that it is in accordance with the Rabbis, who hold that the offspring is a *mamzer* only if the parents are liable to receive *karet*. This is because they concede with regard to a slave and a gentile, as when Rav Dimi came from Eretz Yisrael to Babylonia, he said that Rabbi Yitzhak bar Avdimi said in the name of Rabbi Yehuda HaNasi: With regard to a gentile or a slave who engaged in intercourse with a Jewish woman, the offspring is a *mamzer*.

It was taught in the mishna that even a High Priest sometimes disqualifies his grandmother from partaking of *teruma*. The Sages taught that she can say in disapproval: I am hereby atonementⁿ for my daughter's son, the small jug [*kuza*],^l i.e., the *mamzer*. He is dear to me and I am willing to suffer to atone for him, as he is my offspring from a priest and therefore enables me to partake of *teruma*. However, I am not willing to be atonement for my daughter's son, the large jug [*kada*], the High Priest, as he is my offspring from an Israelite and therefore disqualifies me from partaking of *teruma*.

הדרן עלך אלמנה

Summary of Perek VII

There is a principle, discussed in this chapter, that in a forbidden marriage between a priest and an Israelite woman, the wife may not partake of *teruma*, even if the marriage is valid. Therefore, her slaves may not partake of *teruma* either. However, her slaves of guaranteed investment may partake of *teruma*, as they are considered to be in the husband's possession.

This chapter also dealt with the principle that the daughter of a priest can be disqualified from partaking of *teruma* more easily than an Israelite woman can be entitled to partake of it. The daughter of a priest is disqualified from partaking of *teruma* by having a levirate bond with an Israelite, being impregnated by an Israelite, or engaging in intercourse with a man who is unfit for her, even if he is only nine years old. Only actual marriage to an adult priest or bearing his child entitle her to partake of *teruma*.

With regard to the definition of a woman who has children from a priest or a non-priest, any living Jewish offspring counts. This includes descendants and those who are unfit to marry into the assembly of Israel. However, descendants from gentile women or maidservants are excluded.

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