

בריה בפני עצמה ניהו, עבד נמי – דלמא אתי לאסוקי מתרומה ליוחסין, ערל וטמא – משום דמאיסי, נושא אשה שאינה הוגנת לו – משום קנסא. אלא אשה מאי טעמא לא?

פליגי בה רב פפא ורב הונא בריה דרב יהושע, חד אמר: משום גרושה, וחד אמר: משום יחוד.

מאי בינייהו? איכא בינייהו בי דרי דמקרב למתא ולא שכיהי בהו אינשי. אי נמי – דמרחק ושכיהי בה אינשי.

“ויכולן משגרין להם לבתיהן חוץ מטמא ונושא אשה שאינה הוגנת לו.” אבא ערל – משגרין ליה, מאי טעמא.

משום דאניס – טמא נמי הא אניס! האי נפיש אונסיה, והאי לא נפיש אונסיה.

תנו רבנן: העבד והאשה אין חולקין להם תרומה בבית הגרנות, ובמקום שחולקין – נותנין לאשה תחלה ופוטרין אותה מיד. מאי קאמר?

דכי קאמר: במקום שחולקין מעשר עני נותנין לאשה תחלה. מאי טעמא – משום זילותא.

as they are each an unusual creature of their own kind. With regard to a slave it is also clear, since if he is given *teruma*, perhaps the court will come to elevate him<sup>N</sup> to the presumptive status of priestly lineage. *Teruma* may not be distributed to an uncircumcised man and a ritually impure man, because these situations are repulsive<sup>N</sup> and it is unseemly to give them *teruma* in public. One may not distribute *teruma* to one who marries a woman unfit for him, due to a penalty that expropriates his priestly rights as long as he persists in his transgression. But for what reason is *teruma* not distributed to a woman?

Rav Pappa and Rav Huna, son of Rav Yehoshua, disagree on this issue. One said that it is due to the case of an Israelite woman who was married to a priest and got divorced, thereby losing her permission to partake of *teruma*. *Teruma* is not distributed to women in public at all, lest this divorcee continue to receive *teruma*. And the other one said that it is due to the concern that the owner and the woman might be alone together in the granary.

The Gemara asks: What is the practical difference between them? The Gemara answers: The practical difference between them is in the case of a granary that is close to town but is not frequented by people. Because it is close to town, the owner of the granary would know if she was divorced. However, since there are not many people there, the concern about their being alone together remains. Alternatively, there is a practical difference in the case of a granary that is distant but is frequented by people. There, there is concern that the owner of the granary might not know if she was divorced, but the concern that they might be alone together does not exist.

It is stated in the *baraita* under discussion: And with regard to all of them, one may send *teruma* to them, to their homes, with the exception of a ritually impure man and one who marries a woman unfit for him. The Gemara infers: However, to an uncircumcised man one may send it.<sup>NH</sup> What is the reason? How does he differ from an impure man?

The Gemara answers: One may send him *teruma*. It is because of circumstances beyond his control, i.e., the death of his brothers from their circumcision, that he was not circumcised. The Gemara asks: Isn't an impure man also in his state due to circumstances beyond his control? Why is *teruma* not sent to him? The Gemara answers: This man is uncircumcised because of circumstances entirely beyond his control, as circumcision is considered life-threatening for him, whereas that impure man is not under circumstances entirely beyond his control, as one can protect himself from ritual impurity.

**S** The Sages taught: One may not distribute *teruma* to a slave or a woman if they are in the granary. And in a place where people do distribute it to them, the woman is given first and released immediately. The Gemara asks: What is this saying?<sup>N</sup> If one may not distribute *teruma* to them, how can there be a place where it is distributed?

The Gemara explains that this statement is not referring to *teruma*. This is what it is saying: In a case where the poor man's tithe is distributed to the poor from the owner's house, the woman is given *teruma* first.<sup>H</sup> What is the reason? She is given the tithe first because it is demeaning<sup>N</sup> for a woman to have to wait in the company of men for a lengthy period of time.

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With regard to a slave it is also clear, since if he is given *teruma* perhaps the court will come to elevate him, etc. – עבד נמי דלמא אתי לאסוקי מתרומה וכו': The Gemara explains later that *teruma* may not be distributed to a woman in public, lest an Israelite woman who was married to a priest continue to receive *teruma* after divorce. The Ritva asks why this reason is not given with regard to a slave as well, as a slave who is freed by his master no longer partakes of *teruma*. He answers that it is prohibited, with certain exceptions, for one to free his slave, so the concern for that situation is low. *Tosafot* assert that a freed slave would not want to present himself as a slave, even for the purpose of receiving *teruma*. This can serve as an answer to the Ritva's question as well.

משום דמאיסי – Because these situations are repulsive: Although there is no obligation to be in a state of ritual purity, other than when one enters the Temple or eats sacred food, it is considered praiseworthy to be ritually pure, and the state of ritual impurity is considered somewhat repulsive. This is why *haverim*, i.e., people who have the presumptive status of trustworthiness with regard to ritual impurity, are particular about eating even non-sacred food in a state of purity. With regard to an uncircumcised man, the Gemara states that being uncircumcised is considered repulsive to Jews (*Nedarim* 31b).

אבל – However, to an uncircumcised man one may send it – ערל משגרין ליה: The Meiri maintains that this *halakha* is referring to a man who is uncircumcised for reasons entirely beyond his control. However, *teruma* is not sent to a man who can be circumcised but refrains from doing so.

What is this saying – מאי קאמר: The commentaries ask why the Gemara doesn't raise the possibility that the *baraita* is referring to a case where the prohibition against distributing *teruma* to a woman does not apply because neither concern exists, e.g., the case of a granary that is close to town and is also frequented by people. The Ritva answers that this possibility contradicts the wording of the *baraita*, which indicates that it is referring to the same granary discussed in the first clause of the *baraita*.

Because it is demeaning – משום זילותא: The Sages state in several places that the shame felt by a woman is greater than that felt by a man, especially in a socially uncomfortable situation, such as a pauper collecting tithes or a litigant. The Ritva adds another reason to give the woman first: If the owner gives the man first, he might be left alone with the woman.

HALAKHA

אבל – However, to an uncircumcised man one may send it – ערל משגרין ליה: The Rambam rules that *teruma* is sent to neither an impure man nor an uncircumcised man. The *Kesef Mishne* questions this ruling, as it appears to contradict the Gemara. He concludes that the Rambam had a different version of the text. Others explain that the Rambam is of the opinion that the *halakha* is not in accordance with this Gemara. Rather, Rabbi Akiva's opinion that an uncircumcised man has the same status as an impure man is accepted. It is also possible that the Rambam's ruling refers to a man who is willfully uncircumcised, whereas the Gemara is referring to a man whose is uncircumcised for reasons beyond his control (see Meiri; Rambam *Sefer Zera'im, Hilkhot Terumot* 12:22).

The woman is given first – נותנין לאשה תחילה: If a man and a woman come to a house to receive the poor man's tithe, the woman is given the tithe first and released, and only then is the man given (Rambam *Sefer Zera'im, Hilkhot Mattenot Aniyyim* 6:13).

I resolve the woman's quarrel first – שְׂרִינָא תִּגְרָא: If a judge has several cases to hear, he must handle that of a woman before that of a man, in accordance with Rava's statement (Rambam *Sefer Shofetim, Hilkhot Sanhedrin* 21:6; *Shulhan Arukh, Hoshen Mishpat* 15:2).

We coerce them and they free each other – וּמְשַׁחֲרִין זֶה אֶת זֶה: If one is half-slave and half-freeman, his master is coerced to free him, as it is otherwise prohibited for him to marry a maidservant or a free woman (Rambam *Sefer Kinyan, Hilkhot Avadim* 7:7; *Shulhan Arukh, Yoreh De'a* 267:63).

The meal-offerings of Israelites and priests – מִנְחֹת: A handful is taken from ordinary meal-offerings and sacrificed on the altar, and the rest of the offering is eaten by priests. However, a priest's meal-offering, whether it is the initiation meal-offering, the High Priest's meal-offering, a voluntary meal-offering, or a sinner's meal-offering, is sacrificed in its entirety on the altar, and a handful is not taken (Rambam *Sefer Avoda, Hilkhot Ma'aseh HaKorbanot* 12:9).

Whatever is partly burned in the fire, etc. – כָּל שֶׁמֶמְנוּ – לְאִישִׁים וְכו': If part of an offering was sacrificed on the altar, its remainder may not be sacrificed on the altar. One who does so is in violation of a prohibition (Rambam *Sefer Avoda, Hilkhot Issurei Mizbe'ah* 5:5).

You may bring up leaven, honey, and other materials for the purpose of wood – אֵתָהּ מַעֲלָה לְשׁוֹם עֵצִים: One who brings to the altar leavened bread, honey, or anything else that may not be sacrificed and burns it as fuel rather than as an offering is exempt from liability. However, it is prohibited to do so *ab initio*, contrary to the opinion of Rabbi Elazar (Rambam *Sefer Avoda, Hilkhot Issurei Mizbe'ah* 5:3).

The mixed sons' meal-offering – מִנְחַת הַתְּעוּבוֹת: If two sons were mixed, and it is uncertain who is a priest and who is an Israelite, a handful is taken from their meal-offerings, like those of Israelites. However, the remainder is not eaten, like the meal-offerings of priests. The handful is sacrificed on the altar and the remainder is scattered over the place of the ashes, in accordance with the interpretation of Rav Pappa and the opinion of Rabbi Elazar, son of Rabbi Shimon (Rambam *Sefer Avoda, Hilkhot Ma'aseh HaKorbanot* 12:11).

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If one of the sons desires to free the other he may – אִי – בְּעֵי אֵין: The Jerusalem Talmud explains that even Rabbi Yosei HaGalili, who maintains that it is prohibited to free one's slave, agrees that in a case like this, where it allows the fulfillment of a mitzva, it is permitted.

With regard to their meal-offering the handful is taken, etc. – לְמִנְחָתָם נִקְמְצָת וְכו': A priest's meal-offering does not get eaten, in accordance with the verse "And every meal-offering of the priest shall be wholly made to smoke; it may not be eaten" (Leviticus 6:16). There is a disagreement among the *tanna'im* whether this means that a handful is not taken from a priest's meal-offering at all or whether a handful is taken and then burnt along with the remainder. They also argue over whether this *halakha* includes all meal-offerings of priests or only certain types. In the Jerusalem Talmud, it is suggested that the two mixed sons can bring two meal-offerings together and stipulate that the one that will be sacrificed in the manner of a priest's meal-offering belongs to the priest, and the other one belongs to the Israelite. The offerings are then sacrificed accordingly, thereby obviating the need for the Gemara's suggestions.

אָמַר רַבָּא: מְרִישָׁא, כִּי הוּוּ אָתוּ גְבֵרָא וְאִתְתָּא לְדִינָא קַמָּא, הֵוּהּ שְׂרִינָא תִּגְרָא דְגֵבֵרָא בְּרִישָׁא. אָמֵינָא: דְּמִיחֵיב בְּמַצּוֹת. כִּיּוֹן דְּשִׁמְעֵנָא לְהָא – שְׂרִינָא תִּגְרָא דְּאִתְתָּא בְּרִישָׁא. מָאִי טַעְמָא – מְשׁוֹם זִיּוּלְתָּא.

”הַגְּדִילוּ הַתְּעוּבוֹת” וְכו'. שִׁחְרְרוּ, אִי בְּעֵי אֵין, אִי לֹא בְּעֵי – לֹא. וְאִמָּי לִישָׁא שְׂפַחָה – אֵינוּ יִכּוּל בֵּת חוֹרִין – אֵינוּ יִכּוּל! אָמַר רַבָּא: אִמָּא כּוּפִין אֹתוֹן וּמְשַׁחֲרִין זֶה אֶת זֶה.

”נוֹתְנִין עֲלֵיהֶם חוּמְרֵי” וְכו'. לְמָאִי הִלְכְתָּא? אָמַר רַב פַּפָּא: לְמִנְחָתָם נִקְמְצָת כְּמִנְחַת יִשְׂרָאֵל וְאֵינָה נִאֲכָלָת כְּמִנְחַת כֹּהֲנִים. הָא בְּיַצְדֵּי? הַקּוֹמֵץ קָרֵב בְּעֵצְמוֹ וְהַשְּׂרִיבִין קְרִיבִין בְּעֵצְמוֹ.

אִיקְרִי כָּאן: כָּל שֶׁמֶמְנוּ לְאִישִׁים הֵרִי הוּא בְּבַל תִּקְטִירוּ!”

אָמַר רַבִּי יְהוּדָה בְּרִיהַ דְּרַבִּי שְׁמַעוֹן בֶּן פּוּזִי: דְּמִסְיָק לְהוּ לְשׁוֹם עֵצִים, כְּרַבִּי אֶלְעָזָר. דְּתַנָּא, רַבִּי אֶלְעָזָר אָמַר: ”לְרִיחַ נִחוּחַ”, אִי אִתְּהָ מַעֲלָה, אֶבֶל אִתְּהָ מַעֲלָה לְשׁוֹם עֵצִים.

הַנִּיחָא לְרַבִּי אֶלְעָזָר, אֶלְא לְרַבִּי מָאִי אִיכָּא לְמִימַר? דְּעֵבִיד לָהּ כְּרַבִּי אֶלְעָזָר בְּרַבִּי שְׁמַעוֹן. דְּתַנָּא, רַבִּי אֶלְעָזָר בְּרַבִּי שְׁמַעוֹן אָמַר: הַקּוֹמֵץ קָרֵב לְעֵצְמוֹ וְהַשְּׂרִיבִים מִתְפָּרִין עַל בֵּית הַדָּשָׁן. וְאִפִּילוּ רַבִּין לֹא פְּלִיגֵי עֲלֵיהֶם דְּרַבִּי אֶלְעָזָר בְּרַבִּי שְׁמַעוֹן אֶלְא בְּמִנְחַת חוּטָא שֶׁל כֹּהֲנִים, דְּבֵת הַקְּרִבָּה הִיא. אֶבֶל הָכָּא – אִפִּילוּ רַבִּין מוֹדוּ.

Rava said: Initially, when a man and a woman would come for judgment before me, each for a different case, I would resolve the man's quarrel first. I would say that since he is obligated in many positive mitzvot I should not waste his time by causing him to wait. However, since I heard this *baraita*, I resolve the woman's quarrel first.<sup>14</sup> What is the reason? I resolve her quarrel first because it is demeaning for her to be waiting in the company of men.

It is stated in the mishna: If the mixed sons matured and freed each other, they may marry women fit for the priesthood. The use of the past tense indicates that this *halakha* applies after the fact. If one of the sons desires to free the other, he may,<sup>15</sup> but if he does not desire to do so, he is not obligated. And why not? Neither of them can marry a maidservant in case he is a priest, nor can either of them marry a free woman, as he might be a slave. They are therefore unable to fulfill the mitzva to be fruitful and multiply in their current state and should be obligated to free each other. Rava said: Say that the mishna means that we coerce them and they free each other.<sup>16</sup>

It is stated in the mishna that we place upon them both the stringencies of priests and the stringencies of Israelites. The Gemara asks: With regard to what *halakha* is this stated, beyond those cited specifically in the mishna? Rav Pappa said: It is stated with regard to their meal-offering: The handful is taken<sup>17</sup> from it like the meal-offering of an Israelite, unlike that of a priest, which is burned in its entirety. However, the offering does not get eaten, like the meal-offering of priests.<sup>18</sup> How so? How is the practice performed so that both stringencies are kept? The handful is sacrificed and burned by itself, and the remainder of the offering is offered by itself.

The Gemara asks: How can it be performed in this manner? There is a principle that should apply here, that whatever is partly burned in the fire<sup>19</sup> on the altar is subject to the prohibition of “you may not make... as an offering” (Leviticus 2:11). This principle states that if part of an item, e.g., the blood of an animal offering or the handful of a meal-offering, is burned on the altar, then burning any of its other parts, which are not designated for burning, is prohibited. How, then, can the remainder of the meal-offering be sacrificed?

Rabbi Yehuda, son of Rabbi Shimon ben Pazi, said that the remainder is brought up to the altar only for the purpose of wood, i.e., as fuel for the altar, not as an offering. In this manner, it is permitted. This answer is in accordance with the opinion of Rabbi Elazar, as it is taught in a *baraita* that Rabbi Elazar said: “But they shall not come up for a sweet savor on the altar” (Leviticus 2:12). This verse indicates that you may not bring up leaven and honey as a “sweet savor,” i.e., an offering. However, you may bring up leaven, and honey, and other materials for the purpose of wood.<sup>20</sup>

The Gemara asks: This works out well according to Rabbi Elazar. However, according to the Rabbis, who disagree with Rabbi Elazar and hold that it may not be burned for the purpose of fuel, what can be said? What is to be done with the remainder? The Gemara answers that the offering is treated in accordance with the opinion of Rabbi Elazar, son of Rabbi Shimon, as it is taught in a *baraita* that Rabbi Elazar, son of Rabbi Shimon, says: The handful is sacrificed by itself, and the remainder is scattered over the place of the ashes. And even the Rabbis disagree with Rabbi Elazar, son of Rabbi Shimon, only with regard to a sinner's meal-offering that belongs to priests, as it is fit to be sacrificed in its entirety. However, here, in the case of an uncertain priest, even the Rabbis agree that the remainder is scattered over the ashes, as it cannot be offered in case he is a non-priest.<sup>21</sup>

A woman who did not wait three months after separating from her husband, etc. – **מי שלא שָׁהָתָה אַחֵר בְּעֵלָהּ וְכוּ**: A woman did not wait after being divorced from or widowed by her first husband. Rather, she remarried within three months of the termination of her previous birth. She subsequently gave birth to a son who might have been born to the first husband after nine months of pregnancy, and might have been born to the second after seven months of pregnancy. This son matured, got married, and subsequently died childless. In such a case, if the mother has sons of certain patrilineage from both the first and second husbands, they perform *halitza* with his wife, but they do not perform levirate marriage. Similarly, if the certain sons of the first or the second husband die childless, this son performs *halitza* with their wives but not levirate marriage (Rambam *Sefer Nashim, Hilkhhot Yibbum* 8:6; *Shulhan Arukh, Even HaEzer* 176:7).

**MISHNA** With regard to a woman who did not wait three months after separating from her husband,<sup>h</sup> and remarried and gave birth to a son, and it is not known if he was born after nine months of pregnancy to the former husband or if he was born after seven months to the latter husband, if she had sons of certain patrilineage from the first husband and sons of certain patrilineage from the second one, and the son of uncertain patrilineage married and died childless, then the brothers from both husbands must perform *halitza* with his wife, as they might be his paternal brothers. But they may not perform levirate marriage with her, in case he is only their maternal half brother, and his wife is forbidden to them. And similarly, with regard to him and their wives, if one of them dies childless, he performs *halitza* and not levirate marriage.

**מתני'** מי שלא שָׁהָתָה אַחֵר בְּעֵלָהּ שְׁלֹשָׁה חֳדָשִׁים, וְנִשְׂאָתָה וְיָלְדָה, וְאִין יָדוּעַ אִם בֶּן תְּשׁוּעָה לְרֵאשׁוֹן אִם בֶּן שְׁבַעָה לְאַחֲרוֹן, הִי לָהּ בָּנִים מִן הָרֵאשׁוֹן וּבָנִים מִן הַשֵּׁנִי – חוֹלְצִין וְלֹא מֵיִבְמִין, וְכֵן הוּא לָהֶם – חוֹלְץ וְלֹא מֵיִבְמִים.

Perek XI  
Daf 100 Amud b

הִי לוֹ אֲחִים מִן הָרֵאשׁוֹן וְאֲחִים מִן הַשֵּׁנִי שְׁלֹא מֵאוֹתָהּ הָאִם – הוּא חוֹלְץ וּמֵיִבְמִים, וְהֵם – אֶחָד חוֹלְץ וְאֶחָד מֵיִבְמִים.

If he had half brothers<sup>h</sup> from the first husband and half brothers from the second, not from the same mother but from the same father, he performs *halitza* or levirate marriage with their widows. If he is indeed their paternal half brother, then the widows are his *yevamot*; if not, he may marry them like any other man. And similarly, with regard to them and his wife, one half brother from one father performs *halitza* and one from the other father performs levirate marriage.

הִי אֶחָד יִשְׂרָאֵל וְאֶחָד כֹּהֵן – נוֹשֵׂא אִשָּׁה רְאוּיָה לְכַהֵן, וְאִין מִטְמֵא לְמִתִּים, וְאִם נִטְמָא – אִינוּ סוֹפְגִים אֶת הָאַרְבָּעִים, אִינוּ אוֹכְלִים בְּתְרוּמָה, וְאִם אָכַל – אִינוּ מְשַׁלְּמִים קֶרֶן וְחוּמָשׁ. וְאִינוּ חוֹלְקִים עַל הַגֹּרֶן, וּמוֹכְרֵי הַתְּרוּמָה וְהַדְּמִים שְׁלוֹ.

If one of his two uncertain fathers was an Israelite and one was a priest,<sup>h</sup> he may marry only a woman fit to marry a priest, due to the possibility that he is a priest. And he may not become ritually impure with impurity imparted by a corpse because he might be a priest. But if he became impure, he does not receive the forty lashes, as he might be a non-priest. Likewise, he does not partake of *teruma*, in case he is a non-priest. However, if he ate *teruma* he does not pay the principal and the additional fifth, as he might be a priest. And he does not receive *teruma* at the granary. However, he may sell the *teruma* of his own produce and the money is his. It cannot be taken away from him due to the uncertainty with regard to his status.

וְאִינוּ חוֹלְקִים בְּקִדְשֵׁי הַקֹּדֶשִׁים, וְאִין נוֹתְמִין לוֹ אֶת הַקֹּדְשִׁים, וְאִין מוֹצִיִּין אֶת שְׁלוֹ מִיָּדוֹ. וּפְטוּר מִן הַזְּרֹעַ וְהַלְחָיִים וְהַקִּיבָה, וּבְכוּרוֹ יֵהָא רוּעָה עַד שְׁיִסְתָּאב, וְנוֹתְמִין עָלָיו חוּמְרֵי כֹהֲנִים וְחוּמְרֵי יִשְׂרָאֵלִים.

And he does not receive a share of the sacred of the consecrated offerings, and one may not give him the consecrated offerings to sacrifice. However, the hides of his own offerings may not be appropriated from his possession. And he is exempt from giving a priest the foreleg, and the jaw, and the maw of his non-consecrated animals. And the firstling of his animal should graze until it becomes unfit to be sacrificed because it gets a blemish. And in general, we place upon him the stringencies of priests and the stringencies of Israelites.

HALAKHA

If he had half brothers, etc. – **הִי לוֹ אֲחִים וְכוּ**: If it is uncertain whether a man is the son of his mother's first or second husband, and he has one paternal half brother from each of those husbands, and they die childless, he may perform either *halitza* or levirate marriage with their wives. If he dies childless, one of them performs *halitza* and the other performs levirate marriage with his widow (Rambam *Sefer Nashim, Hilkhhot Yibbum* 8:7; *Shulhan Arukh, Even HaEzer* 176:7).

If one was an Israelite and one was a priest, etc. – **הִי אֶחָד יִשְׂרָאֵל וְאֶחָד כֹּהֵן וְכוּ**: If a woman did not wait three months after separating from her husband before remarrying and gave birth to a son whose father can be either her first or second husband, and if one of her husbands was a priest and the other an Israelite, the child is rendered an uncertain priest. This is also the status of the son of a priest who was mixed with the son of an Israelite, so that their lineage was consequently indeterminate. This child may marry only women fit to marry a priest.

However, if he marries a woman who is not fit, he is not obligated to divorce her. He may not become impure with impurity imparted by a corpse. *Teruma* is not distributed to him, nor may he partake of *teruma*. However, if he eats *teruma* he is not liable to pay the principal and the additional fifth. He is exempt from giving the priestly gifts. His firstborn animal must be left to graze until it gets a blemish. In general, he must observe the stringencies of both priests and non-priests (Rambam *Sefer Kedusha, Hilkhhot Issurei Bia* 20:17; *Shulhan Arukh, Even HaEzer* 3:8).

**If both uncertain fathers were priests – הָיוּ שְׁנֵיהֶם כֹּהֲנִים –** The mixed sons of two priests and the son of a woman who was married to two priests sequentially and did not wait between them are rendered priests. Offspring such as these must observe stringencies with regard to both sets of parents. If the parents die, the child is in a state of acute mourning for them, and vice versa. However, the child may not become ritually impure to bury the parents, nor may they become ritually impure to bury him (Rambam *Sefer Kedusha, Hilkhhot Issurei Bia* 20:18; *Shulḥan Arukh, Even HaEzer* 3:9).

**He does not inherit from them, however they inherit from him – הוּא אֵינוֹ יוֹרֵשׁ אוֹתָן אֲבָל הֵם יוֹרְשִׁין אוֹתוֹ –** If a woman did not wait after leaving her first husband before remarrying and had a son, he does not inherit from either husband, as he is an uncertain son who can be rejected by the inheritors of both fathers. However, the two uncertain fathers do inherit from him. They divide the inheritance equally between them (Rambam *Sefer Mishpatim, Hilkhhot Nahalot* 5:3).

**He must ascend to the Temple service with the priestly watch of this father and of that one, etc. – עוֹלָה בְּמִשְׁמֵרוֹ –** The sons of two priests who were mixed up and the son of a woman who was married to two priests sequentially and did not wait between them must ascend to the Temple service with the priestly watches of both uncertain fathers. However, they do not receive a share of the offerings. If the uncertain fathers were both from the same watch and the same family, the sons receive a single share of the offerings (Rambam *Sefer Kedusha, Hilkhhot Issurei Bia* 20:18).

**Ten priests, etc. – עֶשְׂרֵה כֹהֲנִים וְכוּ' –** If an unidentified priest engaged in intercourse with a woman, and she gave birth to a son, the son is certainly a priest, and he therefore is liable to receive lashes if he becomes ritually impure with impurity imparted by a corpse or if he marries a divorcee. However, the Sages decreed that since he was conceived from licentious intercourse and his father's identity is unknown, he may not serve in the Temple or eat *teruma*, as stated by Shmuel (Rambam *Sefer Kedusha, Hilkhhot Issurei Bia* 20:20; *Shulḥan Arukh, Even HaEzer* 3:9).

הָיוּ שְׁנֵיהֶם כֹּהֲנִים – הוּא אוֹנֵן עֲלֵיהֶם וְהֵם אוֹנֵנִים עָלָיו, הוּא אֵינוֹ מְטַמֵּא לָהֶם וְהֵם אֵינָן מְטַמְּאִים לוֹ, הוּא אֵינוֹ יוֹרֵשׁ אוֹתָן – אֲבָל הֵם יוֹרְשִׁין אוֹתוֹ.

וּפְטוּר עַל מַכְתּוֹ וְעַל קָלְלָתוֹ שֶׁל זֶה וְשֶׁל זֶה. עוֹלָה בְּמִשְׁמֵרוֹ שֶׁל זֶה וְשֶׁל זֶה, וְאֵינוֹ חוֹלֵק. אִם הָיוּ שְׁנֵיהֶם בְּמִשְׁמֵר אֶחָד – נוֹטֵל חֵלֶק אֶחָד.

**גמ' דוקא מיתלץ והדר יבומי, אבל יבומי ברישא לא. דקא פגע ביבמה לישוק.**

**אמר שמואל: עשרה כהנים עומדים, ופירש אחד מהם ובעל – הולד שתוקי. מאי שתוקי? אילימא שמשתקין אותו מנכסי אביו – פשיטא, מי ידעין אביה מנו? אלא – שמשתקין אותו מדין כהונה.**

**מאי טעמא? אמר קרא ויהיתה לו ולזרעו אחריו – בעינן זרעו מיוחס אחריו, וליכא.**

If both uncertain fathers were priests,<sup>H</sup> then if they die he is in a state of acute mourning over each of them, in case the deceased is his father. And if he dies, they are both in a state of acute mourning over him, as one of them is his father. He may not become ritually impure to bury them, as each one may not be his relative, and they may not become ritually impure to bury him for the same reason. He does not inherit from them,<sup>N</sup> as the heirs of both husbands can reject his claims. However, they inherit from him<sup>H</sup> if he has no sons and split his inheritance equally.

And he is exempt from capital punishment for striking and for cursing both this father and that one. Although one who strikes or curses his father or mother is liable to receive the death penalty, he cannot be held liable, as it is unknown which of the men is his father. He must ascend to the Temple service with the priestly watch of this father and of that one,<sup>H</sup> as he belongs to one of these watches and is obligated to serve with them. However, he does not receive a share of the portion of the offerings that gets eaten, as the members of each watch can claim that he is a member of the other watch. If both uncertain fathers were in one priestly watch, he receives one share, as he certainly belongs to that watch.

**GEMARA** The mishna stated that if the son has paternal half brothers from each of his two uncertain fathers and he dies childless, a half brother from one father performs *halitza* and the other performs levirate marriage. The Gemara comments that *halitza* is specifically performed first and only afterward levirate marriage. However, levirate marriage is not performed first, as that would breach the prohibition against a *yevama* engaging in intercourse with a member of the public in the event that she is not his *yevama* but rather the *yevama* of the other half brother.

Shmuel said that if ten priests<sup>H</sup> were standing in one place, and one of them, who is unidentified, left the group and engaged in intercourse with a woman, and she gave birth, the child is a silenced one, i.e., a child whose father's identity is not known. The Gemara asks: What is the meaning of the phrase silenced one [*shetuki*]<sup>N</sup> in this regard? If we say that he is silenced from any claim to his father's property, this is obvious; do we know who his father is? Rather, it means that he is silenced from the status of priesthood,<sup>N</sup> as well. Although his father certainly is a priest, he is not given this status.

The Gemara asks: What is the reason for this? The Gemara answers that the verse states: “And it shall be to him and to his seed after him, the covenant of an everlasting priesthood” (Numbers 25:13). It is derived from “and to his seed after him” that we require a priest's descendants to be attributed to his lineage, and here that is not the case, as there is no certain father.

NOTES

**הוא אינו יורש אותן וכו' –** He does not inherit from them, etc. The commentaries ask why the *halakhot* with regard to inheritance, striking, and cursing are stated specifically with regard to a case in which both husbands were priests, despite the fact that these *halakhot* apply to the same degree to a case in which they were not priests.

One suggestion is that this *halakha* contains a novel element with regard to a case in which they were priests. Although they may not become ritually impure to bury the son and vice versa, they nevertheless inherit from him, as he is still considered their son. Similarly, the mishna teaches: Although the child observes acute mourning over his uncertain fathers, despite his priesthood, he is not liable to receive punishment for striking or cursing them, as the paternity of each one is uncertain (*Tiferet Yisrael*; see *Arukh LaNer*).

What is the meaning of the phrase silenced one [*shetuki*] – **מאי שתוקי**: The common meaning of the term *shetuki* is a person whose mother does not know the identity of his father. He is considered a *mamzer* due to the likelihood that he was born from an adulterous relationship or a *mamzer* father (*Kiddushin* 69a). However, in the case here, the child is certainly not a *mamzer*, although his father's identity is unknown. Therefore, it is necessary for the Gemara to explain the meaning of *shetuki* in this context.

**שמשתקין – אותו מדין כהונה**: The Ritva explains that he forfeits the rights of a priest, while the prohibitions of priesthood still pertain to him. This *halakha* is a penalty by rabbinic law meant to prevent women from engaging in licentious intercourse, as stated by the Gemara below.

You may not marry a gentile woman or a maidservant, etc. – לֹא תִנְסַב גּוֹיָה וְשִׁפְחָה וְכוּ׳: The child of a maidservant or a gentile woman receives her status, whether she engaged in intercourse with a Jew of unflawed lineage or with one who is unfit to enter the assembly of Israel by marriage (*Shulhan Arukh, Even HaEzer 8:5*).

## BACKGROUND

The gathering of the bones – לִיקוּט עֲצָמוֹת: In the period of the Second Temple and for hundreds of years thereafter, the custom was to bury the deceased in the ground temporarily and to wait a few years until all the flesh decayed. The bones would then be collected and placed in a stone ossuary, which was then placed in a niche in a family burial cave.

מתקוף לה רב פפא: אלא מעתה, גבי אברהם דכתיב "להיות לך לאלהים ולורעך אחריך", התם מאי קא מזהר ליה רחמנא? הכי קאמר ליה: לא תנסב גויה ושפחה דלא ליזיל זרעך בתרה.

מיתבי: ראשון ראוי להיות בהן גדול, והא בעינן זרעו מיוחס אחרי, וליכא! זרעו מיוחס אחרי דרבנן, וקרא אסמכתא בעלמא, וכי גזור רבנן – בנות, בנשואין – לא גזור רבנן.

ובנות מי גזור רבנן? והתנן: "מי שלא שהתה אחר בעלה שלשה חדשים ונשאת וילדה",

מאי "אחר בעלה"? אי לימא אחר מיתת בעלה – אימא סיפא: "הוא אוני עליהם והם אוני עליו", בשלמא הוא אוני עליהם – משפחת לה בנשואין דשני, וליקוט עצמות דקמא. אלא הם אוני עליו היכי משפחת לה? קמא הא מית ליה!

ואלא – בגרושה, ומאי "אחר בעלה" – אחר גט בעלה, אימא סיפא: "הוא אין מטמא להם והם אינן מטמאין לו", בשלמא הן אין מטמאין לו – לחומרא, דכל חד וחד דלמא לאו בריה הוא. אלא הוא אין מטמא להם – אמאי?

בשלמא לשני – לא ליטמי ליה, אלא לראשון – ליטמי ליה ממה נפשך: אי בריה הוא שפיר קא מטמא ליה ואי בר בתרא הוא שפיר קא מטמא ליה, דחלל הוא!

Rav Pappa strongly objects to this: However, if that is so, since the same phrase is written with regard to Abraham: "To be a God to you and to your seed after you" (Genesis 17:7), what is the Merciful One warning him there? Can it possibly mean that one who cannot identify his parents is not obligated to serve God as a Jew? The Gemara answers that this is what He said to him: You may not marry a gentile woman or a maidservant,<sup>11</sup> so that the status of your offspring will not follow her status, as the child of a Jewish man and a gentile woman or maidservant receives the status of his mother.

The Gemara raises an objection: A *baraita* (37a) teaches that if a priest performed levirate marriage with his brother's wife within three months of his brother's death, and she gave birth to a son who is either her deceased husband's son or her brother-in-law's son, this first son born after the levirate marriage is fit even to be a High Priest. But don't we require his descendants to be attributed to his lineage, and that is not so in this case, as the father's identity is unknown? The Gemara answers: The requirement that his descendants be attributed to his lineage is rabbinic law, and the verse is a mere support, not the actual source. And when the Sages decreed that one whose father's identity is unknown is not a priest, they did so only with regard to a case of licentious intercourse. With regard to a case of marriage, as is the case in the *baraita*, the Sages did not apply the decree.

The Gemara asks: And with regard to a case of licentious intercourse, did the Sages in fact issue a decree? Didn't we learn in the mishna about a woman who did not wait three months after separating from her husband and remarried and gave birth to a son?

What is the meaning of the phrase: After separating from her husband? If we say it means after her husband's death, say the latter clause of the mishna: If they die, he is in a state of acute mourning over each of them, and if he dies, they are both in a state of acute mourning over him. Granted, if they die, he is in a state of acute mourning over them. You find this case with regard to his uncertain father from his mother's marriage to the second man. If the second husband dies, the child must mourn for him, and he is also in a state of acute mourning following the gathering of the bones<sup>8</sup> of the first husband, who died before he was born. When the bones of a person who was buried are dug up for proper burial in his ancestor's plot, his relatives mourn for him a second time. But with regard to the statement that if he dies they are in a state of acute mourning for him, how can you find these circumstances? The first husband is already dead.

And assume the mishna's statement is rather with regard to a divorcée. And accordingly what is the meaning of the phrase: After separating from her husband? It means: After she received a bill of divorce from her husband. If so, say the latter clause of the mishna: He may not become impure to bury them, and they may not become impure to bury him. Granted, they may not become impure to bury him, as the ruling is stringent, as with regard to each one of them perhaps he is not his son. However, why may he not become impure to bury them?

Granted, for the second one he should not become impure, as he might not be his son. However, for the first he should be allowed to become impure whichever way you view it: If he is his son, it is appropriate for him to become impure to bury him, as even a priest must become ritually impure to bury his father. And if he is the son of the latter one, it is appropriate for him to become impure to bury him, as he, the son, is a *halal*. If his mother is a divorcée, his father, the latter husband, is prohibited as a priest to marry her, and a child born from this relationship is a *halal*, who is unfit for the priesthood. There would then be no prohibition against his becoming ritually impure.

A conclusive refutation of the opinion of Shmuel – **תויבתא דשמואל**: The Meiri suggests, in response to this difficulty, that the mishna is referring to not one particular case but to several different situations. The ruling with regard to ritual impurity is referring to the case of a woman who was widowed from her first husband, whereas the ruling with regard to acute mourning involves a divorcée.

Can a girl who refuses her husband give birth – **ממאנת מי קא ילדה**: The Gemara above indicates that giving birth is considered a sign of maturity and retroactively renders a girl a grown woman from the time she conceives (12b). The commentaries point out that this appears to contradict the Gemara here, which indicates that a girl can theoretically become pregnant and still be considered a minor, as only a minor girl can refuse her husband. They answer that the case is of a girl near the age of maturation who refused her husband and gave birth nine months later. If the first husband is the father, i.e., she became an adult with the conception of a child through him, her refusal was invalid, as she was already an adult. However, if the second husband is the father, i.e., she was still considered a minor at the time of her first marriage, her refusal was valid (Ramban; Rashba; Ritva).

She may refuse her husband and go off on her way – **ממאנת והולכת לה**: The Ritva notes that the term refuse is apparently inaccurate in this context, as it is referring not to a minor girl's refusal but to a mistaken betrothal. He suggests that the term is used anyway because part of the stipulation is that if she feels that the conditions were not fulfilled she has the right to claim that the betrothal was mistaken and to thereby nullify it.

## HALAKHA

Who, although she was not coerced, is permitted to her husband – **שלא נתפשה מותרת**: In the case of a man who engaged in intercourse with a minor girl who is married to an adult, if she was betrothed in a manner that is valid by Torah law, i.e., her father married her off, this man is liable to receive the death penalty by means of strangulation, while she is exempt. However, the Rambam rules that she nevertheless becomes forbidden to her husband. The Ra'avad disagrees, citing the principle that the seduction of a minor is considered rape.

If her betrothal was valid only by rabbinic law, i.e., she was married off by her mother or brothers, one who engaged in intercourse with her is exempt from the death penalty. However, he is liable by rabbinic law to receive lashes for rebelliousness. She is permitted to her husband, even if he is a priest (Rambam *Sefer Kedusha, Hilkhot Issurei Bia* 3:2).

אלא לאו בנות, ומאי "אחר בעלה" – אחר בעלה. וקתני סיפא: "עולה במשומר של זה ושל זה", ותויבתא דשמואל!

אמר רב שמעיא: בממאנת.

ממאנת מי קא ילדה? והתני רב ביבי קמיה דרב נחמן: שלש נשים משמשות במוך: קטנה, מעוברת, ומניקה. קטנה – שמה תתעבר ותמות, מעוברת – שמה תעשה עוברת סנדל, מניקה – שמה תגמול את בנה וימות. ואיזו היא קטנה – מבת אחת עשרה שנה ויום אחד עד בת שתים עשרה שנה ויום אחד. פחות מיכן או יתר על כן – משמשת כדורב והולכת, דברי רבי מאיר.

וחקמים אומרים: אחת זו ואחת זו משמשת כדורב והולכת, ומן השמים ירחמו, שנאמר "שומר פתאים ה'!"

משפחת לה בקידושי טעות, וכדורב יהודה אמר שמואל, דאמר רב יהודה אמר שמואל משום רבי ישמעאל: "והיא לא נתפשה" אסורה, הא נתפשה מותרת.

ויש לך אחרת שאף על פי שלא נתפשה מותרת, ואי זו – זו שקדושיה קידושי טעות, שאפילו בנה מורכב לה על כתפה – ממאנת והולכת לה.

Rather, is the mishna's statement not with regard to the licentious intercourse of an unmarried woman? **And what is the meaning of the phrase: After she separated from her husband [ba'ala]? Is it not: After separating from the man with whom she engaged in intercourse [bo'ala],** meaning that she engaged in intercourse with a man less than three months before marrying another man, and therefore she does not know the identity of the father? **And it is taught in the latter clause of the mishna that the son ascends to the Temple service with the priestly watch of this one and of that one,** which implies that he is considered a priest, although the identity of his father is uncertain due to the licentious intercourse of his mother. **And this appears to be a conclusive refutation of the opinion of Shmuel.<sup>N</sup>**

Rav Shemaya said: The mishna's statement pertains to a girl who refused her husband. A minor girl who was orphaned from her father may be married off by her brothers. However, she may subsequently refuse her husband before reaching majority. This nullifies the marriage entirely, so she is not considered a divorcée, for whom it is prohibited to marry a priest. In the case of the mishna, she did not wait three months after her refusal before marrying again, so she does not know who the father of her child is.

The Gemara asks: **Can a girl who refuses her husband give birth?<sup>N</sup> Didn't Rav Beivai teach before Rav Nahman that women in three situations may engage in intercourse with a contraceptive resorbent, despite the fact that this practice is generally prohibited: A minor girl, a pregnant woman, and a nursing woman? A minor girl may do so lest she become pregnant and die, as the fetus might endanger her life. A pregnant woman may do so lest she get pregnant a second time and her previous fetus becomes a sandal, i.e., it is squashed by the pressure of the second fetus. A nursing woman may do so lest she wean her child prematurely, as pregnancy will cause her milk to dry up, and he will die of hunger. And who is considered a minor girl in this context? A girl from the age of eleven years and one day until the age of twelve years and one day. If she is younger than this or older than this, she should go ahead and engage in intercourse in her usual manner. This is the statement of Rabbi Meir.**

And the Rabbis say: Both this one and that one, i.e., women in any cases, should go ahead and engage in intercourse in their usual manner, and Heaven will have mercy and prevent them from getting pregnant, as it is stated: "The Lord preserves the simple" (Psalms 116:6). Evidently, a girl who is a minor and therefore young enough to refuse her husband cannot become pregnant without endangering her health.

The Gemara answers: **You find a solution in the case of a mistaken betrothal.** For example, if the first husband betrothed her conditionally and the condition was unfulfilled, the marriage is nullified. This woman may marry a priest. If she did so within three months, the identity of her child's father is uncertain, which fits the statement in the mishna. **And this is in accordance with that which Rav Yehuda said that Shmuel said, as Rav Yehuda said that Shmuel said in the name of Rabbi Yishmael:** The verse states with regard to a *sota*: "Neither was she [*hi*] coerced in the act" (Numbers 5:13). It may be inferred that she is forbidden to her husband only if she was not coerced by the adulterer; if she was coerced she is permitted to him.

And the superfluous word "she" indicates that **you have another woman who, although she engaged in intercourse willingly and was not coerced, is nevertheless permitted to her husband,<sup>H</sup> as the intercourse is not considered adultery. And who is this? This is referring to a woman whose betrothal was a mistaken betrothal, as even if her child is riding on her shoulders, she may refuse her husband and go off on her way.<sup>N</sup> She is considered an unmarried woman, and she is therefore permitted to return to her husband, even if she engaged in intercourse with another man. The mishna may therefore be explained in a way that does not contradict Shmuel.**