

”היו שניהם כהנים” וכו’. תנו רבנן: הכה זה וְחָזַר וְהִכָּה זֶה, קָלַל זֶה וְחָזַר וְקָלַל זֶה, קָלַל שְׁנֵיהֶם בְּבֵת אֶחָת – חֲזִיב. רַבִּי יְהוּדָה אָמַר: בְּבֵת אֶחָת חֲזִיב, בְּזֶה אַחֵר זֶה פְּטוּר.

וְהִתְנַיָּא, רַבִּי יְהוּדָה אָמַר: פְּטוּר בְּבֵת אֶחָת! תְּרֵי תַנְיָא אֲלֵיבָא דְרַבִּי יְהוּדָה.

מאי טעמא דמאן דפטור? אמר רבי חנינא: נאמר ברכה למטה ונאמר ברכה למעלה. מה למעלה – שאין בה שותפות, אף למטה – שאין בה שותפות, ואיתקש הכאה לקלה.

”ועולה במשמרו” וכו’. וכי מאחר דאיני חולק למה עולה? למה עולה? האמר: בעינא דניעביד מצוה! אלא: “עלה” לא קתני, אלא “עולה” – בעל כרחו.

אמר רב אחא בר חנינא אמר אביי אמר רבי אסי אמר רבי יוחנן: משום פגם משפחה.

”ואם היו שניהם במשמרו” כו’. מאי שנא שני משמרות דלא – דאזיל להא משמרה ומדחו ליה ואזיל להא משמרה ומדחו ליה – משמרו אחד נמי, אזיל להאי בית אב ומדחו ליה!

אמר רב פפא, הכי קאמר: אם היו שניהם משמרו אחד ובית אב אחד – נוטל חלק אחד.

הדרן עלך נושאין על האנוסה

It is stated in the mishna that if **both** uncertain fathers were priests, the son is exempt from punishment for striking and for cursing them. **The Sages taught: If he struck this uncertain father, and then struck that one, or if he cursed this one and then cursed that one, or if he cursed both of them simultaneously or struck both of them simultaneously, in all these cases he is liable** to receive capital punishment, as one of them is certainly his father. **Rabbi Yehuda says:** Although if he struck or cursed both of them **simultaneously he is liable**, if he struck or cursed them **one after the other, he is exempt**.

The Gemara asks: **But isn't it taught** in a *baraita* that **Rabbi Yehuda says: He is exempt** even if he struck or cursed them **simultaneously**? The Gemara answers: These are the opinions of **two tanna'im**, and they each expressed their opinion **in accordance with that of Rabbi Yehuda**.

The Gemara asks: **What is the reasoning of the one who exempts** the son from punishment? **Rabbi Hanina said: Blessing is stated below** (Leviticus 20:9), with regard to cursing parents, **and blessing is stated above** (Exodus 22:27), with regard to cursing God. The Sages used the word blessing as a euphemism for cursing, as it was their custom to avoid uncouth language. **Just as** the statement **above**, in Exodus, is referring to a curse **that does not involve partnership**, as God is One, **so too** the statement **below**, in Leviticus, is referring exclusively to a curse of a parent **that does not involve partnership**,^N i.e., when there is no doubt with regard to his identity. **And striking is juxtaposed with cursing**. Just as one is not liable for cursing when it is unclear who his father is, the same applies to striking.

It is stated in the mishna: **And he ascends** to the Temple service **with the priestly watch** of both uncertain fathers. However, he does not receive a share of the offerings of either watch. The Gemara asks: **Since he does not receive a share, why does he ascend?** The Gemara is puzzled by this question: **Why does he ascend? Doesn't he naturally say: I wish to perform a mitzva** by serving as a priest? The Gemara explains: **However**, note that the mishna **does not state: If he ascended, but rather: He ascends**, in the present tense. Apparently he is obligated to ascend, **even against his will**. Why is he under obligation to serve in the Temple?

Rav Aha bar Hanina said that Abaye said that Rabbi Yohanan said: He is obligated **due to** the potential **family flaw**, i.e., harm to the family name. If he does not serve with these watches, people will infer that both families are unfit for the priesthood, which is not the case.

It is stated in the mishna: **And if both** uncertain fathers **were in one priestly watch**, he receives one share. The Gemara asks: **What is different** about the case in which the uncertain fathers belonged to **two priestly watches**, with regard to which the mishna states **that the son does not receive a share**, and the case in which they belonged to the same watch? **Just as** in the case where they belonged to two watches, **he goes to this watch** to receive a share **and they reject him**, claiming that he belongs to the other watch, **and he goes to that watch and they reject him** in the same manner, **so too**, where they belonged to **one watch, he goes to this patrilineal family**^B to receive a share on their day, **and they reject him**, and the other patrilineal family rejects him too, as his true patrilineal family is unknown.

Rav Pappa said that this is what the mishna is saying: If they were both in one priestly watch^H **and one patrilineal family, he receives one share**,^N as he cannot be rejected.

NOTES

שאין – נוטל חלק אחד – *Tosafot* ask why the mishna emphasizes that he receives specifically one share, as it is obvious that does not receive more than one share. They point out that the Gemara asked this question with regard to the previous mishna (*Yevamot* 99b). They answer that this mishna merely copies the expression used in that mishna but does not use it here to indicate anything in particular.

נוטל חלק אחד – He receives one share – *Tosafot* ask why the mishna emphasizes that he receives specifically one share, as it is obvious that does not receive more than one share. They point out that the Gemara asked this question with regard to the previous mishna (*Yevamot* 99b). They answer that this mishna merely copies the expression used in that mishna but does not use it here to indicate anything in particular.

BACKGROUND

The priestly watch and the patrilineal family – משמרה ובית אב – Dating back to the days of King David, the priests were divided into twenty-four watches, which took turns serving in the Temple for one week at a time. Every watch was therefore on duty twice a year, excluding the three pilgrim Festivals, when all of the priestly watches would serve together.

Each watch was further divided into patrilineal families. Many commentaries claim that there were six such families in each watch. However, in the *Tosefta* it is stated that different watches contained larger or smaller numbers of families. Each patrilineal family would serve in the Temple for one day on its watch's week, whereas the other families of the same watch would provide assistance when necessary.

HALAKHA

One priestly watch – משמרו אחד – In both the case of the sons of priests who were mixed and the case of a child born to a mother who did not wait three months after separation from her first husband before marrying another priest, if the possible fathers are priests from the same priestly watch and of the same patrilineal family, the offspring is entitled to one share of the offerings in the Temple on days when that family serves, as stated by Rav Pappa (Rambam *Sefer Kedusha, Hilkhot Issurei Bia* 20:18).

מתני' מצות חליצה בשלושה דיינים, ואפילו שלשתן הדיוטות. חליצה במנעל – חליצתה כשרה, באנפיליא – חליצתה פסולה. בסנדל שיש לו עקב כשר, ושאיין לו עקב – פסול.

מן הארכובה ולמטה – חליצה כשרה, מן הארכובה ולמעלה – חליצה פסולה. חליצה בסנדל שאין שלו, או בסנדל של עץ, או בשל שמאל במיין, חליצה כשרה. חליצה בגדול שהוא יכול להלוך בו, או בקטן שהוא חופה את רוב רגלו, חליצתה כשרה.

גמ' ומאחר דאפילו שלשה הדיוטות – דיינים למה לי? הא קא משמע לן: דבעינן בשלושה שידעו להקרות בעין דיינים. תנינא להא דתנו רבנן: מצות חליצה בשלושה שידעו להקרות בעין דיינים. רבי יהודה אומר: בחמשה.

מאי טעמא דתנא קמא? דתנינא: "זקנים" – שנים, ואין בית דין שקול – מוסיפין עליהן עוד אחד, הרי כאן שלשה. ורבי יהודה: "זקני" שנים: "זקנים" שנים, ואין בית דין שקול, מוסיפין עליהן עוד אחד, הרי כאן חמשה.

ותנא קמא, האי "זקני" מאי עביד ליה? מביעי ליה לרבויי אפילו שלשה הדיוטות.

MISHNA The mitzva of *halitza*, the ritual through which the *yavam* frees the *yevama* of her levirate bonds, **must be performed before three judges, and the ritual does not require the judges to be experts fit to adjudicate other matters, as even if all three are laymen, it is acceptable.**^h **If she performed *halitza* while he was wearing a shoe made of soft leather that covers the whole foot, her *halitza* is valid, but if she performed *halitza* while he was wearing a soft shoe [anpileya]^l made of cloth, her *halitza* is invalid,^h as it is not considered a real shoe. If *halitza* was performed while he was wearing a sandal, i.e., footwear made of hard leather, that has a heel, it is valid; but if performed with a sandal without a heel, it is invalid *halitza*.**

If the leg of the *yavam* was amputated anywhere **from the knee down**^{hn} and she performed *halitza* as he wore a shoe on the stump of his leg, **it is valid *halitza***. If, however, the leg was amputated anywhere **from the knee and above**, and she performed *halitza* as he wore a shoe on the stump of his leg, **it is invalid *halitza***. **If she performed *halitza* while the man was wearing a sandal that did not belong to him, or a sandal made of wood, or on the left shoe, which was being worn on his right foot, it is valid *halitza*. If she performed *halitza* as the man was wearing a shoe that was too large for him but which he can still walk in, or a shoe that was too small but that covered most of his foot, her *halitza* is valid.**

GEMARA The Gemara asks: **Now that the mishna says that even three laymen are qualified for *halitza*, why do I need it to mention judges?** It would be sufficient to say that the mitzva requires three people. The Gemara answers: **This teaches us that we require three people who can at least dictate the versesⁿ read during the *halitza* ritual to the participants like judges, as they are not complete laymen in that they are literate.** The Gemara comments: **We already learned this *halakha* in a *baraita*, as the Sages taught: The mitzva of *halitza* is performed before three individuals who know how to dictate the verses like judges. Rabbi Yehuda says: *Halitza* must be performed before five individuals acting as judges.**

The Gemara discusses the dispute as to how many individuals must conducting the *halitza*: **What is the reason of the first *tanna*, who requires three? As it is taught in a *baraita* concerning *halitza*: "His *yevama* shall ascend to the gate to the Elders" (Deuteronomy 25:7).** Since the minimum number of the plural term "Elders" is **two, and since, in order to prevent a paralyzing disagreement between an even number of judges, a court may not be composed of an even number of judges, one more is added to them. Therefore, there are three judges. And Rabbi Yehuda interprets the verse otherwise, for one verse states: "And the Elders of his city shall call him" (Deuteronomy 25:8), indicating a minimum of two judges, and it says in the following verse "Elders" another time, indicating an additional two people, and since a court may not be composed of an even number of judges, one more is added to them. Therefore, there are five judges.**

The Gemara asks: **And what does the first *tanna* do with this second appearance of the word "Elders"?** The Gemara explains: **He requires it for allowing the inclusion of even three laymen as presiding judges for *halitza*.** The word "Elders" would seem to limit *halitza* to recognized judges, but since it is mentioned twice, it becomes an instance of the hermeneutic principle that one restrictive expression appearing after another restrictive expression comes to include some additional *halakha*. Therefore, repeating the restrictive term "Elders" twice actually comes to include laymen rather than exclude them.

HALAKHA

חליצה – *Halitza* before three people, even laymen – **בשלושה ואפילו הדיוטות**: The mitzva of *halitza* is conducted before three judges, and even if they are laymen they are qualified, as long as they can properly oversee the recitation of the texts recited by the *yavam* and *yevama* (Rambam *Sefer Nashim*, *Hilkhot Yibbum* 4:5; *Shulhan Arukh*, *Even HaEzer* 169:1).

Wearing a soft shoe her *halitza* is invalid – באנפיליא – **חליצתה פסולה**: If the *yevama* performed *halitza* using a soft shoe made of cloth, her *halitza* is invalid (Rambam *Sefer Nashim*, *Hilkhot Yibbum* 4:18; *Shulhan Arukh*, *Even HaEzer* 169:22).

From the knee down – מן הארכובה ולמטה – If the *halitza* sandal was tied below the knee, the *halitza* is valid, and if it was tied above the knee, the *halitza* is invalid, in accordance with the interpretation of the majority of commentaries (Rambam *Sefer Nashim*, *Hilkhot Yibbum* 4:16; *Shulhan Arukh*, *Even HaEzer* 169:35).

LANGUAGE

Soft shoe [anpileya] – **אנפיליא**: From the Greek ἐμπιλια, *empilia*, meaning shoes made from felt.

NOTES

From the knee down – מן הארכובה ולמטה – Rashi interprets the mishna's distinction between individuals who have partially amputated legs to mean that eligibility for *halitza* would depend on whether one's leg was amputated from the knee and above or from the knee down. However, most of the other commentaries understood that the mishna is not making a declaration with regard to eligibility based on the degree of amputation. Rather, it is distinguishing between a case where the straps of the sandal are tied above the knee and one where the straps are tied below the knee. If the straps are tied below the knee, they are valid for *halitza*, but if they are tied above the knee, they are invalid (Rif; Rambam; *Tiferet Yisrael*). The discussion in the Jerusalem Talmud fits this second understanding. Some commentaries offer both explanations (see *Tosefot Rid*, *Nimmukei Yosef*, and Rambam's Commentary on the Mishna).

שיודעים להקרות – Who can at least dictate the verses – The *Arukh LaNer* explains that the judges must dictate the verses to those participating in *halitza* even if the participants themselves are knowledgeable and know how to recite them properly. This was also the practice for the mitzva of recitation of verses by those who brought the first fruits to the Temple. The commentaries debate the level of knowledge necessary for these judges. The *Nimmukei Yosef* explains that the judges should know the *halakhot* as thoroughly as do ordained judges and must be well versed in the entire process of *halitza*, as the only leniency intended by the Gemara here is that they need not be ordained Sages. On the opposite extreme, other commentaries explain that only those who are mute or deaf are disqualified from conducting the *halitza* ceremony. The requirement is merely that they are physically able to read, but not that they are literate. Others explain that laymen judges are required to be knowledgeable enough to enable them to consult with expert judges about whether the *halitza* was done properly or not. To this end, the only special knowledge they must possess is the ability to oversee a proper reading of the verses, for if they lack that understanding, they will not be able to consult with expert judges concerning a questionable reading (see *Yam shel Shlomo*).

NOTES

From where does Rabbi Yehuda derive that *halitza* can be done in the presence of laymen – **ורבי יהודה הדיוטות מנא ליה נפקא ליה מ"לעיני"**, דאמר מר: "לעיני" – פרט לסומים.

In a discussion in the Jerusalem Talmud, the permissibility of laymen as judges is derived from the verse "He who had his shoe removed" (Deuteronomy 25:10), which they interpret to mean that any case in which one's shoe was removed is valid, indicating that as long as *halitza* was performed properly this is sufficient after the fact, even if those presiding over the process were laymen.

HALAKHA

A court must be clean of any blemish – **בית דין מנוקים** – **מקל מום**: Just as members of the court must be unsullied in their righteousness, they must be physically unblemished as well (Rambam *Sefer Shofetim*, *Hilkhot Sanhedrin* 2:6).

Perek XII

Daf 101 Amud b

NOTES

As it is stated: "You are entirely beautiful" – **שנאמר בך** – **נפה**: This whole section of Song of Songs is interpreted homiletically in the midrash to refer to the Great Sanhedrin. For instance, the verse "Your eyes are doves" (Song of Songs 1:15) alludes to the Torah's mention of the Great Sanhedrin as "The eyes of the congregation" (Numbers 15:24). Similarly, the words "mountain of myrrh" (Song of Songs 4:6) refer to Mount Moriah, the location of the Chamber of Hewn Stone, in which the Sanhedrin sat (see *Midrash Rabba* and *Targum* on Song of Songs).

The Gemara seems to derive that expert judges are unnecessary for *halitza*, as it mentions that judges for *halitza* must be capable of seeing, something that is obvious in all cases where judges are required, as is expounded from the aforementioned verse in Song of Songs. The Rashba asks how the Gemara derives from a verse in Song of Songs requiring judges to be free of blemishes the *halakha* that the judges for *halitza* may be laymen. He questions this because, as he explains, the fact that Solomon later mentioned that judges must be free of blemishes does not imply that the Torah's verses about *halitza* cannot be indicating that. He explains that Solomon must have known that judges cannot have physical blemishes, either through an oral tradition or a halakhic derivation unknown to us. Since there is such a source, the Torah would not need to state it with regard to the judges of *halitza* unless they were not actual expert judges, as the Gemara concludes.

ורבי יהודה הדיוטות מנא ליה נפקא ליה מ"לעיני", דאמר מר: "לעיני" – פרט לסומים.

ומדאי צטרך "לעיני" למעוטי סומים – שמע מינה דאפילו הדיוטות, דאי סלקא דעתך סנהדרין בעינן – למה לי למעוטי סומין? מדתני רב יוסף נפקא, דתני רב יוסף: כשם שבית דין מנוקים בצדק – כך בית דין מנוקים מקל מום,

שנאמר "כלך יפה רעיתי ומום אין בך". ואידך, ההוא "לעיני" מאי עביד ליה? ההוא לכדרבא הוא דאתא, דאמר רבא: צריכי דיני למיחוי רוקא דקא נפיק מפומא דיבמה, דכתביב "לעיני הזקנים... וירקה".

ואידך נמי, מיבעי ליה לכדרבא! אין הכי נמי ואלא הדיוטות מנא ליה? נפקא מ"בישראל" – ישראל כל דהו.

ואידך, האי "ישראל" מאי עביד ליה? מיבעי ליה לכדתני רב שמואל בר יהודה: "בישראל" – בבית דין של ישראל, ולא בבית דין של גרים.

The Gemara asks: From where does Rabbi Yehuda derive the *halakha* that *halitza* can be done in the presence of laymen?^N The Gemara answers: He derives it from what is written: "Before the eyes of the Elders" (Deuteronomy 25:9), for the Master said: "Before the eyes of" excludes blind individuals from being the judges conducting the *halitza*.

And since it was necessary to say "before the eyes of" to exclude blind individuals from being judges for *halitza*, learn from here that even laymen are qualified to be judges for *halitza*. For if it enters your mind to say that we require expert judges who are fit to sit on the high court of the Sanhedrin, then why do I need to exclude blind individuals? For that matter can be derived from a *baraita* that Rav Yosef taught, as Rav Yosef taught: Just as a court must be clean in righteousness, as they are careful to judge others justly, and are free of guilt and suspicion, likewise a court must be clean of any physical blemish,^H with judges who are physically complete.

This is as it is stated: "You are entirely beautiful,^N my love, and there is no blemish in you" (Song of Songs 4:7). If the Elders conducting *halitza* needed to be expert judges, there would be no reason to explicitly exclude the blind, as they are unfit to be judges in a regular court. Evidently it is permitted for laymen to be judges for *halitza*, and only blind individuals are excluded. The Gemara asks: And the other Sage, the first *tanna*, what does he do with the verse "before the eyes of"? The Gemara answers: That verse comes for that which Rava taught, as Rava said: The judges must see the spittle^H that exits from the mouth of the *yevama* as part of the ceremony of *halitza*, as it is written: "His *yevama* shall approach him, before the eyes of the Elders, and remove his shoe from on his foot and spit before him and respond and say: So shall it be done to the man who does not build his brother's house" (Deuteronomy 25:9).

The Gemara asks: If so, the other Sage, Rabbi Yehuda, should also require "before the eyes" to teach Rava's statement. The Gemara answers: Yes, this is so, as Rabbi Yehuda understands "before the eyes" as requiring the judges to see the spittle. But then from where does he derive the eligibility of laymen? He derives it from the phrase: "In Israel," in the verse "And his name shall be called in Israel" (Deuteronomy 25:10), which indicates that any Israelite, even one who is not an expert judge, may preside over *halitza*.

The Gemara asks: And with regard to the other Sage, the first *tanna*, what does he do with this phrase: "In Israel"? The Gemara answers: He requires it for that which was taught by Rav Shmuel bar Yehuda: "In Israel" means in a court of Israelites from birth, and not in a court of converts.^H The mitzva of *halitza* must be conducted by judges who can trace their lineage to other Jews from birth, and not converts.

HALAKHA

The judges must see the spittle – **צריכי דיני למיחוי רוקא** – During *halitza* the *yevama* must stand across from the *yavam* and spit saliva on the ground so that it will be visible to the judges from the moment it leaves her mouth until it hits the ground. If the judges did not see the spittle as it left her mouth, it is still valid (Rambam *Sefer Nashim*, *Hilkhot Yibbum* 4:6; *Shulhan Arukh Even HaEzer* 169:38), as Rava never said that if they did not see the spittle leaving her mouth the *halitza* is disqualified (*Maggid Mishne*).

Halitza before converts – **חליצה בגרים**: The mitzva of *halitza* takes place before three Jewish judges. If one of them is a close relative, someone unfit for testimony, or a convert, the *halitza* is disqualified, in accordance with Rav Shmuel bar Yehuda's statement with regard to converts (Rambam *Sefer Nashim*, *Hilkhot Yibbum* 4:5; *Shulhan Arukh, Even HaEzer* 169:1–2).

You should all respond: He who had his shoe removed – ענו כולכם חלוץ הנעל: After they have the yevama say: “So shall it be done to the man who does not build his brother’s house, and his name shall be called in Israel: The house of he who had his shoe removed” (Deuteronomy 25:9–10), it is a mitzva for all of the bystanders to repeat three times: “He who had his shoe removed.” Some say, in accordance with Rabbi Yehuda’s opinion, that the yevama must also say this (Rambam *Sefer Nashim, Hilkhot Yibbum* 4:8; *Shulhan Arukh, Even HaEzer* 169:42).

Counsel appropriate for him – עצה ההוגנת לו: The judges call to the yavam and give him advice, with him and the yevama in mind, on whether to enter into levirate marriage or to perform *halitza* (Rambam *Sefer Nashim, Hilkhot Yibbum* 4:1; *Shulhan Arukh, Even HaEzer* 161:1).

Refusal before two men – מִיֵּאוֹן בְּשָׁנִים: A woman may make a declaration of refusal even outside of a court as long as there are two men who witness it, in accordance with Rav Nahman’s halakhic decision. Some say, based on the opinion of *Tosafot*, that three men are required *ab initio*, as even Rav Nahman’s ruling was meant only to teach when the *halitza* is invalid (Rambam *Sefer Nashim, Hilkhot Geirushin* 11:8; *Shulhan Arukh, Even HaEzer* 155:4).

NOTES

However if that is so: And they shall call, is referring to two people – אֵלֶּיָא מַעֲתָה וְקָרְאוּ שָׁנִים: The question of the Gemara here is: Since Rabbi Yehuda bases his statements on the fact that the word “Elders” is mentioned in this part of the Torah several times, then, according to his method of interpretation, shouldn’t he also expound other plural terms in the same manner? (*Arukh LaNer*).

The judges themselves and not their agents – וְלֹא שְׁלוּחִים: The halakhic authorities did not record as *halakha* that the judges must personally call the yavam and yevama to court for *halitza*. One may infer that they understood this *halakha* to mean only that the judges must address the yavam and yevama directly when advising them whether to enter into levirate marriage, and not speak to them by means of intermediaries (*Arukh LaNer*).

Counsel appropriate for him – עצה ההוגנת לו: The *ge'onim* wrote, and the Rambam also ruled, that this does not mean that they provide appropriate counsel for the yavam alone. Rather, the judges provide advice that is appropriate for both of them, meaning that they also take the needs of the yevama into consideration and decide the matter based on weighing the best options for both of them.

ואיך? “בישראל” אחרת? אומר רבי יודא: פעם אחת היינו יושבין לפני רבי טרפון ובאה יבמה לחלוץ, ואמר לנו: ענו כולכם “חלוץ הנעל”.

The Gemara asks: And with regard to the other Sage, Rabbi Yehuda, from where does he derive this *halakha*? The Gemara answers: “In Israel” is written another time as well (Deuteronomy 25:7, 10), and that is the source of this principle. And the other, the first *tanna*, what does he do with this additional “In Israel”? The Gemara explains: He requires it for that which is taught in a *baraita*, that Rabbi Yehuda said: Once we were sitting in study before Rabbi Tarfon, and a yevama came to perform *halitza*, and he said to us: After the *halitza* is completed, you should all respond: “He who had his shoe removed.”^h He understands the verse “His name shall be called in Israel” (Deuteronomy 25:10) to mean that all those who witness the *halitza* must respond: “He who had his shoe removed” (Deuteronomy 25:10).

ואיך? מ’ונקרא נפקא.

The Gemara asks: And the other, Rabbi Yehuda, from where did he derive this *halakha*? The Gemara answers: He derives it from the phrase “Shall be called,” that those who attend the *halitza* must respond aloud.

אלא מעתה: וקראו – שנים: ודברו – שנים, הכי נמי לרבי יהודה הרי כאן תשעה, לרבנן הרי כאן שבעה!

The Gemara returns to the dispute concerning the number of judges: However, if that is so, that the plural term “Elders” indicates the need for additional judges, there are other plural terms written in the verse that should also indicate the need for additional judges. As the verse states: “And they shall call”; this is referring to two people.ⁿ “And they shall speak” indicates two more. Therefore, according to Rabbi Yehuda’s interpretation there should be nine judges here, and according to the Rabbis there should be seven here.

הוא מיבעי ליה לכדתנא: וקראו לו – ולא שלוחם: ודברו אליו – מלמד שמשכינין לו עצה ההוגנת לו: שאם היה הוא ילד והיא זקנה, הוא זקן והיא ילדה, אומרים לו: מה לך אצל ילדה, מה לך אצל זקנה? כלך אצל שכמותך ואל תכניס קטטה לתוך ביתך.

The Gemara answers: That verse is necessary for him to derive the *halakha* that is taught in a *baraita*: “They shall call him” means the judges themselves and not their agents.ⁿ “They shall speak to him” teaches that they give him counsel appropriate for him^h concerning whether he should perform levirate marriage or *halitza*. For example, if he was a young boy and she was elderly, or if he was elderly and she was a young girl, they would tell him not to enter into levirate marriage because: What are you doing with a young girl if you are an old man? What are you doing with an elderly woman if you are a young boy? Go be with someone like yourself, closer to your own age, and do not bring a quarrel into your household, as the age difference will be a cause for disputes and strife later.

אמר רבא אמר רב נחמן: הלכה, חליצה בשלשה, הואיל וסתם לן תנא כוותיה. אמר ליה רבא לרב נחמן: אי הכי מיאון נמי דתנן: המיאון והחליצה בשלשה.

Rava said that Rav Nahman said: The *halakha* is that *halitza* takes place before three men, since the *tanna* taught us this opinion as an unattributed mishna in the beginning of the chapter, in accordance with this opinion, indicating that this is the *halakha*. After he heard him say this, Rava said to Rav Nahman: If that is so, then declarations of refusal, written on behalf of a girl who as a minor was married to a man by her brother or mother after the death of her father, and is given the right to refuse the marriage upon reaching majority, also should be performed before three men. As we learned in a mishna (25b): Declarations of refusal and *halitza* are performed before three judges.

וכי תימא הכי נמי – והתנא: מיאון, בית שמאי אומרים: בית דין מומחין, ובית הלל אומרים: בבית דין ושלם בבית דין, אלו ואלו מודים שצריך שלשה. רבי יוסי ברבי יהודה ורבי אלעזר ברבי יוסי מכשירין בשנים. ואמר רב יוסף בר מניומי אמר רב נחמן: הלכה כאותו דוג!

And if you would say that indeed three men are required, but isn’t it taught in a *baraita*: With regard to refusal, Beit Shammai say that a declaration of refusal may be performed only by a court of experts, and Beit Hillel say: It may be performed in a court of experts, or not in a court of experts. Both concede that whether the judges are experts or not, three men are required. On the other hand, Rabbi Yosei, son of Rabbi Yehuda, and Rabbi Elazar, son of Rabbi Yosei, validate declarations of refusal even before two men.^h And Rav Yosef bar Minyumi said that Rav Nahman said: The *halakha* follows that pair. Evidently, Rav Nahman is willing to rule differently from the unattributed mishna that rules that three judges are necessary for *halitza*.

If she made a declaration of refusal or performed *halitza* before a judge – **מיאנה או שחלצה בפניו**: If a woman made a declaration of refusal or performed *halitza* before a court, it is permitted for any one of the judges to marry her, as there is no room for suspicion of wrongdoing on the part of the judge (*Shulhan Arukh, Even HaEzer 12:2*).

Ordination of Elders – סמיכת זקנים: The laying of hands, which is the manner of ordination, and the appointment of Elders may be performed only by three ordained Sages (Rambam *Sefer Shofetim, Hilkhoh Sanhedrin 4:3*). There is no disagreement in the Gemara with regard to the need for three Sages to ordain a new Elder (*Kesef Mishne*).

Breaking the heifer's neck – עיריפת עגלה: The heifer's neck is broken before five judges (Rambam *Sefer Shofetim, Hilkhoh Sanhedrin 5:5*) as the *halakha* follows Rabbi Yehuda, not Rabbi Yosei (*Kesef Mishne*).

The judges need to establish a location – צריכי דיני למיקבע דוכתא: The judges conducting the *halitza* must establish a place ahead of time *ab initio*, that in such and such location they will perform *halitza*, in accordance with Rava's statement. After the fact, if they did not establish a location, the *halitza* is still valid (Rema, based on *Tur* and Rambam).

The custom is that the judges sit in the synagogue at a set time and announce that they are establishing a location for *halitza* for the following day or another day, and they perform the *halitza* in the location they established (Rambam *Sefer Nashim, Hilkhoh Yibbum 4:2*; *Shulhan Arukh, Even HaEzer 169:4*; see *Taz* and *Yam shel Shlomo*).

Conducted a case of halitza before five judges – עבדי עובדא בחמישה: It is fitting that they should add another two men to the panel of three judges and perform the *halitza* before five men *ab initio*, even if the additional participants are ignoramuses. The two additional judges should not be relatives or disqualified witnesses *ab initio*, but after the fact the *halitza* is valid no matter who the two may be (Rambam *Sefer Nashim, Hilkhoh Yibbum 4:5*; *Shulhan Arukh, Even HaEzer 155:3*, and in the comment of Rema). The Rema cites the dispute over the number of judges present when breaking a heifer's neck and concludes that one should be stringent *ab initio*, but after the fact one can rely on the more lenient opinions.

התם חד סתמא, והכא תרי סתמי. התם נמי תרי סתמי מנהו! דתנן: מיאנה או שחלצה בפניו – ישאנה, מפני שהוא בבית דין!

אלא: התם תרי סתמי, הכא תלתא סתמי.

מכדי, הא סתמא והא סתמא, מה לי חד סתם, מה לי תרי סתם, מה לי תלתא? אלא אמר רב נחמן בר יצחק: הואיל וסתם במקום מחלוקת,

דתנן: סמיכת זקנים ועגלה ערופה בשלשה, דברי רבי יוסי. רבי יהודה אומר: בחמשה. החלצה והמיאונן בשלשה, ולא קפליג רבי יהודה, שמע מינה הדר ביה רבי יהודה, שמע מינה.

אמר רבא: צריכי דיני למיקבע דוכתא, דכתוב "ועלתה יבמתו השערה אל הזקנים". רב פפא ורב הונא בריה דרב יהושע עבדי עובדא בחמשה. כמאן, כרבי יהודה? והא הדר ביה! לפרסומי מילתא.

The Gemara answers: **There**, with respect to declarations of refusal, there is only **one unattributed** mishna (*Sanhedrin 2a*) that states that refusals are performed before three judges, and **here**, there are **two unattributed** *mishnayot* that state that *halitza* is performed before three judges, both here and also in that same mishna in tractate *Sanhedrin*. The Gemara challenges the previous claim: **There too**, with regard to refusals, **there are two unattributed** *mishnayot*, as we learned in a mishna (25b): **If she made a declaration of refusal or performed halitza before a judge**,^H this judge may marry her if he wishes to, as there is no suspicion of ulterior motives, **because he is a member of a court**. This mishna implies that declarations of refusal may take place only before a court.

The Gemara concedes: **Rather, there**, with regard to refusals, there are only **two unattributed** statements found in the mishna, **and here**, with regard to *halitza*, there are **three unattributed** statements found in the mishna. That convinces us to rule in accordance with those three sources requiring three for *halitza*.

The Gemara asks: **Since this is supported by an unattributed** mishna **and that is supported by an unattributed** mishna, **what difference does it make to me** if there is **one unattributed** mishna? **What difference does it make to me** if there are **two unattributed** *mishnayot*?^N **What difference does it make to me** if there are **three unattributed** *mishnayot*? **Rather**, Rav Nahman bar Yitzhak said: This ruling was made **because the unattributed** mishna, which states that *halitza* requires three men, is recorded unequivocally in a place where it is adjacent to a different dispute involving Rabbi Yehuda.

As we learned in a mishna (*Sanhedrin 2a*): **Ordination of Elders^H and the ceremony of the heifer whose neck is broken^H are performed before three judges**; this is the statement of Rabbi Yosei. **Rabbi Yehuda says: Before five. Halitza and declarations of refusal are performed before three**. The Gemara explains the rationale to rule on the basis of this mishna that *halitza* should in fact be performed before three: **And since Rabbi Yehuda did not dispute** this second statement concerning *halitza* even though he disputed the first *halakha* in the mishna, **learn from here: Rabbi Yehuda retracted** his opinion concerning *halitza* and no longer required that it be performed before five men. The Gemara concludes: **Indeed, learn from here** that he retracted his opinion, and three judges are sufficient for conducting *halitza*.

S The Gemara begins a discussion concerning the halakhic details of *halitza*. **Rava said: The judges need to establish a location^{HN}** ahead of time where the *halitza* will be performed, **as it is written: "His yevama shall ascend to the gate to the Elders"** (Deuteronomy 25:7), indicating that there is an established place, "the gate," for the court to convene for *halitza*. The Gemara relates: **Rav Pappa and Rav Huna, son of Rav Yehoshua, conducted a case of halitza before five judges.**^H The Gemara asks: **In accordance with whose opinion were they ruling?** If you say they ruled in accordance with the opinion of **Rabbi Yehuda**, but it was proven above that **Rabbi Yehuda retracted** his initial opinion and requires only three judges. The Gemara answers: They did this only **to publicize the matter^N** and not because this number of judges is required.

NOTES

What difference does it make to me if there is...two unattributed mishnayot, etc. – **מה לי תרי סתם וכי**: The Gemara's question indicates that even if one could claim that a single unattributed mishna does not demonstrate that that opinion is accepted as *halakha*, certainly if the same *halakha* in the mishna is taught in unattributed *mishnayot* more than once it must be indicative of the halakhic conclusion. If so, one need not distinguish between two or three unattributed *mishnayot*. Rav Nahman bar Yitzhak therefore explains that Rabbi Yehuda

changed his mind and conceded that *halitza* may be performed before only three judges.

The judges need to establish a location – צריכי דיני למיקבע דוכתא: In *Yam shel Shlomo* the question is raised as to why this *halakha* of Rava is mentioned in the middle of the discussion concerning the number of judges required for *halitza*. The *Arukh LaNer* explains that the Gemara's line of reasoning would seem to indicate that the judges establish a location for *halitza* in order to publicize the matter, and therefore it is relevant to

the discussion of the number of judges, as it is stated that five judges participate in order to publicize the *halitza*.

To publicize the matter – לפרסומי מילתא: The commentaries explain that there are two reasons for publicizing the *halitza*. Doing so informs potential suitors that from then on it is permitted for the woman who performed *halitza* to be married, and it also apprises priests of the fact that she has performed *halitza*, as it is prohibited for them to marry a *halitza*, i.e., a *yevama* who has performed *halitza* (Rashi; Meiri).

Bundle [zirza] – זירזא: From the Aramaic root z-r-z, meaning to gird or tie. In this context the word *zirza* means a bundle.

PERSONALITIES

Rav Shmuel bar Yehuda – רב שמואל בר יהודה: Rav Shmuel bar Yehuda was a Babylonian *amora* whose life spanned the second and third generations of *amora'im*. According to what is told here it seems that he was born to a family of converts, and it is possible that he and his father actually converted.

His principle teacher was Rav Yehuda, with whom he shared a close affiliation. The Gemara here relates that Rav Yehuda valued his honesty.

For a while, Rav Shmuel bar Yehuda lived in Eretz Yisrael. At some point he returned to Babylonia and transmitted valued halakhic traditions from Israel to the Sages of the Diaspora. In the Talmud we find him engaged in halakhic debate with Rav Yehuda, Rav Yosef, Rav Zeira, and Ulla.

רב אשי איקלע לבי רב כהנא. אמר ליה: סליק מר לגבן למלווי בי חמשה. אמר רב כהנא: הוה קאימנא קמיה דרב יהודה ואמר לי: תא סק לזירזא דקני לאיצטרופי בי חמשה. אמרו לו: למיה לי חמשה? אמר להו: בי היכי דליפרסם מילתא.

It is told further: Rav Ashi once happened to come to Rav Kahana's house. Rav Kahana said to Rav Ashi: Will the master come up with us to complete the quorum of five men in order to perform *halitza*? Rav Kahana said further: When I stood before Rav Yehuda, he said to me: Go up to the bundle [zirza]¹ of reeds to join the five^N men who will oversee the performance of *halitza*, as a bundle of reeds had been set aside to be the established location where the court will convene to conduct cases of *halitza*. Those in attendance said to Rav Yehuda: Why do I need five if three are sufficient? He said to them: In order to publicize the matter, and not because it is a halakhic obligation.

רב שמואל בר יהודה הוה קאי קמיה דרב יהודה, אמר ליה: סק תא לזירזא דקני לאיצטרופי בי חמשה, לפרסומי מילתא. אמר ליה: תימנא בישראל – בבית דין ישראל, ולא בבית דין של גרים, ואנא גר אנא.

It is told: Rav Shmuel bar Yehuda^P was standing before Rav Yehuda. Rav Yehuda said to him: Go up to the bundle of reeds to complete the quorum of five in order to publicize the matter of this *halitza*. Rav Shmuel bar Yehuda said to him: We learned that the phrase “In Israel” in the verse: “And his name shall be called in Israel” (Deuteronomy 25:10) indicates that *halitza* must be performed before a court of Israelites from birth, and not before a court composed of converts,^N but I am a convert, as Rav Shmuel bar Yehuda had converted along with his father.

אמר רב יהודה: כגון רב שמואל בר יהודה מפיקנא ממונא אפומיה. מפיקנא סלקא דעתך?! והא על פי שנים עדים אמר רחמנא! אלא: מרענא שטרא אפומיה.

Rav Yehuda said to him: I would exact payment based on the word of someone such as Rav Shmuel bar Yehuda, as he has shown that he is upright and honest by revealing this unknown fact about himself. The Gemara questions: Does it enter your mind that one can actually exact payment based on the word of one man, no matter how honest he seems to be? Doesn't the Merciful One state in the Torah: “By the mouth of two witnesses or by the mouth of three witnesses, shall a matter be established” (Deuteronomy 19:15), indicating that one can exact payment based only on the evidence of at least two witnesses? Rather, the Gemara explains that Rav Yehuda's intention was to say: I would declare a bill of indebtedness invalid based on his word,^H accepting his claim that the debt had been collected.

אמר רבא: Parenthetical to mentioning the status of a convert with regard to a court of *halitza*, the Gemara relates: Rava said:

NOTES

To join the five – לאיצטרופי בי חמשה: The commentaries disagree as to whether converts as well as others who are disqualified from being judges for *halitza* can at least be used to complete the quorum of five for *halitza*. The additional two are merely bystanders, added to the basic requirement of three judges, for the purpose of publicizing the *halitza*. The Rambam rules that a convert is not qualified even for the role of a bystander. Support for this opinion can be found in the behavior of Rav Shmuel bar Yehuda, who was unwilling to serve even as one of the additional two bystanders. However, others understand that Rav Shmuel bar Yehuda was called to be one of the three primary judges, and therefore he refused. If, however, there are already three judges, and they want two additional men only

to publicize the matter, then even a convert is valid (Ritva; see Rosh). The *Arukh LaNer* adds that one might adduce proof for this opinion from the way in which Rav Yehuda overstated his praise for Rav Shmuel, indicating that the stature of Rav Shmuel would make him fit to be one of the actual judges, and that is what he was being offered.

ולא בבית – דין של גרים: Although it is ruled conclusively in the Babylonian Talmud that a convert is not valid as a judge for *halitza*, in the Jerusalem Talmud this is recorded as a dispute between *tanna'im*. Some *tanna'im* validate *halitza* before a convert, as they understand that the repetition of the phrase “in Israel” in the verse actually comes to include converts.

HALAKHA

I would declare a bill of indebtedness invalid based on his word – מרענא שטרא אפומיה: A judge must be precise concerning the truth of the testimony in monetary cases, and he must judge based on what seems true to him. Therefore, if a contractual document comes before a judge for collection, and someone he trusts, even if he is a close relative or someone else disqualified as a witness, says that the debt has been collected,

the judge may require the claimant to take an oath before collection, or can decide not to collect based on the document. This is the basic *halakha*, in accordance with Rav Yehuda's statement here. The Rambam, however, states that since corrupt courts have become widespread, we may no longer declare a contract to be flawed without adequate evidence (Rambam *Sefer Shofetim*, *Hilkhot Sanhedrin* 24:1; *Shulhan Arukh*, *Hoshen Mishpat* 15:5).