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 tannaim, 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 22:17), 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, 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 striking 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 Yoḥanan 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 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 and one patrilineal family, he receives one share, as he cannot be rejected.

The priestly watch and the patrilineal family – דף וקילל. 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 pilgrimage 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 Tosafot 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.

One priestly watch – דף וקילל. 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 Kiddusha, Hilkhot Issurei Bia 20:18).

NOTES

That does not involve partnership – דף וקילל. The exemption is explained differently in the Jerusalem Talmud. The phrase: His father, stated with regard to both prohibitions (Exodus 21:17, 12:25), is understood as referring exclusively to a definite father.

BACKGROUND

The priests were divided into twenty-four watches, which took turns serving in the Temple for one week at a time. Each watch was further divided into patrilineal families. Many commentaries claim that there were six such families in each watch. However, in the Tosafot 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 – דף וקילל. 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 Kiddusha, Hilkhot Issurei Bia 20:18).
MISHNA The mitzva of halitza, the ritual through which the yavam frees the yevamah 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.1 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 [anpilka] made of cloth, her halitza is invalid,2 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 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 verses 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 yevamah 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.
A court must be clean of any blemish – even laymen must be physically unblemished as well (Rambam Sefer Shoftim, Hilkhot Sanhedrin 2:6).

As it is stated: “You are entirely beautiful” – אִם כִּי נָעֲמָה תֵּעָשֵּׂה. 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 15:2). Similarly, the words “mountain of myrrh” (Song of Songs 2:7) refer to Mount Moriah, the location of the Chamber of Hewn Stone, in which the Sanhedrin sat (see Midrash Rabbah and Taqon 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 Ran already asks how the Gemara derives from a verse in Song of Songs requiring judges to be free of blemishes the halitza 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 halachic 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.

The Gemara asks: From where does Rabbi Yehuda derive the halitza can be done in the presence of laymen? The Gemara answers: He derives it from what is written: “Before the eyes of the Elders” (Deuteronomy 25:10), 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, with judges who are physically complete.
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.” 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).

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.

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. “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.

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. “They shall speak to him” teaches that they give him counsel appropriate for him 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.

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 (35b): Declarations of refusal and halitza are performed before three judges.

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. 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.

NOTES

However if that is so: And they shall call, is referring to two people – בְּכִי שַׁנַּיִם נַנְכִּישׁוּ לְשׁוֹם. 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 Later).

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

Counsel appropriate for him – יְבָמָה אָמַר הַהוֹגֶנֶת. The geonom wrote, and the Rambam also ruled, that this does not mean that they provide appropriate counsel for the yevam alone. Rather, the judges provide advice that is appropriate for both of them, meaning that they also take the needs of the yevam into consideration and decide the matter based on weighing the best options for both of them.
If she made a declaration of refusal or performed the halitza before a judge — רבי יהודה אמר: If a woman made a declaration of refusal or performed the halitza before a court, it is permitted for any of the judges to marry her, as there is no room for suspicion of wrongdoing on the part of the judge (Shulchan Arukh, Even HaZer 13:2).

Ordination of Elders — rema כו: The laying of onen, which is the manner of ordination, and the appointment of Elders may be performed only by three ordained Sages (Rambam Sefer Shotehim, Hilkhos 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 — והכירו ביאר: The heifer’s neck is broken before five judges (Rambam Sefer Shotehim, Hilkhos Sanhedrin 5:5) as the halitza follows Rabbi Yehuda, not Rabbi Yosei (Kesef Mishne).

The judges need to establish a location — רביעי חזק: 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 Rav’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, Hilkhos Yibbum 4:2; Shulchan Arukh, Even HaZer 169:4; see Taz and Yom shei Shlomo).

Conducted a case of halitza before five judges — רבי יהודה אמר: 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, Hilkhos Yibbum 4:5; Shulchan Arukh, Even HaZer 153, and in the comment of Rama). 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.

What difference does it make to me if there is…two unattributed mishna, etc. — רבינו בן יהודה אמר ליה: The Gemara’s question indicates that even if one could claim that a single unattributed mishna does not demonstrate 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 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? 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 and the ceremony of the heifer whose neck is broken 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.

The Gemara begins a discussion concerning the halakhic details of halitza. Rava said: The judges need to establish a location ahead of time where the halitza will be performed, as it is written: “His yevamah 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. 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 and not because this number of judges is required.
It is told: Rav Shmuel bar Yehuda\(^2\) 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 perform \(halitza\). 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,\(^3\) but I am a convert, as Rav Shmuel bar Yehuda had converted along with his father.

Parenthetical to mentioning the status of a convert with regard to a court of \(halitza\), the Gemara relates: Rava said:

\(\text{Rava said:}  \\
\text{אָמַר רַבָּה}  \\
\text{רַבָּה הִיא דְּרַבָּא בּוֹתֵר רַבָּא, רַבָּה הִיא דְּרַבָּא בּוֹתֵר רַבָּא},  \\
\text{רַבָּה הִיא דְּרַבָּא בּוֹתֵר רַבָּא, רַבָּה הִיא דְּרַבָּא בּוֹתֵר רַבָּא},  \\
\text{רַבָּה הִיא דְּרַבָּא בּוֹתֵר רַבָּא, רַבָּה הִיא דְּרַבָּא בּוֹתֵר רַבָּא},  \\
\text{רַבָּה הִיא דְּרַבָּא בּוֹתֵר רַבָּא, רַבָּה הִיא דְּרַבָּא בּוֹתֵר רַבָּא}.  \\
\text{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,\(^4\) accepting his claim that the debt had been collected.}

Notes:

1. 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 HaRav 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.

2. 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 \(tannaim\). Some \(tannaim\) validate \(halitza\) before a convert, as they understand that the repetition of the phrase “In Israel” in the verse actually comes to include converts.

3. 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 \(zirza\) of reeds to join the five\(^5\) 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.

4. I would declare a bill of indebtedness invalid based on his word,\(^6\) 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 \(tannaim\). Some \(tannaim\) validate \(halitza\) before a convert, as they understand that the repetition of the phrase “In Israel” in the verse actually comes to include converts.