The halakha does not follow this pair – Even HaEzer 242.

How can we know what happened between him and her – Rambam: The Rashi proves from here that alitza is considered a matter of forbidden sexual relationships, which requires the presence of two witnesses to deem it a valid act. Therefore, even though both the yavam and the yevoma agree that alitza took place, it is insufficient to deem it valid. Others explain that for alitza to be valid it must be performed in the presence of a court, and therefore, even if one would trust the couple’s word that the alitza took place, it is not considered a halakhically valid act so long as it was done in private.

In prison – Yerushalmi: The Yerushalmi questions why it is necessary to determine the exact location of the incident and the location of Rabbi Akiva when he validated the act. After all, the halakha does not even follow Rabbi Akiva’s opinion in this matter. He answers that the Gemara here clarifies that if three people were present, then certainly the halitza would be valid even in a prison, despite the fact that it was not an established place for the court to meet, as all of the additional requirements for the proper location of a halitza are not indispensable.

NOTES:

If she performed halitza before two or three people, and one of them is found to be disqualified to serve as a judge, Rabbi Shimon and Rabbi Yohanan the Cobbler validate it. If she performed halitza in private, and the yavam is not well versed in halakha: Let her remove your shoe, and in doing so you will take her in marriage, i.e., the yavam understands that by allowing halitza he will actually be marrying her. Although he actually intended to marry her, having allowed her to remove his shoe validates the halitza. Subsequently it is prohibited for the woman to marry him, and she is permitted to others.

The Gemara answers: Both are necessary, for if only the first one, stating that halitza must be before three judges, were stated, I would say: This applies ab initio, but after the fact even two is acceptable. Therefore, he teaches us that the halakha does not follow this pair of Sages, and her halitza before two people is invalid even after the fact. And vice versa: If he would have told us only that the halakha does not follow this pair, but rather the first tanna, I would say that it is valid if performed before three people only after the fact, but they must require five people ab initio, in accordance with Rabbi Yehuda’s opinion. Therefore it is necessary to say both of these statements.

A story is told in the mishna about an incident in which a couple once performed halitza between themselves in private while alone in prison, and the case later came before Rabbi Akiva and he validated it. The Gemara asks: How can we know what happened between him and her? There was no testimony to confirm it, and how can we be certain that the halitza was done properly to validate it? Rav Yehuda said that Shmuel said: And the halitza was validated because there were witnesses who saw them from outside the prison, who testified that the halitza was performed properly.

A dilemma was raised before the students in the house of study with regard to the incident recorded in the mishna in which a private halitza performed in a prison was validated: Did the incident in which they performed halitza between him and her privately actually take place outside in a different locale, and the reference to prison is that the case came before Rabbi Akiva when he was confined in prison? Or, perhaps the incident when they performed halitza between him and her took place in prison, and then this case came before Rabbi Akiva? Rav Yehuda said that Rav said: The halitza incident took place in prison, and also the case came to Rabbi Akiva when he was in prison.

The Sages taught: A mistaken halitza is valid. The Gemara asks: What constitutes a mistaken halitza? Reish Lakish said: Any case in which they say to a yamim who is not well versed in halakha: Let her remove your shoe, and in doing so you will take her in marriage, i.e., the yamim understands that by allowing halitza he will actually be marrying her. Although he actually intended to marry her, having allowed her to remove his shoe validates the halitza. Subsequently it is prohibited for the woman to marry him, and she is permitted to others.

Rabbi Yohanan said to him: I teach that whether in a case where he had intended to perform valid halitza and she did not intend, or whether she had intended and he did not intend, the halitza is invalid, unless they both intend together as one to perform a proper halitza that would permit her to marry others. And yet you say that in that case when he does not have any intention of permitting her to others, and actually intends to marry her through the act of halitza, her halitza is valid!

The halitza must be performed with proper intention – even a woman alitza, any halitza in which both parties do not intend to exempt the woman is invalid (Rambam Sefer Nashim, Hilkhos Yibbum 4:16; Shulhan Arukh, Even HaEzer 169:44).
A mistaken halitza is valid – רחַב: שליחת. If a yavam was deceived, e.g., if they said to him that the woman will pay him a large sum of money if he allows halitza, even if she does not pay him anything afterward, the halitza is valid, in accordance with Rabbi Yoḥanan’s opinion. Even so, she is still obligated to give him what they agreed upon. This is in accordance with what Abaye said to the woman who performed halitza before him. However, in a case where the yavam is obligated by the court to perform halitza and he did not want to and therefore the court deceived him into doing so, then she does not owe him anything and need not pay, as in the case that came before Rabbi Hiyya (Rambam, Sefer Nashim, Hilkhot Yibbum 4:24; Shulḥan Arukh, Even Ḥalitzah 169:50).  

Rather, a mistaken halitza that is valid refers to any case in which they say to him: Let her perform halitza on you, with the intention of releasing her bond, on the condition that she will give you two hundred dinars afterward, and even if she does not give him the money, the halitza is valid, as the stipulated condition is not binding.” This idea of Rabbi Yoḥanan is also taught in a baraita, which states: A mistaken halitza is valid.” What constitutes a mistaken halitza? Any case in which they say: Let her perform halitza on you on condition that she will give you two hundred dinars.

And an incident occurred involving a certain woman, who happened before her yevam for levirate marriage, yet he was not suitable for her, and they, the judges, said to him: Let her perform halitza on the condition that she will give you two hundred dinars. Afterward, when she did not pay, the incident came before Rabbi Hiyya and he validated that halitza.

One man came before Rabbi Hiyya bar Abba with his yevama in order to have the court convince her to perform a levirate marriage. Rabbi Hiyya said to her: My daughter, stand up, for we are beginning to discuss your case now, and the participants must stand. She said to him: Say that her siyya and you know him well enough to know why he wants to perform levirate marriage with you although you are not interested? She said to him: Yes, it is money that he saw in her, a euphemism for herself, and he wants to consume it by taking it from her, and therefore he wishes to enter levirate marriage.

Rabbi Hiyya said to her: Is he not amenable to you? She said to him: No, I am certain he is not good for me. Rabbi Hiyya accepted her wish, but knowing that the yevam was adamant in his desire to marry her, he said to the yevam: Let her remove your shoe, and in doing so you will take her in marriage, for he wanted to mislead him into allowing halitza, which would disqualify a subsequent levirate marriage between them. After he allowed her to perform halitza, Rabbi Hiyya said to the yevam: Now, she is disqualified for you forever, since you allowed her to perform halitza. Although you thought it was an act of marriage, she is no longer permitted to marry you, so you have nothing to lose if you permit her to marry others. Therefore, allow her to perform valid proper halitza, so she will be permitted to others. By performing a second halitza, even Rabbi Yoḥanan, who disqualified this form of a mistaken halitza, would have no problem permitting her to remarry based on the second halitza.

Conditions with regard to performing halitza – רחַב: שליחת: The Gemara’s explanation of the details of the halitza of a mistaken halitza are predicated upon the assumption that one is not permitted to stipulate conditions with regard to halitza. Even if one were to stipulate a condition for halitza on the condition is deemed null and void, and the halitza is valid even if the condition is not fulfilled. Rashi explains that the rationale behind this principle is based on the Gemara in tractate Ketubot (74a). There it says that the biblical source stipulating that conditions are generally binding is from the Torah passage detailing the conditions set by Moses for the children of God and the children of Reuven to inherit the land in Transjordan (see Numbers 21:20–24). Therefore, conditions may apply only in cases similar to the biblical source. One of the relevant requirements for the condition to be binding is that it be contingent on an act that can be performed through an agent. Since halitza must be performed specifically by the yavam and the yevama, unlike divorce, which can be accomplished through an agent, it is therefore not possible to set conditions upon it. 

The Rosh in his Tosafot (see also Tosafot Had MiKkommede) provides an explanation based upon the other reason presented in the Gemara there: Since halitza is an action, a condition set through speech does not have the power to cancel it. A condition can limit the validity only of a matter that is contractual in nature, but because halitza is performed by way of an action, one cannot annul it through a verbal stipulation and consider it as if no action were performed. Others explain differently. Since halitza is a mitzva, one cannot attach a condition to it, just as he may not do so for other mitzvos, as the principle is that one cannot stipulate a condition concerning that which is written in the Torah (MeI Ne’efozri).

The incident came before Rabbi Hiyya, etc. – רחַב: שליחת: In the Jerusalem Talmud a slightly different version of this story appears, in which Rabbi Hiyya says to the man: This woman does not want to be your wife through levirate marriage, but rather through regular marriage. Therefore, allow her to perform halitza in order to undo the levirate bond, and afterward you can marry her consensually as a wife. After she performed halitza, Rabbi Hiyya then said to the yavam that from now on the woman is forbidden to him forever and he must go back and allow her to perform a second, proper halitza. The early commentators discuss what cases of mistaken and deceptive halitza are permitted. Are the examples stated explicitly in the Gemara the only types of permitted deception, as they broker an agreement in which the man allows halitza in return for sum of money or something similar? Or is any case effective in which the yavam performs halitza with the knowledge that in doing so he releases the yevam from the levirate bond, but conditions it upon another matter? See Rashba and Yom shel Shlomo.
It is told: The daughter of Rav Pappa’s father-in-law, i.e., his sister-in-law, happened before her yavam for levirate marriage, yet he was not suitable for her, although he wished to perform levirate marriage. The case came before Abaye. Abaye said to the yavam: Let her remove your shoe, and in doing so you will take her in marriage. Rav Pappa said to him: Does the Master, i.e., do you, not accept what Rabbi Yoḥanan said, that this type of halitza does not work at all? Abaye said to him: But what shall I say to him?

He said to Abaye that he should say to him as Rabbi Yoḥanan himself suggested: Let her perform halitza on the condition that she will give you two hundred dinars. Convince him to allow halitza on the basis that he will profit financially from it. Abaye told the yavam to do so and he did. After he let her perform halitza, Abaye said to Rav Pappa’s sister-in-law: Go give him the money, for you have agreed to give him two hundred dinars. Rav Pappa said to Abaye on her behalf that a case of: I was fooling you, was what she did to him. She never seriously intended to give him the money when accepting his stipulated condition, and even though the halitza is valid one cannot force her to pay.

Isn’t it taught in a baraita: One who was running away from prison and came upon a ferry. He said to the ferry man: Take a dinar, i.e., he offered to pay an amount much larger than the standard fee, and take me across the river. Despite the escapee’s commitment, it is ruled in the baraita that the ferryman receives nothing other than his usual rate, as the escapee is legally exempt from paying the higher amount he had agreed to pay.

Apparently, one could have said in such a case: I was deceiving you and never really intended to live up to my side of the agreement, and therefore it is not an actual debt. Here too, she may say to him: I was fooling you, and she is therefore exempt from paying the two hundred dinars. Abaye heard this and agreed.

Abaye was amazed at Rav Pappa’s sharpness, as he was a young man at the time of this incident. Therefore, he said to Rav Pappa: Where is your father? He said to him: He is in the city. Where is your mother? He said: In the city. Abaye, who was orphaned in his youth, felt that a large part of Rav Pappa’s success came because his parents lived in close proximity to him and provided for all his needs, freeing him from any need to get involved in business affairs and enabling him to immerse himself in Torah without distractions. Abaye felt a twinge of jealousy and set his gaze upon them, Rav Pappa’s parents, in the pain that he did not have similarly supportive parents, and both Rav Pappa’s father and mother died.

Rav Pappa, from the fifth generation of Babylonian amoraim, was a student of both Abaye and Rava in Pumbedita. After Rava’s death Rav Pappa established an academy in Neres, where he was joined by his close friend, Rav Huna, son of Rav Yehoshua, who was appointed chief lecturer. Many of Rava’s students came to study under Rav Pappa, who had more than two hundred students attending his lectures.

Rav Pappa’s father was a wealthy merchant and supported him throughout many years of Talmud study. Rav Pappa became a wealthy businessman in his own right and a successful brewer of date beer. He also prospered in other business ventures. The Talmud records that he engaged in trade with both Jews and gentiles and had a reputation for fairness and generosity in his business dealings. Rav Huna became his partner in many such undertakings and became wealthy as well.

Rav Pappa had great respect for the Sages, and upon entering a city he would immediately call upon the rabbinc head of the community. Once, Rav Pappa felt that he had spoken inappropriately about one of the Sages, and he took upon himself a personal fast as penance for his act. He was reluctant to offer final rulings in various areas of halakha, and he often chose to be stringent in accordance with both opinions in the Talmud rather than rule in accordance with a single opinion.

Rav Pappa was blessed with ten sons, all of whom were Torah scholars. Traditionally, the names of Rav Pappa’s ten sons are recited as part of the ceremony at the completion of the study of a tractate. While the source of this tradition is unclear and the identities of the sons are uncertain as well, the Rama suggests that it commemorates the celebrations made by Rav Pappa with his sons upon completing a course of study.
The Gemara clarifies: What are the circumstances of a coerced bill of divorce? If he forces him until they say: I want to give the bill of divorce, then even this type of halitza also should be valid, as although he was initially coerced, he acquiesced. And if he did not say by the end of the giving of the bill of divorce: I want to divorce her, then even this type of coerced bill of divorce should also not be acceptable.

The Gemara answers that this is what the Sage said: A mistaken halitza is always valid, while a mistaken bill of divorce is invalid. A coerced halitza and a coerced bill of divorce are sometimes valid and sometimes invalid. How so? With regard to the one who says after being coerced: I want to give the bill of divorce, it is effective, although he says this as a result of being under compulsion. With regard to the one who does not say: I want to give the bill of divorce, the divorce is invalid.

As it is taught in a baraita: It is said with regard to some offerings: “He shall offer it” (Leviticus 1:3). This teaches that they may coerce him to bring the offering he owes. I might have thought this means that he brings the offering totally against his will. Therefore, the continuation of that verse states: “In accordance with his will” (Leviticus 1:3). How can these two contradictory expositions be reconciled? They coerce him by imposing fines or penalties until he says: I want to. And similarly, you find the same principle with respect to bills of divorce for women, as it is prohibited for anyone other than the husband to write the bill of divorce, but they coerce him until he says: I want to divorce her, and then write the bill of divorce on his behalf.

Rava said that Rav Sehora said that Rav Huna said: Judges can allow a man and woman to conduct halitza even if the judges do not recognize the participants. In other words, even if they do not have complete testimony before them that proves that these two people are a yavam and a yevama, if two people wish to perform halitza, the judges are not required to check their identities. Likewise, with regard to women making declarations of refusal: If a young woman after reaching majority comes to make a declaration of refusal against her husband, she may do so, even if witnesses do not recognize her and they do not know for sure that she is the wife of the supposed husband.

### HALAKHA

A mistaken bill of divorce is invalid – מִשְׁמַרְתָּה. If someone divorces his wife based on a condition, e.g., he divorces her on condition that she give him a certain sum of money, then, if the condition is fulfilled, the bill of divorce is valid, and if it is not fulfilled, she is not divorced, and it is permitted for her to return to her husband, even if her husband is a priest (Rambam, Sefer Nazirim, Hilkhot Geyrim 8:1; Shulhan Arukh, Even HaEzer 143:3).

A coerced bill of divorce – מְעוּשֶּׂה. When one is under compulsion to give a bill of divorce, if he made an initial declaration stating that his giving of the bill of divorce is without proper intention, this cancels the bill of divorce. If he did not make such a declaration, but he was compelled unlawfully, the bill of divorce is invalid, but if they compelled him legally to give a bill of divorce, even if he agreed only due to the court’s compulsion, it is still a valid bill of divorce. Therefore the court compels anyone who gives a bill of divorce to cancel all earlier declarations (Rambam, Sefer Nazirim, Hilkhot Geyrim 220; Shulhan Arukh, Even HaEzer 134:5).

They coerce him until he says: I want to – דְּתַנְיָא. Even though the verse in Leviticus quoted in the Gemara states that offerings are to be brought “in accordance with his will,” one may compel in court one obligated to bring an offering until he says: I want to (Rambam, Sefer Avoda, Hilkhot Mila’aseh Hakorbanot 14:16).

Notes:

- Recognizing and not recognizing – מְעוּשֶּׂה / מְטוּﬠֵת. The early commentators question why specifically with regard to halitza one must recognize the yavam and the yevama, while in cases of betrothal or permitting a woman to remain based on testimony that her husband is dead, special recognition of the parties is not required? Tosafot Yeshomim explains that the case here is one where the yavam himself does not recognize the yevama, unlike the other cases where the individuals involved recognize one another. The Ramban states that specifically with respect to halitza one must be concerned about deviousness, as someone might come to a court claiming to be the yavam and release the woman through halitza, and then go with the woman to a different locale in order to marry her. Similar concerns don’t apply in other situations (see Rashba).

- One may perform halitza or make a declaration of refusal even when the judges do not recognize them – מְטוּﬠֶה / מְטוּﬠֶה. The reason a court cannot always wait to thoroughly clarify the identities of the participants is that on some occasions there is no time for background identifications, e.g., when the yavam is about to leave for an overseas country, or when the minor is about to reach the age of maturity and will not be able to make a declaration of refusal afterward (Tosafot Rid).
Therefore, in cases where the woman is not identified, although the court may perform halitza and refusals, it may not write a document of halitza, i.e., a document attesting that halitza took place, unless they, the judges, recognize her. And witnesses to the act may not write a document of a declaration of refusal, i.e., a document attesting that a refusal took place, unless they, the judges, recognize the woman, as we are concerned about the possibility of a mistaken court. Perhaps a court will not know that such a document is not complete proof that the action was conducted properly, and will consider it as proof that it was the yevumah in this document who removed the shoe, or the wife in this document who made a declaration of refusal. Since the first court can conduct halitza and refusals without accepting witnesses attesting to the identities of the involved parties, a second court cannot rely on these attesting documents alone, but must verify the identities before declaring the women eligible for marriage.

And Rava himself said the opposite of what he quoted in the name of others: A court may not conduct halitza unless they, the judges, recognize the participants, and a court may not convene a declaration of refusal unless they, the judges, recognize the young woman. Therefore, witnesses may write a document of halitza even if they do not recognize the women themselves, as one who witnessed a court conduct halitza can be sure that the court already checked the party’s identities thoroughly. And witnesses may write a document of refusal even if they do not recognize the young woman who has refused, relying on the fact that witnesses must have already attested to their identities. And we need not be concerned about the possibility of a mistaken court, as there is no reason to fear that the first court conducted the case without properly identifying the participants.

A court may not conduct halitza unless they recognize the participants – The court must recognize the man who comes to perform halitza. The court must also know that he is truly the brother of the deceased man, that he was alive in the lifetime of the deceased, and that the woman is the wife of the deceased, in accordance with the opinion of Rava (Rambam, Sefer Nashim, Hilkhot Yibbum 4:29; Shulhan Arukh, Even HaEzer 169:8).

A court may not convene a declaration of refusal unless they recognize the young woman – Those before whom a minor makes a declaration of refusal must recognize her and her husband (Rambam, Sefer Nashim Hilkhot Geturushin 11:10; Shulhan Arukh, Even HaEzer 155:8).

Witnesses may write a document of halitza even if they do not recognize the women themselves – The court may not conduct halitza unless they recognize the witnesses, and a second court cannot rely on these documents alone, but must verify the identities before declaring the women eligible for marriage.

HALAKHA

A court may not conduct halitza unless they recognize the participants – The court must recognize the man who comes to perform halitza. The court must also know that he is truly the brother of the deceased man, that he was alive in the lifetime of the deceased, and that the woman is the wife of the deceased, in accordance with the opinion of Rava (Rambam, Sefer Nashim, Hilkhot Yibbum 4:29; Shulhan Arukh, Even HaEzer 169:8).

A court may not convene a declaration of refusal unless they recognize the young woman – Those before whom a minor makes a declaration of refusal must recognize her and her husband (Rambam, Sefer Nashim Hilkhot Geturushin 11:10; Shulhan Arukh, Even HaEzer 155:8).

Witnesses may write a document of halitza even if they do not recognize the women themselves – The court may not conduct halitza unless they recognize the witnesses, and a second court cannot rely on these documents alone, but must verify the identities before declaring the women eligible for marriage.

HALAKHA
MISHNA The mitzva of halitza is performed as follows: He and his yevama come to the court, and the scholars of the court give him advice appropriate for him, whether to enter levirate marriage or to perform halitza, as it is stated: “And the Elders of his city shall call him and speak to him” (Deuteronomy 25:8).

If they decide to perform halitza, she says: “My brother-in-law refused to establish a name for his brother in Israel, he did not wish to consummate the levirate marriage” (Deuteronomy 25:7), and afterward he says: “I do not wish” to take her” (Deuteronomy 25:8). And they would say these statements in the sacred Hebrew language and not in any other language. Afterward, the shoe is removed and she spits before him, as is written: “His yevama shall approach him, before the Elders, and remove his shoe from on his foot and spit before him” (Deuteronomy 25:9), which indicates that this spittle must be visible to the judges. “And she shall respond and say: So shall it be done to the man who does not build his brother’s house” (Deuteronomy 25:9).

Up until this point the judges would prompt the parties to recite the text that they are required to say.

And when Rabbi Hyrkanus once prompted the participants in halitza under the ela tree in the village of Eitam, he prompted them to finish reciting the whole Torah passage, after which they established the custom of completing the whole Torah passage. Therefore, they continue and say the following verse: “And his name shall be called in Israel: The house of he who had his shoe removed” (Deuteronomy 25:10). This mitzva of saying: The house of he who had his shoe removed, applies to the judges, but not to the students, i.e., the students of the judges and other onlookers who are present. Rabbi Yehuda says: It is a mitzva upon all those present to say: He who had his shoe removed.

HALAKHA They give him advice appropriate for him – קִשּׁוֹת שָׁמִיש קִשּׁוֹת. When the yavam and the yevama come to the court the judges give them advice befitting their situation, whether to enter levirate marriage or perform halitza (Rambam Sefer Nashim, Hilkhot Yibbum 4:15; Shulhan Arukh, Even Haeder 169:7). She says, etc. – אֵלָיו. They prompt the yevama to recite the following words, one word at a time: “My brother-in-law refused to establish a name for his brother in Israel, he did not wish.” But they prompt her to read the words: “He did not wish,” all at once. This recitation, like the other recitations during halitza, must be recited in Hebrew, in accordance with the mishna and the conclusion of the Gemara (Rambam Sefer Nashim, Hilkhot Yibbum 4:15; Shulhan Arukh, Even Haeder 169:29 and Seder Halitza 48).

He says: I do not wish, etc. – אֵלָיו. They prompt the yavam to recite: “I do not wish to take her” The Rema writes that they prompt him to recite: “to take her (Ekahtah)” with the final letter he accentuated, and likewise they prompt him to recite these words together, all at once, in accordance with Abaye’s opinion (Rambam Sefer Nashim, Hilkhot Yibbum 4:9; Shulhan Arukh, Even Haeder 169:29, Seder Halitza 49).

Spittle must be visible to the judges – מִצְוַת הָאֵלָיו זֶרֶם. The yevama stands across from the yavam and spits on the ground before the face of the yavam. Her spittle must be visible to the judges from when it leaves her mouth until it reaches the space before the yavam. If they did not see it from the time it left her mouth, the halitza is still valid after the fact, in accordance with the mishna and Rava’s opinion in the Gemara (Rambam Sefer Nashim, Hilkhot Yibbum 4:23; Shulhan Arukh, Even Haeder 169:38).

It is a mitzva upon all those present – מִצְוַת לְכָל בְּלַעֲמָם. After the woman finishes reciting her verses, it is a mitzva upon all the onlookers there to say aloud: “He who had his shoe removed,” three times, and some say that the yevama must also say it (Rambam Sefer Nashim, Hilkhot Yibbum 4:6; Shulhan Arukh, Even Haeder 169:42).

NOTES They would say it in the sacred Hebrew language – בְּכֵלָשׁוֹ. It states likewise in tractate Sota (32a) that since the Torah states with regard to halitza: “And she shall respond,” it is learned by means of a verbal analogy from other places in which the term respond is used that the recitation must be done in the sacred language, i.e., Hebrew. HaKetav Vehokhbba explains that the term respond is a ceremonial phrase, and whenever it is used it means that this speech does not require understanding of the words, but rather details an action that must be performed in a particular way.

LANGUAGE Hyrcanus – חֲרֵנוֹאָס. From the Greek name Ὑρκανός, Hyrcanus, which was originally an epithet attached to the name of one who came from an area by that name. Later, this name became an epithet for several of the Hasmonean kings and for others in the generations that followed them.

PERSONALITIES Rabbi Hyrcanus – חֲרוֹנוֹאָס. This is the only mention of Rabbi Hyrcanus in the Talmud, although there are those who suggest that he was Hyrcanus, the son of Rabbi Elezer HaGadol, mentioned in several places. If this is the son of Rabbi Elezer, it explains why the Sages gave such credence to his custom. It is safe to assume that Hyrcanus was acting according to the custom of his father, who was himself known for acting only according to the tradition of his masters.
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The mitzva is like this – ייבוע. There is in fact a distinction between the word mitzva and the word obligation. The word mitzva indicates the manner in which something should be performed initially, as this is the proper way to do it ab initio. If one did not perform the mitzva in its ideal form, one may still fulfill the minimal obligation.

Rava concedes concerning: He did not wish – הוא. Rabbi Reuven Hananel cites an alternate version of the text that seems to have been accepted by a number of early commentaries. According to that version, Rava agrees that “He did not wish to consummate the levirate marriage” must be said carefully, in accordance with Rabbi Zeira’s principle that in the case of a meal-offering fit to be mixed, the actual mixing is not indispensable to it, but a meal-offering that is not fit to be mixed is invalid even though the actual mixing is not indispensable. From here, several halakhic authorities conclude that one need not actually say these verses properly, but must merely know how to do so. If they know how to say them correctly, even if they did not do so during the actual halitza, the halitza is still valid.

Other authorities accept the printed version of the text that requires that the words actually be read properly during the halitza itself. The Meiri adds that the very comparison of this issue to Rabbi Zeira’s statement is surprising, as the whole concern is that perhaps the participants who misread the words will misunderstand them, and therefore he asks: If they did not say them correctly during the halitza, what good is it if they were able to do so beforehand?

And as for the question of why Rava agrees specifically with regard to the words: “He did not wish to consummate the levirate marriage.” The Rif seems to understand that there is no distinction between the different phrases, and Rava agrees in both cases, but the Gemara means to say that it is not common for the yavam to have so little knowledge of Hebrew that he would have difficulty saying this phrase, which in Hebrew is only three words.

HALAKHA

If one switched the order, we have no problem with it – לא כל אין אב אי. The order of halitza is that first the yavam recites, then the yavam recites, and then she removes the shoe and spits and then recites again. But if they changed the order, they have still fulfilled the mitzva, in accordance with the conclusion of the Gemara (Rambam Sefer Nashim, Hilkhot Yibum 4:9, Shulhan Arukh, Even HaEzer 169:43).

The one who prompts, etc. –ميلתא מקת. They train the yavam and yavamot to recite their statements well, until they both know to say them properly, and they ensure that she can say: “He did not wish in one breath, as Rava also agrees this is necessary. There is an opinion that says that they must also train him to say: “I do not wish” all at once, in accordance with Abaye, for even Rava disagreed with him only after the fact (Rambam Sefer Nashim, Hilkhot Yibum 4:4; Shulhan Arukh, Even HaEzer 169:29).

Mar Zutra would score – חציるもの מותר. After the woman removes the shoe, the court who witnessed her actions writes a halitza document for her, and must score the parchement with lines, as documents containing scriptural verses must be scored (Rambam Sefer Nashim, Hilkhot Yibum 4:4; Shulhan Arukh, Even HaEzer 169:50).

GEMARA

Rav Yehuda said: This is the correct order for the mitzva of halitza: She recites the sentence beginning with “My brother-in-law refused” (Deuteronony 25:7), and afterward he recites “I do not wish to take her” (Deuteronomy 25:8). Then she removes the shoe, and spits, and recites: “So shall it be done to the man who does not build his brother’s house” (Deuteronomy 25:9). The Gemara asks: What is Rav Yehuda teaching us? This is already explicit in the mishna. The Gemara answers: This teaches us that the mitzva is like this, i.e., this is the proper order, but if one switched the order, we have no problem with it, as even though he did not fulfill the mitzva properly, the halitza is still valid, since the order is not indispensable.

The Gemara comments: This is also taught in a baraita: Whether the removal of the shoe preceded the spitting, or whether the spitting preceded the removal of the shoe, what he did is done, i.e., the halitza is valid.

§ Abaye said concerning the details of these halakhot: The one who prompts the yavam and the yevama to read the text for the bill of halitza should not prompt her by reciting “He did not” (Deuteronomy 25:7) by itself, and “wish to consummate the levirate marriage” (Deuteronomy 25:7) by itself, because such a way of reading sounds to one who hears only the second phrase like he is saying: My yavam does wish to consummate the marriage. Rather, he should prompt her all at once consecutively: “He did not wish to consummate the levirate marriage” (Deuteronomy 25:7), which will ensure that the intended meaning is clear.

And he should not read to the yavam: “I do not” by itself, followed by: “Wish to take her” by itself, as it sounds to one who heard only the second phrase like I do wish to take her. Rather, he should read together at once: “I do not wish to take her.”

Rava said: It is a mere interruption in the matter. And we have no problem with regard to an interruption in the matter as it is basically just a pause for taking a breath.

It is told: Rav Ashi found Rav Kahana painstakingly trying to prompt a certain yavam, so that she would recite: “He did not wish to consummate the levirate marriage” all at once, but the yavam did not understand and was distorting the meaning by not reciting the words together. Rav Ashi said to him: Does the Master not hold that which Rava said, that the proper pausing during the recitation is not indispensable?

He said to him: Although Rava disagreed with Abaye about interruptions in the recitation of: “I do not wish to take her,” Rava concedes concerning the recitation of: “He did not wish to consummate the levirate marriage,” as this recitation is essential and must be recited properly. Rav Kahana added that Abaye also said: One who writes a bill of halitza must write as follows: We prompted her to recite from “My brother-in-law refused” until “he did not wish to consummate the levirate marriage” (Deuteronomy 25:7); and we prompted him to recite from “I do not” until “take her” (Deuteronomy 25:8). And we prompted her to recite from “So shall” (Deuteronomy 25:9) until “he who had his shoe removed” (Deuteronomy 25:10).

Mar Zutra would score lines of a parchment and write the whole halitza passage on it as a bill of halitza, so it would be displayed before the halitza participants. Mar bar Idi strongly objected to this: But it is unable to be written like this on its own, as the Torah may be written only in a complete state, and it is prohibited to write parts of the Torah when there is no mitzva to write them separately. The Gemara comments: Even so, the halakha is in accordance with the opinion of Mar Zutra, because there is an aspect of a mitzva here, as it is being written as part of a bill of halitza, not for its own purpose.
Abaye said: If the yevama spat, but the wind seized her saliva and it never landed in front of the face of the yevum, she did nothing, and her actions have no halachic significance. What is the reason for this? We require that “she spit before him,” as is mentioned in the verse. Therefore, if he is tall and she is short and the wind seized it, the requirement of “before him” is satisfied, because the moment the saliva left her mouth it was in front of the face of the yevum. But if she is tall and he is short, we require that the saliva reach the space across from his face, and afterward it may go with the wind; i.e., if she was taller than him and the saliva was taken by the wind before it reached the height of his face, she did not fulfill her obligation.

Rava said: If she ate garlic and spat, or if she ate gargishta clay, i.e., a type of clay once chewed for medicinal purposes, and spat, she did nothing and her actions have no halachic significance, for this is not called spitting. What is the reason for this? 

We require that “she shall spit” on her own, and this is not satisfied here, for in this case she spits only on account of another thing that causes a pooling of saliva in her mouth. And Rava said: The judges must see the spittle when it leaves the mouth of the yevama, and the mere fact that she spat on the ground is insufficient, as it is written: “Before the Elders… and spitting,” indicating that the spitting must take place before the eyes of the judges.

It was taught in the mishna: With regard to the verse “And his name shall be called in Israel: The house of he who had his shoe removed,” there is a mitzva upon the judges to recite this but it is not a requirement for the students or onlookers. It is taught in a baraita that Rabbi Yehuda says: Once we were sitting before Rabbi Tarfon and a yevama came to perform halitza. He said to us: You must all answer: “He who had his shoe removed,” “He who had his shoe removed,” stating that portion of the verse three times.8

HALAKHA

If the yevama spat but the wind seized her saliva – חֲלוּץ בָּﬠֵינַן אָכְלָה הָיִינוּ בְּתַלְמִידִים מֵﬠַצְמָהּ. The yevama and the wind seized the saliva before it reached the space across from his face, as might happen in a case where she is taller than he is, she must spit another time. But if the saliva reached the space across from his face and never dissipated before it reached the ground, it is valid. In accordance with Abaye (Rambam Sefer Shulhan Arukh, Even HaEzer 169:39).

If she ate garlic, etc. – וְיָרְקָה וְקְלָטַתּוּ מַאי: If the yevama ate garlic or cress or any other item that increases saliva, and this saliva came out of her mouth on its own, it is not considered spitting. The custom on that day was that the yevama would not eat (Sefer HaTenua) and would refrain from speaking excessively to ensure that the saliva would come on its own, in accordance with Rava (Rambam Sefer Shulhan Arukh, Even HaEzer 169:41).

NOTES

We require that she spit before him – כְּלוּם קְלָטַתּוּ אַפֵּיהּ: The Meiri explains that it is clear that the words: Spit before him, do not mean that she must actually spit in his face, but rather to the side of his face, in front of him. That the spitting is done in front of the face of the yevum is the minimal requirement for the spitting to be valid. Based on this requirement, some said that the halitza of a blind man is invalid, as he cannot see the saliva and therefore it should be considered as if the spitting were not done before him at all. The Rashba explains that this is not so, and the halitza of a blind man is valid even ab initio, because the Gemara’s intention is that the spitting take place in his presence, and the mitzva of seeing it is placed upon the judges.

He who had his shoe removed, three times – וּכְלוּם קְלָטַתּוּ אַפֵּיהּ: The reason for saying these words three times is in order to strengthen the matter of halitza (Yam shel Shlomo). It seems that the reason everyone present must say the words: “He who had his shoe removed” is that they want to establish the place as a place where halitza has been performed, as it says in the verse: “And his name shall be called in Israel: The house of he who had his shoe removed.” By having the bystanders declare: He who had his shoe removed, the name of the place where halitza is performed is called as such in Israel.

BACKGROUND

Gargishta clay – גַּרְגִּישְׁתָּא: Gargishta is apparently an Aramaic word for clay, most likely referring to a very clean variety of clay, such as argyle clay, which is used for seals and contains aluminium silicate. It has also been employed as a remedy for digestive problems and pains associated with excess stomach acid. The practice of eating gargishta clay is mentioned several times in the Talmud.