

ורבי אלעזר אוסר. וכן המגרש את היתומה והחזירה – מותרת ליבם, ורבי אלעזר אוסר. קטנה שהשיאה אביה ונתגרשה – כיתומה בחיי האב. והחזירה – דברי הכל אסורה ליבם.

גמ' אמר עיפה: מאי טעמא דרבי אלעזר – הואיל ועמדה עליו שעה אחת באיסורא. אמרו ליה רבנן לעיפה: אי הכי, חליצה נמי לא תיבעי!

וכי תימא הכי נמי – והתניא, משום רבי אלעזר אמרו: חולצת! אלא אמר עיפה: רבי אלעזר לא ידענא מאי טעמא.

אמר אביי: היינו טעמא דרבי אלעזר: מספקא ליה אי מיתה מפלת, אי נשואין הראשונים מפילים. אי מיתה מפלת – הא רמיא קמיה לייבום, אי נשואין הראשונים מפילים – הא עמדה עליו שעה אחת באיסור.

רבא אמר: לעולם פשיטא לרבי אלעזר דמיתה מפלת. ומיהו, הכל בקיאים בגירושין ואין הכל בקיאים בחזרה.

but Rabbi Elazar prohibits this. Likewise, with regard to one who divorces an orphaned minor girl whose mother and brothers married her off and remarries her and subsequently dies, she is permitted to the *yavam* in levirate marriage, and Rabbi Elazar prohibits it. A minor girl whose father married her off, in which case the marriage is valid by Torah law, and who was subsequently divorcedⁿ while she was still a minor is like an orphan during the lifetime of her father, as he no longer has the right to marry her off, and she cannot become fully married because she is a minor. And if the husband remarries her while she is still a minor and then dies childless, everyone agrees that she is forbidden to the *yavam* and may not enter into levirate marriage.

GEMARA The Sage Eifa said: What is the reasoning of Rabbi Elazar,ⁿ who prohibits a man from entering into levirate marriage with a woman whom his brother had divorced and remarried? It is because she was forbidden to him at one time; when the first brother divorced her, she became forbidden to the second brother due to her status as the first brother's ex-wife. A husband's relatives are forbidden to the wife even after death or divorce. However, the mitzva of levirate marriage grants a special exemption from the prohibition against marrying one's brother's wife. In this case, if the first brother had died while they were still divorced, the mitzva of levirate marriage would not have applied, and she would have been forbidden to him. The Sages said to Eifa: If that is so, she should also not require *halitza*, since she is a forbidden relative.

And if you would say: Indeed, Rabbi Elazar also exempts her from *halitza*, isn't it taught in a *baraita*: It was said in the name of Rabbi Elazar that she performs *halitza*? Rather, Eifa said: I do not know the reason for the opinion of Rabbi Elazar.

Abaye said: This is the reasoning of Rabbi Elazar: He is uncertain whether the death of the husband determines that she is a candidate for levirate marriage, or whether the original marriage determines it. In other words, he is uncertain as to whether the obligation to perform levirate marriage is established only at the death of one's brother or already from the beginning of the brother's marriage. If death determines that she is a candidate for levirate marriage, then she has happened before him for levirate marriage, as she is the wife of his childless brother who died. If the original marriage determines that she is a candidate for levirate marriage, then she was forbidden to him for a time as his brother's ex-wife and is consequently exempt from levirate marriage. According to Rabbi Elazar, it is due to this uncertainty that the brother may not enter into levirate marriage yet must perform *halitza*.

Rava said: Actually, it is obvious to Rabbi Elazar that death determines that she is a candidate for levirate marriage. However, everyone is well informed with regard to divorces. Everyone knows that the woman was divorced, while not everyone is well informed with regard to remarriage, and they do not necessarily know that she remarried him. Therefore, there is concern that people will mistakenly think that one entered into levirate marriage with his brother's ex-wife.

HALAKHA

A minor girl whose father married her off and who was divorced – קטנה שהשיאה אביה והתגרשה: If a minor married off by her father was divorced from her husband and then remarried him, she is prohibited from entering into levirate marriage if her husband subsequently died while she was still a minor (Rambam *Sefer Nashim, Hilkhot Yibbum* 7:13; *Shulhan Arukh, Even HaEzer* 173:16).

NOTES

The reasoning of Rabbi Elazar – טעמא דרבי אלעזר: In the Jerusalem Talmud, there is an explanation of Rabbi Elazar's opinion based on Eifa's statement that she was forbidden to him for a time. Presumably, Rabbi Elazar holds that eligibility for levirate marriage is determined at the time of the original marriage. The Jerusalem Talmud does not mention the *baraita* indicating that according

to Rabbi Elazar she requires *halitza*, either because its Sages were unaware of that tradition or perhaps because they rejected it. Another possibility is that they understood the requirement of *halitza* to be a rabbinic ordinance, despite the fact that she is in principle exempt, due to the fact that she is known to have been his brother's wife.

He decreed to prohibit levirate marriage with these, due to the case of an orphan in the lifetime of her father – דגור הני משום יתומה: The base problem exists only in a case where the husband divorced her and subsequently remarried and then died while she was still a minor. If she reached majority before he died, then their marriage is by Torah law and she is forbidden to the *yavam* by rabbinic decree (Rashi; *Tosafot*).

However, some explain that even if she reaches majority while he is still alive, a man who marries a minor does not ordinarily take into consideration that she is not married to him by Torah law. So long as he does not consciously have relations with her for the purpose of acquisition, she remains his wife only on the basis of the initial betrothal. Accordingly, even after she reaches majority, their marriage is by rabbinic law and she is forbidden to the *yavam* by Torah law (Rashba; Ritva).

אֲדָרְבָה: חֲזָרָה, בֵּינוֹן דִּיתְבָּא תוֹתִיָּה
אֵית לִיהּ קְלָא! מִי לָא עֲסָקִינוּ דְאַהֲדָרָה
בְּאוֹרְתָא וְשָׂכִיב בְּצַפְרָא.

רַב אֲשִׁי אָמַר: הֵינּוּ טַעְמָא דְרַבִּי אֶלְעָזָר:
דְּגָזַר הֵנִי מִשּׁוּם יְתוּמָה בְּחַיֵּי הָאָב וְהַחֲזִירָה.
הָכִי נִמְי מִסְתַּבְּרָא, מִדְּקִתְנִי סִיפָא: קְטַנָּה
שְׁהַשִּׁיאָה אָבִיהָ וְנִתְגַּרְשָׁה – כִּיתוּמָה בְּחַיֵּי
הָאָב, וְהַחֲזִירָה – דְּבָרֵי הַכֹּל שְׁאַסּוּרָה
לְיָבָם.

הָאֵי מַאי לְמִימְרָא? פְּשִׁיטָא! אֶלָּא לָאו הָא
קָא מְשַׁמַּע לֵן: טַעְמָא דְרַבִּי אֶלְעָזָר דְּגָזַר
הֵנָּךְ מִשּׁוּם הָאֵי, שְׁמַע מִינָהּ.

תֵּנָּא בְּוֹתִיָּה דְרַב אֲשִׁי. מוֹדִים חֲכָמִים
לְרַבִּי אֶלְעָזָר בְּקַטְנָה שְׁהַשִּׁיאָה אָבִיהָ
וְנִתְגַּרְשָׁה – הֵרִי הִיא כִּיתוּמָה בְּחַיֵּי הָאָב,
וְהַחֲזִירָה – שְׁאַסּוּרָה לְיָבָם, מִפְּנֵי שְׁגִירוּשִׁיָּהּ
גִּירוּשִׁין גְּמוּרִין וְאִין חֲזָרְתָה חֲזָרָה גְּמוּרָה.

בְּמָה דְּבָרִים אֲמוּרִים – שְׁגִירוּשָׁה כְּשֶׁהִיא
קְטַנָּה וְהַחֲזִירָה כְּשֶׁהִיא קְטַנָּה, אֲבָל גִּירוּשָׁה
כְּשֶׁהִיא קְטַנָּה וְהַחֲזִירָה כְּשֶׁהִיא גְּדוּלָּה, אִי
נִמְי הַחֲזִירָה כְּשֶׁהִיא קְטַנָּה, וְגְּדוּלָּה אֶצְלוּ
וּמַת – אוֹ חוֹלְצַת אוֹ מְתִיבָמַת. מִשּׁוּם
רַבִּי אֶלְעָזָר אָמַר: חוֹלְצַת וְלֹא מְתִיבָמַת.

The Gemara argues against this point: **On the contrary, her return to her former husband, since she is living with him, generates publicity**, so that it is known that they are remarried. The Gemara answers: **Are we not dealing even with a case in which he remarried her in the evening and died in the morning?** In this instance and others like it, not everyone would know that he remarried her, and they will think that the brother took his deceased brother's ex-wife in levirate marriage. In order to avoid such situations, Rabbi Elazar decreed that she is always forbidden.

Rav Ashi said: This is the reasoning of Rabbi Elazar: He decreed to prohibit levirate marriage with these, i.e., women who were divorced and remarried, due to the case of a girl who is considered an orphan in the lifetime of her father,^N who was divorced by her husband and he subsequently remarried her. If a minor girl was married off by her father and was subsequently divorced, she is no longer subject to her father with regard to marriage and divorce, but because she is a minor, any marriage she enters into is by rabbinic rather than by Torah law. The Gemara comments: **So too, this is reasonable based on what was taught in the latter clause of the mishna: A minor girl whose father married her off and who was subsequently divorced while she was still a minor, is like an orphan during her father's lifetime. And if the husband remarries her while she is still a minor and then dies, everyone agrees that she is forbidden to the *yavam* and may not enter into levirate marriage.**

What is the purpose of stating this *halakha*? It is obvious. Rather, is it not teaching us Rabbi Elazar's reason for decreeing that these women who were divorced and remarried are forbidden due to that woman, the girl who is considered an orphan in the lifetime of her father? The Gemara concludes: **Learn from here that this is his reason.**

The Gemara comments: **It is taught in a *baraita* in accordance with the opinion of Rav Ashi: The Rabbis concede to Rabbi Elazar concerning a minor girl whose father married her off and who was divorced, that she is like an orphan in the lifetime of her father, and that if her husband remarried her, she is forbidden to the *yavam*, because her divorce was a full-fledged divorce by Torah law while her remarriage was not a full-fledged remarriage, as she was still a minor.** This implies that Rabbi Elazar's ruling is prompted by the case of a girl who is like an orphan in her father's lifetime and that this was the reason for his decree.

The *baraita* continues: **In what case is this statement said? In a case where he divorced her while she was a minor and he remarried her while she was still a minor. But if he divorced her while she was a minor and remarried her when she was already an adult,^H or if he remarried her while she was a minor and she matured to legal adulthood while with him, and he subsequently died, she may either perform *halitza* or enter into levirate marriage. It was said in the name of Rabbi Elazar: She must perform *halitza* and may not enter into levirate marriage, since he decreed that all remarried women may not enter into levirate marriage due to the case of one who is like an orphan in her father's lifetime.**

HALAKHA

He divorced her while she was a minor and remarried her when she was an adult – אֲבָל גִּירוּשָׁה כְּשֶׁהִיא קְטַנָּה וְהַחֲזִירָה כְּשֶׁהִיא גְּדוּלָּה: If a man divorced his wife while she was a minor, and then remarried her when she was an adult, or if he remarried her when she was a minor and died after she reached majority, she is permitted to enter into levirate marriage with his brother. The

same *halakha* applies to a deaf-mute whose sense of hearing was restored while she was married to the man or if he remarried her after her hearing was restored. These *halakhot* are in accordance with opinion of the Rabbis (Rambam *Sefer Nashim*, *Hilkhot Yibbum* 7:14; *Shulhan Arukh*, *Even HaEzer* 173:17).

What is the *halakha* with regard to the rival wife – צרתה מהו: The early commentaries debated the question of the status of the rival wife of an orphan in her father's lifetime who remarried, according to the opinion of the Rabbis. Some hold that she performs *halitza* and does not enter into levirate marriage, because the orphan herself is forbidden to her *yavam* by Torah law, and therefore her rival wife is forbidden by rabbinic decree (Ra'avad). Others maintain that the rival wife of the orphan in her father's lifetime is permitted to enter levirate marriage; no decree was made in her regard because everyone knows that the betrothal of a minor is by rabbinic law and that this is the reason a minor is prohibited from entering into levirate marriage (Rif). In the Jerusalem Talmud, the *amora'im* disputed this issue, and the majority of them permit her to enter into levirate marriage. However, it appears that the opinion in the Jerusalem Talmud with regard to the marriage of a minor differs from that in the Babylonian Talmud, as the former source considers the marriage of a minor who is an orphan in her father's lifetime to be a partial acquisition (see Rashba).

And will we then proceed to issue a decree to prevent violation of a decree – ויגזור גזירה לגזירה: Some commentaries point out that in other cases where a *yevama* is prohibited from entering into levirate marriage due to a rabbinical decree, the rival wife is also prohibited from doing so (see 31b). Why is this argument not made there? They explain that one decree of the Sages cannot be compared to another, as some are more expansive than others (*Tosefot Had Mikamma'ei*; Meiri).

בעא מיניה רבא רבא נחמן: צרתה מהו? אמר ליה: היא גופה גזירה, ואנן ניקום ויגזור גזירה לגזירה!

Rava asked Rav Nahman: What is the *halakha* with regard to the rival wife^N of a girl whose husband remarried her, according to Rabbi Elazar? Is the girl regarded as a forbidden relative to the extent that even her rival wife may not enter into levirate marriage? He said to him: She herself is forbidden due to a rabbinic decree, as explained already. And will we then proceed to issue a decree to prevent violation of a decree?^N Accordingly, her rival wife is permitted to enter into levirate marriage.

והא תניא, משום רבי אלעזר אמרו: היא וצרתה חולצת. היא וצרתה סלקא דעתך? אלא לאו – או היא או צרתה חולצת? לאו תרוצי קמתרצת? תרוץ הכי היא חולצת. צרתה – או חולצת או מתייבמת.

The Gemara challenges: Isn't it taught in a *baraita*: It was said in the name of Rabbi Elazar: Both she and her rival wife must perform *halitza*? The Gemara asks: Would it enter your mind to say: She and her rival wife? Why should two women from the same household perform *halitza*? *Halitza* performed by one of them exempts the other. Rather, should it not say: Either she or her rival wife must perform *halitza*, but even the rival wife may not enter into levirate marriage. The Gemara responds: Are you not emending the mishna? If so, emend it as follows: She can only perform *halitza*; her rival wife may either perform *halitza* or enter into levirate marriage.

מתני' שני אחין נשואין לשתי אחיות קטנות, ומת בעלה של אחת מהן – הלזו תצא משום אחות אשה. וכן שתי חרשות. גדולה וקטנה, מת בעלה של קטנה – תצא הקטנה משום אחות אשה.

MISHNA If two brothers are married to two minor sisters,^H and the husband of one of them dies childless, this widowed girl shall be exempt from levirate marriage due to her status as a forbidden relative, as one is prohibited from marrying the sister of his wife. The same *halakha* applies to two deaf-mute women, whose status is like that of two minors in this matter, as their marriages are valid by rabbinic law. And if two brothers were married to two sisters, one of them an adult and the other a minor,^H and the husband of the minor dies, the minor shall leave due to her status as the sister of a wife, as in the first case in the mishna.

מת בעלה של גדולה – רבי אליעזר אומר: מלמדין את הקטנה שתמאן בו,

But if the husband of the adult dies, it generates a Torah obligation of levirate marriage, which is not abrogated by the rabbinic prohibition proscribing the *yevama* as his wife's sister. This prohibition is by rabbinic law, because marriage to a minor is rabbinic in origin. What does one do under such circumstances? Rabbi Eliezer says: We instruct the minor, i.e., his wife, to refuse him, so that her marriage is dissolved and he may then enter into levirate marriage with her adult sister, the widow of his childless brother.^H

רבן גמליאל אומר: אם מיאנה – מיאנה, ואם לאו – תמתין עד שתגדיל, ותצא הלזו משום אחות אשה.

Rabban Gamliel says: If the minor refuses of her own accord, her refusal is valid. And if not, she should wait until she reaches majority, whereupon her marriage is valid by Torah law, and that widowed adult sister shall be exempt from levirate marriage due to her status as the sister of a wife.

HALAKHA

שני אחים – נשואין לשתי אחיות קטנות: If two halakhically competent brothers were married to two minor sisters or to two deaf-mutes and one of the men died, the wife of the dead brother is exempt from levirate marriage due to the prohibition against marrying the sister of one's wife. This is the case because both marriages are by rabbinic law (Rambam *Sefer Nashim, Hilkhot Yibbum* 7:15; *Shulhan Arukh, Even HaEzer* 175:9).

An adult and a minor – גדולה וקטנה: If two brothers were married to two sisters, one of whom was an adult and the other a minor, and the minor's husband died, she is exempt from levirate mar-

riage due to the prohibition against marrying the sister of one's wife (Rambam *Sefer Nashim, Hilkhot Yibbum* 7:15; *Shulhan Arukh, Even HaEzer* 175:11).

מת בעלה של גדולה – If the adult sister's husband died without children, the widow becomes eligible for levirate marriage. Under such circumstances, the minor is instructed to make a declaration of refusal of her husband, dissolving her marriage and allowing the *yavam* to enter levirate marriage with the *yevama*. This *halakha* follows the Gemara in ruling in accordance with the opinion of Rabbi Eliezer (Rambam *Sefer Nashim, Hilkhot Yibbum* 7:15; *Shulhan Arukh, Even HaEzer* 175:11).

LANGUAGE

Woe [ee] – אי: Ee is a cry of distress, similar to woe in English. Tosefot Yom Tov notes that this term is mentioned in the Bible: "Woe [ee] is the land whose king is a youth" (Ecclesiastes 10:16).

BACKGROUND

Nullification of vows – הפרת נדרים: It is written in the Torah (Numbers, chapter 30) that a father is authorized to nullify the vows of his daughter before she either attains the age of majority or marries. Similarly, a husband is entitled to nullify vows made by his wife. If a girl is betrothed before she attains the age of majority, her vows may be nullified by her husband and father acting together. For nullification to be valid, the vow must be nullified on the same day on which the father or husband hears of it. A husband is empowered to nullify only those vows that directly or indirectly affect the personal relationship between him and his wife. According to many opinions, this restriction applies to the father as well.

HALAKHA

He should cling to halitza and distance himself from refusal – דבק בחליצה ויתרחק ממיאון – One must try to avoid refusals and instead prefer halitza, in accordance with bar Kappara's statement (Rambam Sefer Nashim, Hilkhot Geirushin 10:16).

רבי יהושע אומר: אי לו על אשתו, אי לו על אשת אחיו. מוציא את אשתו בגט ואשת אחיו בחליצה.

Rabbi Yehoshua says: When the brother married to the adult sister dies, leaving the brother married to the minor, woe [ee]¹ to him for his wife, woe to him for his brother's wife. Under these circumstances, he loses both women: He must release his own wife with a bill of divorce and his brother's wife by performing halitza. He cannot stay married to his wife because she is the sister of his yevama, and he cannot enter into levirate marriage with the yevama even after divorcing his wife, because the yevama is his wife's sister. The principle that one is completely absolved from levirate marriage when the potential yevama is a forbidden relative does not apply because Torah law does not recognize his marriage to his minor wife. That marriage's rabbinic sanction does not suffice to render the yevama, his wife's sister, a forbidden relative who is not a candidate for levirate marriage.

GEMARA The Gemara inquires about Rabbi Eliezer's suggestion to instruct the minor to refuse: Is it permitted to instruct her to refuse? Doesn't bar Kappara teach: A person should always cling to three things^N and distance himself from three things. He should cling to three things: To halitza rather than levirate marriage, to bringing about peace, and to the nullification of vows.^{BN} And he should distance himself from three things: From refusal;^{HN} and from accepting deposits, as he is then responsible for them; and from serving as a guarantor. The Gemara answers: A refusal for a mitzva is different, as this refusal is performed to allow the mitzva of levirate marriage to be fulfilled with the other sister.

גמ' ומי שרי? והתני בר קפרא: לעולם ידבק אדם בשלושה דברים ויתרחק משלושה דברים. ידבק בשלושה דברים: בחליצה, ובהבאת שלום, ובהפרת נדרים. ויתרחק משלושה דברים: מן המיאון, ומן הפקדונות, ומן הערבונות! מיאון דמצוה שאני.

S The Gemara explains the details of the matter itself. Bar Kappara taught: A person should always cling to three things: To halitza; this is in accordance with the opinion of Abba Shaul, as it is taught in a baraita: Abba Shaul said: One who marries his yevama for her beauty, or for the sake of matrimony because he wants to be married to her, or for some other reason, such as her money, it is as if he is having intercourse with a woman forbidden to him, and in my eyes it is almost as if his offspring were a mamzer. Therefore, it is preferable that one performs halitza and avoids sin.

גופא, תני בר קפרא: לעולם ידבק אדם בשלושה דברים: בחליצה – כאבא שאול, דתניא, אבא שאול אומר: הכונס את יבמתו לישם נוי, לישם אישות, לישם דבר אחר – כאילו פוגע בערוה, וקרוב בעיני להיות הולד ממור.

One should cling to bringing about peace, as it is written "Seek peace and pursue it" (Psalms 34:15).

בהבאת שלום – דכתיב "בקש שלום ורדפהו".

NOTES

Cling to three things, etc. – ידבק... בשלושה דברים וכו' – The Maharsha explains the commonality among the actions bar Kappara lists: For each one, it is possible to state reasons in favor of or against performing them. Halitza is a mere substitute for the mitzva of levirate marriage, and the nullification of vows amounts to avoiding one's obligations. Even the pursuit of peace has a negative side, as for the sake of peace one is even permitted to lie (see 65b; Iyyun Ya'akov). With regard to the actions to be avoided, refusal seems justified, as it dissolves a marriage that is valid only according to rabbinic law, and bailees and guarantors offer aid to those in need.

The Rifa writes that the two lists correspond to one another: One should distance himself from refusal and choose halitza instead; one should pursue peace but not take charge of deposits or become a guarantor; and if one becomes obligated to do so, he should nullify his vow.

And to the nullification of vows – ובהפרת נדרים – The term nul-

lification of vows usually refers to the right of a husband to nullify the vows of his wife on the day that he hears about them. However, Rashi extends the concept to include the dissolution of one's vows by a halakhic authority, as one would expect from the implication in the Gemara that bar Kappara objects to vows in general.

Distance oneself from refusal – ויתרחק מן המיאון: According to the Jerusalem Talmud, the court does not initiate refusal. Wherever the procedure of refusal is discussed, it is referring only to cases where the minor came to the court on her own initiative and made a declaration of refusal. Rabbeinu Hananel relates the tradition of the ge'onim in this matter. They discouraged the practice of marrying off minors in order to avoid the occurrence of refusal (see Tosefot Rid). The Maharshah cites a ban by leading Ashkenazic scholars against performing refusals, although this was not universally accepted in practice (see Shulhan Arukh Even HaEzer 155:10, and in the comment of Rema).

ואמר רבי אבהו: אתיא רדיפה רדיפה, וכתב הקא בקש שלום ורדיפהו וכתב התם ורדיף צדקה וחסד ומצא חיים צדקה וכבוד בהפרת נדרים – ברבי נתן, דתנא רבי נתן אומר: הנודר כאילו בנה במה, והמקיימו כאילו הקריב עליה קרבן.

ויתרחק משלשה דברים: מן המיאונים – דלמא גדלה ומיחרטא בה; מן הפקדונות – בבר מתא, דבייתיה כי בייתיה דמי; מן הערבון – בערבי שלציון.

דאמר רבי יצחק: מאי דכתב ר' ירמיה ב' ערב ור' – רעה אחר רעה תבא למקבלי גרים ולערבי שלציון ולתוקע עצמו לדבר הלכה. מקבלי גרים – ברבי חלבו דאמר רבי חלבו: קשים גרים לישראל כספחת בעור.

ערבי שלציון – דעבדי שלוף דוץ. תוקע עצמו לדבר הלכה – דתנא, רבי יוסי אומר: כל האומר אין לו תורה – אין לו תורה. פשיטא! אלא: כל האומר אין לו אלא תורה – אין לו אלא תורה.

הא נמי פשיטא! אלא דאפילו תורה אין לו. מאי טעמא? אומר רב פפא: אמר קרא "ולמדתם ועשייתם", כל שישנו בעשיה ישנו בלמידה, כל שאינו בעשיה אינו בלמידה.

And Rabbi Abbahu said: It is derived by verbal analogy from the terms pursuit and pursuit.^N It is written here: "Seek peace and pursue it" (Psalms 34:15) and it is written there: "He who pursues righteousness and mercy finds life, prosperity, and honor" (Proverbs 21:21), indicating that pursuing peace is a mitzva, just as pursuing righteousness and mercy is. As for the nullification of vows, this is in accordance with the opinion of Rabbi Natan, as it is taught in a *baraita*: Rabbi Natan says: With regard to one who vows, it is as if he built a personal altar^N when it is prohibited to build an altar outside the Temple. And one who fulfills that vow, it is as if he sacrificed an offering on this personal altar,^H thereby doubling his sin. Therefore, it is preferable that he ask a halakhic authority to dissolve the vow.

And one should distance himself from three things: From refusals, as perhaps she will grow up and regret her decision, and it will turn out that she refused a husband who was suitable for her. From deposits entrusted to him by an inhabitant of the same city, as he will treat the bailee's home as his home.^N The owner might enter the bailee's house and take the deposit without the latter's knowledge, and subsequently falsely sue him for its return. From serving as a guarantor: This is referring to Sheltziyyon guarantees, in which the lender is entitled to demand payment from the guarantor even before the borrower defaults on the loan.

As Rabbi Yitzhak said: What is the meaning of that which is written: "He who serves as a guarantor for a stranger shall suffer evil; but he who hates those who shake hands is secure" (Proverbs 11:15)? This means: Evil after evil will befall those who accept converts, and Sheltziyyon guarantors, and one who confounds himself in matters of *halakha*. The Gemara clarifies. Evil will befall those who accept converts: This is in accordance with the opinion of Rabbi Helbo. As Rabbi Helbo says: Converts are difficult for the Jewish people like a leprous sore on the skin.

Evil shall befall Sheltziyyon guarantors because they practice: Pull out, thrust in. That is, they pull out the borrower and thrust the guarantor in his place as the one responsible for the loan. Evil befalls one who confounds himself in matters of *halakha*, as it is taught in a *baraita*: Rabbi Yosei says: Anyone who says he has no Torah, has no Torah. The Gemara asks: Is this not obvious? Rather, anyone who says he has nothing other than Torah, has nothing other than Torah.^N

The Gemara asks: But isn't this also obvious? One does not receive more reward than he deserves. Rather, it means that he does not even have Torah. What is the reason? Rav Pappa said: The verse states: That you may learn them and perform them, which is an abridged version of the verse "Hear, O Israel, the statutes and the ordinances that I speak in your ears this day, that you may learn them, and take care to perform them" (Deuteronomy 5:1). The verse teaches that anyone who is engaged in performing mitzvot is engaged in Torah study, while anyone not engaged in performing mitzvot is not engaged in Torah study; the Torah study of one who wishes only to immerse himself in his studies without fulfilling the mitzvot is not considered to be fulfilling even the mitzva of Torah study.

NOTES

It is derived from pursuit and pursuit – רדיפה רדיפה: This verbal analogy appears to be superfluous, as the first verse itself is clearly calling for the pursuit of peace (see *Tosafot*). One answer is that it would have been possible to understand the meaning of the first verse as follows: Seek peace, and pursue your enemy if he will not make peace with you. Therefore, an additional verse was cited to explain that the object of the pursuit in the first verse is also peace (Maharsha).

As if he built a personal altar – כאילו בנה במה: In tractate *Nedarim* Rashi explains this statement as relating to an altar for idol worship, whereas here, like most of the commentaries, he interprets it as relating to a personal altar.

Some commentaries explain this as follows: Even though one who builds a personal altar does so for the purpose of serving God, he nevertheless transgresses a severe prohibition. Vowing is similarly prohibited even though it appears to be a legitimate activity (Ran). Others explain slightly differently: One who builds a personal altar has not yet transgressed the actual prohibition, which is offering sacrifices on that altar, but is preparing for a transgression that will occur later. Likewise, in the case of the vow, the transgression does not lie in the act of vowing but in one's subsequent behavior in which one might not fulfill the vow (Maharsha).

A different explanation of the comparison is that one who vows is adding prohibitions that the Torah does not impose upon him, which is similar to sacrificing an extraneous offering that the Torah does not require. It should be noted that both early and later commentaries qualify this negative attitude to vows, explaining that certain vows that are designed to strengthen one's commitment to Torah and mitzvot are appropriate and even recommended.

He will treat the bailee's home as his home – דבייתיה כי בייתיה דמי: The Maharsha explains this differently. He says that this statement refers to a case where the owner's house is as secure as the bailee's, and consequently the bailee is taking on additional responsibility for no purpose.

He... has nothing other than Torah – אין לו אלא תורה: This refers to someone who studies Torah solely in order to derive pleasure from his learning and not for the purpose of performing the mitzva of Torah study. Such a person does not receive the reward for performing a mitzva (*ge'onim*).

HALAKHA

One who vows, it is as if he built a personal altar and one who fulfills that vow, it is as if he sacrificed an offering on this personal altar – הנודר כאילו בנה במה, והמקיימו כאילו הקריב עליה קרבן: If one vows, it is as if he built an improvised personal altar at a time when it is forbidden to do so, and if he fulfills it, it is as if

he sacrificed an offering on this altar. It is better for him to ask a halakhic authority to dissolve his vow. This ruling is in accordance with Rabbi Natan's opinion (Rambam *Sefer Hafl'a'a, Hilkhot Nedarim* 13:25; *Shulhan Arukh, Yoreh De'a* 203:3).

יִרְאֶה... view himself as if a sword were placed – ...יִרְאֶה: Judges must preside in a state of dread, awe, and seriousness. They must not engage in idle talk in court, and each judge must view himself as if a sword were at his throat (Rambam *Sefer Shofetim, Hilkhot Sanhedrin* 23:8; *Shulhan Arukh, Hoshen Mishpat* 8:2).

NOTES

When she reaches majority the betrothal reaches majority with her – כִּי גְדֻלָּה גְדֻלָּה בְּהֶדְהָ: The Rashba explains this understanding of a minor's betrothal: When a husband betroths a minor it is as if he were setting a condition that the betrothal will take effect according to Torah law when she reaches maturity. Although she did not yet possess full intellectual capacity when she was betrothed, and although the betrothal money may no longer exist when she reaches maturity, nevertheless, the Sages decreed that this betrothal takes effect when she reaches majority if she does not refuse him in the interim (see Ramban).

According to a different opinion, the validity of the marriage of a minor is not a function of the initial betrothal but rather of the agreement implied by the fact that she became an adult without dissolving the bond between her and her husband (see *Kovetz He'arot*, citing Rabbeinu Peretz and Maharik). This is also debated in the Jerusalem Talmud, where the conclusion is that the betrothal is not a result of intercourse subsequent to her majority but depends upon the initial betrothal.

וְאִיבְעִית אִימָא, לְעוֹלָם בְּדַמְרִיתוֹ מֵעֵיקְרָא: בְּלֹא הָאֹמְרָא אֵין לֹא אֵלָא תוֹרָה – אֵין לֹא אֵלָא תוֹרָה, לֹא צְרִיכָא דְקָא מְמַר לְאַחֲרֵינָא וְאֹלֵי וְעַבְדֵי. מְהוּ דְתִמְמָא אֵית לֵיה אַגְרָא לְדִידֵיה, קָא מְשַׁמְעֵ לֵן.

And if you wish, say: Actually, it is as you initially said: Anyone who says he has nothing other than Torah has nothing other than Torah. Rather, this statement is necessary with regard to one who teaches others and they go and perform the mitzvot. Lest you say that there is reward for him in it, Rabbi Yosei teaches us that since that person engaged in Torah study without the intention of observing the mitzvot himself, he does not receive a reward for the mitzvot that he taught others and which they performed.

וְאִיבְעִית אִימָא, תּוֹקַע עֲצָמוֹ לְדָבַר הֶלְכָה – בְּדִינָא דְאֵתִי דִינָא לְקַמְיָה, וְגַמְרֵי הֶלְכָה וְיַמְדִּימֵי מִלְתָּא לְמִילְתָּא, וְאֵית לֵיה רֵבָה וְלֹא אֹזִיל מִשְׁאִיל.

And if you wish, say that one who confounds himself in matters of halakha is referring to a judge who had a case come before him, and he learned the tradition about a ruling in a similar case, and he likens one matter to the other in order to reach a conclusion; and he has a teacher nearby but he does not go and ask him. This is inappropriate, as judges must be very careful not to err in judgment.

דְּאָמַר רַבִּי שְׁמוּאֵל בְּרַחֲמֵי אָמַר רַבִּי יוֹנָתָן: לְעוֹלָם יִרְאֶה דִּין עֲצָמוֹ כְּאִילוֹ חָרַב מוֹנַחַת לֹא בֵּין יְרִיכוֹתָיו, וְגִיְהֵנָם פְּתוּחָה לֹא מִתְחַתָּיו, שְׁנַאֲמַר "הִנֵּה מִטְתּוֹ שֶׁל־שְׁלֹמֹה שְׁשִׁים גְּבוּרִים סָבִיב לָהּ מְגֹבְרֵי יִשְׂרָאֵל וְגו' מִפְּחַד בְּלִילוֹת" – מִפְּחַד שֶׁל גִּיְהֵנָם שְׂדוּמָה לְלֵילָה.

As Rabbi Shmuel bar Nahmani said that Rabbi Yonatan said: A judge should always view himself as if a sword were placed¹¹ between his thighs, so that if he leans right or left he will be injured, and as if Gehenna was open beneath him, as it is stated: "Behold, it is the bed of Solomon; sixty mighty men are around it, of the mighty men of Israel. They all handle the sword, and are expert in war; every man has his sword upon his thigh, because of dread in the night" (Song of Songs 3:7–8), i.e., because of the dread of Gehenna, which is similar to the night. Rabbi Shmuel bar Nahmani understands the mighty men of Israel in this verse to refer to the judges who sit in judgment around the bed of Solomon, i.e., in the Temple.

"רַבֵּן גַּמְלִיאֵל אוֹמֵר: אִם מִיאָנָה" וכו'. בְּעָא מִינֵיה רַבִּי אֶלְעָזָר מְרַב: מֵאֵי טַעְמָא דְרַבֵּן גַּמְלִיאֵל, מִשּׁוּם דְּקָסְבַר קִידוּשֵׁי קְטַנָּה מִיְתְּלָא תַלְוּ, וְכִי גְדֻלָּה גְדֻלָּה בְּהֶדְהָ, אֵף עַל גַּב דְּלֹא בְּעַל.

It was taught in the mishna that Rabban Gamliel says: If the minor refuses of her own accord, her refusal is valid. And if not, she should wait until she reaches majority, whereupon her marriage is valid by Torah law, and the widowed adult sister shall be exempt from levirate marriage due to her status as the sister of a wife. Rabbi Elazar raised a dilemma to Rav: What is Rabban Gamliel's reasoning? Is it because he holds that the betrothal of a minor girl is in suspension and when she reaches majority, the betrothal reaches majority, i.e., is fully realized, with her?¹² Accordingly, the betrothal would then be realized even if he did not engage in intercourse with her after she reached majority.

או דְּלִמָּא מִשּׁוּם דְּקָסְבַר הַמְקַדֵּשׁ אַחֹת יְבָמָה, נִפְטְרָה יְבָמָה וְהֶלְכָה לָהּ, אֵי בְּעַל אֵין, אֵי לֹא בְּעַל – לֹא?

Or perhaps, is it because he holds that when a yavam betroths the sister of his yevama, causing the yevama to be forbidden to him, the yevama is exempt and is released even though her levirate bond came first? If he engaged in sexual intercourse with his betrothed after she reached majority, then yes, the yevama is exempt as a forbidden relative, because only then does Rabban Gamliel consider the betrothal to be fully realized, but if he did not engage in intercourse with his betrothed, then the yevama is not exempt from levirate marriage.

אָמַר לֵיה: הֵינֵנו טַעְמָא דְרַבֵּן גַּמְלִיאֵל, מִשּׁוּם דְּקָסְבַר הַמְקַדֵּשׁ אַחֹת יְבָמָה, נִפְטְרָה יְבָמָה וְהֶלְכָה לָהּ, אֵי בְּעַל אֵין, אֵי לֹא בְּעַל – לֹא.

Rav said to him: This is Rabban Gamliel's reasoning: Because he holds that in the case of one who betroths the sister of his yevama, the yevama is exempt and is released, then if he engaged in sexual intercourse with the sister after she reached majority then yes, the yevama is exempt from levirate marriage, but if he did not engage in intercourse with the sister after she reached majority, the yevama is not exempt.

אָמַר רַב שֶׁשֶׁת: אִמְיָנָא, כִּי נִיִּים וְשָׁכִיב רַב אָמַר לָהּ שְׁמַעְתָּא. דְּתַנָּא: הַמְקַדֵּשׁ אֶת הַקְּטַנָּה – קִידוּשֵׁיהָ תְלוּיָן. מֵאֵי תְלוּיָן, לֹא כִי גְדֻלָּה גְדֻלָּה בְּהֶדְהָ, וְאֵף עַל גַּב דְּלֹא בְּעַל!

Rav Sheshet said: I say that Rav said this halakha when he was dozing and lying down, as it is difficult. As it is taught in a baraita: In the case of one who betroths a minor girl, her betrothal is in suspension. What does it mean that it is in suspension? Is it not that when she reaches majority, the betrothal reaches majority with her and is fully realized even if he did not have intercourse with her after she reached majority?

This matter that the betrothal of a minor girl – **הָאֵלֶּיךָ עֲדִיף מִינָאֵי** – **מִלְתָּא דְקֻטְנָה**: Ravin, son of Rav Nahman, explains the *baraita* differently than does Rav Sheshet. According to Ravin's opinion, the *baraita* does not mean that the betrothal of the minor was of substance at the outset and that it remains suspended until the acquisition takes effect upon her maturity. Rather, the betrothal is provisional upon the occurrence of sexual intercourse after she reaches majority.

הוא עדיף מינאי – Rav Hai Gaon and many of the early commentaries (Ramban; Rosh; Ra'avad) have a slightly different version of the text, according to which this sentence does not constitute the completion of the statement of Ravin, son of Rav Nahman. Rather, it is Rav Sheshet's comment on their exchange. Rav Sheshet says about himself and Ravin, son of Rav Nahman: I have an advantage over him, for I am better versed in *baraitot*, and he has an advantage over me, as he has the ability to ingeniously explain the *baraita* so that it does not contradict Rav's opinion.

HALAKHA

One who betroths a minor who reaches majority – **הַמְקַדֵּשׁ אֶת הַקְּטָנָה וְגִדְלָהּ** – If one betroths a minor girl who is orphaned of her father, the legal status of this betrothal is defined as uncertain until they have had intercourse after she has reached her majority. During this period, if he wishes to divorce her, she requires a bill of divorce by rabbinic law. If he has not divorced her and she marries another, she requires a bill of divorce from each of the husbands. The first must divorce her but the second may remain married to her if he wishes (Rambam *Sefer Nashim, Hilkhot Geirushin* 11:6; *Shulhan Arukh, Even HaEzer* 155:20–21).

NOTES

But they already disagreed about this once – **וְהָאֵלֶּיךָ עֲדִיף מִינָאֵי בְּהַתְּרָא וְיִמְנָא**: This question, like the similar question that appears elsewhere in the Gemara: But he already said this once, does not imply that a scholar would never repeat the same thing twice. It means, rather, that if the scholar makes a halakhic statement, there is no reason for him to repeat the same thing in a different form with no original content. Likewise, with respect to a halakhic dispute, there is no reason to differentiate between two topics when the foundation of the dispute is identical (*Tosafot; Tosefot HaRosh*).

HALAKHA

Betrothed a woman on some condition, and married her without mentioning it – **קִידְּשָׁהּ עַל תְּנָאֵי** – **וְכַנְסָהּ סְתָם**: If a man betrothed a woman based on a condition, but married her or engaged in sexual intercourse with her without specifying any such condition, she requires a bill of divorce from him in order to be released from the marriage even if the condition was not fulfilled. This is because he retracted the condition when he married her or engaged in intercourse with her. This ruling is in accordance with Rav, whom the *halakha* follows in cases of prohibitions (Rambam *Sefer Nashim, Hilkhot Ishut* 7:23; *Shulhan Arukh, Even HaEzer* 38:35).

אָמַר לִיהָ רַבִּין נַחְמָן: הָאֵלֶּיךָ עֲדִיף מִינָאֵי דְקֻטְנָה מִלְתָּא דְקֻטְנָה מִיְתְּלָא תְּלִיא וְקִימָא: אֵי בְּעַל – אֵין, אֵי לֹא בְּעַל – לֹא. דְאָמְרָה: הוּא עֲדִיף מִינָאֵי וְאִנָּא עֲדִיפָנָא מִינָאֵי.

Ravin, son of Rav Nahman, said to Rav Sheshet: This matter, that the betrothal of a minor girl^N remains in suspension, should be understood differently. It means that her betrothal is provisional as long as she is still a minor: **If he has sexual intercourse** with her after she reaches majority, **yes**, her betrothal is realized; **if he does not engage in intercourse** with her after she reaches majority, her betrothal is **not** realized. **For she says** to herself: **He has an advantage over me^N** in that he can divorce me, **and I have an advantage over him**, as I can refuse him. Since the marriage of a minor depends upon her ongoing consent, as she can refuse him at any time, it remains provisional until it is consummated when she is an adult.

וְסָבַר רַב: אֵי בְּעַל – אֵין, אֵי לֹא בְּעַל – לֹא? וְהָאֵלֶּיךָ עֲדִיף מִינָאֵי דְקֻטְנָה שְׂלֵא מִיְתְּלָא וְהַגְדִּילָהּ וְעָמְדָה וְנִשְׂאָתָא, רַב אָמַר: אֵינָה צְרִיכָה גַּט מִשְׁנֵי, וְשְׂמוּאֵל אָמַר: צְרִיכָה גַּט מִשְׁנֵי.

The Gemara asks: **But does Rav truly think that only if he has intercourse with her** after she becomes an adult, then **yes**, her betrothal is realized, **but if he did not engage in intercourse with her**, then **no**, it is not realized? **Wasn't it stated** that with regard to a **minor who had not refused her husband and reached majority, and then went and married another**, Rav said: **She does not require a bill of divorce from the second man**, as she is fully married to the first and consequently her second marriage is invalid? **And Shmuel said: She does require a bill of divorce from the second man**, as it is uncertain whether her second marriage is valid.^H

Perek XIII

Daf 110 Amud a

מֵאֵי לֹא דְלֹא בְּעַל? לֹא, דְּבְּעַל. אֵי דְּבְּעַל מֵאֵי טַעְמָא דְּשְׂמוּאֵל? קְסָבַר: כֹּל הַבּוֹעֵל עַל דַּעַת קְדוּשֵׁין הִרְאִישׁוּנִים הוּא בּוֹעֵל.

What, is it not a case where he did not have intercourse with her after she reached majority? If so, Rav thinks that even when he did not have intercourse with her, her marriage is fully realized once she reaches majority. The Gemara rejects this: **No**, this is referring to a case where he did have intercourse with her. The Gemara asks: **If it is referring to a case where he had intercourse with her, what is Shmuel's reasoning?** If the first one engaged in intercourse with her after she reached majority, then the marriage was fully realized. Under such circumstances, the second betrothal would not take effect. The Gemara answers: **Shmuel holds that when anyone has sexual intercourse with a woman he married as a minor, his intention is that the intercourse is within the framework established by the initial betrothal and is not a new act of acquisition.**

וְהָאֵלֶּיךָ עֲדִיף מִינָאֵי בְּהַתְּרָא וְיִמְנָא, דְאִיתְמַר: קִידְּשָׁהּ עַל תְּנָאֵי וְכַנְסָהּ סְתָם, רַב אָמַר: צְרִיכָה הֵימְנוּ גַּט, וְשְׂמוּאֵל אָמַר: אֵינָה צְרִיכָה הֵימְנוּ גַּט.

The Gemara asks: **But if this is the basis of the dispute, they already disagreed about this once,^N as it was stated** with regard to the following case: A man betrothed a woman on some condition, and married her without mentioning^H the condition, and the condition was not fulfilled. **Rav says: She requires a bill of divorce from him, and Shmuel says: She does not require a bill of divorce from him.**

רַב אָמַר: צְרִיכָה הֵימְנוּ גַּט, כִּיּוֹן דְּנִסְבָּה – אַחֲרָיִי אַחֲרֵיהּ לְתַנְאֵיהּ, וְשְׂמוּאֵל אָמַר: אֵינָה צְרִיכָה הֵימְנוּ גַּט, כֹּל הַבּוֹעֵל עַל דַּעַת קְדוּשֵׁין הִרְאִישׁוּנִים הוּא בּוֹעֵל!

The Gemara explains: **Rav says she requires a bill of divorce from him, for since he married her, he apparently retracted his condition**, and is therefore married to her even though the condition was not met. **And Shmuel says: She does not require a bill of divorce from him**, because anyone who has sexual intercourse with his wife, his intention is that the intercourse is within the framework established by the initial betrothal and the condition he set at the time of betrothal still stands. Since it was not fulfilled, the marriage is annulled. If so, Rav and Shmuel already disagreed about this same issue.