

NOTES

In the latter clause we have come to Rabbi Akiva – סִיפָא – אֵתָאן לְרַבִּי עֲקִיבָא: If this is indeed Rabbi Akiva's opinion, then even if the brother who performed *halitza* subsequently betrothed the *halitza*, she still would not require a bill of divorce. Consequently, Rabbi Akiva must interpret the phrase: One of the brothers, to refer to all the brothers of the deceased, including the one who performed *halitza* (*Tosafot Yeshanim; Tosefot HaRosh*).

But let the mishna teach: According to the statement of Rabbi Akiva – וְלִיתֵנִי לְדַבְרֵי רַבִּי עֲקִיבָא: The early commentaries ask: There are many statements of this kind in the Gemara, where the mishna is explained as reflecting the opinions of two different *tanna'im*, and yet elsewhere the Gemara does not insist that the mishna should have mentioned the name of the specific *tanna* who authored the second opinion (*Tosafot*). The answer given is that the difficulty is not the mere omission of the phrase: According to the statement of Rabbi Akiva, but that if indeed this ruling is Rabbi Akiva's, he should have explicitly disagreed in the first case as well by stating that she does not require *halitza* from the brothers (Ramban; Ritva).

אָמַר רַב שֵׁשֶׁת: סִיפָא אֵתָאן לְרַבִּי עֲקִיבָא, דְאָמַר: אֵין קִידוּשֵׁין תּוֹפְסִין בְּחַיֵּיבֵי לְאוּיָן. וְלִיתֵנִי: לְדַבְרֵי רַבִּי עֲקִיבָא אֵין לוֹ עָלָיו כְּלוּם!

Rav Sheshet said in resolution of this contradiction: In the latter clause of the *baraita* we have come to a different opinion, that of Rabbi Akiva,<sup>N</sup> who said: Betrothal with those who are forbidden as they are liable for violating a prohibition is not valid. In Rabbi Akiva's opinion there is no difference between regular prohibitions and prohibitions that incur *karet* in this regard, as in both cases the betrothals are invalid. The Gemara raises a difficulty: But if the first clause of the *baraita* is in accordance with the opinion of the Rabbis, while the latter clause is in accordance with a different opinion, let the mishna teach explicitly: According to the statement of Rabbi Akiva<sup>N</sup> she has no claims on him, as this represents a different opinion.

Perek I

Daf 11 Amud a

NOTES

The dispute concerning a *yevama* who performed *halitza* – הַמְחַלְוֹתָת בִּיבְמָה שְׁנַחֲלִיצָה: In the Jerusalem Talmud several other versions of the same basic dispute between Rabbi Yohanan and Reish Lakish are cited. These versions differ in both the opinions held by the two Sages and the details of their argument.

In accordance with Rabbi Shimon... she requires *halitza* from the brothers – צְרִיכָה חֲלִיצָה מִן הָאֲחִין: The commentaries ask: If the brothers were born only after the betrothal of the widow of their already-deceased brother to their other brother, this woman should be permitted to them in levirate marriage; why, then, must they perform *halitza* (*Tosafot*)? One suggestion is that since the second brother had performed *halitza* with her, she retains a measure of the levirate bond from the first brother. Consequently, even Rabbi Shimon concedes that the newborn brothers are not permitted to marry her (*Keren Or*).

קָשְׁיָא. רַב אֲשִׁי סָבַר לָהּ כְּרִישׁ לְקִישׁ, וּמִתְרַץ לָהּ בְּרַבִּי שְׁמַעוֹן. רַבִּינָא סָבַר לָהּ בְּרַבִּי יוֹחָנָן, וּמִתְרַץ בְּרַבָּנָן.

The Gemara comments: Rav Sheshet's explanation of the contradiction between the first clause and latter clause of the *baraita* is difficult. Consequently, the Gemara cites different resolutions of this contradiction. Rav Ashi holds in accordance with the opinion of Reish Lakish and resolves the *baraita* in accordance with the opinion of Rabbi Shimon. Ravina, in contrast, holds in accordance with the opinion of Rabbi Yohanan and resolves the *baraita* in accordance with the opinion of the Rabbis.<sup>N</sup>

רַב אֲשִׁי סָבַר לָהּ כְּרִישׁ לְקִישׁ וּמִתְרַץ לָהּ בְּרַבִּי שְׁמַעוֹן: הַחֹלֵץ לִיבְמֹתוֹ וְחֹזֵר וְקָדְשָׁה צְרִיכָה חֲלִיצָה מִן הָאֲחִין. מֵאֵין אֲחִין –

The Gemara elaborates: Rav Ashi holds in accordance with the opinion of Reish Lakish and resolves the *baraita* in accordance with the opinion of Rabbi Shimon. This is his interpretation: In the case of one who performs *halitza* with his *yevama* and went back and betrothed her, and then died, she requires *halitza* from one of the brothers.<sup>N</sup> Who are the brothers referred to here?

אֲחִין הַיְלִידִים, כְּמֵאן – בְּרַבִּי שְׁמַעוֹן.

Rav Ashi explains that they are the newborn brothers, i.e., those who were born only after the brother betrothed her. Consequently, although this woman was the wife of the first deceased brother before they were born, after their birth she was already the wife of a living brother. Therefore, the prohibition of a wife of a brother with whom he did not coexist never applied, and she requires *halitza*. In accordance with whose opinion is this ruling? It is in accordance with the opinion of Rabbi Shimon, who maintains that in a case of this kind the brothers are not considered to be coexisting.

עַמַּד אַחַד מִן הַנּוֹלָדִים וְקָדְשָׁה – אֵין לָהּ עָלָיו כְּלוּם, כְּמֵאן – כְּרִישׁ לְקִישׁ.

Meanwhile, the latter clause speaks of a case where one of the brothers who was born in the lifetime of the first brother arose and betrothed her, after another brother had performed *halitza*. In this case, she has no claims of a bill of divorce on him. In accordance with whose opinion is this ruling? It is in accordance with the opinion of Reish Lakish, who maintains that the penalty of *karet* applies in this case, and therefore the betrothal is entirely invalid.

**מתוך לה אליבא – Rabbis**: Resolves it in accordance with the Rabbis – **דרבנן**: According to Rashi, this means only in accordance with the opinion of the Rabbis, and not in accordance with the opinion of Rabbi Shimon at all. Other commentaries explain that it means: Even according to the opinion of the Rabbis. The reason is that even if the brothers were born after the living brother with whom they coexisted had performed *halitza* with the *yevama*, she would still be prohibited to them, as *halitza* releases one from the obligation of levirate marriage but it is not considered an act of acquisition on the part of the brother with whom they coexisted, as explained in the Jerusalem Talmud (Ramban; Rashba).

**ילודים וגולדים – [yeludim] and [noladim]**: According to the version of the text accepted by Rashi, the *yeludim* are those who were born at some time after the brother had performed *halitza* or betrothal, whereas the *noladim* were born while the first deceased brother was still alive. The version of the Gemara and the explanation found in *Tosafot*, however, indicate the opposite. Support can be found for both versions from a linguistic perspective; however, as pointed out by *Tosafot*, the regular use of language indicates that their version is correct, as *yelud* generally refers to one already born, as in the verse: “Born [*yelud*] of woman” (Job 14:1). The word *nolad* typically denotes something born at a later point in time, as in the expression: He who anticipates the future [*et hanolad*], translated literally as: What will be born, and in several other places, e.g., with regard to objects that came into being [*nolad*], a concept in the *halakhot* of *muktze* in tractate *Beitza*. In all these cases the term refers to items or people that will be born in the future or were only recently born.

**The prohibition of the rival wife of a yevama to the brothers – איסור צרת יבמה לאחין**: Some commentaries hold that instead of: A positive mitzva, the correct version of the text is: Transgresses a prohibition, i.e., that of the verse: “Does not build up.” Since he released his *yevama* by *halitza* and did not build his brother’s house, he may never do so in the future (Rabbeinu Hananel; *Tosafot*). Conversely, others read: Violation of a positive mitzva, as they maintain that the verse: “Build up his brother’s house” (Deuteronomy 25:9) is a positive mitzva to build only one house (*Ba’al Halakhot Gedolot*; Rashi; Rif). Although one could object that this prohibition apparently applies only to the brother who fulfills the duty of levirate marriage and not to the others, Rashi points out that this brother is considered the agent of the other brothers, meaning that it is as though they all performed the act (Ritva).

Some raise a difficulty against Rashi’s opinion from the verse itself. Since the Torah states: “Does not build up” in the negative, how could this be viewed as a positive mitzva (Rabbeinu Tam)? One answer is that the verse must be read in its entirety: “So shall be done to the man who does not build up his brother’s house.” This shows that the negative formulation of the mitzva does not refer to the action in question, but to the failure to do so. Consequently, the mitzva is actually a positive one (Ritva). Others avoid any potential difficulty with this verse by finding an alternative source for the positive mitzva in the phrase (Deuteronomy 25:5): “Her brother-in-law will have intercourse with her” (Rambam). The Rambam adds that the phrase: “Will have intercourse with her” indicates: Not with another, i.e., the positive mitzva applies to one woman alone (see *Yam shel Shlomo*).

The Gemara continues its explanation of the opinions. **Ravina holds in accordance with the opinion of Rabbi Yoḥanan and resolves the *baraita* in accordance with the opinion of the Rabbis.**<sup>N</sup> How so? In the case of one who performs *halitza* with his *yevama* and went back and betrothed her and then died, she requires *halitza* from one of the brothers. Who are these brothers? This is referring to the brothers already born in the lifetime of the first brother. **In accordance with whose opinion is this interpretation? It is in accordance with the opinion of Rabbi Yoḥanan, who held that this case constitutes a regular prohibition. Consequently, the *yevama* is not exempt from the obligation of *halitza*.**

**If one of the newborn<sup>N</sup> brothers, who were born after the death of the first brother, arose and betrothed her, she has no claim on him.** Since he is considered a brother who did not coexist with his deceased brother, the *yevama* is prohibited to him as a brother’s wife, and as this prohibition entails *karet*, the betrothal is invalid. This is the *halakha* even if he was born after the second deceased brother betrothed her. **In accordance with whose opinion is this ruling? It is in accordance with the opinion of the Rabbis, who maintain that the prohibition of a wife of a brother with whom one did not coexist applies even to a brother’s widow who entered into levirate marriage before the younger brother was born.**

**It was stated that there is a similar dispute between *amora'im* with regard to one who had relations with his *yevama* and thereby performed the mitzva of levirate marriage as required, and one of the other brothers had relations with her rival wife.**<sup>NH</sup> **Rav Aḥa and Ravina disagree with regard to this matter. One said: The second brother is liable to receive *karet*. And the other one said that he is in violation of only a positive mitzva.** The verse: “Who does not build up his brother’s house” (Deuteronomy 25:9), is a positive mitzva, as it teaches that one house may be built up, but not two houses, i.e., no more than one wife of a deceased brother may be married by one of his brothers. Any mitzva formulated as a positive injunction has the status of a positive mitzva, even if it is violated by the performance of an action, in the manner of a prohibition.

The Gemara explains: **The one who said that he is liable to receive *karet* holds in accordance with the opinion of Reish Lakish, who maintains that after the mitzva is performed with one *yevama* who required levirate marriage, the prohibition of a brother’s wife is once again fully applicable to her rival wife. And the one who said that he is in violation of only a positive mitzva holds in accordance with the opinion of Rabbi Yoḥanan.**

#### HALAKHA

**The rival wife of a *yevama* to the brothers after levirate marriage – צרת יבמה לאחין לאחר יבום**: After one of the brothers enters into levirate marriage with the *yevama*, neither he nor the other brothers may have relations with the rival wives. If he or one of the other brothers has relations with a rival wife, they have violated a positive mitzva. The *halakha* is in accordance

with the opinion of Ravina, following the principle that in his disputes with Rav Aḥa the *halakha* is in accordance with the more lenient position. This is certainly the case here, as Ravina accepts the opinion of Rabbi Yoḥanan (*Beit Yosef; Shulḥan Arukh, Even HaEzer* 162:1).

**סוֹטָה וְצֵרֶת סוֹטָה – A sota and the rival wife of a sota** – In the case of a woman who willingly commits adultery and there are witnesses who testify to that effect, if her husband dies before he can divorce her, she is exempt from *halitza* and levirate marriage. Her rival wife is likewise entirely exempt. This is the ruling of the *Shulhan Arukh*, in accordance with the opinion of the Rambam (*Sefer Nashim, Hilkhot Yibbum VaHalitza* 6:19), and the discussion in the Gemara here indicates that there is no dispute in this regard. Some commentaries claim that even if it is clear that the woman was adulterous, she still requires *halitza* (Ra'avad on *Sota* 5b). It is proper to act in accordance with this more stringent opinion (*Shulhan Arukh, Even HaEzer* 173:11, and in the comment of Rema).

**The prohibition of an uncertain sota to her husband – איסור ספק סוטה לבעלה** – In the case of a husband who in the presence of witnesses warns his wife against secluding herself with a specific man, if she disobeys her husband and is observed to be alone with that man long enough to engage in relations, she is forbidden to her husband. Some commentaries maintain that the husband must explicitly declare himself jealous (Rema, citing Rabbeinu Ya'akov Weil; *Shulhan Arukh, Even HaEzer* 115:8).

אָמַר רַב יְהוּדָה אָמַר רַב: צֵרֶת סוֹטָה – אִסּוּרָה,

טוּמְאָה בְּתִיב בְּהַ, כְּעֵרִיּוֹת.

מְתִיב רַב חֲסִדָּא: רַבִּי שְׁמַעוֹן אוֹמֵר: בִּיאָתָהּ אוֹ חֲלִיצָתָהּ מֵאֲחִיו שֶׁל רֵאשׁוֹן פּוֹטְרֶת צֵרֶתָהּ!

[אָמַר לָךְ רַב]: אָמִינָא לָךְ אֲנָא סוֹטָה דְּאוֹרֵייתָא, וְאֵת אֲמַרְתָּ לִּי סוֹטָה דְּרַבְנָן?!

וּדְקָאֵרִי לָהּ מֵאִי קָאֵרִי לָהּ! קְסַבְר: כֹּל דְּתַקְוִין רַבְנָן – כְּעֵין דְּאוֹרֵייתָא תַקְוִין.

The Gemara further analyzes the list of women exempt from levirate marriage. **Rav Yehuda said that Rav said: The rival wife of a sota is forbidden.**<sup>HN</sup> In this context, *sota* refers to an unfaithful wife.<sup>H</sup> If the husband died, the unfaithful wife and her rival wife are exempt from both *halitza* and levirate marriage.

What is the reason for this? The term **defilement is written in that passage dealing with an unfaithful wife: “She being defiled secretly”** (Numbers 5:13), just as defilement is written with regard to **those with whom relations are forbidden**<sup>N</sup> in the verse: “Defile not yourselves in any of these things, for in all these the nations are defiled, which I cast out from before you” (Leviticus 18:24). This teaches that the *halakha* of an unfaithful wife is like that of a woman with whom relations are forbidden; both she and her rival wife are exempt from levirate marriage and *halitza*.

**Rav Hisda raised an objection** to this from the case of a woman who heard that her husband had died and remarried, only afterward to discover that he had still been alive at that time before dying later. What is the *halakha* in this case? **Rabbi Shimon says: Her relations with or halitza from the brother of the first husband exempts her rival wife.** This shows that the obligation of levirate marriage applies to this woman. Although she lived as a married woman with someone else during her husband’s lifetime, Rabbi Shimon nevertheless maintains that her sexual intercourse or *halitza* fulfills the mitzva of levirate marriage and exempts her rival wife. This suggests that the rival wife of an unfaithful wife requires levirate marriage.

The Gemara answers that **Rav could have said to you** in response: **I spoke to you** about the *halakha* of a *sota* by Torah law, i.e., a wife who was intentionally unfaithful, **and you speak to me of a sota by rabbinic law?** The case you mentioned is an unavoidable accident, as the wife married another man only because she received testimony that her husband was deceased. When the Sages instituted that she was forbidden to both her first and second husbands, this was a penalty designed to ensure that women would examine testimony of this kind very thoroughly. However, this is not a case of a *sota* by Torah law, as she was not intentionally unfaithful, and therefore the mitzva of levirate marriage certainly applies to her.

Since this response is overwhelmingly obvious, the Gemara asks: **And he who asked it, why did he ask it?** There are apparently no grounds for this comparison at all. The Gemara explains: **He held that all ordinances that the Sages instituted, they instituted parallel to Torah law.** Consequently, if a *sota* by Torah law is exempt from levirate marriage and exempts her rival wife as though she were a forbidden relative, the same should apply to a *sota* by rabbinic law.

NOTES

**The rival wife of a sota is forbidden – צֵרֶת סוֹטָה אִסּוּרָה:** This is also the *halakha* with regard to a *sota* herself, which is assumed to be understood (Ramban). This statement is in accordance with the opinion that the rival wife of a *sota* is not only prohibited in levirate marriage but is also exempt from *halitza*, which is the opinion of most commentaries and authorities. However, some authorities apparently maintain that even according to the opinion of Rav, the rival wife of a *sota* does perform *halitza* despite the fact that she may not enter into levirate marriage (Ra'avad). According to this opinion, the Gemara is precise in its wording. Some commentaries demonstrate at length how several difficulties can be resolved by this opinion (*Arukh LaNer*; see Vilna Gaon on *Shulhan Arukh, Even HaEzer* 173:11).

**Defilement is written in that passage, just as it is with regard to those with whom relations are forbidden – טוּמְאָה בְּתִיב – כְּעֵרִיּוֹת:** The commentaries ask: Since the defilement in that

context refers only to the woman’s husband and the man with whom she was unfaithful, not to the *yavam*, why should she be forbidden to him (*Arukh LaNer*)? Some commentaries explain that this can be derived by an *a fortiori* inference: If she is forbidden to someone to whom she is generally permitted, i.e., her husband, she is certainly forbidden to one to whom she is usually forbidden, her brother-in-law (*Tevuot HaShor; Kovetz He'arot*). Others write, in accordance with the version cited in the Jerusalem Talmud, that the term defilement is actually written three times in connection to a *sota*: Once for the husband, once for the adulterer, and once for the *yavam* (*Kehillot Ya'akov*). Yet others maintain that the term defilement in the chapter of a *sota* refers specifically to the *yavam*, as it is only with regard to him that it is necessary for the verse to teach that she is a forbidden relative. She is not considered a forbidden relative for her husband, as their marriage is not annulled by her unfaithfulness (Ramban).

**Prohibited from partaking of *teruma* – אסורה לאכול – בתרומה:** In the case of the wife of a priest concerning whom witnesses testified both that her husband warned her against secluding herself with a certain man, and that she was alone with the man in question, she is prohibited from partaking of *teruma* until she undergoes the *sota* procedure (Rambam *Sefer Zera'im, Hilkhot Teruma* 8:15).

**An uncertain *sota* and levirate marriage – ספק סוטה בייבום:** In the case of a wife who secluded herself with a man despite having been warned by her husband not to do so, if her husband dies before she performs the *sota* procedure, she neither undergoes *halitza* nor is fit for levirate marriage (Rambam *Sefer Nashim, Hilkhot Yibbum VaHalitza* 6:19).

מתלב רב אשי נכנסה עמו לסתר ושהתה עמו כדי טומאה – אסורה לבייתה, ואסורה לאכול בתרומה. ואם מת – חולצת

Rav Ashi raised an objection to Rav's opinion from a different source: The *halakha* is that a wife who was warned by her husband not to be secluded with a specific man and yet entered alone with him in private, and remained with him long enough to be defiled, i.e., sufficient time to have sexual relations, she is forbidden to her house, i.e., her husband, from that moment until she undergoes the *sota* ritual. And likewise, if she was the wife of a priest she is prohibited from partaking of *teruma*,<sup>h</sup> as she was possibly disqualified by unfaithfulness. And if he dies,<sup>h</sup> she performs *halitza*

## Perek I

## Daf 11 Amud b

ולא מתיבמתי! [אמר לך רב]: אמינא לך אנה סוטה ודאי. ואמרת לי את סוטה ספק! ומאי שנא סוטה ודאי (מאי טעמא), משום דכתב בה טומאה –

and may not enter into levirate marriage. This indicates that the levirate bond does apply to a *sota*, which contradicts Rav's statement. The Gemara retorts that Rav could have said to you: I spoke to you about a *sota* whose infidelity was definite, and you speak to me of an uncertain *sota*. There is no proof that this wife who secluded herself with another man was actually unfaithful, and due to the uncertainty she must still undergo *halitza*. The Gemara raises a difficulty: And what is different about a definite *sota*? Is it different because the term defilement is written with regard to her?

סוטה ספק נמי טומאה כתיבא בה! דתנא: רבי יוסי בן ביפיר אומר משום רבי אלעזר: המחזיר גרושתו מן הנישואין – אסורה, מן האירוסין – מותרת, משום שנאמר "אחרי אשר הטמאה",

But with regard to an uncertain *sota*, who was alone with a specific man enough time to engage in relations, defilement is written as well.<sup>n</sup> As it is taught in a *baraita*: Rabbi Yosei ben Keifar<sup>p</sup> said in the name of Rabbi Elazar: With regard to one who remarries his divorcée after she had been married to another man, an act prohibited by Torah law, if he remarried her following actual marriage to another, she is forbidden<sup>h</sup> to her first husband. However, if he remarried her following mere betrothal to another man, she is permitted, because it is stated: "Her former husband, who sent her away, may not take her again to be his wife, after she was defiled" (Deuteronomy 24:4), and a woman who was merely betrothed was never defiled, as no sexual relations had taken place.

וחכמים אומרים: אחת זו ואחת זו – אסורה. אלא מה אני מקיים "אחרי הטמאה" – לרבות סוטה שנסתרה.

And the Rabbis say: Both this one and that one, i.e., whether she had been fully married or merely betrothed to another, she is forbidden to her first husband. Rather, how do I establish the phrase: "After she was defiled"? This verse does not refer at all to the case of a woman who married another man lawfully, as she is not called "defiled." Rather, it comes to include a *sota* who secluded herself<sup>nh</sup> with another man, as she is forbidden to her husband due to the concern that she might have committed adultery. This *baraita* shows that a *sota* is termed "defiled," despite the fact that hers is an uncertain case.

## HALAKHA

The prohibition of one's divorcée who married another – איסור גרושה שנישאה לאתר: If one divorced his wife and she was subsequently betrothed to another, even if no sexual relations were involved, she is forbidden to her first husband. This ruling is in accordance with the opinion of the Rabbis, who disagree with Rabbi Yosei ben Keifar (Rambam *Sefer Nashim, Hilkhot Geirushin* 11:12 and *Maggid Mishne* there; *Shulhan Arukh, Even HaEzer* 10:1).

The prohibition of a *sota* – איסור סוטה: A married woman who willingly had relations with another man is forbidden to her husband, and he receives lashes if he engages in sexual intercourse with her. In circumstances where she was secluded with the man against whom she was warned, but her adultery was not proven, some authorities apparently maintain that he does not receive lashes (Rambam). Others (*Maggid Mishne; Kesef Mishne*) rule that he has indeed violated the prohibition (Rambam *Sefer Nashim, Hilkhot Geirushin* 11:14).

## PERSONALITIES

Rabbi Yosei ben Keifar – רבי יוסי בן ביפיר: This Sage from the last generation of *tanna'im* is mentioned in the *Tosefta* and in *baraitot* but not in the Mishna.

He was apparently a primary disciple of Rabbi Elazar ben Shamma, and most of the statements he cites are in this teacher's name. It is related that he was one of the emissaries sent to Babylonia to raise funds for the scholars of Eretz Yisrael. He is grouped together with Rabbi Dostai, son of Rabbi Yehuda, and Rabbi Dostai, son of Rabbi Yannai, who were also among the last of the *tanna'im*.

A Rabbi Yosei ben Keifar is also mentioned in relation to an important mission of the Sages of Eretz Yisrael to quash the attempts of Hananya to determine the calendar outside Eretz Yisrael. However, based on the timeline of these events, this was apparently a different Sage with the same name.

## NOTES

With regard to an uncertain *sota*, defilement is written as well – סוטה ספק נמי טומאה כתיבא בה: Several early commentaries deal with this issue, both from the perspective of the wording of the passage as well as its halakhic implications. Many authorities maintain that one who engages in sexual relations with his *sota* wife before she was tested by the *sota* procedure has violated a Torah prohibition. In addition, by secluding herself with the specified man, she is rendered forbidden both to her husband and to that other man, and may not partake of *teruma*. This indicates that her defilement is treated as definite even in an uncertain case, which apparently contradicts the analysis here.

The commentaries explain that although the Torah indeed considers her secret rendezvous as evidence of her certain defilement, this is only for the purposes of stringencies, not leniencies. Consequently, she still requires *halitza* (Rosh; Rashba). Others maintain that the classification of defilement refers solely to definite adultery, whereas in uncertain circumstances she has transgressed a rabbinic decree (Meiri).

To include a *sota* who secluded herself – לרבות סוטה שנסתרה: The commentaries ask how the Rabbis could uproot this phrase from its plain meaning in this manner (*Tosafot*). They explain that as the term "defiled" cannot possibly refer to a woman who

was lawfully married to another man, it must certainly refer to a *sota*. Some suggest that even in the opinion of the Rabbis, the simple meaning of the verse is not entirely disregarded. Rather, they maintain that there is a prohibition involved both in remarriage of one's former wife after she had been married to another man, and in taking a woman who had been defiled (Ritva). Yet others state that it stands to reason that a man would not divorce his wife in the first place unless he found in her some sort of infidelity, and therefore there is a double prohibition against him remarriage after she had already been defiled by her actions while still married to him (*Arukh LaNer*).

And the same is true even if she fornicated – ואפילו זנאי – נמי: A version of the Gemara mentioned by the *ge'onim* and early and later commentaries is cited by the Vilna Gaon in the following form: But if someone engaged in relations with a divorcée, even though she fornicated with that man she is permitted to her husband. This version resolves several difficulties of the standard text (see Rabbi Yehuda bar Natan and Maharshah).

**Becoming and matrimony are written in this context – הויה ואישות כתיב בה:** Some commentaries explain that this refers to the phrase: “May not take her again to be his wife” (Deuteronomy 24:4), which teaches that one may not remarry his divorcée without a new act of betrothal (Ritva). In addition, the phrase: “Her husband... may not” (Deuteronomy 24:4), indicates that even the second husband may marry her only by means of an act of betrothal.

**She is an abomination but her children are not abominations – היא תועבה ואין בניה תועבין:** But why would one even consider that her children might be forbidden (Meiri)? After all, her husband violated only a regular prohibition, and the children of a prohibited union of this kind are not disqualified. Some explain that as the term “abomination,” which usually appears only in reference to prohibitions entailing *karet*, is stated in this context, one might have thought that this child is also considered a *mamzer*. Alternatively, there is a principle that in every case of a marriage that involves a transgression the status of the child is generally determined by the parent with the more inferior lineage. Consequently, it is not unreasonable to think that the children themselves might be forbidden (Meiri; see *Tosafot* on 14b).

## HALAKHA

**The children of a remarried divorcée – בני גרושה שחתויה:** If one remarries his divorced wife after she had been married to another, then although she is forbidden to him the children born of this union are not classified as *mamzerim* (Rambam *Sefer Kedusha, Hilkhot Issurei Bia* 15:2).

ומאי נסתרה – נבעלה, ואמאי קרי ליה נסתרה – לישנא מעליא נקט. נבעלה, טומאה בהדיא כתיב בה ונסתרה והיא נטמאה!

למיקם עליה בלאו ורבי יוסי בן ביפר לאו בסוטה לית ליה, ואפילו זנאי נמי.

מאי טעמא – הויה ואישות כתיב בה.

בעא מיניה רב יהודה מרב ששת: המחויר גרושתו משניסת, ומת, צרתה מהו? אליבא דרבי יוסי בן ביפר לא תיבעי לך, כיון דאמר רבי יוסי בן ביפר טומאה במחויר גרושתו הוא דכתיבא – צרתה כמותה.

ואי משום דכתיב בה “תועבה היא”, היא תועבה ואין בניה תועבין – הא צרתה תועבה.

כי תיבעי לך – אליבא דרבנן, אף על גב דאמר רבנן טומאה בסוטה הוא דכתיב – אין מקרא יוצא מידי פשוטו,

The Gemara rejects this argument: **And what does: Secluded herself, mean in this context?** It means that she had actually engaged in relations. **And why does the *baraita* call this: Secluded herself, instead of the more straightforward: Engaged in sexual relations?** The *baraita* employed a euphemistic expression, but it actually means that she engaged in intercourse. The Gemara asks: If this is referring to a woman who had engaged in relations, the term defilement is already explicitly written with regard to her, in the chapter that deals with a *sota*. Why is it necessary to derive that she is defiled from a different source, as in the context of a *sota* herself the verse states: “She being defiled secretly” (Numbers 5:13)?

The Gemara explains that “may not take her again to be his wife after she was defiled” does not teach that she is called “defiled,” but rather that the *halakha* establishes upon her a prohibition. In other words, if the husband engages in relations with his wife after she had had intercourse with another, he transgresses a prohibition. **And the Gemara comments that Rabbi Yosei ben Keifar does not hold the opinion that there is a prohibition in the case of a *sota*, as he maintains that a husband who has relations with his *sota* wife does not transgress any prohibition at all, and the same is true even if she definitely fornicated<sup>n</sup> with another man.**

**What is the rationale of Rabbi Yosei ben Keifar?** In his opinion, “after she was defiled” does not refer to a *sota* but to a woman who had been legally divorced from her first husband and subsequently married another man. This is indicated by the fact that both becoming, i.e., betrothal, and matrimony are written in this context:<sup>n</sup> “Becomes another man’s wife” (Deuteronomy 24:2) and: “Or if the latter husband die, who took her to be his wife” (Deuteronomy 24:3). Here it is clear that the reference is to halakhically valid marriage, whereas a *sota* had never been another man’s wife, as she cannot marry another man while she is still married.

**S** The Gemara discusses a similar case. **Rav Yehuda raised a dilemma before Rav Sheshet:** In the case of one who remarries his divorcée after she had married another, and then he dies childless, what is the *halakha* with regard to the levirate marriage of her rival wife? According to the opinion of Rabbi Yosei ben Keifar, do not raise the dilemma, since Rabbi Yosei ben Keifar said that it is with regard to one who remarries his divorcée that defilement is written, and therefore the status of her rival wife is the same as hers.

**And if one would claim that the dilemma does in fact arise because it is written: “That is an abomination” (Deuteronomy 24:4), and the emphasis on “that” serves to limit the range of the prohibition and teaches that this *halakha* applies only to her and not her rival wife, still, the accepted interpretation of this verse is as follows: She is an abomination, but her children are not abominations.<sup>nh</sup> In other words, if he transgressed the prohibition and remarried this woman, their children are not disqualified from marrying priests. If so, the term “that” does not come to exclude her rival wife from this *halakha*, and therefore her rival wife is an abomination for the purposes of levirate marriage, just like the wife herself, and she too is exempt.**

Rather, let the dilemma be raised according to the opinion of the Rabbis. Although the Rabbis said that it is with regard to a *sota* that defilement is written, perhaps here they apply the principle that a verse does not depart from its literal meaning. In other words, notwithstanding the fact that the Rabbis derive from here a halakhic ruling concerning a *sota*, the straightforward meaning of the verse should not be entirely disregarded. Accordingly, as the context here is remarriage to one’s divorced wife, this verse would teach that hers is a case of defilement.

**תַּגִּיתָהּ, הִיְתָה אֶתָּה וכו' –** You learned it, one was, etc. – Some commentaries maintain that this answers only the dilemma according to the first version of the discussion, not the second, as according to the second version the *baraita* can be attributed to the opinion of the Rabbis (*Tosafot*). However, the Rashba cites an explanation of the Gemara according to which Rav Sheshet sought to resolve both difficulties. Some maintain that Rashi interprets the Gemara in a similar manner (Maharsha).

**And what is that, one who remarries his divorcée –** וּמֵאִי נִיהוּ מְחֻזְרֵי גְרוּשָׁתוֹ: Rashi and others explain that Rav Sheshet maintains that this must refer to one who remarries his divorcée and not to other transgressions, as otherwise there would be nothing novel in this ruling. This claim is somewhat problematic. Others suggest that the reasons this must be referring only to a remarried divorcée is because it states that one performs *halitza* in the proper manner with the disqualified woman, which is not the case with regard to other transgressions (*Mero-me'i Sadeh*; see *Tosafot*).

## HALAKHA

**He performs *halitza* with the disqualified woman... he enters into levirate marriage with the fit woman –** חוּלְצֵן לְפְסוּלָה... מֵיִיבֵם לְכַשְׁרָה: If two *yevamot* came before a *yavam* for levirate marriage, one of whom was fit to marry a priest while the other was disqualified, if he opts for levirate marriage he may marry whichever he chooses, provided that he is not himself a priest. If he decides to perform *halitza*, he must do so with the one who is already disqualified, so as not to disqualify the other woman from marriage to a priest (Rambam *Sefer Nashim, Hilkhot Yibbum VaHalitza* 1:10; *Shulhan Arukh, Even HaEzer* 161:2).

או: דְּלִמָּא, כִּיּוֹן דְּאִיעָקֵר – אִיעָקֵר? אִיבָא דְּאִיעָקֵר: אִיבָא דְּרַבְנָן לָא תִּיבְעֵי לָךְ, כִּיּוֹן דְּאִיעָקֵר – אִיעָקֵר.

Or perhaps once a verse is uprooted from its context, it is entirely uprooted and no longer teaches anything about the subject matter of the chapter in which it is written. This would mean that the sole significance of this particular verse is in reference to a *sota*. **There are those who say the opposite: According to the opinion of the Rabbis, do not raise the dilemma, as once a verse is uprooted from its context, it is entirely uprooted.** Consequently, there is no defilement when a man remarries his divorcée, neither with regard to her nor concerning her rival wife.

כִּי תִיבְעֵי לָךְ – אִלִּיבָא דְּרַבִּי יוֹסִי בֶן כִּיפָר, מֵאִי? אִף עַל גַּב דְּאִמְרַר רַבִּי יוֹסִי בֶן כִּיפָר טוּמְאָה בְּמַחְזִיר גְרוּשָׁתוֹ הוּא דְּכִתְיָבָא – מֵעֵט רַחֲמֵנָא "הִיא תוֹעֵבָה" וְאִין צָרְתָה תוֹעֵבָה, או: דְּלִמָּא, הִיא תוֹעֵבָה וְאִין בְּנֵיהּ תוֹעֵבִין, הָא צָרְתָה – תוֹעֵבָה!

Rather, let the dilemma be raised according to the opinion of Rabbi Yosei ben Keifar. What is the dilemma? Although Rabbi Yosei ben Keifar said that it is with regard to one who remarries his divorcée that defilement is written, one can ask: Does the Merciful One limit this *halakha* by the phrase "that is an abomination," which indicates: **And her rival wife is not an abomination?** Or perhaps this verse teaches that she is an abomination but her children are not abominations, which indicates that her rival wife is an abomination.

אָמַר לִיה, תַּגִּיתָהּ: הִיְתָה אֶתָּה כְּשָׂרָה וְאֶתָּה פְּסוּלָה, אִם הִיָּה חוּלְצֵן – חוּלְצֵן לְפְסוּלָה, וְאִם הִיָּה מֵיִיבֵם – מֵיִיבֵם לְכַשְׁרָה.

Rav Sheshet said to him: You learned it in a *baraita* that deals with a case of two *yevamot* who came before a *yavam* for levirate marriage. In a situation where one of the women was<sup>N</sup> fit and the other disqualified, if he would like to perform *halitza* he performs *halitza* with the disqualified woman, and if he would like to enter into levirate marriage he enters into levirate marriage with the fit woman.<sup>H</sup>

מֵאִי כְּשָׂרָה וּמֵאִי פְּסוּלָה? אִילִּימָא כְּשָׂרָה – כְּשָׂרָה לְעֵלְמָא, פְּסוּלָה – פְּסוּלָה לְעֵלְמָא, כִּיּוֹן דְּלִדְיָדִיה תּוֹיָא מֵאִי נְפָקָא לִיה מִיָּנָה?

Rav Sheshet analyzes this *baraita*: What is the meaning of fit, and what is the meaning of disqualified? If we say that fit means fit for all men, and disqualified means disqualified in general, e.g., a woman who had already been divorced is disqualified from marrying any priest, despite the fact that she is fit to marry this particular man himself, then since for him she is suitable, what difference does it make for him whether she is disqualified from or fit for marriage to others?

אֶלָּא לָאוּ: כְּשָׂרָה – כְּשָׂרָה לִיה, פְּסוּלָה – פְּסוּלָה לִיה. וּמֵאִי נִיהוּ – מְחֻזְרֵי גְרוּשָׁתוֹ. וְקִתְנִי: וְאִם הִיָּה מֵיִיבֵם – מֵיִיבֵם לְכַשְׁרָה!

Rather, is it not the case that fit means fit for him, and disqualified means disqualified for him? And what is that case in which a woman is fit or disqualified only with regard to him but not any other man? This is evidently referring to the case of one who remarries his divorcée.<sup>N</sup> The deceased brother had remarried his divorced wife after she had married another man, and therefore she is disqualified from entering into levirate marriage with that particular man but she is permitted to other men. And it is taught there that if he would like to enter into levirate marriage, he may enter into levirate marriage even with the fit woman. This indicates that the rival wife of a remarried divorcée is fit for levirate marriage.

לָא, לְעוֹלָם כְּשָׂרָה – כְּשָׂרָה לְעֵלְמָא, פְּסוּלָה – פְּסוּלָה לְעֵלְמָא. וְדִקְאִמְרַת כִּיּוֹן דְּלִדְיָדִיה תּוֹיָא מֵאִי נְפָקָא לִיה מִיָּנָה – מִשּׁוּם דְּרַב יוֹסֵף.

The Gemara rejects this argument: No; actually, fit means fit to all men, and disqualified means disqualified in general, e.g., a woman who had already been divorced is disqualified from marrying any priest. And that which you said: Since for him she is suitable what difference does it make for him, this is significant because of the statement of Rav Yosef.

דְּאִמְרַר רַב יוֹסֵף, כִּיּוֹן שָׁנָה רַבִּי: לָא יִשְׁפּוֹךְ אֶדָם מִי בּוֹרוֹ וְאַחֲרֵים צְרִיכִים לָהֶם.

As Rav Yosef said: Here Rabbi Yehuda HaNasi taught a valuable moral lesson, that a person should not pour the water from his well when others are in need of it. That is, one should not cause loss in any situation, even when this relates to his own personal life, if he might thereby cause a future loss to others. The same reasoning applies here: If he intends to perform *halitza* it does not matter to him which of the women he chooses, but if he does so with the one who is fit to others, he thereby disqualifies her from marrying a priest, as the legal status of a woman who underwent *halitza* is like that of a divorcée. It is therefore preferable to perform *halitza* with the one who in any case was disqualified from marrying a priest.

Levirate marriage for a remarried divorcée – יבום מחזיר – גרושתו: If one remarries his divorced wife after she had been married to another man, and then dies childless, she must perform *halitza*, not levirate marriage. Her rival wife performs either *halitza* or engages levirate marriage. This ruling is in accordance with the discussion here and the opinion (12b) of Rabbi Yohanan cited later (Rambam *Sefer Nashim, Hilkhot Yibbum VaHalitza* 6:13; *Shulhan Arukh, Even HaEzer* 174:2).

NOTES

And did you not resolve, etc. – וְלֹא תִירֹצֵי וכו': The commentaries note that no actual change was made to the text of the *baraita*, as the letter *vav*, which generally means: And, can often mean: Or (*Tosafot*). *Tosefot HaRosh* explains that this interpretation of the letter *vav* is appropriate only when it is evidently necessary from the context. Here, however, as the matter is not clear, this is indeed considered an adjustment to the text.

She is forbidden to one who was permitted to her, etc. – וְבִמְתוּרָה לָהּ אִסוּרָה וכו': It could be argued that based on this *a fortiori* inference, in every situation where the woman is forbidden by a regular prohibition, her rival wife should be exempt. The commentaries answer that as this prohibition applies to the deceased brother, she has the status of a brother's wife to whom the mitzva of levirate marriage does not apply, and this is considered a prohibition that entails *karet* (*Yosef Lekah*; see *Kovetz He'arot*).

Is the *a fortiori* inference strong, etc. – מִי אֵלִים קָל וְחוֹמֵר וכו': The commentaries ask: In *Sota* 5b the Gemara states that a wife caught secluding herself with the man about whom she was warned must undergo *halitza* and may not enter into levirate marriage, and the Gemara there proves that ruling by this very *a fortiori* inference. Why, then, is the Gemara here uncertain as to whether the *a fortiori* inference can be applied to the woman herself? The answer must be that in Rabbi Yohanan's opinion that *halakha* is actually derived from the alternative reason mentioned by the Gemara there, that it is by Torah law that a *sota* cannot enter into levirate marriage. If so, no proof can be brought from there with regard to this issue (*Tosefot HaRosh*).

תָּא שְׁמַע: הַמְחֻזֵּר גְּרוּשְׁתּוֹ מִשְׁנֵשׂאֵת – הִיא וְצָרְתָּהּ חוֹלְצָת. הִיא וְצָרְתָּהּ סְלֵקָא דְעֵתְךָ?! [אֵלָא] אִימָא: אוּ הִיא אוּ צָרְתָּהּ.

וְלֹא תִירֹצֵי קִמְתְּרַצְתָּ לָּהּ? תִּירֹץ הָכִי: הִיא חוֹלְצָת, צָרְתָּהּ – אוּ חוֹלְצָת אוּ מְתִיבְמָת.

אָמַר רַבִּי חִיָּיא בַר אַבְבָּא, רַבִּי יוֹחָנָן בְּעֵי הַמְחֻזֵּר גְּרוּשְׁתּוֹ מִשְׁנֵשׂאֵת, צָרְתָּהּ מֵהוּ? אָמַר לִיהּ רַבִּי אָמִי: וְתִיבְעֵי לָךְ הִיא גּוֹפָה! הִיא גּוֹפָה לָּא קִמְיַבְעֵי לִי,

דְּאָמְרִינָן: קָל וְחוֹמֵר: בְּמִתוּרָה לָהּ אִסוּרָה, בְּאִסוּרָה לָּהּ – לֹא כָּל שְׂבוּן? בִּי קָא מִיבְעֵי לִי – צָרְתָּהּ מֵאִי מִי אֵלִים קָל וְחוֹמֵר לְמִדְחֵי צָרָה, אוּ לָּא?

רַב נַחֲמָן בַּר יִצְחָק מְתִיב הָכִי: אָמַר רַבִּי חִיָּיא בַר אַבְבָּא, בְּעֵי רַבִּי יוֹחָנָן: הַמְחֻזֵּר גְּרוּשְׁתּוֹ מִשְׁנֵשׂאֵת מֵהוּ? אָמַר לִיהּ רַבִּי אָמִי: וְתִיבְעֵי לָךְ צָרְתָּהּ? צָרְתָּהּ לָּא קִמְיַבְעֵי לִי, דְּלֹא אֵלִים קָל וְחוֹמֵר לְמִדְחֵי צָרָה. אֵלָא, כִּי קִמְיַבְעֵי לִי – הִיא גּוֹפָה מֵאִי מִי אֵלִים קָל וְחוֹמֵר בְּמִקוּם מְצוּהָ, אוּ לָּא?

The Gemara suggests: Come and hear a different *baraita*: With regard to one who remarries his divorcée after she had married another, she and her rival wife perform *halitza*.<sup>14</sup> The Gemara first analyzes the wording of the *baraita*: Can it enter your mind that both she and her rival wife must perform *halitza*? After all, only one wife of a deceased brother undergoes *halitza*, not two. Rather, say: Either she or her rival wife. This indicates that both women are unfit for levirate marriage.

The Gemara rejects this claim: And did you not already resolve<sup>N</sup> a difficulty in the *baraita* by adjusting its language and not interpreting it as it is? If so, you cannot cite a proof from here, as you can adjust it differently and answer as follows: She performs *halitza*, while her rival wife either performs *halitza* or enters into levirate marriage. If so, this *baraita* provides no conclusive proof that might resolve Rav Yehuda's dilemma.

On the same issue, Rabbi Hiyya bar Abba said that Rabbi Yohanan raised a dilemma: With regard to one who remarries his divorcée after she had been married to another, what is the *halakha* concerning the levirate marriage of her rival wife? Rabbi Ami said to him: And you can raise the dilemma with regard to this woman herself. Why not ask if she requires levirate marriage when her husband dies? Rabbi Hiyya bar Abba replied: The *halakha* of the divorcée herself is not a dilemma for me, as she is certainly forbidden.

Rabbi Hiyya bar Abba elaborates: As in this case we state an *a fortiori* inference: If she is now forbidden to one who was previously permitted to her,<sup>N</sup> i.e., her first husband, with regard to one who was forbidden to her, the *yavam*, is it not all the more so the case that she remains forbidden to him? Where I raise the dilemma it is with regard to her rival wife. What is the *halakha* in this case? Is the aforementioned *a fortiori* inference strong enough to invalidate her rival wife or not? The divorcée herself is certainly exempt from levirate marriage, but the question is whether the *a fortiori* inference applies to the rival wife as well.

Rav Nahman bar Yitzhak would teach a different version of this discussion, as follows: Rabbi Hiyya bar Abba said that Rabbi Yohanan raised a dilemma: With regard to one who remarries his divorcée after she had been married to another, what is the *halakha* concerning her levirate marriage? Rabbi Ami said to him: And you can raise the dilemma with regard to her rival wife as well. Rabbi Hiyya bar Abba replied: The *halakha* of her rival wife is not a dilemma for me, as the *a fortiori* inference is not strong enough to invalidate a rival wife. Rather, where I raise the dilemma it is with regard to the divorcée herself. What is the *halakha*? Is the *a fortiori* inference strong<sup>N</sup> enough that it can be accepted even in place of a mitzva to enter into levirate marriage, or not?

Perek I  
Daf 12 Amud a

אָמַר לִיהּ: תְּנִיתוּהָ, הִיתָה אַחַת בְּשָׂרָה וְאַחַת פְּסוּלָה, אִם הָיָה חוֹלֵץ – חוֹלֵץ לְפְסוּלָה, וְאִם הָיָה מֵיִבָּם – מֵיִבָּם לְבְּשָׂרָה. מֵאִי בְּשָׂרָה וּמֵאִי פְסוּלָה? אִילִימָא בְּשָׂרָה – בְּשָׂרָה לְעֵלְמָא, פְּסוּלָה – פְּסוּלָה לְעֵלְמָא, בֵּינן דְּלִדְיָדִיהּ חִוּיָא מֵאִי נִפְקָא לִיהּ מִינָהּ?

Rabbi Ami said to Rabbi Hiyya bar Abba: We learned it in the same *baraita*: In a case where one of the women was fit and the other disqualified, if he would like to perform *halitza* he performs *halitza* with the disqualified woman, and if he would like to enter into levirate marriage, he enters into levirate marriage with the fit woman. What is fit and what is disqualified? If we say that fit means fit to all men, and disqualified means disqualified to all men, since for him she is suitable, what difference does it make for him whether she is disqualified from or fit for marriage to others?