מתני׳ הָאִשָּׁה שֶׁהָלַךְ בַּעְלָהּ וְצָרָתָהּ לִמְדִינַת הַיָּם, וּבָאוּ וְאָמְרוּ לָהּ ״מֵת בַּעֲלַיִךְ״ – לֹא תִנָּשֵׂא וְלֹא תִתְייַבֵּם, עַד שֶׁתֵּדַע שֶׁמָּא מְעוּבֶּרֶת הִיא צָרָתָהּ.

MISHNA In the case of **a woman whose husband and rival** wife **traveled**[H] **to a country overseas, and** witnesses **came and told her: Your husband died, she shall not marry** any other man, in case she requires levirate marriage with her brother-in-law, i.e., *yavam*, in which case she is prohibited from marrying anyone else. **And she** also **shall not enter into levirate marriage until she knows**[N] **whether she,** i.e., **her rival wife, is pregnant.** If her rival wife bears a child to her late husband, she does not have a levirate bond with her brother-in-law, and she is therefore prohibited from marrying him.

הָיְתָה לָהּ חָמוֹת – אֵינָהּ חוֹשֶׁשֶׁת, יָצְתָה מְלֵיאָה – חוֹשֶׁשֶׁת. רַבִּי יְהוֹשֻׁעַ אוֹמֵר: אֵינָהּ חוֹשֶׁשֶׁת.

If she had a mother-in-law[HN] overseas, but her late husband had no brothers, **she need not be concerned** that a brother to her husband may have been born. But if her mother-in-law **departed** from her town **pregnant,**[N] this widow **should be concerned**[N] that perhaps her late husband now has a brother, with whom she is obligated in levirate marriage. **Rabbi Yehoshua says:** Even in such a case **she need not be concerned**[N] and may marry whomever she wishes.

גמ׳ מַאי ״הִיא צָרָתָהּ״? הָא קָא מַשְׁמַע לָן: לְהָא צָרָה הוּא דְּחָיְישִׁינַן, אֲבָל לַצָּרָה אַחֲרִיתִי – לָא חָיְישִׁינַן.

GEMARA The Gemara asks: **What is** implied by the extra word: She, in the expression in the first clause of the mishna: Whether **she,** i.e., **her rival wife, is** pregnant? The Gemara answers that it **teaches us this: We are concerned** about a possible pregnancy of **this rival wife** who went overseas with her husband, **but we are not concerned about** the possibility that he married **another rival wife** overseas and sired a child by her.

״לֹא תִנָּשֵׂא וְלֹא תִתְייַבֵּם״ וכו׳ בְּשְׁלָמָא יְבִימֵי לָא – דִּדְלְמָא מִיעַבְּרָא, וְקָפְגְעָה בְּאֵשֶׁת אָח דְּאוֹרַייְתָא. אֶלָּא לֹא תִנָּשֵׂא – אַמַּאי? הַלֵּךְ אַחַר רוֹב נָשִׁים, וְרוֹב נָשִׁים מִתְעַבְּרוֹת וְיוֹלְדוֹת!

It was taught in the mishna: **She shall not marry** any other man **and shall not enter into levirate marriage** until she knows whether her rival wife is pregnant. The Gemara asks: **Granted,** she may **not enter into levirate marriage, because perhaps** her rival wife **is pregnant, and** if so, this widow **would encounter the Torah** prohibition proscribing **a brother's wife.** If a child is born to her late husband, levirate marriage is not required and she is prohibited from marrying her brother-in-law. **But why** should she **not marry** another man? **Follow the majority of women, and** as **most women become pregnant and give birth,** it is probable that her rival wife did have a child.

HALAKHA

A woman whose husband and rival wife traveled – הָאִשָּׁה שֶׁהָלַךְ בַּעְלָהּ וְצָרָתָהּ: If a woman's husband and rival wife went to a country overseas, and witnesses came and said that her husband died, she may not perform *ḥalitza* and she may not enter into levirate marriage until she knows whether or not her rival wife has given birth to a child. If this woman was prohibited from marrying a priest previously, then she may simply wait nine months and perform *ḥalitza*, even if she has not heard whether or not her rival wife gave birth (Rambam *Sefer Nashim*, *Hilkhot Yibbum* 3:16; *Shulḥan Arukh*, *Even HaEzer* 156:13).

If she had a mother-in-law – הָיְתָה לָהּ חָמוֹת: If a woman's husband dies with neither a child nor a brother, and her husband's parents went overseas, she is permitted to remarry. She need not be concerned that her mother-in-law might have given birth to a son, obligating her in levirate marriage. However, if her mother-in-law left for overseas pregnant, the woman must be concerned that she may have given birth to a son, and she is therefore prohibited from marrying until the matter is resolved (Rambam *Sefer Nashim*, *Hilkhot Yibbum* 3:17–18; *Shulḥan Arukh*, *Even HaEzer* 157:9).

NOTES

Until she knows, etc. – עַד שֶׁתֵּדַע וכו׳: Some have written that this sentence is not an explanation of the *halakha* that the widow may not enter into levirate marriage, which is obvious, as it is likely that her rival wife had a child. Rather, it teaches that the widow may not marry anyone else until she finds out for sure that her rival wife had a child (*Otzar HaShitot*).

If she had a mother-in-law – הָיְתָה לָהּ חָמוֹת: According to some *ge'onim*, the Gemara should be interpreted as follows: If her mother-in-law is in her location, she need not be concerned, since she would know if she gave birth to a son or not. But if her mother-in-law departed pregnant from that place, then she must be concerned.

If her mother-in-law departed from her town pregnant [*melei'a*] – יָצְתָה מְלֵיאָה: The word *melei'a* literally means full. The Rashash explains that this indicates that the mother-in-law's pregnancy was almost full term. Consequently, no concern is presented here about miscarriage.

If her mother-in-law departed from her town pregnant this widow should be concerned – יָצְתָה מְלֵיאָה חוֹשֶׁשֶׁת: There is a certain percentage of women who miscarry, and approximately half of all babies born are female. Consequently, the probability that the mother-in-law gave birth to another son is less than 50 percent, and according to the Rabbis, who are not concerned for minority circumstances, there should be no need to take this minority into consideration. However, it can be said once the woman would already have given birth but is not available to be examined, the concern about miscarriage is like the concern about death, which is usually not taken into consideration. Therefore, the Rabbis do not consider the chance that she gave birth to a son to be of minority probability (*Nimmukei Yosef*), and therefore, it is stated unreservedly in the Jerusalem Talmud that the probability here is evenly balanced between males and females.

Rabbi Yehoshua says even in such a case she need not be concerned – רַבִּי יְהוֹשֻׁעַ אוֹמֵר אֵינָהּ חוֹשֶׁשֶׁת: According to the Jerusalem Talmud, the disagreement here is not about majority and minority but rather about the level of uncertainty involved. According to the Rabbis, there is a single uncertainty here, whether she will give birth to a boy or a girl. According to Rabbi Yehoshua, there is a double uncertainty, whether she will give birth to a viable child and whether that child is a boy or a girl.

לֵימָא רַבִּי מֵאִיר הִיא, דְּחָיֵישׁ לְמִיעוּטָא?

Shall we say that the mishna follows the opinion of **Rabbi Meir,**[N] **who is concerned about the minority?** There is a minority of women who do not give birth, and Rabbi Meir takes this minority into consideration and requires the widow to wait and clarify whether or not she is required to enter into levirate marriage.

אֲפִילּוּ תֵּימָא רַבָּנַן, כִּי אָזְלִי רַבָּנַן בָּתַר רוּבָּא – רוּבָּא דְּאִיתֵיהּ קַמָּן, כְּגוֹן תִּשַּׁע חֲנוּיוֹת וְסַנְהֶדְרֵי, אֲבָל רוּבָּא דְּלֵיתֵיהּ קַמָּן – לָא אָזְלִי רַבָּנַן בָּתַר רוּבָּא.

The Gemara rejects this: **You** can **even say** that the mishna follows the opinion of **the Rabbis. When the Rabbis follow the majority, it is an evident majority,**[N] which is extant and can be examined. **For example,** in a situation where a piece of meat is found in front of **nine stores** selling kosher meat and one store selling non-kosher meat, if it is not known from which store the meat came, it may be assumed that it came from one of the stores that sells kosher meat. **And** similarly, **the Sanhedrin** reaches its decisions by a majority vote of its members. **But** with regard to **a non-evident majority,** which is based solely upon general statistical information, such as the assertion that most women become pregnant and give birth, even **the Rabbis do not follow the majority.**

וַהֲרֵי קָטָן וּקְטַנָּה, דְּרוּבָּא דְּלֵיתָא קַמָּן הִיא, וְאָזְלִי רַבָּנַן בָּתַר רוּבָּא! דְּתַנְיָא: קָטָן וּקְטַנָּה לֹא חוֹלְצִין וְלֹא מְיַבְּמִין, דִּבְרֵי רַבִּי מֵאִיר. אָמְרוּ לוֹ לְרַבִּי מֵאִיר: יָפֶה אָמַרְתָּ שֶׁאֵין חוֹלְצִין: ״אִישׁ״ כְּתִיב בַּפָּרָשָׁה וּמַקְשִׁינַן אִשָּׁה לְאִישׁ. אֶלָּא מַה טַּעַם אֵין מְיַבְּמִין?

The Gemara challenges: **But** the case of **a minor boy or minor girl,** as pertains to levirate marriage, **is** dependent upon **a non-evident majority, and** nevertheless **the Rabbis follow the majority** in their ruling, **as it is taught** in a *baraita*: **A minor boy or minor girl may not perform *ḥalitza* and may not enter into levirate marriage;** this is **the statement of Rabbi Meir.** The Rabbis **said to Rabbi Meir: You have aptly stated that they may not perform *ḥalitza*,** since **"man"** (Deuteronomy 25:7), i.e., an adult male, **is written in the section** of the Torah pertaining to *ḥalitza*. Though an adult female is not mentioned explicitly, **we employ** an analogy based on **juxtaposition** of **the woman to the man** and require that the female involved in *ḥalitza* be an adult as well. **But what is the reason that they may not enter into levirate marriage,** about which the Torah's phraseology does not specifically indicate adults?

NOTES

Shall we say that the mishna follows the opinion of Rabbi Meir, etc. – לֵימָא רַבִּי מֵאִיר הִיא וכו׳: The Rid questions the assumption that the Rabbis would not be concerned for the minority in this case. The ruling that the Rabbis are not concerned for minority circumstances applies to cases where there is no legal presumption that determines the status quo, such as in the case cited in the Gemara of one who found a piece of meat, where it is not known if the meat is kosher. However, in this case, the status quo during a woman's marriage is that she is prohibited from marrying another man. Consequently, when word arrives of her husband's death, this status quo should remain until it has definitively been reversed. It is not clear that even the Rabbis allow the status quo to be overturned on the basis of probability.

Furthermore, the Gemara's conclusion is that this mishna is in accordance with the opinion of Rabbi Meir. However, it is generally accepted that the *halakha* is not in accordance with the opinion of Rabbi Meir, which would mean that this mishna is not accepted as *halakha*. However, the Rambam, who generally accepts the ruling of the Rabbis, writes in his Commentary on Mishna that the *halakha* is in accordance with the mishna.

In answer to these questions, the early commentaries quote Rav Hai Gaon, who explains that according to the statement of Rava cited in the Gemara, the mishna is in accordance with the opinion of the Rabbis. The mishna rules as it does, not because one must be concerned about eventualities that do not apply in the majority of cases, but because of the legal status quo with regard to the woman's status. It is only when there is a reason to doubt whether the status quo still applies, e.g., when the mother-in-law left town pregnant, that other factors, such as probability, are taken into account (see *Tosefot Ḥad MiKamma'ei*).

Evident majority – רוּבָּא דְּאִיתֵיהּ קַמָּן: The principle of following the majority is a complex subject discussed in many places in the Talmud. The Torah states explicitly: "Incline toward the majority" (Exodus 23:2). However, that is referring to rabbinical courts, where the decision of the majority of the judges outweighs the opinion of the minority. The Rabbis argue that the same is true in any case of an evident majority, i.e., a case where the uncertainty pertains to multiple physically tangible items. For example, if meat is found in an area where nine stores sell kosher meat and one store sells non-kosher meat, it can be assumed that the meat came from a kosher store. In such a case, there are several possible, tangible, sources of the meat, the majority of which sell only kosher food, and it can therefore be assumed that the meat came from a kosher store.

In contrast, in the case of determining whether the rival wife gave birth, the question relates to one particular woman. Statistically, most women gave birth, but it is possible that even the Rabbis do not apply statistical majorities when the uncertainty pertains to a single tangible person or item.

Many of the deliberations that take place in our time related to the laws of probability are present in the talmudic deliberations concerning the definition of majority and minority, although of course in a different formulation. Also, the definition of an evident majority is quite often simply a different formulation of the question of how to determine the correct sample to which the uncertainty applies.

אָמַר לָהֶם: קָטָן – שֶׁמָּא יִמָּצֵא סָרִיס, קְטַנָּה – שֶׁמָּא תִּמָּצֵא אַילוֹנִית, וְנִמְצָאוּ פּוֹגְעִים בָּעֶרְוָה. וְרַבָּנַן סָבְרִי: זִיל בָּתַר רוּבָּא דְּקָטַנִּים, וְרוֹב קְטַנִּים לָאו סָרִיסֵי נִינְהוּ; זִיל בָּתַר רוֹב קְטַנּוֹת, וְרוֹב קְטַנּוֹת לָאו אַילוֹנִית נִינְהוּ. אֶלָּא, מְחַוְורְתָּא מַתְנִיתִין רַבִּי מֵאִיר הִיא.

He said to them: I am concerned about **the minor boy, lest he be confirmed as a sexually underdeveloped man** when he grows up, and I am concerned about **the minor girl, lest she be confirmed as an *aylonit*,** a sexually underdeveloped woman, when she grows up. Then levirate marriage would not apply, and **they would end up encountering a forbidden relative** if they consummated the levirate marriage. **And the Rabbis hold: Follow the majority of minor boys, and most minor boys are not sexually underdeveloped** when they grow up. Likewise, **follow the majority of minor girls, and most minor girls are not** in the category of ***aylonit*** when they grow up. This indicates that the Rabbis disagree with Rabbi Meir even with regard to a non-evident majority. **Rather, it is clear that the mishna is** following **Rabbi Meir,** who is concerned about the minority.

בְּמַאי אוֹקֵימְתָּא – כְּרַבִּי מֵאִיר, אֵימָא סֵיפָא: הָיְתָה לָהּ חָמוֹת – אֵינָהּ חוֹשֶׁשֶׁת. אַמַּאי? הַיְינוּ אַחַר רוֹב נָשִׁים, וְרוֹב נָשִׁים מְתְעַבְּרוֹת וְיוֹלְדוֹת, מִיעוּט מַפִּילוֹת, וְכָל הַיּוֹלְדוֹת – מֶחֱצָה זְכָרִים וּמֶחֱצָה נְקֵבוֹת, סְמוֹךְ מִיעוּטָא דְּמַפִּילוֹת לְמֶחֱצָה נְקֵבוֹת – וְהָווּ לֵיהּ זְכָרִים מִיעוּטָא, וְלֵיחוּשׁ!

The Gemara asks: **In what** manner **did you establish** the mishna? You established it **in accordance with** the opinion of **Rabbi Meir.** However, **say the latter clause: If she had a mother-in-law** overseas, **she need not be concerned** that her mother-in-law may have given birth to another son. **Why** should she not be concerned about this? **Follow the majority of women, and most women become pregnant and give birth.** The **minority** become pregnant and **miscarry.**[N] **And** among **all women who give birth, half** of the children are **male and half** are **female.** Therefore, we can **join the minority who miscarry to the half** who give birth to **females, and then the male children** born **would be** only **the minority.** Nevertheless, if the mishna actually follows Rabbi Meir, who is concerned about minority circumstances, **let him be concerned** that a *yavam* might have been born, necessitating a levirate marriage.

דִּלְמָא, כֵּיוָן דְּאִיחֲזְקָה לַשּׁוּק – לָא חָיֵישׁ. רֵישָׁא דְּאִיחֲזַק לְיִיבּוּם – תְּיַיבֵּם!

The Gemara rejects this: **Perhaps, since** the widow **is** legally **presumed** to be permitted **to** marry a man from the general **public,** since her husband had no known brothers, Rabbi Meir **is not concerned** about the minority. The Gemara challenges: If so, in **the first clause** of the mishna, where the widow **is** legally **presumed to** require **levirate marriage,** as her husband had no children, **she should** be permitted to **enter into levirate marriage** without concern that her rival wife might have given birth.

אָמַר רַב נַחְמָן אָמַר רַבָּה בַּר אֲבוּהּ: רֵישָׁא דְּאִיסּוּר כָּרֵת – חָשְׁשׁוּ, סֵיפָא דְּאִיסּוּר לָאו – לָא חָשְׁשׁוּ.

The Gemara answers that **Rav Naḥman said** that **Rabba bar Avuh said:** In **the first clause** of the mishna, **which** relates to **a prohibition** proscribing a brother's wife when levirate marriage does not apply, which bears the punishment of ***karet*, they were concerned** about the minority possibility because of the severity of the prohibition. But in **the latter clause** of the mishna, **which** relates to **an ordinary prohibition,** that of a woman whose husband died childless marrying without performing *ḥalitza*, the prohibition is not so severe. Therefore, **they were not concerned** about the minority and relied upon the presumption.

אָמַר רָבָא: מִכְּדֵי, הָא דְּאוֹרַיְיתָא וְהָא דְּאוֹרַיְיתָא, מַה לִּי אִיסּוּר כָּרֵת מַה לִּי אִיסּוּר לָאו?! אֶלָּא אָמַר רָבָא:

Rava said in opposition to this contention: **Now since this** prohibition **is by Torah** law **and that** prohibition **is by Torah** law, **what** difference is it **to me** if it is **a prohibition** bearing the punishment of ***karet*** and **what** difference is it **to me** if it is **an ordinary prohibition?** If both prohibitions are by Torah law there is no justification for distinguishing between a severe prohibition and a minor one? **Rather, Rava said** that we must reject this contention, and say:

NOTES

The minority miscarry – מִיעוּט מַפִּילוֹת וכו׳: Some of the early commentaries inquire: Why doesn't the Gemara go further and include in this calculation the women who do not become pregnant at all? In fact, the Ritva holds that the expression: A minority miscarry, includes also the few that do not become pregnant at all. However, the Rashba has a different basic outlook on this issue. In his opinion, one may consider only similarly classified factors of uncertainty for these calculations of majority and minority. Since women who give birth may have males or females and may have babies who are not viable, all of these possibilities are taken into account. However, the category of women who give birth does not include women who do not become pregnant, and therefore the statistics of women who do not become pregnant are not taken into account in these calculations.

NOTES

Rather, Rava said: In the first clause, etc. – אֶלָּא אָמַר רָבָא רֵישָׁא וכו׳: Rav Hai Gaon's view, mentioned by many of the early commentaries, is that Rava's answer applies according to the opinion of the Rabbis and not just according to the opinion of Rabbi Meir. The Ritva even maintains that Rav Hai's version of the Gemara text stated this explicitly. Consequently, the Rabbis do not totally disregard the minority. They take it into account when it combines with another factor, such as a previous legal presumption.

For herself [*le'atzma*], three months – לְעַצְמָהּ שְׁלֹשָׁה חֳדָשִׁים: Rashi interprets *le'atzma* to mean: For herself. The Meiri interprets it as: If she were by herself, implying there was no rival wife. The Rambam interprets this matter slightly differently, as referring to a widow who had herself been in the company of her husband on his travels. She need not consider the other wife, since the other wife was not in the husband's company.

BACKGROUND

Join the minority to the legal presumption – סְמוֹךְ מִיעוּטָא לַחֲזָקָה: When faced with the need to rule in cases of uncertainty, there exist certain principles of decision making, such as relying on a legal presumption or ruling based on a majority, as discussed in the Gemara. Generally speaking, a ruling based on a majority of cases is considered preferable to simply relying on the presumption that the status quo has not changed. There are, however, circumstances where the minority is considered sufficiently significant that when the strength of the presumption and the minority are combined, they supersede the majority.

HALAKHA

For herself, three months – לְעַצְמָהּ שְׁלֹשָׁה חֳדָשִׁים: If a woman was with her husband and the man had another wife overseas, and the man dies, the wife who was with him waits ninety days, like all other women widowed by childless husbands, and then performs *ḥalitza* or enters into levirate marriage. She need not be concerned that her rival wife bore her husband a child, since the rival wife was not in her husband's company (Rambam *Sefer Nashim*, *Hilkhot Yibbum* 3:16).

For her fellow wife, nine – לַחֲבֶרְתָּהּ תִּשְׁעָה: If a woman's husband and rival wife went overseas, and witnesses came and told her that her husband died, she neither performs *ḥalitza* nor enters into levirate marriage until she verifies whether her rival wife had a child. If she was already disqualified from marrying into the priesthood, she may perform *ḥalitza* after nine months without verification (Rambam *Sefer Nashim*, *Hilkhot Yibbum* 3:16; *Shulḥan Arukh*, *Even HaEzer* 156:13).

רֵישָׁא חֲזָקָה לְייִבּוּם וְרוּבָּא לַשּׁוּק, וַחֲזָקָה לָא עָדִיף כִּי רוּבָּא. וְאַיְיתֵי מִיעוּטָא דְּמַפִּילוֹת, סְמוֹךְ לַחֲזָקָה – וַהֲוָה לֵיהּ פַּלְגָּא וּפַלְגָּא – לֹא תִּנָּשֵׂא וְלֹא תִּתְייַבֵּם.

In **the first clause**[N] of the mishna, **the** legal **presumption** is that this widow **is** obligated **to** enter into **levirate marriage, but** in **a majority** of cases she will actually be permitted **to** marry a man from the general **public,** because it is statistically probable that her rival wife had a child. **A** legal **presumption is not** as **significant as a majority,** meaning that the majority carries more weight than the presumption, and she should be permitted to marry immediately. **But bring the minority who miscarry** into consideration, and **join** this **to the** legal **presumption,**[B] **and it becomes** similar to an even balance of **half and half.** Those who miscarry detract from the strength of the majority, causing it to be equal in legal significance to the legal presumption. Therefore, the ruling is that **she shall not marry** any man who is not her *yavam* **and she shall not enter into levirate marriage** either.

סֵיפָא חֲזָקָה לַשּׁוּק וְרוּבָּא לַשּׁוּק, וְהָווֹי לֵיהּ זְכָרִים מִיעוּטָא דְּמִיעוּטָא, וּמִיעוּטָא דְּמִיעוּטָא לָא חָיֵישׁ רַבִּי מֵאִיר.

However, in **the latter clause, the** legal **presumption is** that the widow is permitted **to** marry a man from the general **public,** since her late husband had no brothers initially. **And** in **a majority** of cases her mother-in-law will not have had another son, and therefore the widow will actually be permitted **to** marry a man from the general **public.** Consequently, the possibility that her husband has a brother, necessitating levirate marriage, **is** not taken into account because it is **a minority of a minority,** i.e., it is a minority and it contradicts the legal presumption, **and** even **Rabbi Meir is not concerned about a minority of a minority.**

״לֹא תִּנָּשֵׂא וְלֹא תִּתְייַבֵּם״ וכו׳, וּלְעוֹלָם?

§ It was taught in the mishna that in the case of a woman whose husband and rival wife went overseas and then her husband died, **she shall not marry and shall not enter into levirate marriage** until she knows whether her rival wife is pregnant. The Gemara asks: **But** must she wait **indefinitely?** She should be permitted to perform *ḥalitza* on account of the uncertainty and then marry another man.

אָמַר זְעֵירִי: לְעַצְמָהּ – שְׁלֹשָׁה חֳדָשִׁים, לַחֲבֶרְתָּהּ – תִּשְׁעָה, וְחוֹלָצַת מִמַּה נַּפְשָׁךְ.

Ze'eiri said: In order **for herself** [*le'atzma*] to be permitted to marry, she must wait **three months**[NH] after performing *ḥalitza*, since every woman must wait three months after her husband's death before she marries again. Additionally, due to the concern **for** the possibility that **her fellow** wife may be pregnant, she must wait **nine**[H] months, after which time that wife would have given birth had she been pregnant, **and** then **she performs *ḥalitza* whichever way you** look at it. If her rival wife gave birth in the meantime, she is permitted to marry anyone she wishes, and the *ḥalitza* is superfluous; if her rival wife did not give birth, necessitating levirate marriage, she is exempted by the *ḥalitza*. However, she may not perform *ḥalitza* earlier because *ḥalitza* performed while any wife of the deceased husband is pregnant is ineffective.

רַבִּי חֲנִינָא אָמַר: לְעַצְמָהּ – שְׁלֹשָׁה, לַחֲבֶרְתָּהּ – לְעוֹלָם. וְתַחֲלוֹץ מִמַּה נַּפְשָׁךְ!

Rabbi Ḥanina said: For those concerns relating to **herself** she must wait **three** months, as explained, but **for** concerns related to **her fellow** wife's possible pregnancy she must wait **indefinitely,** until it is verified whether or not that wife gave birth. The Gemara challenges Rabbi Ḥanina's opinion: **But let her perform *ḥalitza* whichever way you** look at it, since, whatever happened, after nine months she may certainly perform *ḥalitza*.

אַבַּיֵי בַּר אָבִין וְרַבִּי חֲנִינָא בַּר אָבִין אָמְרִי תַּרְוַיְיהוּ: גְּזֵירָה שֶׁמָּא יְהֵא וָלָד בֶּן קַיָּמָא, וְנִמְצָא אַתָּה מַצְרִיכָהּ כָּרוֹז לִכְהוּנָּה.

Abaye bar Avin and Rabbi Ḥanina bar Avin both say in explanation of Rabbi Ḥanina's opinion: **It is** a rabbinic **decree lest there be viable offspring** of that other wife. If so, her *ḥalitza* is superfluous, since she was exempt from both levirate marriage and *ḥalitza*; **and** then **it transpires** that **you necessitate an announcement** on **her** behalf stating that she is permitted **to the priesthood,** as a woman who has undergone *ḥalitza* is forbidden to a priest, but in this case it has become clear retroactively that she did not undergo *ḥalitza*.

וְלִיצְרְכָה! דִּלְמָא אִיכָּא דְּהָווּ בַּחֲלִיצָה וְלָא הָווּ בַּהַכְרָזָה, וְאָמְרִי: קָשְׁרוּ חֲלוּצָה לְכֹהֵן.

The Gemara asks: **And so let an announcement be necessary for her** if a viable offspring is found. The Gemara answers: **Perhaps there will be** people **who were** present **at the *ḥalitza*** ceremony **but were not** present **at the announcement** that she is permitted to marry a priest, **and** if this woman marries a priest **they will** mistakenly **say: They are permitting a *ḥalutza* to** marry **a priest.**

תְּנַן: ״נִיתַּן לִי בֵּן בִּמְדִינַת הַיָּם״ וְאָמְרָה: ״מֵת בְּנִי וְאַחַר כָּךְ בַּעְלִי״ – נֶאֱמֶנֶת, ״מֵת בַּעְלִי וְאַחַר כָּךְ בְּנִי״ – אֵינָהּ נֶאֱמֶנֶת, וְחוֹשְׁשִׁין לְדִבְרֵיהָ, וְחוֹלֶצֶת וְלֹא מִתְייַבֶּמֶת.

The Gemara deliberates further about this: **We learned** in a mishna (*Yevamot* 118b): If a woman says: **A son was born to me in a country overseas, and she** also **said: My son died, and then my husband died, she is deemed credible.** However, if she said: **My husband died and then my son died, she is not deemed credible** about the sequence of events, **but** even so **one** must **be concerned about her statement** that her husband died childless. Consequently, **she** must **perform *ḥalitza*, but she may not enter into levirate marriage.**

וְלִיחוּשׁ דִּלְמָא אָתוּ עֵדִים וְאָמְרִי כִּדְקָאָמְרָה, וְנִמְצָא אַתָּה מַצְרִיכָהּ כָּרוֹז לְכִהוּנָּה! אָמַר רַב פַּפָּא: בִּגְרוּשָׁה. רַב חִיָּיא בְּרֵיהּ דְּרַב הוּנָא אָמַר: בְּאָמְרָה: ״אֲנִי וְהוּא נֶחְבָּאנוּ בְּמְעָרָה״.

The Gemara says: Just as there is concern about an announcement for the priesthood, **let us be concerned** that **perhaps witnesses** will eventually **come and testify** that the sequence of events was **as she said,** rendering her *ḥalitza* superfluous. **And** then **it transpires** that **you necessitate an announcement** on **her** behalf stating that she is permitted **to the priesthood,** and nevertheless the mishna instructs her to perform *ḥalitza*. **Rav Pappa said:** There it is referring only **to a divorced woman,** who was divorced from a previous husband, so that she is already prohibited from marrying a priest in any case. **Rav Ḥiyya, son of Rav Huna, said:** It is referring to a case **where she said: He and I were hiding** alone with our son **in a cave.**[H] Consequently, there is no concern that witnesses will come and testify about the sequence of the events.

מתני׳ שְׁתֵּי יְבָמוֹת, זוֹ אוֹמֶרֶת: ״מֵת בַּעְלִי״ וְזוֹ אוֹמֶרֶת: ״מֵת בַּעְלִי״ – זוֹ אֲסוּרָה מִפְּנֵי בַּעְלָהּ שֶׁל זוֹ, וְזוֹ אֲסוּרָה מִפְּנֵי בַּעְלָהּ שֶׁל זוֹ.

MISHNA If there are **two sisters-in-law** married to two childless brothers who testify about their marital status, and **this one says: My husband died, and that one says: My husband died,** although each one of them is deemed credible with regard to her own status as a widow, **this one is prohibited** from marrying **due to** the possibility that **the husband of that** other sister may be alive, obligating her in levirate marriage, **and that one is prohibited** from marrying **due to the husband of this** sister, according to the same rationale.[H] Although each is accorded credibility as to her own husband's death, the *halakha* is that sisters-in-law are among the five types of women not accorded credibility with regard to each other's permissibility to marry because of possible conflicts of interest.

לָזוֹ עֵדִים וְלָזוֹ אֵין עֵדִים, אֶת שֶׁיֵּשׁ לָהּ עֵדִים – אֲסוּרָה, וְאֶת שֶׁאֵין לָהּ עֵדִים – מוּתֶּרֶת. לָזוֹ בָּנִים וְלָזוֹ אֵין בָּנִים, אֶת שֶׁיֵּשׁ לָהּ בָּנִים – מוּתֶּרֶת, וְאֶת שֶׁאֵין לָהּ בָּנִים – אֲסוּרָה.

If **this one has witnesses** to her husband's death, **and that one does not have witnesses,** then **the one who has witnesses is prohibited** from marrying,[N] as there are no witnesses to the death of her *yavam* to exempt her from levirate marriage; **but the one who has no witnesses is permitted** to marry based on her own testimony that her husband died combined with the witnesses' testimony exempting her from levirate marriage. If **this one has children and that one has no children,** then **the one with children is permitted** to marry, as she herself is deemed credible with regard to her husband's death, and her children exempt her from levirate marriage. **But the one without children is prohibited** from marrying, as the death of her *yavam* has not been corroborated independently of her sister-in-law's testimony.

נִתְייַבְּמוּ וּמֵתוּ הַיְבָמִין – אֲסוּרוֹת לְהִנָּשֵׂא. רַבִּי אֶלְעָזָר אוֹמֵר: הוֹאִיל וְהוּתְּרוּ לַיְבָמִין – הוּתְּרוּ לְכָל אָדָם.

If there were two additional *yevamin* with whom these two widows **entered into levirate marriage, and** then **the *yevamin* died**[H] childless, the women **are prohibited from marrying,** since the concern about an additional living *yavam* still remains. **Rabbi Elazar says: Since** these women **were permitted to** marry **the** living **brothers-in-law,** as the testimony of each was deemed credible with regard to her own status, **they are permitted,** from then on, **to** marry **any man** because their statements, taken together, indicate that neither one is obligated to enter into levirate marriage.

HALAKHA

Were hiding in a cave, etc. – נֶחְבָּאנוּ בְּמְעָרָה וכו׳: If a husband and wife left town without children, and the woman later returns and reports that she had a son but he died and then her husband died, her report is deemed credible. However, if she said that her husband died before her son died, her report is not entirely trusted concerning the sequence of events. The woman may not enter into levirate marriage, but she must perform *ḥalitza* before marrying anyone else. This applies when she was already disqualified from marrying into the priesthood and when she said that they had been hiding in a cave and there were no witnesses to the events. If this is not the case, she may not perform *ḥalitza* or enter into levirate marriage until witnesses who can verify the sequence of events arrive (Rambam *Sefer Nashim*, *Hilkhot Yibbum* 3:15; *Shulḥan Arukh*, *Even HaEzer* 156:12).

Two sisters-in-law, widowed by childless brothers, who each testified to their own husband's death – שְׁתֵּי יְבָמוֹת שֶׁהֵעִידוּ עַל מוֹת הַבַּעַל: If two sisters-in-law widowed by childless brothers come from overseas, and each one says that her husband died, each one is prohibited from marrying due to the possibility that her *yavam* is actually still alive. If there are witnesses who confirm one of the men's death, that man's widow is prohibited from marrying, but the other woman is permitted to marry. This is because the woman's report that her husband is dead is deemed credible vis-à-vis herself, and there are witnesses who confirm that her *yavam* is dead. If one of the women had children, the one with children is permitted to marry, and the one without children is prohibited from marrying (Rambam *Sefer Nashim*, *Hilkhot Yibbum* 3:7–9; *Shulḥan Arukh*, *Even HaEzer* 158:5).

If these two widows entered into levirate marriage and then the *yevamin* died – נִתְייַבְּמוּ וּמֵתוּ הַיְבָמִין: If women married to two brothers each report that their husband is dead, and then they enter into levirate marriage with their husbands' brothers, and those men die without children and there are no other brothers, the women are prohibited from remarrying. However, if the women had children or were divorced from the levirate marriage, they are permitted to marry outside the family (Rambam *Sefer Nashim*, *Hilkhot Yibbum* 3:10; *Shulḥan Arukh*, *Even HaEzer* 158:6).

NOTES

The one who has witnesses is prohibited from marrying – אֶת שֶׁיֵּשׁ לָהּ עֵדִים אֲסוּרָה: *Tosafot* ask what this passage teaches that would not have been known from the first case discussed in the mishna. The author of *Arukh LaNer* suggests that one might think that the women are prohibited from marrying in the first case because the general leniency of allowing women to marry based upon the testimony of a single witness, even if that witness is a woman, applies only when there is one source of prohibition that needs to be overcome. In the first case, however, there are two prohibitions that need to be overcome with regard to each woman: It must be ascertained both that her husband has died and she is no longer married and that her *yavam* has died and she is not obligated to enter into levirate marriage. However, in a case where there are witnesses that testify that one of the men died, and only one prohibition must be overcome on the basis of the report of a woman, one might have thought that both women are permitted to marry. Alternatively, the mishna may simply intend to emphasize that the principle stated previously applies even in a case where, ironically, the woman who has witnesses who testify to her husband's death is prohibited from marrying, while the woman who has no witnesses is permitted to marry.

גמ׳ תָּנָא: לָוּ עֵדִים וּבָנִים וְלָוּ לֹא עֵדִים וְלֹא בָּנִים – שְׁתֵּיהֶן מוּתָּרוֹת.

GEMARA It was **taught** in a *baraita*: If **this one has witnesses** that her husband died **and** also has **children, and the other has neither witnesses nor children, they are both permitted** to marry. This is because the woman who has children is exempt from levirate marriage, and the woman who has no children may rely upon the witnesses' testimony that her *yavam* died.

״נִתְייַבְּמוּ וּמֵתוּ הַיְּבָמִין – אֲסוּרִין לְהִנָּשֵׂא״. רַבִּי אֶלְעָזָר אוֹמֵר: הוֹאִיל וְהוּתְּרוּ לַיְּבָמִין – הוּתְּרוּ לְכָל אָדָם.

It was taught in the mishna: If **they** both **entered into levirate marriage and** then **the *yevamin*** they married **died, they are prohibited from marrying. Rabbi Elazar says: Since they were permitted to** marry **the *yevamin*, they are permitted to any man.**

בָּעֵי רָבָא: מַאי טַעְמָא דְּרַבִּי אֶלְעָזָר, מִשּׁוּם דְּקָסָבַר צָרָה מְעִידָה לַחֲבֶרְתָּהּ, אוֹ דִלְמָא מִשּׁוּם דְּהִיא לָא מְקַלְקְלָא נַפְשָׁהּ?

Rava raised a dilemma: What is Rabbi Elazar's reasoning? Is it **because he holds** in general that one **rival wife may testify for another** rival wife about her husband's death, and he similarly holds that all of the five types of women who are presumed to have a conflict of interest with each other may testify for one another nonetheless? **Or perhaps** it is **because she would not cause herself injury.** Although she would be suspected of lying and saying that her husband died in order to harm her rival wife, if she herself enters into levirate marriage it can be assumed that she was telling the truth, because if she does so while her husband is actually alive, she would be committing incest with her brother-in-law. Consequently, her rival wife is also permitted to marry on the basis of her testimony.

לְמַאי נָפְקָא מִינָּהּ?

The Gemara asks: **What is the practical difference** between the two reasons?

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לְאַנְסוּבֵי לַצָּרָה מִקַּמֵּי דִּידָהּ. אִי אָמְרַתְּ צָרָה מְעִידָה לַחֲבֶרְתָּהּ, אַף עַל גַּב דְּלָא אִינְסִיב – מַנְסְבִינַן לָהּ לַצָּרָה. אִי אָמְרַתְּ מִשּׁוּם דְּהִיא לָא מְקַלְקְלָא נַפְשָׁהּ, אִינְסִיב – מַנְסְבִינַן לָהּ לַצָּרָה, אִי לָא אִינְסִיב – לָא מַנְסְבִינַן לָהּ.

The Gemara responds that Rabbi Elazar's reasoning could make a practical difference with regard **to** allowing **the rival wife to marry before** the woman **herself,** i.e., the woman who testified that her husband died, remarries. **If you say that** according to Rabbi Elazar, **one rival wife may testify for another,** then **although** the woman who testified that her husband died **has not married, we** allow her **rival wife to marry.** Since the woman's report is deemed credible with regard to herself, it is also deemed credible with regard to her rival wife. However, **if you say** that Rabbi Elazar's reasoning is **due to** the presumption that **she would not cause herself injury,** then **if she has** actually **married we may** allow **her rival wife to marry,** but **if she has not married, we may not** allow **her** rival wife **to marry,** in case she lied in order to cause harm to her rival wife.

מַאי? תָּא שְׁמַע, רַבִּי אֶלְעָזָר אוֹמֵר: הוֹאִיל וְהוּתְּרוּ לַיְּבָמִין הוּתְּרוּ לְכָל אָדָם. אִי אָמְרַתְּ בְּשִׁלָּמָא דְּהִיא לָא מְקַלְקְלָא נַפְשָׁהּ – הַיְינוּ דְּכִי אִינְסִיב מַנְסְבִינַן לָהּ.

What is the basis of Rabbi Elazar's ruling? The Gemara suggests: **Come** and **hear** a resolution based upon the wording of the *baraita* itself: **Rabbi Elazar says: Since they were permitted to** marry **the brothers-in-law, they are** now **permitted to** marry **any man. Granted, if you say that** his reason is because **she would not cause herself injury, this is** the reason **that if she has** actually **married,** as in this case, where each woman entered into levirate marriage, **we may** allow **her** rival wife **to marry.**