

מבית אחד, יבומי חָדָא וְאִפְטוּר אֵיךְ –
לֹא, דְדִלְמָא אֵין זִיקָה כְּכִנְסָה וְהוּוּ לְהוּ
שְׁתֵי יְבָמוֹת הַבָּאוֹת מִשְׁנֵי בְתוּלָם. אֲלֵמָא:
מְסַפְקָא לֵיהּ.

וְכִי תִימָא: מְדֹאֲרֵיהֶּנָּה הֵכִי נִמְיָדְמִיבְמָא
חָדָא, וּמְפֻטְרָא חָדָא, וּמְדֹרְבָנָּה הוּא
דְאָסוּר, גְּזֵירָה מְשׁוּם שְׁמָא יֵאמְרוּ: שְׁתֵי
יְבָמוֹת הַבָּאוֹת מִשְׁנֵי בְתוּלָם, חָדָא מִיִּבְמָא
וְאֵיךְ מִיִּפְטָרָא בּוּלָא כְלוּם.

וְהָא טַעְמָא דְרַבִּי שְׁמַעוֹן מְשׁוּם מֵאָמְרָא
וְלֹא מֵאָמְרָא הוּא! דְתַנְיָא, אָמַר לְהֶם רַבִּי
שְׁמַעוֹן לְחַכְמַיִם: אִם מֵאָמְרוּ שֶׁל שְׁנֵי
מֵאָמְרָא – אִשֶׁת שְׁנֵי הוּא בּוּעֵל.

וְאִם מֵאָמְרוּ שֶׁל שְׁנֵי אֵינוֹ מֵאָמְרָא – אִשֶׁת
רֵאשׁוֹן הוּא בּוּעֵל.

אָמַר לֵיהּ אַבְיִי: וְלֹא שְׁנֵי לָךְ בֵּין זִיקַת יָבָם
אֶחָד לְזִיקַת שְׁנֵי יְבָמוֹת? דְלֵמָא, בֵּין אָמַר
רַבִּי שְׁמַעוֹן זִיקָה כְּכִנְסָה דְמֵאָא – בֵּין בָּם
אֶחָד, אָבֵל בְּשְׁנֵי יְבָמוֹת – לֹא.

from a single household, i.e., husband, and everyone agrees that only one wife from each household may be taken in levirate marriage, as the verse states: “To build his brother’s house,” which is interpreted to mean that the remaining brother may perform levirate marriage with only one wife of his late brother and not with two. To take one in levirate marriage and exempt the other without any procedure, he may not do, as perhaps the levirate bond is not substantial enough to make the first brother’s widow like a married woman to the second brother. In that case this woman whose husband died first remains the wife of the first brother, and the second woman is the wife of the second brother. Then there would be two separate levirate obligations, and one could not exempt the other; they would be two *yevamot* who come from two households. Therefore, apparently even when levirate betrothal was performed Rabbi Shimon is uncertain whether or not the levirate bond is substantial.

And if you would say that by Torah law, indeed, one of them may be taken in levirate marriage and thereby exempt the other, and this was prohibited only by rabbinic law, this would be a rabbinic decree due to the concern lest those who were not aware of the details mistakenly say that in general if two *yevamot*^N come from two households then one is taken in levirate marriage and the other is exempt without anything. One might have thought that the reason Rabbi Shimon required the other woman to perform *halitza* is to avoid the possibility of such a mistake.

But this cannot be, as Rabbi Shimon’s reason is mentioned explicitly in the *baraita*, and there he does not state that this is a decree of the Sages. Rather, his reason is due to the question with regard to the strength of levirate betrothal, specifically whether the status of marriage is achieved by levirate betrothal or not achieved by levirate betrothal. As it is taught in a *baraita*: Rabbi Shimon said to the Rabbis in explanation of his opinion that one of the women could enter into levirate marriage: If the levirate betrothal of the second brother is indeed levirate betrothal and is considered as a fully valid marriage, then the third brother is engaging in relations with the wife of the second brother when he takes her in levirate marriage. That is, if the levirate betrothal by the second brother has the same status as full marriage, then she becomes the wife of this second brother, and all previous connections are no longer relevant.

But if the levirate betrothal of the second brother is not levirate betrothal, i.e., it does not have the full status of marriage, then there was never in fact any connection between the two. If she is then taken by the third brother in levirate marriage, he would be engaging in relations with the wife of the first brother. From here one can conclude that the basis for Rabbi Shimon’s uncertainty is related to the questions concerning the strength of the levirate betrothal.

Abaye said to him: From here you cannot prove what Rabbi Shimon’s opinion was. Is there no difference to you between a levirate bond to a single *yavam* and a bond to two *yevamim*?^N Perhaps when Rabbi Shimon said that a levirate bond is substantial enough to render her like a married woman, this applies only when there is a single *yavam*. If these were the circumstances of the case discussed, that when one brother died there remained only one *yavam*, then because the obligation of levirate marriage would apply only to him, she would be considered his wife. But perhaps he held that if there were two *yevamin*, then no, she would not be considered a married woman, as here the bond would apply to both at once. Accordingly, Rabbi Shimon’s uncertainty is with regard to the case of a levirate bond with two *yevamin*.

NOTES

שְׁמָא יֵאמְרוּ שְׁתֵי – יְבָמוֹת וְכוּ: Several early commentaries discuss a fundamental question that arises from this Gemara: Since Rabbi Shimon’s opinion is that a woman subject to a levirate bond is considered like a married woman, then if two *yevamot* came from two households, it would have been appropriate for one to enter into levirate marriage and the second to be exempt. Rashi explains that the case involves two *yevamot* who fell simultaneously for levirate marriage. Some early commentaries consider this proposal far-fetched, since it is difficult to assume that a decree was made for such a rare occurrence (see Rashba).

זִיקַת יָבָם – אֶחָד וּשְׁנַיִם: Certainly the opinion that a levirate bond to two *yevamin* is not substantial is more easily understood, as a woman cannot be married to two brothers simultaneously. However, it is possible to explain that the levirate bond to two *yevamin* is substantial by saying that provided neither has performed levirate betrothal, both brothers may potentially marry her and the levirate bond applies. If so, all prohibitions connected to marriage apply to both brothers at once (see Ramban).

Three brothers, two of whom...married...sisters – שלשה אחיו...שנים...נשואין...אחיות: If there were three brothers, two of whom married two sisters, and those brothers died consecutively, then both sisters are forbidden to the third brother, as due to the levirate bond they become rival wives to each other. They must perform *halitza* and may not enter into levirate marriage, in accordance with the opinion of the unattributed mishna and contrary to the opinion of Rabbi Shimon (*Shulhan Arukh, Even HaEzer* 175:6).

ומי שני ליה לרבי שמעון? והתניא, כלל אמר רבי שמעון: כל שיה לידה קודמת לנשואין – לא חולצת ולא מתנייבמת, נשואין קודם ללידה – או חולצת או מתנייבמת.

The Gemara challenges: Does Rabbi Shimon differentiate between the case of one *yavam* and the case of two *yevamin* in the matter of a wife of a brother with whom he did not coexist? But it is taught in a *baraita* with regard to the wife of a brother with whom he did not coexist: Rabbi Shimon stated a principle: Whenever the birth of the third brother precedes the levirate marriage of the second brother, if this second brother dies and the *yevama* falls before the third brother, she does not perform *halitza* and she does not enter into levirate marriage. In such circumstances she is the wife of a brother with whom he did not coexist. But if the levirate marriage preceded his birth, she either performs *halitza* or enters into levirate marriage.

מאי לאו ביבם אחד, וקתני: לא חולצת ולא מתנייבמת! לא, בשני יבמים.

What, is it not referring to the case of a single *yavam*, and it is taught in a *baraita*: She does not perform *halitza* and she does not enter into levirate marriage. Even if there is only a single *yavam* this is not considered full marriage, and she remains forbidden as the wife of a brother with whom he did not coexist. Consequently, she who is subject to a levirate bond is not like a married woman. The Gemara answers: No, it refers to a case of two *yevamin*.

אבל ביבם אחד מאי, הכי נמי או חולצת או מתנייבמת? אי הכי, אדתני נשואין קודמין ללידה או חולצת או מתנייבמת – ליפלו וליתני בדידה: במה דברים אמורים – בשני יבמים, אבל ביבם אחד – או חולצת או מתנייבמת!

The Gemara asks: But what, then, is the ruling for a single *yavam*? So too, one should say she either performs *halitza* or enters into levirate marriage, as the woman who requires levirate marriage is like the wife of the second brother for all purposes. If so, rather than teaching the case when the marriage of the second brother precedes the birth of the third brother, that if this second brother dies and she falls before the third brother, she either performs *halitza* or enters into levirate marriage, let Rabbi Shimon distinguish and teach the distinction within the situation itself and say: In what case is this statement said? When there are two *yevamin*. But if there is one *yavam*, she either performs *halitza* or enters into levirate marriage.

בולה בשני יבמין קמירי, ואלא מאי כללא?

The Gemara rejects this: No, the entire *baraita* is in reference to two *yevamin* and differentiates between various cases involving two *yevamin*, namely, the case where the birth of the third brother preceded the marriage of the second brother and the case where the marriage of the second brother preceded the birth of the third brother. The Gemara asks: Rather, what is the principle in this matter? If Rabbi Shimon is speaking of two *yevamin* and not a single *yavam*, then it makes no sense to speak of a principle, as the *halakha* is different in the case of a single *yavam*.

ועוד, מתיב רב אשעיא: שלשה אחיו, שנים מהן נשואין שתי אחיות, או אשה ובתה, או אשה ובת בתה, או אשה ובת בנה – הרי אלו חולצות ולא מתנייבמות, ורבי שמעון פוטר.

Moreover, Rav Oshaya raised an objection from that which was taught in a mishna (28b): If there were three brothers, two of whom were married to two sisters,¹¹ or to a woman and her daughter, or a woman and her daughter's daughter, or a woman and her son's daughter, who are, in each case, two women who may not be married to the same person simultaneously, and subsequently these brothers who were married to relatives died, then those two women must perform *halitza* and may not enter into levirate marriage. Since they both have a levirate bond to the third brother at the same time and he is prohibited from marrying both, they cause one another to be unable to perform levirate marriage. And Rabbi Shimon exempts them even from *halitza*.

ואי סלקא דעתך קסבר רבי שמעון ויקה ככנסה דמניא – לייבם לקמיתא ותיפטר אידיך!

And if it enters your mind that Rabbi Shimon held that a levirate bond is substantial enough to make her like a married woman, then let the third brother consummate the levirate marriage to the widow of the first husband to die, since as soon as her husband dies she has a levirate bond with the other brothers and should be considered to be like his wife, and let the other be exempt as a result, as her levirate bond began only with the death of the second husband.

אמר רב עמרם: מאי פוטר נמי – פוטר בשניה. והתניא: רבי שמעון פוטר בשתיקה!

Rav Amram said: What is really the meaning of the word exempt used by Rabbi Shimon? Only the second is exempt. The Gemara objects: But it is taught in a *baraita*: Rabbi Shimon exempts both. From here it is clear that in his opinion a woman subject to a levirate bond does not have the same status as a married woman.

אמר רבא: שני שבווג זה ודהשני שבווג זה.

Rava said: In the case mentioned in that *baraita*, there were three brothers, two of whom died. Each of the deceased brothers had four wives who were related to the wives of the other brother as described in the mishna. One wife of the first brother was the sister of a wife of the second brother. Another wife was the mother of a wife of the second brother. Another was the daughter of the daughter of a wife of the second brother. And another was the daughter of the son of a wife of the second brother. When these brothers died, all eight women happened before the remaining brother for levirate marriage. When Rabbi Shimon deemed both of them exempt, he was referring to **the second from this pair and the second from that pair**. That is, since one of them was bound to the third brother her relative became exempt as a forbidden relative, and the other of the pair was her rival wife in each of the cases.

קא טעי רבא בארבעה זוגי, חדא ד"או" קתני ועוד: "רבי שמעון פוטר בארבעתן מיבעי ליה.

The Gemara comments: Rava was mistaken about there being four pairs.^b He mistakenly understood that the mishna spoke of two brothers who married four pairs of relatives. Why does the Gemara assume that he was mistaken? One piece of evidence is that the mishna teaches the case using the expression: Or, or. The mishna teaches: Or to a woman and her daughter, or to a woman and her daughter's daughter, or a woman and her son's daughter, meaning that not all of the pairs happened before a single *yavam* for levirate marriage. And further, the *baraita* should have said: Rabbi Shimon exempts all four of them,ⁿ i.e., the four women married to the second brother.

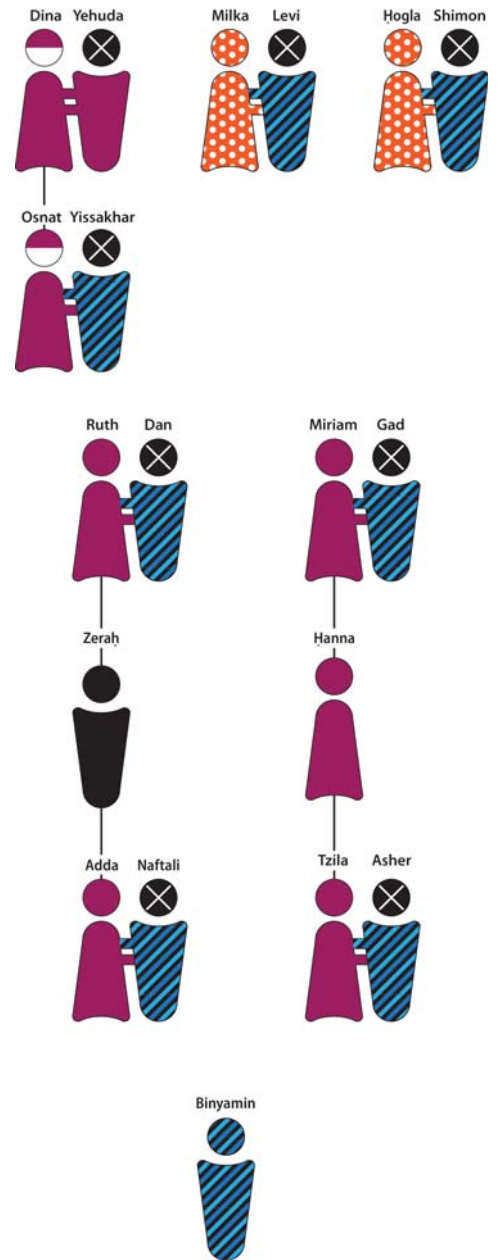
ועוד: תניא, רבי שמעון פוטר בשתייהן מן החליצה ומן היבום, שנאמר "ואשה אל אחותה לא תקח לצרור" בשעה שנעשו צרות זו לזו לא יהא לך ליקוחין אפילו באחת מהן.

And further, it is taught explicitly in a *baraita* that Rabbi Shimon exempts both of them from both *halitza* and levirate marriage, as it is stated: "And you shall not take a woman to her sister, to be a rival to her" (Leviticus 18:18). From here it is derived that when two sisters are about to become rival wives one to the other, that is, at the moment they fall before one brother for levirate marriage, you do not have the option of taking even one of them. In other words, levirate marriage to either of them is not permitted, and therefore both are exempt and not only the second. Thus Rava's explanation is rejected.

אלא אמר רב אשי: אי דנפול בזה אחר זה - הכי נמי, הקא במאי עסקינן - דנפול בבת אחת, ורבי שמעון סבר לה פרבי יוסי הגלילי, דאמר: אפשר לצמצם.

Rather, Rav Ashi said an alternative answer to the Gemara's challenge: If these *yevamot* happened before him for levirate marriage one after the other, indeed it is so that the first woman bound is like a married woman, and she exempts the second, who is her close relative. However, here we are dealing with a case when both brothers died at once and so both women happened before him at once. And Rabbi Shimon holds in accordance with the opinion of Rabbi Yosei HaGelili, who said: It is possible to be precise.ⁿ He held, contrary to the opinion of the Rabbis, that it was possible to be exact about measurements of time. Therefore, it is possible for two things to truly occur at once, and it is possible that both brothers died simultaneously.

טעי... בארבעה זוגי - Mistaken about there being four pairs - There were nine brothers by the same father. Shimon and Levi married the sisters Hogla and Milka, respectively; Yehuda married Dina, and Yissakhar married her daughter Osnat; Gad married Miriam, and Asher married Miriam's daughter's daughter, Tzila; Dan married Ruth and Naftali married her son's daughter, Adda. If these eight brothers were to die and all of the women were to fall before Binyamin for levirate marriage, clearly for each pair there are two women who cannot be taken in marriage at once. According to *Tosafot Yeshanim*, this is the description of the case at hand. According to Rashi, however, the situation is that Shimon married Hogla, Dina, Miriam, and Ruth, while his brother Levi married Milka, Osnat, Tzila, and Adda, and all of these women happened before Binyamin for levirate marriage.



NOTES

Exempts all four of them - פוטר בארבעתן - *Tosafot Yeshanim* raise the following objection: In actuality, it is not four wives who are exempt, but seven. He can perform levirate marriage on only one woman from each household, so that three women are exempt from the first household, and the four from the other household include a forbidden relation and her rival wives who are also forbidden. For this reason, an alternate explanation is suggested: The reference here is not to two brothers but to nine brothers, eight of whom were married in such a way that one was married to a woman and another to her daughter, and one was married to a woman and another to her sister, and so on. When they all happened

before the ninth brother for levirate marriage, four were exempt (see *Tosafot HaRosh*).

It is possible to be precise - אפשר לצמצם - This opinion, held by Rabbi Yosei HaGelili, relates to several areas in *halakha* and refers in essence to the question of whether or not in reality two entities can ever be absolutely equal, be it in questions of exact size or time of occurrence. According to the Rabbis, even if it appears that two things occurred simultaneously, this is only because humans are not able to measure precisely; in reality there must have been some gap between them.

רב פפא אמר: בייבם ואחר כך נולד – פליג רבי שמעון, בגולד ואחר כך ייבם – לא פליג.

Until this point the Gemara dealt with Rav Oshaya's opinion stating that according to Rabbi Shimon's statement, even in the case of one who was born before his brother's levirate marriage the ruling of a wife of a brother with whom one did not coexist would not apply. However, Rav Pappa said: Rabbi Shimon disagreed in the case where the second brother performed levirate marriage and after that the third brother was born; however, where the third brother was born after the death of the first brother and after that the second brother performed levirate marriage Rabbi Shimon did not disagree. He agreed that in this case she would be forbidden to the newly born brother as the wife of a brother with whom he did not coexist.

ותרווייהו לרבנן איצטריך, ו"לא זו אף זו" קתני.

As for the question that Rav Oshaya raised with regard to the apparent redundancy of the similar rulings in both the first mishna of the chapter and the mishna on 18b, it can be explained that both were necessary for the opinion of the Rabbis who prohibited marriage to the wife of a brother with whom one did not coexist in every case. The difficulty raised concerning the apparent redundancy of the first mishna, given the greater scope of the opinion revealed in the second mishna, can be explained by saying that the *tanna* teaches the mishna employing the style: Not only this but also that. That is, the mishna follows the stylistic principle of first teaching the obvious case and continues by saying that this principle applies not only in the obvious case but even in the less obvious case. If so, there is no need to assume that there is an additional dispute with Rabbi Shimon.

תנא כוותיה דרב פפא, ותיובתא דרבי אושעיא: שני אחים בעולם אחד, ומת אחד מהם בלא וולד, ועמד השני הזה לעשות מאמר ביבמתו, ולא הספיק לעשות בה מאמר עד שגולד לו אח, ומת. הראשונה יוצאה משום אשת אחיו שלא היה בעולמו, ושניה או חולצת או מתייבמת.

The Gemara continues: It is taught in a *baraita* in accordance with the opinion of Rav Pappa, and this is a conclusive refutation of the opinion of Rabbi Oshaya: If there were two coexisting brothers, and one died childless, and the second was about to perform levirate betrothal with his *yevama* but did not manage to perform levirate betrothal before his brother was born, and then the second brother died, then the first woman goes out and is free to remarry without *halitza* or levirate marriage due to the fact that she was the wife of a brother with whom the third brother did not coexist, and the second either performs *halitza* or enters into levirate marriage. She was never the rival wife of the widow of the first brother.

עשה בה מאמר, ואחר כך נולד אח, או שגולד לו אח ואחר כך עשה בה מאמר, ומת – הראשונה יוצאה משום אשת אחיו שלא היה בעולמו, ושניה חולצת ולא מתייבמת.

If the second brother performed levirate betrothal with her and afterward his brother was born, or if his brother was born and then he performed the levirate betrothal, and then he died, the first goes out and is free to remarry as the wife of a brother with whom he did not coexist, and the second, the wife of the second brother, must perform *halitza* and may not enter into levirate marriage. This is because, due to the levirate betrothal, she is considered by the Rabbis to be the rival wife of a wife of a brother with whom he did not coexist.

Perek II
Daf 19 Amud b

NOTES

Intercourse or *halitza*, etc. – ביאתה או תליצתה וכו' – The early commentaries asked why the rival wife requires *halitza*. If Rabbi Shimon holds that the levirate bond is significant, she would be considered the rival wife of a wife of a brother with whom he did not coexist through the bond, and therefore totally exempt. *Tosafot* claim that according to Rabbi Shimon's opinion there is no bond. The Meiri explains that the bond is not significant enough to completely exempt the rival wife. Ramban explains that Rabbi Shimon holds that a woman subject to a levirate bond is considered like a married woman retroactively only in cases where she later actually married. But if she did not eventually marry her *yavam*, the bond is not considered significant (see *Tosafot Yeshanim* and *Tosefot HaRosh*).

רבי שמעון אומר: ביאתה או תליצתה של אחת מהם פוטרת צרתה, חלץ לבעלת מאמר לא נמטרה צרה. בנסה ומת, ואחר כך נולד לו אח, או שגולד לו אח ואחר כך בנסה ומת – שתייהן פטורות מן התליצה ומן הייבום.

Rabbi Shimon says: Intercourse or *halitza*^N with one of them, i.e., the wife of the second brother, exempts her rival wife, but if he performed *halitza* with the one who received the levirate betrothal, then her rival wife, i.e., the wife of the second brother, is not thereby exempt, since possibly levirate betrothal does not have the same strength as marriage. If the second brother married his deceased brother's wife and then died himself, and afterward a brother was born, or if a brother was born and then he married her and died, the two wives are both exempt from *halitza* and levirate marriage. In this case, one was the wife of a brother with whom he did not coexist and the other her rival wife.

מֵאִמְרוֹ בְּעַל – A levirate betrothal performed against her will – **כְּרָחָה**: If one performs a non-consensual levirate betrothal, it is wholly ineffectual, The *halakha* is ruled in accordance with the opinion of the Rabbis, who are the majority, against the opinion of Rabbi Yehuda HaNasi (Rambam *Sefer Nashim, Hilkhot Yibbum VaHalitza* 2:1; *Shulhan Arukh, Even HaEzer* 166:3).

בְּנִסָּה וְנִוְלַד לוֹ אָח, וְאַחַר כֵּן מָת – שְׁתִּיחֶהוּ פְטוּרוֹת מִן הַחֲלִיצָה וּמִן הַיִּבּוּם, דְּבָרֵי רַבִּי מֵאִיר. וְרַבִּי שְׁמַעוֹן אוֹמֵר: הוֹאִיל וּבָא וּמְצָאָהּ בְּהִיתָר, וְלֹא עָמְדָה עָלָיו שְׂעָה אַחַת בְּאִיסוּר – מֵיִבּוּם לֵאמֹר מִהֵן שְׂרִיצָה, אוֹ חוֹלֵץ לֵאמֹר מִהֵן שְׂרִיצָה.

The *baraita* continues: If he married his *yevama* and then a brother was born, and then he died, both the wife of the first deceased brother and the original wife of the *yavam* are exempt from *halitza* and levirate marriage; this is the statement of Rabbi Meir. And Rabbi Shimon says: Since the third brother came and found her in a permitted state, and she was never for a moment prohibited to him, as when he was born she was already the wife of the second brother, who was still alive, he therefore takes whichever he wishes in levirate marriage, or performs *halitza* with whichever he wishes.

הֲאֵלֶּיךָ דְּסִיפָא לְמֵאן קְתַנִּי לָהּ? אֵילֵימָא לְרַבִּי מֵאִיר קְתַנִּי לָהּ – מִכְּדִי, לֹא שָׁנִי לִיהָ לְרַבִּי מֵאִיר בֵּין יִבּוּם וְאַחַר כֵּן נִוְלַד, בֵּין נִוְלַד וְאַחַר כֵּן יִבּוּם – לְעִרְבִינָהּ וְלִתְנִינָהּ.

The Gemara clarifies: The section of the latter clause of the *baraita*, which refers to the case of a brother born after the levirate marriage, according to whom is it taught? If we say it is taught for the purpose of clarifying the opinion of Rabbi Meir, it does not make sense, since it makes no difference to Rabbi Meir whether the levirate marriage preceded the birth or the birth preceded the levirate marriage. In his opinion under both circumstances she is the wife of a brother with whom he did not coexist. And if this were in fact taught for the purpose of clarifying his opinion it should have combined the cases and taught themⁿ together.

אֵלֶּיךָ, לֹא רַבִּי שְׁמַעוֹן, וּבֵיבּוּם וְאַחַר כֵּן נִוְלַד – פְּלִיג, בְּנִוְלַד וְאַחַר כֵּן יִבּוּם – לֹא פְּלִיג, שְׁמַע מִינָהּ.

Rather, is it not that the latter segment was meant to clarify the opinion of Rabbi Shimon, since the different parts of the *baraita* enumerate different possibilities? And Rabbi Shimon disagrees in the case when the brother first performed levirate marriage and afterward his brother was born, but he does not disagree in the case where the younger brother was born and afterward the second brother performed levirate marriage. The Gemara summarizes: Conclude from this that Rabbi Shimon disagrees only here, as Rav Pappa explained.

אָמַר מֶר: עָמַד הַשֵּׁנִי לַעֲשׂוֹת מֵאִמְרוֹ בִּיבּוּמָהּ, וְלֹא הִסְפִּיק לַעֲשׂוֹת מֵאִמְרוֹ בִּיבּוּמָתָהּ עַד שֶׁנִּוְלַד לוֹ אָח, וְיָמַת – רִאשׁוֹנָה יוֹצֵאָהּ מִשּׁוּם אִשְׁתְּ אָחִיו שְׂלֵא הִיא בְּעוֹלָמוֹ, וְשֵׁנִיָּה – אוֹ חוֹלֵצָתָה אוֹ מִתְיַבְּמָתָה. מֵאִי עָמַד וּמֵאִי לֹא הִסְפִּיק? אִי עָבַד – עָבַד, וְאִי לֹא עָבַד – לֹא עָבַד!

The Gemara proceeds to discuss the *baraita* itself. The Master said: The second was about to perform levirate betrothal with his *yevama*, but did not manage to perform levirate betrothal with his *yevama* before his brother was born, and then the second brother died. The first woman goes out and is free to remarry without *halitza* or levirate marriage due to the fact that she was the wife of a brother with whom the third brother did not coexist, and the second woman performs *halitza* or enters into levirate marriage. The Gemara asks: What is the meaning of the phrase: Was about to, and what is the meaning of: Did not manage to perform levirate betrothal? The important issue is not his intention but his actions. If he did it, he did it; and if he did not do it, he did not do it.

אֵלֶּיךָ: עָמַד – מִדְּעָתָהּ, וְלֹא הִסְפִּיק מִדְּעָתָהּ, אֵלֶּיךָ בְּעַל כְּרָחָה. וְלֹא כְּרַבִּי דְּתַנְיָא: הָעוֹשֶׂה מֵאִמְרוֹ בִּיבּוּמָתָהּ שְׂלֵא מִדְּעָתָהּ. רַבִּי אוֹמֵר: קָנָה, וְחִכְּמִים אוֹמְרִים: לֹא קָנָה.

Rather, the correct interpretation is: Was about to means that he was about to perform levirate betrothal with her consent. Did not manage means that he did not manage to perform it with her consent, but instead did it against her will. Consequently, it is understood that this *baraita* is not in accordance with the opinion of Rabbi Yehuda HaNasi, as it is taught in a *baraita*: With regard to one who performs levirate betrothal with his *yevama* without her consent, Rabbi Yehuda HaNasi says: He acquired her and the betrothal is fully valid, like a consensual levirate betrothal with his *yevama*; and the Rabbis say: He did not acquire her.¹¹

NOTES

¹¹ לְעִרְבִינָהּ – It should have combined and taught them – לְעִרְבִינָהּ: This objection could not be derived from the mishna itself, because the mishna detailed each ruling separately, which is the linguistic style of the Mishna. The *baraita*, on the other hand, does combine some rulings, and so the question is based on the fact that not all the rulings were combined here (Rivan; *Tosafot*). Also, it could be said that the *baraita* is clearly

teaching by employing the style of: Not only this but also that, unlike the mishna. Rav Oshaya was of the opinion that it was preferable to explain each phrase in the mishna and not resort to saying that it is employing the style of: Not only this but also that. However, once it is clear that the *baraita* uses that style, it is reasonable to assume that the mishna also employs that style (*Tosefot HaRosh*).

He learned this from the case of intercourse with a *yevama* – גְּמַר מִבִּיאָה דִּיבְמָה: *Tosafot* ask how Rabbi Yehuda HaNasi can derive the *halakha* pertaining to levirate betrothal, which is by rabbinic law, from the laws of levirate marriage, which is by Torah law. They answer that rabbinic enactments were often established as though they were Torah law. In the Jerusalem Talmud there is an opinion that considers levirate betrothal to be a Torah law itself, and if so, the laws of a levirate betrothal can certainly be derived from the laws of levirate marriage (see *Keren Ora*).

Betrothal in general requires consent – קְדוּשֵׁין דְּעֵלְמָא – מִדְּעֵתָה: Some early commentaries point out that there is an exception to this rule: A minor may be married off against her will if her father accepts the betrothal. Nevertheless, even in that case the father must give consent, and so it still requires some form of consent (Rivan).

מַאי טַעְמָא דְרַבִּי? גְּמַר מִבִּיאָה דִּיבְמָה, מַה בִּיאָה דִּיבְמָה בְּעַל כְּרֻחָה, אִף קְדוּשֵׁין דִּיבְמָה בְּעַל כְּרֻחָה. וְרַבֵּן גְּמַרִי מִקְדוּשֵׁין דְּעֵלְמָא, מַה קְדוּשֵׁין דְּעֵלְמָא – מִדְּעֵתָה, אִף קְדוּשֵׁין דִּיבְמָה – מִדְּעֵתָה.

בְּמַאי קָמִיפְלִיגִי? מִרְסָר: מִיְלֵי דִיבְמָה מִמִּילֵי דִיבְמָה הָוָה לֵיהּ לְמִילָהּ, וְמִרְסָר: מִיְלֵי דִקְדוּשֵׁין מִמִּילֵי דִקְדוּשֵׁין הָוָה לֵיהּ לְמִילָהּ.

עָשָׂה בָּהּ מֵאָמֵר וְאַחַר כֵּךְ נִוּלַד לּוֹ אֶת, אוֹ שְׁנוּלַד לּוֹ אֶת וְאַחַר כֵּךְ עָשָׂה בָּהּ מֵאָמֵר, וּמַת, רֵאשׁוּנָה יוֹצֵאָה מִשׁוּם אִשְׁתֵּי אָחִיו שְׁלֵא הִיָּה בְּעוֹלָמוֹ, וְשִׁנְיָה חוֹלְצָת וְלֹא מִתְּיַבֶּמֶת. רַבִּי שְׁמַעוֹן אָמַר: בִּיאָתָה אוֹ חֲלִיצָתָה שְׁלֵ אַחַת מֵהֶן פּוֹטֵרַת צָרְתָּה.

רַבִּי שְׁמַעוֹן אֲהֵיִיא קָאִי? אִילִימָא אֲנוּלַד לּוֹ אֶת וְאַחַר כֵּךְ עָשָׂה בָּהּ מֵאָמֵר – הָא אֲמַרְתָּ בְּנוּלַד וְלִבְסוּף יֵיבֵם לֹא פְּלִיגִי רַבִּי שְׁמַעוֹן! אֶלֹא – אַעֲשֶׂה בָּהּ מֵאָמֵר וְאַחַר כֵּךְ נִוּלַד לּוֹ אֶת.

חֲלִץ לְבַעֲלַת מֵאָמֵר לֹא נִפְטְרָה צָרָה, מַאי טַעְמָא? מִשׁוּם דְּהוּאִי צָרָה וְדַאי וּבַעֲלַת מֵאָמֵר סָפְקָה, וְאִין סָפְקָה מוֹצִיא מִיְדֵי וְדַאי.

יְתִיב רַב מְנַשֶּׁה בַר זְבִיד קָמִיָּה דְרַב הוּנָא, וְיְתִיב וְקָאֵמַר: מַאי טַעְמָא דְרַבִּי שְׁמַעוֹן? מַאי טַעְמָא דְרַבִּי שְׁמַעוֹן? בְּדָאֵמֵר טַעְמָא: הוּאִיל וּבָא וּמִצָּאָה בְּהִיתָר, וְלֹא עָמְדָה עָלֶיהּ שְׁעָה אַחַת בְּאִיסוּר!

The Gemara explains: **What is the reason for Rabbi Yehuda HaNasi's opinion? He learned this from the case of a *yavam* engaging in intercourse with a *yevama*.**^N **Just as even non-consensual intercourse with the *yevama* renders her his wife, as the matter does not require her consent, so too, betrothal of a *yevama* can be non-consensual. But the Rabbis learned from the *halakhot* of betrothal in general; just as betrothal in general requires consent^N by the woman, so too, betrothal of a *yevama* for purposes of levirate marriage requires consent.**

The Gemara explains: **With regard to what principle do Rabbi Yehuda HaNasi and the Rabbis disagree? One Sage, Rabbi Yehuda HaNasi, holds that halakhic matters concerning *yevamot* must be inferred from matters concerning *yevamot* and not from other areas of *halakha*. And one Sage, the Rabbis, holds that halakhic matters concerning levirate betrothal must be inferred from matters concerning betrothal.**

The Gemara clarifies another segment of the *baraita*. It is taught: If the second brother performed levirate betrothal with her, and afterward his brother was born, or if his brother was born and then he performed levirate betrothal and died, the first woman goes out and is free to remarry because she is the wife of a brother with whom he did not coexist, and the second, the wife of the second brother, performs *halitza* but does not enter into levirate marriage. Rabbi Shimon says: Intercourse or *halitza* with one of them exempts her rival wife.

The Gemara asks: **To which case is Rabbi Shimon referring? If we say that he is referring to the case when his brother was born and then he performed levirate betrothal with her, didn't you already say that Rabbi Shimon did not dispute the case where the brother was born and then ultimately he performed a levirate marriage, and she would be forbidden as the wife of a brother with whom he did not coexist. Rather, one must say that Rabbi Shimon disputed the case where he performed levirate betrothal with her and afterward his brother was born.**

Later in the *baraita* it is taught: If the third brother performed *halitza* with the wife of the first brother, to whom the second brother performed levirate betrothal, her rival wife is not exempt. The Gemara clarifies: **What is the reason for this? It is because the rival wife, the widow of the second brother, has a definite legal status that requires an act to free her to remarry, as she is the wife of a brother with whom he did coexist, whereas the widow of the first brother with whom the second brother performed levirate betrothal had only an uncertain legal status, as it is not clear if she is to be considered truly the wife of the second brother by means of the levirate betrothal or not. And the principle is that an uncertainty does not override a certainty.** Therefore, even if the third brother performs *halitza*, since the status of the first woman's obligation is uncertain, the status of the *halitza* itself is uncertain, as it is possible that she did not require *halitza* at all. Consequently, this *halitza* is not sufficient to exempt her rival wife. This teaches that he must perform *halitza* or levirate marriage with the woman who is definitely obligated, and then the other will be exempt.

Rav Menashe bar Zevid sat before Rav Huna. He sat and said: **What is the reason that Rabbi Shimon allows the third brother to marry the wife of his brother with whom he did not coexist where she was taken in levirate marriage prior to his birth? The Gemara also wonders: What is Rabbi Shimon's reason? The reason is as he stated in that same *baraita*: Since the third brother came and found her in a permitted state, and she was never for a moment prohibited to him he may perform levirate marriage with her.**

The first levirate bond [*yibbumin*] is still upon her – עדיין יבומים הראשונים עליה: The early authorities ask: If the levirate bond remains, why is he allowed to continue to live with his *yevama*? Once he performs *yibbum*, she apparently remains his brother's wife, who is forbidden to him now that he has already performed the mitzva. They answer that the Torah did not intend to prohibit relations with the *yevama* after the act of consummation, as it states: "He will take her to him to be his wife." However, she remains a *yevama* even after she is married, in that if the couple were to divorce, they would not be permitted to remarry (Rashba).

אָלָא: מַאי טַעמָא דְרַבִּינָן? אָמַר קָרָא "וּלְקַחְתָּהּ לּוֹ לְאִשָּׁה וַיְבַמְתָּהּ" – עַדִּינָן יְבוּמִים הָרִאשׁוֹנִים עָלֶיהָ. אָלָא, הָא דְתַנְּנָן: כְּנֶסֶה – הֲרֵי הִיא כְּאִשְׁתּוֹ לְכָל דְּבַר, וְאָמַר רַבִּי יוֹסֵי בַר חֲנִינָא: מְלֻמָּד

Rather, the question was as follows: Rabbi Shimon gave such a persuasive explanation of his opinion that it raises the question: **What is the reason for the Rabbis' opinion?** The Gemara answers that **the verse states: "Her brother-in-law will ... take her to him to be his wife and consummate the levirate marriage [*veyibbema*]"** (Deuteronomy 25:5). This means that **the first levirate bond is still upon her.**ⁿ Even after she is taken as a wife by the second brother, her earlier status as wife of her late first husband is still in effect. The Gemara challenges this: **But what about that which we learn in a mishna (38a): If he took his *yevama* in marriage as his wife, then her legal status is that of his wife in every sense; and Rabbi Yosei bar Ḥanina said: This teaches**

Perek II

Daf 20 Amud a

שְׂמַגְרָשָׁה בְּגֵט וּמְחִזְזִירָה, הֵתֵם נָמִי לֵימָא: "וַיְבַמְתָּהּ" עַדִּינָן יְבוּמִין הָרִאשׁוֹנִים עָלֶיהָ, וְתִיבְעֵי חֲלִיטָה!

that he must divorce his *yevama* with a bill of divorce and she does not also require *halitza*. **And he may remarry her**, if he wishes, after the divorce; as the *halakha* is not ruled in accordance with the opinion that after he performs the mitzva she is once more forbidden to him as his brother's wife. Why? **There, too, let the *halakha* say**" that the verse states: **"And consummate the levirate marriage [*veyibbema*],"** as explained above, meaning that **the first levirate bond is still upon her and she should also require *halitza*.**

שְׂאֵנִי הֵתֵם, דְּאָמַר קָרָא "וּלְקַחְתָּהּ לּוֹ לְאִשָּׁה", כִּיּוֹן שְׁלֻקְחָהּ נַעֲשִׂית כְּאִשְׁתּוֹ לְכָל דְּבַר. אִי הֲבֵי, הֲכָא נָמִי! הָא כְּתֹב רַחֲמָנָא "וַיְבַמְתָּהּ".

The Gemara answers: **It is different there, as the verse states: "And take her to him to be his wife"** (Deuteronomy 25:5) to teach that **once he has taken her**, her legal status is **that of his wife in every sense**. The Gemara objects: **If so, here too**, in the case of a brother born after the levirate marriage, according to the opinion of the Rabbis this same principle should apply. The Gemara answers that **The Merciful One states: "And consummate the levirate marriage [*veyibbema*],"** that is, even after the marriage she is still considered to be the wife of the deceased brother [*yevama*] with respect to any brothers who are born later.

וּמָה רְאִיתָ? מִסְתַּבְּרָא: שְׂדֵי הֵיטֵירָא וְשְׂדֵי אִיסוּרָא אִיסוּרָא.

The Gemara asks: **What did you see** to distinguish in this way and say that once she is married the levirate obligation is totally abrogated with regard to *halitza*, but that she remains prohibited as the wife of a brother with whom one did not coexist with respect to any brothers born in the future? The Gemara answers: **It stands to reason to say: Toss that which is permitted on that which is permitted, and toss that which is prohibited on that which is prohibited.** In other words, in cases where the woman becomes permitted to her *yavam* through levirate marriage, it stands to reason that this permitted state is absolute, but with regard to the prohibition against taking the wife of a brother with whom one did not coexist, it stands to reason that the verse comes to teach that she retains her prohibited status with respect to any brothers born in the future.

וּלְרַבִּי שְׂמַעוֹן, דְּאָמַר: הוֹאִיל וּבָא וּמְצָאָהּ בְּהֵיטֵר וְלֹא עָמְדָה עָלָיו שְׂעָה אַחַת בְּאִיסוּר, אָלָא מַעֲתָהּ, אַחֲוָתוֹ מֵאִמּוֹ שְׁנִשְׂאָהּ אַחִיו מֵאִבּוֹ, וְאַחַר כֵּן נוֹלַד אָח, וּמַת – תְּתִיבֵם, הוֹאִיל וּבָא וּמְצָאָהּ בְּהֵיטֵר!

The Gemara suggests: **But according to Rabbi Shimon, who said that since he came and found her in a permitted state** a brother born subsequently may perform levirate marriage **since she was never for a single moment prohibited to him; however, if that is so, consider the case of one's maternal half sister, who married his paternal half brother; their marriage was fully permissible since the husband and wife were in no way related to each other. And then his brother was born and the married brother died; in that case, let the sister enter into levirate marriage with her newly born half brother for the same reason, i.e., since he came and found her in a permitted state, as when he was born she was already his brother's wife.**

NOTES

הֵתֵם נָמִי לֵימָא – הֵתֵם נָמִי לֵימָא – There, too, let the *halakha* say, etc. – רַבִּינָן: Rabbeinu Ḥananel had a different version of the text here, and many early commentaries preferred his version. According to his text, the Gemara is discussing two challenges to the concept of the first levirate bond still being upon her: First, if a *yavam* performs levirate marriage and subsequently divorces his *yevama*, he may remarry her afterward. Since he has already performed levirate marriage, she is no longer forbidden to him as his brother's wife, even if he divorces her. This indicates that the original levirate bond is completely removed. Second, if he divorces his *yevama* he does so only with a bill of divorce and does not perform *halitza*. This also indicates that the levirate bond is removed. Although Rashi has a different version of the text, his explanation accords with that of Rabbeinu Ḥananel.