

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 וַיִּבְמָהּ – עַדִּינָן  
יְבוּמִים הָרִאשׁוֹנִים עָלֶיהָ. אָלָא, הָא  
דְתַנְּנָן: בְּנִסָּה – הָרִי הִיא בְּאִשְׁתּוֹ 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.**<sup>n</sup> 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**

There, too, let the *halakha* say, etc. – הָתָם נְמוּ לִימָא – וְכוּ: 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.

## Perek II

## Daf 20 Amud a

שְׁמַגְרָשָׁה בְּגֵט וּמְחִזְזָה, הֵתֵם נְמוּ  
לִימָא: "וַיִּבְמָהּ" עַדִּינָן יְבוּמִין הָרִאשׁוֹנִים  
עָלֶיהָ, וְתִיבְעֵי חֲלִיצָה!

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*.**

שְׁאֵי הֵתֵם, דְּאָמַר קָרָא "וּלְקַחְתָּהּ לּוֹ  
לְאִשָּׁה", כִּיּוֹן שְׁלֻקְחָהּ נַעֲשִׂית בְּאִשְׁתּוֹ  
לְכָל דְּבַר. אִי הָכִי, הָכָא נְמוּ! הָא כְּתֹב  
רְחֻמָּנָא "וַיִּבְמָהּ".

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? מִסְתַּבְרָא: שְׂדֵי הֵייתִירָא  
אֵהֵיתִירָא, וְשְׂדֵי אִיסוּרָא אֵאִיסוּרָא.

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 שְׁמַעוֹן, דְּאָמַר: הוֹאִיל וּבָא  
וּמְצָאָהּ בְּהֵיתִיר וְלֹא עָמְדָה עָלָיו שְׂעָה  
אַחַת בְּאִיסוּר, אָלָא מַעֲתָה, אַחֲוֹתוֹ  
מֵאִמּוֹ שְׁנֵשְׂאָהּ אַחִיו מֵאִבּוֹ, וְאַחַר כֵּן  
נוֹלַד אָח, וּמֵת – תִּתְיַבֵּם, הוֹאִיל וּבָא  
וּמְצָאָהּ בְּהֵיתִיר!

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

That prohibition has a case where it is permitted – איסור קדושה – איסור דאית ליה היתרא: Rashi explains that the case where the prohibition is lifted is when the *yevama* is permitted to marry her *yavam*. According to *Tosafot*, however, the Gemara here is referring to the fact that the prohibition against marrying a brother's wife is totally nullified after levirate marriage, and the *yavam* may remarry her if he divorces her (see Ritva).

HALAKHA

A prohibition resulting from a mitzva or a prohibition stemming from sanctity – איסור מצוה ואיסור קדושה: A *yevama* who is forbidden to her *yavam* by a prohibition, or as a secondary forbidden relation, must perform *halitza* and may not enter into levirate marriage, as explained in the mishna (Rambam *Sefer Nashim, Hilkhot Yibbum VaHalitza* 6:7, 10; *Shulhan Arukh, Even HaEzer* 174:1).

Her sister who is her *yevama* – אחותה שהיא יבמתה: If two sisters happened before their *yavam* for levirate marriage and one of them was prohibited to him as a forbidden relation, he may either perform *halitza* with the other or take her in levirate marriage, as stated in the mishna and explained in the Gemara (Rambam *Sefer Nashim, Hilkhot Yibbum VaHalitza* 7:1; 10; *Shulhan Arukh, Even HaEzer* 175:2).

איסור אחותו להיכן אול? הכא נמי, איסור אחיו שלא היה בעולם להיכן אול? האי, איסורא דלית ליה היתרא, האי – איסורא דאית ליה היתרא.

מתני' כלל אמו ביבמתה: כל שהיא איסור ערוה, לא חולצת ולא מתייבמת. איסור מצוה ואיסור קדושה – חולצת ולא מתייבמת.

אחותה שהיא יבמתה – חולצת או מתייבמת.

איסור מצוה: שניות מדברי סופרים. איסור קדושה: אלמנה לכהן גדול, גרושה וחלוצה לכהן הדיוט, ממזרת ונתינה לישראל, ובת ישראל לנתין וממזר.

גמ' כלל לאתווי מאי? אמר רפרם בר פפא: לאתווי צרת אילומית, וכדרב אסי.

The Gemara challenges this suggestion: How can you say that? What happened to the prohibition against marrying his sister, to where did it go? This widow is the maternal sister of the newly born brother and is therefore forbidden to him. The Gemara objects: If so, here too, one could have said: What happened to the prohibition against marrying the wife of a brother with whom one did not coexist, to where did it go? In this case as well, the prohibition against marrying the wife of a brother with whom he did not coexist already applied from the first brother, so why does Rabbi Shimon see this as abrogated by marriage? The Gemara answers that the comparison is unsound. This prohibition against marrying one's sister has no case where it is permitted and so in this case is also not canceled, whereas that prohibition against marrying a brother's wife has a case where it is permitted,<sup>N</sup> when the mitzva of levirate marriage applies to a second brother and is therefore removed completely before the third brother is born.

**MISHNA** The Sages stated a principle about a *yevama*: Whoever is forbidden by a prohibition of forbidden relations to her *yavam* neither performs *halitza* nor enters into levirate marriage and is completely exempt. If she is forbidden by a prohibition resulting from a mitzva or by a prohibition stemming from sanctity,<sup>H</sup> as will be explained later, then since in these cases the obligation of levirate marriage is not fundamentally nullified she performs *halitza* in order to become free of the levirate bond, and due to her prohibition she does not enter into levirate marriage.

The Sages stated another principle: If two sisters who had been married to two brothers who subsequently died happened before the third brother for levirate marriage, and one of those sisters is a close relation to this third brother and is therefore forbidden to him, she is exempt from levirate marriage. But the other, her sister who is her *yevama*,<sup>H</sup> i.e., her sister-in-law, performs *halitza* or enters into levirate marriage. In this case, they are not ruled to be two sisters who happened before him simultaneously for levirate marriage, since one of them is prohibited to him as a forbidden relation, and therefore she never actually happened before him at all.

The mishna explains: A prohibition resulting from a mitzva is referring to secondary forbidden relationships, which are prohibited by rabbinic law. The Sages prohibited marriage to certain women who were not forbidden by the Torah but were nevertheless deemed forbidden incestuous relations. A prohibition stemming from sanctity is referring to marriage of a widow to a High Priest, a divorcée or a woman who has performed *halitza* [*halutza*] to a common priest, a daughter born from an incestuous or adulterous relationship [*mamzeret*] or a Gibeonite woman to an Israelite, and also an Israelite woman to a Gibeonite or to a son born from an incestuous or adulterous relationship [*mamzer*].

**GEMARA** The Gemara asks: This principle stated in the mishna about *yevamot*, what other cases does it add? Since the entire list of cases involving a forbidden relation was already detailed in the first chapter, what is this mishna adding? **Rafraim bar Pappa said: It comes to include the case of a rival wife of a sexually underdeveloped woman [*aylonit*],** who is incapable of bearing children. Not only does an *aylonit* herself not enter into levirate marriage, since she is unable to give birth, but her rival wife is exempt as well. **And this is like the principle of Rav Asi,** who said that the rival wife of an *aylonit* is forbidden because the *aylonit* herself remains prohibited to the *yavam* as the wife of his brother, as she was never rendered permitted by the obligation of levirate marriage. Therefore, her rival wife is the rival wife of someone prohibited as a forbidden relation.

The rival wife of a sexually underdeveloped woman [*aylonit*], etc. – צרת אילנית: If the two wives of one man fall before his brother for levirate marriage and one of them is an *aylonit*, then her rival wife may either perform *halitza* or enter into levirate marriage. This is in accordance with the opinion cited in the Gemara as: And there are those who say, and contrary to the opinion of Rav Asi (Rambam *Sefer Nashim*, *Hilkhot Yibbum VaHalitza* 6:20; *Shulhan Arukh*, *Even HaEzer* 172:1).

ואיכא דאמר: "כל שאיסורה איסור ערוה" הוא דאיסורא צרתה, הא לא איסורה איסור ערוה – צרתה לא איסורא. למעוטי מאי? אמר רפ"ם: למעוטי צרת אילנית, ודלא כרב אסי.

And there are those who say that Rafram bar Pappa's statement was made in a different context. It was taught in the mishna: **Whoever is forbidden to her *yavam* by a prohibition of forbidden relations is completely exempt**, which implies that it is specifically in such a case that her rival wife is forbidden. But any case when one wife is not forbidden by a prohibition of forbidden relations but is instead forbidden for some other reason, then her rival wife is not forbidden. This case comes to exclude what? Rafram said: It excludes the rival wife of an *aylonit*, who requires levirate marriage or *halitza* because the *aylonit* is not prohibited as a forbidden relation.<sup>h</sup> And this statement is not in accordance with the opinion of Rav Asi.

"אחותה שהיא יבמתה". אחותה דמאן? אילימא דאיסור מצוה, בין דמדאורייתא רמ"א קמיה פגע באחות וקוקתו! אלא: אחותה דאיסור ערוה.

The mishna states: Her sister who is her *yevama* performs *halitza* or enters into levirate marriage. The Gemara clarifies this: **Whose sister? If we say it is the sister of one who is forbidden due to a prohibition resulting from a mitzva, since by Torah law she is cast before him for levirate marriage, then this would in fact simply be a case of two sisters who fell simultaneously before him, both requiring levirate marriage, since according to Torah law there is no prohibition against entering into levirate marriage with such a woman. If so, it turns out that he encounters the sister of the woman with whom he has a levirate bond; but that case has already been taught. Rather, it must refer to the sister of a woman who is forbidden to him by a prohibition of forbidden relations, and since he may not enter into levirate marriage with a forbidden relation, her sister is not considered to be the sister of a woman with whom he has a levirate bond. Therefore, the sister may be taken in levirate marriage.**

"איסור מצוה שנית". אמאי קרי ליה איסור מצוה? אמר אביי: מצוה לשמוע דברי חכמים.

The mishna states that a prohibition resulting from a mitzva is referring to secondary forbidden relationships, which are prohibited by rabbinic law. The Gemara asks: **Why is this called a prohibition resulting from a mitzva? Abaye said: This is because it is a mitzva to listen to and obey the words of the Sages.**<sup>n</sup>

"איסור קדושה אלמנה לכהן גדול גרושה וחלוצה לכהן הדיוט", ואמאי קרי ליה איסור קדושה? דכתוב "קדושים יהיו לאלהיהם".

The mishna states: A prohibition stemming from sanctity is referring to a marriage of a widow to a High Priest, a divorcée or a *halutza* to a common priest. The Gemara asks: **Why are these called a prohibition stemming from sanctity? As it is written with regard to the priests: "They shall be sacred" to their God... they shall not take a woman that is a harlot, or profaned; neither shall they take a woman divorced by her husband** (Leviticus 21:6–7).

תניא, רבי יהודה מחליף: איסור מצוה – אלמנה לכהן גדול, גרושה וחלוצה לכהן הדיוט. ואמאי קרי ליה איסור מצוה? דכתוב "אלה המצוות".

It is taught in a *baraita*: Rabbi Yehuda switches the terms: A prohibition resulting from a mitzva is referring to a widow to the High Priest, or a divorcée or a *halutza* to a common priest. And why is this called a prohibition resulting from a mitzva? As it is written in summarization at the end of Leviticus: **"These are the mitzvot that the Lord commanded Moses for the children of Israel in Mount Sinai"** (Leviticus 27:34).

## NOTES

מצוה לשמוע – דברי חכמים: The *Nimmukei Yosef* notes that this mitzva is explicit in the Torah: "And you shall come... to the judge that shall be in those days... and you shall act according to the tenor of the sentence, which they shall declare... do not turn aside from the sentence that they shall declare" (Deuteronomy 17:9–11).

A prohibition stemming from sanctity... they shall be sacred, etc. – איסור קדושה... קדושים יהיו וכו': The Rivan adds that although this verse refers specifically to priests, there is another verse that refers to Israelites: "Sanctify yourselves and be holy" (Leviticus 20:7). From here it is derived that there are prohibitions

stemming from sanctity for Israelites as well, which are those forbidden sexual relations that are pertinent to them.

Some commentaries point out that included among those relationships enumerated as prohibitions due to sanctity is a woman who has performed *halitza* [*halutza*] marrying a priest, which is prohibited by rabbinic law, and a Gibeonite woman marrying an Israelite, which according to many opinions is also prohibited by rabbinic law and not by Torah law. Some commentaries explain that since these women are prohibited to all Jews these relationships can be called prohibitions due to sanctity, and the prohibition in these cases is unlike the safeguards established by the Sages, e.g., secondary forbidden relations (*Yosef Lekah*).

NOTES

Whoever fulfills the words of the Sages – קָל – תִּמְקִיִּים דְּבָרֵי חֲכָמִים: The Rivan writes that this is alluded to in the verse: “And it shall come to pass that he that is left in Zion, and he that remains in Jerusalem, shall be called sacred” (Isaiah 4:3).

You must sanctify yourself by refraining from that which is permitted to you – קָדַשׁ עֲצַמְךָ בַּמּוֹתֵר – לָךְ: The Ramban explains that this is the true meaning of the mitzva: “You shall be sacred” (Leviticus 19:2). Sanctity requires one to refrain from even that which the Torah permitted. The Ramban explains that it is possible for one to be vile without violating any other explicit Torah prohibitions. The Torah does not limit how much one may eat or how frequently one may engage in intercourse; a hedonist could spend all his time indulging in sensual pleasures. Therefore the Torah stressed: “You shall be sacred” (see Rashi on *Sanhedrin* 53a; Ritva).

HALAKHA

A widow to a High Priest – אֵלֶמְנָה לְבֵתָן גְּדוּלָה: If the brother of a High Priest dies childless and leaves a widow, even a widow from betrothal, then she must perform *halitza* and not enter into levirate marriage. If he engages in intercourse with her, her rival wife is not exempt from *halitza* (Rambam *Sefer Nashim, Hilkhot Yibbum VaHalitza* 6:11 and *Sefer Kedusha, Hilkhot Issurei Bia* 17:12).

איסור קדושה – “שְׁנִיּוֹת מִדְּבָרֵי סוֹפְרִים”, וְאִמָּאֵי קָרִי לִיָּה אִיסוּר קְדוּשָׁה? אָמַר אַבְיִי: כָּל הַמְּקִיִּים דְּבָרֵי חֲכָמִים נִקְרָא קְדוּשָׁה. אָמַר לִיָּה רַבָּא: וְכָל שְׂאִינוּ מְקִיִּים דְּבָרֵי חֲכָמִים, קְדוּשָׁה הוּא דְלֹא מִיקְרֵי, רְשָׁע נִמְי לֹא מִיקְרֵי! אֵלֶּא אָמַר רַבָּא: קְדַשׁ עֲצַמְךָ בַּמּוֹתֵר לָךְ.

“אֵלֶמְנָה לְבֵתָן גְּדוּלָה”. קִפְסִיק וְתִנֵּי, לֹא שָׂנָא מִן הַנְּשׂוּאִין וְלֹא שָׂנָא מִן הָאִירוּסִין.

בְּשִׁלְמָא מִן הַנְּשׂוּאִין – עֵשָׂה וְלֹא תַעֲשֶׂה, וְאִין עֵשָׂה דּוּחָה לֹא תַעֲשֶׂה וְעֵשָׂה. אֵלֶּא מִן הָאִירוּסִין, לֹא תַעֲשֶׂה גְרִידָא הוּא, יָבָא עֵשָׂה וְדָחָה לֹא תַעֲשֶׂה!

אָמַר רַב גִּידֵל אָמַר רַב: אָמַר קָרָא ‘וְעָלְתָה יְבִמְתּוֹ הַשְּׂעֵרָה’ שְׂאִין תִּלְמוּד לְוֹמֵר ‘יְבִמְתּוֹ’, מַה תִּלְמוּד לְוֹמֵר יְבִמְתּוֹ – יֵשׁ לָךְ יְבִמָּה אַחַת שְׂעוּלָה לְחִלְיָצָה וְאִינָה עוּלָה לְיִיבּוּם. וְאִיזוּ – זוּ חֲתִיבֵי לְאוּיִן.

וְאִימָא חֲתִיבֵי כְרִיתוּת! אָמַר קָרָא ‘וְאִם לֹא יַחְפוּץ הָאִישׁ לְקַחְתָּהּ’ הָא חֲפָץ – מִיִּיבּוּם, כָּל הָעוּלָה לְיִיבּוּם עוּלָה לְחִלְיָצָה וְכָל שְׂאִין עוּלָה לְיִיבּוּם. – אִינּוּ עוּלָה לְחִלְיָצָה.

אִי הֲכִי, חֲתִיבֵי לְאוּיִן נִמְי! הָא רַבִּי רַחֲמֵנָא ‘יְבִמְתּוֹ’. וְמָה רָאִיתָ?

A prohibition stemming from sanctity is referring to secondary relationships forbidden by rabbinic law. And why is this called a prohibition stemming from sanctity? Abaye said: Whoever fulfills the words of the Sages<sup>n</sup> is called sacred. Rava said to him: The language you use is not precise, since if so, whoever does not fulfill the words of the Sages is not called sacred, which implies that he is also not called wicked. However, anyone who transgresses the words of the Sages is in fact referred to as wicked. Rather, Rava said that the reason why this is called a prohibition stemming from sanctity is that the term sanctity indicates differentiation or separation, and there is a principle that you must sanctify yourself by refraining from that which is permitted to you<sup>n</sup> by Torah law. The Sages decreed against secondary forbidden relations so that one would not eventually come to transgress Torah law.

The mishna states that the levirate bond of a widow to a High Priest<sup>H</sup> requires her to perform *halitza*, and she may not enter into levirate marriage. The Gemara comments: The *halakha* that a widow does not enter into levirate marriage with a High Priest is taught categorically, merely in a general manner. It is no different whether she is a widow from marriage or she is a widow from betrothal alone.

Granted, she certainly may not enter into levirate marriage if she is a widow from marriage, since she is forbidden to the High Priest by the positive mitzva stated in the verse: “And he shall take a wife in her virginity” (Leviticus 21:13), and by the prohibition stated in the verse: “A widow, or one divorced... these he shall not take” (Leviticus 21:14). And a positive mitzva, levirate marriage, does not override both a prohibition, not marrying a widow, and a positive mitzva, marrying a virgin, together. However, if she is a widow from betrothal, then there is only a prohibition, as she is still a virgin. In that case, why not say that the positive mitzva of levirate marriage should come and override the prohibition against marrying a widow from betrothal?

Rav Giddel said that Rav said in response: The verse states: “His yevama shall ascend to the gate to the Elders and say: My brother-in-law refused to establish a name for his brother in Israel, he did not wish to consummate the levirate marriage” (Deuteronomy 25:7). As there is no need for the verse to state: “His yevama,” since it is clear to whom the verse refers and no new information is added by this word, what is the meaning when the verse states: “His yevama”? It comes to teach that there is one yevama who ascends for *halitza* but may not ascend for levirate marriage, and her brother-in-law is not given a choice. Who is this? This is a woman with whom it is prohibited for her *yavam* to enter into levirate marriage, as he would be liable for the violation of a prohibition, and the positive mitzva of levirate marriage does not override the prohibition.

The Gemara asks: Say that this is referring to those women who are forbidden and would be liable to receive the penalty of *karet* as well, i.e., that these too may not enter into levirate marriage but nevertheless require *halitza*. The Gemara answers: The verse states: “And if the man does not wish to take his yevama” (Deuteronomy 25:7). This implies that if he wishes, he takes her in levirate marriage; it depends upon his wishes. However, one who is eligible for levirate marriage is eligible for *halitza*. And conversely, one who is ineligible for levirate marriage is ineligible for *halitza* and therefore does not require *halitza* at all. Since those relations that carry a penalty of *karet* have no possibility of entering into levirate marriage, they do not require *halitza* either.

The Gemara asks: If so, those relations who are forbidden as he would be liable for the violation of a standard prohibition also should not require *halitza*, as they may not enter into levirate marriage. The Gemara answers: But the Merciful One included one category of *yevama* who is eligible for *halitza* alone and not levirate marriage through the term: “His yevama.” The Gemara asks: And what did you see to conclude that the additional term is referring to relations who are forbidden and with whom he would be liable for the violation of a prohibition and not those who are liable to receive *karet*?

מסתברא, חייבי לאוין תפסי בהו קדושין, חייבי פרישות לא תפסי בהו קדושין.

מתב רבא: איסור מצוה ואיסור קדושה, בא עליה או חלץ לה – נפטרה צרתה. ואי סלקא דעתך חייבי לאוין מדאורייתא לחליצה רמיא, לייבום לא רמיא – כי בא עליה אמאי נפטרה צרתה?

הוא מותב לה והוא מפרק לה: לצדדין קתני, בא עליה – אאיסור מצוה, חלץ לה – אאיסור קדושה.

מתב רבא: פצוע דבא וכרות שפכה, כרים אדם והזקן – או חולצין או מיבמין. ביצד? מתו, ולהם אחים ולהם נשים, ועמדו אחין ועשו מאמר בגשותיהן, ונתנו גט, וחלצו, מה שעשו עשו, ואם בעלו קנו.

The Gemara answers: That stands to reason, since betrothal takes effect with those women who are forbidden and with whom he would be liable for the violation of a prohibition.<sup>N</sup> That is, if a man betroths a woman who is forbidden to him and with whom he would be liable for the violation of a prohibition, then although he violates a prohibition in doing so, the betrothal is valid and cannot be ended without a bill of divorce. Therefore, such a woman also requires *halitza*. In contrast, **betrothal does not take effect** at all with those who are forbidden and would be liable to receive the punishment of *karet*, and therefore in these cases the laws of levirate marriage and *halitza* do not apply at all.

Rava raised an objection to the explanation of Rav: It is taught in a *baraita* with regard to a prohibition resulting from a mitzva and a prohibition stemming from sanctity that if he engages in intercourse with such a woman<sup>H</sup> or performs *halitza* with her,<sup>H</sup> her rival wife is exempt, even though it was prohibited for him to have engaged in intercourse with her in the first place. If it enters your mind that women who are forbidden, as he would be liable for the violation of a prohibition, require *halitza* by Torah law but do not require levirate marriage, then when he engages in intercourse with his *yevama* why is her rival wife exempt? If there is no biblical mitzva to engage in intercourse with her, his action would carry no halakhic validity and the rival wife should not be exempt.

Rava raised the objection and he resolved it: The *baraita* teaches it disjunctively; it did not all deal with the same case. When the *baraita* says: Engages in intercourse with her, it is referring to a prohibition resulting from a mitzva. If one engages in intercourse with a *yevama* prohibited to him by rabbinic law, since by Torah law levirate marriage with her is valid, then although his act involved the transgression of a rabbinic decree, he nevertheless fulfilled the Torah mitzva and the rival wife is thereby exempt. When the *baraita* says: Performs *halitza* with her, it is referring to a prohibition stemming from sanctity, and by Torah law there is no option of levirate marriage because of the prohibited relation; therefore, only *halitza* exempts her rival wife.

Rava raised an objection from that which was taught in the *Tosefta* (*Yevamot* 11:3): A man with crushed testicles<sup>H</sup> or with other wounds to his genitals or one whose penis has been severed, one who is a eunuch<sup>H</sup> caused by man and not from birth or by disease, or an elderly man,<sup>H</sup> all of whom are incapable of fathering children, one either performs *halitza* or levirate marriage. How so? If any of these infertile men died, and they had brothers and they also had wives, and they then died childless, and the brothers proceeded to perform levirate betrothal with their wives, or gave them a bill of divorce, or performed *halitza*, whatever they did is done; i.e., their act was effective. And if any one of the brothers engaged in intercourse with the widow of one of those infertile men, he thereby acquired the woman as a wife according to the laws of levirate marriage.

HALAKHA

Intercourse with one's *yevama* who is prohibited due to a mitzva or sanctity – הקבא על במתו איסור מצוה ואיסור קדושה – In cases where a *yevama* is forbidden to her *yavam* due to a prohibition or a positive mitzva, or where she is a secondary relation forbidden by rabbinic law, if he transgressed and engaged in intercourse with her she is considered married to him for all purposes; he must divorce her with a bill of divorce, and her rival wife is exempt from levirate marriage and *halitza* (Rambam *Sefer Nashim, Hilkhot Yibbum VaHalitza* 6:10; *Arukh HaShulhan, Even HaEzer* 174:8).

One who performs *halitza* with a *yevama* who is prohibited due to a mitzva or sanctity – התולץ לאיסור מצוה וקדושה – In a case where two women were married to a brother and one of them was forbidden to her *yavam* by a prohibition or positive mitzva or by being a secondary forbidden relation, if he performs *halitza* with this forbidden woman, then her rival wife is not exempt from levirate marriage or *halitza* (Rambam *Sefer Nashim, Hilkhot Yibbum VaHalitza* 7:10). However, in the opinion of the *Halakhot Gedolot* and many others, if he wishes to perform levirate marriage he should do so with the woman who is permitted to him, and if he wishes to perform *halitza* he should do so with the woman who is forbidden to him, and her rival wife is thereby exempt; *Shulhan Arukh, Even HaEzer* 170:18, 174:1).

The wife of a man with crushed testicles – אישת פצוע דבא – If a woman had been prohibited to marry her husband due to a positive mitzva or prohibition, e.g., if he had been castrated by a person, etc., but this prohibition does not apply to her *yavam*, then she is permitted to enter into levirate marriage (Rambam *Sefer Nashim, Hilkhot Yibbum VaHalitza* 6:13; *Shulhan Arukh, Even HaEzer* 174:2).

A *yavam* who is a eunuch – יבם כרים – If a woman falls for levirate marriage before one who was castrated by a person but who had previously been fit to marry, then he must perform *halitza* and may not take her in levirate marriage, as he is prohibited from entering into the congregation, i.e., marrying a Jew. If he transgressed and engaged in intercourse with her he acquires her as his wife, but he must divorce her with a bill of divorce (Rambam *Sefer Nashim, Hilkhot Yibbum VaHalitza* 6:4; *Shulhan Arukh, Even HaEzer* 172:3).

An elderly man – הזקן: The Rambam states that if the *yavam* is elderly then he should not take the woman in levirate marriage but rather should perform *halitza* (*Sefer Nashim, Hilkhot Yibbum VaHalitza* 6:4). However, most authorities hold differently, and this ruling does not appear in the *Shulhan Arukh*.

NOTES

Betrothal takes effect with those women who are forbidden, and with whom he would be liable for the violation of a prohibition – חייבי לאוין תפסי בהו קדושין – Rashi explains that the inference connecting betrothal to levirate marriage is from the term “to take” in the verse: “And if the man does not wish to take his *yevama*” (Deuteronomy 25:7), which means taking in marriage.

Marriage, even through intercourse, is not valid in cases where one would be liable to receive *karet* for marrying such a woman and is therefore not considered taking in marriage. However, in the case of relations forbidden by a standard prohibition, although one transgresses Torah law, the betrothal nevertheless comes into effect and they are considered married for all purposes (see Rashba and Ritva).

However, if that is so, the wife of a paternal brother, etc. – אֵלָא מַעְתָּה, אִשְׁתְּ אָחִיו מֵאָבִיו וכו' – *Tosafot* explain this section as not referring to typical cases, as that would undermine the entire concept of levirate marriage. Rather, it is referring to particular examples, each of which is similar enough to the topic of the Gemara that it might deserve a rabbinic decree (see Ritva and *Tosafot Yeshanim*). The Ramban sees this explanation as far-fetched and objects on various grounds. He holds that the Gemara must be understood in a straightforward manner, and that the purpose of these challenges is to illustrate the absurdity of issuing a rabbinic decree to defer the mitzva of levirate marriage in favor of *halitza*.

מִתּוֹ אַחִים, וְעַמְדוֹ הֵם וְעָשׂוּ מֵאָמֵר  
בְּנִשְׁוֹתֵיהֶן, וְנָתַנוּ גֵט, אוֹ שְׁחָלְצוּ – מִה  
שְׁעָשׂוּ עָשׂוּ, וְאִם בְּעֵלוֹ – קָנוּ וְאָסוּר  
לְקַיְיֵמָן, מִשּׁוֹם שֶׁנֶּאֱמַר "לֹא יָבֵא פְּצוּעַ  
דְּבָא". וְאִי סָלְקָא דְעֵתְךָ חֵיבֵי לְאוּיָן  
מִדְּאוּרֵייתָא לְחִלְצָהּ רַמְיָא, לְיִיבִים לֹא  
רַמְיָא, אִם בְּעֵלוֹ – אִמְאֵי קָנוּ?

אֵלָא אָמַר רַבָּא: אֲלֵמְנָה מִן הָאִירוּסִין נִמְי  
עֵשָׂה וְלֹא תַעֲשֶׂה הוּא, דְּכַתִּיב "קְדוּשִׁים  
יְהִיו לֵאלֹהֵיהֶם".

מִמְזוֹרָת וְנִתְיָנָה מֵאִי אֵיבָא לְמִימְרָא? כְּתִיב  
"וְהִתְקַדְּשִׁתֶּם"

אִי הָכֵי, כָּל הַתּוֹרָה כּוֹלָה נִמְי עֵשָׂה וְלֹא  
תַעֲשֶׂה הוּא, דְּכַתִּיב "וְהִתְקַדְּשִׁתֶּם"! אֵלָא  
אָמַר רַבָּא: גְּזִירָה אֲלֵמְנָה מִן הָאִירוּסִין  
אִטּוּ אֲלֵמְנָה מִן הַנְּשׂוּאִין.

מִמְזוֹרָת וְנִתְיָנָה מֵאִי אֵיבָא לְמִימְרָא? גְּזִירָה  
בְּמִקּוּם מְצוּהָ אִטּוּ שְׁלֵא בְּמִקּוּם מְצוּהָ.

אֵלָא מַעְתָּה, אִשְׁתְּ אָחִיו מֵאָבִיו לֹא  
תִּתְיָבֵם, גְּזִירָה מִשּׁוֹם אִשְׁתְּ אָחִיו מֵאָמִי!  
יִיבִים בְּנִחְלָה תֵּלֵא רַחֲמָנָא, מִיַּדַּע יְדִיעַ.

The inverse is also true: If the brothers died childless, and the infertile men proceeded to perform levirate betrothal with their wives, or gave a bill of divorce, or performed *halitza*, whatever they did is done and took effect. And if they engaged in intercourse with their *yevama*, they thereby acquired the *yevama* as their wife. However, it is forbidden to maintain them, i.e., allow them to continue to live as husband and wife, because it is stated: "One with crushed testicles or whose penis has been severed shall not enter into the assembly of the Lord" (Deuteronomy 23:2); they are prohibited from entering the congregation, i.e., marrying a Jew. And if it enters your mind that women who are forbidden, as he would be liable for the violation a prohibition, require *halitza* by Torah law but do not require levirate marriage, then one could ask: if they engaged in intercourse why are they acquired as wives even though there would be no mitzva of levirate marriage because the men are prohibited from marrying them?

Rather, Rav's opinion is rejected, and Rava said an alternative explanation: The reason why a High Priest does not take a widow from betrothal in levirate marriage is because that relationship is also a violation of both a positive mitzva and a prohibition and therefore a different positive mitzva does not override it. How so? As it is written: "They shall be sacred to their God" (Leviticus 21:6), which teaches that there is a positive mitzva of sanctity associated with all prohibitions applying to priests. Therefore, any such prohibition contains both a positive and a negative mitzva.

The Gemara asks: This resolves the issue of priestly prohibitions, but what is there to say about a daughter born from an incestuous or adulterous relationship [*mamzeret*] or a Gibeonite woman, who are prohibited from entering the congregation due to considerations of sanctity? They too may not enter into levirate marriage despite the positive mitzva, which would ordinarily override a prohibition. The Gemara answers: It is written with regard to all of the mitzvot: "Sanctify yourselves, therefore, and be sacred" (Leviticus 11:44). This teaches that in addition to the prohibition, there is the positive mitzva of sanctity.

The Gemara raises an objection: If so, then every single prohibition in the entire Torah contains both a positive mitzva and a prohibition, as it is written: "Sanctify yourselves" (Leviticus 11:44). Rather, this reasoning must be rejected, and Rava stated a different reason: While in essence the mitzva of levirate marriage does apply here, nevertheless, a widow from betrothal is prohibited from entering into levirate marriage with the High Priest by rabbinic decree, due to the case of a widow from marriage.

The Gemara asks: What is there to say about the case of a *mamzeret* or a Gibeonite woman? There appears to be no reason for a rabbinic decree in such cases. The Gemara answers: There, one must say that intercourse with a *mamzeret* even when the mitzva of levirate marriage applies was prohibited by rabbinic decree due to cases when the mitzva of levirate marriage does not apply. The decree was issued lest one come to think that since in the case of levirate marriage a *mamzeret* is permitted, even in cases when there is no levirate marriage a *mamzeret* is similarly permitted.

The Gemara asks: However, if that is so, and the levirate marriage is prohibited lest it become confused with another case, then the wife of a paternal brother<sup>n</sup> should not enter into levirate marriage; i.e., by the same logic, although the Torah allowed it, the Sages should have established a rabbinic decree requiring that she perform *halitza* due to the case of the wife of a maternal brother, who always remains prohibited as a brother's wife. The Gemara answers: The Merciful One made levirate marriage dependent upon inheritance, and it is well known by everyone that only patrilineal relatives inherit, so there is no likelihood of confusion.

The first act of intercourse is prohibited by rabbinic decree – גזירה ביאה ראשונה וכו' – Although the *halakhot* of levirate marriage apply to a woman whom one is prohibited from marrying due to a positive mitzva or a prohibition, the Sages decreed that she should not be taken in levirate marriage. They prohibited the first act of intercourse, which fulfills a mitzva, due to the second act, which involves a prohibition and no mitzva. Therefore, one who transgressed and engaged in intercourse with a *yevama* who was forbidden to him fully acquired her as his wife. However, he must divorce her with a bill of divorce, in accordance with the opinion of Rava (Rambam *Sefer Nashim, Hilkhot Yibbum VaHalitza* 6:10; *Shulhan Arukh, Even HaEzer* 174:1).

**עשה ולא תעשה** – A positive mitzva and a prohibition contradict one another, if it is possible to find a way to fulfill both, this is best. If not, the positive mitzva overrides the negative one, in accordance with the opinion of Reish Lakish (Rambam *Sefer Ahava, Hilkhot Tzitzit* 3:6).

## NOTES

The Gemara raises an objection: And if one of those *yevamin* engaged in intercourse, etc. – **מיתבי ואם** – *Tosafot* point out that Rava himself cited this *baraita* earlier and ask how it could be that he did not notice this difficulty with his own words. Some commentaries answer that for this reason the Gemara presented alternate versions attributing this *halakha* to different names, to either Rava or Rav Ashi, in order to explain that the Sage who cited the *baraita* is not the same as Rava to whom the objection was directed.

אשה שאין לה בנים לא תתייבם, גזירה משום אשה שיש לה בנים! בבנים תלא רחמנא, מידע ידיע.

The Gemara objects further: Then a **childless woman should not enter into levirate marriage** even though the mitzva applies to her; there should be a rabbinic decree due to the case of a woman who has children. The Gemara answers: **The Merciful One made levirate marriage dependent upon children; it is well known** by everyone that the entire purpose of levirate marriage is to establish one's brother's name and that levirate marriage applies only when there are no children. Here, too, there is no likelihood of error.

אשת אחיו שהיה בעולמו לא תתייבם, גזירה משום אשת אחיו שלא היה בעולמו! בשיבה תלא רחמנא, מידע ידיע.

The Gemara challenges further: **The wife of a brother with whom one did coexist should not enter into levirate marriage; there should be a rabbinic decree due to the case of the wife of a brother with whom he did not coexist.** The Gemara responds: **The Merciful One made levirate marriage dependent upon a common dwelling** together and coexistence of brothers, and this is well known by everyone since the matter is explicit in the Torah.

כל הנשים לא תתייבמנה, גזירה משום אילנית! לא שכיחא. ממורת ונתינה נמי לא שכיחא!

The Gemara continues to object: **No woman should enter into levirate marriage; there should be a rabbinic decree due to the case of an *aylonit*.** Since an *aylonit* may not enter into levirate marriage, all other women should be prohibited by rabbinic decree from doing so to avoid confusion. The Gemara answers: The case of an *aylonit* is **not commonplace**, and the Sages did not institute rabbinic decrees on matters that are not common. The Gemara asks: If so, **neither a *mamzeret* nor a Gibeonite woman is commonplace either.** Therefore, since the likelihood of taking a *mamzeret* in levirate marriage is so small, there is no danger that one might think it is permitted to marry a *mamzeret* even where the mitzva does not apply.

אלא אמר רבא: גזירה ביאה ראשונה אטו ביאה שנייה.

Rather, Rava said that it is necessary to reject the previous suggestion and to offer a different reason: **The first act of intercourse is prohibited by rabbinic decree<sup>H</sup> due to the likelihood of a second act of intercourse.** Although intercourse the first time with the *yevama* is the fulfillment of a positive mitzva, which does override the prohibition, once the mitzva is fulfilled with that act there is no longer any positive mitzva involved. Afterward, this *yevama* becomes prohibited because there is no longer a positive mitzva to override the prohibition. Therefore, due to the possibility that one might engage in intercourse a second time with this woman, the Sages decreed that even the first act is prohibited.

תניא נמי הכי: אם בעלו – קנו בבאה ראשונה, ואסור לקיימן בבאה שנייה.

The Gemara comments: **This is also taught in a *baraita*: If one of those *yevamin* who may not marry their *yevama* due to a prohibition engaged in intercourse with her, he acquired her with the first act of intercourse; however, it is prohibited to retain her for a second act of intercourse.**

הדר אמר רבא, ואיתימא רב אשי: לאו מילתא היא דאמרי, דאמר ריש לקיש: כל מקום שאתה מוצא עשה ולא תעשה, אם אתה יכול לקיים שניהם מוטב, ואם לאו יבא עשה ויודקה את לא תעשה, הכא נמי אפשר בחליצה דמקיים עשה ולא תעשה.

The Gemara continues with a retraction from Rava: **Rava then said, and some say it was actually Rav Ashi who said: That which I said, that the reason for the rabbinic decree was to prevent a second act of intercourse, is not correct**, as there is a simpler explanation. **As Reish Lakish said about the same matter: In every place that you find a positive mitzva and a prohibition<sup>H</sup> applying to the same matter, if you can fulfill both of them together, this is best**, and the positive mitzva does not override the prohibition. **And if there is not any possibility of fulfilling both, then let the positive mitzva come and override the prohibition.** Here, too, in the case of levirate marriage, it is possible, by way of *halitza*, to fulfill the positive mitzva and not to transgress the prohibition prohibiting marriage to these women.

מיתבי: ואם בעלו קנו! תיובתא.

The Gemara raises an objection to this last statement by Rava from that which is taught in a *baraita*: **And if one of those *yevamin* engaged in intercourse,<sup>N</sup> he acquired her as a wife.** This shows that although it is possible to perform the mitzva by way of *halitza*, if he nevertheless performs levirate marriage then the positive mitzva overrides the prohibition and the *yevama* is thereby acquired as his wife. The Gemara concludes: This is a **conclusive refutation**, and Rava's last explanation is rejected. The previous explanation is the correct one: The prohibition is due to rabbinic decree.

איתמר: ביאת כהן גדול באלמנה, רבי יוחנן ורבי אלעזר: חד אמר: אינה פוטרת צרתה, וחד אמר פוטרת צרתה.

§ On the same subject, it was stated with regard to the case of a High Priest who engaged in intercourse with a widow who was his *yevama* requiring levirate marriage that the *amora'im* Rabbi Yoḥanan and Rabbi Elazar disputed the matter. One said that intercourse does not exempt her rival wife who had also been married to the High Priest's brother, since the act was prohibited, and one said that it does exempt her rival wife, because although intercourse was forbidden, it is nevertheless a valid enactment of levirate marriage, and so her rival wife is thereby exempt.

Perek II  
Daf 21 Amud a

HALAKHA

A High Priest who engaged in intercourse with a widow from marriage – ביאת כהן גדול ביבמתו – אֵלְמָנָה: If a High Priest engaged in intercourse with his *yevama* who had been widowed from marriage, her rival wife is not thereby exempt, as a positive mitzva does not override both a negative and a positive mitzva together, as the Gemara states here (Rambam *Sefer Nashim, Hilkhot Yibbum VaHalitza* 6:11).

באלמנה מן הנשואין כולי עלמא לא פליגי דלא פטרה, דאין עשה דוחה לא תעשה ועשה. כי פליגי – באלמנה מן הארוסין. מאן דאמר פוטרת, אתי עשה ודחי את לא תעשה, ומאן דאמר אינה פוטרת – לא אתי עשה ודחי את לא תעשה, כיון דאפשר בחליצה.

As for a widow from marriage,<sup>h</sup> everyone agrees that this does not exempt the rival wife, as a positive mitzva does not override a prohibition and a positive mitzva together. When they disagree, it is in the case of a widow from betrothal. The one who said that it exempts the rival wife holds that the positive mitzva of levirate marriage comes and overrides the prohibition against a High Priest marrying a widow. And the one who said that it does not exempt the rival wife held that a positive mitzva does not come and override a prohibition, since it is possible to perform *halitza*.

מיתבי: ואם בעלו – קנו! תיובתא.

The Gemara raises an objection to the opinion that the rival wife would not be exempt, from the previously cited *baraita*: If one of those *yevamin* engaged in intercourse, he acquired her as a wife. This shows that the act of levirate marriage is valid, even when prohibited. If so, in the case of the High Priest and a widow as well, her rival wife should be exempt. This is a conclusive refutation, and that opinion is rejected.

לימא תיהוי נמי תיובתא דריש לקיש! אמר לך ריש לקיש: כי אמינא אנא – היכא דמקיימי מצוה, אבל הכא, חליצה במקום ייבום לאו מצוה היא.

The Gemara asks: Shall we say that this is also a conclusive refutation of the opinion of Reish Lakish and therefore reject his principle? The Gemara answers: Reish Lakish could have said to you: When I say that in every place that you find a positive mitzva and a prohibition applying to the same matter, if you can fulfill both of them together without transgressing the prohibition, this is best, and the positive mitzva does not override the prohibition, this is applicable only when the mitzva is fulfilled properly; but here, *halitza* in place of levirate marriage is not considered a proper fulfillment of the mitzva.<sup>n</sup>

אמר רבא: רמו לשניות מן התורה מנין? שנאמר "כי את כל התועבות האל עשו אנשי הארץ". "האל" קשות, מכלל דאיכא רבות, ומאי נינהו – שניות.

§ Rava said: Where is the prohibition against secondary forbidden relationships hinted at in the Torah? As it is stated at the end of the portion discussing forbidden incestuous relations: "For all these abominations have the men of the land done" (Leviticus 18:27). "These" must be understood to mean the harsh ones, i.e., the severe transgressions. This proves by inference that there are also lesser transgressions that are, as it were, soft ones. And what are those soft ones? They are secondary forbidden relationships.

ומאי משמע ד"האל" לישנא דקשה הוא? דכתיב "ואת אילי הארץ לקח".

The Gemara asks: From where may it be inferred that the word "these" [*ha'el*] is an expression meaning harsh? As it is written: "And the mighty [*eilei*] of the land he took away" (Ezekiel 17:13). The similarity of these words implies that "these" also has connotations of mighty or harsh.

NOTES

חליצה – *Halitza* in place of levirate marriage is not a mitzva – במקום ייבום לאו מצוה: In the *Yosef Lekah* it is explained that *halitza* is a less than ideal option; it is valid but not preferred. Therefore, the positive mitzva of *halitza* is not considered perfect performance of the mitzva. The *Me'a Kesita* explains that the positive mitzva of levirate marriage is similar to a mitzva whose lack of fulfillment can be

rectified by fulfillment of another mitzva, i.e., *halitza*. This is similar to the idea that the positive mitzva of returning a lost item rectifies the prohibition against theft. Therefore, *halitza* is equivalent in importance to levirate marriage, but only when levirate marriage is not possible. Consequently, it is not considered a mitzva when levirate marriage is possible.