

HALAKHA

אחותו מאינסוף – אִחוּתוֹ מֵאִינְסוּף: If a daughter was born from a woman his father raped, rather than married, then as that daughter's paternal half brother he is liable to receive punishment for relations with her only because she is his sister but not as the daughter of his father's wife (Rambam *Sefer Kedusha, Hilkhot Issurei Bia* 2:4).

דְּרָבָא רַמִּי: כְּתִיב "עֲרוֹת בֵּת בְּנִךְ אוֹ בֵּת בִּתְךָ לֹא תִגְלֶה", הֲאֵל בֵּת בְּנֵה דִידָהּ וּבֵת בִּתְהָהּ דִידָהּ – שְׂרִי, וּכְתִיב "עֲרוֹת אִשָּׁה וּבֵתָהּ לֹא תִגְלֶה אֶת בֵּת בְּנֵהּ וְאֶת בֵּת בִּתְהָהּ". הֲאֵל מִיִּצְדָּ?

As Rava raised a contradiction: In one verse it is written: "The nakedness of your son's daughter, or of your daughter's daughter, you shall not uncover" (Leviticus 18:10), which implies, consequently, that her son's daughter or her daughter's daughter is permitted. And it is written elsewhere: "You shall not uncover the nakedness of a woman and her daughter; you shall not take her son's daughter or her daughter's daughter" (Leviticus 18:17), which states explicitly that her son's daughter and daughter's daughter are prohibited. How can these texts be reconciled?

כָּאן בְּאוֹנְסִין כָּאן בְּנִשְׁוֹאִין.

Here, it is referring to a daughter by a woman whom one raped, in which case he is allowed to marry her daughter provided she is not also his daughter. There, it is referring to a woman whom one married, in which case it is forbidden to marry her daughter under any circumstances. However, even in a case where one's father raped a woman, one is still permitted to marry the woman's daughter by another man. If one's father had a daughter with this woman, one would be prohibited from having a relationship with that daughter, as she is his paternal half-sister.^h

Perek II
Daf 23 Amud a

HALAKHA

Betrothal comes into effect with women who are forbidden and one would be liable for violating prohibitions – תִּיִבִי לְאוֹיֵן תִּפְשִׁי בְּהוּ קְדוּשִׁין: If one betroths a woman forbidden to him by a prohibition, the betrothal is nevertheless fully effective (Rambam *Sefer Nashim, Hilkhot Ishut* 4:14; *Shulhan Arukh, Even HaEzer* 44:7).

Prohibition against union with one's sister – אִיסוּר אָחוֹת: One's sister is forbidden to him by Torah law, whether she is a paternal or maternal sister, whether she is a sister from her father's marriage or outside of marriage. Even a sister born from a forbidden union is considered a sister and one is liable to receive punishment for having relations with her (Rambam *Sefer Kedusha, Hilkhot Issurei Bia* 2:1; *Shulhan Arukh, Even HaEzer* 15:10).

וְאִימָא פְּרִט לְחִיבֵי לְאוֹיֵן? אָמַר רַב פִּפְא: תִּיִבִי לְאוֹיֵן תִּפְשִׁי בְּהוּ קְדוּשִׁין.

The Gemara raises a challenge: And say that the verse: "The daughter of your father's wife" comes to exclude women who were forbidden, as they are liable for violating prohibitions but were nevertheless married to his father, such as a *mamzeret*. If so, his sister from such a union would not be considered his sister. Rav Pappa said: Betrothal comes into effect with women who are forbidden, and one would be liable for violating prohibitions^h despite the fact that union with them is forbidden, and so she is called the wife of your father.

דְּכְתִיב "כִּי תִהְיֶינָּה לְאִישׁ שְׁתֵּי נָשִׁים הָאֶחָת אֲהוּבָה וְהָאֶחָת שְׂנוּאָה", וְכִי יֵשׁ אֲהוּבָה לְפָנֵי הַמְּקוֹם וְיֵשׁ שְׂנוּאָה לְפָנֵי הַמְּקוֹם? אָלָּא: אֲהוּבָה – אֲהוּבָה בְּנִשְׁוֹאִיָּה, שְׂנוּאָה – שְׂנוּאָה בְּנִשְׁוֹאִיָּה, וְאָמַר רַחֲמָנָא: "כִּי תִהְיֶינָּה".

This is derived from the verse in which it is written: "If a man has two wives, the one beloved, and the other hated" (Deuteronomy 21:15). Is there one who is loved by the Omnipresent and one who is hated by the Omnipresent? Rather, "beloved" means her marriage is beloved, as it was permitted for her to be married, in accordance with *halakha*, and "hated" means her marriage is hated because it was not permitted for her to be married, according to *halakha*. And the Merciful One states: "If a man has two wives," meaning that both are considered to be married.

וְאִימָא פְּרִט לְחִיבֵי בְּרִיתוֹת – אָמַר רַבָּא: אָמַר קְרָא "עֲרוֹת אִחוּתְךָ בֵּת אָבִיךָ אוֹ בֵּת אִמְךָ מוֹלְדֵת בֵּית אוֹ מוֹלְדֵת חוּץ", בֵּין שְׂאוּמְרִים לוֹ לְאָבִיךָ: "קַיִים", בֵּין שְׂאוּמְרִים לוֹ לְאָבִיךָ "הוֹצֵא", וְאָמַר רַחֲמָנָא: "אִחוּתְךָ הִיא" –

The Gemara asks: Say that this verse comes to exclude a union between one's father and a woman that is forbidden to him as they are liable to receive *karet*, and that since betrothal does not come into effect with her there is no marriage bond. Perhaps a sister born of such a woman would not be prohibited as the daughter of one's father's wife. Rava said that the verse states: "The nakedness of your sister, the daughter of your father, or the daughter of your mother, whether born at home or born outside" (Leviticus 18:9).^h This includes all daughters, whether from a woman for whom the Sages tell your father: Maintain her within your home, or whether the Sages tell your father she is a woman who is forbidden to him and therefore: Send her out of your home. And the Merciful One states that nevertheless: "She is your sister." Even the daughter of a woman who was forbidden to your father such that both parties are liable to receive *karet* is called your sister.

NOTES

A son from a gentile woman – כִּן מִן הַנְּכָרִית: This *halakha* appears to be explicit in the verses: “We have broken faith with our God, and have married foreign women of the peoples of the land... Now therefore let us make a covenant with our God to put away all the wives, and such as are born of them...” (Ezra 10:2–3). Nevertheless, the Gemara sought to find a source for this *halakha* from the Torah (see Jerusalem Talmud).

She is called a Jew who is unfit – יִשְׂרָאֵל פְּסוּל מִקָּרִי: According to most commentaries, being unfit refers to disqualification from the priesthood. A daughter of a gentile father and Jewish mother is unfit for marriage to a priest. Others hold that the disqualification mentioned here is not related to the priesthood but relates only to a defect in lineage (Ramban; *Yam shel Shlomo*).

HALAKHA

Offspring from a gentile or slave – הַנוֹלָד מִנְּכָרִי: If a gentile or slave had relations with a Jewish woman and she gave birth to a child, that child is a Jew and is eligible to enter the congregation. If that offspring is a daughter, then she is unfit to marry a priest (*Shulhan Arukh, Even HaEzer* 4:19; Rambam *Sefer Kedusha, Hilkhot Issurei Bia* 15:3).

אָמַר רַבִּי יוֹחָנָן מִשּׁוּם רַבִּי שְׁמַעוֹן בֶּן יוֹחִי: אָמַר קָרָא “כִּי יָסִיר אֶת בְּנֶךְ מֵאַחֲרָיִךְ, בְּנֶךְ מִיִּשְׂרָאֵל לִית קָרוֹי בְּנֶךְ, וְאִין בְּנֶךְ הֵבֵא מִן הַגּוֹי קָרוֹי בְּנֶךְ, אֲלֵא בְּנֵה.

אָמַר רַבִּינָא שְׁמַע מִינָהּ: בֵּן בִּתְךָ הֵבֵא מִן הַגּוֹי – קָרוֹי בְּנֶךְ. לִימָא קָסַבְר רַבִּינָא גּוֹי וְעֵבֶד הֵבֵא עַל בֵּת יִשְׂרָאֵל הַנּוֹלָד כְּשָׂר? נְהִי דְמִמּוֹר לָא הוּי – כְּשִׂר נִמִּי לָא הוּי, יִשְׂרָאֵל פְּסוּל מִקָּרִי.

הָאֵי בְּשִׁבְעָה אוֹמוֹת כְּתִיב! “כִּי יָסִיר” לְרֵבּוֹת כָּל הַמְּסִירִים.

הַמִּתְקָא לְרַבִּי שְׁמַעוֹן, דְּדָרִישׁ טַעְמָא דְקָרָא, אֲלֵא לְרַבְנָן מָנָא לְהוּ? מֵאֵן תִּנָּא דְפָלִיג עֲלֵיהּ דְרַבִּי יוֹסִי בְרַבִּי יְהוּדָה – רַבִּי שְׁמַעוֹן הִיא.

The Gemara answers: Rabbi Yohanan said in the name of Rabbi Shimon ben Yoḥai: The verse states: “Neither shall you make marriages with them: Your daughter you shall not give unto his son, nor his daughter shall you take unto your son, for he will turn away your son from following Me” (Deuteronomy 7:3–4). This teaches that your son born from a Jewish woman is called your son, but your son born from a gentile woman is not called your son, but her son.^N The verse teaches that since the son of a gentile woman is her son alone, he is not considered related at all to his Jewish father.

Ravina said: Conclude from here that the son of your daughter by a gentile father is nevertheless called your son, i.e., grandson. The Gemara asks: Shall we say that Ravina holds that if a gentile or slave engaged in intercourse with a Jewish woman, the offspring is of unflawed lineage?^H The Gemara answers: There is no conclusive proof from here, because granted, she is not a *mamzer*, but nevertheless she is still not of unflawed lineage; rather, she is called a Jew who is unfit^N to marry into the priesthood.

The Gemara asks with regard to Rabbi Shimon’s reasoning: Was this verse not written in relation to the seven nations who inhabited the land of Canaan when Joshua entered Eretz Yisrael but not with regard to other nations? The Gemara responds that the words “He will turn away” comes to include all those who would turn one’s grandson away from God, i.e., any gentile.

The Gemara asks: This works out well for Rabbi Shimon, who interprets the rationale behind the mitzva in the verse and draws halakhic conclusions based on that interpretation. Although the verse is stated with regard to the seven nations, the reason for the verse applies to all other gentile nations. However, according to the opinion of the Rabbis, who do not draw inferences from the rationale of the verse to apply this ruling to all other nations, from where do they derive this *halakha*? The Gemara answers: Who is the *tanna* who disagrees with Rabbi Yosei, son of Rabbi Yehuda? It is Rabbi Shimon, who applies the rationale of the verse to all other nations.

Perek II Daf 23 Amud b

NOTES

Betrothed one of two sisters – קִידַשׁ אֶחָת מִשְׁתֵּי אָחֳתַי: There are several possible ways in which this could happen. He might have, e.g., betrothed one sister prior to some tumultuous event after which he did not remember which of them he betrothed and others offered conflicting opinions. Such an occurrence is recorded as having taken place and was brought before the *geonim* for a decision. If the mishna is referring to a case where the husband never knew to which sister he was betrothed, it must be a case where the two sisters appointed an emissary to accept their betrothals for them, and though the man intended to betroth one of them he did not explicitly designate which of them he desired.

מִתְנִי מִי שְׁקִידַשׁ אֶחָת מִשְׁתֵּי אָחֳתַי וְאִין יוֹדַע אֵי זֶה מִקֵּין קִידַשׁ – נוֹתֵן גִּט לְזוֹ וְגִט לְזוֹ. מֵת, וְלוֹ אֶחָ אָחָד – חוֹלֵץ לְשִׁתְּיָהּ.

MISHNA In the case of one who betrothed one of two sisters^{NH} and does not know which of them he betrothed, so that both are forbidden to him, he gives a bill of divorce to this one and a bill of divorce to that one due to the uncertainty. If the man who had betrothed one of these women died^H before he could give a bill of divorce, and he had one brother, that brother performs *halitza* with both of them, but he may not take either in levirate marriage. This is because he does not know which woman is his *yevama* and which is forbidden to him as the sister of a woman with whom he has a levirate bond.

HALAKHA

Betrothed one of two sisters – קִידַשׁ אֶחָת מִשְׁתֵּי אָחֳתַי: One who betrothed one of two sisters and is uncertain as to which he betrothed may not consummate the marriage with either one of them. Rather, he must give a bill of divorce to each (Rambam *Sefer Nashim, Hilkhot Ishut* 9:3; *Shulhan Arukh, Even HaEzer* 41:2, 176:1).

One who betroths one of two sisters and subsequently dies – הַמְקַדֵּשׁ אֶחָת הָאָחֳתַי וְנָתַתּוּ: If one betrothed one of two sisters and does not know which he betrothed, and then dies, his brother must perform *halitza* with both of them in order to permit them

to remarry. If the deceased had two brothers, one must perform *halitza* with one sister, and the second is permitted to enter a levirate marriage with the other. One must not take one of the women in levirate marriage *ab initio*, as he would thereby encounter the sister of a woman with whom he has a levirate bond, as explained in the Gemara. If the two brothers both entered levirate marriage with the two sisters before consulting the court, they are not required to divorce (Rambam *Sefer Nashim, Hilkhot Yibbum VaHalitza* 8:1; *Shulhan Arukh, Even HaEzer* 176:1).

Betrothals that cannot ultimately lead to consummation – קידושין שאין מסורין לביאה – Tosafot clarify that this principle does not apply in cases where there is some halakhic obstacle preventing sexual relations, e.g., some prohibition. The Gemara here is referring only to cases where the act of betrothal itself prevents the consummation of the marriage.

היו לו שנים – אחד חולץ ואחד מייבם. קדמו וכנסו – אין מוציאין מידם.

If the man who betrothed one of these women **had two brothers, one of them performs *halitza*** with one of the sisters, but he may not enter into levirate marriage with her due to the possibility that she is the sister of a woman with whom he has a levirate bond. **And one takes the other in levirate marriage** if he so desires. If the two brothers **married** the two sisters **before** consulting the court, the court does not **remove them** from their marriage and they are permitted to remain married. The couple who performed levirate marriage second was even permitted to do so, since there was no longer any doubt about the levirate bond.

שנים שקדשו שתי אחיות, זה אינו יודע אי זו קידש, וזה אינו יודע איזו קידש – זה נותן שני גיטין, וזה נותן שני גיטין. מתו, לזה אח ולזה אח – זה חולץ לשתייהן, וזה חולץ לשתייהן.

Furthermore, in the case of **two unrelated men who betrothed two sisters: If this one does not know which sister he betrothed and that one does not know which sister he betrothed, this one gives two bills of divorce, one to each of the women, and that one gives two bills of divorce.** If the two men **died** before they divorced, and **this one had a brother and that one had a brother, then this brother performs *halitza* with both of them, and that brother performs *halitza* with both of them.**

לזה אחד ולזה שנים – היחיד חולץ לשתייהן. והשנים – אחד חולץ ואחד מייבם. קדמו וכנסו – אין מוציאין מידם. לזה שנים ולזה שנים – אחיו של זה חולץ לאחת ואחיו של זה חולץ לאחת, אחיו של זה מייבם חלוצתו של זה ואחיו של זה מייבם חלוצתו של זה.

If **this one had one brother and that one had two brothers, the single brother performs *halitza* with both of them, and of the two brothers, one performs *halitza* and one performs levirate marriage** if he so desires. If they **married** the sisters **before** consulting the court, the court does **not remove them** from the marriage and they are not told to divorce them. If **this one had two brothers and that one had two brothers, the brother of this one performs *halitza* with one sister, and the brother of that one performs *halitza* with one sister.** The brother of this one who performed *halitza* may take the woman who performed *halitza* [*halutza*] of that other's brother in levirate marriage, and the brother of that second one who performed *halitza* may take the *halutza* of that other's brother in levirate marriage.

קדמו שנים וחלצו – לא ייבמו השנים, אלא אחד חולץ ואחד מייבם. קדמו וכנסו – אין מוציאין מידם.

If the two brothers **performed *halitza* with both wives before consulting the court, the two brothers of the second man may not take sisters in levirate marriage** lest one marry the sister of a woman who with whom he had a levirate bond. **Rather, one performs *halitza* and one performs levirate marriage** if he so desires. If they **married** their wives **before** consulting the court, the court does **not remove them** from the marriage.

גמ' שמע מינה: קדושין שאין מסורין לביאה – הווי קדושין!

GEMARA Learn from here in the mishna that betrothals that cannot ultimately lead to consummation^N are nevertheless betrothals. There is a dispute between Abaye and Rava in tractate *Kiddushin* with regard to a case of a betrothal that, due to some halakhic complication, can never be consummated. The cases in this mishna may not be consummated, since each of the two sisters is forbidden due to the uncertainty as to whether she is the woman he betrothed or the sister of the woman he betrothed. Therefore, both are forbidden to him. Nevertheless, the mishna instructs that he must give a bill of divorce to both of them. This implies that such betrothals are valid, in contrast to Rava's opinion that betrothals that cannot ultimately be consummated are not betrothals at all.

הכא במאי עסקינן – כשהוקרו ולבסוף נתערבו. דיקא נמי, דקתני 'ואינו יודע', ולא קתני 'ואינו יודע', שמע מינה.

The Gemara rejects this: **With what are we dealing here?** We are dealing with a case **when** at first both sisters were **recognized** and at the moment of betrothal he knew whom he betrothed; it was a betrothal destined for consummation. **But later** the two sisters were **mixed up** so that he was no longer certain which he betrothed. If so, there was not any flaw in the betrothal itself initially. The language of the mishna is **also precise, as it teaches: And he does not know** which of them he betrothed, **but it does not teach: It is unknown** completely. This implies that the matter was known at some time. The Gemara adds: **Conclude from here** that this is the case.

מאי קא משמע לן? סיפא איצטריכא ליה: מת ולו אח אחד - חולץ לשתייהן, היו לו שנים - אחד חולץ ואחד מייבם. דוקא מיחלץ והדר יבומי, אבל יבומי ברישא - לא, דקא פגע באחות וקוקתו.

The Gemara asks: If so, **what is the mishna teaching us** in the segment of the mishna referring to the giving of two bills of divorce? That is obvious. The Gemara answers: **It was necessary to teach the last clause of the mishna**, as there it teaches: **If he died and he had one brother, that brother performs *halitza* with both of them; if he had two brothers, one performs *halitza* and the other one enters into levirate marriage if he so desires. Specifically, one brother must perform *halitza* first, and only subsequently the other brother may perform levirate marriage. But one brother may not enter levirate marriage first, before the other brother has performed *halitza*, as he would thereby encounter the sister of a woman with whom he has a levirate bond.**

”שנים שקדשו שתי אחיות” וכו'. שמע מינה: קדושין שאין מסורין לביאה הוון קדושין! הכא נמי: כשהוברו ולבסוף נתערבו. דיקא נמי, דקתני ”ואין יודע” ולא קתני ”ואין ידוע”, שמע מינה.

The mishna says: In the case of **two unrelated men who betrothed two sisters**:¹⁴ If this one does not know which sister he betrothed and that one does not know which sister he betrothed, this one gives two bills of divorce, one to each of the women, and that one gives two bills of divorce. The Gemara asks: **Learn from here that betrothals that cannot ultimately lead to consummation¹⁵ are valid betrothals.** The Gemara rejects this: **Here too, this is referring to a case where they were recognized and later mixed up.** The language is also precise, as it teaches: **And he does not know**, meaning that he does not know now whom he betrothed, **and it does not teach: It is unknown.** The Gemara summarizes: **Indeed, conclude this from here that this is the case.**

ומאי קא משמע לן? סיפא איצטריכא ליה: ”מתו, לזה אחד ולזה שנים - היחיד, חולץ לשתייהן. והשנים, אחד חולץ ואחד מייבם.”

The Gemara asks: If so, **what does it come to teach us** in relating that both of them must give bills of divorce? The Gemara explains: **It was necessary to teach the last clause**, where it says: **If they died and this one had one brother and this one had two, the single brother performs *halitza* with both of them. And of the two, one performs *halitza* and one enters levirate marriage if he so desires.**

פשיטא, היינו רישא! מהו דתימא: ליגזור תרי אטו חד, קא משמע לן.

The Gemara asks: **That is obvious**, as **this is identical to the *halakha* taught in the first clause** of the mishna. Why should this case be different from the previous case of two brothers? The Gemara answers: It is necessary to teach this **lest you say** the Sages should issue a decree in the case of **two brothers due to the case of one brother**. In a case of one brother he may only perform *halitza* but may not enter into levirate marriage. Without this mishna one may have thought the same should be true for two brothers. **This comes to teach us** that they did not issue such a decree, and in this case one of them is allowed to enter into levirate marriage.

ודוקא מיחלץ והדר יבומי, אבל יבומי ברישא - לא, דקא פגע ביבמה לשוק.

And this is specifically if the brother of one man first performs *halitza* and subsequently the brother of the other man consummates the levirate marriage, but if he consummated the levirate marriage first, then no, that is prohibited. And why is that? He might be encountering the prohibition of a *yevama* to a member of the public. Possibly the woman he married was not his *yevama* but someone else's *yevama*, and until the other man's brother performs *halitza* with her she is still forbidden to other men.

HALAKHA

Two who betrothed two sisters – שנים שקדשו שתי אחיות – With regard to the case of two unrelated men who betrothed two sisters but do not know who betrothed whom and then both men died, if each had one brother, each brother performs *halitza* with both of the women, and they may not enter levirate marriage.

If one of the deceased had one brother and the other had two brothers, then the single brother performs *halitza* with both sisters, and with regard to the two brothers of the second man, one must first perform *halitza* with one of the wives and then the other may enter levirate marriage with the other if he so desires. However, if these two brothers both entered into levirate marriage with the sisters before consulting the court but after the brother of the other man had performed *halitza*, they need not divorce.

If each of the deceased men had two brothers, then one brother of the first performs *halitza* for one of the women, and one brother of the second performs *halitza* with the other woman. Then the second brother of the first is permitted to enter into levirate marriage with the woman who performed *halitza* with the brother of the second. Similarly, the second brother of the second may marry the woman who performed *halitza* with the brother of the first.

If both brothers of one man performed *halitza* with both sisters, then *ab initio* one brother of the second should perform *halitza* with one of the women and the second may then take the other in levirate marriage. If, however, both brothers of the second entered into levirate marriage with the sisters after the sisters performed *halitza* with the brothers of the first, then the men are not made to divorce them (Rambam *Sefer*

Nashim, Hilkhot Yibbum VaHalitza 8:2–3; *Shulhan Arukh, Even HaEzer* 176:3).

Betrothals that cannot ultimately lead to consummation – קידושין שאין מסורין לביאה: A betrothal that cannot ultimately be consummated due to a halakhic impediment is nevertheless a valid betrothal, and the bond can be broken only by a bill of divorce. This ruling is against the Gemara here, which attempts to resolve the matter in accordance with Rava's opinion as well. Rather, this ruling is the conclusion of the talmudic discussion in tractate *Kiddushin* (51b) and is one of six cases where the *halakha* is ruled in accordance with the opinion of Abaye and not Rava (Rambam *Sefer Nashim, Hilkhot Ishut* 9:3; *Shulhan Arukh, Even HaEzer* 176:1).

”לְזֶה שְׁנַיִם וְלְזֶה שְׁנַיִם” וכו'. הָא תוּ
 לְמָה לִי, הֵינּוּ הֵךְ! מִהוּ דְתִימָא: לְיָגוּז
 דְלָמָא מְיִיבִים בְּלֹא חֲלִיצָה, קָא מְשַׁמַּע
 לִי.

The mishna taught: If **this one had two brothers and that one had two brothers**, the brother of this who performed *halitza* may take the *halitza* of that other's brother in levirate marriage, and the brother of that second one who performed *halitza* may take the *halitza* of that other's brother in levirate marriage. The Gemara asks: **Why do I need this as well? This clause is identical to that previous halakha.** The Gemara answers: It is necessary **lest you say: Let the Sages issue a decree lest he consummate the levirate marriage without the other first performing halitza at all. This comes to teach us** that such a decree is not issued. Rather, one of each pair of brothers can enter a levirate marriage.

מֵאֵי שָׁנָא מְהֵא דְתַנּוּ: אַרְבַּעַה אַחִין,
 שְׁנַיִם מֵהֶן נִשְׂוִיִּין שְׁתֵּי אַחֲיוֹת, וּמֵתוּ
 הַנִּשְׂוִיִּיִן אֶת הָאֲחִיוֹת – הֲרִי אֵלָיו
 חוֹלְצוֹת וְלֹא מִתְנַיֵּבְמוֹת?

The Gemara asks: In what way is this case **different from that which we learned** in a mishna (26a): If there were **four brothers, and two of them were married to two sisters, and those married to the sisters died, then those two sisters perform halitza but may not enter into levirate marriage** with the remaining brothers, since each woman is the sister of a woman with a levirate bond to each of the brothers. Why not say here as well that each is the sister of a woman with a levirate bond?

The Gemara rejects this: **How can these cases be compared?**

Perek II
 Daf 24 Amud a

הַתֵּם אֵי לְמֵאן דְאָמַר יֵשׁ זִיקָה – יֵשׁ
 זִיקָה. וְאֵי לְמֵאן דְאָמַר אֲסוּר לְבִטּוֹל
 מִצְוֹת יְבָמִין – אֲסוּר לְבִטּוֹל מִצְוֹת יְבָמִין.
 הַכָּא – כָּל חַד וְחַד, אֵימור דִּידְהִי קָא
 מִתְרַמְיָא לִיהּ.

There, in that mishna, if it is according to the one who said that the levirate bond is substantial, then there is a bond in that case, as two sisters were certainly married to the brothers and require levirate marriage. And if it is according to the one who said that it is prohibited to nullify the levirate mitzva through marrying the sister of the *yevama*, then the explanation of that mishna is that it is prohibited to nullify the levirate mitzva and for this reason they must perform *halitza* and may not enter into levirate marriage. However, here, in this mishna, there is uncertainty concerning the betrothal such that with regard to each one of the brothers, one could say that possibly he encountered his own *yevama*. Perhaps each brother took his own brother's wife in levirate marriage, and for this reason the Sages did not issue a decree.

”קִדְמוּ וְכִנְסוּ אִין מוֹצִיאִין” כּו'. תַּנּוּ
 שִׁילָא: וְאִפִּילוּ שְׁנֵיהֶם כֹּהֲנִים. מֵאֵי
 טַעְמָא? חֲלוּצָה דְרַבְּנָן הִיא, וְסַפֵּק
 חֲלוּצָה – לֹא גִזְרוּ בְהוּ רַבְּנָן.

The mishna states that if they married their wives before consulting the court, the court does not remove themⁿ from the marriage. Sheila teaches a *baraita* that clarifies the mishna: And this is the case even if both of the brothers were priests.^h A woman who performed *halitza* is normally forbidden to a priest, yet in this case, although the brother of the other man performed *halitza*, they are not required to divorce. What is the reason for this *halakha*? It is as follows: A *halitza* is forbidden to a priest by rabbinic law because her status is similar to that of a divorcée, who is forbidden to a priest by Torah law. And in a case of uncertainty as to whether she is a *halitza*, since it may not have been her *yavam* who performed the ceremony, the Sages did not issue a decree.ⁿ

וְחֲלוּצָה דְרַבְּנָן הִיא? וְהִתְנֵא: ”גְרוּשָׁה”,
 אִין לִי אֵלָא גְרוּשָׁה, חֲלוּצָה מִנִּין?
 תְּלִמוּד לומר ”וְאִשָּׁה”! מִדְרַבְּנָן הוּא,
 וְקָרָא אֲסַמְכָתָא בְּעֵלְמָא הוּא.

The Gemara asks: And is the prohibition against a *halitza* marrying a priest^h really by rabbinic law? But isn't it taught in a *baraita*: “They shall not take a woman that is a harlot, or profaned; neither shall they take a woman divorced from her husband; for he is holy unto his God” (Leviticus 21:7). I have derived only a divorcée; from where do I derive that a priest may not marry a *halitza*? The verse states: “Neither shall they take a woman.” The repetition of the word “woman” extends the *halakha* to include a *halitza*. The Gemara answers: This prohibition is by rabbinic law, and the verse is a mere support.

NOTES

The court does not remove them – אין מוציאין: In this case they are not required to divorce, because it is uncertain whether each woman is the sister of a woman with whom he has a levirate bond or not. However, the early commentaries write that in a case where she is certainly the sister of a woman with whom one has a levirate bond, then although that prohibition is rabbinic, nevertheless, one who transgresses it and marries her is required to divorce her.

In a case of uncertainty whether she is a *halitza* the Sages did not issue a decree – לא גזרו: *Tosafot* challenge this because later (36b) the Gemara implies that the Sages did indeed render it prohibited for a priest to marry a woman whose *halitza* was uncertain. Ramah, cited by *Tosefot HaRosh*, explains that there is a distinction between a case of *halitza* performed out of uncertainty and a case where it is uncertain whether or not *halitza* was performed. In cases where there was an actual *halitza*, even if it is not certain that the *halitza* was necessary, the Sages decreed that the *halitza* is forbidden to a priest. In the case where it is not certain whether or not there was a *halitza*, the Sages did not decree that she is forbidden to a priest.

HALAKHA

They married their wives before consulting the court... even if both...were priests – ואפילו שניהם כהנים: Once they are married they are not required to divorce, even if they are priests, as the *halitza* performed by the single brother is an uncertain *halitza*, and the Sages did not apply their decree to such a case (Rambam *Sefer Nashim, Hilkhot Yibbum VaHalitza* 8:2 and *Sefer Kedusha, Hilkhot Issurei Bia* 17:7; Shulhan Arukh, Even HaEzer 176:3).

A *halitza* marrying a priest – חלוצה לכהן: A *halitza* is forbidden to a priest by rabbinic law since she is considered similar to a divorcée (Rambam *Sefer Nashim, Hilkhot Yibbum VaHalitza* 8:2; *Sefer Kedusha, Hilkhot Ishut* 1:6 and *Hilkhot Issurei Bia* 17:7; Shulhan Arukh, Even HaEzer 6:1).