

”לְזוֹה שְׁנַיִם וְלְזוֹה שְׁנַיִם” וכו'. הָא תוּ  
 לְמַה לִּי, הֵינּוּ הֵךְ! מַהוּ דְתִימָא: לְיַגְזוּר  
 דְלְמָא 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 שְׁנָא מַהָּא דְתַנֵּן: אַרְבַּעַה אַחִין,  
 שְׁנַיִם מֵהֶן נִשְׂוִיִּין שְׁתֵּי אַחִיוֹת, וּמֵתוּ  
 הַנִּשְׂוִיִּין אֶת הָאֲחִיוֹת – הֲרִי אֵלֶּוּ  
 חוֹלְצוֹת וְלֹא מִתְנַיִבְמוֹת?

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?

הֲכִי הִשְׁתָּא!?

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

Perek II

Daf 24 Amud a

הֲתָם אֵי לְמָאן דְאָמַר יֵשׁ זִיקָה – יֵשׁ  
 זִיקָה. וְאֵי לְמָאן דְאָמַר אָסוּר לְבִטֵּל  
 מִצְוֹת יְבָמִין – אָסוּר לְבִטֵּל מִצְוֹת יְבָמִין.  
 הֲכָא – כָּל חַד וְחַד, אֵימוּר דִּידְיָה קָא  
 מִתְרַמְיָא לִיהָ.

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.

”קָדְמוּ וְכִנְסוּ אֵין מוֹצִיאִין” כּו'. תַּנֵּן  
 שִׁילָא: וְאִפִּילוּ שְׁנֵיהֶם כְּהֻנִּים. מֵאֵי  
 טַעְמָא? חֲלוּצָה דְרַבְּנָן הִיא, וְסַפֵּק  
 חֲלוּצָה – לֹא גִזְרוּ בְּהוּ רַבְּנָן.

The mishna states that if they married their wives before consulting the court, the court does not remove them<sup>n</sup> from the marriage. Sheila teaches a *baraita* that clarifies the mishna: And this is the case even if both of the brothers were priests.<sup>h</sup> 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.<sup>n</sup>

וְחֲלוּצָה דְרַבְּנָן הִיא? וְהִתְנֵיא: ”גְרוּשָׁה”,  
 אֵין לִי אֵלָא גְרוּשָׁה, חֲלוּצָה מִנֵּין?  
 תְּלִמוּד לומר ”וְאִשָּׁה”! מִדְרַבְּנָן הוּא,  
 וְקָרָא אֶסְמִכְתָּא בְּעִלְמָא הוּא.

The Gemara asks: And is the prohibition against a *halitza* marrying a priest<sup>h</sup> 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 – אפילו שניהם – 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).

It is a mitzva for the eldest to consummate the levirate marriage – מצוה בגדול לייבם: The primary obligation to consummate the levirate marriage or perform *halitza* devolves upon the eldest of the brothers (Rambam *Sefer Nashim, Hilkhot Yibbum VaHalitza* 2:6; *Shulhan Arukh, Even HaEzer* 161:4).

If the younger consummated the levirate marriage first, he acquires her as his wife – ואם קדם הקטן זכה: Although the mitzva of levirate marriage devolves primarily upon the eldest of the brothers, if one of the others went ahead and entered into levirate marriage, then it is effective (Rambam *Sefer Nashim, Hilkhot Yibbum VaHalitza* 2:6; *Shulhan Arukh, Even HaEzer* 161:7).

Shall be established in the name of his dead brother, with regard to inheritance – יקים על שם אחיו לנחלה: The brother who consummates levirate marriage with his brother's widow inherits all of the property that is actually in his brother's possession (Rambam *Sefer Mishpatim, Hilkhot Nahalot* 3:7; *Shulhan Arukh, Even HaEzer* 163:1).

Excludes a eunuch – פרט לפרים: A man who became sexually impotent through illness is not eligible for *halitza* or levirate marriage. If he performed *halitza* or if others performed *halitza* with his wife, it has no halakhic significance (Rambam *Sefer Nashim, Hilkhot Yibbum VaHalitza* 6:2, 4; *Shulhan Arukh, Even HaEzer* 172:1).

## BACKGROUND

A verse does not depart from its literal meaning – אין מקרא יוצא מידי פשוטו: Even when the Bible is interpreted metaphorically, and even when halakhic conclusions are reached by means of a homiletic interpretation of a verse, these conclusions do not negate the literal meaning of the text (*Alfei Menashe*).

Verbal analogy – גזירה שוה: This is a fundamental talmudic principle of biblical exegesis appearing in all the standard lists of hermeneutical principles. If the same word or phrase appears in two places in the Torah, and a certain *halakha* is explicitly stated in one of these places, then on the basis of verbal analogy it is inferred that the same *halakha* applies in the other case as well.

Certain restrictions were placed on the use of this principle to prevent unfounded conclusions from being drawn. Most significantly: One cannot infer a verbal analogy on one's own, i.e., only a verbal analogy based on ancient tradition is valid.

## NOTES

Remove the verse from its literal meaning altogether – אפיקתיה מפשטיה לגמרי: It is a transmitted tradition that there is no requirement to name the firstborn son of a levirate marriage after the deceased. Therefore, the verse cannot be read in accordance with its literal meaning (see Rashi).

The reason the Torah writes that the son will take the name of the deceased brother, even though that is not the *halakha*, is explained by the commentaries based on esoteric teachings. Through levirate marriage the soul of the deceased brother is reincarnated in the newborn son. This idea is elaborated upon in Ramban's Commentary on the Torah (Genesis, chapter 38; see *Sefer HaBoneh*).

מתני' מצוה בגדול לייבם ואם קדם הקטן – זכה.

גמ' תנו רבנן: "והיה הבכור" – מיכן שומצוה בגדול לייבם: "אשר תלד" – פרט לאילומית שאין יולדת: "יקום על שם אחיו" – לנחלה.

אתה אומר לנחלה, או אינו אלא לשם יוסף – קורין אותו יוסף יוחנן – קורין אותו יוחנן? נאמר כאן "יקום על שם אחיו" ונאמר להלן "על שם אחיהם יקראו בנחלתם", מה "שם" האומר להלן – נחלה, אף "שם" האומר כאן – לנחלה.

"ולא ימחה שמו" – פרט לפרים, ששמו מחוי.

אמר רבא: אף על גב דבכל התורה בולה אין מקרא יוצא מידי פשוטו, הכא אתאי גזירה שוה אפיקתיה מפשטיה לגמרי.

ואי לא גזרה שוה הוה אמינא "שם" שם ממש? למאן קמוזהר רחמנא. לייבם – "יקום על שם אחיו" מיבעי ליה! אי לבי דינא – "יקום על שם אחי אביו" מיבעי ליה!

ודלמא הכי קאמר להו רחמנא לבית דין: אמרו ליה לייבם "יקום על שם אחיו!" אלא, אתאי גזירה שוה אפיקתיה לגמרי.

השתא דאמרת קרא בגדול כתיב, אימא: בכור – לייבם, פשוט – לא לייבם.

**MISHNA** It is a mitzva for the eldest to consummate the levirate marriage,<sup>1</sup> i.e., the eldest takes precedence over the other brothers, though they too are obligated. But if the younger brother consummated the levirate marriage first, he acquires the *yevama* as his wife.<sup>2</sup>

**GEMARA** The Sages taught the following interpretation of the verse: "And it shall be that the firstborn that she bears shall be established in the name of his dead brother and his name will not be blotted out of Israel" (Deuteronomy 25:6). From here the Sages derive that the mitzva to consummate the levirate marriage is upon the eldest. The next phrase: "That she bears," is interpreted to exclude levirate marriage in the case of a widow who is an *aylonit*, who cannot bear children. From the next phrase: "Shall be established in the name of his dead brother," it is derived that the same brother who performs the mitzva of levirate marriage is established in his brother's name with regard to inheritance,<sup>3</sup> i.e., he inherits his brother's property.

The *baraita* continues and asks: Do you say that he succeeds in the name of his brother for inheritance, or perhaps it is only to inherit his name? If, e.g., the deceased brother was named Yosef, they must call the son born from levirate marriage Yosef, or if his name was Yohanan, then they must call him Yohanan. The *baraita* answers: It is stated here: "He shall succeed in the name of his brother," and it is stated there: "They shall be called after the name of their brothers in their inheritance" (Genesis 48:6). Just as the word "name" stated there in Genesis is referring explicitly to inheritance, so too, the word "name" stated here in Leviticus means with regard to inheritance.

The *baraita* continues to expound the next phrase of the verse: "And his name will not be blotted out of Israel" (Deuteronomy 25:6). This excludes the case where the deceased was a eunuch,<sup>4</sup> as his name is already blotted out, since it is impossible for him to have children.

Rava said: Even though in the entire Torah a verse does not depart from its literal meaning,<sup>5</sup> and even if the Sages offer a homiletical interpretation of the verses, the literal meaning remains intact, here the verbal analogy<sup>6</sup> teaching that the word "name" is referring to inheritance comes to remove the verse from its literal meaning altogether.<sup>7</sup>

The Gemara asks: Were it not for the verbal analogy, would I have said that the meaning of the word "name" is the actual name? The verse would be incomprehensible according to the literal reading. Whom is the Merciful One instructing in this verse? To whom does the possessive pronoun in the phrase "his brother" apply? If He is speaking to the *yavam*, He should have stated: Shall succeed in the name of your dead brother. And if the verse is instructing the court about the *halakha* in general, it should have said: Shall succeed in the name of his father's brother.

The Gemara rejects this question: And perhaps this is what the Merciful One is saying to the court: Say to the *yavam* that the child born to him shall be established in the name of his brother. Were it not for the verbal analogy, the verse could have been understood according to its literal meaning. Rather, the verbal analogy comes to remove it from its literal meaning altogether.

The Gemara challenges the *baraita*: Now that you say that the verse: "And it shall be that the firstborn that she bears" is written in reference to the eldest brother, say that the firstborn brother consummates the levirate marriage but that an ordinary brother, i.e., not the firstborn, may not consummate the levirate marriage, and that if the firstborn son is unable to enter into levirate marriage or is no longer alive, no one else may perform the mitzva.

The Merciful One made levirate marriage dependent upon inheritance – **יבום בנחלה תלה רחמנא** – Rashi explains that this is referring only to the firstborn son, who inherits a double portion from his father. Therefore the firstborn of only the father has relevance, not the firstborn of the mother. See Rabbi Yehuda bar Natan, *Tosefot HaRosh*, and Rashba, who suggest an alternative explanation.

Just as with regard to the firstborn, his status as firstborn causes him, etc. – **כבכור מה בכור בכורתו גרמה לו וכי** – In other words, since the Gemara has explained that with regard to levirate marriage the firstborn status is irrelevant, it is clear that the key factor is that he is the eldest of the brothers. This implies that the eldest takes precedence in matters of levirate marriage (*Tosefot HaRosh*).

## HALAKHA

**Inheritance from the father – נחלה מן האב** – One's mother's family is not called family with regard to inheritance, and inheritance is received only from one's father's family. Therefore, maternal half brothers do not inherit from one another (Rambam *Sefer Mishpatim*, *Hilkhot Nahalot* 1:6; *Shulhan Arukh*, *Hoshen Mishpat* 276:4).

**Order of the obligation to enter levirate marriage – סדר המצוים ביבום** – The obligation of levirate marriage falls upon the eldest of the surviving brothers. If he does not wish to fulfill his mitzva, it devolves upon the next eldest. According to the Rambam it devolves equally on all of the remaining brothers. If none of the younger brothers fulfills the obligation, the obligation to perform the mitzva remains with the eldest (Rambam *Sefer Nashim*, *Hilkhot Yibbum VaHalitza* 2:6; *Shulhan Arukh*, *Even HaEzer* 161:4).

אם כן, אשת אחיו שלא היה בעולמו דמיעט רחמנא – למה לי?

The Gemara answers: **If so** that the mitzva of levirate marriage applies only to the firstborn, then in the case of a **wife of a brother with whom he did not coexist**, which the Merciful One excluded by the verse: “If brothers dwell together,” **why do I need such an exclusion?** If only the firstborn is obligated to perform levirate marriage, then there is no need to separately exclude the case of a wife of one's brother with whom one did not coexist, because by definition one in that position cannot be the firstborn.

פריך רב אחא: ואימא למעוטי בוכרא דאמנא! ההוא לא מצית אמרת, דיבום בנחלה תלה רחמנא, ונחלה מן האב ולא מן האם.

Rav Aha refutes the Gemara's answer: **But say that** the verse comes to **exclude** the case of a brother with whom one did not coexist when one is nevertheless **the firstborn of the mother**, e.g., if the father had two wives. The Gemara rejects this: **You cannot say that, as the Merciful One made levirate marriage dependent upon inheritance,<sup>N</sup> and inheritance comes from the father<sup>H</sup> and not from the mother.**

ואימא: כי איכא בכור תתקיים מצות יבום, כי ליכא בכור לא תתקיים מצות יבום! אמר קרא: “ומת אחד מהם,” מי לא עסקינן דמית בכור, ואמר רחמנא לייבם קטן.

The Gemara again challenges the *baraita*: **Then say that when there is a firstborn the mitzva of levirate marriage can be fulfilled by any of the brothers, but that when there is no firstborn, e.g., if he had already died, the mitzva of levirate marriage may not be fulfilled by any of the younger brothers.** The Gemara answers: **The verse states: “And one of them dies”** (Deuteronomy 25:5), without specifying which brother dies. **Are we not dealing even with the case where the firstborn died, and yet the Merciful One states that the younger brother should consummate the levirate marriage?**

ואימא דמית קטן, ואמר רחמנא לייבם בכור! הא מיעט רחמנא אשת אחיו שלא היה בעולמו.

The Gemara refutes this answer: **Say that** the case in the Torah is referring to when **the younger brother died**, and only then **the Merciful One states that the firstborn must consummate the levirate marriage.** The Gemara answers: **Didn't the Merciful One explicitly exclude the wife of a brother with whom he did not coexist**, which can apply only to a brother who was not the firstborn?

ואימא: כי ליכא בכור – קדם קטן וכה, ואי איכא בכור – קדם קטן לא וכה! אמר קרא: “כי ישבו אחים יחדו” – הוקשה ישיבת אחים זה לזה.

The Gemara challenges the *halakha*: **Say that when there is no firstborn brother, if a younger brother went ahead and consummated the levirate marriage, then he acquires his yevama as a wife. But if there is a firstborn, and the younger brother went ahead and performed levirate marriage first, then he does not acquire his yevama as a wife**, because the Torah specifies that the firstborn brother must perform the mitzva. The Gemara rejects this: **The verse states: “If brothers dwell together”** (Deuteronomy 25:5), implying that **the brothers' dwellings were equated one with the other**, and all the brothers are equally obligated in this mitzva.

ואימא: כי איכא בכור – ליהדר אגדול, כי ליכא בכור – אין חזרין אצל גדול! אלמה תני אבוי קשישא: מצוה בגדול לייבם. לא רצה – הולכים אצל אחיו הקטן, לא רצה – חזרין אצל גדול!

The Gemara challenges the *halakha* again: **Then say: When there is a firstborn, let the mitzva return to the eldest brother if the other brothers refuse to perform levirate marriage. But when there is no firstborn, the court does not return to the eldest**, as the mitzva primarily applies specifically to the firstborn, and if there is no firstborn, none of the brothers take precedence. **Why did Abaye the Elder teach: It is a mitzva for the eldest of the brothers to consummate the levirate marriage? If the eldest did not wish to do so, then the court goes to his younger brother. If he also did not wish to do so, the court returns again to the eldest.** This implies that the eldest, even if he is not the firstborn, has a greater mitzva than the younger brothers.

בכבור, מה בכור – בכורתו גרמה לו, אף גדול – גדולתו גרמה לו.

The Gemara answers: Since it is derived that the eldest brother takes precedence from the verse about the firstborn, then **just as with regard to the firstborn, his status as firstborn causes him<sup>N</sup> to take precedence, so too, with regard to the eldest, his status as eldest causes him to take precedence.<sup>H</sup>**

ואימא: כי מייבם בכור – לישקול נחלה, כי מייבם פשוט לא לישקול נחלה! אמר קרא: "יקום על שם אחיו" – והרי קם.

The Gemara challenges the *halakha* again: **Then say that if the firstborn consummates the levirate marriage he receives his deceased brother's inheritance, but if an ordinary brother consummates the levirate marriage he does not receive the inheritance.** The Gemara answers that the verse states: "The firstborn that she bears shall be established in the name of his dead brother" (Deuteronomy 25:6), and if the younger brother performs levirate marriage he has established his brother's name and thereby earns the inheritance.

ואלא בכור דקרייה רחמנא,

The Gemara asks: **But** if there is no difference between the firstborn and the eldest, why does the **Merciful One** call the brother who enters levirate marriage the **firstborn**?

Perek II  
Daf 24 Amud b

למאי הלכתא? לגרעיותא, מה בכור אינו נוטל בראוי בבמחזק – אף האי אינו נוטל בראוי בבמחזק.

With regard to what *halakha* was that word written in the Torah? **This is in order to limit<sup>n</sup> the inheritance. Just as a firstborn does not take in inheritance property due as he does property possessed, but instead receives a double inheritance only from that property already in actual possession of their father, so too, this one who enters levirate marriage, whether firstborn or younger, does not take in inheritance property due as he does property possessed.<sup>h</sup>**

מתני' הנטען על השפחה ונשתחררה, או על הגויה ונתגיירה, הרי זה לא יכנס. ואם כנס – אין מוציאין מיידו. הנטען על אישת איש והוציאוה מתחת ידו, אף על פי שפנס – יוציא.

**MISHNA** One suspected by others of engaging in sexual relations with a Canaanite maidservant<sup>n</sup> and she was later set free, or one suspected of relations with a gentile woman<sup>h</sup> and she subsequently converted, may not marry that woman, since this will strengthen the suspicions against him. **But if he did marry her, they, the judges of the court, do not remove her from him, i.e., they do not require him to divorce her.** With regard to one who is suspected of illicit relations with a married woman and they, the judges of the court, removed her from her husband, i.e., required them to divorce due to this, even if the man suspected of the illicit relations subsequently married her, he must divorce her.

NOTES

In order to limit – לגרעיותא: *Tosafot* point out that equating the inheritance of one who performs levirate marriage with the inheritance of a firstborn is not solely a limitation, but also gives a benefit, as this additional inherited portion of land is not divided with the other brothers in the Jubilee Year. However, it is described as a limitation because Rabbi Elazar disagrees with regard to the benefit and holds that land inherited through levirate marriage does revert to be shared with the other brothers in the Jubilee Year (*Tosafot on Bekhorot* 52b and *Tosefot HaRosh*; see *Mei Neftoah*).

One suspected of relations with a Canaanite maidservant, etc. – הנטען על השפחה וכו': This mishna and those following are not directly related to the main topic of this chapter. They appear here because the earlier mishna mentioned the distinction between cases where the court removes a wife from her husband and those where it permits her to remain married to him (*Yosef Lekah*).

HALAKHA

One who enters levirate marriage does not take in inheritance property due – המייבם אינו נוטל בראוי – One who performs levirate marriage receives the property of his deceased brother and also receives his brother's portion in the inheritance from their father. However, this applies only to property in the brother's possession, as is the case when the father predeceased the brother but the inheritance had yet to be divided when the brother died. However, if the brother died prior to the father, the one who performed levirate marriage does not receive his brother's portion of the inheritance (Rambam

*Sefer Mishpatim, Hilkhot Naḥalot* 3:7; *Shulḥan Arukh, Even HaEzer* 163:1).

One suspected of relations with a Canaanite maidservant... or with a gentile woman – או על הגויה... הנטען על השפחה...: One who is suspected of relations with a Canaanite maidservant or a gentile woman may not marry her *ab initio* if the maidservant was set free or if the gentile woman converted. However, if he did marry her, the court does not require him to divorce her (Rambam *Sefer Nashim, Hilkhot Geirushin* 10:14; *Shulḥan Arukh, Even HaEzer* 11:5).

Who converted for the sake of a woman – שְׂתַגִּיר לְשׂוּם – אִשָּׁה: *Mishpetei Uziel* derives from this Gemara that one can accept a convert *ab initio*, even if he intends to marry a Jewish woman at the time of his conversion, if it becomes clear that he would have married her anyway while remaining a gentile and instead chose of his own accord to become a Jew. He explains that the concern of the Sages is that a gentile who converts for the sake of a woman may still remain attached to his previous religion, and as soon as his love fades he will once again revert to his former religion. However, if it is apparent that he sincerely wants to become a Jew, even if there were other motives involved it can be assumed that the purer motives will prevail and he will maintain his principles even afterward. Moreover, it may be preferable to convert him in such a case so that the Jewish woman will not marry a gentile, since she would have been willing to marry him even if he did not convert. He bases this on the halakhic principle: "It is time to work for the Lord; they have made void Your Torah" (Psalms 119:126; see *Berakhot* 54a), which implies that when one needs to perform God's will, it is occasionally permitted to negate even a biblical precept or, in this case, a rabbinical decree (*Mishpetei Uziel*, *Yoreh De'a* 2:53).

For the sake of the king's table – לְשׂוּם שׂוֹלְחַן מְלָכִים: In the minor tractate that discusses the *halakhot* of converts, known as tractate *Gerim*, there is a list of four different categories of converts. One of them is a convert for the sake of sustenance, which means that he saw poor Jews receiving sustenance from their brethren and converted so that he too could receive sustenance. He is therefore compared to a pauper, as it is written: "You shall leave them for the poor and the stranger [*ger*]" (Leviticus 19:10). It is possible that the king's table is also referring to this sustenance, as the poor would eat from the king's table (see Meiri).

The so-called minor tractates, some of which are rather long, were also called external tractates by the *ge'onim*. They deal with many subjects, but what they have in common is that their subject matter was generally not discussed in one specific tractate or chapter in the Mishna and Talmud, although many of them do refer to Torah laws and major halakhic principles. These tractates could be an indication that another order of the Mishna once existed.

דָּאֵמַר רַב – רַב אֲסִי: Since this is a biblical verse, why is it attributed to Rav Asi? *Tosafot* on *Ketubot* 22b explain that Rav Asi would frequently cite this verse, and it became associated with him. The Maharatz Hayyut writes that there are alternative interpretations of the verse; it is only due to Rav Asi's interpretation that actions are prohibited if they appear to give validity to prior rumors.

Not...in the days of King David or in the days of King Solomon – לֹא בַיָּמֵי דָּוִד וְלֹא בַיָּמֵי שְׁלֹמֹה: Rambam explains that in each of these two eras there was a different reason for refusing converts: In the time of King David converts were not accepted lest their conversion stem from fear of King David; in the days of King Solomon the concern was that they may have converted due to his glory and wealth.

Behold, they may gather together – הִנֵּן גּוֹר יְגוּר: The homiletical interpretation is based on the fact that the word gather [*gar*] is similar to the word convert [*ger*]. Rabbi Yehuda bar Natan gives an alternative explanation. He writes that the word *gur* also means terror, as in the verse: "For I have heard the whispering of many, terror [*magor*] on every side" (Psalms 31:14). Therefore, if one converted due to fear he is considered "without Me," i.e., not part of God's people.

**GEMARA** The mishna teaches that one who is suspected of relations with a gentile woman who later converted may never marry her. This implies that she is, however, a convert, although it appears that she converted only in order that he might marry her. The Gemara raises a contradiction from a *baraita*: Both a man who converted for the sake of a woman<sup>N</sup> and a woman who converted for the sake of a man, and similarly, one who converted for the sake of the king's table,<sup>N</sup> so that he could serve in a prestigious capacity, or for the sake of Solomon's servants, who were also considered prestigious, in all of these cases they are not converts; this is the statement of Rabbi Neḥemya.

As Rabbi Neḥemya would say: With regard to converts by lions, i.e., forced converts such as the Samaritans [*Kutim*] described in 11 Kings (17:24–25); and converts who convert based on their dreams; and converts of the time of Mordecai and Esther described in the verse, "And many from among the peoples of the land became Jews; for the fear of the Jews was fallen upon them" (Esther 8:17); all of these are not converts until they are converted at this present time.

The Gemara clarifies the meaning of the words: Could it enter your mind to say only at this present time? Since he mentioned the converts of Mordecai and Esther, who were deceased before Rabbi Neḥemya made this statement, he therefore cannot possibly mean this phrase literally. Rather, say: Like at this present time, when the Jewish people are in exile and there is no material benefit to conversion.

Returning to the question above: How could a woman who converted for the sake of a man be considered a true convert? The Gemara answers: But wasn't it stated with regard to that *baraita* that Rav Yitzhak bar Shmuel bar Marta said in the name of Rav: The *halakha* is in accordance with the statement of the one who says that they are all converts.<sup>H</sup>

The Gemara asks: If so, why is one suspected of relations with such a woman not permitted to enter into marriage with her *ab initio* as well? The Gemara answers: The reason for the prohibition is due to the following statement of Rav Asi. As Rav Asi said with regard to such cases: "Put away from yourself<sup>N</sup> a twisted mouth, and perverse lips put far from you" (Proverbs 4:24). If they were to marry, they would give substance to the prior suspicions.

The Sages taught: Converts are not accepted in the days of the Messiah. Similarly, they did not accept converts in the days of King David or in the days of King Solomon.<sup>NH</sup> Rabbi Eliezer said: What is the verse that hints at this *halakha*? "Behold, they may gather together [*gor yagur*],<sup>N</sup> but without Me; whosoever shall gather together [*gar*] with you shall fall on yours" (Isaiah 54:15). The word *gor* implies that only a convert [*ger*] who becomes part of the Jewish people when the Jews are living in exile, at a time when God is not clearly revealed, i.e., "without Me," are considered part of the Jewish people. But another who wishes to convert in a time when God is clearly revealed shall not be accepted.

#### HALAKHA

They are all converts – כּוֹלֵם גֵּרִים הֵם: The court must examine the motivation of a potential convert to ensure that he wishes to convert solely for the sake of Heaven. If the court did not examine his motivation before converting him, and even if it subsequently became known that he converted for some ulterior motive, since he has been circumcised and immersed in a ritual bath before a court of three, he no longer has the status of a gentile but his status remains in doubt until it becomes clear that he accepted Judaism completely. He does not have the status of a Jew such that he should be trusted, e.g., in declaring food to be permitted, but nevertheless he is not considered a

gentile, and if he marries a Jewish woman the marriage is valid. Even if he reverted to idol worship he is considered an apostate Jew, based on the opinion of Rav and the conclusion of the Gemara's discussion (Rambam *Sefer Kedusha*, *Hilkhot Issurei Bia* 13:14–17; *Shulḥan Arukh*, *Yoreh De'a* 268:12).

They did not accept converts in the days of King David or in the days of King Solomon – לֹא קִבְּלוּ גֵרִים לֹא בַיָּמֵי דָּוִד וְלֹא בַיָּמֵי שְׁלֹמֹה: The court did not accept converts in the eras of David and Solomon, as they feared that gentiles might convert due to the strength and glory of the Jewish kingdom (Rambam *Sefer Kedusha*, *Hilkhot Issurei Bia* 13:15).

גַּמְ' הָא גֵּיּוֹרָת מִיָּהָא הָוּא. וְרַמְיָנָהּ: אַחַד אִישׁ שְׂתַגִּיר לְשׂוּם אִשָּׁה, וְאַחַד אִשָּׁה שְׂתַגִּיר לְשׂוּם אִישׁ. וְכֵן מִי שְׂתַגִּיר לְשׂוּם שׂוֹלְחַן מְלָכִים, לְשׂוּם עֲבָדֵי שְׁלֹמֹה – אֵינָן גֵּרִים, דְּבָרֵי רַבִּי נְחֵמְיָא.

שְׂהִיָּה רַבִּי נְחֵמְיָא אָמַר: אַחַד גֵּיּוֹרָת אִישׁ וְאַחַד גֵּיּוֹרָת אִשָּׁה, וְאַחַד גֵּיּוֹרָת שׂוֹלְחַן מְלָכִים – אֵינָן גֵּרִים עַד שִׂתַּגִּירוּ בְּזִמְנָא הַזֶּה.

בְּזִמְנָא הַזֶּה סְלָקָא דַּעְתְּךָ? אֵלָּא, אֵימָא: כְּבִזְמַן הַזֶּה.

הָא אֵיתַמַּר עֲלָהּ, אָמַר רַב יִצְחָק בְּרִי שְׂמוּאֵל בְּרִי מַרְתָּא מְשֻׁמֵּיהּ דְּרַב: הֲלֹכָה כְּדָבְרֵי הָאָמַר כּוֹלֵם גֵּרִים הֵם.

אִי הֲכִי לְכַתְחֵלָה נִמְי! מִשׁוּם דְּרַב אֲסִי, דְּאָמַר רַב אֲסִי: "הֲסַר מִמֶּךָ עֲקָשׁוֹת פֶּה וְלִוְוֹת שְׂפָתַיִם" וְגו'.

תִּנְגּוּ רַבְּנָן: אֵין מְקַבְּלִין גֵּרִים לְיָמֵי מְשִׁיחַ. כִּיּוֹצֵא בּוֹ לֹא קִבְּלוּ גֵּרִים לֹא בַיָּמֵי דָּוִד וְלֹא בַיָּמֵי שְׁלֹמֹה. אָמַר רַבִּי אֱלִיעֶזֶר: מֵאֵי קָרָא – "הִנֵּן גּוֹר יְגוּר אָפֶס מֵאוֹתֵי מִי גַר אֲתָךְ עֲלִיךָ: פּוֹלֵל" אֲבָל אֲתָךְ – לֹא.

NOTES

When Rav was dozing or sleeping – **כִּי נִיִּים וְשָׁכַב רַב** – Some commentaries suggest that this is merely a polite way of saying that Rav's statement is incorrect.

HALAKHA

One who was suspected of adultery with a married woman and later she married someone else – **הַנִּטְעָן עַל – אִשֶּׁת אִישׁ וְנִשְׁאָה לְאַחֵר**: If one was suspected of committing adultery with a married woman, and due to this her husband divorced her and she married someone else and was later divorced from him, it is nevertheless prohibited for her to marry the suspected adulterer. However, if she transgressed and married him he need not divorce her, even if she had no children. The ruling applies even if there were witnesses to circumstantial evidence, provided they were not witnesses to the adultery itself, in which case the adulterer would be forced to divorce the adulteress (Rambam *Sefer Nashim, Hilkhhot Sota* 2:15; *Shulḥan Arukh, Even HaEzer* 11:2).

If she has children she is not required to be divorced – **יֵשׁ לָהּ בָּנִים לֹא תִצָּא**: In the case of a husband who had not made a declaration of jealousy with regard to his wife, yet witnesses came forward and testified that she had been secluded with a man, if the husband then sent her away due to circumstantial evidence, she may not marry the man with whom she is suspected of misconduct. If the divorcée transgressed this *halakha* and married the suspected adulterer, the following distinction applies: If she had no children from the first husband, the court requires him to divorce her; if she had children from him she is not required to be divorced, based on the Rif's interpretation of the Gemara. If the first husband had made a declaration of jealousy with regard to his wife, then she must be divorced from the suspected adulterer even if she had children from him (Rambam *Sefer Nashim, Hilkhhot Sota* 2:13; *Shulḥan Arukh, Even HaEzer* 11:1).

Witnesses to her impurity came and testified – **בָּאוּ עֵידי – טוּמְאָה**: If witnesses testify that a married woman committed adultery, and consequently her husband divorces her, she may not marry the adulterer. If she transgressed and married him, even if she had children from the first husband, she must be divorced from him (Rambam *Sefer Nashim, Hilkhhot Sota* 2:16; *Shulḥan Arukh, Even HaEzer* 11:2 and 178:18).

”הַנִּטְעָן עַל אִשֶּׁת אִישׁ” וכו'. אָמַר רַב: וּבְעֵדִים.

אָמַר רַב שֵׁשֶׁת: אָמִינָא כִּי נִיִּים וְשָׁכַב רַב אָמַר לְהָאִי שְׂמַעְתָּתָא. דְּתַנְיָא: הַנִּטְעָן עַל אִשֶּׁת אִישׁ וְהוֹצִיאָוּהָ עַל יְדוֹ, וְנִתְגַּרְשָׁה מִתַּחַת יְדֵי אַחֵר, אִם כֵּן – לֹא יוֹצִיא.

הֵיכִי דְמִי, אִי דְאִיכָא עֵדִים – כִּי אָתָּא אַחֵר וְאַפְסָקִיָּה לְקָלָא מָאִי הוּוּ? אֶלְא לָאוּ דְלִיכָא עֵדִים, וְטַעֲמָא, דְּאָתָּא אַחֵר וְאַפְסָקִיָּה לְקָלָא, הָא לָאוּ הֲכִי – מִפְקִינָא!

אָמַר לָךְ רַב: הוּא הִדִּין דְּאָף עַל גַּב דְּלָא אָתָּא אַחֵר וְאַפְסָקִיָּה לְקָלָא. אִי אִיכָא עֵדִים – מִפְקִינָא, אִי לִיכָא עֵדִים – לֹא מִפְקִינָא, וְהִכִּי קָאֲמַר: דְּאָף עַל גַּב דְּאָתָּא אַחֵר וְאַפְסָקִיָּה לְקָלָא – לְכַתְחֻלָּה לֹא יִכְנוּס.

מִיִּתְיָבִי: בְּמָה דְּבָרִים אָמֹרִים – כְּשֶׁאִין לָהּ בָּנִים, אַבְל יֵשׁ לָהּ בָּנִים – לֹא תִצָּא. וְאִם בָּאוּ עֵדִי טוּמְאָה – אֶפְיִלוּ יֵשׁ לָהּ בְּמָה בָּנִים תִּצָּא.

רַב מוֹקִי לָהּ לְמַתְנִיתִין בֵּישׁ לָהּ בָּנִים וְיֵשׁ לָהּ עֵדִים. וּמָאִי דְּוִחְקִיָּה דְּרַב לְאוּקְמִי לְמַתְנִיתִין בֵּישׁ לָהּ בָּנִים וְיֵשׁ לָהּ עֵדִים, וְטַעֲמָא דְּאִיכָא עֵדִים – מִפְקִינָא, וְאִי לִיכָא עֵדִים – לֹא מִפְקִינָא, לְוִקְמָה בְּשֶׁאִין לָהּ בָּנִים, אָף עַל גַּב דְּלִיכָא עֵדִים?

The mishna states that **one who was suspected of relations with a married woman** may not marry her even after she divorces her husband. Even if they marry without permission, they must divorce. **Rav said: This is only in a case when there were witnesses to her infidelity, and because of their testimony the court required her first husband divorce her.** However, if her first husband divorced her due to suspicion and rumors but without witnesses, her second husband would not be obligated to divorce her.

Rav Sheshet said: I say that when Rav was dozing or sleeping<sup>N</sup> he said that *halakha*, and it is mistaken. As it is taught in a *baraita*: With regard to **one who was suspected of adultery with a married woman and as a result the court requires her husband to divorce her, and later she married someone else<sup>H</sup> and was then divorced by this other, if the one who had been suspected of illicit relations with her then married her, he need not divorce her.**

The Gemara clarifies this: **What are the circumstances of this case?** If it is referring to a case where **there are witnesses** to their adultery, **when another came and put an end to the rumor** of her misconduct by marrying her, **what of it?** If there were witnesses, the adulterers may never marry each other. **Rather, is it not referring to a case where there were no witnesses to the adultery, and the reason she does not have to be divorced from her third husband, with whom she committed adultery while married to her first husband, is specifically because another came and, by marrying her, put an end to the rumor?** This implies that **were it not so**, i.e., had she not married someone else before marrying the man suspected of committing adultery with her, the court **would have removed** her from him and required them to divorce, even without witnesses to their adultery. This contradicts Rav's statement above that they must divorce only if there were witnesses to the infidelity.

The Gemara responds: **Rav could have said to you that the same is true even if another did not come and put an end to the rumor** by marrying her. The same principle applies: **If there were witnesses to the adultery the court removes her and requires them to divorce, but if there were no witnesses, the court does not remove her. And this is what the baraita is saying:** The novelty in this *baraita* is that **even though another came and put an end to the rumor** by marrying her, nevertheless, the suspected adulterer may **not marry her *ab initio*** due to the original suspicions.

The Gemara raises an objection from a different *baraita* that qualifies the previous one: **In what case is this statement, that the court removes her from the suspected adulterer, said?** It is **when she has no children** from her first husband. **But if she has children** from him, she is **not required to be divorced<sup>H</sup>** from the suspected adulterer. On the contrary, if they were required to divorce, it could strengthen the original rumor and others might suspect that her children are *mamzerim*. **However, if witnesses to her impurity, i.e., her adultery, came and testified<sup>H</sup> that she had relations with this man while she was married, then even if she has several children from the first husband, she is required to be divorced.** This implies that a woman without children from her first husband must separate from a man suspected of illicit relations with her on strength of suspicion alone.

The Gemara answers and explains that **Rav establishes the mishna** as referring only to a case **where she has children** by her first husband **and there are witnesses** to her adultery. In such a situation, she and the adulterer must divorce, but without witnesses they are not required to divorce. The Gemara asks: **What forced Rav to establish the mishna as referring to a case where she has children and there are witnesses and explain that the reason that the court removes her from the suspected adulterer is because there were witnesses, but that if there were no witnesses they do not remove her?** Why does he not establish the mishna as referring to a case **where there were no children** and that they must divorce **even if there were no witnesses?**

אמר רבא: מתניתין קשייתה: מאי איריא דתני "הוציאוה", ליתני הוציאוה, אלא, כל "הוציאוה" בבית דין, ובית דין – בעדים הוא דמפקי.

ואי בעית אימא: הני מתנייתא – רבי היא, דתניא: רובל יוצא ואשה חוגרת בסנין, אמר רבי: הואיל ומכוער הדבר – תצא. רוק למעלה מן הפילה, אמר רבי: הואיל ומכוער הדבר – תצא.

Rava said: The language of the mishna was difficult for him; due to that he deemed it necessary to interpret it as he did. Why does the *tanna* specifically teach: They remove her from him [hotziuha]? Let it teach: He divorces her [hotziah] in the singular. Rather, every time the plural form: They remove her, is used, it is referring to the judges of the court. And a court removes a woman from her suspected adulterer only if there were witnesses, and not due to suspicion alone.

If you wish, say a different answer for Rav's explanation: Those *baraitot* that require the wife and the suspected adulterer to divorce even without witnesses to the adultery are taught in accordance with the opinion of Rabbi Yehuda HaNasi. As it is taught in a *baraita*: With regard to a case where a husband saw a peddler leaving<sup>n</sup> the house, and when he entered he found his wife retying her smock [sinar],<sup>l</sup> i.e., putting her clothes back on, Rabbi Yehuda HaNasi said: Since this is a distasteful matter<sup>h</sup> because it looks as though she committed adultery with the peddler, she must be divorced by her husband. Alternatively, if the husband entered after the peddler had left and found saliva above<sup>n</sup> the netting of the bed, implying that someone had lain on the bed and spit upward, although no actual act was witnessed, Rabbi Yehuda HaNasi said: Since this is a distasteful matter, she must be divorced.

#### NOTES

A peddler leaving – רובל יוצא: The Gemara refers to peddlers because they would frequently spend time selling their wares to women. Therefore, their actions were commonly suspected.

Saliva above – רוק למעלה: The Meiri holds that this phrase is a euphemism meaning that signs of semen were found in the bed.

#### LANGUAGE

Smock [sinar] – סינר: The source of this word is not entirely clear, but some suggest that the word was borrowed from the Greek ζωνάριον, *zonariyon*, which comes from the term for belt and means a strap or girdle worn by women as an undergarment. However, the *sinar* described by the Sages is some kind of trousers worn as an undergarment.

#### HALAKHA

A distasteful matter – דבר מכוער: What is considered a distasteful matter? It is a case where, e.g., one entered the house of a married woman after some other man had left and found her standing next to the bed in her undergarments, or one saw the couple exiting from a secluded place, or one saw them lock themselves in a room, or any similar circumstance. Each case is judged at the judges' discretion (Rambam *Sefer Nashim*, *Hilkhot Sota* 2:13 and *Sefer Kedusha*, *Hilkhot Ishut* 24:15; *Shulhan Arukh*, *Even HaEzer* 11:1, 178:18).

## Perek II Daf 25 Amud a

מנעלים הפוכים תחת המטה, אמר רבי: הואיל ומכוער הדבר – תצא. מנעלים הפוכים? ליחזי דמאן נינהו! אלא: מקום מנעלים הפוכים (תחת המטה). אמר רבי: הואיל ומכוער הדבר – תצא.

The same applies if the husband found the shoes reversed under the bed, so that the toe of the shoe faced the bed; this is a sign that a stranger came in and placed them like that. Rabbi Yehuda HaNasi said: Since this is a distasteful matter, she must be divorced. The Gemara questions this: Shoes turned around? Let him see whose they are and clarify who the stranger was and then find out what he was doing there. Rather, the case was that he found the place of the shoes, i.e., shoe prints, reversed<sup>n</sup> under the bed and cannot recognize whose shoe prints they are. Rabbi Yehuda HaNasi said: Since this is a distasteful matter, she must be divorced.

#### NOTES

The place of the shoes reversed – מקום מנעלים הפוכים: According to Rashi and Rabbi Yehuda bar Natan, this means that the husband found prints of shoes that had been turned upside down so that the sole of the shoe faced up. Rashi holds that they were overturned so as to hide the ownership of the shoes. On the other hand, Rabbi Yehuda bar Natan holds that they were upside down due to the peddler's great haste, so that he did not have time to place the shoes in the regular

fashion. According to the Meiri, the shoe prints were not under the bed but at the foot of the bed, indicating that apparently the shoes fell off while they were engaged in adultery. The Meiri also gives a second explanation, that the husband found footprints of his wife's shoes next to his own bed, suggesting that she lay there with someone else. This opinion is similar to Rashi's second explanation.