

כָּנַס אֵינוּ מוֹצִיא – If he married her, he need not divorce her – If a Sage declared a wife forbidden to her husband due to her vow, that Sage is forbidden from marrying her *ab initio*. If he nevertheless married her he is not forced to divorce her, in accordance with the conclusion of the Gemara (Rambam *Sefer Nashim, Hilkhot Geirushin* 10:14; *Shulhan Arukh, Even HaEzer* 12:2).

אֵינוּ מוֹצִיא לָהּ: כָּנַס, מִהוּ שְׂוִיָּצִיא? רַב כְּהֵנָא אָמַר: כָּנַס – מוֹצִיא, רַב אֲשִׁי אָמַר: כָּנַס – אֵינוּ מוֹצִיא. תֵּנִי לְהוּ רַב זוּטִי דְבֵי רַב פַּפִּי כְּדַבְרֵי הָאוּמֵר כָּנַס אֵינוּ מוֹצִיא.

S A dilemma was raised before the Sages with regard to one who was prohibited from marrying a certain woman: If he nevertheless married her despite the prohibition, what is the *halakha* with regard to whether he must divorce her? Rav Kahana said: If he married her, he need not divorce her. Rav Ashi said: If he married her, he need not divorce her.^h Rav Zuti from the school of Rav Pappi taught the Sages a *baraita* in accordance with the statement of the one who said that if he married her, he need not divorce her.

אָמְרוּ לִיהוּ רַבֵּנן לְרַב אֲשִׁי: גְּמָרָא אִוּ כְּבָרָא? אָמַר לְהוּ: מִתְנַתִּין הֵיא: הִנְטֵעֵן מִשְׁפָּחָה וְנִשְׁתַּחֲרָדָה, מִגּוּיָהּ וְנִתְגַּיְרָה, הֲרִי זֶה לֹא יִכְנֹס, וְאִם כָּנַס – אֵין מוֹצִיא. אֲלֵמָא

The Rabbis said to Rav Ashi: With regard to the *halakha* that you said, that if he married her he need not divorce her, was it based upon tradition or is it your own conclusion? He said to them: It is the *mishna*. I reached this conclusion from the wording of the *mishna*, which taught that one suspected by others of engaging in sexual relations with a Canaanite maidservant and she was subsequently set free, or with a gentile woman and she subsequently converted may not marry that woman. But if he did marry her, they, the judges of the court, do not remove her from him. Apparently,

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בְּרַנְנָה לֹא מִפְקִינָן, הֲכָא נִמְי בְּרַנְנָה לֹא מִפְקִינָן.

we do not remove her from her husband owing to suspicion due to rumor alone. Here too, we do not remove her from her husband due to a rumor.

מִתְנִי' וְכֹלָם שְׁהִי לָהֶם נְשִׁים וּמְתוּ – מוֹתְרוֹת לִינְשָׂא לָהֶם.

MISHNA And for all of these^N who were involved in permitting the wife to remarry, i.e., the judge, the agent who brought a bill of divorce, and the one who testified for a woman that her husband died, if they had wives^{NH} at the time of the ruling or the testimony and their wives died thereafter, then those women they had set free are permitted to be married to them. There is no concern that while their wives were still alive these individuals set their eyes upon another woman.

וְכֹלָן שְׁנִישְׂאוּ לְאַחֵרִים, וְנִתְגַּרְשוּ אוֹ שְׁנִתְאַלְמְנוּ – מוֹתְרוֹת לִינְשָׂא לָהֶם. וְכֹלָן מוֹתְרוֹת לְבִנְיָהֶם אוֹ לְאַחֵיהֶם.

And with regard to all of these women who were prohibited from marrying a certain man due to some suspicion, if they were subsequently married to others^H and then were divorced or widowed from the second husband, they are permitted to be married to them, i.e., to the judge, messenger, or witness who permitted her to remarry. And all of these women who were prohibited from marrying due to some suspicion are permitted to the sons or to the brothers^{NH} of those who set them free.

גַּמ' מֵתוּ – אֵין, נִתְגַּרְשוּ – לֹא.

GEMARA The *mishna* taught that if any of the men had wives who subsequently died, they may marry those women freed by them. The Gemara deduces from here: If the wives of those who rendered the woman permitted died, yes, they are permitted to marry the woman that they freed for marriage; but if the wives were divorced, no, it is prohibited. In such a case, marrying the woman that one had rendered permitted would raise suspicions that he had in fact planned to marry her all along.

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And for all of these, etc. – **וְכֹלָם וכו'** – Rashi explains that the term: All of these, is referring only to a Sage or a witness who testified for a woman (see Rid). Rambam, however, interprets this ruling as applying to one who was under suspicion of misconduct with a maidservant or other woman as well.

They had wives, etc. – **הֵיוּ לָהֶם נְשִׁים וכו'** – At the time of the *mishna*, bigamy was permitted, yet it was extremely rare, and so there was no concern that one would free a woman in order to marry her as a second wife.

Are permitted to the sons or to the brothers – **מוֹתְרוֹת לְבִנְיָהֶם אוֹ לְאַחֵיהֶם** – In the Jerusalem Talmud this is explained by the statement that it is not common for one to sin for the benefit of his relative or his teacher.

HALAKHA

They had wives – **הֵיוּ לָהֶם נְשִׁים**: It is permitted for one who was married when he rendered a woman free to marry that woman if his wife subsequently died (Rambam *Sefer Nashim, Hilkhot Geirushin* 10:15; *Shulhan Arukh, Even HaEzer* 12:4).

them to remarry (Rambam *Sefer Nashim, Hilkhot Ishut* 10:15; *Shulhan Arukh, Even HaEzer* 12:3).

And all of these women, if they were subsequently married to others – **וְכֹלָן שְׁנִישְׂאוּ לְאַחֵרִים**: It is permitted for all of these women who subsequently married others and were then widowed or divorced to marry one of those men who permitted

מוֹתְרוֹת לְבִנְיָהֶם – אִם לְאַחֵיהֶם: All of these women are permitted to marry the close relatives of the witness or the Sage who freed them (Rambam *Sefer Nashim, Hilkhot Ishut* 10:16; *Shulhan Arukh, Even HaEzer* 12:4).

They were divorced – נתגרשו – If those who rendered these women permitted were married at the time and subsequently divorced because their wives started a quarrel, it is permitted for them to marry those women. If they themselves started the quarrel, they may not marry those women. There are those who render it prohibited for them to marry these women if their first wives were sick at the time they freed the women (Rema, citing *Nimmukei Yosef*; Rambam *Sefer Nashim*, *Hilkhot Ishut* 10:15; *Shulhan Arukh*, *Even HaEzer* 12:4).

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That was when there was no quarrel – הא דלא הווי – **קטטה**: Rashi explains that if there was a quarrel between the Sage who permitted this woman and his wife before they divorced, it appears that the divorce resulted from the quarrel and not from interest in the other woman. However, in *Yam shel Shlomo* the opposite explanation is suggested: If there was a quarrel between them beforehand, there is suspicion that due to the quarrel he decided to divorce his wife and seek out another wife for himself. Meiri explains that if there was a quarrel, then the reason for the divorce is not clear, and so there is no room for suspicion. However, if he divorced his wife without another clear reason, there is concern that it appears that he did so due to his desire for the other woman.

אמר ליה רב הלל לרב אשי: והתנאי אפילו נתגרשו! לא קשיא; הא – דהווי קטטה, הא – דלא הווי קטטה.

ואיבעית אימא: הא ודא דלא הווי קטטה, ולא קשיא; הא – דארגיל הוא, הא – דארגילה היא.

”וכולן שנישאו” וכו’. קא סלקא דעתין מיתה אמיתה, וגירושין אגירושין.

נימא מתניתין דלא כרבי, דאי כרבי – האמר: בתרי זימני הווי חזקה!

לא, מיתה אגירושין וגירושין אמיתה.

”וכולן מותרות לבניהם או לאחיהם.” מאי שנא מהא דתנן: הנטען מן האשה – אסור באמה ובבתה ובאחותה!

נשי לגבי נשי – שכיחן דאזלן, גברי לגבי – גברי לא שכיחן.

Rav Hillel said to Rav Ashi: Yet it is taught in a *baraita*: Even if they were divorced^H from their first wives they are permitted to marry the women they freed. The Gemara responds: This is not difficult: This mishna is referring to a case when there was a quarrel between the husband and the wife at the time that he freed the other woman, as then there is legitimate concern that he was already interested in her. That case of the *baraita* was when there was no quarrel^N between them at the time, and therefore the divorce clearly resulted from some other reason.

And if you wish, say: Both this and that were said in cases when there was no quarrel between the one who freed the woman and his first wife, and only later did they quarrel and divorce. And this is not difficult: This case of the mishna was when he started the quarrel himself, as then there is legitimate concern that he had an interest in this other woman and therefore sought out a reason to divorce his wife. And that case of the *baraita* was when his wife started the quarrel, as then there would be no reason to suspect him of freeing the other woman in order to marry her.

The mishna stated: And with regard to all of these women, if they were married to others and then were divorced or widowed, it is permitted for them to marry those who caused them to be free to marry in the first place. It enters our mind to say that the case referred to here was one of death after death, i.e., the case of a woman whose first husband’s death had been substantiated by a single witness but whose second husband died as well, and also to the case of divorce following a bill of divorce that had been validated by a single witness.

Based on this, should we say that the mishna, which permits a woman to remarry even after her two previous husbands have died, is not in accordance with the opinion of Rabbi Yehuda HaNasi? As, if it is in accordance with the opinion of Rabbi Yehuda HaNasi, didn’t Rabbi Yehuda HaNasi say: After two times a woman has the presumptive status to cause death to her husbands, and such a woman is considered murderous. Therefore, she may not remarry. Since there is no mention of such concern in the mishna, it appears that the mishna is not in accordance with the opinion of Rabbi Yehuda HaNasi.

The Gemara rejects this: No evidence can be derived from here, as the reference here may be to death after divorce or divorce after death. The mishna could be referring either to a woman who was at first divorced and then later widowed by her second husband’s death, or to a woman whose first husband died and who was subsequently divorced, but not to a case where she was widowed by the death of two husbands.

§ The mishna taught: And all of these women who were prohibited from marrying the man who freed them due to some suspicion are permitted to the sons or to the brothers of those who set them free. The Gemara asks: In what way is this case different from that which we learned in the *Tosefta* (4:5) that one suspected of adultery with a specific woman is prohibited not only from marrying her, but also from marrying her mother, and her daughter, and her sister. Yet here we allow his sons and brothers to marry the woman despite the suspicion.

The Gemara answers: There is a distinction between the situations, for it is common for women to be at the house of other women and to stay overnight. Therefore, there is concern that a relative of the alleged adulterer’s wife, with whom he was suspected of misconduct, might frequent his house and he might be tempted to repeat his transgression. On the other hand, it is not common for men to be at the house of other men, so that even if she was married to his relative, the one suspected of misconduct would not generally sleep at the house of the husband.

Embarrassed [*keziz*] – קִיזִי: Although this version of the text has *baziz*, the version of the text that reads *keziz* is more correct because it comes from the Aramaic root *k-u-z*, which means to be ashamed or fearful.

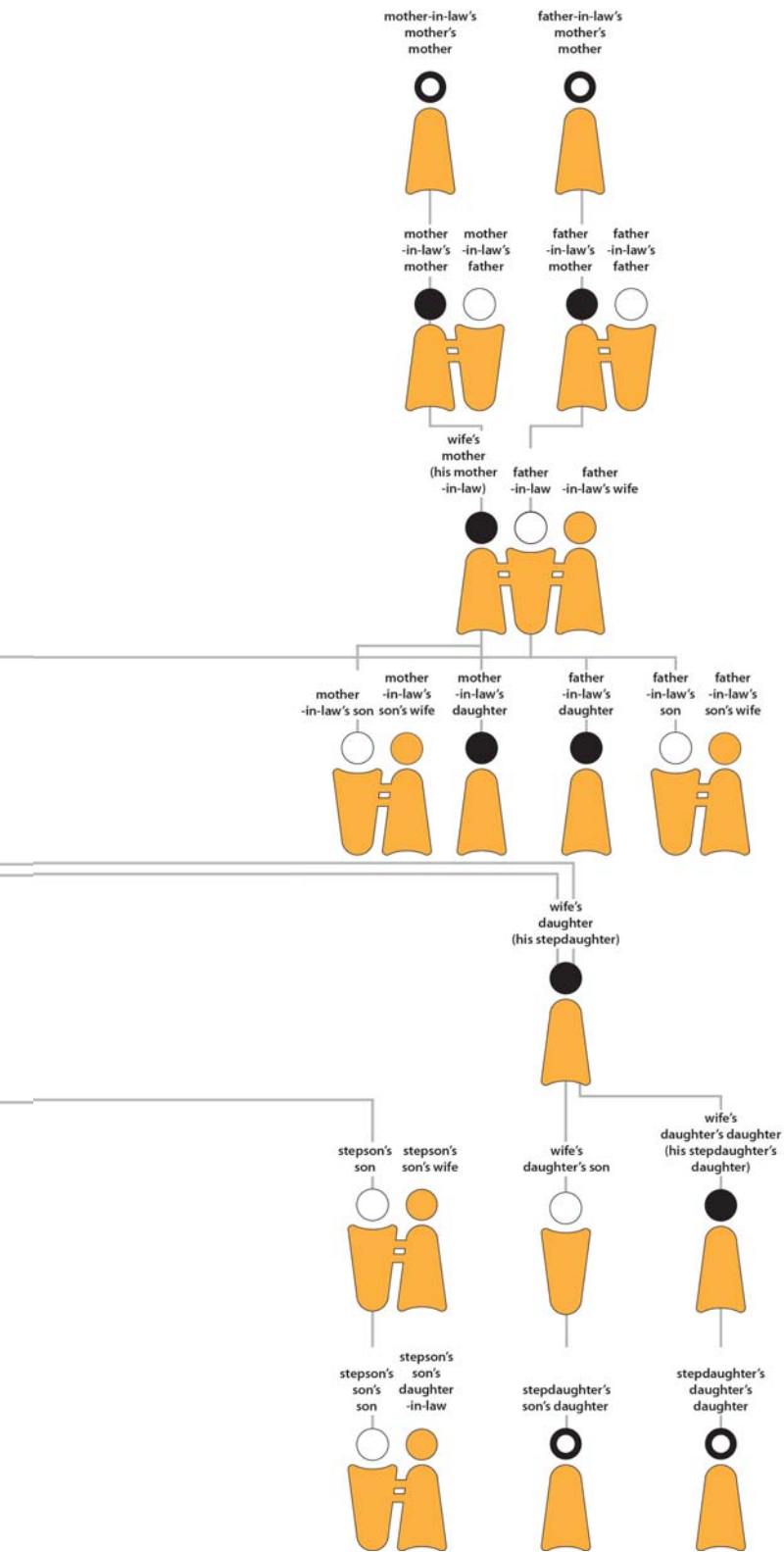
אי נמי: נשי דלא אסרן שכיבתן אהדדי –
לא קפדי אהדדי, גברי דאסרן שכיבתן
אהדדי – קפדי אהדדי.

Alternatively, a different argument could be made: **Women are not so strict with one another, as lying with them and having sexual relations with them does not render them mutually forbidden.** In other words, if a man commits adultery with his wife's close relative, his wife does not become forbidden to him, so she may not pay attention to his behavior with the woman under suspicion. However, **men are strict with one another, as lying with them and having sexual relations with the other man's wife does render them, the husband and wife, mutually forbidden.** In other words, if another man has relations with a married woman, she is forbidden to her husband, and so men pay close attention to what the others are doing.

אי הכי אביו נמי! לא מיבעיא קאמר, לא
מיבעיא אביו – דבזיו בניה מיניה, אבל
בנו דלא בזיו אביו מיניה – אימא לא,
קא משמע לן.

The Gemara asks: **If so, one's father** should be permitted to marry a woman set free by his son **as well.** So why does the mishna say: Their sons or their brothers, and not: Their fathers? The Gemara answers: Certainly his father is allowed as well, but the mishna is speaking utilizing the style of: **It is not necessary. It is not necessary** to mention the case of **his father** because he is most certainly permitted to marry a woman set free by his son, **as his son is embarrassed** [*baziz*]¹ **before him** and so would not come to sleep with his father's wife. **But I might say that since the father is not embarrassed before his son,** she **may not** be married to the son of one for whom there is suspicion. Therefore, **this comes to teach us** that there is no such concern.

הדרן עלך ביצד אשת אחיו



מתני' ארבעה אחין, שנים מהם נשואים שתי אחיות, ומתו הנשואים את האחיות – הרי אלו חולצות ולא מתייבמות. ואם קדמו וקנסו – וציאו. רבי אליעזר אומר, בית שמאי אומרים: וקיים, ובית הלל אומרים: וציאו.

היתה אחת מהן אסורה על האחד איסור ערוה – אסור בה ומותר באחותה, והשני אסור בשתיהן.

איסור מצוה ואיסור קדושה – חולצת ולא מתייבמת.

היתה אחת מהן אסורה על זה איסור ערוה, והשנייה אסורה על זה איסור ערוה – האסורה לזה מותרת לזה, והאסורה לזה מותרת לזה.

וזו היא שפאמרו: אחותה כשהיא יבמתה – או חולצת או מתייבמת.

MISHNA In the case of four brothers,^H two of whom were married to two sisters, and the ones married to the sisters died, then those sisters must perform *halitza* and may not enter into levirate marriage.^N Since both sisters require levirate marriage with each of the surviving brothers, a levirate bond exists between each sister and the brothers. Each of them is considered the sister of a woman with whom each brother has a levirate bond and is therefore forbidden to him by rabbinic law. **And if they married the sisters before consulting the court, they should divorce them, for the Sages decreed that in this situation they may not remain married. Rabbi Eliezer says that there is a dispute in this matter: Beit Shammai^N say: He may maintain her as his wife, while Beit Hillel say: They must divorce them.**

If one of the sisters was forbidden^H to one of the brothers due to a prohibition against forbidden relations because she was a relative of his wife or a relative on his mother's side, then he is forbidden to marry her but permitted to marry her sister. Because she is his close relative, she is exempt from levirate marriage with him, and therefore she is not bound to him with a levirate bond. Consequently, her sister is not considered the sister of a woman with whom he has a levirate bond, and he is permitted to enter into levirate marriage with her. But the second brother, who is not a close relative of either sister, is forbidden to marry both of them. Indeed, for him each woman remains the sister of a woman with whom he has a levirate bond.

If a prohibition resulting from a mitzva^N or a prohibition stemming from sanctity^N will be transgressed when one of the women marries one of the brothers, then her sister must perform *halitza* and may not enter into levirate marriage, as she is considered the sister of a woman with whom he has a levirate bond. In this case, the sister who is forbidden to the brother due to a mitzva or due to sanctity is bound to the brother for the purpose of *halitza*.

If one of those women was forbidden to this one brother due to a prohibition against forbidden relations and the second woman was forbidden to that second brother due to a prohibition against forbidden relations, then she who is forbidden to this brother is permitted to that brother, and she who is forbidden to that brother is permitted to this one.

And this is the case that was referred to when they said: When her sister is also her *yevama*, i.e., in a case where two sisters are also *yevamot* and therefore happened for levirate marriage before two brothers, she either performs *halitza* or enters into levirate marriage. This must be referring to a case where each sister is forbidden to one of the brothers due to a prohibition concerning forbidden relatives. In this case, each sister has a levirate bond only with the one brother to whom she is permitted, and the prohibition against marrying the sister of a woman with whom one has a levirate bond does not apply. Therefore, each brother can either perform the act of *halitza* or consummate the levirate marriage with the sister to whom he is not related.

HALAKHA

Four brothers – ארבעה אחין: In the case of four brothers, two of whom were married to two sisters and died childless, these sisters must perform *halitza* and they may not enter into levirate marriage. If the brothers married the sisters before consulting with the court, they must divorce them (Rambam *Sefer Nashim, Hilkhot Yibbum* 7:1; *Shulhan Arukh, Even HaEzer* 175:3).

If one was forbidden, etc. – היתה אחת אסורה וכו': If one of

the sisters was forbidden from marrying one of the brothers due to a prohibition against forbidden sexual relations, then he is permitted to marry her sister, and the other brother is prohibited from marrying both of them. If one of the sisters was forbidden to one brother and the second to another brother, each brother may marry the sister who is not forbidden to him (Rambam *Sefer Nashim, Hilkhot Yibbum* 7:1–2; *Shulhan Arukh, Even HaEzer* 175:4–5).

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Must perform *halitza* and may not enter into levirate marriage – חולצות ולא מתייבמות: One could suggest that one of the brothers performs *halitza* with one sister and then afterward the second brother consummates the levirate marriage with the second sister, as she would then no longer be the sister of a woman with whom he has a levirate bond. This, however, is not allowed according to both explanations of the mishna. According to the opinion that it is prohibited to negate the mitzva of levirate marriage, there is a concern that they will confuse the order and perform the levirate marriage first. According to the opinion that the levirate bond is substantial, the second brother may not consummate the levirate marriage, as the woman was already forbidden to him once as the sister of a woman with whom he has a levirate bond, and she can no longer be rendered permitted (*Tosefot HaRosh*).

Rabbi Eliezer says, Beit Shammai, etc. – רבי אליעזר אומר, בית שמאי וכו': Although it is common for the Gemara to ask why a Sage saw fit to inform us of Beit Shammai's opinion when it does not accord with *halakha*, here there is an explanation. It seems that Rabbi Eliezer states this version of the dispute between Beit Shammai and Beit Hillel in order to exclude the opinion of Abba Shaul (*Yevamot* 28a), which sets forth an opposite tradition with regard to this dispute (*Tosefot HaRosh*).

A prohibition resulting from a mitzva – איסור מצוה: In addition to the sexual relationships prohibited on the basis of Torah prohibitions, there are additional relationships that are prohibited by rabbinic law. These are called prohibitions resulting from a mitzva, because the basis for the authority of rabbinic prohibitions is the Torah mitzva not to deviate from the words of the Sages, as it is stated: "According to the *halakha* that they shall teach you, and according to the judgment that they shall tell you, you shall do" (*Deuteronomy* 17:11).

A prohibition stemming from sanctity – איסור קדושה: This is referring to a marriage that is prohibited not because of the family relationship between the parties but because of the more elevated level of sanctity of one of the marriage partners. These include the prohibition against the marriage of a native-born Israelite to a *mamzer*, a priest to a divorcée, or a High Priest to a widow.

Levirate bond or negation of the mitzva of levirate marriage – **ויקה או בטול מצות יבום** – *Yosef Lekah* elaborates on both sides of this ancient dispute. It appears in the Jerusalem Talmud and in other places and is formulated as follows: Is *halitza* a mitzva in and of itself or is its purpose only to release one from the levirate bond?

According to the opinion that *halitza* is indeed the fulfillment of a mitzva, one can understand the rationale against negating the mitzva of levirate marriage. By consummating the levirate marriage with one sister, the *yavam* prevents the other sister from performing both the mitzva of *halitza* and of levirate marriage.

If, however, *halitza* merely releases the woman from the levirate bond, it should not matter if that exemption comes from the act of *halitza* or from his marriage to her relative. According to the opinion that *halitza* serves only to release the woman from the levirate bond, it is apparent that the reason for requiring *halitza* here must be due to the levirate bond. Although there is no mitzva involved in performing *halitza*, it is nevertheless necessary, as there is a prohibition against consummating the levirate marriage due to the levirate bond.

If so, three – אי הוי תלתא: This question is based on the assumption of the Gemara that this case should involve three brothers, as all the cases in the continuation of the chapter involve three brothers. For this reason, the Gemara wonders why the number of brothers was increased to four in this mishna (Rashba; Ritva).

It is not necessary, etc. – לא מביעיא וכו': Many early commentaries ask: Why is this question raised specifically with regard to the opinion that the ruling is based on the prohibition against negating the mitzva of levirate marriage, but not with regard to the opinion that the levirate bond is substantial (see Rashi, Rivan, and *Tosafot*)?

The Ramban, in explanation of Rashi's comments, says: According to the opinion that the levirate bond is substantial, there is a novelty to be learned if the case involves specifically four brothers. This is because there is a dispute with regard to whether the levirate bond is substantial only if there is a single brother or even if there are two brothers. Accordingly, in order to teach that the levirate bond is significant even if there are multiple brothers, the case of four brothers is preferable to the case of three brothers.

However, according to the opinion that there is concern for the negation of the mitzva of levirate marriage, it stands to reason that the same concern should exist regardless of the number of brothers. Therefore, if the reasoning behind the ruling in the mishna is that the levirate bond is not substantial, it would have been appropriate to teach the case of three brothers, in order to indicate that although the levirate bond is not substantial, it is nevertheless prohibited to perform levirate marriage. It would then be clear that the rationale behind the ruling is based specifically on the idea that negating the mitzva of levirate marriage should be avoided. However, when the case involves four brothers the underlying rationale is not as clear (Ramban).

גמי' שמע מינה: יש ויקה. דאי אין ויקה, מבדי הני מותרי בהי קאתיין, האי לייבם תדא והאי לייבם תדא!

לעולם אימא לך: אין ויקה, ומשום דקסבר אסור לבטל מצות יבמי; דלמא אדמיבם חד – מיית אידך, וקמבטל מצות יבמי.

אי הכי, תלתא נמי!

לא מביעיא קאמרין; לא מביעיא תלתא, דודאי בטלה מצות יבמי, אבל ארבעה, למיתה לא תיישינן – קא משמע לן.

אי הכי,

GEMARA The Gemara deduces from the *halakha* cited in the mishna: **Conclude from here** that the levirate bondⁿ is substantial. That is, the very obligation of levirate marriage creates a bond that is similar to marriage. **For if the levirate bond were not substantial**, why would these two women not enter into levirate marriage? **After all, these two women come from two households**, as each had a different husband, and they both require levirate marriage. **Let this brother consummate the levirate marriage with one sister and let that brother consummate the levirate marriage with the other sister.** The fact that the mishna requires *halitza* in this situation indicates that the levirate bond is substantial and resembles marriage to the extent that each sister is forbidden to each brother due to the prohibition against marrying the sister of a woman to whom one has a levirate bond.

The Gemara rejects this: **Actually, I could say to you** that according to this *tanna* the levirate bond is not substantial, and yet they are prohibited from entering levirate marriage for a different reason. It is because the *tanna* holds that it is prohibited to negate the mitzva of levirate marriage.ⁿ It is prohibited to act in a way that would lead to a situation where the mitzva to perform levirate marriage is negated. How would this situation arise? **Perhaps before one brother consummates the levirate marriage, the other brother dies**, and only one brother remains. In that case, the second sister would also happen before him for levirate marriage, and by performing levirate marriage with one sister he would thereby negate the mitzva of levirate marriage with the other sister. When the remaining brother marries one of the sisters, the mitzva to enter into levirate marriage or perform *halitza* is automatically negated from the second sister, as she is then forbidden to him as his wife's sister.

The Gemara asks: **If so**, if this is the rationale behind the ruling in the mishna, then the same concern would exist if there were **threeⁿ brothers, as well**. Why did the mishna specify four brothers? It could have cited the case of three brothers, two of whom were married to two sisters. In these circumstances, the concern for negating the mitzva of levirate marriage also exists.

The Gemara answers: Indeed, the ruling would be the same in that case. However, the mishna is speaking utilizing the style of: **It is not necessary. It is not necessaryⁿ** to specify that the women must perform *halitza* in a case involving three brothers, as **certainly the mitzva of levirate marriage is negated** with one of the sisters when the *yavam* marries the other sister. **But** in the case of four brothers, where there is concern only over the possibility that one of the brothers might die, we might have said that **we are not concerned over the possibility of the death** of a brother and therefore allow the brothers to consummate the levirate marriage. The mishna therefore **teaches us** that even in the case where there is concern only for the negation of the mitzva, they must perform *halitza* and not consummate the levirate marriage.

The Gemara asks: **If so**, i.e., if we are concerned over the possibility that the remaining brother might die,

HALAKHA

The levirate bond – ויקה: In accordance with Shmuel's opinion here, the conclusive *halakha* is that the levirate bond is substantial. Although the *halakha* generally follows Rav's opinion in his disputes with Shmuel that pertain to prohibi-

tions, the deliberation of the *amora'im* on Shmuel's opinion indicates that the *halakha* should be ruled according to him (Rosh; Rambam *Sefer Nashim, Hilkhot Yibbum* 1:13; *Shulhan Arukh, Even HaEzer* 159:5).

חַמְשָׁה נָמִי לְמִיתָה דְּתָרֵי לָא חַיִּישִׁינָן.

אָמַר רַבָּא בְרַ רַב הוּנָא אָמַר רַב: שְׁלֹשׁ אֲחִיּוֹת יָבְמוֹת שָׁנְפְלוּ לְפָנֵי שְׁנֵי אַחִין יָבְמִין, זֶה חוֹלֵץ לְאַחַת, וְזֶה חוֹלֵץ לְאַחַת, וְאִמְצָעִית צְרִיכָה חֲלִיצָה מִשְׁנֵיהֶם.

אָמַר לִיה רַבָּה: מִדְּקָאֲמַרְתָּ אִמְצָעִית צְרִיכָה חֲלִיצָה מִשְׁנֵיהֶם – קְסָבְרָתָּ יֵשׁ זִיקָה, וְהוּא לָהּ חֲלִיצָה פְּסוּלָה, וְחֲלִיצָה פְּסוּלָה צְרִיךְ לְחֹזֵר עַל כָּל הָאֲחִין.

אִי הָכִי, קַמְיִיתָא נָמִי!

אִי דְנִפְּלוּ בְּבַת אַחַת – הָכִי נָמִי, לָא צְרִיכָא דְנִפְּלוּ בְּזוּ אַחֵר זוּ.

נִפְּלָה חֵדָא – חֵלֵץ לָהּ רְאוּבֵן, נִפְּלָה אֵידֶךָ חֵלֵץ לָהּ שְׁמֻעוֹן.

then this should also be true in a case of five brothers, two of whom were married to two sisters and died, and their wives happened before the three remaining brothers for levirate marriage. The Gemara answers: **We are not concerned over the possibility of the death of twoⁿ brothers** in such a short period of time.

S Rava bar Rav Huna said that Rav said: In a case where three sisters who were married to three brothers became *yevamot* and happened before two remaining brothers who were their *yevamin* for levirate marriage, then this one brother performs *halitza* with one of the women, and that brother performs *halitza* with another one of the women. **And the middle, i.e., third, sister requires *halitza* with both of the brothers.**

Rabba said to them: From the fact that you say that the middle one requires *halitza* with both of the brothers, it can be deduced that you hold that the levirate bond is substantial and creates a familial relationship, and similarly this *halitza* performed by each of the brothers with the third sister is invalid *halitza*.^{NI} Since the third woman is the sister of a woman with whom he performed *halitza*, it is not possible to consummate the levirate marriage with her. Therefore, the *halitza* performed with her is not entirely valid and does not release her from the levirate bond between her and the two brothers. **And there is a principle that invalid *halitza*^N must be repeated by all of the brothers;** each of them must perform an act of *halitza* with this woman.

The Gemara asks: **If that is so, the first two women should also require *halitza* from each of the brothers** because each act of *halitza* was invalid, as each woman has the status of the sister of a woman with whom the man has a levirate bond, and it is therefore prohibited for the men to consummate the levirate marriage with them.

The Gemara responds: **If the case is that they, i.e., the sisters, happened before the brothers simultaneously,^N it is indeed so** that the two brothers would each be obligated to perform *halitza* with each of the three sisters. This *halakha* is necessary only in the case where they happened before the brothers, one after the other.

How so? **One sister happened before the brothers for levirate marriage and then Reuven, one of the brothers, performed valid *halitza* with her. Another sister happened before the brothers for levirate marriage, and the brother Shimon performed *halitza* with her.** In this case, Shimon was allowed to consummate the levirate marriage with her if he so desired, as she had no family relationship to him at all. When Reuven performed *halitza* with the first sister, he removed the levirate bond between her and the other brothers, such that Shimon has no relationship with the first sister at all and is free to marry the second sister. Therefore, when he performed *halitza*, the act was valid.

HALAKHA

Invalid *halitza* – חֲלִיצָה פְּסוּלָה: The early authorities offer two definitions of invalid *halitza*. The most common understanding is that in any case where the *yevama* is prohibited from consummating the levirate marriage but still requires *halitza*, that *halitza* is regarded as invalid and must be performed by all the brothers (Rashi; Rambam; see Vilna Gaon). The Rema,

following *Tosafot*, writes that invalid *halitza* occurs only when the relevant prohibition directly weakens the levirate bond, such as is the case when a *yavam* has a levirate bond with two sisters (Rambam *Sefer Nashim*, *Hilkhot Yibbum* 7:9; *Shulhan Arukh*, *Even HaEzer* 170:5).

NOTES

We are not concerned over the possibility of the death of two – לְמִיתָה דְּתָרֵי לָא חַיִּישִׁינָן: The Ritva writes that even according to those who hold that there might be legitimate concern over the possibility of two deaths, this is a case of a rabbinic decree that prohibits the negation of the mitzva of levirate marriage, where there need not be concerned for such a possibility.

Invalid *halitza* – חֲלִיצָה פְּסוּלָה: The early commentaries dispute what constitutes invalid *halitza*. According to one opinion, *halitza* performed in a case where the *yavam* is prohibited from consummating the levirate marriage and the sister-in-law still requires *halitza* is invalid *halitza*. It must be performed by all the brothers before the *yevama* is permitted to remarry (Rashi; see Rambam).

According to *Tosafot*, however, invalid *halitza* occurs only when the prohibition that precludes the possibility of performing levirate marriage directly weakens the levirate bond. The present case in the Gemara serves as an example: The woman requiring levirate marriage from the *yavam* is the sister of a woman who already underwent *halitza* with him. If consummation of the levirate marriage is prohibited for a reason unrelated to her status as a *yevama*, such as when the initial marriage of the *yevama* was licentious due to her being her husband's remarried divorcée (see 11b), the proposed *halitza* is not termed invalid and she needs to perform it only with one brother. The later commentaries discuss extensively how this dispute reflects a general question about the essence of *halitza* (*Hiddushei Rav Shimon Shkop*; *Arza deVei Rav*).

The Ramban, following the Jerusalem Talmud, explains why invalid *halitza* must be performed with all the brothers: Ordinary *halitza* has two aspects. In one way it is similar to levirate marriage in that it a mitzva performed with one of the *yevamot* that concludes the levirate bond with both the *halitza* and her rival wives. However, *halitza* also bears resemblance to divorce in that it nullifies the connection between the *yavam* and the *yevama*. Invalid *halitza* is limited in that it only operates in this second way and therefore the woman needs to sever her connection to each *yavam* separately.

The levirate bond is substantial... invalid *halitza*, etc. – יֵשׁ זִיקָה... חֲלִיצָה פְּסוּלָה וְכוּ: The Ritva and the Meiri explain that only if one maintains that the levirate bond is substantial is it possible to say that there was invalid *halitza* and the *yevama* must repeat the *halitza* with each of the *yevamin*. If, however, there is no levirate bond, then even invalid *halitza* suffices to release the sister-in-law. However, from a discussion in the Jerusalem Talmud it would seem that these are two separate questions: First, is the *halitza* an act of acquisition or release? Second, is the levirate bond an act of acquisition?

If the case is that they happened simultaneously – אִי דְנִפְּלוּ אַחַת בְּבַת אַחַת: *Tosafot* comment that if the case is indeed referring to a situation where the two sisters became candidates for levirate marriage with the brothers simultaneously, then it would have been sufficient to state this ruling with regard to only two sisters. In this case, they would also need to repeat the *halitza* with both brothers. Therefore, *Tosafot* raise the question as to why the Gemara specifically chose a case with three brothers. The Ramban writes that although, according to Rav's opinion, it would have sufficed to state this ruling with regard to two sisters, the case of three sisters was necessary according to Shmuel's statement later on. *Tosafot Had Mikamma'ei* and the Meiri say that it was necessary to state the case of three sisters in order to inform us of a novel ruling: Even the third middle sister, whose levirate bond was weakened because she is the sister of a woman with whom he performed *halitza*, requires *halitza* from both of the brothers.

NOTES

In accordance with the statement of the one who says that the levirate bond is substantial – לדברי האומר יש ויקה – Most of the early commentaries hold that Rav presented an opinion that was not his own and that he does not accept. Rivan, however, says that there is an amoraic dispute as to whether or not Rav holds that the levirate bond is substantial, and the opinion presented here follows that of the *amora* who maintains that Rav is of the opinion that the levirate bond is substantial (see *Yevamot* 18b).

נפלה אידך חלץ לה האי מפקע ויקתו, חלץ לה האי מפקע ויקתו.

Another third sister then happened before the brothers for levirate marriage. When this first brother performs *halitza* with her, he terminates his levirate bond, and when this second brother performs *halitza* with her, he terminates his levirate bond. However, neither brother can, by performing *halitza*, terminate the other brother's levirate bond because each brother's *halitza* is invalid, as each brother is unable to consummate the levirate marriage in this case. This is due to the woman's status as the sister of a woman with whom he performed *halitza*.

והאמר רב: אין ויקה! לדברי האומר יש ויקה קאמר.

The Gemara asks: How can this statement be cited in the name of Rav? But didn't Rav say: The levirate bond is not substantial. This *halakha*, however, was explained based on the assumption that the levirate bond is substantial. The Gemara answers: Indeed, according to Rav himself it is unnecessary to perform *halitza* with multiple brothers. He, however, states this *halakha* in accordance with the statement of the one who says that the levirate bond is substantial,ⁿ despite the fact that he does not hold this himself.

ושמואל אמר: אחד חולץ לכולן. מבדי שמינין ליה לשמואל דאמר: חליצה מעליא בעינין, דאמר שמואל:

And with regard to the above case Shmuel said a different halakhic ruling: It is sufficient if one brother performs *halitza* with each of the sisters. The Gemara raises a difficulty: But since we have heard that Shmuel said: We require a full-fledged *halitza*, and invalid *halitza* does not result in complete exemption, this ruling is difficult. It is not clear why the invalid *halitza* in this case would be sufficient, as Shmuel said:

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HALAKHA

If he performed *halitza* with the sisters the rival wives are not exempt – חלץ לאחיות לא נפטרו צרות: In the case of three brothers, two of whom were married to two sisters, where each had a rival wife, and the brothers died and their wives happened before the third brother for levirate marriage, if the *yavam* performs the act of *halitza* with the rival wives then the sisters are thereby exempt as well. However, if he performs *halitza* with the sisters, the rival wives do not become exempt, in accordance with the opinion of Shmuel as explained by Rav Ashi (Rambam *Sefer Nashim, Hilkhot Yibbum* 7:9; *Shulhan Arukh, Even HaEzer* 170:17, 174:1).

To exempt the woman herself...exempt – מפטרא נפשה: It would seem that even according to those authorities who rule that in the case of invalid *halitza* the woman must repeat the *halitza* with the other brothers, this is required in order to completely nullify the levirate bond and exempt the rival wives. The woman who performed the invalid *halitza*, however, is free of her bond and is permitted to the general public without repeating the *halitza*. At the very least, she is permitted after the fact (see *Beit Shmuel*; Rambam *Sefer Nashim, Hilkhot Yibbum* 5:12; *Shulhan Arukh, Even HaEzer* 170:19).

NOTES

Shimon's *halitza*, a valid *halitza* – חליצה דשמעון חליצה כשרה: Some commentaries say that when Reuven performed *halitza* with the first sister, Shimon's bond with her was completely nullified, and therefore when Shimon performs *halitza* with the second sister it is a completely valid *halitza* (see Rashba). Others explain that even if some aspect of Shimon's original bond with the first sister remains intact, his act of *halitza* with the second sister is nevertheless more efficacious than the *halitza* performed by Reuven (Rivan).

Since most are with him – כיוון דרובה גביה: This follows the principle that in any matter, the majority is equivalent to the entirety (Ritva).

חלץ לאחיות לא נפטרו צרות. היכא דקיימא חליצה דשמעון חליצה כשרה, חליץ לה ראובן חליצה פסולה.

In the case of three brothers, two of whom were married to several women, including two sisters, and the two married brothers later died, and their wives happened before the *yavam* for levirate marriage, if the *yavam* performed *halitza* with the sisters who were among the wives, the rival wives are not thereby exempt.⁴¹ One can deduce from here that since the *yavam* cannot consummate the levirate marriage with the sisters, as each is the sister of a woman with whom he has a levirate bond, then the act of *halitza* is invalid, and invalid *halitza* is ineffective in exempting their rival wives. It is concluded from here that even Shmuel requires valid *halitza*, i.e., *halitza* that occurs when there is a possibility of consummating the levirate marriage. According to this rationale, however, Shmuel's ruling in the above case is difficult: With regard to the second sister, when there exists the possibility for Shimon's *halitza*, i.e., the *halitza* of the second brother who did not yet perform *halitza*, to be a valid *halitza*,ⁿ would it be allowed for Reuven, the brother who already did *halitza* with one sister, to perform invalid *halitza* with her?

מאי "אחד חולץ לכולן" נמי דקאמר – אאמצינית. והא כולן קאמר! כיון דרובה גביה קרי ליה "כולן". ואיבעית אימא: כי קאמר שמואל חליצה מעליא בעינין – הני מילי למפטרי צרתה, אבל מפטרא נפשה – פטרה.

The Gemara resolves this difficulty by reinterpreting Shmuel's statement. What does it mean that it says: One performs *halitza* with each of them, that Shmuel stated? Shmuel says that with regard to the middle one, i.e., the third sister, one of the two brothers performs *halitza* with her. The Gemara asks: But didn't he say: Each of them, indicating that one brother performs *halitza* with all of the sisters? The Gemara answers: Since the brother who performed *halitza* with one sister repeats the act with another, it turns out that most of the acts of *halitza* are performed with him,ⁿ and this is called: With each of them. And if you wish, say a different answer: When Shmuel said we require a full-fledged *halitza*, this applies only to exempt her rival wife by means of that *halitza*. But to exempt the woman herself, even invalid *halitza* would render her exempt.⁴¹ In the case above, since no rival wives are involved, it would be sufficient for one brother to perform *halitza* with each of the sisters.