

NOTES

Due to her – משום לתא דידה – The Sages issued a decree requiring the sister of a woman forbidden as the result of a mitzva to perform *halitza* in order to prevent people from permitting levirate marriage to the forbidden woman herself. This, however, would seem to be a decree to prevent the violation of another decree, which the Sages generally refrained from issuing. However, because this case is dealing with two sisters who are exempt primarily for the same reason, it is considered as if they are both included in one general decree (see Rivan and Rabbi Yehuda al-Madari).

But with regard to a forbidden relative we do not issue a decree – והא גבי ערוה לא גורין – Rashi interprets this question in a straightforward manner: Why is there not a similar decree in the cases of sisters of forbidden relatives (see Ritva)? There are, however, early commentaries who interpret the question as follows: If it turned out that the same woman was both a forbidden relative and forbidden as the result of a mitzva, why would the Sages not issue a decree in this case as well, so that others not come to allow cases where the woman is forbidden by a mitzva alone? They explain the Gemara's answer as asserting that everyone knows that she was exempt from levirate marriage as a forbidden relative. They would not come to think that there was also a prohibition resulting from a mitzva involved (Razah; Ramban; Rashba).

And one who was single – ואחד מופנה – As far as the *halakha* is concerned, it makes no difference if the third brother was single or married to a woman who was not related to his brothers' wives. It states that he was single due to the subsequent *mishnayot*, which also include the rulings pertaining to rival wives. In those cases, it is important to mention that the third brother was married to an unrelated woman, which is not the case in the present mishna (Rivan; Rabbi Yehuda al-Madari; *Nimmukei Yosef*). Others explain that this is stated due to the wording: Woe unto him. If he was single at first, he ends up without any wife at all and is therefore unfortunate. This would not be so if he was married (*Tosafot Yeshanim*; Meiri).

והא אמר רבי שמעון: שתי אחיות
לא חולצות ולא מתניבמות!

גוריה משום איסור מצוה דעלמא.

הא תינח איהי אחותה מאי איכא
למימר? גוריה אחותה משום לתא
דידה.

והא גבי ערוה לא גורין! שאני ערוה
דמגמר גמירי לה אינשי, וקלא אית
לה.

מתני' שלשה אחין, שנים נשואים
שתי אחיות, ואחד מופנה; מת אחד
מבעלי אחיות ועשה בה מופנה
מאמר, ואחר כך מת אחיו השני.

This *halakha* was also taught in the previous mishna (26a), and it is cited in this mishna according to the opinion of Rabbi Shimon. The Gemara asks: **But didn't Rabbi Shimon say: Two sisters neither perform *halitza* nor enter into levirate marriage?** Because these women are eligible for levirate marriage according to Torah law, they are considered the sisters of a woman with whom he has a levirate bond. In this case, Rabbi Shimon exempts them from both *halitza* and levirate marriage. Why, then, does the mishna require them to perform *halitza*?

The Gemara answers: It is a rabbinic decree due to the general case of a prohibition resulting from a mitzva. If they did not perform *halitza* in this case, where they are sisters, there is a concern that people would assume that their exemption from *halitza* stemmed not from their status as sisters but rather due to the prohibition. This would lead to the mistaken conclusion that women who are forbidden due to a mitzva do not require *halitza*. Therefore, the Sages issued a rabbinic decree requiring *halitza* in this case.

The Gemara asks: **This works out well for her, as she is forbidden due to the prohibition resulting from a mitzva.** It is appropriate to require *halitza* with her, to demonstrate that *halitza* is generally applied in cases where there is a prohibition resulting from a mitzva. **But with regard to her sister, what is there to say?** Why must she perform *halitza* as well? The Gemara answers: There is a rabbinic decree with regard to her sister due to her.^N

The Gemara asks: If Rabbi Shimon issues a decree in this case requiring *halitza* for the sister, out of concern for confusion, then there is a difficulty: **But, with regard to a forbidden relative we do not issue a decree^N** requiring *halitza* due to her sister; why does Rabbi Shimon issue a rabbinic decree requiring *halitza* with a woman forbidden due to a prohibition resulting from a mitzva and not with a woman who is a forbidden relative? The Gemara answers: **Forbidden relatives are different, as people learn the *halakhot* pertaining to them** because they are stated explicitly in the Torah and are well known to all, **and the ruling has publicity.** Therefore, there is no concern lest people mistakenly confuse this case with cases of *yevamot* who are not sisters. Prohibitions resulting from mitzvot are not, however, explicit in the Torah, nor are they generally known.

MISHNA In the case of three brothers, two of whom were married to two sisters, and one who was single,^N the following occurred: **The husband of one of the sisters died childless, leaving behind his wife, and the single brother performed levirate betrothal [ma'amar] to this wife.^H** The single brother performed an act of betrothal to the *yevama* but did not yet consummate the marriage by engaging in sexual intercourse. **Afterward, the second brother died, and therefore the second brother's wife, the sister of the betrothed, happened before the single brother for levirate marriage as well.**

HALAKHA

Levirate betrothal and the levirate bond in the case of two sisters – מאמר ויקה בשתי אחיות: There is a case of three brothers, two of whom were married to two sisters, and the husband of one of the sisters died. Afterward, the third brother performed levirate betrothal with the widowed sister, but before he could consummate the levirate marriage with her, the other sister's husband died as well, at which point this

sister happened before the third brother for levirate marriage. In this case, the third brother must send both sisters away. She who received levirate betrothal is sent away with a bill of divorce and *halitza*, and her sister must perform *halitza*. This ruling is in accordance with the statement of Beit Hillel (Rambam *Sefer Nashim, Hilkhot Yibbum* 7:6; *Shulhan Arukh, Even HaEzer* 175:6).

בית שמאי אומרים: אשתו עמו, והלוי תצא משום אחות אשה. ובית הלל אומרים: מוציא את אשתו בגט ובחליצה, ואשת אחיו בחליצה. זו היא שאמרו: אוי לו על אשתו, ואוי לו על אשת אחיו.

In this case, **Beit Shammai say: His wife remains with him.** The woman he betrothed is considered like his wife, and he is not required to divorce her. **And this other woman leaves the yavam and is exempt from levirate marriage as the sister of a wife. Beit Hillel say:** Being as he had not yet entered into marriage with the first woman, he is required to perform levirate marriage with both women. Therefore, **he divorces his wife, i.e.,** the woman to whom he performed levirate betrothal, **with a bill of divorce**, which nullifies levirate betrothal, **and by halitza**, which nullifies the levirate bond. **And, he sends away the wife of his second brother with halitza** as well. They comment: **This is the case that was referred to when the Sages said: Woe unto him^N for his wife and woe unto him for the wife of his brother.** Due to the combination of circumstances, he loses them both.

גמ' "זו היא" למעוטי מאי? למעוטי הך דרבי יהושע, דלא עבדינן כוותיה, אלא אי ברבן גמליאל אי ברבי אלעזר.

GEMARA The Gemara asks: **What does the mishna's formulation of the term: This is, which indicates limitation and exactitude, come to exclude?** The Gemara answers: **It excludes that statement of Rabbi Yehoshua (109a).** There, Rabbi Yehoshua holds that if a man is married to a minor when her sister happens before him for levirate marriage, he must send both of the women away. He said there: **Woe unto him for his wife and woe unto him for the wife of his brother.** From the language in the mishna here, we learn **that we do not act in accordance with his opinion. Rather, we act either in accordance with the opinion of Rabban Gamliel^N or in accordance with the opinion of Rabbi Elazar.** According to the opinion of both of these *tanna'im* in the mishna (109a), despite the conflict between the brother's marriage to the minor and the levirate bond with her sister, there is still a way for him to marry one of the women.

אמר רבי אלעזר: לא תימא מאמר לבית שמאי קונה קנין גמור, דאי בעי לאפוקי סגי לה בגיטא, אלא: מאמר לבית שמאי אינו קונה אלא לדחות בצרה בלבד.

S With regard to the main issue of levirate betrothal, it would seem from this mishna that Beit Shammai hold that levirate betrothal has the legal force of levirate marriage. However, **Rabbi Elazar said: Do not say that levirate betrothal acquires the woman as a full-fledged acquisition according to the opinion of Beit Shammai,^N such that the first woman becomes his wife to the extent that if he wants to divorce her a bill of divorce would suffice without an act of halitza. Rather, for Beit Shammai, levirate betrothal acquires the woman only insofar as it precludes a rival wife from entering levirate marriage.^N** The legal force of levirate betrothal is limited to preventing the rival wife^N of the sister from performing levirate marriage; she is exempt from both levirate marriage and *halitza*.

NOTES

זו היא שאמרו – אי אוי לו: *Nimmukei Yosef* explains that the phrase: Woe unto him, related to the fact this man acquired at the time of levirate betrothal the usufruct property of the woman as well as his brother's property, but now he must return it all.

Tosafot explain that the phrase: Woe unto him, apply only to a situation where one performed an act that should not have led to complications, but events outside of his control caused him to lose everything he had acquired. The *Mei Naftoah* raises an objection: How did the third brother lose out? Had he not performed levirate betrothal he would have been unable to marry either woman, being as they were sisters who happened before him at the same time. He answers that in a case where the brothers were married to other rival wives, were it not for levirate betrothal, he would have been allowed to marry one of the rival wives. After levirate betrothal, however, he may no longer marry any of them.

אי ברבן גמליאל – אי ברבי אלעזר: Although it is later proven that the opinion of Beit Hillel does not accord with that of Rabban Gamliel, and the *halakha* does not accord with his opinion either, here the only deduction that can be made is that the mishna is not in accordance with the opinion of Rabbi Yehoshua. It is only from a different source that

that it can be proven that the *halakha* accords with the opinion of Rabbi Eliezer specifically (Ramban; Rashba).

Do not say that levirate betrothal... according to the opinion of Beit Shammai, etc. – לא תימא מאמר לבית שמאי וכו' – The Jerusalem Talmud presents the opinion of Rabbi Elazar ben Arakh, who does assert that levirate betrothal completely acquires the *yevama*. According to his opinion, levirate betrothal completely establishes the relationship between the *yavam* and the *yevama*, just like sexual intercourse. In the course of the discussion in the Jerusalem Talmud, however, it is proven that Beit Shammai do not accord with this opinion.

In the Jerusalem Talmud, it is explained that Beit Shammai's opinion about the strength of levirate betrothal is the same as Rabbi Shimon's opinion concerning the levirate bond: These bonds are sufficiently effective to prevent the creation of a bond with another woman, e.g., the sister of the *yevama*, but are not sufficient to nullify the levirate bond completely. Therefore, if the *yavam* later wants to divorce the *yevama*, she requires *halitza* (see Ramban and Rashba).

Only insofar as it precludes a rival wife from entering levirate marriage – אלא לדחות בצרה בלבד – The question arises: If levirate betrothal cannot establish the union with the same legal

force as sexual relations, how can it completely preclude the rival wife from performing levirate marriage? One commentary explains that levirate betrothal is equivalent to betrothal in the following matter: If the *yavam* betrothed one sister and then the other happened before him for levirate marriage, he need not divorce his betrothed. Rather, her sister is precluded from levirate marriage and is therefore exempt from it. Nevertheless, levirate betrothal does not terminate the levirate bond with the first sister, and she requires *halitza* if the *yavam* later chooses to divorce this woman (*Tosafot Yeshanim*).

Precluding a rival wife from performing levirate marriage – דחיית צרה: Rashi explains here and throughout this talmudic discussion that the rival wife that the Gemara is referring to is in fact the sister who happened before the *yavam* for levirate marriage. Although these women are not actually rival wives, as each was married to a different brother, the sister is considered a rival wife in this context. However, *Tosafot* and the Meiri explain that the Gemara is referring to an actual rival wife. If the brother was married to two women and the *yavam* performed levirate betrothal with one of them, the levirate betrothal prevents the other wife from entering levirate marriage with the *yavam*.

אמר רבי אבין, אף אגן נמי תנינא: בית שמאי אומרין: יקיימו, קיימו – אין, לכתחלה – לא.

Rabbi Avin said: We, too, learn in the mishna a proof that levirate betrothal is not a full-fledged act of acquisition, even according to Beit Shammai. The mishna at the beginning of this chapter (26a) teaches that when two sisters who are *yevamot* happen before two brothers for levirate marriage, if the brothers married their wives before consulting the court, then **Beit Shammai say: They may maintain them** as their wives. From here it can be deduced: If they already married them, **yes, they may maintain them**. However, marrying them *ab initio*, **no**, this is prohibited due to the prohibition against marrying the sister of a woman with whom one has a levirate bond.

Perek III
Daf 29 Amud b

NOTES

This brother should perform levirate betrothal – הוּא יַעֲשֶׂה מֵאִמְרוֹ: Rashi writes that performing levirate betrothal does not violate a prohibition, but engaging in sexual intercourse does. Similarly, the Rambam holds that there is no prohibition involved in betrothing a woman who is forbidden; the prohibition is only violated by engaging in sexual intercourse. The Rashba adds that only with regard to the special prohibitions relating to priests could an act of betrothal constitute violation of a prohibition. However, the *Smag* and *Sefer HaHinnukh* hold that one violates a Torah prohibition simply by performing betrothal with a forbidden woman. According to their opinion, one must explain that in situations where the mitzva of levirate marriage may be fulfilled, such betrothals are not prohibited (*Keren Ora*). Alternatively, one could explain that betrothals are prohibited only in cases where the sexual intercourse that would follow is forbidden. In this case, however, the sexual intercourse that follows the levirate betrothal would be permitted as the levirate betrothal served to cancel the prohibition (*Yosef Lekah*).

This one should perform levirate betrothal...and that one should perform – הוּא יַעֲשֶׂה מֵאִמְרוֹ...וְהוּא יַעֲשֶׂה: Most of the early commentaries write that it is in fact sufficient for one of the brothers to perform levirate betrothal as this would eliminate the prohibition proscribing the second sister. In *Tosefot HaRosh*, however, it is explained that the Gemara here follows the opinion that we are concerned lest the mitzva of levirate marriage be negated. This concern can be allayed only by both brothers performing levirate betrothal at the same time via an agent. The later commentaries explain that although there is still concern that the levirate marriage may not be consummated, as the fulfillment of the mitzva primarily involves intercourse the levirate betrothal still represents the beginning of the performance of the mitzva, and that is sufficient to allay the concern (*Hiddushei Batra*).

In circumstances where it is forbidden to perform levirate marriage, it does not preclude levirate marriage – הוּא יַעֲשֶׂה מֵאִמְרוֹ: The question arises: If levirate betrothal is effective by Torah law, and there is no Torah prohibition against performing the levirate betrothal, why should it preclude the rival wife from levirate marriage? This can be resolved by stating that the Sages would not instruct one to perform levirate betrothal in order to preclude the possibility of levirate marriage in a case where rabbinic prohibitions are involved (*Tosefot HaRosh*).

ואי סלקא דעתך מאמר לביית שמאי קונה קנין גמור – זה יעשה מאמר ויקנה, וזה יעשה מאמר ויקנה!

And if it enters your mind that according to Beit Shammai levirate betrothal acquires the woman as a full-fledged acquisition, then this matter could potentially have been resolved *ab initio*: **This brother should perform levirate betrothalⁿ and acquire one sister, and that brother should perform levirate betrothal and acquire the other sister.** As there is no prohibition whatsoever involved in performing levirate betrothal, the concern for violating a prohibition by consummating the levirate marriage with a sister of a woman with whom he has a levirate bond is avoided; he only betroths her, but does not engage in sexual intercourse with her. After the betrothal, the levirate bond of her sister is dissolved and he can freely consummate the levirate marriage with her.

אלא מאי – דוחה דחיה גמורה? זה יעשה מאמר וידחה, וזה יעשה מאמר וידחה.

The Gemara objects: **Rather, what then?** If levirate betrothal does not serve to fully acquire the woman, what is the alternative? It must be that according to Beit Shammai levirate betrothal **precludes** the rival wife from entering levirate marriage with a **complete preclusion**. If so, there is an additional potential scenario: **This one should perform levirate betrothal with one sister and preclude the second sister from entering levirate marriage, and that one should performⁿ levirate betrothal with the second sister and preclude the first sister from entering levirate marriage.** In this way, the *yevamin* can consummate the levirate marriage with the sisters *ab initio* as well. Yet the mishna does not allow for this possibility.

אלא מאי אית לך למימר: מאמר דהתיירא – דחי, דאיסורא – לא דחי – הכי נמי: מאמר, אפילו למאן דאמר מאמר קונה קנין גמור, מאמר דהתיירא – קני דאיסורא – לא קני.

Rather, what have you to say? One must assert that levirate betrothal performed in circumstances where it is permitted to perform levirate marriage, i.e. where there is no prohibition with regard to the close relative of a woman with whom the *yavam* has a levirate bond, completely **precludes** the rival wife from entering levirate marriage. However, levirate betrothal performed in circumstances where it is **forbidden** to perform levirate marriage, **does not preclude** entering levirate marriage.ⁿ Therefore, in the case of two sisters who happen simultaneously before two brothers for levirate marriage, the sisters cannot be precluded from entering levirate marriage via levirate betrothal. **So too** here, with regard to **levirate betrothal** performed by the third brother, the same distinction can be made. **Even according to the one who said that levirate betrothal acquires a woman as a full-fledged acquisition**, just like marriage, there is the following difference: **Levirate betrothal under permitted circumstances acquires the woman, but levirate betrothal under forbidden circumstances does not acquire the woman.** Therefore, there is no proof as to the nature of levirate betrothal according to the opinion of Beit Shammai from the first mishna in the chapter.

רב אשי מתני הכי אמר רבי אלעזר: לא תימא מאמר לבית שמאי דחי דחיייה גמורה, וצרתה חליצה נמי לא בעיא, אלא דוחה ומשייר הוא.

Rav Ashi teaches this discourse in this manner: Rabbi Elazar said: Do not say that according to Beit Shammai levirate betrothal precludes entering levirate marriage as a complete preclusion, so that the rival wife of the woman who received levirate betrothal does not require even *halitza*. Rather, it precludes entering levirate marriage and yet leaves a remnant of the levirate bond in place. Accordingly, levirate betrothal precludes the rival wife's entering levirate marriage to the degree that the *yavam* is not required to divorce the woman he betrothed, but the levirate bond with the rival wife remains to the extent that he must still perform *halitza* with her.

אמר רבי אבין: אף אנן נמי תנינא: בית שמאי אומרים: יקיימו. יקיימו - אין, לכתחלה - לא. ואי סלקא דעתך מאמר לבית שמאי דוחה דחיייה גמורה - זה יעשה מאמר וידחה, וזה יעשה מאמר וידחה! ואלא הא קתני, בית שמאי אומרים: אשתו עמו, והלזו תצא משום אחות אשה!

Rabbi Avin said: We, too, learn this statement from the mishna, where it states: Beit Shammai say: They may maintain them as their wives. From here it can be deduced: Yes, they may maintain them as their wives after the fact; no, they are not allowed to marry them *ab initio*. And if it enters your mind to say that, according to Beit Shammai, levirate betrothal precludes entering levirate marriage as a complete preclusion, then this brother should perform levirate betrothal and preclude one sister from levirate marriage, and that brother should perform levirate betrothal and preclude the other sister from levirate marriage. The Gemara challenges this conclusion: But didn't the mishna teach that Beit Shammai say: His wife remains with him, and this other is sent away due to her status as a sister of his wife? This indicates that she is exempt from levirate marriage and does not even require *halitza*.

אלא: יבמה דחויא לכולהו - תויא למקצתה. יבמה דלא תויא לכולהו - לא תויא למקצתה.

Rather, one must resolve this by asserting that a *yevama* who is suitable for all of the aspects of levirate marriage is also suitable for part of it. If a *yevama* is eligible for both levirate marriage and *halitza* when she happens before the brothers, as in the case cited in the present mishna where the woman who happened before the third brother was permitted to enter into levirate marriage, she is eligible for part of it. This indicates that if the *yavam* does not take her in levirate marriage but performs only levirate betrothal, the levirate betrothal has sufficient legal force to preclude the rival wife completely. However, a *yevama* who is not suitable for all of the aspects of levirate marriage is also not suitable for a part of it. If the *yevama* is not eligible for levirate marriage, such as in the case referred to in the first mishna of this chapter, where both women happened simultaneously so that the *yavam* is not permitted to consummate the levirate marriage with either woman, she is not suitable for part of it. In that case, if the *yavam* performs levirate betrothal, it does not have the legal force to affect a total preclusion.

בעי רבה: מאמר, לבית שמאי נישואין עושה או אירוסין עושה? אמר ליה אבין: למאי הלכתא?

§ With regard to Beit Shammai's opinion about levirate betrothal, Rabba asks: Does levirate betrothal, according to the opinion of Beit Shammai, create a full-fledged marriage bond? Or, does it merely create betrothal,ⁿ similar to all other acts of betrothal? Abaye said to him: With regard to what *halakha* do you ask this?

NOTES

Does it...create a marriage bond or does it create betrothal – נישואין עושה או אירוסין עושה: The marriage process consists of two steps. The first is the act by which a woman becomes betrothed to a man. The bond created by betrothal is so strong that a betrothed woman requires a divorce before she can marry another man. Similarly, intercourse with other men is considered adulterous and is punishable by death. During the period of betrothal, a

couple may not live together as man and wife, and most of the couple's mutual obligations do not yet apply.

The second step, marriage itself, is effected when the bride and groom enter the bridal canopy. This immediately confers upon the newlywed couple both the privileges and the responsibilities associated with marriage. In modern times, both betrothal and marriage take place during the wedding.

אבלות – Mourning and impurity for a betrothed woman – **אבלות – טומאה בארוסה**: If a man's betrothed dies, he does not enter the state of acute mourning or regular mourning for her, nor does a woman enter acute or regular mourning over the death of her betrothed. If the man is a priest, he may not become ritually impure for her, and she is not obligated to become ritually impure for him (Rambam *Sefer Shofetim, Hilkhhot Evel* 2:3; *Shulḥan Arukh, Yoreh De'á* 373:4, 374:4, *Even HaEzer* 55:5).

מתה אינו יורשה – If she dies he does not inherit from her – **מתה אינו יורשה**: If a man's betrothed dies, he does not inherit from her (Rambam *Sefer Nashim, Hilkhhot Ishut* 22:2; *Shulḥan Arukh, Even HaEzer* 55:5).

If he dies she collects the payment of her marriage contract – מתה היא, גובה כתובתה: If one betroths a woman, writes her a wedding contract, and then dies before he is able to bring her under the wedding canopy, then she may collect the primary dues that are a mandatory part of the contract from his available property, but not the voluntary additions that the husband added from his own accord.

Although some say that the Sages established that every betrothed woman should automatically receive a wedding contract, even if one was not actually written for her (Rosh; Ran), it is not the custom to act in accordance with this opinion, but rather according to the opinion that states that the automatic institution of a wedding contract only applies to married women (Rema; Rambam *Sefer Nashim, Hilkhhot Ishut* 10:11; *Shulḥan Arukh, Even HaEzer* 55:6).

אילימא ליה וליטמא לה ולהפר נדריה – השתא ארוסה בעלמא תני רבי חייא: אשתו ארוסה לא אוגן ולא מטמא לה, וכן היא לא אוננת ולא מטמאת לו, מתה – אינו יורשה, מת הוא – גובה כתובתה, עבד בה מאמר מיבעיא?

ואלא לעגן מסירה לחופה, מאי? נישואין עושה – ולא בעיא מסירה לחופה, או דלמא אירוסין עושה – ובעיא מסירה לחופה!

If we say it pertains to inheriting from her when she dies, and to becoming ritually impure for her^N if he is a priest, and to nullifying her vows,^N all of which are rights and obligations acquired by marriage, this is difficult. Now, with regard to a betrothed woman in general, i.e., a woman who was betrothed by Torah law, Rabbi Hīyya teaches in a *baraita*: **One does not enter acute mourning^N on the day of the death of his betrothed wife, nor can he become ritually impure for her if she dies if he is a priest. Similarly, she does not enter acute mourning for him and is not obligated to become ritually impure for him.^{NH} If she dies, he does not inherit from her;^H if he dies, she collects the payment of her marriage contract;^H In a case where he performed only levirate betrothal with her, is it necessary to say^N that he does not inherit from her, nor does he become ritually impure for her? Therefore, this *halakha* is obvious and Rabba's question seems superfluous.**

Rather, the question must relate to the matter of delivery of the woman to the husband under a wedding canopy.^N What is the ruling with regard to this? Is the *yavam* obligated to enter the wedding canopy in the manner that he would with any other betrothed woman, or not? This is the dilemma: Does levirate betrothal create a full-fledged marriage bond, whereby the *yevama* would not require further delivery to a wedding canopy? Or, does levirate betrothal perhaps create only betrothal, whereby she would require delivery to a wedding canopy?

NOTES

To becoming ritually impure for her – ליטמא לה: Priests are prohibited from contracting ritual impurity through proximity with a corpse. The exception to this principle is the funeral of certain relatives, including wives.

To nullifying her vows – להפר נדריה: The Torah authorizes a husband to nullify vows made by his wife (see Numbers, chapter 30). The vow must be nullified on the same day on which the husband hears of it. A husband is empowered to nullify only those vows which either directly or indirectly affect the personal relationship between him and his wife.

Enter into acute mourning – אוגן: The period of acute mourning begins on the day of the death of a close relative, i.e., a spouse, father, mother, son, daughter, brother, or sister. The mourner is exempt from all positive mitzvot from the time of the death of the close relative until after the burial. At that point, his status changes from that of an acute mourner to that of a mourner.

Not obligated to become ritually impure for him – לא **מיטמאת לו**: There is a halakhic difficulty here, as there is no prohibition against a priestly woman becoming ritually impure for the dead. Why would she not become impure for her husband? Rashi maintains that this phrase is only cited in order to create a parallelism between the obligations of the man and the woman. Additionally he suggests perhaps this is referring to the period of the Festivals, where there is a general prohibition to become impure. The Ritva and other commentaries concur with the *Tosafot*, suggesting that this phrase indicates that the woman is not obligated to become impure for him.

He performed levirate betrothal with her, is it necessary to say – עבד בה מאמר מיבעיא: It would seem from Rashi that even according to Beit Shammai levirate betrothal only has the force of rabbinic law. Many commentaries challenge this opinion from several different sources. For example, it is stated in the Jerusalem Talmud that Beit Shammai derive the obligation to perform levirate betrothal from an explicit verse in the Torah: "And he shall take her" (Deuteronomy 25, 5). The Rashba, therefore, understands that Rashi did not intend to propose that Beit Shammai held levirate betrothal to have the force of rabbinic law, but rather that even according to their opinion that levirate betrothal has the force of Torah law, it is still not equivalent to actual betrothal. For example, a *yevama* who received levirate betrothal is not sentenced to stoning if she commits adultery.

To the matter of delivery to a wedding canopy – לעגן מסירה לחופה: *Tosefot HaRosh* explains, in accordance with *Tosafot*, that this discussion does not refer to a case where the *yavam* performed levirate betrothal alone, but rather to a case where he performed levirate betrothal and also engaged in sexual intercourse. Since a woman is normally not considered to be married unless she willingly enters the wedding canopy, a question arises: When the *yavam* engages in intercourse with her against her will, is there no longer any need for her to willingly enter the wedding canopy, as levirate marriage is effective even without the woman's consent? Or perhaps, as Rabba asserts, once she received levirate betrothal consensually, she is now rendered like any other woman and cannot become his full wife without consenting to marriage?

Nullification of vows for a widow waiting for her *yavam* – **הַפְּרַת נְדָרֵי שׁוֹמֵרַת יָבָם**: With regard to a woman awaiting levirate marriage, the *yavam* may not nullify her vows, whether she is waiting for several *yevamin* or just one, in accordance with the statement of Rabbi Akiva (Rambam *Sefer Hafla'a*, *Hilkhot Nedarim* 11:23; *Shulḥan Arukh*, *Yoreh De'a* 234:7).

Nullification of vows for a betrothed young woman – **הַפְּרַת נְדָרֵי נַעֲרָה מְאוּקָה**: With regard to a betrothed young woman, her father and betrothed nullify her vows together (Rambam *Sefer Hafla'a*, *Hilkhot Nedarim* 11:9; *Shulḥan Arukh*, *Yoreh De'a* 234:5).

NOTES

Rabbi Akiva holds that the levirate bond is not substantial – **רַבִּי עֲקִיבָא קָבַר אֵין זִיקָה** – According to Rashi, Rabbi Akiva holds that the levirate bond is not substantial on any level, and therefore this woman is not considered to be the wife of the *yavam*. Others explain that even Rabbi Akiva agrees that the levirate bond has the force of rabbinic law, but since the nullification of vows is a Torah law, the levirate bond is not effective with regard to these *halakhot* in this case (Rabbi Avraham min HaHar).

With two the levirate bond is not substantial – **לְתַרֵּי אֵין זִיקָה**: Rashi states that in the case of multiple *yevamin*, the levirate bond is weakened. Other commentaries differ and explain that this ruling is due to the fact that nullification of vows entails a clear knowledge of the identity of the husband at the time of the nullification, as retroactive designation does not apply to the *halakhot* of vows. Even if the *yevama* is later married to the brother-in-law who nullified her vows, this clarification is not effectual after the fact.

Howbeit, if you say it creates betrothal, etc. – **אֵלֶּיָא אֵי – אֲמַרְתָּ אִירוּסִין עוֹשֶׂה וְכוּ**: Although Abaye and Rabba discussed only whether levirate betrothal is equivalent to a betrothal by Torah law, here the Gemara seems to entertain the notion that levirate betrothal might be more powerful than standard betrothal, in that the *yavam* would be able to nullify vows on his own (*Tosefot HaRosh*; see Rashba).

אָמַר לִיה: הַשְׁתָּא, לֹא עָבַד בָּהּ מֵאֲמַר כְּתִיב "יְבָמָה יבֹא עֲלֶיהָ", בְּעַל כְּרַחֵךְ, עָבַד בָּהּ מֵאֲמַר מִיְבַעֲיָא?

Abaye said to him that this question is not necessary, as well: Now, if he did not perform levirate betrothal with her at all, it is written: "Her brother-in-law will have intercourse with her" (Deuteronomy 25:5). It is deduced from this verse that he can take her even against her will. Is it necessary to say that if he performed levirate betrothal with her, even without a wedding canopy, that he is allowed to engage in sexual intercourse with her?

אָמַר לִיה: שְׂאֵנִי אֹמֵר כָּל הָעוֹשֶׂה מֵאֲמַר בִּיבְמָתוֹ – פְּרַחָה מִמֶּנּוּ זִיקָתָּ יְבָמִין, וְחָלָה עֲלֶיהָ זִיקָתָּ אִירוּסִין. מֵאֵי?

Rabba said to him: This question is relevant, as I say that anyone who performs levirate betrothal with his *yevama* causes the levirate bond to be removed from him, and he is no longer considered subject to the *halakhot* of levirate marriage. Instead, a standard bond of betrothal applies to him. Therefore, it is appropriate to ask if this act of levirate betrothal is similar to a standard betrothal insofar as the wedding canopy is concerned, and consequently the woman would be required to enter the wedding canopy. Alternatively, perhaps the *halakhot* of levirate marriage still apply somewhat, in which case the woman would not be required to enter a wedding canopy in order to become married, similar to a standard *yevama* to whom levirate betrothal was not performed. Does the performance of levirate betrothal weaken the capacity of intercourse to establish levirate marriage on its own? What is the halakhic ruling here?

תָּא שְׂמַע: שׁוֹמֵרַת יָבָם, בֵּין יָבָם אֶחָד בֵּין שְׁנַי יְבָמִין, רַבִּי אֶלִיעֶזֶר אֹמֵר: יִפְר, רַבִּי יְהוֹשֻׁעַ אֹמֵר: לְאֶחָד וְלֹא לְשְׁנַיִם, רַבִּי עֲקִיבָא אֹמֵר: לֹא לְאֶחָד וְלֹא לְשְׁנַיִם.

The Gemara suggests: Come and hear an answer from what is taught in a mishna (*Nedarim* 74a): What is the ruling with regard to the nullification of vows for a widow who is waiting for her *yavam*,^H whether she is waiting for a single *yavam* or two *yevamin*? Rabbi Eliezer says: Let him nullify her vows. The *yavam* may nullify her vows as though he were her husband. Rabbi Yehoshua says: This holds true only if she is bonded to a single *yavam*, but not to two. Rabbi Akiva says: It does not hold true, neither to one *yavam* nor to two *yevamin*. They may not they nullify her vows.

וְהֵינּוּן בָּהּ: בְּשִׁלְמָא רַבִּי עֲקִיבָא סָבַר: אֵין זִיקָה אֶפְיִלוּ לְחַד, לְרַבִּי יְהוֹשֻׁעַ: לְחַד – יֵשׁ זִיקָה, לְתַרֵּי – אֵין זִיקָה. אֶלֶּיָא לְרַבִּי אֶלִיעֶזֶר, נָהִי נִמִּי דְקָסָבַר יֵשׁ זִיקָה. בְּשִׁלְמָא לְחַד – מִיפְר, אֶלֶּיָא לְתַרֵּי – אֲמַאי?

And we discussed this issue, interpreting the various opinions: Granted, Rabbi Akiva holds that the levirate bond is not substantial,^N even in the case of one *yavam*. In his opinion, the levirate obligation does not create a marriage bond at all, even if there is only a single *yavam*. And according to Rabbi Yehoshua, the levirate bond with one *yavam* is substantial. The *yevama* undoubtedly requires this *yavam* for levirate marriage, and therefore she is considered to be like his wife. But with two *yevamin*, the levirate bond is not substantial,^N since it is not clear which brother will consummate the levirate marriage with her. However, Rabbi Eliezer, if he indeed holds that the levirate bond is substantial, his opinion is difficult. Granted, if there is one *yavam*, he can nullify her vows, but if there are two, why should only one of them suffice to nullify her vows, as it is not yet clear which of them will eventually marry her?

וְאָמַר רַבִּי אֲמִי (בְּר אֶהְבֵּה): הֵכָא בְּמַאי עֲסָקִין – כְּגוֹן דְּעָבַד בָּהּ מֵאֲמַר, וּבֵית שְׂמַאי הֵיא, דְּאָמַר: מֵאֲמַר קוּנָה קִנְיָן גָּמוֹר.

And Rabbi Ami bar Ahava said: With what are we dealing here? This is a case where one of them performed levirate betrothal with her, and this is in accordance with the opinion of Beit Shammai, who say: Levirate betrothal acquires her as a full-fledged acquisition.

אֵי אֲמַרְתָּ בְּשִׁלְמָא נִשְׁוֹאִין עוֹשֶׂה – מְשׁוּם הָכִי מִיפְר, אֶלֶּיָא אֵי אֲמַרְתָּ אִירוּסִין עוֹשֶׂה – הֵיכִי מְצִי מִיפְר? וְהֵתֵּן: נַעֲרָה הַמְּאוּרָסָה אֲבִיָּה וּבַעֲלָהּ מִפְּרִים נְדָרֶיהָ! אָמַר רַב נַחֲמָן בְּר יִצְחָק: מֵאֵי מִיפְר – מִיפְר בְּשׁוֹתְפוֹת.

This interpretation can resolve Rabba's question. Granted, if you say levirate betrothal creates a full-fledged marriage, it is due to that reason that the *yavam* can nullify her vows just as a full-fledged husband does. However, if you say that levirate betrothal merely creates betrothal,^N how can he nullify the vows? Even in standard cases of betrothal by Torah law the husband cannot nullify her vows, for didn't we learn in a mishna: With regard to a betrothed young woman, only her father and her husband together can nullify her vows?^H How could a *yavam* nullify the vows without the father of the *yevama*, if he is not considered a full-fledged husband? Rav Nahman bar Yitzhak said that this proof can be rejected by interpreting the mishna as follows: What is the meaning of the phrase: He nullifies? That he nullifies her vows only in conjunction with her father.

Any woman who makes a vow, etc. – כִּל הַנּוֹדֶרֶת וְכוּי: The commentaries ask: If providing a woman's sustenance is reason enough to justify the husband's ability to nullify his wife's vows, then why was it necessary for the Torah to write the passage on nullification of vows? It must be that this halakhic rationale was established after the Torah explicitly stated the primary ruling with regard to the nullification of vows (*Tosafot Yeshanim*). This idea can be found in a slightly different form in the Responsa of the Rosh, where he says that even though one does not generally interpret the *halakha* based on the underlying rationale of the verses, in the case of nullification of vows, one does utilize the underlying rationale in order to determine how to apply the *halakhot*.

וְלִרְבִּי אֶלְעָזָר, דְּאָמַר: מֵאִמְרוּ לְבֵית שְׁמַאי אֵינוֹ קוֹנֵה אֶלָּא לְדַחוֹת לְצַרָּה בְּלִבָּד, אִמְמַאי מִיִּפְרַר בְּשׁוֹתְפוֹת? אָמַר לֶרְבִּי אֶלְעָזָר: אִימַר דְּאָמְרֵי אָנָּא אֵינוֹ קוֹנֵה אֶלָּא לְדַחוֹת לְצַרָּה בְּלִבָּד – דְּלֵא סָגִי לָהּ בְּגִיטָא אֶלָּא בְּעֵי נַמְי חֲלִיצָה, לְהַפְרֵי נְדָרֶיהָ – מִי אָמְרֵינָן?

וְאִיבְעִית אִימָא, אָמַר לֶרְבִּי אֶלְעָזָר: וְלִרְבִּי נַחְמָן בְּרִי יִצְחָק מִי נִחָא? מִי קִתְּנִי "יִפְרוּ" "יִפְרוּ" קִתְּנִי. אֶלָּא הֵכָא בְּמַאי עָסְקִינָן – שְׁעֵמְדָה בְּדִין וּפְסָקוּ לָהּ מִזְוֹנוֹת מְשֻׁלוּ.

וְכַדְרַב פְּנַחַס מְשֻׁמִּיָּה דְרַבָּא, דְּאָמַר רַב פְּנַחַס מְשֻׁמִּיָּה דְרַבָּא: כָּל הַנּוֹדֶרֶת – עַל דַּעַת בְּעֵלָּהּ הִיא נּוֹדֶרֶת.

The Gemara questions this reading of the mishna: **And according to the opinion of Rabbi Elazar, who said that for Beit Shammai levirate betrothal acquires the woman only insofar as it precludes a rival wife from entering levirate marriage, and it is not a full-fledged acquisition, why should the yavam nullify her vows, even if he does so in conjunction with her father?** The Gemara answers: **Rabbi Eliezer could have said to you: One can say that when I said that levirate betrothal acquires the woman only insofar as it precludes the rival wife from entering levirate marriage, it was to emphasize that a bill of divorce would not suffice for her, but rather she also requires ḥalitza.** However, with regard to the matter of **nullifying her vows, do we say that levirate betrothal is not effective, and that he cannot nullify her vows alone?**

And if you wish, say an alternate explanation: Rabbi Elazar could have said to you: And as for Rav Nahman bar Yitzhak, does this resolution that the mishna is only referring to a case where the father and the yavam can nullify her vows together work out well? Did the mishna teach that they can nullify her vows? It teaches that he can nullify her vows in the singular, implying that he nullifies the vows alone and not in conjunction with anyone else. Rather, the mishna must be explained differently: With what are we dealing here? It is a case where the *yavam*, regardless of whether or not he performed levirate betrothal, did not want to consummate the levirate marriage or perform *ḥalitza*. Therefore, the *yevama* stood in court so as to compel him to consummate the levirate marriage or perform *ḥalitza*, and it ruled that he must supply her sustenance. Because she is bound to him and cannot marry another, the court ruled that he was responsible for her livelihood.

And this is in accordance with the statement that Rav Pineḥas said in the name of Rava, as Rav Pineḥas said in the name of Rava: Any woman who makes a vow,ⁿ makes her vow with the consent of her husband. Because she is dependent upon her husband for her livelihood, she does not act without his consent. In this case, because the *yavam* is responsible to supply the *yevama* with sustenance, it is assumed that her vows are also made with his consent. It is for this reason that he can nullify her vows without her father. Consequently, no conclusive proof can be derived from here with regard to the strength of acquisition through levirate betrothal.

Perek III
Daf 30 Amud a

מתני' שלשה אחין, שנים מהם נשואים שתי אחיות ואחד נשוי נכרית. מת אחד מבעלי אחיות, וכנס נשוי נכרית את אשתו, ומת – הראשונה יוצאה משום אחות אשה, ושניה משום צרתה. עשה בה מאמר ומת – נכרית חולצת ולא מתיבמת.

MISHNA In the case of three brothers, two of whom were married to two sisters and one who was married to an unrelated woman, the following occurred: **The husband of one of the sisters died childless, and the brother who was married to the unrelated woman married, i.e., performed levirate marriage with, the deceased brother's wife and later died himself, childless. In this situation, both women happen for levirate marriage before the other, remaining, brother. The first woman is dismissed due to the prohibition proscribing the sister of one's wife, as she is the sister of this brother's wife, and the second woman is dismissed due to her status as the first woman's rival wife. Following the first levirate marriage, this second woman became the rival wife of the sister, and is therefore exempt from levirate marriage as well. If, however, the brother married to the unrelated woman performed only levirate betrothal, but had not yet consummated the levirate marriage with the sister, and he died, the unrelated woman, whose halakhic status with regard to *yibbum* is similar to that of a sister's rival wife, must perform *ḥalitza* and may not enter into levirate marriage.**