וְאִי נַמִּי זִימְנִין דְּאָתָא אַחֵר וּמְקַדֵּשׁ לָהּ לְדִידָהּ קִדּוּשֵׁי וַדַּאי, וְכֵיוָן דְּאָסַר לָהּ מָר לַצָּרָה לְיַיבּוּמֵי, אָמְרִי: דְּקָמָא – קִדּוּשִׁין וּדְבָתְרָא – לָאו קִדּוּשִׁין.

Alternatively, sometimes another man might come and betroth the forbidden relative **herself** with **a betrothal** whose status is **certain, and since the Master** rendered it **prohibited** for **the rival wife to enter into levirate marriage,** people would **say** that the betrothal **of the first** man, i.e., the deceased brother, was a fully effective **betrothal, and** that the betrothal **of the latter** man **was not** a valid **betrothal.** If she was married to the first man, then she is forbidden to the second as the man's wife, and betrothal cannot take effect with her. However, since the status of her betrothal to the first man was uncertain, then she is also considered possibly betrothed to the second man and would require a divorce from him as well. As a result, one can find a situation that would lead people to think that a man's wife is in fact permitted.

Perek **III**
Daf **31** Amud **a**

NOTES

All will know that this is merely a stringency – וּמֵיַדַּע דְּיָדְעִי דְּחוּמְרָא בְּעָלְמָא הוּא: The Rosh raises an objection: How would they know that this is a stringency? With regard to the case where there is a betrothal whose status is uncertain, if the rival wife is required to perform *ḥalitza* because she is not exempt from levirate marriage, it would be known that this is a stringent measure. With regard to divorce, however, they might think that the man is performing the *ḥalitza* simply because he does not wish to marry her for some other reason, and so there is no proof from here that there is a stringency involved. He resolves this by saying that Abaye is objecting to Rabba's line of reasoning, where it was suggested that requiring *ḥalitza* would constitute a stringency that could lead to a leniency. In that context it was clear that Rabba assumed that people were aware of why *ḥalitza* was being performed (*Tosefot HaRosh*).

If she performs *ḥalitza* she might also enter into levirate marriage – אִם חוֹלֶצֶת מִתְיַיבֶּמֶת: The following objection could be raised: Since in several places the Sages declared that a woman must perform *ḥalitza* due to some doubt, why did they not fear that she might mistakenly enter into levirate marriage in those cases as well? The commentaries resolve this by saying that if the concern and the doubt are general, then there is no reason to assume that they might make this mistake. Here, however, a new decree is being introduced by requiring *ḥalitza* for this woman, and therefore it is necessary to check that in fact all of the problems are solved thereby (*Yosef Lekaḥ*).

Let her enter into levirate marriage and there is no problem with that – תִּתְיַיבֵּם וְאֵין בְּכָךְ כְּלוּם: The talmudic discussion is as follows: Initially, the Gemara assumed that the concern lest she enter into levirate marriage was that this would nullify the rabbinic decree requiring the woman to perform *ḥalitza* in this case. This response indicates that the concern is not for the rabbinic ordinance, but rather for the status of the woman, and since here she is presumed permissible, there is no reason to be concerned lest she enter into levirate marriage (Ritva; see *Melo HaRo'im*).

כֵּיוָן דְּקָא מַצְרֵכְתְּ חֲלִיצָה – מֵידַע יָדְעִי דְּחוּמְרָא בְּעָלְמָא הוּא. אִי הָכִי גֵּירוּשִׁין נַמִּי לִיתְנֵי, וְלִיצְרְכָהּ חֲלִיצָה, וּמֵידַע יָדְעִי דְּחוּמְרָא בְּעָלְמָא הוּא!

Rabba answered: **Since you require *ḥalitza*** and you do not exempt her completely, all will **know that this is merely a stringency**[N] and that the Sages did not decide with certitude that the first betrothal was fully valid. Consequently, they would not come to disregard the other betrothal. Abaye raised a challenge: **If so, let** the mishna **teach** the case where it is uncertain whether the item is closer to him or closer to her with regard to **divorce, and** stipulate **that she requires *ḥalitza*. And they would know that this is merely a stringency** and not make a mistake.

אִם אַתָּה אוֹמֵר חוֹלֶצֶת – מִתְיַיבֶּמֶת. הָכָא נַמִּי: אִם אַתָּה אוֹמֵר חוֹלֶצֶת – מִתְיַיבֶּמֶת! וְתִתְיַיבֵּם, וְאֵין בְּכָךְ כְּלוּם – אַחֲזָקָה קָא קָיְימָא.

He answered him: A mistake could in fact be made here, as, **if you say that she** must **perform *ḥalitza*** then **she** may also **enter into levirate marriage.** People might mistakenly think that if she is suitable for *ḥalitza* then she is also suitable for levirate marriage, and as a result the woman might enter into levirate marriage, despite the fact that it is forbidden for her to do so. Abaye objected: **Here too,** in the case of uncertain betrothal, the concern exists that **if you say that she performs *ḥalitza*** then **she** might also **enter into levirate marriage.**[N] Rabba answered: **So let her enter into levirate marriage, and** there is **no** problem **with that.**[N] In this instance **she remains with** her **presumptive status** as permitted because she was originally assumed to be permitted and was rendered forbidden only due to our concern. However, there would be no actual transgression involved even if she were to enter into levirate marriage.

אֵיתִיבֵיהּ אַבַּיֵי: נָפַל הַבַּיִת עָלָיו וְעַל בַּת אָחִיו, וְאֵין יָדוּעַ אֵיזֶה מֵהֶם מֵת רִאשׁוֹן – צָרָתָהּ חוֹלֶצֶת וְלֹא מִתְיַיבֶּמֶת.

Abaye raised an objection to Rabba by citing a case where even in places of doubt, the woman requires *ḥalitza*. As we learned in a mishna (67b): **A house fell on him,** on a certain man, **and on his brother's daughter** to whom this man was married, and he was childless, **and it is unknown which of them died first.** If the deceased wife had a rival wife, then **her rival wife** must **perform *ḥalitza* but may not enter into levirate marriage.** If the man had died first, then at the time of his death the rival wife was forbidden to the *yavam* as the rival wife of his daughter and exempt from levirate marriage. If, however, the daughter had died first, then at the time of the husband's death the second wife was not the rival wife of a forbidden relative, and requires levirate marriage. It is due to this doubt that she must perform *ḥalitza* and may not enter into levirate marriage.

אַמַּאי? הָכָא נַמִּי נֵימָא: אִשָּׁה זוֹ בְּחֶזְקַת הָיְתָה לַשּׁוּק עוֹמֶדֶת, וּמְסָפֵק אַתָּה בָּא לְאוֹסְרָהּ – אַל תַּאַסְרֶנָּה מְסָפֵק!

And according to Rabba's opinion, **why** is that so? **Here too, let us say: This woman,** the rival wife, **has the presumptive status of** being **permitted** to marry a man **from the** general **public.** This is because she was exempt from levirate marriage for the entire period of her marriage as the rival wife of a forbidden relative. **And due to the uncertainty** whether her rival wife was the first to die **you come to render her forbidden** and require that she perform *ḥalitza*. **Do not render her forbidden due to an uncertainty.**

וְכִי תֵּימָא: הָכָא נַמִּי לְחוּמְרָא – חוּמְרָא דְּאָתֵי לִידֵי קוּלָּא הוּא, שֶׁאִם אַתָּה אוֹמֵר חוֹלָצֶת – מִתְיַיבֶּמֶת! גֵּירוּשִׁין דִּשְׁכִיחִי גָּזְרוּ בְּהוּ רַבָּנַן, מַפּוֹלֶת דְּלָא שְׁכִיחִי – לָא גָּזְרוּ בְּהוּ רַבָּנַן.

And if you would say: Here too, we rule **more stringently** due to the uncertainty. Nevertheless, **this would be a stringency that brings about a leniency, for if you say that she** must **perform *ḥalitza*, she may** also **enter into levirate marriage.** However, it is forbidden for her to enter into levirate marriage, because she is possibly forbidden to the *yavam* as the rival wife of his daughter and therefore forbidden just like the daughter herself. Rabba replied: In cases of **divorce, which are common, the Sages issued a rabbinic decree** preventing her from performing *ḥalitza* due to a concern that if she were required to perform *ḥalitza* then she may enter into levirate marriage as well. In cases of **collapse, which are not common,**[N] **the Sages did not issue a rabbinic decree,** because they did not introduce decrees with regard to uncommon matters.

אִי נַמִּי: גֵּירוּשִׁין דְּקַיְימָא עָרְוָה דְּקָא מוֹכַח, וְצָרְתָהּ קָמַצְרְכַתְּ לָהּ חֲלִיצָה – אָמְרִי: קָמוּ בֵּיהּ רַבָּנַן בְּגִיטָּא דְּגִיטָּא מַעֲלְיָא הוּא, וְאָתוּ לְמֵיבּוּמֵי לַצָּרָה. מַפּוֹלֶת – מִי קָמוּ בְּהוּ רַבָּנַן בְּמַפּוֹלֶת?

Alternatively, there is another reason to differentiate between the cases. In the case of **divorce where there is a forbidden relative who indicates** that the rival wife is forbidden due to her status as the rival wife of a forbidden relative, **and you require that her rival wife perform *ḥalitza*,** people **will say: The Sages determined that this bill of divorce is a full-fledged bill of divorce.** Consequently, they required her rival wife to perform *ḥalitza*, **and** people **may come to consummate the levirate marriage with the rival wife** based on this mistaken assumption. In cases of **collapse,** however, **could the Sages have determined** who died first **in the collapse?** As it is known to all that there was a doubt that could not be clarified, it is clear that the Sages required the rival wife to perform *ḥalitza* only due to this uncertainty. Therefore, there is no concern that she would come to enter into levirate marriage because of this *ḥalitza*.

וְגַבֵּי גֵּירוּשִׁין מִי לָא תְּנַן? וְהָתְנַן: הָיְתָה עוֹמֶדֶת בִּרְשׁוּת הָרַבִּים וּזְרָקוֹ לָהּ, קָרוֹב לָהּ – מְגוֹרֶשֶׁת, קָרוֹב לוֹ – אֵינָהּ מְגוֹרֶשֶׁת. מֶחֱצָה עַל מֶחֱצָה – מְגוֹרֶשֶׁת וְאֵינָהּ מְגוֹרֶשֶׁת.

The Gemara asks: **But did we not learn** in a mishna about the case where it is uncertain whether the bill of divorce is closer to him or closer to her **with regard to** situations of **divorce** whose status is uncertain? **And didn't we learn** in a mishna: In a case where his wife **was standing in the public domain and he threw her** the bill of divorce, if the bill landed **closer to her, she is divorced.** If it was **closer to him, she is not divorced.** If it was **half and half,** i.e., if the bill of divorce landed midway between the man and the woman, there is uncertainty whether **she is divorced or** whether **she is not divorced.**[H]

וְאָמְרִינַן: לְמַאי הִלְכְתָא – דְּאִי כֹּהֵן הוּא אֲסוּרָה לֵיהּ, וְאִי עֶרְוָה הִיא – צָרָתָהּ בָּעֵיָא חֲלִיצָה. וְלָא אָמְרִינַן שֶׁאִם אַתָּה אוֹמֵר חוֹלָצֶת מִתְיַיבֶּמֶת!

And we say: With regard to what *halakha* [N] was the ruling said that she is both divorced and not divorced? The Gemara explains that this affects two areas of *halakha*. The first is **that if** the man divorcing his wife **is a priest,** then his wife **is forbidden to him** due to the uncertainty that she may in fact be divorced through that bill of divorce. Consequently, he would then be unable to remarry her. The second ramification is that **if** the woman being divorced **was a forbidden relative** to her husband's brother, and her husband died childless, then **her rival wife would require *ḥalitza*.** The mishna indicates that in this type of divorce whose status is uncertain as well, the Sages require the rival wife to perform *ḥalitza*, and **we do not say that if you say** that **she** must **perform *ḥalitza*,** she may **enter into levirate marriage.** Here there is no such concern.

HALAKHA

A bill of divorce about which it is uncertain if it was closer to her – גֵּט שֶׁסָּפַק קָרוֹב לָהּ: If a man and his wife were standing in the public domain, or in a domain that did not belong to either of them, and the husband threw her a bill of divorce, the *halakha* is as follows: If it was closer to her, she is divorced. If it was closer to him, she is not divorced. If it was midway between them, she is both divorced and not divorced. In such a case, if her husband was a priest she would be forbidden to him, and if she herself was a forbidden relative with regard to her brother-in-law, then her rival wife must perform *ḥalitza* and may not enter into levirate marriage (Rambam *Sefer Nashim*, *Hilkhot Geirushin* 5:13; *Shulḥan Arukh*, *Even HaEzer* 139:13).

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Cases of collapse, which are not common – מַפּוֹלֶת דְּלָא שְׁכִיחִי: The Rashash raises an objection: If the Sages did not enact rabbinic decrees for matters that were not common, then why did they nevertheless issue a decree for the woman in this case, i.e., that she must perform *ḥalitza*? He responds that they decreed that she must perform *ḥalitza* for a different reason that is common: They were concerned that others might conclude that any time a forbidden relative dies, the rival wife does not require *ḥalitza*. In *Ḥiddushei Batra* this is resolved by the explanation that in cases where the woman's presumptive status cannot be conclusively determined, it cannot be relied upon with regard to Torah law. In this case, as there is no way to determine whether the rival wife was the rival wife of a forbidden relative at the time of death, her presumptive status cannot be relied upon and she must perform *ḥalitza*. However, the concern that others might mistakenly take her in levirate marriage is not commonplace, and therefore the Sages did not enact a decree on the basis of such a concern.

And we say: With regard to what *halakha* – וְאָמְרִינַן לְמַאי הִלְכְתָא: One could object to this interpretation of the mishna in light of the fact that it was asserted by the *amora'im*. How can the Gemara then object to Rabba, an *amora* himself, from their statement? In *Ḥiddushei Batra* the answer is given that perhaps this interpretation of the mishna was an authoritative tradition that had been passed down. *Arukh LaNer* writes that this interpretation could be deduced from the language of the mishna itself, since it does not state that she is a divorcée whose status is uncertain but rather that she is both divorced and not divorced, implying that the matter must be ruled stringently, as though she were both divorced and not divorced.

הָא אִיתְּמַר עֲלָהּ, רַבָּה וְרַב יוֹסֵף דְּאָמְרִי תַּרְוַויְיהוּ: הָכָא בִּשְׁתֵּי כִּיתֵּי עֵדִים עָסְקִינַן, אַחַת אוֹמֶרֶת: קָרוֹב לָהּ, וְאַחַת אוֹמֶרֶת: קָרוֹב לוֹ, דַּהֲוָה לֵיהּ סְפֵיקָא דְּאוֹרַיְיתָא. וּמַתְנִיתִין דְּהָכָא בְּכַת אַחַת, דַּהֲוָה לֵיהּ סְפֵיקָא דְּרַבָּנַן.

The Gemara responds: **But wasn't it stated with regard to** that mishna that this is referring to a very specific set of circumstances? It is **Rabba and Rav Yosef who both say:** The doubt here does not result from the facts of the case themselves, but from conflicting testimonies and an inability to decide between them. **Here, we are dealing with two sets of witnesses, one** of which **says** that the bill fell **closer to her, and one** of which **says** that it fell **closer to him. This,** then, **is an uncertainty** in matters **of Torah** law, for in this case there are two testimonies, each one complete by itself, yet they contradict one another. Such instances are deemed to have the status of an uncertainty with regard to Torah law, and therefore the ruling is stringent. **But the mishna here is referring to one set**[N] of witnesses who were divided in their testimony or who could not clarify exactly what had occurred. **This is** considered to be an **uncertainty** in matters **of rabbinic** law[N] alone, as there is only a single uncorroborated testimony, and in cases of uncertainty in matters of rabbinic law the ruling is lenient.

וּמִמַּאי דְּמַתְנִיתִין דְּהָכָא בְּכַת אַחַת? דּוּמְיָא דְּקִדּוּשִׁין, מַה קִּדּוּשִׁין בְּכַת אַחַת – אַף גֵּרוּשִׁין בְּכַת אַחַת. וְקִדּוּשִׁין גּוּפַיְיהוּ מִמַּאי דִּבְכַת אַחַת, דִּלְמָא בִּשְׁתֵּי כִּיתֵּי עֵדִים? אִי בִּשְׁתֵּי כִּיתֵּי עֵדִים – תִּתְיַיבֵּם, וְאֵין בְּכָךְ כְּלוּם.

The Gemara asks: **And from where** is it known **that the mishna here** is referring to a case of uncertainty **with one set** of witnesses? The Gemara responds: **It is similar to that of betrothal. Just as** with regard to **betrothal** it is referring to a case of uncertainty **with one set of witnesses, so too,** with regard to **divorce** it is referring to a case **of one set** of witnesses. The Gemara wonders: **And** with regard to **betrothal itself, from where** is it known that the mishna is referring to a case of uncertainty **that** involves **one set** of witnesses? **Perhaps** it is referring to a case **of two sets** of witnesses? The Gemara answers: **If** the mishna is referring to a case **of two sets of witnesses** who contradict one another, then **let her enter into levirate marriage, and** there is **no** problem **with that,** as there are two witnesses testifying that there was never a betrothal. Therefore, both the cases of betrothal and divorce must be referring to a situation where there is one set of witnesses.

קַיְימֵי עֵדִים וְקָאָמְרִי ״קָרוֹב לָהּ״ וְאַתְּ אָמְרַתְּ תִּתְיַיבֵּם וְאֵין בְּכָךְ כְּלוּם?! וְתוּ: בִּשְׁתֵּי כִּיתֵּי עֵדִים נַמִּי סְפֵיקָא דְּרַבָּנַן הִיא, דְּאָמְרִינַן: אוֹקֵי תְּרֵי לְבַהֲדֵי תְּרֵי, וְאִשָּׁה אוֹקְמָהּ אַחֲזָקָה.

The Gemara challenges: How can one say that? After all, **there are witnesses who are standing** before us **and saying** that the object of betrothal fell **closer to her.** Accordingly, she was betrothed and her rival wife is the rival wife of a forbidden relative. **And** yet **you say to let her enter into levirate marriage and** there is **no** problem **with that? And furthermore,** with regard to the fundamental difference between two pairs of witnesses and a single pair, the case **of two pairs of witnesses is also** considered an **uncertainty** in matters of **rabbinic** law. This is not considered to be uncertainty with regard to the reality of what actually happened, which would be a case of uncertainty in matters of Torah law, but rather a contradiction between two opposing testimonies. In these cases **we say: Place two** witnesses **against two**[N] witnesses, and let the two testimonies cancel each other out. Therefore, the *halakha* would be to **let the woman remain in her original presumptive status.** Accordingly, this type of uncertainty stems only from rabbinic law and not from Torah law.

מִידֵּי דַּהֲוָה אַנִּכְסֵי דְּבַר שָׁטְיָא. דְּבַר שָׁטְיָא זַבִּין נִכְסֵי, אָתוּ בֵּי תְּרֵי וְאָמְרִי: כְּשֶׁהוּא חָלִים זַבִּין, וַאֲתוּ בֵּי תְּרֵי וְאָמְרוּ כְּשֶׁהוּא שׁוֹטֶה זַבִּין. וְאָמַר רַב אַשִׁי: אוֹקֵי תְּרֵי לַהֲדֵי תְּרֵי

The Gemara cites a proof for this: This is **just as it is in** the case **concerning the property of** a man named **Bar Shatya,**[HB] who was referred to by this name because he would occasionally go insane. The case is as follows: **Bar Shatya sold property. Two** witnesses **came** forward **and said that he sold** it **when** he was **healthy** and therefore the sale was valid. **And two** others **came** forward **and said that he sold** it **when** he was **insane,** and so the sale was void. **Rav Ashi said** with regard to this matter: **Place two** witnesses **against two** witnesses and let the testimonies cancel each other out. As there is no valid testimony to rely on,

NOTES

The mishna…is referring to one set – מַתְנִיתִין…בְּכַת אַחַת: The commentaries have differing opinions as to what is meant by uncertainty with one set of witnesses. According to Rashi and those who follow his opinion, this is a case where one witness says that the bill of divorce was closer to him and one witness says that it was closer to her. According to Rabbeinu Ḥananel and the Rashba, the witnesses themselves are uncertain with regard to the facts (see *Beit Shmuel* and the later commentaries).

Uncertainty in matters of Torah law…uncertainty in matters of rabbinic law – סְפֵיקָא דְּאוֹרַיְיתָא…סְפֵיקָא דְּרַבָּנַן: In cases of uncertainties that arise either because the exact circumstances cannot be ascertained or because no clear halakhic decision has emerged, the principle is: In cases of Torah law, one adopts the stringent practice; in cases of rabbinic law, one adopts the lenient practice.

Place two against two – אוֹקֵי תְּרֵי לְבַהֲדֵי תְּרֵי: Although it seems here that the Gemara concludes that whenever two witnesses contradict another two witnesses it is considered an uncertainty in matters of rabbinic law, there are nevertheless those who disagree with this opinion and hold that this is considered a case of uncertainty in matters of Torah law. There are also those who differentiate between cases of prohibitions and monetary cases. The basis for this debate lies primarily in the question of whether both testimonies, despite the contradiction between them, nevertheless negate fully the previously existing presumptions altogether, or perhaps, since there is no definitive testimony on the matter, the original presumption remains in place (see *Derush VeḤiddush* on marriage contracts).

HALAKHA

The property of Bar Shatya – נִכְסֵי דְּבַר שָׁטְיָא: With regard to one who is sometimes sane and sometimes insane, when he is sane he is like a fully responsible agent for all matters, and all of his actions are binding. When he is insane, all of his actions are null and void.

If two witnesses come forth and say that he made a sale while insane, and two others testify that he made the sale while sane, any real estate remains in the possession of the seller, and movable property remains in the possession of the possessor (Rema, in accordance with *Tosafot* and Rosh; Rambam *Sefer Kinyan*, *Hilkhot Mekhira* 29:5; *Shulḥan Arukh*, *Ḥoshen Mishpat* 235:21).

BACKGROUND

Bar Shatya – בַּר שָׁטְיָא: Bar Shatya was a man who suffered from a psychological ailment that caused him to suffer periodic fits, but who nevertheless had his wits about him between bouts. In other words, he was sometimes sane and sometimes insane. With some of these ailments the fits occur with relative regularity, and with some they are caused by specific circumstances, but there can most certainly be periods when the individual is sane, lacking any abnormalities in his behavior whatsoever. It is for this reason that the *halakha* concludes that at times of sanity he is considered a normal individual, both with regard to his obligation to fulfill mitzvot and the legal validity of his actions. However, since the bouts of insanity occur at various times, and not always in a manner that is immediately recognizable to all, it is important to determine his mental state at the relevant times in order to ascertain the legal validity of specific actions.

וְאַרְעָא אוֹקְמָא בְּחֶזְקַת בַּר שָׁטְיָא.

let the land remain in the possession of Bar Shatya. Since no substantiated proof was brought forth, the land remains in the hands of its current possessor. As such, the same should be true with regard to cases of betrothal and divorce whose status is uncertain; the woman should remain in her former presumptive status.

אֶלָּא אֲמַר אַבַּיֵי: ״יַגִּיד עָלָיו רֵיעֵהוּ״; תָּנָא בְּקִידּוּשִׁין – וְהוּא הַדִּין לְגֵירוּשִׁין, תָּנָא בְּגֵירוּשִׁין – וְהוּא הַדִּין לְקִידּוּשִׁין.

Rather, Rabba's understanding of the mishna must be rejected, and **Abaye said:** The mishna should be understood according to that which is written: **"His fellow speaks of him"** (Job 36:33). This principle teaches that a related case can be inferred from the single case cited. The mishna **teaches** the case where it is uncertain whether the item is closer to him or closer to her **with regard to betrothal, and the same is true with regard to divorce** if it is uncertain whether the bill of divorce fell closer to him or closer to her. Similarly, the mishna **teaches** the case of bills that were written in a questionable manner **with regard to divorce, and the same is true with regard to betrothal.**

אֲמַר לֵיהּ רָבָא: אִי יַגִּיד עָלָיו רֵיעֵהוּ – מַאי ״זֶהוּ״ דְּקָתָנֵי?

Rava said to him: If you understand that the legal ruling in all of these cases is the same, and the mishna was written in the style of: **His fellow speaks of him,**[N] then **what is** the meaning of the term: **This is, that** the mishna **teaches?** The mishna in fact emphasizes that this is a betrothal whose status is uncertain and this is a divorce whose status is uncertain, which indicates this case alone and no other.

אֶלָּא אָמַר רָבָא: כָּל שֶׁיֵּשׁ בְּקִידּוּשִׁין – יֵשׁ בְּגֵירוּשִׁין, וְיֵשׁ בְּגֵירוּשִׁין מַה שֶּׁאֵין בְּקִידּוּשִׁין. וְ״זֶהוּ״ דְּגֵירוּשִׁין לָאו דַּוְקָא, אֶלָּא מְשׁוּם דְּתָנָא ״זֶהוּ״ בְּקִידּוּשִׁין – תָּנָא נַמִּי ״זֶהוּ״ בְּגֵירוּשִׁין. וְ״זֶהוּ״ דְּקִידּוּשִׁין לְמַעוּטֵי מַאי? לְמַעוּטֵי זְמַן, דְּלֵיכָּא בְּקִידּוּשִׁין.

Rather, Rava said: All of the cases **that exist with regard to betrothal** whose status is uncertain **exist in** cases **of divorce** as well. However, **there are** some cases of uncertainty **with regard to divorce that do not exist with regard to betrothal,** as betrothal performed with a questionable bill is not disqualified. Accordingly, the term: **This is,** utilized in the mishna **with regard to divorce, is not specific** and does not imply exclusion of the case where it is possibly closer to him and possibly closer to her. **Rather, because** the mishna **teaches** the ruling of: **This is, with regard to betrothal,** where it is specific **it teaches** the phrase: **This is, with regard to divorce as well.** The Gemara asks: **And what does** the phrase: **This is,** mentioned **with regard to betrothal,** come **to exclude?** The Gemara answers: **It** comes **to exclude the** matter of the **date, which is not** essential **with regard to betrothal,** as when one betroths a woman by means of a document the date need not be written.

וּמִפְּנֵי מָה לֹא תִּקְּנוּ זְמַן בְּקִידּוּשִׁין? הָנִיחָא לְמַאן דְּאָמַר מְשׁוּם פֵּירֵי – אֲרוּסָה לֵית לָהּ פֵּירֵי.

The Gemara asks about this matter itself: **And for what** reason **did they not institute** that **the date** must be included **in the betrothal** document? **This** policy **works out well according to the one who says** that the reason the Sages instituted that the date must be written on a bill of divorce **is due to the profits.** As the husband receives the profits from the wife's properties during the period of their marriage, it was necessary to write a date on the bill of divorce in order to know at what point his right to receive or sell these items was terminated. However, it was not necessary to include a date on a deed of betrothal, as this document serves only to create a bond of betrothal, **and there are no profits from a betrothed woman.**[H] A husband does not have the right to receive profits from his betrothed's property until she is his full-fledged wife.

NOTES

If it was written in the style of his fellow speaks of him, etc. – אִי יַגִּיד עָלָיו רֵיעֵהוּ וכו׳: *Tosafot* suggest a different difficulty with this solution: If the Gemara was using this style, it could have listed all the examples in the context of the first betrothal, and only one in the context of divorce. Similarly, the Rivan points out that Abaye was not precise in his explanation of the mishna, because according to all opinions there is no requirement to include the date in betrothals, and therefore it is clear that not all matters stated with regard to divorce are relevant to cases of betrothal. These issues can be resolved by suggesting that the Gemara raised only a single difficulty among several possible difficulties that could have been raised.

HALAKHA

There are no profits from a betrothed woman – אֲרוּסָה לֵית לָהּ פֵּירֵי: The husband receives the profits from his wife's property following their marriage, but not the profits from the property of a woman to whom he was only betrothed (Rambam *Sefer Nashim*, *Hilkhot Ishut* 12:1, 3; *Shulḥan Arukh*, *Even HaEzer* 69:1, 3).

HALAKHA

Due to the daughter of his sister – מִשּׁוּם בַּת אֲחוֹתוֹ: The Sages instituted that one must include the date of the writing in the bill of divorce just as in other legal documents. This is in order that he not come to cover for his wife if she were licentious, giving her an undated bill so that she might claim that her misdeeds took place after she received the bill of divorce (Rambam *Sefer Nashim*, *Hilkhot Geirushin* 1:24; *Shulḥan Arukh*, *Even HaEzer* 127:1).

אֶלָּא לְמַאן דְּאָמַר מִשּׁוּם בַּת אֲחוֹתוֹ – לִיתְקִין זְמַן!

However, according to the one who says that the Sages instituted the requirement of including the date in the bill of divorce **due to** a case where a man is married to **the daughter of his sister,**[HN] then **they should institute** that he must include **the date** in a deed of betrothal as well. Occasionally a man might marry the daughter of his sister, whom he loves all the more because she is his close relative in addition to being his wife. If he knows that she acted licentiously while she was married to him, he might grant her a bill of divorce without a date so as to save her from the death penalty. Were witnesses to come forth and testify to her behavior, she could claim that at the time of her licentious act she was already a divorced woman. If this was indeed the reason for the Sages' instituting the requirement of including the date in a bill of divorce, then the date should be included in a deed of betrothal as well, for an undated document of betrothal could be utilized equally well to prove the innocence of the daughter of his sister. If she acted licentiously in the period prior to her betrothal, she would not be penalized. Therefore, the date should be written on this document as well.

מִשּׁוּם דְּאִיכָּא דְּמִקַּדֵּשׁ בִּכְסָפָא וְאִיכָּא דְּמִקַּדֵּשׁ בִּשְׁטָרָא – לָא תִּקְּנוּ רַבָּנַן זְמַן.

The Gemara answers: **Because there are those who betroth by means of money and those who betroth by means of a deed,**[N] **the Sages did not institute** that **the date** must be written in the document. As the date of the betrothal has no place in the act of betrothal by means of money, the Sages did not distinguish between the various modes of betrothal.

אֲמַר לֵיהּ רַב אַחָא בְּרֵיהּ דְּרַב יוֹסֵף לְרַב אַשִׁי: וְהָא עַבְדָּא, דְּאִיכָּא דְּקָנֵי בִּכְסָפָא וְאִיכָּא בִּשְׁטָרָא, וּתְקִינוּ רַבָּנַן זְמַן! הָתָם רוּבָּא בִּשְׁטָרָא, הָכָא – רוּבָּא בִּכְסָפָא.

Rav Aḥa, son of Rav Yosef, said to Rav Ashi: But with regard to **a slave,**[N] **where there are** those **who acquire** them **with money and there are** those who acquire them **with a deed, the Sages** nevertheless **instituted** that **the date** must be written in a slave's deed of purchase. He responded: **There,** with regard to slaves, **the majority** of people purchase them **by means of a deed. Here,** with regard to betrothal, **the majority** of people perform betrothal **by means of money.**

אִיבָּעֵית אֵימָא: מִשּׁוּם דְּלָא אֶפְשָׁר. הֵיכִי לִיעֲבִיד? לִינְחָהּ גַּבֵּי דִּידָהּ – מָחֲקָה לֵיהּ. לִינְחָהּ גַּבֵּי דִּידֵיהּ – זְמָנִין דְּבַת אֲחוֹתוֹ הִיא, וּמְחַפָּה עֲלָהּ.

If you wish, say a different reason why the Sages did not institute that the date must be included in a deed of betrothal. This is **due to** the fact that **it is not possible** to institute this in a manner that will ensure that no problems will result. **How would we do** this? If **we leave** the deed of betrothal **with her, she will erase** the date, and so it would remain impossible to prove the juncture at which her licentious behavior took place. If **we leave** the deed **with him,** then **there are times when she is his sister's daughter and he might cover for her** by erasing the date himself.

NOTES

Due to the daughter of his sister – מִשּׁוּם בַּת אֲחוֹתוֹ: Marriage to any relative, and not only to the daughter of one's sister, is cause for concern in this regard, because a man is apt to show additional favor to her since she is part of his family. Moreover, since she is his relative, he may wish to save his family from disgrace and would therefore tend to cover for her misbehavior (see Rivan). The daughter of his sister was mentioned specifically because the Sages recommended marrying the daughter of one's sister, and therefore this phenomenon was relatively common.

There are those who betroth by means of money and those who betroth by means of a deed – אִיכָּא דְּמִקַּדֵּשׁ בִּכְסָפָא וְאִיכָּא דְּמִקַּדֵּשׁ בִּשְׁטָרָא: There are three ways of betrothing a woman. The first is with money or its equivalent, such as a ring, which the bridegroom gives to the bride. The second is with a document in which he attests that he is betrothing the woman. The third is by engaging in sexual intercourse for the explicit purpose of betrothal. The third method, though legally valid, was banned by the Sages to prevent licentiousness.

But with regard to a slave – וְהָא עַבְדָּא: Rashi and those who follow his line of reasoning comment that the issue being discussed is the deed of purchase for a slave, and the date is required in order to know at what moment ownership of all of the slave's possessions was transferred to his master. According to this opinion, the reasoning applies not only to the case of a slave but also to all deeds of purchase. This interpretation is supported by the use of the term: Who acquire.

However, *Tosafot* and most other early commentaries object to this interpretation for various reasons. They explain that the issue at hand is a slave's bill of release, which requires a date in order to determine at what point he is allowed to marry a Jewish woman, or at what point a maidservant would be allowed to marry a Jew. Indeed, the master might have an interest in covering for children born to his slave so as to render them eligible for marriage. These commentaries interpret the word: Acquisition, as referring to the slave acquiring himself, i.e., acquiring his freedom, despite the linguistic difficulties with such a reading.

לִינָּתָהּ גַּבֵּי עֵדִים, אִי דְּזָכְרִי – לֵיתוּ לִיסְהוּד, וְאִי לָא – זִמְנִין דְּחָזוּ מִכְּתָבָא, וַאֲתוּ מְסַהֲדִי. וְרַחֲמָנָא אָמַר: "מִפִּיהֶם", וְלֹא מִפִּי כְּתָבָם.

If **we leave it with the witnesses** who signed the document, **if they remember** themselves the date when the deed was given to the woman, the date need not be written in the document itself, for **let them come forth and testify** from their memory. **And if** they do **not** remember by themselves, then **there are times when they see** the date **that is written and come forth to testify**[N] on that basis. **And the Merciful One states:** "By the mouth of two witnesses, or at the mouth of three witnesses, shall a matter be established" (Deuteronomy 19:15). From this verse it is derived: **From their mouths, and not from their writings,**[NH] indicating that testimony is proper only if the individual stated it of himself, and not on the basis of what is written.

אִי הָכִי בְּגִירוּשִׁין נַמִּי נֵימָא הָכִי! הָתָם לְהַצָּלָה דִּידָהּ קָאָתֵי, הָכָא – לְחוֹבָה דִּידָהּ קָאָתֵי.

The Gemara asks: **If that is so, let us say that with regard to divorce as well.** In cases of divorce there should also be a concern lest the woman erase the date on the bill of divorce in her possession. The Gemara responds: **There,** in the case of a bill of divorce, the date **comes to save her,**[N] since the bill of divorce removes her status as a man's wife. She therefore would fear erasing anything lest she disqualify the bill altogether, thereby possibly rendering herself a married woman again (Ramban). **Here,** however, when dealing with a deed of betrothal, the date **comes to her disadvantage,** since until now she was presumed to be a single woman, and if there is no date on the document then she clearly cannot be punished.

מתני׳ שְׁלֹשָׁה אַחִין, נְשׂוּאִין שָׁלֹשׁ נָכְרִיּוֹת, וּמֵת אֶחָד מֵהֶן, וְעָשָׂה בָּהּ הַשֵּׁנִי מַאֲמָר וָמֵת – חֲרֵי אֵלּוּ חוֹלְצוֹת וְלֹא מִתְיַיבְּמוֹת.

MISHNA In the case of **three brothers** who **were married to three unrelated women,**[N] **and one of** the brothers **died,** the following occurred: **The second** brother **performed levirate betrothal with** the wife of the deceased brother **and** before he was able to consummate the levirate marriage **he died** as well, leaving behind two women who happen before the third brother for levirate marriage. **Then those** two women must **perform *ḥalitza* and may not enter into levirate marriage.**

שֶׁנֶּאֱמַר "וּמֵת אֶחָד מֵהֶן וְבָנָה לֹא יִהְיֶה לְאִישׁ הַמֵּת הַחוּצָה לְיִבְמָה יָבֹא עָלֶיהָ" שֶׁעָלֶיהָ זִיקַת יָבָם אֶחָד וְלֹא שֶׁעָלֶיהָ זִיקַת שְׁנֵי יְבָמִין. רַבִּי שִׁמְעוֹן אוֹמֵר: מְיַיבֵּם לְאֵיזוֹ שֶׁיִּרְצֶה, וְחוֹלֵץ לַשְּׁנִיָּה.

As it is stated: "If brothers dwell together **and one of them dies** and he has no child, the wife of the dead man shall not be married outside of the family to one not of his kin; **her brother-in-law will have intercourse with her**" (Deuteronomy 25:5). This teaches that a woman eligible for levirate marriage is one **who has one levirate relationship and not one who has a double levirate relationship.**[NH] In this case, the wife of the first deceased brother requires levirate marriage due to both the marriage with her first husband as well as the levirate betrothal with the second brother. **Rabbi Shimon says: He** may **consummate the levirate marriage with whichever** woman **he wishes and** then **perform *ḥalitza* with the second.**

NOTES

They see what is written and come forth to testify – חָזוּ מִכְּתָבָא וַאֲתוּ מְסַהֲדִי: Some early commentaries ask: Why not leave the document with the witnesses who signed it and let its validity be established by the ratification of legal documents, just as would happen with any other bill? See *Tosefot HaRosh*, who explains why there is more reason for concern here than with other documents. The Rashba writes that since this document is not ratified in the usual manner and it merely serves as a form of reminder, the *halakhot* relevant to other bills do not apply to it. The Meiri explains that the ratification of a document is legally sufficient only in monetary cases; in cases involving prohibitions the Sages were reluctant to rely upon this.

From their mouths and not from their writings – מִפִּיהֶם וְלֹא מִפִּי כְּתָבָם: There are several different opinions among the early commentaries as to how to understand this ruling, as well as how to understand the principle that any document that has had the signatures of the witnesses confirmed is considered valid, regardless of whether the witnesses themselves remember the testimony.

The reason that written testimony is invalid depends on how one views its role. According to Rashi and the Razah, since a bill of debt is not written without the borrower's explicit knowledge, its validity does not rest upon what is written by the witnesses but rather upon the statement of obligation expressed by the one who wrote the document. According to the Ramban, however, testimony written as a deed falls under a legal category of its own, and is considered as though the testimony were checked and affirmed by the court. Therefore, the disqualification of written testimony expressed by the principle of: From their mouths, applies only in cases where there is no legal document.

In the opinion of Rabbeinu Tam, the disqualification of: From their mouths, applies only where the witnesses are incapable of testifying orally, but if they are capable of testifying, then their testimony is admissible in written form as well. The Rambam is of the opinion that according to Torah law there is no legal validity to written testimony, but the Sages nevertheless ordained that validity of documents could be legally established by the signatures of witnesses (see Rif and his commentaries; *Tosafot*; Ramban).

It comes to save her – לְהַצָּלָה דִּידָהּ קָאָתֵי: Most of the commentaries explain according to the opinion of *Tosafot*, who hold that since the bill of divorce renders her an unmarried woman, she is fearful that if she erases any part of it, it might be disqualified. This is not the case with a deed of betrothal, which renders her a married woman. The same explanation is mentioned by the Ramban, Rashba, and the Ritva. See also Rashi's interpretation.

Married to three unrelated women – נְשׂוּאִין שָׁלֹשׁ נָכְרִיּוֹת: The early commentaries, among them the Rivan, point out that the *tanna* could have taught here that one of the brothers was single, as the marital status of the third brother does not impact the *halakha*. The *Tiferet Yisrael* explains that because the status of the third brother has no legal implications, the *tanna* opted to teach this in the most concise fashion.

A double levirate relationship – זִיקַת שְׁנֵי יְבָמִין: The early commentaries remark that this really means that she requires two levirate marriages and not a levirate bond with two *yevamin*. The concern here is that she has two levirate obligations from two different husbands, which is referred to in other sources as: A wife of two deceased men.

HALAKHA

From their mouths and not from their writings – מִפִּיהֶם וְלֹא מִפִּי כְּתָבָם: By Torah law, in monetary cases, and all the more so in capital cases, testimony is inadmissible unless it is received orally from the witnesses. It may not be handwritten. If their testimony is sent to the court in written form it is inadmissible.

The *Sma* states that it is customary to receive written testimony when the witnesses remember and are fit for oral testimony (see *Tosafot*, Rosh, *Tur*, and Mordekhai). In the opinion of the Rambam, in cases where the witnesses are signed on a document and they come to the court and confirm their signatures but state that they do not recall the event itself, the document is ruled invalid. *Tosafot* and others disagree and hold that their signatures are efficacious in this case. Even the later commentaries were divided over this matter: The Maharshal rules in accordance with *Tosafot*, while the *Shakh* rules in accordance with the Rambam (Rambam *Sefer Shofetim*, *Hilkhot Edut* 3:4, 8:5; *Shulḥan Arukh*, *Ḥoshen Mishpat* 28:11–12, 46:10).

A double levirate relationship – זִיקַת שְׁנֵי יְבָמִים: In the case of three brothers married to women who were not related to one another, if one brother died and his brother performed levirate betrothal with the deceased's wife but died prior to entering into marriage with her, then both the wife of the brother who died first as well as the wife of the brother who died second must perform *ḥalitza* and may not enter into levirate marriage. The Sages decreed that they may not enter into levirate marriage due to a concern lest others come to consummate the levirate marriage with two women from a single household (Rambam *Sefer Nashim*, *Hilkhot Yibbum* 7:27; *Shulḥan Arukh*, *Even HaEzer* 174:4).

NOTES

A rabbinic decree lest people say – גְּזֵירָה שֶׁמָּא יֹאמְרוּ: This explanation of the ruling in the mishna is difficult, as the mishna explicitly states that the reason for this ruling is due to a double levirate bond and not due to a rabbinic decree. This can be resolved by explaining that the primary question of the Gemara is not about this woman, but rather about her rival wife. If the woman with a double levirate bond is not eligible for levirate marriage, then why is her rival wife not exempt from the obligation of *ḥalitza* as the rival wife of a forbidden relative?

The Gemara therefore answers that the prohibition proscribing the woman in the mishna is due to a rabbinic decree. Based on this assertion, the Gemara asks: If the woman is prohibited based on a rabbinic decree, why does the rival wife require *ḥalitza* as well, as the rival wife of a woman prohibited due to a mitzva is generally permitted to enter into levirate marriage? Consequently, they state that there is an additional decree requiring the rival wife to perform *ḥalitza*, and accordingly the suggestion: Let him enter into levirate marriage with one, in fact means that he should take the rival wife in levirate marriage and perform *ḥalitza* with the wife of the first brother (*Melo HaRo'im*).

גמ׳ וְאִי זִיקַּת שְׁנֵי יְבָמִין דְּאוֹרַיְיתָא, חֲלִיצָה נַמִּי לָא תִּיבָּעֵי! אֶלָּא מִדְּרַבָּנַן, וּגְזֵירָה שֶׁמָּא יֹאמְרוּ שְׁתֵּי יְבָמוֹת הַבָּאוֹת מִבַּיִת אֶחָד מִתְיַיבְּמוֹת.

GEMARA The Gemara asks: **If** the *halakha* that a woman who has **a double levirate relationship** is exempt from levirate marriage is **by Torah** law, as indicated by the proof offered in the mishna, **she should not require *ḥalitza* as well,** but be completely exempt. **Rather,** it is **by rabbinic** law. The restriction on levirate marriage in this case is not by Torah law, as by Torah law the brother is allowed to consummate the levirate marriage with both of these women since each was the wife of a different brother. The requirement for *ḥalitza* in this case was instituted as a rabbinic **decree lest** people **say**[N] that **two *yevamot* who come from a single household can enter into levirate marriage.** Since the second brother had performed levirate betrothal, people might come to think that both were actually married to him. If the third brother consummates the levirate marriage with both women, it would lead people to think that it is permitted to take two of a brother's wives in levirate marriage, when in fact the Torah allows the *yavam* to marry only a single wife of the deceased.

וְנֵיבֵּם לַחֲדָא וְנֵיחֲלוֹץ לַחֲדָא! גְּזֵירָה שֶׁמָּא יֹאמְרוּ: בַּיִת אֶחָד, מִקְצָתוֹ בָּנוּי

The Gemara asks: **So let him consummate the levirate marriage with one** woman **and perform *ḥalitza* with** the other **one,** and this would eliminate our concern. The Gemara responds: We do not do this due to a rabbinic **decree lest they say:** When there are two women from **a single household, part of it** must **be built**

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וּמִקְצָתוֹ חָלוּץ.

and part of it must **be released by *ḥalitza*.** That is, if two women were married to a single man, one of these women must enter into levirate marriage and the other must perform *ḥalitza*.

וְיֹאמְרוּ: אִי דְּמַיְיבֵּם וַהֲדַר – חָלֵיץ הָכִי נַמִּי,

The Gemara wonders: **So let them say** it. Why would it be problematic if people thought that? Even were they to act upon this mistaken assumption it would cause no harm, as there is no transgression involved in performing *ḥalitza*. The Gemara answers: **If he were to consummate the levirate marriage** with one and then later **proceed to perform *ḥalitza***[N] with the other, then **indeed** there would be no reason for concern.

אֶלָּא גְּזֵירָה דִּילְמָא חָלֵיץ בְּרֵישָׁא וַהֲדַר מְיַיבֵּם, וְקָם לֵיהּ בְּ״אֲשֶׁר לֹא יִבְנֶה״, וְרַחֲמָנָא אָמַר: בֵּיתָן שֶׁלֹּא בָּנָה – שׁוּב לֹא יִבְנֶה.

Rather, the requirement to perform *ḥalitza* with both women is a rabbinic **decree** that was instituted **lest he first perform *ḥalitza***[N] with one of his brother's wives **and subsequently consummate the levirate marriage** with the other. Under such circumstances, he would in fact be violating a prohibition. Once he performs *ḥalitza* with the first woman **he is subject to** the prohibition indicated by the verse "So shall it be done to the man **who does not build** his brother's house" (Deuteronomy 25:9). In this verse **the Merciful One states** that **once he did not build** his brother's house but rather opted to perform *ḥalitza* with one of his brother's wives, **he may not proceed to build** it by consummating the levirate marriage with a different wife.

NOTES

If he were to consummate the levirate marriage and proceed to perform *ḥalitza* – אִי דְּמַיְיבֵּם וַהֲדַר חָלֵיץ: From the commentaries it seems that this statement is referring to any case where two rival wives happen before a brother for levirate marriage, as there would be no harm were he to consummate the levirate marriage with one and then perform *ḥalitza* with the other. This is because there is no prohibition against performing *ḥalitza* that does not fulfill a mitzva. Rather, the rabbinic decree was ordained due to the possibility of reversing the order and performing the *ḥalitza* prior to consummating the levirate marriage. It is clear, however, from the words of the author of the *Halakhot Gedolot*, that he holds that the Gemara is referring specifically to a case involving both a wife of two deceased men and another woman, such that it would be permitted for him to consummate the levirate marriage with the rival wife first and then perform *ḥalitza* with the wife with whom levirate betrothal was performed. It is only in this case that the Sages issued a decree lest he first perform *ḥalitza* with the woman with whom levirate betrothal had been performed. It would seem that these two opinions are based on different textual versions of the Gemara.

A rabbinic decree lest he…perform *ḥalitza* – גְּזֵירָה דִּילְמָא חָלֵיץ: In the Jerusalem Talmud as well the question of why the rival wife should not enter into levirate marriage is raised, and there it states that the mishna follows Rabbi Meir's opinion, which establishes the principle: So long as you cannot take me in levirate marriage, you cannot take my rival wife in levirate marriage. Accordingly, in every case where one of the wives is forbidden to enter into levirate marriage, her rival wife is likewise forbidden.