

NOTES

**A rabbinic decree lest people say – גזירה שמא יאמרו:** 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 *halitza* 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 *halitza* 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 *halitza*, 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 *halitza* with the wife of the first brother (*Melo HaRo'im*).

**גמ' ואי זיקת שני יבמין דאורייתא, חליצה נמי לא תיבעי! אלא מדרבנן, וגזירה שמא יאמרו שתי יבמות הכאות מבית אחד מתייבמות.**

**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 *halitza* 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 *halitza* in this case was instituted as a rabbinic decree **lest people say<sup>N</sup> 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.

**ומיבם לחדא וניחלוץ לחדא! גזירה שמא יאמרו: בית אחד, מקצתו בני**

The Gemara asks: **So let him consummate the levirate marriage with one woman and perform *halitza* 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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**ומקצתו חלוץ.**

**and part of it must be released by *halitza*.** 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 *halitza*.

**ויאמרו: אי דמיבם והדר – חליץ הכי נמי,**

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 *halitza*. The Gemara answers: **If he were to consummate the levirate marriage with one and then later proceed to perform *halitza*<sup>N</sup> with the other, then indeed there would be no reason for concern.**

**אלא גזירה דילמא חליץ ברישא והדר מיבם, וקם ליה ב"א שור לא יבנה, ורחמנא אמר: כיון שלא בנה – שוב לא יבנה.**

Rather, the requirement to perform *halitza* with both women is a rabbinic decree that was instituted **lest he first perform *halitza*<sup>N</sup> 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 *halitza* 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 *halitza* with one of his brother's wives, he may not proceed to build it by consummating the levirate marriage with a different wife.**

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**If he were to consummate the levirate marriage and proceed to perform *halitza* – אי דמיבם והדר חליץ –** 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 *halitza* with the other. This is because there is no prohibition against performing *halitza* that does not fulfill a mitzva. Rather, the rabbinic decree was ordained due to the possibility of reversing the order and performing the *halitza* 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 *halitza* 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 *halitza* 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.

**גזירה דילמא חליץ –** A rabbinic decree lest he...perform *halitza* – 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.

**Gave a bill of divorce in order to nullify his levirate betrothal – נתן גט למאמרו:** In the case where a woman whose husband died childless happened before the *yavam* for levirate marriage and he performed levirate betrothal but later gave her a bill of divorce explicitly nullifying that levirate betrothal, the levirate betrothal is null and void, and it is permitted for her to enter into levirate marriage with his brothers. However, as per Rashi and Rambam, it is not permitted for her to enter into levirate marriage with him. If this *yavam* died and she happened before a different brother, she is allowed to enter into levirate marriage and is not considered a wife of two deceased men, in accordance with the latter formulation of Rava, which generally signifies the definitive legal ruling (Rambam *Sefer Nashim, Hilkhot Yibbum* 6:29; *Shulhan Arukh, Even HaEzer* 174:5).

**שני אחין נשואין שתי – אחיות:** If two brothers were married to two sisters and one of the brothers died, even if the surviving brother's wife later died, the first wife remains exempt from levirate marriage, because she was forbidden to him at one time, i.e., during her sister's life (Rambam *Sefer Nashim, Hilkhot Yibbum* 7:12; *Shulhan Arukh, Even HaEzer* 175:1).

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**הוטרפה צרתה – Her rival wife is rendered permitted:** Most of the commentaries follow Rashi in understanding the term rival wife to refer to the full wife of the second brother, who by virtue of levirate betrothal became a rival wife of sorts to the wife of two deceased men. However, the Rashba, along with *Nimmukei Yosef*, holds that the term rival wife refers to her actual rival wife. The case would therefore be one where the first brother had two wives, one of whom received levirate betrothal and later a bill of divorce from the second brother, and the other was her rival wife. Rava's statement permitting the rival wife is referring to her actual rival wife.

**Even she is permitted – הוטרפה אפילו היא:** The commentaries and legal authorities were in dispute over to whom, in fact, such a woman would be permitted. Some said that in cases where a *yavam* both performed levirate betrothal and gave a bill of divorce to a woman, she is even permitted to marry that *yavam*. As the levirate betrothal was completely canceled by the bill of divorce, she reverts to her status as a woman with whom he has a levirate bond (Rivan). Others say that she is never again permitted to the man who gave her the bill of divorce but she is permitted to the other brothers (Ramban).

The Ritva explains the difference between the two formulations of Rava's statement. According to the latter version, the prohibition against consummating the levirate marriage with the woman who received the bill of divorce is by rabbinic law. Consequently, the Sages did not institute a decree in the case where the bill of divorce was issued in order to rescind the levirate marriage, which would prevent the violation of another decree due to the possibility of confusion with a woman who only received a bill of divorce. According to the first formulation, however, no special distinction was made for the woman who received a bill of divorce after levirate betrothal, so that there is in fact only one single decree for all *yevamot* who received bills of divorce under any circumstances.

**אמר רבא: נתן גט למאמרו – הוטרפה צרתה, אבל היא אסורה, דמחלפה בבבועלת גט.**

Rava said: If the brother who performed levirate betrothal in the case described in the mishna subsequently gave a bill of divorce to that wife in order to nullify his levirate betrothal<sup>H</sup> before he died, her rival wife is rendered permitted<sup>N</sup> to the third brother. The third brother is allowed to consummate the levirate marriage with the wife of the second brother because this wife is no longer considered to be the rival wife of a woman with a double levirate relationship. The bill of divorce serves to nullify the act of levirate betrothal completely. However, the woman with whom the brother performed levirate betrothal and then received the bill of divorce is forbidden to the third brother. Why is this? She might be confused with a woman who receives a bill of divorce. In general cases where levirate betrothal was not performed, if a man gives a *yevama* a bill of divorce, he is no longer allowed to consummate the levirate marriage with her. If it were permitted to consummate the levirate marriage in this case, people might mistakenly do so in other cases of divorce as well.

There are those who say an alternative formulation of Rava's statement. Rava said: If the second brother gave a bill of divorce to the wife of the first deceased brother in order to nullify his levirate betrothal to her, then even she herself is permitted<sup>N</sup> to enter into levirate marriage with the third brother. What is the reason for this? That which he performed with her, he removed. The levirate betrothal was completely nullified by the bill of divorce, and it is as though he had done nothing at all. Therefore, as far as the third brother is concerned, she remains with her original, single levirate bond, as though her status had never been changed by the second brother.

**איכא דאמרי, אמר רבא: נתן גט למאמרו – הוטרפה אפילו היא, מאי טעמא? מאי דעבד בה – שקליה.**

**MISHNA** In the case where two brothers were married to two sisters,<sup>HB</sup> and one of the brothers died, the widow at this point would be exempt from levirate marriage as the sister of his wife. And afterward the wife of the second brother died. Although the *yevama* is no longer the sister of his wife, this woman is nevertheless forbidden to him forever, since she had already been forbidden to him at one time.

**מתני' שני אחין נשואין שתי אחיות, ומת אחד מהן, ואחר כך מתה אשתו של שני – הרי זו אסורה עליו עולם, הוטרפה עליו שעה אחת.**

BACKGROUND

**שני אחין ושתי אחיות – Two brothers and two sisters:** The brothers Reuven and Shimon married two sisters, Milka and Høgla, respectively. When Shimon died childless, his wife Høgla happened before Reuven for levirate marriage, but was rendered exempt from both levirate marriage and *halitza*, as she was the sister of his wife Milka. Even were Milka to later die, Høgla would never again be permitted to Reuven.



Where she is disassociated from this household, etc. – דְּקָא מִיְדַחֵי מַהֲאֵי בֵּיתָא וְכוּ' It would seem that the opposite conclusion could have been drawn as well. The Gemara could have suggested that in the case at hand, the sister reverted to being eligible for levirate marriage during the original period in which she happened before this brother for levirate marriage, whereas in the case of two *yevamin*, she was forbidden to the *yavam* for the entire period following the death of her first husband. Accordingly, it would be more likely to render her permitted in this case. One must conclude that once she was rendered disqualified to enter into levirate marriage with the brother at one time during the period when she happened before the brothers as a forbidden relative, she can never again revert to a permitted status (Ritva).

For violating the prohibition against marrying a brother's wife and... a wife's sister – מְשוּם אִשְׁתְּ אַחֵי וּמְשוּם אַחֹת אִשָּׁה – Rashi explains that this refers to a case where the relations took place during his wife's lifetime, for then he would be liable to receive punishment for marrying a wife's sister. Rabbeinu Hananel, however, holds that the case here is the same as that of the mishna, i.e., a situation where the wife died. The early commentaries (Rashba) were perplexed by this opinion, for even though the language in the *Tosefta* seems to support Rabbeinu Hananel's interpretation, it is difficult to understand how he might be held liable to receive punishment for marrying his wife's sister after his wife's death (see Meiri).

גַּמְ' פְּשִׁיטָא! הֲשֵׁתָא, וּמַה הָתָם דְּלֹא מִיְדַחֵי מַהֲאֵי בֵּיתָא לְגַמְרִי – אֲמַרְתָּ לָא, הֲכָא דְקָא מִיְדַחֵי מַהֲאֵי בֵּיתָא לְגַמְרִי – לֹא כָּל שְׂבוּן! תִּנָּא הָא תִּנָּא בְּרִישָׁא, וְהָךְ חֻזָּא לְהִיתִירָא וְשָׂרִיָּא, וְהָדָר חֻזָּא לְאִיסוּרָא. וְאִיִּדֵי דְחַבִּיבָה לִיָּה – אֲקַדְמָה, וּמִשְׁנָה לֹא זָזָה מִמְּקוּמָה.

תִּנּוּ רַבָּנִן: בָּא עֲלֵיהּ – חַיִּיב עֲלֵיהּ מְשוּם אִשְׁתְּ אַחֵי, וּמְשוּם אַחֹת אִשָּׁה, דְּבִרֵי רַבִּי יוֹסֵי. רַבִּי שְׁמַעוֹן אוֹמֵר: אֵינוֹ חַיִּיב אֶלָּא מְשוּם אִשְׁתְּ אַחֵי בְּלִבְדָּ. וְהָא תִּנָּא, רַבִּי שְׁמַעוֹן אוֹמֵר: אֵינוֹ חַיִּיב אֶלָּא מְשוּם אַחֹת אִשָּׁה בְּלִבְדָּ!

לֹא קָשְׁיָא: כָּאן – שְׁנַשָּׂא תִי וְאַחַר כֵּן נָשָׂא מֵת, כָּאן – שְׁנַשָּׂא מֵת וְאַחַר כֵּן נָשָׂא חַי.

וְרַבִּי שְׁמַעוֹן, הֵיכָא דְנָשָׂא מֵת וְאַחַר כֵּן נָשָׂא חַי, בֵּינָן דְּאִיסוּר אַחֹת אִשָּׁה לֹא חַיִּיל – תְּתִיבִים יְבוּמִי!

אָמַר רַב אֲשִׁי: אִיסוּר אַחֹת אִשָּׁה מִיתְּלָא תְּלִי וְקֵאֵי, אִי פְקַע אִיסוּר אִשְׁתְּ אַחֵי – אֲתִי אִיסוּר אַחֹת אִשָּׁה וְחַיִּיל, וְהִילְכֵךְ לֹא פְקַע.

**GEMARA** The Gemara asks: **Isn't this obvious?** Now, just as there, in the earlier *mishnayot*, where there was a third brother and so the woman was **not disassociated from this household completely**, as the levirate obligation existed between her and the third brother to whom she was permitted, **you said that she may not enter into levirate marriage because she was forbidden at one time, here, in the case of only two brothers, where she is disassociated from this household<sup>N</sup> completely**, is it **not all the more so** clear that it should be prohibited for her to enter into levirate marriage? The Gemara answers: **The tanna taught this mishna at first**, at which time **he saw it fitting to rule that those other cases are permitted, and therefore he permitted them. And then he subsequently saw it fitting to rule that they are forbidden. And since that case was novel, it was beloved to him, he taught it earlier.** But despite the fact that this mishna was no longer necessary, **the mishna does not move from its place.**

§ The Sages taught: **If he engaged in sexual intercourse with this woman who was forbidden to him, he is liable to receive punishment for violating the prohibition against marrying a brother's wife**, because she was never rendered permitted by the levirate mitzva, **and he is liable to receive punishment for violating the prohibition against marrying a wife's sister;**<sup>N</sup> this is **the statement of Rabbi Yosei. Rabbi Shimon says: He is liable to receive punishment only for violating the prohibition proscribing a brother's wife.** Rabbi Shimon holds that one prohibition does not take effect where another prohibition is already in place, and since she was already forbidden as his brother's wife, the additional prohibition cannot take effect. The Gemara asks: **But isn't it taught in a baraita, Rabbi Shimon says: He is liable only due to the prohibition against marrying a wife's sister?**

The Gemara answers: This is **not difficult. Here**, in the second *baraita*, it is referring to a case **where the living brother married his wife first and afterward the brother who is now deceased married her sister.** In that case, the first prohibition to take effect on the *yevama* was that of a wife's sister, and only later, when she was married to his now-deceased brother, did the additional prohibition proscribing a brother's wife take effect. **There**, in the first *baraita*, it is referring to a case **where the brother who is now deceased married his wife first**, whereby she became forbidden to the brother as a brother's wife, **and afterward the living brother married her sister**, rendering her forbidden as his wife's sister as well.

The Gemara asks: **And according to the opinion of Rabbi Shimon, in a case where the deceased brother married one of the sisters first, in which case she was forbidden to his brother as a brother's wife, and afterward the living brother married her sister, the only prohibition in place is that of a brother's wife. Therefore, since the prohibition with regard to a wife's sister never took effect, then after her husband died she should now enter into levirate marriage.** As the prohibition proscribing a brother's wife is canceled in the face of the levirate mitzva, she should indeed enter into levirate marriage.

Rav Ashi said: **The prohibition with regard to a wife's sister remains suspended. If the prohibition proscribing a brother's wife is terminated, the prohibition proscribing a wife's sister comes and takes effect. Therefore, it is clear that the prohibition proscribing a wife's sister is not completely terminated.** Accordingly, when a man dies and the prohibition proscribing a brother's wife is overridden by the levirate mitzva, the prohibition proscribing a wife's sister takes effect and she is forbidden to him due to that. The moment the first prohibition ceases to exist, the second immediately takes effect.



A prohibition takes effect where another prohibition already exists – איסור חל על איסור: The Meiri comments that the question whether a prohibition takes effect where another prohibition exists is not a matter that relates to the essence of the prohibitions themselves but rather to the penalties that are incurred by them. Therefore, the principle that a prohibition does not take effect where another prohibition already exists expresses the idea that a transgressor is not doubly penalized for two violations, so that if he committed two transgressions requiring sin-offerings, he need bring only one sin-offering.

The later commentaries deliberated over how to understand the Gemara's question both with regard to the opinion of Rabbi Shimon and in light of Rav Ashi's novel idea. It would seem that the discussion revolves around the question of how to view the additional prohibition: Does it actually not take effect, or is there simply no practical possibility of applying it when another prohibition already exists?

Sentenced to the harsher of the two deaths – נידון בקמורה: There are four forms of capital punishment prescribed by the Torah and administered by a court of twenty-three members. They are, in diminishing order of harshness: Stoning, burning, decapitation by sword, and strangulation. The punishment for engaging in intercourse with one's mother-in-law is burning, whereas the punishment for engaging in intercourse with a married woman is strangulation. Therefore, according to this opinion in the *baraita*, one who engaged in intercourse with his mother-in-law who is also a married woman is sentenced to death by burning (Rashi).

## HALAKHA

One who committed a transgression deserving of two death penalties – עבר עבירה שיש בה שתי מיתות: One who committed a single transgression deserving of two death penalties, such as engaging in relations with his mother-in-law while she was a married woman, is sentenced to the harsher penalty (Rambam *Sefer Shofetim, Hilkhot Sanhedrin* 14:4).

וסבר רבי יוסי איסור חל על איסור?  
והא תנאי: עבר עבירה שיש בה  
שתי מיתות – נידון בקמורה, רבי  
יוסי אומר: נידון בזיקה הראשונה  
הבאה עליו.

The *baraita* indicates that Rabbi Yosei holds that if the brother consummated the levirate marriage with this woman he violated two prohibitions. The Gemara asks: **And does Rabbi Yosei hold that a prohibition takes effect where another prohibition already exists?**<sup>N</sup> **But isn't it taught in a *baraita*: One who committed a transgression deserving of two death penalties<sup>H</sup> is sentenced to the harsher of the two deaths?**<sup>N</sup> One would be guilty of such a transgression if he engaged in intercourse with a forbidden relative who was also a married woman, as he would incur one death penalty due to her being a forbidden relative and one death penalty due to her being a married woman. **Rabbi Yosei says: He is sentenced according to the first relationship that applied to him with regard to this woman.**

ותנאי: כיצד אמר רבי יוסי נידון  
בזיקה הראשונה הבאה עליו?  
חמותו ונעשית אשת איש – נידון  
בחמותו, אשת איש ונעשית  
חמותו – נידון באשת איש.

**And it is taught in a *baraita*: In what case did Rabbi Yosei say that he is sentenced according to the first relationship that applied to him?** If this woman was his mother-in-law who was widowed or divorced, and therefore forbidden to him only due to her status as his mother-in-law, and later she married and became forbidden as a married woman and he engaged in sexual relations with her, then he is sentenced for violating the prohibition proscribing his mother-in-law, since this was the first prohibition to apply. Alternatively, if she was a married woman and then he married her daughter so that she then became his mother-in-law, and then had sexual relations with her, he is sentenced for violating the prohibition proscribing a married woman.

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אמר רבי אבהו: מודה רבי יוסי  
באיסור מוסקי.

**Rabbi Abbahu said: Rabbi Yosei concedes** that a prohibition takes effect where another prohibition already exists **when it is an expanded prohibition.**<sup>N</sup> An expanded prohibition is a prohibition that has a greater scope than the original prohibition, either because it applies with greater severity or because it applies to additional individuals. Rabbi Yosei holds that if the second prohibition incorporates additional individuals into the list of those for whom the original item is prohibited, then it takes effect in addition to the previous prohibition that had a more limited range.

## NOTES

An expanded prohibition and a more inclusive prohibition – איסור מוסקי ואיסור כולל: Even though both an expanded prohibition and a more inclusive prohibition are similar in that for both, the scope of the original prohibition is enlarged in some way, they nevertheless differ both in their fundamental natures as well as in their details. An expanded prohibition is defined as a prohibition that adds an additional element of prohibition to the item that is already prohibited. A more inclusive prohibition, on the other hand, occurs when the prohibition now includes other items, even if for the original item there is no actual addition to the prohibition itself.

An expanded prohibition comes about in two ways, either because it applies with greater severity or because it applies to additional individuals. The first might come about, for instance, when a prohibition against deriving benefit takes effect where a prohibition against consumption already exists, since here the second prohibition, against deriving benefit, is of greater severity. The second occurs when, as in the present talmudic discussion, the prohibition applies to a greater number of individuals, when it is not only prohibited for the original subject to perform

an activity with a specific item, but it comes to be prohibited for others to perform that activity as well (Ritva), e.g., this woman was forbidden to one brother, and she is subsequently forbidden to all the brothers. A more inclusive prohibition occurs when the same prohibition applies to the same individual but with more items, e.g., it becomes prohibited for one brother to marry all the sisters of a woman instead of just the woman herself. The later commentaries examined these distinctions, since, e.g., with regard to the *halakhot* of forbidden relatives, the difference between a more inclusive prohibition and an expanded prohibition depends on the individual in question. That which is an expanded prohibition for a man is at the same time a more inclusive prohibition from the woman's perspective, and the opposite holds true as well (see *Yosef Lekah*). According to the *Hazon Ish* it is clear that the ruling goes according to the perspective of the man and not according to the woman.

In addition to these fundamental differences, the details of these two categories differ as well. It would seem from *Tosafot* that a more inclusive prohibition does not take effect where

another prohibition exists unless it is more severe, but never where it is more lenient (*Keren Ora*). Moreover, according to *Tosafot*, a more inclusive prohibition takes effect only where the prohibition is for a single category. In other words, those to whom the prohibition applies must all be included within a single category of the prohibition. This is not the case, for example, when a man marries a woman, for even though all of her relatives are rendered forbidden to him it is nevertheless for different reasons: One is her mother, the other her sister, etc. The Rashba, however, disagrees on this point.

The *Hazon Ish* writes that an expanded prohibition takes effect only when it actually causes additional prohibitions, i.e., there must in fact be additional people in the world who become subject to this prohibition. So, for example, where a man engages in relations with his wife's sister who became his brother's wife, the second prohibition would take effect only if there were in fact additional brothers who were incorporated into the prohibition by the marriage. Therefore, if there were only two brothers in the family, the prohibition of a brother's wife would not apply.

תנינח – היכא דנשא חי ואחר כך נשא  
מת, מגו דאתוסף איסור לגבי אחים –  
אתוסף איסור לגבי דידיה.

אלא, היכא דנשא מת ואחר כך נשא  
חי, מאי איסור מוסיף איכא?

וכי תימא: מגו דאיתסר בכולהו  
אחיותא – האי איסור כולל הוא!

אלא אמר רבא: מעלה אני עליו כאילו  
עשה שתיים, ואינו חייב אלא אחת. וכן  
כי אתא רבין אמר רבי יוחנן: מעלה אני  
עליו כאילו עשה שתיים, ואינו חייב  
אלא אחת. מאי נפקא מינה? לקברו  
בין רשעים גמורים.

The Gemara asks: This works out well in cases where the living brother married his wife first, and her sister became forbidden to him as a wife's sister, and then afterward the brother who was subsequently deceased married his wife's sister. In that case it is possible to say: Since a prohibition was added for all the brothers,<sup>N</sup> a prohibition was added for the living brother as well, and he is liable due to both prohibitions, as this prohibition is more wide-ranging than the previous one. In other words, at first this sister was permitted to the other brothers, and when the second brother married her she was rendered a brother's wife and so she was additionally forbidden to the other brothers.

However, where the deceased brother married first and afterward the living brother married her sister, in what way is there a prohibition that adds? No additional individuals were incorporated into the prohibition as a result of the marriage of the living brother with the sister, since the prohibition here proscribing a wife's sister applies to him alone.

And if you would say: Since he himself now married a sister he became prohibited to all of the other sisters, as opposed to the prior state of affairs where only his brother was married to one of the sisters and all of the other sisters were permitted to him, and therefore an additional prohibition now applies to him, this is difficult. In this case the new prohibition is not considered an expanded prohibition, but rather it is considered a more inclusive prohibition.<sup>N</sup> It is more inclusive and more comprehensive in that it adds additional aspects to the prohibition for the same individual. This is not called an expanded prohibition, as it does not add prohibitions to additional individuals.

Rather, Rava said<sup>N</sup> that when Rabbi Yosei stated in the *baraita* that the man is liable due to both prohibitions, for a brother's wife and for a wife's sister, he meant to say: I ascribe to him liability as though he transgressed twice, since indeed he violated two prohibitions, yet he is liable to receive punishment in human courts on only one count. And likewise, when Ravin came from Eretz Yisrael to Babylonia, he said that Rabbi Yoḥanan said: I ascribe to him liability as though he transgressed twice, yet he is liable to receive punishment on only one count. The Gemara asks: What difference does it make if we consider it as though he transgressed twice? The Gemara answers: It affects the decision whether or not to bury him among the completely wicked.<sup>N</sup> Just as a righteous individual is not buried among the wicked, so too, a wicked individual is not buried among those more wicked than himself. He who violated this prohibition is considered as though he committed two transgressions and not one, and so he would be buried accordingly.

#### NOTES

מגו דאתוסף – איסור לגבי אחים: Since a prohibition was added for the brothers – The Gemara could have suggested that there is a different expanded prohibition; a prohibition was added to the entire populace since previously this woman was available for marriage but now she is a married woman. Nevertheless, the Gemara preferred to mention the prohibition proscribing a brother's wife, since it is not always nullified following the death of the husband (Ritva).

האי איסור – כולל הוא: This is considered a more inclusive prohibition – The Rivan asks: Could not Rabbi Abbahu have said that Rabbi Yosei also concedes in cases of more inclusive prohibitions? He answers that since an expanded prohibition is more severe, it stands to reason that Rabbi Yosei concedes in that case specifically. Other commentaries point out that since Rabbi Yosei disagrees in the case of a married woman who became his mother-in-law, which is a more inclusive prohibition because he became forbidden to her and to her relatives, we can conclude that Rabbi Yosei does not in fact agree in these cases (see Ritva).

אלא אמר רבא – Rather Rava said: Some commentaries maintain

that Rava's statement serves only to resolve Rabbi Yosei's opinion with regard to a wife's sister. However, most of the commentaries agree with the opinion of Rashi and assert that the word rather here indicates a fundamental dispute with Rabbi Abbahu, in that Rava holds that Rabbi Yosei does not concede that an additional prohibition can take effect where a prohibition already exists.

בין רשעים גמורים – Among the completely wicked: Many early commentaries had a version of the text that read: Among the severely wicked, and therefore did not interpret this like Rashi, who explains this as meaning that he should be buried with those who had been stoned to death. They point out that he did not commit a crime so heinous as to deserve such a burial place. Rather, they state, he should be buried among those who were wicked like himself. *Tosefot HaRosh* explains that Rabbi Yosei holds that this man should be buried together with someone who committed sins with two different women, such as a brother's wife and a wife's sister, since he committed both of these transgressions as well. On the other hand, Rabbi Shimon holds that another prohibition cannot take effect where a prohibition already exists, so it is considered as though he committed a single transgression.

**דַּרְשׁוֹת שְׁמִימָה – אִישׁ חֵיב עֲבֹדָה:** A non-priest who served in the Temple on Shabbat was liable to receive punishment both for violating Shabbat and for serving as a non-priest. Similarly, a blemished priest who served in the Temple service while ritually impure was liable both for serving while ritually impure as well as for serving as a blemished priest (Rambam *Sefer Avoda, Hilkhot Biat HaMikdash* 9:12).

## NOTES

**He is liable on two counts – חֵיב שְׁתֵּים:** According to Rashi and other commentaries, this means that he transgressed two prohibitions, the repercussions being that he is considered completely wicked. Ramban explains that this refers to the sets of lashes he would receive, according to the opinion that one receives lashes even for a prohibition for which one is punished with execution by the courts. One who violates such a prohibition is punished with lashes if certain factors prevent the court from administering the death penalty. One commentary explains that with regard to the three questions over which Rabbi Ḥiyya and Bar Kappara disagree, they differ from one another on precisely this point; the first is referring to a negative mitzva and court-administered capital punishment, the second to a negative mitzva and *karet*, and the third is referring to two negative mitzvot (Re'em Horowitz).

**Rabbi Ḥiyya jumped up and swore, etc. – קָפַץ רַבִּי – חֵיבָא וְנִשְׁבַּע וכו':** It is possible that Rabbi Yehuda HaNasi changed his mind, and so both of them could indeed hear the words of Rabbi accurately, but at different times (*Ramat Shmuel*).

**The Temple service – הֶעֱבֹדָה:** According to the Maharsha, this form of oath, which is used on numerous occasions in the Babylonian Talmud, is not in fact referring to the Temple service, since at that time there was no Temple. The word service refers to divine service in accordance with the statement by the Rambam that an oath taken with the divine name is a form of service. The vowels of the word *avoda* are identical to the vowels of the four-letter divine name.

**A non-priest on Shabbat, a blemished priest while ritually impure – בְּעַל מוּם בְּטוּמְאָה:** The Ramban writes that the Gemara could have asked many different questions, one of which was with regard to a blemished priest who served on Shabbat, yet it chose to use one example of many. However, it did not ask about a non-priest who served while ritually impure, because non-priests were never warned against performing the Temple service while ritually impure (Rivan; *Tosafot*). The Meiri contends that this question could have been asked as well.

**Rabbi Ḥiyya began to deliberate – הִתְחִיל רַבִּי חֵיבָא לְדוֹן:** As later becomes clear, the essence of the dispute between these two Sages revolves around the question of whether a prohibition takes effect where another prohibition already exists. Nevertheless, it was important to clarify the opinion of Rabbi Yehuda HaNasi in these cases. Accordingly, the choice of the words: Began to deliberate, is precise, since this served only as a preliminary clarification of the opinions but did not constitute the heart of the discussion (Rashba).

וּבְפִלְגֻתָּא, דְּאִיתְמַר: זֶר שְׁשִׁימָה בְּשַׁבָּת, רַבִּי חֵיבָא אָמַר: חֵיב שְׁתֵּים, בַּר קַפָּרָא אָמַר: אִין חֵיב אֶלָּא אַחַת. קָפַץ רַבִּי חֵיבָא וְנִשְׁבַּע: הֶעֱבֹדָה! כִּן שְׁמַעְתִּי מֵרַבִּי: שְׁתֵּים. קָפַץ בַּר קַפָּרָא וְנִשְׁבַּע: הֶעֱבֹדָה! כִּן שְׁמַעְתִּי מֵרַבִּי: אַחַת.

הִתְחִיל רַבִּי חֵיבָא לְדוֹן: שַׁבָּת לְכָל נְאֻסָּה, כְּשֶׁהוֹתֵרָה בְּמִקְדָּשׁ – אֶצְלַ כְּהֻנִּים הוֹתֵרָה, לְכַהֲנִים הוֹתֵרָה וְלֹא לְזָרִים. יֵשׁ כָּאֵן מְשׁוּם זְרוּת, וְיֵשׁ כָּאֵן מְשׁוּם שַׁבָּת. הִתְחִיל בַּר קַפָּרָא לְדוֹן: שַׁבָּת לְכָל נְאֻסָּה, כְּשֶׁהוֹתֵרָה – בְּמִקְדָּשׁ הוֹתֵרָה, אִין כָּאֵן אֶלָּא זְרוּת.

בְּעַל מוּם שְׁשִׁימָה בְּטוּמְאָה, רַבִּי חֵיבָא אָמַר: חֵיב שְׁתֵּים, בַּר קַפָּרָא אָמַר: אִין חֵיב אֶלָּא אַחַת. קָפַץ רַבִּי חֵיבָא וְנִשְׁבַּע: הֶעֱבֹדָה! כִּן שְׁמַעְתִּי מֵרַבִּי: שְׁתֵּים. קָפַץ בַּר קַפָּרָא וְנִשְׁבַּע: הֶעֱבֹדָה! כִּן שְׁמַעְתִּי מֵרַבִּי: אַחַת.

הִתְחִיל רַבִּי חֵיבָא לְדוֹן: טוּמְאָה לְכָל נְאֻסָּה, כְּשֶׁהוֹתֵרָה בְּמִקְדָּשׁ – אֶצְלַ כְּהֻנִּים תְּמִימִים הוֹתֵרָה, לְכַהֲנִים תְּמִימִים הוֹתֵרָה וְלֹא לְבְּעָלֵי מוּמִין, יֵשׁ כָּאֵן מְשׁוּם בְּעָלֵי מוּמִין, וְיֵשׁ כָּאֵן מְשׁוּם טוּמְאָה. הִתְחִיל בַּר קַפָּרָא לְדוֹן: טוּמְאָה לְכָל נְאֻסָּה, כְּשֶׁהוֹתֵרָה בְּמִקְדָּשׁ – הוֹתֵרָה, אִין כָּאֵן אֶלָּא מְשׁוּם בְּעַל מוּם,

§ The Gemara comments that the issue of a prohibition taking effect where another prohibition already exists is taught in the dispute found in a *baraita*, where it was stated: With regard to a non-priest who served in some capacity in one of the Temple services, such as the burning of a burnt-offering on the altar on Shabbat,<sup>H</sup> Rabbi Ḥiyya says: He is liable to receive punishment on two counts,<sup>N</sup> both because he was a non-priest serving in the Temple and because he desecrated Shabbat. Bar Kappara<sup>P</sup> says: He is liable on only one count. Rabbi Ḥiyya jumped up and swore:<sup>N</sup> I swear by the Temple service<sup>N</sup> that this I heard from Rabbi Yehuda HaNasi: He is liable on two counts. Bar Kappara jumped up and swore: I swear by the Temple service that this I heard from Rabbi Yehuda HaNasi: He is liable on one count.

Since the matter could not be decided by tradition, Rabbi Ḥiyya began to deliberate and analyze the question logically. Prohibited labor on Shabbat was prohibited to all. When prohibited labor was permitted in the Temple for the purposes of the Temple service, it was permitted only for priests. This indicates that it was permitted for priests and not for non-priests. Therefore, when a non-priest serves in the Temple on Shabbat, there is a transgression here due to his serving as a non-priest and there is a transgression here due to his desecrating Shabbat. Bar Kappara began to deliberate in a different manner: Shabbat was prohibited to all. When it was permitted it was permitted in the Temple, so that if it was permitted for one to serve in the Temple, it was permitted for him to serve on Shabbat. Therefore, there is a transgression here only for his serving as a non-priest, since if this man were a priest his service would have been permitted. Therefore, he is not liable to receive punishment for desecrating Shabbat.

They disagreed over a similar issue as well, the case of a priest with a blemish who served in the Temple by sacrificing a public offering, which overrides ritual impurity, while he was ritually impure.<sup>N</sup> Rabbi Ḥiyya says: He is liable on two counts, both for serving with a blemish and for being ritually impure. Bar Kappara says: He is liable on only one count, for serving with a blemish. Rabbi Ḥiyya jumped up and swore: I swear by the Temple service that this I heard from Rabbi Yehuda HaNasi: He is liable on two counts. Bar Kappara jumped up and swore: I swear by the Temple service that this I heard from Rabbi Yehuda HaNasi: He is liable on one count.

Rabbi Ḥiyya began to deliberate.<sup>N</sup> Ritual impurity was prohibited to all, as it was prohibited for all individuals who are ritually impure to enter into the Temple. When it was permitted in the Temple in circumstances where the entire public was impure, it was permitted for unblemished priests. Therefore, it was permitted only for unblemished priests and not for priests with blemishes. Consequently, if that priest with a blemish served while impure, there is a transgression here due to his status as a blemished priest and there is a transgression here due to ritual impurity. Bar Kappara began to deliberate in a different manner: Ritual impurity was prohibited to all. When it was permitted in the Temple, it was permitted for all. Therefore, the only problem was that this priest was blemished, and so there is a transgression here only due to his status as a blemished priest.

## PERSONALITIES

**Bar Kappara – בַּר קַפָּרָא:** This Sage was among the last of the *tanna'im*, a leading pupil of Rabbi Yehuda HaNasi, and a colleague of Rabbi Shimon ben Rabbi Yehuda HaNasi and Rabbi Ḥiyya. His first name is unknown, although some say that he was the son of Rabbi Elazar HaKappar, and, being born after his father's death, was named Elazar as well.

Bar Kappara was among the greatest halakhic authorities of his generation, who even compiled a collection of *baraitot* called *Mishnat bar Kappara*. Excerpts from this compilation are cited several times throughout the Talmud. Bar Kappara was also famous for his sermons, and he was a master of language as well. Several proverbs, poetic phrases, and words of prayer are recorded in his name.

As he had a sense of humor and a sharp wit, he would often aim amusing criticism at the Sages, including the members of Rabbi Yehuda HaNasi's household. For this reason, and despite his closeness to his teacher, bar Kappara was never ordained. Bar Kappara was well versed in general wisdom and was therefore often sent to represent the Jewish community before the Roman authorities.

The majority of prominent *amora'im* of the first generation were among his students. The prominent *amora* Rabbi Yehuda ben Pedaya (bar Padda) was his nephew. He was among the Sages in the southern part of Eretz Yisrael, and active in the city of Parod, where he is buried.



**HALAKHA**

**זר שאכל – מליקה** – A non-priest who ate a bird killed by pinching – **מליקה**: A non-priest who ate from a bird sin-offering is liable to receive punishment on two counts, one as a non-priest who ate consecrated animals, and one for eating an unslaughtered animal carcass (Rambam *Sefer Avoda, Hilkhhot Ma'aseh HaKorbanot* 11:9).

**NOTES**

**Pinching – מליקה**: Turtledoves and young pigeons sacrificed as offerings in the Temple were killed not by ritually slaughtering them with a knife like other offerings, but rather by pinching their necks. This was considered an especially difficult activity to perform. The priest would hold the bird in his left hand with its legs and wings between his fingers, and the back of its neck stretched out and facing upward. With his right fingernail, which he grew especially long for this purpose, the priest would cut the bird's neck and spine from the back until he reached and severed its windpipe and gullet. If the bird was to be sacrificed as a burnt-offering, the priest would completely sever its head. If it was to be sacrificed as a sin-offering, he would leave the head partially attached. A bird killed by pinching and sacrificed as a sin-offering was permitted to be eaten by the priests, while a bird that was killed by pinching but not intended for sacrificial use was considered an unslaughtered carcass, and it was not permitted to eat it. The pinching could be performed only by a priest, whereas the slaughtering of animal offerings in the Temple could be performed by a non-priest.

זר שאכל מליקה, רבי חייא אומר: חייב שתים, בר קפרא אומר: אין חייב אלא אחת. קפץ רבי חייא ונשבע: העבודה! כך שמעתי מרבי: שתים קפץ בר קפרא ונשבע: העבודה! כך שמעתי מרבי: אחת.

התחיל רבי חייא לדון: נבלה לכל נאסרה, בשהותרה במקדש – אצל כהנים הותרה, לכהנים הותרה ולא לזרים. יש כאן משום זרות, ויש כאן משום מליקה. התחיל בר קפרא לדון: נבלה לכל נאסרה, בשהותרה במקדש – הותרה, אין כאן אלא משום זרות.

They disagreed over a similar issue as well. This dispute is with regard to a **non-priest who ate a bird sin-offering** that was killed by **pinching**<sup>H</sup> the back of its neck. It is permitted for priests to consume such an offering, but it is prohibited to consume any other bird killed in such a manner, since it was not ritually slaughtered. **Rabbi Hiyya says: He is liable to receive punishment on two counts**, both for being a non-priest who ate a priestly offering and for eating something that was not properly slaughtered. **Bar Kappara says: He is liable on only one count. Rabbi Hiyya jumped up and swore: I swear by the Temple service that this I heard from Rabbi Yehuda HaNasi: He is liable on two counts. Bar Kappara jumped up and swore: I swear by the Temple service that this I heard from Rabbi Yehuda HaNasi: He is liable on one count.**

**Rabbi Hiyya began to deliberate. An unslaughtered animal carcass was prohibited to all. When it was permitted in the Temple, it was permitted to priests alone. Since it was permitted to priests and not to non-priests, there is a transgression here due to his status as a non-priest who ate of the sin-offering and there is a transgression here due to eating an animal killed by pinching.<sup>N</sup> Bar Kappara began to deliberate: An unslaughtered animal carcass was prohibited to all. When it was permitted in the Temple, it was permitted to all. Therefore there is a transgression here only for being a non-priest, since if he were a priest there would be no prohibition at all.**

Perek III  
Daf 33 Amud a

במאי קמפלגי? באיסור בולל, ואלבא דרבי יוסי: רבי חייא סבר, רבי יוסי באיסור בולל מיתייב תרתי: בר קפרא סבר, לא מיתייב אלא חדא.

The Gemara asks: **With regard to what principle do they disagree?**<sup>N</sup> The Gemara suggests that they disagree with regard to the issue of a **more inclusive prohibition**, and this dispute pertains to the status of a more inclusive prohibition specifically according to the opinion of Rabbi Yosei. **Rabbi Hiyya holds that Rabbi Yosei is of the opinion that in the case of a more inclusive prohibition, one is liable on two counts. Bar Kappara holds that Rabbi Yosei is of the opinion that one is liable only on one count.**

ומאי איסור בולל איבא הכא? בשלמא זר, מעיקרא שרי במלאכה ואסור בעבודה, אתיא לה שבת – מגו דקא מיתסר במלאכה מיתסר נמי בעבודה.

The Gemara asks: **And what more inclusive prohibition is there here in these cases? Granted**, in the case of a **non-priest who served in the Temple on Shabbat, initially he was permitted to perform labor every day and was prohibited from engaging in the Temple service. When Shabbat came, since he is now prohibited from engaging in prohibited labor in all contexts due to Shabbat, he is also prohibited from engaging in labors related to the Temple service due to Shabbat. Indeed, the additional prohibition of Shabbat was added to the previously existing prohibition against performing service in the Temple. This is a more inclusive prohibition since it also includes prohibited labor outside of the Temple.**

**NOTES**

**במאי קמפלגי** – Both the early and later commentaries ask: Why did the Gemara see fit to repeat this question when Rabbi Hiyya and bar Kappara explicitly stated the reasoning behind their positions? *Tosefot HaRosh* states that the Sages of the Talmud held a tradition that the root of the dispute was not based upon the previously suggested interpretation. The Rivan, however, states that this question is directed specifically toward bar Kappara, since his reasoning does not seem sufficient. Others say that because

the two Sages demonstrated that each of these issues could be viewed from two different angles, they would not have depended solely upon their explicit explanations (*Tosafot Yeshanim*). The Rashba writes that there must be an alternate rationale behind this dispute, as otherwise one of the Sages would be telling a falsehood. Moreover, the words: Began to deliberate, indicate that this was not their primary reasoning, but that they intended to present further proofs of their statements (see *Tosafot*).