אָמַר שְׁמוּאֵל: וְכוּלָּן צְרִיכוֹת לְהַמְתִּין שְׁלֹשָׁה חֳדָשִׁים, חוּץ מִגִּיּוֹרֶת וּמְשׁוּחְרֶרֶת קְטַנָּה. אֲבָל קְטַנָּה בַּת יִשְׂרָאֵל – צְרִיכָה לְהַמְתִּין שְׁלֹשָׁה חֳדָשִׁים.

§ **Shmuel said: And all of those** women who had sexual intercourse, and there is therefore a concern that they might be pregnant, **must wait three months** before marrying so as to differentiate between a child born from the previous intercourse and a child born from this marriage, **except for a female convert** who is a minor **and a female released slave who is a minor.** Although it is possible that they had sexual intercourse, they cannot become pregnant in any case. **However, a female Israelite who was a minor** and had intercourse **must wait three months** like all other women.

וּבְמַאי? אִי בְּמֵיאוֹן – וְהָאֲמַר שְׁמוּאֵל דְּלָא בָּעֲיָא. וְאִי בְּגֵט – הָאֲמָרָה שְׁמוּאֵל חֲדָא זִימְנָא. דְּאָמַר שְׁמוּאֵל: מֵיאֲנָה בּוֹ – אֵינָהּ צְרִיכָה לְהַמְתִּין שְׁלֹשָׁה חֳדָשִׁים, נָתַן לָהּ גֵּט – צְרִיכָה לְהַמְתִּין שְׁלֹשָׁה חֳדָשִׁים! אֶלָּא בְּזִנּוּת.

The Gemara asks: **And with regard to what** situation is this statement referring? **If it is** referring to a minor who was released from her marriage **by refusal,** as a minor girl who was married to a man by her mother or brothers may refuse to remain married to her husband until reaching majority, **but didn't Shmuel say that she is not required** to wait three months? **And if** it is referring to a woman who received **a bill of divorce** as a minor, **didn't Shmuel** already **state** this *halakha* **one time?** Why would he repeat this ruling, **as Shmuel said: A female minor who refused** her husband **need not wait three months** before her second marriage,[H] but if **he gave her a bill of divorce, she must wait three months,**[H] so as not to make a distinction between an adult divorcée and a minor divorcée. **Rather,** it must be that this is referring to a female minor who was involved in **licentious sexual intercourse.**

HALAKHA

Waiting period for a female minor who performed refusal – הַמְתָּנָה בִּמְמָאֶנֶת: A female minor who refused her husband is not required to wait three months before marrying another man, as the rabbinic decree did not include her (Rambam *Sefer Nashim*, *Hilkhot Geirushin* 11:22; *Shulḥan Arukh*, *Even HaEzer* 13:6).

Waiting period for a divorced woman – הַמְתָּנָה בִּגְרוּשָׁה: Every woman who was divorced must wait three months before marrying another man. The Sages did not distinguish between divorced women, so that even a minor divorced woman who cannot bear children must still wait three months (Rambam *Sefer Nashim*, *Hilkhot Geirushin* 11:20; *Shulḥan Arukh*, *Even HaEzer* 23:1).

Perek **III**
Daf **35** Amud **a**

וְגָזְרוּ רַבָּנַן קְטַנָּה מִשּׁוּם גְּדוֹלָה.

And, although there is no possibility for her to become pregnant, **the Sages issued** a rabbinic **decree** requiring the three month waiting period **for a female minor due to** this requirement for **a female adult** who engaged in promiscuous sexual acts.

וּמִי גָּזְרִינַן קְטַנָּה מִשּׁוּם גְּדוֹלָה? וְהָתְנַן: אִם הָיוּ קְטַנּוֹת שֶׁאֵינָן רְאוּיוֹת לְיַלֵּד – מַחֲזִירִין אוֹתָן מִיָּד! אָמַר רַב גִּיּוֹדֵל אָמַר רַב: הוֹרָאַת שָׁעָה הָיְתָה. מִכְּלָל דַּהֲוַאי?! אֶלָּא כְּהוֹרָאַת שָׁעָה הָיְתָה, וְחִילּוּף לָא שְׁכִיחַ.

The Gemara asks: **And do we issue a decree** with regard to **a female minor due to** the ruling for **a female adult? But didn't we learn** in the mishna: **If they were female minors who could not bear children, we return them**[H] **immediately** to their husbands? This indicates that there is no concern for pregnancy, and the Sages did not issue a decree in this case. **Rav Giddel said** that **Rav said: This was a provisional edict** issued in exigent circumstances, and therefore one cannot extrapolate from the case in the mishna to other situations. The Gemara wonders: Can one assume **by inference that there was** such an occurrence? It would seem from the mishna that this was merely a possibility and not an actual occurrence, for if it actually happened it would have been appropriate for the mishna to relate the actual case. **Rather,** the ruling in the mishna is **like a provisional edict in that switching** of wives, such as described in the mishna, **is uncommon,** and in cases that are not common, the Sages do not issue a decree. Therefore, in the case of the mishna, the female minors were not required to wait.

HALAKHA

If they were female minors…we return them – אִם הָיוּ קְטַנּוֹת…מַחֲזִירִין אוֹתָן: In situations where a woman was mistakenly married and then removed from her husband by a court, if she was a minor at the time, she is allowed to marry another man. She need not wait because this is an uncommon occurrence and was not included in the rabbinic decree (Rambam *Sefer Nashim*, *Hilkhot Geirushin* 11:23; *Shulḥan Arukh*, *Even HaEzer* 13:8).

לִישָׁנָא אַחֲרִינָא אָמְרִי לָהּ, אָמַר שְׁמוּאֵל: כּוּלָּן צְרִיכוֹת לְהַמְתִּין שִׁלְשָׁה חֳדָשִׁים, חוּץ מִגִּיּוֹרֶת וּמְשׁוּחְרֶרֶת גְּדוֹלָה. [אֲבָל] קְטַנָּה בַּת יִשְׂרָאֵל – אֵינָהּ צְרִיכָה לְהַמְתִּין שִׁלְשָׁה חֳדָשִׁים. בְּמַאי? אִי בְּמֵיאוֹן – הָאֲמָרָהּ שְׁמוּאֵל חֲדָא זִימְנָא, אִי בְּגֵט – הָא קָאָמַר שְׁמוּאֵל דְּבָעֲיָא, דְּאָמַר שְׁמוּאֵל: מֵיאֲנָה בּוֹ – אֵינָהּ צְרִיכָה לְהַמְתִּין שִׁלְשָׁה חֳדָשִׁים, נָתַן לָהּ גֵּט – צְרִיכָה לְהַמְתִּין שִׁלְשָׁה חֳדָשִׁים! אֶלָּא בְּזִנּוּת, וְזִנּוּת בִּקְטַנָּה לָא שְׁכִיחַ.

Some say another version of what was taught: **Shmuel said:**[N] **All** women **must wait three months, except for a female convert** who is an adult **and a freed maidservant**[H] **who is an adult;** these women need not wait. **However, an Israelite female minor need not wait three months** in any case. The Gemara clarifies: **With regard to what** situation is this statement referring? **If** it is referring to a female minor released from her marriage **by refusal,** it would be superfluous, **as didn't Shmuel** already **state this** *halakha* **one time?** If it is referring to a woman released **by a bill of divorce,** but **didn't Shmuel say that** in that case **she is required** to wait, **as Shmuel said:** If **she refused him she need not wait three months,** but **if he gave her a bill of divorce, she must wait three months? Rather,** this is referring to cases of **promiscuous sexual intercourse, and** an occurrence of **promiscuous sexual intercourse with female minors is uncommon,** and the Sages did not issue rabbinic decrees in uncommon instances.

גִּיּוֹרֶת וּמְשׁוּחְרֶרֶת, דְּשָׁכְיַח בְּהוּ זְנוּת, לִיגְזוֹר! הוּא דְּאָמַר כְּרַבִּי יוֹסֵי. דְּתַנְיָא: הַגִּיּוֹרֶת וְהַשְּׁבוּיָה וְהַשִּׁפְחָה שֶׁנִּפְדּוּ וְשֶׁנִּתְגַּיְּירוּ וְשֶׁנִּשְׁתַּחְרְרוּ – צְרִיכוֹת לְהַמְתִּין שִׁלְשָׁה חֳדָשִׁים, דִּבְרֵי רַבִּי יְהוּדָה. רַבִּי יוֹסֵי מַתִּיר לֵיאָרֵס וְלִינָּשֵׂא מִיָּד. אֲמַר רַבָּה: מַאי טַעְמָא דְּרַבִּי יוֹסֵי – קָסָבַר: אִשָּׁה מְזַנָּה מְשַׁמֶּשֶׁת בְּמוֹךְ כְּדֵי שֶׁלֹּא תִּתְעַבֵּר.

The Gemara suggests: **Let** the Sages **issue a decree** requiring **a female convert and a released maidservant** to wait three months, **as** at the time that one was a gentile and the other a maidservant, **promiscuous sexual intercourse was common for them.** The Gemara responds: Shmuel **stated** his *halakhic* ruling **in accordance with** the opinion of **Rabbi Yosei, as it is taught** in a *baraita*: In the case of **the female convert; and the captured woman,** who is suspected of having been raped during her imprisonment; **and the maidservant, who were redeemed or who were converted or who were released, must wait three months** prior to marriage. This is **the statement of Rabbi Yehuda. Rabbi Yosei allows** them **to be betrothed and married immediately. Rabba said: What is the reasoning of Rabbi Yosei? He holds that a woman who engages in promiscuous sexual intercourse uses** a contraceptive **resorbent** that she places at the opening of her womb **so as not to become impregnated.** Therefore, there is no concern that she might be pregnant.

אָמַר לֵיהּ אַבַּיֵי: בִּשְׁלָמָא גִּיּוֹרֶת, כֵּיוָן דְּדַעְתָּהּ לְאִינַּיּוּרֵי – מְנַטְּרָה נַפְשָׁהּ. כְּדֵי לְהַבְחִין בֵּין זֶרַע שֶׁנִּזְרַע בִּקְדוּשָּׁה וּבֵין זֶרַע שֶׁנִּזְרַע שֶׁלֹּא בִּקְדוּשָּׁה. שְׁבוּיָה וְשִׁפְחָה נַמִּי, דְּשָׁמְעִי מִמָּרְיְהוּ וּמְנַטְּרֵי נַפְשַׁיְיהוּ. אֶלָּא יוֹצֵאת בְּשֵׁן וְעַיִן – הֵיכִי מַשְׁכַּחַתְּ לָהּ?

Abaye said to him: Granted, a female convert does this. **Since she is determined to convert, she guards herself** so as not to be impregnated while still a gentile **in order to distinguish between children conceived in sanctity,** i.e., after her conversion, **and children conceived out of sanctity.**[N] **A captured woman and a maidservant** would **also** be cautious because **they hear from their masters** that they are about to be redeemed or that they are about to be released, **and they guard themselves** so as not to be impregnated. **However,** with regard to a maidservant who **is released due to** damage caused her by her masters, i.e., loss of one of her extremities such as **a tooth or an eye, how can you find** a case where there is no concern for her becoming impregnated? Since she could not have known in advance that she would be released, she would have had no reason to be careful not to become pregnant.

וְכִי תֵּימָא: כָּל דְּמִמֵּילָא מוֹדֶה רַבִּי יוֹסֵי – וְהָתְנַן: אֲנוּסָה וּמְפוּתָּה צְרִיכָה לְהַמְתִּין שִׁלְשָׁה חֳדָשִׁים, דִּבְרֵי רַבִּי יְהוּדָה. רַבִּי יוֹסֵי מַתִּיר לֵיאָרֵס וְלִינָּשֵׂא מִיָּד!

And if you would say that in **any** case **where** the situation occurs **by itself,** as in the case where a woman was unaware of her pending release, **Rabbi Yosei concedes** that she must indeed wait, this is difficult. **But didn't we learn** in a mishna: **A woman who was raped and a woman who was seduced**[NH] **must wait three months** as perhaps she became pregnant; this is **the statement of Rabbi Yehuda. Rabbi Yosei permits her to be betrothed and to be married immediately.** Clearly, a woman who was raped could not have prepared herself ahead of time so as not to become pregnant.

NOTES

Shmuel's opinion – שִׁיטַת שְׁמוּאֵל: Clarification of Shmuel's opinion, according to both formulations, and the relationship between his statement and the various tannaitic opinions on this issue is crucial to the understanding of the progression of the discussion here as well as the final halakhic conclusions (see 40a and onward).

According to Rabbeinu Ḥananel, Rashi, and other commentaries, Shmuel does not rule in accordance with Rabbi Yosei's opinion in all cases. Rather, in some situations he rules in accordance with the opinion of Rabbi Yehuda and holds that a woman who was raped or seduced requires a waiting period. Because Shmuel maintains that the primary reason for allowing a woman to marry immediately is the use of a contraceptive resorbent, in cases of rape and seduction he is concerned that the post-intercourse contraceptive will not be sufficient. Converts and released maidservants, however, would certainly protect themselves prior to intercourse (*Tosefot Rid*; see Responsa of the Radbaz 1:196).

Alternatively, Shmuel ruled that it is appropriate to issue a rabbinic decree in cases of rape and seduction, but not for converts, since occurrences of conversion are uncommon (Ramban; Rashba; see Razah).

However, according to the Rif, the Rambam, and other commentaries, Shmuel rules in accordance with the opinion of Rabbi Yosei on all issues. When he said: Except for female converts and released maidservants who were adults, he did not intend to imply that raped and seduced women require a waiting period for the purpose of distinction. On the contrary, he meant to say that even those who were not so cautious, since they nevertheless intended to convert, take steps to prevent pregnancy. If so, this is all the more true for women who were raped or seduced (Ramban).

The Ra'avad explains a different rationale for Shmuel's distinction with regard to converts and released maidservants. In these cases, there are two uncertainties: First, there is uncertainty as to whether the woman engaged in intercourse at all. Second, even if you say that she did engage in sexual intercourse, she might not have become pregnant. This is not the case for a raped or seduced woman. Since she certainly had intercourse, the only uncertainty that remains is whether or not she became pregnant. Therefore, she should be required to observe the waiting period.

In order to distinguish between children conceived in sanctity and children conceived out of sanctity – לְהַבְחִין בֵּין זֶרַע שֶׁנִּזְרַע בִּקְדוּשָּׁה וּבֵין זֶרַע שֶׁנִּזְרַע שֶׁלֹּא בִּקְדוּשָּׁה: Although when a pregnant woman converts, her fetus is converted along with her and does not need to immerse after birth, it is necessary to know the child's status at the time of his conception. As a child who converts no longer maintains the familial connections that he had before his conversion, it is important to know at what point he converted in order to establish his family status vis-à-vis children in that family who are conceived later.

A woman who was raped and a woman who was seduced – אֲנוּסָה וּמְפוּתָּה: With regard to this issue, in the Jerusalem Talmud there is also a ruling that women who were raped or seduced need not wait. There the question is raised as to why the mishna requires the women who were mistakenly switched, which is a type of rape, to nevertheless have a waiting period. This question is sharpened by the assertion that it is inappropriate to issue a rabbinic decree in cases of switched wives since this is an uncommon occurrence. The Gemara there answers that the ruling in the mishna comes to rectify the child's status. The Vilna Gaon explains that there is a distinction between the purposes of the separation period in different cases. In cases of rape and the like, the decree was made in order to know with certainty who was the father of the child. In this case, the rabbinic decree was not applied. However, in the case of the mishna, the separation is necessary in order to determine whether or not the child is a *mamzer*, and therefore the rabbinic decree was issued.

HALAKHA

A female convert and a freed maidservant – גִּיּוֹרֶת וּמְשׁוּחְרֶרֶת: Female converts and maidservants who were married before they became Jewish are required to wait three months before marrying. If the husbands converted they must separate from them for three months in order to distinguish between children conceived before and after the conversion. This ruling is in accordance with the opinion of Rabbi Yehuda, as explained by Abaye (*Maggid Mishne*; Rambam *Sefer Nashim*, *Hilkhot Geirushin* 11:21; *Shulḥan Arukh*, *Even HaEzer* 13:5).

A woman who was raped and a woman who was seduced, etc. – אֲנוּסָה וּמְפוּתָּה וכו': Women who were raped or seduced, and indeed any woman who engaged in promiscuous sexual acts, as well as a woman who was captured, need not wait three months. This ruling is in accordance with the opinion of Rabbi Yosei (Rambam). Some say that if the females are adult women and fit to become pregnant they must wait, in accordance with the opinions of Rabbi Yehuda and Shmuel (Rema; Rambam *Hilkhot Geirushin* 11:22; *Shulḥan Arukh*, *Even HaEzer* 13:6).

אֶלָּא אֲמַר אַבַּיֵי: אִשָּׁה מְזַנָּה מִתְהַפֶּכֶת, שֶׁלֹּא תִּתְעַבֵּר. וְאִידָךְ: חֲיִישִׁינַן שֶׁמָּא לֹא נִתְהַפְּכָה יָפֶה יָפֶה.

Rather, Abaye said: A woman who engages in promiscuous sexual intercourse turns over[NB] following intercourse, trying to prevent the absorption of the semen, so as **not to become pregnant.** Maidservants act in a similar manner. The Gemara asks: If indeed she tries not to become pregnant, how then would **the other** opinion, that of Rabbi Yehuda, explain why she must wait three months? The Gemara responds: **We are concerned** that **perhaps she did not turn over well enough** and therefore became pregnant.

"וְאִם הָיוּ כֹּהֲנוֹת" כו'. כֹּהֲנוֹת – אִין, יִשְׂרְאֵלִית – לָא?! אֵימָא: אִם הָיוּ נְשֵׁי כֹּהֲנִים. נְשֵׁי כֹּהֲנִים – אִין, נְשֵׁי יִשְׂרְאֵלִים – לָא?

§ With regard to the case of two betrothed women who were switched at the time they entered the wedding canopy, the mishna states: **And if they were daughters of priests,** they are disqualified from partaking in *teruma*. The Gemara asks: Does this indicate that with regard to the **daughters of priests, yes,** they are disqualified from partaking in *teruma*, but with regard to **the daughter of an Israelite, no,** she would not be disqualified? It would seem that an Israelite woman married to a priest should most certainly be disqualified from eating of her husband's *teruma*. The Gemara answers: Rather, **say: If they were the wives of priests** then they are disqualified. The Gemara questions this formulation: Does this indicate that with regard to the **wives of priests, yes,** they are disqualified, but with regard to the **wives of Israelites, no,** they are not disqualified, and if their husbands died, they would be suitable for marriage to the priests?

וְהָאֲמַר רַב עַמְרָם: הָא מִילְתָא אֲמַר לָן רַב שֵׁשֶׁת, וְאַנְהֲרִינְהוּ לְעֵינִין מִמַּתְנִיתִין: אֵשֶׁת יִשְׂרָאֵל שֶׁנֶּאֱנְסָה, אַף עַל פִּי שֶׁמּוּתֶּרֶת לְבַעְלָהּ – פְּסוּלָה לִכְהוּנָּה!

The Gemara objects to this: **But didn't Rav Amram say: Rav Sheshet said this matter to us, and he lit our eyes** by showing us that this ruling is indicated **from what was** stated in **the mishna** (*Yevamot* 53b). He said: **The wife of an Israelite who was raped, even though she is permitted to** return to **her husband, she is** nevertheless **disqualified from the priesthood.**[NH] If her husband later dies, she may not marry a priest, for although she is permitted to her husband the rape disqualified her for matters of priesthood.

אֲמַר רָבָא, הָכִי קָאָמַר: אִם הָיוּ כֹּהֲנוֹת נְשׂוּאוֹת לְיִשְׂרָאֵל – נִפְסְלוּ מִן הַתְּרוּמָה דְּבֵי נְשַׁיְיהוּ.

Rava resolved this and **said: This is what** the *tanna* **is saying** in the mishna: **If they were daughters of priests** who **were married to an Israelite, they are disqualified from the *teruma*[H] that is from the household of their fathers,** so that if their husbands die while they are childless, they may not go back to eat of the *teruma* in the house of their fathers. While other childless daughters of priests are again qualified to eat of the *teruma* the moment they leave their Israelite husbands, these women were disqualified by their act of forbidden sexual intercourse.

הדרן עלך ארבעה אחין

NOTES

Turns over – מִתְהַפֶּכֶת: According to *Tosafot Yeshanim*, there is room to differentiate between a maidservant who is released due to the loss of a tooth or an eye and a woman who was raped or seduced because an ordinary maidservant is not concerned with becoming pregnant. In fact, she might even desire it. According to this explanation, even Rabbi Yosei would agree that she requires a waiting period. On the other hand, the *Ḥazon Ish* holds that the primary dispute between Rabba and Abaye is not over the type of preventive measure chosen, i.e., the resorbent and turning over, respectively, as it might seem, but rather over the following question: Does a woman who is not married desire to become pregnant? In Abaye's opinion, she never desires this.

Disqualified from the priesthood – פְּסוּלָה לִכְהוּנָּה: The primary reason for this ruling is that any woman who engaged in intercourse, willingly or unwillingly, with a man for whom she incurs *karet* is considered a *zona*. Although a *zona* is not forbidden to an Israelite, except for in some special cases, she is nevertheless disqualified from marrying into the priesthood or partaking of *teruma* (see Rashi and *Tosafot*).

BACKGROUND

Turns over – מִתְהַפֶּכֶת: Medically speaking, turning over after intercourse is not an effective method of pregnancy prevention. However, it would seem that the Gemara is not referring specifically to the act of turning over, but rather to the fact that a woman who does not desire to become pregnant will take any measures necessary in addition to turning over, including taking drugs and the like. The Gemara's concern that she might not have turned over sufficiently therefore seems justified, since no measure taken following intercourse can fully ensure that a woman will not conceive.

HALAKHA

A married woman who was raped – אֵשֶׁת אִישׁ שֶׁנֶּאֱנְסָה: While a woman who was married to an Israelite and raped is permitted to her husband, she nevertheless may not marry a priest if her husband dies, as the act of prohibited intercourse disqualified her from marrying into the priesthood. This ruling is in accordance with the statement of Rav Sheshet (Rambam *Sefer Kedusha*, *Hilkhot Issurei Bia* 18:7; *Shulḥan Arukh*, *Even HaEzer* 13:6, 11).

Daughters of priests disqualified from partaking of *teruma* – כֹּהֲנוֹת נִפְסָלוֹת לִתְרוּמָה: If the daughter of a priest was married to an Israelite and was raped by another man, she is permitted to her husband. If she is divorced or widowed, she is prohibited from partaking of the *teruma* from her father's household, even if she has no children from her Israelite husband. This ruling is in accordance with the statement of Rava (Rambam *Sefer Zera'im*, *Hilkhot Teruma* 6:10).

מתני׳ הַחוֹלֵץ לְיִבְמָתוֹ וְנִמְצֵאת מְעוּבֶּרֶת. וְיָלְדָה. בִּזְמַן שֶׁהַוָּלָד שֶׁל קַיָּמָא – הוּא מוּתָּר בִּקְרוֹבוֹתֶיהָ וְהִיא מוּתֶּרֶת בִּקְרוֹבָיו, וְלֹא פְּסָלָהּ מִן הַכְּהוּנָּה.

MISHNA When a man who has a brother dies childless, his widow [*yevama*] and one of his brothers [*yavam*] may perform a ritual through which she is freed of her levirate bonds [*ḥalitza*]. It is then considered, with regard to forbidden relationships, as though they had been married and divorced. Therefore, he is forbidden to her relatives, and she to his. However, with regard to **one who performs *ḥalitza* with his *yevama* and** then **she is found** to have been **pregnant**[H] at the time of the *ḥalitza* **and she gave birth, in the event that the offspring is viable,** the deceased husband has been survived by offspring and so there was never any levirate bond; consequently, the *ḥalitza* that was performed was entirely unnecessary and a meaningless act. As such, **he** remains **permitted to her relatives and she** remains **permitted to his relatives.** Furthermore, since the *ḥalitza* was meaningless, she is not afforded the status of a *ḥalutza*, i.e., a *yevama* who performed *ḥalitza*, a status akin to that of a divorcée. Therefore, the *ḥalitza* **does not disqualify her from** marrying into **the priesthood.**

אֵין הַוָּלָד שֶׁל קַיָּמָא – הוּא אָסוּר בִּקְרוֹבוֹתֶיהָ וְהִיא אֲסוּרָה בִּקְרוֹבָיו, וּפְסָלָהּ מִן הַכְּהוּנָּה.

If **the offspring is not viable,** then it emerges that the *ḥalitza* was indeed necessary. Therefore, **he is forbidden** to engage in relations **with her relatives and she is forbidden** to engage in relations **with his relatives,** as though they had been married and divorced, **and** the *ḥalitza* **disqualifies her from** marrying into **the priesthood,** as she is afforded the status of a *ḥalutza*.

הַכּוֹנֵס אֶת יְבִמְתּוֹ וְנִמְצֵאת מְעוּבֶּרֶת וְיָלְדָה, בִּזְמַן שֶׁהַוָּלָד שֶׁל קַיָּמָא – יוֹצִיא, וְחַיָּיבִין בְּקָרְבָּן.

With regard to **one who consummates** the levirate marriage with **his *yevama,*** i.e., he had intercourse with her under the assumption that there is a levirate bond and so there is a mitzva to do so, **and** then **she is found to** have been **pregnant** at the time of the intercourse **and she gave birth, in the event that the offspring is viable**[H] the deceased brother has been survived by offspring and it is evident that there was never any levirate bond. In that case, the relations they had, rather than being a mitzva, were a violation of the prohibition against engaging in relations with one's brother's wife. Therefore, the *yavam* **must send** her **out,** i.e., they must separate, as she is forbidden to him as his brother's wife, **and** to atone for the forbidden relations that they had, **they are** each **obligated** to bring a sin-**offering,** as is the *halakha* for all who inadvertently transgress a prohibition that, when performed intentionally, is punishable by *karet*.

וְאִם אֵין וָלָד שֶׁל קַיָּמָא – יְקַיֵּים.

And if the offspring is not viable,[H] and therefore there was in fact a levirate bond, **he may maintain** her as his wife since his intercourse with her was a valid consummation of levirate marriage.

HALAKHA

One who performs *ḥalitza* with his *yevama* and then she is found to have been pregnant – הַחוֹלֵץ לְיִבְמָתוֹ וְנִמְצֵאת מְעוּבֶּרֶת: With regard to one who performs *ḥalitza* with his *yevama* and then she is found to have been pregnant at the time, if she later gives birth to viable offspring, the *ḥalitza* is considered of no significance. Therefore, he is permitted to her relatives and she is permitted to his relatives, and the *ḥalitza* does not disqualify her from marrying into the priesthood. If the pregnancy did not result in viable offspring, either because she miscarried or because the child died within thirty days of birth, then the *ḥalitza* is valid. Therefore, he is forbidden to her relatives and she to his, and the *ḥalitza* disqualifies her from the priesthood (Rambam *Sefer Nashim*, *Hilkhot Yibbum VaḤalitza* 1:20; *Shulḥan Arukh*, *Even HaEzer* 164:2).

One who consummates a levirate marriage with his *yevama* and then she is found to have been pregnant with viable offspring – הַכּוֹנֵס יְבִמְתּוֹ וְנִמְצְאָה מְעוּבֶּרֶת בְּבֶן קַיָּמָא: If one had intercourse with his *yevama* and then she was found to have been pregnant at the time, she must separate from him, although there is no need for a bill of divorce, and they are both obligated to bring a sin-offering (Rambam *Sefer Nashim*, *Hilkhot Yibbum VaḤalitza* 1:22 and *Sefer Korbanot*, *Hilkhot Shegagot* 1:1; *Shulḥan Arukh*, *Even HaEzer* 164:5).

One who consummates a levirate marriage with his *yevama* and she miscarries – הַכּוֹנֵס יְבִמְתּוֹ וְהִפִּילָה: In the case of one who consummates a levirate marriage with his *yevama* and then she is found to have been pregnant at the time, if she later miscarries then he is permitted to retain her as his wife. Some say that he is permitted to remain with her only if he married her before her pregnancy was recognizable, but if the pregnancy was already recognizable when he married her, then he is obligated to divorce her (Rema, citing *Tosafot*). In cases where he is permitted to maintain her as his wife, he must repeat the act of intercourse in order to consummate the marriage. This is in accordance with the conclusion of the Gemara that intercourse with a pregnant woman is not considered a valid consummation of levirate marriage (*Nimmukei Yosef*, citing Rabbeinu Yeruḥam). However, if he wishes to separate from her, he must both give her a bill of divorce and perform *ḥalitza* (Rambam *Sefer Nashim*, *Hilkhot Yibbum VaḤalitza* 1:22; *Shulḥan Arukh*, *Even HaEzer* 164:5).

סָפֵק בֶּן תִּשְׁעָה לָרִאשׁוֹן, סָפֵק בֶּן שִׁבְעָה לָאַחֲרוֹן – יוֹצִיא, וְהַוָּלָד כָּשֵׁר, וְחַיָּיבִין בְּאָשָׁם תָּלוּי.

If they consummated the levirate marriage and seven months later she gave birth, there is **uncertainty whether** the child **is nine** months **old,** i.e., counting from conception, and is the offspring **of the first** husband,[H] and as such there was no levirate bond, or **whether** the child is only **seven** months **old** and is the offspring **of the latter** husband, i.e., the *yavam*, and not of the deceased, in which case there was a levirate bond. In that case, due to the possibility that she is forbidden to him as his brother's wife, **he must send** her **out.** However, the lineage of **the child is unflawed,** since regardless of whether it was born of the first or second husband, there was no transgression involved in its conception. Furthermore, to atone for the possibility that they had forbidden relations **they are** both **obligated to bring a guilt**-offering for **uncertainty,**[HB] as is the *halakha* for anyone who is uncertain whether they inadvertently transgressed a prohibition that would require one to bring a sin-offering.

גמ׳ אִיתְּמַר, הַחוֹלֵץ לִמְעוּבֶּרֶת וְהִפִּילָה. רַבִּי יוֹחָנָן אָמַר: אֵינָהּ צְרִיכָה חֲלִיצָה מִן הָאַחִין, רֵישׁ לָקִישׁ אָמַר: צְרִיכָה חֲלִיצָה מִן הָאַחִין.

GEMARA An amoraic dispute **was stated** with regard to **one who performs *ḥalitza* with a pregnant woman**[H] **and she** later **miscarried.** Since she miscarried, she was certainly bound to the *yavam* by a levirate bond and may not marry anyone else; rather, she is obligated to consummate the levirate marriage or perform *ḥalitza*. The question is whether the *ḥalitza* that was performed while she was still pregnant is effective in releasing her from the levirate bond. **Rabbi Yoḥanan**[P] **said: She does not require** another ***ḥalitza* from the brothers. Reish Lakish**[P] **said: She requires** another ***ḥalitza* from the brothers.**[N]

HALAKHA

There is uncertainty whether the child is nine months old and is the offspring of the first husband – סָפֵק בֶּן תִּשְׁעָה לָרִאשׁוֹן: If one consummates a levirate marriage with his *yevama* and seven months later she gives birth, then there is an uncertainty whether the child is nine months old, counting from conception, and is the offspring of the first husband, or whether the child is only seven months old and is the offspring of the *yavam*. Therefore, the *yavam* must separate from her and give her a bill of divorce. The lineage of the child is certainly unflawed; however, any future children that he has with her will have the status of an uncertain *mamzer* (Rambam *Sefer Nashim*, *Hilkhot Yibbum VaḤalitza* 1:23; *Shulḥan Arukh*, *Even HaEzer* 164:6).

A guilt-offering for uncertainty – אָשָׁם תָּלוּי: If one consummates a levirate marriage with his *yevama* and she gives birth, and there is an uncertainty whether the child was born after nine months of gestation and is the offspring of the first husband, or after seven months of gestation and is the offspring of the latter husband, the *yavam* is not required to bring a guilt-offering for uncertainty. The *halakha* on this issue is not as ruled in the mishna because the mishna is in accordance with the opinion of Rabbi Eliezer, who holds that a guilt-offering for uncertainty may be brought whenever there exists the possibility that a transgression was performed. However, the Gemara in tractate *Karetot* rejects his opinion and rules that a guilt-offering for uncertainty is brought only in specific cases involving an uncertainty (Rambam *Sefer Korbanot*, *Hilkhot Shegagot* 8:1–2 and *Leḥem Mishne* and *Mishne LaMelekh* there).

***Ḥalitza* with a pregnant woman – חֲלִיצַת מְעוּבֶּרֶת:** In the case of one who performs *ḥalitza* with his *yevama* and then she is found to have been pregnant at the time, even if the offspring is not viable the *ḥalitza* is considered ineffective and another *ḥalitza* must be performed. Some say it may be performed either with the brother who originally performed *ḥalitza* with her or with any of the brothers. Others argue that this *ḥalitza* may be performed only with one of the other brothers (Rambam *Sefer Nashim*, *Hilkhot Yibbum VaḤalitza* 1:20; *Shulḥan Arukh*, *Even HaEzer* 164:2, and in the comment of Rema).

NOTES

She requires *ḥalitza* from the brothers – צְרִיכָה חֲלִיצָה מִן הָאַחִים: The commentaries debate who should perform the additional *ḥalitza* following the miscarriage. Some suggest, in accordance with the plain reading of Reish Lakish's words, that the additional *ḥalitza* cannot be performed by the brother who originally performed it; rather, one of the other brothers should do so. Others suggest the intention is only that she requires an additional *ḥalitza*, but this may be performed by any of the brothers, even the one who originally performed it (see *Tosafot*). The Ramban holds that the original *ḥalitza* is classified as an invalid *ḥalitza* that is partially effective to the extent that the *ḥalitza* of one of the brothers will no longer release her from the levirate bond she has with the other brothers. Consequently, she must now perform a separate *ḥalitza* with each and every one of the brothers.

BACKGROUND

A guilt-offering for uncertainty – אָשָׁם תָּלוּי: The guilt-offering for uncertainty is mentioned in the Torah (Leviticus 5:17–19) and its various *halakhot* are delineated in tractate *Karetot*. The standard case of a guilt-offering for uncertainty is where there is uncertainty whether or not a transgression warranting a sin-offering was committed. For example, if a piece of forbidden fat and a piece of permitted fat were mixed together and one thought that they were both permitted and ate one of them, he must bring a guilt-offering for uncertainty. The offering protects him from punishment until he determines whether or not he actually sinned, and if he did, he must bring a sin-offering.

PERSONALITIES

Rabbi Yoḥanan – רַבִּי יוֹחָנָן: This is Rabbi Yoḥanan bar Nappaḥa, one of the greatest *amora'im*, whose teachings are fundamental components of both the Babylonian Talmud and the Jerusalem Talmud. He resided in Tiberias and lived to an advanced age. Rabbi Yoḥanan was orphaned at a young age, and although his family apparently owned considerable property, he spent virtually all of his resources in his devotion to the study of Torah and eventually became impoverished. In his youth, he had the privilege of studying under Rabbi Yehuda HaNasi, the redactor of the Mishna, but most of his Torah study was accomplished under Rabbi Yehuda HaNasi's students: Ḥizkiya ben Ḥiyya, Rabbi Oshaya, Rabbi Ḥanina, and Rabbi Yannai, who lavished praise upon him. In time, he became the head of the yeshiva in Tiberias, at which point his fame and influence increased greatly.

For many years Rabbi Yoḥanan was the leading rabbinic scholar of the entire Jewish world, not only in Eretz Yisrael but in Babylonia as well, where he was respected by the Babylonian Sages. Many of them immigrated to Eretz Yisrael to become his students. A master of both *halakha* and *aggada*, Rabbi Yoḥanan's teachings in both disciplines are found throughout the Babylonian and Jerusalem Talmuds. As a testament to his intellectual and spiritual stature, the *halakha* is in accordance with his opinion in almost every case, even when Rav or Shmuel, the preeminent *amora'im* of Babylonia, whom he treated deferentially, disagree with him. Only in disputes with his teachers in Eretz Yisrael, such as Rabbi Yannai and Rabbi Yehoshua ben Levi, is the *halakha* not in accordance with his opinion.

Rabbi Yoḥanan was renowned for being handsome, and much was said in praise of his good looks. However, his life was full of suffering; ten of his sons died in his lifetime. There is a geonic tradition that one of his sons was the Babylonian *amora* Rabbi Mattana, who did not predecease him. The death of Rabbi Yoḥanan's disciple-colleague and brother-in-law, Reish Lakish, for which he considered himself responsible, hastened his own death. Rabbi Yoḥanan had many students. In fact, all the *amora'im* of Eretz Yisrael in succeeding generations were his students and benefited from his teachings, to the extent that he is often referred to as the author of the Jerusalem Talmud. His greatest students were his brother-in-law Reish Lakish, Rabbi Elazar, Rabbi Ḥiyya bar Abba, Rabbi Abbahu, Rabbi Yosei bar Ḥanina, Rabbi Ami, and Rabbi Asi.

Reish Lakish – רַבִּי שִׁמְעוֹן בֶּן לָקִישׁ: The name Reish Lakish is actually a contraction of Rabbi Shimon ben Lakish. Reish Lakish was among the greatest *amora'im* in Eretz Yisrael. He was the friend and brother-in-law of Rabbi Yoḥanan.

Reish Lakish lived an extraordinary life. He studied Torah from a young age, but, perhaps due to dire financial straits, he sold himself to a Roman circus as a gladiator. There are many stories in the Talmud that attest to his great strength. Some time later, in the wake of a meeting with Rabbi Yoḥanan, he resumed his Torah study, first as a student of Rabbi Yoḥanan, then as a friend and colleague. He ultimately married Rabbi Yoḥanan's sister.

Many halakhic disagreements between Reish Lakish and Rabbi Yoḥanan concerning central issues of *halakha* are recorded in the Talmud. His objective was not to disagree with Rabbi Yoḥanan but rather to help him hone his opinion through debate. Rabbi Yoḥanan related to him with great respect, often saying: My peer disagrees with me. He was well known for his strict piety, to the extent that one with whom Reish Lakish was seen conversing in public was said to be able to borrow money without guarantors, as Reish Lakish associated only with people beyond reproach. When he died he was survived by his wife and son, who was a child prodigy.

רַבִּי יוֹחָנָן אָמַר: אֵינָהּ צְרִיכָה חֲלִיצָה מִן הָאַחִין – חֲלִיצַת מְעוּבֶּרֶת שְׁמָהּ חֲלִיצָה, וּבִיאַת מְעוּבֶּרֶת שְׁמָהּ בִּיאָה. וְרֵישׁ לָקִישׁ אָמַר: צְרִיכָה חֲלִיצָה מִן הָאַחִין – חֲלִיצַת מְעוּבֶּרֶת לָא שְׁמָהּ חֲלִיצָה, וּבִיאַת מְעוּבֶּרֶת לָא שְׁמָהּ בִּיאָה.

The Gemara elaborates: **Rabbi Yoḥanan said** that **she does not require** another ***ḥalitza* from the brothers** because he holds: ***Ḥalitza*** performed **with a pregnant woman** who later miscarries **is considered** effective ***ḥalitza*** in order to release her from the levirate bond. **And** similarly, **intercourse with a pregnant woman** who later miscarries **is considered** a valid consummation of levirate marriage through **intercourse,** such that she and the *yavam* are considered to be married. **And Reish Lakish said she requires** another ***ḥalitza* from the brothers** because he holds: ***Ḥalitza*** performed **with a pregnant woman is not considered** effective ***ḥalitza,***[N] **and intercourse with a pregnant woman is not considered** a valid consummation of levirate marriage through **intercourse.** Therefore, after she miscarries, another *ḥalitza* must be performed in order to release her from the levirate bond.

בְּמַאי קָמִפַּלְגִי? אִיבָּעֵית אֵימָא קְרָא, וְאִיבָּעֵית אֵימָא סְבָרָא.

With regard to what principle **do they disagree? If you wish, say** that they disagree over the interpretation of **a verse.**[N] **And if you wish, say** that they disagree on a point of **logical reasoning.**

אִיבָּעֵית אֵימָא סְבָרָא, רַבִּי יוֹחָנָן סָבַר: אִם יָבֹא אֵלִיָּהוּ וְיֹאמַר דְּהָא דְּאִיעַבְּרָא מַפּוּלֵי מַפְּלָה – מִי לָאו בַּת חֲלִיצָה וְיִבּוּם הִיא? הָשְׁתָּא נָמֵי, תִּגְלֵי מִילְּתָא לְמַפְרֵעַ.

If you wish, say that that they disagree over a point of **logical reasoning** in that **Rabbi Yoḥanan holds: If Elijah** the prophet **were to come** at the moment of the *ḥalitza* **and say**[N] **that this** woman **who is pregnant will miscarry, is she not eligible for *ḥalitza* or levirate marriage,** even though she is currently pregnant, since her husband died and will not be survived by offspring? **Now, too,** even though when the *ḥalitza* or levirate marriage is performed it is not known whether or not she will miscarry, **the matter will be revealed retroactively,** i.e., if she ultimately miscarries then it is apparent the *ḥalitza* or levirate marriage was always necessary and is therefore valid.

וְרֵישׁ לָקִישׁ אָמַר: תִּגְלֵי מִילְּתָא לְמַפְרֵעַ לָא אָמְרִינַן.

And Reish Lakish said: We do not say that **the matter will be revealed retroactively**[N] in order to validate the levirate marriage or *ḥalitza*. Since at the time of the levirate marriage or *ḥalitza* it was still unknown whether she would miscarry, the act is considered premature and ineffective.

וְאִיבָּעֵית אֵימָא קְרָא; רַבִּי יוֹחָנָן סָבַר ״וּבֵן אֵין לוֹ״ אָמַר רַחֲמָנָא, וְהָא לֵית לֵיהּ. וְרֵישׁ לָקִישׁ סָבַר: ״וּבֵן אֵין לוֹ״ עַיֵּין עָלָיו.

And if you wish, say that they disagree over the interpretation of **a verse** in that **Rabbi Yoḥanan holds: The Merciful One states** in the Torah: "If brothers dwell together, and one of them dies, **and he has no child"** (Deuteronomy 25:5), i.e., the obligation to consummate a levirate marriage or perform *ḥalitza* applies whenever a husband dies and is not survived by offspring. **And this** man, whose wife is currently pregnant, **does not have** any children who will survive him. Therefore, there is an obligation to consummate a levirate marriage or perform *ḥalitza*, and if done, they will be effective. **And Reish Lakish holds:** The phrase **"and he has no [*ein*] child"** is expounded by the Sages to teach that one should **inspect [*ayein*] him** carefully to determine if he is survived by offspring of any form, and currently he is in fact survived by the fetus. Therefore, there is currently no obligation to consummate a levirate marriage or perform *ḥalitza*, and consequently, even if done, they are ineffective.

אֵיתִיבֵיהּ רַבִּי יוֹחָנָן לְרֵישׁ לָקִישׁ: אֵין הַוָּלָד שֶׁל קַיָּימָא – הוּא אָסוּר בְּקָרוֹבוֹתֶיהָ, וְהִיא אֲסוּרָה בְּקָרוֹבָיו. וּפְסָלָה מִן הַכְּהוּנָּה. בִּשְׁלָמָא לְדִידִי, דְּאָמִינָא חֲלִיצַת מְעוּבֶּרֶת שְׁמָהּ חֲלִיצָה – מִשּׁוּם הָכִי פְּסָלָה. אֶלָּא לְדִידָךְ, דְּאָמְרַתְּ חֲלִיצַת מְעוּבֶּרֶת לָא שְׁמָהּ חֲלִיצָה – אַמַּאי פְּסָלָה מִן הַכְּהוּנָּה?

Rabbi Yoḥanan raised an objection to the opinion of **Reish Lakish** from the mishna: If *ḥalitza* was performed with a pregnant woman, and **the offspring is not viable,** then **he is forbidden to her relatives and she is forbidden to his relatives, and** the *ḥalitza* **disqualifies her from the priesthood.** Rabbi Yoḥanan explains the challenge: **Granted, according to my** opinion, **as I say** that ***ḥalitza*** performed **with a pregnant woman** who later miscarries **is considered** effective ***ḥalitza*, it is due to that** reason that the *ḥalitza* **disqualifies her** from the priesthood. **However, according to your** opinion, **as you say that *ḥalitza*** performed **with a pregnant woman is not considered** effective ***ḥalitza*, why** should the *ḥalitza* **disqualify her from the priesthood?** According to your opinion, shouldn't the *ḥalitza* be entirely disregarded?

NOTES

Ḥalitza **performed with a pregnant woman is not considered effective *ḥalitza* – חֲלִיצַת מְעוּבֶּרֶת לָא שְׁמָהּ חֲלִיצָה:** The commentaries debate whether according to Reish Lakish the *ḥalitza* performed with a pregnant woman has any significance. Some suggest that while the *ḥalitza* does not release her from being bound to her *yevamin*, it does preclude her from performing levirate marriage, either specifically with the brother who originally performed *ḥalitza* with her or with any of the brothers. Therefore, her only recourse is to perform another *ḥalitza* following the miscarriage (see Ritva).

If you wish, say a verse, etc. – אִיבָּעֵית אֵימָא קְרָא וכו': Normally, in cases where the Gemara suggest that a *halakha* could be based on logical reasoning, if a verse also exists that can teach that same *halakha* the Gemara will ask why the biblical source is necessary at all; does the force of logical reasoning not suffice? Often the justification for the biblical source is based on the fact that if the *halakha* is based on the verse, then some of the details of the *halakha* will be different than if it were solely based on logical reasoning. In this case, as well, there is such a distinction: Were the *halakha* to be purely based on logical reasoning, then Reish Lakish would agree that were Elijah the prophet to actually reveal beforehand that the woman will ultimately miscarry, then the *ḥalitza* would be effective. However, according to his biblical source, the possibility of performing *ḥalitza* with a pregnant woman is entirely precluded, even if it were already known that she will miscarry (*Keren Ora*).

If Elijah were to come and say – אִם יָבֹא אֵלִיָּהוּ וְיֹאמַר: The mishna in tractate *Eduyyot* rules that when Elijah the prophet appears, he will neither inform the people as to what is prohibited or permitted nor introduce new *halakhot*. This is based on the principle that a prophet is neither permitted to legislate *halakha* nor even to resolve halakhic dilemmas. Despite this principle, the Gemara here and elsewhere appears to state that halakhic dilemmas will be resolved by Elijah. Apparently a distinction should be made between deciding halakhic principles, which cannot be done through prophecy, and clarifying questions of fact utilizing his prophetic powers, which is permitted (*Mishne LaMelekh*).

We do not say that the matter will be revealed retroactively – תִּגְלֵי מִילְּתָא לְמַפְרֵעַ לָא אָמְרִינַן: Despite Reish Lakish's claim here, the principle that the facts of a matter can be revealed retroactively is used throughout the Talmud, and it would appear that even Reish Lakish agrees in those instances. What, then, is different about this case? The Ritva suggests that in this case, it is unsound to deduce from the ultimate miscarriage that the pregnancy had always been unviable. It is possible that at the time of the levirate marriage or *ḥalitza* the pregnancy had in fact been viable, and therefore the *yevama* had not been obligated to perform levirate marriage or *ḥalitza* at the time, and it was only afterward that some additional event occurred that caused the miscarriage.

Tosafot suggest that a distinction should be made between cases in which the future is undeterminable based on the current situation and cases where the outcome could be reasonably calculated from the outset. In the former, the facts of the future are considered halakhically meaningless to the extent that even were a prophet to reveal the future, such information would have no relevance to the *halakha* as it is practiced in the present. So too, in the case of *ḥalitza*, since the ultimate miscarriage is not something that could be known in the present, one cannot say the matter is revealed retroactively (see *Gilyonei HaShas*). Rabbi Avraham min HaHar suggests that the principle is applied only in cases of rabbinic law, but not where it would affect a Torah law, as in this case.

Another explanation is cited by the Ritva: According to the verse cited by Reish Lakish, the reason that levirate marriage and *ḥalitza* cannot be performed during pregnancy is because the very existence of the fetus itself is sufficient to exclude this case from the obligation to perform levirate marriage or *ḥalitza*, since it does not fulfill the basic condition that the *yavam* "has no child." If so, the ultimate demise of the fetus is of no relevance.

אָמַר לֵיהּ: מִדְּרַבָּנַן, וּלְחוּמְרָא בְּעָלְמָא.

Reish Lakish **said to** Rabbi Yoḥanan: Indeed, by Torah law the *ḥalitza* is to be entirely disregarded. The mishna's ruling that she is disqualified from the priesthood is **by rabbinic** decree **and is merely a stringency**[N] lest people not realize that she was pregnant and think that a *ḥalutza* is permitted to marry a priest.

אִיבָּא דְּאָמְרִי, אֵיתִיבֵיהּ רֵישׁ לָקִישׁ לְרַבִּי יוֹחָנָן: אֵין הַוָּלָד שֶׁל קַיָּימָא – הוּא אָסוּר בִּקְרוֹבוֹתֶיהָ, וְהִיא אֲסוּרָה בִּקְרוֹבָיו, וּפְסָלָה מִן הַכְּהוּנָּה. בְּשִׁלְמָא לְדִידִי, דְּאָמִינָא חֲלִיצַת מְעוּבֶּרֶת לָא שְׁמָהּ חֲלִיצָה – הַיְינוּ דְּקָתָנֵי פְּסָלָה מִן הַכְּהוּנָּה לְחוּמְרָא, וְלֹא קָתָנֵי: אֵינָהּ צְרִיכָה חֲלִיצָה מִן הָאַחִין.

There are those **who say** an alternate version of the dispute: **Reish Lakish raised an objection to** the opinion of **Rabbi Yoḥanan** from the mishna: If *ḥalitza* was performed with a pregnant woman and **the offspring is not viable,** then **he is forbidden to her relatives and she is forbidden to his relatives, and** the *ḥalitza* **disqualifies her from the priesthood.** Reish Lakish explains the challenge: **Granted, according to my** opinion, **as I say that *ḥalitza*** performed **with a pregnant woman is not considered** effective ***ḥalitza*, this is** consistent with **that which is taught** in the mishna: The *ḥalitza* **disqualifies her from the priesthood,** which should be understood **as** a rabbinic **stringency, and** it is understandable that the mishna **does not teach: She does not require** another ***ḥalitza* from the brothers,** because according to my opinion, once she miscarries, she does indeed require another *ḥalitza* from the brothers.

אֶלָּא לְדִידָךְ, אֵינָהּ צְרִיכָה חֲלִיצָה מִן הָאַחִין מִיבָּעֵי לֵיהּ! – אָמַר לֵיהּ: אִין הָכִי נַמִּי, וְאַיידֵי דְּתָנָא רֵישָׁא לֹא פְּסָלָה – תָּנָא סֵיפָא פְּסָלָה.

However, according to your opinion that *ḥalitza* performed with a pregnant woman is an effective *ḥalitza*, the mishna **should have** taught the full extent of her permissible status, i.e., that **she does not** even **require** another ***ḥalitza* from the brothers** after she miscarries because the original *ḥalitza* was effective. Rabbi Yoḥanan **said to** Reish Lakish: **Yes, it is indeed so** that she does not require another *ḥalitza* from the brothers, **but since the first clause taught:** The *ḥalitza* **does not disqualify her** from the priesthood, therefore **the latter clause taught:** The *ḥalitza* **disqualifies her** from the priesthood, in order to directly contrast with the first clause rather than teach the greater novelty.

אֵיתִיבֵיהּ רַבִּי יוֹחָנָן לְרֵישׁ לָקִישׁ: אֵין הַוָּלָד שֶׁל קַיָּימָא – יְקַיֵּים. בְּשִׁלְמָא לְדִידִי דְּאָמִינָא חֲלִיצַת מְעוּבֶּרֶת שְׁמָהּ חֲלִיצָה וּבִיאַת מְעוּבֶּרֶת שְׁמָהּ בִּיאָה – מִשּׁוּם הָכִי קָתָנֵי יְקַיֵּים.

Rabbi Yoḥanan raised an objection to the opinion of **Reish Lakish** from the mishna: If a *yavam* had intercourse with his *yevama*, who was pregnant, and **the offspring is not viable,** and therefore she was bound by a levirate bond, **he may maintain** her as his wife. Rabbi Yoḥanan explains the challenge: **Granted, according to my** opinion, **as I say *ḥalitza*** performed **with a pregnant woman is considered** effective ***ḥalitza*, and** similarly, **intercourse with a pregnant woman is considered** a valid consummation of levirate marriage through **intercourse,** it is **due to that** reason that the mishna **teaches: He may maintain** her as his wife, because the levirate marriage was indeed valid.

אֶלָּא לְדִידָךְ, דְּאָמַרְתְּ חֲלִיצַת מְעוּבֶּרֶת לָא שְׁמָהּ חֲלִיצָה, וּבִיאַת מְעוּבֶּרֶת לָא שְׁמָהּ בִּיאָה – יַחֲזוֹר וְיִבְעוֹל וְיקַיֵּים מִיבָּעֵי לֵיהּ! – מַאי יְקַיֵּים – יַחֲזוֹר וְיִבְעוֹל וְיקַיֵּים, דְּלָא סַגִּי.

However, according to your opinion, **as you said** that ***ḥalitza*** performed **with a pregnant woman is not considered** effective ***ḥalitza*, and intercourse with a pregnant woman is not considered** a valid consummation of levirate marriage through **intercourse,** the mishna **should have** taught that **he should proceed to engage in intercourse** with her again in order to consummate the levirate marriage **and** only then **may he maintain** her as his wife. Reish Lakish responded: **What is** the intention of the mishna when it teaches: **He may maintain** her as his wife? Perforce it means that **he should proceed to engage in intercourse** again with her **and** then **he may maintain** her as his wife, **as** any other way **is insufficient** to release her from the levirate bond. Therefore, it is unnecessary for the mishna to teach this explicitly.

אִיבָּא דְּאָמְרִי, אֵיתִיבֵיהּ רֵישׁ לָקִישׁ לְרַבִּי יוֹחָנָן: אֵין הַוָּלָד שֶׁל קַיָּימָא – יְקַיֵּים. בְּשִׁלְמָא לְדִידִי, דְּאָמִינָא חֲלִיצַת מְעוּבֶּרֶת לָא שְׁמָהּ חֲלִיצָה וּבִיאַת מְעוּבֶּרֶת לָא שְׁמָהּ בִּיאָה, הַיְינוּ דְּקָתָנֵי יְקַיֵּים – יַחֲזוֹר וְיִבְעוֹל וְיקַיֵּים, דְּלָא סַגִּי בְּלָאו הָכִי.

There are those **who say** an alternate version of the dispute: **Reish Lakish raised an objection to** the opinion of **Rabbi Yoḥanan** from the mishna: If a *yavam* had intercourse with his *yevama*, who was pregnant, and **the offspring is not viable,** and therefore she was bound by a levirate bond, **he may maintain** her as his wife. Reish Lakish explains how the mishna poses a challenge to Rabbi Yoḥanan's opinion: **Granted, according to my** opinion, **as I say** that ***ḥalitza*** performed **with a pregnant woman is not considered** effective ***ḥalitza*, and intercourse with a pregnant woman is not considered** a valid consummation of levirate marriage through **intercourse, this is** consistent with **that which is taught** in the mishna: **He may maintain** her as a wife, which perforce means **he should proceed to engage in intercourse** with her again **and** then **he may maintain** her as his wife, **as** any other way **is insufficient** to release her from the levirate bond **without this** additional intercourse.

NOTES

By rabbinic decree and is merely a stringency – מִדְּרַבָּנַן וּלְחוּמְרָא בְּעָלְמָא: The Rashba notes that ostensibly, a similar decree should have been introduced in a case where the offspring was viable. Had an observer only witnessed the *ḥalitza* and been unaware that the offspring ultimately proved to be viable, then if he later saw that the *yavam* and *yevama* were permitted to marry each other's relatives, he might mistakenly conclude that relatives are permitted even in a case where the offspring was not viable and the *ḥalitza* was genuinely required. The Rashba explains that in truth, there is no need to be concerned for such a misunderstanding. The Gemara later explains that in cases where *ḥalitza* was unnecessarily performed, a public announcement is made. This, coupled with the continuing living presence of the offspring, should be sufficient to prevent any misunderstanding.

The Meiri suggests an entirely different approach to this statement of the Gemara and a correspondingly different understanding of the entire talmudic discussion: When the Gemara claims that, according to Reish Lakish, the *halakha* in the mishna is true only by force of a rabbinic decree, it is referring not to the disqualification from the priesthood, but rather to the actual requirement to repeat the *ḥalitza*. According to the Meiri, even Reish Lakish holds that the original *ḥalitza* is valid by Torah law, and consequently he also assumes that it is by Torah law that she is disqualified from the priesthood.

אֶלָּא לְדִידָךְ, רָצָה – יוֹצִיא, רָצָה – יְקַיֵּים, מִיבָּעֵי לֵיהּ! – אִין הָכִי נַמִּי, אַיְידֵי דְּתָנָא רֵישָׁא יוֹצִיא – תָּנָא נַמִּי סֵיפָא יְקַיֵּים.

However, according to your opinion that intercourse with a pregnant woman is considered a valid consummation of levirate marriage and therefore she is certainly considered to be his wife, the mishna **should have** taught: **If he wishes he may send** her **out,** through divorce, or **if he wishes he may maintain** her as a wife. Rabbi Yoḥanan replied: **Yes, it is indeed so, but since the first clause taught: He should send** her **out,** therefore **the latter clause taught: He may maintain** her as a wife, in order to directly contrast the first clause, rather than teach the full *halakha* with all its details.

מֵיתִיבִי: הַכּוֹנֵס אֶת יְבִמְתּוֹ וְנִמְצֵאת מְעוּבֶּרֶת – הֲרֵי זוֹ לֹא תִּנָּשֵׂא צָרָתָהּ, שֶׁמָּא יְהֵא וָלָד בֶּן קַיָּמָא. אַדְרַבָּה, כִּי הָוֵי הַהוּא וָלָד בֶּן קַיָּמָא מִיפַּטְּרָה צָרָתָהּ! אֶלָּא אֵימָא: שֶׁמָּא לֹא יְהֵא הַהוּא וָלָד בֶּן קַיָּמָא.

The Gemara **raises an objection** to the opinion of Rabbi Yoḥanan from a *baraita*: In the case of **one who consummates** the levirate marriage with **his *yevama,*** and he does so under the assumption that there is a levirate bond and he is obligated to consummate a levirate marriage with her, **and** then **she is found to** have been **pregnant** at the time of the intercourse, **a rival wife of this** *yevama* **may not marry, lest the offspring be viable.** Before explaining the challenge, the Gemara notes that the reasoning of the *baraita* appears flawed: **On the contrary, when the offspring is viable,** that is a reason for **her rival wife to be released** from the levirate bond, and she should be able to marry any man. **Rather,** emend the *baraita* and **say: Lest the offspring not be viable.**

וְאִי סָלְקָא דַּעְתָּךְ בִּיאַת מְעוּבֶּרֶת שְׁמָהּ בִּיאָה – אַמַּאי לֹא תִּנָּשֵׂא צָרָתָהּ? תִּיפָּטֵר בְּבִיאָה שֶׁל חֲבֵירְתָהּ!

The Gemara now explains how the *baraita* poses a challenge to Rabbi Yoḥanan's opinion: **And if it enters your mind** to say that **intercourse with a pregnant woman is considered** a valid consummation of levirate marriage through **intercourse, why should her rival wife not** be permitted to **marry?** Indeed, her rival wife **should be released** from the levirate bond **by** virtue **of the intercourse of her fellow** wife. If the deceased had several rival wives, all of them become bound by the levirate bond. However, it is sufficient for one of them to either consummate a levirate marriage or perform *ḥalitza* in order to release the rest of them from their bond and thereby permit them to marry any man.

אֲמַר אַבַּיֵי: בְּבִיאָה – כּוּלֵּי עָלְמָא לָא פְּלִיגִי דְּלָא פָּטְרָה, כִּי פְּלִיגִי – בַּחֲלִיצָה.

The Gemara defends Rabbi Yoḥanan's opinion: **Abaye said** that the opinion ascribed to Rabbi Yoḥanan above is not an accurate portrayal of his opinion. Rather, **with regard to intercourse** with a *yevama* who is pregnant at the time, **everyone agrees**[N] **that it does not release** her and her rival wives from the levirate bond; **when they disagree** it is only **with regard to** whether ***ḥalitza***[N] performed with a *yevama* who is pregnant at the time is effective in releasing her and her rival wives from the levirate bond.

רַבִּי יוֹחָנָן סָבַר: חֲלִיצַת מְעוּבֶּרֶת שְׁמָהּ חֲלִיצָה, בִּיאַת מְעוּבֶּרֶת לָא שְׁמָהּ בִּיאָה. רֵישׁ לָקִישׁ סָבַר: בִּיאַת מְעוּבֶּרֶת – לָא שְׁמָהּ בִּיאָה, וַחֲלִיצַת מְעוּבֶּרֶת – לָא שְׁמָהּ חֲלִיצָה.

Abaye continues to explain his opinion: **Rabbi Yoḥanan holds** that ***ḥalitza* with a pregnant woman is considered** effective ***ḥalitza,*** but **intercourse with a pregnant woman is not considered** a valid consummation of levirate marriage through **intercourse** and therefore does not release her and her rival wives from the levirate bond. And **Reish Lakish holds** that **intercourse with a pregnant woman is not considered** a valid consummation of levirate marriage through **intercourse, and *ḥalitza* with a pregnant woman is not considered** effective ***ḥalitza.*** Therefore, the *baraita* cited above does not pose a challenge, since all agree that intercourse with a pregnant woman will not free her or her rival wives from the levirate bond.

אֲמַר לֵיהּ רָבָא: מַה נָּפְשָׁךְ: אִי בִּיאַת מְעוּבֶּרֶת שְׁמָהּ בִּיאָה – חֲלִיצַת מְעוּבֶּרֶת שְׁמָהּ חֲלִיצָה, וְאִי בִּיאַת מְעוּבֶּרֶת לָא שְׁמָהּ בִּיאָה – חֲלִיצַת מְעוּבֶּרֶת נַמִּי לָא שְׁמָהּ חֲלִיצָה. דְּהָא קַיָּמָא לָן

Rava said to him: Whichever way you look at it, one cannot differentiate between the validity of consummating the levirate marriage through intercourse and the validity of *ḥalitza*. **If intercourse with a pregnant woman is considered** a valid consummation of levirate marriage through **intercourse** because if she miscarries it is apparent that there was always an obligation to perform levirate marriage or *ḥalitza,* then perforce ***ḥalitza* with a pregnant woman** should also **be considered** effective ***ḥalitza*. And if intercourse with a pregnant woman is not considered** a valid consummation of levirate marriage through **intercourse** because in her currently pregnant state there is no obligation to perform levirate marriage or *ḥalitza,* then perforce ***ḥalitza* with a pregnant woman** should also **not be considered** effective ***ḥalitza*. As we maintain**

NOTES

With regard to intercourse everyone agrees – בְּבִיאָה כּוּלֵּי עָלְמָא לָא פְּלִיגִי: The commentaries explain that Abaye assumes that the opinion initially ascribed to Rabbi Yoḥanan was never actually said by him. Rather, it was mistakenly assumed to be his opinion by some of his disciples, and it was the disciples of Rabbi Yoḥanan and Reish Lakish, not Rabbi Yoḥanan and Reish Lakish themselves, who then proceeded to debate the viability of that opinion.

When they disagree it is with regard to *ḥalitza* – כִּי פְּלִיגִי בַּחֲלִיצָה: *Tosafot* explain the logic of differentiating between the efficacy of performing a levirate marriage with a pregnant woman and performing *ḥalitza* with a pregnant woman: Rabbi Yoḥanan agrees that the levirate marriage cannot be consummated through intercourse while the *yevama* is still pregnant because there still exists the possibility that the offspring will be viable. Were that to be true, the standard prohibition against engaging in relations with one's brother's wife would remain in force. Consequently, it is certainly forbidden to attempt to consummate the levirate marriage, and therefore doing so is ineffective. In contrast, the act of *ḥalitza* itself is never forbidden, even were it to be unnecessary. Therefore, if it is ultimately revealed that it was necessary, it should certainly be effective. The Rivan suggests that with regard to intercourse, even if it is ultimately revealed that there was an obligation to perform levirate marriage, it is possible for the Sages to retroactively declare the intercourse to have been an illicit act and therefore ineffective in consummating the levirate marriage. However, similar logic could not be applied to invalidate an act of *ḥalitza*.