דְּכָל הָעוֹלָה לְיִבּוּם עוֹלָה לַחֲלִיצָה, וְכָל שֶׁאֵין עוֹלָה לְיִבּוּם – אֵינוֹ עוֹלָה לַחֲלִיצָה!

that anyone who is eligible for levirate marriage[H] **is eligible for *ḥalitza* and anyone who is not eligible for levirate marriage is not eligible for *ḥalitza*.**[N] Therefore, the original understanding of Rabbi Yoḥanan's opinion, that both the intercourse and the *ḥalitza* of a pregnant woman are valid, was accurate.

אֶלָּא אֲמַר רָבָא, הָכִי קָאָמַר: הַכּוֹנֵס יְבִמְתּוֹ וְנִמְצֵאת מְעוּבֶּרֶת – הֲרֵי זוֹ לֹא תִּנָּשֵׂא צָרָתָהּ, שֶׁמָּא יְהֵא וָלָד בֶּן קַיָּמָא, וּבִיאַת מְעוּבֶּרֶת לָא שְׁמָהּ בִּיאָה, וַחֲלִיצַת מְעוּבֶּרֶת לָא שְׁמָהּ חֲלִיצָה, וְהַוָּלָד אֵינוֹ פּוֹטֵר עַד שֶׁיֵּצֵא לָאֲוִיר הָעוֹלָם.

Rava therefore provides a different defense of Rabbi Yoḥanan's opinion: **Rather, Rava said** that **this is what** the *baraita* **is saying:** In the case of **one who consummates** the levirate marriage **with his *yevama*** under the assumption that there is a mitzva to do so, **and** then **she is found to** have been **pregnant** at the time of the intercourse, **a rival wife**[H] **of this** *yevama* **may not marry lest the offspring be viable, and intercourse with a woman pregnant** with viable offspring **is not considered** a valid consummation of levirate marriage through **intercourse, and *ḥalitza* of a woman pregnant** with viable offspring **is not considered** effective ***ḥalitza*. And** furthermore, even if **the offspring** is viable, it **does not release** her and her rival wives from the levirate bond **until it comes into the air of the world,** i.e., until it is actually born.

תַּנְיָא כְּוָותֵיהּ דְּרָבָא: הַכּוֹנֵס יְבִמְתּוֹ וְנִמְצֵאת מְעוּבֶּרֶת – הֲרֵי זוֹ לֹא תִּנָּשֵׂא צָרָתָהּ, שֶׁמָּא יְהֵא וָלָד בֶּן קַיָּמָא, וְאֵין בִּיאָה וַחֲלִיצָה פּוֹטֶרֶת, אֶלָּא וָלָד פּוֹטֵר, וְהַוָּלָד אֵין פּוֹטְרָהּ עַד שֶׁיֵּצֵא לָאֲוִיר הָעוֹלָם.

It is taught in a *baraita* **in accordance with** the opinion of **Rava:** 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 of the intercourse, **a rival wife of this** *yevama* **may not marry lest the offspring be viable.** This is because **intercourse or *ḥalitza*** with a woman pregnant with viable offspring **does not release** a *yevama* from the levirate bond; **rather,** the **offspring releases** her. **And** furthermore, even if **the offspring** is viable, it **does not release her** and her rival wives from the levirate marriage bond **until it comes into the air of the world.**

טַעְמָא – דְּשָׁמָא יְהֵא וָלָד בֶּן קַיָּמָא הוּא, הָא לָא הָוֵי וָלָד בֶּן קַיָּמָא – מִיפַּטַר צָרָתָהּ. לֵימָא תֵּיהֵוֵי תִּיוּבְתָּא דְּרֵישׁ לָקִישׁ!

The Gemara explains that the *baraita* appears to contradict Reish Lakish's opinion: According to the *baraita*, **the** only **reason** that levirate marriage with the pregnant *yevama* does not permit the rival wife to marry **is as** the *baraita* stated: **Lest the offspring be viable.** By inference, **were the offspring not viable, her rival wife would be released** from the levirate bond. If so, **let us say that** this *baraita* **is a conclusive refutation** of the opinion of **Reish Lakish.**

אֲמַר לָךְ רֵישׁ לָקִישׁ, הָכִי קָתָנֵי: הַכּוֹנֵס יְבִמְתּוֹ וְנִמְצֵאת מְעוּבֶּרֶת – הֲרֵי זוֹ לֹא תִּנָּשֵׂא צָרָתָהּ, שֶׁמָּא לֹא יְהֵא הַוָּלָד בֶּן קַיָּמָא, וַחֲלִיצַת מְעוּבֶּרֶת לֹא שְׁמָהּ חֲלִיצָה, וּבִיאַת מְעוּבֶּרֶת לֹא שְׁמָהּ בִּיאָה.

The Gemara defends Reish Lakish's opinion: **Reish Lakish** could have **said to you: This is what** the *baraita* **is teaching:** In the case of **one who consummates** a levirate marriage with **his *yevama*, and** then **she was found to** have been **pregnant** at the time of the intercourse, **a rival wife of this** *yevama* **may not marry lest the offspring not be viable,** which would mean that all the rival wives are bound by the levirate bond. **And** even if one of those wives has intercourse or preforms *ḥalitza* with the *yavam*, it would be ineffective in releasing them from the levirate bond because ***ḥalitza* with a pregnant woman is not be considered** effective ***ḥalitza*, and intercourse with a pregnant woman is not considered** a valid consummation of levirate marriage through **intercourse.**

וְאִם תֹּאמַר: הֲלֵךְ אַחַר רוֹב נָשִׁים, וְרוֹב נָשִׁים וָלָד מַעֲלָיָא יָלְדָן? – וָלָד אֵין פּוֹטֵר עַד שֶׁיֵּצֵא לָאֲוִיר הָעוֹלָם.

Reish Lakish explains the need for the final clause of the *baraita*: **And** even **if you say:** Let the wives marry without the need for any levirate marriage or *ḥalitza* because one should **follow** the **majority of women, and** the **majority of women give birth to a full-fledged,** i.e., viable, **offspring,** and therefore one should presume no levirate bond exists, to counter this claim the *baraita* concludes: Even if the offspring will be viable, an **offspring does not release** a *yevama* and her rival wives from the levirate bond **until it comes into the air of the world.**

HALAKHA

Anyone who is eligible for levirate marriage, etc. – כָּל הָעוֹלָה לְיִבּוּם וכו׳: Whenever a woman is ineligible to consummate a levirate marriage, she is also ineligible to perform *ḥalitza* (Rambam *Sefer Nashim*, *Hilkhot Yibbum VaḤalitza* 1:19).

The rival wife of a pregnant *yevama* – צָרַת יְבָמָה מְעוּבֶּרֶת: If a *yevama* who is pregnant with a child from her deceased husband consummates a levirate marriage or performs *ḥalitza*, her rival wife is prohibited from remarrying until the child is born (Rambam *Sefer Nashim*, *Hilkhot Yibbum VaḤalitza* 1:22; *Shulḥan Arukh*, *Even HaEzer* 164:3).

NOTES

Anyone who is not eligible for levirate marriage is not eligible for *ḥalitza* – כָּל שֶׁאֵין עוֹלָה לְיִבּוּם אֵינוֹ עוֹלָה לַחֲלִיצָה: This principle is generally taken to mean that anyone who is precluded from consummating levirate marriage is not bound by a levirate bond and therefore does not need to perform *ḥalitza*. However, this poses a difficulty, as there are some cases where although it is forbidden to consummate levirate marriage, *ḥalitza* is nevertheless still required in order to release the *yevama* from the levirate bond. This is the case, for example, when the *yavam* is prohibited from engaging in relations with the *yevama* by force of a negative mitzva that does not carry the punishment of *karet*. The Meiri suggests that the principle is indeed sound because, by Torah law, when the levirate marriage is prohibited only by force of a negative mitzva that does not carry the punishment of *karet*, the mitzva to consummate levirate marriage overrides the prohibition. As such, by Torah law, she is in fact eligible to consummate a levirate marriage and therefore is also eligible to perform *ḥalitza*. Therefore, although the Sages decreed that one should not consummate the levirate marriage in such a case, there is still a need to perform *ḥalitza*.

The Ritva suggests a different approach. He explains that even when levirate marriage in such cases is forbidden by Torah law, *ḥalitza* is nevertheless required. He cites the Gemara elsewhere that provides a biblical source that teaches that in cases where the relationship between the *yavam* and the *yevama* is forbidden only by force of a negative mitzva, *ḥalitza* is required. The Gemara's principle here, however, relates exclusively to cases in which the relationship is forbidden by force of a negative mitzva that does carry the punishment of *karet*. In contrast to the above opinions, the Rambam appears to understand the principle in a more limited fashion. According to him, the principle states only that if at any point in time the option to consummate the levirate marriage is proscribed, then at that time, one cannot perform *ḥalitza* either. However, that does not necessarily mean that the *yevama* will be released from the levirate bond. Rather, she will have to wait until, if ever, it is possible to consummate the levirate marriage, at which point she may perform *ḥalitza* if she wishes.

This principle is unanimously accepted. However, in the Gemara, Rava adduces it as support for his understanding of Rabbi Yoḥanan's opinion. How does Abaye justify his understanding in light of the principle? The Ritva explains: Abaye assumes that if it emerges that the offspring is not viable, then it emerges in retrospect that in fact the woman was always eligible for levirate marriage. As such, it is incorrect to automatically consider a pregnant woman as ineligible. Therefore, if she performs *ḥalitza* it will be valid. However, according to Rava, while she is actually pregnant, even should the fetus not survive, she is deemed ineligible to consummate a levirate marriage at that time. Therefore, there is no possibility of performing *ḥalitza* either.

אָמַר רַבִּי אֶלְעָזָר: אֶפְשָׁר, אִיתָּא לְהָא דְּרֵישׁ לָקִישׁ וְלֹא תְּנַן לָהּ בְּמַתְנִיתִין?! – נָפַק, דַּק וְאַשְׁכַּח, דִּתְנַן: הָאִשָּׁה שֶׁהָלַךְ בַּעֲלָהּ וְצָרָתָהּ לְמְדִינַת הַיָּם, וּבָאוּ וְאָמְרוּ לָהּ: ״מֵת בַּעֲלֵךְ״ – הֲרֵי זוֹ לֹא תִּנָּשֵׂא וְלֹא תְּתַיַּבֵּם, עַד שֶׁתֵּדַע שֶׁמָּא מְעוּבֶּרֶת הִיא צָרָתָהּ.

Rabbi Elazar said: Is it **possible** that **there is** halakhic acceptance **of this**[N] opinion **of Reish Lakish and it was not** hinted to by something **taught in the Mishna? He went out** of the study hall, carefully **checked** the *mishnayot*, **and found** one that supported Reish Lakish's opinion, **as we learned** in a mishna: In the case of **a woman whose husband and rival wife went overseas,**[H] **and** then witnesses **came and said to her: Your husband died,** and her husband had a brother, **this** woman **may neither marry** someone other than his brother, **nor may she enter into levirate marriage** with that brother, **until she knows** whether **perhaps her rival wife is pregnant.** If she discovers that her rival wife is not pregnant, she would then be able to perform levirate marriage or *ḥalitza*. If she discovers her rival wife is pregnant, she would have to wait to see if the pregnancy is viable. If it is found to be viable, only at that point would she be permitted to marry someone else.

בִּשְׁלָמָא יַבּוּמֵי לָא – שֶׁמָּא יְהֵא וָלָד בֶּן קַיָּמָא, וְיִפְגַּע בְּאִיסּוּר אֵשֶׁת אָח דְּאוֹרַיְיתָא. אֶלָּא לֹא תַּחֲלוֹץ, אַמַּאי? בִּשְׁלָמָא תַּחֲלוֹץ בְּתוֹךְ תִּשְׁעָה וְתִנָּשֵׂא בְּתוֹךְ תִּשְׁעָה – לָא, הַיְינוּ סָפֵק.

Rabbi Elazar explains how this mishna supports Reish Lakish's opinion: **Granted, she may not enter levirate marriage** as **perhaps** her rival wife is pregnant and the **offspring will be viable, and** therefore by consummating the levirate marriage the *yavam* would **encounter the Torah prohibition against** engaging in relations with one's **brother's wife. But why may she not perform *ḥalitza*? Granted, she may not perform *ḥalitza* during the** first **nine** months following her husband's death **and** then proceed to also **marry during** those **nine** months; **this is** prohibited due to the fact that there is the **uncertainty** whether her rival wife is pregnant with viable offspring, in which case she would be released from the levirate bond.

אֶלָּא תַּחֲלוֹץ בְּתוֹךְ תִּשְׁעָה, וְתִנָּשֵׂא לְאַחַר תִּשְׁעָה!

But let her perform *ḥalitza* during the first **nine** months following her husband's death **and** then wait to **marry** until **after** those **nine** months. By that point in time, even if the rival wife was pregnant she would have already given birth. If the offspring was viable, then it emerges that there was never a levirate bond, and if it is not viable, then she was released from her levirate bond through the *ḥalitza* she performed. Either way, she would now be permitted to remarry. Why, then, does the mishna not consider this possibility? Rabbi Elazar claims that the only explanation for this is if the mishna assumes that *ḥalitza* performed while one of the wives of the deceased is pregnant is not effective. As such, the mishna is a proof for Reish Lakish's opinion.

וּלְטַעְמִיךְ: תַּחֲלוֹץ וְתִנָּשֵׂא לְאַחַר תִּשְׁעָה!

The Gemara rejects Rabbi Elazar's proof: **But** even **according to your reasoning** that *ḥalitza* with a pregnant woman is not effective, the mishna should have considered an additional possibility: **Let her perform *ḥalitza* and marry,** doing both **after nine** months have passed since the death of her husband.Doing so should be effective according to both Reish Lakish and Rabbi Yoḥanan.

אֶלָּא: בַּר מִינָּהּ דְּהַהִיא, דְּאַבַּיֵי בַּר אַבָּא וְרַב חִינָּנָא בַּר אַבַּיֵי דְּאָמְרִי תַּרְוַיְיהוּ: שֶׁמָּא יְהֵא וָלָד בֶּן קַיָּמָא, וְנִמְצָא אַתָּה מַצְרִיכָהּ כָּרוֹז לְכְהוּנָּה.

Rather, the discussion of this topic should be held **apart from that** mishna, as the true reason for that mishna's ruling is **as** it is **Abaye bar Abba and Rav Ḥinnana bar Abaye who both say** that she is prohibited from performing *ḥalitza* while one of the wives of the deceased is pregnant because **perhaps** the **offspring will be viable,** in which case any *ḥalitza* performed would be entirely unnecessary and therefore meaningless, and she would remain permitted to marry into the priesthood, as the opening mishna of the chapter rules. However, in this situation people might not realize that the *ḥalitza* she performed was meaningless, and they would think she is a *ḥalutza*, who is prohibited from marrying a priest. **And it would** therefore **emerge** that if she were allowed to perform *ḥalitza* while pregnant, it is possible that **you will** ultimately **require a public announcement** to be made **for her**[N] to attest to the fact that she is in fact still permitted **to** marry into the **priesthood.**

NOTES

Is it possible that there is halakhic acceptance of this – אֶפְשָׁר אִיתָּא לְהָא: The Rivan notes that since ultimately the *halakha* is ruled in accordance with Reish Lakish's opinion, it would be peculiar if his opinion was not hinted to somewhere in the Mishna.

It would emerge that you will require a public announcement for her – וְנִמְצָא אַתָּה מַצְרִיכָהּ כָּרוֹז: *Tosafot* and other early commentaries note that a public announcement is made only if the woman is otherwise suitable for the priesthood, in order to indicate that despite the fact that she performed *ḥalitza*, it does not disqualify her, since it was meaningless. Therefore, had she been divorced or had some other disqualification, since no public announcement is made, it should follow that she should not need to wait for nine months before performing *ḥalitza*. The Meiri notes that this is stated explicitly in the Jerusalem Talmud, and the Ramban suggests that this is indicated by the precise formulation of the mishna, which chooses to refer to her simply as: A woman, as opposed to: The *yevama*, which suggests that the mishna relates to a standard woman who had not been previously divorced.

HALAKHA

A woman whose husband and rival wife went overseas – הָאִשָּׁה שֶׁהָלַךְ בַּעֲלָהּ וְצָרָתָהּ לִמְדִינַת הַיָּם: In the case of a woman whose husband and rival wife went to a country overseas, and then witnesses came and said to her: Your husband died, the woman may neither perform *ḥalitza* nor consummate levirate marriage until it is established whether the rival wife has given birth (Rambam *Sefer Nashim*, *Hilkhot Yibbum VaḤalitza* 3:16; *Shulḥan Arukh*, *Even HaEzer* 156:13).

וְלַצְרָכָהּ! דִּלְמָא אִיכָּא אִינִישׁ דְּהָווּ בַּחֲלִיצָה וְלֹא הָווּ בְּהַכְרָזָה, וְאָתֵי לְמֵימַר: קְשָׁרֵי חֲלוּצָה לְכֹהֵן.

The Gemara wonders why this poses a problem: **But** why not let her perform *ḥalitza* while still pregnant, and then if it becomes necessary, **require** a public announcement to be made **for her?** The Gemara explains why one should avoid having to rely on a public announcement: **Perhaps there were** some **people who were** present **at the *ḥalitza* and were not** present **at** the **public announcement, and** when that the courts permit her to marry a priest **they might come to say** that **they are permitting a *ḥalutza*** to marry **a priest.**

אָמַר לֵיהּ אַבַּיֵי: מִידֵּי לֹא תַּחֲלוֹץ וְלֹא תִּתְיַיבֵּם קָתָנֵי? לֹא תִּנָּשֵׂא וְלֹא תִּתְיַיבֵּם קָתָנֵי, בְּלֹא חֲלִיצָה, אֲבָל אִי חָלְיָץ לָהּ – הָכִי נַמִּי דְּשַׁרְיָא.

Abaye suggests another rejection of Rabbi Elazar's proof from that mishna: **Abaye said to** Rabbi Elazar: The very formulation of the mishna refutes Reish Lakish's opinion, as **does** the mishna **teach** that **she may neither perform *ḥalitza* nor enter into levirate marriage?** No, the mishna **teaches** only that **she may neither be married nor enter into levirate marriage,** which implies only that she may not marry **without** first performing ***ḥalitza*, but if** the *yavam* **performs *ḥalitza* with her, she would indeed be permitted** to marry after nine months have passed since her husband's death. This understanding of the mishna undermines the basis of Rabbi Elazar's proof from the mishna.

תַּנְיָא כְּוָותֵיהּ דְּרֵישׁ לָקִישׁ: הַחוֹלֵץ לְמְעוּבֶּרֶת וְהִפִּילָה – צְרִיכָה חֲלִיצָה מִן הָאַחִין.

Even if that mishna does not support Reish Lakish's opinion, nevertheless **it is taught** in a *baraita* **in accordance with** the opinion **of Reish Lakish:** In the case of **one who performs *ḥalitza* with a pregnant woman and she miscarries, she requires** another ***ḥalitza* with the brothers** in order to release her from the levirate bond. The *baraita* assumes that the original *ḥalitza* is ineffective because it was done while she was still pregnant, which is accordance with the opinion of Reish Lakish.

אָמַר רָבָא: הִלְכְתָא כְּוָותֵיהּ דְּרֵישׁ לָקִישׁ בִּתְרֵי תִּלְתָּא: חֲדָא – הָא דַּאֲמָרַן. אִידָךְ – דְּתָנֵי: הַמְחַלֵּק נְכָסָיו עַל פִּיו, רִיבָּה לְאֶחָד וּמִיעֵט לְאֶחָד, וְהִשְׁוָה לָהֶם אֶת הַבְּכוֹר – דְּבָרָיו קַיָּימִין.

Rava said: The *halakha* is in accordance with the opinion **of Reish Lakish**[N] **in these three**[N] disputes: **One, this** dispute **that we** already **stated** with regard to the *ḥalitza* of a pregnant woman. **The other** dispute concerns that **which we learned** in a mishna: In the case of **one who verbally divides up his possessions**[H] among his descendants, stating how he wishes his estate to be divided after his death, if **he increases** the proportion of his estate that should go **to one** of his children **or decreases** the proportion of his estate that should go **to** another **one** of his children, **or** if **he equally** distributes **between them** the double portion of **the firstborn,** then **his words are binding.**

וְאִם אָמַר מְשׁוּם יְרוּשָׁה – לֹא אָמַר כְּלוּם. כָּתַב, בֵּין בַּתְּחִלָּה בֵּין בַּסּוֹף בֵּין בָּאֶמְצַע, מְשׁוּם מַתָּנָה – דְּבָרָיו קַיָּימִין.

But if he said explicitly that the receipt of those portions should be considered **as an inheritance,** then it as though the verbal division of his property that **he said is nothing,** i.e., it is non-binding, since his words directly contradict the *halakhot* of inheritance as they are written in the Torah.[B] However, if he wrote a will and somewhere therein **he wrote, whether at the beginning, whether at the end, or whether in the middle,** that the receipt of the portions should be considered **as a gift,** as opposed to an inheritance, then **his words are binding.**

NOTES

The *halakha* is in accordance with the opinion of Reish Lakish – הִלְכְתָא כְּוָותֵיהּ דְּרֵישׁ לָקִישׁ: According to Reish Lakish, if a woman is pregnant at the time of her husband's death, then at that moment she is ineligible to consummate a levirate marriage. The early commentaries raise the following question: If so, she should be entirely released from any levirate bond based on the principle, developed in the Gemara elsewhere, that the levirate bond is formed at the moment of the husband's death; therefore, if she is not subject to the requirement to consummate a levirate marriage at that point, then no bond is formed at all. Why, then, is she obligated to perform levirate marriage or *ḥalitza* if the offspring proves not to be viable? The early commentaries explain that even according to Reish Lakish, the requirement to consummate a levirate marriage does apply to a pregnant woman from the moment of her husband's death, and therefore a levirate bond is formed. However, since she is pregnant, she must first wait until the viability of the offspring is determined before she is able to act upon it (Rashba).

In these three – בִּתְרֵי תִּלְתָּא: Generally, in disputes between Rabbi Yoḥanan and Reish Lakish the *halakha* is ruled in accordance with the opinion of Rabbi Yoḥanan. Therefore, it was necessary to delineate those cases in which the *halakha* is atypically decided in accordance with the opinion of Reish Lakish.

Many of the early commentaries note that there are many other cases in which the *halakha* is ruled in accordance with the opinion of Reish Lakish. Why, then, did Rava list only three cases? The Meiri suggests that Rava meant only to clarify the *halakha* in those three cases but never to suggest that these are the only cases in which the *halakha* is ruled in accordance with the opinion of Reish Lakish. Others suggest that Rava considered only those disputes about actions whose actual performance is never prohibited, e.g., *ḥalitza* (*Tosefot Ḥad MiKamma'ei*; Rabbi Avraham min HaHar; see *Arukh LaNer*).

HALAKHA

One who verbally divides up his possessions – הַמְחַלֵּק נְכָסָיו עַל פִּיו: In the case of one who is mortally ill who divides up his possessions, if he increases or decreases the proportion of his estate that should go to each child, or if he equally distributes the double portion of the firstborn between them, then his words are binding. However, if he states explicitly that the receipt of those portions should be considered an inheritance, then it as though he did not say anything and the inheritance is allotted according to the standard conventions. If he wrote a will and somewhere therein he wrote, whether at the beginning, middle, or end, that the receipt of the portions should be considered a gift, then even if he also referred to the portions as an inheritance, his words are binding (Rambam *Sefer Mishpatim*, *Hilkhot Naḥalot* 6:5; *Shulḥan Arukh*, *Ḥoshen Mishpat* 281:7).

BACKGROUND

The laws of inheritance – דִּינֵי יְרוּשָׁה: The basic *halakhot* of inheritance are stated in Numbers 27:8–11 in the following manner: If one dies without sons, the inheritance is given to his daughter. If he has no daughters, the inheritance passes to his father. If the father is no longer alive, then it passes to the father's heirs. In addition, the firstborn son receives a double portion of the inheritance (Deuteronomy 21:17). The *halakhot* of inheritance apply only to property that the deceased had not already given away. During his lifetime he is entitled to divide up his possessions in whatever way he wishes, and he may even write a will just prior to his death dividing them up in whatever way he desires.

וְאָמַר רֵישׁ לָקִישׁ: לְעוֹלָם לֹא קָנָה עַד שֶׁיֹּאמַר ״פְּלוֹנִי וּפְלוֹנִי יִרְשׁוּ שָׂדֶה פְּלוֹנִית וּפְלוֹנִית שֶׁנָּתַתִּים לָהֶם בְּמַתָּנָה וְיִרְשׁוּם״.

Reish Lakish and Rabbi Yoḥanan dispute whether one must state that the receipt of the portions should be considered as a gift with regard to each recipient, or whether stating it with regard to one of them is enough to indicate that it is true for all. **And Reish Lakish said:** The inheritors **will only ever acquire** the portions as defined by the owner of the possessions **once he says: So-and-so and so-and-so shall inherit such and such a field and such and such** a field **that I have given to them as a gift, and they shall inherit them,** i.e., he must state explicitly for each recipient that their receipt of the portions should be considered a gift.[H] Rava ruled that in this dispute as well, the *halakha* is in accordance with Reish Lakish.

וְאִידָךְ – דִּתְנַן: הַכּוֹתֵב כָּל נְכָסָיו לִבְנוֹ לְאַחַר מוֹתוֹ, הָאָב אֵינוֹ יָכוֹל לְמָכּוֹר – מִפְּנֵי שֶׁנָּתָנָן לַבֵּן, וְהַבֵּן אֵינוֹ יָכוֹל לְמָכּוֹר – מִפְּנֵי שֶׁהַזֵּן בִּרְשׁוּת הָאָב – מָכַר הָאָב מְכוּרִין עַד שֶׁיָּמוּת הוּא. מָכַר הַבֵּן – אֵין לַלּוֹקֵחַ כְּלוּם עַד שֶׁיָּמוּת הָאָב.

And the other dispute concerns that **which we learned** in a mishna: In the case of **one who writes** a bill transferring ownership of **all of his possessions to his son** stating that the transfer should take effect immediately so that the son should gain the rights to use the possessions **after his death,**[H] then although **the father** retained for himself the right to use the possessions until his death, he **is unable to sell** the possessions **due to** the fact **that he gave them to the son, and the son is unable to sell** the possessions **due to** the fact **that they are** still **in the father's possession.** If **the father sold**[H] the possessions, then **they are sold** to the extent that the purchaser may use them **until** the father **dies.** If **the son sold**[H] the possessions during his father's lifetime, **the purchaser does not** receive **any** rights to use the possessions **until the father dies.**

וְאִיתְּמַר, מָכַר הַבֵּן בְּחַיֵּי הָאָב, וּמֵת הַבֵּן בְּחַיֵּי הָאָב, רַבִּי יוֹחָנָן אָמַר: לֹא קָנָה לוֹקֵחַ, וְרֵישׁ לָקִישׁ אָמַר: קָנָה לוֹקֵחַ.

And an amoraic dispute **was stated** in the case in which **the son sold** the possessions **during the father's lifetime, and** then **the son died during the father's lifetime,**[H] following which the father died as well. **Rabbi Yoḥanan said: The purchaser does not acquire** anything, **and Reish Lakish said: The purchaser does acquire** the possessions.

רַבִּי יוֹחָנָן אָמַר: לֹא קָנָה לוֹקֵחַ, קִנְיַן פֵּירוֹת כְּקִנְיַן הַגּוּף דָּמֵי.

The Gemara explains their reasoning: **Rabbi Yoḥanan said** that **the purchaser does not acquire** anything, because he holds that the **ownership of** the rights to an item and its **produce is tantamount to** the **ownership of the item itself,**[B] i.e., the actual title to it. Since the father retained the rights to use the possessions until his death, as long as he lives he is considered to hold the title to them. Therefore, the son's sale can be effective only after the father's death, at which point the son becomes the title owner. However, if the son dies first, then since he never gained the title to the items, his sale can never come to fruition.

וְרֵישׁ לָקִישׁ אָמַר: קָנָה לוֹקֵחַ, קִנְיַן פֵּירוֹת לָאו כְּקִנְיַן הַגּוּף דָּמֵי.

And Reish Lakish said: The purchaser does acquire the possessions, as Reish Lakish holds that the **ownership of** the rights to an item and its **produce is not tantamount to** the **ownership of the item itself,** i.e., the actual title to it. Therefore, although the father is still alive, the son immediately gains the full title to the possessions, which he may sell to someone else. Nevertheless, since the father retains the rights to use the possessions, the purchaser may use the possessions he acquired only when the father dies.

HALAKHA

Inheritance and gift – יְרוּשָּׁה וּמַתָּנָה: With regard to one who is mortally ill, who divides up his possessions in a manner that departs from the standard conventions: If he expresses his wishes in a single unbroken statement, then as long as he refers to the receipt of those portions as a gift, even if he also refers to them as an inheritance, his words are binding. This is true even if he mentions that the portions should be considered a gift with respect to only one of the recipients or one of the possessions; provided he mentioned at some point in the statement that it should be considered a gift, it is all considered a gift. However, if he made two or more separate statements, then he must make it explicitly clear that his intention is that each part of the division should be considered a gift. This is in accordance with the opinion of Reish Lakish (Rambam *Sefer Mishpatim*, *Hilkhot Naḥalot*, 6:6; *Shulḥan Arukh*, *Ḥoshen Mishpat* 281:7).

One who writes a bill of all of his possessions to his son after his death – הַכּוֹתֵב כָּל נְכָסָיו לִבְנוֹ לְאַחַר מוֹתוֹ: If a father wrote a bill stating that the son should be able to use his possessions following the father's death, it is prohibited for both the father and the son to sell those possessions (Rambam *Sefer Kinyan*, *Hilkhot Zekhiya* 12:13; *Shulḥan Arukh*, *Ḥoshen Mishpat* 257:1).

The father sold – מָכַר הָאָב: If the father transgressed and sold the possessions that he had promised to his son, then the sale takes effect to the extent that the purchaser has the rights to the use and produce of those possessions until the death of the father. However, upon the father's death, the son becomes the owner of those rights. If at the time of the father's death there was produce that was still attached to the possessions, e.g., produce that grew on the land and was not yet harvested, the son must pay the purchaser its value. Any produce that was already detached belongs to the purchaser. Some (Rema; see *Tur* and *Beit Yosef*, citing Rashbam) argue with this and claim that upon the father's death, the son becomes the owner even of the produce that has already been detached (Rambam *Sefer Kinyan*, *Hilkhot Zekhiya* 12:13; *Shulḥan Arukh*, *Ḥoshen Mishpat* 257:3).

The son sold – מָכַר הַבֵּן: If the son transgressed and sold the possessions promised to him by his father, then the purchaser has no rights to them until the death of the father (Rambam *Sefer Kinyan*, *Hilkhot Zekhiya* 12:13; *Shulḥan Arukh*, *Ḥoshen Mishpat* 257:4).

The son sold the possessions and then died during the father's lifetime – מָכַר הַבֵּן וּמֵת בְּחַיֵּי אָבִיו: If the son sold the possessions promised to him by his father and then died during the father's lifetime, following which the father died, the purchaser acquires the possessions upon the death of the father. This is because the father retained only the rights to the use and produce of the possessions, and the ownership of the rights to an item and its produce is not tantamount to the ownership of the item itself. This is in accordance with the opinion of Reish Lakish (Rambam *Sefer Kinyan*, *Hilkhot Zekhiya* 12:13; *Shulḥan Arukh*, *Ḥoshen Mishpat* 257:5).

BACKGROUND

Ownership of the rights to an item and its produce is tantamount to the ownership of the item itself – קִנְיַן פֵּירוֹת כְּקִנְיַן הַגּוּף דָּמֵי: If an item was acquired for its produce, one may derive benefit from it, but according to some authorities one cannot perform actions that require actual ownership of the item, e.g., bringing first fruits or selling the item to others. However, other authorities maintain that even if an item is acquired for its produce, this is akin to the purchase of the item itself, and it may be used for these activities.

"אֵין הַוָּלָד שֶׁל קַיָּמָא" כּוֹ'. תָּנָא: מְשׁוּם רַבִּי אֱלִיעֶזֶר אָמְרוּ: יוֹצִיא בְּגֵט.

§ The mishna states that if a *yavam* consummates a levirate marriage with his *yevama* while she is pregnant, if it emerges that **the offspring is not viable** then he may maintain her as his wife because his intercourse with her was a valid consummation of levirate marriage. An opposing opinion **is taught** in a *baraita*: **In the name of Rabbi Eliezer they said: He must send her out with a bill of divorce.**[N] Although it emerged that the levirate marriage took effect, since at the time he consummated the levirate marriage it was prohibited to do so because the *yevama* was pregnant, he is therefore penalized and required to separate from her.

אָמַר רָבָא: רַבִּי מֵאִיר וְרַבִּי אֱלִיעֶזֶר אָמְרוּ דָּבָר אֶחָד. רַבִּי אֱלִיעֶזֶר – הָא דַּאֲמָרַן,

Rava said: Rabbi Meir and Rabbi Eliezer said the same thing, i.e., they both expressed the same opinion that if one marries a woman whom he is prohibited from marrying, he is penalized and required to divorce her, even if the reason for the prohibition no longer applies. **Rabbi Eliezer's** opinion was expressed in **this** ruling **we have** just **stated.**

רַבִּי מֵאִיר – דְּתַנְיָא: לֹא יִשָּׂא אָדָם מְעוּבֶּרֶת חֲבֵירוֹ וּמֵינֶקֶת חֲבֵירוֹ, וְאִם נָשָׂא – יוֹצִיא, וְלֹא יַחֲזִיר עוֹלָמִית, דִּבְרֵי רַבִּי מֵאִיר. וַחֲכָמִים אוֹמְרִים: יוֹצִיא, וְלִכְשֶׁיִּגְיַע זְמַנּוֹ לְכָנוֹס – יִכְנוֹס.

Where was **Rabbi Meir's** opinion expressed? **As it is taught** in a *baraita*: **A man may not marry a woman who is pregnant** with the child **of another** man, **nor a woman who is nursing** the child **of another** man.[H] **And if he** transgressed and **married** her, he is penalized for violating the prohibition, and **he must divorce** her with a bill of divorce, **and he may never take** her **back;**[H] this is **the statement of Rabbi Meir. And the Rabbis say: He must send** her **out, and when the time comes** in which it is permitted **to marry** her, i.e., after the child is weaned, **he may** then **marry** her again.

אָמַר לֵיהּ אַבַּיֵי: מִמַּאי? דִּלְמָא לָא הֵיא, עַד כָּאן לָא קָאָמַר רַבִּי אֱלִיעֶזֶר הָכָא – אֶלָּא מְשׁוּם דְּקָפָגַע בְּאִיסּוּר אֵשֶׁת אָח דְּאוֹרַיְיתָא, אֲבָל הָתָם דְּרַבָּנַן – כְּרַבָּנַן סְבִירָא לֵיהּ.

Abaye said to him: From where do you deduce that they are of one opinion? **Perhaps that is not so,** as it is possible that **Rabbi Eliezer states** his ruling **only here,** in the case of a *yavam* who consummated a levirate marriage with his *yevama* while she was still pregnant, **due to** the fact that by doing so he risks the possibility that the offspring will be viable, in **which** case **he encounters the Torah prohibition against** engaging in relations with one's **brother's wife. However, there,** in the case where one married a woman who is pregnant with the child of another man, **which is a rabbinic** prohibition, it is possible that **he holds in accordance with** the opinion of the **Rabbis** who argue with Rabbi Meir.

אִי נַמִי: עַד כָּאן לָא קָאָמַר רַבִּי מֵאִיר הָתָם – אֶלָּא מְשׁוּם דְּרַבָּנַן, וַחֲכָמִים עָשׂוּ חִיזּוּק לִדְבְרֵיהֶם יוֹתֵר מִשֶּׁל תּוֹרָה. אֲבָל הָכָא – מִדְּאוֹרַיְיתָא, מִפְּרָשׁ פָּרְשִׁי מִינַּהּ.

Alternatively, it is also possible that **Rabbi Meir states** his ruling **only there,** in the case where one married a woman who is pregnant with the child of another man, **due to** the fact **that** doing so is a violation of a **rabbinic** prohibition, and therefore it is possible that this is one of the cases in which **the Sages reinforced their pronouncements**[N] **with greater** severity **than** prohibitions of **Torah law** so that people would not treat them lightly. **However, here,** in the case of a *yavam* who consummated a levirate marriage with his *yevama* while she was still pregnant, where there was a risk of transgressing a prohibition written **in the Torah,** since people are generally careful to **distance themselves from** a Torah prohibition, there is no need to further penalize someone who nevertheless transgressed.

NOTES

He must send her out with a bill of divorce – יוֹצִיא בְּגֵט: Although Rabbi Eliezer's statement is not accepted as the *halakha*, the early commentaries discussed the meaning and rationale of his claim and thereby clarified important principles that lie at the heart of the Gemara's discussion.

Rashi's version of the Gemara text is the same as that which appears in the standard Vilna edition: He must send her out with a bill of divorce. This suggests that nothing more than a bill of divorce is necessary in order to permit her to remarry. The early commentaries note that, ostensibly, this is true only according to the opinion of Rabbi Yoḥanan that the consummation of a levirate marriage with a pregnant woman who later miscarries is valid. Since the marriage is valid, only a divorce is needed to dissolve it. However, according to the opinion of Reish Lakish, the consummation of the levirate marriage performed while the woman was pregnant was invalid, and therefore the couple was never actually married. As such, the levirate bond still exists, and it should be necessary to either repeat the consummation or perform *ḥalitza*. Some commentaries suggest that Rashi's version of the text may be resolved according to the conclusion of the Gemara that the mishna is referring to a case in which, following the miscarriage, the *yavam* indeed repeated the consummation. As such, all would agree that the couple was actually married and that only a bill of divorce is necessary (*Tosafot Yeshanim*; *Tosefot HaRosh*). Other commentaries explain that Rabbi Eliezer's intention was not to suggest that a bill of divorce is sufficient, as certainly according to Reish Lakish it is necessary to perform *ḥalitza*, since the levirate bond remains. Rather, the intention is that in addition to the *ḥalitza*, a bill of divorce is also required (Rambam; Rid; Maharam MiRotenburg).

The Rashba had a different version of the Gemara's text that merely states: He must send her out. According to this version, the Rashba explains, *ḥalitza* alone is sufficient and there is no need for a bill of divorce. The Ritva suggests further that the ambiguity provided by this version of the text means that it can be interpreted as meaning through a bill of divorce, according to the opinion of Rabbi Yoḥanan, or as referring to *ḥalitza,* according to the opinion of Reish Lakish.

The Rivan claims that Rabbi Eliezer's statement was never meant to explain how she should be permitted to remarry; rather, the intention was to teach that a penalty is imposed upon the *yavam* for unlawfully consummating the levirate marriage. He is therefore required to hand her a bill of divorce; by doing so it becomes prohibited for him to repeat the consummation, and therefore his only recourse is to perform *ḥalitza* (see *Baḥ*).

Reinforced their pronouncements – עָשׂוּ חִיזּוּק לִדְבְרֵיהֶם: *Tosafot* note that in many cases throughout the Gemara, Rabbi Meir is of the opinion that the Sages reinforced their pronouncements to be equally as severe as Torah law, but not to have greater severity. They raise various distinctions between the case here and those cases. Most commentaries suggest a simple distinction should be drawn between cases involving rabbinic prohibitions and those involving rabbinic enactments in monetary matters. In the former, Rabbi Meir is very strict and holds that in order to prevent laxity it was necessary for the rabbinic prohibitions to be more severe than Torah law. This is also the reason that in many cases, Rabbi Meir rules that when the Sages provided specific formulations to be used in the fulfillment of mitzvot or in creating a bill of divorce, if one deviates from those formulations, the entire matter is null and void even if the change does not affect the essential meaning. However, in monetary matters, the Sages deemed it sufficient if the rabbinic law was applied with equal severity to that of Torah law (Ramban).

HALAKHA

A woman who is pregnant with the child of another man nor a woman who is nursing the child of another man – מְעוּבֶּרֶת חֲבֵירוֹ וּמֵינֶקֶת חֲבֵירוֹ: It is prohibited to marry a woman who is pregnant with the child of another man or a woman who is nursing the child of another man, until the child reaches twenty-four months of age. It makes no difference whether the woman is a widow, divorced, or became pregnant out of wedlock. Some are more lenient in the latter case (Rema, citing Maharai Mintz). If the child died within that time, or if the child had already been weaned while the mother was still married to the child's father, or if the mother had never been able to nurse, it is permitted to marry her (Rambam *Sefer Nashim*, *Hilkhot Geirushin* 11:25; *Shulḥan Arukh*, *Even HaEzer* 13:11).

One who married a woman who is pregnant with the child of another man or a woman who is nursing the child of another man – הַנּוֹשֵׂא מְעוּבֶּרֶת וּמֵינֶקֶת חֲבֵירוֹ: If one transgressed and married a woman who is pregnant with the child of another man or a woman who is nursing the child of another man, he is ostracized until he divorces her with a bill of divorce, even if he is a priest and would thereby be prohibited from remarrying her. If he is an Israelite, then he is allowed to later remarry her once the child reaches twenty-four months of age. This is in accordance with the opinion of the Rabbis (Rambam *Sefer Nashim*, *Hilkhot Geirushin* 11:28 and in the comment of Ra'avad; *Shulḥan Arukh*, *Even HaEzer* 13:12).

אָמַר רָבָא: וּלְדִבְרֵי חֲכָמִים יוֹצִיאָהּ בְּגֵט. אָמַר מָר זוּטְרָא: דַּיְקָא נַמִּי, דְּקָתָנֵי יוֹצִיא, וְלֹא קָתָנֵי יְפָרִישׁ, שְׁמַע מִינָּה.

Rava said: According to the statement of the Rabbis who dispute Rabbi Meir and require one who married a pregnant woman to send her out, the intention is that **he must send her out with a bill of divorce** and not merely separate from her. **Mar Zutra said:** The language the Rabbis used **is also precise, as** they **teach: He must send** her **out, and** they **do not teach: He must separate** himself from her. **Conclude from here** that Rava's claim is correct.

אָמַר לֵיהּ רַב אַשִׁי לְרַב הוֹשַׁעְיָא בְּרֵיהּ דְּרַב אִידִי: הָתָם תְּנַן, רַבָּן שִׁמְעוֹן בֶּן גַּמְלִיאֵל אוֹמֵר: כָּל שֶׁשָּׁהָא בְּאָדָם שְׁלֹשִׁים יוֹם – אֵינוֹ נֵפֶל. הָא לֹא שָׁהָא – סְפֵיקָא הָוֵי.

Rav Ashi said to Rav Hoshaya, son of Rav Idi: We learned in a *baraita* **there** that **Rabban Shimon ben Gamliel says: Any human** baby **that survives for thirty days**[H] after its birth **is not** to be considered **a stillbirth.** Rather, the baby is considered to be viable, and so the wife of the baby's father is never subject to any obligation of levirate marriage. **But,** by inference, **were it not to survive** for thirty days, **there would be uncertainty** whether the baby was viable or not.

וְאִיתְּמַר, מֵת בְּתוֹךְ שְׁלֹשִׁים יוֹם, וְעָמְדָה וְנִתְקַדְּשָׁה.

And an amoraic dispute **was stated** in the case in which the only offspring of a man **died during** the first **thirty days** of its life, **and** the widow, under the misconception that she was exempt from any obligation of levirate marriage, **arose and was betrothed.**[H]

רָבִינָא מְשַׁמֵּיהּ דְּרָבָא אָמַר: אִם אֵשֶׁת יִשְׂרָאֵל הִיא – חוֹלֶצֶת, וְאִם אֵשֶׁת כֹּהֵן הִיא – אֵינָהּ חוֹלֶצֶת.

Ravina said in the name of Rava: If she became the **wife of an Israelite,** i.e., the man who betrothed her was not a priest, then **she performs *ḥalitza*** with the *yavam* due to the uncertainty whether or not the offspring was viable, and then they may remain married. **But if she** became the **wife of a priest, she does not perform *ḥalitza***[N] with him because if she were to do so, she would become a *ḥalutza* and would therefore be prohibited from remaining married to her husband, who is a priest. Therefore, in this case, in order to allow her to remain married to her husband, the Sages did not require her to be concerned for the possibility that the offspring was not viable.

רַב מְשַׁרְשִׁיָא מְשַׁמֵּיהּ דְּרָבָא אָמַר: אַחַת זוֹ וְאַחַת זוֹ חוֹלֶצֶת.

The Gemara cites a different version of Rav's opinion: **Rav Mesharshiyya said in the name of Rava: Both this** woman **and that** woman **perform *ḥalitza,*** even though by doing so, if she was betrothed to a priest, she would become forbidden to him.

אֲמַר לֵיהּ רָבִינָא לְרַב מְשַׁרְשִׁיָא:

Ravina said to Rav Mesharshiyya:

NOTES

If she became the wife of a priest she does not perform *ḥalitza* – אִם אֵשֶׁת כֹּהֵן הִיא אֵינָהּ חוֹלֶצֶת: The Gemara will explain that since her performance of *ḥalitza* would prohibit her from remaining married to her husband, the Sages were willing to rely on the opinion of the Rabbis who disagree with Rabban Shimon ben Gamliel and hold that even if the child does not survive for thirty days it is considered viable. This is especially reasonable because both opinions agree that by Torah law the child is considered viable; the dispute is only whether, by rabbinic law, the case should be treated as one of doubt.

Some question why the *ḥalitza* should not be performed in this case. The *halakha* is that if a *ḥalitza* is performed and it is uncertain whether it was valid, it does not disqualify the *yevama* from marrying a priest. In the case here, too, the *ḥalitza* is performed only to satisfy the possibility that the child was not viable. If so, why does Rava rule that she should not perform *ḥalitza*? To resolve this difficulty, a distinction must be drawn between two cases of uncertainty. The *halakha* that an uncertain *ḥalitza* does not disqualify a woman from marrying a priest applies only to cases where there is clearly a levirate bond, but it is uncertain whether the man who performed the *ḥalitza* was actually the *yavam*. However, in this case, the *ḥalitza* was certainly performed by the *yavam*, and the only question is whether it was necessary. Therefore it is treated like any other case of uncertainty in Torah law, in which one must be stringent, and so if *ḥalitza* was performed, the couple would have to divorce (Rid).

HALAKHA

Any human baby that survives for thirty days – כָּל שֶׁשָּׁהָה בְּאָדָם שְׁלֹשִׁים יוֹם: Any child of whom it is known that he completed nine months in the womb is considered viable from the moment of birth. If it is not known whether he completed a full nine months, then once he lives for thirty days he is considered viable, and only then will the child's existence free his father's wives from the obligation to perform levirate marriage or *ḥalitza*. Some say that this is true only when his fingernails and hair have grown, as this is proof that the he has reached his ninth month (Rema, citing *Tur*). If the child survived thirty days and then died, and no one checked whether his fingernails and hair had grown, one may rely upon the first opinion (*Beit Shmuel*; *Taz*; Rambam *Sefer Nashim*, *Hilkhot Yibbum* 1:5; *Shulḥan Arukh*, *Even HaEzer* 156:4).

Died during the first thirty days and she arose and was betrothed – מֵת בְּתוֹךְ שְׁלֹשִׁים וְעָמְדָה וְנִתְקַדְּשָׁה: In the case of a *yevama* who gave birth to a child and it was not known whether he reached his ninth month, and then he died within thirty days of his birth, including on the thirtieth day, the *yevama* must perform *ḥalitza* since it is uncertain whether the child was viable. This is in accordance with the opinion of the Rabbis. Even if she was betrothed or married, she must still perform *ḥalitza*, and only then is she permitted to her husband. In the event that the *yavam* was not available to perform the *ḥalitza*, she may remain with her husband until the *yavam* becomes available (Rema, citing Mahari Mintz). However, if she was betrothed to a priest, she is not required to perform *ḥalitza* because if she were to do so she would become prohibited to her husband. In the event that the priest divorced her or died, ideally she should then perform *ḥalitza* in order to become permitted to non-priests. This is in accordance with the opinion of Ravina (Rambam *Sefer Nashim*, *Hilkhot Yibbum* 2:21; *Shulḥan Arukh*, *Even HaEzer* 164:7).