

וְקָסְבֵר אַבְיֵי יְדוּ בַיְדָה.

And Abaye holds that according to Beit Hillel, with regard to the husband's rights to his wife's property, **his hand is like her hand**, but not any stronger. Accordingly, the *yavam* has a weaker hand in her property than she does, because the rights of a *yavam* are always weaker than those of the husband himself. Therefore, she is considered to be in possession of the property, and when she dies, her heirs, i.e., her father and his heirs, inherit it. However, Beit Shammai assume that the husband's hand is stronger than his wife's hand. Therefore, the hand of the *yavam*, which is weaker than the husband's hand, is nevertheless equally as strong as the hand of the *yevama*, and therefore they rule that if she dies, the *yavam* and her heirs divide up the property.

אָמַר לִיהוּ רַבָּא. אִי דְנַפְלִי לָהּ בְּשָׂהִיא
תַּחְתָּיו דְּבַעַל – דְּכֹלֵי עֲלָמָא לָא
פְּלִיגִי דִּידוּ עֲדִיפָא מִיְדָה.

Rava^N said to him: I hold that if the property was bequeathed to her when she was still under the first husband, everyone, i.e., both Beit Hillel and Beit Shammai, agrees that his hand is stronger than her hand, and therefore the hand of the *yavam* will be equally as strong as that of the *yevama*, and if she dies the property will be divided between the two sides.

אֵלָא: אִידִי וְאִידִי דְנַפְלוּ לָהּ בְּשָׂהִיא
שׁוּמְרַת יָבֵם, רִישָׁא – דְּלָא עֵבֵד בָּהּ
מִאֲמָר, סִיפָא – דְּעֵבֵד בָּהּ מִאֲמָר.

Therefore, Rava presents his own resolution to the apparent inconsistency in Beit Shammai's rulings in the mishna: **Rather, both this first clause and that latter clause concern cases in which property was bequeathed to her when she was a widow waiting for her *yavam*. The first clause concerns a case in which the *yavam* had not performed a levirate betrothal with her,^N and the latter clause concerns a case in which he had performed a levirate betrothal with her.**

וְקָסְבֵר רַבָּא: מִאֲמָר לְבִית שַׁמַּאי
עוֹשֶׂה וְדָאִי אַרְוִסָה וְסָפֵק נְשׂוּאָה,
וְדָאִי אַרְוִסָה – לְדָחוֹת בְּצִרָה, וְסָפֵק
נְשׂוּאָה – לְחָלוֹק בְּנִכְסִים.

The Gemara explains the rationale behind Rava's explanation: **And Rava holds that according to Beit Shammai a levirate betrothal with a *yevama* affords her a status equivalent in some aspects to a woman who is definitely betrothed and in other aspects to a woman about whom there is uncertainty whether she is married.** The Gemara elucidates: She is similar to a woman who is **definitely betrothed** with regard to nullifying the levirate bond of her rival wife, so that the rival wife need not perform levirate marriage or *ḥalitza*. **And** she is similar to a woman about whom there is **uncertainty** whether she is married with regard to empowering the *yavam* to divide up the property that she attained while she was waiting for her *yavam*.

NOTES

The opinions of Abaye and Rava – שיטות אבוי ורבא: The commentaries offer various interpretations of the dispute between Abaye and Rava (see Ramban and Rashba, who elucidate them). According to Rashi, Abaye assumes that Beit Hillel hold that a husband's hand over the possessions is equally as strong as his wife's, while in a case where a *yevama* is still awaiting levirate marriage, the hand of the *yavam* is weaker than that of the *yevama*. Therefore, in the latter case, if she dies, any property that fell to her will remain in her and her heirs' possession. Beit Shammai, however, hold that a husband's hand is stronger than the hand of his wife, and therefore the hand of a *yavam* is equally as strong as that of the *yevama*. Accordingly, in the latter case, if she dies, any property that fell to her should be divided up between the heirs of the *yevama* and the *yavam*. According to Rava, all agree that the husband's hand is stronger than that of his wife, and that if property fell to a woman awaiting levirate marriage then the hand of the *yavam* and that of the *yevama* are equally strong, and therefore they divide up

the property between them. The dispute between Beit Hillel and Beit Shammai lies in the case where the *yavam* performed levirate betrothal. In that case, Beit Shammai hold that the betrothal affords her a status of a fully betrothed woman.

The Rif holds that according to Abaye, all agree that a husband's hand and his wife's are equally strong. Beit Shammai hold that when a woman happens before her *yavam* for levirate marriage, all of the husband's rights are transferred to the *yavam*, and so upon her death her heirs and the *yavam* or his heirs divide up the property equally between them. Beit Hillel hold that the husband's rights are not transferred to the *yavam*, and therefore the woman's property is awarded to her heirs. Rava claims that all agree that the hand of the *yavam* is actually stronger than that of the woman, and therefore upon her death her property that was bequeathed to her while she was married to her husband will go to his heirs. However, the Gemara here is discussing only property that she received once she was already awaiting levirate marriage.

The Rambam, Razah, and Ramban assume that the dispute between Abaye and Rava relates only to the opinion of Beit Shammai, but according to Beit Hillel the levirate bond does not render her equivalent even to a betrothed woman, and therefore the property is certainly fully in her possession and will pass to her heirs.

The first clause concerns a case in which he had not performed a levirate betrothal with her – רישא דלא עבד בה – מאמר: The Ritva explains that the distinction between the cases applies in cases in which property was bequeathed to her before the levirate betrothal was performed. Other commentaries differ, suggesting that in that case, even Beit Shammai would hold that the husband's heirs would have rights to the property. Instead, they explain that the dispute lies only in cases where she died, as then there would indeed be a difference if the levirate betrothal had taken place (*Keren Ora*).

And it was stated in the name of Rabbi Yosei, son of Rabbi Hanina – וְאִתְּמַר מִשְׁמִיָּה דְרַבִּי יוֹסֵי בְרַבִּי חַנִּינָא: The Jerusalem Talmud also records an analysis of the distinction between the first and latter clauses of the mishna. There, Rabbi Yosei explains that the first clause concerns a case where the woman inherited property prior to her happening before her *yavam* for levirate marriage, and the latter clause concerns a case where the property was bequeathed to her after she was already awaiting levirate marriage. However, the *Penei Moshe* suggests modifying the text in a way that renders Rabbi Yosei bar Hanina's explanation consistent with Abaye's explanation in the Gemara here. Rabbi Zeira explains there that according to Beit Shammai, the *yavam* is afforded a status similar to that of a man concerning whom it is uncertain whether he is the husband. The *halakha* in such a case is that the property is divided equally between the parties. According to Beit Hillel, the status of the *yavam* vis-à-vis the inheritance is the same as that of any husband. Even so, since even a regular husband does not have full ownership of his wife's property but only a usufructuary interest in it, the *yavam* cannot lay claim to her property either. According to this opinion, Beit Shammai and Beit Hillel dispute what should be done with the value of the marriage contract as well, as is implied by the straightforward reading of the mishna, as opposed to Abaye's interpretation on 38b.

And there is nothing more – וְתוּ לֹא מִיָּדִי: Other commentaries explain that the Gemara's intention is to say that the inference from the formulation of the mishna is very convincing and no objection can be raised against it (Rabbi Avraham min HaHar).

HALAKHA

If he consummated the levirate marriage with her then her legal status is that of his wife in every sense – בְּנִסָּה הָרִי הִיא כְּאִשְׁתּוֹ לְכָל דָּבָר: Once the *yavam* consummates the levirate marriage with his *yevama*, she is considered to be his wife in every sense. Therefore, the only way to divorce her is to by means of a bill of divorce, and following the divorce he is permitted to remarry her (Rambam *Sefer Nashim*, *Hilkhot Yibbum* 1:15; *Shulhan Arukh*, *Even HaEzer* 168:1).

אִתְּמַר מִשְׁמִיָּה דְרַבִּי אֶלְעָזָר בְּוֹתִיָּה דְרַבָּא וְאִתְּמַר מִשְׁמִיָּה דְרַבִּי יוֹסֵי בְרַבִּי חַנִּינָא בְּוֹתִיָּה דְאֲבָיִי.

וְיָמַר אֶמַר רַבִּי אֶלְעָזָר הֲכִי? וְהָא אֶמַר רַבִּי אֶלְעָזָר: מֵאֶמַר לְבֵית שַׁמַּי אֵינָהּ קוֹנָה אֶלְעָזָר לְדַחֲוֹת בְּצַרְהָ בְּלִבָּד!

אִיפּוּךְ. וְאִי בְּעִית אֵימָא: לְעוֹלָם לֹא תִפּוּךְ, אֶמַר לָךְ רַבִּי אֶלְעָזָר: כִּי אֶמְרִי אֲנִי – דְלֹא סָגִי לָהּ בְּגַט, אֶלְעָזָר דְּבַעֵי נְמִי חֲלִיצָה, לְחִלּוּק בְּנִכְסִים דְלֹא קִינִי – מִי אֶמְרִי?

אֶמַר רַב פַּפְּא: דִּיּוּקָא דְּמִתְנִיתִין בְּוֹתִיָּה דְאֲבָיִי וְאֶף עַל גַּב דְּקִשְׁיָא "מִתָּה",

דְּקִתְנִי: "נִכְסִים הִנְכַּסְתִּים וְיוֹצְאִים עִמָּה", מֵאִי נִכְנְסִין וּמֵאִי יוֹצְאִין? לֹאֹו נִכְנְסִין: לְרִשּׁוֹת הַבַּעַל, וְיוֹצְאִים: מְרִשּׁוֹת הַבַּעַל לְרִשּׁוֹת הָאָב.

וְאֶף עַל גַּב דְּקִשְׁיָא מִתָּה, אֲדַמְפְּלִי בְּגוּפָה וְלֹאֹהַר מִתָּה לְפִלְגִי בְּחַיָּיהָ וּלְפִירוֹת.

וְתוּ לֹא מִיָּדִי.

"בְּנִסָּה הָרִי הִיא" כּו'. לְמֵאִי הִלְכְּתָא? אֶמַר רַבִּי יוֹסֵי בְרַבִּי חַנִּינָא: לְוִמֵר שְׁמַגְרָשָׁה בְּגַט וּמְחִזְיָהּ.

The Gemara notes: An interpretation of the mishna was stated in the name of Rabbi Elazar that is in accordance with the opinion of Rava. And an interpretation of the mishna was stated in the name of Rabbi Yosei, son of Rabbi Hanina^N that is in accordance with the opinion of Abaye.

The Gemara objects: And did Rabbi Elazar actually state this interpretation that is in accordance with the opinion of Rava? But didn't Rabbi Elazar say: According to Beit Shammai a levirate betrothal acquires the *yevama* only with regard to nullifying the levirate bond of a rival wife so that she need not perform levirate marriage or *halitza*? This implies that it does not acquire her with regard to enabling the *yavam* to inherit from her. This, then, stands in contrast to Rava's interpretation.

The Gemara offers two possible solutions: Reverse the opinions, so that Rabbi Elazar is in accordance with Abaye, and Rabbi Yosei, son of Rabbi Hanina, is in accordance with Rava. And if you wish, say instead: Actually, do not reverse the opinions, since Rabbi Elazar can be understood to be in accordance with the opinion of Rava, as Rabbi Elazar could have said to you: When I said the statement that implies that a levirate betrothal acquires in a very limited sense, the intention was only that its acquisition is limited in that giving her a bill of divorce is still insufficient for her in order to release her from the levirate bond; rather, she also needs to perform *halitza*. But to suggest that he does not acquire her with regard to dividing up the property she attained, did I say that? Certainly not, as in fact a levirate betrothal acquires her to that extent as well, as Rava assumes.

Rav Pappa said: The precise formulation of the mishna is in accordance with the opinion of Abaye, even though according to his opinion it is difficult that the mishna discusses the case in which she died.

The Gemara explains Rav Pappa's statement: The precise formulation of the mishna is in accordance with the opinion of Abaye, as it teaches: Her property that enters and leaves the marriage with her. What is the meaning of: That enters, and what is the meaning of: That leaves? Is it not: That enters into the domain of the husband and leaves the domain of the husband when she dies, and then enters into the domain of the father? Interpreted in this way, the mishna explicitly considers the period in which she was still married to her first husband, and likewise, the case in which she came into the possession of property should be understood as referring to a case in which she did so while still married. This is consonant with Abaye's interpretation, but not with Rava's.

And when Rav Pappa said: Even though according to his opinion it is difficult that the mishna discusses the case in which she died, he meant as follows: Instead of disputing who has the rights to the property itself, which necessitates considering the case after her death, let Beit Hillel and Beit Shammai dispute the more immediate case when she is still alive and dispute who has the rights to the use and produce of the property.

The Gemara concludes: And there is nothing more^N to say concerning this matter, i.e., as Rav Pappa noted, while it is undeniable that the mishna's formulation supports Abaye's interpretation, it is equally true that the case discussed by the mishna would appear to challenge his interpretation.

§ The mishna states: If the *yavam* consummated the levirate marriage with her, then her legal status is that of his wife in every sense.^H The Gemara asks: With regard to what *halakha* is this said? Rabbi Yosei bar Hanina said: It is to say that once they have consummated the levirate marriage, the only way to legally dissolve the marriage is if he divorces her with a bill of divorce, but *halitza* is of no avail, and after divorcing her, he is permitted to take her back to be his wife, as the prohibition against engaging in relations with one's brother's wife does not apply to her.

מגדולה בגט פשיטא! סלקא דעתך
אמינא: הואיל וכתוב "ולקחה לו
לאשה ויבמה" אמר רחמנא, ועדיין
יבומי הראשון עליה. בחליצה - אין,
בגט - לא. קא משמע לן.

The Gemara examines the first clause of Rabbi Yosei bar Hanina's statement: **Isn't it obvious** that to sever his relationship with her, **he divorces her with a bill of divorce?** The Gemara explains: It is necessary to teach this because **it could enter your mind to say** that **since it is written:** "And take her to him to be his wife and consummate the levirate marriage with her" (Deuteronomy 25:5), continuing to refer to the marriage as a levirate marriage even after the verse has stated that he took her as a wife, one might claim **the Merciful One is saying** that the **original levirate bond continues to be upon her**, and therefore, **with halitza, yes**, they can sever the relationship, but **with a bill of divorce, no**, the relationship would not be severed. Therefore, the mishna **teaches us** that she is considered to be his wife to the extent that the relationship can be severed with a bill of divorce alone.

"מתזירה". פשיטא! סלקא דעתך
אמינא: מצוה דרמיא רחמנא עליה
עבדה. השתא תיקום עליה באיסור
אשת אח - קא משמע לן.

The Gemara examines the second clause: **Isn't it obvious** that after divorcing her, he is permitted to **take her back** to be his wife? The Gemara explains: It is necessary to teach this because **it could enter your mind to say** that the **mitzva that the Merciful One imposes upon him, he has performed**, and therefore **now** that there is no longer any mitzva to marry her, **she should once again be established as forbidden to him by the prohibition** against engaging in relations with one's **brother's wife**. To dispel this notion, the mishna **teaches us** that she is considered to be his wife to the extent that there is no longer any prohibition against remarrying her.

ואימא הכי נמי! אמר קרא: "ולקחה
לו לאשה". כיון שלקחה - הרי היא
באשתו לכל דבר.

The Gemara challenges this ruling: **But why not say** that this is **indeed so**, that she should be forbidden to him? The Gemara explains: **The verse states:** "And take her to him to be his wife" (Deuteronomy 25:5), indicating that **once he has taken her**, her legal status is **that of his wife in every sense**.

"ובלבד שתהא בתובתה" כו'. מאי
טעמא? אשה הקנו לו מן השמים.

§ The mishna states: The **only** exception to this is that her **marriage contract will still be payable** from the property of her first husband and not from the property of the *yavam*. The Gemara asks: **What is the reason for this?** The Gemara explains: **A wife was acquired to him by Heaven**, and since he did not choose her as a wife, he did not obligate himself to pay her marriage contract.

ואי לית לה מן הראשון - תקינו לה
משני, כדי שלא תהא קלה בעיניו
להוציאה.

The Gemara qualifies the mishna's ruling: **And if she has no ability** to collect her marriage contract **from the first husband**,^h since he died without leaving any property with which to pay it, the Sages **instituted an ordinance for her benefit** that she must receive a new marriage contract **from her second husband**, i.e., the *yavam*. This was instituted **so that she will not be demeaned in his eyes** such that he will easily **divorce her**, since doing so would incur a financial burden on his part.

מתני' מצוה בגדול לייבם, לא
רצה - מהלכין על כל האחים, לא
רצו - חוזרין אצל גדול, ואומרים
לו: עליך מצוה, או חלוץ או ייבם.

MISHNA The mitzva of levirate marriage is for the **eldest of the brothers to consummate the levirate marriage**.^h If the **eldest does not want to do so**,^h the court **goes to each of the other brothers** and requires them to do so. **If they do not want to do so**, the court **returns to the eldest brother and says to him:** The mitzva is incumbent upon you; **either perform halitza or consummate the levirate marriage**.

תלה בקטן עד שיגדיל. או בגדול
עד שיבא ממדינת הים, או חרש
או שוטה - אין שומעין לו, אלא
אומרים לו: עליך מצוה, או חלוץ
או ייבם.

If a brother **made his decision dependent** upon the possibility that one of his other brothers will eventually consummate the levirate marriage, saying that he will do so only if they do not, then whether he makes it dependent **upon a brother who is currently a minor**,^h meaning that the *yevama* should wait **until he matures, or upon his eldest brother**, who is not currently present, meaning the *yevama* should wait **until he comes from overseas, or upon a brother who is a deaf-mute or an imbecile**,ⁿ as perhaps they will recover from their disability, the court **does not listen to him; rather, the judges of the court say to him:** The mitzva is incumbent upon you; **either perform halitza or consummate the levirate marriage**.

HALAKHA

And if she has no ability to collect her marriage contract from the first husband – ואי לית לה מן הראשון – If the deceased brother had no property, the *yavam* must give the *yevama* a marriage contract for one hundred dinars payable from his property, so that she will not be demeaned in his eyes such that he will easily divorce her (Rambam *Sefer Nashim, Hilkhot Ishut* 22:14; *Shulhan Arukh, Even HaEzer* 168:9, and in the comment of Rema).

The mitzva is for the eldest to consummate the levirate marriage – מצוה בגדול לייבם – The mitzva of levirate marriage is for the eldest of the brothers to consummate the levirate marriage or perform *halitza*. If he does not wish to do so or is incapable of doing so (Rivash), then the other brothers, starting with the next oldest and proceeding in descending order of age, are required to do so. If they refuse, the eldest brother is again required to either consummate the levirate marriage or perform *halitza* (Rambam *Sefer Nashim, Hilkhot Yibbum* 2:6, 7; *Shulhan Arukh, Even HaEzer* 161:4).

The eldest does not want to consummate the levirate marriage – לא רצה לייבם – If the eldest brother refuses to either consummate the levirate marriage or perform *halitza*, he is forced to perform *halitza*. This is true even though there is a younger brother who could do so, and even if the eldest brother had taken an oath not to do so, because since there is a mitzva incumbent upon him, the oath does not take effect (Rema). Nevertheless, to avoid a situation where it would appear as though he is violating his oath, he is first to be released from his oath (Rivash; Rambam *Sefer Nashim, Hilkhot Yibbum* 2:7; *Shulhan Arukh, Even HaEzer* 161:4).

He made it dependent upon a minor – תלה בקטן – If a brother does not wish to consummate the levirate marriage or perform *halitza* immediately, but instead says that he wishes to wait for a brother who is a minor to mature, or for a brother who is a deaf-mute to heal, or for an older brother to return from overseas, this is not accepted, and he must consummate the levirate marriage with her or perform *halitza* immediately (Rambam *Sefer Nashim, Hilkhot Yibbum* 2:8–9; *Shulhan Arukh, Even HaEzer* 161:5).

NOTES

A deaf-mute or an imbecile – או חרש או שוטה – Rambam, in his Commentary on the Mishna, along with most of the other commentaries, explains that the intention here is that the eldest brother wished to wait for the possibility that a brother who is a deaf-mute or imbecile will be healed. It would appear, however, that *Tosafot* understand that his request is that the deaf-mute or imbecile should consummate the levirate marriage in their current disabled state. Accordingly, *Tosafot* assume that a levirate marriage with such an individual is valid. Nevertheless, a *yevama* is never compelled to enter into levirate marriage in such a case.

The consummation of a younger brother [katan] – ביאת קטן: The Gemara here uses the term *katan*, which normally refers to a minor. However, Rashi explains that in this case the reference is not to a minor but to a younger brother who is already an adult and therefore fully capable of consummating the marriage according to all opinions. Others explain that the reference here is to an actual minor, but one who is above nine years of age, from which point his act of sexual intercourse has legal significance (Rivan; Meiri; see Rashba and Ritva).

Why should they return to the eldest brother – אמאי חוזרין אצל הגדול: Ostensibly, it would seem that the very fact that the younger brothers are considered demonstrates that the consummation of a younger brother is preferable to the *halitza* of the eldest, as if that were not the case, why wouldn't the eldest brother immediately be forced to perform *halitza*? The reason that a proof cannot be drawn from here is because compulsion is always considered a last resort. Therefore, even if the *halitza* of the eldest brother is preferable to the consummation of a younger brother, the consummation of a younger brother is nevertheless preferable to the forced *halitza* of the eldest brother (Yosef Lekah).

Perhaps he will come and perform *halitza* – דלמא אתי וחליץ: The Gemara mentions the possibility that the eldest brother might perform *halitza* to emphasize that the eldest brother is preferred even if he does not intend to consummate the marriage (Rashba; Meiri; see *Haggahot Rav Yeshaya Pick-Berlin*).

We do not delay the performance of any mitzva – כל שהוי מצוה לא משהינן: The *Hayyei Adam* cites the *Terumat HaDeshen*, who infers from the mishna here that one may delay the performance of a mitzva if doing so will enable one to perform it in its optimal manner later. This is derived from the fact that the mishna states only that one does not wait for the older brother to return from overseas in order to perform levirate marriage. By implication, if he were in the same country but merely not available immediately, then one should wait. Apparently, this is because the short delay is acceptable in order to perform a mitzva in its optimal manner. However, the *Sefer Hasidim* cites the verse: "I made haste and did not delay to observe Your commandments" (Psalms 119:60), and interprets it to mean that one should not delay performing a mitzva even if it could be performed in a more complete manner later. The *Hayyei Adam* notes that this is also implied by the straightforward reading of the Gemara, which states without qualifications that one should not delay the performance of a mitzva.

גמ' איתמר, ביאת קטן וחליצת גדול, פליגי בה רבי יוחנן ורבי יהושע בן לוי, חד אמר: ביאת קטן עדיפא, וחד אמר: חליצת גדול עדיפא.

מאן דאמר ביאת קטן עדיפא – דהא מצוה בייבום, ומאן דאמר חליצת גדול עדיפא – במקום גדול – ביאת קטן לאו כלום היא.

תנן: לא רצה – מחוזרין על כל האחין. מאי לאו: לא רצה לייבם אלא לחלוץ, וקתני: מהלכין אצל האחין, שמע מינה ביאת קטן עדיפא –

לא, לא רצה לחלוץ ולא לייבם, דכוותה גבי האחין לא רצו – לא לחלוץ ולא לייבם, אמאי חוזרים אצל הגדול, למיכפיה – לכפיה לדידהו! בין דמצוה עליה דידיה רמא – לדידיה בייבין.

תנן: תלה בקטן עד שיגדיל – אין שומעין לו. ואי ביאת קטן עדיפא, אמאי אין שומעין לו? ניטר דלמא גדיל ומייבם!

ולטיעמך, ובגדול עד שייבא ממדינת הים אין שומעין לו, אמאי ניטר, דלמא אתי וחליץ! אלא: כל שהוי מצוה לא משהינן.

GEMARA An amoraic dispute was stated: Rabbi Yohanan and Rabbi Yehoshua ben Levi disagree with regard to a case in which there is the choice between consummation of the levirate marriage by a younger brother [*katan*]^N or *halitza* performed by the eldest brother. One said: The consummation of the levirate marriage by a younger brother is preferable, and the other one said: *Halitza* performed by the eldest brother is preferable.^H

The Gemara explains: With regard to the one who said that consummation of the levirate marriage by a younger brother is preferable, this is due to the fact that the mitzva of levirate marriage is through the actual consummation of the levirate marriage, and therefore preference is always given to consummation over the performance of *halitza*. And the one who said *halitza* performed by the eldest brother is preferable, this is because in the presence of the eldest brother, the consummation of the levirate marriage by a younger brother is considered nothing.

The Gemara suggests proof for the first opinion: We learned in the mishna: If the eldest does not want to consummate the levirate marriage, the court goes to each of the other brothers and requires them to do so. The Gemara suggests: What, is it not that he does not want to consummate the levirate marriage but is willing to perform *halitza*? And yet the mishna teaches: The court goes to each of the other brothers and requires them to consummate the levirate marriage. If so, conclude from here that the consummation of the levirate marriage by a younger brother is preferable.

The Gemara rejects the proof: No, the mishna might concern a case where the eldest does not want either to perform *halitza* or to consummate the levirate marriage, and it is only because he is unwilling to do either that the other brothers are considered. The Gemara asks: If this is so, then in the corresponding situation in the mishna in which the brothers do not want to do so, the case must be that they do not want either to perform *halitza* or to consummate the levirate marriage. But if so, why should the court invest the extra effort to return to the eldest brother^N to force him to fulfill his duty? Let the court force the other brothers to fulfill their duty. The Gemara responds: Since the mitzva is incumbent upon the eldest brother *ab initio*, it is he who is forced.

The Gemara suggests another proof: We learned in the mishna: If a brother makes his decision dependent upon a brother who is currently a minor, the court does not listen to him. The Gemara suggests: And if the consummation of the levirate marriage by a minor is preferable, why shouldn't the court listen to him? Let the court wait, as perhaps he will mature and consummate the levirate marriage. Rather, it would appear that the mishna assumes that consummation by a younger brother is not preferable.

The Gemara responds: But even according to your reasoning that *halitza* performed by an elder brother is preferable, what about the next case in the mishna, where a brother asks to wait until the eldest brother comes from overseas? In that case, as well, the mishna rules: They do not listen to him; but why shouldn't they listen to him? Let the court wait, as perhaps he will come and at the very least perform *halitza*.^N Rather, it is clear that the reason for the mishna's ruling is that we do not delay the performance of any mitzva;^N therefore, if one of the brothers is currently unable to perform the mitzva, he is not considered at all. Consequently, no proof can be derived from the mishna.

HALAKHA

The consummation of a younger brother and the *halitza* of the eldest brother – ביאת קטן וחליצת גדול: If the eldest brother does not wish to consummate the levirate marriage but only to perform *halitza*, and a younger brother is willing to consummate the levirate marriage, then the consummation of the younger brother is preferable. Whenever *halitza* is performed, preference is given to the eldest

brother. This is the case today, as according to many opinions levirate marriage is never performed nowadays. Even those authorities who hold that levirate marriage is still performed agree that if the *yevama* does not wish to enter into levirate marriage then *halitza* is performed, giving preference to the eldest brother (Rema, citing *Terumat HaDeshen*; *Shulhan Arukh*, *Even HaEzer* 161:6).

אית דאמרי: בביאה – כולי עלמא לא
פליגי דביאת קטן עדיפא. כי פליגי –
בחליצת קטן.

והכי איתמר: חליצת קטן וחליצת גדול –
פליגי בה רבי יוחנן ורבי יהושע בן לוי. חד
אמר: חליצת גדול עדיפא, וחד אמר: כי
הדדי ניהו.

מאן דאמר חליצת גדול עדיפא – דהא
מצוה בגדול. ואידך: כי אמרינן מצוה
בגדול – לענן יבום, אבל לענן חליצה –
בהדדי ניהו.

תנן: לא רצו – חוזרין אצל גדול, מאי
לא: לא רצו לייבם אלא לחלוץ, וקתני
חוזרין אצל גדול, ושמע מינה: חליצת
גדול עדיפא!

לא, לא רצו – לא לחלוץ ולא לייבם.
דכוותיה גבי גדול – לא רצה לא לחלוץ
ולא לייבם, אלא אמאי חוזרין אצל גדול,
למכפייה? לכפייהו לדידהו! בין דמצוה
עליה דידיה רמיא – לדידיה כייפינן.

תא שמע: תלה בגדול עד שיבא ממדינת
הים – אין שומעין לו. ואי סלקא דעתך
חליצת גדול עדיפא, אמאי אין שומעין
לו? ניטר דלמא אתי וחליץ!

There are those who say that the dispute is more limited: When there is the possibility of consummating the levirate marriage, everyone agrees that the consummation of the levirate marriage by a younger brother is preferable to the *halitza* of the eldest brother. When they disagree it is with regard to the significance of the *halitza* of a younger brother.

And this is how the dispute was stated: Rabbi Yohanan and Rabbi Yehoshua ben Levi disagree with regard to a case in which there is choice between the *halitza* of a younger brother or the *halitza* of the eldest brother. One said: The *halitza* of the eldest brother is preferable.⁴ And the other one said: The two options are equivalent.

The Gemara explains: With regard to the one who said that the *halitza* of the eldest brother is preferable, this is due to the fact that the mitzva of levirate marriage and *halitza* is incumbent upon the eldest brother. And the other Sage would respond to this claim by saying that when we say that the mitzva is incumbent upon the eldest brother, that is only with regard to the consummation of the levirate marriage; however, with regard to performing *halitza*, all the brothers are equivalent.

The Gemara suggests a proof for the first opinion: We learned in the mishna: If the younger brothers do not want to consummate the levirate marriage, the court returns to the eldest brother and demands that he at least perform *halitza*. The Gemara suggests: What, is it not that the other brothers did not want to consummate the levirate marriage but are willing to perform *halitza*? And yet the mishna teaches: The court returns to the eldest brother so that he can perform *halitza*. If so, conclude from here that the *halitza* of the eldest brother is preferable.

The Gemara rejects the proof: No, the mishna might concern a case where the other brothers did not want either to perform *halitza* or to consummate the levirate marriage, and it is only because they are unwilling to do either that the court returns to the eldest brother. The Gemara asks: If this is so, then in the corresponding situation in which the mishna states: The eldest brother does not want to do so, the case must be that he does not want either to perform *halitza* or to consummate the levirate marriage. But if so, when the younger brothers also refuse, why should the court invest the extra effort to return to the eldest brother to force him to fulfill his duty? Let the court force them, i.e., the younger brothers, to fulfill their duty. The Gemara responds: Since the mitzva is incumbent upon the eldest brother *ab initio*, it is he who is forced.

Come and hear another proof from the mishna: If a younger brother makes his decision dependent upon the eldest brother, who is currently unavailable, suggesting that the *yevama* wait until he comes from overseas, the court does not listen to him. And if it enters your mind to suggest that the *halitza* of the eldest brother is preferable, why doesn't the court listen to him? Let the court wait, as perhaps he will come and perform *halitza*. Rather, it would appear that the mishna assumes that the with regard to performing *halitza*, all the brothers are equivalent.

HALAKHA

חליצת – חליצת – חליצת – חליצת – חליצת
Halitza of a younger brother and the eldest brother – חליצת – חליצת – חליצת – חליצת
קטן וגדול: If the brothers are willing only to perform *halitza* but not to consummate the levirate marriage, then it is preferable for the *halitza* to be performed by the eldest brother. This is especially true nowadays, when *halitza* takes precedence over

consummating the levirate marriage. Even according to the opinions that the consummation of the levirate marriage takes precedence, if the *yevama* wishes to perform *halitza* then *halitza* is preferred (Rema, citing *Terumat HaDeshen*; *Shulhan Arukh*, *Even HaEzer* 161:6).

Levirate marriage and *halitza* – **ביום וְחִלְצָהּ**: The mitzva to consummate levirate marriage takes precedence over the mitzva of performing *halitza* (Rif; Rambam). This is in accordance with the opinion of the Rabbis and the statement of Rami bar Hama. Others say that the mitzva of performing *halitza* takes precedence (Rashi). This is in accordance with the opinion of Abba Shaul and the assumption of Rav Nahman bar Yitzhak. According to the first opinion, in a case where the *yavam* wishes to consummate the levirate marriage and the *yevama* does not, if she does not have a sufficiently valid reason to refuse, then she is categorized as rebellious and does not receive the money allotted to her in her marriage contract. According to the second opinion, she is not categorized as rebellious for refusing to consummate the levirate marriage, and so when she performs *halitza* she receives the payment of her marriage contract. According to this opinion, although the *yavam* is not forced to perform *halitza*, he can be tricked into doing so (*Tur*, citing Rabbeinu Tam and Rosh). If the *yavam* falls into the category of one who, were he to be married, would be forced to divorce his wife, then he is also forced to perform *halitza* (*Tur*, citing *Smag*).

Some say that even if both the *yavam* and the *yevama* wish to consummate the levirate marriage, they are not permitted to do so unless it is clear that they are doing so for the sake of the fulfilling the mitzva (*Tur*, citing Rabbeinu Tam; see *Yam shel Shlomo*). The custom is not to force *halitza* unless the *yavam* refuses both to consummate the levirate marriage and to perform *halitza* (Maharam Padua). In recent generations, especially in Ashkenazic communities, the custom is not to allow levirate marriage under any circumstances, although there have been some questionable exceptions to this principle. This has also become the accepted practice in Eretz Yisrael (Rambam *Sefer Nashim*, *Hilkhot Yibbum VaHalitza* 1:2, 3:7; *Shulhan Arukh*, *Even HaEzer* 165:1).

Bill of *halitza* – **גַּט חִלְצָהּ**: Although there is no requirement for the *halitza* to be documented in writing, it was nevertheless customary for the court to grant the *yevama* a document as proof that she performed *halitza* and that she is now permitted to marry a man from the general public. There was a standard formulation for this document, as is clear from the statements of Rav Yehuda and Rabbi Hiyya bar Avya. In some places it is not customary to write a bill of *halitza*; however the better custom is to write one (*Be'er Heitev*; Rambam *Sefer Nashim*, *Hilkhot Yibbum* 4:30; *Tur*, *Even HaEzer* 169; *Shulhan Arukh*, *Even HaEzer* 169:56).

BACKGROUND

The order of *halitza* – **סֵדֶר חִלְצָהּ**: A mishna in Chapter Twelve describes the order of the *halitza* ceremony and stresses that the ceremony was performed in Hebrew. The bill of *halitza* mentioned here is a later addition, written in Aramaic and designed to enable the woman to later prove that she has performed the mitzva of *halitza* and is therefore allowed to remarry. The Rif formulated a complete version of the bill of *halitza*, including the details mentioned, e.g., the requirement that the witnesses see the woman's saliva and that they recognize both the woman as the wife of the deceased and the man as his brother. The Rif also adds which phrases from the Torah must be said by the man and which by the woman and by the court, as well as describing the type of shoe required for the performance of *halitza*.

וְלִטְעֵמִיד, בְּקִטְוֵן עַד שֶׁיִּגְדִּיל אֵין שׁוֹמְעִין לּוֹ, אִמְמַאי? נִיטֵר דְּלָמָּא גְּדִיל וּמֵיבִים, (אֵי נָמִי אֵתִי אִיהוּ וּמֵיבִימָה). אֶלְאִי כֹּל שְׁהוּי מִצְוָה לֹא שְׁהִינֵן.

תִּנְנֵן הֵתָם: מִצְוֹת יְבוּם קוֹדְמֹת לְמִצְוֹת חִלְצָהּ – בְּרֵאשׁוֹנָה שְׁהִי מִתְכוּוֹנִין לְשֵׁם מִצְוָה, עֲכָשׁוּ שְׂאִין מִתְכוּוֹנִין לְשֵׁם מִצְוָה – אָמְרוּ: מִצְוֹת חִלְצָהּ קוֹדְמֹת לְמִצְוֹת יְבוּם.

אָמַר רַב: אֵין בּוֹפִין: בִּי אֵתוּ לְקַמֵּיהּ דְּרַב אָמַר רַהוּ: אֵי בְעִית – חִלְצָהּ, אֵי בְעִית – יִיבֵם, בְּדִידָךְ תֵּלֵא רַחֲמֵנָא, "וְאִם לֹא יִחְפוֹץ הָאִישׁ", הָאִ אִם חָפֵץ – אֵי בְעִי חִלְצָהּ, אֵי בְעִי יִיבֵם.

וְאִף רַב יְהוּדָה סָבַר אֵין בּוֹפִין. מְדַאֲתֵקִין רַב יְהוּדָה בְּגִיטָא דְּחִלְצָהּ: אֵין דְּפִלוֹנִית בַּת פִּלוֹנִי אֶקְרַבַּת יַת פִּלוֹנִי יְבָמָה מְדַמְנָא לְבִי דִּינָא, וְאִשְׁתַּמוּדְעִינְהוּ דְּאִחוּהּ דְּמִיתָנָא מֵאֲבָא נִיהוּ, וְאָמְרֵי לִיהּ: אֵי צְבִית לִיבֵם – יִבֵם, וְאֵי לֹא – אֵיטְלַע לָהּ רַגְלֵךְ דִּימִינָא.

The Gemara challenges this: **But even according to your reasoning**, you certainly agree that the possibility of consummating the levirate marriage is always preferable. If so, what about the previous case in the mishna, where the eldest brother asks to wait until his brother who is a minor will mature? In that case as well the mishna rules: **The court does not listen to him; but why shouldn't the court listen to him? Let the court wait, as perhaps he will come and consummate the levirate marriage. Alternatively**, in the case where the eldest brother is overseas, let the court wait, as perhaps he will come and consummate the levirate marriage with her. **Rather**, it is clear that the reason for the mishna's ruling is that **we do not delay the performance of a mitzva**. Therefore, if one of the brothers is currently unable to perform the mitzva, he is not considered at all. Consequently, no proof can be derived from the mishna.

S We learned in a mishna there (*Bekhorot* 13a): **The mitzva of consummating the levirate marriage takes precedence over the mitzva of performing *halitza***; this applied initially, when *yevamin* would have intent for the sake of fulfilling the mitzva. **Now, that they do not have intent for the sake of fulfilling the mitzva**, the Sages say: **The mitzva of performing *halitza* takes precedence over the mitzva of consummating the levirate marriage**.

Rav said: Nevertheless, the court **does not force**^N a *yavam* to perform *halitza*, and if he wishes it is still permitted to consummate the levirate marriage. The Gemara relates: **When a *yavam* and a *yevama* would come before Rav, he would say to them: If you want, perform *halitza*, and if you want, consummate the levirate marriage, as the Merciful One makes the matter dependent upon your will**, as it is stated: **"And if the man does not wish to take his *yevama*"** (Deuteronomy 25:7) then he should perform *halitza*. This implies that the Torah requires him to perform *halitza* only if he does not wish to consummate the levirate marriage, **but if he wishes to do so, then the matter is dependent upon him, and if he wants, he performs *halitza*, or if he wants, he consummates the levirate marriage**.

The Gemara notes: **And even Rav Yehuda holds that the court does not force a *yavam* to perform *halitza* if he wishes to consummate the levirate marriage**. This is apparent from the fact that Rav Yehuda enacted in his court that the following formulation should be used in the bill of *halitza*:^H **That so-and-so, daughter of so-and-so, brought so-and-so, her *yavam*, before the court; and we identified him, that he was indeed the paternal brother of the deceased, and we said to him: If you desire to consummate the levirate marriage, then consummate the levirate marriage, and if not, extend your right foot toward your *yevama* so that she may perform *halitza* by removing your shoe**.^B

NOTES

The court does not force – **אֵין בּוֹפִין**: This statement of Rav can be understood in different ways. Rashi and most of the other commentaries understand it to mean that a *yavam* is not to be forced to perform *halitza* if he wishes to consummate the levirate marriage, and that this is true even if one asserts that the mitzva of *halitza* takes precedence. Rabbeinu Hananel and Rabbeinu Tam explain Rav's statement in the opposite manner: The *yavam* will not be forced to consummate the levirate marriage, even in cases where one assumes his motives will be pure.

It is similarly unclear to whom Rav's statement applies; who is not to be forced? Rashi explains that where both the *yavam* and the *yevama* are willing to consummate the levirate marriage, they cannot be forced to perform *halitza* even if *halitza* is considered preferable. Others explain that Rav was referring only to the *yavam*, meaning that he cannot be forced

to consummate the levirate marriage; alternatively he was referring only to the *yevama*, meaning that she is never forced to consummate the levirate marriage.

The *Gilyonei HaShas* cites a geonic responsum that explains that the dispute with regard to compulsion is dependent upon the broader issue as to whether or not *halitza* is valid if not agreed to by both parties. If the *halitza* requires mutual consent, then there can be no forced *halitza*. According to that opinion, the opinions that do allow for a forced *halitza* must be explained as one of the cases in which the Sages retroactively annulled the original marriage, consequently obviating any need for a valid *halitza*. Nevertheless, an act of *halitza* is still required because otherwise it would be appear as though the *yevama* had been released from her levirate bonds without performing an act that would release her.

Identification of the *yavam* and the *yevama* – הַכֵּרֶת: The court must substantiate that the man coming to perform *halitza* is the paternal brother of the deceased, that the two brothers coexisted, and that this woman was the wife of the deceased. There is no need for two qualified witnesses to testify in this matter; rather, any testimony suffices, even that of a close relative, a woman, or anyone else generally disqualified from giving testimony. Even written testimony is acceptable if the parties can be recognized thereby (*Be'er Heitev*, citing Maharshdam). Some (*Be'er Heitev*, citing Rivash) say that a disqualified witness may not testify at the time of the *halitza* itself; rather, the court must first confirm the identities of the *yavam* and the *yevama* and only then may the *halitza* be performed (Rambam *Sefer Nashim, Hilkhot Yibbum VaHalitza* 4:31; *Shulhan Arukh, Even HaEzer* 169:8; 157:2; *Seder Halitza* 38).

וְאִיטְלַע לָהּ רִגְלָא דִּימִינָא, וְשָׂרַת סִינְיָה
מֵעַל רִגְלוֹהִי, וְרִקְתָּ בְּאַנְפּוֹהִי וְרָקָא
דְּמַתְחוּזָא לְבֵי דִינָא עַל אַרְעָא.

The bill of *halitza* would continue with the account of what transpired: **And he extended [itla] his right foot^N toward her and she removed his shoe from upon his foot and she spat toward his face spittle, which was visible to the court, and which landed upon the ground.**

וְרַבִּי חֵיָּיָא בַּר אַוּיָא מְסִיִּים בְּהַ מְשָׁמִיָּה
דְּרַב יְהוּדָה: וְאַקְרִינְהוּ מַה דְּכָתִיב בְּסִפְר
אוֹרֵייתָא דְּמִשְׁנָה.

And Rabbi Hiyya bar Avya in the name of Rav Yehuda would conclude the formulation of the bill of *halitza* with an additional sentence: And we dictated to the *yavam* that which is written in the book of the Torah of Moses, i.e., those declarations that the *yavam* and the *yevama* are required to make.

אַשְׁתַּמּוּדְעִינְהוּ. פְּלִיגִי בְּהַ רַב אַחָא וְרַבִּינָא.
חַד אָמַר: בְּעֵדִים, וְחַד אָמַר: אֲפִילוּ קְרוּב,
אֲפִילוּ אִשָּׁה. וְהַלְכָתָא: גְּלוּיִי מִיְלִתָּא
בְּעֵלְמָא הוּא, וְאֲפִילוּ קְרוּב וְאֲפִילוּ אִשָּׁה.

The Gemara clarifies the intention of the phrase: **And we identified him^H as the brother of the deceased. Rav Aḥa and Ravina disagree concerning this phrase: One said that this identification must be made through legally valid witnesses, and the other one said that even the testimony of a relative^N and even the testimony a woman is accepted in this case.** The Gemara concludes: **And the *halakha* is that the identification of the brother is considered to be merely revealing the facts of the matter, and therefore, even a relative and even a woman may tender this information.**

בְּרַאשׁוֹנָה שְׁהָיוּ מִתְבּוֹנִין לְשֵׁם מִצְוָה –
מִצְוֹת יְבוּם קוֹדְמֹת לְמִצְוֹת חֲלִיצָה, וְעַכְשָׁיו
שְׂאִין מִתְבּוֹנִין לְשֵׁם מִצְוָה – אָמְרוּ: מִצְוֹת
חֲלִיצָה קוֹדְמֹת לְמִצְוֹת יְבוּם.

The Gemara paraphrases the mishna from tractate *Bekhorot*: **Initially, when *yevamin* would have intent for the sake of fulfilling the mitzva of consummating the levirate marriage, the mitzva of consummating the levirate marriage took precedence over the mitzva of performing *halitza*. And now that they do not have intent for the sake of fulfilling the mitzva, the Sages say: The mitzva of performing *halitza* takes precedence over the mitzva of consummating the levirate marriage.**

אָמַר רַמִּי בַּר חַמָּא אָמַר רַבִּי יִצְחָק: חֲזוּ
לוֹמְרֵי מִצְוֹת יְבוּם קוֹדְמֹת לְמִצְוֹת חֲלִיצָה.
אָמַר לִיהַ רַב נַחְמָן בַּר יִצְחָק: אַכְשׁוּר דְּרִי?!

Rami bar Hama said that Rabbi Yitzḥak said: In later generations they went back to once again saying that the mitzva of consummating the levirate marriage takes precedence over the mitzva of performing *halitza*. Rav Nahman bar Yitzḥak said to him in wonderment: Could it be that the later generations improved their spiritual level and now intend to consummate the levirate marriage solely for sake of fulfilling the mitzva?

מִעֵיקְרָא סְבָרִי לָהּ כְּאַבָּא שְׂאוּל, וְלִבְסוּף
סְבָרִי לָהּ בְּרַבָּנָן.

The Gemara explains that this does not mean that the later generations improved themselves; rather, **initially they held in accordance with the opinion of Abba Shaul, and so the mitzva of performing *halitza* took precedence, and in the end they held in accordance with the opinion of the Rabbis,^N and so the mitzva of consummating the levirate marriage took precedence.**

NOTES

איטלע... רגלא דימינא – Rashi interprets the word *itla* as meaning incline. Accordingly, the phrase means that the *yavam* presented his foot to his *yevama* by extending it toward her. The commentaries explain that Rashi understood that the Aramaic word is related to the Hebrew word *tzela*, which can mean a side; Rashi similarly translates the phrase: “*Tzela hamishkan*” (Exodus 26:26) as being the side of the Tabernacle (Rabbi Yehuda al-Madari; *Noda Bihuda*). Rabbi Avraham min HaHar cites Rashi as explaining *itla* to mean prepare. The *Arukh* writes that the word means remove. Clearly the intention is not that he should remove his shoe; rather, it must mean that he should allow his shoe to be removed by her. Later commentaries note that it appears that the *Arukh* had a variant text of the Gemara that could support such a meaning. Other commentaries explain that the word means limp, and the intention is that the *yavam* should forcefully plant his foot on the ground to the point that he appears like one with a limp, who distributes his weight unequally by supporting himself on one leg (Meiri; Rabbi Avraham min HaHar; *Noda Bihuda*).

אפילו קרוב וכו’ – The early commentaries, based on the comments of the Rif, explain that this is certainly not to say that the court actually relied entirely

on the testimony of a close relative or woman. Rather, in all cases the court would allow for the performance of *halitza* only if they were certain of the identities of the parties involved. The novelty of the ruling is that it allows the court not to follow the standard protocol by which facts are established only through formal testimony supplied by independent valid witnesses (Meiri; *Tosafot*; see HALAKHA).

מחלוקת – אבא שאול והכמסים – The Gemara never explicitly rules on the dispute between the Rabbis and Abba Shaul as to whether nowadays one may consummate a levirate marriage even though there are reservations concerning one’s purity of motives. The Gemara here appears to be inclined toward the opinion of the Rabbis; however, in other places the Gemara appears to accept the opinion of Abba Shaul. Already during the period of the *ge’onim* different communities followed different opinions. In Neharde’a the practice was to act in accordance with Abba Shaul, and in Sura the opinion of the Rabbis was followed. In later generations, the Sephardic commentaries generally permitted the consummation of the levirate marriage, while Ashkenazic commentaries permitted only *halitza*.

The mitzva of levirate marriage – מצות ייבום – If one's paternal brother died childless, one is commanded to take his brother's widow in levirate marriage, whether she was married or only betrothed to his brother (Rambam *Sefer Nashim*, *Hilkhot Yibbum* 1:1; *Shulhan Arukh*, *Even HaEzer* 156:1).

דְּתַנָּא אַבְבָּא שְׂאוּל אוֹמַר: הַכּוֹנִים אֶת יְבָמְתוֹ לְשֵׁם נָוִי, וְלְשֵׁם אִישׁוֹת, וְלְשֵׁם דְּבָר אַחֵר – כְּאִילוּ פּוֹגַע בְּעֵרְוָה, וְקָרֹב אֲנִי בְּעֵינֵי לְהֵיטֵי הוֹלֵד מִמּוֹר. וְחֻכְמִים אוֹמְרִים: "יְבָמָה יָבֵא עָלֶיהָ" – מִכָּל מְקוֹם.

As it is taught in a *baraita*: Abba Shaul says that one who consummates a levirate marriage with his *yevama* for the sake of her beauty, or for the sake of marital relations,^N or for the sake of another matter,^N e.g., he wishes to inherit her husband's estate, it is considered as though he encountered a forbidden relation, and I am inclined to view the offspring born from such a union as a *mamzer*. Since the prohibition against engaging in relations with one's brother's wife is overridden only for the sake of fulfilling the mitzva of consummating the levirate marriage, when one does not have the intention to fulfill that mitzva, the baseline prohibition applies, and so any offspring from the union will be *mamzerim*. **The Rabbis say:** The Torah states: "Her brother-in-law will have intercourse with her" (Deuteronomy 25:5), which indicates that he should do so in any case, even if his intentions are not solely for the sake of fulfilling the mitzva.^N

מֵאֵן תַּנָּא לְהָא דְּתַנּוּ רַבֵּנן: "יְבָמָה יָבֵא עָלֶיהָ" מִצְוָה. שְׁבַתְחֻלָּה הִיְתָה עָלָיו בְּכָלֵל הֵיטֵר, נֶאֱסְרָה, וְחֻזְרָה וְהוֹתָרָה, וְכֹל תַּחֲזוֹר לְהַתְיַרְהוּרָה שׁוֹן – תִּלְמוּד לֹאמַר "יְבָמָה יָבֵא עָלֶיהָ" מִצְוָה.

The Gemara asks: Who is the *tanna* who taught the following *baraita* that the Sages taught: The Torah states: "Her brother-in-law will have intercourse with her" (Deuteronomy 25:5); this is to be considered a mitzva, as initially, before she was married to his brother, she was among all other women who are permitted to him, and then when she married his brother she became forbidden to him, and when his brother died without offspring she reverted from her forbidden status and became permitted to him. One might have thought that she would revert to her original permitted status; therefore, the verse states: "Her brother-in-law will have intercourse with her" to teach that it is in fact a mitzva to do so.^H

NOTES

For the sake of marital relations – לְשֵׁם אִישׁוֹת: *Tosafot* explain that the use of the term: For the sake of marital relations, as it is used here differs from its use later in the Gemara. In the present context, such motivation is presented as being contemptible. Accordingly, the phrase means either that he desires to gain the status of a married man (*Tosafot*), that he desires the woman (*Rivan*), or that he wishes for her to serve him (*Otzar HaShitot*). However, later in the Gemara the phrase is used in contrast to the phrase: For the sake of her beauty. This implies that the phrase: For the sake of marital relations, indicates a more noble intention, i.e., that he wishes to have children with her. Nevertheless, even such motivation is still deficient in a case of a levirate marriage, where one must have intention for the specific goals of the levirate marriage (see *Otzar HaShitot*).

For the sake of another matter – לְשֵׁם דְּבָר אַחֵר: *Rivan* and others offer that the reference is to a case where the *yavam* is motivated by financial gain, either that he had his eye on her possessions or that he wants to inherit from his brother. Others interpret this to mean illicit sexual relations (*Hokhmat Manoah*). Both positions find support in earlier sources.

The opinions of Abba Shaul and the Rabbis – שִׁטוֹת אַבְבָּא: **שְׂאוּל וְחֻכְמִים:** The early commentaries are divided as to what extent Abba Shaul intended to say that lack of appropriate motives would actually result in the violation of a prohibition, the offspring of which would be *mamzerim*. The Ramban understands Abba Shaul's opinion in the most extreme sense, i.e., when the *yavam* lacks the appropriate motives he does not acquire the *yevama* at all, and the children of such a union would actually be *mamzerim*. Others suggest that under all circumstances the *yavam* certainly acquires the *yevama*; Abba Shaul's point is that if the *yavam* lacks pure motives, then he transgresses a Torah prohibition by engaging in intercourse with her (*Keren Ora*). Still others hold that even Abba Shaul agrees that since the *yavam* is obligated to consummate the levirate marriage, there can be no Torah prohibition involved

in doing so, even if he has impure motives. Nevertheless, the Sages prohibited the consummation of the levirate marriage unless his motives were pure. This interpretation explains why Abba Shaul specifically stated: As though he encountered a forbidden relation, and: I am inclined to view the offspring as a *mamzer*, instead of simply stating that the *yavam* encountered a forbidden relation and the offspring is a *mamzer* (*Nimmukei Yosef*).

Some commentaries explain that the dispute between Abba Shaul and the Rabbis hinges on the question of why it is permitted to consummate a levirate marriage in the first place, given that generally one is prohibited from engaging in relations with his brother's wife. They explain that Abba Shaul understood that in every case of levirate marriage there is a clash between two factors: The mitzva to consummate the levirate marriage and the prohibition against engaging in relations with one's brother's wife. The principle in such a case is that by performing the mitzva, one is permitted to disregard the prohibition. Accordingly, if one does not intend to fulfill the mitzva, one necessarily encounters the prohibition without permission to do so. This is readily understandable based on the comments of the Ramban that a mitzva overrides a prohibition because the former is an expression of one's love for God and the latter of one's awe, and when there is a choice between them, one should express one's love. As such, when one performs the mitzva not out of love but for some ulterior motive, the basis for permitting the prohibition is undermined. The Rabbis disagreed with the entire basis of this argument. They understood that it is not that the mitzva of levirate marriage overrides the prohibition against engaging in relations with one's brother's wife; rather, the scope of the prohibition itself is limited and does not apply to any case in which there is the possibility of consummating a levirate marriage. As such, the permission to consummate the levirate marriage is entirely unrelated to the intentions of the *yavam*, since there is simply no prohibition to speak of (*Kovetz He'arot*).

מֵאֵן תִּנָּא? אָמַר רַבִּי יִצְחָק בַּר אֲבָדִימִי: אָבָא שְׂאוּל הֵיא, וְהָכִי קָאָמַר: "יְבָמָה יְבֵא עֲלֶיהָ" מִצְוָה, שְׂבִתְחַלְהָ הֵיתָה עָלָיו בְּכָלֵל הֵיתָה, רְצָה לְשֵׁם נָוִי – בּוֹנְסָה, רְצָה לְשֵׁם אִישׁוֹת – בּוֹנְסָה.

Who is the *tanna* who taught this *baraita*? Rav Yitzhak bar Avdimi said: It is Abba Shaul, and this is what the *baraita* is saying: "Her brother-in-law will have intercourse with her" teaches that it is permitted to engage in intercourse with her only when his intention is to fulfill a *mitzva*, as initially, before she was married to his brother, she was among all other women who are permitted to him, and so, if he wished, then even for the sake of her beauty he was permitted to marry her, or similarly, if he wished, then even for the sake of marital relations he was permitted to marry her.

נְאֻסְרָה, חֲזָרָה וְהוֹתֵרָה, יָכוֹל תִּחְזוֹר לְהֵתִירָה הָרֵאוּשׁוֹן – תִּלְמוּד לֹמַר "יְבָמָה יְבֵא עֲלֶיהָ", לְמִצְוָה.

When she married his brother she became forbidden to him, and when his brother died without offspring she reverted from her forbidden status and became permitted to him. One might have thought that she would fully revert to her original permitted status; therefore, the verse states: "Her brother-in-law will have intercourse with her" to teach that he is permitted to marry her only when his intention is for the *mitzva*.

רַבָּא אָמַר: אֶפְיֵלוּ תֵימָא רַבְנָן, וְהָכִי קָאָמַר: "יְבָמָה יְבֵא עֲלֶיהָ" – מִצְוָה. שְׂבִתְחַלְהָ הֵיתָה בְּכָלֵל הֵיתָה. רְצָה – בּוֹנְסָה, רְצָה – אִינוּ בּוֹנְסָה.

Rava said: You can even say that the *baraita* is in accordance with the Rabbis, and this is what the *baraita* is saying: "Her brother-in-law will have intercourse with her" indicates that it is a *mitzva* to consummate the levirate marriage, as initially, before she was married to his brother, she was among all other women who are permitted to him, and so if he wished, he was permitted to marry her, or if he wished, he was permitted to choose not to marry her.

נְאֻסְרָה, חֲזָרָה וְהוֹתֵרָה, יָכוֹל תִּחְזוֹר לְהֵתִירָה הָרֵאוּשׁוֹן; רְצָה – בּוֹנְסָה, רְצָה – אִינוּ בּוֹנְסָה. רְצָה אִינוּ בּוֹנְסָה?

When she married his brother she became forbidden to him, and when his brother died without offspring she reverted from her forbidden status and became permitted to him. One might have thought that she would fully revert to her original permitted status, so that if he wishes, he may marry her, or if he wishes, he may choose not to marry her.

הָא אֲגִידָה בֵּיהּ, בְּכִדֵי תִפּוּק? אֵלֶּא אִימָא: רְצָה – בּוֹנְסָה, רְצָה – חוֹלֵץ לָהּ. תִּלְמוּד לֹמַר: "יְבָמָה יְבֵא עֲלֶיהָ" – מִצְוָה.

The Gemara interjects that the logic of this last statement seems implausible: Does he really have the option to do as he wishes? Isn't she bound to him with a levirate bond? Could it be that she will be released from that bond without doing anything? Rather, emend the previous argument and instead say: One might think that if he wishes, he may marry her, or if he wishes not to do so, he performs *halitza* with her. Therefore, the verse states: "Her brother-in-law will have intercourse with her," to teach that it is now a *mitzva* to consummate the marriage, and doing so is preferable to performing *halitza*.

אִימָא רִישָׁא: "מִצּוֹת תֹּאכַל בְּמָקוֹם קְדוֹשׁ" – מִצְוָה.

The *baraita* under discussion also presents another case that follows a similar model of initially being permitted, then prohibited, and then once again permitted. The Gemara analyzes the explanations of Rav Yitzhak and Rava based on that clause of the *baraita*: Say the first clause and try to explain it in a way consistent with the various explanations of the latter clause: The Torah states concerning the meal-offerings eaten by the priests: "It shall be eaten unleavened in a sacred place" (Leviticus 6:9); this indicates that doing so is a *mitzva*,

Perek IV
Daf 40 Amud a

שְׂבִתְחַלְהָ הֵיתָה עָלָיו בְּכָלֵל הֵיתָה, נְאֻסְרָה, וְחֲזָרָה וְהוֹתֵרָה, יָכוֹל תִּחְזוֹר לְהֵתִירָה הָרֵאוּשׁוֹן – תִּלְמוּד לֹמַר "מִצּוֹת תֹּאכַל בְּמָקוֹם קְדוֹשׁ" מִצְוָה.

as initially, before the flour was consecrated, it was among all other foods that are permitted to him, and then when the flour was consecrated as a meal-offering, it became forbidden to him, and then once a handful of the offering was brought on the altar, it reverted from its forbidden status and became permitted to him. One might have thought that it would revert to its original permitted status; therefore, the verse states: "It shall be eaten unleavened in a sacred place" (Leviticus 6:9), which indicates that it is a *mitzva*^H to eat it.

HALAKHA

It shall be eaten unleavened... indicates that it is a *mitzva* – מִצְוָה... מִצְוָה תֹּאכַל. After the handful has been taken from the meal-offering and burned on the altar, it is a positive *mitzva* for the priests to eat the remainder of the offering (Rambam *Sefer Avoda, Hilkhot Ma'aseh HaKorbanot* 10:2).