

אמר לך רבי יוחנן: ותסברא אחות
 הלוצה דאורייתא? והאמר ריש
 לקיש: כאן שנה רבי: אחות גרושה –
 מדברי תורה, אחות הלוצה – מדברי
 סופרים.

The Gemara responds: **Rabbi Yoḥanan could have said to you: But how can you understand it that way? Why do you assume that if the rival wives are considered to be represented in the *ḥalitza* that perforce means that their relatives should be forbidden to the *yavam*? Is a sister of one's *ḥalitza* forbidden by Torah law? Didn't Reish Lakish say with regard to another mishna (41a): Here, Rabbi Yehuda HaNasi taught: Engaging in relations with a sister of one's divorcée is forbidden by Torah law, whereas engaging in relations with a sister of one's *ḥalitza* is forbidden by rabbinic law.** Since the prohibition with regard to the relatives of one's *ḥalitza* is rabbinic, it is reasonable to assume that it was applied to only the wife who actually performed *ḥalitza* and not extended to her rival wives, even if they are considered to be represented in her *ḥalitza* to the extent that they do not return to their original forbidden status.

מאי שנה האי, ומאי שנה האי?

S The Gemara questions the distinction indicated by the mishna: **What is different about this woman, the relative of a rival wife of one's *ḥalitza*, that she is permitted, and what is different about that woman, the rival wife of a relative of one's *ḥalitza*, that she is forbidden?**

Perek IV
 Daf 41 Amud a

הך דאזלא בהדה לבי דינא – גורו
 בהו רבנן, האי דלא אזלא בהדה לבי
 דינא – לא גורו בהו רבנן.

The Gemara explains: With regard to **that woman, the relative of the *ḥalitza*, who often goes together with the *ḥalitza*ⁿ to court**, since she is present in the court during the *ḥalitza*, people might mistakenly assume that it was she who actually performed *ḥalitza*. Were the *yavam* permitted to marry her rival wife, people might incorrectly conclude that it is permitted to marry the rival wife of one's *ḥalitza*. To preclude this possibility, **the Sages decreed with regard to her that her rival wife should be forbidden.** However, with regard to **this woman, the rival wife of the *ḥalitza*, who does not go together with the *ḥalitza* to court**, since she is never present in the court during the *ḥalitza*, there is no concern that people will mistake her for the *ḥalitza* herself. Consequently, **the Sages did not see any reason to decree with regard to her that her relatives should be forbidden.**

מתני' החולץ ליבמתו, ונשא אחיו
 את אחותה, ומת – חולצת ולא
 מתיבמת. וכן המגרש את אשתו,
 ונשא אחיו את אחותה ומת – הרי
 זו פטורה.

MISHNA In the case of a *yavam* who performed *ḥalitza* with his *yevama* and then his brother married her sister^h and died, the sister performs *ḥalitza* with the *yavam*, but she may not enter into levirate marriage with him, since as a sister of his *ḥalitza* she is forbidden to him. **And similarly, in the case of one who divorced his wife and his brother married her sister and died,^h then that woman is exempt both from *ḥalitza* and from consummating levirate marriage, since as the sister of his former wife she is forbidden to him.**

HALAKHA

One who performed *ḥalitza* with his *yevama* and then his brother married her sister – **החולץ ליבמתו ונשא אחיו את אחותה**: If a *yavam* performed *ḥalitza* with his *yevama* and then his brother married her sister or one of her other relatives, and then the brother died, the sister or other relative happens for levirate marriage before the *yavam* who originally performed the *ḥalitza*. However, as a relative of his *ḥalitza*, she is forbidden to him. Therefore, she performs *ḥalitza* but may not consummate the levirate marriage. Similarly, her rival wife performs *ḥalitza* but may not enter into levirate marriage (Rambam *Sefer*

Nashim, Hilkhot Yibbum VaḤalitza 6:20; *Shulḥan Arukh, Even HaEzer* 174:3).

The sister of his divorcée – אחות גרושתו: If one divorces his wife and then her sister falls before him for levirate marriage, she is exempt from both *ḥalitza* and from levirate marriage because, as long as his former wife is alive, her sister is prohibited by Torah law from engaging in relations with him (Rambam *Sefer Nashim, Hilkhot Yibbum VaḤalitza* 6:9; *Shulḥan Arukh, Even HaEzer* 173:1).

NOTES

הך דאזלא בהדה לבי דינא: The version of the Gemara cited here has: That woman who goes together with her. Based on this version, Rashi, Rabbeinu Ḥananel, and the Rif explain that: Goes with her, is referring to people that accompany the *ḥalitza* to court. Based on this, they explain that since the relative of the *ḥalitza* accompanies her to court, some people might mistakenly think that it was the relative who performed *ḥalitza*. Therefore, it is necessary to render the rival wife of the relative of the *ḥalitza* forbidden, just as the rival wife of the *ḥalitza* herself is forbidden. However, since the rival wife never accompanies the *ḥalitza*, there is no concern that people might mistakenly think she performed the *ḥalitza*, and so there is no need to render her relatives forbidden.

Tosafot and other early commentaries challenge this explanation; *Yam shel Shlomo* suggests a defense of Rashi's opinion. *Tosafot* themselves suggest that a different version of the Gemara is preferable, which states: That woman who goes with him, where him refers to the *yavam* who performed the *ḥalitza*. Accordingly, the Gemara's distinction is simply between the *ḥalitza*, who actually underwent the *ḥalitza*, and her rival wives, who did not. The Sages expanded the prohibition only to the relatives of the former. The Ramban writes that this version is to be preferred but he questions the authenticity of this version of the text.

Based on the present version of the Gemara, the Maharam MiRotenburg suggests a third interpretation. He understands that the Gemara is referring to a point in time after the *ḥalitza* has already been performed, when the relatives of the *ḥalitza* go to court to inquire as to their status. At that point, the relatives of the *ḥalitza* are instructed that they may not marry the *yavam*. The Gemara states that since the relatives are accompanied by their rival wives, and there is a possibility that people will confuse them, the Sages also rendered the rivals wives of the relatives forbidden (*Tosefot HaRosh*).

A widow waiting for her *yavam* and the brother of the *yavam* betrothed her sister – שומרת יבם שקדש אחיו את אחותה: It is prohibited for one to marry a relative of a woman to whom one is bound by a levirate bond. Therefore, if a woman happens for levirate marriage before a number of brothers, and one of them betroths her sister, it is prohibited for him to proceed to marry the relative he betrothed until after one of the other brothers either consummates the levirate marriage with the *yevama* or performs *halitza* with her, thereby dissolving the levirate bond between her and the other brothers. Some say that if the brother who betrothed the sister transgressed and proceeded to marry her, then the levirate bond to him is thereby dissolved, and so he is allowed to engage in relations with his wife even before his brother performs levirate marriage or *halitza* (*Tosafot*; *Rosh*). Rabbeinu Gershom Meor HaGola issued a ban prohibiting a man from being married to two women. Some say that included in the ban is the case of a *yavam* who is bound by a levirate bond to a *yevama*, such that it is prohibited for the *yavam* to marry any other woman until he has first performed *halitza* with the *yevama* (*Mahari Mintz*). However, if the woman he wishes to marry had committed herself to marry him before the *yevama* happened before him for levirate marriage, then he is permitted to marry her even before he performs *halitza* (*Haggahot Mordekhai*; *Rambam Sefer Nashim, Hilkhot Yibbum VaHalitza* 1:14; *Shulhan Arukh, Even HaEzer* 159:5).

The *yavam* died, etc. – מת יבם וכו' – With regard to a *yavam* who is bound to his *yevama* through a levirate bond, who transgressed and betrothed the sister of his *yevama*, if his other brothers die, since the woman is then bound to him alone, he must divorce the betrothed sister with a bill of divorce and release his *yevama* by performing *halitza* (*Rambam Sefer Nashim, Hilkhot Yibbum VaHalitza* 1:14; *Shulhan Arukh, Even HaEzer* 159:7).

שומרת יבם שקדש אחיו את אחותה, משום רבי יהודה בן בתירא אמרו: אומרים לו: המתן עד שינעשה אחיך מעשה.

הלץ לה אחיו או בנסה – יבנוס את אשתו. מתה היבמה – יבנוס את אשתו. מת יבם – יוציא את אשתו בגט, ואשת אחיו בחליצה.

גמ' מאי 'וכן' אימא: אבל המגרש.

In the case of a widow waiting for her *yavam* to consummate levirate marriage or perform *halitza* with her, and the brother of the *yavam* betrothed her sister,^H they said in the name of Rabbi Yehuda ben Beteira: They say to the brother: Wait and do not marry^N the woman you betrothed until your brother performs an act,^N either of *halitza* or of consummating the levirate marriage, as until he does there remains a levirate bond between the *yevama* and each of the brothers, and it is prohibited to marry the sister of a woman to whom one is bound by a levirate bond.

If a brother of the one who betrothed the sister of the *yevama* performed *halitza* with the *yevama* or consummated a levirate marriage with her, since by doing so the levirate bond between the *yevama* and the one who betrothed her sister is dissolved, he may then enter into marriage with his wife, who until that point was only betrothed to him, as she is no longer the sister of a woman to whom he is bound by a levirate bond. Similarly, if the *yevama* died, since his levirate bond to her is dissolved upon her death, he may proceed to enter into marriage with his betrothed wife. However, if the *yavam* died^H without performing an act that would have dissolved the levirate bond, he must divorce his wife with a bill of divorce,^N as she is forbidden to him as the sister of a woman to whom he is bound by a levirate bond, and his brother's wife he must send out with *halitza*,^N as she is forbidden to him as the sister of his divorcée.

GEMARA The mishna considers two cases in which there is no possibility of consummating levirate marriage with a *yevama*. In the first case the reason is that she is the sister of one's *halutza*, and in the second it is that she is the sister of one's divorcée. The mishna appears to compare the two cases by introducing the second case with: And similarly. The Gemara questions this: What is the meaning of: And similarly? The two cases are not similar; in the first case the *yevama* must perform *halitza*, and in the second she is entirely exempt from the need to do anything. The Gemara answers: Emend the mishna and say: However, one who divorces.^N

NOTES

Wait and do not marry – המתן: The marriage process consists of two distinct stages. In the first stage, termed *kiddushin* or *eirusin*, a legal bond is formed between the couple that defines the woman as a wife to the extent that the dissolution of that bond requires a divorce, and sexual relations with other men are considered adulterous and are punishable by death. However, the couple may still not yet live together as man and wife, and most of the couple's mutual obligations do not yet apply. This stage is usually translated as "betrothal," even though that term fails to convey the fact that this stage is not a precursor to a marriage, but actually the first stage of the marriage.

The second stage of marriage, termed *nissuin*, and translated simply as "marriage," is usually effected by having the couple stand under a marriage canopy together or being secluded together. At this stage, the couple may live together as man and wife and all of the various mutual obligations apply.

The mishna discusses various situations in which one of a number of brothers, who were all bound through a levirate bond to a *yevama*, proceeded to betroth her sister. Due to the bond he has with the *yevama* he is forbidden to engage in relations with the sister. As such, he may not continue to complete the second stage of his marriage with her since the purpose of that stage is for him to live together as man and wife. Nevertheless, should another one of his brothers either consummate levirate marriage with the *yevama*, or perform *halitza* with her, since that will dissolve the levirate bond between her and the other brothers, there will no longer be any impediment to completing the marriage with her sister.

Wait until your brother performs an act – המתן עד שינעשה אחיך מעשה: The commentaries explain that Rabbi Yehuda ben

Beteira holds that the levirate bond is substantial, meaning that to a certain extent it is as though he is already married to her. Accordingly, the woman he betrothed is regarded as though she is his wife's sister, and therefore it is forbidden for him to now proceed to marry her. However, the commentaries explain that despite this, Rabbi Yehuda ben Beteira does not demand that he divorce the woman he betrothed; there is no need to take such drastic action because there is a possibility that she will be rendered entirely permissible through an action of his brother (*Tosefot HaRosh*).

Some commentaries raise the following question: Even if one holds that the levirate bond is substantial, shouldn't the brother's levirate bond to the *yevama* be entirely dissolved by virtue of his betrothal of her sister, since by doing so he renders the *yevama* forbidden to him by Torah law? They explain that since the levirate bond was in place before the betrothal, the strength of betrothal itself is deficient, and so it is not sufficiently efficacious to negate the bond (*Rid*; see *Rashba*).

He must divorce his wife with a bill of divorce, etc. – יוציא וכו': The mishna on 29a discusses a similar case in which ultimately, he is prohibited from living with either his wife or his *yevama*, and expresses the lament: Woe is him on account of his wife, and woe is him on account of his brother's wife. *Tosafot* question why that expression of lament does not appear in this case as well. They suggest that the expression is used only where no prohibition was involved in the man's marriage to his wife, as in the case on 29a. However, in this case the situation was created due to the *yavam* marrying a woman whom he was forbidden to marry. Therefore, it is inappropriate to lament the situation. The Rivan explains that the

lament is appropriate only in a case in which he had already lived together with his wife. However, in this case, the woman was only betrothed to him; therefore, since the couple is not as closely bound as was the couple in the first case, the pain of the ruling is less pronounced.

And his brother's wife with *halitza* – ואשת אחיו בחליצה: This act of *halitza* is required only by rabbinic decree, since as his wife's sister, the *yevama* is forbidden to her *yavam* by Torah law, and therefore by Torah law the *halitza* is unnecessary. Alternatively, since he betrothed the sister of the *yevama* after the levirate bond to the *yevama* was already in place, the strength of betrothal itself is deficient, and so the bond is compromised, but only partially. As such, it is no longer possible to consummate the levirate marriage, but *halitza* is necessary to fully dissolve the bond (*Rashba*; *Ritva*).

Say: However, one who divorces – אימא אבל המגרש: One later commentary explains that the use of the phrase: And similarly, suggests only that there is some connection between the prohibitions with regard to the sister of one's divorcée and the sister of one's *halutza*. When the Gemara suggests the emendation to: However, it is not rejecting that assumption and suggesting that the mishna should be emended; rather, it is simply explaining the correct interpretation of the phrase: And similarly, used in the mishna. The phrase should not be understood as implying that the *halakha* in both cases is the same; rather, it indicates only that the reason for the rabbinic prohibition with regard to the sister of one's *halutza* is on account of the Torah prohibition with regard to the sister of one's divorcée (*Mei Nattoah*).

אמר ריש לקיש: כאן שנה רבי: אחות גרושה – מדברי תורה, אחות חלוצה – מדברי סופרים.

The Gemara explains the reason for the difference between the two cases: **Reish Lakish said: Here**, through this mishna, **Rabbi Yehuda HaNasi taught that a sister of one's divorcée^e is forbidden to him by Torah law**, and that is why she is entirely exempt, whereas **a sister of a *ḥalutza*^f is forbidden to him only by rabbinic law**, and therefore, since there is still a levirate bond between her and the *yavam*, she requires *ḥalitza* to release her from it.

”שומרת יבם שקידש” וכו'. אמר שמואל: הלכה כדברי רבי יהודה בן בתירא.

S The mishna states that in the case of a **widow waiting for her *yavam*** where the brother of the *yavam* betrothed her sister, Rabbi Yehuda ben Beteira said that the brother may not proceed to marry his betrothed. The Gemara cites a ruling on this matter: **Shmuel said: The *halakha* is in accordance with the statement of Rabbi Yehuda ben Beteira.**

איבעיא להו: מתה אשתו, מהו ביבמתו? רב ורבי חנינא דאמרי תרנויהו: מתה אשתו מותר ביבמתו, שמואל ורב אסי דאמרי תרנויהו: מתה אשתו אסור ביבמתו.

A dilemma was raised before the Sages: If a *yavam* is betrothed to the sister of his *yevama*, then since the *yevama* is his betrothed wife's sister, it is forbidden for him to consummate a levirate marriage with her. However, if **his betrothed wife died, what is the *halakha* with regard to his *yevama*;** is he then permitted to consummate a levirate marriage with her? It is **Rav and Rabbi Hanina who both say: If his wife died, he is permitted to consummate a levirate marriage with his *yevama*.**^h Their opinion is disputed by **Shmuel and Rav Asi, who both say: If his wife died, he is forbidden to his *yevama*.**

אמר רבא: מאי טעמא דרב? משום דהוא יבמה שהותרה, ונאסרה, ותורה והותרה – תחזור להיתירה הראשון.

Rava said: What is Rav's reasoning?ⁿ She is permitted due to the fact that **she is a *yevama* who**, when her husband died, was permitted to the *yavam*, and then when the *yavam* betrothed her sister **she became forbidden to him as his wife's sister, and then when his wife died the *yevama* reverted to her original status and was permitted to him.** As such, **she should also revert to her original permitted status** with regard to levirate marriage and be permitted to consummate a levirate marriage with the *yavam*.

מתיב רב המנונא: שלשה אחין, שנים נשואין שתי אחיות ואחד מופנה, מת אחד מבעלי אחיות ועשה בה מופנה מאמר, ואחר כך מת אחיו השני,

Rav Hamnuna raised an objection from that which was taught in a *baraita*: With regard to a case of **three brothers, two of whom are married to two sisters and one of whom is a bachelor, if one of the sisters' husbands died and the bachelor performed levirate betrothal with that sister, and afterward the second brother who was married to the other sister died, and so his wife also happened before the bachelor for levirate marriage, the bachelor is then bound to each of the sisters through a levirate bond.** In such a case it is prohibited for the bachelor to consummate a levirate marriage with either one, as it is prohibited to marry the sister of a woman to whom one is bound through a levirate bond.

ואחר כך מתה אשתו אחריו – אותה יבמה חולצת ולא מתניבמת.

And if afterward the wife of the second brother died after him, i.e., after her husband had already died, which restored the original situation in which the bachelor was bound by a levirate bond only to the widow of the first brother, then in such a case that *yevama*, the widow of the first brother, performs *ḥalitza* but may not enter into levirate marriage.

NOTES

What is Rav's reasoning – מאי טעמא דרב: The later commentaries explain that the dispute between Rav and Shmuel here is not limited to the specific principle of whether a woman who is permitted, then forbidden, and then permitted again may consummate a levirate marriage. Rather, it is a fundamental dispute concerning the very nature of the allowance to marry one's brother's wife in a case of levirate marriage. Normally, one is prohibited from engaging in relations with the wife of one's brother. However, in the case of a levirate marriage it is permitted and a mitzva to do so. Rav assumes that in the case of a *yevama* who is permitted, then forbidden, and then permitted again, one may proceed to consummate the levirate marriage; he understands that the prohibition against engaging in relations with one's brother's wife is itself limited in that it does not apply in a situation where there is a mitzva of levirate marriage. Therefore, once any addi-

tional reason to prevent the levirate marriage is removed, the *yavam* may proceed to consummate the levirate marriage with the *yevama* without any concern about that prohibition. Shmuel, however, assumes that the prohibition against engaging in relations with one's brother's wife does fundamentally apply even in a situation where there is a mitzva of levirate marriage, but that in order to enable the fulfillment of the mitzva, the prohibition is waived. Therefore, should an additional prohibition be applied to his brother's wife that will inhibit the fulfillment of the mitzva, then since there is no longer a mitzva of levirate marriage, the original prohibition against engaging in relations with one's brother's wife is reinstated. Consequently, even should the additional prohibition be removed, the prohibition with regard to one's brother's wife will remain in force and the couple may not consummate the levirate marriage (*Mei Naftoah; Yosef Lekah*).

אחות גרושה – אחות חלוצה: If one divorces his wife, then her sister is forbidden to him by Torah law as long as the divorcée remains alive, irrespective of whether the sister is only a paternal or maternal half sister and irrespective of whether she was born in or out of wedlock (Rambam *Sefer Nashim, Hilkhot Issurei Bia* 2:7; *Shulhan Arukh, Even HaEzer* 15:26).

A sister of a *ḥalutza* – אחות חלוצה: The sister of one's *ḥalutza* is forbidden to him by rabbinic law (Rambam *Sefer Nashim, Hilkhot Yibbum Vaḥalitza* 1:13; *Shulhan Arukh, Even HaEzer* 162:3).

מתה – מיתה: With regard to one who betrothed the sister of his *yevama*, if the woman betrothed to him died, then he is permitted to consummate a levirate marriage with his *yevama*, or if he wishes he may perform *ḥalitza*. This is in accordance with the opinion of Rabbi Hanina (Rambam *Sefer Nashim, Hilkhot Yibbum Vaḥalitza* 7:8; *Shulhan Arukh, Even HaEzer* 159:7).

A *yevama* may not perform *halitza* until she has waited three months – **הַיְבָמָה לֹא תְחַלוֹץ עַד שְׁלֹשָׁה חֳדָשִׁים** – A woman who happened before her *yavam* for levirate marriage may neither perform *halitza* nor enter into levirate marriage before first waiting ninety days, excluding the day of her husband's death and the day of her levirate marriage or *halitza* (Rambam *Sefer Nashim, Hilkhot Yibbum VaHalitza* 1:19; *Shulhan Arukh, Even HaEzer* 164:1).

כָּל שָׂאָר – הַנְּשִׂימ לֹא יִתְאַרְסוּ וְכוּ' Any woman who was divorced or widowed is forbidden to be betrothed or enter into levirate marriage with her *yavam* until she first waits ninety days, excluding the day of her husband's death or her divorce and the day of the betrothal. This is in accordance with the opinion of the first *tanna*, who is Rabbi Meir, and Rabbi Meir's opinion concerning decrees is also accepted as the *halakha*. However, it is permitted during this ninety-day period for the woman to commit herself to marry another man without actual betrothal (*Beit Yosef, citing Rosh and Terumat HaDeshen; Rambam Sefer Nashim, Hilkhot Geirushin* 11:18; *Shulhan Arukh, Even HaEzer* 13:1).

אִפְּלוּ תִּימָא כְּרַבְנָן, עַד כָּאֵן לֹא קָמִיפְלִיגִי רַבְּנָן עָלֶיהָ דְּרַבִּי אֶלְעָזָר – אֵלָּא מְשׁוּם דְּמִנְפִּילָהּ וְאִילָךְ לֹא מִיִּתְסַר עֲלֵיהּ, אֲבָל הֵבָא דְאִיתְסַר – אִפְּלוּ רַבְּנָן מוּדוּ.

The Gemara rejects this: **You can even say that they hold in accordance with the opinion of the Rabbis, as perhaps the Rabbis disagree with Rabbi Elazar in the case of a man who divorced and remarried his wife and then died childless only due to the fact that in that case, from the time of her happening for levirate marriage and onward she was not forbidden to them, i.e., her *yevamin*.** The fact that the prohibition between her and her *yevamin* ended before she ever happened before them for levirate marriage means it has no bearing on her current eligibility for levirate marriage. **However, here, in the case where the *yavam* betrothed the sister of his *yevama*, since she became forbidden after she had already happened before him for levirate marriage, even the Rabbis would agree that she remains permanently ineligible to consummate levirate marriage with him.**

מִתְנִי' הַיְבָמָה לֹא תְחַלוֹץ וְלֹא תִתְיַבֵּם עַד שְׁשִׁי שָׁלֹשׁ חֳדָשִׁים. וְכֵן כָּל שָׂאָר הַנְּשִׂימ לֹא יִתְאַרְסוּ וְלֹא יִנְשָׂאוּ עַד שֶׂיהוּ לָהֶן שְׁלֹשָׁה חֳדָשִׁים אַחַד בְּתוּלוֹת וְאַחַד בְּעוֹלוֹת, אַחַד גְּרוּשׁוֹת וְאַחַד אֱלֻמְנוֹת, אַחַד נְשׂוֹאוֹת וְאַחַד אַרוּסוֹת.

MISHNA A *yevama* may neither perform *halitza* nor enter into levirate marriage until she has waited three months^h from the time of her husband's death. **And similarly, all other women may not be betrothed^h and may not marry until they have waited three months** since their previous marriage ended. This waiting period is necessary so that, should a woman give birth shortly after remarrying, it will be obvious who the father of the child is. This applies **both to virgins and non-virgins, both to divorcées and widows, and both to women who were married to their previous husbands and women who were only betrothed.** All of these women must wait three months before remarrying even though for some of them the reason for doing so does not apply.

רַבִּי יְהוּדָה אוֹמֵר: הַנְּשׂוֹאוֹת יִתְאַרְסוּ, וְהָאָרוּסוֹת יִנְשָׂאוּ, חוּץ מִן הָאָרוּסוֹת שֶׁבִּיהוּדָה, מִפְּנֵי שְׁלֵבּוֹ גַם בָּהּ.

Rabbi Yehuda says: The women who were married to their previous husbands may be betrothed, and the women who were only betrothed to their previous husbands may marry without waiting three months. This is true **except for the betrothed women that are in the area of Judea,^b due to the fact that the groom is familiar with her.** The custom in Judea was for the couple to be secluded together before the marriage so that they would become familiar with each other. This led to the possibility that they might cohabit even during their betrothal period. Rabbi Yehuda holds that one does not need to wait three months whenever the reason for doing so does not apply.

רַבִּי יוֹסֵי אוֹמֵר: כָּל הַנְּשִׂימ יִתְאַרְסוּ, חוּץ מִן הָאֱלֻמְנָה,

Rabbi Yosei says: All of the womenⁿ may be betrothed within three months even if they were previously married, except for a widow,

BACKGROUND

הָאָרוּסוֹת שֶׁבִּיהוּדָה – Tractate Ketubot (12a) recounts that it was the custom in Judea for a couple to be secluded together before the marriage so that they would become familiar with each other. This was done despite the fact that this involved a certain compromise on the standards of modesty, as doing so could result in the couple engaging in sexual relations. The reason for the custom was that, at the time, the local gentile ruler would often force brides-to-be

to first engage in sexual relations with him before entering their marriage. Although the communities would do everything in their power to prevent this, it was not always possible to avoid it. When it did occur, it could often lead to disharmony between the couple. Therefore, it was decided that before a couple would married, they should first be secluded together and thereby develop a close relationship between them that could help them withstand an assault from the local ruler.

NOTES

Rabbi Yosei says: All of the women, etc. – כָּל – רַבִּי יוֹסֵי אוֹמֵר: Rashi explains that Rabbi Yosei fundamentally accepts the opinion of Rabbi Yehuda that the need for a waiting period applies only when there is both the possibility that the woman might already be pregnant from the previous husband and the possibility that she could become pregnant from the new husband. He disagrees only in the case of a widow. He would agree that a woman who was only betrothed to her previous husband is permitted to marry a new husband without waiting. However,

other early commentaries argue that from the Gemara there is no indication that Rabbi Yosei agrees with Rabbi Yehuda on this point. Furthermore, the simple import of his words: All of the women may be betrothed, implies that he permits women to be betrothed without waiting, but never to marry during that three-month period. Therefore, they suggest that Rabbi Yosei actually represents a third opinion, and that his ruling concerning a widow is an additional, but independent, stringency (Rashba; Ritva; *Nimmukei Yosef*).

מפני האיבול.

due to the mourning period she must observe for her deceased husband.

גמ' בשלמא לא תתייבם - שמא יהיה הולד בן קיימא, וקא פגע באיסור אשת אח דאורייתא. אלא לא תחלוץ - אמאי?

GEMARA The Gemara questions the mishna's opening clause: **Granted, she should not enter into levirate marriage,**^N as she might already be pregnant, which would still not be noticeable during the first three months, and **perhaps the baby will be viable.** In that case it would emerge that she was never subject to the mitzva of levirate marriage, and therefore, if the *yavam* consummates a levirate marriage **he will have encountered the Torah prohibition against engaging in relations with one's brother's wife. However, why should she not perform *halitza*?**

לימא תיהוי תיובתא דרבי יוחנן דאמר: חליצת מעוברת שמה חליצה! ולא מי אותביניה לרבי יוחנן חדא זימנא? לימא מהא נמי תיהוי תיובתא!

The Gemara suggests: **Let us say that this mishna, which states that a pregnant woman should not perform *halitza*, is a conclusive refutation of the opinion of Rabbi Yoḥanan, who said that a *halitza* performed with a pregnant woman who later miscarries is considered a valid *halitza*.** The Gemara asks: **But didn't they already conclusively refute the opinion of Rabbi Yoḥanan one time previously from other sources?** The Gemara rephrases the suggestion: **Let us say that from this mishna as well there is a conclusive refutation of the opinion of Rabbi Yoḥanan.**

לא, הכא היינו טעמא שמא יהא ולד בן קיימא, ונמצאת אתה מצריכה פרוז לכהונה.

The Gemara deflects this suggestion: **No, it is possible that in the mishna here, this is the reason that she may not perform *halitza*: Perhaps the offspring will be viable,** in which case although she performed the act of *halitza*, it is entirely meaningless since it was completely unnecessary, and she would remain permitted to marry into the priesthood. However, this could lead to a problem: People might not realize that the *halitza* she performed was meaningless, and they would think she is a *halutza* who is prohibited from marrying a priest. **It would therefore emerge that if you permit her to perform *halitza* even though it is possible that she is pregnant, it could be that you will ultimately require a public announcement to be made for her to attest to the fact that the *halitza* she performed was meaningless and she is in fact still permitted to marry into the priesthood.**

ונצרכה! דלמא איכא דהואי בחליצה ולא הוי בהכרזה, ומפסלודה מן הכהונה.

The Gemara wonders why this poses a problem: **But why not let her perform *halitza* even though it is possible she is 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 will be some people who are present at the *halitza* but were not present at the public announcement, and those people will incorrectly disqualify her from marrying into the priesthood.** To avoid this situation, the mishna rules that she should wait three months before performing *halitza*.

NOTES

בשלמא – Granted, she should not enter into levirate marriage – לא תתייבם: The waiting period is required only due to the possibility that the *yevama* might be pregnant from her previous husband. Therefore there should be no requirement to wait for a *yevama* who was only betrothed to her previous husband, as it can be assumed she is not pregnant since it is forbidden to engage in relations during the betrothal period. Nevertheless, the Sages required the waiting period in all cases. Were they not to have required it a

case in which the *yevama* had only been betrothed, people could have made a mistaken comparison and incorrectly concluded that even where the *yevama* was in fact pregnant from her deceased husband, it is permitted for her to consummate a levirate marriage immediately, which would be violation of a prohibition that entails *karet*. Therefore, to avoid any confusion, the Sages required the waiting period in all cases (Ritva).

One who is eligible for levirate marriage, etc. – כָּל הָעוֹלָה – לְיָבוֹם וְכוּ': A *yevama* may not consummate levirate marriage until she has waited ninety days from the day of her husband's death. Since she is ineligible for levirate marriage, she is also ineligible for *halitza* (Rambam *Sefer Nashim, Hilkhot Yibbum VaHalitza* 1:19).

A woman whose betrothal is uncertain with regard to levirate marriage – סֶפֶק מְקוּדָּשׁ לְעֵינֵי יָבוֹם: If a woman's betrothal to her husband was uncertain and her husband died, and the woman happened before her *yavam* for levirate marriage, he may consummate the levirate marriage with her since there is no reason to prohibit it (Rambam *Sefer Nashim, Hilkhot Yibbum VaHalitza* 6:7; *Shulhan Arukh, Even HaEzer* 173:15).

תִּינַח אֶלְמָנָה, גְּרוּשָׁה מֵאֵי אִיכָּא לְמִימַר? מִשּׁוּם דְּמַפְסִיד לָהּ מְזוֹנוֹת.

The Gemara asks: This answer **works out well** with regard to a **widow** because as a widow she is currently still permitted to marry into the priesthood, but with regard to a **divorcée**, who is already prohibited from marrying into the priesthood, **what is there to say**; why shouldn't she perform *halitza* immediately? The Gemara provides an alternative reason to delay the *halitza*: The reason is **because by performing *halitza* immediately she will forfeit the sustenance payments** from her deceased husband's estate, which she otherwise would have been entitled to for the first three months. Since she is not permitted to remarry during those three months, she will have no means of support. Therefore, she should wait until after three months have passed before performing *halitza*.

תִּינַח נְשׂוּאָה, אַרוּסָה גְּרוּשָׁה מֵאֵי אִיכָּא לְמִימַר?

The Gemara asks: This answer **works out well** with regard to a **woman who was married** to her previous husband and who is therefore entitled to sustenance payments, but with regard to a **divorcée who was only betrothed** to her previous husband, **what is there to say**? She is neither entitled to receive sustenance payments nor is she permitted to marry into the priesthood. Why, then, shouldn't she perform *halitza* immediately?

אֵלָּא מִשּׁוּם דְּרַבִּי יוֹסֵי. דְּתַנָּא: מַעֲשֵׂה בְּאָדָם אֶחָד שָׁבָא לְפָנֵי רַבִּי יוֹסֵי, אָמַר לוֹ: מַהוּ לְחַלוּץ בְּתוּךְ שְׁלִשָּׁה? אָמַר לוֹ: לֹא תַחְלוּץ. וְתַחְלוּץ וּמַה בְּכַךְ?

The Gemara therefore provides an alternative reason to delay the *halitza*: **Rather, it is due to that** which Rabbi Yosei stated, as it is taught in a *baraita*: There was an incident involving a certain man who came before Rabbi Yosei. The man said to him: **What is the *halakha* with regard to performing *halitza* within three months of the husband's death? He said to him: She may not perform *halitza***. He asked him: **Let her perform *halitza*; what would be the problem with that?** Even if she is pregnant, no prohibition will have been transgressed.

קָרָא עָלָיו מִקְרָא זֶה: "וְאִם לֹא יִחְפֹּץ" הָא אִם חָפֵץ – יָבוֹם, כָּל הָעוֹלָה לְיָבוֹם – עוֹלָה לְחַלְיָצָה כּוּ'.

To explain his ruling, Rabbi Yosei recited **this verse about him**: "And if the man does not wish to take his *yevama*" (Deuteronomy 25:7) in levirate marriage, then he must perform *halitza*. By inference, the possibility of performing *halitza* exists only in a case in which **if he wishes he may consummate the levirate marriage**. This teaches the principle that **one who is eligible for levirate marriage^h is eligible for *halitza***, and one who is ineligible for levirate marriage is ineligible for *halitza*. This includes even a woman who is temporarily prohibited from marrying, e.g., a woman in the first three months following a previous marriage.

מִתֵּיב רַב חִינָנָא: הַסְּפָקוֹת חוֹלְצוֹת וְלֹא מִתְיַבְמוֹת.

Rav Hinnana raised an objection from the following *baraita*: **Those women whose status as a *yevama* is uncertain perform *halitza* but may not enter into levirate marriage**. According to this *baraita*, there are in fact cases in which a woman is eligible for *halitza* but may not enter into levirate marriage.

מֵאֵי סְפָקוֹת? אֵילִימָא סֶפֶק קְדוּשֵׁין אִמְרֵי לֹא מִתְיַבְמוֹת? תְּתִיבֵם וְאִין בְּכַךְ כְּלוּם!

The Gemara clarifies the case: **What is the case of women whose status as a *yevama* is uncertain? If we say it is referring to a woman whose betrothal to her previous husband is uncertain, then why does she not enter into levirate marriage? Let her enter into levirate marriage, and there is no problem with that**, because if the betrothal was never valid, then she is permitted to the *yavam* as she is not his brother's wife; and if it was valid, then she is now obligated to enter into levirate marriage with him.^h

אֵלָּא לֹא – סֶפֶק שְׁקִידָשׁ אַחַת מִשְׁתֵּי אַחֲיוֹת וְאִינוּ יוֹדְעַי אִיזוּ מִהֵן קִידָשׁ, וְקָתְנִי חוֹלְצָת!

Rather, is it not referring to a case of uncertainty in which a man betrothed one of two sisters and he does not know which one of them he betrothed? If that man then died childless, the *yavam* may not consummate the levirate marriage with either sister because it is possible that he will do so with the sister who was not betrothed to his brother, who is therefore forbidden to him as the sister of a woman who is bound to him by a levirate bond. This is in fact the case of the *baraita*, and the *baraita* teaches that **she performs *halitza***, even though she is not permitted to enter into levirate marriage.

For three months she receives sustenance payments from the husband's estate – **שְׁלֹשָׁה חֳדָשִׁים נוֹזֶנֶת מִשְׁלַב בְּעַל**: One of the conditions of the marriage contract is that in the event of the husband's death, the widow may remain in her husband's home and be sustained from his estate. This right continues to exist as long as the woman maintains her connection to her deceased husband and refrains from attempts to remarry. However, this is not true of a *yevama*. Since there is a mitzva to either consummate the levirate marriage or perform *halitza*, she is automatically considered as though she is in the process of remarrying and therefore loses the right to be sustained from her husband's estate. However, during the first three months following her husband's death she is not permitted to proceed due to the rabbinic decree. Therefore, during that period she is not considered to be in the process of remarrying, and consequently she retains the rights to be sustained from her husband's estate.

עַמֵּד בְּדִין – וְהָרָחֵק – He was brought to judgment and he ran away – **נִבְרַח**: Rashi explains that the *yavam* ran away to avoid complying with the court's ruling, and his obligation to provide subsistence for her is a penalty for neglecting his duty. However, most of the other early commentaries explain that the *baraita* is referring to a man who was forced to run away due to circumstances beyond his control. Nevertheless, since when he was brought to court, the court fixed a date by which he was expected to consummate the levirate marriage, when that date arrives he automatically takes on the financial responsibilities of a husband to support his wife. The *halakha* is the same in any case of a man who betrothed a woman and a date is set for them to be married; when the date arrives he takes on financial responsibility for her irrespective of whether he actually marries her (Ramban).

מִשְׁמַיָּא קְנָסוּהָ – She was penalized by Heaven – Despite the Gemara's conclusion, several *ge'onim* ruled that in cases such as this, especially where the woman is unable to sustain herself through her own efforts, she should receive sustenance payments from the dowry that she brought with her to her previous marriage. Later, when the *yavam* matures, if he consummates the levirate marriage with her, he will take whatever is left of the dowry, and if he performs *halitza* then she receives the remainder of the marriage contract.

הָכִי הִשְׁתָּא?! הָתָם, אִם יבֵּא אֵלֶיהוּ
וְיֹאמֶר דְּהָא קִידֵּשׁ – בֵּת חַלְיָצָה
וְיִיבֹם הִיא,

הָכֵא אִם יבֵּא אֵלֶיהוּ וְיֹאמֶר דְּהָא
לֹא אֵיעֲבָרָה – מִי מִשְׁגַּח בֵּיהּ וְיִבְמִינָן
לָהּ? הָא קִטְנָה דְּלָאוּ בֵּת אֵיעֲבֹרִי
הִיא. וְאִפִּילוּ הָכִי צְרִיכָה לְהַמְתִּין
שְׁלֹשָׁה חֳדָשִׁים,

תִּנְנוּ רַבָּנִין: יְבָמָה, שְׁלֹשָׁה חֳדָשִׁים
הָרֵאוּנוּם – נוֹזֶנֶת מִשְׁלַב בְּעַל, מִכַּאֵן
וְאִילָךְ – אֵינָה נוֹזֶנֶת לֹא מִשְׁלַב בְּעַל
וְלֹא מִשְׁלַב יָבָם.

עַמֵּד בְּדִין וְנִבְרַח – נוֹזֶנֶת מִשְׁלַב יָבָם.

נִפְלְאָה לְפָנֵי יָבָם קִטְן (מֵאִי) – מִיָּבָם –
לֵית לָהּ, מִבְּעַל – מֵאִי?

פְּלִיגֵי בֵּהּ רַב אַחָא וְרַבִּינָא; חַד
אָמַר: אֵית לָהּ, וְחַד אָמַר: לֵית לָהּ,
וְהַלְבָּתָּא: לֵית לָהּ, מִשְׁמַיָּא קְנָסוּהָ.

תִּנְנוּ רַבָּנִין: יְבָמָה שְׁחָלְצוּ לָהּ אַחִים
בְּתוֹךְ שְׁלֹשָׁה – צְרִיכָה לְהַמְתִּין
שְׁלֹשָׁה חֳדָשִׁים,

The Gemara rejects the proof: **How can these cases be compared?** **There**, in the case of uncertainty, **if Elijah were to come and say that the man betrothed this one of the sisters, then she would be eligible for *halitza* and levirate marriage.** It is clear, then, that fundamentally the sister who was betrothed is actually eligible for levirate marriage, and it is merely a lack of knowledge that prevents her from entering into it.

However, **here**, with regard to a woman during the first three months following her previous marriage, **if Elijah were to come and say that this woman is not pregnant, would one pay heed to him and would we allow the *yavam* to consummate levirate marriage?** Certainly not, as is evident from the fact that a **minor girl, who cannot become pregnant, must also wait three months.**¹¹ Evidently, the requirement to wait three months applies in all situations, even those in which the reason for the requirement is irrelevant. Therefore, by virtue of that decree the *yevama* is considered to be fundamentally ineligible for levirate marriage and similarly is ineligible for *halitza*.

§ The Gemara mentioned that a *yevama* is supported from her deceased husband's estate. It now proceeds to cite a *baraita* that teaches this *halakha*: **The Sages taught: A *yevama* during the first three months following her husband's death receives sustenance payments¹² from the husband's estate.**¹³ This is because her previous marriage to him is the cause of her current unmarried state, since it is due to that marriage that she must first wait three months before remarrying. **From this point forward, she does not receive sustenance payments, neither from the husband's estate nor from the *yavam*, as he has not yet consummated a levirate marriage with her.**

The *baraita* continues: **If the *yavam* was brought to judgment and it was decided that he was obligated to either consummate the levirate marriage with her or perform *halitza*, and he ran away¹⁴ to avoid doing so, she receives sustenance payments from the estate of the *yavam*, which is his penalty for neglecting his duty.**

The Gemara asks: **If she happened before her *yavam* who is a minor¹⁵ for levirate marriage, what is the *halakha*? From the *yavam* she does not have any right to sustenance payments because, as a minor, he is unable to consummate a levirate marriage, but as to payments from her husband's estate, what is the *halakha*?** Since his death placed her in a situation that forces her to remain in an unmarried state, does his estate have to take the responsibility of supporting her?

Rav Aha and Ravina disagree with regard to this matter: **One said she does have rights to sustenance payments, and the other one said she does not have any rights. And the *halakha* is that she does not have any rights to sustenance payments.** This is because the husband is not considered to be responsible for her situation; rather, it is thought that **she was penalized by Heaven.**¹⁶

§ The Sages taught: **In the case of a *yevama* with whom the brothers of her deceased husband performed *halitza* within three months of her husband's death, she still needs to wait three months before remarrying.**

HALAKHA

A minor girl must wait – **קִטְנָה צְרִיכָה לְהַמְתִּין**: When the Sages decreed that no woman may marry until she has first waited three months since the end of her previous marriage, they did not distinguish between cases, and therefore even a woman who is unfit for childbirth, e.g., a minor, is included in the decree (Rambam *Sefer Nashim, Hilkhhot Geirushin* 11:20; *Shulhan Arukh, Even HaEzer* 13:1).

Sustenance payments for a *yevama* – **מוֹנוֹת יְבָמָה**: A *yevama* receives sustenance payments from her husband's estate, like

any other widow, for the first three months following his death. From this point onward, she does not receive sustenance payments either from the husband or from the *yavam*. If, after three months, she demanded that the *yavam* consummate levirate marriage and he agreed to do so, or even if he did not agree (Rambam), then even if he was ultimately prevented from doing so due to circumstances beyond his control he becomes obligated to provide her with sustenance payments. If he ran away to avoid doing so, it would seem that he is obligated to provide for her according to all opinions (*Beit Shmuel*;

Rambam *Sefer Nashim, Hilkhhot Ishut* 18:15; *Shulhan Arukh, Even HaEzer* 160:1).

She happened before her *yavam* who is a minor – **נִפְלְאָה לְפָנֵי יָבָם קִטְן**: In the case of a *yevama* who happened before a *yavam* who is a minor, after three months she no longer receives sustenance payments from the estate of the husband or that of the *yavam* until the *yavam* reaches maturity (*Beit Shmuel*; Rambam *Sefer Nashim, Hilkhhot Ishut* 18:17; *Shulhan Arukh, Even HaEzer* 160:3).