

הִיְתָה אֶחַת בְּשָׂרָה וְאַחַת פְּסוּלָה, אִם הָיָה חוֹלֵץ – חוֹלֵץ לְפְסוּלָה, וְאִם הָיָה מֵיִיבִים – מֵיִיבִים לְבְשִׂרָה.

If one of these women was fit to marry into the priesthood and one was unfit,^h then if he performs *halitza*, he should perform *halitza* with the unfit woman rather than with the one who is fit for the priesthood, since doing so with the woman who is fit would needlessly disqualify her from marrying into the priesthood. But if he consummates the levirate marriage, he may consummate the levirate marriage with the one who is fit.

גַּם אַרְבַּעַה אַחִין סָלְקִין דְּעֵתְךָ? אֵלָּא אִימָא: אַרְבַּעַה מֵאִחִין.

GEMARA The simple reading of the mishna's first clause implies that all four brothers died. The Gemara questions this: Can it enter your mind to say that all four brothers died? If they all died, then who remains to consummate the levirate marriage? Rather, emend the mishna and say instead: Four married men of a set of more than four brothers died.

”הַרְשׁוֹת בִּידוֹ” וְשָׁבְקִי לִיָּהּ? וְהִתְנַנֵּן: ”וְקָרְאוּ לוֹ זְקֵנֵי עִירוֹ” – הֵן וְלֹא שְׁלוּחֵן, וְדַבְּרוּ אֵלָיו” – מִלְּמַד שְׂמִשְׂיָאִין לוֹ עֲצָה הוֹגֵנֶת לוֹ.

The mishna continues: If the eldest of them wished to consummate the levirate marriage with all of his *yevamot*, he has permission to do so. The Gemara asks: Do they actually leave himⁿ to do so? Isn't it taught in a *baraita*: The verse states: “And the Elders of his city shall call him” (Deuteronomy 25:8), which indicates that they, the Elders, and not their agent, should call him. The verse continues: “And they speak to him”;^h this phrase teaches that they offer him advice that is appropriate for him.

שֵׁאִם הָיָה הוּא יָלֵד וְהִיא זְקֵנָה, הוּא זְקֵן וְהִיא יָלֵדָה – אוֹמְרִין לוֹ: מַה לָּךְ אֵצֶל יָלֵדָה, מַה לָּךְ אֵצֶל זְקֵנָה? כִּלְכֵךְ אֵצֶל שְׂכֻמוֹתֶיךָ, וְאֵל תִּשְׂמֵם קִטְטָה בְּבִיתְךָ.

The *baraita* explains: Appropriate advice means that if he was a young man and she an elderly woman or if he was an elderly man and she a young woman, they say to him: What do you want with a young woman when you are elderly? Or: What do you want with an elderly woman when you are young? Go after your own kind, i.e., a woman of a similar age, and do not place discord in your household that could be caused by marrying a woman of a significantly different age. From the *baraita* it is apparent that if consummating the levirate marriage will ultimately lead to contention between the couple, it is preferable to perform *halitza*. Similarly, in the case of the mishna, marrying four women will likely lead to contention since it is difficult to support so many people, and poverty will lead to strife. Therefore, the *yavam* should not be allowed to consummate levirate marriages with all of them.

לֹא צְרִיכָא, דְּאִפְשָׁר לִיָּהּ. אִי הָכִי, אִפְּיֵלוּ טוֹבָא נִמְנִי עֲצָה טוֹבָה קָא מִשְׁמַע לָן: אַרְבַּע – אִין טָפִי – לֹא. כִּי הֵיכִי דְנִמְטִיָּיה עוֹנָה בְּחֻדְשָׁא.

The Gemara qualifies the mishna's case: No, it is necessary to teach that he has permission to consummate the levirate marriage with all of his *yevamot* in the case where it is possible for him to provide for all four women. The Gemara asks: If so, then the same should be true even if there are many more women as well; why does the mishna specifically discuss a case of four women? The Gemara explains: The mishna teaches us good advice; in a case of up to four women, yes, if he can provide for them then it is acceptable to marry all of them. But if there are any more than that, no,^h he should not, in order that he will be able to meet the conjugal rights of each woman at least once in each month.ⁿ A Torah scholar is expected to provide conjugal relations once a week. If he marries no more than four women, then that will ensure that each of his wives will receive their conjugal rights at least once a month.

HALAKHA

הִיְתָה אֶחַת בְּשָׂרָה וְאַחַת – פְּסוּלָה: In a case of several widows of the same man who happen before their *yavam* for levirate marriage, and some of them are fit to marry into the priesthood and some are not, if the *yavam* wishes to consummate the levirate marriage, he may do so with whichever one he chooses. However, if he wishes to perform *halitza*, he should do so with one of the ones who are unfit. Some (*Beit Shmuel*, citing *Beit Yosef*) say that if he willingly violated this *halakha* after having been warned not to do so, then he is excommunicated or receives lashes (Rambam *Sefer Nashim*, *Hilkhot Yibbum VaHalitza* 1:10; *Shulhan Arukh*, *Even HaEzer* 161:2).

And they shall call him...and they speak to him – וְקָרְאוּ לוֹ...וְדַבְּרוּ אֵלָיו: When *halitza* is to be performed, the norm is for the *yavam* and *yevama* to go to the court in the town of the *yavam*, at which point that court advises them whether it is more appropriate for them to consummate the levirate marriage or to perform *halitza* (Rambam *Sefer Nashim*, *Hilkhot Yibbum VaHalitza* 4:1; *Shulhan Arukh*, *Even HaEzer* 166:1).

אַרְבַּע נָשִׁים – Four wives: By Torah law a man is permitted to marry as many women as he is able to provide for, i.e., to fulfill his legal obligation to provide them with food, clothing, and conjugal relations. However, the Sages said that one should not marry more than four women, so that he will be able to provide each of them with their conjugal rights at least once in each month. Some (*Beit Shmuel* and *Helkat Mehokek*) rule that if one belongs to a category of people who are obligated to provide conjugal relations more than once a week, then it would be permitted to marry even more than four women (Rambam *Sefer Nashim*, *Hilkhot Ishut* 14:1; *Shulhan Arukh*, *Even HaEzer* 76:7).

NOTES

Do they leave him – וְשָׁבְקִי לִיָּהּ: The early commentaries explain that the mishna's formulation: He has permission to do so, suggests that not only is he not forced to perform *halitza*, but in fact it is entirely acceptable for him to consummate the levirate marriage with all of the *yevamot* and he would not be advised otherwise. The Gemara therefore challenges this understanding because the Gemara considers such a course of action to be inappropriate (Ritva).

Conjugal rights in each month – עוֹנָה בְּחוֹדֶשׁ: The obligation of a husband to provide his wife with conjugal relations varies based on the husband's occupation. Torah scholars are obligated to provide relations once a week, while men in other

professions have a more or less frequent obligation dependent on their availability. The commentaries question why the number of women one marries should be based upon the expectations placed on a Torah scholar, when the mishna is certainly not referring only to Torah scholars. Some explain that the limitation of four women is true only in a case of levirate marriage; since the situation was brought about by Heaven and not by the free choice of the *yavam*, he is not expected to provide any more than the more minimal frequency of conjugal relations expected of a Torah scholar (Ritva; *Nimmukei Yosef*). This opinion was not accepted as the *halakha*. One commentary suggests that this number in fact applies only to a Torah scholar and is merely an example of the principle

(*Tosefot Yom Tov*). Others suggest that the *halakha* is not based upon the Torah scholars' requirement to provide relations once a week but upon the fact that a Torah scholar is permitted to be absent from the house for up to thirty days without his wife's permission. From that *halakha* it is apparent that it is not considered overly distressing for a woman if she is provided with relations once a month (Rivan). Another commentary explains that the *halakha* is based on the fact that the average woman completes a cycle of menstruation and subsequent ritual purification once a month. At that point she has rights to conjugal relations (*Beit Shmuel*; see *Tosefot Yom Tov*).

Two wives from a single house – שְׁתֵּי נָשִׁים מִבֵּית אֶחָד – A man is not permitted to consummate levirate marriage with two women who were both married to his brother, as the verse states: “His brother’s house,” which indicates he may build one house for his brother, but not two (Rambam *Sefer Nashim, Hilkhot Yibbum VaHalitza* 1:9).

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And furthermore that people should not say – ועוד – **שְׁלֹא יֹאמְרוּ**: *Tosafot* challenge the validity of this section of the Gemara. They assert that if it were indeed permitted by Torah law to consummate levirate marriage with one *yevama* and perform *halitza* with the other, then the Sages would not have issued a decree prohibiting it. The Rivan adds further that since the Torah explicitly prohibits such a practice, it is superfluous for the Gemara to suggest additional reasons that it is prohibited. Therefore, they advocate removing this section entirely from the text of the Gemara.

The Ramban, however, presents a defense of this section. He explains that although by Torah law a *yevama* is released through the levirate marriage of her rival wife, one might have thought that it would be appropriate for the Sages to require that *yevama* to perform *halitza* to avoid the appearance of a *yevama* being permitted without taking any action. The reason suggested here by the Gemara explains why the Sages did not do so. A different defense is offered by Rabbi Avraham min HaHar, who suggests that one might have assumed that the principle derived from the verse refers only to women who are forbidden by prohibitions entailing *karet*; however, if the *yevama* was forbidden by a prohibition punishable by lashes, one might have thought she would require *halitza*. Therefore, the Gemara provides an additional reason to cover this case as well.

When there are two wives the mitzva of levirate marriage does not exist – כִּי אִיכָא תְּרֵי לֹא תִתְקַיֵּים מִצְוַת יְבוּם: The Gemara above derived from the verse “The man who does not build his brother’s house” (Deuteronomy 25:9) that a *yavam* may build only one house by consummating a levirate marriage with one of his brother’s wives, but he may not build two houses. Some commentaries note that the underlying assumption of this derivation is that the mitzva of consummating levirate marriage does exist even in a case where there are two wives. Why, then, does the Gemara question that fact here? They explain that were it not for the derivation mentioned later, which proves that the mitzva applies even in a case where the deceased had two wives, the verse “The man who does not build his brother’s house” would have been expounded in a different manner, possibly to teach that the mitzva applies only where there is one “house,” i.e., wife, but not where there are two (*Tosefot HaRosh; Tosafot Yeshanim*).

מִי שֶׁהָיָה נָשׁוּי וְכוּ'. וְנִיבְּסָם לְתַרְוּיָהּ! אָמַר רַבִּי חֵיָא בַר אֲבָא אָמַר רַבִּי יוֹחָנָן: אָמַר קְרָא “אֲשֶׁר לֹא יִבְנֶה אֶת בֵּית אֶחָיו” – בֵּית אֶחָד הוּא בּוֹנֵה, וְאִין בּוֹנֵה שְׁנַי בְּתַיִם.

וְנִחְלוּץ לְתַרְוּיָהּ! אָמַר מַר זוּטְרָא בַר טוּבִיָּה: אָמַר קְרָא “בֵּית חֻלְצֵי הַנְּעֻלִי – בֵּית אֶחָד הוּא חוֹלֵץ, וְאִין חוֹלֵץ שְׁנַי בְּתַיִם.

וְנִיבְּסָם לְחֵדָא וְנִחְלוּץ לְחֵדָא! – אָמַר קְרָא “אִם לֹא יִחְפוֹץ” הָא חֲפֵץ – יְבוּם, כָּל הָעוֹלָה לְיְבוּם – עוֹלָה לְחֵלְצָהּ, כָּל שְׂאִין עוֹלָה לְיְבוּם – אִין עוֹלָה לְחֵלְצָהּ.

וְעוֹד: שְׁלֹא יֹאמְרוּ בֵּית מִקְצָתוֹ בְּנוֹי וּמִקְצָתוֹ חֻלְצֵי. וְיֹאמְרוּ! אִי דְמִיבְּסָם וְהָדָר חֻלְצֵי – הֲכִי נִמְי, אֶלָּא [דְּלִמָּא] חֻלְצֵי וְהָדָר מְיִיבְּסָם, וְקָם לִיה בְּלֹא יִבְנֶה.”

וְאִימָא: כִּי אִיכָא חֵדָא – תִּתְקַיֵּים מִצְוַת יְבוּם, כִּי אִיכָא תְּרֵי – לֹא תִתְקַיֵּים מִצְוַת יְבוּם!

אִם כֵּן, צֵרַת עֲרוּה דְאֶסְר רְחֻמָּנָא לְמָה לִּי? הַשְּׁתָּא, תְּרֵי בְּעֵלְמָא אֲמַרְתְּ לָאוּ בְּנֵי חֻלְצָה וְיְבוּם מִנְהוּ, צֵרַת עֲרוּה מִיבְּעִיָּא?

S The mishna states: In the case of **one who was married to two women^h** and died childless, the intercourse or *halitza* of either one of them with the *yavam* releases her rival wife from the levirate bond. The Gemara questions why the mishna considers only the possibility that he would do so with only one of the women: **But let him instead consummate levirate marriages with both of them. Rabbi Hiyya bar Abba said that Rabbi Yohanan said: The verse states that a *yavam* who performs *halitza* is referred to as: “The man who does not build his brother’s house” (Deuteronomy 25:9). The fact that the word “house” appears in the singular indicates that even had he instead chosen to consummate a levirate marriage, only one house may he build, by consummating a levirate marriage with one of his brother’s wives, but he may not build two houses.**

The Gemara suggests: **But let him perform *halitza* with both of them; why does the mishna state that he does so with only one woman? Mar Zutra bar Toviyā said: The verse states that following the *halitza* the man is called: “The house of him who had his shoe removed” (Deuteronomy 25:10). The fact that the word “house” appears in the singular indicates that he performs *halitza* with only one house, i.e., only one of his brother’s wives, and he does not perform *halitza* with two houses.**

The Gemara suggests: **But let him consummate the levirate marriage with one and perform *halitza* with the other.** The Gemara explains that the verse states: **“If the man does not wish to take his *yevama*” (Deuteronomy 25:7), which implies that with regard to anyone who performs *halitza*, were he to wish to, he could consummate the levirate marriage.** This teaches the principle that **only one who is eligible for levirate marriage is eligible for *halitza*, but one who is ineligible for levirate marriage is ineligible for *halitza*.** And since, in the case of the mishna, if the *yavam* consummated the levirate marriage with one of his brother’s wives he may not do so with the second, consequently he may not perform *halitza* with her either.

And furthermore, an additional reason that one may not do so is so that people should not sayⁿ that the brother’s house was partially built through levirate marriage and partially released through *halitza*. The Gemara asks: **And even if they will say that, what of it? The Gemara explains: If he first consummated the levirate marriage with one wife and subsequently performed *halitza* with the other, indeed, there is no reason not to do this. However, perhaps he might first perform *halitza* with one wife and subsequently consummate levirate marriage with the other, and by doing so he is liable for a violation of the prohibition of: “He does not build his brother’s house” (Deuteronomy 25:9). The verse indicates that one who performs *halitza* has not built his brother’s house and is therefore subsequently prohibited from attempting to do so by consummating a levirate marriage with either the *halitza* or any of her rival wives.**

The Gemara asks. **But since the Torah’s description of levirate marriage mentions only a case in which the deceased brother had only one wife, say: When there is only one wife, the mitzva of levirate marriage exists, but when there are two wives, the mitzva of levirate marriage does not exist.ⁿ**

The Gemara suggests a proof: **If that were so, why do I need the *halakha* concerning a rival wife of a forbidden relation, which is forbidden by the Merciful One in the Torah? Now that even in the case of two women in general, where neither woman is a forbidden relation, you say that they are not eligible for *halitza* and levirate marriage, is it necessary to say a rival wife of a forbidden relation is also forbidden? The fact that the Torah does prohibit a rival wife of a forbidden relation indicates that the mitzva of levirate marriage does exist in a general case of two wives in which neither are a forbidden relation.**

אלמה לא? אצטרך, סלקא דעתך
אמינא ערוה אבראי קיימא, ותתייבם
צרתה – קא משמע לן דאסירא.

The Gemara objects: **Why not?** Even if one assumes that there is no mitzva of levirate marriage when the deceased brother had two wives, **it is still necessary** to teach the *halakha* concerning a rival wife of a forbidden relation because it could **enter your mind to say** that since there is no possibility of consummating the levirate marriage with her, **the forbidden relation stands outside** the calculation such that her presence is disregarded, **and her rival wife should enter into levirate marriage** as though she were the only wife. Therefore, the verse needs to **teach us that the rival wife is forbidden.**

אלא: "יבמתו... יבמתו" – ריבה.

Rather, the repeated use of the phrase "**his yevama**," "**his yevama**" in the verses concerning levirate marriage **amplifies** the mitzva of levirate marriage so that it applies even when the deceased brother had more than one wife.

"היתה אחת כשרה". אמר רב יוסף:
כאן שנה רבי: לא ישפוך אדם מי בורו
ואחרים צריכים להם.

§ The mishna states: If **one** of these wives of the deceased brother was fit for the priesthood and one was unfit, *ḥalitza* should not be performed with the fit woman since doing so would needlessly disqualify her from the priesthood. **Rav Yosef said that here**, through this mishna, **Rabbi Yehuda HaNasi taught** the principle that one should not perform an action that will needlessly disadvantage others, and so **a person should not spill out water** collected in his pit^N that he does not need **when others are in need of it.**

מתני' המחזיר גרושתו, והנושא
חלוצתו, והנושא קרובת חלוצתו –
יוציא, והולד ממור, דברי רבי עקיבא.

MISHNA With regard to **one who remarries his divorcée** after she had been married to another man from whom she was then widowed or divorced, **or one who marries the woman with whom he performed ḥalitza [ḥalitza], or one who marries a relative of his ḥalitza**, since all such marriages are forbidden he **must divorce her, and the offspring** born from such unions is a *mamzer*; this is **the statement of Rabbi Akiva**. He holds that even the offspring from relations forbidden by a prohibition punishable by lashes is a *mamzer*.

וחכמים אומרים: אין הולד ממור.
ומודים בנושא קרובת גרושתו, שהולד
ממור.

The Rabbis say: **The offspring** in those cases is not a *mamzer*, but they **concede with regard to one who marries a relative of his divorcée**, a union forbidden by a prohibition entailing *karet*, **that the offspring is a mamzer**. They hold that only the offspring from relations forbidden by a prohibition entailing *karet* is a *mamzer*.

גמ' וסבר רבי עקיבא הנושא קרובת
חלוצתו הולד ממור? והאמר ריש
לקיש, כאן שנה רבי: אחות גרושה –
מדברי תורה, אחות חלוצה – מדברי
סופרים! תני: קרובת גרושתו.

GEMARA The Gemara asks: **But does Rabbi Akiva actually hold** that with regard to **one who marries a relative of his ḥalitza, the offspring is a mamzer?** Didn't Reish Lakish say that through the mishna **here, Rabbi Yehuda HaNasi taught** that a **sister of one's divorcée is forbidden by Torah law** whereas a **sister of one's ḥalitza is forbidden by rabbinic law?** If a relative of one's *ḥalitza* is forbidden by rabbinic law, how can the offspring of that union be a *mamzer*? The Gemara concedes: **Emend the mishna and teach instead: A relative of his divorcée.**^N

NOTES

לֹא – אִישׁ שֶׁלֹּא יִשְׁפֹּךְ מַיִם מִבּוֹר: The Rid writes that this imperative should not be confused with the principle that one compels another to refrain from behavior characteristic of Sodom. That principle teaches that if one denies another the use of his possessions even though doing so would incur no loss or damage to himself, then he should be forced to waive his rights to those possessions. The Rid explains that that principle is limited to cases where there is a specific individual who wishes to use the possessions. The imperative here goes much further in demanding that one not perform an action that could theoretically disadvantage an unidentified person in the future. Accordingly, it would appear that one would not be forcibly compelled to act in this manner. This is also how the *Keneset HaGedola* rules; he explains the Gemara to be indicating the proper course of behavior for ethical living but not a strict requirement. In contrast, Rabbeinu Yeruham (cited in *Beit Yosef*) understands the Gemara to actually require such behavior, and he therefore rules that one who refuses to a way that will avoid needlessly causing disadvantage to others should be excommunicated and flogged.

Teach: A relative of his divorcée – תני קרובת גרושתו – According to this emended version of the mishna, Rabbi Akiva states that the offspring resulting from one's union with a relative of his divorcée is a *mamzer*. While Rabbi Akiva certainly holds that this is true, one could question why he would choose to mention such a case. The novelty of Rabbi Akiva's opinion is that he holds that even the offspring from relations forbidden by a prohibition punishable by lashes is a *mamzer*, even though that prohibition is not punishable by *karet*. The prohibition against engaging in relations with a relative of one's divorcée, however, is punishable by *karet*. Therefore, even the Rabbis would agree that the offspring would be a *mamzer*. As such, what advantage is there for Rabbi Akiva to mention this case? One could suggest that Rabbi Akiva's entire statement is directed toward the Rabbis. He mentions the case of a relative of one's divorcée because he knows that the Rabbis agree with him in that case, and then he says that just as they agree in that case, they should agree in the other cases he goes on to enumerate.

הכי נמי מסתברא, דקתני סיפא:
ומודים בנושא קרובת גרושתו שהולד
ממזר. אי אמרת בשלמא איירי בה –
היינו דקתני "ומודים", אלא אי אמרת
לא איירי בה – מאי "ומודים"?

ודלמא הא קא משמע לן: דיש ממזר
מחייבי כריתות. הא קתני לה לקמן:
איזהו ממזר – כל שאר בשר שהוא
ב"לא יבא" דברי רבי עקיבא, רבי
שמעון התימני אומר: כל שחייבין עליו
כרת בידי שמים, והלכה כדבריו.

ודלמא קסתים לן תנא כרבי שמעון
התימני. אם כן ליתני שאר חייבי
כריתות, קרובת גרושתו למה לי? אלא
שמע מינה איירי בה.

[ודלמא] לעולם לא איירי בה, ואידי
דתנא מחזיר גרושתו ונושא חלוצתו
וקרובת חלוצתו – תני נמי קרובת
גרושתו.

אלא קרובת חלוצתו לרבי עקיבא הוי
ממזר. אמר רבי חייא בר אבא אמר
רבי יוחנן: היינו טעמא דרבי עקיבא,
דאמר קרא "בית חלוץ הנעל" – הכתוב
קראו ביתו.

אמר רב יוסף אמר רבי שמעון בר רבי:
הכל מוּדִים במחזור גרושתו

The Gemara notes: **So, too, it is reasonable** that this is the correct version of the mishna, as **the latter clause teaches: But they concede** in the case of **one who marries a relative of his divorcée that the offspring is a mamzer**. Granted, if you say that Rabbi Akiva was talking about that case, **this is consistent with that which the mishna teaches: They concede**, which implies that they agree to a case already mentioned. **However, if you say that he was not talking about that case, what could the phrase: They concede**, possibly be referring to?

The Gemara objects: **But perhaps this phrase teaches us that the Rabbis concede that the offspring from forbidden relations for which one is liable to receive karet is a mamzer**. The Gemara rejects this option: **This is already taught later on** in a mishna (49a): **Which offspring of forbidden relations has the status of a mamzer? It is the offspring of a union with any next of kin that is subject to a Torah prohibition that one should not engage in sexual relations with them; this is the statement of Rabbi Akiva. Rabbi Shimon HaTimni says: It is the offspring of a union with any forbidden relative for which one is liable to receive karet at the hand of Heaven. And the halakha is in accordance with his statement**. Since the mishna explicitly rules in accordance with Rabbi Shimon HaTimni, it would be unnecessary for the mishna here to teach that fact.

The Gemara persists: **But perhaps the tanna taught us as unattributed a mishna that is in accordance with the opinion of Rabbi Shimon HaTimniⁿ to indicate that this is indeed the accepted halakha**. The Gemara rejects this: **If so, then let him teach other cases of forbidden relations for which one is liable to receive karet; why do I need the mishna to specifically consider the case of a relative of one's divorcée? Rather, conclude from this that Rabbi Akiva indeed was talking about that case**.

The Gemara persists: **But perhaps he was not actually talking about that case, but since Rabbi Akiva taught the cases of one who remarries his divorcée, or one who marries his halutza or a relative of his halutza, the mishna also taught in the name of the Rabbis the case of one who marries a relative of his divorcée because it is a similar case**. The Gemara concedes that this would be an acceptable reading of the mishna.

Rather, the mishna should not be emended, and with regard to the Gemara's original question as to how Rabbi Akiva could claim that the offspring from one's union with a relative of his halutza is a mamzer if that union is forbidden only by rabbinic law, one must conclude that a relative of one's halutza is forbidden by Torah law according to Rabbi Akiva and therefore the offspring is a mamzer. Rabbi Hiyya bar Abba said that Rabbi Yohanan said that this is Rabbi Akiva's reasoning: **As the verse states: "The house of he who had his shoe removed"** (Deuteronomy 25:10). The verse called his relationship with the halutza his house, indicating that the halutza is considered as though she had been married to the yavam, and therefore her relative is forbidden to him by Torah law.

Rav Yosef said that Rabbi Shimon bar Rabbi Yehuda HaNasi said: **All agree in the case of one who remarries his divorcée**

NOTES

The tanna taught us as unattributed a mishna in accordance with the opinion of Rabbi Shimon HaTimni, etc. – קסתים לן – תנא כרבי שמעון התימני וכו' What advantage is there in having an unattributed mishna in accordance with the opinion of Rabbi Shimon HaTimni when the mishna on 49a already explicitly states: The halakha is in accordance with his statement? The

advantage is in that there is an accepted principle that the halakha may not be derived from the Mishna. Therefore, even when a mishna explicitly states what the halakha should be, that statement is not necessarily relied upon as the final halakha. This is because that statement might well have been only the opinion of an individual Sage that Rabbi Yehuda HaNasi

preserved in his redaction of the Mishna. However, when there is an unattributed mishna in accordance with one opinion, that clearly indicates that the opinion was held by the majority of Sages, and therefore the halakha is to be fixed in accordance with that opinion (Ritva).

שהולך פגום לכהונה. מאן הכל מודים – שמעון התימני. דאף על גב דאמר שמעון התימני: אין ממזר מחייבי לאוין – נהי דממזר לא הוי פגום – מיהא הוי.

מקל וחומר מאלמנה. ומה אלמנה לכהן גדול, שאין איסורה שוה בכל – בנה פגום, זו שאיסורה שוה בכל – אינו דין שבנה פגום?

איכא למיפרך: מה לאלמנה – שכן היא עצמה מתחללת.

ועוד: "היא תועבה" כתיב, ואין בניה תועבין.

ועוד, תניא: המחזיר גרושתו, והנושא חלוצתו, והנושא קרובת חלוצתו. רבי עקיבא אומר: אין לו ביה קדושין, ואינה צריכה הימנו גט, והיא פסולה וולדה פסול, וכופין אותו להוציא. ותקמים אומרים: יש לו ביה קדושין, וצריכה הימנו גט, והיא כשרה וולדה כשר.

למאן – לאו לכהונה? לא. לקהל. אי הכי, היא כשרה – למאן? אי לימא לקהל – פשיטא, משום דניא אפסלה לקהל? אלא לאו – לכהונה.

that the offspring, even if not a *mamzer*, has flawed lineage and, if the offspring is a girl, is unfit to marry into the priesthood. The Gemara clarifies: **Who is included by saying: All agree?**^N It is **Shimon HaTimni**, as although **Shimon HaTimni** said that the offspring of relations for which one is liable for violating a prohibition is not a *mamzer*, nevertheless, granted that **Shimon HaTimni** holds that he is not a *mamzer*; he would agree, however, that he is of flawed lineage.

This is derived through an *a fortiori* inference from the *halakha* pertaining to a widow, as follows: **Just as in the case of a widow who is married to a High Priest, where the prohibition that pertains to her is not equally applicable to all, i.e., only a High Priest is prohibited from marrying a widow, and nevertheless her child from that union will have flawed lineage, then so too with regard to this divorcée, who married another man and is therefore prohibited from marrying her original husband, where the prohibition that pertains to her is equally applicable to all Jews, as the prohibition to remarry one's divorcée after she was married to another man applies to all Jews, isn't it logical that her child from that union will have flawed lineage?**

The Gemara raises a number of objections: The logic of this *a fortiori* inference can be refuted: **What is true with regard to a widow, where her union with a High Priest is what makes her herself disqualified from subsequently marrying any priest and, if she is the daughter of a priest, from eating *teruma*, is not true with regard to a remarried divorcée, where her remarriage to another man is permitted and is not the cause of any further disqualification. Therefore, one case cannot be deduced from the other.**

And furthermore,^N "She is an abomination" (Deuteronomy 24:4) is written with regard to remarrying with one's divorcée, and the emphasis on the word "she" teaches that only she is considered so, **but her children are not abominations** and they have unflawed lineage.

And furthermore, it is taught in a *baraita*: With regard to one who remarries his divorcée,^H and one who marries his *halutza*, and one who marries a relative of his *halutza*, **Rabbi Akiva says that one's betrothal of such women is not effective. And therefore, even if he attempts to do so, it is meaningless and she does not require a bill of divorce from him in order to separate from him. And if she has relations with him she is rendered unfit and her child is unfit, and we force him to send her away. The Rabbis say that one's betrothal of such women is effective, and therefore if he betrothed her she requires a bill of divorce from him, and if she has relations with him she remains fit and her child is fit.**^N

The Gemara clarifies: When the *baraita* states she and her child are rendered unfit, **to whom** are they unfit to be married? **Is it not to the priesthood? No, it is to the congregation of Israel. If so, when the *baraita* states she is fit, to whom is she fit to be married? If we say it is to the congregation of Israel, this is obvious; could it be that because she engaged in forbidden sexual relations that she is rendered unfit from marrying into the congregation of Israel? Although by doing so she is rendered a *zona*, that can disqualify her only from marrying a priest. Rather, is it not that the intention is that she is fit to marry into the priesthood?**

NOTES

Who is included by saying: All agree – מאן הכל מודים – The Gemara does not need to mention that Rabbi Yehoshua agrees with this, because that was already made explicit on 15b. There, Rabbi Yehoshua testifies to the fact that such children are fit even to marry into the priesthood (Ritva).

This can be refuted...and furthermore – איכא למיפרך...ועוד – The Maharsha notes that it would appear that these two objections stand in direct contradiction to one another. If the objection derived from the *halakha* of a widow were truly compelling, then it would be unnecessary to have a scriptural derivation from the phrase "she is an abomination" to teach that her children have unflawed lineage; that derivation is necessary only to counter the import of the *a fortiori* inference. The Maharsha suggests that it is possible that the one who raised these objections did in fact believe that the objection derived from the *halakha* of a widow is conclusive. He understood that the objection is not contradicted by the subsequent derivation from the phrase: "She is an abomination" because, as the Gemara later suggests, there are other ways to expound the verse. Nevertheless, he cites the derivation from the verse because he reasoned that even if the derivation from the *halakha* of a widow were flawed, then it is still possible to raise the objection from the verse. The *Keren Ora* suggests that the *a fortiori* inference teaches in general about all cases for which one is liable for violating a prohibition, not only the case of one who remarries his divorcée. With regard to one who remarries his divorcée there is an independent reason to assume that the offspring would have flawed lineage because the verse describes the union as "impure" (Deuteronomy 24:4). Therefore, it was necessary to refute both reasons in order to prove that the offspring's lineage would be unflawed.

She remains fit and her child is fit – היא כשרה וולדה כשר – Some of the early commentaries claim that in all these cases, the woman and her daughter from the forbidden union would even be fit to eat *teruma* if they were to marry a priest or are the daughters of a priest. This is because the verse describing the qualification to eat *teruma* excludes only a woman who had relations with a "common man" (Leviticus 22:12), meaning one who was always forbidden to her, whereas in these cases the man was not initially forbidden to her (*Tosafot*; Rid). However, Rabbeinu Hananel claims that in the case of one who remarries his divorcée, the woman and her daughter are rendered unfit to eat *teruma*. This opinion is also found explicitly in the Jerusalem Talmud. The Maharam MiRotenburg explains that this is because the verse describes that union as "impure" (Deuteronomy 24:4).

HALAKHA

One who remarries his divorcée – המחזיר גרושתו – It is prohibited to remarry one's divorcée after she had been married or betrothed to another man. This applies even if she had not engaged in intercourse with the other man. If one violates the prohibition, he is flogged and forced to divorce his wife. Nevertheless, she remains fit and her children are fit. This is in accordance with the opinion of the Rabbis (Rambam *Sefer Nashim*, *Hilkhot Geirushin* 11:12).

She is an abomination but her rival wife is not an abomination – היא תועבה ואין צרתה תועבה – The commentaries ask: How would Rabbi Akiva interpret the restrictive implication of the word “she” in the verse: “She is an abomination” (Deuteronomy 24:4)? He is unable to interpret it in either manner suggested by the Gemara: It cannot be teaching about a rival wife because according to Rabbi Akiva, betrothal of a woman forbidden by a standard prohibition does not take effect. Therefore, she cannot have the status of a wife herself, and consequently she cannot have a rival wife. Furthermore, it cannot come to teach that the lineage of the offspring is unflawed, because according to Rabbi Akiva they are *mamzerim*. Some suggest that since the Gemara uses this verse to derive the *halakhot* of a *sota* as well, Rabbi Akiva could claim that the verse comes to exclude the case of a rival wife of a *sota* (*Tosafot Yeshanim*) or to exclude the offspring of a *sota* from having flawed lineage (*Tosefot HaRosh*).

ומדריהא לכהונה – ולדה נמי לכהונה.
מידי איריאה? הא כדאייתא והא
כדאייתא.

הכי נמי מסתברא. דקתני רישא: היא
פסולה וולדה פסול. היא פסולה למאן?
אילימא לקהל – משום דזניא אפסלה
ליה לקהל? אלא לאו – לכהונה.

ולדה פסול, למאן? אילימא לכהונה –
הא לקהל כשר? האמר רבי עקיבא
הולד ממזר! אלא פשיטא – לקהל.

ומדרישא הא כדאייתא והא כדאייתא –
סיפא נמי הא כדאייתא והא כדאייתא.

“היא תועבה” נמי, היא תועבה – ואין
צרתה תועבה, אבל בניה – תועבין.

אלא אלמנה קשיא: מה לאלמנה שגון
היא עצמה מתחללת!

אלא אי אתמר הכי אתמר: אמר רב
יוסף אמר רבי שמעון ברבי: הכל מודים
בבא על חייבי כריתות שהולד פגום.
מאן “הכל מודים” – רבי יהושע, דאף
על גב דאמר רבי יהושע אין ממזר
מחייבי כריתות, נהי דממזר לא הוי –
פגום מיהא הוי.

The Gemara suggests: **And since** in reference to her the word fit in the *baraita* means fit for the priesthood, it follows that for the child as well, the word fit means fit for the priesthood. The Gemara objects: **Are these cases comparable? This case is as it is, and that case is as it is**, and although the two cases are juxtaposed in the *baraita* they need not be relating to the same issue. Rather, when referring to the mother the *baraita* mentions fitness for the priesthood, and when referring to the child it mentions fitness for the congregation of Israel.

The Gemara notes: **So, too, it is reasonable** to assume that the two clauses concern different issues, as the first clause teaches in the name of Rabbi Akiva: **She is unfit and her child is unfit**. When that first clause states: **She is unfit, to whom** is she unfit to be married? **If we say it is to the congregation** of Israel, could it be that **because she engaged in forbidden sexual relations she is rendered unfit to marry into the congregation** of Israel? **Rather, is it not** that the intention that she is rendered unfit to marry into the priesthood?

And then when the first clause continues and states: **And her child is unfit, to whom** is she unfit to be married? **If we say that it is to the priesthood, that would imply that the child is fit to marry into the congregation** of Israel. However, this is untenable because **didn’t Rabbi Akiva himself say** in the mishna here that **the offspring is a mamzer** and is unfit from entering the congregation of Israel? **Rather, it is obvious** that the intention of the *baraita* is that the child is unfit even to marry into the congregation of Israel.

And since in the first clause of the *baraita* it is apparent that, although two cases are juxtaposed, **this case is as it is and that case is as it is, in the latter clause as well** one should assume that **this case is as it is and that case is as it is**.

Having resolved the objection raised from the *baraita*, the Gemara returns to its preceding objection: **And** the objection raised from the verse: “**She is an abomination**,” in which the Gemara suggested that the emphasis on “she” teaches that only she is an abomination but her children are not, can also be resolved, as the emphasis on “she” could be interpreted differently to teach: “**She is an abomination**” but her rival wife is not an abomination,^N and if they both fell together for levirate marriage, the *yavam* may consummate the levirate marriage with her rival wife. **However**, it is possible that **her children are** in fact **abominations** and are unfit to marry into the priesthood.

The Gemara concludes: **However**, although two of the objections were resolved, the objection to the logic of the *a fortiori* inference from the case of a **widow** remains **difficult**, as the Gemara noted earlier: **What is true with regard to a widow, where her union with a High Priest is what makes her herself disqualified** from subsequently marrying any priest and, if she is the daughter of a priest, from eating *teruma*, is not true with regard to a remarried divorcée, where her remarriage to another man is permitted and is not the cause of any further disqualification. Therefore, there is no basis for assuming that the child of one who remarries his divorcée after she had been married to another man will have flawed lineage.

Rather, if this was stated, it was stated as follows: Rav Yosef said that Rabbi Shimon, son of Rabbi Yehuda HaNasi, said: **All agree with regard to one who engages in intercourse with a forbidden relation for which one is liable to receive karet that the offspring has flawed lineage**. The Gemara clarifies: **Who is included by saying: All agree?** It is Rabbi Yehoshua, as although Rabbi Yehoshua said in the mishna (49b) that the offspring born from a union for which one is liable to receive *karet* is not a *mamzer*, nevertheless, granted that Rabbi Yehoshua holds that he is not a *mamzer*; he would agree, however, that he is of flawed lineage.

All agree with regard to a slave, etc. – הכל מודים – בעבד וכו': The early commentaries point out that the inclusive phrase: All agree, should not be understood as including Rabbi Yehoshua. This is because even if it could be proven that Rabbi Yehoshua holds that betrothal is ineffective when performed with relatives who are forbidden by a prohibition for which one is liable to *karet*, nevertheless, he would still hold that the offspring of such unions are not *mamzerim*. Accordingly, in the case of a union with a gentile or a slave, who are entirely excluded from the possibility of betrothal, he would certainly hold that the offspring would not be *mamzerim* (see *Tosafot*, *Tosafot Yeshanim*, and *Ramban*).

מקל וחומר מאלמנה. ומה אלמנה לכהן גדול, שאין איסורה שוה בכל – בנה פגום, זו שאיסורה שוה בכל – אינו דין שבנה פגום?

This is derived through an *a fortiori* inference from the *halakha* of a widow, as follows: Just as in the case of a widow who is married to High Priest, where the prohibition that pertains to her is not equally applicable to all, i.e., only a High Priest is prohibited from marrying a widow, and nevertheless her child from that union will have flawed lineage, then so too with regard to this woman, where the prohibition that pertains to her is equally applicable to all Jews, isn't it logical that her child from that union should have flawed lineage?

וכי תימא: מה לאלמנה שכן היא עצמה מתחללת – הכא נמי, בין שבעלה – עשאה זונה.

And if you would say that the logic of this *a fortiori* inference could be refuted in a manner similar to the suggestion above that what is true with regard to a widow, who is herself disqualified from marrying a priest, is not true with regard to a woman who is forbidden by a prohibition for which one is liable to *karet*, that is not correct because here, too, once he has engaged in intercourse with her he renders her a *zona*, and as such she is disqualified from marrying into the priesthood.

אמר רבה בר בר חנה אמר רבי יוחנן: הכל מודים בעבד וגוי הכא על בת ישראל שהולד ממזר.

§ The Gemara considers the status of other children born from forbidden unions: Rabba bar bar Ḥana said that Rabbi Yoḥanan said: All agree with regard to a slave^N or a gentile who engaged in intercourse with a Jewish woman that the offspring born from such a union is a *mamzer*.

מאן "הכל מודים" שמעון התימני. דאף על גב דאמר שמעון התימני אין ממזר מחייבי לאוין – הני מילי

The Gemara clarifies: Who is included by saying: All agree? It is Shimon HaTimni, as although Shimon HaTimni said that the offspring of relations for which one is liable for violating a prohibition is not a *mamzer*, this applies only

Perek IV

Daf 45 Amud a

מחייבי לאוין דתפסי בהו קדושין, אבל הכא – גוי ועבד, בין דלא תפסי בהו קדושין – כתייבי פרייתות דמי.

to forbidden relations for which one is liable for violation of a prohibition concerning which a betrothal between the couple would take effect. However, here, with regard to a gentile and a slave, since their betrothal of a Jewish woman would not take effect,^{NH} a union with them is comparable to forbidden relations for which one is liable to receive *karet*, and therefore the offspring of such a union will be a *mamzer*.

מיתבי: גוי ועבד הכא על בת ישראל – הולד ממזר, רבי שמעון בן יהודה אומר: אין ממזר אלא ממי שאיסורו איסור ערוה, ועגוש כרת.

The Gemara raises an objection from a *baraita*: In the case of a gentile or a slave who engaged in intercourse with a Jewish woman, the offspring born from such a union is a *mamzer*. Rabbi Shimon ben Yehuda says: The offspring is a *mamzer* only if born from relations with one who is forbidden by a prohibition of forbidden relations that are punishable by *karet*. It is apparent from the *baraita* that one who holds, as does Shimon HaTimni, that only the offspring from forbidden relations for which one is liable to receive *karet* is a *mamzer*, nevertheless holds that the offspring of a slave or gentile and a Jewish woman is not a *mamzer*.

אלא אמר רב יוסף: מאן "הכל מודים" – רבי אף על גב דרבי אומר: אין הדברים הללו אמורים אלא לדברי רבי עקיבא, שהיה עושה חלוצה בערוה, וליה לא סבירא ליה – בגוי ועבד מודה. דכי אתא רב דימי אמר רב יצחק בר אבדימי משום רבינו: גוי ועבד הכא על בת ישראל – הולד ממזר.

Rather, Rav Yosef said: Who is included by saying: All agree? It is Rabbi Yehuda HaNasi, as although Rabbi Yehuda HaNasi says in a *baraita* (52b) concerning the mishna (50a–51b) that states that a levirate betrothal between a *yavam* and a *yevama* with whom he had already performed *halitza* is ineffective: This statement was said only according to the statement of Rabbi Akiva, as he would consider a *halitza* like a forbidden relative such that if the *yavam* betrothed her it would not take effect. And although Rabbi Yehuda HaNasi himself does not hold accordingly with regard to that issue, with regard to the offspring of a union with a gentile or a slave he concedes that the offspring is a *mamzer*. As, when Rav Dimi came from Eretz Yisrael, he said that Rav Yitzhak bar Avudimi said in the name of our Master, i.e., Rabbi Yehuda HaNasi: With regard to a gentile or a slave who engaged in intercourse with a Jewish woman, the offspring is a *mamzer*.

NOTES

The betrothal of a gentile or a slave with a Jewish woman does not take effect – נכרי ועבד לא תפסי בהו – קדושין: The early commentaries offer various proofs that the betrothal of a gentile or a slave with a Jewish woman is ineffective. With regard to a slave, Rashi cites the homiletic derivation of the verse in which Abraham instructs his slave attendants to "remain here with [im] the ass" (Genesis 22:5), to indicate that slaves are considered to be a people [am] that is comparable to an ass in that their betrothal is entirely ineffective. With regard to a gentile, he cites the case of the gentile female prisoner of war (see Deuteronomy 21:10–14), from which it is clear that there is no possibility of betrothing her prior to her conversion. See Rashi for additional proofs that he cites in the name of the *She'iltot de Rav Aḥai Gaon*. The Ramban also cites an additional proof from the *Mekhilta*: A gentile maidservant may be given to a Hebrew slave in order for them to bear children for their master. When eventually the Hebrew slave goes free, he does not take the gentile maidservant with him; rather, she remains as a slave. The *Mekhilta* demonstrates from here that no marital bond could have existed between them. Through a verbal analogy, the *Mekhilta* derives that the same is true of a gentile.

HALAKHA

אין – Betrothal does not apply to a gentile or a slave – קדושין בנכרי ועבד: If a gentile or a slave betroths a Jewish woman, the betrothal does not take effect at all. Similarly, if a Jew betroths a gentile woman or a maidservant, the betrothal does not take effect (Rambam *Sefer Nashim*, *Hilkhot Ishut* 4:15; *Shulḥan Arukh*, *Even HaEzer* 44:8).