

לְיָגוּזֹר חֲלִיצָה אַחֵר מֵאִמֵּר מִשּׁוּם חֲלִיצָה  
 אַחֵר בִּיָּאָה – אִטּוּ חֲלִיצָה אַחֵר מֵאִמֵּר  
 מִי לֹא בְּעֵינָא גִט לְמֵאִמְרוּ? חֲלִיצָה אַחֵר  
 בִּיָּאָה נִמְי – בְּעֵינָא גִט לְבִיֵּאתוּ.

Alternatively, should we issue a decree stating that other actions are effective after *halitza* is performed after levirate betrothal due to the concern for confusion with the case of *halitza* performed after intercourse? In this case there is a concern that people will assume that no bill of divorce is required after intercourse so long as the *yavam* performed *halitza*. The Gemara challenges this concern: **Is that to say that in the case of *halitza* after levirate betrothal she does not require a bill of divorce for his levirate betrothal**, such that one would conclude the same for *halitza* after intercourse? In the case of *halitza* after levirate betrothal, the woman requires a bill of divorce, and similarly in the case of *halitza* after intercourse she likewise requires a bill of divorce for his intercourse. Thus, the same action performed following *halitza* after levirate betrothal is also performed following *halitza* after intercourse, and therefore there is no need to issue a further decree.

אָמַר רַבָּא: § Rava said:

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מֵאִי טַעְמָא דְרַבִּין גַּמְלִיאֵל – דְּמִסְפָּקָא  
 לִיה: גִּט, אִי דְחִי אִי לֹא דְחִי, מֵאִמֵּר, אִי  
 קָנִי אִי לֹא קָנִי. גִּט אִי דְחִי אִי לֹא דְחִי,  
 אִי קָמָא דְחִי – בְּתָרָא מֵאִי קָעִבִיד? אִי  
 קָמָא לֹא דְחִי – בְּתָרָא נִמְי לֹא דְחִי.

What is the reason for the ruling of Rabban Gamliel that a bill of divorce is not effective after a bill of divorce? It is because he is uncertain with regard to a bill of divorce whether it effectively precludes levirate marriage or whether it does not preclude levirate marriage. Similarly, he is uncertain with regard to levirate betrothal, whether it effectively acquires the *yevama* or does not acquire her at all. The Gemara clarifies: With regard to a bill of divorce, he is uncertain as to whether it precludes levirate marriage or does not preclude it. If the first bill of divorce precludes levirate marriage, what did he do by giving the latter bill of divorce, as it has no substance? Alternatively, if the first bill of divorce does not preclude levirate marriage, neither does the latter preclude levirate marriage.

מֵאִמֵּר אִי קָנִי אִי לֹא קָנִי, אִי קָמָא קָנִי –  
 בְּתָרָא מֵאִי קָעִבִיד? וְאִי קָמָא לֹא קָנִי –  
 בְּתָרָא נִמְי לֹא קָנִי.

Likewise, with regard to levirate betrothal, he is uncertain as to whether it acquires the *yevama* or does not acquire her. If the first levirate betrothal effectively acquires the *yevama*, what does the last one accomplish? And if the first one does not acquire her, the last one also does not acquire her. For this reason Rabban Gamliel maintains that a bill of divorce is not effective after a bill of divorce was given, and similarly levirate betrothal is not effective after levirate betrothal was performed.<sup>N</sup>

NOTES

שִׁיתוּת – The opinions of Rabban Gamliel and the Rabbis – רַבִּין גַּמְלִיאֵל וְחַכְמֵי הַיְרוּשָׁלַיִם: The Jerusalem Talmud provides an analysis of Rabban Gamliel's opinion that is similar to the one found here. There it compares Rabban Gamliel's opinion to that of Rabbi Shimon, who maintains that levirate betrothal either acquires the *yevama* completely or it does not acquire her at all. The Jerusalem Talmud goes on to demonstrate, as Abaye argues here, that Rabban Gamliel must be of the opinion that levirate betrothal and a bill of divorce acquire her to a certain extent. The Rashba and others note that the Gemara here does not inquire into the reason behind the opinion of

the Rabbis. Despite the fact that the Gemara briefly states subsequently that the effects of levirate betrothal and a bill of divorce were instituted by the Sages, this sentence does not appear in all versions of the text and is mentioned only incidentally rather than as a full explanation. These commentaries explain that this is because the reasoning of the Rabbis is clear; it is Rabban Gamliel's opinion that requires elucidation. The Rabbis' opinion is that since levirate betrothal is a rabbinic institution, its effect is not complete, and thus both levirate betrothal and a bill of divorce can be effective even after levirate betrothal.

איתבייה אביי: ומוודה רבן גמליאל  
שיש גט אחר מאמר, ומאמר אחר  
הגט, וגט אחר ביאה ומאמר, ומאמר  
אחר ביאה וגט.

Abaye raised an objection to his opinion from a *baraita*: **And Rabban Gamliel concedes that a bill of divorce is effective after levirate betrothal and levirate betrothal is effective after a bill of divorce.** If a *yavam* gave a bill of divorce to one *yevama* and then performed levirate betrothal with the other, or the reverse, both actions would be effective. **And he also concedes that a bill of divorce is effective after intercourse and levirate betrothal** such that if the *yavam* engaged in levirate betrothal with one *yevama*, engaged in intercourse with a second, and gave a bill of divorce to a third, the bill of divorce is effective and he is prohibited from marrying the relatives of the third *yevama*. **And he concedes that levirate betrothal is effective after intercourse and a bill of divorce**, such that if he gave a bill of divorce to one woman, engaged in intercourse with a second, and performed levirate betrothal with a third, the levirate betrothal is effective and the third woman requires a bill of divorce.

ואי מספקא ליה לרבן גמליאל –  
תהיו בביאה דלכתחלה, ותקני! דהא  
תנן: הבעילה, בזמן שהיא בתחלה –  
אין אחריה כלום.

**And if Rabban Gamliel is uncertain<sup>N</sup> with regard to the efficacy of levirate betrothal or a bill of divorce, then the third action should never be effective.** Either the initial levirate betrothal or bill of divorce was completely effective, in which case any subsequent action is not effective, or these actions are not effective at all and the intercourse that followed them **should be like intercourse performed at the beginning, and it should serve to acquire the *yevama* completely,** and any actions performed afterward with the rival wife should be of no account. **For we learned in the mishna: With regard to intercourse, when it is at the beginning, nothing is effective after it.** Consequently, Rabban Gamliel's ruling is difficult.

אלא אמר אביי: לעולם פשיטא ליה  
לרבן גמליאל בגט דדחי, ומאמר  
דקני. מיהו, אמור רבנן: הא יבמה,  
בחד צד מהני בה גט, ובחד צד מהני  
בה מאמר. גט אחר גט – לא דחי,  
דהא דחה ליה קמא, ומאמר אחר  
מאמר – לא קני, דהא קני ליה קמא.  
גט אחר מאמר, ומאמר אחר הגט –  
האי מילתא קא דחי, והאי מילתא  
קא קני.

Rather, Abaye said: **Actually, it is obvious to Rabban Gamliel that a bill of divorce precludes levirate marriage, and that levirate betrothal acquires the *yevama*.** Nevertheless, the Sages said that with regard to this *yevama*, **in one respect a bill of divorce is effective for her, and in another respect levirate betrothal is effective for her,** but they are not effective in the same manner. Therefore, **a bill of divorce given after a bill of divorce does not preclude levirate marriage, as the first bill of divorce has already precluded it for him as much as he can preclude it by means of a bill of divorce.** **And levirate betrothal performed after levirate betrothal does not acquire her, as the first levirate betrothal has acquired her for him as much as possible.** However, with regard to a **bill of divorce after levirate betrothal, and levirate betrothal after a bill of divorce, this action precludes levirate marriage and that action acquires the *yevama*.** Since the acquisition of levirate betrothal and the nullification of a bill of divorce work in different ways, there can be both an acquisition and a nullification, and therefore one can be effective after the other.

ורבנן: כל חד וחד תקינו ליה רבנן גט  
ומאמר ביבמה.

**However, the Rabbis maintain that the Sages instituted for each and every one of the brothers-in-law both the nullification of a bill of divorce and the acquisition of levirate betrothal for a *yevama*,** and they decreed that these should be effective for each of the *yevamot*. Therefore the strength of the first bill of divorce or levirate betrothal is equal to that of the second one, and both are effective.

#### NOTES

ואי מספקא ליה לרבן –  
גמליאל וכו': Rashi explains this proof in the following manner: If Rabban Gamliel maintains that levirate betrothal either acquires the *yevama* fully or not at all, either way he should not concede in the case of a bill of divorce after intercourse and levirate betrothal. If levirate betrothal acquires her completely the subsequent intercourse and bill of divorce are of no consequence, and if levirate betrothal does not acquire her at all then the intercourse should acquire her fully, and any further action should be ineffective. The early commentaries note that according to Rashi's explanation, Abaye's statement is truncated, as he only mentions

one side of the issue (Rashba; Ritva). They therefore prefer the following interpretation of Rabbeinu Hananel: If Rabban Gamliel is uncertain as to whether levirate betrothal acquires the *yevama*, how can something that only uncertainly acquires her nullify an act, i.e., intercourse, that definitely acquires her according to Torah law? Therefore, when the intercourse takes place after the levirate betrothal it should acquire her completely and the subsequent bill of divorce should not be effective. However, it has been pointed out that this argument is explained in the Jerusalem Talmud in precisely the manner suggested by Rashi.

This invalid intercourse is superior to levirate betrothal – והאי ביאה פסולה עדיפא ממאמר: It would appear that one could similarly argue that a bill of divorce is also preferable to levirate betrothal, as it too is effective after levirate betrothal. However, the only reason a bill of divorce takes effect after levirate betrothal is that a bill of divorce works on a different plane than levirate betrothal, i.e., its effectiveness is not related to that of the levirate betrothal. In contrast, the power of acquisition of intercourse is certainly of the same type as levirate betrothal (*Tosafot Yeshanim*).

Acquires the entire remainder left by the bill of divorce – קני לכוליה שוירא דגט: No further levirate betrothal is possible after levirate betrothal and a bill of divorce, as even Rabban Gamliel agrees that in the case of levirate betrothal after levirate betrothal and a bill of divorce, the second levirate betrothal is not effective (*Ritva*).

Shall we say that this is a conclusive refutation of Shmuel – לימא תיהוי תיובתא דשמואל: Most early commentaries follow Rashi's explanation that the difficulty only stems from Rabban Gamliel's opinion, as Rabban Gamliel maintains that even though the *yavam* can perform a superior *halitza* with the rival wife, he can nevertheless exempt the rival wife by means of this invalid *halitza*. The opinion of the Rabbis, however, presents no difficulty, for they maintain that the *halitza* of the two rival wives is equally invalid. *Tosafot Yeshanim*, however, claim that the Gemara could have raised the difficulty according to the opinion of the Rabbis, but it preferred to cite Rabban Gamliel, who states this *halakha* explicitly.

## HALAKHA

A bill of divorce to this one and a bill of divorce to that one – גט לזו וגט לזו: If two rival wives required levirate marriage, and the *yavam* gave a bill of divorce to each of them, he is forbidden to the relatives of both. Similarly, if two *yevamin* gave a bill of divorce to one *yevama*, they are both forbidden to her relatives, and likewise two *yevamin* who gave bills of divorce to two different rival wives, each is prohibited to the relatives of the woman to whom he gave the bill of divorce, in accordance with the opinion of the Rabbis (*Rambam Sefer Nashim, Hilkhhot Yibbum 5:15; Shulhan Arukh, Even HaEzer 170:4*).

Levirate betrothal with this one and levirate betrothal with that one – מאמר בזו ומאמר בזו: If two rival wives happened before one *yavam*, and he performed levirate betrothal with both of them, he is forbidden to marry the relatives of both. Likewise, if two *yevamin* performed levirate betrothal with one *yevama*, they are both forbidden to marry her relatives, and if the two *yevamin* performed levirate betrothal with two different rival wives, each is forbidden to the relatives of the woman with whom he performed the levirate betrothal, as stated by the Rabbis (*Rambam Sefer Nashim, Hilkhhot Yibbum 5:15; Shulhan Arukh, Even HaEzer 170:6*).

והאי ביאה פסולה עדיפא ממאמר, וגריעא ממאמר. עדיפא ממאמר, דאילו מאמר אחר מאמר לא מהני, ואילו ביאה אחר מאמר – מהני. וגריעא ממאמר, דאילו מאמר אחר הגט קני לכוליה שוירא דגט, ואילו ביאה אחר הגט – לא קניא ליה לכוליה שוירא דגט.

Abaye proceeds to explain the rest of Rabban Gamliel's teaching in the *baraita*: **And this invalid intercourse**, i.e., intercourse that was performed after a disqualifying action, such as levirate betrothal or a bill of divorce, is **superior to levirate betrothal<sup>N</sup>** and also **inferior to levirate betrothal**: It is preferable to levirate betrothal in the following respect: **whereas levirate betrothal after levirate betrothal is not effective at all, intercourse after levirate betrothal is effective**, because intercourse acquires a *yevama* according to Torah law. **And it is inferior to levirate betrothal, for whereas levirate betrothal after a bill of divorce according to Rabban Gamliel acquires the entire remainder of the woman left by the bill of divorce,<sup>N</sup>** such that any further levirate betrothal would be ineffective, **intercourse after a bill of divorce does not acquire the entire remainder of the woman left by the bill of divorce**, as it is not considered valid intercourse, and a subsequent levirate betrothal is effective.

תנו רבנן: כיצד אמר רבן גמליאל אין גט אחר גט? שתי יבמות שנפלו לפני יבם אחד, ונתן גט לזו וגט לזו – רבן גמליאל אומר: חולץ לראשונה ואסור בקרובותיה, ומותר בקרובות שניה.

§ The Sages taught: **How**, i.e., in what case, did Rabban Gamliel say that a bill of divorce is not effective after a bill of divorce? In the case of two *yevamot* who happened before one *yavam* and he gave a bill of divorce to this one and a bill of divorce to that one. Rabban Gamliel says: **He performs *halitza* with the first one and is forbidden to marry her relatives**, as she is his *halitza*, **and he is permitted to marry the relatives of the second one**. Because the bill of divorce he gave the second woman is of no consequence at all, she is merely the rival wife of his *halitza*, and he is therefore permitted to marry her relatives.

וחכמים אומרים: נתן גט לזו וגט לזו – אסור בקרובות שתיהן, וחליצה לאחת מהן. וכן אתה אומר בשני יבמים ויבמה אחת.

But the Rabbis say: **If he gave a bill of divorce to this one and a bill of divorce to that one,<sup>H</sup>** he is forbidden to marry the relatives of both of them, and he must perform *halitza* with one of them. **And you would say the same with regard to two *yevamim* and one *yevama***. If the two *yevamin* gave one *yevama* a bill of divorce, one after the other, Rabban Gamliel maintains that the bill of divorce of the second *yavam* is of no account, and he is therefore permitted to marry her relatives, whereas the Rabbis hold that it is effective in that it renders him forbidden to her relatives.

כיצד אמר רבן גמליאל אין מאמר אחר מאמר? שתי יבמות שנפלו לפני יבם אחד ועשה מאמר בזו ומאמר בזו. רבן גמליאל אומר: נתן גט לראשונה, וחולץ לה, ואסור בקרובותיה, ומותר בקרובות שניה. וחכמים אומרים: נתן גט לשתיהן, ואסור בקרובות שתיהן, וחליצה לאחת מהן. וכן אתה אומר בשני יבמים ויבמה אחת.

How, with regard to what circumstance, did Rabban Gamliel say that there is no levirate betrothal after levirate betrothal? In a case of two *yevamot* who happened before one *yavam*, and he performed levirate betrothal with this one and levirate betrothal with that one,<sup>H</sup> Rabban Gamliel says: **He gives a bill of divorce to the first one and performs *halitza* with her, and is forbidden to her relatives, but he is permitted to the relatives of the second one**, as the levirate betrothal performed with the rival wife is ineffective. **But the Rabbis say: He gives a bill of divorce to both of them**, as the levirate betrothal is effective for both women, **and he is forbidden to the relatives of both of them; and as for *halitza*, he must perform it with one of them**. **And you would say the same with regard to two *yevamim* and one *yevama***. If the first *yavam* performed levirate betrothal with the *yevama*, and the second *yavam* consequently performed levirate betrothal with her, they are both required to give her a bill of divorce and both are forbidden to marry her relatives.

אמר רב: נתן גט לזו וגט לזו, רבן גמליאל אומר: חולץ לראשונה ואסור בקרובותיה, ומותר בקרובות שניה. לימא תיהוי תיובתא דשמואל, דאמר שמואל: חלץ לבעלת הגט – לא נפטרה צרה!

The Master said above in the *baraita*: **He gives a bill of divorce to this one and a bill of divorce to that one**. Rabban Gamliel says: **He performs *halitza* with the first one and is forbidden to marry her relatives, and he is permitted to marry the relatives of the second one**. The Gemara asks: **Shall we say that this is a conclusive refutation of the statement of Shmuel?<sup>N</sup>** For Shmuel said: **If he performed *halitza* with the woman who received a bill of divorce, the rival wife is not exempted by this invalid *halitza***. The *yavam* must therefore repeat the *halitza* with the rival wife as well. This appears to contradict the *baraita*, where Rabban Gamliel rules that he has to perform *halitza* with only one of the *yevamot*.

NOTES

The levirate bond is substantial...the levirate bond is not substantial – יקָה...אֵין יקָה: Although the Torah (Deuteronomy 25:5) forbids a widow requiring levirate marriage from remarrying until *ḥalitza* has been performed, the nature of the connection between her and her *yavam* is not clear. Is this connection seen as a form of betrothal, i.e., the levirate bond is substantial, or is it seen as a unilateral obligation upon the widow to wait for her brother-in-law's action, i.e., the levirate bond is not substantial.

אָמַר לָךְ שְׂמוּאֵל: בִּי אָמַרְי אָנָּא – אֲלֵיבָא דְמָאן דְּאָמַר יֵשׁ זִיקָה, וְרַבֵּן גַּמְלִיאֵל סָבַר אֵין זִיקָה.

The Gemara answers: Shmuel could have said to you: When I said my above teaching, it was in accordance with the opinion of the one who said that the levirate bond is substantial, and he must therefore perform a valid *ḥalitza* in order to cancel this bond. A *ḥalitza* performed with a woman who received a bill of divorce is not powerful enough to completely cancel the bond of the rival wife who did not performed *ḥalitza*. But Rabban Gamliel holds that the levirate bond is not substantial,<sup>N</sup> and therefore any *ḥalitza* that releases one of the women also serves to release the other.

וּמְדַרְבָּן גַּמְלִיאֵל סָבַר אֵין זִיקָה

The Gemara asks: But if so, from the fact that Rabban Gamliel holds that the levirate bond is not substantial,

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The Rabbis hold that the levirate bond is substantial – רַבָּנִין יקָה: Rashi explains that this inference cannot be proven from the mishna, but rather it is logical to assume that just as Rabban Gamliel and the Rabbis disagree with regard to the strength of levirate betrothal, they similarly disagree about the nature of the levirate bond itself. The Ramban and the Rashba, on the other hand, maintain that there is an inherent connection between the nature of the levirate bond and the strength of levirate betrothal. Rabban Gamliel maintains that the levirate bond is not substantial, and therefore levirate betrothal or a bill of divorce performed by one *yavam* is sufficient to nullify the levirate bond between this *yevama* and the other *yevamin* and between him and the other *yevamot* entirely. The Rabbis, however, maintain that the levirate bond is substantial, and therefore no one act of levirate betrothal or bill of divorce can completely cancel this bond. Therefore, all of the actions performed by all the *yevamin* and *yevamot* are effective.

רַבָּנִין סָבְרִי יֵשׁ זִיקָה. וְקָתְנִי סִיפָּא: וְכֵן אֲתָה אֹמְרָא בְּשֵׁנִי וּבְמִין וּבְמָה אַחַת. לֵימָא תִּיהוּי תִּיבְתָא דְרַבָּה בְּרַב רַב הוּנָא אָמַר רַב. דְּאָמַר רַבָּה בְּרַב הוּנָא אָמַר רַב: חֲלִיצָה פְּסוּלָה – צְרִיכָה לְחֻזּוֹר עַל כָּל הָאֲחֵינָן!

it can be inferred that the Rabbis hold that the levirate bond is substantial,<sup>N</sup> as it is assumed that they disagree with Rabban Gamliel in this regard as well. And the latter clause of that *baraita* teaches: And you would say the same<sup>N</sup> with regard to two *yevamin* and one *yevama* such that if the two *yevamin* gave one *yevama* a bill of divorce, she is exempted by the *ḥalitza* of one of them. If so, let us say that it is a conclusive refutation of the statement that Rabba bar Rav Huna said that Rav said. For Rabba bar Rav Huna said that Rav said: In cases of invalid *ḥalitza*, the *yevama* is required to repeat the *ḥalitza* with all the brothers. If the *ḥalitza* was invalid for some reason, all the brothers must perform *ḥalitza* with the *yevama*, as her bond with them is not canceled by an invalid *ḥalitza*.

And the latter clause teaches: And you would say the same, etc. – קָתְנִי סִיפָּא וְכֵן אֲתָה אֹמְרָא וכו'. The early commentaries ask: Why does the Gemara cite the latter clause in the *baraita* when it could have equally questioned the statement of Rabba bar Rav Huna by citing a proof from the first part of the *baraita*? With regard to one *yavam* and two *yevamot* the Rabbis rule that a single *ḥalitza* is enough. One could deduce that if a woman requires *ḥalitza* from all the brothers when her *ḥalitza* was invalid, then similarly in a case of one *yavam* and two *yevamot*, he should have to perform *ḥalitza* with all the *yevamot*. They answer that the Gemara could indeed have asked in this manner, but it preferred to raise a difficulty from a source that explicitly states that she does not require *ḥalitza* from all the brothers (*Tosefot HaRosh*; *Tosefot Yeshanim*). However, some authorities learn from the fact that the Gemara specifically cites the latter clause that in the case of invalid *ḥalitza*, it is not necessary to perform *ḥalitza* with all the *yevamot* (*Tosefot Had MiKamma'e*; Meiri).

אָמַר לָךְ רַבָּה בְּרַב רַב הוּנָא: בֵּין לְרַבָּן גַּמְלִיאֵל בֵּין לְרַבָּנִין סָבְרִי אֵין זִיקָה, וְהָכָא בְּגֵט אַחַר גֵּט וּמֵאֲמַר אַחַר מֵאֲמַר קְמִיפְלִגְי.

The Gemara responds: Rabba bar Rav Huna could have said to you: Both Rabban Gamliel and the Rabbis hold that the levirate bond is not substantial, whereas my statement is in accordance with the opinion that the levirate bond is substantial. And here the dispute does not concern the topic of the levirate bond at all, but rather it only involves the explicitly mentioned issue: They disagree with regard to the efficacy of a bill of divorce after a bill of divorce and levirate betrothal after levirate betrothal.

אָמַר מַר: עֲשֵׂה מֵאֲמַר בּוֹ וּמֵאֲמַר בּוֹ, רַבָּן גַּמְלִיאֵל אֹמְרָא: נוֹתֵן גֵּט לְרֵאשׁוֹנָה וְחוֹלֵץ לָהּ, וְאִסּוּר בְּקִרְבּוֹתֶיהָ, וּמוֹתֵר בְּקִרְבּוֹת שְׂנֵיָהּ. מְכַדֵּי קִסְבֵּר רַבָּן גַּמְלִיאֵל אֵין מֵאֲמַר אַחַר מֵאֲמַר – רֵאשׁוֹנָה נְמִי תִּתִּיבֵם! גִּזְרָה דְלִמָּא אֲתִי לֵיבּוּמִי לְשִׁנְיָהּ.

The Master said above in the *baraita*: If he performed levirate betrothal with this one and levirate betrothal with that one, Rabban Gamliel says: He gives a bill of divorce to the first one and performs *ḥalitza* with her and is forbidden to her relatives, but he is permitted to the relatives of the second one. The Gemara poses a question: Since Rabban Gamliel holds that levirate betrothal is not effective after levirate betrothal, and the second levirate betrothal is of no consequence, the first woman should also be permitted to enter into levirate marriage. Why must he perform *ḥalitza* with her? The Gemara answers: It is prohibited due to a rabbinic decree lest he perform levirate marriage with the second woman. The Sages were concerned that in cases where the *yavam* performed levirate betrothal with both women, if he were permitted to consummate the levirate marriage with the first woman, he might do so with the second woman as well.

Levirate betrothal acquires her as a full-fledged acquisition – מֵאֲמַר קוֹנֵה קַנְיָן גָּמוּר: *Tosefot* point out that these *tanna'im* are not in complete agreement, as they disagree over the particulars of the acquisition. The common denominator is that they consider levirate betrothal to be very powerful. Rashi also notes that this does not mean that all these Sages maintain that levirate betrothal is a full-fledged acquisition, but rather it is at least a significant acquisition. The *Keren Ora* suggests that the shared feature of all these opinions might be that they all view levirate betrothal as having a certain validity from the Torah, not merely as a rabbinical institution.

אָמַר רַבִּי יוֹחָנָן: רַבָּן גַּמְלִיאֵל, וּבֵית שְׁמַאי, וְרַבִּי שְׁמַעוֹן, וּבֵן עֲזַאי וְרַבִּי נְחֵמְיָהּ – כּוֹלְהוּ סְבִירָא לָהּ: מֵאֲמַר קוֹנֵה קַנְיָן גָּמוּר. רַבָּן גַּמְלִיאֵל – הָא דְאָמְרִין.

§ Rabbi Yohanan said: Rabban Gamliel, and Beit Shammai, and Rabbi Shimon, and ben Azzai, and Rabbi Nehemya, they all hold that levirate betrothal acquires the *yevama* as a full-fledged acquisition,<sup>N</sup> like a regular betrothal. The source for Rabban Gamliel's opinion is that which we said above, that levirate betrothal is not effective after levirate betrothal. Rabbi Yohanan maintains that the second levirate betrothal is not effective because she was already fully acquired by the first one.

Rabbi Shimon, as it is taught... if the intercourse, etc. – רבי שמעון דתנא: אם ביאת וכו' שבעין דתנא... The Ramban asks: Why is it necessary for the Gemara to derive a proof from invalid intercourse, by comparing it to levirate betrothal, when Rabbi Shimon explicitly makes the same claim with regard to levirate betrothal itself (see 19a). He answers, and the Rashba explains similarly, that it is possible that when Rabbi Shimon stated his argument there, he was speaking in accordance with the opinion of the Rabbis only in order to argue against their opinion, whereas he himself does not maintain that opinion (see Arukh LaNer and Yosef Lekah for a different resolution).

The intercourse of a nine-year-old boy is like levirate betrothal – ביאת בן תשע כמאמר: Some commentaries are puzzled by this *halakha*: Since any type of intercourse acquires a *yevama*, whether it is performed intentionally or unwittingly, why should the intercourse of a nine-year-old not acquire her as well, being that the Sages considered this intercourse to be full-fledged intercourse with regard to forbidden relations? They answer that it is an established *halakha* that the wife of a minor is not fully acquired by him. Although his cohabitation has the status of intercourse, it is not considered an act of acquisition (*Tosefot HaRosh*; see Ramban, who attributes this response to Rabbi Avraham Av Beit Din and questions it).

The Sages considered invalid intercourse to be like levirate betrothal – ביאה פסולה דכמאמר שויה רבנן: The early commentaries raise a serious difficulty: Surely Rabbi Neḥemya distinguishes between invalid intercourse, after which no action is effective, and levirate betrothal, where subsequent action is effective. But if so, how can he prove that invalid intercourse is like levirate betrothal? Rabbeinu Ḥananel cites a proof from a *Tosefta* that states the following: When did they say that nothing is effective after intercourse? When it is at the beginning; but if it is not at the beginning it is like levirate betrothal. He adds that the principle is that an unattributed *Tosefta* follows the opinion of Rabbi Neḥemya, but the Ramban retorts that it is clear from the context that this particular *Tosefta* is not in accordance with Rabbi Neḥemya.

Rabbi Avraham Av Beit Din writes that invalid intercourse is like levirate betrothal in that neither of them enables the wife of a priest to eat *teruma*. However, the Ramban and the Rashba question this answer as well. They are similarly dissatisfied with the resolutions offered by *Tosafot*, as they do not fit the wording of the Gemara. The Ramban himself answers that Rabbi Neḥemya maintains that invalid intercourse is like levirate betrothal in that this type of intercourse does not exempt a *yevama* with whom an action had previously been performed. However, Rabbi Neḥemya disagrees with the Rabbis with regard to a different issue, as he maintains that no action is effective after invalid intercourse. His reasoning is that the decrees of the Sages are unnecessary in the case of intercourse, as intercourse is an effective method of acquisition from the Torah, and people will therefore not be confused with regard to its efficacy. The Rashba and the Ritva accept the basic premise of this opinion.

בית שמאי – דתנן: שלשה אחיו, שנים מהם נשואין לשתי אחיות ואחד מופנה, מת אחד מבעלי אחיות ועשה בה מופנה מאמר, ואחר כך מת אחיו השני, בית שמאי אומרים: אשתו עמו, והלזו תצא משום אחות אשה.

The source for the opinion of Beit Shammai is as we learned in a mishna: In the case of three brothers, two of whom were married to two sisters, and one who was single, the following occurred: The husband of one of the sisters died childless, leaving behind his wife, and the single brother performed levirate betrothal with this wife. Afterward, the second brother died, whereby the second brother's wife, the sister of the betrothed, happened before him for levirate marriage as well. In this case, Beit Shammai say: His wife remains with him, i.e., the woman he betrothed is considered like his wife, and he is not required to divorce her. And this other leaves the *yavam* and is exempt from levirate marriage due to the fact that she is the sister of a wife. This indicates that Beit Shammai hold that the levirate betrothal performed with the first woman makes her fully betrothed, thereby nullifying the levirate bond with her sister.

רבי שמעון – דתנא. אמר להו רבי שמעון לחכמים: אם ביאת ראשון ביאה – ביאת שני אינה ביאה, אם ביאת ראשון אינה ביאה – ביאת שני נמי אינה ביאה. והא ביאת בן תשע, דכמאמר שויה רבנן, וקאמר רבי שמעון אינה ביאה.

The source for the opinion of Rabbi Shimon is based on the following case cited in a mishna (96b): In the case of a boy aged nine years and one day old who had relations with his *yevama*, and afterward his brother, who is also nine years and one day old, had relations with her, the second brother disqualifies her from performing levirate marriage with the first one. Rabbi Shimon says he does not disqualify her. As it is taught in a *baraita* that Rabbi Shimon said to the Rabbis: If the intercourse<sup>n</sup> of the first brother is considered effective intercourse, the intercourse of the second brother is not considered effective intercourse such that it would disqualify her from performing levirate marriage with the first brother, as the first brother has already acquired her through his intercourse. If the intercourse of the first brother is not considered effective intercourse, the intercourse of the second brother is also not effective intercourse. And the Sages considered the intercourse of a nine-year-old boy<sup>b</sup> to be like levirate betrothal,<sup>n</sup> and Rabbi Shimon says that the intercourse of the second boy is not considered intercourse. This proves that in his opinion the intercourse of a nine-year-old fully acquires the *yevama*, and similarly, so does levirate betrothal.

בן עזאי – דתנא. בן עזאי אומר: יש מאמר אחר מאמר בשני יבמין ויבמה אחת, ואין מאמר אחר מאמר בשתי יבמות ויבם אחד. רבי נחמיה – דתנן, רבי נחמיה אומר: אחת בעילה ואחת חליצה, בין בתחלה בין באמצע בין בסוף – אין אחריה בלום. והא ביאה פסולה, דכמאמר שויה רבנן וקתני: אין אחריה בלום.

This source for ben Azzai's opinion is as it is taught in a *baraita* that ben Azzai says: Levirate betrothal is effective after levirate betrothal in the case of two *yevamin* and one *yevama*, but levirate betrothal is not effective after levirate betrothal in the case of two *yevamot* and one *yavam*. Because the latter case involves only one *yavam*, his levirate betrothal fully acquires the *yevama*, and therefore the levirate betrothal he performs with the second woman is of no account, as he is already betrothed to the first *yevama*. The source for Rabbi Neḥemya's opinion is as we learned in a mishna that Rabbi Neḥemya says: With regard to both intercourse and *halitza*, whether at the beginning, in the middle, or at the end, nothing is effective after it. And the Sages considered invalid intercourse to be like levirate betrothal,<sup>n</sup> and Rabbi Neḥemya teaches that nothing is effective after it. This indicates that he maintains that no form of acquisition is effective after levirate betrothal, as levirate betrothal completely acquires the *yevama*.

ביצד עשה מאמר כו'.

§ The mishna states: How so? If he performed levirate betrothal with his *yevama* and gave her a bill of divorce, etc.

#### BACKGROUND

The intercourse of a nine-year-old boy – ביאת בן תשע: According to the Sages, sexual intercourse cannot be performed by a boy who is less than nine years old, and therefore it has no halakhic significance. From that age and onward such an act of intercourse is recognized as significant, even prior to the advent of physical maturity.