

האי גט אחר גט הוא! אמר רב יהודה, הכי קאמר: גט אחר הגט ומאמר אחר מאמר כדאמרן, יבם אֶחָד ויבמה אחת כיצד התרתן? עשה מאמר ביבמתו ונתן לה גט – צריכה הימנו חליצה.

”עשה מאמר ובעל הרי זו כמצותה.” לימא מסייע ליה לרב הונא, דאמר רב הונא: מצות יבמה – מקדש ואחר כך בועל. אימא: אף זה כמצותה.

פשיטא! סלקא דעתך אמינא: כיון דאמר מר: העושה מאמר ביבמתו – פריחה הימנו ויקת יבמין, וחלה עליו ויקת ארוסין ונשואין, אימא לאו מצוה קעביד – קא משמע לן.

גופא אמר רב הונא: מצות יבמין מקדש ואחר כך בועל, ואם בעל ועשה מאמר – קנה. אם בעל ועשה מאמר – פשיטא, דהא קנייה בביאה! אלא אימא: אם בעל בלא מאמר – קנה.

The Gemara is puzzled: Is this case upon which the mishna elaborates the case of a bill of divorce after a bill of divorce that is mentioned first in the mishna? The mishna first is referring to a bill of divorce after a bill of divorce, but when it comes to the specifics, it mentions a bill of divorce after levirate betrothal. Rav Yehuda said: This is what the *tanna* is saying: With regard to a bill of divorce after a bill of divorce, and levirate betrothal after levirate betrothal, it is as we said and these cases were explained in the *baraita*, but with regard to one *yavam* and one *yevama*, how is their complex bond released? He then proceeds to delineate: If he performed levirate betrothal with his *yevama* and gave her a bill of divorce, she requires *halitza* from him.

§ The mishna teaches: If the *yavam* performed levirate betrothal and engaged in intercourse, this is done in accordance with its mitzva.^h The Gemara suggests: Let us say that this mishna supports the statement of Rav Huna. As Rav Huna said: The mitzva of a *yevama* is properly performed when the *yavam* betroths the *yevama* and only afterward engages in intercourse. This statement indicates that the levirate betrothal is a necessary component of the mitzva, and the mishna seems to imply the same. The Gemara refutes this claim: This is not necessarily the case, as you can read the mishna as stating that this also is in accordance with its mitzva. If he performed levirate betrothal and then engaged in intercourse, this too is a proper manner to proceed, but we do not have to interpret the mishna as indicating that this is the only way to fulfill the mitzva.

The Gemara asks: Isn't this obvious? If one can fulfill the mitzva without performing levirate betrothal, why would one think that levirate betrothal is detrimental? The Gemara answers: It was indeed necessary for the mishna to teach us this, for it might enter your mind to say that since the Master said above (29b): One who performs levirate betrothal with his *yevama* causes the levirate bond to dissipate from himself, and a standard bond of betrothal and marriage takes effect on him, you might say that he no longer performs a mitzva when he carries out levirate marriage, as the levirate bond is no longer in place. The *tanna* therefore teaches us that we consider the levirate betrothal and the subsequent intercourse as part of the same process, which constitutes a mitzva.

The Gemara continues: With regard to the matter itself, Rav Huna said: The mitzva of levirate marriage is properly performed when the *yavam* betroths the *yevama* and afterward engages in intercourse, and if he engaged in intercourse and later performed levirate betrothal, he has acquired the *yevama*. The Gemara is puzzled: If he engaged in intercourse and then performed levirate betrothal it is obvious that he has acquired her, as he has already acquired her by intercourse. The levirate betrothal does not affect the issue one way or another. Rather, say as follows: If he engaged in intercourse without prior levirate betrothal, even in that case he has acquired her.

HALAKHA

The levirate betrothal of a *yevama* – מאמר יבמה: With regard to regular women, the process of marriage involved two stages. The first was betrothal, in which a man would give a woman money or a document or engage in consensual relations with her. This last method was abolished by the *amora* Rav. Through this act of betrothal the man acquired the woman and she was forbidden to all other men. At a later stage, usually a year later, the man would bring the woman into his home as his full-fledged wife. This was done through conjugal relations

and was symbolized by the marriage canopy. With regard to a *yevama*, however, the Torah states that a *yavam* can acquire his *yevama* by intercourse alone. Nevertheless, the Sages instituted that he should betroth her with money or a document and that she requires a marriage canopy like all other women (Rema, citing the Rivash). Only afterward should they engage in intercourse (Rambam *Sefer Nashim*, *Hilkhot Yibbum* 2:1–2; *Shulhan Arukh*, *Even HaEzer* 166:2).

But isn't it taught that he is flogged – וְהִתְנַיָּא לִיקָה: According to Rashi, the assumption of the Gemara at this stage is that he is lashed for transgressing a Torah law. The Rashba and other commentaries support this idea by citing the following homiletic interpretation of the verse that is cited in the Jerusalem Talmud. The Gemara there expounds the verse: “And he shall take her to him to be his wife and consummate the levirate marriage” (Deuteronomy 25:5), in the following manner: “And he shall take her to him to be his wife” by means of betrothal, and afterward he shall “consummate the levirate marriage” through intercourse. It is further explained in the Jerusalem Talmud that this line of reasoning follows the opinion that the action of one who transgresses a Torah law is not effective (see *Arukh LaNer*).

However, the Ritva points out that even according to this opinion the *yavam* should not be liable to lashes, as he has only transgressed a positive mitzva. Furthermore, it is Beit Shammai, not Beit Hillel, who maintain that levirate betrothal acquires the *yevama* by Torah law, and therefore, as the halakha does not accord with Beit Shammai's opinion, it is an established *halakha* that levirate betrothal is only effective by rabbinic decree. *Tosafot* suggest that the Gemara never considered that levirate betrothal is effective by Torah law, but merely that he should be lashed for transgressing a rabbinic ordinance. By not performing levirate betrothal, it is considered as though he had relations with his brother's wife without performing a mitzva. The Ramban explains that the question of the Gemara is not how he can acquire the *yevama* in this way if he receives lashes for his actions, but rather the Gemara is suggesting that he perhaps should be obligated to perform levirate betrothal before he has intercourse with the *yevama* again.

One who betroths a woman in the marketplace, etc. – מֵאֵן דְּמִקְדָּשׁ בְּשׁוּקָא וְכוּ: The objection to this behavior is because the man acted in a disrespectful manner by betrothing in a marketplace or without prior preparation or appeasement of the woman and her family. Betrothing in the market gives the impression of an impromptu decision and is therefore considered licentious, as it is not dissimilar to soliciting a prostitute.

Marriage agreement [shiddukhei] – שְׂדוּכֵי: The Aramaic root *sh-d-kh*, which is apparently the source of the Hebrew word, bears a variety of meanings. It seems that its chief meaning is to silence, from which several other meanings developed, such as to appease or to persuade. This is the likely etymology of the word as an appeasement and agreement between a woman and a man, or two families, as a preparation for marriage.

וְהִתְנַיָּא: לִיקָה! מִכַּת מְרֻדוֹת מְדַרְבְּנָן.

The Gemara challenges this: **But isn't it taught in a *baraita* that a *yavam* who has intercourse without levirate betrothal is flogged?**^{NI} The Gemara answers: The lashes are not because he transgressed by not performing levirate betrothal, but rather they are **lashes for rebelliousness** given for transgressing a rabbinic law, namely for acting in an immodest manner.

דְּרַב מְנַגִּיד מֵאֵן דְּמִקְדָּשׁ בְּבֵימָה, וּמֵאֵן דְּמִקְדָּשׁ בְּשׁוּקָא, וּמֵאֵן דְּמִקְדָּשׁ בְּלֵא שְׂדוּכֵי,

The Gemara cites other instances where the Sages administered lashes for immodest behavior. **As Rav would flog one who betroths a woman by intercourse,**^H despite the fact that betrothal is effective by this method, because he acted in a promiscuous manner. **And he would likewise flog one who betroths a woman in the marketplace,**^N rather than at home, as this too is loose behavior, **and he would also administer lashes to one who betroths a woman without a prior marriage agreement [shiddukhei],**^N as this too is an act of permissiveness.

וּמֵאֵן דְּמִבְטֵל גִּטָּא, וּמֵאֵן דְּמִסֵּר מוֹדָעָא אֲגִיטָא.

And he would further lash one who nullifies a bill of divorce^H he had earlier sent by declaring in the presence of witnesses that the bill of divorce is nullified. This action is effective, but by doing so he transgresses the rabbinic ordinance of the Sages that bans such an action as it might lead his wife to unlawfully wed another. **And he would also flog one who delivers a declaration preemptively invalidating a bill of divorce,** by informing three people before giving a bill of divorce that he is not doing so of his own free will and he wants to cancel it ahead of time. Here too he will mislead his wife, who will assume it is a valid bill of divorce.

וּמֵאֵן דְּפָקִיר שְׁלִיחָא דְרַבָּנָן, וּמֵאֵן דְּשָׁהִי שְׂמִתָּא דְרַבָּנָן עָלֶיהָ תְּלָתִין יוֹמִין וְלֹא אָתִי לְבֵי דִינָא וְתַבַּע לְשִׁמְתִיהָ.

And he would lash one who behaves irreverently toward a messenger of the Sages,^H even if the messenger is not a scholar, as he thereby shows disrespect to the Sages themselves. **And he would administer lashes to one who remained under an excommunication**^H of the Sages for thirty days and did not go to the court and petition for the removal of his excommunication after correcting the sin that led to the excommunication in the first place. This behavior demonstrates that he does not care about the excommunication, and is therefore deserving of lashes.

HALAKHA

If he engaged in intercourse without levirate betrothal he has acquired her and is flogged – בְּעַל בְּלֵא מֵאֵמֶר קְנָה וְלִיקָה: One who has relations with his *yevama* without performing levirate betrothal acquires her, but he receives lashes for rebelliousness from the Sages for acting in an immodest manner (Rambam *Sefer Nashim, Hilkhot Yibbum* 2:2; *Shulhan Arukh, Even HaEzer* 166:2).

One who betroths a woman by intercourse – בְּבֵימָה: One who betroths a woman by intercourse, or betroths her in the marketplace, or without a prior marriage agreement, receives lashes for rebelliousness but she is nevertheless betrothed. The Rema (based on *Tur* citing Rosh) writes that the custom is not to lash one who betrothed in the marketplace or without a marriage agreement (Rambam *Sefer Nashim, Hilkhot Ishut* 3:21–22 and *Sefer Kedusha, Hilkhot Issurei Bia* 21:14; *Shulhan Arukh, Even HaEzer* 26:4).

One who nullifies a bill of divorce, etc. – מֵאֵן דְּמִבְטֵל גִּטָּא וְכוּ: One who sends a bill of divorce to his wife and subsequently retracts and nullifies it in the presence of witnesses, and similarly one who delivers a declaration preemptively invalidating

a bill of divorce, receives lashes for rebelliousness, as stated by Rav (Rambam *Sefer Nashim, Hilkhot Geirushin* 6:26; *Shulhan Arukh, Even HaEzer* 141:67).

One who behaves irreverently toward a messenger of the Sages – מֵאֵן דְּפָקִיר שְׁלִיחָא דְרַבָּנָן: With regard to one who harasses or derides a messenger of the court who is carrying out his duty, if the messenger reports that he was belittled, the messenger is believed like two witnesses, and we place the offender under an excommunication. If there were witnesses to the event, the offender receives lashes for rebelliousness (Rambam *Sefer Shofetim, Hilkhot Sanhedrin* 25:5; *Shulhan Arukh, Hoshen Mishpat* 8:5).

One who remained under an excommunication of the Sages – מֵאֵן דְּשָׁהִי שְׂמִתָּא דְרַבָּנָן עָלֶיהָ: If one was obligated to take an oath by the Sages but he refused to swear, the court places him under an excommunication for thirty days. If he does not come to the court to have the excommunication annulled, the court administers lashes for rebelliousness (Rambam *Sefer Mishpatim, Hilkhot To'en VeNitan* 1:5; *Shulhan Arukh, Hoshen Mishpat* 87:9).

NOTES

A son-in-law who lives in his father-in-law's house – התנא **התנא**: The *ge'onim* state that there is a concern that the mother-in-law might develop an attraction to her first son-in-law. In addition to the concern with regard to forbidden relations, there is also a concern with regard to the monetary aspects of the arrangement (Rabbi Avraham min HaHar). In this context the Rif cites a saying from *Sefer Ben Sira* quoted in tractate *Bava Batra* (89b): I have found no substance lighter than bran; yet, lighter than bran is a son-in-law who lives in the house of his father-in-law.

A document of betrothal – שטר קידושין: The early commentaries explain that an act of using a document to perform levirate betrothal is also called a *ma'amar*, a saying. Admittedly, one who gives a woman a document of betrothal does not have to say anything, but since most betrothals were performed with money, when the man is required to speak, it was called *ma'amar*.

HALAKHA

A son-in-law who lives in his father-in-law's house – התנא **התנא**: The Sages forbade a son-in-law to live in his father-in-law's house. The Ra'avad writes that if a special area is set aside for him and his wife, it is permitted. It appears that we rely on this opinion in order to be lenient in this area (*Maggid Mishneh*; see *Tosafot*). In addition, the early commentaries state in tractate *Kiddushin* that nowadays we are less concerned with regard to this issue (Rambam *Sefer Kedusha*, *Hilkhot Issurei Bia* 21:15).

He was suspected, etc. – מידם הוה דייס וכו': If one is suspected of involvement with a forbidden relation, or if there are rumors circulating with regard to them, he may not live in the same alleyway as her, nor may he be seen in the same neighborhood, in accordance with Rav Sheshet. The Ra'avad claims that this *halakha* only applies to one's mother-in-law, as she is particularly close to him due to her daughter (Rambam *Sefer Kedusha*, *Hilkhot Issurei Bia* 2:12).

A document of betrothal – שטר קידושין: If one writes a document on paper or any other material, even on something worth less than a *peruta*, that states: You are hereby betrothed to me, and gives it to a woman in the presence of witnesses, she is betrothed. The document must, however, be written in the name of that particular woman (Rambam *Sefer Nashim*, *Hilkhot Ishut* 3:3; *Shulhan Arukh*, *Even HaEzer* 32:1).

The marriage contract of levirate marriage – כתובת יבמין: A *yavam* is also required to write a marriage contract for his *yevama*, but the wording of his contract differs from that of a regular marriage contract. The main difference is that the fiscal responsibility for the marriage contract is upon the property of the deceased brother (Rambam *Sefer Nashim*, *Hilkhot Yibbum* 4:32).

The bill of divorce of a yevama – גט יבמה: If the *yavam* gives a bill of divorce to the *yevama* he disqualifies her and her rival wives from levirate marriage, both to himself and his brothers. Any bill of divorce that disqualifies a woman for marrying into the priesthood also disqualifies her from levirate marriage (Rambam *Sefer Nashim*, *Hilkhot Yibbum* 5:1; *Shulhan Arukh*, *Even HaEzer* 170:1).

PERSONALITIES

The Sages of Neharde'a – נהרדעי: The Gemara states elsewhere that anonymous statements attributed to the Sages of Neharde'a refer to Rav Hama from Neharde'a, who served as the head of the yeshiva of Neharde'a for several years following the passing of Rav Nahman bar Yitzhak. Apparently, Rav Hama was related to the house of the Exilarch, and for a time was its official scholar. It is also possible that he was the same Rav Hama who met with the king of Persia and discussed Torah matters with him.

ועל חתנא דדאייר בבי חמוהי. דדאייר – אין, דחליף – לא. והא ההוא דחליף אבבא דבי חמוהי, ונגדיה רב ששת! ההוא – מידם הוה דייס מחמתיה.

נהרדעי אמרי: בכולהו לא מנגיד רב אלא למקדש בביתא ובלא שדוכי. ואיכא דאמרי: אפילו בשדוכי נמי משום פריצותא.

תנו רבנן: כיצד מאמר – נתן לה כסף או שוה כסף, ובשטר כיצד? בשטר כיצד? כדאמרו: כתב לה על הנגיד או על החרס, אף על פי שאין בו שוה פרוטה: "הרי את מקודשת לי!" אמר אביי, הכי קאמר: שטר כתובת יבמין כיצד –

כתב לה: אנא פלוני בר פלוני קבילית ית פלונית יבמתי עלי לזון ולפרנסה כראוי, ובלבד שתהא כתובתה על נכסי בעלה הראשון. ואי לית לה מראשון – תקינו לה רבנן משני, כדי שלא תהא קלה בעיניו להוציאה.

בעא מיניה אביי מרבא: נתן לה גט, ואמר: הרי את מגורשת הימני ואי את מותרת לכל אדם, מהו? גט יבמה דרבנן הוא. גט דמהני באשת איש מהני ביבמה. גט דלא מהני באשת איש – לא מהני ביבמה. או דלמא אתי לאחלופי בגיטא?

And he would also lash a son-in-law who lives in his father-in-law's house,^{NH} as this is likely to lead to temptation between the younger couple and older couple who share the same house. The Gemara asks: With regard to **one who lives in his father-in-law's house, yes, he would lash him, but with regard to one who only passed through his father-in-law's house at regular intervals, no, he would not lash him?** But an incident occurred involving a **certain man who passed by the entrance to his father-in-law's house and Rav Sheshet lashed him.** The Gemara explains: There was a special set of circumstances in that case, as **that man was suspected^H with regard to his mother-in-law,** and therefore he was lashed merely for passing near her house, as he thereby gave credence to the rumors.

The Sages of Neharde'a^P would say: **In all these cases Rav would not flog, apart from the case of one who betrothed by intercourse and without a prior marriage agreement. And there are those who say he would flog a man who betrothed by intercourse even if he did so with a prior marriage agreement, due to the immorality involved, as he must invite witnesses to observe the act.**

S The Sages taught: **How is levirate betrothal performed? He gives her money or the equivalent value of money and declares: You are hereby betrothed to me.** The Gemara asks: **And with a document,^N how does he betroth her?** The Gemara is puzzled by this question: **With a document, how does he betroth her?** It is as we have said by the *halakhot* of a regular document of betrothal: **If he wrote to her on paper or on earthenware, even though it is not worth a peruta, the words: You are hereby betrothed to me,^H it is effective.** As a document is not effective as a means of betrothal due to its monetary value but rather due to the words it contains, there is no requirement that it be of a minimum value. However, because the *halakhot* of betrothal by a document were already taught, the Gemara is puzzled as to the nature of this question. **Abaye said that this is what the baraita is saying: With regard to the document of a marriage contract for levirate marriage, how is it written?** Abaye understands that the question did not refer to the document of betrothal but rather to the marriage contract of a levirate marriage.

The Gemara explains that **he writes to her: I, so-and-so, son of so-and-so, have accepted so-and-so, my yevama upon me, to feed and maintain her in a fitting manner, provided that her marriage contract will still be payable from the property of her first husband and not from the property of the yavam.^H** The Gemara adds: **But if the first husband does not have property, the Sages instituted for her that she should receive her marriage contract from the second husband, i.e., the yavam, for the same reason that they instituted the marriage contract in the first place: So that she will not be demeaned in his eyes such that he will easily divorce her.** If he will suffer no financial penalty, he is likely to divorce over the smallest argument.

S Abaye inquired of Rabba: **If a yavam gave his yevama a bill of divorce, and said the following formula: You are hereby divorced from me but you are not permitted to any other man, what is the status of such a bill of divorce? Is the bill of divorce of a yevama^H a bill of divorce based on rabbinic law and therefore subject to the halakhot of a regular bill of divorce; and consequently, a bill of divorce that is effective for a married woman is also effective for a yevama, and a bill of divorce that is not effective for a married woman is not effective for a yevama?** Since this type of a divorce is invalid in the case of a married woman, it is similarly ineffective in the case of a *yevama*. **Or perhaps the Sages were concerned that perhaps people will come to confuse this bill of divorce with an unqualified bill of divorce given by a yavam and they therefore decreed that it should affect the levirate bond, preventing the yavam from marrying the yevama.**

Scribe [*lavlar*] – לַבְּלָר: The root of the word is from the Latin *librarius*, a writer, especially of contracts. *Lavlar* was another name for a scribe or an expert in writing. His field of expertise was not only the writing itself but also the wording of various kinds of contracts.

[אמר ליה: חיישינן דלמא אתי לאחלופי בגיטא]. מתקיף לה רבא בר חנן: אלא מעתה, יהיב לה גיטא בעלמא הכי נמי דפסלה? אמר ליה: התיב לה גיטא בעלמא, הכא – קפסיל בכהונה.

Rabba said to him: We are concerned that perhaps they will come to confuse this bill of divorce with a regular bill of divorce, and it therefore disqualifies a *yevama*. Rabba bar Hanan strongly objects to this: However, if that is so, that we are stringent with the bill of divorce of a *yevama* out of concern that people might confuse the two types of bills of divorce, if he gives her a mere piece of paper, which does not mention divorce, so too will it disqualify her? He said to him: There it is different, as a mere piece of paper has no effect on any other woman, for it does not disqualify her for marrying into the priesthood. If a husband gives his wife a piece of paper that contains nothing about divorce, even if he says: This is a bill of divorce, his action is of no consequence, not even to forbid her to a priest. Here, however, a bill of divorce of this kind at least disqualifies a woman from marrying into the priesthood.^h

דתניא: ויאשה גרושה מאישה לא יקחו אפילו לא נתגרשה אלא מאישה – לא יקחו, והיינו ריח הגט שפוסל בכהונה.

As it is taught in a *baraita*: “They shall not take a woman that is a harlot, or profaned; and a woman divorced from her husband they shall not take, as he is holy to his God” (Leviticus 21:7). This verse lists the women whom a priest is prohibited from marrying. From this verse it can be inferred: Even if she was only divorced from her husband who said when giving her a bill of divorce: You are divorced from me, but did not permit her to other men, even such a woman they may not take in marriage. Although a bill of divorce of this kind does not permit the woman to others, it does suffice to prohibit her from marrying a priest. And this is what is referred to as the trace of a bill of divorce, which disqualifies a woman from marrying into the priesthood.ⁿ Since this bill of divorce is valid to a certain extent, it also disqualifies a *yevama*.

אמר רמי בר חמא: הרי אמרו, אמר אחד ללבולר “כתוב גט לארוסתני, לכשאכנסנה אגרשנה” הרי זה גט, מפני שבנידו לגרשה.

Rami bar Hama said: They said that if one said to a scribe [*lavlar*]:^l Write a bill of divorce for my betrothed now, such that when I marry her I will divorce her with the bill of divorce, if he indeed gave her this bill of divorce after their marriage it is a valid bill of divorce.^h Why? Because it is already in his power to divorce her while she is betrothed to him, and therefore the bill of divorce written during their betrothal is valid.

HALAKHA

A bill of divorce that disqualifies her from marrying into the priesthood – גט הפוסל בכהונה – A woman who receives a bill of divorce is disqualified from marrying into the priesthood, even if the bill of divorce is invalid because it is an uncertain bill of divorce or if the bill of divorce stated: You are hereby divorced from me, but you are not permitted to any man (Rambam *Sefer Nashim, Hilkhot Geirushin* 10:1; *Shulhan Arukh, Even HaEzer* 6:1).

כתב גט – If he wrote a bill of divorce to his betrothed in order to divorce her with it after he marries her, it is a valid bill of divorce. This applies only if the bill of divorce includes the date on which it was given, but if he wrote the date on which it was written, it is invalid (Ra'avad; Rabbeinu Tam; Rambam *Sefer Nashim, Hilkhot Geirushin* 3:6; *Shulhan Arukh, Even HaEzer* 132:1).

NOTES

The trace of a bill of divorce, which disqualifies for the priesthood – ריח הגט שפוסל בכהונה – The trace of a bill of divorce refers to a divorce which is lacking in some way and therefore does not effect a full divorce. Despite the fact that the woman is not divorced, in some cases the trace of a bill of divorce is enough to consider her a divorcée for the purposes of disqualifying her from marrying into the priesthood. In these cases, should her husband subsequently die, she would be considered a divorcée and not a widow who would be permitted to the priesthood. The question of which bills of divorce disqualify a woman for marrying into the priesthood

is a matter of dispute among the authorities. The Rambam maintains that any bill of divorce about which the Sages said: It is not a bill of divorce, does not even disqualify a woman for marrying into the priesthood. Only this particular bill of divorce, expressed with the formula: You are divorced from me but you are not permitted to any man, disqualifies her due to its status as the trace of a bill of divorce. The Ra'avad disagrees and claims there are other invalid bills of divorce that prevent her from marrying a priest, depending on their similarity to a proper bill of divorce. The *Migdal Oz* writes that this dispute dates back to Rashi and *Tosafot* as well.

HALAKHA

If he wrote a bill of divorce to one who is not his wife – **ולאשה בעלמא** – אין גט, מפני שאין בידו לגרשה. בעי רמי בר חמא: ליבמתו מהו? בין דאגידא ביה – כארוסתו דמא, או דלמא: בין דלא עבד בה מאמר – לא? תיקו.

A bill of divorce for levirate betrothal and a bill of divorce for a levirate bond – גט למאמר וגט לזיקה: If a *yavam* performed levirate betrothal with his *yevama* and afterward gave her a bill of divorce for her levirate bond, he has thereby disqualified her for levirate marriage, both with himself and with the other brothers. If he does not specify the nature of the bill of divorce it is considered to have been written for her levirate bond. In order to permit her to marry any other man she requires another bill of divorce for her levirate betrothal, and *halitza* to release the levirate bond. If he gave her a bill of divorce for her levirate betrothal and not for her levirate bond, she is permitted to the brothers, but not to him. Some say (*Tosafot*; Ra'avad; Rosh) that she is even permitted to him (Rambam *Sefer Nashim, Hilkhot Yibbum* 5:4; *Shulḥan Arukh, Even HaEzer* 170:15).

But if he wrote a bill of divorce for a regular woman who has no connection to him, even if he later married her, it is not a valid bill of divorce.^{HN} This is because at the time of the writing of the bill of divorce, it is not in his power to divorce her, and therefore the bill of divorce is of no consequence. All this is evident, but in light of the above *halakhot* **Rami bar Hama inquires**: If he wrote a bill of divorce for his *yevama* and did not give it to her immediately, but only after they were married, what is the *halakha*?^N Is it a valid bill of divorce or not? The Gemara clarifies the options: On the one hand, since she is tied to him she is considered like his betrothed; or perhaps, since he has not yet performed levirate betrothal with her, she is not even considered the equivalent of his betrothed, and the bill of divorce is not effective? The Gemara does not have a resolution for this and states that the question shall stand unresolved.

Rav Hananya inquires: If he wrote a bill of divorce for his levirate bond, by specifying in the bill of divorce that he is thereby severing the levirate bond between them, but not for his levirate betrothal, or if he wrote a bill of divorce for his levirate betrothal and stated that it is not for his levirate bond, what is the *halakha*?^H Is the levirate betrothal superimposed upon the levirate bond, so that they are considered a single, continuous link, and he is like one who divorces half a woman, and one who divorces half a woman has done nothing; or perhaps this stands on its own and that stands on its own, and he can therefore cancel either the levirate bond or the levirate betrothal separately.

The Gemara asks: And why do you not resolve the dilemma from a teaching of Rava? For Rava said: If a *yavam* gave a bill of divorce for his levirate betrothal, her rival wife is permitted. The levirate betrothal he had previously performed is thereby canceled, which leaves the bond intact, and the rival wife of this *yevama* remains available for levirate marriage. This indicates that levirate betrothal and the levirate bond are not connected. The Gemara answers: To Rava it is obvious, but to Rav Hananya it is a dilemma. What, then, is the *halakha*? Since no other proof is forthcoming, and Rav Hananya does not accept the teaching of Rava, the question remains undecided. The Gemara states that the dilemma shall stand unresolved.

Rav Hananya inquires: If he wrote a bill of divorce for his levirate bond, by specifying in the bill of divorce that he is thereby severing the levirate bond between them, but not for his levirate betrothal, or if he wrote a bill of divorce for his levirate betrothal and stated that it is not for his levirate bond, what is the *halakha*?^H Is the levirate betrothal superimposed upon the levirate bond, so that they are considered a single, continuous link, and he is like one who divorces half a woman, and one who divorces half a woman has done nothing; or perhaps this stands on its own and that stands on its own, and he can therefore cancel either the levirate bond or the levirate betrothal separately.

The Gemara asks: And why do you not resolve the dilemma from a teaching of Rava? For Rava said: If a *yavam* gave a bill of divorce for his levirate betrothal, her rival wife is permitted. The levirate betrothal he had previously performed is thereby canceled, which leaves the bond intact, and the rival wife of this *yevama* remains available for levirate marriage. This indicates that levirate betrothal and the levirate bond are not connected. The Gemara answers: To Rava it is obvious, but to Rav Hananya it is a dilemma. What, then, is the *halakha*? Since no other proof is forthcoming, and Rav Hananya does not accept the teaching of Rava, the question remains undecided. The Gemara states that the dilemma shall stand unresolved.

The Gemara asks: And why do you not resolve the dilemma from a teaching of Rava? For Rava said: If a *yavam* gave a bill of divorce for his levirate betrothal, her rival wife is permitted. The levirate betrothal he had previously performed is thereby canceled, which leaves the bond intact, and the rival wife of this *yevama* remains available for levirate marriage. This indicates that levirate betrothal and the levirate bond are not connected. The Gemara answers: To Rava it is obvious, but to Rav Hananya it is a dilemma. What, then, is the *halakha*? Since no other proof is forthcoming, and Rav Hananya does not accept the teaching of Rava, the question remains undecided. The Gemara states that the dilemma shall stand unresolved.

NOTES

But for a regular woman it is not a bill of divorce – **ולאשה בעלמא אין גט**: Most early commentaries (see *Tosafot*) explain that since he appointed an agent to write the bill of divorce on his behalf, the agent cannot perform something the husband does not have the power to do, and at the time of the appointment he could not have written the bill of divorce himself. Rabbi Avraham min HaHar raises several difficulties with this explanation. He explains that the Rambam has a different opinion: As the woman could not be divorced at that time, the bill of divorce is considered like one that was not written for the sake of a particular woman, and such a bill of divorce is invalid.

For his yevama what is the halakha – **ליבמתו מהו**: Rashi understands this question in a straightforward manner: Is this bill of divorce that she receives when still a *yevama* effective for their divorce after they are married? The Rambam understands the question in a similar vein. *Tosafot*, however, claim that it is obvious that such a bill of divorce cannot be used for divorce after their marriage. Consequently, they explain that the question is whether a bill of divorce written before levirate betrothal can

cancel that levirate betrothal. Alternatively, the reference is to the trace of a bill of divorce, i.e., does a bill of divorce of this kind disqualify her for marrying into the priesthood? *Tosafot Yeshanim* note that one might have thought it is evident that this bill of divorce disqualifies her for marrying into the priesthood, as a bill of divorce is effective for a *yevama* even before he has performed levirate betrothal. Nevertheless, there is a difference between the cases, as he does not give her the bill of divorce immediately, but only after their marriage. It is therefore possible that the decree of the Sages with regard to the bill of divorce of a *yevama* no longer applies to a married woman.

Tosefot HaRosh explains that the dilemma is whether his *yevama* is considered like his betrothed, since he can have intercourse with her, even against her will, and then divorce her; or perhaps there is no relationship between them as of yet, since they have yet to engage in relations. A different point is raised by the Ramban: If the question concerns the validity of the bill of divorce according to Torah law, including its ability to effect a regular divorce, why is the rabbinical levirate betrothal mentioned in this connection at all? He concludes that the

question concerns the efficacy of this bill of divorce on a rabbinic level, such that if he divorced her with it after their marriage, would she be considered divorced by rabbinic law. Do we say that the fact that he can give her a bill of divorce when she is a *yevama* and thereby disqualify her indicates that there is a connection between them, or perhaps this bill of divorce is completely ineffective after their marriage, as stated by *Tosafot Yeshanim*? All this refers to the stage before levirate betrothal, for once he has performed levirate betrothal with her she is certainly considered his betrothed according to rabbinic law.

The Rashba continues the line of reasoning suggested by the Ramban, but he explains somewhat differently. In his opinion the Gemara is asking a pair of questions that involve two distinct possibilities. First, does the fact that he can perform *halitza* with his *yevama* mean that it is as though he can give her a bill of divorce, and she is considered his betrothed with regard to the validity of this bill of divorce? Second, if we say that *halitza* is dissimilar to a bill of divorce, perhaps this bill of divorce is strong enough to disqualify her from marrying into the priesthood before he performs levirate betrothal.

This is the statement of Rabbi Akiva – אַתָּה רַבִּי עֲקִיבָא – In the Jerusalem Talmud, this conclusion is not accepted by all, as there are alternate ways to explain the mishna. For example, Reish Lakish maintains that a woman who performed *halitza* is forbidden to the brothers due to a prohibition for which they are liable to *karat*, as are her rival wives, and therefore betrothal is not effective even according to the Rabbis. Another possibility is that the mishna is in accordance with Rabbi Yehuda HaNasi, and it is discussing a situation where the *yavam* betrothed the *yevama* for the purpose of levirate marriage.

After sending her away – אַתָּה שִׁלַּחְתָּ: Rabbi Akiva maintains that the words “who sent her away” are superfluous, and therefore he reads the verse as speaking of two separate mitzvot. One would therefore read the verse as having two subjects, as follows: “Her former husband” and similarly he “who sent her away,” i.e., the *yavam*, “may not return to take her as a wife.”

HALAKHA

The validity of a bill of divorce for levirate marriage – תָּקַף גִּט יְבָמִין: The Sages decreed that the bill of divorce of a *yavam* to his *yevama* is effective, and it disqualifies her and her rival wives from levirate marriage, both with him and his brothers (Rambam *Sefer Nashim, Hilkhot Yibbum* 5:1; *Shulhan Arukh, Even HaEzer* 170:1).

One who performs *halitza* with his *yevama* and then betroths her – הַחֹלֵץ לְיְבָמָתוֹ וְחָזַר וְקִדְּשָׁהּ: If one performed *halitza* with his *yevama* and then betrothed her, whether he did so for the purpose of regular marriage or levirate marriage, he is forbidden to marry her; but the betrothal is effective to the extent that she requires a bill of divorce from him (Rambam *Sefer Nashim, Hilkhot Yibbum* 5:15; *Shulhan Arukh, Even HaEzer* 170:13).

“חָלַץ וְעָשָׂה מֵאִמֶּר.” אָמַר רַב יְהוּדָה אָמַר רַב: זֶה דְּבַרֵּי רַבִּי עֲקִיבָא, דְּאָמַר: אֵין קְדוּשִׁין תּוֹפְסִין בְּחַיִּיבֵי לְאוּיָן. אָבֵל חֲכָמִים אֹמְרִים: יֵשׁ אַחַר חֲלִיצָה כְּלוּם.

It was taught in the mishna: If the *yavam* performed *halitza* and then performed levirate betrothal, nothing is effective after *halitza* and this levirate betrothal is not valid. Rav Yehuda said that Rav said: This is the statement of Rabbi Akiva,ⁿ who says that betrothal does not take effect on those who are forbidden as they are liable for violating a prohibition. Once he has performed *halitza*, the woman is forbidden to him due to the prohibition derived from the verse “So shall it be done to the man who does not build his brother’s house” (Deuteronomy 25:9), and betrothal is ineffective. But the Rabbis say something is effective after *halitza*. Although the woman who performed *halitza* is forbidden to him, if he does betroth her, his betrothal is effective, as with any regular prohibition.

וּמִי מְצִית מוֹקְמֵת לָהּ כְּרַבִּי עֲקִיבָא? וְהָא קְתַנֵּי רִישָׁא: נָתַן גִּט וְעָשָׂה מֵאִמֶּר – צְרִיכָה גִּט וְחֲלִיצָה, וְאֵי רַבִּי עֲקִיבָא – כִּיּוֹן דִּיהֵב לָהּ גִּט מִי מְהַיֵּי בְּהָ מֵאִמֶּר?

The Gemara asks: And can you establish that the mishna is in accordance with the opinion of Rabbi Akiva? But doesn’t the first clause of the mishna teach: If he gave a bill of divorce and performed levirate betrothal, she requires a bill of divorce and *halitza*. Now if this is in accordance with Rabbi Akiva’s opinion, once he gave her a bill of divorce, is levirate betrothal effective for her?

וְהִתְנַיָּא, רַבִּי עֲקִיבָא אָמַר: מִנְּי לְנוֹתָן גִּט לְיְבָמָתוֹ שְׁנֵאסְרָה עָלָיו עוֹלָמִית – שְׁנֵאמַר “לֹא יוּכַל בְּעֵלָהּ הָרִאשׁוֹן אֲשׁוּר שְׁלַחָה” אַחַר שִׁלּוּחַ.

But isn’t it taught in a *baraita* that Rabbi Akiva says: From where is it derived that if one gives a bill of divorce to his *yevama*, she is forbidden to him forever and he no longer has the option of marrying her? As it is stated with regard to a woman who was divorced and married another man who subsequently died or divorced her: “Her former husband, who sent her away, may not take her again to be his wife” (Deuteronomy 24:4). Rabbi Akiva emphasizes the words “who sent her away,” implying that he may not remarry her after sending her away.ⁿ This indicates that there is an instance where a husband may not remarry his wife even if she has not married another, merely because he has given her a bill of divorce. This applies to the case of a *yevama* where the bill of divorce she receives renders her permanently prohibited to him. According to Rabbi Akiva, once she is rendered prohibited to him, no further action performed by the *yavam* is effective, so why does the levirate betrothal performed require a bill of divorce?

אָמַר רַב אֲשִׁי: גִּט יְבָמִין מִדְּרַבְּנָן. וְקָרָא – אִסְמַכְתָּא בְּעֵלְמָא.

Rav Ashi said: This is not difficult because the bill of divorce for levirate marriage was established by the Sages and only has the force of rabbinic law,^h and the aforementioned verse is not a Torah prohibition, but rather a mere support. Therefore there is no Torah prohibition against marrying a *yevama* who received a bill of divorce, and the levirate betrothal performed afterward is effective according to Rabbi Akiva as well.

תֵּנִיא נְמִי הֵכִי, אָמַר רַבִּי: אֵין הַדְּבָרִים הִלְלוּ אֲמֹרִים אֱלָא לְדְבַרֵּי רַבִּי עֲקִיבָא, שְׁהִיָּה עוֹשָׂה חֲלוּצָה כְּעֵרְוָה. אָבֵל חֲכָמִים אֹמְרִים: יֵשׁ אַחַר חֲלִיצָה כְּלוּם. וְאֵי אֹמַר: אֵימַתִּי – בְּזִמְן שְׁקִדְשָׁהּ לְשׁוּם אִישׁוֹת, אָבֵל קִדְּשָׁהּ לְשׁוּם יְבָמָת – אֵין אַחַר חֲלִיצָה כְּלוּם.

With regard to the *halakha* of betrothal after *halitza*, the Gemara notes: This *halakha* is also taught in a *baraita* as Rabbi Yehuda HaNasi said: These matters were only stated in accordance with the statement of Rabbi Akiva, who considers a *yevama* who underwent *halitza* to be prohibited like a forbidden relation. Therefore, any further betrothal is not effective with her, as is the case with forbidden relations. But the Rabbis say something is effective after *halitza*. And I say: When is betrothal effective after *halitza*? It is effective when he betrothed for the purpose of marriage, like the regular betrothal of any ordinary woman. But if he betrothed her after *halitza* and specified that he is doing so for the purpose of levirate marriage, in that case nothing is effective after *halitza*.

תֵּנִיא אֵידֶךְ: הַחֹלֵץ לְיְבָמָתוֹ, וְחָזַר וְקִדְּשָׁהּ. רַבִּי אָמַר: אִם קִדְּשָׁהּ לְשׁוּם אִישׁוֹת – צְרִיכָה הֵימְנוּ גִּט, לְשׁוּם יְבָמָת – אֵין צְרִיכָה הֵימְנוּ גִּט וְחֲכָמִים אֹמְרִים: בֵּין שְׁקִדְשָׁהּ לְשׁוּם אִישׁוֹת, בֵּין שְׁקִדְשָׁהּ לְשׁוּם יְבָמָת – צְרִיכָה הֵימְנוּ גִּט.

It is taught in another *baraita*: With regard to one who performs *halitza* with his *yevama* and then betroths her,^h Rabbi Yehuda HaNasi says: If he betrothed her for the purpose of regular marriage she requires a bill of divorce from him; if he betrothed her for the purpose of levirate marriage she does not require a bill of divorce from him. And the Rabbis say: Whether he betrothed her for the purpose of regular marriage, or whether he betrothed her for the purpose of levirate marriage, she requires a bill of divorce from him, as this betrothal is effective.

One who hoes in the property of a convert – העוֹדֵר בְּנִכְסֵי הַגֵּר: If one hoes the property of a convert who died without leaving heirs, under the mistaken impression that the land belonged to him, he has not acquired it. However, if he thought it belonged to a particular convert and it actually belonged to a different one, and he intended to acquire the ownerless property, the acquisition is effective (Rambam *Sefer Kinyan, Hilkhot Zekhiya UMattana* 2:13; *Shulhan Arukh, Hoshen Mishpat* 275:25–26).

Levirate betrothal and a levirate bond – מאָמֵר יְבָמִין וְיִקָּת – יְבָמִין: If a *yavam* performed *halitza* with his *yevama* and then betrothed her, whether he said he was doing so with levirate betrothal or with the levirate bond, his betrothal is effective. The *Beit Shmuel* claims that it is only valid by rabbinic law. She then requires a bill of divorce, in accordance with the opinion of the Rabbis (*Shulhan Arukh, Even HaEzer* 170:14).

אָמַר רַב יוֹסֵף: מַאי טַעְמָא דְרַבִּי – עֲשָׂאוּהָ כְּעוֹדֵר בְּנִכְסֵי הַגֵּר וּכְסָבוֹר שְׁלוֹ הֵן דְּלֵא קִנְיָ.

Rav Yosef said: What is the reason for Rabbi Yehuda HaNasi's distinction between one who betroths his *halutza* for the purpose of levirate marriage and one who does so for the purpose of regular marriage? It is because the Sages considered him like one who hoes the property of a convert^H who died without leaving heirs. The property of such a convert is ownerless, and whoever takes possession of it acquires its title. As one of the methods of taking possession of land is hoeing, if one hoed the property of this convert with the intention of acquiring it, it belongs to him. However, if he hoed the convert's property while mistakenly thinking that the land was his own, even though he performed an act of acquisition, since he lacked the requisite intention he has not acquired the land. Here too, since the *yavam* intended to betroth her for the purpose of levirate marriage, and the levirate bond no longer exists, his action is not effective.

אָמַר לִיה אַבְיִי: מִי דְמִי? הֵתָם – לֹא קָא מְכוּיִן לְמִי קִנְיָ, הֵבָא – קָא מְכוּיִן לְמִי קִנְיָ. הָא לֹא דְמִי אֶלָּא לְעוֹדֵר בְּנִכְסֵי גֵר וְהוּא, וּכְסָבוֹר שְׁלֵ גֵר אַחֵר הוּא, דְּקִנְיָ.

Abaye said to him: Are the two situations comparable?^N There, in the case of hoeing, he does not intend to acquire the land as he works, as he thinks that it is already his, whereas here he does intend to acquire the woman. This case is similar only to the one who hoes the property of this deceased convert while thinking it is that of a different convert. The *halakha* in that case is that he acquires the land, despite his imprecise knowledge of what he is acquiring. Here too the betrothal should take effect regardless of his error.

אֶלָּא אָמַר אַבְיִי: הֵבָא בְּמַאי עֲסָקִינָן – כְּגוֹן דְּאָמַר לָהּ "הִתְקַדְּשִׁי לִי בְּמֵאָמַר יְבָמִין". רַבִּי סָבַר: מֵאָמַר עִילּוּי זִיקָה קָא רְמִי, וְאֵתָאִי חֲלִיצָה אֶפְקַעְתָּהּ לְזִיקָה. וְרַבְּנָן סָבְרִי: הָאִי לְחוּדְיָה קָאִי וְהָאִי לְחוּדְיָה קָאִי. מַעֲיַקְרָא, אִילוּ אָמַר לָהּ "הִתְקַדְּשִׁי לִי בְּמֵאָמַר יְבָמִין" מִי לֹא מֵהֵנִי? הִשְׁתָּא נְמִי מֵהֵנִי.

Rather, Abaye said that the dispute between Rabbi Yehuda HaNasi and the Rabbis cannot be explained in the above manner. Instead, he suggests: With what are we dealing here? It is a case where he said to his *halutza*: Be betrothed to me with levirate betrothal. Rabbi Yehuda HaNasi holds that levirate betrothal is superimposed upon the levirate bond, and is therefore only possible when the bond exists, and since *halitza* comes and releases the levirate bond, levirate betrothal is not effective for her. And the Rabbis hold: This, the levirate bond, stands on its own, and that, levirate betrothal, stands on its own. Although the bond has been canceled, the formula of: Be betrothed to me with levirate betrothal, is effective. At the outset, before *halitza*, if he had said to her: Be betrothed to me with levirate betrothal,^N would this not be an effective betrothal despite the lack of connection between the levirate betrothal and the levirate bond? Now too it should be effective, even though she performed *halitza*.

רַבָּא אָמַר: אִי דְּאָמַר לָהּ "בְּמֵאָמַר יְבָמִין" כּוּלִי עֲלָמָא לֹא פְּלִיגִי דְּמֵהֵנָּא, וְהֵבָא בְּמַאי עֲסָקִינָן – כְּגוֹן דְּאָמַר לָהּ "הִתְקַדְּשִׁי לִי בְּיִקָּת יְבָמִין". רַבִּי סָבַר:

Rava said: If he said to her: Be betrothed to me with levirate betrothal, everyone agrees that it is effective, and she is acquired. And with what are we dealing here? It is a case where he said to her: Be betrothed to me with the levirate bond,^H and the dispute is as follows: Rabbi Yehuda HaNasi holds

NOTES

אָמַר לִיה אַבְיִי מִי דְמִי – Abaye said to him, Are they comparable – The early commentaries are puzzled by Abaye's opinion: After questioning Rav Yosef's comparison to one who hoes a field by asserting that a *yavam* acquires his *yevama* when he betroths her for the purpose of levirate marriage, he himself proceeds to claim that he cannot acquire her by levirate betrothal. *Tosafot* offer two explanations, also cited, with slight variations, by *Tosafot Yeshanim*. The Ra'avad explains that Rav Yosef explains Rabbi Yehuda HaNasi's case as one where the *yavam* says he is betrothing so-and-so, his *yevama*. Abaye responds that there is no proof from the wording that he is acquiring her with levirate marriage in mind, as he might merely be mentioning that she was previously his *yevama*. Abaye

therefore explains that Rabbi Yehuda HaNasi was referring specifically to one who said that he is acquiring her with levirate betrothal.

If he had said to her, Be betrothed to me with levirate betrothal – אִילוּ אָמַר לָהּ הִתְקַדְּשִׁי לִי בְּמֵאָמַר יְבָמִין – The Ritva indicates that a statement of this kind would be effective even with regard to a regular woman, despite the fact that it is not a precise expression of betrothal. Levirate betrothal is in essence an act of betrothal, and there is no reason to distinguish between them. For example, the Gemara in tractate *Kiddushin* 6a states that if one says to a woman: You are hereby tied to me by a bond, she is betrothed.