יֵשׁ זִיקָה, וַאֲתַאי חֲלִיצָה אַפְקָעַתֵּיהּ לְזִיקָה. וְרַבָּנַן סָבְרִי, אֵין זִיקָה. מֵעִיקָּרָא אִילּוּ אֲמַר לָהּ ״הִתְקַדְּשִׁי לִי בְּזִיקַת יְבָמִין״ מִי לָא מְהַנְיָא? הָשְׁתָּא נַמִּי מְהַנְיָא.

that **the levirate bond is substantial,** and this betrothal is based on the levirate bond. **And** in this case, the *ḥalitza* **comes** and **releases the levirate bond.** Therefore this type of betrothal does not acquire the *ḥalutza*. **But the Rabbis hold** that **the levirate bond is not substantial,**[N] that is, the bond itself does not create a connection between the *yavam* and *yevama*, and that in general, levirate betrothal acquires a *yevama* as a form of betrothal unrelated to the levirate bond.[N] **And** consequently, **at the outset, if he had said to her: Be betrothed to me by the levirate bond, would** this **not be effective? Now too,** after *ḥalitza*, even without the bond, it should likewise be **effective.**

רַב שֶׁרֶבְיָא אָמַר: בַּחֲלִיצָה כְּשֵׁירָה, אִי דַּאֲמַר לָהּ ״הִתְקַדְּשִׁי לִי בְּזִיקַת יְבָמִין״ כּוּלֵּי עָלְמָא לָא פְּלִיגִי דְּלָא מְהַנְיָא. וְהָכָא בַּחֲלִיצָה פְּסוּלָה קָמִיפַּלְגִי. מָר סָבַר: חֲלִיצָה פְּסוּלָה פּוֹטֶרֶת, וּמָר סָבַר: חֲלִיצָה פְּסוּלָה אֵינָהּ פּוֹטֶרֶת.

Rav Sherevya suggested a different point of dispute and **said:** In a case when the woman performed **valid *ḥalitza*, if he** later **said to her: Be betrothed to me by the levirate bond, everyone agrees**[N] **that it is not effective,** as there is no longer any bond. **And here,** they **disagree** with regard to one who performed **invalid *ḥalitza*.** One **Sage,** Rabbi Yehuda HaNasi, **holds** that **invalid *ḥalitza* exempts** her from the levirate bond and disqualifies her from betrothal as a *yevama*. **And** one **Sage,** i.e., the Rabbis, **holds** that **invalid *ḥalitza* does not** fully **exempt** her,[N] and some element of the levirate bond remains intact and she can therefore be betrothed with the levirate bond.

רַב אַשִׁי אָמַר: דְּכוּלֵּי עָלְמָא חֲלִיצָה פְּסוּלָה אֵינָהּ פּוֹטֶרֶת. וְהָכָא בְּיֵשׁ תְּנַאי בַּחֲלִיצָה קָמִיפַּלְגִי. מָר סָבַר: יֵשׁ תְּנַאי בַּחֲלִיצָה, וּמָר סָבַר: אֵין תְּנַאי בַּחֲלִיצָה.

Rav Ashi said: Everyone agrees that **invalid *ḥalitza* does not exempt** her and does not entirely nullify the bond. **And here** they **disagree** as to whether **a condition is** effective **with regard to *ḥalitza*.** When the *yavam* states he is performing *ḥalitza* on the condition that the *yevama* give him one hundred dinars, for example, is this condition effective and therefore the *ḥalitza* is nullified if the condition is not fulfilled? One **Sage,** i.e., the Rabbis, **holds** that **a condition is** effective **with regard to *ḥalitza*.** If the *yevama* fails to comply with the condition, the *ḥalitza* is ineffective and she can still be betrothed with the levirate bond. **And** one **Sage,** Rabbi Yehuda HaNasi, **holds** that **a condition is not** effective **with regard to *ḥalitza*,**[H] and therefore the *ḥalitza* is always effective as is the subsequent levirate betrothal.

רָבִינָא אָמַר: דְּכוּלֵּי עָלְמָא יֵשׁ תְּנַאי בַּחֲלִיצָה. וְהָכָא בִּתְנַאי כָּפוּל קָמִיפַּלְגִי; מָר סָבַר: בָּעֵינַן תְּנַאי כָּפוּל, וּמָר סָבַר: לָא בָּעֵינַן תְּנַאי כָּפוּל.

Ravina said: Everyone agrees that **a condition is** effective **with regard to *ḥalitza*, and here** they **disagree with regard to a compound condition.**[HB] One **Sage,** Rabbi Yehuda HaNasi, **holds** that **we require a compound condition.** The man must explicitly stipulate that the *ḥalitza* should be effective if the condition is upheld, and that it should not be effective if she does not fulfill the condition. If he did not state both the positive and negative sides of the condition it does not take effect, and the *ḥalitza* is effective and the levirate bond is canceled. Consequently, betrothal by the levirate bond is ineffective. **And** one **Sage,** i.e., the Rabbis, **holds that we do not require a compound condition.** Therefore, the condition applies and cancels the *ḥalitza*, which leaves the levirate bond intact.

NOTES

But the Rabbis hold that the levirate bond is not substantial – וְרַבָּנַן סָבְרִי אֵין זִיקָה: It is not that the Rabbis maintain that the levirate bond is not significant at all, as the *yevama* certainly requires levirate marriage. Rather, it means the bond does not have the halakhic force with regard to creating prohibitions, as it is does not create a family connection that would forbid the *yavam* from marrying the relatives of the *yevama* (*Tosefot HaRosh*). Rabbi Avraham min HaHar explains that this opinion holds the levirate bond is not substantial by Torah law but rather by rabbinic law.

The explanations of the dispute between Rabbi Yehuda HaNasi and the Rabbis – פֵּירוּשֵׁי מַחֲלוֹקֶת רַבִּי וְרַבָּנַן: The early commentaries were puzzled by the variety of interpretations of this dispute, as they are based on assumptions that are not accepted as *halakha*. The Rif states, and the Rid writes similarly, that all these explanations of the Gemara are merely hypothetical exercises to sharpen the mind, and it is a mistake to analyze them too closely, as they are not meant as rulings for *halakha*.

Be betrothed to me by the levirate bond, everyone agrees, etc. – הִתְקַדְּשִׁי לִי בְּזִיקַת יְבָמִין כּוּלֵּי עָלְמָא לָא פְּלִיגִי וכו׳: The *Milḥamot HaShem* had an alternate version of the text that reads: If he said: Be betrothed to me by the levirate bond, everyone agrees that it is effective, as they did not disagree with regard to the levirate bond at all. According to this opinion, which is implied somewhat by Rashi as well, all the suggested interpretations of the dispute are in logical order, in the manner usually signaled by the words: And if you say, etc.

Invalid *ḥalitza* does not exempt her – חֲלִיצָה פְּסוּלָה אֵינָהּ פּוֹטֶרֶת: This suggestion is problematic, as the accepted principle throughout our chapter is that invalid *ḥalitza* exempts the woman and that anything afterward is ineffective. How, then, can the Gemara propose that such a *ḥalitza* does not exempt her? For this reason the Rif claims that this statement refers to the requirement to repeat the *ḥalitza* with the other brothers; and therefore, according to the opinion that invalid *ḥalitza* does not exempt her, she must perform *ḥalitza* with all the brothers. A different interpretation is cited by Rabbi Avraham min HaHar. He contends that invalid *ḥalitza* does not refer to *ḥalitza* performed after another action. Instead, it means *ḥalitza* performed with a pregnant woman, which is ineffective according to Reish Lakish.

HALAKHA

A condition with regard to *ḥalitza* – תְּנַאי בַּחֲלִיצָה: No conditions are effective with regard to *ḥalitza*, and therefore a mistaken *ḥalitza* is valid. For example, if the *yavam* was told to perform *ḥalitza* on condition that the *yevama* should give him a large sum of money, even if it was stated as a compound condition, the *ḥalitza* is valid whether or not she paid him the stipulated amount (Rambam *Sefer Nashim*, *Hilkhot Yibbum* 4:24; *Shulḥan Arukh*, *Even HaEzer* 169:50).

A compound condition – תְּנַאי כָּפוּל: Every condition must include the following four features: It must be double in the sense that he must specify what will happen both if the condition is fulfilled and if it is not fulfilled; the formulation of its positive aspect, i.e., its fulfillment, must precede the negative formulation of the condition; the condition must be stated before the action itself; and the fulfillment of the condition must be feasible. Any condition that lacks one of these elements is discounted (Rambam *Sefer Nashim*, *Hilkhot Ishut* 6:2; *Shulḥan Arukh*, *Even HaEzer* 38:2).

BACKGROUND

A compound condition – תְּנַאי כָּפוּל: This refers to conditions set out when creating contractual obligations. A simple condition merely states the positive side of a commitment: If X, then Y. A compound condition states its negative side, as well: If X, then Y, and if not X, then not Y. Some authorities, basing themselves on the agreement made between Moses and the tribes of Gad and Reuben (see Numbers 32:20–24), maintain that compound conditions are required so that violation of a simple condition, where the negative side of the case is not stated, does not nullify the agreement.

HALAKHA

Nothing is effective after intercourse – אֵין אַחַר בִּיאָה כְּלוּם: If a *yavam* engaged in valid intercourse with the *yevama*, i.e., the intercourse was not preceded by any action that would invalidate it, no action performed afterward is of any effect, whether performed by any other *yavam* with her, or by the *yavam* or one of his brothers with her rival wife, as stated by Abaye and Rava (Rambam *Sefer Nashim*, *Hilkhot Yibbum* 5:14; *Shulḥan Arukh*, *Even HaEzer* 170:12).

"חָלַץ וְעָשָׂה מַאֲמָר וְנָתַן גֵּט וּבָעַל" וכו'. וְנִיתְנֵי נַמִּי אֵין אַחַר בִּיאָה כְּלוּם! אַבַּיֵי וְרָבָא דְּאָמְרִי תַּרְוַיְיהוּ, תְּנֵי: אֵין אַחַר בִּיאָה כְּלוּם. וְתַנָּא דִּידַן – הַתָּרַת יְבָמָה לַשּׁוּק עֲדִיפָא לֵיהּ.

§ The mishna teaches: If the *yavam* **performed *ḥalitza* and** then either **performed levirate betrothal, or gave a bill of divorce, or engaged in intercourse,** nothing is effective after *ḥalitza*. The Gemara asks: **And let** the *tanna* **likewise teach** that **nothing is** effective **after intercourse,**[H] for he also mentioned the case of one who engaged in intercourse and then proceeded to perform other actions such as levirate betrothal, divorce and *ḥalitza*. Indeed, **Abaye and Rava both say** that the mishna should **teach: Nothing is** effective **after intercourse,** as this clause is fit to be inserted into the mishna. The Gemara asks: **And the *tanna* of our** mishna;[N] why did he not state this? The Gemara explains: **The permission for a *yevama* to** marry a member of the **public is preferable to him.** He preferred to teach cases in which the *yevama* is permitted to marry any man from the general public as opposed to a situation where she is married to the *yavam*.

"אֶחָד יְבָמָה אַחַת אֶחָד שְׁתֵּי יְבָמוֹת". מַתְנִיתִין דְּלָא כְּבֶן עַזַּאי. דְּתַנְיָא, בֶּן עַזַּאי אוֹמֵר: יֵשׁ מַאֲמָר אַחַר מַאֲמָר בִּשְׁנֵי יְבָמִין וְיָבָמָה אַחַת, וְאֵין מַאֲמָר אַחַר מַאֲמָר בִּשְׁתֵּי יְבָמוֹת וְיָבָם אֶחָד.

The mishna teaches that all the *halakhot* with regard to levirate betrothal after levirate betrothal and the like apply **both** in cases of **one *yevama*** to one *yavam*, **as well as** in cases of **two *yevamot*** to one *yavam*. The Gemara comments: **The mishna is not in accordance with** the opinion of **ben Azzai. As it is taught** in a *baraita*: **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*.** The *tanna* of the mishna, in contrast, does not differentiate between the cases.

"כֵּיצַד מַאֲמָר לָזֶה" וכו'. לֵימָא מְסַיַּיע לֵיהּ לִשְׁמוּאֵל, דְּאָמַר שְׁמוּאֵל: חָלַץ לְבַעֲלַת מַאֲמָר לֹא נִפְטְרָה צָרָתָהּ,

The mishna further teaches: **How so?** If he performed **levirate betrothal with this** one and performed *ḥalitza* with that one, the first woman requires a bill of divorce to cancel the levirate betrothal. The Gemara suggests: **Let us say** that this teaching **supports** the opinion of **Shmuel.**[N] **As Shmuel said:** If a *yavam* **performed *ḥalitza* with** the woman **who received levirate betrothal,** then the **rival wife is not exempt** as this *ḥalitza* is invalid. The fact that the Gemara does not state that the *ḥalitza* be performed with the woman who received levirate betrothal indicates that this *ḥalitza* is not a valid *ḥalitza* and would not be sufficient to exempt the rival wife.

NOTES

And the *tanna* of our mishna, etc. – וְתַנָּא דִּידַן וכו': The wording here is confusing, for Abaye and Rava just stated that mishna should be adjusted, which means that in their opinion our *tanna* did in fact include this teaching in the mishna. *Tosafot Yeshanim* suggest that Abaye and Rava were pointing out a *baraita* that explicitly says that nothing is effective after intercourse, as indeed, such a *baraita* is found in the *Tosefta*. After noting that source, the Gemara inquires about the *tanna* of our mishna.

Let us say that this supports Shmuel, etc. – לֵימָא מְסַיַּיע לֵיהּ לִשְׁמוּאֵל וכו': *Tosafot* are puzzled by the assertion that this statement is both a support for the opinion of Shmuel and a refutation of the statement of Rav Yosef, for the opposite would appear to be the case; accepting Shmuel's opinion should remove any difficulty with the statement of Rav Yosef. Once it is established that *ḥalitza* with the woman who received levirate betrothal does not exempt the rival wife, it is clear that Rav Yosef's insistence on not performing *ḥalitza* when unnecessary is not relevant to this case, as here it is necessary. They answer that this line should be read as support for Shmuel or a refutation of Rav Yosef. However, the early commentaries point out that the letter *vav* usually means "and" and only rarely means "or" in the Gemara. Some commentaries therefore explain that the Gemara is saying that even according to Shmuel's opinion, if Rav Yosef's opinion is accepted the *yavam* should be obliged to perform *ḥalitza* with the first woman, such that when he later performs *ḥalitza* with the second one he should at least not disqualify her by Torah law (*Tosefot HaRosh*).

Rabbeinu Ḥananel has a very different opinion. He claims that the Gemara is not referring to Rav Yosef's opinion with regard to: He should not pour out the water of his pit, when others require them (12a), indicating that one should not needlessly disqualify a woman, but rather his opinion that: One who hoes the property of a convert…has not acquired it (52b). According to this interpretation, if the *yavam* performed levirate betrothal under the mistaken impression that it fully acquires her as a wife, the acquisition is considered an error, and it should therefore be entirely discounted.

The Ramban objects to this interpretation, as it would mean that the difficulty does not refer to this particular section of the mishna, but to multiple clauses of the mishna, and there was no reason to raise it at this juncture. The Ramban himself suggests that the Sages of the Gemara had a tradition that Rav Yosef disagrees with Shmuel. The *Tosefot HaRosh* similarly explains that the reference here is to Rav Yosef's assertion in tractate *Megilla* (18b) that Shmuel's opinion with regard to the levirate bond is a minority opinion. Therefore, if this mishna supports Shmuel it automatically presents a difficulty to that statement of Rav Yosef.

וּתְיוּבְתָּא דְּרַב יוֹסֵף! מִי קָתָנֵי ״חוֹלֵץ״? ״חָלַץ״ קָתָנֵי, דְּיֵעָבַד.

And this would constitute **a conclusive refutation** of **Rav Yosef's** opinion, for he holds that it is preferable to perform *ḥalitza* with the woman who received levirate betrothal and thereby exempt the second woman. As the first woman requires a bill of divorce and therefore is necessarily disqualified from marrying into the priesthood, it is preferable to perform *ḥalitza* with her as well and consequently leave the second woman eligible to marry a priest. The Gemara refutes this claim: **Does** the mishna **teach: He should perform *ḥalitza*,** which would imply that the *yavam* should do so *ab initio*? It **teaches** that **he performed *ḥalitza*,** implying that the ruling in the mishna is **after the fact.** Therefore, there is no indication in the mishna that the *yavam* should perform *ḥalitza* with the second woman, and it is possible that if he were to perform *ḥalitza* with the first woman he would thereby exempt the second one. It is simply that the particular case discussed by the mishna here concerns a man who performed levirate betrothal with this woman and *ḥalitza* with that one.

״גֵּט לָזוֹ וְגֵט לָזוֹ״ כו׳. לֵימָא מְסַיֵּיעַ לֵיהּ לְרַבָּה בַּר רַב הוּנָא, דְּאָמַר רַבָּה בַּר רַב הוּנָא: חֲלִיצָה פְּסוּלָה – צְרִיכָה לְחַזֵּר עַל כָּל הָאַחִין. מַאי ״צְרִיכוֹת״ צְרִיכוֹת דְּעָלְמָא.

It is further taught in the mishna: If he gave **a bill of divorce to this one and a bill of divorce to that one,** they require *ḥalitza* from him. The Gemara suggests: **Let us say** that **it supports** the statement of **Rabba bar Rav Huna.**[N] **As Rabba bar Rav Huna said:** In cases of **invalid *ḥalitza,*** the *yevama* **is required to repeat** the *ḥalitza*[H] **with all of the brothers,** as that single invalid *ḥalitza* is insufficient. Similarly, in this case of invalid *ḥalitza,* it would be necessary to perform *ḥalitza* with all of the *yevamot.* The Gemara rejects this suggestion: **What is** the meaning of **require** in this context? It means that such women **require in general.** The plural form does not refer to all the *yevamot* mentioned in the mishna, but rather it means that all *yevamot* in similar situations require *ḥalitza.*

״גֵּט לָזוֹ וְחָלַץ לָזוֹ״. לֵימָא מְסַיֵּיעַ לֵיהּ לִשְׁמוּאֵל וְתֶהֱוֵי תִּיוּבְתָּא דְּרַב יוֹסֵף! מִי קָתָנֵי ״חוֹלֵץ״? ״חָלַץ״ קָתָנֵי, דְּיֵעָבַד.

It was taught in the mishna: If he gave **a bill of divorce to this one and performed *ḥalitza* with that one,** nothing is effective after *ḥalitza.* The Gemara suggests: **Let us say that this supports** the opinion of **Shmuel,** as it indicates that the *yavam* should perform *ḥalitza* with the rival wife rather than the woman who received a bill of divorce. **And** it would likewise be **a conclusive refutation of** the opinion of **Rav Yosef,** who prefers performing *ḥalitza* with the disqualified woman. The Gemara again rejects this proof: **Does it teach: He should perform *ḥalitza,*** a ruling *ab initio*? **It teaches: He performed *ḥalitza,*** which is only **after the fact,** meaning he acted in that manner in this particular case.

״חָלַץ וְחָלַץ אוֹ חָלַץ״ וכו׳. וְלִיתְנֵי נַמִּי אֵין אַחַר בִּיאָה כְּלוּם! אַבַּיֵי וְרָבָא דְּאָמְרִי תַּרְוַיְיהוּ, תְּנֵי: אֵין אַחַר בִּיאָה כְּלוּם. וְתַנָּא דִּידַן – הַתָּרַת יְבָמָה לַשּׁוּק עֲדִיפָא לֵיהּ.

The mishna taught that if **he performed *ḥalitza*** with one woman **and** then **performed *ḥalitza*** with another one, **or he performed *ḥalitza*** and then proceeded to perform levirate betrothal, nothing is effective after *ḥalitza.* The Gemara suggests: **And let** the *tanna* **also teach: Nothing is** effective **after intercourse,** as this is indicated in the mishna as well. The Gemara answers: Indeed, **Abaye and Rava both say** that it should **teach: Nothing is** effective **after intercourse.** The Gemara comments: **And the *tanna* of our** mishna did not state this because **the permission for a *yevama* to** marry a member of the **public is preferable to him,** and he therefore specified a case that involves *ḥalitza.*

״בֵּין יָבָם אֶחָד לִשְׁתֵּי יְבָמוֹת״ כו׳. בִּשְׁלָמָא לְרַבִּי יוֹחָנָן, דְּאָמַר: כּוּלָּהּ בֵּיתָא בְּלָאו קָאֵי, אִיצְטְרִיךְ לְאַשְׁמוּעִינַן דְּאֵין קִדּוּשִׁין תּוֹפְסִין בְּחַיָּבֵי לָאוִין.

§ It was taught in the mishna: Nothing is effective after *ḥalitza,* **both** in cases of **one *yavam* to two *yevamot,*** as well as cases of two *yevamin* to one *yevama.* The Gemara comments: **Granted, according to** the opinion of **Rabbi Yoḥanan, who said** that once a *yavam* has performed *ḥalitza* with his *yevama,* **the entire household,** the woman who performed *ḥalitza* as well as her rival wives, **is liable due to a prohibition**[N] derived from the verse "So shall it be done to the man who does not build his brother's house" (Deuteronomy 25:9), but the women are not liable to *karet* due to the prohibition with regard to a brother's wife. In light of Rabbi Yoḥanan's ruling, **it was necessary to teach us that betrothal does not take effect on** the rival wife of the woman who performed *ḥalitza,* despite the fact that she is only **liable for** violating **a prohibition,** in accordance with the opinion of Rabbi Akiva.

NOTES

Let us say that it supports Rabba bar Rav Huna, etc. – לֵימָא מְסַיֵּיעַ לֵיהּ לְרַבָּה בַּר רַב הוּנָא וכו׳: Rashi and other commentaries maintain that the proof is not from this precise section of the mishna that states that both *yevamot* must perform *ḥalitza,* but rather from the continuation: And similarly two *yevamin,* etc., from which we learn that another *ḥalitza* is required even when there are two *yevamin.* The Ritva claims that it is not necessary to explain in this manner, for if invalid *ḥalitza* must be repeated with all the women, it must certainly be repeated with multiple brothers.

The entire household is liable due to a prohibition – כּוּלָּהּ בֵּיתָא בְּלָאו: The Ramban notes that according to Rabbeinu Ḥananel's version of the text (11a), which states that Rabbi Yoḥanan maintains that if one of the brothers has relations with one of the rival wives after *yibbum* has been performed, he violates a prohibition, the Gemara can be read in a straightforward manner. But according to our reading of the text there, which states that in that situation the entire house is liable due to a positive mitzva, the Gemara here is difficult. It must be interpreted as saying that Rabbi Yoḥanan holds that this prohibition is certainly no more than a regular prohibition, and there is a novel ruling being taught if there is a prohibition and all the more so if there is merely a positive mitzva. The novelty in that case would be that betrothal is ineffective for those liable for violating a positive mitzva, as claimed by Rabbi Yesheivav (49a).

HALAKHA

Invalid *ḥalitza*, she is required to repeat it – חֲלִיצָה פְּסוּלָה צְרִיכָה לְחַזֵּר: The dispute as to whether a woman who performed invalid *ḥalitza* must repeat the ḥalitza with all the brothers is left unresolved by the Gemara here. Indeed, some commentaries claim that according to the opinion that one who performed invalid *ḥalitza* is required to repeat it with all the brothers, the same *halakha* applies to all her rival wives, as they all require *ḥalitza* as well. According to the opinion that she does not require *ḥalitza* from all the brothers, however, a single *ḥalitza* is sufficient, whether we are dealing with two *yevamot* or two *yevamin* (Rambam *Sefer Nashim, Hilkhot Yibbum* 5:11; *Shulḥan Arukh, Even HaEzer* 170:5).

אֶלָּא לְרֵישׁ לָקִישׁ, דְּאָמַר: כּוּלָּהּ בֵּיתָא בְּכָרֵת קָאֵי – אִיצְטְרִיךְ לְאַשְׁמוּעִינַן דְּאֵין קִדּוּשִׁין תּוֹפְסִין בְּחַיָּבֵי כָּרֵיתוֹת?!

However, according to Reish Lakish, who said that the **entire household,** apart from the woman who received *ḥalitza,* **is liable** to receive ***karet,* was it necessary to teach us that betrothal does not take effect on** forbidden relations for which one **is liable** to receive ***karet*?** According to Reish Lakish, after the *yavam* performs *ḥalitza,* the mitzva of levirate marriage is canceled and the *karet* prohibition against marrying a brother's wife is once again in force. As all agree that betrothal does not take effect on those liable to receive *karet,* it is unnecessary for the mishna to teach this ruling.

אָמַר לָךְ רֵישׁ לָקִישׁ: וְלִיטַּעֲמִיךְ, סֵיפָא דְּקָתָנֵי: בָּעַל וְעָשָׂה מַאֲמָר, אִיצְטְרִיךְ לְאַשְׁמוּעִינַן דְּאֵין קִדּוּשִׁין תּוֹפְסִין בְּאֵשֶׁת אִישׁ?

The Gemara answers: **Reish Lakish** could have **said to you: And according to your reasoning,** that the mishna would not be teaching us an apparently obvious *halakha,* consider the **latter clause** of the mishna, **which teaches** that if a *yavam* **engaged in intercourse and** another *yavam* **performed levirate betrothal** with the same woman, the levirate betrothal is not effective. Now **was it necessary to teach us that betrothal is not effective for a married woman?** Once a *yavam* has engaged in relations with a *yevama* she is his full-fledged wife, and certainly no other betrothal is effective.

אֶלָּא: אַיְידֵי דְּתָנָא הַתָּרַת יָבָם אֶחָד וְיָבָמָה אַחַת – תָּנָא נַמִּי שְׁתֵּי יְבָמוֹת וְיָבָם אֶחָד, וְאַיְידֵי דְּתָנָא שְׁתֵּי יְבָמוֹת וְיָבָם אֶחָד – תָּנָא נַמִּי שְׁתֵּי יְבָמִין וְיָבָמָה אַחַת.

Rather, it must be that not every clause in the mishna teaches a novel *halakha,* and the reasoning of the *tanna* is as follows: **Since he teaches the release of** the bond between **one *yavam* and one *yevama,* he also teaches** the case of **two *yevamot* and one *yavam,* and since he teaches** the case of **two *yevamot* and one *yavam,* he also teaches** the case of **two *yevamin* and one *yevama.*** The *tanna* therefore listed all possible cases even though we do not learn a novel *halakha* from each and every one.

Perek **V**
Daf **53** Amud **b**

NOTES

It was necessary to teach the case of one who performed *ḥalitza* and then performed levirate betrothal, etc. – חָלַץ וְעָשָׂה מַאֲמָר אִיצְטְרִיךְ וכו': The Rosh asks why this justification is necessary as the Gemara could simply have explained as it did on the previous *amud*, that the mishna is emphasizing Rabbi Akiva's opinion that betrothal is ineffective for those liable due to regular prohibitions. He answers that the Gemara preferred to state an alternative explanation than to say that several sections of the mishna teach us the same thing.

We should issue a decree with regard to a bill of divorce that is given after intercourse, etc. – נִגְזוֹר גֵּט דְּבָתַר בְּעִילָה וכו': The Rashba and the Ritva explain this statement differently from Rashi. Rashi explains that the decree would require the woman who received a bill of divorce after *ḥalitza* to perform *ḥalitza* again so that it not be confused with a bill of divorce given initially. The others explain that one might have thought that since a bill of divorce given to a *yevama* before intercourse permanently disqualifies her from levirate marriage, we should therefore decree that the bill of divorce she receives after intercourse likewise disqualifies her, and she should once again be considered forbidden to the *yavam* as his brother's wife. The *tanna* therefore teaches that in this case they left the Torah law as it is and did not decree further. The *ge'onim* read: Since a bill of divorce before intercourse is effective, a bill of divorce after intercourse is also effective, a version of the text that supports the Rashba's interpretation.

"חָלַץ וְעָשָׂה מַאֲמָר וְנָתַן" וכו'. בְּשִׁלְּמָא חָלַץ וְעָשָׂה מַאֲמָר אִיצְטְרִיךְ, סָלְקָא דַּעְתָּךְ אָמִינָא: נִגְזוֹר מַאֲמָר דְּבָתַר חֲלִיצָה אַטּוּ מַאֲמָר דְּקַמֵּי חֲלִיצָה – קָא מַשְׁמַע לָן דְּלָא גָּזְרִינַן. אֶלָּא חָלַץ וְנָתַן גֵּט לָמָּה לִי?

§ It was taught in the mishna: If **he performed *ḥalitza* and** then proceeded to either **perform levirate betrothal, or give** a bill of divorce, or engage in intercourse with a second woman, nothing is effective after *ḥalitza*. The Gemara asks: **Granted, it was necessary** to teach that in the case of one who **performed *ḥalitza* and then performed levirate betrothal**[N] the levirate betrothal is not effective. For **it might enter your mind to say** that **we should issue a decree** with regard to **levirate betrothal that** takes place **after *ḥalitza* due to levirate betrothal that** takes place **before *ḥalitza,*** and rule that all levirate betrothal is effective. The mishna therefore **teaches us that we do not issue a decree** in this case. **However,** the case of one who **performed *ḥalitza* and gave a bill of divorce, why do I** need this case? What novelty is there in the teaching that a bill of divorce after *ḥalitza* is not effective?

וּלְטַעֲמִיךְ אֵימָא סֵיפָא: בָּעַל וְעָשָׂה מַאֲמָר, בָּעַל וְנָתַן גֵּט – בְּשִׁלְּמָא בָּעַל וְנָתַן גֵּט אִיצְטְרִיךְ, סָלְקָא דַּעְתָּךְ אָמִינָא: נִגְזוֹר גֵּט דְּבָתַר בְּעִילָה אַטּוּ גֵּט דְּקַמֵּי בְּעִילָה, קָא מַשְׁמַע לָן דְּלָא גָּזְרִינַן. אֲבָל בָּעַל וְעָשָׂה מַאֲמָר לָמָּה לִי?

The Gemara answers: **And according to your reasoning,** that each new case must teach something new, **say the latter clause** of the mishna: If **he engaged in intercourse and** then proceeded to **perform levirate betrothal, or give a bill of divorce, or perform *ḥalitza*** with a second woman, nothing is effective. In this case the same question can be asked: **Granted, it was necessary** to teach the case of one who **engaged in intercourse and gave a bill of divorce.** This is because **it might enter your mind to say** that **we should issue a decree** with regard to **a bill of divorce that** is given **after intercourse,**[N] **due to a bill of divorce that** is given **before intercourse,** and decree that this bill of divorce alone is insufficient and she requires *ḥalitza* as well. The mishna therefore **teaches us that we do not issue** such **a decree. But** the case of a *yavam* who **engaged in intercourse and performed levirate betrothal, why do I** need to state it? Once he has engaged in intercourse with her she is his wife in all regards; what difference does levirate betrothal make?

אֶלָּא: אַיְידֵי דְּתָנָא חָלַץ וְעָשָׂה מַאֲמָר – תָּנָא נַמִּי בָּעַל וְעָשָׂה מַאֲמָר, וְאַיְידֵי דְּבָעֵי לְמֵיתְנֵי בָּעַל וְנָתַן גֵּט – תָּנָא נַמִּי חָלַץ וְנָתַן גֵּט.

Rather, one must say that **since** the *tanna* **taught** the case of one who **performed *ḥalitza* and** then **performed levirate betrothal, he also taught** the case of one who **engaged in intercourse and** then **performed levirate betrothal,** due to the similarity between them. **And since he wished to teach** the case of one who **engaged in intercourse and** then **gave a bill of divorce, he also taught** the case of one who **performed *ḥalitza* and** then **gave a bill of divorce.** We should therefore not infer anything from these superfluous cases, as they are merely stated for stylistic reasons.

"בִּזְמַן שֶׁהִיא" וכו'. מַתְנִיתִין דְּלָא כִּי הַאי תַּנָּא. דְּתַנְיָא, אַבָּא יוֹסֵי בֶּן יוֹחָנָן אִישׁ יְרוּשָׁלַיִם אוֹמֵר מִשּׁוּם רַבִּי מֵאִיר: אַחַת בְּעִילָה וְאַחַת חֲלִיצָה, בַּתְּחִלָּה – אֵין אַחֲרֶיהָ כְּלוּם, בָּאֶמְצַע וּבַסּוֹף – יֵשׁ אַחֲרֶיהָ כְּלוּם.

§ The mishna taught: With regard to intercourse, **when it is** at the beginning nothing is effective after it, but if it was in the middle or at the end, something is effective after it. The Gemara comments: **The mishna is not in accordance with** the opinion of **this *tanna*. As it is taught** in a *baraita*: **Abba Yosei ben Yoḥanan, a man of Jerusalem, says in the name of Rabbi Meir:** With regard to **both intercourse and *ḥalitza*,** if one of them were performed **at the beginning, nothing is effective after it,** but if they were done **in the middle or at the end,** i.e., they were preceded by some other action, **something is** effective **after it.** According to the mishna, however, nothing is effective after *ḥalitza* regardless of when it was performed.

וְשָׁלֹשׁ מַחֲלוֹקוֹת בַּדָּבָר, תַּנָּא קַמָּא סָבַר: בִּיאָה דְּאִיכָּא לְמִיגְזַר – גָּזְרִינַן, חֲלִיצָה דְּלֵיכָּא לְמִיגְזַר – לָא גָּזְרִינַן.

And therefore it can be concluded that there are **three disputes with regard to** this **matter,** i.e., three opinions on this issue. **The first *tanna* holds:** In the case of **intercourse** that is preceded by a disqualifying action, **where there is** a reason **to issue a decree,** lest one violate a prohibition by engaging in intercourse after *ḥalitza* or intercourse was performed, **we issue a decree** establishing that invalid intercourse should not be as effective as valid intercourse. With regard to ***ḥalitza,*** however, **where there is no** reason **to issue a decree** as there is no concern of a prohibition even if an action is performed after *ḥalitza*, **we do not issue a decree.**

וְרַבִּי נְחֶמְיָה סָבַר: בִּיאָה נַמִּי לֵיכָּא לְמִיגְזַר. וּדְקָאָמְרַתְּ: לִיגְזוֹר בִּיאָה אַחַר בִּיאָה אַחַר הַגֵּט מִשּׁוּם בִּיאָה אַחַר חֲלִיצָה – כֵּיוָן דַּחֲלִיצָה דְּאוֹרַיְיתָא, מֵידַע יָדְעִי. וּדְקָאָמְרַתְּ לִיגְזוֹר בִּיאָה אַחַר מַאֲמָר מִשּׁוּם בִּיאָה אַחַר בִּיאָה – כֵּיוָן דְּבִיאָה דְּאוֹרַיְיתָא, הָא מֵידַע יְדִיעִי. וְאַבָּא יוֹסֵי בֶּן חָנָן סָבַר לָהּ כְּרַבָּנַן דְּגָזְרִי בְּבִיאָה, וְגָזַר חֲלִיצָה מִשּׁוּם בִּיאָה.

And Rabbi Neḥemya holds that with regard to **intercourse there is also no** reason **to issue a decree. And as** for what **you said** in justification of your ruling, **that we should issue a decree** in a case of **intercourse after a bill of divorce due to intercourse after *ḥalitza,*** there is no cause for such a concern. **Since *ḥalitza*** is effective **by Torah** law, people **know** that it is fully effective and cannot be followed by anything, and they will not confuse it with laws instituted by the Sages. **And as** for what **you said that we should issue a decree** with regard to **intercourse after levirate betrothal due to intercourse after intercourse, since** the acquisition of **intercourse** is **by Torah** law, **this** matter **is known** by people, and they will not err in this regard. **And Abba Yosei ben Ḥanan holds in accordance with** the opinion of **the Rabbis, who issue a decree with regard to intercourse,** but he adds **and issues a decree** with regard to ***ḥalitza* due to intercourse.** He therefore does not differentiate between *ḥalitza* and intercourse at all.

הדרן עלך רבן גמליאל

מתני׳ הַבָּא עַל יְבִמְתּוֹ, בֵּין בְּשׁוֹגֵג בֵּין בְּמֵזִיד בֵּין בְּאוֹנֶס בֵּין בְּרָצוֹן, אֲפִילּוּ הוּא שׁוֹגֵג וְהִיא מְזִידָה, הוּא מֵזִיד וְהִיא שׁוֹגֶגֶת, הוּא אָנוּס וְהִיא לֹא אָנוּסָה, הִיא אֲנוּסָה וְהוּא לֹא אָנוּס. אֶחָד הַמַּעֲרֶה וְאֶחָד הַגּוֹמֵר – קָנָה, וְלֹא חִילֵּק בֵּין בִּיאָה לְבִיאָה.

MISHNA **One who had intercourse with his *yevama*, whether unwittingly,** i.e., he thought he was having intercourse with someone else, **or intentionally,**[N] i.e., he knew she was his *yevama* and nevertheless had intercourse with her without intent to perform levirate marriage; **whether** due to **coercion or willingly; even if he** was **unwitting and her** participation was **intentional, his** participation was **intentional and she** was **unwitting, he was coerced and she was not coerced,** or **she was coerced and he was not coerced; both one who** merely **engages in the initial stage of intercourse**[N] **and one who completes** the act of intercourse **has** thereby **acquired** his *yevama*.[H] **And** similarly, the Torah **did not distinguish between** an act of **intercourse** in an atypical manner, i.e., anal intercourse, **and intercourse** in a typical manner.

וְכֵן הַבָּא עַל אַחַת מִכָּל הָעֲרָיוֹת שֶׁבַּתּוֹרָה, אוֹ פְּסוּלוֹת, כְּגוֹן: אַלְמָנָה לְכֹהֵן גָּדוֹל, גְּרוּשָׁה וַחֲלוּצָה לְכֹהֵן הֶדְיוֹט, מַמְזֶרֶת וּנְתִינָה לְיִשְׂרְאֵל, בַּת יִשְׂרְאֵל לְמַמְזֵר וּלְנָתִין – פְּסָלָהּ, וְלֹא חִילֵּק בֵּין בִּיאָה לְבִיאָה.

And so too, with regard to a man **who had intercourse with any one of those with whom relations are forbidden** [*arayot*] by **the Torah or** with those who are **unfit for him** even though they are not in the category of *arayot*, **for example, a widow with a High Priest; a divorcée and a *yevama* who performed *ḥalitza*** [*ḥalutza*] **with a common priest; a *mamzeret*,** i.e., a woman born from an incestuous or adulterous relationship, **or a Gibeonite woman with an Israelite; the daughter of an Israelite with a *mamzer* or a Gibeonite; he has disqualified her** from marrying into the priesthood through this act no matter how it was performed, **and** the Torah **did not distinguish between** the act of **intercourse** in an atypical manner, i.e., anal intercourse, **and intercourse** in a typical manner.[H]

גמ׳ מַאי אֲפִילּוּ?

GEMARA The Gemara asks: **What is** the significance of the word **even** in the statement that begins with: Even if he was unwitting and her participation was intentional? Since the mishna has already said that there is no halakhic difference whether the act of intercourse was performed intentionally, what is added by that statement?

לָא מִיבָּעְיָא קָאָמַר: לָא מִיבָּעְיָא הוּא שׁוֹגֵג וְהִיא קָמַכְוְונָה לְמִצְוָה, אִי נַמִי הוּא מֵזִיד וְהִיא קָמַכְוְונָה לְמִצְוָה, אֶלָּא אֲפִילּוּ הוּא שׁוֹגֵג וְהִיא מְזִידָה, דְּתַרְוַויְיהוּ לָא קָמַכְוְונִי לְשֵׁם מִצְוָה – אֲפִילּוּ הָכִי קָנָה. תָּנֵי רַבִּי חִיָּיא: אֲפִילּוּ שְׁנֵיהֶם שׁוֹגְגִים, שְׁנֵיהֶם מְזִידִים, שְׁנֵיהֶם אֲנוּסִים.

The Gemara answers: The mishna is stated in the style of: **Needless to say.** It is **needless to say** that if **he** was **unwitting and she intended** to fulfill the **mitzva,** or **alternatively, he** acted **intentionally** without intent to fulfill the mitzva **and she intended** to fulfill the **mitzva,** he has acquired her. **However, even if he** was **unwitting and she** acted **intentionally, where both of them did not intend** to act **for the sake of the mitzva, he nevertheless acquires** her. Similarly, **Rabbi Ḥiyya taught: Even** if **both of them** acted **unwittingly, intentionally,** or **were coerced,** he acquires the *yevama* through the act of intercourse.

אָנוּס דְּמַתְנִיתִין הֵיכִי דָּמֵי? אִילֵימָא כְּשֶׁאֲנָסוּהוּ גּוֹיִם וּבָא עָלֶיהָ – וְהָאָמַר רָבָא: אֵין אוֹנֶס לְעֲרָוָה, לְפִי שֶׁאֵין קִישּׁוּי אֶלָּא לְדַעַת.

§ The Gemara asks: **What are the circumstances the mishna** is referring to when it mentions a man who **was coerced? If we say** that it is **when gentiles coerced him** by threatening to kill him if he did not have intercourse with her **and** he therefore **had intercourse with her, didn't Rava say** that **there is no** such thing as **coercion** of a man to have intercourse with a woman **with whom relations are forbidden,**[NH] **because there is no erection** of the male organ **without intent?**[B] Consequently, even if he acted due to the threat, his action is considered intentional.

אֶלָּא בְּיָשֵׁן – וְהָאָמַר רַב יְהוּדָה

Rather, the mishna must be referring to **one who was sleeping** and became erect, and his *yevama* drew him onto herself. However, **didn't Rav Yehuda say** that

NOTES

Whether unwittingly or intentionally, etc. – בֵּין בְּשׁוֹגֵג בֵּין בְּמֵזִיד וכו׳: *Tosafot* inquired why the mishna specified both the case of one who had intercourse intentionally and the case of one who had intercourse willingly. What is the difference between these cases? They explain that the term willingly indicates that one does so with intention to fulfill the mitzva, whereas the term intentionally means that one acts purposefully but without intent to fulfill the mitzva.

One who engages in the initial stage of intercourse – הַמְּעָרֶה: This term is subsequently explained in the Gemara on 55b.

There is no coercion of a man to have intercourse with a woman with whom relations are forbidden – אֵין אוֹנֶס לְעֲרָוָה: The Ramban cites a dispute with regard to this principle. Some explain that if a man is threatened with death unless he engages in an act of forbidden relations, and he commits the act, he is punishable in court for the forbidden relations due to Rava's principle that there is no coercion of a man with regard to intercourse. Others say that the man is not punishable in court because he is considered to be coerced, despite the fact that, *ab initio*, he is obligated to give up his life rather than engage in forbidden relations. Rather, Rava's principle applies to a case in which a woman or a third person coerced him to engage in intercourse, but not under pain of death. In this case, Rava's principle determines that it is as though he intentionally committed the act and he is not considered coerced. Nevertheless, the Gemara did not explain that the case of coercion in the mishna is one where the man's life has been threatened, as, since he engages in the act of intercourse willingly but for a purpose other than the mitzva, it is no different from the case the mishna refers to as having intercourse intentionally. See also *Tosafot*.

HALAKHA

Any act of intercourse acquires a *yevama* – כָּל בִּיאָה קוֹנָה בִּיבָמָה: If one has intercourse with his *yevama*, whether intentionally or unwittingly, regardless of whether either party was coerced or willing, he has thereby acquired her and they are married. Furthermore, it makes no difference whether it was a typical act of intercourse or anal intercourse, nor whether he completed the act or merely began it (Rambam *Sefer Nashim*, *Hilkhot Yibbum* 2:3; *Shulḥan Arukh*, *Even HaEzer* 166:7).

Prohibited and disqualifying intercourse – בִּיאָה אֲסוּרָה וּפוֹסֶלֶת: A prohibited act of intercourse is considered to have occurred as soon as the act has begun, regardless of whether the act was completed or whether it was a typical act of intercourse or anal intercourse. Furthermore, the woman is disqualified from marrying a priest regardless of whether she or the man engaged in the act intentionally or willingly, as long as she is at least three years old and he is at least nine years old (Rambam *Sefer Kedusha*, *Hilkhot Issurei Bia* 18:6; *Shulḥan Arukh*, *Even HaEzer* 6:9; 20:1, and in the comment of Rema).

There is no coercion of a man to have intercourse with a woman with whom relations are forbidden – אֵין אוֹנֶס לְעֲרָוָה: A woman who was coerced to engage in forbidden relations is exempt from all penalties. However, a man who is coerced is liable to receive punishment. Since Rava ruled that erection occurs willingly, he is not considered to have been coerced at all. The Ra'avad adds that even a man can be coerced and therefore exempt from punishment if he became erect while intending to have intercourse with his wife, and then someone forcibly coerced him to engage in a prohibited act of intercourse. The *Maggid Mishne* writes that even the Rambam would agree that in this rare case, the man would be considered coerced and would be exempt from punishment (Rambam *Sefer Nashim*, *Hilkhot Issurei Bia* 1:9).

BACKGROUND

Intentional erection – קִישּׁוּי לְדַעַת: The nerves that cause erection are usually activated voluntarily. Although it is possible that an erection could be caused by a kind of mechanical stimulation, the assumption here is that a man's desire is largely in control of these nerves, and emotional causes are the decisive factor in the arousal of erection. The conclusion implied by the Gemara that erections are necessarily intentional is to be understood in the sense that there has to be some cooperation on the part of the man for it to occur.