

HALAKHA

A sleeping man has not acquired his *yevama* – נִשְׁן לֹא קָנָה בִּיבְמַתּוֹ: One who did not intend to perform an act of sexual intercourse, e.g., one who was asleep, drunk, or completely unaware of his actions, does not acquire his *yevama* even if they did engage in sexual intercourse (Rambam *Sefer Nashim, Hilkhot Yibbum* 2:4; *Shulhan Arukh, Even HaEzer* 166:8).

One who fell from a roof and was inserted into a woman is liable to pay four types of indemnity – נִפֵּל מִן הַגַּג וְנִתְקַע תֵּיב בְּאַרְבַּע דְּבָרִים: One who fell from a roof due to the force of a normal wind and hurt someone is liable to pay four types of indemnity: Indemnity due to injury, pain, medical costs, and loss of livelihood. However, he is exempt from paying for the victim's shame (Rambam *Sefer Nezikin, Hilkhot Hovel* 1:12; *Shulhan Arukh, Hoshen Mishpat* 421:11).

And if she is his *yevama*, he has not acquired her – וְבִיבְמַתּוֹ לֹא קָנָה: One who became erect while intending to have intercourse with his wife and then fell onto his *yevama* has not acquired her (Rambam *Sefer Nashim, Hilkhot Yibbum* 2:4; *Shulhan Arukh, Even HaEzer* 166:8).

Sexual intercourse completes...but money or a marriage document do not – וְאִין – כִּכְפֵי וְשִׁטְרָא: A *yevama* can be fully acquired by her *yavam* only through sexual intercourse, but not by other means that generally effect betrothal, i.e., money or a marriage document. However, the Sages decreed that one should not have intercourse with his *yevama* without betrothing her first (Rambam *Sefer Nashim, Hilkhot Yibbum* 5:9; *Shulhan Arukh, Even HaEzer* 166:2, 170:2).

NOTES

Her brother-in-law will have intercourse with her, etc. – יְבָמָה יָבֹא עָלֶיהָ וכו' – The Gemara here cites several expositions of this verse and attempts to demonstrate that only one *halakha* is derived from each expression in the verse. Some of these expositions, as well as additional ones, are also cited in the Jerusalem Talmud, but there the Gemara sees no reason to avoid using a single phrase as the source of multiple expositions.

יִשְׁן לֹא קָנָה בִּיבְמַתּוֹ! אֵלֶּא – בְּנִתְקַע? וְהָא אָמַר רַבָּה: נִפֵּל מִן הַגַּג וְנִתְקַע – תֵּיב בְּאַרְבַּע דְּבָרִים, וְבִיבְמַתּוֹ לֹא קָנָה!

אֵלֶּא: כְּגוֹן שְׁנִיתְכּוֹן לְאִשְׁתּוֹ, וְתִקְפְּתוֹ בִּיבְמַתּוֹ, וְכֹא עָלֶיהָ, שְׁנִיחָה אֲנוּסִים דְּבִי רַבִּי חִיָּיא הֵיכִי דְמִי? כְּגוֹן שְׁנִיתְכּוֹן לְאִשְׁתּוֹ, וְתִקְפּוּהוּ גוֹיִם וְדְבָקוּם זֶה בְּזֶה, וְכֹא עָלֶיהָ.

מִנָּא הָנִי מִלִּי? דְּתַנּוּ רַבְנֵי: "יְבָמָה יָבֹא עָלֶיהָ" מִצְוָה. דְּבַר אַחֵר: "יְבָמָה יָבֹא עָלֶיהָ" בֵּין בְּשׁוּגְגַּ בֵּין בְּמִזִּיד, בֵּין בְּאוּסָּם בֵּין בְּרָצוֹן.

וְהָא אֲפִיקְתִּיהָ לְמִצְוָה! לְמִצְוָה מִיֹּאֵם לֹא יִחַפְּזֵי הָאִישׁ נִפְקָא. הָא חֲפִיץ – יָבִים, וְכִי אֲתָא קְרָא – בֵּין בְּשׁוּגְגַּ בֵּין בְּמִזִּיד בֵּין בְּאוּסָּם בֵּין בְּרָצוֹן.

תַּנְיָא אִידָּן: "יְבָמָה יָבֹא עָלֶיהָ" כְּדַרְבָּה, "וְלִקְחָהּ" שְׁלֵא כְּדַרְבָּה. "וְיָבִים" בִּיאָה גּוֹמְרַת בָּהּ וְאִין כֶּסֶף וְשִׁטְרָא גּוֹמְרִין בָּהּ. "וְיָבִים" בְּעַל כְּרַחֵה. דְּבַר אַחֵר: "יְבָמָה יָבֹא עָלֶיהָ" בֵּין בְּשׁוּגְגַּ כּו'.
וְהָא אֲפִיקְתִּיהָ לְכַדְרָבָה! הֵהוּא מִלְּהָקִים לְאַחִיו שֵׁם" נִפְקָא, בְּמָקוֹם שְׂמִיקִים שֵׁם. וְכִי אֲתָא קְרָא – בֵּין בְּשׁוּגְגַּ בֵּין בְּמִזִּיד בֵּין בְּאוּסָּם בֵּין בְּרָצוֹן.

a sleeping man has not acquired his *yevama*,^h as he did not intend to perform the act of intercourse at all? Rather, the mishna was referring to one who was inserted into his *yevama* by accident. But didn't Rabba say: One who fell from a roof and was inserted into a woman due to the force of his fall is liable to pay four of the five types of indemnity^h that must be paid by one who damaged another: Injury, pain, medical costs, and loss of livelihood. However, he is not liable to pay for the shame he caused her, as he did not intend to perform the act, and if she is his *yevama*, he has not acquired her^h in this manner.

Rather, it is a case where he intended to have intercourse with his wife and became erect, and his *yevama* forcefully grabbed hold of him and he had intercourse with her. The Gemara further asks: If so, what are the circumstances of the case when both of them were coerced that was mentioned by the school of Rabbi Hiyya? The Gemara answers: It is a case where he intended to have intercourse with his wife, and gentiles grabbed hold of him and pressed him and his *yevama* against each other, and he thereby had intercourse with her.

§ The Gemara inquires as to the source of these *halakhot*: From where are these matters derived? As the Sages taught with regard to the verse "Her brother-in-law will have intercourse with her" (Deuteronomy 25:5),ⁿ that this indicates that the act of intercourse in this circumstance is a *mitzva*, i.e., it is preferable to the alternative, which is *halitza*. Alternatively, the verse "Her brother-in-law will have intercourse with her," indicates that it does not matter how he had intercourse with her, whether unwittingly or intentionally, whether due to coercion or willingly.

The Gemara asks: Didn't you derive from this phrase that the act of intercourse in this case is a *mitzva*? How can the same phrase also indicate that it does not matter what the intentions of the two parties were during the act of intercourse? The Gemara answers: The fact that it is a *mitzva* is derived from the verse: "And if the man does not wish to take his *yevama*" (Deuteronomy 25:7), which indicates that if he wishes, he performs levirate marriage, which is preferable to *halitza*. Therefore, when the verse cited above came, it indicated that levirate marriage has occurred whether the parties acted unwittingly or intentionally, whether due to coercion or willingly.

It is taught in another *baraita* that the phrase: "Her brother-in-law will have intercourse with her" indicates that levirate marriage has been performed if they engage in typical sexual intercourse. The next phrase, "and take her," includes even atypical, i.e., anal, sexual intercourse. The concluding phrase of the verse, "and consummate the levirate marriage," indicates that sexual intercourse completes her acquisition, but money and a marriage document do not^h complete her acquisition to him as his fully betrothed wife, in contrast to the regular *halakhot* of marriage. By emphasizing "and consummate the levirate marriage with her," the verse teaches that he acquires her even if he acted against her will. Alternatively: "Her brother-in-law will have intercourse with her" indicates that levirate marriage has occurred whether the parties acted unwittingly or intentionally, whether due to coercion or willingly.

The Gemara asks: Didn't you derive from this phrase that levirate marriage has been performed if they engage in typical sexual intercourse? How can it also indicate that it does not matter what the intentions of the two parties were during the act of intercourse? The Gemara answers: That *halakha* is derived from a different verse: "To establish a name for his brother" (Deuteronomy 25:7), which indicates that intercourse must occur in the place where he establishes a name, i.e., where it can lead to childbirth. Therefore, when the verse cited above came, it indicated that levirate marriage has occurred whether the parties acted unwittingly or intentionally, whether due to coercion or willingly.

Whether she was awake or asleep – בין ערה בין ישנה – One who had intercourse with his *yevama* has acquired her regardless of whether she was awake or asleep (Rambam *Sefer Nashim, Hilkhhot Yibbum* 2:3; *Shulhan Arukh, Even HaEzer* 166:7).

One is not liable to pay for shame unless he intends to humiliate his victim – אין חייב על הבושת עד שיתכוון – One is not liable to pay for shaming another individual unless he intended to do so. One who unintentionally shames another individual is exempt from monetary liability (Rambam *Sefer Nezikin, Hilkhhot Hovel* 1:10; *Shulhan Arukh, Hoshen Mishpat* 421:1).

As he at least intended to act for the purpose of sexual intercourse in general – דהא קמכוין לשם ביאה בעולם – If one intended to perform an act of sexual intercourse, and he happened to have intercourse with his *yevama*, he has acquired her. However, if he did not mean to engage in sexual intercourse at all and nevertheless had intercourse with his *yevama*, he has not acquired her, as stated by Rava (Rambam *Sefer Nashim, Hilkhhot Yibbum* 2:4; *Shulhan Arukh, Even HaEzer* 166:8).

A menstruating woman... causes one who has intercourse with her to become ritually impure – נדה... מטמאה את – בועלה: One who had intercourse with a menstruating woman becomes a primary source of ritual impurity with the same *halakhot* as the menstruating woman herself. He transmits impurity to vessels or individuals that come in contact with him or carry him as well as to items that he causes to move. Additionally, if he sits or lies upon an item that is designated for this purpose, it becomes impure even if he did not have direct contact with it or cause it to move (Rambam *Sefer Tahara, Hilkhhot Metamei Mishkav UMoshav* 3:1).

גופא, אָמַר רַב יְהוּדָה: יִשּׁוֹן לֹא קָנָה בִּיבֻמְתָּו, דְּאָמַר קְרָא "יִבְמָה יִבֵּא עָלֶיהָ" עַד דְּמִכּוּיִן לָהּ לְשֵׁם בִּיאַהּ. וְהִתְנַיָּא: בֵּין עַר [בֵּין יִשּׁוֹן אִימָא: בֵּין עֵרָה בֵּין יִשְׁנָה.

The Gemara addresses the matter itself cited in the previous discussion. Rav Yehuda said: A sleeping man has not acquired his *yevama*, as the verse states: "Her brother-in-law will have intercourse with her" (Deuteronomy 25:5), which indicates that he does not acquire her unless he intends to act for the sake of sexual intercourse. Since a sleeping man does not intend to engage in sexual intercourse, he does not acquire his *yevama*. The Gemara asks: Isn't it taught in a *baraita* that one acquires his *yevama* through sexual intercourse regardless of whether he was awake or asleep? The Gemara answers: Say the *baraita* in the following emended form: Whether she was awake or asleep.^H The woman's awareness is not a necessary component in order to perform levirate marriage.

וְהִתְנַיָּא: בֵּין עַר] הוּא בֵּין יִשּׁוֹן הוּא. בֵּין עֵרָה הֵיא בֵּין יִשְׁנָה הֵיא! הֵכָא בְּמֵאֵי עֲסָקִינַן – בְּמִתְנַמְנַם. הֵיכִי דְמִי מִתְנַמְנַם? אָמַר רַב אֲשִׁי: נִים וְלֹא נִים, תֵּיר וְלֹא תֵיר, כְּגוֹן דְּקָרוּ לִיהּ וְעָנִי, וְלֹא יָדַע לְאַהֲדוּרֵי סְבָרָא, וְכִי מְדַבְּרוּ לִיהּ מְדַבְּרֵי.

The Gemara asks further: Wasn't it taught in another *baraita* that one acquires his *yevama* through sexual intercourse regardless of whether he was awake or he was asleep and regardless of whether she was awake or she was asleep? The Gemara answers: With what are we dealing here when the *baraita* says that a sleeping man acquires his *yevama*? It is referring to a man who is dozing. The Gemara asks: What are the circumstances of dozing? Rav Ashi said: One is asleep but not asleep, awake but not awake, when, if they call him, he will answer, but he is unable to provide a reasonable answer. And when they later inform him of what happened, he remembers it.

גופא, אָמַר רַבָּה: נָפַל מִן הַגַּג וְנִתְקַע חַיִּיב בְּאַרְבַּעָה דְּבָרִים, וּבִיבֻמְתָּו לֹא קָנָה: כְּנֹק, בְּצַעַר, בְּשִׁבְתָּ, בְּרַפּוּי, אֲבָל בּוֹשֶׁת לֹא מִיחַיִּיב, דְּאָמַר מָר: אִין חַיִּיב עַל הַבוֹשֶׁת עַד שִׁיתְכּוּוֹן.

The Gemara returns to the statement of Rabba cited earlier in order to discuss the matter itself that Rabba addressed. Rabba said: One who fell from a roof and was inserted into a woman due to the force of his fall is liable to pay four of the five types of indemnity that must be paid by one who damaged another, and if she is his *yevama* he has not acquired her in this manner. He is liable to pay for injury, pain, loss of livelihood, and medical costs. However, he is not liable to pay for the shame he caused her, as the Master said: One is not liable to pay for shame unless he intends to humiliate his victim.^H Consequently, one who fell from a roof accidentally is not liable to pay for the shame he caused the woman.

אָמַר רַבָּא: נִתְכּוּוֹן לְהִטִּיחַ בְּכוֹתֵל וְהִטִּיחַ בִּיבֻמְתָּו – לֹא קָנָה. לְהִטִּיחַ בְּבִהְמָה וְהִטִּיחַ בִּיבֻמְתָּה – קָנָה, דְּהֵיא קְמִכוּיִן לְשֵׁם בִּיאַהּ בְּעוֹלָם.

Rava said: If he intended to press his sexual organ into a wall, and he accidentally pressed it into his *yevama*, he has not acquired her, as he did not intend to engage in an act of sexual intercourse. However, if he intended to press his sexual organ into an animal, and he pressed it into his *yevama*, he has acquired her, as he at least intended to act for the purpose of sexual intercourse in general,^H i.e., for some form of sexual intercourse.

"אֶחָד הַמְעֵרָה". אָמַר עוּלָא: מִנִּין לְהַעֲרָאָה מִן הַתּוֹרָה? שְׁנַאֲמַר "וְאִישׁ אֲשֶׁר יִשְׁכַּב אֶת אִשְׁהּ דָּוָה וְגִלָּה אֶת עֲרוֹתָהּ אֶת מְקוֹרָהּ הַעֵרָה" מִכָּאֵן לְהַעֲרָאָה מִן הַתּוֹרָה.

We learned in the mishna that both one who merely begins the act of intercourse and one who completes it has acquired the *yevama* through this act. Ulla said: From where is it derived that the initial stage of intercourse is considered an act of sexual intercourse by Torah law? As it is stated: "And if a man shall lie with a woman having her sickness and shall uncover her nakedness, he has made naked [he'era] her fountain" (Leviticus 20:18). The verse is referring to the first stage of intercourse, and from here it is derived that the initial stage of intercourse [ha'ara'a] is considered sexual intercourse by Torah law.

אֲשַׁכְּחֵן נְדָה, שְׂאָר עֲרִיּוֹת מִנִּין? וְכִי תִימָא: נִילְף מְנַדָּה – מַה לְנְדָה שְׂכֹן מְטַמְּאָה אֶת בּוֹעֵלָה!

The Gemara asks: We have found a source for this *halakha* in the case of a menstruating woman, the subject of the verse cited above. From where is it derived that the initial stage of intercourse is considered sexual intercourse with regard to the rest of those with whom relations are forbidden? And if you say we should derive it from the *halakha* with regard to a menstruating woman, what comparison can be made to a menstruating woman, concerning whom the *halakha* is more stringent than others with whom relations are forbidden, in that she causes one who has intercourse with her to become ritually impure?^H

It is within his power to increase – שָׁכַן בְּיָדוֹ לְרִבּוֹת – The argument is that since this prohibition is stringent in that the number of individuals to whom it applies can be increased, perhaps it is also stringent with regard to the manner in which it can be violated. Therefore, it cannot be derived that if the initial stage of intercourse is considered an act of sexual intercourse in this case, it is always considered sexual intercourse (Ritva).

Let it come by deriving the *halakha* in any one case from two of the sources mentioned above – תִּיתִי חֲדָא – מתרתי: Rashi and *Tosafot* understood that the *halakha* is derived from the common denominator between two of the sources mentioned above. However, the *Tosafot HaRosh* apparently understood that the *halakha* with regard to some forbidden relations would be derived from one source, and that other *halakhot* would be derived from the other source. The *Arukh LaNer* notes that the *Tosafot HaRosh* must have had a slightly different version of the Gemara text, as the phrase: Let it come by deriving the *halakha* in any one case from two of the sources mentioned above, implies that both sources are needed to derive a single prohibition.

אָלָא אֲתֵיָא מֵאַשְׁתֵּי אָח, דְּכַתִּיב וְאִישׁ אֲשֶׁר יִקַּח אֶת אִשְׁתּוֹ אֲחִיו נֹדֶה הִיא, וְכִי אִשְׁתּוֹ אֲחִיו [לְעוֹלָם] נֹדֶה הִיא? אָלָא: כְּנֹדֶה, מִה נֹדֶה בְּהֶעֱרָאָה – אִף אִשְׁתּוֹ אֶחָ בְּהֶעֱרָאָה.

מִה לְאִשְׁתּוֹ אֶחָ שָׁכַן בְּיָדוֹ לְרִבּוֹת, דְּאִי בְּעֵי מְקַדְּשׁ וְאִזְלֵי כִי אֲלֵפָא!

אָלָא אֲתֵיָא מֵאַחֲוֹת אָב וְאַחֲוֹת אִם, דְּכַתִּיב וְעֵרֹת אַחֲוֹת אִמְךָ וְאַחֲוֹת אָבִיךָ לֹא תִגְלֶה כִּי אֶת שְׂאֵרוֹ הֶעֱרָה. אִיכָא לְמִפְרֵךְ: מִה לְאַחֲוֹת אָב וְאַחֲוֹת אִם – שָׁכַן אִיסוּר הֵבֵא מֵאֲלִי!

מִחֲדָא לֹא אֲתֵיָא, תִּיתִי [חֲדָא] מִתְרֵי. מִהִי תִיתִי? תִּיתִי מֵאַשְׁתּוֹ אֶחָ וְאַחֲוֹת אָב וְאַחֲוֹת אִם – מִה לְהִנָּךְ, שָׁכַן אִיסוּרִין מִשׁוּם שְׂאֵר!

אָלָא תִיתִי מִנִּגְדָה וְאַחֲוֹת אָב וְאַחֲוֹת אִם – מִה לְהִנָּךְ, שָׁכַן אִיסוּר הֵבֵא מֵאֲלִי! אָלָא תִיתִי מִנִּגְדָה וְאַשְׁתּוֹ אֶחָ, דְּמֵאִי פְרִכְתָּ?

מִתְקִיף לָהּ רַב אַחָא בְרִיה דְּרַב אִיקָא: מִה לְנֹדֶה וְאַשְׁתּוֹ אֶחָ – שָׁכַן אִין לָהּם הִיתֵר בְּחַיִי אוֹסְרוֹן, תֵּאמֵר בְּאַשְׁתּוֹ אִישׁ שָׁכַן יֵשׁ לָהּ הִיתֵר בְּחַיִי אוֹסְרָה!

Rather, the *halakha* in other cases comes from a verse about a brother's wife, as it is written: "And if a man shall take his brother's wife, it is impurity [*nidda*]" (Leviticus 20:21). The word *nidda* generally refers to a menstruating woman, and so the Gemara asks: Is his brother's wife always menstruating? Rather, it means that the *halakha* with regard to her is like that of a menstruating woman: Just as one is liable to receive punishment for violating the prohibition against engaging in sexual intercourse with a menstruating woman through the initial stage of intercourse, so too, one is liable to receive punishment for violating the prohibition against engaging in sexual intercourse with a brother's wife through the initial stage of intercourse.

The Gemara asks: What comparison can be made between a brother's wife and other women with whom relations are forbidden? The prohibition with regard to a brother's wife is more stringent in that it is within his power to increase^N the number of women forbidden by this prohibition, as, if he wishes, he can go on betrothing a thousand women, all of whom would be forbidden to his brother. Consequently, the prohibition with regard to a brother's wife cannot serve as a model for other prohibitions.

Rather, the *halakha* in other cases comes from a verse with regard to a father's sister and a mother's sister, as it is written: "And you shall not uncover the nakedness of your mother's sister nor of your father's sister; for he has made naked [*he'era*] his kin" (Leviticus 20:19). The Gemara asks: It is possible to refute this source as follows: What comparison can be made between other women with whom relations are forbidden and a father's sister and a mother's sister, which are unique in that they are prohibited due to a prohibition that comes on its own? The prohibition with regard to a father's sister and a mother's sister does not stem from marriage, but from the biological fact that she is his father's or mother's sister. It is therefore dissimilar to prohibitions that result from marriage.

The Gemara states: The principle that the initial stage of intercourse is considered sexual intercourse does not come from any one of the sources cited above. Let it come by deriving the *halakha* in any one other case from the common denominator of two of the sources mentioned above.^N The Gemara asks: From which two sources could this principle come to be derived? If you say it can come to be derived from the combination of the source with regard to a brother's wife and the source with regard to a father's sister and a mother's sister, what comparison may be drawn from these cases, which are unique in that they are prohibited because they are kin?

Rather, let it come from the prohibition proscribing a menstruating woman and the prohibition with regard to a father's sister and a mother's sister, as a menstruating woman is not prohibited as a family relative. The Gemara raises a difficulty: What comparison may be drawn from these cases, which are each a prohibition that comes of its own accord, as neither one is created through marriage? Rather, let it come from the prohibition proscribing a menstruating woman and the prohibition proscribing a brother's wife. As, what can you say to refute this teaching? These two cases do not share any unique features that might be cause for stringency.

Rav Aḥa, son of Rav Ika, strongly objects to this: What comparison may be drawn based upon the precedent of a menstruating woman and a brother's wife, which are stringent in that they cannot be permitted to others for the duration of the existence of the factor that renders them prohibited? A menstruating woman is forbidden as long as she experiences a flow of menstrual blood, while a brother's wife is forbidden for the duration of the brother's lifetime. Can you say the same with regard to a married woman, who can become permitted during the lifetime of the one who renders her prohibited, i.e., if her husband divorces her?

אמר ליה רב אחא מדפתי לרבנא:
 אטו נדה ואשת אח בתי אוסרן הוא
 דאין להם היתר, אבל לאחר מכאן
 יש להם היתר? נדה

Rav Aḥa of Difti said to Ravina: Is that to say that it is only during the existence of the factor that renders them prohibited that a menstruating woman and a brother's wife cannot be permitted to others, but afterward, when the prohibiting factor has been resolved, they can be permitted? In the case of a menstruating woman,

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 בבנים תליא רחמנא.

the matter depends upon days, not blood. Although the flow of blood causes her to become impure, she remains impure for a full seven days regardless of whether she continues to experience menstrual bleeding for the duration of that time period. Similarly, in the case of a **brother's wife, the Merciful One makes her forbidden status dependent upon children**, as, if she has children she remains forbidden to her husband's brother even after her husband dies.

אלא פרוך הכי: מה לנדה ואשת
 אח - שבין אין אוסרן מתירן, תאמר
 באשת איש - שאוסרה מתירה!

Rather, the Gemara refutes the derivation in the following manner: **What comparison can be drawn from a menstruating woman and a brother's wife, which are unique in that what renders them prohibited does not render them permitted?** Each becomes permitted due to an external factor, i.e., the passing of seven days or the death of her childless husband. **Can you say that the halakhot of these cases apply to a married woman, whose prohibited status is different in that the one who renders her prohibited to the rest of the world, i.e., her husband, has the capacity to render her permitted through divorce?**

אלא אמר רבי יונה ואיתימא רב
 הונא בריה דרב יהושע: אמר קרא
 "כי כל אשר יעשה מכל התועבות
 האלה ונכרתו הנפשות העשות"
 הוקשו כל העריות כולן לנדה, מה
 נדה בהערה - אף כל בהערה.

Rather, the Gemara offers another source for the *halakha* that the initial stage of intercourse is considered sexual intercourse. **Rabbi Yona said, and some say it was Rav Huna, son of Rav Yehoshua: The verse states at the end of the chapter on forbidden relations: "For whoever shall do any of these abominations, the souls that do them shall be cut off" (Leviticus 18:29). All those with whom relations are forbidden are compared to each other in this verse, and therefore also to a menstruating woman, who is mentioned in that chapter. Consequently, just as one is liable to receive punishment for having sexual intercourse with a menstruating woman from the time of the initial stage of intercourse, so too, one violates all prohibitions against engaging in forbidden relations from the time of the initial stage of intercourse.**

ואלא נדה דכתבא גבי אשת אח
 למה ליה לכדרב הונא. דאמר רב
 הונא: רמו ליבמה מן התורה מנין?
 מנין? הא כתיב "במה יבא עליה!"
 אלא: רמו ליבמה שאוסרה בתי
 בעלה מנין?

The Gemara further asks: **But if that is the source of this halakha, why do I need the term *nidda* that is written with regard to a brother's wife?** The Gemara answers that it is needed for that which Rav Huna taught, as Rav Huna said: **From where in the Torah is there a hint to the halakha of a *yevama*?** The Gemara expresses surprise: **From where? Isn't it written explicitly in the verse "Her brother-in-law will have intercourse with her" (Deuteronomy 25:5)? Rather, Rav Huna meant to say: From where is there a hint that a *yevama* is forbiddenⁿ to her brother-in-law in her husband's lifetime, even after she is divorced from her husband?**

האי - סברא היא, מדאמר רחמנא:
 לאחר מיתת בעלה שריא - מכלל
 דבתי בעלה אסורה!

The Gemara remains puzzled: No proof is needed for this *halakha* either, as **this is based upon logical reasoning:ⁿ From the fact that the Merciful One says the woman is permitted to her brother-in-law after her husband's death it may be inferred that in her husband's lifetime she is forbidden to him.**

NOTES

From where is there a hint that a *yevama* is forbidden – רמזו לייבמה שאוסרה: The Ramban poses a basic question: Since it is explicitly prohibited by the Torah for one to marry his brother's wife, and the Torah explicitly permits her to him in only one particular circumstance, i.e., levirate marriage, why would one think that the prohibition does not apply in any other case? He explains that one might have thought that it is permitted for one to marry her in a case of levirate marriage not because the mitzva overrides the general prohibition, but because the prohibition never applied at all as long as his brother did not have children. If so, the prohibition would not apply even while his brother was alive (see *Tosafot*).

This is based upon logical reasoning – האי סברה היא: This is not merely intuitive logic, as it cannot be determined that one is liable to receive capital punishment or *karet* on the basis of abstract logic alone. It refers to logical reasoning based upon a verse (*Ritva*).

One who has intercourse with a menstruating woman is liable to *karet* – נדה בכרת – One who intentionally had intercourse with a menstruating woman is liable to receive *karet*, as is similarly the case with any other forbidden relation, even if they merely perform the initial stage of intercourse (Rambam *Sefer Kedusha, Hilkhhot Issurei Bia* 4:1).

A brother's wife... during her husband's lifetime – אשת אח... בחיי בעלה: One who has intercourse with his brother's wife while his brother is alive is liable to receive *karet*, even if his brother has already divorced her (Rambam *Sefer Kedusha, Hilkhhot Issurei Bia* 1:1, 2:1).

One who performs the initial stage of intercourse with another male – המערה בכבור: One who performs the initial stage of intercourse with another male is liable to receive the punishment of stoning (Rambam *Sefer Kedusha, Hilkhhot Issurei Bia* 1:14).

One who performs the initial stage of intercourse with an animal – המערה בבמה: A man or woman who performs the initial stage of intercourse with an animal is liable to receive the punishment of stoning. The animal is likewise stoned (Rambam *Sefer Kedusha, Hilkhhot Issurei Bia* 1:16).

ודלמא: לאחר מיתת בעלה – מצוה בחיי בעלה – רשות? אי נמי: לאחר מיתת בעלה – אין בחיי בעלה – לא ולא הבא מקלל עשה – עשה!

אמר קרא: "ואיש אשר יקח את אשת אחיו נדה היא" וכי אשת אחיו נדה היא? אלא כנדה, מה נדה, אף על פי שיש לה היתר לאחר מכאן – בשעת איסורא בכרת, אף אשת אח [נמי]. אף על פי שיש לה היתר לאחר מכאן – בחיי בעלה בכרת.

אלא הערצה דכתיבא גבי אחות אב ואחות אם למה לי?

לכדבעא מיניה רבינא מרבא: המערה בכבור, מהו? בכבור – "משכבי אשה" כתיבא!

אלא: המערה בבמה מהו? אמר ליה: אם אינו ענין להערצה, דכתיבא גבי אחות אב ואחות אם, דאתיא בהקישא מדרבי יונה – תנהו ענין להערצה דבמה.

מכדי בהמה חייבי מיתות בית דין היא, מאי טעמא כתיב להערצה דידה גבי חייבי בריתות? לכתוב גבי מיתת בית דין, ונילף מיתת בית דין ממיתת בית דין!

אידי דכוליה קרא לדרשא אתי – כתיב ביה נמי הא מילתא לדרשא.

The Gemara refutes this argument: **Perhaps after her husband's death it is a mitzva for her brother-in-law to marry her, whereas during her husband's lifetime their marriage is optional. Alternatively, perhaps after her husband's death, yes, she is permitted to him, while during her husband's lifetime, no, they are not permitted to marry, but there is no punishment of *karet* if they do.** This is because the source of the prohibition is the mitzva for them to marry after the husband's death, **and a prohibition that stems from a positive mitzva has the status of a positive mitzva, but nothing more.**

Therefore, the verse states: **"And if a man shall take his brother's wife, it is impurity [*nidda*]"** (Leviticus 20:21). **Is his brother's wife necessarily a menstruating woman [*nidda*]? Rather, she is like a menstruating woman in the following manner: Just as with regard to a menstruating woman, although she has a permitted stage afterward, at the time that she is forbidden, one who has intercourse with her is liable to receive the punishment of *karet*,^h so too, with regard to a brother's wife, although she has a permitted stage afterward, during her husband's lifetime^h marriage to her brother-in-law is punishable by *karet*.**

The Gemara asks: **But if the source of the *halakha* that the initial stage of intercourse is considered sexual intercourse is as stated above, why do I need this *halakha* to be indicated by the word *he'era* (Leviticus 20:19) in the case of a father's sister and a mother's sister?**

The Gemara answers that it is needed for the dilemma that Ravina raised before Rava: **With regard to one who performs the initial stage of intercourse with another male,^h what is the *halakha*?** Is it considered to be a forbidden act of homosexual intercourse? The Gemara is puzzled by this dilemma: **With regard to a male, it is written explicitly: "You shall not lie with a man as with a woman" (Leviticus 18:22), which indicates that anything considered an act of sexual intercourse with a woman is also considered an act of sexual intercourse with a man.**

Rather, the word *he'era* in the case of a father's sister and a mother's sister is needed to resolve the following dilemma: **With regard to one who performs the initial stage of intercourse with an animal,^h what is the *halakha*?** Rava said to Ravina: **If the word *he'era* does not refer to the matter of the initial stage of intercourse in the context where it is written, i.e., the prohibition with regard to a father's sister and a mother's sister, as this *halakha* is derived from a comparison based upon the statement of Rabbi Yona, refer it to the matter of the initial stage of intercourse with an animal.** The superfluous expression written in the case of a father's sister and a mother's sister teaches that the initial stage of intercourse is considered sexual intercourse even with an animal.

The Gemara asks: **Since intercourse with an animal is a prohibition for which one is liable to receive capital punishment from the court, what is the reason that the *halakha* of the initial stage of intercourse that applies to it is written with regard to the prohibitions proscribing a father's sister and a mother's sister, for which one is liable to receive *karet*?** Let the word *he'era* be written with regard to prohibitions for which one is liable to receive capital punishment from the court, and let us derive the *halakha* with regard to a prohibition punishable by capital punishment from the court, i.e., the case of bestiality, from another prohibition punishable by capital punishment from the court.

The Gemara answers: **Since the entire verse of a father's sister and a mother's sister comes for the purpose of an exposition, as the Gemara is about to explain, this matter, i.e., that the initial stage of intercourse is considered intercourse, is also written for the purpose of an exposition, i.e., to indicate that this principle holds true in a different context, i.e., that of bestiality.**

A father's sister – אָחות האָב: One's father's sister is a forbidden relative and he is liable to receive *karet* for having intercourse with her, regardless of whether she is his father's paternal sister or maternal sister (Rambam *Sefer Kedusha, Hilkhoh Issurei Bia* 2:5; *Shulhan Arukh, Even HaEzer* 15:16).

His sister – אָחותו: One's sister is forbidden to him by Torah law, regardless of whether she is his paternal sister or maternal sister, or whether she was born in or out of wedlock. He is liable to receive punishment for engaging in intercourse with her even if she is a *mamzeret* (Rambam *Sefer Kedusha, Hilkhoh Issurei Bia* 2:2; *Shulhan Arukh, Even HaEzer* 15:10).

His aunt – דודתו: The wife of one's father's paternal brother is forbidden by Torah law. However, the wife of one's father's maternal brother is forbidden only by rabbinic law (Rambam *Sefer Kedusha, Hilkhoh Issurei Bia* 2:2; *Shulhan Arukh, Even HaEzer* 15:8).

מאי דרשא – דתנא: "ערוות אָחות אביך לא תגלה" בין מן האב בין מן האם. אתה אומר בין מן האב בין מן האם, או אינו אלא מן האב ולא מן האם?

ודין הוא: חייב כאן – וחייב באָחותו. מה אָחותו – בין מן האב בין מן האם, אף כאן – בין מן האב בין מן האם.

או בלך לדרך זו: חייב כאן וחייב בדודתו, מה דודתו – מן האב ולא מן האם, אף כאן – מן האב ולא מן האם.

נראה למי דומה: דנין איסור הבא מאליו מאיסור הבא מאליו, ואל תוכיח דודתו – שאין איסור הבא מאליו.

או בלך לדרך זה: דנין קרובי האב מקרובי האב, ואל תוכיח אָחותו שקרובי עצמו?

תלמוד לומר "ערוות אָחות אביך לא תגלה" בין מן האב בין מן האם. "ערוות אָחות אמך לא תגלה" בין מן האב בין מן האם.

למה לי למכתבא באָחות אב, למה לי למכתבא באָחות אם? אמר רבי אבהו: צריכי, דאי כתב רחמנא באָחות אב – שכן יש לה חיים, אבא אָחות אם – אימא לא.

ואי כתב רחמנא באָחות אם – שכן ודאית, אבא אָחות אב – אימא לא. צריכא.

The Gemara asks: **What is the exposition** that the rest of the verse introduces? **As it is taught in a *baraita***, the verse "You shall not uncover the nakedness of your father's sister" (Leviticus 18:12) indicates that the prohibition applies **whether** she is your father's sister **from his father, or from his mother.**⁴ **Do you say** that she is forbidden **whether** she is your father's sister **from his father or from his mother, or perhaps it is only a sister from his father** who is forbidden, **but not from his mother?**

It may be inferred **logically** from the fact that the Torah **rendered him liable here and rendered him liable with his sister: Just as with regard to his sister**⁴ he is liable to receive punishment **whether** she is his sister **from his father or from his mother, so too here, he is liable whether** she is his father's sister **from his father or from his mother.**

Or perhaps **go this way** and compare a father's sister and a mother's sister to a different *halakha*: The Torah **rendered him liable here and rendered him liable with his aunt**,⁴ i.e., the wife of his father's brother: **Just as concerning his aunt**, he is liable to receive punishment only with regard to the wife of his father's brother **from his father**, i.e., the wife of his father's paternal brother, **and not** for the wife of his father's brother **from his mother**, i.e., the wife of his father's maternal brother, **so too here**, he is liable only with regard to a father's sister or a mother's sister **from their father**, i.e., a paternal sister, **and not from their mother**, a maternal sister.

The Gemara analyzes these two possibilities: **Let us see to which case it is more similar**, i.e., which is a better comparison. We should derive the *halakha* with regard to a **prohibition that comes on its own**, i.e., a father's sister and a mother's sister, **from a prohibition that also comes on its own**, i.e., a sister, **and the halakha with regard to his aunt cannot be used to prove otherwise**, as it is **not a prohibition that comes on its own**, but through marriage.

The Gemara counters this argument: **Or perhaps go this way** and claim that we should derive the *halakha* with regard to **the relatives of his father**, i.e., his father's sister, **from the halakha with regard to the relatives of his father**, i.e., his father's brother's wife, **and the case of his sister cannot be used to prove otherwise**, as she is **his own relative**. Consequently, there is no conclusive proof based on reasoning alone.

Therefore **the verse states**: "You shall not uncover the nakedness of your father's sister," which teaches that this prohibition applies **whether** she is your father's sister **from his father or from his mother**. Similarly, the verse "You shall not uncover the nakedness of your mother's sister" indicates that the prohibition applies **whether** she is your mother's sister **from her father or from her mother**. These prohibitions are stated twice (Leviticus 18:12–13 and 20:19), and the superfluous verse indicates that the prohibition applies even to the maternal sister of one's father or mother.

The Gemara asks: **Why do I need the Torah to write this halakha with regard to a father's sister, and why do I need the Torah to write it again with regard to a mother's sister?** Rabbi Abbahu said: Both verses are necessary. **If the Merciful One had written this halakha only with regard to one's father's sister**, one might say that it is limited to that case, **as she has common lineage with her nephew**, since lineage goes through one's father. **However**, with regard to one's **mother's sister** you might say that she is **not prohibited**, as she is not considered to share common lineage with him.

And conversely, if the Merciful One had written this halakha only with regard to one's mother's sister, one might say that it is limited to that case, **as she is certainly his relative**, since one's biological relationship with his mother is absolutely certain. **However**, with regard to one's **father's sister**, one might say **no**, that she is not forbidden, as paternity can never be established beyond doubt. It is therefore **necessary** for this *halakha* to be stated in both cases.

וְדוּדָתוֹ, דְּפָשִׁיטָא לִיהּ לְתַנָּא דְּמִן הָאָב וְלֹא מִן הָאִמָּה, מִנָּא לִיהּ?

אָמַר רַבָּא: אֲתֵינָא "דודו" "דודו", כְּתִיב הֶכָּא "עֲרוֹת דָּדוֹ גִּלְהֵ" וְכִתִּיב הֵתֵם "אוֹ דָּדוֹ אוֹ בֶן דָּדוֹ יִגְאָלְנוּ" מִהּ לְהֵלֵן מִן הָאָב וְלֹא מִן הָאִמָּה – אִךְ כָּאֵן מִן הָאָב וְלֹא מִן הָאִמָּה.

וְהֵתֵם מִנְלָן? אָמַר קְרָא "מִמְשַׁפְּחָתוֹ יִגְאָלְנוּ", מִשַּׁפְּחָת אָב – קְרוּיָהּ מִשַּׁפְּחָה, מִשַּׁפְּחָת אִמָּה – אֵינָה קְרוּיָהּ מִשַּׁפְּחָה.

וְהִדְתַּנּוּ: אָמְרוּ לוֹ: מִתָּה אֶשְׁתַּד, וְנִשְׂא אַחֻתָּה מֵאִבִּיךָ. מִתָּה, וְנִשְׂא אַחֻתָּה מֵאִמָּה. מִתָּה, וְנִשְׂא אַחֻתָּה מֵאִבִּיךָ. מִתָּה, וְנִשְׂא אַחֻתָּה מֵאִמָּה –

מִוֹתֵר בְּרֵאשׁוֹנָה וּבְשִׁלִּישִׁית וּבְחַמִּישִׁית, וּפּוֹטְרוֹת צְרוּתֵיהֶן. וְאִסּוּר בְּשִׁנְיָה וּבְרַבִּיעִית, וְאֵין בִּיאַת אַחַת מֵהֶן פּוֹטְרַת צְרוּתָהּ.

וְאִם בָּא עַל הַשִּׁנְיָה לְאַחַר מִיתַת הָרֵאשׁוֹנָה – מִוֹתֵר בְּשִׁנְיָה וּבְרַבִּיעִית, וּפּוֹטְרוֹת צְרוּתֵיהֶן, וְאִסּוּר בְּשִׁלִּישִׁית וּבְחַמִּישִׁית.

The Gemara asks: **And** with regard to **his aunt**, where it is obvious to the *tanna* that the prohibition includes only the wife of his father's brother **from his father and not from his mother**, from where does he derive this *halakha*?

Rava said: It is derived through a verbal analogy between the terms "his uncle" and "his uncle." It is written here: "He has uncovered his uncle's nakedness" (Leviticus 20:20), and it is written there, with regard to the redemption of a Jew who has been sold to a gentile: "Either his uncle or his uncle's son shall redeem him" (Leviticus 25:49). Just as there, in the case of redemption, it must be a relative from the side of his father and not from the side of his mother, so too here, with regard to forbidden relations, the prohibition applies to the wife of his father's brother from his father, i.e., the wife of his father's paternal brother, and not from his mother.

The Gemara asks: **And there**, with regard to the *halakhot* of redemption, from where do we derive that a maternal relative is not included? The verse states: "Or any that is near of kin to him of his family shall redeem him" (Leviticus 25:49), and it is an established principle that only the family of one's father is called family, while the family of one's mother is not called family,¹¹ as lineage is determined based upon one's father.

And with regard to that which we learned in a mishna: If they said to him: Your wife is dead, and he then married her sister from her father. He was subsequently informed that his second wife died, and he married her sister from her mother, i.e., his second wife's maternal sister. He was then informed that his third wife died, and he married her sister from her father, i.e., his third wife's paternal sister. He was then informed that his fourth wife died, and he married her sister from her mother, i.e., his fourth wife's maternal sister. It later became apparent that all these rumors were unfounded and all the women were still alive. Consequently, since one cannot marry his wife's sister during his wife's lifetime, some of the marriages are void.

The *halakha* in this case is that it is permitted for him to marry his first, third, and fifth wives, as they are not related to each other. Consequently, these marriages are valid, and these women exempt their rival wives from levirate marriage if they all became subject to levirate marriage and one of them performed levirate marriage or *halitza*. However, it is prohibited for him to marry his second and fourth wives, as they are both sisters of one of his previous wives, and their marriages are therefore void. Consequently, sexual intercourse between one of them and his brother, if he has died childless, does not exempt her rival wife, i.e., the real wives of the deceased, from levirate marriage.

And if the first wife indeed died, and he had intercourse with the second woman after the death of the first one, it is permitted for him to marry the second and fourth women, who are not related to each other, and they exempt their rival wives from levirate marriage if they perform levirate marriage or *halitza*, and it is prohibited for him to marry the third and fifth women, as they are sisters of his previous wives, who are still alive, and consequently these marriages are void.

HALAKHA

מִשַּׁפְּחָת אִמָּה – The family of one's mother is not considered family with regard to inheritance. Therefore, maternal brothers are not considered heirs; each one is an heir of his paternal relatives

only. Even if the identity of one's father is unknown, his maternal relatives are still not considered his heirs (*Terumat HaDeshen*; Rambam *Sefer Mishpatim, Hilkhot Nahalot* 1:6; *Shulhan Arukh, Hoshen Mishpat* 276:4).