

BACKGROUND

The tent of a corpse – אהל המת: The *halakhot* of the impurity imparted by a corpse, including the *halakhot* of a tent covering a corpse, are cited in great detail in tractate *Oholot*. The essential *halakhot* of the tent over a corpse are detailed in the Torah (Numbers, chapter 19). The Sages derived that any structure that has a cavity that is at least one cubic handbreadth in volume and contains a corpse or part of a corpse, e.g., its flesh, bones, or limbs, becomes a tent over a corpse. Not only do all articles subject to ritual impurity contained within it become ritually impure themselves, but they also become a primary source of ritual impurity, capable of imparting ritual impurity to people and objects.

HALAKHA

The impurity of a corpse of gentiles – טומאת המת של נכרים: Some commentaries maintain that the corpses of gentiles do not convey impurity via a tent, in accordance with the opinion of Rabbi Shimon ben Yoḥai. Others disagree (*Tosafot*; *Rosh*). It is proper for a priest to act stringently in this regard. The corpse of a gentile certainly conveys impurity to one who touches or carries it (Rambam *Sefer Tahara, Hilkhot Tumat Met* 1:13 and *Sefer Shofetim, Hilkhot Evel* 3:3; *Shulḥan Arukh, Yoreh De'a* 372:2).

קברי גוים אינן מטמאין באהל, שנאמר  
"ואתם צאני צאן מרעייתי אדם אתם" אתם  
קרויין "אדם", ואין הגוים קרויין "אדם".

מיתביי: "ונפש אדם ששה עשר אלף!  
משום בהמה.

"אשר יש בה הרבה משתים עשרה רבוא  
אדם אשר לא ידע בין ימינו לשמאלו  
(ובהמה רבה)". משום בהמה.

"כל הורג נפש וכל נוגע בחלל תתחטאו!  
דלמא איקטיל חד מישראל. ורבנן: לא  
נפקד ממנו איש. ורבי שמעון בן יוחי:  
לא נפקד ממנו איש לעבירה.

רבינא אמר: נהי דמעטינהו קרא מאטמוי  
באהל, דכתיב "אדם כי ימות באהל",  
ממגע ומשא מי מעטינהו קרא?

The graves of gentiles do not render items impure though a tent,<sup>b</sup> as it is stated: "And you My sheep, the sheep of My pasture, are men [*adam*]" (Ezekiel 34:31), from which it is derived that you, the Jewish people, are called men [*adam*]<sup>n</sup> but gentiles are not called men [*adam*]. Since the Torah introduces the *halakha* of ritual impurity of a tent with the words: "When a man [*adam*] dies in a tent" (Numbers 19:14), this *halakha* applies only to corpses of Jews but not those of gentiles.<sup>h</sup>

The Gemara raises an objection based upon the verse with regard to captives taken during the war against Midian: "And the persons [*nefesh adam*] were sixteen thousand" (Numbers 31:40), which indicates that gentiles are also referred to as *adam*. The Gemara answers: They are given this title due to the need to distinguish the people taken captive from the animals that were taken as spoils of war.

The Gemara raises another difficulty based upon a verse with regard to the city of Nineveh: "Wherein are more than one hundred and twenty thousand men [*adam*] that cannot discern between their right hand and their left hand, and also much cattle" (Jonah 4:11). The Gemara answers: There, too, the gentiles are given this title due to the need to distinguish them from the animals mentioned in the verse.

The Gemara continues to question Rabbi Shimon's ruling based upon a verse pertaining to the war against Midian: "Whoever has killed anyone, and whoever has touched any slain, purify yourselves" (Numbers 31:19). This indicates that gentile corpses convey ritual impurity. The Gemara answers: Perhaps a Jew was killed, and the concern was for impurity caused by his corpse. And the Rabbis reply that the verse attests: "Not one man of us is missing" (Numbers 31:49). No Jewish soldiers fell in battle, and therefore the concern for impurity must have been due to the corpses of gentiles. And Rabbi Shimon ben Yoḥai responds: The intent of that verse is that not one man of us is missing due to transgression, i.e., none of them sinned.

Ravina said that the explanation above is unnecessary: Granted, the verse excluded gentiles from rendering items impure through a tent, as it is written: "When a man [*adam*] dies in a tent" (Numbers 19:14); but did the verse exclude them from rendering items impure via touching and carrying?<sup>n</sup> Since gentile corpses convey impurity in these ways, they could have rendered impure the Jews involved in the war with Midian, even according to Rabbi Shimon ben Yoḥai.

NOTES

You are called men [*adam*] – אתם קרויין אדם: Since the Torah was given to the Jewish people, it is assumed that whenever it refers to men [*adam*], it is referring to its primary audience, the Jewish people. If a wider meaning is intended the verse so specifies (see Maharatz Hayyut).

The commentaries analyze many instances where the Torah uses the term *adam*. Their conclusion is that the word *adam* is sometimes stated with regard to gentiles, but only when the verse must use this word, e.g., a verse that distinguishes between man and animal or between a commoner and a man of social standing.

*Tosafot* cite the opinion of Rabbeinu Meshullam that the Torah uses the term *adam* instead of referring directly to the Jewish people in the context of punishment or tragedy, while it refers directly to the Jewish people in more positive contexts. Rabbeinu Tam contends that the term: Man [*adam*], always refers to the Jewish people, whereas the term: The man

[*ha'adam*], refers to the entire human race. Some commentaries note that the numerical value of: The man [*ha'adam*], is the same as the numerical value of the word impure [*tamei*]. See Rabbi Avraham min HaHar's response to this exposition. Later commentaries suggest other homiletic explanations of this idea (see *Iyyun Ya'akov*).

Did the verse exclude them from rendering items impure via touching and carrying – ממגע ומשא מי מעטינהו קרא: Ezekiel prophesies that in the future any place that contains the bones of the corpses of Gog and Magog will be marked off (Ezekiel 39:15), which seemingly indicates that gentile corpses also convey impurity through a tent. The Ramban offers two answers: First, it is always possible that any corpse found is that of a Jew. Moreover, purity will be so widespread in the future that any source of impurity will be marked, even if it does not convey impurity through a tent (see Meiri).

Betrothed a widow and was appointed to be High Priest – אִירֹס אֶת הָאֵלְמָנָה וְנִתְמַנֶּה לְהִיּוֹת כֹּהֵן גָּדוֹל: If a priest is appointed High Priest after betrothing a widow, he is permitted to marry her (Rambam *Sefer Kedusha, Hilkhot Issurei Bia* 19:12).

A widow waiting for her *yavam* should also be permitted to a High Priest – שׁוֹמֵרֵת יָבָם נָמִי: A High Priest must perform *halitza* and not enter into levirate marriage. This applies even if the obligation to perform *halitza* or levirate marriage took effect before he was appointed High Priest (Rambam *Sefer Kedusha, Hilkhot Issurei Bia* 19:12 and *Sefer Avoda, Hilkhot Kelei HaMikdash* 5:10).

A widow from marriage – אֵלְמָנָה מִן הַנִּשְׁאוּיָן: If a *yevama* was widowed from marriage and her *yavam*, the High Priest, had intercourse with her, they have not fulfilled the mitzva of levirate marriage because a positive mitzva does not override both a positive mitzva and a prohibition. Therefore, the rival wives of a *yevama* are not permitted to marry anyone else until they have performed *halitza* (Rambam *Sefer Nashim, Hilkhot Yibbum* 6:11).

PERSONALITIES

Yehoshua ben Gamla – יְהוֹשֻׁעַ בֶּן גַּמְלָא: Yehoshua ben Gamla, referred to by Josephus as Yehoshua ben Gamliel, was apparently one of the last High Priests in the Second Temple. He was appointed by King Agrippa II and was killed during the destruction of the Second Temple. Although the Sages criticized the way he became High Priest, they also noted his good deeds. He was praised for donating golden lots for the Yom Kippur service and was especially commended for expanding the circle of Jewish education by establishing an extensive network of schools in every town in Eretz Yisrael. It is even said that were it not for him, the Torah would have been forgotten from the Jewish people. However, some claim that there were two men with the same name, and the Yehoshua ben Gamla mentioned here is not the one who established the network of schools (see *Tosafot Yeshanim*).

Marta bat Baitos – מַרְתָּא בַת בַּיְתוֹס: Marta bat Baitos is mentioned in several places in the Talmud. Due to her great wealth, she has served throughout the ages as the archetype of a very wealthy woman. The house of Baitos was one of the most powerful and wealthy families of priests in Jerusalem, and many members of this household served as High Priest or in other important positions in the Temple. According to the Jerusalem Talmud, Marta married Yehoshua ben Gamla as a result of trickery on his part, yet after becoming betrothed to him, she sought to secure him the most elevated position possible.

The Talmud relates that during the siege of Jerusalem all her wealth was to no avail and she died of starvation.

King Yannai – יָנָאי מַלְכָּא: As *Tosafot* note, it is inconceivable that this could have been Yannai the Hasmonean king, as he himself was High Priest and would not have given up the position to someone else. The Sages referred to several kings from the second Temple era as Yannai, to indicate their disapproval of these kings' actions.

מתני' אִירֹס אֶת הָאֵלְמָנָה וְנִתְמַנֶּה לְהִיּוֹת כֹּהֵן גָּדוֹל – יִכְנֹס. וּמַעֲשֵׂה בִיהוּשֻׁעַ בֶּן גַּמְלָא שִׁקְדֵשׁ אֶת מַרְתָּא בַת בַּיְתוֹס. וּמִנְהוּ הִמְלִיךְ לְהִיּוֹת כֹּהֵן גָּדוֹל, וְכִנְסָהּ. שׁוֹמֵרֵת יָבָם שֶׁנִּפְלְהָ לְפָנָי כֹּהֵן הַדְּיוֹט, וְנִתְמַנֶּה לְהִיּוֹת כֹּהֵן גָּדוֹל, אִף עַל פִּי שְׁעֵשָׂה בָּהּ מֵאִמֶּר – הֲרֵי זֶה לֹא יִכְנֹס.

**MISHNA** If a priest betrothed a widow<sup>N</sup> and was subsequently appointed to be High Priest,<sup>H</sup> he may marry her. And there was an incident with Yehoshua ben Gamla,<sup>P</sup> who betrothed Marta bat Baitos,<sup>P</sup> a widow, and the king subsequently appointed him to be High Priest, and he nevertheless married her. Conversely, in the case of a widow waiting for her *yavam* who happened before a common priest, i.e., the priest was her *yavam*, and he was subsequently appointed to be High Priest, then even if he had already performed levirate betrothal with her, he may not marry her, because she is a widow.

גמ' תנו רבנן: מנין שאם אירס את האלמנה ונתמנה להיות כהן גדול שייכנס – תלמוד לומר "יקח אשה". אי הכי שומרית יבם נמי! "אשה" ולא יבמה.

**GEMARA** The Sages taught: From where is it derived that if a priest betrothed a widow and was subsequently appointed to be High Priest, that he may marry her? The verse states: "Shall he take for a wife"<sup>N</sup> (Leviticus 21:14), an inclusive phrase that indicates that he may marry her in this situation despite the general prohibition for a High Priest to marry a widow. The Gemara asks: If so, a widow waiting for her *yavam* should also be permitted to a High Priest.<sup>H</sup> The Gemara answers: The word "wife" indicates that this does not include a *yevama*,<sup>N</sup> who was not initially his wife but his brother's.

"מעשה ביהושע" וכו'. מנהו – אין נתמנה – לא. אמר רב יוסף: קטיר קתוניה הכא. דאמר רב אסי: תרקבא דדינרי עיילה ליה מרתא בת ביתוס לינאי מלכא. עד דמוקי ליה ליהושע בן גמלא בכהני רבירבי.

The mishna related an incident with Yehoshua ben Gamla. The Gemara notes that the mishna states that the king appointed him, yes, but not that he was worthy of being appointed. Rav Yosef said: I see a conspiracy here,<sup>N</sup> as this was clearly not a proper appointment by the priests and the Sanhedrin but rather a political appointment, as Rav Asi said: Marta bat Baitos brought a vessel the size of a half-*se'a* [*tarkav*] full of dinars to King Yannai<sup>P</sup> until he appointed Yehoshua ben Gamla High Priest.

מתני' כהן גדול שמת אחיו – חולץ ולא מייבם.

**MISHNA** A High Priest whose brother died without children performs *halitza* and he does not perform levirate marriage, as he may not marry a widow.

גמ' קא פסיק ותני, לא שנא מן האירוסין ולא שנא מן הנשואין. בשלמא מן הנשואין – עשה ולא תעשה הוא. ואין עשה דוחה לא תעשה ועשה. אלא מן האירוסין יבא עשה וידחה את לא תעשה!

**GEMARA** The Gemara comments: The mishna teaches this *halakha* categorically, indicating that it is no different if she is his brother's widow from betrothal, and it is no different if she is his widow from marriage.<sup>H</sup> The Gemara analyzes this *halakha*: Granted, she is forbidden to him if she was widowed from marriage, as, if he were to marry her, it would be a violation of both the positive mitzva that the High Priest marry a virgin and the prohibition for him to marry a widow. And a positive mitzva, i.e., levirate marriage, does not override a prohibition and a positive mitzva together. However, if she was a widow from betrothal and is therefore still a virgin, the positive mitzva of levirate marriage should come and override the prohibition for a High Priest to marry a widow.

NOTES

If a priest betrothed a widow, etc. – אִירֹס אֶת הָאֵלְמָנָה וכו': This policy does not extend to a case where a man betrothed a woman and then his testicles became crushed. The reason for the distinction is that the Torah expresses the prohibition to marry a man with crushed testicles by stating that he "shall not enter into the congregation of the Lord" (Deuteronomy 23:2). Conversely, with regard to a High Priest, the verse states that "he shall not take" a widow (Leviticus 21:14), which indicates that it is only the taking, i.e., the betrothal, that is prohibited (*Yosef Lekah*).

Shall he take for a wife – יִקַּח אִשָּׁה: Since the word wife is entirely superfluous in this verse, the Sages derived that despite the requirement that the High Priest marry a virgin, there are instances where he may take even a woman who is not a virgin as a wife (Rivan).

The word wife indicates that this does not include a *yevama* – אִשָּׁה וְלֹא יִבְמָה: The Gemara does not employ the exposition cited earlier, that "wife" is written in singular and includes only one

case but not two, because there is no legal difference between a woman waiting for her *yavam* and any other widow (Ritva).

I see a conspiracy here – קִטִּיר קְתוּנִיָּא הֵכָא: In tractate *Bava Batra* (21a), the Gemara praises Yehoshua ben Gamla for strengthening Torah observance among the Jewish people; how does that fit in with the account here? In the *Tosafot Yeshanim*, it is suggested that the two passages are actually referring to two different individuals who had the same name. However, *Tosafot* on *Bava Batra* 21a and the *Tosefot HaRosh* explain that he was indeed great, but there were others who were more righteous and worthy of being appointed High Priest. Furthermore, he should not have accepted a royal appointment without the approval of the Sanhedrin. In the Jerusalem Talmud, it is stated that Yehoshua ben Gamla craftily spread a rumor that he had betrothed Marta bat Baitos. Once the rumor took hold, no one else would have agreed to marry her unless she obtained a bill of divorce from him. She therefore agreed to marry him and used her influence to have him appointed High Priest, as befitting her honor.

It is because he is obligated to fulfill the mitzva to be fruitful and multiply, etc. – משום פריה ורבייה וכו'. The Gemara could also have pointed out that if the reason was due to the mitzva to have children, the mishna should also have mentioned that it is prohibited for him to marry any barren or elderly woman. In any case, Rav Huna's answer resolves these difficulties as well (*Arukh LaNer*).

גְּזֵירָה בִּיאָה רֵאשׁוֹנָה אֶטוּ בִּיאָה שְׁנִיָּה.

The Gemara answers: By Torah law, levirate marriage is permitted in this case. However, there is a rabbinic decree prohibiting their first act of intercourse due to their second act of intercourse.<sup>H</sup> After they have engaged in intercourse once, they have fulfilled the mitzva of levirate marriage, and any subsequent act of intercourse would constitute a violation of the prohibition without the fulfillment of a mitzva.

מִתְנִי' בְּהֵן הַדְּיוּט לֹא יִשָּׂא אֵילוּנִית, אֶלְיָא אִם כֵּן יֵשׁ לֹא אִשָּׁה וּבָנִים. רַבִּי יְהוּדָה אָמַר: אֵף עַל פִּי שְׂיִישׁ לֹא אִשָּׁה וּבָנִים – לֹא יִשָּׂא אֵילוּנִית, שְׁהִיא זֹנָה הָאֲמוּרָה בְּתוֹרָה. וְהַכֹּמִים אֹמְרִים: אֵין זֹנָה אֶלְיָא גְּזֵירָת, וּמְשֻׁחָרְרֵת, וְשֹׁבְעֵלָה בְּעִילַת זִנוּת.

**MISHNA** A common priest may not marry a sexually underdeveloped woman [aylonit],<sup>H</sup> who is incapable of bearing children, unless he already has a wife and children. Rabbi Yehuda says: Even if he has a wife and children, he may not marry a sexually underdeveloped woman, as she is the *zona* about whom it is stated in the Torah that a priest may not marry her. Intercourse with her is considered a licentious act because she is incapable of bearing children. And the Rabbis say: The only women in the category of *zona*,<sup>H</sup> who are therefore forbidden to a priest, are a female convert, a freed maidservant, and any woman who engaged in licentious sexual intercourse with a man she is prohibited from marrying.

גַּמ' אָמַר לִיה רֵישׁ גְּלוּתָא לְרַב הוּנָא: מָאי טַעְמָא – מְשֻׁם פְּרִיָּה וּרְבִיָּה, אֶפְרָיָה וּרְבִיָּה בְּהַנִּים הוּא דְּמִפְקָדִי, וְיִשְׂרָאֵל לֹא מִפְקָדִי! אָמַר לִיה: מְשֻׁם דְּקָא בְּעִי לְמִיתְנִי סִיפָא, רַבִּי יְהוּדָה אָמַר: אֵף עַל פִּי שְׂיִישׁ לֹא אִשָּׁה

**GEMARA** The Exilarch said to Rav Huna: What is the reason for the *halakha* that a priest may not marry a sexually underdeveloped woman? It is because he is obligated to fulfill the mitzva to be fruitful and multiply.<sup>N</sup> Is it only priests who were commanded to be fruitful and multiply, but Israelites were not commanded? Why does the mishna specify that a priest may not marry a sexually underdeveloped woman? Rav Huna said to him: This *halakha* does in fact apply even to Israelites, and the *tanna* mentions priests because he wants to teach it in a way that would parallel the latter clause of the mishna, which states that Rabbi Yehuda says: Even if he has a wife

#### HALAKHA

There is a rabbinic decree prohibiting their first act of intercourse due to their second act of intercourse – גְּזֵירָה בִּיאָה רֵאשׁוֹנָה אֶטוּ בִּיאָה שְׁנִיָּה. If a *yevama* was forbidden to her *yavam* due to an ordinary Torah prohibition, i.e., one that does not carry with it a punishment of *karet* or the death penalty; due to a positive mitzva; or due to a rabbinic decree, they must perform *halitza* and not enter into levirate marriage. Although the mitzva of levirate marriage should override the prohibition, the Sages prohibited the first act of intercourse due to the possibility that they would engage in a further act of intercourse, in which case they would violate the prohibition without fulfilling the mitzva. If they entered into levirate marriage nevertheless, they are considered fully married, and the woman's rival wives are exempt from *halitza*. However, the *yavam* is required to divorce her (Rambam *Sefer Nashim*, *Hilkhot Yibbum* 6:10).

He may not marry a sexually underdeveloped woman [aylonit] – לֹא יִשָּׂא אֵילוּנִית – A man may not marry a sexually underdeveloped woman or any other woman incapable of bearing children, unless he has already fulfilled the mitzva of procreation or unless he has another wife who can bear children (Rambam *Sefer Nashim*, *Hilkhot Ishut* 15:7; *Shulhan Arukh*, *Even HaEzer* 1:8).

Who is considered a *zona* – אֵילוּנִית זֹנָה – A woman who had intercourse with a man she is prohibited from marrying, a gentile, or a slave is classified as a *zona* and is forbidden to a priest. However, if she was prohibited from marrying only a priest but permitted to marry other Jewish men, and she had intercourse with a priest, she is not classified as a *zona*. The category of *zona* also includes a female convert and a freed maidservant (Rambam *Sefer Kedusha*, *Hilkhot Issurei Bia* 18:2; *Shulhan Arukh*, *Even HaEzer* 6:8).

וַיֵּשׁ לֹוּ בְנִים לֹא יִשָּׂא אִילּוּמִית, שְׁהִיא זֹנָה הָאִמּוּרָה בְּתוֹרָה. דְּאִזְוָנָה כְּהֵנִים הִיא דְּמִפְקָדֵי, וַיִּשְׂרָאֵל לֹא מִפְקָדֵי, מִשּׁוּם הֵכִי קִתְּנֵי כֹהֵן.

אָמַר רַב הוּנָא: מֵאֵי טַעְמָא דְרַבִּי יְהוּדָה – דְּכִתְיִב “אֲכָלוּ וְלֹא יִשְׁבְּעוּ הוֹנוּ וְלֹא יִפְרְצוּ”, כֵּל בְּיָאָה שְׂאִין בְּהַ פִּרְצָה – אֵינָה אֶלָּא בְּעִילַת זִנוּת.

תֵּנְיָא, רַבִּי אֱלִיעֶזֶר אָמַר: כֵּהֵן לֹא יִשָּׂא אֶת הַקְטָנָה. אָמַר לִיה רַב הִסְדָּא לְרַבָּה: פּוּק עֵינֵי בְּהַ, דְּלֹאֲוֹרְתָא בְּעֵי לָהּ רַב הוּנָא מִינְךָ. נֶפֶק עֵינֵי בְּהַ: רַבִּי אֱלִיעֶזֶר סָבַר לָהּ כְּרַבִּי מֵאִיר, וְסָבַר לָהּ כְּרַבִּי יְהוּדָה.

סָבַר לָהּ כְּרַבִּי מֵאִיר – דְּחֵיִישׁ לְמִיעוּטָא, וְסָבַר לָהּ כְּרַבִּי יְהוּדָה – דְּאָמַר: אִילּוּמִית זֹנָה הוּנָא.

וְכְרַבִּי מֵאִיר מִי סָבַר לָהּ? וְהֵתְנֵיָא: קָטָן וְקָטָנָה – לֹא חוֹלְצִין וְלֹא מִבְּמִין, דְּבְרֵי רַבִּי מֵאִיר. אָמְרוּ לוֹ לְרַבִּי מֵאִיר: יִפְּהָ אֲמַרְתָּ שְׂאִין חוֹלְצִין “אִישׁ” כְּתִיב בְּפִרְשָׁה, וּמִקְשִׁינָא אִשָּׁה לְאִישׁ. אֶלָּא מֵאֵי טַעְמָא אִין מִבְּמִין?

and he has children, he may not marry a sexually underdeveloped woman, as she is the *zona* about whom it is stated in the Torah that a priest may not marry her. It is priests who were commanded not to marry a *zona*, but Israelites were not commanded this. It is due to that reason that he taught the first clause of the mishna about a priest, even though that *halakha* applies equally to Israelites.

Rav Huna said: What is the reason for the opinion of Rabbi Yehuda? As it is written: “And they shall eat, and not have enough, they shall commit harlotry, and shall not increase” (Hosea 4:10). He expounds the verse as follows: Any intercourse that does not have the possibility to increase the population because the woman is incapable of having children, is nothing other than licentious sexual intercourse.

It is taught in a *baraita* that Rabbi Eliezer says: A priest may not marry a minor. Rav Hisda said to Rabba: Go and investigate this *halakha*, as in the evening Rav Huna will ask you the reason for Rabbi Eliezer’s ruling. He went and investigated it, and arrived at the following conclusion: Rabbi Eliezer holds in accordance with the opinion of Rabbi Meir, and he also holds in accordance with the opinion of Rabbi Yehuda.

Rabba explains: He holds in accordance with the opinion of Rabbi Meir, who says that one must be concerned for the minority. Rabbi Meir does not allow one to assume that an unknown case is similar to the majority of cases. Consequently, one must take into account the possibility that a minor will turn out to be sexually underdeveloped, although this will not be true of most individuals. And he also holds in accordance with the opinion of Rabbi Yehuda, who said that a sexually underdeveloped woman is a *zona* and therefore forbidden to a priest.

The Gemara challenges Rabba’s explanation: And does Rabbi Eliezer hold in accordance with the opinion of Rabbi Meir? Isn’t it taught in a *baraita*: A boy minor and a girl minor may not perform *halitza*<sup>H</sup> or levirate marriage; this is the statement of Rabbi Meir. The Rabbis said to Rabbi Meir: You spoke well when you said that they may not perform *halitza*, as the term “man” is written in the passage of *halitza* (Deuteronomy 25:7–10), which limits the *halakha* to an adult male, and we compare a woman to a man<sup>N</sup> and therefore limit *halitza* to an adult woman. However, what is the reason that they may not perform levirate marriage?

HALAKHA

The *halitza* of a minor – תְּלִיצַת קָטָן: A minor boy cannot perform *halitza*. If he was nine years and one day old and had intercourse with his *yevama*, he has partially acquired her and she must wait until he matures, at which point he must either marry her fully or perform *halitza* and also write her a bill of divorce. Similarly, a girl may not perform *halitza* until she is twelve years old and develops two pubic hairs, at which point she is considered an adult (Rambam *Sefer Nashim*, *Hilkhot Yibbum* 1:16–18; *Shulhan Arukh*, *Even HaEzer* 167:3–4).

NOTES

וּמִקְשִׁינָא אִשָּׁה לְאִישׁ – according to the opinion of Rashi, this *halakha* is derived from the verse only according to Rabbi Meir. However, the Rabbis, who hold that a minor may perform levirate marriage, do not exclude minors based upon the verse, and therefore they must have another reason to exclude them from *halitza* (see *Arukh LaNer*).

And we compare a woman to a man – according to the opinion of Rashi, this *halakha* is derived from the verse only according to Rabbi Meir. However, the Rabbis, who hold that a minor may perform levirate marriage, do not exclude minors based upon the verse, and therefore they must have another reason to exclude them from *halitza* (see *Arukh LaNer*).

Who is considered a *zona* – איזוהי זונה: This dispute between the *tanna'im* relates to the meaning of this term with regard to the prohibition for a priest to marry a *zona* and with regard to the prohibition against sacrificing as an offering an animal used as payment for a *zona*. The word *zona* appears many times in the Bible, usually in reference to a prostitute. However, since these verses do not refer to halakhic topics, they cannot serve as proof of the halakhic meaning of the term, as it is possible that the term is borrowed from its precise legal meaning and used in other contexts. Therefore, it was necessary to clarify the precise legal definition of this term.

As the name *zona* implies – זונה בשמה: The commentaries explain that according to Rabbi Eliezer a *zona* is a married woman who committed adultery. The Meiri states that the word is understood as in the verse: "And they shall go astray [vezanu] after foreign gods" (Deuteronomy 31:16). In other words, she strays from her husband to another man.

Even if her husband went to make her drink, etc. – אפילו – רבי איליו: Her status as a *zona* would be significant only if her husband died and she then wanted to marry a priest. However, even if she did not engage in intercourse with her husband once she became a *sota*, if he died before she drank the waters, she no longer drinks the waters and therefore has no way to prove her innocence. Consequently, she would be forbidden to a priest in any event, due to the possibility that she is a *zona* because she committed adultery. Rabbi Akiva Eiger explains that intercourse between the husband and wife on her way to drink the *sota* waters is still significant, as it would cause the woman to be a definite *zona*, not merely an uncertain one. Consequently, if a priest marries her he is liable by Torah law to receive lashes.

Without reason [mekhalei lev] – מכילי לב: According to the versions of the Gemara text recorded by the *ge'onim* and many of the early commentaries, this expression should read *mibeli lev*, i.e., something said without understanding or knowledge. The version of the text printed in the Vilna edition of the Talmud, which was also Rashi's version, is difficult to understand, but is interpreted in the same manner, in accordance with one of the connotations of the root *k-l-a*.

Is this Rabbi Eliezer's opinion and not that of the Rabbis – רבי אליעזר היא ולא רבנן: The Rashba asks how Rava can be certain that the Rabbis would agree with Rabbi Eliezer. Perhaps, according to the Rabbis, if the High Priest marries her he is not required to divorce her, in accordance with the reasoning mentioned earlier in the Gemara, that she would have become a non-virgin while married to him anyway. Rabbi Eliezer, on the other hand, holds that he would have to divorce her. The Rashba answers that since all agree that the High Priest may not marry her *ab initio*, the ruling prohibiting their marriage would not have been stated in the name of Rabbi Eliezer alone.

אמר להם: קטן – שמה ימצא קטן, קטנה – שמה תמצא אילומית, ונמצאו פוגעין בערוה, ותנאי: קטנה – מתניבמת ואינה חולצת, דברי רבי אליעזר.

ורבי יהודה מי סבר לה? והתנאי: "זונה" זונה בשמה, דברי רבי אליעזר. רבי עקיבא אומר: "זונה" זו מופקרת. רבי מתנא בן חרש אומר: אפילו הלך בעלה להשקותה, ובא עליה בדרך – עשאה זונה.

רבי יהודה אומר: "זונה" זו אילומית. והכמים אומרים: אין זונה אלא גיורת ומשוחררת ושנבעלה בעילת זנות. רבי אליעזר אומר: פנוי הבא על הפנויה שלא לשם אישות – עשאה זונה.

אלא אמר רב אדא בר אבהו: הכא בכהן גדול עסקינן, לאימת קמי לה – לבי גדולה, בעולה היא.

אמר רבא: מכילי לב! אי דקדשה אבוה – מה היא שענתא הוא דקני לה, ואי דקדשה נפשה – הא רבי אליעזר היא ולא רבנן!

אלא אמר רבא: לעולם בכהן הדיוט, וחישינן שמה תפתה עליו. אי הכי ישראל נמי! פתויי קטנה אונס הוא. ואונס בישראל מישרא שרי.

Rabbi Meir said to them: A boy minor may not perform levirate marriage lest he be found to be an eunuch, i.e., one who is incapable of fathering children for his late brother. Similarly, a girl minor may not perform levirate marriage lest she be found to be sexually underdeveloped when she grows up. In either case, the mitzva of levirate marriage does not apply, and they turn out to have encountered a forbidden relative. And it was taught in a different *baraita*: A girl minor enters into levirate marriage but does not perform *halitza*; this is the statement of Rabbi Eliezer. This proves that Rabbi Eliezer disagrees with Rabbi Meir and is not concerned that a girl may turn out to be sexually underdeveloped.

The Gemara continues to challenge Rabba's explanation of Rabbi Eliezer's ruling. And does Rabbi Eliezer hold in accordance with the opinion of Rabbi Yehuda? Wasn't it taught in a *baraita*: The *zona*<sup>N</sup> forbidden to a priest is as the name *zona* implies,<sup>N</sup> i.e., a married woman who committed adultery; this is the statement of Rabbi Eliezer. Rabbi Akiva says: A *zona* is a woman, even an unmarried woman, who is available to all, i.e., she has intercourse with whoever is interested. Rabbi Matya ben Harash says: Even if her husband went to make her drink<sup>N</sup> the bitter waters after she disregarded his warning not to seclude herself with a certain man, and he had intercourse with her on the way, he has thereby caused her to become a *zona* because she was forbidden to him at the time, despite the fact that she is his wife.

Rabbi Yehuda says: A *zona* is a sexually underdeveloped woman. And the Rabbis say: The term *zona* applies only to a female convert, a freed maidservant, and one who engaged in licentious sexual intercourse. Rabbi Elazar says: Even in the case of an unmarried man who had intercourse with an unmarried woman<sup>N</sup> not for the purpose of marriage, he has thereby caused her to become a *zona*. This *baraita* proves that Rabbi Eliezer does not agree with Rabbi Yehuda.

Rather, Rav Adda bar Ahava said that Rabbi Eliezer's ruling that a priest may not marry a minor must be explained differently: Here we are dealing with a High Priest, and the problem is as follows: When can he acquire her as his wife? Only when she is grown up. However, if they had started living together as husband and wife when she was a minor, then when she is grown up and the marriage can legally take effect, she is already a non-virgin, and a High Priest is commanded to marry a virgin.

Rava said: This explanation is without reason.<sup>N</sup> If her father betrothed her to her husband, her husband acquired her from that time, as betrothal that a father carries out on his daughter's behalf when she is a minor is effective by Torah law. And if the minor betrothed herself, is this Rabbi Eliezer's opinion and not that of the Rabbis?<sup>N</sup> The Rabbis would certainly agree that a High Priest may not marry a minor under these circumstances.

Rather, Rava said: Actually, Rabbi Eliezer's ruling includes a common priest, and the reason he cannot marry a minor is that we are concerned lest she be seduced by another man, due to her tender age and naiveté, while married to him. The Gemara asks: If so, the same concern should apply to an Israelite also. The Gemara answers: The seduction of a minor is considered rape, and a rape victim remains permitted to her husband in a case where she is married to an Israelite, but not if she is married to a priest.

## HALAKHA

An unmarried man who had intercourse with an unmarried woman – פנוי הבא על הפנויה: If an unmarried man had intercourse with an unmarried woman not for the purpose of marriage, she does not thereby become a *zona*, even if she has made herself available to all for licentious purposes. The

*halakha* is in accordance with the opinion of the Rabbis, that only the following women have the status of a *zona*: A female convert, a freed maidservant, and a woman who has had intercourse with a man she is not permitted to marry (Rambam *Sefer Kedusha*, *Hilkhot Issurei Bia* 18:2).

**עַרְוַת לְבָנֵי גְדוּלָּה** – A High Priest may not marry a minor or a grown woman. He must marry a maiden, i.e., a young woman in the first six months of adulthood (Rambam *Sefer Kedusha, Hilkhoh Issurei Bia* 17:13).

**A man may not neglect the mitzva to be fruitful and multiply** – **לֹא יִבְטֵל אָדָם מִפְרִיָּה וְרִבְיָה** – A man may not neglect the mitzva to be fruitful and multiply. Rather, he must marry and have children. Even if his wife foregoes her conjugal rights, he may desist from fulfilling them only if he has already fathered children (Rambam *Sefer Nashim, Hilkhoh Ishut* 15:1; *Shulhan Arukh, Even HaEzer* 1:7).

**וּבֵית הַלֵּל אוֹמְרִים** – **וְכִי יִבְרָא אִישׁ בֵּן וְיָקָבָה** – A man who has a daughter and son who are capable of bearing children has fulfilled the mitzva to be fruitful and multiply, in accordance with the opinion of Beit Hillel (Rambam *Sefer Nashim, Hilkhoh Ishut* 15:4; *Shulhan Arukh, Even HaEzer* 1:5).

**אִסוּר לְעֵמוּד בְּלֵא** – **אִשָּׁה** – Even if a man has fulfilled the mitzva to be fruitful and multiply, the Sages nevertheless said that he should not remain without a wife. If he can, he should marry a woman who can bear children. If he has not fathered children and is in need of money in order to marry a wife, he may even sell a Torah scroll for this purpose. If he already has children he may not sell a Torah scroll in order to marry, although some authorities permit him to do so even in this case (Rambam *Sefer Nashim, Hilkhoh Ishut* 15:16; *Shulhan Arukh, Even HaEzer* 1:8).

NOTES

**אֵלֶּיךָ אִם בֵּן יֵשׁ לוֹ בְּנִים** – **Tosafot** ask: why is it necessary to state this point if it was already made clear in the previous mishna? The *Arukh LaNer* contends that the precise formulation of this mishna adds a new element to what was stated earlier. The previous mishna said that one may not marry a sexually underdeveloped woman unless he has a wife and children. In this mishna, it states that one may not neglect the mitzva to procreate unless he has children. This emphasizes that unless one already has children, it is not sufficient to be married; one must actively try to have children.

**בֵּית שַׁמַּי אוֹמְרִים וְכוּ'** – The commentaries dispute whether Beit Shammai and Beit Hillel insist on these combinations of children. Many early commentaries cite Rashi as holding that Beit Shammai agree that one fulfills the mitzva if he has a son and daughter, and merely add that one can also fulfill the mitzva by fathering two sons. Conversely, some hold that it is Beit Hillel who are lenient and hold that one fulfills the mitzva with a son and daughter or with two sons (Rid; *Tosafot Had Mikamma'ei*). This latter view is stated explicitly in the Jerusalem Talmud. However, most commentaries assume that according to Beit Hillel one must father a son and a daughter in order to fulfill the mitzva, and according to Beit Shammai one must father two sons.

**אִסוּר לְעֵמוּד – בְּלֵא אִשָּׁה** – On a basic level, the reason for this is so that one will not fall prey to sinful thoughts (*Nimmukei Yosef*). Alternatively, the verse indicates that mankind is complete only through marriage (see Maharsha).

רַב פַּפֵּא אָמַר: בְּכֹהֵן גְּדוּלָּה, וְהָאִי תַנָּא הוּא, דְּתַנְיָא: "בְּתוּלָה" יָכוֹל קַטְנָה – תַלְמוּד לומר "אִשָּׁה". אִי "אִשָּׁה" יָכוֹל בּוֹגְרָת – תַלְמוּד לומר "בְּתוּלָה". הָאִי מִיַּצֵּד? יַצֵּתָה מִכְּלָל קַטְנוּת, וְלְכַלל בְּגֵרוּת לֹא בְּאִתָּה.

רַב נַחֲמָן בְּרִי יִצְחָק אָמַר: הָאִי תַנָּא הוּא, דְּתַנְיָא "בְּתוּלָה" אִין בְּתוּלָה אֵלֶּא נַעֲרָה, וְכֵן הוּא אוֹמֵר "וְהַנְעִרָה טוֹבַת מְרָאָה מֵאֵד בְּתוּלָה".

רַבִּי אֶלְעָזָר אוֹמֵר: פְּנֵי הַבָּא עַל הַפְּנוּיָה שְׂלֵא לְשֵׁם אִישׁוֹת – עֲשָׂאָה זוֹנָה. אָמַר רַב עֲמֵרָם: אִין הֲלָכָה פְּרַבִּי אֶלְעָזָר.

**מִתְנִי'** לֹא יִבְטֵל אָדָם מִפְרִיָּה וְרִבְיָה אֵלֶּא אִם בֵּן יֵשׁ לוֹ בְּנִים. בֵּית שַׁמַּי אוֹמְרִים: שְׁנֵי זָכָרִים, וּבֵית הַלֵּל אוֹמְרִים: זָכָר וְיָקָבָה, שְׁנַאֲמַר "וְכִי יִבְרָא אִישׁ בֵּן וְיָקָבָה בְּרָאִים".

**גַּמ'** הָאִי יֵשׁ לוֹ בְּנִים, מִפְרִיָּה וְרִבְיָה – בְּטִיִּל, מֵאִשָּׁה – לֹא בְטִיִּל. מְסִיִּעָא לִיהּ לְרַב נַחֲמָן אָמַר שְׁמוּאֵל, דְּאָמַר: אַף עַל פִּי שֵׁיִשׁ לוֹ לְאָדָם כְּמָה בְּנִים – אִסוּר לְעֵמוּד בְּלֵא אִשָּׁה, שְׁנַאֲמַר "לֹא טוֹב הִיּוֹת הָאָדָם לְבָדוּ".

וְאִיבָא דְאָמְרִי: הָאִי יֵשׁ לוֹ בְּנִים – בְּטִיִּל מִפְרִיָּה וְרִבְיָה, וּבְטִיִּל נְמִי מֵאִשָּׁה. נִימָא תְהִיּוּ תִיּוֹבָתָא דְרַב נַחֲמָן אָמַר שְׁמוּאֵל! לֹא. אִין לוֹ בְּנִים – נוֹשָׂא אִשָּׁה בֵּת בְּנִים, יֵשׁ לוֹ בְּנִים – נוֹשָׂא אִשָּׁה דְלֵאוּ בֵּת בְּנִים. נִפְקָא מִיָּנָה – לְמַבּוּר סִפּוּר תּוֹרָה בְּשָׁבִיל בְּנִים.

"בֵּית שַׁמַּי אוֹמְרִים שְׁנֵי זָכָרִים". מֵאִי טַעֲמֵיהוֹן דְּבֵית שַׁמַּי – יִלְפִינן מִמִּשְׁחָה, דְּכָתוּב "בְּנֵי מֹשֶׁה גֵרְשׁוֹם וְאֶלְיָזָר", וּבֵית הַלֵּל – יִלְפִינן מִבְּרִייתוֹ שֶׁל עוֹלָם. וּבֵית שַׁמַּי, לִילְפִי מִבְּרִייתוֹ שֶׁל עוֹלָם! אִין דְּנִין אֶפְשָׁר

Rav Pappa said: Rabbi Eliezer's ruling applies specifically to a High Priest, and it is the opinion of this *tanna*, as it is taught in a *baraita* that when the verse states: "A virgin of his own people shall he take for a wife [*isha*]" (Leviticus 21:14), one might have thought a High Priest may marry a minor; the verse therefore states that he must marry a woman [*isha*], i.e., an adult. If he must marry a woman, one might have thought it means a grown woman. The verse therefore states that he must marry a virgin, which excludes a grown woman, who is considered only a partial virgin because her hymen is not fully intact. How so? He must marry a woman who has left the class of minority but who has not yet reached the class of grown womanhood, i.e., he must marry a maiden.<sup>h</sup>

Rav Nahman bar Yitzhak said: It is the opinion of this *tanna*, as it is taught in a *baraita*: The High Priest must marry a virgin, and the term virgin refers only to a maiden. And a verse similarly states: "And the maiden was very fair to look upon, a virgin, and no man had known her" (Genesis 24:16).

The *baraita* cited above mentioned that Rabbi Elazar says: In the case of an unmarried man who had intercourse with an unmarried woman not for the purpose of marriage, he has caused her to become a *zona*. Rav Amram said: The *halakha* is not in accordance with the opinion of Rabbi Elazar.

**MISHNA** A man may not neglect the mitzva to be fruitful and multiply<sup>h</sup> unless he already has children.<sup>n</sup> Beit Shammai say:<sup>n</sup> One fulfills this mitzva with two males, and Beit Hillel say: A male and a female,<sup>h</sup> as it is stated: "Male and female He created them" (Genesis 5:2).

**GEMARA** The Gemara infers from the mishna's wording that if he already has children he may neglect the mitzva to be fruitful and multiply, but he may not neglect the mitzva to have a wife. This supports what Rav Nahman said in the name of Shmuel, who said: Even if a man has several children, it is prohibited to remain without a wife,<sup>hn</sup> as it is stated: "It is not good that the man should be alone" (Genesis 2:18).

And some say a different version of the inference from the mishna: If he already has children, he may neglect the mitzva to be fruitful and multiply and he may also neglect the mitzva to have a wife. Shall we say this is a conclusive refutation of what Rav Nahman said that Shmuel said? The Gemara responds: No, it means that if he does not have children he must marry a woman capable of bearing children, whereas if he has children he may marry a woman who is not capable of bearing children. A practical difference between a man who has children and one who does not is whether he is permitted to sell a Torah scroll in order to marry a woman capable of having children. This is permitted only for one who does not yet have children.

§ The mishna states that Beit Shammai say that one fulfills the mitzva to be fruitful and multiply when he has two males. The Gemara asks: What is the reason of Beit Shammai? The Gemara answers: We learn this from Moses as it is written: "The sons of Moses, Gershom and Eliezer" (1 Chronicles 23:15). Since Moses did not have any other children, two sons must be sufficient to fulfill the mitzva. And the reason of Beit Hillel is that we learn from the creation of the world, as mankind was created male and female. The Gemara asks: And Beit Shammai, let them learn from the creation of the world as well. The Gemara answers that Beit Shammai could say to you: We do not derive a case where it is possible