

תְּרִיסָר יָרְחֵי שָׁתָא, וְלֹא דְרַבֵּיהּ לְמַסְפְּדֵיהּ.

נִתְּנִים נִקְרִינְהוּ וְנִפְיִי סִימְנָהוּ, וְיִקְרָא הַמֶּלֶךְ  
לְגַבְעוֹנִים וַיֹּאמֶר אֲלֵיהֶם מָה אַעֲשֶׂה לָכֶם  
וּבְמָה אֲכַפֵּר וּבְרַכּוּ אֶת נַחֲלַת ה'. וַיֹּאמְרוּ  
לוֹ הַגַּבְעוֹנִים אֵין לָנוּ כֶּסֶף וְזָהָב עִם שְׂאֹל  
וְעִם בֵּיתוֹ וְאֵין לָנוּ אִישׁ וְגו'. יִתֵּן לָנוּ שְׂבָעָה  
אֲנָשִׁים מִבְּנֵי וְהִקְעַנּוּם לָהּ" וְגו'. מִפְּיֵיהֶם,  
וְלֹא פְּיִינְהוּ.

אָמַר: שְׁלֹשָׁה סִימְנִים יֵשׁ בְּאוֹמָה זוֹ:  
הַרְחֻמְנִים, וְהַבְּיִישָׁנִין, וְגוֹמְלֵי חֲסָדִים.  
רְחֻמְנִים – דְּכֹתִיב "וְנָתַן לְךָ רַחֲמִים וְרַחֲמֶךָ  
וְהַרְבֵּךְ". בְּיִישָׁנִין – דְּכֹתִיב "בַּעֲבוּר תִּהְיֶה  
יְרֵאתוֹ עַל פְּנֵיכֶם". גּוֹמְלֵי חֲסָדִים – דְּכֹתִיב  
"לְמַעַן אֲשֶׁר יֵצֵא אֶת בְּנֵי וְאֶת בֵּיתוֹ" וְגו'.  
כָּל שֵׁישׁ בּוֹ שְׁלֹשָׁה סִימְנִים הִלְלוּ רְאוּי  
לְהַדְבִּק בְּאוֹמָה זוֹ.

"וַיִּקַּח הַמֶּלֶךְ אֶת שְׁנֵי בְנֵי רִצְפָּה בַת  
אִיָּה אֲשֶׁר יָלְדָה לְשָׂאוֹל אֶת אַרְמֹנִי וְאֶת  
מִפְּבֹשֶׁת וְאֶת חֲמֹשֶׁת בְּנֵי מִיכָל בַּת שְׂאֹל  
אֲשֶׁר יָלְדָה לְעַדְרִיאֵל בֶּן בְּרוּיָלִי הַמְּחֻלְתִּי".  
מֵאֵי שְׁנָא הֵינָּה? אָמַר רַב הוּנָא: הַעֲבִירוֹם  
לְפָנֵי אָרוֹן, כָּל שְׂאֵרוֹן קוֹלְטוֹ – לְמִיתָה, כָּל  
שְׂאֵין אָרוֹן קוֹלְטוֹ – לְחַיִּים.

מְתִיב רַב חֲנָנָא בְּרִי קֵטִינָא: "וַיַּחְמַל הַמֶּלֶךְ  
עַל מִפְּבֹשֶׁת בֶּן יְהוֹנָתָן בֶּן שְׂאֹל!" שְׂאֹל  
הַעֲבִירוֹ.

וְכִי מִשׂוֹא פְּנִים יֵשׁ בְּדַבְּרֵךְ? אֵלָּא: שְׁהַעֲבִירוֹ  
וּקְלָטוֹ, וּבִקֵּשׁ עָלָיו רַחֲמִים וּפְלָטוֹ. וְאִכְתִּיב,  
מִשׂוֹא פְּנִים יֵשׁ בְּדַבְּרֵךְ? אֵלָּא שְׂבָקֵשׁ  
רַחֲמִים שְׂאֵל יְקַלְטֵנוּ הָאָרוֹן.

the twelve months of the year<sup>N</sup> of mourning, i.e., several years have elapsed since the twelve-month mourning period for Saul, and it is not the proper way to eulogize after such a long time.<sup>H</sup>

As for the Gibeonites, let us call them and appease them. Consequently, the verse states: "And the king called the Gibeonites and said to them...What shall I do for you, and with what shall I make atonement that you may bless the inheritance of the Lord? And the Gibeonites said to him: It is not a matter of silver or gold between us and Saul or his house; neither is it for us to put any man to death in Israel... Let seven men of his sons be delivered to us, and we will hang them up to the Lord..." (II Samuel 21:1–6). He tried to appease them in other ways, but they would not be appeased.

David said: There are three distinguishing marks<sup>N</sup> of this nation, the Jewish people.<sup>H</sup> They are merciful, they are shamefaced, and they perform acts of kindness.

They are merciful, as it is written: "And He will give you mercy, and have mercy upon you and multiply you" (Deuteronomy 13:18); not only will God have mercy upon you, but He will bestow the attribute of mercy upon you.

They are shamefaced, as it is written: "And that His fear shall be upon your faces" (Exodus 20:17), and the fear that is on one's face is his shame.

They perform acts of kindness, as it is written: "For I have known him, to the end that he may command his children and his household after him, that they may keep the way of the Lord, to practice righteousness and justice" (Genesis 18:19), i.e., to perform acts of kindness.

Whoever has these three distinguishing marks is fit to cleave to this nation. Those who lack these qualities, however, are unfit to be part of the Jewish people. When David saw the cruelty of the Gibeonites, he decreed that they may never enter into the congregation of Israel.

The Gemara continues with its understanding of the incident: "And the king took the two sons of Rizpah, daughter of Aiah, whom she bore unto Saul, Armoni and Mephibosheth, and the five sons of Michal, daughter of Saul, whom she bore to Adriel the son of Barzillai the Meholathite" (II Samuel 21:8). The Gemara asks: What is different about these sons that David chose them from among all the descendants of Saul? Rav Huna said: He passed all of Saul's descendants before the Ark<sup>N</sup> of the Covenant. Whoever was held back by the Ark,<sup>N</sup> so that he could not move on, was condemned to death; whoever was not held back by the Ark was set apart for life.

Rav Hana bar Ketina raised an objection: The verse states: "And the king had pity on Mephibosheth, son of Jonathan, son of Saul, because of the Lord's oath that was between them, between David and Jonathan, son of Saul" (II Samuel 21:7). If the seven men were condemned by the Ark, how did the king's pity affect their sentence? The Gemara answers: It means that he did not pass Mephibosheth before the Ark at all, so that he would not be in danger of being held back at all.

The Gemara questions this behavior: May favoritism be shown in this matter? Once the decision was placed in the hand of Heaven, how could David have intervened in matters of life and death and not pass Mephibosheth before the Ark? Rather, what happened was that David passed Mephibosheth before the Ark and the Ark held him back, but David immediately asked for mercy on his behalf, and the Ark released him. The Gemara asks: But the difficulty still remains: May favoritism be shown in this matter? Once the Ark condemned Mephibosheth to death, how could David have intervened so that another would have to die in his place? Rather, David asked for mercy<sup>N</sup> on his behalf, that the Ark should not hold him back and performed no other action.

NOTES

**Twelve months of the year** – תְּרִיסָר יָרְחֵי שָׁתָא: The later authorities suggest various reasons for this *halakha*. It seems that a period of twelve months was fixed as the maximum period of mourning, because one's sorrow for the dead diminishes with time. If a eulogy is delivered after this time, it will not increase mourning and distress, and it is improper to deliver a eulogy if the level of grief will remain unaffected.

**Three distinguishing marks** – שְׁלֹשָׁה סִימְנִים: In the Jerusalem Talmud in tractate *Kiddushin* and elsewhere, it is stated about these traits: Three good gifts were given to the Jewish people. The Maharsha likewise explains that these characteristics are not inherent qualities of the Jewish people but rather gifts that God gave to those who stood at Sinai, so that they can fulfill the mitzvot properly.

**He passed them before the Ark** – הֵעִבִירוֹם לְפָנֵי אָרוֹן: In the Jerusalem Talmud it is stated that he passed them before the altar, and anyone who was held back by the altar was set apart for life, while the others were condemned to death. The *Yefe Mareh* explains that there is no dispute between the Babylonian and Jerusalem Talmuds, as it is known that those who draw too near to the Ark are sentenced to death, and therefore being held back by the Ark is a sign of death, whereas the altar serves as a refuge for those whose lives are in danger.

**Whoever was held back by the Ark** – כָּל שְׂאֵרוֹן: The Ritva writes that God certainly does not treat people unjustly, and presumably these individuals deserved to die for their sins at the hand of God. They were not supposed to have been tried by an earthly court, but their sentence was changed due to the Jewish people's desecration of God's name.

**Rather, he asked for mercy** – אֵלָּא שְׂבָקֵשׁ רַחֲמִים: The later authorities point out that this does not appear to resolve the problem of favoritism. The *Iyyun Ya'akov* explains that the question referred to actions performed openly, since if one was initially held back by the Ark and subsequently released, it would appear as though justice had not been served. However, no one would have observed anything untoward if the Ark did not hold him back due to a private prayer of David.

HALAKHA

**A eulogy after twelve months** – הַקֶּפֶר לְאַחַר שָׁנִים: Eulogies for the dead are not delivered after twelve months have passed. Similarly, if word of a scholar's death arrived twelve months after the fact, he is not eulogized (*Shulhan Arukh, Yoreh De'a* 394:2).

**There are three signs of the Jewish people** – שְׁלֹשָׁה סִימְנִים יֵשׁ בְּיִשְׂרָאֵל: If one is brazen or cruel, hates others, and does not act kindly toward them, he is suspected to be a Gibeonite, as the characteristic marks of the Jewish people are that they are shamefaced, merciful, and perform acts of kindness (*Rambam Sefer Kedusha, Hilkhot Issurei Bia* 12:24, 19:17; *Shulhan Arukh, Even HaEzer* 2:2).

It is better that one letter be uprooted – מוטב  
 שתעקר אות אחת: Certain early authorities (Ritva) and  
 later authorities attempt to explain that this refers  
 literally to a single letter, but their interpretations  
 are somewhat far-fetched. Nearly all commentaries  
 conclude that this does not mean one letter but an  
 entire verse.

And the name of Heaven be sanctified – ויתקדש  
 שם: In the Jerusalem Talmud it is stated that from  
 here it is understood that the gain from the sanctifica-  
 tion of God's name is greater than the loss caused by  
 its desecration. This is derived from the fact that the  
 very reason that the dead may not be left hanging  
 overnight is that it is considered a desecration of God's  
 name, as explained in tractate *Sanhedrin* and else-  
 where, and yet the sanctification of His name caused  
 by doing so in this case is deemed greater than the  
 desecration involved.

Immediately... they joined the Jewish people – מיד  
 נתוספו על ישראל: Although the Sages said that con-  
 verts were not accepted in the days of David and Solo-  
 mon, this refers exclusively to conversion in authorized  
 courts, whereas these gentiles were converted in the  
 presence of ordinary people (Rashba).

## HALAKHA

It is better that one letter be uprooted – מוטב שתעקר  
 אות אחת: The court has the authority to temporarily  
 uproot a positive or negative mitzva in order to restore  
 the public to the proper observance of religion or pre-  
 vent the masses from erring in some matter (Rambam  
*Sefer Shofetim, Hilkhot Mamrim 2:4*).

והא כתיב "לא יומתו אבות על בנים"  
 וגו! אמר רבי חייא בר אבא אמר  
 רבי יוחנן: מוטב שתעקר אות אחת  
 מן התורה, ואל יתחלל שם שמים  
 בפרהסיא.

"ותקח רזפה בת איה את השק ותטהו  
 לה אל הצור מתחלת קציר עד נתך  
 מים עליהם מן השמים ולא נתנה עוף  
 השמים לנוח עליהם יומם וחית השדה  
 לילה." והא כתיב "לא תליו נבלתו על  
 היץ!"

אמר רבי יוחנן משום רבי שמעון בן  
 יהוצבק: מוטב שתעקר אות אחת מן  
 התורה ויתקדש שם שמים בפרהסיא.  
 שהיו עוברים ושבים אומרים: מה טיבן  
 של אלו? הללו בני מלכים הם. ומה  
 עשו? פשוט ידיהם בגרים גרוים. אמרו:  
 אי לך אומה ישראל ומה להדבק בה? ומה  
 בני מלכים כך, בני הדיוטות על  
 אחת כמה וכמה! ומה גרים גרוים כך,  
 ישראל על אחת כמה וכמה!

מיד נתוספו על ישראל מאה וחמשים  
 אלף, שנאמר "ויהי לשלמה שבעים  
 אלף נושא סבל ושמונים אלף חוצב  
 בהר." ודלמא ישראל הו! לא סלקא  
 דעתך, דכתיב "ומבני ישראל לא נתן  
 שלמה עבד".

ודלמא דוגור בעלמא! אלא מהכא:  
 "ויספד שלמה כל האנשים הגרים  
 אשר בארץ ישראל [וגו] וימצאו מאה  
 וחמשים אלף [וגו] ויעש מהם שבעים  
 אלף (נושא) סבל ושמונים אלף חוצב  
 בהר."

The Gemara raises a difficulty with regard to the story as related by the Bible: **But isn't it written: "The fathers shall not be put to death for the children; neither shall the children be put to death for the fathers"** (Deuteronomy 24:16)? As Saul's sons had not sinned, why were they put to death? **Rabbi Hiyya bar Abba said that Rabbi Yohanan said: It is better that one letter and one mitzva be uprooted<sup>NH</sup> from the Torah in this manner and thereby the name of Heaven not be desecrated in public [parhesya].<sup>L</sup>** The killing of the Gibeonites by the Jewish people constituted a desecration of God's name. In order to repair the damage, David acquiesced to the Gibeonites' demands, even though they contradicted Torah law.

The Gemara continues with its analysis of the incident. The verse states: **"And Rizpah, daughter of Aiah, took sackcloth and spread it for her upon the rock, from the beginning of harvest until water was poured upon them from heaven; and she allowed neither the birds of the air to rest on them by day, nor the beasts of the field by night"** (II Samuel 21:10). The Gemara raises a difficulty: How could they have left Saul's executed sons unburied all that time? **Isn't it written: "His body shall not remain all night upon the tree; but you shall surely bury him the same day"** (Deuteronomy 21:23)?

**Rabbi Yohanan said in the name of Rabbi Shimon ben Yehotzadak: It is better that one letter be uprooted from the Torah and thereby the name of Heaven be sanctified<sup>N</sup> in public.** How so? As the gentile passersby would say: **What is the nature of these people who have been left hanging here for so long? They were told that these are sons of kings. And what did they do to deserve such a fate? They had laid their hands upon and caused harm to calculating converts who had converted for personal gain and were never permitted to enter into the congregation. Those passersby said: There is no nation as worthy of cleaving to it as this one. If the sons of kings who harmed converts are treated in this manner, all the more so would the sons of ordinary people [hediyotot]<sup>L</sup> be. And if calculating converts are related to in this way, all the more so would this apply to members of the Jewish people themselves.**

**Immediately, one hundred and fifty thousand converts joined the Jewish people,<sup>N</sup> as it is stated: "And Solomon had seventy thousand that bore burdens and eighty thousand that were hewers in the mountains"** (1 Kings 5:29), all of whom were converts. The Gemara asks: **But perhaps these carriers and hewers were Jews?** The Gemara answers: **This cannot enter your mind, as it is written: "But of the children of Israel Solomon made no slaves"** (1 Kings 9:22).

The Gemara raises another difficulty: **But from where may it be inferred that these men were slaves? Perhaps they were merely workers employed [dogzar]<sup>L</sup> in the ranks of public service, in which case they could have been born Jews and not converts. Rather, the matter is derived from here: "And Solomon counted all the converted men that were in Eretz Yisrael... and they were found to be one hundred and fifty thousand... and he made seventy thousand of them to bear burdens, and eighty thousand to be hewers in the mountains"** (II Chronicles 2:16–17). It is apparent from here that these carriers and hewers were in fact converts. These large numbers of converts had been influenced by the sanctification of God's name in the wake of the punishment meted out to the descendants of Saul.

## LANGUAGE

Public [*parhesya*] – פרהסיא: From the Greek *παρησία*, *parèsia*, meaning a matter stated openly and without restraint. In mishnaic Hebrew, it describes an act performed in the open with no attempt made to conceal it.

Ordinary people [*hediyotot*] – הדיוטות: From the Greek *ἰδιώτης*, *idiotēs*. Both in Greek and in the language of the Sages the term

carries a variety of associated meanings. Here it is used in its fundamental sense, denoting an ordinary citizen with no official appointment.

Employed [*dogzar*] – דוגור: The correct reading of this word, which is preserved in medieval records, is *rogzar*. The term comes from the Middle Persian *rōz*, meaning day, and the agent *gār*, giving the approximate literal meaning: Day laborer.

Joshua issued a decree – יהושע גזר – By Torah law it is not prohibited for a convert from one of the seven Canaanite nations to enter into the congregation; it was Joshua who permanently barred both males and females from doing so. However, his decree applied only during the time when the Temple was standing. King David extended the decree to apply even to the period when the Temple was not standing (Rambam *Sefer Kedusha, Hilkhot Issurei Bia* 12:22–23).

ונתנינן, דוד גזר עליהם? משה גזר עליהם, דכתיב "מחוטב עציך עד שואב מימך!" משה גזר להווא דרא, דוד גזר לכולי דרא.

The Gemara returns to the main issue under discussion. As for the Gibeonites, was it David who issued a decree against them that they may not enter the congregation? Wasn't it Moses who issued a decree against them, as it is written: "From the hewer of your wood to the drawer of your water" (Deuteronomy 29:10), which indicates that there was a distinct class of wood hewers and water drawers already in the time of Moses. This class must have been composed of insincere converts who constituted a separate group unto themselves, apart from the rest of the Jewish people. The Gemara answers: **Moses issued a decree only with regard to that generation** that they must remain separate, whereas **David decreed for all generations**.

ואכתי יהושע גזר עלייהו דכתיב "ויתנם יהושע ביום ההוא חוטבי עצים ושואבי מים לעדה ולמזבח ה'" יהושע גזר בזמן שבית המקדש קיים, דוד גזר בזמן שאין בית המקדש קיים.

The Gemara raises another difficulty: **But still, it was Joshua who issued a decree against the Gibeonites, as it is written: "And Joshua made them that day hewers of wood and drawers of water, for the congregation and for the altar of the Lord" (Joshua 9:27).** The Gemara answers: **Joshua issued a decree<sup>h</sup> for the period when the Temple is standing**, as indicated by the phrase "for the altar of the Lord," whereas **David issued a decree even for the period when the Temple is not standing**.

Perek VIII  
Daf 79 Amud b

בימי רבי בקשו להתיר נתינים אמר להם רבי חלקנו נתי, חלק מזבח מי יתיר?

It is related that **in the days of Rabbi Yehuda HaNasi the Sages sought to permit the Gibeonites<sup>n</sup> and treat them like Jews in all regards, thereby allowing them to enter into the congregation. Rabbi Yehuda HaNasi said to them: Even if we permit our share and say that the court nullifies the Jewish people's right to enslave the Gibeonites, and so they should be treated like emancipated slaves, who can permit the altar's share? Do they not belong to the Temple and the altar as well?**

ופלגיא דרבי חייא בר אבא דאמר רבי חייא בר אבא אמר רבי יוחנן: חלק עדה – לעולם אסור, חלק מזבח, בזמן שבית המקדש קיים – אסור, אין בית המקדש קיים – שרי.

The Gemara comments: **And Rabbi Yehuda HaNasi disagrees with the teaching of Rabbi Hiyya bar Abba. As Rabbi Hiyya bar Abba said that Rabbi Yohanan said: The share in the enslavement of the Gibeonites that belongs to the congregation of Israel is forbidden forever and can never be permitted. However, with regard to the share belonging to the altar, when the Temple is standing it is forbidden, but when the Temple is not standing it is permitted.**

NOTES

**They sought to permit the Gibeonites – בקשו להתיר** – נתינים: The early authorities discuss this matter at length, as it concerns the prohibition with regard to the Gibeonites in general concerning whether they are prohibited by Torah law or by rabbinic law, or whether only the first generation was prohibited by Torah law. According to the opinion that this is a rabbinic prohibition, the meaning of the Gemara is straightforward, as it discusses whether it was subsequently permitted for Gibeonites to enter into the congregation. If the prohibition applies by Torah law, it is possible that the Gemara here is referring only to their enslavement, not to their eligibility for marriage (see *Sefer HaYashar*). The early authorities point out that at least according to the Jerusalem Talmud, the subject under discussion is clearly their eligibility to marry Jews.

In any event, the enslavement of the Gibeonites to the altar

and to the congregation is either a sign of their prohibition, according to the opinion that they are forbidden by Torah law, or a way of accentuating their different status, according to the opinion that they are forbidden by rabbinic law. Although they are not full-fledged slaves, as all agree that they are not bodily enslaved, their subjugation rendered them quasi slaves. Due to this, it was suggested that Rabbi Yehuda HaNasi's court, or Rabbi Eliezer's court according to the Jerusalem Talmud, could seek to permit a matter that had been prohibited by a greater court, which is ordinarily impossible. They could do this because they wished to release the Gibeonites from their subjugation, based on the principle that property declared ownerless by the court is ownerless. This procedure would automatically have rendered it permitted for the Gibeonites to enter into the congregation (see the Ramban, Rosh, and Rashba).

NOTES

And I cannot explain – ואין לי לפרש: Rabbi Yehoshua's uncertainty, which concerns the very point about which Rabbi Akiva and Rabbi Eliezer disagree, is connected to a fundamental problem with regard to levirate marriage. On one hand it seems that the purpose of levirate marriage is to have children in the deceased brother's name, but on the other hand, even if the yevama and the yavam are each capable of becoming parents, they do not have the power to determine whether and when this duty will actually be fulfilled. Consequently, the only cases that can be discussed are those in which the possibility of having children exists. As a result, a sexually underdeveloped woman who is incapable of bearing children is excluded from the obligation of levirate marriage. The same dilemma arises with regard to the case of a eunuch: Does inclusion in the mitzva depend on one's ability to have children in the future or on the mere fact that at some point one had been able to become a father?

HALAKHA

A eunuch caused by man performs halitza – קרים אדם: חולץ: If a eunuch had once been fertile and died without fathering children, his brother may perform halitza or levirate marriage with his widow. If his brother died without children, the eunuch may perform halitza with his yevama but may not enter into levirate marriage, as it is prohibited for him to enter into the congregation. The halakha is in accordance with the opinion of Rabbi Akiva, based on the testimony given by Rabbi Yehoshua ben Beteira (Rambam Sefer Nashim, Hilkhot Yibbum 6:4; Shulhan Arukh, Even HaEzer 172:3).

A eunuch by natural causes does not perform halitza – קרים חמה: חולץ: A male who was entirely lacking in sexual capacity from birth and a sexually underdeveloped woman are not included in the mitzvot of halitza and levirate marriage (Rambam Sefer Nashim, Hilkhot Yibbum 6:2; Shulhan Arukh, Even HaEzer 172:1).

If a sexually underdeveloped man performed halitza... he has not disqualified her – לא פסלה: If a sexually underdeveloped man performed halitza with his yevama, or if his brother performed halitza with his widow, and similarly, if a sexually underdeveloped woman performed halitza, these women have not been disqualified from marrying into the priesthood, as the halitza is of no consequence (Rambam Sefer Nashim, Hilkhot Yibbum 6:2; Shulhan Arukh, Even HaEzer 172:1).

If a eunuch had intercourse with a woman, he has disqualified her – קרים שבא על אשה פסלה: If a eunuch had intercourse with any woman, he has disqualified her from marrying into the priesthood. If she was the daughter of a priest, she is barred from eating teruma (Rambam Sefer Kedusha, Hilkhot Issurei Bia 18:3).

LANGUAGE

A sexually underdeveloped woman [aylonit] – איילונית: The source of the word, as stated in the Gemara (Ketubot 11b), is the Hebrew term for a male sheep, eyal. A male sheep, called dikhra, meaning male in Aramaic, is a symbol of masculinity. A sexually underdeveloped woman is a masculine woman, so to speak, as she is incapable of giving birth.

מתני' אמר רבי יהושע: שמעתי שהקרים חולץ וחולצין לאשתו, והקרים לא חולץ ולא חולצין לאשתו, ואין לי לפרש.

אמר רבי עקיבא: אני אפרש: קרים אדם – חולץ וחולצין לאשתו, מפני שהיתה לו שעת הבושר קרים חמה לא חולץ ולא חולצין לאשתו מפני שלא היתה לו שעת הבושר.

רבי אליעזר אומר: לא כן, אלא: קרים חמה – חולץ וחולצין לאשתו, מפני שיש לו רפואה. קרים אדם – לא חולץ ולא חולצין לאשתו, מפני שאין לו רפואה.

העיד רבי יהושע בן בתירא על בן מגוסת שהיה בירושלים קרים אדם, ויבמו את אשתו, לקיים דברי רבי עקיבא.

הקרים לא חולץ ולא מייבם, וכן איילונית לא חולצת ולא מתייבמת.

הקרים שחלץ ליבמתו – לא פסלה, בעלה – פסלה, מפני שהיא בעילת זנות, וכן איילונית שחלצו לה אחין – לא פסלה, בעלה – פסלה, מפני שבעלתה בעילת זנות.

גמ' מרבי שמעון רבי עקיבא דאמר חייבי לאוין כחייבי בריתות דמו – וחייבי בריתות לאו בני חליצה וייבום נגדה!

**MISHNA** Rabbi Yehoshua said: I heard two rulings from my teachers. One ruling is that a eunuch performs halitza with his yevama, and his brothers perform halitza with his wife, and the other ruling is that a eunuch does not perform halitza with his yevama, and his brothers do not perform halitza with his wife. And I cannot explain<sup>N</sup> these two rulings, as I do not remember the circumstances to which each ruling applies.

Rabbi Akiva said: I will explain. A eunuch caused by man, i.e., one who became emasculated after birth, performs halitza<sup>H</sup> with his yevama and his brothers perform halitza with his wife, because he had an hour of fitness, a time when he was fertile. On the other hand, a eunuch by natural causes, i.e., who was entirely lacking in sexual capacity from birth, does not perform halitza<sup>H</sup> with his yevama and his brothers do not perform halitza with his wife, because he did not have an hour of fitness, as he never had the potential to father children.

Rabbi Eliezer says: No; rather, the opposite is the case: A eunuch by natural causes performs halitza with his yevama and his brothers perform halitza with his wife because he can be cured,<sup>B</sup> whereas a eunuch caused by man does not perform halitza with his yevama and his brothers do not perform halitza with his wife because he cannot be cured.

Rabbi Yehoshua ben Beteira testified about a man named ben Megusat, who lived in Jerusalem and was a eunuch caused by man, that his brothers nevertheless entered into levirate marriage with his wife, in order to fulfill and confirm the statement of Rabbi Akiva.

A sexually underdeveloped man does not perform halitza or enter into levirate marriage with his yevama. And similarly, a sexually underdeveloped woman [aylonit],<sup>L</sup> who is incapable of bearing children, does not perform halitza or enter into levirate marriage with her yavam.

If a sexually underdeveloped man performed halitza with his yevama, he has not thereby disqualified her<sup>H</sup> from marrying into the priesthood, as his halitza is invalid. However, if he had intercourse with her, he has disqualified her.<sup>H</sup> This is because it is considered licentious sexual intercourse, since such intercourse does not fulfill the mitzva of levirate marriage and is therefore categorized as forbidden relations with one's sister-in-law. And similarly, with regard to a sexually underdeveloped woman, if one of the brothers performed halitza with her he has not thereby disqualified her from marrying into the priesthood. However, if he had intercourse with her, he has disqualified her because the intercourse is considered licentious sexual intercourse.

**GEMARA** Now, we learned that Rabbi Akiva said: Those liable for violating a prohibition are like those liable to receive karet with regard to the validity of their marriage and all its ramifications, and those liable to receive karet are not eligible to perform halitza or levirate marriage. A eunuch caused by man has the status of a man with crushed testicles, and is therefore prohibited by a standard negative mitzva from marrying a Jewish woman. If he violated the prohibition and married her, his marriage is invalid according to Rabbi Akiva, just as if he had married a woman who is forbidden to him by a prohibition punishable by karet. Why, then, should his halitza be valid?

BACKGROUND

A defect that can be cured – ליקוי שיש לו רפואה: As will be explained on 80b, a eunuch by natural causes is one who suffers from defective sexual development, whether due to a hereditary condition or one that stems from a glandular dysfunction. Sometimes a glandular defect can be cured, either spontaneously or through supplement of various hormones. Although there is no definite knowledge on this matter, it is possible that in the past this condition was treated by ingesting natural substances containing hormones, or by means of herbal remedies that strengthened glandular function in general.

**בְּגוֹן שֶׁנִּשְׂא אֶתִּי – וְיָוֵמָה:** If a man married a convert and died childless, and he had a brother who was a eunuch, it is permitted for the latter to perform levirate marriage with his *yevama*, in accordance with the opinion of Rabbi Yosei that the congregation of converts is not called a congregation (*Shulḥan Arukh, Even HaEzer 172:3*, and in the comment of Rema).

**Forbidden to the husband and permitted to the *yavam* – וְאִסוּר לְבַעַל וְנוֹתֵרֶת לְיָבָם:** If a woman was forbidden to her husband by a positive or negative mitzva or a rabbinic prohibition, but she is permitted to his brother, and her husband died without children, she may enter into levirate marriage (*Rambam Sefer Nashim, Hilkhot Yibbum 6:4; Shulḥan Arukh, Even HaEzer 174:2*).

**But they are prohibited from maintaining them – וְאִסוּר לְקַיְיֵמָן:** If a woman is forbidden to her *yavam* by a positive or negative mitzva or a rabbinic prohibition, she must undergo *halitza* and may not enter into levirate marriage. If the *yavam* transgressed and had intercourse with her, he acquired her as his wife and exempted her rival wife from levirate marriage and *halitza*, but he must divorce her (*Rambam Sefer Nashim, Hilkhot Yibbum 6:2; Shulḥan Arukh, Even HaEzer 173:3, 174:1*).

## NOTES

**וְהַזְקֵן – וְהַזְקֵן:** The early authorities note that an elderly man does not belong to this category in all respects, as the *tanna* is stressing that although he cannot have children in practice, since he was inherently capable of fathering children he is obligated in levirate marriage. Consequently, the prohibition stated here against maintaining the woman as his wife does not apply to an old man, as he is not classified as one with crushed testicles. Some commentaries distinguish between an elderly man who is no longer even capable of the act of intercourse, and one who can perform the act but cannot have children (see Meiri, Rambam, and *Maggid Mishne*).

אָמַר רַבִּי אֲמִי: הֲכָא בְּמַאי עָסְקִינָן – בְּגוֹן שֶׁנִּשְׂא אֶתִּי גֵיּוֹרָתָא. וְרַבִּי עֲקִיבָא סָבַר לָהּ כְּרַבִּי יוֹסֵי, דְאָמַר: קֹהֵל גְרִים לֹא אֶקְרִי קֹהֵל.

Rabbi Ami said: With what are we dealing here? We are dealing with a case where the eunuch's brother had married a convert,<sup>H</sup> and Rabbi Akiva holds in accordance with the opinion of Rabbi Yosei, who said that the congregation of converts is not called a congregation of the Lord. Consequently, it is permitted even for those for whom it is prohibited to enter into the congregation, e.g., a eunuch, to marry converts.

אִי הָכִי יְבוּמֵי נְמִי מֵיִבָּם! אִין הָכִי נְמִי וְאִיִּדִי דְאָמַר רַבִּי יְהוֹשֻׁעַ חוֹלֵץ אָמַר אִיהוּ נְמִי חוֹלֵץ.

The Gemara raises a difficulty: If so, the eunuch should also be able to perform levirate marriage with the convert. The Gemara answers: Yes, it is indeed so, but since Rabbi Yehoshua said that a eunuch performs *halitza* with his *yevama*, Rabbi Akiva as well said that he performs *halitza* with her, while in fact he may enter into levirate marriage with her if he so chooses.

דִּיקָא נְמִי, דְקִתְנִי: הַעִיד רַבִּי יְהוֹשֻׁעַ בֶּן בֵּיתִירָא עַל בֶּן מְגוּסָת שֶׁהָיָה בִירוּשָׁלַיִם סָרִיס אָדָם, וְיָבָמוּ אֶת אִשְׁתּוֹ, לְקַיְיֵם דְּבַרֵי רַבִּי עֲקִיבָא. שְׂמַע מִנָּה.

The Gemara adds: The language of the mishna is also precise in this regard, as it teaches: Rabbi Yehoshua ben Beteira testified about a man named ben Megusat, who lived in Jerusalem and was a eunuch caused by man, that his brothers entered into levirate marriage with his wife, to fulfill the statement of Rabbi Akiva. This indicates that according to Rabbi Akiva, not only *halitza* but even levirate marriage is permitted. The Gemara concludes: Learn from this that this is the correct understanding of the mishna.

מְתִיב רַבָּה: פְּצוּעַ דְּכָא, וְכָרוֹת שְׂפָכָה, סָרִיס אָדָם, וְהַזְקֵן – אִו חוֹלְצִין אִו מְיִיבָמִין. בִּיצֵד? יִתּוּ וְלָהֶם נָשִׁים, וְלָהֶם אֶחָיו, וְעָמְדוּ אֶחָיו וְעָשׂוּ מֵאָמַר בְּנִשְׁוֹתֵיהֶן וְנִתְּנוּ גֵט אִו שְׁחָלְצוּ – מֵהָ שְׂעָשׂוּ עָשׂוּ, וְאִם בְּעָלוּ – קָנוּ.

Rabba raised an objection from the following *baraita*: A man with crushed testicles, and one whose penis has been severed, and a eunuch caused by man, and an elderly man<sup>N</sup> who is no longer capable of fathering children, may either perform *halitza* or enter into levirate marriage. The *baraita* clarifies the matter: How so? If these men died and they had wives and they also had brothers, and the brothers proceeded to perform levirate betrothal with their wives, or gave them a bill of divorce, or performed *halitza* with them, what they did is done, i.e., it is a valid act. And if the brothers had intercourse with the wives, they acquired them in levirate marriage, like any other *yevama*.<sup>H</sup>

יִתּוּ אֶחָיו וְעָמְדוּ הֵן וְעָשׂוּ מֵאָמַר בְּנִשְׁוֹתֵיהֶן וְנִתְּנוּ גֵט אִו חָלְצוּ – מֵהָ שְׂעָשׂוּ עָשׂוּ, וְאִם בְּעָלוּ – קָנוּ, וְאִסוּר לְקַיְיֵמָן, מִשּׁוּם שֶׁנֶּאֱמַר "לֹא יָבָא פְּצוּעַ דְּכָא וְכָרוֹת שְׂפָכָה בְּקֹהֵל ה'". אֲלֵמָּא בְּקֹהֵל עָסְקִינָן!

If the brothers of these sexually impaired men died, and the sexually impaired men proceeded to perform levirate betrothal with their brothers' wives, or gave them a bill of divorce, or performed *halitza* with them, what they did is done, i.e., it is a valid act. And if they had intercourse with their brothers' wives they acquired them in levirate marriage, but they are prohibited from maintaining them<sup>H</sup> as their wives because it is stated: "A man with crushed testicles or a severed penis shall not enter into the congregation of the Lord" (Deuteronomy 23:2). Apparently, we are dealing with a case where the eunuch's brother had married a woman who is in the congregation of the Lord, i.e., a Jew from birth who is governed by this prohibition, and not a convert.

אֲלֵא אָמַר רַבָּה: בְּגוֹן שֶׁנִּפְלָה לֹו וְלְבָסוֹף נִפְצָע.

Rather, Rabba said that the case here is one where one's brother died and his *yevama* happened before him for levirate marriage, and he was injured only afterward. Since the mitzva of levirate marriage had initially applied to him, he performs *halitza* with her.

אָמַר לֵיהּ אַבְיִי: וְלִיִּתִי אִסוּר פְּצוּעַ וְנִדְחֵי עֵשָׂה דִּיִּבְבוּם! מִי לֹא תִנּוּ, רַבִּין גַּמְלִיאֵל אָמַר: אִם מֵאָמַר – מֵאָמַר, מֵאָמַר.

Abaye said to him: If so, let the prohibition applying to a man with crushed testicles come and override the positive mitzva of levirate marriage. Didn't we learn in a mishna (109a) as follows: With regard to a case of two brothers who were married to two sisters, one of whom was a minor married off by her brothers in a marriage valid only by rabbinic decree, and the brother who was married to the adult sister passed away, Rabban Gamliel says: If the minor sister refuses her husband, declaring that she does not desire the marriage, she has refused him. Since the marriage is valid only by rabbinic decree, the girl may terminate it before she reaches the age of twelve by declaring that she does not wish to remain in the marriage, and no bill of divorce is required. In such a case the marriage is nullified retroactively, and so her former husband, the *yavam*, may perform levirate marriage with her sister.

ואם לאו – תמתין עד שתגדיל, ותצא  
הלוו משום אחות אשה. אלמא: אתי  
איסור אחות אשה ודחי, הקא נמי  
נתי איסור פצוה ונדחתי!

The mishna continues: **But if she does not** refuse him, the minor **must wait** and her husband must not have relations with her **until she reaches adulthood** and their marriage is valid by Torah law, since in the meantime she is forbidden to him as the sister of a woman awaiting levirate marriage with him. At that point, when the minor reaches adulthood, **this one**, the adult sister, **goes out free** from the *yavam* without levirate marriage or *halitza* as his **wife's sister**. Apparently, the prohibition with regard to a wife's sister comes and overrides the mitzva of levirate marriage that had previously been in effect. **Here too**, then, let the prohibition applying to a man with **crushed testicles come and override** the positive mitzva of levirate marriage.

אלא אמר רב יוסף: האי תנא – הך  
תנא דבי רבי עקיבא היא, דאמר:  
מחייבי לאוין דשאר הוי ממזר,  
מחייבי לאוין גרידי – לא הוי ממזר.

Rather, Rav Yosef said: This *tanna* of our mishna is the *tanna* of the school of Rabbi Akiva, who said that only the child born of a union between those who are liable for violating prohibitions involving incestuous relationships is a *mamzer*, but the child born of a union between people who are liable for violating ordinary prohibitions is not a *mamzer*. The prohibition applying to a man with crushed testicles falls into the latter category, and therefore his marriage is valid and he may perform *halitza*.

אי קרי כאן "להקים לאחיו שם" והא  
לאו בר הכי הוא!

The Gemara asks: Why does the mitzva of levirate marriage apply at all to a eunuch? Read here the verse with regard to levirate marriage: "To establish a name for his brother in Israel" (Deuteronomy 25:7), and this one is no longer capable of this, even if previously he had an hour of fitness when he was fertile earlier in his life.

אמר רבא: אם בן אין לך אשה  
שבשרה ליבם שלא נעשה בעלה  
סריס חמה שעה אחת קודם למיתתו.

Rava said: If it is so that anyone who cannot presently father children is exempt from levirate marriage even if he had previously been capable of doing so, there is no instance of a woman who is fit for the *yavam*, as even if her husband died of natural causes it is impossible that he did not become like a eunuch by natural causes an hour before his death. He had certainly lost his fertility before dying, and therefore he has the status of a eunuch, which means that the mitzva of levirate marriage should not apply in his case at all. Rather, it must be that a man who had previously been capable of fathering children is considered fit for the purposes of levirate marriage.

לרבי אליעזר פירוקא דרבא פירוקא  
היא!

The Gemara comments: According to the opinion of Rabbi Eliezer in the mishna that a eunuch caused by man does not perform *halitza* and his marriage is invalid even though he had an hour of fitness when he was fertile, Rava's answer, his proof from the fact that all men on their deathbeds lack sexual capacity, is undoubtedly a refutation.

התם בחי שותא דאתחילה ביה.

The Gemara answers: Rabbi Eliezer maintains that a man who is about to die cannot be compared to a eunuch, as there, he can no longer father children due to the general weakness that begins to take over his body as death approaches, which prevents him from engaging in relations with a woman, but his basic ability to father children remains unimpaired.

היכי דמי סריס חמה? אמר רב יצחק  
בר יוסף אמר רבי יוחנן: כל

The Gemara raises a practical question: What are the circumstances of a eunuch by natural causes?<sup>24</sup> Rav Yitzhak bar Yosef said that Rabbi Yoḥanan said: Anyone

#### NOTES

What are the circumstances of a eunuch by natural causes – mishna here. This is because this category includes two different types: A man regarding whom there is no external indication that he is incapable of fathering children, and a eunuch by natural causes.