

A bird used for sexual relations, and one set aside, etc. – **הַרְבֵּעַ וְהַמְיֻקָּצָה וְכוּ**: A bird offering that was killed by pinching is not considered an unslaughtered carcass with respect to the *halakhot* of ritual impurity. This *halakha* applies only if the bird was fit for sacrifice, but if it was used for sexual relations with a human being, or set aside for idolatrous purposes, or was itself worshipped as an idol, or was given as payment to a prostitute, or was the price of a dog, or was a *tumtum* or a hermaphrodite, it is considered an unslaughtered carcass in all regards. Consequently, it renders one and the garments he is wearing ritually impure when it is eaten and comes into contact with one's throat. The *halakha* is ruled in accordance with the opinion of the Rabbis, against that of Rabbi Eliezer (Rambam *Sefer Avoda*, *Hilkhot Pesulei HaMukdashin* 7:1–4).

A tumtum and a hermaphrodite with regard to the offerings – טוּמְטוּם וְאַנְדְרוֹגִינוֹס בְּקִדְשִׁים: An animal that is a *tumtum* or a hermaphrodite is considered to be blemished, so that the sanctity of the altar does not apply to it. Even a bird that is a *tumtum* or a hermaphrodite is unfit for the altar, as there is a doubt as to whether it is a male or a female. This is in accordance with the opinion of the Rabbis, against that of Rabbi Eliezer (Rambam *Sefer Avoda*, *Hilkhot Issurei Mizbe'ah* 3:3).

NOTES

They render garments ritually impure when they come into contact with his throat – **מְטַמְּאִין בְּגָדִים אֲבִית הַבְּלִיעָה**: A special *halakha* applies to the carcass of a clean bird. Although it is impure, it does not impart ritual impurity via touching or carrying, as does the carcass of an animal, but only via eating. When a piece of the carcass enters one's esophagus, he contracts ritual impurity that affects not only himself but also the clothes he is wearing at the time.

BACKGROUND

וְיֻצְאָ דוֹפָן – Delivered through the abdominal wall – An animal that was delivered through the abdominal wall is one that was not born naturally but by means of a caesarean section. The animal is called by this name because it was delivered through the abdominal wall of its mother. Various halakhic matters apply only in cases of natural birth, and animals delivered through the abdominal wall are governed by different *halakhot*.

וּמִנֵּלן דְּלֵא קִדֵּשׁ – דִּתְנוּ רַבְנָן: הַרְבֵּעַ, וְהַמְיֻקָּצָה, וְהַנֶּעֱבָד, וְהָאִתָּן, וּמְחִיר, וְטוּמְטוּם, וְאַנְדְרוֹגִינוֹס מְטַמְּאִין בְּגָדִים אֲבִית הַבְּלִיעָה.

And from where do we derive that it does not become sacred? As the Sages taught in a *baraita*: With regard to a bird used for sexual relations with a human being, and one set aside^H for idolatrous purposes, and one that itself was worshipped as an idol, and one given as payment to a prostitute (see Deuteronomy 23:19), and one that was the price of a dog received in exchange for the sale of a dog (see Deuteronomy 23:19), and similarly, a bird that is a *tumtum* or a hermaphrodite, if one killed any of these birds by pinching their necks in the manner of an offering rather than by ritual slaughter, the birds render him and the garments he is wearing ritually impure, when the birds are eaten and come into contact with his throat.^{HN} The reason is that pinching is valid only for sacrificial birds; any other bird that is killed by pinching is deemed an unslaughtered carcass. Since none of these birds are fit to be sacrificed, pinching their necks renders them unslaughtered carcasses, and the unslaughtered carcass of a clean bird imparts ritual impurity when it is eaten and reaches the individual's throat.

רַבִּי אֱלִיעֶזֶר אוֹמֵר: טוּמְטוּם וְאַנְדְרוֹגִינוֹס אִין מְטַמְּאִין בְּגָדִים אֲבִית הַבְּלִיעָה. שְׁהֵיָה רַבִּי אֱלִיעֶזֶר אוֹמֵר: כָּל מְקוֹם שֶׁנֶּאֱמַר זָכָר וְנִקְבָּה – אֵתָהּ מוֹצִיא טוּמְטוּם וְאַנְדְרוֹגִינוֹס מִבִּינֵיהֶם, וְעוֹף, הוֹאִיל וְלֹא נֶאֱמַר בּו זָכָר וְנִקְבָּה – אֵי אֵתָהּ מוֹצִיא טוּמְטוּם וְאַנְדְרוֹגִינוֹס מִבִּינֵיהֶם.

Rabbi Eliezer says: If one pinched the neck of a bird that is a *tumtum* or a hermaphrodite, it does not render him and the garments he is wearing ritually impure when it is eaten and comes into contact with his throat, as the sanctity of an offering does in fact apply to it. As Rabbi Eliezer would say: Wherever it is explicitly stated in the Torah “male” and “female,” you are to remove a *tumtum* and a hermaphrodite from among them, as their gender status is in doubt. This is true of animal offerings, with regard to which the Torah uses the terms male and female. In the case of a bird-offering, however, since male and female are not stated with regard to it, but instead the Torah simply mentions turtledoves and young pigeons, you are not to remove a *tumtum* and a hermaphrodite from among them, as they are fit for the altar. It is evident then that Rabbi Eliezer maintains that a hermaphrodite is not considered a proper male with respect to offerings.

אָמַר רַב נַחֲמָן בַּר יִצְחָק: אִף אֲנִי נִמְיָ תִּנְיָנָא, רַבִּי אֱלִיעֶזֶר אוֹמֵר:

Rav Nahman bar Yitzhak said: We too learned this explicitly in a *baraita* that states: Rabbi Eliezer says:

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הַכְּלָאִים וְטִרְפָּה, וְיֻצְאָ דוֹפָן, טוּמְטוּם וְאַנְדְרוֹגִינוֹס – לֹא קִדְוִשִׁין וְלֹא מְקִדְשִׁין.

Forbidden crossbred livestock, an animal with a condition that will cause it to die within twelve months [*tereifa*],^H an animal delivered through the abdominal wall,^B and an animal that is a *tumtum* or a hermaphrodite do not become sacred^N and do not render another animal sacred in their place.

HALAKHA

Forbidden crossbred livestock and a *tereifa*, etc. – **הַכְּלָאִים וְטִרְפָּה וְכוּ**: If one attempted to substitute for an animal that had been designated as an offering a crossbred animal, an animal with a condition that will cause it to die within twelve months [*tereifa*], an animal delivered through the abdominal wall, or an animal that is a *tumtum* or a hermaphrodite, the substituted

animal does not become sacred, and it is as though one had tried to transfer the sanctity of the offering to a camel or a donkey. The *halakha* follows the opinion of Rabbi Eliezer, in accordance with Shmuel's explanation (Rambam *Sefer Korbanot*, *Hilkhot Temura* 1:17).

NOTES

They do not become sacred – **לֹא קִדְוִשִׁין**: Why is it necessary to cite Shmuel's explanation that the phrase: They do not become sacred, is referring to substitution? Even if one would claim that: They do not become sacred, is referring to the initial consecration of an offering, this still proves that a hermaphrodite is not a male. The *Arukh LaNer* answers that were it not for Shmuel's

statement, one might have said that a hermaphrodite does not become sacred because it is considered a male with a blemish. The Gemara therefore cites Shmuel's teaching that although a blemished animal becomes sacred through substitution, a hermaphrodite does not.

NOTES

Substitution – תְּמוּדָה: The *halakha* of substitution appears in Leviticus 27:10, and an entire tractate, *Temura*, deals with its details. The basic *halakha* of substitution is that while it is prohibited to replace a sanctified animal, i.e., one that has been consecrated as an offering, with another animal, and anyone who does so has transgressed a prohibition and is liable to be flogged, the animal designated as a substitute is nevertheless sanctified. However, the first animal still retains its own sanctity. Furthermore, although blemished animals cannot become sacred through initial consecration, they can become sacred through substitution. Nevertheless, a special biblical decree teaches that the animals listed in the Gemara do not become sacred through substitution.

And they do not render another animal sacred when it is made a substitute – וְלֹא מְקַדְשִׁין בְּעוֹשֵׂה תְּמוּדָה: Rashi suggests several possibilities as to how these disqualified animals can become sanctified. The early authorities point out that one could simply say that they all became sacred as the offspring of offerings, but since not all Sages agree that the offspring of offerings are sanctified, it is preferable to find other explanations for their sanctification.

They did not let me learn – לֹא הִנְיחוּנִי לְלָמוּד: In the Jerusalem Talmud, where this incident is recounted as well, it is discussed whether the reason they prevented him from studying there was because they did not want him to reveal matters best kept secret or because they thought him unworthy to be a disciple of their teacher (see *Arukh LaNer*).

BACKGROUND

The roosters of Beit Bukya – תְּרִנְגוּלִים שֶׁל בֵּית בּוּקְיָא: Roosters in general are aggressive birds, described by the Sages as fierce. A new rooster will encounter hostility from the local roosters whose turf it enters. Various other birds will also attack any stranger, even when the stranger is not of their own species. There are special breeds of roosters that are raised to act aggressively, such as fighting cocks. Apparently, the roosters of Beit Bukya were known for their especially aggressive nature.



One rooster attacking another

וְאָמַר שְׂמוּאֵל: לֹא קְדוּשִׁין – בְּתְּמוּדָה, וְלֹא מְקַדְשִׁין – בְּעוֹשֵׂה תְּמוּדָה, שְׂמַע מִיָּנָה.

And Shmuel said: They do not become sacred by way of substitution,^N i.e., if one had an animal that had been designated as an offering, and he wished to substitute one of these animals for it, the substituted animal does not become sacred. And they themselves do not render another animal sacred when it is made a substitute^N for them. If one designated one of these animals as an offering and he wished to substitute another animal for it, it does not become sacred. The Gemara concludes: Learn from this that Rabbi Eliezer does not consider a hermaphrodite to be a proper male.

”רַבִּי אֱלִיעֶזֶר אוֹמֵר: חַיִּיבִין עָלָיו סְקִילָה בְּזִכְרָא.” תַּנְיָא, אָמַר רַבִּי: כְּשֶׁהֲלַכְתִּי לְלָמוּד תּוֹרָה אֶצְל רַבִּי אֱלִיעֶזֶר בֶּן שְׂמוּעַ, חָבְרוּ עָלַי תְּלַמִּידָיו כְּתְּרִנְגוּלִים שֶׁל בֵּית בּוּקְיָא, וְלֹא הִנְיחוּנִי לְלָמוּד אֶלָּא דָּבָר אֶחָד בְּמִשְׁנֵיתִינוּ: רַבִּי אֱלִיעֶזֶר אוֹמֵר: אֲנִידְרוּגִינוֹם חַיִּיבִין עָלָיו סְקִילָה בְּזִכְרָא.

It is taught in the mishna that Rabbi Eliezer says: If one had intercourse with a hermaphrodite, one is liable to be punished with stoning on his account as if one had relations with a male. It is taught on this matter in a *baraita* that Rabbi Yehuda HaNasi says: When I went to learn Torah from Rabbi Elazar ben Shamua, his students joined together against me like the roosters of Beit Bukya,^B highly aggressive animals that do not allow other creatures to remain among them, and they did not let me learn^N there. Therefore, I managed to learn only one thing in our mishna, which is that Rabbi Eliezer says: If one had intercourse with a hermaphrodite, one is liable to be punished with stoning on his account as if one had relations with a male.

הדרן עלך הערל

מתני' יש מותרות לבעליהן ואסורות לביבמיהן, מותרות לביבמיהן ואסורות לבעליהן, מותרות לאלו ולאילו, ואסורות לאלו ולאילו.

ואלו מותרות לבעליהן ואסורות לביבמיהן: בהן הדיוט שנשא את האלמנה ויש לו אח בהן גדול; חלל שנשא כשרה ויש לו אח כשר;

ישראל שנשא בת ישראל ויש לו אח ממזר; ממזר שנשא ממזרת ויש לו אח ישראל - מותרות לבעליהן ואסורות לביבמיהן.

ואלו מותרות לביבמיהן ואסורות לבעליהן: בהן גדול שקידש את האלמנה ויש לו אח בהן הדיוט; כשר שנשא חללה ויש לו אח חלל; ישראל שנשא ממזרת ויש לו אח ממזר; ממזר שנשא בת ישראל ויש לו אח ישראל - מותרות לביבמיהן ואסורות לבעליהן.

ואלו אסורות לאלו ולאילו: בהן גדול שנשא את האלמנה ויש לו אח בהן גדול או בהן הדיוט; כשר שנשא חללה ויש לו אח כשר; ישראל שנשא ממזרת ויש לו אח ישראל; ממזר שנשא בת ישראל ויש לו אח ממזר - אסורות לאלו ולאילו. ושאר כל הנשים מותרות לבעליהן וליבמיהן.

שניות מדברי סופרים: שנייה לבעל ולא שנייה ליבם - אסורה לבעל ומותרת ליבם. שנייה ליבם ולא שנייה לבעל - אסורה ליבם ומותרת לבעל. שנייה לזה ולזה - אסורה לזה ולזה.

MISHNA There are women who are permitted to their husbands and forbidden to their *yevamin*,^N while others are permitted to their *yevamin* and forbidden to their husbands. Certain women are permitted both to these and to those, and others are forbidden to both these and to those.

The mishna elaborates: **And these are cases of women who are permitted to their husbands^N and forbidden to their *yevamin*:** In the case of a common priest who married a widow, and he has a brother who is the High Priest, the widow, who was permitted to her husband, is forbidden to her *yavam*, as it is prohibited for the High Priest to marry a widow. The same is true in the case of a priest disqualified due to flawed lineage [*halal*], e.g., the son of a priest and a divorcée, who married a woman fit to marry a priest, and he has a brother who is a priest fit for service. That woman was permitted to marry the *halal* but is forbidden to his brother. Having engaged in intercourse with the *halal*, she is rendered a *halala*, a woman disqualified from marrying a priest.

Another example is the case of an Israelite of unflawed lineage who married an Israelite woman of similar lineage, and he has a brother who is a son born from an incestuous or adulterous relationship [*mamzer*]; or a *mamzer* who married a daughter born from an incestuous or adulterous relationship [*mamzeret*], and he has a brother who is an Israelite of unflawed lineage. A *mamzer* is permitted to marry a *mamzeret*, but neither is permitted to a Jew of unflawed lineage. In each of these cases, these women are permitted to their husbands and forbidden to their *yevamin*.

And these are cases of women who are permitted to their *yevamin* and forbidden to their husbands.^N For example, there is the case of a High Priest who betrothed a widow, and he has a brother who is a common priest, whom she is permitted to marry. This is true only if the High Priest merely betrothed her. However, if he consummated the marriage, he rendered her a *halala* forbidden to all priests, including her *yavam*. The additional cases are a priest fit for service who married a *halala* and he has a brother who is a *halal*; an Israelite of unflawed lineage who married a *mamzeret*, and he has a brother who is a *mamzer*; and a *mamzer* who married an Israelite woman of unflawed lineage, and he has a brother who is, similarly, an Israelite of unflawed lineage. All of these women are permitted to their *yevamin* and forbidden to their husbands.^H

And these are cases where women are forbidden both to these and to those: A High Priest who married a widow, and he has a brother who is a High Priest or a common priest; a priest fit for service who married a *halala*, and he has a brother who is a priest fit for service; an Israelite of unflawed lineage who married a *mamzeret*, and he has a brother who is similarly an ordinary Israelite, or a *mamzer* who married an Israelite woman of unflawed lineage, and he has a brother who is a *mamzer*. All of these women are forbidden both to these and to those. **And all other women^N are permitted to their husbands and to their *yevamin*.**

With regard to secondary relatives, who are forbidden by rabbinic law, if the woman is a secondary relative to the husband but not a secondary relative to the *yavam*, she is forbidden to the husband and permitted to the *yavam*. Conversely, if she is a secondary relative to the *yavam* but not a secondary relative to the husband, she is forbidden to the *yavam* and permitted to the husband. If she is a secondary relative both to this man and to that man, she is forbidden to this one and to that one.

NOTES

There are women who are permitted to their husbands and forbidden to their *yevamin* – יש מותרות לבעליהן ואסורות לביבמיהן: *Tosafot* explain that this chapter presents a summary of the topic of forbidden and permitted *yevamot*. After this chapter, the tractate turns to other matters, which are connected to levirate marriage but not to the specific issue of permitted and forbidden *yevamot*. They further explain that there are certain novel elements in the mishna's statements with regard to those who are forbidden to their husbands but permitted to their *yevamin*. Furthermore, even if there is no novelty with regard to the *halakhot* of *yevamot*, the chapter does offer original *halakhot* with regard to the conditions of a marriage contract as well as the marriage contract itself.

And these are permitted to their husbands – ואלו מותרות לבעליהן: This mishna follows a format used elsewhere. It states a principle and then lists specific cases for each category. The specific cases are presented in the same order as the general categories. The *tanna* does not present those who are permitted both to their husbands and their *yevamin* in order, but rather states this *halakha* in shortened form at the end, because in all of the other cases he brings detailed examples, whereas the women who are permitted to both are mentioned in general terms (*Ritva*).

And these are permitted to their *yevamin* and forbidden to their husbands – ואלו מותרות לביבמיהן ואסורות לבעליהן: This ruling explains that although the marriage itself was improper, an obligation of levirate marriage exists nevertheless, and it is permitted for the *yevamin* to marry the women. This is true despite the fact that with regard to certain prohibitions the Gemara applies the following *a fortiori* inference: If she is forbidden to the man usually permitted to her, namely her husband, she is certainly also prohibited to her *yavam*, who as her husband's brother is ordinarily forbidden to her. Furthermore, although her marriage was never supposed to serve reproductive purposes, as her husband was obligated to divorce her, the mitzva to establish offspring for one's deceased brother still remains (*Ritva*; see *Nimmukei Yosef*).

And all other women – ושארו כל הנשים – In the Jerusalem Talmud, which is cited by several early authorities including the *Rashba*, it is pointed out that this statement is imprecise, as there are several other cases in which the woman is forbidden to the husband or *yavam* that are omitted by the mishna. The Gemara there infers a universal principle from this: Practical *halakha* cannot be derived from the generalizations of a mishna, as they are not always formulated precisely.

HALAKHA

Permitted to their *yevamin* and forbidden to their husbands – מותרות לביבמיהן ואסורות לבעליהן – In the case where a woman was forbidden to her husband by dint of a prohibition, a prohibition stated as a positive mitzva, or because they are secondary relatives forbidden to each other by rabbinic law, but she is permitted to her *yavam*, they may perform levirate marriage (*Rambam Sefer Nashim, Hilkhot Yibbum* 6:13; *Shulhan Arukh, Even HaEzer* 174:2).

She does not have the right to receive payment for her marriage contract, etc. – אין לה לא כתובה וכו' – If a man marries a woman forbidden to him as a secondary relative, whether or not he was aware of this fact, she has no claim to the main sum of her marriage contract, meaning the primary commitment of two hundred dinars for a virgin or one hundred dinars for a bride who is not a virgin. She also has no claim to any of the additional stipulations in the marriage contract, clauses that obligate the husband to provide the wife with additional benefits in various circumstances. However, she does receive the additional sum of the marriage contract: a supplementary amount above the compulsory one hundred or two hundred dinars that the husband may have added voluntarily. She is not entitled to sustenance from her husband's estate, even after his death. Furthermore, as an additional disincentive, he does not have to pay for his consumption of the produce of her property during their marriage (Rambam *Sefer Nashim, Hilkhot Ishut* 24:2; *Shulhan Arukh, Even HaEzer* 116:4).

And the court forces him to divorce her – ובפני אותו להוציא: If a man married a woman forbidden to him, the court forces him to divorce her, even if she is prohibited only by rabbinic law, e.g., she is a secondary relative (Rambam *Sefer Nashim, Hilkhot Ishut* 24:2; *Shulhan Arukh, Even HaEzer* 154:20).

A widow married to a High Priest, etc. – אִלְמָנָה לְבָהֵן גְּדוּל – In the case of one who married a woman forbidden to him by a Torah prohibition, if he was aware of the prohibition at the time of marriage, she receives her basic marriage contract and his addition to it, as well as all the conditions of the marriage contract, and she is sustained from his property after his death.

If he did not know about the prohibited nature of the marriage, she does not receive her basic marriage contract or any of the conditions of the marriage contract, although she is entitled to the additional part. The Rambam rules that a woman who married a man forbidden to her by a positive mitzva is entitled to payment of her marriage contract, the additional sum, and her sustenance, as the transgression is a light one. He maintains that the mishna spoke only of prohibitions (Rambam *Sefer Nashim, Hilkhot Ishut* 24:4 and *Kesef Mishne* there; *Shulhan Arukh, Even HaEzer* 116:1).

NOTES

Why does he specifically teach: Married – מאי איריא דתני נשא: Many commentators, including Rashi, understand this question as referring to the first clause of the mishna. The Maharsha, in his second edition, asks why the same difficulty is not raised concerning all of the other cases in the mishna that state: Married, instead of: Betrothed. He answers that with regard to other prohibitions there is no practical halakhic difference whether he married or betrothed her, as the prohibition is created by the forbidden relationship. In the case of a High Priest, however, it does matter whether she is a virgin.

Let him teach that he betrothed – ליתני קידוש: This and other related questions are posed by the Jerusalem Talmud as well. The primary answer given there is that the mishna's generalizations are not precise, and therefore nothing can be inferred from the omission of particular examples.

But the entire chapter – והא כולה פירקין: According to Rashi, this ruling is based on a biblical exposition. Rashba points out that the conclusion of the Gemara indicates otherwise, as stated by Rava: Although a positive mitzva does override a prohibition, the Sages decreed that they should not perform levirate marriage in this case, since only the first act of intercourse fulfills the mitzva of levirate marriage; and any additional cohabitation, which does not constitute a mitzva, is prohibited (*Peri Eshel*).

אין לה לא כתובה, ולא פירות, ולא מזונות, ולא בלאות, והולד כשר, ובפני אותו להוציא.

אִלְמָנָה לְבָהֵן גְּדוּל, גְּרוּשָׁה וְחַלּוּצָה לְבָהֵן הַדְּיוּט, מִמְזוּרָה וְנִתְיָנָה לְיִשְׂרָאֵל, בֵּת יִשְׂרָאֵל לְנִתְיָן וְלִמְמוּר – יֵשׁ לָהֶן כְּתוּבָה.

גמ' מאי איריא דתני נשא, ליתני קידוש!

וכי תימא: טעמא דנשא, דהוה ליה עשה ולא תעשה, אבל קידוש אתי עשה ודוחה לא תעשה – והא כולה פירקין עשה ולא תעשה הוא, ולא אתי עשה ודחי לא תעשה!

משום דקבעי למיתני סיפא: "בהן גדול שנשא את האלמנה" דוקא נשא – דשווייה חללה, אבל קידוש – שריא ליה, תנא נמי רישא "נשא".

Furthermore, if a man marries a woman forbidden to him as a secondary relative, she does not have the right to receive payment for her marriage contract¹ if divorced or widowed, nor is she entitled to payment from her husband for the produce of her property that he used, nor is she entitled to provisions for her sustenance from his estate, nor does she get back her worn clothes or other objects she brought with her to her marriage. And the lineage of the offspring is unflawed, and the court forces him to divorce her.¹⁴

In contrast, a widow married to a High Priest,¹⁵ a divorcée or a yevama who performed *halitza* [*halutza*] married to a common priest, a mamzeret or a Gibeonite woman married to an Israelite of unflawed lineage, and an Israelite woman of unflawed lineage married to a Gibeonite or to a mamzer all have the right to receive payment for their marriage contract, although it was prohibited for them to marry.

GEMARA As an example of a woman who is permitted to her husband and forbidden to her yavam, the mishna cites the case of a widow married to a common priest whose brother was a High Priest. The Gemara asks: Why does the *tanna* specifically teach a case where the priest married¹⁶ the widow? Let him teach that he betrothed¹⁷ her, as even if she is widowed after betrothal she requires levirate marriage or *halitza*.¹⁸

And if you would say: The reason that the *tanna* cited the case where they were married is that in this case there is a positive mitzva that the High Priest marry a virgin and also a prohibition to marry a widow, and therefore she is forbidden to him. However, if he betrothed her, the positive mitzva of levirate marriage comes and overrides the prohibition against marrying a widow. To counter this argument, the *tanna* states: But that cannot be the case, as the entire chapter¹⁹ discusses cases involving the positive mitzva of levirate marriage and prohibitions, and in all those cases, the positive mitzva does not come and override the prohibition, even in the absence of an additional positive mitzva.

The Gemara answers: The mishna could have cited a case where the priest betrothed the widow. Instead, the mishna cites a case where the priest married a widow, due to the fact that the *tanna* wants to teach in the latter clause of the mishna the case of a High Priest who married a widow who has a brother who is a common priest. That case is specifically if he married her, because he thereby rendered her a *halala*. However, if he only betrothed her, she is permitted to his brother who is a common priest, as it is permitted for him to marry a widow. Therefore, the *tanna* also taught in the first clause the case where the priest married her.

BACKGROUND

Betrothed and married – קידוש ונשא: A Jewish wedding is divided into two distinct parts. Betrothal is the first stage of the marriage process. The bond created by betrothal is so strong that, after betrothal, the woman is forbidden to other men, and intercourse with another man is considered adulterous and is punishable by death. Consequently, a betrothed woman requires a divorce before she can marry another man. Nevertheless, at this stage the betrothed couple may not yet cohabit as man and wife, and most of the couple's mutual obligations do not yet apply.

The second stage of the marriage process follows the betrothal. Marriage is effected by having the bride and groom

come under the wedding canopy, and this immediately confers both the privileges and the responsibilities associated with marriage upon the newlywed couple. After marriage, if one spouse dies, all the *halakhot* of mourning for a close relative apply to the surviving spouse. If a priest's wife dies, he is permitted to render himself ritually impure to bury her. All the monetary rights and obligations applying to married couples take effect after marriage.

Today, betrothal and marriage are performed in quick succession as part of a single ceremony, but in talmudic times there was usually a year-long gap between the two.

The *halakha* that is its neighbor [*bat bukta*] – בית בוקתא – Bukta or bikta is an Aramaic word, used in Hebrew as well, for a small house or a kind of shack. The source of the word is unclear and the Sages explained homiletically that it is an abbreviation of *bei akta*, a narrow house. Here the word is used metaphorically: Two things in the same shack is referring to a pair of adjacent items, i.e., objects that are linked based on spatial proximity.

ואֲדָתְנִי מִשּׁוּם סִיפָא – לִיתְנִי מִשּׁוּם
מִצִּיעָתָא: "בְּהֵן גְּדוּל שְׂקִידֵשׁ אֶת
הָאֵלְמָנָה וַיֵּשׁ לוֹ אֶחָ בְּהֵן הַדְּיוּט! אֶלָּא
מִשּׁוּם בֵּת בּוּקְתָא. דְּקִבְעֵי לְמִיתְנִי:
"חֲלָל שְׂנַשָּׂא בְּשָׂרָה", טַעְמָא – דְּנַשָּׂא.
דְּשׁוּיָה חֲלָלָה. אֲבָל קִידֵשׁ – שְׂרִינָא
לִיה, מִשּׁוּם הֵכִי קִתְנִי "נַשָּׂא".

The Gemara asks: **But rather than teaching** a case where she was married in the first clause **due to the latter clause** of the mishna, **let him teach** a case where she was betrothed in the first clause **due to the middle clause**, which speaks of a **High Priest who betrothed a widow, and he has a brother who is a common priest**. The Gemara concludes: **Rather**, the reason the *tanna* taught the case where the priest married the widow is **due to the halakha** that is its **neighbor** [*bat bukta*],¹ i.e., due to the fact that in the adjacent case **he wants to teach** the case of a *halal* who **married** a woman fit to marry a priest. There, the reason that the woman is forbidden to his brother is specifically that the *halal* **married her, as he rendered her a halala** by consummating the marriage. **However**, if the *halal* merely **betrothed her, she is permitted to him**. **Due to that reason**, the *tanna* teaches the case where the priest **married** the widow.

ומאי אירינא דקתני "אלמנה", ליתני
ב"תולה"!

The Gemara asks: **And why does the tanna specifically teach** the case of a common priest who married a **widow**? **Let him teach** that the priest married a **virgin**. Since in any case she becomes a widow upon his death, what difference is there whether she was previously a widow?

Perek IX

Daf 84 Amud b

וכי תימא קסבר האי תנא נישואין
הראשונים מפילין – הרי חלל שנשא
בשרה, ולא אמרינן נישואין הראשונים
מפילין!

And if you would say that this tanna holds that it is her status at the time of the **first marriage** that determines her status when **she happens** before the *yavam*^N for levirate marriage, and not her status at the time of her husband's death, and therefore if she had been a virgin when she married she would have been permitted to enter into levirate marriage with a High Priest, that cannot be so, as the mishna cites the case: **A halal who married** a woman fit to marry a priest is permitted to her husband and forbidden to her *yavam*. **And in that case, we do not say that the first marriage** determines her status when **she happens** before him for levirate marriage, as the woman was fit to marry the brother when she married the *halal* and was rendered a *halala* only as a result of her marriage.

הא ודאי משום סיפא, משום דקבועי
למיתנא סיפא "בהן גדול שנשא את
האלמנה ויש לו אח בהן גדול או בהן
הדיוט", דוקא אלמנה, אבל בתולה
תויה ליה, משום הכי קתני "אלמנה".

The Gemara answers: **That fact**, that the mishna cited a case where the priest married a widow, is **certainly due to the latter clause** of the mishna, i.e., **due to the fact that the tanna wants to teach in the latter clause: A High Priest who married a widow, and he has a brother who is the High Priest or a common priest**. In the case where the *yavam* is a common priest, the widow is forbidden to him **specifically** if the High Priest married a **widow**, as by consummating the marriage he rendered her a *halala*. **However**, had she been a **virgin** when the High Priest married her, he would not render her a *halala*, and when the High Priest dies **she would be fit** for his brother. It is **due to that reason** that the *tanna* teaches the case of a **widow** in the first clause as well.

מתקיף לה רב פפא: אם איתא להא
דכי אתא רב דימי אמר רבי יוחנן: מצרי
שני שנשא מצרית ראשונה – בנה שני
הוי, לתני נמי:

❧ Rav Pappa objects to the mishna: **If it is so**, that the *halakha* is in accordance with Rabbi Yohanan's opinion, **as when Rav Dimi came** from Eretz Yisrael he reported that **Rabbi Yohanan said** that in the case of a **second-generation Egyptian who married a first-generation Egyptian woman, her son is considered a second-generation Egyptian**, as the child's status in this matter is determined according to the mother, then **let the tanna of the mishna also teach** the following case:

NOTES

It is her status at the time of the first marriage that determines her status when she happens before the *yavam* – נישואין הראשונים מפילין: *Tosafot* and other early authorities are puzzled by this claim, as the suggestion that the status of the *yevama* is determined at the onset of her original marriage is always raised as a stringency, and not as a leniency as it is here. This should be especially true of the case brought as response, since the woman is rendered a *halala* and is forbidden due to her marriage to the *halal* (see *Rashba*). For this reason, some commentaries interpret this as a suggestion for the sake of argument, meaning, even if one were to suggest such a novel and unlikely application of the principle, this can be refuted (*Tosefot HaRosh*).

And if they married in the reverse manner – ואי איפוך – ונסוב: In their discussion of this case, *Tosafot* claim that a third-generation Egyptian is always permitted to marry a second-generation Egyptian woman, as the congregation of converts is not considered part of the congregation into which Egyptians may not enter. The later authorities point out that Rashi does not agree with this opinion. Rambam also indicates otherwise, as he maintains that anyone who is permitted to enter the congregation and whose mother is a Jew no longer has the status of a convert in this regard (see *Yam shel Shlomo*).

מצרי שני שנשא שתי מצריות, אחת ראשונה ואחת שנייה, והיו לו בנים מראשונה ושנייה, אי נסוב בי אורחיהו – מותרות לבעליהן ואסורות לבימיהן.

With regard to a second-generation Egyptian who married two Egyptian women, one of whom was a first-generation Egyptian convert and one of whom was from the second generation, and he had sons from both the first and second women, if these two sons married in their proper way, meaning that the third-generation Egyptian married an ordinary Jewish woman, and the second-generation convert married another second-generation Egyptian, then it is also true of these women that they are permitted to their husbands and forbidden to their *yevamin*. The second-generation Egyptian is forbidden to his Jewish *yevama*, while the third-generation Egyptian is an ordinary Jew and therefore prohibited to marry his *yevama*, who is a second-generation Egyptian woman.

ואי איפוך ונסוב – מותרות לבימיהן ואסורות לבעליהן, מותרות לאלו ולאילו – גיורות, אסורות לאלו ולאילו – אילוניות!

And if they married in the reverse manner,^N i.e., the third-generation convert married a second-generation Egyptian woman, and the second-generation man married an ordinary Jewish woman, they are permitted to their *yevamin* and forbidden to their husbands. Similarly, they are permitted both to these and to those if these sons married converts, for an Egyptian convert is permitted to marry a convert of a different nationality. And there is also a case in which they are forbidden to these and to those, namely if they married sexually underdeveloped women [*ayloniot*]. If an Egyptian married an *aylonit*, she is forbidden to him as a Jewish woman, and she is forbidden to his brother, a third-generation Egyptian convert who is permitted to marry a Jewish woman, because levirate marriage is prohibited with an *aylonit*. The fact that the mishna omits these cases appears to indicate that the *halakha* is not in accordance with Rabbi Yoḥanan.

תנא ושייר. מאי שייר דהאי שייר? שייר פצוע דכא.

The Gemara answers: There is no proof from here with regard to the *halakha*, as the *tanna* of the mishna did not mention all possible examples. Rather, he taught certain cases and omitted others. The Gemara asks: What else did he omit that he omitted this? The *tanna* would not have omitted only one example. The Gemara answers: He omitted the case of a man with crushed testicles or with other wounds to his genitals. If the husband is such a man, the wife is forbidden to her husband and permitted to her *yavam*. If the *yavam* is such a man, the opposite is true.

אי משום פצוע דכא – לאו שיירא, דהא תנא ליה חייבי לאוין!

The Gemara asks: If this mishna is determined to have taught certain cases and omitted others due to the omission of the case of a man with crushed testicles or other wounds to his genitals, this is not an omission, as in this mishna the *tanna* taught a principle that applies to all forbidden relationships for which one is liable for violating a prohibition. This category includes such a case, and therefore it was not omitted.

אטו חייבי לאוין מי לא קתני והדר תני? והא קתני "בהן הדיוט שנשא אלמנה, וחלל שנשא כשרה!"

The Gemara answers: Is that to say that with regard to those relationships for which one is liable for violating a prohibition, he does not teach a principle and again teach them in detail? But this is not the case. He teaches the case of a common priest who married a widow and he had a brother who was a high priest, and the case of a *halal* who married a woman fit to marry a priest and he had a brother who was a priest fit for service, both of whom are forbidden as they are liable for violating a prohibition. Therefore, since the *tanna* did not specifically teach the case of the man with crushed testicles, this constitutes an omission.

ההוא איצטרביא ליה לאשמוענין כדרב יהודה אמר רב, דאמר רב יהודה אמר רב: לא הוזהרו כשירות להנשא לפסולין.

The Gemara responds: That clause of the mishna is not merely a specification of the previous general *halakha*, as it was necessary for the *tanna* to mention these cases individually in order to teach us another *halakha* that Rav Yehuda said that Rav said, as Rav Yehuda said that Rav said: It is not prohibited for daughters of priests who are fit to marry priests to marry men who are disqualified from the priesthood, although this marriage disqualifies them from subsequently marrying a priest.

It is not prohibited for daughters of priests who are fit to marry priests to marry men who are disqualified from the priesthood – לא הוזהרו בשרות להנשא – לפסולין: Another proof of this principle is that the Torah forbids a *halala* to a priest but does not prohibit a *halal* from entering the congregation of priests by marrying a priest's daughter. This indicates that the daughter of a priest may marry a *halal* (Ritva, citing Ra'avad). Some explain that since the sanctity of the priesthood is not transferred to the daughter of a priest, as her children from an Israelite are not priests, the Torah was not particular about her marriage to a *halal*. The marriage is permitted, although by marrying her he disqualifies her permanently from eating *teruma*, as in any case her children will be Israelites and not priests (*She'iltot*).

Fit for the priesthood – כְּשֵׁרָה לְכַהֵן: Rashi explains that although it is not prohibited for a priest to marry an Israelite, nevertheless, there is a special virtue in the marriage of a priest to the daughter of another priest. For many generations, it was the custom of priests to marry daughters of priests.

HALAKHA

It is not prohibited for daughters of priests who are fit to marry priests to marry men who are disqualified from the priesthood – לא הוזהרו בשרות להנשא – לפסולין: A daughter of a priest is permitted to marry a *halal*, a convert, or an emancipated slave, as it is not prohibited for daughters of priests who are fit to marry priests to marry those disqualified from the priesthood, as stated by Rav (Rambam *Sefer Kedusha*, *Hilkhot Issurei Bia* 19:11; *Shulhan Arukh*, *Even HaEzer* 7:22).

וְהָא קָתְנִי "חָלָל שֶׁנִּשְׂא בְּשֵׂרָה, וְיִשְׂרָאֵל שֶׁנִּשְׂא בֵּת יִשְׂרָאֵל וְיֵשׁ לוֹ אָח מַמְזֵר!" הָא נִמְי לֹא מִהֲדֵר מִיתְנָא הִיא, דְּאִשְׁמוּעִינָן לֹא שְׂאִין שׂוּהָ בְּכָל וְקַמְשָׁמַע לֹן לֹא הַשׂוּהָ בְּכָל.

The Gemara challenges that answer: **But** the mishna also teaches these cases: **A *halal* who married a woman fit to marry a priest; and an Israelite of unflawed lineage who married an Israelite woman of unflawed lineage, and he has a brother who is a *mamzer*.** These are specifications that do not teach additional *halakhot*. The Gemara answers: **This too is not a case of the *tanna* going back and teaching** additional examples of the same *halakha* without adding anything, **as he teaches us something new through each of these two examples.** The first example is referring to a **prohibition that is not equally applicable to all**, such as one concerning priests, and the second example is referring to a **prohibition that is equally applicable to all**, such as one involving a *mamzer*.

הָא קָתְנִי יִשְׂרָאֵל שֶׁנִּשְׂא מַמְזֵרָת וְיֵשׁ לוֹ אָח יִשְׂרָאֵל, (וּמַמְזֵר שֶׁנִּשְׂא מַמְזֵרָת וְיֵשׁ לוֹ אָח יִשְׂרָאֵל!) אֵלֵּא לֹא שָׁמַע מִינָהּ תִּנָּא וְשִׁיר, שָׁמַע מִינָהּ.

The Gemara further challenges the answer: **But** the mishna also teaches the case of an Israelite of unflawed lineage who married a *mamzeret* and who has a brother who is an Israelite of similar lineage, and the example of a *mamzer* who married a *mamzeret* and he has a brother who is an Israelite of unflawed lineage. Consequently, the *tanna* does in fact teach the same *halakha* several times with regard to a prohibition that is equally applicable to all. **Rather, isn't it correct to conclude from it that he taught and omitted certain cases and did not list all possible examples?** The Gemara concludes: **Indeed, conclude from it that this is the case, and therefore there is no proof from here that the *halakha* is not in accordance with Rabbi Yohanan.**

גּוֹפֵּא, אָמַר רַב יְהוּדָה אָמַר רַב: לֹא הוּזְהָרוּ בְּשֵׂרֹת לְהִנְשֵׂא לְפִסּוּלִין. לִימָא מְסִיעֵי לֵיהּ: "חָלָל שֶׁנִּשְׂא בְּשֵׂרָה". מֵאֵי לֹא: כִּהְנִת [הִרְאוּהָ לֹן], וּמֵאֵי "בְּשֵׂרָה", בְּשֵׂרָה לְכַהֵנָה?

§ The Gemara returns to a statement cited incidentally above, in order to discuss the matter itself: **Rav Yehuda said that Rav said: It is not prohibited for daughters of priests who are fit to marry priests to marry men who are disqualified from the priesthood,**^{NH} although this marriage would disqualify them from subsequently marrying a priest, and they may do so even *ab initio*. The Gemara suggests: **Let us say that the following statement of the mishna supports his opinion: A *halal* who married a woman who is fit, and he has a brother who is a priest fit for service, this woman is permitted to her husband and forbidden to her *yavam*. What, is it not referring to a priestess, i.e., a priest's daughter, who is appropriate to marry him? And what is the meaning of: Fit? This means that she is fit for the priesthood,^N and yet the mishna says she is permitted to her husband, the *halal*.**

לֹא, יִשְׂרָאֵלִית, וּמֵאֵי "בְּשֵׂרָה" – בְּשֵׂרָה לְקַהֵל.

The Gemara rejects this suggestion: **No**, it is possible that the mishna is speaking of an **Israelite woman. And what is the meaning of: Fit?** It means that she is fit to enter the congregation of the Jewish people, through marriage. According to this explanation, there is no proof from the mishna about daughters of priests.

אֵי הָכִי, יֵשׁ לוֹ אָח בְּשֵׂר נָמִי – בְּשֵׂר לְקַהֵל, מִכָּלֵל דְּהוּא פָּסוּל לְקַהֵל? אֵלֵּא לֹא – בְּהֵן, וּמִדְּהוּא בְּהֵן – הִיא בְּהֵנָת! מִיָּדֵי אִירָא? הָא בְּדֵאִיתָא וְהָא בְּדֵאִיתָא.

The Gemara raises a difficulty: **If so**, consider the phrase: **A *halal* who married a woman fit to marry a priest, and he has a brother who is also fit.** Consistency demands that here **too** it means that the brother is fit to enter the congregation. Can it not therefore be deduced by inference that he, the deceased *halal*, was unfit to enter the congregation? But such an inference would be an error, as a *halal* is disqualified only from the priesthood. **Rather, is it not referring to a priest, and from the fact that he must be a priest, she too must be a priestess?** The Gemara rejects this claim: **Are the cases comparable? This case, of the *halal*, is as it is, i.e., he is fit for the priesthood. And that case, of the woman, is as it is, i.e., she is fit to enter the congregation.**

מִתֵּיב רַבִּין בַּר נַחֲמָן "לֹא יִקְחוּ" לֹא יִקְחוּ – מִלְּמַד שֶׁהָאִשָּׁה מוּזְהָרָת עַל יְדֵי הָאִישׁ!

Ravin bar Nahman raised an objection against Rav's ruling from the following *baraita*: The verse states about priests: **"They may not take a woman who is a harlot [*zona*], or profaned [*halala*]"** (Leviticus 21:7). The same verse says: **"They also may not take a woman divorced from her husband."** This repetition of "they may not take" teaches us that the woman is also prohibited by means of the prohibition addressed to the man. Therefore, we can conclude that there is a prohibition for a daughter of a priest to marry a *halal*.

NOTES

And is this derived from here – **וְהָיָה מִהֲכֹא נִפְקָא**: Ramban asks: Even without the proof from the verses, there is another reason why it is prohibited for a woman to marry a man to whom she is forbidden, as there is a general prohibition: “You shall not put a stumbling block before the blind” (Leviticus 19:14), which means that it is prohibited to assist another person in the performance of a transgression. He answers that a marriage of this sort would constitute a violation of the general prohibition, but the Gemara is inquiring into whether there is also a specific prohibition with regard to these marriages. Other early authorities add that the prohibition: “You shall not put a stumbling block before the blind” is stated in general terms, and therefore lashes are not administered for it. Consequently, the Gemara sought a source for her liability to receive lashes for this transgression.

HALAKHA

The verse equates a woman to a man – **הַשְׂוֵה הַכֶּתוּב אִשָּׁה** – **לְאִישׁ**: There is no difference between men and women with regard to punishments: If he is liable to lashes, she is too; and if he is exempt, so is she. The sole exception is the case of a designated maidservant, i.e., a woman who is half free and half slave and betrothed to a Hebrew slave. In this case, the woman is liable to receive lashes, but the man is required to bring a guilt-offering (Rambam *Sefer Kedusha, Hilkhot Issurei Bia* 17:5).

אָמַר רָבָא: כָּל הַיְכָא דְהוּא מוֹזְהָר –
הִיא מוֹזְהָרָת, וְכָל הַיְכָא דְהוּא לֹא
מוֹזְהָר – הִיא לֹא מוֹזְהָרָא.

וְהָיָה מִהֲכֹא נִפְקָא: מִדְּרַב יְהוּדָה
אָמַר רַב נִפְקָא! דְּאָמַר רַב יְהוּדָה
אָמַר רַב, וְכֵן תִּנָּא דְּבִי רַבִּי יִשְׁמַעֵאל:
“אִישׁ אוֹ אִשָּׁה בִּי יַעֲשׂוּ מִכָּל חֲטָאֵת
הָאָדָם” – הַשְׂוֵה הַכֶּתוּב אִשָּׁה לְאִישׁ
לְכָל עוֹנְשֵׁי שְׁבִיתוֹרָה!

אִי מִהֵיאָה הוּא אֲמִינָא: לְאוּ הַשְׂוֵה
בְּכָל, אֲבָל לְאוּ שְׂאִינוּ שׂוֹה בְּכָל –
לֹא.

Rava said: Ravin bar Nahman’s objection is not valid. All that the *baraita* teaches is that **anywhere that a prohibition** of sexual intercourse applies to **him**, i.e., to a man, the same **prohibition** applies to **her**, his female partner. **And anywhere that a prohibition does not apply to him, the prohibition does not apply to her** either. It does not, however, indicate that since it is prohibited for a priest to marry a *halala* it is also prohibited for the daughter of a priest to marry a *halala*.

The Gemara asks with regard to the *baraita* itself: **And is this matter derived from here?**^N It is derived from a different statement that Rav Yehuda said that Rav said, as Rav Yehuda said that Rav said, and the school of Rabbi Yishmael similarly taught: The verse states: “**When a man or woman shall commit any sin that people commit**” (Numbers 5:6). The verse here equates a woman to a man^H with regard to all punishments of the Torah. Consequently, the *halakhot* of forbidden marriages apply equally to women and to men. Why then do we need to learn the same thing from the repetition of “they may not take”?

The Gemara answers: **If it was derived only from that verse, I would say that this principle is true of a prohibition that is equally applicable to all, but with regard to a prohibition that is not equally applicable to all, such as the prohibitions pertaining to priests, this is not the case.** Since these prohibitions only apply to priests, we might have thought that they do not extend to women. The verse therefore teaches that the prohibition applies to women in the same manner as men.

Perek IX
Daf 85 Amud a

HALAKHA

The sons of Aaron and not the daughters of Aaron – **בְּנֵי אַהֲרֹן**: Only priests fit for service, including blemished ones, are included in the prohibition against contracting ritual impurity from a corpse. This prohibition does not apply to daughters of priests (Rambam *Sefer Shofetim, Hilkhot Evel* 2:6; *Shulhan Arukh, Yoreh De’at* 373:2).

וְהָיָה טוֹמְאָה, דְּלֹא שְׂאִין שׂוֹה בְּכָל,
וְטַעֲמָא דְּכִתְבַּב רַחֲמֵנָא “בְּנֵי אַהֲרֹן”
וְלֹא בְּנוֹת אַהֲרֹן, הָא לֹא הֵכִי – הוּא
אֲמִינָא: נְשִׂים חַיִּיבוֹת. מֵאִי טַעֲמָא –
לְאוּ מִשּׁוּם דְּרַב יְהוּדָה אָמַר רַב?

The Gemara asks: **But there is the prohibition for priests to contract ritual impurity from a corpse, which is a prohibition that is not equally applicable to all, as only priests are bound by this prohibition, and the reason that this command applies only to male priests is that the Merciful One writes:** “Speak to the priests **the sons of Aaron**, and say to them: None shall defile himself” (Leviticus 21:1), from which it is inferred: **The sons of Aaron and not the daughters of Aaron.**^H **Therefore, were it not for this specific derivation, I would say that women from priestly families are also obligated to avoid becoming ritually impure. What is the reason for this?** Is it **not due** to the principle that Rav Yehuda said that Rav said, that women are equated to men with regard to all punishments in the Torah, including those that are not equally applicable to all?

לֹא, דְּגַמְרִינַן מִ“לֹא יִקְחוּ”.

The Gemara rejects this proof: **No, that initial assumption, that the daughters of priests might be obligated to avoid ritual impurity, is not due to the halakha that Rav Yehuda said that Rav said, but rather it is something that we learn through tradition from the words “they may not take.”** This phrase teaches that women are included in the marital prohibitions of the priesthood, and we might therefore have thought that they are included in all *halakhot* pertaining to priests.