

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 – **הַשְּׂוֹה הַכֹּתוּב 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 רַבָּא: כָּל הַיְכָא דְהוּא מוֹזְהָר –
הִיא מוֹזְהָרָת, וְכָל הַיְכָא דְהוּא לָא
מוֹזְהָר – הִיא לָא מוֹזְהָרָא.

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 *halal*.

וְהָיָה מִהֲכֹא נִפְקָא: מִדְּרַב יְהוּדָה
אָמַר רַב נִפְקָא! דְּאָמַר רַב יְהוּדָה
אָמַר רַב, וְכֵן תִּנָּא דְּבִי רַבִּי יִשְׁמַעְיֵאל:
“אִישׁ אוֹ אִשָּׁה בִּי יַעֲשׂוּ מִכָּל חַטָּאת
הָאָדָם” – הַשְּׂוֹה הַכֹּתוּב אִשָּׁה לְאִישׁ
לְכָל עוֹנְשֵׁי שְׁבִיתוֹרָה!

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”?

אִי מִהֵיא הוּא אֲמִינָא: לָאוּ הַשְּׂוֹה
בְּכָל, אֲבָל לָאוּ שְׂאִינּוּ שְׂוֹה בְּכָל –
לָא.

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, דְּלָאוּ שְׂאִין שְׂוֹה בְּכָל,
וְטַעְמָא דְּכִתְבַּב רַחֲמֵנָא “בְּנֵי אַהֲרֹן”
וְלֹא בְּנוֹת אַהֲרֹן, הָא לָאוּ הֵכִי – הוּא
אֲמִינָא: נְשִׂים חַיִּיבוֹת. מֵאִי טַעְמָא –
לָאוּ 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?

לָא, 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.

איכא דאמרי: קיחה איצטריכא
ליה, סלקא דעתך אמנא: ליגמר
מטומאה, קמשמע לן.

There are those who say a different version of this answer:^N With regard to that verse about taking, it was necessary for him to mention this explicitly, for it might enter your mind to say: We should learn this *halakha* from the prohibition of impurity and conclude that just as only male descendants of Aaron are prohibited from contracting ritual impurity, the restrictions of marriage also apply only to men. The verse therefore teaches us, with the words “they may not take,” that this is not the case.

רב פפא ורב הונא בריה דרב יהושע
איקלעו להינצבו, לאתריה דרב אידי
בר אבין. בעו מיניה: הוזהרו בשרות
להנשא לפסולין או לא?

The Gemara relates: Rav Pappa and Rav Huna, son of Rav Yehoshua, arrived at the town of Hintzevu, to the place of Rav Idi bar Avin.^P The townspeople asked them: Is it prohibited for daughters of priests who are fit to marry priests to marry men disqualified from the priesthood or not?

אמר להו רב פפא: תניתוה, עשרה
יוחסין עלו מבבל: כהנים, לויים,
וישראלים, חללים, גרים, וחרורים,
וממזורים, נתינים, שתוקי, ואסופי;
כהנים, לויים, ישראלים, מותרין לבא
זה בזה. לויים, ישראלים, חללים,
גרים, חרורים – מותרין לבא זה בזה;
גירי, חרורי, וממזורי, נתיני, שתוקי,
ואסופי – מותרים לבא זה בזה, ואילו
כהנות לחלל – לא קתני.

Rav Pappa said to them: You learned it in a mishna (*Kiddushin* 69a): People of ten types of lineages ascended from Babylonia: Priests, Levites, and Israelites, *halalim*, converts, and freed slaves, and *mamzerim*, Gibeonites, children of unknown paternity [*shetukim*], and foundlings. With regard to Priests, Levites, and Israelites,^H they are permitted to marry into one another's families; Levites, Israelites, *halalim*,^H converts, and freed slaves are permitted to marry into one another's families; converts, freed slaves, and *mamzerim*,^H Gibeonites, *shetukim*, and foundlings are permitted to marry into one another's families; whereas the *tanna* does not teach that priestesses, i.e., daughters of priests, are permitted to marry a *halal*. This must mean they are forbidden to them.

אמר ליה רב הונא בריה דרב יהושע:
כל היכא דהני נסבי מהני והני נסבי
מהני – קתני. כהן, בין דאילו בעי
למינסב חללה אסירא ליה – לא
קתני. אתו לקמיה דרב אידי בר
אבין, אמר להו: דרדקי, הכי אמר רב
יהודה אמר רב: לא הוזהרו בשרות
לינשא לפסולים.

Rav Huna, son of Rav Yehoshua, said to him: There is no proof from here, for he teaches the *halakha* anywhere that these men may marry those women, and there is also a parallel case where these women may marry those men. With regard to the case of a priest, however, since if he wants to marry a *halala* this is prohibited to him, the *tanna* does not teach this *halakha*. Consequently, there is no proof from this mishna that daughters of priests who are fit to marry priests are warned against marrying men disqualified from the priesthood. They came before Rav Idi bar Avin and told him about the question and their debate about the matter. He said to them: Children, this is what Rav Yehuda said that Rav said: Daughters of priests who are fit to marry priests are not warned against marrying men disqualified from the priesthood.

PERSONALITIES

Rav Idi bar Avin – רב אידי בר אבין: Rav Idi bar Avin was an *amora* from the third and fourth generations of Babylonian *amora'im*.

It is related that his father, Rav Avin Naggara, was meticulous concerning the lighting of Sabbath candles, and Rav Huna told him that he would merit sons who were Torah scholars. Indeed, he fathered Rav Hiyya bar Avin and Rav Idi bar Avin.

Rav Idi bar Avin was a disciple of Rav Hisda, but he transmits traditions in the name of various Sages from the second

generation of Babylonian *amora'im*. He was one of the greatest *amora'im* of his generation, and he is found engaged in halakhic discourse primarily with Abaye. Rav Idi was the leader of his town, where he apparently ran a private yeshiva.

He lived an exceptionally long life. Rav Huna, son of Rav Yehoshua, and Rav Pappa were among the disciples who learned Torah from him. In his old age, he called these disciples his *dardekai*, children.

Very little is known of the events of his life, besides the fact that he had two sons who were Sages in the next generation.

HALAKHA

Priests, Levites, Israelites – כהנים, לויים, ישראלים: Priests, Levites, and Israelites are permitted to marry into each other's families. The lineage of the offspring follows that of the father (Rambam *Sefer Kedusha*, *Hilkhot Issurei Bia* 19:15; *Shulhan Arukh*, *Even HaEzer* 8:1).

Levites, Israelites, *halalim* – חללים, ישראלים, לויים: Levites, Israelites, *halalim*, converts, and freed slaves are permitted to marry into each other's families. If a male convert or freed slave married a Levite or Israelite woman, the offspring is an Israelite. If a male Israelite, Levite or *halal* married a female convert or freed slave, their offspring's lineage follows that of the father (Rambam *Sefer Kedusha*, *Hilkhot Issurei Bia* 19:16; *Shulhan Arukh*, *Even HaEzer* 8:2–3).

Converts, freed slaves, and *mamzerim* – גירי, חרורי, וממזורי: In the case of a *shetuki* and a foundling, there is uncertainty as to whether or not they are *mamzerim*. Therefore, they may not marry even other *shetukim*, nor may they marry a Jew of unflawed lineage or a *mamzeret*; but they may marry converts and Gibeonites, and their offspring similarly have the status of an uncertain *mamzer*, in accordance with the opinion of Rabbi Elazar in tractate *Kiddushin*. Definite *mamzerim* are permitted to marry converts, freed slaves, and Gibeonites, and their offspring are *mamzerim*. Converts and freed slaves may marry each other, and their children are fit to enter the congregation (Rambam *Sefer Kedusha*, *Hilkhot Issurei Bia* 15:33).

There are those who say a different version of this answer – איכא דאמרי: The difference between these two versions is whether a distinction should be assumed between men and women with regard to a prohibition that does not apply equally to all. According to the first version, since the prohibition does not apply equally to all Jews, it cannot be assumed to apply equally to men and women. The need to negate the idea that daughters of priests are obligated to avoid impurity is simply because one might have drawn an analogy to priestly marriage *halakhot*. According to the second version, the *halakha* that Rav Yehuda said that Rav said could be seen as referring to all prohibitions. The *baraita* needed the exposition from the words “they may not take” to teach that a *halala* is prohibited from marrying a priest only to negate an alternative theory that could have been suggested (Ritva).

A secondary relative of the husband but not a secondary relative of the *yavam* – שְׁנֵי לְבַעַל וְלֹא שְׁנֵי לִיבָם: If a *yevama* did not previously have a marriage contract from her husband because she was forbidden to him, but she was permitted to the *yavam* and married him, she is not entitled to a marriage contract from the *yavam*, as stated by Rav Sheshet. The Rema claims that although she has no rights to a marriage contract, he may not continue to cohabit with her unless he grants her one (*Maggid Mishne*, citing Ramban and Rashba); but the *Bah* maintains that he is permitted to do so even without a marriage contract (Rambam *Sefer Nashim*, *Hilkhot Yibbum* 2:17; *Shulhan Arukh*, *Even HaEzer* 168:9).

BACKGROUND

Marriage contract – כְּתוּבָה: This is a legal document given by a husband to his wife upon their marriage, stating his obligations toward her during and after their marriage. The contract includes a lien on the husband's estate, the minimum amount being two hundred dinars for a virgin bride and one hundred dinars for other brides, payable if she is divorced or widowed. The general guidelines for a marriage contract are provided by the Talmud. Its particular provisions, however, are often based on local custom. In addition, the marriage contract may include individual stipulations agreed to by the husband and wife. The marriage contract gives the marriage halakhic legitimacy. Without one, the couple's relationship is considered licentious.

The *baraita* is incomplete – חֲסוּרֵי מִיחְסָרָא: This method of explanation is often found in the Gemara. Generally, it does not suggest an actual emendation of the text of the mishna or *baraita*. The addition introduced by the Gemara is a necessary elaboration upon that which is written in the mishna, which is insufficiently clear in its current form. The addition provides the necessary clarification.

”שְׁנֵי מְדַבְּרֵי סוֹפְרִים” וכו'. בְּעוֹ מִינְיָהּ בְּנֵי בִירֵי מֶרֶב שְׁשֶׁת: שְׁנֵי לְבַעַל וְלֹא שְׁנֵי לִיבָם. יֵשׁ לָהּ כְּתוּבָה מִיבָם אִם לֹא? כִּיּוֹן דְּאָמַר מֶר כְּתוּבָתָהּ עַל נְכָסֵי בְּעַלָּהּ הָרְאוּשׁוֹן – לִית לָהּ.

או דְּלָמָּא: כִּיּוֹן דְּאִילוּ לִית לָהּ מִרְאוּשׁוֹן תַּקְיִינוּ לָהּ רַבְנָן מִשְׁנֵי – אִית לָהּ?

אָמַר לְהוּ רַב שְׁשֶׁת: תַּנְיִתוּהּ, כְּתוּבָתָהּ עַל נְכָסֵי בְּעַלָּהּ הָרְאוּשׁוֹן, וְאִם הִיתָה שְׁנֵי לְבַעַל – אִפִּילוּ מִיבָם אִין לָהּ.

מְכַלְל דְּאִיבָא דְּאִית לָהּ מִיבָם? חֲסוּרֵי מִיחְסָרָא וְהִבֵּי קַתְנִי: כְּתוּבָתָהּ עַל נְכָסֵי בְּעַלָּהּ הָרְאוּשׁוֹן, וְאִין לִית לָהּ מִרְאוּשׁוֹן – תַּקְיִינוּ לָהּ מִשְׁנֵי, וְאִם הִיתָה שְׁנֵי לְבַעַל – אִפִּילוּ מִיבָם אִין לָהּ.

בְּעָא מִינְיָהּ רַבִּי אֶלְעָזָר מִרְבִּי יוֹחָנָן: אֶלְמָנָה לְכַהֵן גְּדוּל, גְּרוּשָׁה וְחַלּוּצָה לְכַהֵן הַדְּיוּט – יֵשׁ לָהּ מְזוּנוֹת אוֹ אִין לָהּ מְזוּנוֹת? הִיבֵי דְּמִי, אִילִימָא דִּיתְבַּה תוֹתִיָּה – בְּעֵמּוֹד וְהוּצָא קָאִי, מְזוּנוֹת אִית לָהּ? לֹא צְרִיבָא שְׁהַלֵּךְ הוּא לְמַדְיַת הָיָם, וְלוֹתָהּ וְאֶכְלָהּ, מֵאִי?

§ We learned in the mishna that secondary forbidden relatives, whose status is established by rabbinic law, are sometimes forbidden to the husband and sometimes to the *yavam*. The residents of the town of Biri inquired of Rav Sheshet: Is a woman who is a secondary forbidden relative of the husband but not a secondary forbidden relative of the *yavam*^{HN} entitled to a marriage contract^B from the *yavam* or not? The Gemara clarifies the sides of the dilemma: Perhaps, since the Master said that in a levirate marriage, the payment of her marriage contract is due from the property of her first husband, and this woman, who was a secondary relative of her first husband, does not receive a marriage contract from him, she consequently does not have the right to one from the *yavam* either.

Or perhaps, since there is a principle in levirate marriage that if she does not have a marriage contract from the first husband, e.g., he died without leaving behind any property, the Sages instituted a marriage contract for her from the second one, we should say that she has a marriage contract from the *yavam*?

Rav Sheshet said to them: You learned it in a *baraita*: Payment of her marriage contract is due from the property of her first husband, and if she was a secondary forbidden relative of the husband, she does not have one even from the *yavam*. This *baraita* clearly answers the question.

The Gemara asks: Can it be concluded by inference from the *baraita* that there is a case of a woman in a levirate marriage who does have a marriage contract from the *yavam*?^B The Gemara answers: The *baraita* is incomplete^B and this is what it is teaching: Payment of her marriage contract is due from the property of her first husband, and if she does not have anything from the first husband because he died without property, they instituted a marriage contract for her from the second one. And if she was a secondary forbidden relative of the husband, she does not have one even from the *yavam*.

Rabbi Elazar inquired of Rabbi Yohanan: Do women in cases like a widow married to a High Priest and a divorcée or a *halutza* married to a common priest have rights to payment for their sustenance from their husbands, or do they not have a right to sustenance? The Gemara asks: What are the circumstances of the case under discussion? If we say that she is dwelling under his roof, he stands in a position where he is obligated to arise and divorce^N her. In such a situation, does she have a right to sustenance? It is obvious that she does not. The Gemara clarifies: No, it is necessary to ask this question with regard to a case where he went overseas and therefore is not present to divorce her, and in the meantime she borrowed money for her sustenance and ate. What is the *halakha* in that case?

NOTES

A secondary relative of the husband but not a secondary relative of the *yavam* – שְׁנֵי לְבַעַל וְלֹא שְׁנֵי לִיבָם: In the Jerusalem Talmud, this inquiry is extended to ask whether a woman who is fit to marry the husband but is forbidden to the *yavam* as a secondary relative is entitled to a marriage contract, and it leaves this issue unresolved. It appears that according to the Gemara here, this question does not arise at all, for since the husband was obligated to pay her the marriage contract, she does not forfeit this right just because she happened before a *yavam* for levirate marriage (Ramban; Rashba).

There is dispute among the commentaries and authorities in the case of a woman who was forbidden to her husband as a secondary relative, and her *yavam* consummated the levirate

marriage with her. Some claim that although the *yavam* is not obligated to pay her marriage contract if they get divorced, nevertheless, the Sages forbade a woman to remain with her husband without a marriage contract, and therefore he must provide her with one. Others contend that since this woman is not entitled to a marriage contract at all, the Sages did not require one in this case.

Can it be concluded by inference that there is a woman who does have a marriage contract from the *yavam* – מְכַלְל: Rav Sheshet's proof from the *baraita* is clear enough, but the Gemara sought to undermine the *baraita* as a reliable source, since its wording is somewhat unclear. It

was therefore necessary to resolve the difficulty in order to strengthen the proof (Ritva).

He stands in a position where he is obligated to arise and divorce her – בְּעֵמּוֹד וְהוּצָא קָאִי: This case is presumably referring to a wife who comes to court to claim sustenance from her husband. The court is obligated to separate the couple, and therefore she would certainly not receive her sustenance. The Rashba points out that if her husband chose to provide her with food he cannot demand repayment from her, and consequently the Gemara has to establish the case as referring to a woman demanding future sustenance.

להתנאי – והתנאי – But isn't it taught in a *baraita* that she does have – **יש לה**: The Rashba writes that this difficulty was not stated by Rabbi Elazar, for had he been aware of the problem he would not have inquired of Rabbi Yoḥanan. The Ritva disagrees, maintaining that it is possible that Rabbi Elazar was familiar with the *baraita* but was unsure of its meaning. He therefore brought his dilemma before Rabbi Yoḥanan, and after hearing his answer raised a difficulty from the *baraita*.

לא פירות – פירות – Nor payment for the produce of her property – The literal translation of the phrase is: She does not have produce. This is somewhat problematic, as the Gemara is referring to the produce of the wife's own property, and therefore the issue would appear to be whether the husband has the right to the produce. Rashi and other earlier authorities maintain that the question is whether she has the right to demand repayment for the produce he consumed during the marriage. Another explanation, suggested in the Jerusalem Talmud, is that during the marriage she does not get produce from the property, since her husband is entitled to benefit from it. *Tosafot* contend that the term produce in this context means the rights extended to the wife in exchange for the husband's access to the produce of her property. In other words, this is referring to the rabbinic enactment that the husband receives the produce of her property in exchange for his obligation to redeem her if she is captured.

בגלאות – וכלא – Worn clothes – Rashi maintains that a woman whose marriage was in violation of a rabbinic prohibition has no rights to her actual worn clothing or other used objects, even if the objects themselves remain intact. *Tosafot* claim that if the items are still in existence, she certainly receives them. The dispute concerns only her right to the value of objects that have worn out completely. The Rif and the Rambam distinguish between the guaranteed property she brought to the marriage, for which she receives compensation even if they are entirely worn out, and the usufruct property, with regard to which her entitlement extends only to the objects themselves.

הוא פסול – והיא פסולה – He is disqualified and she is disqualified – **היא פסולה**: This is the reading accepted by Rashi, who explains that the husband is temporarily disqualified from the Temple service, as long as he remains married to a woman forbidden to him. An alternative version of the text, cited by *Tosafot*, Meiri, and others, reads: He is fit and she is disqualified. According to this version, the husband cannot be called disqualified, as he reverts to a state of being fit for Temple service after divorcing her. However, she is permanently barred from the priesthood. Rabbeinu Ḥananel accepts Rashi's reading, but explains that the pronoun, he, is referring to their child. Rashba also prefers this explanation.

מוזני תנאי כתובה ניהו, מדאית לה כתובה – אית לה מוזני, או דלמא: כתובה דלמשקל ומיפק – אית לה, מוזני דלמא תיעבב גביה – לית לה? אמר ליה: לית לה.

Is it correct to say that **sustenance is a stipulation in the marriage contract**, and since she has a marriage contract she also has a right to **sustenance**, and therefore the husband must pay her debt? Or perhaps there is a difference between the cases: Concerning a **marriage contract, which gives her motivation to take the money and leave him, she has rights to it**, as the Sages wanted to motivate her to seek divorce and end the prohibited marriage. However, with regard to **sustenance**, we are worried that if he provides for her sustenance, **perhaps she might tarry with him**, as she would have no reason to rush the divorce, and consequently **she does not have rights to it. He said to him: She does not have a right to sustenance.**

– והתנאי: יש לה! כי תנאי ההיא – לאחר מיתה.

The Gemara raises a difficulty: **But isn't it taught in a *baraita* that she does haveⁿ a right to sustenance?** The Gemara answers: **When that *baraita* is taught**, it is referring to sustenance she receives **after his death**. At that point, she is no longer in violation of a prohibition, while the obligation to sustain her remains intact.

אית דאמר, אמר ליה: תנאי יש לה. הא ב"עמוד והוצא" קאי! ואלא התנאי יש לה! כי תנאי ההיא – לאחר מיתה.

Some say a different version of the discussion, which is that he said to him: It is taught in a *baraita* that she has a right to sustenance. He replied: He stands in a position where he is obligated to **arise and divorce her**. He should not be required to provide for her sustenance. He again asked: **But isn't it taught in a *baraita* that she has a right to sustenance?** He responded: **When that *baraita* is taught** it is referring to the period **after his death.**

תנו רבנן: אלמנה לכהן גדול, גרושה וחלוצה לכהן הדיוט – יש לה כתובה, פירות, מוזנות, בגלאות, והיא פסולה וולדה פסול, וכופין אותו להוציא. שניות מדברי סופרים – אין לה כתובה, לא פירות, לא מוזנות ולא בגלאות, והיא בשירה וולדה כשר, וכופין אותו להוציא.

The Sages taught: A widow married to a High Priest, or a divorcée or a *halutza* married to a common priest^h has the right to receive payment for her marriage contract; and for the produce of her property that her husband used; and sustenance; and she gets back her worn clothes and other objects she brought to the marriage; and she is disqualified as a *halala* from marrying a priest; and her offspring is disqualified^h from the priesthood as a *halal*; and the court forces him to divorce her.^h A woman who is a secondary relative prohibited by rabbinic law has neither a marriage contract; nor payment for the produce of her property;ⁿ nor sustenance; nor does she get back her worn clothes;^m and she is fit to marry a priest and her offspring is fit^h for the priesthood; and the court forces him to divorce her.

אמר רבי שמעון בן אֶלְעָזָר: מִפְּנֵי מָה אָמְרוּ: אֶלְמָנָה לְכֹהֵן גָּדוֹל יֵשׁ לָהּ כְּתוּבָה – מִפְּנֵי שֶׁהוּא פְּסוּל וְהִיא פְּסוּלָה, וְכָל מְקוֹם שֶׁהוּא פְּסוּל וְהִיא פְּסוּלָה.

Rabbi Shimon ben Elazar said: For what reason did they say that a widow married to a High Priest has a marriage contract? Because he is disqualified from the priesthood by his marriage to her, as a priest who marries a woman forbidden to him is barred from the Temple service until he divorces her and agrees not to remarry her, and she is rendered a *halala* and disqualifiedⁿ from the priesthood by intercourse with him, and any place where he is disqualified and she is disqualified,

HALAKHA

A widow married to a High Priest, or a divorcée or a *halutza* married to a common priest – **גרושה וחלוצה**: If a man marries a woman forbidden to him by Torah law, e.g., a priest marries a divorcée, and he knew she was forbidden, she is entitled to the basic marriage contract and all the conditions of a marriage contract. However, she receives sustenance only after his death but not during his lifetime, and even if she borrowed money in order to eat he does not have to repay her debt, consistent with the opinion of Rabbi Yoḥanan (Rambam *Sefer Nashim*, *Hilkhot Ishut* 24:4; *Shulḥan Arukh*, *Even HaEzer* 116:1).

She is disqualified and her offspring is disqualified – היא: In this case, a priest married a divorcée or a *zona*, i.e., a woman who has had sexual relations with a man forbidden to her by Torah law and with whom she cannot establish a marital bond; or a High Priest married a divorcée, a *zona*, a widow, or a non-virgin. In any of these situations, the

woman is permanently rendered a *halala* as a result of intercourse with the priest or the High Priest. Any child they have is a *halal* (Rambam *Sefer Kedusha*, *Hilkhot Issurei Bia* 19:3; *Shulḥan Arukh*, *Even HaEzer* 7:12).

The court forces him to divorce her – כופין אותו להוציא: If someone marries a woman forbidden to him, whether by Torah law or by rabbinic decree, he is forced to divorce her (Rambam *Sefer Nashim*, *Hilkhot Ishut* 24:4; *Shulḥan Arukh*, *Even HaEzer* 154:20).

She is fit and her offspring is fit – היא כשרה וולדה כשר: If a priest has intercourse with a woman who underwent *halitza*, she and her children are disqualified from the priesthood by rabbinic law. If he married a woman forbidden to him as a secondary relative prohibited by rabbinic law, she and her children are fit for the priesthood (Rambam *Sefer Kedusha*, *Hilkhot Issurei Bia* 18:4; *Shulḥan Arukh*, *Even HaEzer* 7:19).

NOTES

She encourages him – היא מרגילתו: The early authorities explain that this entire discussion is based on an assumption that appears in many places in the Talmud, namely that a woman desires to be married more than a man does. Consequently, whenever a woman has no good reason to reject a marriage there is a presumption that she actively desires it. As a result, if the marriage involves a transgression that has no deleterious effects on the wife, the Sages penalized her with the forfeiture of her marriage contract (Rashba; Meiri).

The case of a *halutza* poses a difficulty to his opinion – חלוצה קא קשאי ליה: Some early authorities maintain that according to the first version, the dispute between Rabbi Yehuda HaNasi and Rabbi Shimon ben Elazar concerns the rabbinic prohibition of a *halutza* and the question of whether or not she receives her marriage contract. According to Rabbi Yehuda HaNasi, she does not receive it, whereas according to Rabbi Shimon ben Elazar, she does. The *Tur* claims that this is the opinion of the Rambam.

Others contend that even according to the first version, Rabbi Yehuda HaNasi agrees that a *halutza* is entitled to a marriage contract, as the *halakha* in her case resembles the case of a divorcée, which is a Torah law, and therefore this *halakha* does not need strengthening (Rashba; Ritva). However, according to this opinion, the need for the justification: She encourages him, must be explained in the second version, which ascribes it to Rabbi Yehuda HaNasi. Some say that this is merely an additional point, so that we do not erroneously think that a *halutza* does not get her marriage contract. Alternatively, it may be that this reason was also stated by Rabbi Shimon ben Elazar, and Rabbi Yehuda HaNasi simply agrees with him in this regard (see Ritva).

What difference is there between the explanations of Rabbi Yehuda HaNasi and Rabbi Shimon ben Elazar – מאי איכא בין רבי לרבי שמעון בן אלעזר: Many early authorities have a different version of the text that reads: What is the difference between them, referring to the two versions of the alternative explanation offered in the Gemara. The Ritva writes that there is in fact no substantial difference between the two versions, because according to the first interpretation Rabbi Yehuda HaNasi agrees that a *halutza* receives a marriage contract. According to this, the two opinions differ in style alone.

A mamzeret or a Gibeonite woman married to a Jew – ממורת ונתניה לישראל: *Tosafot Yeshanim* claim that even according to Rabbi Tarfon, the authority who holds that it is possible for the descendants of a *mamzeret* to enter into the congregation, the wife appears to gain nothing from this marriage, as the remedy of her son marrying a maidservant could be similarly achieved if she had married a *mamzer*. They offer several answers, one of which is that she nevertheless prefers to marry a Jew, so that her children will have at least one parent with unflawed lineage. Since neither she nor her offspring suffer from this marriage, it is assumed that it is she who encourages him.

קנסו אותו בתובה. ומפני מה אמרו שנינו מדברי סופרים אין להן בתובה – מפני שהוא כשור והיא כשירה, וכל מקום שהוא כשור והיא כשירה קנסו אותה בתובה.

רבי אומר: הללו דברי תורה – ודברי תורה אין צריכין חיזוק, והללו דברי סופרים – ודברי סופרים צריכין חיזוק. דבר אחר: זה – הוא מרגילה, וזו – היא מרגילתו.

דבר אחר מאן קתני לה? איכא דאמר: רבי שמעון בן אלעזר קתני לה, ומה טעם קאמר: מה טעם אמרו הוא פסול והיא פסולה קנסו אותו בתובה – מפני שהוא מרגילה, ומה טעם הוא כשור והיא כשירה קנסו אותה בתובה – מפני שהיא מרגילתו.

איכא דאמר: רבי קתני לה, וחלוצה קא קשאי ליה: והא חלוצה דרבנן ואית לה בתובה! הדר אמר: כיון דפסיל לה מדרבנן, זה – הוא מרגילה, וזו – היא מרגילתו.

מאי איכא בין רבי לרבי שמעון בן אלעזר? אמר רב חסדא: ממורת ונתניה לישראל איכא ביניהו.

they penalized him through the marriage contract. In other words, the Sages did not exempt him from payment of the marriage contract in that case. Since he is disqualified from the priesthood until he divorces her, the marriage will not last, and they did not force her to forfeit her marriage contract. **And for what reason did they say that women forbidden as secondary relatives by rabbinic law do not have a marriage contract? Because he is fit for the priesthood and she is similarly fit, the couple therefore sees no need to divorce, and any place where he is fit and she is fit they penalized her by exempting him from payment of the marriage contract, in order to speed up the divorce.**

Rabbi Yehuda HaNasi says a different reason: **These cases, a widow married to a High Priest and a divorcée married to a common priest, are prohibited by Torah law,^H and Torah law does not require strengthening by means of additional enactments. But those secondary relatives are forbidden by rabbinic law, and rabbinic law does require strengthening. Alternatively, the Gemara presents a second explanation: In this case, when they are both disqualified, it is he who encourages her to live with him despite the deleterious effect the prohibition will have on her and her offspring. Therefore, they penalized him by making him pay the marriage contract. But in that case, when they both remain fit for the priesthood despite the prohibited nature of their marriage, it is she who encourages him,^N and they consequently penalized her.**

The Gemara asks: **Who teaches the alternative explanation; whose opinion does it follow? Some say that Rabbi Shimon ben Elazar teaches it and is saying: What is the reason?** In other words, the latter part of the *baraita* provides the rationale for the previous statement: **What is the reason that they said that if he is disqualified from the priesthood and she is similarly disqualified, they penalized him through the marriage contract? It is because in such a case he primarily encourages her to violate the prohibition, as the main disqualification concerns her, so they penalize him for enticing her to sin. And for what reason did they say that when he is fit and she is fit they penalized her through the marriage contract? It is because in such a case she encourages him, since she is not disqualified and therefore may care less about the sin. The Sages therefore penalized her.**

Conversely, some say that Rabbi Yehuda HaNasi is the one who teaches it, and the case of a *halutza* poses a difficulty to his opinion,^N as it seems to contradict his principle that rabbinic law requires strengthening: **A halutza is forbidden to a priest by rabbinic law, and yet she does have a marriage contract. In response, he then said an additional explanation: Since he disqualifies her from the priesthood by rabbinic law, in this case it is he who encourages her, and in that case of secondary relatives, when neither of them is disqualified, she encourages him.**

The Gemara asks: **Practically speaking, what difference is there between the explanations of Rabbi Yehuda HaNasi and Rabbi Shimon ben Elazar?**^N Rav Hisda said: **The practical difference between them concerns the cases of a mamzeret or a Gibeonite woman married to a Jew^N of unflawed lineage.**

HALAKHA

These are prohibited by Torah law – הללו דברי תורה: With regard to a secondary relative, the Sages did not distinguish between a husband who was aware of the problem and one who was not. In either case, the woman forfeits the basic part and the conditions of the marriage contract. This is because the Sages found it necessary to strengthen their decrees, as stated by Rabbi Yehuda

HaNasi. According to the *Tur*, based on the Rif and the Rosh, the rationale: He encourages her, is accepted by Rabbi Yehuda HaNasi as well, in accordance with the second interpretation of the Gemara. Consequently, although a priest is prohibited by rabbinic law from marrying a *halutza*, she is entitled to a marriage contract (Rambam *Sefer Nashim, Hilkhot Ishut* 24:4; *Tur, Even HaEzer* 116).

But according to Rabbi Eliezer, etc. – **וְלִרְבִּי** וְאֵלֶיָּעוֹר: The Ritva asks why we do not say that Rabbi Yehuda HaNasi and Rabbi Shimon ben Elazar in fact argue over whether the *halakha* is in accordance with Rabbi Tarfon or Rabbi Eliezer. *Arukh LaNer* addresses this point and suggests that the Gemara prefers to minimize disputes as much as possible, and since there is a way of saying that they do not argue, there is no need to create a dispute where one might not exist.

A non-virgin married to a High Priest – בְּעוֹלָה לְכֹהֵן גָּדוֹל: The Ramban notes that even according to Rabbi Eliezer ben Ya'akov, the Gemara could have said that they argue over a High Priest who marries a woman who was a virgin until she engaged in relations with him, as everyone agrees that he does not disqualify her. The Ramban explains that the Gemara did not want to answer in a manner that depends on a dispute between *amora'im*. The Rashba maintains that it is unclear that this woman, i.e., a non-virgin who engaged in intercourse only with him, is forbidden by Torah law. It is possible that this is merely a rabbinic prohibition.

One who remarries his wife when there is an uncertainty if she is an adulteress – מְחֻזָּר סֶפֶק: The Ramban writes that this is not referring to one who divorced his wife and remarried her, but rather to one who separated from her out of fear that she was an adulteress and then changed his mind and had relations with her.

The practical difference between them is the case of a definite adulteress – סוּטָה וְדַאי אֵיבָא – **בִּינְיָהוּ**: Following one reading of the text, Rabbeinu Hananel maintains that although the child is unflawed by Torah law, he is treated by rabbinic law as if he were a *mamzer*. The Ramban proves from this discussion that this cannot be the case. The Rashba agrees that Rabbeinu Hananel's second version, according to which their child is fit even for the priesthood, is more reasonable.

מֵאֵן דְּאָמַר דְּאוֹרֵייתָא הָא נְמִי דְּאוֹרֵייתָא, מֵאֵן דְּאָמַר מִפְּנֵי שְׁהוּא מְרְגֵלָה, הָא הִיא מְרְגֵלָא לִיה.

וְלִרְבִּי אֵלֶיָּעוֹר, דְּאָמַר: הָרִי זֶה עֶבֶד וּמְמוֹר, הָא לֹא מְרְגֵלָא לִיה וְלֹא מִיְדֵי! אֶלְאָ אָמַר רַב יוֹסְפִי: מְחֻזָּר גְּרוּשָׁה מְשֻׁנֶּשֶׁת אֵיבָא בִּינְיָהוּ. מֵאֵן דְּאָמַר דְּאוֹרֵייתָא – הָא נְמִי דְּאוֹרֵייתָא, וּמֵאֵן דְּאָמַר מִפְּנֵי שְׁהוּא מְרְגֵלָה – הָא הִיא מְרְגֵלָא לִיה.

וְלִרְבִּי עֲקִיבָא, דְּאָמַר יֵשׁ מְמוֹר מְחֻזָּר לְאוּרִין, הָא לֹא מְרְגֵלָא לִיה וְלֹא מִיְדֵי! אֶלְאָ, אָמַר רַב פֶּפְאָה: בְּעוֹלָה לְכֹהֵן גָּדוֹל אֵיבָא בִּינְיָהוּ. מֵאֵן דְּאָמַר דְּאוֹרֵייתָא – הָא נְמִי דְּאוֹרֵייתָא, וּמֵאֵן דְּאָמַר מִפְּנֵי שְׁהוּא מְרְגֵלָה – הָא הִיא מְרְגֵלָא לִיה.

וְלִרְבִּי אֵלֶיָּעוֹר בְּן יַעֲקֹב, דְּאָמַר: יֵשׁ חֲלָל מְחֻזָּר עֲשָׂה, הָא לֹא מְרְגֵלָא לִיה וְלֹא מִיְדֵי! אֶלְאָ אָמַר רַב אֲשִׁי: מְחֻזָּר סֶפֶק סוּטָתוֹ אֵיבָא בִּינְיָהוּ.

מֵאֵן דְּאָמַר דְּאוֹרֵייתָא – הָא נְמִי דְּאוֹרֵייתָא, וּמֵאֵן דְּאָמַר מִפְּנֵי שְׁהוּא מְרְגֵלָה – הָא הִיא מְרְגֵלָא לִיה. וְלִרְבִּי מַתְיָא בְּן חֲרָשׁ, דְּאָמַר: אֲפִילוּ הִלֵּךְ בַּעֲלָהּ לְהִשְׁקוּתָהּ וּבָא עָלֶיהָ בְּדֶרֶךְ – עֲשָׂאָהּ זוֹנָה, הָא לֹא מְרְגֵלָא לִיה וְלֹא מִיְדֵי! אֶלְאָ, אָמַר מַר בַּר רַב אֲשִׁי: סוּטָה וְדַאי אֵיבָא בִּינְיָהוּ.

According to **the one who says** that the reason the marriage contract is not revoked from a widow who is married to the High Priest is because this relationship is prohibited by Torah law, which doesn't require strengthening, **this too is by Torah law**, and therefore she receives her marriage contract. But according to **the one who says it is because he encourages her**, in this case **she encourages him**, as the woman is disqualified regardless, and she wants to marry a Jew because there is a way for her descendants to be fit to enter the congregation: If her *mamzer* son marries a maidservant and has children, they will be slaves who can then be freed and enter the congregation.

The Gemara asks: **But according to Rabbi Eliezer,^N who said in a mishna (Kiddushin 69a) that if a mamzer marries a maidservant and they have a child, their son is both a slave and a mamzer, since she has no hope of her descendants being fit to enter into the congregation, she does not encourage him at all. Rather, Rav Yosef said: The practical difference between them is with regard to one who remarries his divorcée after she has married another man.^B According to the one who says that it depends on whether the prohibition is by Torah law, this too is prohibited by Torah law. And according to the one who says it is because he encourages her, in this case she encourages him, as she and her children are unaffected by this marriage.**

The Gemara raises a difficulty: **But according to Rabbi Akiva, who said that offspring from forbidden intercourse for which one is liable for violating a prohibition is a mamzer, she does not encourage him at all, because according to this opinion her children would be adversely affected by the marriage. Rather, Rav Pappa said: The practical difference between them involves a non-virgin married to a High Priest.^N According to the one who says that it depends on whether the prohibition is by Torah law, this too is prohibited by Torah law. And according to the one who says it is because he encourages her, in this case she encourages him, as the marriage merely violates a positive mitzva, which does not disqualify her children.**

The Gemara asks: **But according to Rabbi Eliezer ben Ya'akov, who said that offspring conceived through intercourse with a priest for which one is liable for violating a positive mitzva is a halal, she does not encourage him at all. Rather, Rav Ashi said: The practical difference between them is with regard to the case of one who remarries his wife when there is an uncertainty if she is an adulteress.^N If a married woman was in seclusion with another man after her husband had become suspicious and had warned her concerning that man, and the husband did not subsequently bring her to be examined by the bitter waters as a *sota*, but rather continued to live with her, he has acted contrary to Torah law, as she is forbidden to him.**

In this case, according to **the one who says that it depends on whether the prohibition is by Torah law, this too is prohibited by Torah law. And according to the one who says it is because he encourages her, in this case she encourages him**, as her children are not disqualified by such a relationship. The Gemara asks: **But according to Rabbi Matya ben Harash, who said that even if her husband went to cause her to drink the bitter waters and had intercourse with her on the way, he has thereby rendered her a zona and disqualified her from the priesthood, she does not encourage him at all. Rather, Mar bar Rav Ashi said: The practical difference between them is with regard to the case of a definite adulteress.^N In such a case, all agree that their children are not mamzerim, despite the prohibition against their cohabitation. Consequently, she encourages him to sin.**

BACKGROUND

One who remarries his divorcée after she has married another man – **מְחֻזָּר גְּרוּשָׁה מְשֻׁנֶּשֶׁת** – According to the Torah (Deuteronomy 24:1–4), once a man has divorced his wife, he cannot remarry her if she has married someone else in the interim, even after she is widowed

or divorced from her second husband. This *halakha* is mentioned by the prophet Jeremiah (Jeremiah 3:1) who uses it as a poetic contrast with the relationship between God and the Jewish people who can return to Him after atonement through exile (Radak).

בת ישראל... מעוברת – מעוברת – An Israelite woman... pregnant, etc. – An Israelite or Levite woman who is not married to a priest, but is pregnant from a priest, may not partake of *teruma*, despite the fact that she is carrying a priest's offspring. Similarly, if she is not married but merely betrothed to a priest, or if she is a widow awaiting her *yavam* who is a priest, she is prohibited from partaking of *teruma* (Rambam *Sefer Zera'im, Hilkhot Terumot* 8:2, 5).

מתני' בת ישראל מאורסת לכהן, מעוברת מכהן, שומרת יבם לכהן, וכן בת כהן לישראל – לא תאכל בתרומה. בת ישראל מאורסת ללוי, מעוברת מלוי, שומרת יבם ללוי, וכן בת לוי לישראל – לא תאכל במעשר.

בת לוי מאורסת לכהן, מעוברת מכהן, שומרת יבם לכהן, וכן בת כהן ללוי – לא תאכל לא בתרומה ולא במעשר.

גמ' ותהא זרה, זרה מי לא אכלה במעשר? אמר רב נחמן אמר שמואל: הא מני – רבי מאיר היא. דאמר: מעשר ראשון אסור לזרים. דתנא:

MISHNA If there is an Israelite woman betrothed to a priest or pregnant from a priest, and he died; and a widow awaiting her *yavam*, who is a priest; and similarly, the daughter of a priest who is betrothed, pregnant from, or is a widow waiting for her *yavam*, who is an Israelite, she may not partake of *teruma*.^h If there is an Israelite woman betrothed to a Levite or pregnant from a Levite; and a widow awaiting her *yavam*, who is a Levite; and similarly the daughter of a Levite who is betrothed, pregnant from, or a widow waiting for her *yavam*, who is an Israelite, she may not partake of tithes.

If there is a daughter of a Levite betrothed to a priest or pregnant from a priest; and a widow awaiting her *yavam*, who is a priest; and similarly a daughter of a priest who is betrothed to or pregnant from a Levite, or is a widow waiting for her *yavam*, who is a Levite, she may partake of neither *teruma* nor tithes. This follows the *halakha* that betrothal, pregnancy, and waiting for a *yavam* disqualify the daughter of a priest from eating *teruma*, but they do not enable an Israelite woman to partake of *teruma*.

GEMARA The mishna states that an Israelite woman betrothed to a Levite may not partake of tithes. The Gemara is puzzled by this ruling: **And let her even be a complete foreigner who is not a Levite; may a foreigner not partake of tithes?** In contradistinction to *teruma*, no special sanctity pertains to tithes; they are merely the possession of the Levite. What difference does it make, then, whether she is a Levite or not? **Rav Nahman said that Shmuel said:** In accordance with whose opinion is this mishna? **It is in accordance with the opinion of Rabbi Meir, who said that the first tithe is forbidden to foreigners, i.e., non-Levites, as it is taught in a baraita:**

Perek IX

Daf 86 Amud a

Teruma is for a priest – תרומה לכהן: *Teruma* and *teruma* of the tithe may be eaten by adult and minor priests, both male and female, by their Canaanite slaves, and by their animals (Rambam *Sefer Zera'im, Hilkhot Terumot* 6:1).

The first tithe is for a Levite – מעשר ראשון ללוי: The first tithe is given to Levites, both males and females. However, this tithe may also be eaten by Israelites, even in a state of impurity, as it has no sanctity (Rambam *Sefer Zera'im, Hilkhot Ma'asrot* 1:1–2).

תרומה לכהן ומעשר ראשון ללוי, דברי רבי מאיר. רבי אלעזר בן עזריה מתירו לכהן. מתירו – מכלל דאיכא מאן דאסר? אלא אימא: נותנו אף לכהן.

Teruma is for a priest^h and the first tithe is for a Levite;^h this is the statement of Rabbi Meir.ⁿ Rabbi Elazar ben Azarya permits it, i.e., the first tithe, to a priest, as he too is from the tribe of Levi. The Gemara is puzzled by this last statement: It says: **Permits it.** Does this prove by inference that there is one *tanna* that prohibits a priest from partaking of tithes? But a priest is also a Levite and cannot be considered a foreigner. **Rather, say that Rabbi Elazar ben Azarya meant that one may give it even to a priest.** The tithe does not have to be handed to a Levite; one may choose to give it to a priest instead.

NOTES

The first tithe is for a Levite, this is the statement of Rabbi Meir – מעשר ראשון ללוי, דברי רבי מאיר – This ruling of Rabbi Meir does not state explicitly that, in his opinion, foreigners are prohibited from partaking of the first tithe. Rashi attempts to prove this from Rabbi Elazar ben Azarya's response. However, *Tosafot* question this interpretation, as does the Rivan. The Ramban agrees with *Tosafot* and maintains that our

knowledge of Rabbi Meir's opinion is not from the *baraita*, but rather from the tradition quoted by Rav Aha, son of Rabba, which is assumed to be in accordance with Rabbi Meir's opinion. It is based on this tradition that in several places the Talmud states as a generally accepted fact that Rabbi Meir is of the opinion that foreigners are prohibited from partaking of first tithe (Rashba; Ritva).