

כל קלא דביתר נשואין לא חיישינן. מהו דתימא: הואיל ואתאי לבי דינא ושרינן כקלא דקמי נשואין דמי ותיפתר, קא משמע לן.

ניסת על פי בית דין תצא" וכו'. אמר זעירי: ליתא למתניתין מדתני בי מדרשא, דתני בי מדרשא: הווי בית דין ששקעה חמה ולבסוף זרח – אין זו הוראה אלא טעות.

ורב נחמן אמר: הוראה היא.

אמר רב נחמן: תדע דהוראה היא, דבכל התורה בולה עד אחד לא מהימן, והכא מהימן. מאי טעמא, לא משום דהוראה היא? אמר רבא: תדע דטעות הוא דאילו הווי בית דין בחלב ובדם להיתירא, והדר הווי טעמא לאיסורא, כי הדרי ואמרי להיתירא לא משגחינן להו.

ואילו היכא דאתא עד אחד שרינא, אתו תרי אסרנא, כי הדר אתא עד אחרנא שרינן לה, מאי טעמא, לא משום דטעות הוא?

ואף רבי אליעזר סבר דטעות הוא, דתניא רבי אליעזר אומר: יקוב הדין את הדר ותביא חטאת שמינה. אי אמרת בשלמא דטעות הוא – משום הכי מתיא קרבן, אלא אי אמרת דהוראה היא – אמאי מתיא קרבן?

We are not concerned about any rumor after marriage.^{NH} If a rumor spread about a woman after her marriage that she was forbidden to her husband, the court takes no notice of these reports. The Gemara answers: There is a novel aspect to this teaching: **Lest you say that since she came to the court and they permitted her**, the very fact that her case had to be discussed indicates that her status is not fully established, and consequently one might think that it should be considered like a rumor before marriage, and she should therefore be forbidden, Rav Ashi therefore teaches us that even in this case, once she is married the court takes no notice of unsubstantiated rumors.

S The mishna further taught that if she married by permission of the court^N she must leave him, but she is exempt from bringing a sin-offering. On this issue, Ze'iri said: **The mishna is not accepted,**^H and this is derived from what was taught in the study hall, as it was taught in a *baraita* in the study hall: **If the court ruled that the sun had set^H at the conclusion of Shabbat**, which means it is permitted to perform labor, and later the sun shone, this is not a ruling for which the court is to blame, but an error.

Consequently, the court does not have to bring an offering for the unwitting communal sin. Rather, each individual is liable to bring a separate offering. Here too, although the woman married with the consent of the court, they did not issue a mistaken ruling of *halakha* but simply erred with regard to the facts. She is therefore an unwitting sinner and is liable to bring an offering. **And** conversely, Rav Nahman said that the court's permission is considered a ruling that renders them liable to bring an offering for an unwitting communal sin.

Rav Nahman said: You can know that her permission to marry is a ruling, as in the entire Torah one witness is not deemed credible, and yet here he is deemed credible. What is the reason for this? Is it not because it is considered a ruling, i.e., she does not rely on the witness but on the decision of the court? By contrast, Rava said^N that we can know that her permission to marry is an error. His reasoning is that had the court ruled with regard to forbidden fat or with regard to blood that it is permitted, and they went back and saw a reason to prohibit it, if they subsequently retract and say that it is permitted we take no notice of them. If they did not find a conclusive proof but merely offered a new argument, this claim does not cancel the earlier ruling that the substance is forbidden.

Whereas in the case of marriage, when one witness comes the court permits her, and when two witnesses subsequently come and testify that her husband is alive, they render her forbidden. When one other witness again comes forward, claiming that the husband is dead, they permit her. What is the reason for this? Is it not because it is considered an error of the court, as they did not issue their rulings based on their own reasoning but in reliance on the facts they had garnered from the witnesses? It is therefore considered a factual error, not a mistaken ruling.

The Gemara adds: **And Rabbi Eliezer also maintains that the ruling of the court is an error, as it is taught in a baraita that Rabbi Eliezer says:** If a woman married by permission of the court and it later turned out that her husband was alive, **let the law pierce the mountain,**^N i.e., the matter must be fully investigated. If it turns out that the ruling of the court is incorrect, it is nullified and she brings a choice sin-offering. **Granted, if you say that it is an error, it is due to that reason that she must bring an offering. However, if you say it is a ruling, why does she bring an offering?** It is the court that should be liable to bring an offering for its incorrect ruling.

NOTES

Rumor after marriage – קלא דביתר נשואין – The commentaries discuss whether this refers only to a rumor that the marriage was flawed from the outset, e.g., that she is forbidden to her husband, who is a priest, due to a divorce, or if any rumor that would disqualify her marriage is rejected (Rashi; *Tosafot*). Other commentaries note that although the Sages were concerned about rumors about a woman even after marriage, such as reports that she had been unfaithful, in these cases the court does not rely on rumor alone, but requires either the testimony of one witness or some other substantial proof (*Sefer HaAguda*).

If she married by permission of the court – ניסת על פי בית דין: The commentaries ask whether she is exempt from bringing an offering even by the ruling of a three-man court, or whether this *halakha* that an individual who acted by permission of the court is exempt applies only to the Great Court, the Sanhedrin of seventy-one members (Rabbi Avraham min HaHar). Some contend that since the court presiding over all the Jewish people decided that in general one may rely on one witness in the case of a missing husband, even if the court that issued this particular ruling was comprised of three judges, it as though the instruction was given by the Sanhedrin (*Keren Ora*).

The dispute between Rav Nahman and Rava – מתולקת – The later authorities suggest that this dispute centers on the following dilemma: Is a single witness deemed credible by Torah law, and this *halakha* in principle applies in other areas as well, but the Sages were stringent with regard to other cases? Or, is it a special lenient ruling of the Sages that the court accepts this testimony here? Some suggest an alternative version of this analysis: Was the court's erroneous reliance on the testimony of one witness a simple mistake, or was the acceptance of the testimony of this lone witness considered a ruling of the court (*Yosef Lekah*)?

Let the law pierce the mountain – יקוב הדין את ההר – The commentaries explain that this expression applies only to a case that includes another way of deciding the matter, whereas according to Rabbi Eliezer there is no alternative resolution (*Ritva*). Others contend that this phrase indicates that the court must accept this conclusion after a full investigation, whereas here it is a necessary outcome (Rabbi Avraham min HaHar).

HALAKHA

Rumor after marriage – קלא דביתר נשואין – If a rumor circulated after a woman's marriage, or even after her betrothal, that she had been betrothed to another, the court takes no notice of it, as stated by Rav Ashi (*Shulhan Arukh, Even HaEzer* 46:8).

The mishna is not accepted, etc. – ליתא למתניתין וכו' – If the court ruled that a woman may marry after two witnesses had testified before them that her husband was dead, and the husband subsequently arrived, this is not considered a proper ruling of the court but an error. Consequently, the woman and the second husband, not the court, are obligated to bring a sin-offering for their unwitting sin, (Rambam *Sefer Korbanot, Hilkhot Shegagot* 5:5).

If the court ruled that the sun had set – הווי בית דין ששקעה חמה: If the court ruled that Shabbat had ended because the sun was hidden and they thought it had set, and it was later established that it was still daytime, their instruction is not considered a ruling but an error. Therefore, anyone who performed labor during that period must bring a sin-offering for their mistake, while the court is exempt (*Rambam Sefer Korbanot, Hilkhot Shegagot* 5:5, 14:3).

הלכה וקלקלה – She went and ruined herself – The Jerusalem Talmud states that this is comparable to a case of a court that declared that forbidden fat was permitted, and someone ate forbidden fat and blood. His consumption of blood demonstrates that he did not act on the basis of the court's ruling.

שלהן – בעלה ובנה – Whose husband and child went – This should be understood as: Whose husband or child. The same ruling applies if only one of them went overseas and the other stayed home, in a case where the erroneous report concerned the time of death of the absent party (*Tosefot Yom Tov*).

ואחר כך – אמרו לה – And afterward they said to her – This must refer to a case where the second set of witnesses proved that the first pair were false, conspiring witnesses, thereby negating their testimony entirely, as otherwise the matter remains in doubt. In normal cases of conflicting testimony, a wife does not have to leave her husband due to the more recent account (*Nimmukei Yosef*).

תצא – She must leave – The commentaries discuss the possible significance of the fact that in this case the *tanna* does not state: She must leave this one and that one. This might indicate that if the husband is found to be still alive she may return to him. Alternatively, it is possible that she is in fact forbidden to both of them, but as he is probably dead the *tanna* merely dealt with her relationship to the second man (Rid).

ידלמא קסבר רבי אליעזר יחיד שעשה בהוראת בית דין תיב? אם כן, מה "יקוב הדין את ההר"?

הורוה בית דין להנשא" בו. מאי קלקלה? רבי אליעזר אומר: זינתה, רבי יוחנן אומר: אלמנה לכהן גדול, גרושה וחלוצה לכהן הדיוט.

מאן דאמר זינתה, כל שכן אלמנה לכהן גדול. מאן דאמר אלמנה לכהן גדול, אבל זינתה לא. מאי טעמא – [דאמרה]: אתון הוא דשויתין פנויה.

תנא כוותיה דרבי יוחנן: הורוה בית דין להנשא, והלכה וקלקלה, כגון אלמנה לכהן גדול, גרושה וחלוצה לכהן הדיוט – תייבת בקרבן על כל ביאה וביאה, דברי רבי אלעזר.

וחכמים אומרים: קרבן אחד על הכל. ומודים חכמים לרבי אלעזר שאם נשאת לחמשה בני אדם, שחייבת בקרבן על כל אחד ואחד, הואיל וגופין מוחלקין.

מתני' האשה שהלך בעלה ובנה למדינת הים, ובאו ואמרו לה: מת בעליך ואחר כך מת בנך. ונשאת, ואחר כך אמרו לה: חילוף היו הדברים – תצא, והולך ראשון ואחרון ממור.

The Gemara asks: **But perhaps Rabbi Eliezer maintains that an individual who acted by ruling of the court is also liable to bring an offering, and this is why he obligates her to bring an offering, despite the fact that she went ahead with the consent of the court.** The Gemara refutes this suggestion: **If so, what need is there for the special mention of the rationale: Let the law pierce the mountain?** He should simply have said that she is liable to bring an offering. Rather, Rabbi Eliezer evidently maintains that in general an individual does not have to bring an offering for a sin he committed based on the ruling of a court. Here, however, she must bring a sin-offering because there was an error with regard to the facts.

S The mishna taught that if the court instructed her to marry, and she went and ruined herself, she is liable to bring an offering. The Gemara asks: **What is the meaning of: Ruined herself? Rabbi Eliezer says: She engaged in licentious sexual relations with a man, i.e., intercourse not for the purpose of marriage. Rabbi Yohanan said: It means that she married in a prohibited manner, e.g., a widow to a High Priest, or a divorcée or a yevama who had performed halitza [halutza] to a common priest.**

The Gemara elaborates: According to the one who says that she engaged in licentious sexual relations, she is all the more so liable to bring an offering if she is a widow who had sexual relations with a High Priest, as she performed an act prohibited by Torah law. Conversely, according to the one who says that the mishna is speaking of a widow who engaged in relations with a High Priest, it is only in that case that she must bring an offering; however, if she engaged in licentious sexual relations she is not liable to bring an offering. **What is the reason? As she can say: It is you who deemed me unattached, and although my behavior was unseemly, I may live with whomever I choose as a single woman.**

The Gemara comments: **It is taught in a baraita in accordance with the opinion of Rabbi Yohanan: If the court ruled that she may marry, and she went and ruined herself,ⁿ for example a widow who engaged in intercourse with a High Priest, or a divorcée or a halutza who engaged in intercourse with a common priest, she is liable to bring an offering for each and every sexual act, as each is a separate transgression. This is the statement of Rabbi Elazar.**

And the Rabbis say that she brings one offering for all of them, as she performed them all in a single lapse of awareness. And the Rabbis concede to Rabbi Elazar that if a married woman married in error, e.g., to five people, that she is liable to bring an offering for each and every one of them, since they are separate bodies. She is obligated to bring an offering for each separate man with whom she engaged in sexual relations.^h

MISHNA With regard to a woman whose husband and child went^{nh} overseas, and witnesses came and said to her: **Your husband died and afterward your child died, she does not require levirate marriage, as she had a child when her husband died. And for this reason she married another man. And if afterward they said to herⁿ that the matters were reversed, i.e., the child died before the husband, which means that she did require levirate marriage, she is therefore a yevama who married a stranger without halitza and she must consequently leaveⁿ her second husband. And with regard to the first child, the one born before they heard about the reversal, and the last one, born after they realized who actually died first, each of these children is a mamzer.**

HALAKHA

Separate offerings – קרבנות מוחלקים – One who committed the same transgression several times due to a single lapse of awareness, e.g., if a woman unwittingly had ongoing relations with a man forbidden to her, she is liable to bring one sin-offering. If she had intercourse with different men, even if the same transgression was performed in one lapse of awareness, e.g., a married woman who married several men one after the other when she was mistakenly permitted to remarry, she must bring

a separate offering for each and every man (Rambam *Sefer Korbanot, Hilkhot Shegagot* 5:3).

אשה שהלך בעלה ובנה וכו' – בעלה ובנה וכו' – A woman's husband and child traveled overseas. After being informed that her husband had died followed by her son, she went ahead and married another man, under the assumption that she was exempt from levirate marriage. If

she subsequently discovers that her son in fact passed away first, she must leave her second husband and is obligated in levirate marriage. However, their child is eligible to marry into the congregation of Israel, as the mishna is in accordance with the rejected opinion of Rabbi Akiva, as explained in the Gemara (Rambam *Sefer Nashim, Hilkhot Yibbum VaHalitza* 3:19; *Shulhan Arukh, Even HaEzer* 159:2).

If they said to her: Your child died...and she entered into levirate marriage – וְנִתְיַבְמָהּ – אָמְרוּ לָהּ מֵת בְּנֶךְ... וְנִתְיַבְמָהּ: A woman was told that her child died before her husband, which obligated her in levirate marriage. She therefore entered into levirate marriage with her husband's brother. If she is later informed that her husband had in fact died first, and therefore she was exempt from levirate marriage, she must leave her husband. Their child is a *mamzer*, as he is the offspring of a relationship between a man and his brother's wife, who are forbidden relatives (Rambam *Sefer Nashim, Hilkhot Yibbum VaHalitza* 3:19).

If they said to her: Your husband died, and she married, etc. – אָמְרוּ לָהּ מֵת בְּעֵלֶיךָ וְנִשְׂתַּחְוּ: If a woman was told that her husband had died and she married another, and afterward it was discovered that at the time of her marriage her husband was in fact alive and he died only later, any child born to the woman and her second husband while the first husband was still alive is a *mamzer*. However, a child born after the first husband's death is not a *mamzer* and may enter the congregation. Some authorities maintain that even this second child is a *mamzer* by rabbinic law (*Shulhan Arukh, Even HaEzer* 17:57).

If they said to her: Your husband died, and she became betrothed to another man – מֵת בְּעֵלֶיךָ – וְנִתְקַדְשָׁה: If a woman was informed that her husband was dead and she became betrothed to another, after which her husband arrived, she is permitted to return to her original husband. Even if the second man gave her a bill of divorce, he has not disqualified her from marrying into the priesthood (Rambam *Sefer Nashim, Hilkhot Geirushein* 10:6; *Shulhan Arukh, Even HaEzer* 150:1).

There is no *mamzer* from a *yevama* – אִין מְמֹר מִיבְמָה: If a *yevama* married before she performed *halitza* with her *yavam*, even if she did so by mistake, in reliance on testimony, her second husband must release her with a bill of divorce, even if they had children together, and she forfeits her marriage contract and the conditions of the marriage contract. However, the child is not a *mamzer*. Some authorities claim that the Sages penalized her and rendered her child a *mamzer* by rabbinic law (*Tosafot; Rosh; Rambam Sefer Nashim, Hilkhot Yibbum VaHalitza* 3:19; *Shulhan Arukh, Even HaEzer* 159:2).

אָמְרוּ לָהּ: מֵת בְּנֶךְ וְאַחַר כֵּן מֵת בְּעֵלֶיךָ, וְנִתְיַבְמָהּ, וְאַחַר כֵּן אָמְרוּ לָהּ: חֵילוּף הָיוּ הַדְּבָרִים – תִּצָּא, וְהוֹלֵד רִאשׁוֹן וְאַחֲרוֹן מְמֹר. אָמְרוּ לָהּ: מֵת בְּעֵלֶיךָ, וְנִשְׂתַּחְוּ, וְאַחַר כֵּן אָמְרוּ לָהּ: קָיָם הָיָה, וְנִצָּא – תִּצָּא, וְהוֹלֵד רִאשׁוֹן מְמֹר, וְהַאֲחֲרוֹן אֵינוֹ מְמֹר.

אָמְרוּ לָהּ: מֵת בְּעֵלֶיךָ, וְנִתְקַדְשָׁה, וְאַחַר כֵּן בָּא בְּעֵלָהּ – מוֹתֶרֶת לְחֹזֵר לוֹ. אִף עַל פִּי שְׁנֵתָן לָהּ אַחֲרוֹן גַּט – לֹא פִסְלָה מִן הַכֹּהֲנִיּוֹת. אֵת זֶה דִּרְשׁ רַבִּי אֶלְעָזָר בֶּן מִתְיָא: 'וְאִשָּׁה גְרוּשָׁה מֵאִשְׁחָה' – וְלֹא מֵאִשׁ שְׂאִינוֹ אִשָּׁה.

גַּמ' מֵאִי רִאשׁוֹן וּמֵאִי אַחֲרוֹן? אֵילִימָא רִאשׁוֹן – לִפְנֵי שְׂמוּעָה, וְאַחֲרוֹן – לְאַחַר שְׂמוּעָה, לִיתְנִי: הוֹלֵד מְמֹר!

מִשּׁוֹם דְּקִבְעֵי לְמִיתְנֵי סִפָּא, אָמְרוּ לָהּ: מֵת בְּעֵלֶיךָ, וְנִשְׂתַּחְוּ. וְאַחַר כֵּן אָמְרוּ לָהּ: קָיָם הָיָה, וְנִצָּא – הִרְאִישׁוֹן מְמֹר וְהַאֲחֲרוֹן אֵינוֹ מְמֹר, תִּנָּא נְמִי רִישָׁא: רִאשׁוֹן וְאַחֲרוֹן מְמֹר.

תְּנִי רַבְנֵי: זֶה דְּבָרֵי רַבִּי עֲקִיבָא, שְׁהֵיה אֹמֵר: אִין קְדוּשִׁין תּוֹפְסִין בְּחֵיבֵי לְאוּיָן, אֲבָל חֲכָמִים אֹמְרִים: אִין מְמֹר מִיבְמָה – וְלִימָא: אִין מְמֹר מִחֵיבֵי לְאוּיָן!

הֵאִי תִנָּא הֵךְ תִּנָּא דְּרַבִּי עֲקִיבָא הוּא, דְּאָמַר: מִחֵיבֵי לְאוּיָן דְּשָׂאָר הוּי מְמֹר, מִחֵיבֵי לְאוּיָן גְּרִידֵי לֹא הוּי מְמֹר. אָמַר רַב יְהוּדָה

Conversely, if they said to her: Your child died and afterward your husband died, and she therefore entered into levirate marriage,^H and afterward they said to her that the matters were reversed, which means she married her husband's brother when there was no obligation of levirate marriage, she must leave her husband, and the first child and the last one are each a *mamzer*. If they said to her: Your husband died, and she married,^H and afterward they said to her that he was alive at the time of her marriage and he later died, she must leave the second husband. And the first child, born when her original husband was still alive, is a *mamzer*, and the last one, born after his death, is not a *mamzer*.

If they said to her: Your husband died, and she became betrothed to another man,^H and afterward her husband came, she is permitted to return to him,^N as betrothal alone does not render her forbidden to her husband. Furthermore, although the last man, i.e., her betrothed, gave her a bill of divorce, he has not thereby disqualified her from marrying into the priesthood. She was never his wife, for the betrothal was invalid, and a bill of divorce given to the wife of another man does not disqualify her. This was taught by Rabbi Elazar ben Matya: The verse states with regard to priests: "Neither shall they take a woman divorced from her husband" (Leviticus 21:7), which indicates: And not one who was divorced from a man who is not her husband, e.g., the second man in this case.

GEMARA The Gemara asks a question with regard to the first section of the mishna: What is the meaning of first child and what is the meaning of last child in this context? If we say that the first means the one born before her hearing that the report was erroneous, and the last means the one born after she heard, let him teach simply: The offspring is a *mamzer*, as there is no difference between the two cases.

The Gemara explains that because the *tanna* wanted to teach in the latter clause: If they said to her your husband died, and she married, and afterward they said to her that he was alive and he later died, the first child is a *mamzer* and the last one is not a *mamzer*, he also taught in the first clause: The first and the last are each a *mamzer*, despite the fact that in this case it makes no difference whether the child was born before or after she heard.

§ The Sages taught: This mishna is the statement of Rabbi Akiva, who would say that betrothal does not take effect for those liable for violating regular prohibitions, and therefore the child of a *yevama* who transgressed a prohibition by marrying someone else is a *mamzer*. However, the Rabbis say that there is no *mamzer* from a *yevama*.^{NH} The Gemara asks: And let the Rabbis say, as a principle: There is no *mamzer* from those liable for violating regular prohibitions.

The Gemara answers: This *tanna* called the Rabbis is in fact another *tanna* citing the opinion of Rabbi Akiva, who claims that Rabbi Akiva said that a child born from those liable for violating prohibitions proscribing sexual relations with close relatives is a *mamzer*, but one born from those liable for violating regular prohibitions, i.e., a prohibition that does not involve a family relationship, such as the prohibition that "the wife of the dead man shall not be married outside of the family to one not of his kin" (Deuteronomy 25:5), is not a *mamzer*. Rav Yehuda said

NOTES

She is permitted to return to him – מוֹתֶרֶת לְחֹזֵר לוֹ – Likewise, if she was divorced from the first man, she is permitted to the second one, as she was never rendered forbidden to him at all (*Tosafot Yeshanim*).

There is no *mamzer* from a *yevama* – אִין מְמֹר מִיבְמָה: Some

commentaries cite this passage as proof that the child is completely eligible to enter the congregation, even by rabbinic law. If he were prohibited to do so by rabbinic law, there would be no need to establish the mishna in accordance with the opinion of Rabbi Akiva, as one could simply say that the children are *mamzerim* by rabbinic law. The fact that the Gemara does not

suggest this answer proves that the child is entirely fit according to the opinion of the Rabbis (*Ritva*). However, others reject this conclusion, claiming that the child is indeed disqualified by rabbinic law, like the offspring of any woman who remarried in error and afterward discovered that her husband was alive (*Rosh*; see *Meiri*).

NOTES

Betrothal does not take effect with a *yevama* – אין קדושין תופסין ביבמה: Some commentaries explain this opinion in the following manner: Levirate marriage overrides the prohibition of a brother's wife, whereas betrothal does not override this prohibition, i.e., in the absence of the mitzva of levirate marriage, betrothal is ineffective with a brother's wife. Therefore, betrothal should certainly not be effective when there is an obligation of levirate marriage (Maharik). With regard to the dispute between Rav and Shmuel, Rabbeinu Tam explains that both Rav and Shmuel agree that a prohibition is involved, as the verse states: "The wife of the dead man shall not be married outside of the family to one not of his kin" (Deuteronomy 25:5), which undoubtedly prohibits her from marrying someone else. Their dispute is whether this verse also indicates that the act of betrothal itself is of no account. Some say that this is the explanation of the Rambam as well. Others, however, maintain that according to Rav there is no prohibition here at all, as the Torah simply states that the betrothal does not take effect, which means that if she married a stranger she has not violated a prohibition. Rather, she had neglected to fulfill the positive mitzva of levirate marriage (Rabbi Yehuda al-Madari).

If her *yavam* was a priest – אם היתה יבמה כהן: Some commentaries cite a tradition that this passage is not part of the Gemara itself but comes from other, truncated collections of *halakhot*, which are very stringent in this case (Ra'avan, citing Rabbeinu Hananel). Others contend that although there is no proper source for these *halakhot*, they are alluded to in Judah's statement to Tamar to "remain a widow in your father's house" (Genesis 38:11), which indicates that a woman waiting for her *yavam* is entirely prohibited from marrying anyone else (*Sekhel Tov*).

Many early authorities explain that the Gemara is referring only to a *yevama* who purposely became betrothed to another, but not to one who did so unwittingly. There is even an opinion that if the woman acted unwittingly the court compels the *yavam* to perform *halitza* (*Nimmukei Yosef*). Likewise, some maintain that if she married, especially if she had children, the *yavam* must perform *halitza* and she is permitted to her new husband (see *Halakhot Gedolot*). Others offer a compromise opinion and claim that the court does not force the *yavam* to perform *halitza*, but if he did so of his own accord the woman is permitted to her new husband even if she married beforehand (see Meiri).

The Jerusalem Talmud also cites a dispute concerning this case. One opinion in the Gemara there states: This one performs *halitza* and this one may retain her as a wife. The Gemara rejects this opinion outright, arguing that even if the *halakha* is not in accordance with the ruling of the mishna concerning the child of a *yevama* who married another man, nevertheless the *halakha* that she must leave both this one and this one is unanimous.

Betrothal does not apply to her, etc. – קדושין אין בה: Rashi explains that this statement is assumed to be referring to a bill of divorce, i.e., if she was married to someone other than her *yavam* she requires a bill of divorce. Other commentaries raise several difficulties with this interpretation and maintain instead that the reference is to her prohibition to the *yavam* afterward (*Tosafot Yeshanim*). If she was merely betrothed to another, she is certainly permitted to the *yavam*, but if she actually married she is forbidden to the *yavam*. Some commentaries discuss the relationship between this *halakha* and the fundamental dispute with regard to the effectiveness of the betrothal of another man to a *yevama* (see Rid, Ritva, Razah, and *Milhamot Hashem*).

אמר רב: מנן שאין קדושין תופסין ביבמה? שנאמר "לא תהיה אשת הית החוצה לאיש זר" – לא תהיה בה הויה לזר.

ושמואל אמר: בעניינותו צריכה גט. מספקא ליה לשמואל האי "לא תהיה אשת הית" אי ללאו הוא דאיתא, אי דלא תפסי בה קדושין הוא דאיתא.

אמר ליה רב מרי בר רחל לרב אשי, הכי אמר אממר: הלכה כוותיה דשמואל. אמר רב אשי: השתא דאמר אממר הלכתא כוותיה דשמואל, אם היתה יבמה כהן – חולץ לה ושריא ליה.

איתגורי איתגר? אם כן מצינו חוטא נשפר! אלא, אם היתה יבמה ישראל – נותן לה שני גט והותרה לו.

אמר רב גידל אמר רב תניא בר יוסף אמר רב: יבמה, קדושין אין בה, נשואין יש בה. אי קדושין אין בה, נשואין נמי אין בה! אימא: קדושין ונשואין אין בה.

that Rav said: From where is it derived that betrothal by another man does not take effect with a *yevama*?^N As it is stated: "The wife of the dead man shall not be married outside of the family to one not of his kin" (Deuteronomy 25:5), which indicates: She shall not have the possibility of becoming married to one not of his kin, i.e., his betrothal is of no account.

And Shmuel said: In our poverty of knowledge, as we do not fully understand the verse, she requires a bill of divorce. The Gemara explains: Shmuel was uncertain with regard to this verse: "The wife of the dead man shall not be married outside," whether it comes for a prohibition, i.e., the woman is prohibited from marrying another man but the betrothal of that other man is effective, or whether it comes to teach that betrothal by any other man does not take effect with her.

Rav Mari bar Raḥel said to Rav Ashi that Ameimar said as follows: The *halakha* is in accordance with the opinion of Shmuel.^H Rav Ashi said: Now that Ameimar said that the *halakha* is in accordance with the opinion of Shmuel, who maintains that one who betroths a *yevama* before she has performed *halitza* must give her a bill of divorce, if her *yavam* was a priest,^{NH} he performs *halitza* with her, as she is forbidden to him after the man who betrothed her gave her a bill of divorce, and she is thereby permitted to the man to whom she was betrothed.

The Gemara expresses surprise at this ruling: But in that case, she thereby gains from her prohibited betrothal, as she may subsequently marry the man who betrothed her illegally. If so, we find a sinner benefiting from his transgression. Rather, the Gemara emends the teaching: If her *yavam* was a regular Israelite,^H this second man who betrothed her must give her a bill of divorce, and she is permitted to the *yavam*, as a non-priest may marry a divorcée.

§ Rav Giddel said that Rav Ḥiyya bar Yosef said that Rav said: With regard to a *yevama*, betrothal does not apply to her,^N but marriage does apply to her.^H The Gemara expresses puzzlement: If betrothal does not apply to her, marriage also should not apply to her. How can marriage take effect if the earlier and less binding stage of betrothal is of no consequence? Rather, emend the above statement and say: Neither betrothal nor marriage apply to her.

HALAKHA

A *yevama* who became betrothed to someone else – יבמה: If a *yevama* became betrothed to someone else before she performed *halitza* with the *yavam*, her betrothal is valid due to uncertainty. The *halakha* is in accordance with the opinion of Shmuel, as ruled by Ameimar (Rambam *Sefer Nashim*, *Hilkhot Yibbum VaHalitza* 4:14; *Shulḥan Arukh*, *Even HaEzer* 44:7).

If her *yavam* was a priest – היתה יבמה כהן: In the case of the Gemara, if the *yavam* was a priest, who is forbidden to a divorcée, she must leave the second man with a bill of divorce, so that this sinner not benefit from her transgression, after which the *yavam* performs *halitza* with her (Rambam *Sefer Nashim*, *Hilkhot Yibbum VaHalitza* 2:19; *Shulḥan Arukh*, *Even HaEzer* 159:1).

If her *yavam* was an Israelite – אם היתה יבמה ישראל: If a woman who required levirate marriage from a regular Israelite mistakenly became betrothed to another, the second man must give her a bill of divorce, after which the *yavam* can perform either levirate marriage or *halitza*.

Some maintain that this *halakha* applies solely to a *yevama* who became betrothed to another man despite knowing that she was required to perform *halitza*, but if she did so thinking she was exempt from levirate marriage she requires a bill of divorce only if the *yavam* wishes to enter into levirate marriage with her.

If, however, the *yavam* prefers to perform *halitza*, he may do so and she is free to marry the man who betrothed her, although he must betroth her a second time after her *halitza*. This is the ruling of the Rema, based on the opinion of most early authorities, including *Halakhot Gedolot*, *Tosafot*, the Rambam, and the Ramban. However, others distinguish between the type of mistake the *yevama* committed: If she was completely unaware that her late husband had a brother, she is permitted to marry the man who betrothed her, but if she relied on a mere rumor that the *yavam* had died, she must leave this second man (*Terumot HaDeshen*; Rambam *Sefer Nashim*, *Hilkhot Yibbum VaHalitza* 2:19; *Shulḥan Arukh*, *Even HaEzer* 159:1).

Marriage does apply to her – נשואין יש בה: If a woman waiting for her *yavam* married someone else, even unwittingly, her new husband must release her with a bill of divorce, even if they had children together. She is permanently forbidden both to the husband and the *yavam*, and all thirteen penalties imposed by the Sages on a woman who married a man forbidden to her apply to this woman, with the exception that her child from this man is not a *mamzer*. Some authorities claim that her children from him are *mamzerim* by rabbinic law. After she has received a bill of divorce from the husband, the *yavam* performs *halitza* with her, thereby permitting her to other men (*Shulḥan Arukh*, *Even HaEzer* 159:2).

What is marriage... licentious sexual relations – מאי נשואין... ונגות: Since this marriage is invalid, the term: Marriage, should be understood as a euphemism in this context. Alternatively, the Gemara is saying is that even an act of marriage in a situation of this kind is considered licentious, as it is the act of intercourse that is significant (Ritva).

Had I not lifted the earthenware shard – אי לא דדלאי...: Rashi explains that were it not for Rabbi Yannai's statement one might have thought that the reason for the mishna's ruling is that the man did not want the betrothal to go into effect at that point in time, and therefore it is ineffective in the future as well. The Ritva rejects this interpretation, claiming that it does not fit the wording of the mishna. He therefore emends the explanation slightly by saying that one might have considered the *yevama* after *halitza* as a different entity, like an emancipated maidservant, which would mean that the previous act of betrothal is of no account.

HALAKHA

She is not betrothed – אינה מקודשת: With regard to one who says to a woman: You are hereby betrothed to me with this *peruta* after I convert; after you convert; after I am freed; after you are freed; after your husband dies; after your sister, who is married to this man who is attempting to betroth her, dies, in all such cases she is not betrothed. The *halakha* is that any betrothal that is invalid at the time of its pronouncement is permanently ineffective (*Shulhan Arukh, Even HaEzer 40:5*).

One who betroths a *yevama* – המקדש יבמה: If one says to a *yevama*: You are hereby betrothed to me with this *peruta* after your *yavam* performs *halitza* with you, she is betrothed due to the uncertainty, because the Rabbis maintain, as explained by Shmuel, that betrothal with a *yevama* is effective where there is uncertainty. According to some commentaries, the Rambam rules that she is definitely betrothed in this case, because had he said that she is betrothed right now, the betrothal would have been nullified only out of doubt. Consequently, this is not considered the acquisition of an entity that has not yet come into being (*Rambam Sefer Nashim, Hilkhot Ishut 7:15* and *Kesef Mishne* there; *Shulhan Arukh, Even HaEzer 40:6*).



Pearl in oyster

ואיבעית אימא: מאי נשואין יש בה – בזנות, כדרב המנונא, דאמר רב המנונא: שומרת יבם שזינתה – אסורה ליבמה.

ואי בעית אימא: לעולם כדאמרן מעיקרא, קדושין אין בה, נשואין יש בה – דמיחלפא באשה שהלך בעלה למדינת הים.

אמר רבי ינאי: בחבורה נמנו וגמרו: אין קדושין תופסין ביבמה. אמר ליה רבי יוחנן: רבי, לא משנתנו היא זו? דתנן: האומר לאשה: הרי את מקודשת לי לאחר שתגירי, לאחר שתחררי, לאחר שתמיתני, או לאחר שיהלץ לך יבמך – אינה מקודשת. אמר ליה: אי לאו דדלאי לך חספא מי משכחת מוגנתא תותיה?

אמר ליה ריש לקיש: אי לאו דקלסך גברא רבה, הוה אמינא לך אגא: מתניתין רבי עקיבא היא. דאמר אין קידושין תופסין בחייבי לאוין.

ואי רבי עקיבא, כי אמר לה: לאחר שיהלץ לך יבמך, ליתפסי בה קידושין! דהא שמעינן ליה לרבי עקיבא דאמר אדם מקנה דבר שלא בא לעולם. דתנן:

And if you wish, say a different explanation. What is the meaning of the phrase: **Marriage does apply to her?** It is referring to a case of **licitious sexual relations**.^N In other words, although Rav maintains that betrothal is ineffective for her, if she entered the wedding canopy with another man and had relations with him, her status changes and she is forbidden to the *yavam*. This is in accordance with the opinion of Rav Hamnuna, as Rav Hamnuna said that a widow awaiting her *yavam* who committed an act of licentious sexual relations is forbidden to her *yavam*.

And if you wish, say: **Actually, it is as we said initially, that betrothal does not apply to her but marriage does apply to her.** However, this does not mean that marriage is actually effective. Rather, the *halakha* is that he must give her a bill of divorce, as people might confuse this case with that of a woman whose husband went overseas. The Sages decreed that he must give her a bill of divorce so that people would not say that a woman who remarried after hearing that her husband had died likewise does not require a bill of divorce.

§ Rabbi Yannai said: In the group of Sages who discussed this matter, they counted and concluded that **betrothal by another man does not take effect with a *yevama*.** Rabbi Yoḥanan said to him: **My teacher, is this not taught in a mishna that states that betrothal is of no account for such a woman? As we learned in a mishna (*Bava Metzia 16b*): With regard to one who says to a woman: You are hereby betrothed to me after I convert; after you convert; after I am freed from slavery; after you are freed; after your husband dies; after your sister dies; or after your *yavam* performs *halitza* with you, she is not betrothed.**^H The reason for the above ruling is that he is considered to be attempting to acquire an entity that is not yet in existence, as the betrothal cannot take effect at that point in time. This indicates that betrothal is entirely ineffective for a *yevama* until she performs *halitza*. Rabbi Yannai said to Rabbi Yoḥanan: **Had I not lifted the earthenware shard^N for you, would you have discovered the pearl [*marganita*]^L beneath it?** It was only after I informed you of the *halakha* that you were able to cite a proof for it from a mishna.

Sometime later, Reish Lakish said to Rav Yoḥanan: **If it were not for the fact that a great man, Rabbi Yannai, praised you, I would say that this is no proof, as it is possible that the mishna is in accordance with the opinion of Rabbi Akiva, who said that betrothal does not take effect for those liable for violating regular prohibitions, and therefore it is not effective with a *yevama*.** However, according to the opinion of the Rabbis, betrothal is effective for this woman, as is the case with all regular prohibitions.^H

The Gemara asks: **And if it is the opinion of Rabbi Akiva, when he said to her: After your *yavam* performs *halitza* for you, let the betrothal take effect with her, as we have heard that Rabbi Akiva said that a man can transfer an entity that has not yet come into the world.** In other words, Rabbi Akiva is of the opinion that an acquisition can take effect for something not yet in existence. If so, even if the betrothal cannot take effect now, it should be valid after she has performed *halitza*. The proof that this is indeed Rabbi Akiva's opinion is as we learned in a mishna (*Ketubot 59a*):

LANGUAGE

Pearl [*marganita*] – מרגניתא: From the Greek μαργαρίτης, *margaritēs*, meaning pearl. This is apparently the source of the Hebrew word *margalit*, as well as the similar term in Syriac. Here the word appears in its Aramaic form, with the common

exchange of the letter *lamed* for a *nun*. Some say that the word *haspa*, earthenware shard, means shell in this context. In other words, had he not opened the seashell, which is similar to *heres*, or clay, he would not have found the pearl inside.