

דְּסִנְיָא לִיהּ. אָמַר לְהוּב רַב שֵׁשֶׁת׃ תְּנִיתוּהּ, אָמְרוּ לָהּ "מֵת בְּעֵלֶיךָ וְאַחַר כֵּן מֵת בְּנֶךְ", וְנִשְׂאָת וְאַחַר כֵּן אָמְרוּ לָהּ "חִילוּף הָיָה הַדְּבָרִים" – תִּצָּא, וְהוֹלֵד רֵאשׁוֹן וְאַחֲרוֹן מִמּוֹר.

הֵיכִי דְמִי? אֵילִימָא תְּרִי וְתְרִי – מֵאֵי חוּזִית דְּסִמְכַת אֶהְיִי, סְמוּךְ אֶהְיִי וְעוֹד: מִמּוֹר? סִפְק מִמּוֹר הוּא! וְכִי תֵימָא לָא דַק, הָא מְדַקְתְּנִי סִיפָא: הֲרֵאשׁוֹן מִמּוֹר וְהֲאַחֲרוֹן אֵינִי מִמּוֹר – שְׁמַע מִינָה דְדוֹקָא קְתַנִּי.

אֵלֵא לָאוּ – חַד, וְטַעֲמָא דְאֵתוּ בִּי תְרִי אֲכַחְשׂוּהָ, הָא לָאוּ הֵכִי – מִהֵימֵן. לְעוֹלָם תְּרִי וְתְרִי, וְכֹדָאֲמַר רַב אֲחָא בְּרַ מְנַיִמִי: בְּעֵדֵי הַזְמָה,

הֵכִא נִמְי בְּעֵדֵי הַזְמָה.

אָמַר לִיהּ רַב מְרִדְכַי לְרַב אֲשִׁי וְאָמְרִי לִיהּ רַב אֲחָא לְרַב אֲשִׁי, תָּא שְׁמַע: אֵין הָאֲשָׁה נְאֻמְנַת לְזַמְר "מֵת יְבָמִי", שְׂאֲנִשָּׂא, וְלֵא "מֵתָה אַחֲוֵתִי", שְׂאֲכַנְס לְבֵיתָהּ. הֵיא נְהִי דְלֵא מְהֵימְנָא, הָא עֵד אַחַד מְהֵימֵן!

וְלִיטְעֵמִיךְ, אֵימָא סִיפָא: אֵין הָאִישׁ נְאֻמְנָן לְזַמְר: "מֵת אַחִי", שְׂאֲנִיבְס אֶת אֲשֶׁתּוֹ, וְלֵא "מֵתָה אֲשֶׁתִּי", שְׂאֲשָׂא אֶת אַחֲוֵתָהּ. הוּא נְהִי דְלֵא מְהֵימֵן, הָא עֵד אַחַד – מְהֵימֵן. בְּשִׁלְמָא גְבִי אֲשָׁה – מְשׁוּם עֵגוּנָא אֲקִילוּ בְּהַ רְבִנָן, אֵלֵא גְבִי אִישׁ – מֵאֵי אֵיבָא לְמִמּוֹר?

hates the *yavam*, and she would therefore take advantage of any testimony to rid herself of him. Rav Sheshet said to them that you learned it in the mishna. If they said to her: Your husband died^N and afterward your child died, and she married another man, and afterward they said to her that the matters were reversed, she must leave the other man, and the first child and the last one are each a *mamzer*.

Again, Rav Sheshet analyzes the case: **What are the circumstances? If we say that they are two and two, i.e., the account of two witnesses was contradicted by two other witnesses, what did you see to make you rely on these second witnesses when you can equally rely on those? Why should she have to leave this man? And furthermore, why should the child be a *mamzer*?** At worst he is an individual whose status as a *mamzer* is uncertain, as there is no proof that the second witnesses are more reliable. **And if you would say that the *tanna* of the mishna was not precise in his language, but from the fact that it teaches in the latter clause of the mishna: The first is a *mamzer* and the last is not a *mamzer*, one can learn from here that the mishna was taught specifically in this manner.**

Rather, is it not the case that this is referring to one witness, and the reason is that two others came and contradicted him. It may be inferred from this that if it was not so, the sole witness is deemed credible. The Gemara refutes this proof: **Actually, the mishna is speaking of a case when two witnesses came first, followed by another two witnesses, and the ruling is as Rav Aha bar Manyumi said, with regard to a different issue, that it is referring to witnesses of false, conspiring testimony.**

In other words, the second set of witnesses did not offer an alternative account of the same incident. Rather, they claimed that the first witnesses lied, as they were with them, elsewhere, during the time that they supposedly witnessed the husband's death. In this case, the first witnesses are entirely disqualified, as the account of the second pair is accepted. **Here too, we are dealing with witnesses of false, conspiring testimony.**^N Consequently, the question of whether the court believes one witness who testifies that a *yavam* is dead cannot be resolved from the mishna.

Rav Mordekhai said to Rav Ashi, and some say it was Rav Aha who said to Rav Ashi: **Come and hear a proof from a different source (Yevamot 118b): A woman is not deemed credible if she says: My *yavam* is dead,^H so that I may marry, i.e., to permit herself to marry another man. And she is not deemed credible if she says: My sister is dead,^N so that I may enter her house, i.e., to marry her husband. The Gemara infers: It is she herself who is not deemed credible. It may be inferred from this that if one witness issues this report, he is deemed credible.**

The Gemara refutes this argument. **And according to your reasoning, say the latter clause of that same mishna: A man is not deemed credible if he says: My brother is dead, so that I may enter into levirate marriage with his wife. And he is not deemed credible when he says: My wife is dead, so that I may marry her sister.** Following the above reasoning, it is he himself who is not deemed credible, which indicates that one witness is deemed credible. Yet this cannot be correct: **Granted, with regard to a woman, due to the concern that she be left a deserted wife, the Sages were lenient in her case, by allowing her to rely on a single witness. However, with regard to a man, what can be said?** There is no concern that he will be left deserted, as a man can marry more than one woman, so he certainly cannot marry a woman on the basis of such flimsy testimony.

NOTES

You learned it...your husband died, etc. – תְּנִיתוּהּ...: The early authorities raise the following difficulty: The other mishna explicitly states with regard to this very *halakha* that a woman who testifies that her husband died before her child is deemed credible. If she herself is deemed credible, certainly the testimony of a witness is accepted. Why, then, did Rav Sheshet find it necessary to cite such a convoluted proof when a far simpler one was readily available? *Tosafot* answer that she is deemed credible because she could have submitted a more advantageous claim, as she could simply have said her husband was dead without mentioning the child at all, whereas with regard to one witness the court remains suspicious.

Others explain that once a witness has testified with regard to the important matter that her husband and child are both dead, she is no longer careful about the details of who died first (Ramban). Alternatively, a wife is scared to say her husband is dead in case he comes and denies her claim in the flesh. If, however, a witness has stated that her husband and child are dead, she has no fear of contradiction when she says her husband was the first to die (Meiri; *Tosefot Had MiKamma'ei*).

Here too we are dealing with witnesses of false, conspiring testimony – הֵכִי נִמְי בְּעֵדֵי הַזְמָה: Some commentaries note that the mishna does not appear to be dealing with false, conspiring testimony at all, as the phrase: And afterward they said to her, indicates that the second set of witnesses testified that the reverse occurred (*Yam shel Shlomo*). This is perhaps one of the reasons why the *ge'onim* accepted Rav Sheshet's opinion as *halakha* despite the refutation of the Gemara, as they do not consider it a convincing argument.

And not, my sister is dead – וְלֵא מֵתָה אַחֲוֵתִי: The early authorities point out that this case is merely mentioned parenthetically, as it is imprecise, for one witness is not deemed credible to testify that a woman's sister is dead (Ramban; Rashba; Meiri).

HALAKHA

A woman is not deemed credible when she says my *yavam* is dead – אֵין הָאֲשָׁה נְאֻמְנַת לְזַמְר מֵת יְבָמִי: Although a woman is deemed credible when she testifies that her husband is dead, and the court allows her to marry another man or her *yavam* on the basis of this testimony, she is not deemed credible if she says that her *yavam* is dead so that she should be permitted to marry any other man. Likewise, he cannot testify that his brother is dead so that he can enter into levirate marriage with the latter's wife (*Shulhan Arukh, Even HaEzer* 158:1).

NOTES

For her own ruin, etc. – אקלקולא דידה וכו' – Rashi claims that this sentence should be deleted, and specifies his reason. However, others maintain that she is happy to be rid of the yavam, as she hates him. By contrast, it can be assumed that she is fond of her husband and is concerned about making a mistake that would render her permanently forbidden to him (Ramban).

For a prohibition involving karet you permitted – לאיסור כרת התרת: According to Rashi, this refers to the karet of a married woman, as she is permitted to all other men in that case. Other commentaries claim that it means the karet of a yavam who has relations with his brother's wife after the testimony of one witness that her husband was dead (Tosefot Yeshanim; Tosefot HaRosh; see Tosafot).

HALAKHA

The trace of a bill of divorce – ריח הגט: A priest is prohibited by Torah law to marry a divorcée, including a woman with regard to whom there is uncertainty whether she is divorced as well as one who was divorced with the trace of a bill of divorce. What is the trace of a bill of divorce? If a man gave a bill of divorce to his wife which stated: You are hereby divorced from me but you are not permitted to any other man, although the woman may not marry another man on the basis of this bill of divorce, it nevertheless serves to disqualify her from the priesthood if her husband dies (Rambam Sefer Nashim, Hilkhot Geirushin 10:1; Shulhan Arukh, Even HaEzer 6:1).

If they testified before him that his wife is dead – העידו לו שמתה אשתו: With regard to one whose wife traveled overseas and they came and told him that she was dead and he married her sister, if it later became apparent that his wife was alive, the sister does not require a bill of divorce from him at all, as she is not considered his wife. He is permitted to her relatives and she is permitted to his, and he is likewise permitted to his actual wife, who is not forbidden due to her sister (Rambam Sefer Nashim, Hilkhot Geirushin 10:9; Shulhan Arukh, Even HaEzer 15:27).

אלא בי איצטרויך, לרבי עקיבא איצטרויך, סלקא דעתך אמינא הואיל ואמר רבי עקיבא יש ממזר מחייבי לאוין – אימא חיישא אקלקולא דירעא ודייקא, קא משמע לן (דאקלקולא דידה חיישא, אקלקולא דירעא לא חיישא).

רבא אמר: עד אחד נאמן ביבמה מקל וחומר: לאיסור כרת התרת, לאיסור לאו לא כל שכן?! אמר ליה ההוא מרבנן לרבא: היא עצמה תוכיח דלאיסור כרת התרת, לאיסור לאו לא התרת.

ואלא, איהי מאי טעמא לא מהימנא, דבין דזימנן דסניא ליה לא דייקא ומינסבא – עד אחד נמי, דבין דזימנן דסניא ליה לא דייקא ומינסבא.

זה מדרש דרש רבי אלעזר בן מתאי וכו'. אמר רב יהודה אמר רב: הוה ליה לרבי אלעזר למדרש ביה מרגניתא ודרש ביה חספא.

מאי מרגניתא? דתניא: "ואשה גרושה מאישה" – אפילו לא נתגרשה אלא מאישה – פסולה לכהונה, והיינו ריח הגט דפוסל בכהונה.

מתני' מי שהלכה אשתו למדינת הים באו ואמרו לו "מתה אשתך", ונשא את אחותה, ואחר כך באת אשתו – מותרת לחזור

Rather, the case of one witness cannot be decided from the mishna, as when is this halakha that a woman is not deemed credible when she says that her yavam is dead necessary to be stated? It is necessary for the opinion of Rabbi Akiva. The Gemara explains: It might enter your mind to say: Since Rabbi Akiva said that the offspring born of intercourse for which one is liable for violating a prohibition is a mamzer, which indicates that even the offspring of a yevama who unlawfully wed another man is a mamzer, one might say that she is concerned for the ruin of her offspring and is consequently exacting in her investigation and would marry only if she received clear, unambiguous testimony. The tanna therefore teaches us that she is concerned for her own ruin,ⁿ e.g., if there is uncertainty as to whether her husband died, which would force her to leave both him and her second husband, but she is not as concerned for the ruin of her offspring, and in this case she is likelier to marry unlawfully.

§ Rava said: One witness is deemed credible in the case of a yevama by means of an a fortiori inference: If for a prohibition involving karet, i.e., adultery of a married woman, you permittedⁿ the testimony of one witness, then for a regular prohibition, that of a yevama to another man, is it not all the more so? One of the Sages said to Rava: She herself, a woman who testifies with regard to herself, can prove otherwise: For a prohibition involving karet you permitted her, i.e., if she testifies that her husband is dead she may marry another man and there is no concern that she might still be a married woman, and yet for a regular prohibition you did not permit her, as she is not deemed credible when she claims that her yavam is dead.

But rather, she herself, what is the reason that she is not deemed credible? Since sometimes the woman may hate him, she is not exacting in her examination of the matter and marries. With regard to one witness, the same concern also applies: Since sometimes the woman may hate him, she is not exacting in her investigation before she marries again. The court believes one witness only because they assume that she herself is careful to examine the matter. The a fortiori inference is therefore groundless, and the question remains unresolved.

§ The mishna states that this was an exposition 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). This teaches that a woman is not disqualified from marrying into the priesthood by a bill of divorce she receives from a man other than her husband. Rav Yehuda said that Rav said: Rabbi Elazar should have taught this verse as a pearl but in fact he taught it as earthenware shard. In other words, he could have arrived at a more significant conclusion.

The Gemara asks: What pearl does he mean? As it is taught in a baraita: "Neither shall they take a woman divorced from her husband," even if she was divorced only from her husband. Even if the woman was separated from her husband and was not permitted to marry anyone else, e.g., if her husband wrote in the bill of divorce: This is your bill of divorce but you are not permitted to any other man, this document is certainly not considered a full-fledged bill of divorce, and yet she is disqualified from the priesthood. If her husband later passes away, she has the status of a divorcée, not a widow, which means that she is prohibited from marrying a priest. And this is the trace of a bill of divorce,ⁿ which is not an actual bill of divorce and yet disqualifies from the priesthood.

MISHNA In the case of one whose wife went overseas and people came and told him: Your wife is dead,ⁿ and he married her sister, and afterward his wife came back from overseas, the original wife is permitted to return

לו ומותר בקרובות שניה, ושניה
מוותרת בקרוביו, ואם מתה ראשונה –
מותר בשניה.

אמרו לו "מתה אשתו", ונשא את
אחותה, ואחר כך אמרו לו "קיימת
היתה ומתה" – הולד ראשון ממזר,
והאחרון אין ממזר. רבי יוסי אומר:
כל שפוסל על ידי אחרים פוסל על ידי
עצמו, וכל שאין פוסל על ידי אחרים
אינו פוסל על ידי עצמו.

גמ' ואף על גב דאזיל אשתו וגיסו
למדינת הים, דאהני הני נשואים
דקמיתסרא אשת גיסו אגיסו, אפילו
הכי – אשת גיסו אסירא, אשתו
שריא,

ולא אמרין מתוך שנאסרה אשת
גיסו אגיסו תיאסר אשתו עליו. לימא
מתניתין דלא ברבי עקיבא, דאי רבי
עקיבא הווא לה אחות גרושתו.

to him,^N as his erroneous marriage to her sister is considered
licitious sexual relations, and one who has intercourse with his
wife's relatives has not rendered his first wife forbidden to himself.
And he is permitted to the relatives of the second woman, e.g.,
her daughter, **and this second woman is permitted to his rela-**
tives, e.g., his son, as the marriage was entirely invalid. **And if the**
first woman died he is permitted to the second woman, despite
the fact that he has already engaged in forbidden relations with
her.

If they said to him that his wife is dead, and he married her
sister,^H and afterward they said to him that she was alive when
he married the sister and only later died, in this case the first
child, born to the sister while his wife was still alive, is a *mamzer*,
as he was born from the union of a man and his sister-in-law,
and the last one is not a *mamzer*. Rabbi Yosei says: **Whoever**
disqualifies others also disqualifies himself, and whoever does
not disqualify others does not disqualify himself either. Rabbi
Yosei's obscure statement will be explained by the Gemara.

GEMARA With regard to the case of a man who
married his wife's sister after he was
informed that his wife was dead, the Gemara comments: **And**
even if his wife and his brother-in-law both went^N overseas^N
and he was told that they had died, the *halakha* is that **this**
marriage he performed is effective only to the extent that his
brother-in-law's wife is forbidden to his brother-in-law. The
reason for this prohibition is that he performed a marriage
ceremony with a married woman by mistake, and one who
erroneously weds a married woman has thereby rendered her
forbidden to her husband. The Gemara adds: **Even so**, it is only
his brother-in-law's wife who is forbidden to her husband,
whereas his own wife remains permitted to him.

It might have been thought that his own marriage, which caused
this to be an act of forbidden sexual relations, would also be
adversely affected. **But** the Gemara adds that **we do not say:**
Since his brother-in-law's wife is forbidden to his brother-in-
law, his wife is likewise forbidden to him. The Gemara suggests:
Let us say that the mishna is not in accordance with the opinion
of Rabbi Akiva. The reason is that if the mishna follows the
opinion of Rabbi Akiva, his wife is now considered, with regard
to him, the sister of his divorcée.^H

NOTES

The original wife is permitted to return to him, etc. – אשתו –
מותרת לחזור לו וכו': The Jerusalem Talmud explains the differ-
ence between these *halakhot* and the case of a wife who
married by mistake after her husband went overseas, an
issue addressed by the Gemara here later in the discussion.
Although the prohibition against a man marrying relatives
is no less severe, the Sages did not penalize him as they did
a married woman, as it is rare for a woman to travel alone
overseas, and the Sages did not apply their decrees to unusual
circumstances.

And even if... both went, etc. – ואף על גב דאזיל וכו': According
to some commentaries, this statement stands on its own as a
separate observation pertaining to the mishna (see Ramban
and Rashba). Most early authorities, however, maintain that
this is one long argument, with the first clause introducing
the ensuing question. They explain: One might have thought
that Rabbi Akiva requires the man to give a bill of divorce to
his wife's sister only if he relied on testimony that his wife and
brother-in-law were both dead and proceeded to marry the

sister. Just as the Sages penalized a woman who remarried
erroneously by requiring her husband to give her a bill of
divorce, the same should apply to a man who marries his
wife's sister. It is possible, however, that Rabbi Akiva's ruling
does not include one whose wife's sister was unattached. The
Gemara therefore points out that the mishna includes all cases,
even a wife's sister who was married, and therefore it cannot
possibly be in accordance with the opinion of Rabbi Akiva
(*Tosafot*; Ramban).

His wife and his brother-in-law went overseas – אזיל אשתו –
וגיסו למדינת הים: According to Rashi, one witness testified with
regard to both of their deaths. Most early authorities maintain
that the court requires two witnesses, at least with regard to
the testimony that his wife is dead, as the Sages accepted the
testimony of one witness only in the case of a missing husband,
so that his wife not be left a deserted wife (Rid; *Tosafot*; *Tosafot*
Yeshanim). Some commentaries suggest that Rashi sought to
limit this *halakha* to a case where the marriage was prohibited
(Maharsha; *Otzar HaShitot*).

HALAKHA

They said to him that his wife is dead and he married her
sister – אמרו לו מתה אשתו ונשא את אחותה – If a man was
informed that his wife was dead and he married her sister,
and it later became known that at the time of the marriage
his wife was still alive, as she passed away only later, the child
born during the original wife's lifetime is a *mamzer*, whereas
any child born after her death is not a *mamzer* (*Shulhan Arukh*,
Even HaEzer 15:29).

His wife is... the sister of his divorcée – הווא לה אחות גרושתו:
A man's wife went overseas with her sister's husband, his
brother-in-law. Afterward, he was informed that they were
dead, and he married his wife's sister. If the missing pair later
arrived, his wife's sister requires a bill of divorce from him,
whether he married based on the testimony of one witness
or two, and she is forbidden to her husband. Similarly, whether
he was fully married or merely betrothed to his wife, she is for-
bidden to him. The *halakha* is in accordance with the opinion
of Rabbi Akiva, as the discussion of the Gemara endorses his
ruling (*Shulhan Arukh*, *Even HaEzer* 15:28).

Forbidden women do not require a bill of divorce – One who unwittingly married a forbidden woman does not have to give her a bill of divorce. The exceptions are a married woman who wed another with the consent of the court, the sister of one's betrothed, and a woman who enters into levirate marriage with the brother of her betrothed. This ruling is in accordance with the opinion of Rabbi Akiva, as explained by Rav Giddel (Rambam *Sefer Nashim, Hilkhot Geirushin* 10:8–9; *Shulhan Arukh, Even HaEzer* 15:27, 159:4).

A woman who entered into levirate marriage by mistake – **אשה שנתייבמה בטעות**: A man betrothed a woman and traveled overseas. After hearing of the man's death, his brother entered into levirate marriage with his wife. If the husband subsequently returns, the woman requires a bill of divorce from the *yavam* and is forbidden to her husband. However, if she was married to the brother and entered into levirate marriage by mistake, she does not require a bill of divorce from the *yavam*. With regard to her status vis-à-vis her husband, the *Shulhan Arukh* rules that she is forbidden (Rif). According to the Rosh, the *Tur* maintains that she is permitted. The basic *halakha* is in accordance with the opinion of Rabbi Akiva, as explained by Rav Giddel (Rambam *Sefer Nashim, Hilkhot Geirushin* 10:8; *Shulhan Arukh, Even HaEzer* 159:4).

A wife's sister who married by mistake – **אחות אשה ששנישאה בטעות**: A man betrothed a woman and she went overseas. Upon hearing of his betrothed's death, he married her sister. If his betrothed later returns, he is forbidden to both of them, and they each require a bill of divorce from him. However, if he was not betrothed but was married to the first woman, the sister does not require a bill of divorce and his wife is permitted to him, in accordance with the opinion of Rabbi Akiva, as explained by Rav Giddel (Rambam *Sefer Nashim, Hilkhot Geirushin* 10:8; *Shulhan Arukh, Even HaEzer* 15:27).

LANGUAGE

Of them [mehen] – **מהן**: This exposition involves a play on words between *hen*, they in Hebrew, and the Greek word *én, hen*, meaning one.

דַּתְנָא: כָּל עֲרִיבוֹת שְׁבִתוֹרָה אֵין צְרִיכוֹת הַיִּמְנוּ גַּט, חוּץ מֵאִשְׁתּוֹ אִישׁ שֶׁנִּשְׁאָת עַל פִּי בֵּית דִּין. וְרַבִּי עֲקִיבָא מוֹסִיף אַף אִשְׁתּוֹ אַח וְאָחוֹת אִשָּׁה. וְכֵן דָּאֵמַר רַבִּי עֲקִיבָא בְּעֵינֵי גַּט, מִמִּילָא אִיתְסָרָא עֲלֵיהּ, דְּהוּיָא לָהּ אַחוֹת גְּרוּשָׁתוֹ!

וְלֹא אִיתְמַר עֲלֵיהּ: אָמַר רַב גִּידֵל אָמַר רַב חֵיָא בְּרִי יוֹסֵף אָמַר רַב: הָאִי אִשְׁתּוֹ אַח – הֵיכִי דְמִי בְּגוֹן שְׁקִידָשׁ אַחֵיו אֶת הָאִשָּׁה וְהִלְךְ לְמַדְיַת הַיָּם, וְשָׁמַע שְׁמַת אַחֵיו, וְעָמַד וְנִשָּׂא אֶת אִשְׁתּוֹ, דָּאֵמַרִי אֵינְשִׁי: הֵךְ קָמָא תְּנָאָה הוּהוּ לֵיהּ בְּקִידוּשֵׁין, וְהָאִי שְׁפִיר נָסִיב.

וְהָאִי אַחוֹת אִשָּׁה נְמִי, הֵיכִי דְמִי – בְּגוֹן שְׁקִידָשׁ אֶת אִשָּׁה וְהִלְכָה לְמַדְיַת הַיָּם וְשָׁמַע שְׁמַתָּהּ, עָמַד וְנִשָּׂא אֶת אַחוֹתָהּ, דָּאֵמַרִי אֵינְשִׁי: הֵךְ קָמִיִּיתָא, תְּנָאִי הוּהוּ לֵיהּ בְּקִדוּשָׁיָהּ, וְהָאִי שְׁפִיר נָסִיב. אֵלֶּא נִשְׂוֵאִין מִי אִיבָא לְמִימַר תְּנָאָה הוּהוּ לֵיהּ בְּנִשְׂוֵאִין?

אָמַר לֵיהּ רַב אֲשִׁי לְרַב כְּהֵנָּא: אִי רַבִּי עֲקִיבָא לִיתְנִי נְמִי חֲמוֹתוֹ! דְּהָא שְׁמַעִינֵן לֵיהּ לְרַבִּי עֲקִיבָא דָּאֵמַר: חֲמוֹתוֹ לְאַחַר מִיתָהּ לֹא בְּשָׂרָהּ.

דַּתְנָא: "בָּאֵשׁ יִשְׂרְפוּ אוֹתוֹ וְאֶתְהֶן" – אוֹתוֹ וְאֶת אַחַת מֵהֶן, דְּבָרֵי רַבִּי יִשְׁמַעֵאל. רַבִּי עֲקִיבָא אוֹמַר: אוֹתוֹ וְאֶת שְׁתֵּיהֶן.

As it is taught in a *baraita*: None of those with whom relations are forbidden by Torah law require a bill of divorce from him, even if he married them in a proper manner, apart from a married woman who married by mistake by permission of the court. And Rabbi Akiva adds: Also a brother's wifeⁿ and a wife's sister.^h Since it is possible that these two women could become permitted to him, by levirate marriage in the case of a brother's wife, or a wife's sister after his wife's death, they too require a bill of divorce. And with regard to the issue at hand, since Rabbi Akiva said that a wife's sister requires a bill of divorce, this factor by itself indicates that his wife is forbidden to him, as his wife is considered the sister of his divorcée.

The Gemara refutes this claim: And wasn't it stated with regard to this case that Rav Giddel said that Rav Hiyya bar Yosef said that Rav said: In the case of this brother's wife, mentioned by Rabbi Akiva, what are the circumstances? For example, if his brother betrothed a woman and then went overseas, and the man who was here heard that his brother was dead, and he arose and married his brother's wife as a *yevama*^h The reason for Rabbi Akiva's ruling is that uninformed people will say: This first one had a condition in the betrothal with his wife, and his betrothal was canceled because the condition was left unfulfilled, and this other one married well, in compliance with the *halakha*, as she was not his brother's wife. It is for this reason that Rabbi Akiva requires him to give her a bill of divorce.

And in this case of a wife's sister as well, what are the circumstances? For example, if he betrothed a woman and she went overseas, and he heard she died and arose and married her sister.^h As people will say: This first one, he had a condition in her betrothal, and as the condition was not fulfilled the betrothal is annulled, and this other one married well. However, with regard to the case of the mishna, which involves an actual previous marriage, can it be said that he had a condition in the marriage? There is a presumption that no man marries a woman conditionally. Once he marries her, it is assumed that he waived all prior conditions, and therefore even Rabbi Akiva agrees that a bill of divorce is not required in this case.

Rav Ashi said to Rav Kahana: If it is the opinion of Rabbi Akiva, let him also teach the case of his mother-in-law, as she is another forbidden woman who nevertheless requires a bill of divorce, as we have heard him, Rabbi Akiva, say: One who has relations with his mother-in-law after his wife's death is not liable to being executed by burning, because the prohibition lapses upon his wife's death.

As it is taught in a *baraita*: The Torah states, with regard to one who takes a woman and her daughter: "They shall be burned in fire, he and they [*et'hen*]" (Leviticus 20:14). Now this cannot literally mean that both women are burned, as the first woman he took did not sin at all. The Sages therefore explained that the word *et'hen* means he and one of them [*mehen*].^l This is the statement of Rabbi Yishmael. Rabbi Akiva says: He and both of them. Since it is hard to understand how they could both deserve punishment, the *amora'im* suggested various interpretations of Rabbi Akiva's opinion.

NOTES

Adds also a brother's wife, etc. – מוֹסִיף אַף אִשְׁתּוֹ אַח וְכוּ' – Some commentaries maintain that the underlying reason for Rabbi Akiva's opinion is that there are circumstances in which these two women can be lawfully married to this man, and therefore they are more likely to make a mistake and marry him in the wrong circumstances. Consequently, the Sages decreed that he must give a bill of divorce (*ge'onim*). Conversely, many other commentaries claim that the reason is as stated later in the Gemara, that

in these cases it is possible for the condition of the betrothal to be broken (Rid). According to this explanation, the cases of a brother's wife and a wife's sister are merely stated as examples, as the same applies to all women rendered forbidden by his betrothal. These other cases are omitted because they are comparatively rare (see *Tosafot* and *Tosefot HaRosh*). Others disagree, maintaining that this *halakha* applies only to the two cases specifically mentioned by Rabbi Akiva (Meiri; *Yam shel Shlomo*; *Minhat Hinnukh*).

איסור – תמותו: The prohibition proscribing one's mother-in-law – **איסור תמותו**: When one betroths a woman, the following relatives of his betrothed are forbidden to him: Her mother, her mother's mother, her father's mother, her daughter, her daughter's daughter, and her son's daughter. If he has relations with any of these during his wife's lifetime, the man and the forbidden relative are both liable to be executed by burning, a ruling accepted by all opinions (Rambam *Sefer Kedusha, Hilkhot Issurei Bia* 2:7).

תמותו לאחר – מיתה: **One's mother-in-law after his wife's death – מיתה**: One who has relations with his mother-in-law or his wife's daughter after his wife has passed away is not liable to receive the death penalty. The *halakha* follows Rabbi Akiva in opposition to his colleague, in accordance with the explanation of Rava, whom the *halakha* follows rather than Abaye. However, he is liable to receive *karet* for this intercourse, as stated by the *Ba'al Halakhot Gedolot* and *Tosafot*. Others maintain that he is not liable even to receive *karet*, as he has merely transgressed a regular prohibition (Ramban; Rashba; Rambam *Sefer Kedusha, Hilkhot Issurei Bia* 2:8).

בשלמא לאבוי דאמר: משמעות דרשין איכא בנייהו, דרבי ישמעאל סבר: חדא בתיב, ורבי עקיבא סבר: תרתי בתיב – שפיר.

Granted, this makes sense according to the explanation of this dispute suggested by Abaye, who said that the interpretation of the meaning of the verse is the difference between them.^N In other words, Rabbi Yishmael and Rabbi Akiva did not argue over the *halakha* itself, but merely over the manner in which the *halakha* is derived from the Torah. That is, Rabbi Yishmael holds that it states: One woman, and the plain meaning of the verse is: He and one of them. And Rabbi Akiva holds that it states: Two, e.g., if he took two women who were both forbidden to him, such as his mother-in-law and her mother, they are both liable to be executed by burning.^H If this is the dispute between Rabbi Akiva and Rabbi Yishmael, it is fine, as there is no proof from here that prohibition of a mother-in-law lapses upon his wife's death.

אלא לרבא דאמר: תמותו לאחר מיתה איכא בנייהו, ליתני נמי תמותו!

However, there is a difficulty according to the explanation of Rava, who said that the practical difference between Rabbi Yishmael and Rabbi Akiva's opinion concerns one's mother-in-law after his wife's death.^H Rabbi Yishmael maintains that even after the death of one's wife he is liable for marrying his mother-in-law. Rabbi Akiva maintains that one is liable only if both women are alive, as the verse mentions two women, but if the first one has already died his relations with the second woman are no longer punishable by Torah law. If so, let the *tanna* of the mishna, according to Rabbi Akiva, also teach that one must give a bill of divorce to his mother-in-law whom he married by mistake, as she too will be permitted to him after his wife's death.

אמר ליה: נהי דמייעטה קרא משרפה, מאיסורא מי מייעטה קרא?

Rav Kahana said to Rav Ashi: Granted that the verse excluded her from the punishment of burning, did the verse also exclude her from a prohibition?^N Even Rabbi Akiva agrees that the Torah prohibits a man from marrying his mother-in-law after his wife's death. Consequently, he cannot marry her in a permitted manner, despite the fact that according to Rava's explanation Rabbi Akiva maintains that they are not executed by burning.

ותאסר בשכיבה דאחותה, מידי דהוה אאשה שהלך בעלה למדינת הים? לא דמי, אשתו דבמזיד אסירא מדאורייתא, בשוגג זורו בה רבנן.

S The Gemara asks another question, from a different perspective: And let his wife be forbidden by his sexual relations with her sister,^N just as it is in the case of a woman whose husband went overseas, who is forbidden to her husband if she had relations with another man by mistake. The Gemara answers: This is not comparable. With regard to his wife, who is forbidden to him by Torah law if she committed adultery intentionally, the Sages decreed concerning her that she is forbidden to him even if she did so unwittingly.

NOTES

The interpretation of the meaning of the verse is the difference between them – **משמעות דרשין איכא בנייהו** – The difference between the opinions of *tanna'im* is not always evident, as they sometimes cite alternative proofs for apparently identical conclusions. One way to account for this is to claim the following: The interpretation of the meaning of the verse is the difference between them. In other words, with regard to the matter in question, there is in fact no practical difference between them, but as they differ over the source of the *halakha*, it is possible that they disagree about some other matter that stems from the same verses. In this case, Rabbi Akiva and Rabbi Yishmael do not dispute the basic *halakha*, as they both agree that one who has relations with his mother-in-law after his wife's death is liable to be executed by burning. Their dispute is whether this *halakha* is derived from this verse itself or by verbal analogy from another verse.

מאיסורא מי – מייעטה קרא: Did the verse exclude her from a prohibition – **מייעטה קרא**: The early authorities dispute the nature of this prohibition. Some say that after the death of one's wife a mother-in-law is forbidden by a prohibition and *karet* (*Tosafot*), whereas others maintain that as both the prohibition and the *karet* are stated together with the sentencing of burning, if she is not liable to be executed at the hands of the court then this prohibition and the *karet* do not apply to her either (*Tosafot Yeshanim*). According to this opinion, the prohibition mentioned here is derived from the verse: "Cursed be he who lies with his mother-in-law" (Deuteronomy 27:23). The Ritva attributes a similar interpretation to the Ramban.

ותיאסר בשכיבה דאחותה – מידי דהוה אאשה שהלך בעלה למדינת הים? לא דמי, אשתו דבמזיד אסירא מדאורייתא, בשוגג זורו בה רבנן: And let her be forbidden by his sexual relations with her sister – **ותיאסר בשכיבה דאחותה**: The suggestion is not that she is forbidden by Torah law, but rather that the Sages should penalize her like a married woman who married another by mistake (Ramban).