

אחות אשה, דבמזיד לא אסירא
מדאורייתא, בשוגג לא גזרו בה רבנן.
ומנלן דלא אסירא – דתנאי: “אותה” –
אותה שכיבתה אוסרתה, ואין שכיבת
אחותה אוסרתה.

שיכול, והלא דין הוא: ומה במקום
שפא על איסור קל נאסר האוסר, מקום
שפא על איסור חמור אינו דין שנאסר
האוסר.

אמר רבי יהודה: לא נחלקו בית שמאי
ובית הלל בבא על חמותו, שפוסל את
אשתו. על מה נחלקו – בבא על אחות
אשתו, שבית שמאי אומרים: פוסל, ובית
הלל אומרים: לא פוסל. אמר רבי יוסי:
לא נחלקו בית שמאי ובית הלל בבא
על אחות אשתו, שלא פוסל את אשתו.
על מה נחלקו – בבא על חמותו, שבית
שמאי אומרים: פוסל, ובית הלל אומרים:
לא פוסל.

למי שבתחלה הוא מותר בכל הנשים
שבעולם, והיא מותרת בכל האנשים
שבעולם. קדשה – הוא אוסרה והיא
אסרתו. מרובה איסור שאסרה מאיסור
שאסרתה, שהיא אסרה בכל אנשים
שבעולם, והיא לא אסרתהו אלא
בקרובותיה.

והלא דין הוא: ומה הוא, שאסרה
בכל אנשים שבעולם, שגגה באסור
לה – אינה נאסרת במותר לה, היא שלא
אסרתהו אלא בקרובותיה, שגג באסור
לו אינו דין שלא נאסר לו במותר לו!?

וזה הדין לשוגג, למזיד מנין? תלמוד לומר
“אותה” – אותה שכיבתה אוסרתה, ואין
שכיבת אחותה אוסרתה.

However, with regard to a wife's sister, where even if the sister sins intentionally the wife is not forbidden to him by Torah law, if he did so unwittingly the Sages did not decree with regard to him. And from where do we derive that she is not forbidden? As it is taught in a *baraita* that in the verse: “A man, when his wife goes aside... and a man lies with her” (Numbers 5:12–13), the emphasis of “her” teaches: It is her intercourse with another man that renders her forbidden to her husband, but the intercourse of her sister does not render her forbidden.

As, were it not for this verse, one might have thought: Could this not be derived through an *a fortiori* inference: And if in a case where he has relations subject to a light prohibition, the one causing her to be rendered prohibited is forbidden, then in a situation where he has intercourse subject to a severe prohibition, is it not right that the one causing her to be rendered prohibited should be forbidden? This *a fortiori* inference will be explained later in the Gemara.

Rabbi Yehuda said: Beit Shammai and Beit Hillel did not disagree with regard to one who has relations with his mother-in-law, that he renders his wife disqualified from remaining married to him. With regard to what case did they disagree? With regard to one who has relations with his wife's sister, as Beit Shammai say that he renders his wife disqualified, and Beit Hillel say he does not render her disqualified. Rabbi Yosei said: Not so, as Beit Shammai and Beit Hillel did not disagree with regard to one who has relations with his wife's sister, that he does not render his wife disqualified from remaining married to him. With regard to what did they disagree? With regard to one who has relations with his mother-in-law, as Beit Shammai say he renders his wife disqualified and Beit Hillel say he does not render her disqualified.

Rabbi Yosei explains why Beit Shammai and Beit Hillel did not disagree with regard to the case of one who has relations with his wife's sister. This is because at first, before the marriage, he is permitted to all the women in the world and she is permitted to all the men in the world. After he has betrothed her as his wife, he renders her forbidden to all men, and she renders him forbidden to her relatives. Consequently, the prohibition by which he renders her forbidden is greater than the prohibition by which she renders him forbidden, as he renders her forbidden to all the men in the world and she renders him forbidden by their betrothal only to her relatives.

Rabbi Yosei's explanation continues. Could this *halakha* of a wife's sister not be derived through an *a fortiori* inference: And if he prohibited her through their betrothal to all men in the world, and yet she was unwitting with one forbidden to her, i.e., she had relations with another man by mistake, she is not forbidden to he who is permitted to her, her husband; she, who prohibited him only to her relatives, if he was unwitting with one forbidden to him, her sister, is it not right that we should not render him forbidden to her, she who is permitted to him, namely his wife?

And this is the *a fortiori* inference and the reason for the *halakha* of an unwitting sinner, i.e., that if he had unwitting relations with one of his wife's relations the wife is not thereby rendered forbidden to him. With regard to one whose act was intentional, from where is the *halakha* derived? The verse states: “Her,” meaning that it is her intercourse with another man that renders her forbidden to her husband, but the intercourse of her husband with sister does not render her forbidden to him.

הבא על – קרובת אשתו: One who has relations with his wife's relative – **הבא על** – קרובת אשתו: If one engages in relations with any of the women forbidden to him due to his wife, i.e., her mother, mother's mother, daughter, daughter's daughter, or her sister; whether he did so unwittingly or intentionally his wife is forbidden to him, even if he sinned in a manner that renders him liable to receive the death penalty. The *halakha* follows Rabbi Yosei, as Shmuel ruled in accordance with his opinion, not that of Rabbi Yehuda (Rambam *Sefer Kedusha, Hilkhot Issurei Bia* 2:10; *Shulhan Arukh, Even HaEzer* 15:27).

NOTES

I would render your wife forbidden to you permanently – **אסריתה עלך איסורא דעלם**: The early authorities question this ruling in light of the *halakha* that one who is accused of having relations with a woman who is forbidden to him is forbidden to her daughter. Here there is more than an accusation, as he actually violated a prohibition. Some commentaries explain that this *halakha* of an accusation means only that he may not marry her *ab initio*, but if he went ahead and married her the court does not force them to divorce (Ramban). This certainly applies in this case, as the sin with his mother-in-law occurred after he married the daughter. The Jerusalem Talmud cites a similar incident, in which Rabbi Mana forced a man who had sinned with his mother-in-law to divorce his wife. There, however, the reason was that as long as they remained married the presence of his mother-in-law in their house might tempt him to sin.

ואיסורה – **אסורה**: And her prohibition applies to the majority – **אסורה**: According to Rashi, this means that she is forbidden to most men. Others explain that the majority of men can render her forbidden to him (*Tosafot*; see Ritva).

אמר רבי אמי אמר ריש לקיש: מאי טעמא דרבי יהודה – דכתיב "באיש ישרפו אותו ואתהון" וכי כל הבית כולו בשרפה? אם אינו ענין לשרפה תנהו ענין לאיסורא.

Rabbi Ami said that Reish Lakish said: What is the reason of Rabbi Yehuda, who maintains that one who has intercourse with his mother-in-law is forbidden to his wife? As it is written: "They shall be burned in fire, he and they" (Leviticus 20:14). This verse is puzzling: **And shall the entire house be punished by burning?** Why should both women be punished when only one of them transgressed? **If it does not refer to the matter of burning, refer it to the matter of a prohibition, that they are both forbidden to him.** This teaches that he is forbidden not only to the woman with whom he sinned, but also to his wife.

אמר רב יהודה אמר שמואל: אין הלכה כרבבי יהודה. ההוא דעבד איסורא בהמתניה, אתייה רב יהודה נגדיה. אמר ליה: אי לאו דאמר שמואל אין הלכה כרבבי יהודה אסריתה עלך איסורא דעלם.

Rav Yehuda said that Shmuel said: **The halakha is not in accordance with the opinion of Rabbi Yehuda.**^H The Gemara relates: **A certain individual performed a transgression by having relations with his mother-in-law. Rav Yehuda had him brought for judgment and ordered that he be flogged. He said to him: If it were not for the fact that Shmuel said the halakha is not in accordance with the opinion of Rabbi Yehuda, I would render your wife forbidden to you permanently.**^N

מאי איסור קל? אמר רב חסדא: מתחזיר גרושתו משנשאת.

At the start of the *baraita* the *tanna* stated an *a fortiori* inference that is not entirely clear: If in a place where he has relations subject to a light prohibition, the one causing her to be rendered prohibited is forbidden. The Gemara asks: **What is this light prohibition?** **Rav Hisda said:** It is referring to one who **remarries his divorcée after she married another man.**

בא עליה היא אסרה עליה דהאי, בא עליה אינדך אסרה עליה דהאי.

The Gemara explains that according to this interpretation the *a fortiori* inference should be understood as follows: If **this one**, the second husband, **has relations with her, he has rendered her forbidden to that one**, the first husband. And if the second man divorced her and then **the other one**, the first husband, **had relations with her, he has likewise rendered her forbidden to this one.** This demonstrates that even with regard to a light prohibition the man who renders her forbidden is also forbidden by this intercourse.

מה למחזיר גרושתו משנשאת שכן נטמא הגוף ואיסורה ברוב ואיסורה איסור עולם!

The Gemara refutes this interpretation: **What about the fact that one who remarries his divorcée after she married another man cannot be considered to have violated a light prohibition, as the prohibition is stringent in several regards: As the body is defiled by this intercourse, for the Torah states "after she has been defiled" (Deuteronomy 24:4); and her prohibition applies to the majority^N of the Jewish people, not to select groups; and her prohibition is an irrevocable prohibition, as she is no longer permitted to her first husband after having relations with her second husband.** This last stringency is not true of his wife's sister, who is permitted to him after the death of his wife.

אלא אמר ריש לקיש: יבמה. יבמה למאן? אילימא לאחר, וכדרב המנונא. דאמר רב המנונא: שומרת יבם שזינתה אסורה ליבמה.

Rather, the Gemara rejects this explanation in favor of the following one that **Reish Lakish said:** The *baraita* is referring to relations with a *yevama*, which is called a light prohibition, as the man who has relations with her is forbidden to her. The Gemara clarifies: **With regard to this yevama, with whom did she engage in intercourse? If we say that she had relations with another man, not her yavam, this would mean that the ruling is in accordance with the opinion of Rav Hamnuna. As Rav Hamnuna said: A widow waiting for her yavam who engaged in licentious sexual relations with another man is forbidden to her yavam.** The argument would be as follows: Although the *yavam* renders the *yevama* forbidden to every other man, if she has relations with another she becomes forbidden to him as well.

מה ליבמה שכן נטמא הגוף, ואיסורה ברוב!

However, this argument can also be challenged: **What about the fact that in the case of a yevama who engages in this forbidden relationship, the body is defiled and her prohibition applies equally to the majority of the people.** Therefore, one cannot derive the prohibitions of one's wife's relatives from this *halakha*.

אֵלָא יְבָמָה לְאַחֵין. עֵבֶד בְּהַ מֵאָמֵר
הָאִי – אֶסְרָה עֲלֶיהָ דְּהָאִי, בָּא עֲלֶיהָ
אִידָךְ – אֶסְרָה עֲלֶיהָ דְּהָאִי. מֵאִי
אִירִיא שְׂבָא עֲלֶיהָ שְׁנֵי? אֶפִּילוּ עֵבֶד
בְּהַ נְמִי מֵאָמֵר!

Rather, the *baraita* must be referring to a case of a *yevama* to the brothers, as follows: If this brother performed levirate betrothal [*ma'amar*]^b with her he has rendered her forbidden to that one, the other brothers, as she is effectively betrothed to him. If one of the other brothers, who had not performed levirate betrothal with her, subsequently has relations with her, he has rendered her forbidden to this one who had performed levirate betrothal with her. The Gemara asks: If that is the meaning of the *baraita*, why specifically state that the second had relations with her?ⁿ Even if he performed levirate betrothal with her too, he thereby renders her forbidden to the first brother, which proves that it is not the act of intercourse itself that causes the prohibition.

הָא לֹא קָשְׁיָא, כְּרֵבֵן גְּמִלְיָאֵל, דְּאָמֵר
אִין מֵאָמֵר אַחֵר מֵאָמֵר. אֵלָא אֶפִּילוּ
נָתַן לָהּ גֵּט, וְאֶפִּילוּ חִלְץ לָהּ!

The Gemara refutes this suggestion: This is not difficult, as it can be explained in accordance with the opinion of Rabban Gamliel, who said: There is no levirate betrothal after a levirate betrothal, i.e., if one brother performed levirate betrothal with the *yevama*, no other levirate betrothal is of any effect. However, this explanation can still be refuted, as her prohibition to the *yavam* is not due to the act of intercourse, as even if the other brother gave her a bill of divorce, or even if he performed *halitza* with her, he has likewise rendered her forbidden to the first brother, who performed levirate betrothal.

אֵלָא אָמַר רַבִּי יוֹחָנָן: סוֹטָה. סוֹטָה.
לְמֵאן? אִילִימָא לְבַעַל, בָּא עֲלֶיהָ בַּעַל
אֶסְרָה עֲלֶיהָ דְּבַוְעַל, מֵאִי אִירִיא בָּא
עֲלֶיהָ? אֶפִּילוּ נָתַן לָהּ גֵּט, וְאֶפִּילוּ אָמַר
אִין אֲנִי מְשַׁקֵּה!

Rather, Rabbi Yohanan said: The light prohibition is that of a *sota*. The Gemara asks: This *sota*, to whom is she forbidden? If we say that she is forbidden to the husband, the explanation would be as follows: If her husband has relations with her, despite the fact that she is forbidden to him after she disobeyed his warning not to seclude herself with a certain man, he has rendered her forbidden to the fornicator, as she is barred from marrying him even if her husband divorces her. However, why is this true specifically in a case in which he had relations with her? Even if her husband only gave her a bill of divorce and did not have relations with her after her seclusion, or even if he said: I will not force her to drink the waters of a *sota*, she is likewise forbidden to the other man.

אֵלָא סוֹטָה לְבַוְעַל – הָאִי אִיסוּר קַל
הוּא? אִיסוּר חֲמוּר הוּא, דְּהֵינּוּ אֶשֶׁת
אִישׁ!

Rather, the *baraita* is referring to a *sota* who had relations with the fornicator, thereby rendering herself permanently forbidden to her husband, as she was a married woman at the time.^h Yet this too is puzzling: Is this a light prohibition? It is a severe prohibition, as this is the prohibition proscribing a married woman, one of the most serious of all prohibitions.

BACKGROUND

Levirate betrothal [*ma'amar*] – מֵאָמֵר: In the context of levirate marriage, *ma'amar* is referring to an ordinary act of betrothal that is performed prior to actual levirate marriage. As stated in the first mishna in tractate *Kiddushin*, betrothal between Jews can be performed with money or its equivalent, e.g., a ring, with a legal document, or through sexual inter-

course. By Torah law there is no betrothal for levirate marriage, which can be established only by means of sexual intercourse. The Sages ruled that when the *yavam* gives his *yevama* money and states that he is betrothing her by means of this money, they are betrothed by rabbinic law.

NOTES

Why specifically state that the second had relations with her – מֵאִי אִירִיא שְׂבָא עֲלֶיהָ שְׁנֵי: This same difficulty could apparently have been raised with regard to one who remarries his divorcée, as she is forbidden to her husband as soon as she has been betrothed to another. Some commentaries suggest that the Gemara wanted to provide an explanation

that would accord with the opinion of Rabbi Yosei ben Keifar, who maintains that a woman may return to her first husband even after she was betrothed to another, provided that she had not engaged in sexual relations with her betrothed (Ritva). This is explained in the Jerusalem Talmud in precisely the same manner.

HALAKHA

The prohibition with regard to a *sota* – אִיסוּר סוֹטָה: If a husband suspected his wife of being unfaithful to him with another man, and he warned her against secluding herself with him but she disregarded his warning, she is forbidden

to her husband until she drinks the *sota* waters. She is likewise permanently forbidden to the adulterer (Rambam *Sefer Nashim, Hilkhot Sota* 2:12).

אָלָא אָמַר רַבָּא: אִשְׁתּוֹ אִישׁ. וְכֵן כִּי אֵתָא רַבִּין אָמַר רַבִּי יוֹחָנָן: אִשְׁתּוֹ אִישׁ, וּמַאי קָרִי לָהּ אִיסוּר קַל – שְׂאִין הָאוֹסְרָה אוֹסְרָה כָּל יָמֶיהָ. תַּנְיָא נְמִי הָכִי, אַבָּא חָנַן אָמַר מִשּׁוּם רַבִּי אֶלְעָזָר: אִשְׁתּוֹ אִישׁ.

וּמָה בְּמִקּוֹם הַבָּא עַל אִיסוּר קַל שְׂאִין הָאוֹסְרָה אוֹסְרָה כָּל יָמֶיהָ, נֶאֱסָר הָאוֹסֵר – הַבָּא עַל אִיסוּר חֲמוּר, שְׁהָאוֹסְרָה אוֹסְרָה כָּל יָמֶיהָ, אֵינוֹ דִּין שְׁנֵאֲסָר הָאוֹסְרָה!

תַּלְמוּד לְרַמְבַּם “אוֹתָהּ” – אוֹתָהּ שְׂכִיבָתָהּ אוֹסְרָתָהּ וְאֵין שְׂכִיבַת אַחוֹתָהּ אוֹסְרָתָהּ.

”רַבִּי יוֹסֵי אוֹמֵר כָּל שְׂפוֹסֵל” וְכוּ. מַאי קָאָמַר רַבִּי יוֹסֵי? אֵילִימָא דְקָאָמַר תַּנָּא קָמָא דְאָוִיל אִשְׁתּוֹ וְגִיסוֹ לְמִדִּינַת הַיָּם אִשְׁתּוֹ גִּיסוֹ אֶסְרִיא וְאִשְׁתּוֹ שְׂרִיא.

וְקָאָמַר לֵיהּ רַבִּי יוֹסֵי: כִּי הֵיכִי דְאִשְׁתּוֹ שְׂרִיא אִשְׁתּוֹ גִּיסוֹ נְמִי שְׂרִיא, אֵי הָכִי “כָּל שְׂאִין פּוֹסֵל עַל יְדֵי אַחֲרִים אֵין פּוֹסֵל עַל יְדֵי עַצְמוֹ”? “כָּל שְׂאִין פּוֹסֵל עַל יְדֵי עַצְמוֹ אֵינוֹ פּוֹסֵל עַל יְדֵי אַחֲרִים” מִיבַעֲיָא לֵיהּ!

וְאֶלָּא, כִּי הֵיכִי דְאִשְׁתּוֹ גִּיסוֹ אֶסְרִיא אִשְׁתּוֹ נְמִי אֶסְרִיא – הַתִּינַח “כָּל שְׂפוֹסֵל”, “כָּל שְׂאִין פּוֹסֵל” מַאי עֲבִידְתִּיהּ?

Rather, Rava said^N that the light prohibition is actually that of a married woman.^N And similarly, when Ravin came from Eretz Yisrael, he said that Rabbi Yohanan said that the *baraita* is referring to a married woman. And for what reason does the *tanna* call this a light prohibition? The reason is that it differs from and is more lenient than other prohibitions in that her husband, who renders her forbidden, does not render her forbidden for his whole lifetime, as he can negate the prohibition by giving her a bill of divorce. This is also taught in a *baraita*: Abba Hanan said in the name of Rabbi Elazar: The *baraita* is referring to a married woman.

The Gemara explains that according to this opinion the *a fortiori* inference should be understood as follows: And if in a case where he has relations with a married woman, which is a light prohibition, due to the fact that he who renders her forbidden does not render her forbidden for his whole lifetime, and yet the one who renders her forbidden is forbidden, as the husband of a woman who committed adultery is permanently barred from having relations with her, then the following conclusion is correct: One who has relations subject to a severe transgression, e.g., a wife’s sister, which is severe because the one who renders his wife forbidden renders her forbidden for her whole lifetime, since as long as his wife remains alive he is forbidden to her sister, is it not right that the one who renders her forbidden should be forbidden?

The verse therefore states: “Her,” from which it is derived: It is her intercourse that renders her forbidden, but the intercourse of her sister does not render her forbidden.

§ The mishna taught: Rabbi Yosei says: Whoever disqualifies others also disqualifies himself, and whoever does not disqualify others does not disqualify himself. The Gemara asks: What is it Rabbi Yosei is saying?^N If we say that the first *tanna* said that one’s wife and brother-in-law went overseas and he mistakenly had relations with his wife’s sister, who is married to his brother-in-law, and consequently the wife of his brother-in-law is forbidden to the brother-in-law, and his wife is permitted to him, this is problematic.

The Gemara elaborates: And according to this explanation, Rabbi Yosei says to the first *tanna*: Just as his wife is permitted to him, the wife of his brother-in-law is also permitted to her husband. Rabbi Yosei’s reasoning is that if he has not disqualified his wife to himself, due to the accidental nature of his relations with her sister, he should not disqualify the sister to her husband either. The Gemara continues: If so, the formulation of Rabbi Yosei’s statement is imprecise, as instead of saying: Whoever does not disqualify others does not disqualify himself, he should have said: Whoever does not disqualify himself, i.e., his sexual relations do not render his wife forbidden to him, does not disqualify others, i.e., the wife of the other man.

But rather, one might explain Rabbi Yosei’s teaching in the reverse manner: Just as the wife of his brother-in-law is forbidden to her husband, his own wife is also forbidden to him. This works out well with regard to the clause that starts with: Whoever disqualifies, as he disqualifies others, i.e., his brother-in-law’s wife to his brother-in-law, and therefore he also disqualifies his wife to himself. However, the continuation of the statement: Whoever does not disqualify, what is its purpose?^N This clause has no apparent relevance to Rabbi Yosei’s statement.

NOTES

Rather, Rava said – אָלָא אָמַר רַבָּא: The problem is that the previous questions apparently apply to this interpretation as well, as she too is forbidden to most men and her body is defiled. Some commentaries answer that the Gemara initially sought an actual light transgression, i.e., a regular prohibition. When this attempt failed, the Gemara retracted from this premise entirely and tried to apply the argument to a prohibition that entails strangulation, e.g., the adultery of a married woman, which is lighter than others in that it is temporary (*Tosefot HaRosh*, citing Rivan). Others explain similarly that the prohibition in this case is not permanent, and therefore the Gemara is not concerned about the other two difficulties (*Otzar HaShitot*).

Rava said a married woman – אָמַר רַבָּא אִשְׁתּוֹ אִישׁ – Some commentaries ask: Isn’t the prohibition proscribing a married woman more severe than that proscribing a wife’s sister, as it is punishable by the death penalty rather than *karet* (*Tosafot*; see *Tosafot Yeshanim* and *Tosefot HaRosh*)? Others understand from Rashi that Rava is not referring to all married women but specifically to a *sota*, and he is responding to the previous difficulty concerning the severity of her prohibition (*Ritva*). This interpretation resolves several difficulties, since this situation entails neither the death penalty nor bodily impurity, as the transgression was not definitely committed; she is forbidden merely because she disobeyed her husband’s warning (see *Ritva*).

What is it Rabbi Yosei is saying – מַאי קָאָמַר רַבִּי יוֹסֵי: The Jerusalem Talmud cites Reish Lakish’s explanation, which avoids all of these difficulties. He maintains that Rabbi Yosei distinguishes between one’s wife’s married sister, whose extramarital sexual relations disqualify her from others, i.e., her husband, and therefore also disqualifies his wife to him, and his wife’s unattached sister, whose intercourse does not forbid her to another.

Whoever does not disqualify, what is its purpose – כָּל שְׂאִין פּוֹסֵל, מַאי עֲבִידְתִּיהּ: The early authorities ask why the Gemara does not explain this as referring to his wife’s unattached sister. A similar question is asked in the Jerusalem Talmud. They answer that Rabbi Yosei’s wording does not suit this interpretation, as the sister is unmarried, and therefore it cannot be said about her that she does not disqualify others, as there are no relevant others here at all (*Ramban*; *Rosh*).

Based on the testimony of witnesses, who does not disqualify, etc. – **על פי עדים דאינו פוסל וכו'** – How can one be sure that the first *tanna* maintains that if she married based on the testimony of witnesses she does not become disqualified? Apparently, the first *tanna* disagrees with Rabbi Shimon in this regard, and claims that she may not return to her husband even if she married on the basis of witness testimony. The commentaries suggest two answers. First, Rabbi Yosei agrees with the first *tanna* with regard to the *halakha* in practice; however, he contends that as the first *tanna* prohibits her to her husband by rabbinical decree, it cannot be said that the intercourse of one who married based on the testimony of witnesses actually disqualifies her to her husband. Second, Rabbi Yosei indeed takes issue with the opinion of the first *tanna*, as he agrees with Rabbi Shimon that a woman who married based on the testimony of witnesses may return to her husband (Rashba).

Disqualify others – פוסל על ידי אחרים – Many of the disputes of the early authorities with regard to this issue stem from the various opinions concerning the source of the *halakha* that a married woman who married another man by mistake is forbidden to her original husband, even if she acted based on witnesses testimony. Some say that this *halakha* is a penalty imposed on the woman to ensure that a wife will examine any testimony with regard to her husband's death with great care, the same reason why the Sages accepted the wife's own testimony in that case. These commentaries claim that the Sages did not differentiate between one witness and two in this regard. Others maintain that she is forbidden to her husband by a decree so that people should not say that this man divorced her and the other one married her. Yet others contend that some *tanna'im* take both of these considerations into account. These different opinions have ramifications both with regard to the ruling of *halakha* as well as the meaning of the discussion of the Gemara.

The *halakha* is in accordance with the opinion of Rabbi Yosei – **הלכה כרבי יוסי** – Many early authorities claim that as it is unclear to which explanation of Rabbi Yosei's opinion Shmuel's ruling is referring to, the stringencies of both rulings are accepted. Furthermore, even if one's wife and brother-in-law went overseas, he may not return to his wife (Rambam). Although others disagree and contend that this conclusion does not follow even from a combination of both stringencies (Ra'avad; Rashba), the Rambam in *Sefer HaZekhut* agrees with the Rambam. Some commentaries accept Rabbi Yosei's opinion as explained by Rabbi Yitzhak Nappaḥa, as the other explanation of Shmuel's statement is in accordance with the opinion of Rav Hamnuna (see Rid and Meiri).

HALAKHA

The *halakha* is in accordance with the opinion of Rabbi Yosei – **הלכה כרבי יוסי** – If a man's wife and brother-in-law went overseas, and people came and told him that they were both dead, and after he married his wife's sister the missing pair arrived, his wife's sister requires a bill of divorce from him in any case, whether she married based on the testimony of one witness or two, and she is forbidden to the brother-in-law. As for his wife, she is forbidden to him whether she was married or betrothed to him. The reason is that it is unclear whether Shmuel's ruling in accordance with the opinion of Rabbi Yosei follows Rabbi Yitzhak Nappaḥa's explanation or that of Rabbi Ami, and therefore the stringencies of both opinions are accepted. In other words, there is concern that the betrothal might have been conditional, as stated by Rabbi Yitzhak Nappaḥa, and therefore he is forbidden to his betrothed either way, and the *halakha* is also stringent with regard to a wife who married on the basis of one witness, in accordance with the opinion of Rabbi Ami (Rif; Ramban; Rosh; *Shulḥan Arukh*, Even HaEzer 15:28).

אמר רבי יוסי: ארישא, ניסת על פי בית דין – תצא ופטורה מן הקרבן. על פי עדים – תצא וחייבת בקרבן. ופה כחו של בית דין שפטרה מן הקרבן.

וקאמר תנא קמא: לא שנא על פי עדים דאשת גיסו שריא, ולא שנא על פי בית דין דאשת גיסו אסירא.

וקאמר ליה רבי יוסי: על פי בית דין דפוסל על ידי אחרים – פוסל על ידי עצמו, על פי עדים דאינו פוסל על ידי אחרים – אינו פוסל על ידי עצמו.

רבי יצחק נפחא אמר: לעולם אסיפא, (הא דנסיב אשת גיסו, והא דנסיב ארוסת גיסו), הא דאזלי ארוסתו וגיסו, הא דאזלי אשתו וגיסו, וקאמר תנא קמא: לא שנא אשתו וגיסו, ולא שנא ארוסתו וגיסו – אשת גיסו אסירא ואשתו שריא.

וקאמר ליה רבי יוסי: אשתו וגיסו, דליכא למימר תנאה הוה ליה בנשואין, דאינו פוסל על ידי אחר – אינו פוסל על ידי עצמו, ארוסתו וגיסו, דאיכא למימר תנאה הוה ליה בקידושין ופוסל על ידי אחרים – אף פוסל על ידי עצמו.

אמר רב יהודה אמר שמואל: הלכה כרבי יוסי. מתקיף לה רב יוסף: ומי אמר שמואל הכי? והא תמר: רב אמר: הרי היא כאשת איש, ושמואל אמר: אינה כאשת איש. ואמר רב הונא: כגון שקדש אחיו את האשה, והלך לו למדינת הים, ושמע שמת אחיו, ועמד ונשא את אשתו.

Rabbi Ami said: Rabbi Yosei's statement does not refer to this *halakha*, but to the first mishna of the chapter, which taught that if a woman whose husband went overseas was informed that he was dead and she married by permission of the court she must leave her new husband and is exempt from bringing an offering. If she married based on the testimony of witnesses, without the authorization of the court, she must leave and is liable to bring an offering. In this regard, the power of the court is enhanced, as she is exempt from an offering.

Rabbi Ami explains: And accordingly, if his wife and brother-in-law went overseas and witnesses came and testified that they were both dead, the first *tanna* says that it is no different whether the wife of his brother-in-law married him based on the testimony of witnesses alone, in which case the wife of his brother-in-law is permitted to her husband, as she is considered as having acted under duress, having heard testimony that her husband was dead, and it is no different if she married him by permission of the court, as although the wife of his brother-in-law is prohibited, his own wife remains permitted to him.

Rabbi Ami continues his explanation. And Rabbi Yosei says to the first *tanna*: One who married by permission of the court, who disqualifies others, he also disqualified himself to his own wife; however, in the case of one who married based on the testimony of witnesses who does not disqualify^N others,^N I agree that he does not disqualify himself, and his wife is permitted to him.

Rabbi Yitzhak Nappaḥa said: Actually, Rabbi Yosei is referring to the latter clause of the mishna, and the explanation is as follows: This is referring to one who married his brother-in-law's wife, and that case is referring to one who married his brother-in-law's betrothed. Alternatively, this involves a situation where his betrothed and his brother-in-law went overseas, whereas that concerns a situation when his wife and his brother-in-law went abroad. And the first *tanna* said: It is no different whether the ones who left were his wife and his brother-in-law, and it is no different whether they were his betrothed and his brother-in-law. Either way his brother-in-law's wife is forbidden to her husband and his own wife or betrothed is permitted to him.

Rabbi Yitzhak Nappaḥa continues his interpretation. And Rabbi Yosei said to the first *tanna*: If his wife and his brother-in-law left, in which case it cannot be said that he had a condition with regard to his marriage to his wife, i.e., that the finalization of the marriage was pending on the fulfillment of some condition, everyone would realize that his marriage to her sister was a mistake and she is therefore permitted to his brother-in-law. Consequently, as he does not disqualify another, he does not disqualify himself either. If, however, it was his betrothed and his brother-in-law who left, when it can be mistakenly said that he had a condition with regard to his betrothal and the condition was unfulfilled, his brother-in-law's wife is therefore prohibited from returning to his brother-in-law. And therefore, as he disqualifies others he also disqualifies himself, and his betrothed is forbidden to him.

§ Rav Yehuda said that Shmuel said: The halakha is in accordance with the opinion of Rabbi Yosei.^{NH} Rav Yosef strongly objects to this: And did Shmuel actually say this? But wasn't it stated that they disputed the status of a *yevama*: Rav said that she is like a married woman, and Shmuel said that she is not like a married woman. And Rav Huna said that this dispute concerns a case where his brother betrothed a woman and that brother went off overseas, and the one left behind heard that his brother was dead and he arose and married his brother's wife, in levirate marriage, and subsequently the missing brother returned.

And is forbidden to the *yavam* – יְאִסְוּרָה לְיָבָם: Rashi explains that in this context the *yavam* is the woman's betrothed, who is now considered a brother-in-law. Others maintain that the *yavam* is the betrothed's brother, and the dispute is whether this woman can return to the second man if it later became known that the betrothed man indeed died, or whether the fact that he was obligated to divorce her during the betrothed man's lifetime and she was forbidden to him means that he must divorce her even after the betrothed man's death (Rabbeinu Hananel; see Ritva).

HALAKHA

A betrothed woman who entered into levirate marriage by mistake – אִרוּסָה שְׁנִיתִיבְמָה בְּטָעוּת: If a man betrothed a woman and traveled overseas, and his brother, thinking he was dead, consummated levirate marriage with her, then when the betrothed man subsequently returns she requires a bill of divorce from her husband, the brother of the betrothed man, and she is forbidden to her betrothed. This ruling follows Rav Huna's explanation of the dispute in accordance with the opinion of Rav, as the *halakha* follows him rather than Shmuel in cases involving prohibitions (Rambam *Sefer Nashim*, *Hilkhot Geirushin* 10:8; *Shulḥan Arukh*, *Even HaEzer* 159:4).

דָּרַב אָמַר: הֲרֵי הִיא כְּאִשְׁתּוֹ אִישׁ, וְאִסְוּרָה לְיָבָם, וְשִׁמּוּאֵל אָמַר: אֵינָהּ כְּאִשְׁתּוֹ אִישׁ, וְשָׂרְיָא לֵיהּ.

As Rav said that she is like a married woman who married another man based on testimony that her husband was dead and is therefore forbidden to the *yavam*,^{NH} i.e., to her first husband, who is called the *yavam* after his brother married her. And Shmuel said that she is not like a married woman, and is permitted to him. This apparently contradicts Rav Yehuda's ruling in the name of Shmuel that the *halakha* is in accordance with the opinion of Rabbi Yosei, as here too people might mistakenly think that the original betrothal included an unfulfilled condition and she should therefore be forbidden to him as the wife of his brother.

אָמַר לֵיהּ אַבְיִי: וּמִמָּאֵי דְכִי אָמַר שְׁמוּאֵל הֲלָכָה כְּרַבִּי יוֹסֵי אֲדַרְבֵּי יִצְחָק נִפְחָא קְאָמַר? דְּלָמָּא אֲדַרְבֵּי אַמֵּי קְאָמַר? וְאֵי נָמִי אֲדַרְבֵּי יִצְחָק נִפְחָא, מִמָּאֵי דְאִפְסִיל,

Abaye said to Rav Yosef: And from where do you know that when Shmuel said that the *halakha* is in accordance with the opinion of Rabbi Yosei, he was speaking of the explanation of Rabbi Yitzhak Nappaḥa with regard to Rabbi Yosei's opinion? Perhaps he was speaking of the explanation of Rabbi Ami, that Rabbi Yosei is referring to the difference between one who married by permission of the court and one who did so based on the testimony of witnesses. And even if one accepts the claim that Shmuel's ruling endorses the interpretation of Rabbi Yitzhak Nappaḥa, from where do you know that he was referring to the clause: One who disqualifies?

Perek X

Daf 96 Amud a

וְדָלְמָא אֵינּוּ פּוֹסֵל? אֵי נָמִי: מִמָּאֵי דְאִיתָא לְדָרַב הוּנָא, דְּלָמָּא לִיתָא דָּרַב הוּנָא כָּלֵל, וּבְדָרַב הַמְּנוּנָא קְמִיפְלָגִי. דְּאָמַר רַב הַמְּנוּנָא: שׁוֹמְרֵת יָבָם שְׁוִינְתָּה אִסְוּרָה לְיָבָמָה,

But perhaps Shmuel's ruling in accordance with the opinion of Rabbi Yosei is referring to the ruling that he does not disqualify his brother-in-law's wife to his brother-in-law, in a case where his wife and brother-in-law left. Alternatively, the contradiction can be resolved in the following manner: From where do we know that there is a reason to accept the explanation of Rav Huna with regard to the dispute between Rav and Shmuel? Perhaps there is no cause to agree with Rav Huna at all, and it can be explained that Rav and Shmuel disagree with regard to the statement of Rav Hamnuna. As Rav Hamnuna said: A widow waiting for her *yavam* who engaged in licentious sexual relations^H is forbidden to her *yavam*.

דָּרַב אָמַר: הֲרֵי הִיא כְּאִשְׁתּוֹ אִישׁ וּמִיפְסָלָא בְּזוּנָת, וְשִׁמּוּאֵל אָמַר: אֵינָהּ כְּאִשְׁתּוֹ אִישׁ וְלֹא מִיפְסָלָא בְּזוּנָת, וְאֵי נָמִי בְּקִדּוּשִׁין תּוֹפְסִין בִּיבְמָה קְמִיפְלָגִי, דָּרַב אָמַר: הֲרֵי הִיא כְּאִשְׁתּוֹ אִישׁ וְלֹא תּוֹפְסִין בְּהָ קִדּוּשִׁין, וְשִׁמּוּאֵל אָמַר: אֵינָהּ כְּאִשְׁתּוֹ אִישׁ וְתּוֹפְסִין בְּהָ קִדּוּשִׁין –

According to this interpretation, the dispute is as follows: As Rav said, she is like a married woman and she is therefore disqualified by licentious sexual relations. And Shmuel said that she is not like a married woman and is not disqualified by licentious sexual relations. And alternatively, one can explain that Rav and Shmuel disagree with regard to the issue of whether betrothal takes effect with a *yevama*: As Rav said, she is like a married woman with regard to all men other than her *yavam*, and therefore betrothal performed by anyone else does not take effect with her. And Shmuel said that she is not like a married woman, and this means that betrothal does take effect with her.

וְהָא אִפְלִיגוּ בְּהָ חֲדָא וְיִמְנָא! חֲדָא מְכַלְלֵי דְחִבְרֵתָהּ אֵיתָמַר.

The Gemara asks with regard to this last answer: How can the dispute be explained in this manner? But Rav and Shmuel already disagreed over this once. The Sages would certainly not record the same dispute twice. The Gemara answers: It is possible that they did not in fact disagree twice with regard to the same case. Rather, one ruling was stated by inference from the other. In other words, their dispute was recorded in two different ways, the second time by inference from their original dispute.

HALAKHA

A widow waiting for her *yavam* who engaged in licentious sexual relations – שׁוֹמְרֵת יָבָם שְׁוִינְתָּה: If a woman awaiting levirate marriage had sexual relations with another man, she is permitted to the *yavam*, as the Gemara in tractate *Sota* (18b) does not rule in accordance with the opinion of Rav Hamnuna (Rambam *Sefer Nashim*, *Hilkhot Yibbum VaHalitza* 2:20; *Shulḥan Arukh*, *Even HaEzer* 159:3).