

What, is it not that he betrothed her conditionally – מאי לאו, קידשה על תנאי: According to the Gemara's question, the mishna should be understood as one continuous discussion. It opens with a case of betrothing a woman conditionally, and the second clause, which speaks of marrying her unconditionally, is the continuation of the case where he betrothed her conditionally. The Gemara will explain that according to Shmuel the second clause is a new case, and the betrothal was unconditional as well (Rabbeinu Crescas Vidal).

ושמואל אמר: צריכה גט משני!

And Shmuel said: She requires a bill of divorce from the second one. Her first husband did not engage in sexual intercourse with the intention that it serve as a new betrothal, rather he intended to continue the relationship established between them when she was a minor. Therefore, she is not considered to be his wife and the second marriage is binding.

צריכא, דאי אתמר בההיא – בההיא קאמר רב, משום דליכא תנאה. אבל בהא, דאיכא תנאה – אימא מודי ליה ל'שמואל'.

The Gemara explains: It is **necessary** to state the dispute in both instances. **For if it was stated only in that case of the minor who did not refuse, one could say that in that case Rav stated his opinion because there is no condition attached to the betrothal.** Consequently, when she becomes an adult, he engages in sexual intercourse with intent to betroth her, as he recognizes that the initial betrothal was ineffective. **But in this case, where there is a condition and it is unfulfilled, one could say that he concedes to Shmuel that he did not intend to betroth her through intercourse, and she does not require a bill of divorce.**

ואי אתמר בהא – בהא קאמר שמואל, אבל בהך – אימא מודי ליה לרב, צריכא.

And conversely, if it was stated only in this case concerning betrothal, it could be argued that **in this case Shmuel said that the betrothal is not valid when he engages in sexual intercourse with her, since she violated a condition, but in that case of the minor who did not refuse, one could say that he concedes to Rav.** Therefore, it is **necessary** to state the argument explicitly in both cases.

תנן: כנסה סתם ונמצאו עליה נדרים – תצא שלא בכתיובה. כתובה הוא דלא בעינא, הא גיטא – בעינא! מאי לאו – קידשה על תנאי וכנסה סתם, תיבתא דשמואל!

The Gemara discusses proofs for both sides of this dispute: We learned in the mishna: **If he married her without specification, and it was discovered that vows were incumbent upon her, she may be divorced without receiving payment of her marriage contract.** The Gemara infers: **She does not require or receive payment of her marriage contract, but she does require a bill of divorce.** What, is it not speaking about the case discussed in the first clause, namely that **he betrothed her conditionally^N and then married her without specification?** If so, the mishna is a **conclusive refutation of Shmuel's opinion.**

Perek VII
Daf 73 Amud b

לא, קידשה סתם וכנסה סתם.

The Gemara rejects the proof: **No, the case there is referring to where he betrothed her without specification and then married her without specification.**

אבל קידשה על תנאי וכנסה סתם – הכי נמי דלא בעינא גיטא? אדתני המקדש את האשה על מנת שאין עליה נדרים, ונמצאו עליה נדרים – אינה מקודשת, ליתני: כנסה סתם ונמצאו עליה נדרים אינה מקודשת, וכל שבין הא!

The Gemara asks: **But according to this explanation, if he betrothed her conditionally and then married her without specification, is it indeed the case that she does not require a bill of divorce? If so, instead of teaching in the mishna that if one betroths a woman on condition that there are no vows incumbent upon her to fulfill, and it was subsequently discovered that there are vows that are incumbent upon her, she is not betrothed, let the mishna teach instead a more novel halakha:** If he betrothed her with a condition and **married her without specification and then it was discovered that vows were incumbent upon her, she is not betrothed.** And from this one can derive that **all the more so** the same *halakha* would apply in this case, where he betrothed her conditionally but did not repeat the condition when marrying her.

הכי נמי קאמר: המקדש את האשה על מנת שאין עליה נדרים, וכנסה סתם ונמצאו עליה נדרים – אינה מקודשת. קידשה סתם וכנסה סתם – תצא שלא בכתיובה.

The Gemara answers: **That is also what he is saying, and one should understand the mishna this way: One who betroths a woman on condition that there are no vows incumbent upon her to fulfill, and then marries her without specification, and it is then discovered that vows were incumbent upon her, she is not betrothed.** If he betrothed her without specification and **married her without specification, she requires a bill of divorce but may be divorced without receiving payment of her marriage contract.**

She requires a bill of divorce from the words of the Sages – צריכה גט מדברייהם – This is required because he did not explicitly state a condition at the time of the betrothal or marriage, and therefore people will not know that the betrothal was invalid. Instead, they will think that it is possible for a married woman to leave her husband without receiving a bill of divorce (Rivan).

HALAKHA

He betrothed her in error or he betrothed her with an item worth less than the value of a *peruta* – קידושה בטעות ופחות משוה פרוטה: If a man betroths a woman with an item worth less than the value of a *peruta*, she is not betrothed. Similarly, if a minor betroths a woman, she is not betrothed, even if he sends gifts that are worth more than a *peruta* to the bride after he reaches maturity. This is because the gifts were sent only based on the assumption that the initial betrothal was valid (Rambam *Sefer Nashim*, *Hilkhot Ishut* 4:20; *Shulhan Arukh*, *Even HaEzer* 31:9).

LANGUAGE

Presents [*sivlonot*] – סבלונות: Most commentaries suggest that the root of this word is the Hebrew *saval*, meaning a gift. Others claim it comes from the Greek *συμβολή*, *symbolē*, which has multiple meanings, such as a monetary advance or something that binds two sides, e.g., a contract.

כתובה הוא דלא בעיא, הא גיטא – בעיא. ומאי שנא כתובה דלא בעיא – דאמר: אי אפשי באשה נדרנית, אי הכי גט נמי לא תיבעי!

The Gemara asks about this *halakha* according to Shmuel: The mishna says that **she does not require** or receive payment of her **marriage contract**, but one can infer that **she does require a bill of divorce**. And what is different about a marriage contract that she does not require payment? Because he says: **I do not want a vowing wife**, and therefore the marriage is considered a mistaken transaction. If so, **she should also not require a bill of divorce**. Since he is clearly particular about this, shouldn't the betrothal also be considered a mistaken transaction?

אמר רבה: צריכה גט מדברייהם. וכן אמר רב חסדא: צריכה גט מדברייהם. רבא אמר: תנא ספוקי מספקא ליה; גבי ממונא – לקולא, גבי איסורא – לחומרא.

Rabba said: **She requires a bill of divorce from the words of the Sages**,ⁿ i.e., by rabbinic law. Although by Torah law the betrothal is in fact invalid, the Sages declared that since he did not explicitly stipulate the condition, she requires a bill of divorce. And similarly, Rav Hisda said: **She requires a bill of divorce from the words of the Sages**. Rava said a different explanation: The *tanna* is uncertain about the status of the betrothal in this case. **Concerning monetary matters, one should be lenient**. Therefore, she cannot extract money from the husband for the marriage contract based on the principle that in monetary cases the burden of proof rests upon the claimant. But **concerning prohibitions** such as adultery, one **must be stringent**, and she therefore requires a bill of divorce.

אמר רבה: מחלוקת בטעות שתי נשים, אבל בטעות אשה אחת – דברי הכל אין צריכה הימנו גט.

Rabba said: **The dispute between Rav and Shmuel is in the case of an error concerning two women**. The same man married one woman on condition that she had no vows incumbent upon her and then married another woman without specification. Rav and Shmuel disagree whether the condition he explicitly stated for the first woman should be seen as proof that he is particular about this with regard to the second one as well, to the point that the betrothal is invalid if the condition was not fulfilled. **But in the case of an error concerning one woman**, where he betroths her with a condition, marries her without specification, and subsequently discovered that the condition was not fulfilled, **all agree**, including Rav, **that she does not require a bill of divorce from him**.

אמר (ליה) אביי: והא מתניתין דטעות אשה אחת היא. וקמותבינן תיבתא מיניה!

Abaye said to him: **But the mishna discusses an error concerning one woman**, as a second woman is not mentioned, **and we raise an objection from it** against Shmuel, implying that Rav and Shmuel have a dispute in this case as well. How, then, can you say that dispute is in the case of an error concerning two women?

אלא אי אתמר הכי אתמר: אמר רבה: מחלוקת בטעות אשה אחת בעין שתי נשים, אבל בטעות אשה אחת גרידתא – דברי הכל אינה צריכה הימנו גט.

Rather, the previous explanation must be retracted and instead the Gemara says: **If the above statement of Rabba was said, it was said as follows: Rabba said that the dispute between Rav and Shmuel is with regard to a case of an error concerning one woman similar to an error concerning two women**. He betrothed one woman conditionally and then divorced her, and subsequently married her again without specification. In this case, Rav and Shmuel dispute whether the assumption is that he intended to nullify the initial condition with the second betrothal or whether he married her the second time based upon the conditions of the first betrothal. **But in the case of a simple error only concerning one woman**, where he betroths her with a condition, marries her without specification, and then discovers that the condition was not fulfilled, **all agree that she does not require a bill of divorce from him**.

איתיביה אביי: קידושה בטעות, ופחות משוה פרוטה, וכן קטן שקידוש, אף על פי ששלח סבלונות לאחר מיכן – אינה מקודשת, שמחמת קדושין הראשונים שלח. ואם בעלו – קנו. רבי שמעון בן יהודה משום רבי ישמעאל אמר: אם בעלו – לא קנו.

Abaye raised an objection to Rabba's statement from a *baraita*: In cases where the man **betrothed her in error**, or he betrothed her with an item worth less than the value of a *peruta*,ⁿ and similarly in a case where there was a **minor boy who betrothed a woman**, even if the man later sent presents [*sivlonot*]^l to the bride after he became an adult, **she is not betrothed, because he sent them on the basis of the original betrothal**. And if the men in any of these cases **engaged in sexual intercourse** with the woman after betrothal at the appropriate time, **they have acquired the women as their wives**, since they presumably intended the intercourse to serve as betrothal. **Rabbi Shimon ben Yehuda said in the name of Rabbi Yishmael**: Even if they engage in sexual intercourse, they have not acquired the women as wives, since they presumably engaged in these relations based upon the earlier betrothal, which was invalid.

A person knows that betrothal does not take effect, etc. – אדם יודע שאין קדושין תופסין וכו' – The early authorities ask: If people know that betrothal is not binding when performed with an item worth less than the value of a *peruta*, why did he betroth her with such an item? They explain that one can interpret this answer by distinguishing between the cases. Concerning betrothal with an item worth less than the value of a *peruta* or when the male performing the betrothal is a minor, there may be general uncertainty about the *halakha*, so it can be assumed that he intends to complete the process in a manner that is acceptable according to all opinions. In contrast, he may not be aware that his wife is a vowing woman, and therefore he may still intend to retain his initial condition when engaging in sexual intercourse (Ra'ah; Ritva).

A minor girl who was married off by her father, etc. – קטנה שהשיאה אביה וכו' – There is fundamental complication in the laws of levirate marriage: If a man dies childless, his brother-in-law is obligated to marry the *yevama*. However, absent this obligation, brothers- and sisters-in-law are forbidden to each other by a prohibition that incurs liability to receive *karet*. This prohibition includes a divorcee marrying her former brother-in-law. The question here concerns a woman who was divorced and then remarried to the same husband: Once she was forbidden to her brother-in-law as a result of her divorce, is that prohibition voided if her former husband marries her again?

HALAKHA

On condition that my father will desire it – על מנת שיִרצה – אבא: If one betroths a woman on condition that his father consents, she is betrothed, provided that his father does consent. If his father does not consent, is silent, or died before he heard of the betrothal, she is not betrothed.

If the man said: You are betrothed to me on condition that my father not protest, she is not betrothed if his father protests. If he does not protest, or he died before hearing of the betrothal, she is betrothed. This is the opinion of the Rambam. *Beit Shmuel* clarifies that, according to the Rambam, when his father does not protest, the betrothal is a definite betrothal. According to the other authorities, it has the status of an uncertain betrothal until his father dies.

Some maintain that even one who says: You are betrothed to me on condition that my father desires it, is equivalent to having said: On condition that my father does not protest (Ra'avad). Others maintain that his status is like one who says: On condition that my father is silent, as is evident from the continuation of the discussion in tractate *Kiddushin* 63a (*Tur*, citing Rosh; *Maggid Mishneh*, citing Ramban). The conclusion is that one should be stringent in the case where the husband declares: On condition that he desires, and accommodate all of the opinions (*Beit Shmuel*, citing Rabbeinu Yeruham). The authorities ruled in accordance with the opinion of Rabbi Shimon ben Yehuda here, since this opinion was taught as an unattributed mishna in *Kiddushin* (Rambam *Sefer Nashim*, *Hilkhot Ishut* 7:1; *Shulhan Arukh*, *Even HaEzer* 38:8).

A minor girl who was married off by her father, etc. – בקטנה שהשיאה אביה וכו' – If a minor girl was married off by her father, then divorced from her husband through the agency of her father, then later returned to her husband, and then was widowed while she was still a minor, is prohibited from entering into levirate marriage, as is stated here, and all agree to this *halakha*. According to the Rambam, she does not require *halitza* either. According to the *Tur* and the Rosh, she does require *halitza*, but it is not a full-fledged *halitza*, since her rival wife is not exempted from *halitza* through it (Rambam *Sefer Nashim*, *Hilkhot Yibbum VaHalitza* 7:13; *Shulhan Arukh*, *Even HaEzer* 173:16 and *Beit Shmuel* there).

והא הכא, דטעות אשה אחת היא, ופליגי! מאי לאו טעות נדרים?

לא, טעות פחות משוה פרוטה. פחות משוה פרוטה בהדיא קתני לה: קידשה בטעות, ופחות משוה פרוטה! פרושי קא מפרש: קידשה בטעות כיצד? כגון שקידשה בפחות משוה פרוטה.

במאי קא מיפליגי? מר סבר: אדם יודע שאין קדושין תופסין בפחות משוה פרוטה, וגמר ובעל לשם קדושין. ומר סבר: אין אדם יודע שאין קדושין תופסין בפחות משוה פרוטה, וכי קא בעל – אדעתא דקדושין הראשונים בעל.

איתביה: "הריני בועליך על מנת שיִרצה אבא" – אף על פי שלא רצה האב – מקודשת. רבי שמעון בן יהודה אומר משום רבי שמעון: רצה האב – מקודשת, לא רצה האב – אינה מקודשת. והא הכא, דכי טעות אשה אחת דמי, ופליגי!

התם בהא קמיפליגי: מר סבר: על מנת שיִרצה האב – על מנת שישתוק האב, והא שתיק ליה. ומר סבר: על מנת שיאמר אבא "הן" – והא לא אומר אבא "הן".

איתביה: מודים חכמים לרבי אליעזר בקטנה שהשיאה אביה ונתגרשה, והיא יתומה בחיי האב, והחזירה – שחולצת ולא מתיבמת.

Noting that the first case in the *baraita* is where a man betrothed a woman in error, Abaye asks: **But here in this *baraita*, where the first case is an error concerning one woman, and the first *tanna* and Rabbi Shimon ben Yehuda disagree; what, is it not that the intention of the phrase: Betrothed her in error, is referring to an error in the condition with regard to vows, where he mistakenly believed she didn't have any vows incumbent upon her?** This would constitute a refutation of Rabba's statement that all agree that in a case of an error concerning one woman she is betrothed.

The Gemara responds: **No**, here it is referring to a halakhic error, that he betrothed a woman with an item worth less than the value of a *peruta*. The Gemara asks: Concerning the case where the betrothal is with an item worth less than the value of a *peruta*, the *baraita* teaches it explicitly as a separate case with the following words: **If he betrothed her in error, or if he betrothed her with an item worth less than the value of a *peruta*.** The Gemara answers: **It is explaining what it stated earlier: What is the case of one who betrothed her in error? For example, when he betrothed her with an item worth less than the value of a *peruta*, as he did not engage in sexual intercourse with her based on such a betrothal.**

The Gemara asks: **With regard to what do they disagree?** The Gemara answers: One Sage, the first *tanna*, holds that a person knows that betrothal does not take effect^N with an item worth less than the value of a *peruta*. Consequently, he decides to engage in sexual intercourse for the purpose of betrothal and therefore acquires the woman as his wife through these relations. **And one Sage, Rabbi Shimon ben Yehuda, holds that a person does not know that betrothal does not take effect with an item worth less than the value of a *peruta*, and when he later engages in sexual intercourse, he does so on the basis of the original betrothal, so no new betrothal takes place.**

Abaye again raised an objection to Rabba's statement from a *baraita*: If a man said to a woman: **I am engaging in sexual intercourse with you for the purpose of betrothal on condition that my father will desire^H our betrothal, and then he married her without specification, although the father did not desire it, she is nevertheless betrothed through this act of intercourse. Rabbi Shimon ben Yehuda says in the name of Rabbi Shimon: If the father desires it, she is betrothed, and if the father does not desire it, she is not betrothed, since he engaged in intercourse with her based on the initial condition. But here it is similar to a mistake concerning one woman, and they disagree whether the betrothal is valid.**

The Gemara responds: **There, they disagree about this:** One Sage, the first *tanna*, holds that: **On condition that my father will desire it, means: On condition that my father is silent. Consequently, if his father does not protest, the betrothal is valid, and he was indeed silent about it. And one Sage, Rabbi Shimon ben Yehuda, holds that it means: On condition that my father says yes, and he did not say yes.** Therefore, the dispute is about the significance of the father's silence in this case.

Abaye again raised an objection to Rabba's statement from a *baraita*: **The Rabbis concede to Rabbi Eliezer concerning a minor girl who was married off by her father^{NH} and then divorced while she was still a minor, and is therefore treated by the *halakha* as an orphan in the lifetime of the father, since the *halakha* is that the father is no longer able to marry her off to someone else, and while she was still a minor, her former husband remarried her, and he then died without children, that she performs *halitza* and may not instead enter into levirate marriage.**

מפני שגירושיה גירושין גמורין, ואין תורתה חזרה גמורה.

The *baraita* continues: This is because her divorce was a full-fledged divorce, since the father has authority to receive her bill of divorce from her husband, and her return to her husband afterward is not a full-fledged return, since she remarries her husband while still a minor, and her father no longer has authority to marry her off, and marriage to a minor girl by her own consent is not considered a full-fledged marriage. She is consequently prohibited from entering into a levirate marriage based on the prohibition against a divorcée marrying her former husband's brother.

במה דברים אמורים - שגירשה כשהיא קטנה והחזירה כשהיא קטנה. אבל גירשה כשהיא קטנה והחזירה כשהיא גדולה, או שהחזירה כשהיא קטנה וגדלה אצלו, ומת - או חולצת או מתבמט.

The *baraita* continues: In what case is this statement said? When he divorced her while she was still a minor girl and then remarried her while she was still a minor girl. But if he divorced her while she was still a minor girl, and then remarried her when she was an adult woman, or if he remarried her while she was still a minor girl and she became an adult woman while married to him, the second marriage is binding, and she has the status of a full-fledged married woman. And therefore, if he died, either she performs *halitza* or she enters into levirate marriage like any other widow.

Perek VII
Daf 74 Amud a

משום רבי אליעזר אמרו: חולצת ולא מתבמט. והא הכא, דכטעות אשה אחת דמי - ופליגי!

In the name of Rabbi Eliezer they said that even in this case she performs *halitza*,⁸ but she may not enter into levirate marriage. This dispute seems to hinge on whether, when he engaged in sexual intercourse with her as an adult, he did so for the purpose of betrothal, or whether he relied upon the invalid betrothal performed when she was a minor. But here, this should be considered similar to an error concerning one woman, and yet they disagree.

התם נמי בהא קמפליגי. מר סבר: אדם יודע שאין קידושי קטנה בלום, וגמר ובעל לשים קידושין. ומר סבר: אין אדם יודע שאין קידושי קטנה בלום, וכי קא בעל - אדעתא דקידושין הראשונים קא בעל.

The Gemara refutes this claim: This is not the nature of the disagreement. Rather, there too they disagree over a possible halakhic error: One Sage, the first *tanna*, holds that a person knows that the betrothal of a minor girl is nothing, and consequently, after she reaches adulthood, he decides to engage in sexual intercourse for the purpose of betrothal. Therefore, if the husband dies she may enter into levirate marriage. And one Sage, Rabbi Eliezer, holds that a person does not know that the betrothal of a minor girl is nothing, and therefore when he engages in sexual intercourse with her after she reaches adulthood, he does so on the basis of the initial betrothal, which is not effective according to Torah law, and therefore she cannot enter into levirate marriage.

אתמר נמי, אמר רב אחא בר יעקב אמר רבי יוחנן: המקדש על תנאי ובעל - [דברי הכל] אינה צריכה הימנו גט. איתביה רב אחא בר רב איקא בר אחתיה: חליצה מוטעת בשידה. איזו היא חליצה מוטעת? אמר ריש לקיש: כל שאמר לו - חלוץ לה ובכך אתה בונסה.

It was also stated in accordance with Rabba's opinion, that there is no dispute with regard to an error concerning one woman: Rav Aha bar Ya'akov said that Rabbi Yoḥanan said: One who betrothed a woman conditionally and engaged in sexual intercourse without specifying that he is voiding the condition, all agree that she does not require a bill of divorce from him. Rav Aha, son of Rav Ika, son of Rav Aha bar Ya'akov's sister, raised an objection to his opinion from a *baraita* that states: A mistaken *halitza* is valid. The *amora'im* asked: What is meant by the term: A mistaken *halitza*? Reish Lakish said: Any situation when someone says to a man whose married brother died childless [*yavam*] not well versed in *halakha*: Perform *halitza* with her and by doing so you will thereby marry her. Although he did not intend to release their bond with this *halitza*, it is nevertheless effective.

BACKGROUND

Halitza - חליצה: *Halitza* is the ceremony that frees the widow of a man who died without children from the obligation to marry one of her deceased husband's brothers and allows her to remarry (see Deuteronomy 25:7-10). The term *halitza* is derived from the central element of this ceremony, which is the removal [*halitza*] by the widow of a special sandal from the foot of one of her deceased husband's brothers. *Halitza* must be performed before a rabbinical court. The laws governing this ceremony are discussed in detail in tractate *Yevamot*.