

מפני שגירושיה גירושין גמורין, ואין תורתה חורה 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 מתבבמת.

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 מתבבמת. 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, ונמר 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*.

Mistaken *halitza* – חליצה מוטעת: Both the *yavam* and the *yevama* must intend to permit the woman to all other men by means of this *halitza*. If she had this intention but he did not, or vice versa, the *halitza* is invalid and does not permit her to others. However, this invalid *halitza* does serve to permanently disqualify her from marrying the *yavam* and all of the other brothers of her late husband, as stated by Rabbi Yohanan (Rambam *Sefer Nashim, Hilkhot Yibbum VaHalitza* 4:16; *Shulhan Arukh, Even HaEzer* 169:44).

Perform *halitza* with her on condition that she gives you – חלוץ לה על מנת שתתן לך: If someone performs *halitza* under false assumptions, it is nevertheless valid, e.g., if one is told to perform *halitza* with a woman on condition that she gives him two hundred dinars. Even if she subsequently refuses to pay the money, the *halitza* is valid. Furthermore, even if one states both sides of the condition, by specifying that if she does not give him this sum she will not be allowed to marry other men, his words are of no significance (Rosh). Although the *halitza* is valid despite her failure to pay him the money, she is nevertheless obliged to give him what she promised, like anyone who hired someone to perform work and agreed to payment. However, if she has a valid reason why she does not want to enter into levirate marriage with him, and he refused to carry out his obligation to perform *halitza* unless she agreed to pay him, she does not have to pay him the money after he performs *halitza* (Rambam *Sefer Nashim, Hilkhot Yibbum VaHalitza* 4:24; *Shulhan Arukh, Even HaEzer* 169:50–51).

אמר רבי יוחנן: אני שונה: בין שנתכוון הוא ולא נתכוונה היא, בין שנתכוונה היא ולא נתכוון הוא – חליצתה פסולה, עד שיתכוונו שניהם, ואת אמרת חליצתה כשרה? אלא אמר רבי יוחנן: כל שאומר לו 'חלוץ לה על מנת שתתן לך מאתיים זו'.

אלמא, בין דעבד מעשה – אחולי אחליה לתנאיה, הכא נמי בין דבעל – אחולי אחליה לתנאיה?

אמר ליה: בר בי רב, שפיר קא אמרת? מבדי כל תנאי מהיכא גמרינן – מתנאי בני גד ובני ראובן.

תנאה דאפשר לקיימה על ידי שליח, כי התם – הוי תנאיה תנאה, דלא אפשר לקיימה על ידי שליח כי התם – לא הוי תנאה.

והא ביאה, דלא אפשר לקיימה על ידי שליח כי התם, וקא הוי תנאה!

Rabbi Yohanan said: I teach with regard to the *halakhot* of *halitza*: Whether he intended to release her through *halitza* and she did not intend it, or whether she intended this outcome and he did not intend it, her *halitza* is invalid;¹¹ it will always be invalid until they both intend the appropriate outcome. And you say that in that case, when he intended to marry her and not to release her, that her *halitza* is valid? Rather, Rabbi Yohanan said that in fact, in such a case, the *halitza* would be invalid, and the term: A mistaken *halitza*, concerns any situation where someone says to the *yavam*: Perform *halitza* with her on condition that she gives you¹² two hundred dinars as payment, and afterward she refuses to give him the money.

The Gemara returns to our issue: Apparently, it can be seen from here that since he performed an action, the *halakha* views this as though he explicitly waived his condition, for although he stipulated a condition, once he actually performs *halitza* the condition is ignored. If so, here too, with regard to a conditional betrothal, since he engaged in sexual intercourse, he has waived his condition, which contradicts Rav Aha bar Ya'akov's view.

He said to him: Student of the academy, have you spoken well? The reason why the *halitza* is valid is not because he waived his condition, but rather because the condition was invalid to begin with. After all, from where do we learn through tradition all the laws of conditions? From the conditions made with the descendants of Gad and the descendants of Reuben. Moses made a condition with the tribes of Gad and Reuben: If they would go with the rest of the nation to fight in the battles for the land of Canaan on the western side of the Jordan, they would receive their inheritance on the eastern side, as they requested (see Numbers, chapter 32).

The Gemara derives the *halakhot* of contractual conditions from that incident, and these include the rule that a condition that can be fulfilled by means of an agent, as was done there, when Moses transferred responsibility for implementing the condition to Joshua and the Elders, and such a condition is a valid condition. Whereas a condition that cannot be fulfilled by means of an agent¹³ as was done there is not a valid condition. Accordingly, since *halitza* cannot be performed by means of an agent, the condition is of no effect and the *halitza* is valid. There is therefore no proof from here that a husband who performs an action waives his condition.

The Gemara raises a difficulty: But sexual intercourse is something that cannot be fulfilled by means of an agent as was done there, in the case of the descendants of Gad and the descendants of Reuben, and yet it is considered a valid condition. If a man says that he is engaging in intercourse with a woman for the purpose of betrothal on condition that a certain stipulation be fulfilled, if that condition is broken the betrothal is invalid.

NOTES

A condition that cannot be fulfilled by means of an agent – *Tosafot* note that this principle does not mandate complete equivalence to the conditions made with the descendants of Gad and the descendants of Reuben, as all agree that the details of contractual conditions do not all have to follow the exact model of that case. Rather, details of that paradigm are applied to other cases only when there is a logical reason to assume that they are halakhically

significant. Consequently, they explain that the logic of this particular rule is that if a person has such control over an act that he can appoint an agent to perform it for him, he can also stipulate conditions. A slightly different interpretation is suggested in the *Penei Yehoshua*, following the Ritva, the Meiri, and others: If an action cannot be performed by an agent, this demonstrates that the act itself is the essential factor, not the intention it expresses. Consequently, one cannot void the act by means of speech.

One who betroths with a loan and subsequently engages in sexual intercourse – **הַמְקַדֵּשׁ בְּמִלְוָה וְבָעַל**: If a man betrothed a woman by forgiving a loan and then proceeded to engage in sexual intercourse with her without specifying his intent, she requires a bill of divorce as a matter of uncertainty, in accordance with the opinion of Rabbi Elazar. For the purposes of this *halakha*, if witnesses saw him seclude himself with her, it is considered that they engaged in sexual intercourse (Rambam *Sefer Nashim, Hilkhot Ishut* 7:23; *Shulḥan Arukh, Even HaEzer* 28:16).

One who betroths conditionally and he subsequently engages in sexual intercourse – **עַל – תְּנַאי וְבָעַל**: If a man betrothed a woman conditionally, and his condition was unfulfilled, and he subsequently married her or engaged in sexual intercourse with her without specification, she requires a bill of divorce as a matter of uncertainty. Consequently, if another man then betroths her before she receives the bill of divorce, she must receive a bill of divorce from each of them (Rambam *Sefer Nashim, Hilkhot Ishut* 7:23; *Shulḥan Arukh, Even HaEzer* 38:35).

One who betroths with an item worth less than the value of a *peruta* and subsequently engages in sexual intercourse – **הַמְקַדֵּשׁ בְּפָחוֹת מִשְׁוֵה פְרוּטָה וְבָעַל**: If a man betrothed a woman with an item worth less than the value of a *peruta* and subsequently engaged in sexual intercourse with her in the presence of witnesses, she requires a bill of divorce. The reason is that he certainly had relations with her for the purpose of betrothal, as stated by Rabbi Ami (Rambam *Sefer Nashim, Hilkhot Ishut* 7:23; *Shulḥan Arukh, Even HaEzer* 31:9, and 28:16 in the comment of the Rema).

הַתָּם מְשוּם דְאִיתְקוּשׁ הַיּוֹת לְהַדְדִי.

The Gemara answers: **There**, in the case of betrothal, there is a special reason for this law, **because** the different ways of **becoming** betrothed **are juxtaposed to each other**. The Torah describes betrothal with the term becoming, as in the expression: “And she becomes another man’s wife” (Deuteronomy 24:2). Betrothal can be performed through the transference of money or an item of value, through a document, or through sexual intercourse. All three forms are juxtaposed with one another. Conditions can be stipulated for betrothal performed via transference of money or through a document, since these methods of betrothal can be fulfilled through an agent. Therefore, a condition may also be stipulated for betrothal through sexual intercourse, although that cannot be fulfilled through an agent.

אָמַר רַב עוּלָא בְרַ אַבָּא אָמַר עוּלָא
אָמַר רַבִּי אֱלֵעָזָר: הַמְקַדֵּשׁ בְּמִלְוָה וְבָעַל,
עַל תְּנַאי וְבָעַל, בְּפָחוֹת מִשְׁוֵה פְרוּטָה
וְבָעַל – דְּבָרֵי הַכֹּל צְרִיכָה הֵימָנוּ גַּט.

Rav Ulla bar Abba said that Ulla said that Rabbi Elazar said: In the case of **one who betroths a woman with a loan** by forgiving a debt she owes him, which does not effect betrothal, **and subsequently engages in sexual intercourse^H** with her; or one who betroths a woman **conditionally** and the condition was not fulfilled, **and he subsequently engages in sexual intercourse^H** with her; or one who betroths a woman **with an item worth less than the value of a *peruta***, **and he subsequently engages in sexual intercourse** with her, in all of these cases, **all agree that she requires a bill of divorce from him**. Although the initial betrothal was invalid, they are betrothed due to the subsequent sexual intercourse.

אָמַר רַב יוֹסֵף בְּרַ אַבָּא אָמַר רַבִּי מְנַחֵם
אָמַר רַבִּי אָמִי: הַמְקַדֵּשׁ בְּפָחוֹת מִשְׁוֵה
פְרוּטָה וְבָעַל – צְרִיכָה הֵימָנוּ גַּט. בְּהָא
הוּא דְלָא טַעֵי, אָבֵל בְּהֵנַךְ – טַעֵי.

Rav Yosef bar Abba said that Rabbi Menahem said that Rabbi Ami said: In the case of **one who betroths a woman with an item worth less than the value of a *peruta*** and subsequently **engages in sexual intercourse^H** with her, **she requires a bill of divorce from him**. This is because **it is in this matter that he does not err^N**. He knows that betrothal must be performed with an item worth at least a *peruta*, and he therefore must have engaged in intercourse with her for the purpose of betrothal. **But with regard to those other cases, i.e., a loan or a condition, he does err**. He engages in intercourse based upon his initial betrothal, and therefore she does not require a bill of divorce.

אָמַר רַב בְּהֵנָּא מִשְׁמִיחָ דְּעוּלָא: הַמְקַדֵּשׁ
עַל תְּנַאי וְבָעַל – צְרִיכָה הֵימָנוּ גַּט. זֶה
הִיָּה מַעֲשֵׂה, וְלֹא הִיָּה כַּח בְּחֻכָּמִים
לְהוֹצִיָּא בְּלֹא גַט.

Rav Kahana said in the name of Ulla: In the case of **one who betroths a woman conditionally** and the condition was not fulfilled, **and he subsequently engages in sexual intercourse** with her, **she requires a bill of divorce from him**, in accordance with Rabbi Elazar. The Gemara relates: **This was an incident** that actually occurred. A man betrothed a woman conditionally and then engaged in sexual intercourse with her without specification, **and the Sages did not have the power to allow her to leave her husband without a bill of divorce**, since they could not definitively rule that the betrothal was invalid. Therefore, they forced him to give her a bill of divorce.

לְאִפּוּקֵי מֵהָא תַנָּא. דְּאָמַר רַב יְהוּדָה
אָמַר שְׁמוּאֵל מְשוּם רַבִּי יִשְׁמַעְאֵל:
”וְהִיא לֹא נִתְפָּשָׂה” – אִסּוּרָה, הָא
נִתְפָּשָׂה – מוֹתֶרֶת. וְיֵשׁ לָךְ אַחֲרָה, שְׂאֵף
עַל פִּי שְׂלֵא נִתְפָּשָׂה מוֹתֶרֶת, וְאִיזוּ זוּ –
שְׂקִידוּשֵׁי קִידוּשֵׁי טְעוּת, שְׂאִפִּילוּ בְּנָה
מִוֶּרְבֵּב עַל כְּתֻפָּה,

The Gemara comments: This statement comes to **exclude** the opinion of this *tanna*, as Rav Yehuda said that Shmuel said in the name of Rabbi Yishmael: The verse states with regard to a woman suspected by her husband of having been unfaithful [*sota*]: “**And she was not seized**” (Numbers 5:13), i.e., she was not raped. That is, she is **forbidden** to her husband since she willingly committed adultery with another man. **Consequently**, a woman who in fact was **seized** is **permitted** to her husband. **And you have another woman who, although she was not seized** but rather engaged in sexual intercourse willingly, is nevertheless **permitted** to her husband and is not considered a *sota*. **And who is this?** This is referring to one **whose betrothal was a mistaken betrothal, as even if her son from this marriage is riding on her shoulders**,

NOTES

It is in this matter that he does not err – **בְּהָא הוּא דְלָא טַעֵי**: The halakhic authorities dispute whether this should be viewed as a special case that is an exception to the rule or as an example of a principle. Some say that the only widely known law is the *halakha* that betrothal is ineffective with an item worth less than the value of a *peruta*.

However, the Rashba and others maintain that this case is cited as an example, and the statement of Rabbi Ami would apply to

any problem with the betrothal that stems from a general *halakha* that is familiar to all. Since it is assumed that he was aware of the error, he must have engaged in sexual intercourse with her for the purpose of betrothal, since a person does not intentionally engage in licentious sexual intercourse. According to this opinion, the only time she requires a bill of divorce as a matter of uncertainty is if he stipulated a condition. Since the condition was his choice, he might err about it.

HALAKHA

She goes to a halakhic authority and he dissolves her vows, etc. – הִלְכָה אֶצְל חָכָם וְהִתְיַרָה וְכוּ: If a man betroths a woman on condition that there are no vows incumbent upon her to fulfill, and she does have vows incumbent upon her but goes to a halakhic authority who dissolves her vows, she is betrothed. This *halakha* applies only if her vows were dissolved before her husband found out about them. If he discovered the vows before the halakhic authority dissolved them, the betrothal is voided. The Rosh and others claim that if she is a woman of importance, then even if her vows were dissolved before the husband's discovery, she is betrothed as a matter of uncertainty (see 75a; Rambam *Sefer Nashim*, *Hilkhot Ishut* 7:8; *Shulḥan Arukh*, *Even HaEzer* 39:2).

She goes... to a doctor and he heals her, etc. – הִלְכָה וְכוּ אֶצְל רוֹפֵא וְיִרְפָּא וְכוּ: If a man betroths a woman on condition that she has no blemishes, but she does have blemishes and goes to a doctor who heals her, she is not betrothed, as stated in the *baraita* (Rambam *Sefer Nashim*, *Hilkhot Ishut* 7:9; *Shulḥan Arukh*, *Even HaEzer* 39:6).

מִמָּאֲתָּהּ וְהוֹלֶכֶת לָהּ.

תָּנוּ רַבֵּנּוּ: הִלְכָה אֶצְל חָכָם וְהִתְיַרָה – מְקוּדָּשֶׁת, אֶצְל רוֹפֵא וְיִרְפָּא אוֹתָהּ – אֵינָהּ מְקוּדָּשֶׁת. מַה בֵּין חָכָם לְרוֹפֵא? חָכָם – עוֹקֵר אֶת הַנְּדָר מֵעִיקְרוֹ, וְרוֹפֵא – אֵינוֹ מְרַפָּא אֶלָּא מִכָּאן וְלִהְבָּא.

וְהִתְנַיָּא: אֶצְל חָכָם וְהִתְיַרָה, אֶצְל רוֹפֵא וְיִרְפָּא אוֹתָהּ – אֵינָהּ מְקוּדָּשֶׁת! אָמַר רַבָּא: לֹא קְשִׁיָּא; הָא – רַבִּי מֵאִיר, הָא – רַבִּי אֶלְעָזָר. הָא – רַבִּי מֵאִיר, דְּאָמַר: אָדָם רוֹצֵה שְׁתַּתְּבּוּזָה אֶשְׁתּוֹ בְּבֵית דִּין, הָא – רַבִּי אֶלְעָזָר, דְּאָמַר: אֵין אָדָם רוֹצֵה שְׁתַּתְּבּוּזָה אֶשְׁתּוֹ בְּבֵית דִּין.

she may refuse her husband and go on her way. According to this opinion, the marriage did not take effect at all, despite the fact that they engaged in sexual intercourse, because the betrothal involved an error.

S The Sages taught: If a man betroths a woman on condition that there are no vows incumbent upon her to fulfill, but there are vows incumbent upon her, and she goes to a halakhic authority and he dissolves her vows,^{HN} she is betrothed. However, if he betroths her on condition that she has no blemishes, but she does have blemishes, and she goes to a doctor and he heals her^H blemishes, she is not betrothed. The Gemara inquires: What is the difference between a halakhic authority and a doctor? The Gemara explains: When a halakhic authority dissolves a vow, he uproots the vow retroactively.^N It is as if she had never vowed at all, and therefore she was in fact not bound by vows at the time of their betrothal. But a doctor only heals from here onward. Since she had blemishes at the time of betrothal, she is in breach of his condition.

The Gemara raises a difficulty: But isn't it taught in a different *baraita* that if she goes to a halakhic authority and he dissolves her vows, or to a doctor and he heals her blemishes, she is not betrothed? Rava said: This is not difficult, for this *baraita* follows the opinion of Rabbi Meir, and that one follows Rabbi Elazar. The Gemara elaborates: This *baraita*, which states that if her vows were dissolved by a halakhic authority she is betrothed, is in accordance with Rabbi Meir, who said that a man is willing for his wife to be degraded by going to court to have her vow dissolved. That *baraita* follows the opinion of Rabbi Elazar, who said that a man is not willing for his wife to be degraded in court. Consequently, even if she went to a halakhic authority and he dissolved her vows, such a solution is unacceptable to her husband, as he did not want her to go to court. Therefore, the betrothal is invalid even after the dissolution of the vow.

NOTES

She goes to a halakhic authority and he dissolves her vows – הִלְכָה אֶצְל חָכָם וְהִתְיַרָה: Rabbi Aharon HaLevi raises the following question: If this is true, then her betrothal can never be definitively voided even if she does not go to a halakhic authority, as at any time she could go to a halakhic authority and retroactively establish her betrothal as valid. Therefore, it is difficult to understand the significance of the mishna's ruling that she is not betrothed. Rabbi Aharon HaLevi finds a partial resolution to this question in the opinion of *Tosafot*, who say that the ruling of the *baraita*, that if she goes to a halakhic authority she is betrothed, is limited to a case where the halakhic authority dissolves her vows before her husband found out about them. But once he knows about them, the betrothal is permanently invalidated. This view is accepted as normative in the *Shulḥan Arukh*. Nevertheless, the difficulty raised by the question remains.

Two other possibilities are suggested by the Rivash and cited in the *Shita Mekubbetzet*: There is no concern that she will have her vow dissolved after remarrying, because of the negative repercussions it would cause for her. Alternatively, the Sages ruled that once a court has allowed her to remarry, the betrothal will no longer be ruled valid retroactively even if she does have her vow dissolved.

This question is also discussed in a slightly different form in the Jerusalem Talmud. Two possibilities are suggested there: First, that if the woman knew that she had a way of dissolving

her vow and failed to do so, she has demonstrated her rejection of the betrothal, which means it is completely invalid. Alternatively, it is possible that there is concern that she might have her vow dissolved in the future. If she then marries someone else in the meantime, there is a danger that her children from the second marriage will be *mamzerim*. Rabbi Aharon HaLevi and his students maintain that in light of this possibility, in practice she may not leave her husband without a bill of divorce, in order to remove this potential stumbling block.

A halakhic authority uproots the vow retroactively, etc. – חָכָם וְכוּ עוֹקֵר אֶת הַנְּדָר מֵעִיקְרוֹ וְכוּ: As explained by the Gemara in tractate *Nedarim*, there is a difference between the nullification of a husband and the dissolution of a vow by a halakhic authority. Only in the latter case is the vow voided retroactively, and it is as though it never existed. It seems that this principle is the basis of the difference in the mishna between a vow and a blemish. In the case of a blemish, the blemish certainly existed at the time of the betrothal, even if it has since fully healed, and therefore the betrothal was invalid. With regard to a vow, however, it is as though there was never any vow at all, as stated above. However, *Tosafot* maintain that the distinction is that in the case of a blemish, a man is sensitive with regard to a woman who originally had such blemishes, even after they have been removed. Consequently, her later cure does not change the way he views her.

מאי היא? דתנן: המוציא את אשתו משום נדר – לא יחזיר, משום שם רע – לא יחזיר.

The Gemara poses a question: **What is this fundamental dispute between Rabbi Meir and Rabbi Elazar?** The Gemara answers: **As we learned in a mishna (Gittin 45b): If a man who divorces his wife due to a vow that she took subsequently regrets his decision and wants to take her back, he may not remarry her.**^N Similarly, if he divorces her **due to a bad reputation**^H she has acquired, **he may not remarry her.** This is because if he were allowed to take her back if the vow is dissolved by a halakhic authority or after discovering that the rumors about her were false, he might say that had he known this he never would have divorced her. Such a statement would retroactively cast doubt on the validity of the bill of divorce and could potentially cause her children from a second marriage to have the status of *mamzerim*. He is therefore informed that if he divorces her due to a vow or a bad reputation he can never remarry her.

רבי יהודה אומר: כל נדר שידעו בו רבים – לא יחזיר, לא ידעו בו רבים – יחזיר. רבי מאיר אומר: כל נדר שצריך תקיפת חכם – לא יחזיר, ושאינו צריך תקיפת חכם – יחזיר.

Rabbi Yehuda says: With regard to **any vow that is known by many people and therefore cannot be nullified, he may not remarry her.** If it is **not known by many people**, but rather is a private matter between them, **he may remarry her.** **Rabbi Meir says: Any vow that requires investigation by a halakhic authority**, that is, the husband cannot nullify it himself and she needs a halakhic authority to analyze the vow carefully to find an opening that will permit its dissolution, **he may not remarry her**, for he can claim that had he known the vow could be dissolved he would never have divorced her, thereby undermining the bill of divorce. **And with regard to a vow that does not require the investigation by a halakhic authority**, which he knows he can nullify himself, **he may remarry her.** There is no concern that he might impair the bill of divorce, as he knew he could dissolve the vow and yet he chose to divorce her regardless.

רבי אלעזר אומר: אחד צריך ואחד אינו צריך – לא יחזיר. אומר רבי אלעזר: לא אסרו צריך אלא מפני שאינו צריך. מאי טעמא דרבי יהודה? דכתביב

Rabbi Elazar says: **Both in the case of a vow that requires investigation by a halakhic authority and one that does not require it, he may not remarry her.** **Rabbi Elazar said in explanation of his view: They prohibited remarrying a woman who was bound by a vow that requires investigation by a halakhic authority only due to a vow that does not require such investigation.** The Gemara explains the respective opinions: **What is the reason for Rabbi Yehuda's statement? As it is written:**

NOTES

Due to a vow he may not remarry her, etc. – משום נדר – The Gemara in tractate *Nedarim* suggests two reasons for this law. One possibility is that there is concern that the vow will be dissolved or the rumor will be proven baseless, which will lead the husband to undermine the bill of divorce by saying that had he known he would not have divorced her. The Rosh and *Tosafot* say that according to this opinion it is prohibited for them to remarry only if his stipulation was formulated as a double condition. Alternatively, it is possible that the Sages enacted this measure to prevent Jewish women from behaving improperly and vowing indiscriminately. They therefore barred them from remarrying their husbands if they were divorced because they engaged in such behavior. The dispute between the *tanna'im* mentioned here is connected to the reason for this ban.

HALAKHA

A man who divorces his wife... due to a bad reputation, etc. – המוציא את אשתו... משום שם רע וכו' – If a man divorces his wife due to her bad reputation or because of vows, he may never remarry her. The Rosh states that this law applies only if he informed her that this was the reason for the divorce and formulated a double condition by adding that were this not the case he would not divorce her. If, however, he did not state a double condition, he is permitted to remarry her. The Ramban, the Rashba, and others maintain that he may not remarry her if he told her why he was giving her a bill of divorce, even without a double condition. The Rambam rules that even if he did not specify the reason for the divorce, he may not remarry her. The basic *halakha* follows the unattributed view in the mishna, not the dissenting opinions (Rambam *Sefer Nashim, Hilkhot Geirushin* 10:12; *Shulhan Arukh, Even HaEzer* 10:3).

HALAKHA

How many people are considered many – כמה רבים – With regard to a vow, three are considered many, in accordance with the opinion of Rav Nahman bar Yitzhak (*Shulhan Arukh, Yoreh De'a* 228:21).

Perek VII
Daf 75 Amud a

“ולא הבוס בני ישראל כי נשבועו להם נשיאי העדה.” וכמה רבים? רב נחמן בר יצחק אומר: שלשה. “ימים” – שנים: “רבים” – שלשה. רבי יצחק אומר: עשרה: “עדה” בתיב בהו.

“And the children of Israel did not smite them, for the princes of the assembly had sworn to them” (Joshua 9:18), and since this oath was uttered in the presence of many people, it could not be rescinded, although it was undertaken in error because the Gibeonites had deceived the people of Israel. The Gemara poses a question: **And how many people are considered many^H for the purposes of this law?** Rav Nahman bar Yitzhak said: **Three**, as can be learned from the laws of a woman who experiences a discharge of uterine blood after her menstrual period [*zava*]: “Days” indicates **two**, which is the minimal number justifying use of the plural noun. The term “many days” (Leviticus 15:25) therefore indicates a total of **three**. **Rabbi Yitzhak said: Ten**, as the term “assembly” is written in relation to the Gibeonites, and it is taught elsewhere that an assembly is comprised of at least ten members.