

This matter that the betrothal of a minor girl – **הָאֵלֶּיךָ מִלְתָּא דְקַטְנָה**: Ravin, son of Rav Nahman, explains the *baraita* differently than does Rav Sheshet. According to Ravin's opinion, the *baraita* does not mean that the betrothal of the minor was of substance at the outset and that it remains suspended until the acquisition takes effect upon her maturity. Rather, the betrothal is provisional upon the occurrence of sexual intercourse after she reaches majority.

הוא עדיף מינאי – Rav Hai Gaon and many of the early commentaries (Ramban; Rosh; Ra'avad) have a slightly different version of the text, according to which this sentence does not constitute the completion of the statement of Ravin, son of Rav Nahman. Rather, it is Rav Sheshet's comment on their exchange. Rav Sheshet says about himself and Ravin, son of Rav Nahman: I have an advantage over him, for I am better versed in *baraitot*, and he has an advantage over me, as he has the ability to ingeniously explain the *baraita* so that it does not contradict Rav's opinion.

HALAKHA

One who betroths a minor who reaches majority – **הַמְקַדֵּשׁ אֶת הַקַּטְנָה וְגָדְלָה** – If one betroths a minor girl who is orphaned of her father, the legal status of this betrothal is defined as uncertain until they have had intercourse after she has reached her majority. During this period, if he wishes to divorce her, she requires a bill of divorce by rabbinic law. If he has not divorced her and she marries another, she requires a bill of divorce from each of the husbands. The first must divorce her but the second may remain married to her if he wishes (Rambam *Sefer Nashim, Hilkhot Geirushin* 11:6; *Shulhan Arukh, Even HaEzer* 155:20–21).

NOTES

But they already disagreed about this once – **הָאֵלֶּיךָ מִלְתָּא דְקַטְנָה**: This question, like the similar question that appears elsewhere in the Gemara: But he already said this once, does not imply that a scholar would never repeat the same thing twice. It means, rather, that if the scholar makes a halakhic statement, there is no reason for him to repeat the same thing in a different form with no original content. Likewise, with respect to a halakhic dispute, there is no reason to differentiate between two topics when the foundation of the dispute is identical (*Tosafot; Tosefot HaRosh*).

HALAKHA

Betrothed a woman on some condition, and married her without mentioning it – **קִידְשָׁהּ עַל תְּנַאי** – If a man betrothed a woman based on a condition, but married her or engaged in sexual intercourse with her without specifying any such condition, she requires a bill of divorce from him in order to be released from the marriage even if the condition was not fulfilled. This is because he retracted the condition when he married her or engaged in intercourse with her. This ruling is in accordance with Rav, whom the *halakha* follows in cases of prohibitions (Rambam *Sefer Nashim, Hilkhot Ishut* 7:23; *Shulhan Arukh, Even HaEzer* 38:35).

אָמַר לִיהָ רַבִּין בְּרִיָּה דְרַב נַחְמָן: הָאֵלֶּיךָ מִלְתָּא דְקַטְנָה מִיְתְּלָא תְּלִיא וְקִימָא: אֵי בְּעַל – אֵין, אֵי לֹא בְּעַל – לֹא. דְאָמְרָה: הוּא עָדִיף מִינְאֵי וְאֵנָּא עָדִיפְנָא מִינְיָה.

Ravin, son of Rav Nahman, said to Rav Sheshet: This matter, that the betrothal of a minor girl^N remains in suspension, should be understood differently. It means that her betrothal is provisional as long as she is still a minor: **If he has sexual intercourse** with her after she reaches majority, **yes**, her betrothal is realized; **if he does not engage in intercourse** with her after she reaches majority, her betrothal is **not** realized. **For she says** to herself: **He has an advantage over me^N** in that he can divorce me, **and I have an advantage over him**, as I can refuse him. Since the marriage of a minor depends upon her ongoing consent, as she can refuse him at any time, it remains provisional until it is consummated when she is an adult.

וְסָבַר רַב: אֵי בְּעַל – אֵין, אֵי לֹא בְּעַל – לֹא? וְהָאֵי אֵיתְמַר, קַטְנָה שְׂלֵא מִיְתְּלָא מִיְתְּלָא וְהַגְדִּילָהּ וְעָמְדָה וְנִשְׂאָתָה, רַב אָמַר: אֵינָּה צְרִיכָה גַּם מִשְׁנֵי וְשִׁמּוּאָל אָמַר: צְרִיכָה גַּם מִשְׁנֵי.

The Gemara asks: **But does Rav truly think that only if he has intercourse with her** after she becomes an adult, then **yes**, her betrothal is realized, **but if he did not engage in intercourse with her**, then **no**, it is not realized? **Wasn't it stated** that with regard to a **minor who had not refused her husband and reached majority, and then went and married another, Rav said: She does not require a bill of divorce from the second man**, as she is fully married to the first and consequently her second marriage is invalid? **And Shmuel said: She does require a bill of divorce from the second man**, as it is uncertain whether her second marriage is valid.^H

Perek XIII

Daf 110 Amud a

מֵאֵי לָאוּ דְלֹא בְּעַל? לֹא, דְּבְּעַל. אֵי דְּבְּעַל מֵאֵי טַעְמָא דְּשִׁמּוּאָל? קָסְבַּר: כֹּל הַבּוֹעֵל עַל דַּעַת קְדוּשִׁין הָרֵאשׁוֹנִים הוּא בּוֹעֵל.

What, is it not a case where he did not have intercourse with her after she reached majority? If so, Rav thinks that even when he did not have intercourse with her, her marriage is fully realized once she reaches majority. The Gemara rejects this: **No**, this is referring to a case where he did have intercourse with her. The Gemara asks: **If it is referring to a case where he had intercourse with her, what is Shmuel's reasoning?** If the first one engaged in intercourse with her after she reached majority, then the marriage was fully realized. Under such circumstances, the second betrothal would not take effect. The Gemara answers: **Shmuel holds that when anyone has sexual intercourse with a woman he married as a minor, his intention is that the intercourse is within the framework established by the initial betrothal and is not a new act of acquisition.**

וְהָאֵלֶּיךָ מִלְתָּא דְקַטְנָה בְּהַתְּנָא זִימְנָא, דְאֵיתְמַר: קִידְשָׁהּ עַל תְּנַאי וְכִנְסָהּ סְתָם, רַב אָמַר: צְרִיכָה הֵימְנוּ גַּם, וְשִׁמּוּאָל אָמַר: אֵינָּה צְרִיכָה הֵימְנוּ גַּם.

The Gemara asks: **But if this is the basis of the dispute, they already disagreed about this once,^N as it was stated** with regard to the following case: A man betrothed a woman on some condition, and married her without mentioning^H the condition, and the condition was not fulfilled. **Rav says: She requires a bill of divorce from him, and Shmuel says: She does not require a bill of divorce from him.**

רַב אָמַר: צְרִיכָה הֵימְנוּ גַּם, כִּיּוֹן דְּנִסְבָּה – אַחֲוָיִי אַחֲוָיִי לְתַנְאִיָּה, וְשִׁמּוּאָל אָמַר: אֵינָּה צְרִיכָה הֵימְנוּ גַּם, כֹּל הַבּוֹעֵל עַל דַּעַת קְדוּשִׁין הָרֵאשׁוֹנִים הוּא בּוֹעֵל!

The Gemara explains: **Rav says she requires a bill of divorce from him, for since he married her, he apparently retracted his condition**, and is therefore married to her even though the condition was not met. **And Shmuel says: She does not require a bill of divorce from him**, because anyone who has sexual intercourse with his wife, his intention is that the intercourse is within the framework established by the initial betrothal and the condition he set at the time of betrothal still stands. Since it was not fulfilled, the marriage is annulled. If so, Rav and Shmuel already disagreed about this same issue.

BACKGROUND

Neresh – נרש: A Babylonian city near the Neresh River, south of Sura. This was an important agricultural and commercial center that was home to a large number of date palm farmers and alcoholic beverage producers. The city's inhabitants were considered uncultured. Nevertheless, it was home to a Jewish community for many generations, producing no small number of Sages. At one point, the prominent sage Rav Pappa was the head of the yeshiva in Neresh.

NOTES

This bride snatcher acted improperly, etc. – הוא עשה כוונתו וכו': Rashi explains that the Sages abrogated his betrothal because they established a general rule that if a man seizes another man's wife, his betrothal does not apply. The Ramban and others questioned Rashi's statement by pointing out cases that appear to be similar, in which the fact that a man took a woman designated for another man does not cause the betrothal to be abrogated, despite the fact that the behavior is despicable. The Ramban offers two explanations as to the Sages saw fit abrogate the betrothal specifically in this case in for two reasons: One, as opposed to other cases, this case appears to be one in which her consent was given under duress and it is only then that the Sages abrogate the betrothal. Two, in this case, she was already betrothed by rabbinic law, the Sages sought to uphold that status.

This works out well if he betrothed her with money – תינתן כסף: The Meiri asks with regard to this case and other cases elsewhere in the Gemara: How is it possible to explain the abrogation of the betrothal when it was accomplished by means of the third available way, betrothal by means of a bill of betrothal? The later commentaries wrote that the very fact that the Sages abrogate the betrothal indicates that they are uprooting the halakhic validity of the act. Although the act is, at face value, an act of betrothal, it negates the instructions of the Sages. Therefore, any means the man uses for betrothal, whether it is intercourse, money, or a bill of betrothal, is devoid of all legal validity.

A minor and a deaf-mute – קטנה וחרשת: Rashi (110b) explains that the reason sexual intercourse or halitza with one of the women does not exempt her rival wife is because it is unclear which of these marriages the husband prefers. The Maharshah writes that there is a more profound reason for this: There is a difference in the nature of the acquisitions performed for the deaf-mute and for the minor. Although they are both valid acquisitions according to rabbinic law, they are of different types and one does not preclude the other from taking place.

HALAKHA

Two orphaned minors who became candidates for levirate marriage – שתי יתומות קטנות שנגלו לייבום: If a man was married to two orphaned minors, whose mother or brothers married them off, and he died, or if he was married to two deaf-mutes and he died, if the yavam has sexual intercourse with one of them, the rival wife is exempted from levirate marriage in accordance with the mishna (Rambam Sefer Nashim, Hilkhot Yibbum 5:23; Shulhan Arukh, Even HaEzer 171:2).

A minor and a deaf-mute – קטנה וחרשת: If a man was married to an orphaned minor and a deaf-mute and died childless, and the yavam has sexual intercourse with one of them, it does not exempt the rival wife from levirate marriage, in accordance with the mishna (Rambam Sefer Nashim, Hilkhot Yibbum 5:24; Shulhan Arukh, Even HaEzer 171:1).

צריכא, דאי איתמר היא – בהיא קאמר רב, משום דאיכא תנאה, וכיון דבעל אחליה לתנאיה, אבל בהא אימא מודה ליה לשמואל ואי איתמר בהא – בהך קאמר שמואל, אבל בהך אימא מודה ליה לרב, צריכא.

ומי אמר רב כי בעל – אין, אי לא בעל – לא? הא היא עובדא דהוה בנרש, ואידידישה בשחיה קטנה, וגדלה, ואותביה אבי בורסייא, ואתא אחרינא וחתפה מיניה, ורב ברונא ורב חננאל תלמידי דרב הוה התם ולא הצריכוה גיטא מבתרא!

אמר רב פפא: בנרש מינסב נסיבי והדר מותבי אבי בורסייא. רב אשי אמר: הוא עשה שלא כהוגן – למיכד עשו בו שלא כהוגן ואפקעניהו רבנן לקידושי מיניה.

אמר ליה רבינא לרב אשי: תינתן דקדיש בכסףא, קדיש בבניאה מאי? שויהו רבנן לבעילתו בעילת זנות. אמר רב יהודה אמר שמואל: הלכה ברבי אליעזר. וכן אמר רבי אליעזר: הלכה ברבי אליעזר.

מתני' מי שהיה נשוי לשתי יתומות קטנות ומת – ביאתה או חליצתה של אחת מהם פוטרת צרתה. וכן שתי חרשות. קטנה וחרשת – אין ביאת אחת מהן פוטרת צרתה.

The Gemara answers: It is necessary to state the dispute in both contexts, for if only that halakha about conditional betrothal was stated, one might think: In this case Rav says she needs a divorce since there is a condition with regard to the betrothal, but when he had intercourse with her, he retracted the condition. But in this case of betrothal to a minor, say that Rav would concede to Shmuel that the intercourse was not performed with the intention of it constituting a full betrothal. And if only this case of betrothal to a minor was stated, one might think: Shmuel said that the marriage is effective in this case of betrothal to a minor, but in that case of a conditional betrothal, say that he would concede to Rav. Therefore, it was necessary to state the dispute explicitly in both instances.

The Gemara asks: And did Rav actually say that when he engaged in sexual intercourse with her, yes, the original marriage is valid, and if he did not have intercourse with her, no, it is not valid? Wasn't there an incident in the city of Neresh⁸ where a woman was betrothed when she was a minor, and she reached majority, and the husband seated her in a bridal chair under the marriage canopy and had not yet had intercourse with her, and another man came and seized her from him and married her? And Rav Bruna and Rav Hananel, the students of Rav, were there and they did not require her to receive a bill of divorce from the latter husband. Presumably, they regarded her as fully married to the first husband, so the marriage to the second marriage never took effect, despite the fact that the first marriage had not yet been consummated.

Rav Pappa said: There is a difference, because in Neresh their practice is to first marry a woman and have intercourse with her, and afterward they seat her in the bridal chair. In this incident, the husband had already had intercourse with her once she was an adult, and that is why Rav's students did not require a bill of divorce from the second man. Rav Ashi says: There was a different reason, even if the practice was not as Rav Pappa describes. This bride snatcher acted improperly.⁹ Consequently, they treated him improperly by annulling the legal validity of his actions, and the Sages abrogated his betrothal.

Ravina said to Rav Ashi: This works out well if the second man betrothed her with money,¹⁰ as then the Sages could declare that money to be ownerless property and void the betrothal. If he betrothed her by means of intercourse, what is the halakha? How can the Sages dissolve the betrothal when the sexual act took place? The Gemara answers: The Sages rendered his sexual act a licentious sexual act, which does not create a bond of betrothal. With regard to the dispute in the mishna, Rav Yehuda said that Shmuel said: The halakha is in accordance with the opinion of Rabbi Eliezer, and the minor is instructed to make a declaration of refusal. Likewise, Rabbi Elazar said: The halakha is in accordance with the opinion of Rabbi Eliezer.

MISHNA If a man was married to two orphaned minors and died,¹¹ consummation of levirate marriage or halitza with one of them exempts her rival wife from either levirate marriage or halitza, rendering her free to remarry. Likewise, if two deaf-mutes were married to one man who died, consummation of levirate marriage or halitza with one of them exempts her rival wife. In both of these cases, both women are married by rabbinic law and consequently become yevamot by rabbinic law. Since their statuses are equal, one can exempt the other. If one wife is a minor and the other is a deaf-mute,¹² consummation of levirate marriage or halitza with one of them does not exempt her rival wife. Although both women are married by rabbinic law, their statuses are not the same and one cannot exempt the other.

A halakhically competent wife and a deaf-mute – תְּחִיבָהּ: If a man was married to one woman who was halakhically competent and to another woman who was a deaf-mute, and he died, if the *yavam* has sexual intercourse with the halakhically competent woman or if she performs *halitza*, the deaf-mute wife is exempt from levirate marriage. However, if he has sexual intercourse with the deaf-mute, it does not exempt the halakhically competent woman; *halitza* performed by the deaf-mute has no effect (Rambam *Sefer Nashim, Hilkhot Yibbum* 5:25; *Shulhan Arukh, Even HaEzer* 171:4).

An adult and a minor – גְּדוּלָה וְקִטְנָה: If a man was married to two women, one an adult and one an orphaned minor, and died, sexual intercourse of the *yavam* with the adult woman, or her performance of *halitza*, exempts the minor. However, sexual intercourse of the *yavam* with the minor does not exempt the adult woman and she must either consummate the levirate marriage or perform *halitza* (Rambam *Sefer Nashim, Hilkhot Yibbum* 5:25; *Shulhan Arukh, Even HaEzer* 171:3).

Halitza performed by a deaf-mute – תְּחִיבָהּ הַתְּחִיבָהּ: *Halitza* performed by a deaf-mute cannot exempt her rival wife. This ruling is in accordance with Rav Giddel and the conclusion of the Gemara that follows (Rambam *Sefer Nashim, Hilkhot Yibbum* 5:23; *Shulhan Arukh, Even HaEzer* 171:2).

פְּקֻחַת וְחִרְשָׁת – בִּיאַת הַפְּקֻחַת
וּפְטוּרַת הַחִרְשָׁת, וְאִין בִּיאַת הַחִרְשָׁת
וּפְטוּרַת אֶת הַפְּקֻחַת. גְּדוּלָה וְקִטְנָה –
בִּיאַת הַגְּדוּלָה פּוֹטֵרַת הַקִּטְנָה, וְאִין
בִּיאַת הַקִּטְנָה פּוֹטֵרַת הַגְּדוּלָה.

If one of them was halakhically competent and one was a deaf-mute,^H consummation of levirate marriage with the halakhically competent wife exempts the deaf-mute, as the halakhically competent women's marriage and levirate marriage are by Torah law. But consummation of levirate marriage with the deaf-mute does not exempt the halakhically competent wife. Likewise, if one was an adult woman and one a minor girl,^H consummation of levirate marriage with the adult exempts the minor but consummation of levirate marriage with the minor does not exempt the adult.

גַּמְ' וְחִרְשָׁת בֵּת חֲלִיצָה הִיא? וְהִתְנַן:
חִרְשׁ שֶׁנִּחְלַץ, וְחִרְשָׁת שֶׁחֲלָצָה,
וְחִלְצָת מִן הַקְּטָן – חֲלִיצָתָהּ פְּסוּלָה!

GEMARA The mishna states that *halitza* by one deaf-mute exempts the other. The Gemara asks: Can a deaf-mute perform *halitza*?^H Didn't we learn in a mishna (104b): If a male deaf-mute performs *halitza*, and if a female deaf-mute performs *halitza*, and if a woman performs *halitza* on a minor boy, her *halitza* is disqualified?

אָמַר רַב גִּידֵל אָמַר רַב: אֲבִיאָהּ. רַבָּא
אָמַר: אֲפִילוּ תִּמְמָא אֲחִילְצָהּ, כָּאִין
בְּחִרְשָׁת מִעִיקָרָא. כָּאִין בְּפְקֻחַת וְאַחַר
כֵּךְ נִתְחַרְשָׁה;

Rav Giddel said that Rav said: The mishna is not referring to a deaf-mute's *halitza*, but rather to consummation of levirate marriage with one of the deaf-mutes. Rava said: You can even say it is referring to *halitza*. Here, the mishna is referring to a woman who was a deaf-mute from the outset, when he married her, and there the mishna that disqualifies the *halitza* is referring to someone who was halakhically competent when she was married and afterward became a deaf-mute.

חִרְשָׁת מִעִיקָרָא, בִּי הִכִּי דְעַל – הִכִּי
נִפְקַד פְּקֻחַת וְאַחַר כֵּךְ נִתְחַרְשָׁה – לֹא,
דְּמַעֲבָבָא בְּהַ קְרִיָּה.

The difference is that a deaf-mute from the outset, just as she entered into marriage with her first husband so she leaves the levirate bond by means of *halitza*. Both her marriage and her status as a *yevama* are by rabbinic law. However, one who was halakhically competent, so that she was married by Torah law, and later became a deaf-mute, no, she cannot be released by *halitza*, since recitation is indispensable for her^N *halitza*, and she cannot recite the text that a *yevama* must recite.

אִיתִיבִיָּה אֲבִינִי: וְחִרְשָׁת מִעִיקָרָא
בֵּת חֲלִיצָה הִיא? וְהִתְנַן שְׁנֵי אֲחִין,
אֶחָד פְּקֻחַת וְאֶחָד חִרְשׁ, נִשְׁוֹאִין לְשִׁמְתִי
נְכָרִיּוֹת, אֶחָת פְּקֻחַת וְאֶחָת חִרְשָׁת.
מִת חִרְשׁ בְּעַל חִרְשָׁת, מִה יַעֲשֶׂה פְּקֻחַת
בְּעַל פְּקֻחַת? כּוֹנֵס, וְאִם רָצָה לְהוֹצִיא
וְיֹצֵא.

Abaye raised an objection to this: And is one who is a deaf-mute from the outset a candidate for *halitza*? Didn't we learn in a mishna (*Yevamot* 112b): Two brothers, one who is halakhically competent and one who is a deaf-mute, are married to two unrelated women, one who is halakhically competent and one deaf-mute. If the male deaf-mute, who is the husband of the female deaf-mute, dies, what should the halakhically competent man, who is the husband of the halakhically competent woman, do? He may consummate the levirate marriage, but there is no option of performing *halitza*. And if he wants to divorce her later, he may divorce her.

מִת פְּקֻחַת בְּעַל פְּקֻחַת, מִה יַעֲשֶׂה
חִרְשׁ בְּעַל חִרְשָׁת? כּוֹנֵס, וְאִינוּ מוֹצֵא
לְעוֹלָם. מֵאִי לֹא – בְּחִרְשָׁת מִעִיקָרָא,
וְקִטְנָה: כּוֹנֵס – אִין,

If the halakhically competent man, husband of the halakhically competent woman, dies, what should the male deaf-mute, who is the husband of the female deaf-mute, do? He may consummate the levirate marriage, but he may never divorce her, as a deaf-mute is not halakhically competent to divorce a woman to whom he is married by Torah law. What, is it not referring to a deaf-mute from the outset? And it is taught: Yes, he may consummate the levirate marriage,

NOTES

Recitation is indispensable for her – דְּמַעֲבָבָא בְּהַ קְרִיָּה: Actually, a simpler argument could have been offered here: Lack of intellectual capacity invalidates the *halitza* of the deaf-mute, as she does not understand what she is doing. The Ritva explains that the lack of intellectual capacity would certainly

preclude the *halitza* of a total deaf-mute, as one who can neither hear nor speak is regarded as halakhically incompetent, but the Gemara preferred to use an argument that has a broader scope. This reason is also relevant to those who can hear but cannot speak.

חולץ - לא! לא. בפקחת ואחר כך נתחרשה.

but no, he may not perform *halitza*. The Gemara rejects this: No, it is referring to a halakhically competent woman who later became a deaf-mute, and *halitza* performed by a deaf-mute does not have the power to undo a levirate bond that is valid by Torah law.

תא שמע: שני אחין פקחין נשואין שתי נכריות, אחת פקחת ואחת חרשה. מת פקח בעל החרשה, מה יעשה פקח בעל פקחת? כונס, ואם רוצה להוציא - יוציא. מת פקח בעל פקחת, מה יעשה פקח בעל חרשה? או חולץ או מייבם.

Come and hear proof from a *baraita*: Two halakhically competent brothers are married to two unrelated women, one who is halakhically competent and one who is a deaf-mute. If the halakhically competent man who is the husband of the female deaf-mute, dies, what should the halakhically competent man who is the husband of the halakhically competent woman do? He consummates the levirate marriage with the deaf-mute, and if he later wishes to divorce her, he may divorce her. But if the halakhically competent man who is the husband of the halakhically competent woman dies, what should the halakhically competent man who is the husband of the female deaf-mute do? He may either perform *halitza* or consummate the levirate marriage.

מאי לאו, מדהוא פקח מעיקרא היא נמי חרשת מעיקרא. וקתני: כונס - אין, חולץ - לא! מידי איריא? הא כדאיתא והא כדאיתא.

What, is it not the case in this *baraita* that since he is halakhically competent from the outset, one may presume that she is a deaf-mute from the outset as well? And it is taught yes, he may consummate the levirate marriage with the *yevama* who is a deaf-mute, but no, he may not perform *halitza* to her, thereby indicating that *halitza* cannot be performed even though as a deaf-mute from the outset, she is a *yevama* by rabbinic law and not by Torah law. The Gemara rejects this: Are the cases comparable? This case is as it is, i.e., the husband is competent throughout, and that case is as it is, i.e., the wife was not a deaf-mute at the outset.

איתיביה: שני אחין, אחד פקח ואחד חרש, נשואין שתי אחיות, אחת פקחת ואחת חרשה. מת חרש בעל חרשה, מה יעשה פקח בעל פקחת - תצא משום אחות אשה.

The Gemara raised an objection to this from a mishna (*Yevamot* 112b): Two brothers, one who is halakhically competent and one who is a deaf-mute, are married to two sisters, one who is halakhically competent and one who is a deaf-mute. If the male deaf-mute who is the husband of the female deaf-mute dies, what shall the halakhically competent man who is the husband of the halakhically competent woman do? The female deaf-mute leaves and is exempt from levirate marriage due to the prohibition against marrying the sister of one's wife.

מת פקח בעל פקחת, מה יעשה חרש בעל חרשת - מוציא את אשתו בגט ואשת אחיו אסורה לעולם!

If the halakhically competent man who is the husband of the halakhically competent woman dies, what should the male deaf-mute who is the husband of the female deaf-mute do? He releases his wife, the female deaf-mute, with a bill of divorce, and his brother's wife is forbidden forever and may never remarry. He cannot remain married because his wife is the sister of his *yevama* by Torah law. He cannot consummate the levirate marriage with her because she is the sister of his ex-wife. Apparently, *halitza* is not an option because he is a deaf-mute, and his *halitza* cannot dissolve a levirate bond that is established by Torah law.

וכי תימא: הקא נמי בפקח ואחר כך נתחרש - מי מצי מפיק? והתנן: נתחרשה - יוציא, נשתטית - לא יוציא, נתחרש הוא או נשתטה - לא יוציא עולמית!

And if you would say: Here, too, it is referring to a man who was halakhically competent and later became a deaf-mute, can such a person divorce his wife? Didn't we learn the following in the mishna (112b): If a halakhically competent man married a halakhically competent woman and she became a deaf-mute, he may divorce her; if she became mentally incompetent, he may not divorce her, because of a rabbinic ordinance to protect her from harm. If he himself became a deaf-mute or became mentally incompetent, he may never divorce her. Since he was competent when he married her, he cannot dissolve a marriage that is by Torah law when he is incompetent.

Was silent – אישתיק – The Gemara does not say who was silent, though it was apparently Rabba, Abaye's teacher to whom he presumably raised the objection. This is supported by the fact that at the end of the discussion, the concluding Gemara identifies Rabba's opinion as that which is refuted. On the other hand, according to the printed text of the Gemara, the original suggestion to distinguish between a woman who was a deaf-mute from the outset and a woman who became a deaf-mute subsequent to her marriage was made by Rava, Abaye's colleague. Though at least some manuscripts support the printed text, it is likely that the original suggestion was made by Rabba rather than Rava. Though these names are spelled slightly differently, they are versions of the same name, and the difference in spelling the names is a way that the Gemara distinguishes between these two famous *amoraim*. This is not the only place in the Gemara where it is unclear whether Abaye is discussing a topic with his teacher or with his colleague.

BACKGROUND

Pumbedita – פומבדיתא: Pumbedita, a city on the Euphrates River northwest of Neharde'a, was an important center of the Babylonian Jewish community for many generations. As early as the Second Temple period, Pumbedita was referred to simply as the Diaspora. After the destruction of Neharde'a, some scholars from its yeshiva relocated to Pumbedita, and Torah study continued there without interruption until the end of the geonic period.

The scholars of Pumbedita were particularly renowned for their acumen. The best-known heads of the Pumbedita yeshiva are its founder, Rav Yehuda, as well as Rabba, Rav Yosef, Abaye, Rav Nahman bar Yitzhak, Rav Zevid, and Rafram bar Pappa. The Pumbedita yeshiva was prominent in the geonic period, as well, often overshadowing the yeshiva in Sura. The last prominent heads of the Pumbedita yeshiva were the renowned *ge'onim* Rav Sherira Gaon and his son, Rav Hai Gaon.

אלא לאו – בחרש מעיקרא, ומדהוה חרש מעיקרא – היא נמי חרשת מעיקרא, ומדאחיות חרשות מעיקרא – נבריות נמי חרשות מעיקרא, ונתנ גבי נבריות: כונס – אין, חולץ – לא! אישתיק.

בי אתא לקמיה דרב יוסף אמר ליה: מאי טעמא תותביה מהא, דיכול לשנויי לך: אחיות – חרשות מעיקרא, נבריות – פקחות ואחר כך נתחרשו.

אלא איבעי לך לאותביה מהא: שני אחין חרשין נשואין שתי אחיות פקחות, או שתי אחיות חרשות, או שתי אחיות אחת פקחת ואחת חרשת; וכן שתי אחיות חרשות נשואות לשני אחין פקחין, או לשני אחין חרשין, או לשני אחין אחד פקח ואחד חרש – הרי אלו פטורות מן החליצה ומן היבוס. ואם היו נבריות – יכנסו, ואם רצו להוציא – יוציאו.

היכי דמי? אילימא בפקחים ולבסוף נתחרשו – מי מציי מפקחי והתנן: נשתטית – לא יוציא, נתחרש הוא או נשתטה – לא יוציא עולמית!

אלא לאו – אחרשין מעיקרא, ומדהוה חרשין מעיקרא – אינהו נמי חרשות מעיקרא, וקתני אם היו נבריות – יכנסו, יכנסו – אין, יחלצו – לא, תיבתא דרבה! תיבתא.

”קטנה וחרשת” וכו' – אמר רב נחמן: אשכחתייה לרב אדא בר אבהו ולרב תנא חתניה, דיתבי וקמקוון אקוונתא בשוקא דפומבדיתא ואמר: הא דתנן קטנה וחרשת אין ביאת אחת מהן פוטרת צרתה – הני מילי דנפלה ליה מאחיו פקח, דלא ידענן אי בקטנה נחא ליה אי בחרשת נחא ליה.

Rather, is it not referring to a male who was deaf-mute from the outset? And since he was a deaf-mute from the outset, she was also a deaf-mute from the outset. And since the sisters in these cases were deaf-mutes from the outset, then the unrelated women were also deaf-mutes from the outset, and we learned in the mishna with regard to the unrelated women that yes, he may consummate the levirate marriage with them, but no, he may not perform *halitza*. When this question was presented to Rabba, he was silent^N and had no response.

When Abaye came before Rav Yosef and told him of the matter, Rav Yosef said to him: What is the reason that you raised an objection to him based on this? For he could teach, i.e., explain to you, as follows: The sisters the mishna referred to were deaf-mutes at the outset, whereas the unrelated women it referred to were halakhically competent women who later became deaf-mutes.

Rather, you should have raised an objection to him from this mishna (112b): In the cases of two deaf-mute brothers married to two halakhically competent sisters or to two deaf-mute sisters or to two sisters, one halakhically competent and one a deaf-mute; and likewise, two deaf-mute sisters married to two halakhically competent brothers or to two deaf-mute brothers or to two brothers, one halakhically competent and one a deaf-mute, all these women are exempt from *halitza* and from levirate marriage in the event of the death of one of the brothers while childless. And if, in these cases, the women were unrelated to one another, the surviving brothers should consummate levirate marriage with them, and if they wish to divorce them subsequently, they may divorce them.

The Gemara clarifies: What are the circumstances? If we say the mishna is referring to men who were halakhically competent and later became deaf-mutes, then in that case can they release them? But didn't we learn in the mishna (112b): If she became mentally incompetent, he may not divorce her; if he became a deaf-mute or mentally incompetent, he may never divorce her?

Rather, is it not referring to men who were deaf-mutes at the outset? And since they were deaf-mutes at the outset, the women were also deaf-mutes at the outset, and it is taught there: If, in these cases, they were unrelated to one another, the surviving brothers should consummate levirate marriage with them. This implies: Yes, they should consummate levirate marriage with them, but no, they should not perform *halitza*. From this conclusion is apparent that a female deaf-mute may not perform *halitza*; the refutation of the opinion of Rabba is a conclusive refutation.

It is taught in the mishna: If one wife is a minor and the other is a deaf-mute, consummation of levirate marriage or *halitza* of the *yavam* with one of them does not exempt her rival wife. Rav Nahman said: I found Rav Adda bar Ahava and Rav Hana his son-in-law sitting and posing challenges [*kamakvu akvata*]^L to one another in the marketplace of Pumbedita,^B and saying as follows: That which we learned in the mishna, that in the case of a minor and a deaf-mute, the consummation of levirate marriage with one of them does not exempt her rival wife, applies when she happened before him for levirate marriage as the widow of his halakhically competent brother. Under such circumstances, we do not know if the minor was preferable to the brother who married her initially, or if the deaf-mute was preferable to him.

LANGUAGE

Posing challenges [*kamakvu akvata*] – קמקוון אקוונתא: The version of the text cited in the *Arukh* reads: *kamakhu akahata*. According to the *Arukh*, this expression is related to the word blunt [*keha*] in Hebrew, as in: “If the iron is blunt [*keha*]” (Ecclesiastes 10:10). In this

context, the Sages are metaphorically making one another blunt by asking each other questions. Rashi explains the phrase to mean convening, or gathering together, as in the verse: “He will gather together [*yikhat*] the people” (Genesis 49:10).

אי בקטנה נחא ליה – דאָתאָ לַכִּלְלָה
 דיעה, אי בחרשת נחא – דגדולה
 היא, ובת ביאה היא. אבל נפלה
 מאחיו חרש – ודאי בחרשת נחא
 ליה, דבת ביאה היא, ובת מיניה
 היא.

The Gemara explains: They wondered if the minor was preferable to him, since she eventually would have come to full intellectual capacity when she reached majority, or if the deaf-mute was preferable, since she is an adult and she is suitable for sexual intercourse. Given the uncertainty, it cannot be determined whose initial marriage was more complete and therefore the levirate marriage of one of them cannot exempt her rival wife. However, if she happened before him for levirate marriage as the widow of his brother who was deaf-mute, certainly the female deaf-mute was preferable to him, as she was suitable for sexual intercourse and was of his kind, and therefore the marriage to her was more complete.

ואמניא להו אנא: אפילו נפלה ליה
 מאחיו חרש – נמי מספקא ליה.

And I, Rav Nahman, said to them: Even if she happened before him as the widow of his brother who was deaf-mute,^H it is still uncertain, because the difference between the marriage of a minor and a deaf-mute in this case is independent of the original husband's preferences. They are different types of relationships.

כיצד תקנתן? אמר רב חסדא אמר
 רב: בונים החרשת ומוציאה בגט,
 וקטנה תמתין עד שתגדיל, ותחלוץ.

The Gemara asks: How can their situation be rectified,^{HN} so that they can remarry? Rav H̄isda said that Rav said: He consummates the levirate marriage with the deaf-mute and then releases her by means of a bill of divorce. He cannot stay married to her because the subsequent *halitza* of the minor will disqualify her as the rival wife of his *yevama* who has performed *halitza* [*halutza*]. The minor must wait until she reaches majority and then perform *halitza*.

אמר רב חסדא: שמוע מינה, קסבר
 רב: חרשת קנויה ומשוויקרת, קטנה –
 קנויה ואינה קנויה, דאי סלקא דעתך
 חרשת קנויה ואינה קנויה, קטנה
 קנויה ומשוויקרת – חרשת אמאי בונים
 ומוציאה בגט?

Rav H̄isda said: Learn from this statement that Rav holds^N that a married deaf-mute is partially acquired,^N and a minor is either acquired or not acquired,^N i.e., there is uncertainty as to whether she was acquired completely or not acquired at all. For if it enters your mind to say the opposite, that the deaf-mute is either acquired or not acquired, while the minor is partially acquired, then with regard to the deaf-mute woman, why should he consummate the levirate marriage and then release her with a bill of divorce?

HALAKHA

Even if she happened before him as the widow of his brother who was deaf-mute – אפילו נפלה ליה מאחיו חרש – If two widows from one household happen before a *yavam* for levirate marriage, and one of them is a minor and one a deaf-mute, the *halitza* of one of them does not exempt the other from requiring *halitza* herself. This is the case regardless of whether the brother who died was himself halakhically competent. This ruling is in accordance with the opinion of Rav Nahman (*Shulhan Arukh, Even HaEzer* 171:1).

with one of the women does not exempt her rival wife from levirate marriage. How can their situation be rectified? The minor is instructed to refuse him, and the *yavam* marries the deaf-mute, whom he may subsequently divorce if he wishes. This ruling is not in accordance with Rav, but with Rabbi Elazar's opinion in the mishna that the minor should be instructed to refuse. The Ra'avad disagrees and rules in accordance with Rav's opinion that the levirate marriage is consummated with the deaf-mute, who subsequently should be divorced, and the minor must wait until she reaches majority and then perform *halitza*. However, most halakhic authorities are of the opinion that the minor should be instructed to refuse (see *Sefer HaZekhut*; Rambam *Sefer Nashim, Hilkhot Yibbum* 5:24; *Shulhan Arukh, Even HaEzer* 171:1).

How can their situation be rectified – כיצד תקנתן – If a man is married to a deaf-mute and an orphaned minor, and he dies without children, and both of the women happen before his brothers for levirate marriage, the act of sexual intercourse

NOTES

How can their situation be rectified – כיצד תקנתן – Most halakhic authorities, including the Rif and Rambam (see HALAKHA), rule against Rav, and follow the opinion of Rabbi Elazar in the following mishna that in such a case the minor should be instructed to refuse, thus annulling her marriage and making it possible for the *yavam* to stay married to the deaf-mute. The Ra'avad disagrees, arguing that Rabbi Elazar's ruling applies only in a case where one of the women is permitted to enter into levirate marriage (see *Yam shel Shlomo*). The Meiri writes that even according to those who apply Rabbi Elazar's ruling to this case and would have the court instruct the minor to refuse, Rav's statement applies when the minor does not wish to refuse or when she has already matured.

a minor could have the same status as either partial marriage or of marriage of uncertain status. They say that Rav H̄isda had a tradition from Rav that one of these is a partial marriage and the other is of uncertain status. The purpose of the Gemara's discussion is to clarify which is which.

Learn from this statement that Rav holds – שמוע מינה קסבר רב: The early commentaries explain why the Gemara does not entertain the possibility that marriage to a deaf-mute and to

Partially acquired – קנויה ומשוויקרת – The Sages did not institute an incomplete acquisition for a female deaf-mute. Rather, since a deaf-mute is not regarded as fully halakhically competent, she cannot grant full consent, and therefore her status as married is inferior to that of a halakhically competent woman (*Hazon Ish*).

She is either acquired or not acquired – קנויה ואינה קנויה: The Rashba explains that the uncertainty is whether the Sages instituted full-fledged betrothal for a minor or whether, given the possibility of refusal, the minor's betrothal should not be regarded as true betrothal (Responsa of the Rashba).