Let her stay with him, as she is permitted whichever way you look at it: If she is acquired, then she is fully acquired; and if she is not acquired at all, then she is merely an unrelated woman. If the marriage to the deceased brother was not a true marriage, there is no reason for her to be forbidden to him.

And if you would say that the same question could be asked if you claim that it is the minor whose acquisition is uncertain: Why should she wait until she reaches majority and performs ḥalitza? Let her stay with him: If she is acquired, then she is fully acquired; and if she is not acquired at all, then she is merely an unrelated woman. However, you cannot say that because, if that is so, how shall the deaf-mute be released? As a deaf-mute, she cannot perform ḥalitza, and he cannot consummate the levirate marriage with her since the minor may be considered to be acquired by him, in which case the deaf-mute would be disqualified as the rival wife of his ḥevama. Rav’s suggestion was meant to find a way for both of them to be able to remarry, and that is only possible if the minor and deaf-mute’s statuses are as Rav Ḥisda argues.

Rav Sheshet said: Indeed, this too stands to reason, i.e., only the way that Rav Ḥisda explained the halakha in accordance with the opinion of Rav is reasonable.

As it is taught in a baraita about the following case: Two brothers
married two orphaned sisters, one of them a minor and one of them a deaf-mute. If the husband of the minor dies and she happens before the husband of the deaf-mute for levirate marriage, the deaf-mute must be released by means of a bill of divorce due to her sister’s levirate bond, and the minor must wait until she reaches majority and perform ḥalitza.

If the deaf-mute’s husband dies, the minor must be released by means of a bill of divorce and the deaf-mute is forbidden forever. He must divorce the minor because of the levirate bond with her sister. He may not consummate the levirate marriage with the deaf-mute because she is his ex-wife’s sister; and he cannot perform ḥalitza with her, because she is not capable of performing ḥalitza. And if he transgresses and consummates the levirate marriage with the deaf-mute, he gives her a bill of divorce afterward, and she is thereby released.

Granted, this argument works if you say that the deaf-mute is partially acquired, and the minor is either acquired or not acquired; it is due to that reason that if he transgresses and consummates the levirate marriage with the deaf-mute, he gives her a bill of divorce and she is released. You would say she is released whichever way you look at it: If the minor is fully acquired by her husband, then the deaf-mute is released due to her status as the sister of his wife, who is a forbidden relative and as such is entirely exempt from levirate marriage. And if the minor is not acquired at all, then he may rightly consummate the levirate marriage and afterward divorce her.

But if you say that the deaf-mute is either acquired or not acquired, i.e., the status of a marriage with a deaf-mute is uncertain, while the minor is partially acquired, then when he transgresses and has intercourse with the deaf-mute, why should he give her a bill of divorce and she thereby be released? It is an invalid sexual act, as the minor is partially acquired, which disqualifies her sister from levirate marriage. And an invalid sexual act does not exempt her, i.e., does not constitute full consummation of the levirate marriage, making it possible for him to divorce her. She still requires ḥalitza, and a deaf-mute cannot perform ḥalitza. Therefore it must be, as Rav Ḥisda suggested, that the deaf-mute is partially acquired while it is uncertain whether the minor is acquired or not.
If a man was married to two minor orphans — and he dies, if his brother consummates levirate marriage with one of the wives and then has intercourse with the other, he is not disqualified from remaining married to the first. The same is true if a different brother has intercourse with the second girl after the first brother already consummated levirate marriage with the first girl. However, the yavam is forbidden to maintain the second girl as his wife. She is instructed to refuse him, and then he may maintain the first girl as his wife. This ruling is in accordance with the Rif and others who are of the opinion that whenever possible, the minor is instructed to refuse her husband, and that when she does refuse him, she does not become disqualified from marrying a priest. If the second girl does not refuse him, he may divorce her as long as she has sufficient intellectual capacity to safeguard her bill of divorce (for a priest, who is not married). If the second girl is not married, as the Sages decreed that she must perform halitza no matter what, as perhaps he may precipitately have intercourse with the deaf-mute first, so that the subsequent intercourse with the minor is considered an invalid sexual act, because he is already partially married to her rival wife. However, since the deaf-mute is only partially acquired, her levirate marriage does not exempt the minor and the minor still must perform halitza.

But if you say it is in accordance with the opinion of Rabbi Nehemya, and also that the status of a deaf-mute’s marriage is uncertain while the status of the minor is that she is partially acquired, there is no explanation why the minor must perform halitza when she reaches majority, as he said that an invalid sexual act exempts her.

Rather, conclude from this reasoning that this baraita is in accordance with the opinion of the Rabbis. The Gemara concludes: Learn from it.

Rav Ashi said: One may learn also from the first clause of the baraita that it is in accordance with the opinion of the Rabbis, as it teaches: If he transgresses and consummates the levirate marriage with the sister, who is a deaf-mute, he gives her a bill of divorce afterward, and she is thereby released. And it does not teach: If he consummates the levirate marriage with the minor, he gives her a bill of divorce and she is released. This is presumably because consummation of levirate marriage with the minor is an invalid sexual act, as her deaf-mute sister is partially married to the yavam. Even if he does engage in intercourse with her, she will still require halitza.

The Gemara rejects this argument: If it is due to that reason, there is no conclusive argument, as one may say that for the deaf-mute, whose situation has no rectification that is permitted, because she cannot perform halitza, the baraita teaches a prohibited rectification; but for the minor, whose situation has a permitted rectification, in that she can perform halitza after she reaches majority, the baraita does not teach a prohibited rectification.

The Gemara rejects the conclusion that the baraita provides evidence for Rav Hida’s explanation, as it is possible to say: In accordance with whose opinion is this baraita? It is in accordance with the opinion of Rabbi Nehemya, who said: An invalid sexual act also exempts a woman from halitza.

Grant, this halakha makes sense if you say that a deaf-mute is partially acquired, meaning that she was never fully acquired in the first place; that a minor is either acquired or not acquired; and that the baraita is in accordance with the opinion of the Rabbis who state that an invalid sexual act does not exempt a woman from halitza. For these reasons, the minor must wait until she reaches majority and then perform halitza. The Sages decreed that she must perform halitza no matter what, as perhaps he may precipitately have intercourse with the deaf-mute first, so that the subsequent intercourse with the minor is considered an invalid sexual act, because he is already partially married to her rival wife. However, since the deaf-mute is only partially acquired, her levirate marriage does not exempt the minor and the minor still must perform halitza.

MISHNA If a man was married to two minor orphans and he died, and a yavam engaged in intercourse with the first of them to consummate the levirate marriage, and then engaged in intercourse with the second, or if his brother who is also their yavam engaged in intercourse with the second,
The fact that he did not make such an argument supports Rashi's reads: He does not disqualify the minor, and most halakhic authorities ruled accordingly. Some early authorities question the validity of the version that reads that the minor is not disqualified. If that were the case, the mishna would serve as conclusive evidence for Rav Hida’s claim that the status of a minor’s acquisition is uncertain, while a deaf-mute’s acquisition is partial. The fact that he did not make such an argument supports Rashi’s version that the minor in this case is in fact disqualified, though her disqualification is not based on Torah law. Rather, it is a decree of the Sages lest it be confused with a case where he consummated the levirate marriage with the deaf-mute first. It is possible that the Rambam, who had the version reading: He does not disqualify the minor, consciously avoided this difficulty. He does not explain the fact that the minor is not disqualified as deriving from the uncertain status of her acquisition. Rather, he states that it is a result of the fact that she will eventually become an adult and will then be fully married. As such, her marriage cannot be disrupted by the fact that the yavam has engaged in intercourse with her deaf-mute rival wife.

Likewise, if the two wives were two female deaf-mutes – the first wife may remain married to the yavam. Intercourse with the second wife, though prohibited, has no effect. If the marriage was of uncertain status, then either the levirate marriage was concluded when he engaged in intercourse with the first, or neither wife was really married to the first husband, and they are therefore not rival wives. If the initial marriage was partial, then since both wives have the same standing, the levirate marriage with the first wife fully realizes whatever degree of levirate marriage is available.

If one was a minor and the other a deaf-mute, and the yavam engaged in intercourse with the minor and then engaged in intercourse with the deaf-mute, or if his brother engaged in intercourse with the deaf-mute, then the yavam or his brother disqualified the minor from staying married due to the Sages’ decree, lest it be confused with a situation where the intercourse with the deaf-mute was first.

If one widow was halakhically competent and one widow was a deaf-mute, and the yavam engaged in intercourse with the halakhically competent woman and then engaged in intercourse with the deaf-mute, or if his brother then engaged in intercourse with the deaf-mute, the yavam or his brother did not disqualify the halakhically competent woman from staying married. Since the yavam consummated the levirate marriage with her first, the levirate bond was entirely dissolved and the intercourse with the deaf-mute, though forbidden, had no effect.

If the yavam engaged in intercourse with the deaf-mute and then engaged in intercourse with the halakhically competent woman, or if his brother engaged in intercourse with the halakhically competent woman, the yavam or his brother disqualified the deaf-mute from staying married. Consummation of the levirate marriage with the deaf-mute creates only a partial acquisition that does not fully dissolve the levirate bond.

He disqualified the minor – the minhag is that in this case the yavam or his brother did not disqualify the first girl from staying married to him, as her levirate marriage was consummated. Likewise, if the two wives were two female deaf-mutes, the first wife may remain married to the yavam. Intercourse with the second wife, though prohibited, has no effect. If the marriage was of uncertain status, then either the levirate marriage was concluded when he engaged in intercourse with the first, or neither wife was really married to the first husband, and they are therefore not rival wives. If the initial marriage was partial, then since both wives have the same standing, the levirate marriage with the first wife fully realizes whatever degree of levirate marriage is available.
An adult and a minor – יוסי ויהודה. If the deceased brother had two wives, one an adult and one a minor, and the yavam engaged in intercourse with the adult, and then either he or his brother engaged in intercourse with the minor, he did not disqualified the adult from staying married, and the minor is instructed to refuse him. If he engaged in intercourse with the minor first, then afterward engaged in intercourse with the adult, the minor is instructed to refuse him and he maintains the adult as his wife. This ruling is in accordance with the opinion of Rabbi Elazar, whom the halakha follows (Rambam Sefer Nashim, Hilkhot Yibbum 5:30, Shulhan Arukh, Even HaEzer 171:10).

If a minor yavam engaged in sexual intercourse with a minor yavam – רבי אלעזר. A minor yavam who has relations with his minor yavam, they should grow up together. He cannot divorce her while he is a minor, in accordance with the mishna (Rambam Sefer Nashim, Hilkhot Yibbum 11:6, 18, Shulhan Arukh, Even HaEzer 167:3).

If the deceased brother had two wives, an adult and a minor,1 and the yavam engaged in sexual intercourse with the adult, then engaged in intercourse with the minor, or if his brother engaged in intercourse with the minor, the yavam or his brother did not disqualify the adult from staying married, as the consumption of the levirate marriage with the adult completely dissolves the levirate bond. If the yavam engaged in intercourse with the minor, and then engaged in intercourse with the adult, or if his brother engaged in intercourse with the adult, the yavam or his brother disqualified the minor from staying married. Rabbi Elazar says: The court instructs the minor to refuse him2 thereby annulling her marriage retroactively, and then the minor is permitted to marry any man.

GEMARA Ray Yehuda said that Shmuel said: The halakha is in accordance with the opinion of Rabbi Elazar, and likewise the amorav Rabbi Elazar ben Pedat said: The halakha is in accordance with the opinion of Rabbi Elazar ben Shammaia, the tanna in the mishna.

The Gemara says: It is necessary to rule that the minor is instructed to refuse, thus annulling her original marriage, both in this case and in the earlier case (Yevamot 109a) of an adult woman who becomes the yavam of her husband’s brother who is married to her minor sister. For if this halakhic ruling was stated only in that earlier case, I would have said: It was in that case that Shmuel stated the halakha is in accordance with the opinion of Rabbi Eliezer, due to the fact that the yavam did not fulfill the mitzva of levirate marriage with the adult. In order for him to be permitted to do so, the Sages rule that the minor should be instructed to refuse him. But for this case, where the mitzva of levirate marriage is fulfilled, say that they must both be released with a bill of divorce.

And conversely, if the tanna teaches us the ruling only in this case, one would think: It is because the adult happened before him for levirate marriage, and since both the adult and the minor are equally candidates for levirate marriage, it makes sense to encourage the minor to refuse; however, in the other mishna, where the minor is already married to the yavam, making the adult yavam his wife’s sister who is forbidden to him, she should not be encouraged to refuse. Therefore, it was necessary to state, also in this case, that she is nevertheless encouraged to refuse.

MISHNA If a minor yavam3 engaged in sexual intercourse with a minor yavam,4 they should grow up together,5 living as a married couple. He may not divorce her, as he is a minor. If he engaged in sexual intercourse with an adult yavam, she should raise him, i.e., they must stay married, as there is no way for him to divorce her until he reaches majority.

NOTES

1 Some early commentaries have a text that reads: In all these cases, the minor is instructed to refuse. If the instruction to refuse applies to all of the cases in the mishna that involve a minor girl, it is clear that the tanna holds that the minor’s refusal dissolves her original marriage to the dead brother, thereby nullifying the levirate bond retroactively. According to the opinion in the Gemara that refusal to a yavam only dissolves levirate betrothal and the levirate bond remains, the instruction to perform refusal refers only to the cases where the other wife is halakhically competent. When the Ramban (Hilkhot Yevamot 5:2) rules that refusal does not wholly erase the levirate bond and he does not accept the version of the text that says: In all these cases, for an additional reason, in accordance with the principle that one should avoid refusal, refusal is permitted only in cases where it allows the other wife to stay married to the yavam. Therefore, in the case of the minor and the deaf-mute, she is not instructed to refuse.

2 A minor yavam – יוסי ויהודה. The minor yavam referred to here is necessarily older than nine years and one day, because otherwise his sexual act is of no legal significance. The minor yavam referred to here is necessarily older than three years and one day for the same reason (Tosefta Had MiKamalah).

3 According to the Ramban, the meaning of the ruling that they should grow up together is that they remain yavam and yevamah and are not fully married until they reach majority and consummate the marriage. He asks: Why shouldn’t their consummation as minors effectively render them fully married and dissolve the levirate bond? Since levirate marriage does not require consent either of the yavam or of the yevamah, a case where a yavam was forced to engage in intercourse with his yevamah against her will is still considered a valid consummation of levirate marriage. How is that different than intercourse engaged in by minors, who do not have the power of consent as a matter of halakha? He explains that intercourse under threat of force, though not a matter of consent, is nevertheless intentional, in the sense that he is performing an action. Intercourse engaged in by minors is not considered by the halakha to be an intentional action at all and as such does not constitute consummation of levirate marriage.

4 They should grow up together – יוסי ויהודה. The Rif states that the duration of time this halakha is observed is not necessarily until they are both adults. Rather, it applies until the male is a full adult, so that he is capable of giving her a bill of divorce, while the female may still be a minor who is merely capable of safeguarding her bill of divorce.
A yevama who said: I have not engaged in sexual intercourse with him — the court asks him to perform halitza with her.

In this case, a yevama entered into levirate marriage and her husband gave her a bill of divorce. She says that he did not have sexual relations with her; while he claims that he did have relations with her. In this situation, he is forced to perform halitza, if the claim was made within thirty days of entering into the marriage. However, if more than thirty days passed since the beginning of the marriage, he is asked to perform halitza.

The court asks him to perform halitza with her — as if heREF: the mishna is not in accordance with the opinion of Rabbi Meir. When Rabbi Meir said that minors may not enter into levirate marriage, he was referring to an adult yevama with a minor yevamah or a minor yevama with an adult yevamah. This is because for one of them it would be a forbidden sexual act, due to the uncertainty of the minor’s status. Since the minor may turn out to be permanently sexually underdeveloped, the adult is forbidden from having intercourse with him or her. But in the case of a minor yevamah who has sexual intercourse with a minor yevama, where they are both similar to one another, as neither of them is obligated to perform mitzvot, Rabbi Meir did not state that it is forbidden for them to perform levirate marriage.

The Gemara asks: But it is taught in the mishna: If he, i.e., the minor yevamah, engaged in sexual intercourse with an adult yevama, she should raise him, which contradicts the explanation of Rabbi Meir’s opinion above. Rabbi Ḥanina Hoz’a says: It is different once he engaged in intercourse with her. Although at the outset Rabbi Meir prohibits consummation of the levirate marriage, once it has already taken place, it is preferable that she raise him. The Gemara asks: But it says that she should raise him, indicating that they are meant to live as a married couple, even though each and every sexual act is forbidden according to Rabbi Meir. Rather, it is clear that the mishna is not in accordance with the opinion of Rabbi Meir.
The verse here reads: To establish a name for his brother, etc. — Rabbeinu Hananel understands the Gemara here as offering support for Rabbi Meir’s opinion that a minor should not be a candidate for levirate marriage. The Rashba explains that this passage could not be relating to Rabbi Meir’s opinion as Rabbi Meir holds that a minor cannot perform levirate marriage for a different reason. It is not because he is presently unable to produce offspring but because there is a risk that either the yavam or the yeveva will turn out to be sexually underdeveloped and as such unfit for levirate marriage. The Rashba explains that this passage relates to the Rabbis’ opinion, which does not disqualify the minor’s levirate marriage. The Gemara asks why this levirate marriage should be considered valid, and Abaye and Rava offer explanations.

Her brother-in-law...to include anyone – To include anyone is a risk that either the yavam or the yeveva will turn out to be sexually underdeveloped and as such unfit for levirate marriage. The Rashba explains that this passage relates to the Rabbis’ opinion, which does not disqualify the minor’s levirate marriage. The Gemara asks why this levirate marriage should be considered valid, and Abaye and Rava offer explanations.

The Gemara asks: How can the minor enter into levirate marriage? The verse here reads: And if the man does not wish to take his yeveva, his yeveva shall ascend to the gate to the Elders and say: My brother-in-law refused to establish a name for his brother in Israel; he did not wish to consummate the levirate marriage” (Deuteronomy 25:7), and this minor is incapable of doing so, as he cannot sire children. Abaye said that the verse states: “Her brother-in-law will have intercourse with her and take her to him to be his wife and consummate the levirate marriage” (Deuteronomy 25:5), to include anyone, even someone who cannot sire children.

Rava said: Even without this interpretation you still could not say that it is prohibited for a minor to enter into levirate marriage. Is there a case of levirate marriage where she is forbidden to him now, and after some time she becomes permitted? Didn’t Rav Yehuda say that Rav said: Any yeveva to whom I cannot apply the verse “Her brother-in-law will have intercourse with her” (Deuteronomy 25:5) at the time she happens before him for levirate marriage, is considered as if she were the wife of a brother who has children, who is exempt from levirate marriage, and she is consequently forbidden to him forever? It must be the case that minors can perform levirate marriage. If it was forbidden, then they would be exempt from levirate marriage even after reaching the age of majority.

The Gemara asks: And say, indeed, a minor should be exempt from levirate marriage, and consequently forbidden from ever marrying his brother’s wife. The Gemara answers: The verse states: “If brothers dwell together” (Deuteronomy 25:5), indicating that this rule applies to all brothers who are alive simultaneously, even if the brother was only one day old.

The mishna states: When a yeveva said within thirty days of her marriage: I have not engaged in sexual intercourse with him, the court forces him to perform halitza with her. The Gemara asks: Who is the tanna who taught that for up to thirty days a person can be presumed to restrain himself and resist engaging in sexual intercourse with a woman who lives with him?

Rabbi Yoḥanan said: It is the opinion of Rabbi Meir, as it is taught in a baraita: A man may come to court to make a claim concerning virginity, i.e., that the woman he married was not a virgin, for thirty days after the marriage ceremony. Assuming that he makes the claim immediately following their first sexual act, his claim is credible if he makes it within the first thirty days; this is the statement of Rabbi Meir.

Rabbi Yosei says: If she was secluded with him after the wedding in a place suitable for sexual intercourse, a claim concerning virginity is only credible immediately. But if she was not secluded with him, they presumably did not engage in intercourse, and such a claim is credible even several years later.

Rabba said: You can even say that the mishna is in accordance with the opinion of Rabbi Yosei. Rabbi Yosei states his opinion there only with regard to a virginity claim about one’s betrothed, to whom he is accustomed, and therefore less inhibited, but with regard to his brother’s wife, i.e., a widow,

Until what point may a man make a claim concerning virginity? When a man claims that he had sexual relations with his wife and discovered that she was not a virgin, if it is a case where she was secluded with him, he may only make this claim immediately, i.e., on the following day. However, if she was not secluded with him, he may make the claim even after thirty days have passed, in accordance with the opinion of Rabbi Yosei, whom the halakha follows instead of Rabbi Meir (Rambam Sefer Nashim, Hilkhot Ishut 11:15; Shulhan Arukh, Even HaEzer 68:10).