

תיתב גביה ממה נפשך: אי קנויה היא – הא קנויה היא, ואי לאו קנויה היא – הא נכרית בעלמא היא.

וכי תימא: קטנה אמאי תמתין עד שתגדיל ותחלוץ? תיתב גביה, אי קנויה היא – הא קנויה היא, אי לאו קנויה היא – נכריתא בעלמא היא! אם כן, חרשת במה תפוק?

אמר רב ששת: הכי נמי מסתברא כדקא מתרץ רב חסדא אליבא דרב.

דתנא: שני אחין נשואין שתי אחיות ותמות, קטנה וחרשת. מת בעלה של קטנה – חרשת יוצאה בגט, וקטנה תמתין עד שתגדיל, ותחלוץ.

מת בעלה של חרשת – קטנה יוצאה בגט, וחרשת אסורה לעולם. ואם בא על החרשת – נותן לה גט והותרה.

אי אמרת בשלמא חרשת קנויה ומשויירת, קטנה קנויה ואינה קנויה – משום הכי דכי בא על החרשת נותן לה גט והותרה, דאמרת: ממה נפשך: אי קטנה קנויה היא – הא נפקא משום אחות אשה, אי לאו קנויה – שפיר מיבם.

אלא אי אמרת חרשת קנויה ואינה קנויה, קטנה קנויה ומשויירת – כי בא על חרשת אמאי נותן גט והותרה? הויה ליה ביאה פסולה, וביאה פסולה לא פטרה!

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 *halitza*? 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 *halitza*, 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 *yevama*. 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 Hisda argues.

Rav Sheshet said: Indeed, this too stands to reason, i.e., only the way that Rav Hisda 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<sup>N</sup> 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 *halitza*.**

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 *halitza* with her, because she is not capable of performing *halitza*. **And if he transgresses and consummates the levirate marriage with the deaf-mute,<sup>N</sup> 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 *halitza*, and a deaf-mute cannot perform *halitza*. Therefore it must be, as Rav Hisda suggested, that the deaf-mute is partially acquired while it is uncertain whether the minor is acquired or not.

## NOTES

דתינא שני אחין – וזכר: This *baraita* is cited in the Jerusalem Talmud, in the name of Rabbi Hiyya. Rav's opinion is in accordance with that of his teacher and uncle Rabbi Hiyya, from whom he presumably learned this *halakha*.

He transgresses and consummates the levirate marriage with the deaf-mute, etc. – ואם בא על: The Ritva points out that the first two sections of the *baraita* do not help to establish which of the women has the status of being partially acquired, and which has the status of uncertain acquisition. Even if their statuses were reversed, and the minor's was that of partially acquired and the deaf-mute's that of uncertain acquisition, the *halakha* would be the same: Neither woman exempts the other because of the discrepancy in their statuses, and the deaf-mute cannot perform *halitza*.

הָיָה – If a man was married to two minor orphans – נָשׂוּי לְשְׁתֵּי יְתוּמוֹת קִטְנוֹת: 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 (*Perisha*; Rambam *Sefer Nashim*, *Hilkhot Yibbum* 5:26; *Shulhan Arukh*, *Even HaEzer* 171:5).

הָא מְנִי רַבִּי נַחֲמִיָּה הֵיא, דְּאָמַר: בִּיאָה פְּסוּלָה פּוֹטְרַת מִחֻלוּץ.

אִי רַבִּי נַחֲמִיָּה – אִימָא סִיפָא: מִי שְׁהִיָּה נָשׂוּי שְׁתֵּי יְתוּמוֹת, קִטְנָה וְחֶרֶשֶׁת, וּמֵת. בָּא יָבֵם עַל הַקִּטְנָה וְחֹזֵר וּבָא עַל הַחֶרֶשֶׁת, אוֹ שָׁבָא אַחֲרָיו עַל הַחֶרֶשֶׁת – נֶאֱסָרוּ שְׁתֵּיהֶן עָלָיו. כִּי צִדְדֵי תַקְנָתָן? חֶרֶשֶׁת יוֹצֵאת בְּגֵט, וְקִטְנָה תִּמְתֵּין עַד שְׁתַּגְדִּיל וְתַחֲלוּץ.

אִי אָמַרְתָּ בְּשׁוּלְמָא חֶרֶשֶׁת קִטְנָה וּמְשׁוּיָרָת, קִטְנָה קִטְנָה וְאִינָה קִטְנָה, וְרַבֵּנָן הֵיא, מְשׁוּם הָכִי תִּמְתֵּין עַד שְׁתַּגְדִּיל וְתַחֲלוּץ. דְּדִלְמָא קָדִים וּבְעֵיל חֶרֶשֶׁת בְּרִישָׁא, וְהָיָא לִיה בִּיאָה דְּקִטְנָה בִּיאָה פְּסוּלָה.

אֵלָא אִי אָמַרְתָּ: רַבִּי נַחֲמִיָּה – הָא אָמַר: בִּיאָה פְּסוּלָה פְּטָרָה.

אֵלָא, שְׂמַע מִינָה רַבֵּנָן הֵיא, שְׂמַע מִינָה.

אָמַר רַב אֲשִׁי: מִרִישָׁא נְמִי שְׂמַע מִינָה דְּרַבֵּנָן הֵיא, דְּקָתְנִי: אִם בָּא עַל הַחֶרֶשֶׁת נוֹתֵן לָהּ גֵּט וְהוֹתְרָה, וְלֹא קָתְנִי: אִם בָּא עַל הַקִּטְנָה נוֹתֵן לָהּ גֵּט וְהוֹתְרָה!

אִי מְשׁוּם הָא לָא אִירִיא: חֶרֶשֶׁת, דְּלִית לָהּ תַקְנָתָא דְּהִיתְרָא, קָתְנִי תַקְנָתָא דְּאִיסוּרָא. קִטְנָה דְּאִית לָהּ תַקְנָתָא דְּהִיתְרָא – לָא תִּנִּי תַקְנָתָא דְּאִיסוּרָא.

מִתַּנִּי מִי שְׁהִיָּה נָשׂוּי לְשְׁתֵּי יְתוּמוֹת קִטְנוֹת, וּמֵת, וּבָא יָבֵם עַל הָרֵאשׁוֹנָה, וְחֹזֵר וּבָא עַל הַשְּׁנִיָּה, אוֹ שָׁבָא אַחֲרָיו עַל הַשְּׁנִיָּה.

The Gemara rejects the conclusion that the *baraita* provides evidence for Rav Hīsa'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 Neḥemya, who said: An invalid sexual act also exempts a woman from *ḥalitza*.

The Gemara asks: If one accepts the suggestion that this *baraita* is in accordance with the opinion of Rabbi Neḥemya, say the latter clause of this same *baraita*: Consider the case of one who was married to two orphans, a minor and a deaf-mute, and he died. If the *yavam* had intercourse with the minor and then had intercourse with the deaf-mute, or if one of his brothers had intercourse with the deaf-mute after the first brother engaged in intercourse with the minor, they are both forbidden to the first brother. How can their situation be rectified? The deaf-mute must be released with a bill of divorce, and the minor must wait until she reaches majority and then perform *ḥalitza*.

Granted, 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 *ḥalitza*. For these reasons, the minor must wait until she reaches majority and then perform *ḥalitza*. The Sages decreed that she must perform *ḥalitza* 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 *ḥalitza*.

But if you say it is in accordance with the opinion of Rabbi Neḥemya, 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 *ḥalitza* 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 *ḥalitza*.

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 *ḥalitza*, the *baraita* teaches a prohibited rectification; but for the minor, whose situation has a permitted rectification, in that she can perform *ḥalitza* after she reaches majority, the *baraita* does not teach a prohibited rectification.

**MISHNA** If a man was married to two minor orphans<sup>H</sup> 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,

לֹא פָסַל אֶת הָרְאוּשׁוֹנָה. וְכֵן שְׁתֵּי חֲרֻשׁוֹת.

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**,<sup>h</sup> 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.

קִטְנָה וְחֲרֻשָׁת: בְּאֵי יָבָם עַל הַקְטָנָה, וְחִזּוֹר וּבָא עַל הַחֲרֻשָׁת, אוֹ שָׂבָא אָחִיו עַל הַחֲרֻשָׁת – פָּסַל אֶת הַקְטָנָה;

If one wife was a **minor and the other a deaf-mute**,<sup>h</sup> 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**<sup>n</sup> from staying married due to the Sages' decree, lest it be confused with a situation where the intercourse with the deaf-mute was first.

בְּאֵי יָבָם עַל הַחֲרֻשָׁת, וְחִזּוֹר וּבָא עַל הַקְטָנָה, אוֹ שָׂבָא אָחִיו עַל הַקְטָנָה – פָּסַל אֶת הַחֲרֻשָׁת.

If the *yavam* engaged in intercourse with the deaf-mute<sup>h</sup> and then engaged in intercourse with the minor, or if his brother engaged in intercourse with the minor, then the *yavam* or his brother **disqualified the deaf-mute** from staying married. The marriage to the deaf-mute creates a partial acquisition that does not exempt the second wife from levirate marriage, as she, as a minor, has a different standing. Accordingly, intercourse with the second wife also creates a partial acquisition and thereby both women are prohibited to the *yavam*, as it is prohibited to consummate levirate marriage with more than one wife.

פְּקֻחַת וְחֲרֻשָׁת: בְּאֵי יָבָם עַל הַפְּקֻחַת, וְחִזּוֹר וּבָא עַל הַחֲרֻשָׁת, אוֹ שָׂבָא אָחִיו עַל הַחֲרֻשָׁת – לֹא פָסַל אֶת הַפְּקֻחַת;

If one widow was halakhically **competent** and one widow was a **deaf-mute**,<sup>h</sup> and the *yavam* engaged in intercourse with the halakhically **competent woman** and 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.

בְּאֵי יָבָם עַל הַחֲרֻשָׁת, וְחִזּוֹר וּבָא עַל הַפְּקֻחַת, אוֹ שָׂבָא אָחִיו עַל הַפְּקֻחַת – פָּסַל אֶת הַחֲרֻשָׁת.

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.

## HALAKHA

**Likewise, if the two wives were two female deaf-mutes – וְכֵן שְׁתֵּי חֲרֻשׁוֹת:** In this case, a man is married to two deaf-mutes and dies without children. The *yavam* engages in sexual intercourse with one of the deaf-mute widows, and then either he or his brother engages in intercourse with the other deaf-mute widow. The second sexual act does not disqualify the first deaf-mute widow from remaining married to him. The second woman is forbidden to him, and he releases her with a bill of divorce (*Shulḥan Arukh, Even HaEzer* 171:6).

**A minor and a deaf-mute – קִטְנָה וְחֲרֻשָׁת:** If a man is married to a minor and a deaf-mute and he dies, and the *yavam* engages in sexual intercourse with the minor, and then he or his brother engages in intercourse with the deaf-mute, the minor does not become disqualified from remaining married to the *yavam*. He maintains the minor as his wife and releases the deaf-mute with a bill of divorce. This ruling is in accordance with the Rif and the Rambam's version of the mishna. However, the Ra'avad, who has the same version as Rashi, disagrees (*Rambam Sefer Nashim, Hilkhot Yibbum* 5:27; *Shulḥan Arukh, Even HaEzer* 171:7).

**If the yavam engaged in intercourse with the deaf-mute – בְּאֵי יָבָם עַל הַחֲרֻשָׁת:** In this case, a *yavam* engaged in intercourse with the deaf-mute first. Afterward, either he or his brother engaged in intercourse with the minor. The deaf-mute is consequently disqualified from remaining married to the *yavam* by this second sexual act. The minor is instructed to refuse the *yavam* and the deaf-mute requires a divorce. The Ra'avad and the Rashba disagree with this opinion in different ways: According to the Ra'avad, he stays married to the minor and divorces the deaf-mute, whereas according to the Rashba, the minor should refuse him and he should maintain the deaf-mute as his wife (*Rambam Sefer Nashim, Hilkhot Yibbum* 5:28; *Shulḥan Arukh, Even HaEzer* 171:8).

**A halakhically competent woman and a deaf-mute – פְּקֻחַת וְחֲרֻשָׁת:** In this case, the deceased brother had two wives, one who was halakhically competent and one who was a deaf-mute. The *yavam* engaged in intercourse with the halakhically competent woman, and then either he or his brother engaged in intercourse with the deaf-mute. In this situation, the halakhically competent woman is not disqualified from remaining married, and the deaf-mute requires a bill of divorce from him. However, if he first engaged in intercourse with the deaf-mute and subsequently engaged in intercourse with the halakhically competent woman, then both are disqualified from remaining married. The deaf-mute requires a bill of divorce, and the halakhically competent woman requires both a bill of divorce and *ḥalitza* (*Rambam Sefer Nashim, Hilkhot Yibbum* 5:29; *Shulḥan Arukh, Even HaEzer* 171:9).

## NOTES

**He disqualified the minor – פָּסַל אֶת הַקְטָנָה:** Many of the early commentaries (Rif; Rambam) have a version of the text that 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 Hisda'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.

**An adult and a minor – גדולה וקטנה** – 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 disqualify 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* in the Gemara 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 *yevama* – יבם קטן שפא על יבמה קטנה** – If a minor *yavam* had relations with his minor *yevama*, they should grow up together. He cannot divorce her while he is a minor, in accordance with the mishna (Rambam *Sefer Nashim, Hilkhot Yibbum* 1:16, 18; *Shulhan Arukh, Even HaEzer* 167:5).

גדולה וקטנה, בא יבם על הגדולה, וחזר ובא על הקטנה, או שפא אחיו על הקטנה – לא פסל את הגדולה; בא יבם על הקטנה, וחזר ובא על הגדולה, או שפא אחיו על הגדולה – פסל את הקטנה. רבי אלעזר אומר: מלמדין הקטנה שתמאן בו.

**גמ' אומר רב יהודה אמר שמואל: הלכה ברבי אלעזר. וכן אמר רבי אלעזר: הלכה ברבי אלעזר.**

וצריכא: דאי איתמר בהא קמייתא – בהך קאמר שמואל הלכה ברבי אלעזר, משום דלא קיים מצות ייבום. אבל בהא, דאי קיים מצות ייבום – אימא תרוייהו לפקו ביגט.

ואי אשמעינן בהא – משום דגדולה רמא קמיה, אבל איך לא צריכא.

**מתני' יבם קטן שפא על יבמה קטנה – יגדלו זה עם זה; בא על יבמה גדולה – תגדלנו.**

If the deceased brother had two wives, an adult and a minor,<sup>h</sup> 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 consummation 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 him<sup>n</sup>** thereby annulling her marriage retroactively, and then the minor is permitted to marry any man.

**GEMARA** Rav Yehuda said that Shmuel said: The *halakha* is in accordance with the opinion of Rabbi Elazar, and likewise the *amora* Rabbi Elazar ben Pedat said: The *halakha* is in accordance with the opinion of Rabbi Elazar ben Shammua, 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 *yevama* of her husband's brother who is married to her minor sister. **For if this halakhic ruling was stated only 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 *yevama* 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 *yavam*<sup>n</sup> engaged in sexual intercourse with a minor *yevama*,<sup>h</sup> they should grow up together,<sup>n</sup> living as a married couple. He may not divorce her, as he is a minor. **If he engaged in sexual intercourse with an adult *yevama*, 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

**The court instructs the minor to refuse him – מלמדין הקטנה** – **שְׁתִּמְאָן**: 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 other wife is a deaf-mute, it would not help, as they both remain prohibited due to the levirate bond (Ramban; Rashba).

The Ra'avad in fact 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 refusals,

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.

**A minor *yavam* – יבם קטן** – 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 *yevama* referred to here is necessarily older than three years and one day for the same reason (*Tosefot Had Mikammaei*).

According to the *Rid*, the meaning of the ruling that they should grow up together is that they remain *yavam* and *yevama* 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 *yevama*, a case where a *yavam* was

forced to engage in intercourse with his *yevama* 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.

**They should grow up together – יגדלו זה עם זה** – The Ritva writes 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 – לא נבעלתי: 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*.

If he has not divorced her and she presents this claim, the court forces him either to consummate the levirate marriage with her or to perform *halitza* and give her a bill of divorce. If he admits that he did not engage in intercourse with her, he is forced to perform *halitza*, in accordance with the mishna and Rav's explanation (Rambam *Sefer Nashim, Hilkhot Yibbum* 2:5; *Shulhan Arukh, Even HaEzer* 167:6).

A *yevama* who vows not to derive benefit from her *yavam* – יבמה שנדרה הנאה מן היבם: If a *yevama* vowed during her husband's lifetime not to derive benefit from her *yavam*, or from any Jew, which would necessarily include him, the *yavam* is forced to submit to *halitza*. If she vowed after her husband's death not to derive benefit from her *yavam*, or if she meant to do so from the outset to avoid entering levirate marriage, the court asks him to perform *halitza*.

If the brother-in-law of the *yevama* was a priest and she betrothed herself to another man in order to cause herself to be forbidden to her *yavam*, it is as if she vowed not to derive benefit from him. However, he is not forced to perform *halitza* since she herself caused the situation. The same *halakha* applies if she spat in front of one of the brothers and caused herself to be forbidden to enter into levirate marriage. The above *halakhot* apply according to the opinion that the mitzva of levirate marriage is preferable to *halitza*, but according to those who say that the mitzva of *halitza* is preferable (Rema), if she does not want to enter into levirate marriage, she does not have the status of a rebellious wife (Rambam *Sefer Nashim, Hilkhot Yibbum* 2:15; *Shulhan Arukh, Even HaEzer* 165:2).

היבמה שאמרה בתוך שלשים יום "לא נבעלתי" – בופין אותו שיחלוץ לה; לאחר שלשים יום – מבקשין הימנו שיחלוץ לה. ובזמן שהוא מודה – אפילו לאחר שנים עשר חדש בופין אותו שיחלוץ לה.

הנודרת הנאה מיבמה בחיי בעלה – בופין אותו שיחלוץ לה; לאחר מיתת בעלה – מבקשין הימנו שיחלוץ לה. ואם נתכוונה לכך – אפילו בחיי בעלה, מבקשין הימנו שיחלוץ לה.

גמ' לימא מתניתין דלא ברבי מאיר. דתניא: קטן וקטנה – לא חולצין ולא מתניבמין, דברי רבי מאיר.

אפילו תימא רבי מאיר: כי אמר רבי מאיר – גדולה לקטן, וקטנה לגדול, דחד מיניהו ביאה דאיסורא הוא, אבל קטן הבא על הקטנה, דתרויהו כי הדדי נהו – לא אמר.

והא קתני: בא על יבמה גדולה – תגדלנו! אמר רבי חנינא חזא: בא – שאני, והא תגדלנו קאמר, דכל ביאה וביאה דאיסורא הוא! אלא מתורתא מתניתין דלא ברבי מאיר.

When a *yevama* said within thirty days of her marriage: I have not engaged in sexual intercourse with him,<sup>14</sup> the court forces him to perform *halitza* with her. If she said this after thirty days but he claimed that he had engaged in sexual intercourse, the court asks him to perform *halitza* with her,<sup>15</sup> as there are grounds to believe him. And when he admits that he did not engage in intercourse with her, even after twelve months, the court forces him to perform *halitza* with her.

If a woman vows during her husband's lifetime to derive no benefit from her *yavam*,<sup>16</sup> the court forces him to perform *halitza* with her as it is forbidden for her to engage in sexual intercourse with him to consummate the levirate marriage. If she vowed after the death of her husband to derive no benefit from her *yavam*, the court asks him to perform *halitza* with her. And if she intended to do so, i.e., she had an ulterior motive of avoiding levirate marriage when she vowed, even if she made the vow during her husband's lifetime, the court merely asks him to perform *halitza* with her.

**GEMARA** The mishna teaches that a minor *yavam* and minor *yevama* can consummate a levirate marriage and are permitted to live together. The Gemara suggests: Let us say that the mishna is not in accordance with the opinion of Rabbi Meir as it is taught in a *baraita*: A minor boy and a minor girl may not perform *halitza* and may not enter into levirate marriage. This is the statement of Rabbi Meir. Rabbi Meir prohibits this lest the boy turn out to be a eunuch or the girl turn out to be sexually underdeveloped. In such cases, the mitzva of levirate marriage would not apply, and the prohibition against marrying one's brother's wife would be in effect.

The Gemara responds: You can even say that the mishna is 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 *yavam* or a minor *yevama* with an adult *yavam*. 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 *yavam* 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 *yavam*, engaged in sexual intercourse with an adult *yevama*, she should raise him, which contradicts the explication of Rabbi Meir's opinion above. Rabbi Hanina Hoza'a said: 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.

NOTES

מבקשין – The court asks him to perform *halitza* with her – הימנו שיחלוץ לה: The Gemara explains below that the mishna is referring to a case where he has already divorced her. Some early commentaries ask: Under such circumstances, why doesn't the court force him to perform *halitza* even when her claim is made after thirty days? He incurs no loss in performing *halitza*, and it allows her to remarry. In general, the *halakha* is that the court forces compliance in cases of behavior characteristic of Sodom, i.e., in cases where someone refuses to help another at no loss

to himself. Why is that principle not applied in this case? *Tosafot* explain that there is some loss to the *yavam* in participating in *halitza*. He may not wish to appear in court, and there is a certain amount of abasement involved in participating in *halitza* (see also the *Tosefot HaRosh*). Another explanation is that he can say that according to his claim that he engaged in intercourse with her and divorced her, he retains the right to remarry her. However, if he performs *halitza* with her, she will be forbidden to him forever (*Nimmukei Yosef*).

The verse here reads: To establish a name for his brother, etc. – קרי כאן להקים שם, והוא לאו בר הכי הוא! אמר אביי: אמר קרא 'בממה יבא עליה' – כל דהו.

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 *yevama*, his *yevama* shall ascend to the gate to the Elders and say: My brother-in-law refused to establish a name for his brother<sup>N</sup> 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,<sup>N</sup> 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 *yevama* 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.

Her brother-in-law... to include anyone – כל דהו – יבמה... כל דהו – The *Tosefot HaRosh* explains: Since the verse states "her brother-in-law," this includes any *yavam*, even a minor. Otherwise, the Torah would have had to say: The brother of the deceased shall engage in intercourse with her, and then it would be understood that the brother must be similar to the deceased husband and must also be an adult.

רבא אמר: בלאו הכי נמי לא מצית אמרת, מי איבא מידי דהשתא אסיקא ליה ולבתר שעתא שריא? והא אמר רב יהודה אמר רב: כל יבמה שאין אני קורא בשעת נפילה 'יבמה יבא עליה' – הרי היא באשת אח שיש לו בנים, ואסורה.

רבי יוחנן: רבי מאיר היא דתניא: אומר קרא "כי ישבו אחים יחדו" – אפילו בן יום אחד.

אימא הכי נמי! אמר קרא "כי ישבו אחים יחדו" – אפילו בן יום אחד.

"יבמה שאמרה בתוך שלשים יום וכו', מאן תנא דעד תלתין יומין מוקים איניש אנפשיה?"

אמר רבי יוחנן: רבי מאיר היא דתניא: טענת בתולים – כל שלשים יום, דברי רבי מאיר.

רבי יוסי אומר: נסתרה – לא לתר, לא נסתרה – אף לאחר כמה שנים.

רבה אמר: אפילו תניא רבי יוסי עד כאן לא קאמר רבי יוסי התם – אלא בארוסתו, דגיס בה, אבל אשת אחיו

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.

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Rabbi Yohanan 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,<sup>H</sup> 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,

## HALAKHA

Until what point may a man make a claim concerning virginity – עד מתי טענת בתולים – 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).