



What is the *halakha* with regard to her rival wife – **צָרְתָּהּ מֵהוּ**: In the Jerusalem Talmud, Rabbi Elazar states unequivocally that the *yavam* and *yevama* do not have the power to cause the rival wife to be forbidden. Although the claims that they have not consummated the levirate marriage affect their own status, these claims do not have the power to affect the status of others. The reason for this is the legal presumption that a person, and all the more so a husband, does not restrain himself from permitted intercourse. The *yevama* requires *halitza* despite this presumption only because of the *halakha* that a person who claims to be subject to a prohibition becomes a forbidden object, i.e., is considered subject to that prohibition so long as no one else is affected.

Heaven is between me and you – **הַשָּׁמַיִם בֵּינִי לְבִינְךָ**: Rashi, based on the Jerusalem Talmud, explains this expression is a metaphor for the woman's claim that her husband does not engage in sexual intercourse with her. She is indicating that just as heaven is distant from earth, so too is my husband distant from me. The Babylonian Talmud in tractate *Nedarim* (91a) offers a different interpretation of the expression. It means that the husband does not "shoot like an arrow," meaning that he cannot ejaculate normally. Some argue that there is no fixed meaning for this expression; the point is that the wife is making some kind of claim about a private matter for which no evidence can be provided (see Meiri).

Deals with the matter by way of a request – **יַעֲשֶׂה דְרָךְ בְּקִשָּׁה**: This expression is not entirely clear either. Rabbeinu Tam (see *Tosafot*), in accordance with the understanding that the woman's claim is that he cannot ejaculate normally, explains that the court prays that the man be healed. The Jerusalem Talmud in tractate *Nedarim* explains this phrase to mean that a feast should be held in order to make peace between the couple. Rabbeinu Hananel explains that this does not necessarily mean that there must be an actual feast. The point is that the court makes an effort to bring about a reconciliation without compulsion. Rashi apparently understands it this way, as well.

The Ramban explains why the ruling in this case is to deal with the matter by way of request, as opposed to the previous case where the priest's wife, who claims she was raped, must bring evidence to that effect. The claim in the previous case is not accepted at all without evidence as the woman is suspected of desiring another man. In contrast, no evidence is available, in principle, for the claim that Heaven is between them. In addition, her claim could well be motivated by the desire to have children, and as such is more credible (see Rashba).

**בָּעָא מִימֵיהּ הוּן בְּרִיהּ דְּרַב נַחְמָן מְדַרְבַּי נַחְמָן: צָרְתָּהּ מֵהוּ?**

**אָמַר לֵיהּ: וְכִי מִפְּנֵי שְׂאֵנוּ בּוֹפִין וּמְבַקְּשִׁין תִּיאָסֵר צָרָה?**

**"הַנּוֹדֶרֶת הַנְּאָה" וְכוּ' תִּנְן הֵתָם: בְּרֵאשׁוֹנָה הָיוּ אוֹמְרִים: שְׁלֹשׁ נְשִׁים יוֹצְאוֹת וְנוֹטְלוֹת בְּתוֹבָה;**

**הָאוֹמֶרֶת "טְמֵאָה אֲנִי לְךָ", "הַשָּׁמַיִם בֵּינִי לְבִינְךָ", "נְטוּלָה אֲנִי מִן הַיְהוּדִים".**

**חִזְרוּ לוֹמְרֵי שְׁלֵא תִּהְיֶה אִשָּׁה נוֹתֶנֶת עֵינֶיהָ בְּאַחַר וּמְקַלְקֶלֶת עַל בַּעְלָהּ. אֵלֶּא, הָאוֹמֶרֶת "טְמֵאָה אֲנִי לְךָ" – תִּבְיֵא רְאִיָּה לְדַבְרֶיהָ; "הַשָּׁמַיִם בֵּינִי לְבִינְךָ" – יַעֲשֶׂה דְרָךְ בְּקִשָּׁה;**

Hon, son of Rav Nahman, asked Rav Nahman: What is the *halakha* with regard to her rival wife?<sup>NH</sup> If the *yavam* consummated the levirate marriage with his brother's wife, the rival wife is exempted. In the event that the *yevama* who entered levirate marriage says that her *yavam* did not consummate the levirate marriage, is there a need for a procedure to exempt the rival wife from the levirate bond?

He said to him: Just because we force or sometimes ask the husband to perform *halitza* in order to remove any uncertainty and release the wife, should the rival wife be forbidden to remarry? The presumption is that the *yavam* did consummate the levirate marriage but since she denies it, she causes herself to be forbidden to marry others without *halitza*. However, her statement is not relied upon to the extent that her rival wife would be forbidden.

§ It is taught in the mishna: If a woman vows during her husband's lifetime to derive no benefit from her *yavam*, the court forces him to perform *halitza*. We learned in a mishna elsewhere (*Nedarim* 90b): At first they said: Three categories of women are divorced from their husbands against their will, and even so they receive payment of their marriage contract.

They are: A woman who says: I am defiled to you.<sup>H</sup> When a priest's wife tells her husband that she was raped, he is obligated to divorce her as she is forbidden to him. Since she became forbidden due to circumstances beyond her control, she is entitled to receive payment of her marriage contract. Likewise, a woman who says: Heaven is between me and you,<sup>NH</sup> that is: There are no witnesses to the matter, but Heaven will testify that you are incapable of having normal sexual relations with me. Since this is not her fault, she receives the settlement in her marriage contract. The same *halakha* applies if a woman vows: I am withdrawn from the Jews,<sup>H</sup> meaning, she vows not to engage in sexual relations with any Jew, because conjugal relations are difficult for her.

The Sages subsequently retracted and said that in order that a married woman should not cast her eyes on another man and, in order to be with him, ruin her relationship with her husband and leave with payment of her marriage contract, these *halakhot* were modified. Rather, a priest's wife who says to her husband: I am defiled to you, must bring evidence for her statement that she was raped. A woman who says: Heaven is between me and you, the court deals with the matter by way of a request,<sup>N</sup> and the husband is not forced to divorce his wife.

## HALAKHA

What is the *halakha* with regard to her rival wife – **צָרְתָּהּ מֵהוּ**: In the case of a *yevama* whose *yavam* married her, even if they both say within thirty days that he did not engage in intercourse with her, her rival wife is still permitted to remarry, on the presumption that the levirate marriage was in fact consummated. This *halakha* is in accordance with Rav Nahman's opinion (Rashi; Rabbeinu Hananel). Some authorities (*Tur*, based on Rosh and Rema) say that within thirty days, if he claims that he did not have sexual relations with her, the rival wife is forbidden to remarry without *halitza* (*Shulhan Arukh Even HaEzer* 167:6).

A woman who says: I am impure for you – **הָאוֹמֶרֶת טְמֵאָה אֲנִי לְךָ**: If a woman tells her husband that she committed adultery and is forbidden to him, she is not believed, and she is not forbidden to him. The Sages did not grant credibility to this statement lest it provide her with a way to force him to divorce her because she is interested in someone else. However, if he believes her, or if there is some evidence short of testimony (Rema), he is obligated to divorce her though he is not forced to do so.

A woman who admits to adultery loses the rights to the settlement in her marriage contract, both the basic sum, any additional settlement, and any lost value from her dowry. However, if she was raped, she does not lose her marriage settlement in her marriage

contract, regardless of whether she is the wife of a priest or a non-priest. This *halakha* is in accordance with the ultimate version of the mishna (Rambam *Sefer Nashim, Hilkhot Ishut* 24:23; *Shulhan Arukh, Even HaEzer* 115:6).

Heaven is between me and you – **הַשָּׁמַיִם בֵּינִי לְבִינְךָ**: If a man claims that his wife is rebellious and that she withholds sexual relations from him while she denies his claim, or if she claims that it is he who is withholding sexual relations from her but he denies it, the judges excommunicate whoever is lying. If neither one admits to lying, they are secluded together in the presence of witnesses, and if they still persist with their claims, the judges negotiate a compromise between the two parties according to the power of the court, in accordance with the ruling that the matter is dealt with by way of a request (Rambam *Sefer Nashim, Hilkhot Ishut* 14:16; *Shulhan Arukh, Even HaEzer* 77:4).

I am withdrawn from the Jews – **נְטוּלָה אֲנִי מִן הַיְהוּדִים**: If a woman vows to prohibit herself from sexual intercourse with any Jew, her husband nullifies his part in the vow and she may engage in intercourse with him. If he dies or divorces her, she is forbidden to all men. This ruling is in accordance with the mishna (Rambam *Sefer Hafla'a, Hilkhot Nedarim* 12:8; *Shulhan Arukh, Yoreh De'a* 234:68).

נְטוּלָה אֲנִי מִן הַיְהוּדִים – יָפַר חֶלְקוֹ, וּבְשִׁמְשׁוֹתוֹ, וְתֵהָא נְטוּלָה מִן הַיְהוּדִים.

אֵיבְעִיָא לָהּ: “נְטוּלָה אֲנִי מִן הַיְהוּדִים” לֵיבָם מֵהוּ? מִי מְסַקָּה אֲדַעְתָּה דְּמִיִּית בְּעֵלָה וְנִפְלָה קָמִי יָבָם, אִו לָא?

רַב אָמַר: יָבָם אֵינוֹ כְּבַעַל, וְשִׁמּוֹאֵל אָמַר: יָבָם הָרִי הוּא כְּבַעַל. אָמַר אַבְיִי: כְּוֹתִיָּה דְּרַב מִסְתַּבְּרָא, דְּתַנְּן: הַנּוֹדֶרֶת הַנָּאָה מִיבְמָה בְּחַיִּי בְּעֵלָה – בּוֹפִין אוֹתָהּ שְׁיַחְלוּץ. וְאִם אֵיתָא דְּמְסַקָּה אֲדַעְתָּה

As for a woman who says: **I am withdrawn from the Jews**, her husband **must nullify his part** in the vow, that is, the part of the vow that concerns him, so that she should be permitted to him, **and she may have relations with him. But she is withdrawn from all other Jews**, so that if he divorces her, she is forbidden to all.

A dilemma was raised before the scholars: If the wife said: **I am withdrawn from the Jews** and the husband nullifies his part in the vow, **what is the halakha with regard to the yavam**<sup>NH</sup> once the husband has died? Does this vow apply to him? When she takes the vow, **does it enter her mind that her husband will die and she will happen before a yavam, or not?** If she did entertain the thought, then the vow applies to the *yavam*, as the husband's nullification only affects himself, and she must perform *halitza*. If she did not consider the possibility of becoming a *yevama*, then the vow does not apply to the *yavam* and she can enter into levirate marriage. Her vow was directed only against any potential suitors she might have if her husband divorced her.

Rav says: **A yavam is not like a husband.** She did not intend that her vow be directed against him at all, and he may enter into levirate marriage with her. **And Shmuel says: A yavam is like a husband** in this respect and the vow applies to him as well, so he must perform *halitza*. **Abaye said: Ruling according to Rav's opinion stands to reason, as we learned in the mishna:** If a woman vows during her husband's lifetime to derive no benefit from her *yavam*, the court forces him to perform *halitza*. **And if it is the case that it enters her mind that the husband will die and she will become a candidate for levirate marriage with the yavam,**

#### NOTES

What is the *halakha* with regard to the *yavam* – לֵיבָם: Rashi interpreted this question as referring to the forbidden or permitted status of the *yevama* in relation to the *yavam*. However, most of the commentaries (*Tosafot*; *Tosefot Had Mikamma'e'i*; *Ramban*) accept the interpretation of Rabbeinu Hananel that this question refers to the manner of bringing about *halitza*: Is the *yavam* forced to perform *halitza* or is he merely requested to do so?

#### HALAKHA

I am withdrawn from the Jews...with regard to the *yavam* – נְטוּלָה אֲנִי מִן הַיְהוּדִים לֵיבָם: If a woman vowed to prohibit herself from sexual intercourse with any Jew and subsequently became a candidate for levirate marriage, the *yavam* is forced to perform *halitza*, in accordance with Rav's opinion, as the *halakha* follows him in matters of prohibitions. This ruling follows the explanation of the dispute in the Gemara provided by Rif and *Tosafot* (*Rambam Sefer Nashim, Hilkhot Yibbum* 2:15; *Shulhan Arukh, Even HaEzer* 165:2).

### Perek XIII Daf 112 Amud b

מִבְּקָשִׁין מִיבְעִי לִיָּה! הֲכָא בְּמַאי עֲסָקִינָן – בְּאִשָּׁה שְׁיִישׁ לָהּ בָּנִים, דְּכוּלִּי הָאִי לָא מְסַקָּה אֲדַעְתָּה.

אָבַל אֵין לָהּ בָּנִים, מַאי – מִבְּקָשִׁין? אֲדַתְנִי אִם נִתְפַּוּנָה לְכָךְ אֲפִילוּ בְּחַיִּי בְּעֵלָה מְבַקְשִׁין מִמֶּנּוּ שְׁיַחְלוּץ לָהּ, לִפְלוּג וְלִיתְנִי בְּדִידָה: בְּמָה דְּבָרִים אָמורִים – בְּשִׁישׁ לָהּ בָּנִים, אָבַל אֵין לָהּ בָּנִים – מִבְּקָשִׁין!

אֵלָא שְׁמַע מִינָה: לָא שְׁנָא יֵשׁ לָהּ בָּנִים, וְלָא שְׁנָא אֵין לָהּ בָּנִים – בּוֹפִין אוֹתוֹ, כְּרַב, שְׁמַע מִינָה.

הדרן עלך בית שמאי

the mishna should have said that the court asks the *yavam* to perform *halitza* rather than forces him. The court would not force him to perform *halitza* in a case where she deliberately attempted to avoid fulfilling the mitzva of levirate marriage. The Gemara answers: **With what are we dealing here? With a woman who has children**<sup>N</sup> with her husband when she vows, **so that it did not enter her mind to the extent that her children would die**, and later her husband would also die, and she would happen before his brother for levirate marriage.

The Gemara asks: **But if she has no children, what is the halakha?** Is it that we ask him to perform *halitza*, but do not force him? If so, then **instead of teaching** the more remote case that **if she intended to do so**, to avoid levirate marriage in the event of her husband's death, **even if she vowed during her husband's lifetime**, the court merely asks him to perform *halitza* with her, let the mishna distinguish and teach the distinction within this *halakha* itself, as follows: **In what case is this statement said? When she has children, but if she does not have children**, the court merely asks him.

Rather, learn from it that **there is no difference between when she has children and when she does not have children.** Either way the court forces him to perform *halitza*, in accordance with the opinion of Rav, as there is no assumption that the woman planned to avoid levirate marriage unless she says so explicitly. The Gemara concludes: **Indeed, learn from it that the halakha follows Rav's opinion.**

#### NOTES

A woman who has children – אִשָּׁה שְׁיִישׁ לָהּ בָּנִים: The *Arukh LaNer* points out that with regard to levirate marriage, it is irrelevant whether the woman has children. The relevant criterion is whether the husband has children, and the Gemara refers here to a woman who has children with this husband.

**מתני'** חרש שנשא פקחת, ופקח שנשא חרשת: אם רצה להוציא – יוציא, ואם רצה לקיים – יקיים. כשם שהוא בונים ברמיה – כך הוא מוציא ברמיה.

פקח שנשא פקחת ונתחרשה, אם רצה – יוציא, ואם רצה – יקיים. נשתתית – לא יוציא. נתחרש הוא או נשתתה – אינו מוציא עולמית.

אמר רבי יוחנן בן נורי: מפני מה האשה שנתחרשה יוצאה והאיש שנתחרש אינו מוציא? אמרו לו: אינו דומה האיש המגרש לאשה המתגרשת, שהאשה יוצאה לרצונה ושלא לרצונה, והאיש אינו מוציא אלא לרצונו.

העיד רבי יוחנן בן גודגדא על החרשת שהשואה אביה שהיא יוצאה בגט. אמרו לו: אף זו ביוצא בה.

**MISHNA** With regard to a deaf-mute who married<sup>H</sup> a halakhically competent woman, and a halakhically competent man who married a deaf-mute: If either man wants to divorce his wife, he may divorce her, and if he wants to maintain her<sup>N</sup> as his wife, he may maintain her. The reason why a deaf-mute man can divorce his wife is that just as he marries her by intimation, i.e., his marriage is not performed by explicit speech, as deaf-mutes rely on gestures, so too, he divorces her by intimation.<sup>N</sup>

Likewise, in the case of a halakhically competent man who married a halakhically competent woman, and she later became a deaf-mute: If he wants to divorce his wife, he may divorce her, as a wife does not have to have intellectual capacity to receive a bill of divorce, and if he wants to maintain her as his wife, he may maintain her. If she became an imbecile,<sup>H</sup> he may not divorce her, i.e., a bill of divorce is ineffective in this case. If he became a deaf-mute or an imbecile<sup>H</sup> after they were married, he may never divorce her, as he does not have the legal competence to give a bill of divorce.

Rabbi Yoḥanan ben Nuri said: For what reason is the *halakha* that in the case of the woman who becomes a deaf-mute, her husband may divorce her,<sup>H</sup> but in the case of the man who becomes a deaf-mute, he may not divorce his wife? If the bill of divorce written by someone who formerly possessed all his senses and later became a deaf-mute is invalid, it stands to reason that it should not be valid when she becomes a deaf-mute either. They said to him: The man who divorces his wife is not similar to the woman who is divorced, as the woman is divorced whether she is willing or unwilling. Since the woman's consent is not required, she may be divorced even if she is a deaf-mute. And, conversely, the man divorces his wife only willingly, and therefore the bill of divorce of a deaf-mute, who is not legally competent, is ineffective.

Rabbi Yoḥanan ben Gudgada<sup>P</sup> testified with regard to a female deaf-mute whose father married her off when she was a minor, which means her marriage was valid by Torah law, that she can be divorced with a bill of divorce even when she matures and is no longer under her father's authority, despite the fact that she is not legally competent. They said to him: This woman, too, has a similar status. In other words, a woman who possessed all her faculties and later became a deaf-mute is comparable to a minor whose marriage was valid by Torah law and later, when she matured and was no longer under the authority of her father, received a bill of divorce. Both of these women can receive a bill of divorce, in accordance with the principle stated in the previous paragraph.

NOTES

If he wants to maintain her – אם רצה לקיים: Some commentaries maintain that this section of the mishna is superfluous, as this *halakha* is obvious (*Tosafot*). However, others claim that it does teach a novel *halakha*, as one might have thought that if the halakhically competent man was a priest he may not maintain a deaf-mute as his wife, in case she commits licentious acts due to her incompetence. Although in such a case she would be considered like a raped woman, nevertheless the wife of a priest who was the victim of a rape is forbidden to her husband (*Arukh LaNer*).

So too, he divorces her by intimation – כך הוא מוציא ברמיה: In the Jerusalem Talmud, it is stated that this refers specifically

to betrothal by means of money. If, however, the betrothal was performed by sexual intercourse, since intercourse constitutes a legal act by Torah law, he cannot divorce her with a bill of divorce that applies by rabbinic law. Several early commentaries cite this opinion of the Jerusalem Talmud. However, the Babylonian Talmud does not accept this difference between the various methods of betrothal. Some commentaries maintain that the Jerusalem Talmud's opinion does not indicate that a deaf-mute's betrothal by intercourse actually applies by Torah law. Rather, the idea is that sexual intercourse is such a significant act that a mere intimation cannot nullify its effects (*Keren Ora*).

HALAKHA

**A deaf-mute who married – חרש שנשא**: If a deaf-mute married a woman, whether or not she is also a deaf-mute, he can divorce her by means of an intimation (Rambam *Sefer Nashim, Hilkhot Ishut* 4:9; *Shulḥan Arukh, Even HaEzer* 121:6).

**The divorce of an imbecilic woman – גירושי חרשה**: A man may not divorce a woman who became so imbecilic that she could no longer look after herself. This was decreed by the Sages so that people would not treat imbecilic women in a disrespectful manner (Rambam *Sefer Nashim, Hilkhot Geirushin* 10:23; *Shulḥan Arukh, Even HaEzer* 119:6).

**If he became a deaf-mute or an imbecile – נתחרש הוא או נשתתה**: If a man married a woman, or if a *yevama* came before a man for levirate marriage, and at the time of the marriage he possessed all his senses but he later became a deaf-mute or an imbecile, the man may no longer divorce his wife (Rambam *Sefer Nashim, Hilkhot Geirushin* 2:17; *Shulḥan Arukh, Even HaEzer* 121:6).

**The divorce of a female deaf-mute – גירושי חרשת**: With regard to a female deaf-mute, even if she was married before she became a deaf-mute, her husband may divorce her, as divorce does not require the consent of the wife. This is the basic *halakha*; however, Rabbeinu Gershom decreed that a man may divorce his wife only with her consent (Rambam *Sefer Nashim, Hilkhot Geirushin* 10:23; *Shulḥan Arukh, Even HaEzer* 119:6, and in the comment of Rema).

PERSONALITIES

**Rabbi Yoḥanan ben Gudgada – רבי יוחנן בן גודגדא**: Rabbi Yoḥanan ben Gudgada was a Sage from the tribe of Levi, who merited to serve in the Temple in Jerusalem. It is related that he was a righteous man who went beyond the letter of the law and was careful always to eat in a state of ritual purity, which is obligatory only when partaking of the Temple offerings.

After the destruction of the Temple he was still active in the school in Yavne, where he testified with regard to several ancient customs, as recorded in tractates *Eduyyot, Hullin*, and elsewhere.

Rabbi Yoḥanan ben Gudgada had children and grandchildren who, although born mute due to a hereditary condition, were discovered to be great Torah scholars to the extent that they were appointed overseers over ritual purity in Jerusalem.

**Two deaf-mute brothers** – שני אחין חרשין: These detailed cases provide a list of all possible combinations, but in terms of their content they offer no original ideas. These *halakhot* are based on three principles. First, deaf-mutes can enter into levirate marriage but they cannot perform *halitza*. Second, a man who married a woman by Torah law and later became incompetent, e.g., a halakhically competent man who became a deaf-mute after his regular marriage or levirate marriage, may not divorce his wife. Third, if a *yevama* came for levirate marriage before a man who was married by rabbinic law to a relative of hers, he must leave both of them, one by means of a bill of divorce and the other by means of *halitza* (Rambam's Commentary on the Mishna).

## HALAKHA

**Two deaf-mute brothers married to...sisters** – שני אחין חרשין נשואין לאחיות: Several different cases are discussed here. The first scenario is that of two brothers who were both deaf-mutes, or both halakhically competent, or one was halakhically competent and the other was a deaf-mute; and they were married to two deaf-mute sisters. The second scenario is that of two deaf-mute brothers who were married to two sisters who were both deaf-mutes, or both halakhically competent, or one of them was halakhically competent while the other was a deaf-mute. In any of these cases, if one of the brothers died without children, his wife is exempt from levirate marriage due to the prohibition against marrying one's wife's sister (Rambam *Sefer Nashim, Hilkhot Yibbum* 7:16; *Shulhan Arukh, Even HaEzer* 175:13).

**If they were unrelated women** – אם הן נכריות: If the two brothers were married to unrelated women, and one of the brothers dies, the surviving brother may consummate levirate marriage or perform *halitza* (*Shulhan Arukh, Even HaEzer* 175:13).

**A halakhically competent man and a deaf-mute married to sisters** – פקח וחרש נשואין לאחיות: There are two scenarios discussed here. The first scenario involves two brothers, one halakhically competent and one a deaf-mute, married to two halakhically competent sisters. In the second scenario the halakhically competent brother was married to a halakhically competent sister and the deaf-mute was married to a deaf-mute sister, and the deaf-mute brother died childless. In both cases, the *yevama* is exempt from levirate marriage due to the prohibition against marrying a wife's sister. If the halakhically competent brother died, the deaf-mute must divorce his own wife, and there is no remedy for his brother's wife, who is forbidden to him forever and cannot be released by *halitza* (Rambam *Sefer Nashim, Hilkhot Yibbum* 7:17; *Shulhan Arukh, Even HaEzer* 175:12).

**Brothers married to sisters, one a deaf-mute and one a halakhically competent woman** – אחין נשואין לאחיות: If two halakhically competent brothers were married to two sisters, one of whom is a deaf-mute and the other halakhically competent, and the deaf-mute's husband died, she is exempt from levirate marriage due to the prohibition with regard to a wife's sister. If the husband of the halakhically competent sister died, the deaf-mute's husband must divorce his wife and perform *halitza* with his brother's wife (Rambam *Sefer Nashim, Hilkhot Yibbum* 7:16; *Shulhan Arukh, Even HaEzer* 175:10).

שני אחין חרשין נשואין לשתי אחיות חרשות, או לשתי אחיות פקחות, או לשתי אחיות אחת חרשת ואחת פקחת, או שתי אחיות חרשות נשואין לשני אחין פקחין, או לשני אחין חרשין, או לשני אחין אחד חרש ואחד פקח – הרי אלו פטורין מן החליצה ומן הייבום. ואם היו נכריות – יכנסו; ואם רצו להוציא – יוציאו.

שני אחין אחד חרש ואחד פקח, נשואין לשתי אחיות פקחות, מת חרש בעל הפקחת – מה יעשה פקח בעל הפקחת? תצא משום אחות אשה.

מת פקח בעל הפקחת – מה יעשה חרש בעל הפקחת? מוציא אשתו בגט, ואשת אחיו אסורה לעולם.

שני אחין פקחין נשואין לשתי אחיות, אחת חרשת ואחת פקחת; מת פקח בעל חרשת – מה יעשה פקח בעל פקחת? תצא משום אחות אשה. מת פקח בעל פקחת – מה יעשה פקח בעל החרשת? מוציא את אשתו בגט ואת אשת אחיו בחליצה.

שני אחין אחד חרש ואחד פקח, נשואין לשתי אחיות, אחת חרשת ואחת פקחת, מת חרש בעל חרשת – מה יעשה פקח בעל פקחת? תצא משום אחות אשה.

מת פקח בעל פקחת – מה יעשה חרש בעל חרשת? מוציא את אשתו בגט, ואשת אחיו אסורה לעולם.

The mishna continues: In a case where there were two deaf-mute brothers<sup>n</sup> married to two deaf-mute sisters<sup>h</sup> or to two halakhically competent sisters, or to two sisters, one of whom was a deaf-mute and the other one halakhically competent; or in a case where there were two deaf-mute sisters married to two halakhically competent brothers or to two deaf-mute brothers or to two brothers, one of whom was a deaf-mute and the other one halakhically competent, all these women are exempt from *halitza* and from levirate marriage. Each of them is forbidden to her *yavam* because he is married to her sister. And if they were unrelated women,<sup>h</sup> i.e., the women are not sisters, the men may marry them in levirate marriage, and if they want to divorce them later, they may divorce them.

However, if two brothers, one of whom is a deaf-mute and other one halakhically competent, were married to two halakhically competent sisters,<sup>h</sup> and the deaf-mute married to the halakhically competent sister died, what should the halakhically competent brother married to the halakhically competent sister do? His brother's wife is released without levirate marriage or *halitza*, due to the prohibition with regard to a wife's sister.

If the halakhically competent brother married to the halakhically competent sister died, what should the deaf-mute brother married to the halakhically competent sister do? He divorces his wife with a bill of divorce, as his wife's sister came before him for levirate marriage by Torah law, and the legal status of her marriage and her levirate marriage is higher than his own marriage, which applies only by rabbinic law. And his brother's wife is forbidden to him forever, and there is no remedy for her. He cannot marry her, as by rabbinic law she is the sister of his ex-wife, nor can he exempt her by means of *halitza*, as he is a deaf-mute.

If two halakhically competent brothers were married to two sisters, one of whom is a deaf-mute and the other one halakhically competent,<sup>h</sup> and the halakhically competent brother married to the deaf-mute sister died, what should the halakhically competent brother married to the halakhically competent sister do? The deaf-mute sister is released due to the prohibition with regard to a wife's sister. If the halakhically competent brother married to the halakhically competent sister died, what should the halakhically competent brother married to the deaf-mute sister do? He divorces his wife with a bill of divorce, as the halakhically competent sister came before him for levirate marriage, and the status of her levirate bond is higher than the status of his marriage to his wife, a deaf-mute. And he releases his brother's wife, who is not a deaf-mute, by means of *halitza*, as they are both legally competent and can therefore perform *halitza*.

If two brothers, one of whom is a deaf-mute and the other one halakhically competent, were married to two sisters, one of whom is a deaf-mute and the other one halakhically competent, and the deaf-mute brother married to the deaf-mute sister died, what should the halakhically competent brother married to the halakhically competent sister do? The deaf-mute woman is released due to the prohibition with regard to a wife's sister.

If the halakhically competent brother married to the halakhically competent sister died, what should the deaf-mute brother married to the deaf-mute sister do? He divorces his wife with a bill of divorce, which is as valid as their original marriage. And his brother's wife is forbidden to him forever. There is no remedy for her, as he may not consummate levirate marriage with her because she is the sister of his ex-wife by rabbinic law, and he cannot perform *halitza* with her either, as he is a deaf-mute.

שני אחין, אחד חרש ואחד פקח, נשואין לשתיהן נכריות פקחות; מת חרש בעל פקחת – מה יעשה פקח בעל פקחת? או חולץ או מניבם. מת פקח בעל פקחת – מה יעשה חרש בעל פקחת? בונים, ואינו מוציא לעולם.

If two brothers, one of whom is a deaf-mute and the other one halakhically competent, were married to two unrelated, halakhically competent women,<sup>h</sup> and the deaf-mute married to the halakhically competent woman died, what should the halakhically competent brother married to the halakhically competent woman do? He either performs *halitza* or enters into levirate marriage. If the halakhically competent brother married to the halakhically competent woman died, what should the deaf-mute brother married to the other halakhically competent woman do? He cannot perform *halitza* with her, as he is a deaf-mute. Rather, he marries her, and he may never divorce her, as sexual intercourse between a *yavam* and his *yevama* creates a valid marriage that cannot be broken by the bill of divorce of a deaf-mute.

שני אחין פקחין נשואין לשתיהן נכריות, אחת פקחת ואחת חרשת, מת פקח בעל חרשת – מה יעשה פקח בעל פקחת? בונים. ואם רצה להוציא – יוציא. מת פקח בעל פקחת – מה יעשה פקח בעל חרשת? או חולץ או מניבם.

If two halakhically competent brothers were married to two unrelated women, one of whom is halakhically competent and the other one a deaf-mute,<sup>h</sup> and the halakhically competent brother married to the deaf-mute woman died, what should the halakhically competent brother married to the halakhically competent woman do? The brother cannot perform *halitza* with her, as she is a deaf-mute. Rather, he marries the deaf-mute, and if he wishes to divorce her, he may subsequently divorce her with a bill of divorce. If the halakhically competent brother married to the halakhically competent sister died, what should the halakhically competent brother married to the deaf-mute do? Either he performs *halitza* or he enters into levirate marriage.

שני אחין, אחד חרש ואחד פקח, נשואים לשתיהן נכריות, אחת חרשת ואחת פקחת; מת חרש בעל חרשת – מה יעשה פקח בעל פקחת? בונים. ואם רצה להוציא – יוציא. מת פקח בעל פקחת – מה יעשה חרש בעל חרשת? בונים, ואינו מוציא לעולם.

If two brothers, one of whom is a deaf-mute and the other one halakhically competent, were married to two unrelated women, one of whom is a deaf-mute and the other one halakhically competent, and the deaf-mute brother who was married to the deaf-mute woman died, what should the halakhically competent brother married to the halakhically competent woman do? He may marry her if he desires the deaf-mute woman, and if he wishes afterward to divorce her, he may divorce her. If the halakhically competent brother married to the halakhically competent woman died, what should the deaf-mute brother married to the deaf-mute woman do? He marries his *yevama* and may never divorce her, as he does not have the legal capacity to end a valid marriage.<sup>h</sup>

**גמ'** אמר רמי בר חמא: מאי שנא חרש וחרשת דתקיניו להו רבנן נשואין, ומאי שנא דשוטה ושוטה דלא תקיניו להו רבנן נשואין? דתנא: שוטה וקטן שנשא נשים ומתו – נשתייהן פטורות מן החליצה ומן היבום!

**GEMARA** Rami bar Hama said: What is the difference between the case of a deaf-mute man and a deaf-mute woman, that the Sages enacted rabbinic marriage for them despite their condition,<sup>h</sup> and the case of an imbecilic man and an imbecilic woman, that the Sages did not enact marriage for them?<sup>h</sup> As it is taught in a *baraita*: With regard to an imbecilic man and a minor who married women and died, their wives are exempt from *halitza* and from levirate marriage. This indicates that the marriages of an imbecile and a minor are of no significance.

HALAKHA

**A deaf-mute and a halakhically competent brother who were married to unrelated women – תרש ופקח נשואין נכריות –** If two brothers, one a deaf-mute and the other halakhically competent, were married to two halakhically competent, unrelated women, and the deaf-mute died, the *yavam* may perform *halitza* or consummate levirate marriage. If the halakhically competent brother died, the deaf-mute cannot perform *halitza*; rather, he must marry his brother's former wife and can never divorce her (*Shulhan Arukh, Even HaEzer* 172:13).

marries her, and afterward he may divorce her. If the husband of the halakhically competent woman died, she may perform *halitza* or enter into levirate marriage (*Shulhan Arukh, Even HaEzer* 172:14).

**The marriage of deaf-mutes – נישואי חרשים –** A deaf-mute man and woman are not eligible for marriage by Torah law. However, the Sages enacted a decree enabling them to marry by rabbinic law (Rambam *Sefer Nashim, Hilkhhot Ishut* 4:9; *Shulhan Arukh Even HaEzer* 44:1).

**Brothers married to a halakhically competent woman and a deaf-mute woman – אחין נשואין לפקחת וחרשת –** This case involves two halakhically competent brothers who were married to two unrelated women, one of whom was halakhically competent while the other was a deaf-mute. If the deaf-mute's husband died and she came before the *yavam* for levirate marriage, the *yavam* may not perform *halitza* with her. Rather, he

**חרש – תרש ופקח נשואין נכריות, ונשוי חרשת וכו'** This case involves two brothers, where one is a deaf-mute and the other is halakhically competent. If the deaf-mute man married a deaf-mute woman while the halakhically competent brother married a halakhically competent woman, and the deaf-mute brother died, the halakhically competent brother marries the deaf-mute woman and afterward he may divorce her. If the husband of the halakhically competent woman died, the deaf-mute enters into levirate marriage with the halakhically competent woman and he may never divorce her (*Shulhan Arukh, Even HaEzer* 172:15).

**The marriage of an imbecile – נישואי שוטה –** Imbeciles are ineligible for marriage, both by Torah law and by rabbinic law, whether they wish to marry halakhically competent people or other imbeciles. Some authorities claim that this *halakha* applies specifically to a full-fledged imbecile; however, the marriage of a feeble-minded man is valid (Rema). If a man is at times competent and at times incompetent, and his state of mind during the betrothal is unknown, his betrothal is doubtfully valid (Rambam *Sefer Nashim, Hilkhhot Ishut* 4:9; *Shulhan Arukh, Even HaEzer* 44:2).

**HALAKHA**

**The marriage of a male minor – גישואי קטן:** If a minor betrothed a woman or married her, his action is of no consequence, as the Sages did not enact betrothal for a minor. There is even a prohibition for a minor boy to live with a woman as his wife. If he transgressed and did so, he need not leave her and it is permitted for her to stay with him until he matures and they have relations, at which point they are considered fully married, according to most opinions (Rambam *Sefer Nashim, Hilkhot Ishut* 11:6; *Shulhan Arukh, Even HaEzer* 43:1, and in the comment of Rema, based on *Mordekhai*).

**The marriage of a female minor – גישואי קטנה:** This scenario involves a female minor who has no father, or whose father married her off and then died; or a female minor who was divorced while she was a minor. If her mother or brothers married her off with her consent, her betrothal is not valid by Torah law but it does apply by rabbinic law. Therefore, she may leave her husband only by a declaration of refusal. The Sages enacted a decree enabling this type of a marriage so that people should not treat her in a disrespectful manner (Rambam *Sefer Nashim, Hilkhot Ishut* 11:6; *Shulhan Arukh, Even HaEzer* 155:1).

**NOTES**

**The enactment of the Sages with regard to the marriage of a deaf-mute – תקנת חכמים בגישואי חרש:** Rashi indicates that the Sages enacted marriage for a deaf-mute man so that he will not neglect the mitzva to be fruitful and multiply. Although a deaf-mute is not obligated in mitzvot, as he is not legally competent, the general instruction: “He created not a waste; He formed it to be inhabited” (Isaiah 45:18), applies to him as well. Apparently, the Sages enacted this decree for his own good, so that he would have someone to help him and attend to his needs.

**A deaf-mute, as he will not reach the stage of eligibility for marriage – חרש דלא אתי לכלל גישואין:** It cannot be suggested that it is possible for someone else to acquire a wife on behalf of a deaf-mute by Torah law. The reason is that a deaf-mute will never be able to contract a marriage himself by Torah law, and therefore no one else can act as his agent for this purpose either (*Noda Bihuda*).

חרש וחרשת, דקיימא תקנתא דרבנן – תקינו להו רבנן גישואין. שזטה ושזטה דלא קיימא תקנתא דרבנן – דאין אדם דר עם נחש בכפיפה אחת – לא תקינו רבנן גישואין.

ומאי שנא קטן דלא תקינו רבנן גישואין, וחרש תקינו ליה רבנן גישואין? חרש דלא אתי לכלל גישואין – תקינו רבנן גישואין, קטן דאתי לכלל גישואין – לא תקינו רבנן גישואין.

והרי קטנה, דאתי לכלל גישואין ותקינו רבנן גישואין! התי, שלא ינהגו [בה] מנהג הפקר.

ומאי שנא קטנה דממאנה, ומאי שנא חרשת דלא ממאנה? דאם כן.

The Gemara explains: In the case of a deaf-mute man and a deaf-mute woman, where the ordinance of the Sages can be fulfilled, i.e., these marriages can be maintained, the Sages enacted marriage for them. By contrast, with regard to an imbecilic man and an imbecilic woman, where the ordinance of the Sages cannot be fulfilled, as one cannot live with an imbecilic partner, in accordance with the well-known saying: **A person cannot reside in a basket, i.e., in close quarters, with a snake, the Sages did not enact marriage for them.**

The Gemara asks: **And what is the difference between a minor, that the Sages did not enact marriage for him,<sup>11</sup> and a deaf-mute, that the Sages did enact marriage for him?<sup>12</sup>** The Gemara explains: In the case of a deaf-mute, as he will not reach the stage of eligibility for marriage<sup>13</sup> by Torah law, the Sages enacted marriage for him. Conversely, with regard to a minor, as he will eventually reach the stage of eligibility for marriage by Torah law when he matures, the Sages did not enact marriage for him.

The Gemara raises a difficulty: **But there is the case of a minor girl, who will reach the stage of eligibility for marriage by Torah law someday, and yet the Sages enacted marriage for her, as her mother and brothers may marry her off by rabbinic law.<sup>14</sup>** The Gemara answers: **There** the Sages issued their decree for a different reason, so **that people should not treat her in the manner of ownerless property.** If she marries, her husband will watch over her; if not, she might be treated disrespectfully.

The Gemara asks: **What is the difference between a minor girl, that she may perform refusal, i.e., she can retroactively nullify her marriage by means of a declaration of refusal of her husband, and a female deaf-mute, that she cannot perform refusal, as the Sages did not establish the option of refusal in her case?** Since the marriage of a deaf-mute woman also applies by rabbinic law, why didn't the Sages establish refusal in her case as well? The Gemara answers: The reason is **that if so, i.e., had the Sages enacted refusal for a female deaf-mute,**

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**NOTES**

**Others would refrain – מימנעי:** Rashi explains that the difference between a minor and a deaf-mute is that there is a time limit to the refusal of a minor, as she cannot refuse her husband once she reaches the age of maturity, whereas there is no time limit to the refusal of a deaf-mute, as her status is unlikely to change. Other commentaries add another reason: Since a deaf-mute is more impaired than a minor, if the Sages gave her permission to leave her marriage by means of refusal, no one would want to marry her (Rashba).

מימנעי ולא נסבי לה.

others would refrain<sup>15</sup> from marrying her at all, as she can issue a declaration of refusal indefinitely, whereas in the case of a minor there is a time limit with regard to her option of a refusal.

ומאי שנא קטנה דאכלה בתרומה, ומאי שנא חרשת דלא אכלה בתרומה? דתנן: העיד רבי יוחנן בן גודגדא על החרשת שהשיאה אביה שיוצאה בגט. ועל קטנה בת ישראל שנשאת לכהן שאוכלת בתרומה. ואילו חרשת לא אכלה?

**S** The Gemara further asks: **What is the difference between a minor girl, that she may partake of teruma<sup>16</sup> when she is married to a priest, and a deaf-mute woman, that she may not partake of teruma<sup>17</sup> when she is married to a priest, despite the fact that both of their marriages apply by rabbinic law? As we learned in a mishna (*Gittin* 55b): Rabbi Yohanan ben Gudgada testified with regard to a female deaf-mute whose father married her off, that she can be divorced with a bill of divorce. And he testified with regard to a minor girl, daughter of a non-priest who was married to a priest, that she may partake of teruma, whereas a deaf-mute woman, it may be inferred, may not partake of teruma.**

**HALAKHA**

**A minor girl may partake of teruma – בתרומה אוכלת:** If a priest married the daughter of a non-priest she may partake of teruma, even if she is a minor who is three years and one day old (Rambam *Sefer Zera'im, Hilkhot Terumat* 6:3).

**A deaf-mute woman may not partake of teruma – חרשת אינה אוכלת בתרומה:** A deaf-mute woman or an imbecile who is married to a priest may not partake of teruma, even if she is a minor married off by her father, due to a rabbinic decree (Rambam *Sefer Zera'im, Hilkhot Terumat* 6:4).