

**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 גישואי:** 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*).

**Perek XIV  
Daf 113 Amud a**

**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).

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

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

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

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

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>h</sup> and a deaf-mute, that the Sages did enact marriage for him?<sup>n</sup>** The Gemara explains: In the case of a deaf-mute, as he will not reach the stage of eligibility for marriage<sup>n</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>h</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,**

מימנעי ולא נסבי לה.

others would refrain<sup>n</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 שנישאת 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>h</sup> when she is married to a priest, and a deaf-mute woman, that she may not partake of *teruma*<sup>h</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:** 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:** 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).

גוֹזְרָה שְׂמָא יֹאכִיל חֵרֶשׁ בְּחֵרֶשׁ.  
וְלִיכּוּל? קֵטָן אוֹכֵל נְבִלוֹת הוּא!

The Gemara answers: The reason that a deaf-mute woman may not partake of *teruma*, even if she is married to a halakhically competent priest, is due to a rabbinic decree lest a deaf-mute priest likewise feed *teruma* to his deaf-mute wife.<sup>N</sup> The Gemara asks: And which prohibition would that violate? **Let him feed her, as he is equivalent to a minor who eats meat from unslaughtered animals.** This is referring to the *halakha* that there is no obligation to prevent minors from committing transgressions. Since a deaf-mute, who is not legally competent, has the status of a minor, the same reasoning should apply in this case. Consequently, the court should be under no obligation to prevent this deaf-mute woman from eating *teruma* unlawfully.

גוֹזְרָה שְׂמָא יֹאכִיל חֵרֶשׁ בְּפִקְחָת. וְחֵרֶשׁ  
בְּפִקְחָת נְמִי, לִיכּוּל בְּתְרוּמָה דְּרַבְנָן!  
גוֹזְרָה דְלִמָּא אֲתִי לְאוֹכְלָהּ בְּתְרוּמָה  
דְּאוּרֵייתָא.

Rather, it is a rabbinic decree lest a deaf-mute priest feed *teruma* to a halakhically competent wife. Since by Torah law her marriage to a deaf-mute man is not valid, she may not eat *teruma*. The Gemara asks: As well, in the case of a deaf-mute priest who wishes to feed a halakhically competent wife, let her partake of *teruma* that applies by rabbinic law. There are types of produce from which there is no obligation to separate *teruma* by Torah law, and one separates *teruma* from them due to rabbinic decree. Just as the marriage of this woman is by rabbinic law, she should be permitted to eat *teruma* that applies by rabbinic law. The Gemara answers: It is a rabbinic decree, as perhaps he will come to feed her *teruma* that applies by Torah law.

וּמֵאִי שְׂנָא קֵטָנָה דְּאִית לָהּ כְּתוּבָה,  
וּמֵאִי שְׂנָא חֵרֶשׁ דְּלִית לָהּ כְּתוּבָה?  
דְּאִם כֵּן מִימְנָעִי וְלֹא נִסְבִּי לָהּ.

The Gemara further asks: **And what is the difference between a minor girl, that she has a marriage contract, and a deaf-mute woman, that she does not have a marriage contract?**<sup>N</sup> The Gemara answers: The reason is that if so, if the husband of a deaf-mute would be obligated to give her a marriage contract, men would refrain from marrying her at all.

וּקֵטָנָה מְנַלן דְּאִית לָהּ כְּתוּבָה? דְּתַנּוּ:  
הַמְמַאָּנָה, וְהַשְּׂנִיָּה וְאֵילוּמִית – אִין לָהּ  
כְּתוּבָה, אֲבָל יוֹצְאָה בְּגֵט, וּקֵטָנָה – יֵשׁ  
לָהּ כְּתוּבָה.

The Gemara asks: **And a minor girl, from where do we derive that she has a marriage contract? As we learned in a mishna (*Bava Metzia* 67a):** With regard to a minor who refuses her husband and leaves him,<sup>H</sup> and likewise a woman who is a secondary forbidden relative prohibited by rabbinic law,<sup>H</sup> and a sexually underdeveloped woman<sup>H</sup> who is incapable of bearing children, these women have no marriage contract. The Gemara infers: However, any other woman who can be divorced by means of a bill of divorce, and this includes a minor girl, is entitled to a marriage contract.<sup>H</sup>

וְחֵרֶשׁ מְנַלן דְּלִית לָהּ כְּתוּבָה? דְּתַנּוּ:  
חֵרֶשׁ וְשׁוֹטָה שְׂנִישְׂאוּ פְּקוּחוֹת, אֶף עַל פִּי  
שְׂנִיתְפַּקְחָן הַחֵרֶשׁ וְנִשְׁתַּפְּחָה הַשׁוֹטָה – אִין  
לָהֶם עֲלֵיהֶם בְּלוּם. רְצוּ לְקַיְמָן – יֵשׁ  
לָהֶם כְּתוּבָה.

The Gemara asks: **And a deaf-mute woman, from where do we derive that she has no marriage contract? As it is taught in a *baraita*: A deaf-mute and an imbecile who married halakhically competent women,<sup>H</sup> even if the deaf-mute subsequently regained his senses, and the imbecile regained his competence, their wives have no claim of anything against them, even if their wives received marriage contracts from them. However, if the men wish to maintain these women as their wives after they became fully competent, they have a marriage contract from that point onward.**

#### HALAKHA

**A girl who makes a declaration of refusal – מְמַאָּנָה:** A minor who refuses her husband is not entitled to a marriage contract (Rambam *Sefer Nashim, Hilkhhot Ishut* 24:5; *Shulḥan Arukh, Even HaEzer* 116:5).

**A woman who is a secondary forbidden relative prohibited by rabbinic law – הַשְּׂנִיָּה:** If a man married a woman who is a secondary forbidden relative, she is not entitled to a marriage contract, whether or not he was aware that that she is forbidden to him (Rambam *Sefer Nashim, Hilkhhot Ishut* 24:2; *Shulḥan Arukh, Even HaEzer* 116:4).

**A sexually underdeveloped woman – אֵילוּמִית:** If a man who married a sexually underdeveloped woman was aware of her condition at the time of their betrothal, she is entitled to a marriage contract like all other women. However, if he did not know about her status, she is not entitled to a marriage contract

(Rambam *Sefer Nashim, Hilkhhot Ishut* 24:2; *Shulḥan Arukh, Even HaEzer* 116:3).

**A minor girl divorced with a bill of divorce – קֵטָנָה יוֹצְאָה בְּגֵט:** A divorced minor has the same status as an adult with respect to a marriage contract (Rambam *Sefer Nashim, Hilkhhot Geirushin* 11:16 and *Hilkhhot Ishut* 3:1; *Shulḥan Arukh, Even HaEzer* 116:6).

**A deaf-mute man and an imbecile who married halakhically competent women – חֵרֶשׁ וְשׁוֹטָה שְׂנִישְׂאוּ פְּקוּחוֹת:** If a deaf-mute man or a male imbecile married halakhically competent women, even if the deaf-mute gained all his senses, and the imbecile became competent, their wives are not entitled to a marriage contract. However, if they wish to maintain their wives after being healed, the women are entitled a marriage contract of one hundred dinars (Rambam *Sefer Nashim, Hilkhhot Ishut* 11:6; *Shulḥan Arukh, Even HaEzer* 67:10).

**A decree lest he feed her – גוֹזְרָה שְׂמָא יֹאכִיל:** If the Sages enacted a decree for a man who married a deaf-mute woman on account of a deaf-mute man who married a halakhically competent woman, why didn't they also issue a decree for an adult man who married a female minor on account of a male minor who married an adult woman? One explanation is that because the Sages did not establish marriage for a minor they did not enact a decree on account of this uncommon occurrence (Rashi). Others suggest that as the minor eventually will mature and his marriage will be fully valid, the Sages did not enact a decree on account of a temporary marriage (*Tosafot*). The commentaries explain that these two answers are based on a difference of opinion with regard to the marriage of a minor. According to Rashi it is prohibited to allow a male minor to marry an adult woman, whereas according to *Tosafot* there is no prohibition against the marriage of a male minor, and sometimes he may even marry *ab initio* (*Tosafot HaRosh*; see Meiri).

**A deaf-mute woman has no marriage contract – חֵרֶשׁתּ – אִין לָהּ כְּתוּבָה:** The commentaries discuss this case in light of the *halakha* that it is prohibited to maintain a wife without a marriage contract, as this would render her insignificant in her husband's eyes. Furthermore, in that case the sexual relationship between the couple is considered licentious (Rashba). The Rashba answers that this decree does not apply to the marriage of a deaf-mute man and woman. First, because it is rare for a deaf-mute man to divorce his wife, and second, because this prohibition is relevant only in cases when the woman knows that other women of her stature have a marriage contract, and as she does not have one she might feel that she is being treated like a prostitute. This is not the case for a woman married to a deaf-mute man, as she knows that there is no marriage contract in her situation. All the more so for a deaf-mute woman, who is certainly not discriminating in this regard.

A halakhically competent man who married a deaf-mute or an imbecile – פקח שגנשא חרשת או שוטה, אפילו כתב לה מאה מנה – כתובתה קיימת, מפני שרצה לזק בנכסיו. טעמא – דרצה; הא לא רצה – אין לה, דאם בן מימנעי ולא נסבי לה.

**A deaf-mute woman has no marriage contract – חרשת – אין לה כתובה:** Although the Sages instituted marriage for a deaf-mute woman, they did not enact a marriage contract for her. Furthermore, she is not entitled to receive sustenance from her husband, nor is she entitled to any of the conditions normally included in a marriage contract (Rambam *Sefer Nashim, Hilkhoh Ishut* 11:5; *Shulhan Arukh, Even HaEzer* 67:8).

**A deaf-mute was in the neighborhood, etc. – חרש דתה – בשיבוביה וכו':** If the court permitted the marriage of a deaf-mute man, and they wrote a marriage contract for his wife, she may take the amount they designated for her (*Shulhan Arukh, Even HaEzer* 67:10).

**The wife of a deaf-mute, he is not obligated to bring a guilt-offering for uncertainty on her account – אשת חרש אין תיבין עליה אשם תלוי:** One is obligated to bring a guilt-offering for uncertainty only if the forbidden item was definitely present and the doubt concerns whether or not he performed the transgression. Consequently, with regard to one who had relations with a woman who was questionably betrothed, since the prohibition has not been definitively established, no guilt-offering for uncertainty applies. The *halakha* is in accordance with the first version of Shmuel's statement (Rambam *Sefer Korbanot, Hilkhoh Shegagot* 8:2).

**Five may not separate *teruma* – חמשה לא יתרמו:** Five categories of people may not separate *teruma*, and if they did so their action is of no consequence. They are: A deaf-mute, an imbecile, a minor, a gentile who separated on behalf of a Jew even if he acted with the permission of the Jew, and one who separates something that does not belong to him without the owner's permission (Rambam *Sefer Zera'im, Hilkhoh Terumot* 4:2; *Shulhan Arukh, Yoreh De'a* 331:30).

## NOTES

**Because he wanted to harm his own property – מפני שרצה לזק בנכסיו:** This emphasis is necessary, because it might have been thought that the man could claim that he erred in writing her a marriage contract as it is a rabbinic marriage, and had he known that she is not entitled to a marriage contract, he would not have written it. Therefore, the Gemara stresses that he gave her the money of his own free will (*Nimmukei Yosef*).

**The reason is that he wanted, etc. – טעמא דרצה וכו':** The commentaries ask: Wouldn't it have been possible to reach this conclusion from a precise reading of the first part of the *baraita*? The first part of the *baraita* states that a deaf-mute man who married a halakhically competent woman has no marriage contract. Isn't it logical that, all the more so, if a halakhically competent man married a deaf-mute woman there is no marriage contract (Ritva)? The Ritva explains that, though the *baraita* is clear in this regard, the Gemara preferred to cite a proof from the section that refers to the deaf-mute woman herself.

## PERSONALITIES

**Rav Malkiyuu – רב מלכיו:** Almost nothing is known about this Sage aside from what can be inferred from this passage, i.e., that he was an important scholar and a contemporary of Rava. Rav Malkiyuu is mentioned several times in the Talmud as transmitting traditions in the name of Rav Ada bar Ahava. Since both Rav Malkiyuu and a Sage with a very similar name, Rav Malkiyya, cite statements in the name of Rav Ada bar Ahava, they are the subject of several discussions in the Talmud that explore who exactly said which *halakha*.

ופקח שגנשא חרשת או שוטה, אפילו כתב לה מאה מנה – כתובתה קיימת, מפני שרצה לזק בנכסיו. טעמא – דרצה; הא לא רצה – אין לה, דאם בן מימנעי ולא נסבי לה.

אי הכי פקחת לחרש ליתקן לה כתובה, דאם בן מימנעי ולא מינסבי יותר משהאיש רוצה לישא, אשה רוצה להנשא.

ההוא חרש דהיה בשיבוביה דרב מלכיו; אנסביה איתתא וכתב לה ארבע מאה זוזי מנכסיה. אמר רבא: מאן חקים כרב מלכיו דגברא רבה הוא, קסבר: אילו רצה שפחה לשמשו, מי לא זבנינן ליה? כל שכן הכא, דאיכא תרתין.

אמר רב חייה בר אשי אמר שמואל: אשת חרש אין תיבין עליה אשם תלוי.

לימא מסיע ליה: חמשה לא יתרמו, ואם תרמו – אין תרומתן תרומה, ואלו הן: חרש, שוטה, וקטן, והתורם את שאינו שלו, וגוי שתורם של ישראל אפילו ברשות ישראל – אין תרומתו תרומה.

And in the case of a halakhically competent man who married a deaf-mute or an imbecile,<sup>h</sup> and he decided to write a marriage contract for her, even if he wrote for her one hundred dinars her marriage contract is valid, because he wanted to harm his own property.<sup>n</sup> In other words, as he acted willingly, despite the lack of obligation to do so, this is comparable to one who chooses to harm himself and give away property in any other manner; it is his prerogative. The Gemara infers: **The reason for this *halakha* is that he wanted<sup>n</sup> to write her a marriage contract, from which it may be inferred that if he does not want to write one, she will not have a marriage contract.<sup>h</sup>** The logic is as stated above, **that if so, men would refrain from marrying her.**

The Gemara asks: **If so, in a case of a halakhically competent woman who was married to a deaf-mute, let the Sages enact a marriage contract for her, for if so, i.e., if women would not receive marriage contracts in this situation, they would refrain from marrying deaf-mute men entirely.** The Gemara answers: **More than the man wants to get married, a woman wants to be married.** Consequently, women will not be too discriminating with regard to marriage with a deaf-mute, even if they are not entitled to a marriage contract.

The Gemara relates: There was a certain deaf-mute man who was in the neighborhood<sup>h</sup> of Rav Malkiyuu.<sup>p</sup> Rav Malkiyuu married him to a woman, and he wrote four-hundred dinars for her from the property of the deaf-mute as her marriage contract. Rava said: **Who is as wise as Rav Malkiyuu, as he is a great man who found a way to achieve a desirable result by giving her a marriage contract, despite the fact that the deaf-mute was not obligated to do so. Rav Malkiyuu reasoned as follows: If that deaf-mute man wanted a maidservant to attend to him, would we not acquire one for him? All the more so here, as there are two advantages, for she will attend to his needs both as a maidservant and as a wife.**

**S Rav Hiyya bar Ashi said that Shmuel said:** If a man had unwitting relations with the wife of a deaf-mute, i.e., not knowing that she was married, he is not obligated to bring a guilt-offering for uncertainty on her account.<sup>h</sup> He is not liable to bring an offering that is brought in cases where one is unsure whether he committed a sin that requires a sin-offering. A man who unwittingly has relations with a married woman must bring a sin-offering, whereas if the woman was doubtfully married, he brings a guilt-offering for uncertainty. However, the marriage of a deaf-mute is not even categorized as a doubtful marriage.

The Gemara comments: **Let us say that the mishna (*Terumot* 1:1) supports Shmuel's opinion: There are five categories of people who may not separate *teruma*<sup>h</sup> *ab initio*, and if they separated *teruma*, their *teruma* is not considered *teruma*. They are: A deaf-mute, an imbecile, and a minor,<sup>b</sup> and one who separates *teruma* from produce that is not his, and a gentile who separated *teruma* from the produce of a Jew even with the Jew's permission. In this last case, his *teruma* is not considered *teruma*, because a gentile cannot be appointed as an agent to separate *teruma*, and all the more so he cannot separate *teruma* on his own. This shows that the actions of a deaf-mute have no effect, and are not even considered of doubtful validity.**

## BACKGROUND

**A deaf-mute, an imbecile, and a minor – חרש שוטה וקטן:** The members of these three categories are frequently grouped together, either because of their limited intellectual capacity or due to their inability to act responsibly. Deaf-mutes, imbeciles, and minors are not obligated to perform mitzvot, nor are they held responsible for any damage they may cause. They also lack the legal capacity to act as agents. Although all three categories are often mentioned together, there are many differences between the *halakhot* governing each of them. When

the Sages refer to an imbecile, they mean someone who has no intelligence at all, in halakhic terms, and who is therefore exempt from all mitzvot and liabilities. When they refer to a deaf-mute, they mean someone of limited intelligence. This was a consequence of the deaf-mute's inability, in ancient times, to communicate with his surroundings. Although he is not obligated in mitzvot, the Sages imposed certain strictures with regard to the deaf-mute, and there are circumstances in which he can facilitate the fulfillment of mitzvot by others.

**One piece from two pieces – הַתִּיבָה מִשְׁתֵּי חֵתִיבוֹת** – One is liable to bring a guilt-offering for uncertainty only in a case that involves a doubt concerning an established prohibition. An example is the case where there were two pieces of meat placed before an individual, one of which is definitely forbidden fat and the one of which is definitely permitted fat, and he does not know which one of them he ate. However, if there was only one piece of meat before him, which is doubtfully forbidden fat, he is exempt from bringing a guilt-offering for uncertainty. For this reason one who ate the fat of a *koy* is exempt, as its status is doubtful, for it has characteristics both of a non-domesticated animal and of a domesticated animal. The *halakha* is not in accordance with the opinion of Rabbi Elazar (Rambam *Sefer Korbanot*, *Hilkhot Shegagot* 8:2–3).

BACKGROUND

**Koy – כּוֹי** – Many problems arise in trying to identify the *koy*. It is mentioned numerous times in the Mishna and the Gemara, not because it is a common animal, but rather because it is useful in discussions that explore the parameters and limits of the laws of domestic animals versus wild animals. As early as the mishnaic period, the Sages disagreed on the identification of the *koy*. Some maintain that it is a hybrid born to a deer or another kosher wild animal and a goat.

According to many researchers, the *koy* is identified as the water buffalo. There are allusions to this identification in some medieval rabbinic sources. Others reject this idea and claim that water buffalo did not live in Eretz Yisrael during the time of the Mishna, when the *koy* was first mentioned. Others maintain that the *koy* is the mouflon, a subspecies of wild sheep, though there are a number of opinions as to the specific subspecies of mouflon it may be. There is also uncertainty with regard to both the origin of the term *koy* and its proper vocalization.



Water buffalo



Mouflon

הוא דָּאֵמַר כְּרַבִּי אֶלְעָזָר, דְּתַנָּא: רַבִּי יִצְחָק אָמַר מִשּׁוּם רַבִּי אֶלְעָזָר: תְּרוּמַת חֵרֶשׁ לֹא תֵצֵא לְחֹלִין, מִפְּנֵי שֶׁהוּא סֶפֶק. אִי סְבִירָא כְּרַבִּי אֶלְעָזָר – אֲשֶׁם תְּלוּי נִמְי לִיחִיב!

The Gemara responds: This is no proof, as with regard to *teruma*, Shmuel said his statement in accordance with the opinion of Rabbi Elazar.<sup>N</sup> As it is taught in a *baraita* that Rabbi Yitzhak said in the name of Rabbi Elazar: **The *teruma* of a deaf-mute is not released into a non-sacred status, because it is uncertain.** Rabbi Elazar does not maintain that the actions of a deaf-mute have no consequence whatsoever. The Gemara asks: **If Shmuel maintains, in accordance with the opinion of Rabbi Elazar, that a deaf-mute is competent, let him also obligate a man who has relations with the wife of a deaf-mute to bring a guilt-offering for uncertainty.**<sup>N</sup>

בְּעֵינַי חֵתִיבָה מִשְׁתֵּי חֵתִיבוֹת.

The Gemara answers: **We require one piece from two pieces.**<sup>H</sup> Shmuel maintains that one is not liable to bring a guilt-offering for uncertainty in every case where there is doubt whether or not there was a transgression, and where one would be liable to bring a sin-offering if it were certain that there was a transgression. Rather, a guilt-offering for uncertainty is brought if, for example, one had two pieces of meat before him, one of which was definitely forbidden while the other was permitted, but he does not know with certainty which one he ate. However, when the doubt involves a single item or action, which may or may not have been prohibited, in that situation one does not bring a guilt-offering for uncertainty. In the case discussed here, the doubt concerning the wife of a deaf-mute does not involve a choice between an action that is prohibited and one that is permitted. Rather, it depends on the status of the woman's marriage.

וּמִי בְּעֵי רַבִּי אֶלְעָזָר חֵתִיבָה מִשְׁתֵּי חֵתִיבוֹת? וְהַתַּנָּא: רַבִּי אֶלְעָזָר אָמַר: כּוֹי חֵיבִין עַל חֵלְבוֹ אֲשֶׁם תְּלוּי!

The Gemara asks: **And does Rabbi Elazar need a case involving one piece from two pieces to render one liable to bring a guilt-offering for uncertainty? But isn't it taught in a *baraita* that Rabbi Elazar says:** With regard to a *koy*,<sup>B</sup> a kosher animal with characteristics of both a domesticated animal and a non-domesticated animal, **one is obligated to bring a guilt-offering for uncertainty for eating its forbidden fat.** Certain fats, which are permitted in the case of a wild animal, are prohibited if they are from a domesticated animal, and one who partakes of them is liable to bring a sin-offering. Since a *koy* is of uncertain status, one must bring a guilt-offering for uncertainty for eating its fat. This shows that Rabbi Elazar maintains that one brings a guilt-offering for uncertainty even for a doubt involving one item or action.

שְׁמוּאֵל סָבַר כְּרַבִּי אֶלְעָזָר בְּחֻדָּא, וּפְלִיג עָלֵיהּ בְּחֻדָּא.

The Gemara answers: **Shmuel holds in accordance with the opinion of Rabbi Elazar in one matter, the status of a deaf-mute, and disagrees with him in one other matter, the *halakha* of a guilt-offering for uncertainty.**

NOTES

**הוא דָּאֵמַר כְּרַבִּי – Said in accordance with Rabbi Elazar – אֶלְעָזָר:** Some commentaries are puzzled by the unusual style of the Gemara here (Ritva). The Gemara is seeking a proof for Shmuel's opinion, and yet the suggested proof is rejected not on the basis of his own statement but in light of a different ruling, one that is not explicitly mentioned by Shmuel himself. However, there is a different version of the text, which resolves this difficulty (*Ba'al Halakhot Gedolot*). According to this version, the mishna is not cited in support of Shmuel's opinion but as a question: Why was it necessary for Shmuel to issue his statement when this *halakha* can be derived from an explicit mishna? The Gemara proceeds to answer this question by attributing a different opinion to Shmuel.

5:17–19), while the details of its *halakhot* are explained mainly in tractate *Karetot*. The Torah itself does not specify the transgression for which one is liable to bring this offering. However, it is a tradition of the Sages that a guilt-offering for uncertainty is brought for an action that is possibly a sin. The performance of this action renders the unwitting sinner liable to bring a fixed sin-offering. As long as it remains unknown whether or not one committed the transgression, he must bring a guilt-offering for uncertainty. If it subsequently became known to him that he definitely sinned, at that stage he brings a sin-offering. The doubt referred to here does not involve the basic existence of the prohibition, but whether he actually committed the transgression. If the doubt involved the basic existence of the prohibition, e.g., the fat of a *koy*, this is a not a doubt for which one is obligated to bring a guilt-offering for uncertainty.

**אֲשֶׁם תְּלוּי – A guilt-offering for uncertainty –** The guilt-offering for uncertainty is mentioned in the Torah (Leviticus

ואיכא דאמרי: אמר רב חייה בר אשי אמר שמואל: אשת חרש חייבין עליה אשם תלוי. מיתבי: חמשה לא יתרומו! סבר לה פרבי אלעזר.

בעא רב אשי: מאי טעמא דרבי אלעזר? מיפשוט פשיטא לי דחרש דעתא קלישתא הוא, ומיהו מספקא לי אי דעתא צילותא.

And there are those who say a different version of the above discussion. Rav Hiyya bar Ashi said that Shmuel said: If a man had unwitting relations with the wife of a deaf-mute, he is obligated to bring a guilt-offering for uncertainty on her account, due to the doubt. The Gemara raises an objection: Five categories of people may not separate *teruma*, etc., which indicates that the actions of a deaf-mute have no legal effect. The Gemara answers that Shmuel maintains his opinion in accordance with the opinion of Rabbi Elazar, that the *teruma* of a deaf-mute is considered *teruma* that is of doubtful legal status.

Rav Ashi raised a dilemma: What is the reason for the opinion of Rabbi Elazar? One possibility is that it is obvious to him that the mind of a deaf-mute is weak. However, he is uncertain as to whether his mind is clear. In other words, although a deaf-mute is weaker intellectually than an average person, and he does not understand everything, nevertheless he is aware of what he is doing with regard to certain undertakings.

Perek XIV  
Daf 113 Amud b

NOTES

**He may betroth – קדושי מצוי מקדש** – The commentaries ask why isn't she divorced due to the fact that her forbidden status is a compound uncertainty: It is doubtful whether her betrothal occurred when she was healthy, for she might have been incompetent at the time, and even if she was competent at the time of her betrothal, perhaps she was competent when she was divorced (Rabbi Akiva Eiger). This question is based on the principle that in a case of a compound uncertainty the lenient option is generally accepted. Rabbi Akiva Eiger answers that the concept of a compound uncertainty applies only when the two uncertainties came into effect simultaneously, whereas in this case the events occurred at different times. Consequently, each uncertainty is judged on its own merits.

HALAKHA

**Divorce for one who is imbecilic – גירושי שוטה** – If someone's wife became imbecilic and she cannot guard her bill of divorce, according to all opinions he cannot divorce her. He remains obligated in all the monetary commitments of a man to his wife (*Helkat Mehokek*).

If she is able to guard her bill of divorce but does not know how to take care of herself, it is prohibited to divorce her until she recovers, so that people will not treat her in a disrespectful manner. Therefore, he must leave her in her current status, and marry another woman. In those places where the ban of Rabbeinu Gershom is in effect, one must request special permission from one hundred rabbis to marry a second woman. In this case he is not obligated in food, clothing, or conjugal rights, nor in the other commitments set forth in her marriage contract. If he transgressed and divorced her, she is divorced, and he is not obligated to care for her anymore. Some authorities maintain that she is not divorced even after the fact (Rema, citing Rashba and Ra'avya). Nowadays, when the ban of Rabbeinu Gershom that one may not divorce a woman against her will is in effect, all the monetary obligations toward a wife certainly apply to him according to all opinions (*Helkat Mehokek*). Even if the rabbis permit him to marry another woman, he must guarantee that he will take care of his imbecilic wife. If he did divorce her, he should deposit the bill of divorce with the court and sign a guarantor's document for the payment of her marriage settlement. In a case where a man's wife is at times competent and at times imbecilic, if he divorced her when she was competent, the bill of divorce is valid (Rambam *Sefer Nashim*, *Hilkhot Geirushin* 10:23; *Shulhan Arukh*, *Even HaEzer* 119:6).

אי לאו דעתא צילותא – ולעולם חדא דעתא הוא. או דלמא: פשיטא ליה דדעתיה קלישתא ולא דעתא צילותא הוא. והכא היינו טעמא: בין דעתים חלים ועתים שוטה.

למאי נפקא מינה – להוציא אשתו בגט. אי אמרת חדא דעתא הוא – כקדושין כך גירושין.

ואי אמרת עתים חלים ועתים שוטה – קדושי מצוי מקדש, גירושי לא מצוי מגרש. מאי תיקו.

"נשתטית" וכו'. אמר רבי יצחק: דבר תורה שוטה מתגרשת, מידי דהוה אפקחת בעל ברחיה. ומה טעם אמרו אינה מגורשת? שלא ינהגו בה מנהג הפקר.

Or perhaps his mind is not clear, i.e., he cannot achieve full and clear understanding, and yet he is always of one mind. In other words, a deaf-mute functions at the same level of intellectual capacity every day. Rav Ashi explains the other possibility: Or perhaps it is obvious to Rabbi Elazar that the mind of a deaf-mute is weak and his mind is unclear, but in this case here, this is Rabbi Elazar's reasoning: Since he is at times competent and at times imbecilic, without clarity of mind, i.e., he does not function at the same level of understanding every day, therefore the *teruma* of a deaf-mute is considered *teruma* that is of doubtful legal status.

The Gemara asks: What is the practical difference how one defines the intellectual capacity of a deaf-mute? The Gemara answers: It makes a difference with respect to divorcing his wife with a bill of divorce. If you say that a deaf-mute has one consistent mind, his divorce is equivalent in status to his betrothal. Since he had a weak mind at the time of his betrothal, he has the same level of competence at his divorce and therefore he may divorce his wife.

But if you say that he is at times competent and at times imbecilic, he may betroth<sup>n</sup> a woman, as the Sages are stringent and assume that he was healthy and of clear mind at the time; however he cannot divorce her, due to a concern that he was competent when he betrothed her but he is incompetent now. If so, what is Rabbi Elazar's reasoning? No solution is found, and therefore the Gemara states that the dilemma shall stand unresolved.

§ The mishna taught that one whose wife became imbecilic may not divorce her.<sup>h</sup> Rabbi Yitzhak said: By Torah law, an imbecilic woman may be divorced, just as it is in the analogous case of a halakhically competent woman who was divorced against her will. Since there is no need for a woman to agree to receive a bill of divorce, an imbecile's lack of sound mind does not prevent her from being divorced. And if so, what is the reason that the Sages said that an imbecilic woman may not be divorced? The reason is so that people should not treat her in the manner of ownerless property. Since she is not of sound mind and has no husband to protect her, there is a concern that people might treat her in a disrespectful fashion.

And give it into her hand – וְנָתַן בְּיָדָהּ – The hand referred to here is a concept that exists in various areas of *halakha*. Basically, it refers to the legal ability to accept and acquire an item from others. Someone described as having a hand is considered to be legally competent, whereas one described as not having a hand is considered as if he is without intellectual capacity and cannot acquire items for himself. The commentaries discuss whether Rabbi Yannai's statement and that of the school of Rabbi Yishmael teach the same idea in different forms or if each exposition offers a unique meaning (*Tosafot*). One issue is that it is unclear whether the school of Rabbi Yishmael maintains that the acceptance of a bill of divorce is a type of acquisition that requires legal competence.

This issue can be discussed from a different perspective: According to the opinion of the school of Rabbi Yannai, is it sufficient for the divorced woman to have a hand? The practical relevance of this question concerns an imbecilic minor, as although she might return to her husband after a divorce, thereby demonstrating mental incompetence, nevertheless she has a legal hand via her father (see *Nimmukei Yosef* and *Keren Ora*).

It is also precise, as it teaches – דִּיקָא נָמִי דְקִתְנִי – If a bill of divorce is invalid by Torah law, the wife cannot be divorced with that document, which means that even if she left and married another man with whom she bore children, the second marriage is entirely invalid and the children are *mamzerim*. However, if the mishna does not state the term: Never, this is an indication that if he transgressed and divorced his wife, the divorce is effective after the fact (*Ritva*).

היכי דמי? אילימא דיודעת לשמור גיטה ויודעת לשמור עצמה – מי נהגי בה מנהג הפקד? אלא: דאין יודעת לשמור לא גיטה ולא עצמה.

The Gemara inquires: **What are the precise circumstances of this case? If we say that this woman knows how to guard her bill of divorce, i.e., she understands the concept of a bill of divorce, and she also knows how to take care of herself, would people treat her in the manner of ownerless property? She is capable of protecting herself. Rather, the mishna is evidently referring to a woman who does not know how to guard her bill of divorce, nor does she know how to take care of herself.**

דבר תורה שוטה מתגרשת? והא אמר דבי רבי ינאי: "ונתן בידה" – מי שיש לה יד לגרש עצמה, יצתה וזו שאין לה יד לגרש עצמה!

The Gemara asks: **Is it correct that by Torah law an imbecilic woman may be divorced? But didn't a Sage of the school of Rabbi Yannai say, with regard to the verse: "He shall write her a bill of divorce and give it into her hand" (Deuteronomy 24:3),<sup>n</sup> that this refers only to a woman who has a hand, i.e., she has enough intellectual capacity to accept a bill of divorce for herself. This serves to exclude this imbecilic woman, who does not have a hand to accept her divorce for herself.**

ותנא דבי רבי ישמעאל: "ושלחה מביתו" – מי שמשלחה ואינה חוזרת, יצתה וזו שמשלחה וחוזרת!

And the school of Rabbi Yishmael taught this slightly differently. The verse continues: **"And send her out of his house" (Deuteronomy 24:3);** this indicates that one may divorce only the type of woman whom he will send away and she will not return. It serves to exclude this imbecilic woman, as he will send her away and she will return, as she does not understand the concept of divorce.

לא צריכא, דיודעת לשמור גיטה ואינה יודעת לשמור עצמה, דבר תורה שוטה מתגרשת – דהא יודעת לשמור גיטה, ואמור רבנן לא ליפקא, שלא ינהגו בה מנהג הפקד.

The Gemara explains: **No, Rabbi Yitzhak's halakha is necessary in the case of a woman who knows how to guard her bill of divorce but does not know how to take care of herself. By Torah law this imbecilic woman may be divorced, as she knows how to safeguard her bill of divorce, and yet the Sages said that her husband should not divorce her, so that people should not treat her in the manner of ownerless property, because she does not know how to take care of herself.**

אמר אביי דיקא נמי, דקתני גבי דידיה: נשתתית – לא יוציא, וגבי דידיה: לא יוציא עולמית. מאי שנא הכא דקתני עולמית ומאי שנא התם דלא קתני עולמית? אלא שמע מינה: הא – דאורייתא, הא – דרבנן.

Abaye said: The language of the mishna is also precise in this case, as it teaches<sup>n</sup> with regard to this woman that if she became an imbecile he may not divorce her; and yet, with regard to the husband, the mishna states that if he became an imbecile he may never divorce her. **What is different here, that the mishna teaches using the word: Never, and what is different there, that it does not teach: Never? Rather, one can learn from here that this halakha, that an imbecilic man may not give a divorce, applies by Torah law, and this one, that a man may not divorce an imbecilic woman, applies by rabbinic law, and therefore the mishna does not add the phrase: Never.**

"אמר רבי יוחנן בן נורי וכו'. איבעיא ליה: רבי יוחנן בן נורי – איש פשיטא ליה ואשה קמיבעיא ליה, או דלמא: אשה פשיטא ליה ואיש קמיבעיא ליה?"

§ The mishna taught that **Rabbi Yohanan ben Nuri said: What is the reason that the husband of a woman who became a deaf-mute may divorce her, whereas a man who becomes a deaf-mute may not divorce his wife? A dilemma was raised before the scholars with regard to the opinion of Rabbi Yohanan ben Nuri: Is it obvious to him that a deaf-mute man may not divorce his wife, and he raised his dilemma with regard to a woman, i.e., why she may be divorced if she is a deaf-mute? Or perhaps, it is obvious to him why one may divorce a deaf-mute woman, and he raised his dilemma with regard to a deaf-mute man, i.e., why he may not divorce his wife.**

תא שמע: מדקאמרו ליה אינו דומה האיש המגרש לאשה המתגרשת – שהאשה יוצאת לרצונה ושלא לרצונה, והאיש אינו מוציא אלא לרצונו – שמע מינה: איש קמיבעיא ליה. אדרבה, מדקאמרו ליה אף זו כיוצא בה – שמע מינה: אשה קמיבעיא ליה!

The Gemara cites a proof: **Come and hear from what the Rabbis said in response to Rabbi Yohanan ben Nuri: 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, and the man divorces his wife only willingly. Learn from here that Rabbi Yohanan ben Nuri raised his dilemma with regard to a deaf-mute man, not a woman, as the reply of the Rabbis is referring to the man, not the woman. The Gemara rejects this proof: On the contrary, from the fact that the Rabbis said to him: This woman, too, has a similar status, one can learn from here that he raised his dilemma with regard to a deaf-mute woman.**

And he said to her, take this promissory note, she is divorced, etc. – ואמר לה כנסתי שטר חוב זה והרי זו מגורשת וכו' – When a husband divorces his wife, he must make it clear that he is giving her a bill of divorce. If he gave the document to her but said it was a promissory note, she is not divorced, unless he told her afterward that it is a bill of divorce or if witnesses were aware of this fact from the outset. Some commentaries (*Beit Shmuel*) maintain that the woman must know at the time that she receives the document that she is divorced by means of this bill of divorce, or she must be informed by the witnesses (*Shulhan Arukh, Even HaEzer 136:5*, and in the comment of Rema).

אלא רבי יוחנן בן נורי לדבריהם קאמר לה: לדידי, כי היכי דאיש לא מצוי מגרש – אשה נמי לא מיגרשא, אלא לדידכו – מאי שנא אשה ומאי שנא איש? אמרו ליה: אינו דומה האישה המגרש לאשה המתגרשת.

“העיד רבי יוחנן” וכו'. אמר רבא: מעדותו של רבי יוחנן בן גודגדא, אמר לעדים: “ראו גט זה שאני נותן”, ואמר לה: “כנסתי שטר חוב זה” – הרי זו מגורשת.

מי לא אמר רבי יוחנן בן גודגדא לא בעינן דעתה – הכא נמי לא בעינן דעתה. פשיטא!

מהו דתימא: מדאמר לה “כנסתי שטר חוב זה” בטולי בטליה, קא משמע לן אי איתא דבטליה – לעדים הוה קאמר להו; ומדלא אמר לעדים – לא בטליה ולא מידי, והאי דקאמר הכי – מחמת כיוסופא הוא דקאמר להו.

רב יצחק בר ביסנא אירכסו ליה מפתחי דבי מדרשא ברשות הרבים בשבתא. אתא לקמיה דרבי פדת. אמר ליה: זיל

Rather, Rabbi Yoḥanan ben Nuri spoke to the Rabbis in accordance with their statement, i.e., he formulated his statement so as best to argue with their opinion, as follows: **According to my opinion,<sup>N</sup> just as a deaf-mute man cannot divorce his wife, so too a deaf-mute woman cannot be divorced. However, according to your opinion, what is the difference between the case of a deaf-mute woman and the case of a deaf-mute man? They said to him: The man who divorces his wife is not similar to the woman who is divorced.**

The mishna taught: **Rabbi Yoḥanan ben Gudgada testified** that in the case of a deaf-mute minor whose father married her off, which is a marriage that is valid by Torah law, she may nevertheless be divorced once she matures. **Rava said: From the testimony of Rabbi Yoḥanan ben Gudgada<sup>N</sup> one may learn that if a husband said to witnesses: See this bill of divorce that I am giving my wife, and yet he said to her: Take this promissory note, she is divorced,<sup>H</sup> despite the fact when he gave his wife the bill of divorce she did not know what it was.**

This *halakha* is derived from Rabbi Yoḥanan ben Gudgada’s statement in the following manner: **Didn’t Rabbi Yoḥanan ben Gudgada say that we do not require her consent**, as there is no need for the woman to understand that she is receiving a bill of divorce? **Here, too, we do not require her consent**, and even if she believes that she is receiving a bill of debt, she is divorced. The Gemara asks: **Isn’t it obvious** that there is no need for the woman’s consent? What is the novel element in Rava’s statement?

The Gemara answers that Rava’s statement is necessary, **lest you say: From the fact that the husband said to her: Take this promissory note, he has thereby nullified the bill of divorce.** Rava therefore **teaches us** that this is not the case, for if it is so, that he nullified the bill of divorce, **he would have said so to the witnesses. And from the fact that he did not say this to the witnesses, he evidently did not nullify the bill of divorce at all.** **And the reason that the husband said this, i.e., that she should take this bill of debt, it was due to shame that he said this to her, as he meant to divorce her all along, but he did not want her to know at the time what he was doing.**

The Gemara relates a story: **Rav Yitzḥak bar Bisna lost the keys to the study hall**, and therefore they could not come into the study hall from **the public domain on Shabbat**. It was impossible to open the synagogue, as they could not bring the key because it is prohibited to carry in the public domain. **He came before Rabbi Pedat to ask what to do. Rabbi Pedat said to him: Go**

NOTES

רבי – according to my opinion – Rabbi Yoḥanan ben Nuri...according to my opinion: The Jerusalem Talmud indicates that Rabbi Yoḥanan ben Nuri reasons as follows: Although there is no need for the consent of a competent woman for her divorce, nevertheless a woman who lacks intellectual capacity cannot be divorced. This is similar to the principle: Whatever is fitting to be mixed, mixing is not indispensable for it, and whatever is not fit to be mixed, mixing is indispensable for it. In other words, certain requirements do not have to be performed in practice, but the option to perform them must be available in potential. This principle, which was originally stated with regard to meal-offerings, was also extended to other halakhic areas. In this case it means that for divorce to be effective, the woman must be legally competent, even if it is performed without her consent in actuality.

From the testimony of Rabbi Yoḥanan ben Gudgada, etc. – מעדותו של רבי יוחנן בן גודגדא וכו' – The commentaries point out that Rava’s statement is not a direct outcome of Rabbi Yoḥanan ben Gudgada’s testimony (*Tosafot*). Rava’s statement includes the new line of reasoning that even if the husband expressly told his wife that it is a bill of debt, he has not thereby nullified the bill of divorce. The connection between the two halakhic rulings should be understood as follows: From Rabbi Yoḥanan’s statement one can derive that there is no need at all for the woman’s awareness in order for her divorce to be valid, and Rava advanced a novel *halakha* on this basis of this reasoning (*Rashba*).