

Levirate marriage for a remarried divorcée – **ייבום מחזיר**: If one remarries his divorced wife after she had been married to another man, and then dies childless, she must perform *halitza*, not levirate marriage. Her rival wife performs either *halitza* or engages levirate marriage. This ruling is in accordance with the discussion here and the opinion (12b) of Rabbi Yohanan cited later (Rambam *Sefer Nashim, Hilkhot Yibbum VaHalitza* 6:13; *Shulhan Arukh, Even HaEzer* 174:2).

NOTES

And did you not resolve, etc. – **וְלֹא תִירֹצֵי וכו'**: The commentaries note that no actual change was made to the text of the *baraita*, as the letter *vav*, which generally means: And, can often mean: Or (*Tosafot*). *Tosefot HaRosh* explains that this interpretation of the letter *vav* is appropriate only when it is evidently necessary from the context. Here, however, as the matter is not clear, this is indeed considered an adjustment to the text.

She is forbidden to one who was permitted to her, etc. – **בְּמִיתָר לָהּ אִסוּרָה וכו'**: It could be argued that based on this *a fortiori* inference, in every situation where the woman is forbidden by a regular prohibition, her rival wife should be exempt. The commentaries answer that as this prohibition applies to the deceased brother, she has the status of a brother's wife to whom the mitzva of levirate marriage does not apply, and this is considered a prohibition that entails *karet* (*Yosef Lekah*; see *Kovetz He'arot*).

Is the *a fortiori* inference strong, etc. – **מִי אֵלִים קֵל וְחֹמֶר וכו'**: The commentaries ask: In *Sota* 5b the Gemara states that a wife caught secluding herself with the man about whom she was warned must undergo *halitza* and may not enter into levirate marriage, and the Gemara there proves that ruling by this very *a fortiori* inference. Why, then, is the Gemara here uncertain as to whether the *a fortiori* inference can be applied to the woman herself? The answer must be that in Rabbi Yohanan's opinion that *halakha* is actually derived from the alternative reason mentioned by the Gemara there, that it is by Torah law that a *sota* cannot enter into levirate marriage. If so, no proof can be brought from there with regard to this issue (*Tosefot HaRosh*).

תָּא שְׁמַע: הַמְחֹזֵר גְּרוּשְׁתּוֹ מִשְׁנֵשׂאֵת –
הִיא וְצָרְתָּהּ חוֹלְצָת. הִיא וְצָרְתָּהּ סֹלְקָא
דְּעֵתְךָ?! [אֵלָא] אִימָא: אוּ הִיא אוּ
צָרְתָּהּ.

The Gemara suggests: Come and hear a different *baraita*: With regard to one who remarries his divorcée after she had married another, she and her rival wife perform *halitza*.¹⁴ The Gemara first analyzes the wording of the *baraita*: Can it enter your mind that both she and her rival wife must perform *halitza*? After all, only one wife of a deceased brother undergoes *halitza*, not two. Rather, say: Either she or her rival wife. This indicates that both women are unfit for levirate marriage.

וְלֹא תִירֹצֵי קְמַתְרַצְתָּ לָּהּ? תִּירֹץ הָכִי:
הִיא חוֹלְצָת, צָרְתָּהּ – אוּ חוֹלְצָת אוּ
מִתְיַבְמָת.

The Gemara rejects this claim: And did you not already resolve^N a difficulty in the *baraita* by adjusting its language and not interpreting it as it is? If so, you cannot cite a proof from here, as you can adjust it differently and answer as follows: She performs *halitza*, while her rival wife either performs *halitza* or enters into levirate marriage. If so, this *baraita* provides no conclusive proof that might resolve Rav Yehuda's dilemma.

אָמַר רַבִּי חִיטָּא בַר אֲבָא, רַבִּי יוֹחָנָן
בְּעֵי: הַמְחֹזֵר גְּרוּשְׁתּוֹ מִשְׁנֵשׂאֵת, צָרְתָּהּ
מֵהוּ? אָמַר לִיָּהּ רַבִּי אָמִי: וְהִיבְעִי לָךְ
הִיא גּוֹפָה: הִיא גּוֹפָה לָּא קְמִיבְעִיָּא לִי.

On the same issue, Rabbi Hiyya bar Abba said that Rabbi Yohanan raised a dilemma: With regard to one who remarries his divorcée after she had been married to another, what is the *halakha* concerning the levirate marriage of her rival wife? Rabbi Ami said to him: And you can raise the dilemma with regard to this woman herself. Why not ask if she requires levirate marriage when her husband dies? Rabbi Hiyya bar Abba replied: The *halakha* of the divorcée herself is not a dilemma for me, as she is certainly forbidden.

דְּאָמְרִינָן: קֵל וְחֹמֶר: בְּמִיתָר לָהּ אִסוּרָה,
בְּאִסוּר לָהּ – לֹא כָּל שְׂכֵנִי?! כִּי קָא
מִיבְעִיָּא לִי – צָרְתָּהּ מֵאִי מִי אֵלִים קֵל
וְחֹמֶר לְמִידְחֵי צָרָה, אוּ לָא?

Rabbi Hiyya bar Abba elaborates: As in this case we state an *a fortiori* inference: If she is now forbidden to one who was previously permitted to her,^N i.e., her first husband, with regard to one who was forbidden to her, the *yavam*, is it not all the more so the case that she remains forbidden to him? Where I raise the dilemma it is with regard to her rival wife. What is the *halakha* in this case? Is the aforementioned *a fortiori* inference strong enough to invalidate her rival wife or not? The divorcée herself is certainly exempt from levirate marriage, but the question is whether the *a fortiori* inference applies to the rival wife as well.

רַב נַחֲמָן בַּר יִצְחָק מִתְנִי הָכִי: אָמַר רַבִּי
חִיטָּא בַר אֲבָא, בְּעֵי רַבִּי יוֹחָנָן: הַמְחֹזֵר
גְּרוּשְׁתּוֹ מִשְׁנֵשׂאֵת מֵהוּ? אָמַר לִיָּהּ רַבִּי
אָמִי: וְהִיבְעִי לָךְ צָרְתָּהּ? צָרְתָּהּ לָא
קְמִיבְעִיָּא לִי, דְּלֹא אֵלִים קֵל וְחֹמֶר
לְמִידְחֵי צָרָה. אֵלָא, כִּי קְמִיבְעִיָּא לִי –
הִיא גּוֹפָה מֵאִי, מִי אֵלִים קֵל וְחֹמֶר
בְּמִקוּם מִצְוָה, אוּ לָא?

Rav Nahman bar Yitzhak would teach a different version of this discussion, as follows: Rabbi Hiyya bar Abba said that Rabbi Yohanan raised a dilemma: With regard to one who remarries his divorcée after she had been married to another, what is the *halakha* concerning her levirate marriage? Rabbi Ami said to him: And you can raise the dilemma with regard to her rival wife as well. Rabbi Hiyya bar Abba replied: The *halakha* of her rival wife is not a dilemma for me, as the *a fortiori* inference is not strong enough to invalidate a rival wife. Rather, where I raise the dilemma it is with regard to the divorcée herself. What is the *halakha*? Is the *a fortiori* inference strong^N enough that it can be accepted even in place of a mitzva to enter into levirate marriage, or not?

Perek I

Daf 12 Amud a

אָמַר לִיָּהּ: תְּנִיתוּהָ, הִיתָה אַחַת בְּשָׂרָה
וְאַחַת פְּסוּלָה, אִם הִיא חוֹלְץ – חוֹלֵץ
לְפְסוּלָה, וְאִם הִיא מֵיִיבָם – מֵיִיבָם
לְבְּשָׂרָה. מֵאִי בְּשָׂרָה וּמֵאִי פְּסוּלָה?
אִילִימָא בְּשָׂרָה – בְּשָׂרָה לְעֵלְמָא,
פְּסוּלָה – פְּסוּלָה לְעֵלְמָא, בִּינּוּן דְּלִידִיָּהּ
חִוּיָּא מֵאִי נִפְקָא לִיָּהּ מִיָּנָה?

Rabbi Ami said to Rabbi Hiyya bar Abba: We learned it in the same *baraita*: In a case where one of the women was fit and the other disqualified, if he would like to perform *halitza* he performs *halitza* with the disqualified woman, and if he would like to enter into levirate marriage, he enters into levirate marriage with the fit woman. What is fit and what is disqualified? If we say that fit means fit to all men, and disqualified means disqualified to all men, since for him she is suitable, what difference does it make for him whether she is disqualified from or fit for marriage to others?

The rival wife of a girl who performed refusal – צרת – ממאנת: If a man's minor wife was a forbidden relative of her *yavam*, and she performed refusal with regard to this *yavam* despite not having refused her husband, her rival wife performs *halitza* but does not enter into levirate marriage. In other words, her refusal of the *yavam* is not considered a refusal of the deceased. However, the rival wife of a girl who is not a forbidden relative of her *yavam* and who performs refusal is permitted in levirate marriage, in accordance with the opinion of Rabbi Yohanan on *daf* 12b (Rambam *Sefer Nashim*, *Hilkhot Yibbum VaHalitza* 6:22; *Shulhan Arukh*, *Even HaEzer* 173:7).

מיאנה בזה – מותרת בזה: The wife of a deceased man who refused one of his brothers is permitted to the other brothers, in accordance with the opinion of Shmuel. Although Rav and Rav Asi dispute this matter (107b), the *halakha* is ruled in accordance with the opinion of Shmuel, as Rabbi Yohanan holds accordingly (Rambam *Sefer Nashim*, *Hilkhot Geirushin* 11:17; *Shulhan Arukh*, *Even HaEzer* 155:11; 173:14).

אלא לאו: כשרה – כשרה ליה, פסולה – פסולה ליה, ומאי ניהו – מחזיר גרושתו, וקתני: אם היה מייבם – מייבם לכשרה!

לא. כשרה לעלמא, פסולה לעלמא. ודקאמרת: בין דלדידיה חזיא מאי נפקא ליה מינה – משום דרב יוסף. דאמר רב יוסף: באן שנה רבי לא ישפוד אדם מי בורו ואחרים צריכים להם.

תא שמע: המחזיר גרושתו משיניסת – היא וצרתה חולצת. היא וצרתה סלקא דעתך? אלא אימא: או היא או צרתה. ולא תרוצי קא מתרצת לה? תרוץ הכי: היא חולצת, צרתה – או חולצת או מתיבמת.

אמר רב לילי בר ממל אמר מר עוקבא אמר שמואל: צרת ממאנת אסורה. למאן? אילימא לאחים – השותא היא גופה שריא. דאמר שמואל: מיאנה בזה מותרת בזה, צרתה מיבעיא?

אלא לדידיה, ומאי שנא ממאנת דשריא לאחין – דלא עבדא בהו מעשה, צרה נמי לא עבדא בהו מעשה!

Rather, is it not the case that *fit* means *fit for him*, and *disqualified* means *disqualified for him*? And what is that case in which a woman is fit or disqualified only with regard to him but not to any other man? This is referring to the case of **one who remarries his divorcée. And it is taught that if he would like to enter into levirate marriage, he enters into levirate marriage with the fit woman.** This answers Rabbi Yohanan's question.

The Gemara rejects this argument: **No; actually, fit means fit to all men, and disqualified means disqualified in general, e.g., a woman who had already been divorced is disqualified from marrying any priest. And that which you said: Since for him she is suitable, what difference does it make for him, this is significant because of that statement of Rav Yosef. As Rav Yosef said: Here Rabbi Yehuda HaNasi taught a valuable moral lesson, that a person should not pour the water from his well when others are in need of it.**

Come and hear a different *baraita*: With regard to **one who remarries his divorcéeⁿ after she had married another, she and her rival wife must perform *halitza*.** Can it enter your mind that both she and her rival wife must perform *halitza*? Rather, say: **Either she or her rival wife.** This indicates that both women are unfit for levirate marriage. The Gemara rejects this claim: **And did you not already resolve a difficulty in the *baraita*? If so, answer as follows: She performs *halitza*, while her rival wife either performs *halitza* or enters into levirate marriage.** If so, this *baraita* provides no conclusive proof that might resolve Rabbi Yohanan's dilemma.

§ The Gemara cites another discussion concerning women who are forbidden in levirate marriage. **Rav Liliⁿ bar Memel said that Mar Ukva said that Shmuel said: The rival wife of a girl who performed refusal^h is forbidden.**ⁿ If the deceased brother had two wives, one of whom was a minor who refused the brother who sought to be her *yavam*, not only is she forbidden in levirate marriage, but so too is her rival wife. The Gemara asks: **To whom is she forbidden? If we say that she is forbidden to the other brothers, this cannot be the case, as now that she herself, the girl who actually performed refusal, is permitted to them, as Shmuel said: A minor *yevama* who refused this brother is permitted to that^h other brother of the deceased husband, is it necessary to state that her rival wife is likewise permitted?**

Rather, it means that she is forbidden to him, i.e., as she refused a specific brother, both she and her rival wife are forbidden to him. The Gemara clarifies: **And in what way is this *halakha* of the rival wife different from that of one who performed refusal, who is permitted to the other brothers?** If the reason is that she did not perform any act of refusal with them that might nullify the obligation of levirate marriage, her rival wife did not perform any act with them either, and therefore she should be permitted to all of the brothers.

NOTES

תא – Come and hear, one who remarries his divorcée, etc. – שבע המחזיר גרושתו וכו' At first the Gemara attempted to resolve the dilemma posed by Rabbi Yohanan in accordance with both versions of his dilemma (see Rashi). This suggestion refers only to the first of the two versions, as the second does not deal with the case of a rival wife at all (*Tosefot HaRosh*; Maharsa).

לילי – Lili: Apparently, this is not a proper name but an epithet or a nickname. The full name is Hillel, a common name among the Sages. Lili might be a shortened form of the foreign equivalent of this name, Julianus or Lulianus.

צרת – The rival wife of a girl who performed refusal is forbidden – ממאנת אסורה: The commentaries ask why the girl who performed refusal is herself forbidden. Since her refusal retroactively annuls the marriage entirely, she should be considered like any other woman who was never married at all. Some answer in accordance with the reason stated later, that since she first came before the *yavam* for levirate marriage and only later performed refusal she has the appearance of a brother's wife, and therefore the Sages rendered her forbidden (Rabbi Yehuda bar Natan; *Tosefot Yeshanim*; Ritva). Some say that due to her refusal she is similar to a *yevama* who received a bill of divorce from her first husband and who is consequently forbidden to the *yavam* (*Tosefot Rid*).

Due to the rival wife of one's daughter, etc. – משום צרת. At first glance this seems to be a decree enacted in addition to another decree, as the rival wife of one's daughter who performed refusal is herself forbidden only by rabbinic decree, as she has the appearance of a fully married daughter's rival wife. Apparently, Shmuel holds that this is all one decree, and he maintains that if the Sages permitted the rival wife of any other girl who refused her husband they allow the rival wife of a daughter who refuses as well. In contrast, Rabbi Yohanan states (12b) that this rabbinic decree was never enacted (Rashba).

One's daughter who performed refusal – בתו ממאנת. Rashi addresses the question of how a girl could perform refusal during her father's lifetime, as only a fatherless girl married off by her mother and brothers can perform refusal. He explains that the Gemara is referring to a so-called orphan during her father's lifetime, i.e., a minor girl who was married off by her father only to be divorced or widowed. In these circumstances her father can no longer betroth her by Torah law, and she is therefore considered like an orphan. With regard to the refusal itself, Rashi indicates that the girl performs refusal with her own father. Several early commentaries are puzzled by this, as she could never come before him for levirate marriage, which means that there is no opportunity for refusal at all. In their opinion, she refuses one of the other brothers to whom she is permitted. Since there was an act of refusal after the mitzva of levirate marriage came into effect, she has the appearance of a married woman (Ritva).

She uproots the first marriage – נשואין קמאי קא עקרא. This discussion appears in full later in the Gemara (107b). See also the Jerusalem Talmud, in which the matter is explained similarly. The basic question concerns the possibility of refusal with regard to a *yavam*, in light of the fact that the act of refusal annuls the previous marriage retroactively. It is possible that her refusal of her *yavam* is not considered a proper refusal, as it might actually be her first marriage that she seeks to annul. The commentaries also discuss whether the rival wife of a forbidden relative who performed refusal is forbidden to the *yavam*, due to the fact that she was not fit when the mitzva of levirate marriage initially came into effect. They explain that the rival wife remains forbidden, as anyone examining the case at the time when the mitzva of levirate marriage came into effect would have concluded that she is forbidden (*Melo HaRo'im*). Several other later commentaries explain this in a similar manner.

גזירה משום צרת בתו ממאנת. וצרת בתו ממאנת מי אסירא? והתנן: וכולן, אם מתו או מיאנו צרותיהן מותרות!

דמיאנה במאן? אילימא דמיאנה בבעל – היינו גרושה, אלא לאו ביבם!

לא, לעולם בבעל, ותרי גוונג גרושין, ומאי שנא בי מיאנה בבעל, דעקרינהו לנשואין.

בי מיאנה ביבם נמי נשואין קמאי קא עקרא!

משום דתני רמי בר יחזקאל. דתני רמי בר יחזקאל: מיאנה בבעל – מותרת לאביו, ביבם – אסורה לאביו.

אלמא: משעת נפילה נראית כבתו,

The Gemara answers: This is a rabbinic decree imposed due to the case of a rival wife of one's daughter^N who performed refusal. If the girl who refused was his daughter or any other forbidden relative, her rival wife would be forbidden as the rival wife of one's daughter. Therefore, the Sages rendered forbidden the rival wives of other women who performed refusal, not only his daughter. The Gemara asks: **And is the rival wife of a daughter who performed refusal^N actually forbidden? But didn't we learn in the mishna: And with regard to all of these women, if they died or performed refusal with their husbands, their rival wives are permitted.**

The Gemara analyzes this statement: **Whom did this girl refuse? If we say that she refused the husband**, i.e., the deceased brother before he passed away, **this is exactly the same as the case of a divorcée**, and the mishna explicitly states that if one's relative who had been married to his deceased brother died, or refused her husband, or was divorced, no prohibition applies to her rival wife. What is the difference between refusal and divorce? **Rather, is it not referring to a case where she refused the *yavam*?** If she refuses the *yavam*, her levirate bond is broken and her rival wife is no longer considered the rival wife of a forbidden relative. Consequently, the rival wife is fit for levirate marriage. This shows that no prohibition applies to the rival wife of a daughter who performed refusal.

The Gemara answers: **No; actually, it means that she refused the husband, and two types of divorce** are listed in the mishna: Divorce by Torah law and refusal, which is a form of divorce that applies by rabbinic law. The Gemara asks: **And what is different between the two cases?** Since refusal is not actually divorce but is a form of annulment that nullifies the matrimonial bond retroactively, **when she refuses her husband it must be said that she uproots the marriage**, and therefore the rival wife is rendered permitted.

If so, **when she refuses the *yavam***, one should also say that **she uproots the first marriage**.^N The reasoning is that she cannot actually refuse the *yavam*, as she was never married to him. Rather, it must be that she annuls her first marriage, and the bond with the *yavam* is canceled automatically. Consequently, it is as though she were not married at all, and there was never a rival wife.

The Gemara explains that Shmuel's reasoning is **due to the statement that Rami bar Yehezkel taught in a *baraita* as Rami bar Yehezkel taught**: If a minor refused her husband, she is permitted in marriage even to his father, as refusal completely nullifies the marriage, and it is as though there had never been any earlier marriage with the son. However, if she refused the *yavam*, not her husband, **she is forbidden to his father**.^H

Apparently, from the moment when she came before the *yavam* for levirate marriage she appears to be his father's daughter-in-law. Since at the time of the husband's death she had not yet performed refusal, to all appearances she was the father's daughter-in-law. Consequently, although the marriage of this minor was not valid by Torah law, any observer would have assumed it was a proper marriage. Therefore, the Sages rendered a girl who refused her *yavam* forbidden to his father, so that people not take lightly the prohibition of those with whom relations are forbidden.

HALAKHA

If she refused the *yavam* she is forbidden to his father – מיאנה... ביבם אסורה לאביו. Although refusal nullifies a marriage, and the relatives of the husband are therefore permitted to marry the girl who performed refusal, nevertheless, one who refused her *yavam* is forbidden to his father, as she came for levirate marriage when his son died, and therefore she appeared to be his daughter-in-law, as stated by Rami bar Yehezkel. With

regard to the other relatives of the deceased brother, some commentaries say that she is permitted to them (Rambam), while others rule that she is forbidden (Ramban; Rashba). She is permitted to the relatives of the *yavam* (Rema, citing *Beit Yosef*; Rambam *Sefer Nashim*, *Hilkhot Geirushin* 11:17; *Shulhan Arukh*, *Even HaEzer* 155:11).

The rival wife of an *aylonit* is forbidden – צרת אילנית – אסורה: Rav Asi maintains that an *aylonit* whose status was known at the time of her marriage is considered a forbidden relative, as she is unfit for levirate marriage. Accordingly, her rival wife is forbidden as well, as Rav Asi does not distinguish between the reasons for this prohibition. In the Jerusalem Talmud, it is stated that Rav Asi holds in accordance with the opinion of Rabbi Meir that a woman forbidden in levirate marriage exempts her rival wife in all circumstances.

ולא זיקת שני יבמין – Rav Asi: The Gemara states later (31b) that despite the apparent proof from the Torah, this prohibition applies by rabbinic law. The reason for the decree is so that people not think that two *yevamot* from a single household could both enter levirate marriage.

HALAKHA

To exclude an *aylonit* – פרט לאילנית: An *aylonit* is entirely exempt from levirate marriage and is forbidden to her *yavam* (Rambam *Sefer Nashim*, *Hilkhot Yibbum VaHalitza* 6:8).

הכא נמי – משעת נפילה נראית כצרת בתו.

Here, too, the same reasoning applies: From the moment when the other wife came before the *yavam* for levirate marriage she appears to be the rival wife of his father's daughter. For this reason she is forbidden, despite the fact that she is permitted by Torah law. Shmuel's ruling that the rival wife of a girl who performed refusal is forbidden is therefore a decree due to the case of the rival wife of a daughter who performed refusal.

אמר רב אסי: צרת אילנית אסורה, שנאמר "והיה הבכור אשר תלד" – פרט לאילנית שאינה יולדת.

The Gemara continues to discuss various cases of forbidden women. Rav Asi said: The rival wife of a sexually underdeveloped woman [*aylonit*] is forbidden.ⁿ In other words, if one of the wives of the deceased brother was an *aylonit*, who is incapable of giving birth, the mitzva of levirate marriage does not apply. As it is stated with regard to a woman who requires levirate marriage: "The first-born that she bears" (Deuteronomy 25:6), which comes to exclude an *aylonit*,^h who cannot give birth. Since the *halakhot* of levirate marriage do not apply to an *aylonit*, she retains her status as a brother's wife who is forbidden, and therefore her rival wife is also exempt from levirate marriage.

מתניב רב שישת: שלשה אחין נשואין שלש נשים נכריות, ומת אחד מהם, ועשה בה שני מאמר.

Rav Sheshet raised an objection to this from a mishna: Three brothers are married to three unrelated women, and one of the brothers died, and a second brother performed levirate betrothal with the *yevama*. A levirate betrothal does not have the legal status of a regular betrothal, as the levirate bond between *yavam* and *yevama* is not dependent upon betrothal; rather, it represents a kind of continuation of the previous marriage with her deceased husband. Full marriage with a *yevama* is effected by sexual intercourse alone. However, for reasons of modesty, the Sages instituted that the act of betrothal should apply to a *yevama* as well.

ומת – הרי אלו חולצות ולא מתניבמות, שנאמר "ומת אחד מהם יבמה יבא עליה" – מי שעליה זיקת יבם אחד, ולא זיקת שני יבמין.

And this brother who performed the levirate betrothal died before consummation of the marriage. In this case, both of these, the wife of the first brother, who had already come before the second brother for levirate marriage, and the wife of the second brother, perform *halitza* and may not enter into levirate marriage. As it is stated: "And one of them dies and he has no child, the wife of the dead man shall not be married outside of the family to one not of his kin; her brother-in-law will have intercourse with her" (Deuteronomy 25:5). This implies that the option of levirate marriage applies only to one who is subject to the levirate bond of one *yavam*, for only one deceased brother, and not the bond of two *yevamin*.ⁿ Since it is considered as though the first widow has two levirate duties to fulfill, neither she nor her rival wife may enter into levirate marriage.

וקתני עליה, אמר רב יוסף: זו היא צרת אשת אח מאב, שאיסור נפילה גרם לה, שלא מציינו בכל התורה כולה כגון זאת.

And it is taught with regard to this issue that Rav Yosef said: This is an example of a rival wife of a paternal half brother's wife, i.e., a fully fit *yevama*, for whom coming before the *yavam* for levirate marriage caused her to be forbidden. In other words, she was fully fit for levirate marriage by Torah law, as all conditions of the mitzva are present in her case. The reason for her prohibition has nothing to do with her particular status but is the result of her having come before a *yavam* for levirate marriage once already. We have not found in the entire Torah an example like this, where the fact that she was obligated in a mitzva she was unable to fulfill means that not only she, but her rival wife as well, are both rendered forbidden.

"זו היא" למעוטי מאי? לאו למעוטי צרת אילנית דשריא?

The Gemara analyzes Rav Yosef's statement: The emphasis of: This is, which indicates that it applies to this case and no other, comes to exclude what? Doesn't it come to exclude the rival wife of an *aylonit*, which would mean that she is permitted? Although an *aylonit* herself may marry any man, she is not suitable for levirate marriage. If so, Rav Yosef's comment indicates that only a woman subject to a double levirate bond, not any other case, renders her rival wife forbidden merely by coming before the *yavam* for levirate marriage.

NOTES

No, it was meant to exclude the rival wife of an *aylonit* – Why should this exclude the rival wife of an *aylonit* at all, rather than a *sota* or a remarried divorcée (*Tosafot*)? One answer is that these two cases each entail an additional prohibition, whereas in the case of a double levirate bond there is no additional prohibition beyond that of a brother's wife. The only analogous case is that of an *aylonit*, who is also forbidden only as a brother's wife (*Tosafot Yeshanim; Tosafot HaRosh*).

לָא, לְמַעוּטֵי צֵרֶת אֵילוֹנִית דְּאִסְרָא, וּמַאי "זוֹ הִיא" – זוֹ הִיא דְּאִסְרוּר נְפִילָה גְרָם לָהּ – צֵרֶתָהּ בְּעֵינֵי חֲלִיצָה, אֵילוֹנִית – אֶפְילוּ חֲלִיצָה לָא בְּעֵינֵי. מַאי טַעְמָא? הָא – דְּאוֹרֵי תָא, הָא – דְּרַבְנִן.

תָּנִן: וְכוּלָן, אִם מֵתוּ אוּ מֵיָאֲנוּ אוּ נִתְגַּרְשׁוּ אוּ שְׁנַמְצְאוּ אֵילוֹנִית – צֵרֶתֵיהֶן מוֹתְרוֹת! לָא קִשְׂיָא: כָּאֵן שְׁהִכִּיר בְּהָ,

כָּאֵן – שְׁלֵא הִכִּיר בְּהָ.

דִּיקָא נְמִי דְקָתְנִי: שְׁנַמְצְאוּ, וְלֵא קָתְנִי שְׁהִיוּ. שְׁמַע מֵיָנָה. אֶמַר רָבָא:

The Gemara rejects this suggestion: **No**, Rav Yosef's statement was meant to **exclude the rival wife of an *aylonit*,^N that she is forbidden. And what is the meaning of: This is?** It means that **this is the one for whom coming before the *yavam* for levirate marriage caused her to be forbidden**, and therefore **her rival wife requires *halitza*** and is not entirely exempt. In contrast, in the case of the rival wife of an *aylonit*, she does **not even require *halitza***. **What is the reason** for this difference between the two cases? **This one**, an *aylonit*, is exempt from levirate marriage **by Torah law**, while **this one**, who was betrothed by levirate betrothal to the other brother, is forbidden **by rabbinic law**, and she therefore must perform *halitza*.

§ The Gemara cites another relevant source. **We learned** in the mishna: **And with regard to all of these women with whom relations are forbidden, if they died, or they refused their husbands, or were divorced, or were found to be *aylonit*, their rival wives are permitted** in levirate marriage. This ruling apparently contradicts the statement of Rav Asi that the rival wife of an *aylonit* is forbidden. The Gemara responds: This is **not difficult**. **Here**, Rav Asi is referring to a situation in **which her husband knew that she was an *aylonit* prior to marriage**, and as he married her regardless of her condition their marriage is fully valid. Since the mitzva of levirate marriage does not apply to her because she cannot give birth, her rival wife is also exempt.

There, in the mishna, it is referring to a case **where he did not know that she was an *aylonit* at the time of marriage**, but only at a later stage. Since in this case it can be said that he would not choose to marry an *aylonit*, hers was a mistaken betrothal, and it is therefore nullified. Consequently, her rival wife is permitted.

The Gemara comments: The language of the mishna is **also precise, as it teaches: Were found to be an *aylonit*, and it does not teach: Were an *aylonit***. This indicates that her condition was not known to the husband at the time of marriage but was discovered by him only later. The Gemara summarizes: **Conclude from this that this is the correct interpretation of the mishna**. Consequently, the mishna does not contradict the opinion of Rav Asi. **Rava said:**

הֲלֵכְתָא, צֵרֶת אֵילוֹנִית מוֹתְרָת, וְאֶפְילוּ הִכִּיר בְּהָ, וְאֶפְילוּ צֵרֶת בְּתוֹ אֵילוֹנִית.

And the *halakha* is that the **rival wife of an *aylonit*^H is permitted,^N and this is the case even if her first husband knew of her status and her marriage was fully valid. The mitzva of levirate marriage does not apply to an *aylonit*, but her rival wife is not forbidden. **And even in the case of the rival wife of his *aylonit* daughter^H who was recognized as such, the other wife is not considered the rival wife of a forbidden relative.****

NOTES

צֵרֶת אֵילוֹנִית מוֹתְרָת – The rival wife of an *aylonit* is permitted – The differences between the opinions of Rav Asi and Rava are explained in greater detail in the Jerusalem Talmud. Rav Asi maintains that an *aylonit* remains included in the prohibition of a brother's wife, as she may not enter into levirate marriage. Accordingly, her rival wife, like all rival wives of those with whom relations are forbidden, is also forbidden. This is similar to the case of the rival wife of the wife of a brother with whom he did not coexist, as she too is forbidden.

Conversely, according to Rava and Rabbi Yohanan these cases are dissimilar, as there is no prohibition against an *aylonit*

entering into levirate marriage. Rather, the mitzva of levirate marriage simply does not apply to her. This is expressed in the Jerusalem Talmud as: It is as though she is not there. That is, she is considered non-existent with regard to all matters of levirate marriage, and therefore her rival wife is not the rival wife of a forbidden relative. There are numerous other explanations, but the essential idea remains the same: The rival wife of a forbidden relative is forbidden herself only if the mitzva takes effect, whereas for an *aylonit* the mitzva of levirate marriage does not apply at all (Rashi and many others).

Perek I
Daf 12 Amud b

HALAKHA

The rival wife of an *aylonit* – **צֵרֶת אֵילוֹנִית**: If the deceased brother had two wives, one of whom was an *aylonit*, her rival wife is permitted and must either perform *halitza* or enter into levirate marriage, in accordance with the opinion of Rava and Rabbi Yohanan (Rambam *Sefer Nashim, Hilkhot Yibbum VaHalitza* 6:20; *Shulhan Arukh, Even HaEzer* 172:1).

The rival wife of an *aylonit* who is a forbidden relative – **צֵרֶת עֵרוּה אֵילוֹנִית**: If the *yevama* is a forbidden relative of the *yavam* and she is also an *aylonit*, even if her husband knew of her condition and accepted her, only her rival wife performs *halitza* or levirate marriage (Rambam *Sefer Nashim, Hilkhot Yibbum VaHalitza* 6:21; *Shulhan Arukh, Even HaEzer* 173:9).

Engage in relations with a contraceptive resorbent – **מְשֻׁמְשׁוֹת בְּמוֹךְ**: The *halakha* is in accordance with the opinion of the Rabbis that these women may not use a contraceptive resorbent. In clearly dangerous situations some permit this in practice in various ways. Later commentaries deliberate with regard to other methods of birth control that do not entail the placement of an actual interposition before the sperm, and there are various halakhic rulings in this regard (*Shulhan Arukh, Even HaEzer 23; Pithei Teshuva 2*).

BACKGROUND

Three women may engage in relations with a contraceptive resorbent – **שְׁלֹשׁ נָשִׁים מְשֻׁמְשׁוֹת בְּמוֹךְ**: The issue of women using a contraceptive resorbent, or any other contraceptive device, is discussed at length in the halakhic literature; see also 65b. Here the discussion concerns the use of mechanical means for preventing the penetration of sperm into the uterus. The method of placing a contraceptive resorbent after sexual relations, as described by Rabbeinu Tam in *Tosafot*, is of minimal to no effectiveness. The use of these contraceptive methods is permitted only in cases of danger to life, and the dispute between Rabbi Meir and the Rabbis apparently involves the question of how cautious one should be. Nowadays these cases are extremely rare.

Her fetus becomes deformed – **תַּעֲשֶׂה עוֹבְרָה**: In every case of twins or simultaneous pregnancies, which are possible albeit infrequent, one of the embryos occasionally develops more quickly and thereby severely reduces the blood supply to the other embryo. In these situations the undernourished fetus does not develop at all but remains a fleshy mass adjoined to the placenta, similar in shape to the sandal fish.

Sandal fish – **סַנְדַּל**: This fish is referred to today as the species sole, a group of flatfish, a name derived from the Latin *solea*, referring to both the fish and the sole of a shoe. The common sole, *Solea solea*, possesses an interesting feature: Both of its eyes are on the right side of its body.



Common sole, referred to in talmudic times as the sandal fish

ואֵלֶּא הָא דִּקְתַּנִּי שְׁנַמְצָאוּ? תַּנִּי שְׁהִי.
כִּי אֵתָא רַבִּין אָמַר רַבִּי יוֹחָנָן: אַחַת צִרְתָּ
מִמָּאֲנָתָּ וְאַחַת צִרְתָּ אֵילוּנִיתָ, וְאַחַת
צִרְתָּ מִחֲזוּר גְּרוּשָׁתוֹ – כּוֹלֵן מוֹתְרוֹת.

תַּנִּי רַב בִּיבֵי קַמִּיָּה דְרַב נַחְמָן: שְׁלֹשׁ
נָשִׁים מְשֻׁמְשׁוֹת בְּמוֹךְ: קִטְנָה, מְעוּבֶרֶת,
וּמְנִיקָה. קִטְנָה – שְׂמָא תַתְּעִיבַר וְשְׂמָא
תַּמּוּת, מְעוּבֶרֶת – שְׂמָא תַתְּעִיבַר עוֹבְרָה
סַנְדַּל, מְנִיקָה – שְׂמָא תַגְמוּל בְּנָה
וְיָמוּת.

וְאִיזוּ הִיא קִטְנָה – מִבֵּית אַחַת עֲשָׂרָה
שָׁנָה וְיָוִם אֶחָד עַד שְׁתַּיִם עֲשָׂרָה שָׁנָה
וְיָוִם אֶחָד, פְּחוּת מִבְּאֵן וְיֵתֵר עַל כֵּן
מְשֻׁמְשׁוֹת כְּדָרְכָה וְהוֹלֶכֶת, דְּבָרֵי רַבִּי
מֵאִיר, וְחֻכְמִים אוֹמְרִים: אַחַת זֹ
וְאַחַת זֹ מְשֻׁמְשׁוֹת כְּדָרְכָה וְהוֹלֶכֶת, וּמִן
הַשְּׂמִים יִרְחַמוּ. מִשּׁוּם שְׁנִאָמַר "שׁוֹמֵר
פְּתָאִים ה'".

מִדְּקָאֵר שְׂמָא תַתְּעִיבַר וְשְׂמָא תַּמּוּת,
מִכְּלָל דְּאִיכָא קִטְנָה דְּמִיעֲבָרָא וְלֹא
מִתְּדָה, אִם כֵּן מְצִינּוּ חֲמוּתוֹ מִמָּאֲנָתָּ.

The Gemara asks: **However**, with regard to **that which** the mishna teaches: **Were found to be**, from which it was inferred that there is a difference between an *aylonit* whose condition was known by the husband beforehand and one who was recognized by him only later, how is this to be explained? The Gemara answers that one should emend this and **teach** simply: **That were**,^N and not: **Were found to be**. **When Ravin came from Eretz Yisrael he said that Rabbi Yohanan said**: There is one *halakha* with regard to the rival wife of a girl who refused her husband, and the rival wife of an *aylonit*, and also the rival wife of one who remarries his divorcée: **They are all permitted**.

Incidental to the case of refusal, the Gemara cites a related *halakha*. **Rav Beivai taught a baraita before Rav Nahman**: **Three women may engage in relations with a contraceptive resorbent**,^{NHB} a soft fabric placed at the entrance to their wombs to prevent conception, despite the fact that this practice is generally prohibited. They are as follows: **A minor**, a woman who is already pregnant, and a nursing woman. The *baraita* specifies the reason for each exception: **A minor may do so lest she become pregnant and perhaps die**; **a pregnant woman, lest she be impregnated a second time and her previous fetus becomes deformed**^B into the shape of a sandal fish^B by being squashed by the pressure of the second fetus. As for a nursing woman, she does so **lest she become pregnant and her milk dry up**, in which case **she will wean her son too early**, thereby endangering him, **and he will die**.

And the *baraita* continues: **Who is considered a minor?** It is a girl from the age of eleven years and one day until the age of twelve years and one day. If she was younger than this or older than this,^N she may go ahead and engage in relations in her usual manner. This is the statement of Rabbi Meir. Since it is assumed that a minor who is less than eleven years old cannot become pregnant, she is considered to be in no danger. **And the Rabbis say**: **Both this one and that one**, i.e., in all these cases, she may go ahead and engage in relations in her usual manner, and Heaven will have mercy^N upon her and prevent any mishap, since it is stated: **"The Lord preserves the simple"** (Psalms 116:2).

The Gemara analyzes the *baraita*: From the fact that the *baraita* states: **Lest she become pregnant and perhaps die**, this indicates by inference that there is a minor who can become pregnant and will not die, although the conditions for this scenario of a minor giving birth and surviving are unclear. **If so**, that a minor might be impregnated and give birth, **we find the case of one's mother-in-law who refused her husband**. Since it is possible for a woman to give birth to a daughter while still a minor, if a man betroths this daughter while still an infant, the mother might be a mother-in-law who performed refusal.

NOTES

Teach, that were – תַּנִּי שְׁהִי: Although the Gemara initially inferred from the wording of the mishna that it is referring to a situation where it was not known at first that the woman was an *aylonit*, Rava nevertheless held that this was not necessarily the case. The reason is that the phrase: They were found, might be referring to the court who determined that she was an *aylonit*, and if so there is no essential difference between this phrase and the simple: They were (Ritva).

Three women may engage in relations with a contraceptive resorbent – שְׁלֹשׁ נָשִׁים מְשֻׁמְשׁוֹת בְּמוֹךְ: There is a dispute among the early commentaries both with regard to the meaning of this statement as well as its halakhic implications. Rashi and others maintain that the woman inserts a contraceptive resorbent into the entrance to her uterus to prevent the entrance of sperm. Others hold that she inserts a contraceptive resorbent after sexual relations to prevent the semen from reaching the uterus (Rabbi Yehuda bar Natan; *Tosafot*). They base their opinion on

the fact that sexual relations with a contraceptive resorbent in place would entail the unavoidable destruction of sperm, which is a transgression for the man. However, Rashi contends that provided that the sexual relations take place in the usual manner and there is no intention of destroying the sperm, this is not prohibited (see *Tosefot Rid*).

This dispute extends to the *halakha* as well. Rashi contends that these women are only permitted to use a contraceptive resorbent. Others rule that these women are obligated to do so, while others are merely permitted to engage in this practice (Rabbeinu Tam; Rabbi Yehuda bar Natan; Rashba). This is apparently the explanation of the *ge'onim* as well, who may have been even more lenient on this issue. For an attempt to reconcile all of these opinions, see *Yam shel Shlomo*.

Younger than this or older than this – פְּחוּת מִבְּאֵן וְיֵתֵר עַל כֵּן: Many early commentaries connect this discussion, including the opinions of Rav Safra and Rav Zevid cited later, to the related

matter of signs of puberty that appear in a young woman during this period, between age eleven and twelve. If she develops the sign of pubic hairs before this time, everyone agrees that the hairs are only a mole and she has certainly not reached maturity, while after this period hair is definitely a sign of maturity. The dispute concerns whether this intermediate period is considered like the time before or after (see *Tosafot*, Rashba, Ritva, and Meiri).

And Heaven will have mercy – וְיָוִם הַשְּׂמִים יִרְחַמוּ: Some commentaries explain that the Rabbis felt that the danger is highly unlikely, and therefore the women are not obligated, or permitted according to certain opinions, to use a contraceptive resorbent (Meiri). Several later commentaries explain similarly, as the phrase: Heaven will have mercy, indicates that one is acting in the usual fashion, without concern for some uncertain danger. If the danger is definitely present, however, this principle does not apply (see *Ahizerer*).

NOTES

During this time she dies and her fetus dies – תוך הזמן: In the Jerusalem Talmud a different version of this statement is cited, which includes a further distinction: If she was impregnated prior to showing signs of puberty and gave birth after showing these signs, she lives and her fetus dies.

But this is difficult – ואלא קשיא הך: Some commentaries explain that this is difficult according to Rabba bar Livai, who said that a minor cannot give birth at all, whereas Rabba bar Shmuel indicates that a minor can give birth (Tosafot). However, most of the early commentaries accept Rashi's explanation that it is difficult according to the mishna, which clearly indicates that one's mother-in-law cannot perform refusal (Rashba; Nimmukey Yosef).

Children are equivalent to signs – בנים הרי הם קסימנים: The early commentaries dispute the precise meaning of this expression. Apparently, the Rif maintains that the term: Signs, does not necessarily mean hairs. Rather, children themselves are proof of maturity, even if they were born before the mother reached the age of twelve (see Ramban and Rashba). Others contend that the pregnancy itself, not the birth of children, is a sign of maturity, and therefore from the onset of pregnancy she is considered mature (Tosafot). According to this interpretation, children were mentioned to teach that a pregnancy is retroactively considered a sign of maturity from the onset of the pregnancy only if it results in a living child, not a stillborn.

Until the black are more plentiful – עד שירבה השחור: The Gemara in Nidda 52a explains that there is no need for the black, hairy, area actually to be more plentiful than the hairless area. Rather, there must be two hairs lying down in such a manner that it appears as though the black area is greater.

HALAKHA

Children and signs – בנים וקסימנים: A girl who gives birth after the age of twelve is considered mature even if she has no signs of puberty, as children are equivalent to signs (Rambam). This halakha is in accordance with the opinion of Rav Safra, who apparently maintains that even if she gave birth as a minor she is not considered mature until the age of twelve years. This has implications for halitza and other matters. Some commentaries (Maggid Mishne) claim that even the Rambam agrees that after a minor has given birth she can no longer perform refusal (Beit Shmuel). The Shulhan Arukh writes that a minor may refuse her husband until she either develops signs or gives birth. Some rule that she is already considered mature at the time of pregnancy (Rema, citing Or Zarua). The Vilna Gaon contends that according to this opinion she might be considered mature even before the age of twelve, in accordance with the ruling of Tosafot.

Some commentaries write that she may not perform refusal even as a minor if she is pregnant, but this does not hold true if she miscarries (Beit Shmuel). Others dispute this ruling (see Pithei Teshuva). With regard to halitza, however, she is not considered mature before the age of twelve (Rambam Sefer Nashim, Hilkhot Ishut 2:9; Shulhan Arukh, Even HaEzer 155:12, 169:11, and in the comment of Rema).

ותנן: אי אתה יכול לומר בחמותו ואם בחמותו ואם חמיו שנמצאו אילוניות או שמיאנו! אימא: שמא התעבר ותמות.

דאמר רבה בר לויאי: גבול יש לה: קודם הזמן הזה אינה מתעברת כל עיקר, תוך הזמן הזה היא מתה ועוברת מת, לאחר זמן הזה – היא חייה ועוברת חי.

איני? והא תני רבה בר שמואל: אי אתה יכול לומר בחמותו ואם חמותו ואם חמיו שנמצאו אילוניות או שמיאנו, שכבר ילדו! אלא, לעולם – שמא התעבר ושמא תמות. ואלא קשיא הך!

אמר רב ספרא: בנים הרי הם קסימנים. ואית דאמרי: בנים עדיפי מסימנים. למאי נפקא מינה? דאפילו לרבי יהודה, דאמר: עד שירבה השחור, בבנים מודה.

And yet we learned in the mishna: You cannot say, i.e., the possibility does not exist, in the case of his mother-in-law, his mother-in-law's mother, and his father-in-law's mother, that they were found to be an aylonit or performed refusal, as refusal may be performed only by a minor, who cannot give birth. If so, there is apparently a contradiction between the mishna and the baraita. The Gemara answers: Do not say: Lest she become pregnant and perhaps die, which indicates that it is possible for her not to die from the impregnation. Rather, say: Lest she become pregnant and die. In other words, although it is uncertain whether she will be impregnated, if she does become pregnant she will certainly die, which means that there is no case in which a minor could give birth and live.

As Rabba bar Livai said: There is a limit with regard to her pregnancy, i.e., that of a young girl. Before this time, the age of eleven, she cannot be impregnated at all.⁸ During this time, from age eleven to twelve, she dies and her fetus dies.^N After this time, from twelve onward, she lives and her fetus lives.

The Gemara raises a difficulty: Is that so? But didn't Rabba bar Shmuel teach: You cannot say in the case of his mother-in-law, and his mother-in-law's mother, and his father-in-law's mother that they were found to be an aylonit or performed refusal, as they already gave birth. This indicates that a minor can give birth, as otherwise he should have stated: As they are already mature. Rather, actually, the original version of the baraita is correct: Lest she become pregnant and perhaps die. But this is difficult^N with regard to the mishna, which indicates that this scenario is impossible.

Rav Safra said: Children are equivalent to signs^{NH} of puberty. In other words, a girl who gives birth does not retain the legal status of a minor, as the very fact that she bore children is equivalent to a physical sign of maturity, usually in the form of pubic hairs. And some say: Children are preferable to signs of puberty. The Gemara asks: What is the practical difference that arises from the question of whether bearing children is equivalent or preferable to signs of maturity? The Gemara answers: The difference is that even according to the opinion of Rabbi Yehuda, who said that a minor may perform refusal even after she develops two pubic hairs, until the black hairs of her genitals are more plentiful^N than the hairless skin, in the case of children he concedes that she is considered mature and may not perform refusal.

BACKGROUND

A minor who gives birth – קטנה שילדת: The question of whether a minor can give birth depends upon the definition of the relevant terms. The appearance of two pubic hairs is one stage in the process of sexual maturation. Apparently, the definition of adulthood as the stage when two hairs appear is based on the fact that this sign of maturity can be checked objectively by witnesses. Generally, the appearance of hairs occurs prior to the advent of ovulation and the menstrual cycle, which allow for the possibility of impregnation and childbirth. Consequently the claim stated later in the Gemara that children are preferable to signs of puberty is accurate, as childbearing occurs at a much later stage in the process of maturation, even if the hairs are not visible.

The Sages determined that the appearance of signs of puberty alone before the appropriate age, twelve for females and thirteen for males, is not sufficient for establishing adulthood. Nevertheless, despite the average age of puberty, physical maturity may be reached earlier depending on nutrition and hereditary factors. There have even been cases of extremely early maturation. It is clear, however, that complications in pregnancy and childbirth are more prevalent among girls than among mature women. Especially in the days of the Talmud, it was consequently assumed that childbirth before full physiological development would likely lead to an inability to give birth or severe tearing of the womb that could cause the death of the mother and baby at birth.