

לְאַחַר שְׁלֹשָׁה – אִין צְרִיכָה לְהַמְתִּין שְׁלֹשָׁה חֳדָשִׁים.

הַיּוֹי הַשְּׁלֹשָׁה חֳדָשִׁים שְׁאָמְרוּ – מִשְׁעַת מִיתַת הַבַּעַל, וְלֹא מִשְׁעַת חֲלִיצַת הַיָּבָם.

מֵאִי שָׁנָא מִגָּט, דְּרַב אֲמַר מִשְׁעַת נְתִיבָה וְשִׁמּוּאֵל אֲמַר מִשְׁעַת כְּתִיבָה?

אֲמַר רַבָּא: קָל וְחֹמֶר: אִיסוּר כְּרַת הַתְּרֵת, אִיסוּר לָאוּ לֹא כָּל שָׁבִין?

”וְכֵן שְׂאָר כָּל הַנְּשִׂים.” בְּשִׁלְמָא יְבָמָה – כְּדָאֲמַרְן. אֵלָא שְׂאָר כָּל הַנְּשִׂים אֲמַאי?

אֲמַר רַב נַחְמָן אֲמַר שְׁמוּאֵל: מִשּׁוּם דְּאֲמַר קָרָא “לְהַיּוֹת לְךָ לֵאלֹהִים וְלִזְרֹעַךְ אַחֲרֶיךָ” לְהַבְחִין בֵּין זָרְעוֹ שֶׁל רִאשׁוֹן לְזָרְעוֹ שֶׁל שֵׁנִי.

מֵתִיב רַבָּא: לְפִיכָךְ גַּר וְגִיּוֹרֵת צְרִיכִין לְהַמְתִּין שְׁלֹשָׁה חֳדָשִׁים, הֲכָא מֵאִי לְהַבְחִין אִיכָּא?

If they performed the *halitza* after three months, she does not need to wait three months and may marry immediately.

The Gemara infers from the latter clause of the *baraita*: It must be that the three months that are stated throughout the *baraita* are counted from the time of the husband's death and not from the time of the *halitza* of the *yavam*.^h

The Gemara asks: In what way is this case different from the case of a bill of divorce,^h where Rav said that the three months are counted from the time of the giving of the bill of divorce, and Shmuel said that the count is from the time of the writing of the bill. If a couple is secluded together after the bill of divorce is written, the bill of divorce is invalid. Therefore, there is no concern that they were secluded from that time. This is why Shmuel holds that the three months are counted from the writing. Rav apparently assumes that even so, the count always begins from the formal end of the marriage and not from the point from which there was no possibility of her becoming pregnant. Why, then, does the *baraita* not rule also in the case when a woman happens for levirate marriage, that the count should begin from the point of *halitza*, since the marriage is only fully severed at that point?

Rava said: With regard to a *yevama*, all agree that the count begins from the time of her husband's death. This can be derived through an *a fortiori* inference, as follows: If a prohibition that entails *karet*, i.e., the prohibition against engaging in relations with one's brother's wife in the event she is pregnant and not subject to levirate marriage, you have permitted after three months from the husband's death, then in the case of a standard negative prohibition, such as the prohibition against engaging in relations with a woman within three months of the death of her previous husband, is it not all the more soⁿ clear that she should be permitted to remarry after three months from her husband's death? Therefore, even Rav agrees that in this case, the count begins from the husband's death.

§ The mishna states: And similarly, all other women may not be betrothed or marry until they have waited three months. The Gemara asks: Granted, a *yevama* has to wait, in accordance with the reason that we said, that if she is pregnant with viable offspring, consummating the levirate marriage would violate the prohibition against engaging in relations with one's brother's wife. But with regard to all other women, why shouldn't they remarry immediately even if they are pregnant?

Rav Nahman said that Shmuel said: It is due to the fact that the verse states with regard to Abraham: “To be a God to you and your seed after you” (Genesis 17:7), which indicates that the Divine Presence rests with someone only when his seed can be identified as being descended from him, i.e., there are no uncertainties with regard to their lineage. Therefore, to prevent any uncertainties concerning the lineage of her child, the woman must wait so that it will be possible to distinguishⁿ between the seed of the first husband and the seed of the second husband. After three months, if she has conceived from her previous husband, the pregnancy will already be noticeable.

Rava raised an objection from a *baraita*: Therefore, on account of the requirement to wait three months, a male convert and a female convert who were originally married to each other and converted need to wait three months^h before they may remarry following their conversion. Rava asks: Here, in this case, what reason is there to distinguish? Even if they do not wait and she is found to be pregnant, it is clear who the child's parents are.

HALAKHA

מִמֵּתִי מִמֵּתִינָה – From when does a *yevama* wait – הַיָּבָמָה: A *yevama* who performed *halitza* within three months of her husband's death must still complete the three-month wait after her husband's death before remarrying. If she performed *halitza* after three months had already passed, she need not wait any longer (Rambam *Sefer Nashim, Hilkhot Yibbum VaHalitza* 1:19; *Shulhan Arukh, Even HaEzer* 164:1).

מִמֵּתִי מִמֵּתִינָה – From when does a divorcée wait – הַגְּרוּשָׁה: A divorcée must wait three months from the writing of her bill of divorce before remarrying. This applies even if the bill was made conditional or was given only some time later. This is in accordance with the opinion of Shmuel. Most halakhic authorities rule in accordance with his opinion because in tractate *Ketubot* Rav Ashi, one of the latest of the *amora'im*, rules in accordance with his opinion (*Kesef Mishne*). This is also the final ruling in the Jerusalem Talmud. However, the Rema (citing *Tur* and *Rosh*) rules that it is correct to be stringent and count from the time that the bill of divorce was given (Rambam *Sefer Nashim, Hilkhot Geirushin* 11:19; *Shulhan Arukh, Even HaEzer* 13:1).

הַפְּרֻשָׁת – Separation of male and female converts – הַגְּיּוֹרֵת: A maidservant or female convert who was married prior to conversion must wait ninety days before remarrying. This applies even to a husband and wife who converted together; they must separate from each other for that period. This is required so that it will be possible to distinguish between seed that was sown in sanctity and seed that was not sown in sanctity (Rambam *Sefer Nashim, Hilkhot Geirushin* 11:21; *Shulhan Arukh, Even HaEzer* 13:5).

NOTES

A standard negative prohibition, all the more so – אִיסוּר לָאוּ לֹא כָּל שָׁבִין – This reasoning cannot be applied in the case of a divorcée since she is still considered fully married until she has actually received a bill of divorce (Rivan).

To distinguish – לְהַבְחִין – The later commentaries deliberate whether the fact that a biblical source is cited renders this a true exegetical inference, which would mean that the need to distinguish is by Torah law, or whether the requirement is a rabbinic decree and the verse is cited merely as support for it. The *Keren Ora* states that the need to distinguish is a rabbinic decree, while *Arukh LaNer* cites the *Targum Yerushalmi* and certain formulations of the Rambam that suggest that the requirement is by Torah law.

Yosef Lekah writes that although the concern of being unable to distinguish between the seed of the first and second husbands might seem unlikely, nevertheless, since remarriage for women is so common it is reasonable to assume that even this unusual situation will eventually arise.

Between seed that was sown in sanctity – בין זרע שנוֹרע בקדוּשהּ: If the child was conceived before his parents' conversions, the child would also have the status of a convert. As such, if the child was a female she would be prohibited from marrying into the priesthood (Rivan). Furthermore, as a convert, the child would not inherit from his convert father. Some assume that halakhically, the child would be considered as though he were not descended from his father for all other matters as well.

Rava stated, it is a rabbinic decree, etc. – דָּבָא אָמַר גִּיּוֹרָה וְכוּ' – An additional reason for the decree is cited in the *She'iltot deRav Aḥai Gaon*, and it is possible that this reason actually appeared in the author's version of the Gemara: Lest he set slaves free. The *Gilyonei HaShas* explains the concern: When one owns slaves and dies, his mastery over his slaves is inherited by his children. If the child in this case incorrectly identified who his father was, and then upon that father's death the son frees the father's slaves, his release of the slaves would be entirely ineffectual since he is not truly that father's son and does not actually inherit from him. This would create a situation where those slaves, assuming that they had been lawfully freed, might proceed to marry Jewish women, when in fact they would be prohibited from doing so because they remained slaves. A similar explanation can be offered for the requirement to distinguish between seed in the case of a maidservant, which requires her to wait three months after her release. Since her offspring conceived before her release would have the status of slaves, whereas those conceived after her release would be fully Jewish, there is a concern that her offspring might actually be slaves but will act as though they are free.

The Rivash notes that based on all the reasons that the Gemara provides, it would appear that when a man remarries his divorcee without her having since remarried in the interim, there is no reason to require her to wait three months.

In all of those cases I identify – בְּכֹלֵי אֲנִי קוֹרָא בְּהֵן: According to *Tosafot*, the phrase: All of those cases, refers to all *yevamot* who are prohibited from marrying. However, Rashi and the Meiri explain that it refers to all cases of women who are prohibited from remarrying. This includes even cases such as those in which the evidence of a husband's death is not sufficient to allow a woman to remarry; even in such cases, the ultimate reason for the prohibitions is to prevent people from engaging in forbidden relations.

BACKGROUND

Born after eight months of pregnancy – אִי נִמְי לְתַמְנֵי יָלְדָה: During talmudic times conventional wisdom held that a child born during the eighth month of pregnancy had no chance of survival, while a child born during the seventh month, and even one born during the sixth month, was more likely to survive. Nowadays, a baby born in the eighth month is considered to have greater chances of survival than one born earlier. Accordingly, despite the fact that the Gemara says that one may not desecrate the Shabbat to save a child born during the eighth month (*Shabbat* 135a), nowadays, since the child is likely to survive, the later authorities maintain that one may desecrate Shabbat to save him or her (*Minḥat Yitzhak* 4:123; *Hazon Ish*, *Yoreh De'a* 155:3).

הָכָא נִמְי: אִיכָא לְהַבְחִין בֵּין זֶרַע שְׁנוּרַע בְּקִדּוּשָׁהּ לְזֶרַע שְׁלֹא נִרְע בְּקִדּוּשָׁהּ.

רָבָא אָמַר: גִּיּוֹרָה שְׂמָא יִשְׂא אֶת אַחֲוֹתָי מֵאֲבִי, וְיֵיבִים אֶשְׁתִּי אַחֲוֵי מֵאֲמוֹ,

וְיֹצִיא אֶת אֲמוֹ לְשׁוּק, וְיִפְטוֹר אֶת יְבָמָתוֹ לְשׁוּק.

מְתִיב רַב חֲנַנְיָהּ: בְּכֹלֵי אֲנִי קוֹרָא בְּהֵן מְשׁוּם תְּקִנַּת עֲרוּהָ, וְכָאן מְשׁוּם תְּקִנַּת יֶלֶד. וְאִם אֵיתָא – כּוֹלְהוּ מְשׁוּם תְּקִנַּת עֲרוּהָ!

הָאִי מְשׁוּם תְּקִנַּת וְלָד דְּלָא לְפָגַע בְּהָ עֲרוּהָ.

בְּשִׁלְמָא תַּמְתִּין שְׁנֵי חֳדָשִׁים וְתַנְשָׂא. לָא – דְּהֵינּוּ סְפִיקָא. אִי בְּרַ תַּשְׁעָה לְקַמָּא אִי בְּרַ שְׁבַעָה לְבַתְרָא.

אֲלָא, תַּמְתִּין חֳדָשׁ אֶחָד וְתַנְשָׂא: וְאִי לְשַׁבְעָה יָלְדָה – הָאִי בְּרַ שְׁבַעָה לְבַתְרָא הוּא, וְאִי לְתַמְנֵי יָלְדָה – הָאִי בְּרַ תַּשְׁעָה לְקַמָּא הוּא.

The Gemara explains: **Here, too, there is a need to distinguish between seed that was sown in sanctity,**^N i.e., a child conceived by a Jewish parents, **and seed that was not sown in sanctity,** i.e., a child conceived by gentile parents.

Rava stated a different reason for the need to wait: It is a rabbinic decree^N lest a child be born and be incorrectly identified as the son of his mother's second husband when he is fact the son of her first husband. This could result in him **marrying his paternal sister**, unaware of the true relationship between them, **or consummating a levirate marriage with the wife of his maternal brother** under the misconception that his maternal brother was also his paternal brother. This would be prohibited because the prohibition to engage in relations with one's brother's wife is waived only in the case where there is a mitzva of levirate marriage, which applies only to paternal brothers.

Or in the event that his mother's second husband died and he was assumed to be his only offspring, **he would cause his mother to go out** and be permitted to the general public because, under the misconception that he was the offspring of the deceased, he assumed that there was no mitzva of levirate marriage. **Or**, in the event that his maternal brother died childless and the brother's widow became subject to levirate marriage, under the misconception that he was the paternal brother of the deceased he might perform *halitza* and **permit** his supposed *yevama* to marry a man from the general public. To avoid these problems, the Sages decreed that a woman must wait before remarrying.

Rav Ḥananya raised an objection from a *baraita*: **In all of those cases where the Sages prohibit a woman from marrying or consummating a levirate marriage, I identify^N that the prohibition is due to an ordinance** instituted to prevent a violation of forbidden relations, **and here**, with regard to the prohibition against marrying within three months, it is **due to an ordinance for the benefit of the offspring**. Rav Ḥananya explains the challenge: **And if it is so** that Rava's understanding of the prohibition against marrying within three months is correct, then **all of the cases of forbidden marriages are due to an ordinance** to prevent violation of forbidden relations. However, the *baraita* indicates otherwise.

The Gemara defends Rava's opinion and explains that the *baraita* can be interpreted in a way that is consistent with his understanding: When the *baraita* says that **this prohibition is due to an ordinance for the benefit of the offspring**, it means **that due to the prohibition the offspring will not encounter a prohibition of forbidden relations**.

S The Gemara analyzes the prohibition against marrying before three months have passed: **Granted, she should not wait for only two months and then marry, as this is still a case that could give rise to an uncertainty whether the child born to her seven months after remarrying is nine months old**, i.e., counting from conception, and it is the offspring of the first husband, or **whether the child is only seven months old and is the offspring of the latter husband**.

However, let her wait only one month and then marry, and then, since it is presumed that a baby born during its eighth month since conception is not viable⁸ but a baby born during its seventh or nine month is viable, **if after seven months since remarrying she gives birth**, then the child is clearly seven months old and is the offspring of the latter husband, and **if after eight months since remarrying she gives birth**, then this child is clearly nine months old and is the offspring of the first husband. Why, then, is there a need to wait three months?

One could say that the child is the offspring of the latter husband, etc. – איכא למימר דבתרא הוא וכו' – Why didn't the Gemara reject the possibility of waiting one month also due to the possibility that she had become pregnant from her previous husband one month before the end of the marriage? In that case, if a baby boy was born after eight months that child would actually be nine months old and the offspring of the first husband. Rashi suggests that Gemara could have considered this possibility; however, since in any case the Gemara rejects the possibility of waiting one month for the reasons it mentions, it was not necessary to state another reason. Others suggest that the Gemara considered it preferable to provide reasons that pertain to all cases, even to a case where she had been married to her previous husband for only a single day (Ramban; Tosefot HaRosh).

But let her be examined through the way she walks – ונגדקה בהלכה: Rashi and Rivan cite the *ge'onim*, who explain that the fetus of a pregnant woman rests on one side of the womb and causes her steps to be uneven.

BACKGROUND

Let her be examined through the way she walks – ונגדקה בהלכה: Rashi cites the explanation of the *ge'onim* that the woman's footprints are examined. There is also an additional change in pregnant women: Their posture becomes less stable in that the upper body begins to arch back more and more as the pregnancy progresses. This small change is discernible already in the first months of pregnancy. A woman who wishes to hide her state can do so by purposefully altering her posture. If she does so, her pregnancy will not be evident for some time.

HALAKHA

Pregnant and nursing women – מעוברת ומינקת: A man may not marry a woman who is pregnant with the child of another man. He may also not marry a woman who is nursing the child of another man within twenty-four months of its birth. If he transgressed and married such a woman, he must divorce her with a bill of divorce. This applies even if he is a priest. If he is a non-priest he is permitted to remarry her after the nursing period has ended (Rambam *Sefer Nashim*, *Hilkhot Geirushin* 11:25; *Shulhan Arukh*, *Even HaEzer* 13:11).

אי נמי לתמנא ילדה – איכא למימר דבתרא הוא. דלמא אישתהוי אישתהא חדש אחד ואיעבר.

The Gemara explains: Even if she gave birth after eight months since remarrying one could say that the child is the offspring of the latter husband,^N as perhaps she waited one month after remarrying and conceived only then. As such, the baby would be only seven months old, and that would explain its viability.

ותמתין שני חדשים ומחצה ותנשא, דאי לטבעה ילדה – האי בר טבעה לבתרא הוא. ואי לשיתא ופלגא ילדה – האי בר תשעה לקמא הוא. דאי בר בתרא הוא – בר שיתא ופלגא לא חיי!

The Gemara asks further: But let her wait for two and a half months and then marry, as, if after seven months since remarrying she gives birth, then this child is clearly seven months old and is the offspring of the latter husband. And if after six and a half months since remarrying she gives birth, then this child is clearly nine months old and is the offspring of the first husband, because if one would suggest it is the offspring of the latter husband, in that case it would be six and a half months old, at which age it cannot survive.

אי נמי לשיתא ופלגא ילדה – איכא למימר דבתרא הוא. דאמר מר זוטרא: אפילו למאן דאמר יולדת לתשעה אינה יולדת למקוטעין – ילדה לטבעה יולדת למקוטעין.

The Gemara objects: Even if after six and a half months since remarrying she gave birth, one could say that the child is the offspring of the latter husband, as Mar Zutra said: Even according to the one who says that a woman who gives birth after nine months does not give birth after an incomplete number of months, i.e., she carries for a full nine months, nevertheless, a woman who gives birth after seven months can give birth after an incomplete number of months, and therefore it is possible that the baby was actually born after six and a half months.

שנאמר "ויהי לתקופות הימים", מעוט תקופות – שתים, מעוט ימים – שנים.

This fact is derived from the verse concerning the birth of Samuel the prophet, as it is stated: "And it came to pass, when the seasons of the days had come, that Hannah conceived, and bore a son" (1 Samuel 1:20). How much time is indicated by the phrase "the seasons of the days"? The minimal sense of the word "seasons" is two, and since each season of the year is three months, that indicates six months. The minimal sense of the word "days" is two. Accordingly, one may conclude that Samuel the prophet was born after six months and two days.

ותמתין משהו ותנשא, וכי מלו שלשה חדשים לבדקה!

The Gemara suggests further: But let her wait any minimal amount of time, less than a month, and then marry, and then when three months after the end of her first marriage are complete, examine her body to see if she is noticeably pregnant. If she is, then perforce the baby is the offspring of her previous husband because a pregnancy is not noticeable until three months.

אמר רב ספרא: אין בודקין את הנשואות, שלא יתגנו על בעליהן. ונגדקה בהלכה?

Rav Safra said: This solution is not possible because one does not examine the bodies of married women so as not to shame them before their husbands. The Gemara suggests: But let her be examined through the way she walks,^{NB} since after three months a pregnant woman walks differently than a woman who is not pregnant.

אמר רמי בר חמא: אשה מחפה עצמה, כדי שירש בנה בנכסי בעלה.

Rami bar Hama said: A woman who conceived from her previous husband would mask herself by purposefully walking in a manner in which her pregnancy will not be discerned, so that her child will be identified as the son of her new husband in order that her child will ultimately inherit her new husband's property. Therefore, it is impossible to rely upon a test of this kind. In summary, the Gemara has demonstrated that it would be ineffective to wait any less than three months.

היכא דקים לן דמעוברת היא תנשא, אלא תניא: לא ישא אדם מעוברת חבור ומינקת חבור, ואם נשא יוציא ולא יחזיר עולמית.

§ The Gemara asks: In cases where we are convinced that she is pregnant, let her marry immediately, as the reason to wait three months does not apply. Why, then, is it taught in a *baraita*: A man may not marry a woman who is pregnant with the child of another man, nor a woman who is nursing the child of another man;^H and if he transgressed and married her, he is penalized for violating the prohibition, and he must divorce her and may never take her back?

NOTES

Heaven will have mercy upon her – מן השמים ירחמו – This concept, based on the verse: “The Lord preserves the simple” (Psalms 116:6), applies only when one acts normally and does not take unusual risks. When there is definite danger involved, one is not permitted to take the risk and rely on God’s protection. In the case here, there is only a very slight risk involved, and therefore this concept can be applied (Meiri; Ridvaz 3:596; *Ahizer* 1:23).

Due to the pressure – משום דחקה: Usually when the Gemara challenges the logic of a given answer and proceeds by saying: Rather, it indicates that the given answer is rejected. Accordingly, it would appear that the Gemara here rejects the suggestion that the concern that the man might damage the fetus by applying too much pressure could be the reason for the prohibition. However, the Rambam does cite this reason when he codifies the *halakha*. Some suggest that the Rambam understood that the Gemara never meant to reject the reasons it raised; it merely held that they were insufficient. It is also possible that the Rambam had a different version of the Gemara text and that in his version the Gemara never stated: Rather. Alternatively, it is possible that the Rambam drew a distinction between the case of a pregnant woman and that of a nursing woman, and different reasons apply to each case (see *Kesef Mishne* and *Ha’amek She’ala*).

גורה שזמא תעשה עוברת סנדל, אי הכי – דידיה נמי,

אי למאן דאמר במוך – במוך, ואי למאן דאמר מן השמים ירחמו – מן השמים ירחמו,

הכא נמי: אי למאן דאמר במוך – במוך, אי למאן דאמר מן השמים ירחמו – מן השמים ירחמו!

אלא משום דחקה. אי הכי דידיה נמי! דידיה חיים עילויה. הכא נמי חיים עילויה!

אלא: סתם מעוברת למניקה קיימא,

The Gemara explains: This prohibition is a rabbinic decree lest she become pregnant a second time and her original fetus will be deformed into the shape of a sandal fish. The Gemara asks: If so, even if his wife is pregnant with his own child, the same concern applies.

The Gemara responds: She is permitted to engage in relations, both if one holds in accordance with the one who said that a young girl, for whom it is dangerous to become pregnant, is permitted to engage in relations using a contraceptive resorbent placed at the entrance to her womb, then also a woman pregnant with her husband’s child may engage in relations using a resorbent, and similarly if one holds in accordance with the one who said a young girl is permitted to engage in relations in her usual manner and Heaven will have mercy upon her^N and prevent any mishap, then in this case as well a pregnant woman should continue to engage in relations and Heaven will have mercy upon her.

The Gemara objects: But here, too, in the case of a woman who is pregnant with the child of another man, these solutions could be employed: Both if one holds in accordance with the one who says that a young girl may engage in relations using a resorbent, in this case as well she may do so using a resorbent, and similarly if one holds in accordance with the one who says that Heaven will have mercy upon her, in this case as well Heaven will have mercy upon her.

The Gemara suggests a different reason for the prohibition against marrying a woman who is pregnant with the child of another man: Rather, it is due to the damage that could be caused to the fetus by the pressure^N applied to it at the time of intercourse. The Gemara asks: If so, even if his wife his pregnant with his own child, the same concern applies. The Gemara explains: When it is his own child, he has mercy upon it and tries not to apply too much pressure. The Gemara asks: But here, too, when it is the child of another man, he will have mercy upon it, as certainly one is careful not to cause harm to any human life and will be careful not to press down too hard.

The Gemara suggests a different reason: Rather, the reason for the prohibition is that a typical pregnant woman is poised to nurse her child once it is born;

Perek IV
Daf 42 Amud b

BACKGROUND

She will become pregnant and her milk will dry up – איעברה ומיעבר תלבה: The hormone responsible for producing milk in the mother’s body also substantially hinders ovulation. As such, women generally do not become pregnant while nursing. However, if a nursing woman does become pregnant, the hormones that are then released into her body can affect the mother’s milk and produce a change in the quality of the milk.

LANGUAGE

She will feed [memasmesa] – ממסקא: This verb apparently has two meanings: It can mean to soften or mash, which fits well with the current version of the Gemara, as the verb is applied to eggs. It can also mean to calm or give encouragement. Accordingly, in the Gemara here it would mean to calm the hungry infant by providing him with these foods. Indeed, Rashi translates the word here to mean that she feeds her child.

דלמא איעברה, ומעבר תלבה, וקטלה ליה. אי הכי דידיה נמי! דידיה ממסקא ליה בבצים וחלב. דידיה נמי ממסקא ליה בבצים וחלב! לא יהב לה בעל. וליתבעיניה ליורשים! אמר אביי: אשה בושה לבא לביית דין, והורגת את בנה.

therefore, one should be concerned that perhaps she will become pregnant and her milk will dry up^B during pregnancy, and the lack of milk will kill her newborn child. The Gemara asks: If so, even if his wife is pregnant with his own child, the same concern applies. The Gemara explains: For his own child, she will feed [memasmesa]^L him^N with eggs and milk as a substitute for the mother’s milk. The Gemara asks: Even if the child is not his, it is still the mother’s child, and for her child she will also feed him with eggs and milk. The Gemara answers: The husband will not give her money to procure food for a child that is not his. The Gemara asks: But she could sue her first husband’s heirs to provide subsistence for the child. Abaye said: A woman is embarrassed to come to court, and therefore she will not obtain enough sustenance for him. Consequently, she effectively kills her son as a result.

NOTES

She will feed him – ממסקא ליה: Rashi explains the word as a reference to feeding. The Rivan explains it refers to preparing the food. Both of them assume that the food is for the baby. However, the *Ha’amek She’ala* cites the Rambam’s version of the text, which

implies that the eggs were not for the child but for the mother. He explains that sexual relations can affect a woman’s milk, causing it to dry up, but consuming eggs can help restore the flow.

Which are virgins – הי ניהו בתולות – Rashi assumes that the case of a virgin *yevama* is one in which she was widowed from betrothal. Accordingly the Gemara's question is that the cases of virgins and women who were betrothed are synonymous; why then are they listed as though they are two distinct cases? However, other early commentaries highlight that it is also possible that a married woman might be a virgin if she had not yet had the opportunity to consummate her marriage. Therefore, the *Arukh LaNer* explains the Gemara's question differently: A betrothed woman is certainly a virgin, and as such the additional reference to a virgin is superfluous.

That an individual opinion disagrees with him – דיחידא פליג עליה: In his Commentary on the Mishna, the Rambam explains that even in those places where the Mishna mentions the opinion of a single Sage, it does not necessarily mean that it was only that Sage who held that opinion. Rather, many other Sages held that opinion; the Sage mentioned was merely the leading exponent of it. However, when the Mishna cites an unattributed opinion or states: The Rabbis said, this is an indication that Rabbi Yehuda HaNasi maintained that the majority of the Sages held in accordance with that opinion.

Barren – עקרה: The Rivan and other commentaries explain that this refers to a woman whose womb had been removed. They explain that although the term barren is typically used in a more general sense, since the list here concludes with reference to a woman who is unsuited to give birth, which is a general statement, the earlier reference to a barren woman must be understood as referring to a specific case.

She was unsuited to give birth – שאינה ראויה לילד: Rashi explains that this is referring to a woman who took a drug that rendered her barren. The Rif writes that this is referring to a woman above the age of forty, or to a woman who had been married for ten years without children, since in such cases the Gemara states elsewhere that such women are no longer suitable for childbirth.

BACKGROUND

The vineyard of Yavne – כפר ביבנה: According to an ancient tradition, the Sanhedrin in Yavne was called a vineyard because when it was in session, the Sages themselves, along with their students, would sit in rows, like the rows of a vineyard (Jerusalem Talmud). It is also possible that the Sanhedrin may have been situated near vineyards, lending the name a double meaning.

”אחת בתולות ואחת בעולות.” הי ניהו בתולות והי ניהו ארוסות, הי ניהו בעולות והי ניהו נשואות?

S The mishna states: The requirement to wait three months before remarrying applies **both to virgins and non-virgins**, both to divorced and to widows, and both to women who were married to their previous husbands and to women who were only betrothed. The Gemara asks: **Which women are referred to as virgins^N and which are referred to as those who were betrothed?** Although the two terms appear to be synonymous, since a virgin will be subject to levirate marriage only if she was betrothed, they must certainly refer to two different categories of women. Similarly, **which women are referred to as non-virgins and which are referred to as married**, as a married woman is always considered to be a non-virgin?

אמר רבי יהודה הכי קאמר: אחת בתולות ואחת בעולות שנתארמלו או שנתגרשו, בין מן הארוסין בין מן הנשואין.

Rabbi Yehuda said this is what the mishna is saying: The requirement to wait applies **to both virgins and non-virgins who were widowed or divorced, whether from betrothal or from marriage**, i.e., the mishna does not list different categories of women but instead establishes a general principle.

רבי אלעזר לא על לבי מדרשא, אשבחיה לרבי אסי, אמר ליה: מאי אמור רבנן בבי מדרשא? אמר ליה, הכי אמר רבי יוחנן: הלכה כרבי יוסי.

The Gemara relates: **Rabbi Elazar did not enter the study hall one day. He found Rabbi Asi and said to him: What was said by the Sages in the study hall today? He said to him: This is what Rabbi Yohanan said: The halakha is in accordance with the opinion of Rabbi Yosei** that a woman is permitted to be betrothed even before three months have passed, since the reason for waiting does not apply in that case.

מכלל דיחידא פליג עליה? אין, והתניא: הרי שהיתה רדופה לילך לבית אביה, או שהיה לה פעם בבית בעלה, או שהיה בעלה חבוש בבית האסורין, או שהיה בעלה זקן או חולה, או שהיתה היא חולה.

Rabbi Elazar said: **From the fact that Rabbi Yohanan needed to state this, it would seem that there is an individual opinion that disagrees with him,^N even though no such opinion is mentioned in the mishna.** Rabbi Asi answered: **Yes, that is correct, and so it is taught in a baraita in the Tosefta (Yevamot 6:6):** With regard to a woman who is certainly not pregnant, for example, a woman who, at the time of her husband's death, had not lived with her husband for some time because she always eagerly hurried, like **one pursued, to go to her father's house, or because she had been subject to anger in her husband's house, or because her husband had been incarcerated in prison, or because her husband was elderly or infirm, or because she was infirm.**

או שהפילה אחר מיתת בעלה, או שהיתה עקרה, או זקנה, או קטנה, או אילומית, או שאינה ראויה לילד – צריכה להמתין שלשה חדשים, דברי רבי מאיר. רבי יהודה מתיר ליארס ולנשא מיד.

Or a woman who could not be pregnant because she miscarried after her husband's death, or because she was barren,^N or elderly, or a minor, or a sexually underdeveloped woman [aylonit], or if for some other reason she was unsuited to give birth,^N even though the reason for the decree to wait three months does not apply to such a woman, nevertheless, she must wait three months. This is the statement of Rabbi Meir. **Rabbi Yehuda permits such women to be betrothed or to marry immediately.** It is apparent from the *baraita* that the question of whether a woman is required to wait the three months when the reason to do so does not apply is subject to a dispute.

אמר רבי חייא בר אבא: תור בו רבי יוחנן. אמר רב יוסף: אי הדר ביה – ממתניתין דכרמא הדר ביה. דתנא, אמר רבי ישמעאל בנו של רבי יוחנן בן ברוקה: שמעתי מפי חכמים בכרם ביבנה: כולן צריכות להמתין שלשה חדשים.

Rabbi Hiyya bar Abba said: Rabbi Yohanan retracted his statement that the halakha is in accordance with the opinion of Rabbi Yosei. Rav Yosef said: **Even if he wanted to retract his statement, would he retract from the baraita that records the opinions of the Sages of the vineyard of Yavne? As it is taught in a baraita: Rabbi Yishmael, son of Rabbi Yohanan ben Beroka, said: I heard from the mouth of the Sages in the vineyard of Yavne^B that all those women enumerated in the baraita above need to wait three months.^H If the great Sages of Yavne held in accordance with the opinion Rabbi Yosei, then the halakha is certainly in accordance with his opinion.**

HALAKHA

Which women require a waiting period for the purposes of distinguishing – איזו נשים צריכות הבקנה: The rabbinic decree that any woman who had been married must wait three months until she remarries is applied irrespective of whether the reason to wait is relevant. Therefore, a woman must wait even if it is clear that she is not pregnant, e.g., if she did not have the opportunity

to engage in sexual relations with her husband, or if she is elderly, or a minor, or an *aylonit*, or if for some other reason she is unsuited to give birth. This is in accordance with the opinion of Rabbi Meir, as the *halakha* is ruled in accordance with his opinion in all cases of rabbinic decrees (Rambam *Sefer Nashim, Hilkhot Geirusin* 11:20; *Shulhan Arukh, Even HaEzer* 13:1).

אמר ליה רבי ירמיה לרבי זריקה: כי עיילת לקמיה דרבי אבהו רמי ליה: מי אמר רבי יוחנן הלכה כרבי יוסי? והאמר רבי יוחנן: הלכה כסתם משנה, ותנן: כל הנשים לא ינשאו ולא יתארסו עד שיהו להם שלשה חדשים, אחת בתולות ואחת בעולות!

אמר ליה: דרמא לך הא – לא חש לקמחיה; סתם ואחר כך מחלוקת היא, ואין הלכה כסתם. דאמר רב פפא ואיתימא רבי יוחנן: מחלוקת ואחר כך סתם – הלכה כסתם, סתם ואחר כך מחלוקת – אין הלכה כסתם.

מסתמיך ואויל רבי אבהו אכתפיה דרבי נחום שמיניה, מנקיט ואויל הלכתא מיניה. בעא מיניה: מחלוקת ואחר כך סתם מאי? אמר ליה: הלכה כסתם. סתם ואחר כך מחלוקת מאי? אמר ליה: אין הלכה כסתם.

סתמא דמתניתין ומחלוקת בבביתא מאי? אמר ליה: הלכה כסתם. מחלוקת במתניתין וסתמא בבביתא מאי? אמר ליה:

Rabbi Yirmeya said to Rabbi Zerika: When you come before Rabbi Abbahu, raise the following contradiction: Did Rabbi Yohanan actually say that the *halakha* is in accordance with the opinion of Rabbi Yosei? Didn't Rabbi Yohanan say that the *halakha* is always established in accordance with the ruling of an unattributed mishna? And we learned in the mishna an unattributed ruling: All women may not marry and may not be betrothed until they have waited three months since their previous marriage ended; this applies to both virgins and non-virgins.

When Rabbi Zerika went and asked, Rabbi Abbahu said to him: The one who raised this contradiction to you is clearly not concerned for his flour;^N this is a case of an unattributed ruling followed by a dispute^N on that ruling, and in such cases the *halakha* is not necessarily in accordance with the unattributed opinion. As Rav Pappa said, and some say it was Rabbi Yohanan who said the following principle: When the Mishna first records a dispute, and afterward it records only one side of that dispute as an unattributed opinion, then the *halakha* is in accordance with the unattributed opinion. However, when the Mishna first records an unattributed opinion and afterward records that the ruling is subject to a dispute, the *halakha* is not necessarily in accordance with the unattributed opinion. In each case, the later reference is considered to be a summary of the matter.

§ The Gemara relates: Rabbi Abbahu would walk while leaning upon the shoulder of Rabbi Naḥum, his attendant, and along the way Rabbi Naḥum would walk and gather halakhic rulings from him. Once, Rabbi Naḥum asked him: When the Mishna first records a dispute, and afterward it records only one side of that dispute as an unattributed opinion, what is the *halakha*? Rabbi Abbahu said to him: The *halakha* is in accordance with the unattributed opinion. Rabbi Naḥum then asked: When the Mishna first records an unattributed opinion and afterward records that the ruling is subject to a dispute, what is the *halakha*? Rabbi Abbahu said to him: The *halakha* is not necessarily in accordance with the unattributed opinion.^N

Rabbi Naḥum asked: When a ruling is recorded in the Mishna as unattributed and it is subject to a dispute in a *baraita*, what is the *halakha*?^N Rabbi Abbahu said to him: The *halakha* is in accordance with the unattributed opinion in the Mishna. Rabbi Naḥum then asked: When the Mishna records that a matter is subject to a dispute, and only one side is recorded as an unattributed opinion in a *baraita*, what is the *halakha*? Rabbi Abbahu said to him:

NOTES

He is not concerned for his flour – לא חש לקמחיה: Rashi explains the analogy as referring to one who does not show care and concern for the items that he himself produces. *Arukh* interprets it as a reference to one who is not wary of wasting his flour; here, he wasted the energy he gained from the bread he had eaten because he did not study thoroughly enough. Rabbi Avraham min HaHar explains the reference is to one who is not sufficiently aware of his own flour, i.e., one who does not taste his own food, which in this case is referring to one not paying attention to the words he says. The *ge'onim* had a different version of the text, which states: He does not fear that which is before him, meaning that he does not perceive that which is found directly before him.

An unattributed ruling followed by a dispute – סתם ואחר כך מחלוקת: The early commentaries engaged in a detailed clarification of this principle. For example, does it apply only to cases where named Sages are in dispute, or also to cases where an individual Sage disagrees with an unattributed opinion? The Meiri cites an opinion, also mentioned in *Sefer HaKeritut*, that

whenever the Mishna cites a dispute between a named Sage and an unattributed opinion, the *halakha* is not necessarily in accordance with the unattributed opinion, irrespective of whether the unattributed opinion is cited first or last in the mishna. The commentaries also discuss whether this principle applies only when the opinions appear together within a single mishna or even when they appear in different *mishnayot* within the same tractate. The Gemara states in one place that the tractates of the Mishna are not ordered sequentially, so that if in one tractate a dispute is cited and in another tractate one of the opinions is cited as unattributed, one cannot claim that the opinions in one tractate were recorded before the other in order to determine what the *halakha* should be. However, some claim that there is a specific sequencing of the orders of the Mishna, and therefore if the two *mishnayot* appear in different orders, the principle can be applied (see *Tosefot Yom Tov on Sota*, chapter 9, *Sha'ar HaMelekh*, and *Arukh LaNer*).

The *halakha* is not in accordance with the unattributed opinion – אין הלכה כסתם: Ramban, Rashba, Ritva, and *Nimmukei*

Yosef all note that the only intent of this statement is that in such a case Rabbi Yohanan's principle that the *halakha* is always established in accordance with the ruling of an unattributed mishna does not apply. It does not mean to state positively that the *halakha* is never in accordance with the unattributed opinion, but only that it is not necessarily so. Therefore, in such cases, the dispute must be analyzed based on the standard principles of halakhic decision-making.

A ruling recorded in the Mishna as unattributed and subject to a dispute in a baraita – סתם במשנה ומחלוקת בבביתא – The essence of this question lies in the fact that it was the disciples of Rabbi Yehuda HaNasi, the redactor of the Mishna, who taught the *baraitot*. It is therefore possible that they received Rabbi Yehuda HaNasi's final opinion on a matter and that he may have retracted his ruling recorded in the Mishna. The Rashba writes (*Bava Kama* 102a) that although the Gemara here states that one disregards the *baraita* in such a case, there are other *amora'im* who hold that the *baraita* does indeed carry greater authority than an unattributed mishna.