

HALAKHA

If he divorced her she is permitted to marry another man – **גִּירְשָׁה**, מוֹתֵרֶת לִיְנַשֵּׂא לְאַחֵר: If a woman was divorced because she failed to bear a child, she is permitted to marry another man. This second husband may stay with her ten years, but if she has not had children at this point he too must divorce her or marry an additional wife (Rambam *Sefer Nashim, Hilkhot Ishut* 15:14; *Shulhan Arukh, Even HaEzer* 154:16).

A wife who did not give birth – **אִשָּׁה שְׁלֵא יָלְדָה**: If a man remained with his wife for ten years without having children, he must divorce her and pay her marriage contract in order to marry another woman who can bear children. Even if he does not want to divorce her, he is compelled to do so. Some commentaries say that if the man has already fathered a viable child, he is not compelled to divorce his wife even if he has not fulfilled the mitzva to be fruitful and multiply (Rema, citing Rivash). The Rema adds that nowadays the custom is not to force the couple to divorce in any situation (Rambam *Sefer Nashim, Hilkhot Ishut* 15:7; *Shulhan Arukh, Even HaEzer* 154:10 and in the comment of Rema).

BACKGROUND

He did not merit to be built from her – **לֹא זָכָה לְהִבְנוֹת מִמֶּנָּה**: From a medical standpoint it is possible for both a man and a woman to be fertile and yet be unable to have children together. Certain antibodies in the woman might destroy the sperm of a particular man and prevent pregnancy, or the genetic combination of the two could create a situation in which the fetus dies before it has a chance to develop.

מִלְמַד שְׂאִין הַשְּׂבִינָה שׁוֹרָה עַל פְּחוֹת מִשְׁנֵי אֲלָפִים וּשְׁנֵי רִבְבוֹת מִיִּשְׂרָאֵל. הָרִי שְׁהָיוּ יִשְׂרָאֵל שְׁנֵי אֲלָפִים וּשְׁנֵי רִבְבוֹת חָסֵר אֶחָד, וְזֶה לֹא עֶסֶק בְּפִרְיָהּ וּרְבִיָּהּ – לֹא נִמְצָא זֶה גֹרֵם לְשְׂבִינָה שֶׁתִּסְתַּלַּק מִיִּשְׂרָאֵל!?

אֲבָא חֲנַן אָמַר מִשׁוּם רַבִּי אֱלִיעֶזֶר: חַיִּיב מִיִּתָּהּ, שְׁנֵי אֲמַר "וּבְנִים לֹא הָיוּ לָהֶם" הָא הָיוּ לָהֶם בְּנִים – לֹא מֵתוּ. אַחֲרֵים אוֹמְרִים: גֹּרֵם לְשְׂבִינָה שֶׁתִּסְתַּלַּק מִיִּשְׂרָאֵל, שְׁנֵי אֲמַר "לְהָיוֹת לְךָ לְאֵלֶיהֶם וְלִזְרֵעַךָ אַחֲרֶיךָ", בְּזִמְנֵן שְׁזִרְעַךָ אַחֲרֶיךָ – עַל שְׂבִינָה שׁוֹרָה, אִין זִרְעַךָ אַחֲרֶיךָ – עַל מִי שׁוֹרָה, עַל הַעֲצִים וְעַל הָאֲבָבִים!?

מִתְנִי' נִשְׂאָ אִשָּׁה וְשָׂדָה עִמָּה עֶשֶׂר שָׁנִים וְלֹא יָלְדָה – אִינוּ רִשְׁאֵי לְבִטּוֹל. גִּירְשָׁה – מוֹתֵרֶת לִיְנַשֵּׂא לְאַחֵר, וְרִשְׁאֵי הַשְּׂנֵי לְשָׂדוֹת עִמָּה עֶשֶׂר שָׁנִים. וְאִם הִפְלָה – מוֹנָה מִשְׁעָה שֶׁהִפְלָה.

גְּמִ' תִּנּוּ רַבָּנַן: נִשְׂאָ אִשָּׁה וְשָׂדָה עִמָּה עֶשֶׂר שָׁנִים וְלֹא יָלְדָה – יוֹצֵיא וְיִתֵּן בְּתוּבָה, שְׂמָא לֹא זָכָה לְהִבְנוֹת מִמֶּנָּה.

This teaches that the Divine Presence does not rest upon less than two thousands and two ten-thousands<sup>N</sup> of the Jewish people, as the terms thousands and ten-thousands are both in the plural. Consequently, if there were two thousands and two ten-thousands of the Jewish people, less one, and this man did not engage in the mitzva to be fruitful and multiply, is he not found to have caused the Divine Presence to be depart from the Jewish people?

Abba Hanan said in the name of Rabbi Eliezer: A man who does not engage in procreation is liable to death,<sup>N</sup> as it is stated with regard to the sons of Aaron: "And Nadav and Avihu died... and they had no children" (Numbers 3:4). This indicates that if they would have had children they would not have died. Others say: He causes the Divine Presence to depart from the Jewish people, as it is stated: "To be a God to you and to your seed after you" (Genesis 17:7). When your seed is after you, i.e., when you have children, the Divine Presence rests upon the Jewish people, but if your seed is not after you, upon whom can the Divine Presence rest? Upon wood and stones?

**MISHNA** If a man married a woman and stayed with her for ten years and she did not give birth,<sup>N</sup> he is no longer permitted to neglect the mitzva to be fruitful and multiply. Consequently, he must either divorce her and marry someone else, or take another wife while still married to her. If he divorced her she is permitted to marry another man,<sup>H</sup> as it is not necessarily on her account that she and her first husband did not have children, and the second husband is permitted to stay with her for ten years. And if she had a miscarriage, he counts the ten years from the time of the miscarriage.

**GEMARA** The Sages taught: If a man married a woman and stayed with her for ten years and she did not give birth,<sup>H</sup> he should divorce her and pay her marriage contract, because perhaps he did not merit to be built,<sup>N</sup> i.e., to have children, from her.<sup>B</sup> It is not certain that their failure to have children is due to her, as it is possible that they are not a suitable match for bearing children.

NOTES

שְׁנֵי אֲלָפִים וּשְׁנֵי רִבְבוֹת – Two thousands and two ten-thousands: The Maharsha notes that the verse states: "The chariots of God are ten-thousands, thousands" (Psalms 68:18), and the Jewish people are worthy of serving as a chariot for the Divine Presence by this same number. Similarly, there were twenty-two thousand Levites in the wilderness who did not participate in the sin of the Golden Calf, and in whose merit the Divine Presence rested upon the Jewish people.

Liable to death – חַיִּיב מִיִּתָּהּ: This is similar to the statement cited earlier that one who is not occupied with the mitzva to be fruitful and multiply is considered a bloodshedder, and is therefore liable to death (see *Iyyun Yaakov*).

Married a woman...and she did not give birth – ...נִשְׂאָ אִשָּׁה – לֹא יָלְדָה: The commentaries debate whether this means that she has not given birth to any children at all, or perhaps, as

explained in the Jerusalem Talmud, it even includes a case where she had a child and the child died, and then she did not have another child for ten years. A third possibility is that this applies even to a woman who had only one child, even if that child lived, and ten years have passed since then (see Ramban and Rashba). The *Nimmukei Yosef* summarizes these opinions.

Perhaps he did not merit to be built – לֹא זָכָה לְהִבְנוֹת: Even if he had children from a former wife, and therefore it is clear that he is capable of having children, perhaps his present wife is also capable of having children but the two simply did not merit to have children together (Ritva). The commentaries note that this consideration is strong enough to serve as the basis for a monetary claim, and he cannot withhold the payment of her marriage contract by claiming that there is at least a doubt as to whether she is fertile (*Gilyonei HaShas*).

If he was sick, etc. – תְּלָהּ הוּא וְכוּי – The ten years that one may remain married before divorcing his wife if she has not borne him children do not include periods of time when one of them was sick, even if they engaged in intercourse during this period, or time when they were imprisoned, or when one of them was out of the country, as mentioned in the Jerusalem Talmud (Rambam *Sefer Nashim, Hilkhot Ishut* 15:11; *Shulhan Arukh, Even HaEzer* 154:11).

אף על פי שאין ראיה לדבר – וְכוּי – לדבר: "מקץ עשר שנים לשבת אברם בארץ כנען" ללמדך שאין ישיבת חוץ לארץ עולה לו מן המנין. לפיכך, חלה הוא או שתלתה היא, או שניהם חבושים בבית האסורים – אין עולין לו מן המנין.

Although there is no explicit proof<sup>N</sup> for the matter that one must take another wife if he has not had children after ten years of marriage, there is an allusion to the matter, as the verse states: "And Sarai, Abram's wife, took Hagar... after Abram had dwelled ten years in the land of Canaan, and gave her to Abram her husband to be his wife" (Genesis 16:3). Incidentally, this verse also comes to teach you that the years spent dwelling outside of Eretz Yisrael do not count as part of his tally.<sup>NH</sup> Consequently, if he was sick<sup>NH</sup> during this period or she was sick, or if one of the two of them was imprisoned in jail, it does not count as part of his tally.

אמר ליה רבא לרב נחמן: ויליף מיצחק, דכתוב "ויהי יצחק בן ארבעים שנה בקחתו את רבקה" וגו' וכתוב "ויצחק בן ששים שנה בלדת אותם!" אמר ליה: יצחק עקור היה.

Rava said to Rav Nahman: Let us derive from Isaac that one may wait a longer period of time, as it is written: "And Isaac was forty years old when he took Rebekah... to be his wife" (Genesis 25:20), and it is written with regard to the birth of Jacob and Esau: "And Isaac was sixty years old when she bore them" (Genesis 25:26). This indicates that one may wait twenty years. Rav Nahman said to him: Isaac knew that he was infertile, and therefore there was no reason for him to marry another woman, as Rebekah was not the cause of their infertility.

אי הכי, אברהם נמי עקור היה! ההוא מיבעי ליה לכדרבי חייא בר אבא. דאמר רבי חייא בר אבא אמר רבי יוחנן: למה נמנו שנותיו של ישמעאל – כדי לייחס בהן שנותיו של יעקב.

The Gemara responds: If so, Abraham also should not have married another woman, as he was also infertile. Rather, the *tanna* requires that verse that states when Jacob and Esau were born for that which Rabbi Hiyya bar Abba taught. This is because Rabbi Hiyya bar Abba said that Rabbi Yohanan said: Why were Ishmael's years counted in the Torah, as they do not appear to be relevant to its narrative? In order to determine through them the years of Jacob, i.e., Jacob's age at the time that various events took place, as explained in tractate *Megilla* (17a). The verse concerning Jacob's birth was not meant to allude to a *halakha* about remaining married before having children, but to make it possible to determine Jacob's age by relating it to the age of Ishmael.

NOTES

Although there is no explicit proof – אף על פי שאין ראיה – See the explanations of *Tosafot* and the *Tosefot HaRosh* as to why this source is considered to merely be an allusion and not an explicit proof. Rabbi Yehuda al-Madari states that the verse does not prove he is obligated to divorce her or marry another woman, because in the case of Avraham it was Sarah who freely chose to give Hagar to her husband.

Years spent dwelling outside of Eretz Yisrael do not count as part of his tally – אין ישיבת חוץ לארץ עולה לו מן המנין – The commentaries discuss this issue at length. Rashi's comments that the sin of living outside Eretz Yisrael may have prevented them from having children implies that the *halakha* that one must take another wife after ten years applies only in Eretz Yisrael. Some commentaries indeed write that a husband is not compelled to divorce his barren wife outside Eretz Yisrael, due to the possibility that the reason they have no children is because they are living outside the land (*Or Zarua*). Most commentaries, however, reject this opinion, arguing that there is no reason why the mitzva to be fruitful and multiply, which is not connected to the land, cannot be fulfilled properly outside of it.

One alternative explanation is that if a man whose permanent residence is in Eretz Yisrael leaves the country, the sin of his departure might prevent him from having children (Ramban, citing Rabbi Avraham *Av Beit Din*). The majority of the commentaries

explain that one who did not have children outside Eretz Yisrael and subsequently immigrated to Eretz Yisrael must wait an additional ten years, as the merit of living in Eretz Yisrael might help him bear children (see Ritva). Rabbi Avraham min HaHar states that the expression: Count as part of his tally, is referring specifically to Abraham. He lived in sorrow over the fact that he was not in Eretz Yisrael, which might have led to his failure to have children.

Consequently if he was sick – לפיכך חלה הוא – Rashi explains the use of the word consequently in this context: The fact that the time Abraham and Sarah spent outside of Eretz Yisrael did not count toward the ten years indicates that whenever there is an external factor that may have been responsible for the couple's childlessness, the time when that factor applied is not taken into account. Consequently, if one of them was sick or incarcerated for a period of time, that time is not included in the ten years. The Rosh explains that the Gemara's statement is not limited to situations where the couple was unable to engage in intercourse, in which case there would have been no need to state that the time does not count toward the tally. Rather, the sin for which they were punished with their illness or incarceration may also be responsible for the fact that they have not conceived, and therefore the time does not count even if they were able to engage in intercourse.

NOTES

Concerning [lenokhah] his wife – לְנוֹכַח אִשְׁתּוֹ: Rashi explains that the term *lenokhah* indicates that Isaac and Rebekah stood opposite each other and prayed. The Maharsha states that *lenokhah* can mean corresponding to. Consequently, just as Rebekah required this prayer, so did Isaac, as his status was similar to hers.

Because the prayer... is not similar, etc. – לָמִי שְׂאִינוּ דוֹמָה: This means not that the prayer of a righteous individual who is the son of a righteous individual is always answered, but that it is more likely to be answered. See the *Iyyun Ya'akov*.

Abraham and Sarah were originally *tumtumin* – אַבְרָהָם – וְשָׂרָה טוּמְטָמִין הָיוּ: The Meiri writes that this informs us of the power of prayer, which can change even one's physical nature.

אָמַר רַבִּי יִצְחָק: יִצְחָק אָבִינוּ עָקוֹר הָיָה, שְׁנֵאמַר "וַיַּעֲתֵר יִצְחָק לַה' לְנוֹכַח אִשְׁתּוֹ", "עַל אִשְׁתּוֹ" לֹא נֵאמַר, אֲלֵא "לְנוֹכַח" מִלְּמֹד שְׂשֻׁנֵיהֶם עָקוֹרִים הָיוּ. אֵי הָכִי "וַיַּעֲתֵר לוֹ" "וַיַּעֲתֵר לָהֶם" מִיִּבְעֵי לֵיהּ! לָמִי שְׂאִינוּ דוֹמָה תְּפִלַּת צְדִיק בֶּן צְדִיק לְתְּפִלַּת צְדִיק בֶּן רָשָׁע.

אָמַר רַבִּי יִצְחָק: מִפְּנֵי מָה הָיוּ אֲבוֹתֵינוּ עָקוֹרִים – מִפְּנֵי הַקְּדוּשׁ בְּרוּךְ הוּא מְתַאֲוֶה לְתְּפִלַּתוֹ שֶׁל צְדִיקִים. אָמַר רַבִּי יִצְחָק: לָמָּה נִמְשָׁלָה תְּפִלַּתוֹ שֶׁל צְדִיקִים כְּעֵתֶר – מָה עֵתֶר זֶה מִהַפֵּךְ הַתְּבוּאָה מִמְּקוֹם לְמְקוֹם. כֵּךְ תְּפִלַּתוֹ שֶׁל צְדִיקִים מְהַפֵּכֶת מִדוּחֵיו שֶׁל הַקְּדוּשׁ בְּרוּךְ הוּא מִמַּדַּת רַגְנוּת לְמַדַּת רַחֲמָנוּת. אָמַר רַבִּי אָמִי: אַבְרָהָם וְשָׂרָה טוּמְטָמִין הָיוּ, שְׁנֵאמַר "הִבִּיטוּ אֶל צוּר

Rabbi Yitzhak said: Isaac our father was infertile, as it is stated: "And Isaac entreated the Lord concerning [lenokhah] his wife<sup>N</sup> because she was barren" (Genesis 25:21). It is not stated that he entreated the Lord for [al] his wife, but *lenokhah*, which can mean opposite, against, or corresponding to; this teaches that they were both infertile. The Gemara asks: If so, why does the verse continue: "And the Lord let Himself be entreated of him"? The verse should say: And the Lord let Himself be entreated of them. The Gemara answers that their prayers were answered due to Isaac, because the prayer of a righteous individual who is the son of a righteous individual is not similar<sup>N</sup> to the prayer of a righteous individual who is the son of a wicked individual, and Rebekah's father was the wicked Laban.

Rabbi Yitzhak said: For what reason were our forefathers initially infertile? Because the Holy One, Blessed be He, desires the prayers of the righteous, and He therefore wanted them to pray for children. Similarly, Rabbi Yitzhak said: Why are the prayers of the righteous compared to a pitchfork [*eter*],<sup>B</sup> as in the verse: "And He let Himself be entreated [*vaye'ater*]"? This indicates that just as this pitchfork turns over produce from one place to another, so the prayer of the righteous turns over the attributes of the Holy One, Blessed be He, from the attribute of rage to the attribute of mercy. Rabbi Ami said: Abraham and Sarah were originally *tumtumin*,<sup>NB</sup> people whose sexual organs are concealed and not functional, as it is stated: "Look to the rock

BACKGROUND

Pitchfork [*eter*] – עֵתֶר: Rashi explains here that *eter* means a shovel, but *Tosafot* (*Sukka* 14a) prove from various sources that an *eter* is a pitchfork used to dig the earth or turn over produce in the process of winnowing, which is the way Rashi explains the word in tractate *Sukka* (14a).

*Tumtum* – טוּמְטָמִין: A *tumtum* is one whose external sexual organs are concealed or otherwise indeterminate, and it is therefore unclear whether this person is male or female. In certain cases, the gender of the *tumtum* is later established, which is described in the language of the *halakha* as: A *tumtum* who was torn, revealing his or her gender, at which point this person is considered a full-fledged member of that gender.



Farmer winnowing with a pitchfork

חֲבַבְתֶּם וְאֵל מְקַבֵּת בּוֹר נִקְרְתֶם וְכַתִּיב  
“הִבִּיטוּ אֶל אַבְרָהָם אֲבִיכֶם וְאֶל שָׂרָה  
חֲחֹלְלֵכֶם.”

אָמַר רַב נַחֲמָן אָמַר רַבָּה בַּר אַבּוּה: שָׂרָה  
אָמְנוּ אֵילּוּנִית הִיְתָה, שְׁנַאֲמַר “וְתִהְיֶה  
שְׂרֵי עֲקָרָה אֵין לָהּ וְלֹד” אֲפִילוּ בֵּית וְלֹד  
אֵין לָהּ.

אָמַר רַב יְהוּדָה בְּרִיה דְּרַב שְׁמוּאֵל  
בַּר שִׁילַת מִשְׁמִיחָה דְּרַב: לֹא שָׁנוּ אֶלָּא  
בְּדוֹרוֹת הָרֵאשׁוֹנִים, שְׁשָׁנוּתִיהֶן מְרֻבּוֹת.  
אֲבָל בְּדוֹרוֹת הָאַחֲרוֹנִים שְׁשָׁנוּתִיהֶן  
מוֹעָטוֹת – שְׁתֵּי שָׁנִים וּמַחְצָה, כְּנֶגֶד  
שְׁלֹשָׁה עִבּוּרִים. רַבָּה אָמַר רַב נַחֲמָן:  
שְׁלֹשׁ שָׁנִים, כְּנֶגֶד שְׁלֹשׁ פְּקִידוֹת.  
דְּאָמַר מַר: בְּרֵאשׁ הַשָּׁנָה נִפְקְדוּ שָׂרָה  
רַחֵל וְחַנָּה.

אָמַר רַבָּה: לִיתְנָהוּ לְהֵנִי כְּלָלִי מִכְּדִי  
מִתְנַתִּין מֵאֵן תִּקֵּין – רַבִּי, וְהָאֵל בִּימֵי דָּוִד  
אִימְעוּט שָׁנִי, דְּכָתִיב “יְמֵי שְׁנוֹתֵינוּ בָּהֶם  
שִׁבְעִים שָׁנָה.”

וְהָאֵי “שְׂמָא לֹא זָכָה לְהַבְנֹת הַיְמִנָה”  
וְדִלְמָא אִיהִי דְּלֹא זָכָא: אִיהִי, בֵּין דְּלֹא  
מִפְקֵדָא אֲפִרְיָה וְרַבִּיָּה – לֹא מִיעֲנִשָּׁה.

from where you were hewn, and to the hole of the pit from where you were dug” (Isaiah 51:1), and it is written in the next verse: “Look to Abraham your father and to Sarah who bore you” (Isaiah 51:2), which indicates that sexual organs were fashioned for them, signified by the words hewn and dug, over the course of time.

Rav Nahman said that Rabba bar Avuh said: Our mother Sarah was initially a sexually underdeveloped woman [*aylonit*], as it is stated: “And Sarah was barren; she had no child” (Genesis 11:30). The superfluous words: “She had no child,” indicate that she did not have even a place, i.e., a womb, for a child.

Rav Yehuda, son of Rav Shmuel bar Sheilat, said in the name of Rav: They taught that he waits ten years only with regard to the people who lived in former generations, whose years were numerous, i.e., they lived longer. However, with regard to the people who live in later generations, whose years are few, he waits only two and half years<sup>8</sup> before divorcing her, corresponding to the time period of three pregnancies.<sup>9</sup> Rabba said in the name of Rav Nahman: He waits three years, corresponding to the three remembrances of barren women by God, as the Master said: On Rosh HaShana Sarah, Rachel, and Hannah were remembered, i.e., God gave them children. Since God determines on Rosh HaShana whether barren women will conceive that year, one may remain married until three such opportunities have passed.

However, Rabba himself said: These principles are not accepted as *halakha*. Why not? Now consider, who established the content of the *mishna*? Rabbi Yehuda HaNasi. Yet, in the days of King David, many years before the time of Rabbi Yehuda HaNasi, the years of an average lifespan were already diminished, as it is written: “The days of our years<sup>10</sup> are seventy years, and if with strength eighty years” (Psalms 90:10). Consequently, if Rabbi Yehuda HaNasi included in the *mishna* the statement that one remains married for ten years, that must apply even nowadays.

The Gemara asks about the language of the *baraita*. And what about this expression: Perhaps he did not merit to be built from her; perhaps it was she who did not merit<sup>11</sup> to build a family. The Gemara answers: She, since she is not commanded to be fruitful and multiply, is not punished. Their worthiness therefore depends on him, not her.

NOTES

Two and a half years – שְׁתֵּי שָׁנִים וּמַחְצָה: Since the duration of three pregnancies is twenty-seven months, why does Rav say that one remains married for two and a half years, which is thirty months? One suggestion is that the thirty months include one month for the woman to become ritually pure and permitted to her husband between each of the three time periods corresponding to a pregnancy (Rabbi Avraham min HaHar). Alternatively, Rav was not particular about the exact duration, and allowed extra time (Rabbi Yehuda al-Madari).

The days of our years – יְמֵי שְׁנוֹתֵינוּ: *Tosafot* note that even though this psalm is entitled “A prayer of Moses,” it was in fact composed by David. The phrase “A prayer of Moses,” means a prayer for Moses (*HaKotev in Ein Ya’akov*).

Perhaps it was she who did not merit, etc. – וְדִלְמָא אִיהִי דְּלֹא זָכָא וְכִיָּא וְכִיָּא: Rashi explains that the point of this question is that

therefore she should not be entitled to the payment of her marriage contract (see *Rid*). Rabbi Avraham min HaHar explains similarly that since she is not obligated to have children, their inability to have children is considered a punishment for the husband, not the wife. Consequently, although it is not known whether she is fertile, she nevertheless receives payment for her marriage contract.

However, some commentaries (Ramban; Rashba; *Tosefot Had Mikamma’ei*) question the connection between not being obligated to have children and receiving payment of the marriage contract. The Ramban suggests that the Gemara’s initial statement that he did not merit to have children through her is meant to explain that since they are not presumed to necessarily be infertile, he must divorce her in order to marry someone else. The Gemara’s question here is simply linguistic; it asks why this statement was phrased from the perspective of the husband rather than the wife (see Rashba).

BACKGROUND

Three pregnancies – שְׁלֹשָׁה עִבּוּרִים: It is possible for a woman to become pregnant and give birth three times in a period of two and a half years, and this phenomenon occasionally takes place.

**A second husband yes, but a third one no – שני איין, – שלישי לא**: If a woman had been married twice for ten years each without bearing a child by either husband, she may not marry a third time. If she does, her husband must divorce her unless he has another wife or has already fulfilled the mitzva to be fruitful and multiply. If he divorces her, he is required to pay her marriage contract only if he was aware of her background before he married her, in which case he must pay it even if he does not have another wife and has not fulfilled the mitzva to be fruitful and multiply (Rambam *Sefer Nashim, Hilkhot Ishut* 15:14; *Shulhan Arukh, Even HaEzer* 154:17; *Beit Shmuel*).

**Circumcised her first son and he died, etc. – מלה**: If a woman circumcised her first son and he died as a result of the circumcision, and she circumcised her second son and he too died, her third son is not circumcised at the usual time; rather, he is given time to grow and to become stronger. This applies regardless of whether the sons shared the same father. The same principle applies also to the sons of one father from different mothers. Some authorities disagree, but the *halakha* is in accordance with the lenient opinion in cases of potential danger (Rambam *Sefer Ahava, Hilkhot Mila* 1:18; *Shulhan Arukh, Yoreh De'a* 263:2 and in the comment of Rema).

**Sisters establish a presumption – אֲחִיּוֹת מְחַקְוֹת**: If a woman circumcised her son and he died as a result, and her sister also circumcised her son and he too died, their other sisters do not circumcise their sons at the proper time (*Shulhan Arukh, Yoreh De'a* 263:3).

BACKGROUND

**The first sister circumcised her son and he died, etc. – מלה ראשונה ומת וכו'**: Apparently, this is referring to a hereditary disease that prevents the blood from clotting, e.g., hemophilia. It is transmitted through the female, who carries the offending gene, although it affects primarily males. In this case it is certain that sisters establish a presumption, as they are all likely to pass on the disease.

איני? והא אמרו ליה רבנן לרבי אבא בר זבדא: נסיב איתתא ואוליד בני! ואמר להו: אי זכאי – הו לי מקמייתא. התם דחוי קא מדחי להו לרבנן. דרבי אבא בר זבדא איעקר מפרקיה דרב הונא,

רב גידל איעקר מפרקיה דרב הונא, רבי חלבון איעקר מפרקיה דרב הונא, רב ששת איעקר מפרקיה דרב הונא. רב אחא בר יעקב אחתיה סוכנינתא, תלויה בארזא דבי רב ונפק מיניה כהוצא יקא. אמר רב אחא בר יעקב: שיתין סבי הונא, וכולהו איעקור מפרקיה דרב הונא, לבר מאנא דקיימי בנפשאי "החכמה תחיה בעליה".

גרשה מותרת וכו'. שני – אין, שלישי – לא.

מתנינן מני – רבי היא. דתניא: מלה הראשון ומת, שני ומת, שלישי – לא תמול, דברי רבי. רבן שמעון בן גמליאל אומר: שלישי – תמול, רביעי – לא תמול.

והתניא איפכא, הי מיניהו אחרניתא?

תא שמע, דאמר רבי חייה בר אבא אמר רבי יוחנן: מעשה בארבע אחיות בצפורי, שפלה ראשונה ומת, שניה ומת, שלישית ומת, רביעית באת לפני רבן שמעון בן גמליאל, אמר לה: אל תמולי.

ודלמא אי אתיא שלישית – נמי הוה אמר לה? אם כן מאי אסדהותיה דרבי חייה בר אבא. ודלמא הא קא משמע לן דאחיות מחוקות!

The Gemara challenges the mishna's statement that if one did not have children after ten years he should marry a different woman. **Is that so? Didn't the Sages say to Rabbi Abba bar Zavda: Marry a woman and have children, and he said to them: If I had merited, I would already have children from my first wife?** This indicates that there is no obligation to remarry if one did not have children with his first wife. The Gemara answers: **There, Rabbi Abba bar Zavda was merely putting the Rabbis off with an excuse, as the real reason why he would not marry was because Rabbi Abba bar Zavda became impotent from Rav Huna's discourse.** Rav Huna's students would hold back from relieving themselves until his lengthy sermons were finished, which caused them to become sterile.

The Gemara similarly relates that **Rav Giddel became impotent from Rav Huna's discourse, Rav Helbo became impotent from Rav Huna's discourse, and Rav Sheshet became impotent from Rav Huna's discourse.** The Gemara relates: **Rav Aha bar Ya'akov was afflicted by *suskhinta*, a disease caused by holding back from urinating. They suspended him from the cedar column that supported the study hall, and a substance that was as green as a palm leaf emerged from him, and he was healed. Rav Aha bar Ya'akov said: We were sixty elders present at the time, and they all became impotent from Rav Huna's discourse, aside from me, as I fulfilled with regard to myself the verse: "Wisdom preserves the life of he who has it" (Ecclesiastes 7:12).** I used the above cure to avoid becoming impotent.

**S** It was taught in the mishna that if a man divorced his wife after ten years without children, **she is permitted** to marry a second man, who may remain married to her for ten years. The Gemara comments: **A second husband, yes, but a third one, no.**<sup>14</sup> Once she has been married to two men without children for ten years each, it is presumed that she is unable to have children.

The Gemara comments: **Who is the *tanna* of the mishna? It is Rabbi Yehuda HaNasi, who holds that a legal presumption [*hezaka*] is established after two occurrences. As it is taught in a *baraita*: If a woman circumcised her first son and he died<sup>15</sup> as a result of the circumcision, and she circumcised her second son and he also died, she should not circumcise her third son, as the deaths of the first two produce a presumption that this woman's sons die as a result of circumcision. This is the statement of Rabbi Yehuda HaNasi. Rabban Shimon ben Gamliel says: She should circumcise her third son, as there is not considered to be a legal presumption that her sons die from circumcision, but she should not circumcise her fourth son if her first three sons died from circumcision.**

The Gemara asks: **Isn't the reverse taught in a *baraita*, that Rabbi Yehuda HaNasi holds that the woman's third son must be circumcised and Rabban Shimon ben Gamliel holds that he is not circumcised? Which of them was composed later and is therefore presumed to be more reliable?**

The Gemara suggests: **Come and hear, as Rabbi Hiyya bar Abba said that Rabbi Yoḥanan said: An incident occurred involving four sisters in Tzipori, that the first sister circumcised her son and he died,<sup>16</sup> and the second sister circumcised her son and he died, and the third one circumcised her son and he too died. The fourth sister came before Rabban Shimon ben Gamliel, who said to her: Do not circumcise him.** This indicates that according to Rabban Shimon ben Gamliel a presumption is established only after three occurrences.

The Gemara refutes this proof: **Perhaps if the third sister had come before him he would also have said to her the same ruling.** The Gemara asks: **If so, what is the purpose of Rabbi Hiyya bar Abba's testimony? Why would he have related this incident if it does not teach us anything?** The Gemara answers: **Perhaps he comes to teach us that sisters establish a presumption<sup>17</sup> in a case like this even though the children who died were not from the same mother.**

**אָהוּת מְחֻקָּת – Sisters establish a presumption** – Although Rava himself maintains later in the discussion that one must be concerned that a presumption has been established after only two occurrences in the case of marriage to a woman whose previous husbands died, in this case of the sisters he admits that three occurrences are required in order to establish a presumption. The reason for the difference is that in the case of a woman whose husbands died, the presumption relates to the woman herself. Conversely, in this case the presumption is based on the experiences of other family members, and therefore more evidence is required in order to establish a legal presumption (Rashba).

**Say that they disagree with regard to circumcision, etc.** – **אִימֵר דְּפִלְיָי לְעֵנֵן מִלָּה וְכוּ** – The difference between the cases is twofold. First, the presumption in the case of circumcision does not pertain to the same child, but to his brother. Secondly, the merit of the mitzva may prevent the tragedy. Therefore, even if three occurrences are required in order to establish a presumption in the case of circumcision, all should agree that if two husbands of a particular woman have died, one should not marry her (Rabbi Avraham min HaHar).

**לְשָׁלִישִׁי – She may not get married to a third husband** – **לֹא תִנְשָׂא** The Rambam rules that if she did get married, or even betrothed, her husband is not forced to divorce her. Other commentaries struggle to find a rationale for this opinion and support for it in the Gemara. The Rambam himself, in a responsum, explains that marrying a woman whose two previous husbands have died is not actually dangerous; however, if her husband thinks he is at risk, his own worry will in fact cause him to suffer a greater likelihood of harm. Therefore, if he is not concerned, he is not in danger and has committed no transgression by marrying this woman.

## HALAKHA

**A man should not marry a woman from a family of epileptics – לֹא יִשָּׂא אִדָּם אִשָּׁה לֹא מִמְשַׁפַּחַת נִכְפִּין** : A man should not marry a woman from a family of epileptics, lepers, or the like. This applies only if three cases from the same family have been documented (Rambam *Sefer Kedusha, Hilkhoh Issurei Bia* 2:130; *Shulhan Arukh, Even HaEzer* 2:7).

**Her constellation is the cause of her husbands' deaths – מְקוֹל גּוֹרָם** : If a woman was married or betrothed twice and her husbands died she may not marry a third time, as there is a presumption that she was the cause of her husbands' deaths. However, if a third man married her he is not required to divorce her. Even if he has only betrothed her, he may marry her. If he was not aware of her previous history and wants to divorce her due to the fact that her previous husbands died, he is not required to pay her marriage contract.

The Rema writes that some authorities rule in accordance with the opinion that her spring is the cause, and therefore the presumption that she is the cause of her husbands' deaths is established only when they died on their own; however, if they died in accidents or due to an epidemic, no presumption is established. Therefore, many are lenient in regard to this *halakha*, and no objection to their practice is raised (Rambam *Sefer Kedusha, Hilkhoh Issurei Bia* 2:131; *Shulhan Arukh, Even HaEzer* 9:1 and in the comment of Rema).

**אָמַר רַבָּא: הַשְּׂתָא דְאַמְרַת אֲחִיות מְחֻקָּת – לֹא יִשָּׂא אִדָּם אִשָּׁה לֹא מִמְשַׁפַּחַת נִכְפִּין, וְלֹא מִמְשַׁפַּחַת מְצוּרָעִים, וְהוּא דְאַתְחֻק תְּלָתָא וְיִמְנִי.**

**מֵאִי הוּוּ עֵלְהָ? כִּי אֲתָא רַב יִצְחָק בְּרַי וְיִסְרֵי אָמַר: עוֹבְדָא הוּוּ קָמִיהּ דְּרַבִּי יוֹחָנָן בְּכַנְיָשׁוֹתָא דְּמַעוֹן בְּיוֹם הַכַּפּוּרִים שְׁחַל לְהוֹיֹת בְּשַׁבָּת, וּמְלָה רַאשׁוֹנָה וּמַת, שְׁנִיָּה וּמַת, שְׁלִישִׁית בְּאָה לְפָנָיו. אָמַר לָהּ: לְכִי וּמְוִלִי.**

**אָמַר לֵיהּ אַבְיִי: חַזִּי דְקִשְׁרִית אִיסוּרָא וְסַכְנָתָא!**

**סַמְךָ עֵלְהָ אַבְיִי, וְאוֹל נִסְבָּה לְחוּמָה בְּרַתָּא דְאַיְסִי בְּרִיהּ דְּרַב יִצְחָק בְּרִיהּ דְּרַב יְהוּדָה. דְּנִסְבָּה רַחְבָּא דְּפוּמְבֵּדִיתָא וְשָׁכִיב, רַב יִצְחָק בְּרִיהּ דְּרַבָּה בְּרַב בְּרַב חָנָה וְשָׁכִיב, וְנִסְבָּה הוּוּ וְשָׁכִיב.**

**אָמַר רַבָּא: וּמִי אִיכָא דְעֵבִיד עוֹבְדָא בְּנִפְשִׁיהּ כִּי הָאִי, וְהָא אִיהוּ דְאַמְרַ: אַבְיִן – דְּסַמְכָא, יִצְחָק סוּמְקָא – לֹא בְּרַב סַמְכָא. אַבְיִן – יִשְׁנֵנוּ בְּחוּרָה, יִצְחָק סוּמְקָא – אִינוּ בְּחוּרָה. וְעוֹד: אִימֵר דְּפִלְיָי לְעֵנֵן מִלָּה, בְּנִישׁוּאֵין מִי פְּלִיגִי?**

**אִין, וְהִתְנַיָּא: נִישֵׁת לְרַאשׁוֹן וּמַת, לְשִׁנִּי וּמַת, לְשִׁלִּישִׁי – לֹא תִנְשָׂא, דְּבְרֵי רַבִּי. רַבִּין שְׁמַעוֹן בֶּן גַּמְלִיאֵל אָמַר: לְשִׁלִּישִׁי תִנְשָׂא, לְרַבִּיעִי לֹא תִנְשָׂא.**

**בְּשִׁלְמָא גְבִי מִלָּה – אִיכָא מְשַׁפַּחָה דְּרַפִּי דְמָא וְאִכָּא מְשַׁפַּחָה דְקָמִיט דְמָא. אִלָּא נִישׁוּאֵין מֵאִי טַעְמָא? אָמַר לֵיהּ רַב מְרֻדְכִי לְרַב אֲשִׁי, הֲכִי אָמַר אַבְיִי מִי הִגְרוּנָא מִשְׁמִיהּ דְּרַב הוֹנָא: מַעֲנֵן גּוֹרָם. וְרַב אֲשִׁי אָמַר: מְקוֹל גּוֹרָם.**

Rava said: Now that you have said that sisters establish a presumption,<sup>N</sup> a man should not marry a woman from a family of epileptics<sup>HB</sup> or from a family of lepers, as these diseases might be hereditary. The Gemara adds: **And this applies only if it was established three times, i.e., three members of the family are afflicted with the disease.**

The Gemara asks: **Which halakhic conclusion was about this matter? Is a presumption established after two occurrences or only after three? When Rav Yitzhak bar Yosef came from Eretz Yisrael, he said: An incident occurred before Rabbi Yohanan in the synagogue of the town of Maon on a Yom Kippur that occurred on Shabbat. The first sister had circumcised her son and he died; the second sister circumcised her son and he also died. The third sister came before him, and he said to her: Go and circumcise your son, as a presumption is not established after only two occurrences.**

Abaye said to Rav Yitzhak: **See to it that your report is accurate, as you are permitting an action that would otherwise constitute a prohibition and a danger. If the third baby should not be circumcised, doing so would be a prohibited labor and would endanger the life of the child.**

The Gemara comments: **Abaye relied on this report and went and married Huma, the daughter of Isi, son of Rav Yitzhak, son of Rav Yehuda. Huma had previously married Raḥava of Pumbedita, and he died, and then she married Rav Yitzhak, son of Rabba bar Hana, and he died; and he, Abaye, married her nevertheless, without concern that she had been established to be a woman whose husbands die; and he died as well while married to her.**

Rava said: **Is there anyone who performs an action like this and endangers himself by marrying such a woman? Wasn't it he, Abaye, who said that Avin is reliable but Yitzhak the Red, i.e., Rav Yitzhak bar Yosef, is not reliable? He proceeds to explain the difference between them: Avin returns to Eretz Yisrael and hears whether the Sages there rescind their previous rulings, whereas Yitzhak the Red does not return to Eretz Yisrael and never finds out if the Sages there rescind their rulings. And furthermore, say that they disagree with regard to whether a presumption is established by two or by three deaths due to circumcision,<sup>N</sup> but do they necessarily argue with regard to marriage?**

The Gemara responds: **Yes, and it is taught in a baraita: If a woman was married to her first husband and he died, to a second one and he also died, she may not get married to a third husband.<sup>N</sup> This is the statement of Rabbi Yehuda HaNasi. Rabban Shimon ben Gamliel says: She may get married to a third husband, but if he also dies, she may not get married to a fourth husband.**

The Gemara asks: **Granted with regard to circumcision a presumption of death due to circumcision can be established because there are families whose blood is thin and does not clot well, and there are families whose blood clots. However, in the case of marriage, what is the reason for concern that a subsequent husband will die? Rav Mordekhai said to Rav Ashi: Avimi of Hagronya said in the name of Rav Huna as follows: Her spring is the cause.<sup>B</sup> In other words, the woman has some sort of condition that causes those who have intercourse with her to die. And Rav Ashi said that her constellation is the cause of her husbands' deaths.<sup>H</sup>**

## BACKGROUND

A man should not marry a woman from a family of epileptics – **לֹא יִשָּׂא אִדָּם אִשָּׁה לֹא מִמְשַׁפַּחַת נִכְפִּין** This is one of the earliest mentions in the history of medicine of the recognition that certain hereditary diseases are transmitted through a carrier. Consequently, although the woman displays no signs of the disease, the very occurrence of the hereditary disease in the family raises the possibility that she could pass it on to her children.

Contemporary medicine knows of numerous such diseases, of which epilepsy is a prime example.

**Her spring is the cause – מַעֲנֵן גּוֹרָם** : It is possible for bodily fluids to transmit infectious diseases. This applies especially to sexually transmitted illnesses, but it is true of other infectious diseases as well. It is also possible for a woman to carry a disease that does not threaten her but is deadly for a man.

NOTES

Rav Yosef – רב יוסף: When the Gemara refers to Rav Yosef without further identification, it is referring to Rav Yosef bar Hiyya.

Marriage and lashings, etc. – נישואין ומלקיות וכו': The commentaries discuss why the *halakha* distinguishes between different cases. They explain that with regard to marrying a woman whose previous husbands have died, since there is a concern of danger, the *halakha* is in accordance with the more cautious opinion of Rabbi Yehuda HaNasi. Although it is not mentioned in the Gemara, the same is true in a case of circumcision; if two brothers have already died as a result of circumcision, the third is not circumcised. In the case of lashings, the *halakha* is in accordance with the opinion of Rabbi Yehuda HaNasi due to the court's responsibility to protect society from evildoers.

Conversely, the *halakhot* of set patterns of menstrual bleeding are rabbinic, and therefore the *halakha* is in accordance with the lenient opinion of Rabban Shimon ben Gamliel. In the case of a forewarned ox, which involves monetary payment, the burden of proof rests upon the claimant and therefore he is not awarded the extra payment unless he can prove that a presumption has been established. Since he cannot prove that the *halakha* is in accordance with the opinion of Rabbi Yehuda HaNasi, he is awarded the extra payment of a forewarned ox only if its owner had been warned on three separate occasions.

HALAKHA

One who was flogged and repeated the same transgression – מי שלקה ושנה: If one was flogged for committing a transgression that carries a punishment of *karet* and repeated the sin and was flogged again, if he repeats the sin a third time he is not flogged. Rather, he is placed in a narrow, vaulted chamber until he dies (Rambam *Sefer Shofetim, Hilkhot Sanhedrin* 18:4).

Perek VI  
Daf 65 Amud a

HALAKHA

A set pattern of menstrual bleeding is established after three occurrences – וסת בשלש פעמים: A woman establishes a set pattern if she experiences menstrual bleeding at a particular interval of days, or on a particular day of the month, or after a particular physiological phenomenon, on three consecutive occasions. She must assume that she will continue to experience menstrual bleeding according to her set pattern unless it is uprooted, which occurs if she does not experience menstrual bleeding according to her pattern on three consecutive occasions (Rambam *Sefer Kedusha, Hilkhot Issurei Bia* 8:5; *Shulhan Arukh, Yoreh De'a* 189:2).

A forewarned ox – שור המועד: An ox becomes forewarned only if witnesses testify that it caused damage by goring or biting on three consecutive days. If witnesses testified about three separate incidents on the same day, it is questionable whether the ox becomes a forewarned ox. However, if fewer than three incidents occurred during a three-day period, the ox certainly maintains its status as an innocuous ox, whose owner is liable to pay only half the value of damage that it caused intentionally (Rambam *Sefer Nezikin, Hilkhot Nizkei Mammon* 6:1).

מאי בינייהו? איכא בינייהו דאיורסא ומית, אי נמי דנפל מדיקלא ומית.

אמר ליה רב יוסף בריה דרבא לרבא: בעי מיניה מרב יוסף, הלכה ברבי? ואמר לי: אין. הלכה ברבן שמעון בן גמליאל? ואמר לי: אין. אחובי אחיך בי?

אמר ליה: לא. סתמי היא, ופשיט לך: נישואין ומלקיות – ברבי, וסתות ושור המועד ברבן שמעון בן גמליאל.

נישואין – הא דאמרן, מלקיות – דתנן: מי שלקה ושנה – בית דין בונסין אותו לכיפה, ומאכילין אותו געורים עד שתהא גריסו נבקעת. וסתות – דתנן: אין האשה

The Gemara asks: **What is the practical difference between them?** The Gemara answers: **There is a difference between them in a case where a man betrothed her and died before the wedding; alternatively, in a case where he fell off a palm tree and died.** If the concern is due to intercourse, then in these cases the husband's death cannot be attributed to his wife. Conversely, if the concern is due to her bad fortune, the husband's death can be attributed to his wife even in these cases.

Rav Yosef, son of Rava, said to Rava: I inquired of Rav Yosef<sup>n</sup> whether the *halakha* is in accordance with the opinion of Rabbi Yehuda HaNasi, and he said to me: Yes. I subsequently asked him if the *halakha* is in accordance with the opinion of Rabban Shimon ben Gamliel, and he said to me: Yes. Was he mocking me by issuing contradictory rulings?

Rava said to him: No, there are unattributed *mishnayot* in accordance with each opinion, and he resolved for you that the *halakha* is in accordance with each opinion in particular cases. With regard to marriage and lashings<sup>n</sup> the *halakha* is in accordance with the opinion of Rabbi Yehuda HaNasi that two occurrences are sufficient for a presumption. Concerning set patterns of menstrual bleeding and a forewarned ox, the *halakha* is in accordance with the opinion of Rabban Shimon ben Gamliel that a presumption is established after three occurrences.

The Gemara identifies the aforementioned *halakhot*. Marriage is referring to that which we said with regard to a woman whose husbands have died. The case of lashings is as we learned in a mishna (*Nidda* 63b): One who was flogged for transgressing a Torah law, and repeated the same transgression<sup>n</sup> and was flogged again, if he then repeats the sin a third time, the court places him in a narrow, vaulted chamber and they feed him barley until his stomach bursts. Once he has sinned and been flogged twice he has established a presumption of wickedness, and when he sins again he is caused to die so that he will not continue to sin. The case of set patterns of menstrual bleeding is as we learned in a mishna (*Nidda* 63b): A woman does not

קובעת לה וסת עד שתקבענה שלש פעמים, ואין מטהרת מן הוסת עד שתעקר ממנה שלש פעמים. ושור המועד – דתנן: אין השור נעשה מועד עד שיעידו בו שלשה פעמים.

establish a set pattern of menstrual bleeding for herself, so that it can be assumed that she will start bleeding at a particular time, until she has established it three times.<sup>n</sup> Similarly, she is not purified from her set pattern until it is uprooted from her three times, i.e., until she did not experience menstrual bleeding at the expected time according to her pattern on three occasions. And the case of a forewarned ox<sup>n</sup> is as we learned in a mishna (*Bava Kamma* 23b): An ox does not become forewarned until witnesses testify that it has gored three times. Consequently, in the cases of set patterns and a forewarned ox, a legal presumption is created only after three occurrences, in accordance with the opinion of Rabban Shimon ben Gamliel.

NOTES

A forewarned ox – שור המועד: *Tosafot* contend that Rabbi Yehuda HaNasi did not disagree with regard to a forewarned ox, as this *halakha* is explicitly stated in the Torah. Rather, the Gemara is saying that in certain cases a legal presumption is established only after three occurrences, which is consistent with the general principle stated by Rabban Shimon

ben Gamliel. The Ramban, however, claims that Rabbi Yehuda HaNasi disagrees in the case of a forewarned ox as well, and holds that the third time the ox gores its owner must pay for the full value of the damages caused, because after the first two occurrences it is already considered a forewarned ox.