

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 דאיירוסה ומית, אי נמי דנפל מדיקלא ומית.

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.

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

Rav Yosef, son of Rava, said to Rava: **I inquired of Rav Yosef<sup>FN</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?**

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

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.**

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

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>H</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>H</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>HN</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.

If she was married to a third husband and she did not have children – **נישאת לשלישי ולא היו לה בנים** – If a woman was married to two husbands for ten years each without children, and then marries a third husband for ten years without children, she does not have to return the money that her first two husbands paid for her marriage contract. However, if she had not yet collected the money she is no longer entitled to it. Her claim that she was fertile in her younger years is not strong enough to enable her to claim money from others (*Shulhan Arukh, Even HaEzer* 154:18).

If she was married to a fourth husband and she had children – **נישאת לרביעי והיו לה בנים** – If a woman's third husband divorced her without paying her marriage contract because she did not have children after ten years of marriage, and she married a fourth husband and did bear children, she cannot claim her marriage contract from the third, as it is possible that she became fertile only after they were divorced (*Shulhan Arukh, Even HaEzer* 154:19).

BACKGROUND

**השתא הוא דכחשי** – It is now that I have become weak – This statement is easily understandable, as the woman has already been married three times, for ten years each. Even if she married the first time at a very young age, she is likely to be approaching menopause. Furthermore, there is a significant drop in fertility for women in their thirties, and this weakening, as it is called here, is an expected occurrence.

תנו רבנן: נישת לראשון ולא היו לה בנים, לישני ולא היו לה בנים, לשלישי – לא תנשא אלא למי שיש לו בנים. נישאת למי שאין לו בנים – תצא בלא כתובה.

The Sages taught: If a woman was married to her first husband<sup>N</sup> and she did not have children, and then she was married to her second husband and she did not have children, she may not get married to a third husband unless it is to one who already has children and has fulfilled the mitzva to be fruitful and multiply, as it is presumed that she is unable to have children. If she got married to one who does not have children and he had been unaware of her presumptive status, she is divorced without receiving payment for her marriage contract,<sup>N</sup> as he married her erroneously.

איבעיא להו: נישאת לשלישי ולא היו לה בנים, מהו דליתבעיה הנך קמאי? מי מצו אמרי לה: איגלאי מילתא דאת הוא דגרמת, או דלמא מצית אמרה להו: השתא הוא דכחשי? מסתברא מצית אמרה להו: השתא הוא דכחשי.

A dilemma was raised before the Sages: If she was married to a third husband and she did not have children<sup>H</sup> for ten years, what is the *halakha* with regard to whether those first husbands can demand the return of the money they paid for her marriage contracts? Can they say to her: It has been revealed retroactively that it was you who caused our inability to have children, and therefore we entered our marriages erroneously, or perhaps she can say to them: It is now that I am older that I have become weak, but in my youth I could have had children with a different husband. The Sages answer: It is reasonable that she can say to them: It is now that I have become weak.<sup>BN</sup>

איבעיא להו: נישאת לרביעי והיו לה בנים, מהו דתיתבעיה לשלישי? אמרינן לה: שתקויתך נפה מדיבורך, דמצני אמר לה: אנא אדעתא דהכי לא גרשתיך.

Another dilemma was raised before the Sages: If she was married to a fourth husband and she had children<sup>H</sup> with him, what is the *halakha* with regard to whether she can demand the payment of her marriage contract from her third husband by claiming that it is now evident that she was capable of having children? The Gemara answers: We say to her: Your silence is preferable to your speech, i.e., you are better off not making this claim, as he can say to her: I did not divorce you with this understanding, and now that I know you are capable of having children, I regret divorcing you. This would invalidate her divorce and, consequently, her marriage to her fourth husband, and would render her child a *mamzer*.

מתקיף לה רב פפא: אי איהי שתקא אנן מי שתקינן? נמצא גט בטל ובניה ממזרין! אלא אמרינן: השתא הוא דבריתא.

Rav Pappa strongly objects to this: If she was silent<sup>N</sup> do we remain silent? If there is room for concern that the divorce might be invalid, the concern exists regardless of her claim, and therefore the bill of divorce should be found invalid and her children from her fourth husband should be rendered *mamzerin*. Rather, we say that it is now that she has become healthy. In other words, she was previously incapable of bearing children, but she has since recovered from that disability.

NOTES

**נישת לראשון** – If a woman was married to her first husband, etc. – The commentaries point out that this *baraita* is in accordance with the opinion of Rabbi Yehuda HaNasi. A different opinion is cited in the Jerusalem Talmud which maintains that she is permitted to marry a third husband and forbidden to marry only a fourth husband.

**She is divorced without receiving payment for her marriage contract – תצא בלא כתובה** – The reason for this *halakha* is that the husband entered the marriage erroneously, as stated in the *Tosefta*. However, the Ramban writes that the marriage is not considered to have been entirely erroneous, because if it were, the woman would not even require a bill of divorce. He explains that with regard to this issue it is considered uncertain whether the woman is fertile, and if she is fertile, her current marriage is not erroneous, and entering a new marriage would constitute adultery. Consequently, she requires a bill of divorce before marrying someone else. However, since there is a presumption that she is infertile, he does not have to pay her marriage contract, in accordance with the general principle that in monetary law, the burden of proof is upon the claimant.

**It is now that I have become weak – השתא הוא דכחשי** – The commentaries ask: If this is a valid claim, why doesn't she receive payment for her marriage contract from her third husband as well,

as she can claim that she was capable of having children at the time they got married? The *Tosefot HaRosh* and *Tosefot Yeshanim* explain that this claim is effective only to prevent her from having to pay back her previous husbands, but is not convincing enough to bolster claims on her part for additional money. Consequently, if for some reason her previous husbands have not yet fulfilled their obligation to pay her marriage contract, she is no longer able to force them to do so. Conversely, the Ritva explains that she cannot collect payment for her marriage contract from her third husband due to a rabbinically imposed penalty for marrying a man unsuitable for her.

**If she was silent, etc. – אי איהי שתקא וכו'** – The commentaries ask why this is a reason to deprive the woman of her marriage contract; it would seem that the husband can make this claim only if he explicitly stated at the time of the divorce that he was divorcing her because she was infertile. It is explained in the *Tosefot HaRosh* that in fact the case under discussion concerns only a situation when he made such a statement at the time of the divorce. The Ramban explains that since at the time of the divorce it was not known with absolute certainty that she was infertile, as she had no external signs of infertility, he divorced her with the understanding that she might actually be fertile. Therefore, the divorce cannot be retroactively nullified.

Shoots like an arrow – יורה כחץ: As far as fertilization is concerned, it does not matter how the sperm enters the womb. Nevertheless, if his semen does not shoot like an arrow, which is an unusual predicament, there are grounds to suspect that it is a symptom of some other problem that prevents pregnancy, even if a small chance of conception still remains.

הוא אָמַר: מִיָּנָה, וְהִיא אָמְרָה: מִיָּנָה – אָמַר רַבִּי אָמִי: דְּבָרִים שְׂבִינּוּ לְבִינָה נֶאֱמָנִת. וְטַעֲמָא מַאי? הִיא – קָיִמָא לָהּ בְּיֹרֵה כַחֲץ, הוּא – לָא קִים לִיהּ בְּיֹרֵה כַחֲץ.

אָמַר אִיהוּ: אִיזִיל אִינְסִיב אִיתְתָּא וְאִיבְדוּק נְפִשְׁאֵי. אָמַר רַבִּי אָמִי: אִף בְּזוּ יוֹצִיא וְיִתֵּן כְּתוּבָה, שְׂאֵנִי אֹמֵר: כָּל הַנּוֹשֵׂא אִשָּׁה עַל אִשְׁתּוֹ – יוֹצִיא וְיִתֵּן כְּתוּבָה. רַבָּא אָמַר: נוֹשֵׂא אָדָם כְּמָה נְשִׂים עַל אִשְׁתּוֹ, וְהוּא דְאִית לִיהּ לְמִזְוִינִינָהּ.

§ The Gemara addresses a related case. If he said that the cause for their failure to have children is from her,<sup>NH</sup> i.e., it is she who is infertile, and she said it is from him, Rabbi Ami said: With regard to such matters between him and her, she is believed. The Gemara inquires: What is the reason for this ruling? She is certain whether his semen shoots like an arrow,<sup>B</sup> whereas he is not certain whether his semen shoots like an arrow.

If he says: I will go and marry a different woman and examine myself<sup>N</sup> to see if I am indeed the cause, Rabbi Ami said: Even in this case he must divorce his first wife and give her the payment for her marriage contract, as I say that whoever marries a woman in addition to his first wife must divorce his first wife and give her the payment for her marriage contract. Conversely, Rava said that a man may marry several women<sup>I</sup> in addition to his first wife, and there is nothing wrong with this practice as long as he has enough to support them all.

## NOTES

**He said it is from her – הוא אָמַר מִיָּנָה –** The commentaries offer many conflicting interpretations of this passage in light of the fact that it seems to contradict the Gemara in tractate *Nedarim* (91a), in which the Sages declared that a wife who claims that her husband's semen does not shoot like an arrow is not believed, due to the possibility that she is merely trying to force him to divorce her because she has set her eyes upon another man. Some *ge'onim* claim that the Gemara here is referring to the time before the rabbinic decree mentioned in tractate *Nedarim*, and the statement of the Gemara here is not accepted as *halakha*. The *Rid* writes that the Gemara in tractate *Nedarim* means that the court requests of the woman to withdraw her demand for a divorce and to try again, whereas the Gemara here states that if she insists on a divorce, her claim is accepted.

The *Ra'avad* explains that there is no contradiction because the Gemara in tractate *Nedarim* is referring to a case where she claims that her husband is completely unable to engage in intercourse, whereas here she claims that he does not ejaculate forcefully. Others explain that she is believed in the case here because there is circumstantial support to her claim, from the fact that they have been married for ten years without children. The *Rif* adds that in this situation it is the court that initiates the

divorce process rather than the woman, and therefore there is no concern that she has set her eyes upon another man. See the *Meiri*, who cites several of these explanations and explains the differences between them.

An entirely different opinion is suggested by the *Razah*: The wife in the Gemara here does not want to be divorced from her husband, and her claim is that since he is the cause for their failure to have children there is no point in forcing him to divorce her, as he cannot father children in any case.

**I will go and marry a different woman and examine myself – אִיזִיל אִינְסִיב אִיתְתָּא וְאִיבְדוּק נְפִשְׁאֵי:** According to most commentaries, this is a continuation of the previous case: Hearing his wife's claim that he is infertile, the husband suggests that he might try and have children with another woman. However, *Tosefot Had Mikamma'e'i* cites an alternative explanation, according to which this is a different case: The couple has not had children, and neither side is interested in a divorce. The husband claims that he wants to delay divorcing his wife until he determines that she is in fact the cause of their inability to have children. Rabbi Ami states that even in this case he must divorce her, and Rava disagrees.

## HALAKHA

**He said it is from her, etc. – הוא אָמַר מִיָּנָה וכו' –** With regard to a woman who sues for divorce with the claim that she is unable to conceive because her husband does not ejaculate forcefully, if they have already been married for ten years without children and she has no other reason for demanding a divorce, then she is believed. Even if he had children from a previous marriage, it is possible that he has since become dysfunctional, and he is obligated to divorce her; however, he is required to pay only the main part of her marriage contract. This is two hundred dinars for a woman who was a virgin at the time of her marriage or one hundred dinars for a woman who was not a virgin when she married, which the Sages required a husband to include in the marriage contract. He is not required to pay any additional sum that he voluntarily included in the marriage contract. He may declare a ban on one who makes unsubstantiated claims of this kind.

If he wants to marry an additional woman in order to determine the veracity of his wife's claim before divorcing her he is permitted to do so, and if his second wife bears children he may divorce the first one without paying her marriage contract. Some commentaries state that if the second wife confirms the claim of the first wife, he must divorce them both and pay them their marriage contracts.

If the husband knows that he is infertile and his wife demands a divorce on these grounds, he must grant it at once. This is the opinion of the *Rambam* and the *Shulhan Arukh*. However, the *Rema* rules in accordance with the opinion of the *Ra'avad* and the *Tur*, who contend that this *halakha* applies only to a third husband or in a case where the husband has children from a previous marriage. In other cases, the woman receives payment for her marriage contract even if she does not claim that they have been unable to have children due to her husband's dysfunction. See the *Beit Shmuel*, who cites the various opinions of the earlier halakhic commentaries on this matter (*Rambam Sefer Nashim, Hilkhot Ishut* 15:8–9; *Shulhan Arukh, Even HaEzer* 154:6 and in the comment of *Rema*).

**A man may marry several women – נוֹשֵׂא אָדָם כְּמָה נְשִׂים –** A man is permitted to be married to several women at once, on condition that he can provide for their sustenance, clothing, and conjugal rights. However, in a place where the custom is not to marry more than one wife he may not do so. The ban on polygamy of *Rabbeinu Gershom Meor HaGola* is generally accepted, and this is the binding custom of Ashkenazic Jews to this day (*Rambam Sefer Nashim, Hilkhot Ishut* 14:3; *Shulhan Arukh, Even HaEzer* 1:9, 76:7).



הוא אומר: אפלת בגו עשר והיא אמרה: לא אפליה. אמר רבי אמי: אף בזו היא נאמנת, דאם איתא דהפילה – נפשה בעקרתה לא מחוקה.

הפילה, וחזרה והפילה, וחזרה והפילה – החוקה לנפלים. הוא אמר: אפליה תרי, והיא אמרה: תלת. אמר רבי יצחק בן אלעזר: עובדא הוה בי מדרשא, ואמרו: היא מהימנא, דאם איתא דלא אפלה – נפשה בניפלי לא מחוקה.

**מתני'** האי ש מצוה על פריה ורביה, אבל לא האשה. רבי יוחנן בן ברוקה אומר: על שניהם הוא אומר "ויברך אותם אלהים ויאמר להם [אלהים] פרו ורבו".

**גמ'** מנא הני מילי? אמר רבי אילעא משום רבי אלעזר ברבי שמעון: אמר קרא "ומלאו את הארץ וכבשוה" איש דרבו לכבש, ואין אשה דרבה לכבש.

אדרבה, "וכבשוה" תרתי משמע! אמר רב נחמן בר יצחק: "וכבשוה" כתיב. רב יוסף אמר: מהכא, "אני אל שדי פרה ורבה" ולא קאמר "פרו ורבו".

The Gemara addresses another case in which the court forces a man to divorce his wife who has not had children after ten years. If he said: **You miscarried<sup>NH</sup> within the ten years of our marriage**, and since less than ten years have elapsed since that time he should not have to divorce her, and she said: **I did not miscarry, Rabbi Ami said: Even in this case she is believed, because if it is so that she miscarried she would not establish herself as barren through denying his claim.**

If she miscarried, and then miscarried again,<sup>N</sup> and miscarried again, she has been established to be a woman who is prone to miscarriages,<sup>NB</sup> and her husband must divorce her so that he can have children with another woman. If he said she miscarried twice,<sup>H</sup> and she said it occurred three times, **Rabbi Yitzhak ben Elazar said: There was an incident of this kind that was adjudicated in the study hall and they said that she is believed, because if it is so that she had not miscarried a third time she would not establish herself as one who is prone to miscarriages.**

**MISHNA** A man is commanded with regard to the mitzva to be fruitful and multiply,<sup>H</sup> but not a woman.<sup>H</sup> Rabbi Yohanan ben Beroka says that a woman is also commanded, as the verse states with regard to both of them: "And God blessed them, and God said to them: Be fruitful and multiply" (Genesis 1:28).

**GEMARA** From where are these matters derived, that a woman is not obligated in the mitzva to be fruitful and multiply? **Rabbi Ile'a said in the name of Rabbi Elazar, son of Rabbi Shimon: The verse states: "Be fruitful and multiply, and fill the land and conquer it" (Genesis 1:28). It is the manner of a man to conquer and it is not the manner of a woman to conquer.** Consequently, it is evident that the entire command, including the mitzva to be fruitful and multiply, was given only to men and not to women.

The Gemara raises a difficulty. **On the contrary**, the plural term: "And conquer it [*vekhivshuha*]," indicates that the two of them are included. **Rav Nahman bar Yitzhak said: It is written in the Torah without the letter vav**, so that it can be read: **And conquer it [*vekhivsha*],<sup>N</sup> in the singular.** **Rav Yosef said: The proof is from here: "And God said to him: I am God Almighty, be fruitful and multiply [*perei urvei*]" (Genesis 35:11), which is in singular, and it does not state: Be fruitful and multiply [*peru urvu*] in the plural.**

NOTES

הוא אמר אפלת וכו' – The commentaries disagree over the context of this *halakha*. According to the *She'iltot deRav Ahai Gaon* and other *ge'onim* it includes even a case where she is demanding a divorce. There is no concern that she is making this statement because she has set her eyes on another man, as she would presumably not publicize negative information about herself for this purpose. Others, however, claim that this *halakha* applies only if the wife did not ask for a divorce; rather, the court wanted to force the husband to divorce her and she informed them of her version of events (see Ramban; Rashba; Meiri).

הפילה – הפילה – In this case the *halakha* is not in accordance with the opinion of Rabbi Yehuda HaNasi, and the presumption is established only after three miscarriages. Although it was stated above (64b) that the *halakha* is in accordance with the opinion of Rabbi Yehuda HaNasi with regard to marriage, since in this case it was permitted for them to marry, he is not obligated to divorce her after only two miscarriages. Furthermore, it is possible that Rabbi Yehuda HaNasi himself agrees that in this case he is obligated to divorce her only after three miscarriages (Ramban; Rashba).

She has been established to be a woman who is prone to miscarriages – החוקה לנפלים – In this case there is no need to wait ten years, and he must divorce her immediately (*ge'onim*; see Rid). However, just as in the case of a woman who was married for ten years without children, the woman may marry another man. This is because it has been established only that she miscarries after conceiving from her first husband; it is possible that she is capable of bearing children, but is incompatible with that man (see Meiri).

וכבשוה כתיב – *vekhivshah* – There is a general dispute among the *tanna'im* whether the written form of the Torah's text is considered authoritative or whether it is the manner in which it is vocalized that is authoritative. Nevertheless, in this case all would agree that the written form is authoritative, because the verse implies that the purpose of procreation is for humankind to conquer the earth, and it is men who engage in conquest (Ritva).

BACKGROUND

She has been established to be a woman who is prone to miscarriages – החוקה לנפלים – Nowadays as well, the phenomenon of recurring miscarriages exists. While there are different reasons for this, it is clear that some women are prone to miscarry.

HALAKHA

He said, you miscarried, etc. – הוא אמר אפלת וכו' – If a husband claims that his wife had a miscarriage during their ten years of marriage without children, and she denies it, she is believed (Rambam *Sefer Nashim, Hilkhot Ishut* 15:13; *Shulhan Arukh, Even HaEzer* 154:13).

He said she miscarried twice, etc. – הוא אמר אפליה תרי וכו' – If a husband claims that his wife miscarried only twice and she says she miscarried three times, she is believed (Rambam *Sefer Nashim, Hilkhot Ishut* 15:13; *Shulhan Arukh, Even HaEzer* 154:14).

A man is commanded...to be fruitful and multiply – האי ש מצוה על פריה ורביה – Every man is obligated to marry in order to fulfill the mitzva to be fruitful and multiply (Rambam *Sefer Nashim, Hilkhot Ishut* 15:2; *Shulhan Arukh, Even HaEzer* 1:1).

But not a woman – אבל לא האשה – Women are not obligated to be fruitful and multiply, and therefore they do not have to marry. Some say that a woman should not remain unmarried, in order to avoid suspicions of indecent behavior (Rambam *Sefer Nashim, Hilkhot Ishut* 15:2; *Shulhan Arukh, Even HaEzer* 1:13 and in the comment of Rema).

וְאָמַר רַבִּי אֵילְעָא מְשׁוּם רַבִּי אֶלְעָזָר  
בְּרַבִּי שְׁמַעוֹן: כְּשֵׁם שְׁמִצְוָה עַל אָדָם  
לִזְכֹּר דְּבַר הַנְּשָׁמַע – כִּךְ מִצְוָה עַל אָדָם  
שֶׁלֹּא לִזְכֹּר דְּבַר שְׂאִינוֹ נִשְׁמַע. רַבִּי אַבָּא  
אוֹמֵר: חֻבָּה, שְׁנֵאמַר “אַל תּוֹכַח לְעַן פֶּן  
יִשְׁנָאֲךָ הַכּוֹחַ לְחֶכְמָה וְיִאֱהַבְךָ.”

וְאָמַר רַבִּי אֵילְעָא מְשׁוּם רַבִּי אֶלְעָזָר  
בְּרַבִּי שְׁמַעוֹן: מוֹתֵר לוֹ לְאָדָם לְשַׁנּוֹת  
בְּדִבְרֵי הַשְּׁלוֹם, שְׁנֵאמַר “אֲבִיךָ צִוָּה” וְגו’  
“כִּי תֵאמְרוּ לְיוֹסֵף אָנָּה שָׂא נָא” וְגו’.

רַבִּי נָתַן אוֹמֵר: מִצְוָה, שְׁנֵאמַר “וַיֹּאמֶר  
שְׁמוּאֵל אֵיךְ אֵלֶיךָ וְשָׁמַע שְׂאוֹל וְהִרְגָנִי”  
וְגו’.

דְּבֵי רַבִּי יִשְׁמַעְאֵל תְּנָא: גְּדוֹל הַשְּׁלוֹם  
שְׂאֵף הַקְּדוּשׁ בְּרוּךְ הוּא שִׁינָה בּוּ.  
דְּמַעֲיָקְרָא כְּתִיב “וַאֲדוֹנִי זָקֵן” וְלִבְסוּף  
כְּתִיב “וַאֲנִי זָקֵנְתִי.”

“רַבִּי יוֹחָנָן בֶּן בְּרוּקָה אוֹמֵר.” אֶתְמַר,  
רַבִּי יוֹחָנָן וְרַבִּי יְהוֹשֻׁעַ בֶּן לֵוִי, חֵד אָמַר:  
הִלְכָה כְּרַבִּי יוֹחָנָן בֶּן בְּרוּקָה, וְחֵד אָמַר:  
אֵין הִלְכָה כְּרַבִּי יוֹחָנָן בֶּן בְּרוּקָה.

תַּסְתֵּיִם דְּרַבִּי יוֹחָנָן הוּא דְאָמַר אֵין  
הִלְכָה דִּיתֵיב רַבִּי אַבְהוֹ וְקָאֵמַר מְשֻׁמֵּיהּ  
דְּרַבִּי יוֹחָנָן הִלְכָה, וְאֵהֲדַרְיֵיהּ רַבִּי אֲמִי  
וְרַבִּי אֲסִי לְאַפְיֵיהּ.

The Gemara cites other statements made by Rabbi Ile’a in the name of Rabbi Elazar, son of Rabbi Shimon. **And Rabbi Ile’a said in the name of Rabbi Elazar, son of Rabbi Shimon: Just as it is a mitzva for a person to say that which will be heeded, so is it a mitzva for a person not to say<sup>n</sup> that which will not be heeded.** One should not rebuke those who will be unreceptive to his message. **Rabbi Abba says: It is obligatory for him to refrain from speaking, as it is stated: “Do not reprove a scorner lest he hate you; reprove a wise man and he will love you”** (Proverbs 9:8).

**And Rabbi Ile’a further said in the name of Rabbi Elazar, son of Rabbi Shimon: It is permitted for a person to depart from the truth<sup>n</sup> in a matter that will bring peace, as it is stated: “Your father commanded before he died, saying: So you shall say to Joseph: Please pardon your brothers’ crime, etc.”** (Genesis 50:16–17). Jacob never issued this command, but his sons falsely attributed this statement to him in order to preserve peace between them and Joseph.

**Rabbi Natan says: It is a mitzva to depart from the truth in order to preserve peace, as it is stated: “And Samuel said: How can I go, and Saul will hear and kill me”** (1 Samuel 16:2). God responded in the next verse that Samuel should say he went to sacrifice an offering, indicating that God commands one to lie in order to preserve peace.

It was taught in the school of Rabbi Yishmael: **Great is peace,<sup>n</sup> as even the Holy One, Blessed be He, departed from the truth for it. As, initially it is written that Sarah said of Abraham: “And my lord is old”** (Genesis 18:12), **and in the end it is written that God told Abraham that Sarah said: “And I am old”** (Genesis 18:13). God adjusted Sarah’s words in order to spare Abraham hurt feelings that might lead Abraham and Sarah to quarrel.

§ It is taught in the mishna that **Rabbi Yoḥanan ben Beroka says that women are also included in the mitzva to be fruitful and multiply. It was stated that two amora’im, Rabbi Yoḥanan and Rabbi Yehoshua ben Levi, disagreed concerning this matter. One said that the halakha is in accordance with the opinion of Rabbi Yoḥanan ben Beroka, and one said that the halakha is not in accordance with the opinion of Rabbi Yoḥanan ben Beroka.**

The Gemara comments: **Conclude that it was Rabbi Yoḥanan<sup>n</sup> who said that the halakha is not in accordance with the opinion of Rabbi Yoḥanan ben Beroka, as Rabbi Abbahu sat and said in the name of Rabbi Yoḥanan that the halakha is in accordance with the opinion of Rabbi Yoḥanan ben Beroka, and Rabbi Ami and Rabbi Asi, who were sitting across from him, turned their faces as an indication that they disagreed with this report of Rabbi Yoḥanan’s opinion, but did not want to explicitly contradict Rabbi Abbahu’s statement out of respect for him.**

#### NOTES

כִּךְ מִצְוָה עַל אָדָם – So is it a mitzva for a person not to say – שְׁלֵא לִזְכֹּר: The commentaries question why it is permissible to remain silent when there is a mitzva to rebuke wrongdoers (see Leviticus 19:17). The Ritva answers that the Gemara is referring to addressing a group of people, whereas one is always obligated to rebuke an individual. The *Shela* explains that if the offender knows that he is acting improperly it is proper to rebuke him, but if he does not think he has transgressed the criticism is better left unsaid. Alternatively, if one rebukes another who does not accept reproof, this will only cause the latter to act willfully in the future, and it is preferable for him to remain an unwitting sinner (*Iyyun Ya’akov*).

מוֹתֵר – It is permitted for a person to depart from the truth – לוֹ לְאָדָם לְשַׁנּוֹת: The Gemara does not cite Sarah’s reaction: “And Sarah denied, saying I did not laugh” (Genesis 18:15), as proof that one may depart from the truth, as she did so only when faced with an accusation, whereas the other verses prove that one may take the initiative in stating falsehoods for the sake of peace (*Arukh LaNer*).

מְצוּה... – great is peace – גְּדוֹל הַשְּׁלוֹם: The commentaries point out that God did not command Samuel to tell an outright lie, but rather to take an animal with him and sacrifice it. In this way he would not be lying if he said that he was traveling to sacrifice an offering, even though he would be omitting the main purpose of his journey, which was to anoint David as the next king of the Jewish people. A similar claim can be made with regard to God’s report to Abraham that Sarah said: And I am old; as she herself did say: “After my withering shall I have youth” (Genesis 18:12). God simply left out her additional comment: “And my lord is old” (Meiri; see *Tosafot Yeshanim*).

תַּסְתֵּיִם דְּרַבִּי יוֹחָנָן – Conclude that it was Rabbi Yoḥanan, etc. – הוּא וְכוּ: It would appear that the Gemara does not prove what Rabbi Yoḥanan’s opinion is, as it merely cites a dispute among his students about the matter. Perhaps that is why the Gemara continues by citing Rabbi Abbahu in the name of Rabbi Asi with regard to the incident in Caesarea; it is an attempt to prove that they actually both agree that Rabbi Yoḥanan held in accordance with the opinion of Rabbi Yoḥanan ben Beroka (*Arukh LaNer*).

**תאומים שגולדו בהפְּרָשִׁי** – **תאומים שנולדו בהפרשי** – **בְּמִן**: Although rare, it is possible for twins to be born at different times, occasionally with a significant interval between the births. There have been documented cases of the birth of twins separated by a gap of over fifty days, and even up to eighty-five days.

**One more belly** – **תְּדָא כְּרִסָא אַחְרִיתָא**: There is a hereditary tendency among certain women to give birth to twins, and therefore a woman who gave birth to two sets of twins has a considerable likelihood of having an additional set of twins. The birth of twins, and in particular the unusual occurrence of a lengthy interval between their births, explains why Rabbi Ḥiyya's wife was worried about significant labor pains.

## PERSONALITIES

**רבי חייא ומשפחתו** – **Rabbi Ḥiyya and his family**: Rabbi Ḥiyya ben Abba, who was from the city of Kafri, Babylonia, was among the last of the *tanna'im* and was a disciple-colleague of Rabbi Yehuda HaNasi. Rabbi Ḥiyya descended from a family of distinguished lineage that traced its ancestry back to King David and produced many Sages. While he was still in Babylonia, Rabbi Ḥiyya was considered a Torah luminary. When he ascended with his family from Babylonia to Eretz Yisrael, some, engaging in hyperbole, said that the Torah was about to be forgotten in Eretz Yisrael until he came from Babylonia and reestablished it. When he came to Eretz Yisrael, he became a disciple and a colleague of Rabbi Yehuda HaNasi, with whom he had a very close relationship. He was especially close with Rabbi Yehuda HaNasi's son Shimon, who was also his business partner.

All of the students of Rabbi Yehuda HaNasi were Rabbi Ḥiyya's colleagues, and he was close with the *tanna* Rabbi Shimon ben Ḥalafta. The younger disciples of Rabbi Yehuda HaNasi, e.g., Rabbi Ḥanina, Rabbi Oshaya, Rabbi Yannai, and others, studied Torah from Rabbi Ḥiyya and were, to a certain degree, his disciples as well. His brothers' sons, Rabba bar bar Ḥana, and above all, the great *amora*, Rav, were his primary disciples. In addition to his prominence as a Torah scholar, Rabbi Ḥiyya was outstanding in his piety, as reflected in several anecdotes throughout the Talmud. Rabbi Ḥiyya also appears as a central figure in the *Zohar*. He was buried in Tiberias and his two sons were later buried alongside him.

Rabbi Ḥiyya's sons, Yehuda, son-in-law of Rabbi Yannai, and Ḥizkiyya, were both among the leading Torah scholars in the transitional generation between the *tanna'im* and the *amora'im*. They apparently succeeded Rabbi Ḥiyya at the head of his private yeshiva in the city of his residence, Tiberias.

The *geonim* had a tradition, also cited in *Tosafot* (*Bava Batra* 149a), that Rabbi Ḥiyya's daughter Pazi was the mother of a large family that included several important Sages such as Rabbi Shimon ben Pazi and his son, Rabbi Yehuda. Out of respect for Rabbi Ḥiyya, they were referred to by Pazi's name rather than that of her husband. It is possible that the family of Ḥiyya's other daughter Tavi was also renowned, and for this reason the two sisters, Pazi and Tavi, are mentioned alongside their brothers, Yehuda and Ḥizkiyya, to explain why Rabbi Ḥiyya was so upset that his wife did not give birth to another set of twins.

ואיכא דאמר: רבי חייא בר אבא אמר, ואהדרניהו רבי אמי ורבי אסי לאפניהו. אמר רב פפא: בשלמא למאן דאמר רבי אבהו אמרה – משום כבוד בני קיסר לא אמרו ליה ולא מידי, אלא למאן דאמר רבי חייא בר אבא אמרה – לימרו ליה: לא אמר רבי יוחנן הכי!

And some say a different version of the incident, that it was Rabbi Ḥiyya bar Abba who said this statement, and Rabbi Ami and Rabbi Asi turned their faces. Rav Pappa said: Granted, according to the one who said that Rabbi Abbahu said it, it makes sense that due to the honor of Caesar's court, where Rabbi Abbahu maintained close ties, Rabbi Ami and Rabbi Asi did not say anything to him and merely hinted at their disagreement. However, according to the one who said that Rabbi Ḥiyya bar Abba said it, let them say to him explicitly: Rabbi Yoḥanan did not say this. In any event, it is clear that according to Rabbi Ami and Rabbi Asi, Rabbi Yoḥanan disagreed with the opinion of Rabbi Yoḥanan ben Beroka.

מאי הוה עלה? תא שמע, דאמר רבי אהא בר חנינא אמר רבי אבהו אמר רבי אסי: עובדא הוה קמיה דרבי יוחנן בכנישתא דקיסרי, ואמר: "יציא ויתן פתובה". ואי סלקא דעתך לא מפקדה – פתובה מאי עבידתה?

The Gemara asks: What conclusion was reached about this issue? The Gemara suggests: Come and hear, as Rabbi Aḥa bar Ḥanina said that Rabbi Abbahu said that Rabbi Asi said: There was an incident that came before Rabbi Yoḥanan in the synagogue of Caesarea involving a woman who wanted a divorce from her husband after ten years of childless marriage, and he said that the husband must divorce her and give her the payment for her marriage contract. If it enters your mind to say that she is not commanded to be fruitful and multiply, what is payment for a marriage contract doing here? Why does she have a right to demand to be divorced and to receive the payment for her marriage contract?

The Gemara responds: Perhaps that was in a case when she came to demand a divorce due to another claim, i.e., she wanted children for a reason other than the fulfillment of the mitzva to be fruitful and multiply. Since this claim has merit, her husband must divorce her and pay her marriage contract.

This is like the case of a certain woman who came before Rabbi Ami and requested a divorce due to her husband's inability to father children. She said to her husband: Give me the payment for my marriage contract. He said to her: Go away, as you are not commanded to be fruitful and multiply and have no right to demand a divorce. She said to him: In her old age, what will be with this woman, i.e., if I have no children, who will take care of me when I grow old? Rabbi Ami said: In a situation such as this, we certainly force the husband to divorce and her and pay her marriage contract.

The Gemara relates a similar incident: A certain woman came before Rav Naḥman and requested a divorce due to her husband's inability to father children. He said to her: You are not commanded to be fruitful and multiply. She said to him: Does this woman not require a staff for her hand and a hoe for her burial? In other words, the woman said that she wanted children so that they could care for her in her old age and bury her when she would die. Rav Naḥman said: In a case such as this, we certainly force the husband to divorce her.

The Gemara relates that Rabbi Ḥiyya's sons, Yehuda and Ḥizkiyya, were twins, but one of them was fully developed after nine months of pregnancy and one was fully developed at the beginning of the seventh month, and they were born two months apart.<sup>8</sup> Yehudit, the wife of Rabbi Ḥiyya,<sup>9</sup> had acute birthing pain from these unusual deliveries. She changed her clothes to prevent Rabbi Ḥiyya from recognizing her and came before Rabbi Ḥiyya to ask him a halakhic question. She said: Is a woman commanded to be fruitful and multiply? He said to her: No. She went and drank an infertility potion.

Eventually the matter was revealed, and Rabbi Ḥiyya found out about what Yehudit had done. He said to her: If only you had given birth to one more belly<sup>8</sup> for me, i.e., another set of twins. As the Master said: Yehuda and Ḥizkiyya were twin brothers and became prominent Torah scholars, and Pazi and Tavi, Rabbi Ḥiyya's daughters,

דלמא בבאה מחמת טענה.

כי ההיא דאתאי לקמיה דרבי אמי, אמרה ליה: הב לי בתובה. אמר לה: זיל, לא מפקדת. אמרה ליה: מסיבו דילה מאי תיהו עליה דהך אתתא? אמר: כי הא – ודאי כפינן.

ההיא דאתאי לקמיה דרב נחמן, אמר לה: לא מפקדת. אמרה ליה: לא בעינא הך אתתא חוטרא לידה ומרה לקבורה? אמר: כי הא – ודאי כפינן.

יהודה וחיזקיה תאומים היו, אחד נגמרה צורתו לסוף תשעה ואחד נגמרה צורתו לתחלת שבועה. יהודית, דביתהו דרבי חייא, הוה לה צער לידה, שנאי מנא ואיתי לקמיה דרבי חייא, אמרה: אתתא מפקדא אפריה ורבייה? אמר לה: לא. אלא אשתאי סמא דעקריתא.

לסוף איגלאי מילתא. אמר לה: איבו ילדת לי תדא כרסא אחרייתא! דאמר מר: יהודה וחיזקיה – אחי, פזי וטוי