HALAKHA

A set pattern of menstrual bleeding is established after three occasions. 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 upset, which occurs if she does not experience menstrual bleeding according to her pattern on three consecutive occasions (Rambam Sefer Shofetim, Hilchos Nidduyos 4:1).

A forewarned ox – 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 the damage that it caused intentionally (Rambam Sefer Nezikin, Hilchos Nidduyos 4:1).

NOTES

Rav Yosef – When the Gemara refers to Rav Yosef without further identification, it is referring to Rav Yosef ben Haya.

Marriage and lashings, etc. – 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 cautionary 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 lenienter opinion of Rabbi 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 - A forewarned ox: 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, Hilchos Sanhedrin 18:2).

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 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 Rabbi 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, 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 Rabbi 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 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 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. 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 is as we learned in a mishna (Bava Kamma 33b): 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 Rabbi Shimon ben Gamliel.

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The Sages taught: If a woman was married to her first husband 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, as he married her erroneously.

A dilemma was raised before the Sages: If she was married to a third husband and she did not have children 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.

Another dilemma was raised before the Sages: If she was married to a fourth husband and she had children 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.

Rav Pappa strongly objects to this: If she was silent 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.

If a woman was married to her first husband, etc. – If a woman was married to her first husband, etc. – The commentaries point out that this bonus 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 – 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 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 – 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 Tosefta Halkosh and Tosafot 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. – If a woman’s third husband divorced her without paying her marriage contract because she did not have children 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 154:10).

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.
Shooting like an arrow – womb. 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.

He said it is from her – When 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.

He said it is from her – The commentaries offer many conflicting interpretations of this passage in light of the fact that it seems to contradict the Gemara in tractate Nedarin (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 geonim claim that the Gemara here is referring to the time before the rabbinic decree mentioned in tractate Nedarin, and the statement of the Gemara here is not accepted as halakha. The Rid writes that the Gemara in tractate Nedarin 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 Nedarin 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 Mei, 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.

If he says: I will go and marry a different woman and examine myself – According to most commentators, 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, Tosafot HadMikammona 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.

A man may marry several women – This is the opinion of the Rambam and the Shulhan Arukh. However, the Rema rules in accordance with the opinion of the Raavad 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 Bet Shmuel, who cites the various opinions of the earlier halakhic commentators on this matter (Rambam Sefer Nashim, Hilkhot Ishut 15:8–9; Shulhan Arukh, Even HaEzer 154:6 and in the comment of Rema).

The Gemara addresses a related case. If he said that the cause for their failure to have children is from her, 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, whereas he is not certain whether his semen shoots like an arrow.
The Gemara addresses another case in which the court forces a man to divorce his wife who has not had children after ten years. He said: You miscarried 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. If he said: You miscarried 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, and miscarried again, she is established to be a woman who is prone to miscarriages, and her husband must divorce her so that he can have children with another woman. If he said she miscarried twice, 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, but not a woman. Rabbi Yoḥanan 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 Ilai 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 [vekhashahu],” indicates that the two of them are included. Rav Naḥman bar Yitzhak said: It is written in the Torah without the letter yud, so that it can be read: And conquer it [vekhashina], in the singular. Rav Yoṣef said: The proof is from here: “And God said to him: I am God Almighty, be fruitful and multiply [pera’ urvu]” (Genesis 35:11), which is in singular, and it does not state: Be fruitful and multiply [pera’ urvu] in the plural.
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 that which will not be heeded. One should not rebuke those who will be unresponsive 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 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 Nathan 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, 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 of Rabbi Yoḥanan ben Beroka that women are also included in the mitzva to be fruitful and multiply. It was stated that two amoraim, 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 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.

So it is a mitzva for a person not to say – שַׁלֵּמוּת the commentary questions why it is permissible to remain silent when there is a mitzva to rebuke wrongdoers (see Leviticus 19:17). The Riva 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 (Yissan Ya’akov).

It is permitted for a person to depart from the truth – רַבּוּעַ 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 (Avodah Zarah).

It is a mitzva to depart from the truth…great is peace – מבוות The commentary point out that God did not command Samuel to tell an outright lie, but rather to take an animal in order 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.” By telling “And my lord is old” (Genesis 18:12), God simply left out her additional comment: “And my lord is old” (Melacha; see Tosafot Yeshanim).

Conclude that it was Rabbi Yoḥanan, etc. – שַׁלֵּמוּת עַל מִשְׁמָיהָו 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 (Avodah Zarah).
And some say a different version of the incident, that it was Rabbi Hyya 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 Hyya bar Abba said it, let them say to him explicitly: Rabbi Yohanan did not say this. In any event, it is clear that according to Rabbi Ami and Rabbi Asi, Rabbi Yohanan disagreed with the opinion of Rabbi Yohanan ben Beroka.

The Gemara asks: What conclusion was reached about this issue? The Gemara suggests: Come and hear, as Rabbi Aha bar Hanina said that Rabbi Abbahu said that Rabbi Asi said: There was an incident that came before Rabbi Yohanan 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?

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 her and pay her the marriage contract.

The Gemara relates a similar incident: A certain woman came before Rav Nahman 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 Nahman said: In a case such as this, we certainly force the husband to divorce her.

The Gemara relates that Rabbi Hyya’s sons, Yehuda and Hizkiyya, 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.9 Yehudit, the wife of Rabbi Hyya, had acute birthing pain from these unusual deliveries. She changed her clothes to prevent Rabbi Hyya from recognizing her and came before Rabbi Hyya 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 Hyya found out about what Yehudit had done. He said to her: If only you had given birth to one more belly10 for me, i.e., another set of twins. As the Master said: Yehuda and Hizkiyya were twin brothers and became prominent Torah scholars, and Pazi and Tavi, Rabbi Hyya’s daughters,