who never saw a single hour of life in a state of fitness, as he was born infertile. The Gemara asks: How do we know that one was born this way and was never capable of having children? Abaye said: Anyone who passes water and does not form an arch with his urine, but rather his urine dribbles out downward, never had sexual capacity.

Incidentally, the Gemara inquires: From what does this defect arise? What is its cause? The Gemara answers: It results from his mother baking bread at noon and drinking strong beer (shikha marka) while pregnant. The excessive heating of the mother’s body causes her child to be born with defective reproductive organs. Rav Yosef said: This is the meaning of the phrase in the Tosefta: Rabbi Ami says: Anyone who is impaired from his mother’s womb, and at the time I did not know what he was referring to. Now I understand that he was speaking about a man who was infertile from birth.

The Gemara asks: Let us be concerned that perhaps he was cured for some period in the meantime, without our having known about it, in which case he would have had an hour of fitness at some point. The Gemara answers: Since both his beginning and his end are impaired, i.e., he was born with a defect and he presently suffers from it, we are not concerned about such a possibility.

Rav Mari raised an objection from the following mishna (Bekhotot 38b): Rabbi Hanina ben Antigonus says: One examines a firstborn animal that developed a blemish in its eye three times within eighty days to see whether the defect is permanent. This shows that no presumptions are made in such a case; rather, there is concern that the animal may have been cured in the meantime, even if it had the defect at the beginning and at the end of the period.

The Gemara answers: With respect to a blemish affecting a single organ, e.g., an eye, we are concerned that the blemish might have passed and then later redeveloped, but with regard to a defect affecting the entire body, we are not concerned about such a possibility. A eunuch is not impaired in a single organ; rather, he has a defect that affects his entire body. Consequently, there is no concern that, though he was born with the defect and presently suffers from it, he might have regained his potency for some time in the middle.

§ It is taught in the mishna that Rabbi Eliezer says: No; rather, a eunuch by natural causes performs halitza, whereas a eunuch caused by man does not perform halitza. The Gemara raises a contradiction from the following mishna (Nidda 47b): If a twenty-year-old man has not grown two pubic hairs, a sign of sexual maturity, the relatives of the widow who wish to exempt her from halitza and levirate marriage must bring proof that he is twenty years old, and he, having been established as a sexually underdeveloped man, does not perform halitza or levirate marriage with his yeumah. If a twenty-year-old woman has not grown two pubic hairs, the relatives of her deceased husband’s brother must bring proof that she is twenty years old, and she, having been established as a sexually underdeveloped woman, does not perform halitza or enter into levirate marriage with her yeumah. This is the statement of Beit Hillel. And Beit Shammai say: With regard to both this and that, males and females, the relevant age is eighteen years old, not twenty.

### Background

An eighteen year old, a twenty year old – §§ shikha marka. The medical phenomenon of late adolescence, both in males and in females, is caused by a low level of secretion of the appropriate sex hormones, which prevents secondary sexual characteristics such as pubic hair from developing at the usual time. Sometimes this delay is only temporary. In such cases, several years later the level of glandular secretion rises to the normal level, and the boy or girl reaches full maturity. However, if this does not occur before a certain age, which based on modern medical knowledge is nineteen, then by the twentieth year normal sexual development is no longer possible, and a fixed state of eunuchism sets in.
Alexandria of Egypt – six months. However, since the period of young womanhood is called youth. Special halakhot apply only to this period, which lasts for roughly six months. However, since the period of young womanhood depends on the signs of maturity, this period never applies to a sexually underdeveloped woman at all.

The mishna continues: Rabbi Eliezer says that for a male the halakha is in accordance with the statement of Beit Hillel, and for a female the halakha is in accordance with the statement of Beit Shammai, because a woman reaches maturity more quickly than does a man, and therefore, if she fails to develop the signs of maturity by the age of eighteen it is assumed that she is a sexually underdeveloped woman. In any case, it is clear from this mishna that even Rabbi Eliezer agrees that one who lacks sexual capacity from birth may neither perform halitza nor enter into levirate marriage.

Rami bar Dikulei said that Shmuel said: Rabbi Eliezer retracted his opinion. A dilemma was raised before the Sages: Which statement did he retract? Did he retract what he said here in the mishna, that a eunuch by natural causes performs halitza with his yevana and his brothers perform halitza with his wife? Alternatively, perhaps the mishna here reflects his final view, after he retracted what he said in the other mishna. The Gemara suggests: Come and hear a resolution to this question, as it is taught in a baraita that Rabbi Eliezer says: A eunuch by natural causes performs halitza with his yevana and his brothers perform halitza with his wife, as such type of men are cured in Alexandria of Egypt. This additional source and its reasoning suggest that Rabbi Eliezer did not retract what he said in the mishna here. Rather, he retracted his statement with regard to the dispute between Beit Hillel and Beit Shammai in the other mishna.

Rabbi Elazar says: Actually, he did not retract anything at all. And when we learned Rabbi Eliezer’s ruling in that mishna with regard to the age of a sexually underdeveloped individual, that ruling was stated with regard to punishments, i.e., the age at which such an individual is considered an adult so that he is liable to receive punishment, and not with regard to halitza or levirate marriage.

And it was stated that the amoraim disagreed on this issue: With regard to one who ate forbidden fats between the age of twelve years and one day, and not thirteen. The Ramban suggests that this is not necessarily the case and that it might be referring to both males and females. It is because there is an opinion that a certain period of time before puberty is also considered part of adulthood. The Rashba and others reject the Ramban’s argument, arguing that despite the slight linguistic difficulty, it is nevertheless preferable to establish Rav’s opinion in accordance with the opinion that has been accepted as the halakha, and consequently, they accept Rash’s interpretation. Some of the later authorities point out that similar discrepancies, where the Gemara is not particular about gender-based detail, are found elsewhere as well.

Passes from minority to adulthood – בְּרִית אַלְפָּאָה אֶזֶר: נְעַלְעָה לֹא אִלּוּ עָלְּיָה. come and hear. The same halakha applies to a sexually underdeveloped woman. Therefore, any girl who has not grown two pubic hairs and has not given birth is regarded as a minor and may refuse her husband. However, once she reaches the age of twenty and displays the signs of a sexually underdeveloped woman, she is considered an adult retroactively from the age of twelve years and one day (Rema), as the halakha is ruled in accordance with the opinion of Rav, against that of Shmuel, in matters of ritual law (Shulchan Arukh, Even Ha’EZer 555:12).
All such excellent matters – see the previous page. The standard version of the text appears incomplete. According to the Rituals version, Abaye said to Rav Yosef. They say in your name that a sexually underdeveloped woman passes directly from minority to full adulthood. This version is convincing, as it is well known to court for this act, he is exhorted to desist and is punished with so many years (see Ramban and Rashba). Rabbi Hananel and the gebim, as well as the Raavad, understand that owing to the child’s unusual weakness, even if he grows two hairs at the proper time, he is not considered an adult until he reaches the age of twenty. The Ramban cites an opinion that Rabbi Abbabhu’s statement with regard to a baby born during the eighth month is totally unrelated to the teachings concerning sexually underdeveloped people. He merely means to say that also in the case of a child born during the eighth month, no immediate action is taken. Rather, one waits until the matter is clarified, in accordance with either the requirements of Rabban Shimon ben Gamliel or those of Rabbi Yehuda HaNasi. The Ramban himself accepts the following explanation: If a boy born during the eighth month fails to grow two hairs at the age of thirteen, even if he shows signs of sexual incapacity he is not treated as a eunuch until he is twenty, as he might be a late developer due to his weak constitution. He adduces support for his opinion from the Jerusalem Talmud (see Raaah and Kero (O)).

Greatly impressed with this answer, Rav Yosef said to Abaye: Would that all such excellent matters be stated in my name. As it is taught in a baraita: A sexually underdeveloped man is not judged as a stubborn and rebellious son (Rambam Ishut 2:5). As a boy is judged as a stubborn and rebellious son only when he has the mark of his lower beard, i.e., when his pubic hair begins to grow in. At that point he has reached the age of maturity but is not yet a fully developed man, a stage that parallels young womanhood for women. A sexually underdeveloped man never passes through this intermediate stage between minority and full adulthood. And similarly, a sexually underdeveloped woman who was betrothed and raped is not judged in accordance with the laws governing a betrothed young woman (see Deuteronomy 22:23–27), as she passes directly from minority to full adulthood without the intermediate stage of young womanhood. Therefore, the baraita fully corroborates Abaye’s view.

Rabbi Abbabhu said: If one has the signs of a sexually underdeveloped man; or the signs of a sexually underdeveloped woman; or the signs of a child born during the eighth month of pregnancy, whose survival is uncertain; no action is taken in their regard, i.e., the sexually underdeveloped male or female is not treated as an adult and the child born during the eighth month is not deemed viable, until they are twenty years old.

The Gemara asks: Can a child born during the eighth month of pregnancy survive? But isn’t it taught in a baraita: A child born during the eighth month is like a stone with regard to the halakhot of set-aside [nukezim] on Shabbat, and therefore it is prohibited to move him on Shabbat, as it may be presumed that he is not viable at all. However, his mother may bend over him and nurse him, if this child, who was suspected of not being viable; grows up and reaches adulthood, it is clear that he is not stillborn. Why, then, should uncertainty remain for so many years (see Ramban and Rashba)? Rabbi Hananel and the gebim, as well as the Raavad, understand that owing to the child’s unusual weakness, even if he grows two hairs at the proper time, he is not considered an adult until he reaches the age of twenty. The Ramban cites an opinion that Rabbi Abbabhu’s statement with regard to a baby born during the eighth month is totally unrelated to the teachings concerning sexually underdeveloped people. He merely means to say that also in the case of a child born during the eighth month, no immediate action is taken. Rather, one waits until the matter is clarified, in accordance with either the requirements of Rabban Shimon ben Gamliel or those of Rabbi Yehuda HaNasi. The Ramban himself accepts the following explanation: If a boy born during the eighth month fails to grow two hairs at the age of thirteen, even if he shows signs of sexual incapacity he is not treated as a eunuch until he is twenty, as he might be a late developer due to his weak constitution. He adduces support for his opinion from the Jerusalem Talmud (see Raaah and Kero (O)).
The signs prove – יָדְנוּ הַיָּדָן שָׁתָא כַּפָּאִים: A boy born during his mother’s eighth month of pregnancy may not be circumcised on Shabbat unless his hair and nails are fully developed, in accordance with the opinion of Rabbi Yehuda HaNasi and Rabban Shimon ben Gamliel, and following the opinion of Rava Tosfa’a (Rambam Sefer Avoda, Hilket Matia 1:23; Shulhan Arukh, Yoreh De’a 156:1). If a woman’s husband goes overseas – אַחֲרֵי הַיָּמִים יְהִי רֹאשׁ כְּפָאִים. If a woman whose husband is overseas gives birth a full twelve months after his departure, the child is a mamzer. The Halakhah Gedolah maintains that he is not a definite mamzer, as the husband might have returned secretly (Bein HaGola; see Penina and Taz). A child born within twelve months of the husband’s departure is considered fit, in accordance with the opinion of Rava Tosfa’a (Rambam Sefer Kesuvos, Hilket Issurei Biya 15:19; Shulhan Arukh; Even HaZer 4:14).

Any...child who stays alive for thirty days – יָשֵׂה לַחֲ自然灾害 הם. If a man died, leaving a pregnant wife, and she bore a live child, she is exempt from levirate marriage. By rabbinic law the baby does not exempt the mother unless it is known that the baby was carried to full term. If there is no proof in this regard, a child that survives thirty days exempts his mother and her rival wives from helping. It is known that the baby was carried to full term.

BACKGROUND

The signs prove – יָדְנוּ הַיָּדָן שָׁתָא כַּפָּאִים: Fetal development is not uniform. Some fetuses develop so quickly that in the seventh month they already have fully developed bodies. Similarly, there are fetuses that develop more slowly. One measure of development is the growth of fingernails past the fingertips. Another measure is the growth of hair such as eyelashes and eyebrows.

Delayed for the twelve months of the year – יָדְנוּ הַיָּדָן שָׁתָא כַּפָּאִים: In general it is very difficult to determine the precise length of a pregnancy, both due to the uncertainty as to when it began and because for various reasons one cannot rely on the testimony of the woman involved. Nevertheless, it is clear that many women, approximately 30 percent of all childbearing women, give birth significantly later than after the usual nine months. Though rare, doctors allow for the possibility of a pregnancy continuing for forty-eight weeks, i.e., around eleven months, and there are extremely rare cases of pregnancies lasting even longer than this.

Though the courts in certain countries have officially recognized pregnancies as having continued for even longer than eleven months, their rulings are not based on reliable scientific evidence.

The Gemara answers: Since there is also Rabban Shimon ben Gamliel’s, who says that a baby can be delayed in its mother’s womb, Rava Tosfa’a in fact acted in accordance with the majority, as Rabbi Yehuda HaNasi’s opinion is not that of a lone dissenting scholar. As it is taught in a baraita that Rabban Shimon ben Gamliel says: Any human who stays alive for thirty days is not a stillborn. Even if the child was not carried for a full nine months, once he has survived for thirty days he is no longer treated as an infant whose viability is in doubt. The reason is that he is presumed to be a child that was fit to be born after seven months but for some reason was delayed in its mother’s womb and not born immediately upon reaching full development.

Due to the danger – יָדְנוּ הַיָּדָן שָׁתָא כַּפָּאִים: According to Rashi, this refers both to the danger posed to the mother due to excess milk, as well as the danger to the baby. Some early authorities (Meir; Rabbi Avraham min HaHa) maintain that the Gemara is speaking only of the danger to the mother, as Rashi himself explains in tractate Shabbat, since if the child was thought to be potentially viable it would be treated as an invalid, not as a stone.

Rabbi Yehuda HaNasi and Rabban Shimon ben Gamliel – יָדְנוּ הַיָּדָן שָׁתָא כַּפָּאִים: The early authorities (see Tosfa) discuss Rabban Shimon ben Gamliel’s opinion and compare it to that of Rabbi Yehuda HaNasi, as well as to the opinion of the Rabbis who disagree with them both. Most early authorities distinguish between the opinions of Rabbi Yehuda HaNasi and Rabban Shimon ben Gamliel. According to Rabbi Yehuda HaNasi, the physical signs are the decisive factor; a child that lacks these signs is not removed from the category of a possible stillborn for an extended period of time, which according to some is twenty years. According to Rabban Shimon ben Gamliel, on the other hand, even if the child’s hair and nails are incompletely formed, once he has survived for thirty days he is no longer classified as stillborn. See the comments of Tosfa, the Ramban, and the Rashba with regard to the relationship between this issue and the halakha that is in accordance with Rabbi Abbahu. According to a different approach, even Rabban Shimon ben Gamliel agrees that a baby who does not show the proper physical signs is not considered fully viable. Therefore, in a case where he was definitely born in the eighth month and did not develop these signs, if he survives thirty days he is no longer treated as a possible stillborn, but he is not seen as viable in all regards until he reaches the age of twenty. According to this approach there is no contradiction between ruling in accordance with the opinion of Rabban Shimon ben Gamliel and ruling in accordance with the opinion of Rabbi Abbahu (Tosfa, Yad MeKamalei; Meir).

NOTES
The signs of an eunuch by natural causes – חַמָּה

A eunuch by natural causes – חַמָּה

The signs of a eunuch by natural causes are as follows: The first sign is that he lacks a beard; this is understood in several ways. The other signs of an eunuch are: His hair is defective and unlike that of others; his skin is smooth; he urinates without forming an arch; his semen dissipates; his urine does not ferment; when he bathes in the winter his skin does not give off steam; and his voice is defective, so it is unclear whether he is a man or a woman. The Vilna Gaon, based on the Rambam and the Tur, adds that his urine does not raise foam (Rambam Sefer Nashim, Hilkhhot Ishut 21:3; Shulhan Arukh, Even HaEzer 172:5).

And has not yet grown two pubic hairs – אל הֵבִיא אִשָּׁה וּבְשָׂרוֹ

And and some say: It is anyone who urinates without forming an arch. And some say: It is anyone whose semen dissipates and fails to congeal in the proper manner. And some say: Anyone whose urine does not ferment. Others say: It is anyone who bathes in the rainy season and his flesh does not give off steam. Rabbi Shimon ben Elazar says: It is anyone whose voice is defective, so that it is not evident from it whether he is a man or a woman.

The signs of a sexually underdeveloped woman – תַּעֲלְיוּת מַטְפָּה

It was stated that amora'im disagreed over the signs of a eunuch. Rav Huna said that one is not categorized as a eunuch unless all these signs are present: Rabbi Yohanan said: He is categorized as such even if only one of them is present. The Gemara comments: In a case when he has grown two hairs in his beard, everyone agrees that he is not considered sexually impotent unless all the signs are present. When they disagree, it is with regard to a case when he has not grown two hairs.

The Sages taught: Who is considered a eunuch by natural causes? It is anyone who is twenty years old and has not yet grown two pubic hairs. And even if he grows pubic hairs afterward, he is still considered a eunuch by natural causes with regard to all his matters. And his signs are as follows: Whoever does not have a beard, and his hair is defective, unlike that of ordinary individuals, and his skin is smooth, i.e., hairless. Rabbi Shimon ben Gamliel says in the name of Rabbi Yehuda ben Ya'ir: It is anyone whose urine does not raise foam.

And who is a sexually underdeveloped woman? It is anyone who is twenty years old and has not yet grown two pubic hairs. And even if she grows pubic hairs afterward, she is still considered a sexually underdeveloped woman with regard to all her matters. And her signs are as follows: A sexually underdeveloped woman is anyone who does not have breasts and experiences pain during intercourse. Rabbi Shimon ben Gamliel says: It is anyone whose lower abdomen is not formed like that of other women, as she lacks the cushion of flesh that is usually situated above a woman's genitals. Rabbi Shimon ben Elazar says: It is anyone whose voice is deep, so that it is not evident from it whether she is a woman or a man.

The signs of a eunuch by natural causes – חַמָּה

The signs of a eunuch by natural causes are as follows: The first sign is that he lacks a beard; this is understood in several ways. The other signs of an eunuch are: His hair is defective and unlike that of others; his skin is smooth; he urinates without forming an arch; his semen dissipates; his urine does not ferment; when he bathes in the winter his skin does not give off steam; and his voice is defective, so it is unclear whether he is a man or a woman. The Vilna Gaon, based on the Rambam and the Tur, adds that his urine does not raise foam (Rambam Sefer Nashim, Hilkhhot Ishut 21:3; Shulhan Arukh, Even HaEzer 172:5).

And has not yet grown two pubic hairs – אל הֵבִיא אִשָּׁה וּבְשָׂרוֹ

And and some say: It is anyone who urinates without forming an arch. And some say: It is anyone whose semen dissipates and fails to congeal in the proper manner. And some say: Anyone whose urine does not ferment. Others say: It is anyone who bathes in the rainy season and his flesh does not give off steam. Rabbi Shimon ben Elazar says: It is anyone whose voice is defective, so that it is not evident from it whether he is a man or a woman.

The signs of a sexually underdeveloped woman – תַּעֲלְיוּת מַטְפָּה

It was stated that amora'im disagreed over the signs of a eunuch. Rav Huna said that one is not categorized as a eunuch unless all these signs are present: Rabbi Yohanan said: He is categorized as such even if only one of them is present. The Gemara comments: In a case when he has grown two hairs in his beard, everyone agrees that he is not considered sexually impotent unless all the signs are present. When they disagree, it is with regard to a case when he has not grown two hairs.

The signs of a eunuch by natural causes – חַמָּה

The signs of a eunuch by natural causes are as follows: The first sign is that he lacks a beard; this is understood in several ways. The other signs of an eunuch are: His hair is defective and unlike that of others; his skin is smooth; he urinates without forming an arch; his semen dissipates; his urine does not ferment; when he bathes in the winter his skin does not give off steam; and his voice is defective, so it is unclear whether he is a man or a woman. The Vilna Gaon, based on the Rambam and the Tur, adds that his urine does not raise foam (Rambam Sefer Nashim, Hilkhhot Ishut 21:3; Shulhan Arukh, Even HaEzer 172:5).

And has not yet grown two pubic hairs – אל הֵבִיא אִשָּׁה וּבְשָׂרוֹ

And and some say: It is anyone who urinates without forming an arch. And some say: It is anyone whose semen dissipates and fails to congeal in the proper manner. And some say: Anyone whose urine does not ferment. Others say: It is anyone who bathes in the rainy season and his flesh does not give off steam. Rabbi Shimon ben Elazar says: It is anyone whose voice is defective, so that it is not evident from it whether he is a man or a woman.

The signs of a sexually underdeveloped woman – תַּעֲלְיוּת מַטְפָּה

It was stated that amora'im disagreed over the signs of a eunuch. Rav Huna said that one is not categorized as a eunuch unless all these signs are present: Rabbi Yohanan said: He is categorized as such even if only one of them is present. The Gemara comments: In a case when he has grown two hairs in his beard, everyone agrees that he is not considered sexually impotent unless all the signs are present. When they disagree, it is with regard to a case when he has not grown two hairs.

The signs of a eunuch by natural causes – חַמָּה

The signs of a eunuch by natural causes are as follows: The first sign is that he lacks a beard; this is understood in several ways. The other signs of an eunuch are: His hair is defective and unlike that of others; his skin is smooth; he urinates without forming an arch; his semen dissipates; his urine does not ferment; when he bathes in the winter his skin does not give off steam; and his voice is defective, so it is unclear whether he is a man or a woman. The Vilna Gaon, based on the Rambam and the Tur, adds that his urine does not raise foam (Rambam Sefer Nashim, Hilkhhot Ishut 21:3; Shulhan Arukh, Even HaEzer 172:5).

And has not yet grown two pubic hairs – אל הֵבִיא אִשָּׁה וּבְשָׂרוֹ

And and some say: It is anyone who urinates without forming an arch. And some say: It is anyone whose semen dissipates and fails to congeal in the proper manner. And some say: Anyone whose urine does not ferment. Others say: It is anyone who bathes in the rainy season and his flesh does not give off steam. Rabbi Shimon ben Elazar says: It is anyone whose voice is defective, so that it is not evident from it whether he is a man or a woman.

The signs of a sexually underdeveloped woman – תַּעֲלְיוּת מַטְפָּה

It was stated that amora'im disagreed over the signs of a eunuch. Rav Huna said that one is not categorized as a eunuch unless all these signs are present: Rabbi Yohanan said: He is categorized as such even if only one of them is present. The Gemara comments: In a case when he has grown two hairs in his beard, everyone agrees that he is not considered sexually impotent unless all the signs are present. When they disagree, it is with regard to a case when he has not grown two hairs.
A widow waiting for her yavam who engaged in an act of licentious relations — whether in the flesh or in thought:

If a woman waiting for her yavam to enter into levirate marriage with her had intercourse with another man, she is not forbidden to her yavam if he is an ordinary Israelite, against the opinion of Rav Hamnuna. According to the Rema, she is prohibited to the other man in any event, as a penalty (Shulchan Arukh, Even HaEzer 159:3).

The Gemara asks: But if so, with regard to that which Rabba bar Avuh said to the Sages: Examine Rav Nahman when he bathes and if his flesh gives off steam I will give him my daughter for a wife, in accordance with whose opinion did he issue these instructions? Is it not in accordance with the opinion of Rav Huna, who maintains that all the signs must be present, as presumably he could see that Rav Nahman did not have a beard? The Gemara answers: No, Rav Nahman had wisps of a beard, and therefore Rabba bar Avuh wanted to know whether he displayed the other signs of sexual incapacity.

§ It is taught in the mishna that a sexually undeveloped man does not perform halitza or enter into levirate marriage with his yavam, and similarly, a sexually undeveloped woman does not perform halitza or enter into levirate marriage with her yavam. The Gemara comments that the tanna teaches the case of a sexually undeveloped man similarly to that of a sexually undeveloped woman, from which it can be inferred: Just as in the case of a sexually undeveloped woman, her disability is by the hand of Heaven, so too, in the case of a sexually undeveloped man, his disability must be by the hand of Heaven. And this unattributed view in the mishna is in accordance with the opinion of Rabbi Akiva, who said: With regard to one whose incapacity was brought about by the hands of man, yes, he is considered like any other man and performs halitza, whereas one who suffers his condition by the hand of Heaven does not do so.

§ It is further taught in the mishna that if a eunuch performed halitza with his yavam, he has not thereby disqualified her from marrying into the priesthood, but if he had intercourse with her, he has disqualified her. The Gemara infers from this wording that the reason for her disqualification is that he, the yavam, had intercourse with her, as she had intercourse with her yavam outside the framework of permitted levirate marriage. But if a different individual had relations with her she would not be disqualified.

Shall we say that this is a conclusive refutation of the opinion of Rav Hamnuna, who said: A widow waiting for her yavam, who engaged in an act of licentious relations, is disqualified from entering into levirate marriage with her yavam, like an ordinary married woman who committed adultery? The Gemara rejects this argument: No, this presents no difficulty for Rav Hamnuna, as it is possible that the same is true even in a case where she had relations with a different man, that she too would be disqualified from marrying into the priesthood. But since the tanna taught the first clause with regard to the yavam himself, he also taught the latter clause with regard to the yavam himself, even though the same halakha applies if she cohabitated with another.

Shall we say that this is a conclusive refutation of the opinion of Rabbi Akiva: The phrase shall we say generally indicates that the proposed suggestion or difficulty will ultimately be dismissed by the Gemara. In this case, however, the halakha is not ruled in accordance with Rav Hamnuna’s opinion, and it is therefore unclear why the Gemara goes to such lengths to explain the mishna in accordance with his opinion. While it is true that the Gemara occasionally defends an entirely rejected view, it is uncommon. The Ritva asserts that there is a reason for this inquiry, as the ruling of the mishna is in accordance with the opinion of Rabbi Akiva, and Rav Hamnuna’s opinion must be accepted in order to reach Rabbi Akiva’s conclusion. This is because it may be argued that a woman awaiting levirate marriage who married or had relations with another man before halitza has transgressed a prohibition. According to Rabbi Akiva, who equates those who have transgressed standard negative prohibitions with those liable to receive karet with regard to the validity of their marriage, she is considered a harlot even in that case. However, ultimately, the halakha is not ruled in accordance with the opinion of Rabbi Akiva. Therefore, a woman awaiting levirate marriage is not considered like a married or a betrothed woman, and having relations with another man does not disqualify her from marrying her yavam.

Perek VIII
Daf 81 Amud a

HALAKHA

NOTES