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YESHIVAS IYUN HALACHA

PAZ RAV  
HILCHOS KIDDUSHIN PROGRAM

# HILCHOS KIDDUSHIN SHIUR 2

אבן העזר סימן א' סעיפים ג'-ד'

The Age of Marriage

SECOND EDITION

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## HILCHOS KIDDUSHIN SHIUR 2

### מראה מקומות

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#### **Siman 1 Se'if 3**

ת"ר ללמוד תורה 29b *Gemorah Kiddushin*

ולישא אשה

ל ע"א אמר ליה רבא לרב נתן *until*

(ד"ה נשא) 96b *Tosafos Yevomos*

פרק כא הלכה כה *Rambam Isurei Biyah*

*Tur, Bais Yosef*

*Darkei Moshe Seif Katan 2*

*Shulchan Aruch*

*Chelkas Mechokek 4, 5*

*Bais Shmuel*

*Pischei Teshuva seif katan 2, 3, 5*

*R' Akiva Eiger seif katan 3*

#### **Se'if 4**

בן עזאי אומר 63b *Gemorah Yevomos*

*Shulchan Aruch*

*Taz seif katan 6*

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Av Beis Din Rabbani Haifa

## SIMAN 1 SE'IF 3 - THE AGE OF MARRIAGE – THE EARLIEST AND LATEST

The Shulchan Aruch writes:

**Every man is obligated to marry a woman once he turns eighteen. However, it is a mitzvah min hamuvchar to get married before that age, but not before thirteen, for that is considered zenus. Under no circumstances should one pass the age of twenty without getting married. If he passes the age of twenty and does not get married, bais din forces him to get married in order to fulfill the mitzvah of p'ru u'revu. However, if he is learning Torah and is deeply involved in it, and is worried that if he gets married, he will have to toil for a livelihood, he may delay getting married.**

The Rama writes:

*Nowadays we are not accustomed to forcing this. Similarly, one who did not fulfill p'ru u'revu and wants to marry a woman who cannot bear children, such as an old or infertile woman because he desires her or her money, even though according to the letter of the law we really should protest, the custom for several generations has been not to be so punctilious regarding zivugim (i.e. matchmaking.) And even one who married a woman and lived with her for ten years, the custom is not to force him to get divorced even though he has not yet fulfilled p'ru u'revu, and also regarding other matters of zivugim (Rivash Siman 15) as long as he is not marrying a woman who is prohibited to him.*

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## THE SOURCE

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The source of this seif is the Tur who bases himself on several different sources, such as the Mishna in Avos (5:21), the Gemorah in Yevomos (62b) and in Kiddushin (29b) and more. We will quote the words of the Tur, together with the source of his words.

The Tur starts with the aforementioned Mishna that states that it is a mitzvah to get married at the age of eighteen as it says: "18 years old to the chupah."

### ♦ The earliest age to get married

The Tur continues that nevertheless, one who gets married even earlier, at the age of thirteen, has performed the mitzvah min ha'muvchar, the higher level performance of the mitzvah. The source of these words is the Gemorah in Kiddushin (29b) where Abaya states: "The reason why I am better than my friends is because I got married at the age of sixteen. If I would have gotten married at fourteen, I would have been able to shoot arrows in the eyes of the soton." (This term is a figurative way of saying that he would have been able to totally destroy his evil inclination.)

The Tur continues with the words of the Gemorah in Yevomos (62b) that states that one who marries off his sons and daughters "סמוך לפירקן" close to becoming of age, the pasuk says regarding him: "וידעת כי שלום אהליך" - and you will know that peace will dwell in your tents."

However, after the Tur stresses the great benefits of getting married early, he adds that one should not get married before the age of thirteen, for it is like zenus (prostitution). The source of this is the Rambam (Isurei Biyah כה הלכה כה פרק כא) as quoted by the Bais Yosef, that Chazal did not establish nissuin for a minor. The Rambam understood that from the fact that Chazal did not establish a Rabbinical marriage for a minor, it must be that all his marital relations are viewed as zenus.

Regarding this, the Bais Yosef points out the following disagreement between the Rambam and Tosafos.

#### ♦ **Rambam**

The Rambam understands that the age referred to in the previous Gemorah that states that one should marry off their children when they are close to becoming of age is no earlier than thirteen, as before that age is considered zenus.

#### ♦ **Tosafos**

However, Tosafos in Yevamos (96b) is of the opinion that even though Chazal did not institute nissuin for minors, there is no prohibition to marry them off before that age and it is not considered zenus. Even more so, there is also a mitzvah to marry off a son when he is still a minor.

NOTE: The Rama in Darkei Moshe argues on the Bais Yosef who understands that there is a disagreement between the Rambam and Tosafos. He explains that Tosafos does not mean that one may marry off any minor under the age of thirteen. He was only referring to a minor who is twelve or twelve and a half years old. Therefore, it is possible that the Rambam also agrees to this, for the Rambam never wrote the age thirteen, he simply wrote "katan" - a minor, the exact word stated in the Gemorah. Therefore, we can say that the Rambam means just like Rashi (who is also quoted by the Bais Yosef) that the Gemorah means that one should not marry off his son when he is very young, but rather close to becoming of age, which is twelve or twelve and a half. Therefore, there is no need to say that the Rambam and Tosafos argue.

#### ♦ **Until which age may one wait to get married?**

The Tur continues with the Gemorah in Kiddushin (29b) that states that under no circumstances may one pass the age of twenty without getting married, as Rava and Tana D'vei R' Yishmael say : until man is twenty Hashem waits for the man to get married. Once he reaches twenty and has not yet gotten married, Hashem says "תפחנה עצמותיו" let his bones swell.

The Drisha explains this concept to mean as follows. The pasuk says regarding Chava "זאת הפעם עצם מעצמי" - This time a bone from my bones" (Bereishis 2:23). Meaning, the woman is like one of man's bones, and therefore this man who does not want to marry a woman does not want to recover one of his bones. Therefore Hashem says "מדה כנגד מדה" we pay him back according to his own actions, and his bones get swollen.

The Tur continues with the words of the Rosh that a bachelor who passes the age of twenty and does not want to get married, bais din forces him to get married in order to fulfill the mitzvah of p'ru u'revu.

The Tur then brings the Gemorah in Kiddushin (29b) that one who will not be able to learn Torah once he gets married is not obligated to get married at the age of twenty.

Similarly, the Rambam writes (Ishus 15:2) "And if he is learning Torah and is deeply involved in it and is worried that if he gets married he will have to become involved in supporting her and will learn less Torah, he may delay getting married. This is because we know that one who is involved with one mitzvah is exempted from all other mitzvos, so certainly if he is learning Torah he is exempt from this mitzvah.

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## SHULCHAN ARUCH

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The Shulchan Aruch here establishes the halacha like the aforementioned Rambam that marriage under the age of thirteen is prohibited, not like the Tosafos quoted in the Bais Yosef.

The Bais Shmuel (seif katan 3) asks in the name of the Chelkas Mechokek, why is the mitzvah to get married only at the age of eighteen, if regarding all other mitzvos one is already obligated from the age of thirteen?

The Bais Shmuel answers (in name of the Chelkas Mechokek) that Chazal established that this mitzvah only begins at eighteen because one must learn Torah before he gets married and learning Gemorah begins at the age of fifteen. The Bais Shmuel adds that the Maggid Mishnah writes that eighteen means the beginning of his eighteenth year, meaning when he reaches seventeen and one day old.

The Bais Shmuel adds that there are Rishonim who say that getting married under the age of thirteen is not considered zenus since it is considered kiddushin for him, as we quoted earlier in Tosafos. He also quotes the Bach that is of the opinion that one who marries off his son in his thirteenth year, meaning from when he turns twelve and a day old, has a mitzvah. The reason is because his kiddushin is valid on a rabbinical level so much so that his wife will require a get mid'rabanan (a rabbinical divorce) if she wishes to remarry. However, before he turns twelve it is considered zenus.

The Bais Shmuel (seif katan 4) continues and discusses the opinion of Tosafos and is of the opinion that there is a disagreement between the Rambam and Tosafos, not like the

aforementioned Darkei Moshe. His conclusion is that according to Tosafos there is no zenus even if the boy is under the age of twelve, however there is no mitzvah to get married at that age.

NOTE: The Pischei Teshuva (seif katan 3) quotes the response of the K'neses Yechezkal who explains the words of the Rambam and Tosafos in another manner, and writes that there is no argument between them. Tosafos is discussing a case where the boy's father is marrying him off and therefore the marriage is not considered zenus being as the father is taking responsibility for his son's kesubah (document listing the husband's obligations to his wife) and puts a lean on his acquisitions for it. The Rambam, however, is discussing a case where the boy is marrying himself off and therefore it is considered zenus since he cannot obligate himself monetarily.

### ♦ Why don't we get married so early nowadays?

Now let us ask the obvious question: Since the halacha is that one should get married at a young age, why isn't it our custom nowadays to get married younger than eighteen?

We find a sort of solution to this mystery in the Pischei Teshuva (seif katan 2) in the name of R' Yehuda Hachasid who writes that in our times we are not obligated to get married this early as our bodies have become weaker and the generations have changed. (He appears to be saying that now the nature and personality of such young children is not fitting for marriage.)

### ♦ The age of marriage for one learning Torah

As mentioned, the Shulchan Aruch writes that one who is learning Torah may delay getting married. Is there any time limit as to how long one may push off getting married? Can he do so indefinitely?

The Bais Shmuel (seif katan 5) quotes an argument regarding this:

#### ♦ The Rosh

The Rosh is of the opinion that it cannot be that one who learns Torah can push off the mitzvah of p'ru u'revu indefinitely, for only someone like Ben Azay who had an extreme desire for Torah was allowed to remain single, as it says in the Gemorah. The Rosh, however, does not say how long a person who is learning may wait.

#### ♦ Rambam

On the other hand, the Rambam is of the opinion that there is no limit for this exemption. As long as getting married will disturb his ability to learn and his evil inclination is not overpowering him, he can remain single.

R' Akiva Eiger (in his commentary on Shulchan Aruch, seif katan 3) quotes the Maharam Mintz who suggests that the exemption due to learning was only in earlier times when it was normal to learn a certain amount of years with a rebbe. Therefore we permit him to wait until he finishes the set amount of time there and then get married afterwards. But someone who wishes to learn indefinitely with his rebbe, does not have any exemption and must get married immediately.

The Maharam Mintz continues: According to this, what is the halacha of someone who has the choice of learning with a rebbe, which would mean not getting married, or learning by himself, which would allow him to get married? Perhaps we say that since Chazal tell us "חרב על הבדים", which means that it is not good to learn Torah by oneself without a chavrusah, it is better not to get married so that he may learn with a rebbe, or perhaps it is more important to get married, even if it means learning by oneself. The Maharam seems to lean more to the side of getting married, but this matter still requires more investigation.

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## THE RAMA

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In this seif the Rama quotes the halacha of the Rivash that nowadays we do not force one to get married when they reach the age of marriage.

The Chelkas Mechokek (seif katan 4) writes that even though the words of the Rosh imply like the Rama, the Rivash himself was not discussing forcing one to get married once he has reached the age of marriage. Rather, he was discussing the issue of forcing someone who does not have children to divorce his wife and marry a different woman, or regarding divorcing a woman who is physically unable to bear children.

The Rama continues: similarly, we do not stop one who has not yet fulfilled the mitzvah of p'ru u'revu from marrying a woman who cannot bear children. Even though the strict halacha is that bais din is required to protest, the custom of the Achronim for several generations was not to get involved in the matters of zivugim. And even one who married a woman and lived with her for ten years, the custom is not to force him to get divorced even though he has not yet fulfilled p'ru u'revu.

The Rama implies that there is more reason to force one married ten years to marry a different woman than not to allow one not to marry a woman that cannot have children. The Chelkas Mechokek (seif katan 5) points out that the Rivash himself goes the other way, that we should force a person married ten years without children to get divorced and marry someone else and certainly we should force one not to marry a woman that cannot have children. (In any case the Rivash writes that the custom is not to get involved in the matters of zivugim).

The Bais Shmuel (seif katan 7) writes that even though the Rama says that we do not force the husband to get divorced, he is permitted out of his own volition to divorce his wife against her will. Even though Rabbainu Gershom established, as we will discuss in later

shiurim, that one is prohibited from divorcing his wife against her will, in this case, where he is doing so in order to fulfill the mitzvah of p'ru u'revu, it is permissible. (The Bais Shmuel in siman 154 seif katan 35 is also of the opinion that it is permissible, but the Pischei Teshuva there [seif katan 29] quotes many Achronim who argue and say that it is not permissible.)

What needs to be clarified still is, in practice, until what age can a young man wait to get married, especially if he is trying to find his match and claims that he just hasn't found "the right one?"

The Pischei Teshuva (seif katan 5) writes that there are those who say that even nowadays bais din should force him to get married. However others say that if the man wants to get married just he is delaying because he hasn't found the perfect one for him or for other reasons, we do not force him to get married. Nevertheless, it appears that unless there is a specific reason (such as health issues etc..), one should not wait more than until the age of twenty four to get married!

## SIMAN 1 SE'IF 4

### ♦ One who desires to dedicate his life to Torah - may he remain single?

The Shulchan Aruch writes:

**One who's soul desires Torah constantly like Ben Azay, and attaches himself to it his entire life, if he does not get married he is not considered a sinner, as long as his evil inclination does not overcome him.**

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### THE SOURCE

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The source of this seif is the following Gemorah in Yevamos (63b). Ben Azay preached that anyone who does not involve himself in the fulfillment of p'ru u'revu is considered a murderer and detracts from "The G-dly Image." His colleagues told him "you preach well but you don't fulfill your own words" (Ben Azay had not gotten married). Ben Azay answered, "What can I do, my soul extremely desires Torah!"

The poskim deduce from here that one who desires to learn Torah constantly like Ben Azay, and attaches himself to learning it his entire life is not considered a sinner if he does not get married. They add that this is only as long as his evil inclination does not overcome him.

It is important to note that the level we are discussing in this seif is a much higher level than that of the previous seif. There we were just discussing a regular person who doesn't want to get married because he wants to learn Torah.

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## SHULCHAN ARUCH

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The Shulchan Aruch in this se'if paskins the din of Ben Azay l'halacha.

The question can be asked, is this approach of a talmid chochom who wants to follow the ways of Ben Azay to not get married considered l'chatchila - an ideal approach? The Taz (seif katan 6) writes that l'chatchila one should not take this approach.

In the next shiur we will IY"H discuss all the details of the mitzvah of p'ru u'revu.

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## SUMMARY

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1. Every man is obligated to get married once he turns eighteen.
2. The earliest age one can get married is when he turns thirteen and this is considered the mitzvah min hamuvchar, the best way to fulfill the mitzvah.
3. One should not marry off his children before they turn thirteen, as it is considered zenus.
4. The Rishonim disagree if one is permitted to marry off his children before the age of thirteen, or perhaps that is also considered zenus.
5. According to the strict law of the Gemorah, under no circumstances should one pass the age of twenty without getting married.
6. Some say, if a man has passed the age of twenty and doesn't want to get married, bais din forces him to get married.
7. Anyone who will not be able to learn Torah if he gets married may delay marriage.
8. Some say that there is a mitzvah to marry off one's son even before the age of thirteen and the kiddushin is valid m'drabanan, and requires a get mid'rabanan.

9. Some say that nowadays it is not necessary to get married very young as the generations have changed and we have become weaker.

10. The Rishonim argue if there is a set amount of time as to how long one may push off getting married in order to be able to learn Torah.

11. The Rama writes that nowadays we do not force anyone to get married even if he has reached the age of marriage.

12. Similarly, one who has not yet fulfilled p'ru u'revu and wants to marry a woman who cannot bear children (such as an older or infertile woman), we do not stop him, as we don't get involved in matters of zivugim.

13. We also do not force divorce neither regarding one who has been married for ten years and did not have children, or regarding other matters of zivugim, as long as he is not married to someone prohibited to him.

14. Some say that nevertheless, if one has been married for ten years without having children, he may divorce his wife against her will.

15. Some say that if a person wants to get married just he isn't finding the one who is perfect for him, we do not force him to get married. Nevertheless he should not wait past the age of twenty four.

16. Someone who desires Torah constantly like Ben Azay, and attaches himself to it his entire life, if he does not get married he is not considered a sinner, as long as his evil inclination does not overcome him. Nevertheless, the Achronim write that it is not ideal to go with this approach.