

THE YESHIVA PIRCHEI SHOSHANIM SHULCHAN ARUCH PROJECT

# Hilchos Kiddushin Lesson 2

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## Shiur Subjects:

1. Seifim of the Shulchan Aruch and the Rama
2. The earliest and latest ages for marriage
3. The very earliest age for marriage
4. Until what age can one delay getting married
5. Why is marriage not done so early in our times
6. Age of marriage for one who is sitting and learning Torah
7. If one only wants to sit and learn all his life – may he remain unmarried?
8. Summary



## *The Age of Marriage The Dinim of Fathering Children and not Remaining Without a Wife*

### *Siman 1 (Seifim 3-4)*

**3** It is a *Mitzvah* for every man to marry a woman at the age of 18, and one who married earlier fulfills the *Mitzvah* in its choicest manner. However, before the age of 13 one should not get married as this is considered immoral [*z'nus*]. In any event, one should not go past 20 years of age without a wife. And one for whom 20 years passed and he does not want to get married, the Beis Din forces him to marry in order to fulfill the *Mitzvah* of *piryah v'rivya*. Nevertheless, one who is occupied [with learning] Torah and toils in [its study], and he is afraid to take a wife in order that he will not have to bother [working] for his sustenance and will thus disrupt his Torah study, is permitted to delay [getting married].

*Rama: And nowadays it has been the custom not to enforce this. Similarly, anyone who has not fulfilled the Mitzvah of piryah v'rivya and comes to marry a woman who cannot bear children, such as an infertile woman or an older woman or a child, because he desires her or because of her money, then even though according to the Din one should protest against it, but for several generations they have not been particular in the matter of marriage partnerships. And even if one married a woman and remained with her for ten years [without her bearing children] it has not been the custom to force him to divorce her, even if he had not fulfilled the Mitzvah of piryah v'rivya, and likewise in other matters of marriage partnership (Rivash, Siman 15), so long as she is not prohibited for him [to marry].*

**4** And one whose soul desires [to study] Torah, like Ben Azai, constantly, who cleaved to it all his life and did not get married, is not considered as one who transgressed, but so long as his [evil] inclination does not overcome him.

## The Earliest and Latest Ages for Marriage

The source for this Seif is in the Tur who bases his words on several sources, such as the Mishna in Avos (Chapter 5 Mishna 21), the Gemara in Yevamos 65b, Kiddushin 29b and others. Below will be brought the Halachos in the Tur and, along with them, the source for the Halacha

These are the Halachos which are brought down in the Tur regarding the age for marriage: Firstly he brings that which is brought in the Mishna in Avos, Chapter 5 Mishna 21, that it is a *Mitzvah* for a man to get married when he is 18, an age which is described as “18 years for *Chuppah* [wedding canopy.]”

## The Earliest Age for Marriage

### Next the Tur writes:

But one who marries earlier, at the age of 13, is fulfilling the *Mitzvah* in its choicest manner. The Tur learns this out from that which is brought in the Gemara Kiddushin 29b, with the words of Abaya: “The reason that I am superior to my colleagues is that I married at sixteen. And had I married at fourteen I would have said to Satan, An arrow in your eye.” Abaya praised himself for the fact that he married early and said that had he married at 14 this would have been like arrows in Satan’s eyes.

### The Tur adds,

By bringing the words of the Gemara in Yevamos 62b: Our Sages have taught us-- One who marries off his sons and daughters close their appropriate time [for marriage], about him Scripture writes, “And you shall know that your tent is in peace etc.”<sup>1</sup>

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<sup>1</sup> Iyov 5, 24

However, after the Tur has emphasized the benefit of one who marries early he adds that there are limitations to early marriage: But before the age of 13 they should not marry him off because this is considered immoral. The source of this limitation is in the Rambam (Hilchos Issurei Biah, Chapter 21 Halacha 25), and his reason (according to that which is brought in the Beis Yosef there) is because Chazal did not decree marriage for a child, and the Rambam understood that if marriage was not decreed for him even from the Rabbis [*Mid'Rabanan*], then his *be'ilab*<sup>2</sup> is considered one of immorality.

The Beis Yosef here points out the argument which arises out of the words of the Rambam and that of Tosefos.

1. According to the Rambam it seems that that which has been brought above in the Gemara, that it is preferable for one to marry off his children close to their appropriate time for marriage, does not mean before the age of 13, but only afterwards (for according to the Rambam, before this age the *be'ilab* is considered one of immorality).
2. However, the view of the Tosefos in Yevamos 96b is that even though the Rabbis did not decree marriage for a child, nevertheless there is no prohibition in marrying before the age of 13, and this is not considered immorality and, what is more, the father is accorded a *Mitzvah* from this *Nissuin* by marrying off his young son.

## Until What Age May One Delay Getting Married?

The Tur continues with the words of the Gemara in Kiddushin 29b, that in no case should one exceed the age of 20 years without getting married, for Rava and Rabbi Yishmael have said: Until the age of 20 years Hashem waits for man to take a wife, but as soon as 20 years have passed and he has not yet married, Hashem says, "May his bones be blasted!"

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<sup>2</sup> Conjugal act.

In explaining this concept of “may his bones be blasted” (said about one who does not marry before the age of 20) it is interesting to note one of the explanations of the Drisha on this: About a woman [when she was created] it is written, “this time a bone from my bones,” (Bereishis 2, 23) meaning that a woman is actually a bone of a man, and a man who does not want to marry a woman does not want to hold onto to one of his own bones.

**Therefore Hashem says to him,**

“May his bones be blasted” – his bones – as a measure for measure [*Midab K'neged Midab*] for the fact that he does not want to take that bone– meaning his wife.

**The Tur adds the words of his father,**

The Rosh:<sup>3</sup> an unmarried man who passed 20 years of age and does not want to get married is forced by the Beis Din to marry in order to fulfill the *Mitzvah* of *piryah v'rivya*.

The **Tur** further brings the words of the Gemara in Kiddushin 29b, that one who will be unable to learn Torah if he will get married is not obligated to marry in the 20<sup>th</sup> year of his life.

A similar thought is brought by the **Rambam (Hilchos Ishus, Chapter 15 Halacha 2):**

“And if he is occupied with [learning] Torah and toils in [its study], and he is afraid to take a wife in order that he will not have to bother [working] for his sustenance and will thus disrupt his Torah study, he is permitted to delay [getting married], because one who is busy with one *Mitzvah* is exempt from another *Mitzvah*,<sup>4</sup> and all the more so the *Mitzvah* of learning Torah.”<sup>5</sup>

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<sup>3</sup> **Rosh – Rabbi Asher ben Yechiel Born:** Germany, c. 1250. **Died:** Toledo, Spain, 1327. **Notes:** Talmudist and Halachist, one of the most important in Jewish history. He was a descendant of the Meor HaGolah and a leading student of the Maharam M'Rottenberg and his successor as the leader of Germany. Left Germany in 1303 in the aftermath of the Rindfleish massacres and was welcomed by the Rashba in Barcelona. Became Rav and Av Beis Din of Toledo in 1305 and became the leading authority in Spain after the death of the Rashba. In this capacity he introduced in Spain the methods of the Tosefists and Ashkenazic *minhagim*. He opposed any attempt to give precedence to secular learning, having prohibited such studies under 25 year of age. Author of a commentary on the Mishna, Peirush HaRosh, a commentary on the Talmud patterned after the Rif, Hilchos HaRosh (also known as Piskei HaRosh), a compilation of Halachos which is the basis for subsequent compilations including the Tur, Tosefos HaRosh, where he clarifies the Tosefos, Teshuvos Ha Rosh, a compilation of his responsa, and Orchos Chaim, on Ethics. Among his students was his son, the Tur.

<sup>4</sup> העוסק במצוה פטור מן המצוה

<sup>5</sup> As we recite every morning from the first Mishna of Pe'ah, “And the learning of Torah is equal to all of them [the *Mitzvos*].”

## Getting Married by the age of 18

The **Shulchan Aruch** in this Seif was posek all the above in brief,

That it is a *Mitzvah* for every man to get married at the age of 18, and if one gets married earlier he is performing the *Mitzvah* in its choicest manner.

**However,**

One should not marry before the age of 13 for then it considered immoral (on this point he was posek like the Rambam and not like the Tosefos which is brought in the Beis Yosef).

**The Shulchan Aruch further adds,**

That in no case should one exceed 20 years of age without a wife. And one who passed the age of 20 and does not want to get married is forced by the Beis Din to marry in order to fulfill the *Mitzvah* of *piryah v'rivya*. But if he is occupied with the study of Torah and toils in its study, and he is afraid to take a wife in order that he will not have to bother [working] for his sustenance and will thus disrupt his Torah study, he is permitted to delay getting married.

## Question of the Beis Shmuel<sup>6</sup>

The **Beis Shmuel** in **Seif Katan 3** raises the following difficulty:

Why is the *Mitzvah* of getting married only from the age of 18 (according to the words of the Mishna in *Avos*, and as was brought above in the *Shulchan Aruch*)? Is it not the case that one is obligated to keep *all Mitzvos* from the age of 13 [when one becomes *Bar Mitzvah*]?

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<sup>6</sup> Beis Shmuel – R' Shmuel Ben Shraga Feivish - **Born:** c. 1630.**Died:** Lemberg, c. 1700. Author of **Beis Shmuel**, a commentary on the *Shulchan Aruch*. *Beis Shmuel* (The House of Samuel) is a commentary on *Even HaEzer* (can be found in the inner part around the text). This commentary is characterized by its clear style and by its independence of opinion. It is frequently in disagreement with the decisions of the *Shulchan Aruch*, the *Mapah*, as well as *Chelkat Mechokek*.

### The Beis Shmuel explains,

That Chazal accepted and decided that the *Mitzvah* of getting married is only from the age of 18 because a person must learn Torah before he marries, and the start of learning is from the age of 15 and upwards.<sup>7</sup>

### The Beis Shmuel writes there that,

There are Rishonim who say that it is not considered immoral, even at an age of less than 13, because she is already *Mekudeshes* to him (see the Tosefos brought above). He further brings the view of the Bach that one who marries off his son in his 13<sup>th</sup> year is thus performing a *Mitzvah*, and the *Kiddushin* are valid from the Rabbis [*MiD'Rabanan*], and she would also need a *Get MiD'Rabanan* [in order to be able to remarry].

## Why do we not Get Married so Early Nowadays?

### The question is asked:

If this is the Halacha, that one must marry a woman at a very young age (even younger than 18), then why isn't the community not particular about it, and there is no one nowadays who gets married before the age of 18?

A possible answer to this is brought in the Pischei Teshuva, Seif Katan 2, in the name of Rabbi Yehuda HaChasid<sup>8</sup> who writes that in our times it is not necessary to get married so early, because the physical nature of man has weakened and the generations have undergone a change (and apparently nowadays the nature and behavior of a child so young is not suited to marriage).

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<sup>7</sup> Avos, Chapter 5 Mishna 21.

<sup>8</sup> **Rabbi Yehuda ben Shmuel HaChassid** - **Born:** Speyer, Germany, c. 1150. **Died:** Regensburg, Germany 1217. **Notes:** Talmudist, Ethicist, and Kabbalist. A Tosefist. Rosh Yeshiva in Regensburg. Son and student of R' Shmuel HaChassid. Author of *Sefer Chassidim/Book of the Pious*, on ethics and moral teachings and laws and customs as well as *Shir HaKavod*. He was the main teacher of the religious ethical movement Chasidei Ashkenaz/The Pietists of Germany. Among his students are the Smag and the Ohr Zarua.

## The Age of Marriage for One Who is occupied with the Study of Torah

As mentioned previously, the Shulchan Aruch writes that one who is occupied with the study of Torah, and is afraid to get married lest he will be disrupted from his learning, is permitted to delay getting married.

But apparently we must clarify, is there no limit to this delay, or can one remain forever unmarried because he wants to occupy himself in learning Torah?

The Beis Shmuel in Seif Katan 5 brings an argument about this:

1. The Rosh writes that there must be a limit to this delay, for it cannot be that every *Ben Torah* can exempt himself from the *Mitzvah* of *P'ru u'Revu* all his life. Only Ben Azai, whose soul so desired the study of Torah, was granted permission not to marry, as is brought in the Gemara. (However, the Rosh does not mention there what exactly is the limit of the delay which is permitted.)
2. However, against him is the view of the Rambam that indeed there is no limit, and so long as one is concerned that he will be disrupted for the purpose of making a living, and as long as his [evil] inclination does not overcome him, he may delay getting married, and there is no limit for this.

See the Hagahos of Rabbi Akiva Eiger<sup>9</sup> Letter 3 (which is brought on the page of the Shulchan Aruch) which deals with the question of the limits to the delay in getting married in order to continue learning Torah, and he writes that this whole Din, that one may delay due to learning Torah, was only appropriate in their times, where there was a limit to their studying, and they did not remain indefinitely due to the decrees or decisions of their Rabbis and Teachers (only for a certain period and no more).

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<sup>9</sup> **Rabbi Akiva ben Moshe Eiger - Born:** Eisenstadt, Austria, 1761 **Died:** Posen, Poland, 1837 **Notes:** Great halachic authority, Torah leader of his generation, and fierce opponent of secular education and reform ideas. Rabbi of Markish Friedland and Rav of Posen after 1814 and founder of the Posen Yeshiva. Author of Tosefos Rabbi Akiva, a commentary on the Mishna, Gilyon HaShas, comments on the Talmud, Rashi, and Tosefos, which is included in the traditional editions of the Talmud, Chiddushei Rabbi Akiva Eiger, a commentary on the Talmud and Teshuvos Rabbi Akiva, a three-volume compendium of Responsa.

### Therefore,

In those times they used to learn first and then marry, but one who wishes to remain in the house of his Rabbi forever, (meaning he wishes to learn Torah for a long period of time), it cannot be that he shouldn't get married his whole life (rather he should get married and then learn).

Then he describes the dilemma that arises in the case where one can either remain in the house of his Rabbi without getting married or he can marry, but cannot continue to remain in his Rabbi's house and will have to continue his Torah study on his own. What should he do?

### In answer he writes there:

The matter must be looked into as to whether one says about such a person, "A sword is upon the boasters; [and they shall become fools],"<sup>10</sup> (a verse which is said of one who learns by himself without a Chavrusa), because one would tend to say that it is preferable that he should learn by himself and get married rather than continuing to learn with his Rabbi without a wife at his side.

## Can Marriage be forced once the Appropriate Time Arrives?

The Rama in this Seif brings the Din of the Rivash<sup>11</sup>, that in our times it has been customary not to force marriage as soon as the age for marrying arrives.

### Similarly,

Anyone who has not yet fulfilled *piryah v'rinya* and comes to marry a woman who cannot bear children, such as an infertile woman, an older woman or a child, because he desires her or because of her money, then even though according to the principle Din it would have been appropriate to protest this (through the Beis Din), nevertheless it has not been customary for several generations (in recent generations) to be particular about such marriage partnerships.

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<sup>10</sup> Yirmiyahu 50, 36. The verse in Hebrew reads, 'חרב על הבדים' and the comment is a play on the word הבדים which can also mean "those who sit alone."

<sup>11</sup> Rivash – R'Yitzchak Ben Sheshet Perfet - **Born:** Barcelona, Spain, 1326. **Died:** Algiers, c. 1408. **Notes:** Talmudic and halachic scholar. A student of the Ran. Lived in Spain most of his life presumably until around the time of the Spanish Massacres of 1391. Settled in Algiers where he became the Chief Rabbi. Author of commentaries on the Talmud preserved as part of the Shita Mekubetzes, as well as responsa. He warned against the study of philosophy and Kabbalah. His students included the Rashbatz.

## Can He be forced to Divorce a Barren Wife?

The Rama also adds that even if one married a woman and remained with her for ten years, it has not been customary to force him to divorce her even if he had not fulfilled *piryah v'riya*, and likewise in other matters of marriage partnership (Rivash Siman 15), so long as she is not prohibited for him to marry.

### Regarding the above issue,

The Beis Shmuel brings an innovative view in Seif Katan 7, that although if he lives with his wife for ten years and she did not bear children he is not forced to divorce her, but if the husband himself wants to divorce his wife he can divorce her, even against her will.

### This is even though,

There is the *Cherem* [ban] of Rabbeinu Gershom<sup>12</sup> which prohibited a husband to divorce his wife against her will (as will be brought in later Shiurim), but in a case such as this, where he wants to divorce her in order to fulfill the *Mitzvah* of *piryah v'riya*, the decree of Rabbeinu Gershom was not made (it should be pointed out that the same innovative idea is brought by the Beis Shmuel in Siman 154, and the Pischei Teshuva there brings many Achronim who disagree with him about it).

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<sup>12</sup> **Rabbeinu Gershom Ben Yehuda - Meor Hagolah - Born:** Metz, France, c. 960. **Died:** Mainz, Germany, c. 1040. **Notes:** Known as Meor HaGolah/The Light of the Diaspora. Talmudist, Rosh Yeshiva in Mainz, he laid the foundation of the Ashkenazic tradition by establishing correct readings and providing commentaries on the Talmud, many of which are included in Rashi's commentaries. Many decrees regulating the life of a Jew bear his name, e.g., prohibition of polygamy, of divorcing a wife without her consent, of shaming apostates returning to Judaism, etc. His son, and possibly his wife, were forcibly converted to Christianity. Author of Peirush Rabbeinu Gershom, a commentary on the Talmud included in the traditional editions.

## Until What Age may Marriage be Delayed?

We must clarify, until what age can one actually put off marrying a wife, especially where he has been looking for quite some time and does not seem to be able to find the right match?

See the Pischei Teshuva, Seif Katan 5, who writes at the beginning of his words there, that some say that even nowadays a Beis Din should force a person to marry on time.

### **He adds,**

That some say that if a person wants to get married, but he holds back from doing so because he does not find a marriage partner best suited to his liking or because of some other reason, and then he is not forced to get married.

### **But in any event,**

It seems that one should not delay making a *Shidduch* for reasons not associated with him physically (which excludes reasons of health, etc.) more than the age of 24!

## One Whose Soul Desires to Study Torah – May he Remain Unmarried?

The source for this Seif is in Masechtas Yevamos 63b, where the following account is brought:

Ben Azai was teaching his students that anyone who does not occupy himself with the *Mitzvah* of *P'ru u'Revu* is considered as if he sheds blood, and he diminishes the Divine image.

**His students answered him:**

“You preach well but do not act well,” (for Ben Azai did not marry). Ben Azai answered them “What can I do, if my soul so desires [to study] Torah?”

The Rishonim conclude from here,

That according to Halacha one whose soul so desires to study Torah like Ben Azai, and he cleaves to it all his life and does not get married, is not considered as if he transgressed, but so long as his [evil] inclination does not overcome him.

It should be pointed out that this level is higher than that of an ordinary man who does not want to get married in order to be able to continue learning Torah, the Din of which has been brought in the previous Seif.

## May one stay unmarried so he can learn Torah?

The Shulchan Aruch in this Seif was posek all the above (the Din of Ben Azai) as Halacha.

The question is asked,

May a Talmid Chacham whose soul so desires to study Torah like Ben Azai, and he cleaves to it all his life, *Lebachbila* [in the first instance] not get married? See the Taz, Seif Katan 1, who writes: Nevertheless, *Lebachbila* one should not do so, meaning that although if he did not get married he is not considered as having committed a transgression, but *lebachbila* he should not do so in the first place.

**In the next Shiur we will discuss the *Mitzvah* of *piryah v'rivya*, including all its provisions and details.**

## Questions and Answers

**1. At what age is it a Mitzvah for one to get married?**

At the age of 18.

**2. May one get married earlier?**

Yes, and one who marries at the age of 13 is considered as having fulfilled the Mitzvah in the choicest manner.

**3. May one marry off his sons before the age of 13?**

No, for it is considered immoral.

**4. Do all agree on this?**

This is an argument among the Rishonim; some say it is immoral and others say that it is not.

**5. According to the Din of the Gemara, up to what age may one can wait to get married?**

20.

**6. Can the Beis Din force someone who has passed the age of 20 to get married?**

Some say yes, because he must fulfill Mitzvah of P'ru u'Revu

**7. What about one who is studying Torah, may he push off marriage until a later time?**

If he will be unable to continue learning, he may do so.

**8. What do some say regarding one who marries off his sons at the age of 13?**

It is accorded to him as a Mitzvah, and the Kiddushin are valid MiD'Rabanan, and she also needs a Get MiD'Rabanan.

**9. Why is marriage not done so early nowadays?**

Some say because the nature of man has changed over the generations.

**10. Is there a limit to the amount of time one can delay marriage due to Torah Study?**

The Rishonim differ in opinion on this.

**11. Can the Beis Din force someone to get married when his appropriate age arrives?**

The Rama brings that in our times it has not been customary to do so.

**12. What about one who did not fulfill piryah v'rivya and marries a woman who cannot bear children?**

It has not been customary to force him to divorce her.

**13. What about one who was married to a woman for 10 years and she did not have children?**

It has not been customary to force him to divorce her, and the same holds for other marriage issues, so long as she is not prohibited for him to live with.

**14. But what if he wants to divorce her, can he do so against her will?**

Some say yes.

**15. What about one who wants to get married but did not yet find the right marriage partner, can he be forced to get married?**

Some say no, but in any event he should not delay marriage past the age of 24.

**16. What if one wants to continue learning Torah all his life, like Ben Azai – can he exempt himself from marriage?**

If he does so he is not considered as committing a transgression, but so long as his inclination does not overcome him. But it is brought in the Achronim that one should not do so Lechatchila.