

Koren Talmud Bavli
THE NOÉ EDITION

BAVA METZIA • PART ONE



Steinsaltz
Center



KOREN

תלמוד בבלי

KOREN TALMUD BAVLI

— THE NOÉ EDITION —

בבא מציעא

BAVA METZIA · PART ONE

COMMENTARY BY

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Steinsaltz

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STEINSALTZ CENTER

KOREN PUBLISHERS JERUSALEM



Supported by the Matanel Foundation

The Noé Edition Koren Talmud Bavli
Volume 25: Tractate Bava Metzia, Part One

Hardcover edition, ISBN 978 965 301 586 9

First Hebrew/English Edition, 2016

Koren Publishers Jerusalem Ltd.
PO Box 4044, Jerusalem 9104001, ISRAEL
PO Box 8531, New Milford, CT 06776, USA
www.korenpub.com

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Cover image © Clara Amit, Yoram Lehman, Yael Yolovitch, Miki Koren, Mariana Salzberger, and Shai Halevi, courtesy of the Israel Antiquities Authority

Hardcover design by Ben Gasner

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Second printing, 2020

Printed in PRC

הַפָּה יְמִים בָּאִים, נָאֵם אֲדֹנֵי יְהוָה, וְהַשְׁלָחָתִי רָעַב בָּאָרֶץ,
לְאַדְעַב לְלִכְמָן וְלֹא-צָמָא לְמִים, כִּי אִם-לְשָׁמָעַ אֶת דְּבָרֵי יְהוָה.

Behold, days are coming – says the L^{ORD} God –
I will send a hunger to the land, not a hunger for bread
nor a thirst for water, but to hear the words of the L^{ORD}.

(AMOS 8:11)

*The Noé edition of the Koren Talmud Bavli
with the commentary of Rabbi Adin Even-Israel Steinsaltz
is dedicated to all those who open its cover
to quench their thirst for Jewish knowledge,
in our generation of Torah renaissance.*

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in the bookcases of the Beit Midrash,
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who carve out precious time to grapple with its timeless wisdom.*

For the Student and the Scholar

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KOREN

*Once upon a time, under pressure of censorship,
printers would inscribe in the flyleaves
of volumes of the Talmud:*

*Whatever may be written herein about gentiles
does not refer to the gentiles of today,
but to gentiles of times past.*

*Today, the flyleaves of our books bear a similar inscription,
albeit an invisible one:*

*Whatever may be written herein about Jews
does not refer to the Jews of today,
but to Jews who lived in other times.*

*So we are able to sit down and study Torah, Talmud,
books of ethics, or books of faith
without considering their relevance to our lives.*

*Whatever is written there
does not apply to us or to our generation,
but only to other people, other times.*

*We must expunge from those invisible prologues
the notion that the words are written about someone else,
about others, about anyone but us.*

*Whether the book is a volume of Torah,
a tractate of the Talmud, or a tract of faith,
the opposite must be inscribed:*

*Whatever is written herein refers only to me;
is written for me and obligates me.*

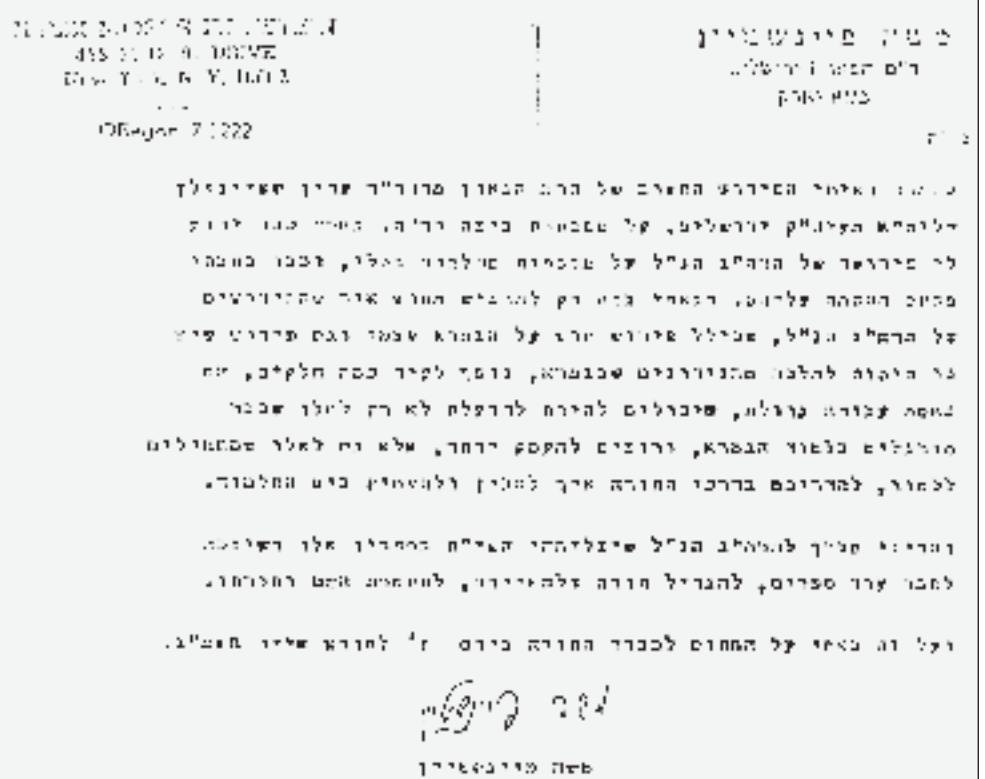
First and foremost, the content is addressed to me.

— From a public address by Rabbi Adin Even-Israel Steinsaltz
as quoted in *מִלְויָנָה* (Talks on Parashat HaShavua)
Maggid Books, 2011

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Haskama Rabbi Moshe Feinstein



...These new commentaries – which include a new interpretation of the Talmud, a halakhic summary of the debated issues, and various other sections – are a truly outstanding work; they can be of great benefit not only to those familiar with talmudic study who seek to deepen their understanding, but also to those who are just beginning to learn, guiding them through the pathways of the Torah and teaching them how to delve into the sea of the Talmud.

I would like to offer my blessing to this learned scholar. May the Holy One grant him success with these volumes and may he merit to write many more, to enhance the greatness of Torah, and bring glory to God and His word ...

Rabbi Moshe Feinstein
New York, 7 Adar 5743

ר' משה פיננסטайн שליט"א
הת�ה איה לא סכתת את מחדלים שנקרא אמתות וזה
שייר צורות ומטפורות וכדומה מדברים שלא ידוע לפניו
אנשיהם הרהרגן ר' אדרן שטינצלר כורשעלט שליטא
זאת חסמי שם בבלויון טורניות הדרושים ונזכר שטה
לפניהם בDAL נסיבות ובכוח מדרשיות שיש שייח' לו
למהותם. – ועל זו באמת דוחה בדור ב' השילוב.
ג' אמ' משה פיננסטайн
ר' יוסי האפרת וויליאם נוֹיִוִילַט אַבְּרָהָם

I have seen one tractate from the Talmud to which the great scholar Rabbi Adin Steinsaltz has added *nikkud* (vowels) and illustrations to explain that which is unknown to many people; he has also added interpretations and innovations, and is evidently a *talmid hakham*. *Talmidei hakhamim* and yeshiva students ought to study these volumes, and synagogues and *batei midrash* would do well to purchase them, as they may find them useful.

Rabbi Moshe Feinstein
New York, Adar 5730



Haskama **Rabbi Menachem Mendel Schneerson**

... I have just had the pleasant surprise of receiving tractate *Shabbat* (part one), which has been published by [Rabbi Steinsaltz] along with his explanations, etc. Happy is the man who sees good fruits from his labors. May he continue in this path and increase light, for in the matters of holiness there is always room to add – and we have been commanded to add – for they are linked to the Holy One, Blessed be He, Who is infinite. And may the Holy One grant him success to improve and enhance this work, since the greater good strengthens his hand ...

Rabbi Menachem Mendel Schneerson
The Lubavitcher Rebbe
Brooklyn, 5 Marheshvan 5729

Haskama **Rabbi Moshe Zvi Neria**

The translation of the books of our past into the language of the present – this was the task of the sages of every generation. And in Israel, where the command to “teach them repeatedly to your children” applies to all parts of the nation, it was certainly the task of every era. This is true for every generation, and in our time – when many of those who have strayed far are once again drawing near – all the more so. For many today say, “Who will let us drink from the well” of Talmud, and few are those who offer up the waters to drink.

We must, therefore, particularly commend the blessed endeavor of Rabbi Adin Stein-saltz to explain the chapters of the Talmud in this extensive yet succinct commentary, which, in addition to its literal interpretation of the text, also explicates the latter's underlying logic and translates it into the language of our generation.

It appears that all those who seek to study Talmud – the diligent student and the learned adult – will have no difficulty understanding when using this commentary. Moreover, we may hope that the logical explanation will reveal to them the beauty of the talmudic page, and they will be drawn deeper and deeper into the intellectual pursuit which has engaged the best Jewish minds, and which serves as the cornerstone of our very lives ...

Rabbi Moshe Zvi Nerja

מרדכי אליהו
MORDECHAI ELIYAHU
FORMER CHIEF RABBI OF ISRAEL & RICHON LEZION

וזאתו לעצנו והגב הואה ליישראלי שעבר
ב' בתשדי תשנ"ד
נ"ד-5-137

מכתב ברורה

הגמרא בעירובין כ"א: אומرتא: דרש רבא Mai דכתיב ויזהר שהיה קהלה חכם, עוד לימד דעת את העם – ואזון וחקר تكون משלים הרבה". לימד דעת את העם – קבוע כיצד לזרוא פסוק ולימינים בין תיבת המקרה ומשיכחה הגמara ואומרטא: מר עולא אמר ר' אליעזר בתהילה יתבה תורה דומה לפכיה שאיין לה איזנים עד שבא שלמה ועשה לה איזנים". וכדברי רש"י שם: "ועדי כך זה חוץ ישראל במצוות שנתרקרו מן העבריה כדרכו שנוח לאחוז בכל שיש לו בית יד וכו'" (עדוביון כ"א, י').

דברים מעין אלו אפשר לומר על האי גברא יקירה, על איש מורה מעם, שכמו ומעלה בתורה ובמידות. ויזהר מה שעשנה בתורה שב"פ נישא בתורה שבכתב – מלמד דעת את העם. ולא זו בלבד אלא גם עוזה איזנים לתורה, היא תורת תלמידך שוארתות וסתומות בבני רבים. ורק מעת מזער מבני עלייה שהם מוגעים וכי לומד בישיבתיכל כיום ליום בש"ס ולחביבך מה שלפנינו, ואך שיש לנו פירוש רש"י, עדין לא הכל ממשיכיו גו. עד שקס הרב הגadol מעוז ומגדל הרה"ג עדין שטיינזלץ שליט"א זעשה איזנים ניגורו, שאפשר לאחוז ביד וללמוד, ואפי' לפטוטי העם ועשה פרושים ושם איזום בצד הארון, פרושים נאים נשפה בדורותה ועינימה דבר דבר על עופנייו. ונס הסרורים וציפורים להבין ולהשכיל, כדי שיימי שורצחה בקרבה אל מלאכתה כי למדוד יכול לעשות זאת.

ועיני ראו ולא זר שבשיעורי תורה בגמרא הרבה באים עם גמורות בידם ולאה שבאים עס פירוש הרב שטיינזלץ לתלמידו הבבלי"ה הם מוכנים ומכינים טוב יותר. כי כבר יש להם הקדמה מכוושיו ומנבוריו. ואמיינא לפועלו ישר וממן שמייא זכו ליה ללמד דעת את העם.

והיה רצון שחפץ בידו יצלח, וכל אשר יפנה ישכיל ויצלח, ויזכה להגדיל תורה ולהאדירה, ויזטיף לנו עוד גמורות מבוארות בהנה ובנהנה עד לטיסומו, "וישראל עשו חיל".

ובזכות לימוד תורה ואני זאת בריתי וכו', ובא לציוון גואל, בב"א.

מרדכי אליהו

ראשון לציוון הרב הראשי ליישראלי שעבר

Haskama
Rabbi Mordechai
Eliyahu

The Talmud in *Eruvin* 21b states: Rava continued to interpret verses homiletically. What is the meaning of the verse: "And besides being wise, Kohelet also taught the people knowledge; and he weighed, and sought out, and set in order many proverbs" (Ecclesiastes 12:9)? He explains: He taught the people knowledge; he taught it with the accentuation marks in the Torah, and explained each matter by means of another matter similar to it. And he weighed [izen], and sought out, and set in order many proverbs; Ulla said that Rabbi Eliezer said: At first the Torah was like a basket without handles [*oznayim*] until Solomon came and made handles for it. And as Rashi there explains: And thus were Israel able to grasp the mitzvot and distance themselves from transgressions – just as a vessel with handles is easily held, etc.

Such things may be said of this beloved and eminent man, a great sage of Torah and of virtue. And far more than he has done with the Oral Torah, he does with the Written Torah – teaching the people knowledge. And beyond that, he also affixes handles to the Torah, i.e., to the Talmud, which is obscure and difficult for many. Only the intellectual elite, which are a precious few, and those who study in yeshiva, can today learn the Talmud and understand what it says – and even though we have Rashi, still not everyone uses him. But now the great scholar Rabbi Adin Steinsaltz has come and affixed handles to the Torah, allowing the Talmud to be held and studied, even by simple men. And he has composed a commentary alongside the text, a fine commentary in clear, comprehensible language, "a word fitly spoken" with explanations and illustrations, so that all those who seek to study the work of God can do so.

Rabbi Mordechai Eliyahu
Former Chief Rabbi of Israel, 7 Tishrei 5754

Message from Rabbi Adin Even-Israel Steinsaltz

The Talmud is the cornerstone of Jewish culture. True, our culture originated in the Bible and has branched out in directions besides the Talmud, yet the latter's influence on Jewish culture is fundamental. Perhaps because it was composed not by a single individual, but rather by hundreds and thousands of Sages in *batei midrash* in an ongoing, millennium-long process, the Talmud expresses the deepest themes and values not only of the Jewish people, but also of the Jewish spirit. As the basic study text for young and old, laymen and learned, the Talmud may be said to embody the historical trajectory of the Jewish soul. It is, therefore, best studied interactively, its subject matter coming together with the student's questions, perplexities, and innovations to form a single intricate weave. In the entire scope of Jewish culture, there is not one area that does not draw from or converse with the Talmud. The study of Talmud is thus the gate through which a Jew enters his life's path.

The *Koren Talmud Bavli* seeks to render the Talmud accessible to the millions of Jews whose mother tongue is English, allowing them to study it, approach it, and perhaps even become one with it.

This project has been carried out and assisted by several people, all of whom have worked tirelessly to turn this vision into an actual set of books to be studied. It is a joyful duty to thank the many partners in this enterprise for their various contributions. Thanks to Koren Publishers Jerusalem, both for the publication of this set and for the design of its very complex graphic layout. Thanks of a different sort are owed to the Steinsaltz Center and its director, Rabbi Menachem Even-Israel, for their determination and persistence in setting this goal and reaching it. Many thanks to the translators, editors, and proofreaders for their hard and meticulous work. Thanks to the individuals and organizations that supported this project, chief among them the Matanel Foundation and the Noé family of London. And thanks in advance to all those who will invest their time, hearts, and minds in studying these volumes – to learn, to teach, and to practice.

Rabbi Adin Even-Israel Steinsaltz
Jerusalem 5773

Acknowledgments

We are indeed privileged to dedicate this edition of the *Koren Talmud Bavli* in honor of the generous support of Leo and Sue Noé of London.

The name Noé is synonymous with philanthropy. The family's charitable endeavors span a vast range of educational projects, welfare institutions, and outreach organizations across the globe, with a particular emphasis on the "nurturing of each individual." Among so many other charitable activities, the Noés have been deeply involved with Kisharon, which provides the British Jewish community with vital support for hundreds of people with learning difficulties and their families; they provide steadfast support of SEED, which stands at the forefront of adult Jewish education in the UK, and Kemach, an organization in Israel that "helps Haredi students sustain themselves in dignity," providing both professional and vocational training for the Haredi community in Israel.

The Noés are not simply donors to institutions. They are partners. Donors think of a sum. Partners think of a cause, becoming rigorously and keenly involved, and giving of their time and energy. We are honored that they have chosen to partner with our two organizations, Steinsaltz Center and Koren Publishers Jerusalem, enabling us to further and deepen learning among all Jews.

Leo and Sue are the proud parents and grandparents of five children and their families. The next generation has been taught by example that with life's gifts come the responsibilities to be active within and contribute to society – both Jewish and non-Jewish – as is consistent with the noblest of Jewish values.

Rabbi Adin Even-Israel Steinsaltz
Matthew Miller, Publisher
Jerusalem 5773

Introduction by the Editor-in-Chief

The publication of tractate *Bava Metzia* is a significant milestone for the Koren Talmud Bavli project. With this, the second tractate of *Seder Nezikin*, the order of Damages, we continue our challenging but rewarding journey toward our goal, the completion of a new and unique translation of the Babylonian Talmud.

This remarkable accomplishment calls for celebration and congratulations. We congratulate the exceptional team that has helped the project reach this point. The team has brought excellence to every aspect of the daunting task of translating Rabbi Adin Even-Israel Steinsaltz's masterful Hebrew translation of the Talmud into English. Rabbi Steinsaltz's work is much more than a mere translation. It includes a coherent interpretation of the Mishna and the Gemara, and an expansion of the text that provides an array of intriguing marginal notes. Rendering this masterpiece into English called for talents that include biblical and talmudic scholarship, literary skills, linguistic expertise, editorial acumen, graphic and visual creativity, and most of all, teamwork and diligence. Congratulations to every member of the team are in order, and celebration of our achievement is well deserved.

Reaching this milestone grants us the opportunity to express our gratitude to the Almighty for giving us the strength to persevere at this sacred task for the past several years. These years have been difficult ones for the Jewish people, and especially for those of us who dwell in Eretz Yisrael. But the difficulties have not diminished our ability to succeed in our goals. For that we thank the Master of the Universe.

Students of this tractate will find in it the fundamental Jewish concepts of responsibility for one's commitments and respect for the property of others. We consider our efforts successful if the reader comes away from the text a better person, and not just a better informed person. Tractate *Bava Metzia* is particularly successful in supporting our contention that Talmud study fosters lifelong ethical development and a profound sensitivity to the needs and concerns of other human beings.

We have now had the opportunity to survey hundreds of responses submitted by our readers. Naturally, these include constructive criticism and reports of errors that are inevitable in such an undertaking. We have systematically preserved such responses so that we can correct them in future editions. Indeed, we have already begun to do so for the initial tractates in our series.

The most exciting result of our survey has been our discovery that “consumers” of Koren Talmud Bavli are a remarkably diverse group. They range from beginners who have never before been exposed to a *blatt gemara*, to accomplished scholars who have completed the study of the entire Talmud more than once. Beginners find our work not only a helpful introduction to Talmud study, but an impetus to the further study of rabbinic texts. Experienced scholars report that our work provides them with unexpected insights and fresh perspectives that enhance their appreciation of texts with which they have long been acquainted.

Tractate *Bava Metzia*, part I, is the twenty-fifth volume of the project. Like the preceding volumes, it includes the entire original text, in the traditional configuration and pagination of the famed Vilna edition of the Talmud. This enables the student to follow the core text with the commentaries of Rashi, *Tosafot*, and the customary marginalia. It also provides a clear English translation in contemporary idiom, faithfully based upon the modern Hebrew edition.

At least equal to the linguistic virtues of this edition are the qualities of its graphic design. Rather than intimidate students by confronting them with a page-size block of text, we have divided the page into smaller thematic units. Thus, readers can focus their attention and absorb each discrete discussion before proceeding to the next unit. The design of each page allows for sufficient white space to ease the visual task of reading. The illustrations, one of the most innovative features of the Hebrew edition, have been substantially enhanced and reproduced in color.

The end result is a literary and artistic masterpiece. This has been achieved through the dedicated work of a large team of translators, headed by Rabbi Joshua Schreier; the unparalleled creative efforts of the gifted staff at Koren; and the inspired and impressive administrative skills of Rabbi Jason Rapoport, managing editor of the Koren Talmud Bavli project.

It is an honor for me to acknowledge the role of Matthew Miller of Koren Publishers Jerusalem in this historic achievement. Without him this work would never have begun. Its success is attributable to his vision and supervision. I owe a great personal debt to him for selecting me as editor-in-chief, and I am continually astounded by his commitment to Jewish learning, the Jewish people, and the Jewish homeland.

The group of individuals who surround Rabbi Steinsaltz and support his work deserve our thanks as well. I have come to appreciate their energy, initiative, and persistence. And I thank the indefatigable Rabbi Menachem Even-Israel, whom I cannot praise highly enough. The quality of his guidance and good counsel is surpassed only by his commitment to the dissemination and perpetuation of his father’s precious teachings.

Finally, in humility, awe, and great respect, I acknowledge Rabbi Adin Even-Israel Steinsaltz. I thank him for the inspirational opportunity he has granted me to work with one of the outstanding sages of our time.

Rabbi Tzvi Hersh Weinreb
Jerusalem 5776

Preface by the Executive Editor

In the fifth chapter of tractate *Gittin* (6ob), Rabbi Yohanan said: The Holy One, Blessed be He, made a covenant with Israel only for the sake of the words that were transmitted orally [*al peh*], as it is stated: “As on the basis of [*al pi*] these matters I have made a covenant with you and with Israel.”

In contrast to the Written Torah, which is clearly demarcated and to which there can be no additions, the Oral Torah is, and will always remain, a work in progress. Every novel idea conceived by one engaged in the study of Torah immediately becomes part of the Oral Torah. No matter one’s expertise in the Written Torah, the relationship between him and that Torah is the relationship of a subject to an object external to him. In contrast, the Oral Torah has no existence independent of those who study it. There is no duality between the Oral Torah and the one studying it. One who studies the Oral Torah becomes part of the Oral Torah, just as the Oral Torah becomes part of him. That is why the covenant with Israel is on the basis of the Oral Torah.

Although much of the Oral Torah studied today is written, and the *Koren Talmud Bavli* is no exception, the *Koren Talmud Bavli* seeks to enhance the covenant that was made on the basis of the Oral Law by making its content available to all seekers of God and His Torah. Its user-friendly layout, together with its accessible translation, takes the Steinsaltz commentary on the Talmud one step further. It opens the doors to even more students who might have previously felt excluded from the exciting give-and-take of the study hall, enabling them to take their place as full-fledged participants in the world of Talmud study.

My involvement in the production of the *Koren Talmud Bavli* has been both a privilege and a pleasure. The Steinsaltz Center, headed by Rabbi Menachem Even-Israel and devoted to the dissemination of the wide-ranging, monumental works of Rabbi Adin Even-Israel Steinsaltz, constitutes the Steinsaltz side of this partnership; Koren Publishers Jerusalem, headed by Matthew Miller, constitutes the publishing side of this partnership. The combination of the inspiration, which is the hallmark of the Steinsaltz Center, with the creativity and professionalism for which Koren is renowned and which I experience on a daily basis, has lent the *Koren Talmud Bavli* its outstanding quality in terms of both content and form.

I would be remiss if I failed to mention the contribution of Raphaël Freeman, who guided this project from its inception and is largely responsible for transforming the content of the Steinsaltz Talmud into the aesthetic *Koren Talmud Bavli* that is before

you. He was succeeded by Dena Landowne Bailey, who has facilitated a seamless transition and has continued to ensure that the *Koren Talmud Bavli* lives up to the lofty standards that are the hallmark of Koren Publishers.

I would like to express my appreciation for Rabbi Dr. Tzvi Hersh Weinreb, the editor-in-chief, whose insight and guidance have been invaluable. Rabbi Jason Rappoport, the managing editor, has added professionalism to this project, systematizing the work of the large staff, and it is thanks to him that the project is proceeding with efficiency and excellence. Rabbi Dr. Joshua Amaru, the coordinating editor, oversees the work of the translators and editors, and is largely responsible for ensuring the consistently high quality of their work. Rabbi Avishai Magence is the content curator, who, in addition to his general contributions to this project, is responsible for the accuracy of the realia and for the photographs and images that enhance the experience of Talmud study in the *Koren Talmud Bavli*. The contribution of my friend and colleague, Rabbi Dr. Shalom Z. Berger, the senior content editor, cannot be overstated; his title does not begin to convey the excellent direction he has provided in all aspects of this project. The staff of copy editors, headed by Aliza Israel, with Ita Olesker as production coordinator, pleasantly but firmly ensures that the finished product conforms to standards and is consistently excellent. The erudite and articulate men and women who serve as translators, editors, and copy editors generate the content that is ultimately the *raison d'être* of the *Koren Talmud Bavli*.

Thanks to my fellow occupants of the *Koren beit midrash*: Rabbi David Fuchs, Rabbi Hanan Benayahu, Rabbi Yinon Chen, Efrat Gross, and others. Their mere presence creates an atmosphere conducive to the serious endeavor that we have undertaken and their assistance in all matters, large and small, is appreciated.

At the risk of being repetitious, I would like to thank Rabbi Dr. Berger for introducing me to the world of Steinsaltz. Finally, I would like to thank Rabbi Menachem Even-Israel, with whom it continues to be a pleasure to move forward in this great enterprise.

Rabbi Joshua Schreier
Jerusalem 5775

Introduction by the Publisher

The Talmud has sustained and inspired Jews for thousands of years. Throughout Jewish history, an elite cadre of scholars has absorbed its learning and passed it on to succeeding generations. The Talmud has been the fundamental text of our people.

Beginning in the 1960s, Rabbi Adin Even-Israel Steinsaltz נ"ע'ל created a revolution in the history of Talmud study. His translation of the Talmud, first into modern Hebrew and then into other languages, as well the practical learning aids he added to the text, have enabled millions of people around the world to access and master the complexity and context of the world of Talmud.

It is thus a privilege to present the *Koren Talmud Bavli*, an English translation of the talmudic text with the brilliant elucidation of Rabbi Steinsaltz. The depth and breadth of his knowledge are unique in our time. His rootedness in the tradition and his reach into the world beyond it are inspirational.

Working with Rabbi Steinsaltz on this remarkable project has been not only an honor, but a great pleasure. Never shy to express an opinion, with wisdom and humor, Rabbi Steinsaltz sparkles in conversation, demonstrating his knowledge (both sacred and worldly), sharing his wide-ranging interests, and, above all, radiating his passion. I am grateful for the unique opportunity to work closely with him, and I wish him many more years of writing and teaching.

Our intentions in publishing this new edition of the Talmud are threefold. First, we seek to fully clarify the talmudic page to the reader – textually, intellectually, and graphically. Second, we seek to utilize today's most sophisticated technologies, both in print and electronic formats, to provide the reader with a comprehensive set of study tools. And third, we seek to help readers advance in their process of Talmud study.

To achieve these goals, the *Koren Talmud Bavli* is unique in a number of ways:

- The classic *tzurat hadaf* of Vilna, used by scholars since the 1800s, has been reset for greater clarity, and opens from the Hebrew “front” of the book. Full *nikkud* has been added to both the talmudic text and Rashi’s commentary, allowing for a more fluent reading with the correct pronunciation; the commentaries of *Tosafot* have been punctuated. Upon the advice of many English-speaking teachers of Talmud, we have separated these core pages from the translation, thereby enabling the advanced student to approach the text without the distraction of the translation. This also reduces the number of volumes in the set. At the bottom of each *daf*, there is a reference to the corresponding English pages. In addition, the Vilna edition was read against other manuscripts and older print editions, so that texts which had been removed by non-Jewish censors have been restored to their rightful place.

- The English translation, which starts on the English “front” of the book, reproduces the *menukad* Talmud text alongside the English translation (in bold) and commentary and explanation (in a lighter font). The Hebrew and Aramaic text is presented in logical paragraphs. This allows for a fluent reading of the text for the non-Hebrew or non-Aramaic reader. It also allows for the Hebrew reader to refer easily to the text alongside. Where the original text features dialogue or poetry, the English text is laid out in a manner appropriate to the genre. Each page refers to the relevant *daf*.
- Critical contextual tools surround the text and translation: personality notes, providing short biographies of the Sages; language notes, explaining foreign terms borrowed from Greek, Latin, Persian, or Arabic; and background notes, giving information essential to the understanding of the text, including history, geography, botany, archaeology, zoology, astronomy, and aspects of daily life in the talmudic era.
- Halakhic summaries provide references to the authoritative legal decisions made over the centuries by the rabbis. They explain the reasons behind each halakhic decision as well as the ruling’s close connection to the Talmud and its various interpreters.
- Photographs, drawings, and other illustrations have been added throughout the text – in full color in the Standard and Electronic editions, and in black and white in the Daf Yomi edition – to visually elucidate the text.

This is not an exhaustive list of features of this edition; it merely presents an overview for the English-speaking reader who may not be familiar with the “total approach” to Talmud pioneered by Rabbi Steinsaltz.

Several professionals have helped bring this vast collaborative project to fruition. My many colleagues are noted on the Acknowledgments page, and the leadership of this project has been exceptional.

RABBI MENACHEM EVEN-ISRAEL, DIRECTOR OF THE STEINSALTZ CENTER, was the driving force behind this enterprise. With enthusiasm and energy, he formed the happy alliance with Koren and established close relationships among all involved in the work.

RABBI DR. TZVI HERSH WEINREB ט'ו'ל, EDITOR-IN-CHIEF, brought to this project his profound knowledge of Torah, intellectual literacy of Talmud, and erudition of Western literature. It is to him that the text owes its very high standard, both in form and content, and the logical manner in which the beauty of the Talmud is presented.

RABBI JOSHUA SCHREIER, EXECUTIVE EDITOR, assembled an outstanding group of scholars, translators, editors, and copy editors, whose standards and discipline enabled this project to proceed in a timely and highly professional manner.

RABBI MEIR HANEGBI, EDITOR OF THE HEBREW EDITION OF THE STEINSALTZ TALMUD, lent his invaluable assistance throughout the work process, supervising the reproduction of the Vilna pages.

RAPHAËL FREEMAN created this Talmud’s unique typographic design which, true to the Koren approach, is both elegant and user friendly.

It has been an enriching experience for all of us at Koren Publishers Jerusalem to work with the Steinsaltz Center to develop and produce the *Koren Talmud Bavli*. We pray that this publication will be a source of great learning and, ultimately, greater *avodat Hashem* for all Jews.

Matthew Miller, Publisher
Koren Publishers Jerusalem
Jerusalem 5773

Introduction to **Bava Metzia**

Tractate *Bava Metzia* was originally part of a large tractate called tractate *Nezikin*, meaning damages, which comprised what are now the first three tractates in the order of *Nezikin*. *Bava Metzia* was the middle section of tractate *Nezikin*, and from this placement it derived its name, which means the middle gate. The remaining part of this super-tractate was divided into *Bava Kamma*, the first gate, which precedes *Bava Metzia*, and *Bava Batra*, the last gate. Each of these three parts has its own central topic.

Bava Metzia deals with issues relating to business, specifically those that the Torah mentions explicitly. The topics discussed in this tractate include the *halakhot* of lost and found items, the loading and unloading of animals, verbal mistreatment, exploitation, charging interest, feeding workers, depositing and borrowing items, withholding wages, and the prohibition against damaging collateral.

Bava Metzia expresses one of the unique aspects of Torah law, namely, that it does not distinguish between civil law and ritual law. Jewish civil law is based not on a social contract but on requirements defined by Torah law and rabbinic law. Accordingly, interpersonal relationships and civil laws are viewed as part of the relationship between the Jewish people and God. Although there are certain distinctions made by the Torah between civil and ritual law, in general they are interwoven in the Torah text, as can be seen, for example, in Exodus, chapters 21–23; Leviticus, chapter 19; and Deuteronomy, chapters 21–25.

A basic element in Jewish civil law is the integration of compassion with justice. To a large extent, the *halakha* goes beyond the requirements of justice. The obligation to relate to others with compassion and generosity is not merely a supererogatory addition to one's legal obligations; it is normative *halakha* that is derived from the conception of the Jewish people as one family. This is the reason for the distinction that one finds between general *halakhot* that structure economic life, which apply to all, and specific *halakhot* that apply only to interactions with fellow Jews. The general *halakhot* are as much a part of the Noahide mitzva to construct a fair legal system, which is incumbent upon all humanity, as they are aspects of Jewish law. By contrast, *halakhot* addressing interpersonal relationships, such as the obligation to return lost property and the prohibition against charging or paying interest, are not features of a legal system whose only purpose is justice. Rather, they reflect the requirement to have compassion on and care for one's fellow Jew.

The *halakhot* discussed in tractate *Bava Metzia* can be divided into four categories. The first category involves *halakhot* relating to transactions that are an essential

part of any legal system. The second category includes *halakhot* that apply only to transactions between Jews, the rationale for which has been explained above. The third category describes acts that are not punishable by the courts but are discouraged by the Sages. An example of the court's response to one such act would be the curse administered by the court to one who does not keep his word. Finally, the fourth category states *halakhot* of ethical behavior. These behaviors were practiced by people of high integrity, and they are based on the verse: "That you may walk in the way of good men, and keep the paths of the righteous" (Proverbs 2:20).

There is one concept that is common to all of these areas of *halakha* and is found throughout *Bava Metzia*, and that is the concept of ownership. Although an item is usually owned by the person in whose possession it is held, sometimes that is not the case, e.g., when an item is loaned or rented to another, or when it is deposited with another for safekeeping or as collateral on a loan. At other times, the item is not in the possession of its owner because it has been stolen or lost. In each of these cases, the tractate discusses who has halakhic ownership of the item, and who is responsible for safeguarding it and liable for damage caused to the item or by the item.

Ownership of movable property is transferred through specific modes of transaction, whose details are discussed mostly in this tractate. Even in cases where it is clear that someone performed a valid act of acquisition, it is necessary to determine the exact point in time when the ownership was transferred in order to resolve issues of multiple claims of ownership of the item. It is also necessary to determine the point after which neither party can withdraw from a transaction.

The tractate contains ten chapters, the first four of which are included in the present volume:

Chapter One primarily discusses how to determine ownership of an item that is claimed by two individuals.

Chapter Two details the *halakhot* of returning lost items in general, and those of loading and unloading animals.

Chapter Three examines the *halakhot* of safeguarding a deposit, the responsibilities of bailees, and the *halakhot* of misappropriation.

Chapter Four discusses the definition of money and business transactions in which one party exploits the other.

Introduction to **Perek I**

This chapter deals primarily with cases of a lost item that was found and is claimed by two individuals. Whereas the fundamental *halakhot* concerning lost items are discussed in the second chapter, the discussions in this chapter focus on questions relating to ownership and methods of acquisition, in particular, how the court adjudicates conflicting claims to the same rights or property. The chapter addresses the process of clarifying these conflicting claims and the apportioning of rights and ownership.

In analyzing this topic, the chapter addresses many specific questions, both conceptual and practical: Does the fact that two people lay claim to the same item mean that one is deliberately lying? If so, how does the court act against the deceitful party? When is it appropriate for the court to use methods of clarification and coercion, such as requiring a litigant to take an oath, in the context of litigants who are suspect? How is the court to act if it is believed that both litigants may be somewhat justified in their claims and neither is actually lying? How does a court allocate rights to a contested property when it is not possible for the court to fully clarify the facts of the case?

Another issue that arises in this context is the question of how the court relates to the status and rights of people who are peripherally involved in a case. What is the status of one who is not a litigant but is impacted by the case? As an example, the conflict between a debtor and creditor will affect a broader circle of people, such as one who purchased a field from the debtor and may now be subject to a lien on his land.

Perek I

Daf 2 Amud a



שנים אוחזין בטלית, זה אומר: אני ממצאתה, וזה אומר: אני ממצאתה. וזה אומר: בלילה שלி וזה אומר: בלילה שלி. זה ישבע שאין לו בה פחות מחצית, וזה ישבע שאין לו בה פחות מחצית, וזה תחולוקן.

זה אומר: בלילה שלி, וזה אומר: חציה שלி. האומר בלילה שלி – ישבע שאין לו בה פחות משלשה חלקיים. וזה אומר חציה שלி – ישבע שאין לו בה פחות מרביתו, וזה נוטל שלשה חלקיים, וזה נוטל רביע.

היו שניים רוכבון על גבי בהמה, והוא ששהיה אחד רוכב ואחד מנהיג, וזה אומר: בלילה שלி, וזה אומר: בלילה שלி – וזה ישבע שאין לו בה פחות מחצית, וזה ישבע שאין לו בה פחות מחצית, וזה תחולוקן.

בזמן שהם מודרים, או שיש להן עדים – חולקין בלاء שבואה.

גמ' לפה ל' למתקנא: זה אומר אני ממצאתה וזה אומר אני ממצאתה וזה אומר אני ממצאתה, וזה אומר בלילה שלி וזה אומר בלילה שלוי? ל'תני חזאי! חזאי קתני: זה אומר אני ממצאתה ובלילה שלוי, וזה אומר אני ממצאתה ובלילה שלוי.

The early commentaries ask why this chapter, which discusses details of the *halakhot* of found items, precedes the second chapter, which discusses the fundamental *halakhot* of found items.

Tosafot explain that as tractate *Bava Metzia* follows tractate *Bava Kamma*, the *halakhot* of found items are elucidated in this chapter as a continuation of the topics discussed in the last chapter of *Bava Kamma*, which discussed the division of items between litigants by means of an oath, which is also the ruling in the mishna here (see *Shita Mekubetzet*). The Rosh explains that because there is a suspicion of theft in this case, these matters are juxtaposed with the *halakhot* of theft, which are described at length in *Bava Kamma*.

MISHNA If two people came to court holding a garment,^{NH} and this one, the first litigant, says: I found it, and that one, the second litigant, says: I found it; this one says: All of it is mine, and that one says: All of it is mine; how does the court adjudicate this case? This one takes an oath^B that he does not have ownership of less than half of it, and that one takes an oath^N that he does not have ownership of less than half of it, and they divide it.

If this one says: All of it is mine, and that one says: Half of it is mine,^{NH} since they both agree that half of the cloak belongs to one of them, the conflict between them is only about the other half. Therefore, the one who says: All of it is mine, takes an oath that he does not have ownership of less than three parts, i.e., three-fourths, of it, and the one who says: Half of it is mine, takes an oath that he does not have ownership of less than one-quarter of it. This one takes three parts, and that one takes one-quarter.^N

If two people were sitting in a riding position on the back of an animal,^N e.g., a donkey or camel, or one was sitting in a riding position on the animal and one was leading it by its halter, and this one says: All of it is mine, and that one says: All of it is mine, how does the court adjudicate this case? This one takes an oath that he does not have ownership of less than half of it, and that one takes an oath that he does not have ownership of less than half of it, and they divide it.

When they admit to the validity of each other's claims or when they each have witnesses attesting to their claims, they divide the disputed item without taking an oath, as an oath is administered only in a case where the parties have no other way to prove their claims.

GEMARA The Gemara asks: Why do I need the *tanna* to teach two separate claims made by each party? Why does the *tanna* say both: This one says: I found it, and that one says: I found it; and in addition: This one says: All of it is mine, and that one says: All of it is mine? Let the *tanna* teach one case. The Gemara answers: The correct understanding of the mishna is that it teaches one claim of each party, as their claims were as follows: This one says: I found it and all of it is mine, and that one says: I found it and all of it is mine.

NOTES
שנים אוחזין בטלית: The reason that the mishna discusses a garment as opposed to a generic item is because, as will be explained (7a), there are certain *halakhot* that apply specifically to a garment and the way it is held that do not apply to other items (*Torat Hayyim*).

שניהם אוחזין בטלית – ר' הונאן ש�ב ע...: Rabbeinu Hananel asks: Since neither party can prove that the garment belongs to him, why doesn't the mishna apply the ruling used in other cases of disputed property, that whoever is stronger prevails, i.e., the court leaves the matter to the litigants and does not award the property to either one? *Tosafot* explain that because each party is currently in possession of the garment, the situation must be adjudicated. In a similar vein, several early commentaries (Rabbeinu Hananel; Rashba) write that the ruling that whoever is stronger prevails applies specifically when the litigants are not in possession of the item. The Rosh writes that if the ruling that whoever is stronger prevails is applied here, it will encourage people to take items by force.

ר' הונאן ש�ב ע...: The commentaries ask: Why is the one claiming to own half of the item not accorded credibility based on the fact that he could have made a more advantageous claim [*miggo*] that all of it is his? Since he admits that only half of it is his, his claim should be believed. Various explanations are offered for this ruling. Some explain that this principle does not apply in a case where, in any event, the litigant is obligated to take an oath (Ramban). The Rid explains, based on the Gemara's interpretation that this is a case of two people who each paid for a garment, that perhaps the reason the one who claimed to own half of it does not claim all of it is that he dared not make that claim lest the seller contradict him. Therefore his claim does not lend him credibility.

נוטל רביע – In the Jerusalem Talmud and the *Tosefta* this is stated as a principle: If one claims an entire item and another claims part of it, the one who claims part of it takes an oath with regard to half of his claim and receives that part; i.e., one who claims that one-third is his takes an oath that he owns one-sixth and he receives one-sixth.

רוכבון על גבי בהמה – Although the verb used by the mishna, *rokhvin*, often means riding, it is apparent from the Gemara (8b) that in this context the reference is to the act of sitting on an animal.

HALAKHA

שנים אוחזין בטלית: In the case of two people who are both holding on to the same item or animal, and each one claims ownership of the entire item, each man takes an oath that he has a right to the item he is claiming and that he owns no less than half of it, and they divide it (Rambam *Sefer Mishpatim*, *Hilkhot To'en VeNitan* 9:7; *Shulhan Arukh*, *Hoshen Mishpat* 138:1).

ר' הונאן ש�ב ע...: If two people claim ownership of an item, and one claims all of it while the other claims half of it, the one who claims all of it takes an oath that he has ownership rights to the item and that he owns no less than three-fourths of it. The one who claims half of it takes an oath that he has ownership rights to the item, and owns no less than a quarter. The first one receives three-fourths of the item and the other receives one-fourth (Rambam *Sefer Mishpatim*, *Hilkhot To'en VeNitan* 9:8; *Shulhan Arukh*, *Hoshen Mishpat* 138:2).

BACKGROUND

Oath – **שבואה**: An oath is a statement implicitly or explicitly invoking the name of God, in which one affirms a certain truth or commits himself to perform or refrain from performing a specific action. Although there is a positive mitzva in the Torah (Deuteronomy 6:13) to take oaths under certain circumstances, the Sages said that a person taking an oath must be worthy,

and that there must be no suspicion of falsehood, either intentional or unintentional. The punishment for a false oath is very severe, as it involves the desecration of God's name. Sometimes the gravity of oaths is stressed by taking the oath while holding a sacred item, e.g., a holy book, or a ritual article like phylacteries.

NOTES

But didn't Rabbenai say – **וְהִיא אָמַר וּבֶן-אָיָה**: Although Rabbenai is an *amora*, apparently he was not the one who formulated this *halakha*. Rather, it predated him. Proof of this is the fact that this *halakha* is cited elsewhere as definitive *halakha* (*Shita Mekubbetzetz*).

HALAKHA

One does not acquire a lost item through sight – **רֹאשׁוֹת בְּעֵלָמָא לֹא קָנַי לָהּ**: One does not acquire ownership of an ownerless item until he picks it up or it is on his property. Merely sighting one such item, even if one fell upon it without picking it up, does not give him ownership of it; and if another picks it up first, he acquires it when he does so (Rambam *Sefer Nezikin*, *Hilkhot Gezeila VaAveda* 17:1; *Shulhan Arukh*, *Hoshen Mishpat* 268:1).

וליתני: אֲנִי מִצְאָתִיךְ, וְאַנְּאָ יַדְעַנָּא
כְּבוֹדֶה שְׁלִי אֵין תַּנְאָ אֲנִי מִצְאָתִיךְ, הַוָּה
אַמְנִינָא: בְּאַיִל מִצְאָתִיךְ – רֹאשׁוֹת, אַף עַל
גַּב דְּלָא אַתָּא יַלְדִיה – בְּרוֹאשָׁה בְּעֵלָמָא
קָנָי. תַּנְאָ כּוֹלָה שְׁלִי – דְּבוֹרָאָה לֹא קָנָי.

ומי מִצְיָת אָמְרוֹת מֵאַי מִצְאָתִיךְ
וְרֹאשׁוֹת? וְהִיא אָמַר וּבֶן-אָיָה וּמִצְאָתָה –
דְּאַתָּא יַלְדִיה מִשְׁמָעָ!

אַיִן, וּמִצְאָתָה דְּקָרָא – דְּאַתָּא יַלְדִיה
מִשְׁמָעָ, וּמִיחּוֹת תַּנְאָ – לִשְׁנָא דְּעֵלָמָא,
קָנָט, וּמִדְחַי לְיִהְיָה אָמָר: אַנְּאָ אַשְׁבַּחַת,
וְאַף עַל גַּב דְּלָא אַתָּא יַלְדִיה, בְּרוֹאשָׁה
בְּעֵלָמָא קָנָי. תַּנְאָ כּוֹלָה שְׁלִי – דְּבוֹרָאָה
בְּעֵלָמָא לֹא קָנַי לָהּ.

וליתני כּוֹלָה שְׁלִי וְלֹא בַּשְׁי אֲנִי מִצְאָתִיךְ!
אַי תַּנְאָ כּוֹלָה שְׁלִי הַוָּה אַמְנִינָא: בְּעֵלָמָא
לְקַתְנִי מִצְאָתִיךְ – בְּרוֹאשָׁה בְּעֵלָמָא קָנָי.
תַּנְאָ אֲנִי מִצְאָתִיךְ וְתַדְרֵר תַּנְאָ כּוֹלָה
שְׁלִי – דְּמַפְשָׁנָה יִתְרֵה אַשְׁמָעֵנָן דְּרוֹאָה
לֹא קָנָי.

ומי מִצְיָת אָמְרוֹת חֲדָא קַתְנִי? וְהִיא וְוָה
לְקַתְנִי: זֶה אָוּר אֲנִי מִצְאָתִיךְ וְזֶה אָוּר
אֲנִי מִצְאָתִיךְ, זֶה אָוּר כּוֹלָה שְׁלִי וּבוּרָאָה

אָמַר רַב פַּפָּא וְאַיִתִימָא רַב שִׁימִי בֶּרֶאָשִׁי, וְאָמַר לְהָכְדִּי: רִישָׁא בְּמִצְיאָה,
סִיפָּא בְּמִקְחָה וּמִמְכָר.

ואַרְיכָא.

The Gemara asks: But let the *tanna* teach a case where each one merely claims: I found it, and I would know that the intention of each litigant is to claim: All of it is mine. The Gemara answers: If the *tanna* would teach only that each one claimed: I found it, I would say that what is the meaning of the claim: I found it? It means: I saw it. In other words, he is claiming that he saw the item first, and he believes that even though it did not reach his possession, he acquired it through mere sight. Since it would have been possible to think that this is an effective claim, the *tanna* teaches that the litigant states definitively: All of it is mine, to teach that one does not acquire a lost item through sight alone.

The Gemara challenges this explanation: But how can you say that what the term: I found it, means is actually: I saw it? But didn't Rabbenai say^N in interpreting the verse: "And so shall you do with every lost item of your brother's, which he has lost, and you have found it" (Deuteronomy 22:3), that "and you have found it" indicates that it came into his possession? The term find in the Torah refers exclusively to a situation where the item is in the possession of the finder.

The Gemara answers: Indeed, the phrase "and you have found it" in the verse certainly indicates that it came into his possession. But one might say that the *tanna* employed colloquial language in the mishna. And in colloquial language, once a person sees an item, he says: I found it, even if it did not yet come into his possession, because he believes that he acquired the item through mere sight. Since it would have been possible to understand the claim of: I found it, in this manner, the *tanna* teaches that the litigant states definitively: All of it is mine, to teach that one does not acquire a lost item through sight^H alone.

The Gemara asks: But if that was the objective of the *tanna*, let him teach that each party need only state: All of it is mine, and the litigant would not need to say: I found it. The Gemara answers: If the *tanna* had taught that it is sufficient for each party to claim only: All of it is mine, I would say that in general, when the *tanna* teaches that one claims: I found it, he means that the finder acquires the item through mere sight. Therefore, he taught that the litigants claimed: I found it, and he then taught that the litigants claimed: All of it is mine, to teach that only when the litigants each make both of these claims does the court divide the item, as from the superfluous expression in the mishna he teaches us that one does not acquire the item through sight alone.

After explaining the viability of this interpretation, the Gemara asks: But how can you say that the mishna is teaching one claim of each party? But doesn't the mishna teach: This one says, and again: This one says? In other words, the mishna writes: This one says: I found it, and that one says: I found it; and it states additionally: This one says: All of it is mine, and that one says: All of it is mine. From the fact that the *tanna* introduced each of the claims with the phrase: This one says, it is apparent that they are two separate claims, not one compound claim.

Rav Pappa said, and some say it was said by Rav Shimi bar Ashi, and some say it was an unattributed [kedi]^L statement: The first clause, where each party says: I found it, is referring to a case of a found item, where two people found one item. And the latter clause, where each party says: All of it is mine, is referring to a case of buying and selling, where each party claims that he is the one who bought the item from its seller.

And it is necessary for the mishna to teach its ruling both with regard to a found item and with regard to a purchase.

LANGUAGE

Unattributed [kedi] – **קָדִי**: There is a difference of opinion with regard to the meaning of this word. Rashi cites two interpretations. According to one interpretation, *kedi* is the name of a specific

scholar; according to Maharatz Hayyut, it is a nickname of a specific scholar. According to the other interpretation, *kedi* means unattributed, i.e., the opinion was cited anonymously.

Perek I

Daf 2 Amud b

דָּאִי תְּנַא מֵצֵאָה – הַוֹּה אֲמִינָא: מֵצֵאָה הַוֹּא דְּרֻמוֹ רַבֵּן שְׁבוּעָה עַלְיָה, מִשּׁוּם דָּמוּר וְאָמֵר: חֶבְרָא לְאוֹ מִידָּי חֶסֶר בָּהּ, אַיְלָא אַתְּפֵס וְאַתְּפֵלֵג בְּהַרְיוֹתָה. אַבְּלָמַמְקָה מִמְכָר, דְּלִיכָא לִמְימָר הַכִּי – אִיכָּא לֹא.

וְאֵי תְּנַא מֵקָח וּמִמְכָר, הַוֹּא דְּרֻמוֹ רַבֵּן שְׁבוּעָה עַלְיָה מִשּׁוּם דָּמוּר וְאָמֵר: חֶבְרָא דָמִי קָא יְהִיבָּנוּ. וְאֵנָא דָמִי קָא יְהִיבָּנוּ. הַשְׁתָּא דְצִירָכָא לְדוֹדִי אַשְׁקָלָה אָנוּ. חֶבְרָא לִיְיָלְלָה לְטָרָה לְיָבוֹן, אַבְּלָמַמְקָה, דְּלִיכָא לִמְימָר הַכִּי – אִיכָּא לֹא, צְרִיכָא.

מֵקָח וּמִמְכָר? וְלֹחֵץ וְזַיִן כְּמַפְאָן נַקְטָה! לֹא אָרִיכָא, זַנְקָט מַתְּעוּוֹיהָgo, מִתְּחִדְרָה מִדְעָתָה וּמִתְּבָלָע בְּרָחִיה, וְלֹא יַדְעָנָה מֵהַוָּא מִדְעָתָה וּמֵי הַוָּא בְּעַל בְּרָחִיה.

לִימָא מִתְּנִיחָן דְּלָא בְּבָן נֶגֶב, דָּאִי בְּבָן נֶגֶב:
הָאָמֵר:

בַּיְצָד אַלְוְאַלְוְ בְּאַיִן לִידֵי שְׁבוּעָת שְׂוָא!

אַפְּיָלוּ תִּיכָּא בְּבָן נֶגֶב: הַתָּם – וְדָאִי אַיְכָא
שְׁבוּעָת שְׂוָא, הַכָּא – אַיְכָא לִמְימָר
דְּלִיכָא שְׁבוּעָת שְׂוָא, אִימָר דְתְּרִיעִיה
בְּהַרְרוּ אֲגָבָהוּ.

As had the *tanna* taught the case of a found item alone, I would say that it is only in the case of a found item that the Sages imposed an oath upon him, as in that case one can rationalize his actions and say: The other party, the one who in fact found the item, is not losing anything by not keeping all of it, as it was not his to begin with. I will go seize it from him and divide it with him. But in the case of buying and selling, where that cannot be said,^N say that the Sages did not impose an oath upon him.

And had the *tanna* taught the case of buying and selling alone, one might say that it is specifically in this case that the Sages imposed an oath upon him, because he could rationalize his actions, saying to himself: The other party gave money to the seller and I gave money to the seller; now that I need it for myself, I will take it and let the other one go to the trouble to buy another item like the first item. But in the case of a found item, where that cannot be said, say that the Sages did not suspect that he seized an item that did not belong to him, and therefore there is no need to impose an oath upon him. Therefore, both cases are necessary.

The Gemara asks: How can the mishna be referring to a case of buying and selling? But let us see from whom the seller took the money.^N Obviously, the one who gave him the money is the one who bought it. The Gemara answers: No, it is necessary in a case where he took money from both of them.^H He accepted the money willingly from the one to whom he wanted to sell the item, and he received the money against his will from the one to whom he did not want to sell the item, and I do not know who is the one from whom he took it willingly, and who is the one from whom he received it against his will. Consequently, the matter is clarified by means of an oath.

§ The Gemara suggests: Let us say that the mishna is not in accordance with the opinion of ben Nannas,^P as, if it were in accordance with the opinion of ben Nannas, doesn't he say that an oath is not administered to two parties in court when one of them is certainly lying?

As it is stated in a mishna (*Shevuot* 45a): With regard to a case where a man said to his laborer: Go to the storekeeper and he will give you food in lieu of your salary, and sometime later the laborer claimed that the storekeeper did not give him anything while the storekeeper claimed that he did, the Rabbis say: The storekeeper and the laborer must each take an oath to support their claims, and the employer must pay them both. Ben Nannas says in response: How can you allow these people, i.e., the laborer, and those people, i.e., the storekeeper, to come to take an oath in vain?^N Since one of them is definitely lying, the Sages would not impose the taking of an oath that by definition must be false. Similarly, in the case of the mishna here, since the found item is divided between the parties in any case, according to the opinion of ben Nannas they should receive their portions without taking an oath.

The Gemara rejects this suggestion: It is even possible for you to say that the mishna is in accordance with the opinion of ben Nannas. There, in the case of the laborer and the storekeeper, an oath is certainly taken in vain, as it is clear that one of them is lying. Here, there is room to say that there is no oath taken in vain. Say that they are both taking an oath truthfully, as they lifted the item together, and therefore each of them owns half of it. In this case, ben Nannas would agree that they both take an oath.

NOTES

Where that cannot be said – **דְּלִיכָא לִמְימָר הַכִּי** – Although the other litigant would be able to reclaim half of the money he paid for the item were the court to rule that it should be divided, this is still considered a loss, as the fact that he purchased it in the first place demonstrates that he prefers having the item to having the money that it costs.

Let us see from whom the seller took the money – **לְהַלֵּל כְּמַפְאָן קַטְט**: Rashi explains that the court can ask the seller who paid him for the item, according to the principle that one is deemed credible to testify to whom he sold his item.

Tosafot explain that, regardless of this principle, the seller's testimony is effective like that of any lone witness, whose testimony obligates the party against whom he testifies to take an oath to refute his testimony.

Talmidei Rabbeinu Yona explain that the seller is no longer deemed credible to say which litigant he took the money from, as the item is no longer in his possession. The Gemara's intention is that perhaps the deceitful buyer would be embarrassed to tell a lie in the seller's presence and would retract his claim, thereby obviating the need for an oath (see *Rashba*; *Tosafot* citing *Rabbeinu Yitzhak*).

Come to take an oath in vain – **בְּאַיִן לְדִי שְׁבוּעָת שְׂוָא**: The early commentaries ask: Isn't it conceivable that one of them is telling the truth? Why does ben Nannas say that both of them will take an oath in vain? Some explain that he means that there is clearly at least one oath that is taken in vain between them. Mahari Abuhav explains that for one of the parties, the oath is a false oath, while for the other it is a gratuitous oath, which is also a form of an oath taken in vain (see *Shita Mekubetzet*).

HALAKHA

Where he took money from both of them – **דְּנַקְתָּה בְּמַתְּעוּוֹיהָgo**: In this case, two people bought an item from one person, and the one who sold it received the money from one willingly and from the other one against his will. It is unknown from whom he received the money willingly and from whom he received the money against his will. If both of them are grasping the item, each takes an oath that no less than half of the item is his and each receives half of the item and half of the money refunded from the seller (Rambam *Sefer Kinyan, Hilkhot Mekhira* 20:4; *Shulhan Arukh, Hoshen Mishpat* 222:1).

PERSONALITIES

Ben Nannas – **בָּן נֶגֶב**: This is referring to Rabbi Shimon ben Nannas, one of the *tanna'im* quoted in the mishna. Apparently, he was a colleague of Rabbi Akiva and Rabbi Yishmael, despite the fact that he was younger than them. Several of his opinions are cited in the Talmud, primarily in disputes with Rabbi Akiva on different topics. Nothing is known about the events of his life and his family. All that remains is the exceptional testimonial of Rabbi Yishmael (*Bava Batra* 175b): One who wants to acquire wisdom should engage in the study of monetary law. One who wants to engage in the study of monetary law should do his apprenticeship under the guidance of Shimon ben Nannas.

LANGUAGE

Sumakhos – סומקס: From the Greek σύμμαχος, *summakhos*, meaning ally.

PERSONALITIES

Sumakhos – סומקס: Sumakhos ben Yosef was a Sage of the last generation of the tannaitic period. He was the most prominent student of Rabbi Meir, and he transmitted to future generations significant portions of Rabbi Meir's statements. As his most prominent student, Sumakhos attempted to resolve difficulties in Rabbi Meir's statements, even after Rabbi Meir's death. Like his mentor, Sumakhos was famous for his outstanding intelligence, to the point that it was said that he would provide forty-eight reasons for every *halakha* to prove and reinforce its validity. He was considered one of the greatest Torah scholars of his generation, as he is found to have disagreed with the greatest colleagues of Rabbi Meir, including Rabbi Yosei and Rabbi Eliezer ben Ya'akov. Even Rabbi Natan consulted him on Torah matters. He evidently lived a long life, as the *amora*, Rav, had the opportunity to learn Torah from him.

HALAKHA

Property of uncertain ownership – ממון המוטל בפסק: In a case of a monetary claim, when there is no conclusive proof, even if the plaintiff states definitively the reason why he is entitled to the money and the defendant is uncertain whether or not he is liable to pay, the burden of proof rests upon the claimant. This is in accordance with the opinion of the Rabbis (Rambam *Sefer Kinyan, Hilkhot Mekhira* 20:10; *Shulhan Arukh, Hoshen Mishpat* 400:1, see 223:1 and *Beur HaGra* there).

לִימָא מַתְנִיתֵין דֶּלֶא בְּסֻמְכּוֹן, דָּא
בְּסֻמְכּוֹן – הָאָמָר: מִמּוֹן הַמּוֹטֵל
בְּפִקְדָּן – חֹלְקֵין בֶּלֶא שְׁבוּעָה.

וְאֶלְאָ מַאי – רְבָנָן, הָא אָמָרִי הַמוֹצִיאָה
מִחְבָּרוֹ עַלְיוֹ הַרְאִיתָן

הָאֵי מַאי? אֵי אָמָרָת בְּשָׁלְמוֹא רְבָנָן
הַתָּם דֶּלֶא תְּפִסִּי תְּרוּיִיהו – אָמָרָו
רְבָנָן הַמוֹצִיאָה מִחְבָּרוֹ עַלְיוֹ הַרְאִיתָה,
הַכָּא דְתְרוּיִיהוּ תְּפִסִּי – [פָלָגִי לְהָ
בְּשְׁבוּעָה].

וְאֶלְאָ אֵי אָמָרָת סֻמְכּוֹן, הַשְׁתָּא וְמָה
הַתָּם דֶּלֶא תְּפִסִּי תְּרוּיִיהו – חֹלְקֵין
בֶּלֶא שְׁבוּעָה, הַכָּא דְתְרוּיִיהוּ תְּפִסִּי
לְהָ – לֹא בֶּלֶ שְׁבָן?

אֲפִילוּ תִּימָא סֻמְכּוֹן; בֵּי אָמָר
סֻמְכּוֹן – שְׁמָא וּשְׁמָא, אֲבָל בָּרִ
וּבָרִ – לֹא אָמָר.

The Gemara suggests further: Let us say that the mishna is not in accordance with the opinion of Sumakhos,^{L⁹} as, if it were in accordance with the opinion of Sumakhos, doesn't he say the following principle: In a case of property of uncertain ownership,^H the parties divide it without taking an oath.^N

The Gemara rejects this suggestion: Rather, what opinion does the mishna follow? Does the mishna follow the opinion of the Rabbis, who disagree with Sumakhos? Don't they say that in a case of property of uncertain ownership the burden of proof rests upon the claimant? In the case of the mishna neither side offers proof.

The Gemara answers: What is this comparison? Granted, if you say that the mishna is in accordance with the opinion of the Rabbis, there is room to distinguish between two cases: There, in the case of property of uncertain ownership, where both parties are not grasping the property, the Rabbis say that the burden of proof rests upon the claimant since the one with possession of the property ostensibly has the right to that property. Here, in the case of the mishna, where both are grasping the property and neither has exclusive possession of the item, they divide it with the proviso that they take an oath.

The Gemara continues to state its proof that the mishna is not in accordance with the opinion of Sumakhos: But if you say that the mishna is in accordance with the opinion of Sumakhos, how do you resolve the following contradiction: Now, if there, in a case where they are not both grasping the property, they nevertheless divide it without taking an oath, here, where they are both grasping the property, is it not all the more so that they should divide it without taking an oath?

The Gemara rejects this suggestion: You may even say that the mishna is in accordance with the opinion of Sumakhos. When Sumakhos states that in a case of property of uncertain ownership, the parties divide it without taking an oath, that is in the case of an uncertain claim and an uncertain claim,^B i.e., when the circumstances are such that neither party can state definitively that he is entitled to the property. But in a case of a certain claim and a certain claim, where each party states definitively that he is entitled to the property, Sumakhos does not say that they divide the property without taking an oath.

NOTES

In a case of property of uncertain ownership the parties divide it without taking an oath – מִמּוֹן הַמּוֹטֵל בְּפִקְדָּן חֹלְקֵין בֶּלֶא שְׁבוּעָה: An application of this principle is in the case of an ox that gored and killed a cow, and the cow's fetus was found dead at its side, and it is not known whether the cow gave birth before the ox gored it and the fetus's death is unrelated to the goring or whether it gave birth after the ox gored it and the fetus died on account of the goring (see *Bava Kamma* 46a). Sumakhos holds that in that case, the owner of the goring ox must pay for half of the damage to the fetus, while the Rabbis hold that since the owner of the gored cow cannot prove that the fetus's death was due to the goring, the owner of the goring ox is exempt from paying for the damage to the fetus.

A second application is in the case where two people exchange a horse for a pregnant cow, while not in the same location as the cow. When the new owner of the cow goes to take the cow, he sees that she had given birth to a calf. It is unknown whether the birth was before the exchange, thereby leaving the calf in the possession of the previous owner of the cow, or after the exchange, in which case it belongs to the new owner of the cow (see 100a). Sumakhos holds that they divide the value of the calf, while the Rabbis hold that the new owner of the calf must bring proof that the birth happened after the exchange.

BACKGROUND

An uncertain claim and an uncertain claim – שְׁמָא וּשְׁמָא: When one party makes a certain claim and the other makes an uncertain claim, greater weight is generally attached to the certain claim, although the verdict is not always in his

favor. Sometimes both litigants in a court case are capable of making only uncertain claims as they were not present when the incident took place. In such cases their claims have equal weight.

ולובָה בָר וְבַהֲנָא, דָאָמֵר: אָמֵר סֻמְחָכָס
אֲפִילוּ בָרִי וּבָרִי, מַאי אֲכָא לְמִימָרוֹ?

- אֲפִילוּ תִּימָא סֻמְחָכָס, כִּי אָמֵר סֻמְחָכָס
הַיְכָא דָאִיכָא דָרְרָא דָמְמוֹנָא, אֲכָל הַיְכָא
לְלִיכָא דָרְרָא דָמְמוֹנָא - לא.

לְלֹא קָל וְחוֹמֶר הוּא? וּמָה הַתִּם דָאִיכָא
דָרְרָא דָמְמוֹנָא לִמְרָא, וְאִיכָא דָרְרָא
דָמְמוֹנָא לִמְרָא,

The Gemara asks: **And according to the opinion of Rabba bar Rav Huna, who said that Sumakhos says that even in a case of a certain claim and a certain claim the parties divide the property without an oath, what is there to say to establish the mishna in accordance with the opinion of Sumakhos?**

The Gemara answers: **You may even say that the mishna is in accordance with the opinion of Sumakhos. When Sumakhos says that property of uncertain ownership is divided, he is referring to a case where the litigants have a financial association^N with the item independent of their claims to it. But where the litigants do not have a financial association with the item beyond their claims, they do not divide it without taking an oath.**

The Gemara asks: **But is it not an *a fortiori* inference?^B If there, in a case where this Master has a financial association with the item, and that Master has a financial association with the item,**

NOTES

דררה דממוֹנוֹן: Financial association [derara demamona] – **דררה דממוֹנוֹן:** Many explanations have been suggested to explain the term *derara demamona*. Rashi's opinion is that it means loss of money, i.e., a case where one or both of the parties involved will incur a loss. *Tosafot* explain that the circumstances themselves give rise to an uncertainty, even without the litigants stating their claims. The Ramban maintains that it is referring to a circumstance where the two litigants do not contradict each other with regard to the primary facts upon which their respective claims are based. The Ramban shows that Rabbeinu Hananel and the Rambam also interpret the phrase in that manner. The Rashba suggests that both explanations are correct in different contexts and that Rashi's interpretation is appropriate here. The Rosh explains that it means that the money undoubtedly belongs to one of them (see also *Tosafot*). These commentaries each explain the succeeding stages of the discussion in accordance with their understanding of this term.

BACKGROUND

An *a fortiori* inference – **קל יותר:** One of the fundamental principles of rabbinic exegesis, the *a fortiori* inference appears in all the standard lists of exegetical principles. In essence, it is a principle of logical argumentation where a comparison is drawn between two cases, one more lenient and the other more stringent. The *a fortiori* inference asserts that if the *halakha* is stringent in a case where the ruling is usually lenient, then all the more so will it be stringent in

a case which is generally more stringent. Likewise, if the *halakha* is lenient in a case where the ruling is not usually lenient, then it will certainly be lenient in a less stringent case. *A fortiori* argumentation appears in the Bible, and the Sages compiled lists of verses in which *a fortiori* inferences appear. One example is: "If you have run with the foot soldiers, and they have wearied you, how can you contend with horses?" (Jeremiah 12:5).

Perek I

Daf 3 Amud a

אֲיִיכָא לְמִימָר כּוֹלָה לִמְרָא, וְאִיכָא לְמִימָר
כּוֹלָה לִמְרָא, אָמֵר סֻמְחָכָס: מִמּוֹן הַמוֹטֵל
בְּפֶפֶק חֹלְקוּ בְלֹא שְׁבּוּעָה, הַכָּא, וְלִיכָא
דָרְרָא דָמְמוֹנָא, דָאִיכָא לְמִימָר דְתְרוּיָהוּ
הִיא - לֹא כָל שְׁבּוּעָה?

and there is room to say that it belongs entirely to one of them, and there is also room to say that it belongs entirely to the other one, and nevertheless Sumakhos says that since it is property of uncertain ownership they divide it without taking an oath, then here, where the litigants have no financial association with the item, as there is room to say that it belongs to both of them, all the more so is it not clear that they should divide it without taking an oath?

אֲפִילוּ תִּימָא סֻמְחָכָס, שְׁבּוּעָה זֶה מְדֻרְבָּן
הִיא, כְּדָרְבֵי יְהָנָן. דָאָמֵר רַבִּי יְהָנָן:
שְׁבּוּעָה זֶה תְּקִנַת חֲכָמִים הֵיא, שְׁלָא יְהָא
כָל אַחֲרֵי אַחֲרֵי הַזָּלָן וְתוֹקֵף בְּעַלְיוֹתָן שֶׁל
תְּבִירָוּ וְאָמֵר שֶׁלִי הוּא.

The Gemara answers: **You may even say that the mishna is in accordance with the opinion of Sumakhos: This oath is instituted by rabbinic law^H in accordance with the statement of Rabbi Yohanan. As Rabbi Yohanan says: This oath, administered in the case of two people holding a garment, is an ordinance instituted by the Sages^B so that everyone will not go and seize^N the garment of another and say: It is mine.**

HALAKHA

שְׁבּוּעָה זֶה מְדֻרְבָּן הִיא: This oath is instituted by rabbinic law – **שְׁבּוּעָה זֶה מְדֻרְבָּן הִיא:** The oath taken by two individuals holding an item is a rabbinic ordinance instituted in order to prevent people from seizing items belonging to others (Rambam *Sefer Mishpatim*, *Hilkhot To'en VeNitan* 9:7).

NOTES

שֶׁלֹּא יְהָא כָל – **אַחֲרֵי הַזָּלָן וְתוֹקֵף בְּעַלְיוֹתָן:** So that everyone will not go and seize – **שֶׁלֹּא יְהָא כָל**: Sumakhos does not require an oath in cases where he rules that the property should be divided because this rabbinic oath was instituted only in commonly occurring cases. In less common cases, the Sages did not institute an oath, just as many of their enactments did not apply to rare occurrences (*Talmidei Rabbeinu Peretz*; *Rosh*; *Ritva*).

BACKGROUND

Ordinance instituted by the Sages – **תקנות חכמים:** The Sages instituted *halakhot* in order to regulate daily life. These ordinances strengthen the observance of mitzvot and, in particular, civil matters. Some ordinances are attributed to Moses, e.g., the public reading of the Torah. Others with regard to the settlement of Eretz Yisrael and the public and private use of the land are attributed to Joshua. Some are ascribed to Ezra the Scribe, e.g., the convening

of courts on Mondays and Thursdays and the *halakhot* of modesty. In later periods of history, rabbis of various communities instituted their own ordinances, e.g., the ordinances of Speyer, Worms, and Mainz with regard to marriage contracts, or the establishment of local community yeshivot instituted by the Committee of the Four Lands. Ordinances are distinct from decrees of the Sages, which are rabbinic extensions of Torah prohibitions.

NOTES

The entire deposit will be placed in a safe place until Elijah comes – **הכל יהא מונח עד שיבא אליהו**: Most authorities hold that this ruling applies only in cases where the property is already in the possession of a third party. When the litigants themselves are in possession of the property, the ruling is different, e.g., the court administers oaths to both parties or leaves the matter to the litigants and lets the stronger one prevail (Meiri).

מי יימר דאייבא אליהו? Even if they lifted the item together, isn't at least one of them being deceitful, as each one claims that it is entirely his? The answer is that it is possible that each one is not deceitful but rather mistaken, believing that he lifted the item before the other (*Torat Hayim*).

BACKGROUND

Until Elijah comes – **עד שיבא אליהו**: In cases of monetary matters that cannot be resolved, e.g., a lost item that no one claims or an item that is claimed by two people, the court may rule that the item should remain in the hands of the court or of a third party until Elijah the prophet comes. This means it is in the hands of the court indefinitely, until the question can be resolved through prophetic vision. This concept appears initially in the book of Ezra, where it is recounted that priests who could not prove their priestly lineage were removed from the priesthood "until a priest will stand with the *Urim VeTummim*" (Ezra 2:63). When Elijah comes, he will not establish new *halakhot* but he will resolve issues about which there is currently insufficient evidence to reach a clear solution.

Rather it is clearly as we explained initially – **אליהו**: Sometimes, after proposing two answers to a question, the Gemara rejects the second one and states: Rather, it is clearly as we explained initially, i.e., only the first answer is correct. This expression is used when the first answer is unattributed, as in the Gemara here. When the first answer is attributed to one of the Sages, the expression used is: Rather, it is clearly in accordance with the opinion of Rabbi so-and-so.

ליכא מותניתן דלא ברבבי יוסף, דאייבא
יוסי – ה' אמר: אם בן מה הפסיד רמאין?
אליהו, הכל יהא מונח עד שיבא אליהו.

§ The Gemara suggests: Let us say that the mishna is not in accordance with the opinion of Rabbi Yosei. As, if you say that the ruling is in accordance with the opinion of Rabbi Yosei, doesn't he say that a case cannot be decided in a manner in which there is no deterrent for one taking a false claim to court (37a)? He says this with regard to a case where two people deposited money with the same person. One deposited one hundred dinars and one deposited two hundred, and the bailee forgot which of them deposited the larger sum. Subsequently, each claimed ownership of the larger sum and was prepared to take an oath to that effect. The Rabbis say that each should receive the smaller sum and the remainder should be held until Elijah the prophet prophetically resolves the uncertainty. Rabbi Yosei says: If so, what did the swindler lose? Rather, the entire deposit will be placed in a safe place until Elijah comes.^{NB}

אליהו מא – רבנן? פון דאמרי רבנן:
השאר יהא מונח עד שיבא אליהו, ה' א
נמי בשאר דמי, דספיקה היא!

האי מא? אי אמרת בשלמא רבנן, ה' תם
וזודאי הא מנה חדיד מיניהם הוא – אבורי
רבנן: יהא מונח עד שיבא אליהו, ה' בא
דאיבא לא לימייר דתורי יהו הוא – אמר רבן
פלוי בשבועה.

אליהו מא אמרת רבבי יוסף היא, השטה ומוה
התם זבוזאי איבא מנה למור ואיבא מנה
למור – אמר רבבי יוסף יהא מונח עד שיבא
אליהו, ה' בא דאייבא לא לימייר דחדיד מיניהם
הוא – לא כל שפוני?

אפיקולו פימא רבבי יוסף, ה' תם – וזה אייבא
רמאין, ה' בא – מי יימר דאייבא רמאין?
איקפא טרוי יהו בהדי הרדי אגבוהו.

אי נמי, התם קנס ליה ורבבי יוסף לרמאין
בי ה' כי דלויד, ה' בא מא פסידא אית
ליה דלויד?

תינח מציאות, מוקח וממוכר מא ייבא
למיימור? אליה מוחורתא כדרשין מעיקרא.

The Gemara counters: Rather, what is suggested? Is it suggested that the mishna is in accordance with the opinion of the Rabbis, who disagree with Rabbi Yosei? Since the Rabbis say there: The remainder is placed in a safe place until Elijah comes, this case of the mishna concerning the garment is also comparable to the remainder in the case of the deposit, as it is uncertain to whom the entire garment belongs. It should therefore be placed in a safe place until the matter is resolved.

The Gemara answers: What is this comparison? Granted, if you say that the mishna is in accordance with the opinion of the Rabbis there, in the case of the depositors, where these one hundred dinars certainly belong to only one of them and the Rabbis say that it is placed in a safe place until Elijah comes, here, in the case of this mishna, where there is room to say that it belongs to both of them, the Rabbis say that they divide it with the proviso that they take an oath.

But if you say that the mishna is in accordance with the opinion of Rabbi Yosei, there is a difficulty. Now consider, if there, in a case where it is certain that there are one hundred dinars that belong to one of the litigants and there are one hundred dinars that belong to the other one, nevertheless, Rabbi Yosei says that the entire sum is placed in a safe place until Elijah comes, here, where there is room to say that it all belongs to only one of them, all the more so is it not clear that it should be placed in a safe place until Elijah comes, as one of the claims may be entirely fraudulent?

The Gemara rejects this suggestion: You may even say that the mishna is in accordance with the opinion of Rabbi Yosei: There, in the case of the deposit, there is certainly a swindler between the two depositors. By contrast, here, in the case of the mishna, who is to say that there is a swindler?^N Say that both of them lifted the garment at the same time, and therefore there is no reason to penalize them by placing the garment in a safe place.

Alternatively, there is room to distinguish between the cases: There, Rabbi Yosei penalizes the swindler by confiscating his deposit so that he will admit that he lied in order to receive his original deposit of one hundred dinars from the bailee. Here, in the case of the garment, what loss would a swindler incur that would prompt him to admit that he is lying? If the item is placed in a safe place, he loses nothing.

The Gemara rejects this alternative explanation: This distinction works out well in the case of a found item where he did not pay anything for it. Consequently, he has no incentive to admit that he lied. But in a case of buying and selling, what is there to say? Both parties paid for the item and prefer to receive the item. Rather, the distinction is clearly as we explained initially.^B The difference between the cases is that in the mishna, there is no certainty that one of them is lying.

בֵּין לְרָבֶן וּבֵין לִבְיּוֹסֵי, הַתָּם גַּבְיוֹנָה
עַל פְּנַקְסָוּ דְּקָתְנִי זֶה נְשָׁבָע וְנוּטָל וְזֶה
נְשָׁבָע וְנוּטָל

מַאי שְׁנָא דְּלָא אָמְרִין נְפִקְיָה לְמַמְוָנָה
מִבְּעֵל הַבַּיִת, וַיהֲא מֻוָּחָד עַד שִׁיבָּא
אַלְיָהוּ, דְּהָא בָּדָא אִיכָּא רְמָא?

אמְרֵי: הַתָּם הַיּוֹ טָעֵמָא, דְּאָמְרָ לֵיהּ
חַנְנָנִי לְבַעַל הַבַּיִת: אַנְנָא שְׁלִיחָתָא דִּירָךְ
קָא עֲבִידִינָא, מַאי אִיתָ לְגַבְיוֹ שְׁכִירָא? אָרְךָ
עַל גַּבְיוֹ דְּקָא מִשְׁתְּבָעָ לֵיהּ לְאַמְרָתָן לֵי
בְּשִׁבּוּעָה, אָתָה הַאֲמָנָתָה, דְּלָא אָמְרָתָה
לֵי בְּסָחָדי הַבָּבָל.

וְשִׁבְיָר נָמִי אָמְרָ לֵיהּ לְבַעַל הַבַּיִת: אַנְנָא
עֲבָדִי עֲבִירָתָא גַּבְעָ, מַאי אִיתָ לְיַגְבָּ
חַנְנָנִי? אָרְךָ עַל גַּבְיוֹ דְּמִשְׁתְּבָעָ לֵיהּ לְאַ
מְהַיִּמן לֵי, הַלְּכָן תְּרוּיָהוּ מִשְׁתְּבָעָ
וּשְׂקָלִי מִבְּעֵל הַבַּיִת.

תַּנִּי רַבִּי חִיאָ: "מִנָּה לֵי בִּירָךְ" וְהִלְּהָ
אָוּמָר: "אֵין לְךָ בִּידֵי בְּלוּסָ", וְהַעֲדִים
מַעֲדִים אָוֹתוֹ שְׁשׁוֹ לְחַמְשִׁים וּוּ - נְנוֹתָן
לְוּ חַמְשִׁים וּוּ, וְשָׁבָע עַל הַשָּׁאָר,

שְׁלָא תְּהִא הַזְּדָאת פִּוּ גְּדוֹלָה מִהְעֱדָאת
עֲדִים, מַקְלָל וְחוֹמָר.

The Gemara asks: **Both according to the opinion of the Rabbis and according to the opinion of Rabbi Yosei, there, with regard to the case of a storekeeper relying on his ledger,^h** it is unclear why the money is not held until the matter is clarified. This is referring to a case where an employer tells a storekeeper to give food to his laborer in lieu of his salary, and later the storekeeper claims that he gave it to him but the laborer claims that he did not receive it. Both parties therefore claim payment from the employer. As the mishna (*Shevuot 45a*) teaches that **this one, the storekeeper, takes an oath that he gave the food to the laborer and receives payment from the employer, and that one, the laborer, takes an oath that he was not given the food and takes his salary from the employer.**

What is different in that case, that we do not say: Appropriate the money from the employer,ⁿ and it is placed in a safe place until Elijah comes? Apparently, we should say this because there is certainly a swindler among the litigants, since it is impossible that both the storekeeper and the laborer are telling the truth.

The Sages say in response: **There, this is the reason that the money is not set aside: Because the storekeeper can say to the employer: I carried out your agencyⁿ to give the food to the laborer, and I have dealings only with you. What business do I have with the hired laborer? Even if he takes an oath to me that he did not receive the food, he is not trustworthy to me by virtue of his oath. You are the one who trusted him, as you did not say to me: Give him the food in the presence of witnesses.** Therefore, you are obligated to pay me. If you have a grievance, settle it with your employee.

And the hired laborer can also say to the employer: I worked for you. What relationship do I have with the storekeeper? Even if he takes an oath to me that he gave me the change, he is not trustworthy to me by virtue of his oath. Therefore, both parties take an oath and take payment from the employer.

§ Rabbi Hiyya taught a *baraita*: If one says to another: I have one hundred dinars [maneh]^l in your possession that you borrowed from me and did not repay, and the other party says: Nothing of yours is in my possession, and the witnesses testify that he hasⁿ fifty dinars that he owes the claimant, he gives him fifty dinars and takes an oath about the remainder, i.e., that he did not borrow the fifty remaining dinars from him.^h

This ruling is derived via an *a fortiori* inference from the *halakha* that one who admits to part of a claim that is brought against him is obligated to take an oath that he owes no more than the amount that he admits to have borrowed. The inference is: **As the admission of one's own mouth should not carry greater weight than the testimony of witnesses.** Since in this case witnesses testify that he owes an amount equal to part of the claim, he is all the more so obligated to take an oath with regard to the rest of the sum.

HALAKHA

Storekeeper relying on his ledger – **חַנְנָנִי עַל פְּנַקְסָוּ:** If an employer said to a storekeeper: Give my laborer a *sela*, and subsequently the storekeeper claims that he gave him the *sela* but the laborer claims that he never received it, the storekeeper takes an oath that he gave him the *sela*, and the laborer takes an oath that he never received it, and they each collect a *sela* from the employer. If the employer denies having given these instructions to the storekeeper and there are no witnesses of the incident, he is exempt from paying him (Rambam *Sefer Mishpatim*, *Hilkhot Malve VeLoveh* 16:5; *Shulhan Arukh*, *Hoshen Mishpat* 91:1).

Denial of the entire claim and testimony confirming part of it – **כְּפִירָה בְּכָל וִישָׁוּת עַל מִקְצָת:** If one completely denies a claim that he owes a certain amount of money and witnesses testify that he owes part of that sum, he incurs liability to pay the amount to which the witnesses attest, and he is obligated by Torah law to take an oath with regard to the rest of the sum, in accordance with the *baraita* taught by Rabbi Hiyya (Rambam *Sefer Mishpatim*, *Hilkhot To'en VeNitan* 4:10; *Shulhan Arukh*, *Hoshen Mishpat* 75:4).

LANGUAGE

One hundred dinars [*maneh*] – **מִנְהָ:** This word is biblical in origin (I Kings 10:17) and was incorporated into the Greek μνᾶ, *mna*, and the Latin *mina*. The *maneh* was a coin that weighed one hundred drachmas, or 433 g, which was equal to the weight of one hundred dinars. It was therefore valued at one hundred silver dinars.

NOTES

Appropriate the money from the employer – **נְפִקְיָה לְמַמְוָנָה:** The early commentaries ask why the Gemara does not ask a more basic question about this case: Why must the employer pay twice? Why can't he keep his money and whoever is the swindler will lose out? They answer that this question is in any event addressed by the Gemara's answer (*Shita Mekubbetzet*).

I carried out your agency – **אַנְנָא שְׁלִיחָתָא דִּירָךְ קָא עֲבִידִינָא:** Tosafot ask why the employer cannot claim that the storekeeper should have realized on his own that he should have given the food to the laborer in the presence of witnesses, and since

he did not, he did not carry out the agency of the employer properly. Some commentaries answer that a storekeeper does not usually give his merchandise to customers in the presence of witnesses unless he is explicitly instructed to do so.

And the witnesses testify that he has – **וְהַעֲדִים מַעֲדִים אָוֹתוֹ שִׁיטָּל:** How can the witnesses testify definitively that the money is still in his possession and that he did not pay? Several different explanations are suggested. One explanation is that they testify that they heard the debtor deny borrowing the sum altogether (Rashbatz).

NOTES

ותנא תונא: two people, etc. – **וותנא תונא:** This is a similar *halakha* but not necessarily a confirmation of the *halakha* cited in Rabbi Hiyya's *baraita*, as the oath in the mishna is different from all other oaths administered by Torah law. Whereas usually it is the defendant who takes the oath, here both parties take an oath and divide the garment. The Gemara does not mention this because on 4a it rejects the comparison between the two oaths (Rashba).

A person does not exhibit insolence in the presence of his creditor – **אין אָדָם מֵעַי פְּנֵיו בְּפֶנִי בַּעַל חֹבֶן:** According to Rashi, this explains why one who admits to part of a claim is not the equivalent of one returning a lost item, who is exempt from taking an oath. *Tosafot* explain that this reasoning answers why the defendant is not exempt from taking an oath due to the principle of *miggo*, as he could have denied owing the debt entirely instead of admitting to owing part of it.

HALAKHA

One who admits to part of the claim must take an oath – **מִזְרָה קְצֵת הַטְּעָנָה יִשְׁבַּע:** If one claims that another owes him money, and instead of completely denying it the defendant admits to part of the claim, by Torah law the defendant is obligated to take an oath with regard to the rest of the money (Rambam *Sefer Mishpatim*, *Hilkhot To'en VeNitan* 1:1; *Shulhan Arukh*, *Hoshen Mishpat* 87:1).

ותנא תונא: **"שְׁנִים אֲוֹתִין בְּטַלְתָּה זֶה אָמַר אֲנִי מִצְאָתְךָ וּכְאַתָּה אַתָּה דְּתָפִיס – אָמַן כָּהֵד דָמָא דְתָפִיס הָאֵי דִידָה הָוֹא, וְקַתְנִי יִשְׁבַּע!"**

The Gemara comments: And the *tanna* of the mishna also taught a similar *halakha*: In a case of **two people**^N who came to court **holding a garment**, where this one says: I found it, and the other one says: I found it, each litigant takes an oath and they divide the garment. And here, in the case of a found item, since each litigant is holding part of the garment, it is clear to us that what is in this one's grasp is his, and what is in that one's grasp is his. This is tantamount to witnesses testifying that part of the claim of each litigant is legitimate. **And the mishna teaches that each of them takes an oath.**

מאי "שְׁלָא תֹהֶא הַזְדָאת פִי גְדוֹלָה מִהְעָדָת עֲדִים מַקֵּל וְחוֹמֵר?" שֶׁלֶא תָאָמֵר: הַזְדָאת פִי הוּא דָרְמִיא וְרַחְמָנָא שְׁבִיעָה עַלְיהָ, כְּרֻבָּה.

The Gemara clarifies: For what reason is it necessary to have the *a fortiori* inference: As the admission of one's own mouth should not carry greater weight than the testimony of witnesses? Isn't the comparison to the case of an admission to part of a claim self-evident? The Gemara answers: It is necessary so that you will not say that it is only in a case of the admission of one's own mouth that the Merciful One imposes an oath upon him, in accordance with the explanation of Rabba.

דָמַר רַבָּה: מִפְנֵי מִה אָמַרְתָּ תֹרַה מוֹדָה מִקְצֵת הַטְּעָנָה יִשְׁבַּע – תְּזַקָּה, אַינְיָן אָדָם מֵעַי פְּנֵי בְּפֶנִי בַּעַל חֹבֶן, וְהָא בְּכָלְילָה בְשִׁי דְנַכְפָּרִיהָ, וְהָא דָלָא כְפָרִיהָ – מְשׁוֹם דָאַיְן אָדָם מֵעַי פְּנֵי,

As Rabba says: For what reason did the Torah say that one who admits to part of the claim must take an oath?^H It is because there is a presumption that a person does not exhibit insolence by lying in the presence of his creditor,^N who had done him a favor by lending money to him. And this person who denies part of the claim actually wants to deny all of the debt, so as to be exempt, and this fact that he does not deny all of it is because a person does not exhibit insolence.

Perek I**Daf 3 Amud b****NOTES**

He was evading him – **אֲשֶׁר־טוֹבֵשׁ הָוֹא קָא מִשְׁתְּפִיט מִינִי:** Without this explanation, it would have been reasoned that an oath cannot be administered to one who is suspected of denying debt, as he is likewise suspected of being willing to take an oath falsely. Therefore, the Gemara explains that his denial is merely a way to buy time, and he is not suspected of intending to evade the debt entirely (Rashi).

But isn't the admission of a litigant similar to one hundred witnesses – **זֶה אַהֲרֹן הַזְדָאת בַּעַל דַי בְּמַהְמָה עָדִים דַבִּי:** The reason the court accepts a litigant's admission is subject to disagreement. Some say that the reason is that it includes a commitment. Just as one can obligate himself to give a gift to another by making a commitment, so too, by admitting that he owes another a certain amount, he thereby renders himself liable to pay that same sum (Mahari ben Lev). Others explain that the Torah accords credibility to an admission similar to that which is given to the testimony of two witnesses (*Ketzot HaHoshen*).

וְהָא בְּכָלְילָה בְשִׁי דְלוֹדִי לִיהְיָה, וְהָא דָלָא אֲדִי – אֲשֶׁר־טוֹבֵשׁ הָוֹא דָקָא מִשְׁתְּפִיט מִינִי, סְבָר עַד דָהּוּ לוֹזֵי וּפְרַעַנָּא לִיהְיָה. אַמְרָר וְרַחְמָנָא: רַמְיָ שְׁבִיעָה עַלְיהָ בַּי הַיִּבְרָה לְדוֹדִי לִיהְיָה בְּכָלְילָה.

And in order not to exhibit insolence, this person wants to admit to the creditor with regard to all of the debt, and this fact that he denies owing him in part is because he reasons: If I admit to him with regard to all of the debt, he will lodge a claim against me with regard to all of it, and right now I do not have the money to pay. He was evading his creditor,^N and thought: I will continue doing so until I have money, and then I will pay him all of it. This rationalization enables one to falsely deny part of a claim. **And therefore, the Merciful One states: Impose an oath on him, in order to ensure that he will admit to him with regard to all of the debt.**

אֲבָל הַשְׁדָאת עָדִים, דָלִיבָא לִמְימָר הַבִּי – אִימָא לֹא, קָא מְשַׁמְעַ לֹן קָל וְחוֹמֵר.

But in a case where the testimony of witnesses renders him liable to pay part of the debt, as one cannot say this explanation since this logic applies only when it is the debtor admitting to part of the claim, say that he has no intention to repay the debt at all, and he is completely dishonest and therefore his oath is worthless. Therefore, the *baraita* teaches us that the defendant's obligation to take an oath is derived by means of an *a fortiori* inference.

וְמַא קָל וְחוֹמֵר? וְמַה פִי שְׁאַי מִוחִיבָן בְּמַמוֹן – מִוחִיבָן שְׁבִיעָה, עַדְיָם שְׁמַחִיבָן אָתוֹ מַמוֹן – אִינוֹ דַי שְׁמַחִיבָן אָתוֹ שְׁבִיעָה.

The Gemara explains: And what is the explanation of this *a fortiori* inference? It should be explained as follows: If admitting to part of a claim by his own mouth, which does not render him liable to pay the money he admitted to owing, nevertheless obligates him to take an oath, with regard to the testimony of witnesses, which does render him liable to pay money,^H is it not logical that it should obligate him to take an oath with regard to the remaining sum?

וְפִי אַיִן מִוחִיבָן בְּמַמוֹן? וְהָא הַזְדָאת בַּעַל דַי בְּמַהְמָה עָדִים דַבִּי!

The Gemara asks: But does the admission of his own mouth not render him liable to pay money? But isn't the legal status of the admission of a litigant similar to that of one hundred witnesses?^{NH}

מֵאַיִן מְמוֹן – קָנֶס. וּמָה פִי שָׁאוֹן בְּחוֹבֵב
קָנֶס – מְחוֹבֵב שָׁבוֹעָה, עֲדִים שְׂמִחֵי בֵין
אָוֹתָן קָנֶס – אֵינוֹ דִין שְׂמִחֵי בֵין אָוֹתָן
שָׁבוֹעָה.

מָה לְפִיו – שָׁפֵן מְחוֹבֵב קָרְבָּן, תָּמָם
בְּעֵדִים שָׁאוֹן מְחוֹבֵב אָוֹתָן קָרְבָּן!

הָא לֹא קָשִׁיא, רֹبֵי חִיאָה בָּרְבִּי מְאֵיר
סְבִּירָא לְיָה, דָאָמוֹ: עֲדִים מְחוֹבֵב אָוֹתָן
קָרְבָּן מְקֻלָּוּ וְחוֹמָר.

דָתָן: אָמְרוּ לוּ שְׁנִים אֲכַלְתָּ חָלָב וְחוֹמָר.
אָוּמָר לֹא אֲכַלְתִּי, רֹבֵי מְאֵיר מְחוֹבֵב,
וְחַכְמִים פּוֹטְרִים.

אָמָר רֹבֵי מְאֵיר: אִם הַבְּיאָוֹת שְׁנִים לִירֵי
מִיתָה חִמּוֹרָה, לֹא יִבְיאָוֹת לִירֵי קָרְבָּן
הַקְלָל? אָמְרוּ לוּ: מָה אִם יַרְצָח לְוָמֵיד
הַיִתְיָ – יִפְטַר.

אֶלָּא, מָה לְפִיו – שָׁפֵן מְחוֹבֵב אָשָׁם.
אָשָׁם הַיָּנוּ קָרְבָּן.

The Gemara answers: **What is the money that one is not liable to pay based on his own admission?** It is referring to the payment of a fine [kenes].^{nl} In all cases where the Torah imposes a fine, if the defendant admits his liability voluntarily he is not required to pay it. Therefore, the *a fortiori* inference is as follows: If the admission of one's own mouth, which does not render him liable to pay a fine,^h nevertheless renders him liable to take an oath with regard to the part of the claim to which he did not admit, with regard to the testimony of witnesses, which does render him liable to pay a fine,^h is it not logical that it should render him liable to take an oath with regard to the remaining sum?

The Gemara attempts to refute the inference: **What is notable about the admission of one's mouth?** It is notable in that it renders him liable to bring an offering.^b One who admits that he transgressed a prohibition unwittingly is obligated to bring an offering for atonement. **Would you say that the halakhot of admission apply with regard to the testimony of witnesses, which, in a case where they testify that one transgressed a prohibition, does not obligate him to bring an offering?**^{nh} If he denies it?

The Gemara answers: **This is not difficult. Rabbi Hiyya holds in accordance with the opinion of Rabbi Meir, who says that the testimony of witnesses renders him liable to bring an offering, based on an *a fortiori* inference.**

As we learned in a mishna (Karetot 11b): If two witnesses say to a person: You ate forbidden fat,^b and he says: I did not eat it, Rabbi Meir deems him liable to bring an offering and the Rabbis deem him exempt from bringing an offering.

Rabbi Meir said to the Rabbis: If two witnesses can cause a person to receive the death penalty, which is a severe penalty, can they not also cause one to receive the light penalty of having to bring an offering? The Rabbis said to him: **What if he would want to say: I sinned intentionally?**ⁿ Wouldn't he be exempt? Since one does not bring an offering for an intentional sin, the testimony of witnesses has no bearing in this matter, as they cannot prove that his transgression was unwitting. Therefore, even if he claims that he did not sin at all, the testimony does not obligate him to bring an offering.

The Gemara suggests another refutation: **Rather, what is notable about the admission of one's mouth?** It is notable in that it renders a robber liable to bring a guilt-offering. One who admits that he robbed another is required to bring a guilt-offering for atonement, whereas if witnesses testify that he robbed another he is not obligated to bring a guilt-offering. The Gemara answers: **A guilt-offering is the same as any other offering, about which there is a dispute between Rabbi Meir and the Rabbis as to whether the testimony of witnesses renders one liable to bring an offering.**

NOTES

Fine – קָנֶס: Any payment imposed by the Torah that is not equal to the value of the damage caused is referred to as a fine. The halakha is that one can be required to pay a fine only by the ruling of an ordained court based on the testimony of witnesses. There are different opinions among the halakhic authorities with regard to whether one can be made liable to pay fines in modern times, as there are no ordained judges.

Would you say...does not obligate him to bring an offering – תָּמָם...אֵין מְחוֹבֵב אָוֹתָן קָרְבָּן: The Ramban questions this statement, as if witnesses accuse one of sinning unwittingly and he does not deny the charge, he is obligated to bring an offering. The Rashba answers that in such a case, one does not bring the offering due to the testimony of the witnesses. Rather, he is obligated to bring it because his silence when confronted by their accusation is tantamount to an admission of guilt.

I sinned intentionally – פָזֵר הִיִּתִי: It is a principle that almost all offerings, with the exception of certain guilt-offerings, are brought exclusively for unwitting transgressions. One who performs a transgression willfully is not obligated to bring an offering and he does not gain atonement if he brings one.

LANGUAGE

Fine [kenes] – קָנֶס: From the Latin word census, meaning a tax or a population tally, parallel to the word's use in modern English.

HALAKHA

One's mouth which does not render him liable to pay a fine – פִי שָׁאוֹן מְחוֹבֵב קָנֶס: One who is liable to pay a fine by Torah law and admits his guilt of his own volition is not required to pay the fine (Rambam Sefer Nezikin, Hilkhos Geneiva 1:5, 3:7 and Sefer Mishpatim, Hilkhos To'en VeNitan 1:16-17; Shulchan Arukh, Hoshen Mishpat 87:26).

Testimony of witnesses which does render him liable to pay a fine – עֲדִים שְׂמִחֵי בֵין אָוֹתָן קָרְבָּן: One is liable to pay a fine by Torah law if two witnesses testify that he acted in a manner rendering him liable to pay that fine (Rambam Sefer Mishpatim, Hilkhos Nezikin, Hilkhos Geneiva 1:4).

Which does not obligate him to bring an offering – שָׁאוֹן מְחוֹבֵב אָוֹתָן קָרְבָּן: If witnesses testify that one has committed a transgression for which he is obligated to bring a sin-offering but he contradicts their testimony, he is not obligated to bring the offering, in accordance with the opinion of the Rabbis (Rambam Sefer Korbanot, Hilkhos Shegagot 3:1).

BACKGROUND

Renders him liable to bring an offering – מְחוֹבֵב קָרְבָּן: One who unwittingly commits a transgression punishable by *karet* must bring a sin-offering as atonement. A sin-offering brought by an individual is a female lamb or goat less than one year old. It must be slaughtered in the northern section of the Temple courtyard and its blood is collected there. The blood is sprinkled on each of the four corners of the altar, the fats are consumed on the altar, and its meat is eaten by the priests. The Gemara is referring to a case where an individual sinned unwittingly and then later became aware of his transgression. To atone for his act he must confess his sin and bring a sin-offering. Alternatively, the argument offered here might relate to the specific case of a guilt-offering for robbery. Such an offering is brought by one who denied owing a debt, took a false oath that he owed

nothing, and later admitted that he owed the money and that he had taken the false oath.

Fat – בָּלָט: This term is referring to animal fats forbidden for consumption by Torah law. Intentionally eating those specific fats of kosher domesticated animals is punishable by *karet* (Leviticus 7:22-25). A sin-offering must be brought for eating them unwittingly. The fats of undomesticated kosher animals and of kosher birds may be eaten. Among the signs differentiating forbidden from permitted fats is the fact that the forbidden fats lie above the meat and are not intertwined with it. They are enclosed by a thin membrane and are easily peeled away from the meat. Most of the forbidden fats of an animal offering are sacrificed on the altar.

NOTES

In that it is not subject to contradiction or to refutation as testimony of conspiring witnesses – **שְׁבַן אִינוּ בָּהֲכַחַתָּה בְּבָהְמָה**: If one admitted that he borrowed money and did not repay the loan, and witnesses testify that he repaid the loan or that on the day that he claimed to have borrowed the money he was not in the location where he said that the loan took place, the court ignores their testimony (Rabbeinu Hananel).

BACKGROUND

Conspiring witnesses – בְּבָהְמָה: This term refers specifically to a case where witnesses are proved to have perjured themselves when examining the testimony of a pair of witness against the testimony of another pair. There are two ways in which the testimony of witnesses can be invalidated: (1) If two other witnesses testify that the incident did not happen as described by the first pair of witnesses, the testimony of neither pair is accepted and the matter remains unresolved. (2) If two witnesses testify that the first pair of witnesses, whose testimony condemned the defendant, happened to have been elsewhere, with the second pair of witnesses, at the time that the purported incident transpired, and therefore they could not have witnessed the events about which they testified, the first pair are considered to be conspiring witnesses. In such a case, the testimony of the second pair of witnesses is accepted and the testimony of the first pair is rejected. Furthermore, the first pair are liable to pay the penalty they sought to inflict on the defendant through their testimony (see Deuteronomy 19:16–19). If their testimony would have resulted in the defendant's execution, they are both executed. If their testimony would have resulted in a fine, these witnesses are themselves liable to pay their victim the amount they sought to have him pay. The specifics of this *halakha* are analyzed in great detail in tractate *Makkot*.

One witness – עֶד אֶחָד: The Torah states: "One witness shall not rise up against a person" (Deuteronomy 19:15). Consequently, in most instances, the testimony of a single witness has no legal standing. In most cases it is prohibited for a single witness to testify, lest he damage the defendant's reputation. Nevertheless, there are certain instances where credence is accorded to the testimony of a single witness. In monetary cases, if a witness corroborates a claimant's statements, his testimony is not sufficient to render the defendant liable to pay. Nevertheless, his testimony obligates the defendant to take an oath to support his own statements.

אֵלָא, מַה לְפָיו – שְׁבַן מְחִיבו חֹמֶש! הָא
לֹא קָשֵׁיא, רַبִּי חִיאָ בָבִי מַאי רַבִּי
לֵיה, כִּי הַיכִּי דְמַחְיֵב לֵיה קָרְבָּן מַקְלָה
וְחוֹמֶשׁ – מְחִיב לֵיה חֹמֶשׁ מַקְלָה וְחוֹמֶשׁ.

The Gemara suggests another refutation: Rather, what is notable about the admission of one's mouth? It is notable in that it renders one who unlawfully possessed the money of another liable to pay an additional one-fifth of the value of that money when he returns it of his own accord (see Leviticus 5:20–26). By contrast, if witnesses testify that he unlawfully possessed the money of another, he is not obligated to add one-fifth to his payment. The Gemara answers: This is not difficult; Rabbi Hiyya holds in accordance with the opinion of Rabbi Meir. Just as Rabbi Meir holds that the testimony of witnesses renders one liable to bring an offering due to an *a fortiori* inference, he also holds that the testimony of witnesses renders one liable to add one-fifth, via an *a fortiori* inference.

אֵלָא, מַה לְפָיו – שְׁבַן אִינוּ בָּהֲכַחַתָּה
בְּבָהְמָה, הָאָמָר בָּעִידִים שְׁבַן בָּהֲכַחַתָּה
בְּבָהְמָה!

אֵלָא, אָתֵיא מַעַד אֶחָד. וּמַה עַד אֶחָד
שָׁאַי מְחִיבו מַמְנוֹן – מְחִיבו שְׁבוּעָה,
עַדְים שְׁפָחָיִבְנִין אַוּתוֹ מַמְנוֹן – אִינוּ דַי
שְׁמַחְיֵבְנִין אַוּתוֹ שְׁבוּעָה.

מַה לְעַד אֶחָד – שְׁבַן עַל מַה שְׁהָוָא מַעַיד
הָא נִשְׁבָּע.

The Gemara suggests another refutation: Rather, what is notable about the admission of one's mouth? It is notable in that it is not subject to contradiction or to refutation as applies to the testimony of conspiring witnesses,^{NB} as the testimony of witnesses cannot negate the admission of a litigant. Would you say the same *halakhot* with regard to witnesses, who are subject to contradiction and to refutation as conspiring witnesses? Evidently, the testimony of witnesses is weaker, in some aspects, than the admission of a litigant.

Rather, Rabbi Hiyya's *a fortiori* inference is apparently derived from the *halakha* of the testimony of one witness.^B If the testimony of one witness, which does not render the defendant liable to pay money, obligates him to take an oath to contradict the testimony, is it not logical that the testimony of two witnesses, which render one liable to pay money, also obligates him to take an oath?

The Gemara rejects this inference: What is notable about the testimony of one witness? It is notable in that the defendant takes an oath with regard to the matter concerning which he testifies, not with regard to other claims raised by the claimant.

Perek I**Daf 4 Amud a****NOTES**

Extension of an oath – גָּלְגָּל שְׁבוּעָה: If one was obligated to take an oath in response to a specific claim, the plaintiff can demand that the defendant take an oath about additional claims that he has against him, even if with regard to those claims alone, the plaintiff could not have obligated him to take an oath. This principle is a Torah law, and it is derived from the oath of a *sota*, a woman suspected by her husband of having been unfaithful. She must take an oath with regard to the suspicion of infidelity supported by circumstantial evidence, and she also takes an oath with regard to any additional suspicions.

הָאָמָר בָּעִידִים, שְׁעַל מַה שְׁפָרְפָּר הָוָא
נִשְׁבָּע!

אֵלָא אָמָר רַב פָּפָא: אָתֵיא מַגְלָגָל שְׁבוּעָה
דַעַד אֶחָד.

מַה לְגָלָגָל שְׁבוּעָה דַעַד אֶחָד שְׁבַן
שְׁבוּעָה גּוֹרָת שְׁבוּעָה, הָאָמָר בָּעִידִים
דַמְנוֹן קָא מְחִיבִּי!

Would you say the same with regard to two witnesses, in which case the defendant takes an oath with regard to the claim that he denies, and not with regard to the debt about which they testify?

Rather, Rav Pappa said: Rabbi Hiyya's *a fortiori* inference is derived from the extension of an oath^N that the testimony of one witness obligates him to take. Once a defendant is obligated to take an oath, the plaintiff can demand that he take an oath with regard to other claims that he has against him as well.

The Gemara rejects this: What is notable about the extension of an oath that is obligated by the testimony of one witness? It is notable in that one oath leads to another oath. The obligation to take the second oath is not caused directly by the witness. Would you say the same in the case of witnesses, whose testimony renders the defendant liable to pay money? Incurring liability to pay one part of the claim does not extend further and incur liability to pay the rest.

בַּיו יָכִיתְתֶּה מֵה לְפָיו – שְׁבִן אִינוּ בְּהַכְחַשָּׁה.
עד אַחַד יוֹכִיתֶת, שִׁישַׁן בְּהַכְחַשָּׁה וְמִיחַיּוֹ
שְׁבֻועָה.

מֵה לְעֵד אַחַד – שְׁבִן עַל מֵה שִׁמְעֵיד הוּא
שְׁבֻועָה, תֹּאמֶר בְּעָדִים שְׁעַל מֵה שִׁכְפָּר הוּא
שְׁבֻועָה! פַּיו יוֹכִיתֶת.

וְחוֹר הַדִּין: לֹא רָאִי זֶה כְּרָאִי זֶה, וּלֹא רָאִי
זֶה כְּרָאִי זֶה, הַצָּדֶה שְׁבַחֲנוֹ – שְׁעַל יְדֵי
טֻעָנָה וּכְפִרָּה הַזָּה בְּאָנוּ וְנִשְׁבַּעַ. אָךְ אָנוּ
אָבִיא עָדִים, שְׁעַל יְדֵי טֻעָנָה וּכְפִרָּה הַזָּה
בְּאָנוּ – וְנִשְׁבַּעַ.

מֵה לְהַצָּדֶה שְׁבַחֲנוֹ – שְׁבִן לֹא הַוְזִיק
בְּפָרוֹן, תֹּאמֶר בְּעָדִים שְׁבִן הַוְזִיק בְּפָרוֹן!

בְּעָדִים מֵי הַוְזִיק בְּפָרוֹן? וְהַאֲמֵר רָב אִידִי
בָּר אַבְּיָן אָמֵר רָב חֶסְדָּא: הַכּוֹפֵר בְּמַלְוָה –
כְּשֶׁר לְעִדרות, בְּפִיקְדוֹן – פְּסָול לְעִדרות.

אַלְאָ, פַּרְיךְ הַכִּי: מֵה לְהַצָּדֶה שְׁבַחֲנוֹ –
שְׁבִן אִינְן בְּתוּרַת הַוְמָה, תֹּאמֶר בְּעָדִים
שִׁישַׁן בְּתוּרַת הַוְמָה!

The Gemara responds: The admission of one's **mouth can prove** that an element other than an oath can cause the defendant to be obligated to take an oath with regard to the rest of the claim. Although the *a fortiori* inference from admission alone was already rejected, due to the claim of: **What is notable about the admission of one's mouth, it is notable in that it is not subject to contradiction; the testimony of one witness can prove that even testimony that is subject to contradiction renders one liable to take an oath.**

The *a fortiori* inference from the testimony of one witness was also rejected, as **what is notable about the extension of an oath resulting from the testimony of one witness?** It is notable in that the defendant **takes an oath with regard to** the matter concerning that which he testifies. **Would you say the same with regard to two witnesses,** in which case the defendant **takes an oath with regard to** the claim that he denies? Admission to part of a claim by one's **mouth can prove** this difference irrelevant, as a defendant can be required to take an oath even with regard to a claim that he denies.

And the derivation has reverted to its starting point. At this point, the *halakha* is derived from a combination of the two sources: **The aspect of this case, admission, is not like^N the aspect of that case,** the extension of an oath resulting from the testimony of one witness, and **the aspect of that case is not like the aspect of this case.** Their **common denominator** is that these cases come before the court with a **claim and its denial**, and the defendant is obligated to **take an oath.** I will also include in the obligation to take an oath the case of Rabbi Hiyya, where there is testimony of two **witnesses** about part of the debt, **which comes before the court with a claim and its denial.** And therefore the defendant is obligated to **take an oath.** This is the inference to which Rabbi Hiyya was referring.

The Gemara rejects this: **What is notable about their common denominator,** i.e., the common denominator shared by admission to part of a claim by the defendant and the extension of an oath resulting from the testimony of one witness? It is notable in that the defendant **does not assume the presumptive status of one who falsely denies his debts.** He has not been proven to be lying, so he is trusted to take an oath. **Would you say the same with regard to** the case of two **witnesses** who contradict the defendant's denial of the plaintiff's claim, where the defendant **assumes the presumptive status of one who falsely denies his debts?** In this case, he is no longer deemed trustworthy and his oath may not be credible.

The Gemara asks: **But in a case where his denial is contradicted by two witnesses, does he assume the presumptive status of one who falsely denies his debts?** But doesn't Rav Idi bar Avin say that **Rav Hisda says: One who denies a claim that he received a loan and is contradicted by witnesses is fit to bear witness in a different case.** He does not assume the status of a confirmed liar, as perhaps he intended to return the money afterward and denied the claim only in order to buy time until he acquired the necessary funds to repay the loan. By contrast, if one denies receiving a **deposit** and witnesses testify that he is lying, he is **disqualified from bearing witness** in other cases, as in that case he has no reason to buy time and is clearly a robber.^H Therefore, Rabbi Hiyya's *a fortiori* inference stands.

Rather, refute the inference like this: What is notable about their common denominator, i.e., the common denominator shared by admission to part of a claim by the defendant and the extension of an oath resulting from the testimony of one witness? It is notable in that these cases are **not subject to the halakhot of conspiring witnesses.**^N Even if witnesses testify that the single witness lied, he is not required to pay the defendant the sum that he sought to require him to pay, which is the punishment exacted upon conspiring witnesses. **Would you say the same halakhot with regard to two witnesses, who are subject to the halakhot of conspiring witnesses?**

NOTES

And the derivation has reverted to its starting point, the aspect of this case is not like, etc. – **וְחוֹר הַדִּין לֹא אָנוּ זֶה וּמָה**: This is the standard method of inferring a *halakha* from two cases. When the inference from one case is rejected because it includes a unique aspect, the second case proves that this aspect is irrelevant to the *halakha* in question. If the proof from the second source is also rejected because it too contains an exceptional aspect, the first case is employed again. Ultimately, the *halakha* is derived from the common denominator of both cases without taking into account the unique stringencies of each.

Are not subject to the *halakhot of conspiring witnesses* – **אַיִן בְּתוּרַת הַוְמָה**: The testimony of a single witness is subject to certain *halakhot* of conspiring witnesses, whereas the admission of the defendant is not subject to these *halakhot* at all. Although the *halakha* of a single witness and the *halakha* of the admission of the defendant are not identical, and therefore the *halakha* is not a true common denominator, the Gemara initially deemed the similarity as sufficient enough of a common denominator to refute the derivation based on two separate cases, which is a weaker type of derivation.

HALAKHA

One who denies a loan and one who denies a deposit – **סְפָר בְּבָילָה וְסְפָר בְּקִידּוֹן**: One who denied having a debt, even if witnesses contradict his denial, is neither considered suspect with regard to taking a false oath, nor is he disqualified from testifying in other cases, as long as he did not take an oath falsely. One who denied receiving a deposit, and witnesses contradict his denial, is suspected of taking a false oath, and he is disqualified from testifying in other cases (Rambam *Sefer Mishpatim, Hilkhos To'en VeNitan* 2:2; Shulhan Arukh, *Hoshen Mishpat* 92:4).

NOTES

Does not refute based on the *halakhot* of conspiring witnesses – **תורות הומה לא פריך**: Some of the early commentaries explain that since the extent to which these two cases are not subject to the *halakhot* of conspiring testimony is different, the refutation is invalid (Rosh; Rabbeinu Hananel, cited in *Shita Mekubetzet*). Furthermore, a single witness is not subject to the penalty of a conspiring witness not because the doctrine does not apply, but because he was capable only of causing the defendant to take an oath, which is a consequence that cannot be imposed on the witness.

הא לא קשייא, רבבי חייא תורת הומה לא פריך.

The Gemara rejects this: **This is not difficult**, as Rabbi Hiyya does not refute this inference based on the punishment accompanying the *halakhot of conspiring witnesses*.^N In other words, Rabbi Hiyya does not accept this refutation, as while this *halakha* does not apply at all to the admission of a defendant, it does apply to the testimony of a single witness in that if two witnesses testify that the single witness is a conspiring witness, his testimony is rendered void.

אללא דקאמר ותננא תונא, מי דמי? הדר –
בלולוה איתיה סחדי, ללויה לית ליה
סחדי דלא מספיק ליה ולא מידי, דאי
חו ליה סחדי ללויה דלא מספיק ליה ולא
מידי – לא בעי רבבי חייא לאשتبוחין.
הכא, כי היכי דאן סחדי בהאי – אן
סחדי בהאי, ואפfilו היכי משtabuin!

The Gemara asks: **But with regard to that which was stated** (3a): **And the tanna of the mishna also taught** a similar *halakha* to that of Rabbi Hiyya, there is a difficulty. Is the case of the mishna comparable to the *halakha* of Rabbi Hiyya? There, in the case of witnesses to a loan, the creditor has witnesses to support his claim that there was a loan while the debtor does not have witnesses to support his claim that he does not owe the creditor anything. As, if the debtor had witnesses to support his claim that he does not owe the creditor anything, Rabbi Hiyya would not require him to take an oath. By contrast, here, in the case of the mishna, just as it is clear to us that this claimant has a right to the garment, as he is holding it, so too, is it clear to us that that other claimant has a right to the garment, as he is also holding it. Yet nevertheless, in the mishna each party is required to take an oath.

אללא, כי איתמר ותננא תונא – אאייך
רוב חייא איתITEM. דאמר רבבי חייא: מנה
לי בידך, והלה אומר: אין לך ברי אלא
חמשים זיין והילך – חייב.

Rather, when the phrase was stated: **And the tanna of the mishna also taught** a similar *halakha*, it was stated with regard to another statement of Rabbi Hiyya. As Rabbi Hiyya says: If one says to another: I have one hundred dinars in your possession, and the other says in response: You have only fifty dinars in my possession, and here you are, handing him the money, he is obligated to take an oath that he does not owe the remainder.

מאי טעם – הילך גמי במוודה מוקצת
הטענה דמי,

What is the reason? One who says: **Here you are**, while immediately giving the money, is also considered like one who admits to part of the claim. It cannot be reasoned that by immediately handing over the amount to which he admits, the defendant thereby reduces the claim by the fifty dinars that he denies owing, and he is consequently exempt from taking an oath like any defendant who denies the claim entirely.

ותננא תונא: "שנים אוחזין בטלית".
ההא הכא, כיון דתפיס – אן סחדי דמאי
תפיס הילך הו, וקחני ישבע.

Concerning this ruling of Rabbi Hiyya, the Gemara comments: **And the tanna of the mishna taught** a similar *halakha*, citing the mishna beginning: If two people came to court holding a garment.

ההא הכא, כיון דתפיס – אן סחדי דמאי
תפיס הילך הו, וקחני ישבע.

The Gemara explains the comparison: **And here**, in the mishna, since each one grasps half the garment, it is clear to us that what one grasps is in his possession, just as if the other one had said to him: **Here you are**, I am giving it to you. **And the mishna teaches that he takes an oath.** Evidently, in a case where one denies part of a claim that is brought against him, and with regard to the rest of the claim he says to the claimant: **Here you are**, he is obligated to take an oath.

רוב ששת אמר: הילך פטור. מאי טעם –
כיון דאמר ליה הילך, הני זיין דקא מודי,
בגוייהו – כמאן דנקיט להו במלוה דמי,
באין חמשים – הא לא מודי, הילך
ליילך הוודאת מוקצת הטענה.

And Rav Sheshet says: One who says about part of the claim: **Here you are**, and denies the rest of the claim, is exempt^H from taking an oath about the rest. **What is the reason?** Since he said to him: **Here you are**, those dinars that he admitted to owing are considered as if the creditor has them in his possession already, and with regard to the other fifty dinars, the defendant did not admit to owing them. Therefore, there is no admission to part of the claim.

HALAKHA

One who says, here you are, is exempt – הילך פטור – One who admits to part of a claim made against him, and concerning that part says to the plaintiff: The sum that I admit I owe you is now yours, either by giving it to him immediately, or, according to some opinions, by giving him collateral for that amount, is exempt

from taking an oath by Torah law. He is, by rabbinic law, obligated to take an oath known as an oath of inducement, just like anyone who totally denies a claim (Rambam *Sefer Mishpatim*, *Hilkhot To'en VeNitan* 1:3; *Shulhan Arukh*, *Hoshen Mishpat* 75:6, 87:1).

ולוב ששות קשיה מותניין אמר לך
רב ששות מותניין פקנית חכמים היא.

ואיך: אין, פקנית חכמים היא. וביה,
אי אמרת בשלמה מדוריתא הילך
חייב – מתקני רבנן שבועה בעין
DAOITIA. אלא אי אמרת DAOITIA
הילך פטור – מתקני רבנן שבועה
דילטיא דכוותה DAOITIA?

The Gemara asks: **But according to the opinion of Rav Sheshet, the mishna is difficult**, as it seems to be a comparable case and yet an oath is required. The Gemara answers: **Rav Sheshet could have said to you:** The oath mentioned in the mishna is a rabbinic ordinance, which pertains specifically to that case. In general, a debtor who immediately hands over the money that he admits to owing is exempt from taking an oath.

And how would the other amora, Rabbi Hiyya, respond to this assertion? Indeed, he would agree that it is a rabbinic ordinance. However, granted, if you say that by Torah law one who says: Here you are, is obligated to take an oath, that explains why the Sages instituted the oath mentioned in the mishna, as it is similar to an oath administered by Torah law. But if you say that by Torah law one who says: Here you are, is exempt from taking an oath, would the Sages institute an oath that has no corresponding oath in Torah law?^N Clearly, there is a basis for the oath instituted by the Sages in Torah law, and that basis is the case where the defendant says: Here you are.

מחלוקת:

The Gemara raises an objection to the opinion of Rabbi Hiyya from a *baraita*:

NOTES

Would the Sages institute an oath that has no corresponding oath in Torah law – **מתקני רבנן שבועה דילטיא דכוותה DAOITIA**: The Rosh asks: The Sages did institute various oaths that have no precedent in the Torah, e.g., those taken by the plaintiff in certain cases, enabling him to collect money owed to him. He answers that in those cases, there was an obligation by Torah law for the defendant to take an oath, which, under certain circumstances, the Sages transferred to the plaintiff (see *Shevuot* 44b). By contrast, here, there is no obligation to take an oath by Torah law, and therefore the Sages would not institute an oath unless there was a corresponding oath required by Torah law.

Perek I

Daf 4 Amud b

סלים, דינרין. מלוה אומו. חמץ, ולה
אומר: שלש. רבוי שמיעון בן אלעוז
אומר: הויל והזדה מקצת השטנה –
שבע, רבוי עקיבא אומר: איןו אלא
כממשיב אבידה, ופטור.

קחני מיהת ובי שמיעון בן אלעוז אומר:
הויל והזדה מקצת השטנה – ישבע
טעמא – דברם שלש, הא שיטים –
פטור, והאי שטר דקמוד' ביה – הילך
הוא, ושמע מינפה: הילך פטור!

If it is written in a promissory note that one borrowed an unspecified amount of *sela'im*, or that one borrowed an unspecified amount of *dinars*,^{HN} and the creditor says: I lent you five *sela*, and the debtor says: You lent me only three, in this case **Rabbi Shimon ben Elazar says: Since the debtor admitted to part of the claim, he takes an oath. Rabbi Akiva says: Since the wording of the note indicates only that he owes two dinars, the minimum plural amount, by admitting that he owes three he is merely the equivalent of one returning a lost item,^N and he is exempt^N from taking an oath.**

In any event, the *baraita* teaches that **Rabbi Shimon ben Elazar says: Since the debtor admitted to part of the claim, he takes an oath.** This indicates that the reason that he is obligated to take an oath is specifically because he said that he owes three dinars, but had he admitted to owing only two, he would have been exempt from taking an oath. And concerning the minimal obligation recorded in this promissory note, to which he admits, which is two dinars, it is as though he said: **Here you are.** An obligation recorded in a promissory note is tantamount to an obligation concerning which the defendant says: **Here you are.** And therefore, conclude from it that one who says: **Here you are, is exempt** from taking an oath with regard to the part of the claim he denies.

HALAKHA

Sela'im, dinars – סלים דינרין: If a promissory note mentions an unspecified amount of dinars, and the creditor claims that the debtor owes five and the debtor says that he owes only two, the debtor is exempt from taking an oath administered by Torah law. If the debtor says that he owes three dinars, he is also exempt, as he is considered the equivalent of one returning a lost item. Some hold that he is exempt from taking even an oath of inducement, which is enacted by rabbinic law (*Bah*). Others maintain that he is obligated to take an oath of inducement, as his status is not identical to that of one returning a lost item (Rambam *Sefer Mishpatim, Hilkhot To'en VeNitan* 4:5; *Shulhan Arukh, Hoshen Mishpat* 88:32, and *Shakh* and *Sma* there).

NOTES

Sela'im, dinars – סלים דינרין: Why does the *baraita* cite two examples, i.e., both *sela'im* and dinars? In *Shita Mekubetzet* it is explained that the *baraita* teaches that even if the defendant admits that he owes a large sum like three *sela*, Rabbi Shimon ben Elazar does not deem him credible without taking an oath, and conversely, Rabbi Akiva deems him exempt from taking an oath even if he admits only that he owes three dinars. Others explain that the *baraita* teaches that the debtor cannot claim that if the debt was five dinars it should have been written as a *sela* and one dinar, as a *sela* is worth four dinars. This is because it is common to record the sum of five dinars as five dinars (*Nahalat Yisrael*).

Rabbi Akiva says, he is merely the equivalent of one returning a lost item – **רבוי עקיבא אומר אין אלא כמשיב אבידה –** Some versions of the text cite Rabbi Yaakov as the author of this opinion

instead of Rabbi Akiva, either because it is unusual for a *tanna* of a later generation, Rabbi Shimon ben Elazar, to engage in a dispute with a *tanna* of an earlier generation, or because the ensuing discussion is inconsistent with Rabbi Akiva's opinion elsewhere. Others reject this variant version as there are no manuscripts that support it (Rosh; *Tosafot*).

And he is exempt – גפטור: Why is the claim that he is equivalent to one returning a lost item not made with regard to every case of one who admits to part of the claim? The Rambam explains that in most cases of one who admits to part of the claim there is a presumption that one would not be insolent to his creditor and deny his debt entirely. Here, where the note supports his claim, the defendant might have the audacity to do so. Therefore, only here, if he admits to part of the claim, is he halakhically equivalent to one returning a lost item.

לא, לעולם אימא לך: שתים חיב, והאי דקתי נשלש – לאפוקי מרבבי עקיבא רצאמו משיב אבידה הוי ופטור, קא משמע לו דמזה מקצת הטענה חי וחייב.

אי הCY, רבינו שמעון בן אלעזר אומר הוילז' והודה מקצת הטענה ישבע? אף זה ישבע מבע ליה!

אללא, לעולם שתים פטור, והילך חיב. וטהני הCY – דקא מסיע ליה שטרא.

אי נמי, משום דהוה ליה שטר שעבוד קרקעות – ואין נשבעין על בפיית שעבוד קרקעות.

אי פא דמותיב מסיפה: רבינו עקיבא אומר: אין אללא במשיב אבידה ופטור. – טעמא – רצאמו שלש, הא שתים – חיב, והא שטר בין דקא מוויה ביה מהילך דמי, שמע מינה הילך חיב!

לא, לעולם אימא לך: שתים נמי פטור, והאי דקתי נשלש – לאפוקי מרבבי שמעון בן אלעזר, רצאמו מזה מקצת הטענה חי וחייב, קא משמע לו דמשיב אבידה הוי ופטור.

The Gemara rejects this: No, actually I will say to you that even if he admitted that he owes two dinars he is **obligated** to take an oath, and the reason that the *baraita* teaches the dispute specifically with regard to the case of three dinars is not to exclude a case where he admits that he owes only two, but rather it is to exclude the opinion of Rabbi Akiva, who says that he is the equivalent of one returning a lost item, and he is therefore **exempt**. Therefore, Rabbi Shimon ben Elazar teaches us that he is considered like one who admits to part of the claim, and he is **obligated** to take an oath.

The Gemara asks: If so, the *baraita* should have been phrased differently. If the defendant is obligated to take an oath even in a case where he admits that he owes two dinars, rather than stating that Rabbi Shimon ben Elazar says: Since the debtor admitted to part of the claim, he takes an oath, the *baraita* should have stated: Even this one, who admits to owing three dinars, takes an oath, in addition to one who admits to owing two dinars.

Rather, that explanation should be rejected. Actually, if he admits that he owes two dinars, he is **exempt** from taking an oath, but nevertheless, one who says: Here you are, is **obligated** to take an oath. And the reason for this distinction is that here, the case is **different**, as the note supports him, i.e., it indicates that he owes two dinars. Therefore, he is exempt from taking an oath with regard to the rest.

Alternatively, if he admits to owing two dinars he is exempt for a different reason: Because a promissory note creates a lien on the debtor's land, and there is a principle that one does not take an oath with regard to a debtor's denial of a debt that is secured with a lien on land.^{NH} Oaths are administered only when one denies owing money or movable property.

There are those who raise an objection to Rav Sheshet's opinion from the latter clause of this *baraita*, which teaches that Rabbi Akiva says: He is merely the equivalent of one returning a lost item and is **exempt** from taking an oath. The Gemara infers: The reason he is exempt is that he said that he owes three dinars. But had he admitted to owing only two, he would have been **obligated** to take an oath. And concerning the minimal obligation recorded in this promissory note, to which he admits, which is two dinars, it is as though he said: Here you are. Learn from it that one who says: Here you are, is **obligated** to take an oath.

The Gemara rejects this: No, actually I will say to you that if he admits that he owes two dinars he is also **exempt** from taking an oath, and the reason that the *baraita* teaches the dispute specifically with regard to the case of three dinars is to exclude the opinion of Rabbi Shimon ben Elazar, who says that he is considered one who admits to part of the claim and he is **obligated** to take an oath. Rabbi Akiva, therefore, teaches us that in his opinion, the defendant is the equivalent of one returning a lost item, and he is **exempt** from taking an oath.

NOTES

An oath with regard to land – שבועה על הקרקעות: The Sages (*Bava Metzia* 57b) derive that the court administers an oath to someone only for a claim for movable property that has intrinsic value, from the verse: "For any matter of trespass, for an ox, for a donkey, for a sheep, for a garment, for any lost item about which one shall say: This is it, the claims of both of them shall

come before the judges" (Exodus 22:8). It is unclear whether there are *tanna'im* who dispute this principle. The *ge'onim* write that since courts no longer administer oaths that are required by Torah law, but instead declare that if the defendant is lying he is excommunicated, this is done for claims involving land as well.

HALAKHA

One does not take an oath with regard to denial of a debt that is secured with a lien on land – אין נשבעין על בפיית שעבוד קרקעות: By Torah law, one is not obligated to take an oath in response to claims involving land. By rabbinic law, one does

take an oath, known as an oath of inducement (Rambam *Sefer Mishpatim*, *Hilkhot To'en VeNitan* 5:1; *Shulhan Arukh*, *Hoshen Mishpat* 95:1).

הַכִּי נָמֵי מְסֻתְּבָרָא: דָּא סְלָקָא דַעֲתָן
 שְׁתִים חִיב - בְּשֶׁלֶשׁ הַכִּי פָטָר לִיהְיָה
 עַקְבָּבָא? הָא יָא עֲרוֹמִי קָא מְעָרִים, סְבָרָ
 אָי אַמְנָא שְׁתִים - בְּשָׁעָנָא אַשְׁתְּבָועַי,
 אַיְמָא שֶׁלֶשׁ, דָּא הַכִּי בְּמַשְׁבֵּב אַבְדִּיחָה -
 וְאַיפָּטוֹר. אַלְא שְׁמַע מִינָה: שְׁתִים נָמֵי
 פָטָר.

אַלְא קָשְׁיא לְבִי חִיא! שָׁאַי הַתָּם,
 דָּקָא מְסֻעָה לִיהְיָה שְׂטוֹרָא. אַיְנָמִי, מְשׁוּם
 דְּרוֹהָה לִיהְיָה שְׁטוֹר שְׁעַבּוֹד קְרָקָעוֹת, וְאַיְן
 נְשָׁבָעַנִי עַל כְּפִירַת שְׁעַבּוֹד קְרָקָעוֹת.

מִתְּבֵב מָר וּזְטוּרָא בְּרִיהָ דְּרַב נָחָמן: טַעַנָּנוּ
 בְּלִים וּקְרָקָעוֹת, הַזָּהָה בְּכָלִים וּכְפָר
 בְּקְרָקָעוֹת, הַזָּהָה בְּקְרָקָעוֹת וּכְפָר
 בְּכָלִים - פָטָוֹר. הַזָּהָה בְּמִקְצַת קְרָקָעוֹת -
 פָטָוֹר. מִקְצַת בְּלִים - חִיב.

טַעַמָּא - דְכָלִים וּקְרָקָעוֹת, דְקָרָקָע
 לְאוֹ בַת שְׁבוּעָה הֵיא. הָא בְּלִים וּכְלִים
 דּוּמִיא דְכָלִים וּקְרָקָעוֹת - חִיב. הַכִּי
 רְקִמִּי? לְאוֹ דְאַמְרָו לִיהְיָה הַיִּלְךְ, וּשְׁמַע מִינָה
 הַלְּךְ חִיב!

לֹא, לְעוֹלָם אַיְמָא לְקָא בְּלִים וּכְלִים נָמֵי
 פָטָוֹר, וְהָא דְקָרָקָע בְּלִים וּקְרָקָעוֹת - הָא
 קָא מְשַׁבְּעַנִי לְזָהָה הַזָּהָה בְּמִקְצַת בְּלִים -
 חִיב אָרֶךְ עַל קְרָקָעוֹת.

מַאי קָא מְשַׁבְּעַנִי לְזָהָה וּזְקוּקִין? תִּנְיָא:
 וּזְקוּקִין הַנְּכָסִים שְׁאַי לְזָהָן אַחֲרִיוֹת,
 אֶת הַנְּכָסִים שְׁוֵישׁ לְזָהָן אַחֲרִיוֹת לִשְׁבַּע
 עַלְיָהֶם!

הַכָּא - עַיְקָר, הַתָּם - אַגְבָּגָרָא נְסִבָּה.

The Gemara comments: So too, it is reasonable to explain the *baraita* as just explained, as, if it enters your mind that one who admits that he owes two dinars is obligated to take an oath, how does Rabbi Akiva deem him exempt in a case where he admits that he owes three dinars? Perhaps this debtor is employing artifice, thinking: If I say that I owe two, I will be required to take an oath. Therefore, I will say that I owe three so that I will be considered equivalent to one returning a lost item and will be exempt from taking an oath. Rather, learn from it that even if he admits that he owes only two dinars, he is also exempt from taking an oath.

The Gemara asks: But this explanation poses a difficulty to the opinion of Rabbi Hiyya,^N that a defendant is obligated to take an oath in a case where he says: Here you are. In other words, Rabbi Hiyya's opinion is negated by the case of one who admits that he owes only two dinars, where he is exempt from taking an oath. The Gemara answers: The case there is different, as the note supports him. Therefore, he is not required to take an oath. Alternatively, he is exempt because a promissory note creates a lien on the debtor's land, and there is a principle that one does not take an oath with regard to a debtor's denial of a debt that is secured with a lien on land.

Mar Zutra, son of Rav Nahman, raises an objection to the opinion of Rav Sheshet from a mishna (*Shevuot* 38b): If one claimed that another owed him vessels and land,^H and the defendant admitted to owing him vessels but denied that he owes him land, or conversely, if he admitted to owing him land but denied that he owes him vessels, he is exempt from taking an oath with regard to what he denies. If he admitted that he owes him part of the land, he is exempt. If he admitted to owing some of the vessels, he is obligated to take an oath with regard to the remainder.

The Gemara infers: The reason he is exempt in the first cases is because the claim is for vessels and land, as a claim with regard to land is not subject to an oath. But if the claim is for vessels and vessels, i.e., two sets of vessels, in a manner similar to the case of a claim for vessels and land, he is obligated to take an oath. What are the circumstances of such a case? Is it not a case where he said to him: Here you are? And learn from the mishna that one who says: Here you are, is obligated to take an oath.

The Gemara answers: No, actually I will say to you that if the claim is for vessels and vessels he is also exempt. And the fact that the mishna teaches the case of vessels and land teaches us this different halakha: If he admitted that he owes some of the vessels, and is therefore obligated to take an oath, he is also obligated to take an oath with regard to the land that he denied owing his creditor, although in and of itself one does not take an oath with regard to land.

The Gemara asks: What is this teaching us? Is this teaching the halakha of binding? According to this halakha, one who is obligated to take an oath in response to a claim can be required to take an oath with regard to an additional claim of land. This cannot be, as we already learned this halakha in a mishna in tractate *Kiddushin* (26a): When there is a claim brought against a person for movable property and land, and he is obligated to take an oath with regard to the property that does not serve as a guarantee, i.e., the movable property, it binds the property that serves as a guarantee, i.e., the land, so that he is forced to take an oath with regard to it too. Why is this halakha repeated in tractate *Shevuot*?

The Gemara answers: The mishna here, in *Shevuot*, is the main reference to this halakha, as it discusses the halakhot of oaths, whereas the mishna there, in tractate *Kiddushin*, cites it incidentally, in the context of a broader survey of the difference between these two types of property.

NOTES

קְשִׁיעָה – לְבִי חִיא: Rabbi Hiyya himself had the status of a *tanna*, so why was he not permitted to disagree with other *tanna'im*? The answer is that the Gemara often assumes that the last generation of *tanna'im* did not consider themselves worthy of contradicting earlier *tanna'im*. In this specific case, since there are already two opinions in this dispute, it is presumed that Rabbi Hiyya does not disagree with both (Maharatz Hayyut).

HALAKHA

If one claimed that another owed him vessels and land – בְּטַעַנָּנוּ בְּלִים וּקְרָקָעוֹת: If the plaintiff claimed that he was owed both vessels and land, and the defendant admitted to owing him all the vessels he claimed but denied that he owed him any of the land, or if he admitted to owing him all or some of the land but denied owing him any of the vessels, he is exempt from taking an oath by Torah law. If the defendant denied owing him any of the land but admitted to owing him some of the vessels, while denying that he owed him the other vessels, he is obligated by Torah law to take an oath with regard to the vessels he denied owing, and the obligation is extended to include the land he denied owing (Rambam *Sefer Mishpatim*, *Hilkhot To'en VeNitan* 53; *Shulhan Arukh*, *Hoshen Mishpat* 95:8).

Perek I

Daf 5 Amud a

NOTES

Where one dug pits – **הַיְכָא דִּחְפֵּר בָּה בָּרוֹת**: There are those who explain that since the defendant dug pits in the land, the plaintiff is demanding not only his land in return but also compensation for the damage, which has the status of movable property (*Ge'onic; Shita Mekubetzet*). Others explain that the plaintiff is not demanding compensation but is demanding that the defendant repair the field (Rosh; Ritva).

וְלֹא מִן דָּא כָּמוּ הַיְלֵךְ פֶּטוֹר, אֲמֵנִי
אַיִצְרִיךְ קָרָא לְמַעַטִּית קְרֻקָּעַ מְשֻׁבָּעָה?
הָא בֶּל קְרֻקָּעַ הַיְלֵךְ הוּא!

אמָר לְךָ אַיִצְרִיךְ קָרָא הַיְכָא דִּחְפֵּר בָּה
בָּרוֹת שִׁיחָן וּמִשּׁוֹת.

אי נִמֵּי הַיְכָא דִּסְתַּעַנוּ בְּלִים וּקְרֻקָּעָות,
וְהַזְּרָה בְּלִים וּכְפָרָ בְּקְרֻקָּעָות.

תֵּא שְׁמַע, דָּתַי רַמִּי בֶּרֶת חִמָּא: אַרְבָּעָה
שׁוֹמְרִין עֲרֵיכִין בְּפִרְיוֹה בְּמִקְצָת וְהַזְּדָה
בְּמִקְצָת: שׁוֹמֵר חַנְסָם וְהַשׂוֹאֵל, נֹשָׁא
שָׁכָר וְהַשּׁוֹכֵר.

הַיְכָיְדִּמְיָה – לֹאו דָא כָּמוּ לִיה הַיְלֵךְ?

The Gemara asks: **But according to Rav Sheshet**, with regard to the one who says that in a case where the debtor says: **Here you are**, he is exempt from taking an oath, **why was it necessary** for the verse to exclude a claim of land ownership from the defendant's obligation to take an oath when he admits part of the claim? The exclusion of land is derived from the verse: "For any matter of trespass, for an ox, for a donkey, for a sheep, for a garment, for any lost item about which one shall say: This is it, the claims of both of them shall come before the judges" (Exodus 22:8). **But all cases involving one who admits to part of the claim involving land** are cases where the defendant effectively says: **Here you are**, as land always remains in its location. Therefore, the derivation from the verse appears to be unnecessary.

The Gemara answers that Rav Sheshet could have said to you: **The verse was necessary** in a case where the defendant **dug pitsⁿ, ditches, and caves** in the land that he is returning to the plaintiff. Since the land has been damaged and is no longer in its prior state, the defendant is not effectively saying: **Here you are**.

Alternatively, there is the case where one claimed that another owed him **vessels and land**, and the defendant **admitted to the claim involving the vessels and denied the claim involving the land**. The verse teaches that although the defendant denied part of the claim and did not effectively say: **Here you are**, he is not obligated to take an oath with regard to the land.

Come and hear a proof for Rabbi Hiyya's opinion, as Rami bar Hama teaches a *baraita*: All four types of bailees^b mentioned in the Torah require **denial of part of the claim and admission of part of the claim** in order to incur liability to take an oath when someone claims to have given them an item as a deposit. This applies to **an unpaid bailee**, who receives no payment in exchange for safeguarding the item, and a **borrower**, who does not pay the owner in exchange for the right to use the item, as well as a **paid bailee**, who receives payment in exchange for safeguarding the item, and a **renter**, who rents an item in order to use it and pays the owner in exchange for that right.

The Gemara elaborates: **What are the circumstances** in which the bailees both deny part of the claim and admit to part of the claim? **Is it not referring** to a case where the bailee **said to** the one who deposited the item: With regard to the items that I admit to having received from you: **Here you are**, and as to the rest, I never received them and I am therefore not obligated to return them? This supports Rabbi Hiyya's opinion that one who says: **Here you are**, is obligated to take an oath.

BACKGROUND

Four bailees – **אַרְבָּעָה שׁוֹמְרִין**: The Torah has four categories of bailees, each of whom is administered an oath under different circumstances when unable or unwilling to return the item with which he was entrusted. An unpaid bailee is one who accepts an item for safekeeping without remuneration and without permission to use it for his own benefit. He is not required to recompense the owner of the item if it is lost or stolen from him, or if it is damaged due to an accident, and he is liable only if he is criminally negligent or if he misappropriates the item (see Exodus 22:6–8). A paid bailee is one who accepts an item for safekeeping for a fee. In addition to the responsibilities imposed on an unpaid bailee, a paid bailee must compensate the owner of the item if it is lost or stolen. He is exempt from liability if the item is taken by force or damaged due to an accident (see Exodus 22:9–12). The

third type of bailee is a borrower, one who receives an item from its owner with permission to use it without having to pay for its use. Since the borrower enjoys the full benefit of the use of the item, the Torah holds him responsible for it, and he must make restitution if it is lost, stolen, or destroyed, even as the result of an accident. He is exempt only if the item breaks as a result of ordinary use (see Exodus 22:13–14). The last category of bailee is a renter, who pays a fee for use of an item. The Torah (Exodus 22:14) mentions this category, but does not define his responsibility if the rented item is lost or stolen. The Sages dispute whether his responsibilities resemble those of a paid bailee or an unpaid bailee. In practice, the *halakha* is that he has the responsibilities of a paid bailee.

לא, רצאמך ליה: שלש פרות מסרתי לך ומתיו כולחו בפשיעתך, ואמר ליה:
איהו: תדרא – לא כי דברים מעולם,
וחדרא – מיתה באונם, וחדרא – מיתה
בפשיעתך, דבעינן שלומי לך, דלאו
הילך הוא.

הא שמע, ורוצח אבוה דרבנן אפטוריקי
לרבנן חייא קמיה: "מהנה לי בידך"
והלה אמר "אין לך בידי כלום",
זה העדים מעידים אותו שיש בידו
חמשים וזה, יכול ישבע על השאר?

תלמוד לומר "על כל אבידה אשר
אמר כי הוא זה" – על הזראת פין
אתה מהיבנו, ואי אתה מהיבנו על
הזראת עדים!

מתניתא קא רmittah עליה דרבנן חייא?
רבנן חייא תננא הווא, ולפיגג.

היא קרא קאמרו! ההוא למזרה מקצת
הטענה.

وابוה ורבנן אפטוריקי אמר לך: כתיב
הוא וכתיב זה – חד למזרה מקצת
הטענה, וחוד להזראת עדים דפטור.

ואידך: חד למזרה מקצת הטענה, וחוד
למזרה ממין הטענה.

ואידך: מזורה ממין הטענה לית ליה,
וסבר ליה ברבן גמליאל, דתנן: טענו
חטין והזרה לו בשערון – פטור, ורבנן
גמליאל מחייב.

The Gemara rejects this: No, Rami bar Hama is referring to a different case, for example, a case where the depositor said to the unpaid bailee: **I gave you three cows and they all died due to your negligence.** You are therefore liable to pay for them. And the bailee said to him: With regard to one cow, this matter never happened. In other words, I received only two cows, not three. And one of the cows died due to an unavoidable accident, and I am exempt from paying for it. And the other one died due to my negligence, for which I need to pay you. In that case, although he admits to part of the claim, it is not a case of: Here you are, as he is not returning the cow itself.

§ Come and hear a challenge to the first halakha of Rabbi Hiyya, as the father of Rabbi Aptoriki¹ taught in a baraita: If one says to another: I have one hundred dinars in your possession, and the other says: Nothing of yours is in my possession, and the witnesses testify that he has fifty dinars in his possession that he owes the plaintiff, one might have thought that he should take an oath about the remainder.

To counter this, the verse states with regard to bailees: "For any matter of trespass, for an ox, for a donkey, for a sheep, for a garment, for any lost item about which one shall say: This is it, the claims of both of them shall come before the judges" (Exodus 22:8). This indicates that you obligate the defendant to take an oath based on the admission to part of a claim by his mouth, but you do not obligate him to take an oath based on the testimony of witnesses.

The Gemara rejects this challenge: Are you raising an objection to the opinion of Rabbi Hiyya from a baraita? Rabbi Hiyya himself is a tanna, and as such, he has the authority to dispute the determination in a baraita.

The Gemara asks: But doesn't that tanna cite a verse? The Gemara answers: According to Rabbi Hiyya, that verse teaches that one who admits to part of the claim is obligated to take an oath.

And Rabbi Aptoriki's father could have said to you that both halakhot are derived from the expression "This is it." Since "this" is written and "it" is also written, it is interpreted that one word is stated to teach that one who admits to part of the claim is obligated to take an oath, and one word is stated to teach that in a case that involves the testimony of witnesses, one is exempt from taking an oath.

The Gemara asks: And how does the other Sage, Rabbi Hiyya, interpret the double qualification in the verse? The Gemara answers: In his opinion, one word is stated to teach that one who admits to part of the claim is obligated to take an oath, and one word is stated to teach that one is obligated to take an oath only if he admits that he owes an item that is of the same type as the subject of the claim.² If the plaintiff claims one type of item and the defendant admits to owing a different type of item, he is not obligated to take an oath.

And the other Sage, Rabbi Aptoriki's father, does not accept the principle that one is required to take an oath only if he admits that he owes an item that is of the same type as the subject of the claim, but he holds like Rabban Gamliel in this matter. As we learned in a mishna (*Shevuot* 38b): If one claimed that another owes him wheat, and the defendant admitted to owing him barley, which is less expensive than wheat, he is exempt from taking an oath despite his admission to part of the claim, as his admission does not correspond to the claim. And Rabban Gamliel deems him liable to take an oath.

LANGUAGE

Aptoriki – אַפְטוּרִיקִי: From the Latin patricius, meaning of noble or aristocratic lineage.

HALAKHA

He admits he owes an item of the same type as the claim – למזרה ממין הטענה: One who admits to part of the claim brought against him is obligated to take an oath by Torah law only if he admits that he owes an item of the same type as the item claimed. Even if he admits to owing an item worth less than the item that is claimed, e.g., if the plaintiff claims that he owes him a certain

quantity of wheat and he admits that he owes the same quantity of the less valuable barley, he is exempt from taking an oath. The halakha is not in accordance with the opinion of Rabban Gamliel (Rambam *Sefer Mishpatim*, *Hilkhot To'en VeNitan* 3:8; *Shulhan Arukh*, *Hoshen Mishpat* 88:7).

NOTES

A certain shepherd, etc. – **ההוּא רַעִיא וְכֵן:** The commentaries ask why the Gemara mentions the fact that the people would normally give this shepherd their sheep in the presence of witnesses, which seems irrelevant to the discussion. The Rashba explains that this detail is included in order to emphasize that the power of the plaintiffs' claim is not compromised by the fact that they would normally give the shepherd their sheep in the presence of witnesses, which indicates that they did not trust him, as this time they claim that they gave him the sheep without witnesses.

I was saying that the party opposing him – **שָׁבֵגְנָדו קָאַמְיִינָא:** One of the cases in which the plaintiff takes an oath and collects the money instead of the defendant taking an oath to exempt himself from payment is when the defendant lacks credibility (see *Shevuot* 44b).

Oath of inducement [hesset] – **שְׁבוּעַת הִיסְטָת:** This is an oath instituted by the Sages in a case where a defendant completely denies a claim. By Torah law, a defendant is required to take an oath only if the plaintiff has evidence against him, either through the testimony of a single witness or if the defendant admits to part of the claim. In talmudic times, the Sages instituted that one who completely denies a claim must take an oath to clear himself of suspicion.

The early commentaries disagree with regard to the meaning of the word *hesset*. Rashi interprets it to mean inducement, as the purpose of the oath is that it may induce the defendant to confess that he owes the money. In his commentary on tractate *Shevuot* (40b), Rashi interprets it to mean imposition, based on the verse: "If it be God that has placed [*hesitekha*] it in your heart to be against me" (I Samuel 26:19), meaning that the Sages imposed the oath on the defendant. Others assert that *hesset* means consultation, as the Sages consulted with each other and decided to require this oath for the betterment of society. This interpretation is based on the verse: "If...entice you [*ki yesitekha*]" (Deuteronomy 13:7), which is translated by Onkelos as: "When...consults with you" (*Sefer HaTerumot*; Rabbi Yitzhak Karkusha).

הַהוּא רַעִיא דָהֹו מִסְרֵי לֵיה בֶּל יוֹמָא
חַיוּתָא בְּסָהָרִי, יוֹמָא חַד מִסְרֵי לֵיה
בְּלָא סָהָרִי, לְסֹז אָמֵר לְהֹו: לְאַהֲרֹן
דְּבָרִים מְעוּלִם. אָתוֹ סָהָרִי אַסְהָרִי בֵּית
דָּאַפְּלִ תְּרַחִי מִיעִיהָו. אָמֵר רַבִּי זֵירָא: אָם
אִיתָא לְרוּבֵי חַיָּא קְמִינָתָא - מְשֻׁתְּבָעָ
אַשְׁרָא.

אָמֵר לֵיה אָבִי: אָם אִיתָא מְשֻׁתְּבָעָ?
הַהָּא גּוֹלֵן הוּא! אָמֵר לֵיה: שָׁבֵגְנָדו
קָאַמְיִינָא.

הַשְׁתָּא נִבְמֵי, דְּלִיתָא לְרוּבֵי חַיָּא -
חַיְבָה מִדְרֵב נִחְמָן.

דִּין: "מִנָּה לִבְיָדֶךָ" - "אֲנֵין לְךָ בִּידֶךָ"
פָּטוּר. וְאָמֵר רַב נִחְמָן: מְשֻׁבְעַנִּי אָתוֹ
שְׁבוּעַת הִיסְטָת.

הַרְבָּב נִחְמָן תְּקִנְתָּא הִיא,

§ The Gemara relates: There was a certain shepherd^N to whom people would give their animals for safekeeping every day in the presence of witnesses. One day, they gave him their animals without witnesses. At the end of the day he said to the owners of the animals: This matter never occurred; I never received the animals. Witnesses came and testified against him that he ate two of them. Rabbi Zeira said: If Rabbi Hiyya's first halakha is so, the shepherd must take an oath with regard to the remainder, or else he must pay the value of the animals to their owners.

Abaye said to him: If Rabbi Hiyya's first halakha is so, the shepherd takes an oath? Isn't he a robber? The witnesses established through their testimony that he took and ate some of the animals, and consequently his oath lacks credibility. Rabbi Zeira said to him: I did not mean that the shepherd takes an oath; I was saying that the party opposing him^N takes an oath and collects payment.

The Gemara comments: Now, too, if it is so that the halakha is not in accordance with the opinion of Rabbi Hiyya, and testimony supporting part of the claim does not obligate the defendant to take an oath with regard to the rest, the court should still obligate the shepherd to take an oath due to the ordinance of Rav Nahman, and since his oath is not deemed credible the plaintiff should take an oath and collect payment.

As we learned in a mishna (*Shevuot* 38b): If one says to another: I have one hundred dinars in your possession, and that person replies: Nothing of yours is in my possession, he is exempt from taking an oath. And Rav Nahman says: Nevertheless, the judges administer an oath of inducement^{NH} to him. Rav Nahman instituted an ordinance that even if the defendant completely denies the claim, he is obligated to take an oath that the claim is false. Consequently, the shepherd is obligated to take that oath.

The Gemara responds: This halakha of Rav Nahman is a rabbinic ordinance and not an oath required by Torah law,

HALAKHA

Oath of inducement – **שְׁבוּעַת הִיסְטָת:** One who completely denies a claim that is brought against him is exempt, by Torah law, from taking an oath. The Sages instituted that he must take

an oath of inducement (Rambam *Sefer Mishpatim*, *Hilkhot To'en VeNitan* 1:3; *Shulhan Arukh*, *Hoshen Mishpat* 75:7; 87:1).

Perek I**Daf 5 Amud b****HALAKHA**

An ordinary shepherd is disqualified – **סִתְמָה רַוְעָה פְּסָול:** Shepherds and cattle herders are disqualified from testifying, as they presumably graze the animals in fields belonging to others, and are therefore guilty of robbery. This applies only to a shepherd who grazes his own animals, not one who grazes only animals belonging to others (Rambam *Sefer Shofetim*, *Hilkhot Edut* 10:4; *Shulhan Arukh*, *Hoshen Mishpat* 34:13).

וְתְקִנְתָּא לְתַקְנִתָּא לֹא עֲבִדִין.

וְתִיפֹּק לֵיה דָהֹו לֵיה רַוְעָה, וְאָמֵר רַב
הַוִּדָּה: סִתְמָה רַוְעָה פְּסָול!

Likewise, the halakha that if the defendant is suspect with regard to taking a false oath the plaintiff takes the oath and collects the money is also a rabbinic ordinance, and we do not institute one rabbinic ordinance upon another rabbinic ordinance. Therefore no oath is administered.

The reason cited for the lack of credibility of the oath of the shepherd is that he is guilty of robbery. The Gemara asks: But why not let Rabbi Zeira derive that he is disqualified from testifying or taking an oath because he is a shepherd; and Rav Yehuda says that an ordinary shepherd is disqualified^H from testifying? A shepherd is presumed to be a robber since shepherds allow the animals under their care to graze in the fields of other people.

לא קשיא, זה – ר' יריה, וזה – ר' יעלם.
דאילא תימא הבי, און חייטה לווועה
היכי מסקינין? והא בתייב "לפניעו לא
תנן מבלש"? אלא: תיקה, אין אדרם
חויטה ולא לו.

זה ישבע שאין לו בה פחות מחציתו
[כו']. על דיאית ליה משפטבע או על
דילית ליה משפטבע אמר רב הונא.
דאמר: שבועה שיש לו בה, ואין לו בה
פחות מחציתו.

ונימא: שבועה שבולה שלוי ומיליבין
ליה נולחה?

ונימא: שבועה שחציה שלוי, מערע ליה
לדיבוריה.

השתא נמי מרע ליה לדיבוריה! דאמר:
בולה שלוי, ולדבריהם – שבועה שיש לו
בה, ואין לו בה פחות מחציתו.

וכי מאחר שהז תפוס וועמוד, זה תפס
ועמוד, שבועה זו למה? אמר רבי יוחנן:
שבועה זו תקנת חכמים היא, שלא יא
כל אחד ואחד הולך וטוקח בטלותו של
תבירו, ואומר שלוי הוא.

ונימא: מיינו דחשיד אפומזנא חזיד נמי
אשבוועתאי!

The Gemara rejects this: This is not difficult. That case, where he is presumed a robber, is a case where he herds his own animals, and this case, where he is not presumed a robber, is a case where he herds animals that belong to others.^N As if you do not say so, if even one who herds the animals of others is presumably a robber, how do we give our animals to a shepherd? Isn't it written: "Do not put a stumbling block before the blind" (Leviticus 19:14)? It is prohibited to cause others to commit a transgression. Rather, there is a presumption^B that a person sins only for his own benefit, and one would not commit robbery for the benefit of animals that are not his.

S The mishna teaches: This one takes an oath that he does not have ownership of less than half of it, and that one takes an oath that he does not have ownership of less than half of it, and they divide it. The Gemara asks: Does he take an oath with regard to the part that he has^N in his grasp, taking an oath that it is his, or does he take an oath with regard to the part that he does not have, i.e., that he does not have a claim to less than half of it? The latter wording of the oath is problematic, as he may mean that he does not have a claim to the garment at all. Rav Huna said: He must take an oath in which he says: I hereby take an oath that I have a claim to it,^H and I hereby take an oath that I do not have a claim to less than half of it.

The Gemara asks: But let him say: I hereby take an oath that all of it is mine, as that is his claim. Why does he take an oath that merely half of it belongs to him? The Gemara answers: And would we give him all of it^N if he took such an oath? Since he will not be awarded the entire garment, it would be inappropriate for the court to administer to him an oath that he owns all of it.

The Gemara asks: But let him say: I hereby take an oath that half of it is mine. Why is the complicated formulation suggested by Rav Huna necessary? The Gemara answers: If he takes an oath to that effect he compromises his initial statement, i.e., his claim that the entire garment is his.

The Gemara challenges: Now too, when he takes an oath according to Rav Huna's formulation, he compromises his initial statement, as he takes an oath only with regard to his claim to half the garment. The Gemara answers: This is not so, as he makes the following statement to the court: All of it is mine; but according to your statement,^N I hereby take an oath that I have a claim to it and I do not have a claim to less than half of it.

S The Gemara questions the requirement that the litigants take an oath at all: But since this one is standing with half the item in his grasp and that one is standing with half the item in his grasp, and each party ultimately receives what is in his grasp, why is this oath necessary? Rabbi Yohanan says: This oath is an ordinance instituted by the Sages so that everyone will not go and seize the garment of another and say: It is mine.

The Gemara asks: But let us say that since he is suspect with regard to financial dishonesty, i.e., stealing another's property and lying in court that it belongs to him, he is also suspect with regard to taking an oath, and his oath cannot be accepted.

NOTES

This case is where he herds animals that belong to others – **הא דעלמא:** Rashi explains that the shepherd is presumed to be a robber if he herds his own animals, and he is not presumed to be a robber if he herds the animals of other people. An alternative interpretation is that he is presumed to be a robber in a case where he grazes the animals in his own fields, so that he profits by allowing the animals to eat from others' fields as well, whereas he is not presumed to be a robber if he normally grazes them in ownerless fields, as he would not benefit from allowing them to eat from fields that belong to others (*Shita Mekubetzet*).

Does he take an oath with regard to the part that he has – **על דיאית ליה משפטבע:** This discussion appears difficult, as the mishna states explicitly that the litigant takes an oath with regard to the part that he does not have, i.e., that he does not have claim to less than half of it. It is explained that the Gemara deliberates whether the mishna means to spell out the exact wording of the oath. The conclusion is that the mishna does spell out the exact wording of the oath. Yet, in order to prevent deceit, the following phrase must be added: That I have a claim to it (*Hokhmat Manoah*).

And would we give him all of it – **כמי יהביבין ליה נוללה:** The mishna does not accept the opinion of ben Nannas (2a) that the court may not administer an oath that will turn out to be in vain. Nevertheless, when avoiding an oath taken in vain is possible, the court should take steps to do so (*Sefer HaAgudda*).

All of it is mine but according to your statement, etc. – **בנוללה שלוי ולרביכם וכו':** There are those who explain that the Gemara does not mean that the litigant actually makes this statement, but rather that this is the intention of his oath (Rid).

HALAKHA

שיעור שיש לו באה וכו': Oath that I have a claim to it, etc. – In a case of two people who have a garment or a similar item in their grasp, they each take an oath in the following manner: I hereby take an oath that I have a claim to the item, and I do not have a claim to less than half of it. This is in accordance with the opinion of Rav Huna. This wording precludes potential deception by the one taking the oath (*Shulhan Arukh, Hoshen Mishpat* 138:1).

BACKGROUND

Presumption [hazaka] – **תיקה:** This term is frequently used in halakha but has different meanings depending on the context. In general, the term *hazaka* is an accepted presumption based on facts, circumstances, custom, or behavioral tendencies. For example, among the presumptions accepted by the Sages are:

An agent carries out his agency, and: Children who are treated as family members are, in fact, their parents' offspring. Unless the facts prove otherwise, these presumptions are accepted as truth, even to the extent that corporal punishment may be administered, where relevant, based on these presumptions.

HALAKHA

Since one is suspect with regard to financial dishonesty, etc. – **מִינּוֹ דָּחַשׁ אֶפְמֻנָּנוּ וּכְיִ:** If witnesses testify that one individual stole money from another, an oath cannot be administered to him as he is suspect with regard to taking a false oath. In a case where one is suspected of financial dishonesty but there are no witnesses, e.g., one who denies receiving a loan, he is not considered suspect with regard to taking a false oath (*Shulhan Arukh, Hoshen Mishpat* 92:3).

NOTES

We do not say that since one is suspect with regard to financial dishonesty he is suspect with regard to taking an oath – **מִינּוֹ דָּחַשׁ אֶפְמֻנָּנוּ חַשֵּׁד אֲשֶׁר עָתָא:** There is a principle that even if one is established as a transgressor with regard to one prohibition, he is not suspect with regard to transgressing the rest of the Torah. Therefore, even if the debtor is a confirmed robber, why should he be suspect with regard to taking a false oath? The Rashba answers that since he is suspect with regard to transgressing one prohibition for financial gain, he is suspect with regard to transgressing all prohibitions for financial gain.

לֹא אָמְרִין מִינּוֹ דָּחַשׁ אֶפְמֻנָּנוּ חַשֵּׁד
אֲשֶׁר עָתָא. דָּאַי לֹא תִּמְאָה כְּפִי – הָאֵ
דָּאַמֵּר רַחֲמָנָא מִזְרָה מִקְצָת הַטּוּנָה
שְׁבָע, נִמְאָה: מִינּוֹ דָּחַשׁ אֶפְמֻנָּנוּ
חַשֵּׁד אֲשֶׁר עָתָא!

The Gemara answers: In principle, we do not say that since one is suspect with regard to financial dishonesty^h he is suspect with regard to taking an oath.ⁿ This is because even one who steals property is presumed to consider taking a false oath more severe. As if you do not say so, then with regard to that which the Merciful One states, that one who admits to part of the claim must take an oath, let us also say that his oath cannot be accepted, as since he is suspect with regard to financial dishonesty he is suspect with regard to taking an oath.

הַתָּם אֲשֶׁר מִזְרָה קָא מִשְׁתְּמִיט לִיה
כְּרוּבָה.

תְּרֻעָה, דָּאַמֵּר רַב אִידִי בָּרוּ אַבְינוּ אָמֵר רַב
חַסְדָּא: הַכּוֹפֵר בִּמְלֹה – בְּשִׁיר לְעִזּוֹת,
בְּפִיקְדוֹן – פְּסָול לְעִזּוֹת.

The Gemara rejects this proof: There, the debtor is presumably evading the creditor temporarily, in accordance with the explanation of Rabba that the debtor really intends to repay the entire debt, and the reason that he admits to owing only part of it is because he wants to buy time until he can afford to repay the entire debt.

אֲלֹא הָא דַתִּי רַמִּי בָּרוּ חַמָּא: אַרְבָּעָה
שׁוֹמְרָיו צְרִיכִין כְּפִיה בִּמְקַצָּת וְהַדָּאָה
בִּמְקַצָּת: שׁוֹמֵר חָנָם וְהַשּׂוֹאֵל, נֹשָׂא
שְׁכָר וְהַשּׂוֹכֵר, נִמְאָה: מִינּוֹ דָּחַשׁ
אֶפְמֻנָּנוּ חַשֵּׁד אֲשֶׁר עָתָא!

The Gemara adds: Know that this distinction is correct, as Rav Idi bar Avin says that Rav Hisda says: One who denies a claim that he received a loan and is contradicted by witnesses is fit to bear witness in a different case. By contrast, if one denies receiving a deposit and witnesses testify that he is lying, he is disqualified from bearing witness in other cases. The reason for this distinction is that since money is borrowed to be spent, the assumption is that the debtor did so, and his denial is merely an attempt to buy time until he can repay the debt. A deposited item, by contrast, may not be used by the bailee, so if he denies having received the deposit he presumably stole it. Therefore, he is disqualified from bearing witness. This demonstrates the distinction between lying in court about a debt and lying about property.

הַתָּם נִמְיָא אֲשֶׁר מִזְרָה קָא מִשְׁתְּמִיט, סָבָר:
מִשְׁבְּחָנָא לְגַנְבָּה וְתִפְסְּנָה לִיה. אֵי נִמְיָא:
מִשְׁבְּחָנָא לִיה בְּאֶגֶם וּמִיְתְּנִיא לִיה.

The Gemara asks: But if one who denies having received a deposit is considered a robber, this is contradicted by that *baraita* that Rami bar Hama teaches: All four types of bailees mentioned in the Torah require denial of part of the claim and admission of part of the claim in order to be liable to take an oath: These four are an unpaid bailee, and a borrower; a paid bailee, and a renter. Since a bailee has no need to buy time, let us say that the court cannot administer an oath to the bailee, as since he is suspect with regard to financial dishonesty he is suspect with regard to taking an oath as well.

אֵי הַכִּי, הַכּוֹפֵר בְּפִיקְדוֹן אַפְמַאי פְּסָול
לְעִזּוֹת? נִמְאָה: אֲשֶׁר מִזְרָה קָא מִשְׁתְּמִיט,
סָבָר: עַד דְּבַחֲנָא וּמִשְׁבְּחָנָא לִיה.

כִּי אָמְרִין הַכּוֹפֵר בְּפִיקְדוֹן פְּסָול לְעִזּוֹת –
כִּגְון דָּאַתָּו סְהָדֵר (אַסְהָדֵר) בֵּית דָהָרָא
שְׁעַתָּא אִתְּיהָ לְפִיקְדוֹן בְּבִיתָה וְהַוָּה
יְדָע. אֵי נִמְיָא: דָהָרָה נִקְשֵׁת לִיה בְּדִידָה.

The Gemara answers: There too, in the case of a bailee, it is conceivable that the bailee is not a robber; rather, the deposit was stolen and the bailee is evading the depositor temporarily, thinking: If I have enough time I will find the thief and seize the deposit and return it. Alternatively, if the deposit was lost, the bailee is thinking: I will find the deposit in the marsh⁸ and I will bring it back to him. Therefore, he is not considered a robber but merely one seeking to buy time.

The Gemara asks: If so, then why is one who denies receiving a deposit disqualified from bearing witness? Let us say in that case too, that he is evading the depositor, thinking: I will buy time until I search and find the item.

The Gemara answers: In an ordinary case, one who denies receiving a deposit is not disqualified from testifying. When we say that one who denies receiving a deposit is disqualified from bearing witness, it is with regard to a case where witnesses came and testified against him that at that time, when he denied the owner's claim in court, the deposit was in his house and he knew that it was there. Alternatively, it is with regard to a case where he was holding the item in his hand. In those circumstances, it is obvious that he was not buying time, but rather he intended to keep the item.

BACKGROUND

Marsh [agam] – **אֲגָם**: In this context, as in most places in the Talmud, *agam* means a pasture for animals. This is also the meaning of the word in some of the verses in the Bible (see Jeremiah

51:32). It is reasonable to assume that a pasture would be situated next to sources of water, making it into a kind of marshland, which does not belong to anyone.

אֵלֹא הָא דָאמַר רַב הַוָּנָא: מִשְׁבֵּיעַ אֶת
שְׁבֻועָה שָׁאַנְהָ בְּרִשותוֹ, יִמְאָא: מִינּוּ
דְּחִשֵּׁיד אֶפְמֹנוֹנָא חִשֵּׁיד אֲשֶׁרְבֻּעַתָּא!

הַתִּמְמָנִי מִזְרָחָ וְאָמָר: דָּמִי קָא יְהִבְנָא
לְהָ.

אָמָר לַיהָ רַב אַחֲרָא מִדְיפְתִי לַרְבִּינָא: וְהָא
קָא עַבְרָ עַל לְאוֹ דְלָא תְּחִמְדָ!

לְאָתָה תְּחִמְדָ לְאַיְשִׁי בְּלָא דָמִי מִשְׁמָעָ
לְהָ.

The Gemara asks: **But if one who is suspected of financial dishonesty cannot be administered an oath, that which Rav Huna says with regard to the halakhot of bailees is difficult, as Rav Huna says that if a bailee did not return the deposit, claiming that it was lost or stolen, and says that he is prepared to pay for it, the judges nevertheless administer an oath to him that the item is not in his possession. Let us say that since he is suspected of financial dishonesty, he is suspect with regard to taking an oath as well.**

The Gemara answers: **There too, the bailee is not suspected of outright robbery, as even if he took the deposited item for himself, he could rationalize his behavior, saying to himself: Since I gave him money for the item, I did nothing wrong. Therefore, his oath is deemed credible and an oath can be administered to him.**

Rav Aḥa of Difti said to Ravina: But by paying for the deposit instead of returning it, doesn't the bailee violate the prohibition of: "You shall not covet your neighbor's wife, nor his slave, nor his maidservant, nor his ox, nor his donkey, nor anything that is your neighbor's" (Exodus 20:14)? One transgresses this prohibition by taking an item from another by force or deceit, even if one pays for it.

The Gemara answers: The prohibition "You shall not covet" is understood by most people as referring to taking an item without paying money.^{NH} Since the bailee may have been unaware that he was acting criminally, his testimony and his oath are deemed credible.

NOTES

You shall not covet is...without paying money – **לֹא תְּחִמְדָ לְאַיְשִׁי בְּלָא דָמִי:** Since people mistakenly do not consider taking the item and paying money to be a violation of the prohibition, the oath of one who acts in this manner is deemed credible. Some commentaries distinguish between two types of forced transactions: One is a case where one takes another's item and forces the owner to agree to sell it to him. This is not technically considered robbery. The other is a case where one pays the owner, but the owner does not agree to sell the item to him, which involves an element of robbery. The type of forced transaction discussed in this Gemara is the former. If one were to perform the latter type, his oath would not be deemed credible (Rosh).

HALAKHA

You shall not covet is...without paying money – **לֹא תְּחִמְדָ לְאַיְשִׁי בְּלָא דָמִי:** When the Gemara says that one who transgresses a prohibition intentionally is disqualified from testifying and from taking an oath, it refers only to an action that is well known to be a transgression. An action that is not well known to be a transgression does not disqualify one from testifying or taking an oath (*Shulhan Arukh, Hoshen Mishpat* 75:4, in the comment of Rema).

Perek I

Daf 6 Amud a

אֵלֹא הָא דָאמַר רַב נַחְמָן: מִשְׁבֵּיעַ
אֶת שְׁבֻועָת הַיּוֹתָה, יִמְאָא: מִינּוּ דְּחִשֵּׁיד
אֶפְמֹנוֹנָא חִשֵּׁיד אֲשֶׁרְבֻּעַתָּא!

וְתוּ, הָא דָתַני רַבִּי חִיאָא: שְׁנִיםָם נְשַׁבְּעַי
נוֹטְלִין מִבְּעֵל הַבַּיִת, יִמְאָא: מִינּוּ דְּחִשֵּׁיד
אֶפְמֹנוֹנָא חִשֵּׁיד אֲשֶׁרְבֻּעַתָּא!

וְתוּ, הָא דָאמַר רַב שְׁשֶׁת: שְׁלַשׁ שְׁבֻועָתָ
מִשְׁבֵּיעַ אֶת שְׁבֻועָה שְׁלָא פְּשָׁעָתִ
בָּה, שְׁבֻועָה שְׁלָא שְׁלָחוּתִ בָּה יְד, שְׁבֻועָה
שָׁאַנְהָ בְּרִשותָהּ. יִמְאָא: מִינּוּ דְּחִשֵּׁיד
אֶפְמֹנוֹנָא חִשֵּׁיד אֲשֶׁרְבֻּעַתָּא!

The Gemara asks: **But if one who is suspected of theft cannot be administered an oath, that which Rav Nahman says, that when a person denies a debt entirely the judges administer an oath of inducement to him, is difficult. Let us say that since he is suspect with regard to financial dishonesty, he is suspect with regard to taking an oath.**

And furthermore, that which Rabbi Hiyya teaches^N in a baraita with regard to the case of the storekeeper and the laborer (see 3a), that both parties take an oath^N and take payment from the employer, is also difficult. Let us say there, too, that since he is suspect with regard to financial dishonesty, he is suspect with regard to taking an oath.

And furthermore, with regard to that which Rav Sheshet says: The judges administer three oaths^H to an unpaid bailee who claims that the deposit with which he was entrusted was stolen: I hereby take an oath that I was not negligent in safeguarding it; I hereby take an oath that I did not misappropriate the deposit; and I hereby take an oath that it is no longer in my possession, there is the same difficulty. Since the court raises these suspicions against the bailee, let us say that since he is suspected of financial dishonesty, he is suspected with regard to taking an oath. How can the court administer these oaths?

NOTES

That which Rabbi Hiyya teaches – **הָא דָתַני רַבִּי חִיאָא:** Rashi asks why this halakha is attributed to Rabbi Hiyya when it is an explicit mishna in tractate Shevuot. Some answer that Rabbi Hiyya was the one who explained this mishna to Rabbi Yehuda HaNasi (see Shevuot 47b), and therefore the Gemara ascribes it to him (*Tosafot*).

Both take an oath – **שְׁנִיםָם נְשַׁבְּעַי:** Why does the Gemara cite specifically this example? There are many cases where the defendant is required to take an oath despite the fact that he is suspect with regard to financial dishonesty. The answer is that this case is unique because it is clear that either the storekeeper or the laborer is suspect with regard to financial dishonesty, and nevertheless they both take an oath (Maharam Schiff).

HALAKHA

The bailees' oath – **שְׁבֻועָת הַשְׂוּרִים:** Any bailee who takes the bailees' oath must include three elements in his oath: (1) that he safeguarded the item in the manner typical of bailees, and that what happened to the item was beyond the realm of his responsibility, i.e., theft in the case of an unpaid bailee, or an unavoidable accident in the case of a paid bailee; (2) that the

item is not in his possession; and (3) that he did not misappropriate the item before the theft or the unavoidable accident took place. This is in accordance with the opinion of Rav Sheshet (Rambam *Sefer Mishpatim, Hilkhota She'ela U'Fikadon* 6:1; *Shulhan Arukh, Hoshen Mishpat* 295:2).

NOTES

Perhaps he has an old loan that he lent to the plaintiff – **חַיִשֵּׁין שֶׁמְאָמָלָה יִשְׁנָה יְשַׁנָּה**: There are different opinions among the early commentaries with regard to the meaning of Abaye's statement. Some maintain that Abaye rejects the proof from the aforementioned *halakhot* that an oath can still be administered to one who is suspect with regard to financial dishonesty, reasoning that in these cases it is possible that the suspect acted in this manner due to an old debt that is owed to him. Others interpret Abaye's statement as disagreeing with Rabbi Yohanan's opinion with regard to the explanation of the mishna. Whereas Rabbi Yohanan holds that the Sages instituted an oath in the case of two people holding a garment in order to prevent one from seizing the garment of another and saying it is his, Abaye holds that it was instituted so that one will not seize another's item when he has an uncertain claim brought against him (see Ramban; Rashba).

Uncertain whether he has an old loan – שִׁפְקָם לְמַלְוָה יִשְׁנָה: If there is always the possibility that one hasn't paid back an old loan and therefore one who is suspect with regard to financial dishonesty is not suspect with regard to taking a false oath, why is one who denies having received a deposit and is contradicted by witnesses, or a thief, suspect with regard to taking a false oath? In those cases, also, perhaps the theft was due to an old loan. The early commentaries explain that only in a case where the facts are unclear, as in the case where two people have a garment in their grasp, can their actions be attributed to recovering an old debt of uncertain status, enabling them to take an oath. By contrast, a confirmed robber or denier of a deposit is disqualified from taking an oath (Responsa of Ri Migash).

אֲלֹא: לֹא אָמְרִין בַּגְּזֵרָה
אָמְנוּן חַשֵּׁד אֲשֶׁר עָזַבְתָּ.

אֲבָבִי אָמַר: חַיִשֵּׁין שֶׁמְאָמָלָה יִשְׁנָה
יְשַׁנָּה לֹא עַלְיוֹן.

אֲלֹא הַכִּי, נִשְׁקוֹל בְּלֹא שְׁבוּעָה!

אֲלֹא: חַיִשֵּׁין שֶׁמְאָמָלָה יִשְׁנָה
יְשַׁנָּה לֹא עַלְיוֹן.

אֲלֹא אָמְרִין תְּפִיסָּמְנוּן מִסְפִּיקָּא.
מִשְׂתַּבֵּעַ נִמְיָמִי מִסְפִּיקָּא!

אָמַר רְבָב שְׁשַׁת בָּרִיה דָּרְבָ אִידִי
פָּרְשֵׁי אַינְשִׁי מִסְפִּיק שְׁבוּעָה, וְלֹא
פָּרְשֵׁי מִסְפִּיק בְּמֻנוֹן. מַיִ טָמֵא?
מִמּוֹן – אִתְּתִי בְּחֹורָה, שְׁבוּעָה –
לִיתְּתִי בְּחֹורָה.

בַּעַד רְבִי זַיְרָא: תְּקִפָּה אַחַד בְּפִנֵּינוּ
מַהְוָה?

הַיכִּי דָמִי? אֵי דְשַׁתִּיק – אָזְדוּי אָזְדי
לְהָ, וְאֵי דְקָא צָוָח – מַאֲיָה הָלָה
לְמַעַבְדָ?

Rather, the conclusion from all of the above is that we do not say that since one is suspected of financial dishonesty, he is suspected with regard to taking an oath.

Abaye said: There is no proof from the three *halakhot* cited above that an oath is administered to one who is suspect with regard to financial dishonesty, as it can be explained that the reason the oath is administered in these cases is that we suspect that perhaps the defendant has an old loan that he lent to the plaintiff,^N and he has been unable to get his money back. He is therefore withholding or claiming ownership of the item or money of the plaintiff as repayment of the loan and not as an act of outright robbery. Therefore, an oath is administered to him.

The Gemara asks: If so, why does he take an oath in these cases? Let him take the item or money without taking an oath, as perhaps he is withholding it as repayment for an old loan, in which case the oath will not determine the truth in the dispute at hand.

Rather, Abaye's suggestion should be understood as follows: We suspect that perhaps he is uncertain as to whether he has an old loan^{NH} that he lent to the plaintiff. The defendant is unsure whether the plaintiff owes him money and is withholding the item just in case.

The Gemara asks: But why don't we say in this case that if the defendant is capable of seizing another person's property due to an uncertain debt, he may also take an oath falsely due to that same uncertainty? How is the oath administered to him?

Rav Sheshet, son of Rav Iди, said: People refrain from taking an oath about which they are uncertain but do not refrain from seizing property about which they are uncertain. What is the reason for this? People reason that property can be returned, but an oath cannot be retracted. If it is proven that his seizure of the property was unjustified, the defendant can return it. By contrast, once he takes a false oath, there is no remedy for the situation. Therefore, one is more cautious when taking an oath than when seizing property.

§ Rabbi Zeira raises a dilemma: If two people together had a garment in their grasp and one of them seized it in its entirety from the grasp of the other in our presence,^H i.e., before the court, what is the *halaka*?

The Gemara asks: What are the circumstances? If the one from whom it was seized remained silent, his silence indicates that he admits to the one who seized it from him that he is the owner. And if he shouted in protest at the seizure, what more should he have done? The fact that the other person is stronger than him is irrelevant as far as determining legal ownership of the garment is concerned.

HALAKHA

Uncertain whether he has an old loan – שִׁפְקָם לְמַלְוָה יִשְׁנָה: One who denies that he took a loan is not suspect with regard to taking a false oath because perhaps he was uncertain as to whether he had an old loan in the possession of the plaintiff, and for that reason he took the money and is keeping it. It is not certain that he intended to steal money that does not belong to him (*Shulhan Arukh, Hoshen Mishpat* 92:3).

One seized it in our presence – תְּקִפָּה אַחַד בְּפִנֵּינוּ: If two people simultaneously held an item in their grasp and both claimed ownership of it, and one seized it from the other in the presence of the court or in the presence of witnesses while the other remained silent, even if the one who lost his grasp on the item later protested the seizure, the court does not appropriate the item from the one who seized it, as the other party's initial silence is tantamount to an admission that it belongs to the one who seized it (Rambam *Sefer Mishpatim, Hilkhot To'en VeNitan* 9:13; *Shulhan Arukh, Hoshen Mishpat* 138:8).

לא צריבא, דשתיק מעינך ואחרך צוות
מאי? מדאשתקיך – אודוי אודוי ליה, או
לטמא: בגין דקא צוחה השטה – איגלאי
מליהתא דהאי דשתיק משיקרא סבר: הא
קא צוח ליה רבען.

אמר רב נחמן, תא שמע: במה דברים
אמורים – ששייהם אדוקין בה, אבל
היתה טלית יויצאת מחתה ידו של אחר
ביהן – המזיא מחייב עלי הראה. היכי
דמי? אי ניכא בדקתי – פשיטא! אלא –
שתקפה אחד בפנינו.

לא, הכא במאי עסקין – בגין דאותו לךון
בדתפסו לה תרויהו, ואמרין לה: זילו
פלונו. ונקה, והדר אוטו כי תפיס לה חד
מג'יה. האי אמר: אודוי אודוי ליה, והאי
אמר: ברמי אגרותי ניחלה. ואמרין ליה:
עד השטה חסdet ליה בגין, והשתा
מגורת ליה בלא סחד?

אַבְּשָׁעֵת אִימָא – בְּדַקְתַּי, דָּאוֹתָן לְקָנוֹ
בַּתְּפִיסָּס לְהַחֲדָה מִגְיָהָה, וְאַיְדָן מִסְרָן
בְּהַסְרָה, וְאַפְּלִוָּל לְסֻמְכָן, דָּאָמֶר מִמְּנוֹ –
הַמוֹּטֵל בְּסֶפקָה חֲלֵקִין בֶּלֶא שְׁבוּעָה –
מוֹדָה סֻמְכָן דְּסֶרֶכָּא לֹא בְּלֹם הִיא.

אם תמציא לומר תקפה אחד בפנינו
מושציאו אותה מיד – הקידשה אינה
מקודשת. אם תמציא לומר תקפה אחד
בפנינו אין מושציאו אותה מיד – הקידשה
בלא תקפה מהו?

בגין דאמר מר: אַמְּרָתוֹ לְזִבְזָה כְּמִסְרָתוֹ
לְהַדִּוּת דָמִי – בָּמָאן דְתַקְפַּה דָמִי,

The Gemara explains: **No**, it is necessary to raise this dilemma in a case where he was silent initially, when the other litigant seized the garment, and he later shouted. What is the halakha? Is there an assumption that since he was initially silent, he admitted to the one who seized it from him that in seizing it the litigant became the owner, and it was only later that he regretted doing so and shouted? Or perhaps, since he is shouting now about the injustice that was done to him, the matter is revealed that the fact that he was silent initially was because he thought: The Rabbis of the court saw him grab it from me, so there is no need to cry out.

Rav Nahman says: Come and hear a solution to the dilemma from what was taught in a baraita: In what case is this statement said that both of them take an oath and each receives half of the garment? It is said in a case where both of them are still holding the garment.^h But if the garment was in the possession of only one of them, the burden of proof rests upon the claimant, i.e., the one not holding the garment. In the absence of proof, the item remains in the possession of the one holding the garment. The Gemara asks: What are the circumstances of this case? If we say that it is to be understood as it is taught, it is obvious that one who claims an item that is in another's possession must bring proof to support his claim. Rather, it must be referring to a case where one of them seized it in our presence, which is the case to which Rabbi Zeira referred.

The Gemara rejects this proof: No, it is possible that here we are dealing with a case where they came before us, the court, while both were holding the garment, and we said to them: Go divide the garment, and they left the court and afterward came back while one of them was holding it. This one, who was holding the garment, said: The other one admitted to me that I was justified in my claim. And that one, who was not holding the garment, said: I rented half of the garment to him for moneyⁱ and did not relinquish my right to it. In this case the latter person's claim is not accepted, as we say to him: Until now you suspected him of being a robber, claiming that he took from you an item that you found, and now you rented it to him without witnesses? Therefore, the burden of proof rests upon the one who is not holding the garment.

And if you wish, say instead that it is possible to understand the case in the baraita as it is taught, i.e., they came before us while only one of them was holding the garment itself, but the other was hanging on to the edge of the garment. And the baraita teaches that even according to Sumakhos, who says that in a case of property of uncertain ownership the parties divide it without an oath, in this case Sumakhos concedes that hanging on to the edge is worth nothing. It does not render the ownership of the garment uncertain, and therefore the burden of proof rests upon the claimant, i.e., one who is hanging on to the edge.

Rabbi Zeira's dilemma was not resolved, but the Gemara states a related halakha: If you say that if one seizes the garment in our presence the court removes it from his possession, then if either of the parties consecrated the entire garment to the Temple treasury, the consecration is not valid, as it is not his. But if you say that if one seizes the garment in our presence the court does not remove it from his possession, then if one of them consecrated the entire garment to the Temple treasury without seizing it, what is the halakha?

The two sides of this dilemma are as follows: Since the Master said a principle with regard to the halakhot of transactions that a declaration to the Most High is equivalent to a transfer to an ordinary person,^h i.e., verbal consecration of an item is equivalent to a formal act of acquisition in a non-sacred transaction, is the one who consecrated the garment therefore considered like one who seized it, and consequently the consecration takes effect?

HALAKHA

Where both of them are holding the garment, etc. – **שְׁנַיִם אַדְוקִין בָּהּ**: In this case, two people were holding a garment and the court ruled that they should divide it. They left the courtroom, then returned with the garment in the sole possession of one of them. The one holding it claims that the other admitted that it belongs to him, while the other one claims that he rented his share of the garment to the one holding it. In this case, the burden of proof rests upon the one who is not holding the garment (Rambam Sefer Mishpatim, Hilkhos To'en VeNitan 9:13; Shulhan Arukh, Hoshen Mishpat 138:8).

Declaration to the Most High is equivalent to a transfer to an ordinary person – **אַמְּרָתוֹ לְגַבּוֹהַ כְּמִסְרָתוֹ לְדָרְדִּיוֹת**: One who says: I hereby consecrate this item to Heaven, or charity, cannot renege on his pledge, even if the item never physically left his possession, as one's declaration to God is equivalent to a transfer to an ordinary person (Rambam Sefer Kinyan, Hilkhos Mekhira 9:1; Shulhan Arukh, Yoreh De'a 258:13).

NOTES

I rented half of the garment to him for money – **בְּרִמִּי אַרְגִּינְתִּילְיָה**: Even if the item in question is one that is commonly rented, where a claim of this kind would normally be plausible, in this case it is not accepted (Ritva).

If the one who is not holding the garment claims that the other snatched it from him by force, some of the early commentaries say that this claim is also unacceptable (Rambam). Others maintain that this claim is valid, and he is still assumed to own half of the garment (Ramban; Rashba).

HALAKHA

To the exclusion of this garment which is not in his possession – **לאפקין הא דלא ברשותו**: One cannot consecrate an item that is not in his possession. Even if the item belongs to him, if he is unable to recover it from the person who has it in his possession, it is not considered his property for the purpose of consecration (Rambam Sefer Hafla'a, Hilkhot Arakhin 6:22; Shulhan Arukh, Yoreh De'a 258:7).

או דלמא השטה מיהא לא לא
תקפה, וחתיב "אייש כי יקדש את
ביתו קדש" גוי מה ביתו ברשותו –
אשר כל ברשותו, לאפקין הא דלא
ברשותו.

Or perhaps the consecration does not take effect, as now, in any event, he did not actually seize the garment and it is not his? And it is written: "And when a man shall sanctify his house to be sacred unto God" (Leviticus 27:14), from which the Sages derive: Just as his house is in his possession, so too, anything that one wishes to consecrate must be in his possession, to the exclusion of this garment, which is not in his possession,^h as he did not actually seize it, and therefore the consecration does not take effect.

תא שמע, דההיא

The Gemara attempts to answer the question: Come and hear proof from an incident that transpired, as there was a certain

Perek I**Daf 6 Amud b****PERSONALITIES**

Rabba – רבָה: Rav Abba bar Nahmani, commonly referred to as Rabba throughout the Babylonian Talmud, was a priest and a third-generation Babylonian *amora*. Rabba was a student of Rav Huna, who was himself a student of Rav. Therefore, Rabba's approach to *halakha* was consistent with Rav's statements. Rabba was considered the sharpest among his peers, to the extent that he was referred to as: One who uproots mountains, in contrast to his colleague, Rav Yosef, whose talent was in his comprehensive knowledge and was referred to as: Sinai. In almost every dispute between them, the ruling is in accordance with the opinion of Rabba.

Rabba had many students, and all of the Sages of the following generation studied under him. His personal life was tragic; his children apparently died during his lifetime. He was poverty stricken throughout his life, barely subsisting on agricultural work. When his nephew Abaye was orphaned at a young age, Rabba adopted him.

HALAKHA

Uncertainty with regard to firstborns whether a human firstborn – **ספק בכורות אחד בכור אדם**: If it is uncertain whether a son is a firstborn of his mother or not, his father is not required to redeem him, as the burden of proof is upon the claimant, in this case, the priest (Rambam Sefer Zera'im, Hilkhot Bikkurim 11:19; Shulhan Arukh, Yoreh De'a 305:13).

A kosher animal whose status as firstborn is uncertain – **ספק בכור בהרמה טהורה**: If it is uncertain whether an animal is a firstborn, its owner is not required to give it to a priest. He may keep it until it develops a blemish and eat it. Nevertheless, he is prohibited from shearing its wool or utilizing it for labor (Rambam Sefer Zera'im, Hilkhot Bikkurim 12:23; Shulhan Arukh, Yoreh De'a 315:1).

A donkey whose status as firstborn is uncertain – **ספק בכור חמוץ**: If it is uncertain whether a donkey is a firstborn, its owner sets aside a lamb in order to annul its uncertain status of sanctity, but he keeps the lamb, as the burden of proof is upon the claimant, in this case, the priest (Rambam Sefer Zera'im, Hilkhot Bikkurim 12:23; Shulhan Arukh, Yoreh De'a 321:10).

בפטוא דהו מנצוא עליה בי תרי,
האי אמר: דידי הווא, והאי אמר:
דידי הווא. קם חד מינוחו אקדשה.
פרשי מינה רב חנניה ורב אושעיא
וכילחו רבנן. ואומר ליה רב אושעיא
לרבבה: כי אילמת קמיה דרב חסידא
לכפרי בשע מינוי.

כפי אתה לסתורא, אמר ליה רב
המנונא: מותיינן הייא: ספק בכורות,
אחד בכור אדם ואחד בכור בהמות,
בini טהורים בין טמאים – המזיא
מחבירו עליו הרואה. ותני עליה:
אסורים בגיה ובשבודה.

bathhouse over which two people were arguing, and of which neither of them were in possession. This one said: It is mine, and that one said: It is mine. One of them arose and consecrated the bathhouse. Rav Hananya and Rav Oshaya and all the Rabbis kept away from the bathhouse and refrained from bathing there lest they transgress the prohibition against misusing consecrated property, as they were uncertain whether this act of consecration took effect. And Rav Oshaya said to Rabba:^p When you go to study before Rav Hisda in the town of Kafrei,^b ask him what we should do in this case.

When on his way to Kafrei, Rabba came to the city of Sura^b and related the incident to the Sages there. Rav Hamnuna said to him: The resolution to your dilemma is found in the following mishna (Teharot 4:12): If there is uncertainty with regard to firstborns,^b whether a human firstborn^h or an animal firstborn, whether with regard to kosher animals^h or non-kosher animals, i.e., the firstborn of a donkey,^h the burden of proof rests upon the claimant. The priest may not take the animal from its owner, or the redemption payment from the child's father. And it is taught in that regard in a *baraita*: One is nevertheless prohibited from shearing and from working such animals, as their status as firstborns is uncertain.

BACKGROUND

Kafrei – כפרי: Kafrei was a small town approximately twenty kilometers south of Sura. Evidently, there was an ancient Jewish settlement in that town, as it was the seat of the Exilarch for a period of time, and it is the birthplace of Rav's distinguished family. Rav Hisda was also raised in that town. The incident in the bathhouse took place in Pumbedita, Rabba's city. On his way to Kafrei, Rabba passed through Sura, where Rav Hisda was located.

Sura – סורא: Sura was a town in southern Babylonia that became an important Jewish community when the *amora* Rav moved there and established a yeshiva (c. 220 CE). From then until the end of geonic period (c. 1000 CE), Sura was a major Torah center. The yeshiva in Sura, under the leadership of Rav and his closest disciples, was influenced by the halakhic traditions of Eretz Yisrael and was renowned for its unique approach to Torah study. Among the great Sages and leaders in Sura were Rav, Rav Huna, Rav Hisda, Ravina, and Rav Ashi. The Babylonian Talmud was, for the most part, redacted in Sura. There was another city with the same name, and in order to distinguish between them the other city was called Sura on the Euphrates.

Firstborns – בכורות: The Torah states: "Sanctify to Me every firstborn, whatever opens the womb... both of man and beast, it is Mine" (Exodus 13:2). In practical terms, the sanctity of a firstborn son is exhibited only by the obligation to redeem him from a priest for five pieces of silver (Exodus 13:13; Numbers 18:15–16). Similarly, the Torah requires that a firstborn male donkey be redeemed by giving a lamb in exchange for it to a priest. If the donkey is not redeemed, it must be decapitated (Exodus 13:13).

The male firstborn of cattle, sheep, or goats belonging to a Jew is sacred from birth and must be given to a priest to be sacrificed in the Temple, and its meat is eaten by the priests and their families (Numbers 18:17–18). If a firstborn animal has a physical blemish that disqualifies it from being sacrificed as an offering, it may be slaughtered and eaten like any other non-sacred kosher animal. Nevertheless, it still has to be given to a priest. It is prohibited to intentionally inflict a disqualifying blemish on a firstborn animal, and a firstborn animal may not be used for any mundane purpose even if it is blemished. It is prohibited to put the animal to work, and its fleece may not be used. Even after the destruction of the Second Temple, a firstborn animal continues to be considered sacred. Since it can no longer be sacrificed in the Temple, various halakhic devices are employed to restrict the classification of animals as firstborn and to permit their slaughter as non-sacred animals.

ואנו ה'כא, ר'אמור: תקפו פ'ן – אין מוציאין אותו מיד', דקחני: המוציא – מחבירו עליו הרואה, וכי לא תקפו – אסורין בגיןה ובעבורה.

אמר ליה ר'בה: קדושת בכור
קארברה – לעילם אימא לך תקפו
ב'ן מוציאין אותו מיד', ואפי'לו כי
אסורים בגיןה ובעבורה – וקדושה
הבא נאייה שניין.

אמר ליה רב חנניה לר'בה: תניא
דמסיע לך, הספיקות נכנסין לדין
להתעשר.

ואין סלקא דעתך תקפו ב'ן אין
מוסיאין אותו מיד', אםאי נכנסין
לדין? נמצאה זה פוטר ממונו בממונו
של פ'ן.

אמר ליה אבוי: אי משום הד לא
תקס'יעיה למ'ר. הכא במאיעס'קין –
בגון דלית ליה אללא תשעה והוא –
דינה נפשך, אי בר חיובא הוא –
שפיר קא מעשר, אי לאו בר חיובא
הוא – תשעה לאו בר עשרין יננהו.

הדור אמר אבוי: לאו מילתא היא
ראמורי, ספיקא לאו בר עשרין היא.
דרנן: קפץ אחד מן המנין לתוכן –
בוקן פטורין.

Rav Hamnuna continued: **And here, where the mishna effectively says that if a priest forcefully seized an animal whose status as firstborn is uncertain¹⁴ the court does not remove it from his possession,¹⁵ as it teaches that the burden of proof rests upon the claimant, the baraita states that even when the priest did not seize it, one is prohibited from shearing and working it.** Evidently, the fact that the priest would remain in possession of the animal were he to seize it suffices to accord consecrated status to the animal even in a case where the priest did not seize it. The same is true in the case of the bathhouse, that even though the one who consecrated it had not taken possession of it, his consecration takes effect.

Rabba said to him: This is no proof, as the cases are not comparable. You say a ruling concerning the sanctity of a firstborn. Actually, I will say to you with regard to an animal whose status as firstborn is uncertain, if a priest seized it, the court removes it from his possession, as there is no validity to ownership acquired by force. Accordingly, when the mishna states that the burden of proof rests upon the claimant, it means that the priest must bring proof that the animal is a firstborn. **And nevertheless, one is prohibited from shearing and from working such an animal, as sanctity that emerges by itself is different.** The sanctity of a firstborn does not result from an act of consecration; rather, the firstborn is consecrated by itself at birth. Therefore, the uncertainty with regard to its sanctity is intrinsic, and one is prohibited from using the animal as long as the uncertainty exists.

Rav Hananya said to Rabba: A halakha is taught in a baraita that supports your opinion that if a priest seizes an animal whose status as firstborn is uncertain, the court removes it from his possession: **The animals whose status as firstborn is uncertain enter the pen to be tithed.¹⁶** They are brought in together with the rest of the young animals from whom the animal tithe is separated. This is so despite the fact that the halakhot of animal tithe do not apply to a firstborn animal.

And if it enters your mind to say that in the case of an animal whose status as firstborn is uncertain that is seized by a priest, the court does not remove it from his possession, why do these animals enter the pen? Isn't this a case of the owner exempting his property from the animal tithe with the property of a priest? If the animal belongs to the priests, it cannot be used as a tithe since one is obligated to separate the animal tithe from one's own animals.

Abaye said to him: If your support for Rabba's opinion is due to that baraita, it does not support the Master. Here, we are dealing with a case where the owner has only nine animals and it, the animal whose status as firstborn is uncertain. Since whichever way you look at it, the owner of the animals is exempt: If that animal is not a firstborn, it belongs to the owner and is subject to the obligation to be tithed as part of a group of ten animals, and the owner tithes properly. And if the animal is a firstborn, it belongs to the priests and the animals are not subject to the obligation to be tithed, since the nine animals belonging to an owner are not subject to tithing.

Abaye then said: That which I said is not correct, as, contrary to what I said, an animal whose status as firstborn is uncertain is not subject to tithing, as we learned in a mishna (Bekhorot 58b): If before one completed tithing his animals, one of those already counted jumped¹⁷ back into the pen¹⁸ among the animals that were not yet counted, all those in the pen are exempt from the obligation to be tithed, because each of them could be the animal that was already counted.

HALAKHA

If a priest seized it – תקפו פ'ן: If it is uncertain whether a certain animal is a firstborn, and a priest seizes it, he retains possession of it. This is the opinion of the Rambam, who holds that although the proof for Rav Hamnuna's opinion was rejected, his opinion was not rejected (Rashba). Most halakhic authorities (*Tosafot*; Ra'avad; Rosh) hold that the court appropriates it from the priest, and the Rema and *Shakh* rule accordingly (Rambam *Sefer Korbanot*, *Hilkhot Bekhorot* 5:3; *Shulhan Arukh*, *Yoreh De'a* 315:1).

One of those counted jumped – קפץ אחד מן המנין – If, while one was tithing his sheep and counting those emerging from the pen, one by one, a sheep that was already counted jumped back into the pen, all of the animals in the pen are exempt from being tithed (Rambam *Sefer Korbanot*, *Hilkhot Bekhorot* 8:14).

NOTES

If a priest seized it the court does not remove it from his possession – תקפו פ'ן אין מוציאין אותו מיד': *Tosafot* note that this ruling would apply only in a case where this owner has an arrangement with this particular priest to give him his priestly gifts. Otherwise, the court would certainly remove the animal from the possession of the priest, as the owner can claim that he intends to give it to another priest.

קפץ אחד מן המנין – *Tosafot* ask: Why is the animal that jumped back into the pen not nullified by the majority of the animals that had not yet been counted, thereby giving it the status of an animal that had not been counted? *Tosefot HaRosh* answers that this is due to the halakha that only an animal whose status as the tenth animal is certain must be tithed and not one whose status as the tenth animal is uncertain (see 7a). Even if based upon the principle of nullification it would be considered an animal that had not been counted, this is not analogous to a definite status.

BACKGROUND

Animal tithe – מנש'ר בהמה: On three occasions each year, the owner of a herd of kosher animals is required to gather all the animals born during the preceding period into an enclosure, and to let them out one by one. These animals are passed "under the shepherd's rod" (Leviticus 27:32), and every tenth animal is marked with red paint, to indicate that it is sacred. The animals so designated are called animal tithe. If the marked animal is fit to be sacrificed, it is brought to Jerusalem, where it is sacrificed and eaten by its owner. If fewer than ten animals remain, he adds those to the animals from the next tithing season and they are tithed together. The details of the halakhot of animal tithe are elucidated in tractate *Bekhorot*.

HALAKHA

Tally fit to reach ten exempts – If, while one was tithing his sheep, one of those that were not yet counted died, those that were led out of the pen and counted are exempt from animal tithe, as a tally fit to reach ten exempts the counted animals from being tithed again. The person must set aside those remaining in the pen for the next time that he tithes his sheep (Rambam *Sefer Korbanot, Hilkhot Bekhorot* 8:10).

ואִי סְלָקָא דַעֲתָן סְפִיקָא בֶּעֶשֶׂר,
לֹעֲשֵׂר מִפְהָנָה נְשָׁנָה: זָאי בָּר חִיבָּא
הָוּא – שְׁפִיר מַעַשָּׂר, וְזָאי לָאו בָּר
חִיבָּא הָוּא – נְפִיטָר בְּמִנְיָן חָרָאִי.

דָּבָר רַבָּא: מִנִּין חָרָאִי פּוֹטָר.

And if it enters your mind that an animal whose status as firstborn is uncertain requires tithing, let him tithe the remaining animals, as whichever way you look at it, his tithing would be effective. Because if this group of ten emerging now renders the owner obligated in the animal tithe, he is tithing properly. And if it does not render the owner obligated in the animal tithe, as one of the ten is the animal that was previously counted, nevertheless, each of the other nine is exempt from animal tithe due to the principle of a tally fit to reach ten.

This principle is as Rava says: A tally fit to reach ten exempts^H oneself from the obligation to tithe. If one began counting animals for the purpose of tithing and when he began the tally the group was fit to be tithed, but ultimately he was unable to separate the tithe, for example, because one of the animals died and there were only nine left, those that were counted while the tally was fit to reach ten are exempt from the requirement of animal tithe, and the owner is not required to include them in the tithe the following year. Similarly, in a case where one of the ten animals was already counted, the other nine are nevertheless exempted by this count, as while he was counting them, the tally was fit to reach ten.

Perek I

Daf 7 Amud a

NOTES

Redemption of a firstborn donkey – The Torah states that a firstborn male donkey belongs to a priest. If the owner prefers, he may redeem it and give the priest a lamb instead (see Exodus 13:13). The lamb used to redeem the donkey is the priest's property and has no sanctity. If the status of the donkey as firstborn is uncertain, e.g., in a case where the mother donkey gave birth to twins, both a male and a female, and it is unclear which was born first (Rashi on *Bekhorot* 11a), the owner must designate a lamb, but he is not required to give it to a priest. Since the priest is the claimant, the burden of proof rests upon him, and since his claim cannot be proven he cannot collect the lamb.

אַלְאָמָא אֵיתָ לְךָ לִמְבָר – עַשְׂרִי
וְדָאִי אָמָר רְחַמְנָא וְלֹא עַשְׂרִי סְפִיקָא
הַכָּא נְמִי – עַשְׂרִי וְדָאִי אָמָר רְחַמְנָא
וְלֹא עַשְׂרִי סְפִיקָא.

אמָר לֵיה רֵב אַחֲרָא מַדְפֵּתִי לְרַבִּינָא:
מַאֲכִילִים סְפִיקָות? אַלְיִמָּא סְפִיקָא בְּכוֹתָה,
יְהִי קָדֵשׁ" אָמָר רְחַמְנָא, וְלֹא
שְׁבָרְבָר קָדוֹשׁ.

אַלְאָ: סְפִיקָא פְּרִיאָן פּוֹטָר חָמָוּ, וְכַדְרָב
נְחַמּוּ. דָּאָמָר רֵב נְחַמּוּ אָמָר רֵבָה בָּר
אָבָוָה: יִשְׂרָאֵל שְׁשׁוֹ לֹעֲשֵׂר סְפִיקָא
פּוֹטָר חָמָוּ בְּתוֹךְ בֵּיתוּ – מְפֻרִישׁ
עַלְיָהּ עַשְׂרָה שִׁין, וּמַעַשְׂרָה, וְתַן
שְׁלֹשׁ.

Rather, what have you to say to explain why one is not required to tithe his flock in a case where a counted animal jumped back into the pen? **The Merciful One states:** “And all the tithe of the herd or the flock, anyone that passes under the rod, the tenth shall be sacred to the Lord” (Leviticus 27:32), from which it is derived that a certain tenth animal must be tithed, but not an uncertain tenth, i.e., an animal that is not certainly the tenth. **Here too,** the entire flock is exempt from tithe because **the Merciful One states** that a certain tenth animal must be designated as tithe and not an uncertain tenth, i.e., an animal that is not certainly subject to tithe. Therefore, there is proof from the *baraita* that if a priest seizes an animal whose status as firstborn is uncertain, the court removes it from his possession.

Rav Aha of Difti said to Ravina: What are these animals of uncertain status that are subject to tithe according to the mishna? If we say that the reference is to animals whose status as firstborns is uncertain, **the Merciful One states:** “The tenth shall be sacred to the Lord,” indicating that the tithe animal becomes sacred only when it is designated as tithe, from which it is inferred: **But not an animal that is already sacred** for a different reason. Therefore, since an animal whose status as firstborn is uncertain is already considered sacred due to the uncertainty, the sanctity of animal tithe would not apply to it.

Rather, the mishna must be referring to a case of an uncertain redemption of a firstborn donkey,^{NH} i.e., a lamb used as redemption for a donkey whose status as firstborn is uncertain. And this is in accordance with the statement of Rav Nahman, as Rav Nahman says that Rabba bar Avuh says: An Israeli who has ten donkeys whose status as firstborn is uncertain in his home separates ten lambs to redeem them, and tithes the lambs, separating one as a tithe, and they all belong to him, as a priest cannot prove that he is entitled to any of the ten.

HALAKHA

סְפִיקָא פְּרִיאָן – An uncertain redemption of a firstborn donkey – If one has ten lambs, each of which was used to redeem a donkey whose firstborn status was uncertain, they

are all considered non-sacred. Therefore, he is required to separate one of the lambs as the animal tithe (Rambam *Sefer Zera'im, Hilkhot Bikkurim* 12:23).

מַאי הָיו שְׁלָה דְמִסּוֹתָא? תֵּא שְׁבֻעָה,
דָּא מַרְוֶה רַבִּי חִיאָ בֶּן אֲבִין: הַהָּו עֲזָבָא
בִּירַב חִסְדָּא, וּבִרַב חִסְדָּא בִּירַב הַונָּא,
וְפִשְׁטוּתָה מֵהָא דָא מַרְוֶה רַב נַחַם: כָּל מִמּוֹן
שָׁאַיְן יְכֹל לְהֹצִיאוֹ בְּרוּגִין, הַקְדִישׁוֹ
אַיְנוּ קְדוּשָׁ.

הָא יְכֹל לְהֹצִיאוֹ בְּרוּגִין – הַקְדִישׁוֹ
קְדוּשָׁ, אָף עַל גַּב דָּלָא אַפְקִיה? וְהַא מַרְוֶה
רַבִּי יוֹחָנָן: גָּוֹל וּלְאַנְתִּיאָשׁוּ הַבְּלִילִים –
שְׁנֵיהֶם אַיְנָם יְכֹלָן לְהַקְדִישׁוֹ, וְהָ
לְפִי שְׁאַיְנָה שְׁלֹו, וְהָ – לְפִי שְׁאַיְנָה
בְּרִשותָׁו.

מִשְׁבָּרָת בְּמִסּוֹתָא מְטֻלְּלָן עַסְקִינָן?
בְּמִסּוֹתָא מְקֻרְעַי עַסְקִינָן, דְּכִי יְכֹל
לְהֹצִיאָה בְּרוּגִין – בְּרוּשָׁתָה קְיֻמָּא.

תְּנִי רַב תְּחִלְיףָא בֶּר מַעֲרָבָא קְמִיה –
רַבִּי אֲבָהָו: שְׁנֵים אֲדוֹקִים בְּטַלִּית –
זֶה נְטַל עַד מָקוֹם שִׁידּוֹ מִגְעָת, וְהָשָׁאָר
נְטַל עַד מָקוֹם שִׁידּוֹ מִגְעָת, וְהַשָּׁאָר
חוֹלְקִין בְּשׂוֹתָה. מַחְנִי לְיהָ רַבִּי אֲבָהָו:
וּבְשֻׁבָּעָה.

אַלְאָ מַתְנִינִי, דְּקַתְנִי דְּפָלִי בְּחִדְרוֹ,
וְלֹא קַתְנִי וְהַנְּטָל עַד מָקוֹם שִׁידּוֹ
מִגְעָת, הַכִּי מִשְׁבָּחָת לְהָ? אָמָר רַב
פָּפָא: דְּתַפְּסִי בְּכֻרְכְּשָׁתָא.

אָמָר רַב מְשָׁרְשִׁיָּא: שְׁמַע מִינָה, הָא
סּוֹדָא, בַּיּוֹן דְּתַפְּסִי בֵּיהֶ שֶׁלֶשׁ עַל
שֶׁלֶשׁ – קְרוּן בֵּיהֶ "וַיְנַתְּנֵנִי לְרַעַתָּה",

The Gemara asks: What halakhic conclusion was reached about this matter of the bathhouse? Come and hear a conclusion, as Rabbi Hyya bar Avin said: There was a similar incident that was brought before the school of Rav Hisda, and Rav Hisda brought the case before the school of Rav Huna, and Rav Huna resolved the issue based on that which Rav Nahman says: With regard to any property that one cannot recover from the possession of another party by legal process, if he consecrated it while it was in the possession of the other party the consecration is not valid.

The Gemara questions Rav Nahman's statement: By inference, is it so that if one can recover the property from the other party by legal process, and he consecrated it, the consecration is valid, although he has not yet recovered it? But doesn't Rabbi Yohanan say: In a case where one robbed another of an item and the owner did not despair^b of retrieving it, neither the owner nor the robber can consecrate it;^h this one, the robber, because it is not his, and that one, the owner, because it is not in his possession? The indication is that one cannot consecrate even his own item if it is not in his possession.

The Gemara answers: Did you think that in the case of the bathhouse we are dealing with a movable bath? No, we are dealing with a bath that is excavated in the ground,^h in which case once its owner can recover it by legal process there is no need to take possession of it, as it already exists in his possession.

SRav Tahalifa from the West, i.e., Eretz Yisrael, taught this *baraita* before Rabbi Abbahu: If two people are grasping a garment,^h this one takes up to where his hand reaches, and that one takes up to where his hand reaches, and they divide the remainder, the part of the garment that is in the grasp of neither, equally. Rabbi Abbahu indicated by means of a hand gesture that Rav Tahalifa should add: And this is with the proviso that they take an oath.ⁿ

The Gemara asks: But then how can you findⁿ a case where the *halakha* in the *mishna* applies? As the *mishna* teaches that they divide the garment between them, and does not teach that this one takes up to where his hand reaches and that one does likewise. Rav Pappa said: The *mishna* is discussing a case where neither of them is grasping the garment itself, but rather they are holding onto the fringes [*bekarkashta*]^c of the garment. Therefore, each is required to take an oath and they divide the garment between them.

Rav Mesharshiyya said: Learn a *halakha* with regard to the symbolic transfer of a cloth^b as a formal act of acquisition from Rav Pappa's statement: The entire cloth need not change hands. Rather, once the recipient of the cloth has grasped three by three fingerbreadths of the cloth,^{hn} which is the minimum size of a cloth that can be considered a utensil, the transaction takes effect, as we consider such an action to be an implementation of the verse upon which acquisition by means of a cloth is based: "Now this was the custom in former times in Israel... to confirm all things: A man drew off his shoe, and gave it to his neighbor; and this was the attestation in Israel" (Ruth 4:7).

BACKGROUND
לֹא נָתַתְנָשׁ הַבְּלִילִים: Despairing of recovering a stolen item is not merely an emotional state of mind; it has halakhic ramifications as well. Once this happens, the item is considered abandoned property, and anyone may take it. This concept is relevant to the *halakhot* of returning lost items, as well as to the halakhic status of stolen property.

Cloth – סְנָאָת: Transferring ownership by means of a cloth is a mode of transaction rooted in the principle of trading property. When two people trade items, the formal acquisition of one of the items automatically transfers ownership of the second item as well. While people naturally trade items of equal value, it is not necessary that the items be of equal value, and therefore a formal mode of transaction by means of a cloth developed as an extension of the principle of trading.

The symbolic transfer of a cloth or some other article from one party to another seals any agreement made between them, as it is indicative of their willingness to proceed with the transaction. Normally, when the ownership of an item is transferred by means of a cloth, the seller grasps the buyer's cloth and then releases it, effecting the transfer of his item to the other. The source for this mode of transaction is the biblical account in which Boaz purchases land and property by means of transferring a shoe to his relative (see Ruth 4:7).

HALAKHA

Consecration of a stolen item – זְכַר שְׁגַנְלָל: If an item was stolen from its owner and he has not despaired of recovering it, neither the owner nor the thief can consecrate it (Rambam *Sefer Hafla'a*, *Hilkhot Arakhin* 6:24; *Shulhan Arukh*, *Hoshen Mishpat* 354:6 and *Yoreh De'a* 258:6).

With a bath that is excavated in the ground – בְּמִסּוֹתָא בְּקֻרְעַשׁ: Although one cannot consecrate an item that is not in his possession, if he was robbed of land and is able to recover it by legal proceedings, he can consecrate it even while it is in the robber's possession (Rambam *Sefer Hafla'a*, *Hilkhot Arakhin* 6:23; *Shulhan Arukh*, *Yoreh De'a* 258:6).

Two people grasping a garment – שְׁנֵים אֲדוֹקִים בְּטַלִּית: The *halakha* in the *mishna* that two people holding a garment divide it equally applies only in a case where each is holding on to the edge of the garment and has less than three by three fingerbreadths in his grasp. If each party has a larger part of the garment in his grasp, each receives the part that he is holding and they divide the rest equally after taking an oath (Rambam *Sefer Mishpatim*, *Hilkhot To'en VeNitan* 9:9–10; *Shulhan Arukh*, *Hoshen Mishpat* 138:3).

Acquisition by pulling the item – קְנָנָן מִשְׁבָּחָת: The Rambam rules that when an acquisition is effected by means of pulling the item, if the one who is acquiring the item has at least three by three fingerbreadths of the item in his grasp, or even less than that if he is able to pull the item toward him, the transaction takes effect. The Rema rules in accordance with the opinion of the Rashba that the transaction takes effect only if he has at least three by three fingerbreadths in his grasp; merely being able to pull the item toward him is not sufficient (Rambam *Sefer Kinyan*, *Hilkhot Mekhira* 5:7; *Shulhan Arukh*, *Hoshen Mishpat* 195:4).

LANGUAGE

Fringes [karkashta] – בְּכֻרְכְּשָׁתָא: This is the Aramaic form of the Greek word κροκύς, *krokus*, meaning threads of wool.

Two people grasping a garment...and with the proviso that they take an oath – שְׁנֵים אֲדוֹקִים בְּטַלִּית...וּבְשֻׁבָּעָה: The commentaries disagree as to whether the obligation of each litigant to take an oath is in order to keep the part of the garment that is in his grasp, as the Sages instituted this oath in order to prevent people from grabbing others' garments (see 3a), and the rest of the garment is divided evenly without the need for an oath (*Tosafot*; Ra'avad; Rashba); or whether the oath is taken primarily over the part of the garment that is not in his grasp (*Halakhot Gedolot*; Rambam; Mordekhai). According to both opinions, each party ultimately takes the oath with regard to both the part that is in his grasp and the part that is not in his grasp, due to an extension of the oath (Rambam; see Meiri).

NOTES

How can you find – הַיכִי מִשְׁבָּחָת לָהּ: Why doesn't the Gemara explain that each of them has exactly half the garment in his grasp? One answer is that this is an extremely uncommon situation, and it is therefore implausible to interpret the *mishna* as referring to this case (*Shita Mekubetzet*).

Once the recipient has grasped three by three fingerbreadths of the cloth – בַּיּוֹן דְּתַפְּסִי בֵּיהֶ שֶׁלֶשׁ עַל שֶׁלֶשׁ: This is the minimum size of a garment in terms of the *halakhot* of ritual impurity as well as for the transfer of a cloth as a formal act of acquisition.

HALAKHA

A bill of divorce in his wife's hand and a string in his hand – **גט בידה ומישחה בידו**: In a case where a man gives his wife a bill of divorce but part of it, or even a string attached to it, remains in his hands, if he is able to pull the bill of divorce toward him the divorce does not take effect (Rambam Sefer Nashim, Hilkhos Geirushin 5:16; Shulhan Arukh, Even HaEzer 138:2).

If the garment was fashioned with gold thread they divide it – **אם היתה טלית מזוהבת חולקין**: In a case where two people were grasping a garment fashioned with gold thread, even if the gold was closer to the side of the garment grasped by one of them, the garment is divided equally; the gold is not given to the one to whom it was closer (Rambam Sefer Mishpatim, Hilkhos To'en VeNitan 9:10; Shulhan Arukh, Hoshen Mishpat 138:3).

NOTES

We require severance – **בריתות ביטין**: From the fact that the Torah refers to a bill of divorce as "a scroll of severance" (Deuteronomy 24:1), it is derived that for a divorce to take effect it must be absolute, severing all connection between the husband and the wife once he gives her the bill of divorce. This precludes both the existence of a legal connection, e.g., a permanent condition upon whose fulfillment the divorce is contingent, and the physical possession of part of the bill of divorce by the husband.

דְּכָמָא דְּפִסִּיקָה דְּמַיִּינִי

ומאי שנא מדבר חקודה? דאמר רב חקודה: גט בידה ומישחה בידו, אם חולקו לנתקו ולהיבאו אצלו – אינה מגורשת, ואם לאו – מגורשת!

This is because such an amount of the cloth is significant enough to be considered as though it were severed from the rest of the cloth, and therefore when the recipient grasps it, it effects the acquisition, even though the rest of the cloth is still in the hand of the other party.

The Gemara asks: But in what way is this case different from the ruling of Rav Hisda? As Rav Hisda said: In a case where a husband placed a bill of divorce in his wife's hand, and a string attached to the bill of divorce remained in his hand,^h if the husband can still pull the bill of divorce out of her hand and bring it to him, she is not divorced; and if he is not able to do so, e.g., if the string is too flimsy, then she is divorced. This indicates that as long as part of the bill of divorce remains in his hand, it is not considered as though he gave it to her.

החתם – בריתות ביטין, וליכא. הכא – בניתה ביטין, וזה איכא.

אמרו ר' בא: אם היתה טלית מזוהבת – חולקין. פשיטא! לא צריכא, דקאי. דהבא כי מצטי.

הא נמי פשיטא! לא צריכא, דמייקרב לגביו דוחה. מהו דתימא, דאמר ליה: פלוגה הכא. קא משמע לנו, דאמר ליה: מיי חווית דפלגת הכא? פלוגה הכא.

רבנן: שניים אודוקין בשטר, מליה אומר: שליל הווא, ונפל מפניהם, ומיצאתי. ולזה אמר: שלין הווא, ופרעטה לו. תיקיים השטר בחותמו, דברי רבי.

רבנן שמעון בן גמליאל אומר: יחלוקו.

ונפל לידי דין – לא יוציאו עולמת. רבי יוסי אומר: הרי הוא בחזקתו.

The Gemara answers: There, in the case of a bill of divorce, we require that it accomplish a complete severanceⁿ between the husband and wife, and as long as the husband continues to have some hold on the bill of divorce there is no complete severance. By contrast, here, in the case of a transaction by means of a cloth, we require an act of giving, and there is a valid act of giving even if only part of the cloth was given.

Rava says: Even if the garment was fashioned with gold thread, they divide it.^h The Gemara asks: Isn't this obvious? Why would a gold garment have a different halakha? The Gemara answers: No, it is necessary to state this halakha in a case where the gold is in the middle of the garment, neither in one's hand nor in the other's.

The Gemara challenges: This too is obvious; the halakha is that they divide the remainder. The Gemara answers: No, it is necessary to state this halakha in a case where the gold is closer to one of them, though it is not in his grasp. Lest you say that the one to whom the gold is closer can say to the other: Divide it in this manner, along the middle line of the garment between us, leaving most of the gold in my possession, Rava therefore teaches us that they divide the gold equally. The reason is that the other litigant can say to him in response: What did you see that led you to divide it in that manner, e.g., lengthwise? Divide it in this manner, e.g., widthwise, so that the gold will be divided equally between us.

§ The Sages taught in a baraita (Tosefta 1:8): In a case where two people, a creditor and a debtor, are grasping a promissory note, and the creditor says: The promissory note is mine, as the debt has not yet been repaid, and I merely dropped it and I subsequently found it, and the debtor says: The promissory note was once yours, i.e., you lent me the money, but I already repaid you, and you therefore gave me the note, in that case the promissory note must be ratified through its signatories for the creditor to collect the debt. In other words, the court must first ascertain the validity of the promissory note by verifying that the signatures of the witnesses are authentic. This is the statement of Rabbi Yehuda HaNasi.

Rabban Shimon ben Gamliel says: The creditor and the debtor divide the debt attested to in the promissory note, i.e., the debtor is liable to pay half the amount, due to uncertainty as to who is telling the truth.

If a promissory note fell into the possession of a judge and the two parties do not agree as to which of them it belongs, either to the creditor, and the debt has yet to have been repaid, or to the debtor, and the debt was repaid, it may never be removed from the judge's possession to collect the debt until proof is provided. **Rabbi Yosei says:** The promissory note retains its presumptive status of validity and the litigants proceed in accordance with its contents.

אמר ר' ברא אמר רב נחמן: במקו"ם ליה מלה כויליה? ולית ליה מתייתן שנים אוחזין" כו?

אמר ר' ברא אמר רב נחמן: במקו"ם - דברי הכל יחלוקו, כי פלוני - בשאיינו מקו"ם.

רבי קבר: מורה בשטר שבחתו צריך רקיעמו, ואי מקו"ם ליה - פליג, ואילא מקו"ם ליה - לא פליג.

מאי טעם? חספה בעלמא הו. מאן קא משוי ליה להאי שטרא - לה, הא קא אמר דפרען.

ורבי שמעון בן גמליאל קבר: מורה בשטר שבחתו אין צריך רקיעמו, ואילא על גב דלא מקו"ם ליה - יחלוקו.

"נפל ליר דין לא יוציאו עולמית,"

The Gemara discusses the *baraita*. The Master said that the promissory note must be ratified through its signatories. And does this indicate that once it is ratified, the creditor collects the entire debt? But doesn't Rabbi Yehuda HaNasi hold in accordance with the halakha taught in the mishna with regard to two people holding a garment, that they divide the garment? Here too, each party should be entitled half the promissory note, and the debtor should therefore be obligated to pay only half the debt.

Rava says that Rav Nahman says: In a case where the promissory note was ratified by the court, everyone agrees that the litigants divide it, and the debtor repays only half of the debt. They disagree with regard to a case where it was not ratified.

Rabbi Yehuda HaNasi holds that even when a debtor admits that he wrote a promissory note,^h the creditor must ratify it in court in order for the creditor to collect the debt. And therefore, if he ratifies the promissory note in court he divides it with the debtor, and if he does not ratify it he does not divide it with the debtor. If he is unable to ratify the signatures of the witnesses, he receives nothing even if the debtor admits that he borrowed the money.

What is the reason for Rabbi Yehuda HaNasi's opinion? He holds that an unratified promissory note is merely a shard. Who renders this document a valid promissory note? The debtor does. The validity of the note is solely dependent on the corroboration of the debtor, and doesn't the debtor say that the debt mentioned in the promissory note was repaid? Therefore, the note is worthless unless it is ratified by the witnesses in court.

And Rabbi Shimon ben Gamliel holds that if a debtor admits that he wrote a promissory note, the creditor is not required to ratify it^h in court in order for the creditor to collect the debt. And therefore, even if the creditor does not ratify it, the promissory note is valid, and they divide it.

It is taught in the *baraita* that if a promissory note fell into the possession of a judge it may never be removed from his possession until proof is provided.

HALAKHA

מודה בשטר Admits that he wrote a promissory note – **שכחתו:** In a case where a promissory note has not been ratified, and the debtor admits that there was a debt but claims that he repaid it, the debtor's claim is accepted. In order to avoid that situation, the creditor should have the document ratified first and then come to court to claim the money due him (Rambam Sefer Mishpatim, Hilkhot Malve VeLoveh 14:14; Shulhan Arukh, Hoshen Mishpat 82:1).

NOTES

אין צריך לרiliymoro: By Torah law, a promissory note signed by two witnesses is valid without ratification. The Sages observed that forgery was rampant, and they therefore instituted an ordinance that a promissory note must be ratified in court in order to be used to collect a debt (Rosh).

Perek I Daf 7 Amud b

מאי שנא ליד דין? אמר ר' ברא, וכי קא אמר: ואחד שטעה שטר שנפל ליד דין, והיכי דמי - דכתב ביה הנפק, לא יוציאו עולמית.

The Gemara asks: What is different about the case where the promissory note fell into the possession of a judge, such that the creditor cannot retrieve it to collect the debt? Rava said this is what the *baraita* is saying: But in the case of another individual, who is neither the debtor nor the creditor, who found a promissory note that had already fallen into the possession of a judge,^h it may never be removed from his possession until proof is provided. And what are the circumstances? What does it mean that the promissory note had fallen into the possession of a judge? It is a case where the court wrote in the promissory note a ratification certifying that it examined and ratified the note and it can be used to collect the debt.

ולא מיבעייא לא כתוב ביה הנפק, דאיכא למימר כתוב לילות ולא לה, אלא אפלו כתוב ביה הנפק, דמקום - לא יחויר, רק חיישן לפירעון.

And the reason the *baraita* refers specifically to these circumstances is that it is not necessary to state that in a case where there is no ratification written in the promissory note that the creditor cannot use it to collect the debt; as it can be said that the debtor wrote the document because he intended to borrow the money, but he ultimately did not borrow it. Rather, the *baraita* states that even in a case where there is a ratification written in the promissory note, as it is now a ratified promissory note, the finder should not return it to the creditor, as we suspect that there was repayment, i.e., that the debtor may have repaid the debt, and he lost the promissory note.

HALAKHA

But another individual who found a promissory note that had fallen into the possession of a judge – **אהר שטעה שאישר שטעה ליד דין:** One who found a promissory note may not return it to the creditor even if it was ratified in court, as it may have been repaid. Even if the debtor admits that he did not repay the debt the promissory note may not be returned, due to the suspicion that there is collusion between the creditor and the debtor. This is in accordance with Rava's opinion (Rambam Sefer Nezikin, Hilkhot Gezila VaAveda 18:13; Shulhan Arukh, Hoshen Mishpat 65:6–7).

HALAKHA

If one found a marriage contract – **מִצְאָ שֶׁתֶּרֶת קַטּוֹבָה:** In a case where one found a marriage contract, even if the husband admits that it belongs to his wife, the one who finds it may not return it to her, due to the suspicion that there is collusion between the husband and wife (Rambam Sefer Nezikin, Hilkhot Gezeila VaAveda 18:12).

NOTES

Should not return it to this one or to that one – **לֹא יִחְיֵר:** The early commentaries ask: If the possibility that the husband already paid the marriage contract is taken into account, why is it returned to the wife in a case where the husband admits that he has not paid it? Why is the possibility of collusion between husband and wife, in order to collect the husband's liened property that was sold to others, not taken into account?

The Rashba answers that the *tanna* of this *baraita* does not take the possibility of collusion into account in the case of other monetary documents either (see 13a). The Ramban explains that the Gemara is referring to a marriage contract that does not include a lien on the husband's property, and therefore there is no possibility of collusion.

וּרְبִי יוֹסֵי אָמַר: הַרְיָה הוּא בְּחִזְקָתוֹ, וְלֹא
חִשְׁנָן לְפִרְעֹוֹן, וְלֹא חִישׁ רְבִי יוֹסֵי
לְפִרְעֹוֹן?

וְהַתְנוּנָה: מִצְאָ שֶׁתֶּרֶת קַטּוֹבָה בְּשָׁוֹק,
בְּמִן שַׁהְבָּעֵל מִזְרָה – יִחְיֵר לְאַשָּׁה,
אַיִן הַבָּעֵל מִזְרָה – לֹא יִחְיֵר לְאַלְמָה
וְלֹא לְהָ

רְבִי יוֹסֵי אָמַר: עֲזָדָה תַּחַת בָּعֵלָה –
חִישׁ רְבִי יוֹסֵי אָלְמָה, שְׂתָרָמָלָה אוֹ שְׂנִתְגָּרָשָׁה –
לֹא יִחְיֵר לְאַלְמָה וְלֹא לְהָ

אַיִלּוֹן, נַפְלָה לִידֵי דִין לֹא יוֹצִיאוּ
עוֹלָמִית – דָבָרִי רְבִי יוֹסֵי, וְחַכְמִים
אָמַרְוּ: הַרְיָה הוּא בְּחִזְקָתוֹ.

אַיִלּוֹן קְשִׁיאָה וְרַבָּן אַדְרָבָנִי

שֶׁתֶּרֶת קַטּוֹבָה כִּילָה רְבִי יוֹסֵי, וְחַסְדָּיוֹ
מַחְשָׁרָא וְהַכִּי קְתָנָה: אַיִן הַבָּעֵל
מִזְרָה – לֹא יִחְיֵר לְאַלְמָה וְלֹא לְהָ
בְּבָהָה דְּבָרִים אֲמֹרִים – שְׂתָרָמָלָה
אוֹ שְׂנִתְגָּרָשָׁה, אָכְלָה עֲזָדָה תַּחַת
בָּעֵלָה – יִחְיֵר לְאַשָּׁה, שְׂרָבִי יוֹסֵי
אָמַרְוּ: עֲזָדָה תַּחַת בָּעֵלָה יִחְיֵר לְאַשָּׁה,
שְׂתָרָמָלָה אוֹ שְׂנִתְגָּרָשָׁה – לֹא יִחְיֵר
לְאַלְמָה וְלֹא לְהָ

The Gemara discusses the continuation of the *baraita*: **And Rabbi Yosei says:** The promissory note retains its presumptive status. The Gemara explains: **And we do not suspect that there was repayment;** had the debt been repaid the debtor would have immediately destroyed the promissory note. The Gemara asks: **But does Rabbi Yosei not suspect that there was repayment?**

But isn't it taught in a baraita: If one found a marriage contract^{HB} in the marketplace, in a case when the husband admits that he has not yet paid the amount written in the contract to his wife, the finder must return the document to the wife. In a case when the husband does not admit this, but instead claims that he has already paid the amount written in the contract, the one who found it should not return it to this one, the husband, or to that one,^N the wife.

Rabbi Yosei says that there is a distinction between different situations: If the wife is still under the auspices of her husband, i.e., she is still married to him, the one who found the marriage contract must return it to the wife because presumably the husband did not pay her the amount specified in the marriage contract during their marriage. If the wife was widowed or divorced, he should not return it to this party, the husband or his heirs, or to that party, the wife, as perhaps she already received payment and the contract was later lost by her husband or his heirs. In this case, Rabbi Yosei suspects that there was payment.

The Gemara answers: Reverse^B the order of the *tanna'im* in the *baraita* and teach it as follows: If the promissory note fell into the possession of a judge, it may never be removed; this is the statement of Rabbi Yosei. And the Rabbis say: It retains its presumptive status.

The Gemara asks: If so, the contradiction between the statement of the Rabbis in this *baraita* and the statement of the Rabbis with regard to the case of the marriage contract is difficult. Whereas according to the emended version of the *baraita* the Rabbis do not take into account the possibility that the debt was repaid, in the case of the marriage contract the Rabbis take this possibility into account.

The Gemara resolves the problem: The *baraita* that discusses the marriage contract is entirely in accordance with the opinion of Rabbi Yosei; it contains no dispute. **And the baraita is incomplete, and this is what it is teaching:**^B In a case where the husband does not admit that he did not pay the marriage contract, the one who found it should not return it to this party or to that party. **In what case is this statement said?** It is said in a case where the woman was widowed or divorced. But if she is still under the auspices of her husband, the finder must return it to the wife. As Rabbi Yosei says: If she is still under the auspices of her husband, the finder must return it to the wife. If she was widowed or divorced, he should not return it to this party or to that party.

BACKGROUND

Marriage contract – בְּתִבְחָרָה: A marriage contact is a legal document given by a husband to his wife upon their marriage, stating his obligations toward her during and after their marriage. The contract includes a lien on the husband's estate payable if the wife is divorced or widowed. The minimum value of such a document is two hundred dinars for a virgin bride and one hundred dinars for other brides. The general guidelines for a marriage contract are given in the Talmud, but its specific provisions are often based on local custom. In addition, the marriage contract may include individual stipulations agreed to by the husband and wife.

The marriage contract gives the marriage halakhic legitimacy. Without one, the couple's relationship is considered licentious.

Reverse – אַיִלּוֹן: Sometimes, when opinions are attributed to a pair of Sages in one context, and the opposite opinions are attributed to those same Sages in another context, the Gemara attempts to resolve the contradiction by suggesting that the opinions attributed to these Sages be reversed. Subsequently, the Gemara may reject this suggestion, saying: Actually, do not reverse the opinions, but instead explain as follows.

תְּחַסְּרָא וְהַכִּי קְתָנָה: This method of explanation is found often in the Gemara. The addition introduced by the Gemara is an elaboration upon that which is written in a mishna or *baraita*, which comes to resolve difficulties raised in the Gemara that render the mishna or *baraita* in its original form incoherent or inconsistent with another authoritative source. The addition provides the necessary clarification.

רְבָבָא אָמַר: לְעוֹלָם לֹא תִפְאַרְךָ וּבֵן יוֹסֵי
לְדִבְרֵיכֶם דָּרְבֵנִים קָאָמַר לְהּוּ.

לְדִידִי – אֲפִילוּ נְתָאָרְמָלָה אָוּ נְתָגָרָשָׁה
נְמִי לֹא חִיְשֵׁין לְפִיעֻוֹן, לְדִידְכָו – אֲזֹדוֹ
לִי מִיהֶת בַּעֲזָרוֹת תְּחִתָּה בְּעֵלָה דִּיחָיוֹר
לְאַשָּׁה, דְּלֹאו בַּת פְּרַעֽוֹן הִיא,

וְאִמְרָוּ לִיהְ רַבָּן: אִימְרָוּ צָרֵרִי אַתְּפָסָה.

רְבִינָא אָמַר: לְעוֹלָם אִיפּוֹךְ קְמִיְּתָא.
טַעֲמָא דָּרְבֵנִים הַכָּא – מִשּׁוּם דְּחִיְשֵׁין
לְשָׂתִי כְּתוּבָות. וּבֵן יוֹסֵי לְשִׁתְּפִי כְּתוּבָות
לֹא חִישׁ.

אָמַר רַבִּי אַלְעָוָר: מַחְלֻקָּת בְּשִׁנְיָהִם
אֲדוֹקִים בְּטוּפָס וְשִׁנְיָהִם בְּטוּרָה, אֲבָל
אַחֲרָא אֲדוֹק בְּטוּפָס וְאַחֲרָא אֲדוֹק בְּטוּרָה –
וְהַנוּ נְוטָל טְוָפָס וְהַנוּ נְוטָל תּוּרָה. וּבֵן יוֹחָנָן
אָמַר: לְעוֹלָם חֹלְקָיִן.

Rav Pappa said: Actually, do not reverse the opinions in the *baraita*, but instead resolve the contradiction differently: **Rabbi Yosei was telling the Rabbis what the halakha should be in the case of a marriage contract according to their statement**, i.e., according to their opinion that one who finds a promissory note needs to take into account that the debt may have been repaid already.

His statement should be understood as follows: In my opinion, even if she was widowed or divorced we do not suspect that there was payment. But according to your opinion, concede to me, in any event, that while she is still under the auspices of her husband the finder should return the document to the wife, as the marriage contract is not yet subject to payment. Since the husband is not yet liable to pay, it is unlikely that he paid.

And the Rabbis said to him in response: Even if they are still married, say that he gave her bundles^N of money, and in exchange she gave him back the marriage contract. If the finder then returns the marriage contract to the wife, that would enable her to collect the sum twice.

Ravina said: Actually, reverse the order of the *tanna'im* in the first *baraita*,^N which discusses one who finds a promissory note, and resolve the contradiction between the different statements of the Rabbis as follows: **The reason for the opinion of the Rabbis here**, that a marriage contract cannot be returned to the wife, is that we suspect that the husband wrote two marriage contracts;^N after the first marriage contract was lost, the husband had to write a second one in its stead. Returning to the wife the marriage contract that was found would enable her to collect twice. **And Rabbi Yosei holds** that it should be returned to the wife because he does not suspect that the husband wrote two marriage contracts; in his opinion, it is a rare occurrence.

§ Rabbi Elazar says: With regard to the dispute between Rabban Shimon ben Gamliel and Rabbi Yehuda HaNasi in the case of a creditor and a debtor both grasping a promissory note, Rabban Shimon ben Gamliel holds that they divide the promissory note evenly, specifically in a case where both are grasping^{NH} the standard part of the promissory note, i.e., the part that contains the standard formulation of the note, or both are grasping the essential part^N of the promissory note, where the names of the creditor and debtor are written, as well as the amount owed and the date. **But if one of them is grasping the standard part and the other one is grasping the essential part**, they divide the promissory note between them based on the section that each of them is holding; **this one takes the standard part and that one takes the essential part**. **And Rabbi Yoḥanan says:** Actually, they divide everything equally.

NOTES

He gave her bundles – צָרֵרִי אַתְּפָסָה: Rashi explains that the husband gave his wife money so that after his death she would not have to become involved in litigation in order to collect the sum due her in the marriage contract. This raised a discussion among the early commentaries as to whether this *halakha* applies with regard to one who finds a promissory note as well, i.e., whether the possibility that the debtor repaid the debt before it was due is plausible enough that the promissory note cannot be returned to the creditor in such a case. Some commentaries suggest that this possibility is plausible only in the case of a marriage contract, since if a married couple's marriage contract is misplaced the husband is obligated to produce a new one, and in such a case he may have given his wife money instead (Rashba; Ritva).

Reverse the first baraita – אִיפּוֹךְ קְמִיְּתָא: According to Ravina's explanation, in order to resolve the contradiction, reversing the last *baraita* would have also been effective. Some commentaries explain that Ravina maintains that the possibility that there was payment need not be taken into account, and therefore he sought to establish that as the majority opinion (*Shita Mekubetzet*).

We suspect that the husband wrote two marriage contracts – דְּחִיְשֵׁין לְשִׁתְּפִי כְּתָבָתָה: This suspicion is unique to marriage contracts and does not apply to other documents, due to the *halakha* that a husband and wife are prohibited from engaging in intercourse in the absence of a marriage contract. If the marriage contract is lost, the husband must write the wife a new one. Consequently, a situation might arise where the wife has two marriage contracts in her possession.

The dispute [mahaloket]...where both are grasping – מַחְלֻקָּת שְׁשִׁנְיָהִם אֲדוֹקִים: Although the term *mahaloket* usually refers to a dispute, in this context Rashi and most other commentaries interpret the term as meaning division. In other words, the value of the promissory note is divided evenly between the two litigants only if both are grasping both the standard part and the essential part of the promissory note. The reason for this interpretation is that the *halakha* stated here seems unrelated to the dispute between Rabban Shimon ben Gamliel and Rabbi Yehuda HaNasi; Rabbi Elazar's distinction is valid according to both opinions. The *Levush Mordekhai* interprets the word *mahaloket* in its usual sense, and understands that this was the Rambam's interpretation as well.

Standard part and essential part – טְוָפָס וְתוּרָה: There are many different interpretations of these terms. Rashi holds that the essential part is the first part of the promissory note, which includes all of the specific details of the loan, i.e., the names of the debtor and the creditor, the sum, and the date and location where the loan was given. The standard part includes the standard formulation of the document.

Others explain that the essential part is that section of the promissory note that includes the signatures of the witnesses and a summary of the document's contents, and the standard part is the first part of the document, which does not include the witnesses' signatures. See Rambam, Rashba, and Rosh, who elaborate extensively on this topic.

HALAKHA

מַחְלֻקָּת בְּשִׁנְיָהִם אֲדוֹקִים וּכְ: In a case where a debtor and creditor are both holding a promissory note and each claims that he was the one who lost it, each of them takes an oath and they divide its value. This is the opinion of the Rif and the Rambam, who rule in accordance with the opinion of Rabbi Yoḥanan.

Others hold that if one of the litigants is holding the essential part of the document and the other is holding the standard part, the one holding the essential part receives the difference in value between the essential part and the standard part, and each takes an oath and they divide the rest. This is the opinion of the Rosh, who rules in accordance with the opinion of Rabbi Elazar,

because much of the discourse in this discussion in the Gemara is in accordance with his opinion (*Beit Yosef*).

Some authorities rule in accordance with the opinion of Rashi that according to the conclusion of the Gemara, there is no dispute between Rabbi Elazar and Rabbi Yoḥanan; both agree that if one of the litigants is holding the essential part of the promissory note and the other is holding the standard part, the one holding the essential part receives a higher amount. Otherwise, even if the essential part is closer to the grasp of one of the litigants, the value of the promissory note is divided equally (*Shulḥan Arukh, Hoshen Mishpat* 65:15).

וְאַפְלִילוּ אֶחָד אֶדְרָק בְּטוֹפֵס אֶחָד
בְּתוֹרָה, וְהַתְּנִיא: זֶה נוֹטֵל עַד מִקּוֹם
שִׁירָז מְגֻשָּׂת! לֹא צְרִיכָא, דְּקָאֵי תּוֹרָה
בְּמַצְעִי.

The Gemara asks with regard to Rabbi Yoḥanan's statement: And does he hold that this is the *halakha* even in a case where one is grasping the standard part and one the essential part? But isn't it taught in the *baraita* that was cited above with regard to a garment: This one takes up to where his hand reaches and that one takes up to where his hand reaches? Here as well, if one is grasping the standard part and the other is grasping the essential part, they should take the parts they are holding. The Gemara answers: No, this *halakha* that Rabbi Yoḥanan stated is necessary for a case where the essential part is located in the middle. He was not discussing the case where one was grasping the standard part and the other one was grasping the essential part. In that case, he would agree that each takes the part he was grasping.

אי הַכִּי, מַיְ לִמְידָרָא? לֹא צְרִיכָא,
דְּמַקְרָב לְבֵבִי דְתַחַד. מַהוּ דְתַחַמָּא,
אָמַר לֵיה: פָלוֹג הַכִּי, קָא מִשְׁמָעַלן?
דְאָמַר לֵיה: מַיְ חַזִית דְפָלָגַת הַכִּי?
פָלוֹג הַכִּי.

אָמַר לֵיה רְבָבָא מַדְפָּתִי לְרַבִּינָא:
לְרַבָּא אַלְעוֹר, דְאָמַר זֶה נוֹטֵל טֻפֵס
וְזֶה נוֹטֵל תּוֹרָה, לִפְנֵיה? וּכְיַלְזָמוֹ
עַל פִּי צְלָוחִיתָו הָא צָרָק?

אָמַר לֵיה: לְדָמִי.

דְאָמַר הַכִּי: שְׁטָרָא דְאִית בֵּיה
זָמָן בְּפָה שָׁוֵי, וְדָלִית בֵּיה זָמָן
בְּפָה שָׁוֵי? בְּשְׁטָרָא דְאִית בֵּיה
זָמָן - גַּבְיִ מִפְשִׁיעָבָדִי, אַיִלְךָ לְאַ
גַּבְיִ מִמְשִׁעָבָדִי, יְהִיב לְהָהָאָן
דְבָבִי בֵּין.

וַיַּחֲלֹקוּ נָמִי דְאַבְּמוֹן - לְדָמִי. דָאִי
לֹא תִּמְאָה דְכִי, שְׁעִים אַוְתְּזִין בְּטַלִית
הַכִּי, נָמִי דְפָלָגַת הָא אַפְסָדוֹתָה! הָא
לֹא קַשְׁיאָ.

The Gemara asks: If so, what is the purpose of stating that they divide it equally? That is obvious. The Gemara answers: No, it is necessary in a case where the essential part of the document is closer to one of them. Lest you say that the one to whom the essential part is closer can say to the other one: Divide it in this manner, leaving the essential part on my side, Rabbi Yoḥanan teaches us that the other one can say to him in response: What did you see that led you to divide it in that manner? Divide it in this manner, so that we will both share the essential part.

Rav Aḥa of Difti said to Ravina: According to the opinion of Rabbi Elazar, who says this one takes the standard part and that one takes the essential part, why do either of them need it? Does he need half of the document to cover the opening of his flask?^N Having half a promissory note is of no legal consequence.

Ravina said to him: The division in question is not division of the document itself, with each taking half of the paper. It is a division of its monetary value, as the value of each section of the promissory note is compared to the value of the other.

The one grasping the essential part of the promissory note, which contains the date, can say this: Consider a promissory note that has the date written on it; how much is it worth? And consider a promissory note that does not have the date written on it; how much is it worth? The significance of writing the date is that if a creditor is in possession of a promissory note that has the date written on it, he can collect his debt even from liened property that has been sold by the debtor to another individual after taking the loan. But if a creditor is in possession of the other kind of promissory note, i.e., one that does not have the date written on it, he cannot collect his debt from liened property. Therefore, the other party, who is grasping the standard part of the document, gives him the difference between the two values.

And this is also true in general, with regard to cases where we said that the two litigants divide the disputed item: The reference is to the monetary value, and not division of the actual item. As, if you do not say so, but rather you hold that the item itself is divided, in the case of two people who come to court holding a garment, do they also divide the garment itself into two? But by doing so they would ruin it. The Gemara rejects this proof: This is not difficult, as it is possible to explain that they actually cut the garment in two.

NOTES

To cover the opening of his flask – לְלִזְמוֹר עַל פִּי צְלָוחִיתָו. Although there are instances in which the Gemara assumes that people might become involved in litigation in a dispute over a small piece of paper, here it is clear that the dispute

concerns greater value. Otherwise it would make no difference whether the paper contains the standard part or the essential part of the promissory note (Ramban).

Perek I

Daf 8 Amud a

דוחיא ל��נים.

This is because each party receives an item that has monetary value, as it is fit to be made into a garment for small children.

והא דבר ר' בא: אם היה טלית מוחבת חולקין, וכי נמי דפליין? מה? לא אפסודה! לא לא קשיא. דוחיא לבני מלכים.

והא דרנן: כי שניים וocabין על גבי בהמה וכוכ, וכי נמי דפליין לה? – הא אפסודה! בשלה מא טהורה – חזיא לבשר, אלא טמאה – הא אפסודה! אלא – לדמי, הכא נמי – לדמי.

The Gemara asks: But as for that which Rava said, that if the garment was fashioned with gold thread they divide it, does that also mean that they divide the garment itself? By doing so they would ruin it. The Gemara answers: That is not difficult, as after the garment is divided it is fit to be made into a garment for the children of kings or wealthy people. Therefore, it is not ruined.

The Gemara asks: But with regard to that which we learned in the mishna (2a): If two people were sitting on an animal and each of them claims to own the entire animal, they each take an oath and divide the animal, does that also mean that they divide the animal itself? By doing so they would ruin it. Granted, if it is a kosher animal it is fit to be slaughtered and divided between them for the meat. But if it is a non-kosher animal, slaughtering it and dividing the carcass would ruin it and render it worthless. Rather, clearly they divide its monetary value.^{NH} Here too, in the other cases where the ruling is to divide the item, it means that the litigants divide its monetary value and not the item itself.

אמר ר' מי בר חמא, זאת אומרת: המגביה מציאה להבירותו – קנה חברו.

S Based on an inference from the mishna on 2a, Rami bar Hama says: That is to say: In a case of one who performs an act of acquisition by lifting a found item on behalf of another,^H the other person, i.e., the latter, acquires ownership of the item.

ראי סלקא דעתך לא קנה חברו – תיעשה זו במי שפונחת על גבי קרקע, זו במי שפונחת על גבי קרקע, ולא יקנה לא זה ולא זה, אלא לא שמע מינה: המגביה מציאה להבירותו – קנה חברו.

Rami bar Hama explains his inference: As, if it enters your mind that if one lifts a found item for another the other does not acquire the item, this garment has not been acquired by either of the two litigants, as each prevents the other's acquisition. If that were the case, this part of the garment, held by one of them, would be considered as though it is still lying on the ground, and that part of the garment, held by the other one, would be considered as though it is still lying on the ground, and neither this one nor that one acquires it; if a third party takes it, it is his. Rather, isn't it correct to conclude from it that in a case of one who performs an act of acquisition by lifting a found item on behalf of another, the other person acquires the item?

אמר ר' בא, לעולם אימא לא: המגביה מציאה להבירותו – לא קנה חברו, והא הינו טעמא – מגו דובי לנפשיה זכי נמי לחבירה.

Rava said: This is not a proof, as actually I could say to you that in a case of one who performs an act of acquisition by lifting a found item solely on behalf of another, the other person does not acquire the item. And here in the mishna, this is the reason the two litigants acquire the garment: Since each of the litigants acquires part of the garment for himself, he also acquires the other part for the other one.

תדע, שאילו אמר לשלוחו צא גנוב לי, וגנוב – פטור. ושותפין שנבו – חביבן, Mai Teuma – לאו משום דאמרין מגו דובי לנפשיה זכי נמי לחבירה? שמע מינה.

Rava adds: Know that one who acquires an item for himself can acquire part of it for another, as, if someone says to his agent: Go out and steal an item for me, and the agent stole that item, the one who sent him is exempt from liability, due to the principle that there is no agency for sin; but partners who stole^H an item together are both liable even if only one of them actually lifted the item. What is the reason that they are both liable? Is it not because we say that since the one who lifted the item acquires part of it for himself, he also acquires the other part for the other one, his partner? The Gemara concludes: Learn from it that this principle is correct.

אמר ר' בא: השטא דאמורת אמרין מגו, חרש ופקח שהגביהו מציאה, מותך קנה תרש – קנה פקט.

Rava said in continuation of his statement: Now that you said^N that we say: Since [miggo] one acquires part of an item for himself he can also acquire the other part for another, another halakha can be derived: In a case of a deaf-mute^N and a mentally competent person who lifted a found item^H simultaneously, since the deaf-mute acquires his part of the item, the mentally competent person also acquires his portion.

NOTES

Rather its monetary value – **אלא לרמי**: The Gemara's proof that they do not divide the animal is based on common sense; it is unreasonable that they would have to ruin the value of the animal by dividing it. Why isn't the same common sense applied with regard to a promissory note? The Rashba answers that although the creditor would lose from tearing the document in half, the debtor would profit, so it is theoretically possible that they would have to tear it. By contrast, in the case of an animal, there is no possibility that they would have to kill it, since they would both lose.

Now that you said – **השתא דאמורת**: This is a peculiar wording, as it was Rava himself who authored the previous statement. Some commentaries emend the text, changing the name of the amora of one of the two statements (*Shita Mekubbetz*). Others explain that Rava's statement that one who acquires part of an item for himself can acquire the other part for another person is universally accepted (*Ritva*).

Deaf-mute – **הריש**: The Sages consider a deaf-mute as one who is not mentally competent, having the same halakhic status as an imbecile and a minor. By Torah law, he is not obligated to perform any mitzvot and is unable to acquire property. Nevertheless, since deaf-mutes are considered to have a certain degree of capacity, the Sages instituted several ordinances for their benefit, e.g., that they have the ability to gain ownership of an ownerless item.

HALAKHA

Monetary value – **לטמי**: Wherever it is stated in these halakhot that the litigants divide the item, the reference is to the item's monetary value. The *Sma* explains that this principle refers to an item that would be ruined, or its value reduced, were it to be physically divided (*Rambam Sefer Mishpatim, Hilkhos To'en VeNitan* 9:10; *Shulhan Arukh, Hoshen Mishpat* 138:4).

One who performs an act of acquisition by lifting a found item on behalf of another – **המגביה מציאה להבירותו**: In the case of one who performs an act of acquisition by lifting a found item on behalf of another, the other person acquires the item. There are authorities who limit this principle to a case where the one who lifted the item stated his intention explicitly as he lifted the item. If he failed to do so he can renege on his original intention (*Sma; Ketzot HaHoshen*). Others maintain that even if he said nothing when he lifted the item, but he intended to acquire it on behalf of another and subsequently acknowledged this intention, he cannot renege on his original intention (*Rambam Sefer Nezikin, Hilkhos Gezeila VaAveda* 17:3; *Shulhan Arukh, Hoshen Mishpat* 269:1, and *Shakh* and *Netivot HaMishpat* there).

But partners who stole – **ושותפין שנבו**: Partners who stole an item jointly are obligated to repay double the value of the item. If one of them slaughtered or sold a stolen animal with the other's knowledge, together they pay four or five times the value of the animal (*Rambam Sefer Nezikin, Hilkhos Geneiva* 2:14).

A deaf-mute and a mentally competent person who lifted a found item – **רחש ופקח שהגביהו מציאה**: If a deaf-mute and a competent person lift a found item simultaneously, neither acquires it. Since the deaf-mute person does not acquire the item, neither does the competent person. If another person seizes the item from them, he acquires it. If a deaf-mute alone, or two deaf-mutes, lift a found item, the Sages instituted an ordinance that they acquire ownership of the item, so that others would not seize it from them, leading to a quarrel (*Rambam Sefer Nezikin, Hilkhos Gezeila VaAveda* 17:4; *Shulhan Arukh, Hoshen Mishpat* 269:4).

**בשלמה חורש קנה – רקה מוגבה ליה בון
דעת, אלא פקח במאית קנה?**

**אלא אימא: חרש – קנה, פקח – לא
קנה. ומאי מנו? מנו דשוי חרשן בעלמא
קנו – האי נמי קני.**

**האי מא? אם תמצא לומר המגביה
מציאה להביו קנה חבירו – קני מייל
היכא רקה מוגבה ליה ארעשתא דחבירו,
האי – ארעשתא דיריה קא מוגבה ליה
אייזו לא קני, לאחריני מקני?**

**אלא אימא: מותוך שלא קנה פקח לא
קנה חרש.**

**וב' תימא: מי שנא משני חרשין
בעלמא – חתם תקינו לו רבנן דלא
אות לאנצוי, הכא – מימר אמר פקח
לא קני, ואנא אקמי?**

**אמר ליה רב אחא בריה דרב אדא לרוב
אשי: דיקיה דרמי בר חמא מהיכא?
אי נימא מרישא: "שעים אוחזין בטלית,"
חתם הא' קאמו כולה של' ו Ана
אגבהתה כולה, והאי אמר כולה של'
ו Ана אגבהתה כולה.**

**אלא מהא דקתיini: זה אומר כולה של'
זה אומר כולה של'. הא تو למה לי?
אלא מפרשנה היהה שמע מיפה: המגביה
מציאה להביו – קנה חבירו.**

The Gemara asks: Granted, the deaf-mute acquires his portion of the found item, as a mentally competent person lifted it for him; since the mentally competent person acquired his own part, he also acquired the other part for the deaf-mute. But how does the mentally competent person acquire his part? He needs the deaf-mute to acquire it for him, and a deaf-mute cannot acquire an item for another.

Rather, say Rava's statement differently: The deaf-mute acquires his part, but the mentally competent person does not acquire his part. And what is the principle of *miggo* from which Rava derives this *halakha*? It is not the principle that one who acquires a found item for himself can acquire part of it for another as well, but rather: Since [miggo] in general two deaf-mutes^N who pick up an item simultaneously acquire it, in this case too, the deaf-mute acquires it, even though the mentally competent person does not acquire it.

The Gemara asks: What is this derivation? Even if you say that in a case of one who performs an act of acquisition by lifting a found item on behalf of another, the other person acquires it, as Rami bar Hama says, this statement applies only where he lifts it with the intention of having the other person acquire the item. But in this case, the mentally competent person lifted the item with the intention of acquiring it for himself; he had no intention of acquiring it for the deaf-mute. If he does not acquire the item for himself, does he acquire it for others?

Rather, say that since the mentally competent person does not acquire any part of the found item, the deaf-mute does not acquire it either.

And if you would say: In what way is this case different from the general case of an item that was found by two deaf-mutes, in which they both acquire it? The answer is that there, in that case, the Sages instituted an ordinance for them that they both acquire the item so that they will not come to quarrel with others who want to take the item from them due to the fact that a deaf-mute lacks the halakhic ability to acquire the item. Here, in the case of the deaf-mute and the mentally competent person, the deaf-mute says to himself: If even the mentally competent person does not acquire the item, can I acquire it? Therefore, in that case, he will not quarrel if others take the item from him.

Rav Aha, son of Rav Adda, said to Rav Ashi: From where in the mishna is Rami bar Hama's inference drawn? If we say that he infers it from the first clause of the mishna, i.e., the case of two people holding a garment, isn't the case there one in which this one says: All of it is mine, and I lifted the entire garment; and that one says: All of it is mine, and I lifted the entire garment? How can the *halakha* where one acquires an item for another be inferred from that case?

Rather, he infers it from that which is taught later in the mishna: This one says all of it is mine and that one says all of it is mine. Why do I need this case as well? The first case, where each one says: I found it, is sufficient. Rather, learn from the superfluous case in the mishna^N that even if they lifted it simultaneously, they divide it and a third party has no right to take it, as in a case of one who performs an act of acquisition by lifting a found item on behalf of another, the other person acquires the item.

NOTES

Since in general two deaf-mutes – בטלמא חרשן בעלמא: There are those who explain this as follows: Since the ability of a deaf-mute to acquire property is based on a rabbinic ordinance, it is logical that the Sages also instituted that he should have the ability to acquire property on behalf of another deaf-mute (Rosh).

The superfluous case in the mishna – משנה יתרה: Rashi indicates, and the Rid states explicitly, that the superfluous case in the mishna is the first case, where each litigant says: I found it. Since more detailed *halakhot* are subsequently introduced, the first clause is understood as teaching the *halakha* of Rami bar Hama.

**וְהִיא אָקַיְמָנָא רִישָׁא בְּמִצְיאָה וְסִיפָּא
בְּמִקְחָה וּמִמְכָר!**

The Gemara asks: But that clause in the mishna is not superfluous; didn't we already establish (2a) that the first clause is referring to a dispute over a found item, and the latter clause is referring to a case of buying and selling, where each party claims that he is the one who bought the item from its seller?

אֲלֹא מִסִּיפָּא: "זֶה אָוֹמֵר בָּוְלָה שְׁלִי
וְזֶה אָוֹמֵר חֲצִיתָה שְׁלִי". הָא תֹּוּלְפָה
לִ? אֲלֹא מִפְשָׁנָה יִתְרֹה שָׁמַע מִינָּה:
הַמְגַבֵּה מִצְיאָה לְחַבְּרוֹ קָנָה חַבְּרוֹ.

Rather, Rami bar Hama infers his ruling from the latter clause of the mishna, i.e., the case where this one says all of it is mine and that one says half of it is mine. Why do I need this case as well? What does it add to the previous cases? Rather, learn from this superfluous case in the mishna that in a case of one who performs an act of acquisition by lifting a found item on behalf of another, the other person acquires the item.

**וּמִמְאי דְּבְּמִצְיאָה? דְּלָמָא בְּמִקְחָה
וּמִמְכָר!**

The Gemara asks: And from where is it inferred that this clause is referring to the case of a found item? Perhaps it is referring to a case of buying and selling.

וְכִי תִּקְמָא: אֵי בְּמִקְחָה וּמִמְכָר – מַאי
לְמִימְרָא? אֵי צְטָרִין, סְלָקָא דְּעַתָּן
אָמִינָא: הָא דַקְאָמֵר חֲצִיתָה שְׁלִי לְהָיִ
בְּמַשְׁיב אַבְּדָה, וְלִפְטָר, קַמְשֻׁמָּן
דְּהָא אִישׁוּמִי קָא נְשָׁוִים. סְבָר: אֵי
אָמִינָא בָּוְלָה שְׁלִי – בְּעַנְיָא אַשְׁתְּבוּעַ,
אָמִינָא הַכִּי דְּהָא הוּא בְּמַשְׁיב אַבְּדָה,
וְאִפְטָר.

And if you would say: If it were referring to a case of buying and selling, what would be the purpose of stating it, as it adds no novel ruling? One could answer that it was necessary to teach this additional case, as otherwise it might enter your mind to say that the one who says: Half of it is mine, should be considered the equivalent of one returning a lost item; he could have claimed that the garment was entirely his, and instead he conceded half of it to the other party and consequently he should be exempt from taking an oath. To counter this, the mishna teaches us that he is not exempt, as perhaps this person is employing artifice. Perhaps he is thinking: If I say that all of it is mine I will need to take an oath. I will state this claim, that half of it is mine, as I will thereby be considered the equivalent of one returning a lost item, and I will be exempt from taking an oath. Therefore, this clause is not superfluous; it teaches that this litigant is not considered the equivalent of one returning a lost item.

אֲלֹא מִהָּא: "הַיּוֹ שָׁנִים רֹזְכִּין עַל גַּבְיוֹ
בְּהַמְּהָה". הָא תֹּוּלְפָה לִ? אֲלֹא מִפְשָׁנָה
יִתְרֹה שָׁמַע מִינָּה: הַמְגַבֵּה מִצְיאָה
לְחַבְּרוֹ קָנָה חַבְּרוֹ.

Rather, Rami bar Hama infers his ruling from this clause: If two people were sitting on an animal, and each of them claims that it is his, each of them takes an oath and they divide the value of the animal. Why do I need this case as well? It teaches no novel halakha. Rather, learn from this superfluous clause in the mishna that in a case of one who performs an act of acquisition by lifting a found item on behalf of another, the other person acquires the item.

**וְדָלָמָא הָא קִמְשֻׁמָּן לָן֊: דַּרְזֵב נְמִ
קְנִי**

The Gemara asks: But perhaps this mishna teaches us that one who sits on an animal also acquires it, even though he has not caused the animal to move.

אֲלֹא מִסִּיפָּא: "בְּוּמָן שְׁהָן מְזִדָּן
או שִׁישׁ לְהָן עֲדִים – חֹלְקִין בְּלָא
שְׁבּוּעָה". בְּמַאי? אֵי בְּמִקְחָה וּמִמְכָר –
אָרְכָּא לְמִימְרָא? אֲלֹא לְאו – בְּמִצְיאָה,
וּשְׁמַע מִינָּה: הַמְגַבֵּה מִצְיאָה לְחַבְּרוֹ
קָנָה חַבְּרוֹ.

Rather, Rami bar Hama inferred his ruling from the last clause in the mishna: When they each admit to the validity of the other's claim or when they have witnesses attesting to their claims, they divide it without taking an oath. To what case is the mishna referring? If it is referring to a case of buying and selling, does it need to be said? Rather, is it not referring to a found item? Accordingly, the reason they divide the item is that they knowingly lifted it together, and they intended to acquire it for both of them. And learn from it that in a case of one who performs an act of acquisition by lifting a found item on behalf of another, the other person acquires the item.

**וּרְבָּא אָמַר לְךָ: מִגּוֹ דַּבְּרִי לְנַפְשֵׁיה וְכֵ
נְמִי לְחַבְּרוֹה.**

The Gemara comments: And Rava said to you that this clause is based on a different principle: When one acquires an item, since he acquires it for himself he can also acquire part of it for another person.

הַיּוֹ שָׁנִים רֹזְכִּין. אָמַר ר֔ב יוֹסֵף, אָמַר
לִי ר֔ב יְהוּדָה:

§ The mishna teaches: If two people were sitting on an animal, or one was sitting on the animal and the other one was leading it, and each claims ownership of the animal, they must each take an oath and they divide it. Rav Yosef said: Rav Yehuda said to me:

Perek I

Daf 8 Amud b

NOTES

שְׁמֻעַת מִינִיה – דָבָר שְׁמוֹאֵל תְּרוּתִי: The Rosh writes that Rav Yehuda did not hear these as two separate halakhot. Rather, two similar cases of sitting on an animal and leading an animal came before Shmuel at the same time, and Rav Yehuda did not remember how Shmuel ruled in each case.

Sits and leads – רַכֶּב וּמַנְהָגָי: The early commentaries ask why the mishna, which discusses a case where one person is sitting on the animal and another is leading it, is not immediately cited as proof that one can acquire an animal by sitting on it. Rabbeinu Yosef Kaltzon of Jerusalem answers that Rav Yehuda was uncertain as to the nature of the case discussed in the mishna, i.e., whether it is referring to one who is sitting on the animal and holding the reins, to one who is riding the animal and driving it with his feet, or to one who is passively sitting on the animal. Therefore, no definite conclusion can be reached from the mishna (*Talmid Rabbeinu Peretz*).

The Ran explains that the case in the mishna may be irrelevant to the halakhot of acquiring an animal, e.g., it may be a case where the one sitting on the animal claims that he found it first, acquired it with one of the standard acts of acquisition, and then mounted it. Subsequently, the other person came and took hold of the reins.

Animals of diverse kinds – בְּלֵיא בָּהָמה: There are two separate prohibitions that apply to animals of different species: The prohibition against mating animals of two diverse kinds (Leviticus 19:19), and the prohibition against performing labor with two diverse kinds of animal yoked together (Deuteronomy 22:10).

And the one sitting in the wagon – הַיֹּשֵׁב בְּקָרּוֹן: Although one is liable to receive lashes only for a transgression committed through an action, in this case sitting in the wagon is considered an action because the animal begins to walk as soon as the person sits down in the wagon. Similarly, when one mounts an animal, even without driving it, the animal begins to walk when it feels his weight.

Holding the reins does not effect acquisition – מַוסְרָה אֲלֵיכָה: This is referring to one who holds the reins without pulling the animal, in which case there is no transaction by pulling. Therefore, the transaction is effective only if the owner either hands him the reins or tells him to hold the reins and acquire the animal. By contrast, in a case where one pulls the animal, he acquires it even without the owner's initiating the act of acquisition.

HALAKHA

Leading animals of diverse kinds – נְהִיגָה בְּכָלְאִים: One may not sit in a wagon drawn by animals of diverse kinds, e.g., an ox and a donkey, and all the more so one may not lead that wagon. Not only is the one leading the wagon liable to receive forty lashes, the one sitting in the wagon is also liable, in accordance with the unattributed opinion in the mishna in tractate *Kilayim* (8:3). Although Shmuel reverses the opinions in that mishna, the answers to the Gemara's challenges against Shmuel's opinion are forced (*Rambam Sefer Zera'im, Hilkhot Kilayim* 9:9; *Shulchan Arukh, Yoreh De'a* 297:12).

LANGUAGE

Wagon [karon] – קָרּוֹן: From the Greek κάρρον, *karron*, meaning wagon or carriage.

Indeed [ivra] – אֲבָרָא: A loanword from Middle Iranian languages, where ēbar (or the form ēwar in Middle Persian) means: Certainly.

שְׁמֻעַת מִינִיה דָמָר שְׁמוֹאֵל תְּרוּתִי,
רַכֶּב וּמַנְהָגָי – חַד קָנִי וַחֲדַת לֹא קָנִי,
וְלֹא יַדְעַנָּה הַיְמִינִיה.

הַיְכִי דָמָי? אַיִלְמָא רַכֶּב לְחוּרִיה
מַנְהָגָי לְחוּרִיה – מַנְהָגָי לְחוּרִיה מֵי
אַיְכָא מַאן דָמָר לֹא קָנִי? אַלְאָ אַיְ
אַיְכָא לִמְימָר דָלָא קָנִי – רַכֶּב הוּא
דָאַיְכָא לִמְימָר.

אַלְאָ, רַכֶּב בָּמְקוּם מַנְהָגָי אִיבְעָא
לְהָיָה, מָא? רַכֶּב עֲדֵרִיךְ – דָהָא פִּיסְמִים
בְּהָא, אוֹ דָלְמָא מַנְהָגָי עֲדֵרִיךְ – דָאַלְאָ
מַחְמַתִּיה?

אָמָר רַב יוֹסֵף, אָמָר לִי רַב יְהוּדָה:
נְהִי אָנָן. דְתַנָּן: הַמַּנְהָגָה סַפְגָּת
הַאֲרָבָּעִים, וְהַיֹּשֵׁב בְּקָרּוֹן סַפְגָּת
אַתְּ הַאֲרָבָּעִים. רַבִּי מֵאִיר פּוֹטֵר אֶת
הַיֹּשֵׁב בְּקָרּוֹן.

וּמְדַאֲפֵיךְ שְׁמוֹאֵל וְתַנִּינִי: וְחַכְמִים
פּוֹטְרִין אֶת הַיֹּשֵׁב בְּקָרּוֹן, שֶׁמְעַמֵּיהָ
רַכֶּב לְחוּרִיה לֹא קָנִי, וְכֹל שְׁפָן רַכֶּב
בָּמְקוּם מַנְהָגָי.

אָמָר לֵיה אֲבָי לִרְבּוֹ יוֹסֵף: הָא זְמִינָה
סְפִיאָנִין אָמְרָתָה לְהָיִי אָקָן, וְלֹא אָמְרָתָה
לְזַלְלָה מִשְׁמִיחָה דָרְבּוֹ יְהוּדָה!

אָמָר לֵיה: אֲבָרָא, וְדָכְרֵנוּ נִמְיָה
דָאַמְרָי לֵיה: הַיְכִי פְשִׁיטָה מַר רַכֶּב
מַיּוֹשֵׁב – יֹשֵׁב לֹא תְפִיסָ בְּמַוסְרָה,
רַכֶּב – תְפִיסָ בְּמַוסְרָה, וְאָמָר לֵיה:
וְבָשְׁמוֹאֵל דָאַמְרָי תְּרוּיָהוּ מַסְרָה
לֹא קָנִי.

I heard two halakhot from Master Shmuel,^N one halakha with regard to one who sits in a riding position on an animal, and the other halakha with regard to one who leads^N an animal. With regard to one case I heard that he thereby acquires the animal, and with regard to the other one I heard that he does not acquire the animal. But I do not know which halakha applies to which of them.

The Gemara asks: What are the circumstances? If we say that this is referring to one who sits in a riding position alone and to one who leads alone, is there anyone who says that one who leads an animal alone does not acquire it? Pulling an item, or leading an animal, is a classic mode of acquisition (see *Kiddushin* 25b). Rather, if there is a case where it could be said that one does not acquire the animal, it is obviously in the case of one who sits in a riding position that it could be said. Therefore, why was Rav Yehuda uncertain?

The Gemara answers: Rather, his dilemma was with regard to a case where one sits in a riding position on the animal while another leads it. What is the halakha? Which of them acquires the animal? Does the one sitting in a riding position on the animal take precedence, as the animal is in his grasp, since his legs are grasping the sides of the animal, or perhaps the one leading the animal takes precedence, as it walks because of him?

Rav Yosef said: Rav Yehuda said to me: Although I do not remember what Shmuel said, let us see if we can analyze this ourselves, as we learned in a mishna concerning the prohibition against leading animals of diverse kinds (*Kilayim* 8:3):^H If two animals of diverse kinds, e.g., a horse and a donkey, are harnessed to the same wagon, the one leading the animals incurs the forty lashes for transgressing the Torah prohibition: "You shall not plow with an ox and a donkey together" (Deuteronomy 22:10), and the one sitting in the wagon [*bakaron*]^{NL} also incurs the forty lashes. Rabbi Meir deems the one sitting in the wagon exempt, as he did not perform any action.

And from the fact that in his version of the mishna Shmuel reversed the opinions and taught: And the Rabbis deem the one sitting in the wagon exempt, it can be inferred that he agrees with this opinion that the one sitting in the wagon is considered to have not performed any action, as the halakha is in accordance with the opinion of the Rabbis in their disputes with Rabbi Meir. Conclude from it that one who sits on an animal alone does not acquire it, as sitting on an animal is not considered a significant action, and all the more so one who sits on an animal while another leads the animal does not acquire the animal.

Abaye said to Rav Yosef: Didn't you say to us many times with regard to this halakha: Let us see if we can analyze this ourselves, followed by the proof from the aforementioned mishna? And you did not say to us that this statement was in the name of Rav Yehuda. Rav Yosef had an illness that caused him memory loss. Consequently, some of his later statements of halakha were inaccurate, and Abaye suspected that he attributed this statement to Rav Yehuda erroneously.

Rav Yosef said to him: Indeed [ivra],^L I remember that Rav Yehuda stated this proof, and I also remember that I said to him in response: How can the Master resolve the case of one who sits on an animal via proof from the case of one who sits in the wagon? One who sits in the wagon does not hold the reins, whereas one who sits on the animal holds the reins. And Rav Yehuda said to me in response: Rav and Shmuel both say that holding the reins of an ownerless animal does not effect acquisition^N of it. Consequently, there is no difference between sitting on an animal and sitting in a wagon drawn by an animal.

איכא ר'אמרי אמר ליה אבוי לוב
יוסף: הַיִלְפְּשֵׁיט מֶרֶכֶב מִשְׁוֹבָן?
ושׁב - לא תְּפִיס בְּמוֹסִירָה, רַכְוב -
תְּפִיס בְּמוֹסִירָה. אמר ליה: הַכִּי תְּנַא
איך: מוֹסִירָה לֹא קַנֵּי.

אתמר נמי, אמר רבינו חלבו אמר
רב הונא: מוֹסִירָה, מִחְבָּרוֹ - קַנֵּן,
בְּמִצְּאָה וּבְנִסְיָה הָגָר - לא קַנֵּן.

מאי לשון מוֹסִירָה? אמר רבא: אידי
אַסְכְּרָא לֵי - בְּאֶדֶם הַמּוֹסֵר דָּבָר
לְחַבְּרוֹ. בְּשַׁלְמָא מְחַבְּרוֹ קַנֵּי - דָקָא
מִסְרָ לְיהָ חֲבְרִיה, אֶלְאָ בְּמִצְּאָה
וּבְרַכְשִׁי הָגָר - מִאן קָא מִסְרָ לְיהָ
דָלִיקְנִי?

מיთיב: "הַיְוָ שְׁנִים רַכְבֵּין עַל גַּבְיוֹ
בְּהַמְּה" וכו'. מַנְיָן? אַלְיָמָר וּבַמְּאֵיר -
הַשְׁתָּא יֹשֵׁב קַנֵּי רַכְוב מִפְּעֵי? אֶלְאָ
לֹא - רַכְמָן, וּשְׁמַע מִינָה: רַכְוב קַנֵּי!

הַכָּא בְּמַאי עַסְקִין - בְּמַנְהָגָ בְּרַגְלָיו.
אי הַכִּי הַיְנוּ מַנְהָגָן תַּרְגּוּנִי מַנְהָגָן.
מַהוּ דְּתִינְאָא: רַכְוב עַדְיף - דָהָא מַנְהָגָן
וְתְּפִיס בָּה, קָא מִשְׁמָעַן.

תֵּא שְׁמַע: שְׁנִים שְׁהָיו מוֹשְׁכִין בְּגַמְלֵל
וּמַנְהָגִין בְּחַמּוֹר, או שְׁהָיו אֶחָד מוֹשְׁחֵן
וְאֶחָד מַנְהָגָן!

There are those who say that the exchange between Abaye and Rav Yosef was as follows: **Abaye said to Rav Yosef: How can the Master resolve the case of one who sits on an animal via proof from the case of one who sits in the wagon? One who sits in the wagon does not hold the reins, whereas one who sits on the animal holds the reins.** Rav Yosef said to him: **Idi taught in a baraita like this: Holding the reins of an ownerless animal does not effect acquisition of it.**

It was also stated that **Rabbi Helbo says that Rav Huna says:** With regard to holding the reins of an animal in order to acquire it, if he is attempting to acquire it from another person,^h he acquires the animal. But with regard to acquisition of a found animal, or with regard to acquisition of an animal that was the property of a convertⁿ who died without heirs, leaving his property ownerless, it does not effect acquisition.

The Gemara explains: What is the meaning of the term **reins [moseira]**? Rava said: Idi explained to me that they are used like a person who transmits [moser] an item to another, i.e., they are used to transfer the ownership of the animal. Granted, in a case where one takes the reins from another, this effects acquisition of the animal, as the other person hands them to him. But in a case of a found animal or of one that was the property of a convert,^h who is handing him the reins, enabling him to acquire the ownerless animal? Since there was no transaction, one cannot acquire the animal by merely holding the reins.

The Gemara raises an objection from the mishna: If two people were sitting in a riding position on an animal, or if one was sitting on it in a riding position and the other was leading it, they divide it after taking an oath. In accordance with whose opinion is this mishna? If we say that it is in accordance with the opinion of Rabbi Meir, now, in his opinion, even one who sits in a wagon acquires the animal that is pulling the wagon. Is it necessary to state that one who sits in a riding position on an animal acquires it? Rather, is it not the opinion of the Rabbis? And learn from it that one who sits in a riding position on an animal acquires it.^h

The Gemara answers: With what are we dealing here? We are dealing with a case where the one sitting on the animal also leads, i.e., drives it by squeezing or kicking it with his legs. The Gemara asks: If so, this is the same as leading the animal by pulling the reins, as the essential factor in both is that one causes the animal to move, so why does the mishna need to mention it? The Gemara answers: The tanna teaches two types of leading,ⁿ both pulling the animal by the reins and driving it while sitting on it. Lest you say that one who is sitting in a riding position on the animal takes precedence, as he is both leading the animal and also holding it by the reins, the tanna teaches us that the claim of the one sitting in a riding position on the animal is not stronger than the claim of the one leading it by the reins.

Come and hear a different proof from a baraita: With regard to two people who were pulling a camel or driving a donkey together, or one who was pulling it and one who was driving it,

NOTES
The property of a convert – נַכְּסֵי הַגָּר: One who was born a Jew has heirs by definition, as all Jews are related in some way. A convert, however, is considered reborn; his gentile family does not inherit from him. Consequently, if he dies without a wife or children his estate becomes ownerless.

Two types of leading – תְּרִיר גַּוּשׁ מַנְהָגָה: The Rashba explains that these are two different answers: First, the Gemara answers that the tanna teaches two types of leading, and then it answers that when the one sitting on the animal also holds it by the reins, he acquires it.

Holding the reins of an animal in order to acquire it from another person – **מוֹסִירָה מַתְּפִיסָה:** According to the *Beit Yosef*, an animal can be acquired only by means of one's pulling it. Others say that a large animal can be acquired by its owner's handing over the reins to the one acquiring it (*Haggahot Maimoniyot*). Yet others maintain that even a small animal can be acquired in that manner if it is handed over in the presence of the owner (*Tur*, citing Rashi and Rabbeinu Tam; *Sma*).

The early commentaries disagree with regard to whether the seller must physically hand the reins to the buyer or whether

it is sufficient for the buyer to take the reins himself at the instruction of the seller (*Shulhan Arukh, Hoshen Mishpat* 197:1 and *Arukh HaShulhan* there).

A found animal or...one that was the property of a convert – **בְּמִצְּאָה וּבְנִסְיָה הָגָר**: If one takes the reins of an ownerless animal or one that had been the property of a convert who died without heirs, he does not thereby acquire the animal. If another person pulls or leads the animal, that person takes ownership of it, and the one holding the reins merely acquires the reins

(Rambam *Sefer Nezikin, Hilkhos Gezeila VaAveda* 17:6; *Shulhan Arukh, Hoshen Mishpat* 271:2).

קַנֵּן בְּרַכְבִּיהָ: Acquisition of an animal through sitting on it – According to the Rif and the Rambam, one can acquire an animal by sitting on it, even if he does not drive it. The Rosh and the *Tur* hold that one acquires the animal only if he also drives it (Rambam *Sefer Nezikin, Hilkhos Gezeila VaAveda* 17:7; *Sefer Kinyan, Hilkhos Mekhira* 2:6; and *Sefer Mishpatim, Hilkhos To'en VeNitan* 9:7; *Shulhan Arukh, Hoshen Mishpat* 138:1, 197:5, 271:3).

HALAKHA

Perek I
Daf 9 Amud a

BACKGROUND

A camel and a donkey – גֶּמֶל וְחַמּוֹר: The difference between pulling a camel and driving a donkey is due to both the nature of these animals and the way that they are trained to be led. A donkey tends to be driven, i.e., the donkey walks in front, followed by its driver, who holds a prod with which he directs the donkey. A camel cannot be driven in that way; instead, a halter or a nose peg is placed on its nose and the leader walks in front of it and pulls it. This difference was so well known that the Sages describe a person who holds a self-contradictory position in the Gemara as: A donkey driver and a camel driver (*Eiruvin* 35a), i.e., one who must fill two contradictory roles.

NOTES

And there are those who raise an objection [motiv] from the latter clause – אֵיתָ דָמוֹתִיב מִסְפִּיאָא: According to one of the early commentaries, the Aramaic word for raising an objection, *motiv*, in this case means to bring proof, i.e., there are those who bring proof from the latter clause in support of Shmuel's opinion that one cannot acquire an animal by sitting on it (*Talmid Rabbeinu Peretz*).

בִּמְדָה זוֹאת קָנָה. רַבִּי יְהוּדָה אָמָר: לְעֹלָם
לَا קָנָה עַד שְׁתֵּה אָמַר מִשְׁיכָה בְּגֶמֶל
וְהַנְּגָה בְּחַמּוֹר.

קָתַנִּי מִיהָתָה: אָוֹ שְׁחִיה אָחֵד מוֹשֵׁךְ
וְאָחֵד מְנַהֲגִים. מוֹשֵׁךְ וְמְנַהֲגִים – אֵין, אֲכַלְּבָן
רַכְבָּב – לֹא!

הִיא הַדִּין דָּאֲפִילוּ רַכְבָּב, וְהָא דָקַתְּנִי
מוֹשֵׁךְ וְמְנַהֲגִים – לְאַפְוַקִּי מִדָּרְבֵּי יְהוּדָה,
דָּאֲמָר עַד שְׁתֵּה אָמַר מִשְׁיכָה בְּגֶמֶל וְהַנְּגָה
בְּחַמּוֹר, קַמְשָׁמָעַן דָּאֲפִילוּ אֲפְכָא נִמְיָן
לֹא?

אֵי הַכִּי לִיעַרְבֵּנָה וּלְתַנְיָהוּ: שְׁנִים שְׁנִים
מוֹשְׁכִּין וּמְנַהֲגִין בֵּין בְּגֶמֶל בֵּין בְּחַמּוֹר!

אִיכָּא חָדָר צָדְלָא קָנָי, אִיכָּא דָאֲמָר
מִשְׁיכָה בְּחַמּוֹר, וְאִיכָּא דָאֲמָר הַנְּגָה
בְּגֶמֶל.

וְאֵיתָ דָמוֹתִיב מִסְפִּיאָא: בִּמְדָה זוֹ קָנָה,
בִּמְדָה זוֹ לְמַעֲוטִי מַאי – לֹא לְמַעֲוטִי
רַכְבָּב? לֹא, לְמַעֲוטִי אֲפָכָא.

אֵי הַכִּי הַיְנוּ רַבִּי יְהוּדָה! אִיכָּא בֵּין הַ
צָדְלָא קָנָה, אֵיתָ דָאֲמָר מִשְׁיכָה
בְּחַמּוֹר, וְאִיכָּא דָאֲמָר הַנְּגָה בְּגֶמֶל.

they have both acquired the animal in that manner. Rabbi Yehuda says: Actually, one acquires an animal only through pulling in the case of a camel or driving in the case of a donkey,⁸ as that is the manner in which they are normally directed.

In any event, it is taught in the *baraita*: Or one who was pulling and one who was driving, which indicates that pulling and driving are indeed effective modes of acquisition, but sitting in a riding position on an animal is not.

The Gemara rejects this inference: The same is true with regard to even sitting in a riding position on an animal; it is an effective mode of acquisition. And the reason that the *baraita* teaches specifically the modes of pulling and driving is only to exclude the opinion of Rabbi Yehuda, who says that one acquires an animal only through pulling in the case of a camel or driving in the case of a donkey. Therefore, the first *tanna* teaches us that even in the opposite manner, i.e., pulling a donkey or driving a camel, one acquires the animal.

The Gemara asks: If that is so, then let the first *tanna* combine the cases and teach them as follows: With regard to two people who were pulling or driving either a camel or a donkey, they each acquire the respective animal. The fact that this wording is not used indicates that the first *tanna* does not entirely disagree with Rabbi Yehuda.

The Gemara modifies its response: There is one manner of acquisition by which the first *tanna* concedes to Rabbi Yehuda that one does not acquire the animal if one employs it, and it is unclear what manner that is. Some say that by pulling a donkey one does not acquire it, as donkeys tend to not move at all when being pulled, and some say that by driving a camel¹⁰ one does not acquire it, as that is not the common way to move it.

And according to an alternative version of this discussion, there are those who raise an objection to the opinion that one can acquire an animal by sitting on it in a riding position from the latter clause¹¹ of the statement of the first *tanna* in the *baraita*: They acquire the animal in that manner. The phrase in that manner is stated to exclude what? Is it not to exclude one who sits in a riding position on the animal? The Gemara answers: No, it is stated to exclude the opposite cases: One who drives a camel or pulls a donkey does not acquire the animal.

The Gemara asks: If so, that is identical to the opinion of Rabbi Yehuda. The Gemara answers: There is a practical difference between them with regard to one manner of acquisition in which one does not acquire the animal. Some say that according to the first *tanna*, by pulling a donkey one does not acquire it, and some say that by driving a camel one does not acquire it.

HALAKHA

Pulling and driving a donkey or a camel – גֶּמֶל וְחַמּוֹר בְּגֶמֶל: If two people see a lost donkey and both drive it or pull it, or one pulls it and one drives it, both acquire the donkey. In the case of an ownerless camel, if both pull it or both drive it, they acquire the camel, but if one pulls it and the other drives it, only the one who pulls it acquires it. This ruling is apparently based on

the latter opinion mentioned in the Gemara, which states that by driving a camel one does not acquire it, and on the understanding that this is referring only to a case where one person is pulling the camel at the same time that the other person is driving it (Rambam *Sefer Nezikin, Hilkhot Gezeila VaAveda* 17:5 and *Maggid Mishne* there; *Shulhan Arukh, Hoshen Mishpat* 271:1).

תא שמע: אחד רוכב חמור ואחד תפוס במוסירה – זה קנה חמור וזה קנה מוסירה. שמע מינה: רוכב קני!

הכא נמי במנגוע ברגלו. אי הכל נקי נמי רוכב במוסירה! אימא: זה קנה חמור וחמי מוסירה, וזה קנה חזי מוסירה.

בשלמה רוכב קני – רק מגביה ליה בז דעת, אלא תפוס במוסירה במאן קני?

אימא: זה קנה חמור ובויליה מוסירה, וזה קני מה שותפוס בידו.

האי מאי? אם תימצ'י לומר המגביה מצייה להחבירו קנה חבירו – נמי מייל הילא רקא מגביה ליה ארעטה דחבריה. האי – אדרעתא דידיה קא מגביה ליה, אויה לא קני – לאחרמי מקני?

אמר רב אששי: זה קנה חמור ובית פייה, וזה קנה מוה שותפוס בידו, והשאר לא קנה לרוא ולא זה.

רבי אבוחו אמר: לעולם כדרקען, הוαι יכול לנתקה ולהביאה אצלך.

והוא דרב אבוחו ברותא היא. דאי לא תימא הכל – טלית שהיא מונחת חזיה על גבי קרקע וחציה על גבי עמו, ובא אחד והגביה חזיה מעל גבי קרקע, ובא אחר והגביה חזיה מעל גבי עמו, הци נמי דקמא קני ובתרוא לא קני, הוαι יכול לנתק ולהביא אצלך? אלא, הא דרב אבוחו ברותא היא.

Come and hear proof from a *baraita* that one can acquire an animal by sitting on it in a riding position: If one person is sitting in a riding position on a **donkey** and one other person is holding the reins,^h this one, the one sitting on the donkey, acquires the donkey, and that one, who is holding the reins, acquires the reins. Learn from it that one who sits in a riding position on an animal acquires it.

The Gemara rejects this: **Here too**, the reference is to one who is not only sitting on the donkey but who is also **driving it with his feet** by squeezing or kicking it. The Gemara asks: If so, the **one who is sitting should acquire part of the reins too**. The fact that he does not acquire the reins indicates that his acquisition of the donkey is imperfect, which would not be the case if he were driving it. The Gemara answers: Emend the text and say: This one acquires the donkey and half of the reins, and that one acquires half of the reins.

The Gemara asks: Granted, the one sitting on the donkey acquires half of the reins because a mentally competent person, the one holding the reins, has lifted it for him, but in what manner does the one holding the reins acquire half the reins? The other end of the reins is attached to the donkey, and because he does not acquire the donkey he cannot acquire the reins.

The Gemara answers: Emend the text and say: This one, the one sitting on the donkey, acquires the donkey and almost the entire reins, and that one, who is holding the reins, acquires only the part of the reins that is actually held in his hand.

The Gemara asks: What is the basis for this understanding? Even if you say that in a case of one who performs an act of acquisition by lifting a found item on behalf of another, the other person, i.e., the latter, acquires ownership of the item, that statement applies only in a case where one lifts an item with the intention that another person will acquire it. In the case here, this person who is holding the reins is lifting them with the intention of acquiring them for himself. Since he himself does not acquire them, how can he acquire them for others?

Rav Ashi said: Emend the *baraita* and say: This one, who is sitting on the donkey and driving it, acquires the donkey and its halter,^b which is attached to its head; and that one, who is holding the reins, acquires only the part that is held in his hand. And with regard to the rest, the part of the reins that is neither attached to the donkey's head nor held in the person's hand, neither this one nor that one has acquired it.

Rabbi Abbahu said: Actually, do not emend the *baraita*; leave it as it is taught. The one holding the reins acquires them because he can detach them from the donkey and bring them toward himself. Since he is able to pull the reins into his possession, they are considered his even though he does not lift them.

The Gemara comments: **And this statement of Rabbi Abbahu is an error.**ⁿ As, if you do not say so, but instead accept Rabbi Abbahu's opinion, that would result in an incorrect halakhic ruling in the case of a garment, half of which was lyingⁿ on the ground and half of which was lying on a pillar,^h and one came and lifted the half of it that was on the ground off the ground, and another person came and lifted the other half of it off the pillar. In that case, should one also rule that the first one acquires the garment and the latter one does not acquire it, since the first one was able to detach it from the pillar and bring the entire garment toward him? That is certainly not the *halakha*. Rather, clearly this statement of Rabbi Abbahu is an error. In any event, the question of whether one can acquire an animal by sitting on it in a riding position remains unresolved.

HALAKHA

One is sitting on a donkey and one is holding the reins – **אחד רוכב חמור ואחד תפוס במוסירה**: If two people attempt to acquire an ownerless animal, one by sitting on it and the other by holding its reins, the one sitting on the animal acquires it and the one holding the reins acquires the part of the reins that he is holding, in accordance with the opinion of Rav Ashi (Rambam Sefer Nezikin, Hilkhot Gezeila VaAveda 17:7; Shulhan Arukh, Hoshen Mishpat 271:3).

A garment half of which was lying on the ground and half of which was lying on a pillar – **טלית שהיא מונחת על עמוד וחציה על גבי קרקע וחציה על גבי עמו**: In a case where half of a garment is resting on a pillar that protrudes at least three handbreadths from the ground, and the other half is lying on the ground, if someone lifts the side that is on the ground, causing the side that is on the pillar to move, he thereby acquires the entire garment. If he lifts the side that is on the ground without causing the other side to move at all, he does not acquire the other half, contrary to the opinion of Rabbi Abbahu (Shulhan Arukh, Hoshen Mishpat 269:5).

BACKGROUND

חמור ובית פיצה: The donkey and its halter –



Greek vessel dating back to the 5th century BCE, in the shape of a donkey's head, with a halter used to tie the reins to the donkey

NOTES

ברוטא דאי – **ברוטא דאי**: The word *baruta* literally means external, i.e., a statement that should be left out of the discussion in the study hall. A variant reading is *beduta*, meaning a fabrication, i.e., this Sage never said such a thing, and an erroneous statement was ascribed to him. The refusal to attribute such an error to a particular Sage is an expression of respect for that Sage.

טלית שהיא מונחת – **טלית שהיא מונחת**: The Gemara assumes, without citing any proof, that in the case of the garment that is half on the floor and half on a pillar, it should be divided between the two finders. *Tosafot* ask: How does the Gemara thereby refute Rabbi Abbahu's statement? Perhaps Rabbi Abbahu would not agree that the garment is divided. The *Ritva* answers that the Gemara's assumption is based on the fact that it was common practice to divide the garment, and that in itself is proof that this should be the *halakha*. The *Ra'avad* explains that the Gemara infers that the garment is divided from the fact that the mishna on 2a does not distinguish between a case where the garment was lying on a flat surface and a case where it was lying on two surfaces, one above the other.

NOTES

Leads in the city – מנהיג בעיר: According to Rashi, one can also acquire an animal by leading it in a field. The Rashba disagrees, maintaining that it is not common practice to lead an animal in a field, as it is liable to escape.

What is the reason that one who sits on an animal in the city does not acquire it – **רוכב בעיר פאי טענאו לא קני**? Why is this question relevant only after the Gemara states that the *baraita* is referring to one who is also driving the animal with his legs? The Ra'avad explains that mounting an animal effects acquisition because the animal begins to walk when it feels the person's weight. In the city, which is crowded, the animal would not necessarily begin to walk without additional prodding, so it is obvious that merely mounting the animal would not effect acquisition.

The Ritzbash, cited in *Shita Mekubbetz*, explains that the typical purpose for which one would sit upon an animal passively is in order to survey his field. Therefore, by sitting on it in the field, he makes use of the animal and thereby acquires it. In the city, it is not typical for one to sit passively upon an animal without causing it to move, and in order to acquire the animal there, he must direct it toward a desired destination.

HALAKHA

Acquisition on Shabbat – קני בשבת: Although the Sages prohibited all transactions on Shabbat, nevertheless, one who performs a formal act of acquisition on Shabbat acquires the item, even if the item he lifts is *muktze* (*Shulhan Arukh, Hoshen Mishpat* 195:11).

תא שמע, ובו אליעזר אומר: רוכב בשדה ומנהיג בעיר – קנה! הכא נמי!
מן היג ברגליו. אוי היכי הינו מנהיג!
תרי גווני מנהיג.

The Gemara suggests: Come and hear an additional proof from a *baraita*: Rabbi Eliezer says: If one sits on an animal in the field or leads an animal in the city,^N he acquires it. This proves that one can acquire an animal by sitting on it. The Gemara rejects this proof: Here too, the reference is to one who leads, i.e., drives, the animal with his feet. The Gemara asks: If so, that is the same as leading the animal. Why would the *baraita* mention the same case twice? The Gemara answers: The *baraita* is discussing two types of leading.

אוי היכי רוכב בשער Mai טעם לא
קני? אמר רב כהנא: לפי שאין דוקן
של בני אדם לרוכב בשער.

אמר ליה רב אשיה לרוב כהנא: אלאי
מעהה, הגביה ארונקי בשבת, שאין
דרום של בני אדם להגביה ארונקי
שבת – היכי נמי דלא קני? אלאי
מאי דעביד עבד – וקני, הכא נמי!

אלאי במקח וממבר עסקין, לא אמר
לה: קני בדרכן שבני אדם קוני.

The Gemara asks: If that is so, what is the reason that one who sits on an animal in the city does not acquire it?^N Rav Kahana said: It is because people do not normally ride in the city, as it is crowded.

Rav Ashi said to Rav Kahana: If that is so, that by means of an unusual action one cannot effect an acquisition, then if one lifted a purse that he found on Shabbat, has he also not acquired^H it, since people do not normally lift a purse on Shabbat due to the prohibition of set-aside [*muktze*]? That is clearly not the *halakha*. Rather, how should one rule in that case? What he did, he did, and he acquires the purse. Here too, if one sat on an animal in the city, what he did, he did, and he acquires the animal.

Rather, the *baraita* is not referring to the case of a found animal, which one can acquire it even by sitting on it in the city. In fact, we are dealing with a case of buying and selling an animal, where the seller said to the buyer: Acquire the animal the way that people normally acquire an animal. Therefore, the buyer cannot acquire it in the city by sitting on it.

Perek I

Daf 9 Amud b

NOTES

Pull this animal in order to acquire the vessels that are upon it – **ישוך בהפה זו וליקנות כלם שעלה**: *Tosafot* note that if a seller were to instruct a buyer to pull a box in order to acquire the vessels within it, he would certainly be able to acquire the vessels in this manner. The difference between this case, where the vessels are upon an animal, and that case, when they are in a box, is that in this case the movement of the animal cannot be fully attributed to the one pulling it, as it walks on its own while being pulled.

ואין רשות הרבים הוא – קני, וכי
אדם חשוב הוא – קני, וכי איש
היא – קני. ואין אישילא הוא –
קני.

And if he rides it in the public domain, he acquires it, as people commonly ride animals in the city's public domain. And if he is an important person, who always rides his animal rather than leading it, he acquires it even in an alleyway. And if the buyer is a woman, she acquires the animal, as women do not normally lead animals. And if the buyer is a detestable person, who rides even where other people do not, he too acquires the animal.^H

בשי רבי אלעזר: האומר לחבירו
משוך בהמה זו וליקנות כלם שעלה
מהו?

§ Rabbi Elazar raises a dilemma: With regard to one who says to another, to whom he wishes to sell vessels: Pull this animal in order to acquire the vessels that are upon it,^N what is the *halakha*? Can the buyer acquire the vessels by pulling the animal?

One who sits on an animal in the field or leads an animal in the city – רוכב בשדה ומנהיג בעיר: If one sells an animal to another person and instructs him to acquire it in the way that people normally acquire animals, the buyer acquires it by either pulling it or lifting it. He can also acquire the animal by sitting on it in the field, but in the city he does not acquire it by doing so, as it is not common practice to sit on an animal in the city. The following people can acquire an animal by sitting on it in the city: An important person whose common practice is to ride even in the city, one whose practice is to disregard societal norms and ride in the city, and a woman. In the public

domain, amid a jostling crowd, anyone can acquire an animal even by sitting on it in the city.

The Rosh has a different version of the text in the Gemara, according to which anyone can acquire an animal by sitting on it in an alleyway, whereas in the public domain only an important person can acquire it by sitting on an animal. The Rema apparently accepts this opinion. The *Sma* distinguishes between different kinds of public domains (*Rambam Sefer Kinyan, Hilkhot Mekhira* 2:10; *Shulhan Arukh, Hoshen Mishpat* 197:5, and see *Beur HaGra* and *Arukh HaShulhan* there).

לִקְנוֹת? מַי אָמַר לֵיה קְנִי? אֲלֹא: מִשׁוּן
בְּהַמָּה זו וְקַנֵּה כְּלִים שְׁעִלְתָּה, מַה? מַי
מִהְנָא מִשְׁיכָה דְּבַהָּמָה לְאַקְנָנוּי כְּלִים.
אוֹ לֹא?

Before discussing the dilemma, the Gemara clarifies the issue. If the vendor merely says: **In order that you will acquire the vessels**, how can the buyer acquire them? **Did he say to him** in the imperative: **Acquire the vessels?**^H Without the seller's explicitly instructing the buyer to acquire the vessels, the buyer cannot acquire them. **Rather**, Rabbi Elazar's dilemma is with regard to a case where the seller says to the buyer: **Pull this animal and thereby acquire the vessels that are upon it.**^{HN} **What is the halakha?** Is pulling the animal effective in order to acquire the vessels upon it, or not?

אָמַר רַבָּא: אֵי אָמַר לֵיה קְנִי בְּהַמָּה וְקַנֵּ
כְּלִים מֵקְנִי כְּלִים? חַצְרָה מְהֻלְּכָת הִיא,
וְחַצְרָה מְהֻלְּכָת לֹא קְנָה.

Rava said: It is clearly not effective, as even if he said to him: **Acquire the animal and acquire the vessels**, does the buyer acquire the vessels? Although one can acquire an item by having it placed in his courtyard, and one's animal is the equivalent of his courtyard, it is considered a **mobile courtyard**, and a mobile courtyard does not effect acquisition^N of items that are placed in it.

וְכִי תִּמְאָה בְּשֻׁמְדָה, וְהָא כֶּל שְׁאַילְוָן
מְהֻלְּךָ לֹא קְנָה – עַזְמָד יוֹשֵׁב לֹא קְנָה.

And if you would say that the animal can function as a courtyard when it is standing still, not walking, while being pulled, isn't there a principle which states that **anything that does not effect acquisition when moving also does not effect acquisition** when it is standing or sitting?

והלכה – בCaps

The Gemara concludes: **And the halakha** is that the buyer can acquire vessels by having them placed on the animal's back only when the animal is bound. In that circumstance, when the buyer acquires the animal it assumes the legal status of his courtyard, and he also acquires the items that are placed upon the animal.

אָמַרוּ לֵיה רַב פַּפָּא וּרְבָה הַנּוּא בָּרוּה
דָּרְבָּ יְהוֹשֻׁעַ לְרַבָּא: אֶלָּא מִעֵת הִיא
מְהֻלְּךָ בְּסְפִינָה וְקַפְצָוּ דָגִים וְנַפְלָוּ לְתוֹךְ
הַסְּפִינָה, הַכִּי נִמְיָה דְּחַצְרָה מְהֻלְּכָת הִיא,
וְלֹא קְנָה? אָמַר לֵיה: סְפִינָה מִנְחָה נִיחָה.
וּמִיא הַוָּא דְקָא מִמְטוֹ לְהָ.

Rav Pappa and Rav Huna, son of Rav Yehoshua, said to Rava: If that is so, in a case where one was sailing on a boat and fish jumped and fell into the boat,^H is the boat also considered a mobile courtyard, and therefore he does not acquire the fish? Rava said to them: A boat is not considered a mobile courtyard, as the boat itself sits idle, and it is the water that moves it.

HALAKHA

Did he say to him, acquire the vessels – **>If one says to another: Pull this item and you will acquire it, or: Take possession of this land and you will acquire it, the transaction does not take effect, because the use of the future tense indicates that the buyer will not acquire the item through this action. The transaction takes effect only if the owner uses an imperative, namely: Pull the item and thereby acquire it, or: Take possession of the land and thereby acquire it, or a similar phrase. The Rambam derives this from the Gemara (Rambam Sefer Kinyan, Hilkhot Mekhira 2:8, and Ra'avad and Maggid Mishne there; Shulhan Arukh, Hoshen Mishpat 197:6).**

Acquisition of an animal and the vessels that are upon it – **קְנִי בְּהַמָּה וְכְלִים שְׁעִלְתָּה**: If one pulls an animal that has vessels upon it in order to acquire the animal and the vessels, he

acquires the animal but not the vessels, and he must perform a separate act of acquisition for the vessels. This is because the animal is considered a mobile courtyard. If the animal is bound, one can acquire the vessels upon it by pulling the animal. The Rosh rules that if the vessels are ownerless, by acquiring the animal one acquires the vessels as well. Since the dilemma in the Gemara is not resolved, acquisition is prevented only if there is an existing owner (Rambam Sefer Kinyan, Hilkhot Mekhira 3:13; Shulhan Arukh, Hoshen Mishpat 202:14 and Sma there).

And fish jumped and fell into the boat – **קַפְצָוּ דָגִים וְנַפְלָוּ לְתוֹךְ סְפִינָה**: If fish, or any other ownerless items, fall into a boat, the owner of the boat acquires them, as the boat has the halakhic status of a stationary courtyard (Rambam Sefer Kinyan, Hilkhot Zekhiya UMattana 1:5; Shulhan Arukh, Hoshen Mishpat 273:15).

NOTES

Pull this animal and acquire the vessels that are upon it – **מִשׁוּן בְּהַמָּה וְקַנֵּה כְּלִים שְׁעִלְתָּה**: The early commentators deal extensively with clarifying this dilemma. Some explain that the question is whether or not the animal can serve as a courtyard for the purpose of acquiring the vessels, and others maintain that the issue revolves around the possibility of acquisition by means of pulling the vessels via pulling the animal. The Rashba explains, based on the conclusion of the Gemara that this acquisition is effective only if the animal is bound, that the dilemma is whether an animal or the vessels that are upon it can be acquired by pulling the animal in this manner, since this is clearly not the common way to move an animal.

And a mobile courtyard does not effect acquisition – **מְהֻלְּכָת לֹא קְנָה**: The Rashba questions the reason for this ruling, as the halakha that one can acquire an item by virtue of its being placed in his courtyard is derived from the halakha of agency, i.e., one's courtyard can serve as his agent for acquiring items, and an agent is mobile. The Ritva answers that whereas an agent moves to carry out the mission of the one who appointed him, an animal moves on its own. The Rosh maintains that acquisition by means of a courtyard is not derived from agency but from acquisition by means of grasping the item in one's hand. Therefore, just as one's hand is not independently mobile, so too, a courtyard that is independently mobile cannot effect acquisition.

HALAKHA

Her basket – קילתָה: If a husband threw a bill of divorce into a vessel that his wife was carrying, she is divorced (Rambam Sefer Nashim, Hilkhot Geirushin 5:8; Shulhan Arukh, Even HaEzer 139:10).

One who gleaned pe'a for another – עבורה גleaned pe'a: If one collects pe'a and says: This is for so-and-so the poor person, and the one who collected the pe'a is himself poor and eligible to receive pe'a, the pe'a is acquired by the poor person on whose behalf it was collected. If the one collecting the pe'a is wealthy, the produce is not acquired by the poor person for whom it was designated, and the one who collected it must give it to the first poor person he encounters. This is in accordance with the opinion of the Rabbis, as explained by Rabbi Yehoshua ben Levi (Rambam Sefer Zera'im, Hilkhot Mattenot Aniyim 2:19).

BACKGROUND

Pe'a – פאה: The Torah states that it is prohibited for a farmer to harvest the produce of the corner of his field, and he must allow the poor to glean this produce for themselves. The Sages decreed that the area of the corner must be at least one-sixtieth of the field. This mitzva appears in the Torah (Leviticus 19:9, 23:22), and tractate Pe'a is devoted to the details of this mitzva. By Torah law, this mitzva applies to fields, vineyards, and olive groves.

אמר ליה רבי יונאי לרוב אשוי אלא מעטה, היתה מהלכת ברשות הרבים וירק לה גט לתוכך חיקת או לתוכך קלחתה, הכא נמי דלא מנדרשה? אמר ליה: קלחתה מינח נייחא, ואיהי דקא מסגיא מותווה.

Ravina said to Rav Ashi: If that is so, that one does not acquire items that are placed in his mobile courtyard, then if a woman was walking in the public domain and her husband threw a bill of divorce into her lap, i.e., onto her person, or into her basket^h that she was carrying on her head, here too, is she not divorced because the basket was moving? Rav Ashi said to him: Her basket is not considered a mobile courtyard, as it sits idle, and it is she who walks beneath it.

מתני' היה רוכב על גבי בהקה וראה את המזיאה, ואמר לחבירו תנה לי נטלה ואמר אני זכית ביה – זכה ביה. אם משנתנה לו אמר אני זכית ביה תחללה – לא אמר כלום.

MISHNA If one was riding on an animal and saw a found item, and said to another person who was walking beside him: Give it to me, if the pedestrian took it and said: I have acquired it for myself, he has acquired it by means of lifting it, even though he did not see it first. But if, after giving it to the one riding the animal, he said: I acquired it for myself at the outset, he has said nothing and the rider keeps the item.

גמ' תנן התרם: מי שליקט את הפאה ואמר הרוי זו לפולוני עמי, ובפי אליעזר ואומר זוכה לו, וחכמים אומרים: ינתנה לעני הנמצאת ראשונה.

אמר עוליא אמר רבינו יהושע בן לוי: מחלוקת מעשר לעני,

רבוי אליעזר סבר: מנו דאי בפי מפרק נכסה והוי עמי, וחותמי ליה – השטא נמי חזוי ליה, ומנו דכי לנטשיה – כי נמי לחבירה. ורקון סברוי חד מנו – אמרין, תורי מנו – לא אמרין.

אבל מעני לעני – דברי הכל זוכה לו. דמו דכי לנטשיה וכי נמי לחבירה.

אמר ליה רב נחמן לעוליא: ולימא מ"ר מעני לעני מחלוקת, דהא מאיה הפל עננים אצל, ותנן: היה רוכב על גבי בהמה וואה את המזיאה, ואמר לחבירו תנה לי נטלה ואמר אני זכית ביה – זכה ביה.

אי אמרת בשלים מא מעני לעני מחלוקת

GEMARA We learned in a mishna there (Pe'a 4:9): With regard to one who gleaned the produce in the corner of the field, which is given to the poor [pe'a],^{hbn} and said: This produce is for so-and-so, a poor person, Rabbi Eliezer says: He thereby acquired it on the poor person's behalf. And the Rabbis say: He did not acquire it for the poor person; rather, he should give it to the first poor person that he encounters.

Ulla said that Rabbi Yehoshua ben Levi said: This dispute is in a case where the pe'a was gleaned by a rich person, who is not entitled to take the pe'a for himself, on behalf of a poor person.

As Rabbi Eliezer holds that since [miggo], if he so desires, he can renounce ownership of his property and he would then be poor, and the pe'a would then be suitable for him, now too, it is considered potentially suitable for him even though he is wealthy. And since [miggo] he can acquire it for himself, he can acquire it on behalf of another poor person as well. And the Rabbis hold that we say miggo once, but we do not say miggo twice. Therefore, a wealthy person cannot acquire pe'a for a poor person.

But in a case where the pe'a was gleaned by a poor person on behalf of another poor person, everyone agrees that he acquires it on behalf of the other person, as since [miggo] he can acquire it for himself, he can acquire it on behalf of another person as well.

Rav Nahman said to Ulla: But shouldn't the Master say that the dispute is even in a case where the pe'a was gleaned by a poor person on behalf of another poor person? This can be proven from the mishna, as everyone is considered like poor people with regard to a found item, i.e., everyone has the right to acquire a found item just as a poor person is entitled to glean pe'a, and we learned in the mishna: If one was riding on an animal and saw a found item, and said to another person: Give it to me, if the pedestrian took it and said: I have acquired it for myself, he has acquired it.

Granted, if you say the dispute pertains to a case where the pe'a was gleaned by a poor person on behalf of a poor person,

NOTES

One who gleaned produce in the corner of the field which is given to the poor [pe'a] – בפי שליקט את הפאה – In Rashi's opinion, this is not referring to the owner of the field's gleaning the produce, since by Torah law the owner is required to separate pe'a and is therefore unable to acquire that produce. Most commentaries hold that there is no distinction here between the owner of the field and anyone else (Rabbeinu Shimshon of

Saens; Rosh; Ran). The Jerusalem Talmud apparently supports the latter opinion.

Others maintain that the owner of the field is included in this halakha only according to the opinion that the dispute pertains to a wealthy person; since the owner of the field may not take the pe'a even if he is poor. The only exception to this would be were he to renounce his ownership of the entire field (Meiri).

מִתְנִיתֵין מַנִּי – רָבֵן הָיא. אֲלֹא אֵי
אֶמְرָתָ בְּעֵשֶׂר וְעַנִּי מִתְהַלְקָתָ, אֲבָל
מַעַן לְעַנִּי דָּבְרִי הַכְּלָל זָכָה לוֹ – הָא
מַנִּי? לֹא רָבֵן וְלֹא רַבִּי אֱלִיעֶזֶר!

אמור ליה: מִתְנִיתֵין דָּאָמֵר תְּחִילָה.

הַכְּלָל נִבְנֵי מִסְתְּבָרָא, דָקְתַּנִי סִיפָּא:
אִם מִשְׁנִיתָנָה לוֹ אָמָר: אַנְיַ זָכִיתִי בָּה
תְּחִילָה – לֹא אָמָר בְּלוּם. "תְּחִילָה"
בְּסִפְאָה לְפָה לִי? פְּשִׁיטָא, אָר עַל גַּב
דָּלָא אָמָר תְּחִילָה – תְּחִילָה קָאָמָר!
אֲלֹא לָאו, הָא קָא מִשְׁמָעָן: רַישָׁא
דָּאָמֵר תְּחִילָה.

וְאַיְצָן: תְּנָא סִיפָּא לְגַלְלֵי רִישָׁא,
סִיפָּא דָאָמֵר תְּחִילָה, רַישָׁא דָלָא
אָמֵר תְּחִילָה.

רַב נַחְמָן וּרְבָּחָסְדָא דָאָמְרִי תְּרוּיָה:
הַמְגַבֵּה מִצְיאָה לְחַבְירָיו – לֹא קָנָה
חַבְירָו.

מַאי טַעַמָּא – הַוי תּוֹפֵס לְבַעַל חֹוב
בָּמְקוּם שְׁתַב לְאַחֲרִים, וְהַתוֹפֵס
לְבַעַל חֹוב בָּמְקוּם שְׁתַב לְאַחֲרִים –
לֹא קָנָה.

אַיִתְבִּיהָ וּבָא לֹבֶן נַחְמָן: מִצְיאָת
פְּעַל – לְעַצְמוֹ.

בְּמֹה דְּבָרִים אָמְרִים – בְּמֻמָּן שָׁאָמֵר
לוֹ בַעַל הַבַּיִת נִבְשֵׁה עַמְּיָה יּוֹם, עַד
עַמְּיָה יוֹם. אֲבָל אָמָר לוֹ: עַשְׂתָּה עַמְּיָה
מַלְאָכָה הַיּוֹם מִצְיאָתָן שֶׁל בַעַל
הַבַּיִת הוּא!

whose opinion is expressed in the mishna? It is the opinion of the Rabbis, who hold that one cannot acquire an item for another in this manner. But if you say that the dispute is specifically in a case of a rich person and a poor person but in a case where the *pe'a* was gleaned by a poor person on behalf of a poor person everyone agrees that he acquired it on the latter's behalf, in accordance with whose opinion is this mishna? It is neither in accordance with the opinion of the Rabbis nor in accordance with the opinion of Rabbi Eliezer.

Ulla said to Rav Nahman: The mishna is referring to a case where the one lifting the item said: I intended to acquire the item for myself at the outset; I never had intention to acquire it on behalf of the rider.

The Gemara adds: So too, it is reasonable to explain the mishna in this manner, as it teaches in the last clause: But if, after giving it to the one riding the animal he said: I acquired it for myself at the outset, he has said nothing and the rider keeps the item. Why do I need the phrase: At the outset, to be mentioned in the last clause? It is obvious that even if he did not explicitly say: At the outset, he meant that he acquired it at the outset, before he gave it to the rider. Rather, isn't this phrase mentioned to teach us this: The first clause of the mishna is also referring a case where he said: I intended to acquire it for myself at the outset?

And the other Sage, Rav Nahman, is of the opinion that the mishna taught this phrase in the last clause of the mishna in order to shed light on the first clause. The last clause is referring to a case where he said that he acquired the item at the outset in order to indicate that in the first clause, the one who lifts the item acquires it even in a case where he did not say that he acquired it for himself at the outset. In Rav Nahman's opinion, the rider does not acquire the item until it is given to him.

§ The Gemara discusses the opinion of Rav Nahman and Rav Hisda, who both say: In a case of one who performs an act of acquisition by lifting a found item on behalf of another,^h the other person, i.e., the latter, does not acquire ownership of the item.

What is the reason for this? The reason is that it is a case of one who seizes assets for a creditor in a situation that will result in a disadvantage for others,^{hn} as the debtor owes money to other creditors as well; and one who seizes assets for a creditor in a situation that will result in a disadvantage for others does not acquire the assets for him. Although a creditor can himself seize the assets as payment for the debt, no one else can take action that will benefit one person at the expense of others. Similarly, since everyone has equal rights to an ownerless item that is found, one person cannot deprive all others of that right on behalf of another person.

Rava raised an objection to the opinion of Rav Nahmanⁿ from a *baraita*: The found item of a laborer,^h i.e., something that he found, belongs to him and not to the employer for whom he is working at that time.

In what case is this statement, that the item belongs to the laborer, said? It is said when the employer told the laborer to perform a specific task, e.g., he said to him: Weed for me today, or: Till for me today. Since the employer specified the task that he hired the laborer to perform, the laborer has rights to the item that the laborer found. But if the employer said to the laborer: Work for me today, without specifying the nature of the work, the found item is the employer's, as finding ownerless items is included within the general category of work. This indicates that a laborer can acquire an item for someone else, which contradicts Rav Nahman's principle.

HALAKHA

One who performs an act of acquisition by lifting a found item on behalf of another – **הַמְגַבֵּה מִצְיאָה לְחַבְירָיו**: If one says to another: Acquire this lost item on my behalf, once that person raises the item, the first person acquires it. If he says: Give me that item, the one who lifts it can decide to acquire it for himself if he has not yet handed it to the one who asked him for it. This is in accordance with the opinion of Rabbi Yohanan (Rambam *Sefer Nezikin*, *Hilkhot Gezeila VaAveda* 17:2; *Shulhan Arukh*, *Hoshen Mishpat* 269:6).

One who seizes assets for a creditor in a situation that will result in a disadvantage for others – **תוֹפֵס לְבַעַל חֹוב לְאַחֲרִים**: If a debtor owes money to several people and does not have sufficient funds to repay them all, and one who is not a creditor seizes the debtor's property for the benefit of one of the creditors, that creditor does not acquire the property. Rather, it is distributed to the creditors in the same manner that it would have been distributed had it remained in the debtor's possession (Rambam *Sefer Mishpatim*, *Hilkhot To'en VeNitan* 20:2; *Shulhan Arukh*, *Hoshen Mishpat* 105:1).

The found item of a laborer – **מִצְיאָת פּוּזֵל**: If a laborer is hired for unspecified labor, any lost item that he finds while working belongs to the laborer. If the employer specifically hired him to search for lost items for him, any item that the laborer finds belongs to the employer. This is in accordance with the *baraita*, as interpreted by Rav Pappa on 12b (Rambam *Sefer Mishpatim*, *Hilkhot Sekhirut* 9:11 and *Sefer Nezikin*, *Hilkhot Gezeila VaAveda* 17:13; *Shulhan Arukh*, *Hoshen Mishpat* 270:3).

NOTES

One who seizes assets for a creditor in a situation that will result in a disadvantage for others – **תוֹפֵס לְבַעַל חֹוב לְאַחֲרִים**: In Rashi's opinion, if the creditor explicitly appoints an agent to seize the property on his behalf and the agent does so, the creditor acquires the property. Most early commentaries disagree with Rashi, maintaining that even if the creditor appointed an agent, the agent cannot seize the property on his behalf (*Tosafot*; Rid; *Rashba*).

Rava raised an objection to the opinion of Rav Nahman – **אַיִתְבִּיהָ וּבָא לֹבֶן נַחְמָן**: Earlier in the Gemara (8a), Rava challenges Rami bar Hama's opinion that one can acquire a found item for another by lifting it, yet here Rava objects to Rav Nahman's contrary opinion. Some commentaries resolve this apparent contradiction by noting that after Rav Nahman responded to Rava's objection, Rava reconsidered his opinion (*Shita Mekubetzet*). Others explain that Rava did not express his opinion one way or the other. Rather, while analyzing the topic without having arrived at a conclusion, he raised challenges against both sides of the dispute (Rosh).

HALAKHA

פּוֹעֵל יָכֹל לְחוֹזֶר בּוֹ: A laborer may reconsider – even if he already began working, even in the middle of the day, and even if he already received his wages for the entire day. In the latter case, he is liable to repay the employer the surplus money he received. This is in accordance with the statement of Rav (Rambam *Sefer Mishpatim, Hilkhot Sekhirut* 9:4; *Shulhan Arukh, Hoshen Mishpat* 333:3).

אמָר לִיהְיָה: שָׁאַנְיַ פּוֹעֵל דִּין יָד בָּעֵל הַבַּיִת הוּא.

וְהַאֲמָר וּבָ: פּוֹעֵל יָכֹל לְחוֹזֶר בּוֹ אַפְּלוּ בְּחַצִּי הַיּוֹם!

אָמָר לִיהְיָה: כִּל בְּמִה דְּלָא הַדָּר בֵּיהְיָה - כִּיד בָּעֵל הַבַּיִת הוּא, בִּי הַדָּר בֵּיהְיָה - טַעֲמָא אַחֲרֵינָא הוּא, דְּכַתֵּב "בַּיְ לִי בְּנֵי יִשְׂרָאֵל עֲבָדִים" - עֲבָדֵי הָם, וְלֹא עֲבָדִים לְעַבְדִּים.

אָמָר רַבִּי חִיאָה בֶּן אַבָּא אַמְרָר רַבִּי יוֹחָנָן: הַמְּגֻבֵּה מִצְּיָה לְחַבְּרוֹ - קָנָה חַבְּרוֹ, וְאָסַר תְּאַמֵּר מִשְׁנְתַּנוּ - דָּאָמָר "תַּנְהַ לִי", וְלֹא אָמָר "זָכַה לִי".

מַתָּנִי רָאָה אֶת הַמִּצְּיָה וַנֵּפֶל עַלְיָהּ, וְבָא אַחֲרָה וְחִזֵּק בָּהּ - זֶה שְׁחִזֵּק בָּהּ וְזֶה בָּהּ.

גַּם' אָמָר רִישׁ לְקַיֵּשׁ מִשּׁוּם אַבָּא כְּנַזְן בְּרַדְלָא: אַרְבָּע אַמּוֹת שֶׁל אָדָם קְנוֹת לוֹ בְּכָל מִקּוּם. [מַאי טַעַמָּא?] תְּקִינוּ רְבָּעָן - דְּלָא אָתֵי לְאַנְצָוּי. אָמָר אַבִּי: מַוְתִּיב רַבִּי חִיאָה בֶּן יוֹסֵף פִּיאָה, אָמָר וּבָא: מַוְתִּיב רַבִּי יַעֲקֹב בֶּן אַיִדִי נִיְקָין.

Rav Nahman said to him: **A laborer is different, as his hand is like the hand of the employer.** He is considered his agent while he is working for him.

Rava responded: **But doesn't Rav say that a laborer may reconsider⁴ and quit his job, even at midday?** Evidently, the relationship between the employer and the laborer is structured to the benefit of the laborer.

Rav Nahman said to him: **As long as he does not retract his commitment, his hand is like the employer's hand. When he does retract his commitment, he is able to do so. But this is not because matters are structured to the benefit of the laborer, but for a different reason, as it is written: "For to Me the children of Israel are slaves;⁵ they are My slaves whom I brought forth out of the land of Egypt" (Leviticus 25:55), which indicates: They are My slaves, and not slaves of slaves, i.e., of other Jews. Consequently, a Jew can never be enslaved to another Jew with a contract from which he cannot release himself whenever he wishes. Nevertheless, as long as the laborer does not quit the job, he is considered his employer's agent.**

Contrary to the opinion of Rav Nahman and Rav Hisda, **Rabbi Hiyya bar Abba** says that **Rabbi Yohanan** says: In a case of one who performs an act of acquisition by lifting a found item on behalf of another, the other person acquires⁶ ownership of the item. And if you say that our mishna seems to suggest otherwise, it is referring to a case where the rider says to the pedestrian: Give it to me, but does not say: Acquire it for me. If he says give it to me, the rider acquires the item only when it reaches his possession. If he says acquire it for me, the rider acquires the item as soon as the pedestrian lifts it.

MISHNA If one saw a found item and fell upon it, intending to thereby acquire it, but did not employ one of the formal modes of acquisition, and then another came and seized it, the one who seized it acquired it because he employed one of the formal modes of acquisition.

GEMARA Reish Lakish says in the name of Abba Kohen Bardela: The area of four square cubits surrounding a person has the legal status of his courtyard, and it effects acquisition of every ownerless item located there for him,⁷ everywhere. What is the reason for this? The Sages instituted this ordinance so that people would not come to quarrel over an item. Abaye said that Rabbi Hiyya bar Yosef raises an objection to this from a mishna in tractate *Pe'a*. Rava said that Rabbi Ya'akov bar Idi raises an objection to this from a mishna in *Nezokin*.⁸

כִּי לְבַנֵּי יִשְׂרָאֵל For to Me the children of Israel are slaves – One who hires himself out as a laborer is not in violation of this mitzva, since a laborer does not become the property of his employer as a slave does (Rosh; see *Tosafot*). The later commentaries ask how an item found by a laborer is thereby acquired by his employer if the laborer is not considered the employer's property (see *Kehillot Ya'akov*).

In a case of one who performs an act of acquisition by lifting a found item on behalf of another, the other person acquires – **הַמְּגֻבֵּה מִצְּיָה לְבַבְיוֹן קָנוֹת וְבִרְיוֹן:** The early commentaries raise an apparent contradiction between this statement of Rabbi Yohanan's and his opinion elsewhere that one who seizes assets for a creditor at the expense of other creditors does not acquire the assets for him. According to the Gemara's discussion earlier, this principle serves as a basis for the opinion that one cannot acquire a found item for another by lifting it. One answer is that according to Rabbi Yohanan the cases are not similar; whereas the agent of a creditor cannot take the

assets of the debtor for himself, one can acquire a found item for himself, and he can therefore acquire it for another person as well (Rid; *Rabbeinu Tam*). Others suggest a different distinction: In the case of a found item, the one who acquires it does not cause anyone else to lose money, as the found item does not belong to anyone (Ramban).

The area of four square cubits surrounding a person effects acquisition for him – **אַרְבָּע אַמּוֹת שֶׁל אָדָם קְנוֹת לוֹ:** Most of the early commentaries hold that the four square cubits encompassing a person can effect acquisition for him only with regard to ownerless items and gifts (see Meiri). In the Jerusalem Talmud there is a dispute as to whether one's area of four square cubits is effective in buying property and in other cases involving Torah law as well (see Ramban). Some commentaries explain that the mode of transaction utilizing this area is effective in buying property only if the one acquiring the item was standing in the four-square-cubit area before the

item arrived in it; otherwise, other modes of acquisition are necessary (*Nimukei Yosef*; Ran).

Since acquisition by means of one's four-square-cubit area is a rabbinic ordinance, instituted in order to avoid disputes, some commentaries ask how a woman can receive her bill of divorce by the husband's placing it in her four square cubits. How is such a divorce effective by Torah law? Some commentaries answer that the actual ordinance was to grant a person standing in the public domain ownership of the four square cubits surrounding him. Consequently, this area is considered his courtyard by Torah law, and he can therefore acquire by Torah law items that are placed in it (*Talmid Rabbeinu Peretz*).

מַוְתִּיב... נִיְקָין: Rashi explains that this is referring to the order of *Nezokin*. Others explain that the reference is to tractate *Nezokin*, i.e., *Bava Kamma*, *Bava Metzia*, and *Bava Batra*, which originally formed a larger tractate called *Nezokin* before they were divided into three separate tractates (*Torat Hayyim*; Rashash).

אמור אבוי: מותיב רבבי חייא בר יוסוף פאה: נטל מקצת פיאה ווירק על השאר – אין לו בה כלום, נפל לו עלייה, פרס טליתו עלייה – מעבירו אותו הימנה, וכן בעומר שכחה.

אי אמונת ארבע אמות של אדם
קנות לו בכל מקום, נקנו ליה ארבע אמות דידיה!

הכא במאי עסקין – דלא אמר אקנין.

ואית קזון רבן, כי לא אמר מאוי חזוי?

ביוון נפל – גלי דעתיה דברנפילה ניחא ליה דנקני, בארבע אמות לא מיחא ליה דנקני.

The Gemara elaborates: Abaye said that Rabbi Hyya bar Yosef raises an objection to this from a mishna in tractate Pe'a (4:3), which states: If a poor person took some of the pe'a in the field and threw it on the rest of the pe'a in order to acquire it, he has nothing of it.^N The same is true if he fell upon the pe'a, or if he spread his garment over it;^H others may remove him or his garment from the pe'a in order to take it for themselves, as he did not acquire it. And the same is true in the case of a forgotten sheaf^G left for the poor; a poor person cannot acquire it in any of these manners.

Rabbi Hyya bar Yosef continues: And if you say that a person's area of four square cubits effects acquisition of property for him everywhere, let his area of four square cubits effect acquisition of the pe'a or the forgotten sheaf for him.

The Gemara responds: With what are we dealing here? We are dealing with a case where he did not say: I will acquire the pe'a through this action. He performed the action without revealing his intention; therefore, his acquisition is ineffective.

The Gemara asks: But if the Sages instituted an ordinance that the area of four cubits surrounding a person acquires property for him, then even in a case where he did not say: I will acquire the produce, what of it? Shouldn't he have acquired it even without expressing his intent to do so?

The Gemara answers: This case is different. Since he fell upon it he thereby revealed his intention: That it is satisfactory for him to acquire the produce by falling on it and it is not satisfactory for him to acquire the produce through the ordinance concerning his four square cubits. Since he decided to forgo the mode of acquisition that the Sages instituted, and falling on the produce is not a valid mode of acquisition, he did not acquire the produce.

NOTES

He has nothing of it – אין לו בה כלום: According to the Rambam and Rabbeinu Shimshon of Saens, citing the Tosefta and the Jerusalem Talmud, this means that not only is the attempt to acquire additional produce ineffective, the produce that he previously gleaned is confiscated from him as a penalty as well. The Sages apparently imposed this penalty in order to prevent altercations (Rashba).

HALAKHA

Took some of the pe'a and threw it on the rest...spread his garment over it – נטל מקצת פיאה ווירק על השאר...פרס טליתו עלייה. If a poor person took some pe'a and threw it on the rest of the pe'a, or fell upon the pe'a, or spread his garment over the pe'a, he has not acquired the pe'a that he attempted to acquire in this manner. Furthermore, the pe'a that he had already collected is confiscated from him as a penalty (Rambam Sefer Zera'im, Hilkhot Mattenot Aniyim 2:18).

BACKGROUND

Forgotten sheaf – עומר שכחה: This is referring to one of the agricultural gifts to the poor. A farmer who forgot a sheaf in the field while harvesting his grain may not return to collect it, and instead it must be left for the poor (Deuteronomy 24:19).

HALAKHA

רואה את האנzieה ונפל לו: Saw a found item and fell upon it – ראה את האנzieה ונפל לו. If one saw an item and fell upon it, and another came and seized it, the person who seized it acquired it. The Rema holds that if the item was located in a place where one's four square cubits can effect acquisition of ownerless property for him, the one who fell upon it acquired it (Tur and Bah, citing the Rif and the Rosh) in accordance with the second answer of the Gemara (Rambam Sefer Nezikin, Hilkhot Gezeila VaAveda 17:1; Shulhan Arukh, Hoshen Mishpat 268:1 and Sma there).

ארבע אמות...קנות: Four square cubits effect acquisition of property – ארבע אמות...קנות: The four square cubits surrounding a person can effect acquisition of property for him. If there is an ownerless item in that space he acquires it. This halakha applies only in an alleyway or in areas adjacent to the public domain. In the public domain itself, or in a field belonging to another, one's four square cubits do not effect acquisition of property for him. The Shakh is uncertain whether or not one's four square cubits can effect acquisition of a gift; the Gra rules that they can, in accordance with the statements of Rav Pappa and Rav Sheshet (Rambam Sefer Nezikin, Hilkhot Gezeila VaAveda 17:9 and Sefer Kinyan, Hilkhot Zekhiya UMattana 4:9; Shulhan Arukh, Hoshen Mishpat 268:2).

Perek I

Daf 10 Amud b

רב פפא אמר: כי תקינו ליה רבן ארבע אמות – בעילמא, בשדה דבעל הבית – לא תקינו ליה רבן, ואך על גב דזכה ליה רחמנא בגונה, כי זכה ליה רחמנא – להלוכי בה וילקוטי פאה, למתהוי חציו לא זכה ליה רחמנא.

Rav Pappa said a different answer: When the Sages instituted an ordinance that one's four square cubits effect acquisition of property for him, that was in the world,^N i.e., on public land. But the Sages did not institute this mode of acquisition for him in a field belonging to an owner. And even though the Merciful One accorded a poor person certain rights in a landowner's field during the distribution of pe'a, this mode of acquisition is not included in those rights; when the Merciful One accorded him rights it was specifically to walk in the field and to collect pe'a, but the Merciful One did not accord him the right that the field be considered his courtyard with regard to acquiring pe'a. Therefore, the mishna in tractate Pe'a does not contradict the statement of Reish Lakish.

אמור רבא, מותיב רבבי יעקב בר אידי ניקין: ראה את המזיאה ונפל לו עלייה, ובא אחר וחייב ביה – זה שחייב ביה בכבה בה. ואית אמורת ארבע אמות של אדם קנות לו בכל מקום, נקנו ליה ארבע אמות דידיה!

As mentioned previously, Rava said that Rabbi Ya'akov bar Idi raises an objection to this from a mishna in *Nezokin*. The Gemara elaborates: The mishna here states that if one saw a found item and fell upon it,^H and another came and seized it, the one who seized it acquired it. And if you say that a person's four square cubits effect acquisition of property^H for him everywhere, let his four square cubits effect acquisition of the found item for him.

NOTES

In the world – גלגול: The ge'onim had a variant text: A field belonging to the world, i.e., an ownerless field. The Rambam rules accordingly that in an ownerless field, the four square

cubits surrounding a person effect acquisition of property for him.

HALAKHA

Acquisition for a minor girl by means of her courtyard or her four square cubits – **חצר ואربע אמות לתקנה**: A minor girl acquires property that is placed in her courtyard or in her four square cubits. The Rema holds that this applies exclusively to a fatherless minor girl, whereas the *Shakh* maintains that even if she has a father she can acquire property by means of her courtyard. A minor boy cannot acquire property by either of these means (*Rambam Sefer Nezikin, Hilkhot Gezeila VaAveda* 17:10 and *Sefer Kinyan, Hilkhot Zekhiya UMattana* 4:9; *Shulhan Arukh, Hoshen Mishpat* 243:23, 268:5).

NOTES

A courtyard is included due to her hand...due to agency – **חצר משום ידה איתרביי...משום שליחות**: The logic behind the opinion that a courtyard acts as one's hand is that it is considered an extension of a person, in which he holds his possessions. The opinion that a courtyard acts as one's agent considers it an independent entity that serves its owner, similar to an agent, who acts on behalf of the one who appointed him. Various limitations apply with regard to agency, including the *halakha* that a minor cannot appoint an agent.

הכא במא עסקין – דלא אמר אקנין.
אי תקון רבען, כי לא אמר מאוי הו? בין דנפל עליה – גלי דעתיה דבנפילה ניחא ליה דנקני.

The Gemara answers: Here we are dealing with a case where he did not say: I will acquire it. The Gemara asks: But if the Sages instituted an ordinance that one's four square cubits effect acquisition of property for him, then even in a case when he did not say: I will acquire the item, what of it? The item should still be his. The Gemara answers: Since he fell upon it, he revealed his intention that it is satisfactory for him to acquire the item by falling on it, and it is not satisfactory for him to acquire the item through the ordinance concerning his four square cubits. Since he decided to forgo the mode of acquisition instituted by the Sages, he does not acquire the found item.

רב ששת אמר: כי תקינו רבנן – בסמطا,
דלא דחקרי ובם, ברשות הרבים דקא דחקרי ובם – לא תקינו רבנן.

Rav Sheshet said a different answer: When the Sages instituted that one's four square cubits effect acquisition of property for him, that was in a place like an alleyway, where the multitudes do not crowd, so the four square cubits surrounding a person can temporarily be considered his property and enable him to acquire an item; but the Sages did not institute this mode of acquisition in the public domain, where the multitudes crowd.

והא בכל מקום קאמרו!

The Gemara asks: But doesn't the wording of Reish Lakish's statement indicate that there is no such limitation, as he says that the area of four square cubits surrounding a person effects acquisition of property for him everywhere? The indication is that this is true even in the public domain.

כל מקום לאתמי צדי רשות הרבים.

The Gemara answers: The word everywhere is not to be taken literally; it was stated to include even the sides of the public domain, areas that are adjacent to the public domain but not actually part of it. Since the multitudes do not crowd there, one who is standing there acquires an item that is in his four square cubits.

ואמר ריש לחייב משום אבאה כהן ברדלא:
תקנה אין לה חצר, ואין לה ארבע אמות.
ובפי יוחנן משום רבבי ינאי אמר: יש לה חצר יש לה ארבע אמות.

§ And Reish Lakish says another *halakha* in the name of Abba Kohen Bardela: A minor girl does not have the ability to acquire property by means of her courtyard, and she does not have the ability to acquire property by means of her four square cubits.^h And Rabbi Yohanan says in the name of Rabbi Yannai that she has the ability to acquire property by means of her courtyard, and she has the ability to acquire property by means of her four square cubits.

במאי קמיפלגי? מ"ר סבר: חצר משום ידה איתרביי, כי היכי דאית לה יד – חצר נמי אית לה. ומ"ר סבר: חצר משום שליחות איתרביי, וכי היכי דשליחות לית לה – חצר נמי לית לה.

The Gemara asks: With regard to what do they disagree? The Gemara explains: One Sage, Rabbi Yannai, holds that placing an item in a courtyard is included as a valid means of acquisition due to the fact that it acts as her hand. Just as a minor girl has the ability to acquire property with her hand, she also has the ability to acquire property by means of her courtyard. And one Sage, Abba Kohen Bardela, holds that placing an item in a courtyard is included as a valid means of acquisition due to the option of acquiring property via agency;ⁿ and just as a minor girl has no power of agency, as a minor cannot appoint an agent, she does not have the ability to acquire property by means of her courtyard either.

מי אפ"א מאן דאמר חצר משום שליחות איינט בא? והתניא: "בדור" – אין לי אלא ידור, גנו חציו וקורփו מנין? תלמוד לומר: "המצעה תמצאה" – מכל מקום.

The Gemara asks: Is there anyone who says that a courtyard is included as a valid means of acquisition due to the option of acquiring property via agency? But isn't it taught in a *baraita*: The verse states: "If the thief shall be found in his possession alive, whether it is an ox, or a donkey, or a sheep, he shall pay double" (Exodus 22:3) From the term "in his possession [beyado]," I have derived only a case where the stolen item is found in his hand [yado]. From where do I derive that the same *halakha* applies if it is found on his roof, in his yard, or in his enclosure? The verse states the repetitive phrase "if the thief shall be found [himmatze timmatze]," to indicate that the same *halakha* applies in any case, i.e., in any location that the stolen item is found.

וְאֵי סָלַקְאָ דְּשַׁתְּךָ חָצֶר מִשּׁוֹם שְׁלִיחָה
אִתְּרוּבָא אֶסְ בְּן מַצְעִוָּ שְׁלִיחָה לְדָבָר
עֲבִירָה, וְקִימָא לֹא: אֵין שְׁלִיחָה לְדָבָר
עֲבִירָה!

אמָר רַבִּינָא: הַיכָּא אָמְרָמִין דָּאיְנִ שְׁלִיחָה
לְדָבָר עֲבִירָה - הַיכָּא דְּשַׁלְּחָה בַּר חִיבָּא
הָוּא, אֲבָל בַּחֲצֶר דָּלָאו בַּר חִיבָּא הוּא -
מִיחִיב שׂוֹלְחוֹ.

אֵלָא מִעֵדָה, הָאָמָר לְאַשֶּׁה וּעַבְדֵּצָא
גָּנוּבוּ לִי, דָלָאו בַּנִּי חִיבָּא נִנְחָא, הַכִּי נִנְמַי
מִיחִיב שׂוֹלְחוֹ?

אָמָרָת: אַשֶּׁה וּעַבְדֵּצָא
וְהַשְׁתָּא כִּיְדָא לִתְהַלְּלִשְׁוּמִי. וְתָמָן:
נְתַגְּרָשָׁה הָאַשֶּׁה, נְשַׁתְּחָרֵר הַעֲבָד -
חִיבָּן לְשָׁלָם.

רַב סָמָא אָמָר: הַיכָּא אָמְרָמִין אֵין שְׁלִיחָה
לְדָבָר עֲבִירָה - הַיכָּא דָאֵי בְּשִׁיעָרְבִּי,
וְאֵי בְּשִׁיעָר לְאַעֲבֵיד. אֲבָל חָצֶר, דְּבָעֵל
בְּרִיחָה מוֹתָבָה - מִיחִיב שׂוֹלְחוֹ.

מַאֲיָ בִּינְיוֹה? אֵיכָא בִּינְיוֹה כֵּן דָּאָמָר
לִיה יְלִשְׁרָאֵל צָא וְקִדְשָׁ לִי אַשֶּׁה גְּרוּשָׁה.
אֵי נִמְיָ, אִישׁ דָּאָמָר לָהּ לְאַשֶּׁה: אֲקִפִּי
לִי קְטָן.

The Gemara explains: **And if it enters your mind that a courtyard is included as a valid means of acquisition due to agency, if so, we have found a case where there is agency for a transgression, i.e., theft. But we maintain that there is no agency for transgression.**^{HN} If one sends an agent to violate a transgression on his behalf, the agent is liable for the transgression and is not considered to be acting on behalf of the one who sent him.

Ravina said: That *baraita* poses no problem, as **where do we say that there is no agency for transgression? It is where the agent himself is subject to liability for transgression.** Consequently, the agent is liable, not the one who sent him. **But in the case of a courtyard, which is not subject to liability, its sender, i.e., its owner, is liable.**

The Gemara asks: **If that is so, then in a case of one who says to a woman or a slave: Go out and steal for me, is the one who sent them indeed liable, since they are not subject to liability?** Married women and slaves have no property of their own from which one could collect payment.

The Gemara answers: **You can say in response: A woman and a slave are not comparable to a courtyard, as they are subject to liability if they steal; and only now, in any event, they do not have the means to pay.** This is as we learned in a mishna (*Bava Kamma* 87a) concerning a married woman or Canaanite slave who injured another person: **If the woman becomes divorced or the slave becomes emancipated,**^H and they then have their own money, **they are liable to pay for the damage they inflicted.** Evidently, although it is not possible to collect payment from them, they are liable for their actions.

Rav Samma stated a different resolution to the difficulty based on the *baraita*: **Where do we say that there is no agency for transgression?** It is specifically in a case where if the agent wants to execute his assignment he can do so, and if he wants to refrain from executing it he can also opt to not do it. **But in the case of a courtyard, where one places items without its consent, its sender, i.e., its owner, is liable.**

The Gemara asks: **What is the practical difference between the answers of Ravina and Rav Samma?** The practical difference between them is in the case of a priest who said to an Israelite: **Go out and betroth a divorced woman for me.**^N It is prohibited for a priest to betroth a divorcee, while it is permitted for an Israelite to do so. Alternatively, the difference is in the case of a man who said to a woman: **Round the corners of the head of a minor boy for me.**^N Rounding the corners of a man's head, and a man having the corners of his head rounded, are prohibited in the verse: "You shall not round the corners of your head" (*Leviticus* 19:27), but they are prohibited only for men and not for women.

HALAKHA

אֵין שְׁלִיחָה לְדָבָר עֲבִירָה: Although the legal status of a person's agent is like that of himself, this does not apply with regard to a transgression committed by an agent, as there is no agency for transgression. Therefore, if an agent commits a transgression at the instruction of the one who appointed him, the one who appointed him is not liable. This applies specifically in a case where the agent is also prohibited from performing that act. If the action is permitted to the agent, his agency is valid, in accordance with the opinion of Ravina (Rema). Others (*Shakh*, citing Rosh and Ramah) maintain that even in a case where the action is permitted to the agent, there is agency for transgression only if the agent was not halakhically competent, e.g., if he is a deaf-mute, an imbecile, or a minor, but that one who is halakhically competent does not cause the transgression to be attributed to the one who appointed him, in accordance with the opinion of Rav Samma (Rambam *Sefer Avoda*, *Hilkhot Me'ilah* 7:2; *Shulhan Arukh*, *Hoshen Mishpat* 182:1, and in the comment of Rema, 410:8).

If the woman becomes divorced or the slave becomes emancipated – **תַּגְנִשָּׁה הָאַשֶּׁה נְשַׁתְּחָרֵר הַעֲבָד:** Slaves or married women who damage property or injure another are temporarily exempt from payment because they have no money of their own. If the woman becomes divorced or the slave is emancipated, and they then have their own money, they must then pay for the damage. The Rema adds that if the married woman owns any property that she can sell, she is liable to pay even while married (Rambam *Sefer Nezokin*, *Hilkhot Hovel UMazik* 4:21; *Shulhan Arukh*, *Hoshen Mishpat* 424:9).

NOTES

There is no agency for transgression – **אֵין שְׁלִיחָה לְדָבָר עֲבִירָה:** Some explain that the reason that there is no agency for transgression is that the one who appoints the agent does not appoint him wholeheartedly, since he does not believe that the agent will actually follow his instructions (*Tosefot* of Rabbeinu Shimshon of Saens). Others hold that the reason is that among the limitations of agency as dictated by the Torah is that one does not have the legal ability to appoint an agent to transgress a prohibition (*Penei Yehoshua*; Rabbi Akiva Eiger).

A priest who said to an Israelite, go out and betroth a divorced woman for me – **בֵּן דָאָמָר לִיה יְלִשְׁרָאֵל צָא וְקִדְשָׁ לִי אַשֶּׁה גְּרוּשָׁה:** *Tosafot* and the Ritva discuss whether the opinion that the priest is exempt from punishment would remain the same in a case where the agent is also a priest. *Tosafot* also ask which prohibition is violated through the act of betrothal, as a priest violates

the prohibition against marrying a divorcee only if he engages in sexual intercourse with her. Some commentaries answer that the Gemara's statement is in accordance with the opinion of Abaye, who holds that even if a priest only betroths a divorced woman he violates the prohibition and is liable to receive lashes (Ramban). Others explain that the issue is not whether the priest is liable to be punished, but rather whether the agency is effective, i.e., whether the betrothal takes effect, even though it is forbidden (*Talmidei Rabbeinu Peretz*; Rashba).

Round the corners of the head of a minor boy for me – **אֲקִפִּילִי:** **בֵּן דָאָמָר לִיה יְלִשְׁרָאֵל צָא וְקִדְשָׁ לִי אַשֶּׁה גְּרוּשָׁה:** The Ramban explains that the reason that the Gemara cites a case specifically involving a minor is that in a case involving an adult it would require his consent. Consequently, the woman would be cutting his hair on his behalf and not as an agent of the one who appointed her.

לֹא כַּל לִשְׁנָא דָאָמֵר בֶּלְהִיכָּא דֵאַי בְּעֵבֶד, אַי בְּשֵׁלָא עֲבֵד – לֹא מִתְחַיֵּב שׂוֹלְחוֹ, הַנִּי נָמֵי אַי בְּשֵׁלָא עֲבֵד אַי בְּשֵׁלָא עֲבֵד – לֹא מִתְחַיֵּב שׂוֹלְחוֹ. לֹהֵךְ לִשְׁנָא דָאָמֵר בֶּלְהִיכָּא דְשַׁלֵּחַ לְאוֹ בר חִיבָּא – מִתְחַיֵּב שׂוֹלְחוֹ, הַנִּי נָמֵי בֵּין דְלָאו בְּעֵבֶד נִיחָנוּ – מִתְחַיֵּב שׂוֹלְחוֹ.

וְמי אַיְכָא לְמַאן דָאָמֵר חַצְרָא לְאוֹ מִשּׁוּם יְדָה אַיְתְּרָבָא? וְהַתְּנִינָא: "זֶה" – אַיְן לְאַלְאַיְדָה, גַּגְהָ חַצְרָה וְקַרְפִּיהָ מִפְנִים תְּלִמוד לוֹמֵר 'זֶה' – מִכֶּל מָקוֹם.

לְעֵין גֶּט – כּוֹלֵי עַלְמָא לְאַפְלִיגִי דְחַצְרָה מִשּׁוּם יְדָה אַיְתְּרָבָא, בְּפִלְגִּי – לְעֵין מִצְיאָה. מָר סְבָרָ:

The Gemara explains: According to the formulation in which it was said that anywhere that if the agent wants to execute his assignment he can do so and if he wants to refrain from executing it he can opt to not do it the one who sent him is not liable for the transgression but rather the agent is liable, in these cases too, since if the agent wants to execute his assignment he can do so, and if he wants to refrain from executing it he can opt to not do it, the one who sent them is not liable. But according to the formulation in which it was said that wherever an agent is not subject to liability the one who sent him is liable, in these cases too, since the agents are not subject to liability, the one who sent them is liable.

The Gemara asks about the explanation of the opinion of Abba Kohen Bardela: But is there anyone who says that placing an item in a courtyard is not included as a valid means of acquisition due to the fact that it acts as her hand? But isn't it taught in a baraita: From the verse: "And he writes her a scroll of severance, and he gives it in her hand" (Deuteronomy 24:1), I have derived only that a woman is divorced if her husband places the bill of divorce in her hand. From where is it derived that even if he places it on her roof, in her courtyard, or in her enclosure, she is divorced? The verse states: "And he gives," indicating that she is divorced in any case. Apparently one's courtyard is considered an extension of his hand with regard to acquiring property, in this case, the bill of divorce.

The Gemara answers: With regard to a bill of divorce everyone agrees that placing an item in a courtyard is included as a valid means of acquisition due to the fact that it acts as her hand. When they disagree, it is with regard to acquiring a found item that was discovered in her courtyard. One Sage, Rabbi Yannai, holds that

Perek I

Daf 11 Amud a

NOTES

We derive a found item from a bill of divorce – **לְפִנֵּן מִצְיאָה מְגַט**: Some commentaries explain that these matters are equated by Torah law, and it is by Torah law that a minor can acquire a found item that enters his courtyard. The Ran questions this opinion, as it is stated in a mishna (*Gittin* 59b) that a minor cannot acquire a found item by Torah law, whereas a minor girl can be divorced by Torah law. He answers that the mishna is referring to a minor who is too young to safeguard the found item, as, likewise, a minor girl who is too young to safeguard her bill of divorce cannot be divorced. By contrast, the discussion here is about a minor who is old enough to look after his belongings and can therefore acquire found items by Torah law.

Most of the commentaries maintain that this halakha enabling minors to acquire a found item is by rabbinic law and not Torah law (Rosh).

Although in general there are no halakhic differences in monetary matters between men and women, the Gemara suggests that this may be an exception to that principle, as girls are more inclined to be at home than boys, in light of the verse: "All glorious is the king's daughter within the palace" (Psalms 45:14), which is understood to be a reference to the fact that women were generally found within the palace, i.e., the home. Therefore, her courtyard acts as her hand (*Helkat Yoav*).

We do not derive a found item from a bill of divorce – **לְפִנֵּן מִצְיאָה מְגַט**: Rashi explains that halakhot related to monetary matters cannot be derived from those of ritual matters. The later commentaries add that the two matters are not comparable, as a bill of divorce can be given to a wife even against her will, whereas one can acquire a found item only willingly (see *Netivot HaMishpat*).

לְפִנֵּן מִצְיאָה מְגַט, וּמָר סְבָרָ: לְאַיְלָה פְּלִיגִי דְחַצְרָה מִצְיאָה מְגַט.

וְאַיְבָעִית אִימָא: בְּקַטְנָה כּוֹלֵי עַלְמָא לְאַפְלִיגִי דְיְלִפְנִין מִצְיאָה מְגַט, וְהִכָּא בְּקַטְנָן קָא מִפְלִיגִי.

מָר סְבָרָ: לְפִנֵּן קָטָן מִקְטָנָה, וּמָר סְבָרָ: לְאַיְלָה פְּלִיגִי קָטָן מִקְטָנָה.

וְאַיְבָעִית אִימָא: מָר אָמֵר חַדָּא, וּמָר חַדָּא, וְלֹא פְלִיגִי.

we derive the halakha with regard to acquiring a found item from the halakha with regard to a bill of divorce,ⁿ and one Sage, Abba Kohen Bardela, holds that we do not derive the halakha with regard to a found item from the halakha with regard to a bill of divorce.ⁿ

And if you wish, say instead that with regard to a minor girl, everyone agrees that we derive the halakha with regard to a found item from the halakha with regard to a bill of divorce,^h and she acquires an ownerless item that is found in her courtyard. And here they disagree with regard to whether a minor boy acquires an item that is placed in his courtyard.

One Sage, Rabbi Yannai, holds that we derive the halakha with regard to a minor boy from the halakha with regard to a minor girl, as there should be no difference between them with regard to the halakhot of acquisition. And one Sage, Abba Kohen Bardela, holds that we do not derive the halakha with regard to a minor boy from the halakha with regard to a minor girl; only a minor girl acquires items by means of her courtyard, as the Torah includes this mode of acquisition with regard to acquiring a bill of divorce.

And if you wish, say instead that there is no dispute here at all. Rather, one Sage, Abba Kohen Bardela, said one statement, that a minor girl is divorced by her husband placing a bill of divorce in her courtyard, and one Sage, Rabbi Yannai, said another statement, that a minor boy or girl does not acquire an item that is found in his or her courtyard; and they do not disagree.

HALAKHA

We derive a found item from a bill of divorce – **לְפִנֵּן מִצְיאָה מְגַט**: In a case where a minor girl was betrothed by her father and he subsequently died, if she has matured to the point that she is able to distinguish between a bill of divorce and

other documents, she can receive a bill of divorce. Such a girl is divorced even if one places her bill of divorce in her courtyard or in the four square cubits surrounding her. She can acquire property in this manner as well (*Shulhan Arukh, Even HaEzer* 141:6–7).

מתנית' ראה אוטן רצין אחר מוציא,
אחר צבי שבשו, אחר גוזלות שלא'
פרחוי, ואמר: זכיתה ל' שדי – זכיתה לו.
היה צבי רץ ברופו, או שהיו גוזלות
בפרחויין, ואמר זכיתה ל' שדי – לא'
אפר בлом.

גמ' אמר רב יהודה אמר שמואל:
והוא שעומד בצד שדהו.

ותקע ליה שדהו, דאמר רבבי יוסי ברבי
חנינא: חציו של אדם קונה לו שלא'
מדעתתו!

הני מיל' בחוץ המשתרעת, אבל
חצר שאינה משתרעת, אין עומד בצד
שדהו – אין, אי לא – לא.

ומנא תימרא דחצ'ר שאינה משתרעת,
אי עומד בצד שדהו – אין, אי לא –
לא.

דרתניתא: היה עומד בעיר ו אומר יערך
אני שעומד שיש לי בשדה פועלים
שבחו, לא יהא שכחה, יכול לא
יהא שכחה – תלמוד לומר זשכחת
עمر בשדה" בשדה ושכחת, ולא
עיר.

הא גופא קשייא: אמרות יכול לא יהא
שכחת – אלמא הוי שכחה, ונסיב לה
תלמודא בשדה ושכחת ולא בעיר,
אלמא לא הוי שכחה

אל לא לא הוי קאמרא: בשדה, שכוח
מעיקרו – הוי שכחה, כבור ולבטוף
שכח – אין שכחה. מאי טעם,
דבון דקאי גבה – הוייא ליה חצ'ר,
זכיתה ליה.

אבל בעיר, אפילו זכור ולבטוף –
שכח – הוייא שכחה. Mai Teummah –
דליתיה גביה דלובי ליה.

MISHNA If one saw people running after a found ownerless animal, e.g., after a deer^h crippled by a broken leg, or after young pigeons that have not yet learned to fly, which can be caught easily, and he said: My field has effected acquisition of this animal for me,ⁿ it has effected acquisition of it for him. If the deer were running in its usual manner, or the young pigeons were flying, and he said: My field has effected acquisition of this animal for me, he has said nothing, as one's courtyard cannot effect acquisition of an item that does not remain there on its own.

GEMARA Rav Yehuda says that Shmuel says: And this acquisition mentioned in the mishna is effective specifically in a case where the owner is standing next to his field at the time of the acquisition, so that it has the halakhic status of a secured courtyard.

The Gemara raises a difficulty: But shouldn't his field effect acquisition of the animal for him even without him standing next to it? As Rabbi Yosei, son of Rabbi Hanina, says: A person's courtyard effects acquisition of property for him even without his knowledge.^h

The Gemara answers: This statement applies only to a secured courtyard, where items remain in the courtyard without supervision. But with regard to an unsecured courtyard, if the owner is standing next to his field,^h yes, it effects acquisition of ownerless items on his behalf, but if he is not, it does not effect acquisition of items on his behalf.

The Gemara asks: And from where do you say that in the case of an unsecured courtyard, if the owner is standing next to his field, yes, it effects acquisition of ownerless items on his behalf, but if he is not, it does not effect acquisition of items on his behalf?

As it is taught in a baraita: There is a case where a landowner was standing in the town and saying: I know that my laborers forgot a sheaf that I have in the field, which I had intended for the laborers to bring in, but since I remember it, it shall not be considered a forgotten sheaf,ⁿ which must be left for the poor. Then, the landowner himself forgot about the sheaf. In this case, one might have thought that it is not considered a forgotten sheaf. To counter this, the verse states: "When you reap your harvest in your field, and have forgotten a sheaf in the field, you shall not go back to fetch it; it shall be for the stranger, for the fatherless, and for the widow" (Deuteronomy 24:19). It is derived from here that the phrase: "And have forgotten" applies "in the field," but not in the town.^h

The Gemara clarifies: This baraita itself is difficult. First you said that one might have thought that it is not considered a forgotten sheaf, so apparently the tanna seeks to prove that it is considered a forgotten sheaf. And then the baraita adduces the derivation that the phrase "and have forgotten" applies only "in the field," but not in the town, which apparently means that a sheaf forgotten by the owner while he is in the town is not considered a forgotten sheaf.

Rather, isn't this what the tanna is saying: In a case where the owner is in the field, if the sheaf was forgotten at the outset, it is considered a forgotten sheaf,ⁿ but if it was remembered at first and was ultimately forgotten, it does not assume the status of a forgotten sheaf? What is the reason for this distinction? The reason is that since he is standing in the field, beside the sheaf, his field is tantamount to his courtyard, and his courtyard effects acquisition of the sheaf for him once he remembers it.

But in a case where the owner is in the town, even if the sheaf was remembered and ultimately forgotten, it is considered a forgotten sheaf and must be left for the poor. What is the reason for this? It is because the owner is not beside it, which is necessary for his courtyard to effect acquisition of the sheaf for him. Evidently, an item that is in a person's courtyard is acquired by him only if he is standing next to the courtyard.

HALAKHA

כ כי באבי ר' – בצד שדה: In a case where one sees people attempting to catch an ownerless animal or a bird that are in his field, and he says: My field shall effect acquisition of the animal or bird, if the animal is injured or the bird is too young to fly, such that the owner of the field would be able to catch it, his acquisition is valid; but if he would be unable catch it, his acquisition is invalid (Rambam Sefer Nezikin, Hilkhos Gezeila VaAveda 17:11 and Sefer Kinyan, Hilkhos Zekhiya UMattana 1:4; Shulhan Arukh, Hoshen Mishpat 243:23, 268:5).

A person's courtyard effects acquisition of property for him without his knowledge – **חצ'ר של אדם קונה לו – בצד מדעתו:** If an ownerless item falls into one's secure courtyard, the courtyard effects acquisition of it for him, even without his knowledge (Rambam Sefer Nezikin, Hilkhos Gezeila VaAveda 17:8, 16:8 and Sefer Kinyan, Hilkhos Zekhiya UMattana 1:4; Shulhan Arukh, Hoshen Mishpat 243:20, 268:3).

Standing next to his field – **שופר בצד שדה:** One acquires an ownerless item that is in his unsecured courtyard only if he is standing next to the courtyard and declares that his courtyard effects acquisition of the item for him (Shulhan Arukh, Hoshen Mishpat 268:3).

Forgotten sheaves in the town and in the field – שכחת שיר ושרה: A sheaf is rendered a forgotten sheaf only if the owner of the field, the laborers, and any onlookers all forget about it. If the owner says in advance that he knows that the laborers will forget a certain sheaf, it is not rendered a forgotten sheaf. If the owner is in the town, his declaration has no effect (Rambam Sefer Zera'im, Hilkhos Mattenot Aniyim 5:2).

NOTES

My field has effected acquisition of this animal for me – **זכתה ל' שדי – Tosafot** hold that the owner acquires the item in his field even without stating so explicitly, just as in the case of an item that is found within his four square cubits (see 10a). The reason that the mishna mentions the owner's statement is to teach that even if he said so explicitly, the owner does not acquire a running deer or flying bird. The Rosh explains that his statement is merely to let those chasing the animal know that it is his, to prevent them from taking it from him.

In the *Beit Yosef* an opinion is cited that the owner must state that his field effects acquisition of it for him in order for the acquisition to be effective. According to this opinion, the acquisition is valid without a statement only in the case of one acquiring an item that is within his four square cubits.

It is suggested in *Melo HaRo'im* that it is from here that Shmuel derives that the mishna is referring to a case where the field is not secured, and therefore the statement is necessary.

Forgotten sheaf – שכחה: A farmer who forgot a sheaf in the field while harvesting his grain may not return to collect it. It must be left for the poor (Deuteronomy 24:19). The details of this mitzva are elucidated in tractate *Pe'a*.

If it was forgotten at the outset it is a forgotten sheaf – **שכחה מעיקרו הוי שכחה:** According to most of the commentaries (see Ramban), an owner's awareness of his sheaves before they have been gathered by the laborers does not prevent them from being rendered forgotten. Only once the laborers have forgotten a sheaf can the owner then nullify its definition as a forgotten sheaf by remembering it.

NOTES

Perhaps, it is a Torah edict – דלמא גוירת הכתוב היא: Rashi explains that the Gemara is rejecting the proof supporting the opinion of Shmuel. Most of the commentaries explain that the Gemara is challenging the derivation in the *baraita* itself, suggesting that perhaps the verse indicates that if the owner is in the town, the *halakha* that forgotten sheaves must be left for the poor does not apply altogether (*Tosafot*; *Ramban*; *Rashba*).

BACKGROUND

Torah edict – גוירת הכתוב: This is a common talmudic term referring to a *halakha* by Torah law whose logic is not immediately apparent, or which might even seem illogical. Since the reason for the specific *halakha* is unclear, the Gemara resorts to labeling it a Torah edict because its observance is due strictly to God's will. The concept is occasionally invoked in cases where the basis for the mitzva is clear but the rationale for its details is not. That is the case here, as the mitzva of leaving sheaves for the poor is both rational and ethical, but the logic behind the distinction between a case where the owner is in the field and a case where he is in the town is not obvious.

מפני? דלמא גוירת הכתוב היא
ובשדה נהני שכחה ובעיר לא נהני
שכחה!

The Gemara rejects this proof: **From where can it be proven that this is the reason? Perhaps the baraita should be understood in a different manner: It is a Torah edict^{NB} that if the owner is in the field, it is considered a forgotten sheaf, but if the owner is in the town, it is not considered a forgotten sheaf and does not need to be left for the poor. Accordingly, the distinction would not be derived from the halakhot of acquisition.**

אמר קרא לא תשוב לךחטו –
לרובות שכחת העיר.

The Gemara responds that **the verse states: "You shall not go back to take it"** (Deuteronomy 24:19), which is interpreted **to include sheaves forgotten while the owner is in the town.** Evidently, there is no fundamental difference between a town and the field with regard to the *halakhot* of forgotten sheaves; rather, the distinction is due to the fact that one cannot acquire a sheaf by means of his courtyard if he is not standing next to the courtyard.

האי מיבעי ליה לאו!

The Gemara challenges: **This phrase is necessary to impose a prohibition upon one who takes his sheaf after he forgot it, instead of leaving it for the poor. It is therefore not superfluous and cannot be interpreted as including an additional case.**

אם כן יממא קרא לא תקחנו. מא' –
לא תשוב – לרובות שכחת העיר.

The Gemara answers: **If so, if the verse serves only that purpose, let the verse say: You shall not take it. What is added by the phrase: "You shall not go back to take it"? It is written to include sheaves forgotten while the owner is in the town.**

אבל מיבעי ליה לךחטן: שלפניהם –
איין שכחה, שלאחוריו – יש שכחה
שהוא בבל תשוב.

The Gemara challenges: **But the phrase "you shall not go back" is still necessary for that which we learned in a mishna (*Pe'a* 7:4): While a landowner collects the sheaves from his field, any sheaf that remains **before him**, as he has not reached it yet, does **not** assume the status of a **forgotten** sheaf, even if he has forgotten about its existence. Any sheaf that is already **behind him** has the status of a **forgotten** sheaf, as the **prohibition of: You shall not go back**, applies.**

זה הכליל: כל שעשו בבל תשוב
שכחה, כל שעשו בבל תשוב – איין
שכחה!

This is the principle: Any sheaf to which the prohibition of: You shall not go back, applies, as one would need to retrace his steps in order to retrieve the sheaf, assumes the status of a forgotten sheaf; and any sheaf to which the prohibition of: You shall not go back, does not apply, i.e., a sheaf that one has yet to reach, does not assume the status of a forgotten sheaf. The phrase "You shall not go back" is apparently necessary to teach this *halakha*, and it cannot be interpreted as including a case where the owner is in the town.

אמר רב אשוי אמר קרא ייה –
לרובות שכחת העיר.

Rav Ashi said that the inclusion of this case is derived from another phrase in the verse. **The verse states: "It shall be" (Deuteronomy 24:19), which is interpreted to include sheaves forgotten while the owner is in the town.** Therefore, the Gemara's initial interpretation of the *baraita* is accepted, leading to the conclusion that the distinction between a case where the owner is in the field and a case where he is in the town is due to the *halakha* that one's courtyard can effect acquisition of property for him only if he is next to the courtyard, as Rav Yehuda said in the name of Shmuel.

וכן אמר עוליא: והוא שעומד בצד
שדרה. וכן אמר רבבה בר בר חנה:
והוא שעומד בצד שדרה.

And Ulla also says that the acquisition mentioned in the mishna is effective specifically in a case where the owner is **standing next to his field**. And Rabba bar bar Ḥana also says that the acquisition is effective specifically in a case where he is **standing next to his field**.

HALAKHA

Forgotten sheaves before him and behind him – שכחה לפניו ולאחוריו: A sheaf is considered forgotten only if it is already behind the laborers, i.e., if they would have to go back to get it. If they have not yet reached it, it is not considered forgotten (Rambam *Sefer Zera'im, Hilkhot Mattenot Aniyim* 5:10).

אייתביה רבי אבא ליעולא: מישנה
ברבן גמליאל ווקנים שחי באים
בספינה, אמר רבנן גמליאל: עישור
שאני עתיד למוד נتون ליהושע,

Rabbi Abba raised an objection to Ulla from that which is taught in a mishna (*Ma'aser Sheni* 5:9): There was an incident involving Rabban Gamliel^p and other Elders, who were traveling on a ship. Since he remembered that he had not tithed the produce of his fields, Rabban Gamliel said to the others: **One-tenth of my produce, which I will measure out in the future and separate from my produce, is given to Yehoshua ben Hananya,^p who is a Levite and is entitled to receive the first tithe,**

PERSONALITIES

רבי יהושע בן חנניה – This *tanna*, often referred to simply as Rabbi Yehoshua, lived in the generation following the destruction of the Temple. He had been one of the Levite singers in the Temple and he married the daughter of a priest. While in Jerusalem he studied under Rabban Yohanan ben Zakkai, and he even aided Rabban Yohanan ben Zakkai's famed escape from the siege of Jerusalem. After the Sanhedrin was reestablished in Yavne, Rabbi Yehoshua became one of the most prominent members there. Later, he moved to Peki'in, where he established his own study hall. Rabbi Yehoshua was well-known for his sharp mind as well as for his great modesty. There are many stories told of his encounters with a Roman emperor, apparently Hadrian, as well as with the sages of other nations.

PERSONALITIES

Rabban Gamliel – רבן גמליאל: Rabban Gamliel was the *Nasi* of the Sanhedrin and one of the most prominent *tanna'im* in the period following the destruction of the Temple. His father, Rabban Shimon ben Gamliel, was also *Nasi* of the Sanhedrin and one of the leaders of the nation during the Great Revolt against the Romans. After the destruction of the Temple, Rabban Gamliel was brought by Rabban Yohanan ben Zakkai to Yavne, and after the death of Rabban Yohanan ben Zakkai he became *Nasi* of the Sanhedrin.

During Rabban Gamliel's time of leadership, the city of Yavne became a spiritual center in which various *halakhot* were established for future generations. Consequently, Rabban Gamliel is also known as Rabban Gamliel of Yavne. In Yavne, he was surrounded by the great Sages of his time: His brother-in-law Rabbi Eliezer, Rabbi Yehoshua, Rabbi Akiva, and Rabbi Elazar ben Azarya. This was a remarkable group of Sages that had no equal for many subsequent generations.

Rabban Gamliel sought to create a spiritual center in Eretz Yisrael that would unite the entire people as the Temple had

done in its time. For this reason he tried to raise the stature of the office of the *Nasi* and to establish the Sanhedrin as a locus of power. His stern and uncompromising leadership eventually led his colleagues to dismiss him from office for a period of time and appoint Rabbi Elazar ben Azarya in his place (see *Berakhot* 27b). Since they understood that his intentions were only for the good of the nation, he was quickly restored to his previous position.

There are very few *halakhot* attributed to Rabban Gamliel, but in his time and under his leadership some of the most important decisions affecting the spiritual history of the Jewish people took shape. Examples include the principle that the *halakha* is ruled in accordance with the opinions of Beit Hillel and the establishment of fixed formulas for prayers.

Rabban Gamliel's two sons were also famous Sages: Rabban Shimon ben Gamliel, who succeeded his father as *Nasi* of the Sanhedrin, and Rabbi Hanina ben Gamliel. In modern-day Yavne there is a site identified by some thirteenth- and fourteenth-century Jewish scholars as the tomb of Rabban Gamliel.

Perek I
Daf 11 Amud b

ומקומו מושכר לו. ועישור אחר
שאני עתיד למוד נتون לעקיבא בז'
ויספה כדי שייכבה בו לעניים, ומקומו
מושכר לו.

and the place of the tithe is rented to him. Rabbi Yehoshua paid him a token sum to rent the field, which presumably became the equivalent of his courtyard, and thereby acquired the tithe. **And another one-tenth that I will measure out in the futureⁿ and separate from my produce as the poor man's tithe is given to Akiva ben Yosef so that he will acquire it for the poor, and its place is rented to him.**

וב' רבי יהושע ורבי עקיבא בצד
שזהו של רבנן גמליאל הוי עמדין?

אמר ליה: דמי הא מרבען בדלא
גמרי איןישי שמעתא.

Rabbi Abba continued: **But were Rabbi Yehoshua and Rabbi Akiva standing next to Rabban Gamliel's field then? All of them were on the ship. Apparently, one's courtyard effects acquisition for him even when he is not standing next to it.**

ULLA SAID TO HIM: **This one of the Sages seems likeⁿ one who has not studied halakha.** Ulla dismissed the question entirely, as he deemed it unworthy of consideration.

כיאתא לסייע אמר להו: ה כי אמר
יעולא. ודרבי אוותבתיה. אמרו ליה
ההוא מרבען: רבנן גמליאל מטלטל
אנב מקרו עי הנקעה להם. רבי זира –
קבלה, רבי אבא – לא קבלה.

When Rabbi Abba came to Sura, he related the discussion to the local scholars, saying to them: **This is what Ulla said, and this is how I challenged him. One of the Sages said to him: Rabban Gamliel transferred ownership of the movable property, the tithes, to them by means of renting them the land.** The transaction concerning the tithes was effected not by causing the location of the produce to become the equivalent of a courtyard belonging to Rabbi Yehoshua and Rabbi Akiva, but rather by employing the principle that movable property can be acquired together with the acquisition of land. The Gemara comments: **Rabbi Zeira accepted this response to Rabbi Abba's objection, but Rabbi Abba did not accept it.**

NOTES

שאני עתיד למוד – The early commentaries ask why Rabban Gamliel did not specify a location, e.g., the north or south side of his field, for the tithes that he separated. Some explain that he did in fact specify a location, but the mishna does not give that detail, as it is not the main point of the mishna.

דמי הא מרבען וכו' – Ulla held that a case of an ownerless item cannot be compared to this incident, where Rabban Gamliel transferred the ownership of the tithes to Rabbi Yehoshua and Rabbi Akiva (*Shita Mekubetzet*).

NOTES

Benefit of discretion – טובת הנאה: One is not considered the owner of the *teruma* and tithes that he separates from his produce, as the Torah obliges him to give them to the priests, the Levites, and the poor. Nevertheless, he has the right to give the produce to the priest, Levite, or poor person of his choice.

Benefit of discretion is not property – טובת הנאה איננה מטען: Some explain that since the benefit of discretion does not have monetary value, it can be acquired only through a more substantial mode of acquisition than a symbolic exchange.

Exchange is a form of buying and selling – חיליפין דרכ מקח ומכיר הוּא: Although the Elders paid rent to Rabban Gamliel for the land upon which the tithes were located, they received the tithes themselves as a gift and not as part of a sale (*Ritva*).

HALAKHA

רשות אחרית מקנה: In a case where an item was given to a person as a gift, and it was passing through his field, even if he could not have caught it he has acquired it. If it was an animal running in its usual manner or a bird that was flying, and the owner of the field would not have been able to catch it, his field does not effect acquisition of it for him, even though it is a gift (*Rambam Sefer Kinyan, Hilkhot Zekhiya UMattana* 4:8 and *Sefer Nezikin, Hilkhot Gezila VaAveda* 17:11; *Shulhan Arukh, Hoshen Mishpat* 243:20, 268:4).

A bill of divorce in a courtyard – גט בחרח: In a case where a husband threw a bill of divorce into his wife's courtyard, if she was standing in the courtyard and the courtyard was secured, she has acquired the bill of divorce and the divorce is valid. If she was not present, the divorce is not valid (*Rambam Sefer Nashim, Hilkhot Geirushin* 5:2; *Shulhan Arukh, Even HaEzer* 139:1).

A bill of divorce is different as it is possible against her will – גט לאו יתירה בעיל בחרחה: By Torah law, a husband can divorce his wife without her consent. Rabbeinu Gershom Meor HaGola instituted an ordinance that any husband who divorces his wife without her consent shall be excommunicated, and this ruling has been accepted by all Jewish communities (*Rambam Sefer Nashim, Hilkhot Geirushin* 5:2; *Shulhan Arukh Even HaEzer* 119:3, 6).

אמר רב בא: שפир עביד דלא קבלת, וכי לא היה להם סידר ליקנות מטען בחיליפין? אלא – טובת הנאה איננה מטען? ליקנות מטען בחיליפין, הכא נמי – טובת הנאה איננה מטען ליקנות על גבי קורע.

Rava said: Rabbi Abba did well by not accepting this response, because if Rabban Gamliel had intended to transfer his ownership of the tithes to Rabbi Yehoshua and Rabbi Akiva, did they not have a cloth with which to acquire the tithes from him by means of a symbolic exchange? They could have acquired the tithes through symbolic exchange without renting the land. Rather, clearly the tithes were not considered the property of Rabban Gamliel, as he owned only the **benefit of discretion**,^N i.e., the benefit accrued from the option of giving the tithes to whichever Levite or poor person that he chose, and such benefit is not considered **property that can be acquired by means of a symbolic exchange**. Here, too, the transaction was clearly effected by means of a courtyard, as **benefit of discretion is not property^N that can be acquired by means of acquiring land**. Therefore, Rabbi Abba's explanation must be correct, and one's courtyard effects acquisition for him even when he is not standing next to it.

ולא היא, מותנות בהזנה – נתנה בתיבא בהgi חיליפין – דרכ מקח וממכר הוא. מטלטלין אגב מקרא – נתינה אלימתא היא.

The Gemara rejects Rava's reasoning: But that is not so. With regard to gifts to which members of the priesthood are entitled, and similarly with regard to tithes that are given to Levites and to the poor, the concept of **giving is written** in the Torah: "And have given it to the Levite, to the stranger, to the fatherless, and to the widow" (Deuteronomy 26:12). These gifts must be given and not sold or bartered. Therefore, since **exchange is a form of buying and selling**,^N it is an inappropriate mode of acquisition with regard to tithes. By contrast, transferring ownership of **movable property by means of transferring ownership of land is a powerful form of giving**. Consequently, Rabban Gamliel could not give them the tithes by means of a symbolic exchange using a cloth, but instead had to give it to them along with land. Therefore, since the transaction was not effected by means of a courtyard, it poses no difficulty to Ulla's opinion.

רב פפא אמר: רשות אחרית מקנה אותן שאיני.

Rav Pappa said: Even if Rabbi Yehoshua and Rabbi Akiva acquired the tithes by means of a courtyard, this poses no difficulty to Ulla's opinion. Since the tithes were not ownerless items, but rather **another mind**, i.e., Rabban Gamliel, transferred their ownership to Rabbi Yehoshua and Rabbi Akiva, it is different, and the recipients did not need to stand next to the courtyard.

ומנא תימרא – רתנן: ראה אותן רצין אחר המזחאה כו, ואמר רב ירמיה אמר רב בי יוחנן: והוא שרשן אמרין, ובשי רבי ירמיה: במתנה דיאן? קבללה מיניה רבי אבבא בר Kahana: אף על פי שרשן אחריהן ואין מגין. מאית טעם – לאו משום דדעת אחרית מקנה אותן שאיני?

And from where do you state this distinction? As we learned in the mishna: If one saw people running after a found ownerless animal, and said: My field has effected acquisition of this animal for me, it has effected acquisition of it for him. And **Rabbi Yirmeya says that Rabbi Yohanan says that this halakha is true only in a case where he would be able to run after them and catch them**. And **Rabbi Yirmeya raises a dilemma: Does one acquire animals that are given to him as a gift in such a scenario? Rabbi Abba bar Kahana accepted the premise of the dilemma of Rabbi Yirmeya, and ruled that in the case of a gift one acquires the animals even if he would not be able to run after them and catch them**. What is the reason for this distinction? Is it not because when another mind transfers their ownership,^H the halakha is different, in that the courtyard effects acquisition of the items with fewer limitations? This supports Rav Pappa's explanation.

אמר ליה רב שימי לרוב פפא: הרי גט, דדעת אחרית מקנה אותה, ואמר על לא: והוא שעומדת בצד ביתה או בצד חצרה! שני גט, דאיתיה בעיל בחרחה.

Rav Shimi said to Rav Pappa: But what about the case of a bill of divorce, where another mind, the husband, transfers its ownership to the wife, and nevertheless Ulla says with regard to one who threw a bill of divorce into his wife's house or courtyard: But it is a valid divorce only if she is standing next to her house or next to her courtyard?^H Rav Pappa responded: A bill of divorce is different, as it is possible to give it to one's wife even against her will.^H

מתקין לה רב ששת בירה רוב אידר,
ולאו קל וחותם הווא: ומה גט דאייה
בעל ברחה – איז עומרת בערך ביתה
ובערך חצרה – אין, איז לא – לא. מותנה
דמאייה – לא כל שבן!

אלא אמר רב אשי:

Rav Sheshet, son of Rav Idi, objects to this response: But is it not an *a fortiori* inference? If in the case of a bill of divorce, which is valid even if it is given to the wife **against her will**, nevertheless if she is standing next to her house or next to her courtyard she does acquire the bill of divorce, and if not she does not acquire it, then in the case of a gift, which one can receive only **willingly**, is it not all the more so correct that the recipient must be next to his courtyard for the transaction to take effect?

Rather, Rav Ashi said that the distinction between the cases of a gift and a bill of divorce should be explained as follows:

Perek I

Daf 12 Amud a

חצ'ר איתרבעאי מושום יד, ולא גרעעה
משילוחות. גבי גט דחווב הווא לה – אין
חכין לאדם אלא בפנוי. גבי מותנה
דיכות הווא לו – זכין לאדם שלא
בפנוי.

One's **courtyard is included** as a valid means of acquisition due to the fact that it acts as his **hand**; **but it is no less effective than agency**.^N Therefore, **with regard to a bill of divorce, which is considered detrimental to the wife**,^N one cannot transfer it to her by placing it in her courtyard in her absence, as **one cannot act against the interests of a person unless it is in his presence**.^H By contrast, **with regard to a gift, which is beneficial for the recipient**, one can give it to him by placing it in his courtyard in the recipient's absence, as **one can act in a person's interest in his absence**.^H

גופא, ראה אותן רצין אחר המציגה
כו': אמר רבי ירמיה אמר רבי יוחנן:
זהו שרשץ אחריהם ומפני. בשי רבי
ירמיה: במותנה היהן? קבלה מימי
רבי אבא בר כהנא: אף על פי שרשץ
אתהן אין מאיין.

S The Gemara returns to discuss the matter **itself**. The mishna teaches: If one saw people **running after a found ownerless animal**, and said: My field has effected acquisition of this animal for me, it has effected acquisition of it for him. **Rabbi Yirmeya says** that **Rabbi Yohanan says**: And this halakha is true only in a case where he would be able to **run after them and catch them**. **Rabbi Yirmeya raises a dilemma**: Does one acquire animals that are given to him as a **gift** in such a scenario? **Rabbi Abba bar Kahana accepted** the premise of the dilemma of Rabbi Yirmeya, and ruled that in the case of a gift one acquires the animals **even if he would not be able to run after them and catch them**.

בש רבא: זוק ארנק בפתח זה ויזע
בפתח אחר מהו? אויר שאין סוטו
לנוח כמושך דמי, או לא?

Rava raises a dilemma: If one **threw a purse** through this entrance of a house and it went through the house and exited through another entrance,^H what is the halakha? Does the owner of the house acquire the purse during the course of its flight? The dilemma is: Is an item in the **airspace [avir]**^L of a courtyard that will not eventually come to rest^N in the courtyard itself regarded as though it has come to rest, or is it not regarded as though it has come to rest?

HALAKHA

One cannot act against the interests of a person unless it is in his presence – **אין חכין לאדם אלא בפנוי**: One may not act against the interests of a person unless it is in his presence. For instance, a husband may not give his wife a bill of divorce unless he does so in her presence. If he placed it in her courtyard when she was not present, the divorce is not valid (Rambam Sefer Nashim, Hilkhot Geirushin 5:2 and Sefer Kinyan, Hilkhot Zekhiya UMattana 4:2).

One can act in a person's interest in his absence – **זכין לאדם שלא בפנוי**: One can transfer ownership of an item that is of benefit to another even without his being present. Therefore, one can acquire a gift on behalf of another, and the item belongs to that person even though it did not reach his hands. If that

person does not want to receive the gift, it is not transferred to him against his will (Rambam Sefer Kinyan, Hilkhot Zekhiya UMattana 4:2).

One threw a purse through this entrance of a house and it exited through another entrance – **זוק ארנק בפתח זה ויזע בפתח אחר**: If a purse was thrown through a house without touching the ground, and the one who threw it had given the purse as a gift to the homeowner and then changed his mind while it was still in the air inside the house, the homeowner has not acquired it. This issue was not resolved in the Gemara and remains in doubt. Consequently, the purse remains in the possession of its owner (Shulhan Arukh, Hoshen Mishpat 243:24).

NOTES

ולא גרעעה משלוחות: But it is no less effective than agency – This explanation is based on common sense, as one clearly wants his courtyard to effect acquisition of items for him, whether acting as his hand or as his agent. The principle that it acts as his hand is necessary only for those cases where an agent cannot acquire an item on his behalf (*Tosafot; Rosh*). The Ra'avad explains that this is an *a fortiori* inference: Since taking an item in one's hand is a more powerful form of acquisition than acquiring it through an agent, certainly a courtyard, which can act as one's hand, can also function as an agent.

ט דוחב הוא לה: A bill of divorce which is detrimental to the wife – Even in cases when divorce is beneficial for the wife, her courtyard does not effect acquisition of the bill of divorce for her unless she is present, as the Sages did not differentiate between the cases (*Ge'on Tzvi*).

ונזרקן: One threw a purse – **ונזרקן**: Rashi explains that this is referring to a case where the one who throws it declares the purse ownerless. *Tosafot* challenge this explanation because if so, it is not an example of a case where another mind transferred ownership of the property. The Ramban explains that even an ownerless item has the same status as an item where another mind transferred ownership of the property. The Ran explains Rashi's opinion by stating that although the *halakha* with regard to an ownerless item is different, when one intentionally declares the item to be ownerless it is considered as if it were a case where another mind is transferring ownership of the property.

ונזיר שיאין סוטה לנוח: An item in the airspace that will not eventually come to rest – **ונזיר שיאין סוטה לנוח**: Even according to the opinion that with regard to the *halakhot* of Shabbat, an item in the air is considered as though it has come to rest (*Shabbat* 4a), that is due to the stringency of Shabbat and does not apply to the *halakhot* of acquisition (*Ritva*).

LANGUAGE

Airspace [avir] – **אוויר**: From the Greek ἀέρ, *aēr*, meaning air or space.

NOTES

The found item of one's minor son or daughter – **מציאת בנו ובותו הקטנים**: Rashi and the Rambam hold that an item found by a minor daughter belongs to her father by Torah law. Several of the early commentaries disagree and hold that it belongs to the father by rabbinic law, in order to avoid enmity or jealousy on the part of the father (Rosh; Ran).

HALAKHA

The found item of one's minor son or daughter – **מציאת בנו ובותו הקטנים**: If an item is found by children who are minors but not dependent on their father's table, it belongs to them. This is in accordance with the opinion of Rabbi Yohanan (Rambam Sefer Nezikin, *Hilkhot Gezeila VaAveda* 17:13; *Shulhan Arukh, Hoshen Mishpat* 270:2).

The found item of members of one's household – **מציאת בני ביתך**: If an ownerless item is found by members of a household who are dependent on the father's table, even if they are adults, or if it is found by a wife, the item belongs to the father or husband, respectively. This is in accordance with the mishna and the opinion of Rabbi Yohanan (Rambam Sefer Nezikin, *Hilkhot Gezeila VaAveda* 17:13 and *Sefer Nashim, Hilkhot Ishut* 12:3, 21:1; *Shulhan Arukh, Hoshen Mishpat* 270:2 and *Even HaEzer* 69:3).

The found item of his Hebrew slave or maidservant – **מציאת עבודו ושפחתו העברים**: An ownerless item found by a Hebrew slave belongs to him. An item found by a Canaanite slave belongs to the master (Rambam Sefer Nezikin, *Hilkhot Gezeila VaAveda* 17:13; *Shulhan Arukh, Hoshen Mishpat* 270:2).

The found item of his ex-wife whom he divorced – **מציאת אשתו גרושה**: An item found by one's ex-wife belongs to her (Rambam Sefer Nezikin, *Hilkhot Gezeila VaAveda* 17:13; *Shulhan Arukh, Hoshen Mishpat* 270:2).

The wife and the son of a laborer – **ашתו ובנו של פועל**: The wife and children of a hired laborer, even one who earns a percentage of the produce, are permitted to glean produce from behind him. This is in accordance with the opinion of Rabbi Yosei (Rambam Sefer Zera'im, *Hilkhot Mattenot Aniyim* 4:11).

אמר ליה ר' פפא לר' בא, ואמרי לה ר' רב אדא בר מותנה לר' בא, ואמרי לה ר' ובניא לר' בא: לאו הינו מתרניין, ר' בא אומר ר' צין אמר ר' מצאיה, ואמר ר' ירמיה אמר ר' בפי יוחנן: והוא שערץ אחדרין ומגין, ובע' ר' בפי ירמיה: במתנה היאך? וקבלה מיניה ר' בפי ירמיה אמר בר מהנא: במתנה אף על פי שערץ אחריהם ואין מגין.

אמר ליה: מתגלגל קאמורתן שאני מתרגלל רכਮונח דמי.

מתני' מציאת בנו ובותו הקטנים, מציאת עבודו ושפחתו הבנאים, מציאת אשתו – הרי אלו שלו. מציאת בנו בנות הגודלים, מציאת אשתו שפירשה אף על פי שלא נתן בתובה – הרי אלו שללה.

גמ' אמר שמואל: מפני מה אמרו מציאת קطن לאביו – ששבשה שמוץאה מריצעה אצל אביו, ואינו מאחר בידו.

למי מראה דעתך שモאל קטן לית ליה וביה נפשיה מדורייתא? והתנייא: השוכר את הפועל – ילקט בן אחריו, למחצה לשלייש ולרביע – לא ילקט בן אחריו. ר' יוסי אומר: בין בך ובמי בך ילקט בן ואשתו אהדרוי. ואמר שמואל: הלכה קרבוי יוסי.

Rav Pappa said to Rava, and some say that it was Rav Adda bar Mattana who said this to Rava, and some say that it was Ravina who said this to Rava: Isn't this the same as the halakha in the mishna? As it is stated: If one saw people running after a found ownerless animal, and said: My field has effected acquisition of this animal for me, it has effected acquisition of it for him. And Rabbi Yirmeya says that Rabbi Yohanan says: And this halakha is true only in a case where he would be able to run after them and catch them. Rabbi Yirmeya raises a dilemma: Does one acquire animals that are given to him as a gift in such a scenario? Rabbi Abba bar Kahana accepted the premise of the dilemma of Rabbi Yirmeya, and ruled that in the case of a gift one acquires the animals even if he would not be able to run after them and catch them.

Rava said to him: Are you saying that a purse flying through the air is comparable to an item that is rolling, i.e., moving on the ground? A rolling item is different, as it is regarded as though it has come to rest. At any given instant throughout its movement, the item rests on the ground. Therefore, the dilemma cannot be resolved from the mishna.

MISHNA With regard to the found item of one's minor son or daughter,^{NH} i.e., an ownerless item that they found; the found item of his Canaanite slave or maidservant;^B and the found item of his wife, they are his.^H By contrast, with regard to the found item of one's adult son or daughter; the found item of his Hebrew slave^B or maidservant;^H and the found item of his ex-wife, whom he divorced,^H even if he has not yet given her payment of the marriage contract that he owes her, they are theirs.

GEMARA Shmuel says: For what reason did the Sages say that the found item of one's minor son or daughter belongs to his father? It is because the minor does not intend to acquire it for himself, as when he finds it, he runs with it to his father and does not retain it in his possession.

The Gemara asks: Is this to say that Shmuel holds that a minor does not have the capability of acquiring property for himself by Torah law? But isn't it taught in a baraita: With regard to one who hires a salaried laborer to harvest his field, the son of the laborer may glean^B fallen stalks from behind the laborer like all poor people who have a right to the stalks left in the field. But if one hires a laborer as a sharecropper, whether the laborer receives one-half, one-third, or one-quarter of the produce, his son may not glean stalks after him, as the laborer himself is considered a partial owner of the field and is consequently not considered poor. Rabbi Yosei says: In both this case and that case the laborer's son and wife^H may glean after him. And Shmuel says that the halakha is in accordance with the opinion of Rabbi Yosei.

His Canaanite slave or maidservant – עבדו ושפחתו הבנאים: The mishna is referring to a gentile slave or maidservant purchased by a Jew (see Leviticus 25:44–46). A gentile slave purchased by a Jew must be immersed in a ritual bath, and, if male, also circumcised. These acts signify a change in the slave's status. Though not yet a Jew in all respects, a Canaanite slave must observe all of the Torah's prohibitions and must fulfill all positive mitzvot that are not time bound. Although a Canaanite slave must serve his master for life and is inherited by his master's heirs, his master can emancipate him by handing him a bill of manumission. At that point the slave becomes fully Jewish, although the Sages required him to immerse again in a ritual bath to symbolize his conversion.

Hebrew slave – עבד עברי: A Hebrew slave is an adult male Jew who becomes the slave of another Jew. There are two ways in which a Jew can enter into slavery: The court can sell a thief into slavery if he does not possess the means to make restitution for his theft (Exodus 22:2); or, if a Jew becomes impoverished, he may choose to sell himself to seek relief from his poverty (Leviticus 25:39). A Hebrew slave sold by the court is emancipated after serving his master for six years (Exodus 21:2). One who sells himself as a slave may sell himself for six years or for a longer period. In the event of his master's death, a Hebrew slave is required to continue serving his master's son until the end of the period for which he was sold. If the master has no sons, the slave is not obligated to continue serving other heirs. In the

Jubilee Year, all Hebrew slaves are emancipated irrespective of how long they have served (Leviticus 25:40). When a Hebrew slave attains his freedom in one of these manners, his master or his master's heirs must give him a severance gift (Deuteronomy 15:13–14). A Hebrew slave may also attain his freedom by paying his master the value of the remainder of the term for which he was sold.

Gleanings – ללקט: The Torah prohibits the owner of a field from gleaning individual stalks that have fallen during the harvest (see Leviticus 19:9). If fewer than three stalks fall in one place, they are deemed gleanings and are considered the property of the poor.

אֵין אָמֶרֶת בְּשִׁלְמָא קָטָן אֶת לִיה וּבַיִת
לְנַפְשֵׁה, כִּי קָא מֶלֶךְ – לְנַפְשֵׁה קָא
מֶלֶךְ וְאָבָה מִינְהָה קָא זֹכַר. אַלְאָ אֵין
אָמֶרֶת קָטָן לִתְיַה וּבַיִת לְנַפְשֵׁה, כִּי
קָא מֶלֶךְ – לְאָבָיו קָא מֶלֶךְ, אָבָה
עִשְׂרֵה הוּא, אֲפָאֵי אָשָׁתוֹ וּבָנו מֶלֶךְ
אַחֲרוֹיו?

שְׁמוֹאֵל טֻמְמָא דְתְּנָא דִין קָאָמֵר, וְלַיה
לְאַסְבִּירָא לִיה.

וּסְבָּרֶר רַבִּי יוֹסֵי קָטָן אֶת לִיה וּבַיִת
מִדְאָוּיִתָּא? וְהַתֵּן: מִצְיאָת חֶרֶשׁ,
שׁוֹטָה וּקָטָן – יְשַׁ בְּהַן בְּשָׂומָן גָּלְמָפְנִי
דָּרְכִּי שְׁלוֹם. רַבִּי יוֹסֵי אָוּמֵר: גָּלְגָּמוֹר.

אָמֵר רַב חֶסְדָּא: גָּלְגָּמוֹר מִדְבָּרֵיהָן.
נְפָקָא מִינָה לְהֹזִיאָה בְּדִינֵינוּ.

אַלְאָ אָמַר אֲבִי עַשְׂוָה כְּמַי שְׁחַלְכָו
בָּה נְמוּשֹׁת, דְּעָנִים גּוֹפֵיָהוּ מִסְחָה
דָּעַתִּיָּה. סְבָּרֶר בְּרִיהָ דִין אָנָךְ מֶלֶךְ
לִיה.

אָמֵר לִיה רַב אֶדְאָ בֶּר מַתָּנָה לְאָבִי וּכְיִ
מְטוּר לְאָדָם לְרַבְּפִין אָרוּ בְּתֻן שְׁדָה
כִּי שִׁירָאו עֲנִים וּבְרָחוֹ?

אַלְאָ אָמַר רַבָּא:

Granted, if you say that a minor has the capability of acquiring property for himself, Shmuel's opinion is understood, as when the son gleans stalks, he gleans them for himself and acquires them, and his father subsequently acquires them from him as a gift. Since the minor has no property of his own, his status is that of a poor person and it is permitted for him to glean stalks. **But if you say that a minor does not have the capability of acquiring property for himself,**^N then when he gleans the stalks, he gleans them for his father. Since his father is considered wealthy^N and is not entitled to the gleanings because he owns a portion of the produce, why may his wife and son glean stalks after him?

The Gemara answers: In Shmuel's explanation, **Shmuel is stating the reason of the tanna of our mishna, but he himself does not hold accordingly.** Rather, Shmuel holds in accordance with the opinion of Rabbi Yosei that a minor can acquire property for himself.

The Gemara asks: **And does Rabbi Yosei hold that a minor has the capability of acquiring property by Torah law? But didn't we learn in a mishna (Gittin 59b): With regard to the found items of a deaf-mute, an imbecile, or a minor,**^{BH} i.e., lost items that they found, although they are not considered to be halakhically competent and are unable to acquire found items by Torah law, taking such items from them is considered robbery, by rabbinic law, for the sake of the ways of peace.^B **Rabbi Yosei says:** This is full-fledged robbery.

And Rav Hisda says that Rabbi Yosei means that it is full-fledged robbery by rabbinic law.^N And the practical difference between the opinion of the first tanna and Rabbi Yosei's opinion is that according to Rabbi Yosei, if the robber refuses to return the stolen item, it is appropriated by the judges and returned to its owner. In any event, it is evident from here that Rabbi Yosei also holds that a minor cannot acquire property for himself by Torah law.

Rather, Abaye rejected the above explanation of Rabbi Yosei's opinion in the baraita with regard to gleaning, and said: The reason that according to Rabbi Yosei a sharecropper's son may glean after him despite the fact that he does not acquire property by Torah law is that in such a case the Sages rendered the field like one through which the last gleaners have walked. Once the poor people have finished gleaning stalks from a field, even wealthy people are permitted to collect whatever remains. In this case, since the sharecropper's son is walking behind him, the poor people themselves dismiss the notion of gleaning in this field from their minds; they assume that the son of this sharecropper is gleaning for him and that they will therefore not find any gleanings in this field. Since the poor people themselves have finished taking stalks from the field, the sharecropper's son can glean for his father.

Rav Adda bar Mattana said to Abaye: But how is it permitted for one to allow his son to follow him in the field, thereby causing all the poor people to leave? **Is a person permitted to have a lion crouch in his field**^H so that the poor people will see it and flee?

Rather, Rava stated an alternative explanation:

NOTES

If you say that a minor does not have the capability of acquiring property for himself – **אֵין אָמֶרֶת קָטָן לְתִלְתִּילָה וּבַיִת קָא נַפְשֵׁה**: The Gemara assumes that according to Rabbi Yosei a minor can acquire property by Torah law. If this were not so, the Sages would not institute a right of acquisition for a minor when by doing so they would diminish the right of acquisition from the poor (*Tosefot HaRosh*).

His father is wealthy – **אָבָה שְׁרוֹן הָוֹא**: The Gemara defines a poor person as one who owns less than two hundred dinars. Therefore, some explain that the right of the sharecropper to a percentage of the produce is probably worth more than this amount (*Ritva*). Others hold that since the father has rights to a portion of the produce, it is considered to belong to him, and one is not permitted to take the gleanings from his own produce (*Tosafot*; *Rosh*).

גָּלְגָּמוֹר מִדְבָּרֵיהָן – **אָבָה שְׁרוֹן מִדְבָּרֵיהָן**: This must be Rabbi Yosei's intent because he includes an imbecile, who has no deliberate intention and has no rights of acquisition by Torah law (*Penei Yehoshua*; *Torat Hayyim*).

BACKGROUND

תְּרַשְׁׁוֹתָה וּקָטָן: The members of these three categories are frequently grouped together because of their presumed limited intellectual capacity or their inability to act responsibly. They are neither obligated to perform mitzvot nor held responsible for any damage they cause. They also lack the legal capacity to act as agents. Although all three categories are often mentioned together, there are many differences between the halakhot governing each of them.

Ways of peace – **דְּבָרִי שְׁלָמָם**: The phrase: Ways of peace, refers to various rabbinic ordinances instituted to foster peace and to prevent strife and controversy. (1) With regard to monetary cases, in certain instances the Sages rendered it prohibited for one to take property from another person who does not possess full formal legal ownership. (2) The Sages permitted certain lenient practices in dealings with a common, uneducated person, in order to prevent division between scholars and the common people. (3) The Sages instructed that charity be given to the gentile poor together with the poor of the Jewish people. Similarly, they instituted other practices to reduce friction between the Jewish people and other nations.

HALAKHA

Found items of a deaf-mute, an imbecile, or a minor – **מִצְיאָתָה**: Although by Torah law an ownerless item found by a deaf-mute, an imbecile, or a minor does not belong to its finder, the Sages instituted an ordinance that the finder acquires it, for the sake of the ways of peace. Therefore, one who steals an item found by a deaf-mute, an imbecile, or a minor transgresses rabbinic law, but the stolen item is not returned by the court to the finder, in accordance with the opinion in the unattributed mishna (Rambam *Sefer Nezikin*, *Hilkhot Gezeila VaAveda* 17:12; *Shulhan Arukh*, *Hoshen Mishpat* 270:1).

מְרַבִּיבֵץ אֲרֵי בְּתֻן שְׁדָה – One who has a lion crouch in his field – It is prohibited for one to have a lion crouch in his field, i.e., to station someone or something frightening in his field, so that the poor will see it and flee without gleaning the gifts that are properly theirs (Rambam *Sefer Zera'im*, *Hilkhot Mattenot Aniyim* 4:13).

Perek I
Daf 12 Amud b

NOTES

Rendering one who does not acquire like one who has the right to acquire property – עשו שאינו זוכה בזוכה, מאי טעמא: The Rosh explains the specifics of this halakha, that the Sages instituted an ordinance rendering those poor people who had not yet gleaned as though they had acquired the gleanings, assuming ownership of them. It is then assumed that the poor people are willing to give up their portion, so that when they enter into similar arrangements themselves, their children will be able to glean the stalks after them. Therefore, the children of the sharecroppers may take the sheaves.

The word adult is not referring to an actual adult – לאן גודל דול מינש: The reason behind this explanation is that obviously any item found by an adult belongs to him; there is no reason to think that it should belong to his father. Therefore, Rabbi Yohanan explains that the issue is whether or not the son is financially independent (*Torat Hayyim*).

A minor son who is not dependent – קטן זאיו סמיך: This refers only to sons; with regard to a minor daughter, even if she is financially independent her father acquires any item that she finds (Ramban; Ran).

With a case where he lifts a found item with his work – במנגבה מציאה עם מלاكتה: Some explain that this is elucidating the case where an item found by a laborer belongs to his employer, i.e., it is a case where the laborer interrupts his work in order to pick up the item. In a case where a laborer lifts an item he finds without interrupting his work, it belongs to him.

HALAKHA

The found item of a laborer – מציאת פועל: A laborer may keep any ownerless item that he finds while on the job, whether he was hired to perform a specific task or for general work. If he was hired specifically to collect ownerless items, anything he finds belongs to his employer (Rambam Sefer Mishpatim, Hilkhos Sekhirut 9:11; Shulhan Arukh, Hoshen Mishpat 270:3).

LANGUAGE

Pearls [margaliyyot] – מרגליות: From the Greek μαργαρίτης, *margarítēs*, or μαργαρίς, *margaris*, meaning pearl or gem.

BACKGROUND

Pierces pearls – נזקם מרגליות: Since pearls, especially valuable ones, were usually strung in necklaces, they had to be pierced. This was a very specialized form of craftsmanship that required expertise. The artisan would choose the ideal place to pierce the jewel, and the resultant hole had to be completely straight so as not to mar the beauty of the pearl. That craftsman was well paid, and a slave who could perform this task was considered highly valuable.

עננים גויהו ניחא להו, כי היכי דבי אגורו לדיזה נלקוט בניהו בתריהו.

ופליגא דרבי חייא בר אבא, דאמר רבי חייא בר אבא אמר רבי יוחנן: לא גודל – גודל ממש, ולא קטן – קטן ממש. אלא: גודל סמוך על שלוחן אביו – זהו קטן, ואינו סמוך על שלוחן אביו – זהו גודל.

מציאת עבוז ושפחתו העברים הרי הוא של עצמן. אמא? לא יתא אלא פועל, ותני: מציאת פועל לעצמו. במדה דברים אמורים – בזמנ שאמר לו: נבש עמי היום, עדור עמי היום.

אבל אמר לו עשה עמי מלאהה היום – מציאתו לבעל הבית!

אמר רבבי חייא בר אבא אמר רבי יוחנן: הכא בעבד נזקם מרגליות עסקין, שאין רבו רוץ לשנותו למלאכה אחרת.

רב אמר: במנגבה מציאה עם מלاكتה עסיקין.

רב פפא אמר: בגון ששכרו ללקט מציאות, והיכי דמי? דאכפי אונמא בכורי.

האי שפחה היכי דמי? איז דאייתני שמי שערות – מאיבעיא גביה?

The Sages instituted an ordinance rendering a son of the sharecropper, who does not have the right to acquire property, like one who has the right to acquire property,^N i.e., they granted him a special right to acquire the gleanings. What is the reason for this ordinance? This arrangement is satisfactory for the poor people themselves, so that when they are hired under similar terms themselves, their sons will be able to glean the stalks after them.

The Gemara comments: And Shmuel, in his above explanation of the mishna, disagrees with the opinion of Rabbi Hiyya bar Abba. As Rabbi Hiyya bar Abba says that Rabbi Yohanan says: The word adult in the mishna is not referring to an actual adult,^N and the word minor is not referring to an actual minor. Rather, with regard to an adult son who is dependent on the food of his father's table for support, this is considered a minor in the context of the mishna. It is appropriate for one who is reliant on his father's support to give items that he finds to his father. And with regard to a minor son who is not dependent^N on the food of his father's table for support, this is considered an adult in this context, and any lost item that he finds is his.

§ The mishna teaches: The found item of his Hebrew slave or maidservant, it is theirs. The Gemara asks: Why does it not belong to the master? Let the slave be considered merely a laborer; and it is taught in a *baraita*: The found item of a laborer,^H i.e., a lost item that he found, belongs to him and not to his employer. In what case is this statement, that the item belongs to the laborer, said? It is said when the employer told the laborer to perform a specific task, e.g., he said to him: Weed for me today, or: Till for me today. Since the employer specified the task that he hired the laborer to perform, and that task did not include finding lost items, the laborer has rights to the item that he himself found.

The *baraita* continues: But if the employer said to the laborer: Work for me today, without specifying the nature of the work, the found item is the employer's, as finding ownerless items is included within the general category of work. Since a Hebrew slave is duty-bound to perform all types of labor for his master, why doesn't his master acquire all items that he finds?

Rabbi Hiyya bar Abba said that Rabbi Yohanan said: Here we are dealing with a slave who pierces pearls [margaliyyot],^{LB} which is such a profitable activity that his master would not want to transfer him to another line of work even for a moment. Therefore his status is like that of a laborer who is hired to perform a specific task.

Rava said: We are dealing with a case where the slave lifts a found item along with performing his work.^N Since there is no need for him to interrupt his work in order to take the item, his taking the item costs his master nothing, so it belongs to the slave.

Rav Pappa said: An item found by a laborer belongs to his employer only in a case where he hired him specifically to collect found items. The Gemara asks: But what are the circumstances in which one would hire a person to find ownerless items? The Gemara answers: It is in a case where a lake flooded its shore with fish, and after the water receded, the fish remained on the shore. One would hire laborers to gather those fish.

§ The mishna teaches that an item found by a Hebrew maidservant belongs to her. The Gemara asks: What are the circumstances of this maidservant? If the reference is to a maidservant who has grown two pubic hairs, which is a sign of adulthood, why is she with her master? A Hebrew maidservant who reaches adulthood is emancipated.

וְאֵי דָלֶת אֲיַתִּיהִ לְאָב – דָאָבָה הַזֹּא, וְאֵי דָלֶת הַלְּיתִיהִ לְאָב – תִּפְוֹק בְּמִתְתַּחַת הָאָב.

דָאָמָר רֵישׁ לְקִישׁ: אַמְמָה הַעֲבָרִיה
קָנָה עָצָמָה בְּמִתְתַּחַת הָאָב מִרְשׁוֹת
הַאֲדוֹן מַקֵּל וְחוֹמָר! וְלֹאָוֹ אִיתּוֹתָב
רֵישׁ לְקִישׁ?

And if she is a maidservant who has not yet grown two pubic hairs and is still considered a minor, then if her father is still alive, the found item is her father's, and if her father is not still alive, she should have gone free with the death of her father.

As Reish Lakish says: A Hebrew maidservant^h acquires herself from the authority of her master through the death of her father, and this halakha is derived from an *a fortiori* inference: Signs indicating puberty release her from her master's authority but do not release her from her father's authority, as although she shows signs indicating puberty she remains under her father's authority with regard to certain matters. Therefore, is it not logical that her father's death, which releases her entirely from the father's authority, would release her from the authority of her master? Clearly, there is no situation where a Hebrew maidservant can acquire an item that she finds. The Gemara answers: But wasn't the opinion of Reish Lakish conclusively refuted? It is not accepted as halakha.

נִמְאָה מֵהָא נִמְיָה תִּיהְיוּ פִּיבְתָּא!

לֹא, לְעוֹלָם דָאִיתִיהִ לְאָב, וְמֵאַתְּרֵי
הַנְּשָׁלָחַן – לְאַפּוֹקִי דָרְבָּתָה.

The Gemara suggests: Let us say that there is a conclusive refutation of his opinion from this mishna as well. If a Hebrew maidservant is emancipated once her father dies, there is no possible situation in which a Hebrew maidservant who finds an ownerless item acquires it for herself.

The Gemara rejects this suggestion: This mishna is not a refutation of Reish Lakish's opinion, as perhaps it is actually referring to a case where the father is alive. And what is the meaning of the phrase: They are theirs? It does not mean that the item belongs to the maidservant; rather it is stated in order to exclude the possibility that it belongs to her master. The maidservant acquires the found item, and through her, her father acquires it.

מִצְיאָת אָשָׁתוֹ. גִּירָשָׁה, פְּשִׁיטָא!

§ The mishna teaches that the found item of his ex-wife, whom he divorced, belongs to her, even if he has not yet given her payment of the marriage contract that he owes her. The Gemara asks: If he divorced her, it is obvious that the item is hers. Why does the mishna specify this?

הַכָּא בְּמֵאַי עַסְקִין – בְּמִגְוָרְשָׁת
וְאֵינָה מִגְוָרְשָׁת. דָאָמָר רְבִי זִירָא אָמָר
שְׁמוֹאָל: כֹּל מָקוֹם שָׁאָמָרוּ חַכְמִים
מִגְוָרְשָׁת וְאֵינָה מִגְוָרְשָׁת – בָּעָלָה
חַיָּב בְּמוֹנוֹתָה.

The Gemara answers: Here we are dealing with a case where there is uncertainty whether she is divorced or whether she is not divorced.^h As Rabbi Zeira says that Shmuel says: Everywhere that the Sages said that there is uncertainty whether a woman is divorced or whether she is not divorced, her husband remains obligated to provide for her sustenance. Furthermore, the Sages instituted an ordinance that an item found by a wife belongs to her husband, and that this right is reciprocal to his obligation to provide for her sustenance. Therefore, one might reason that here too, since the husband is still obligated to provide for his wife he retains the right to items that she finds.

טֻעַמָּא מֵאַי אָמָר וּבְנֵן מִצְיאָת אָשָׁה
לְבָעָלָה – בַּי הַכָּא דָלֶת תִּיהְיוּ לָהּ
אַיְכָה, הַכָּא – אַיְתַּלְהָ אַיְכָה אַיְכָה.

But this is not the halakha, as what is the reason that the Sages said that an item found by a wife belongs to her husband? It is so that she should not be subject to her husband's enmity due to the fact that he is supporting her and yet she keeps any item that she finds. Here, however, let her be subject to much enmity. He should resolve the uncertainty and finalize the divorce as soon as possible, and perhaps this enmity will facilitate reaching that goal.

מַתְנִי מַצְאָא שְׁטָרִי חֹזֶב, אָם יִשְׁבָּחֵן
אַחֲרִיות נְכָסִים – לֹא יְחִיּוּ, שְׁבִיתְדִּין
נְפִרְעָן מַהְן. אֵין בְּחֵן אַחֲרִיות נְכָסִים –
יְחִיּוּ, שְׁאַיִן בֵּית דִין נְפִרְעָן מַהְן, דְבָרִי
רְבִי מֵאַי.

MISHNA With regard to one who found promissory notes,^h if they include a property guarantee for the loan he may not return them to the creditor, as, if he were to return them, the court would then use them to collect repayment of the debts from land that belonged to the debtor at the time of the loan, even if that land was subsequently sold to others. If they do not include a property guarantee, he returns them to the creditor, as in this case the court will not use them to collect repayment of the debt from purchasers of the debtor's land. This is the statement of Rabbi Meir.

HALAKHA

A Hebrew maidservant – אַמְמָה הַעֲבָרִיה: A Hebrew maidservant who reaches puberty is emancipated without having to pay anything (Rambam Sefer Kinyan, Hilkhot Avadim 4:5).

She is divorced or she is not divorced – מִגְוָרְשָׁת וְאֵינָה מִגְוָרְשָׁת: In any case of uncertainty with regard to a divorce, the husband is obligated to provide for his wife until it is certain that she is divorced (Rambam Sefer Nashim, Hilkhot Ishut 18:25; Shulhan Arukh, Even HaEzer 93:2).

One who found promissory notes – בְּקָא שְׁטָרִי חֹזֶב: One who finds promissory notes may not return them to the creditor, even if they appear valid, and even if the debtor admits that he owes the money, in case the debtor and creditor colluded to repossess property that the debtor sold. The promissory notes may be returned to the creditor only if it is clear that they do not create a lien on the debtor's property and if the debtor admits that he owes the money (Rambam Sefer Nezikin, Hilkhot Gezeila VaAveda 18:1; Shulhan Arukh, Hoshen Mishpat 65:6).

NOTES

She is divorced or she is not divorced – מִגְוָרְשָׁת וְאֵינָה מִגְוָרְשָׁת: In the Jerusalem Talmud it is explained that the reference is to a woman who is fully divorced, but whose husband has not yet paid her the entire value of her marriage contract. Until he does so, he is obligated to provide for her sustenance. The early commentaries disagree as to whether that opinion would be accepted in the Babylonian Talmud.

וחכמים אומרים: בין בְּנֵי וּבְנֵי בְּנֵי לֹא
חויר, מִפְנֵי שְׁבִית דָין בְּפֶרְעֹז מִן-

And the Rabbis say: In both this case and that case he should not return the promissory notes to the creditor, as, if he were to return them, the court would in any event use them to collect repayment of the loan from purchasers of the debtor's land.

גַם בַמְאי עַסְקִין? אַילְמָא בְשַׁחַיב
מוֹדָה, כִּי יִשְׁבַּחֲנָן אֲתָרוֹת נְכָסִים אַפְמָא
לֹא יַחֲזִיר? הָא מוֹדָה! וְאֵי כַּשְׁאוֹן חַיְב
מוֹדָה, כִּי אַיִן בָּהָן אֲתָרוֹת נְכָסִים אַפְמָא
יַחֲזִיר? נָהָי דָלָא גַבִּי מִמְשֻׁעַד! – מִבְנִי
חרי מִגְבָּא גַבִּי

GEMARA With what case are we dealing? If we say it is a case when the liable party, i.e., the debtor, admits that he wrote the promissory notes and that the debts have not yet been repaid, then when the promissory notes include a property guarantee, why should the finder not return them to the creditor? Doesn't the debtor admit to the debts? And if it is in a case when the debtor does not admit to the debts, claiming that he dropped the promissory notes after he repaid his debts, then even when the promissory notes do not include a property guarantee, why should the finder return them to the creditor? Granted, the creditor cannot collect these debts from liened property that has been sold, but he can collect from unsold property. The returning of the promissory note would be disadvantageous to the borrower, who claims that he repaid the loan.

לְעוֹלָם בְשַׁחַיב מוֹדָה, וְהַכָּא הַיּוֹנָה
טַעֲמָא: דְחִישֵין שְׁמָא כְתָב לְלוֹת
בְּנִיסָן, וְלֹא לֹהֶה עַד תְּשִׁירִי, וְאַתְיַי לְמִטְרָה
לְקַזּוֹת שָׁלָא בְּדִין.

The Gemara answers: Actually, the mishna is referring to a case when the liable party admits to the debts, and here, this is the reason that the finder may not return the promissory notes: It is that we are concerned that perhaps the debtor wrote^N in the promissory note that he would borrow the money in Nisan but he did not actually borrow the money until Tishrei, and between Nisan and Tishrei he sold land. These lands are not liened to the debt, as the liability to repay the loan took effect only when he actually borrowed the money. And the creditor will come to repossess the land that was sold between Nisan and Tishrei from the purchasers, unlawfully.

אֵי הַכִּי, כָל שְׂטוֹרִי דָאטוֹ לְקַפְּנֵן יְחִוּשׁ
לְהַזְּהַבְּנִי הַכִּי!

The Gemara asks: If so, if the court must be concerned that the date on a promissory note predates the actual loan, we should likewise be concerned that all promissory notes that come before us to the court are perhaps predicated.

כָל שְׂטוֹרִי – לֹא רַיעַי, הַנִּי – רַיעַי.

The Gemara answers: The credibility of all promissory notes in general has not been compromised, as they remain in the creditor's possession, which is the correct location in the case of an outstanding loan. The credibility of these promissory notes has been compromised by the fact that they were lost.

אֲלֹא הָא דָתַנָּן: כַּותְבֵין שְׁטוֹר לְלוֹהֶה
אֲנָף עַל פִּי שְׁאוֹן מִלּוֹה עָמֹן, לְכַתְּחִילָה
הַיְבִיכִי קְרַבְיִיחָוָה? יְחִוּשׁ שְׁמָא כְתָב לְלוֹת
בְּנִיסָן, וְלֹא לֹהֶה עַד תְּשִׁירִי, וְאַתְיַי לְמִטְרָה
לְקַזּוֹת שָׁלָא בְּדִין!

The Gemara asks: But with regard to that which we learned in a mishna (Bava Batra 167b): One may write a promissory note for a borrower even if the lender is not with him because it is the borrower who assumes liability based on the note, the question arises: How can one write this promissory note ab initio? Let us be concerned that perhaps the borrower wants to write the note as he intends to borrow money in Nisan, but will ultimately not borrow the money until Tishrei, and the lender might then come to repossess the land that the borrower sells between Nisan and Tishrei from the purchasers, unlawfully.

אמָר רָב אָסִי:

Rav Asi said:

NOTES

That we are concerned that perhaps the debtor wrote, etc. – It is evident from the continuation of the discussion that the concern here is not of collusion between the debtor and the creditor to claim that the loan occurred before

it actually did. Rather, the concern is that the debtor mistakenly assumes that he borrowed the money on the date written in the promissory note, when in fact he borrowed it on a later date (Rashba; Ran).

Perek I
Daf 13 Amud a

בשטרו הנקאה, דהא שעבד נפשיה.

אי ה' כי, מתיינו דקענ' אם יש בהן אחוריות נכסים לא יחויר ואוקימנה בשחיב מודה, וכושים שמא כתוב ללוות בניסן ולא לה עד תשרי ואת' למטר ל Kohozot שלא בדין, אמא לא יחויר?

נוח, אי בשטר הנקאה – הא שעבד לה נפשיה, אי בשטר שלא הנקאה – ליכא למיחש, דהא אמרת כי ליכא מלה בחדיה לא כתיבנו.

אמר לך רב אשי: אף על גב דשטר רלאו הנקאה כי ליכא מלה בהדרה לא כתיבין, מתיינו בין רפה אטרע ליה, וחישין דלמא אקרוי וכותב.

אבי אמר: עדרו בחתומי זכין לו, ואפילו שטרו שלא הנקאה.

משום דקשייא ליה: בין דאמרת בשטרו שלא הנקאה כי ליתיה למלה בחדיה לא כתיבין – ליכא למיחש דאקרוי וכותב.

אללא הא דתנן: מצא גיטי נשים ושחוריו עבדים, דיתיקין, מתנה שוברים – הרי זה לא יחויר, שמא כתובים הוי ונמלך עליהם מאי הוי? והא אמרת עדרו בחתומי זכין לו!

This mishna is referring not to one who finds an ordinary promissory note but to one who finds **deeds of transfer**.^h This refers to a promissory note that establishes a lien on the debtor's property from the date the note is written, regardless of when he borrows the money. **Because the debtor obligated himself** from that date, the creditor has the legal right to repossess his land from any subsequent purchasers.

The Gemara asks: **If that is so**, the following difficulty arises: How will one account for the ruling of the mishna here, which teaches that if the promissory notes include a **property guarantee**, the finder should not return them to the creditor; and we established that the reference is to a case when the **debtor admits** that he still owes the debt and that the promissory note should not be returned due to suspicion that perhaps the debtor wrote it with the intention to borrow the money in Nisan but did not actually borrow it until Tishrei, and therefore, if the promissory note is returned to the creditor he will come to repossess the land from the **purchasers unlawfully**. If Rav Asi's explanation is correct, why shouldn't the finder return the document?

The Gemara elaborates: Let us see what the possibilities are. If the reference is to a **deed of transfer**, didn't the debtor obligate himself that his property can be collected for payment of the loan from the date that the deed of transfer was written? Conversely, if the reference is to a **promissory note that is not a deed of transfer**, there is no room for concern, as you said that in such a case, when the lender is not present together with the borrower, we do not write such a document.

The Gemara answers: Rav Asi could have said to you: Although we do not write promissory notes that are not deeds of transfer when the lender is not present together with the borrower, with regard to the case in the mishna it can be explained that since the promissory note was dropped, its credibility was compromised, and consequently we are concerned that perhaps it happened to have been written in the absence of the lender, deviating from the standard procedure.

Abaye stated an alternative explanation of the mishna that allows one to write a promissory note for a borrower in the absence of the lender: The document's **witnesses, with their signatures, acquire the lender's lien on the borrower's land on the lender's behalf**, despite the fact that the loan did not occur yet. And this applies even with regard to **promissory notes that are not deeds of transfer**.

Abaye offered this explanation because Rav Asi's explanation was difficult for him;ⁿ since you said with regard to promissory notes that are not deeds of transfer that we do not write them when the lender is not present together with the borrower, there is no reason for concern that perhaps in the case of a found promissory note it happened to be written in the lender's absence.

The Gemara asks: But how can Abaye's opinion be reconciled with that which we learned in a mishna (18a): If one **found bills of divorce, or bills of manumission of slaves, or wills [deyaitiki]**,^l or deeds of gift, or receipts, he may not return them to the people who are presumed to have lost them. The reason is that perhaps they were only written and not delivered, because the one who wrote them subsequently reconsidered about them and decided not to deliver them. The Gemara asks: If he reconsidered and decided not to deliver them, what of it? Didn't you say that a document's **witnesses, with their signatures, acquire it on behalf of the recipient**? If so, why shouldn't it be returned to him?

HALAKHA

Deeds of transfer – שטר הנקאה: A promissory note may be written for a debtor even if the creditor is not present with him. The Rif, the Rambam, and most other authorities rule that this applies only to a promissory note that states that the debtor's property is liened to the creditor from the date mentioned in it, in accordance with the opinion of Rav Asi. Rabbeinu Yitzḥak, the Rosh, and the Tur rule in accordance with the opinion of Abaye that this applies to any promissory note. The *Shakh* concludes that the halakha is in accordance with the opinion of the Rif, but that one who is in possession of such a promissory note can claim that he accepts the opinion of the Rosh, and the promissory note is not declared invalid (Rambam *Sefer Mishpatim, Hilkhot Malve Veloveh* 23:5, 24:1; *Shulhan Arukh, Hoshen Mishpat* 39:13).

NOTES

Because Rav Asi's explanation was difficult for him – **משם דקשייא לאיה:** The early commentaries had a tradition that this section was not part of the Gemara itself, but was added later by Rav Yehudah Gaon.

Some question the assertion that Abaye's statement that the lien on the borrower's land applies from the time the witnesses sign the promissory note is due to his difficulty with Rav Asi's explanation. Since in any case the Gemara establishes later that according to Abaye, the reason that the mishna states that a found promissory note may not be returned to the creditor is due to the possibility of collusion, Abaye's current statement is unnecessary in order to understand the mishna. Therefore, the commentaries explain that the Gemara is merely describing why Abaye disagrees with Rav Asi's explanation, and not why he makes this particular statement (Ramban; *Tosafot*).

Others explain that because Abaye does not accept Rav Asi's interpretation of the mishna here, he is not compelled to interpret the mishna in tractate *Bava Batra* as referring exclusively to deeds of transfer. Consequently, he interprets that mishna as referring to all types of promissory notes, in accordance with the simple understanding of that mishna (Rashba; Ran).

LANGUAGE

Wills [deyaitiki] – διαθήκη: From the Greek διαθήκη, *diatēkē*, meaning a will. The Sages interpret the word homiletically as *da teheh lemeikam*, meaning: This will stand.

NOTES

That the *tanna* suspects that there was repayment and collusion – רְחוּשׁ לְפָרָעָן וְלִקְנוּנָא: The Rosh asks why there is no suspicion that perhaps the debt was repaid and that the reason the debtor claims that it was not is because he intends to take another loan using the same promissory note. He answers that it is unreasonable to suspect that in order to save the small amount of money that it would cost to hire a scribe, the debtor would risk causing financial loss to the purchasers of the property he sold.

According to Shmuel...what is there to say – פָּאֵי: Although the Gemara can be explained by assuming that there is a *tanna* who does suspect repayment and collusion, nevertheless the Gemara prefers to give an answer that establishes the mishna in accordance with Shmuel's opinion (*Melo HaRo'im*).

A promissory note that does not include a property guarantee, the creditor collects neither from liened property nor from unsold property – שַׁיר חֹב שָׁאוֹן בּוֹ אֶחָרוֹת נְכָסִים אֵין גָּוָה – Some explain that it was uncommon to lend money without a property guarantee, so that if a promissory note was found without a property guarantee, it had clearly not been used (*Ra'avad*). Others explain that such a promissory note is invalid, as such a document has no legal significance, since it grants the creditor no additional rights beyond those received in the case of a loan by oral contract. Consequently, even the testimony of the witnesses signed on the promissory note is invalid, as testimony must be provided orally unless it is written on a valid legal document (*Ramban*).

הַנִּמְיָלִי הַיכָּא דְּקָא מַטוּ לִיעִיה, אֲבָל
הַיכָּא דְּלֹא מַטוּ לִידִיה - לֹא אָמְרָין

אֲלֹא מַתְנִינִין, דְּקָחַנִּין: מֵצָא שְׁטוּרִי
- חֹב, אָם יִשְׁבַּחַם אֶחָרוֹת נְכָסִים
לֹא יְחִוּר. וְאַזְקִימָן בְּשַׁחַטִּיב מוֹדָה,
וּמִשּׁוּם שְׁמָא בְּתַבְּלָה לְלוֹת בְּנִיסְן וְלֹא
לֹהֶה עַד תְּשִׁירִי.

בְּשַׁלְמָא לְרֹב אָסִי, דָּאָמָר בְּשְׁטוּרִי
אַקְנִיתָא - מוֹקֵן לְהַבְּשְׁטוּרִי דְּלֹא
אַקְנִיתָא, וְכַרְאָמְרָין, אֲלֹא לְאָבִי,
דָּאָמָר עַדְיוֹ בְּחַתּוּמוֹ זְכִין לוֹ, מַאי
אַיְכָא לְמִימְרִי?

אָמָר לְךָ אָבִי: מַתְנִינִין הַיּוֹתוֹ טֻמְמָא -
רְחוּשׁ לְפָרָעָן וְלִקְנוּנָא.

וּלְשְׁמוֹאָל, דָּאָמָר: לֹא חִיְשֵׁין לְפָרָעָן
וְלִקְנוּנָא, מַאי אַיְכָא לְמִימְרִי? הַנִּחְאָ
אֵי סְבָר לְהָכְרִיב אָסִי, דָּאָמָר בְּשְׁטוּרִי
הַקְּנָאָה - מוֹקֵן מַתְנִינִין בְּשְׁטוּרִי דְּלֹא
הַקְּנָאָה, אֲלֹא אַיְסְבָר בְּאָבִי, דָּאָמָר
עַדְיוֹ בְּחַתּוּמוֹ זְכִין לוֹ מַאי אַיְכָא
לְמִימְרִי?

שְׁמוֹאָל מוֹקֵן לְמַתְנִינִין בְּשָׁאַיִן חַיֵּב
מוֹדָה.

אֵי הַכִּי, פִּי אֵין בָּהּ אֶחָרוֹת נְכָסִים
אַפָּאֵי יְחִוּר? נְהִי דְּלֹא זְכִי מַן
מִשְׁעָבָדִי, מִבְּנֵי חַרִי מִגְּבִּי גַּבִּי

שְׁמוֹאָל לְטֻמְמָה, דָּאָמָר שְׁמוֹאָל,
אָוּמָר הַיְהָ רְבִי מַאי: שְׁטַר חֹב שָׁאוֹן
בּוֹ אֶחָרוֹת נְכָסִים - אֵין גָּוָה לֹא
מִפְּשִׁיעָבָדִי וְלֹא מִבְּנֵי חַרִי.

The Gemara answers: This statement, that a creditor acquires the lien on the debtor's land immediately when the witnesses sign the document, applies only in a case where the document came into the creditor's possession; but in a case where the document did not come into his possession, as it was never given to him, we do not say that.

The Gemara asks: Rather, how can the mishna be reconciled with Abaye's opinion? As it teaches: With regard to one who found promissory notes, if they include a property guarantee, he may not return them to the creditor. And we established that the mishna is referring to a case when the liable party, i.e., the debtor, admits to the debts, and nevertheless the finder may not return the note due to the suspicion that perhaps he wrote the promissory note with the intention to borrow the money in Nisan but he did not actually borrow it until Tishrei.

The Gemara elaborates: Granted, according to Rav Asi, who says that the halakha that a promissory note may be written for a borrower in the absence of the lender applies only with regard to deeds of transfer, the mishna can be established as referring to promissory notes that are not deeds of transfer, and it is as we stated above. But according to Abaye, who says that a document's witnesses, with their signatures, acquire the lien on the lender's behalf, what is there to say? Why shouldn't one return the promissory notes even if they include a property guarantee for the loan?

The Gemara answers that Abaye could have said to you that this is the reason for the ruling in the mishna: It is that the *tanna* suspects that there was repayment and collusion.^N Although the debtor admits his debt, he is suspected to be lying, as after he repaid the debt he might have colluded with the creditor to repossess land that he sold during the period of the loan, and the debtor and creditor would split the money between them.

The Gemara asks: But according to Shmuel, who says that we do not suspect repayment and collusion, what is there to say?^N How can the mishna be explained? This works out well if Shmuel holds in accordance with the opinion of Rav Asi, who says that only in the case of deeds of transfer is it permitted to write a promissory note for a borrower in the absence of the lender. Accordingly, Shmuel can establish the mishna as referring to promissory notes that are not deeds of transfer. But if Shmuel holds in accordance with the opinion of Abaye, who says that a document's witnesses, with their signatures, acquire the lien on the creditor's behalf, what is there to say?

The Gemara answers: Shmuel can establish the mishna as referring to a case when the purported liable party does not admit to the debt, and therefore the finder may not return the promissory notes to the creditor.

The Gemara asks: If so, in a case when the promissory notes do not include a property guarantee, why must the finder return them to the purported creditor? Granted, the creditor cannot collect the debt from liened property that had been sold, but he can collect it from the debtor's unsold property, even though the debtor claims to be exempt.

The Gemara answers: Shmuel conforms to his standard line of reasoning, as Shmuel says that Rabbi Meir would say: In the case of a promissory note that does not include a property guarantee, the creditor collects neither from liened property that has been sold nor from unsold property.^N Therefore, there is no harm in the finder returning the promissory note to the creditor.

ובְּמַחְאָר שְׁאֵינו גֹּוֹבָה אֶמְמָי יִחוֹר? אָמַר רַבִּי נָתָן בֶּן אֲוֹשָׁיָה: לְצֹר עַל פִּי צְלוּחִיתוֹ שֶׁל מְלֻוחָה.

וְנַהֲדֵרִיה לְהוּ לְלָהּ לְצֹר עַל פִּי צְלוּחִיתוֹ שֶׁל לְלָהּ! לְלָהּ הוּא

The Gemara asks: **But since the creditor cannot collect the debt, why should the finder return the promissory note?** For what purpose can the creditor use it? **Rabbi Natan bar Oshaya says:** The creditor can use it to cover the opening of his flask.ⁿ Its only value is as a piece of paper.

The Gemara asks: If the document has only the value of the paper, let the finder return it to the debtor, to cover the opening of the debtor's flask. The Gemara answers: **The debtor is**

NOTES

לְצֹר עַל פִּי צְלוּחִיתוֹ: Although earlier (7b) the Gemara considers it unreasonable that people would quarrel over a document that is worth only the value of the paper it is written on, here the issue is mentioned tangentially, as the mishna states that a promissory note that includes a property guarantee may not be returned, and the Rabbis hold that this is the halaka even with regard to a promissory note that does not include a property guarantee. The mishna therefore mentions the opinion of Rabbi Meir that a promissory note that does not include a property guarantee may be returned, even though its value is minimal (*Ein Yehosef*).

Perek I**Daf 13 Amud b**

דָּמָרָה: לֹא הָיו דָּבָרִים מַעֲולִם.

אָמַר רַבִּי אַלְעָזָר: מְחַלּוֹקַת בְּשָׁאי
מִצְּבֵבָה מִזְּדָה, דָּרְבִּי מַאֲיר סְבָר: שְׁטוֹ
שְׁאֵין בּוֹ אַחֲרִיות נְכָסִים – אֵינו גֹּוֹבָה
לֹא מִפְּשָׁעָבָדִי וְלֹא מִבְּנֵי חָרִי, וּרְבָּן
סְבָרִי, מִפְּשָׁעָבָדִי הוּא דָלָא גָּבָר,
מִבְּנֵי חָרִי – מִגְּבָא גָּבָר. אַבְּלָכְשָׁחִיב
מוֹדָה – דָּרְבִּי הַפְּלִילִיתָר, וְלֹא חִישֵּׁין
לְפָרָעוֹן וְלְקָנָנִיא.

the one who says that these **matters**, the loan, never happened and that the promissory note is forged. Therefore, he has no claim to the paper on which the promissory note is written.

S Rabbi Elazar says: The **dispute** in the mishna between Rabbi Meir and the Rabbis is in a case when the purported liable party **does not admit** to the debt. As, Rabbi Meir holds that with a promissory note that **does not include a property guarantee**, one **can collect a debt neither from liened property that has been sold nor from unsold property**. And the Rabbis hold that it is **only from liened property that one cannot collect a debt using this promissory note but that one does collect a debt from unsold property**. But in a case when the liable party **admits to the debt, everyone agrees** that the finder **must return** the promissory note, and we do not suspect the creditor and the debtor of engaging in **repayment and collusion** [*veliknuneya*]^l to the detriment of one who purchased land from the debtor.

וּרְבִּי יוֹחָנָן אָמָר: מְחַלּוֹקַת בְּשָׁחִיב
מוֹדָה, דָּרְבִּי מַאֲיר סְבָר: שְׁטוֹ שְׁאֵין
בּוֹ אַחֲרִיות נְכָסִים – מִפְּשָׁעָבָדִי הוּא
דָלָא גָבָר, אַבְּלָכְשָׁחִיב מִגְּבָא גָבָר.
וּרְבָּן סְבָרִי, מִפְּשָׁעָבָדִי נִמְיָגָבָר, אַבְּלָכְשָׁחִיב
בְּשָׁאי תְּחִיב מוֹדָה – דָּרְבִּי הַפְּלִילָא
לְחִיר, דְּחִישֵּׁין לְפָרָעוֹן.

And Rabbi Yohanan says: The dispute is in a case when the liable party admits to the debt. As, Rabbi Meir holds that it is **only from liened property that one cannot collect a debt using a promissory note that does not include a property guarantee, but one does collect a debt from unsold property**. And the Rabbis hold that one collects a debt from liened property too. But in a case when the liable party **does not admit** to the debt, **everyone agrees** that the finder **may not return** the promissory note, as we suspect that perhaps there was **repayment**.

תְּנִינָא בְּוּתוּתְהָ דָּרְבִּי יוֹחָנָן, וְתִוְּבָתָא
דָּרְבִּי אַלְעָזָר בְּחַדָּא, וְתִוְּבָתָא
דְּשָׁמוֹאָל בְּתְּרָתָי.

It is taught in a *baraita* in accordance with the opinion of Rabbi Yohanan, and from it there is also a conclusive refutation of one element of the opinion of Rabbi Elazarⁿ and a conclusive refutation of two elements of the opinion of Shmuel.

מֵצָא שְׁטוֹרִי חֹב וַיֵּשׁ בָּהּ אַחֲרִיות
נְכָסִים, אַךְ עַל פִּי שְׁנַיְנַיְמָה מוֹדִים –
לֹא יַחֲזֵיר לֹא לְהָהָר וְלֹא לְהָרָה. אֵין בְּהָנָה
אַחֲרִיות נְכָסִים, בּוּמָן שְׁלֹחָה מוֹדָה –
לְחִיר, אֵין הַלְּהָר מוֹדָה – לֹא יַחֲזֵיר
לֹא לְהָהָר וְלֹא לְהָרָה, דָּרְבִּי רַבִּי מַאֲיר.

The *baraita* teaches: In a case where one **found promissory notes and they include a property guarantee, even if both the creditor and the debtor agree about the existence of the debt, the finder should not return it to this creditor or to that debtor**. If they **do not include a property guarantee**, then in a case when the debtor **admits to the debt, one should return the promissory note to the creditor. But if the debtor does not admit to the debt, one should not return it to this creditor or to that debtor**. This is the statement of Rabbi Meir.

שְׁהִיא רַבִּי מַאֲיר אוֹמֵר: שְׁטוֹרִי שִׁישָׁ
בְּהָנָה אַחֲרִיות נְכָסִים – גֹּוֹבָה מִגְּבָא
מִפְּשָׁעָבָדִים, וְשְׁאֵין בָּהּ אַחֲרִיות
נְכָסִים – גֹּוֹבָה מִגְּבָא מִבְּנֵי חָרִי,
וְחַקְמָים אָמְרָם: אַחֲד זֶה וְאַחֲד זֶה
גֹּוֹבָה מִגְּבָא מִפְּשָׁעָבָדִים.

The *baraita* continues: As Rabbi Meir would say: With promissory notes that include a property guarantee, one can collect the debt from liened property; but with those that do not include a property guarantee,^h one collects the debt only from unsold property. And the Rabbis say: With both this type and that type of promissory note, one can collect the debt from liened property.

NOTES

לְצֹר עַל פִּי צְלוּחִיתוֹ: From the Greek *κοινωνία*, meaning partnership or association.

NOTES

A conclusive refutation of one element of the opinion of Rabbi Elazar – **תְּנִינָא בְּוּתוּתְהָ דָּרְבִּי אַלְעָזָר בְּחַדָּא**: Some early commentaries had a tradition that this section was not part of the original Gemara but was added later by the *ge'onim*. They challenge both the Gemara and Rashi's explanation of it and reject this entire section (Ramban; Rashba). One reason is that both elements of Shmuel's opinion that are refuted are shared by Rabbi Elazar, so it is unclear why the Gemara states that one element of Rabbi Elazar's opinion is refuted and two elements of Shmuel's opinion are refuted. Some explain that the division into two elements is not based on logical distinction but is done because Shmuel made two separate statements on two occasions, whereas Rabbi Elazar made only one statement (*Tosefot HaRash*). Others explain that while Shmuel states explicitly that there is no suspicion of repayment, Rabbi Elazar does not (*Rabbeinu Hananel*; see Ra'avad and Ran).

HALAKHA

A promissory note that does not include a property guarantee – **שְׁטוֹר שָׁאֵין בּוֹ אַחֲרִיות נְכָסִים**: A promissory note that does not include a property guarantee can nevertheless be used to collect even from liened property that has been sold, in accordance with the opinion of the Rabbis, as the Gemara explains on the following *amud* (Rambam Sefer Nezikin, *Hilkhot Gezeila VaAveda* 18:1 and *Sefer Mishpatim*, *Hilkhot Malve VeLoveh* 18:3; *Shulhan Arukh*, *Hoshen Mishpat* 39:1).

NOTES

We suspect collusion – **ח'ישין לְקָנְנִיא**: Even if the reason not to return the promissory note is not suspicion of collusion but rather the possibility that it might be a pre-dated document, as Rav Asi holds (12b), this is nevertheless a refutation of the opinion of Rabbi Elazar (Rosh).

תַּיְבָתָא דְּרַבִּי אֶלְעָזָר בְּחֲדָא, דָּא מֵר:
לְרַבִּי מֵאֵיר שְׁטָר שָׁאיָן בְּאַחֲרִיוֹת נְכָסִים אִינּוֹ גּוֹבֵה מְנֻכָּסִים כְּשַׂעַבְדִּים וְלֹא מְנֻכָּסִים בַּיּוֹרְקִין, וְקָאָמָר בֵּין לְרַבִּי מֵאֵיר בֵּין לְרַבִּן לְאַחֲרֵי ח'ישין לְקָנְנִיא.

This is a conclusive refutation of one element of the opinion of Rabbi Elazar, who says that according to Rabbi Meir, with a promissory note that does not include a property guarantee one can collect a debt neither from liened property that has been sold nor from unsold property. And Rabbi Elazar also says that according to both Rabbi Meir and the Rabbis, we do not suspect that there is collusion between the debtor and the creditor.

בְּרִיאַתָּא קָתְנִי: שְׁטָר שָׁאיָן בְּאַחֲרִיוֹת נְכָסִים – מִפְשַׁעַבְדִּי הָוּא דָלָא גַּבֵּי, הָא מִבְנֵי חֹווֵין – מִגְבָּא גַּבֵּי, וְקָתְנִי בֵּין לְרַבִּי מֵאֵיר בֵּין לְרַבִּן לְאַחֲרֵי ח'ישין לְקָנְנִיא, דָקְתַּנִּי: אָף עַל פִּי שְׁנֵיהם מְוּדִים – לֹא יַחֲזֵיר לֹא לָהּ וְלֹא לָהּ. אַלְמָא: ח'ישין לְקָנְנִיא.

And the *baraita* teaches that with a promissory note that does not include a property guarantee the creditor cannot collect a debt from liened property, but he can collect it from unsold property. And the *baraita* also teaches that according to the opinions of both Rabbi Meir and the Rabbis, we suspect that there is collusion between the debtor and the creditor, as it is taught that if one found promissory notes that include a property guarantee, even if both the creditor and the debtor agree about the existence of the debt, the finder should not return it to this creditor or to that debtor. Apparently, we suspect collusion.^N This refutes Rabbi Elazar's opinion that there is no suspicion of collusion.

וְהָא חַנִּי תְּרַתִּי הוּא!

The Gemara asks: But aren't these two elements of Rabbi Elazar's statement that are refuted by the *baraita*? Why was it stated above that only one element is refuted?

Perek I

Daf 14 Amud a

NOTES

What is the reason for the opinion of the Rabbis – **תַּיְבָתָא** – **טַעַמְיוֹן דְּרַבָּן**: *Tosafot* ask how Shmuel was aware of this opinion of the Rabbis; he could not have been aware of the *baraita*, as the *baraita* constitutes a refutation of his aforementioned statements. Some explain that Shmuel was aware of the *baraita*, but he disagreed with it as far as explaining the opinions in the mishna is concerned, as it is proved from a subsequent mishna (20a) that there is no suspicion of collusion between the debtor and creditor (see 16b). But with regard to the ruling that a promissory note that does not include a property guarantee can be used to collect repayment from liened property that was sold, he accepts the opinion of the Rabbis in the *baraita* (Rosh). Others explain that once Shmuel heard the *baraita*, he retracted his opinion and offered an explanation of the opinion in the *baraita* (*Talmid Rabbeinu Peretz*).

Omission of the property guarantee is a scribal error – **אַחֲרִיות טַעַות סְפָרִים**: Most commentaries hold that even if neither the debtor nor the creditor made any mention of this guarantee, the witnesses should tell the scribe to include this clause (Rashba; Ran).

תַּיְבָתָא דְּשָׁמוֹאֵל בְּתְּרוּתִי חֲדָא – בְּרַבִּי דָקְאָמָר רַבִּי אֶלְעָזָר מִפְשַׁעַבְדִּי בְּשָׁאיָן חַיְבָמָדָה – הָא מִתְּרַצְּכִי.

The Gemara answers: It is actually one element, as both elements have the same one reason; because Rabbi Elazar says that the dispute in the mishna is in a case when the liable party does not admit his debt, he explains Rabbi Meir's opinion in this manner, i.e., that a promissory note that does not include a property guarantee cannot be used to collect the debt even from unsold property.

תַּיְבָתָא דְּשָׁמוֹאֵל בְּתְּרוּתִי חֲדָא – בְּרַבִּי חַיְבָמָדָה, דָקְאָמָר שָׁמוֹאֵל: מֵאָא שְׁטָר

וְחֲדָא – דָקְתַּנִּי דָקְאָמָר שָׁמוֹאֵל: מֵאָא שְׁטָר שְׁנֵיהֶה בְּשָׁוק – יַחֲזֵיר לְבָעֵלים, וְלֹא ח'ישין לְפָרָעָן.

The Gemara elaborates on the statement that the *baraita* serves as a conclusive refutation of two elements of the opinion of Shmuel: One element is like the element of the opinion of Rabbi Elazar that was refuted, as Shmuel also establishes the dispute in the mishna as referring to a case when the liable party does not admit to the debt, and the *baraita* states that in such a case there is no dispute.

תַּיְבָתָא. דָקְתַּנִּי הַכָּא: אָף עַל פִּי שְׁנֵיהם מְוּדִים – לֹא יַחֲזֵיר לֹא לָהּ וְלֹא לָהּ, אַלְמָא: ח'ישין לְפָרָעָן, וְכֹל שָׁבֵן הַכָּא דָלָא מְדָה לֹהּ, דָחַיְשִׁין לְפָרָעָן.

There is a conclusive refutation of that statement as well, as the *baraita* here teaches: Even if they both agree, he should return it neither to this person nor to that person. Apparently, we suspect that there was repayment. And all the more so here, in the case of a deed of transfer, when the liable party does not admit that he owes money, the deed should certainly not be returned, as we suspect that there was repayment.

אמָר שָׁמוֹאֵל: מַאי טַעַמְיוֹן דְּרַבָּן?
סְבָרִי: אַחֲרִיות טַעַות סְפָרִים הָוּא.

§ Shmuel said: What is the reason for the opinion of the Rabbis,^N who say that one can collect a debt from liened property even if the promissory note does not include a property guarantee? They hold that omission of the property guarantee from the promissory note is a scribal error,^{NH} as one would certainly not lend money without a property guarantee.

אמר ליה רבא בר אידי ליב אידי בר
אָבִין: וְמִי אָמַר שְׁמוֹאֵל הַכִּי? וְהַאֲמָר
שְׁמוֹאֵל: שְׁבַת, שְׁפָר וְשֻׁבּוֹר צָרִיךְ
לִימְלֹךְ?

לִימָא מְאָן דָּמַר הָא לֹא אָמַר הָא?

לֹא קָשַׁיא: בָּאן - בְּשֶׁ�ֶר הַלְּאָה, דָלָא
יַחַב אַיִשׁ וּוּיְבָדֵד. בָּאן - בְּמִקְחָה
וּמִמְּבָר, דַעֲבֵיד אַיִשׁ דָבֵין אַרְעָא
לִימִיה.

בַּיְהִיא דָבָוה בָּר אַיִי יַבְנֵן עַלְיָתָא
מַאֲחַתְּתָה, אָתָא בַּעַל חֹוב טְרָפָא מִגְּנָה.
אָתָא לְקַמְתָה דָמָר שְׁמוֹאֵל. אָמָר לֵיה:
בְּתַבְתָה לֹא אָחִירוּת? אָמָר לֵיה: לֹא.
אָמָר לֵיה: אָם בָן, וּלְלַשְׁלָמָא. אָמָר
לֵיה: וְהָא מָר הָוא דָאמְרוֹ אַחֲרוֹת טַעוֹת
סּוֹפֵר הָוא! אָמָר לֵיה: הַנִּי מַיִיל - בְּשֶׁ�ֶר
הַלְּאָה, אַבְלָא בְּשֶׁ�ֶר מִקְחָה וּמִמְּבָר -
לֹא.
דַעֲבֵיד אַיִשׁ דָבֵין אַרְעָא לִימִיה.

אָמָר אֲבִי: רַאוּבֵן שְׁמַכְרֵר שְׂדָה לְשִׁמְעָנוֹ
בְּאַחֲרוֹת, וְבָא בַּעַל חֹוב דָרַאוּבֵן וְקָא
טְרִיף לֵיה מִיְהָה - דִינָא הוּא דָאַיִל
רַאוּבֵן וּמִשְׁתְּשִׁיעֵי דִינָא בְּהַדִּיחָה, וְלֹא מַצִּיא
אָמָר לֵיה: לֹא בַּעַל דְּבָרִים דִינִי אַתָּה.
אָמָר לֵיה: דְמַפְקַת מִיְהָה - עַלְיִ דִינִי.
הַדָּר.

אִיכָּא דָאמְרִי: אֲפִילוּ שְׁלָא בְּאַחֲרוֹת
נִמְיָה, דָאמְרַי לֵיה: לֹא נִיחָא לִי דִילְחוּי
לְשִׁמְעָנוֹ תְּרֻעָם עַלִי.

וְאָמָר אֲבִי: רַאוּבֵן שְׁמַכְרֵר שְׂדָה לְשִׁמְעָנוֹ
שְׁלָא בְּאַחֲרוֹת, וַיַּצְאֵן עַלְהָ עַסְקִין. וְעַד
שְׁלָא הַחְיִקְבָּה

Rava bar Ittai said to Rav Idi bar Avin: Did Shmuel actually say this; i.e., that the omission of this clause is considered a scribal error? But doesn't Shmuel say that enhancement, superior-quality land,ⁿ and a lien require consultation? When a scribe writes a deed of sale for a field he must ask the seller whether to write explicitly that if there is a lien on the field, and the field is then repossessed from the buyer, in which case the seller must compensate the buyer for any enhancement of the value of the field that occurred while it was in his possession, that this compensation will be made from superior-quality land, and that he liens all of his land as security for this sale. This indicates that Shmuel holds that a property guarantee is not written in every promissory note.

The Gemara asks: Shall we say that the one who says this statement quoting Shmuel does not say thatⁿ statement quoting Shmuel? Perhaps it is a dispute between the *amora'im* who transmitted the statements of Shmuel.

The Gemara answers: This is not difficult. Here, where Shmuel said that the omission of a property guarantee is a scribal error, it was with regard to a promissory note, as a person does not give away his money for nothing. When one lends his money, he requires a property guarantee. There, by contrast, where Shmuel said that a scribe must consult with the seller with regard to writing a property guarantee, it is with regard to a case of buying and selling land, as a person is apt to purchase land for a day. It is conceivable that the buyer is willing to risk that there is a prior lien on the land, thinking that even if he owns the property only for one day he can earn a profit.

As evidence of this distinction, the Gemara gives an example: It is like that incident in which Avuh bar Ihi^b purchased a loft from his sister. Her creditor came and repossessed the loft from him. He came before Mar Shmuel to file a claim against his sister. Shmuel said to him: Did she write you a guarantee in the deed of sale? He said to Shmuel: No. Shmuel said to him: If so, go to peace (see *Berakhot* 64a), as there is nothing that can be done. He said to Shmuel: But wasn't it you, Master, who said that omission of the guarantee of the sale from the document is a scribal error? Shmuel said to him: This statement applies only to promissory notes, but with regard to deeds of buying and selling it does not apply, as a person is apt to purchase land for a day.

§ Abaye said: Consider the case of Reuven,^b who sold a field to Shimon with a property guarantee, and Reuven's creditor came and repossessed the field from Shimon, as he had a prior lien on the property. It is the halakha that Reuven can go and litigate with the creditor,^{nh} and the creditor cannot say to him: I am not legally answerable to you since I am taking the field from Shimon. This is because Reuven can say to his creditor: That which you take from him comes back to me, as I sold the field to Shimon with a guarantee, so you cannot claim that I am not a legal party in this matter.

There are those who say that Abaye said: Even if Reuven sold the field to Shimon without a property guarantee, Reuven can dispute the legal claim in court, as he can say to the creditor: It is not amenable to me that Shimon would have a grievance against me for selling him property that was subsequently repossessed.

And Abaye said: Consider the case of Reuven, who sold a field to Shimon without a property guarantee, and disputants emerged^h disputing Reuven's prior ownership of the field. As long as Shimon has not yet taken actual possession of the land,

NOTES

Superior-quality land [shefar] – שְׁפָר: The Meiri maintains that the word *shefar* refers not to superior-quality land but to enhancement of the value of the field due to the buyer's investment in the land, as opposed to a rise in its value that occurs without any effort on the part of the owners.

מן דָּאָמַר הָא לֹא אָמַר הָא: Rashi explains that there is a dispute among *amora'im* as to what Shmuel said. Others explain that although Shmuel explained the opinion of the Rabbis, he himself did not agree with it (Ritva).

Reuven can go and litigate with the creditor – רַאוּבֵן בְּחַזְקָה: *Tosafot* ask what difference it makes whether it is Reuven or Shimon who brings the case to court, as the court is required to present every possible claim that Reuven could make on behalf of Shimon. *Tosafot* offer several answers, one of which is that perhaps Reuven is sharper and better at litigation than Shimon. In *Hokmat Manoah* it is elaborated that perhaps Reuven can present claims that the judges would not have thought of, or make an unusual claim that the judges may not have made on behalf of Shimon. Others explain, citing Rashi, that Reuven may claim that the creditor also owes him money, which is a claim that only Reuven himself can make (Rid). Another explanation is that the reference is to a case where Reuven set aside this field as designated repayment for the debt, in which case only Reuven can remove that status and offer money instead (Rashba).

PERSONALITIES

Avuh bar Ihi – אָבּוּה בָר אַיִי: Avuh bar Ihi was a first-generation *amora* who lived in Babylonia. He apparently lived in Neharde'a, since he engaged in discussion with Shmuel, who presided over the yeshiva there. The Gemara relates that Avuh bar Ihi and his brother Binyamin were pious individuals, and one of them merited a visitation from Elijah the prophet.

BACKGROUND

Reuven – רַאוּבֵן: In constructing theoretical cases, the Gemara will occasionally assign names to parties in a case. The traditional names used in such instances are Reuven, Shimon, and Levi, names which would have been familiar to the Gemara's readers as those of Jacob's three oldest sons. This is not to suggest that the individuals in the example are necessarily presented as brothers, although this relationship might be implied when dealing with familial situations. Rachel and Leah are the names used when female characters are required.

HALAKHA

It is the halakha that Reuven can go and litigate with the creditor – רַאוּבֵן וְמִשְׁתַּחַת הַדָּרְשָׁנוֹת: If Reuven sells a field to Shimon without a property guarantee, and Levi, Reuven's creditor, subsequently repossesses it from Shimon, Reuven litigates with Levi in court, and Levi cannot claim that he is not legally answerable to Reuven. This is all the more so the case if he sold the field with a property guarantee. This is in accordance with the second explanation in the Gemara (Rambam *Sefer Kinyan, Hilkhot Mekhira* 19:9; *Shulhan Arukh, Hoshen Mishpat* 226:1).

מִכְרָ שְׂדָה... וַיַּצְאָו: If one sells a field to another, and after the purchaser acquired it, employing one of the methods of acquisition but before he made use of the field, claims are made contesting the seller's ownership of the field, the purchaser may withdraw from the transaction and be reimbursed. If the purchaser has already made use of the field, even if he merely walked along the borders, he cannot withdraw from the deal; rather, he must go to court against the claimant. If the claimant succeeds in removing the field from his possession, the purchaser may return to the seller for reimbursement (Rambam). The *Rosh* and the *Tur* hold that once he has paid the money and effected the transaction, the purchaser may no longer withdraw from the purchase (*Shulhan Arukh, Hoshen Mishpat* 226:6).

Perek I
Daf 14 Amud b

NOTES

A tied sack – חיתא דקטרו: Rashi interprets this phrase to mean a sack full of knots. Rashi in his commentary on *Bava Kamma*, as well as Rabbeinu Yehonatan, both explain that it is a tied sack full of air. In *Nimukei Yosef* on *Bava Kamma* it is interpreted to mean a tied sack whose contents are unknown.

Walks along the borders – דיש אמץרי: It is implied by Rashi's comments elsewhere (*Bava Kamma* 9a) that this is referring to a case where the parties have reached an agreement but the transaction has not as yet been finalized. Walking the borders of the land is a symbolic means of taking possession of the land and serves to finalize the transaction. According to *Tosafot*, it is referring to a case where the sale has already been finalized using one of the methods of acquisition; nevertheless, until the buyer has walked around the borders of the land he can still withdraw from the transaction and claim that it was mistaken, due to the claims of the disputants. A third explanation is that the buyer did not yet pay for the field but he finalized the transaction through one of the formal modes of acquisition. If the ownership of the field is contested, the buyer can withdraw from the transaction, unless he subsequently walked the borders, which demonstrates that he does not consider it a mistaken transaction. If he is unaware of any appeals contesting the ownership of the land, walking the borders has no legal significance (*Tur*; see *Ra'avad*).

The betterment of the world – תיקון העולם: Rashi mentions two reasons for this ordinance, based on the Gemara in *Gittin* (50b): These obligations are not known publicly, and therefore the purchasers of the liened property are unable to take them into account. Furthermore, since these obligations have no fixed amount, it is impossible to know the full obligation of the seller.

HALAKHA

One cannot appropriate liened property for consuming produce – אין מוציאין לאכילת פירות...מנכסים: If one buys a field from a robber and consumes its produce, he must repay the value of that produce to the robbery victim, and he can then sue the robber. If the purchaser did not realize that the field was stolen, he can reclaim the value from liened property belonging to the robber. The above halakhot apply only if the purchaser did not know that the field was stolen. If he did know, he is not entitled to collect any compensation (*Shulhan Arukh, Hoshen Mishpat* 373:2).

Sustenance of a man's wife and daughters – מזון האשה והבנות: A man's wife and daughters receive their sustenance after his death from the unsold property that he left, but not from liened property that has been sold (*Rambam Sefer Nashim, Hilkhos Ishut* 18:13; *Shulhan Arukh, Even HaEzer* 112:7).

יכל לזרור בו, משחיח בָה – אינו יכול לזרור בו. דאמר ליה: חיתא דקטרו סברות וקבלת. מאימתי הוי? חיקת? מפני דיש אמץרי.

ואיכא דאמרין: אפילו באחריות נמי.
דאמר ליה: אחו טפרק ואשלם לך.

איitemor, המוכר שדה לחייבו ונמצאת
שאינה שלו, רב אמר: יש לו מעות ויש
לו שבח, ושמואל אמר: מעות – יש לו,
שבח – אין לו.

בעו מיניה מרוב הונא: פירש לו את
השבח מהו? טעםם דשמעאל – משות
דו לא פירש שבחא, וככא הא פירש לה.
או דלמא: טעםיה דשמעאל בין דלית
לייה קרקע – מותח ברוביה. אמר להו:
אין לו לאו, ורפה בידיה.

איitemor, אמר רב נחמן אמר שמואל:
מעות – יש לו, שבח – אין לו, אף על
פי שפירש לו את השבח. מאט טעםם?
בינוי קרקע אין לו – שבר מעותיו עומד
ונוטל.

אייתיביה ורבא לרב נחמן: אין מוציאין
לאכילת פירות, ולשבח קרקע, ולבון
האשה והבנות מנכסים מושעבים,
מן פנוי תיקון העולם.

he can withdraw from the transaction and is not required to pay for the land. Once he has taken possession of the land, he cannot withdraw, as Reuven, the seller, can say to him: The purchase of the land was like purchasing a **tied sack**^N whose content is unknown and might not be worth anything. Since you were aware of that and accepted it, as you purchased it without a guarantee, you cannot withdraw your purchase. From when is it that he has taken possession? It is from when he walks along the borders^N of the field to inspect them.

And there are those who say: Even if he bought the field with a property guarantee, the buyer cannot withdraw from the sale, as the seller can say to him: Show me your document of **authorization to repossess**, which a court provides to a buyer when the land he purchased is seized from him by a third party who demonstrated that it did not belong to the seller, **and then I will pay you**. I do not wish to cancel the sale and reimburse you unless it is clear that the field is being taken from you legally.

§ It was stated that with regard to a case of **one who sells a field to another and it is found subsequently that it did not belong to the seller**, and the rightful owner repossesses the field from the buyer and the buyer then demands reimbursement from the seller, Rav says that the buyer has the right to be repaid the **money** that he paid for the field, **and he also has the right to compensation for the enhancement** of the value of the field while it was in his possession. And Shmuel says that **he has the right to the money, but he does not have the right to compensation for the enhancement**.

The students raised a dilemma before Rav Huna: What is the halakha if the seller specified that the buyer would receive payment for any **enhancement** in the value of the field in the event that the field is taken by the rightful owners? Is the reason for the opinion of Shmuel because the seller did not specify that the buyer would receive the **enhancement** when he sold him the field, but here, in this case, he did specify it? Or perhaps Shmuel's reason is that since the buyer is reimbursed but the seller does not have the right to the land, i.e., he is not given back the land, the transaction appears to have been a loan, and therefore payment for enhancement of the field appears to be interest. Rav Huna said to them: Yes and no, and the matter was unclear to him.

It was stated that Rav Nahman says that Shmuel says that he has the right to the **money**, but he does not have the right to the value of the **enhancement**, even if the seller specified in the deed of sale that he would compensate the buyer for the value of the **enhancement** in the event that the field was repossessed. What is the reason? Since the seller does not have the right to the land, the buyer appears to be standing and taking payment for the right to use his **money**, which is interest.

Rava raised an objection to the statement of Rav Nahman: It is taught in a mishna (*Gittin* 48b) that **one cannot appropriate liened property** that has been sold as payment for **consuming produce**^H or for **enhancement of land**, cases that will be explained later, or for the **sustenance of a man's wife and his daughters**^H after his death, to which he committed in his marriage contract. This is despite the fact that each of these financial liabilities or commitments predated the sale of the land. These ordinances were instituted by the Sages for the **betterment of the world**,^N as these liabilities are not of a fixed amount, and the purchaser of the liened property cannot assess the risk he is assuming should some other person come to collect compensation from that property.

ממשערדי הוא ולא מפקין, לא מבני חורון – מפקין. וקתי מיה: לשבח קרקען. מי לאו בליך מגול?

The mishna indicates that **that we do not appropriate liened property for these purposes, but we do appropriate unsold property.** **And in any event, it is taught** in the mishna that one of these purposes is **for the enhancement of land.** **What, is it not referring to a case where one purchases a field from a robber?**^N in which case the field did not belong to the seller? And it says that the seller must pay the buyer the value of the field's enhancement, provided he has unsold property.

לא, בבעל חוב.

The Gemara responds: **No, it is referring to a case of a creditor,** where one sold a field and his creditor subsequently repossessed it from the buyer due to the seller's prior debt to him. In that case, the sale of the land was valid, and it does not appear to have been a loan. Therefore, the seller's payment of the enhancement does not appear to be interest.

אי בבעל חוב – אין רישא: אין מוציאין לאכילת פירות, ואי בבעל חוב – בעל חוב מיאת ליה פירוי? והאמר שמואל: בעל חוב גובה את השבת, שבח – אין אבל פירות – לא!

The Gemara asks: If this mishna is referring to the case of a **creditor, say the first clause of the mishna: One cannot appropriate liened property for consuming produce.** This is apparently referring to a case where the field was full of unharvested produce and was appropriated from the buyer along with the produce. The buyer then claims payment for the value of the produce as well. **And if the reference is to the case of a creditor, does a creditor have the right to appropriate produce from the buyer? But doesn't Shmuel say that a creditor collects the value of the enhancement of the field?** This indicates that he **does collect the value of enhancement, but he does not collect the produce.**

אללא פשיטה בגזול ונגול, ומדרישה בגזול נגול – סיפה נמי בגזול ונגול!

Rather, it is **obvious** that the mishna is referring to the case of a **robber, who stole the field and sold it, and a robbery victim, who recovers his field, including the produce, from the buyer.** **And from the fact that the first clause is referring to a robber and a robbery victim, the latter clause, i.e., the case of the enhancement of land, is also referring to a robber and a robbery victim.** Rava's objection to Shmuel's opinion remains.

מידי אריא? זה כדראיתה וזה כדראיתה.

The Gemara rejects the premise: **Are the cases comparable?** **This case, with regard to consuming produce, is as it is, and that case, with regard to the enhancement of land, is as it is.** The former case is referring to a case of robbery and the latter case is referring to the case of a creditor.

והא לא תני הibi: לשבח קרקען ביצד? הרי שאלול שדה מתחבירו, והרי היא יוץאה מתחת ידו, בשחווא גובה – גובה את הקרקע מנכדים משועבדים, ושבח גובה מנכדים בני חורין.

The Gemara asks: **But it is not taught that way** in a *baraita* that elaborates on the mishna, stating: **What is the case in which one appropriates property for enhancement of land?** It is a case where **one robbed another of a field and it is appropriated by the court from his possession.** When he collects payment, he collects the principal, i.e., the value of the field itself, **from liened property, and he collects the enhancement from unsold property.**^H

היכי דמי? אילימא פרקתן, גזלו מפמאן גביה? אללא לאו – בגין שאלול שדה מתחבירו, ומברחה לאחר השבייה.

The Gemara asks: **What are the circumstances of the case?** If we say that the case is **as it is taught**^N in the *baraita*, which indicates that it is the robber who collects, **from whom does the robber collect?** Who owes him money? **Rather, is it not referring to a case where one robbed another of a field and sold it to another person, i.e., to a third party, and that third party invested in the field and enhanced it?** Accordingly, when the court appropriates the land from the purchaser, he collects the value of the enhancement from the unsold property of the robber who sold it to him. This interpretation poses a difficulty to Shmuel's opinion.

אמר לך: לאו תרוצץ קא מתרצת? גריין נמי בבעל חוב.

The Gemara answers: Shmuel could have said to you: **Did you not explain the baraita by adding information, i.e., that the robber sold the field to a third party? If so, you could also explain that rather than referring to a robber, it is referring to a creditor.** This interpretation would accord with the opinion of Shmuel.

NOTES

Payment of enhancement to one who bought from a robber – שבח לווק מגול: The early commentaries ask: If the true owner of the field profits from the enhancement, why should he not pay the purchaser, who caused the field to appreciate in value, for his profit? Some explain that the owner can claim that he is not legally answerable to the purchaser, and any claims that the purchaser has should be directed to the robber. If the robber then claims payment from the owner they will resolve the matter between themselves (*Geonim*).

Rashi avoids this question by explaining that the reference is to a case where the robber caused the field to depreciate in value and the purchaser then restored it to its prior value, so the land did not appreciate for the owner at all. Therefore, the purchaser has no claim against the owner.

Others explain that while the purchaser may recover from the owner any expenses from his investment in the field, he does not have the right to be paid the entire value of the enhancement (*Rosh; Tosafot*).

The Rashba explains that the reference is to natural enhancement of the value of the field, for which the owner owes nothing to the purchaser.

If we say as it is taught, etc. – אילימא כדקתי וכו': The Ritva asks why the Gemara does not suggest that the *baraita* means that the purchaser collects the principal from the robber's liened property and payment for the expenses invested in the enhancement in the field's value from the owner. He answers that the Gemara presumes that the *baraita* is referring to only one party that is liable to pay. This is true even according to Rav Ashi, who explains later (15a) that the *baraita* is taught disjunctively.

HALAKHA

He collects the principal from liened property and he collects the enhancement from unsold property – **גובה את הקרקע מנכדים משועבדים ושבח גובה מנכדים בני חורין:** When a creditor repossesses a field from a purchaser, although the purchaser collects the value of the field from the liened property of the seller, the enhancement in value that occurred since the sale may be collected only from the seller's unsold property (*Shulhan Arukh, Hoshen Mishpat* 115:1).

HALAKHA

חַפֵּר בָּה: And dug pits, ditches, and caves in the field – If one robs another of his land and damages it through his actions, e.g., by digging pits in it, the owner of the field collects payment for the damage from the unsold property of the robber. The same applies to payment for the produce of the field that was consumed by the robber (*Shulhan Arukh, Hoshen Mishpat* 372:1).

תְּאַשְׁמָע: לְאַכְלָתִ פִּירֹת בִּיצָּד? הָרִי
שְׂגָול שְׂדָה מִחְבָּרוֹ, וְהִי יְזָאָה
מִתְחַת יְדוֹ. בְּשַׁהֲוָא גּוֹבָה – גּוֹבָה אֶת
הַלְּקָרְן מִנְכָּסִים מִשְׁעוּבָּרִים, וִפְיוֹת גּוֹבָה
מִנְכָּסִים בֵּין חָרוֹן.

The Gemara suggests: **Come and hear another baraita** that elaborates on the mishna and poses a difficulty to the opinion of Shmuel: **What is the case in which one appropriates property for consuming produce?** It is the case of **one who robbed another of a field, and it is appropriated from his possession.** When he collects payment, he collects the principal from liened property and he collects the produce from unsold property.

הַיְכִי דְּמַי? אַיִלְמָא בְּדַקְתַּנִּי – גִּזְוָן
מִפְּאוֹן גּוֹבָה? אַלְאָ לְאָו – בְּגַנּוֹן שְׂגָול שְׂדָה
מִחְבָּרוֹ וּמִכְרָה לְאַחֲרֵי וְהַשְׁבִּיחָה.

The Gemara asks: **What are the circumstances?** If we say that the case is **as it is taught in the baraita**, which indicates that it is the robber who collects, **from whom does the robber collect?** Rather, is it not referring to a case where one robbed another of a field and sold it to yet another person, and that third person enhanced it?

אָמָר רְבָא: הַכָּא בַּמְאֵי עַסְקִין – בְּגַנּוֹן
שְׂגָול שְׂדָה מִחְבָּרוֹ מִלְאָה פִּירֹת, וְאַכְלָת
אֶת הַפִּירֹת, וְחַפֵּר בָּה בְּזָרוֹת, שִׁיחַן
וּמִעוֹרוֹת. בָּא נְגַזֵּל לִבְבוֹת קָרְן – גּוֹבָה
מִנְכָּסִים מִשְׁעוּבָּרִים, בָּא נְגַזֵּל לִגְבוֹת
פִּירֹת – גּוֹבָה מִנְכָּסִים בֵּין חָרוֹן.

Rava said: **With what are we dealing here?** It is a case where one stole a field full of produce from another, and he consumed the produce and dug pits, ditches, and caves in the field,⁴ damaging it. When the robbery victim comes to collect the principal, the value of the field before it was damaged, he collects it from the robber's liened property. When the robbery victim comes to collect the value of the produce from the robber, he collects it from unsold property.

רְבָה בֶּר בֶּן הַוֹּנָא אָמָר: בְּגַנּוֹן

Rabba bar Rav Huna said: It is a case where

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BACKGROUND

Thugs [mesikin] – **מִסְיקִין**: It appears that the term *mesikin* is referring to soldiers who were released from the Roman army. They would receive the right to land from the emperor, and they would dispossess the landowners they had defeated to claim this land. Sometimes they were given specific plots of land, and other times they were given permission to take whatever land they wished.

שְׁנַטְלָה מִסְיקִין, בָּא נְגַזֵּל לִגְבוֹת
קָרְן – גּוֹבָה מִנְכָּסִים מִשְׁעוּבָּרִים, בָּא
נְגַזֵּל לִגְבוֹת פִּירֹת – גּוֹבָה מִנְכָּסִים בֵּין
חוֹרוֹן.

רְבָא לֹא אָמָר רְבָה בֶּר בֶּן הַוֹּנָא,
הָרִי הִיא יְזָאָה מִתְחַת יְדוֹ – בְּדַרְיָא
מִשְׁמָעַ, וְרְבָה בֶּר בֶּן הַוֹּנָא לֹא אָמָר
כַּרְבָּא, הָרִי הִיא יְזָאָה מִתְחַת יְדוֹ –
בְּעִינֵּי מִשְׁמָעַ.

רְבָ אַשִּׁי אָמָר: לְצַדְדֵי קָתְנִי: בְּגַנּוֹן שְׂגָול
שְׂדָה מִחְבָּרוֹ מִלְאָה פִּירֹת, וְאַכְלָת
אֶת הַפִּירֹת, וּמִכְרָה אֶת הַשְּׁדָה, בָּא לְקַח
לִגְבוֹת קָרְן – גּוֹבָה מִנְכָּסִים מִשְׁעוּבָּרִים,
בָּא נְגַזֵּל לִגְבוֹת פִּירֹת – גּוֹבָה מִנְכָּסִים
בֵּין חָרוֹן.

gentile thugs⁵ took the field⁶ from the robber by force due to previous dealings between them. In that case, when the robbery victim comes to collect the principal, he collects it from liened property, and when the robbery victim comes to collect payment for the produce, he can collect only from unsold property.

The Gemara explains: Rava did not state his explanation of the baraita in accordance with the explanation of Rabba bar Rav Huna, because the phrase: **It is appropriated from his possession**, indicates that the field was taken from him legally and not by thugs. And Rabba bar Rav Huna did not state his explanation of the baraita in accordance with the explanation of Rava, because the phrase: **It is appropriated from his possession**, indicates that the field is appropriated in its unadulterated form, and was not damaged.

Rav Ashi stated that the baraita teaches its rulings disjunctively.⁷ According to Rav Ashi, the baraita is referring to a case where one robbed another of a field while it was full of produce, and he consumed the produce and sold the field. When, after the true owner recovers the field from purchaser, the purchaser comes to collect the principal from the robber, i.e., the amount that he paid for the field, he collects it from the robber's liened property. When the robbery victim comes to collect payment for the produce, he collects only from unsold property.

NOTES

Thugs took the field – **שְׁנַטְלָה מִסְיקִין**: Rashi writes that they took the field from the robber as a result of previous encounters with him, and he was the only Jew whose field was taken; if this were a widespread seizure of the property of Jews, it would be tantamount to a regional disaster, and the robber would be exempt (*Talmid Rabbeinu Peretz*).

Rav Ashi stated that the baraita teaches its rulings disjunctively – **רְבָ אַשִּׁי אָמָר לְצַדְדֵי קָתְנִי**: The reason that Rav Ashi does not explain the baraita in the manner that Rava or Rabba bar Rav Huna explain it is due to the difficulties raised in the Gemara with regard to each of their explanations. They do not explain the baraita in the manner that Rav Ashi explains it because the assertion that the baraita is taught disjunctively is inconsistent with the straightforward understanding of the baraita (Ritva).

בין לְבָבָא בֵּין לְכָה בַּרְבָּה הַוְנָא מִלְּוָה
עַל פֶּה הָוֹא, וְמִלְּוָה עַל פֶּה אַיְנוּ גַּוְבָּה
מִנְכָּסִים מִשׁוּעֲבָדִים!

הַכָּא בַּמְאֵי עַסְקִין – כְּשֻׁעַם בְּדַין
וְהַדּוּ רַבִּין.

אֵי הַכָּי, פִּירּוֹת נִמְיָן בְּשֻׁעַם בְּדַין עַל
הַקָּנָן, וְלֹא עַמְּדָה בְּדַין עַל הַפִּירּוֹת.
וְמַאי פְּסָקָא? קַתְמָא דְמִלְתָּא, כִּי
תַּבָּע אַיִשׁ – קְרָנָא תַּבָּע בְּרִישָׁא.

שָׁבָחָא?
שָׁבָחָא?

וְהַא אָמַר לַיה שָׁמוֹאָל לְזָקֵח מִגְּלָן לִית לְיה
בְּרַשְׁתָּה: אַמְלִיךְ וּבְתֹב שׂוֹפָרָא,
שָׁבָחָא וּפִירִי.

בְּמַאי? אֵי בְּבָעֵל חֹוב – מֵאֵית לְיה
פִּירּוֹת? וְהַאָמַר שָׁמוֹאָל: בְּבָעֵל חֹוב גַּוְבָּה
אַתְּ הַשְּׁבָח, שְׁבָח – אַיְן אַבְּלַפְּרֹוֹת –
לֹא. אַלְאַלְאַ – בְּלֹקָח מִגְּלָן!

אָמַר וּבְיָוסֵף: הַכָּא בַּמְאֵי עַסְקִין –
בְּגֹונֶשׁ לֹא קְרָקָע.

אָמַר לַיה אֲבִי: וְכִי מוֹתֵר לְלוֹת סָאה
בְּסָאה בְּמִקּוּם שִׁישׁ לֹא קְרָקָע?

אָמַר לַיה: הַתִּמ – הַלְּאָה, הַכָּא
וּבִינִי.

The Gemara raises a difficulty: According to both Rava and Rabba bar Rav Huna, the money that the robber owes the robbery victim has the status of a loan by oral agreement,⁴ as it is not accompanied by documentation, and one who is owed a loan by oral agreement cannot collect from liened property.

The Gemara answers: Here we are dealing with a case where the robber stood trial⁵ for his robbery and was found guilty, and he subsequently sold the land. Since he sold it after his liability was well known, the debt is equivalent to one that is written in a promissory note, and can be collected from liened property.

The Gemara asks: If so, the owner should collect payment for the produce as well as from liened property. The Gemara answers: It is referring to a case when the robber stood trial for the principal, but did not yet stand trial for the produce. The Gemara asks: And why was it stated without qualification? According to this explanation, the distinction is not between the principal and the produce but rather between debts for which the robber stood trial and those for which he did not stand trial. The Gemara answers: The normal way of things is that when a person files a claim, he first claims the principal and only afterward does he file claims with regard to other property, such as produce.

§ The Gemara questions the statement that Rav Nahman cited in Shmuel's name: But does Shmuel hold that one who buys land from a robber does not have the right to the value of the enhancement of the land?

But didn't Shmuel say to Rav Hinnana bar Sheilat, who was a scribe: When you write a deed of sale, consult with the parties, and if they agree, write that the seller commits to compensate the buyer, in the event that the land is appropriated from him, with superior-quality land, and for the value of the enhancement of the land and the produce as well? That was the standard formula for deeds of sale.

The Gemara clarifies: To what case is this statement referring? If it is a case where the seller's creditor repossesses the land, does a creditor have rights to the produce? But doesn't Shmuel say that a creditor collects the value of the enhancement of the field, indicating that he does collect the value of the enhancement, but he does not collect the produce? Rather, is it not referring to a case of one who buys land from a robber, and the owner subsequently repossesses it? This contradicts Shmuel's earlier statement that one who buys land from a robber does not have the right to the value of the enhancement.

Rav Yosef said: Here we are dealing with a case where the robber owns land,⁶ which he can return to the buyer instead of paying him money. In that case, the transaction appears to be a sale and not payment of interest for a loan.

Abaye said to him: But is it permitted for one to borrow a se'a⁸ of grain for return of a se'a in a case where he owns land? The Sages render prohibited executing a loan of produce for return of the same amount of produce, lest the price rise in the interim, causing the debtor to return a higher value than he borrowed, which appears to be interest. This is the halakha even in a case where the borrower owns land. Similarly, in the case where the robber owns land, the payment of the value of the enhancement resembles the payment of interest.

Rav Yosef said to him: The distinction between the two cases is that there, with regard to borrowing a se'a and returning a se'a, the case in question involves a loan, whereas here, it is a case involving a sale. Since the field was bought from the robber, the additional value that the robber pays does not appear to be interest.

HALAKHA

Loan by oral agreement – בְּלֹוה עַל פֶּה: With regard to any loan that is not written in a promissory note, when the creditor claims repayment from the debtor, he collects only from property that has not been sold (Shulhan Arukh, Hoshen Mishpat 39:1, 111:1).

Where the robber stood trial – בְּשֻׁעַם בְּדַין: If one who robs another of his field is sued in court and deemed liable to pay compensation beyond returning the field itself, e.g., if he destroyed the field or consumed its produce, the robbery victim collects his compensation even from property that the robber sold after the verdict (Shulhan Arukh, Hoshen Mishpat 372:1).

NOTES

Where the robber stood trial – בְּשֻׁעַם בְּדַין: The commentaries ask: If a court ruling renders the debt equivalent to a written one, why does the Gemara later (7a) state that if the court deems one liable to pay, he can subsequently claim that he already paid, without bringing evidence? Such a claim is unacceptable in the case of a debt written in a promissory note. One answer is that the reference here is to a robber who refused to adhere to the court ruling; consequently, his later claim that he paid the debt is not accepted (Rif). Others explain that the Gemara here is referring to a case where the court wrote a document stating their ruling that he owes the money. The novel element of this statement is that although the document was written against the will of the one obligated to pay, it is valid (Rabbeinu Hananel; Rabbeinu Efrayim).

Where the robber owns land – בְּשִׁישׁ לֹא קְרָקָע: In a case where the robber owns land, it is liened as a property guarantee to the buyer at the time of the transaction. Consequently, payment of the compensation resembles a transaction and not a loan with interest. Similarly, employing an act of acquisition over the reimbursement at the time of the initial transaction precludes resemblance to a loan with interest (Ritva). Although the liened land is worth more than the money the robber was paid, it is viewed as a sale at a discount (Ra'avad).

BACKGROUND

Se'a – סְאָה: A se'a is a measure of dry volume first mentioned in Genesis (18:6). It is used by the Sages as a point of reference for all measures. Every se'a contains six kav, which equals twenty-four log. Estimates of the modern equivalent of a se'a range from 7.2 to 14.4 l.

NOTES

I will...cleanse [amareik] – **אמיריך**: There are those who interpret this word to mean: I will complete, as it appears in *Yoma* 15a (*Melo HaRo'im*).

And this seller [zevina] consented – **זכבי בונא דן**: While many explain that the word *zevina* is referring to the seller, Rabbeinu Hananel explains that it is referring to the purchaser, stating that he agrees to this arrangement that if the field is repossessed from him, this is what he will receive (see Rambam; Ran; Ritva).

Indeed stronger – **יפה יפה**: Some commentaries explain this to mean that a gift has greater legal power than a sale with regard to other matters as well. For example, if one wishes to sell his field, the owners of the adjacent fields have precedence. This is not true if he wishes to give his field as a gift to a third party (*Talmidei Rabbeinu Yona*). Furthermore, when one sells a field, the assumption is that he does not include in the sale the pits and wells located in the field. When he gives a field as a gift, the assumption is that the pits and the wells are included (*Ra'avad*).

But our colleague Rav Huna interprets it – **והוא חבירין מוקים** – **תלמוד נהמן**: If Rav Nahman is aware of an alternative explanation of the *baraita*, why does he mention it as proof for Shmuel's opinion? Furthermore, why does Rav Nahman prefer to cite a proof from the *baraita* rather than from the mishna in *Gittin* cited earlier? The commentaries answer that rejecting the proof from the mishna would have been accomplished simply by establishing it as referring to a case where one purchases a field from a robber. It is more difficult to interpret the *baraita* in that manner because there is no mention of compensation for produce, leading to the assumption that it is referring to a case where a creditor repossesses the field (*Urim VeTummim; Maayan HaHokhma; Hokmat Manoah*).

**איפא דאמרי, אמר רב יוסף: הכא
במאי עסקין – בגון שקנו מידי.**

**אמר ליה אפיי: וכי מותר ללוות סאה
בסאה במקום שקנו מידי?**

**אמר ליה: החט – הלואה, והכא –
ביבי.**

**גופא, אמר שמואל: בעל חוב גובה
את השבת. אמר ר'בא: תדע, שך
בוחב לו מוכור לך: אני איקום
ואשרי ואדרבי ואמריך ובמי אילין
אני ועמליהו ושבחיהם וายיקום
קדמך, זכבי יבניא דן וקפל עלה.**

**אמר ליה ר' חייא בר אבון לר' בא:
אל מא מעטה, מותנה דלא כתיב לה
הכי, הכי נמי דלא טריף שבחה?
אמר ליה: אין.**

**ובו יפה כו' מותנה מפרק? אמר ליה:
אין, יפה יפה.**

**אמר רב נחמן: הא מותניתא מסיע
לייה לממר שמואל, והוא חבירין
מוקים לה במיליא אחרני, דתנייא:
המפרק שרה לתבירו, והרי היא
ויצאה מתחת ידו, קשחוא גובה –
גובה את הקרן מנכסים משועבדים,
שבח גובה מנכסים ביני חורי.**

There are those who say that this is what Rav Yosef said: Here we are dealing with a case where the buyer performed an act of acquisition at the time he purchased the land from the robber's possession, thereby formalizing a condition that should the field be appropriated from him, he will be reimbursed for any enhancement in its value. Since he acquired this right at the time of the purchase, it does not appear as though he is receiving interest.

Abaye said to him: But is it permitted for one to borrow a *se'a* for a *se'a* in a case where he performed an act of acquisition formalizing such a condition at the time he purchased the land from the lender's possession? Isn't it still considered to be interest and therefore prohibited?

Rav Yosef said to him: There, with regard to borrowing a *se'a* and returning a *se'a*, it is a case involving a loan, whereas here it is a case involving a sale. Buying at a low price and selling for a higher price is not considered to be interest.

The Gemara returns to discuss Shmuel's statement itself that was mentioned above. Shmuel says: A creditor collects the value of the enhancement of the land. Rava says: Know that this is true, as this is the standard formulation that the seller writes to the buyer in a deed of sale: I will stand and silence and purify and cleanse^N this sale, i.e., I accept responsibility if the land is repossessed by my creditor. The text of the document continues: This applies to this property itself, and the labor invested in it, and its enhancement; and I will present its value before you. The witnesses then sign the document and attest: And this seller consented^N and accepted upon himself all of the commitments enumerated in the document. Evidently, a creditor can collect the value of the enhancement.

Rav Hiyya bar Avin said to Rava: If that is so, in the case of a gift, where the owner does not write this formulation to the recipient in the deed of gift, would you indeed say that the creditor does not repossess the value of the enhancement of the land from the recipient of the gift? Rava said to him: Indeed.^H

Rav Hiyya bar Avin said to Rava: But is the legal power of a gift stronger than that of a sale, as in the case of a sale the buyer loses the value of the enhancement if the land is repossessed? Rava said to him: Yes, it is indeed stronger.^N Since in a case of repossession, the recipient of the gift does not receive the value of the enhancement back from the one who gave him the gift, he is under no obligation to relinquish this value to the creditor.

Rav Nahman said: This following *baraita* supports the opinion of Mar Shmuel; but our colleague, Rav Huna, interprets it^N as referring to other matters, so it does not support Shmuel's opinion. As it is taught in a *baraita*: With regard to a case of one who sells a field to another, and it is appropriated from the buyer's possession, as it was liened to the seller's debt, when the buyer then collects compensation from the seller, he collects the principal from liened property, and he collects the enhancement from unsold property. Evidently, the value of the enhancement is also repossessed by the creditor.

HALAKHA

Paying enhancement in the case of a gift – **שבח במתנה:** If the one gave another his field as a gift, and the creditor of the one who gave it subsequently came to collect the field for a debt, he may collect only what it was worth at the time that it was given as a gift; he may not collect the value of the field's

enhancement due to the investment of the recipient. If the field appreciated in value on its own, the creditor may collect the entire value. Some say that even in such a case he may not collect the value of the enhancement (*Shulhan Arukh, Hoshen Mishpat* 115:3, and in the comment of Rema).

- והוּנָא חֶבְרֹן מַזְקִים לְה בְּמִילֵי אֲחָרִים
בְּלֹקָח מַנוֹלָן.

תניא אידך: המוכר שדה לוחבו והשביטה,
ובא בעל חוב וטרפה. כשהוא גובה, אם
השבח יותר על הייצאה – נטלת את השבח
ambil החקיע, והייצאה מבעל חוב. ואם
הייצאה יתרה על השבח – אין לו אלא
היוצאה שיורו שכח מבעל חוב.

והא, שמואל במא מזקים לה? אי בלאקון
מנולן – קשייא רשא. דאמר שמואל: לוקון
מנולן לית ליה שכחה. אי בבעל חוב –
קשייא רישא וספא. דאמר שמואל: בעל
חוב גובה את השבח!

אי בעית אימא בלאקון מנוולן, בגין שיש לו
קרקע. אי נמי – בשקנו מדו.

But our colleague, Rav Huna, interprets it as referring to other matters, i.e., to the case of one who buys a field from a robber. In that case, the robbery victim is certainly entitled to the value of the enhancement of the land.

It is taught in another baraita: In a case of one who sells a field to another, and the buyer enhances it, and then a creditor comes and repossesses the field, in this case when the buyer collects compensation, the halakha is as follows: If the value of the enhancement of the field is greater than the buyer's expenses in generating that enhancement, he takes the difference in value between the enhancement and the expenses from the owner of the land, i.e., the seller, and he is compensated for the expenses by the creditor. And if the expenses were greater than the enhancement of the field, he receives compensation for his expenses, only up to the value of the enhancement, from the creditor.

The Gemara asks: But how does Shmuel interpret the baraita? If it is referring to one who buys a field from a robber, the first clause in the baraita poses a difficulty to Shmuel's opinion, as Shmuel says that one who buys a field from a robber does not have the right to compensation for the enhancement of the field, and the baraita states that the buyer is entitled to compensation for the enhancement. If it is referring to a creditor, then both the first clause and the latter clause in the baraita pose a difficulty to Shmuel's opinion, as Shmuel says that a creditor collects the enhancement of the field and needs to pay nothing.

The Gemara suggests two answers: If you wish, say that the baraita is referring to one who buys a field from a robber, in a case where the robber owns land with which he can compensate the buyer instead of paying him money. In that case, the compensation does not appear to be interest. Alternatively, it is referring to a case where the buyer performed an act of acquisition at the time he purchased the land from the robber's possession, thereby formalizing a condition that should the field be appropriated from him, he will be reimbursed for any enhancement in its value. Since the buyer acquired the enhancement at the time he paid for the field, it does not appear as if he is receiving interest.

If you wish, say instead that it is referring to a creditor, but nevertheless it is not difficult according to the opinion of Shmuel. Here, in the baraita, the reference is to enhancement

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המג'יע לכתפים, כאן – בשכח שאינו מג'יע
לבתפים.

of the field that reaches one's shoulders,ⁿ i.e., the produce that grew due to the improvements made by the purchaser is almost fully grown and ripened, and it can soon be harvested and carried upon one's shoulders. At that point, the produce is considered independent of the land and is therefore not collected by the creditor unless he pays for the expenses. And there, in Shmuel's statement that the creditor collects the enhancement without paying compensation, the reference is to enhancement that does not reach one's shoulders, i.e., whose growth is not almost complete. At that point, the produce is considered to be part of the land.

The Gemara asks: But there were daily incidents of this type, and Shmuel would collect payment from buyers even for enhancement that reaches one's shoulders, without requiring the creditors to compensate them for their expenses.

זה מא מעשים בכל יום, וכא מבוי שמואל
אפילו בשכח המג'יע לכתפים!

NOTES

שכח שאינו מג'יע לבתפים: This phrase may be understood in several different ways. Most commentaries interpret it to mean produce that is fully grown and ready to be harvested and carried on the shoulders of a laborer (Rabbeinu Hananel; Rif; Rashi). Rashi qualifies this interpretation, stating that the produce is clearly not completely ready to be harvested, as if that were the case, it would not be liable to debts at all. A second interpretation is that the phrase is referring to any produce that will eventually be harvested and removed from the land. This category excludes enhancements to the field itself, such as enrichment of the soil or growth of its trees (*Tosafot on Bava Kamma* 95b; Rabbeinu Tam, *Sefer HaYashar*). A third interpretation is that it is referring to an enhancement that is the result of manual labor, rather than enhancements that occur without intervention (Rashba, citing Rabbeinu Tam; Ra'avad, citing Rav Hai Gaon).

HALAKHA

Can dismiss the creditor – מִשְׁמַלְיָה לְהַבְּעֵל חֹב: When a creditor attempts to collect a field as payment of the debt owed to him by the individual who sold the field to its current owner, the current owner has the right to pay off the debt and retain the field. The creditor cannot demand payment in the form of the field. Nevertheless, if this field was set aside as designated repayment of the debt, the purchaser cannot dismiss the creditor by paying the debt in cash (Rambam *Sefer Mishpatim*, *Hilkhot Malve VeLoveh* 21:5; *Shulhan Arukh*, *Hoshen Mishpat* 115:2).

Recognized that it was not the seller's – הַכְּרִיר בָּה שְׁאַינְהָ: If one purchases a field with the knowledge that it is stolen property and then the owner recovers it, the purchaser is entitled to be reimbursed by the robber. Additionally, if he enhanced the value of the field, he may collect the value of the enhancement or the expenses incurred while enhancing the value of the property, whichever is less, from the true owner of the field. Some hold that he is not entitled to any compensation from the owner of the field (Rambam *Sefer Nezikin*, *Hilkhot Geneiva VaAveda* 9:7; *Shulhan Arukh*, *Hoshen Mishpat* 373:1, and in the comment of Rema).

One who betroths his sister – הַקְּדֹשׁ אֶת אֲחוֹתָו: One who betroths his sister obviously realizes that the betrothal does not take effect. Therefore, the money that he gave her for the betrothal was certainly given as a gift. This is in accordance with the opinion of Shmuel (Rambam *Sefer Kinyan*, *Hilkhot Zekhiya UMattana* 6:20; *Shulhan Arukh*, *Even HaEzer* 50:2).

LANGUAGE

Designated repayment [apoteiki] – אַפּוֹתֵיקִי: From the Greek ὑποθήκη, *hypothēkē*, meaning a pledge or mortgage.

NOTES

He does not have the right to be reimbursed for the enhancement – שְׁבָח אָין לוֹ: Since there clearly was no sale, the money paid for the land is essentially a loan. Consequently, if the purchaser is compensated for the enhancements he made to the field in addition to receiving back the money he paid to purchase the field, it would constitute a form of interest (*Ge'onim*).

But didn't Rav and Shmuel already disagree about this principle one time – הַהָא פָּלִיא בִּיה תְּרֵא וַיְמַנְאָה: This question does not imply that a Sage would never repeat a statement that he had made. Rather, there is no reason to repeat the same principle in a different context if there is no additional novelty. Likewise, with regard to a halakhic dispute, there is no reason for the Sages to repeat the dispute in a second context if the foundation of the dispute is obviously identical.

לֹא קָשַׁיא: הָא – רַמְפִיק בֵּיה בְשִׁיעוֹר
אֲעוֹא שְׁבָחָא, הָא – רַלְאָ מַפִּיק בֵּיה
אַלְאָ בְשִׁיעוֹר אֲרוּעָא, דִּיחַיב לֵיה
שְׁבָחָה וּמַסְלִיק לֵיה.

The Gemara answers that this is **not difficult**; these instances when Shmuel did not require the creditor to compensate the purchaser were cases where the creditor was **owed by the debtor the same amount** of money as the value of the land and the enhancement. That *baraita*, which states that the creditor must compensate the purchaser for the enhancement, is referring to a case where he was owed by the debtor **only the same amount** of money as the value of the land, without the enhancement, as in this case the creditor gives the buyer the value of his enhancement to the land and thereby dismisses from the buyer any claim to the land.

הַנִּיחָא לְמַמְּן דְּאָמוֹן: אֵי אִית לֵיה זָוִי
לְלוֹחֵךְ – לֹא מִשְׁמַלְיָה לֵיה לְבָעֵל
חֹב – שְׁפִיר, אַלְאָ לְמַמְּן דְּאָמוֹן: בַּי
אִית לֵיה זָוִי לְלוֹחֵךְ – מִשְׁמַלְיָה
לֵיה לְבָעֵל חֹב, נִימָא לֵיה: אַילְוָה
לִזְוִי – הַוָּה מַסְלִיק נִינְזָה מַפְלָה אֲרוּעָא,
הַשְּׁתָּא דְּלִית לִזְוִי – הַבְּ לִגְרָבָא
דְּאֲרוּעָא בָּאֲרוּעָא שִׁיעֹור שְׁבָחָה!

הַכְּא בַּמְאֵי עַסְקִין – בְּגַנְז שְׁעַשְׂאָן
אַפּוֹתֵיקִי, דְּאָמוֹר לֵיה לֹא יָהָא לְבָנָן
פְּרֻעָן אַלְאָ מוֹן.

The Gemara asks: **This works out well according to the one who says that even if the purchaser has money, he is unable to dismiss the creditor** from his claim to the land by paying its value. But according to the one who says that when the purchaser has money he can dismiss the creditor^h by paying the value of the land, let the purchaser say to him: **If I had money, I would have dismissed you from the entire plot of land. Now that I do not have enough money to pay off the entire debt, give me at least a *se'a* of land from the land that you wish to repossess, which is the amount of my enhancement.**

The Gemara answers: **Here we are dealing with a case where the debtor, who sold this land to the purchaser, set aside his land as designated repayment [apoteiki]ⁱ for the debt, as he said to the creditor: You will be repaid only from this piece of land.** Consequently, the buyer cannot dismiss the creditor from any part of the land, even though he enhanced its value.

הַכְּרִיר בָּה שְׁאַינְהָ שָׁלֹו וּלְקָחָה. אָמֵר
רַב: מִעוֹת – יִשְׁלֹו, שְׁבָח – אֵין לוֹ.
וּשְׁמוֹאָל אָמָר: אַפְּיָלוּ מִעוֹת אֵין לוֹ.

¶ In a case where one who bought a field from a robber recognized that it was not the seller's,^h i.e., he knew that it was stolen property, but he purchased it nevertheless, when the true owner repossesses the field Rav says that the purchaser has the right to be reimbursed for the money that he paid for the field, but he does not have the right to be reimbursed for the enhancementⁿ of the field in his possession. And Shmuel says that he does not have the right to be reimbursed even for the money he paid for the field, as he knew that the sale was invalid.

בַּמְאֵי קְמִיפְלָגִי? רַב סִבְרָ: אָדָם יוֹצֵע
שְׁקָרְקָע אֵין לוֹ, גַּמֵּר וּנְתַן לְשָׁוּם:
פְּקָדוֹן, נִימָא לֵיה לְשָׁוּם פְּקָדוֹן סִבְרָ:
לֹא מִקְבָּל.

The Gemara asks: **With regard to what principle do Rav and Shmuel disagree?** The Gemara answers: **Rav holds that such a person knows that the sale is invalid and that he does not have the right to the land, and therefore he clearly resolved to give the money to the seller as a deposit.** The Gemara asks: **But if that is his objective, let him say to the seller explicitly that he is giving him the money as a deposit.** The Gemara answers: **The purchaser thought that the seller would not accept it as a deposit, and therefore he gave it to him in this fashion so that he would hold it for him in the interim.**

וּשְׁמוֹאָל סִבְרָ: אָדָם יוֹצֵע שְׁקָרְקָע אֵין
לוֹ, גַּמֵּר וּנְתַן לְשָׁוּם מִתְנָה, וַיְמַנְאָה
לְשָׁוּם מִתְנָה! כְּסִפְאָה לֵיה מִלְתָא.

And Shmuel holds that such a person knows that he does not have the right to the land, and therefore he clearly resolved to give the money to the seller as a gift. The Gemara asks: **But if so, let him say to the seller that he is giving him the money as a gift.** The Gemara answers: **If he would say so explicitly, the matter would be embarrassing for the seller. Therefore, the purchaser used this ploy in order to give a gift to the seller.**

וְהָא פָּלִיא בִּיה תְּרֵא וַיְמַנְאָה, דְּאִיתְמָר:
הַמְּקֹדֵשׁ אֶת אֲחוֹתָו, רַב אָמָר: מִעוֹת
חֹזּוֹן, וּשְׁמוֹאָל אָמָר: מִעוֹת מִתְנָה.
רַב אָמָר: מִעוֹת חֹזּוֹן, אָדָם יוֹצֵע
שְׁאַלְיָן קִידּוּשִׁין תָּפְסִין בְּאֲחוֹתָו, גַּמֵּר
וּנְתַן לְשָׁוּם פְּקָדוֹן, וַיְמַא לֵיה לְשָׁוּם
פְּקָדוֹן: סִבְרָ: לֹא מִקְבָּל מִיְתָה.

The Gemara asks: **But didn't Rav and Shmuel already disagree about this principle one time?ⁿ** As it was stated concerning one who betroths his sister:^h Rav says: **The money he gave for the betrothal is returned**, since the betrothal does not take effect; and Shmuel says: **This money is a gift**, meaning that he wished to give a gift to his sister and he did so in this manner. Rav says: **The money must be returned since a person knows that betrothal does not take effect with his sister, and he decided to give the money to her for the purpose of a deposit.** The Gemara raises a difficulty: **And let him explicitly say to her that he is giving her the money for the purpose of a deposit.** The Gemara answers: **He thought she would not accept it from him.**

ושמויאל אמר: מעות מתנה, אָרְם
יודע שאין קידושון תופשי באחותו,
ונגמר ונגנן לשום מתנה. ונימא לה
לשום מתנה כסיפה לה מילתה.

צ'ריכא, דאי איתמר בהא - בהא
קאמרו רב, דלא עבדי אינשי דיברי
מתנות לנוראה. אבל גבי אחותו -
אימא מודה ליה לשמיאל.

ואין איתמר בהן - בהן קאמרו
שומויאל, אבל בהא - אימא מודה
לייה לר'ב, צ'ריכא.

בן לר'ב דאמר פקדון, בין לשומויאל
דאמר מתנה, האילארעא במאיקא
נחתית, ופירות היכי אכילה

סבר: אנה איזוחות לארעא, ואיעבד
וaicol בגוניה, כי היכי דהוה קא
עבד איזוג, לכוי אתי מיריה דארעא,
וועיא נהורו לר'ב דאמר פקדון - פקדון
לשומויאל דאמר מתנה - מתנה.

אמר ר'בא: הילכתא, יש לו מעות ויש
לו שבת, ואך על פ' שלא פירש לו
את השבת. הביר בה שאינה שלו,
ולקחה, מעות - יש לו, שבת - אין
לו.

אחריות טעות סופר הווא, בין בשטרו
הלהאה בין בשטרו מקה וממבר.

בעא מיניה שומויאל מרוב: חור ולקחה
מבעליים הראשונים מהו? אמר ליה:
מה מביך לו ראשן לשני - כל בכות
שחתבא לידי.

And Shmuel says: The money is considered to be a gift because a person knows that betrothal does not take effect with his sister, and he decided to give the money to her for the purpose of a gift. The Gemara again raises a difficulty: And let him explicitly say to her that he is giving it to her for the purpose of a gift. The Gemara answers: He thought the matter would be embarrassing to her and she would refuse to accept the money. He therefore attempted to give it her by an alternative method.

The Gemara explains: It is necessary to present the disagreement in both instances because if it were stated only with regard to that case, of buying property from a robber, one might have reasoned that it is specifically in that case that Rav says that the money returns to the purchaser, as people do not tend to give gifts to non-relatives, and therefore it is clear that the purchaser intended for the money to be a deposit. But with regard to the case of one who betroths his sister, one might say that Rav concedes to Shmuel that the money was given as a gift. It is therefore necessary to present Rav's opinion in both cases.

And conversely, if the disagreement were stated only in that case, i.e., betrothal of one's sister, one might have reasoned that it is only in that case that Shmuel says the money is a gift, but in this case, where the purchaser is a non-relative, one might say that Shmuel concedes to Rav that the money is a deposit. It is therefore necessary to present the disagreement in both instances.

The Gemara asks: Both according to Rav, who says that the money is a deposit, and according to Shmuel, who says that the money is a gift, when this purchaser takes possession of the land despite knowing that his acquisition is invalid, with what justification does he take possession of the land, and how does he justify consuming its produce?

The Gemara answers that the purchaser reasons: I will take possession of the land,^N and work it, and consume the produce that is in it, just as the seller would have done. And when the owner of the land comes and claims it, the money that I paid for it will be designated for a different purpose. According to Rav, who says that the money is a deposit, it will be a deposit, and according to Shmuel, who says that the money is a gift, it will be a gift.

Rava said: With regard to the aforementioned halakhic disputes, the halakha^N is that in a case where one bought a field and it turned out to be stolen, the purchaser has the right to demand that the seller return the money he paid for the land, and he also has the right to demand that the seller compensate him for the value of the enhancement, in accordance with the opinion of Rav. And this is the halakha even if the seller did not explicitly obligate himself to compensate him for the enhancement. But if the purchaser recognized that the field was not the seller's and he purchased it anyway, he has the right to demand that the seller return the money he paid for the land, but he does not have the right to demand compensation for the enhancement, in accordance with the opinion of Rav.

Rava issued another ruling with regard to a dispute cited above: Omission of the guarantee of the sale from the document is a scribal error.^H This is the halakha both with regard to promissory notes and with regard to deeds of buying and selling, i.e., deeds of sale.

§ Shmuel asked Rav: If one robbed another of a field and sold it, and then purchased it from the original owner,^{NH} what is the halakha? Can the robber now repossess the field from the person to whom he sold it before he legally owned it? Rav said to him: No, he cannot. What did the first person, the robber, sell to the second person, the purchaser, when he sold him the field? He sold him any rights to the field that will come into his possession. Consequently, the rights that the robber has now acquired are transferred to the purchaser.

NOTES

אֲנָא אַיזוּת לְאַרְעָא וכו': Some commentaries explain that the buyer benefits from his actions insofar as he is not liable to pay for the produce that he consumes. The Ritva explains that there is no problem of interest in receiving reimbursement for the expenses he incurred in enhancing the value of the field, because he is entitled to reimbursement from the original owner rather than from the seller. This is in accordance with the principle that one who enhances the value of another person's field on his own initiative is reimbursed for his expenses.

ר'バ אמר הילכה וכו': Why did Rava not simply state that the halakha is in accordance with the opinion of Rav in these disputes? One possible reason is that Rava wished to clarify that the purchaser is paid for the enhancement even if the seller did not explicitly obligate himself to do so (Rashba; Rosh). Furthermore, Rava wished to add the principle that omission of a guarantee of compensation from a document is regarded as a scribal error, which was not stated by Rav (Ramban).

חוּר וַלִקְחָה מִבְעָלִים הָרָאשׁוֹנִים: Most commentaries understand this halakha to be referring to a case where the purchaser did not know that the land was stolen (Rabbeinu Hananel; Rif; Rashba). Some commentaries understand this to apply even when the purchaser did know (Ritva; Meiri).

HALAKHA

Omission of the guarantee of the sale from the document is a scribal error – אַזְרָקִית טֻעָת סָפֶר: All promissory notes and deeds of transaction are treated as though they include a guarantee that if the field is repossessed, the seller will compensate the buyer for his loss, even if they do not contain any explicit guarantee. The omission of this guarantee is considered a scribal error, unless the document explicitly states that there is no such guarantee (Rambam Sefer Nezikin, Hilkhos Gezeila VaAveda 18:1; Sefer Kinyan, Hilkhos Mekhira 19:3; and Sefer Mishpatim, Hilkhos Malve VeLoveh 18:3; Shulhan Arukh, Hoshen Mishpat 39:1, 111:1, 225:1).

חוּר וַלִקְחָה מִבְעָלִים הָרָאשׁוֹנִים: If one robbed another of a field and sold it, and subsequently bought it from the owner, the field now becomes the property of the one who bought it from the robber. The assumption is that the robber went to the trouble of buying the field in order to maintain his reliability (Rambam Sefer Nezikin, Hilkhos Gezeila VaAveda 9:9; Shulhan Arukh, Hoshen Mishpat 374:1).

NOTES

What is the reason...it is preferable for him – **מאי טעמא?** Many commentaries interpret this question as asking why it is that the robber cannot repossess the field from the purchaser once he legally buys it from the original owner. If so, this question appears to be superfluous, as the Gemara already explained that he sold the purchaser whatever rights he would acquire in the land. Some explain that since those rights did not yet exist when the robber sold the land to the purchaser, the Gemara is asking why the sale is valid according to the opinion, accepted as *halakha*, that one cannot acquire an item that does not yet exist (*Rashba*). Others explain that the principle that one who sells property to another sells him all of his rights to the property could be implemented conversely: When the owner sold the field to the robber, he sold him all of his rights, including the right to repossess the field from the buyer. Therefore, the Gemara asks why Rav chooses to implement this principle such that the robber cannot repossess the field (*Tosefot HaRosh*).

מאי טעמא? בר זוטרא אמר ניחא ליה דלא נקירה גולנה. רב אשי אמר ניחא ליה דליך בהמנותה.

The Gemara asks: What is the reason that the robber would buy the land he had already sold in order to retroactively uphold the sale? Mar Zutra said: It is preferable for himⁿ not to be called a robber by the purchaser when the original owner demands he return the field. Rav Ashi said: It is preferable for him to maintain his reliability, i.e., to be considered an honest person.

מאי ביניוהו? אי בא ביניוהו דמית לוקת מאן דאמר ניחא ליה דלא לך נקירה גולנה.

The Gemara asks: What is the practical difference between these two opinions? The Gemara answers: The practical difference between them is in a case where the purchaser died. According to the one who says that the robber bought it because it is preferable for him not to be called a robber,

Perek I

Daf 16 Amud a

הַא מית ליה. ומאן דאמר ניחא ליה דליךום בהמנותה – בהדי בני נמי ניחא ליה דליךום בהמנותה.

in this case, since the purchaser already died, the owner is not present to call the seller a robber, so he presumably did not intend to retroactively validate the sale. And conversely, according to the one who says that he bought the land because it is preferable for him to maintain his reliability, it is preferable for him to maintain his reliability with regard to the purchaser's children too.

סוף סוף קרו ליה בני לוחך גולנה!

The Gemara challenges this distinction: Ultimately, the purchaser's children will also call the seller a robber if the field is appropriated from them. Therefore, there is no difference between the two explanations of Rav's ruling in a case where the purchaser has died.

אלא, אי בא ביניוהו דמית גולן. מאן דאמר ניחא ליה לאיני ש דלא לך נקירה גולן – הָא מית ליה. למאן דאמר ניחא ליה דליךום בהמנותה – הִכְנֵי, אף על גב דמית, ניחא ליה דליךום בהמנותה!

Rather, the practical difference between them is in a case where the robber himself died, and his children subsequently bought the field from its owner. According to the one who says that the motivation is that it is preferable for a person not to be called a robber, he already died and this motive is not applicable. While according to the one who says that his motivation is that it is preferable for him to maintain his reliability, in this case also, even though the robber died, it is still preferable for him to maintain his reliability, i.e., one is concerned about the reputation he will have after his death, not only while he is alive.

סוף סוף קרו לבניה בני גולנה!

The Gemara rejects this distinction as well: Ultimately, if the sale is revoked after his death, people will call his children the children of a robber. Just as one does not want to be called a robber during his lifetime, one presumably does not want his children to be called the children of a robber after his death.

אלא, אי בא ביניוהו דיבבה במתנה. מאן דאמר ניחא ליה דליךום בהמנותה – מתנה נמי ניחא ליה דליךום בהמנותה, מאן דאמר ניחא ליה דלא נקירה גולנה – אמר לו ליה: מאי גולנה מינך?

Rather, the practical difference between them is in a case where the robber gave the land to the recipient as a gift^h rather than selling it. According to the one who says that it is preferable for him to maintain his reliability, in the case of a gift also, it is preferable for him to maintain his reliability. While according to the one who says that the motivation is that it is preferable for him not to be called a robber, in this case the robber could say to the recipient of the gift: What did I rob you of? You incurred no loss.

HALAKHA

Where the robber gave the land as a gift – **יף דיבבה במתנה:** If one robbed another of a field and gave it to someone else as a gift, and he then subsequently bought it from the robbery victim, the assumption is that he wishes to validate the gift. This

is in accordance with the opinion that the robber's motivation is to maintain his reputation as a reliable individual (*Rambam Sefer Nezikin, Hilkhot Gezeila 9:9; Shulhan Arukh, Hoshen Mishpat 374:1*).

- **פְשִׁיטָא:** וּבָנָה, אֲוֹרֶתָה וַיַּהֲבֵה בַמְתֻנָה -
לֹאו לְאוֹקְמָה קְפִי לְקַח קָא בְּעֵי.

§ The Gemara discusses various scenarios relating to the *halakha* of one who sold stolen land and then acquired it from the robbery victim. It is **obvious** that if, after selling the stolen land, the robber **sold it again** to another person, or **bequeathed it**, or **gave it as a gift**, it is clear that the robber **does not want to establish it before**, i.e., transfer ownership of it to, the original **buyer**. Therefore, the robber's purchase of the land from the robbery victim is not assumed to be for the purpose of validating the original sale. The buyer can demand compensation from the robber for the invalid sale, but the land remains in the possession of the second buyer or the recipient of the gift or the inheritance.

גְּפַלָּה לִיה בִּירוֹשָׁה – יְרוֹשָׁה מִמְּפִילָה הִיא.
לֹאו אֲיוֹהו קָא טְרֵח אַפְתָּרָה.

גְּבִי אֲיוֹהו בְּחוֹזֶן, חִינְיאָ: אֵיתָ לִיה
אָרְעָא אַחֲרִיּוֹתִי, וְאָמָר הָאֵי בְּעִינָה
לְאוֹקְמָה קְפִיה לְקַח קָא בְּעֵי.

וְאֵי לָא – זֹזִי הָוָא דְבָעֵי אַפְרָעוּי.

Likewise, it is clear that if the land that he stole and then sold later **came into his possession** not by purchase but as an **inheritance**,^H the buyer does not have the rights to it, as an **inheritance** is acquired **passively**, and the robber **did not make an effort to acquire it**. Here too, the buyer can claim only compensation and not the land itself.

If the robber **collected** the land that he had sold as payment for a **debt owed to him**^H by the robbery victim, we need to **see** the circumstances. If the robbery victim **has other land** from which the robber could have collected the debt, and nevertheless the robber said: I want to collect **this** land, apparently the robber **wanted to establish it before the buyer** and validate the sale.

And if the robbery victim does **not** have other land, and the robber had no choice as to which land to collect, there is no reason to assume that the robber was attempting to validate the sale. He merely **wanted to be paid money** for his debt, and not to secure the land for the buyer.

הַבָּהַ נְהַלְילָה בַמְתֻנָה – פְלִגִּי בָה וּבָאַחֲרָה
וּרְבִינָא. חֶד אָמָר: מְתֻנָה בִּירוֹשָׁה, דְהָא
מִמְּפִילָה. וְחֶד אָמָר: מְתֻנָה כְמַכְרָה, דְאֵי לֹא
דְטָרָח וְאַרְצִי קְפִיה – לֹא חָוו יְהִיב לִיה
מְתֻנָה, לְהָכִי טְרֵח אַרְצִי קְפִיה, כִּי הַיְיִי
דְלִיקָום בְּהַמְנוּתָה.

With regard to a case where the robbery victim gave the land as a **gift to the robber**,^H Rav Aḥa and Ravina disagree. One says that a gift has the same status as an **inheritance**, as it is also acquired **passively**, and one says that a gift has the same status as a sale. This is because were it not for the fact that the robber took the trouble to ingratiate himself with the owner, he would not have given it to him as a gift. It is clearly for this reason that the robber took the trouble to ingratiate himself with him, i.e., in order to validate the sale and thereby **maintain his reliability**.

עַד אִימָת נִיחָא לִיה דְלִיקָום בְּהַמְנוּתָה?
אָמָר רַב הָוָנָא: עַד שָׁעַת הַעֲמָדָה בְּדִין.

The Gemara asks: **And until when** can it be assumed that the robber bought the land because it is **preferable for him**^H to **maintain his reliability**? Rav Huna says: Until the time of standing trial.^N Once the purchaser takes the robber to court, it is too late for the robber to protect his reputation, as the purchaser has demonstrated that he does not consider the robber to be trustworthy.

NOTES

עד שָׁעַת הַעֲמָדָה בְּדִין:
Some commentaries explain that this is referring to when the owner takes the purchaser to court in order to retrieve his property. Others say that it is referring to the point when the purchaser has already lost the field and takes the robber to court for selling him property that did not belong to him. After that point, the robber does not try to protect his reputation anymore, because the purchaser has already damaged his reputation by taking him to court (Rashba; Rabbeinu Yehonatan).

Sold it again, bequeathed it, or gave it as a gift...came into his possession as inheritance – ...
בְּנִיה אֲוֹרֶתָה וַיַּהֲבֵה בַמְתֻנָה – גְּפַלָּה לִיה בִּירוֹשָׁה: If one sold stolen property and then bought it from the robbery victim, and later sold it, bequeathed it, or gave it as a gift to another individual, he has thereby indicated that he was not interested in validating the original sale and did not acquire the property for the first one to whom he sold the stolen land. According to the Rema, this is the *halakha* only if the robber sold, bequeathed, or gave away the property before the first purchaser acquired the land. If he did so after the first purchaser acquired the land, his actions have no effect, as the land was already acquired by the first purchaser. If, after selling the land, the robber inherited it from the robbery victim, the land belongs to the robber, as there is no indication that he intends to validate the sale (Rambam Sefer Nezikin, Hilkhot Gezeila VaAveda 9:11; Shulḥan Arukh, Hoshen Mishpat 374:2).

HALAKHA
גְּבִי אֲיוֹהו בְּחוֹזֶן: Collected the land for a debt owed to him – In a case where one robbed another of a field and then sold it, and later collected the field from the robbery victim as payment for a debt, if there were other fields that the robber could have collected from the owner and he chose to collect this field, it is apparent that he did so in order to validate his sale. Therefore, the field belongs to the purchaser. If there was no other field to collect, the assumption is that he merely intended to collect the debt (Rambam Sefer Nezikin, Hilkhot Gezeila VaAveda 9:12; Shulḥan Arukh, Hoshen Mishpat 374:3).

Gave the land as a gift to the robber – **הַבָּה נְהַלְילָה בַמְתֻנָה –** There is no conclusion in the Gemara with regard to this dispute, and later authorities disagree as to the *halakha*. The principle is that the *halakha* follows the lenient opinion in monetary matters, meaning that the property remains in the possession of the individual currently holding it. The question is how that principle applies in this case. The *Gra* holds that the purchaser is considered to be in possession of the land and therefore keeps

it, in accordance with the opinion that receiving the land as a gift is considered the same as buying it. The *Rema* holds that since it is disputed whether the purchaser acquired the land, it is not considered to be in his possession, and it belongs to the robber (Rambam Sefer Nezikin, Hilkhot Gezeila VaAveda 9:13; Shulḥan Arukh, Hoshen Mishpat 374:4).

עַד אִימָת נִיחָא לִיה וּכְלָה: And until when it is preferable for him, etc. – The assumption that the robber wishes to maintain his reliability, and that this motivates him to acquire the field for the purchaser, is limited in scope. Once the purchaser has sued the robber and the court has begun to announce that the robber's property is for sale in order to reimburse the purchaser, this assumption no longer applies. Consequently, if the robber then buys the field from the robbery victim, it is not assumed that he did so in order to validate his sale of the field to the purchaser (Rambam Sefer Nezikin, Hilkhot Gezeila VaAveda 9:10; Shulḥan Arukh, Hoshen Mishpat 374:1).

NOTES

Authorization – אדריכתא: This is referring to a legal document drafted by the court authorizing a creditor to locate and take possession of any property belonging to his debtor in repayment of the debt.

By means of what does this purchaser acquire this land – **הַיְיָ לְזֹעֲקֵב בְּמַאֲיוֹןָה אֶרְעָא:** The early commentaries are troubled by the fact that this question was seemingly answered earlier (15b), as the Gemara explained that when the robber bought the land from the robbery victim, his intention was to acquire it for the purchaser. The Rashba explains that the question here refers specifically to the case where the robber collected the land as payment for a debt. In this case the answer mentioned earlier is insufficient (Rashba). Others suggest that the earlier explanation is insufficient in any case, as even if the robber intends to acquire the land for the purchaser, the robbery victim and the purchaser do not have this in mind. Therefore, the Gemara inquires further, asking by which legal mechanism the purchaser acquires the land. The Gemara's answer is that the satisfaction that the robber received is equivalent to a monetary payment, which effects a transfer of ownership from the robber to the purchaser (Rivash; Ran).

Takes the trouble and brings to him and resolves to transfer its ownership to him – **טְרוּחׁ וּמִיְתִּיתִ לְיהָ נָמָר וּמִקְנֵן לְהָ:** Some commentaries maintain that the phrase: And resolves to transfer its ownership, indicates that the robber must inform the robbery victim that he is acquiring the land for the benefit of the purchaser. As a result, the robbery victim also intends that the land be transferred to the possession of the purchaser (Rosh).

This objection need not be introduced inside – **אֵין צְרִיכָה לְנִימָם:** Rashi explains that the objection is clear and compelling; however, he also cites the explanation of the *ge'onim* that the objection is insubstantial. According to this understanding, Rava's reply is that, in fact, it requires very extensive thought. Another interpretation is that it is referring to bringing the question inside the study hall for evaluation by the great Sages (Ritva). Yet another interpretation of Rabbi Abba bar Zavda's statement is that this question should not be hidden but rather publicized, as it is compelling (*Tosefot HaRash*). Finally, there is a variant text cited in the *Arukha* that reads: This need not be brought inside, or even to the periphery of the inside. That is to say, not only is there no reason to bring this question into the study hall, there is not even a need to bring it to the corridor leading to the study hall. According to that reading, the point is that the objection does not present a real difficulty.

HALAKHA

He has said nothing – לא אמר בלאום: One cannot sell an item that he does not own, just as one cannot sell an item that does not yet exist. Consequently, if one sells a field that he expects to buy, or fish that he expects to catch in his net, or his expected inheritance, the transaction does not take effect. According to the Rema, if one sells a specific item that he expects to inherit, the sale is valid (Rambam *Sefer Kinyan, Hilkhot Mekhira* 22:5; *Shulhan Arukh, Hoshen Mishpat* 211:1).

That which I will inherit from my father today – מה שאריש אבוקה היום: The Sages instituted an ordinance that if necessary, an heir may sell a small amount of property that he stands to inherit, in order to procure whatever funds are necessary for the funeral of his relative who is dying. Similarly, they instituted that a destitute fisherman may sell the fish that he will catch that day, so that he will have food to eat (Rambam *Sefer Kinyan, Hilkhot Mekhira* 22:6; *Shulhan Arukh, Hoshen Mishpat* 211:2).

**חייא בר רב אמר: עד דמתא אדריכתא
לידיה. ר' פפא אמר: עד דמתחלן יומי
אכורתא.**

**מתקיף לה רב כי בר חמאת: מכדי, חייא
ולוקח במאוי קני להאי אראעא - בהאי
שטרוא, חי שטרוא חספה בעלה
וואו!**

**אמר ליה ר' בא: תהא במאמיינו,
בזהו הוא הנאה דלא קאמו ליה מידי,
וaea סמיך עלייה - טוח ומיתיה ליה.
גמור ומקני ליה.**

**מתיב רב ששת: מה שאירש מאבאו
מכור לך, מה שתעללה מעודתי מכור
 לך - לא אמר בלאום. מה שאירש מן
אבא היום מכור לך, מה שתעללה
מעודתי היום מכור לך - דבריו
קמיini**

**אמר ר' רמי בר חמאת: הדא גברא זה
תויבתא!**

**אמר ר' בא: גברא קא חזינא, ותויבתא
לא קא חזינא. הכא - סמכא דעתה,
והכא - לא סמכא דעתה. הכא
סמכא דעתה - דאיל טוח ומיתיה
ליה, כי היכי דלא נקוריה גולנא. הכא
לא סמכא דעתה.**

**שלוחה לקביה ורבוי אבא בר זבדא.
אמר להו: זו איננה צריכה לפנים. אמר
ר' בא: זו צריכה לפנים ולפניהם.
הכא - סמכא דעתה, והכא - לא
סמכא דעתה.**

Hiyya bar Rav says that the robber would still buy the land from the owner in order to maintain his reliability up until the time that a document of **authorization**ⁿ by the court to locate and seize property from the robber comes into the purchaser's possession. It is only once the robber avoids immediately reimbursing the purchaser and the court is compelled to authorize the purchaser to appropriate the robber's property that the robber's reliability is no longer a factor. **Rav Pappa** says that the robber's reliability remains a motive to acquire the field until the **days of announcement begin**. During the days of announcement the court assesses the value of the robber's property in order to compensate the purchaser.

§ Rami bar Hama objects to Rav's statement, the focal point of this discussion, that the robber transfers to the buyer any rights to the land that he might acquire; after all, by means of what mode of acquisition does this purchaser acquire this land?ⁿ It is by means of this deed of sale that the robber gave him. The purchase is invalid, as this document is merely a shard, since the robber did not own, at the time of the sale, the land he purported to sell.

Rava said to him in response: Let Rav's statement be understood as applying to a case where the buyer said to the robber that he trusts him to resolve the legal issue. By virtue of that satisfaction that the robber received from the buyer's not having said anything to him to question his rights to the land, but rather having relied on him, the robber therefore takes the trouble and brings to him the opportunity to purchase the land and resolves to transfer the land's ownership to him.ⁿ

Rav Sheshet raises an objection to Rav's statement from a *baraita* that states that if one says: That which I will inherit from my father is hereby sold to you, or: That which my net will catch is sold to you, he has said nothing,^{hb} as one cannot sell that which he does not yet own. But if one says: That which I will inherit from my father today^h is hereby sold to you, or: That which my net will catch today is sold to you, his statement stands. The first *halakha* of the *baraita* indicates that one cannot sell that which he does not yet own, which contradicts Rav's ruling.

Rami bar Hama said about this objection: **This is the great man and this is his refutation** of Rav's opinion; i.e., this refutation is compelling.

Rava said in response: I see that he is a great man, but I do not see the conclusive refutation. Here, in the case of validating a sale, the purchaser relies on the seller and is confident he will acquire the land; but there, in the case of the *baraita*, the purchaser does not fully rely on the seller. The Gemara explains: Here, in the case of validating the sale, the purchaser relies on the seller to go take the trouble and provide him with the land so that he will not be called a robber. Whereas there, in the case of the *baraita*, the purchaser does not fully rely on the seller, as it is uncertain whether the seller will actually inherit his father's property or catch anything with his net.

The Gemara relates that the Sages sent Rav Sheshet's objection and presented it before Rabbi Abba bar Zavda for his evaluation. Rabbi Abba bar Zavda said to them: This objection need not be introduced insideⁿ the study hall for further clarification, as it is clear and compelling. Rava disagreed and said: This objection needs to be brought inside the study hall and inside the innermost area of the study hall. In other words, it should be examined carefully, as it is not compelling. This is because here, the purchaser relies on the seller, whereas there, in the case of the *baraita*, the purchaser does not fully rely on the seller.

BACKGROUND

He has said nothing – לא אמר בלאום: This statement is based on the halakhic principle that one cannot transfer ownership of an item that has not yet come into being. This principle applies not only with regard to an item that does not yet exist, e.g., produce that has not yet grown, but also with regard to an item that is

not yet in one's possession. Additionally, one cannot transfer ownership of an item to a person who is not yet born. Only in certain exigent circumstances did the Sages accord legal validity to transactions of this kind.

זהה עובדא בפומבדיתא ואוותבה.
אמר להו רב יוסף: זו איננה צירכה
לפניהם. ואמר לויה אבוי: צירכה לפניהם
ולפניהם. הכא - סמיכא דעתיה,
הכא - לא סמיכא דעתיה.

ומאי שנא רישא ומאי שנא סיפא?
אמר רבבי יוחנן: סיפא מה שאירע
מאבא היום - ממשום כבוד אבוי, מה
שותעה מוצורתה היום

There was an incident in Pumbedita⁸ where the court ruled in accordance with the opinion of Rav, and the Sages refuted the ruling based on the *baraita* cited earlier. **Rav Yosef said to them:** This objection need not be introduced inside the study hall for further clarification, as the objection is clear and compelling. **And Abaye said to him:** It needs to be brought inside the study hall and inside the innermost area of the study hall, as here the purchaser relies on the seller, whereas there the purchaser does not fully rely on the seller.

The Gemara asks concerning the *baraita* cited earlier: **And what is different in the first clause**, where the sale is not valid, and **what is different in the latter clause**, where the sale is valid? In both cases, the seller does not yet own the merchandise. **Rabbi Yoḥanan said:** In the latter clause, when the seller states: I am selling that which I will inherit from my father today, he does so for the honor of his father. He believes that his father will die that day, and his intention is to raise money for the burial. Consequently, the Sages instituted an ordinance that the sale is valid. Similarly, in the case of a person who says: That which my net will catch today is sold to you,

BACKGROUND

פומבדיתא: A city on the Euphrates River, northwest of Neharde'a, Pumbedita was an important center of the Babylonian Jewish community for many generations. As early as the Second Temple period, Pumbedita was called the Diaspora, as it was considered the center of Babylonian Jewry. After Neharde'a was destroyed in a war, some scholars from its yeshiva relocated to Pumbedita, and from then on Torah study continued there without interruption until the end of the geonic period.

The scholars of Pumbedita were particularly famous for their acumen. The most famous heads of the Pumbedita Yeshiva were its founder Rav Yehuda, Rabba, Rav Yosef, Abaye, Rav Nahman bar Yitzhak, Rav Zevid, and Rafram bar Pappa. The Pumbedita Yeshiva was still prominent in the geonic period as well, often overshadowing the yeshiva of Sura. The last heads of the Pumbedita Yeshiva were the renowned *ge'onim* Rav Sherira Gaon and his son, Rav Hai Gaon.

Perek I

Daf 16 Amud b

משום כדי חייו.

אמר רב הונא אמר רב: האומר לחתבו
שדה שאני לוקת, ל凱שא קתנה קנויה
לן מעכשי - קנה.

אמר רבא: מסתברא מלטה דרב
בשדה סתם, אבל בשורה זו - לא, מי
ימור דקונבון לה נינה?

והאללים! אמר רב אפילו בשדה זו.
- מחייב, רב במאן אמרה לשמעתיה
ברבי מאיר, דאמר: אדם מקונה דבר
שלא בא לעולם.

the Sages instituted an ordinance that the sale is effective because of their concern for his immediate livelihood.ⁿ

§ The Gemara continues to discuss the matter of selling property that one does not yet own. **Rav Huna says that Rav says:** With regard to one who says to another: With regard to the field that I am about to buy,^h when I buy it, it will be retroactively transferred to your ownership from now, the stipulation takes effect, and once he buys it, the second party has acquired the field.

Rava said: The statement of Rav is reasonable only with regard to an unspecified field, as one is capable of buying a field. But with regard to a case where one says to another that he is selling him this specific field that is not yet in his possession, the transaction does not take effect, as who is to say that the current owner will sell it to him? Since it is not in his power alone to purchase the field, it is tantamount to an entity that has not yet come into being, and therefore he cannot sell it to anyone.

The Gemara emphatically rejects Rava's qualification of Rav's statement in the form of an oath: By God! Rav said his statement even in a case where the seller said: This field. After all, in accordance with whose opinion did Rav state his *halakha*? It was in accordance with the opinion of Rabbi Meir, who says that a person can transfer ownership of an entity that has not yet come into the world.

NOTES

Because of concern for his livelihood – **כדי חייו**: Rav Hai Gaon understands this to mean that his sale is valid only in a case where it is necessary for the fisherman's immediate livelihood, i.e., what he needs to sustain himself for a single day. Others

disagree with this qualification. They explain that while concern for one's livelihood was what motivated the Sages to validate the sale, once they instituted this ordinance, it applies in any event (see Ramban; Ran).

HALAKHA

The field that I am about to buy – **שדה שאני לוקת**: If one sells a field that is not yet in his possession, the sale is invalid, and both the buyer and the seller can withdraw from the sale. This

is contrary to the opinion of Ray, who accepts the opinion of Rabbi Meir that one can sell an item that has not yet come into being (*Shulhan Arukh, Hoshen Mishpat* 211:1).

HALAKHA

התקדשי ל' לאחרו – Be betrothed to me after I convert – In a case where a man says to a woman: You are hereby betrothed to me after I convert, or: After you convert, or after any condition comes into effect that would enable him to betroth her, since he cannot betroth her at that moment, the betrothal is ineffective even when the stipulated circumstance materializes. This is in accordance with the opinion of the Rabbis in the *baraita* (Rambam *Sefer Nashim, Hilkhot Ishut* 7:14; *Shulhan Arukh, Even HaEzer* 40:5).

BACKGROUND

Your *yavam* – **יבניך**: A man whose married brother died without children is obligated by Torah law to marry his deceased brother's widow or perform *halitza* (see Deuteronomy 25:5–10). As long as neither levirate marriage nor *halitza* has taken place, it is prohibited for the widow to marry another man. By Torah law, levirate marriage is effected by the act of sexual intercourse. The Sages instituted the practice of *ma'amor*, in which the deceased husband's brother, the *yavam*, betroths the widow, the *yevama*, even though this betrothal is not effective by Torah law without intercourse. Sexual intercourse consummates the marriage between the deceased's brother and the widow, and she is thereafter considered his wife in all respects. Nowadays, in most Jewish communities the *yavam* is required to free his *yevama* of her obligation through *halitza*, and he is not permitted to marry her through levirate marriage.

Halitza – **חילוץ**: Through the ceremony of *halitza*, the widow of a man who died without children is freed from the obligation to marry one of her deceased husband's brothers, and she is permitted to remarry (Deuteronomy 25:7–10). The term *halitza*, literally meaning removal, is derived from the central element of this ceremony, which involves the removal by the widow of a special sandal from the foot of one of her deceased husband's brothers. *Halitza* must be performed before a rabbinical court. The *halakhot* governing this ceremony are discussed in detail in tractate *Yevamot*.

NOTES

לאחר יבניך: The underlying assumption is that the levirate bonds, which prohibit the *yevama* from marrying anyone other than her *yavam*, render betrothal ineffective. This is difficult, as the *halakha* is that only prohibitions against sexual intercourse that subject transgressors to the punishment of *karet* render betrothals ineffective, whereas the prohibition against a *yevama* marrying or engaging in intercourse with a man who is not her *yavam* is not punishable by *karet*. Apparently, this *tanna* agrees with the opinion of Rav that this prohibition is an exception to the general *halakha*, due to an interpretation of the verses that invalidates betrothal in this case (Rashba).

כבר שיטתא כבר שבע: Normally, testimony with regard to what one saw as a minor is not valid. In this case, however, Rav Nahman was merely confirming a *halakha* that was already known (Ya'avetz).

Shev u'man – **תעלטאתה ואדריכתך**: A bill of authorization is a legal document drafted by the court authorizing a creditor to locate and take possession of any property belonging to his debtor in repayment of the debt. As for a bill of foreclosure, some explain that this is referring to a promissory note that specifies land that will serve as security for repayment of the loan (Rashba). In *Tosefot HaRid*, the text is emended and the mention of bills of authorization deleted, as after a bill of authorization is written, the debtor can repay the debt and have the bill torn up; there is no need for a deed of sale to be written for the property that the debtor wishes to retain.

דתניתא: האומר לאשה התקדשי ל'
לאחר שאתג'יר לאחר שתתג'יני לאחר
שאטחו לאחר שתשתחו לאחר
שימות בעליך לאחר שיחילוץ לך
יבמך לאחר שתמות אחותיך – איןנה
מקודשת.

As it is taught in a *baraita*: With regard to one who says to a woman: Be betrothed to me after I convert,^H or: After you convert, or if he is a slave and says: After I am freed, or if she is a maid servant and he says: After you are freed, or if he says to a married woman: After your husband dies, or if he says to a widow waiting for her *yavam* to perform the ritual through which he frees her from her levirate bonds [*halitza*]: After your *yavam*^B performs *halitza*^B with you,^N or if he says to his wife's sister: After your sister dies (see Leviticus 18:18), in all these cases she is not betrothed. Since he cannot betroth her at the present moment, his attempt at betrothal is ineffective.

רבי מאיר אומר: מקודשת.

Rabbi Meir says: She is betrothed. Rabbi Meir holds that one can acquire that which is not yet available, and the acquisition will take effect once the item is available. In this case as well, the betrothal will take effect once it becomes possible for her to become betrothed to him.

זה לא אשה בשרה זו דמיין, ואמר רבי
מאיר מקודשת.

And isn't the case of betrothing a specific woman comparable to the case of selling this specific field? And yet, **Rabbi Meir says that she is betrothed.** It is therefore clear that Rav, who accepts the opinion of Rabbi Meir, holds that the sale is effective even if the seller specified a particular field.

אמר שמואל: הופיעא שטר הדקנאה
בשוק – יוציאו לבעלים, דאי מושום
רכבת לולות ולא לוה – הא שעבד
נפשיה, ואי מושום פרעון – לא חיישין
לפערון, דאם איתא דפרעה – מקרע
זהו קרע ליה.

§ Shmuel says: With regard to one who finds a deed of transfer, i.e., a promissory note that establishes a lien on the debtor's property from the date it is written, regardless of whether or not he borrows the money at that time, **in the marketplace, he must return it to its owner**, i.e., the creditor, as, if one were to be concerned because of the possibility that the debtor wrote the note intending to borrow money, but did not borrow it in the end, he is nevertheless liable, since he committed himself to pay at the time it was written. **And if one were to be concerned because of the possibility that repayment had already taken place, this is not a justified concern, as in general we are not concerned that there was repayment, as, if it were so that the debtor had repaid it, he certainly would have torn up the note.**

אמר רב נחמן: אבא מן ספרי דייני דמ"ר
שמואל הו, והיינה כבר שיטה בבר
שבע, וזכרנו דהוי מבריז ואמר: דמיין
שטר' אקניניתא דמשתבחין בשוקא –
נחריןחו למרייה.

Rav Nahman^P said: My father was one of the scribes of the judges of Mar Shmuel, and I was about six or seven years old,^N and I remember that they made an announcement, saying: Those deeds of transfer that are found in the marketplace should be returned to their owners, the creditors, in accordance with the opinion of Shmuel.

אמר רב עמרם אף אנן תניננא: כל
מעשה בית דין – הר' זה יחויר, אלמא:
לא חיישין לפערון, אמר ליה רבי זира:
מתנייתין בשטר חלטאתה וארכפתא,
דלאו ביט פערון נינה.

Rav Amram said: We, too, learn similarly in a mishna (20a): One must return any court enactment, i.e., a promissory note that has been authenticated by the court, to its owner. **Apparently, we are not concerned that there may have been repayment.** Rabbi Zeira said to him: The mishna is not proof for Shmuel's ruling, as it is stated not with regard to all court enactments but with regard to bills of foreclosure, which award property to a creditor as payment for the debt owed to him, and bills of authorization^N to locate and seize property from the debtor, both of which are not subject to repayment.

PERSONALITIES

רב נחמן – **רב נחמן**: Rav Nahman bar Ya'akov was a Babylonian *amora* of the second and third generations of *amora'im*. While he also cites statements of both Rav and Shmuel, his primary teacher was Rabba bar Avuh, Rav's student. Rav Nahman acquired most of his Torah knowledge at the yeshiva in Mehzoa. While he never formally headed one of the Babylonian academies, many of the Sages of the next generation were his students, including the great *amora* Rava.

In his youth, Rav Nahman was already recognized as a prodigy. He married Yalta, a member of the Exilarch's family,

who was a learned and strong-willed woman. Subsequently, Rav Nahman was appointed a judge in the Exilarch's court in Neharde'a. In that capacity, Rav Nahman became an expert in monetary matters, to the extent that the Gemara concludes that in monetary matters his opinion is always accepted.

While Rav Nahman was known to have a forceful personality, he was also considered to be one of the most pious men of his generation, and the Gemara cites numerous examples of his acts of kindness.

אמור ורבא: והני לא בני פרעון מינהו? וזה
אמרי נהרדען: שבא הדר עד פריסר יוחי
שׂתא. ואמר אמרים: אנא מנחדען אנה,
וסביברא ל' דשומא הדר לעוזם.

אליא אמר ורבא: התחם הינו טעמא. דאמורי:
אי הווא דאפסיד אנטישיה, דבעדינא
דפרקעה אבשי ליה למקרעה לשטריה.
אי נמי - למקתב שטרא אחריניא עיליה.

דמדיינא ארצה לא בעיא למשהדר, ומושום
ועשית הישר והטוב בענין ה' הווא דאמורי
רבנן תתרדר, הלקבן מירשא הווא דקה זיין
אבשי ליה למקתב שטר זיין.

גב' שטר חוב Mai Aik'a למייר? אם
איתא. דפרקעה איבשי ליה למקרעה
לשטריה. אימורו, אשפטומי קא משפטמי
לייה, דאמורי ליה: למחזר יהבנה לך, דהשתא
לייתיה גבאי. אי נמי - אפישיטי דספרא
זיד ליה.

אמור ובי אבחו אמר ובי יוחנן: המוציא
שטר חוב בשוק, אף על פי שבתו בו
הנפק - לא יחוירו לביצים.

לא מיבעיין היכא דלא כתוב בו חנפק -
דאכפה למייר כתוב לילו ולא לה, אלא
אפיק' כתוב בו הנקף, ומאי נמי - דמקומים.
לא יחויר, דחוישין לפרעון.

איתיביה ובי ירמיה לרבי אבחו: כל מעשה
בית דין הרי זה יחויר אמר ליה: ירמיה בר רבי,
לא כל מעשה בית דין שי. אלא בגין
שהותיק בפרק.

Rava said to him: And are these bills not subject to repayment? But didn't the Sages of Neharde'a say that after property is repossessed in order to pay an unpaid debt based on the court's appraisal of its value, the property is returned if the debtor pays the debt until twelve months of the year have passed after the repossession? And furthermore, Ameimar said: I am from Neharde'a, and nevertheless, I hold that property repossessed based on an appraisal of an article's value can always be returned.⁴ If the debtor pays his debt, he can reclaim his property at any point. Consequently, even bills of foreclosure or authorization might be obsolete, and nevertheless the mishna states that one who finds them must return them to the creditor.

Rather, Rava said that the mishna is not proof for the ruling of Shmuel for a different reason: There, this is the reason that the documents are returned: As I can say that if the debtor has already repaid his debt, it is he who caused the loss to himself, as at the time he repaid his debt he should have either ripped up the document, or alternatively, he should have demanded of the creditor to write another document for the debtor's redeemed property, returning it to him.

The reason for a new document to be written is that according to the letter of the law, the land need not be returned by the creditor to the debtor, and it is due to the principle: "You shall do that which is right and goodⁿ in the eyes of the Lord" (Deuteronomy 6:18), that the Sages said that the land should be returned. Therefore, it is as though the debtor is purchasing it anew, and the creditor must write a bill of sale.

The Gemara explains why this reasoning is not applicable to deeds of transfer or other promissory notes. With regard to a found promissory note, what is there to say to justify returning it to the creditor? That if it is so that the debtor repaid the debt, he should have ripped up the promissory note? This is not so, as one could say that the creditor avoided returning the note, as he said to him: Tomorrow I will give you the note, as it is not with me now. Alternatively, the creditor may have held back the note as security for the debtor's payment of the fee of the scribe who wrote the promissory note. Consequently, it is possible that the debtor was never given back the note and was unable to rip it up, through no fault of his own.

§ Rabbi Abbahu says that Rabbi Yohanan says: With regard to one who finds a promissory note in the marketplace, even if a ratification^b of the court is written in it, he may not return it to the owner, i.e., the creditor.

The Gemara explains: It is not necessary to say that one should not return the promissory note in a case where a ratification is not written in it, as in that case there is room to say that the debtor wrote it intending to borrow money, but he did not end up borrowing it, and therefore the creditor has no rights to the promissory note. But even if a ratification is written in it, one should not return it. And what is this authorization? It is an approval that the promissory note has been ratified by the court, which examined the note and the signatures of the witnesses and found everything to be in order. The reason one may not return the promissory note to the creditor is that we are concerned that repayment has already taken place.

Rabbi Yirmeya raised an objection to Rabbi Abbahu from the mishna that states (20a): One must return any court enactment, i.e., a promissory note that has been authenticated by the court, to its owner. Apparently there is no concern about repayment. Rabbi Abbahu said to him: Yirmeya, my son, not all court enactments are equal. Rather, the ruling that one must return such a document applies only in a case where the debtor has the presumptive status of one who deniesⁿ his debts, and therefore, if he claims the debt was repaid, his claim is not accepted.

HALAKHA

That repossession based on an appraisal can always be returned – **דשותם הדר לעוזם**: When a debtor, whose land was seized by the creditor, pays his debt, the seized land returns to the debtor. The reason for this ordinance is the Torah's mandate that one do that which is right and good, which requires one to go beyond the letter of the law when doing so does not entail financial loss. Some hold that the right to repay the loan and reclaim the land is limited to the debtor and his heirs. It does not apply if the debtor sold the land to another person and the creditor then collected it from that purchaser. In such a case, the purchaser cannot repay the loan at a later date and thereby redeem the land (Rema). The ability to reclaim property is limited to land, and it does not apply to movable property (Rambam Sefer Mishpatim, Hilkhot Malve VeLoveh 22:16; Shulhan Arukh, Hoshen Mishpat 103:9).

NOTES

You shall do that which is right and good – **ועשׂתָה בְּטוֹב**: The Ramban (Leviticus 19:2) explains that the Torah instructs one to act in an ethical and moral manner, beyond its explicit prescriptions. There are specific halakhot that the Sages instituted as applications of this concept. Some of these were instituted as absolute legal obligations enforceable by the rabbinical court, while others were formulated merely as guidelines for laudable ethical behavior (Maharatz Hayyut).

Where the debtor has the presumptive status of one who denies – **שהזק בפרק**: Some commentaries explain that this is referring to one who was proven to have lied in another situation, and it is certainly the case that one who had previously lied with regard to this debt is no longer believed if he claims that he repaid his debt (Ra'avad). Others hold that even if he lied with regard to this debt, the document may not be returned to the creditor, as the fact that it appears to have been discarded is an indication that the debt had been repaid (Rashba; Tosafot).

BACKGROUND

Ratification – **הנפק**: This term refers to the endorsement of a legal document by the court certifying that it has examined the document and the signatures of the witnesses and found everything to be in order. A promissory note with such an endorsement may be presented for collection and requires no further substantiation.

אמור ר' בא: ומשום דהותיק בפ' ח' וא' מני'א,תו לא פרע כל' ? אלא אמר ר' בא: מיתניין בשטר חלטאתה אדריכתא, וכדרובי זירא.

כפ'ן, הויל ואתא ל'ין נימא ביה מל'תא. דאמר רב יוסף בר מנויומי אמר רב נחמן: אמרו לו צא תן לו

In response to this explanation of that mishna, Rava said: But does it necessarily follow that just because a debtor assumed the presumptive status of one who denies his debts after one time that he did so, he will never again repay a debt that he owes, and therefore the promissory note should be returned to his creditor? Rather, Rava said: The mishna is referring to a bill of foreclosure, or a bill of authorization, which are not subject to repayment, in accordance with the explanation of Rabbi Zeira.

The Gemara adds: And with regard to the topic of one who denies his debts, since it came to us, let us say something about it. As Rav Yosef bar Minyumi said that Rav Nahman said: If the court said to the litigant against whom they ruled: Go and give the other litigant what you owe him,

Perek I

Daf 17 Amud a

NOTES

Go give him...you are liable – צא תן לו...חייב אתה: In contrast to Tosafot, who follow the straightforward meaning of the Gemara, the Ritva understands that there is actually no halakhic distinction between these two declarations by the court. According to his interpretation, both are equal expressions of a final verdict. The Gemara is referring only to the fact that the debtor could mistakenly believe that when the judges say: You are liable to pay, it was not the final verdict and they are still deliberating the matter.

And the witnesses testify concerning him that he did not repay it – **זה העדים מעדין אותו שלא פרע**: There are various interpretations of this statement. Rashi interprets this to mean that they testify that the creditor demanded payment and the debtor refused to pay. The *ge'onim* and several of the early commentaries interpret that the debtor claims to have repaid the debt at a specific time, and the witnesses contradict this and testify that he did not repay the debt at that time (Ramban; see Ritva).

Assumed the presumptive status of one who denies – דהותיק בפ'ן: There are those who explain that since the debtor is a confirmed liar, he must repay the debt in the presence of witnesses so as not be accused of lying about the repayment (Rashba). Rabbi Elhanan Wasserman suggests that since he is a confirmed liar, he is disqualified from making any further claims about this matter, and therefore his claim of repayment is not accepted without the support of witnesses or a receipt.

אמר: פרעתה – נאמן. בא מל'ה לכתוב – אין כותבין נונטנן לו.

"חייב אתה ל'ין לו," ואמר: פרעתה – אין נאמן. בא מל'ה לכתוב – פותבי נונטנן לו.

רב זвид משמיה דבר נחמן אמר: בין "צא תן לו" בין "חייב אתה ל'ין לו" ואמר פרעתה – נאמן. בא מל'ה לכתוב – אין כותבין נונטנן לו.

אל'א, אי איבא לפלא – ה'כ ה'וא דאייבא לפלא. אמרו לו צא תן לו אמר פרעתה, והעדים מעדין אותו שלא פרע, וחזר ואמר פרעתה – ה'ותיק בפ'ן לאו'תו ממון.

and later on the debtor said: I repaid him, his claim is deemed credible. He must take an oath and is exempt from payment. Therefore, if the creditor comes and asks the court to write an authorization for him to appropriate the property of the debtor, they do not write an authorization and give the document to him.^h

By contrast, if the court merely said: You are liableⁿ to give him what you owe him, but did not complete the process by saying: Go and give it to him, and later on the debtor said: I repaid the debt, his claim is not deemed credible. The assumption is that since he did not pay on his own without the need for litigation, he does not intend to pay until the court finalizes its verdict against him. Therefore, since the debtor is suspected of lying, the creditor takes an oath and collects what he is owed. In this case, if the creditor comes and asks the court to write an authorization for him to appropriate the property of the debtor, they write the document and give it to him.

Rav Zevid says in the name of Rabbi Nahman: Both in the case where the court said: Go and give him what you owe him, and in the case where the court said: You are liable to give him, if the debtor subsequently said: I repaid the debt, his claim is deemed credible. Therefore, if the creditor comes and asks the court to write an authorization, they do not write the document and give it to him.

Rather, if there is room to make a distinction between different cases, this is how there is room to distinguish^h between them: If the court said to the debtor: Go and give him what you owe him, and subsequently the debtor said: I repaid the debt, and the witnesses testify concerning him that he did not repay itⁿ when the debt was demanded in their presence, and later the debtor said again: I repaid the debt, in such a case, the debtor has assumed the presumptive status of one who deniesⁿ his debts with regard to that money, and he is no longer believed when he claims that he repaid the debt unless witnesses substantiate his claim.

HALAKHA

They do not write and give to him – אין כותבין נונטנן לו: With regard to a case where one of the litigants admitted that he was liable to pay, and the judges said: Go and give the claimant what you owe him, or said: You are liable to pay him, if the litigant later claimed that he paid, his claim is accepted after he takes an oath of inducement. Therefore, if the other litigant later asks the court to write a document attesting to the admission, the court does not write it, as the money may have already been repaid

(Rambam Sefer Mishpatim, Hilkhot To'en VeNitan 7:5; Shulhan Arukh, Hoshen Mishpat 39:9, 79:12).

This is how there is room to distinguish – ה'כ ה'וא דאייבא לפלא: If one of the litigants was found liable, and the judges said: Go and give the claimant what you owe him, and later he claimed that he repaid the debt, but witnesses testified that they were with him the entire time during which he claims

to have paid, and he did not pay, the liable party assumes the status of one who denies his debts with regard to that case. If the judges merely said to him: You are liable to pay, and he later said that he repaid the debt, even if witnesses contradict this claim of his, he has not assumed the status of one who denies his debts with regard to that case (Rambam Sefer Mishpatim, Hilkhot To'en VeNitan 7:6; Shulhan Arukh, Hoshen Mishpat 79:13).

"**חִיב אָתָה לִיּוֹן לוֹ**" וְאָמַר פְּרוּעַת,
וְהַעֲדִים מַעֲדִין אָתוֹן שְׁלָא פְּרֻעַת
וְחוֹר וְאָמַר פְּרֻעַת - לֹא הַזְּקָק בְּפֶרְנָן
לְאָתוֹן מַמְוֹן.

מַאי טָעֵמָא - אֲשַׁתְּמוּטִי הָוָא קָא
מִשְׁתְּמִיטִי מִיְּהָה, סְבָר: עַד דְּמַעַיִינָן
בְּיַרְבָּן בְּדִין.

אָמַר רַבָּה בֶּר בֶּר חָנָה אָמַר רַבִּי יוֹחָנָן:
"מַנְנָה לִי בַּיּוֹךְ", וְהַלָּה אָמַר: אֵין לָן
בַּיּוֹךְ בְּלָם, וְהַעֲדִים מַעֲדִין אָתוֹן
שְׁשׁ לֹא, וְחוֹר וְאָמַר: פְּרֻעַת - הַזְּקָק
בְּפֶרְנָן לְאָתוֹן מַמְוֹן.

כִּי הָא דְּשְׁבָתָאִי בְּרִיהָ דָּרְבִּי מַרְינוּס
בְּתַחַב לָהּ לְכַלְתָּה אַיְצְטָלָא דְּמַילְתָּא
בְּכַרְתּוֹתָה, וְקִבְּלָה עַלְיָה, אִירְפֵּס
כַּתְּבוֹתָה. אָמַר לָהּ: לֹא הָיָה דָּבָרִים
מַעוּלָּם. אָתוֹ סְהָדִי וְאָמְרוּ: אֵין.
בְּתַחַב לָהּ. לְסֹן אָמַר לָהּ: פְּרֻעַת.
אתָא לְקַמְהָה דָּרְבִּי חִיא, אָמַר לָהּ:
הַזְּקָק בְּפֶרְנָן לְאָתוֹהָ אַיְצְטָלָא.

אָמַר רַבִּי אַבְּיָן אָמַר רַבִּי אַלְעָא אָמַר
רַבִּי יוֹחָנָן: הַיְהָ חִיב לְחַבְּרוֹן שְׁבֹועָה,
וְאָמַר נְשַׁבְּעָתִי וְהַעֲדִים מַעֲדִין אָתוֹן
שְׁלָא נְשַׁבְּעָע, וְחוֹר וְאָמַר נְשַׁבְּעָתִי
הַזְּקָק בְּפֶרְנָן לְאָתוֹהָ שְׁבֹועָה.

אָמְרוּה קַמְהָה דָּרְבִּי אַבְּהָוָה. אָמַר
לָהּ: מִסְתְּבָרָא מַלְתָּא דָּרְבִּי אַבְּיָן -
שְׁתַחַבְּ יִבְּשָׂוָה בְּבִיתָ דִין, אַבְּלָא
חִיב עַצְמוֹ שְׁבֹועָה - [גַּאֲמָן], עַבְּיד
אַיִשְׁ דְּמָקְרִי וְאָמַר. אַהֲרוֹהָ קַמְהָה
דָּרְבִּי אַבְּיָן, אָמַר לָהּ: אַנְּאָ נְמִי בְּבִית
דִין אָמַר.

אִיתָמָר נָמִי, אָמַר רַבִּי אַבְּיָן אָמַר רַבִּי
אַלְעָא אָמַר רַבִּי יוֹחָנָן: הַיְהָ חִיב
לְחַבְּרוֹן שְׁבֹועָה בְּבִיתָ דִין, וְאָמַר
נְשַׁבְּעָתִי וְהַעֲדִים מַעֲדִין אָתוֹן שְׁלָא
נְשַׁבְּעָע, וְחוֹר וְאָמַר נְשַׁבְּעָתִי - הַזְּקָק
בְּפֶרְנָן לְאָתוֹהָ שְׁבֹועָה.

By contrast, if the court said: **You are liable to give him what you owe him, and subsequently the debtor said: I repaid the debt, and the witnesses testify concerning him that he did not repay the debt when it was demanded in their presence, and later the debtor said again: I repaid, in this case, the debtor does not assume the presumptive status of one who denies his debts with regard to that money.** His claim that he repaid the debt in the absence of witnesses is accepted after he takes an oath to that effect.

What is the reason that he is not presumed to be lying? It is because before the court verdict was finalized, the debtor was merely trying to **evade** the creditor, **thinking** to himself: Since the court has not yet finalized the verdict, I can delay payment **until the Sages** in the court **investigate my case** further, as I am not actually liable to pay until the verdict is finalized.

Rabba bar bar Ḥanna says that Rabbi Yoḥanan says: If one says to another: I have **one hundred dinars in your possession** that you borrowed from me, and the other says in response: **Nothing of yours is in my possession, and the witnesses testify concerning him that, in fact, he does have such a debt, and subsequently** the debtor said: I repaid the debt, in that case the debtor **assumes the presumptive status of one who denies his debts with regard to that money.**^h

It is like the ruling in this case, where Shabbtai, son of Rabbi Marinus, wrote a pledge to give his daughter-in-law a cloak [*itztela*]ⁿ of fine wool [*demileta*]^l in her marriage contract, and he accepted upon himself the status of a guarantor for the contract. Her marriage contract was lost, and there was a disagreement between the parties as to its content. Shabbtai said to her: These matters never occurred; I never wrote that I would give you such a cloak. Witnesses then came and said: Yes, he did write her this pledge. Ultimately, he said to them: I paid it, i.e., I gave her the cloak. This case came before Rabbi Ḥiyya. He said to Shabbtai: You have assumed the presumptive status of one who denies his debts with regard to that cloak. His claim was therefore not accepted, even by means of an oath.

Rabbi Avin says that Rabbi Ela says that Rabbi Yoḥanan says: If one was obligated to take an oath to counter another person's claim brought against him, and later he said: I took the oath,ⁿ and the witnesses testify against him that he did not take an oath when it was demanded of him in their presence, and the defendant subsequently said again: I took the oath, he assumes the status of one who denies his obligations with regard to that oath.

The Rabbis stated this ruling before Rabbi Abbahu. He said to them: Rabbi Avin's statement is reasonable in a case where one was obligated by a court to take an oath. But if one voluntarily obligated himself to take an oath, and he later claims that he took the oath, he is deemed credible. This is because a person is prone to say incidentallyⁿ that he will take an oath and then change his mind; this does not render him a liar. The Rabbis then brought Rabbi Abbahu's analysis back to Rabbi Avin and presented it before him. Rabbi Avin said to them: I also said this halakha specifically with regard to one who was obligated by a court to take an oath, as Rabbi Abbahu explained.

It was also stated that Rabbi Avin says that Rabbi Ela says that Rabbi Yoḥanan says: If one was obligated by a court to take an oath to counter the claim of another person, and he subsequently said: I took the oath, and the witnesses testify against him that he did not take an oath when it was demanded of him in their presence, and later the defendant said again: I took the oath, he has assumed that status of one who denies his obligations with regard to that oath.^h This wording is explicitly in accordance with Rabbi Abbahu's explanation.

HALAKHA

The debtor assumes the presumptive status of one who denies his debts with regard to that money – **הַזְּקָק בְּפֶרְנָן לְאָתוֹה שְׁבֹועָה**: If the defendant completely denied owing money and was contradicted by witnesses, and he subsequently claimed that he repaid the debt, his claim is not accepted, as he has the presumptive status of one who denies his debts, and he is liable to pay. This is in accordance with the opinion of Rabbi Yoḥanan (Rambam *Sefer Mishpatim*, *Hilkhot To'en VeNitan* 6:1; *Shulḥan Arukh*, *Hoshen Mishpat* 79:5).

He has assumed that status of one who denies his obligations with regard to that oath – **הַזְּקָק בְּפֶרְנָן לְאָתוֹה שְׁבֹועָה**: With regard to a case where the court obligated one to take an oath, and subsequently the other litigant demanded an oath of him, if he claims that he already took the oath on a certain day, and witnesses testify that he did not take an oath that day, he assumes the presumptive status of one who denies his obligations with regard to that oath. If he was not obligated by the court to take an oath, rather, he committed voluntarily to take an oath, in that case if he claims to have taken the oath already, even if witnesses contradict him, he does not assume the status of one who denies his obligations. This is in accordance with the conclusion of the Gemara (Rambam *Sefer Mishpatim*, *Hilkhot To'en VeNitan* 7:5; *Shulḥan Arukh*, *Hoshen Mishpat* 87:27).

NOTES

כתוב – **כְּתַב** בְּלַבְּלָה אַיְצְטָלָא: Some explain that this means that he wrote in the marriage contract that she had brought such a cloak into the marriage, which renders the husband liable to give her such a cloak in the event that she is widowed or divorced. Shabbtai, her father-in-law, who was the guarantor of the marriage contract, then accepted upon himself the obligation to provide such a cloak (Rid).

And he said, I took the oath – **אָמַר נִשְׁבָּעָתִי**: If the defendant's claim is not contradicted by witnesses, is he automatically exempt from taking an oath, or must he take an oath of inducement that he had already taken an oath, just as any defendant who completely denies the claim brought against him is obligated to take an oath? The Rosh maintains that an oath of inducement is required only when one denies a monetary claim, and not when he denies an obligation to take an oath (Rosh). In *Halakhot Gedolot* the distinction is drawn between the denial of an obligation to take an oath mandated by Torah law, in which case the defendant is obligated to take an oath of inducement over his denial, and the denial of an obligation to take an oath mandated by rabbinic law. In the latter case, the defendant does not take an oath of inducement, as there is a principle that one rabbinic ordinance does not apply to another rabbinic ordinance, and here both of these oaths are mandated by rabbinic law.

Say incidentally – **שְׁמַרְיָה**: Some explain that this is referring to one who commits to taking an oath outside of court. Since he can renege on his commitment to take an oath, he is also believed when he says that he took it (Meiri). Others explain that people sometimes appear to be committing to take an oath when that is not actually their intention (*Ge'onim*).

LANGUAGE

Cloak [itztela] – **אַיְצְטָלָא**: From the Greek στολίς, *stolis*, meaning garment or cloak.

Fine wool [meilat] – **מַיְלָתָא**: Possibly related to the Greek Μίλητος, *Milētos*, the name of the ancient Greek city of Miletus in Asia Minor, where the finest wool was produced in antiquity. Another explanation is that it derives from the Greek μηλωτή, *mēlotē*, meaning wool.

HALAKHA

He must return it to the owner – יְחִיּוּ לַבָּעֵלִים: If a promissory note is found on the day it was written, and the debtor admits to the debt, it must be returned to the creditor. In the *Shulhan Arukh*, this halakha is limited to a case where the promissory note contains a ratification, an opinion that is defended by some of the later commentaries (*Ketzot HaHoshen*; *Netivot HaMishpat*). The *Shakh* and the *Gra* disagree and hold that it must be returned regardless of whether or not it contains a ratification (*Rambam Sefer Nezikin*, *Hilkhot Gezeila VaAveda* 18:2; *Shulhan Arukh*, *Hoshen Mishpat* 65:7).

May not reuse it to borrow – אַיְטַ חֹזֶר וְלֹוֹהַ בָּו: A promissory note that was written for a loan that was repaid cannot be reused for another loan, even if the second loan takes place on the same day and there would be no issue of the note being antedated. This is because the lien on the debtor's property that was created by the promissory note has been removed. The Rema maintains, citing the Mordechai, that it is possible to reuse the promissory note if a new lien is established. This can be accomplished through a new act of acquisition performed by the creditor or if the note is transferred again in the presence of witnesses (*Rambam Sefer Mishpatim*, *Hilkhot Malve VeLoveh* 14:7; *Shulhan Arukh*, *Hoshen Mishpat* 48:1, 57:2).

Antedated promissory notes – שְׁטוּרִי חֹזֶר הַמּוֹקָדְמִין: Antedated promissory notes are invalid. According to the *Shulhan Arukh*, this means that the Sages penalized the creditor by disallowing use of such a promissory note to collect property that was sold. The Rema interprets this halakha to mean that an antedated promissory note is completely invalid and cannot be used to collect repayment at all. Nevertheless, if the debtor admits to the loan, the admission itself is basis for collection of the debt from unsold property (*Rambam Sefer Mishpatim*, *Hilkhot Malve VeLoveh* 23:1; *Shulhan Arukh*, *Hoshen Mishpat* 43:7).

אמָר רַבִּי אָסִי אָמָר רַבִּי יוֹחָנָן: הַמּוֹצָא שְׁטוּרִי חֹזֶר בְּשָׁוֹק וְכַתּוֹב בָּו הַנְּפָךְ כְּתוֹב בָּו זַמָּנוֹ, בָּו בַּיּוֹם – יְחִיּוּ לַבָּעֵלִים.

אי מִשּׁוּם כְּתֻב לִלְוָת וְלֹא לְזָה – הָא כְּתוֹב בָּו הַנְּפָךְ, אי מִשּׁוּם פְּרָעָן – לְפִרְיעָה בַּת יוֹמָא לֹא חִישָׁן.

אמָר לִיהְ רַבִּי זֵירָא לְרַבִּי אָסִי: מַי אָמָר רַבִּי יוֹחָנָן הַכִּי? הָא אֲתָה הוּא דָאָמָר מִשְׁמָמִה דָּרְבִּי יוֹחָנָן: שְׂטָר שְׁלוֹחוֹ בָּו יִפְרַעַן – אַיְטַ חֹזֶר וְלֹוֹהַ בָּו, שְׁבָבוֹ נִמְחָל שִׁיעָבָרוֹ.

אִימָת? אַילִימָא לִמְחָר וְלִיְמָא חָרָא?
מַאֲיָ אָרִיא שְׁבָבוֹ נִמְחָל שִׁיעָבָרוֹ?
מִיּוֹפְּקָה לִיהְ דָּרוֹהַ לִיהְ מוֹקָדָם, וְתָנָן:
שְׁטוּרִי חֹזֶר הַמּוֹקָדְמִין – פְּסָולִין.

אֲלֹא לֹא – בְּיוּמִיהְ, אַלְמָא: פְּרָעַי
אַיְנָשִׁי בְּיוּמִיהְ!

אמָר לִיהְ: מַי קָּא אַמְינָא דָלָא פְּרָעַי
כְּלָל? דָלָא שְׁבִיחִי אַיְנָשִׁי דָפְרָעַי
בְּיוּמִיהְ קָא אַמְינָא.

רַב בְּחָנָן אָמָר: כִּשְׁחִיב מִזְדָּה. אֵי הַכִּי
מַאֲיָ לִמְיָרָא?

§ Rabbi Asi says that Rabbi Yohanan says: With regard to one who finds a promissory note in the marketplace, and a ratification is written in it, and the date of the loan is written in it, and evidently it was written on that same day, he must return it to the owner,^H i.e., the creditor.

The Gemara explains why there is no concern that perhaps the debtor does not owe the money: If one were to be concerned because perhaps the debtor wrote the promissory note intending to borrow money, but he ultimately did not borrow it, this is not a concern, as a ratification is written in the promissory note. Since only the creditor would have brought the note for ratification, it is clear that the loan occurred. And if one were to be concerned because perhaps there was repayment, this is not a concern, as we are not concerned that there was repayment on the same day^N that the loan was taken, since normally one would not take a loan for less than one day.

Rabbi Zeira said to Rabbi Asi: Does Rabbi Yohanan actually say this? Isn't it you who said in the name of Rabbi Yohanan that one who borrowed money and wrote a promissory note for the loan, and subsequently repaid the debt, may not reuse it to borrow^H another time, as its lien is already forgiven by virtue of the repayment? A promissory note is valid only for the debt for which it was written.

Rabbi Zeira explains: When did the debtor take the second loan? If we say that it was the day after the first loan, when the promissory note was written, or another later date, then Rabbi Yohanan's statement is difficult. Why does he specifically give as the reason for the promissory note's disqualification: As its lien is already forgiven? Instead, he should derive the disqualification of the promissory note from the fact that it is antedated, i.e., dated prior to the actual loan, and we learned in a mishna (*Shevi'it* 10:5): **Antedated promissory notes^H are invalid.**^N Therefore, Rabbi Yohanan could not have been referring to a case where the second loan took place after the date of the first loan.

Rather, is Rabbi Yohanan's statement not referring to a case where the second loan took place on the same day as the first loan? Evidently, people do occasionally repay their loans on the same day as they take the loan.

Rabbi Asi said to him: Did I say that people do not repay their loans on the same day at all? Rather, I said that it is uncommon for people to repay their loans on the same day. Therefore, if a note is found on the same day it was written, it is reasonable to assume that it has not yet been repaid, even though there is a remote possibility that it has.

Rav Kahana says an alternative explanation: Rav Kahana is referring to a case when the liable party, i.e., the debtor, admits^N to the debt. The Gemara asks: If that is so, what is the purpose of stating that the note may be returned? This is obvious.

NOTES

We are not concerned that there was repayment on the same day – **לְפִרְיעָה בַּת יוֹמָא לֹא חִישָׁן**: There is no suspicion of collusion between the creditor and the debtor, as people presumably would not collude for the sake of such minor gain as being able to repossess property from people who bought land from the debtor earlier that same day (*Rabbeinu Peretz*). Others explain that if they wished to collude they could have simply written a new note on that same day, without mention of the time when the loan took place, instead of reusing the original note, as the exact time is usually not written on a promissory note (*Rashba*; *Ran*).

שְׁטוּרִי חֹזֶר הַמּוֹקָדְמִין – פְּסָולִין: Rabbi Yohanan and Reish Lakish disagree as to whether such notes are completely invalid, or whether their use is merely limited to collecting property that was sold from the time that the loan actually took place (*Jerusalem Talmud*).

When the liable party admits – בְּשִׁחְרִיב מִזְדָּה: The *Rif* and the *Rambam* understand that even in this case, the promissory note is returned to the creditor only if it contains an authentication of the court, as Rav Kahana's comments serve as a clarification of the statement of Rabbi Yohanan. There are those who disagree, maintaining that even if there is no authentication, since the debtor admits to the debt the promissory note should be returned to the creditor (*Tosafot*; *Rashba*; *Ran*; see *Shakh*).

מהו דתימא: האי מברען פרעה,
והאי דקה אמר לא פרעתה - משום
דקבי מחד לו מזפה ביה זמנה
אחרית, ולפשתי דספיא חיש, קא
משמע לנו אדם בן מלחה גופה לא
שבק, סבר: שמעי בי רבן ומפסדי
לן.

מאי שנא מוהא, דתנן: מצא שטר
חוב, אם יש בהן אחריות נכסים -
לא יחויר,

ואוקימנא בשחיב מודה, משום
שפמא כתוב לולות בגין ולא לוה עד
תשרי, ואתי למטור לךוחות מנין
עד תשיי שלא בדין.

ולא אמרין דאם בן מלחה גופה
לא שביק, ואם ליה: כתוב שטרא
אחרינא בתשרי ודולמא שמעי רבן
ומפסדי לי.

אמרו: הטעם משום דעתו ליה רוחחא.
דקא טרייך לךוחות מנין ועד תשרי -
מינה ניחא ליה, ולא אמר לו לא מידי.
הכא, כיון דלית ליה רוחחא, דסוף סור
שטרא דאיתנא בתיב, מאי איבא
דקטיריך לךוחות - בשטר שנמחל
שייעבוזו לא שביק.

אמר רבי חייא בר אבא אמר רבי
יוחנן: הטוען אחר מעשה בית דין

The Gemara answers: Lest you say that even if this debtor admits to the debt, perhaps he actually repaid it, and the fact that the debtor says: I did not repay it, is because he wants to go back and use the promissory note to borrow money again. And the reason he prefers to claim that he did not repay the first debt is that he is concerned about saving the scribe's fee that he would have to pay for another promissory note. Therefore, Rabbi Yohanan teaches us that this possibility need not be taken into account, as, if that were so, the creditor himself would not allow such a scheme. He would be afraid to act in such a manner, thinking: The Sages will hear about me that I reused the note, and will cause me to lose the payment owed to me.

The Gemara asks: In what way is this case different from that which we learned in a mishna (12b): With regard to one who found promissory notes, if they include a property guarantee for a loan, he may not return them to the creditor.

And we interpreted this mishna as referring to a case when the liable party admits to the debt. And the reason the promissory notes may not be returned is due to the concern that perhaps the debtor wrote the note in order to borrow the money in Nisan, but he ultimately did not borrow it until Tishrei, and the creditor will come to unlawfully repossess land from purchasers who bought the debtor's land between Nisan and Tishrei. He is entitled to collect land only from those who bought land from the debtor after the loan took place, causing the lien on the debtor's land to take effect.

The Gemara points out the contradiction between this mishna and Rabbi Kahana's explanation of Rabbi Yohanan's statement: And this indicates that we do not say that if that were so, if the promissory note were antedated, the creditor himself would not allow the debtor to use it, as he would say to him: Write another note dated properly in Tishrei, lest the Sages hear about the fact that the date is incorrect and disqualify the promissory note, causing me to lose the money.

The Gemara answers: The Sages say that there, in the case of the mishna, since the creditor benefits by using this promissory note, as he can repossess land from purchasers who bought from the debtor between Nisan and Tishrei, it is satisfactory to him, and he does not say anything to the debtor about using this promissory note. By contrast, here, in the case to which Rabbi Yohanan is referring, since the creditor does not benefit from reusing the promissory note, as ultimately, the note is written for the current date, what is there for him to repossess from purchasers by means of the note that he cannot repossess by means of a new promissory note? Therefore, he would not allow the debtor to borrow more money from him with a promissory note whose lien was forgiven, as this would result only in risk and have no potential benefit.

§ Rabbi Hyya bar Abba says that Rabbi Yohanan says: With regard to one who claims to have repaid a debt that has already been established by a court enactment,ⁿ i.e., a rabbinic ordinance obligating one to pay a debt, e.g., the main sum in a marriage contract, but he has no witnesses,

NOTES

One who claims...a court enactment – **הטען אחר מעשה בית דין**: Rashi explains that this is referring to one who claims to have repaid his debt. The Ba'al HaMaor suggests an alternative interpretation, according to which the reference is to one who refuses to pay his debt that is based on a court enactment,

e.g., payment of a marriage contract, unless he is given the document. Rabbi Yohanan rules that one does not have the right to make such a demand; he merely has the right to receive a receipt.

Perek I
Daf 17 Amud b

NOTES

Court enactment – מישנה בית דין: This phrase, used in the upcoming discussions in the Gemara, has two entirely different meanings. Here it is referring to an ordinance of the Sages that establishes certain financial rights, e.g., the main sum a wife receives as part of her marriage contract and the inheritance rights of her children. Since these rights were instituted by the Sages, they are rendered enactments of the court and are equivalent to written legal documents. The other meaning of the expression is any financial document that has been ratified and validated by the court. Other early commentaries explain the expression in slightly different ways.

Any court enactment is considered like one who is holding a promissory note in his hand – **כל משענשה בית דין במאן דקיט שטרא**: Normally a document is written expressing the intent and consent of all parties. In cases where the Sages enacted obligations to pay specific monetary sums in specific cases, the liability to pay is independent of the intent or consent of the one who is liable (see Ra'avad; Ran).

Had I not lifted up the shard for you – לאו דקלאי לך: Were it not for Rabbi Yohanan's statement, one could have understood the halakha in the mishna as deriving not from a principle, but from specific exigent circumstances that apply to marriage contracts. One could say that since it was prohibited to write marriage contracts during periods of persecution, the Sages instituted an ordinance that a woman could collect the payment she deserved with a bill of divorce instead (see *Hokmat Manah*).

HALAKHA

Produced a bill of divorce and there was no accompanying marriage contract – **הוציאה גט ואין עמו כתובה**: In cases where a woman produces a bill of divorce without presenting a marriage contract and demands the payment of her marriage contract, there is a distinction between two scenarios: If it is in a place where the practice is not to write a marriage contract, she collects the main sum of her marriage contract. If it is in a place where the practice is to write a marriage contract, then she does not collect even the main sum of the marriage contract. In such a case, the husband takes an oath of inducement to counter her claim and is exempt from payment. The Gra maintains that this is in accordance with the opinion of Shmuel, mentioned in *Ketubot* (89a). The Rosh holds that it is in accordance with the opinion of Rabbi Yohanan, and that Abaye's opinion is a clarification of Rabbi Yohanan's opinion (*Rambam Sefer Nashim, Hilkhot Ishut* 16:18; *Shulhan Arukh, Even HaEzer* 100:12).

לא אמר כלום. מאי טעמא – כל משענשה בית דין במאן דקיט שטרא בידיה דמי

אמר ליה רבי חייא בר אבא לרבי הוזמן: ולא משגנתינו היא זו – הוציאה גט ואין עמו כתובה – גובה כתובה!

אמר ליה: אי לאו דקלאי לך חספה, לא משכחת מרגניתא תורה.

אמר אביי: מאי מרגניתא? דלמא במקום שאין בותבini כתובה עסקין, גט היינו כתובה. אבל במקום שבותבini כתובה, אי נקייטה כתובה – גבאי, אי לא – לא גבאי.

הדר אמר אביי: לאו מלחתא היא דאמר. די סלκא דעתך במקום שאין בותבini כתובה עסקין, אבל במקום שבותבini כתובה, אי נקייטה כתובה – גבאי, אי לא – לא גבאי. אלמנה מן האירוסין במאן גבאי?

בעדי מיתה בעל – לטעון ולמאמן: פרעתי, וכי תימא: ה כי נמי, אם כן מה הזעיר חכמים בתקנות?

he has said nothing. His claim is not accepted. What is the reason that he is not believed? It is because one who is owed any money based on a **court enactment**ⁿ is considered **like one who is holding a promissory note in his hand**,ⁿ against which a claim of repayment is not accepted without supporting evidence.

Rabbi Hiyya bar Abba said to Rabbi Yohanan: But what are you adding? Isn't this principle stated in a mishna (*Ketubot* 88b), which teaches: If a woman produced a bill of divorce, and there was no accompanying marriage contract,^h she collects payment of her marriage contract? This is an example of Rabbi Yohanan's principle that a court enactment enables one to collect a debt even without the relevant document.

Rabbi Yohanan said to him: True, this mishna is a source for my principle; but had I not lifted up the shard for you,ⁿ you would not have found a pearl beneath it.^g In other words, if Rabbi Yohanan had not pointed out the principle, Rabbi Hiyya bar Abba would not have realized that it was underlying the ruling of the mishna.

Abaye said: What qualifies this proof as a pearl? It is not a compelling proof, as perhaps in the mishna we are dealing with a place where they do not write a marriage contract, as in such a place, a woman's bill of divorce is the same as her marriage contract. But in a place where they do write a marriage contract, if she is holding a marriage contract then she collects payment, and if not, she does not collect payment. There is no proof from the mishna in support of Rabbi Yohanan's principle.

Abaye then said: What I said is not correct. As, if it enters your mind that we are dealing with a place where they do not write a marriage contract, but in a place where they do write a marriage contract, if she is holding a marriage contract then she collects payment, and if not she does not collect payment, then through what means does a widow from her betrothal^b collect payment of her marriage contract? She has neither a marriage contract nor a bill of divorce.

If it is suggested that she can collect payment by means of **witnesses to the death of her husband**, let the husband's heir, from whom she is demanding payment, **claim and say: I paid it; she has no proof that she did not receive the money. And if you would say that indeed, the heir can claim that he has paid what he owes, if so, what did the Sages accomplish with their ordinance that a widow from betrothal receives payment of her marriage contract? The heirs can always exempt themselves.**

BACKGROUND

Had I not lifted up the shard for you, you would not have found a pearl beneath it – לאו דקלאי לך חספה לא משכחת תורה: This expression can be understood as simply referring to a pearl hidden underneath a shard, i.e., a precious item concealed under a worthless one. Tosafot suggest a more sophisticated interpretation of the metaphor. They understand that the reference is not to a shard of earthenware but to the shell that contains the pearl, as shard and shell have the same word in Aramaic. This image alludes to the notion that by noticing the shell one may discover a pearl inside.

Betrothal – אירוסין: A Jewish wedding comprises two distinct stages. Betrothal is the first stage of the marriage process. After betrothal, the couple is considered married with regard to the halakhot of forbidden sexual intercourse, e.g., adultery. For the

woman to be able to marry another man, divorce is necessary. At this stage the betrothed couple may not yet live together as man and wife, and most of the couple's mutual obligations do not yet apply. The second stage of the marriage occurs when the bride and groom come under the bridal canopy, and it immediately confers both the privileges and the responsibilities associated with marriage upon the newlywed couple. After this second stage, if one spouse dies, all the halakhot of mourning for a close blood relation apply to the surviving spouse. If the wife of a priest dies, he is required to render himself ritually impure to bury her. All the monetary rights and obligations that apply to married couples take effect after marriage. Nowadays, betrothal and marriage are both performed in a single ceremony, but in talmudic times there was usually a yearlong gap between the two.

**אָמַר לֵיה מֶר קְשִׁישָׁא בְּיַהֲ דָבָר חֲסֹדָא
לְבָאשִׁי: וְאַלְמָנָה מִן הָאִירוֹסִין דָּאִית
לְהַכְתּוֹבָה מִנָּא לָה?**

**אַיִלְמָא מִהָּא דָתָנוּ: נְתַאֲרָמְלָה אָז
נְתַגְּרָשָׁה, בֵּין מִן הָאִירוֹסִין וּבֵין מִן
הַנִּישְׁוֹאָן - גּוֹבָה אֶת הַכֵּל. דָלָמָא
הַיכָּא דָכְתָבָה לָה.**

**וְכִי תִּמְאָה: מַאי לִמְמָרָא? לְאָפּוֹקָה
מַדְרוּבִּי אַלְשׁוֹר בֶּן עֲוֹנִיה, דָאָמוּ:
שָׁלָא כְתָב לָה אַלְאָ עַל מִנְתָּה לְכֻונָּה
אַצְטְּרִיכָּא לִיה.**

**דִּיקָא נָמִי, דָקְתָנִי: גּוֹבָה אֶת הַכֵּל, אָז
אָמְרָתָ בְּשָׁלָמָא דָכְתָב לָה - הַיְנוּ דָקָא
תְּנִי גּוֹבָה אֶת הַכֵּל, אַלְאָ אֵי אָמְרָתָ
דָלָא כְתָב לָה**

Mar Kashisha, son of Rav Hisda, said to Rav Ashi, questioning the underlying assumption of Abaye: And from where do we derive that a widow from her betrothal^N has the right to receive payment of her marriage contract?

If we say that this halakha is derived from that which we learned in a mishna (Ketubot 54b): If a woman became widowed or divorced, whether from betrothal or from marriage, she collects all that she is entitled to, both the main sum of her marriage contract instituted by the Sages and the additional sum that her husband added; that mishna cannot serve as a source for the halakha that a widow from her betrothal has the right to receive payment of her marriage contract. As perhaps the mishna is referring to a case where the husband wrote a marriage contract for her,^H but if he did not, she does not receive any money at all.

And if you would say: In that case, what is the purpose of stating this halakha since it is obvious that she can collect payment if she has a written contract, then one could respond that it is stated to exclude the opinion of Rabbi Elazar ben Azarya, who says that a widow from betrothal does not receive that which the husband committed to pay in the marriage contract, as he wrote the marriage contract only on the condition that he would marry her. He did not intend to obligate himself in a situation where he died before their marriage. Therefore, it was necessary for the mishna to mention that a widow from betrothal who has a written marriage contract collects payment.

The language of the mishna is also precise according to this understanding, as it teaches: She collects all that she is entitled to. Granted, if you say that the mishna is referring to a case where the husband wrote her a marriage contract, this is why the mishna teaches that she collects all that she is entitled to, i.e., even the amount that the husband added to the main sum of the marriage contract. But if you say that it is referring a case where he did not write her a marriage contract,

NOTES

אַלְמָנָה מִן הָאִירוֹסִין: The early commentaries note that there are actually numerous sources for the payment of a marriage contract to a betrothed woman. They offer various explanations for why the Gemara did not utilize those proofs for this halakha. Some explain that all of the sources deal only with payment in the case of divorce, whereas the Gemara is questioning the existence of payment in the case of widowhood (Ran). Alternatively, perhaps the Gemara is questioning only whether the marriage contract of a betrothed woman is a rabbinic ordinance that has the status of a court enactment or merely a custom, which is not equivalent to a court enactment (Ritva).

HALAKHA

הַיכָּא דָכְתָב for her – **הַיכָּא דָכְתָב לָה:** If a man betrothed a woman and did not write a marriage contract, the Rambam holds that she does not receive any payment if he dies or divorces her. There are those who hold that she is entitled to receive payment of the main sum of a marriage contract from the unsold property of the husband (Rosh; Ran; Tur). The Rema notes that the custom is that she does not receive payment of the marriage contract (Rambam Sefer Nashim, Hilkhos Ishut 10:11; Shulchan Arukh, Even HaEzer 55:6).

Perek I**Daf 18 Amud a**

**מַאי גּוֹבָה אֶת הַכֵּל? מִנָּה וּמִאֵתִים הוּא
דָאִית לָה.**

then what is meant by the wording: She collects all that she is entitled to? What she has is only the main sum of the marriage contract of **one hundred or two hundred dinars^N** that she can collect. Clearly, the mishna is referring to a case where the husband wrote a marriage contract, and it does not indicate that a betrothed widow receives payment of her marriage contract.

**וְאַלְאָ מַדְתָּנִי רַב חִיאָ בֶּר אֲמִי: אָשְׁטוֹ
אֲרוֹסָה, לְאָזְנוֹן וְלְאָמְעָמָא לָה,
וּכְן הַיא לְאָזְנוֹת וְלְאָמְטָמָה לָה,
מִתָּה - אַיְנוּ יוֹרֶשָׁה, מִתָּה וְאָזְנוֹת
כְּתוּבָה.**

And if one would say that the marriage contract of a betrothed woman is instead derived from that which Rav Hiyya bar Ami teaches, that is also difficult. He teaches: One does not enter acute mourning^N on the day of the death of his betrothed wife,^H nor may he become ritually impure at her funeral^N if she dies, if he is a priest; and similarly, she does not enter acute mourning for him if he dies, and she may not become ritually impure at his funeral.^N If she dies, he does not inherit her property. If he dies, she collects payment of her marriage contract.

NOTES

כְּנָה וּמִאֵתִים: The main sum of a marriage contract is two hundred dinars for a virgin or one hundred dinars for a non-virgin (Ketubot 10b).

Acute mourning – עֲזֹם: The period of acute mourning is observed on the day of the death of one's wife, husband, father, mother, son, daughter, brother, or sister. The mourner is exempt from all positive mitzvot from the time of the death of the relative until after the burial. At that point his status changes from that of an acute mourner to that of a mourner.

Nor may he become ritually impure at her funeral – לְאָזְנוֹת לְפָטָמָה לָה: Rashi, in his commentary on tractate Yevamot (29b), explains that a priest is permitted to become impure only for a relative that is considered: "His kin, that is near to him" (Leviticus 21:2). One understanding of Rashi is that whereas one's betrothed wife is considered his kin, she is not considered to be near to him, and therefore a priest is not permitted to become impure at her funeral. This understanding has a basis in the Jerusalem Talmud (Yevamot 6:4) as well.

And may not become ritually impure at his funeral – לְאָזְנוֹת לְפָטָמָה לְה: Several early commentaries maintain that this statement is inaccurate, as there is no prohibition against a woman becoming impure at anyone's funeral, even if she is of priestly lineage. In tractate Yevamot (29b) Rashi explains that the reference is to the pilgrimage Festivals, when everyone must remain in a state of ritual purity, and therefore a betrothed wife may not become ritually impure at the funeral of her betrothed.

His betrothed wife – אָשְׁטוֹ אֲרוֹסָה: If a betrothed woman dies, and her husband is a priest, he may not become ritually impure at her funeral. He does not inherit her property and is not responsible for her burial. Similarly, if a betrothed man

dies, the betrothed wife is not obligated to become impure at his funeral (Rambam Sefer Shofetim, Hilkhos Evel 2:3 and Sefer Nashim, Hilkhos Ishut 22:3; Shulchan Arukh, Yoreh De'a 373:4, 374:4, and Even HaEzer 55:5).

HALAKHA

NOTES

You should have torn up – **אִבַּשׁ לְךָ לְמִקְרָעָה**: It is necessary to tear up the bill of divorce, rather than write on it that the marriage contract was paid, because the writing can be erased, allowing her to collect payment a second time (*Hokmat Manoah*; *Maharam Schiff*).

Found bills of divorce – גִּיאֵי נְשִׁים: Since a bill of divorce is ineffective without the husband's authorization, why would one think that it should be returned to the wife? In *Penei Yehoshua* it is suggested that one might reason that a husband is more likely to be careful not to lose a bill of divorce that he has not yet given, whereas a wife is more likely to lose it once she has received it. Therefore, the wife is probably the one who lost it. Furthermore, one normally does not write a bill of divorce before he is ready to give it to his wife.

Wills – גִּיאֵי מִתְּחִיקִי: Wills may not be returned to the beneficiary. Despite the fact that the writer of the will has the ability to change his bequest, in which case the returning of the document to the beneficiary would be of no consequence, there is a concern that he may die from his illness before he has a chance to change it (*Meiri*).

דָּלַמְּאָ דָכְתָב לֶה. וְכִי תִּמְאָ: דָכְתָב
לֶה מַאי לְמִקְרָא - מִתְהָ אִינוֹ יוֹשָׁ
אִיצְטִרְיכָא לְיהָ!

אַלְאָ, אֲבִי מְגֻופָה דְּמִתְנִיתִין קָא הַדָּר
בֵּיהֶן. דָאֵי סְלָקָא דַעֲתָךְ בְּמִקְומָ שָׁאַיִן
כּוֹתְבִין כְּתוּבָה עַסְקִינָן, דְגַת הַיּוֹנָן
כְּתוּבָתָה - אַשְׁׁוּגָן מִנָּה מְאַתִּים בְּתִיבָּ
בֵּיהֶן?

וְכִי תִּמְאָ: בֵּין דַתְקִינוּ רַבְנָן לְמִגְבָּא
לֶה - בְּמַאוֹן דְכִתְבָּב בֵּיהֶן דָמִי, לְטַעַונָּן.
ולִמְאָ: פְּרֻעָתִי.

וְכִי תִּמְאָ: דָאַמְרָנָן לְיהֶן אֵי פְּרֻעָתָה -
אִבַּשׁ לְךָ לְמִקְרָעָה, אָמַר לְהָנָן:
לֹא שְׁבָקָתָן, אִמְרָה: בְּעֵינָא לְאָסְכָּוּבָה בֵּיהֶן.

וְכִי תִּמְאָ: אַמְרָנָן לְיהֶן אִבַּשׁ לְךָ
לְמִקְרָעָה וּמְכַתֵּב אֲגָבָה: גִּיטָּא דָקָן
דְּקָרְעָנוּהוּ, לֹא מְשִׁום דְגִיטָּא פְּסָולָה
הָוּא, אַלְאָ כִּי הַכִּי דָלָא תְּגַבֵּבָה
וּמְנָא אַחֲרִיתִי - אַשְׁׁוּגָן קָלְ דְמָגָבָה בְּבָיָן
דְּנָיאָ מְגַבֵּי?

מתני' מצא גִּיטָּי נְשִׁים וְשַׁחֲרוֹרִי
עבדים, דִּינִיקִי, מִתְהָנָה וְשַׁבְּרוֹן - הָרִי
זה לֹא חִזּוּר, שָׁאַמְנָא אָוּמָר: כְּתוּבָנִי הָיָן,
וְנִמְלָך עַלְּתָן שְׁלָא לְתָנָן.

If it is derived from here that a betrothed woman receives payment of a marriage contract, this is not proof, as **perhaps** this too is referring to a case where he wrote a marriage contract for her. And if you would say that if it is referring to a case where he wrote her a marriage contract, what is the purpose of stating this? One could answer that while this clause is obvious, it was necessary for Rav Hiyya bar Ami to state that conversely, if she dies, he does not inherit her property.

Rather, Abaye retracted his objection to Rabbi Yoḥanan's proof from the mishna, not because of the case of a widow from betrothal, but due to an indication from within the mishna itself. Because if it enters your mind that we are dealing with a place where they do not write a marriage contract, where a woman's bill of divorce is effectively her marriage contract, and therefore she can use her bill of divorce to collect payment of her marriage contract, that does not make sense; is it written in a bill of divorce that the husband is liable to pay the wife the one hundred or two hundred dinars she is owed? In fact, this is not written in a bill of divorce.

And even if you would say that since the Sages instituted that she use the bill of divorce to collect her marriage contract, it is considered as though the liability of the husband to pay one hundred or two hundred dinars is written in it, and it would still be problematic to say that the bill of divorce is sufficient for her to collect payment. The husband should still be able to claim that he is exempt, and say: I already paid it.

And if you would say that if the husband would state such a claim, we would say to him: If, in fact, you paid her, you should have torn up^N the bill of divorce, and he could respond and say to us: She did not allow me to tear it up, because she said: I need the bill of divorce to remarry, by using it as proof that I am divorced.

And if you would say that we would then say to him: You should have torn up the bill of divorce and written on the back of it: The reason that we tore up this bill of divorce is not because it is an invalid bill of divorce, but rather it is in order that the woman not collect payment of her marriage contract again with it, this suggestion is not always applicable. Does everyone who collects payment of a marriage contract collect payment in court, where it is possible to write such a legal statement? Therefore, the suggestion that a bill of divorce serves as a marriage contract remains untenable. This leads to the conclusion that the basis for collecting payment of a marriage contract where such a document does not exist must be a court enactment, in accordance with the interpretation of Rabbi Yoḥanan.

MISHNA If one found bills of divorce,^{NB} or bills of manumission of slaves,^B or wills,^N or deeds of a gift, or receipts, he may not return these items to the one who is presumed to have lost them, as I say it is possible that they were written and then the writer reconsidered about them and decided not to deliver them.

BACKGROUND

Bills of divorce – גִּיטָּי נְשִׁים: The basic text of a bill of divorce includes the declaration of the husband that he divorces his wife, mentioning both of their names and the names of their fathers, and that she is permitted to marry any other man. The document must contain the date when it was written and the signatures of two witnesses. In talmudic times a bill of divorce could be written privately by a scribe at the request of the husband. In later generations it became customary for a bill of divorce to be written in a rabbinical court that had expertise in this field so that no halakhic difficulties would arise that might lead to the invalidation of the bill of divorce.

Bills of manumission of slaves – שַׁחְרוֹרִי עֲבָדִים: Canaanite slaves and maidservants must receive a bill of manumission in order to be emancipated. Alternatively, another person can purchase their freedom from the master. After obtaining their freedom, they have all the obligations and privileges of a Jew and have the status of a convert. Even though they had already immersed in a ritual bath when they began their service, the Sages required them to immerse a second time, similar to the immersion of converts.

גמ' טעמא - דנמלן שלא לתנן.
הא אמר תנו - נותני, ואפילו לויין מרווחה.

ורמינהו: המביא גט ואבד הימנו -
מצאו לאלאתו - בשר, אם לאו פסול!

אמר רביה: לא קשיא, כיון - במקום שהשויות מצויות,
שאין השויות מצויות.

ואפילו במקום שהשויות מצויות -
והוא שהותוקו שני יופר בן שמעון בעיר אחת.

ראי לא תקנא חci - קשיא ורבבה
ארכובה. דההו גיטא דاشתבח כי
דייא דרב הונא. דההו בתוב בית:
בשורי מטה רעל רוכיס נהרא. אמר
רב הונא:

GEMARA It can be inferred from the mishna that the only reason that these documents are not returned is that there is a concern that the person obligated by the document reconsidered with regard to them and decided not to deliver them. But if the writer says: Give this found document to the intended recipient, the finder must give^N it to him. And since the mishna places no limitation on this, presumably this is the halakha even if a long time passed since it was lost, and there is no concern that perhaps the document belongs to someone else with the same name.

And the Gemara raises a contradiction from a mishna (*Gittin* 27a): With regard to an agent who was bringing a bill of divorce to a woman, and it was lost by him, if he found it immediately, the bill of divorce is still valid. If not, then it is not valid, as it is possible that the bill of divorce that he found is not the same one that he lost, and this second bill of divorce belongs to someone else whose name and wife's name are identical to the names of the husband and wife in the lost bill of divorce.

Rabba says: This is not difficult, because there, in tractate *Gittin*, the mishna is stated with regard to a place where caravans passing through are common, and there is a concern that the found bill of divorce belongs to someone else with the identical name. By contrast, the mishna here is stated with regard to a place where caravans passing through are uncommon, so there is no such concern.

The Gemara adds: And even in a place where caravans passing through are common, there is not always a concern that the bill of divorce may belong to another man with an identical name, and this concern is only where it has been established that there are two men named, for example, Yosef ben Shimon^N in that one city.

As, if you do not say so, that this concern is taken into account only in a place where it is known that there are two people with this same name, then there is a difficulty presented in the form of a contradiction between this statement of Rabba and another statement of Rabba. As there was a certain bill of divorce that was found in the court of Rav Huna, in which it was written that the bill of divorce was written in Sheviri City, which is located on the Rakhis River. Rav Huna said about this:

NOTES

הא אמר תנו: But if the writer says, give, the finder must give – **נתן:** Several commentaries question the validity of this inference, for different reasons. The Rashba says that perhaps there is collusion between the one who wrote the document and the recipient to use this document even though it is invalid, as the Gemara suggests later (19a). He answers that the inference is based on the fact that the mishna defines the issue as being the concern that the one who wrote the document changed his mind, whereas in the previous mishna (12b) this is not mentioned. This indicates that the suspicion that there is collusion, which exists in the case of the previous mishna, does not exist in this case. Furthermore, the Gemara may be relying on the *baraita* cited later (18b), which states explicitly that if the one who wrote the document says to deliver it to its intended recipient, it should be delivered to him. Others suggest that the basis for this inference is contextual. Since with regard to a will or receipt there is no reason not to give it to the intended recipient if the one who wrote it issues instructions to do so, the same apparently holds true with regard to bills of divorce or manumission (*Torat Hayim*).

ויאו שחווקן: And this concern is only where it has been established that there are two men named Yosef ben Shimon – **שיע יופר בן שמעון:** If it has been established that there is another couple in the city that have the same names, how can the bill of divorce be returned to one of them, even if it was found in a place where caravans do not pass? Some answer that since only one of the couples is known to have lost a bill of divorce, it can be returned to them (*Tosafot; Rosh*).

Perek I**Daf 18 Amud b**

חישין לשני שווי. ואמר לי רב חסידא לרבה: פוק עיין בה, דלאו רותא בעי מינך רב הונא. נפק דק ואשפת דתנן: כל מעשה בית דין - הרי זה יתיר.

We are concerned about the possibility that there are two cities named Sheviri^N and that this bill of divorce may belong to someone else who lives in the other Sheviri, and therefore it should not be returned. And Rav Hisda said to Rabba about this issue: Go out and examine this halakha, as in the evening Rav Huna^P will ask you about it. He went out, examined it, and discovered a relevant source, as we learned in a mishna (20a): One must return any court enactment,^N i.e., a promissory note that has been authenticated by the court, to its owner. Since the bill of divorce was found in the court, it is in this category and must be returned.

PERSONALITIES

Rav Huna – רב הונא: One of the great second-generation Babylonian *amora'im*, Rav Huna was most closely associated with his teacher, Rav. Rav Huna was of aristocratic descent, from the house of the Exilarchs, but despite that lineage, he lived in abject poverty for many years. Later in life he became wealthy and lived comfortably, and he distributed his resources for the public good. Rav Huna was the greatest of Rav's students, to the extent that Shmuel, Rav's colleague, used to treat him deferentially and direct questions to him. After Rav's death Rav Huna became the head of the yeshiva of Sura and filled that position for forty years. His prominence in Torah and his loftiness of character helped make the yeshiva of Sura the preeminent center of Torah for many centuries. Because of Rav Huna's extensive Torah knowledge, the halakha is almost invariably ruled in accordance with his opinion in disputes with his colleagues and contemporaries. The only exception is in monetary matters, where the rulings are in accordance with the opinion of Rav Nahman.

Rav Huna had many students, some of whom studied exclusively with him. Moreover, Rav's younger students remained to study with Rav Huna, his disciple, after Rav's death. Rav Huna's son, Rabba bar Rav Huna, was one of the greatest Sages of the following generation.

We are concerned about two Sheviri – **חישין לשני שווי בית דין:** Several commentaries maintain that Rav Huna did not state this as a halakhic ruling but as a problem that requires examination. That is why he asked Rabba about it. This is supported by the fact that the Gemara speaks of a dispute between Rabbi Zeira and Rabba, but not of one between Rav Huna and Rabba. Others explain that Rav Huna said this only to sharpen the minds of his students by challenging them to prove that it is wrong (*Shita Mekubetzet*). There are those who do hold that this is, in fact, Rav Huna's halakhic opinion (Gra).

NOTES

כל מעשה בית דין: It seems that Rabba is deriving this halakha with regard to ritual matters from monetary matters, which seems to run counter to the principle that one cannot derive the halakhot of these two domains from each other. In fact, that is not the case, as Rabba understands the phrase: Court enactments, as including those that concern ritual matters as well (*Talmid Rabbeinu Peretz*).

NOTES

The court of Rav Huna – בֵּין דָנִיא דָרְבָ הַוָּנוֹן: Commentaries differ as to whether it is specifically Rav Huna's court that is considered like a place where passing caravans are common, or whether any court has this status and Rav Huna's court is merely cited as an example, as that is where the incident occurred (*Shita Mekubetzet; Ma'ayan HaHokhma*).

Where people soak flax – הַכְּא דְתַרוּ יְמַטְנָא: This indicates that localities are defined in a very limited way for the purpose of this halakha. If, for example, caravans frequent one part of a city, it does not mean that the entire city is deemed a place frequented by caravans. Rather, the specific location frequented by the caravans has that status (Ritva).

Raises a contradiction between the mishna and a baraita – בְּנֵי מִתְנִיתָן אֶבְרִיָּתָן: Instead of this baraita, Rabbi Zeira could have mentioned the mishna taught later in this chapter (20a), which states that one who finds bills of halitzah or refusal must return them. He chose to employ the baraita because it explicitly refers to bills of divorce (Ritva).

He may return it neither to this one nor to that one – לֹא תָהַנֵּר לְאַחֲרָיו: The reason not to return it to the wife is the concern that the bill of divorce had not been given to her, and therefore the divorce did not actually take place. The reason it may not be given to the husband is that he might falsely use it as proof that he already paid the marriage contract (Rashi on *Gittin* 27a). Others explain that the reason not to give the bill of divorce to the husband is the concern that it is an invalid bill of divorce and that he might nevertheless use it (Rashba). This concern is mentioned in the Jerusalem Talmud as well.

HALAKHA

Found it immediately – בְּנֵא לְאַלְמָר: If a bill of divorce was lost by an agent who was in the process of transporting it, and it was later found, the halakha depends on the circumstances. If it was found immediately, or if it has a distinguishing mark, or if the witnesses who are signed on it testify that they signed only one bill of divorce for a husband and wife with these names, the bill of divorce is valid and may be returned to the agent, in accordance with the opinions of Rabbi Yirmeya and Rav Ashi. Otherwise, the Rif and the Rosh hold that if it was found in a place where caravans pass frequently, or if it is known that there are two sets of husbands and wives in that town with the same names, it may not be returned. If neither of these conditions exist, it may be returned. This is in accordance with the opinion of Rabbi Zeira, and not that of Rabba. The Rambam maintains that if it was found in a place where caravans do not pass frequently it may be returned, even if it is known that there are two sets of husbands and wives in that town with the same names. In a place where caravans pass frequently, it may be returned only if it was found immediately or if it has an identifying feature. This is in accordance with Rambam's alternative interpretation of Rabbi Zeira's opinion (Rambam Sefer Nashim, *Hilkhot Geirusin* 3:9; *Shulhan Arukh, Even HaEzer* 133:4).

When the husband admits – בְּזַעַן שַׁהְבָעֵל מוֹדָה: In a case where a bill of divorce was found in the marketplace, even if the wife is unable to describe it by means of a distinguishing mark, if the husband admits that he wrote it and issues instructions to give it to her, it may be given to her, and she is thereby divorced. Similarly, if the husband claims that he has already divorced her, it should be returned to her. If he does not admit that he wrote it, it should not be returned to either of them. This is in accordance with the baraita (Rambam Sefer Nezikin, *Hilkhot Gezeila VaAveda* 18:6; *Shulhan Arukh, Even HaEzer* 153:1).

וְהִיא בֵּין דָרְבָ הַוָּנוֹן דָבֵי מִקּוֹם
שְׁדָשִׁיּוֹת מִצְוֹת דְמִי, וְקַא פְשִׁיטַ רַבָּה
דִּיחָר. אַלְמָא: אֵי הוֹחִיקָו שְׁנִי יוֹסֵף בָּן
שְׁמֻעוֹן - אֵין, אֵין לֹא - לֹא.

The Gemara concludes its proof that even in a place where passing caravans are common, the concern that the bill of divorce belongs to another couple applies only if it is known that there is another couple in the same locale with the same names as those written in the bill of divorce: **And the court of Rav Huna^N is comparable to a place where passing caravans are common**, as many people from different places pass through for judgment. **And yet, Rabba resolved that if one finds a bill of divorce there, he should return it.** Evidently he holds that if it is established that there are two people named **Yosef ben Shimon** in the city, then there is indeed a concern and the document should not be returned, but if not, there is no concern.

עֲבָד רַבָּה עִוְרָא בְּהַהְוָא גִּטָּא דְאַשְׁתַּבְחָה
בְּיִכְתָּנָא דְפֻמְבְּדִיתָא קְשָׁמְעִיתָה.

וְאִיכָּא דָאמְרוּ: הַכְּא דְמוֹבֵנִי בִּיְתָנָא,
וְהַוָּא שְׁלָא הוֹחִיקָו, אֵף עַל גַּב דְשְׁכִיחָן.
שִׁירָהָא.

וְאִיכָּא דָאמְרוּ: הַכְּא דְתַרוּ בִּיְתָנָא, וְאֵך
עַל גַּב דְהֹוֹחִיקָו, דְלֹא שְׁבִיחָא שִׁירָהָא.

רַבִּי יְזָא רַמִּי מִתְנִיתָן אֶבְרִיָּתָן גַּט וְאֶבְדֵ הַיְמָנוֹן, מִצְאָו
לְאַלְמָר - כְּשֶׁר, וְאָם לָאו - פְּסָול. וּמִנְהָה:
מִצְאָא גַּט אַשָּׁה בְּשָׁוק, בְּזַעַן שַׁהְבָעֵל
מוֹדָה - יְחִיר לְאַשָּׁה, אֵין הַבָּעֵל מוֹדָה -
לֹא יְחִיר לְאַלְהָה וְלֹא לְהָה.

קְתֻנִי מִיהָת: בְּזַעַן שַׁהְבָעֵל מוֹדָה - יְחִיר
לְאַשָּׁה, וְאַפְלִילוּ לִזְמָן מְרוֹבָה!

וּמִשְׁנִי כְּאָן - בָּמִקּוֹם שְׁהַשִּׁירָהָא מִצְוֹת,
כְּאָן - בָּמִקּוֹם שְׁאַיִן הַשִּׁירָהָא מִצְוֹת.

וְאִיכָּא דָאמְרוּ: וְהַוָּא שְׁהֹוֹחִיקָו דְלֹא נְהָדוֹר,
וְהַיְנוּ דָרְבָה. אִיכָּא דָאמְרוּ: אֵף עַל גַּב
דְלֹא הוֹחִיקָו לֹא נְהָדוֹר, וּפְלִיגָא דָרְבָה.

The Gemara relates that Rabba performed an action, i.e., issued a practical ruling, with regard to a certain bill of divorce that was found in a flax house in the city of Pumbedita, in accordance with his halakha, and he instructed that the bill of divorce should be returned.

There is disagreement as to the exact details of the case. There are those who say that this occurred in the place where people sell flax, and it is specifically because it was not established that two couples with the same names lived in the city where the bill of divorce was written that Rabba ruled that the bill of divorce should be returned despite the fact that passing caravans are common there.

And there are those who say that it occurred in the place where people soak flax,^N and he ruled that the bill of divorce should be returned even though it was established that there were two couples with the same names living in the city where the bill of divorce was written, as passing caravans are uncommon there.

Similarly, Rabbi Zeira raises a contradiction between the mishna and a baraita,^N and he resolves the contradiction employing the same distinction. We learned in the mishna: With regard to an agent who was bringing a bill of divorce to a woman and he lost it, if he found it immediately,^H the bill of divorce is still valid, but if not, it is not valid. And Rabbi Zeira raises a contradiction between this mishna and a baraita that states: If one found a woman's bill of divorce in the marketplace, in a case when the husband admits^H that he wrote and gave it to the wife, the finder must return it to the wife; but if the husband does not admit to this, he may return it neither to this one, the husband, nor to that one,^N the wife.

In any event, the baraita teaches that in a case when the husband admits that he wrote it, the finder must return it to the wife, and this is the halakha even if it was found after a long time.

And Rabbi Zeira answers that here, in the case of the mishna, the bill of divorce is valid only if it is found immediately, as it is a case where it is found in a place where passing caravans are common. And there, in the baraita, the bill of divorce can be returned even if it was found after a long time, as it is a case where it is found in a place where passing caravans are uncommon.

The Gemara compares the rulings of Rabba and Rabbi Zeira. There are those who say, with regard to Rabbi Zeira's statement that the finder should not return the bill of divorce in a place where passing caravans are common: **And this applies specifically in a case where it is established that there are two couples in the town with the same names.** In that case, Rabbi Zeira holds that the bill of divorce should not be returned, and this is the same ruling as that of Rabba. **And there are those who say:** In a place where passing caravans are common, even if it is not established that there are two couples with the same names, the bill of divorce should not be returned, and Rabbi Zeira disagrees with the ruling of Rabba.

בְּשַׁלְמָא רְבָה לֹא אָמֵר בָּרְבִּי זִירָא -
מִתְנִיתִין אֶלְמָא לְיהָלָקְשִׁוּי. אֶלְאָ רְבִּי
זִירָא, מַאי טַעַמָּא לֹא אָמֵר בָּרְבָּה?

The Gemara asks: Granted, Rabba does not state his explanation in accordance with that of Rabbi Zeira and raise a contradiction from the *baraita*, as he holds that a *mishna* serves as a stronger basis for raising a difficulty than a *baraita*, as the Mishna, redacted by Rabbi Yehuda HaNasi, employs more precise language; but what is the reason that Rabbi Zeira does not state his explanation in accordance with that of Rabba and raise a contradiction from the Mishna?

אָמֵר לֹךְ: מֵיקָא תְּנִינִי: הָא אָמֵר בָּרְבִּי זִירָא - נַזְתִּינִי -
אֲפִילוּ לְקָנָן מְרוּבָה? דְּלָמָא הָא אָמֵר תְּנִינִי -
נוֹתִינִי, וְלֹעֲלָם כְּדָקִים מָא לֹן - לְאַלְפָר.

The Gemara answers: Rabbi Zeira could have said to you: Does the mishna actually teach that if the one who wrote the document says: Give it to the intended recipient, the finder must give it to him, and that this is the *halakha* even if a long time passed since it was lost? This was only an inference from the mishna. Perhaps the mishna merely means to indicate that if the writer says: Give it to the intended recipient, the finder must give it to him, but actually, this is to be understood as we maintain in the mishna in *Gittin*, that this *halakha* applies only if the document was found immediately. Therefore, Rabbi Zeira posed his question from the *baraita*.

לְמַאֲן דֹּאָמֵר לְרְבִּי זִירָא בְּמִקְמוֹ שְׁהַשְׁׁוֹרֶת
מִצְוֹת וְאֶפְרַע עַל גַּב שְׁלָא הַוְּחֻזָּקוּ שְׁנִי
יֹסֵף בֶּן שְׁמֻעוֹן, וְפָלִינָא דְּרָבָה, בָּמָא קָא
מִפְלָגִי?

The Gemara asks: According to the one who says that according to the opinion of Rabbi Zeira a document may not be returned in a place where passing caravans are common, and this is the *halakha* even if it was not established that there are two people named Yosef ben Shimon in town, and he disagrees with Rabba, with regard to what do Rabbi Zeira and Rabba disagree? What is the foundation of their dispute?

רְבָה סְבָר: וְקִתְמַנִּי בְּלָי מִעְשָׂה בֵּית דִין הָרִי
הַיְהּוּרִי דְּאַשְׁתַּבְחַ בְּבֵית דִין עַסְקָנִין;
בֵּית דִין בְּמִקְמוֹ שְׁהַשְׁׁוֹרֶת מִצְוֹת, וְהָוָא
שְׁהַוְּחֻזָּקוּ - לֹא יְזִיר, לֹא הַוְּחֻזָּקוּ - יְזִיר.

The Gemara answers: Rabba maintains his opinion based on the mishna (2oa) that teaches: One must return any court enactment. He understands that we are dealing with a document that was found in court, and a court is equivalent to a place where passing caravans are common. And therefore, he maintains that it is specifically in a place where it is established that there are two people with the same name that the finder should not return the document to its presumed owner; but in a place where it is not established that there are two people with the same name, he should return it.

רְבִּי זִירָא אָמֵר לֹךְ: מֵיקָא קִתְמַנִּי בְּלָי מִעְשָׂה בֵּית
דִין שְׁנָמְצָאוּ בְּבֵית דִין? בְּלָי מִעְשָׂה בֵּית דִין
יְזִיר קָטָנִי, וְלֹעֲלָם כְּדָקִים דְּאַשְׁתַּבְחַ אַבְרָאִי.

And Rabbi Zeira, who disagrees with Rabba, could have said to you: Does the mishna teach that one must return any court enactment that was found in court? It teaches that one must return any court enactment, without specifying the location where the court enactment was found, and it is actually referring to a case where the documents were found outside the court. If it was found inside the court, it should not be returned. Therefore, Rabbi Zeira was not convinced by Rabba's proof.

רְבִּי יְרְמֵיאָ אָמֵר: בְּגֹזֵן דְּקָא אָמֵר יְעִידִים:
מִעַלְמָם לֹא חַתְמָנוּ אֶלְאָ עַל גַּט אֶחָד שְׁלִ
יֹסֵף בֶּן שְׁמֻעוֹן.

Rabbi Yirmeya states an alternative resolution to the contradiction between the mishna here and the *baraita*, on the one hand, and the mishna in *Gittin* on the other: A found bill of divorce should be returned only in a case where the witnesses who signed the bill of divorce say: We have never signed a bill of divorce of a person named Yosef ben Shimon other than this one, in which case there is no concern that the bill of divorce belongs to someone else.

אֵי הַכִּי, מַאי לִמְימָרָא? מַהוּ דְּתִימָא:
לְחוֹזֶשׁ דְּלָמָא אֶתְרָמִי שְׁמָא בְּשָׁמָא, וְעִירִים
בְּעִידִים - קָא מְשֻׁבָּעַ לֹן.

The Gemara asks: If that is so, what is the purpose of stating that one returns the bill of divorce? Since it clearly belongs to him, there is no question that it must be returned to him. The Gemara answers that it is necessary lest you say that one should be concerned that perhaps it happened that another bill of divorce was written in which the names of the husband and the wife are identical to the names of the husband and wife of the second bill of divorce, and the names of the witnesses on that bill of divorce are identical to the names of the witnesses^N on this bill of divorce, when in fact they are different witnesses. To counter this, the mishna teaches us that this is not a concern.

NOTES

The names are identical to the names and the witnesses are identical to the witnesses – **שְׁמָא בְּשָׁמָא** בְּשָׁמָא, **בְּעִירִים בְּעִירִים**: This possibility is truly remote, as the handwriting of the two witnesses would also have to be identical, as otherwise the identity of the witnesses would be clarified during the process of authentication (*Shita Mekubbetz*).

NOTES

Where he says, there is a hole in the bill of divorce – **רְקָב יְשָׁ**: This is stated in the singular, indicating that it is the husband or the agent who is describing the bill of divorce by means of the distinguishing mark. There is also a variant text that has the plural verb: They say. According to that text, it is referring to the witnesses. The practical difference between these two versions of the text is that the claim of the husband or agent is accepted only if he describes the distinguishing mark before seeing the found bill of divorce. By contrast, witnesses are relied upon to identify the document even after they have seen it (Rabbeinu Peretz).

Whether a lost item is returned on the basis of distinguishing marks by Torah law or whether it is by rabbinic law: **סִימָנִים אֵי דָאוּרִיתָא אֵי דָרְכָּן** – The commentaries ask why the distinguishing marks should not be acceptable enough to counter the concern that there are two people with the same name, even if the validity of this evidence is by rabbinic law, since the concern itself is taken into account only by rabbinic law. Some answer that it is based on the principle that the Sages modeled their ordinances on Torah law. For this reason, if distinguishing marks are not sufficient evidence for matters that require proof by Torah law, they are also insufficient for concerns that are taken into account by rabbinic law (*Hokmat Manoah*). Others explain that since the issue at hand is a bill of divorce, which is a matter of Torah law, all evidence must meet the standard of Torah law, even though the specific concern in this case is taken into account by rabbinic law (*Penei Yehoshua; Yeshuot Yaakov*). Others suggest that the rabbinic law of accepting distinguishing marks is limited to monetary matters, where the court has the authority to nullify ownership, but does not apply to ritual matters (see Meiri).

רְבָּאַשִּׁי אָמַר: בְּגֹנֵן רְקָב אָמַר נְקָב יְשָׁ בְּפָנֶיךָ בְּצֻדָּא אֶת פְּלֹנִית.

רְדוֹקָא בְּצֻדָּא אֶת פְּלֹנִית, אֲבָל נְקָב בְּעַלְמָא – לֹא.

רְבָּאַשִּׁי מַסְפְּקָא לְיהָ: סִימָנִים, אֵי דָאוּרִיתָא אֵי דָרְכָּן.

Rav Ashi stated another resolution to the contradiction: The bill of divorce should be returned only in a case where the person claiming to have lost it provides a clear-cut distinguishing mark, e.g., he says: There is a hole in the bill of divorce^N next to such and such a letter.

The Gemara comments: And Rav Ashi permits one to return such a bill of divorce specifically when the one claiming to have lost it says that the hole is next to such and such a letter, as that is a clear-cut distinguishing mark. But if he said only that it had a hole without mentioning its precise location, one should not return the bill of divorce, as that is not considered a clear-cut distinguishing mark.

The Gemara explains: Rav Ashi is uncertain whether a lost item is returned to its owner on the basis of distinguishing marks by Torah law or whether it is by rabbinic law.^N Therefore, in the case of a bill of divorce, he holds that one may rely only on a clear-cut distinguishing mark, as everyone agrees that a lost item is returned to its owner on the basis of a clear-cut distinguishing mark by Torah law.

רָבָּה בָּרָ בָּר חָנָה

The Gemara relates that Rabba bar bar Hana

Perek I**Daf 19 Amud a****NOTES**

Visual recognition – **טַבְיוּת עֵינָא**: The early commentaries note that while recognition should be more accurate than distinguishing marks, it is not subject to empirical verification and therefore relies on personal credibility. Therefore, the court accepts recognition only when performed by a Torah scholar. In ritual matters, any person may rely on his recognition of an item, e.g., that one knows that a particular piece of meat is kosher.

HALAKHA

Due to visual recognition – **מִשּׁוּם טַבְיוּת עֵינָא**: If the agent bringing a bill of divorce to a wife lost it, and it was subsequently found, and he identified it or its container by means of recognition, the bill of divorce is valid. If he is an ignoramus, he has the credibility to identify the bill of divorce by means of recognition only if he could have made a more advantageous claim, e.g., in the case where he himself found it and could have claimed that he never lost it (*Beit Yosef*, citing *Tosafot*). A Torah scholar always has the credibility to identify lost items through recognition. In the *Maggid Mishne* (*Sefer Nashim, Hilkhot Gittin* 3:9) it is noted that no one has the status of a Torah scholar in this sense nowadays (*Shulhan Arukh, Even HaEzer* 132:4).

אִירְבָּס לְיהָ גִּישָׁא בַּיּוֹרְשָׁא. אָמַר: אֵי סִימָנָא – אַתְּ לִי בְּגֹנֵה, אֵי טַבְיוּת עֵינָא – אַתְּ לִי בְּגֹנֵה, אֲחַדְרוֹת נִיהְלָה. אָמַר: לֹא יַדְעָנָא אֵי מִשּׁוּם סִימָנָא אֲחַדְרוֹת נִיהְלָה, וְקָרְבָּרִי: סִימָנִין דָאוּרִיתָא. אֵי מִשּׁוּם טַבְיוּת עֵינָא אֲחַדְרוֹת מַתְּלָלִי, וְדוֹקָא – צְרָבָא מַדְרָבָן, אֲבָל אַיְשָׁן דָּעַלְמָא – לֹא.

גּוֹפָא, מֵצָא גַּט אֲשָׁה בְּשָׂוֹק, בָּזְמָן שְׁהַבָּעֵל מַזְדָּה – מִיהָא יְחִיּוֹר לְאֲשָׁה, אֵין הַבָּעֵל מַזְדָּה – לֹא יְחִיּוֹר לְאַזְהָה וְלֹא גַּזְהָה.

בָּזְמָן שְׁהַבָּעֵל מַזְדָּה – מִיהָא יְחִיּוֹר לְאֲשָׁה, וְלִיחְוֹשׁ שְׁפָא בְּתַבְּ לִיְתָן בְּמִינָן, וְלֹא בְּמִינָן לְהָעֵד תְּשִׁירָה, וְאַוְלָבָל וְבָנָן פְּנִי מִיסְקָן וְעַד תְּשִׁירָה, וּמַפְקָא לְגִיטָּא בְּכַתְבָּה בְּנִיסְן וְאַתְּיָא לְמַטְרָרָה לְקוֹחוֹת שְׁלָא בְּדָרִין!

lost a bill of divorce, which had been given to him to deliver, in the study hall. When it was found, he said: If they request a distinguishing mark, I have one for it. If it depends on visual recognition,^N I have methods of recognition for it. They returned the bill of divorce to him. He said afterward: I do not know if they returned it to me due to the distinguishing mark that I supplied, and they hold that distinguishing marks are used to return lost items by Torah law, or if they returned it to me due to my visual recognition,^H and it was specifically because I am a Torah scholar, as Torah scholars are relied upon when they say that they recognize an item, but an ordinary person would not be relied upon to recognize the item and have it returned to him.

§ The Gemara discusses the matter itself cited above: If one found a woman's bill of divorce in the marketplace, in a case when the husband admits that he wrote and gave it, the finder must return it to the wife. If the husband does not admit to this, the finder may neither return it to this one, the husband, nor to that one, the wife.

In any event, the *baraita* states that when the husband admits that he wrote and gave it, the finder must return it to the wife. The Gemara challenges: But let us suspect that perhaps he wrote the bill of divorce intending to give it in Nisan, but did not give it to her until Tishrei, and the husband went and sold the produce of his wife's property in the interim, between Nisan and Tishrei, since the divorce had not yet taken effect. And the wife might then produce the bill of divorce, which he wrote in Nisan, and come to repossess the produce from the purchasers unlawfully.

הנימאה למאן דאמר בין שפטן עניין
לגרשה שב אין לבעל פירות – שפיר,
אללא למאן דאמר יש לבעל פירות עד
שעת נתינה, מאי איכא למימור?

כפי אתה למתוך אמרין לה: איתי ראה
אימת מטה גיטא לידך.

ומאי שנא משטר חוב? דתנן: מצא שטר
חוב, אם יש בהן אחריות נכסים – לא
חווי, ואוקייננא בשחייב מזדה, וממשום
שמא כתוב ללוות בגין ולא להה עד
תששי, וכא בריך לךותות שלא בגין.

החות נמי ליהדר, וכי אתה למתוך – ימיא
לה: איתי ראה אימת מטה שטר חוב
לידך!

אמרו: הכא, ובב"ט אשה, אתה לוקח
ותבעה. אמר: הא דהדרוה ניהלה רבנן
לגיטא – משום שלא תענוג ותיתיב,
השתא דקא אתה למתוך – הייל ותיתיב
אה אימת מטה גיטא לידה.

הכא, ובב"ט שטר חוב, לא אתה לוקח
ותבע, מראהדרוה מיהלה רבנן לשטר
חוב – פשיטה, למאי הלכתא אחרדרוה
ניהלה – למתוך הוא, שמע מינ' קומי
רבנן בAMILTA, ומקמי דידי מטה שטרא
לידיה.

"שחורורי עבדים" וכו'. תנ"ו רבנן: מצא
שטר שחור בשוק, ביום שהרבות מזדה –
חויר לעבד, אין הרוב מזדה – לא יחויר
לא להה ולא להה.

This works out well according to the one who says that once he has decided to divorce her, the husband no longer has the rights to his wife's produce. Since the husband had no right to sell the produce, the wife repossessed it rightfully. But according to the one who says that the husband has rights to his wife's produce until the actual time of giving the bill of divorce, what is there to say?

The Gemara answers: When she comes to repossess the produce, we say to her: First bring proof as to when the bill of divorce came into your possession, and then we will allow you to repossess the sold produce.

The Gemara asks: But in what way is it different from promissory notes? As we learned in a mishna (12b): With regard to one who found promissory notes, if they include a property guarantee for the loan, he may not return them to the creditor. And we interpreted the mishna as referring to a case where the liable party admits that he has not yet repaid the debt, and the reason the promissory note cannot be returned is due to the possibility that perhaps he wrote it intending to borrow money in Nisan, but ultimately did not borrow it until Tishrei, and the creditor might therefore use the promissory note to unlawfully repossess property that the debtor sold between Nisan and Tishrei from the purchasers.

According to the Gemara's suggestion with regard to a bill of divorce, there, in the case of a promissory note, it should also be returned, and when the creditor comes to repossess the debtor's property that was sold in the interim, let the court say to him: First bring proof as to when the promissory note came into your possession.

The Sages say that it is not comparable. Here, with regard to a woman's bill of divorce, the purchaser will come and demand that the wife prove when it was given to her, as he will say to himself: The fact that the Sages returned the bill of divorce to her was only so that she would not dwell alone as a deserted wife^b and not be able to remarry for lack of a bill of divorce. Now that she is coming to repossess the property her husband sold me, she should go and bring proof as to when the bill of divorce came into her possession.

By contrast, here, with regard to a promissory note, the purchaser will not come and demand proof, because he will infer from the fact that the Sages returned the promissory note to him that it is obviously valid from the date written in it. After all, for what halakha did the court return it to him? It was clearly in order to repossess property with it. Therefore, he will conclude from it: The Sages clarified the matter and determined that, in fact, this promissory note came into the possession of the creditor prior to my purchase of property from the debtor.

§ The mishna teaches: Bills of manumission of slaves that are found should not be returned. The Sages taught in a baraita: If one found a bill of manumission in the marketplace,^h in a case when the master admits that he gave the bill to the slave, one should return it to the slave. If the master does not admit to it, one should neither return it to this person, the master, nor to that person, the slave.

BACKGROUND

She would not dwell alone as a deserted wife – **דילא געאנן ותייב**: A woman whose husband has deserted her, or whose husband has disappeared, is referred to as an *aguna*, a deserted wife. Since a Jewish marriage can be dissolved only by either establishing that the husband is dead or through a bill of divorce given by the husband, the status of a deserted wife can be resolved only if she obtains a bill of divorce or is able to provide valid testimony that her husband has died. Many leniencies were instituted with regard to the kinds of evidence of her husband's death that are acceptable in order to prevent a woman from remaining a deserted wife.

HALAKHA

Found a bill of manumission in the marketplace – **מצא שטר שחרור בשוק**: If one found a bill of manumission in the marketplace and the master mentioned in it does not admit to its validity, the finder should not return it to either the master or the slave. If the master admits that he wrote it and intended to give it to his slave, the finder should give it to the slave, thereby freeing

him. Nevertheless, the slave cannot repossess property that he purchased and his master sold after the bill of manumission was dated but before the bill of manumission was given (Rambam *Sefer Nezikin, Hilkhot Gezeila VaAveda* 18:8; *Shulchan Arukh, Hoshen Mishpat* 65:13).

HALAKHA

It is in a slave's interest to leave his master's authority and attain freedom – **בָּכֹות הַוָּא לְעִצָּר שְׂיִיצָא מִתְחָת רַבּוֹ**: The halakha is in accordance with the opinion of the Sages who maintain that it is in a slave's interest to be freed (Rambam Sefer Kinyan, Hilkhos Avadim 6:1, and Kesef Mishne there).

Gift of a healthy person is like the gift of a person on his deathbed – **מִנְגַּת בָּרִיא שְׁהָא כְּמִתְּפָתֶשׁ שְׁכֵב מַרְעַ**: If a healthy person gives another person a gift by means of a deed of gift, writing in it: This gift is given from today and after my death, the gift takes effect after his death and he cannot retract it (Rambam Sefer Kinyan, Hilkhos Zekhiya UMattana 12:14; Shulhan Arukh, Hoshen Mishpat 257:6).

בַּיּוֹם שְׁהָרַב מִזְרָה מִיהָא – יְחִזּוּר לְעִבָּר,
וְאַפְּמַאי? וַיְחִזּוּשׁ שְׁמָא כְּתָב לִיתְןׁ לוֹ
בְּבִינְסִין, וְלֹא נִתְןׁ לוֹ עַד תִּשְׁ�ֵי, וְאַזְלָעַבְדָּא
וְקַבְּנָה נְכֻסִין מִפְּנֵין וְעַד תִּשְׁ�ֵי, וְאַזְלָעַלְהָרָב
וְוַיְבִּינְהוּ, וְמַפְּקִיךְ לִיהְיָה לְשְׁחָרוֹ דְּכָתָב
בְּבִינְסִין, וְקַא טַרְיךְ לְקֹחוֹת שְׁלָא בְּרַין.

הַנִּיחָא לִמְאָן דָּאָמַר זִכּוֹת הַוָּא לְעִבָּר
שְׂיִיצָא מִתְחָת רַבּוֹ לְחִירּוֹת, וּבְאַבְּיִ
דָּאָמַר עֲדֵי בְּחֻתוּמוֹ וְכַיְן לִיהְיָה – שְׁפָר.
אַלְאָ לִמְאָן דָּאָמַר חֹב הַוָּא לְעִבָּר
שְׂיִיצָא מִתְחָת רַבּוֹ לְחִירּוֹת, מַאֲיַ אַיכְאָ
לְמִימָר?

דְּבַי אָתֵי לְמַטְרֵךְ אָמְרִין לִיהְיָה: אִיִּיתִי
וְאַתָּה אִימְתָּטָא שְׁחָרוֹ לְדָן.

"דְּיִתְּקִי מִתְנָה" וּכְיָ. תַּנוּ רְבָנָן: אִיָּוּ
הָיא דְּיִתְּקִי – דָא תַּהֲא לְמִיקָם וְלְחִיּוֹת,
שָׁאָם מַת – נְכֻסִי לְפָלוֹנִי. מִתְנָה, כֵּל
שְׁבָתוֹב בּוֹ מִיהָיָם וּלְאַחֲרֵי מִתְהָ

אַלְמָא: אֵי בְּתִיבָא מִיהָיָם וּלְאַחֲרֵי
מִתְהָ – הוּא דְקַעַע, וְאֵי לֹא – לֹא קַעַע!

אָמַר אַבְּיִ, הַכִּי קָאָמַר: אִיוֹז הַיָּא מִתְנָה
בְּבִיאָ שְׁהָא כְּמִתְּפָתֶשׁ שְׁכֵב מַרְעַ, דְלָא
קַיְיַ אַלְאָ לְאַחֲרֵי מִתְהָ – כֵּל שְׁבָתוֹב בָּהּ
מִיהָיָם וּלְאַחֲרֵי מִתְהָ.

The Gemara asks: In any event, the *baraita* states that when the master admits that he gave the bill of manumission to the slave, the one who found it should return it to the slave. But why should he return it? Let us suspect that perhaps he wrote the bill of manumission intending to give it to him in Nisan, but he did not give it to him until Tishrei, and the slave went and bought property in the interim, between Nisan and Tishrei, at which time he was still a slave, in which case the property belongs to his master, and the master then went and sold that property. And if the bill of manumission is returned to the slave, he might produce the bill of manumission, which his master wrote in Nisan, in order to claim that the property was not his master's to sell, and repossess the property from the purchasers unlawfully.

This works out well according to the one who says that it is in a slave's interest to leave his master's authority and attain freedom^H and in accordance with the opinion of Abaye, who says that when a document serves the interests of its intended recipient, its witnesses, with their signatures, acquire it on his behalf. Accordingly, a slave attains freedom at the moment his bill of manumission is signed, even if it is given to him at a later date. Therefore, the halakha in the *baraita* works out well. But according to the one who says that it is against a slave's interests to leave his master's authority and attain freedom,^N what is there to say?

The Gemara answers that when the slave comes to repossess the property, we say to him: Bring proof as to when the bill of manumission reached your possession and you were freed.

§ The mishna teaches: If one found wills [*deyaytiki*] or deeds of gift, he should not return them. The Sages taught in a *baraita*: What is considered a *deyaytiki* and is collected by the designated recipient after the death of the giver? It is a deed that states: This deed will be to stand [*da tehe lemeikam*] and exist as proof that if this person dies, his property is to be given to so-and-so. An ordinary deed of gift, by contrast, is any deed in which it is written: This gift is given from today and after the death of the giver.

The Gemara asks: Apparently, only if it is written in the deed: From today and after the death of the giver, the recipient acquires the gift, and otherwise, he does not acquire the gift. Is there no deed of gift that is effective even without the clause: And after my death?

Abaye said that this is what the *baraita* is saying: What deed of gift of a healthy person is considered like the deed of gift of a person on his deathbed,^{HNB} in that the recipient acquires it only after the death of the giver? It is any deed in which it is written: This gift is given from today and after the giver's death.

NOTES

It is against a slave's interests to leave his master's authority and attain freedom – **חֹב הַוָּא לְעִצָּר שְׂיִיצָא מִתְחָת רַבּוֹ לְחִירּוֹת**: The Gemara reports various incidents in which people sought to become slaves. This was especially the case with older people. The reason for this is that the master would normally provide for the slave until his death, whereas a free person must support himself. Some limit the perspective that it is against a slave's interests to attain freedom to cases where the master is a priest, as this enables the slave to partake of *teruma*. Once he is freed, the slave loses this source of sustenance (*Tosafot* on *Gittin* 12b).

Gift of a healthy person is like the gift of a person on his deathbed – **בְּתִינְתָּר בָּרִיא שְׂיִיצָא מִתְחָת שְׁכֵב מַרְעַ**: Some early commentaries explain that the ownership of the property is transferred to the recipient immediately, but the owner retains the rights to the profit generated from the property during his lifetime (Rashi; Ramban; Ritva). Others maintain that the ownership is transferred in its entirety, with the exception that the one who gave it has the right to retract the gift at any point (Rashba; Ran).

BACKGROUND

A person on his deathbed – **שְׁכֵב מַרְעַ**: According to halakha, one on his deathbed is given exceptional powers to assign his property to others without many of the ordinary requirements that such a transfer usually entails. The Sages recognized the unique physical and emotional state of a dying person and were concerned with the possibility that such a person would become distraught that his final wishes would not be fulfilled. To alleviate

this concern they ruled that an oral gift on one's deathbed is considered equivalent to a deed of gift that has been signed, sealed, and delivered. Consequently, the stated desire of one on his deathbed for his property to be transferred takes effect even if witnesses were not formally appointed and a formal act of acquisition was not performed.

- טעםם דלא אמר לנו, לא אמר לנו
ונתנו.

§ The mishna teaches that these documents may not be returned to the one who is presumed to have lost them, as perhaps the one who wrote them reconsidered and decided not to deliver them. The Gemara infers: **The reason** that these deeds may not be returned is that the one who wrote them doesn't say to the finder: Give them to their intended recipient. **But if he says:** Give them, the finder must give them.

ורמייה: מצא ויתקאות, אפוטיקאות
ומנתנות, אף על פי שישניהם מזין
לא יחויר לא לוה ולא לה!

And the Gemara raises a contradiction to that inference from a *baraita* that states that if one found wills, or deeds of designated repayment, or deeds of gift, even if both the one who wrote the deed and its intended recipient agree that it is valid, he should return it neither to this person nor to that person.

אמר רבי אבא בר ממל: לא קשייא.

Rabbi Abba bar Memel said: This is not difficult.

Perek I

Daf 19 Amud b

הא – בבריא, וזה – בשכיב מרע.

This *halakha* applies in a case of a gift given by a healthy person,^N and that *halakha* applies in a case of a gift given by a person on his deathbed.

מתניתין דקתיini הא אמר לנו נתניין –
בשכיב מרע, דבר מהדר הו,

The Gemara explains: **The mishna that teaches that if the giver says: Give it to its intended recipient, the finder must give it, applies in a case of a gift given by a person on his deathbed, who is capable of retracting his gift.**

דאמרין: מי איכא למיimer, דלמא
בתבה מעקרו לא Hai, ואטלייך ולא
יובה ניחליה, והדור בתבה לאויש
אחרינא ויתביבה ניחליה – השטא קא
הדור ביה מההוא דהבה ניחליה.

Therefore, the finder must give the deed to the recipient, as we say:^N What is there to say as a reason for not returning the deed? One might suggest that perhaps the giver initially wrote a deed of gift for this person, but then reconsidered and did not give it to him, and then he wrote a second deed of gift for another person and thereby gave his property to him. And now that his first deed was found, he wishes to retract his gift to that second person to whom he gave the property, by dishonestly validating the first deed.

אי במתנית ברוא יתבה ליה – לית ליה
פסקרא, וכי נפקא תורה – בתרי"תא
ובci, דהא הדור ביה מקמי"תא.

This attempt to retract his latter gift will not succeed. If he gave his property to the recipient of the second deed of gift as the gift^H of a healthy person, then the second recipient incurs no loss by the first deed being given to its intended recipient. This is because, when the two deeds are produced in court, the recipient of the later one acquires the property, as the owner evidently retracted the first gift. Since one who gave away his property while on his deathbed can subsequently retract his gift, the second recipient acquires the property.

אי במתנית שכיב מרע נמי יתבה
ニיחליה – לית בה פסרא, דברי"תא
ובci, דקא הדור ביה מקמי"תא.

So too, if he gave it to the second person as the gift of a person on his deathbed, he incurs no loss. This is because the recipient of the later deed acquires the property, as the giver evidently retracted his gift to the first recipient.

כי קתי בברי"תא אף על פי שישניהם
מזדים לא יחויר לא לוה ולא לה –
בבריא, דלאו בר מהדר הו,

And when the *baraita* teaches that even if both the one who wrote the deed and its intended recipient agree that it is valid, the one who found it should neither return it to this person nor to that person, it is referring to the case of a gift given by a healthy person, who is not able to retract his gift.

NOTES

A healthy person – **בריא:** This suggestion that the *baraita* is referring to the gift of a healthy person seems untenable, as the *baraita* explicitly speaks of wills. The Ran explains that the reference is to the gift of a person on his deathbed that has the status of the gift of a healthy person, as a formal act of acquisition was performed; the gift of a person on his deathbed does not require such an act.

As we say, etc. – **דאמרי וכו':** The Ramban notes that elaborate expositions such as this are later additions to the Gemara from Rav Yehudai Gaon.

HALAKHA

Gift – נפקה: If one finds a deed of gift, even in a case where the giver admits to its validity, he should not return it to the recipient unless the deed of gift contains a stipulation to the effect that the giver can retract it at any point or that it was a deed of transfer. If one finds a document attesting to the gift of a person on his deathbed, and the giver is still alive and instructs that the docu-

ment be given to the recipient, one should give it to the recipient. If the giver died, even if the heirs instruct that the document be given, one should not give it to the recipient unless it is a deed of transfer. This is in accordance with the conclusion of the Gemara (Rambam Sefer Nezikin, Hilkhot Gezeila VaAveda 18:9–10; Shulhan Arukh, Hoshen Mishpat 65:14).

דָּמְרִין: וְלֹמַדְתָּה לְהָא מַעֲקָרָא, וְאַמְלֵין לְאַיְלָה
יְהָבָה לְיָה, וְדוֹר בְּתָבָה לְאַיְשׁ אֶחָרִינָא וְיְהָבָה לְיָה,
הַשְׁתָּא קָא חָדוּ בֵּיהַ מַהֲוָא דִיְהָבָה לְיָה, וְסַבָּרָה:
מַהֲדוֹר - לֹא מַצִּינָא הַדָּרוֹנָא בֵּי, אִימָרָה לְהָוּ דָּאָנוֹ
לְהָא יְהָבָתָא, וְיְהָדוֹרָה נְהָלִיהָ בְּתָבָה, בֵּי הַיְכִי דְּבִי
מַפְיקָה אֲיַבְתָּא דְּקָרִים - זְכָה בֵּיהַ הָוָא.

Therefore, one may not return the deed, as we say that perhaps the giver initially wrote a deed of gift for this person but then reconsidered and did not give it to him, and then he wrote a second deed of gift for another person and thereby gave his property to him; and now he wishes to retract his gift to that second person to whom he gave the property, thinking: Since I cannot retract the gift legally, I will say to the court that I gave the first deed of gift to this first person, and they will return the deed of gift to him, in order that when he produces this deed of gift, which is dated earlier, he will thereby acquire the property.

אַלְא אָמְרִין לְיהָ אָנוֹ: הָא יְהָבָתָא, לֹא יְהָבָן לְיהָ
לְהָא, וְלֹמַדְתָּה בְּתָבָה, מִיְהָבָה לְאַיְבָתָה נְהָלִיהָ,
וְיְהָבָתָה לְאַיְשׁ אֶחָרִינָא וְקָא חָדוֹתָה בֵּיהַ, אַיְלָא -
יְהָבָתָה לְאַיְשׁ אֶחָרִינָא וְקָא בְּשַׁעַת דִּתְהָבָה לְהָא-
בְּתָבָה לְיהַ שְׁתָּא בְּתָבָה אֶחָרִינָא וְיְהָבָה נְהָלִיהָ,
דָּאַיְיָבָתָה לְאַיְשׁ אֶחָרִינָא - לִיתְבָּה פְּסִיאָא,
דְּקָרִים זְכִי.

Rather, we say to the giver: We will not give this document to this person, as perhaps you wrote it but did not give it to him, and then you gave the property to another person, and you now wish to retract your gift to him unlawfully. Therefore, if in fact you did not give this property as a gift to another person, and you wish to return it to this person, then do the following: Write another deed of gift for him now and give it to him, so that if you did previously give the property to another person, he will incur no loss, as the earlier recipient acquires the gift.

מוֹתְקִיבָה רַב זְבִיד: הָא אִידִי וְאִידִי דִּיְתְּקָאּוֹת קָא
תְּנִינָא אָמָרָה רַב זְבִיד: הָא וְהָא בְּשַׁכְּבִיבָה מַרְעָא, וְלֹא
קְשָׁזָא: הָא - בֵּיהַ, וְהָא - בְּרִיהָ.

Rav Zevid objects to this distinction between the mishna and baraita, asking: But don't this mishna and that baraita both teach halakhot with regard to wills? How can Rabbi Abba bar Memel explain that the baraita is referring to the gift of a healthy person? Rather, Rav Zevid said that both this mishna and that baraita are referring to the gift of a person on his deathbed, and nevertheless, the contradiction between them is not difficult; this mishna is referring to him, the giver himself, who authorizes the return of the will to its intended recipient, and that baraita is referring to a case where the giver died, and his son is the one who is authorizing the return of the will.

מַתְנִינִין דָּקָא אָמָרָה תְּנוּנוֹתָנִין - בְּדִידִיה, דָבָר מַהֲדוֹר
הָוָא. דָּמְרִין: אֵי נְמִי יְהָבָה לְאַיְשׁ אֶחָרִינָא - לִיתְ
בֵּה פְּסִיאָא, דְּקָרִים וּבְרִיהָ - בְּתָרָא זְכִי, דָּהָא חָדוּ
בֵּיהַ מַקְמָא.

The Gemara explains: The mishna, which indicates that if the giver says: Give it to the recipient, the finder must give it to him, is referring to a case where the giver himself authorizes giving the will, as he is capable of retracting it. Therefore, there is no harm in giving the will to the recipient, as we say that even if in the meantime he already gave the property to another person, the latter recipient incurs no loss. This is because in a case where there are two wills, a first one and a last one, the recipient of the last one acquires the property, as the owner evidently retracted the first will.

כִּי קָא תְּנִינָה בְּרִיהָתָא אֶךְ עַל פִּי שְׁנִיהם מַוְדִים, לֹא
צְחוֹר לְהָוָה וְלֹא לְהָוָה - בְּרִיהָ.

And when the baraita teaches that even if both the one who wrote the deed and its intended recipient agree that it is valid, the one who found it should neither return it to this person nor to that person, it is referring to a case where the one who wrote it died, and it is his son who authorizes its return to the recipient.

דָּמְרִין: וְלֹמַדְתָּה אָבָהוֹ לְהָא, וְאַמְלֵין לְאַיְלָה
יְהָבָה נְהָלִיהָ, וְבִתְרָוָה בְּתָבָה אָבָהוֹ לְאַיְשׁ אֶחָרִינָא,
אֶחָרִינָא, וְיְהָבָה לְיָה. וְהַשְׁתָּא קָא חָדוּ בֵּיהַ מַהֲוָא,
סַבָּרָה: מַהֲדוֹר לֹא מַצִּינָא הַדָּרוֹנָא בֵּי, אִימָרָה לְהָוּ דָּאָבָא
יְהָבָה לְיהַ לְהָא, וְגַנְבָּתוֹ לְיהַ בְּתָבָה נְזִילָה וּנְפִיקָה
מִינִיה - וְהָא זְכִי, וּנְפִילָג בְּהָרִיהָ.

In that case, the deed may not be returned, as we say that perhaps his father wrote the deed of gift for this person and then reconsidered and did not give it to him, and after his father died, the son wrote a deed of gift giving the property to another person and gave it to him. And now the son wishes to retract that gift, thinking: Since I cannot retract the gift legally, I will say to the court that my father gave his deed of gift to this first person, and they will return him his deed of gift, and he will then go and appropriate the property from the one who legally acquired the property, as he will be successful in acquiring it, and I will divide it with him.

הַלְּפָקָן אָמְרִין לְיהָ אָנוֹ: הָא יְהָבָתָא לֹא יְהָבָן לְיהָ
לְהָא, וְלֹמַדְתָּה מִכְתָּב בְּתָבָה אָבָהוֹ, מִיְהָבָה לֹא יְהָבָה
לְיהַ, וְיְהָבָתָה אֶת לְאַיְשׁ אֶחָרִינָא וְקָא חָדוֹתָה בֵּיהַ.

Therefore, we say to the son: We will not give this deed to this person, as perhaps your father wrote it but did not give it to him, and then you gave the property to another person, and now you wish to retract your gift.

אֲלֹא אֵי קַוְשָׁטָא קָא אִמְרָת דִּיבָּר לֵי
אָבָּוּ - וַיְלַא אֶת הַשְׁתָּא בְּתִיב לֵיה שְׁטוֹרָא
אַחֲרִינָא דָאַנְיָה נַמְיָה לֵא יַהְבָה לֵיה אָבָוּ,
וְתַּפְתִּיחָה אָתְּ לְאַיִשָּׁת אַחֲרִינָא - לִית בָּהּ
פִּסְידָא, דְקָמָא וּבְתוּרָא - קַמָּא זָכִי.

תַּנוּ רְבָּנָן: מַצְאָ שׂוֹבֵר, בַּמְּמַן שְׁהָאָשָׁה
מוֹדָה - יַחְזֵיר לְבֶעֶל, אֵין הָאָשָׁה מוֹדָה -
לֹא יַחְזֵיר לֵא לְהָה וּלֹא לְהָה.

בַּמְּמַן שְׁהָאָשָׁה מוֹדָה מִיהָת - יַחְזֵיר לְבֶעֶל,
וְלֹיחֲשׁ דְלָמָא בְּתִיבָה לִיתְנַהֲןָ בְּנִיסָן, וְלֹא
לִתְנַהֲןָ עַד תְּשִׁירָ, וְאַוְלָה וּבְנִנְתָּה לְבַתּוּבָה
בְּטֻבַת הַנְּאָהָמִיכָן עַד תְּשִׁירָ,

מִמְפִיק לֵיה לְשׂוֹבֵר דְכִתְבָּ בְּנִיסָן, וְאַתָּא
לְמַטְרֵף לְקוֹזָהָת שָׁלָא בְּדִין!

Rather, if you are telling the truth that your father gave him this property, then you should go now and write another deed of gift for him, so that even if your father did not give him this property, and you wrote a deed of gift giving this property to another person, he will incur no loss. This is because in a case where there are two deeds of gift, a first one and a last one, the recipient of the first one acquires the property.

§ The Sages taught in a *baraita*: If one found a receipt for payment of a marriage contract,^H in a case when the wife admits that it was paid, he should return it to the husband. If the wife does not admit that it was paid, he should neither return it to this person, the husband, nor to that person, the wife.

In any event, the *baraita* states that when the wife admits that it was paid, one should return the receipt to the husband. The Gemara asks: But let us suspect that perhaps the wife wrote the receipt intending to give it to the husband in Nisan, but ultimately she did not give it to him until Tishrei, and she went and sold^I her marriage contract for financial advantage in the interim, between Nisan and Tishrei. In other words, she received a sum of money and in exchange agreed that if she were to be divorced or widowed and become entitled to payment of her marriage contract, the money would belong to the purchaser of the rights to her marriage contract.

And then after the couple is divorced, and the purchaser collects payment of the marriage contract from the husband, the husband will produce the receipt that was written in Nisan and will come to repossess property from the purchasers unlawfully.

אמָר רָבָא:

Perek I

Daf 20 Amud a

שָׁמַע מִינָה אִתָּא לְדַשְׁמוֹאָל. דָאַמְרָה
שְׁמוֹאָל הַמּוֹכָר שָׁרוֹ חֹב לְחַבְיוֹ וְחוֹזֶ
וּמְחַלֶּוּ - מְחַול, וְאַפְלָוּ יוֹרֶשׁ מְחַלֶּל.

Conclude from the fact that this suspicion is not taken into account that the halakha of Shmuel is accepted. As Shmuel says: In the case of one who sells a promissory note to another, and the seller then forgives^{HN} the debt of the debtor, it is forgiven, since the debtor essentially had a non-transferable obligation to the creditor alone, and even the creditor's heir can forgive the debt. Therefore, if the wife did engage in the deception mentioned above, it was within her rights, as she is able to forgive the debt of the marriage contract.

אַבְּיִי אָמָר: אַפְילּוּ תִּמְאָ לִיתְהָ לְדַשְׁמוֹאָל
הַכָּא בְּמַאי עַסְקִין - בְּשַׁשְׁטָר בְּתַובָּה
וַיַּצֵּא מִתְחַת יְדָה. וְרָבָא אָמָר: אֵי מְשׁוּם
שְׁטוּר בְּתַובָּה - חַיִישָׁן לְשֹׁטֵי בְּתוּבּוֹת.

Abaye said: This is not conclusive proof. Even if you say that the halakha of Shmuel is not accepted, here we are dealing with a case where the marriage contract emerges from her possession, which indicates that she did not sell it. And Rava disagreed with Abaye and said: If the reason there is no suspicion that she sold her marriage contract is due to the fact that the marriage contract emerged from her possession, this reason is insufficient, as we should suspect that there might be two marriage contracts.^N

HALAKHA

מִצְאָ שָׁבֵר – Found a receipt for a marriage contract – Ostensibly, this suspicion exists with regard to any lost item that is returned to its owner as perhaps the owner sold it to someone else in the interim. The Ritva explains that in the case of a lost item, there is a public announcement that the item was found, and the person who bought it could also come and describe its distinguishing marks. In this case, by contrast, the document is returned to the person for whom it was written.

NOTES

And she went and sold, etc. – Ostensibly, this suspicion exists with regard to any lost item that is returned to its owner as perhaps the owner sold it to someone else in the interim. The Ritva explains that in the case of a lost item, there is a public announcement that the item was found, and the person who bought it could also come and describe its distinguishing marks. In this case, by contrast, the document is returned to the person for whom it was written.

And then forgives – **וּמְחַלֶּל**: There are various explanations for the ability of a creditor to forgive a debt after he sold it. One opinion is that the sale of a promissory note is valid only by rabbinic law, and therefore, the creditor can still forgive the debt by Torah law (*Rambam; Tosafot*, citing *Rabbeinu Yitzhak of Dampierre* and *Rabbeinu Tam*). *Rabbeinu Tam* is also cited as explaining that a creditor can sell his right to collect the property that is liened to the debt, but the debtor's personal obligation to repay the debt is solely to the creditor. Therefore,

once the creditor forgives the personal obligation, the debt and its lien are automatically void. The Ra'avad holds that when a creditor sells a promissory note, the lien is not transferred at all, and the debtor does not actually become obligated to the buyer. In *Sefer Hashlama* it is explained that the purchaser of the promissory note cannot demand payment from the debtor at all; rather, he must ask the creditor to demand the payment on his behalf (see also Ra'avad). According to the conclusion of the Gemara, the purchaser can demand com-

pensation from the creditor if he forgives the lien. The early commentaries disagree as to whether this is referring to the entire value of the debt or only to the amount he paid for the promissory note.

We suspect that there might be two marriage contracts – **חַיִישָׁן לְשֹׁטֵי בְּתוּבּוֹת**: In such a case, since the receipt does not specify to which marriage contract it refers, both are void (Ritva).

BACKGROUND

Refusal – מיאון: A girl under the age of twelve and a half can be married off by her father. If her father is no longer alive, Torah law mandates that she, as a minor, cannot marry. Nevertheless, the Sages instituted that a girl's mother or brothers may marry her off before she reaches the age of twelve if they secure her consent. The girl may later terminate this marriage before she reaches the age of twelve by performing an act of refusal, i.e., declaring that she does not want the marriage. In such a case, no bill of divorce need be written. When a girl performs the act of refusal, the marriage is nullified retroactively, and she is considered never to have been married at all. Most of the halakhah of refusal are discussed in tractate Yevamot.

אֲבָי אָמַר: חֶדֶר, לְשֵׁתִי בְּתוּבֹת לָהּ
חַיִּשִּׁין, וְעַזְוֹד, שָׂוֹר בְּמַנוֹּת טְרִיף. אֲבָי
לְטֻעָמָה, דָּאָמַר: עַרְיוֹ בְּחַתּוּמוֹ יְכִין לוֹ.

HALAKHA

Any court enactment – **כל מעשה בית דין** – If one found a document of appraisal, a document concerning food, a bill of halitzah or refusal, a document that records litigants' claims, a document in which litigants declare the judges that they selected, or any other document that constitutes a court enactment, he must return it to its presumed owner. This is because the court would not have issued this document unless it was clearly valid (Rambam Sefer Nezikin, Hilkhos Gezeila VaAveda 18:13; Shulhan Arukh, Hoshen Mishpat 65:12 and Sma there).

If one found a document among his documents – **מצא שטר בין שטרות**: If one found a document in his possession and is unsure as to who gave it to him and what its status is, the document must be set aside until Elijah the prophet comes (Rambam Sefer Mishpatim, Hilkhos Malve VeLoved 16:11; Shulhan Arukh, Hoshen Mishpat 65:1).

LANGUAGE

Container [deluskema] – **לְלוּסְקֵמָה**: This word, or its variant, geluskema, is apparently derived from the Greek γλωσσόκομον, glossokomon, meaning case or box.

מִתְנִי מֵצָא אֱיּוֹרֹת שָׁוֹם וְאֱיּוֹרֹת מָזוֹן,
שְׁטוּרִי חַלִּיזָה בְּמִיאוֹנִין, וְשְׁטוּרִי בִּירוּרִין.
וְכָל מַעֲשָׂה בֵּית דִין – הַרְיָה וְיַחֲזֵיר.

מֵצָא בְּחַפֵּיסָה אוֹ בְּגַלְוָסְקֵמָה תְּרִיכָה
שֶׁל שְׁטוּרֹת אוֹ אֲגֹודָה שֶׁל שְׁטוּרֹת – הַרְיָה
וְיַחֲזֵיר. וּכְמוֹ אֲגֹודָה שֶׁל שְׁטוּרֹת –
שְׁלֶשֶׁה קְשֹׁרוֹן וְהַבָּה. רַבּוֹ שְׁמַעַן בְּנָן
גִּמְלַיאֵל אָמַר: אַחֲד הַלְּוָה מְשֻׁלָּשָׁה –
יַחֲזֵיר לְלָוָה, שְׁלֶשֶׁה הַלְּוָן מִן הַאַחֲד –
יַחֲזֵיר לְמַלְוָה.

מֵצָא שֶׁטֶר בֵּין שְׁטוּרֹת וְאַינוֹ יוֹדֵעַ מָה
שְׁבִיבָה – וְזַא מָנוֹחַ עַד שִׁבְבוֹא אַלְיהָ.
אָם יִשְׁעַם הַנְּמָפְנוֹנָה – יַעֲשֵׂה מָה
שְׁבִיבָה מָפְנוֹנָה.

גַּם' מָאֵי שְׁטוּרִי בִּירוּרִין? הַכ־ּא תַּرְגּוּמוֹ:
שְׁטוּרִי טַעַנְתָּא, רַבִּי יִרְמֵיָה אָמַר: זֶה בָּזָר
וְאַחֲד וְזֶה בּוֹרֵר לֹא אַחֲד.

וְכָל מַעֲשָׂה בֵּית דִין הַרְיָה וְיַחֲזֵיר.
הַהוּא גַּעֲפָא דְאַשְׁתַּבְחָה בֵּי דִינָא דָרְבָּנוֹן,
דָּהָה בְּתִיבָּה: בְּשִׁוְרִי מְתָא
דָעַל רְבִיס נְהָרָא. אָמַר רְבָב הַנְּנוֹן:

And Abaye said in response: First, we are not concerned about the remote possibility of two marriage contracts. And furthermore, even if there is only one marriage contract, which was sold before the receipt was given to the husband, the receipt is valid, as a receipt can be used to repossess property from the time it was written, even if it was given on a later date. In saying this, Abaye conforms to his standard line of reasoning, as he says that once a monetary document is written for someone, the document's witnesses, with their signatures, acquire it on his behalf.

MISHNA If one found documents of appraisal of a debtor's property for the purpose of debt collection; or documents concerning food,^N which were drawn up when one accepted upon himself to provide sustenance for another; documents of halitzah; or documents of refusal^B of a girl upon reaching majority to remain married to the man to whom her mother or brothers married her as a minor after the death of her father; or documents of beirurin, a concept that will be explained in the Gemara; or any court enactment,^H e.g., a promissory note that has been authenticated by the court, in all of these cases, the finder must return the document to its presumed owner.

If one found documents in a *hafisa* or in a *deluskema*,^L both of them types of containers, or if he found a roll of documents or a bundle of documents, he must return them. And how many documents are considered to be a bundle of documents? It is three that are tied together. Rabban Shimon ben Gamliel says: If the documents make reference to loans of one person who borrowed money from three people, the finder must return them to the debtor, as they were presumably in his possession before being lost. If the documents make reference to loans of three people who borrowed money from one person, he must return them to the creditor, as they were presumably in his possession before being lost.

If one found a document among his documents^{HN} that were given to him by other people as a trustee, and he does not know what its nature is, i.e., he does not remember who gave it to him or whether the debt mentioned in it has been paid, the document is placed aside until Elijah the prophet comes and clarifies the issue through his prophecy. If there are cancellations of contracts [*simponot*] among them, he should do what is stated in the *simponot*.

GEMARA What is meant by documents of *beirurin*? Here, in Babylonia, the Sages interpret it to mean documents recording each litigant's clarification [*beirur*] of his claims^N in a court case. Rabbi Yirmeya, who lived in Eretz Yisrael, said: It is referring to cases where this litigant chooses [*borer*] one judge, and that litigant chooses one judge, and they choose the third judge for the case. The two litigants sign a document in which they declare which judges they choose.

§ The Gemara addresses that which the mishna states: And with regard to any court enactment, the one who found it must return it to its presumed owner. The Gemara relates: There was a certain bill of divorce that was found in the court of Rav Huna, in which it was written that the bill of divorce was written in Sheviri City, which is located on the Rakhis River. Rav Huna said about this:

NOTES

Documents of appraisal or documents concerning food – **אֱיּוֹרֹת שָׁוֹם וְאֱיּוֹרֹת מָזוֹן**: The Ritva maintains that the expression: Documents of appraisal, refers to the court's appraisal of the debtor's property prior to the court's sale of it to pay his debt. Documents concerning food, according to the Ritva, are documents that the court produces authorizing the appropriation of a person's property in order to pay for his wife's and daughters' sustenance.

If one found a document among his documents – **מצא שְׁטוּרִי בֵּין שְׁטוּרֹת**: There are *ge'onim* who hold that this halakhah applies not only to a third party serving as a trustee, but also to a creditor who finds a promissory note among his documents and is unsure whether the debt was repaid (*Sefer HaTerumot*).

Documents recording each litigant's clarification of his claims – **שְׁטוּרִי טַעַנְתָּא**: This refers to the court records of the litigants' claims. These records are kept so that the litigants cannot add to their original claims or later deny points that they already conceded (Rashbam).

An additional interpretation of documents of *beirurin* is given in the Jerusalem Talmud: These documents give power of attorney to investigators to look into a dispute.

Perek I
Daf 20 Amud b

חַיִשֵּׁין לְשִׁנֵּי שְׁוּרִי. אָמַר לֵיהּ וּבָ
חַסְדָּא לְרֹבֶה: פּוֹק עַיִן, דְּלֹא רֹתֶתֶת בְּשַׁ
לָהּ וּבָהּ הָנוּ מִינָּךְ. נַפְקֵד דָק וְאַשְׁפָט.
וְתַּגְנִין: בְּלֹ מַעֲשָׂה בֵּית דִין תְּרִיעָה יְחִיּוּ.

אָמַר לֵיהּ וּבָעָמָם לְרֹבֶה: הַיִכְפְּשֵׁיט
מַר אִיסּוֹרָא מִמְּמֻנָּא? אָמַר לֵיהּ: תְּרִיאָ!
שְׁטוּרִי חַלְצָה וּמִיאוֹנִין תִּנְשָׁ.

פְּקֻעַ אַרְזָא דִבְרֵי רָב. מַר אָמַר: מִשּׁוּם
לְתַאי דִין פְּקֻעַ, וּמַר אָמַר: מִשּׁוּם לְתַאי
דִין פְּקֻעַ.

מֵצָא בְּחַפְיסָה אוֹ בְּדָלוֹסְקָמָא". מַאֲ
חַפְיסָה? אָמַר רַבָּה בָּר בָּרָה: חַמְתָּ
קְטָנָה. מַאֲ דָלוֹסְקָמָא? אָמַר רַבָּה בָּר
שְׁמוֹאֵל: טְלִיקָא דְסִבִּי.

"תְּכִירִיךְ שֶׁל שְׁטָרוֹת אוֹ אֲגֹנְדָה שֶׁל
שְׁטָרוֹת" וּכְוּ. פָּנָו רְבָנָן: בְּפָמָה הוּא
תְּכִירִיךְ שֶׁל שְׁטָרוֹת - שְׁלֵשָׁה בְּרוּכִין
הַבּוֹהַ. וּכְמוֹה הִיא אֲגֹנְדָה שֶׁל שְׁטָרוֹת -
שְׁלֵשָׁה קְשָׁרוֹנִים וְבָהּ.

שְׁמֻעַת מִינָה - קָשֵׁר סִימָן.

הַא תַּנִּי רַבִּי חִיאָ שְׁלֵשָׁה בְּרוּכִין וְהַ
בָהּ!

We are concerned for the possibility that there are two cities named Sheviri, and that this bill of divorce may belong to someone else who lives in the other Sheviri, and therefore it should not be returned. Rav Hisda said to Rabba: Go out and examine this halakha, as in the evening Rav Huna will ask you about it. He went out, examined it, and discovered a relevant source, as we learned in the mishna: With regard to any court enactment,^N the one who found it must return it to its presumed owner. Since this bill of divorce was found in court, it belongs to this category and should be returned.

Rav Amram said to Rabba: How can the Master resolve the halakha in the case of a bill of divorce, which is a ritual matter, from the mishna, which discusses monetary matters? Rabba said to him: Fool,^N we learned in the mishna that this halakha applies in the case of documents of halitza and documents of refusal as well, which are ritual matters.

At that point, the supporting cedar beam of the study hall dislodged. One Sage said: It was due to my fortune that it dislodged, as you spoke to me offensively, and the other Sage said: It was due to my fortune that it dislodged, as it was you who spoke to me offensively.

§ The mishna teaches: If one found documents in a *hafisa*^H or in a *deluskema*, he must return them. The Gemara asks: What is a *hafisa*? Rabba bar bar Hana says: It is a small flask. What is a *deluskema*? Rabba bar Shmuel says: It is a container [*telika*]^L used by the elderly.

The mishna teaches: If one found a roll^B of documents^H or a bundle^B of documents, he must return them. The Sages taught in a *baraita*: How many documents constitute a roll of documents? A roll is three documents rolled together. And how many constitute a bundle of documents? A bundle is three documents tied together.

The Gemara infers: Conclude from it that if one lost an item that has a knot, the type of knot can serve as a distinguishing mark by means of which the owner can describe the item, and it therefore must be returned to him.

The Gemara rejects this inference: Doesn't Rabbi Hiyya teach that the reference is to three documents that are rolled together?^N The fact that they are rolled together is what serves as a distinguishing mark, rather than the knots.

NOTES

כל מִשְׁנָה בֵּית דִין – Apparently, Rabba was referring to the entire mishna and not merely to this phrase. Rav Amram thought that he was referring only to this specific phrase, and he therefore challenged Rabba's answer.

Fool [terada] – תְּרִדָּא: There are several versions of the word *terada*, as well as various interpretations of it. Rashi here understands it to mean one who is crazy. In *Zevahim* (25b) he interprets it to mean a confused fool. In *Karetot* (18b) it means either a fool or a lazy person. In *Bava Kamma* (105b) the word is rendered *tedura*. There, Rashi explains that it means one who is lacking in wisdom. Some *ge'onim* read the word as *terara*, meaning a slobbering fool (*Rabbeinu Hananel; Arukh*).

שלשָׁה בְּרוּכִין הַבָּהּ – שלשָׁה בְּרוּכִין הַבָּהּ: It seems that Rabbi Hiyya did not emend the language of the mishna but rather reinterpreted the phrase: Tied together, to mean intertwined, rather than meaning tied together by means of some other object, e.g., a rope or string (*Rosh*).

HALAKHA

מֵצָא בְּחַפְיסָה – If one found documents in a *hafisa*: If one finds a document in a container, and another comes and describes a distinguishing mark on the container, the finder must return it to him. If one proclaimed that he found a document, and another described it by stating that it was placed in such and such a container that is not standard for keeping documents, it is considered a valid description and the container, along with the document, must be returned (Rambam *Sefer Nezikin, Hilkhot Gezeila VaAveda* 18:3; *Shulhan Arukh, Hoshen Mishpat* 65:9).

אַרְזָא דְסִבִּי – תְּכִירִיךְ שֶׁל שְׁנָקָות: If one found three or more documents rolled together, he should proclaim that he found documents. If someone claims the documents by stating the number of documents, they should be returned to him, and it is not necessary for him to clarify the manner in which they were rolled together (Rambam *Sefer Nezikin, Hilkhot Gezeila VaAveda* 18:3; *Shulhan Arukh, Hoshen Mishpat* 65:10).

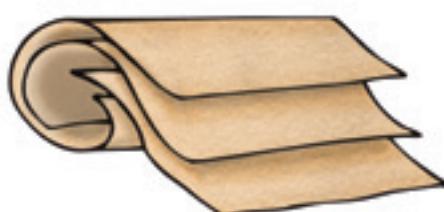
LANGUAGE

Container [*telika*] – תְּלִיקָא: Possibly derived from the Greek θύλακος, *thulakos*, meaning sack or bag.

BACKGROUND

Roll – תְּכִירִיךְ:

Bundle – אֲגֹנְדָה:



Roll of documents



Bundle of documents

NOTES

One person who borrowed from three people – **אחד להו משלשה**: The Meiri explains that under these circumstances, the promissory notes do not need to be rolled together; the fact that they are referring to one person who borrowed from three different people is sufficient. In *Sma*, which cites the Rosh, the ruling is that even in this case, the promissory notes must be rolled together for them to be returned (see also *Hiddushei Harim*).

Perhaps the three all went to ratify their promissory notes – **כלם לא לkipotichu איל**: Some explain that the concern is not that the promissory notes may have been lost by the creditors, but rather that they may have been lost by the scribe, or his messenger, in the process of returning the ratified promissory notes to the creditors (Rabbi Ovadyah Bartenura; Maharam Schiff).

As though he were merely jesting [*meshekh*] – **אינו אלא במשיח**: The wording cited in the Jerusalem Talmud is: He was dealing [*mitasek*] with his documents. In other words, he did not write the *simpon* for immediate use, but rather for it to be given the debtor when he repays the debt (*Penei Moshe*).

HALAKHA

One who borrowed from three people – **אחד להו משלשה**: If one found three ratified promissory notes of three creditors who lent to one debtor, he must return them to the debtor, without the debtor having to provide a distinguishing mark. He may not return them to the creditors, even if they provide distinguishing marks. If the promissory notes are not ratified, he should return them only to a debtor who provides a distinguishing mark.

If one found promissory notes of one creditor who lent to three different debtors, and they reflect the handwriting of three different scribes, he should give them to the creditor, even if the creditor does not provide a distinguishing mark. If they reflect the handwriting of one scribe, he should return them to one who provides a distinguishing mark. This is in accordance with the opinion of Rabban Shimon ben Gamliel, whose opinions that are stated in the Mishna are almost always accepted (Rambam *Sefer Nezikin*, *Hilkhot Gezeila VaAveda* 18:4; *Shulhan Arukh*, *Hoshen Mishpat* 65:11).

A *simpon* that emerges from the possession of a creditor – **שופען הייא מתקחת ידי מלה**: A *simpon* that is found in the possession of the creditor, stating that one of his promissory notes is repaid, is invalid. But if the promissory note to which the *simpon* refers is found among torn documents, the promissory note is invalidated and the debt is therefore considered to have been repaid (Rambam *Sefer Mishpatim*, *Hilkhot Malve VeLoveh* 16:8; *Shulhan Arukh*, *Hoshen Mishpat* 65:18).

**אי היב, הינו פברון! תברון, כל חד
חד ברואה דתבירה, אגודה - דרומו
אחדדי וכורכות.**

The Gemara asks: If so, this case is identical to the case of a roll of documents, which is also mentioned in the mishna. What is the difference between a roll and a bundle? The Gemara answers: A **roll** is referring to a case where **each and every one** of the documents is located at the top of another one, i.e., they are rolled together such that the top of each page is near the bottom of the previous page. A **bundle**, by contrast, is referring to a case where they are located one on top of the other and rolled together.

מאי מבריז? ממי?

The Gemara asks: What does the person who found the documents proclaim so that the owner can claim it? The Gemara answers: He proclaims the **number** of documents that he found, and the owner can describe them by saying that they were rolled together.

מאי אריא תלטא? אפיקלו תרין נמי?

The Gemara asks: If so, why does the *tanna* teach specifically a case of three documents? Even if two documents are found, they can also be returned in this manner.

**אלא בראמר ריבניא: טבעא מבריז,
הבא נמי: שטרו מבריז.**

Rather, the finder proclaims his find in a manner similar to that which Ravina said: If one finds coins, he simply proclaims that he found coins, without specifying the number. Here too, the finder proclaims that he found documents, and the owner describes them by both their exact number and the fact that they were rolled together. Therefore, if there are only two documents the description is deficient, as the number two is already implicit in the finder's proclamation that he found documents, which is plural.

**רבנן שמעון בן גמליאל אומר אחד
להו משלשה יחויר להו, וכו' דאי
סקלך דעתך דמלין יינהו, Mai בעו
גביה חדדי?**

¶ The mishna teaches that Rabban Shimon ben Gamliel says: If one finds three promissory notes that make reference to the loans of **one person who borrowed from three people**,^{NH} he must return them to the debtor. The Gemara explains: The reason for this is that if it enters your mind that these promissory notes belong to the creditors, what are they doing together in one place?

דלא לkipotichu איל? דמקימי.

The Gemara suggests: Perhaps the three creditors all went to court in order to ratify their promissory notes,^N and the notes were lost together there. The Gemara responds that the mishna is referring to a case where the promissory notes are ratified.

**דלא מא מידא דספרא נפל? לא משחי
איןיש קיומה בידא דספרא.**

The Gemara asks: Perhaps they fell from the hand of the scribe of the court after he ratified them. The Gemara answers: A person does not leave his ratified promissory note in the possession of the scribe. Therefore, the most likely scenario is that the promissory notes were lost by the debtor.

**שלשה שלוח מאחד יחויר למלה
 וכו'. דאי סקלך דעתך דלוין יינהו
 Mai בעו גביה חדדי?**

¶ The mishna teaches: If the promissory notes make reference to the loans of **three people who borrowed from one person**, the one who found them **must return them to the creditor**. The Gemara explains: The reason for this is that if it enters your mind that these promissory notes belong to the debtors, what are they doing together?

**דלא למכתבנהו אולוי? דכתבי
בתלת ידי ספרי.**

The Gemara asks: Perhaps the three went to one scribe to write the promissory notes, and the notes were then lost together. The Gemara answers that the mishna is referring to a case where the promissory notes are written in the handwriting of three different scribes.

**ודלא לkipotichu אולוי? מלוה מקים
שטריה, לזה לא מקים שטריה.**

The Gemara suggests: And perhaps the three debtors went to the court in order to ratify the promissory notes, and they lost them there. The Gemara answers: It is the creditor who ratifies his promissory note; the debtor does not ratify his promissory note.

**אם יש עמהן סמפוןות יעשה מה
שבסםפוןות. אמר רב ירמיה בר
אבא אמר רב: סמפון היוצא מתקחת
ידי מלוה, אף על פי שבכתב בכתב
דו - אין אלא במשיח, ופסול.**

¶ The mishna teaches: If there are cancellations of contracts [*simponot*] among one's documents, he should do what is stated in the *simponot*. The Gemara cites that which Rav Yirmeya bar Abba says that Rav says: With regard to a *simpon* that emerges from the possession of a creditor,^H even if it is written in his own handwriting and is clearly not forged, it is considered as though he were merely jesting^N and the *simpon* is invalid.

אֲמַבְּעָא בְּתוֹב בְּכִתְבֵּי יָד סְפָרָה, וְאִיכְא
לְמַיְמָר סְפָרָה אֶתְרָמִי לֵיהּ וְכִתֵּב, אֶלָּא
אֲפִילוּ בְּתוֹב בְּכִתְבֵּי יָד – פָּסוֹל. סְבָרָה:
דְּלִמְאָם מַתְרָמִי וְאַתְּ בֵּין הַשְׁמָשׁוֹת, וְקַא
פָּרָעַ לֵיהּ, דְּאֵי לֵא יָהִיבָּן לֵיהּ לְאֵי חַיָּב
לֵי וּזְוִי, אַכְתּוֹב אָנָּא, דְּכֵי אִיתִי לֵי זְוִי –
אַתְּן לֵיהּ.

תַּנִּינָה: אִם יְשִׁיחַ שְׂמִונָה – יַעֲשֵׂה מָה
שְׁבַּקְשְׁמִונָה!

בְּדִאמְרוֹ רַב סְפָרָה: שְׁנִמְצָא בֵּין שְׁטָרוֹת
קְרוּעִין, הַכָּא נִמְיָה שְׁנִמְצָא בֵּין שְׁטָרוֹת
קְרוּעִין.

תַּאֲשִׁמָּע: נִמְצָא לְאַחֲרֵי בֵּין שְׁטָרוֹת
שְׁטוֹרָה שֶׁל יוֹסֵף בֶּן שְׁמֻעוֹן פָּרוּעַ – שְׁטוֹרָה
שְׁיִיחַם פָּרוּעַ!

בְּדִאמְרוֹ רַב סְפָרָה: שְׁנִמְצָא בֵּין שְׁטָרוֹת
קְרוּעִין, הַכָּא נִמְיָה – שְׁנִמְצָא בֵּין שְׁטָרוֹת
קְרוּעִין.

תַּאֲשִׁמָּע: שְׁבוּעָה שֶׁלָּא פָקַדְנוּ אֶבְּאָא,
וּשֶׁלָּא אָמַר לְנוּ אֶבְּאָא, וּשֶׁלָּא מִצְאָנוּ בֵּין
שְׁטוֹרָתוֹ שֶׁל אֶבְּאָא שְׁבָרָה זוֹ פָּרוּעַ!

אָמַר רַב סְפָרָה: שְׁנִמְצָא בֵּין שְׁטָרוֹת
קְרוּעִין.

תַּאֲשִׁמָּע: סְמִפְוָן שִׁישׁ עַלְיוֹ עֲדִים: יְתַקְּיִים
בְּחוֹתְמָיו! אִימָא: יְתַקְּיִים בְּחוֹתְמָיִם,

The Gemara explains: It is not necessary to state this halakha in a case where it is written in the handwriting of a scribe, as it can be said that he happened to have an opportunity to have the scribe write the simpon, and therefore he had him write it before the debt was repaid. But even in a case where it is written in the handwriting of the creditor it is invalid. The creditor may have written the simpon himself before the debt was repaid, thinking: Perhaps the debtor will happen to come at twilight on the eve of Shabbat and wish to repay me. I should prepare a document of cancellation, as, if I do not give him one, he will not give me the money. I will therefore write the document now, so that when he brings me the money, I will give it to him.

The Gemara challenges the statement of Rav based on that which we learned in the mishna: If there are simponot among one's documents, he should do what is stated in the simponot. This is apparently referring to simponot that are in the possession of the creditor.

The Gemara answers that the mishna is to be understood in accordance with that which Rav Safra said in response to another difficulty: It is referring to a case where the simpon was found among torn documents. This indicates that the simpon is valid, as had the debt not been repaid, the creditor would not have put the simpon note among torn documents. Here too, the mishna is referring to a case where the simpon was found among torn documents.

Come and hear another challenge to Rav's statement from a mishna (*Bava Batra* 172a): If one found among his documents a simpon that says: The debt mentioned in the promissory note of Yosef ben Shimon^h is repaid, and there are two people by that name who owe him money, the debts mentioned in the promissory notes of both of them are considered repaid, as each can claim that the cancellation is referring to his debt, and the burden of proof rests upon the creditor. Apparently, a simpon that is found in the possession of the creditor is valid.

The Gemara answers that this mishna, too, is to be understood in accordance with that which Rav Safra said in response to another difficulty: It is referring to a case where the simpon was found among torn documents. Here too, the mishna is referring to a case where the simpon was found among torn documents.

Come and hear another challenge to Rav's statement from a mishna (*Shevuot* 45a): If orphans who inherited their father's property demand repayment of a debt owed to their father from the orphans of the debtor, they are required to take an oath stating: We take an oath that our father did not instruct us^h on his deathbed that the debt mentioned in this promissory note was repaid and it should be returned to the debtor, nor did our father say to usⁿ on an earlier date that it was repaid, nor did we find among the documents of our father a simpon stating that this promissory note was repaid. This too, seems to indicate that a simpon is valid even if it is found in the possession of the creditor.

The Gemara answers by citing the statement of Rav Safra, who said in this context that this reference is to a case where the simpon was found among torn documents.

Come and hear another challenge from a baraita: A simpon upon which witnesses are signed is ratified by means of its signatories. The court verifies the validity of the witnesses' signatures and thereby ratifies the document. This too seems to include a simpon that is in the possession of the creditor. The Gemara answers: Say that the baraita reads: Is ratified by obtaining confirmation from its signatories,

HALAKHA

Among his documents the promissory note of Yosef ben Shimon – בֵּין שְׁטוֹרָתוֹ שֶׁטוֹרָה שֶׁל יוֹסֵף בֶּן יוֹסֵף בֶּן שְׁמִינִי: There are different opinions with regard to a case where a creditor lent money to two people who have the same name, and he possesses a promissory note for each debt, stating clearly to which debtor the promissory note is referring, and a simpon is found but it is unclear which debt was canceled. In the *Shulhan Arukh* it is stated that if the simpon is ratified, and the promissory notes were found among torn documents, both promissory notes are voided. The Maharshal adds that the same applies if the notes were found among notes that recorded loans that were repaid, rather than torn up. The *Shakh* and the *Gra* hold that the promissory notes are voided if either the simpon is ratified or the promissory notes were found among torn documents (Rambam *Sefer Mishpatim*, *Hilkhot Malve VeLoveh* 24:8; *Shulhan Arukh*, *Hoshen Mishpat* 49:9).

Our father did not instruct us – שֶׁלָּא פָקַדְנוּ אֶבְּאָא: If a creditor died, and his heirs demand payment of the debt, producing a promissory note as proof, and the debtor claims that he repaid the debt, and the heirs respond that they do not know whether that is the case, the debtor is liable to pay. If the debtor wishes, he can demand that they take an oath that their father never told them that the debt was repaid, and that they never found any document among his papers indicating that it was repaid (Rambam *Sefer Mishpatim*, *Hilkhot Malve VeLoveh* 17:1–2; *Shulhan Arukh*, *Hoshen Mishpat* 108:5).

NOTES

Our father did not instruct us nor did our father say to us – שֶׁלָּא פָקַדְנוּ אֶבְּאָא וּשֶׁלָּא אָמַר לְנוּ אֶבְּאָא: Rashi explains that their father neither told them so on his deathbed nor previously. The Meiri explains that their father neither told them directly nor through

a messenger. Others explain that he neither instructed them to return this promissory note, nor told them that the debt was repaid (Rabbeinu Peretz).

Perek I
Daf 21 Amud a

HALAKHA

סִמְפּוֹן שָׁיֵשׁ – If a receipt for payment of a debt is found in the possession of the creditor, and it includes the signature of witnesses and is ratified, the debtor is exempt from payment. If it is not ratified, the witnesses must be asked in person about the debt. If they say that they do not know whether the debt was repaid, or if they are not available for questioning, the receipt is worthless (*Shulhan Arukh, Hoshen Mishpat* 65:18).

If there are no witnesses signed on it but it emerged from the possession of a third party – **אַין עַלְיוֹ עֲדִים**: If a receipt for payment of a debt was in the possession of a third party serving as a trustee for the promissory note, the receipt is accepted as valid, even if the receipt was seen in the trustee's possession before he testified that the debt was repaid, and even if it does not include the signatures of witnesses, and even if the trustee died and cannot be asked whether the debt was actually repaid. But this is the *halakha* only if the promissory note and the receipt are both in the possession of the third party; otherwise the receipt is not accepted as valid, even if the third party testifies that the debt was repaid, unless it is signed by witnesses and ratified. This is in accordance with the opinion of Rabbeinu Tam (*Rambam Sefer Mishpatim, Hilkhos Malve VeLoveh* 16:8; *Shulhan Arukh, Hoshen Mishpat* 65:19).

Or if it emerges after the signing of the documents – **שִׁוִּיצָא לְאַחֲרֵי חִיּוֹתָם שְׂטוֹרוֹת**: If a *simpon* is written on the promissory note itself, it is valid even if it is in the possession of the creditor, and even if it is not signed by witnesses (*Rambam Sefer Mishpatim, Hilkhos Malve VeLoveh* 16:10; *Shulhan Arukh, Hoshen Mishpat* 65:20).

NOTES

But the *simpon* emerges from the possession of a third party – **יַוְצֵא מִתְחַת יְדֵי שְׁלִישׁ**: The commentaries disagree as to the meaning of this clause. Some explain that both the promissory note and the *simpon* had been in the possession of the trustee (Rabbeinu Tam). They explain that if only the *simpon* were in his possession, perhaps he had never been appointed by the creditor as a trustee (*Ra'avad*). Others understand that only the *simpon* was in his possession because had the promissory note also been in his possession, the trustee's testimony that the debt was repaid would be accepted even without a *simpon* (*Rashba; Rosh; Ran*).

דְּשִׁיְלִין לְהוּ לְסֶהָדִי אֵי פָרוּעַ, אֵי
לְאַפּוּעַ.

הַא שָׁמַעַ: סִמְפּוֹן שָׁיֵשׁ עַלְיוֹ עֲדִים –
בָּשָׂר. מֵאַי עֲדִים – עַדְיִ קִים.

הַכִּי נָמֵי מִסְתְּבָרָא, מִדְקָתָנִי סִיפָּא:
וְשָׁאַיְן עַלְיוֹ עֲדִים – פְּסָול. מֵאַי אַיְן
עַלְיוֹ עֲדִים? אִילִמָּא רְלִיכָּא עַלְוִיה
עֲדִים כָּלֶל – צְרִיכָּא לְמִמְרָר דְּפָסָול?
אַלְאָ לְאוּ – עַדְיִ קִים.

גַּוְפָּא, סִמְפּוֹן שָׁיֵשׁ עַלְיוֹ עֲדִים –
יִתְקִים בְּחוֹתְמִי, אַיְן עַלְיוֹ עֲדִים,
וַיּוֹצֵא מִתְחַת יְדֵי שְׁלִישׁ אוֹ שִׁוִּיצָא
לְאַחֲרֵי חִיּוֹתָם שְׂטוֹרוֹת – בָּשָׂר.

יַוְצֵא מִתְחַת יְדֵי שְׁלִישׁ – דְּהָא
הַיְמָנִיה מְלֻוה לְשְׁלִישׁ. יַוְצֵא לְאַחֲרֵי
חִיּוֹתָם שְׂטוֹרוֹת נָמֵי, דְּאֵי לְאוּ דְּפָרָעַ –
לְאַחֲרֵי מְרֻעָה לְיִהְרָא לְשְׁטִיבָה.

הַדּוֹן עַלְךָ שְׁנִים אַוחֲזִין

as we ask the witnesses whether the loan was repaid or whether it was not repaid.

Come and hear another challenge from a *baraita*: A *simpon* upon which witnesses are signed^H is valid. Apparently, it is valid even if it is found in the possession of the creditor, as no distinction is made. The Gemara answers: To what witnesses is the *baraita* referring? It is referring to witnesses of ratification. The fact that the *simpon* was ratified by the court proves its validity.

The Gemara notes that this too stands to reason, from the fact that the *baraita* teaches in the latter clause: And a *simpon* upon which witnesses are not signed is invalid. What is meant by the expression: Upon which witnesses are not signed? If we say that it means that there are no witnesses signed on it at all, does it need to be said that it is invalid? Rather, is it not referring to a *simpon* on which witnesses are signed, just not witnesses of ratification?

The Gemara discusses the *baraita* itself cited above: A *simpon* upon which witnesses are signed is ratified by means of its signatories. If there are no witnesses signed on it, but the *simpon* emerges from the possession of a third party^{HN} serving as a trustee, or if it emerges after the signing of the documents,^H i.e., the *simpon* was written on the promissory note beneath the content of the note and the witnesses' signatures, it is valid.

The Gemara explains: The reason that it is valid if it emerges from the possession of a third party is that the creditor granted credibility to the third party by placing the *simpon* in his possession. So too, the *simpon* is valid in a case where it emerges after the signing of the documents, as, if not for the fact that the debt was repaid, the creditor would not have undermined his note by allowing the *simpon* to be written on it.

Summary of **Perek I**

One of the key conclusions of this chapter is that, contrary to the opinion of Sumakhos, in the case of a dispute between litigants the burden of proof rests upon the claimant. Therefore, the chapter dealt at length with questions of how the court should rule when it is not clear which litigant has presumptive ownership of the property and which is considered the claimant.

The chapter established that merely sighting an ownerless item or declaring one's acquisition of it is ineffective. The intent to acquire it must be expressed through a valid act of acquisition. Acquisition can also be effected by placing the item in one's courtyard, or, by extension, in the four square cubits surrounding one's person, provided that one had intent to acquire the item in question and no one else had prior rights to it.

The court's basic presumption, to the degree that it is not contradicted by known facts, is that neither litigant is being deliberately deceitful. Furthermore, even when it is clear that the claim of one of the litigants must be false, the court assumes that he is not necessarily lying outright. Rather, the assumption is that he is trying to avoid payment temporarily, and he does not lose his basic credibility as a result. Therefore, one who is suspect with regard to financial dishonesty is not consequently suspect with regard to oaths. This is the basis for the ability of an oath to provide final clarification of the validity of a litigant's claims.

Another matter discussed in the chapter is the rights of those who are indirectly affected by the litigation. Where their rights will be affected by a ruling of the court, and there is no way to ensure that they will not be harmed, the matter is frozen.

In a case where the claim of one of the parties is completely unreasonable, the claim of the other party is accepted, even without proof.

If you encounter your enemy's ox or his donkey going astray, you shall return it to him. If you see the donkey of him that hates you collapsed under its burden, you shall forgo passing him by; you shall release it with him.

(Exodus 23:4–5)

You shall not see your brother's ox or his sheep wandering and disregard them; you shall return them to your brother. And if your brother be not near to you, and you know him not, then you shall bring it home to your house, and it shall be with you until your brother require it, and you shall restore it to him. And so shall you do with his donkey; and so shall you do with his garment; and so shall you do with every lost item of your brother, which shall be lost from him, and you have found it; you may not disregard it. You shall not see your brother's donkey or his ox fallen down by the way, and disregard them; you shall lift them with him.

(Deuteronomy 22:1–4)

Introduction to Perek II

The *halakhot* of returning a lost item in a case where the identity of its owner is clear are stated in considerable detail in the Torah. Less clear is the disposition of a lost item when it is temporarily or permanently impossible to locate the owner. It is necessary to examine the rights of the finder with regard to that item during the period that it is in his possession. Even in the relatively simple circumstance when the finder proclaims his find and another person claims ownership, the process through which that claim is verified also requires elaboration.

More fundamental questions arise in a case where it is impossible to identify the owner of the lost item. While in that case the lost item presumably belongs to the finder, there is a fundamental question with regard to the conditions under which one may conclude that it is impossible to return the item. In other words, which lost items belong to the finder? How does one define the legal status of the ownership rights of the one who lost the item, and how does the finder eliminate those rights and acquire that item?

The determining factor in this process is the owner's despair of recovering the item. When the owner of the lost item despairs of its recovery, it is tantamount to renouncing ownership of it, thereby rendering it available to all takers. Therefore, it is crucial to ascertain whether the owner despaired of its recovery and at what point that despair occurred. This question is tied to the matter of distinguishing marks on the item, the relationship between those marks and the owner's despair, the validity of those marks as definitive proof of ownership, and more.

The Gemara also addresses issues related to a lost item that is not acquired by the finder, e.g., the finder's obligation vis-à-vis the item and the degree of his responsibility. It further considers whether the finder has the right to utilize the item, and under what circumstances.

The mitzva of returning a lost item is related to the mitzva of assisting another to load or unload his animal, e.g., if it collapsed under a burden, both in terms of their juxtaposition in the Torah and in terms of their essence. The Gemara analyzes when one is obligated to assist in unloading and loading, who is obligated, and who is exempt. The Gemara also clarifies whether the requirement to prevent suffering to animals plays a role in determining the application of this mitzva.

These problems and others that emerge from them are the primary focus of this chapter.

Perek II

Daf 21 Amud a

מַתָּנִי אֵלֹו מִצְיאוֹת שֶׁלּוּ וְאֵלֹו חִיב
לְהַכְרִיוֹן?

אֵלֹו מִצְיאוֹת שֶׁלּוּ: מִצְאָ פִּירּוֹת מִפּוֹזָרִין,
מִעֲשָׂות מִפּוֹזָרִין, כְּרִיכּוֹת בְּרוּשָׁת הַרְבִּים,
עֲגֹלִי, וּבְיִלָּה, בְּכֻרוֹת שֶׁלּוּחָתָם, מִחוֹזָזָת
שֶׁלּוּ דְּגִים, וְחַתְּכוֹת שֶׁלּוּ בָּשָׂר, וְגַיִּי אַמְרָה
הַלְּקוֹחַן מִפְּדוּתָן, וְאַנְצִי פְּשָׁתָן, וְלִשְׁוֹנוֹת
שֶׁלּוּ אַרְגָּמָן - הַרְיֵי אֵלֹו שֶׁלּוּ, דְּבָרִי בְּמַאיָּר.

רַבִּי יְהוּדָה אָמָר: בְּלִ שִׁישׁ בְּזִינִי חִיב
לְהַכְרִיוֹן. בִּזְכָּרָה? מִצְאָ עֲגֹלִי בְּתוֹכוֹ חָרָק,
כְּבָר וּבְתוֹכוֹ מִעֲשָׂות.

רַבִּי שְׁמֻעוֹן בָּן אַלְעָזָר אָמָר: בְּלִ כָּלִי
אַנְפּוֹרִיא אֵין חִיב לְהַכְרִיוֹן.

MISHNA In a case where one discovers lost items, which found items belong to him, and for which items is one obligated to proclaim his find so that the owner of the lost items can come and reclaim them?

These found items belong to him:^{HN} If one found scattered produce,^H scattered coins, bundles of grain in a public area, round cakes of pressed figs,^B baker's loaves,^B strings of fish, cuts of meat, unprocessed wool fleeces that are taken from their state of origin^N directly after shearing, bound flax stalks, or bound strips of combed purple wool,^B these belong to him, as they have no distinguishing marks that would enable their owners to claim them. This is the statement of Rabbi Meir.

Rabbi Yehuda says: If one finds any lost item in which there is an alteration,^H he is obligated to proclaim his find. How so? If he found a round cake of pressed figs with an earthenware shard inside it or a loaf of bread with coins inside it, he is obligated to proclaim his find, as perhaps the owner of the item inserted them as a distinguishing mark by means of which he could reclaim his property in case it became lost.

Rabbi Shimon ben Elazar says: If one finds any *anpyura* vessels, since their shape is uniform and they are indistinguishable, he is not obligated to proclaim his find.

HALAKHA

These found items belong to him – **אֵלֹו מִצְיאוֹת שֶׁלּוּ**: If one finds an item that appears to be one that the owner would despair of finding, the item belongs to him. These typically are items with no distinguishing marks. Presumably, in such a case, even before the item is discovered by the finder the owner despaired of its recovery (Rambam Sefer Nezikin, Hilkhot Gezeila VaAveda 15:8; Shulhan Arukh, Hoshen Mishpat 262:6-7, 9).

If one found scattered produce – **מִצְאָ פִּירּוֹת מִפּוֹזָרִין**: If one found scattered produce and it was scattered in a manner indicating that it had been deliberately placed there, he may not take it. If the produce was scattered in a manner indicating that it fell there, it belongs to him (Rambam Sefer Nezikin, Hilkhot Gezeila VaAveda 15:8; Shulhan Arukh, Hoshen Mishpat 262:7).

Any lost item in which there is an alteration – **בְּלִ שִׁישׁ בְּזִינִי**: If one finds a round cake of pressed figs with an earthenware shard inside it or a loaf of bread with coins inside it, he is obligated to proclaim his find due to it being non-standard, regardless of whether that alteration was intentional. The Rema, citing the Rosh, rules that in cases where there is uncertainty whether the alteration was happenstance or deliberate, one need not proclaim his find. The halakha of whether one must proclaim his find of a non-standard item whose alteration was unintentional is based on a dispute as to whether or not the correct version of the mishna attributes the first clause to Rabbi Meir, in which case the halakha is in accordance with the opinion of Rabbi Yehuda with regard to an item that is non-standard even if that alteration was not deliberate. According to the variant reading that eliminates attribution to Rabbi Meir, the first clause is an unattributed mishna, and the halakha is in accordance with the opinion of the unattributed mishna and not in accordance with the opinion of Rabbi Yehuda (Rambam Sefer Nezikin, Hilkhot Gezeila VaAveda 15:11; Shulhan Arukh, Hoshen Mishpat 262:15).

NOTES

These found items belong to him – **אֵלֹו מִצְיאוֹת שֶׁלּוּ**: The mishna could have formulated its ruling parallel to the second half of the sentence: For these found items, one is not obligated to proclaim his find. The fact that it states instead: These found items belong to him, indicates that the item belongs to the finder unequivocally. Even were the owner to produce witnesses that the item is his it would be to no avail, as due to the absence of distinguishing marks he presumably despaired of recovering the lost item (Ritva). Although in other cases the authorities disagree as to whether despair alone effects transfer of the item

from the owner to another, everyone agrees that in the case of a lost item despair by itself effects the transfer of the item from the owner to the finder.

That are taken from their state of origin [medinatan] – **הַלְּקוֹחַן מִמְּדִינָת**: Some explain that *medinatan* in this context refers to the knot in which they were typically bound with other fleeces after shearing. A similar usage, *medanei*, appears in tractate *Shabbat* (33b) referring to bundles of myrtle branches (*Tosefot HaRosh*).

BACKGROUND

Dried figs and round cakes of pressed figs – **קְצִיעֹת וּעֲגֹלִי**: During the mishnaic and talmudic periods, figs were processed in different manners for different purposes. After they were picked and underwent preliminary processing, the figs were placed in the field to dry. At that stage they were called *ketziot*. Afterward, they were gathered and placed into barrels for storage, at which point they were called *gerogerot*. Occasionally, they were then pounded and pressed into cakes of dried figs known as *deveilim*.

Baker's loaves – **בְּכֻרוֹת שֶׁלּוּחָתָם**: Baker's loaves during mishnaic times were baked in a uniform mold and were therefore identical. A homeowner's loaves were kneaded and baked according to personal taste.

Strips of combed purple wool – **לִשְׁוֹנוֹת שֶׁלּוּ אַרְגָּמָן**: These strips were bundles of wool that after preliminary washing and processing were combed into standard-sized tongue-shaped strips in preparation for spinning the wool into thread. The primary value of these woolen strips stemmed from their purple dye. This dye, like the sky-blue dye used in ritual fringes, was painstakingly extracted from specific glands in snails by means of obscure, complex procedures. Purple dye was very expensive and donning purple garments was an indication of wealth and leadership.



Fresco from Pompeii of baker selling bread

BACKGROUND

Cubit [*amma*] – **אַמָּה**: Several different measures are referred to as *amma*. The physical basis of this measure is the distance from the elbow to the end of the middle finger, called *amma* in Hebrew. The standard cubit is six handbreadths long, equaling 48 cm according to one opinion and 57.6 cm according to another. One also finds in the Talmud mention of expansive and compressed cubits (*Eiruvin* 3b), as well as a cubit five handbreadths long (*Sukka* 32b). Four standard cubits would be 192–230 cm.

HALAKHA

בְּמִכְשְׁתָּא – דְּבֵרָה: The gathering of grain on the threshing floor – **בְּמִכְשְׁתָּא**: If one found a *kav* of produce scattered on the threshing floor in an area of four by four cubits, even if it is not apparent that it had fallen, the produce belongs to the finder, as presumably the owner renounced ownership of it because he did not want to exert himself and gather it from the floor. The dilemmas with regard to a half-*kav* found in an area that measures two by four cubits; two *kav* found in an area that measures eight by four cubits; and a *kav* of sesame, pomegranates, and dates found in an area that measures four by four cubits remain unresolved. Therefore, the finder must leave them in place (Rambam *Sefer Nezikin, Hilkhot Gezeila VaAveda* 15:12; *Shulhan Arukh, Hoshen Mishpat* 260:7).

NOTES

חֲצֵי קָב בְּשְׂתִּים אַמּוֹת – The dilemma here is with regard to a scenario where the ratio of dispersal between the produce and the floor is the same, i.e., half of the produce and half of the floor area. Therefore, it must be that the dimensions of the dispersal area are two by four cubits and not two by two cubits. Were it two by two, that would be one-quarter of the original area and it would be obvious that the owner would not renounce ownership (Ritva).

גַם "מֵצָא פִּירּוֹת מִפּוֹרוֹן". וּכְמָה?
אמָר רַבִּי יַצְחָק: קָב בְּאַרְבֶּעָ אַמּוֹת.

הַיכִּי דְּמַיִּ? אֵי דָרְךָ נְפִילָה – אֲפִילָה
טוֹבָא נְמִיִּ, וְאֵי דָרְךָ הַיּוֹנֵחַ – אֲפִילָה
בְּצִיר מְהֻכִּ נְמִי לְאַ!

GEMARA

The mishna teaches as an example of items that one finds without any distinguishing mark: If one found scattered produce. The Gemara asks: **And how much produce in how large an area constitutes scattered produce?** **Rabbi Yitzḥak says:** It is considered scattered produce when it has a dispersal ratio of one *kav* in an area of four by four cubits.⁸

The Gemara asks: **What are the circumstances?** If he found the produce scattered in a **manner** indicating that it came there by falling and was not deliberately placed there, then **even if the volume of produce in that area was greater than this limit, it should also belong to him, because there is no distinguishing mark that would enable the owner to reclaim it.** **And if he found produce scattered in a manner indicating intentional placement, then even if the volume of produce in an area that size was less than this limit, he should also not be allowed to keep the produce, as clearly the owner plans on returning to reclaim his produce.**

אמָר רַב עֲזָקָבָא בֶּרֶתְּמָא: בְּמִכְשְׁתָּא
דְּבֵרָה עֲסִקִּין: קָב בְּאַרְבֶּעָ אַמּוֹת
דַּגְבִּישׁ טְרֵחַ יְהוּ – לֹא טְרֵחַ אַיִלְשׁוּלָא
הַדּוֹר אַתִּי וְשָׁקֵל לְהֹג, אַפְקוֹרִי מַפְקָרִי
לְהֹג. בְּצִיר מְהֻכִּ – טְרֵחַ וְהַדּוֹר אַתִּי
וְשָׁקֵל לְהֹג, וְלֹא מַפְקָרִי לְהֹג.

בְּשִׁיעָרֵב יַרְמֵיאָה: חֲצֵי קָב בְּשְׂתִּים אַמּוֹת
מִהָּוּ? קָב בְּאַרְבֶּעָ אַמּוֹת טְעַמָּא מַאי
מִשּׁוּם דַּגְבִּישׁ טְרֵחַ יְהוּ, חֲצֵי קָב בְּשְׂתִּים
אַמּוֹת בֵּין דְּלָא דַּגְבִּישׁ טְרֵחַ יְהוּ – לֹא
מַפְקָרִי לְהֹג. אוֹ דְּלָמָא: מִשּׁוּם דְּלָא
חַשְׁיבִּי, וְחֲצֵי קָב בְּשְׂתִּים אַמּוֹת, בֵּין
דְּלָא חַשְׁיבִּי – מַפְקָרִי לְהֹג.

קָבִים בְּשְׂמֹנוֹה אַמּוֹת מִהָּוּ? קָב
בְּאַרְבֶּעָ אַמּוֹת טְעַמָּא מַאי – מִשּׁוּם
דַּגְבִּישׁ טְרֵחַ יְהוּ, וְכָל שְׁבַע קָבִים
בְּשְׂמֹנוֹה אַמּוֹת, בֵּין דַּגְבִּישׁ טְרֵחַ יְהוּ
טְפִ – מַפְקָרִי לְהֹג. אוֹ דְּלָמָא: מִשּׁוּם
דְּלָא חַשְׁיבִּי, וְקָבִים בְּשְׂמֹנוֹה אַמּוֹת
בֵּין דְּלָא חַשְׁיבִּי – לֹא מַפְקָרִי לְהֹג.

PERSONALITIES

רבבי ירמיה – רבבי ירמיה: Rabbi Yirmeya was an *amora* who was born in Babylonia, studied there in his youth, and then moved to Eretz Yisrael. It was only upon his immigration to Eretz Yisrael that he became renowned as a Torah scholar. He studied there with the disciples of Rabbi Yohanan, who were the local Torah luminaries, particularly Rabbi Zeira and Rabbi Abbahu.

Rabbi Yirmeya was especially sharp and would often test the boundaries of halakhic principles. Due to this conduct, he was temporarily expelled from the study hall. His sharp tongue

led him to characterize the *amora'im* of Babylonia as foolish Babylonians on several occasions. Notably, this criticism was submissively accepted by those Babylonian scholars.

Rabbi Yirmeya became one of the most prominent Sages in Eretz Yisrael and his statements are often cited in both the Jerusalem and the Babylonian Talmud. In Babylonia, his statements are often addressed with the phrase: They say in the West, as they used the term West to characterize Eretz Yisrael.

קב שומשミニ ב ארבע אמות מ מהו? קב
ב ארבע אמות טעמא מא – משום
דלא חשיבי, ושומשmini בין דחשיבי –
לא מפרק להו. או דלמא: משום דגש
טרוחיהו, וכל שבע שומשmini, בין
דנפיש טרוחיהו טפי – מפרק להו.

קב תמרי ב ארבע אמות, קב רמוני
ב ארבע אמות מהו? קב ב ארבע אמות
טעמא מא – משום דלא חשיבי, קב
תמרי ב ארבע אמות, קב רמוני ב ארבע
אמות נמי, בין דלא חשיבי – מפרק
להו.

או דלמא: משום דגש טרוחיהו, וקב
תמרי ב ארבע אמות, וקב רמוני ב ארבע
אמות, בין דלא נפיש טרוחיהו – לא
מפרק להו, מי? תיקו.

If one *kav* of sesame seeds was scattered in an area of four by four cubits, what is the halakha? The aspects of the dilemma are: In the case of one *kav* of kernels scattered in an area of four by four cubits, what is the reason that the owner renounces ownership? It is due to the fact that they are not of significant value. And in the case of sesame seeds, since they are of significant value he does not renounce his ownership of them. Or perhaps, the owner renounces ownership in the case of one *kav* of kernels scattered in an area of four by four cubits due to the fact that gathering them requires great exertion. That is true all the more so in the case of sesame seeds. Since gathering them requires even greater exertion, he renounces his ownership of them.

If one *kav* of dates was scattered with a dispersal ratio of one *kav* in an area of four by four cubits, or if one *kav* of pomegranates^N was scattered with a dispersal ratio of one *kav* in an area of four by four cubits, what is the halakha? The aspects of the dilemma are: In the case of one *kav* of kernels scattered in an area of four by four cubits, what is the reason that the owner renounces ownership? It is due to the fact that they are not of significant value; and also in the case of one *kav* of dates in an area of four by four cubits or one *kav* of pomegranates in an area of four by four cubits, since they are not of significant value he renounces ownership of the fruit.

Or perhaps, the owner renounces ownership in the case of one *kav* of kernels scattered in an area of four by four cubits due to the fact that gathering them requires great exertion. And in the case of one *kav* of dates in an area of four by four cubits or one *kav* of pomegranates in an area of four by four cubits, since gathering them does not require great exertion he does not renounce his ownership of them. In all these cases, what is the halakha? The Gemara concludes: All these dilemmas shall stand unresolved.

איתמר:

§ It was stated:

Perek II

Daf 21 Amud b

יאוש שלא מדעת. אבוי אמר: לא הוי
יאוש, ורבא אמר: הוי יאוש.

With regard to one's despair⁸ of recovering his lost item that is not a conscious feeling,^N i.e., were he aware of the loss of his property, he would have despaired of its recovery, but he was unaware of his loss when the finder discovered the item, Abaye said: It is not considered despair; the owner maintains ownership of the item, and the finder may not keep it. And Rava said: It is considered despair and the finder may keep it.

בדבר שיש בו סיכון – قوله עולם
לא פליג, דלא הוי יאוש. ואף על גב
דشمיעינה דמייאש לסתו – לא הוי
יאוש, וכי איתא ליעיה – באיסורא הו
זאתא ליעיה. דילוי ידע דנפלו מימייה
לא מייאש, מימר אמר: סיכון איתה ל-
בגניהו, והבניא סימנא, ושקילנא לה.

The Gemara limits the scope of the dispute. In the case of an item on which there is a distinguishing mark, everyone agrees that despair that is not conscious is not considered despair. And even though we hear that he ultimately despairs of recovering the item, it is not considered despair, as when the item came into the possession of the finder, it was in a prohibited manner that it came into his possession. It is prohibited because when the owner learns that it fell from his possession, he does not despair of its recovery immediately. Instead, he says: I have a distinguishing mark on the item; I will provide the distinguishing mark to the finder, and I will take it.

NOTES

שומשmini, תמרי, רמוני: Early commentaries question the necessity of the preponderance of dilemmas all revolving around the same uncertainty: Does the owner renounce ownership due to exertion or due to the insignificant value of the produce? One explanation is that these dilemmas were not raised together; rather each was raised in a different study hall and later collected. There are different nuances in each case, examining the relative proportion between the factors of exertion and value (Rashba).

The Rambam has a variant reading in which the three types of produce are included in a single dilemma: What is the halakha when a *kav* consisting of different types of produce that require different levels of exertion and are of different value is scattered in an area of four cubits?

NOTES

יאוש שלא מדעת: Ostensibly, the dispute between Abaye and Rava is identical to the general dispute with regard to retroactive designation, i.e., whether one determines the present status of an item based upon future developments. The Ra'avad asks why Abaye and Rava limited their dispute to the narrow topic of unconscious despair and did not discuss the fundamental issue of retroactive designation. Some say that the concept of retroactive designation applies only to items whose status is clarified by actions performed in the future and not those clarified by knowledge acquired in the future (Or Same'ah). Others explain that before an owner despairs it is prohibited to take the item, and one who takes it has committed an act of robbery. Therefore, even if Abaye held that there is retroactive designation, he would still maintain that despair in the future is ineffective in changing the status of the stolen item (Maharatz Hayut).

BACKGROUND

Despair – **יאוש:** This reference is to the owner's despair of recovering a lost or stolen item. The legal status of a lost item whose owner has despaired of its recovery is that of an ownerless item, and its finder may keep it. If a natural disaster, e.g., a flood, caused the loss, it may be presumed that the owner despaired of its

recovery from the moment it was swept away. Despair that is not conscious refers to a situation where the owner is not yet aware of his loss, but if he becomes aware of his loss, he will despair of its recovery.

NOTES

תide of the sea [zuto shel yam – גוטו של ים]: This is Rashi's translation of this term. Rabbeinu Hananel explains it as the seabed. Others say that it refers to the area where the river spills into the sea, where the current is particularly strong (Rabbi Meir HaKohen).

Come and hear – תא שמע: Some note that although the Gemara employs the same reasoning in rejecting most of the proofs, the preponderance of proofs that are deflected with the same forced answer can combine to constitute proof in and of itself (*Hokmat Manoah*).

In accordance with the statement of Rabbi Yitzhak who says – **כדרבי יצחק דאמר:** *Tosafot* ask why Rabbi Yitzhak did not state his explanation with regard to the proof cited from the mishna and instead stated it with regard to the *baraita*. Some answer that Rabbi Yitzhak stated his explanation with regard to neither the mishna nor the *baraita*; rather, he stated in general terms that human nature dictates that a person is prone to feel his money pouch constantly (*Gilyon Tosefot HaRash*).

Round cakes of pressed figs – עוגולי דבילה: The commentaries ask why the Gemara does not cite proof from the other cases in the mishna, e.g., strings of fish or cuts of meat. Some explain that since it is obvious that the items mentioned in those cases are heavy, those cases are addressed by the Gemara's discussion of cakes of pressed figs (Ramban, Ran).

HALAKHA

אדם עשי – במשמש בכיסו: One may keep scattered coins that he finds in a place frequented by the public, because a person is prone to feel his money pouch on constantly and presumably the owner was aware of his loss and despaired of recovering the coins (Rambam *Sefer Nezikin*, *Hilkhot Gezeila VaAveda* 1:8 and *Hilkhot Geneiva* 4:10; *Shulhan Arukh*, *Hoshen Mishpat* 355:1).

Round cakes of pressed figs – עוגולי דבילה: If one finds baker's loaves or cakes of pressed figs, they belong to him. Due to their weight, presumably the owner was aware shortly after they fell and despaired of their recovery (Rambam *Sefer Nezikin*, *Hilkhot Gezeila VaAveda* 15:8; *Shulhan Arukh*, *Hoshen Mishpat* 262:3).

בזוטו של ים בשלוליתו של נהר, אף על גב דעתה ביה סימן – רחמנא שריה, כדבעין למייר לך פון.

ב' פליינ – בדרכו שאין בו סימן, אמר לא חוי יאוש, זה לא ידע דנפל מיניה. רבא אמר: חוי יאוש, דליך ידע דנפל מיניה – מיאש. מייר אמר: סימנא לית ל' בגניה, מה שתהא הוא דמיاش.

סימן: פ מג"ש ממגנט"י בכטען.

תא שמע: פירות מפוזרין, זה לא ידע דנפל מיניה! הוא אמר רב עוקבא בר חמא, הכא במקנשתא דבורי עסקין, דרבידיה מדעת היא.

תא שמע: מעות מפוזרות – הרי אלו שלו, אפאי? הוא לא ידע דנפל מיניה! התם נמי, כדרבי יצחק, דאמר: אדם עשי למשבש בכיסו בכל שעיה ושבעה, הכא נמי – אדם עשי למשבש בכיסו בכל שעיה ושבעה.

תא שמע: עוגולי דבילה וככורות של נחתום – הרי אלו שלו. אפאי? וזה לא ידע דנפל מיניה! התם נמי, אגב דחשי – מידע ידע בהו.

תא שמע: ולשונות של ארוגמן – הרי אלו שלו. ואפאי? הוא לא ידע דנפל מיניה! התם נמי, אגב דחשי – ממשומייש ממשמש בהו, וכדרבי יצחק.

With regard to an item swept away by the tide of the sea^N or by the flooding of a river, even though the item has a distinguishing mark, the Merciful One permits the finder to keep it as we seek to state below, later in the discussion.

When they disagree, it is with regard to an item in which there is no distinguishing mark. Abaye said: Despair that is not conscious is not considered despair, as he did not know that the item fell from him; therefore, he cannot despair of recovering it. Rava said: Despair that is not conscious is considered despair, as when he discovers that it fell from him, he will despair of its recovery; as he says upon this discovery: I have no distinguishing mark on the item. Therefore, it is considered from now, when the item fell, that he despairs.

The Gemara proceeds to cite a series of proofs for and against the opinions of Abaye and Rava and provides a mnemonic representing those proofs: *Peh, mem, gimel, shin; mem, mem, kuf, gimel, tet, yod; kaf, kaf, samekh, ayin, zayin*.

The Gemara suggests: Come and hear^N a proof from the mishna: If one found scattered produce, it belongs to him. The Gemara asks: Why does it belong to him; isn't the owner unaware that they fell from him? Apparently, despair that is not conscious is considered despair. The Gemara rejects that proof: Didn't Rav Ukva bar Hama say: We are dealing with kernels of wheat that remained during the gathering of grain on the threshing floor? The owner knowingly left the kernels on the threshing floor because it was not worth his while to gather them. That is a deliberate loss, and therefore the despair is conscious. Therefore, this clause in the mishna is not relevant to the dispute in question.

The Gemara suggests: Come and hear a proof from the mishna: If one found scattered coins, these belong to him. The Gemara asks: Why do they belong to the one who finds them; isn't the owner unaware that they fell from him? Apparently, despair that is not conscious is considered despair. The Gemara rejects that proof: There too, it is not a case of unconscious despair, in accordance with the statement of Rabbi Yitzhak, who says:^N A person is prone to feel his money pouch^H constantly. Here too, a person is prone to feel his money pouch constantly; therefore, it is reasonable to assume that shortly after the coins fell, the owner became aware of his loss.

The Gemara suggests: Come and hear a proof from the mishna: If one found round cakes of pressed figs^{NH} or baker's loaves, these belong to him. The Gemara asks: Why do they belong to the one who finds them; isn't the owner unaware that they fell from him? Apparently, despair that is not conscious is considered despair. The Gemara rejects that proof: There too, it is not a case of unconscious despair. Since these items are heavy he knows that they fell, and it is reasonable to assume that shortly after they fell the owner became aware of his loss.

The Gemara suggests: Come and hear a proof from the mishna: If one found strips of purple wool, these belong to him. The Gemara asks: And why do they belong to the one who finds them; isn't the owner unaware that they fell from him? Apparently, despair that is not conscious is considered despair. The Gemara rejects that proof: There too, it is not a case of unconscious despair. Since they are significant and valuable, the owner feels around for them to ensure that they are not lost, and therefore, it is reasonable to assume that shortly after the strips fell, the owner became aware of his loss. This reasoning is in accordance with the statement of Rabbi Yitzhak with regard to coins.

תְּאַשְׁמָע: הַפּוֹצֵא מִעוּדָה בְּבָתִי בְּנִסּוּת
בְּבָתִי מִרְשָׁוֹת, וּבְכָל מִקּוּם שֶׁהָרְבִים
מִצּוֹין שָׁם – הָרִי אַלְוּ שָׁלוֹ, מִפְנֵי שְׁהַבָּעֲלִים
מִתְאַשְׁן מִהָּן, וְהָא לֹא יָדַע דָּנֶל מִיעָה!
אָמָר רַבִּי יִצְחָק: אָדָם עֲשִׂיו לְמִשְׁמָשׁ בְּכִיסּוֹ
בְּכָל שָׁעה.

תְּאַשְׁמָע: מַאֲמִתִּי כֵּל אָדָם מוֹתָרִים
בְּלֶקֶט – מִשְׁלִיכְוּ בָּה הַגְּנוּשׁוֹת. וְאָמְרוּ:
מַאֲיִינְמוֹשׁוֹת? וְאָמָר רַבִּי יוֹחָנָן: סְבִּי דָּאַילִי
אַתְּגָרָא. רִישׁ לְקִישׁ אָמָר: לְקוּטִי בְּתָר
לְקוּטִי.

אַפְּמָאֵי? נָהִי דְעָנִים דְהָכָא מִיאָשִׁי, אִיכָּא
עֲנִים בְּדֻכְתָּא אַחֲרִיתָא וְלֹא מִיאָשִׁי
אָמְרוּ: בֵּין דָאַיכָּא עֲנִים הָכָא – הָנָן
מַעֲקָרָא אַיּוֹשִׁי מִיאָשִׁי, וְאָמְרוּ: עֲנִים
דְּהָתָם מַלְקָטִי לִיהְתָּה.

תְּאַשְׁמָע: קָצִיעוֹת בְּדַרְךָ, וְאַפְּלִיו בְּצָדָקָה
שִׁידָה קָצִיעָות. וּכְנָהָנָה הַגּוֹטָה לְדַרְךָ,
וּמֵצָא תְּאַנִּים תְּחִתָּה – מוֹתָרוֹת מִשּׁוּם גָּלַל
וּפְטוּרוֹת מִן הַפְּעָשָׂר. בְּזִיתִים וּבְחוּרִים –
אָסּוֹר.

בְּשַׁלְמָא וַיָּשָׂא לְאָבִי לֹא קָשִׁיא, אֲגַב
דְּחַשְׁבִּי – מִמְשָׁמֵשׁ בָּהוּ. תָּאָנָה נָמִי –
מִידָע יְדִיעָ דְנַתְרָא.

The Gemara suggests: Come and hear a proof from a *baraita*: In the case of one who finds coins in synagogues, and in study halls, and in any place where the multitudes are found, these coins belong to him due to the fact that the owners despair of their recovery. Why do they belong to him; isn't the owner unaware that the coins fell from him? Rabbi Yitzḥak says: A person is prone to feel his money pouch constantly; therefore, it is reasonable to assume that shortly after the coins fell, the owner became aware of his loss.

The Gemara suggests: Come and hear a proof from a mishna (*Pe'a* 8:1): From when is it permitted for any person to collect gleanings,^h which the Torah designates as exclusively for the poor (see Leviticus 19:9–10)? It is permitted once the *nemushot* have walked in the field. And we say in interpreting the mishna: What are *nemushot*?ⁿ And Rabbi Yohanan said: They are the elderly people who walk leaning on a cane.ⁿ Since they walk slowly, they will see any stalks that remain and take them. Reish Lakish said: They are the second wave of gleaners who pass through the field after the initial gleaners, collecting any stalks that remain.

The Gemara asks: And why is it permitted for any person to take the stalks, given that although the poor who are here renounce ownership of the stalks after seeing the *nemushot* pass through the field, there are poor people in another place who are unaware of the passing of the *nemushot* and do not renounce ownership? Apparently, despair that is not conscious is considered despair. The Sages say in rejecting that proof: Since there are poor people here, those poor people in the other places despair of the gleanings from the outset, and they say: The poor people who are there gather the gleanings.

The Gemara suggests: Come and hear a proof from a mishna (*Ma'asrot* 3:4): If dried figs are found on the path, and even if they were found at the side of a field where dried figs are spread to dry, and likewise, if there is a fig tree whose branches extend over a path and one found figs beneath it, those figs are permitted and taking them is not prohibited due to the prohibition of robbery. And as these are ownerless property, one who finds them is exempt from the obligation to separate tithes.^{NBH} In the case of olives or of carobs, it is prohibited to take the fruit.^h

Granted, the first clause of the mishna is not difficult according to the opinion of Abaye, as he can explain that one consciously despairs of recovering the dried figs. Since dried figs are significant and valuable, one feels around for them to ensure that they have not become lost. It is reasonable to assume that shortly after the fruits fell, the owner became aware of his loss and despaired of recovering them. In the case of the fig tree, too, one knows that it is a common occurrence for the fruit of the fig tree to fall from the tree and he renounces ownership from the outset.

NOTES

Nemushot – **הַגְּנוּשׁוֹת**: In the Jerusalem Talmud, the term is *meshoshot*, meaning people who feel their way. Some explain that it refers to people who gather only insignificant gleanings that lack substance [*mamash*] (*Ge'onim*).

דָאַילִי אַתְּגָרָא – **tigda**: A variant reading cited by the *ge'onim* is *tigda*. Some explain that it means cane (*Arukh*), whereas others explain that it means the boundary of the field.

Exempt from tithes – **פְּטוּרוֹת מִן הַמְּשָׁרָר**: The early commentaries discuss the reason for this exemption. Some explain that it is because they were ownerless property, and therefore one who takes possession of them is exempt from separating tithes. Others explain that it is because the labor associated with them has yet to be completed, either because there is a rabbinic ordinance to consider it unfinished, or because they were not yet brought into the house, a prerequisite for incurring the obligation of tithes (see *Ritva*).

BACKGROUND

Tithes – **מִשְׁרָאָרָת**: By Torah law, certain portions of the agricultural crop are separated and designated for various purposes. According to most opinions, one is obligated by Torah law to tithe the only grain, wine, and olive oil. By rabbinic ordinance, one is obligated to tithe any produce that grows from the ground. There are three main tithes: First tithe, which is given to a Levite, second tithe, which is brought to Jerusalem and consumed there by the owner of the produce, and poor man's tithe. These tithes are separated from produce only after the produce ripens, the farmer's labor has been completed, and the produce is brought into the house.

One is exempt from titling ownerless produce, and therefore one does not tithe the Sabbath year produce, which is ownerless. Similarly, one need not tithe produce eaten in the course of a casual, incidental meal, e.g., fruit eaten straight from the tree. Most of the *halakhot* of tithes are detailed in tractate *Ma'asrot*.

HALAKHA

From when is it permitted for any person to collect gleanings – **מַאֲמִתִּי כֵּל אָדָם מוֹתָרִים בְּלֶקֶט**: The Rambam rules that it is permitted for anyone to take gleanings from a field after the second wave of gleaners have completed passage through the field. The commentaries ask why the Rambam rules in accordance with the opinion of Reish Lakish, as the principle is that the *halakha* is in accordance with the opinion of Rabbi Yohanan in his disputes with Reish Lakish. Some explain that their dispute has no halakhic ramifications and they merely disagree with regard to the definition of the term *nemushot* (*Kesef Mishne*). The Radbaz suggests that Reish Lakish merely explains Rabbi Yohanan's opinion and does not disagree with him (*Rambam Sefer Zera'im, Hilkhot Mattenot Aniyim* 1:11).

Exempt from tithes – **פְּטוּרוֹת מִן הַמְּשָׁרָר**: If one finds dried figs on a public path, even if they are found close to the edge of a field, he is exempt from the obligation to tithe the figs (Rambam *Sefer Zera'im, Hilkhot Ma'aser* 3:21).

Fallen fruit – **פְּרוּזָה שְׁנִירָה**: One who finds olives beneath an olive tree or carobs beneath a carob tree is obligated to tithe them. If one finds figs beneath a fig tree, there is uncertainty as to whether or not he is obligated to tithe them (Rambam *Sefer Nezikin, Hilkhot Gezeila VaAveda* 15:15; *Shulchan Arukh, Hoshen Mishpat* 260:6).

NOTES

Since its appearance [hazuto] proves the identity of the owner – **הוזען מוכיח עלי**: The Meiri explains that the word *hazuto* means its border. Since the fruit does not roll far, it is clear that it fell from the tree it is near.

A fig becomes disgusting with its fall – **תאנה עם נפילה נמנאתה**: Rashi explains that the owner renounces his ownership of the fig. *Tosafot* suggest that the fallen figs are not similar in appearance to those on the tree, and therefore the owner despairs of recovering them; there is a variant reading of the text that supports this explanation.

אלא סיפה, לרבה קשיא. דקתי ני בזיתים וברוחבים אסורי אמר רב אביה: שאני זית, הוזען מוכיח עלי, ואך על גב דעתינו זית בידע ייע, דוכתא דאיינש איינש הוא.

אי הכי, אפלו רישא נמי אמר רב פפא: תאנה עם נפילה נמנאתה.

תא שמע: הגב שנטל מזה ונתן לו, בגין גולן שנטל מזה וננתן לו,

But the latter clause of the mishna is difficult according to the opinion of Rava, as it teaches: In the case of olives or of carrots, it is prohibited to take the fruit. Apparently, despair that is not conscious is not considered despair. **Rabbi Abbahu said:** The halakha of an olive is different, since its appearance proves the identity of the owner,^N as the fruit fallen from the tree appears similar to the fruit on that tree, and even though the olives fall off the tree, the one who finds the olives knows that an olive tree that is located in a place that is owned by a specific person belongs to that person and the owner will not renounce ownership of his fruit.

The Gemara asks: If so, then even in the first clause as well, it should be prohibited to take the fruit that fell from the fig tree. **Rav Pappa said:** A fig becomes disgusting with its fall^N from the tree. Even if the fruit can be attributed to the tree of origin, since it is no longer fit for consumption, the owner would not want the fruit and consequently renounces his ownership of it.

The Gemara suggests: Come and hear a proof from a *baraita*: A thief who took an item from this person and gave it to that person, and likewise, a robber who took an item from this person and gave it to that person,

Perek II**Daf 22 Amud a****NOTES**

The Jordan – **ירדן**: Rashi explains that the *halakha* stated here about the Jordan River concerns lost items, and the same *halakha* applies to a lost item swept away by any river. The *tanna* mentioned the Jordan simply because that was the river nearest to him. Most early commentaries (Ramban; Rashba; Rosh; Ran) disagree with Rashi's explanation of the Gemara. They explain based on the Jerusalem Talmud that the *halakha* stated about the Jordan is unrelated to matters of lost items. Rather, since the Jordan demarcates the eastern border of Eretz Yisrael, the *tanna* is referring to the *halakha* in a situation where the Jordan alters its course eastward and thereby incorporates additional territory within the boundaries of Eretz Yisrael or alters its course westward and thereby excludes territory from the boundaries of Eretz Yisrael. Accordingly, the *baraita* is stating that the border is still defined by the Jordan River, and it has effectively taken or given land from one area to the other. Others explain that the reference is not to the Jordan, *Yarden*, but rather to *yordan*, meaning one who seeks to rob others (*Ritva*).

If a river swept away one's beams – **שיטף נהר קורי**: According to Rashi's version and his explanation of the Gemara, most commentaries distinguish between this case, where the current sweeps away the items and places them nearby, and the case cited previously (21b) of the flooding of a river where the items are swept away to sea. Here, whether it is permitted for one to take the item is dependent upon whether the owner despaired of its recovery. There, no despair is necessary, because it is lost not only from the owner but from everyone (see Ramban, Rashba, Rosh, and *Tosafot*).

LANGUAGE

Bandits [*listim*] – **לִסְטִים**: From the Greek *ληστής*, *lestēs*, meaning robber.

ובן ירדן שנטל מזה וננתן לו, מה שנטל – נטל, ומה שנתן – נתן.

בשלטם גולן יירדן – רקא חי להו ומיאש, אלא גנב מי קא חי ליה דמייאש? הרוגמה רב פפא בליכים בזויין, אי ה כי היינו גולן תרי גוינו גולן.

תא שמע: שיטף נהר קורי עצי ואני וננתנו בתוך שדה חבירו – הוי אילו שלו, מפני שהתייאשו הבעלים. תעטמא – דעתיאשו הבעלים, הא סחתמא – לא! רקא במא依 עסקין – בשיכול להציל.

and likewise, in the case of the **Jordan**^N River or another river that took an item from this person and gave it to that person, in all those cases, that which the person took, he took, and that which the person gave, he gave. Likewise, that which the river took, it took, and that which the river gave, it gave. The person who received the item need not return it.

The Gemara asks: Granted in the cases of the robber and the **Jordan** River, one could say that the owner sees them take the item and despairs of its recovery; but in the case of the thief, who takes the item surreptitiously, does the owner see him take the item and would that lead him to despair? The Gemara explains: Rav Pappa interpreted the term thief in the *baraita* to be referring to armed bandits [*listim*];^L therefore, the owner is aware that the item was taken and he despairs of its recovery. The Gemara asks: If so, this is the same as a robber, why mention two identical cases? The Gemara answers: The *baraita* mentioned two types of robbers; in both cases the owner was aware that his item was taken.

The Gemara suggests: Come and hear a proof from a *baraita*: If a river swept away one's beams,^{NH} one's wood, or one's stones and placed them into the field of another, these items belong to the owner of the field due to the fact that the respective owners despaired of their recovery. The Gemara infers from the *baraita*: The reason they belong to the finder is that the owners despaired; but in an unspecified case, where it is not definitively known that the owners despaired, they do not belong to the finder. Apparently, despair that is not conscious is not considered despair. The Gemara rejects the proof: With what are we dealing here? It is a case where the owners are capable of rescuing the beams, wood, or stones; therefore, their decision not to rescue them is a clear indication of despair.

HALAKHA

If a river swept away one's beams – **שיטף נהר קורי**: An item that was swept away by a river belongs to the finder even if the owner strenuously protests that he did not despair of its recovery. *Tosafot* rule that if the owner pursued the item and it was at all

possible, even if only with great difficulty, for him to recover the item, the finder must return it to him (Rambam *Sefer Nezikin*, *Hilkhot Gezeila VaAveda* 6:1; *Shulhan Arukh*, *Hoshen Mishpat* 259:7, and in the comment of Rema).

אֵיךְ אִםָּא סִפְאָ: אֲםַר רַב הַבָּעֵל
מְרַדְפֶּן אֶתְהָרִים – חִיב לְהַחֵר, אֵי
בִּיכּוֹלִין לְהַצִּיל – מַאֲרִיא מְרַדְפִּין?
אֲפִילוּ אֵין מְרַדְפֶּן נִמְנִי הַכָּא בָּמָאי
עַסְקִין – בִּיכּוֹלִין לְהַצִּיל עַל דִּי הַדָּחָק,
מְרַדְפֶּן – לֹא אִיּוֹשׁ, אֵין מְרַדְפֶּן –
אִיּוֹשִׁי מִיאָש.

תֵּא שְׁמַע: בַּיַּצְדֵּק אִמְרוּ הַתּוֹרָם שְׁלָא
מִדְעַת תְּרוּמָתוֹ תְּרוּמָה? הַיְּ שִׁירָד
לְתוֹזֵק שְׂדָה תְּבִיוֹ וְלִיקְטָת וְתָרָם שְׁלָא
בְּרִשות, אֲםַר חֹזֶשׁ מִשּׁוּם גַּל – אֵין
תְּרוּמָתוֹ תְּרוּמָה, וְאָם לֹא – תְּרוּמָתוֹ
תְּרוּמָה.

וּמְנִין הוּא יוֹדֵעַ אֲםַר חֹזֶשׁ מִשּׁוּם
גַּל אֲםַר לֹא? הַרְיָ שְׁבָא בֶּלֶב הַבַּיִת
וּמְצָאוֹ, וְאָמַר לוֹ "בְּלֹן אַצְלָפּוֹת", אֲםַר
נִמְצָאוֹ יִפּוֹת מִן – תְּרוּמָתוֹ תְּרוּמָה,
וְאָם לֹא – אֵין תְּרוּמָתוֹ תְּרוּמָה. לִקְטוֹ
הַבְּעִילִים וְהַזְּקִיףּ עַלְלָה – בֵּין גַּן וּבֵין
בֵּין תְּרוּמָתוֹ תְּרוּמָה.

וְכִי נִמְצָאוֹ יִפּוֹת מִן תְּרוּמָתוֹ תְּרוּמָה,
אֲמִמְּאָ? בַּעֲדֵנָא דָתָרָם הָא לֹא הָוה
יַדְעַת תְּרוּמָה רְבָא אַלְיָבָא דָאַבָּי
דְּשֻ׊וִּיהַ שְׁלִית.

הַכִּי נִמְלִיכְתָּבָרָא, דָאַיְסְלָקָא דְעַתָּךְ
דְּלָא שְׁוֹ�ה שְׁלִיחָה מֵהַיָּא תְּרוּמָתוֹ
תְּרוּמָה? וְהָא אַתָּם גַּם אַתָּם אָמַר
רְחַמְנָא לְרֹבּוֹת שְׁלֹוחָכֶם, מַה אַתָּם
לְרֹעֲהָכֶם, אָף שְׁלֹוחָכֶם – לְרֹעֲהָכֶם.

The Gemara asks: If so, say the latter clause of the same *baraita*: If the owners were pursuing the items, the finder is obligated to return them. If it is a case where the owners are capable of rescuing the items, why did the *baraita* specifically cite a case where the owners were pursuing the items? Even if they were not pursuing the lost items, the items also remain in their ownership, as they did not despair of their recovery. The Gemara answers: With what are we dealing here? It is a case where the owners are capable of rescuing the items with difficulty. In that case, if the owners pursue the items, it indicates that they did not despair of their recovery, but if the owners do not pursue the items, it indicates that they despaired of their recovery.

The Gemara suggests: Come and hear a proof from a *baraita* (*Tosefta, Terumot 1:5*): When did the Sages say that in the case where one separates *teruma* without the owner's consent,^h his *teruma* is considered *teruma*?⁸ It is in a case where there was someone who entered another's field and gathered produce from it and separated *teruma*^h without the owner's permission. If he is concerned that the owner will object to his actions and view it as robbery, his *teruma* is not *teruma*, but if he is not concerned, his *teruma* is *teruma*.

The *baraita* continues: And from where would the gatherer know whether he should be concerned that the owner objects and views it as robbery or not? If the owner came and found him separating *teruma* and said to him: You should have gone to take the produce of better quality and separate *teruma* from that, then if produce of better quality than the produce he had separated is found, his *teruma* is considered *teruma*, since the owner is assumed to have been sincere and pleased that the other has separated *teruma* from his produce. But if not, his *teruma* is not *teruma*, as it may be assumed that the owner was angry at him and was speaking sarcastically. The *baraita* adds: If the owners were gathering and adding to the *teruma* he had separated, indicating that they agree to his act of separation, either way, whether or not better-quality produce was found, his *teruma* is considered *teruma*.

The Gemara questions the ruling of the *baraita*: But why is that the *halakha*, that if produce of better quality than the produce he had separated is found his *teruma* is *teruma*? At the time that he separated the *teruma*, he did not know that the owner would ultimately agree. The *baraita* states that the *teruma* is *teruma* from the moment he separated it, despite the fact that it was only later that he learned that the owner agreed. Apparently, in the case of despair as well, despair that is not conscious is considered despair, contrary to the opinion of Abaye. Rava interpreted the matter in accordance with the opinion of Abaye: This is a case where the owner designated him as an agent.

So too, it is reasonable, as if it enters your mind that the owner did not designate him as an agent, would his *teruma* be *teruma*? But doesn't the Merciful One state: "So you also shall set apart a gift unto the Lord of all your tithes" (Numbers 18:28)? Once the verse states "you," the addition of the word "also" in the term "you also"^h serves to include an agent. Therefore, an agent separating *teruma* has the same *halakhot* as an owner separating *teruma*. Just as when you, the owner, separate *teruma*, it is with your knowledge, so too when your agent separates *teruma*, it must be with your knowledge. Evidently, in any event, one needs to be appointed as an agent to be capable of separating *teruma* for another.

HALAKHA

One who separates *teruma* without the owner's consent – **הַתְּהִרְתָּם שְׁלָא מִרְעַת**: With regard to one who designates *teruma* from another's produce without his consent, including a case where he did not receive permission to enter the field, if the owner says: You should have gone to take the produce of better quality and separate *teruma*, and there is higher-quality produce, his *teruma* is *teruma*. If there is no higher-quality produce, the *teruma* is not *teruma*. If the owner added to the *teruma*, the *teruma* is valid *teruma* even if there is no higher-quality produce. Contrary to the Gemara's initial explanation that this is the *halakha* only in the case of an agent appointed by the owner of the field, the conclusion of the Gemara is that this is the *halakha* even when the owner did not appoint an agent (Rambam *Sefer Zera'im, Hilkhos Terumot 4:3*, and *Kesef Mishne* there).

You, you also – **אַתָּם נִמְלִיכְתָּבָרָא**: One can appoint an agent to separate *teruma* and tithe his produce. This is derived from the additional word "also" in the verse (Rambam *Sefer Zera'im, Hilkhos Terumot 4:1*).

BACKGROUND

Teruma – תְּרוּמָה: Whenever the term *teruma* appears without qualification, it is referring to *teruma gedola*, the great *teruma*. The Torah commands that the first fruit of one's grain, wine, and oil be given to a priest (Deuteronomy 18:4; Numbers 18:12), and the Sages extended the scope of this mitzva to include all produce. This mitzva applies only in Eretz Yisrael. After one sets aside the first fruits, a certain portion of the produce must be set aside for priests, before he separates other tithes.

Teruma is considered sacred and may be eaten only by a priest and his household while they are in a state of ritual purity (see Leviticus 22:9–15). To highlight that state of ritual purity, the Sages obligated the priests to wash their hands before partaking of it. This is the source for the practice of washing the hands before eating bread today.

A ritually impure priest or a non-priest who partakes of *teruma* is subject to the penalty of death at the hand of Heaven. If *teruma* becomes ritual impure, it may no longer be eaten and must be burned. Nevertheless, it remains the property of the priest, and he may derive benefit from its burning. Nowadays, *teruma* is not given to priests because they have no definite proof of their priestly lineage. The obligation to separate *teruma* still remains, but only a small portion of the produce is separated.

NOTES

Gathered produce and separated *teruma* – **לִיקְטָת וְתָרָם**: Some explain that the reference is to one whom the owner allows to enter his field and collect produce for his own use. In this

case, in addition to collecting produce for himself, he separates *teruma* on behalf of the owner (*Ketzot HaHoshen*, citing *Shakh*).

NOTES

It is from the crops of intermediate quality that he separates *teruma* – **מִבְּנִינַת הָאָרֶת**: There is no prescribed measure by Torah law for *teruma*, and one may fulfill his obligation by separating a single kernel of grain from an entire crop. The Sages established a graduated scale of measures: One-fortieth of the crop for a generous gift, one-fiftieth for an average gift, and one-sixtieth for a miserly gift. With regard to the quality of the produce, the Sages did not establish a graduated scale, and one typically separates *teruma* from produce of intermediate quality (see *Hokhmat Manoah*).

If produce of better quality than the produce he had separated is found – **אֵם נִמְצָאוּ יִפּוֹת מִן**: Some explain that in this case the agent was not familiar with the character of the owner of the field, but the subsequent approval of the owner retroactively reveals that the agent acted in accordance with the owner's wishes when he separated the high-quality produce as *teruma* (*Maharatz Hayyut*).

Ameimar and Rav Ashi ate the fruit but Mar Zutra did not eat – **מִמְבָּנָה וּבָבָר אֲשֶׁר אָכַל, מַר וּזְטוּרָא לֹא אָכַל**: One explanation of the dispute between Ameimar, Rav Ashi, and Mar Zutra is that since the sharecropper has a share in the field, Ameimar and Rav Ashi ate from the produce based on the likelihood that he was giving them produce from his share. Mar Zutra, by contrast, was concerned that since the crop had not yet been divided between the owner and the sharecropper, the sharecropper might not compensate the owner of the field for the produce that he gave the Sages (*Ramban; Rashba; Rosh*).

Only with regard to the matter of *teruma* – **אֵלָא לְעֵנֵן – תְּרוּמָה בְּלָד**: Some ask how Ameimar and Rav Ashi could respond to Mar Zutra's point that the statement: You should have gone to take the produce of better quality and separate *teruma*, indicates consent of the owner only with regard to the matter of *teruma*, due to the fact that it is a mitzva. They explain that those Sages held that treating Torah scholars with the appropriate deference is also a mitzva, and therefore when the owner urges the sharecropper to offer them high-quality produce, a mitzva is performed with his property (*Shita Mekubbetzet*).

Mar Zutra, by contrast, distinguishes between separating *teruma*, which is a mitzva that is incumbent upon the owner to perform in any case, and therefore he does not mind if another performs it on his behalf, and giving gifts to Torah scholars, which is not a mitzva that is incumbent upon him, and therefore one may not presume that the owner would approve it.

LANGUAGE

Orchard [bustana] – **בּוֹסְטָנָה**: From the Middle Iranian *bōstan*, a compound word referring to a garden, composed of *bōy*, meaning fragrant, and *stan*, meaning place,

אֵלָא הַכָּא בַּמְאֵי שְׂקִין – בְּגֹן דְּשֻׁוִיה
שְׁלִיחַת, וְאָמָר לֵיה: יַלְתָּרֹום, וְלֹא אָמָר
לִיה תְּרוּמָה מִהְנָי. וְסִתְמִיכָה דְבָעֵל הַבַּיִת בַּ
תְּרוּמָם – מִבְּנִינַת הָאָרֶת, וְאָוֹל אַיְהוֹ
וְתְּרוּמָמִיפּוֹת. וְבָא בַּעַל הַבַּיִת וּמִצְאוֹ
וְאָמָר לֵיה בְּלָד אַצְלִיפּוֹת, אֲםָן נִמְצָאוֹ
יִפּוֹת מִן – תְּרוּמָתוֹ תְּרוּמָה, וְאַם לֹא –
אֵין תְּרוּמָתוֹ תְּרוּמָה.

אַמִּימָר וּמַר וּזְטוּרָא וּרְבָבָא אֲשֶׁר אָקְלָעוּ
לְבּוֹסְטָנָה דְמָרִי בָר אַיסְקָה, אַיִתִי אַרְיסִיכָה
תְּמִרְרִי מִימְנוּ וּשְׁדָא קְפִיהִיָּה. אַמִּימָר וּבָבָא
אֲשֶׁר אָכְלָי, מַר וּזְטוּרָא לֹא אָכְלָי. אַדְחָבִי
אַתְּא מַרְיִי בָר אַיסְקָה, אַשְׁבִּחִינָהוּ, וְאָמָר
לֵיה לְאַרְיסִיכָה: אַמְפָא לֹא אַיִתִיתָ לְהָ
לְרַבְּן מִהְנָךְ שְׁפִירָתָא?

אַמְרוּ לֵיה אַמִּימָר וּרְבָבָא לְמַר וּזְטוּרָא:
הַשְׁתָּא אַמְפָא לֹא אָכְלָי מַר? וְהַתְּנִיאָ: אֲםָ
נִמְצָאוּ יִפּוֹת מִן – תְּרוּמָתוֹ תְּרוּמָה אַמְרָ
לְהָיָה, הַכִּי אַמְרָ רְבָבָא: לֹא אַמְרוּ בְּלָד אַצְלִ
יִפּוֹת אֵלָא לְעֵנֵן תְּרוּמָה בְּלָד, מִשּׁוּם
דְּמִצְחָה הָאָרֶת, וַיְנִיחָא לְהָיָה. אַבְלַת הַכָּא –
מִשּׁוּם כְּסִיפּוֹתָא הָאָרֶת וְאַמְרָ הַכִּי.

Rather, with what are we dealing here? It is a case where the owner designated him as an agent and said to him: Go and separate *teruma*, but he did not say to him: Separate *teruma* from these specific crops. And when the owner's intent is unspecified, and it is unclear which of his crops are meant to be separated when the agent separates *teruma*, it is from the crops of intermediate quality that he separates *teruma*.^N And in this case, the agent went and separated *teruma* from higher-quality produce, and the owner of the field came and found him and said to him: You should have gone to take the produce of better quality and separate *teruma* from that. If produce of better quality than the produce he had separated is found,^N his *teruma* is considered *teruma*. But if not, his *teruma* is not *teruma*,

The Gemara digresses with a related incident: Ameimar,^P Mar Zutra,^P and Rav Ashi^P happened to come to the orchard [*levustana*]^L of Mari bar Isak.^P His sharecropper came and placed dates and pomegranates before them. Ameimar and Rav Ashi ate the fruit, but Mar Zutra did not eat^N the fruit due to the concern that the sharecropper had provided them with the fruit without the approval of the owner of the field. Meanwhile, Mari bar Isak came and found them eating his fruit and said to his sharecropper: Why didn't you bring the Sages fruit from those higher-quality fruits?

Ameimar and Rav Ashi said to Mar Zutra: Now why is the Master not eating the fruit? But isn't it taught in a *baraita*: In a case where the owner of the field came and found him and said to him: You should have gone to take the produce of better quality and separate *teruma* from that; if produce of better quality than the produce he had separated is found, his *teruma* is considered *teruma*. Here too, it is clear that Mari bar Isak approved of the actions of his sharecropper. Mar Zutra said to them that this is what Rava said: The Sages said that the statement: You should have gone to take the produce of better quality and separate *teruma*, indicates consent of the owner only with regard to the matter of *teruma*,^N due to the fact that it is a mitzva and the owner is amenable to having the mitzva fulfilled. But here, in this incident, it is due to shame that he said this: Why did you not bring these Sages fruit from those higher-quality fruits? He did not really want to give them the fruit.

PERSONALITIES

Ameimar – **אמִימָר**: Ameimar was one of the great talmudic Sages of the fifth and sixth generations of Babylonian *amora'im*. Ameimar was born and raised in Neharde'a, where he studied and taught Torah, although it is likely that he also studied with the Sages of Pumbedita. The statements that he quotes are mainly from fifth-generation *amora'im*, students of Abaye and Rava. It appears that he served as a rabbi and religious judge in Neharde'a, where he established various rabbinic regulations, but he also wielded influence in many other places, including Mehoza. The leaders of the following generation, including Rav Ashi, were his disciples. He had a son named Mar who studied with Rav Ashi during Ameimar's lifetime.

Mar Zutra – **מַר וּזְטוּרָא**: A colleague of Rav Ashi, Mar Zutra was one of the leading Sages of his generation and a disciple-colleague of Rav Pappa and Rav Nahman bar Yitzhak. Beyond his greatness in *halakha* and *aggada*, Mar Zutra was a noted preacher, and his homiletic interpretations are cited throughout the Talmud. He apparently held an official position as the scholar and preacher of the house of the Exilarch. Late in his life, he was appointed head of the yeshiva of Pumbedita.

The Gemara frequently mentions meetings between Mar Zutra, Ameimar, and Rav Ashi, some of which may well have been formal conferences of the leaders of Babylonian Jewry of that generation.

Rav Ashi – **רב אַשִּׁי**: Rav Ashi was a sixth-generation Babylonian Sage whose primary undertaking was the redaction of the Babylonian Talmud together with Ravina. He was born in the year 352 CE and studied with Rav Kahana. Rav Ashi reestablished the academy in Sura, which had been closed since the time of Rav Hisda, and he led the yeshiva for sixty years.

Mari bar Isak – **מַרְיִי בָר אַיסְקָה**: Mari is mentioned in various places in the Talmud. Some say that there were two people with this name (*Tosafot, Yevamot 21b*), although the references might be to one person who lived a long life.

Mari bar Isak was very wealthy, and several of the Sages were visitors to his home. As stated here, the Sages believed that he used his wealth improperly. That led them to reverse the standard regulations of evidence with regard to him and place the onus of evidence upon him. His displays of generosity were also treated with suspicion.

תא שמע: עזרתו הפל עליהן ושם
היא זה בכי יתען. נגבו אף על פי ששמה

The Gemara suggests: **Come and hear** another proof from a *baraita* with regard to despair that is not conscious. It is written: “And if any part of their carcass falls upon any sowing seed that is to be sown, it is ritually pure. But when water is placed upon the seed, and any part of their carcass falls thereon, it is ritually impure unto you” (Leviticus 11:37–38). Produce becomes susceptible to contracting ritual impurity only after coming into contact with one of seven liquids: Wine, honey, oil, milk, dew, blood, and water. It is taught in the *baraita*: **If the dew is still upon** the produce and has not yet dried, and if the owner was glad that the dew moistened the produce and kept it fresh, **that** produce falls into the category of: “But when water is placed upon the seed,” and the produce is susceptible to contracting ritual impurity. If the produce had dried when the owner found it, then even though he was glad that the dew had moistened the produce,

Perek II

Daf 22 Amud b

אין בכי יתען.

טעמָא מַאי? לֹא מִשׁוּם דְלָא אָמְרוּנִי,
בֵין דָאַיְלָאִי מִלְתָא דְהַשְׁתָא נִיחָא
לִיה, מַעֲקָרָא נִמְיָא לִיה? שָׁאָנִי
הַתָּם, דְכַתְּבֵב כִי יתען – עַד שִׁתְעַן.

the produce is not in the category of: “But when water is placed [*ki yuttan*] upon the seed,” and the produce is not susceptible to contracting ritual impurity.⁷

What is the reason that if the produce dried, the fact that the owner is glad does not render it susceptible to ritual impurity? Is it not due to the fact that we do not say: **Since the matter was revealed that he is amenable to the moisture now, he was also amenable from the outset?** The same should be true with regard to despair that is not conscious. The fact that when he becomes aware of his loss he despairs of its recovery does not indicate that he despaired from the outset, contrary to the opinion of Rava. The Gemara rejects the proof: **It is different there, as although the phrase is vocalized to mean: “When it is placed,” it is written: When one places [ki yitten],** from which it is derived that the produce is rendered susceptible to ritual impurity **only if the owner places the liquid on the produce.**

אי הַכִּי, רִישָׁא נִמְיָא הַתָּם קְדוּמָה פֶּפֶא.
וּרְבָ פֶּפֶא רְכִמִי: בְּתִיב כִי יתען וְקָרְבָן כִי
וּתְעַן, הָא פְּיַצֵּד?

The Gemara asks: **If so, in the first clause of the baraita, too,** the produce should not be rendered susceptible to contracting impurity, because the dew fell on the produce and was not placed there by the owner. The Gemara answers: **There, the explanation is in accordance with the opinion of Rav Pappa, as Rav Pappa raised a contradiction:** The verse states: “But when water is placed [*vekhi yuttan*] upon the seed, and any part of a carcass falls thereon, it is ritually impure unto you” (Leviticus 11:38). The word “*yuttan*” is written in the defective form, as if it says “*ki yitten*.” Accordingly, this would mean that one must actively place the water on the produce. Yet, we read it, based on the tradition as to its correct pronunciation, as if it is written “*ki yuttan*,”⁸ which includes any situation where the produce becomes wet. **How so?** How can the way the verse is written and the way it is read be reconciled?

בְּעִינָן, כִי יתען דּוֹמְאָה דְכִי יתען; מַה יתען
לְדֻשָּׁת – אָף כִי יתען נִמְיָא לְדֻשָּׁת.

Rav Pappa explains that we require that the situation described by the words “when water is placed [*ki yuttan*]” be similar to the situation described by the words: **When one places [dekh yitten]:** Just as the term **places** [*yitten*] indicates that it is with the knowledge of the owner that the produce becomes wet, as he himself is placing the water, so too, the term “is placed [*yuttan*]” means that it is with his knowledge⁹ that the produce becomes wet, despite the fact that he did not place the water himself. Therefore, no proof may be cited with regard to the matter of despair, where there is no Torah derivation requiring awareness from the outset.

NOTES

Susceptibility to ritual impurity – הַכְשָׂרָה לְטַבְמָאָה: By Torah law, food becomes ritually impure only if a liquid is first placed upon it. Food is considered susceptible to contracting ritual impurity only if certain conditions were met as it became damp. Primary among them are: It must be dampened by one of seven liquids, i.e., wine, blood, oil, milk, dew, honey, or water; it must be dampened with the knowledge and approval of the owner; and it must be dampened after being detached from the ground. The numerous halakhot governing what constitutes approval are explained primarily in tractate *Makhshirin*.

BACKGROUND

Ki yitten...ki yuttan – כי יתען כי יתען: Although the Hebrew writing in a Torah scroll does not have vowels, certain consonants, known as *matries lectionis*, literally, mothers of reading, are occasionally inserted to indicate the correct pronunciation of the word. This is not done consistently. A word can thereby be written defective, without these additional letters, or plene, with them. Some Sages maintain that the tradition of the manner in which the verses in the Torah are written is authoritative, and one derives *halakhot* based on the spelling of the words. By contrast, others hold that the vocalization of the Torah is authoritative, meaning that one derives *halakhot* based on the pronunciation of the words, although it diverges from the spelling. This dispute applies only when the written and vocalized texts of the Torah are entirely different. If it is possible to reconcile the two readings, as is the case here, this is certainly preferable (*Tosefot Tukh*).

HALAKHA

אָף כִי יתען נִמְיָא לְדֻשָּׁת: If any of the seven liquids: Wine, blood, oil, milk, dew, honey, or water, fell onto food with the approval of its owner, the food is rendered susceptible to contracting ritual impurity. Even if the liquid dries, the food remains susceptible to contracting ritual impurity (*Rambam Sefer Tahara, Hilkhot Tumat Okhalin* 1:2).

HALAKHA

Which is lost from him and is not available to be found by any person – שָׁאַבּוֹדָה מִמְּנָוֹא יְהִי אֶלָּא דָם: In the case of one who rescues an item from a wild animal, e.g., a lion or bear, or from being swept away by the tide of the sea or the flooding of a river, the item belongs to him even if the owner strenuously objects. The Rema rules that nevertheless the righteous course of action (see Deuteronomy 6:18) is to return it to its owner (Rambam Sefer Nezikin, Hilkhot Gezela VaAveda 11:10; Shulhan Arukh, Hoshen Mishpat 259:7, and in the comment of Rema).

PERSONALITIES

Abaye – אֲבֵי: Abaye was a fourth-generation Babylonian amora, and was one of the outstanding Sages of the Talmud. Abaye was orphaned at the time of his birth and raised by his paternal uncle, Rabba. Some say that his real name was Nahmani or Kilil and that Abaye was just a nickname. The woman who assisted his uncle in raising him impressed upon him many life lessons that he quoted in her name. There are several incidents related in the Gemara that illustrate his intelligence even as a child, including some where his adoptive father, Rabba, tested his knowledge.

Although Rabba was a priest and the head of his yeshiva, he lived in poverty, as did Abaye. Growing up in his uncle's home, Abaye was aware of the difficulties of scholars who were without financial means. The Gemara in tractate Berakhot (35b) relates that he testified that many were successful following the path of Rabbi Yishmael, who instructed his students to plow, plant, and harvest in the appropriate time. Very few of them were successful following the path of Rabbi Shimon bar Yoḥai, who taught that one should devote himself entirely to Torah and ignore worldly concerns.

Abaye was the primary student of Rabba and of Rav Yosef, and after the latter's death Abaye succeeded him as the head of the yeshiva in Pumbedita. He celebrated the study of Torah and would announce a holiday for the scholars whenever one of them completed a tractate. In addition to Abaye's prominence as a Torah scholar, he was known for his righteousness and his acts of kindness. His son, Rav Beivai bar Abaye, was also a prominent Torah scholar.

Abaye's exchanges and halakhic disputes with his uncle and, even more so, with Rav Yosef, can be found throughout the Talmud. His disputes with his colleague Rava are especially significant. Their disputes, known as the discussions of Abaye and Rava, are examples of profound and edifying disputes and are among the foundations of the Babylonian Talmud. In these disputes, with six exceptions, the halakha is ruled in accordance with the opinion of Rava.

BACKGROUND

Repugnant creatures and creeping animals – שְׁקָצִים וּרְמַשִּׁים: This is a phrase meant to include all non-kosher animals. Tosefot Yom Tov distinguishes between the two terms: Repugnant creatures [shekatzim] refers to small sea and land creatures, as well as birds and insects categorized as shekatzim in the Torah. The term creeping animals [remashim] refers to worms and other creatures that infest produce, believed to originate through spontaneous generation.

תָּאַשְׁמָע, דָּאַמְּרָה רַבִּי יוֹחָנָן מִשּׁוֹם רַבִּי
שְׁמַעְיָאֵל בֶּן יְהוֹצָדָק: מִין לְאַבְּדָה
שְׁשַׁטְּפָה נִנְהָר שְׁהִיא מוֹתָרָת – רַכְתִּיב:
וַיְהִי תַּعֲשָׂה לְלַמְּבוֹרוֹ וְכֵן תַּעֲשָׂה לְשִׁמְלָתוֹ
וְכֵן תַּעֲשָׂה לְכָל אֲבִידָת אֲחִיךְ אֲשֶׁר
תַּאֲבֹד מִמְּנָוֹא וּמִצְּאתָה – מִ שְׁאַבּוֹדָה
תַּיְמְנוֹ וּמִצְּאתָה אֶל כָּל אָדָם, יָצָאתָה וְ
שְׁאַבּוֹדָה מִמְּנָיו, וְאַיִלָּה מִצְּאתָה אֶל כָּל
אָדָם.

וְאִסּוּרָא דּוֹמִיא דְּהִתְיִרְאָא, מִה הַיִּתְיִרְאָא –
בֵּין דָּאִית בְּהַ סִימָן וּבֵין דָּלִית בְּהַ סִימָן
שָׁוֹא, אַף אִיסּוּרָא – בֵּין דָּאִית בְּהַ סִימָן
וּבֵין דָּלִית בְּהַ סִימָן אֲסּוֹרָה. תִּיקְבָּתָא
רַבָּא. תִּיקְבָּתָא.

הַלְּבָתָא פּוֹתִיהָ דָאַבְּיָי בִּיעַל קָגָם.

אָמַר לֵיהּ רַב אָחָא בָּרְיהָ דָרְבָּא לְבָ אָשָׁי:
וּבַיּוֹם אַמְּתָר זְאוּתָבָּה וּבָא, הַנִּי תְּמָרִי
דִּזְקָא הַכִּי אַכְלִין לְהֹה? אָמַר לֵיהּ: בֵּין
דָּאַבָּא שְׁקָצִים וּרְמַשִּׁים דִּזְקָא אַכְלִילְהֹה,
מַשְׁקָרָא יְאֹשֵׁי מִיאָשָׁן בְּנִיּוֹ.

The Gemara suggests: Come and hear a proof from that which Rabbi Yoḥanan says in the name of Rabbi Yishmael ben Yehotzadak: From where is it derived with regard to a lost item that the river swept away that it is permitted for its finder to keep it? It is derived from this verse, as it is written: "And so shall you do with his donkey; and so shall you do with his garment; and so shall you do with every lost item of your brother, which shall be lost from him, and you have found it" (Deuteronomy 22:3). The verse states that one must return that which is lost from him, the owner, but is available to be found by any person. Excluded from that obligation is that which is lost from him and is not available to be found by any person;^h it is ownerless property and anyone who finds it may keep it.

And the prohibition written in the verse against keeping an item that is lost only to its owner is similar to the allowance^N to keep an item lost to all people that is inferred from the verse; just as in the case of the allowance, whether there is a distinguishing mark and whether there is no distinguishing mark, it is permitted for the finder to keep it, so too in the case of the prohibition, whether there is a distinguishing mark and whether there is no distinguishing mark, it is prohibited for the finder to keep it, until there is proof that the owner despaired of its recovery. The Gemara concludes: The refutation of the opinion of Rava is indeed a conclusive refutation.

And although in disputes between Abaye and Rava, the halakha is typically ruled in accordance with the opinion of Rava, the halakha is in accordance with the opinion of Abaye^P in the disputes represented by the mnemonic: *Yod, ayin, lamed; kuf, gimmel, mem*.^N

Rav Aha, son of Rava, said to Rav Ashi: And now that the opinion of Rava was conclusively refuted, and the halakha is that despair that is not conscious is not considered despair, if those dates are blown off the tree by the wind,^N how do we eat them? Perhaps their owner did not despair of their recovery. Rav Ashi said to him: Since there are repugnant creatures and creeping animals^{NB} that eat the dates after they fall, the owner despairs of their recovery from the outset. Therefore, one who finds the dates may keep them.

NOTES

And the prohibition is similar to the allowance – **וְאִיסּוּרָא דּוֹמִיא דְּהִתְיִרְאָא:** The early commentaries found this proof difficult, particularly the clause that begins as: Just as in the case of the allowance. How does the comparison between allowance and prohibition emerge from the preceding derivation? The Ba'al HaMaor concludes that the comparison between them is not inferred from the derivation; rather, it is an independent statement added by Rabbi Yoḥanan. Most commentaries reject that opinion, as, were it an amoraic statement, it could not conclusively refute Rava's opinion (see Ra'avad and Ramban). Rather, they explain that the inference is from the fact that it was necessary for the Torah to teach that if one found a lost item that cannot be found by any person, it belongs to him. Apparently, if one found a lost item that had the potential to be found by any person, it belongs to him only in certain circumstances (see Ramban, Rashba, and Rosh).

Yod, ayin, lamed; kuf, gimmel, mem – עַל קָגָם: Rashi explains that *yod* represents the dispute here with regard to whether despair that is not conscious [*yeush shelo mida'at*] is considered despair. Abaye holds that it is not.

Ayin represents the dispute (*Sanhedrin* 27b) with regard to whether a conspiring witness [*ed zomear*] is disqualified retroactively or only from when he is convicted in court. Abaye holds that he is disqualified retroactively.

Lamed represents the dispute (*Eiruvin* 15a) with regard to whether a side post [*lehi*] at the entrance to an alleyway that was not placed by human hand is considered a valid side post. Abaye holds that it is a valid side post.

Kuf represents the dispute (*Kiddushin* 51a) with regard to whether betrothal [*kiddushin*] that is not given to consummation takes effect and requires a bill of divorce to dissolve it. Abaye holds that the betrothal takes effect.

Gimmel represents the dispute (*Gittin* 34a) with regard to whether disclosure of intent with regard to bills of divorce [*get*] is significant. Abaye holds that it is not significant.

Mem represents the dispute (*Sanhedrin* 27b) with regard to whether an apostate [*mumar*] who displays insolence vis-à-vis God by eating unslaughtered animal carcasses is disqualified from bearing witness. Abaye holds that he is disqualified.

Rabbeinu Tam explains that the letter *lamed* represents the dispute with regard to how a *zava* who gave birth [*leida*] and did not bleed counts the tally of the days of the *zava*. The early commentaries of Narbonne explain (*Pesahim* 25b) that the *lamed* represents the dispute with regard to a case where one is prohibited from deriving benefit from an item and has no intent to derive benefit from it, but deriving benefit from it is unavoidable [*la afshar*], where Abaye rules that it is permitted for one to derive benefit from it.

Dates blown off the tree by the wind – תְּמָרִי דִּזְקָא: It appears that the Gemara is referring specifically to dates because they are sweet and are consumed by most animals. In addition, date trees grow tall and when the wind blows dates off the tree they fall far from the tree (Rambam).

Shekazim and remashim – שְׁקָצִים וּרְמַשִּׁים: The Meiri understands that these creatures eat the fruit on the tree, causing them to fall.

וַתִּתְמַיֵּן דָּלוֹא בְּנֵי מְחִילָה נִגְהַו מָאִים?
אָמַר לְיהָ: בְּאֶגָּא בְּאֶרְעָא דִתְמִי לֹא
מִחוּקִין.

מוֹחַק וְעוֹמֵד מָאִים? בְּרִכְתָּא מָאִים? אָמַר
לְיהָ: אֲסִיךְן.

כְּרִיכּוֹת בְּרִשׁוֹת הָרַבִּים הָרִי אַלְוָשָׁלוֹ.
אָמַר רַבָּה: וְאַפְּיָלוֹ בְּדָבָר שִׁישׁ בּוֹ סִימָן.
אַלְמָא קָסְבָּר רַבָּה: סִימָן הַעַשְׂיוֹ לִדְרוֹס -
לֹא הָיָי סִימָן. וּבָא אָמַר: לֹא שָׁנוֹ אַלְאָ
בְּדָבָר שָׁאַן בּוֹ סִימָן, אַבְּלָי בְּדָבָר שִׁישׁ
בּוֹ סִימָן - חַיְבָ לְהַכְרִי. אַלְמָא קָסְבָּר
רַבָּא: סִימָן הַעַשְׂיוֹ לִדְרוֹס - הָיָי סִימָן.

וְאַيְכָא דָמַתְנִי לְהָא שְׁמֻעָתָא בְּאַנְפֵי
נְפָשָׁה; סִימָן הַעַשְׂיוֹ לִדְרוֹס. רַבָּה אָמַר:
לֹא הָיָי סִימָן, וּבָא אָמַר: הָיָי סִימָן.

תַּנִּינָה: כְּרִיכּוֹת בְּרִשׁוֹת הָרַבִּים הָרִי אַלְוָ
שָׁלוֹ, בְּרִשׁוֹת הַיְחִידָה נַטֵּל וּמְכִירָה. הַיְכִי
דָמִי? אֵי דָלִית בָּהוּ סִימָן - בְּרִשׁוֹת
הַיְחִידָה מָאִים מְכִירָה? אַלְאָ לֹא - דָאִית
בָּהוּ סִימָן, וְקַתְנִי: בְּרִשׁוֹת הָרַבִּים הָרִי
אַלְוָשָׁלוֹ, אַלְמָא: סִימָן הַעַשְׂיוֹ לִדְרוֹס
לֹא הָיָי סִימָן, תַּוְיַּבְתָּא דְרַבָּא!

Rav Aha asked: Perhaps the tree belonged to **minor orphans who**, because **they are not capable of relinquishing property**, cannot despair of recovering the dates from the outset. Accordingly, what is the justification for eating found dates? Rav Ashi said to him: **We do not presume a valley to be land belonging to orphans**, and therefore that is not a concern.

Rav Aha asked: If the **presumptive status** of the trees was **previously established** as belonging to orphans, **what is the halakha?** If the trees are surrounded by **fences**^N that prevent repugnant creatures and creeping animals from gaining access, **what is the halakha?** Rav Ashi said to him: The dates are forbidden in those cases.

§ The mishna teaches that if one found bundles of grain in a public area, these belong to him. Rabba says with regard to this ruling: And this is the halakha even with regard to an item on which there is a distinguishing mark. The Gemara comments: Apparently, Rabba holds that the legal status of a distinguishing mark that is prone to be trampled is not that of a distinguishing mark. Since the owner of the lost item knows that the mark is prone to be trampled, he does not rely on it and he despairs of recovering the item. Rava said: The Sages taught this halakha only with regard to an item on which there is no distinguishing mark, but with regard to an item on which there is a distinguishing mark, the one who finds it is obligated to proclaim his find. The Gemara comments: Apparently, Rava holds that the legal status of a distinguishing mark that is prone to be trampled^N is that of a distinguishing mark.

And there are those who teach the dispute with regard to this halakha independent of the mishna.^N With regard to the legal status of a distinguishing mark that is prone to be trampled, Rabba says: It is not a distinguishing mark. And Rava says: It is a distinguishing mark.

The Gemara cites proof from that which we learned in a baraita: If one finds bundles of grain in a public area, these belong to him; if he finds them in a secluded area,^N the finder takes them and proclaims his find. What are the circumstances? If it is a case where there is no distinguishing mark on the bundles, when one finds them in a secluded area, what does he proclaim? Rather, is it not a case where there is a distinguishing mark on the bundles, and there is then a reason for him to proclaim his find. And yet, it is taught in the baraita that if he finds the bundles in a public area those bundles belong to him. Apparently, a distinguishing mark that is prone to be trampled is not a distinguishing mark. This is a conclusive refutation of the opinion of Rava.

NOTES

Fences [kerakhta] – בְּרִכְתָּא: Rabbeinu Hananel explains that kerakhta is referring to trees that grow in the city, where animals are less common. Others understand that it is referring to mats unfurled under the tree to catch the falling dates (*Shita Mekubetzet*). The Meiri explains that it is referring to entire branches that fall. According to his opinion, the owner despairs of those fruits that fell because he suspects they were eaten by repugnant creatures. The owner does not consider the possibility that an entire branch will fall, and therefore does not despair of recovering its fruits.

A distinguishing mark that is prone to be trampled – סִימָן: If trampling is a concern, why does the mishna teach (24b) that one is obligated to proclaim one's find of piles of produce or piles of coins? The Ramban answers that one will avoid trampling produce based on the halakha (see 23a) that one may not pass by food lying on the ground without picking

it up. Similarly, one will avoid stepping on money because it is valuable.

וְאַיְכָא דָמַתְנִי לְהָא שְׁמֻעָתָא בְּאַנְפֵי נְפָשָׁה: Some posited a practical difference between the two presentations of the dispute. If it is independent of the mishna, there is a fundamental dispute with regard to all cases. If it is related to the mishna, perhaps the halakha would be different in a city with a gentile majority (*Ma'ayanei HaJokhma*).

Secluded area – רִשְׁוֹת הַיְחִידָה: Although this term is usually translated as private property, here the reference is not to full-fledged private property, as in that case the finder would have no right to trespass there. Rather, the reference is to a field through which few people pass or to ruins (Rashi; Rabbeinu Yehonatan of Lunel).

NOTES

He proclaims the location – מִקְרֵי מָקוֹם: According to Rashi the finder proclaims that he found an unspecified item in a certain location and the owner describes the item and claims it. *Tosafot* explain that the finder proclaims that he found a specific item and the owner claims it by describing its location. Others explain that the finder proclaims the general area where he found the item and the owner describes the precise location (*Shita Mekubetzet*).

אמור לך ורבא: לעולם דלית בהו סימן,
וזeka אמורת ברשות היחיד מאי מCKERיו -
מCKERיו מUNKOM. ורבבה אמר: מUNKOM לא חוי
סימן. דאיתנמר: מUNKOM. ורבבה אמר: לא חוי
סימן. ורבא אמר: חוי סימן.

Rava could have said to you: Actually, it is a case where there is no distinguishing mark on the bundles. And with regard to that which you said: When one finds them in a secluded area, what does he proclaim? He proclaims that the owner should provide the location^N where he lost the bundles and thereby recover his bundles. And Rabba said: The location, provided by the owner, is not a distinguishing mark that would enable the return of an item to its owner. As it was stated that the *amora'im* disputed this matter: With regard to location, Rabba says: It is not a distinguishing mark, and Rava says: It is a distinguishing mark.

כא שמע: בריכות ברשות הרבים – חוי
אלול שלו, ברשות היחיד – נוטל ומCKERיו.
והאלומות, בין ברשות הרבים בין ברשות
היחיד – נוטל ומCKERיו. רבבה היכי מטרץ
לה ורבא היכי מטרץ לה? רבבה מטרץ
לטעמיה – בסימן, ורבא מטרץ לטעמיה –
בUNKOM.

רבבה מטרץ לטעמיה בסימן: בריכות
ברשות הרבים חוי אלול שלו – משום

The Gemara suggests: Come and hear a proof from a *baraita*: If one finds bundles of grain in a public area, these belong to him; if he finds them in a secluded area, the finder takes them and proclaims his find. And with regard to the sheaves, i.e., large bundles, whether he finds them in a public area or whether he finds them in a secluded area, the finder takes them and proclaims his find. How does Rabba explain the *baraita*, and how does Rava explain the *baraita*? Rabba explains, according to his line of reasoning, that the *baraita* is referring to bundles with a distinguishing mark. And Rava explains, according to his line of reasoning, that the *baraita* is referring to bundles whose location is their distinguishing mark.

The Gemara elaborates. Rabba explains, according to his line of reasoning, that the *baraita* is referring to bundles with a distinguishing mark: If one finds bundles of grain in a public area, these belong to him due to the fact

Perek II

Daf 23 Amud a

HALAKHA

Bundles of grain – בריכות: If one found small bundles of grain in a public area, they belong to him. If he found them in a secluded area, they belong to him only if he found them in a manner indicating that they had fallen there. If he found them in a manner indicating that they had been placed there purposefully, he proclaims his find, in accordance with the opinion of Rava that location is a distinguishing mark. In the case of large sheaves of grain that tend to remain in place, he proclaims his find in any event (Rambam *Sefer Nezikin, Hilkhot Gezeila VaAveda* 15:8; *Shulhan Arukh, Hoshen Mishpat* 262:9).

דמדוסא, ברשות היחיד נוטל ומCKERיו –
דלא מדרוסא, והאלומות בין ברשות
הרבים ובין ברשות היחיד נוטל ומCKERיו –
בין דגביה, לא מדרוסא.

that they are trampled. Even if there had been a distinguishing mark on the bundles it would have been destroyed when it was trampled. If he finds them in a secluded area, the finder takes the sheaves and proclaims his find, as due to the absence of pedestrian traffic they are not trampled and the distinguishing mark remains intact. And with regard to the sheaves, whether he finds them in a public area or whether he finds them in a secluded area, the finder takes them and proclaims his find. Since they protrude high above the ground, they are not trampled.

ורבא מטרץ לטעמיה בUNKOM: בריכות
ברשות הרבים חוי אלול שלו – דמיינשטאפא
ברשות היחיד חיב להכריו – דלא
מיינשטאפא, והאלומות בין ברשות הרבים
ובין ברשות היחיד נוטל ומCKERיו – בין
היכרי לא מיינשטאפא.

And Rava explains, according to his line of reasoning, that the *baraita* is referring to bundles whose location is their distinguishing mark: If one finds bundles of grain^H in a public area, these belong to him due to the fact that they are kicked and they consequently roll to a different location than where they were placed. If he finds them in a secluded area, he is obligated to proclaim his find. Due to the absence of pedestrian traffic they are not kicked and do not roll, and they therefore remain in the location where they were placed. And with regard to the sheaves, whether he finds them in a public area or whether he finds them in a secluded area, the finder takes them and proclaims his find. Since they are heavy, they do not roll when kicked.

כא שמע: בכורות של נחתום – חוי אלול
שלו. הא של בעל הבית – חיב להכריו.
של בעל הבית מאי טעם – בין דאית
בחו סימן, דמיינשדא ידייע רפתקא דאיינש
איינש הווא, ולא שנא רשות הרבים ולא
שנא רשות היחיד – נוטל ומCKERיו. אלמא:
סימן העשו לדרוס חוי סימן, תיובתא
רבבה!

The Gemara suggests: Come and hear a proof from the mishna: If one found baker's loaves, these belong to him. The Gemara infers: But if one finds loaves of a homeowner, he is obligated to proclaim his find. What is the reason? When one finds loaves of a homeowner he is obligated to proclaim his find because there is a distinguishing mark on the loaves. As each person shapes his loaves in a unique manner, it is known that the loaves of a person belong to that person. And there is no difference if the loaves were found in a public area, and there is no difference if the loaves were found in a secluded area; the finder takes the item and proclaims his find. Apparently, the legal status of a distinguishing mark that is prone to be trampled is that of a distinguishing mark. This is a conclusive refutation of the opinion of Rabba.

אמור לו ורביה: הִתְמַמֵּן טָעֵמָה, מִשּׁוֹם
דֵּין מִעֲבִירֵין עַל הַאֲוָכְלִין, וְהֵא אַיְכָא
בְּכָרִים! נִכְרִים חִישֵּׁי לְכַשְּׁפִים. וְהֵא אַיְכָא
בְּהַרְמָה וּבְלַבְמָה! בְּאַתְּרוֹא דֶּלֶא שְׁבִיחִי
בְּהַרְמָה וּבְלַבְמָה.

Rabba could have said to you: There, this is the reason that one must return the loaves of a homeowner found in a public area. It is due to the fact that one does not pass by food^{NH} without picking it up. Therefore, it can be assumed that it will not be trampled. The Gemara asks: But aren't there gentiles^N who do not treat food with deference and who will trample the loaves? The Gemara answers: Gentiles are concerned that the loaves were placed in a public area for reasons of sorcery. The Gemara asks: But aren't there beasts and dogs that will trample the loaves? The Gemara answers: The mishna is referring to a place where beasts and dogs are not commonly found.

לִימָא בְּתְנָאֵי, רַבִּי יְהוּדָה אָוָרֶר: כֶּל דָּבָר
שִׁישׁ בּוֹ שִׁינְעִי - חִיבְלָהָכְרִי. בַּיְצָרְדָּמָא מִצָּא
עִזּוּל וּבְתוּכוֹ חָרָס, בְּכָר וּבְתוּכוֹ מַעֲזָה.
בְּכָל דְּתָנָא קְפָא סְבָר: הָרִי אַלְוּ שָׁלוֹ.

כְּבָרוּהָ: דְּכָבְילִי עַלְמָא סִימָן הַבָּא מַאֲלִיו -
הָרִי סִימָן, וּמִעֲבִירֵין עַל הַאֲוָכְלִין. פְּנָא לְאוֹ
בְּסִימָן הַעֲשִׂׂיו לְיִדְוָס קָא מִפְלָגִי, מַר סְבָר:
לָא הָרִי סִימָן, וְמַר סְבָר: הָרִי סִימָן?

The Gemara suggests: Let us say that this dispute between Rabba and Rava is parallel to a dispute between *tanna'im* in the mishna. Rabbi Yehuda says: If one finds any lost item in which there is an alteration, he is obligated to proclaim his find. How so? If he found a round cake of pressed figs with an earthenware shard inside it, or a loaf of bread with coins inside it, he must proclaim his find. One may conclude by inference that the first *tanna* of the mishna holds that even in that case those items belong to him.

In explaining the tannaitic dispute, the Sages assumed that everyone agrees that the legal status of a distinguishing mark that could come to mark an item on its own without having been placed there intentionally is that of a distinguishing mark, and everyone agrees that one passes by food without picking it up. Accordingly, what is the basis of their dispute? Is it not with regard to the matter of a distinguishing mark that is prone to be trampled that they disagree? As one Sage, the first *tanna*, holds that its legal status is not that of a distinguishing mark, and one Sage, Rabbi Yehuda, holds that its legal status is that of a distinguishing mark.

אמור רב זвид משמעיה דרבא: אֵי סְלָקָא
דַעַתְךָ דָקָא סְבָר תְּנָא קְפָא סִימָן הַעֲשִׂׂיו
לִידּוֹס לֹא הָרִי סִימָן, וּמִעֲבִירֵין עַל
הַאֲוָכְלִין - כְּבָרוֹת שְׁלָבָל הַבִּתְרָבָת בְּרִשות
חֲרָבִים אַפְמָא מִכְרִיו?

Rav Zevid^P said in the name of Rava: If it enters your mind that the first *tanna* holds that the legal status of a distinguishing mark that is prone to be trampled is not that of a distinguishing mark and that one passes by food without picking it up, then in the case of loaves of a homeowner that were found in a public area, where the loaves would be trampled and their distinguishing mark destroyed, why does he proclaim his find?

אַלְאָא אָמָר רַב זָвид מִשְׁמָה דְּרָבָא: דְּכָבְילִי
עַלְמָא סְבָר סִימָן הַעֲשִׂׂיו לִידּוֹס - הָרִי
סִימָן, וּמִעֲבִירֵין עַל הַאֲוָכְלִין. וְהֵכָא -
בְּסִימָן הַבָּא מַאֲלִיו קָא מִפְלָגִי. דְּתָנָא
קְפָא סְבָר: סִימָן הַבָּא מַאֲלִיו - לֹא הָרִי
סִימָן, וְמַר יְהוּדָה סְבָר: הָרִי סִימָן.

Rather, Rav Zevid said in the name of Rava that everyone holds that the legal status of a distinguishing mark that is prone to be trampled is that of a distinguishing mark and that one passes by food without picking it up. And here, it is with regard to the legal status of a distinguishing mark that could come to mark an item on its own that they disagree. The first *tanna* holds that the legal status of a distinguishing mark that could come to mark an item on its own is not that of a distinguishing mark, and Rabbi Yehuda holds that the legal status of a distinguishing mark that could come to mark an item on its own is that of a distinguishing mark.

NOTES

One does not pass by food on the ground – Most commentaries understand this to mean that one does not pass by food on the ground without picking it up. Others say that it means that it is prohibited to trample food (Meiri; Ritva). In both explanations, the reason is the same: One may not treat food in a contemptuous manner. Any food fit for human consumption must be treated with appropriate deference.

But aren't there gentiles – Early commentaries note that if there is a gentile majority in the area in question, the lost item should belong to the finder for that reason alone. Therefore, it must be that in the case here there is a gentile minority. Apparently, there is a distinction between despair about recovering lost items, which exists only where there is a majority of gentiles, and concern that the item will be trampled, which exists even where there is a minority of gentiles (Rashba).

HALAKHA

One does not pass by food – It is prohibited for one who sees a food item on the ground to leave it there. Rather, he lifts it and places it where it will not be trampled (*Shulhan Arukh, Orah Hayim* 180:4, and *Magen Avraham* there).

PERSONALITIES

Rav Zevid – רב זвид: A fifth-generation Babylonian *amora*, Rav Zevid was a preeminent disciple of Abaye and Rava, and cited numerous statements in their names. He participated in talmudic discussions with the prominent *amora'im* of his generation. Apparently, he devoted considerable time to the analysis of *baraitot* that emerged from the study hall of Rabbi Oshaya.

After Rava's death there was a split in his yeshiva and Rav Zevid headed the Pumbedita branch for approximately ten years. The Gemara relates that he was poisoned by servants of the Exilarch who took umbrage at his stringent halakhic decision with regard to an egg roasted by an idolater, contrary to the ruling of the Exilarch (*Avoda Zara* 38b).

רובה אמר לך: דכולי עלמא סימן העשו
לידום - לא חוי סימן, ואין מעבירין על
האוכליין. והכא בסימן הבה מאילו
קמיפלגי. תנא קמא סבר: לא חוי סימן,
רבי יהודה סבר: חוי סימן.

aicā dāmrō: s̄boroh d̄colī ulmā siman
haba malīy hoi simon, simon ha'usho
lid'om - la choi simon. Mai la'ao -
b'me'ubirin ul ha'ocelin ka miflai, d'mar
s̄bar: me'ubirin, v'mor s̄bar: ain me'ubirin.

אמור רב זבד משםיה דרבא: אֵי סְלָקָא
דַעֲתָךְ סְבָר תְנַא קְמָא סִימָן הַעַשׂוֹ לִידּוֹס
- לא חוי סימן, ומ'עב'רין על האוכליין -
כפ'ות של בעל הבית ברשות הרבים
אםאי מכריו?

אלא אמר רב זבד משםיה דרבא: דכולי
עלמא סבר, סימן העשו לידום - חוי
סימן, ומ'עב'רין על האוכליין, והכא -
בסימן הבה מאילו קא miflai, דתנא
קמא סבר: סימן הבה מאילו - לא חוי
סימן, רבי יהודה סבר: חוי סימן.

רובה אמר לך: דכולי עלמא סימן העשו
לידום - לא חוי סימן, ואין מעבירין על
האוכליין. והכא - בסימן הבה מאילו
קא miflai, תנא קמא סבר: סימן הבה
מאילו - לא חוי סימן, רבי יהודה סבר:
חוי סימן.

אמור רב זבד משםיה דרבא: כללו
דאבדתא: בין דאמר ווי לה לחסרון
ביס - מיאש ליה מינה.

And Rabba could have said to you that everyone agrees that the legal status of a distinguishing mark that is prone to be trampled is not that of a distinguishing mark and that one does not pass by food without picking it up. And here, it is with regard to the legal status of a distinguishing mark that could come to mark an item on its own that they disagree. The first *tanna* holds that the legal status of a distinguishing mark that could come to mark an item on its own is not that of a distinguishing mark, and Rabbi Yehuda holds that the legal status of a distinguishing mark that could come to mark an item on its own is that of a distinguishing mark.

There are those who say, in explaining the tannaitic dispute, that the Sages assumed that everyone agrees that the legal status of a distinguishing mark that could come to mark an item on its own without having been placed there intentionally is that of a distinguishing mark, and everyone agrees that the legal status of a distinguishing mark that is prone to be trampled is not that of a distinguishing mark. What, then, is the basis of their dispute? Is it not with regard to the matter of whether one passes by food without picking it up that they disagree. As one Sage, the first *tanna*, holds that one passes by food without picking it up, and one Sage, Rabbi Yehuda, holds that one does not pass by food without picking it up.

Rav Zevid said in the name of Rava: If it enters your mind that the first *tanna* holds that the legal status of a distinguishing mark that is prone to be trampled is not that of a distinguishing mark and that one passes by food without picking it up, then in the case of loaves of a homeowner that were found in a public area, where the loaves would be trampled and their distinguishing mark destroyed, why does he proclaim his find?

Rather, Rav Zevid said in the name of Rava that everyone holds that the legal status of a distinguishing mark that is prone to be trampled is that of a distinguishing mark and that one passes by food without picking it up. And here, it is with regard to the legal status of a distinguishing mark that could come to mark an item on its own that they disagree. The first *tanna* holds that the legal status of a distinguishing mark that could come to mark an item on its own is not that of a distinguishing mark, and Rabbi Yehuda holds that the legal status of a distinguishing mark that could come to mark an item on its own is that of a distinguishing mark.

And Rabba could have said to you that everyone agrees that the legal status of a distinguishing mark that is prone to be trampled is not that of a distinguishing mark and that one does not pass by food without picking it up. And here, it is with regard to the legal status of a distinguishing mark that could come to mark an item on its own that they disagree. The first *tanna* holds that the legal status of a distinguishing mark that could come to mark an item on its own is not that of a distinguishing mark, and Rabbi Yehuda holds that the legal status of a distinguishing mark that could come to mark an item on its own is that of a distinguishing mark.

§ Rav Zevid said in the name of Rava that this is the principle of a lost item: Once the owner of a lost item says: Woe is me for the monetary loss,^h this indicates that he has despaired of its recovery.

HALAKHA

Woe is me for the monetary loss – If one finds a lost item and knows that the owner despaired of its recovery, it belongs to the finder, as apparently the owner despaired of its recovery (Rambam Sefer Nezikin, Hilkhot Gezila VaAveda 14:3; Shulhan Arukh, Hoshen Mishpat 262:5). Likewise, if the item was there for an extended period, it belongs

ואמר רב זיביד ממשימה דרבנן -
הילכתא, ברכות ברשות הרובים -
הרוי אלו שלו, ברשות היחיר, אי
דרך נפילה - הרוי אלו שלו, אי דורך
הנחה - נוטל ומזכיריו. וזה וזה בדבר
שאין בו סימן, אבל בדבר שיש בו
סימן - לא שנא ברשות הרובים ולא
שנא ברשות היחיר, בין דרך נפילה
ובין דרך הנחה - תחיב להזכיר.

And Rav Zevid said in the name of Rava: The *halakha* is that if one finds bundles of grain in a public area, those bundles belong to him. If he finds the bundles in a secluded area in a manner indicating that they had fallen, those bundles belong to him. If he finds the bundles in a manner indicating that they had been placed there, the finder takes them and proclaims his find.^N And both this ruling and that ruling are in the case of an item in which there is no distinguishing mark. But in the case of an item on which there is a distinguishing mark, it is no different if the bundles were found in a public area and it is no different if the bundles were found in a secluded area; whether the bundles were found in a manner indicating that they had fallen or whether they were found in a manner indicating that they had been placed there, he is obligated to proclaim his find.

NOTES

If he finds the bundles in a manner indicating that they had been placed the finder takes them and proclaims his find – **רִבְעָה נֶטֶלְתְּכִירֵי אַיִל**: The Ritva asks why one takes an item intentionally placed there by its owner and proclaims his find, rather than leaving it in place so the owner can return and recover it? The Ritva answers that the case here is one where the lost item was found placed in an unsafe location, leading to the concern that the owner forgot it there.

Perek II

Daf 23 Amud b

"זֶמַחֲרוֹזָת שֶׁל דְּגִים". אַמְּמָא? לְהֹו
קָשֵׁר סִמְנוּ בְּקָטָרָא דְּצִיְּדָא, דְּכִילָּי,
עַלְמָא הַכִּי מְקֻטָּן. וְלֹהִי מְנִין סִמְנוּ
בְּמַנְנָא דְּשָׂוִין.

§ The mishna teaches that **strings of fish** are among the list of found items that one may keep. The Gemara asks: Why not let the knot with which the fish are tied serve as a **distinguishing mark**? The Gemara answers: The mishna is referring to the fisherman's knot with which everyone ties his fish, which is not distinctive. The Gemara asks: But why not let the **number** of fish tied on the string serve as a **distinguishing mark**? The Gemara answers: The mishna is referring to a number of fish that is equal to that on all strings of fish in that area.

בְּעוֹמִיהַ מְרֻב שָׁתָּה: [מְנִין] הָוּ
סִימָן או לְאַהֲיוּ סִימָן? אָמֵר לְהוּ
רַב שָׁתָּה: תְּנִיתָה, מֵצָא בֶּלֶי כְּסֻף
וְכֶלֶי נְחוֹשֶׁת, גַּסְטוֹן שֶׁל אָבָר וְכֶלֶי
כְּלַי מִתְכּוֹנָת - הָרִיזָה לְאַיְחוֹר, עַד
שִׁינְעָן אֹתָה עַד שִׁיכְיוֹן מִשְׁקָלוֹתָיו,
וְנַדְמְשָׁקֵל הָוּ סִימָן - מְדָה וּמְנִין נְמִי
הָוּ סִימָן.

וַיֹּחַתְּכִים֙ שֶׁל בָּשָׂר וּכְוֹ. אֲמָמָא? לְהֵי מַשְׁקָלָא סִימָן בְּמַשְׁקָלָא דְּשָׂוִין וְתֵהַי חַתְּכָה גַּופָּה סִימָן אוֹ דְּדַפְּקָא אוֹ דְּאַטְמָא? מֵי לֹא תְנַיא: מַצָּא חַתְּכָות דְּגִים וְדַגְשָׁוָךְ - חַיֵּב לְהַבְּרִיא, חַבּוּתָל יְזִין וְשַׁלְמָן וְשַׁלְמָנוֹת - תְּבֻוָּה וְשֶׁל גַּרְזָגָוֹת וְשֶׁל זִיתִים - הַרְיָה אַלְוָה שְׁלָוָן!

The mishna teaches that **cuts of meat**^N are among the list of found items that one may keep. The Gemara asks: **Why not let the weight of the cut serve as a distinguishing mark?** The Gemara answers: The mishna is referring to a weight that is equal, i.e., all cuts of meat in that area are of that weight. The Gemara asks: **But why not let the cut of meat itself serve as a distinguishing mark**, as it came, for example, either from the neck or from the thigh of the animal? Isn't it taught in a *baraita*: If one found cuts of fish, or a fish that was bitten,^H he is obligated to proclaim his find, and if he found barrels of wine, or of oil,^H or of grain, or of dried figs, or of olives, these belong to him? Apparently, the distinguishing mark in the cuts of fish is the part of the fish from which they were cut.

הַכָּא בְּמַאי עַסְקִין - בְּדַאיַּכְא
סִימְנוֹן בְּפֶסְקָא. בֵּיהָ דַּוְבָּה בָּרְבָּה
הַיְּנָא מַחֲזִין לְיהָ אַתְּלָתָה קְרָנְתָּא.
דְּקִיאָא נְבָיָה, דְּקִטְנָה דְּמִינָה דְּגַג נְשָׁוָן,
שְׁבֻעָה מִפְּהָה.

The Gemara answers: With what are we dealing here in the *baraita*? It is in a case where there is a distinguishing mark in the shape of the cut, as in that case of Rabba bar Rav Huna^p who would cut the meat **with three corners**,ⁿ forming a triangle. The distinguishing mark is not the part of the fish from where it had been cut. The language of the *baraita* is also precise, as the case of cuts of fish is taught juxtaposed to and similar to a fish that was bitten, in which case the bite is a distinguishing mark. The Gemara concludes: Learn from it that it is the shape of the cut that is a distinguishing mark, not the place from where it was cut.

HALAKHA

Knot, weight, measure, and number – קשר משקל מידה ומספר

Weight, measure, and number are full-fledged distinguishing marks in terms of the return of a lost item. Likewise, the knot with which items are tied is a distinguishing mark (Rambam Sefer Nezikin, Hilkhot Gezeila VaAveda 15:6; Shulhan Arukh, Hoshen Mishpat 262:3 and 267:7).

חניכות של בשר ודג – חניכות של בשר ודג
שאלה: If one found meat cut in a unique shape or a fish that was bitten, he must proclaim his find, as these are distinguishing marks. If one found meat cut in a standard shape, it belongs to him. Even if one who claims to be the owner can describe the body part of the animal from which the meat was cut, it belongs to the finder, as that is not a distinguishing mark (Rambam Sefer Nezikin, Hilkhos Gezeila VaAveda 15:11; Shulhan Arukh, Hoshen Mishpat 2628, 15).

Barrels of wine or of oil – בְּבַיּוֹת שֶׁל יְנוּשָׁל שָׂמֵחַ: In a case where one found barrels of wine or oil and the like, if this occurred prior to the opening of the storehouses, he is obligated to proclaim his find because the clay seal of a storehouse is a distinguishing mark. If he found them when the storehouses were open, the barrels belong to the finder. If one found barrels that were partially filled he is obligated to proclaim his find, because the measure of its contents is a distinguishing mark (Rambam Sefer Nezikin, Hilkhot Gezeila VaAveda 15:9; Shulhan Arukh Hoshen Mishpat 262:9).

NOTES

Cuts of meat – חתיכות של בשר: The reason that the Gemara did not suggest that the number of the cuts of meat should serve as a distinguishing mark is either that the Gemara already answered that question with regard to strings of fish, or that cuts of meat were not typically linked on a string (Ritva).

With three corners – תְּלִינָה קְרַנְבָּא: Rashi explains (*Hullin* 95b) that Rabba bar Rav Hunu cut his meat in that shape so that others would know it was his and not take it.

PERSONALITIES

Rabba bar Rav Huna – רבבה בר רב הונא A third-generation Babylonian *amora*, Rabba bar Rav Huna studied under Rav and transmitted several statements in his name. He was a pre-eminent disciple of his father, Rav Huna, and there are several instances in the Talmud where Rav Huna offers him practical halakhic guidance. Rabba bar Rav Huna was a disciple-colleague of Rav Ḥisda, and a colleague of Rav Nahman and Rabba, as well as a judge in the city of Sura after the death of his father. His son Abba was the *amora* Rava, whose statements are cited throughout the Talmud.

HALAKHA

The bank of the river – **רֹקְתָּא דַנֶּהֶרְתָּא**: Although location is a distinguishing mark, if an item was found on the bank of a river or any other area where merchandise is typically unloaded, location is not a distinguishing mark (*Shulhan Arukh, Hoshen Mishpat* 262:9).

אמֵר מֶרֶב: חֲבִיּוֹת שֶׁל יְין וְשֶׁל שָׂמֵן וְשֶׁל
תְּכִבָּאָה וְשֶׁל גָּרוּגְרוֹת וְשֶׁל זִיתִים הַרְיָ אַלְיָ
שֶׁל. וְהָא תָּנוּ: כִּי יְין וְכִי שָׂמֵן חִיבָּב
לְהַכְּרִי! אָמֵר רַבִּי זִירָא אָמֵר רַבִּי מִתְנִינָה
בְּרִישִׁים. מַכְלֵל דְּבָרִיתָא - בְּפִתּוֹת, אַיִ
בְּפִתּוֹת - אַבְּרִיהָ מִדְעַת הִיא! אָמֵר רַבִּי
הַשְׁוִיאָה: בְּמִצְף.

אַבְּיָי אָמֵר: אַפְּיָילוּ הַיָּמָא אִידִי וְאִידִי בְּרַשּׁוֹם,
וְלֹא קְשִׁיאָ: פְּאָן - קְוֹדֵם שְׁנַפְתָּחוּ הַאוֹצְרוֹת,
פְּאָן - לְאַחֲרֵ שְׁנַפְתָּחוּ הַאוֹצְרוֹת. כִּי הָא
דוֹבָר יַעֲקֹב בָּר אַבָּא אַשְׁבֵּחַ חֲבִיתָא דְּחַמְרָא
לְאַחֲרֵ שְׁנַפְתָּחוּ הַאוֹצְרוֹת, אַתָּא לְקִמְחָה
דָּאָבִי, אָמֵר לֵיהֶ: וַיַּלְשְׁקוֹל לְפָנֶיךָ.

בְּעָא מִיעִיה רַב בִּיבִּי מַרְבֵּן: מִקּוֹם הָיוּ
סִימָן, או לֹא הָיוּ סִימָן? אָמֵר לֵיהֶ: תִּנְיַתָּה
מִצְאָא חֲבִיּוֹת שֶׁל יְין וְשֶׁל שָׂמֵן וְשֶׁל תְּבֻוָּה
וְשֶׁל גָּרוּגְרוֹת וְשֶׁל זִיתִים - הַרְיָ אַלְיָ שֶׁל.
וְאֵי סְלִקָּא דְּעַתָּן דְּמִקּוֹם הָיוּ סִימָן, לְכַרְוּ
מִקּוֹם! אָמֵר רַב זִיבָד: הַכָּא בְּמַאי עַסְקִין -
רֹקְתָּא דַנֶּהֶרְתָּא.

The Master said in the *baraita*: If one found barrels of wine, or of oil, or of grain, or of dried figs, or of olives, these belong to him. The Gemara asks: But didn't we learn in a mishna (25a): With regard to jugs of wine or jugs of oil, if one finds any of these he is obligated to proclaim his finding. Rabbi Zeira said that Rav said: The mishna is referring to a case of sealed jugs. Each person seals his jugs and barrels in a unique manner. Therefore, the seal constitutes a distinguishing mark. The Gemara asks: One may conclude by inference that the *baraita* is referring to a case of open barrels, and if it is referring to a case of open barrels, it is a deliberate loss. Since the wine in open barrels will spoil, it is obvious that one need not return it to the owner. Rav Hoshaya says: The *baraita* is referring to a case where one covers the barrel with the lid but does not seal it.

Abaye said: You can even say that both this mishna and that *baraita* are referring to jugs and barrels that are sealed,⁸ and it is not difficult. Here, in the mishna, where one is required to return the jugs, it is referring to a case where one found the jugs before the storehouses of wine were opened.⁹ At that point, the distinguishing mark of the seal proves that the jug belongs to its owner. There, in the *baraita*, where one is not required to return the barrels, it is referring to a case where one found the barrels after the storehouses of wine were opened. Since the storekeepers sold their barrels to the public, the seal would no longer serve as an indicator of the identity of the owner. This is just as in that case where Rav Ya'akov bar Abba found a barrel of wine after the storehouses were opened. He came before Abaye to ascertain what he should do with the barrel. Abaye said to him: Go take the barrel for yourself.

§ Rav Beivai raised a dilemma before Rav Nahman: Is the location where the lost item was found a distinguishing mark, or is it not a distinguishing mark? Rav Nahman said to him that you learned it in the *baraita*: If one found barrels of wine, or of oil, or of grain, or of dried figs, or of olives, these belong to him. And if it enters your mind that location is a distinguishing mark, let the finder proclaim what he found, and have the location serve as a distinguishing mark. Rav Zevid said: With what are we dealing here? We are dealing with the case of a barrel that was found on the bank of the river.¹⁰ Since it is the place where ships dock and merchandise belonging to many people is loaded and unloaded, the bank of a river cannot serve as a distinguishing mark.

BACKGROUND

Jugs and barrels that are sealed – **שְׁוָם**: The barrel mentioned was a large earthenware vessel used for the storage of liquids, especially wine. Barrels and jugs were typically covered with an easily removable earthenware lid and sealed with clay spread around the lid. Unlike the earthenware lid that was uniform in all barrels, each person sealed his barrels in a manner unique to him.



Roman fresco depicting a sealed wine jug and fruit bowls

NOTES

Sealed...the storehouses were opened – **שְׁוָם...נִפְתָּחוּ הַאוֹצְרוֹת**: The Gemara does not explain the effect of the storehouses' status upon the question of whether or not the barrel's seals are halakhically valid indicators of ownership. Rashi explains that the existence of a seal is a distinguishing mark. Once the storehouses were open, storekeepers would typically open the barrels to sample the wares and shut the barrel with a seal. Therefore, the seal was not distinctive. By contrast, before the storehouses were open, each seal was unique and was therefore an effective distinguishing mark.

Tosafot and the Rashba explain that the seal was a distinguishing mark because each vintner had his own unique seal. Once the storehouses were opened, the storekeepers would purchase wine from the various vintners and thereby familiarize themselves with the various seals. The vintners despaired of recovering their barrels because their seals were no longer indicators of their ownership, as storekeepers, who had seen their seals, could also claim to have lost the barrels and describe them by their seals (*Talmid Rabbeinu Peretz*).

אָמַר ר֔ב מְרִי: מֵאַי טֻמָּא אֲמֹרוֹ רַבָּן וַקְתָּא
דַּנְהָרָא לְאַחֲרֵי סִכְמָן – דָּאָמַרְנִין לֵיה: כִּי הַיִּצְחָק
דָּאָתְרָמִי לְדִין אֲתְרָמִי נְמִי לְחֶבְךָ. אִיכָּא
דָּאָתְרָמִי, אָמַר בְּבָרְךָ מְרִי: מֵאַי טֻמָּא אֲמֹרוֹ
רַבָּן מְקוּם לְאַחֲרֵי סִכְמָן – דָּאָמַרְנִין לֵיה: כִּי
הַיִּצְחָק דָּאָתְרָמִי לְדִין הַאִי מְקוּם. אֲתְרָמִי
נְמִי לְחֶבְךָ הַאִי מְקוּם.

זהו גברא דאשכח כופרא בי מעתרתא.
אתא לקפיה דרב. אמר ליה: זיל שוקל
לעפיש, חיויה דהוה קא מהחס, אמר ליה:
זיל פלוג ליה לחיא בר מיטיה. זילמא קא
סבר ורב מוקם לא הווי סיכמן? אמר רב אי אבא:
משום יאוש בעלים גנעוו בה, דתא דקורי
ביה חלי.

רב שמעון בן אליעזר אומר וכו': מאי
אנפורייא? אמר רב הודה אמר שמואל:
כלoms חדים שלא שבעתן העין. היכי דמי?
אי אית בזו סיכמן – כי לא שבעתן העין
מאי חוי? אי דלית בזו סיכמן – כי שבעתן
העין מאי חוי?

לעולם דלית בזו סיכמן, נפקא מינה
לאחדורי לצורבא מרבען בטביעות עינא.
שבעתן העין – קים ליה בגויהו, ומחדין
ליה. כי לא שבעתן העין – לא קים ליה
בגוייהו, ולא מהדרין ליה. דאמר רב הודה
אמר שמואל: בהני תלת מלוי עברי ובן
דמשנו במליהו: במשכת, ובפוריא.

Rav Mari said: What is the reason that the Sages said that in the case of a lost item, the location of the bank of a river is not a distinguishing mark? It is because we say to one seeking to reclaim his item by providing its location on the bank of a river: Just as it happened that you lost an item there, it also happened that another person lost an item there. Some say a slightly different version of that which Rav Mari said: What is the reason that the Sages said that location is not a distinguishing mark? It is because we say to one seeking to reclaim his item by providing its location: Just as it happened that you placed an item in that place, it also happened that another placed an item in that place.

The Gemara relates: There was a certain man who found pitch near the winepress. He came before Rav to ascertain what he should do with the pitch. Rav said to him: Go take the pitch for yourself. Rav saw that the man was hesitating, uncertain that he was entitled to the pitch. Rav, in an attempt to allay his qualms, said to him: Go divide it with Hiyya my son,ⁿ as Rav would certainly not want his son to take a share of a stolen item. The Gemara suggests: Let us say that Rav holds that location is not a distinguishing mark. Rabbi Abba said: That is not Rav's reasoning. Rather, it is due to the despair of its owner that the Sages touched upon this matter and permitted the finder to keep such a found item. As, Rav saw that grass was growing through the pitch, indicating that it had been there for an extended period.

§ The mishna teaches: Rabbi Shimon ben Elazar says: If one finds any *anpurya* vessels he is not obligated to proclaim his find. The Gemara asks: What are *anpurya*^l vessels? Rav Yehuda says that Shmuel says: They are new vessels, as the eye of its purchaser has not yet sufficiently seen them^h to be able to recognize them. The Gemara asks: What are the circumstances? If there is a distinguishing mark on the vessels, when the eye of its purchaser has not yet sufficiently seen them, what of it? He can describe the mark after even a short glance and claim his item. If there is no distinguishing mark on the vessels, then when the eye of the one who purchases them has sufficiently seen them, what of it?

The Gemara answers: Actually, it is a vessel in which there is no distinguishing mark, and the practical difference is with regard to returning the vessel to a Torah scholarⁿ on the basis of visual recognition.ⁿ When the eye of a Torah scholar has sufficiently seen them he is certain about them, and we return a lost item to him on the basis of his description of the vessel. When the eye of a Torah scholar has not sufficiently seen them, he is not certain about them, and we do not return a lost item to him, as Rav Yehuda says that Shmuel says: With regard to these three matters alone, it is normal for Sages to amend their statements and deviate from the truth: With regard to a tractate,ⁿ if he is asked whether he studied a particular tractate, he may humbly say that he did not, even if he did. And with regard to a bed, if he is asked whether he slept in a particular bed, he may say that he did not, to avoid shame in case some unseemly residue is found on the bed.

LANGUAGE

Anpurya – אַנְפּוּרִיא: From the Greek ἀμπορία, *emporía*, meaning commerce.

HALAKHA

כלoms חדים שלא שבעתן העין: In the case of one who finds one of a series of identical vessels, if it is a new vessel, it belongs to the finder. If it is used, one is obligated to proclaim his find because he is obligated to return a lost item to a Torah scholar, based on visual recognition. A Torah scholar in this context is defined as one who lies only in a few specific circumstances in which the Sages permitted lying, and whose comportment is that of a Torah scholar. The Rema holds that one proclaims his find only if he found it in a place that is frequented by Torah scholars. The Taz writes that with regard to lost items, the favored legal status of a Torah scholar is in effect even today (Rambam Sefer Nezikin, Hilkhot Gezeila VaAveda 14:13; Shulhan Arukh, Hoshen Mishpat 262:21).

NOTES

With Hiyya my son – לר' ה'יא בר': Rav could have achieved a similar result by offering to divide the pitch with the man, but he preferred to advise him to divide it with his son in order to avoid the impression that he was issuing a ruling for his own personal benefit (Ya'avetz).

To a Torah scholar – לר' צורבא מרבען: The commentaries ask how one is to know, if he finds a lost item, whether the owner is a Torah scholar and that on that basis he should proclaim his find rather than keep it? Some explain that in this case, he proclaims his find only in study halls and in places where Torah scholars

congregate (Ra'avad). Others hold that this *halakha* applies only in a case where one found the lost item in an area frequented by Torah scholars (Ramban). Yet others suggest that the finder can determine whether he must proclaim his find based on the nature of the item found, e.g., books of Torah analysis (Rabbi Shmuel di Vidas).

Of visual recognition – בטביעות עינא: Visual recognition refers to one's ability to identify an item or person not on the basis of a distinguishing mark, but on the basis of a combination of subtle features that he is unable to characterize. In terms of the cer-

tainty of the identification, visual recognition establishes greater certainty than identification based on a single distinguishing mark. In terms of convincing others, visual recognition is less effective and is reliable only in the case of a Torah scholar.

With regard to a tractate – במשכת: The Rambam explains that it is permitted for a Torah scholar to lie and claim that he is involved in the study of a different tractate so that others will not ask him about the tractate that he is actually studying, thereby distracting him from his studies.

Perek II Daf 24 Amud a

LANGUAGE

Host [ushpiza] – אושפיזא: From the Middle Persian aspinj, meaning hotel or hospitality.

BACKGROUND

What is the practical difference – מאי נפקא מינה: This question is asked when an issue raised by the Gemara appears purely academic in nature.

HALAKHA

Needles or utensils for spinning...when is it permitted – חוטין ואינריות...איינטני מתרום: If one found a needle or a nail or the like, it belongs to him. If one found them in pairs, and all the more so in larger groupings, he is obligated to proclaim his find (Rambam Sefer Nezikin, Hilkhot Gezeila VaAveda 16:1; Shulhan Arukh, Hoshen Mishpat 262:16).

בָּאוֹשְׁפִּיאָה. מַיְ נִפְקָא מִנֶּה? אָמֵר מָר זַעַתָּרָא לְאַהֲדֹרִי לֵיה֒ אַבִּידָתָא בְּכִיעוֹת עַיְנָה. אֵי יַדְעַת בֵּיה֒ דְּלָא מְשֻׁעָה אֶלָּא בְּהַעַלְתָּה – מְהַדְרִין לֵיה֒, וְאֵי מְשֻׁעָה בְּמַילִּי.

אַחֲרִיִּי – לֹא מְהַדְרִין לֵיה֒.

And he can lie with regard to a host [ushpiza],^{LN} as one may say that he was not well received by a certain host to prevent everyone from taking advantage of the host's hospitality. What is the practical difference^B that emerges from this statement with regard to matters in which Torah scholars deviate from the truth? Mar Zutra says: The practical difference is with regard to returning a lost item on the basis of visual recognition. If we know about him that he alters his statements only with regard to these three matters, we return the lost item to him, but if he alters his statements with regard to other matters,^N we do not return the lost item to him.

מָר זַעַתָּרָא חַסְדִּיאָ אַגְנִיבָה לֵיה֒ בְּסָא דְכַסְפָּא מְאוֹשְׁפִּיאָה, חִיאָ לְהַחְוֹא בַּר בַּיְתָךְ דְמַשִּׁי דְרִיה֒ וְנִגְבֵּן בְּגַלְמָא דְחַבְרִיה֒. אָמָר: הַיּוֹן הַאֲיָן דְלָא אִיכְפָּת לֵיה֒ אַפְּמוֹנָה דְחַבְרִיה֒. בְּפִיהִו וְאַזְדִּי.

תַּנִּינָא: מַזְדָּה רַבִּי שִׁמְעוֹן בֶּן אַלְעָזָר בְּכָלִים תַּרְדִּישָׁם שְׁשָׁבְעַתְנָה עַיְנָה שְׁחַטֵּב לְהַכְּרִי. וְאַלְוָה הַן בְּלִים תַּרְדִּישָׁם שְׁלָא שְׁעַטְנָה עַיְנָה שְׁאַיְנוּ חַיֵּב לְהַכְּרִי – בְּגַזְוּ בְּדִי מְחַטֵּין וְצִינּוּרִות, וּמְחַרְזּוֹת שְׁלָל קְרוּדּוֹמֹת. כְּלֹא שְׁאַמְרוּ אִקְּמָתִי מוֹתָרִים – בְּזַמָּן שְׁמַצְאָן אֶחָד אֶחָד, אֶבֶל מִצְאָן שְׁנָים שְׁנִים – חַיֵּב לְהַכְּרִי.

מַיְ בְּדִי – שׂוֹבֵי, וְאַמְאִי קָרוּ לֵיה֒ בְּדִי? דְּבָר דְּתַלְוָה בֵּיה֒ מִדיִּי, בְּדִ קָרוּ לֵיה֒. בַּיְתָהָא רְתִין הַתָּם: עַלְהָ אַחֲרָ בְּבָדָ אַחֲרָ.

The Gemara relates: A silver goblet was stolen from the host of Mar Zutra ḥasida.^P Mar Zutra saw a certain student of Torah^N who washed his hands and dried them on the cloak of another. Mar Zutra said: This is the one who does not care about the property of another. He bound that student, and the student then confessed^N that he stole the goblet.

It is taught in a baraita: Although Rabbi Shimon ben Elazar holds that one does not need to proclaim his finding of *anypurya* vessels, he concedes that the finder is obligated to proclaim his find of new vessels that the eye of its purchaser has sufficiently seen. And these are new vessels that the eye of its purchaser has not yet sufficiently seen and concerning which the finder is not obligated to proclaim his find: for example, branches [badei] upon which needles^N or utensils for spinning^H are hanging, or strings of axes. When is it permitted for the one who finds all those items that the *tanna* mentioned in the *baraita* to keep them? It is when he found them one at a time. But if he found them two at a time, the finder is obligated to proclaim his find.

The Gemara clarifies: What is the meaning of the term *badei*? It means branches. And why did the *tanna* call them branches? It is because the item upon which one hangs another item [*davar detalu bei midei*], he calls it a branch, like that which we learned there (*Sukka* 44b): One leaf on one branch.

NOTES

With regard to a host – בָּאוֹשְׁפִּיאָה: Most commentaries explain that this means that one may refrain from praising his exemplary host, lest others take excessive advantage of his largesse. The Rambam explains that one may lie and say that someone other than his actual host hosted him.

He alters his statements with regard to other matters – מְשֻׁעָה אַחֲרִיִּי: The commentaries note that Shmuel omitted the license that the Sages granted to lie in order to prevent enmity between people. Some answer that here Shmuel enumerates the instances where it is merely permissible for one to lie. Shmuel does not speak of lying to prevent enmity between people, which is a mitzva (see Meiri and *Torat Hayyim*).

See a certain student of Torah – חִיאָ לְהַחְוֹא בַּר בַּיְתָךְ: Although a Torah scholar is typically deemed credible, if he demonstrates disregard for the property of others, not only is that credibility compromised, it is permitted for one to suspect that he performed a transgression (Meiri).

He bound him and he confessed – בְּפִיהִו וְאַזְדִּי: Some explain that this means that Mar Zutra ḥasida bound him and flogged him until he confessed. Others say that Mar Zutra ostracized him until he confessed (*Shita Mekubbeztet*).

Branches upon which needles – בְּדִי מְחַטֵּין: *Tosefot Rid* understands this to mean that one is able to visually identify larger vessels that are in regular use. This is as opposed to small utensils, e.g., needles, that are not in regular use and which the owner is consequently unable to identify visually.

PERSONALITIES

Mar Zutra ḥasida – מָר זַעַתָּרָא חַסְדִּיאָ: Mar Zutra ḥasida, not to be confused with the *amora* known as Mar Zutra, appears several times in the Talmud. Although no halakhic rulings are cited in his name, the Gemara relates several incidents reflecting his good deeds, praising his humility and his care in dealing with the money and the dignity of others. The title Master [Mar] indicates

that he was a member of the family of the Exilarch. This is also evident from the fact that the Gemara relates that he was carried on a palanquin to the lecture typically delivered by the Exilarch or a member of his household on a Festival. Some claim that he was himself the Exilarch.

ובן היה ובי שמעון בן אלעזר אומר:
המְצַא לְבָנָיו וּמִן הַדּוֹב וּמִן הַגֶּמֶר וּמִן
הַבָּרְדָּלָס, וּמִן וּטוֹ שֵׁל יִם וּמִשְׁלָוִילִיתוֹ שֵׁל
נָהָר, הַמּוֹצָא בְּסֻרְטִיא וּפְלִיטִיא גָּדוֹלָה, וּבְכָל
מִקְוּם שְׁהָרְבִים מִצְעִין שָׁם – חֲרִי אַלְוָ שָׁלוֹ,
מִפְנִי שְׁהָבָעָלִים מִתְּאַשֵּׁין מִבָּהָן.

§ The *baraita* continues: And likewise, Rabbi Shimon ben Elazar would say: In the case of one who rescues a lost item from a lion,^H or from a bear, or from a cheetah [*bardelas*],^L or from the tide of the sea, or from the flooding of a river; and in the case of one who finds a lost item in a main thoroughfare [*seratya*]^L or a large plaza [*pelatya*],^{LB} or in any place where the multitudes are found, these items belong to him due to the fact that the owner despairs of their recovery.^N

אייבעיא להו: כי קאמורنبي שמעון בן אלעוז – ברוב נברים, אבל ברוב ישראלי – לא, או דלמא: אפיילו ברוב ישראלי נמי אמר?

אם תמציא לומו אפיילו ברוב ישראלי נמי אמר, פליינ רבען עלייה או לא פלייגי?

ואם תמציא לומו פלייגי, ברוב ישראלי ודאי פלייגי, ברוב נברים פלייגי או לא פלייגי?

HALAKHA
המיאיל – בון הארי וכו': If one rescues an item from a lion, a bear, the tide of the sea, or the flooding of a river, it belongs to him. The Rema states that when possible, the proper course of action would be to return the item (Rambam Sefer Nezikin, Hilkhot Gezeila VaAveda 6:2; Shulhan Arukh, Hoshen Mishpat 259:7, and in the comment of Rema).

NOTES

Due to the fact that the owner despairs of their recovery: **מפני שהבעלים מותאשין מהן:** The early commentators question the statement that Rabbi Shimon ben Elazar rules that the lost item belongs to the finder due to the despair of the owner. After all, the Gemara (22b) states that there is a Torah decree that with regard to an item swept away by a river, there is no obligation to return it, independent of whether the owner despairs. Some say that there are different reasons for the different circumstances listed in the *baraita* and the despair of the owner explains the other cases. Others say that the owner's despair is the reason for the Torah decree that there is no obligation to return the item swept away by the tide of the sea (Rashba).

Cheetah [*bardelas*] – **ברדרלָס:** From the Greek πάρδαλις, *pardalis*, meaning cheetah. In the Gemara, the term *bardelas* refers to at least three animals. One is a small animal similar to a polecat. Another is a striped hyena, and some commentaries hold that this is the animal to which this *baraita* refers (see Rashi). Others understand that the reference in the *baraita* is to a cheetah, a spotted animal from the cat family found in Asia and Africa.



Above: Two cheetahs hunting

Left: Polecat

Main thoroughfare [*seratya*] – **סְרִטְיא:** From the Latin strata, meaning street or public road.

Plaza [*pelatya*] – **פֶּלַטְיא:** From the Greek πλατεῖα, *plateia*, meaning plaza, large street, or city square.

Plaza – פֶּלְטְיא: The reference is to the city square through which the public passes and in which it gathers. It is a prominent example of a full-fledged public domain, in which all the halakhic conditions of a public domain are found.

Forum in Pompeii, a well-known example of a public plaza



NOTES

In which gentiles are sitting – **דיתבי בה נוצרים**: This response does not refute the proof that Rabbi Shimon ben Elazar stated his *halakha* even in a case where there is a Jewish majority, as even if gentiles sit there, the Jewish majority remains. Some explain that since the gentiles sit there while the Jewish congregants come and go, the likelihood is that a gentile found the item.

BACKGROUND

Garbage dump [*ashpa*] – **אשפה**: *Ashpa* usually means garbage dump. Here, apparently, the reference is to specific type of dump, a place where one would dispose of scrap metal and obsolete items that were no longer in use. Some were located in the public domain and others on private property, although in both cases the multitudes used it to dispose of their scraps. In some cases, there was no intent to clear the scrap heap and it remained in place indefinitely. In other cases, scrap heaps were regularly cleared by the owner of the property or by the municipality.

ואם תמצא לומר פלגי אפיקלו ברוב נוצרים, הלכה במתו או אין הלכה במתו?

אם תמצא לומר הלכה במתו, דוקא ברוב נוצרים או אפיקלו ברוב ישראל?

תא שמע: המוציא מעות ב בת כנסיות וב בת מדרשות, ובכל מקום שהרבים מצויין שם – הרי אלו שלם, מפני שהבעלים מותיאשין מבה. מאן שבעת ליה דאיל בתר ורבא – רבי שמעון בן אליער, שמעת מינה – אפיקלו ברוב ישראל נמי.

הכא במא עסקין – במפורין. אי במפוזר מי איא מקום שהרבים מצויין שם? אפיקלו אין הרבים מצויין שם!

אלא לעולם בצרורין, והכא במא עסקין – בת כנסיות של נוצרים. בת מדרשות מי ייכא למיר? בת מדרשות ודין דיתבי בה נוצרים. השטא דאתית להכى, בת כנסיות נמי. דין, דיתבי בה נוצרים.

תא שמע: מצא בה אבידה, אם רוב ישראלי – חביב להכרי, אם רוב נוצרים – אין חביב להכרי. מאן שמעת ליה אמר אולנן בתר ורבא – רבי שמעון בן אליער, שמעת מינה: כי קאמר רבי שמעון בן אליער – ברוב נוצרים, אבל ברוב ישראל – לא.

הא מני – רבען היא. תפשות מינה דמודו ליה בגין לרבי שמעון בן אליער ברוב נוצרים!

אלא, לעולם רבי שמעון בן אליער היא, ואפיקלו ברוב ישראל נמי, והכא במא עסקין – בטמן. אי בטמן – מי עבירה היה גביה? והתנו: מצא בלי באשפה, מכוסה – לא יגע בו, מגולה – נוטל ומזכיר!

And if you say that the Rabbis disagree with him even in a place where there is a majority of gentiles, is the *halakha* in accordance with the opinion of Rabbi Shimon ben Elazar, or is the *halakha* not in accordance with his opinion?

And if you say that the *halakha* is in accordance with the opinion of Rabbi Shimon ben Elazar, does this *halakha* apply specifically in a place where there is a majority of gentiles, or is the *halakha* in accordance with his opinion even in a place where there is a majority of Jews?

The Gemara suggests: Come and hear a proof from a *baraita*: In the case of one who finds coins in synagogues [*bevatei khenesiyot*] and study halls or in any place where the multitudes are found, these coins belong to him, due to the fact that the owner despairs of their recovery. Who is the one about whom you heard that he follows the multitudes, i.e., that he attaches significance to the loss of an item in a place where the multitudes are present? It is Rabbi Shimon ben Elazar. Conclude from the *baraita* that Rabbi Shimon ben Elazar holds that a lost item belongs to the finder even in a place where there is a majority of Jews, as synagogues and study halls are places frequented exclusively by Jews.

The Gemara rejects the proof. With what are we dealing here? We are dealing with a case where the coins are scattered and there is no distinguishing mark on them. The Gemara asks: If it is a case where the coins are scattered, why did the *baraita* establish the case specifically in a place where the multitudes are found? Even in a place where the multitudes are not found, the coins belong to the finder.

Rather, actually the *baraita* is referring to a case where the coins are bound, and with what are we dealing here? This is a case where the coins were found in the houses of assembly [*bevatei khenesiyot*] of gentiles, not in synagogues. That resolves the matter of synagogues; but with regard to study halls, which are exclusive to Jews, what can be said? The Gemara answers: The *baraita* is referring to our study halls in which gentile guards or custodians are sitting. The Gemara notes: Now that you have arrived at this explanation, the *batei khenesiyot* in the *baraita* can be explained as referring to our synagogues, in which gentiles are sitting.^N

Come and hear a proof from a mishna (*Makhshirin* 2:8): In a case when one found a lost item in a city where both Jews and gentiles reside, if the city has a majority of Jews he is obligated to proclaim his find. If there is a majority of gentiles he is not obligated to proclaim his find. Who is the one about whom you heard that he follows the multitudes, i.e., that he attaches significance to the loss of an item in a place where the multitudes are present? It is Rabbi Shimon ben Elazar. Resolve from this mishna that when Rabbi Shimon ben Elazar says that the item belongs to the finder, it is referring specifically to a place where there is a majority of gentiles, but in a place where there is a majority of Jews, no, it does not belong to the finder.

The Gemara rejects this proof: In accordance with whose opinion is this mishna? It is in accordance with the opinion of the Rabbis. The Gemara suggests: In any case, resolve the dilemma from the mishna that the Rabbis concede to Rabbi Shimon ben Elazar in a place where there is a majority of gentiles.

The Gemara rejects this explanation: Rather, actually the mishna is in accordance with the opinion of Rabbi Shimon ben Elazar, and he stated his opinion even in a place where there is a majority of Jews. And with what are we dealing here? This is a case where the found item is concealed. The Gemara asks: If the item is concealed, what is the reason the item is with the finder? Clearly it was placed there and the owner will return to retrieve it. And didn't we learn in a mishna (25b): In a case where one found a vessel in a garbage dump,^B if the vessel is concealed he may not touch it, but if it is exposed, the finder takes the item and proclaims his find.

בְּדָאָמֵר רַב פָּפָא: בָּאשֶׁפֶה שָׁאַנְתָּה עֲשִׂיָּה לְפִפּוֹתָה, וְנִמְלָךְ עַלְיהָ לְפִפּוֹתָה.
הַכָּא נִמְיָ – בָּאשֶׁפֶה שָׁאַנְתָּה עֲשִׂיָּה לְפִפּוֹתָה, לְפִפּוֹתָה, וְנִמְלָךְ עַלְיהָ לְפִפּוֹתָה.

The Gemara answers: It can be explained as Rav Pappa says elsewhere, that it is referring to a garbage dump that is not designed to be cleared, and the owner of the land reconsidered and decided to clear it. If one finds concealed vessels he should proclaim his find, because otherwise the vessels will be cleared with the rest of the garbage dump. Here too, the mishna is referring to a garbage dump that is not designed to be cleared, and the owner of the land reconsidered and decided to clear it. If one finds concealed items, his course of action is determined by the identity of the majority of the residents of the city. If they are Jews, he must proclaim his find, and if not, he need not proclaim his find. No proof can be cited to resolve the dilemma.

Perek II

Daf 24 Amud b

וְאִיבְשִׁית אִםְמָא: לְעַלְםָ רְבָנָן, מֵקְתַּנָּה חָנָן שָׁלוֹ? "אִינוֹ חִיב לְהַכְּרִי" קְתַנָּי, וַיַּחַי וַיַּתֵּן יִשְׂרָאֵל וַיַּבְּחַר בָּה סִמְנָא, וְשָׁקֵיל.

תֵּא שְׁמַע דָּאָמֵר רַב אָסִי: מֵצָא חֲבִית יָן בָּעֵיר שְׁרוֹבָה נְגָרִים – מוֹתָרָת מִשּׁוּם מִצְיאָה, וְאָסְרוֹת בְּהַנְּאָה. בָּא יִשְׂרָאֵל וְנִתְן בָּה סִמְן – מוֹתָרָת בְּשַׁתְּחִיה לְמוֹצָאה.

כְּמַאן – כָּרְבִּי שְׁמַעַן בֶּן אַלְעָזָר, שְׁמַעַן מִנָּה: בַּי קָאָמֵר רַבִּי שְׁמַעַן בֶּן אַלְעָזָר – בָּרוּבָן נְגָרִים, אַבְלָ בָּרוּבָן יִשְׂרָאֵל – לָא. לְעוֹלָם אִםְמָא לְךָ רַבִּי שְׁמַעַן בֶּן אַלְעָזָר אֲפִילוּ בָּרוּבָן יִשְׂרָאֵל נִמְיָ אָמֵר, וְבָאָסִי סְבָרָ לְהַכְּוֹתִיה בְּחַדָּא, וּפְלִיגָּן עַלְיהָ בְּחַדָּא.

כִּי מַאְחֵר דָּאָסְרָא בְּהַנְּאָה, מוֹתָרָת מִשּׁוּם מִצְיאָה לְמַאי הַלְּכִתָּא? אָמֵר רַב אָשִׁי: לְקַנְקָה.

And if you wish, say instead that actually the mishna is in accordance with the opinion of the Rabbis. Is it taught in the mishna that the items are his? It is taught that he is not obligated to proclaim his find. He may not keep them, but he shall place the items in his possession and a Jew will come and provide a distinguishing mark to describe the items and take them.

Come and hear a proof from that which Rav Asi says: If one found a barrel of wine^{HB} in a city whose population has a majority of gentiles, keeping the barrel is permitted in terms of the halakhot of finding lost items because it presumably belonged to a gentile, and deriving benefit from the wine is prohibited, as it is presumed to be wine of a gentile. If a Jew came and provided a distinguishing mark to describe it, drinking the wine is permitted for its finder, as it proved to be the wine of a Jew. Nevertheless, it belongs to the finder, because the owner despaired of recovering a barrel misplaced in a public area.

The Gemara explains the proof: In accordance with whose opinion is this statement of Rav Asi? It is in accordance with the opinion of Rabbi Shimon ben Elazar.^P Conclude from it that when Rabbi Shimon ben Elazar stated his opinion, it was only with regard to a place where there is a majority of gentiles; but in a place where there is a majority of Jews, the owner does not despair of recovering his lost item. The Gemara rejects the proof: Actually, I will say to you that even with regard to a place where there is a majority of Jews, Rabbi Shimon ben Elazar also stated his opinion, and Rav Asi holds in accordance with the opinion of Rabbi Shimon ben Elazar in one case, that of a place where there is a majority of gentiles, and disagrees with him in one case, that of a place where there is a majority of Jews.

The Gemara clarifies: And once it was established that deriving benefit from the wine is prohibited, then with regard to the fact that it is permitted in terms of the halakhot of finding lost items, for what matter is that halakha relevant? Rav Ashi said: It is relevant with regard to deriving benefit from its container, which is permitted.

HALAKHA

בָּאַחֲרֵי חַבִּית יָן: If one found a barrel of wine in a city with a gentile majority, it is prohibited to derive benefit from the wine, but it is permitted to derive benefit from the barrel. If a Jew claims the barrel of wine and provides a distinguishing mark in the barrel, the wine is also permitted to the finder. Despite the distinguishing mark, the finder is not obligated to return the barrel of wine to the owner, because the owner presumably despaired of recovering it (Rambam Sefer Nezikin, Hilkhos Gezeila VaAveda 11:8 and Sefer Kedusha, Hilkhos Ma'akhalot Assurot 12:28; Shulhan Arukh, Hoshen Mishpat 259:4 and Yoreh De'a 129:17).

BACKGROUND

Wine – יין: The reference here is to wine that is forbidden due to its use in idol worship. Consuming that wine or deriving benefit from it is forbidden (Deuteronomy 32:38). The Sages extended the scope of the prohibition and prohibited drinking any wine touched by gentiles, even if it was neither used nor intended for idol worship. The Rema cites opinions that today, since idolaters do not pour wine libations to their deities, one is permitted to benefit from the wine of a gentile. Therefore, it is permitted to accept wine as repayment of debts they owe (*Tur*, citing Rashbam and Rosh). Nevertheless, one may not conduct trade with the wine touched by gentiles, *ab initio* (*Haggahot Maimoniyot*).

PERSONALITIES

Rabbi Shimon ben Elazar – **רַבִּי שְׁמַעַן בֶּן אַלְעָזָר:** Rabbi Shimon ben Elazar was one of the Sages of the Mishna during the final generation of *tanna'im*. Little is known about his life or family. Furthermore, because he was a member of the generation during which the Mishna was redacted, few of his statements are cited in the Mishna, although they do appear in *baraitot* and in the Gemara, where his halakhic and aggadic statements are cited extensively. Rabbi Shimon ben Elazar was a friend of Rabbi Yehuda HaNasi, and several disputes between them are cited in the Talmud. Most of his Torah knowledge was gained by studying under his preeminent teacher, Rabbi Meir, to whom he was devoted and in whose name he cites many statements. Rabbi Shimon ben Elazar lived in Tiberias or its environs. Apparently, he did not head his own academy.

HALAKHA

The Biran River – נַהֲר בִּירָן: In a case where there are dams or other obstacles in a river that will prevent an item from being carried downstream, if there is a distinguishing mark on the item, one may not presume that the owner despaired of its recovery (*Shulhan Arukh, Hoshen Mishpat* 259:7 and *Yoreh De'a* 129:17).

An item found in the marketplace – מִצְאָה בָּשָׁוֹק: In a case where one found a lost item in an area with a gentile majority, even if a Jew described it by providing a distinguishing mark, the finder is not obligated to return the item. Nevertheless it is proper, beyond the letter of the law, to return the item. The Rema adds that if the finder is poor and the owner wealthy, there is no obligation to return the item, even if he seeks to act beyond the letter of the law (*Rambam Sefer Nezikin, Hilkhot Gezeila VaAveda* 11:7; *Shulhan Arukh, Hoshen Mishpat* 259:5).

LANGUAGE

Purse [arnakei] – אַרְנָקֵי: From the Greek ἄρνακις, *arnakis*, meaning sheepskin coat. The word was employed by the Sages in the sense of a money pouch or purse, perhaps made of leather, that was used for holding coins.

NOTES

And returned them to their owner after the passage of twelve months of the year – ואַהֲרֻנְיָהוּ לְמִרְיוֹחָה לְבַתְּרַתְּרִיסָר: *Tosafot* explain that Shmuel's father tended the donkeys for a full year, after which he could have returned their monetary value. Shmuel's father opted to go beyond the letter of the law, and he returned the animals (see Rosh and Ran).

Rashi explains that Shmuel's father found the animals twelve months after they were lost, but the commentaries question how Shmuel's father knew that they had been lost for that long. One possibility is that he had been in the desert the year before and spotted the donkeys. A year later, he returned to the desert and saw the same donkeys there (*Ritva; Ra'avad*).

Rashi cites a biblical allusion to the opinion that after twelve months the owner despairs of recovering his lost item, from the verse: "I am forgotten as a dead man out of mind; I am like a lost vessel" (*Psalms 31:13*). Just as the mourning period for a deceased parent is twelve months, so too one despairs of recovering his lost vessel after twelve months.

Beyond the letter of the law – לְפִנֵּים מִשּׁוֹרֶת הַדָּין: Only significant personages are required to conduct themselves beyond the letter of the law in these circumstances and return the lost item (Rabbeinu Yehonatan of Lunel).

הַהוּא גָּבָרָא דָאַשְׁבֵּח אַוְבָּעָה וּוֹיִדְעֵי בָּסְדִּינָא וּשְׂדוּ בָּנָר בִּירָן:
אַתָּא לְקַמְּיהָ דָרְבָּה יְהוּדָה. אָמָר לֵיהֶ
יַיְלָא כְּרָבִי. וְהָא וּזְטוּ שְׁלַמִּים הוּא! שָׁאַנְיָה
נַהֲרָ בִּירָן. בִּין דְּמַתְּקִיל לָא מִיאָש.
וְהָא רַוְבָּא גְּכָרִים בַּיְנָה, שְׁבַע מִנְבָּה
אַיִן הַלְּכָה בָּרוּבִי שְׁמַעַן בְּן אַלְעָרוֹ
אֲפִילּוּ בָּרוֹבָּן נְגִרְמִים שָׁאַנְיָה נַהֲרָ בִּירָן
דִּישְׁרָאֵל סְכָרוֹ לֵיהֶ, וִישְׁרָאֵל בָּרוֹ
לֵיהֶ. בֵּין דִּישְׁרָאֵל סְכָרוֹ לֵיהֶ – אִימָרוֹ
מִישְׁרָאֵל נְפָלֵל, וּבֵין דִּישְׁרָאֵל בָּרוֹ
לֵיהֶ – לֹא מִיאָש.

The Gemara relates: There was a certain man who found four dinars that were bound in a cloth and cast into the Biran River.^h He came before Rav Yehuda and asked how to proceed. Rav Yehuda said: Go proclaim your finding. The Gemara asks: But isn't it a case of an item lost in the tide of the sea that should therefore belong to the finder? The Gemara answers: **The Biran River is different. Since it contains obstacles, the owner does not despair of recovering the lost item.** The Gemara asks: But isn't it a place where the majority of the population is gentiles? Conclude from it that the halakha is not in accordance with the opinion of Rabbi Shimon ben Elazar even in a place where there is a majority of gentiles. The Gemara answers: **The Biran River is different, as Jews dammed it and Jews dredge it. Since Jews dammed it, say that the coins fell from a Jew, and since Jews dredge it, the owner of the coins does not despair of recovering them.**

רַב יְהוּדָה הָוֹה שְׁקִיל וְאַזְוֵיל בְּתְרִיבָה
דָמָר שְׁמוֹאֵל בְּשָׁוֹקָא דְבִּי דִיסָא, אָמָר
לֵיהֶ מִצְאָה בַּאֲנוֹרָקִי מַהוּ? אָמָר לֵיהֶ
הָרִי אַלְוּ שְׁלוֹ. בָּא יִשְׁרָאֵל וְנַתְנֵה
סִיםְמִין מַהוּ? אָמָר לֵיהֶ: חַיְבַּל הַחַיָּוִת.
תְּרַתְּתָ? אָמָר לֵיהֶ: לְפִנֵּים מִשּׁוֹרֶת הַדָּין.
בַּי הָא דְּאַבְּבוֹה דְשְׁמוֹאֵל אַשְׁכֵחַ הַנְּךָ
חַמְרִי בְּמַזְבָּחָה, וְאַהֲרֹנִי הַלְּמִרְיוֹחָה
לְבַתְּרַתְּרִיסָר יְהִי שְׁתָא, לְפִנֵּים
מִשּׁוֹרֶת הַדָּין.

רַבָּא הָוֹה שְׁקִיל וְאַזְוֵיל בְּתְרִיבָה דָרְבָּ
נַחְמָן בְּשָׁוֹקָא דְגַלְדָּאי, וְאָמָר לֵהֶ
בְּשָׁוֹקָא דְרַבְּבָן, אָמָר לֵיהֶ: מִצְאָה בַּאֲנוֹרָקִי
מַהוּ? אָמָר לֵיהֶ: הָרִי אַלְוּ שְׁלוֹ.
בָּא יִשְׁרָאֵל וְנַתְנֵה בְּסִיםְמִין מַהוּ? אָמָר
לֵיהֶ: הָרִי אַלְוּ שְׁלוֹ. וְהָלָא עַזְמָד וְצַוָּתָה!
נַעֲשֵׂה בְּצֹוֹתָה עַל בֵּיתָה שְׁנָפֵל, וְעַל
סְפִינְטוֹ שְׁטָבָעָה בַּיָּם.

The Gemara relates: Rav Yehuda was moving along behind Mar Shmuel in the market where pounded grain was sold. Rav Yehuda said to Shmuel: If one found a purse [arnakei]ⁱ here, what is the halakha?^j Shmuel said to him that the halakha is as the mishna states: These belong to him. Rav Yehuda asked him: If a Jew came and provided a distinguishing mark to describe it, what is the halakha? Shmuel said to him: The finder is obligated to return it. Rav Yehuda asked: These are two contradictory rulings. Shmuel said to him: By law, it belongs to him. When I said the finder is obligated to return it if he learns the identity of the owner, that was beyond the letter of the law. This is like that incident where Shmuel's father^k found these donkeys in the desert and returned them to their owner after the passage of twelve months of the year,ⁿ as he acted beyond the letter of the law.^m

The Gemara relates: Rava was moving along behind Rav Nahman in the tanner's market, and some say in the marketplace frequented by the Sages. Rava said to Rav Nahman: If one found a purse here, what is the halakha? Rav Nahman said to him that the halakha is as the mishna states: These belong to him. Rava asked him: If a Jew came and provided a distinguishing mark to describe it, what is the halakha? Rav Nahman said to him that in this case as well, the halakha is as the mishna states: These belong to him. Rava asked: But isn't the owner justifiably standing and screaming that the purse belongs to him? Rav Nahman said to him: He becomes as one who screams to no avail about his house that collapsed or about his ship that sank in the sea.

PERSONALITIES

Shmuel's father – אָבָהוּ דְשְׁמוֹאֵל: This is the Sage Abba bar Abba, who is typically known as Shmuel's father due to the prominence of his son, the great *amora*. Abba bar Abba traveled far and wide as a silk merchant and visited Eretz Yisrael. While in Eretz Yisrael he developed close ties with Rabbi Yehuda HaNasi and his sons.

Abba bar Abba was one of the prominent Torah scholars of his generation. Although he was not appointed to any official position, he was the most significant personage in his city, Neharde'a, where he was responsible for municipal

matters and devoted considerable time to charitable work and redeeming captives. Upon his return to Babylonia, Shmuel's father was befriended by the Sage Levi bar Sisi, and Rav treated him with great deference. His Torah statements appear throughout both the Babylonian and the Jerusalem Talmud. The Gemara often mentions his close ties with the academies in Eretz Yisrael, where he was greatly respected and to which he addressed various questions. He lived a long life and in addition to Shmuel he had another son, Rav Pinehas, who was also a Torah scholar.

הַהוּא דַי דְשָׂקִיל בְּשָׂרָא בְּשִׁיקָא,
וְשָׂרֵה בְּגַנְתִּיתָא דְבִי בָר מַרְיוֹן. אֲתָא
לְקַמְפִיה דָאָבִי. אָמָר לֵיה: זֶיל שְׁקוֹל
לִנְפְּשָׁר. וְהָא רַוְבָא דִישְׁרָאֵל נִינָה.
שְׁמֻמָּתָה מִינָה: הַלְכָה כְּרוּבִי שְׁמַעַן בָּן
אַלְעָזָר אֲפִילוּ בָרוֹב יִשְׂרָאֵל! שָׁאַנְיָה!
דַי, דְכוּתוֹ שֶׁל יְם דָמִי. וְהָא אָמָר רַב:
בָשָׂר שְׁנַתְעַלְמָם מִן הַעַן אָסּוֹר! בְּעַומְדָה
רוֹאָה.

רַבִי חַנִּינָא מָצָא גָדִי שְׁחוֹט בֵין טִיבְרִיא
לְצִיפּוֹר וְהַתְּרוֹווֹה לו. אָמָר רַבִי אַמִי:
הַתְּרוֹווֹה לו מִשּׁוּם מִצְיָה – בָרוּבִי
שְׁמַעַן בָן אַלְעָזָר, מִשּׁוּם שְׁחִיטה –
בָרוּבִי חַנִּינָא בָנו שֶׁל בָרִי יוֹסֵי הַגְּלִילִי.
דְתַנְיָה: הַרְיָה שָׁאָבָדוּ לו גְּדִי וְתְּרָנוּלִי
הַלְךָ וְמִצְאָן שְׁחֹוטִין – רַבִי יְהוֹדָה אָסָר,
וְרַבִי חַנִּינָא בָנו שֶׁל בָרִי יוֹסֵי הַגְּלִילִי
מִתְרָא.

אָמָר רַבִי נְרָאֵין דְבָרִי רַבִי יְהוֹדָה
כְשִׁמְצָאוֹן בְּאַשְׁפָה, וְדָבָרִי רַבִי חַנִּינָא
בָנו שֶׁל בָרִי יוֹסֵי הַגְּלִילִי כְשִׁמְצָאוֹן
בְּבַיִת. מִדְהַתְּרוֹווֹה לו מִשּׁוּם שְׁחִיטה –
רַוְבָא יִשְׂרָאֵל נִינָה, שְׁמֻמָּתָה מִינָה הַלְכָה
בָרוּבִי שְׁמַעַן בָן אַלְעָזָר אֲפִילוּ בָרוֹב
יִשְׂרָאֵל! אָמָר רַבִּים וְרַבִּים
טַבְּחֵי יִשְׂרָאֵל.

רַבִי אַמִי אֲשֶׁר חָרְגָה פְּרָגִוֹת שְׁחוֹטוֹת בֵין
טִיבְרִיא לְצִיפּוֹר, אֲתָא לְקַמְפִיה דָרְבִי
אַסִי, וְאָמָר לֵיה: לְהָא לְקַמְפִיה דָרְבִי יוֹחָנָן.
וְאָמָר לֵיה: בַּי מִדְרָשָׁא. וְאָמָר לֵיה:
וַיְלַקְּשׁוּל לְפִשְׁךָ. רַבִי יִצְחָק נַפְחָא
אֲשֶׁר חָרְגָה קִבּוֹרָא דָאָולִי בֵיהָ אַלְוָיִי,
אֲתָא לְקַמְפִיה דָרְבִי יוֹחָנָן וְאָמָר לֵיה:
בַּבְּיַמְדָרְשָׁא, וְאָמָר לֵיה: זֶיל שְׁקוֹל
לִנְפְּשָׁר.

The Gemara relates: There was a certain kite^b that took meat^h in the marketplace and cast it among the palm trees of the house of bar Maryon. The one who found the meat came before Abaye to ask how to proceed. Abaye said to him: Go take it for yourself. The Gemara asks: But isn't the marketplace of kosher meat a place where there is a majority of Jews? Conclude from it that the halakha is in accordance with the opinion of Rabbi Shimon ben Elazar even in a place where there is a majority of Jews. The Gemara answers: A kite is different, as an item taken by a kite is similar to a lost item swept away in the tide of the sea. The Gemara raises another issue: But doesn't Rav say: Meat that was obscured from sight^{hn} and unsupervised for a period of time is forbidden, as its source is unknown? The Gemara answers: This is a case where the finder stands and sees the meat from the moment that it was taken by the kite until it was cast among the trees.

The Gemara relates: Rabbi Hanina found a slaughtered young goat^h between Tiberias and Tzippori and the Sages permitted it to him. Rabbi Ami said: The Sages permitted it to him in terms of the halakhot of finding lost items in accordance with the opinion of Rabbi Shimon ben Elazar, and they permitted it to him in terms of the halakhot of the slaughter of kosher animals, in accordance with the opinion of Rabbi Hananya, son of Rabbi Yosei HaGelili. As it is taught in a baraita: In a case where one's young goats and roosters were lost, and the owner went and found them slaughtered,^{hn} Rabbi Yehuda deems the meat forbidden, and Rabbi Hananya, son of Rabbi Yosei HaGelili, deems it permitted.

Rabbi Yehuda HaNasi says: The statement of Rabbi Yehuda appears to be correct in a case where he found the slaughtered animals in a garbage dump, as the concern is that they were thrown away because the slaughter was unfit. And the statement of Rabbi Hananya, son of Rabbi Yosei HaGelili, appears correct in a case where he found them in the house. The Gemara infers: From the fact that the Sages permitted the meat to him in terms of the halakhot of slaughter, apparently, this place is one where there is a majority of Jews. Conclude from it that the halakha is in accordance with the opinion of Rabbi Shimon ben Elazar even in a place where there is a majority of Jews. Rava said: It is a place where there is a majority of gentiles but the majority of slaughterers are Jews.

The Gemara relates: Rabbi Ami found slaughtered fledglings between Tiberias and Tzippori. He came before Rabbi Asiⁿ to ask how to proceed, and some say he came before Rabbi Yohanan, and some say he came to the study hall. And they said to him: Go take it for yourself. Rabbi Yitzhak Nappaḥa found a skein of thread from which a net was woven. He came before Rabbi Yohanan to ask how to proceed, and some say he came to the study hall. And they said to him: Go take it for yourself, because he found it in a place frequented by the multitudes.

Meat that was obscured from sight – **בָשָׂר שְׁנַתְעַלְמָם מִן הַעַן:** Many Sages disagree and rule that meat that was obscured from sight is permitted. Rav holds that when meat is left unattended, there is concern that perhaps it was exchanged for the meat of a forbidden carcass. Therefore, if there is no distinguishing mark, meat that was obscured from sight is forbidden.

And found them slaughtered – **מִצְאָן שְׁחֹוטִין:** In tractate Hullin (12a) the Sages discuss whether the fact that the animals were slaughtered constitutes a clear indication that they were properly slaughtered by a Jew, or whether gentiles and unquali-

fied Jews also slaughter animals and therefore the fact that an animal is slaughtered does not indicate that it was slaughtered according to halakha (see Meiri).

He came before Rabbi Asi – **אֲתָא לְקַמְפִיה דָרְבִי אַסִי:** The early commentaries ask: The impression created in other sources in the Talmud is that Rabbi Ami was greater than Rabbi Asi, who was his disciple-colleague. Why, then, did Rabbi Ami consult with him in this case? Some explain that because this was an issue in which Rabbi Ami had a vested interest he wanted to consult with an objective authority (see Shita Mekubbetzet).

BACKGROUND

Kite – קַיְל: The reference here is probably to the black kite, *Milvus migrans*, a carnivorous bird indigenous throughout the world, as well as in ancient Babylonia and Eretz Yisrael. They are 55 cm in length and blackish brown in color, and have long wings, a long, forked tail, and short legs. Common kites prey on small creatures and carcasses and nest on high trees. They typically live close to human settlement and prey on small birds or snatch meat.



Black kite with food in its talons

HALAKHA

דַי דְשָׂקִיל בְּשָׂרָא: In the case of a bird that took meat and cast it elsewhere, even if the meat was taken from a place with a Jewish majority, the finder may keep it, because the owner certainly despairs of its recovery (*Shulhan Arukh, Hoshen Mishpat* 259:6).

בָשָׂר שְׁנַתְעַלְמָם מִן הַעַן – If one finds meat in the possession of a gentile or in the marketplace, even if all the merchants and slaughterers are Jewish, the meat is forbidden. Even concerning meat that one brings home, if it is left unobserved, one is permitted to eat it only if there is a distinguishing mark or he recognizes it, or if it was bound and sealed (Rif). *Tosafot* and others say that meat left unobserved is permitted, provided it remained in the same place where it was left (Rambam *Sefer Kedusha, Hilkhot Ma'akhalot Assurot* 8:12; *Shulhan Arukh, Yoreh De'a* 63:1, and in the comment of Rema).

מָצָא גָדִי שְׁחוֹט – In a place with a gentile majority, if the majority of butchers and slaughterers are Jewish, and one finds a slaughtered animal or chicken, it belongs to the finder and eating it is permitted. This halakha applies only in a case where the prohibition against eating meat that was obscured from sight is not in effect (*Sma, Ketzot HaHashen*).

אֲבָדוּ לו גְּדִי וְתְּרָנוּלִי הַלְךָ וְמִצְאָן שְׁחֹוטִין: In a case where one's animals or chickens were lost or stolen and he finds them properly slaughtered, if there is a Jewish majority there, it is permitted to eat the meat. If he found the meat in a garbage dump in the marketplace, the meat is forbidden, as presumably it was tossed there because it was improperly slaughtered (*Shulhan Arukh, Yoreh De'a* 1:4).

NOTES

NOTES

Or a vessel by itself – או בְּכַמֹּת שָׁהָא: The Ritva comments that once it is taught in the mishna that the produce in a vessel must be returned, presumably because the vessel has a distinguishing mark, it is obvious that a vessel by itself must also be returned. Why, then, is it necessary to specify this? He answers that in the first case, perhaps it is the combination of the produce and the vessel which constitutes a distinguishing mark, even if the vessel has no distinguishing mark of its own. Therefore, it was necessary to establish that if a vessel itself has a distinguishing mark, one must return a vessel.

מתנה ויאלו חיב להזכיר: מצא פירות בכל, או בְּכַמֹּת שָׁהָא, מִעוּת בְּכִים, או בְּסִםְמִוּת שָׁהָא, צבורי פירות, צבורי מִעוּת,

MISHNA And for these found items, one is obligated to proclaim his find: If one found produce inside a vessel, or a vessel by itself;ⁿ coins inside a pouch, or a pouch by itself; piles of produce; piles of coins,

Perek II**Daf 25 Amud a****HALAKHA**

bundles of grain in a secluded area – בְּרִיכּוֹת בַּרְשׁוֹת הַיִּיחִיד: If one finds small bundles of grain in a secluded area, and they appear to have fallen, they belong to the finder. If they appear to have been intentionally placed there, he is obligated to proclaim his find (Rambam Sefer Nezikin, Hilkhot Gezeila VaAveda 15:10; Shulhan Arukh, Hoshen Mishpat 262:9).

And loaves of a homeowner, etc. – וּבְכוֹרֹת שֶׁל בָּעֵל הַבַּיִת וּבְוי: Since the shape of the loaves of a homeowner are unique, their particular shape constitutes a distinguishing mark and one who found them is obligated to proclaim his find. This halakha applies also to wool fleeces from the house of a craftsman, as each craftsman processes the wool in his own unique manner (Rambam Sefer Nezikin, Hilkhot Gezeila VaAveda 15:9; Shulhan Arukh, Hoshen Mishpat 262:8).

If he found a vessel and produce was before it – מצא כליל יונטו פירות: If one finds a vessel with produce before it, he is obligated to proclaim that he found the vessel, but the produce belongs to him. If it appears that the produce and vessel belong to one owner, he is obligated to proclaim that he found both. One can determine if the produce and vessel belong to one owner using the following guidelines: If the mouth of the vessel is facing the produce, one is obligated to proclaim that he found both of them. If the vessel is facing away from the produce, the produce belongs to the finder. If there is a rim on the empty vessel, even if the mouth of the vessel is facing the produce, the produce belongs to the finder, as had the produce originally been in the basket, some of it would have remained. This ruling of the Rambam is in accordance with the opinion of the Rav Pappa in his dispute with Rav Zevid, because Rav Pappa is the latter authority. The Rosh and the Tur rule in accordance with the opinions of both *amoraim*, based on their understanding that Rav Pappa does not disagree with Rav Zevid but merely cites an additional explanation (Rambam Sefer Nezikin, Hilkhot Gezeila VaAveda 15:13; Shulhan Arukh, Hoshen Mishpat 262:19, and Sma and Beur HaGra there).

שלשה מטבעות זה על גב זה, בְּרִיכּוֹת בַּרְשׁוֹת הַיִּיחִיד, וככבות של בעל הבית, וגוי צmr הרקוחין מבית האומן, כדי יין וכדי שמן – הרי אלו חיב להזכיר.

גם טעמא – דמצא פירות בכל, ומאות ביכים. הא כליל ולפניו פירות, ביס ולפניו מאות – הרי אלו שלו. תניינא להא דתנו רבנן: מצא כליל ולפניו פירות, ביס ולפניו מאות – הרי אלו שלו. מקצתן בכליל ומকצתן על גבי קרקע, מקצתן ביכים ומוקצתן על גבי קרקע – חיב להזכיר.

ורunning: מצא דבר שאין בו סימן בצד דבר שיש בו סימן – חיב להזכיר. בא בעל סימן ונintel את שלו – זכה הילה בדבר שאין בו סימן:

אמור רב זвид: לא קשייא: הא – בכבוא וכיתנן, הא – בצעא ופירוי.

three coins stacked one atop another; bundles of grain in a secluded area;^h loaves of a homeowner,^h as each shapes his loaves in his own unique manner; wool fleeces that are taken from the house of a craftsman, as each craftsman processes the wool in his own unique manner; jugs of wine; or jugs of oil. If one finds any of these, he is obligated to proclaim his find.

GEMARA The Gemara infers from the mishna: The reason one is obligated to proclaim his find is that he found produce inside the vessel or coins inside the pouch; but if he found a vessel and produce was before it, or if he found a pouch and coins were before it, those, the produce and coins, belong to him. The Gemara comments: We learn from this mishna by inference that which the Sages taught explicitly in a *baraita*: If one found a vessel and produce was before it,^h or if he found a pouch and coins were before it, those, the produce and coins, belong to him. If some of the produce is in the vessel and some of the produce is on the ground, or if some of the coins are inside the pouch and some of them are on the ground, one is obligated to proclaim his find.

And the Gemara raises a contradiction from another *baraita*: If one found an item on which there is no distinguishing mark alongside an item on which there is a distinguishing mark, he is obligated to proclaim that he found both. If the owner of the item with the distinguishing mark came and took his item but did not claim ownership of the other item, the other person, who found the items, acquires the item on which there is no distinguishing mark. This halakha should also apply when one finds a vessel on which there is a distinguishing mark and produce on which there is no distinguishing mark.

The Gemara cites several possible resolutions to this contradiction. Rav Zevid said that this is not difficult: This *baraita*, where the finder is obligated to proclaim his finding of both the vessel and the produce, is referring to a container and flax.ⁿ Since the flax fibers are intertwined, when part of the flax falls out of the container, all of the flax would fall out. Therefore, the fact that the flax is completely outside the container is not an indication that it was never in the container. That mishna, from which it is inferred that produce found outside the vessel belongs to the finder, is referring to a basket and produce. Had the produce fallen out of the basket, presumably some produce would remain in the basket, because the individual units of produce are not connected. Therefore, the fact that no produce was found in the basket indicates that the produce did not fall out of the basket.

NOTES

This baraita...is referring to a container and flax – הא בכבוא כיתנן: Rav Zevid seeks to resolve the contradiction between the mishna and *baraita* by establishing that they are referring to two different circumstances. There is a dispute among the early commentaries with regard to which tannaitic source addresses

each circumstance. Rashi understands that the mishna, where the ruling is that the items belong to the finder, is referring to a case where one found flax, and that the *baraita*, where the ruling is that one must proclaim his find, is referring to a case where one found produce. Rashi's interpretation is difficult in

that it runs counter to Rav Pappa's statement that when no produce remains in the basket, the produce belongs to the finder. Most early commentaries agree with *Tosafot* that the mishna is referring to a case where one found produce, while the *baraita* is referring to a case where one found flax (Rashba; Ritva; Ran).

רְבָבַפָּא אָמַרְוּ: הֵא וְהֵא בֶּצְנָא וְפִרְיוֹי, וְלֹא
קְשִׁיאָ; הֵא - דְּאַשְׁתִּיר בְּהַמִּידָּי, הֵא -
דְּלֹא אַשְׁתִּיר בְּהַמִּידָּי.

וְאַיְבָעִית אִימָא: הֵא וְהֵא דְּלֹא אַשְׁתִּיר
בְּהַמִּידָּי, וְלֹא קְשִׁיאָ; הֵא - דְּמַהֲדרִי
אָפִיה לְגַבְיוֹ פִּירְיוֹ, הֵא - דְּלֹא מַהֲדרִי אָפִיה
לְגַבְיוֹ פִּירְיוֹ.

וְאַיְבָעִית אִימָא: הֵא וְהֵא דְּמַהֲדרִי אָפִיה
לְגַבְיוֹ, וְלֹא קְשִׁיאָ; הֵא - דְּאַתְּ לָהּ
אוֹגְנָן לְצְנָא, הֵא - דְּלִילָת לָהּ אוֹגְנָן
לְצְנָא.

"צְבּוּרִי פִּירְות וְצְבּוּרִי מִעוּזָת". שְׁמֻעָת
מִינָה - מִנְיָן תְּווֹ סִימָן! תְּנִי צְבּוּרִי פִּירְות.
שְׁמֻעָת מִנָה מִקּוּם הַיּוֹ סִימָן! תְּנִי צְבּוּרִי
פִּירְות.

"שְׁלֶשֶׁה מִטְבָּעוֹת זוֹ עַל גַּבְיוֹ". אָמַר רַבִּי
צִחְקָן מִגְדָּלָה: וְהָוּ שְׁעַשְׂיוֹן כְּמִגְדָּלָן.
תְּנִי אַמְּבִי הַכְּבִי: מִצְאָ מִעוּזָת מִפּוֹרוֹת -
הַרְיָ אַלְוּ שְׁלֶשֶׁ, עַשְׂיוֹן כְּמִגְדָּלָם - חַיְבָן
לְהַכְּרִי. וְאַלְוּ חַן עַשְׂיוֹן כְּמִגְדָּלִים -
שְׁלֶשֶׁה מִטְבָּעִין זוֹ עַל גַּבְיוֹ.

Rav Pappa said: Both this ruling and that ruling are referring to a basket and produce, and nevertheless it is **not difficult**: This baraita, where the finder is obligated to proclaim his finding of the produce found outside the empty vessel, is referring to a case where some produce remains in the basket. That mishna, from which it is inferred that produce found outside the vessel belongs to the finder, is referring to a case where no produce remains in the basket.

And if you wish, say instead: Both this ruling and that ruling are referring to a case where no produce remains in the basket, and nevertheless it is **not difficult**: This baraita, where the finder is obligated to proclaim his finding of the produce found outside the empty vessel, is referring to a case where the mouth of the basket is facing the produce, indicating that the produce fell from it. That mishna, from which it is inferred that produce found outside the vessel belongs to the finder, is referring to a case where the mouth of the basket is **not facing the produce**.

And if you wish, say instead: Both this ruling and that ruling are referring to a case where the mouth of the basket is facing the produce, and nevertheless, it is **not difficult**: That mishna, from which it is inferred that produce found outside the vessel belongs to the finder, is referring to a case where the empty basket has a **rim**.⁸ Had the produce fallen out of the basket, the rim would have prevented some of the produce from falling. This baraita, where the finder is obligated to proclaim the produce found outside the empty vessel, is referring to a case where the basket has **no rim** and therefore the produce in its entirety could have fallen from the basket.

§ The mishna teaches: And for these found items, one is obligated to proclaim his find: **Piles of produce and piles of coins. Conclude from it that number is a distinguishing mark**,⁹ and one reclaims his produce or coins by correctly declaring the number of piles. The Gemara rejects that proof. Perhaps one should teach the mishna as stating: **A pile of produce**. It is not the number of piles but their location that serves as a determining mark. Based on that emendation, **conclude from it that location is a distinguishing mark**. The Gemara rejects that proof as well. Perhaps one should teach the mishna as stating: **Piles of produce**. Since the authoritative version of the mishna is unclear, no proof can be cited from it.

§ The mishna teaches: And for these found items, one is obligated to proclaim his find: **Three coins stacked one atop another. Rabbi Yitzhak from Migdal¹⁰ says: And one is obligated to proclaim the find in a case where the coins are arranged in well-ordered towers.**¹¹ This is also taught in a baraita: If one found scattered coins,¹² these belong to him. If the coins are arranged in well-ordered towers, he is **obligated to proclaim his find**. The baraita elaborates: **And these coins are arranged in towers: Three coins stacked one atop another.**

BACKGROUND

Rim – אַוְגָנָן:



Jug with rim from the talmudic era

NOTES

Piles of produce...conclude from it that number is a distinguishing mark – שְׁמֻעָת מִנְיָן הַיּוֹ סִימָן: The commentaries ask what proof can be cited from the fact that it is written in the plural, as the entire mishna is formulated in the plural. Some answer that since the mishna could have written: Piled produce, and instead wrote: Piles of produce, the fact that piles is written in plural is significant. According to this explanation, the attempt to refute the proof by saying: Teach: A pile of produce, is not an emendation of the text of the mishna. It is explaining that the plural is not a reference to a case of multiple piles but to a case of one pile, and the plural is due to the fact that it is referring to such cases in general (Ritva).

Rabbi Yitzhak from Migdal [migdal'a'a] – רַבִּי יִצְחָק מִגְדָּלָה: Some suggest that the appellation *migdalata* is appended to Rabbi Yitzhak's name because he proceeds to discuss the halakha of coins arranged in well-ordered towers [*migdalim*] (Maharatz Hayyut).

Where the coins are arranged in well-ordered towers – שְׁעַשְׂיוֹן כְּמִגְדָּלִין: According to the straightforward understanding of the Gemara, the coins are arranged such that the widest coin is on the bottom and the coins stacked upon it are progressively smaller. Rabbeinu Hananel and the Rif understand that the arrangement is one where coins that are the same size are stacked in well-ordered towers.

HALAKHA

In towers – כְּמִגְדָּלִין: If one found three coins arranged in a tower, he is obligated to proclaim his find. The Rema holds that one is obligated only if the tower is arranged with the widest on the bottom and the coins stacked upon it progressively smaller. The Gra understands that there is a dispute between the Rema and the *Shulhan Arukh* on the matter, and that the *Shulhan Arukh* holds that one is also obligated to proclaim his find if there were three coins that were the same size arranged in a well-

ordered tower (Rambam *Sefer Nezikin, Hilkhot Gezeila VaAveda* 16:2; *Shulhan Arukh, Hoshen Mishpat* 262:11).

If one found scattered coins – מִצְאָ מִעוּזָת מִפּוֹרוֹת: If one finds scattered coins, even if there was some overlap among them, they belong to him. If he found a bundle of coins, he is obligated to proclaim his find (Rambam *Sefer Nezikin, Hilkhot Gezeila VaAveda* 16:2; *Shulhan Arukh, Hoshen Mishpat* 262:12).

BACKGROUND

Rather, if it was stated, this is how it was stated – **אֵלֹא אִי אַתָּמָר הִכְאָתָמָר**: At times, when an objection has been raised against an amoraic statement, the Gemara resolves the objection by suggesting that the statement of the *amora* was reported incorrectly and must be emended. This expression means: If the statement was made at all, it was made as follows.

NOTES

One proclaims that he found coins – **שְׁבָעָה מִכְרֵי**: Some explain that the finder proclaims that he found coins issued by a certain king and the owner of the coins identifies them by providing their number and location.

Like a bracelet – **כְּשִׂיר**:



Coins configured like a bracelet

Like a straight line – **כְּשָׂרוֹה**:



Coins configured like a straight line

Like a triangle – **כְּחַצְבָּה**:



Coins configured like a triangle

Like a ladder – **כְּסֶולֶם**: Ostensibly, this seems identical to the case with regard to coins that partially overlap [*meshalhefei shalhufer*], where the coins belong to the finder. Some explain that the case of *meshalhefei shalhufer* is not one where they overlap; rather, the coins are aligned in a straight line with space between them. According to this explanation, the case of coins configured like a straight line is one where there is no space between them.



Coins configured like a ladder

הֲذָא גָּוֹפָא קְשִׁיאָ, אִמְרָתָה: מֵצָא מִעוּdot
מִפְוֹזָות – הַרְיָי אַלְוָ שְׁלוֹ, הֲא מִשְׁלַחְפֵּי
שְׁלַחְפֵּי – חִיבֵּ לְהַכְּרִי. אִימָא סִיפָּא:
עֲשִׂיוֹן בְּמַגְדָּלִין חִיבֵּ לְהַכְּרִי, הֲא
מִשְׁלַחְפֵּי שְׁלַחְפֵּי – הַרְיָי אַלְוָ שְׁלוֹ תְּנָא,
כֹּל שְׁאַין עֲשִׂיוֹן בְּמַגְדָּלִין – מִפְוֹזָות קְרֵי
לְהָגָה.

אָמָר רַבִּי חַנִּינָא: לֹא שָׁנוּ אַלְאָ שְׁלַשָּׁה מְלָכִים, אַבְלָ שְׁלַמְלָךְ אֶחָד –
אַינוּ חִיבֵּ לְהַכְּרִי. הַכְּקִידְמִי אֵי דַעֲשֵׂין
בְּמַגְדָּלִין – אַפְילּוּ שְׁלַמְלָךְ אֶחָד נִמְיָן,
וְאֵי דְּאוֹין עֲשִׂיוֹן בְּמַגְדָּלִין – אַפְילּוּ שְׁלַמְלָךְ נִמְיָן לֹא!

אַלְאָ, אִי אַתָּמָר הִכְאָתָמָר: לֹא שָׁנוּ
אַלְאָ שְׁלַמְלָךְ אֶחָד בַּשְׁנִינָה שְׁלַשָּׁה מְלָכִים,
אַבְלָ שְׁלַמְלָךְ אֶחָד אַינוּ חִיבֵּ לְהַכְּרִי.
וְהַכְּקִידְמִי דַעֲשֵׂין בְּמַגְדָּלִים – וּוְחַדָּא
תַּתְאָה וּמַצְיעָא עַלְוָה, וּוְטָא עִלְלִיה
מַעֲשָׂא, דְּאָמְרוּנָה: אַפְתָּחָא אַנְחִינָה, אַבְלָ
שְׁלַמְלָךְ אֶחָד, דְּכַוְּלוּ בַּהֲדִיר נִנְהָה,
אָךְ עַל בַּדְמָנָחִי אַהֲדָה – הַרְיָי אַלְוָ
שְׁלוֹ, אִומֶר אַתָּמָרִי אַתָּמָרִי, וּבְהָדִיר
הָדִיר נִפְולָ.

וּרְبִּי יוֹחָנָן אָמָר: אַפְילּוּ שְׁלַמְלָךְ אֶחָד
נִמְיָן מִכְרֵי. מַאי מִכְרֵי – מַנֵּן. מַאי אַרְיוֹא:
תַּלְתָּא? אַפְילּוּ תְּנִינָה נִמְיָן נִמְיָן רַבִּיָּא:
שְׁבָעָה מִכְרֵי.

בְּשִׁירִי יְרֻמְּמָה: כְּשִׂירִ מַהָו, כְּשָׂרוֹהִ מַהָו,
כְּחַצְבָּהִ מַהָו, כְּסֶולֶםִ מַהָו?

The Gemara notes an apparent contradiction in the *baraita*. This *baraita* itself is difficult. In the first clause of the *baraita*, you said: If one found scattered coins, these belong to him, from which it can be inferred that if the coins partially overlap [*meshalhefei shalhufer*], he is obligated to proclaim his find. Say the latter clause of the *baraita*: If the coins are arranged in well-ordered towers, he is obligated to proclaim his find, from which it can be inferred that if the coins partially overlap, those coins belong to him. The Gemara answers: The *tanna* of the *baraita* calls any pile of coins that is not arranged in well-ordered towers: Scattered.

Rabbi Hanina says: The Sages taught that one must proclaim his find only when he finds coins minted by three different kings, but if all the coins were minted by one king, one is not obligated to proclaim his find. The Gemara asks: What are the circumstances? If the coins are arranged in well-ordered towers, then even if all the coins were minted by one king, the finder should also be obligated to proclaim his find. And if the coins are not arranged in well-ordered towers, then even if the coins were minted by three kings, the finder should also not be obligated to proclaim his find.

Rather, if Rabbi Hanina's ruling was stated, this is how it was stated:⁸ The Sages taught that one must proclaim his find only when he finds coins of different sizes minted by one king, which are similar to coins minted by three kings. But if they are coins of the same size minted by one king, he is not obligated to proclaim his find. The Gemara elaborates: According to this interpretation, what are the circumstances of coins that are arranged in well-ordered towers and which one must proclaim? It is when the bottom coin is broadest, and the intermediate-sized coin is atop it and the smallest coin is atop the intermediate one, as we say: They were placed there and are not lost at all. But if one finds coins minted by one king, each of them sized like the other, even if each is placed upon the other, those coins belong to the finder. The reason is that it is possible to say that it is happenstance and they fell together, so their arrangement is not a distinguishing mark.

And Rabbi Yohanan says: Even if the coins were minted by one king, one is also obligated to proclaim his find. The Gemara asks: What does one proclaim in order to invite the owner to describe his item? The Gemara answers: He proclaims that he found coins and the owner specifies the number of coins. The Gemara asks: If so, why does the mishna specifically teach a case where one found three coins when even if one found two coins they could be identified by their number? **Ravina said:** Since the finder proclaims that he found coins,^N using the plural term, indicating that there were at least two coins, if the owner claims that he lost two coins, the default of the plural term, he is not providing a distinguishing mark. Therefore, the mishna teaches a case of three coins.

Rabbi Yirmeya raises a dilemma: If one found coins configured like a round bracelet,^N what is the halakha? If they were configured like a straight line,^N what is the halakha? If they were configured like a triangle,^N what is the halakha? If they were configured like a ladder,^{NH} one partially upon the other and partially protruding, what is the halakha?

HALAKHA

Like a bracelet...like a straight line...like a triangle...like a ladder – **כְּשִׂירִי...כְּשָׂרוֹה...כְּחַצְבָּה...כְּסֶולֶם**: If one found coins configured like a round bracelet, a straight line, a triangle, or a

ladder, due to the uncertainty with regard to their status, one must leave them in place (Rambam Sefer Nezikin, Hilkhot Gezeila VaAveda 16:2; Shulhan Arukh, Hoshen Mishpat 262:12).

פְּשׁוֹת מֵהָא חֶדֶא, דָּבָר רַב נַחֲמָן
אָמָר רַבָּה בָּרוּ אָבוֹה: כִּל שָׂאַלְוּ מִכְּנִיס
לְהָ קִים בִּינֵיכֶם וְנוֹטְלָם בְּבַתְּ אַחַת -
חַיְבַּ לְהַבְּרִיא.

The Gemara suggests: **Resolve at least one^N** of these dilemmas, as Rav Nahman says that Rabba bar Avuh says: For any arrangement of coins such that if one were to introduce a wood chip between the coins he could thereby lift them all at once with that wood chip, he is **obligated to proclaim** his find. Based on that criterion, one can conclude that if one finds coins configured like a ladder, he is obligated to proclaim his find.

בַּעַד רַב אַשִׁי:

Rav Ashi raises a dilemma:

NOTES

Resolve at least one – פְּשׁוֹת מֵהָא חֶדֶא: Some versions of the text record the statement of Rav Nahman as an independent ruling, not as a response to the series of dilemmas raised by Rabbi Yirmeya.

Perek II

Daf 25 Amud b

כָּאַבְנֵי בֵּית קְוִילִים מְהֹוָה?

תָּא שְׁמַע, דְּתַנְיָא: מֵצָא מִעוּזָה
מִפּוֹרוֹת - הַרְיָא אַלְוּ שָׁלוּ, כָּאַבְנֵי בֵּית
קְוִילִים - חַיְבַּ לְהַכְּרוּ. וְאַלְוּ הַז אַבְנֵי
בֵּית קְוִילִים: אַחַת מִפְּאָן וְאַחַת מִפְּאָן
וְאַחַת עַל גְּבִיהָן.

If they were configured like the stones of the house of worship dedicated to the Roman deity Mercury, what is the halakha?

The Gemara suggests: **Come and hear a resolution of the dilemma. As it is taught in a baraita:** If one found scattered coins, these belong to him. If they were configured like the stones of the house of worship dedicated to Mercury,^B he is **obligated to proclaim** his find. The Gemara explains: **And these are coins that were configured like the stones of the house of worship dedicated to Mercury:^H One was situated here on one side, and one was situated there alongside it, and one was situated atop the two of them.**

תַּנְיוֹרְבָּנָן: הַמּוֹצָא סָלָע בְּשָׁוֹק, וּמֵצָא
חַבְירָוּ אֲמָר שְׁלֵי הַיָּא, חֶדֶשָׁה הַיָּא -
נִירְוִונִית הַיָּא, שֶׁמְלָךְ פְּלָוִנִית הַיָּא -
לֹא אָמָר בְּלֹום. וְאַז עַוד, אַלְאָ אֲפִילּוּ
שְׁמוֹ כְּתוּב עַלְיהָ - לֹא אָמָר בְּלֹום,
לְפִי שָׁאַין סִימָן לְמַטְבָּע, דָּאָמָר דְּלָמָא
אֲפֻוקִי אֲפֻקָּא, וּמְאַיִינִשׁ אֲחַרְיָינִא נַפְלָל.

S The Sages taught in a baraita: In the case of **one who finds a sela coin in the marketplace^H and another person finds him and says: It is mine**, and the distinguishing mark is that **it is new**, or that it is a coin minted by the emperor Nero,^B or that it is minted by king so-and-so, he has not said anything and the finder need not give him the sela. Moreover, even if his name is written on the sela he has not said anything, due to the fact that there is no distinguishing mark for a coin^N that is effective in its recovery, as the finder says: **Perhaps he spent the coin and it fell from another person.**

מַתְנִי מֵצָא אַחַר הַגְּפָה או אַחַר
הַגְּדוּר גְּזִילָות מִקְשָׁרִים, או בְּשִׁבְלֵין
שְׁבָדְדוֹת - הַרְיָא לֹא יַעֲשֶׂה בָּהוּ, מֵצָא
כְּלִי בְּאַשְׁפָה, אָמָמָכָה - לֹא יַעֲשֶׂה בָּוּ,
אָמָמָנָה - נַעֲלֵל וּמְרִירִי.

MISHNA If one found, behind a wooden fence^H or behind a stone fence, bound fledglings, or if he found them in the paths that run through fields, he may not touch them, as they were certainly placed there intentionally. In a case where one found a vessel in a garbage dump, if it is concealed, he may not touch it, as a person certainly concealed it there. If it is exposed, the finder takes the item and proclaims his find.

גַּמְ' מֵאי טַעַמָּא? דָּאָמְרִין: הַיָּא
אַנְיָשׁ אַצְנִינוּהוּ, וְאַיְשָׁקֵל לְהָוֹ -
לִית לְהָוֹ לְמִרְיָהוּ סִימָן בְּגַנוּיָהוּ,
הַלְּכָר לְשַׁבְּקִינוּהוּ עַד דְּאַתִּי קְרוּיָהוּ
וּשְׁקֵל לְהָוֹ.

GEMARA What is the reason that one may not touch the fledglings? The Gemara answers: The reason is that we say with regard to these birds: A person concealed them, and if one takes them, their owner has no distinguishing mark on them that would enable him to reclaim them. Therefore, let the finder leave the birds in place until their owner comes and takes them.

NOTES

Distinguishing mark for a coin – סִימָן לְמַטְבָּע: The reason coins do not have a distinguishing mark is that they are typically minted with a uniform imprint (Ramban). The Gemara adds that even if one's name is written on the coin, it is not a distinguishing mark, due to the concern that perhaps he spent it or gave it to another. Some assert that this was actually a statement of the Rif that was incorporated into the text of the Gemara.

The early commentaries ask: If the concern that a coin changed hands invalidates any distinguishing mark that might

be on it, why does this not apply with regard to all lost items? The Rashba answers that the concern is that one wrote his name on several coins, then spent some and lost some, and it is possible that the one that was found by this finder was lost by another person. Since, generally speaking, items other than coins were not identical to each other, this concern is in effect only with regard to coins. Others explain that the concern with regard to coins is greater because coins, by their very essence, are designated for circulation and for use in transactions (Ritva; Meiri).

BACKGROUND

בֵּית קְוִילִים: House of worship dedicated to Mercury [Kulis] – Kulis is one of the talmudic corruptions of the name of the Roman god Mercury, whose Greek name was Hermes, god of commerce and the roads. Idols or other representations of Mercury were often situated at crossroads and travelers would place stones on a designated pile near those idols as a form of worship. The initial configuration included two adjacent stones with a third stone atop them. Those are the stones of the house of worship dedicated to Mercury mentioned in the Gemara.

Minted by the emperor Nero – נִירְוִינִית: Apparently, attributing the coin to Nero was not due to the image of the emperor imprinted on it, but rather due to its value. The coin ascribed to Nero was minted with a substantially lower weight and value, as distinct from earlier coins that were uniformly heavier and more valuable.

HALAKHA

Like the stones of the house of worship dedicated to Mercury – כָּאַבְנֵי בֵּית קְוִילִים: If one finds coins configured with two coins adjacent to each other and a third coin atop them, he is obligated to proclaim his find (Rambam Sefer Nezikin, Hilkhos Gezeila VaAveda 16:2; Shulhan Arukh, Hoshen Mishpat 262:12 and Beur HaGra there).

הַמּוֹצָא בְּלֹעַ – בְּשִׁוּ: If one finds a single coin he need not return it, even if another attests that it was minted by a specific king, and even if his name was written on it. Some say that if the other person describes a distinguishing mark, e.g., that it is cracked in a particular area, one must return the coin to him (Rambam Sefer Nezikin, Hilkhos Gezeila VaAveda 14:10; Shulhan Arukh, Hoshen Mishpat 262:13, and in the comment of Rema).

Found behind a fence – הַצְּאָא אֶלְרָא דְּגָפָה: If one finds an item without a distinguishing mark that appears to have been intentionally placed there, he may not touch it. One may not touch it even if it is uncertain whether or not it was placed there. If he took it, it belongs to him after the fact. The Rema, citing the Ra'avad, disagrees and says that if he took an item in a case where it is uncertain whether it was placed there, it does not belong to him; rather, he must safeguard it until Elijah the prophet comes and identifies the owner. In addition, if one found an item with a distinguishing mark in a case where it is uncertain whether it was intentionally placed there in a place that is at least partially sheltered, he is obligated to take it and proclaim his find (Rambam Sefer Nezikin, Hilkhos Gezeila VaAveda 15:6; Shulhan Arukh, Hoshen Mishpat 260:10, and in the comment of Rema, and Sma and Ketzot HaHoshen there).

NOTES

ואם נטול לא – Rashi explains that one need not return a lost item in this case even to one claiming to be the owner. The Rambam explains that it means that the item belongs to the finder. See the various commentaries on the Rambam, who question that understanding. The Ra'avad holds that he must safeguard the item until witnesses or Elijah the prophet come and reveal the identity of the owner. By contrast, several early commentaries explain that the Gemara means that he must not return the item to the place from which he took it, due to the concern that someone else will take it with no intention to return it (*Tosafot*; Ramban; Rashba; Rosh). That appears to be the understanding in the Jerusalem Talmud.

HALAKHA

מצא כל – נטול לא: If one found a vessel hidden in a garbage dump he may not touch it. If the vessel is in a garbage dump that is regularly cleared, this is a deliberate loss and the vessel belongs to the finder (Rambam *Sefer Nezikin*, *Hilkhot Gezeila VaAveda* 15:7; *Shulchan Arukh*, *Hoshen Mishpat* 260:11, and in the comment of Rema).

ואמאי? ליהי קשר סימן! אמר רב ביבי
אבא בר זבדא אמר רב: במקושרין
בכונפיחן, דכוייל עולם הא מקטרי
להו.

וליהו מקום סימן! אמר רב עיקבא בר
חמא: במדאין, אי במדאין – מעולם
אתו, ומותר!

אייבא לימייר מעולם אתו, ואיבא
למייר אין אש אצנעהו, והוה ליה
ספיק העיתות, ואמר רב אבא בר זבדא
אמר רב: כל ספיק העיתות – לכתהילה
לא יטול, ואם נטול – לא יתיזו.

מצא כל באשפה, מכוסחה לא יגע
בו, מגילה – נטול ומזכיר". ורמיינהו
מצא כל טמון באשפה – נטול
ומזכיר, שכן דרך אשפה לפנות!

אמר רב זבדא: לא קשיא: הא – בכובי
ובכסי, הא – בסכיני והמnik. בכובי
ובכסי – לא גע, בסכיני והמnik – נטול
ומזכיר.

רב פפא אמרו: הא זה הא בכובי ובכסי,
ולא קשיא: כאן – באשפה העשויה
לפנות, כאן – באשפה שאינה עשויה
לפנות.

אשפה העשויה לפנות אבידה מדעת
היא! אלא, באשפה שאינה עשויה
לפנות, ונמלך עליה לפנותה.

בשלמה לר' פפא – הינו דקתי שبن
דרך אשפה לפנות, אלא לר' זבד
מאי שבן דרך אשפה לפנות? שבן
דרך אשפה לפנות לה כלים קטנים.

The Gemara asks: But why? Let the knot binding them serve as their distinguishing mark. Rabbi Abba bar Zavda said that Rav said: This is a case where the birds were bound at their wings. Since everyone binds them in that manner, the knot binding the birds is not a distinguishing mark.

The Gemara asks: And let their location serve as their distinguishing mark. Rav Ukva bar Hama said: This is a case where the birds hop and do not remain in place. The Gemara asks: If it is a case where the birds hop, perhaps the birds came to that location from elsewhere and it is permitted for the finder to keep them.

The Gemara answers: It can be said that the birds came from elsewhere and it can be said that a person concealed them, and the result is uncertainty with regard to whether the placement of the birds was deliberate, i.e., whether or not they are lost items. And Rabbi Abba bar Zavda says that Rav says: In any case of uncertainty as to whether the placement of an item was deliberate, one may not take it *ab initio*. And if he took it, he need not return it.^N

S The mishna teaches: In a case where one found a vessel in a garbage dump,^H if it is concealed, he may not touch it, as a person certainly concealed it there. If it is exposed, the finder takes the item and proclaims his find. The Gemara raises a contradiction from a *baraita*: If one found a vessel concealed in a garbage dump, the finder takes the item and proclaims his find, because it is routine for a garbage dump to be cleared. Therefore, presumably it was not placed there; rather, it is a lost item and one is obligated to proclaim his find.

Rav Zevid said that this is not difficult: This mishna is referring to containers or cups. That *baraita* is referring to knives or a fork [*vehannik*.^L The Gemara elaborates: In the case of containers or cups, which are large, it is inconceivable that they fell there inadvertently, so he may not touch them. In the case of knives or forks, which are small, there is room for uncertainty as to whether it was placed there or whether it fell, so the finder takes the item and proclaims his find.

Rav Pappa said: Both this *baraita* and that mishna are referring to containers and cups, and nevertheless, it is not difficult: Here, the *baraita* is referring to a garbage dump that is designed to be cleared; therefore, he must take the vessel and proclaim his find to prevent it from being cleared with the garbage. There, the mishna is referring to a garbage dump that is not designed to be cleared; as it is possible that the owner placed it there, the finder may not touch it.

The Gemara asks: How could one be obligated to proclaim his find of a vessel in a garbage dump that is designed to be cleared? Even if the owner of the vessel concealed it there, it is a deliberate loss and the owner renounced ownership of the vessel. The Gemara answers: Rather, the *baraita* is referring to a garbage dump that is not designed to be cleared, and the owner of the land reconsidered and decided to clear it.

The Gemara asks: Granted, according to Rav Pappa, this is the reason that the *tanna* teaches in the *baraita*: He takes it and proclaims his find, because it is routine for a garbage dump to be cleared, as the ruling is dependent on whether the dump is ultimately cleared. But according to Rav Zevid, the reason for the ruling in the *baraita* is that the utensils found were knives and forks. What is the relevance of the statement in the *baraita*: Because it is routine for a garbage dump to be cleared? The Gemara answers that according to Rav Zevid, it means: Because it is routine for a garbage dump to inadvertently have small utensils cleared, i.e., discarded, into it.

LANGUAGE

Fork [*hamnik*] – **המnik**: Several variant readings of this term appear in manuscripts of the Talmud and its origin is unclear. The *Shulchan Arukh*, citing the *ge'onim*, explains that it is a utensil with two tines used by the Persians as a fork.

מתני' מצא בגָל וּבְכֹתֶל יִשְׁן –
הַרְיָ אַלְוָ שָׁלוֹ. מִצְאָ בְּכֹתֶל חָדֵשׁ,
מִחְזִיוֹ וְלֹחֵז – שָׁלוֹ, מִחוֹצֵוֹ לְרֹפֵגִים –
שָׁלָל בָּעֵל הַבַּיִת. אֲםָרָ היה מִשְׁבְּרִים
לְאֶחָרִים – אֲפִילוּ בָּתוּךְ הַבַּיִת הַרְיָ
אַלְוָ שָׁלוֹ.

גַם תָּנָא, מִפְנֵי שִׁכּוֹל לוֹמֵר לוֹ: שָׁלָל
אַמּוֹרִים הָן. אָטוֹ אַמּוֹרִים מִצְנְעִים,
שְׁרָאֵל לֹא מִצְנְעִים? לֹא אַרְיכָא

MISHNA If one found lost items in a heap of stone rubble or in an old wall,ⁿ these belong to him. If one found lost items in a new wall^h from its midpoint and outward, they belong to him. If he found the items from its midpoint and inward, they belong to the homeowner. If the homeowner would rent the house to others on a regular basis and there was a steady turnover of residents, even if one found lost items inside the house, these belong to him. Since the owner of the lost items cannot be identified based on location, he will certainly despair of recovering his lost items.

GEMARA The mishna teaches that if one found a lost item in a heap of rubble or in an old wall it belongs to him. The Sages taught in a *baraita*: It is his due to the fact that when the owner of the heap or wall claims the property, the finder can say to him: They belong to the Amorites,ⁿ who lived in Eretz Yisrael before it was conquered by the Jews. The Gemara asks: Is that to say that Amorites conceal items but Jews do not conceal items? Perhaps it was the homeowner who placed the item in the wall or the heap. The Gemara answers: No, the *baraita* is necessary only in the specific case

NOTES
If one found lost items in a heap of stone rubble or in an old wall – **בְּגָל וּבְכֹתֶל יִשְׁן**: The early commentaries ask why the owner of the heap of rubble does not acquire the item by means of his courtyard. Some explain that this mode of acquisition is effective only with regard to easily found items, not concealed items that may never be discovered (*Tosafot*; *Rashba*; *Rosh*). The *Ra'avad* explains that the heap in question is not located in the courtyard.

של אַמּוֹרִים הָן: Property that previously had belonged to the Amorites was acquired by the entire Jewish people with their conquest of Eretz Yisrael and does not belong to any individual or tribe.

HALAKHA

If one found lost items in a heap of stone rubble or in an old wall...in a new wall – **בְּכֹתֶל חָדֵשׁ**: If one found an item in a heap of rubble, or in an old wall whose builder's identity was long forgotten, or if the item is rusted or discovered deep in a recess in the wall, it belongs to the finder, as presumably it was placed there by gentiles in antiquity. If the item appears to have been newly concealed, the finder may not touch it. In a case where an item was found in a new wall, if it is found in the inner half of the recess in the wall, it belongs to the owner of the courtyard. If it is found in the outer half of that recess, it belongs to the finder (*Rambam Sefer Nezikin, Hilkhot Gezeila VaAveda* 16:9; *Shulchan Arukh, Hoshen Mishpat* 260:1).

Perek II

Daf 26 Amud a

דְּשַׁתִּיק טַפִּי.

**בְּכֹתֶל חָדֵשׁ מִחְזִיוֹ וְלֹחֵז שָׁלוֹ
מִחְזִיוֹ וְלֹפְגִים שָׁלָל בָּעֵל הַבַּיִת.**

**אמֶר רַב אַשִּׁי: סְכִינָא – בַּתְּרַ קְּתָא.
וְכִיסָּא בַּתְּרַ שְׂנִיצִיה.**

where the item is extremely rusted,ⁿ indicating that it had been left there for a long time.

§ The mishna teaches: If one found lost items in a new wall^h from its midpoint and outward,ⁿ they belong to him. But if he found the items from its midpoint and inward, they belong to the homeowner.

Rav Ashi said: The determination of ownership with regard to a knife found in a wall follows the handle, and the determination of ownership with regard to a money pouch^b follows the laces at the opening of the pouch. If the handle or laces face inward, they belong to the homeowner. If the handle or laces face outward, they belong to the finder.

**וְאֶלְאָ מִתְנִיתִין, דְּשַׁתִּיק מִחְזִיוֹ וְלֹחֵז
שָׁלוֹ מִחְזִיוֹ וְלֹפְגִים שָׁלָל בָּעֵל הַבַּיִת,
וְלֹחֵז אֲלֹקָה לְגַאוֹ אֵי קְתָא לְבָרָא, אֵי
שְׂנִיצִיה לְגַאוֹ אֵי שְׂנִיצִיה לְבָרָא! מִתְנִיתִין
בָּאַיְדָרָא וּנְסָכָא.**

The Gemara asks: But if so, what is the applicability of the ruling of the mishna, which teaches: If one found lost items in a new wall from its midpoint and outward, they belong to him, and from its midpoint and inward, they belong to the homeowner? But instead, to determine ownership, let us see if its handle faces inward or if its handle faces outward, or if its straps face inward or if its straps face outward. The Gemara answers: The mishna is referring to a case where one found rags or metal strips.

NOTES
Where the item is extremely rusted – **דְּשַׁתִּיק טַפִּי**: The Sages do not expect one to determine whether the item actually belonged to the Amorites based on the degree of rust. Rather, if it is extremely rusted, even if it belonged to a Jewish owner, he has already despaired of its recovery (*Ritva*).

Some say that the Rambam had a variant reading of this term. Instead of *shetikh*, meaning rusted, it read *shetit*, meaning buried deep in the heap of rubble, not near the surface (*Haggahot HaGra*).

In a new wall – **בְּכֹתֶל חָדֵשׁ**: The early commentaries ask why, given that the very presence of the item in a hollow in the wall

is an indication that it was placed there, one is permitted to take it. They answer that this is also referring to a case where the item is extremely rusted and therefore one may presume that the owner despairs of its recovery (*Tosafot*; *Rosh*).

From its midpoint and outward – **מִחוֹצֵוֹ לְחָצֵן**: Some commentaries explain that although one might have thought that even if the item had not initially belonged to the owner of the wall he should acquire it by means of his courtyard, this is not the case. Since the outer half of the wall is unsecured, the acquisition does not take effect, as one does not acquire an item by means of an unsecured courtyard (*Rashba*).

HALAKHA

In a new wall – **בְּכֹתֶל חָדֵשׁ**: If one found items in the hollow of a new wall and those items fill the entire hollow, the finder and the owner split the items, even if the wall is inclined and it is possible that the items moved from the higher side of the hollow to the lower side. If one found an item typically stored in a hollow in a wall, e.g., a knife or a pouch, then ownership is determined by the direction that the handle of the knife or the straps of the pouch are facing. If they face the courtyard, it belongs to the owner; if it faces the public domain, it belongs to the finder. If the homeowner does not claim ownership, it belongs to the finder regardless of the circumstances (*Rambam Sefer Nezikin, Hilkhot Gezeila VaAveda* 16:9, 11; *Shulchan Arukh, Hoshen Mishpat* 260:1-2).

BACKGROUND

Pouch – **כִּיסָּא**:



Money pouch like those from the bar Kokheva era

HALAKHA

Would rent to others – **הַיְהּ מִשְׁכָּרֶוּ לְאֶחָדִים**: Any lost item found in a house that is regularly rented to others belongs to the most recent renter. If it was rented to three gentiles, any items found in the house or on the property belong to the finder. This is in accordance with the ruling of the Rif and the Rambam. They hold that Rava (26b) disagrees with Rav Nahman, who says that the item belongs to the finder even if the house was rented to three Jews. The halakha is in accordance with the opinion of Rava, as he was the latter, chronologically, of the two Sages (Rambam Sefer Nezikin, Hilkhot Gezeila VaAveda 16:11; Shulchan Arukh, Hoshen Mishpat 260:3).

Money that was found – **מִעוּdot שְׁנָמֵצָא**: In the case of one who found money in Jerusalem during the period when the Temple was standing, the money is non-sacred. Since the streets are swept each day, presumably the money that he found fell that day. If he found the money during a pilgrimage Festival, the presumptive status of the money is that of second-tithe money. If the money was discovered before animal merchants in Jerusalem at any time of year, its presumptive status is that of second-tithe money. With regard to money found on the Temple Mount, even during a Festival, its presumptive status is that of non-sacred money (Rambam Sefer Zera'im, Hilkhot Ma'aser Sheni 6:9–10).

NOTES

בָּרוּךְ הַבֵּית – **בְּתִילָן**: The later commentaries ask: Why not say that just as one acquires items by means of his courtyard, let the Temple treasury acquire the coins on the Temple Mount in the same manner, thereby rendering the coins sacred (*Ketzot HaHoshen*)? Some answer that the courtyard of the Temple does not effect acquisition for the Temple treasury (*Magen Avraham*). Others explain that although theoretically acquisition by means of a courtyard would take effect in the Temple courtyard, in practice, since it is frequented by the multitudes, it is an unsecured courtyard, and acquisition by means of an unsecured courtyard does not take effect (see *Hatam Sofer* and *Ma'ayanei HaHokhma*).

During the Festival all money is second-tithe money – **בְּשִׁיעַת הַרְגֵל הַכֹּל מַעֲשֵׂר**: As there is no time frame during which the tithe money must be brought to Jerusalem, people generally did not make a special trip to take the produce or money to Jerusalem. Most people brought their second-tithe money with them when they ascended to Jerusalem to observe the three pilgrimage Festivals. During those Festivals, with so many people entering the city with tithe money in so concentrated a time frame, most of the money in circulation, especially among the animal merchants, was second-tithe money.

LANGUAGE

Inn [pundak] – **פּוֹנְדָק**: From the Greek πανδοκεῖον, *pandokeion*, meaning guest house or hotel.

תְּנָא: אִם הִיה כּוֹתֶל מִמּוּלָא מִהְנָן –
חוֹלְקִין, פְּשִׁיטָא! לֹא צִרְכָא דְּמִשְׁפָע בְּחֵד
גִּיסָּא, מְהוּ דְּתִימָא אֲשַׁתְּפּוּכִי אִישְׁתּוֹפּוֹ,
קְאָמְשָׁמָעַן.

It is taught: If the hollow in the wall was filled with lost items, e.g., coins, the homeowner and the finder divide them. The Gemara asks: Isn't that obvious? The Gemara answers: No, it is necessary to teach this only in a case where the hollow in the wall is inclined toward one side of the wall. Lest you say that all the items were initially on the elevated side, and due to the incline they slipped and filled the entire space, the tanna teaches us that the homeowner and the finder divide them.

אִם הִיה מִשְׁכָּרֶוּ לְאֶחָדִים אֲפִילוּ מִצְּאָה
בְּתוֹךְ הַבֵּית הַרְגֵל אַלְוָלֶוּ. וְאַמְּאֵי? לִיְיָלֶל!
בְּתַר בְּתַרְאָ!

מִלְאָתָן: מִעוּdot שְׁנָמֵצָא לְפִנֵּי סֻתָּרִי
בְּהַמָּה – לְעוֹלָם מַעֲשֵׂר, בָּרוּךְ הַבֵּית –
חוֹלְקִין.

וּבְיוֹרָשִׁים, בְּשָׁאָר יְמֹת הַשָּׁנָה –
חוֹלְקִין.
בְּשִׁיעַת הַרְגֵל – הַכֹּל מַעֲשֵׂר.

וְאָמַר וּבְשִׁמְעֵיהֶ בָּר זֵ'ירָא: מַאי טַעֲמָא –
הַזָּאֵל יְשֻׁוּקִי יוֹשְׁלִים עַשְׂיוֹן לְהַתְּבִּיבָד
בְּכָל יוֹם. אַלְמָא אַמְּרִין: קְמָא קְמָא
אַזְוֵל, וְהַנְּאָחָרִין נִנְהָה. הַכָּא נִמְיָ, קְמָא
קְמָא אַזְוֵל וְהַנְּאָחָרִין דְּבַתְּרָא הוּא!

אָמַר רֵישׁ לְקִישׁ מִשּׁוּם בָּר קְפָּרָא: בְּגֹנֶן
שְׁעַשְׁאוּ פּוֹנְדָק לְשָׁלֶשֶׁה יִשְׂרָאֵל.

§ The mishna teaches: If the homeowner would rent the house to others^h on a regular basis and there was a steady turnover of residents, even if one found lost items inside the house, these belong to him. The Gemara asks: And why do they belong to the finder? Let us follow the last renter and determine that he is the owner of the items.

Did we learn in a mishna (Shekalim 7:2): With regard to money that was found^h before animal merchants in Jerusalem, it is always assumed to be money of the second tithe, as most of the animals purchased in Jerusalem were bought with second-tithe money. This halakha applies both during a Festival and throughout the year, as people would typically purchase animals for meat with their second-tithe money. If the money was found on the Temple Mount it is considered non-sacredⁿ money. This halakha applies even during a Festival, when people would come to Jerusalem with second-tithe money in hand, as it can be assumed that one who entered the Temple Mount had already spent that money and only non-sacred money is left in his possession.

The mishna continues: And if the coins were found elsewhere in Jerusalem, the following distinction applies: If it was found during the rest of the days of the year, it is considered non-sacred money. But if the money was found during the Festival, when many people would come to Jerusalem with their second-tithe money, all money is presumed to be second-tithe money.^{NB}

And Rav Shemaya bar Ze'eira says in explanation of the mishna: What is the reason that during the rest of the year the money is considered non-sacred, even on the day after the Festival? Since the markets of Jerusalem tend to be cleaned every day, any money left there would already have been found by the street cleaners. Consequently, any money found there must have been left there recently. Apparently, we say that each of the first coins is gone, and these coins are other ones, i.e., they were left there after the conclusion of the Festival. Here too, with regard to lost items found in a rented house, why not say that the items belonging to each of the first renters are gone and these items belong to the last renter?

Reish Lakish said in the name of bar Kappara: The mishna that states that the item belongs to the finder is referring to a case where the homeowner rendered his house an inn [pundak]^l for three Jews. Since it is unclear to which of them the item belonged, the owner despairs of its recovery.

Second-tithe money – **מִעוּdot מַעֲשֵׂר שְׁנִי**: Second tithe is one-tenth of the produce that remains after teruma is separated for the priests and first tithe is separated for the Levites. Second tithe was taken during the first, second, fourth, and fifth years of the Sabbatical cycle. After the second tithe was separated, it was brought to Jerusalem and consumed there by its owner. The Torah permitted redemption of the second-tithe produce; in

such a case, the owner was required to take the redemption money to Jerusalem, purchase food with it, and consume the food there, within the city walls, as it is written: "And thou shall bestow the money for whatsoever thy soul desires, for oxen, or for sheep, or for wine, or for strong drink, or for whatsoever thy soul asks of you; and thou shalt eat there before the Lord your God" (Deuteronomy 14:26).

BACKGROUND

שְׁמַע מִינֶּה הָלַכָּה בָּרְבִּי שְׁמַעוֹן בֶּן אַלְשָׁוּר
אֲפִילוּ בָּרוּב יִשְׂרָאֵל!

אֲלֹא אָמָר רַב מְנַשְּׁיָּא בָּר יַעֲקֹב: כִּגְ�זַע
שְׁעַשָּׂאוּ פּוֹנְדָק לְשָׁלַחַת נָגָרִים.

בְּבִנְמַנְןָ אָמָר רַבָּה בָּר אַבְבוֹה: אֲפִילוּ תִּמְאָם
לְשָׁלַחַת יִשְׂרָאֵל, מַאי טֻמָּא? הַהוּא דַּנְפֵל
מִינֵּה מִיאָשׁ. מִימּוֹר אָמָר: מִכְדִּי אַיִשׁ
אֲחִירִינָא לֹא הָהָה בְּהָדִי אַלְאָ דָמִי, אֲפִילוּ
קְמִינֵּה כִּפְרָה וּמַנִּי לְהִדְרוֹלִי, וְלֹא הִדְרוֹלִי,
הַשְׁׁתָּא לְהִדְרוֹלִי? אִי דַעַתְּיָהוּ לְאַהֲדָרוֹתָה
אַהֲדָרוֹתָה נִתְהַלֵּי, וְהָא דָלָא אַהֲדָרוֹתָה לִי
בְּדַעַתְּיָהוּ לְמִינְיָה.

The Gemara previously (see 24a) raised a dilemma with regard to the *halakha* stated by Rabbi Shimon ben Elazar that a lost item found in a location frequented by the multitudes belongs to the finder. Is the *halakha* in accordance with his ruling? Moreover, is his ruling specifically with regard to a location with a gentile majority, or is it even applicable in a location with a Jewish majority? Based on the opinion of bar Kappara, the Gemara suggests: **Conclude from it that the *halakha* is in accordance with the opinion of Rabbi Shimon ben Elazar even in a location with a Jewish majority.**

The Gemara rejects this conclusion, and presents an alternative explanation of the latter clause of the mishna. **Rather, Rav Menashya bar Ya'akov said:** The mishna is referring to a case where he rendered his house an inn for three gentiles.^N According to that explanation, perhaps Rabbi Shimon ben Elazar issued his ruling specifically in a location with a gentile majority.

Rav Nahman said that **Rabba bar Avuh said:** Even if you say that the owner rendered his house an inn for three Jews, one cannot conclude that Rabbi Shimon ben Elazar issued his ruling even in an area with a Jewish majority. **What is the reason** that the item belongs to the finder? It is because the person from whom the item fell despairs of its recovery. The one who lost the item says: Now, no other person was with me here, only these residents of the inn. I said in their presence several times to return the item to me, and they did not return it to me; and is it likely that now they are going to return it? If their intention was to return the item, they would have already returned it to me, and the fact that they did not yet return it to me indicates that it is their intention to rob me of the item.

And Rav Nahman follows his standard line of reasoning, as Rav Nahman says: If one saw a *sela* coin

NOTES
For three gentiles – **לְשָׁלַחַת נָגָרִים**: Rashi, as well as the Rashba, the Rosh, and the Ran, explain that this *halakha* applies not only in a case where there were three gentiles; the same would be true if there were only one gentile guest. Others say it is the *halakha* only in a case where there were at least three gentiles, as only then is there a sufficiently significant gentile presence for the location to be considered to have a gentile majority (*Tosafot*). Some understand that this is the *halakha* in a case where there were at least three people and a majority of them were gentiles (Ra'avad).

Perek II

Daf 26 Amud b

שְׁנַפֵּל מִשְׁנִים – חִיב לְהַחֹזֵיר. מַאי טֻמָּא?
הַהוּא דַּנְפֵל מִינֵּה לֹא מִיאָשׁ. מִימּוֹר אָמָר:
מִכְדִּי אַיִשׁ אֲחִירִינָא לֹא הָהָה בְּהָדִי אַלְאָ
הָאִי, נִקְרְטָנָא לִיהְיָה וְאַמְּנָנָא לִיהְיָה: אַנְתָּה הוּא
דְּשָׁקְלִתְהָ!

that fell from one of two people, he is **obligated to return it**. **What is the reason?** The person from whom the *sela* fell does not despair of recovering it. **He says:** After all, no other person was with me, only this one who was with me, as he is unaware that the *sela* was found by a third party. He therefore thinks: **I will seize him^N and say to him: It is you who took it.**

בְּשָׁלַחַת אַינוֹ חִיב לְהַחֹזֵיר, מַאי טֻמָּא?
הַהוּא דַּנְפֵל מִינֵּה וְרַא מִיאָשׁ. מִימּוֹר אָמָר:
מִכְדִּי תְּרֵי בְּהָדָאי, אַיִ נִקְרְטָנָא לְהָאִי –
אמָר: לֹא שְׁקָלִתְהָ, וְאַיִ נִקְרְטָנָא לְהָאִי –
אמָר: לֹא שְׁקָלִתְהָ.

In a case where the coin fell from one of three people, the finder is **not obligated to return it**. **What is the reason?** The person from whom the *sela* fell **certainly despairs** of recovering it. **He says:** After all, two other people were with me. **If I seize this one, he will say: I did not take it. And if I seize that one, he will say: I did not take it.** Since he cannot make an definitive claim, he despairs of recovering his coin.

אָמָר רַבָּא: הָאִי דְּאָמָרָת בְּשָׁלַחַת אַינוֹ
חִיב לְהַחֹזֵיר – לֹא אַמְּנָנָא לְלִיטָה בֵּיהָ
שְׁוֹהָ פּוֹתַחַתָּה לְכָל חָדְרָה, אַבְלָא אַיִתָּה בֵּיהָ
שְׁוֹהָ פּוֹתַחַתָּה לְכָל חָדְרָה – חִיב לְהַחֹזֵיר.
מַאי טֻמָּא? אִيمּוֹר שׁוֹתְפִּי נִנְהָג, וְלֹא
מִאֲשָׁוּשָׁא.

Based on the fact that by Torah law, one must return a lost item to its owner only if it is worth one *peruta*, **Rava said:** With regard to that which you said, that in a case where the coin fell from one of three people the finder is **not obligated to return it**,^H we said this **only in a case where** the total value of the lost coin, when divided by three, **does not amount to the value of one *peruta* for each and every one of them**; but if it amounts to the **value of one *peruta* for each and every one of them**, he is **obligated to return it**. **What is the reason?** Say that perhaps they are partners, i.e., they own the coin jointly; consequently, **they do not despair**, as each assumes that one of the other two found it and is holding it for the three of them.

NOTES
I will seize him – **קְרַטְנָא לִיהְיָה**: Rashi explains that the person who lost the coin will compel the other person to take an oath of inducement, i.e., an oath instituted by the Sages for defendants who completely deny a claim. Other early commentaries question this interpretation, as although some claim that an oath of inducement is a tannaitic ordinance, most commentaries agree that it had not yet been instituted during the time of bar Kappara (see *Torat Hayim*). The Rosh contends that even if the other person takes an oath the owner of the coin will not despair; he will suspect that the other person lied and employ alternative methods to recover his coin. Consequently, the Rosh and the Ritva explain that the one who lost the coin will seize the other person, chastising and shaming him until he returns the coin.

HALAKHA

In a case of three people the finder is not obligated to return it – **בְּשָׁלַחַת אַינוֹ חִיב לְהַחֹזֵיר**: In a case where an outsider finds a coin lost by several partners, even if the coin is valuable, if none of the partners owns a share worth at least one *peruta*, the finder need not return it. This is the *halakha* only in a case where the finder knows that it is owned by all the partners. If he is not certain of that fact, e.g., if he saw an item worth two *perutot* fall from three people and so he does not know whether it belonged to all three of them or only to two of them, then he must return it (Rambam *Sefer Nezikin, Hilkhot Gezila VaAveda* 14:8; *Shulhan Arukh, Hoshen Mishpat* 262:2, 4).

HALAKHA

מצוות השבת אֶחָדָה: The mitzva of returning a lost item – One who sees a lost item belonging to a Jew is obligated to tend to it until he can return it to its owner, as it is written: "You shall return them to your brother." If he took the item with the intent to steal it, before the owner despaired of its recovery, he has violated the prohibition of: "You shall not...rob," the positive mitzva of: "You shall return them to your brother," and the prohibition of: "You may not disregard." Even if the finder subsequently returns the item, he remains in violation of the prohibition of: "You may not disregard."

If the finder took the item with the intention of returning it, before the owner despaired, and then he decided to keep it, he has violated the prohibition of: "You shall not...rob," and the positive mitzva of: "You shall return them to your brother." If he waited and took the item only after the owner despaired, he has violated only the prohibition of: "You may not disregard," in accordance with the opinion of Rava (Rambam Sefer Nezikin, Hilkhot Gezeila VaAveda 14:6-7; Shulhan Arukh, Hoshen Mishpat 259:1).

Who sees that a dinar coin falls from another into the sand – דְּחִוּ דַּגְּלֵל וְיִזְחַבְּנֵה בַּיּוֹתְרָה: If one sees a coin or other item drop from another person into the sand, it belongs to the finder, because the owner certainly despairs of recovering the lost item. Even if the finder subsequently sees the owner sifting through the sand searching for the item, he need not return his find, in accordance with the statement of Rava (Rambam Sefer Nezikin, Hilkhot Gezeila VaAveda 14:9; Shulhan Arukh, Hoshen Mishpat 262:14).

אִיבָּא דָאָמַר, אָמַר רְبָא: אַף עַל גַּב
דְּלִית בֵּיהֶן אֶלְאָ שָׁווֹת פְּרוּטוֹת חִיבָּר
לְהַחֲזֵיר. מַאי טָעֵמָא? אִימָּרוּ שָׂוֹתִיף
מִנְהָה, וְתַדְּ מִנְהָה אֶחָדָה אֶחָלֵיהֶן לְמִנְהָה
גַּבְּ תְּבִרִיהֶן.

וְאָמַר רְבָא: רָאָה סְלֻעָה שְׁגַפְלָה, נְטַלָּה
לִפְנֵי יָאוֹשׁ עַל מַנְתָּה לְגַזְוָלָה – עֹזֶב
כִּכְלָן, מִשּׁוּם "לְאַתָּגָול" וּמִשּׁוּם "הַשְּׁבָת תְּשִׁיבָם"
אַף עַל גַּב דְּחַרְחָה לְאַחֲרֵי יָאוֹשׁ – מִתְנָהָה
הַוָּא דִּיחַבְּלָה, וְאִיסְרָאָרָה דָעֶבֶד – עֶבֶד.

נְטַלָּה לִפְנֵי יָאוֹשׁ עַל מַנְתָּה לְהַחֲזֵירָה,
וְלֹאַחֲרֵי יָאוֹשׁ נְתַבֵּין לְגַזְוָלָה – עֹזֶב
מִשּׁוּם "הַשְּׁבָת תְּשִׁיבָם".

הַמְתַנָּה לְהַעֲדָה שְׁנַתְיָאָשׁוּ הַבְּעָלִים
וּנְטַלָּה – אַינוּ עֹזֶב אֶלְאָ מִשּׁוּם "לֹא
תוֹכֵל לְהַתְּעִילָם" בְּלֹבֶד.

אָמַר רְבָא: הָאֵי מָאן דְּחִוּ דַּגְּלֵל וּזְוּיִן
מִחְבְּרָה בַּיּוֹתְרָה, וְאַשְׁכְּחָה וְשְׁקָלָה –
לֹא מִיחַיֵּב לְאַהֲדוֹיו לָהּ. מַאי טָעֵמָא –
הַוָּא דַּגְּלֵל מִינָה מִיאָשׁ הַוָּא, אַף עַל
גַּב דְּחִיָּיה דָאַיִתִי אַרְבָּלָא וְקָא מַרְבָּל –
מִיּוֹרָ אָמָר: בַּיּוֹתְרָה דַּגְּלֵל מִיאָשׁ דִּיִּי –
הַכִּי גַּפְול מִאִינְשׁ אֶחָרֵינוּ, וּמִשְׁחַנְנוּ
מִיּוֹן.

There are those who say that Rava said: Even if its total value is only two *perutot*,^N which is insufficient to provide each of the three partners with one *peruta*, one is **obligated to return it**. **What is the reason?** Say that perhaps they are partners and one relinquishes his share to another. In that case, the remaining two partners each have a one *peruta* share, rendering the finder liable to return it.

§ And Rava says: In a case where **one saw a sela coin that fell from another, if he took the coin in order to steal it, before the despair of the owner, he violates all of the following mitzvot:** He is liable due to the prohibition: "**You shall not...rob**" (Leviticus 19:13); and due to the positive mitzva, stated with regard to found items, of: "**You shall return them to your brother**" (Deuteronomy 22:1),^H and due to the prohibition, stated with regard to one who finds an item: "**You may not disregard**" (Deuteronomy 22:3). **And even if he returned it^N after the despair of the owner, it is merely a gift that he gave him; and the transgression that he performed, he performed, and he remains in violation of these mitzvot.**

Rava continues: If he took the coin in order to return it, before the despair of the owner, and then, after the despair of the owner, he intended to steal it; he violates a commandment, due to his failure to fulfill the positive mitzva of: "**You shall return them to your brother**" He does not violate the prohibition: "You shall not...rob," because at the time he took the coin he did not intend to keep it. And he does not violate the prohibition: "You may not disregard," because he did not disregard the lost item. He took it with the intention of returning it.

If he waited until the owner despaired of recovering the lost item and only then took it, he violates a commandment, but only due to his failure to fulfill the positive mitzva of: "You may not disregard,"^N as he took no action to return the lost item to its owner.

Rava says: In the case of this person who saw that a dinar coin fell from another into the sand,^{HN} and then he found it and took it, he is not obligated to return it to its owner. What is the reason? The reason is that the one from whom the money fell despairs of finding it. Even if the finder sees that the owner brought a sifter and is sifting through the sand, ostensibly indicating that he did not despair of finding his coin, perhaps the owner is saying: Just as a coin fell from me in the sand, so too, a coin fell from another person and I will find some item to offset my loss.

NOTES

Its value is...two perutot – שָׁוֹה שְׁתִּי פְּרוּטוֹת: If the coin is worth less than two *perutot* he need not return it, as it is unlikely that two people will cede their respective portions to a third person (Rosh).

And even if he returned it, etc. – אַף עַל גַּב דְּחַרְחָה כּוֹן: The early commentaries maintain that this statement, which says that he remains in violation of the various mitzvot, is an explanation added by Rav Yehudai Gaon that was nevertheless incorporated into most versions of the Gemara. Tosafot and the Ba'al HaMaor note that the prohibition against robbery is a prohibition that entails fulfillment of a positive mitzva, as every robber is required to return the stolen property, and they ask why the transgression is not rectified once he returns the stolen goods. Based on that question, the Ra'avad deletes the statement from his version of the text.

The Ramban distinguishes between a case of robbery and the case of a lost item. In the case of robbery, the owner's despair over recovering the item does not transfer ownership to the robber; therefore, the return of the stolen item rectifies the transgression. By contrast, in the case of a lost item there is a Torah edict that the owner's despair transfers ownership to the finder. If he does not return the item before the owner despairs, the return of the item no longer rectifies the transgression. Others distinguish between the mitzva to return a stolen item, which remains in effect forever, and the mitzva to return a lost item, which remains in effect only until the owner despairs (Radbaz).

He violates a commandment, but only "you may not disregard" – אַינוּ עֹזֶב אֶלְאָ מִשּׁוּם לֹא תַּוְكֵל לְהַתְּعִילָם בְּלֹבֶד: The word: Only, is removed in the version of the text of the Rambam and

the Ba'al HaMaor, because they hold that he also fails to fulfill the positive mitzva: "You shall return them to your brother." Others contend that one's obligation to return a lost item commences only from the moment that he takes possession of it (see Rosh and Ra'avad).

רַגְּלַיִן זְוּיִן: מִחְבְּרָה בַּיּוֹתְרָה: Some say that the halakha in this situation is like that of a situation when items are swept away by the tide of the sea (21b), with regard to which there is no obligation to return them even if the owner does not despair of recovering them (Ritva). Others explain that since there are no distinguishing marks on the lost item, the conclusion is that in the absence of proof to the contrary, apparently the owner despairs of its recovery (Rivash).

מַתָּנִי מִצְאָת בְּחֻנּוֹת – הַרְיָ אֵלֹ שָׁלוֹ,
בֵּין הַתְּבִיבָה וְלַחֲנָנוּ – שֶׁל חֲנָנוּ. לִפְנֵי
שְׁוֹלְחָנִי – הַרְיָ אֵלֹ שָׁלוֹ, בֵּין הַכְּפָא
וְלַשְׁוֹלְחָנִי – הַרְיָ אֵלֹ שֶׁל שְׁוֹלְחָנִי.

הַלּוּקָחַ פִּירּוֹת מִחְבָּרוֹ אוֹ שְׁשִׁילָחַ
לוֹ מִחְבָּרוֹ פִּירּוֹת, וּמִצְאָת בְּחֻנּוֹת –
הַרְיָ אֵלֹ שָׁלוֹ. אָם הִי צְרוּרִין – נִטְלָל
וּמְכָרָיו.

אמ' אמר רבי אלעזר: אַפִּילוּ מִוְתָּחִין
עַל גַּבְיוֹ שְׁוֹלְחָן.

תַּנִּינָה: לִפְנֵי שְׁוֹלְחָנִי – הַרְיָ אֵלֹ שָׁלוֹ,
הָא עַל גַּבְיוֹ שְׁוֹלְחָן – רַשְׁוֹלְחָנִי. אִימָא
סִיפָּא: בֵּין הַכְּפָא וְלַשְׁוֹלְחָנִי – שֶׁל
שְׁוֹלְחָנִי, הָא עַל גַּבְיוֹ שְׁוֹלְחָן – שָׁלוֹ.
אַלְאָ, מַהְאָ לִיכָּא לְמַשְׁמָעַ מִנָּה.

רַבִּי אַלְעָזָר, הָא מַנָּא לְיהָ? אָמָר רַבָּא:
מִתְיִתְנֵן קְשִׁיטִיתָה, פָּאֵי אַרְיָא דְּתַעַבְנִי
הַכְּפָא לְשְׁוֹלְחָנִי שֶׁל שְׁוֹלְחָנִי? לִתְנֵן
עַל שְׁוֹלְחָן, אֵי נִמְיָה: מִצְאָת בְּשְׁוֹלְחָנוֹת.
בָּרוּתָנִי רִישָׁא: מִצְאָת בְּחֻנּוֹת – שָׁלוֹ.
אַלְאָ שְׁבָעַ מִנָּה: אַפִּילוּ מִוְתָּחִין עַל
גַּבְיוֹ שְׁוֹלְחָן – הַרְיָ אֵלֹ שָׁלוֹ.

"הַלּוּקָחַ פִּירּוֹת מִחְבָּרוֹ" וכו'. אָמָר
רֵישׁ לְקִישׁ מִשּׁוּם רַבִּי נַיָּא: לֹא שָׁנָן
אַלְעָזָר

MISHNA If one found items without a distinguishing mark in a store,^N those items belong to him, as, since the store is frequented by the multitudes, the owner despairs of its recovery. If the items were found between the storekeeper's counter and the storekeeper, the items belong to the storekeeper; since his customers do not typically have access to that area, presumably the items are his. If one found coins before a money changer,^H those coins belong to him. If the coins were found between the money changer's chair and the money changer, those coins belong to the money changer, because his clients do not typically have access to that area.

In the case of one who purchases produce from another or in a case where another sent him produce as a gift, and he found coins intermingled with the produce, those coins belong to him. If the coins were bundled, this serves as a distinguishing mark and the finder takes the coins and proclaims his find.

GEMARA The mishna teaches that if one found coins before a money changer, those coins belong to him. Rabbi Elazar says: Even if the coins were found placed^N upon the table itself they belong to the finder.

The Gemara challenges: We learned in the mishna: If one found coins before a money changer, those coins belong to him; this indicates by inference that if they were found upon the table, the coins belong to the money changer. The Gemara responds: Say the latter clause of the mishna: If the coins were found between the money changer's chair and the money changer, those coins belong to the money changer; this indicates by inference that if they were found upon the table, the coins belong to the finder. The Gemara concludes: Rather, due to the contradictory inferences from the first and the latter clauses, no inference is to be learned from this mishna.^B

The Gemara asks: And Rabbi Elazar himself, from where does he derive this halakha that coins found on the table belong to the finder, given that apparently one cannot infer this ruling from the mishna? Rava said: The mishna is difficult for him: Why did the tanna teach specifically that when the coins are found between the money changer's chair and the money changer, those coins belong to the money changer? Let the tanna teach instead: If the coins were found on the table, or: If the coins were found in the money-changing establishment, as it is taught in the first clause of the mishna: If one found items without a distinguishing mark in a store, those items belong to him. Rather, learn from it that since the money changer typically places his money in his drawer, even if the coins were found placed upon the table itself these coins belong to him.

§ The mishna teaches: In the case of one who purchases produce from another, and he found coins intermingled with the produce, those coins belong to him. Reish Lakish says in the name of Rabbi Yannai: The Sages taught this only

NOTES
בְּצֹא בְּחֻנּוֹת: The early commentaries ask: Why doesn't the storekeeper acquire the item found in his store by means of his courtyard? Some explain that since it is likely that others will discover the item before the storekeeper does, the store is not considered a courtyard that is consciously secured by its owners (Rosh). Others say that because the storekeeper encourages people to patronize his store, its legal status is that of a public area, and it is not considered his courtyard (Rashba).

Even placed – אַפְּלִילוּ מִוְתָּחִין: Many early commentaries cite a variant version of the text which reads: Even bound upon the table, as they maintain that even if there is a distinguishing mark on the item it belongs to the finder. The Ra'avad holds that the money belongs to the finder specifically if it is bound, because customers, not money changers, commonly bind their money. The very fact that the money is bound proves that it belongs to the customer.

HALAKHA

מִצְאָת בְּחֻנּוֹת...לִפְנֵי שְׁוֹלְחָנִי: If one found an item without a distinguishing mark in a store between the table and the storeowner, it belongs to the storeowner. If he found it elsewhere in the store, it belongs to the finder. If it was found on the table, it belongs to the finder; and some say it belongs to the storeowner (Rema, citing Tur).

If one found money before a money changer on the table or before the table, it belongs to the finder. If he found it between the table and the money changer it belongs to the money changer (Rambam Sefer Nezikin, Hilkhot Gezeila VaAveda 16:4-5; Shulchan Arukh, Hoshen Mishpat 260:5).

No inference is to be learned from this mishna – מַהְאָ לִיכָּא מִשְׁבָּעַ מִנָּה: This expression, found throughout the Gemara, concludes the refutation of an inference. Inference is employed in the Gemara as a method of interpretation used to draw conclusions from tannaitic sources. According to this method, inferences may be drawn not only from what is explicitly stated in a mishna or baraita, but also from what is left unsaid. One

manner in which an inference may be rejected is by illustrating that another part of the same mishna or baraita can lead to the opposite conclusion. In such cases the Gemara concludes: No inference is to be learned from this, indicating that this mishna or baraita was not composed in a manner that lends itself to drawing conclusions by means of inference. Rather, it is to be accepted as written, without reading into it further.

Perek II
Daf 27 Amud a

HALAKHA

One who purchases produce from a merchant...from an owner – **לֹא קָחَ מִן הַתְּגִידָר מִבְּעֵל הַבֵּית**: In a case where one purchased or received a gift of produce from a merchant and found coins among the produce, if the coins were bound, he must proclaim his find. If the coins were scattered among the produce, they belong to the finder. If they were purchased or received from one who himself or whose slaves tend to the produce personally, he is obligated to return the coins to the owner (Rambam Sefer Nezakin, Hilkhot Gezeila VaAveda 16:6; Shulhan Arukh, Hoshen Mishpat 262:17).

Any item in which there are distinguishing marks and it has claimants – **דָּבָר שֶׁשְׁיַתְּבִּין בְּיָמָנֵינוּ וְיַשְׁלִיחַ תּוֹעֲשָׂים**: One is obligated to return any lost item with distinguishing marks that has claimants. If the owner despaired of its recovery, one need not return it (Rambam Sefer Nezakin, Hilkhot Gezeila VaAveda 14:1; Shulhan Arukh, Hoshen Mishpat 259:3, 262:3).

A donkey is returned where he describes distinguishing marks on the saddle – **כְּמוֹ בְּסִימֵנֵי הַאֲכִיר**: Even if there are no distinguishing marks on the item or animal itself, if there are distinguishing marks on its accessory one must return the item or animal (Rambam Sefer Nezakin, Hilkhot Gezeila VaAveda 14:1; Shulhan Arukh, Hoshen Mishpat 262:18).

NOTES

Should I delete it – **אִיסְמִיה**: The Sages who recited tannaitic literature in the amoraic study halls would recite different *baraitot*. Some *baraitot*, which originated in the more established study halls, were precisely formulated. Others were collections of statements of *tanna'im* from several generations, and their formulation was less precise. One of the tasks of the Sages was to confirm the authenticity of the *baraitot* and their meaning. Occasionally, they would conclude with regard to one of the *baraitot* that all or part of it should be deleted because it was inaccurate or otherwise flawed.

בְּלֹקֶחֶם מִן הַתְּגִידָר, אֲכָל בְּלֹקֶחֶם מִבְּעֵל הַבֵּית – חַיֵּב לְהַחֵר. וְכֵן תְּנַא קָמִיה דָּרְבָ נַחֲמָן: לֹא שָׁנוּ אֶלְאָכָל בְּלֹקֶחֶם מִן הַתְּגִידָר, אֲכָל בְּלֹקֶחֶם מִבְּעֵל הַבֵּית – חַיֵּב לְהַחֵר.

in the case of one who purchases produce from a merchant, who acquired the produce from several suppliers and is unable to determine the source of the coins. But in the case of one who purchases produce from a single owner,^h he is obligated to return the coins to the seller. And likewise, the *tanna* who recited *mishnayot* and *baraitot* in the study hall of Rav Nahman taught a *baraita* before Rav Nahman: The Sages taught that the coins belong to the buyer only in the case of one who purchases produce from a merchant, but in the case of one who purchases produce from a single owner, he is obligated to return the coins to the seller.

אָמָר לֵיה וּבְנַחֲמָן: בְּכֵן בַּעַל הַבֵּית בְּעַצְמוֹ דְּשָׁוֹ? אֲכָר לֵיה: אִיסְמִיה?
אָמָר לֵיה: לֹא. תַּرְגּוּם מִתְנִיתִין בְּגַנְזָן שְׁדָשָׁן עַל יָד עֲבֹדוֹ וְשַׁפְתָּחוֹ הַכְּנֻעִים.

Rav Nahman said to the *tanna*: But does the owner thresh the grain himself? His workers thresh the grain, and the coins could belong to one of them. The *tanna* said to Rav Nahman: Based on the difficulty you raise, should I delete itⁿ from the collection of authoritative *baraitot*? Rav Nahman said to the *tanna*: No. Interpret the *baraita* as referring to a case where the grain was threshed by his Canaanite slave or maidservant, and therefore any coins found intermingled with the produce belong to the owner.

מִתְנִיתִין אָמָר הַשְׁמִלָּה הָיְתָה בְּכָל כֵּל אָלוֹן, וְלֹמַה יִצְאָת – לְהַקִּישׁ אֲלֵיהֶן, לֹומֶר לֹן: מִה שְׁמִלָּה מִיּוֹתָרָה – שִׁשְׁ בְּהַ סִינְנֵי וְשַׁלְּהַ תּוֹבָעֵן, אָמָר בְּלַדְבֵּר שְׁשָׁיָשׁ בְּ סִינְנֵי וְשַׁלְּהַ תּוֹבָעֵם – חַיֵּב לְהַכְּרִיוֹן.

MISHNA This mishna is an excerpt from a halakhic midrash concerning lost items, based on the verse: “You shall not see your brother’s ox or his sheep wandering, and disregard them; you shall return them to your brother... And so shall you do with his donkey; and so shall you do with his garment; and so shall you do with every lost item of your brother, which shall be lost from him, and you have found it; you may not disregard it” (Deuteronomy 22:1, 3). The garment was also included in the generalization that one must return all of these items. And why did it emerge from the generalization that is should be specified? To draw an analogy to it and to say to you: What is notable about a garment? It is notable in that there are distinguishing marks concerning it and it has claimants asserting ownership, and its finder is obligated to proclaim his find. So too with regard to any item concerning which there are distinguishing marks and it has claimants^h asserting ownership, its finder is obligated to proclaim his find.

גַּם מַאי בְּכָל כֵּל אָלוֹן אָמָר רַבָּ:
בְּכָל כֵּל אָבוֹת אַחֲרֵיכֶן.

GEMARA When the mishna says that the garment was included in the generalization that one must return all of these items, in what generalization is it included? Rava said: It is included in the generalization: “And so shall you do with his donkey; and so shall you do with his garment; and so shall you do with every lost item of your brother, which shall be lost from him, and you have found it; you may not disregard it” (Deuteronomy 22:3).

אָמָר רַבָּ: לָמָה לִי ذְכַר וְחַמְנָא?
שׂוֹר חָמָר שָׁה וְשְׁמָלָה?

אָרַיבִּי, רַאֲי בְּתַבְּרָחָמְנָא שְׁמָלָה, הַהָּא אֲמִינָא: הַנִּי מִילִי – בְּעָדִים דְּגַופָּה וְסִימְנֵן דְּגַופָּה, אֲכָל חָמָר בְּעָדִים דְּאַוְקָר וְסִימְנֵן דְּאַוְקָר – אֲנִיא אֶלְאָהָדרִין לֵיה, בְּתַבְּרָחָמְנָא חָמָר, דְּאַפְּיָלוֹ חָמָר בְּסִימְנֵי הַאַוְקָר.

Rava answers: They are all necessary, as a unique *halakha* is derived from each example. As, if the Merciful One had written only “garment,” I would say: This matter, i.e., the mitzva to return a lost item, applies only in a case where the owner brings witnesses capable of testifying about the item itself or he describes distinguishing marks concerning the item itself; but with regard to returning a donkey to its owner in a case where he brings witnesses with regard to the saddle or describes distinguishing marks concerning the saddle and not on the donkey, say that we do not return the donkey to the owner. To counter this, the Merciful One writes: “Donkey,” from which it is derived that a donkey is returned to its owner even in a case where he describes distinguishing marks on the saddle.^h

שׂוֹר וְשָׂה דְּכַתֵּב רְחִמְנָא לְפָה לִי? שׂוֹר
דְּאַפְּלָו לְגִזְוָת נְגֻבוֹ, וְשָׂה – לְגִזְוָתּוֹ.
וְלֹכֶתֶב רְחִמְנָא שׂוֹר, דְּאַפְּלָו לְגִזְוָתּוֹ
נְגֻבוֹ, וְכָל שְׁבָן שָׂה לְגִזְוָתּוֹ!

אֲלֹא אָמַר רַבָּא: חַמּוֹר דָּבָר לְרַבִּי
יְהוּדָה, וְשָׂה דְּאַבְּיָהָה לְדָבָרִי הַכְּלָל
קְשִׁיאָה.

וְאִםְאָ לְגַלְלִים הוּא דְּאַתָּא! גַּלְלִים
אַפְּקָרְיוֹ מִפְּקָר לְהֹו, וְרוּקְפָּא לְסִקְמָנוֹ
הֹו דְּאַתָּא? דְּאַבְּיָהָא לְזָהָר: סִקְמָנוֹ
דָּאוּרִיתָה אָוֹ דְּרוֹבָּנָה, כְּתָבָר רְחִמְנָא
שָׂה – דְּאַפְּלָו בְּסִקְמָנוֹ מִהְדָּרִין, וּסִקְמָנוֹ
דָּאוּרִיתָה!

אָמַרְיוֹ, מִדְקַתְּנִי לְהֹו תְּנָא לְסִקְמָנוֹ גְּבֵי
שְׁמַלְלָה, דְּקַתְּנִי: מֵהָ שְׁמַלְלָה מִיּוֹחֶדֶת
שִׁשְׁ בָּהָ סִקְמָנוֹ וְשָׁלַחַת תּוּבָשָׁן – חַיֵּב
לְהַכְּרִי, אָךְ כָּל דָּבָר שִׁשְׁ בָּהָ סִקְמָנוֹ וְשָׁלַחַת
לְתוּבָשָׁן – חַיֵּב לְהַכְּרִי, שָׁמַעַ מִינָּה
דְּשָׁה לְאָוֹ לְסִקְמָנוֹ הוּא דְּאַתָּה.

תְּנַוְּרַבָּן "אֲשֶׁר תִּאֲבֹד" – פָּרֶט לְאַבְּיָהָה
שָׁאַיִן בָּהָ שָׂוָה פְּרוֹטָה. רַבִּי יְהוּדָה אָמַר:
"זִמְצַאָתָה" – פָּרֶט לְאַבְּיָהָה שָׁאַיִן בָּהָ
שָׂוָה פְּרוֹטָה.

Rava continues: With regard to the specific mentions of “ox” and “sheep” that the Merciful One writes, why do I need them? Rava answers: From “ox” it is derived that one must return even the sheared wool of its tail;^N and from “sheep” it is derived that one must return even its sheared wool.^H The Gemara challenges: And let the Merciful One write only “ox,” from which it is derived that one must return even the sheared wool of its tail, and derive all the more so that one must return the more substantial sheared wool of a sheep.

Rather, Rava said: The term “donkey” stated with regard to damage in the category of Pit,^N according to the opinion of Rabbi Yehuda (see Exodus 21:33 and Bava Kamma 54a), and the term “sheep” stated with regard to a lost item, according to the opinion of everyone, are difficult. There is no explanation for why they are stated.

The Gemara suggests: And say that the term “sheep” comes to teach the obligation to return the animal’s dung?^N The Gemara answers: One need not return dung, because the owner has renounced its ownership. The Gemara suggests: And perhaps the term “sheep” comes to teach the obligation to return an item based on its owner providing distinguishing marks, as we raised a dilemma: Is the halakha that an item can be identified using distinguishing marks by Torah law or is it by rabbinic law? Therefore, the Merciful One writes: “Sheep” in order to teach that it is not only through the testimony of witnesses, but even based on distinguishing marks that we return lost items to their owner. Resolve the dilemma and conclude that the halakha that an item can be identified using distinguishing marks is by Torah law.

The Gemara rejects this proof. The Sages say: One can understand the matter from the fact that the tanna teaches the concept of distinguishing marks together with the term garment. As it is taught in the mishna: What is notable about a garment? It is notable in that there are distinguishing marks concerning it and it has claimants asserting ownership, and its finder is obligated to proclaim his find. So too with regard to any item concerning which there are distinguishing marks and it has claimants asserting ownership, its finder is obligated to proclaim his find. Conclude from it that the term “sheep” does not come to teach the obligation to return an item based on its owner providing distinguishing marks

The Sages taught in a baraita: The verse states: “And so shall you do with his donkey; and so shall you do with his garment; and so shall you do with every lost item of your brother, which shall be lost from him, and you have found it” (Deuteronomy 22:3). The Rabbis derive that this phrase serves to exclude a lost item in which there is not the value of one peruta,^{NBH} which due to its negligible value is not considered lost. Rabbi Yehuda says that this halakha is derived from the conclusion of that verse: “Which shall be lost from him, and you have found it.” The term “and you have found it” serves to exclude a lost item in which there is not the value of one peruta.

NOTES

That one must return even the sheared wool of its tail – דְּאַפְּלָו לְגִזְוָת נְגֻבוֹ: The early commentaries ask: If the sheared wool is worth one *peruta*, it is obvious that one is obligated to return it, and if it is worth less than one *peruta*, why would he return it? They explain that this serves to teach that the finder must tend to the lost item and even seek to enhance its value, which includes periodically shearing the animal’s tail (see Rashba). The Ritva explains that since the lost animal itself is worth more than one *peruta*, the finder must return it and all proceeds that emerge from it.

The term donkey stated with regard to Pit – חַמּוֹר דָּבָר לְפִתְּנָה: Tosafot note that the Gemara does not cite all of the matters derived by different Sages from all of the superfluous words in the verse. The Gemara merely cites the derivations that are similar in structure and subject matter.

To teach the obligation to return the dung – טְלִילָה: The Gemara concludes that although the owner of the lost item insists upon the return of even minor proceeds from his item, e.g., wool sheared from the tail, he is not insistent upon the return of excessively minor proceeds (Meiri). In particular, since the finder cannot confine the animal to one place and accumulate all the dung for the entire period, even if the total value of the dung exceeds one *peruta*, one need not be concerned with returning it to the owner.

To exclude a lost item in which there is not the value of one *peruta* – פָּרֶט לְאַבְּיָהָה שָׁאַיִן בָּהָ שָׂוָה פְּרוֹטָה: Many later commentaries address the question of whether it is merely that one is not obligated to proclaim the find of a lost item worth less than one *peruta*, but it remains the property of the owner, or whether, since it is worth less than a *peruta*, it is effectively ownerless (see *Hiddushei HaRim*, *Even HaAzel*, and *Dibberot Moshe*).

BACKGROUND

Peruta – פְּרוֹטָה: The *peruta* is a copper coin, the smallest unit of currency. For halakhic purposes, the *peruta* is defined as the value of pure silver half the weight of a barleycorn. Traditionally, this is estimated at approximately 24 mg of silver. The halakhic value of all coins is linked to the price of silver.

HALAKHA

Ox...the sheared wool of its tail and...the sheared wool of a sheep – שׂוֹר לְגִזְוָת נְגֻבוֹ וְשָׂה לְגִזְוָתּוֹ: As long as a lost item is in the possession of the finder, he is obligated to tend to it and ensure that it does not depreciate in value. He is even obligated to take minor steps to enhance its value, e.g., by shearing a sheep or an ox’s tail (*Shulhan Arukh, Hoshen Mishpat* 267:17).

To exclude a lost item in which there is not the value of one *peruta* – פָּרֶט לְאַבְּיָהָה שָׁאַיִן בָּהָ שָׂוָה פְּרוֹטָה: One is not obligated to return any lost item that was worth less than one *peruta* when it was lost and when it was found, even if it appreciated in value in the interim (Rambam *Sefer Nezikin, Hilkhot Gezeila VaAveda* 11:12; *Shulhan Arukh, Hoshen Mishpat* 262:1).

מַאֲיִ בֵּינֵיהוּ? אָמַר אַבְּיָי: מִשְׁמֻעוֹת
דוֹרְשֵׁין אֶבְּכָא בֵּינֵיהוּ. כְּר֔ נִפְקָא לִיהְ
מִ"אֲשֶׁר תָּאָבֶד" – וּמְר֔ נִפְקָא לִיהְ
מִ"וַיְמַצֵּאתָה".

The Gemara asks: What is the practical difference between the two opinions? Ostensibly, the Rabbis and Rabbi Yehuda both state the same halakha. Abaye said: There is no practical difference. Rather, the interpretation of the meaning of the verse is the difference between them. One Sage, the Rabbis, derives it from the phrase: "Which shall be lost from him"; and one Sage, Rabbi Yehuda, derives it from the term: "And you have found it."

וְלֹמְדָן דַּנִּפְקָא לִיהְ מִ"אֲשֶׁר תָּאָבֶד"
הָאֵי "וַיְמַצֵּאתָה" מַا עֲבִיד לִיהְ?

הַהוּא מִבְשֵׁע לִיהְ לְכָדוּבָנָא, דָאַמַּר
רַבָּנָא "וַיְמַצֵּאתָה" – דָאַתָּא לִידָה
מִשְׁמֻעָה

וְלֹמְדָן דַּנִּפְקָא לִיהְ מִ"וַיְמַצֵּאתָה", הָאֵי
אֲשֶׁר תָּאָבֶד" מַا עֲבִיד לִיהְ?

מִבְשֵׁע לִיהְ לְכָדוּבָי יוֹחָנָן, דָאַמַּר רַבִּי
יוֹחָנָן מִשְׁומָר רַבִּי שְׁמֻעוֹן בֶּן יוֹחָנָן: מִמֵּין
לְאַבְּרִיהָ שְׁשִׁיטָה נָהָר שְׁהָא מִתְרָתָה –
שְׁנָאַמֵּר "בָּן תַּعֲשֵׂה לְכָל אֶבֶרֶת אָחִיךָ
אֲשֶׁר תָּאָבֶד מִמְּנוֹ וַיְמַצֵּאתָה" – מֵ
שְׁאַבּוֹדָה הַיְמָנוֹ וְמִצְאָתָה – אֶל כָּל אָדָם,
צִדְחָה וּשְׁאַבּוֹדָה הַיְמָנוֹ וְאַיִלָּה מִצְיָה
אֶל כָּל אָדָם.

וְאַיִלָּה, הָא דָרְבָנָא מַנָּא לִיהְ? נִפְקָא
לִיהְ מִ"וַיְמַצֵּאתָה".

וְאַיִלָּה, הָא דָרְבָי יוֹחָנָן מַנָּא לִיהְ? נִפְקָא
לִיהְ "מִמְּנוֹ". וְאַיִלָּה: מִמְּנוֹ לֹא מִשְׁמֻעָה
לִיהְ.

The Gemara asks: And according to the first Sage, the Rabbis, who derives the halakha that one need not return a lost item worth less than one peruta from the phrase "which shall be lost from him," what does he do with the term: "And you have found it"?

The Gemara answers: According to the Rabbis, that term is necessary for the derivation of the halakha in accordance with the opinion of Rabbenai. As Rabbenai says in interpreting the verse: "And so shall you do with every lost item of your brother's, which he has lost, and you have found it" (Deuteronomy 22:3), that the term "and you have found it" means that it assumes the status of a found item only when it actually enters his possession.

The Gemara asks: And according to Rabbi Yehuda, who derives the halakha that one need not return a lost item worth less than one peruta from the term: "And you have found it," what does he do with the phrase: "Which has been lost from him"?

The Gemara answers: According to Rabbi Yehuda, that phrase is necessary for the derivation of the halakha in accordance with the opinion of Rabbi Yoḥanan. As Rabbi Yoḥanan says in the name of Rabbi Shimon ben Yoḥai: From where is it derived with regard to a lost item that the river swept away that it is permitted for its finder to keep it? It is derived from this verse, as it is written: "And so shall you do with his donkey; and so shall you do with his garment; and so shall you do with every lost item of your brother, which shall be lost from him, and you have found it" (Deuteronomy 22:3). The verse states that one must return that which is lost from him, the owner, but is available to be found by any person. Excluded from that obligation is that which is lost from him and is not available to be found by any person; it is ownerless property and anyone who finds it may keep it.

The Gemara asks: And the other tanna, Rabbi Yehuda, who derived from the term: "And you have found it," that one need not return a lost item worth less than one peruta, from where does he derive the halakha of Rabbenai that the item assumes the status of a found item only when it actually comes into his possession? The Gemara answers: Rabbi Yehuda derives it from the superfluous conjunction "and" in the term "and you have found it."

The Gemara asks further: And the other tanna, the first tanna, who derives from the phrase "which shall be lost from him" that one need not return a lost item worth less than one peruta, from where do they derive the halakha of Rabbi Yoḥanan that one need not return an item that is lost from him and is not available to be found by every person? The Gemara answers: He derives it from the superfluous term "from him," in the phrase "which shall be lost from him." And as for the other tanna, Rabbi Yehuda, he does not learn anything from the term "from him."ⁿ

NOTES

He does not learn anything from the term, from him – מִמְּנוֹ – it means that he derives nothing from the use of this term in this particular context.
לֹא מִשְׁמֻעָה לִיהְ: Tosafot (Sanhedrin 14a) prove that this does not mean that he derives nothing from this term in general. Rather,

רְבָא אָמַר: פִּरְוטָה שְׁחוֹלָה אֵיכָא
בַּיּוֹתֶר. מִן דָּאָמַר מְאַשֵּׁר תָּאָבֵד –
אֵיכָא, וּמִן דָּאָמַר מִזְמְצָאתָה –
לִיבָּא.

Abye explained that there is no practical difference between the opinion of the first *tanna* and Rabbi Yehuda. By contrast, Rava said: The practical difference **between them** is with regard to an item that was worth one *peruta* when it was lost but **that was then devalued** and was worth less than one *peruta* when it was found. According to **the one who says** that the *halakha* that one need not return a lost item worth less than one *peruta* is derived **from** the phrase “**which shall be lost from him**,” **there is** an obligation to return the item, as that verse is referring to the value of the item when it was lost. **And** according to **the one who says** that the *halakha* that one need not return a lost item worth less than one *peruta* is derived **from** the phrase: “**And you have found it**,” **there is no** obligation to return the item, as that verse is referring to the value of the item when it is found.

ולִמְאן דָּאָמַר “אֲשֶׁר תָּאָבֵד” – הֵא
בַּעֲשֵׂין “זִמְצָאתָה” לִיבָּא!

The Gemara asks: But even according to the one who says that the *halakha* is derived from the phrase “**which shall be lost from him**,” **do we not require** the item to be worth one *peruta* when it is found, based on the term “**and you have found it**”? And in this case, **it is not** worth one *peruta* when it is found, so he should agree that it need not be returned.

אֵלָא, פִּרְוטָה שְׁחוֹלָה אֵיכָא בַּיּוֹתֶר.
מִן דָּאָמַר זִמְצָאתָה – אֵיכָא, וּמִן
דָּאָמַר “אֲשֶׁר תָּאָבֵד” – לִיבָּא.

Rather, the practical difference **between them** is with regard to an item worth less than one *peruta* when it was lost **that appreciated in value** and is worth one *peruta* when it is found. According to **the one who says** that the *halakha* that one need not return a lost item worth less than one *peruta* is derived from the term: “**And you have found it**,” **there is** an obligation to return the item, as that verse is referring to its value when it is found. **And** according to **the one who says** that the *halakha* that one need not return a lost item worth less than one *peruta* is derived **from** the phrase: “**Which shall be lost from him**,” **there is no** obligation to return the item, as that verse is referring to the value of the item when it was lost.

ולִמְאן דָּאָמַר זִמְצָאתָה, הֵא בַּעֲשֵׂין
אֲשֶׁר תָּאָבֵד וּלִבָּא!

The Gemara asks: But even according to the one who says that the *halakha* is derived from the term “**and you have found it**,” **do we not require** the item to be worth one *peruta* when it is lost, based on the phrase “**which shall be lost from him**”? And in this case, **it is not** worth one *peruta* when it was lost, so he should agree that it need not be returned.

אֵלָא, פִּרְוטָה שְׁחוֹלָה וְחוֹרָה
וְחוֹקָה אֵיכָא בַּיּוֹתֶר. מִן דָּאָמַר
“אֲשֶׁר תָּאָבֵד” – אֵיכָא, וּמִן דָּאָמַר
זִמְצָאתָה – בַּעֲשֵׂין דָּאִיתָּה שִׁיעָר
מִצְיאָה מִשְׁעַת אֲבִידָה וְעַד שֵׁעַת
מִצְיאָה.

Rather, the practical difference **between them** is with regard to the case of an item worth one *peruta* when it was lost **that appreciated in value and was devalued** in the interim and was worth less than one *peruta*, and then **appreciated in value** and is worth one *peruta* when it is found. According to **the one who says** that the *halakha* that one need not return a lost item worth less than one *peruta* is derived from the phrase: “**Which shall be lost from him**,” **there is** an obligation to return the item, as the verse is referring to its value only when it was lost and when it is found. **And** according to **the one who says** that the *halakha* that one need not return a lost item worth less than one *peruta* is derived from: “**And you have found it**,” **there is no** obligation to return the item, as we require that there will be the value of one *peruta*, the requisite measure of a lost item, **from the time of its loss and until the time of its finding**, as the conjunction “**and**” connects the time of the finding to the time of the loss.

אִיבְּעָא לְהוּ: סִימְנָן דָּאוּרִיתָא אוֹ
דָּרְבָּנוּ? מָא נִפְקָא מִינָּה

§ A dilemma was raised before the Sages: Is identification of an item on the basis of distinguishing marks by Torah law^h or is it by rabbinic law? The Gemara asks: What difference is there whether it is by Torah law or by rabbinic law?

HALAKHA

Is identification of an item on the basis of distinguishing marks by Torah law – **סִימְנָן דָּאוּרִיתָא**? Everyone agrees that by Torah law the legal status of clear-cut distinguishing marks is equivalent to that of witnesses in terms of determining ownership. The legal status of lesser distinguishing marks remains

uncertain, and one may not rely on those distinguishing marks in matters relating to marriage. Others say that one may rely upon those distinguishing marks after the fact (Rambam *Sefer Nashim, Hilkhot Geirushin* 3:11; *Shulhan Arukh, Even HaEzer* 132:4, and *Beit Shmuel* there).

לְאַהֲרוֹן גֵּט אֲשֶׁר בָּסִימִים. אֵין
אָמְרָת דָּאוּרִיתָא – מִהְדָּרִין, וְאֵין
אָמְרָת דָּרְבָּן, פִּי עָבֹד רְבָּן תְּקִנְתָּא –
בְּמַמְנוֹן, אָכְלָב בְּאִיסְרוֹא – לֹא עָבֹוד
רְבָּן תְּקִנְתָּא.

The Gemara answers: The practical difference is with regard to returning the bill of divorce of a woman that was lost by an agent before its delivery, on the basis of distinguishing marks.^N If you say that the identification of an item on the basis of distinguishing marks is by Torah law, we return the document and allow the agent to transmit it to the woman. But if you say that it is by rabbinic law, we do not return the document, because when the Sages institute an ordinance, it is only with regard to monetary matters they have the authority to declare property ownerless; but with regard to ritual matters, the Sages do not institute an ordinance. They lack the authority to abrogate the prohibitions by Torah law that are associated with a woman's marital status.

תְּאַשְׁמָע: אָךְ הַשְׂמָלָה הִיְתָה בְּכָל
כֶּלֶל אַלְוָן וְלַפְּחוֹצָאת – לְהַקִּישׁ אֲלֵיהֶה
וּלְזֹמֵר לְךָ: מִה שְׂמָלָה מִיּוֹחָדָת שִׁישׁ
לְהַסְּמִינָן וַיֵּשׁ לְהָתוֹבָעָן – חִיבָּר
לְהַכְּרִי, אָךְ כִּי דָבָר שִׁישׁ לוֹ סִימְנָן
וַיֵּשׁ לְתוֹבָעָן – חִיבָּר לְהַכְּרִי! תְּנַא
תוֹבָעָן אַצְטְּרוֹכָא לִיהְיָה, סִימְנָן בְּדַיִן
נְסָכָא.

תְּאַשְׁמָע: חִמּוֹר בְּסִימְנִי אַוְקָרָא יְמָנָא:
בְּעֵדִי אַוְקָרָא.

The Gemara suggests: Come and hear proof from the mishna: The garment was also included in the generalization that one must return all of these items. And why did it emerge from the generalization that is should be specified? To draw an analogy to it and to say to you: What is notable about a garment? It is notable in that there are distinguishing marks concerning it and it has claimants asserting ownership, and its finder is obligated to proclaim his find. So too with regard to any item concerning which there are distinguishing marks and it has claimants asserting ownership, its finder is obligated to proclaim his find. Clearly, the identification of an item on the basis of distinguishing marks is by Torah law. The Gemara rejects the proof: Perhaps it was necessary for the *tanna* to mention only the criterion of claimants, and the *tanna* cited the criterion of distinguishing marks for no reason,^N as by Torah law distinguishing marks is not a relevant factor.

תְּאַשְׁמָע: יוֹחֵד עַמְקָן עַד דָּרְשׁ אַחֲרֵיךְ
אַתָּה – כִּי תַּعֲלֵה עַל דָּעַתְךָ שִׁיטָּה
לוֹ קֹדֶם שִׁידּוֹשָׁנוּ אֶלָּא, דָרְשָׁהוּ אָם
רְמָאִי הוּא אוֹ אִינוֹ רְמָאִי.

The Gemara suggests: Come and hear proof from the aforementioned statement: The obligation to return a donkey to its owner on the basis of the distinguishing marks of the saddle is derived based on the mention of the word "donkey" in the verse from Deuteronomy. Clearly, the identification of an item on the basis of distinguishing marks is by Torah law. The Gemara rejects this proof: Emend the *baraita* and say: There is an obligation to return the donkey only on the basis of witnesses who testify with regard to the identity of the owner based on the fact that the saddle belongs to him, and not on the basis of distinguishing marks.

The Gemara suggests: Come and hear proof from a mishna (28b): "And if your brother be not near you, and you know him not, then you shall bring it into your house, and it shall be with you until your brother claims [derosh] it, and you shall return it to him" (Deuteronomy 22:2). Would it enter your mind that he would give the lost item to him before he claims it? How can the finder return it if he does not know the identity of the owner? Rather, the verb *derosh* is not referring to the claim of the owner; it is referring to the scrutiny performed by the finder. Scrutinize him [darshehu] to determine whether the claimant is a swindler^N or whether he is not a swindler. Only then may you return the lost item to him.

NOTES

Distinguishing marks – סימנים: The early commentaries explain that there are three levels of effectiveness with regard to distinguishing marks. The most effective are clear-cut distinguishing marks, e.g., a hole in a bill of divorce alongside a specific letter. The intermediate level of distinguishing marks refers to features such as length or weight, on the basis of which the finder returns a lost item to its owner. Least effective are non-specific distinguishing marks, e.g., color or a general description of height such as tall or short.

The majority opinion of the commentaries is that clear-cut distinguishing marks are sufficient by Torah law in every area of halakha that requires proof, and that non-specific

distinguishing marks are never sufficient. The dispute among the commentaries is with regard to the intermediate level of distinguishing marks, whether they are sufficient by Torah law in all cases, or whether they are sufficient by rabbinic ordinance and the Sages instituted that they are sufficient exclusively with regard to the returning of lost items.

Cited the criterion of distinguishing marks for no reason – סימני בְּנִי נְבָבָא: According to this opinion, the focal point of the derivation is to teach that there are lost items that one returns based on effective proof, and that they must be lost items for which there are claimants. The mention of distinguishing marks

is not part of the derivation; rather, it is a practical example of how lost items are returned based on the rabbinic ordinance.

דָרְשָׁה – אִם רְמָאִי הוּא: This does not mean that by Torah law any claimant must bring witnesses who can testify that he is not a swindler; rather, in general one must take steps to ensure that it would be difficult for someone to claim items that do not belong to him. The obligation to scrutinize each claimant to ensure that he is not a swindler is a rabbinic ordinance (Rid; Rosh).

מאי לאו בסיקנין? לא, בעדים.

תא שמע: אין מושידין אלא על פרוץ
הפנים עם החוטם, אף על פי שיש
סיקני ב גופו וב כליו.

שמע מעה: סיקני לאו דאוריתא!
אמר: גופו – דאורון וגוז, כליו –
דוחשין לשאללה.

אי חישין לשאללה חמור בסיקני
אוכף היבי מודרין? אמרו: אוכף
לא שאולן איishi אוכף, משומ
דמסקב ליה לחדרא.

אי בעית אימא: בלוי – בחירוי
ובסומקי.

אל לא הא דתניא: מצעאו קשור בכיס
או באורני ובטבעת, או שמצאו
בין כלוי – אפילו למן מרובה כשר.
ואי סלקא דעתך חישין לשאללה,
בי מצעאו קשור בכיס אמאיכ ברש?

nichush leshaleh!

The Gemara states its suggested proof: **What, is it not** that the one who claims the lost item proves that he is not a swindler **on the basis of distinguishing marks** that he provides? Apparently, the identification of an item on the basis of distinguishing marks is by Torah law. The Gemara rejects this proof: **No**, the determination of whether he is a swindler is **on the basis of scrutinizing his witnesses**.^N

The Gemara suggests: **Come and hear** proof from a mishna (*Yevamot* 120a): **One testifies** that a man died, thereby permitting his wife to remarry, **only if he can testify about seeing the countenance [partzuf]^{LN} of the face with the nose**,^H as this allows one to identify the individual with certainty. **Although there are distinguishing marks on his body and on his garments**,^H which appear to indicate his identity, they cannot be used to identify the person.

The Gemara states its suggested proof: **Conclude from it** that the identification of an item on the basis of **distinguishing marks is not by Torah law**. The Sages say in rejecting that proof: The distinguishing marks on **his body** mentioned in the mishna are non-specific distinguishing marks, e.g., **that he was tall or short**, and that is the reason that the distinguishing marks are ineffective in determining his identity. The distinguishing marks on **his garments** mentioned in the mishna are ineffective in determining his identity, as **we are concerned about the possibility of a loan**,^N e.g., perhaps the husband loaned his clothes to the deceased.

The Gemara asks: **If we are concerned about the possibility of a loan, how do we return a donkey to its owner on the basis of the distinguishing marks of the saddle**; perhaps it was borrowed? The Sages say in response: **People do not typically borrow a saddle because saddles that are not custom fit wound the donkey**.

If you wish, say instead: The distinguishing marks on **his garments** mentioned in the mishna are non-specific distinguishing marks, e.g., **where the witness said that they were white or red**, and that is the reason that the distinguishing marks are ineffective in determining his identity.

The Gemara questions the previous answer with regard to the concern about the possibility of a loan. **But there is that which is taught in a baraita:** If the agent **found** the bill of divorce that he lost **bound to his pouch, or his purse,^H or his signet ring, or if he found it among his garments, even if he found it a long time after he lost it**, the distinguishing marks on those items are sufficient in order to identify the bill of divorce as the one that he lost, and it is **valid**. **And if it enters your mind that we are concerned about the possibility of a loan, when he found the bill of divorce bound to his pouch, why is it valid? Let us be concerned about the possibility of a loan and that perhaps the pouch and the bill of divorce belong to someone else.**

LANGUAGE

Countenance [partzuf] – פְּרַצּוּף: From the Greek πρόσωπον, prosopon, meaning countenance, or mask in the image of a countenance.

HALAKHA

פְּרַצּוּף הַפָּנִים – עַם וְחוֹנָם: If a dead man was found with his countenance, including his nose, intact, and is identified by witnesses as the husband of a deserted wife, it is permitted for her to remarry (Rambam *Sefer Nashim, Hilkhos Geirushin* 13:21; *Shulhan Arukh, Even HaEzer* 17:24).

Distinguishing marks...and on his garments – סִקְנֵי...וּבְכָלָיו: In a case where witnesses are unable to identify a man's face due to disfigurement, even if they can identify clear-cut distinguishing marks on his garments or belongings, they cannot testify to his identity on that basis in the case of a deserted wife due to the concern that perhaps the woman's husband lent his garments to the deceased (Rambam *Sefer Nashim, Hilkhos Geirushin* 13:21; *Shulhan Arukh, Even HaEzer* 17:24).

Bound to his pouch or his purse – קְשׁוּר בְּכִים או בְּאַרְנָקִי וּבְכָלָיו: In a case where one found a bill of divorce bound to an item on which there was a clear-cut distinguishing mark, if it was an item that is not typically lent or sold to others, it is an effective distinguishing mark and one returns the bill of divorce on that basis (*Shulhan Arukh, Even HaEzer* 132:4).

NOTES

No, on the basis of scrutinizing his witnesses – לא בעדים: Some explain that if one attempts to claim the item on the basis of visual recognition, he must bring witnesses to testify that he is a Torah scholar, per the Gemara on 19a (Ba'al HaMaor; Rabbeinu Hananel). The Ramban explains that although witnesses need not testify that they saw him lose the item, they must testify that he purchased the item or wove the garment, or otherwise establish that it belongs to the owner.

One testifies only about seeing the countenance, etc. – אין מעוניין אלא על פרוץ וכו': Although the Gemara here cites proof from the halakhot concerning the required testimony permitting a woman to remarry to draw an inference concerning the halakhot of returning a lost item, the later commentaries discuss at length the distinctions between monetary laws and ritual matters. One prominent difference between the cases is that in one

case the distinguishing marks must overcome the presumptive status of a married woman, while in the case of the lost item, there is no presumptive ownership (see *Noda BiYehuda, Hemdat Shlomo*, and *Avnei Nezer*).

We are concerned about the possibility of a loan – נִיחֲשֵׁן לשאללה: Many early and later commentaries discuss this matter extensively, especially as it relates to the halakhot of enabling a deserted wife to remarry. They ask: If there is concern about the possibility of a loan, how can any lost item be returned to a claimant on the basis of distinguishing marks? Some answer that a borrower who already returned the item that he borrowed does not know that it was lost, and therefore it is likely that the claimant is the owner. Furthermore, if the item was in the possession of the borrower, it is likely that he became intimately familiar with the item's distinguishing marks (see Ramban and Rashba).

BACKGROUND

Ring – טבעת: Most ancient rings were signet rings, which its owner used to notarize various documents. Therefore, it is unlikely that one would lend his ring to another, as doing so would be tantamount to granting another power of attorney.



Roman signet ring from the talmudic era

אמר ר' פיס וארכקי בטבעת לא משאלי איןשי.
פיס וארכקי - משים דמספמי, בטבעת משום
דמויין.

The Sages say in response: There is no concern in this case, as people do not loan a pouch, a purse, or a signet ring to another person. One does not loan his pouch and his purse to others due to the fact that it portends the loss of his good fortune. And one does not loan his signet ring⁸ to others due to the fact that it could be used to forge documents.

לימא בחטאי: אין מעידין על השותמא, ולא לעור
בן מהבאי אומר: מעידין על השותמא.מאי לאו
בהא קמיפלגי: רותנא קמא סבר: סימני דרבנן,
ואלעור בן מהבאי סבר: סימני דאויריתא.

The Gemara suggests: Let us say that the dilemma whether the identification of an item on the basis of distinguishing marks is by Torah law or by rabbinic law is the subject of a dispute between *tanna'im*, as it is taught in a *baraita*: One does not testify on the basis of a mole⁹ on the body of the deceased to determine the identity of a man who died and permit his wife to remarry. And Elazar ben Mahavai says: One testifies to identify the corpse on the basis of a mole. What, is it not with regard to this matter that they disagree; as the first *tanna* holds that identification of an item on the basis of distinguishing marks is by rabbinic law and therefore, testimony concerning those marks cannot dissolve a marriage by Torah law; and Elazar ben Mahavai holds that identification of an item on the basis of distinguishing marks is by Torah law.

אמר רבא: דכולי עלמא סימני דאויריתא.
זהכא - בשומה מזיהה בבן גילו קמיפלגי. מר
סבר: שומה מזיהה בבן גילו, ומר סבר: שומה
אינה מזיהה בבן גילו.

Rava said: That is not necessarily the crux of their dispute, as perhaps everyone agrees that identification of an item on the basis of distinguishing marks is by Torah law, and here, it is with regard to whether one needs to be concerned that a mole is often found on one's contemporary, i.e., one born under the same constellation, rendering it useless as a means of identification, that they disagree. One Sage, the first *tanna*, holds that a mole is often found on one's contemporary and therefore it is insufficient as a means of identification; and one Sage, Elazar ben Mahavai, holds that a mole is not often found on one's contemporary, and therefore it is sufficient as a means of identification.

איבעית אימא: דכולי עלמא שומה אינה
מזיהה בבן גילו, וזהכא - בסימני העשוי
להשתנות לאחר מיתה קמיפלגי. מר סבר:
סימני שעושים להשתנות לאחר מיתה, ומר
סבר: סימני אין שעושים להשתנות לאחר
מיתה.

If you wish, say instead that everyone agrees that a mole is not often found on one's contemporary, and here it is with regard to whether the appearance of distinguishing marks on the body is apt to change after death that they disagree. One Sage, the first *tanna*, holds that the appearance of distinguishing marks is apt to change after death, and that consequently they are insufficient as a means of identification; and one Sage, Elazar ben Mahavai, holds that the appearance of distinguishing marks is not apt to change after death, and therefore, they are sufficient as a means of identification.

איבעית אימא: דכולי עלמא שומה אינה
עשית להשתנות לאחר מיתה. וסימני דרבנן,
זהכא בשומה סימן מובהק הוא קמיפלגי.
מר סבר: שומה סימן מובהק הוא, ומר סבר:
שומה לאו סימן מובהק הוא.

If you wish, say instead that everyone agrees that a mole is not apt to change after death, and that the identification of an item on the basis of distinguishing marks is by rabbinic law, and here it is with regard to whether a mole is a clear-cut distinguishing mark that they disagree. One Sage, Elazar ben Mahavai, holds that a mole is a clear-cut distinguishing mark that can be relied upon without hesitation even in matters of Torah law, e.g., dissolving a marriage; and one Sage, the first *tanna*, holds that a mole is not a clear-cut distinguishing mark. Since standard distinguishing marks are sufficient by rabbinic law, a marriage, which is in effect by Torah law, cannot be dissolved on the basis of a mole.

אמר רבא: אם תמציא לומר סימני לאו
דאוויריתא היכי מחדרון אבידתא בסימני?
ריביא ליה למזא אבידה רינדור בסימני?
בי היכי רבי אמרה ליה לרידה נמי נהדרו
ליה בסימני.

Rava says: If you say that the identification of an item on the basis of distinguishing marks is not by Torah law, how do we return a lost item to the presumed owner on the basis of distinguishing marks; perhaps it will result in the return of property to one who was in fact not the owner? Rava answers: We return the lost item, as it is satisfactory to the finder of a lost item to return it on the basis of distinguishing marks, rather than exercise his right by Torah law to retain it, so that when an item is lost from him in the future, the finder will return it to him on the basis of distinguishing marks as well.

אמור ליה רב ספרא לר' בא: וכי אדר' עושה טבה לעצמו במתנו שאין שלו?

אלא: ניחא ליה לבעל אבידה למ' יתב סימני ולשקליה. מידע ידע רעים לית ליה, ומיר אמר: قول' עלמא לא ידע סימני מובקחים דידה, ואנא יהבנה סימני מובקחים דידה ושלחנ' לה.

אלא הדתן רבן שמعون בן גמליאל אומר: אחד תלוה בשלשה – יחויר ללזה, שלשה שלו מן אחד – יחויר לפולוה. ניחא ליה ללזה לאחדורי ליה לפולוה?

אמור ליה: התרם סברא הו, אחד תלוה בשלשה יחויר ללזה – הגבי לזה שכיחי, גבי מלוה לא שכיחי, שמע מינה מלזה נפל. שלשה שלו מאחד יחויר לפולוה – הגבי מלזה שכיחי, גבי לזה לא שכיחי.

Rav Safra said to Rava: But can a person perform an act that results in benefit for himself with property that is not his? The lost item belongs not to the finder but to the one who lost it. How can the finder waive the right of the true owner to the lost item so that he may recover his own lost item in the future?

Rather, we return the lost item, as it is **satisfactory to the owner of the lost item to be able to **provide** a description using **distinguishing marks** and on that basis take possession of the item. He knows that he has no **witnesses** to testify to his ownership, and he says: No one else knows the **clear-cut distinguishing marks** that are on the item. And I will provide a description using the **clear-cut distinguishing marks**,ⁿ and based on that information I will take possession of the item. Each owner gives his tacit agreement to the return of lost items on the basis of distinguishing marks, based on the belief that he is best able to identify them.**

The Gemara asks: But there is that which we learned in a mishna (20a), that Rabban Shimon ben Gamliel says: If one found three promissory notes relating to the loan of **one debtor who borrowed money from three creditors**, he must return the documents to the debtor. If one found three promissory notes relating to the loans of **three debtors who borrowed money from one creditor**, he must return the documents to the creditor. If one returns lost items on the basis of distinguishing marks due to the tacit agreement of the owners, is it **satisfactory to the debtor to have the documents returned to the creditor**, as doing so would enable the creditor to collect payment of the loan?

Rava said to Rav Safra: There, the obligation to return the promissory notes to the creditor is not on the basis of distinguishing marks; rather, it is based on **logical reasoning. If one found three promissory notes relating to the loan of **one debtor who borrowed money from three creditors**, he shall return the documents to the debtor, because a group of several documents indicating that one debtor borrowed money from several creditors is typically found with the debtor and is not typically found with a creditor, as the only element common to all the documents is the debtor. Conclude from it that the group of documents fell from the debtor while they were in his possession. If one found three promissory notes relating to the loans of **three debtors who borrowed money from one creditor**, he shall return the documents to the creditor, because a group of several documents indicating that multiple debtors borrowed money from a single creditor is typically found with the creditor and is not typically found with a debtor, as the only element common to all the documents is the creditor.**

NOTES

And I will provide the clear-cut distinguishing marks – **ונא נין סימני מובקחים**: *Tosafot* prove that although the Gemara employs the term: Clear-cut, the reference here is not to clear-cut distinguishing marks, but to distinguishing marks that are more clear-cut than those that others will provide. The Rashba adds that even if there are clear-cut distinguishing marks on one's item, he is not always familiar with them (Rashba).

Perek II**Daf 28 Amud a**

אלא הדתן: מצא תכריין של שטרות או אגדה של שטרות – הוי זה יחויר, כי נמי דניחא ליה ללזה לאחדורי ליה למילוה?

The Gemara asks: But there is that which we learned in that mishna (20a): If one found a roll of documents or a bundle of documents, he shall return the documents to the one for whom they were written, i.e., the creditor, when he describes the roll and the bundle, which serve as distinguishing marks. Would one say that so too, if one returns lost items on the basis of distinguishing marks due to the tacit agreement of the owners, it is **satisfactory to the debtor to have the documents returned to the creditor**?

NOTES

Rather Rava said identification on the basis of distinguishing marks is by Torah law – **אֲלָא אָמַר רְבָא סִימְנֵן דָאוּיִתָא**: Clearly the proof Rava is citing is not from the derivation from the verse, as that proof was already rejected. Rather, Rava said that the *halakha* in the mishna with regard to documents can be understood only if identification of an item on the basis of distinguishing marks is by Torah law. Yet, even Rava himself was not certain of this *halakha*, because he found no explicit proof to support it.

Distinguishing marks and distinguishing marks, the finder shall leave it – **סִימְנֵן וּסִימְנֵן יְחִיד**: According to the Ra'avad, even if one person provided a clear-cut distinguishing mark and the other brought an intermediate-level distinguishing mark, nevertheless, the finder shall retain the item in his possession. The reason is that if identification of an item on the basis of distinguishing marks is by Torah law, there is no difference between the various types of distinguishing marks. The dilemmas cited later in the Gemara with regard to the relative effectiveness of different distinguishing marks, e.g., the measure of its length and the measure of its width, are in accordance with the opinion of the one who holds that identification of an item on the basis of distinguishing marks is by rabbinic law. According to that opinion, since the item is returned to the most logical claimant, it is returned to the one who provides the most clear-cut distinguishing mark.

Nevertheless, many early commentaries disagree with the Ra'avad and hold that even if identification of an item on the basis of distinguishing marks is by Torah law, there is a distinction between clear-cut and intermediate-level distinguishing marks. They add that the ruling in the Gemara about a case where two claimants provide distinguishing marks, i.e., that the finder shall retain the item in his possession, is referring to a case where the distinguishing marks were definitive to the same degree.

Distinguishing marks and distinguishing marks and one witness – **סִימְנֵן וּסִימְנֵן וְעַד אֶחָד**: Some explain that according to the opinion of the one who holds that identification of an item on the basis of distinguishing marks is by Torah law, distinguishing marks are as effective as witnesses; in this case, each claimant has witnesses supporting his claim. Just as in a case where one of the parties brings two witnesses and the other brings more there is no advantage to the one who brings more witnesses, so too, there is no advantage to one who brings one witness in addition to the distinguishing mark (*Haggahot Mordechai*).

אֲלָא אָמַר רְבָא: סִימְנֵן דָאוּיִתָא,
דְכַתְבֵי "וְהִיא עַמְקָעֵד דָרְשׁ אֲחִיךָ
אֹתוֹ. וְכִי תַעֲלֵה עַל דָעַתְךָ שִׁיתְנָנוּ
קוֹדָם שִׁידְרָשָׂנוּ? אֲלָא, דָרְשָׁה
אָם רְמָאִי הוּא או אַיְנוּ רְמָאִי? לֹא
בְסִימְנֵן? שְׁמַע מִפְהָ

אָמַר רְבָא: אָם תִמְצֵי לֹמֶר סִימְנֵן
דָאוּיִתָא. אָם תִמְצֵי לֹמֶר? הָא
פְשִׁיטַ לְיהָ סִימְנֵן דָאוּיִתָא! מָשָׁומָ
דָאִיכָּא לִמְיָר בְּדִשְׁיָמָן.

סִימְנֵן וּסִימְנֵן – יְחִיד. סִימְנֵן וּעַדִּים –
יְהַנֵּן לְבֶבֶל הָעָרִים. סִימְנֵן וּסִימְנֵן
וְעַד אֶחָד – עַד אֶחָד כִּמְאָן דְלִיטָה
דָמִי, גְּנִיבָה.

Rather, Rava said: Identification of an item on the basis of distinguishing marks is by Torah law,^N as it is written: “And if your brother be not near you, and you know him not, then you shall bring it into your house, and it shall be with you until your brother claims [derosh] it, and you shall return it to him” (Deuteronomy 22:2). Would it enter your mind that he would give the lost item to him before he claims it? How can the finder return it if he does not know the identity of the owner? Rather, the verb *derosh* is not referring to the claim of the owner; it is referring to the scrutiny performed by the finder. Scrutinize him [*darshehu*] to determine whether the claimant is a swindler or whether he is not a swindler. Only then may you return the lost item to him. What, is it not that the one who claims the lost item proves that he is not a swindler on the basis of distinguishing marks that he provides? Rava affirms: Conclude from it that identification of an item on the basis of distinguishing marks is by Torah law.

Rava begins his statement and says: If you say that identification of an item on the basis of distinguishing marks is by Torah law. The Gemara interjects: If you say? Didn't he already resolve the dilemma and conclude that identification of an item on the basis of distinguishing marks is by Torah law? The Gemara answers: Rava phrased his statement conditionally due to the fact that although he holds that identification of an item on the basis of distinguishing marks is by Torah law, one could reject his conclusion and say as we explained previously (27b), that when the mishna states that the finder scrutinizes whether he is a swindler, he does so on the basis of witnesses and not on the basis of distinguishing marks.

The Gemara resumes Rava's interrupted statement: If you say that identification of an item on the basis of distinguishing marks is by Torah law, then in a case where an item is found and two people claim it as theirs, and one describes distinguishing marks on the item and the other describes distinguishing marks^H on the item, the finder shall leave it^N in his possession and not give it to either claimant. In a case where one person describes distinguishing marks on the item and the other brings two witnesses^H to support his claim of ownership, the item shall be given to the claimant with witnesses. In a case where one person describes distinguishing marks on the item and the other describes distinguishing marks on the item and brings one witness^{NH} to support his claim of ownership, the one witness is as one who is not there, and the finder shall leave it in his possession. The testimony of a single witness has no legal standing in this case.

עַדִי אֲרִיגָה וְעַדִי נְפִילָה – תַגְתֵּן לְעַדִי
נְפִילָה, דָאָמְרוּן זְבוּנִי זְבוּנָה, וּמְאִינְשִׁ
אַזְרִיכָא נְפָלָה.

In a case where one claimant to a found garment brings witnesses who testify that the garment was woven for him, and the other claimant brings witnesses who testify that the garment had fallen from him,^H the garment shall be given to the claimant whose witnesses testified that the garment had fallen from him, as we say that perhaps the one for whom it was woven sold the garment and it fell from another person, who is the current owner.

HALAKHA

Distinguishing marks and distinguishing marks – **סִימְנֵן וּסִימְנֵן**: If a lost item has two claimants, each of whom can provide its distinguishing marks, the finder shall not give the item to either claimant unless one of them brings witnesses supporting his claim or admits that his is a false claim (Rambam Sefer Nezikin, *Hilkhot Gezeila VaAveda* 13:6; *Shulhan Arukh, Hoshen Mishpat* 267:8).

Distinguishing marks and witnesses – **סִימְנֵן וּעַדִּים**: If one claimant provides distinguishing marks, even clear-cut distinguishing marks (*Shakh*, citing *Rosh*), and another claimant brings witnesses supporting his claim, the lost item is given

to the claimant who brings witnesses (Rambam Sefer Nezikin, *Nezikin, Hilkhot Gezeila VaAveda* 13:6; *Shulhan Arukh, Hoshen Mishpat* 267:9).

Distinguishing marks and distinguishing marks and one witness – **סִימְנֵן וּסִימְנֵן יְחִיד**: If two claimants to a lost item each provide distinguishing marks, and one of the claimants also brings one witness to support his claim, the lost item remains in the possession of the finder. The Rema rules that in that case, the claimant who did not bring a witness must take an oath that the item is his. If he does not take the oath, the finder gives the item to the claimant who brought the witness (Rambam Sefer

שְׁעִיר אֲרִיגָה וְשְׁעִיר נְפִילָה – תַגְתֵּן לְשְׁעִיר
נְפִילָה: If one claimant to a lost garment bring witnesses who testify that it was woven for him and another claimant brings witnesses who testify that it fell from him, the finder gives the garment to the latter claimant (Rambam Sefer Nezikin, *Hilkhot Gezeila VaAveda* 13:7; *Shulhan Arukh, Hoshen Mishpat* 267:11).

מִדְתָּא אַרְבּוֹ וּמִדְתָּרְחֶבּוֹ – תַּגְנֵן לְמִדְתָּא אַרְבּוֹ,
לְמִדְתָּרְחֶבּוֹ שְׁעִירְאָ קָא מְשִׁירְלָה בְּדַכְּפֵי
לְהַמְּרָה וְקָאָי, וּמִדְתָּא אַרְבּוֹ לֹא מְשֻׁתְּעָרָה לָהּ.

מִדְתָּא אַרְבּוֹ וּמִדְתָּרְחֶבּוֹ וּמִדְתָּגְמִיו – יִתְהַנֵּן
לְמִדְתָּא אַרְבּוֹ וּרְחֶבּוֹ.

מִדְתָּא אַרְבּוֹ וּמִדְתָּרְחֶבּוֹ וּמִדְתָּמְשָׁקְלָהָתוֹ –
יִתְהַנֵּן לְמִדְתָּא מְשָׁקְלָהָתוֹ.

הוּא אָוֹםֶר סִימְנֵי הַגְּטָה וְהִיא אָוֹמְרָת סִימְנֵי
הַגְּט – יִתְהַנֵּן לָהּ. בָּמָא? אַילְמָא בְּמִדְתָּא אַרְבּוֹ
וּרְחֶבּוֹ – וְלֹמְדָא בְּהָדִי דְּנָקַט לִיהְיָה חִזְיָהָה.
אַלְאָ: נְקַבְּ יְשָׁ בּוּ בְּצֵד אֹות פְּלוּנִי.

הוּא אָוֹמֶר סִימְנֵי הַחוּט וְהִיא אָוֹמְרָת
סִימְנֵי הַחוּט – יִתְהַנֵּן לָהּ. בָּמָא? אַילְמָא
בְּחִזְיוֹרָא וּבְסָמְקָא – וְלֹמְדָא בְּהָדִי דְּנָקַט
לִיהְיָה חִזְיָהָה? אַלְאָ, בְּמִדְתָּא אַרְבּוֹ.

הוּא אָוֹמֶר בְּחִפְיסָה וְהִיא אָוֹמְרָת בְּחִפְיסָה –
יִתְהַנֵּן לוּ, מַאי טַעַמָּא – מִידָּע יְדָעָה דְּכָלְמָה
דְּאַתָּה לִיהְיָה – בְּחִפְיסָה הוּא דְּמַנְחָה לִיהְיָה.

If one claimant provides the measure of length of a lost garment and the other provides the measure of its width,^h the garment shall be given to the claimant who provided the measure of its length, as one can approximate the measure of its width when its owner dons the garment and stands, but the measure of its length cannot be approximated in that manner. Therefore, it is a more clear-cut distinguishing characteristic.

If one claimant provides the measure of its length and the measure of its width and the other provides the measure of its gamma, its combined length and width, which together form the Greek letter gamma,^{lh} but does not provide each measure individually, the item shall be given to the claimant who provided the measure of its length and the measure of its width separately.

If one claimant provides the measure of its length and the measure of its width and the other provides the measure of its weight,^h the item shall be given to the claimant who provided the measure of its weight, which, because it is more difficult to approximate, is a more clear-cut distinguishing characteristic.

Rava continues: In a case where a bill of divorce is found and it is unclear whether it had been delivered to the wife, and the husband, who reconsidered, states the distinguishing marks of the bill of divorce and claims that he did not yet give it to his wife, and the wife, who wants to be divorced, states the distinguishing marks of the bill of divorce^h and claims that she already received it, the document shall be given to the wife. The Gemara asks: With what distinguishing mark did she describe the bill of divorce? If we say that she described it with the measure of its height and its width, that is not a clear-cut distinguishing mark; perhaps while her husband was holding the bill of divorce, she saw it, although he had not yet given it to her. Rather, it must be that she says that there is a perforation alongside such and such letter in the document, which she could know only if the bill of divorce had been in her hand.

In a case where the husband states the distinguishing marks of the string with which the bill of divorce is bound, and she states the distinguishing marks of the string, the document shall be given to the wife. The Gemara asks: With what distinguishing mark did she describe the string? If we say that she described it by saying that the string is white or by saying that it is red, this cannot be the mark based on which she proves her ownership, as perhaps while her husband was holding the bill of divorce, she saw the string. Rather, it must be that she stated the measure of its length. As the string was wrapped around the document, she would know its length only if the bill of divorce had been in her hand.

In a case where the husband claims that the bill of divorce was not given to the wife and states that it was stored in a case, and the wife claims that she received the bill of divorce and states that it was stored in a case, the document shall be given to the husband. What is the reason? Identification of the document based on its storage cannot prove her ownership, as she knows that he places any valuable item that he has in his possession in the case.

LANGUAGE

Gamma – גָּמָה: This is the Greek capital letter gamma, Γ, which consists of two perpendicular lines, here representing length and width.

מִדְתָּא אַרְבּוֹ וּמִדְתָּרְחֶבּוֹ – תַּגְנֵן לְמִדְתָּא אַרְבּוֹ
לְמִדְתָּרְחֶבּוֹ שְׁעִירְאָ קָא מְשִׁירְלָה בְּדַכְּפֵי
לְהַמְּרָה וְקָאָי, וּמִדְתָּא אַרְבּוֹ לֹא מְשֻׁתְּעָרָה לָהּ.

מִדְתָּא אַרְבּוֹ וּמִדְתָּרְחֶבּוֹ וּמִדְתָּגְמִיו – יִתְהַנֵּן
לְמִדְתָּא אַרְבּוֹ וּרְחֶבּוֹ.

מִדְתָּא אַרְבּוֹ וּמִדְתָּרְחֶבּוֹ וּמִדְתָּמְשָׁקְלָהָתוֹ –
יִתְהַנֵּן לְמִדְתָּא מְשָׁקְלָהָתוֹ.

more specific details (Rambam Sefer Nezikin, Hilkhot Gezeila VaAveda 13:7; Shulhan Arukh, Hoshen Mishpat 267:14).

The measure of its length and the measure of its width and the measure of its weight – מִדְתָּא אַרְבּוֹ וּמִדְתָּרְחֶבּוֹ וּמִדְתָּתְשָׁלָה: If one claimant provides the measure of the item's length and the measure of its width, and the other provides the measure of its weight, the finder returns the item to the claimant who provided the measure of its weight (Rambam Sefer Nezikin, Hilkhot Gezeila VaAveda 13:7; Shulhan Arukh, Hoshen Mishpat 267:13).

A husband and his wife with regard to distinguishing marks in a bill of divorce – בְּעַל וְאֲשֶׁתוֹ סִימְנֵי הַגְּט – If a bill of divorce is found in the marketplace, and the wife claims that she

was divorced with that bill of divorce and it fell from her possession, and the husband claims that he had not yet given her the bill of divorce and it fell from his possession, the finder does not return the bill of divorce to either party. If the wife provides the distinguishing marks of the bill of divorce, the finder returns it to her even if the husband also provides distinguishing marks. With regard to the effectiveness of a distinguishing mark required to return a bill of divorce, the Rif holds that it must be a clear-cut distinguishing mark, and the Rosh holds that even an intermediate-level distinguishing mark suffices. The Gra explains that the ruling in the Shulhan Arukh is in accordance with the opinion of the Rif (Rambam Sefer Nezikin, Hilkhot Gezeila VaAveda 18:6–7; Shulhan Arukh, Even HaEzer 153:1).

HALAKHA

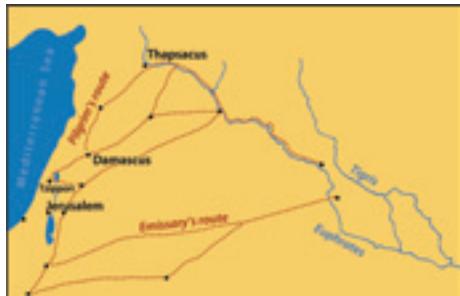
And until when is one who finds a lost item obligated to proclaim his find...for three pilgrimage Festivals – **שְׁלֹשׁ גָּלוּם**: During the Temple period, anyone who found a lost item would proclaim his find during all three pilgrimage Festivals. During the first pilgrimage Festival, he would proclaim: This is the first pilgrimage Festival during which I am proclaiming my find. During the second, he would proclaim that it was the second Festival. During the third Festival, he would proclaim his find without specifying which number Festival it was. Seven days after the last Festival, he would again proclaim his find, in accordance with the opinion of Rabbi Yehuda (Rambam *Sefer Nezikin*, *Hilkhot Gezeila VaAveda* 13:8).

One starts to request rain – שׁוֹאֵלָן אֶת הַגָּשִׁים: In Eretz Yisrael, one begins to request rain by inserting the phrase: And grant dew and rain, in the blessing of the years, the ninth blessing of the *Amida*, on the seventh day of Marheshvan (Rambam *Sefer Ahava*, *Hilkhot Tefilla* 2:16; *Shulhan Arukh*, *Orach Hayim* 117:1).

BACKGROUND

Three pilgrimage Festivals – שְׁלֹשׁ רִגְלִים: The three pilgrimage Festivals are Passover, *Shavuot*, and *Sukkot*. On these three Festivals, Jewish men were obligated to appear at the Temple in Jerusalem (Deuteronomy 16:16). All offerings pledged to the Temple were brought on these Festivals, so that one would not violate the prohibition: "You shall not be slack" (Deuteronomy 23:22) in fulfilling your vows.

So that the last...can reach the Euphrates River – כִּי שָׁאַעַן לְנָהָר פְּרָת: There were several routes from Eretz Yisrael to Babylonia. The main path was probably via Damascus, through Thapsacus, all the way along the Euphrates to Babylonia. Although this route, which followed inhabited areas, was very long, more than 500 km to Thapsacus, it was the best journey for large convoys, which occasionally included women and children. At a speed of roughly 30 to 40 km a day, the trip would take about fifteen days. A more direct path via the desert, at a quicker pace, offered the traveler a journey of roughly seven days.



Routes from Eretz Yisrael to Babylonia

NOTES

And proclaim his loss for one day – **יִקְרֵי יּוֹם אֶחָד**: Rashi explains that the one who lost the item proclaims his loss. The Rambam holds that the finder proclaims his find for one additional day, i.e., seven days after the third pilgrimage Festival. Rabbeinu Tam and Rabbeinu Yehonatan of Lunel explain that in this context the reference is not to proclamation; rather, the Gemara states that the one who lost the item will search through his belongings to ascertain whether it is indeed his item that is lost.

Here during the First Temple period – אָנוּ בָּמִקְדֵּשׁ רִאשׁוֹן: Although Rabban Gamliel did not live during the First Temple period, he nevertheless sought to establish a *halakha* in principle and not merely to issue a ruling relevant to his time period. In fact, he became *Nasi* only after the destruction of the Second Temple (*Ya'avetz*).

מַתָּנֵי וְעַד מִתָּי חִיב לְהִכְרִיז? עַד כִּי שִׁידְעוּ בּוֹ שְׁבִינוּ, דָּבְרֵי רַבִּי מֵאִיר. וּבַיְהּוֹדָה אָוּמָר: שְׁלֹשׁ רְגִלִּים וְאַחֲרֵי הַרְגִּילָה הַאַחֲרָון שְׁבָעָה יָמִים, כִּי שִׁילָּוּ לְבִתְתוֹ שְׁלֹשָׁה וְיְחִזּוּ שְׁלֹשָׁה וְכְרִיזָה יּוֹם אֶחָד.

גַּם תְּנָא: שְׁבִינוּ אֶבְיִידָה. מֵאַי שְׁבִינוּ אֶבְיִידָה? אַיְלִמָּא שְׁבִינִים דְּבָעֵל אֶבְיִידָה – אֵי יָצַע לְיהָ לְיוֹלָל וְלְהִרְוָה נְהַלְּהָ! אַלְאָ: שְׁבִינוּ מִקּוּם שְׁנָמְצָאת בּוֹ אֶבְיִידָה.

יְבִי יְהּוֹדָה אָוּמָר" כָּו.

וּמִנִּגְהָ: בְּשַׁלְשָׁה בְּמִרְחָשָׂן שׁוֹאֵלִין אֶת הַגָּשִׁים. רַבָּן גַּמְלַיאֵל אָוּמָר: בְּשַׁבָּעָה בּוֹ, שֶׁהָוָא חִמְשָׁה עַשֶּׁר יוֹם אַחֲרֵי הַחַג, כִּי שְׁאַיּוּعַ אַחֲרָון שְׁבָעָרָץ יִשְׂרָאֵל לְנָהָר פְּרָת!

אָמָר רַב יוֹסֵף: לֹא קָשִׁיא: כֹּאן – בְּמִקְדֵּשׁ רִאשׁוֹן, בָּאוּ – בְּמִקְדֵּשׁ שְׁנִי.

בְּמִקְדֵּשׁ רִאשׁוֹן, דְּנִפְשִׁי יִשְׂרָאֵל טָבָא. וְכַתֵּב בָּהוּ "יְהּוֹדָה וְיִשְׂרָאֵל – רַבִּים בְּחֹל אֲשֶׁר עַל הֵם לְבָב". בְּעֵינֵן פְּלִי הָאִי, בְּמִקְדֵּשׁ שְׁנִי דְּלָא נִפְיִשְׁיַי יִשְׂרָאֵל טָבָא, דְּכַתֵּב בָּהוּ "כָּל הַקָּהָל אֶחָד אַרְבָּעָה וּבוֹא אַלְפִים שְׁלֹשׁ מְאוֹת שָׁשים" – לֹא בְּעֵינֵן פְּלִי דָאי.

MISHNA And until when is one who finds a lost item obligated to proclaim his find? He is obligated to do so until the moment that the neighbors will know of its existence; this is the statement of Rabbi Meir. Rabbi Yehuda says: He is obligated to proclaim his find for three pilgrimage Festivals^{HB} and for seven days after the last of the three pilgrimage Festivals, so that its owner will have time to go to his home, a trip lasting up to three days, and ascertain that he in fact lost the item, and he will return to Jerusalem, a trip lasting up to three days, and proclaim his loss for one day.^N

GEMARA The mishna teaches that one must proclaim his find until his neighbors will know of its existence. A *tanna* taught: One must proclaim his find until the neighbors of the lost item will know of its existence. The Gemara asks: What is the meaning of the expression: **Neighbors of the lost item?** If we say that the reference is to **neighbors of the owner of the lost item**, he need not proclaim his find, as if the finder knows who lost the item, let him go and return it to him. The Gemara answers: Rather, the reference is to the **neighbors of the place where the lost item was found**.

¶ The mishna teaches that **Rabbi Yehuda says:** He is obligated to proclaim his find for three pilgrimage Festivals and for seven days after the last of the three pilgrimage Festivals, so that its owner will go to his home, a trip lasting up to three days, will ascertain that he in fact lost the item, and will return to Jerusalem, a trip lasting up to three days, and proclaim his loss for one day.

Apropos Rabbi Yehuda's calculation of three days as the duration of a pilgrim's travel from Jerusalem to his home, the Gemara raises a contradiction from a mishna (*Ta'anit* 10a): **On the third of the month of Marheshvan one starts to request rain** by inserting the phrase:^H And grant dew and rain, in the blessing of the years, the ninth blessing of the *Amida* prayer. **Rabban Gamliel says:** One starts to request rain **on the seventh of Marheshvan**, which is fifteen days after the conclusion of the festival of *Sukkot*, so that the last of those who are in Eretz Yisrael on the pilgrimage to Jerusalem can reach their homes beyond the Euphrates River^B before the onset of rain, which would make crossing the river more hazardous. Apparently, it takes fifteen days for those who came for the pilgrimage Festivals to return home, not three days.

Rav Yosef says: This is not difficult. Here, in the mishna in tractate *Ta'anit*, Rabban Gamliel's statement is referring to the duration of the journey **during the First Temple period**,^N which took fifteen days; whereas there, Rabbi Yehuda's statement is referring to the duration of the journey **during the Second Temple period**, which took three days.

The Gemara explains the answer: **During the First Temple period, when the Jewish people were very numerous, as it is written with regard to them: "Judea and Israel were many, as the sand that is by the sea in multitude, eating and drinking and rejoicing"** (1 Kings 4:20), we need that much time for them to travel from Jerusalem to the farthest reaches of Eretz Yisrael, due to the wide distribution of the large population. **During the Second Temple period, when the Jewish people were not very numerous, as it is written: "The whole congregation together was forty and two thousand three hundred and sixty"** (Ezra 2:64), we do not need that much time for them to travel from Jerusalem to the farthest reaches of Eretz Yisrael, due to the limited distribution of the small population.

**אָמָר לְהָא אֲבִי וְהָא בַּתְּבִיבָּו הַכְּנִינִים
וְהַלּוּסִים וְוּ וְהַמְּשֻׁרִים וְהַשּׁוּעָרִים... כֹּל
יִשְׂרָאֵל בְּעַרְיוֹתָם!**

Abaye said to Rav Yosef: **But isn't it written: "So the priests, and the Levites, and some of the people, and the singers, and the porters, and the Gibeonites, dwelt in their cities, and all Israel in their cities"** (Ezra 2:70). The verse indicates that despite their limited numbers, the Jewish people dwelt in all the cities that they inhabited previously, and the distance to the far reaches of Eretz Yisrael was no shorter during the Second Temple period.

**כִּי־בֵין דְּחַבֵּי הָוָה - אֶפְכָּא מִסְתְּבָרָא: מִקְדֵּשׁ
וְאַשְׁוֹן דְּבִיפְשִׁי יִשְׂרָאֵל טֹבָא, דְּמִצְוֹת
עַלְמָא, וּמִשְׁתְּבַחַי שִׁירָתָא דָאָזְלִי בֵין
בִּימְמָא וּבֵין בְּלִילָא - לֹא בְעַשְׁנִין כּוֹלִי
הָאֵי, וְסֹגִי בְּתִלְתָּא יוֹמָא. מִקְדֵּשׁ שְׁנִי, דָלָא
גַּפְישִׁי יִשְׂרָאֵל טֹבָא וְלֹא מִצְוֹת עַלְמָא,
וְלֹא מִשְׁתְּבַחַי שִׁירָתָא דָאָזְלִי בֵין בִּימְמָא
וּבֵין בְּלִילָא - בְּעַשְׁנִין כּוֹלִי הָאֵי.**

**רְבָא אָמָר: לֹא שְׁנָא בְּמִקְדֵּשׁ וְרָאשׁוֹן
וְלֹא שְׁנָא בְּמִקְדֵּשׁ שְׁנִי, לֹא הַטְּרוּחוּ רְבָנִים
בְּאַבְרָהָה יוֹתֵר מְדָאי.**

**אָמָר רַבִּינוֹ: שְׁמַע מִנְהָה בַּיְמָה בַּיְמָה - גָּלִימָה
מִכְרָיו. דָאֵי סְלָקָא דַעֲתָךְ אַבְרִיךְתָּא מִכְרָיו,
בְּעַשְׁנִין לְמַטְפִּי לְהָא חַדָּא יוֹמָא לְעַיְנוֹן
בְּמַאֲנִיאָה. אַלְאָ שְׁמַע מִנְהָה: גָּלִימָה מִכְרָיו,
שְׁמַע מִנְהָה.**

**רְבָא אָמָר: אַפְּיָלוּ תִּמְאָא אַבְרִיךְתָּא מִכְרָיו,
לֹא הַטְּרוּחוּ רְבָנִים בְּאַבְרָהָה יוֹתֵר מְדָאי.**

**תַּנִּינָה רְבָנִים: רָגֵל רָאשׁוֹן אָמָר: רָגֵל רָאשׁוֹן,
רָגֵל שְׁנִי אָמָר: רָגֵל שְׁנִי, רָגֵל שְׁלִישִׁי אָמָר:
קְתֻמָּה.**

Abaye continued: And since that is the reality, the opposite is reasonable. During the First Temple period, when the Jewish people were very numerous and when everyone was structured in groups, and caravans could be found that traveled both during the day and during the night, we do not need that much time to travel from Jerusalem to the farthest reaches of Eretz Yisrael, and three days suffice. By contrast, during the Second Temple period, when the Jewish people were not very numerous and when everyone was not structured in groups, and therefore, caravans could not be found that traveled both during the day and during the night, we need that much time, i.e., fifteen days, to travel from Jerusalem to the farthest reaches of Eretz Yisrael.

Rava said: It is no different during the First Temple period and it is no different during the Second Temple period; the requisite travel time to the border was fifteen days, as the opinion of Rabban Gamliel indicates. Nevertheless, Rabbi Yehuda calculated three days of travel to the border because the Sages did not wish to trouble the finder excessively in returning a lost item by requiring him to wait an extended amount of time.

Ravina says: Learn from the calculation of Rabbi Yehuda in the mishna that when a finder proclaims his find⁴ he specifies the nature of the item, e.g., he proclaims that he found a cloak. As, if it enters your mind that the finder proclaims that he found a lost item without specifying its nature, we need to increase the period of time afforded the owner to ascertain that he lost an item, and add one day for him to examine all his vessels. Rather, learn from it that the finder proclaims that he found a cloak. The Gemara affirms: Learn from it that the finder specifies the nature of the item.

Rava said: Even if you say that the finder proclaims that he found an unspecified lost item, nevertheless, Rabbi Yehuda does not require extending the period afforded the owner, because the Sages did not wish to trouble the finder excessively in returning a lost item by requiring him to wait an extended amount of time.

The Sages taught in a *baraita*: On the first pilgrimage Festival after finding the lost item, the finder proclaims his find and says: This is the first pilgrimage Festival that I am proclaiming this find. On the second pilgrimage Festival after finding the lost item, the finder proclaims his find and says: This is the second pilgrimage Festival that I am proclaiming this find. On the third pilgrimage Festival, the finder proclaims his find and says his proclamation without specification of the number of the Festival.

**וְאַמְאָאי? לִימָא רָגֵל שְׁלִישִׁי? דָלָא אַתִּי
אַחֲלָופִי בְּשָׁנִים. שְׁנִי נְמִי,**

The Gemara asks: And why does he not specify the number of the Festival? Just as he specified the previous two Festivals, let him say that it is the third pilgrimage Festival. The Gemara answers: He does not specify that it is the third pilgrimage Festival, so that one who hears him will not come to confuse it with the second pilgrimage Festival. If the finder were to proclaim that it is the third [shelishi] Festival, it is possible that the owner would mistakenly hear the word second [sheni] and believe that there is time remaining to reclaim his lost item. Since on the second Festival he mentions the number and on the third Festival he does not mention a number, there is no potential for confusion. The Gemara asks: Based on that reasoning, on the second pilgrimage Festival too, the finder should not mention the number of the Festival,

HALAKHA

כִּי מִכְרִיזׁוּ כָּוִי – When a finder proclaims his find, etc. – Typically, the finder proclaims his find, whether the item in question is money, a garment, or an animal. The owner then comes and provides its distinguishing marks, in accordance with the opinion of Ravina (Rambam Sefer Nezikin, Hilkhot Gezeila VaAveda 13:1; Shulhan Arukh, Hoshen Mishpat 267:4).

Perek II

Daf 28 Amud b

HALAKHA

From the time that the Temple was destroyed – **בשחרוב בית המקדש**: From the time that the Temple was destroyed, the Sages instituted an ordinance that those who find lost items proclaim their finds in synagogues and study halls. From the time that the oppressors proliferated, i.e., that the king would confiscate lost items, the Sages instituted that it is sufficient for the finder to inform his neighbors and acquaintances of his find (Rambam Sefer Nezikin, Hilkhot Gezeila VaAveda 13:9; Shulhan Arukh, Hoshen Mishpat 267:3).

Claimant's Stone – **אבן טוין**: There was an elevated stone where those who found lost items would proclaim their finds and owners would claim their lost items. According to the Rambam this stone was located outside of Jerusalem, while other commentaries disagree (Rambam Sefer Nezikin, Hilkhot Gezeila VaAveda 13:1).

And a swindler even though he stated its distinguishing marks – **הדרמי אין ילי פ שאמור סקיניה**: If one comes and claims a lost item and provides equivocal distinguishing marks, the finder need not return it to him. In a case where the claimant is a known swindler, even if he provides clear-cut distinguishing marks, the finder need return it to him only if he brings witnesses to support his claim (Rambam Sefer Nezikin, Hilkhot Gezeila VaAveda 13:3; Shulhan Arukh, Hoshen Mishpat 267:5 and Beur HaGra there).

BACKGROUND

A lost item belongs to the king – **אבירתא למלכא**: In ancient times, laws governing the rights to a lost item varied among countries. In many countries, any treasure buried in the ground belonged to the monarch, and any other lost item was divided equally between the finder and the monarchy. Under the Roman legal system, lost items belonged exclusively to the finder. The Gemara relates an incident involving Rabbi Ami, who was initially from Babylonia, which was under Persian rule, where lost items belonged to the king. In Eretz Yisrael, which was under Roman rule, lost items belonged to the finder.

NOTES

Claimant's Stone [Even To'an] – **אבן טוין**: This translation is in accordance with the version of the term that appears in the Gemara. There is a variant reading, *to'in*, meaning those who erred or are lost, referring to those who lost items and seek to recover them.

Has been obscured – **נתקחת**: Rashi explains that this term means obscured, i.e., covered with rainwater. In the Jerusalem Talmud, it is understood as hyperbole, meaning eroded.

Until your brother claims it [oto] – **עד דרשות אחיך אותו**: The Sages interpreted this phrase as meaning: Until you scrutinize him [*oto*], meaning your brother (Ba'al HaTurim). The Radbaz cites the Zohar, which explains that the term *oto* means its sign, *ot*, i.e., until the owner examines the distinguishing marks of the lost item (see *Haketav Vehakabbala*).

אתיא לאחלופי בראשון הא קא אתי גבל שלישי.

תנו רבנן: בראשונה, כל מי שמצא אבידה – היה מברורי עליה שלשה רגליים, ולאחר רגליו שבעת ימים, בדי שלן שלשה וחזרו שלשה וכבריו יום אחד. משחרוב בית המקדש, שינה במרתחה ביוםינו, התקינו שייה מברורים בבתי כנסיות ובכתבי מדושים. ונשברו האגסים – התקינו שייה מודיעין לשכינו ולמיידען, וידיו.

מאי משבבו האגסים? אמר ר' אבדיתא למלא. ר'AMI אשכח אורדייא לדינרי, ח'יה והוא רומאה דקה מירתת. אמר לה'iol שקוול נפשך, דלא פרסאי אמן. אמר ר' אבדיתא למלא.

תנו רבנן: אבן טוין היתה בירושלים, כל מי שאברה לו אבידה נפנה לשם, וכל מי שמצא אבידה נפנה לשם. זה עמד ומזכיר, וזה עוזם ונוטן סימני ונוטלה. זו היא שׁנינו: צאו וראו אם נמתה. אבן הטוין.

מתני' אמר את האבידה ולא אמר סקיניה – לא יתן לו. והרמא, אף על פי שאמר סקיניה – לא יתן לו, שנאמר עד דרש אחיך אותו – עד שתדרוש את אחיך, אם רמאי הוא אם אינו רמאי.

because perhaps one who hears him will come to confuse it with the first pilgrimage Festival? The Gemara answers: Confusing the second Festival with the first is not a problem, as in any case, won't the finder come on the third pilgrimage Festival, thereby giving the owner another opportunity to recover his lost item?

§ The Sages taught: Initially, anyone who found a lost item would proclaim his find for three pilgrimage Festivals and for seven days after the last of the three pilgrimage Festivals, so that its owner will go to his home, a trip lasting up to three days, and will return to Jerusalem, a trip lasting up to three days, and proclaim his loss for one day. But from the time that the Temple was destroyed,^h may it be rebuilt speedily in our days, the Sages instituted that those who find lost items shall proclaim their finds in synagogues and study halls. And from the time that the oppressors proliferated, the Sages instituted an ordinance that one who finds a lost item shall inform his neighbors and acquaintances, and that will suffice for him.

The Gemara asks: What is the meaning of: From the time that the oppressors proliferated? The Gemara answers: It is from the time that they say: A lost item belongs to the king.^b The Sages were concerned that any public proclamation would result in confiscation of the lost item. The Gemara relates: Rabbi Amiⁱ found a vessel full of dinars. A certain Roman saw that he was wary and hesitant to take it. The Roman said to him: Go, take it for yourself; as we are not Persians, who say that a lost item belongs to the king.

The Sages taught in a *baraita*: There was a Claimant's Stone^{HN} in Jerusalem, and anyone who lost an item would be directed there and anyone who found a lost item would be directed there. This finder would stand and proclaim his find and that owner would stand and provide its distinguishing marks and take the item. And that is the place about which we learned in a mishna (*Taanit* 19a): Go and see if the Claimant's Stone has been obscured^N by the rising water.

MISHNA

If a claimant accurately stated what type of item the lost item that was found by another is, but did not state, i.e., describe, its distinguishing marks, the finder shall not give it to him. And in the case of a swindler, even though he stated its distinguishing marks,^h the finder shall not give the lost item to him, as it is stated: "And if your brother be not near you, and you know him not, then you shall bring it into your house, and it shall be with you until your brother claims [derosh] it [oto],^N and you shall return it to him" (Deuteronomy 22:2). Would it enter your mind that the finder would give it to him before he claims it? How can the finder return it if he does not know the identity of the owner? Rather, the verb *derosh* is not referring to the claim of the owner; it is referring to the scrutiny performed by the finder. You shall not return the lost item until you scrutinize [shetidrosh] your brother to determine whether he, the claimant, is a swindler or whether he is not a swindler.

PERSONALITIES

Rabbi Ami – **רבבי אמר**: Rabbi Ami was a prominent third-generation *amora* in Eretz Yisrael, who lived at the end of the third century CE. He headed the yeshiva in Tiberias together with his colleague Rabbi Asi after the deaths of Rabbi Yohanan and Rabbi Elazar. Rabbi Ami considered Rabbi Yohanan his primary teacher, although he studied with Reish Lakish, Rabbi Elazar, Rabbi Oshaya, and Rabbi Yehoshua ben Levi as well. During Rav Hunai's lifetime,

Rabbi Ami deferred to his halakhic rulings. After his death, Rabbi Ami was considered the foremost halakhic authority, which was the source of his great renown. Responding to a question sent to him, he wrote: From me, Ami bar Natan, Torah emerges to all of Israel (*Gittin* 44a). Among those who consulted him with their Torah inquiries were Rabbi Abbahu, Rav Nahman, and Rava.

**גמ' אמרו ר' יהודה אמר: אַבִידָתָא
מְכֻרֵי, וּרְבָן חֲמֹן אָמַר: גָּלִימָא מְכֻרֵי.**

**רב יהודה אמר: אַבִידָתָא מְכֻרֵי, דָא
אמָרָתָ גָּלִימָא מְכֻרֵי - חַיְשֵׁין לְרַפָּאִי.**

**רב נחמן אמר: גָּלִימָא מְכֻרֵי, לרַמָּא
לא חַיְשֵׁין, דָא בָּן אין לְזֶבֶר סָוִי.**

**תנן: אמרו את האבידה ולא אמרו את
סימניה - הרי זה לא יתון לו. אי אמרתו
בשלמה אַבִידָתָא מְכֻרֵי - הָא קא
משמע לו, אף על גב דאמר גלימה, כי
לא אמר סימניה - לא מחדירין ליה.
אללא אי אמרות גָּלִימָא מְכֻרֵי, אמר
איוה גָּלִימָא ואמר איוה גָּלִימָא, צויכא
למייר כי לא אמר סימניה לא מחדירין
לייה?**

**אמר רב ספרא: לעולם גָּלִימָא מְכֻרֵי.
אמר איוה גָּלִימָא, ואמר איוה סימניה.
וממאי לא אמר את סימניה - לא אמר
סימניה מובחקין דינה.**

**ויהרומאי אף על פי שאמרו את סימניה
הרי זה לא יתון לו. תנו רבנן: בראשונה
כל מי שאבדה לו אבידה - היה נתן
סימניה ונוטלה. משובבו הרומאי, התקינו
שיהו אומרים לו: צא והבא עדים לך
רפואי אתה, וטול.**

**כי ה'א דאבותה דרב פפא איריבס ליה
חקרו ואשבחו. אתחא לkipha ורבה
בר רב הונא, אמר ליה: זיל איזיט שחר
דלאו רפאית, וטול אל איזיט
שחרוי, אמר להו ידעיתון ביה דרפואי
הוא? אמרו ליה: אין. אמר להו: אננא
רמאה אונא? אמרו ליה: אין. לאו רמא
את קאמורין. אמר רבה בר רב הונא:
מסתברא, לא מיתתי איניש חוברתא
לנפשיה.**

GEMARA It was stated that Rav Yehuda said: One who finds an item proclaims that he found a lost item without specifying its nature. And Rav Nahman said: He specifies the nature of the item, e.g., he proclaims that he found a cloak.^h

Rav Yehuda said: One who finds an item proclaims that he found a lost item, as if you say that he proclaims that he found a cloak, we are concerned about the possibility that a swindler may attempt to claim the item. Perhaps the swindler learned that another person lost that item, and he will ascertain its distinguishing marks, provide those distinguishing marks, and claim the item.

Rav Nahman said: The finder proclaims that he found a cloak, and we are not concerned about the possibility that a swindler may attempt to claim the item, as if so, there is no end to the matter. Even if the finder does not specify the nature of the item, perhaps a swindler would be able to guess its nature.

The Gemara cites proof from that which we learned in the mishna: If a claimant accurately states what type of item the lost item that was found by another is, but did not state its distinguishing marks, the finder shall not give it to him. Granted, if you say the finder proclaims that he found an unspecified lost item, this mishna teaches us that even though the claimant indeed stated that the lost item is a cloak, as long as he did not state its distinguishing marks, we do not return it to him. But if you say that the finder proclaims that he found a cloak, if the finder stated that he found a cloak and the claimant stated that he lost a cloak, does it need to be said that when he did not state its distinguishing marks, we do not return it to him?

Rav Safra said: Actually, one could say that the finder proclaims that he found a cloak, and the mishna is referring to a case where the finder stated that he found a cloak, and the claimant stated its distinguishing marks. And what is the meaning of the phrase in the mishna: If he did not state its distinguishing marks? It means: If he did not state its clear-cut distinguishing marks but rather stated distinguishing marks that are not exclusive to the item. Therefore, he does not prove his ownership.

§ The mishna teaches: And in the case of a swindler, even though he stated its distinguishing marks, the finder shall not give the lost item to him. The Sages taught: Initially, anyone who lost an item would provide its distinguishing marks and take it. But when the swindlers proliferated,ⁿ the Sages instituted an ordinance that the finders will say to him: Go and bring witnesses who can testify that you are not a swindler,^h and take your item.

The Gemara relates: This is as in that incident involving the father of Rav Pappa, who lost a donkey and others found it. He came before Rabba bar Rav Huna to reclaim his donkey. Rabba bar Rav Huna said to the father of Rav Pappa: Go and bring witnesses who can testify that you are not a swindler, and you may take your donkey. The father of Rav Pappa went and brought witnesses. Rabba bar Rav Huna said to the witnesses: Do you know about him that he is a swindler? The witnesses said: Yes. Rav Pappa's father said, incredulously, to the witnesses: I am a swindler? The witnesses said to him: We were saying that you are not a swindler. They had thought the question was if he was not a swindler, and therefore responded in the affirmative. Rabba bar Rav Huna said: It is reasonable to conclude that the witnesses actually intended to support Rav Pappa's father, because presumably, a person does not bring condemnation upon himself;ⁿ Rav Pappa's father would not have volunteered to provide witnesses who would testify against him.

HALAKHA

אַבִידָתָא מְכֻרֵי... גָּלִימָא מְכֻרֵי: One who finds a lost item proclaims which type of item he found, in accordance with the opinion of Rav Nahman, as the halakha is in accordance with his opinion in monetary matters. This ruling is also in accordance with the opinion of Ravina cited on 28a (Rambam Sefer Nezikin, Hilkhot Gezila VaAveda 13:3; Shulhan Arukh, Hoshen Mishpat 267:5).

צָא וְבָרַא אֵת הַבָּא עַיִם דְּאָוֹרְפָאִי: From the time that swindlers proliferated, the Sages instituted an ordinance that the owner of a lost item must bring witnesses who can testify that he is not a swindler, and only then does the finder return the lost item to him. The Rema, citing the Tur, holds that if he provides a clear-cut distinguishing mark, the finder may return it to him without witnesses (Rambam Sefer Nezikin, Hilkhot Gezila VaAveda 13:4; Shulhan Arukh, Hoshen Mishpat 267:6).

NOTES

מְשֻׁרְבּוּ הַרְמָאִין: Initially, the claimant was scrutinized only if he was a known swindler. With the proliferation of swindlers, the Sages instituted an ordinance that every claimant is considered suspect (Meiri).

אַל אִמְרֵית אִישׁ חַבְּתָא לְמַפְשִׁיה: Generally, the principle is that once a witness states his testimony he may not offer a revision of that testimony. That is true especially in this case, where Rav Pappa challenged the witnesses. Nevertheless, since it was apparent that their original statement was based on a misunderstanding, their explanation was accepted (Ritva; Meiri).

HALAKHA

Any living being that works – *כִּל דָבָר שְׁעוֹשָׂה*: If one finds an animal that works and generates enough revenue to cover the costs of its sustenance, he tends to it for twelve months. This is the *halakha* with regard to both beasts of burden, e.g., a cow or donkey, and chickens that lay eggs. If the finder can earn more by renting the animal, he should do so. If the revenue generated by the animal is greater than the cost of its sustenance, the profit belongs to the owner of the animal. After twelve months, the finder assesses its value, and the finder and owner become equal partners in the animal and share any future profits (Rambam *Sefer Nezikin, Hilkhot Gezeila VaAveda* 13:15; *Shulhan Arukh, Hoshen Mishpat* 267:22 and *Sma* there).

Calves and foals – *עֲגָלִים וַתְּרִינְגָּלוּן*: If one finds calves and foals that graze in the open pasture, he tends to them for three months. If they require fattening, he tends to them for just one month (Rambam *Sefer Nezikin, Hilkhot Gezeila VaAveda* 13:16; *Shulhan Arukh, Hoshen Mishpat* 267:23).

Geese and roosters – *אֲוֹוִין וַתְּרִינְגָּלוּן*: In the case of one who found ganders and roosters, if they are large, he tends to them for thirty days. If they are extremely small, he tends to them for three days and sells them in court. This is the *halakha* for any other animal whose care costs more than the revenue it generates. The Rema holds that the finder may assess the animal's value, set aside the money, and keep the animal (Rambam *Sefer Nezikin, Hilkhot Gezeila VaAveda* 13:16; *Shulhan Arukh, Hoshen Mishpat* 267:24).

מַתָּנֵי כִּל דָבָר שְׁעוֹשָׂה וְאֶכֶל – יַעֲשֵׂה
וְאֶכֶל, וְדָבָר שָׁאוֹן עֹשָׂה וְאֶכֶל – יַמְכַר,
שֶׁנָּאֹמֵר "וְהַשְׁבֹּתוֹ לוֹ" – רַאֲהָה הַאֲזָקָן
תַּשְׁבַּבְנוּ לוֹ.

מה ה'יא בדמים? וב' טרפון אומר: ישתמש
ב'חן, לפיכך אם אברוד חיב באחריוון, וב'
עקי'בא אומר: לא ישתמש ב'חן, לפיכך אם
אברוד אין חיב באחריוון.

גַם וְלֹעֲלָס? אמר רב נחמן אמר שמואל:
עד שנים עשר חוץ. תנייא נמי ה'ci: כִּל דָבָר
שְׁעוֹשָׂה וְאֶכֶל, בְּנוּ פָרָה וְחַמּוֹר – מַטְפֵל
ב'חן עד שנים עשר חוץ. מְכָאן וְאַילְךָ –
שם דמיון ומניין.

עֲגָלִים וַתְּרִינְגָּלוּן מַטְפֵל ב'חן שְׁלַשָּׁה תְּרוּשִׁים,
מְכָאן וְאַילְךָ – שם דמיון ומניין. אֲוֹוִין
וַתְּרִינְגָּלוּן מַטְפֵל בָּהֶם שְׁלַשָּׁים יָמִים, מְכָאן וְאַילְךָ –
וְאַילְךָ – שם דמיון ומניין.

אמר רב נחמן בר יצחק: תרינגולות בבהמה
גסה. תנייא נמי ה'ci: תרינגולות ובהמה
גסה מטפל ב'חן שנים עשר חוץ, מְכָאן
וְאַילְךָ – שם דמיון ומניין. עֲגָלִים וַתְּרִינְגָּלוּן
מַטְפֵל ב'חן שְׁלַשָּׁים יָמִים, מְכָאן וְאַילְךָ –
שם דמיון ומניין. אֲוֹוִין וַתְּרִינְגָּלוּן וכל
דבר שטיפולו מרווחה משברו – מטפל ב'חן
שְׁלַשָּׁה יָמִים, מְכָאן וְאַילְךָ – שם דמיון
ומניין.

MISHNA If one finds any living being that works^H and generates enough revenue to cover the costs of the food that it eats, it shall work and eat while in the finder's possession. And any living being that does not work but it does eat shall be sold,^N as it is stated: "Then you shall bring it into your house, and it shall be with you until your brother claims it, and you shall return it to him" (Deuteronomy 22:2),^N indicating that the finder must see how best to return it to him. Since the owner must repay the finder for his expenditures, if feeding the animal costs more than its value, the finder's keeping the animal in his possession will prevent the owner from recovering it.

What shall be done with the money received from the sale of the animal? Rabbi Tarfon says: The finder may use it; therefore, if the money is lost, he is liable to pay restitution for it. Rabbi Akiva says: He may not use the money; therefore, if it is lost, he is not liable to pay restitution for it.

GEMARA The mishna teaches that an animal that generates enough revenue to cover the costs of the food that it eats shall work and eat while in the finder's possession. The Gemara asks: And must he care for the animal forever? Rav Nahman says that Shmuel says: He cares for the animal until twelve months pass. This is also taught in a *baraita*: If one finds any living being that works and generates enough revenue to cover the costs of the food that it eats, e.g., a cow or a donkey, he tends to them until twelve months pass. From that point forward, one assesses their value,^N sells them, and places the money aside for the owner.

If one finds calves and foals,^H which are young and unfit for labor, he tends to them for three months, as they do not earn their keep. From that point forward, one assesses their value, sells them, and places the money aside for the owner. If one finds geese and roosters, he tends to them for thirty days. From that point forward, one assesses their value, sells them, and places the money aside for the owner.

Rav Nahman bar Yitzhak says: The legal status of a chicken is like that of a large domesticated animal in that the eggs it lays suffice to cover the cost of its food, and therefore the finder keeps it for twelve months. This is also taught in a *baraita*: If one finds a chicken and a large domesticated animal, he tends to them for twelve months. From that point forward, one assesses their value, sells them, and places the money aside for the owner. If one finds calves and foals, he tends to them for thirty days. From that point forward, one assesses their value, sells them, and places the money aside for the owner. If one finds geese and roosters^H and anything that costs more to tend to than the revenue generated by it, he tends to them for three days. From that point forward, one assesses their value, sells them, and places the money aside for the owner.

NOTES

Shall be sold – *יַמְכַר*: Since the Gemara explains that ultimately even animals that work and generate revenue are sold, why does the mishna state only that an animal that does not work should be sold? Some answer that if one chooses, he may keep a working animal even beyond the twelve months stipulated in the Gemara, but he must sell a non-working animal (*Torat Hayyim*; Maharam Schiff).

And you shall return it [vahashevoto] to him – *וְהַשְׁבֹּתוֹ לוֹ*: The mishna's interpretation is based upon the translation of the word "vahashevoto," meaning: You shall return it, indicating that the one who finds the item must return its entire value, not just part of it (Rabbeinu Yehonatan of Lunel).

One assesses [sham] their value – *שם דמיון*: Rashi and the Rif explain that this means that the finder must sell the animals and set the money aside for their owner. Some cite a variant reading, and explain that rather than *sham*, meaning assesses, the word should be read *sam*, meaning the verb places. The Maharal explains the Rif's opinion as saying that with regard to those animals that may be sold immediately due to the difficulty involved in tending to them, they may be sold for less than their actual value; therefore, the sale must take place specifically in court. The Ramban holds that the finder need not sell them; rather, he can assess any lost animal, set its value aside for the owner, and keep it for himself.

**קשייא עגלים וקיהין אעגלאים
וקיהין איזוין ותרנגולין איזוין
ותרנגולין**

**עגלאים וקיהין אעגלאים וקיהין
לא קשייא; לא – דרעריא, והא
דפטומא.**

**איזוין ותרנגולין איזוין ותרנגולין
במי לא קשייא; הא – ברברבי, הא
בוטמי.**

**"ושאינו עושה ואוכל". תנ רבען:
"והשבתו לוי – ראה הירך השבען
לו, שלא יאכילד עגל לעגלאים, וסיח
לקיהין, איזוא לאיזוין, ותרנגול
לתרנגולין.**

**"מה יהיה בדים? רבי טרפון אומר
שחתם" וכו'. עד פאן לא פליין'**

The Gemara asks: It is **difficult**, as there is a contradiction between the ruling in the first *baraita* that the finder keeps **calves and foals** for three months and the ruling in the second *baraita* that the finder keeps **calves and foals** for thirty days; and there is another contradiction between the ruling in the first *baraita* that the finder keeps **geese and roosters** for thirty days, and the ruling in the second *baraita* that the finder keeps **geese and roosters** for three days.

The Gemara answers: The contradiction between the ruling in the first *baraita* with regard to **calves and foals** and the ruling in the second *baraita* with regard to **calves and foals** is **not difficult**. This ruling in the first *baraita* that the finder keeps them for three months is referring to calves and foals that **graze** in the pasture, and that ruling in the second *baraita* that the finder keeps them for thirty days is referring to calves and foals that **need to be fattened** and therefore require greater exertion on the part of the one who finds them.

The contradiction between the ruling in the first *baraita* with regard to **geese and roosters** and the ruling in the second *baraita* with regard to **geese and roosters** is **also not difficult**. This ruling in the first *baraita* that the finder keeps them for thirty days is referring to **large** geese and roosters, which do not require great exertion, and that ruling in the second *baraita* that the finder keeps them for three days is referring to **small** geese and roosters, which require great exertion.

The mishna teaches: **And any living being that does not work but it does eat shall be sold.** The Sages taught in a *baraita*: The verse states: “**And you shall return it to him**” (Deuteronomy 22:2), indicating that the finder must see how best to return it to him, meaning that one shall not feed the value of a calf to the lost calves that he is tending, nor the value of a foal to the lost foals that he is tending, nor the value of a goose to the geese that he is tending, nor the value of a rooster to the roosters that he is tending. Were the finder to do so, ultimately, the owner would receive nothing.

§ The mishna teaches: **What shall be done with the money received from the sale of the animal?** **Rabbi Tarfon says:** The finder **may use it**; therefore, if the money is lost, he is liable to pay restitution for its loss. **Rabbi Akiva says:** He may not use the money. Therefore, if it is lost, he is not liable to pay restitution. The Gemara analyzes the tannaitic dispute: Rabbi Tarfon and Rabbi Akiva disagree

Perek II

Daf 29 Amud a

**אלא בשנתם ביהן אבל לא
שנתם ביהן אם אבדו – פטור.**

only in a case where the finder **used** the money.^N But in a case where the finder **did not use** the money, everyone agrees that if the money is lost, the finder is **exempt** from paying restitution for its loss.

NOTES

Where the finder used the money – **בשנתם ביהן:** Rashi and *Tosafot* prove that there is no requirement that the finder actually use the money in order to render him liable to pay compensation for its loss, as in that case Rabbi Akiva would

also concede that the finder must pay; rather, the fact that he is permitted to use the money suffices to render him liable. This corresponds to the Gemara's explanation later of the opinion of Rabbi Tarfon (see *Meorot Natan*).

HALAKHA

שומר – A bailee charged with safeguarding a lost item – **אכיפה**: As long as the lost item is in the finder's possession, if it is then stolen or lost, the finder bears financial responsibility like a paid bailee and must compensate the owner for the loss or theft. This is the ruling of the *Shulhan Arukh*, based on the opinion of the early commentaries (Rif; Rambam; Rabbeinu Hananel; *Halakhot Gedolot*), who rule in accordance with the opinion of Rav Yosef, as the discussion in the Gemara is conducted according to his opinion. *Tosafot* and the Rosh rule in accordance with the opinion of Rabba, based on the principle that in his disputes with Rav Yosef, the *halakha* is in accordance with the opinion of Rabba. In Rabba's opinion, the legal status of a bailee safeguarding a lost item is like that of an unpaid bailee, who is liable to pay restitution only in cases of negligence (Rambam *Sefer Nezikin*, *Hilkhot Gezeila VaAveda* 13:10; *Shulhan Arukh*, *Hoshen Mishpat* 267:16).

NOTES

A bailee charged with safeguarding a lost item...is like a paid bailee – **שומר אכיפה...**: Elsewhere (*Bava Kamma* 56b) the Gemara explains that Rav Yosef holds that his legal status is like that of a paid bailee, because while he is engaged in the mitzva of tending to and returning the lost item, he is exempt from performing other mitzvot, e.g., giving charity to a poor person. The benefit he derives from that exemption constitutes his payment.

Therefore stated by Rabbi Tarfon – **לפייך רבי טרפון** – The Gemara here is not raising an additional difficulty to the opinion of Rav Yosef; rather, it is explaining the mishna in accordance with all opinions (*Tosafot*; Rosh).

לִמְאֵת הַיּוֹבֵת אֶת־רֹב יוֹסֵף דָאַתֵּמֶר,
שֻׁמֶּר אֲכִיפָה. וְבָה אָמַר: בְּשֻׁמֶּר חֲנָם.
רב יוסף אמר: בְּשֻׁמֶּר שָׁכָר.

The Gemara suggests: Let us say that this shall be a conclusive refutation of the statement of Rav Yosef, as it was stated that there is an amoraic dispute with regard to the legal status of a bailee charged with safeguarding a lost item.^h **Rabba said:** His legal status is like that of an unpaid bailee, who is liable to compensate the owner of the deposited item only in cases of negligence. **Rav Yosef said:** His legal status is like that of a paid bailee,ⁿ who is liable to compensate the owner of the deposited item even in cases of theft or loss. When the mishna teaches that if the finder did not use the money everyone agrees that he is exempt from paying restitution for its loss, it apparently contradicts the statement of Rav Yosef.

אָמַר לְךָ רֹב יוֹסֵף: בְּגַנִּיבָה וְאֲכִיפָה –
דְּכֹלְיוֹ לְעַמְּאָלָא פְּלִיעִי דְּחִיבִּיב, כִּי פְּלִיעִי –
בְּאָנוּסִין דְּשֹׂואָל. וּבִטְרָפָן סְבָר: שָׁרוֹ
לְהָרְבָּן לְאַשְׁתָּמוֹשִׁי בְּגַנִּיבָה, וְהָהָרְבָּן
לְהָרְבָּן לְאַשְׁתָּמוֹשִׁי בְּגַנִּיבָה, הַלְּקָרְבָּן לְ
הַיּוֹשָׁאָל עַלְיָהּ.

The Gemara answers that Rav Yosef could have said to you: In cases of theft or loss, everyone agrees that a bailee charged with safeguarding a lost item is liable to pay restitution for it. When they disagree is in a case of damage caused by circumstances beyond his control, for which it is the obligation of a borrower to pay compensation. The Gemara elaborates: **Rabbi Tarfon holds:** The Sages permitted him to use the money, and he is therefore a borrower with regard to it, and is liable to compensate the owner even in the event of circumstances beyond his control. **And Rabbi Akiva holds:** The Sages did not permit him to use the money, and he is therefore not a borrower with regard to it.

אֵי חַכִּי, "לְפִיכָן" דָאַמֵּר רֹבִי עֲקִיבָא
לְמַה לִי? אֵי אָמָרָת בְּשִׁלְמָא בְּגַנִּיבָה
וְאֲכִיפָה הוּא דְּפִלְיעִי – הַיּוֹן דְּקָתְנָה בְּפִי
עֲקִיבָא אָוּמֵר לֹא יִשְׁתַּמְשֵׁל בְּחַדְשָׁה לְפִיכָן
אֵם אַכְּרוֹן אַיִן חִיבָּב בְּאַתְּרִירָה, לְקָרָא
דְּעַתָּךְ אַמְּנָא שֻׁמֶּר שָׁכָר הַוי כְּדָרְבָּן
וְעַקְבָּא, וּבְגַנִּיבָה וְאֲכִיפָה מְחִיב – קָא
מִשְׁמָעָן לֹן, לְפִיכָן, הַשְׁתָּא דְּמָרָת לֹא
יִשְׁתַּמְשֵׁל בְּחַדְשָׁה – שֻׁמֶּר שָׁכָר לֹא הַוי, וְלֹא
מְחִיב בְּגַנִּיבָה וְאֲכִיפָה.

The Gemara asks: If so, why do I need the statement that Rabbi Akiva said: He may not use the money; therefore, if it is lost, he is not liable to pay restitution for it? Granted, if you say that it is in cases of theft or loss that they disagree, I understand that is the reason that the *tanna* teaches in the mishna that Rabbi Akiva says: He may not use the money; therefore, if it is lost, he is not liable to pay restitution for it. The Gemara explains: Since it enters your mind to say^b that the legal status of the finder is like that of a paid bailee, in accordance with the opinion of Rav Yosef, and that in cases of theft and loss the finder is liable to pay restitution, Rabbi Akiva teaches us: Therefore, if it is lost, he is not liable to pay restitution. Now that you said that he may not use the money, he is not a paid bailee and is not liable to pay restitution in cases of theft and loss.

אַלְאָא אֵי אָמָרָת בְּגַנִּיבָה וְאֲכִיפָה דְּכֹלְיוֹ
עַלְמָא לֹא פְּלִיעִי דְּחִיבִּיב, כִּי פְּלִיעִי –
בְּאָנוּסִין דְּשֹׂואָל, מָאי "לְפִיכָן" דָרְבִּי
עֲקִיבָא? הַכִּי מִבְשָׁלֵה לְהָלְמָתָנָא: רֹבִי
עֲקִיבָא אָוּמֵר לֹא יִשְׁתַּמְשֵׁל בְּחַדְשָׁה וְאַנְאָ
יְדַעַנָּא, דְבִין דְלָא יִשְׁתַּמְשֵׁל בְּחַדְשָׁה – לֹא
שְׁזָאָל הַוי, וְאַיִן חִיבָּב בְּאַתְּרִירָה,
לְפִיכָן" דָרְבִּי עֲקִיבָא לְמַה לִי?

משום, "לְפִיכָן" דָרְבִּי טְרָפָן.

But if you say that in cases of theft or loss, everyone agrees that a bailee charged with safeguarding a lost item is liable to pay restitution for it, and when they disagree it is in cases of damage caused by circumstances beyond his control for which it is the obligation of a borrower to pay compensation, what is the meaning of the statement of Rabbi Akiva: Therefore, if it is lost, he is not liable to pay restitution for it? Rather, this is what the mishna should have taught: Rabbi Akiva says: He may not use the money; and I would know that since he may not use the money, he is not considered a borrower, and consequently bears no financial responsibility. Why do I need the statement that Rabbi Akiva said: Therefore, if it is lost, he is not liable to pay restitution for it?

The Gemara answers: The explanation appended to the statement of Rabbi Akiva is indeed extraneous. It was added in order to create a parallel between the formulation of the statement of Rabbi Akiva and the formulation of the statement of Rabbi Tarfon. The phrase: Therefore, if the money is lost, he is not liable to pay restitution for it, was appended to the statement of Rabbi Akiva due to the explanation: Therefore, if the money is lost, he is liable to pay restitution for it, stated by Rabbi Tarfon.ⁿ

BACKGROUND

It enters your mind to say – **שְׁלַקְנָא דְעַתָּךְ אַקְמָא**: This expression is used by the Gemara in response to an assertion that a certain statement is obvious and therefore unnecessary. The Gemara

responds by attempting to show that there are circumstances where the statement is in fact necessary in order to avoid a potential misunderstanding.

"וַיֹּאמֶר רָبִי טְרֵפָן לְמַה לֵי? הֲכִי
קָאָמֶר: בֵּין דְּשָׂרוֹ לֵיהּ רַבֵּן לְאַשְׁתָּמוֹשִׁ
בְּגּוּיָהוּ - כְּמַאן דְּאִשְׁתָּמֵשׁ בְּגּוּיָהוּ דָםִ
וְתִּיבְּ אַחֲרִיּוֹתָן."

וְהִיא אַבְדוֹ קְרָנִינִי!

The Gemara asks: And why do I need the statement that Rabbi Tarfon said: Therefore, if the money is lost, he is liable to pay restitution for it? The Gemara answers: This is what the mishna is saying: Since the Sages permitted him to use the money, his legal status is like that of one who actually used it and therefore, he is liable to pay restitution for it.

The Gemara asks: How can Rav Yosef explain that the dispute in the mishna is with regard to damage caused by circumstances beyond his control? But doesn't the mishna teach: Therefore, if the money is lost? The disagreement between Rabbi Tarfon and Rabbi Akiva is with regard to a case of damage due to loss, and not with regard to a case of damage caused by circumstances beyond one's control.

Perek II

Daf 29 Amud b

בְּדַרְבָּה, דָּאָמַר רַבָּה: נָגְנוּבוֹ - בְּלָקְטִים
מוֹזִיעִין, אַבְדוֹ - שְׁטַבָּעָה סְפִינְטוֹ בָּם.

The Gemara answers that the statement in the mishna: Therefore, if the money is lost, he is liable to pay restitution for it, can be explained in accordance with the statement of Rabba, as Rabba says concerning another mishna (58a): When the *tanna* says that they were stolen, the reference is to a case where the item was stolen by armed bandits; when he says that they were lost, the reference is to a case where the agent's ship sank at sea.

אָמַר רַב יְהוּדָה אָמַר שְׁמוּאֵל: הַלְּכָה
בְּרַבִּי טְרֵפָן, בֵּין וְרַבָּה הַתָּה לֵיהּ הַנָּהוּ
וּוֹיְדִיםִי, אַתָּא לְקַמְתָּה דִּירַב יוֹסֵף, אָמַר
לֵיהּ: מַהְוּ לְאַשְׁתָּמוֹשִׁי בְּגּוּיָהוּ? אָמַר
לֵיהּ, הֲכִי אָמַר רַב יְהוּדָה אָמַר שְׁמוּאֵל:
הַלְּכָה בְּרַבִּי טְרֵפָן.

אָמַר לֵיהּ אָבִי: וְלֹאָוֶא אָתְמָר עַלְהָ, אָמַר
רַבִּי חֶלְבּוֹ אָמַר רַב הַוָּנָא: לֹא שָׁנוּ אַלְאָ
בְּרַמְּיָה אַבְּיָהָה, הַוָּאֵיל וְטוֹרָח בָּהּ, אַבְּלָ
מְעוֹתָ אַבְּיָהָה דְּלָא טְרַח בָּהוּ - לֹא. וְהַנִּ
כְּמְעוֹתָ אַבְּיָהָה דָמוֹ. אָמַר לֵיהּ: זַיל, לֹא
שְׁבָקוּ לֵי דְאַשְׂרוּ לֵךְ.

Rav Yehuda says that Shmuel says: The halakha is in accordance with the opinion of Rabbi Tarfon, who said that it is permitted for the finder to use the money. The Gemara relates: There were these dinars that belonged to orphans^N that were in the possession of Rahava.^P Rahava came before Rav Yosef and said to him: What is the halakha; is it permitted for me to use these dinars? Rav Yosef said to him: This is what Rav Yehuda says that Shmuel says: The halakha is in accordance with the opinion of Rabbi Tarfon.

Abaye said to Rav Yosef: Wasn't it stated concerning this halakha that Rabbi Helbo says that Rav Huna says: The Sages taught this halakha, that it is permitted to use the money, only in a case of money received from the sale of a lost item^H that one found and that is no longer financially viable for one to tend to it. This is permitted, since he exerted himself and tended to it. But in the case of lost coins, where he did not exert himself in order to tend to them, it is not permitted for him to use them. And the case of these dinars in Rahava's possession is similar to a case of lost coins. Rav Yosef accepted Abaye's objection and said to Rahava: Go; as they did not allow me to permit the use of the dinars for you.

מַתְנִי מֵצָא סְפִירִים קוֹרְאָ בָּהּ אֶחָד
לְשָׁלְשִׁים י֙וֹם, וְאֵם אַיְנוּ יוֹדֵעַ לְקָרוֹת -
גּוֹלְלוּן, אַבְּלָלָא יַמְּדֹד בָּהּ בְּתִחְיָה, וְלֹא
קוֹרְאָ אֶחָד עַמּוֹ.

MISHNA If one found scrolls,^H he reads them once in thirty days in order to ventilate them and prevent mold. And if he does not know how to read, he rolls and unrolls them in order to ventilate them. But he shall not study passages in them for the first time, as he would leave the scroll exposed to the air for a lengthy period, thereby causing damage. And another person shall not read the scroll with him, as each might pull it closer to improve his vantage point, which could cause the scroll to tear.

מֵצָא כְּסֻות - מַנְעָרָה אֶחָד לְשָׁלְשִׁים י֙וֹם,
וְשׁוֹטְחָה לְצָרְבָּה, אַבְּלָלָא לְכֹבְדָו.

If one found a garment, he shakes it^H once in thirty days, and he spreads it out for its sake, to ventilate it, but he may not use it as a decoration for his own prestige.

NOTES

These dinars that belonged to orphans – **הַנְּהָ� צַדִּיקִי**: Rahava's request is difficult, as there is a principle that it is prohibited for one to use money which is deposited in his possession. The Ra'avad explains that this is a case where the father of these orphans deposited the money with him for safekeeping until they would reach the age of majority. The reason that a bailee may not use money deposited with him is that it must be available to be returned on demand. In this case, since the orphans had not yet reached the age of majority, that was not a consideration.

The Nimmukei Yosef asks how this is relevant to Rabbi Tarfon's opinion, since it is not a lost item. He explains that the case here is one where Rahava discovered that the money belonged to orphans only after he found it. Along these lines, some explain that it was lost money that Rahava did not manage to return to the father before the latter's death (Maharam Schiff).

HALAKHA

Money received from the sale of a lost item – **דָםִי אַבְּדָה**: One who finds a lost item may utilize money received from its sale after tending it for the prescribed period. His legal status after the sale is that of a borrower, and he is responsible for any loss of the money, even if it is due to circumstances beyond his control. By contrast, one may not utilize lost money that he found; he is considered either a paid or an unpaid bailee, as explained on 29a (Rambam Sefer Nezikin, Hilkhos Gezeila VaAveda 13:18; Shulhan Arukh, Hoshen Mishpat 267:25, and in the comment of Rema).

One who found scrolls – **מֵצָא סְפִירִים**: One who found scrolls reads them once every thirty days. If he does not know how to read, he rolls and unrolls them. He may neither study a topic that he never studied before, nor read and review one passage, nor read and translate one passage. Additionally, he may not open the scroll more than three columns at a time. Two people may read the same passage in the scroll, but they may not read different passages. Three people may not read even the same passage from the scroll (Rambam Sefer Nezikin, Hilkhos Gezeila VaAveda 13:11; Shulhan Arukh, Hoshen Mishpat 267:18, 292:21).

If one found a garment he shakes it – **מֵצָא כְּסֻות מַנְעָרָה**: If one found a woolen garment, he must shake it once every thirty days. He must do so alone and not together with another, and may not beat the garment with a stick. He may spread it on his bed in order to benefit the garment, but he may not do so for his own benefit (Rambam Sefer Mishpatim, Hilkhos She'ela UFitadon 7:4; Shulhan Arukh, Hoshen Mishpat 292:20).

PERSONALITIES

Rahava – **רַהַבָּה**: Rahava of Pumbedita was a prominent disciple of Rav Yehuda. His two sons, Avimi and Eifa, were also

Sages and were known as the sharp ones of Pumbedita (Sanhedrin 17b).

BACKGROUND

כלי כסף וכלי נחושת – A bailee safeguarding vessels or one who found vessels buries them in the ground. Copper vessels stored underground tend to rust if they are not treated, and silver vessels stored underground become tarnished by a layer of sulfur. Therefore, the bailee takes them out periodically to prevent deterioration. Only gold and glass vessels remain unharmed when stored underground.

הבית של בר הָבָע – The house of bar Havu was a large, family-owned factory in the city of Mehoza where phylacteries and mezuzot were produced. Its workers were renowned for their expertise in their field, and are mentioned elsewhere in the Gemara as experts in their field. Due to the activity of this factory and others like it, phylacteries and mezuzot were no longer uncommon and it was no longer necessary to commission specialized scribes in order to acquire them.

HALAKHA

המוציא תפילין – If one finds phylacteries, he should assess their value, and he is permitted to don the phylacteries immediately, in accordance with the opinion of Shmuel (Rambam Sefer Nezikin, Hilkhos Gezela VaAveda 13:14; Shulhan Arukh, Hoshen Mishpat 267:21).

One who borrows a Torah scroll – One who borrows an item may not lend it to another. This is the halakha even with regard to a Torah scroll, with which a mitzva is performed (Rambam Sefer Mishpatim, Hilkhos Sekhirut 1:4; Shulhan Arukh, Hoshen Mishpat 342:1).

One who deposits a Torah scroll – If one deposits a Torah scroll with another, the bailee should scroll it once every twelve months. Although he may read it while it is being rolled, he may not open it and read it for his own purposes (Rambam Sefer Mishpatim, Hilkhos She'ela UFikadon 7:4; Shulhan Arukh, Hoshen Mishpat 292:20).

אין השוכר רשאי לתרשי – One who rents an item from another may not rent it out to a third person (Rambam Sefer Mishpatim, Hilkhos Sekhirut 1:4; Shulhan Arukh, Hoshen Mishpat 307:4).

כלי כסף וכלי נחושת – משפטם
בזהן לזרוף, אבל לא לשחנקן, כל-
וזב וכלי זכוכית – לא יגע בזה עד
שיזבו אלייהו.

מצוא שק או קופה וכל דבר שאין דרכו
לטול – חרי זה לא יטול.

גמ' אמר שמואל: המוציא תפילין
בשוק – שם דמיון ומניין לאלטר.

מתיב רביינא: מצא ספרים – קורא בהן
אחד לששים יום, ואם אינו יודע
לקנות – גוללו. אין שם דמיון
ומניין – לא! אמר אביי: תפילין ביבי
בר חבו משבח שכיחי, ספרים לא
שכיחי.

תנין רבנן: השואל ספר תורה מחבירו
הרי זה לא ישאלנו לאחר, פותחו
וקוראו בו, ובלבך שלא לימוד בו
בתחריליה ולא יקרא אחר עמו.

ובן דפפיקיד ספר תורה אצל חבריו
גוללו כל שנים עשר חדש, פותחו
וקוראו בו, אם בשביlico פותחו – אסור.
סימוכים אומר: בחדר שלשים יום,
ביחס שנים עשר חדש. ובי אליעזר בן
יעקב אומר: אחד זה ואחד זה שנים
עשר חדש.

אמור מר: השואל ספר תורה מחבירו
הרי זה לא ישאלנו לאחר. מאיר אמר
ספר תורה? אפילו כל מיל נמי! דאמר
רבי שמעון בן לוי: כאן שנה רב איין
השואל ורשאי להשאיל, ואין השוכר
רשאי להשכיר.

ספר תורה איצטראיכא לייה, מהו
דתימא: ניחא ליה לאיניש דתיעבד
מצאה במנניה – קא משבען לנו.

If one found silver vessels or copper vessels,^b he may use them for their own sake to prevent tarnish and rust, but he may not use them to the extent that he will erode them. If he finds gold vessels or glass vessels, which are not ruined by neglect, he may not touch them until Elijah will come and identify the owner.

If a person found a sack or a basket or any other item that it is not his typical manner to take and carry because it is beneath his dignity, he shall not take it, as one need not demean himself in order to return a lost item.

GEMARA Shmuel says: One who finds phylacteries^h in the marketplace and is in need of phylacteries assesses their value and immediately places the money asideⁿ for the owner.

Ravina raises an objection from the mishna: If one found scrolls, he reads them once in thirty days; and if he does not know how to read, he rolls and unrolls them. Ravina infers: To roll and unroll them, yes, he may do so, but assess their value and place the money aside, no, he may not. Abaye said: There is a difference between phylacteries and scrolls. Phylacteries are available at the house of bar Havu,^b where they are produced in large quantities, but scrolls are not available, as Torah scrolls are not easily obtained.

§ The Sages taught in a *baraita*: In the case of one who borrows a Torah scroll^h from another, that person may not lend it to another, i.e., a third person. He may open it and read it, provided that he does not study passages in it for the first time, lest the scroll be exposed for a lengthy period of time and sustain damage. And another person shall not read the scroll with him, lest the scroll tear.

And likewise, in the case of one who deposits a Torah scroll^h with another, the bailee rolls it every twelve months, and he may open it and read it. If it is for himself that he opened it, it is prohibited. Sumakhos says: In the case of a new Torah scroll, one rolls it every thirty days because the ink is not yet dry and must be more frequently ventilated. By contrast, in the case of an old Torah scroll, one rolls it every twelve months. Rabbi Eliezer ben Ya'akov says: In the case of both this new Torah scroll, and the case of that old Torah scroll, one rolls it every twelve months.

The Gemara analyzes the *baraita*: The Master said: In the case of one who borrows a Torah scroll from another, that person may not lend it to another, i.e., a third person. The Gemara asks: Why did the *tanna* teach this *halakha* specifically with regard to a Torah scroll? This is the *halakha* with regard to any item as well, as Rabbi Shimon ben Lakish says: Here in a mishna (Gittin 29a), Rabbi Yehuda HaNasi taught: A borrower is not allowed to lend the item that he borrowed to someone else, and a renter is not allowed to rent out^h the item that he rented to someone else.

The Gemara answers: It was necessary for the *tanna* to mention the *halakha* specifically with regard to a Torah scroll, lest you say that a person is amenable to having a mitzva performed with his propertyⁿ and would consequently not mind if his Torah scroll was lent to another. Therefore, the *tanna* teaches us that the borrower may not lend even a Torah scroll.

NOTES

And immediately places [umanniyan] the money aside – **מןין לאלטר**: Some understand the term *umanniyan* to be referring not to placing aside the money, but to donning [manniah] the phylacteries. Once he assesses their worth so that he will be able to compensate the owner in the future, he may retain them for his own personal use.

Lest you say that a person is amenable to having a mitzva performed with his property – **בומו דתימא ניחא ליה לאיניש דתיעבד**: The commentaries note that there are several instances in the Gemara where the ruling is that indeed, a person is amenable to having a mitzva performed with his property, and they ask why this case is different. Some answer that in those cases, the value of the property in question does

not diminish as a result of use, whereas the value of scrolls diminishes when lent to others (Ritva). Others answer that while a person is amenable to having a mitzva performed with his property, in this case the mitzva was already performed, as he lent the scroll to another, and he has no interest in having another mitzva performed with it (Sefer HaOra).

"פּוֹתַחוּ וְקָרְוָא בּוּ", פְשִׁיטָא!
וְאֶלָּא לְמַאי שִׁילֵּיה֙ מִפְיָה֙? סִיפָּא
אַיִצְטְּרִיכָא לְיהָ: וּבַלְבָד שֶׁלְאָ יַלְמֹוד
בְּבִתְחַלָּה.

"וְכָנְהַמְפַקֵּיד סְפָר תּוֹרָה אֶצְל חֲבִירּוֹ
גּוֹלְלוֹ בְּשִׁנְמָשׁ עֲשָׂר חֶדֶשׁ, פּוֹתַחוּ
וְקָרְוָא בּוּ". מַאי עֲבִידָתְהָ גְּבִיהָ?
וְתוֹ: אִם בְּשִׁבְילוֹ פּוֹתַחוּ אַסּוּר – הָא
אַמְתָה "פּוֹתַחוּ וְקָרְוָא בּוּ" הַכִּיקָּאמָה:
אִם בְּשִׁהְוָא גּוֹלְלוֹ פּוֹתַחוּ וְקָרְוָא בּוּ
מוֹתָר. אִם בְּשִׁבְילוֹ פּוֹתַחוּ – אַסּוּר.

"סֻמְכוֹס אָמָר: בְּחֶדֶש שְׁלֹשִׁים יוֹם,
בֵּין שְׁנִים עָשָׂר חֶדֶשׁ. רַבִּי אַלְיעָזָר
בֶּן יַעֲקֹב אָמָר: אַחֲרֵה זֶה וְאַחֲרֵה זֶה
שְׁנִים עָשָׂר חֶדֶשׁ". רַבִּי אַלְיעָזָר בֶּן
ယַעֲקֹב הַיּוֹנוֹ תְּנָא קָמָא! אַלְאָ אִימָא:
רַבִּי אַלְיעָזָר בֶּן יַעֲקֹב אָמָר: אַחֲרֵה זֶה
אַחֲרֵה זֶה שְׁלֹשִׁים יוֹם.

"אָבֶל לֹא יַלְמֹוד בְּבִתְחַלָּה וְלֹא
יִקְרָא אַחֲרֵי עַמּוֹ". וּמִמְינָהוּ: לֹא יִקְרָא
פְּרָשָׁה וְוִשְׁנָה, וְלֹא יִקְרָא בְּפְרָשָׁה
וַיְתַגֵּם וְלֹא יִפְתַּח בְּזֶה וְיִתְהַרְבֵּשׁ מִשְׁלָשָׁה
דָּפִין, וְלֹא יִקְרָאוּ בְּשְׁלֹשָׁה בְּנֵי אָדָם
בְּרַךְ אַחֲרֵה זֶה שְׁנִים – קָרוּן!

אמָר אָבִי: לֹא קָשִׁיא: פְּאָן – בְּעַמִּן
אַחֲרֵה, פְּאָן בְּשִׁנִּי עַמִּינִים.

"מֵצָא בְּסָות מִנְעָרָה אַחֲרֵל שְׁלֹשִׁים
יוֹם". לְמִינְרָא דְבִיעּוֹר מַעַלְיוֹ לְהָ? הַחְאָמָר בְּבִי יְהָנָקָן: מֵי שִׁישׁ לוּ גְּדָרִי
אוֹפְּנָן בְּתַחַן בֵּיתְךָ יִנְשֶׁר בְּסָתוֹרָה בְּכָל
יוֹם! אָמָר: בְּכָל יוֹם – קָשִׁילָה, אַחֲרֵה,
לְשְׁלֹשִׁים יוֹם – מַעַלְיוֹ לְהָ.

אִיבְּעַת אִימָא: לֹא קָשִׁיא; הָא –
בְּחֶדֶשׁ, וְהָא – בְּתַרְיִי.

אִיבְּעַת אִימָא: לֹא קָשִׁיא; הָא –
בְּיַדָּא, וְהָא – בְּחַוטָרָא.

The *baraita* continues: He may open it and read it. The Gemara asks: Isn't that obvious? And rather, for what purpose did he borrow the Torah scroll from him, if not to read it? The Gemara answers: It was necessary to teach the last clause: Provided that he does not study passages in it for the first time.

The *baraita* continues: And likewise, in the case of one who deposits a Torah scroll with another, the bailee rolls it every twelve months, and he may open it and read it. The Gemara asks: What is the bailee doing with it?^N As a paid bailee, he has no right to read it. And furthermore, whereas the *tanna* teaches: If it is for himself that he opened it, it is prohibited, didn't you say in the previous passage: He may open it and read it? The Gemara answers: This is what the *tanna* is saying: If, when he is rolling the Torah scroll to ventilate it, he opens it and reads it, it is permitted. If it is for himself that he opened it, it is prohibited.

The *baraita* continues: Sumakhos says: In the case of a new Torah scroll, one rolls it every thirty days because the ink is not yet dry and must be more frequently ventilated. By contrast, in the case of an old Torah scroll, one rolls it every twelve months. Rabbi Eliezer ben Ya'akov says: In both the case of this new Torah scroll and the case of that old Torah scroll, one rolls it every twelve months. The Gemara asks: What is the dispute here; it appears that the statement of Rabbi Eliezer ben Ya'akov is identical to the statement of the first *tanna*, who stated without qualification that one rolls a Torah scroll every twelve months. The Gemara answers: Rather say that Rabbi Eliezer ben Ya'akov says: Both in the case of this new Torah scroll and the case of that old Torah scroll, one rolls it every thirty days.

§ The Gemara resumes its analysis of the mishna, which teaches with regard to borrowed scrolls: But he shall not study passages in them for the first time and another person shall not read the scroll with him. The Gemara raises a contradiction from a *baraita* (*Tosefta* 2:31): If one borrows a scroll, he shall not read a passage and review it, and he shall not read a passage in it and translate the passage, and he shall not open it more than three columns at a time, and three people shall not read in it together from one volume. The Gemara infers: But two people may read it together, contrary to the ruling in the mishna.

Abaye said: It is not difficult. Here, where it is inferred from the *baraita* that two may read one scroll together, it is referring to a case where they are reading one matter and each is aware of the progress of the other. There, in the mishna, where the ruling is that two may not read one scroll together, it is referring to a case where they are reading two different matters,^N as each is oblivious to the progress of the other and may pull the scroll closer to improve his vantage point.

§ The mishna teaches: If one found a garment, he shakes it once in thirty days. The Gemara asks: Is this to say that shaking a garment is beneficial for it? But doesn't Rabbi Yoḥanan say: Only one who has access to a skilled weaver [*gardī*]^{N1} in his house may shake his garment every day, as the weaver can replace the damaged garments with new ones. The Sages say: Shaking a garment every day is harmful to it, but shaking it once in thirty days is beneficial for it.

If you wish, say instead: It is not difficult. In this mishna, where the ruling is that shaking a garment is beneficial, the reference is to a case where one person shakes the garment. And that statement of Rabbi Yoḥanan, who rules that shaking the garment causes damage, is referring to a case where two people shake the garment.

If you wish, say instead: It is not difficult. In this mishna, where the ruling is that shaking a garment is beneficial, the reference is to a case where one shakes the garment by hand. And that statement of Rabbi Yoḥanan, who rules that shaking the garment causes damage, is referring to a case where one shakes the garment with a stick.

NOTES

מַאי עֲבִידָתְהָ גְּבִיהָ: In other words, why must he tend to the Torah scroll, rather than letting the owner come and do so? The Gemara's answer is that there is no obligation to tend to it. Rather, the *baraita* is saying that if the bailee seeks to go beyond the letter of the law and tend to the scroll, then he may read from it while doing so (Rashba).

There, where they are reading two different matters – בְּאָן בְּשִׁנִּים: Rashi explains that when they are reading one matter, it is likely that each will pull the scroll toward himself and it will tear, so it is prohibited. When they are reading two matters found in different columns, it is less likely that they will pull the scroll, so it is permitted.

מַי שִׁישָׁ: נָרְדִי אַתָּן וּכְ: The reason that Rabbi Yoḥanan did not formulate this statement: A person may not shake his garment daily, is because he sought to emphasize that not only does shaking damage the garment, it actually causes extensive damage (*Torat Hayyim*).

LANGUAGE

Weaver [*gardī*] – גָּרְדִּי: From the Greek γέρδας, *guerdios*, meaning weaver.

NOTES

A great deal of money – **כַּעֲוֹת הָרְבָה**: There is a variant reading of the text which says: One whose father left him money that is the proceeds of usury, and that is why he seeks to lose the money.

BACKGROUND

White glass – **חִירְתָּא חִירְתָּא**: White glass, which was apparently completely transparent, was more difficult to produce than colored glass, as it required special care in selecting raw materials that were free from any impurity. The vessels made of white glass were extremely fragile, and therefore the use of those vessels would often lead to financial loss due to breakage of the glass.

איַבְעֵית אִימָא: לֹא קְשִׁיא;
דְּרוּמָא, הָא - בְּדִיכְתָּנָא.

**אמֶר רַבִּי יוֹחָנָן: בְּסָא דְּתְרָשִׁין וְלֹא
כְּסָא דְּפֹשָׂרִין, וְלֹא אָמְרָן אֶלְאָ בְּכָל
מִתְכּוֹת, אֶבְלָ בְּכָל חֶרֶשׁ - לִתְּלִין
בָּהּ, וּבְכָל מִתְכּוֹת נִמְלֵאת אָמְרָן אֶלְאָ
דְּלָא צַוְּיאָ, אֶבְלָ דְּצַוְּיאָ - לִתְּלִין בָּהּ.
אֶבְלָ שְׁדָא בְּיהָ צַבְּיאָ, - לִתְּלִין בָּהּ.**

**וְאָמֶר רַבִּי יוֹחָנָן: מֵי שְׁהַנִּיחַ לֹא אָבִיו
כַּעֲוֹת הָרְבָה וְוֹצֵא לְאָבִון יַלְבֵשׁ בְּגַדִּי
פְּשָׁתָן, וַיַּשְׁתַּמְשֵׁשׁ בְּכָלִי זָכוֹת, וַיַּשְׁבַּר
פּוּלִילִים וְאֶל יַשְׁבֵּע עַמְּחָן. יַלְבֵשׁ בְּכָלִי
פְּשָׁתָן - בְּכִינְתָּנָא רַומִּיתָא, וַיַּשְׁתַּמְשֵׁשׁ
בְּכָלִי זָכוֹת - בְּגַגְתָּא חִירְתָּא,
וַיַּשְׁבַּר פּוּלִילִים וְאֶל יַשְׁבֵּע עַמְּחָן -
תַּרגְמוֹן**

If you wish, say instead: It is not difficult. In this mishna, where the ruling is that shaking a garment is beneficial, the reference is to a case where one shakes a garment made of wool. And that statement of Rabbi Yohanan, who rules that shaking the garment causes damage, is referring to a case where one shakes a garment made of linen.

The Gemara cites additional statements by Rabbi Yohanan providing practical advice. Rabbi Yohanan says: It is preferable to drink from a cup of witches and not to drink from a cup of lukewarm water, which is extremely unhealthy. Rabbi Yohanan qualifies his statement: We said this only with regard to lukewarm water in metal vessels, but in earthenware vessels we have no problem with it. And even in metal vessels, we said this only in a case where the water had not been boiled, but if the water had been boiled we have no problem with it. And we said that lukewarm water is unhealthy only in a case where one did not cast flavorings into the water, but if he cast flavorings into the water we have no problem with it.

And Rabbi Yohanan says: In the case of one whose father bequeathed him a great deal of money^N and he seeks to lose it, he should wear linen garments, and should use glass vessels, and should hire laborers and not sit with them to supervise. The Gemara elaborates: He should wear linen garments; this is stated with regard to Roman linen, which becomes tattered quickly. He should use glass vessels; this is stated with regard to expensive white glass.^B And he should hire laborers and not sit with them; the explanation is

Perek II

Daf 30 Amud a

NOTES

With oxen – **בְּתוּרִי**: A variant reading cited by Rabbeinu Hananel is: Laborers who work with oxen during the season of plowing and sowing. Failure to perform the labor properly at that time will ruin the entire year's crop.

HALAKHA

For his sake and for its sake – **לְזַוְּדוֹ וְלְזַוְּכָה**: One may spread a lost garment that he found over a bed or a similar surface, but he may do so exclusively for the sake of the garment, not for his own purposes (Rambam; Rosh). If guests happen to visit, he may not spread the garment even for its own sake, in order to ensure that it will not be stolen (Rambam Sefer Nezikin, Hilkhot Gezeila VaAveda 13:11; Shulhan Arukh, Hoshen Mishpat 267:18).

בָּתוּרִי, דְּנִפְשֵׁה פְּסִידִיָּהוּ

**"שׁוֹטְחָה לְצַוְּרָה אֶבְלָ לֹא לְכָבוֹד"
וּכְרִ. אִיבְעֵיא לְהָ לְצַוְּרָה וְלְצַוְּרָה
מַאי?**

**תֵּא שְׁמַע: שׁוֹטְחָה לְצַוְּרָה - לְצַוְּרָה
איַן, הָא לְצַוְּרָה וְלְצַוְּרָה - לֹא. אִימָא
סִפְא: אֶבְלָ לֹא לְכָבוֹד, לְכָבוֹד, לְצַוְּרָה וְלְצַוְּרָה -
דְּלָא, הָא לְצַוְּרָה וְלְצַוְּרָה - שְׁפִיר
רַמְּנִי אֶלְאָ מַהָּא לִיכָּא לְמַשְׁמָעִינָה.**

**תֵּא שְׁמַע: לֹא יַשְׁתַּחַנָּה לֹא עַל גַּבְיָ
מַפְתָּה וְלֹא עַל גַּבְיָ מַגְדָּל לְצַרְבָּוֹ, אֶבְלָ
יַשְׁתַּחַנָּה עַל גַּבְיָ מַפְתָּה וְעַל גַּבְיָ מַגְדָּל
לְצַרְבָּה. נַדְמָנוּ לוּ אֶזְרָחִים - לֹא
יַשְׁתַּחַנָּה לֹא עַל גַּבְיָ מַפְתָּה וְלֹא עַל גַּבְיָ
מַגְדָּל, בֵּין לְצַרְבָּוֹ בֵּין לְצַרְבָּה!**

**שְׁאַנְיַי הַתָּמָם, דְּמַקְלָא קָלִילָה, אֵין מִשּׁוּם
עַינָּא אֵין מִשּׁוּם גַּבְיָ.**

that this applies to laborers who work with oxen,^N whose potential for causing damage is great if they are not supervised, as they will trample the crops.

§ The mishna teaches that one who found a lost garment spreads it for its sake to ventilate it, but may not use it as a decoration for his own prestige. A dilemma was raised before the Sages: If one spreads it both for his sake and for its sake,^H what is the halakha?

The Gemara suggests: Come and hear proof from the mishna: He spreads it for its sake. The Gemara infers: For its sake, yes, he spreads it, but both for his sake and for its sake, he may not do so. The Gemara rejects the proof: Say the latter clause of the mishna: But not for his own prestige. The Gemara infers: It is for his prestige alone that he may not spread it, but for its sake and for his sake, one may well do so. Rather, no inference is to be learned from this mishna, as there are conflicting inferences from the first clause and the latter clause.

The Gemara suggests: Come and hear a proof from a baraita: If one finds a lost garment, he may not spread it on a bed or on a hanger for his sake, but he may spread it on a bed or on a hanger for its sake. If guests happened to visit, he may not spread it, neither on a bed nor on a hanger and neither for his sake nor for its sake. Apparently, it is prohibited to spread it for both his sake, to enhance his prestige before his guests, and for its sake.

The Gemara rejects this proof: It is different there, as spreading it before his guests is tantamount to burning it, either due to the evil eye that will result, or due to thieves, as once the guests are aware of the valuable item in his possession they may be tempted to steal it.

- **תְּאַשְׁמָעַ:** הַכִּנִּסָּה לְרַבָּקָה וְרֹשֶׁה
בְּשִׂירָה, בְּשִׁבְלֵל שְׂתִּינָק וְתְּדוֹשָׁה
פְּסָולָה. וְהָא הַכָּא, דְּלֹצְרוֹבָו וְלֹצְרוֹבָה
הַוָּא, וְקַטְנִי פְּסָולָה!

**שָׁאַנְיַי הַתָּם דָּאַמְרָ קְרוֹא "אֲשֶׁר לֹא
עָבֵד בָּה" – מִכֶּל מִקּוֹם.**

**הַא לֹא דְמִינָא אָלָא לְהָא, וְתַנְנָן: שָׁבֵן
עַלְיָה עַזָּה – בְּשִׂירָה, עַלְיָה עַלְיָה זָכָר –
פְּסָולָה. מַאי טֻמָּה?**

**כְּדֹבָר פְּפָא. דָּאַמְרָ רְבָבָ פְּפָא: אֵי
כְּתִיב "עַזָּבָד" וְקָרְוִין "עַזָּבָד" – הַוָּה
אַמְנִיאָ, אֲפִילוּ מִמְפִילָא. וְאֵי כְּתִיב
"עַזָּבָד" וְקָרְוִין "עַזָּבָד" – הַוָּה אַמְנִיאָ
עַד עַזָּבָד בָּה אַיהֲוָה.**

The Gemara suggests: Come and hear a proof from a *baraita*: If one introduced a calf into a yoke [*lirvaka*]^{HL} so that it would suckle, and it threshed with the cows, it is fit for use in the ritual of the heifer whose neck is broken,⁸ because the owner did not intend for it to perform labor. But if the owner introduces it so that it will suckle and it will thresh, it is unfit for use in that ritual because his intent is for the calf to perform labor, and the intentional performance of labor disqualifies it. And here, isn't the placement of the calf in the yoke for both his sake, threshing, and for its sake,^N sucking, and the *baraita* teaches that the calf is unfit? Apparently, it is prohibited for one who found a lost garment to spread it for both his sake and for its sake.

The Gemara rejects this proof by citing a verse written with regard to the heifer whose neck is broken. It is different there, as the verse states: "The Elders of that city shall take a heifer of the herd that has not been worked with and that has not pulled a yoke" (Deuteronomy 21:3), indicating that the heifer is rendered unfit in any case of labor performed. Therefore, no conclusion can be drawn with regard to spreading the garment.

The Gemara asks: If it is so that the calf is rendered unfit by any labor that it performed, then it should be unfit even in the first clause, where the owner did not intend for the calf to perform labor.

The Gemara answers. This is comparable only to this other case, as we learned in a mishna (*Para* 2:4): If a bird rested upon a red heifer,^{NB} it remains fit for use in the purification ritual, as supporting the bird on its back is considered neither labor nor comparable to pulling a yoke. If a male animal mounted it for mating, it is unfit for use in the purification ritual. The Gemara asks: What is the reason for the difference between the two cases?

The difference is in accordance with the statement of Rav Pappa, as Rav Pappa says with regard to the verse written concerning the heifer whose neck is broken: "And the Elders of that city shall take a heifer of the herd that has not been worked with and that has not pulled a yoke" (Deuteronomy 21:3). If the word were written with an additional letter *vav*, which would mean the passive: Has been worked with [*ubbad*], and we also vocalized the word in the passive voice, *ubbad*, I would say that even if the heifer performed labor by itself, it is disqualified for use in the ritual. If the word were written without an additional letter *vav*, which would mean the active: He used it for labor [*avad*],^B and we also vocalized the word in the active voice, *avad*, I would say that indicates that the heifer was fit for use in the ritual until its owner intentionally used it for labor.

HALAKHA הַכִּנִּסָּה לְרַבָּקָה: The following halakhot apply to both a red heifer and a heifer whose neck is broken: It is disqualified for its ritual when it is utilized for labor with the agreement of its owner. If the owner utilized it for an action for its own sake it remains fit for use in the ritual, but if he used it for any other purpose it is disqualified. If a bull mated with the heifer, it is disqualified. If the owner placed it into a yoke so that it could nurse and it threshed grain on its own, it remains fit. If he placed it into the yoke so that it could nurse and thresh, it is disqualified (Rambam *Sefer Nezikin, Hilkhot Rotze'ah UShmirat HaNefesh* 10:3 and *Sefer Tahara, Hilkhot Para Aduma* 1:7).

LANGUAGE

Yoke [revaka] – רַבָּקָה: Rashi and other commentaries explain that a *revaka* is a type of yoke or harness that binds several oxen together, as in the Arabic *rabqah*. Rabbeinu Hananel and most early commentators say that the term *revaka* stems from the term *marbek*, meaning fattened. According to that understanding, the *baraita* is referring to a place where the calf is placed for fattening.

NOTES

לְשָׁרֶטֶת יְלִיצְרוֹה: The commentaries ask how the Gemara can cite proof from a halakha stated in the realm of ritual matters for a case in the realm of monetary matters. Some explain since the keeping of a lost item that one does not have the right to keep would entail the transgression of the prohibition of robbery, this is classified as a ritual matter. There is no difference whether the prohibition relates to monetary matters or other matters; it is classified as a ritual matter (Responsa of the Radbaz).

A bird rested upon a red heifer, etc. – שָׁבֵן עַלְיָה עַזָּה וּבָי: The early commentaries note that this halakha applies to both the red heifer and a heifer whose neck is broken. Because in this context there is no difference between the cases, the Gemara discusses both cases interchangeably (Ramban; Rashba).

Heifer whose neck is broken – שְׁנִינָה: When the corpse of a murder victim is found outside a town and the murderer's identity is unknown, the following procedure is followed (Deuteronomy 21:1–9): First, judges who are members of the Great Sanhedrin measure the distance between the corpse and the nearest town, to determine which town must perform the rite of the heifer whose neck is broken. This measurement is carried out even if it is obvious which town is closest. Afterward, the Elders of that town bring a heifer that has never been used for labor, and they break its neck in a valley that is not tilled. The Elders wash their hands and make a statement absolving themselves of guilt. If the murderer is discovered before the heifer is killed, the rite is not performed.

Red heifer – בְּרִיה אֲדֹפוֹת: In order to purify people or vessels who are ritually impure with impurity imparted by a human corpse, a priest sprinkles spring water mixed with the ashes of a red heifer upon those people or vessels (Numbers 19). A cow qualifies as a red heifer offering only if all its hairs are red. Even

two black hairs can disqualify it. Similarly, it must be unblemished, and may not have been utilized for labor. The red heifer is slaughtered on the Mount of Olives, and its blood is sprinkled seven times opposite the entrance of the Temple. Its body is then burned on a pyre, together with cedar wood, hyssop, and scarlet wool (Numbers 19:6). The ashes from this pyre are gathered and mixed in a vessel with water drawn from a spring. Three hyssop branches are dipped in the mixture, which is then sprinkled on the impure person or vessel. A single drop from the purification water anywhere on the vessel or on the body of the impure person suffices to purify them.

Only rarely were red heifers burned. According to tradition, from the construction of the Sanctuary in the wilderness through the destruction of the Second Temple, only nine red heifers were burned. All the priests who participated in the ritual of the red heifer became ritually impure until the evening. Any priest was eligible to burn the red heifer, but it was customary for the High Priest to burn it.



Red heifer being prepared for burning on the Mount of Olives

Ubbad, avad – עַזָּבָד: This discussion is based on a dispute among the Sages with regard to whether the spelling or vocalization of the Torah is considered more authoritative.

NOTES

That the owner is amenable – **תניא לאיה**: Tosafot ask why the owner would be amenable to his heifer being mounted. Even though in ordinary circumstances he would be amenable to this, as it could result in the birth of a calf, in this case it would disqualify the red heifer, and thereby cause him to lose the steep sale price of the heifer. They explain that when assessing whether an act disqualifies a red heifer, one considers only if an owner would generally be amenable to that act, disregarding the halakhot of a red heifer.

- **דְּשַׁתָּא דִכְתִּיב "עֲבָד"** וְ**קֹרֵן "עֲבָד"**
בְּשִׁיטִין "עֲבָד" רְוִיִּיא **דְּעַבָּד**, מִה **עֲבָד** –
דְּנִיחָא לְיהָ, אֶךְ עֲבָד – **דְּנִיחָא לְיהָ**.

Now that the word is written without an additional letter *vav* as *avad* and we vocalize the word with an additional letter *vav*, as *ubbad*, in order to render the heifer unfit we require the situation described by the word *ubbad* be similar to the situation described by the word *avad*. Just as the word *avad* indicates that the owner is amenable to the performance of that labor, so too, the word *ubbad* means that the owner is amenable^N to the performance of that labor. Since the owner is amenable to the heifer mating, the heifer is rendered unfit. So too, in the first clause of the *baraita*: If one introduced a calf into a yoke so that it may suckle, and it threshed with the cows, it is fit for use in the ritual of the heifer whose neck is broken, because the owner is not amenable to its performing labor.

בְּלֵי בְּסֻף וּבְלֵי נְחֹשֶׁת מְשֻׂתְמֶשׁ בְּהָנָה וּכוֹ.
תַּנוּ רְבָנִין: הַמּוֹצָא בְּלֵי עַז – מְשֻׂתְמֶשׁ בְּהָנָה
בְּשִׁבְעַל שָׁלָא יְרַקְבּוּ, בְּלֵי נְחֹשֶׁת מְשֻׂתְמֶשׁ
בְּהָנָה בְּחַמְפִין אֲכַל לָא עַל יְדֵי הָאוּר, מִפְנֵי
שְׁמַשְׁחִין. בְּלֵי בְּסֻף מְשֻׂתְמֶשׁ בְּהָנָה בְּצָוֹן
אֲכַל לָא בְּחַמְפִין, מִפְנֵי שְׁמַשְׁחִין. מִגְוִיפּוֹת
וְקְרוּדִימּוֹת מְשֻׂתְמֶשׁ בְּהָנָה בְּרָר, אֲכַל לָא
בְּקָשָׁה, מִפְנֵי שְׁמַפְחִיתָן. בְּלֵי הַבָּבָר וּבְלֵי
וּכְכִית לָא יָגַע בְּהָנָה עַד שִׁיבָּא אַלְיהָוָה.

בְּדַרְךָ שָׁאמָרוּ בְּאַבִּידָה כֵּן אָמָרוּ בְּפְקָדוֹן:
פְּקָדוֹן מָאֵי עַבְדִּתָּה גַּבְיהָ? אָמָר רַב אַדָּא
רַב חַמָּא אָמָר וּבְשִׁשְׁתָּה: בְּפְקָדוֹן שְׁהָלָבָן
בְּעַילְיָהּ לְמִדְינַת הַיּוֹם.

מִמְצָא שָׁק אוֹ קֹופֶה [וְכָל־דָּבָר] שָׁאן דָּרְכוֹ
לְיטֹול – הַרְיָה לָא יָטֹל. מִנְהָנִי מִלְּאֵי
דְּתַנוּ רְבָנִין: "וְהַתְּعַלְמָת" – פָּעָמִים שָׁאַתָּה
מִתְּעַלְמָם, וּפָעָמִים שָׁאַי אַתָּה מִתְּעַלְמָם.

הַאֲכִיזָּד? הַהִיא כְּהָנָה וְהַיא בְּבֵית הַקְּבָרוֹת,
או שָׁהִתָּה זָקָן וְאַיִלָּה לְפִי בְּבוֹזָו, או שָׁהִתָּה
מִלְאַכָּה שָׁלוּ מִרְוָה מִשְׁלַחְבָּיו – לְכָךְ
נִאֵמֶר "וְהַתְּعַלְמָת מֵהֶם".

§ The mishna teaches: If one found silver vessels or copper vessels, he may use them for their own sake; and the same halakha applies to other vessels. The Sages taught in a *baraita*: One who finds wooden vessels uses them, so that they will not deteriorate due to lack of use. If one found copper vessels he uses them with hot water, but not directly on the fire, due to the fact that it erodes them. If one found silver vessels he uses them with cold water, but not with hot water, because it tarnishes them. If one found rakes or axes, he may use them with soft substances but not with hard substances because using them with those substances damages them. If one found gold vessels or glass vessels,^H which do not deteriorate due to lack of use, he may not touch them until Elijah will come and identify the owner.

The *baraita* continues: In the manner that the Sages said with regard to a lost item, so they said with regard to a deposit.^H The Gemara asks: What is the bailee doing with a deposit; i.e., the owner should tend to his own item, why is the bailee using it at all? The Gemara answers: Rav Adda bar Hama said that Rav Sheshet said: It is referring to a deposit whose owner went to a country overseas. Therefore, it is incumbent upon the bailee to tend to the deposit until his return.

§ The mishna teaches: If a person found a sack or a basket or any other item that it is not his typical manner to take and carry because it is beneath his dignity, he shall not take it. The Gemara asks: From where are these matters derived? It is as the Sages taught in a *baraita*: It is stated with regard to the return of a lost item: "You shall not see your brother's ox or his sheep wandering and disregard them; you shall return them to your brother" (Deuteronomy 22:1). The *tanna* explains that the phrase "and disregard them" means that there are occasions in which you may disregard lost items and there are occasions in which you may not disregard them.

How so; under what circumstances may one disregard a lost item? One may do so in a case where he was a priest and the lost item is in the graveyard (Leviticus 21:1–4), or where he was an elderly person and it is not in keeping with his dignity^H to tend to the item, or where the value of his labor was greater than the value of the lost item of the other person, i.e., if the finder was to return the item, reimbursing him for his lost wages would cost more than the value of the item; therefore, it is stated: "And disregard them."

HALAKHA

Use of lost vessels – **שִׁמוּשׁ בְּכָל־אַבִּידָה**: If one found wooden vessels, he may use them only enough to prevent them from decaying. He may use copper vessels with hot water, but not directly on a fire. He may use silver vessels only with cold water. He may use rakes and axes with soft substances but not with hard substances. He may not touch gold and glass vessels or flaxen garments at all (Rambam Sefer Nezikin, *Hilkhot Gezeila VaAveda* 13:12; *Shulhan Arukh, Hoshen Mishpat* 267:19).

Use of deposited vessels – **שִׁמוּשׁ בְּכָל־פְּקָדוֹן**: If one deposited items with another and departed on an extended trip, the bailee tends to those items based on the principles that govern the use

of lost items for preventing damage (Rambam Sefer Nezikin, *Hilkhot Gezeila VaAveda* 13:12; *Shulhan Arukh, Hoshen Mishpat* 292:21–22).

A priest and it is in the graveyard...an elderly person and it is not in keeping with his dignity – **בְּנֵן וְהִיא בְּבֵית הַקְּבָרוֹת...זָקָן**: A priest who discovers a lost item in a graveyard may not become impure in order to retrieve and return it. An elderly person for whom it is not in keeping with his dignity to tend to the type of item that was lost is similarly exempt (Rambam Sefer Nezikin, *Hilkhot Gezeila VaAveda* 11:18; *Shulhan Arukh, Hoshen Mishpat* 272:2 and 263:1).

לֹמַד אִזְטָרוֹן קְרָא? אִילְמָא לְכֵן?
הַיּוֹא בְּבִתְהַקְבּוֹת – פְשִׁיטָא: הַיּוֹא
עֲשָׂה, וַהֲיִא לֹא תַעֲשֶׂה וְעֲשָׂה, וְלֹא
אַתִּי עֲשָׂה וְחִי אֶת לֹא תַעֲשֶׂה וְעֲשָׂה.
וַתֹּוֹ: לֹא דָחַנְן אִישָׂרָא מִקְפֵּי מִמוֹנָה.

- אֵלֹא לְשָׁלוּ מְרוּבָה מִשְׁלָחָבוֹ
מִקְרָב יְהוּדָה אָמָר רַב נְפָקָא, דָאָמָר
רַב יְהוּדָה אָמָר רַב: "אַפְסִ בִּ"

The Gemara asks: **For what case was a verse necessary to derive that one may disregard a lost item?** If we say that the verse is necessary for the case of a **priest** and the lost item in the **graveyard**, it is obvious that he need not return the item, as this obligation to return the lost item is a **positive mitzva**: “You shall return them to your brother” (Deuteronomy 22:1), and that entry of a priest into a graveyard is prohibited by both a **prohibition**: “To the dead among his people he shall not defile himself” (Leviticus 21:1), and a **positive mitzva**: “You shall be holy” (Leviticus 19:2); and there is a principle that a **positive mitzva does not override a prohibition and a positive mitzva**.^{NH} **And furthermore, we do not override a ritual prohibition in the face of monetary matters.**^{NH}

The Gemara suggests: **Rather**, say that the verse is necessary to derive the exemption from returning the lost item in the case where the value of his **labor was greater than the value of the lost item of the other**. The Gemara rejects that possibility: That *halakha* is derived not from the phrase: “And disregard them,” but from that which Rav Yehuda says that Rav says. As Rav Yehuda says that Rav says: It is written: **Only so that**

NOTES

A positive mitzva does not override a prohibition and a positive mitzva – **לֹא דָחַנְן אִישָׂרָא מִקְפֵּי מִמוֹנָה**. The early commentaries note that failing to return a lost item is similarly prohibited by both a prohibition and a positive mitzva. Furthermore the positive mitzva in the case of the priest is a mitzva whose application does not apply to all Jews and is therefore less authoritative than a standard positive mitzva. In addition, when one fails to take a lost item that he finds, he violates only the prohibition: “You shall not disregard,” and is not in violation of the positive mitzva, which goes into effect only after one takes the item. Finally, the entire concept of a positive mitzva overriding a prohibition applies only in a case where violation of the mitzva and performance of the mitzva are simultaneous. In this case, the priest violates the prohibition when he enters the graveyard and becomes impure, whereas fulfillment of the mitzva of returning the lost item would come only later. Due to these difficulties, the commentaries explain that the Gemara’s primary objection is the second one: And furthermore, we do not override a prohibition in the face of monetary matters (Ramban; Rashba; Rosh; Ritva).

We do not override a prohibition in the face of monetary matters – **לֹא דָחַנְן אִישָׂרָא מִקְפֵּי מִמוֹנָה**: The commentaries explained that if the owner of the lost item was himself a priest, it would be prohibited for him to retrieve the item from the graveyard. All the more so is it prohibited for a priest to enter the graveyard to retrieve the item and return it to another. Furthermore, since there would be no mitzva if the owner were to declare his item ownerless, clearly this mitzva is tied exclusively to monetary considerations (Ramban).

HALAKHA

A positive mitzva does not override a prohibition and a positive mitzva – **לֹא דָחַנְן אִישָׂרָא מִקְפֵּי מִמוֹנָה**: When confronted with a situation that involves both a positive mitzva and a prohibition, if possible, one should fulfill both. If it is not possible, the positive mitzva overrides the prohibition, and

he should fulfill the mitzva. A positive mitzva does not override both a prohibition and a positive mitzva (Rambam *Sefer Nezikin, Hilkhot Gezeila VaAveda* 11:18 and *Sefer Hafla'a, Hilkhot Nezirut* 7:15).

Perek II
Daf 30 Amud b

לֹא יִהְיֶה בֶן אָבִיוֹ – שְׁלֵךְ קְודֵם
לְשָׁלֵךְ כָּל אָדָם.

there shall be no needy among you” (Deuteronomy 15:4). This verse can be understood as a command, indicating that it is incumbent upon each individual to ensure that he will not become needy. Therefore, **your assets take precedence over the assets of any other person**.

The Gemara concludes: **Rather**, the verse is necessary to derive the exemption from returning the lost item in the case where he was an elderly person and it is not in keeping with his dignity to tend to the item.

אמָר רַבָּה: הַכִּישָׁה – חִיבָּה. אַבְּבִי
הַוָּה יִתְּבִּיבּ קְמִיהָ דָרְבָּה, חַזְא לְהַנְּקָעֵי
דְקָמִים, שְׁקָל קְלָא וְשָׁזָא בָּהּ. אָמָר
לְהָ: אַיִחְיָת בָּהוּ, קֻומָ אַהֲדָרִינָה.

Rabba says: If there was a lost animal and the elderly person began the process of returning it, e.g., if he struck it even once to guide it in a certain direction, he is **obligated to tend to it**^{NH} and return it. The Gemara relates: **Abaye was sitting before Rabba and saw these goats standing nearby. He picked up a clod of dirt and threw it at them, causing them to move. Rabba said to him: You have thereby obligated yourself to return them. Arise and return them to their owner.**

HALAKHA

הַכִּישָׁה חִיבָּה – If he struck it he is **obligated to tend to it** – **נָגָ:** An elderly person or Torah scholar is exempt from the obligation to return a lost item whose return is not in keeping with his dignity. If he began taking steps to return it, he is obligated to complete the process due to the rabbinic adage: If one begins performing a mitzva, we tell him to finish. Many authorities restrict this *halakha* to lost animals and do not apply it to inanimate objects (Rambam *Sefer Nezikin, Hilkhot Gezeila VaAveda* 11:13–14; *Shulchan Arukh, Hoshen Mishpat* 263:2, and *Sma* there).

NOTES

If he struck it he is **obligated to tend to it** – **הַכִּישָׁה חִיבָּה**: Rashi and the Rambam explain that once he begins performing the mitzva it is incumbent upon him to complete it. Some later commentaries explain that the reason for this *halakha* is based on the rabbinic adage: If one begins performing a mitzva, we tell him to finish. Others explain that the reason for this *halakha* is that once the elderly person begins the process of returning

the item, he is not subject merely to the prohibition: “You may not disregard,” for which there is an exemption; he is also subject to the positive mitzva to return the item, for which there is no exemption (see *Matammrei Yitzhak* and *Even HaAzel*). Some early commentaries explain that this *halakha* applies only to one who finds an animal, because once he hits the animal he causes it to stray farther; therefore, he is obligated to return it (Rosh; Ran).

HALAKHA

It is his manner to return an item of that type in the field but it is not his manner to return it in the city – **דרכו**: In the case of one who is accustomed to carrying certain items in the field but not in the city, if he finds such an item in the city, he is not obligated to return it. If he finds it in the field, some say he is obligated to return it, since he began the process of its return by lifting it in the field. Others rule he is exempt from returning it (Rabbeinu Yitzhak of Dampierre). Some hold that he is obligated to return it even if in order to do so he must take it into the city (Rambam). Yet others say he is obligated to return it only as far as the city limits (Rosh). The Gra rules in accordance with the opinion of the Rambam (Rambam Sefer Nezikin, Hilket Gezeila VaAveda 11:13–14; Shulhan Arukh, Hoshen Mishpat 263:2).

כל שבלו מוחיו – בשל חבריו נמי מוחיו, וכל שבלו פזק וטוען – בשל חבריו נמי פזק וטוען: With regard to any item that one would retrieve if it were his own, he is obligated to retrieve it and to return it to another who lost it. The same applies to the obligation to load and unload a burden onto and off of another's donkey (Rambam Sefer Nezikin, Hilket Gezeila VaAveda 11:13 and Hilket Rotze'ah Ushmirat HaNefesh 13:4; Shulhan Arukh, Hoshen Mishpat 263:1, 272:3).

Property declared ownerless for the poor – פזק למשים: If one declared his property ownerless exclusively for the poor and not for the rich, it has no halakhic ramifications; it is not ownerless until he declares it ownerless for everyone (Rambam Sefer Hafla'a, Hilket Nedarim 2:15; Shulhan Arukh, Hoshen Mishpat 273:5).

NOTES

A burden of wood – פטיכא דאומי: The geonim explain that this is referring to strings of wood from the bases of hard date branches that were used for decorative purposes or as a flotation device.

BACKGROUND

Ownerless property – הפקר: When one declares an item ownerless, he must completely renounce ownership of it. He may not cede ownership in a way that enables only certain people to acquire it and denies others that opportunity. Some authorities hold that for one to renounce ownership of his property he must do so in the presence of at least three people. Others maintain that even a private statement is effective. Certain property is deemed ownerless by Torah law, e.g., produce that grows during the Sabbatical Year. Property belonging to a convert who dies without heirs is also ownerless. There is no obligation to tithe ownerless produce.

אֲבִיעֵיא לְהָ: זַרְפּוֹ לְהַחְזֵיר בְּשָׁדָה
וְאֵין דַּרְפּוֹ לְהַחְזֵיר בְּעָרָ, מַהוּ מַיִּ
אָמְרִינָן: הַשְּׁבָה מַעַלְיָא בְּעַמָּן, וּכְיַיִן
דַּלְאָוּ דְּרֶבֶיה לְהַחְזֵיר בְּעָרָ – לֹא
לְתִיְבָּ. אָוּ דְּלָמָא: בְּשָׁדָה מִיחַת הַוָּא
דַּאַיְחַיב לִיהְ, וּכְיַיִן דַּאַיְחַיב עַלְיָה
בְּשָׁדָה – אַיְחַיב לִיהְ בְּעָרָ? תִּיקָּן.

A dilemma was raised before the Sages: In a case of a person for whom it is his typical manner to return an item of that type in the field, where there are fewer onlookers, but it is not his typical manner to return an item of that type in the city,⁴ what is the halakha? Do we say that for one to be obligated to return a lost item we need an unequivocal obligation to return it that applies in all cases, and since it is not his typical manner to return an item of that sort in the city, let him not be obligated to return such an item at all? Or perhaps, he is obligated in any event to return the item in the field, and once he is obligated to return it in the field, he is also obligated in the city. The Gemara concludes: The dilemma shall stand unresolved.

אָמָר רַבָּא: כָּל שְׁבָלּוֹ מַחְיוֹ – בְּשָׁל
חַבְירָוּ נָמֵי מַחְיוֹ, כָּל שְׁבָלּוֹ פָזָק
וְטֻועָן – בְּשָׁלְחַבְירָוּ נָמֵי פָזָק וְטֻועָן.

רַבִּי יִשְׁמָעֵאל בָּרְבִּי יוֹסֵי דָהָה קָאַיִל
בְּאוֹרְחָא, פָגַע בֵּיהְ הַהּוּא גַּבְרָא, הַהְ
דָּרִי פְּחַכָּא דָאַוִּי, אָוֹתְבִּינְהוּ וּקְאָ
מִיתְחַפֵּחַ. אָמָר לְיהָ: דָלְלִי. אָמָר לְיהָ:
בְּמַה שָׂוִוָן? אָמָר לְיהָ: פָלָא דָוָוא.
הַבָּבָל לְהָ פָלָא דָוָוא, וְאַפְקָרָה.

הַדָּר וּבָה בָהוּ, הַדָּר יַחַב לִיהְ פָלָא
דָוָוא וְאַפְקָרָה. חִזְיָה דָהָה קָא
בְּשָׁעַ לְמַיְהָר לְמוֹכִיבָה בָהוּ, אָמָר
לְיהָ: לְכָלְיָ עַלְמָא אַפְקָרְנָהוּ וְלֹן
לֹא אַפְקָרְנָהוּ.

וּמֵהָוִי הַפְּקָר בַּיְהָ אֵי גּוֹנְגָן?
הַדָּתָן, בֵּית שְׁמָאי אַוְרָם: הַפְּקָר:
לְעַנְיִים – הַפְּקָר, וּבֵית הַלְּלָא אַוְרָם:
אַיְנוּ הַפְּקָר, שְׁדַיְהָא הַפְּקָר לְעַנְיִים
לְעַשְׁרִים כְּשִׁמְתָּה.

אַלְאָ רַבִּי יִשְׁמָעֵאל בָּרְבִּי יוֹסֵי לְכָלְיָ
עַלְמָא אַפְקָרְנָהוּ, וּבְמַלְתָּא בְּעַלְמָא
הָוָא דְאַזְקָבָה.

Rava says: In any case where he would recover his own⁴ item and would consider it to be in keeping with his dignity, he is also obligated to return another's item. And any case where he unloads and loads his own animal's burden, he is also obligated to unload and load the burden of another's animal.

The Gemara relates: Rabbi Yishmael, son of Rabbi Yosei,⁵ was walking on the road. A certain man encountered him, and that man was carrying a burden that consisted of sticks of wood.⁶ He set down the wood and was resting. The man said to him: Lift them for me and place them upon me. Since it was not in keeping with the dignity of Rabbi Yishmael, son of Rabbi Yosei, to lift the wood, Rabbi Yishmael said to him: How much are they worth? The man said to him: A half-dinar. Rabbi Yishmael, son of Rabbi Yosei, gave him a half-dinar, took possession of the wood, and declared the wood ownerless.⁸

The man then reacquired the wood and again requested that Rabbi Yishmael, son of Rabbi Yosei, lift the wood for him. Rabbi Yishmael, son of Rabbi Yosei, again gave him a half-dinar, again took possession of the wood, and again declared the wood ownerless. He then saw that the man desired to reacquire the sticks of wood. Rabbi Yishmael, son of Rabbi Yosei, said to him: I declared the sticks of wood ownerless with regard to everyone else, but I did not declare them ownerless with regard to you.

The Gemara asks: But is property rendered ownerless in a case like this? But didn't we learn in a mishna (Pe'a 6:1) that Beit Shammai say: Property declared ownerless for the poor⁹ is thereby rendered ownerless. And Beit Hillel say: It is not ownerless, until the property will be ownerless for the poor and for the rich, like produce during the Sabbatical Year, which is available for all. As the halakha is in accordance with the opinion of Beit Hillel, how could Rabbi Yishmael, son of Rabbi Yosei, declare the wood ownerless selectively, excluding the prior owner of the wood?

Rather, Rabbi Yishmael, son of Rabbi Yosei, actually declared the wood ownerless to everyone without exception, and it was with a mere statement that he prevented him from reacquiring the wood, i.e., he told the man not to reacquire the wood even though there was no legal impediment to that reacquisition.

PERSONALITIES

Rabbi Yishmael, son of Rabbi Yosei – רַבִּי יִשְׁמָעֵאל בָּרְבִּי יוֹסֵי: Rabbi Yishmael was a *tanna* of the last generation of *tannaim* and the eldest son of Rabbi Yosei bar Halafta. Although he studied under other Sages, including Rabbi Akiva, Rabbi Yishmael achieved renown as the outstanding disciple of his father, Rabbi Yosei, from whom he acquired most of his Torah knowledge. He was a noted scholar in his generation and was considered his father's successor and the leading rabbinic authority in his hometown of Tzippori in the Galilee. Nevertheless, he still accepted the authority of Rabbi Yehuda HaNasi, with whom he established himself as the latter's outstanding disciple, even though they were approximately the same age and he was a friend of Rabbi Yehuda HaNasi's family. He also engaged in

halakhic discussions with Rabbi Shimon, the son of Rabbi Yehuda HaNasi, and with Rabbi Hyya.

Alongside his prominence in the field of Torah study, Rabbi Yishmael was renowned as being wise in all fields and a quick-witted conversationalist. Most of his contemporaries, including the *Nasi*, received and disseminated Torah and traditions that he transmitted in the name of his father.

Although few details are available about his private life and his family, it is known that he was a wealthy landowner and a merchant. He was forced to serve in a position of law enforcement by the gentile authorities, and apparently fled from Eretz Yisrael for a brief period to avoid assuming that position.

וְהִיא רַבִּי יְשָׁמֵעָל בָּרוּבִי יוֹסֵי זָקָן וְאַיִן לְפִי בְּבוֹדוֹ הַהֲרָה! רַבִּי יְשָׁמֵעָל בָּרוּבִי יוֹסֵי לְפִנִים מִשּׂוֹרַת הַדָּין הוּא דָעֶבֶר.

The Gemara asks: But wasn't Rabbi Yishmael, son of Rabbi Yosei, an elderly person and it was not in keeping with his dignity to tend to the item? Why did he purchase the wood and render it ownerless in order to absolve himself of the obligation to lift the burden if he had no obligation to do so in the first place? The Gemara answers: In the case of **Rabbi Yishmael, son of Rabbi Yosei, he conducted himself beyond the letter of the law**,^h and he could have simply refused the request for help.

דַתְנִי רַב יוֹסֵף: "וְהַזְדֻעַת לְהַסְמִיכָה" – זה בֵּית חַיָּם, "אַתְּ הַדָּרָךְ" – זו גִּמְילֹות חֲסִידִים, "אֲשֶׁר יַלְכֵוּ" – זה בִּיקּוּר חֲולִים, "בָּה" – זו קְבּוֹרָה, "וַיָּאתָה הַמְשֻׁחָה" – זה הַדָּין, "אֲשֶׁר עָשָׂוּ" – זו לְפִנִים מִשּׂוֹרַת הַדָּין.

אָמַר מֶר: "אֲשֶׁר יַלְכֵוּ" – זה בִּיקּוּר חֲולִים, הַיְנוּ גִּמְילֹות חֲסִידִים! לֹא נָצְרָחָה אֶלָּא לְבָנָן גִּילָן. דָאָמַר מֶר: בָּנָן גִּילָן נָטַל אֶחָד מִשְׁשִׁים בְּחַלְיוֹן, וְאַפְלוּ הַכִּי מְבַשֵּׁר לְיהָ לְמִינְיָל לְגַבְיהָ.

"בָּה" – זו קְבּוֹרָה. הַיְנוּ גִּמְילֹות חֲסִידִים! לֹא נָצְרָחָה אֶלָּא לְזָקָן וְאַיִן לְפִי בְּבוֹדוֹ.

"אֲשֶׁר יַעֲשָׂוּ" – זו לְפִנִים מִשּׂוֹרַת הַדָּין. דָאָמַר רַב יְוחָנָן: לֹא חַרְבָּה יְרוּשָׁלָם אֶלָּא עַל שְׁדָנו בְּהָדִין תּוֹרָה. אֶלָּא דִין דְמִגִּיזָה לְדִין? אֶלָּא אַיִמָא: שְׁהָעִמָּדוּ דִינֵיכֶם עַל דִין תּוֹרָה, וְלֹא עַבְדוּ לְפִנִים מִשּׂוֹרַת הַדָּין.

The Gemara cites a source for going beyond the letter of the law in the performance of mitzvot. As Rav Yosef taught in a *baraita* with regard to the verse: "And you shall teach them the statutes and the laws, and shall show them the path wherein they shall walk and the action that they must perform" (Exodus 18:20). The *baraita* parses the various directives in the verse. "And you shall teach them," that is referring to **the structure of their livelihood**,ⁿ i.e., teach the Jewish people trades so that they may earn a living; "the path," that is referring to **acts of kindness**; "they shall walk," that is referring to **visiting the ill**; "wherein," that is referring to **burial**;^h "and the action," that is referring to acting in accordance with the letter of the law; "that they must perform," that is referring to acting **beyond the letter of the law**.^h

The Gemara analyzes the *baraita*. **The Master said:** With regard to the phrase "they shall walk," that is referring to **visiting the ill**. The Gemara asks: That is a detail of **acts of kindness**; why does the *baraita* list it separately? The Gemara answers: The reference to visiting the ill is **necessary only for the contemporary**^h of the ill person,ⁿ as the **Master said:** When one who is a **contemporary** of an ill person visits him, he **takes one-sixtieth**ⁿ of his illness. Since visiting an ill contemporary involves contracting a bit of his illness, a special derivation is necessary to teach that even so, he is required to go and visit him.

It was taught in the *baraita*: With regard to the phrase "wherein," that is referring to **burial**. The Gemara asks: That is a detail of **acts of kindness**; why does the *baraita* list it separately? The Gemara answers: The reference to burial is **necessary only to teach the halakha of an elderly person**, and it is in a circumstance where it is not in keeping with his dignity to bury the dead. Therefore, a special derivation is necessary to teach that even so, he is required to participate in the burial.

It was taught in the *baraita*: "That they must perform"; that is referring to acting **beyond the letter of the law**, as Rabbi Yohanan says: Jerusalem was destroyed only for the fact that they adjudicated cases on the basis of Torah law in the city. The Gemara asks: Rather, what else should they have done? Should they rather have adjudicated cases on the basis of arbitrary decisions [demagogizeta]?ⁱ Rather, say: That they established their rulings on the basis of Torah law and did not go beyond the letter of the law.

HALAKHA

Beyond the letter of the law with regard to lost items – **לְפִנִים מִשּׂוֹרַת הַדָּין בְּאַבְדִּיה**: One who generally follows the path of the right and the good (Deuteronomy 6:18) should go beyond the letter of the law and return a lost item even when it is not in keeping with his dignity to do so. The Rema adds that some authorities prohibit a Torah scholar from going beyond the letter of the law if he would thereby dishonor the Torah (Rambam Sefer Nezikin, *Hilkhot Rotze'ah UShmirat HaNefesh* 13:4; *Shulchan Arukh*, *Hoshen Mishpat* 263:3, 272:3).

Visiting the ill, burial, etc. – **בְּיִקּוּר חֲולָם קְבּוֹרָה וּכְרָבָה**: It is a mitzva by rabbinic law to visit the ill, comfort the mourner, accompany the dead and see to his burial, as well as to facilitate weddings, bring joy to the bride and groom, and see to all their needs. These are all physical acts of lovingkindness for which there is no prescribed limit. Although these are mitzvot by rabbinic law, they fall under the rubric of the mitzva by Torah law: "And you shall love your neighbor as yourself" (Leviticus 19:18), meaning that any action in Torah and mitzvot that you would want others to perform for you, you should perform for your brethren (Rambam Sefer Shofetim, *Hilkhot Evel* 14:1).

Beyond the letter of the law – **לְפִנִים מִשּׂוֹרַת הַדָּין**: The pious people of earlier generations would deviate from the golden rule of being balanced in one's behavior and would go to the positive extreme, e.g., extreme generosity. That is the meaning of going beyond the letter of the law (Rambam Sefer HaMadda, *Hilkhot Deot* 1:5).

בִּיקּוּר חֲולָם...לְבָנָן – **אֲיַל**: It is a mitzva to visit the ill, provided that the visit does not disturb him. This applies even to a contemporary of the ill person (Rambam Sefer Shofetim, *Hilkhot Evel* 14:4; *Shulchan Arukh*, *Yoreh De'a* 335:2, and in the *Shakh*).

NOTES

The structure of their livelihood – **זה בֵּית חַיָּם**: Rashi elsewhere (*Bava Kamma* 100a) explains that this is referring to Torah study.

For the contemporary of the ill person – **לְבָנָן גִּילָן**: Rashi (*Nedarim* 39a) explains this to mean someone the same age as him. The Rosh and the Ran there explain that it is referring

to one who is born at precisely the same time, with the same astrological map.

Takes one-sixtieth – **נָטַל אֶחָד מִשְׁשִׁים**: One-sixtieth is not meant as a precise measure; rather, it represents a small amount. The visitor takes an imperceptible modicum of his illness (*Torat Hayyim*).

LANGUAGE

Arbitrary decisions [*magizeta*] – **מִגִּיזָה**: Several explanations were provided for this term, and many have sought to identify a source in different languages. According to Rabbi Binyamin Musafya its root is from the Greek μέγισται, *megistai*, meaning

prominent people or noblemen. In this context, it means: Will they adjudicate the matter in accordance with the customs of gentile judges.

NOTES

ולעולם אמר ... – And forever, Rav Yehuda said, etc. – Some explain that the Gemara is not questioning Rav Yehuda's statement; rather, for didactic purposes, Rav Yehuda asked the question and answered it (Rosh).

מַתָּנִי אֵי זו הַיָּא אֲבִידָה? מֵצָא חָמוֹר
או פְּרָה וּזְעִינָן בְּדָרֶךְ – אֵין זו אֲבִידָה, חָמוֹר
וּכְלֵי הַפּוּכִים, פְּרָה רַצֶּחֶת בֵּין הַכְּרָמִים – הָרָי,
זו אֲבִידָה. הַחִוָּרָה וּבְרָחָה, הַחִוָּרָה וּבְרָחָה,
אֲפִילוֹ אֲרָבָה וְחִמְשָׁה פְּנָמִים – חִיבָּה
לְהַחִוָּרָה, שָׁנָאָמָר הַשְׁבָּתָבָם.

הַיָּה בְּטַל מִסְלָע לֹא יָמֹר לוֹ תַּן לִי סְלָע
אֵלָא נוֹתֵן לוֹ שְׁכָרוֹ כְּפֻזָּל. אָם יִשְׂשָׂמֵחַ
דַּי – מִתְנָה בְּפִנְךָ בֵּית דִין, אָם אֵין שָׂמֵחַ
דַּי בְּפִנְךָ מִי יִתְנַהֵן שְׁלֹו קָודֵם.

גַּם אָטוֹ בְּלָהִינִּי דָּאָמְרוּנִי לֹא אֲבִידָה הוּא
אָמָר וּבְיְהוּדָה: הַכִּי קָאָמָר, אֵי זו הַיָּא בְּלָהִינִּי
אֲבִידָה שֶׁהָוא חִיבָּה – מֵצָא חָמוֹר וּבְרָחָה
רּוּעִין בְּדָרֶךְ – אֵין זו אֲבִידָה וְלֹא מִתְחִיב
בָּה, חָמוֹר וּכְלֵי הַפּוּכִים, פְּרָה וּרְצָחָה בֵּין
הַכְּרָמִים – הָרָי זו אֲבִידָה וּמִתְחִיב בָּה.

ולעולם? אָמָר וּבְיְהוּדָה אָמָר וּבָ: עַד שְׁלָשָׁה
יְמִים. הַכִּי דְמִי? אֵי בְּלִילָותָא – אֲפִילוֹ תְּרָא
שְׁעַתָּא נָמִי, אֵי בִּימָא – אֲפִילוֹ טָבָא נָמִי
לֹא!

לֹא צְרִיכָא, דְּהָהָה חִי לְהַבְּקָרָמְתָא
וּבְחַשְׁכָתָא; תְּלַהָא יוֹמִי אָמְרוּנִי: אַיְתָרָמְיוּ
אַוְתָרָמְיוּ לְהָ, וּנְפָקָא. טַפִּי – וְדָא אֲבִידָה
הָיָא.

תְּנִיאָ נָמִי הַכִּי: מֵצָא טְלִית וּקְרוּדָם,

MISHNA Which is the item that is considered lost property? If one found a donkey or a cow grazing on the path, that is not lost property, as presumably the owners are nearby and are aware of the animal's whereabouts. If one found a donkey with its accoutrements overturned, or a cow that ran through the vineyards, that is lost property. In a case where one returned the lost animal and it fled, and he again returned it and it fled, even if this scenario repeats itself four or five times, he is obligated to return it each time, as it is stated: "You shall not see your brother's ox or his sheep wandering and disregard them; you shall return them to your brother" (Deuteronomy 22:1).

If in the course of tending to and returning the lost item, the finder was idle from labor that would have earned him a *sela*, he shall not say to the owner of the item: Give me a *sela* to compensate me for my lost income. Rather, the owner gives him his wage as if he were a laborer, a payment that is considerably smaller. If there are three men there who can convene as a court, he may stipulate before the court that he will undertake to return the item provided that he receives full compensation for lost income. If there is no court there before whom can he stipulate his condition, his financial interests take precedence and he need not return the lost item.

GEMARA With regard to the question in the mishna: Which is the item that is considered lost property, the Gemara asks: Is that to say that all those other cases that we stated in this chapter are not lost property? Rav Yehuda said that this is what the *tanna* is saying: What is the principle employed in defining a lost item that one is obligated to return? The mishna cites examples to illustrate the principle: If one found a donkey or a cow grazing on the path, that is not lost property, and he is not obligated to return it. But if one found a donkey with its accoutrements overturned, or a cow that was running through the vineyards, that is lost property, and he is obligated to return it.

With regard to the ruling in the mishna that a donkey and cow grazing on the path are not considered lost property, the Gemara asks: And is that the case even if they graze there intended forever? Rav Yehuda said^N that Rav said: Until three days^H pass they are not lost. Thereafter, they are considered lost. The Gemara asks: What are the circumstances? If the animal is found grazing at night, even if it is intended for even one hour it can be presumed to be lost, as an owner never grazes his animals intended at night. If the animal is found grazing during the day, even if it is intended for more than three days, it is also not presumed to be lost.

The Gemara answers: No, the measure of three days is necessary only in a case where one saw the animal grazing in the early hours in the morning and in the dark of nightfall. For the first three days, we say: It happened that the animal went out a bit earlier or a bit later than usual, but nevertheless, it was with the owner's knowledge. Once this is observed for more than three days, it is certainly a lost item.

This is also taught in a *baraita*: If one found a cloak or an ax

HALAKHA

Until three days – **עַד שְׁלָשָׁה יְמִים**: If one found a cow or donkey grazing along a path, by day it is not considered lost, and at night it is considered lost. If the donkey's saddle was askew, even during the day it is considered lost. If he found the animal at daybreak or at twilight for three consecutive days, it is considered lost. The Arukh

HaShulhan comments that the principle is that the determination whether an item is lost is based on local standards. If it appears to be lost, he must tend to it (Rambam *Sefer Nezikin, Hilkhot Gezeila VaAveda* 15:2; *Shulhan Arukh, Hoshen Mishpat* 261:1).

Perek II
Daf 31 Amud a

בְּאִסְרָתִיא, וֶפֶרֶה רֹצֶה בֵּין הַכְּרָמִים – חֲרִיו אַבִּידָה. טָלוּת בְּצַדְקָה, קְנָדוּם בְּצַדְקָה. וֶפֶרֶה רֹצֶה בֵּין הַכְּרָמִים – אַין זֶה אַבִּידָה. שְׁלָשָׁה יְמִים וְהַאֲחֵר זֶה – חֲרִיו זֶה אַבִּידָה. רֹאשָׁה מַיִם שָׁוֹטְפִין וּבְאַיִן – חֲרִיו זֶה גָּדוֹר בְּפִנֵּיהֶם.

אָמָר רִבָּא: "לְכָל אַבִּידָה אַחִיךָ" – לְבוּבָה אַבִּידָה קְרוּעָה, אָמָר לִיהְיָה רַב חָנָנָה לְרַבָּא: תְּנִיאָ דְּמָסִיעָה לְךָ; רֹאשָׁה מַיִם שָׁוֹטְפִין בְּאַיִן – חֲרִיו זֶה גָּדוֹר בְּפִנֵּיהֶם.

אָמָר לִיהְיָה: אֵי מִשּׁוּם הָא – לֹא תַּסְיִיעַ, הַכָּא בַּמָּא עַסְקָנִין – בְּרַאֲכָא עַזְמָרִין. אֵי דְּאַיְכָא עַזְמָרִין מַאי לְמִימְרָא? לֹא צַיְיכָא, דְּאַיתָּה בְּהַעֲמָרִין דְּצַרְיכִי לְאַזְעָא. מַהוּ דְּתִימָא: פִּין דְּצַרְיכִי לְאַרְעָא – כִּי גּוֹפָה דְּאַרְעָא דְּמַיִן, קָא מְשֻׁמָּעַן.

on a main thoroughfare [*be'isratiyya*]^l, or a cow running through the vineyards, that is lost property. If one found a cloak alongside a fence,^h an ax alongside a fence, or a cow grazing among the vineyards, that is not lost property. If one sees these items for three consecutive days,ⁿ that is lost property. If one saw water that is flowing and coming to inundate another's field, he must establish a barrier before the water in order to preserve the field.

Rava says that the verse: "And so shall you do with every lost item of your brother" (Deuteronomy 22:3), serves to include an obligation to protect your brother from the loss of his land.^h Rav Hananya said to Rava: There is a *baraita* that is taught that supports your opinion. If one saw water that is flowing and coming to inundate another's field, he must establish a barrier before the water in order to preserve the field.

Rava said to Rav Hananya: If you are attempting to bring support for my ruling due to that *baraita*, do not support my ruling. With what are we dealing here in the *baraita*? We are dealing with a field in which there are sheaves of grain on the land. The *tanna* of the *baraita* is referring to preservation of the sheaves, not of the land itself. The Gemara asks: If the *baraita* is referring to a field in which there are sheaves of grain, what is the purpose of stating it? Isn't it obvious that one is obligated to preserve the sheaves as he would any other item? No, it is necessary to state the *halakha* only in a case where there are sheaves that need the land in order to dry. Lest you say: Since they still need the land, their legal status is like that of the land itself and he is not obligated to return them, the *baraita* teaches us that the sheaves are independent of the land and must be preserved.

מֵצָא חָמָר וֶפֶרֶה" [וכו]. הָא גּוֹפָה קָשְׁיא! אָמָרָה: מֵצָא חָמָר וֶפֶרֶה וּזְעִינָה בְּדַרְךָ – אַין זֶה אַבִּידָה, רֹוּשִׁי בְּדַרְךָ הוּא לֹא הָוֹא הָוֹא אַבִּידָה, הָא רֹצֶה בְּדַרְךָ וְרֹוּשָׁה בֵּין הַכְּרָמִים – הַיְיָא אַבִּידָה. אִימָא סִיפָּא: חָמָר וּכְלָיו הַפּוּכִים, וֶפֶרֶה רֹצֶה בֵּין הַכְּרָמִים – חֲרִיו זֶה אַבִּידָה! רֹצֶה בֵּין הַכְּרָמִים הָא דְּהַיָּא אַבִּידָה, הָא רֹצֶה בְּדַרְךָ וְרֹוּשָׁה בֵּין הַכְּרָמִים – אַין זֶה אַבִּידָה!

§ The mishna teaches: If one found a donkey or a cow^h grazing on the path, that is not deemed lost property. The Gemara asks: This itself is difficult. On the one hand you said: If one found a donkey or a cow grazing on the path, that is not lost property, from which it may be inferred that only if it is grazing on the path it is not lost property, but if it was running on the path or grazing among the vineyards, it is a lost item. On the other hand, say the latter clause of the mishna: If one found a donkey with its accoutrements overturned, or a cow that ran through the vineyards, that is lost property. From this wording it may be inferred that only if the animal is running through the vineyards is it lost property, but if it is running on the path or grazing among the vineyards, it is not lost property.

Abaye said that the *tanna* employs the style of: Its counterpart tells about it (see Job 36:33), and the mishna distinguishes between grazing and running. The *tanna* taught a case of grazing on the path, where the animal is not considered lost property, and the same is true of a case where the animal is grazing among the vineyards. And the *tanna* taught a case of running through the vineyards, where the animal is considered lost property, and the same is true of a case where the animal is running on the path.

אָמָר אַבִּי: "יָגִיד עַלְיוֹ רַעֲוֹ". תְּנִיא רֹוּשָׁה בְּדַרְךָ דְּלָא הָוֹא אַבִּידָה – וְהָוֹא הַדִּין לוֹדוּשָׁה בֵּין הַכְּרָמִים, תְּנִיא רֹצֶה בֵּין הַכְּרָמִים דְּהַיָּא אַבִּידָה – וְהָוֹא הַדִּין לְרֹצֶה בְּדַרְךָ.

אָמָר לִיהְיָה רִבָּא: אֵי יָגִיד עַלְיוֹ רַעֲוֹ" לִיטְעַנְתָּא וְכָל שְׁכַנְתָּא חַמְרָתָא: לִיטְעַנְתָּא רֹצֶה קְיִלְתָּא וְכָל שְׁכַנְתָּא חַמְרָתָא: לִיטְעַנְתָּא רֹצֶה בְּדַרְךָ דְּהַיָּא אַבִּידָה – וְכָל שְׁכַנְתָּא רֹצֶה בֵּין הַכְּרָמִים, וְלֹהֵנִי רֹוּשָׁה בֵּין הַכְּרָמִים דְּלָא הַיָּא אַבִּידָה – וְכָל שְׁכַנְתָּא רֹוּשָׁה בְּדַרְךָ.

Rava said to him: If the *tanna* employs the style of: Its counterpart tells about it, let him teach the lenient case and all the more so it would apply to the stringent case. The Gemara elaborates: Let the *tanna* teach that when the animal is running on the path it is lost property and all the more so it is lost property when it is running through the vineyards. And let the *tanna* teach that when the animal is grazing among the vineyards it is not lost property, and all the more so it is not lost property when it is grazing on the path.

LANGUAGE

Main thoroughfare [*isratiyya*] – אִסְרָתִיא: From the Latin strata, meaning street or public road. There is an etymological link to the Greek στράτιος, *stratos*, whose meaning is linked to soldiers and military camps.

HALAKHA

שְׁלִיטָה בְּצַדְקָה נְדָר: If one finds a cloak alongside a fence or an ax alongside a fence or a cow grazing in a vineyard, or if one finds any item that appears to be there with the owner's knowledge, it is not lost and the finder must not touch it (Rambam *Sefer Nezikin, Hilkhos Gezeila VaAveda* 15:2, 5; *Shulchan Arukh, Hoshen Mishpat* 260:9).

לְבִזּוּת אַבִּידָה קְרוּעָה: The obligation to return another's property includes preventing loss of his land, e.g., if one sees floodwaters approaching another's field, he is obligated to erect a barrier to prevent the field from becoming inundated (Rambam *Sefer Nezikin, Hilkhos Gezeila VaAveda* 11:20; *Shulchan Arukh, Hoshen Mishpat* 259:9).

מֵצָא חָמָר וֶפֶרֶה: In a case where one sees a cow running along a path, if it is running toward the city, it is not considered lost. If it is running toward the field, away from the city, it is considered lost. If one found a cow grazing among the vineyards, one must return the cow in order to prevent damage to the vineyard. If the vineyard was owned by a gentile, one need not tend to the animal. If the danger exists that the vineyard's owner may kill the cow, or if it is a place where the authorities penalize the owner of an animal that grazes in another's field (Rema), one treats that animal as though it were lost (Rambam *Sefer Nezikin, Hilkhos Gezeila VaAveda* 15:3–4; *Shulchan Arukh, Hoshen Mishpat* 261:2, and in the comment of Rema).

NOTES

שְׁלָשָׁה יְמִים וְהַאֲחֵר זֶה: The Ritva understands that this *halakha*, that after three consecutive days the item is deemed lost and one is obligated to return it, applies not only to animals but to other items as well. If one sees an item in the same place for three days, presumably it is lost and it is incumbent upon him to return it.

HALAKHA

If one returned the lost animal and it fled – **הַחִיּוֹת בְּרָחוֹת**: In a case where one returned an animal several times, even if it fled each time there is no limit to the number of times that he must return it (Rambam Sefer Nezikin, Hilkhot Gezeila VaAveda 11:14; Shulhan Arukh, Hoshen Mishpat 267:2).

אֲלֹא אָמָר רַבָּא: רֵצֶה אָרְצָה לְאַקְשִׁיא -
הָא דְּאָפָה לְבִי דְּבָרָא, הָא דְּאָפָה לְבִי
מִתְאָ.

רוֹעֵה אֲרוֹעֵה נָמֵילְאַקְשִׁיא - בְּאוֹן בְּאַבִּידָת
גּוֹפָה, בְּאוֹן בְּאַבִּידָת קְרֻקָּעַ.

כִּי קָתַנִּי רֹועֵה בְּדַרְךָ לֹא הָיוֹא אַבִּידָה הָא
רוֹעֵה בֵּין הַכְּרָמִים הָיוֹא אַבִּידָה - בְּאַבִּידָת
קְרֻקָּעַ, וְכִי קָתַנִּי רֵצֶה בֵּין הַכְּרָמִים הָיוֹא
אַבִּידָה, הָא רֹועֵה בֵּין הַכְּרָמִים לֹא הָיוֹא
אַבִּידָה - בְּאַבִּידָת גּוֹפָה, דְּרֵצָה בֵּין
הַכְּרָמִים - מִסְקָבָא, וְרוֹעֵה בֵּין הַכְּרָמִים -
לֹא מִסְקָבָא.

רוֹעֵה בֵּין הַכְּרָמִים, נָהִי דְּלָא מִסְקָבָא
תִּפְאֹק לִיה מִשּׁוּם אַבִּידָת קְרֻקָּעַ? בְּדִנְרִי.

תִּפְאֹק לִיה מִשּׁוּם אַבִּידָת גּוֹפָה, דְּרָלְמָא
קָטְלוּ לְהָא בְּאָתוֹא דְּמַתְרוּ וְהָדוּ קָטְלִי.
וְדָלְמָא אָתוּוּ בָּה? אֵי אָתוּ בָּה וְלֹא
אוֹרְדָהּוּ בָּה - וְנָאִי אַבִּידָה מִדְעַת הָיאָ.

“הַחִיּוֹת בְּרָחוֹת הַחִזּוֹרָה וּבְרוֹחָה” [כו'].
אמָר לִיה הַחוֹר מַרְבָּן לְרַבָּא: אִימָא:
”חִשְׁבָּ” - חִרְדָּא זְמָנָא, ”תְּשִׁיבָּם” - תְּרִי
?מִינִי?

Rather, Rava said: The apparent contradiction between the inference from the first clause with regard to running on the path and the inference from the latter clause with regard to running on the path is not difficult. This inference from the first clause that an animal running on the path is lost property is referring to a case where its face is directed toward the field, and it is running away from the city. That inference from the latter clause that an animal running on the path is not lost property is referring to a case where its face is directed toward the city.

Rava continues: The apparent contradiction between the inference from the first clause with regard to grazing among the vineyards and the inference from the latter clause with regard to grazing among the vineyards is also not difficult. Here, the inference from the latter clause that an animal grazing among the vineyards is not lost property is with regard to loss of the animal itself. There, the inference from the first clause that the halakhot of lost property apply in the case of an animal grazing among the vineyards is referring to loss in the sense of damage to the land.

The Gemara elaborates: When the tanna teaches that in the case of an animal grazing on the path, the halakhot of lost property do not apply, from which it is inferred: But in the case of an animal grazing among the vineyards the halakhot of lost property do apply, it is referring to preventing loss in the sense of damage to the land caused by the animal. And when the tanna teaches that in the case of an animal running among the vineyards the halakhot of lost property do apply, from which it is inferred: But in the case of an animal grazing among the vineyards the halakhot of lost property do not apply, it is referring to loss of the animal itself, as an animal running among the vineyards is typically wounded with lacerations from the vines, but an animal grazing among the vineyards is not typically wounded.

The Gemara asks: And with regard to the inference from the latter clause that in the case of an animal grazing among the vineyards the halakhot of lost property do not apply, although it is not wounded, why not derive that the halakhot of lost property do apply due to loss in the sense of damage to the land caused by the animal? The Gemara answers: It is stated with regard to the land of a gentile, which one is not obligated to return or preserve.

The Gemara questions this explanation: But why not derive that one is obligated to return it due to loss of the animal itself, as perhaps the gentiles will kill it? The Gemara answers: It is stated with regard to a place where they forewarn the owner and only then kill the animal. The Gemara challenges: And perhaps they already forewarned the owner with regard to the animal. The Gemara explains: If they already forewarned the owner with regard to the animal and the owner did not heed the warning, this is certainly a case of deliberate loss, where there is no obligation to return it.

¶ The mishna teaches: In a case where one returned the lost animal and it fled, and he again returned it and it fled,^h even if this scenario repeats itself four or five times, he is obligated to return it each time, as it is stated: “You shall not see your brother’s ox or his sheep wandering and disregard them; you shall return them [hashev teshivem] to your brother” (Deuteronomy 22:1). The Gemara understands that from the use of the compound form of the verb, “hashev teshivem,” the mishna derives that one must return the lost animal multiple times if it flees. The Gemara asks: A certain one of the Sages said to Rava: Say that from “hashev” one derives the obligation to return the animal once, and from “teshivem” one derives the obligation to return the animal twice, and beyond that there is no obligation.

אמור ליה: "הַשֵּׁב" – אֲפִילוֹ מֵאָה פָעָם
מִשְׁמָעַ, "תְּשִׁיבֶם" – אֵין לוֹא לְבִתוֹ.
לְגִנְטוֹ וְלְחוֹרְבָתוֹ מִפְנִין – תַּלְמוֹד לְמַרְ
תְּשִׁיבֶם" – מִכֶּל מִקּוֹם. זֶה כִּי דָמֵי? אֵי
דְּמִינִיטָרָא – פְּשִׁיטה, אֵי דָלָא מִינִיטָרָא –
אַמְאֵי?

לְעוֹלָם דְּמִינִיטָרָא, וְהָא קָא מִשְׁמָעַ לָן:
דָלָא בְּשִׁין דִעַת בְּעָלִים, כְּרוּבִי אַלְשָׁוֹ,
דָאָמָר: הַכֵּל אַרְיכִין דִעַת בְּעָלִים, חֹזֶ
מִוחָשְׁבָת אַבִּירָה, שְׁהָתֹורָה רִבְתָּה
הַשְׁבָות הַרְבָּה.

שְׁלִיחַ תְּשִׁלְחָה" – אֵימָא: "שְׁלִיחַ" – חַדָּא
וַיְמַנְאָ, "תְּשִׁלְחָה" – תְּרִי וּמַנְיִ?

אמור ליה: "שְׁלִיחַ" אֲפִילוֹ מֵאָה פָעָם
מִשְׁמָעַ, "תְּשִׁלְחָה" – אֵין לוֹא לְדַבָּר
חֶרְשׁוֹת, לְבָרָר מִצְחָה מִפְנִין – תַּלְמוֹד לְמַרְ
תְּשִׁלְחָה, מִכֶּל מִקּוֹם.

אמור ליה הַהוּא מַדְרָכָן לְרָבָא: וְאֵימָא
הַזּוֹכָחָה – חַדָּא וַיְמַנְאָ, "תּוֹכִיחָה" – תְּרִי
וּמַנְיִ?

אמור ליה: "הַזּוֹכָחָה" – אֲפִילוֹ מֵאָה פָעָם
מִשְׁמָעַ, "תּוֹכִיחָה" – אֵין לוֹא הַרְבָּה
לְתַלְמִיד, תַּלְמִיד לְבָר מִפְנִין – תַּלְמוֹד
לְמַרְ "הַזּוֹכָחָה תּוֹכִיחָה", מִכֶּל מִקּוֹם.

Rava said to him: "Hashev" indicates that there is an absolute obligation to return the animal, even if it flees one hundred times. "Teshivem" teaches another matter: I have derived only that one may return the animal to the owner's house. From where is the halakha derived that one may return the animal to his garden or to his building in ruins? The verse states: "Teshivem," to teach that in any case, wherever one returns the lost animal, he fulfills the mitzva of returning it. The Gemara asks: What are the circumstances? If those areas are protected, it is obvious that one who returns the animal there fulfills his obligation. If they are not protected, why is he considered to have returned the lost animal? It will just flee again.

The Gemara answers: Actually, it is a case where the property is protected. And this teaches us that we do not require the owner's knowledge in order to return the lost item to him. And this ruling is in accordance with the opinion of Rabbi Elazar, who says: Every instance involving return of an item to its owner, e.g., by a bailee or by a thief, requires the owner's knowledge^h that it is being returned, except for the return of a lost item^h, as the Torah amplified the halakha to permit multiple forms of return by means of the compound verb "hashev teshivem," among them return without the owner's knowledge.

The Gemara cites additional mitzvot where the Torah employs the compound verb form, and the Sages derived additional halakhot from the phrasing of the verse. With regard to the mitzva of dispatch of the mother bird from the nest^b before taking its eggs or fledglings, the verse states: "You shall dispatch [shalle'ah teshallah] the mother, but the young take for yourself; that it may be well with you, and that you may prolong your days" (Deuteronomy 22:7). The Gemara understands that from the use of the compound form of the verb, "shalle'ah teshallah," the Sages derive that one must dispatch the mother bird multiple times if it returns. The Gemara asks: Say that from "shalle'ah" one derives the obligation to dispatch the mother once, and from "teshallah" one derives the obligation to dispatch the mother twice, and beyond that there is no obligation.

Rava said to him: "Shalle'ah" indicates that one must dispatch the mother even one hundred times.^h "Teshallah" teaches another matter: I have derived only the obligation to dispatch the mother bird in a case where one takes the eggs or the fledglings and wants to take the mother bird for a non-compulsory matter, e.g., to eat it. In a case where one takes the eggs or the fledglings and needs the mother bird for a matter involving a mitzva,^h e.g., the purification of a leper, from where is the halakha that he must dispatch the mother derived? The verse states: "Teshallah," to teach that in any case one must dispatch the mother bird.

With regard to the mitzva of rebuke,^b the verse states: "You shall not hate your brother in your heart; you shall rebuke [hokhe'ah tokhiah] your neighbor, and not bear sin because of him" (Leviticus 19:17). The Gemara understands that from the use of the compound form of the verb, "hokhe'ah tokhiah," the Sages derive that one must rebuke another multiple times if necessary. A certain one of the Sages said to Rava: Say that from "hokhe'ah" one derives the obligation to rebuke another once, and from "tokhiah" one derives the obligation to rebuke another twice, and beyond that there is no obligation.

Rava said to him: "Hokhe'ah" indicates that one must rebuke another even one hundred times. "Tokhiah" teaches another matter: I have derived only the obligation of a teacher to rebuke a student. With regard to the obligation for a student to rebuke a teacher, from where is it derived? The verse states: "Hokhe'ah tokhiah"^h to teach that one is obligated to rebuke another in any case that warrants rebuke.

HALAKHA

Every instance involving return of an item to its owner requires the owner's knowledge – הכל עירין דעת בעלים: If one stole an item and its owner became aware of the theft, the thief fulfills his obligation to return the stolen item only if the owner is aware that it was returned (Rambam Sefer Nezikin, Hilkhota Gezeila VaAveda 1:8 and Hilkhota Geneiva 4:10; Shulhan Arukh, Hoshen Mishpat 355:1).

Except for the return of a lost item – חוץ מוחשבת אבידה: One who returns a lost item to the owner's garden or ruin fulfills his obligation to return the item (Rambam Sefer Nezikin, Hilkhota Gezeila VaAveda 11:15; Shulhan Arukh, Hoshen Mishpat 267:1).

שלוח אפִילוֹ – Shalle'ah indicates even one hundred times – מֵאָה פָעָם משמע: If one dispatched a mother bird and it returned before he took the fledglings, he must dispatch it again. There is no limit to the number of times that one must dispatch the bird (Rambam Sefer Kedusha, Hilkhota Shehita 13:5; Shulhan Arukh, Yoreh De'a 292:5).

טשללה... – Teshallah...for a matter involving a mitzva – ...טשללה... לְבָר מַצָּה: It is prohibited to take both a mother bird and its fledglings, even for the purpose of fulfilling a mitzva, e.g., purification of a leper (Rambam Sefer Kedusha, Hilkhota Shehita 13:19).

תעליך תוכיח – You shall rebuke [hokhe'ah tokhiah]: One who sees another performing a transgression is obligated to rebuke him. If the sinner does not heed the rebuke, one is obligated to continue rebuking him indefinitely until he does. One is absolved of his obligation to rebuke only if the sinner strikes him and states: I will not listen to you. Even a student must rebuke his teacher, although he must do so in a deferential manner (Rambam Sefer HaMadda, Hilkhota Deot 6:7 and see Hilkhota Talmud Torah 5:9).

BACKGROUND

טשללה... – Dispatch of the mother bird from the nest – טשללה... There is a mitzva in the Torah (Deuteronomy 22:6-7) for one who finds a nest in which the mother bird is sitting on her eggs or with her fledglings to send the mother bird away before taking the eggs or the fledglings. The Sages taught that this mitzva applies only to kosher birds.

rebuke – תעליך: There is a mitzva by Torah law (Leviticus 19:17) to rebuke a fellow Jew for behaving improperly. If one sees another performing a reprehensible act, he must rebuke him for his deed repeatedly. Several conditions are attached to the act of rebuke, e.g., one must avoid publicly embarrassing the wrongdoer and one may not rebuke one who vehemently expressed unwillingness to be reprimanded. If one is able to rebuke a wrongdoer and fails to do so, he is considered to a certain extent an accomplice to the misdeed.

NOTES

And why does the Torah need to write unloading and why does the Torah need to write loading – **ולמה**? Rashi explains that the Gemara is asking why it was necessary for the Torah to command both mitzvot. Others explain that the Gemara is asking why it was necessary for the Torah to employ compound verbs in both mitzvot (*Talmid Rabbeinu Peretz; Ritva*).

The suffering of the animal itself – צערא דידה איתה: Loading a burden onto an animal without the assistance of another causes the animal suffering, because it takes longer for the burden to settle comfortably, and until it settles it weighs heavily on the animal. Yet, unloading the burden from an animal without assistance certainly engenders greater suffering (Rosh).

שׁוב התעוב עמו – אין לי אלא בעליך עמו, שאין בעליך עמו מפני תלמוד לומר עזוב תעוב, מכל מקום.

הדקם תקימים עמו – אין לי אלא בעליך עמו, שאין בעליך עמו מפני תלמוד לומר הדקם תקימים, מכל מקום.

ולמה ליה למכות פריקה ולמה ליה למכות טעינה? ארכי, די' כתוב רחמנא פריקה – והוא אמרנו: ממש דאי' בא ערב חסרון צער בעליך חיים, ואיבא חסרון ביס. אבל טעינה, שלאו צער בעליך חיים איבא ולא חסרון ביס איבא – אימא לא.

ואין אשמעין טעינה – ממש דבשבר אבל פריקה ובחנים – אימא לא, צרכא.

ולבי שמעון, רצאמ: אף טעינה בחנים: מאין איבא למייר? לובי שמעון לא מסיים קראי.

למה לי למכות הביטר תרתי, ולמה לי למכות אבידת? ארכי, די' כתוב רחמנא דני פרתי – ממש דצערא דמרא איתא, צערא דידה איתה. אבל אבידת, דצערא דמרא איתא וצערא דידה ליתה – אימא לא. ואין אשמעין אבידת – ממש דליתא לרעה בהדרה.

§ The Gemara cites additional derivations from compound verb forms. “If you see the donkey of him that hates you collapsed under its burden, you shall forgo passing him by; you shall release it [*azov ta’azov*] with him” (Exodus 23:5). I have derived only that one is obligated to help unload the fallen animal in a case where its owner is with it. From where is the obligation to unload it in a case where its owner is not with it derived? The verse states: “*Azov ta’azov*,” indicating that there is an obligation to unload it in any case.

The verse states: “You shall not see your brother’s donkey or his ox fallen by the wayside, and hide yourself from them; you shall lift them [*hakem takim*] with him” (Deuteronomy 22:4). I have derived only that one is obligated to help load the animal in a case where its owner is with it. From where is the obligation to load it in a case where its owner is not with it derived? The verse states: “*Hakem takim*,” to teach that there is an obligation to load it in any case.

The Gemara asks: And why does the Torah need to write the compound verb form to teach the obligation in the owner’s absence with regard to unloading and why does the Torah need to write the compound verb form to teach the obligation in the owner’s absence with regard to loading^N the animal? The Gemara answers: They are both necessary, as had the Merciful One written this halakha only with regard to unloading, I would say that one is obligated to unload the animal even when the owner is not present, due to the fact that in the failure to unload the animal there is potential suffering of animals and there is potential monetary loss, as the burden might be damaged or the animal might die. But in the case of loading, where there is no potential suffering of animals and there is no potential monetary loss, I would say no, there is no obligation to load the animal when the owner is not present.

The Gemara continues its answer: And had the Torah taught us the obligation in the owner’s absence with regard to loading, I would say that it is due to the fact that his action is rewarded with remuneration, as one is paid for loading an animal. But with regard to unloading,^H which is performed for free, I would say no, there is no obligation to unload the animal when the owner is not present. Due to the unique element in each, both are necessary.

The Gemara asks: And according to Rabbi Shimon, who says that even loading must be performed for free, what is there to say to explain why it was necessary to repeat the obligation with regard to unloading? The Gemara answers: According to Rabbi Shimon, it is not clearly defined which of the verses is referring to loading and which is referring to unloading. Had the Torah written one verse, it would have been interpreted to be referring to unloading and one might assume that he need not load an animal in the absence of the owner.

The Gemara asks: Why do I need the Torah to write these two mitzvot of unloading and loading, and why do I need the Torah to write the obligation to return a lost item? Write one of them, and derive the other from it, as they are all mitzvot to preserve another’s property. The Gemara answers: Both are necessary, as had the Merciful One written only these two mitzvot of unloading and loading, one would say that it is due to the fact that in those cases there is the suffering of its owner and there is the suffering of the animal itself.^N But in the case of a lost item, where there is the suffering of its owner but there is no suffering of the lost item, I might say no, there is no obligation to return the lost item. And had the Torah taught us only the obligation to return a lost item, one would say that is due to the fact that its owner is not with it to care for it;

HALAKHA

The mitzva of unloading and loading – If one sees another’s animal collapsed under its burden, there is a mitzva to unload the burden and reload it, even if the animal’s owner is not present (Rambam Sefer Nezikin, Hilkhot Rotze’ah Ushmirat HaNefesh 13:8; Shulhan Arukh, Hoshen Mishpat 272:7).

Perek II
Daf 31 Amud b

אֲבָל הַעֲנֹתִי דְּאִיתָא לְמַרְאָה בְּהַדָּה
- אִםָּא לָא, צְרִיכָא.

"**מוֹת יוֹמָת הַמְּפֻבָּה**" - אין לי אלא
בְּמִתְהָה הַכְּתוּבָה בָּו. מִנֵּן שָׁאָם אֵי
אַתָּה יִכּוֹל לְהַמִּיטָו בְּמִתְהָה הַכְּתוּבָה
בָו שָׁאָתָה רְשָׁאֵי לְהַמִּיטָו בְּכָל מִתְהָה
שָׁאָתָה יִכּוֹל לְהַמִּיטָו - תַּלְמוֹד לוֹמֶר
"מוֹת יוֹמָת, מֶכֶל מִקּוֹם".

"**הַכָּה תִּפְחַד**" - אין לי אלא בהכאה
הַכְּתוּבָה בָּהּן. מִנֵּן שָׁאָם אֵי אַתָּה יִכּוֹל
לְהַמִּיטָו בְּהַכָּה הַכְּתוּבָה בָּהּן, שָׁאָתָה
רְשָׁאֵי לְהַפְּטוֹן בְּכָל הַכָּה שָׁאָתָה
יִכּוֹל - תַּלְמוֹד לוֹמֶר "הַכָּה תִּפְחַד", מֶכֶל
מִקּוֹם.

"**הַשְׁבָּת תִּשְׁיבָּה**" - אין לי אלא שְׁמַבְּבָנו
בְּרִשות בֵּית דָין, מֶשֶׁבֶן שְׁלָא בְּרִשות
בֵּית דָין מִנֵּן - תַּלְמוֹד לוֹמֶר "הַשְׁבָּת
תִּשְׁיבָּה", מֶכֶל מִקּוֹם.

"**חַבֵּל תִּחְבְּלָה**" - אין לי אלא שְׁמַבְּבָנו
בְּרִשות, מֶשֶׁבֶן שְׁלָא בְּרִשות מִנֵּן
- תַּלְמוֹד לוֹמֶר "חַבֵּל תִּחְבְּלָה", מֶכֶל מִקּוֹם.

וְהַנִּי תְּרוּ קְרוּאֵי לְפָה לִ? חַד לְכָסּוֹת יוֹם
וחַד לְבָסּוֹת לִילָה.

"**פָּתַח תִּפְתַּח**" - אין לי אלא לְעַזְזֵב שְׂרָךְ,
לְעַזְזֵב עַיר אֶחָתָה מִנֵּן - תַּלְמוֹד לוֹמֶר
"פָּתַח תִּפְתַּח", מֶכֶל מִקּוֹם.

but in the case of **these two mitzvot** of unloading and loading, where its owner is with it,^N I might say no, there is no need to assist him. Therefore, it was **necessary** for the Torah to write both.

S The Gemara cited additional derivations from compound verb forms. "Or in enmity struck him with his hand, that he died; **he that struck him shall be put to death [mot yumat]**" (Numbers 35:21). I have derived **only** that the murderer is executed **with the form of death written with regard to him**, i.e., decapitation. **From where** is it derived that if you are unable to execute him **with the form of death written with regard to him, it is permitted for you to execute him with any death^H with which you are able to execute him?** The verse states: "*Mot yumat*," to teach that you must execute him **in any case**.

With regard to an idolatrous city,^B it is written: "**You shall strike [hakeh takeh]** the inhabitants of that city by sword, destroying it utterly" (Deuteronomy 13:16). I have derived **only** that the residents of the idolatrous city are executed **with the form of death written with regard to them**, i.e., decapitation. **From where** is it derived that if you are unable to execute them **with the form of death written with regard to them, it is permitted for you to execute them with any death with which you are able to execute them?** The verse states: "*Hakeh takeh*," to teach that you must execute him **in any case**.

With regard to an item that a poor person needs, e.g., a blanket, that a lender took as collateral when lending him money, it is written: "**You shall restore [hashev tashiv]** to him the pledge when the sun goes down, that he may sleep in his garment, and bless you; and it shall be righteousness for you before the Lord your God" (Deuteronomy 24:13). I have derived **only** the obligation to return his garment each night in a case where the lender **took collateral with the sanction of the court**. **From where** do I derive the obligation to return his garment each night even in a case where the lender **took collateral without the sanction of the court?**^N The verse states: "*Hashev tashiv*," to teach that he must return it **in any case**.^H

The Gemara brings another derivation from a compound verb written with regard to returning collateral: "If you **take as collateral [havol taḥbol]** your neighbor's garment, you shall restore it to him until the sun sets" (Exodus 22:25). I have derived **only** the obligation to return his garment before sunset in a case where the lender **took collateral with the sanction of the court**. **From where** do I derive the obligation to return his garment each night even in a case where the lender **took collateral without the sanction of the court?** The verse states: "*Havol taḥbol*," to teach that he must return it **in any case**.

The Gemara asks: **And with regard to these two verses, why do I need both of them to teach the same halakha**, that one must return to the debtor any garment that he needs? The Gemara answers: **One** is referring to a garment worn during the day, and **one** is referring to a garment worn during the night (see 114b).

With regard to the mitzva of giving charity and granting loans, it is written: "For the poor shall never cease out of the land; therefore I command you, saying: **You shall open [patoah tiftah]** your hand to your poor and needy brother in your land" (Deuteronomy 15:11). I have derived **only** the obligation to give charity **to the poor residents of your city**. **From where** is the obligation to give charity **to the poor residents of another city** derived? The verse states: "*Patoah tiftah*," to teach that you must give charity to the poor **in any case**.

NOTES
דֵּאִיתָא לְמַרְאָה בְּהַדָּה: Even though one is obligated to unload and load another's animal even in a case where the owner is not present, there is a distinction between unloading and loading and returning a lost item. In the case of unloading and loading, the owner is aware of the whereabouts of his animal and can organize assistance. In the case of a lost item, there is no one other than the finder to care for it (Ritva).

מִשְׁבַּנְו בְּרִשות בֵּית דָין: Why would one think that a person who took collateral from another without the sanction of the court would be rewarded with an exemption from the standard obligation to return it daily, necessitating a verse to discount that possibility? Some explain that this Gemara is in accordance with the opinion of Rava (*Temura* 4b), who states that for any action that the Merciful One said: You may not do it, if one does it, it is ineffective. Therefore, one might have thought that if a lender took collateral without the sanction of the court he must return it to the borrower permanently, without reclaiming it daily (*Talmid Rabbeinu Peretz*). Others explain differently: It is clear that one who took collateral without the sanction of the court must return the item each night; nevertheless, one might have thought that by returning it, he does not fulfill a mitzva (see Meiri). Yet others say that since it is extremely uncommon for one to take collateral without the sanction of the court, one might have thought that the Torah did not legislate with regard to uncommon cases (*Shita Mekubetzet*, citing *Gilyon Tosafot*).

HALAKHA
שְׁאָתָה רְשָׁאֵי לְהַמִּיטָו בְּכָל מִתְהָה: In most capital cases, if the court sentences the criminal to death, and he escapes and avoids execution with the form of execution prescribed by the Torah, the witnesses whose testimony convicted him are to kill him with any method available to them. If the witnesses' hands had been amputated before they testified and they therefore unable to execute him, anyone may execute the person sentenced to death. If their hands were amputated after his conviction, no one else may kill him. The exception is a murderer who was convicted and escaped. In that case anyone may execute the murderer with any method available to him (Rambam *Sefer Shofetim*, *Hilkhot Sanhedrin* 14:8).

Returning collateral – **הַשְׁבָּת מֶשֶׁבֶן**: In the case of one who takes collateral from a debtor, whether or not this was sanctioned by the court, if the debtor is destitute and needs the item, e.g., a blanket, it is a mitzva to return it to the debtor for the period of time that he needs it; he may take it thereafter. This applies only if the creditor took the collateral subsequent to giving the loan; if the creditor took the collateral when he gave the debtor the loan, he is not obligated to return it during the periods that the debtor needs it (Rambam *Sefer Mishpatim*, *Hilkhot Malve VeLoveh* 3:5; *Shulhan Arukh*, *Hoshen Mishpat* 97:16).

BACKGROUND
Idolatrous city – **שְׂרָךְ תִּפְרַחְתָּ**: The Torah discusses (Deuteronomy 13:13–19) the unique *halakha* of a city where the majority of inhabitants engage in idol worship. The city is placed on trial by the Great Sanhedrin, consisting of seventy-one judges, which is authorized to depose a militia to subdue the city if necessary. If the city is found guilty, courts are convened and each of the city's adult inhabitants is placed on trial. Those found guilty of idol worship are beheaded, whereas stoning is the penalty for the idol worship of an individual. Those found innocent are exonerated. All the property in the city, including that of the righteous, is destroyed, and all its buildings are razed to the ground. The city remains in ruins forever.

NOTES

From where is the obligation to give even a small gift derived – **בַּתְּנָה מוֹעֵטָת מִנֶּן:** The early commentaries ask: Why does the Gemara assume that the obligation to give a large gift is more obvious? On the contrary, the obligation to give a small gift seems more obvious, and the compound verb should be necessary to derive that one is obligated to give even a large gift. Some explain that the verse “And your heart shall not be grieved when you give unto him” (Deuteronomy 15:10) indicates that one must give a substantial gift (Rosh). Alternatively, they explain that the verse “Furnish him enough for his lack that he is lacking” (Deuteronomy 15:8) makes it clear that a large gift is in order. The Gemara derives from the compound verb that one fulfills his obligation with a small gift as well (*Melo HaRo'im*). Others explain that the reference to a large gift is a gift given by a wealthy person who can easily afford a substantial gift, and a small gift is a gift from a poor person. The Gemara states that while one might have thought that only a wealthy person must give a gift, it is derived from the compound verb that even a poor person must give at least a small gift (Rabbeinu Yehonatan of Lunel; Ritva; Meiri). Another explanation is that the Gemara is referring to the verse: “Because for this matter the Lord your God will bless you in all your actions” (Deuteronomy 15:10). One might have thought that one receives this blessing only for giving a substantial gift. The Gemara derives from the compound verb that one receives the blessing even for giving a small gift (*Torat Hayyim*).

The Torah speaks in the language of people – בְּרִית הַתֹּורָה בְּלִשׁוֹן בְּנֵי אָדָם: This does not mean that the Torah speaks simplistically or in the common vernacular. Rather, as explained in the Jerusalem Talmud, this refers to the opinion that compound verbs in the Torah are merely stylistic formulations from which additional *halakhot* cannot be derived. Some explain that this is not a fundamental principle, and that the Sages employed this reasoning only in the cases where they hold that there is a specific reason that one should not derive *halakhot* from the compound verb (*Tosafot*; Ra'avad). Others understand that in this context it means that the compound verb comes to underscore the significance of the mitzva and to spur one to engage in its fulfillment. This encouragement is necessary in cases that involve the outlay of funds (*Torat Hayyim*).

HALAKHA

You shall furnish – הַעֲנֵיק תְּعֵנֵיק: When a master emancipates his Hebrew slave, he furnishes him with the various gifts listed in the Torah. This obligation exists whether or not the household of the master was blessed during the tenure of the slave (Rambam *Sefer Kinyan, Hilkhot Avadim* 3:14).

He has resources and he does not want to be supported with his resources – יְשַׁלְּוּאֵנוּ וְזַחַה לְתַחְפּוּנָם: The demand of a wealthy person who starves himself in order to be supported with charity is ignored (Rambam *Sefer Zera'im, Hilkhot Mattenot Aniyim* 7:9; *Shulhan Arukh, Yoreh De'a* 253:10).

נָתַן תִּתְנַ – אֵין לִי אֶלָּא מִתְנָה מְרוּבָה, מִתְנָה מוֹעֵטָת מִנֶּן – תְּלִמּוֹד לוֹמֵר נָתַן, מִכֶּל מִקּוֹם.

With regard to the mitzva of giving charity it is written: “Beware... and your eye is stingy against your needy brother... You shall give [naton titten] him, and your heart shall not be grieved when you give unto him” (Deuteronomy 15:9–10). I have derived only the obligation to give a large gift. From where is the obligation to give even a small gift derived?^N The verse states: “Naton titten,” to teach that one must give gifts in any case, whether a large gift or a small one.

הַעֲנֵיק תְּעֵנֵיק – אֵין לִי אֶלָּא שְׁנָתְבָרֵךְ הַבַּיִת בְּגַלְלוֹ מְעַנְיקִין, לֹא נְתַבְּרֵךְ הַבַּיִת בְּגַלְלוֹ מִנֶּן – תְּלִמּוֹד לוֹמֵר הַעֲנֵיק, מִכֶּל מִקּוֹם.

With regard to the release of a Hebrew slave it is written: “You shall furnish [*ha'aneik ta'anik*]^{H8} him liberally from your flock, and from your threshing floor, and from your winepress; of that which the Lord your God has blessed you, you shall give unto him” (Deuteronomy 15:14). Based on the conclusion of the verse, I have derived only that when the house is blessed because of him, one furnishes the slave with gifts. From where have I derived the obligation to furnish him with gifts even when the house is not blessed because of him? The verse states: “*Ha'aneik ta'anik*,” to teach that one must furnish him with gifts in any case.

לֹרֶבֶי אַלְשָׁוֹר בְּן שֻׁרְיָה, דָּאָמָר נְתַבְּרֵךְ הַבַּיִת בְּגַלְלוֹ – מְעַנְיקִין לוֹ, לֹא נְתַבְּרֵךְ הַבַּיִת בְּגַלְלוֹ – אֵין מְעַנְיקִין: הַעֲנֵיק לְמַה? דְּבָרָה תֹּורָה בְּלִשׁוֹן בְּנֵי אָדָם.

The Gemara asks: And according to Rabbi Elazar ben Azarya, who says: If the house is blessed because of him, one furnishes him with gifts, and if the house is not blessed because of him, one need not furnish him with gifts, why do I need a compound verb, “*ha'aneik ta'anik*”? The Gemara answers: The Torah speaks in the language of people.^{NB} The compound verb is a common conversational style, and the Torah employs the same style. Rabbi Elazar ben Azarya holds there is nothing extraordinary about it and therefore, nothing may be derived from it.

הַעֲבֵט תְּעֵבֵיטָנו – אֵין לִי אֶלָּא שְׁנָתְבָרֵךְ שָׂאַלְוָה לֹו וְאַיְנוּ רֹצֶחֶת הַחֲמָנָא: תַּן לוֹ דָרְךָ הַלְאָהָה. יְשַׁלְּוּאֵנוּ וְזַחַה לְתַחְפּוּנָם – תְּלִמּוֹד לוֹמֵר תְּעֵבֵיטָנו, מִכֶּל מִקּוֹם.

With regard to the mitzva of lending money to the poor it is written: “But you shall open your hand to him, and you shall lend [*ha'avet ta'avitennu*] him sufficient for his need that he is lacking” (Deuteronomy 15:8). I have derived only that in a case where one does not have resources and does not want to be supported with charity, the Merciful One states: Provide for him by means of a loan. In a case where he has resources and he does not want to support himself with his resources,^H from where is the obligation to lend him money derived? The verse states: “*Ta'avitennu*,” to teach that you must grant him a loan in any case.

לֹרֶבֶי שְׁמֻעוֹן, דָּאָמָר יְשַׁלְּוּאֵנוּ וְזַחַה לְתַחְפּוּנָם – אֵין נְזַקְקִין לוֹ, תְּעֵבֵיטָנו. לְמַה? דְּבָרָה תֹּורָה בְּלִשׁוֹן בְּנֵי אָדָם.

The Gemara asks: And according to Rabbi Shimon, who says that in a case where he has resources and does not want to support himself with his resources one is not obligated to attend to his needs, why do I need a doubled verb: “*Ha'avet ta'avitennu*”? The Gemara answers: The Torah speaks in the language of people and nothing may be derived from it.

BACKGROUND

You shall furnish – הַעֲנֵיק תְּעֵנֵיק: Upon completion of his service, a Hebrew slave is provided with goods by his master. The Torah mandates a gift of sheep, grain, and wine (Deuteronomy 15:12–15). The Torah's command of this severance payment reminds the Jewish people that they were slaves in Egypt and liberated by God; at the time of the Exodus from Egypt the Israelites collected gold and silver from the Egyptians (Exodus 12:35–36) as fulfillment of God's promise to Abraham (Genesis 15:12–16). The purpose of both the payment to the departing Israelites and to the liberated Hebrew slave was to assist them in establishing themselves in freedom.

The Torah speaks in the language of people – דְּבָרָה תֹּורָה בְּלִשׁוֹן בְּנֵי אָדָם: Although phrased as a comprehensive principle, this rule applies in only narrow and specific areas. Frequently, the Torah makes use of a double verb form, e.g., *shalle'ah teshallah*,

“You shall release” (Deuteronomy 22:7). According to Rabbi Yishmael, who maintain that there is a principle that the Torah speaks in the language of people, the double verbs have no exegetical significance; rather, the doubling of the verb is simply a standard linguistic style. By contrast, Rabbi Akiva sought to draw halakhic inferences from these repetitions. This is not a general principle of biblical exegesis, as it applies only to cases where a verb form is repeated. Indeed, this principle is phrased differently in the Jerusalem Talmud, where the controversy between Rabbi Akiva and Rabbi Yishmael is described as follows: Double verbs are either repetitive expressions and exegetically insignificant or amplificatory expressions and exegetically significant. Some of the early commentaries broaden the application of the principle that the Torah speaks in the language of people to explain such phenomena as the anthropomorphizing of God.

**הַיְהּ בֶּטֶל מִן הַפְּלָעָה לֹא יֹאמֶר לוֹ חֵן
לִי כְּלָעָה אֲלָא נוֹתֵן לוֹ שְׁכָרוֹ כְּפֻועַל
בְּטֶל.**

§ The mishna teaches: If in the course of tending to and returning the lost item, the finder was **idle from labor** that would have earned him a *sela*, he shall not say to the owner of the item: **Give me a sela to compensate me for my lost income. Rather**, the owner gives him his wage as if he were a **laborer**. The Gemara cites that we learned in a *baraita* (*Tosefta* 4:11): The owner **gives him his wage as if he were an idle laborer.**^h

**מַאי כְּפֻועַל בְּטֶל? אָמַר אֲבִי: כְּפֻועַל
בְּטֶל שֶׁל אָוֹתָה מִלְאָכָה וְבְטֶל מִינָה.**

The Gemara asks: **What is the meaning of: As if he were an idle laborer?** In fact, he is not idle, but engaged in return of a lost item. **Abaye said:** It means that he is paid as a **laborer who is idle from that typical labor of his from which he is kept idle**. In other words, he must receive the amount of money a person would be willing to accept to refrain from his current occupation and engage in returning a lost item. This calculation accounts for both the degree of difficulty of his steady employment and the amount of his remuneration.

אִם יִשְׁשֶׁם בֵּית דִין מִתְנָה בְּפִנֵּיכֶם.
אִיסּוּר וּבְסִפְרָא עֲבֵיד עַסְקָא בְּחִרְבִּי
הַדָּרִי, אַוְלָה וּבְסִפְרָא פָּלָג לִיה בְּלָא
דֻּעָהוּת זָאָסָוּ בְּאַפִּי בְּרוּתִי. אַתָּא
לְקַמְיָה זְרַבָּה בָּרְךָ רַב הַוְּנוֹ. אָמַר לֵיה:
וַיְלַא אִיתִי תְּלַתָּא דְּפָלָגָת קַמְיָה, אֵין
נִמְזָה

§ The mishna teaches: **If there are three men there who can convene as a court, he may stipulate before the court that he will undertake to return the item provided that he receives full compensation for lost income.** The Gemara relates: **Issur and Rav Safra^p formed a joint venture with each other.** Rav Safra went and dissolved their partnership **without Issur's knowledge in the presence of two witnesses.** Rav Safra came before Rabba bar Rav Huna in order to ratify the dissolution of the partnership. Rabba bar Rav Huna said to him: **Go and bring me the court of three before whom you dissolved your partnership.**^h **Alternatively, you may bring**

HALAKHA

שְׁכָרוֹ הַשְׁבַּת אַבִּידָה: One who has no employment and finds a lost item must return it without payment, as that is the mitzva. If he was employed and interrupted his work in order to return the item, he receives remuneration as an idle laborer, which, according to the Rambam, means the sum that a laborer would be willing to accept in order to remain idle. The Rema cites Rashi, who states that it is the amount in pay that a laborer would accept in order to move from a grueling occupation to a less strenuous occupation, e.g., returning a lost item. The *Shakh* explains in accordance with the opinion of Rabbeinu Hananel, that one receives the payment that he would receive for performing his labor at a time when salaries are low due to low demand. All this applies in a case where one chooses to return the item. If his standard wage is significant and he is unwilling to lose that sum, he may prioritize his own interests and disregard the lost item (Rambam *Sefer Nezikin, Hilkhos Gezeila VaAveda* 12:4; *Shulchan Arukh, Hoshen Mishpat* 265:1).

תִּתְלַא דְּפָלָגָת קַמְיָה: In the case of a partnership in which no time was predetermined for its dissolution, or where a time was predetermined and that time has arrived, in order to dissolve the partnership without the knowledge of his partners, he must do so in the presence of a court consisting of three men. The three may even be laymen, provided they are trustworthy and experts in assessing the value of property. This halakha applies only to people who are partners in the ownership of various types of property or property whose value is not clear. If they are partners in one type of property whose value is clear, e.g., one type of currency, the partnership can be dissolved even with no court (Rambam *Sefer Kinyan, Hilkhos Sheluhin VeShutafin* 5:9; *Shulchan Arukh, Hoshen Mishpat* 176:17).

PERSONALITIES

Rav Safra – רב סָפָרָא: Rav Safra was a third- and fourth-generation Babylonian *amora*. The Talmud relates that Rav Safra engaged in halakhic discourse as a disciple-colleague with the prominent third-generation *amoraim*, e.g., Rabba and Rav Yosef, and he continued to play an active role in the generation of their students, Abaye and Rava. Rav Safra was apparently a merchant and visited Eretz Yisrael, where he interacted with

the Sages there, e.g., Rabbi Abba and Rabbi Abbahu. His expertise was primarily in matters of *halakha*, and he did not devote himself to the study of Bible or *aggada*. Rav Safra was also well known for his exemplary character, particularly in striving to avoid falsehood. Because Rav Safra traveled extensively he did not head his own academy and was not a constant presence in the study hall.

Perek II Daf 32 Amud a

**תְּרֵי מִנוֹת תְּלַחְתָּא, וְאֵין נִמְזָה – תְּרֵי סָהָרִי
דְּפָלָגָת בְּאַפִּי בְּרוּתִתָּא.**

**אָמַר לֵיה: מַנָּא לֹךְ דָּא? אָמַר לֵיה:
דָּתָן אִם יִשְׁשֶׁם בֵּית דִין – מִתְנָה
בְּפִנֵּיכֶם, אֵין שֶׁם בֵּית דִין – בְּפִנֵּי
יִתְנַהּ? שְׁלֹא קַודָם.**

two of the three of them to testify that you dissolved the partnership before them. Or alternatively, bring two witnesses to testify that you dissolved the partnership before a court of three.

Rav Safra said to Rabba bar Rav Huna: **From where do you know this halakha**, that dissolution of the partnership may be accomplished only before a court? Rabba bar Rav Huna said to him: It is as we learned in the mishna: **If there are three men there who can convene as a court, he may stipulate before the court that he will undertake to return the item provided that he receives full compensation for lost income. But if there is no court there, before whom can he stipulate his condition?** Rather, in that case, **his financial interests take precedence**, and he need not return the lost item. Apparently, one stipulates binding conditions with regard to another's property only before a court.

HALAKHA

A widow sells the property of the estate when not before a court – **אללנה מוכרת שלא בפני בית דין**: In order to receive payment of her marriage contract, a widow takes an oath that her marriage contract was not paid. She may then sell property from her deceased husband's estate before a court of laymen, provided that the laymen in the court are trustworthy and are experts in assessing the value of property (Rambam Sefer Nashim, Hilkhos Ishut 17:13; Shulchan Arukh, Even HaEzer 103:1).

Finding an animal – בוציאת בהמה: If one found an animal in a public area beyond the city limits, he is obligated to return it to its owner (see Gra and Arukh HaShulchan). If it was grazing in the fields or in a stable, even if it was found in a barn in which the animal was not secured, he is not obligated to return it, provided that the stable does not encourage the animal to stray. Some say that if a stable of that kind was beyond the city limits, one is obligated to return the animal (Rambam Sefer Nezikin, Hilkhos Gezeila VaAveda 15:5; Shulchan Arukh, Hoshen Mishpat 261:3, and in the comment of Rema).

If the animal was lost in a graveyard – קברות: If a priest found a lost item in a graveyard, he may not enter the graveyard and become impure in order to return it to its owner (Rambam Sefer Nezikin, Hilkhos Gezeila VaAveda 11:18 and Hilkhos Rotze'ah UShmirat HaNefesh 13:3; Shulchan Arukh, Even HaEzer 272:2).

If his father said to him, Become impure – אביו לא אמר לך: If one's parent told him to fail to fulfill a positive mitzva or to violate a prohibition, including one by rabbinic law, the child may not obey him (Rambam Sefer Nezikin, Hilkhos Gezeila VaAveda 11:19 and Sefer Shofetim, Hilkhos Mamrim 6:12; Shulchan Arukh, Hoshen Mishpat 266:5 and Yoreh De'a 240:15).

NOTES

Neither encourages the animal to stray nor secures the animal – **איןיה מותעה ולאינה משמרת**: The Meiri explains that it does not encourage the animal to stray because there are no large openings that would enable the animal to easily exit; nevertheless, it does not secure the animal because the openings are not so small as to completely prevent the animal from exiting. The Ritva explains that the stable does not secure the animal from thieves and it does not encourage the animal to stray because there is food there and the animal need not leave in order to eat.

אמר ליה: מי דמי? והם דמפיק ממונא מהאי ומוטיב להאי – בשיין בית דין אבל הכא דידייה שקל, גילוי מילתה בענמא הו, בתורי סגי ליה. תרעוע, רותנן: אלמה מוכרת שלא בפני בית דין.

אמר ליה אבוי: ולו מיאתמר עליה, אמר רב יוסף בר מניזמי אמר רב נחמן: אלמנה אין צריכה בית דין של מומחה, אבל צריכה בית דין של הדיוטות.

מתני' מצאה ברפת – אין חייב בה ברשות הרבים – חייב בה. ואם היהת בבית הקברות – לא יטמא לך. אם אמר לו אבוי היטמא או שאמר לו לא תתחור – לא ישמע לו.

פרק וטען, פרק וטען, אפיקו ארבעה וחמשה פעמים – חייב, שנאמר "שוב תשׁוב".

חולן וישב לו, ואמר: חזיל וועלך מצוחה, אם רצונך לפרק פרוק – פטו, שנאמר עמו. אם היה יקון או חולה – חייב.

מצואה מן התורה לפרק, אבל לא לטען. רבי שמעון אומר: אף לטען.

רבי יוסי הגלילי אומר: אם היה עליו יתר על משאו – אין זוקק לו, שנאמר "תחת משאו" משאו שיכול לעמוד בו.

גמ' אמר רבא: רפת שאמרו איןיה מותעה ולאינה משמרת; איןיה מותעה – מודקתי אין חיב בה, ולאינה משמרת – כן אמר לך למייתני אין חיב בה.

Rav Safra said to Rabba bar Rav Huna: Is that case in the mishna comparable to this case? There, where he is removing property from the possession of this person and giving it to that person, we require a court. But here, referring to himself in the third person, he is merely taking his own property, and not the property of any other person. There is no transaction effected here. It is mere disclosure of the matter that he divided the joint property equitably, and two witnesses are sufficient for him to disclose that fact. Rav Safra cites proof. Know that this is so, as we learned in a mishna (Ketubot 97a) that a widow owed sustenance from her husband's estate sells the property of the estate when not before a court.^h Apparently, one need not involve the court when reclaiming property that belongs to him.

Abaye said to him: But wasn't it stated with regard to that mishna that Rav Yosef bar Minyumi says that Rav Nahman says: The court before which a widow sells the property of the estate need not be a court of experts, but is required to be at least a court of laymen. Therefore, as in the parallel case of the widow, even when disclosing that one took property belonging to him, two witnesses are not sufficient and a court is required.

MISHNA If one found an animal^h in a stable belonging to its owner, he is not obligated to return it to its owner. If he found it in a public area, he is obligated to return it. And if the animal was lost in a graveyard^h and a priest found it, he may not become impure to return it. If his father said to him: Become impure;^h or in a case where one was obligated to return the animal and his father said to him: Do not return it, he may not listen to his father, as one may not violate Torah law to honor his father.

If one unloaded a burden from an animal collapsing under its weight and then later loaded it onto the animal, and later unloaded and loaded it again, even if this scenario repeats itself four or five times, he is obligated to continue unloading and loading, as it is stated: "If you see the donkey of him that hates you collapsed under its burden, you shall forgo passing him by; you shall release it [azov ta'azov] with him" (Exodus 23:5). It is derived from the verse that one is obligated to perform the action as needed, even several times.

If the owner went, and sat, and said to a passerby: Since there is a mitzva incumbent upon you to unload the burden, if it is your wish to unload the burden, unload it, in such a case the passerby is exempt, as it is stated: "You shall release it with him," with the owner of the animal. If the failure of the owner to participate in unloading the burden was due to the fact he was old or infirm, the passerby is obligated to unload the burden alone.

There is a mitzva by Torah law to unload a burden, but there is no mitzva to load it. Rabbi Shimon says: There is even a mitzva to load the burden.

Rabbi Yosei HaGelili says: If there was a burden upon the animal greater than its typical burden, one need not attend to it, as it is stated: "Under its burden," i.e., the obligation is with regard to a burden that the animal can bear.

GEMARA The mishna teaches that if one found an animal in a stable, he need not return it to its owner. Rava said: The stable that the Sages mentioned in the mishna is one that neither encourages the animal to stray nor secures the animal^h so it will not flee. The Gemara explains Rava's statement. That it does not encourage the animal to stray is learned from the fact that the tanna teaches: He is not obligated in its return. The fact that it does not secure the animal is learned from the fact that it was necessary for the tanna to teach: He is not obligated in its return.

דאילקא דעתן משמרת – השתקה
משבח לה אבראי מיעיל לה לונאי,
משבח לה מגוואי מביאו! אלא שמע
מיינה: איןנה משמרת. שמע מיינה.

The Gemara continues its explanation of Rava's statement: **As, if it enters your mind** to say that it is a stable that **secures** the animal, that ruling would be extraneous. Now that in a case where one **found** the animal **outside** a stable he **brings it inside** a stable of that type and thereby returns the animal to its owner, in a case where he **found** the animal **inside** the stable is it **necessary** to teach that he is not obligated to return it to its owner? Rather, **learn from it** that the stable mentioned in the mishna does **not secure** the animal and therefore there is a possibility that one must return it. The Gemara affirms: Indeed, **learn from it** that it is a stable that neither encourages the animal to stray nor secures the animal.

"מצאה ברכבת אינו חייב." אמר רבי יצחק: והוא שעומדת תוך לתחום. מכלל דברשות הרבים, ואפלו בתוך התחום – נמי חייב.

§ The mishna teaches: If one found an animal in a stable belonging to its owner, he is **not obligated** to return it. Rabbi Yitzhak says: And that is the *halakha* only in a case where the animal is standing **within the city limits**. The Gemara concludes by inference that if the animal was **found in a public area** he is obligated to return it, and even if it was **within the city limits**, he is also **obligated** to return it.

אייבא דמתני לה אסיפה: ברשות הרובים חייב בה. אמר רבי יצחק: והוא שעומדת חוץ לתחום. מכלל דברות, אףלו שעומדת חוץ לתחום –

נמי אינו חייב בה.

There are those who teach this statement with regard to the latter clause of the mishna: If he found it in a public area, he is **obligated** to return it. Rabbi Yitzhak says: And that is the *halakha* only in a case where the animal is standing **beyond the city limits**. The Gemara concludes by inference that in a case where the animal was **found in the stable**, even if the animal is standing **beyond the city limits**, he is also **not obligated** in its return.

"בבית קברות לא יטהר לה." תנ"ז: מפני שאין שם אמור לו אביו היטמא או שאמר לו אל תהייר שלא ישמע לו – שנאמר "איש אמו ואביו תיראו – ואת שבתותי תשמרו אני ה" –itolim chayben be-kvod.

§ The mishna teaches: **And if the animal was lost in a graveyard** and was found by a priest, he **may not become impure** to return it. In a case where a priest's father said to him: Become impure, or in a case where one was obligated to return the animal and his father said to him: Do not return it, he may not listen to his father. The Gemara cites a *baraita* in which the Sages taught: From where is it derived that if a priest's father said to him: Become impure,ⁿ or that if one's father said to him: Do not return a lost item that you found; he should not listen to him? It is derived from the verse, as it is stated: "Every man shall fear his mother and his father, and you shall observe My Shabbatot,ⁿ I am the Lord" (Leviticus 19:3). From the fact that the verse concludes: "I am the Lord," it is derived that: **You are all, parent and child alike, obligated in My honor.** Therefore, if a parent commands his child to refrain from observing a mitzva, he must not obey the command.

NOTES

That if a priest's father said to him, **Become impure** – **אמך** – **אבוי היטמא**: Early commentaries ask: In what sense does it honor his father to sin at his behest? Even if the father commits no transgression with his instructions, it is certainly not to his credit. Some explain that the case here is not one where the father directly tells his son to refrain from returning the lost item; rather, he instructs him to perform a different action in his service instead. Or with regard to the priest, it is a case where the father instructs his son to enter the graveyard and become impure in order to perform a service for him, e.g., to bring him something (Ramban; Rashba).

ואת שבתותי תשמרו – נמי: And you shall observe My Shabbatot – **נמי:** The primary derivation is from the conclusion of the verse: "I am the Lord"; everyone is obligated to perform God's will, and observing Shabbat is God's will. The commentaries ask: Why is observing Shabbat God's will any more than obeying his parent? Why not say the opposite, that one should obey his parent and thereby violate Shabbat, as this would also perform God's will. The Rosh answers that Shabbat is the more significant mitzva because by observing Shabbat one attests to his belief in Creation and thereby honors God. Therefore, when the verse states: "I am the Lord," it is interpreted as referring to observing Shabbat.

NOTES

This is a positive mitzva and that is both a prohibition and a positive mitzva – **הִיא עֲשֵׂה וְהִיא לֹא תַעֲשֶׂה וְעַשֶּׂה**: The early commentaries discuss which mitzva the Gemara characterizes as being both a prohibition and a positive mitzva. The Rashba explains that it could not be referring to the mitzva to return a lost item, as there is no positive mitzva until he lifts the item and there is no prohibition once he lifts the item. Therefore, he explains that the Gemara is referring to the mitzva that the priest must maintain his purity and the prohibition against his becoming impure. Others explain that the reference is to the mitzva of observing Shabbat and the prohibition against violating Shabbat (Rosh; *Talmid Rabbeinu Peretz*).

Since honoring one's father and mother is equated to the honor of the Omnipresent – **הָאָלֹהִים קָדוֹשׁ כִּיּוֹת אָבָּא זָמָם לְכִבּוֹד שְׁלָמָךְ**: The commentaries ask: Even if honoring one's parents is on a par with honoring God, nevertheless, is it greater than that? In fact, some note that it seems in the Jerusalem Talmud that God deemed honoring one's parent more significant than honoring Him (Rosh). Rav Yosef of Jerusalem answered that one might think that since these two mitzvot were equated, one may choose which mitzva he prefers (*Shita Mekubetzet*). Others explain that one might think that honoring one's parents is greater, as in honoring them he honors God as well.

Honor the Lord with your wealth – **כִּבְדָת ה' בְּמַחְזָקָה**: The Ritva notes that the Gemara could have cited the verses in the Torah with regard to fear of God and cursing one's parent, from which the parallel between one's treatment of God and one's treatment of his parents is also derived. Nevertheless, the Gemara cited these verses, although one of them is in found in Writings, because the primary mitzva with regard to one's father is the one that appears in the Ten Commandments, where the mitzva is phrased in terms of honor.

The verses are not clearly defined – **לֹא מְסִימֵי קָרְאֵי**: Some explain that although it is not possible to explain that both verses are referring to loading, it is possible to interpret both verses as referring to unloading (*Tosefot HaRash*).

HALAKHA

mitzvot priyka v'tshevah – **מִצְוֹת פְּרִיקָה וְטַשְׁוָה**: If there is a burden that must be unloaded from or loaded onto an animal, there is a mitzva to assist the animal's owner, even if it entails unloading and loading several times. If the animal's owner does not participate in the unloading and loading, one is obligated to help him only if he is old or infirm (Rambam *Sefer Nezikin, Hilkhot Rotze'ah UShmirat HaNefesh* 13:5, 8; *Shulhan Arukh, Hoshen Mishpat* 272:4–7).

Unloading for free, loading with remuneration – **פְּרִיקָה בְּחִנָּם טַשְׁוָה בְּשַׁכְּרָה**: The Torah commands one to assist an animal's owner in unloading and loading his animal. One must assist in unloading the burden without pay, but may request remuneration for assistance in loading the animal (Rambam *Sefer Nezikin, Hilkhot Rotze'ah UShmirat HaNefesh* 13:7; *Shulhan Arukh, Hoshen Mishpat* 272:6).

טַשְׁוָה דְּכַתֵּב רְחִמָּנוּא אֶת שְׁבָתוֹתִי
תְּשִׁמְוֹת, הָא לֹא דָבֵר – הָוּ אֱמִינָא:
צִיְּתָא לְהָ. וְאַמְּאָיו? הָאֵ עֲשָׂה וְהָאֵ
לֹא תַעֲשֶׂה וְעַשֶּׂה, וְלֹא אַתְּ עֲשָׂה וְדַחֵי
אֶת לֹא תַעֲשֶׂה וְעַשֶּׂה!

אַיִצְּרִיךְ, סְלִקָּא דַעֲתָךְ אֲמִינָא: הָאֵיל
וְהַקְשֵׁת בִּבְרוֹד אָב וְאָם לְכִבּוֹד שְׁלָמָךְ
מִקּוּם, שְׁנָאָמֵר בָּאָן "כִּבְדָת אֶת אָבֵיכְךָ
וְאֶת אָמֵן", וְנוֹאָמֵר לְהָלָן "כִּבְדָת הָ
מְהוֹן" – הַלְּכָר לְמִשְׁתַּת לְיהָ – קָא מְשֻׁמָּעָ
לֹן דָּלָא לְשֻׁמָּעָ לְיהָ.

The Gemara infers: The reason that a priest must not obey his father's command to become impure is because the Merciful One writes: “You shall observe My Shabbatot; I am the Lord”; but if it were not so, I would say that the child must obey him. The Gemara asks: But why? This obligation to obey a parent is a positive mitzva, as it is written: “Honor your father and your mother” (Exodus 20:12), and that obligation of a priest to refrain from becoming impure is both a prohibition: “To the dead among his people he shall not defile himself” (Leviticus 21:1), and a positive mitzva.^N “You shall be holy” (Leviticus 19:2); and the principle is that a positive mitzva does not come and override a prohibition and a positive mitzva.

The Gemara answers that the derivation from “You shall observe My Shabbatot; I am the Lord” was necessary, as it might enter your mind to say: Since honoring one's father and mother is equated to the honor of the Omnipresent,^N as it is stated here: “Honor your father and your mother” (Exodus 20:12), and it is stated elsewhere: “Honor the Lord with your wealth” (Proverbs 3:9),^N therefore, one might have thought that the priest must obey his father's command to become impure. Therefore the Torah teaches us that the priest is commanded not to listen to him.

§ The mishna teaches: There is a mitzva by Torah law to unload a burden, but there is no mitzva to load it.^H The Gemara asks: What is the meaning of the phrase: But there is no mitzva to load it? If we say that it means: But there is no mitzva to load it at all; what is different about unloading, with regard to which it is written: “You shall release it with him” (Exodus 23:5)? With regard to loading as well, isn't it written: “You shall lift them with him” (Deuteronomy 22:4)?

אַלָּא: מִצְוָה מִן הַתּוֹרָה לְפַרְוּק אָבֶל לְ
לְטַעַן. מִאָבֶל לֹא לְטַעַן? אַיִלְמָא
אָבֶל לֹא לְטַעַן בְּלָ – מַאי שְׁנָא
פְּרִיקָה – דְּכַתֵּב "עַזְבֵּת תַּעֲזֹב עַמּוּ"
טַשְׁוָה נָמֵי הַכְּהִיב "דְּקָם תַּקְרִים עַמוּ"!
בְּשַׁכְּרָה. רַבִּי שְׁמֻעוֹן אָזְפָר: זֹו וּו בְּחִנָּם.

מַאי טַעַמְיָהוּ דָרְבָּנוּ? דָאֵי סְלִקָּא
דַעֲתָךְ בְּרִכְבָּי שְׁמֻעוֹן – לְכֹתֵב רְחִמָּנוּ
טַשְׁוָה, וְלֹא בְּשַׁכְּרָה, וְאַנְנָא אֲמִינָא:
וּמָה טַשְׁוָה דְּלִית בָּה צָרָב עַלְיִ חִים,
וְלִכְאָחָרְזָן בַּיס – חִיבָּ, פְּרִיקָה דָאַת
בָּה צָרָב עַלְיִ חִים וְחָרְזָן בַּיס – לֹא
כָּל שְׁבָן? אַלָּא לְמַאי הַלְּכָתָא כְּתִיבָה
טַשְׁוָה – בְּשַׁכְּרָה.

וְרַבִּי שְׁמֻעוֹן, מַאי טַעַמָּה? מִשּׁוּם דָּלָא
מְסִימֵי קָרְאֵי.

The Gemara answers: Rather, there is a mitzva by Torah law to unload the burden for free, but there is no mitzva to load it for free; rather, the mitzva is performed with remuneration.^H Rabbi Shimon says: There is also a mitzva to load it for free. The Gemara states: We learn by inference from the mishna that which the Sages taught explicitly in a baraita: Unloading is performed for free, and loading is performed with remuneration. Rabbi Shimon said: Both this and that are performed for free.

The Gemara asks: What is the reason for the opinion of the Rabbis that there is a distinction between unloading and loading with regard to remuneration? The reason is that if it enters your mind that the halakha is in accordance with the opinion of Rabbi Shimon, let the Merciful One write only the mitzva of loading, and then He would need not write the mitzva of unloading, and I would say: Just as with regard to loading, where there is no potential suffering of animals and there is no potential monetary loss for the owner, one is obligated to load the burden, with regard to unloading, where there is potential suffering of animals and there is potential monetary loss for the owner, is it not all the more so clear that one is required to unload the burden? Rather, with regard to what halakha did the Merciful One write the mitzva of unloading? It is to tell you: The mitzva of unloading the burden is performed for free, but the mitzva of loading is performed with remuneration.

The Gemara asks: And according to Rabbi Shimon, who holds that even loading is performed for free, what is the reason that the Torah writes the mitzva of unloading? The Gemara answers: It is because the verses are not clearly defined,^N and it is unclear which of the verses refers to loading and which refers to unloading. Had the Torah written one verse, it would have been interpreted with regard to unloading, and there would be no source that one needs to load an animal.

וובכן: אםאי לא מסיני קראין? הכא
בתיב "רוכז תחת משאו", ה там כתיב
"נופלן בדרך" דרומו איניה וטענייה
באורה מאשמע. ורבינו שמעון: "נופלן
בדרך" איניה וטענייה עלייהו משמע.

And the Rabbis could ask: Why does Rabbi Shimon say that the verses are not clearly defined? Here it is written: "Collapsed under its burden" (Exodus 23:5), clearly referring to the case of a burden that needs unloading, and there it is written: "Fallen down by the way" (Deuteronomy 22:4), indicating that both the animals and their burdens are lying on the way and are in need of loading. And Rabbi Shimon explains that the verses are not defined because the phrase "fallen down by the way" could be understood as indicating that the animals are fallen with their burdens upon them, and referring to unloading.

אמר רバ:

Perek II

Daf 32 Amud b

מדברי שנייהם נלמד: צער בעלי חיים
דאורייתא. ואפיקלו רבי שמעון לא
קאמור אלא משום דלא מסיני קראי,
אבל מסיני קראי - אין שמן כל חומר,
משום Mai - לאו משום צער בעלי חיים
דרשין?

ולמאי משום דאייבא חסרוון ביס. והכי
קאמर: ומה טעינה דלית בה חסרוון
ביס - חייב, פריקה דעתית בה חסרוון
ביס - לא ביל שבן?

וטעינה אין בה חסרוון פיס? מי לא
עסקין דארחבי והכי בטיל משוקהיה,
אי נמי אתו גנבי ושוקלי פ' מה דאייבא
בדוחיה.

תדעך צער בעלי חיים דאורייתא. דקתי
סיפה. רבוי יוסי הגלילי אומר: אם היה
עליו יתר [על] משאו - אין זוקק לו.
שניאמר "תחת משאו" - משאו שיכול
לעמדו בו. לאו מבלל דתנאי קמא סבר
זוקק לו? מי טעמא - לאו משום צער
בעלי חיים דאורייתתא?

ולמאי ב"תחת משאו" פלאי, דרבוי יוסי
סבר: דרישין "תחת משאו" - משאו
שיכול לעמוד בו, וובכן סבר: לא דרישין
"תחת משאו".

From the statements of both of these *tanna'im* it can be learned that the requirement to prevent suffering to animals^N is by Torah law. As even Rabbi Shimon says that he disagreed with the opinion of the Rabbis only because the verses are not clearly defined; but had the verses been clearly defined, we would have learned the same *a fortiori* inference. Due to what factor can that inference be learned? What, is it not due to the matter of suffering of animals, which is a factor in unloading and not a factor in loading, that we would have learned the *a fortiori* inference?

The Gemara rejects that proof. Perhaps the *a fortiori* inference is due to the fact that there is the factor of monetary loss in unloading but not in loading, and this is what the Rabbis are saying: If in the case of loading, where if one fails to assist the owner there is no potential monetary loss, one is obligated to help load the animal, in the case of unloading, where if one fails to assist the owner there is potential monetary loss, is it not all the more so clear that one is required to unload the burden?

The Gemara asks: But is there no potential monetary loss in loading? Are we not also dealing with a case where in the meanwhile, while the owner waits for assistance, he will be prevented from bringing his merchandise to the marketplace in time to sell it; alternatively, thieves might come and take all the merchandise that is there with him? Therefore, no *a fortiori* inference can be learned on the basis of monetary loss, and the inference must be based on the matter of the suffering of animals.

The Gemara cites an additional proof: Know that the requirement to prevent suffering to animals is by Torah law, as it is taught in the latter clause of the mishna: Rabbi Yosei HaGelili says: If there was a burden upon the animal greater than its typical burden,^H one need not attend to it, as it is stated: "Under its burden" (Exodus 23:5). Rabbi Yosei holds that the obligation to unload an animal is with regard to a burden that the animal can bear; does this not indicate by inference that the first *tanna* holds that he must attend to it to unload a burden that is greater than its typical burden? What is the reason for this ruling; is it not due to the fact that the requirement to prevent suffering to animals is by Torah law?

The Gemara rejects that proof: Perhaps it is with regard to the meaning of the phrase "under its burden" that they disagree, as Rabbi Yosei HaGelili holds that we interpret the phrase "under its burden" to mean: A burden that the animal can bear. And the Rabbis hold that we do not interpret the phrase "under its burden" in this manner.

NOTES

צער בעלי חיים: Requirement to prevent suffering to animals – Some say the Torah source for this obligation is the verse: "You shall not muzzle the ox when it threshes" (Deuteronomy 25:4), which is an admonition to prevent the ox from suffering (Meiri). The *Hatam Sofer* derives it from the verse: "The Lord is good to all; and His compassion extends to all His works" (Psalms 145:9). He notes that even according to those who hold that this obligation is by Torah law, it applies only in situations when the suffering is gratuitous and provides no benefit, as the Torah grants people dominion over animals. That is why it is permitted to eat animals and utilize them for one's own purposes, as it is written: "And let them have dominion over the fish of the sea, and over the fowl of the air, and over the cattle, and over all the earth, and over every creeping thing that creeps upon the earth" (Genesis 1:26).

HALAKHA

יגיר על משאו: There is a mitzva for one who sees an animal collapsed under its burden to assist in unloading it, whether the burden was appropriate for the animal or whether it was greater than its typical burden (Rambam Sefer Nezikin, Hilkhos Rotzeah UShmirat HaNefesh 13:1; Shulhan Arukh, Hoshen Mishpat 272:1).

HALAKHA

The animal of a gentile collapsed under the burden of a Jew – בְּהַמֶּת נָכֵר וּמִשְׁאָיו יִשְׂרָאֵל: If one sees the animal of a gentile bearing the burden of a Jew with the gentile accompanying the animal, he need not assist in its unloading or loading. If a Jew is accompanying the animal, one is obligated to assist in its unloading or loading. In the case of the animal of a gentile accompanied by its gentile owner, if failure to assist will engender enmity one is obligated to assist him. The Rema rules that regardless of the circumstances one is required to assist in unloading the animal, due to the requirement to prevent suffering of animals. He adds that in cases where the obligation to assist in unloading the animal is due to the requirement to prevent suffering of animals and not due to the mitzva to assist in unloading, one may ask for remuneration for his efforts (Rambam *Sefer Nezikin*, *Hilkhot Rotze'ah UShmirat HaNefesh* 13:9; *Shulhan Arukh*, *Hoshen Mishpat* 272:9, and in the comment of Rema).

Actually to prevent suffering of animals is by Torah law – לְעֹלָם צָר בְּעֵל חַיִם דָּאוּרִיתָא: Many authorities maintain that the requirement to prevent suffering of animals is by Torah law, and that consequently there are instances where it overrides mitzvot by rabbinic law (Rosh; Rashba; Rambam according to the *Sma*). Others contend that the Rambam holds that the requirement to prevent suffering of animals is by rabbinic law (Rambam *Sefer Nezikin*, *Hilkhot Rotze'ah UShmirat HaNefesh* 13:13; *Shulhan Arukh*, *Hoshen Mishpat* 272:9, and in the comment of Rema and *Beur HaGra*).

הַדָּרְעַ דְּצֹעַר בְּעֵלִי חַיִם לֹא דָאוּרִיתָא
דָּקְתְּנִי רִישָׁא: הַלְּךָ וַיִּשְׁבֵּן לוֹ וַיֹּאמֶר לוֹ הַאֲוִיל
וְעַלְּיךָ מִצְחָה לְפָרוֹק – פָּרוֹק, פָּטוֹר, שְׁנָאָמָר
עַמּוֹ. וְאֵי סְלָקָא דְּשֻׁתָּעַ צָר בְּעֵלִי חַיִם
דָּאוּרִיתָא, מַה לֵי אַתְּתָּה לְמַרְיוֹת בְּהַדִּיחָה,
וְמַה לֵי בַּיְתָה לְמַרְיוֹת בְּהַדִּיחָה?

לְעֹלָם צָר בְּעֵלִי חַיִם דָּאוּרִיתָא, מַי סְבָרָת
פָּטוֹר פָּטוֹר לְגַמְרִי? וְדָלָמָא: פָּטוֹר – בְּחִנָּם,
וְחוּבָּ – בְּשָׁכָר. וְהִכְיָה קָאָמָר רְחִמָּנָא: כִּי
אַיִינָה לְמַרְיוֹת בְּהַדִּיחָה – עַבְדָּגְבִּיהָ בְּחִנָּם,
וְכִי לִתְיָה לְמַרְיוֹת בְּהַדִּיחָה – עַבְדָּגְבִּיהָ
בְּשָׁכָר, וְלְעֹלָם צָר בְּעֵלִי חַיִם דָּאוּרִיתָא.

סִימָן: בְּהַמֶּת בְּהַמֶּת אָזֵה בְּשׁוֹנֵא רְבָצֵן

לִימָא מַסְיִיעַ לְיהָ: בְּהַמֶּת נָכֵר מַטְפֵּל בָּה
בְּבַהֲמַת יִשְׂרָאֵל. אֵי אָמָרָת בְּשָׁלְמָא צָר
בְּעֵלִי חַיִם דָּאוּרִיתָא – מִשּׁוּם הַכִּי מַטְפֵּל
בְּהַבְּהַמֶּת יִשְׂרָאֵל. אַלְאָ אֵי אָמָרָת צָר
בְּעֵלִי חַיִם לֹא דָאוּרִיתָא, אַמְּמִיא מַטְפֵּל
בְּהַבְּהַמֶּת יִשְׂרָאֵל? הַתָּם בְּשָׁוִים אַיְבָה.

הַכִּי נְמִי מִסְתְּבָרָא. דָקְתָּנָא: אָם הַיְתָה טָעַנָּה
יֵין נְסָךְ – אֵין זַקּוֹק לָהּ. אֵי אָמָרָת בְּשָׁלְמָא
לֹא דָאוּרִיתָא – מִשּׁוּם הַכִּי אֵין זַקּוֹק לָהּ,
אַלְאָ אֵי אָמָרָת דָאוּרִיתָא – אַפְּנִיא אֵין זַקּוֹק
לָהּ? הַכִּי קָאָמָר: וְלַהֲטִיעָנָה יֵין נְסָךְ – אֵין
זַקּוֹק לָהּ.

הַתָּא שְׁמַע: בְּהַמֶּת נָכֵר וּמִשְׁאָיו יִשְׂרָאֵל
וְיִתְדָּלַת. וְאֵי אָמָרָת צָר בְּעֵלִי חַיִם
דָּאוּרִיתָא, אַמְּמִיא וְיִתְדָּלַת? "עַזְבֵּת תַּשְׁבַּב"
מִבְּעֵי לְיהָ! לְעֹלָם צָר בְּעֵלִי חַיִם.
דָּאוּרִיתָא, הַתָּם בְּטָעַנָּה.

The Gemara cites an opposing proof: Know that the requirement to prevent suffering to animals is not by Torah law, as it is taught in the former clause of the mishna: If the owner went, and sat, and said to a passerby: Since there is a mitzva incumbent upon you to unload the burden, unload it, the passerby is exempt, as it is stated: “You shall release it with him” (Exodus 23:5). And if it enters your mind that the requirement to prevent suffering to animals is by Torah law, what is it to me if its owner is working with the passerby and what is it to me if its owner is not working with the passerby? The animal suffers in both cases.

The Gemara rejects that proof: Actually, one could say that the requirement to prevent suffering to animals is by Torah law. And when the *tanna* exempts the passerby when the owner does not participate in unloading the burden, do you maintain that exempt means completely exempt? Perhaps it means that the passerby is exempt from unloading the burden for free, but is obligated to do so for remuneration; and this is what the Merciful One said: If its owner is working with the passerby, perform the unloading with him for free; and if its owner is not working with the passerby, perform the unloading for him for remuneration. And actually, the requirement to prevent suffering to animals is by Torah law.

The Gemara presents a mnemonic for a series of proposed proofs cited by the Gemara: Animal of; animal of; friend; enemy; collapses.

Let us say that a *baraita* supports Rava’s opinion that the requirement to prevent suffering to animals is by Torah law: If one encounters the animal of a gentile collapsed under its burden, he tends to it and unloads its burden, as he would the animal of a Jew. The Gemara reasons: Granted, if you say that the requirement to prevent suffering to animals is by Torah law, it is due to that reason that he tends to it as he would the animal of a Jew. But if you say that the requirement to prevent suffering to animals is not by Torah law, why does he tend to it as he would the animal of a Jew? The Gemara rejects the proof: There one tends to the animal due to enmity that would arise if gentiles see Jews assisting their own people and not gentiles. The obligation is not due to the requirement to prevent suffering of animals.

So too, it is reasonable to explain the *baraita* in this manner, as it is taught in another *baraita*: If the animal of a gentile was loaded with wine used for a libation to idolatry, and the animal is collapsed under its burden, a Jew does not attend to it. Granted, if you say that the requirement to prevent suffering of animals is not by Torah law, it is due to that reason that he does not attend to it. But if you say that the obligation is by Torah law, why does he not attend to it; isn’t the animal suffering? The Gemara answers that this is what the *tanna* is saying: And to load the animal with wine used for a libation to idolatry, he does not attend to it. Loading an animal does not alleviate its suffering. Furthermore, the refusal of the Jew to handle the libation wine will not cause enmity, because he can explain that his religion precludes him from handling these materials.

The Gemara suggests: Come and hear proof from a *baraita*: If one encounters the animal of a gentile collapsed under the burden of a Jew,^h he may refuse to unload the burden, as it is written: “If you see the donkey of him that hates you collapsed under its burden, you shall forgo passing him by; you shall release it with him” (Exodus 23:5). By employing the phrase “you shall forgo,” the verse indicates that there are circumstances in which one may forgo unloading the animal. The Gemara reasons: And if you say that the requirement to prevent suffering to animals is by Torah law, why is there the option of: “You shall forgo”? The Torah should have commanded only: “You shall release it with him.” The Gemara answers: Actually, say that the requirement to prevent suffering to animals is by Torah law,^h and there the *baraita* is referring to a case of loading, where suffering of animals is not a factor.

אֵי הַכִּי, אִמְאָסֶפֶת: בְּהַמְּתִימָה יִשְׂרָאֵל
וּמְשָׁאוֹי נָכְרִי – “עֹזֶב תַּעֲזֹב”. וְאֵי
בְּטֻעַנָּה, אִמְאָי “עֹזֶב תַּעֲזֹב”? מִשּׁוּם
צָעֵרָה דִּישָׂרָאֵל.

אֵי הַכִּי אֲפִילוּ רִישָׁא נִמְיָן רִישָׁא בְּחִמְרָה
נָכְרִי, סִפְאָה בְּחִמְרָה יִשְׂרָאֵל. מַאֲפִילָה?
סִתְמָה דְּמִלְתָּה, אִינְשׁ בְּתַר חִמְרִיה
אֲוִיל.

וְהִיא “וְתַדְלִית” וּ“עֹזֶב תַּעֲזֹב” בְּפְרִיקָה
הַוָּא דְּכִתְבִּי

אָמָר לֵיהֶ: הָא מַפִּי – רַבִּי יוֹסֵי הַגְּלִילִי
הָא, דָּאָמָר: צָעֵר בָּעֵלִי חִים לֹא
דָּאָרוּתָה.

תֵּא שְׁמַע: אָזְהָב לְפָרוֹק וְשׂוֹנָא לְטַעַזְעָן –
מֵצֹזָה בְּשׂוֹנָא כִּדִּי לְכֹרֶף אַת יָצָרָו.
וְאֵי סְלִקָּא דְּעַתָּעַץ עַר בָּעֵלִי חִים
דָּאָרוּתָה, הָא עַדְךְ לֵיהֶ! אֲפִילוּ הַכִּי
כִּדִּי לְכֹרֶף אַת יָצָרָעָדִי.

תֵּא שְׁמַע: שׂוֹנָא שָׁאַמְרוֹ – שׂוֹנָא
יִשְׂרָאֵל, וְלֹא שׂוֹנָא נָכְרִי. אִי אָמְרָת צָעֵר
בָּעֵלִי חִים דָּאָרוּתָה – מַה לִי שׂוֹנָא
יִשְׂרָאֵל וְמַה לִי שׂוֹנָא נָכְרִי?

The Gemara asks: If so, say the latter clause of the *baraita*: With regard to a case involving the animal of a Jew collapsed under the burden of a gentile, it is written: “You shall release it.” And if the *baraita* is referring to a case of loading, where suffering of animals is not a factor, why does the *baraita* state: “You shall release it”? The Gemara answers: It is because in that case, there is suffering of the Jew, who is delayed while waiting for the animal to be loaded.

The Gemara asks: If so, then the *halakha* should be the same even in the first clause. Why is there no requirement to prevent the suffering of the Jewish partner in that case? The Gemara answers: The ruling of the first clause is stated with regard to a gentile donkey driver, and the Jewish owner of the burden is absent. The ruling of the latter clause is stated with regard to a Jewish donkey driver and one is obligated to prevent his suffering. The Gemara asks: On what basis did you arrive at this definitive assertion that the animal of a Jew is driven by that Jew and the animal of a gentile is driven by that gentile? The Gemara answers: The typical state of matters is that a person follows his donkey. The first clause addressed the case of a gentile’s donkey, so presumably its driver is gentile. The latter clause addressed the case of a Jew’s donkey, so presumably its driver is a Jew.

The Gemara questions the explanation that the *baraita* is referring to cases involving loading. But isn’t it with regard to unloading that the phrases cited in the *baraita*: “You shall forgo passing him by,” and: “You shall release it,” are written?

The Gemara answers that he said to him: Indeed, the fact that one need not unload the burden from the donkey in the first clause of the *baraita* indicates that the requirement to prevent suffering to animals is not by Torah law. In accordance with whose opinion is this *baraita*? It is in accordance with the opinion of Rabbi Yosei HaGelili, who says that the requirement to prevent suffering to animals is not by Torah law. That is the minority opinion, as the Rabbis disagree.

The Gemara suggests: Come and hear proof from a *baraita*: If one encounters a friend whose animal collapsed and it is necessary to unload its burden, and one also encounters an enemy^N who needs assistance to load^{NH} a burden onto his animal, the mitzva is to assist the enemy, in order to subjugate one’s evil inclination. The Gemara reasons: And if it enters your mind that the requirement to prevent suffering to animals is by Torah law, that option, to unload his friend’s animal, is the preferable course of action for him. The Gemara answers: Even if the requirement to prevent suffering to animals is by Torah law, even so, loading his enemy’s animal in order to subjugate his evil inclination is preferable.^N

The Gemara suggests: Come and hear proof from a *baraita*. The enemy with regard to which they stated the *halakha* that one must assist with his animal is a Jewish enemy and not a gentile enemy. The Gemara asks: If you say that the requirement to prevent suffering to animals is by Torah law, what is it to me if it is a Jewish enemy and what is it to me if it is a gentile enemy? In either case, failure to unload the burden will cause the animal suffering.

NOTES

Friend and enemy – אָזְהָב וְשׂוֹנָא: The Gemara (*Pesahim* 113b) asks how the verse can be discussing a Jewish enemy, if it is written in the Torah: “You shall not hate your brother in your heart” (Leviticus 19:17). The Gemara answers: In a case where one witnesses another performing a transgression, although he is not liable to be punished in the absence of two witnesses, it is permitted for the single witness to hate him. The Ramban asks: Why would one be required to aid a sinner? He concludes that the enemy referred to in the verse is one whom he hates because that person wronged him.

The Rosh adds that there is an additional aspect to this mitzva. Typically, when one hates another, that other person hates him as well, as indicated in the verse: “As in water face answers to face, so the heart of man to man” (Proverbs 27:19). Through helping one’s enemy, perhaps the situation will be defused and a relationship of mutual amity will replace the hatred.

A friend whose animal collapsed and it is necessary to unload its burden and an enemy who needs assistance to load – אָזְהָב וְשׂוֹנָא לְטַעַזְעָן: The Ritva explains this *baraita* as saying that in a case where one’s friend and enemy both see his donkey collapsed beneath its burden, the mitzva to assist him is incumbent upon the enemy and not the friend.

To subjugate his evil inclination is preferable – לְכַזֵּחַ אֶת רָעָיו: Some explain that although the requirement to prevent suffering to animals is by Torah law, just as the Torah granted people dominion over animals and permitted physical benefit from the animal even if it suffers, the Torah permitted spiritual benefit as well (*Minhat Hinnukh*).

HALAKHA

A friend whose animal collapsed and it is necessary to unload its burden and an enemy who needs assistance to load – אָזְהָב וְשׂוֹנָא לְטַעַזְעָן: If one sees two animals, one whose owner requires assistance to unload its burden and one whose owner requires assistance to load its burden, he assists in unloading the animal first, due to the requirement to prevent suffering to animals. If the owner of the first animal is his friend and the

owner of the other is his enemy, loading his enemy’s animal takes precedence, because in doing so he subdues his evil inclination. Some say that if the reason he hates his enemy is because that person is a sinner, he need not assist him in loading his animal (Rambam *Sefer Nezikin, Hilkhot Rotze’ah UShmirat HaNefesh* 13:13, *Shulhan Arukh, Hoshen Mishpat* 272:10, and in the comment of Rema).

מִסְבָּרֶת אֲשׁוֹנָא דַקְרָא קָאֵי? אֲשׁוֹנָא
דַמְתִּינְתִּין קָאֵי.

The Gemara answers: Do you maintain that the reference in the *baraita* to an enemy applies to the enemy mentioned in the verse: "If you see the donkey of him that hates you collapsed under its burden...you shall release it with him"? It applies to the enemy mentioned in the *baraita* cited above, in which the *tanna* taught that loading a burden onto an enemy's animal is preferable to unloading a burden from a friend's animal.

תֵּן אֶלְעָמֵד The Gemara suggests: Come and hear proof from a *baraita*:

Perek II
Daf 33 Amud a

"רַבֵּץ" – וְלֹא רַבֵּצָן, "רַבֵּץ" – וְלֹא עֻמָּד,
"תַחַת מִשְׁאָזָן" – וְלֹא מַפְרוֹק, "תַחַת
מִשְׁאָזָן" – מִשְׁאָזָן שִׁכְול לְעַמּוֹד בּוֹ. וְאֵי
אָמְרָתָא צָעֵר בָּעֵל חַיִם זָאוּרִיתָא, מַה
לִי רַבֵּץ וְמַה לִי רַבֵּצָן וְמַה לִי עֻמָּד?

It is written: "If you see the donkey... collapsed under its burden" (Exodus 23:5). The *baraita* infers that this obligation to unload a burden applies with regard to an animal that is "collapsed," but not with one that is a habitual *collapser*;ⁿ "collapsed," but not standing; "under its burden," but not when it is unloaded; and "under its burden," meaning a burden that is not excessive, that the animal can bear. The Gemara reasons: And if you say that the requirement to prevent suffering to animals is by Torah law, what is it to me if the animal is collapsed; and what is it to me if the animal is a habitual *collapser*; and what is it to me if the animal is standing? One should be obligated to unload its burden in any case, if the animal is suffering.

הָא מִנִּי – רַבִּי יוֹסֵי הַגְּלִילִי הִיא, דָא מַר
צָעֵר בָּעֵל חַיִם דַּרְבָּן.

The Gemara answers: In accordance with whose opinion is this *baraita*? It is in accordance with the opinion of Rabbi Yosei HaGelili, who says that the requirement to prevent suffering to animals is by rabbinic law, and the ordinance does not apply in these circumstances.

הַכִּי נִמֵּי מִסְתְּבָרָא, דַקְתָּנִי: "תַחַת
מִשְׁאָזָן" – מִשְׁאָזָן שִׁכְול לְעַמּוֹד בּוֹ, מַאֲנָן
שְׁמַעַת לְהָדִיא לְהָאֵי סְבָרָא – רַבִּי
יּוֹסֵי הַגְּלִילִי, שְׁמַעַת מִנָּה.

The Gemara supports its answer: So too, it is reasonable to explain the *baraita* in this manner, as it is taught in the *baraita* cited above: "Under its burden" indicates a burden that the animal can bear. About whom did you hear that he holds that line of reasoning? It is Rabbi Yosei HaGelili. The Gemara affirms: Learn from it that the *baraita* is in accordance with the opinion of Rabbi Yosei HaGelili.

וְמַמְצִיא תָּקוּמָת לְהָכְרִיב יוֹסֵי הַגְּלִילִי?
וְהָא קְתָנִי סִיפָּא: "תַחַת מִשְׁאָזָן" – וְלֹא
מַפְרוֹק, מַאֲנָן לֹא מַפְרוֹק? אַיִלְמָא לֹא
מַפְרוֹק כָּלָל – הָא בְּחִיב "הַקְמָת תְּקִים
עַמּוֹ". אַלְאָ פְּשִׁיטָא: לֹא מַפְרוֹק – בְּחִנָּמָן,
אַלְאָ בְּשָׁכָר. מַאֲנָן שְׁמַעַת לְהָדִיא
לְהָאֵי סְבָרָא – וְבָנָן! לְעוֹלָם וְרַבִּי
הַגְּלִילִי הִיא, וּבְטִיעָנָה סְבָר לְהָכְרִיב.

The Gemara asks: And can you establish the *baraita* in accordance with the opinion of Rabbi Yosei HaGelili? But isn't it taught in the latter clause of the *baraita*: "Under its burden," but not when it is unloaded? What is the meaning of: Not when it is unloaded? If we say that it means that when it is unloaded there is no obligation at all, isn't it written in that case: "You shall lift them with him" (Deuteronomy 22:4), teaching that there is a mitzva to load an animal? Rather, it is obvious that the meaning is that when it is unloaded, one is not obligated to load it for free; rather, he may do so for remuneration. About whom did you hear that he holds that line of reasoning? It is the Rabbis. Apparently, the *baraita* is in accordance with the opinion of the Rabbis and not the opinion of Rabbi Yosei HaGelili. The Gemara answers: Actually, the *baraita* is in accordance with the opinion of Rabbi Yosei HaGelili, and in the matter of loading he holds in accordance with the opinion of the Rabbis.

NOTES

Collapsed but not one that is a habitual *collapser* – רַבֵּץ וְלֹא
מַפְרוֹק: A question is raised in the Jerusalem Talmud: The mishna teaches (32a) that one must assist in unloading an animal collapsed under its burden, even several times. What is the difference between an animal that collapses several times and a

habitual *collapser*? The answer is that the mishna is referring to an animal that repeatedly collapses under its burden. The *collapser* in the *baraita* is an animal that collapses for no apparent reason.

תנו רבנן: "כִּי תְּرָאֵה" – יְכֹל אֲפִילוֹ מַרְחֹק – תַּלְמוֹד לוֹמֶר: "כִּי תִּפְגַּע" יְכֹל פְּגִיעָה מִמֶּשׁ – תַּלְמוֹד לוֹמֶר: "כִּי תְּרָאֵה". ואיוו דיא ראייה שיש בָּה פְּגִיעָה – שִׁיעָרוֹ חֲקִים אֶחָד מִשְׁבָּע וּמִחְצָה בְּמִיל, וְהַוְאָ רִיס.

תנ"א: וְמִדְדָה עַמּוֹ עַד פְּרָקָה. אמר רב בר בור חנָה: וַנּוֹטֵל שָׁכָר.

מתני' אָבָרְתוֹ וְאָבָרְתָּא אָבִיו – אָבָרְתוֹ קָרְמָת, אָבָרְתוֹ וְאָבָרְתָּא רָבוֹ – שָׁלוֹ קָרְמָת.

אָבָרְתָּא אָבִיו וְאָבָרְתָּא רָבוֹ – שָׁלְרָבוֹ קָרְמָת, שָׁאָבִיו הַבָּיאוֹ לְעוֹלָם הַזֶּה וָרָבוֹ שְׁלָמָמוֹן חֲכָמָה קָבִיאוֹ לְתִהְיָה עַלְוָלָם הַבָּא. וְאָם אָבִיו חָכָם – שָׁלְאָבִיו קָרְמָת.

הַיְהָ אָבִיו וָרָבוֹ נַשְׁאַיִן מִשְׁאַיִן – מִנִּיחָאת שָׁלְרָבוֹ, וְאַחֲרֵי כֵּן מִנִּיחָאת שָׁלְאָבִיו. הַיְהָ אָבִיו וָרָבוֹ בְּבֵית הַשְּׁבִי – פּוֹדֵה אֶת רָבוֹ אַחֲרֵי כֵּן פּוֹדֵה אֶת אָבִיו. וְאָם אָבִיו חָכָם – פּוֹדֵה אֶת אָבִיו וְאַחֲרֵי כֵּן פּוֹדֵה אֶת רָבוֹ.

The Sages taught in a baraita: It is written: “If you see the donkey of him that hates you collapsed under its burden...you shall release it with him” (Exodus 23:5). I might have thought one is obligated even if he sees the animal from a distance; therefore the previous verse states: “If you encounter^H your enemy’s ox or his donkey going astray, you shall return it to him” (Exodus 23:4). If the Torah had written only: “If you encounter,” I might have thought that one is obligated to unload the burden only if there was an actual encounter; therefore, the verse states: “If you see.” And what is seeing in which there is an element of encounter? The Sages calculated it as one of seven and a half portions, i.e., two-fifteenths, of a mil,^B and that is the measure of a ris.^L

It is taught in a baraita: After loading the burden onto the animal, one walks with it up to one parasang [parsa]^L to ensure that the burden will not fall again. Rabba bar bar Ḥana says: And he takes remuneration^H for accompanying the animal, as that is not included in the mitzva.

MISHNA If one finds his lost item and his father’s lost item, tending to his own lost item takes precedence.^H Similarly, if one finds his lost item and his teacher’s lost item, tending to his own lost item takes precedence.

If one finds his father’s lost item and his teacher’s lost item,^H tending to his teacher’s lost item takes precedence, as his father brought him into this world, and his teacher, who taught him the wisdom of Torah, brings him to life in the World-to-Come. And if his father is a Torah scholar, then his father’s lost item takes precedence.

If his father and his teacher were each carrying a burden and he wants to assist them in putting down their burdens, he first places his teacher’s burden down and thereafter places his father’s burden down. If his father and his teacher^N were in captivity,^H he first redeems his teacher and thereafter redeems his father. And if his father is a Torah scholar, he first redeems his father and thereafter redeems his teacher.

HALAKHA
If you see...if you encounter – **כִּי תְּרָאֵה...כִּי תִּפְגַּע**: One is obligated to assist another in unloading or loading his animal when he is at a distance from which he sees the animal with an element of encountering. The Sages calculated that this is a distance of a *ris*, which is two-fifteenths of a *mil*, or 266 ½ cubits. If the distance is greater, there is no obligation to assist him (Rambam Sefer Nezikin, Hilkhos Rotze’ah UShmirat HaNefesh 13:6; Shulḥan Arukh, Hoshen Mishpat 272:5).

One walks with it up to one parasang...and he takes remuneration – **מִדְדָה עַמּוֹ שָׁדָ פרָסָה...וַנּוֹטֵל שָׁכָר**: After assisting in the unloading or loading of another’s animal, he accompanies the animal for an additional parasang to assist the owner. He may demand payment for that aspect of his assistance (Rambam Sefer Nezikin, Hilkhos Rotze’ah UShmirat HaNefesh 13:5; 7; Shulḥan Arukh, Hoshen Mishpat 272:4, 6).

His lost item takes precedence – **אָבִינוֹ קָדְשָׁת**: One who finds his own lost item and another’s lost item should tend to both if possible. If it is not possible, his item takes precedence. Nevertheless, one should go beyond the letter of the law and occasionally prioritize the needs of others. One who always places himself first and fails to observe the relevant mitzvot for the benefit of others, and fails to perform acts of lovingkindness, will eventually be in a position where he will require the assistance of others (Rambam Sefer Nezikin, Hilkhos Gezeila VaAveda 12:8; Shulḥan Arukh, Hoshen Mishpat 264:1).

His father’s lost item and his teacher’s lost item – **אָבָתָה אָבָרְתָּא וְרָבוֹ**: In a case where one finds his father’s lost item and his teacher’s lost item, if his father is a Torah scholar on a par with his teacher, he returns his father’s item first. Otherwise, his teacher’s item takes precedence. This precedence applies only to one’s preeminent teacher (Rambam Sefer Nezikin, Hilkhos Gezeila VaAveda 12:2 and Sefer HaMadda, Hilkhos Talmud Torah 5:1; Shulḥan Arukh, Hoshen Mishpat 264:2 and Yoreh De’ah 242:34).

If his father and his teacher were in captivity – **הַיְהָ אָבִיו וָרָבוֹ בֵּית הַשְּׁבִי**: If one’s father and teacher were both taken captive, he redeems his teacher first. Likewise, if each of them was carrying a burden, one assists his teacher first. For both halakhot, if his father is a Torah scholar, then even if his father’s scholarship is not on a par with that of his teacher’s, his father takes precedence (Rambam Sefer Zera’im, Hilkhos Mattenot Aniyim 8:18; Shulḥan Arukh, Yoreh De’ah 242:34 and 252:9).

BACKGROUND

Mil – **מִיל**: The talmudic *mil* is a unit of distance related to, but not identical to, the Roman mile, from which it received its name. One *mil* equals two thousand cubits. This is equivalent to 960 m according to Rav Hayyim Na’e and 1,150 m according to the *Hazon Ish*.

LANGUAGE

Ris – **רִיס**: From the Pahlavi *asprēs*, meaning hippodrome or stadium. A *ris* is calculated in several sources (see *Arukha*) as equal to the distance of a bow-shot. The precise measurement is two-fifteenths of a *mil*, or 266 ½ cubits, which according to different opinions is 251 m or 331 m. In an ancient homiletical interpretation, this measurement appears as *ros*, spelled *reish*, *vav*, *samekh*, whose numerological value is 266.

Parasang [parsa] – **פְּרָסָה**: A parasang is a Persian unit of length. The word derives from the Middle Persian *frasang*, or *farsang* in Modern Persian, which made its way into Semitic languages, e.g., the Syrian *parsha*, and into Greek as παρασάγγης, *parasangēs*. One parasang is approximately four *mil*.

NOTES

If you see...if you encounter – **כִּי תְּרָאֵה...כִּי תִּפְגַּע**: Although these two phrases are written in the context of two separate matters, as “if you see” is stated in the context of unloading, while “if you encounter” is written in the context of the return of a lost item, they are similar matters and *halakhot* can be derived from one and applied to the other. Others explain that the derivation is based on the juxtaposition of the two verses (Ritva). Some later commentaries cite a variant reading in which the first verse is not the verse in Exodus written with regard to unloading (23:5); rather, it is the verse: “You shall not see your brother’s ox or his sheep wandering and disregard them; you shall return them to your brother” (Deuteronomy 22:1), which is written with regard to the return of a lost animal (Gra; Be’er Avraham on Mekhilta). In that case, both verses address the same matter. Nevertheless, early commentaries already cited and rejected that variant reading (*Shita Mekubbetzet*, citing *Gilyon Tosafot*).

His father and his teacher – **אָבִיו וָרָבוֹ**: According to most versions of the mishna and in the rulings of many authorities, there is a difference between return of a lost item and redemption from captivity with regard to one’s father who is a Torah scholar. One returns his father’s lost item before his teacher’s lost item only if his father is a Torah scholar on a par with his teacher. By contrast, he redeems his father from captivity before his teacher if his father is a Torah scholar, even if the father’s scholarship is not on a par with that of his teacher. The reason is that with regard to monetary loss, one’s obligation to his father and to his teacher is the same. With regard to captivity, his obligation to his father in this case is greater than his obligation to his teacher. Some explain that the *halakhot* in the mishna apply specifically to a case where one is able to redeem both from captivity; if it is possible to redeem only one of them he redeems his father (Rashash; see *Sha’agat Arye*). Some early commentaries maintain that if one’s father pays tuition for his Torah study, his father takes precedence in all these cases (Mordechai).

HALAKHA

Who is considered one's teacher – כי הוא המקרא רבו – All the halakhot that were stated with regard to one's obligations to his teacher were stated only with regard to his preeminent teacher from whom he learned most of his knowledge in Bible, Mishna, or Gemara, in accordance with the opinion of Rabbi Yehuda. The Rema, citing the Maharik, writes that today, a preeminent teacher is only one who taught him how to reach halakhic decisions and genuine talmudic analysis. One treats his other teachers with deference in that he stands when they are within four cubits and rends his garments upon their teacher's passing (Rambam Sefer Nezikin, Hilkhot Gezeila 12:2 and Sefer HaMadda, Hilkhot Talmud Torah 5:9; Shulhan Arukh, Hoshen Mishpat 264:2 and Yoreh De'a 242:30).

LANGUAGE

Zuhama listeron – זוחמא ליסטרון: In the Jerusalem Talmud, the word appears as *zumei listeran*, which is closer to the original Greek ζωμός, *zomos*, meaning soup, and λιστρόν, *liston*, meaning shovel or spoon. These two words combined are almost identical to the talmudic expression and refer to a large spoon used to ladle soup. Based on various talmudic sources, apparently this utensil had a spoon on one side and a fork on the other.

BACKGROUND

Torah scholars who are in Babylonia – תלמידי חכמים שביבל: In the talmudic era, there was a clear difference between the style of Torah study in Babylonia and the style in Eretz Yisrael. In Eretz Yisrael, where the study halls were in close proximity to the Sanhedrin, the hierarchy was clear. Most of the study took place in the form of lectures by the head of the yeshiva. In Babylonia, at first, the head of the yeshiva did not have great authority, and most of the students assembled only twice a year for the *yarhei kalla*, during the months of Elul and Adar. Otherwise Torah was studied in small groups. Therefore, the knowledge they amassed from their colleagues equaled, if not surpassed, the knowledge they gained from the head of a yeshiva in the role of a preeminent teacher.

NOTES

Until you complete forty years – עד ארבעים שנים: The commentaries explain that the specific reference to forty years is based on the talmudic statement that a student does not fully absorb his teacher's knowledge until forty years have passed (*Avoda Zara* 5b). This is derived from that which Moses told the children of Israel at the conclusion of forty years in the wilderness: "But the Lord has not given you a heart to know, and eyes to see, and ears to hear, until this day" (Deuteronomy 29:3). Others punctuated the Gemara differently and appended this phrase to the next sentence: Until forty years passed, they remained angry with each other. This too is based on the admonition of the children of Israel that was accompanied by a punishment of forty years of wandering in the wilderness (Maharsha; Maharam Schiff).

גמ' מנא הני מליל? אמר רב יהודה אמר רב:
אמר רב: אמר קרא "אפס כי לא
היה בן אביו" – שלך קודם לשל
כל אדם.

GEMARA

With regard to precedence in the return of lost items, the Gemara asks: **From where are these matters derived?** Rav Yehuda says that the verse states: "Only so that there shall be no needy among you" (Deuteronomy 15:4). This verse can be understood as a command, indicating that it is incumbent upon each individual to ensure that he will not become needy. Therefore, **your property takes precedence over the property of any other person.**

אמר רב יהודה אמר רב: כל המקיים
בעצמו בר – סוף בא לידי בך.

היה אביו ורבו נושאין משאוי וכו'
תנו רבנן: רבו שאמרו – רבו שלמדו
חכמתה, ולא רבו שלמדו מקרא
ומשנה, דברי רבי מאיר. וביהודה
אומר: כל שרוב חכמתו היינטן. רבי
יוסי אומר: אפילו לא האיר עינוי
אליא במשנה אחת – זה הוא רבבו.

אמר רבא: בגון רב סחורה, דאסכבר
זההמא ליקטרון. שמואל קרע מאניה
עליה והוא מרבנן דאסכבריה: אחד
וירד לאמת השוח ואחד פותח פון.

אמר עולא: תלמידי חכמים שביבל
עומדין זה מפי זה, וקוריין זה על זה.
ולענין אבראה במקום אבוי – אין
חויזין אלא לרבו מובהק.

קבשי מיפה رب חסידא מרוב הונא:
תלמיד וצריך לו רב מא? אמר ליה:
חסידא חסידא, לא ציריכנא לך, אתה
זריכת לי עד ארבעים שנים, אייפדי
אהדרי ולא עלייל לגבוי הדרדי. יתיב
רב חסידא ארבעין תעניתא משום
דחילש דעתיה דרב הונא, יתיב
רב הונא ארבעין תעניתא משום
ڌחדריה לרוב חסידא.

And Rav Yehuda says that Rav says: Although that is the halakha, anyone who fastidiously fulfills this principle with regard to his property at the expense of others' property ultimately comes to experience that fate. He will become impoverished, and others will prioritize their interests at his expense.

§ The mishna teaches: If his father and his teacher were each carrying a burden, he first places his teacher's burden down and thereafter places his father's burden down. The Sages taught in a baraita (Tosefta 2:30): His teacher, with regard to whom the *tanna'im* stated in the mishna that his burden takes precedence, is his teacher who taught him wisdom, i.e., the profound analysis of the Torah that constitutes the Talmud, and not his teacher who taught him Bible or Mishna; this is the statement of Rabbi Meir. Rabbi Yehuda says: The reference is to any teacher from whom one learned most of his knowledge, be it Bible, Mishna, or Talmud. Rabbi Yosei says: Even if he enlightened him in the understanding of only one mishna, that is his teacher.^h

Rava said: For example, Rav Sehora is my teacher with regard to these matters, as he explained to me the meaning of the term in a mishna (*Kelim* 13:2) *zuhama listeron*,^l a utensil with a spoon on one end and a fork on the other. Shmuel rent his garment in mourning over the passing of one of the Sages who explained to him the meaning of a mishna (*Tamid* 3:6) that describes the two keys that opened the compartment through which the priest would enter the Sanctuary each morning: One is the key with which the priest would open the inside lock. He would insert his arm up to his armpit through a small opening in the door and reach down and open the lock that was at the bottom of the door on the inside, and he would go through that door into a compartment. And the other one is the key with which the priest opened the lock on the inner door of the compartment, through which he entered the Sanctuary, and he opened that lock directly.

Ulla says: The Torah scholars who are in Babylonia^b rise in deference before one another and rend their garments in mourning over one another's passing. In contrast to Eretz Yisrael, where the preeminent Torah scholars and teachers served at the heads of the Torah academies, in Babylonia most scholars studied Torah with peers and there was no preeminent teacher. But with regard to returning a lost item in a case where both one's father and one's teacher lost an item, he returns the lost item only to his preeminent teacher before returning that of his father, and not to his peer or to one who taught him the meaning of one mishna or one term.

Rav Hisda raised a dilemma before Rav Huna: If there is a student, and his teacher needs him because he serves as his peer and study partner, what is the halakha with regard to precedence in a case where he finds a lost item belonging to his father and one belonging to his teacher? As Rav Hisda was Rav Huna's disciple-colleague, Rav Huna assumed that Rav Hisda was referring to himself and said to him: Hisda, Hisda, I do not need you. On the contrary, you need me until you complete forty yearsⁿ of study before me. They grew angry with each other over the perceived insult and the harsh reaction, and each did not enter to visit the other. Rav Hisda was contrite and observed forty fasts due to the fact that Rav Huna was offended, although it had not been his intention to offend him. Rav Huna observed forty fasts due to the fact that he had erroneously suspected that Rav Hisda was referring to the relationship between them.

אִתָּמָר, רְבִי יַעֲקֹב בָּר יוֹסֵף אָמַר רְبִי יְחִינָן: הַלְכָה בֶּבֶן יְהוּדָה, רְבִי אֲחָא בָּר רְבִי הָונָא אָמַר רְבִי שֶׁשֶּׁת: הַלְכָה בֶּבֶן יוֹסֵף.

וְמַיְ אָמַר רְבִי יוֹחָנָן הַכִּי? וְהַאֲמַר רְבִי יוֹחָנָן: הַלְכָה בְּסִתְמָמָה, וְתַנְ: רְבִי שֶׁלְמָדוֹ חִכְמָה! מַאי חִכְמָה – רַוב חִכְמָתוֹ.

תַּנְ: וְתַנְ: הַעֲסָקִין בְּמִקְרָא – מִדָּה וְאַיִלָּה מִדָּה, בְּמִשְׁנָה – מִדָּה וְנוּטְלִין עַלְיהָ שְׁכָר, בְּתַלְמוֹד – אַיִלָּה לְמִדָּה גָּדוֹלָה מִזֶּה, וְלָעוֹלָם הַיְרָץ לִמְשָׁנָה יוֹתֵר מִן הַתַּלְמוֹד.

הַא גַּפְאָ קְשִׁיאָ, אָמְרָתָ: בְּתַלְמוֹד אַיִלָּה לְמִדָּה גָּדוֹלָה מִזֶּה, וְתַדְרָ אָמְרָתָ: וְלָעוֹלָם הַיְרָץ לִמְשָׁנָה יוֹתֵר מִן הַתַּלְמוֹד! אָמַר רְבִי יוֹחָנָן:

It was stated that Rav Yitzḥak bar Yosef says that Rabbi Yoḥanan says: The *halakha* is in accordance with the opinion of Rabbi Yehuda, who says that returning the teacher's lost item takes precedence only in the case of his preeminent teacher. Rav Aḥa bar Rav Hunah says that Rav Sheshet says: The *halakha* is in accordance with the opinion of Rabbi Yosei, who says that returning the teacher's lost item takes precedence even if the teacher enlightened him with regard to only one mishnah.

The Gemara asks: **And did Rabbi Yoḥanan say that? But doesn't Rabbi Yoḥanan say:** The *halakha* is always in accordance with the opinion cited in an unattributed mishnah; and we learned an unattributed opinion in the mishna that returning the teacher's lost item takes precedence in the case of: **His teacher, who taught him the wisdom of Torah.** The ruling of the unattributed mishna is in accordance with the opinion of Rabbi Meir. The Gemara answers: **What is the meaning of wisdom in this context?** It means the majority of his wisdom.

The Sages taught in a *baraita*: For those who engage in the study of Bible, it is a virtue but not a complete virtue.ⁿ For those who engage in the study of Mishna, it is a virtue and they receive reward for its study. For those who engage in the study of Talmud, you have no virtue greater than that.^h And always pursue study of the Mishna more than study of the Talmud.

The Gemara asks: **This matter itself is difficult**, as the *baraita* is self-contradictory. You said: For those who engage in the study of Talmud, you have no virtue greater than that. And then you said: And always pursue study of the Mishna more than study of the Talmud. Rabbi Yoḥanan says:

NOTES
A virtue but not a complete virtue – **מִדָּה וְאַיִלָּה מִדָּה**: Some explain that the reward for Torah study is given primarily for the novel ideas and reasoning that a person introduces on his own, and that this is the rationale for the hierarchy articulated in the Gemara. Study of the Bible, which leaves little room for one's personal contribution to the discourse, is not a complete virtue. Study of Mishna, which has more room for one's personal contribution, is a virtue. There is no virtue greater than the study of Gemara, as by its very nature it entails the contribution of its students and incorporation of their novel ideas.

HALAKHA

You have no virtue greater than that – **אַיִלָּה לְמִדָּה גָּדוֹלָה מִזֶּה**: When one begins engaging in the study of Torah he should divide his study into three: He should devote one-third of his time to Bible, one-third to Mishna, and one-third to Gemara. Once he becomes more accomplished in his Torah study, he should devote his time primarily to the study of Gemara and devote enough time to the other disciplines to ensure that he will not forget them. Tosafot explain that one fulfills his obligation of Torah study through study of the Babylonian Talmud, as it includes Bible, Mishna, and Gemara (Rambam *Sefer HaMadda*, *Hilkhot Talmud Torah* 1:1; *Shulhan Arukh*, *Yoreh De'a* 246:4, and in the comment of Rema).

Perek II Daf 33 Amud b

בִּימֵי רְבִי נְשִׁינִית מִשְׁנָה זוֹ. שְׁבָקוֹ כּוֹלָא עַלְמָא מִתְהַנְּתִין וְאַולְוָן בְּתַר תַּלְמִידָא. הַדָּר דָּרְשׁ לְהָזָה: וְלָעוֹלָם הַיְרָץ לִמְשָׁנָה יוֹתֵר מִן הַתַּלְמֹוד.

מַאי דָּרוֹשׁ – בְּדָרְבֵי רְבִי יְהוּדָה בֶּבֶן אַלְעָלָא, מַאי דְּכִיבָב "הַגָּדוֹלָה לְעַמִּי פְּשֻׁעַם וְלִבְית יְעַקְבָּן חַטָּאתָם?"

"הַגָּדוֹלָה לְעַמִּי פְּשֻׁעַם" – אַלְוֹ תַלְמִידִי חַכְמִים, שְׁמָנָgoת נְעֹשָׂות לְהָם בְּדָרְבֵי. וְלִבְית יְעַקְבָּן חַטָּאתָם" – אַלְוֹ עַמִּי הָאָרֶץ, שְׁזָוְנוֹת נְעֹשָׂות לְהָם בְּשָׁגָנוֹת. הַיְיִינָן דָרְתָן, רְבִי יְהוּדָה אָמַר: הַיְיִינָן זָהָיר בְּתַלְמִידָה, שְׁמָנָgoת תַלְמִידָה עֹלָה זָהָיר.

It was during the era of Rabbi Yehuda HaNasi that the beginning of this *baraita* extolling the study of Talmud was taught.ⁿ The result was that everyone abandoned study of the Mishna and pursued the study of the Talmud. It was then that Rabbi Yehuda HaNasi taught them: **And always pursue study of the Mishnaⁿ more than study of the Talmud**, as without a firm basis in the fundamental *halakhot* of the Mishna, talmudic discourse is futile.

The Gemara asks: On the basis of what homiletic interpretation did the *tanna* state that there is no virtue greater than the study of Talmud? It is just as Rabbi Yehuda, son of Rabbi Elai, interpreted homiletically: **What is the meaning of that which is written: "Cry aloud, spare not, lift up your voice like a horn, and declare to My people their transgression and to the house of Jacob their sins"** (Isaiah 58:1)?

In the phrase "declare to My peopleⁿ their transgression," these people are the Torah scholars, whose unwitting transgressions become for them tantamount to intentional transgressions. Due to their erudition, they are held to a higher standard. **And to the house of Jacob their sins**, these are the ignoramuses, whose intentional transgressions become for them tantamount to unwitting transgressions. Due to their lack of erudition, they are held to a lower standard. **And that is the basis of that which we learned in a mishna (Avot 4:13), that Rabbi Yehuda says: Be careful in the study of the Talmud, as a transgression based on an unwitting misinterpretation of the Talmud is considered an intentional transgression.**ⁿ

NOTES
It was during the era of Rabbi Yehuda HaNasi that this *baraita* was taught – **בִּימֵי רְבִי נְשִׁינִית מִשְׁנָה זוֹ**: There was special reason to engage in the study of tannaitic literature specifically during the generation of Rabbi Yehuda HaNasi (Rabbeinu Tam). As Rabbi Yehuda HaNasi was engaged in the task of redacting the Mishna, it was crucial that the Torah scholars assist him in analyzing the material, in order to ascertain which material would be included in the mishna and ensure that the versions of the text were accurate (Rabbeinu Hananel).

Pursue study of the Mishna – **הַיְיִרְצָה לִמְשָׁנָה**: Based on the continuation of the Gemara, Rabbeinu Hananel explains that the advantage in the study of Mishna is that while one who studies it is rewarded, he does not bear the responsibility for precision borne by those who study Gemara.

To My people – **לְעַמִּי**: The term: My people, is an expression of affection through which God associates His name with His people. God reserves that appellation for the nation's elite, the Torah scholars (*Shita Mekubetzet*).

An unwitting misinterpretation of the Talmud is considered an intentional transgression – **שְׁמָנָgoת תַלְמִידָה עֹלָה זָהָיר**: Some explain this as a reference to the unwitting transgressions performed by the Torah scholar himself (Rabbeinu Hananel). Others understand it as a reference to transgressions committed by others that resulted from the unwitting misinterpretation of the *halakha* by a Torah scholar who decides *halakha* incorrectly (Rashi; Meiri).

דָרְשׁ רַבִּי יְהוֹנָה בָּבֵי אֶלְעָאִי מֵאִי דְכַתִּיב
שְׁמַעוּ דָבָר ה' חֲדָדִים אֶל דָבָרוֹ? אַל
תַּלְמִידִי חֲכָמִים. "[אָמָרוּ] אֲחִיכֶם" – אַל
בָּעֵלִי מִקְרָאִי, "שְׁנָאִיכֶם" – אַל בָּעֵלִי
מִשְׁנָה, "מִנְדִיכֶם" – אַל בָּעֵלִי הָאָרֶץ.

שֶׁמְאָא תֹאמֶר פְּסָק סְבָרִים וּבְטַל סִכְפּוּם –
תַּלְמִודׁ לֹמֵר "עֲנָרָה בְשְׁמַחְתֶּכָם". שֶׁמְאָ
תֹאמֶר יִשְׂרָאֵל יְבֹשׁו – תַּלְמִודׁ לֹמֵר "הֵם
יְבֹשׁו" – נָכְרִים יְבֹשׁו וּיִשְׂרָאֵל יְשֻׁמְחוּ.

הדרן עלך אלמו מציאות

Rabbi Yehuda, son of Rabbi Elai, interpreted a verse homiletically. What is the meaning of that which is written: “Hear the word of the Lord, you who tremble at His word: Your brothers that hate you, that ostracize you for My name’s sake, have said: Let the Lord be glorified, that we may gaze upon your joy, but they shall be ashamed” (Isaiah 66:5)? “Hear the word of the Lord, you who tremble at His word,” these are Torah scholars; “your brothers ... have said,” these are masters of the Bible, who are aware of their shortcomings and treat the Torah scholars with deference; “that hate you,” these are masters of Mishna, who consider themselves the equals of Torah scholars and resent the fact that the Torah scholars do not treat them as equals; “that ostracize you,” these are ignoramuses, who distance themselves with their actions from the Torah scholars.

Lest you say, with regard to those groups who are not Torah scholars, that their hope has ceased and their chances are eliminated, the verse states: “That we may gaze upon your joy.” All of the Jewish people, including the groups listed above, will gaze upon the joy of the Torah scholars. Lest you say that the Jewish people will be ashamed, the verse states: “But they shall be ashamed,” meaning that gentiles will be ashamed, but the Jewish people will be joyous.

Summary of Perek II

This chapter is devoted primarily to *halakhot* of returning lost items, and it examines situations where the owners despair of recovering an item and situations where the owners do not despair. In principle, when there are clear-cut distinguishing marks on the item, one may assume that the owner would not despair of recovering it unless the item remained in the place that it was discovered for an extended period, or it was swept from the owner's domain by means of a natural disaster or other circumstances beyond his control. Even with regard to items on which there are no distinguishing marks, the Gemara concluded that the location where it was found, its size, its weight, and the number of its units can serve as distinguishing marks.

The most fundamental dispute in this chapter is with regard to despair that is not conscious. The *halakha* is in accordance with the opinion of Abaye that despair is effective only when it is conscious. Therefore, unless it is clear that the despair pre-dated finding the item, the finder does not acquire the lost item.

With regard to an item that the finder is obligated to proclaim that he found, the Gemara determined that it is permitted for the finder to utilize the item for its sake, i.e., to maintain it in good condition, but not for his own sake. The Gemara also issued rulings concerning the period during which the finder is obligated to tend to found animals or other items that require extensive care. It is permitted for the finder to make use of money he receives when selling a lost item, but his legal status with regard to that money is that of a paid bailee.

There are three mitzvot tied to the return of lost items: A prohibition against disregarding the lost item, an obligation to see to its return, and a prohibition against keeping an item that belongs to its owner. These mitzvot apply in most circumstances, with few exceptions, e.g., when return of the lost item is not in keeping with the dignity of the finder, when there is a prohibition preventing the finder from returning it, or when return of the item will engender monetary loss for the finder. Although the Torah lists specific examples of lost items that one is obligated to return, the Gemara established that the obligation includes not only return of lost items, but also assistance to others in any case where it is possible to spare them monetary loss.

The Gemara concluded that return of a lost item to one's teacher takes precedence over return of a lost item to one's father, and the return of an item to his father takes precedence over the return of an item to another. Recovering one's own item takes precedence over returning a lost item to anyone else.

Various aspects of the *halakhot* of assisting another in unloading a burden from his animal and loading it were discussed. Primarily, the Gemara investigated the dispute with regard to the requirement to prevent suffering to animals. There are many elements in common between the *halakhot* of unloading and loading an animal and the *halakhot* of returning a lost item.

If a man delivers unto his neighbor money or vessels to keep, and it is stolen out of the man's house; if the thief is found, he shall pay double. If the thief is not found, then the master of the house shall approach the judges, to see whether he has not misappropriated his neighbor's goods. For every matter of sin, whether it is for ox, for donkey, for sheep, for garment, or for any manner of lost item, whereof one says: This is it, the cause of both parties shall come before the judges; he whom the judges shall condemn shall pay double unto his neighbor.

(Exodus 22:6–8)

Introduction to Perek III

The Torah states that a bailee who safeguards a deposit must return to the owner the item that was entrusted to his care. If it was lost or stolen while in his possession, the bailee may take an oath and exempt himself from payment, unless it is discovered that he himself misappropriated the deposit.

One fundamental issue concerns the matter of ownership of the stolen deposit. Is the bailee who compensated the owner for the loss of his item considered the owner of the item immediately? If so, if the thief is found, he returns the item to the bailee and pays him the fine. Or perhaps the depositor remains the owner of the item, and when the thief is located, the owner receives the item and the fine. The owner then returns to the bailee only the amount of money the bailee gave him as compensation.

Another question that requires clarification is the essence of safeguarding an item. The bailee commits himself to providing a reasonable level of security for the item, but what is the definition of reasonable here? In a case where the bailee discovers that the deposit is deteriorating over time, does he have the right or obligation to take action to preserve the deposit, or is the obligation of the bailee limited to avoiding misappropriation of the deposit?

The essence of misappropriation as far as a bailee is concerned requires analysis. Is misappropriation another word for theft perpetrated by the bailee, so that cases of misappropriation are treated like cases of theft? Or is misappropriation a unique halakhic concept that involves betraying the trust of the depositor and breaching their agreement, so that using the deposit is merely the second stage of a betrayal that began with misappropriation? If it is the latter, is the bailee liable for the mere intention to steal the deposit, or is he liable only if he actually stole it?

The resolution of these issues and the dilemmas that emerge from them are the primary focus of this chapter.

Perek III
Daf 33 Amud b

מִתְנֵי הַמְפַקֵּד אֶל חַבְירוֹ בָּהָמָה
או בְּלִים, וְגַנְגָנוּ או שָׁאָבָדוּ, שִׁילָם
וְלֹא רָצָה לִשְׁבַּע שְׁהִרְאָה: שׁוֹמֵר
חַנְםָ נִשְׁבַּע וַיַּצֵּא,

נִמְצָא הַגָּנָב – מִשְׁלָם תְּשֻׂלָּומי כֶּפֶל.
טְבַח וּמִכָּר – מִשְׁלָם תְּשֻׂלָּומי אֲרָכָה
וְחַמְשָׁה. לֹמִי מִשְׁלָם – לֹמִי שְׁהַפְּקָדוֹן
אֶל.

נִשְׁבַּע וְלֹא רָצָה לִשְׁלָם, נִמְצָא הַגָּנָב –
מִשְׁלָם תְּשֻׂלָּומי כֶּפֶל. טְבַח וּמִכָּר –
מִשְׁלָם תְּשֻׂלָּומי אֲרָכָה וְחַמְשָׁה. לֹמִי
מִשְׁלָם – לֹבֵעַ הַפְּקָדוֹן.

גַּם לֹמַה לִיה לִמְתַנֵּי בָּהָמָה, וְלֹמַה
לִיה לִמְתַנֵּי בְּלִים?

זְרִיכָה, דֵּין תְּנָא בָּהָמָה – הוּא אֲמִינָה:
בָּהָמָה הוּא דְמַקֵּן לִיה בְּפִילָא – מִשּׁוּם
דָּנְפִישׁ טִירָחָה לְעִוָּלָה וְלְאַפְוֹקָה, אֶבֶל
בְּלִים רְלָא נְפִישׁ טִירָחָה – אַיִלָּא
מְקַנֵּן לִיה בְּפִילָא.

MISHNA

In the case of one who deposits an animal or vessels with another, who is acting as an unpaid bailee, and they were stolen or they were lost,ⁿ and the bailee paid the owner the value of the deposit, and did not wish to take an oathⁿ that he did not misappropriate the item and that he was not negligent in safeguarding it, that will effect who keeps the deposit if it is found or returned. The bailee may also choose to take the oath, as the Sages said: An unpaid bailee^{HB} takes an oath, and he is thereby released from the liability to pay the owner.

If the thief is later found, the thief pays the double payment.^{HB} If the deposited item was a sheep or an ox and the thief slaughtered or sold it, he pays the fourfold or fivefold payment.⁸ To whom does the thief pay? He gives the payment to the one who had the deposit in his possession when it was stolen, i.e., the bailee. When the bailee paid the owner for the stolen item, the owner granted the rights to the item to the bailee. Therefore, the bailee is entitled to any payment the thief presents for the item, be it compensation for the item's value or a fine.

In the case of a bailee who took an oath and did not wish to pay, if the thief is then found and required to pay the double payment, or if he slaughtered or sold the animal and is required to pay the fourfold or fivefold payment, to whom does the thief pay? He gives the payment to the owner of the deposit, not the bailee.

GEMARA

The Gemara asks: Why does the mishna need to teach the case of one who deposits an animal, and why does the mishna need to teach the case of one who deposits vessels? The mishna could have sufficed with a general halakha about one who deposits any item.

The Gemara explains: Both are necessary, as, if the mishna taught only the case of one who deposits an animal, I would say: It is only with regard to an animal that the owner agrees to transfer rights to the double payment to the bailee when the bailee pays for the stolen item. This is due to the fact that the exertion required to tend to the animal, to bring the animal in and to take it out, is great. Consequently, when it becomes clear that the bailee was not responsible for the theft of the animal but nevertheless compensated the owner, the owner waives his rights to any compensation the thief will pay. But in the case of vessels, where the exertion that is required to tend to the vessels is not great, say that the owner does not transfer to the bailee rights to the double payment.

NOTES

Or they were lost – או שָׁאָבָדוּ: Tosafot note the difficulty with this phrase. If the deposit was lost rather than stolen, the issue of the double payment is not relevant. Some commentaries explain that in the case of a lost item, there is an analogous issue, i.e., an increase in the value of the deposit in the interim. The mishna is teaching that the bailee acquires the deposited item and the appreciation in its value (Ramban; Rashba).

And did not wish to take an oath – וְלֹא רָצָה לִשְׁבַּע: The Ramban maintains that the bailee acquires the rights specified in this mishna only if he chooses to pay despite the fact that he could have exempted himself by means of the oath. The Rashba disagrees and holds that he acquires the rights in any case where he pays, even if he was liable to do so because witnesses testified that he was negligent in safeguarding the deposit.

HALAKHA

Unpaid bailee – שׁוֹמֵר חַנְםָ: If an item in the care of an unpaid bailee was lost or stolen, the bailee takes an oath that it is not in his possession and that he was not negligent in safeguarding it. He is thereby exempt from compensating the owner (Rambam Sefer Mishpatim, Hilkhot Sekhirut 1:2; Shulhan Arukh, Hoshen Mishpat 291:1).

Unpaid bailee and the double payment – שׁוֹמֵר חַנְםָ כֶּפֶל: If a deposit in the care of an unpaid bailee was lost or stolen, he may opt to pay the owner instead of taking an oath. If the stolen item is discovered in the possession of the thief, the thief pays the double payment. If the stolen item was a sheep or cow and the thief slaughtered or sold it, he pays the fourfold or fivefold payment, respectively, to the bailee. If the bailee opted to take an oath rather than paying the owner, the owner receives the payments made by the thief (Rambam Sefer Mishpatim, Hilkhot She'ela Uifikadon 8:1; Tur, Hoshen Mishpat 295).

BACKGROUND

Unpaid bailee – שׁוֹמֵר חַנְםָ: An unpaid bailee is one of the four categories of bailees described in the Torah (see Exodus 22:6–8). He is one who accepts an article for safekeeping without remuneration and without authorization to use it for his own benefit. An unpaid bailee is not required to recompense the owner of the article if it is lost, stolen, or taken for reasons beyond his control. He is liable only if he is criminally negligent or if he misappropriates the article.

Double payment – תְּשֻׂלָּומי כֶּפֶל: A thief must repay twice the value of a stolen article, i.e., he must return the stolen item to its owner and make an additional payment equal to the value of the article (see Exodus 22:3). This additional payment is a fine.

Accordingly, a thief is required to give this additional payment only if he is apprehended by others. If he voluntarily admits his wrongdoing and seeks to return the stolen article or pay an amount equivalent to its value, he need not pay the fine. One who takes an oath that an item placed in his care was stolen is liable to pay double if the item is found in his possession.

Fourfold or fivefold payment – תְּשֻׂלָּומי אֲרָכָה וְחַמְשָׁה: One who steals an ox and kills or sells it must repay five times the value of the ox (see Exodus 21:37). If the stolen item was a sheep he pays four times its value. The money added to the animal's principal value is a fine, and it is not collected when the thief returns the stolen item of his own free will.

NOTES

Rami bar Hama objects to the fundamental reasoning – מתקיף לה רמי בר חמא: Rashi explains that he is objecting to the ruling in the mishna. Others explain, based on the use of the term objects, which is generally employed only with regard to statements of *amora'im*, that Rami bar Hama is objecting to the Gemara's understanding of the mishna. The mishna itself could have been understood to mean that the bailee acquires the double payment not by Torah law but by rabbinic ordinance (Ritva).

HALAKHA

An entity that has not yet come into the world – בָּר שְׁלִא בָּא לְעוֹלָם: One cannot transfer ownership of an entity that did not yet come into the world, even if he is on his deathbed. Therefore, if one says to another: The crop that this field will yield next year is hereby sold to you, the sale does not take effect, and he can renege on his commitment (Rambam *Sefer Kinyan, Hilkhot Mekhira* 22:10; *Shulhan Arukh, Hoshen Mishpat* 209:4).

BACKGROUND

An entity that has not yet come into the world – בָּר שְׁלִא בָּא לְעוֹלָם: This term is employed to describe two different situations. First, an item that has not yet come into existence, e.g., a child not yet born or fruit not yet grown, and second, an item that, although it exists, has not yet entered one's possession. Transactions pertaining to either entities that are not yet in existence or not in one's possession have no legal validity. They cannot be bought or sold, and ownership of them cannot be transferred. Likewise, it is impossible to transfer ownership of an item to the unborn. Only in certain exigent circumstances did the Sages accord legal validity to transactions of this kind.

וְאֵין תַּנֶּא כְּלִים – הוּה אַמְנִיא: כְּלִים
הוּא דַקְמָקִין לִיה בְּפִילָא – מִשּׁוּם
דָּלָא נְפִישׁ כְּפָלוּחוֹת, אֲבָל בְּחַמָּה רַכְבִּי
טַבְבָּח וּמִכְרָב מִשְׁלָמִים תְּשֻׁלָּמִי אַרְבָּעָה
וְחַמָּשָׁה – אִםְאָלָא מַקְנֵי לִיה בְּפִילָא,
אַרְכְּבָא.

And had the mishna taught only the case of one who deposits vessels, I would say: It is only with regard to vessels that the owner transfers rights to the double payment to the bailee when the bailee pays for the lost item. This is due to the fact that double payment, in their case, is not substantial, as that is the maximum payment that he could receive. But in the case of an animal, where if the thief slaughtered or sold it, he pays the fourfold or fivefold payment, which is substantial, I would say that the owner does not transfer the rights to the double payment to the bailee. Therefore, both cases are necessary.

מַתְקִיף לְהָרְמִי בָּר חַמָּא: וְהָא אֵין אָדָם
מַקְנֵה דָּבָר שְׁלִא בָּא לְעוֹלָם. וְאַפְּלִי
לְרַבִּי מֵאִי, דָּאַמְרָה: אֲדָם מַקְנֵה דָּבָר
שְׁלִא בָּא לְעוֹלָם – הַיְיָ מַיְלִי בְּגַזְוּ פְּרוֹת
דָּקֵל, דַעֲבָידִי דָּאַתָּה.

Rami bar Hama objects to the fundamental reasoning.^N How can the owner of the deposit transfer rights to the double payment to the bailee? But isn't there a principle that one cannot transfer to another ownership of an entity that has not yet come into the world?^{H8} Since the thief was not yet liable to pay the double payment when the bailee paid the owner for the item, there was no way to transfer rights to that payment to another person. And even according to Rabbi Meir, who says that a person can transfer to another ownership of an entity that has not yet come into the world, that statement applies to items such as the fruits of a date palm, which are likely to come into being, as they grow on a regular basis.

אֲבָל חַכָּא

But here, where the transfer of rights to the payment is part of the initial agreement between the owner and the bailee, taking effect when the item is deposited,

Perek III**Daf 34 Amud a****NOTES**

The fleece and offspring – מִיאוֹתָה וּוְלְדוֹתָה: The early commentaries disagree over the status of the fleece and offspring produced by an animal after its theft. Some maintain that it belongs to the bailee (Rashba; Ritva). Others maintain that the fleece and offspring produced after theft are not acquired by the bailee, as they are profit that originates from the body of the animal (see *Maggid Mishne*).

HALAKHA

Except for its fleece and its offspring – חוץ מִיאוֹתָה וּוְלְדוֹתָה: If an animal is stolen from a bailee, and he pays rather than taking an oath, and the thief is then discovered, he returns the animal to the owner, along with its fleece and offspring. This is because the bailee acquires only profit that comes from elsewhere, but not profit that originates from the body of the animal. The *Maggid Mishne* explains that according to the Rambam, even the fleece and offspring produced by the animal after its theft but before the owner despaired of recovering it belong to the owner. Other early commentaries disagree with the Rambam (Rambam *Sefer Mishpatim, Hilkhot She'ela UFikadon* 8:1 and *Maggid Mishne*; *Tur, Hoshen Mishpat* 295).

מַתְקִיף לְהָרְמִי זִירָא: אֵי הַכִּי, אַפְּלִי
דַמְגַנְבָּא – מִי יִמְרֶךְ דְמַשְׁתְּבָח גַּנְבָּ, וְאֵי
מְשַׁתְּבָח גַּנְבָּ – מִי יִמְרֶךְ דְמַשְׁלָמִים דְלָמָא
מוֹזֵעַ וּמַפְטָר. אָמָר רַבָּא: נָשָׂה בָּאָמָר
לוֹ: לְכַשְׁתְּגַנְבָּ וְתִרְצָחָ וְתִשְׁלַמְנִי – הַרִּי
פְּרַתִּי קְנוֹתָה לְךָ מַעֲבֵשָׂיו.

who could say that the deposit will be stolen? And if you say it will be stolen, who could say that the thief will be found? And even if the thief will be found, who could say that he will pay the double payment? Perhaps he will confess and will be exempted from the double payment. Rava said in response: It is as though the owner said to the bailee at the time that he gave him the deposit: When it will be stolen, and you will wish to refrain from taking an oath, and you will pay me instead, ownership of my cow is hereby transferred to you from this time, and the cow is an entity that already came into the world. Since ownership of the cow is retroactively transferred to the bailee from the time of the deposit, any profits generated by the cow, e.g., the double payment, belong to the bailee.

מַתְקִיף לְהָרְמִי זִירָא: אֵי הַכִּי, אַפְּלִי
גִּיאוֹתָה וּוְלְדוֹתָה נָמִי. אַלְמָה תְּנִינָא:
חוֹזֵק מִיאוֹתָה וּוְלְדוֹתָה! אַלְאָ אָמָר רַבִּי
זִירָא: נָשָׂה בָּאָמָר לוֹ חוץ מִיאוֹתָה
וּוְלְדוֹתָה.

וְמַאי פְּסָקָא? סְתִמָּא דְמִלְתָּא, שְׁבָחָא
דְאַתָּא מַעַלְמָא – עֲבִיד אַיִשׁ דַמְקִין,
שְׁבָחָא דְמַנוֹּפָה – לֹא עֲבִיד אַיִשׁ
דַמְקִין.

Rabbi Zeira objects to this: If so, then even the fleece and offspring^N of the animal that grew while it was in the bailee's possession should be the property of the bailee. Why, then, is it taught in a *baraita* that the bailee receives all profits generated by the animal except for its fleece and its offspring? Rather, Rabbi Zeira says that it is as though the owner said to the bailee: My animal is hereby transferred to you from this time except for its fleece and its offspring.^H

The Gemara asks: If so, why was this *halakha* stated in the mishna without qualification? Does every owner necessarily have that condition in mind? The Gemara answers: Typically, profit that comes from elsewhere, e.g., the double payment from a thief, which is difficult to anticipate, a person is apt to transfer to the bailee. But profit that originates from the body of the animal, which can be anticipated, a person is not apt to transfer to the bailee.

אי' בא דאמרו, אמר רבא: **נעשה באומר**
לו לכתנתוב ותרצה ותשלטני, סמוך
לגניבתה קנייה לך. מי בינייהו?

אי' בא בינייהו קושיא דרבנן. אי נמי,
דקי' מא באגם.

Some say that Rava says his response differently. It is as though the owner said to the bailee at the time of the deposit: When it will be stolen, and you will wish to refrain from taking an oath, and you will pay me instead, ownership of my animal is transferred to you adjacent to, i.e., immediately before, its theft. The Gemara asks: What is the difference between the formulations in Rava's two responses?

"שילם ולא רצה לישבע" [וכו]. אמר רבי חייא בר אבא אמר רבי יוחנן: לא'
"שילם" שילם מ ממש, אלא בין שאמר
"הריini משלם, אף על פי שלא שילם."

תנן: **שילם ולא רצה לישבע, שילם –**
איין, לא שילם – לא. אימא כי בא נשבע
ולא רצה לשלם, טעמא – שלא רצה, הא
רצה – אף על פי שלא שילם! אלא מהא
ליכא למושמע מיה.

The Gemara answers: There is a difference between them with regard to the difficulty raised by Rabbi Zeira with regard to fleece and offspring, which is irrelevant according to the second formulation. Alternatively, there is a difference in a case where the animal is standing in a marsh [*ba'agam*]¹ at the time of its theft. Since the animal was not on the bailee's property at that time, he could not acquire it.

§ The mishna teaches that if the bailee paid the owner and did not wish to take an oath, the thief pays the double payment to the bailee. Rabbi Hiyya bar Abba says that Rabbi Yohanan says: When the mishna says: If the bailee paid, it does not mean that he actually paid. Rather, once the bailee said: I hereby choose to pay,² even if he did not yet actually pay, he acquired the double payment and all other profits.

The Gemara raises an objection from that which we learned in the mishna: If the bailee paid the owner and did not wish to take an oath, the thief pays the double payment to the bailee. The Gemara infers: If the bailee paid, yes, he acquires these rights; if the bailee did not pay, he does not. The Gemara answers: Say the latter clause of the mishna: In the case of a bailee who took an oath and did not wish to pay, the thief pays the double payment to the owner. The Gemara infers: The reason that the thief pays the owner is that the bailee did not wish to pay. But if the bailee wished to pay, although he did not actually pay, he acquires the rights to the double payment. Rather, because the inference from the first clause and the inference from the latter clause are contradictory, no inference is to be learned from this mishna.³

תניא בותיה דרבי יוחנן: השוכר פרה
מחבירו ונגנבה, ואמר לה הריini משלם
ואני נשבע ואחר כן נמצאת הנגב –
משלים תשלומי כפל לשוכר.

The Gemara notes: It is taught in a *baraita* in accordance with the opinion of Rabbi Yohanan: In the case of one who rents⁴ a cow from another, and it was stolen, and the other party, the renter, said: I hereby choose to pay and I will not take an oath, and the thief was located thereafter, the thief pays the double payment to the renter. Apparently, once the renter chooses to pay, he acquires the rights to the double payment.

אמר רב פפא: שומר חם, בין שאמר
פשתעתי – מקנה ליה כפילה. דאי בעי
פטור נפשיה בגניבת שומר שכר, בין
שאמר נגנבה – מקנה ליה כפילה. דאי
בעי פטור נפשיה בשבורה ומיתה.

Rav Pappa says: In the case of an unpaid bailee, once he stated: I was negligent,⁵ thereby rendering himself liable to compensate the owner, the owner transfers rights to the double payment to him, as, if the unpaid bailee wishes, he can exempt himself from that liability with the claim of theft. Admitting negligence is tantamount to agreeing to pay rather than taking an oath. Likewise, in the case of a paid bailee,⁶ once he stated: It was stolen, the owner transfers rights to the double payment to him, as, if the paid bailee wishes, he can exempt himself from that liability with the claim that the animal was maimed or died due to circumstances beyond his control.

שואל שאומר הריini משלם – לא מקני
לייה כפילה. במאוי הוה ליה למפטור
נפשיה – במתה מוחמת מלאה, מיתה
מחמת מלאה לא שכיה.

By contrast, in the case of a borrower⁷ who says: I hereby choose to pay, the owner does not transfer the rights to the double payment to him. The borrower's statement that he chooses to pay is ineffectual, as he is liable to pay even without it. Because the statement is ineffectual, it does not confer any rights. With what claim would a borrower be able to exempt himself from payment? It is only with the claim that the animal died due to ordinary labor. A case of an animal that died due to ordinary labor is uncommon,⁸ and this claim is therefore accepted only with corroborating proof.

LANGUAGE

Marsh [agam] – נַגָּם: In this context, as in most places in the Talmud, the term *agam* refers to a pasture where animals graze. That is certainly its meaning in various verses in the Bible (see, e.g., Jeremiah 51:32). Presumably, the marsh would be situated adjacent to a water source, e.g., an ownerless swampland.

HALAKHA

I hereby choose to pay – **הריini משלם**: If an item is stolen from an unpaid bailee, a paid bailee, or a renter, once the bailee declares his intention to pay for it, he acquires the rights to the double, fourfold, or fivefold payment, in accordance with the opinion of Rabbi Yohanan (Rambam *Sefer Mishpatim*, *Hilkhot She'ela UFikadon* 8:1; *Tur*, *Hoshen Mishpat* 295).

An unpaid bailee once he stated, I was negligent – **שומך**
חטף בין שאמר פשתעתי: If an unpaid bailee declares that he was negligent in safeguarding the deposit, or if a paid bailee or renter admits that the animal was stolen from him, he is liable to compensate the owner. He also thereby acquires the double, fourfold, or fivefold payment, in accordance with the opinion of Rav Pappa. By contrast, a borrower acquires the rights to the double payment only if he actually pays the owner, and not through his admission that he is liable to pay alone, in accordance with the opinion of Abaye (Rambam *Sefer Mishpatim*, *Hilkhot She'ela UFikadon* 8:2; *Tur*, *Hoshen Mishpat* 295).

BACKGROUND

מה לא ליקא למשמע מיה: This expression, found throughout the Gemara, concludes the refutation of an inference. Inference in the Gemara is a method of interpretation through which conclusions are drawn from tannaitic sources. Inferences may be drawn not only from what is explicitly stated in a mishna or *baraita*, but also from what is left unsaid. The rejection of the inference is effected by illustrating that another part of the same mishna or *baraita* can lead to the opposite conclusion. In that case, the Gemara concludes: No inference can be deduced from this, indicating that this mishna or *baraita* was not formulated in a manner that lends itself to inference.

One who rents – השוכר: This is one who pays a fee for the use of an item. The Torah mentions a renter, but does not specify his liability if the rented article is lost or stolen (see Exodus 22:14). The Sages dispute whether his responsibilities parallel those of a paid bailee or those of an unpaid bailee. The ruling is that his responsibilities parallel that of a paid bailee.

Paid bailee – שומר שכר: A paid bailee is discussed in Exodus 22:9–12. This is one who accepts an article for safekeeping for a fee. In addition to the responsibilities of an unpaid bailee, a paid bailee must compensate the owner of the deposit if it is lost or stolen. He is not liable if the article is taken by robbers or damaged through circumstances beyond his control.

Borrower – שואל: A borrower receives an item from its owner with authorization to use it without paying a fee. Since the borrower enjoys the full benefit of the use of the item, the Torah renders him liable for the loss of the item in almost all circumstances. He must compensate the owner if it is lost, stolen, or destroyed, even if it was the result of circumstances beyond his control (see Exodus 22:13–14).

NOTES

A case of an animal that died due to ordinary labor is uncommon – **הויה מוחמת מלאה לא שכיה:** Since this is an uncommon occurrence, stating this claim is not an option, as he is wary of being suspected of lying (*Ritva*). Rabbeinu Hananel apparently had a variant reading of the Gemara text. His version states that the claim that the animal died due to ordinary labor was not an option, as he does not have the carcass, which was stolen.

LANGUAGE

Conclusive refutation [teyvuta] – תיובטה: This term is typically employed when the Gemara presents a conclusive refutation of an amoraic statement on the basis of a tannaitic source that contradicts the statement of the *amora*. This is one of several terms based on the Aramaic root *tet*, *vav*, *beit*, with the connotation of refutation. When the refutation is conclusive, this term is occasionally repeated: The *teyvuta* of Rav so-and-so is a *teyvuta*, indicating that the opinion of that particular *amora* was rejected.

NOTES

מי אלימא than the mishna – ממתניתין: As a rule, the formulation of *mishnayot* is more precise than that of *baraitot*. For this reason, the Sages drew inferences that led to halakhic conclusions more readily from them than from *baraitot*. Therefore, Rav Pappa claims that once it was agreed to reinterpret the mishna in a manner not entirely consistent with its language, the *baraita* can certainly be reinterpreted in that manner.

Are these two baraitot taught together – כי יב הרדי תנייא? *Baraitot* were often studied on an individual basis. There are anthologies of tannaitic statements external to the Mishna, the authoritative tannaitic anthology. Inferences can be drawn from differences in formulation between different *baraitot* only if they are both in the same anthology, e.g., the *Tosefta*.

PERSONALITIES

Rabbi Ḥiyya – רבי חייא: Rabbi Ḥiyya ben Abba, from the Babylonian city of Kafri, was among the last *tanna'im*. Rabbi Ḥiyya descended from a distinguished family that traced its ancestry back to King David and included many Torah scholars. While still in Babylonia, Rabbi Ḥiyya was considered a Torah luminary. When he emigrated from Babylonia with his family, some stated the hyperbole that the Torah was in danger of being forgotten until he arrived in Eretz Yisrael and reestablished it. When he came to Eretz Yisrael, he became a disciple-colleague of Rabbi Yehuda HaNasi, with whom he had a close relationship. His most significant project was the redaction of an anthology of external *baraitot* together with his own colleague-disciple, Rabbi Oshaya. It complemented the Mishna, redacted by Rabbi Yehuda HaNasi. Some believe that he edited the *Tosefta*.

Rabbi Oshaya – רבי אושעיא: Referred to in the Jerusalem Talmud as Rabbi Hoshaya the Great, Rabbi Oshaya was one of the greatest scholars of the transitional generation between the *tanna'im* and the *amora'im*. He was from the third generation of Torah scholars in his family, the son of Rabbi Ḥama and the grandson of Rabbi Bisa. He studied Torah with his father, with bar Kappara, and with Rabbi Ḥiyya, with whom he had the relationship of disciple-colleague. His greatest work involved redaction of *baraitot*, which he formulated in an exceptionally precise manner, to the extent that the Sages said: Any *baraita* that was not taught in the study halls of Rabbi Ḥiyya and Rabbi Oshaya is unreliable. Due to his deep knowledge of the Mishna he was known as the father of the Mishna.

Rabbi Oshaya was closely associated with the house of the *Nasi* and was on especially close terms with Rabbi Yehuda Nesia, grandson of Rabbi Yehuda HaNasi. Rabbi Oshaya had many students, the greatest of whom was Rabbi Yoḥanan, who studied Torah with him for many years. Apparently, he had a son who was a Torah scholar, Rabbi Merinos, who continued the family's close relationship with the house of the *Nasi*.

HALAKHA

If the bailee said I will not pay and then said I hereby choose to pay – אמר עני משלם וארו הרשי משלם – If the bailee initially said that he would not pay, and then retracted his previous statement before the thief was apprehended, ultimately saying that he would pay, he acquires the rights to the double payment (Rambam *Sefer Mishpatim*, *Hilkhot She'ela Uifikadon* 8:4; *Tur*, *Hoshen Mishpat* 295).

אי' בא דאמר, אמר רב פפא: שואל נמי, ביוון שאמר הריני משלם – מקני ליה כפילה. דאי בעי פטר נפשיה במתה מחמת מלוכה. אמרו ליה רב זвид, ה' כי אמר אביי: שואל עד שיטים. מאי טעם – הואיל וככל הנאה שלו, בריבורה לא מקני ליה כפילה.

תניא בותחה דבר זвид: השואל פרה מחייבו ונגנבה, והוא קידם השואל ושילם, ואחר כך נמצא הגנב – משלם תשלומי כפלו לשואל.

לישנא קמא דבר פפא ודי לא הייא תובחתא, לישנא בתרא למما מהוי תובחתה?

אמר לך רב פפא: מי אלימא ממתניתין, רקתני שלם ואוקימנא באמר, הכא נמי – באמר.

מי דמי? התרם לא קתני קידם, הכא קתני קידם מא קידם – קידם ואומר.

הא מדרקתי גבי שוכר ואמר, וגבי שואל קידם – שמע מינה דוקא קתני. מידי גבי הרדי תניא?

שיילנו לתנא דבי רבי חייא ודבי רבי אושעיא, ואמר: גבי הרדי תניא.

פשיטה, אמר עני משלם וחרור ואמר הריני משלם – ה' הא קאמר הריני משלם. אלא אמר הריני משלם.

Some say that Rav Pappa said: In the case of a borrower, once he stated: I hereby choose to pay, the owner transfers rights to the double payment to him, as, if a borrower wishes, he can exempt himself from that liability with the claim that the animal died due to ordinary labor. Rav Zevid said to him that this is what Abaye said: A borrower acquires the rights to the double payment only when he actually pays for the item. **What is the reason** for this? Since all of the benefit accrues to the borrower, as he enjoys the use of the item without payment, the owner does not transfer the rights to the double payment to the borrower due to his statement that he chooses to pay.

The Gemara notes: It is taught in a *baraita* in accordance with the opinion of Rav Zevid: In the case of one who borrows a cow from another, and it was stolen, and the borrower went ahead and paid, and the thief was located thereafter, the thief pays the double payment to the borrower. This indicates that the borrower receives the double payment only if he actually paid the owner for the item.

The Gemara comments: According to the first version of the statement of Rav Pappa, that the owner transfers rights to the double payment to the borrower only if he actually pays the owner, this *baraita* certainly is not a conclusive refutation [teyvuta]¹ of the opinion of Rav Pappa, as the *baraita* corresponds to his opinion. According to the latter version of Rav Pappa's statement, that the owner transfers rights to the double payment to the borrower even if the borrower merely says that he chooses to pay, shall we say that this *baraita* would be a conclusive refutation of the opinion of Rav Pappa?

The Gemara answers: Rav Pappa could have said to you: Is the *baraita* stronger than the mishna,² which teaches that the bailee receives the double payment if he already paid the owner, and nevertheless, we established that the mishna is referring to one who states his intent to pay but has not yet paid? Here, too, establish the *baraita* as referring to one who states his intent to pay but has not yet paid.

The Gemara questions this: Are these cases comparable? There, in the mishna, it is not taught that he went ahead and paid. Here, in the *baraita*, it is taught that he went ahead and paid, which indicates that he actually paid and not merely that he agreed to pay. The Gemara responds: What is the meaning of went ahead? It means that he went ahead and stated his intent to pay, although he did not yet actually pay.

The Gemara asks: But from the fact that the *tanna* teaches the *halakha* in the *baraita* cited earlier with regard to a renter with the formulation: And he said that he would pay, and in the *baraita* with regard to a borrower the *tanna* uses the formulation: Went ahead, conclude from it that the *baraita* concerning a borrower is teaching specifically that he actually paid. The Gemara rejects this proof: Are these two baraitot taught together³ so that one can draw a conclusion based on a discrepancy in their formulation? Perhaps the *baraitot* are unrelated and are simply formulated in different styles.

The Gemara comments: The Sages asked the *tanna'im* of the school of Rabbi Ḥiyya⁴ and Rabbi Oshaya,⁵ experts in *mishnayot* and *baraitot*, if these *baraitot* were formulated together. And they said that the *baraitot* were taught together as one long *baraita*, and therefore one can draw a conclusion based on a discrepancy in their formulation.

§ The Gemara comments that it is obvious that if the bailee initially said: I will not pay, and then said: I hereby choose to pay⁶ rather than taking an oath, he is entitled to the double payment, as didn't he ultimately say: I hereby choose to pay? The Gemara raises a dilemma: But if he initially said: I hereby choose to pay,

Perek III
Daf 34 Amud b

וְתוּר וְאָמַר "אֵין מִשְׁלָמִים", מָא? מַי אָמַר: מַהְרוּ קָא הֶדְרָ בֵּיה, אוֹ דָלְמָא בְּמַלְתָּיה קָאִי, וְדַחֲווִי הוּא דָקָא מַדְחָי לְהָ?

אָמַר "הַרְישׁ מִשְׁלָמִים" וְמַת, וְאָמְרוּ בְנֵינוֹ אֵין אָנוּ מִשְׁלָמִין" מַאי? כִּי אָמַרְינָן מַהְרוּ קָא הֶדְרָ בֵּיה, אוֹ דָלְמָא בְּמַלְתָּיה דָבְרָהָן קִיְּמִי, וְדַחֲווִי הוּא דָקָא מַדְחָוּ לְהָ?

שְׁלָמוֹ בְּנִים מַאי? מַצִּי אָמַר לְהָ: כִּי אָקְנָא בְּפִילָא – לְאָבוֹכָן דַעֲבָד לִי נִיחַ נְפָשָׁא, לְדִיקָו – לֹא, אוֹ דָלְמָא לְאָשְׁנָא?

שְׁלָם לְבָנִים מַאי? מַצִּוְוָא אָמְרוּ לְיהָ: כִּי אָקְנָי לְךָ אָבּוֹנָא בְּפִילָא – דַעֲבָדָת לְיהָ נִיחַ נְפָשָׁה, אָכְלָן אָמַן לְדִין – לֹא, אוֹ דָלְמָא לְאָשְׁנָא? שְׁלָמוֹ בְּנִים לְבָנִים מַאי?

שְׁלָם מְחַצָּה מַאי? שָׁאַל שְׁתִּי פְּרוֹת וּשְׁלָם אֶחָת מְחַן מַאי? שָׁאַל מַן הַשׁוֹתְפִין וּשְׁלָם לְאַחֲרָד מְחַן מַאי? שְׁוֹתְפִין שְׁשָׁאָלוּ וּשְׁלָם אַחֲרָד מְחַן מַאי? שָׁאַל מִן הָאֲשָׁה וּשְׁלָם לְבָעֵלה מַאי? אֲשָׁה שְׁשָׁאָלה וּשְׁלָם בָּעֵלה מַאי? תִּיקְ.

אָמַר רְבָבָה: מִשְׁבֵּיעַן אָתוֹ שְׁבוּעָה שְׁאַנְהָ בְּרִשותָׁו. מַאי טֻמָּא – חִיְשִׁים שְׁמָא עִיּוֹ נְתַנְּבָה.

and then said: I will not pay,^h what is the halakha? Do we say he is retracting his intention to pay and therefore has no right to the double payment? Or, perhaps he stands committed to his initial statement and is merely postponing payment to a later date, in which case he maintains rights to the double payment.

The Gemara raises another dilemma. If the bailee said: I hereby choose to pay, and then he died before paying, and his sons said: We are not paying, what is the halakha? Do we say they are retracting their father's decision to pay, or perhaps they stand committed to fulfilling their father's statement and are merely postponing payment to a later date when they will be able to pay?

The Gemara raises another dilemma. If the father died before he declared his willingness to pay and the sons paid,ⁿ what is the halakha? Can the owner say to them: When I transferred rights to the double payment, I transferred them to your father, who pleased me,ⁿ but to you, I did not transfer those rights? Or perhaps this case is no different, and the owner transfers rights to the double payment provided that he receives payment, and it does not matter whether it was the bailee or his sons who paid him.

If the owner of the deposit died and the bailee paid the payment to the owner's sons, what is the halakha? Can the sons say to the bailee: When our father transferred rights to the double payment to you, it was because you pleased him, but as far as we are concerned, you did not please us? Or perhaps it is no different, and the bailee receives the double payment. Likewise, if both the owner and the bailee died, and sons of the bailee paid the sons of the owner, what is the halakha?

The Gemara raises additional dilemmas: If the bailee paid half the value of the deposit before the thief was discovered, what is the halakha? If one borrowed two cows, and they were stolen, and he paid the value of one of them, what is the halakha? If one borrowed an item from partners, and he paid one of them, what is the halakha? In the case of partners who borrowed an item and one of them paid,ⁿ what is the halakha? If one borrowed an item from a woman and paid her husband, what is the halakha? In the case of a woman who borrowed an item, and her husband paid, what is the halakha? The Gemara concludes: All of these dilemmas shall stand unresolved [teiku].^{hl}

§ Rav Huna says: Even if the bailee declares his intention to pay for the deposit, the court administers an oath to him that the item was actually stolen or lost and is not in his possession.^{hn} What is the reason for this oath? We are concerned that perhaps he coveted that item.

NOTES
The sons paid – **שְׁלָמוֹ בְּנִים**: The Ra'avad explains that this refers to a case where the cow was stolen and then the father died, whereas Rashi explains that this is a case where the cow was stolen after the father died.

Who pleased me – קָדַעַבְךָ לִי נִיחַ נְפָשָׁא: That the bailee pleased the owner did not result from the bailee's agreement to safeguard his item, or from his choice to pay for the deposit without inconveniencing the owner to sue him in court. The assumption is that if the owner chose to deposit the item with the bailee, they must know each other, and the bailee must have pleased him previously on several occasions (Ritva; *Torat Hayyim*; see Rashi).

Partners who borrowed an item and one of them paid – שְׁוֹתְפִין שְׁשָׁאָלוּ וּשְׁלָם אַחֲרָד מְחַן: Rashi explains that one of them paid his share, whereas the Rambam maintains that one of the partners paid for the entire deposit. Most of the commentaries accept the opinion of Rashi.

The court administers to him an oath that the item is not in his possession – שְׁבֵּיעַן אָתוֹ שְׁבוּעָה שְׁאַנְהָ בְּרִשותָׁו: Some commentaries hold that this is an oath by Torah law. In fact, some later commentaries explain that this is the primary oath of the bailees (see Rav Hai Gaon and Ritva). Others hold that this is an oath by rabbinic ordinance (Rambam; see Meiri).

HALAKHA

If he said I hereby choose to pay and then said I will not pay – **אָמַר הַרְישׁ מִשְׁלָמִים וְתוּר וְאָמַר אֵין מִשְׁלָמִים**: If the bailee declared in court that he would pay and then he reneged and said he would not pay, although his second statement does not exempt him from payment, there is uncertainty whether he acquires the rights to the double payment if the thief is apprehended (Rambam *Sefer Mishpatim, Hilhot She'ela UFikadon* 8:5; *Tur, Hoshen Mishpat* 295).

These dilemmas shall stand unresolved – **תִּיקְוָן**: All of the dilemmas raised by the Gemara in this passage remain unresolved. The Rif and the Rambam write that since there is uncertainty concerning who is entitled to the payments, they are divided equally between the owner and the bailee. If one of them seizes the payments, the other cannot reclaim it. According to Rabbeinu Yitzhak of Dampierre and the Rosh, the owner maintains presumptive ownership of the payments, and the burden of proof to establish rights to the payments is upon the bailee. Since there is no proof, he does not receive any of the payments (Rambam *Sefer Mishpatim, Hilhot She'ela UFikadon* 8:5; *Tur, Hoshen Mishpat* 295).

The court administers an oath to him that the item is not in his possession – **מִשְׁבֵּיעַן אָתוֹ שְׁבוּעָה שְׁאַנְהָ בְּרִשותָׁו**: If a bailee says he will pay rather than take an oath, and the deposit was an easily obtainable item, he is not required to take an oath (*Ge'onim*). If the deposit was an item that is not easily obtainable, there is concern that he offered to pay because he wanted to keep the item. Therefore, he is required to take an oath upon a sacred item that the deposit is not in his possession and only then he pays, in accordance with the opinion of Rav Huna (Rambam *Sefer Mishpatim, Hilhot She'ela UFikadon* 6:1; *Shulchan Arukh, Hoshen Mishpat* 295:1, 305:1).

LANGUAGE

Shall stand unresolved [teiku] – **תִּיקְוָן**: There are various explanations for the etymology of this term. One explanation is that it is an abbreviated version of *tikom*, meaning: Let it stand. Another is that its source is the word *tik*, meaning case or pouch, whose contents are unknown. Here too, the resolution is unknown, as though it were concealed in a case (*Arukha*). Although not its literal meaning, some suggest that the term alludes to the acrostic *Tishbi yetaretz kushiyot uve'ayot*, meaning: The Tishbite, i.e., Elijah the prophet, will resolve questions and dilemmas (*Tosefot Yom Tov*). This suggestion refers to the belief that when Elijah the prophet returns to proclaim the coming of Messiah, he will resolve outstanding halakhic difficulties.

HALAKHA

Disputes with regard to the value of the collateral – **סְכָסָק בָּדָר שְׂוֹוֹ שֶׁל הַמְּשִׁבֵּן**: If one loans money to another on the basis of collateral, and the collateral is stolen or lost, and the creditor claims that the loan was greater than the value of the collateral, and the debtor claims that the value of the collateral was equal to the value of the loan, then the creditor takes an oath that the collateral is not in his possession. Then the debtor takes an oath of inducement that the value of the collateral equaled the value of the loan, and he is exempt from payment. The oath of inducement is an oath by rabbinic law. If the creditor claims that value of the collateral was lower than the value of the loan, and the debtor admits that its value was lower than the loan but it was higher than the assessment of the creditor, the creditor takes an oath that the item is not in his possession, and the debtor takes the oath by Torah law of one who makes a partial admission (Rambam *Sefer Mishpatim, Hilhot Malve VeLoveh* 13:4; *Shulhan Arukh, Hoshen Mishpat* 72:9–10).

You loaned me a *sela* on the basis of that collateral and the collateral was worth two *sela* – **סֶלֶע הַלְוִיתִינְךָ עַלְיוֹן, שְׁנַיִם הִיא שְׂוֹה**: If the creditor claims that the collateral was lost and its value equaled the value of the loan, and the debtor claims that the collateral was worth more than the loan, then, if the debtor trusts that the creditor lost the collateral, or if there are witnesses to that effect, the creditor takes an oath of inducement and is exempt.

If the debtor does not trust the creditor, and the creditor has no witnesses, then the creditor takes an oath that it is not in his possession, and, based on the principle of extension of an oath, i.e., one obligated to take an oath can be forced to take other oaths as well, he also takes an oath with regard to the value of the collateral. If the creditor admits that the collateral was worth more than the loan but claims it was worth only one dinar more, but the debtor claims that it was worth one *sela*, i.e., four dinars, more, the creditor pays one dinar and takes an oath that it was worth no more, and he adds an oath attesting that the collateral is not in his possession (Rambam *Sefer Mishpatim, Hilhot Malve VeLoveh* 13:4; *Shulhan Arukh, Hoshen Mishpat* 72:12).

מִי תִּתְבִּי הַמְּלֹוה אֶת חֲבִיוֹ עַל הַמְּשִׁבֵּן,
וְאֶבְדָּר הַמְּשִׁבֵּן? וְאָמָר לֵאמֹר: סֶלֶע הַלְוִיתִינְךָ
עַלְיוֹן, שְׁקָל הִיא שְׂוֹה, וְהַלְהָ אָמָר לֵאמֹר: כִּי, אֶלָּא סֶלֶע הַלְוִיתִינְךָ
עַלְיוֹן, שְׁלָשָׁה דִּינָרִים הִיא שְׂוֹה – חַיִב.
שְׂוֹה – פָּטוּר.

The Gemara raises an objection from a mishna (*Shevuot* 43a): In the case of one who lends money to another on the basis of collateral, and the collateral was lost, and the creditor says to the debtor: I loaned you a *sela* on the basis of that collateral and that collateral was worth a shekel, i.e., a half-*sela*. Therefore you owe me a shekel. And the other individual, the debtor, says in response to that claim: That is not the case. Rather, you loaned me a *sela* on the basis of that collateral, and the collateral was worth a *sela*; I owe you nothing. In this case, the debtor is exempt from payment.

סֶלֶע הַלְוִיתִינְךָ עַלְיוֹן, שְׁקָל הִיא שְׂוֹה,
וְהַלְהָ אָמָר לֵאמֹר: כִּי, אֶלָּא סֶלֶע הַלְוִיתִינְךָ
עַלְיוֹן, שְׁלָשָׁה דִּינָרִים הִיא שְׂוֹה – חַיִב.
חַיִב – פָּטוּר.

The mishna continues: If the creditor claimed: I loaned you a *sela* on the basis of that collateral and it was worth a shekel. And the other individual, the debtor, says: That is not the case; rather, you loaned me a *sela* on the basis of that collateral and the collateral was worth three dinars, i.e., three-quarters of a *sela*. In this case, the debtor is obligated to take an oath,⁴ due to the fact that he responded to the claim of the creditor with a partial admission.

סֶלֶע הַלְוִיתִינְךָ עַלְיוֹן, שְׁנַיִם הִיא שְׂוֹה,
וְהַלְהָ אָמָר לֵאמֹר: כִּי, אֶלָּא סֶלֶע הַלְוִיתִינְךָ
עַלְיוֹן, שְׁלָשָׁה דִּינָרִים הִיא שְׂוֹה – חַיִב.
חַיִב – פָּטוּר.

The mishna continues: If the debtor said: You loaned me a *sela* on the basis of that collateral and the collateral was worth two *sela*, so now you owe me a *sela*. And the other party, i.e., the creditor, said: That is not the case; rather, I loaned you a *sela* on the basis of that collateral and the collateral was worth a *sela*. Here, the creditor is exempt.

סֶלֶע הַלְוִיתִינְךָ עַלְיוֹן, שְׁנַיִם הִיא שְׂוֹה,
וְהַלְהָ אָמָר לֵאמֹר: כִּי, אֶלָּא סֶלֶע הַלְוִיתִינְךָ
עַלְיוֹן, חַמְשָׁה דִּינָרִים הִיא שְׂוֹה – חַיִב.
חַיִב – פָּטוּר.

If the debtor said: You loaned me a *sela* on the basis of that collateral and the collateral was worth two *sela*.⁴ And the other party, i.e., the creditor, said: That is not the case; rather, I loaned you a *sela* on the basis of that collateral and the collateral was worth five dinars. Here, the creditor is obligated to take an oath due to the fact that he responded to the claim of the debtor with a partial admission.

כַּי נִשְׁבַּע – מֵי שְׁהַפְּקוּדָן אֲצַלָּו, שְׁפָא,
שְׁבַע זֶה וַיּוֹצֵא הַלָּה אֶת הַפְּקוּדָן.
חַיִב – פָּטוּר.

The mishna concludes: Who takes the oath? The one in whose possession the deposit was located, i.e., the creditor, who took collateral from the debtor. The Sages instituted this provision lest this party, i.e., the debtor, take an oath and the other party, i.e., the creditor, produce the deposit and prove the oath false.

אֲזַהְיָא? אַיִלְמָא אֲסִיפָּא – וְתִיפּוֹק לִיהְיָה
דְּשִׁבּוּעָה גַּבֵּי מְלֹוה הִיא, דְּהָא קָא מַזְרָעִי
מִקְצָת הַטֻּעָנָה! אֶלָּא אָמָר שְׁמוּאֵל:
אֲרִישָׁא.

The Gemara seeks to clarify the mishna: To which case in the mishna is this halakha referring? If we say it is referring to the latter clause of the mishna, where the debtor claims that the creditor owes him money, the mishna's explanation is unnecessary: Derive that the obligation to take the oath is incumbent upon the creditor due to the fact that he admits to part of the debtor's claim, which renders one obligated to take an oath by Torah law. Rather, Shmuel says: This halakha is referring to the first clause of the mishna.

מַאי אֲרִישָׁא – אֲסִיפָּא דְּרוּשָׁא: סֶלֶע
הַלְוִיתִינְךָ עַלְיוֹן, שְׁקָל הִיא שְׂוֹה, וְהַלְהָ
אָוּמָר: לֵאמֹר, כִּי, אֶלָּא סֶלֶע הַלְוִיתִינְךָ
עַלְיוֹן, שְׁלָשָׁה דִּינָרִים הִיא שְׂוֹה – חַיִב.
דְּשִׁבּוּעָה גַּבֵּי לְוָה הַוָּא, וְאָמָר רַבָּנָן:
לְשִׁתְּבַע מְלוֹה, שְׁפָא יִשְׁבַּע זֶה וַיּוֹצֵא
הַלָּה אֶת הַפְּקוּדָן.

The Gemara clarifies further: What is the meaning of Shmuel's statement that this halakha is referring to the first clause of the mishna? It is referring to the latter part of the first clause: The creditor says: I loaned you a *sela* on the basis of that collateral and it was worth a shekel. And the other individual, the debtor, says: That is not the case; rather, you loaned me a *sela* on the basis of that collateral and the collateral was worth three dinars. Here, the halakha is that the debtor is obligated to take an oath. Fundamentally, the obligation to take the oath is that of the borrower, as he is the one who responds to the creditor's claim with a partial admission. But the Sages said: Let the creditor take the oath to bolster his claim, lest this party, the debtor, take an oath⁵ and the other party, the creditor, produce the deposit.

After explaining this mishna from tractate *Shevuot*, the Gemara analyzes its connection to the statement of Rav Huna: But if

NOTES

Lest this party take an oath – **שְׁבַע יִשְׁבַּע זֶה**: Rashi explains that the concern is that the creditor will prove that the debtor lied about the value of the collateral, and the debtor will then be disqualified from giving testimony and taking oaths. Tosafot object to that explanation and contend that the Sages would

not institute an ordinance to protect one who takes a false oath. The Rashba explains that the debtor may have taken the oath about the value of the collateral in good faith. The concern is that when it is discovered that he was mistaken, others will unjustifiably suspect him. Rabbeinu Hananel maintains that the

concern is that the oath is superfluous and would therefore be considered an oath in vain. The Rif writes that the concern is that the oath will result in the profaning of God's name. Some commentaries understand that this is the essence of Rabbeinu Hananel's explanation as well.

Perek III
Daf 35 Amud a

איתא לדור הונא, בגין דמשתבע מלוה שאינה ברשותו – היכי מביא מפיק לה? אמר רבא: שיש עדים שנשרפה.

אי היכא מיתיה לה? אלא אמר רב יוסף: שיש עדים שנגנבה. סוף סוף מהיכא מיתיה לה? דטרח ומיתיה לה.

אי היכי, כי משפטע מלוה נמי, לטrho לה ולייתן בשלמא מלוה – ידע מאן קא עילן ונפק בבייתה, ואoil וטרח ומיתיה לה, אלא לה, מיידע מאן עילן נפק בבייתה דמלוה?

אבי אומר: גוירה שמא יטען ויאמר לו: אחר שבועה מצאתה. רב אשיה אמר: זה נשבע וזה נשבע – זה נשבע שאינה ברשותו, וזה נשבע בפה היה שווה. והיכי קאמר: מי נשבע תחיליה מלוה נשבע תחיליה, שמא ישבע זה וויציא הלה את הפקדון.

רב הונא בר תחליפה ממשמיה זרבא אמרו: רישא דסיפא תיבתא לר' הונא: סלע ולחותין עלי, שרים היה שווה, והלה אומר: לא פ, אלא סלע הלויתיך עליו סלע היה שווה – פטו. ואם איתא לדור הונא, בגין דמשתבע מלוה שאינה ברשותו – לישבע נמי איגילול שבועה בפה היה שווה

the statement of Rav Huna is so, once the creditor takes an oath that the collateral is not in his possession, how can he produce it thereafter? Rava said: The mishna is referring to a case where there are witnesses that the collateral was burned. Therefore, the creditor need not take an oath that it is not in his possession.

The Gemara asks: If so, the question remains: Why is the obligation to take the oath transferred from the debtor to the creditor? There is no concern that the creditor will produce the collateral. From where will he bring it^N if it was burned? Rather, Rav Yosef said: The mishna is referring to a case where there are witnesses that the collateral was stolen. The Gemara asks: Ultimately, in that case too, from where will the creditor bring the collateral if it was stolen? The Gemara answers: Although the collateral had been stolen, it is possible the creditor will exert himself to locate the thief and bring the collateral, thereby proving that the debtor took a false oath.

The Gemara asks: If so, in a case where the creditor takes an oath as well, let the debtor exert himself and bring the collateral, thereby proving that the creditor took a false oath. The Gemara answers: This is unlikely. Granted, there is concern that the creditor will recover the stolen collateral, as he knows who enters and exits his house, so he may have some inkling of the identity of the thief. And therefore, he goes and exerts himself and brings the collateral. But with regard to the debtor, does he know who enters and exits the creditor's house? He has no inkling who the thief might be.

Abaye says: Although the creditor takes an oath that the collateral is not in his possession, the obligation to take an oath for partial admission is transferred from the debtor to the creditor, as the Sages issued a decree lest the debtor take the oath for his partial admission and the creditor claim and say to him: I found the collateral after you took the oath. Rav Ashi says: This party, the creditor, takes an oath and that party, the debtor, takes an oath. This party, the creditor, takes an oath that the collateral is not in his possession. And that party, the debtor, takes an oath as to how much the collateral was worth. And this is what the mishna is saying: Who takes an oath first? The creditor takes an oath first that the collateral is not in his possession, lest this party, i.e., the debtor, take an oath and the other party, i.e., the creditor, produce the deposit.

Rav Huna bar Tahlifa said in the name of Rava: The first part of the latter clause of the mishna is a conclusive refutation of the opinion of Rav Huna, who said that the creditor is obligated to take an oath that the collateral is not in his possession. In that clause, the debtor said: You loaned me a sela on the basis of that collateral, and the collateral was worth two selas, so now you owe me a sela. And the other party, i.e., the creditor, said: That is not the case, rather, I loaned you a sela on the basis of that collateral and the collateral was worth a sela. In this case, the creditor is exempt. And if the statement of Rav Huna is so, once the creditor takes an oath that the collateral is not in his possession, let him also take an oath by means of extension of an oath^N as to how much the collateral was worth, as one obligated to take an oath can be forced to take other oaths as well.

NOTES

From where will he bring it – מהיכא מיתיה לה: Some explain this question as follows: If the witnesses are deemed credible to exempt him from an oath, what basis is there for the concern that it was not burned (Ritva)?

Let him also take an oath by means of extension of an oath – לישבע נמי איגילול שבועה: Although some say that if one who claims that another owes him money does not demand that he extend the oath, then the other is not required to take the additional oath, Rav Huna himself explains that it is the court that initiates extension of the oath and administers the additional oath (Melo HaRo'im).

NOTES

But let the debtor trust the creditor – **ונַהֲמִינָה לֹהֶה לְמַלְוָה**: The Kikayon deYona and Penei Yehoshua ask: Granted, the debtor has no way of knowing what happened to the collateral, and therefore he is ready to trust the creditor. But with regard to the value of the collateral, wouldn't he trust himself more than he would trust the creditor? Some explain that here too, he is concerned that he might be mistaken, since he trusts the creditor, and perhaps the creditor knows the value of the collateral better than he does (Penei Yehoshua). Others explain that since the debtor trusts that the creditor is not lying intentionally, then even if the creditor errs with regard to the item's value, the debtor, if pressed, will take an oath that it is worth what the creditor says it is worth. According to that explanation, the Gemara's answer is understood to mean that the debtor is not that certain, and if there is any concern that the oath is problematic, he will refrain from taking it (*Mahaze Avraham*).

בְּלֹא בְשִׁיעוּתָה וְאֵין: Every circumstance...is negligence – Some say that this applies specifically to a bailee who is required to safeguard the item, but in other cases lack of knowledge is not considered negligence. Others explain that in this case he is required to pay, not because lack of knowledge where he placed the item is in and of itself negligence, but because he is unable to take an oath that he was not negligent, as he does not know what happened to the jewels (*Netivot HaMishpat; Terumat HaDeshen; Darkhei Moshe; Sma*).

And our chapter of study was this chapter, one who deposits – **וּפְקִזְזִין הַמְּקִידָה הוּה**: Rava includes this information to clarify why he did not explicate his question at length. Since they were already studying this matter, he sufficed with a brief allusion (*Torat Hayim*).

LANGUAGE

Jewels [*keifei*] – **כִּיִּפְיָ**: In both Hebrew and Aramaic, this term has several meanings, some related. It can mean rocks, specifically precious stones and jewelry. Or, based on the term *kippot*, meaning domes, it refers to piles of grain. Sometimes it is used to mean bundles of vegetables, plants, palm branches, and the like. Because there are several possible meanings, there are often disputes among the commentaries as to the appropriate understanding of this word in context. In this context, it refers to jewels.

PERSONALITIES

Rav Nahman – **בָּבְנַחֲמָן**: Rav Nahman bar Ya'akov was a second- and third-generation Babylonian *amora*. While he cites statements in the names of both Rav and Shmuel, his primary teacher was a student of Rav, Rabba bar Avuh. Rav Nahman acquired most of his knowledge in the yeshiva in Mehoza. While he was never formally appointed to head one of the Babylonian academies, many of the Sages of the following generation were his students, including the great *amora* Rava.

Rav Nahman was already recognized as a prodigy in his youth. He married Yalta, a member of the Exilarch's family, who was a learned and strong-willed woman. Rav Nahman was subsequently appointed a judge in the Exilarch's house in Neharde'a. In that capacity, Rav Nahman became an expert in monetary law, to the extent that the Gemara concludes that his rulings in matters of monetary law are always the accepted *halakha*. He was considered one of the pious men of his generation, and the Gemara cites numerous examples of his acts of kindness.

אמָר רַב אֲשִׁי אָמְרוּתָה לְשִׁמְעַתָּא קְפִיה דָרְבָ בְּהָנָא, וְאָמָר לֵי, תְהִא בְמַאֲמִינָה. וְנַהֲמִינָה לֹהֶה לְמַלְוָה נִמְיָה בְּהָא בְּמַה הִתְהַשֵּׁה! לֹא קִים לֵיה בְגִוָה. וְנַהֲמִינָה מַלְוָה לְלֹהֶה, דָקִים לֵיה בְגִוָה לֹא מַהְיֵן לֵיה.

Rav Ashi said: I stated this *halakha* before Rav Kahana, and he said to me: Let the *halakha* in the mishna be understood with regard to a case where the debtor **trusts** the creditor that the collateral is no longer in his possession. The Gemara challenges: **But if so, let the debtor trust the creditor^N with regard to this matter of how much the collateral was worth.** The Gemara explains: The creditor is **not certain about** the value of the collateral, as the item did not belong to him, which is why the debtor does not rely upon him to take an oath concerning its value. The Gemara challenges: **But let the creditor trust the debtor**, as the debtor is **certain about** the value of the collateral, as it is his. The Gemara answers: The creditor **does not trust** the debtor.

וּמַאי שְׁנָא לֹהֶה דְמַהְיֵן לֵיה לְמַלְוָה, וּמַאי שְׁנָא מַלְוָה דָלָא מַהְיֵן לֵיה לְלֹהֶה? לֹהֶה מַקִים בֵּיה בְמַלְוָה "תְּפַמֵּת שְׂרוֹם תְּנַחַם", מַלְוָה מַקִים בֵּיה בְלֹהֶה יְסֻלָּרְבָּן גְּדוּדִים יְשִׁידָם."

The Gemara asks: **And what is different so that the debtor trusts the creditor that the collateral is not in his possession, and what is different that the creditor does not trust the debtor** to accurately assess the value of the collateral? The Gemara answers: The debtor sees in the creditor fulfillment of the verse: "**The integrity of the upright shall guide them**" (Proverbs 11:3). He believes that God blesses the creditor with wealth to lend because he is an upright person. The creditor sees in the debtor fulfillment of the end of that verse: "**But the perverseness of the faithless shall destroy them**" (Proverbs 11:3). The creditor believes that God made the debtor poor because he is a deceitful person.

הַהוּא גָבָרָא דְאַפְקִיד בַּיִפְיָ גִבְבָה תְבִרִיה, אָמָר לֵיה: הַב לִי בַיִפְיָ. אָמָר לֵיה: לֹא יַדְעָנָא הַיכָא אָוֹתְבִינָהוּ. אָוֹתָא לְקַפְפִיה דָרְבָ נַחַם, אָמָר לֵיה: כָל לֹא יַדְעָנָא – פְשִׁיעָתָא הָיא, זַל שְׁלִים. לֹא שְׁלִים, אַלְלָבָנָה אַגְבָה לְאַפְרִינָה מִגְיָה. לְסֻוף אַיְשָׁנְבָה בַּפִּי, אַאיְקוֹר. אָמָר רַב נַחַם: הַדָּרִי בַיִפְיָ לְמַרְיוּחוֹ, וְהַדָּרָא אַפְרִינָא לְבָרָה.

¶ The Gemara relates: A certain man deposited jewels [*keifei*]^L with another. When the period of the deposit was complete, the owner of the jewels said to the bailee: Give me the jewels. The bailee said to him in response: I do not know where I placed them. The matter came before Rav Nahman,^P who said to the bailee: Every circumstance where a bailee claims: I do not know where I placed them, is in and of itself **negligence**.^{NH} Go pay him for the jewels. The bailee did not pay. Rav Nahman went and gave instructions to repossess his palace and sell it to pay for the jewels. Ultimately, not only were the jewels found, but they had also increased in value. Rav Nahman said: The jewels return to their initial owner, and the palace returns to its owner, and the bailee does not profit from the increase in the value of the jewels.

אָמָר רַבָא: הַהָא יַתְיַבְנָא קְמִיה דָרְבָ נַחַם, וּפְרִקְזִין הַמְּפִקְדִד הַהָא, וְאָמָר לֵיה: "שְׁלִים וְלֹא רָצָה לִישְׁבָעִי וְלֹא אָהָרְדָר לִי, וְשִׁפְרָר עַבְרָד דָלָא אָהָרְדָר לִי.

Rava said: I was sitting at that time studying before Rav Nahman, and our chapter of study was this chapter: One who deposits,^N which is relevant to this case. And I said to Rav Nahman: Isn't this the case of a bailee who paid the owner and did not wish to take an oath? And it is the bailee who receives the double payment, ostensibly because once he paid, the owner transfers ownership of the item to him. And Rav Nahman did not answer me, and he did well that he did not answer me, as the question was not worthy of an answer.

מַאי טַעַמָא – הַתָּם לֹא אַטְרוּחָה לְבִי דִינָא, הַכָּא אַטְרוּחָה לְבִי דִינָא.

Rava continues: What is the reason he did not answer me? The reason is that the cases cannot be compared. There, in the case of the mishna, the bailee paid at his own initiative. He did not inconvenience the owner by compelling him to go to court. Therefore, the owner transfers ownership of the deposit to the bailee. Here, in the case involving the jewels, the bailee inconvenienced the owner and compelled him to go to court.^H Consequently, the owner does not transfer ownership of the deposit to the bailee.

HALAKHA

כל פְשִׁיעָתָא הָיא – If the bailee claims that he does not remember where he placed the deposit when the owner of the deposit asks that it be returned, this is in and of itself negligence. He is liable to pay the owner immediately (Rambam *Sefer Mishpatim, Hilkhot She'ela UFikadon 4:7; Shulchan Arukh, Hoshen Mishpat 291:7*).

The bailee inconvenienced the owner and compelled him to go to court – **אַטְרוּחָה לְבִי דִינָא**: In the case of a bailee who pays for a deposit only after he was taken to court and compelled to

do so, if the deposit is later recovered, the bailee is not entitled to the double payment or increase of the item's value. Instead, the item is returned to the owner, who returns to the bailee the money that he had paid. The inconvenience of a court trial strips the bailee of the rights to the profit. In a case where the bailee took an oath and then paid, although he inconvenienced the owner to come to court for the oath, he is entitled to the double payment (Rambam *Sefer Mishpatim, Hilkhot She'ela UFikadon 8:3; Tur, Hoshen Mishpat 295*).

לִמְימָרָא דְּסֶבֶר רַב נְחַמֵּן דְּשׁוֹמָא הָדָר?
שָׁנִי הַתָּם, דְּשׁוֹמָא בְּטֻעָות הַתָּה, דְּקָא
הַתָּה בַּפִּי מַעֲקָרָא.

The Gemara asks: **Is this to say that Rav Nahman holds that after property is repossessed in order to pay an unpaid debt based on the court's appraisal of the article's value, it is returned^N if the debtor pays the debt?** The Gemara rejects that conclusion: In general, the item is not returned. But **it is different there, in the case of the jewels, as it was an erroneous appraisal, in that the jewels were in the possession of the bailee from the outset^N and he was merely unable to locate them.**

אָמָרִי נְהָרְדֵ'י: שׁוֹמָא הָדָר עַד תְּגִיסָּר יוֹחָנָן שְׁתָא. וְאָמָר אַמְּיָרָ: אָנָּא מְהָרְדֵ'עַ אָנָּא סְבִּירָא לִי שׁוֹמָא הָדָר לְעוֹלָם. וְהַלְכָה: שׁוֹמָא הָדָר לְעוֹלָם, מִשּׁוּם שְׁנָאָמָר יוֹשַׁעַת הַשְׁרָה וְהַטּוֹב.

With regard to the reversal of an appraisal, the Sages of Neharde'a say: After property is repossessed in order to pay an unpaid debt based on the court's appraisal of the article's value, it is returned to the debtor, provided he repays the debt from the time of the appraisal until the twelve months of the year have passed. And Ameimar said: I am from Neharde'a, and nevertheless, I hold that repossession based on an appraisal of an article's value can always be returned. If the debtor pays his debt, he can reclaim his property at any point. The Gemara rules: **And the halakha is that repossession based on an appraisal can always be returned,^H due to the fact that it is stated: "And you shall do that which is right and good"** (Deuteronomy 6:18). The owner of property appreciates his property more than another person would. Therefore, once the debtor repays his debt to the creditor, legal formalism should not prevent return of the debtor's property.

פְּשִׁיטָא, שְׁמוֹ לִיהְיָה לְבַעַל חֹוב, וְאֹלֵל אַיְהָוָה וְשָׁמָה לְבַעַל חֹוב דִּידִיה, אַמְּרִין לְיהָוָה: לֹא עֲדֵךְ אַתְּ מְגַבְּרָא דְּאַתִּית מִינְיָה. וּבְנָהָא אָוֹרְתָּא, וְהַכָּה בְּמִתְּנָה – וְרוֹאֵי הַיִּם מַעֲקָרָא אֲדַעַתָּא דְּאַרְעָא נְחוֹת, וְלֹא אֲדַעַתָּא דְּרוֹויִ נְחוֹת.

§ The Gemara clarifies related matters. It is obvious that if the court appraised property to repay a debt to a creditor, and this creditor went and had the property appraised and repaid his debt to his creditor,^H we say to the second creditor: Your rights are not superior to those of the man through whom you came to possess the property. Just as the first debtor can repay the debt and reclaim his property from his creditor, he can also reclaim the property from the creditor of his creditor. If a creditor who received appraised land sold it or bequeathed it^N to his heirs or gave it as a gift, the debtor cannot reclaim the land from those who acquired their land. It is certain that from the outset, when those people acquired the land, it was with the intent to acquire the land itself that they descended to it, and it was not with the intent to receive money that they descended to the land.

שְׁמוֹ לְהָאָשָׁה וְאַיִשְׁכָּבָא, אוֹ שְׁמוֹ מִינְיָה דְּאָשָׁה וְאַיִשְׁכָּבָא וְמוֹתָה – בַּעַל בְּנָכְסִי אַשְׁתָּוֹ לְקֹחַ חֹווֹי, לֹא מִיהָדוֹ וְלֹא מִהָּדָרִין לִיהְיָה.

If the court appraised property to repay a debt to a woman and she then married, or if the court appraised property from a woman^H to repay her debt and she then married and died, since the legal status of a husband with regard to his wife's property is that of a buyer, he does not return property that was appraised and repossessed to pay his wife's debt. And we do not return to him property that was repossessed from his wife if he pays her debt.

אָמָר רַבִּי יוֹסֵי בֶּן חַנִּינָא: בְּאוֹשָׁנָא הַתְּקִינָה: הָאָשָׁה שְׁמַכְתָּה בְּנָכְסִי מַלְאָג בְּחִי בְּעָלָה וְמוֹתָה – הַבַּעַל מוֹצִיא מֵיד הַלְלוּחוֹת.

This is as Rabbi Yosei bar Hanina said: In Usha the Sages instituted that in the case of a woman who sold part of her usufruct property^B during the life of her husband^H and she died, the husband repossesses the property from the purchasers. The property belongs to the wife, while the profits accrued after marriage belong to the husband. Therefore, the woman does not have the right to sell the property as long as they are married. If she sold the property and died, and her husband is her heir, the Sages instituted that his legal status is that of a buyer and not an heir. His rights to the land precede those of the subsequent buyers. He repossesses the land and reimburses them the sale price of the property.

NOTES

Is this to say that Rav Nahman holds that appraisal is returned – **לִמְימָרָא דְּסֶבֶר רַב נְחַמֵּן דְּשׁוֹמָא הָדָר**? The Ramban says that this is based on a type of *a fortiori* inference: If, in this case, where the owner of the palace might not want his palace back, his property is returned to him, then all the more so is it returned in cases where this directive applies: "And you shall do that which is right and good" (Deuteronomy 6:18).

In that the jewels were in the possession of the bailee from the outset – **דְּקָא הַתָּה בַּפִּי מַעֲקָרָא**: According to Rashi, this is specifically because it turned out that they were never lost. The Ramban and the Rambam hold that even if the jewels were actually lost, the halakha is no different.

Bequeathed it – **אָוֹרְתָּא**: The commentaries explain that this term refers to the gift of one on his deathbed to a specific person. It does not refer to one who inherited property after the death of a relative (Ramban; Rashba).

HALAKHA

שׁוֹמָא הָדָר can always be returned – **שְׁמָה לִיהְיָה לְבַעַל חֹוב, וְלֹא עֲדֵךְ**: If a court appraises land of a debtor for it to be repossessed by a creditor, whether it is unsold property or liened property that was sold, if the owner of the field eventually accumulates enough money to repay the debt, the land is returned to the debtor even if several years passed (Rambam Sefer Mishpatim, Hilkhot Malve VeLoveh 22:16; Shulhan Arukh, Hoshen Mishpat 103:9).

It was appraised for a debtor and given to others – **שְׁמָה לִיהְיָה לְבַעַל חֹוב וְלֹא עֲדֵךְ לְאַחֲרִים**: Land of a debtor that was appraised for it to be repossessed by a creditor and then appraised again to be repossessed by the creditor of the creditor is returned to the first debtor if he repays his debt. If the creditor sold it, gave it as a gift, or bequeathed it to others, it is not returned to the debtor. Others say that if it is inherited by several heirs, it is not returned to the debtor. If there is a single heir, it is returned (Rambam Sefer Mishpatim, Hilkhot Malve VeLoveh 22:17; Shulhan Arukh, Hoshen Mishpat 103:10, and in the comment of Rema).

Appraised property to repay a debt to a woman... or appraised property from a woman – **שְׁמַיְהָא לְאָשָׁה וְשְׁמוֹ מִינְיָה דְּאָשָׁה**: If the court appraised land to pay a debt to a woman who then married, or if they appraised her land to pay her debt and she then married, her husband neither returns the land repossessed by his wife if his wife's debtor wants to repay his debt nor is her appraised land returned to him if she repays her debt, as the legal status of a husband is that of one who bought his wife's property. Others say that this is the halakha only after his wife dies (Rambam Sefer Mishpatim, Hilkhot Malve VeLoveh 22:17; Shulhan Arukh, Hoshen Mishpat 103:10, and in the comment of Rema).

A woman who sold part of her usufruct property during the life of her husband – **הָאָשָׁה שְׁמַכְתָּה בְּנָכְסִי בְּעָלָה מַלְאָג בְּחִי בְּעָלָה**: If a woman sold her usufruct property after she was married, the husband owns the rights to the profits accrued from that land for the duration of her life, but he has no claim to the land itself. If he dies during the lifetime of his wife, the purchasers obtain the rights to the profits as well (Rambam Sefer Nashim, Hilkhot Ishut 22:7; Shulhan Arukh, Even HaEzer 90:9).

BACKGROUND

Usufruct property – **בְּכִיּוּ מַלְאָג**: A married woman's property is divided into two categories, usufruct property and guaranteed property. Usufruct property refers to a wife's personal property, from which her husband is entitled to derive benefit. It is the property that a wife brings to the marriage from her father's home, which is not included in her marriage contract, or property that she inherits or receives as a gift after her marriage. This property remains hers, and her husband may not sell it, although he is entitled to benefit from its profits. The husband must care for this

property, although he does not bear responsibility if it decreases in value, provided that he did not intentionally cause the loss. The wife reassumes control of this property if her husband dies or divorces her, and any increase or decrease in its value from the time that they marry is her gain or loss. If she dies before her husband, he inherits the property. Before marriage, the couple may arrive at any agreement they wish with regard to usufruct property.

Perek III
Daf 35 Amud b

HALAKHA

The debtor authorized to repossess the land for his debt – **אָגְבֵּה אִיהוּ בְּחֻבוֹ:** If a creditor receives land in payment of a debt and then lends it to the debtor at his own initiative, the land is not returned to the debtor if he attempts to repay his prior debt with money (Rambam Sefer Mishpatim, Hilkhos Malve VeLoveh 22:17; Shulhan Arukh, Hoshen Mishpat 103:10).

From when does he consume the produce of that land – **אָמַת אֲכִיל פְּרִי:** If one seizes a field as payment for a debt owed him, he consumes its produce after the days of proclamation conclude, in accordance with the later commentaries, who rule according to Rava in the dispute with Abaye (Rambam Sefer Mishpatim, Hilkhos Malve VeLoveh 22:12 and Maggid Mishne there; Shulhan Arukh, Hoshen Mishpat 103:1).

One who rents a cow from another and this renter then lends it to another person – **הַשּׁוֹר פָּרָה מִתְּחִבּוֹ וְהַשְׁאִילָה:** If one rents a cow and lends it to another, and the cow dies or is taken by force while it is in the borrower's possession, then the borrower compensates the owner for the loss of his cow. This ruling is in accordance with the statement of Rabbi Yosei and the conclusion of the Gemara.

If the owner of the cow said to the renter: If you so desire, lend the animal to another and you will litigate with the borrower, and then the animal dies, the borrower pays the renter (Rambam Sefer Mishpatim, Hilkhos Sekhirut 1:6; Shulhan Arukh, Hoshen Mishpat 307:5).

**אָגְבֵּה אִיהוּ בְּחֻבוֹ, פָּלֶנְיַ בְּהַרְבָּ אַחֲרָה
רַבְנִיא. חֶדֶם אָמַר: הַדָּרָה, וְחוּד אָמַר: לֹא
הַדָּרָה.**

**מַאוֹ דָּמָר לֹא הַדָּרָה - סְבָר: הַאֲיָנוּ
מַעֲלָאָה הִיא, דָּהָא מַדְעַתָּא דְּנַפְשָׁתָה
אָגְבֵּה. וּמְאָן דָּמָר הַדָּרָה - סְבָר:
לֹא זְבַּי מַעֲלָאָה הוּא, וְהַאֲיָ דָּאֲגֵבָה
מַדְעַתָּה וְלֹא אַתָּא לְדִינָה - מַחְמָת
כִּיסְפָּא הַוָּא דְּאֲגֵבָה.**

**מִמְּאִימָת אֲכִיל פְּרִי? רַבָּה אָמַר: מִפְּ
מַטְאָא אַדְרָכָתָא לִקְיָה, אַבְּיָ אָמַר: עֲדָיו
בְּחִתּוּמִי זְכִין לוֹ.**

רַבָּא אָמַר: מִפְּ שְׁלִימָו יְמִי אַכְרוֹתָא.

**מַתָּנִי' הַשּׁוֹר פָּרָה מִתְּחִבּוֹ וְהַשְׁאִילָה
לְאַחֲרָה וּמִתָּהָ בְּדָרְכָה - יִשְׁבַּע הַשּׁוֹר
שְׁמַתָּה בְּדָרְכָה, וְהַשׁוֹאֵל שְׁלָמָם לְשּׁוֹר.
אַמְּרֵבָה יוֹסֵי: בִּיצְדָּה הַלָּה עֲשָׂה סְתוּרָה
בְּפִרְתּוֹ שֶׁל חִבּוֹ? אַלְאָ, תְּחֹזֵר פָּרָה
לְבָשָׁלִים.**

With regard to a case where the debtor, not the court, authorized his creditor to repossess the land for his debt,^h and now he seeks to pay his debt and reclaim it, Rav Aha and Ravina disagree. One says: If he pays the debt, the repossession based on the appraisal is reversed and he reclaims the land. And one says: The repossession based on the appraisal is not reversed.

The Gemara elaborates: The one who says that the repossession based on the appraisal is not reversed holds that this is a full-fledged sale, as he authorized the repossession at his own initiative. Consequently, he cannot retract it. And the one who says that the repossession based on the appraisal is reversed holds that it is not a full-fledged sale. And the fact that he authorized the repossession at his initiative and did not wait to come to court for a ruling that his land be repossessed does not make it a full-fledged sale. It was only due to his desire to avoid embarrassment that he authorized the repossession.

The Gemara clarifies the halakhot of repossession: And when a creditor repossesses the debtor's land, from when does he consume the produce of that land?^h Rabba said: He consumes the produce from the time when the document of authorization reaches his possession. This is a document that authorizes him to repossess the property of the debtor in payment of the debt wherever that property is located. Abaye said: He need not wait until he receives that document. Rather, the document's witnesses, with their signatures, acquire the debtor's land on his behalf.ⁿ From the moment they sign the document, the land is his.

Rava said: He consumes the produce from the time when the days of proclamation conclude. After property belonging to the debtor is located, the court proclaims that the property will be auctioned to raise funds to repay the debt. Therefore, even after the document of authorization reaches him, the creditor is not entitled to the produce, as someone else may purchase it. If the creditor enters the highest bid, he is entitled to the produce.

MISHNA In the case of one who rents a cowⁿ from another, and this renter then lends it to another person,^h and the cow dies in its typical manner, i.e., of natural causes, in the possession of the borrower, the renter takes an oathⁿ to the owner of the cow that the cow died in its typical manner, and the borrower pays the renter for the cow that he borrowed. A renter is exempt in a case of damage due to circumstances beyond his control, including death, but a borrower is liable to compensate the owner even for damage due to circumstances beyond his control. Rabbi Yosei said: How does the other party, i.e., the renter, do business with and profit from another's cow?ⁿ Rather, the value of the cow should be returned to the owner. The renter need not take an oath, but the borrower must compensate the owner of the cow.

NOTES

The document's witnesses with their signatures acquire the debtor's land on his behalf – **שְׁעִיר בְּחִתּוּמִי זְכִין לוֹ:** This use of language here is symbolic, as since this is a document issued by the court, there is no significance to witnesses' signatures on this document. Rather, it means that the writing and signing of the court's decision transfers the rights to him.

One who rents a cow – **הַשּׁוֹר פָּרָה:** The early commentaries asked: Why is this halakha taught specifically with regard to a renter and not with regard to bailees in general? The Ritva explains that it is prohibited for other bailees to utilize the deposit, but the renter receives the deposit for the express

purpose of using it. For this reason, it is permitted for him to lend it to another person. Others explain that the mishna specifically mentions a renter since it was previously stated in the Gemara that the legal status of renting is similar to that of acquisition for a limited period. The renter has rights to the item itself, and when the borrower returns it, he returns it to the renter, who may benefit from it (Rashash).

The renter takes an oath – **שְׁבַע הַשּׁוֹר:** The renter may take an oath that he was there at the time that the cow died. If he was not there, he can bring the borrower to testify that the cow in fact died. The borrower is liable to pay for the cow

in any event. Consequently, he does not have a vested interest in the outcome of the case, and he may serve as a witness (Ritva).

How does the other party do business with another's cow – **בִּיצְדָּה הַלָּה עֲשָׂה סְתוּרָה שֶׁל חִבּוֹ:** Some explain that, according to Rabbi Yosei, the halakha of Rabbi Natan applies: If Reuven owes Shimon money and Shimon owes Levi money, then Reuven owes Levi money. Since the renter is a middleman as far as the animal is concerned, all obligations are directly between the owner and the person who was most recently in possession of the deposit (see Ritva).

גמ' אמר ליה רב אידי בר אבין
לאבויי מקיד שוכר במאית קני להאי
פרה - בשביעה,

ונימא ליה משכיר לשוכר: דל אנט
ודל שביעתך, ואננא משתחעננא דינא
בחדו שזאל. אמר ליה: מי סברת שוכר
שבובעה הוא דקא קני לה? משעת
מייתה הויא דקני, ושבובעה כדי להיפס
דעתו של בעל הבית.

אמר רבי זירא: פעמים שהבעל
משלמיין כפיה פרות לשוכר. היכי דמי?
אגורה מיגיה מאה יומי, והדר שייללה
מייטה תשעים יומי. הדר אגורה נייטה
תקמן יומי, והדר שייללה מיגיה שבעין
יום, ומיתה בתוך ימי שאלה. ואכל
שאלה ושאלה מתייבח חדא פרה.

אמר ליה רב אחא מדייטי לרביבנא:
מכדי חדא פרה היא, עיילה ואפקה,
אפקה משכירות ועיילה לשאלה,
אפקה משאלה ועיילה לשכירות!
אמר ליה:ומי איתא לפרק בעינא.
דינמא ליה ה'כ?

מר בר רב אשוי אמר: אין לו עליון
אללא שתי פרות, חדא לשאלה וחדרא
דשכירות, שום שאלה אחת היא.
ושום שכירות אחת היא. דשאלה -
קני לממי, דשכירות - עבר ביה ימי
שכירותיה, ומיהדר ליה למורה.

אמר רבי יומיה: פעמים ששניהם
בחטא,

GEMARA Rav Idi bar Avin said to Abaye: After all, with regard to the renter, with what does he acquire this cow to the extent that one who borrows the cow from him is liable to compensate him if it dies? He acquires it with an oath that he took to the owner of the cow that the cow died of natural causes.

The Gemara asks: But since the acquisition is effected by the renter's oath, let the one who rented his animal for hire say to the renter: Remove yourself and remove your oath.^N I do not want to deal with you at all in this case, and I will litigate with the borrower to recover my cow. Abaye said to Rav Idi bar Avin: Do you hold that it is with an oath that the renter acquires the cow? That is not so, as from the moment of the cow's death, the renter acquires the cow. From the moment the cow dies in the possession of the borrower, the renter has the right to receive another cow in exchange. And this oath that the renter takes to the owner of the cow is not required by the halakha. Rather, he takes the oath to alleviate the concerns of the owner, so that the owner will not suspect him of negligence. Consequently, the owner of the cow cannot litigate with the borrower, and even if he waives his right to demand an oath from the renter, he is unable to receive a cow from the borrower.

Rabbi Zeira says: According to the halakha in the mishna, there are times when the owner pays several cows to the renter. What are the circumstances? In a case where the renter rented a cow from him for one hundred days, and the owner of the cow then borrowed that cow^N from the renter for ninety days, and the renter then rented that cow from the owner for eighty days, and the latter then borrowed that cow from the renter for seventy days, and that cow died within the seventy-day period of its borrowing, then for each and every occasion of borrowing of the cow, the owner, who then became the borrower, owes one cow. Since there were two discrete acts of borrowing and two discrete acts of rental, the owner owes him four cows, two outright as compensation for the borrowed cows that died, and two cows for the renter to use for the duration of his rental periods.

Rav Aha of Difti said to Ravina concerning this halakha: After all, it is one cow, and he introduced it into one legal status and removed it from another legal status. He removed it from the status of rental and he introduced it into the status of borrowing; he removed it from the status of borrowing and introduced it into the status of rental. How then does the owner pay multiple cows for one cow? Ravina said to Rav Aha: And is the cow intact so that the owner could say this to the renter: Here is your cow? Since the borrower cannot return the cow to the creditor, he is liable to return that which he committed to return, and he committed to return two cows, not one.

Mar bar Rav Ashi said a third opinion: The renter has against the owner only a claim of two cows, one for the borrowing done by the owner, and one for fulfillment of his rental agreement. This is because the category of borrowing is one and the category of rental is one.^N As for the cow that is repayment for the borrowing, the renter acquires it completely. And as for the one for the rental, he works with it for the duration of its rental period and then he returns it to its owner.

Apropos the situations described in the mishna, Rabbi Yirmeya says: If the renter and the borrower each took a false oath and are liable to bring offerings for their false oaths, there are times that both are liable to bring a sin-offering;

NOTES

Remove yourself and remove your oath – **דל אנט נידל שביעתך**: Tosafot explains that if the renter is unable to take an oath at all, and he provides no witnesses and no other proof, then even according to Rabbi Yosei, the borrower litigates with the renter and the renter litigates with the owner of the animal.

דל אנט נידל שביעתך: The renter rented a cow from him for one hundred days and the owner of the cow then borrowed that cow – **אורה מיגיה**: According to the Ra'avad, the Gemara is referring to a case where one rented the cow, worked it for ten days, and then lent it, with the process repeating itself. The Ritva explains that all of these rentals and borrowings occurred on one day.

שום שכירות אחת היא – The category of rental is one – **אורה מיגיה וידר שייללה**: The later commentaries discuss whether the statements of Rav Aha of Difti and of Mar bar Rav Ashi are one opinion or two opinions. The essence of the opinion of Mar bar Rav Ashi is that the obligation takes effect with regard to the cow itself and is not an abstract obligation. Since there is only one cow, there can be liability to pay for only one cow (*Shita Mekubbetz*).

Perek III
Daf 36 Amud a

BACKGROUND

Sin-offering – חטאת: If one unwittingly commits a transgression whose punishment is *karet* when performed intentionally, he is liable to bring a sin-offering. The transgressor must have remained unwitting throughout his performance of the act. He brings a female lamb or goat less than one year old as his sin-offering. It is slaughtered in the north of the Temple courtyard, and its blood is received there. The blood is sprinkled on each of the four corners of the altar. The fats of the sin-offering are burned on the altar, and its meat is eaten by the priests. Other sin-offerings are brought by individuals at the conclusion of a period of ritual impurity, e.g., a woman after childbirth, as part of the purification rites. There are other sin-offerings sacrificed to atone for the sins of the community and special sin-offerings brought by the communal leaders to atone for transgressions. The Gemara here addresses a sliding-scale sin-offering brought for violation of an oath.

Guilt-offering – אשם: A guilt-offering is an offering of the most sacred order. It is eaten exclusively by priests on the day it is offered and during the following night. The sacrifice of the guilt-offering is fundamentally parallel to that of a sin-offering, other than a slightly different procedure for the sprinkling of the blood. Like the sin-offering, the guilt-offering is a propitiatory offering, brought to gain atonement for human failing.

There are six circumstances when one is obligated to bring a guilt-offering. In five of those circumstances, one brings a definite guilt-offering, as the sinner is aware that he sinned and that he must atone for his conduct or undergo purification. The sixth circumstance is where one is uncertain whether he committed a sin for which he is liable to bring a sin-offering. In that case, he brings a provisional guilt-offering.

The Gemara here addresses a case where one takes an oath denying a debt and later confesses that he took a false oath and owes money. This individual brings a ram as the guilt-offering for robbery.

HALAKHA

A false oath that involves denial of a monetary matter a guilt-offering – בְּפִרְיוֹת מִמוֹן אָשָׁם: In the case of one who took a false oath with regard to a deposit, or one who took a false oath to exempt himself from a monetary debt, beyond repaying the debt to the claimant and adding the one-fifth payment, he brings a guilt-offering as atonement. This is the *halakha* whether he took a false oath intentionally or unwittingly (Rambam *Sefer Hafla'a, Hilkhot Shevuot* 1:9).

A false oath on an utterance of the lips, a sin-offering – בְּשִׁיטֵי שְׁפָתִים חֲטָאת: If one takes an oath falsely, whether it relates to an incident that took place in the past or whether it relates to an incident that he plans on performing in the future and he fails to do so, it is a false oath. If one took a false oath unwittingly, he is liable to bring a sliding-scale sin-offering (Rambam *Sefer Hafla'a, Hilkhot Shevuot* 1:3).

פְּעֻמִים שְׁשִׁנִים בְּאָשָׁם, פְּעֻמִים שְׁהַשּׁוֹכֵר בְּחַטָּאת וְהַשּׁוֹאֵל בְּאָשָׁם,
פְּעֻמִים שְׁהַשּׁוֹכֵר בְּאָשָׁם וְהַשּׁוֹאֵל בְּחַטָּאת.

הָא בַּיּוֹד? בְּפִרְיוֹת מִמוֹן – אָשָׁם, בְּיטוֹן – שְׁפָתִים – חֲטָאת.

פְּעֻמִים שְׁשִׁנִים בְּחַטָּאת – בָּגָזון
שְׁמַתָּה בְּדָרְכָה, וְאִמְרוּ מוֹתָה מִחְמָתָה מִלְאָכָה.
רְבִיּוֹן כֶּן וּבְנֵי כֶּן מִיְפְּטַר פְּטוֹר
בְּחַטָּאת, שְׁוֹאֵל רְבִיּוֹן כֶּן וּבְנֵי כֶּן חַיְבֵי מִיתְחַיֵּב – בְּחַטָּאת.

פְּעֻמִים שְׁשִׁנִים בְּאָשָׁם – בָּגָזון
שְׁגַנְגַבָה, וְאִמְרוּ מוֹתָה מִחְמָתָה מִלְאָכָה.
דְּתַרְוִיְיָדוֹ קָא בְּפִרְיוֹת מִמוֹן, דְּהָנוֹ
מִתְחַיֵּב וְקָא פְּטוֹר נִפְשִׁיָּהוּ.

שְׁוֹכֵר בְּחַטָּאת וְשְׁוֹאֵל בְּאָשָׁם – בָּגָזון
שְׁמַתָּה בְּדָרְכָה, וְאִמְרוּ מוֹתָה מִחְמָתָה מִלְאָכָה.
שְׁוֹכֵר וּבְנֵי כֶּן וּבְנֵי כֶּן מִיְפְּטַר פְּטוֹר
בְּחַטָּאת – חַיֵּב בְּחַטָּאת, שְׁוֹאֵל דְּמִיתְחַיֵּב
בְּמַתָּה בְּדָרְכָה, וּקָא פְּטוֹר נִפְשִׁיהָ
בְּמַתָּה מוֹתָה מִלְאָכָה – בְּאָשָׁם.

there are times that both are liable to bring a guilt-offering; there are times that the renter is liable to bring a sin-offering^b and the borrower is liable to bring a guilt-offering;^{BN} there are times that the renter is liable to bring a guilt-offering and the borrower is liable to bring a sin-offering.

The Gemara elaborates: **How so?** One who takes a false oath that involves the denial of a monetary matter is liable to bring a guilt-offering.^H One who takes a false oath on an utterance of the lips that involves no denial of a monetary debt is liable to bring a sin-offering.^H

The Gemara elaborates: There are times that both are liable to bring a sin-offering. This is in a case where the cow died in its typical manner and the renter and the borrower both said that it died due to circumstances beyond his control. A renter, who in any case is exempt from paying whether it died of natural causes or due to circumstances beyond his control, is liable to bring a sin-offering if he took a false oath. A borrower, who in any case is liable to pay regardless of the circumstances of its death, is liable to bring a sin-offering if he took a false oath. In both cases, the oath involved no denial of monetary debt.

There are times that both are liable to bring a guilt-offering. This is in a case where the cow was stolen from a borrower, and the renter and the borrower both said that it died due to ordinary labor.^N That is a case where both denied a monetary matter, as they are both liable to pay in a case of theft, and both take an oath on a claim with which they seek to exempt themselves.

There are times when a renter is liable to bring a sin-offering and a borrower is liable to bring a guilt-offering. This is in a case where the cow died in its typical manner and the renter and the borrower both said that it died due to ordinary labor. A renter, who in any case is exempt, as he is exempt from paying in cases where the ox was damaged or died due to circumstances beyond his control, is liable to bring a sin-offering, as the false oath involved no denial of monetary debt. A borrower, who is liable to pay when the cow died in its typical manner and attempted to exempt himself with the claim that it died due to ordinary labor, is liable to bring a guilt-offering.

NOTES

That the renter is liable to bring a sin-offering and the borrower is liable to bring a guilt-offering – שְׁהַשּׁוֹכֵר בְּחַטָּאת וְשְׁהַשּׁוֹאֵל בְּאָשָׁם: One who takes a false oath or an oath in vain violates the severe prohibition: "You shall not take the name of the Lord your God in vain" (Exodus 20:7; Deuteronomy 5:11). There are many detailed halakhot concerning the atonement the Torah affords for certain oath-related transgressions. It is stated: "Or if a soul takes an oath clearly to utter with lips to do evil, or to do good, whatsoever it be that a man shall utter clearly with an oath, and it be hid from him; and, when he knows of it, be guilty in one of these things" (Leviticus 5:4). One who seeks atonement confesses his sins and brings a she-goat or a ewe as a sin-offering. If he is poor, he brings two pigeons or two turtledoves. If even that offering is beyond his means, he brings one-tenth of an ephah of fine flour. This is known as a sliding-scale offering. This is the process of atonement for an oath on an utterance. Based on the description in the verse, the oath did not benefit the person in any way. Rather, it related to either an event that transpired or a personal obligation that he accepted.

With regard to one who takes a false oath by means of which

he attempts to achieve financial gain, the Torah writes: "If anyone sin, and commit a trespass against the Lord... Or have found that which was lost, and deal falsely therein, and take an oath to a lie... Or anything about which he has sworn falsely, he shall restore it in full, and shall add the one-fifth part more, thereto... And his guilt-offering he shall bring, a ram without blemish out of the flock" (Leviticus 5:21–25). This is a guilt-offering for robbery, and it is brought whether the robbery was intentional or unwitting. One brings the offering when he takes a false oath with regard to money that he owes for any reason. The details of these halakhot are discussed in tractate Shevuot.

Died due to ordinary labor – מוֹתָה מִחְמָתָה מִלְאָכָה: The commentaries ask: What monetary debt does the borrower deny? Doesn't the renter support his testimony, as he corroborates that the animal died due to ordinary labor and therefore demands nothing from him? They explain that the reference here is to a case where each takes an oath separately: If the borrower takes an oath in response to the claim of the renter, the borrower is liable to pay. If the renter takes an oath only in response to the claim of the owner, the renter is exempt (Rosh).

שוכר באשם וושאל בבחשאת – כגון שגנבה, ואמרו מיתה ברורה. שוכר הוא דמייחיב בגנבה ואבידה, וכי פטור נפשיה במתה ברורה – באשם. שואל, רביון בן ובין בן חיבי מיחייב – בחשאת.

מאי קא משמע לנו? לאפיקי מדרבי אמר דאמרו: כל שבועה שחדיינום משביעים אותה – אין חיבון עליה משום שבועת ביטוי, שנאמר "או נפש כי תשבע לבטיא בשפתיים" – כי תשבע מעצמה. קא משמע לנו דלא רבבי אמר.

אתמר, שומר שמסור לשומר. רב אמר:
פטור, ורבי יוחנן אמר: חיב.

אמר אביי: לטעמיה דרב לא מביעיא שומר חנם שמסור לשומר שכיר, רעלוי עלייה לשמריתו. אלא אפילו שומר שכיר שמסור לשומר חנם. גור羞 גור羞 לשמריתו – פטור. Mai טעם – זהא מסקה להזונ דעת.

ולטעמיה דרבי יוחנן, לא מביעיא שומר שכיר שמסור לשומר חנם רעושי גור羞 לשמריתו, אלא אפילו שומר חנם שמסור לשומר שכיר, רעלוי עלייה לשמריתו – חיב. דאמרו ליה: אין רצוני שיהא פקדוני ביד אחר.

There are times when a renter is liable to bring a guilt-offering and a borrower is liable to bring a sin-offering. This is in a case where the cow was stolen from the borrower, and the renter and the borrower both said that it died in its typical manner. The renter, who is liable to pay in cases of theft and loss and attempted to exempt himself with the claim that it died in its typical manner, is liable to bring a guilt-offering. A borrower, who in any case is liable to pay, is liable to bring a sin-offering.

The Gemara asks: What is Rabbi Yirmeya teaching us with this systematic presentation of these cases? They are merely details based on established halakhic principles. The Gemara answers: His statement serves to exclude the opinion of Rabbi Ami,^H who says: With regard to any oath that the judges administer, one is not liable to bring a sin-offering for taking a false oath on an utterance, as it is stated in the passage concerning the obligation to bring an offering for taking a false oath: "Or if a soul takes an oath clearly to utter with lips" (Leviticus 5:4). The Gemara infers: The liability to bring an offering for taking a false oath applies only to one who takes an oath on his own initiative, but not when the oath is administered by others. Rabbi Yirmeya teaches us that the halakha is not in accordance with the opinion of Rabbi Ami, as one is liable to bring a sin-offering for taking a false oath on an utterance even if it was administered by another.

It was stated that there is an amoraic dispute with regard to a bailee who conveyed to another bailee^H the deposit with which he was entrusted. Rav says: He is exempt from payment in the same cases in which he is exempt when the deposit is in his possession. And Rabbi Yohanan said: He is liable to pay even in cases of damage due to circumstances beyond his control.

Abaye says: According to Rav's line of reasoning, it is not necessary to state his ruling in a case where he was initially an unpaid bailee who conveyed the deposit for safeguarding to a paid bailee, as in that case the unpaid bailee enhanced the level of his safeguarding,^N since a paid bailee is liable to pay in instances where an unpaid bailee is exempt. But even in the case of a paid bailee who conveyed the deposit for safeguarding to an unpaid bailee, where the paid bailee diminished the level of his safeguarding, he is exempt. What is the reason? He is exempt because he conveyed the deposit to a mentally competent person, thereby effectively safeguarded the deposit.

According to Rabbi Yohanan's line of reasoning, it is not necessary to state his ruling in a case where he was initially a paid bailee who conveyed the deposit for safeguarding to an unpaid bailee, as the paid bailee diminished the level of his safeguarding, since an unpaid bailee is exempt in instances where a paid bailee is liable to pay. But even in the case of an unpaid bailee who conveyed the deposit for safeguarding to a paid bailee, where the unpaid bailee enhanced the level of his safeguarding, he is liable to pay. What is the reason? He is liable because the owner of the deposit said to him: It is not my desire that my deposit be in the possession of another bailee.^N

HALAKHA

ל: לאפיקי מדרבי אמר. To exclude the opinion of Rabbi Ami – In the case of a bailee who is sued in court and takes an oath supporting a false claim, if he garnered no financial gain from that claim, he is liable to bring a sin-offering for taking a false oath (Rambam Sefer Hafla'a, Hilkhos Shevuot 7:2, 8:5).

A bailee who conveyed the deposit to another bailee – **שומר שמסר לשותם:** A bailee who conveys a deposit to a different bailee is liable to pay for damage to the deposit. This is the halakha even if the bailee conveys the deposit to a bailee who has a higher level of responsibility for the deposit and consequently the safeguarding is enhanced, e.g., in a case where an unpaid bailee conveys the deposit to a paid bailee, as the owners can say: We do not trust the oath of the second bailee. Consequently, if it is known that the owner regularly entrusts the second bailee with his deposits, the first bailee is exempt, provided the level of safeguarding is not diminished, as it would be in the case of a paid bailee conveying a deposit to an unpaid bailee. If the first bailee diminished the level of safeguarding, it is a case of negligence, and he is liable to pay, in accordance with the statement of Rabbi Yohanan and the ruling of Rava (Rambam Sefer Mishpatim, Hilkhos Sekhirut 1:6 and Sefer Nezikin, Hilkhos Nizkei Mamon 4:11; Shulhan Arukh, Hoshen Mishpat 291:26, 305:5, 396:9).

NOTES

דעלוי עלייה לשמריתו: Most of the early commentaries agree that the enhancement and diminishment mentioned in this context are not stated with regard to the monetary liability of the first bailee to the owner. Rather, the assumption is that a paid bailee is more meticulous in safeguarding the deposit than an unpaid bailee (Ramban; Rashba).

_it is not my desire that my deposit be in the possession of another bailee – אין רצוני שיהא פקדוני ביד אחר: Some of the early commentaries explain that the bailee must pay because the legal status of one who deviates from the desire of the owner is that of a robber (Rif). Tosafot explain that it is as though the owner stipulated an explicit condition that if the bailee deviates from the owner's desires, the bailee is responsible for the deposit regardless of what occurs. The Ra'avad explains that it is known that there are people whose luck is bad, and different accidents befall them. The owner therefore insists that his deposit be safeguarded by a specific person.

אמור ורב חסדא: הִא זָרַב לְאוֹ בְּפִירּוֹשׁ אֶתְמָרָא,
אֵלָא מְכֻלָּא. דְּהַנּוּ גִּיאָי דְּכָל יוֹמָא הַו
מִפְקָדִי מַרְיַיחוּ גַּבְהָ דְּהַהְיָא סְבָתָא. יוֹמָא חֲדָר
אַפְקָדִינָהוּ לְבַבִּי חֲדָר מִיעִיחָהוּ, שָׁמַע קָלָא בַּי
הַלְּלוּא, נַפְקָח אָזָל, אַפְקָדִינָהוּ לְבַבִּה דְּהַהְיָא
סְבָתָא. אַדְאָזָל וְאַתָּא אֲגָנוּבָן מַרְיַיחָה

אתָא לְקַמְּיהָ דְּרָב וְפֶטְרוּהָ. מַאן דְּתַא סְבָרָא
מִשּׁוּם שְׁמַר שְׁמַר לְשׁוּמָר – פָּטוּר, וְלֹא הִיא.
שָׁאַמְּנִי הַתָּם, דְּכָל יוֹמָא נִמְיָה אַיִלָּה גַּפְיַיחָה גַּבְהָ
דְּהַהְיָא סְבָתָא הַו מִפְקָדִי לְהָ.

תַּיבְרֵי אַמִּי וְקָאָמָר לְהָ לְהָא שְׁמַעְתָּא.
אַיִתְבִּיהָ רַבִּי אַבָּא בָּר מְמַלְּ לְרַבִּי אַמִּי:
הַשְּׁכָרָה מִתְּחִיבוֹ וְהַשְּׁאַלָּה לְאַחֲרָה, וּמִתָּה
בְּדָרְכָה – יִשְׁבַּע הַשּׁוּכָר שְׁמַתָּה בְּדָרְכָה,
וְהַשּׁוֹאֵל מִשְׁלִים לְשּׁוּכָר. וְאִם אַיִתָּא, לִמְאָ
לְיהָ: אַיִן רַצְוַנִּי שִׁיהָא פְּקָדוֹנִי בַּדְּאַחֲרִי אָמָר
לְיהָ: הַכָּא בְּמַאי עַסְקִין – בְּשַׁגְּתָנוּ לְרַשׁוֹת
הַבְּעִילִים לְהַשְּׁאֵל.

אֵי הַכִּי, לְבַעַלִים בַּעַי לְשָׁלֹומי! דְּאָמְרוּ לְיהָ:
לְדָעַתְךָ.

מִתָּבְרֵמִי בָּר חֶמְאָ: הַפְּקָדִיד מַעֲוֹת אַצְלָ
חַבְיוֹן, צְרוּן וְהַפְּשִׁילָן לְאַחֲרָיו, מַסְקָן לְבָנָנוּ
– וּבְתוֹךְ הַקְּטָבִים, נַעַל בְּפִנֵּיכֶם שְׁלָא בְּרוֹאֵי –
תַּיְיָבָ, שְׁלָא שְׁמַר בְּדָרְךָ הַשּׁוּמָרִים.

תַּעֲמֵד – דְּקָטָנִים, הָא גַּדּוֹלִים – פָּטוּר. אַמְּנָא?
ニִמְיָה לְיהָ: אַיִן רַצְוַנִּי שִׁיהָא פְּקָדוֹנִי בַּדְּאַחֲרִי!

אמָר וְבָא: בְּלִ הַמִּפְקָדִיד

Rav Hisda said: This statement that is attributed to Rav was not stated explicitly. Rather, it was inferred from another statement of his, as it is related: There were these gardeners who each day would deposit their spades with a certain old woman. One day they deposited their spades with one of gardeners. He heard noise from a wedding hall and set out and went there. He deposited the spades with that old woman. In the time that he went and came back from the wedding, their spades were stolen.

The case came before Rav, and Rav exempted the gardener who deposited the spades with the old woman. One who observed Rav's ruling thought that Rav issued that ruling due to the fact that a bailee who conveyed a deposit to another bailee is exempt. But that is not so. There, in the case of the spades, it is different, as the gardeners themselves would deposit their spades with that old woman. Since the gardeners cannot claim that it is not their desire for their deposit to be in the possession of this old woman, the gardener who did so is exempt.

The Gemara relates: Rabbi Ami sat and stated this halakha. Rabbi Abba bar Memel raised an objection to Rabbi Ami from the mishna: In the case of one who rents a cow from another, and this renter lends it to another person, and the cow dies in its typical manner in the possession of the borrower, the halakha is that the renter takes an oath to the owner of the cow that the cow died in its typical manner, and the borrower pays the renter for the cow that he borrowed. And if the statement of Rabbi Yohanan is so, let the owner say to the renter: It is not my desire that my deposit be in the possession of another bailee, and the renter should be liable to pay because he violated the owner's wishes. Rabbi Ami said to him: With what are we dealing here? It is a case where the owner gave the renter permission to lend the deposit to another.

The Gemara asks: If so, the borrower should be required to pay the owners, as the owner sanctioned the borrowing. Rabbi Abba bar Memel answers: The case in the mishna is one where the owner said to the renter: Lend this deposit to another at your discretion. Therefore, it is not considered as if the owner lent it to the borrower.

Rami bar Hama raises an objection from a mishna (42a): In the case of one who deposited coins with another, and that bailee bound it in a cloth and slung it behind him,^h or conveyed them to his minor son or daughter for safeguarding, or locked the door before the coins in an inappropriate, i.e., insufficient, manner to secure them, the bailee is liable to pay for the coins, as he did not safeguard the coins in the manner typical of bailees.

The Gemara infers: The reason he is liable to pay is that he conveyed the coins to his minor children, but if he conveyed them to his adult son or daughter he is exempt. Why? Let the owner say to him as Rabbi Yohanan said: It is not my desire that my deposit be in the possession of another bailee, and therefore even if the children are adults the bailee should be liable to pay.

Rava said: No proof can be cited, as it is clear that in the case of anyone who deposits an item with another,

HALAKHA

Bind it in a cloth and slung it behind him – צְרוּן וְהַפְּשִׁילָן לְאַחֲרָיו: When money is deposited with a bailee, he must bind it and keep the money pouch in his hand or in his sight. If he did not bind it in that way, he bears responsibility for the loss of the

money, even if it is taken from him due to circumstances beyond his control, as he was negligent (Rambam Sefer Mishpatim, Hilkhos She'ela UFitkadon 4:6; Shulchan Arukh, Hoshen Mishpat 291:20).

Perek III
Daf 36 Amud b

על דעת אשתו ובניו הוא מפקיד.

אמר ר' נהרדע: דיקא נמי, דקתני: או שטCKERן לבנו ובטו הקטנים - חייב. הא לבנו ולבטו הגודלים - פטור. מפלל דלאחרים, לא שנא גודלים - ולא שנא קטנים - חייב. ראמ' בן - ליתני קטנים סתמא. שמע מינה.

אמר ר' בא: הלכתא, שומר שמסר לשומר - חייב. לא מביעיא שומר שבר שמסר לשומר חנם. גורעים גורעה לשמרתו. אלא אפלו שומר חנם שמסר לשומר שבר - חייב. מא טעם מא - דאמר ליה: אתה מהימנת לי בשבועה, האיך לא מהימן לי בשבועה.

אתמר, פשע בה ויצאת לאגם, ומיתה בדרכה. אבוי משמימה דרבבה אמר: חייב, רבא משמימה דרבבה אמר. פטור.

אבוי משמימה דרבבה אמר: חייב, כל דינא דלא כי כי דאי דינא לאו דינא הו. לא מביעיא למאן דאמר תחילתו בפשעה וסופו באונס חייב - דחייב. אלא אפלו למאן דאמר פטור - חכא חייב. מא טעם מא - דאמרין: הבלא דאגמא קטללה.

it is with the awareness that at times the bailee's wife and his children will safeguard the item that he deposits it,^{NH} as the bailee cannot be with the deposit at all times.

The Sages of Neharde'a say: The language of the mishna is also precise, as it teaches: Or if he conveyed the coins to his minor son or daughter for safeguarding, he is liable to pay. But if he conveyed them to his adult son and daughter, he is exempt. By inference, one can conclude that with regard to others, it is no different if they are adults and it is no different if they are minors. Either way, the bailee is liable to pay, as, if there were a difference, let the tanna teach: If he conveyed the coins to minors, without qualification. The Gemara concludes: Since the tanna specifically addressed the case of one's minor children, learn from the wording of the mishna that the difference between minors and adults exists only with regard to one's children.

Rava says: The halakha is: A bailee who conveyed a deposit to another bailee is liable to pay. It is not necessary to say that this is the halakha if he was a paid bailee who conveyed the deposit to an unpaid bailee, as in that case the first bailee diminished the level of his safeguarding, as an unpaid bailee is exempt from paying in instances where a paid bailee is obligated to do so. But even if it was initially an unpaid bailee who conveyed the deposit for safeguarding to a paid bailee, the first bailee is liable to pay. What is the reason that he is liable in that case? He is liable, as the owner of the deposit can say to him: You are trustworthy to me when you take an oath that the item was stolen or lost. That person is not trustworthy to me when he takes an oath.^N

It was stated that there is an amoraic dispute: In the case of one who was negligent in safeguarding an animal, and it went into a marsh, where it was susceptible to thieves and predatory animals, but it died^H in its typical manner despite this negligence, i.e., it was neither stolen nor devoured, Abaye says in the name of Rabba: The bailee is liable to pay. Rava says in the name of Rabba:^N The bailee is exempt from doing so.

The Gemara elaborates. Abaye said in the name of Rabba: He is liable to pay, and any judge who does not rule^N in accordance with this halakha is not a judge. It is not necessary to say that the bailee is liable in this case, according to the one who says: In a case where the incident was initially through negligence and ultimately by accident,^H one is liable to pay. According to this opinion, it is obvious that the bailee is liable to pay. But even according to the one who says: If the incident was initially through negligence and ultimately by accident one is exempt, here the bailee is still liable to pay. What is the reason that he is liable? It is because we say: The air of the marsh killed the animal.^N The negligence led to the death of the animal, and it was not due to circumstances beyond his control.

NOTES
It is with the awareness that at times the bailee's wife and his children will safeguard the item that he deposits it – על דעת אשתו ובניו הוא מפקיד: The bailee leaves his own property in their care, and the standards for the safeguarding of others' property is no greater than the safeguarding of his own property (Rabbeinu Hananel).

That person is not trustworthy to me when he takes an oath – לאן לא מביעין לי בשבועה: Several conclusions result from this rationale. If there were witnesses, the bailee is not required to take an oath. Consequently, according to this opinion, if he conveys the deposit to another person, he is not liable to pay, as the conveyance per se is not an act of negligence. There is a dispute with regard to a case where the second bailee is no less trustworthy and perhaps even more trustworthy than the first. According to Tosafot, since he is trustworthy, the owner cannot refuse to accept his oath. The Rosh says that there is no general rule with regard to this matter, and the owner can say that he does not trust even one who is trustworthy.

Abaye says...Rava says in the name of Rabba – ... אבל דינא תל לאין: It has already been noted that it is not necessarily true that one of them erred about the Sage's opinion. Rather, it is possible that Rabba said one statement first and later retracted this and said another statement. Similar situations can be found on other occasions (see Ramban and Ya'avetz).

Any judge who does not rule – אבל דינא תל לאין: This language serves to indicate that the ruling is not only in accordance with one opinion, which would enable a judge to say that he rules in accordance with the contrary opinion. Rather, this ruling is in accordance with all opinions. Therefore, anyone who rules otherwise is mistaken (*Torat Hayim*; Maharam Schiff).

הבלא דאגמא קטללה: There is no certainty that the air caused the death, as animals frequently graze in marshland and are not harmed. Nevertheless, since there was negligence at the outset, all damage is attributed to that negligence.

It is with the awareness that at times the bailee's wife and his children will safeguard the item that he deposits it – על דעת אשתו ובניו הוא מפקיד: Anyone who deposits an item with one who lives with his family is aware that at times the adult members of his household will be the ones safeguarding the item. If the bailee entrusted the item to minor members of his household or to his Canaanite slave (*Sma*), or if he entrusted the item to one who is not a member of his household and is not financially dependent upon him, it is then considered a case of a bailee who conveyed a deposit to another bailee, and he is liable to pay (Rambam *Sefer Mishpatim*, *Hilkhot Sheela UFitkadon* 4:8; *Shulhan Arukh*, *Hoshen Mishpat* 291:21).

One was negligent in safeguarding an animal and it went into a marsh but it died – תחילתו בפשעה וסופו באונס: If a bailee was negligent in safeguarding an animal, and it went into a marsh where it died of natural causes, the bailee is exempt. Although initially there was negligence, there is no difference as far as the Angel of Death is concerned. If one was negligent and the animal went into a marsh and was stolen, even if it died while in the thief's possession, the bailee bears responsibility. This is the halakha even for an unpaid bailee (Rambam *Sefer Mishpatim*, *Hilkhot Sekhirut* 3:10; *Shulhan Arukh*, *Hoshen Mishpat* 291:9).

Initially through negligence and ultimately by accident – תחילתו בפשעה וסופו באונס: If the bailee was negligent and failed to safeguard the deposit properly, and if the deposit was damaged due to circumstances beyond his control, although the damage was not caused directly by his negligence, the bailee is still liable to pay. If there is absolutely no connection between the negligence and the damage, he is exempt (Rambam *Sefer Mishpatim*, *Hilkhot Sekhirut* 3:9; *Shulhan Arukh*, *Hoshen Mishpat* 291:6 and *Sma* there).

NOTES

The Angel of Death – בָּלְאַךְ הַמֶּתֶת: Rava holds that although the air of the marsh could harm the animal, it is unreasonable to assume that it could cause the animal's death. It must have been sick before going to the marsh and it happened to die there. Some commentaries question Rava's opinion: Why, in the case where an animal in the possession of a borrower dies due to ordinary labor, is the borrower liable to pay? Couldn't he claim that with regard to the Angel of Death, i.e., death that occurred through natural causes, other factors are irrelevant, and the location of the animal's death is not taken into consideration? They answer that when borrowing an item, one explicitly assumes responsibility for any mishap that befalls the item and prevents its return to the owner.

BACKGROUND

The Angel of Death – בָּלְאַךְ הַמֶּתֶת: The Sages distinguish between deaths that are the result of an observable cause, e.g., an accident or an illness caused by exposure to inclement weather, and deaths that have no observable cause, due to some internal illness. Only the latter are attributed to the Angel of Death. The assumption was that an animal with that type of illness will die from it wherever it may be. Neither location nor exertion is the primary cause of its death.

HALAKHA

If one brought the animal to the edge of a cliff – הַעֲלָה לִפְנֵי שָׁקָר: If the bailee took the animal in his charge to the edge of a cliff and it fell, this is not considered a circumstance beyond his control, and the bailee is liable to pay. If it died there of natural causes, he is exempt (Rambam Sefer Mishpatim, Hilkhos Sekhirut 3:9; Shulchan Arukh, Hoshen Mishpat 291:6).

רְבָא מְשֻמֵּיהּ וְרֹבֶה אָמֵר: פָּטוּר, כְּלֹא מִבְּעֵיא לְמַאן דָּאָמֵר: תְּחִילוֹ בְּפִשְׁעָה וְסֹפוֹ בְּאָוֹסָטָר – רָבָטָר.
אַלְאָא אָפִילוּ לְמַאן דָּאָמֵר חַיָּב – הַכָּא
פָּטוּר. מַאי טַעַמָּא – דָּאָמְרֵין: מַלְאָן
הַמֶּתֶת, מַה לֵי הַכָּא וּמַה לֵי הַתְּסִים?

וּמוֹדי אָבִי דָי הַדָּרָא לְבִי מְרָה וּמְתָה
רָפְטוּוּ. מַאי טַעַמָּא – דָהָא הַדָּרָא לְהָ
וְלִכְאָא לְמַיְמָר הַבָּלָא דָאָגָמָא קַטְלָה.
וּמוֹדי רְבָא כְּלֹא הַיְכָא דָאָגָנְבָה גַּנְבָּ
בְּאָגָם וּמְתָה בְּרוּכָה בַּי גַּנְבָּ דְּחִיָּב.
מַאי טַעַמָּא, דָאָשְׁבָקָה מַלְאָן הַמֶּתֶת –
בְּבִיתְהָה גַּנְבָּה הָהּוּ קִימָם.

אָמַר לֵיהּ אָבִי לְרָבָא: לְדִיקָּךְ דָּאָמַר
מַלְאָן הַמֶּתֶת, מַה לֵי הַכָּא וּמַה לֵי הַתְּסִים
הָאִי דְּאוּתְבָה בְּבִי אַבָּא בָּר מִמְּלָלוּבִּ
אַמִּי, וְשַׁנְיָה לֵיהּ בְּשַׁנְתָּנוּ לוּ בְּעָלָם רִשות
לְהַשְּׂאֵל, וְלִימָא לֵיהּ: מַלְאָן הַמֶּתֶת, מַה
לֵי הַכָּא וּמַה לֵי הַתְּסִים?

אָמַר לֵיהּ: לְדִיקָּכוּ דְּמִתְנִיתָו אֵין רַצְוִי
שִׁיחָא פְּקָדוּנִי בַּיד אַחֲרִ – אַיְכָא
לְאוּתְבָה לְהָהִיא, לְדִיקָּי דָּאָמַנְתָּא אַתָּת
מַהְיִינְתָּא לִי בְּשַׁבּוּחָה וְהָאֵיךְ לֹא מַהְיָה
לִי בְּשַׁבּוּחָה – לִיכָּא לְאוּתְבָה כְּלָל.

מַחְטֵיב רַמִּי בֶּר חַמָּא: הַעֲלָה לְרֹאשׁ צָוֹן
וְגַנְפָּה – אֵין זֶה אָוָסָם, וְחַיָּב. הָא מְתָה
כְּרוּכָה – הָרִי זֶה אָוָסָם, וְפָטוּ. וְאַמְּאי?
לִימָא לֵיהּ אָוְרִיא דָהָר קַטְלָה, אֵי נִמְיָה
אַוְצָנָא דָהָר קַטְלָה!

Rava says in the name of Rabba: He is exempt, and any judge who does not rule in accordance with this halakha is not a judge. It is not necessary to say that the bailee is exempt in this case, according to the one who says: In a case where the incident was initially through negligence and ultimately by accident, one is exempt from payment. According to this opinion, it is obvious that the bailee is exempt. But even according to the one who says: In a case where the incident was initially through negligence and ultimately by accident, one is liable to pay, here the bailee is still exempt from payment. What is the reason that he is exempt? It is because we say with regard to the Angel of Death,^{NB} who causes death by natural causes: What difference is there to me if the animal was here, and what difference is there to me if the animal was there? The cause of the animal's death was natural, and there is no relevance given to the location of the death. Consequently, the bailee is exempt.

The Gemara notes: And Abaye concedes that if the animal returned from the marsh to its owner's house and died there that the bailee is exempt. What is the reason that he is exempt? He is exempt due to the fact that the animal returned, and since it was able to return there is no justification to say that the air of the marsh killed it. And Rava concedes that anytime the animal was stolen from the marsh and then dies in its typical manner in the house of the thief that the bailee is liable to pay. What is the reason that he is liable to pay? He is liable because even if the Angel of Death spared the life of the animal, it would be standing in the house of the thief due to the negligence of the bailee.

Abaye said to Rava: According to you, who said with regard to the Angel of Death: What difference is there to me if the animal was here and what difference is there to me if the animal was there? How will you explain the exchange between Rabbi Abba bar Memel and Rabbi Ami? As there is that objection that was raised by Rabbi Abba bar Memel to Rabbi Ami from the mishna with regard to one who rents a cow from another, and then lends it to another person, and Rabbi Ami answered him: It is a case where the owner gave the renter permission to lend the deposit. Abaye states his challenge: But according to your explanation, let Rabbi Ami say to him that the bailee is exempt because with regard to the Angel of Death, what difference is there to me if the animal was here, and what difference is there to me if the animal was there. If the death would have happened regardless of the location of the animal, it makes no difference whether it was in the possession of the first renter or in the possession of the one he lent it to.

Rava said to Abaye: According to you, that you teach that a bailee who conveyed a deposit to another bailee is liable to pay because the owner can claim: It is not my desire that my deposit be in the possession of another bailee, there is room to raise that objection. But according to me, as I say that a bailee who conveyed a deposit to another bailee is liable to pay because the owner can claim: You are trustworthy to me when you take an oath that the item was stolen or lost; that person is not trustworthy to me when he takes an oath, there is no room to raise that objection at all.

Rami bar Hama raises an objection to the opinion of Abaye from a mishna (93b): If one brought the animal to the edge of a cliff^H and it fell, that is not considered an accident, and he is liable to pay. One may infer that if he brought it to the edge of the cliff and it died in its typical manner, that is considered an accident and he is exempt. But why? Let the owner of the animal say to the bailee: It is the air of the mountain that killed it, or: The exhaustion from climbing the mountain killed it.

הַכָּא בְּמַאי עַסְקִים – שְׁהַעֲלָה לְמֹרֶעה
שְׁמֹן וְטוֹב. אֵי הַכָּא, נִפְלָה נִמְיָן שְׁחִידָה
לֹא לְתוֹקֵפָה, וְלֹא תְּקַפָּה.

אֵי הַכָּא, אִימָא רִישָׁא: עַלְתָּה לְרוֹאשָׁי
צִיקְוִין וְנִפְלָה – הָרִי הוּא אָנוֹם, אִיבְּשִׁיעַ
לִיהְיָה לְמִתְקַפְּהָ! לֹא צִירְכָּא, שְׁתַקְפָּתוֹ
עַלְתָּה, תְּקַפְּתוֹ וַיַּרְדָּה.

"אמור רבוי יוסי כיצד חלה עשה
סחורה בפרטתו" וכו'. אמר רב יהודה
אמר שמואל: הילכה ברבי יוסי. אמר
לייה רב שמואל בר יהונתן רב יהודה,
אמרת לו ממשימה דשמעאל: חילוק היה
רבי יוסי

The Gemara rejects this: **With what are we dealing here?** It is with a case where the bailee took the animal to a bountiful and high-quality pasture. Since shepherds typically herd their flocks there, taking the animal there is not negligent. The Gemara asks: **If so, then the bailee should be exempt even if the animal fell.** The Gemara answers: He is liable to pay because he should have subdued the animal to prevent it from falling, and he did not subdue it.

The Gemara asks: **If so, say the first clause of the mishna:** If the animal climbed to the top of a cliff and fell, it is a circumstance beyond his control and he is exempt. Shouldn't he be liable, since he was required to subdue it and prevent it from falling? The Gemara answers: **No, it is necessary for the tanna to say that the bailee is exempt only in a case where the animal overpowered him and ascended^N and the animal overpowered him and descended.** Although he attempted to prevent the animal from falling, it overpowered the bailee and fell.

§ The mishna teaches that Rabbi Yosei said: How does the other party do business with and profit from another's cow? Rav Yehuda says that Shmuel says: The halakha is in accordance with the opinion of Rabbi Yosei. Rav Shmuel bar Yehuda said to Rav Yehuda: You told us in the name of Shmuel that Rabbi Yosei was in disagreement with the first tanna

NOTES

Overpowered him and ascended – **שְׁתַקְפָּתוֹ וְעַלְתָּה:** This phrase is ostensibly superfluous. The Ra'avad explains that since the animal overpowered him and ascended the mountain, the bailee did not attempt to restrain it when it sought to descend, as he feared falling down the mountain himself.

Perek III**Daf 37 Amud a**

אַף בְּרָאשׁוֹנָה. הַלְכָה בְּמוֹתוֹ, אוֹ אֵין
הַלְכָה בְּמוֹתוֹ? אָמָר לֵי: חִילּוּק הַהִיא
רַבְּי יּוֹסִי אַף בְּרָאשׁוֹנָה, וְהַלְכָה בְּמוֹתוֹ
אַף בְּרָאשׁוֹנָה.

even in the first mishna in this chapter, and Rabbi Yosei holds that even when a bailee pays for the deposit and chooses not to take an oath, the thief pays the double payment to the owner. Is the halakha in accordance with his opinion even in that case, or is the halakha not in accordance with his opinion? Rav Yehuda said to him: Rabbi Yosei was in disagreement even in the first mishna in this chapter, and the halakha is in accordance with his opinion even in the first mishna.

אתמר נמי, אמר רב אלעזר: חילוק
הַהִיא רַבְּי יּוֹסִי אַף בְּרָאשׁוֹנָה, וְהַלְכָה
בְּמוֹתוֹ אַף בְּרָאשׁוֹנָה. וַרְבִּי יוֹחָנָן אָמָר:
מוֹדָה הַהִיא רַבְּי יּוֹסִי בְּרָאשׁוֹנָה, שְׁכַבֵּר
שִׁילּוּם.

It was also stated that the *amora'im* in Eretz Yisrael disagreed about this matter. Rabbi Elazar says: Rabbi Yosei was in disagreement even in the first mishna and the halakha is in accordance with his opinion even in the first mishna. And Rabbi Yohanan says: Rabbi Yosei conceded in the first mishna because the bailee already paid and acquired the animal.

שִׁילּוּם – אֵין, לֹא שִׁילּוּם – לֹא? וְהַאֲמָר
רַבְּי חִיאָה בָּר אָבָא אָמָר רַבְּי יוֹחָנָן: לֹא
שִׁילּוּם שִׁילּוּם מִמְשָׁה, אֶלָּא בֵּין שָׁאָמָר
הַרְבִּי מִשְׁלָם, אֶךְ עַל פִּי שְׁלָא שִׁילּוּם!
אִימָא: מוֹדָה הַהִיא רַבְּי יּוֹסִי בְּרָאשׁוֹנָה,
שְׁכַבֵּר אָמָר הַרְבִּי מִשְׁלָם.

The Gemara questions the formulation of Rabbi Yohanan's statement: If he paid, yes, the thief pays the double payment to him; if he did not pay, no? But doesn't Rabbi Hyya bar Abba say that Rabbi Yohanan himself says: When the mishna says: If the bailee paid, it does not mean that he actually paid; rather, once the bailee said: I hereby choose to pay, even if he did not yet actually pay, he acquired the double payment? The Gemara answers: Emend the statement of Rabbi Yohanan and say: Rabbi Yosei conceded in the first mishna because the bailee already said: I hereby choose to pay.

מַתָּנִי אָמָר לְשָׁנִים: גַּלְתִּי לְאֶחָדר
מִכֶּם מִנֶּה, וְאַתִּי יוֹצֵעַ אֵיזֶה מִכֶּם. אָנוֹ
אָבִיו שֶׁל אֶחָדר מִכֶּם הַפְּקִיד לִי מִנֶּה
וְאַתִּי יוֹצֵעַ אֵיזֶה הוּא – נֹזֵן לְהָמִינָה
וְלֹא מִנֶּה, שְׁהַזְּהָמָה מִפְּעָצָמָה.

MISHNA If one said to two people: I robbed one of you of one hundred dinars, but I do not know from which of you I took the money, or if one said to two people: The father of one of you deposited one hundred dinars with me,^N but I do not know the father of which of you he is, then he gives one hundred dinars to this person and one hundred dinars to that person. This is because there is no way to determine which of them is entitled to the money, and he admitted his obligation at his own initiative.^H

NOTES

The father of one of you deposited one hundred dinars with me – **בְּבִאוּ שֶׁל אֶחָדר גַּם הַפְּקִיד לִי מִנֶּה:** The language employed here: The father of one of you, indicates that there are no claimants to the money. Rather, he admits his debt at his own initiative, as explained in the Gemara. This situation is likelier in a case of robbery, as the victims do not know who robbed them of their belongings. In the case of a deposit, it is unlikely that one completely forgot with whom he deposited the money. Therefore, the mishna states that this is a case where one's father deposited the money (Ritva).

HALAKHA

One who robbed and does not know from whom he robbed – **כִּי שָׁגֹל זַיְנָו יְדַע מִכֵּן גּוֹל:** If one said to two people: I robbed one of you of one hundred dinars, but I do not know which of you I robbed, he gives one hundred dinars to the two of them and they divide it. If the robber seeks to fulfill his obligation to Heaven, he gives one hundred dinars to each. That is the ruling when those people do not claim the money from him. If each claims that the one hundred dinars were robbed from him, and he admits that he robbed them of the money but he does not know which of them he robbed, he pays one hundred dinars to each. The Rema adds that if he robbed one of them of one hundred dinars and the other of two hundred dinars, and each of them claims the two hundred dinars, he pays both, as the halakha is not in accordance with the ruling of the mishna, which is in accordance with the opinion of Rabbi Tarfon. Rather, it is in accordance with the opinion of Rabbi Akiva (Rambam Sefer Nezikin, Hilkhot Gezeila VaAveda 4:10; Shulhan Arukh, Hoshen Mishpat 365:2).

HALAKHA

Two people who deposited money with one person, etc. – **שְׁנַים שָׂהֶפְקִידו אֶצְל אֶחָד וּכְיֵינוּ:** In a case where two people deposited money with one person, one depositing one hundred dinars and one depositing two hundred, and they each claim that they deposited two hundred dinars, and the bailee says he does not know which of them deposited two hundred, each takes an oath that he deposited two hundred dinars, and the bailee pays two hundred to each. The bailee loses one hundred dinars because he did not mark the deposits to indicate to whom they belonged. If their claims are uncertain, he is required to pay no more than one hundred dinars to each one according to human law. If he seeks to fulfill his obligation to Heaven, he pays two hundred to each of them.

If they deposited their money in one bundle, and each claims that the two hundred dinars are his, the bailee gives each one hundred dinars and the remainder remains in his possession until Elijah comes or until one of them admits that the two hundred dinars belong to the other. The Rema says that it is placed with the court. Since the two depositors trusted each other, as they deposited the money in one bundle, it was not incumbent upon the bailee to note who deposited the larger sum. Therefore, the bailee need not pay more than one hundred dinars to either, even if he seeks to fulfill his obligation to Heaven. The Rema, citing the Rosh, maintains that even in this case, if their claims are certain and he seeks to fulfill his obligation to Heaven, he pays two hundred dinars to each (Rambam Sefer Mishpatim, Hilkhos She'ela Uifikadon 5:4; Shulhan Arukh, Hoshen Mishpat 300:1).

שְׁנַי בְּלִים אֲלֵם יְזִיר וּזְלִיל: If two people deposit vessels with one bailee, with one depositing an expensive vessel and the other depositing an inexpensive vessel, and each claims that he deposited the expensive vessel, the bailee gives the expensive vessel to one and the value of the expensive vessel to the other. If they brought their vessels in one bundle and did not suspect each other, he gives the small vessel to one and the value of the small vessel to the other, and the rest remains in the bailee's possession until Elijah comes or until one of them admits that the large vessel belongs to the other, in accordance with the opinion of Rabbi Akiva (Rambam Sefer Mishpatim, Hilkhos She'ela Uifikadon 5:4; Shulhan Arukh, Hoshen Mishpat 300:2).

BACKGROUND

Until Elijah comes – **עד שִׁבְאָ אַלְיהּוּ:** In unresolved monetary matters, e.g., an unclaimed lost item or an item claimed by two people, the court may rule that the item will remain in the possession of the court or a third party indefinitely, until the advent of Elijah the Prophet, i.e., until the matter can be resolved prophetically. Elijah will not establish new halakhot; rather, he will provide proof leading to resolution of unresolved matters.

שְׁנַים שָׂהֶפְקִידו אֶצְל אֶחָד וּזְהַמְנָה וְזֶה מְאֹתִים, זֶה אָמֵר שְׁלֵי מְאֹתִים וְזֶה אָמֵר שְׁלֵי מְאֹתִים – נוֹתֵן לְזֶה מְנָה וְלְזֶה מְנָה, וְהַשָּׁאֵר יְהָא מְנוּחַ עד שִׁבְאָ אַלְיהּוּ.

אָמֵר רַבִּי יוֹסֵי: אִם כִּنְמָה הַפְּסִיד הַרְמָפָא? אַלְאָ, הַכָּל יְהָא מְנוּחַ עד שִׁבְאָ אַלְיהּוּ.

וְכֵן, שְׁנַי בְּלִים אֲחֵד יְפֵה מְנָה וְאֶחָד יְפֵה אַלְפִים וּזְהַמְנָה וְזֶה אָמֵר יְפֵה שְׁלֵי וְזֶה אָמֵר יְפֵה שְׁלֵי – נוֹתֵן אֶת הַקְּטָן לְאֶחָד מְהָן, וּמוֹתֵן הַגָּדוֹל נוֹתֵן דְּמַיִּם קְטָן לְשְׁנִי, וְהַשָּׁאֵר יְהָא מְנוּחַ עד שִׁבְאָ אַלְיהּוּ, אָמֵר רַבִּי יוֹסֵי: אִם כִּנְמָה הַפְּסִיד הַרְמָפָא? אַלְאָ, הַכָּל יְהָא מְנוּחַ עד שִׁבְאָ אַלְיהּוּ.

גַּם, אַלְמָא: מִסְפִּיקָא מִפְּקִינָן מְמוּנָא, וְלֹא אִמְרָנָן אַזְקִי מְמוּנָא בְּחִזְקָתָה מְרִיבָה.

וּרְמִינְיהָ: שְׁנַים שָׂהֶפְקִידו אֶצְל אֶחָד וְזֶה מְנָה וְזֶה מְאֹתִים, זֶה אָמֵר שְׁלֵי מְאֹתִים וְזֶה אָמֵר שְׁלֵי מְאֹתִים – לְזֶה מְנָה וְלְזֶה מְנָה, וְהַשָּׁאֵר יְהָא מְנוּחַ עד שִׁבְאָ אַלְיהּוּ.

In the case of **two people who deposited money with one person**,^H and **this one deposited one hundred dinars and that one deposited two hundred dinars**, and when they come to collect their deposit, **this one says: My deposit was two hundred dinars, and that one says: My deposit was two hundred dinars, the bailee gives one hundred dinars to this one and one hundred dinars to that one. And the rest^N of the money, i.e., the contested one hundred dinars, will be placed in a safe place until Elijah comes^B and prophetically determines the truth.**

Rabbi Yosei said: If so, what did the swindler lose? He lost nothing by claiming the one hundred dinars that belongs to another, and he has no incentive to admit the truth. **Rather, the entire deposit will be placed in a safe place until Elijah comes.** As his fraud will cause him to lose even the one hundred dinars that he deposited, perhaps he will be discouraged from making a fraudulent claim.

And likewise, if two people deposited **two vessels, one worth one hundred dinars and one worth one thousand dinars**,^H and this one says: **The expensive vessel is mine, and that one says: The expensive vessel is mine, the bailee gives the small vessel to one of them, and from the proceeds of the sale of the large vessel he gives the value of the small vessel^N to the other, and the rest of the money is placed in a safe place until Elijah comes.** **Rabbi Yosei said: If so, what did the swindler lose?** Rather, the entire deposit, i.e., both vessels, are placed in a safe place until Elijah comes or one of them admits his deceit.

GEMARA From the fact that the mishna teaches that if the bailee does not know whom he robbed, he gives one hundred dinars to this one and one hundred dinars to that one, apparently, in cases of uncertainty, we expropriate property^N and return it to those claiming it. And we do not say: Establish the money in the possession of its owner. In this case, the bailee is currently the owner of the money, but the money is not left in his possession.

And raise a contradiction from the continuation of the mishna: In the case of **two people who deposited money with one person**, and **this one deposited one hundred dinars and that one deposited two hundred dinars**, and when they come to collect their deposit, **this one says: My deposit was two hundred dinars, and that one says: My deposit was two hundred dinars, the bailee gives one hundred dinars to this one and one hundred dinars to that one. And the rest of the money will be placed in a safe place until Elijah comes** and prophetically determines the truth.

The bailee gives one hundred dinars to this one and one hundred dinars to that one and the rest, etc. – **נוֹתֵן לְזֶה נְבָה וְהַשָּׁאֵר וּכְיֵינוּ:** The Ramban asks: Why not rule as follows: Since they each claim that he owes them money, and he is unable to take an oath to counter either of their claims, he pays two hundred dinars to each, based on the principle: One who is unable to take an oath is required to pay? He answers that it is only in the case of a partial admission that one is required to take an oath that he is exempt from paying the remainder, due to the concern that he is keeping that sum. But in this case, where he is willing to pay the entire sum of the deposit, and there is no concern that he is keeping the money, he is not required to take an oath. Similarly, the Riva says that there is no adjudication between the bailee and the depositors. Rather, it is between the depositors themselves.

And from the proceeds of the large vessel he gives the value of the small vessel – **רַמְבָּן הַגָּדוֹל נְזִית רַמְבָּן:** Rashi appears to explain that he actually breaks the large vessel and gives the other a piece of it that has the value of the small vessel, as it says in the Gemara later that the large vessel is lost. The Ritva explains that he sells the large vessel. The loss to the owner is that he cannot recover the vessel intact. The Meiri states an explanation that bridges these two opinions, noting that if it is a vessel from which a part can be broken without destroying the vessel, he should do so. If the entire item would be destroyed, he should sell it.

Apparently in cases of uncertainty we expropriate property – **אַלְמָא מִסְפִּיקָא מִפְּקִינָן מְמוּנָא:** The Ramban explains that this itself is the question: How can it be said that we expropriate property in cases of uncertainty when, according to the opinions of Rav Nahman and Rabbi Yoḥanan, one who responds to a claim and says: I do not know, is exempt from payment?

אמור ליה: פְּקָדֹן אֲגֹל קָא רַמִּית? גַּוֹל
דַּעֲבֵד אִיסּוֹרָא - קְנֻסָּהוּ וְרַבָּן, פְּקָדֹן
דַּלְא עֲבֵד אִיסּוֹרָא - לָא קְנֻסָּהוּ וְרַבָּן.

ורמי פְּקָדֹן אֲפְקָדֹן, וַרְמִי גַּוֹל אֲגֹל.
פְּקָדֹן אֲפְקָדֹן - דַקְתִּין רִישָׁא: אָו
אָבֵיו שֶׁל אָחָד מִכֶּם הַפְּקִיד אֲצִיל
מִנָּה, וְאַנְיִי יָדַע אֲיַהָה הוּא - נָטוּן
לְזָה מִנָּה וְלְזָה מִנָּה. וַרְמִינָה: שְׁנִים
שְׁהַפְּקִידוּ וּבוּ!

אמור וּבָא: רִישָׁא נָשַׁה כִּמִי שְׁהַפְּקִידוּ
לו בְּשַׁעַר כְּרִיכּוֹת, וְהַהָה לִיה לְמִזְיקָה
סִיפָּא - נָשַׁה כִּמִי שְׁהַפְּקִידוּ לו
בְּכָרְךָ אָחָד, וְלֹא הוּה לִיה לְמִזְיקָה,
כִּגְנוֹן דְּאַפְקִידוּ פְּרוּיָתו בְּהַדִּי הַדִּי
בְּחַד זִימָנָא, דָמָר לְהָה: אָנָת גַּופִּיכָו
לֹא קְפִּירְתָּו אַהֲדָה, אָנָא קְפִּידָנָא?

ורמי גַּוֹל אֲגֹל - קְתִינִי הַכָּא: אָמָר
לְשָׁנִים גַּוֹלָתִי לְאָחָד מִכֶּם מִנָּה וְאַנְיִ
יָדַע אֲיַהָה מִכֶּם, אָו אָבֵיו שֶׁל אָחָד
מִכֶּם הַפְּקִיד לִי מִנָּה וְאַנְיִי יָדַע אֲיַהָ
הוּא - נָטוּן לְזָה מִנָּה וְלְזָה מִנָּה.

ורמִינָה: גַּוֹל אֲחָד מִחְמָשָׂה וְאַינוּ יָדַע
אֲיַהָה מִנָּה גַּוֹל זוּ אֲוֹמֵר אָוֹתִי גַּוֹל וְזוּ
אֲוֹמֵר אָוֹתִי גַּוֹל - מִנָּה גַּוֹלָה בִּינֵיכֶם
וּמְסֻתָּלָק, דָבֵר רַבִּי טְרָפּוֹן, אַלְפָא:
מִסְפְּקָא לֹא מִפְקִינָן מִמְנָא, וְאַמְרִינָן:
אָוקִים מִמְנָא בְּחִזְקַת מִרְיהָ.

וּמְמַאי דְּמַתְנִיתֵין דְהַכָּא רַבִּי טְרָפּוֹן
הֵיא - דַקְתִּין עַלְהָ דְהַהָא: מַזְהָ רַבִּי
טְרָפּוֹן בָּאוֹמֵר לְשָׁנִים גַּוֹלָתִי לְאָחָד
מִכֶּם מִנָּה, וְאַנְיִי יָדַע אֲיַהָה מִכֶּם -
שְׁנָוּטָן לְזָה מִנָּה וְלְזָה מִנָּה.

The Sages said to the one who raised the contradiction: **Are you raising a contradiction between the halakha stated in the case of a deposit and the halakha stated in the case of a robbery? In the case of robbery, where one transgressed a prohibition, the Sages penalized him^N and ruled that he must pay both possible robbery victims. In the case of a deposit, where he did not transgress a prohibition, the Sages did not penalize him.**

And they raised a contradiction between the halakha stated in the case of a deposit and the halakha stated in the case of a deposit, and they raised a contradiction between the halakha stated in the case of a robbery and the halakha stated in the case of a robbery. There is a contradiction between the halakha stated in the case of a deposit and the halakha stated in the case of a deposit, as is it taught in the first clause of the mishna: **Or, if one said to two people: The father of one of you deposited one hundred dinars with me, but I do not know the father of which of you he is, he gives one hundred dinars to this person and one hundred dinars to that person. The Gemara raises a contradiction from the continuation of the mishna cited above: In the case of two people who deposited money with one person, the contested sum is placed in a safe place until Elijah comes.**

Rava said: In the first clause of the mishna, in the case where the bailee receives money from the father of one person, he becomes like one with whom they deposited sums of money in two separate bundles, as the bailee should have been discerning with regard to who gave him the money. His failure to do so constitutes negligence, and therefore he pays the sum to both claimants. In the latter clause of the mishna, in the case where he receives money from two people, he becomes like one with whom they deposited sums of money in one bundle, as there is no expectation that he should have been discerning. It is a case where they both deposited their money together at one time, as the bailee says to them: If you yourselves were not suspicious of each other, should I be suspicious? Therefore, he is required to pay them only the sum that they can prove is theirs.

And they raised a contradiction between the halakha stated in the case of a robbery and the halakha stated in the case of a robbery. It is taught here: If one said to two people: I robbed one of you of one hundred dinars, but I do not know from which of you I took the money, or if one said to two people: The father of one of you deposited one hundred dinars with me, but I do not know the father of which of you he is, then he gives one hundred dinars to this person and one hundred dinars to that person.

The Gemara raises a contradiction from a mishna (Yevamot 118b): If one robbed one of five people and he does not know which of them he robbed, and this one says: He robbed me, and that one says: He robbed me, the robber places the stolen item between them and withdraws from them; this is the statement of Rabbi Tarfon. Apparently, contrary to the mishna, we do not expropriate property due to an uncertainty and return it to those claiming it, and instead we say: Establish the money in the possession of its owner.

The Gemara asks: **And from where is it known that the mishna here is in accordance with the opinion of Rabbi Tarfon?** Perhaps the mishna is in accordance with the opinion of Rabbi Akiva, who holds the robber must pay each of the five possible victims, and there is no contradiction at all. The Gemara answers: It is known that the mishna here is in accordance with the opinion of Rabbi Tarfon, as it is taught in a baraita concerning the halakha taught in that mishna, in tractate Yevamot: Rabbi Tarfon concedes that in a case where a robber says to two people: I robbed one of you of one hundred dinars, but I do not know which of you it was, he gives one hundred dinars to this person and one hundred dinars to that person, as he has already admitted his obligation on his own. There is an apparent contradiction between the two statements of Rabbi Tarfon.

NOTES

In the case of robbery where one transgressed a prohibition the Sages penalized him – גַּוֹל דַעֲבֵד אִיסּוֹרָא קְנֻסָּה – בְּגַם. The Rosh explains that here, in a case where one seeks to fulfill his obligation to Heaven, the term penalized is inappropriate. Since he transgressed a prohibition, he must fulfill that obligation in its entirety. The Rosh asks: Why not treat this penitent thief in accordance with the ordinance instituted for the penitent, by which the Sages instituted several leniencies to encourage thieves and robbers to return that which they stole? He answers that when the robber returns the principal, this ordinance was instituted to allow him to pay for the stolen item rather than returning it. But in a case where the victim would lose even the principal, the ordinance for the penitent was not instituted.

הַתָּם דִּקְאָתֵבֵשׁ לֵיהּ, הַכָּא – בְּבָא
לִיאוֹת יְיִשְׁרָם. דִּיקְאָנָמִי, דִּקְתָּנִי
שְׁחוֹדָה מִפְּעַצְמָו – שָׁמָעַ מִינָה.

The Gemara answers: **There**, in the mishna where one robbed one of five people of money, it is referring to a case **where the claimants demand payment from him**. He is required to pay them only one hundred dinars, as the burden of proof rests upon the claimant. By contrast, **here**, i.e., in this mishna and the statement of Rabbi Tarfon in the *baraita*, it is referring to a case **where the robber comes to fulfill his obligation to Heaven**. Only by returning the money to the person he robbed can he atone for his transgression. Therefore, he goes beyond the halakhic requirement and pays both claimants. The Gemara notes: The language of this mishna is also precise, as the *tanna* teaches: Because he admitted his obligation at his own initiative. The Gemara affirms: Learn from the wording of the mishna that this is the explanation of the mishna.

אָמַר מֶרֶ: הַתָּם דִּקְאָתֵבֵשׁ לֵיהּ. וְתָלָה
מָה טוֹעַן? רַב יְהוּדָה אָמַר רַב: חֲלָה
שׂוֹתָק, רַב מַתָּנָה אָמַר רַב: הַלָּה

With regard to returning stolen money, the Master said: There, it is referring to a case **where the claimants demand payment from him**. The Gemara asks: **And the other person**, the thief, **what does he claim in response?** Rav Yehuda says that Rav says: **The other person is silent**, as he does not know to whom he owes the money. Rav Mattana says that Rav says: **The other person**

Perek III

Daf 37 Amud b

NOTES

שְׁתִיקָה דְּהַכָּא – לֹא בְּהַדָּאָה: One can learn from here that silence is not tantamount to admission in every case. At times, one's silence is attributable to his considering his response, and certainly one should not bear responsibility because he does not respond quickly (Rosh).

And the robber should place it – יְיִחַ: The robber does not leave the money in his possession. Rather, he places it in the possession of the court (Rashba). He cannot retain the money in his possession, because as long as it is in his possession he has not fulfilled the mitzva of returning it. He removes the money from his possession, allowing the claimants to plead their cases before the court, and whoever proves his claim takes the money. Some explain that the robber places the money before them and they place it before the court, as is the practice with a lost item (Ra'avad).

צָוֹתָה. מִאן דָּאָמַר הַלָּה צָוָת – אָבֶל
שְׁתִיקָה בְּהַדָּאָה, וּמִאן דָּאָמַר הַלָּה
שׂוֹתָק – שְׁתִיקָה דְּהַכָּא לֹא בְּהַדָּאָה
הָא. מֵץ אָמַר לֵיהּ: חָא דְשְׁתִיקָה לְכָל
חַד וְחַד – דָּאָמַנָּא: דְלַמָּא חָא הוּא.

screams and says to each of the claimants: I do not recognize you and I find no basis for your claim. The Gemara comments: **The one who says that the other screams** holds that he need not return the money to each of them if he is screaming that he does not accept their claims. **But a reaction of silence is tantamount to admission** that the demands of the claimants are legitimate. **And the one who says that the other is silent** holds that **the silence here is not tantamount to admission**,^N as the robber could say to him: The fact that I was silent to each and every one of the claimants is because I said: Perhaps this is he, the robbery victim, but I do not admit that I owe money to more than one person.

אָמַר מֶרֶ: מִנְחָגָיו לְהַבֵּין הַמִּסְתָּלִיךְ.
וּשְׁקָלֵי לְהַבֵּין וְאַוְלֵי? וְהַאָמַר וּבַיִ
אָבָא בָּר זְבָדָא אָמַר רַב: כֵּל סְפָק
הַיּוֹנָח – לְכַתְּחִילָה לֹא יְטֻול, וְאַם
נְעַל – לֹא יְתַחֲווּ אָמַר רַב סְפָרָא:
יְיִחַ.

The Master said: The robber places the **stolen item between them and withdraws** from them. The Gemara challenges: **And do all of them take it and go**, possibly resulting in the robbery victim losing his property? **But doesn't Rabbi Abba bar Zavda say that Rav says concerning found items:** In any case of **uncertainty** whether the **placement** of a found item was deliberate, the **finder may not take the item ab initio**, and if he took it, he **should not return it** to one who claims ownership without conclusive proof? Here too, the robber should keep the money until one of the claimants provides conclusive proof that the money is his. **Rav Safra says:** The *baraita* means: **And the robber should place it**^N in his possession or before the court.

אָמַר לֵיהּ אָבָי לְבָא: כִּי אָמַר רַבִּי
עַקְבָּא לֹא וְהַדְרָךְ מַזְכִּירָתוֹ מִידִי
עֲבֹרָה עַד שִׁישְׁלָם גַּוְילָה לְכָל חַד וְחַד,
אַלְמָא: מְסֻפִּיקָא מְפֻקִּין מְמוֹנָא, וְלֹא
אָמְרִין: אָקוּם מְמוֹנָא בְּחִזְקַת מִרְויָה.

Abaye said to Rava: In disputing Rabbi Tarfon's opinion with regard to one who robbed money from one of five people, did Rabbi Akiva say: **This is not the way to spare him from transgression**; he is not considered to have returned the stolen item until he **pays the value of the stolen item to each and every one of the five?** Apparently, in his opinion, in cases of **uncertainty**, we **expropriate property** and return it to those claiming it, and we do not say: Establish the money in the possession of its owner.

וּמִינְהָיִם נַפְלֵל הַבַּיִת עַלְיוֹ וְעַל אָמוֹן
יוֹרְשֵׁי הַבָּן אֲוֹמְרִים: הַאֲם מִתָּה
רְאִשׁוֹנָה, וַיּוֹרְשֵׁי הָאָם אֲוֹמְרִים:
הַבָּן מֵת רְאִשׁוֹן, אֶלְוּ וְאֶלְוּ מִזְדִּים
שִׁיחַלְקֻוּ. וְאָמָר רַבִּי עֲקִיבָּא: מוֹדָה
אַנְּכִי בָּו שְׂהִנְכְּסִים בְּחוֹקְתִּי

אָמָר לֵיהֶ: הַתָּם – שְׁמָא וְשְׁמָא, גּוֹל
אַחֲרֵד מִתְחַמֵּשָׁה – בְּרִי וְשְׁמָא. וְהִיא
מִתְנִיחַתִּין דְּרָכָא. אָמָר לְשִׁנְיָנִים גּוֹלָתִי
לְאַחֲרֵד מַכְסֵם מִנָּה, דְּשְׁמָא וְשְׁמָא הוּא.
וְקָתְנִי נוֹתֵן לְהָ מִנָּה וְלְהָ מִנָּה

וּמִמְּפַאי דָּרְבֵי עֲקִיבָּא הִיא – דַּקְתִּני
עַלְלה דְּהָהִיא: מוֹדָה רַבִּי טְרָפּוֹן בָּאוּמָר
לְשִׁנְיָנִים גּוֹלָתִי לְאַחֲרֵד מַכְסֵם מִנָּה וְאַיִן
יָדָע אֲיַהֲ מַכְסֵם כֹּו. לְפָנָן מוֹדָה, לֹא
לְרַבִּי עֲקִיבָּא בָּר פְּלוּגִיָּה?

וּמִמְּפַאי דְּשְׁמָא וְשְׁמָא הוּא? חֲדָא:
דְּלֹא קָתְנִי תּוֹבֵעַ אֶתְהוּ, וְעוֹד: הָא
תִּנְיַרְבֵּי חִיאָא: זֶה אֲוֹמָר אַיִן יָדָע.
וְזֶה אֲוֹמָר אַיִן יָדָע.

The Gemara raises a contradiction from a mishna (*Bava Batra* 158b): A house collapsed on a person and on his mother,⁴ and it is unclear which of them died first. The son's heirs say: The mother died first and her property was inherited by her son, who then died, and therefore the heirs of the son inherit the property of both. And the mother's heirs say: The son died first, and therefore the mother's heirs should inherit all of her property. In this case, both these *tanna'im*, Beit Shammai, and those *tanna'im*, Beit Hillel, agree that they should divide the disputed property, although they disagree in similar cases. And Rabbi Akiva said: I concede⁵ in this case that the property retains its previous ownership status. Apparently, Rabbi Akiva himself holds that property is not removed from one's possession in cases of uncertainty.

Rava said to Abaye: There, in the case where the house collapsed, it is where there is an uncertain claim and an uncertain claim, as neither party knows what transpired. By contrast, in a case where one robbed money from one of five people, it is a case where there is a certain claim and an uncertain claim, as the robber does not know from whom he robbed the money, but the victims' claims are based on certainty. The Gemara challenges: But in the mishna here, where one said to two people: I robbed one of you of one hundred dinars, but I do not know from which of you I took the money, it is a case where there is an uncertain claim and an uncertain claim, and it is taught: He gives one hundred dinars to this person and one hundred dinars to that person.

The Gemara asks: And from where is it known that the mishna here is in accordance with the opinion of Rabbi Akiva? The Gemara answers: This is known, as it is taught in a *baraita* concerning the *halakha* taught in that mishna: Rabbi Tarfon concedes that in a case where one says to two people: I robbed one of the two of you of one hundred dinars and I do not know from which of you I robbed the money, the robber gives one hundred dinars to each of them. To whom does Rabbi Tarfon concede? Is it not to Rabbi Akiva, who is his usual disputant?

The Gemara asks: And from where is it known that in the mishna it is a case where there is an uncertain claim and an uncertain claim? Perhaps the victims are certain that they were robbed. The Gemara answers: This is unlikely for several reasons. One, it is not taught in the mishna that they demand payment from him. And furthermore, didn't Rabbi Hiyya teach in a *baraita* that the mishna is referring to a case where this party says: I do not know, and that party says: I do not know, indicating that these are uncertain claims?

הָא אָוְקִימָנָה לְהָ בָּבָא לְצַאת יְדֵי
שְׁמִים.

The Gemara resolves the contradiction between the statements of Rabbi Akiva: Didn't we establish the mishna as referring to a case in which the robber is coming to fulfill his obligation to Heaven? Therefore, the robber gives one hundred dinars to each, although he has no legal obligation to do so, as they made uncertain claims.

HALAKHA

A house collapsed on a person and on his mother – נַפְלֵל הַבַּיִת עַלְיוֹ וְעַל אָמוֹן: If a house collapsed on a mother and son, and the son's heirs claim that the mother died first, and the mother's heirs claim that the son died first, then the property

of the mother is inherited by her heirs, as they are certainly her heirs. This ruling in accordance with the opinion of Rabbi Akiva (Rambam *Sefer Mishpatim*, *Hilkhot Nahalot* 5:6; *Shulhan Arukh*, *Hoshen Mishpat* 280:10).

NOTES

I concede – מוֹדָה אֲקִי: Rashi explains that Rabbi Akiva says this because he was affiliated with Beit Shammai. The Rosh disagrees and proves from several sources that this is not the case. He explains that either Rabbi Akiva anomalously explains the

halakha according to Beit Shammai in this case, or, because the *baraita* stated: Both these and those conceded, Rabbi Akiva expressed his opinion employing a similar formulation: I concede.

NOTES

Everyone concedes in the case of two people who deposited animals with a shepherd – **הכל מודים**: Rashi explains here that one of them deposited one lamb and the other deposited two. The early commentaries question different aspects of his explanation. The Ba'al HaMaor explains that according to Rashi, the fact that he places the lamb among them and does retain it, as in the case of the third one hundred dinars in the mishna, is due to the fact that he does not wish to exert himself and tend to the animal.

ר' בא כל בשתי קריות הוה ליה למידק?
וְהַאֲמֵר רָבָא, וְאִי תִּמְאָרְבָּ פָּפָא: הַכָּל
מוֹדִים בְּשָׁנִים שֶׁהַפְּקִידוּ אֶצְלָוּ וּשְׁעָרָה:
שֶׁמְגִיף רֹועָה בַּיְנָה וּמְסֻתְּלָקָן! אָמָר לֵיאָ
הַחֲם – בְּשֶׁהַפְּקִידוּ בְּעִזּוֹ שֶׁלּוּ וּשְׁעָרָה שֶׁלּוּ.
מְדֻשָּׁתָּה.

HALAKHA

Everyone concedes in the case of two people who deposited animals with a shepherd – **הכל מודים**: If two people each deposited an animal with a shepherd and one of the animals died, and the shepherd does not know who was the owner of the sheep that died, he pays both sheep owners. If they were placed in the herd without the knowledge of the shepherd, he places the animal with the sheep owners and leaves. The animal remains in abeyance until one admits that it belongs to the other or they agree to divide it, in accordance with the opinion of Rava (Rambam Sefer Mishpatim, Hilkhot She'ela Ufikadon 5:4; Shulhan Arukh, Hoshen Mishpat 300:4).

וְכֵן שני כלים אחד יפה מנה ואחד יפה
אלף ווא"ר בר, וצ'ריכא,

דאי אשמועין הָן קמִיתָא – בְּהָהִיא
קָאָמֵר וּבְנָן, מִשּׁוּם דְּלִיכָא פְּסִידָא. אֶבֶל
בְּרוֹא, דְּאָכָא פְּסִידָא דְּגָדוֹל – אִימָא מוֹדוֹ
לֵיה לְרָבִי יוֹסֵי. וְאִי אַתָּמָר בְּהָא – בְּהָא
קָאָמֵר רָבִי יוֹסֵי, אֶבֶל בְּהָא – אִימָא מוֹדי
לְהָוֹ לְרָבָן, צ'ריכא.

Ravina said to Rav Ashi: And did Rava say that in every case where the deposits are given in two separate bundles that the bailee should have been discerning with regard to the identity of the ones giving him the deposits? But didn't Rava say, and some say that it was Rav Pappa who said: Everyone concedes in the case of two people who deposited animals with a shepherd,^{NH} that if each claims that his deposit included a greater number of animals than that of the other, the shepherd places the animals among them and leaves? Rav Ashi said to Ravina: There, it is referring to a case where the shepherds deposited animals in the shepherd's flock without his knowledge. Clearly there is no expectation that the shepherd will discern how many animals belong to each party.

The mishna teaches: And likewise, in the case of two people who deposited two vessels, one worth one hundred dinars and one worth one thousand dinars, and each of the claimants claims that the expensive vessel is his, the bailee gives the small vessel to one of them, and from the proceeds of the sale of the large vessel he gives the value of the small vessel to the other, and the rest of the money is placed in a safe place until Elijah comes. The Gemara comments: And it is necessary for the tanna to cite both the case of money and the case of vessels.

The reason is that if the tanna had taught us this first case with regard to money alone, one would conclude that it is in this case that the Rabbis say that each party receives one hundred dinars, and one hundred dinars is kept in a safe place, because in this case there is no loss. But in that case of the vessels, where there is a loss of the large vessel, as it must be broken or sold in order to pay the value of the small vessel to the other party, say that they concede to Rabbi Yosei that both vessels are kept in a safe place. And had the dispute been stated only in that case of vessels, one would conclude that it is in that case that Rabbi Yosei said that both vessels are kept in a safe place. But in this case of money, say that he concedes to the Rabbis. Therefore, it is necessary to cite both cases.

Perek III**Daf 38 Amud a****BACKGROUND**

Teaches not only this but also that – **ולא זו אף זו קתני**: Occasionally the mishna cites a series of cases, the first of which seems superfluous. In those instances, the Gemara may explain the inclusion of the seemingly superfluous first clause on stylistic grounds. The expression used in those cases is: The tanna first teaches the obvious case and then the less obvious case, indicating that this halakha applies not only in the obvious case but even in the less obvious case.

וזא טעם מא דרבוי יוסי ממשום הפסד הרמא
הוא! אללא, פרוייהו לרבן איצטראיך, ולא
זו אף זו קתני.

The Gemara asks: But isn't the reason for the opinion of Rabbi Yosei as he stated in the mishna: Due to the loss of the fraud? It is not due to the fact that the vessel will not remain intact. Consequently, there is no reason to believe that Rabbi Yosei would concede to the Rabbis in the instance where money was deposited. Rather, both of the cases are necessary according to the Rabbis. And although the first case could have been inferred from the second case, the tanna teaches the mishna employing the style of: Not only this but also that,^B i.e., the mishna began with an obvious example and continued with a more novel one.

NOTES

Even if it is lost – **אַפִּילוּ הָן אַבְּדִין**: The term: Even, alludes to the fact that there are other cases where one must make certain not to touch it, e.g., in a case where there is a significant rise in the price of the deposited items, and were he to sell it the owner would realize a significant profit. Nevertheless, it is prohibited for the bailee to touch the deposit (*Likkutei Hever ben Hayyim*).

מתני' המפקיד פירות אצל חבירו,
אַפִּילוּ הָן אַבְּדִין – לֹא יַעֲבֹדֵן. רבנן
שְׁמֻעוֹן בֶּן גַּמְלָא ל' אומר: מוכן בפֿנֵי בֵית
דָּיו, מִפְנֵי שְׁהָא בִּמְשֵב אַבְּיךָ לְבָעֵלים.

MISHNA In the case of one who deposits produce with another, even if it is lost^{NH} due to spoilage or vermin, the bailee may not touch it, as it is not his. Rabban Shimon ben Gamliel says: He sells it before the court, as by doing so he is like one returning a lost item to the owner, since through its sale he prevents the owner from losing the value of his produce.

One who deposits produce with another even if it is lost – **המַפְקִיד פִּירֹות אֶצְלָחָבִירָוּ אַפִּילוּ הָן אַבְּדִין**: In a case where one deposited produce with another, even if the produce continues to spoil, the bailee may not touch it. That is the ruling when its rate of deterioration is standard. If the rate of deterioration is greater

than the standard rate, the bailee must inform the owner if the owner is in the city. If not, the bailee sells the produce in court, in accordance with the opinion of the Rabbis and the ruling of Rabbi Yohanan (Rambam Sefer Mishpatim, Hilkhot She'ela Ufikadon 7:1; Shulhan Arukh, Hoshen Mishpat 292:15).

גמ' מאי טעמא? אמר רב כהנא:
אָרֶם וּזְחָה בַּקָּבֵשׁ שְׁלֹו מִתְשֻׁעָה קְבִים
שְׁלַחְבָּרוֹ. וּרְבָבָנָה בָּר יִצְחָק אָמָר:
חִישִׁין שְׁמָא עֲשָׂאָן הַמְפַקֵּד תְּרוּמָה
וּמַעֲשָׂר עַל מִקּוֹם אַחֲרָיו.

מייתיב: המפקיד פירות אצל חבירו –
הרי זה לא יעבָהן, לפיכך בעל הבית
עשה אותו פרוכחה ומעשר על מקום
אחר. בשלה מא לרָב כהנא – ה'ינו'
דקדני "לפייך".

אללא לרָב כהנא בר יִצְחָק – מא' לפייך? חכי אמר: השטן דאמור
ובבן לא נבען, דחישין, דבכרי חסרון, לפיכך בעל
הבית עשה אותו תרומה ומעשר על
מקום אחר.

אמר רבה בר בר חנה אמר רב
יוחנן: מחלוקת בכרי חסרון, אבל
ויתר מכרי חסרון – דבכרי הפל מובן
בבית דין.

אזריך נחמן בר יִצְחָק – וזה פליגיא.
אזריך כהנא מי לימת פליגיא? כי
казמר רב כהנא – בכרי חסרון
казמר.

והא רוזחה בקב שלו מתשעה קבי
של חבירו קאברנו גוועא בעלמא.

GEMARA What is the reason that the first tanna said that the bailee should not touch the produce? Rav Kahana says that it is based on the principle: A person prefers a *kav*⁸ of his own^N produce to nine *kav* of another's produce. Consequently, despite the spoilage, the owner prefers that the bailee not touch the produce. Rav Nahman bar Yitzhak says: We are concerned that perhaps the one who deposited the produce rendered it *teruma* and tithe for produce in another place,^N resulting in the buyer consuming produce that is *teruma* and tithe inappropriately.

The Gemara raises an objection from a *baraita*: In the case of one who deposits produce with another, the bailee may not touch it, and therefore the owner may render it *teruma* or tithe for produce in another place. Granted, according to Rav Kahana, this is the reason that the tanna teaches: And therefore the owner renders them *teruma*. The concern that the owner may render the produce *teruma* and tithe is not the reason why the bailee may not sell it, and the *halakha* that the owner may render the produce *teruma* and tithe results from the *halakha* that the bailee may not sell it.

But according to Rav Nahman bar Yitzhak, what is the meaning of the term **therefore**? According to his explanation, the fact that the owner may render the produce *teruma* and tithe is the very reason why the bailee may not sell the produce. The Gemara explains: This is what the tanna is saying: Now that the Sages said that the bailee may not sell the produce due to the fact that we are concerned that perhaps the owner had rendered it *teruma*, the owner can be confident that the produce is still in the possession of the bailee. Therefore, the owner may render it *teruma* and tithe for produce in another place even *ab initio*.

§ Rabba bar bar Hana says that Rabbi Yohanan says: The dispute in the mishna is in a case where the produce deteriorates at its standard rate of deterioration. But if the produce deteriorates at a rate greater than its standard rate of deterioration, everyone agrees that the bailee sells it before the court.

The Gemara comments: Rabbi Yohanan certainly disagrees with the opinion of Rav Nahman bar Yitzhak, as the concern that the owner might have rendered the produce *teruma* or tithe applies regardless of the rate of deterioration. The Gemara asks: Shall we say that Rabbi Yohanan disagrees with the opinion of Rav Kahana? The Gemara answers: When Rav Kahana says that one prefers his own produce, it was in a case where the produce deteriorates at its standard rate of deterioration that he says it. When the rate of deterioration is accelerated, he would agree that the bailee sells the produce.

The Gemara asks: But didn't Rav Kahana say: A person prefers a *kav* of his own produce to nine *kav* of another's produce? This indicates that even if the rate of deterioration was accelerated, one prefers his own produce, as in the case he describes eight-ninths of the produce is lost. The Gemara answers: This expression is merely an exaggeration,^N and actually one prefers his own produce only when its rate of deterioration is standard.

BACKGROUND

Kav – קב: This is a basic unit of measurement from which many smaller units are determined. It is equivalent to one-sixth of a *se'a* or twenty-four egg-bulks.

NOTES

A person prefers a *kav* of his own – **אָרֶם רוזחה בקב שלו מתשעה קבי של חבירו קאברנו גוועא בעלמא.**: Some explain that because he labored to grow the produce, it is more beloved to him. This concept is known in modern terminology as the endowment effect, by which people ascribe more value to items merely because they own them. The Rashba discusses whether there is a different *halakha* with regard to produce that one purchased and did not grow. Others explain that the preference is due to the fact that the labor of one's hands is blessed, which is not the case with regard to items that are not his (*Hokhmat Manoah*).

Perhaps the one who deposited the produce rendered it *teruma* and tithe for produce in another place – **שְׁמָא עֲשָׂאָן הַמְפַקֵּד תְּרוּמָה וּמַעֲשָׂר עַל מִקּוֹם אַחֲרָיו**

: **הַמְפַקֵּד תְּרוּמָה וּמַעֲשָׂר עַל מִקּוֹם אַחֲרָיו**: This means that when the owner of the produce has additional non-sacred produce from which he must separate *teruma* and tithes, instead of separating *teruma* and tithes from produce in his possession, he may mentally separate the produce in the possession of the bailee as *teruma* and tithes to render the produce in his possession permitted in consumption. *Tosafot* discuss this question, as ostensibly it is prohibited to separate *teruma* from produce that is not proximate. The early and later commentaries addressed this matter at length. Some sought to explain that perhaps the owner of the produce rendered it *teruma* before he deposited it. In that way, the problems are resolved. The Ramban and the Rashba reject this explanation.

גָזָם בְּעַלְמָא: Merely an exaggeration [*guzema be'alma*] – This refers to an assertion that is overstated or expressed in an exaggerated manner that should not be understood literally. The word's derivation is unclear. It is possible that it developed from the term *gazam*, meaning cut, which was used in turn by the Sages to mean threat or intimidation. From there, perhaps, it came to refer to anything stated merely to make an impression and not intended to be taken literally. The terms nine *kav* and one *kav* are employed in several contexts in order to exaggerate the value of certain items. These terms should not be taken literally (Rabbeinu Hananel).

BACKGROUND

Untithed produce – טבל: This term describes produce from which *teruma* and tithes have not been separated. The Torah prohibits the consumption of untithed produce. One who eats untithed produce is liable to be punished with death at the hand of Heaven. Once the tithes are separated, the produce no longer has the status of untithed produce and may be eaten, even if the tithe has not yet been given to the priests or Levites for whom they are designated.

It spoiled – הַרְבֵּשׁ: Honey rarely spoils. Yet, at times, honey is collected from the beehives when it is not sufficiently concentrated. Particularly after a long storage period during which this honey is exposed to changes in temperature, some of the honey crystallizes and the honey that remains liquid spoils. The portion that spoils is the honey to which the *baraita* is referring.

NOTES

המפיק פירות אצל חבירו ור��בו: This dispute differs from the dispute in the mishna, as in this case, since the produce of the deposit has completely rotted, the owner certainly no longer has any interest in its safeguarding. Neither the preference for one's own produce nor the concern that perhaps he separated *teruma* is relevant. This dispute relates to the loss of casks and vessels (Ramban).

מייתבי: לפיכך בעל הבית עוזה אוטן
תרומה ומעשר על מקום אחר. וליחס
דלאו הוא להו יותר מכדי חסרונו,
ובינויו, וכן אכילת טבלים יותר מכדי
חסרון לא שבית.

ואין משתחחי מאי – מובנין להו, וליחס
שפמא עשאן בעל הבית תרומה ומעשר
על מקום אחר! כי מובנין נמי – לכהנים
ברמי תרומה מובנין להו.

ולוב נחמן בר יצחק נמי, נובנינו לכהנים
ברמי תרומה! באה פלגי, דרביה בר בר
זהה סבר: יותר מכדי חסרונו לא שבית
מיידי, וכי משתחח – لكمיה הוא דהוייא
תיר מכדי חסרונו, אי עבד להו בעל
הבית תרומה ומעשר על מקום אחר –
מקומיה דהו להו יותר מכדי חסרונו עבד
להו. הלכך, כי הוו להו יותר מכדי
חסרון – נובנינו לכהנים ברמי תרומה.

ורב נחמן בר יצחק סבר: יותר מכדי חסרונו
משפח שבית, וכי הוו להו – לאalter הו
דרשו להו, ואיל אמרת נובנינו – זימני
דקדים ומזבין להו, וכי עבד להו בעל
הבית תרומה ומעשר על מקום אחר – לא
ידע דזבנא, וכן אכילת טבלים.

מייתבי: המפיק פירות אצל חבירו
והרקייב, יין וה חמץ, שמן וה באיש,
רבש וה דבש – הרוי זה לא גע בעהן, דברי
רבי מאיר. וחכמים אומרם: עשה להם
פקנה, ומובן בבית דין, וכשהוא מוכן –
מוכרן לאחרים, ואין מוכרן לעצמו.

The Gemara raises an objection from a *baraita*: Therefore, the owner renders it *teruma* or tithe for produce in another place. And let the owner be concerned that perhaps the produce deteriorated at a rate greater than its standard rate of deterioration, and the bailee sold it, in which case the owner would be eating untithed produce. The Gemara answers: Deterioration at a rate greater than its standard rate of deterioration is uncommon, and the Sages do not issue decrees for uncommon cases.

The Gemara asks: And if it is found that more of the produce is missing than would be lost according to the standard rate of deterioration, what should be done? According to the opinion of Rabbi Yohanan, do we sell it? But let us be concerned that perhaps the owner already rendered this produce *teruma* and tithe for produce in another place. The Gemara answers: Even when we sell the produce, it is to priests at the price of *teruma* that we sell it. Consequently, even if the owner rendered it *teruma*, it is consumed by priests and therefore there is no concern.

The Gemara asks: And according to Rav Nahman bar Yitzhak as well, since the concern is that perhaps the owner rendered the produce *teruma*, let the bailee sell the produce to priests at the price of *teruma*. The Gemara answers: It is with regard to this that they disagree, as Rabba bar bar Hana holds: Deterioration at a rate greater than its standard rate of deterioration is not common at all. And when it occurs that the produce deteriorates at the greater rate, it is only from now on that it is assumed that it became deteriorated at a rate greater than its standard rate of deterioration. Therefore, if the owner had rendered the produce *teruma* and tithe for produce in another place, it is assumed that it was before it deteriorated at a rate greater than its standard rate of deterioration that he did it. Therefore, when the produce deteriorated at a rate greater than its standard rate of deterioration, the bailee should sell the produce to priests at the price of *teruma*, as it may be *teruma*.

And Rav Nahman bar Yitzhak holds: Deterioration at a rate greater than its standard rate of deterioration is common. And when the produce became deteriorated at a rate greater than its standard rate of deterioration, it may be immediately that it became deteriorated to that extent. And if you say: Let us sell it, the concern is that at times the bailee will sell it early. And when the owner renders the produce *teruma* and tithe for produce in another place, he does not know that the bailee already sold the produce, and the owner eats untithed produce.⁸

The Gemara raises an objection from a *baraita*: In the case of one who deposits produce with another and it rotted,^N wine and it fermented, oil and it putrefied, honey and it spoiled,^B the bailee may not touch them; this is the statement of Rabbi Meir. And the Rabbis say: He effects a remedy^H for these items and sells them in court. The *baraita* adds: And when he sells them, he sells them to others and does not sell them to himself,^H even for the same price, so no one will suspect that he bought it at a discount.

HALAKHA

He effects a remedy – שעשה לרם תקנה: In a case where one deposits with another produce and it rots, or he deposits honey and it spoils, or he deposits wine and it ferments, if the owner of the item is in the city, then the bailee informs him. If not, the bailee effects a remedy and sells the item in court, so the vessels and casks are not ruined as well. This ruling is in accordance with the statement of the Rabbis in the *baraita* (Rambam Sefer Mishpatim, Hilkhos She'ela UFikadon 7:2; Shulhan Arukh, Hoshen Mishpat 292:16).

He sells them to others and does not sell them to himself – מוכרן לאחרים ולאיננו מוכרן לעצמו: Anyone who sells a deposit with the authorization of the court sells it to others and not to himself, to avoid arousing suspicion (Rambam Sefer Mishpatim, Hilkhos She'ela UFikadon 7:5; Shulhan Arukh, Hoshen Mishpat 292:19).

ביו' צא בז גבאי צדקה בז'ון שאן
להם ענינים לחלק – פורטן לאחרים.
ואין פורטן לעצמן, גבאי תמחוי בז'ון
שאן להם ענינים לחלק – מוכרי
לאחרים, ו אין מוכרים לעצמן.

קחני מילת פירות והרקיבו, מא'
לאו – אפיקלו יתר מבדי חסרון?
לא, בבדי חסרון, וזה יין והחמצץ,
שמן והבאיש, דבר והרביש, דיתר
מכדי חסרון ניהו שאמני הני בינו
דקם – קם.

שמן והבאיש, דבר והרביש
שאמני הני בינו

On a similar note, with regard to charity collectors, when they do not have poor people to whom to distribute charity, they change copper *perutot* that they collected for more valuable silver coins only for other people,ⁿ but they do not change the coins for themselves, to avoid suspicion. If collectors for the charity plate^h collected ready-made food for the poor, at a time where there are no poor people to whom to distribute the food, they sell the food only to others but do not sell the food to themselves.

In any event, it is taught: Produce and it rotted. What, is it not referring even to a case where they all rotted at a rate greater than its standard rate of deterioration? The Gemara rejects this: No; it is referring to a case where they deteriorated at their standard rate of deterioration. The Gemara asks: But aren't the cases of wine and it fermented, oil and it putrefied, and honey and it spoiled cases where these items deteriorated at a rate greater than their standard rate of deterioration, as there is a significant difference in the price of wine before and after fermentation, and in the price of oil before and after putrefaction? The Gemara rejects that proof: Those cases are different. Once they become spoiled, they remain spoiled but do not continue to deteriorate. Therefore, although their deterioration was significant, there is nothing gained by selling it.

On a related note, the Gemara asks: Concerning the cases of oil and it putrefied, honey and it spoiled,

Perek III

Daf 38 Amud b

למי חוו שמן חוי לגלדי, דבר
לכתיישא דגמלין?

"וחכם אומרים עושה להם תקנה
ומזקן בבית דין. מי תקנתא עביד
לה? אמר רבashi לנקננים.

במי קא מיפליג? דמר סבר: להפסיד
מורבה – חיששו, להפסיד מועט – לא
חששו. ומ רבר: אפיקלו להפסיד
מעט – נמי חיששו.

"רבנן שמעון בן גמליאל אומר ימקרים
בבית דין מפיע שהו בא משיב אבידה
לבעלום. אמרו, רבי אבא ברבי
יעקב אמר רבי יוחנן: הלכה ברובו
שמעון בן גמליאל, ורבא אמר רב
נחמן: הלכה ברורי חכמים.

for what use are they fit? According to the Rabbis, one sells them in court. Apparently, they must have some value. The Gemara answers: Oil is fit for tanners who would coat the hides with oil even if it had a foul odor. Honey is fit as a salve for a wound on the back of camels.

It is taught in the baraita: And the Rabbis say that the bailee effects a remedy for the spoiled products and sells them in court. The Gemara asks: What remedy does he effect for those products? Rav Ashi said: It is a remedy for the casks. Although the contents of the barrel are irreversibly spoiled, leaving it in the barrels will ruin the barrels.

The Gemara asks: Since Rabbi Meir agrees that when there is deterioration at a rate greater than its standard rate of deterioration, the bailee should sell the deposit, with regard to what issue do Rabbi Meir and the Rabbis disagree?ⁿ The Gemara answers: The dispute is that one Sage, Rabbi Meir, holds: The Sages were concerned for a significant loss, but the Sages were not concerned for an insignificant loss, like damage to the barrels. And one Sage, the Rabbis, holds: The Sages were concerned even for an insignificant loss.

§ The mishna teaches that Rabban Shimon ben Gamliel says: He sells it before the court, due to the fact that in doing so he is like one returning a lost item to the owner. It was stated that Rabbi Abba, son of Rabbi Yaakov, says that Rabbi Yohanan says: The halakha is in accordance with the opinion of Rabban Shimon ben Gamliel. And Rava says that Rav Nahman says: The halakha is in accordance with the statement of the Rabbis.

With regard to what issue do Rabbi Meir and the Rabbis disagree – **במי קא מיפליג**: Most commentaries explain that the dispute about spoiled goods is unrelated to the previous dispute concerning a deposit. They explain that in cases pertaining to the former there is nothing preventing the bailee from selling the deposit. Even if the mishna ruled that the bailee may not

touch the deposit because one prefers his own *kav*, that does not apply to one's own spoiled *kav*. If the mishna's concern is that the owner might have rendered the produce *teruma* before it spoiled and the bailee will give *teruma* to non-priests, the prohibition against benefiting from *teruma* is by rabbinic law, and the Sages do not issue a decree in the uncommon case (Ritva).

NOTES

גבאי צדקה...change for others – פורטן לאחרים: They need not change the money in the presence of the court. Since they were authorized to distribute the money as they see fit, they may also change the money as they see fit. They are required to change money only so that others will not cast aspersions upon them (Rashba).

HALAKHA

Charity collectors...collectors for the charity plate – גבאי צדקה...גבאי תמחוי: Collectors of charity who have no poor people to whom to distribute the money collected should change it into silver coins for others and not for themselves. Collectors for the charity plate sell the food to others to avoid arousing suspicion (Rambam Sefer Zeraim, Hilkhos Mattenot Aniyim 9:11; Shulhan Arukh, Yoreh De'a 257:2).

BACKGROUND

The guarantor and Tzaidan and the final disagreement – שָׁבַע – These three halakhot are cases in the Mishna in which Rabbi Yoḥanan rules that the halakha is not in accordance with the opinion of Rabban Shimon ben Gamliel.

The halakha of the guarantor refers to Rabban Shimon ben Gamliel's opinion that even when a guarantor has accepted full responsibility for a debt, the creditor may not approach him for repayment without first seeking to exact payment from the borrower (*Bava Batra* 173b).

The second case is one where a man divorced his wife on the condition that she return his cloak, and the garment was lost (*Gittin* 74a). Since she is unable to fulfill the condition, the Rabbis rule that the divorce does not take effect. Rabban Shimon ben Gamliel disagreed and ruled that in that case, the Sages deemed it permitted for her to pay him the value of the cloak, and then the divorce takes effect.

The final case of disagreement appears in a mishna where there are two disputes with regard to evidence (*Sanhedrin* 31a). The first dispute pertains to a case where an individual was told to bring evidence or witnesses on his behalf within thirty days. The Rabbis maintain that he may not produce them after that deadline. Rabban Shimon ben Gamliel maintains that this evidence or these witnesses may be brought after the deadline. The halakha is in accordance with the opinion of Rabban Shimon ben Gamliel. In the second dispute, an individual was told to bring evidence or witnesses on his behalf, and he responded that he has neither. The Rabbis hold that he may not subsequently bring them. Rabban Shimon ben Gamliel holds he may subsequently bring them. In this latter case the halakha is not in accordance with the opinion of Rabban Shimon ben Gamliel.

NOTES

The court authorizes a relative to descend and manage the property of a captive – מִוּרֵידִין קָרוֹב לְכֶסֶי שְׁבִי: The similarity between selling a deposit of produce and authorizing one to manage the property of a captive is clear. According to the opinion of Rabban Shimon ben Gamliel, it is proper for a bailee and the court to ensure that another's property will not decrease even slightly in value. The court does not take into consideration the possibility that perhaps the owner prefers that the property remain intact, as he may anticipate a significant profit. It is assumed that he prefers to avoid a loss. That does not prove that it is specifically a relative that is authorized by the court. There is another reason for that. Since the court authorizes one to manage the property, the relative has the right of first refusal, because if the captive does not return, he is entitled to all the produce and any increase in the value of the property. Why give it to a stranger? (Ramban; Rashba).

Rabban Shimon ben Gamliel states his opinion here only, etc.: שע"ד פ"ן לא קאמ' בר' ר' שמעון ב' גמליאל אל' אלו וכו' – Tosafot ask: Isn't it taught in a baraita cited later that Rabban Shimon ben Gamliel holds that the court authorizes a relative to manage the property of a captive? Some answer that the halakha in the baraita is formulated differently, and this phrase does not appear. Alternatively, the Gemara preferred to cite proof from a mishna rather than from a baraita. Another possibility is that the Gemara sought not only to prove what the opinion of Rabban Shimon ben Gamliel is but also to indicate that his opinion with regard to authorization to manage property is connected to his opinion with regard to a deposit (see Ritva).

HALAKHA

The court authorizes a relative to descend and manage the property of a captive – מִוּרֵידִין קָרוֹב לְכֶסֶי שְׁבִי: In the case of a captive or one who flees due to mortal danger, the court authorizes an heir apparent to manage his property and cultivate the land until the captive returns or it is determined that he died. If the captive or the refugee returns, the labor that the relative invested and the produce that he consumed are calculated according to the rates customary for sharecroppers in that area. Others say that the heir is treated like a sharecropper only in terms of the enhancement of the field, but he receives all of the produce (Rema, citing *Tur* and *Rosh*). These rulings are in accordance with the opinion of Shmuel (Rambam *Sefer Mishpatim*, *Hilkhot Nahalot* 7:4; *Shulhan Arukh*, *Hoshen Mishpat* 285:2-3).

וְהִיא אָמֵרָה רַבִּי יוֹחָנָן חֶדֶר וְמַנָּא,
דָּאָמֵר וְבָהּ בָּר בָּר חֶנָּה אָמֵר וְבָהּ
יוֹחָנָן כֵּל מִקּוֹם שְׁשָׁנָה וְרַבָּן שְׁמֻעוֹן בָּן
גִּמְלַיאֵל בְּמִשְׁתְּבָרָא – הַלְּכָה בְּמוֹתוֹן,
חוֹזֵם מִשְׁרָב וְצִדְןָן וְאֲרָיה אַחֲרוֹנָה!

אמָרְאִי נִנְחָה, וְאַלְיבָא דָרְבִּי יוֹחָנָן.

מִדְרָבֵן שְׁמֻעוֹן בָּן גִּמְלַיאֵל נִשְׁתְּמָעַ
דָּמָרְדִּין קָרוֹב לְכֶסֶי שְׁבִי, מִדְרָבֵן
נִשְׁתְּמָעַ – דָּאַין מִוּרֵידִין קָרוֹב לְכֶסֶי
שְׁבִי.

וּמִפְּמַאי? דְּלָמָא עַד פָּאָן לֹא קָאָמֵר
רַבָּן שְׁמֻעוֹן בָּן גִּמְלַיאֵל הַכָּא – אַלְאָ
מִשּׁוּם דְּקָא בְּלִיאָ קָרְאָ, אַבְלָ הַתָּם –
הַכִּי נִמְּיָן דָּאַין מִוּרֵידִין וְעַד פָּאָן לֹא
קָאָמֵר רַבָּן הַכָּא – אַלְאָ אֵי כְּרָב
פְּהָנָא אֵי כְּרָב נִחְמָן בָּר יַעֲקֹב, אַבְלָ
הַתָּם – הַכִּי נִמְּיָן דִּמּוּרֵידִין.

לִמְיָמָרָא דָתְרֵי טָעֵמִי נִנְחָה? וְהַאֲמֵר
רַב יְהוּדָה אָמֵר שְׁמוּאֵל: הַלְּכָה בְּרָבוֹן:
שְׁמֻעוֹן בָּן גִּמְלַיאֵל, וְאָמֵר שְׁמוּאֵל:
מִוּרֵידִין קָרוֹב לְכֶסֶי שְׁבִי, לֹא
מִשּׁוּם דְּחַד טָעֵמָא הַזָּה? לֹא, תָּרִ
טָעֵמִי נִנְחָה.

הַכִּי נִמְּיָן מִסְתְּבָרָא, דָאָמֵר רַבָּא
רַב נִחְמָן: הַלְּכָה בְּדָבְרֵי חַכְמִים, וְאָמֵר
רַב נִחְמָן: מִוּרֵידִין קָרוֹב לְכֶסֶי שְׁבִי.
אַלְאָ שְׁבָע מִינָה: תָּרִי טָעֵמִי נִנְחָה
שְׁמָעַ מִינָה.

אַתָּה בָר, שְׁבִי שְׁגַבָּה. רַב אָמֵר: אֵין:
מִוּרֵידִין קָרוֹב לְכֶסֶי, שְׁמוּאֵל אָמֵר:
מִוּרֵידִין קָרוֹב לְכֶסֶי.

The Gemara asks: But why is it necessary for Rabbi Yoḥanan to issue that ruling specifically in this case? Didn't Rabbi Yoḥanan already say one other time that in general the halakha is in accordance with the opinion of Rabban Shimon ben Gamliel? As Rabba bar bar Ḥana says that Rabbi Yoḥanan said: Every place where Rabban Shimon ben Gamliel taught a ruling in our mishna, the halakha is in accordance with his opinion, except for the following three cases: The responsibility of the guarantor (*Bava Batra* 173b), and the incident that occurred in the city of Tzaidan (*Gittin* 74a), and the dispute with regard to evidence in the final disagreement (*Sanhedrin* 31a).^b By inference, in all other cases, Rabbi Yoḥanan holds that the halakha is in accordance with his opinion.

The Gemara answers: Rabbi Abba and Rabba bar bar Ḥana are *amora'im* and disagree with regard to the opinion of Rabbi Yoḥanan. Rabbi Abba holds that there was no general ruling, and therefore a ruling was necessary in this case. Rabba bar bar Ḥana holds that Rabbi Yoḥanan issued a general ruling.

The Gemara notes: From the statement of Rabban Shimon ben Gamliel, it is learned that the court authorizes a relative, who is the heir apparent, to descend and manage the property of a captive.^{nh} A bailee who sells rotting produce is like one returning a lost item to the owner; one who manages the property of a captive who is unable to do so himself should have the same status. From the statement of the Rabbis, who say that the bailee may not touch the rotting produce, it is learned that the court does not authorize a relative to descend and manage the property of a captive.

The Gemara rejects this parallel: And from where do you draw that conclusion? Perhaps Rabban Shimon ben Gamliel states his opinion here onlyⁿ due to the fact that the principal, i.e., the rotting produce, is destroyed. But there, indeed, the court does not authorize a relative to descend and manage the property of a captive, because if the land lies fallow, the land will remain intact, even if the captive will not profit. And perhaps the Rabbis state their opinion only here based either on the reason of Rav Kahana, that a person prefers his own produce, or on the reason of Rav Nahman bar Yitzḥak, that there is concern that perhaps the owner designated the produce as *teruma* or tithe. But there, with regard to the captive's property, those reasons do not apply, and indeed the court authorizes the relative to manage it.

The Gemara asks: Is this to say that they are two independent reasons for these two halakhot? But doesn't Rav Yehuda say that Shmuel says: The halakha is in accordance with the opinion of Rabban Shimon ben Gamliel, and Shmuel says: The court authorizes a relative to descend and manage the property of a captive? Is it not due to the fact that there is one common reason for both halakhot? The Gemara rejects that reasoning: No, they are based upon two unrelated reasons, and Shmuel ruled the halakha in each case independently.

The Gemara comments: So too, it is reasonable to say that the two halakhot are unrelated, as Rava says that Rav Nahman says: The halakha is in accordance with the opinion of the Rabbis, and Rav Nahman says: The court authorizes a relative to descend and manage the property of a captive. Rather, learn from it that they are based upon two unrelated reasons. The Gemara affirms: Learn from it that they are unrelated.

The Gemara notes that it was stated that there is an amoraic dispute with regard to one who was taken captive. Rav says: The court does not authorize a relative to descend and manage the property of a captive. Shmuel says: The court authorizes a relative to descend and manage the property of a captive.

**בשְׁמָעוֹ בּוֹ שְׁמַת - כּוֹלִי עַלְמָא לֹא
פְּלִגֵּי דָמוֹרִידִין,**

כִּי פָלַגְיִי – בְּשַׁלְאָ שָׁמְעוּ בֹּו שְׁמָתָה. ר' אָמֶר: אֵין מְזֻרִידִין, דְּלַמְאָ מְפַסִּיד לְהֹו.
וְשִׁמְאָלָא אָמֶר: מְזֻרִידִין, בְּנֵי דָאָמֶר מַר
שְׂמִיחָה – הַזָּהָר בְּאָרִיס – לֹא מְפַסִּיד לְהֹו.

מיתה ב', רבי אליעזר אומר: מפשמע
שנאמר "זורה אפי ורגתי אתכם"
ידע אני ש' שותיהם אלגנות ובניהם
יתומים". אלא מה תלמוד לומר זיהוי
נשיכם" וגו'.

מלמד שגשותיהם מבקשות לישא
וain מחייב אוטן, ובניהן רוחים לירד
לנכסי אביהן וain מחייב אוטן אמר
רבע: לירד ולמכור תנ.

הזה עובדא בנהרדעא, ופשתה רב ששות מהא מתניתא. אמר ליה רב העמרם: זלמא לירד ולמכור תנן? אמר ללה: דלמא מופומבדיתא את, דמעילין פילא בקופא דמחטיא? זה הוא מיא דרושתיהם [ביביהם] קתני, מה התרם - כללו לא, אף הכא נמי - בכללו לא.

ומורידין קרוב לנכסי שבי תנאי
היא. דתניתא: הייר לנטבי שבי – אין
מויצאין אותו מידן, ורא עוד אללא.
אפילו שמע שממשמשין ובאיין, וכך
ותלש ואכל – הרי זה רווי ונשבר. ואלו
הן נכסי שבויין: הרי שהיה אביו או
אחיו או אחד מן המורישין, החלכו להם
למידינת הים, ושבעו בהן שפת.

The Gemara limits the scope of the dispute: In a case where they heard that the captive died,¹⁴ everyone agrees that the court authorizes a relative to descend and manage the property of a captive. The relative is the prospective heir and will tend to the land as if it were his own. If the captive returns, he will compensate the relative for his expenditures.

When they disagree, it is in a case where they did not hear that the captive died and presumably he will return. **Rav says**: The court does not authorize a relative to descend and manage the property of a captive, lest he devalue the property. Since presumably the owner of the property is alive, the relative assumes that he will eventually be required to return the property to the owner. Therefore, he does not tend to the land as if it were his own but will farm the land to increase its short-term yield, at the expense of its long-term condition. **And Shmuel says**: The court authorizes a relative to descend and manage the property of a captive. **Since the Master said**: In any case where one works a field that is not his, we appraise his work as if he were a sharecropper, the relative will not devalue the property. It is in his best interest to tend to the land to ensure that he will receive his payment.

The Gemara raises an objection from a *baraita*. Rabbi Eliezer says: By inference, from that which is stated: "My wrath shall wax hot, and I will kill you" (Exodus 22:23), I know that their wives shall be widows and their children orphans. Rather, what is the meaning when the verse states: "And your wives shall be widows and your children orphans" (Exodus 22:23)? Why is this clause in the verse necessary?

The verse teaches an additional punishment, that the men will be killed with no witnesses. Their wives will seek to marry, and the courts will not allow them to do so without witnesses to their husbands' deaths. And their children will wish to descend to their father's property, to inherit it, and the courts will not allow them to do so. Apparently, the court does not authorize a relative to descend and manage the property of a captive. Rava said: We learned in the *baraita* that the courts do not allow them to descend and to sell the land, but the court does authorize a relative to descend and manage the land.

The Gemara relates: There was a similar incident in Neharde'a, and Rav Sheshet resolved the matter from this *baraita* and ruled that the court does not authorize a relative to descend to the property of a captive. Rav Amram said to him: Perhaps we learned in the *baraita* that the courts do not allow a relative to descend and to sell the land? Rav Sheshet said mockingly to him, employing a similar style: Perhaps you are from Pumbedita,^b where people pass an elephant through the eye of a needle, i.e., they engage in specious reasoning. But doesn't the juxtaposition between their wives and their children in the verse teach that the meaning is similar in both cases? Just as there, with regard to the wives, it means that they may not remarry at all, so too here, with regard to the sons, it means that they may not descend to the property at all.

The Gemara comments: And the matter of whether the court authorizes a relative to descend and manage the property of a captive is a dispute between *tanna'im*, as it is taught in a *baraita*: In the case of one who descends to the property of a captive^H and works his field, the court does not confiscate it from his possession. And furthermore, even if he heard that the owners are approaching and arriving, and the one who descended to the field preceded their arrival and uprooted and consumed produce that grew that year, that person is deemed diligent and he profits, as he received a return on the work that he invested. And these are the cases where there is captives' property: Cases where one's father, or brother, or one of those relatives who bequeaths him an inheritance went to a country overseas, and those in his locale heard that the relative died.

HALAKHA

בשניהם – Where they heard that the captive died – בזאת שמעו If there is a report that a captive or a refugee died, the court authorizes his relatives to manage his property until there is clear proof that he died or until he returns. The Rema cites the Rosh, who says that if the captive returns, the one who managed the property is not entitled to any profit. He does not receive any compensation for his expenditures but he is not required to compensate the captive for the produce that he consumed (Rambam Sefer Mishpatim, Hilkhot Nahalot 7:5; Shulhan Arukh, Hoshen Mishpat 285:5, and in the comment of Rema).

הירך One who descends to the property of a captive – **הירך** If there is a report that a captive died, and his heirs divide his property between them, the court does not confiscate the property from them. If the relatives hear that the captive is returning and then hastily eat all of the produce, the court does not require them to compensate the captive (*Shulhan Arukh, Hoshen Mishpat* 285:1 and *Netivot HaMishpat* there).

BACKGROUND

Perhaps you are from Pumbedita – דָלְמָא מִפּוּמְבָדִיתָא

אַמְּרָא: In Babylonia, during the first generations of *amoraim*, two major academies were established, one in Sura and one in Pumbedita. Although there were periods when, for different reasons, they closed or split into different academies, they continued to exist for many years.

The method of study in Sura was similar to the method in Eretz Yisrael, where the emphasis was on extensive knowledge of the texts, from the Torah through tannaitic literature. Rav Sheshet was one of the prominent students of that academy.

The method in Pumbedita put more emphasis on intensive study. Rav Amram was a student of Rav Sheshet, and Rav Sheshet knew him well. The question: Perhaps you are from Pumbedita, is an ironic question, through which Rav Sheshet expressed his attitude toward the method of study in Pumbedita.

HALAKHA

Forsaken property – נכסי רטושים: If one traveled of his own volition and his destination is unknown, the court does not authorize a relative to manage his property. Furthermore, if a relative descends to manage the traveler's property, the court evicts him from there. The property remains as it was, as it is considered to be deliberately lost by its owner, a situation the court does not address (Rambam Sefer Mishpatim, Hilkhos Nahalot 7:8; Shulhan Arukh, Hoshen Mishpat 285:1).

הַיּוֹדֵל בְּכִסֵּי נָטוּשִׁים – מָזִיאין אֶתְוָתוֹ מִידָּוֹ. וְאֵלּוּ הַנּוֹכְשִׁים: הַרִּי שָׁהִיה אֲבִיו אוֹ אָחִיו אוֹ אָחָד מִן הַפּוֹרִישִׁין, הַלְּבָוֹ לְהַמִּדרְנָה הַיּוֹם וְלֹא שָׁמַעַן בָּהֶם שְׁמָתָה. וְאָמַר רַבָּן שְׁמֻעוֹן בָּן גַּמְלִיאֵל: שְׁמַעְתִּי שְׁהַנְּטֹשִׁים כְּשָׂבוֹין.

הַיּוֹדֵל בְּכִסֵּי רַטוּשִׁים – מָזִיאין אֶתְוָתוֹ מִידָּוֹ. וְאֵלּוּ הַנּוֹכְשִׁים: הַרִּי שָׁהִיה אֲבִיו אוֹ אָחִיו אוֹ אָחָד מִן הַפּוֹרִישִׁין בָּאוֹן, וְאַינוֹ יְדֹעַ לְהִיכְנוֹ הַלְּבָוֹ.

מַאי שְׁנָא הַנּוֹדֵקְרוֹ לְהַוְּ נָטוּשִׁים, וּמַאי שְׁנָא הַנּוֹדֵקְרוֹ לְהַוְּ רַטוּשִׁים?

In the case of one who descends to abandoned property, the court removes it from the possession of the one managing it. And these are the cases where there is abandoned property: Cases where one's father, or brother, or one of those relatives who bequeaths him an inheritance went to a country overseas, and those in his locale did not hear that the relative died. And Rabban Shimon ben Gamliel said: I heard that the legal status of abandoned property is like that of the property of captives, and it is not confiscated from the possession of the one managing it. The dispute between the first *tanna* and Rabban Shimon ben Gamliel parallels the dispute between Rav and Shmuel.

With regard to one who descends to forsaken property,^h the court removes it from his possession. And these are the cases where there is forsaken property: Cases where one's father, or brother, or one of those relatives who bequeaths him an inheritance was here, and the relative does not know where they went. Everyone agrees that in these instances the court does not authorize a relative to descend to the property.

The Gemara asks: What is different about one property, that it is called abandoned property? And what is different about the other property, that it is called forsaken property?

Perek III

Daf 39 Amud a

NOTES

Expropriation by edict of the King of the Universe – נְקֻעָתָה דְּמָלָכָא: This characterization was necessary in order to establish that the land is expropriated during the Sabbatical Year, independent of any declaration of ownerlessness by its owner (see Pe'at HaShulhan and Hazon Ish). It is also necessary to underscore that the land lies fallow not in order to improve the soil but by edict of the King of the Universe (*Nefesh Hayya*).

He is diligent and he profits – רָוי וּנְשָׁבֵר: The Sages instituted that the one working the land consume its produce. This is primarily because there is concern that he will exploit the land to take from it what he can and thereby cause damage, as the field is not transferred to his ownership absolutely. There is a distinction between abandoned property and the property of a captive. In the latter case, one is more hesitant to damage the field because there is a greater chance that the owner will return. According to another explanation, the produce harvested by the one working the land is not included in the calculations of what he receives and what he must pay; if he is diligent, he profits. Although one appraises his work as if he were a sharecropper, that applies only to produce that he did not yet harvest (*Ritva*).

נָטוּשִׁים דְּבָעֵל בְּרִיחָן, דְּכִתְבֵּי "וְהַשְׁבִּיעָת תְּשִׁמְתָּנָה וְנִטְשָׁתָה" – אַפְקָעָתָא דְּמָלָכָא. רַטוּשִׁים – דְּמַנְעָתָן, דְּכִתְבֵּי "אָמֵן עַל בָּנִים רְטַשָּׁה".

תְּנָא: וּכְלָם שְׁמַיִן לְהַמְּפַרְבָּרִים. אֲהַיָּא?
אַילִימָא אֲשָׁבוֹן – הַשְׁתָּא רָוי וּנְשָׁבֵר
הַהָּה, מָאי דְּאֲשָׁבָה מִבְּעֵיא? אַלְאָ
אַרְטוּשִׁים? וְהָא מָזִיאין אֶתְוָתוֹ מִידָּוֹ
קְרִתְמִינִי.

אַלְאָ אַנְטוּשִׁים, לְמַאְן? אַילִימָא לְרַבָּן –
הָא אַקְמֵי מָזִיאין אֶתְוָתוֹ מִידָּוֹ, אֵי רַבָּן
שְׁמַעַן בָּן גַּמְלִיאֵל – הָא אָמַר שְׁמַעְתִּי
שְׁהַנְּטֹשִׁים כְּשָׂבוֹין!

The Gemara explains: Abandoned property [*netushim*]; this is referring to property that the owners vacated perforce. When it is written: “But the seventh year you shall let it rest and lie fallow [*untashitah*]” (Exodus 23:11), that is expropriation by edict of the King of the Universe.ⁿ Forsaken property [*retushim*]; this is referring to property that the owners vacated of their own volition, as it is written: “A mother was forsaken [*rutasha*] with her sons” (Hosea 10:14), indicating that the mother was left with the sons, as all the men left.

A Sage taught with regard to the *baraita* discussing the case of one who descends to the property of another: And for all of them, the court appraises their work as one would appraise the work of a sharecropper. The Gemara asks: To which property in the *baraita* is this ruling stated? If we say it is stated with regard to captives' property, now that the *tanna* stated that he is diligent and he profits,ⁿ as he may take as much produce as he wishes, is it necessary to say that he can take a share of what he did to enhance the field? Rather, say that it is stated with regard to forsaken property. But isn't it taught: The court removes it from his possession? The legal status of the one who labored in the field is not at all similar to that of a sharecropper.

Rather, say that it is stated with regard to abandoned property. The Gemara asks: In accordance with whose opinion? If we say it is in accordance with the opinion of the Rabbis, don't they say: The court removes it from his possession? And if it is in accordance with the opinion of Rabban Shimon ben Gamliel, doesn't he say: I heard that the legal status of abandoned property is like that of captives' property, and the rights of the one who labored in the field are superior to those of a sharecropper.

**בשׁוּרִין, וְלֹא שׁוּרִין. בְּשׁוּרִין – דָאַן
מוֹצִיאָן אֲוֹתָן מִידָּן, וְלֹא שׁוּרִין – דָאַילְוָה
הַתְּמִםְרֵין וְנִשְׁבֵר, וְאַיְלָה הַכָּא שִׁימִינִין לִיה
כָּאָרִים.**

**בְּמַאי שְׂנָא מְהָא דָתֵנָן: הַמוֹצִיאָה הַזְּעָזָות
עַל נְכָסִי אֲשֶׁתוֹ, הַזְּעָזָה הַרְבָּה וְאַכְלָל
קִימְעָא, קִימְעָא וְאַכְלָל הַרְבָּה – מַה
שְׁהַזְּעָזָה הַזְּעָזָה, וְמַה שְׁאַכְלָל אַכְלָל!**

**הַא לֹא דָמֵי אַלְאָ לְהָא, דָתֵנָן: הַמוֹצִיאָה
הַזְּעָזָות עַל נְכָסִי אֲשֶׁתוֹ קַטְנָה – כְּמוֹצִיאָה
עַל נְכָסִי אֶחָד דָמֵי. אַלְמָא: בֵּין דָלָא
קַמְאָה דַעֲתָה – תִּקְנוּ לְיהָ וּרְפָנָן, בַּיְהִיכִּי
דָלָא לְפִסְדִּינָהוּ. הַכָּא נָמֵי, תִּקְנוּ לְיהָ וּרְפָנָן
בַּיְהִיכִּי דָלָא לְפִסְדִּינָהוּ.**

**יָכוֹלָן שְׁמַיְן לְהָם כָּאָרִים. וְכוֹלָן לְאַיְתּוּי
מַאי?**

The Gemara answers: According to the opinion of Rabban Shimon ben Gamliel, the legal status of that property is in some ways like that of captives' property but in other ways not like that of captives' property. It is like that of captives' property in that the court does not remove it from his possession. But it is not like that of captives' property, as there, in the case of captives' property, the one working the field is diligent and he profits from the produce he takes, while here, one appraises their work as one would appraise the work of a sharecropper.

The Gemara asks: And what is different in this case from that which we learned in a mishna (79b): In the case of one who outlays expenditures to enhance his wife's usufruct property,^h which belongs to his wife but whose profits are his for the duration of their marriage, if the marriage ends in divorce or his death and she reclaims the property, whether he spent much to enhance the property and consumed little and did not derive benefit commensurate with his investment, or whether he spent little and consumed much, the principle is: What he spent, he spent, and what he consumed, he consumed. His labor is not appraised like that of a sharecropper.

The Gemara answers: This case is comparable only to that which we learned in a statement that Rabbi Ya'akov said that Rav Hisda said: The legal status of one who outlays expenditures to enhance the usufruct property of his minor wife,^h whose father died and whose brother and mother married her off, is like that of one who outlays expenditures to enhance the property of another, as this is a marriage by rabbinic law and she can void the marriage by performing refusal. If the husband spent much to enhance the property and consumed little, his work is assessed like that of a sharecropper. Apparently, since he does not rely on the fact that her property will remain his, the Sages instituted on his behalf that he be reimbursed for his expenditures so that he will not devalue the property. Here too, the Sages instituted on behalf of the one who labored in the field that he be reimbursed for his labor, so that he will not devalue the property.

The Gemara asks with regard to the phrase written in the *baraita*: And for all of them, the court appraises their work as one would appraise the work of a sharecropper, what additional case does it serve to include, as apparently it applies only to property of those who abandoned it, in accordance with the opinion of Rabban Shimon ben Gamliel?

**לְאַיְתּוּי הַא דָאַמַּר רַב נַחְמָן אַמְרָה
שְׁמַאֲלָה: שְׁבוּי שְׁנַשְׁבָּה – מוֹרְדִּין קָרוֹב
לְנְכָסִי, יֵצֵא לְעֵת – אֵין מוֹרְדִּין קָרוֹב
לְנְכָסִי. וַרְבָּן נַחְמָן דִּירִיה אָמַר: בּוֹרָח הַרִּי
הַוָּא בְּשָׁבְּיָה. בּוֹרָח מִחְמָת מַאי? אַיִלְמָא
מִחְמָת בְּרוֹא – הַיְיָנוּ לְעֵת, אַלְאָ בּוֹרָח
מִחְמָת מוֹרְדִּין.**

The Gemara answers: It comes to include that which Rav Nahman says that Shmuel says: For a captive who was taken captive, the court authorizes a relative to descend and manage his property. If he left of his own volition, the court does not authorize a relative to descend and manage his property. And Rav Nahman says his own statement: The legal status of one who flees is like that of a captive. The Gemara asks: One who flees for what reason? If we say that he flees due to a tax [karga]^l that he attempts to evade, that is the case of one who left of his own volition. Rather, the reference is to one who flees due to an allegation that he committed murder [meradin],^{hl} and he flees to avoid execution. Therefore, his legal status is that of a captive.

HALAKHA

One who outlays expenditures to enhance his wife's usufruct property – נְכָסִי אֲשֶׁתוֹ על המוציא הוצאות על נְכָסִי אֲשֶׁתוֹ: In the case of a husband who spends money on his wife's personal property, if he dies or divorces her, whatever he spent is spent and whatever he profited from he profited from, provided that he enjoyed some of the profits. He is neither entitled to be reimbursed for expenditures nor required to pay for any profits that he enjoyed (Rambam Sefer Nashim, Hilkhos Ishut 23:8; Shulhan Arukh, Even HaEzer 88:7).

One who outlays expenditures to enhance the usufruct property of his minor wife – נְכָסִי אֲשֶׁתוֹ קַטְנָה: In the case of a minor girl who was married off by her mother and brothers, whose marriage is by rabbinic law, the court appraises the work of the husband like that of a sharecropper. It calculates how much of the profits he enjoyed, how much the value of the property increased, and how much he spent (Rambam Sefer Nashim, Hilkhos Ishut 23:10; Shulhan Arukh, Even HaEzer 88:10).

One who flees due to an allegation that he committed murder – בּוֹרָח מִחְמָת מוֹרְדִּין: If one flees his property at his own initiative due to mortal danger, his legal status is that of a captive in terms of one tending to his property (Rambam Sefer Mishpatim, Hilkhos Nahalot 7:5; Shulhan Arukh, Hoshen Mishpat 285:2).

LANGUAGE

Tax [karga] – כְּרוֹגָא: This word comes from the Middle Persian word harg, meaning duty or tribute. In the Talmud it normally refers to a poll tax.

Murder [meradin] – מוֹרְדִּין: Apparently from Middle Iranian murd, meaning death, and related to the English term mortality. Others suggest that it is a term referring to dueling. If so, the sense here is that the person fled because he was challenged to a duel.

LANGUAGE

Steward [apoteropa] – אֲפּוֹטְרוֹפָא: From the Greek ἐπίτροπος, *epitropos*, meaning appointee, steward, trustee, or administrator.

NOTES

A steward for the bearded – אֲפּוֹטְרוֹפָא לְדִיקְנַי: According to Rashi, stewards are not typically appointed for adults. There is no mitzva in tending to their property, so people are not likely to exert themselves on their behalf. The Ritva explains that a steward appointed to manage the property of a minor is aware from the outset of the duration of his tenure, i.e., until the minor reaches majority and can manage the property himself. Were a steward appointed to manage the property of an adult, there would be no clear end to his tenure, and people typically do not accept responsibility for an indeterminate period (Ritva).

A relative to the property of a minor – קָרָוב לְגַבֵּסִי קָטָן: Although it has been established that one cannot assume presumptive ownership over the property of a minor, there is a distinction between a case where one is in possession of his property, where people inform the minor and he can claim it when he reaches majority, and a case where a relative descends to the field. In the latter case, onlookers assume that the relative is the legal heir to the field. They will not inform the minor, who is consequently unaware that he must claim that the field is his in order to recover it (Ritva).

One cannot assume presumptive ownership of the property of a minor – אַין מִתְחִיקִין בְּגַבֵּסִי קָטָן: The ge'onim explain that when the Gemara says: Even if the minor reached majority, it means this: Even if the possessor was in possession of the field for three years after the minor reached majority, the owner is unaware of this and will not protest it because the person took possession of the field when he was a minor. Therefore, his being in possession does not result in presumptive ownership.

BACKGROUND

אַין מִתְחִיקִין: One cannot assume presumptive ownership – If one has been in possession of property for a period of time, this serves as proof to support his claim that he is its legal owner. The requisite period of time varies according to the nature of the property, e.g., establishing presumptive ownership of land requires three years. One capable of proving uninterrupted possession for the requisite period is no longer required to produce a document as evidence of his ownership. In order to preclude one occupying a field from asserting ownership after three years, the owner must issue a protest before that period elapses. The Gemara here states that possession of the land of a minor for three years does not create the presumption of ownership.

אמֶר וּבְיְהוּדָה אָמֶר שְׁמוּאֵל:
שְׁבִי שָׁנְשָׁבָה וְהַזִּיחַ קְמָה לְקָצֹר,
עֲנָבִים לְבָצֹר, תְּמֻרִים לְגָדוֹר, זִיתִים
לְמַסּוֹק – בֵּית דָין יוֹרְדֵין לְגַבֵּסִי
וּמִעֲמִידֵין אֲפּוֹטְרוֹפָס, וּקְצֵר וּבְצֵר
גָּדוֹר וּמַסּוֹק, וְאַחֲרֵכָן מָרוֹידֵין קָרָוב
לְגַבֵּסִי. וְלֹא קָרָוב אֲפּוֹטְרוֹפָא לְעוֹלָם!
אֲפּוֹטְרוֹפָא לְדִיקְנַי לֹא מָקוּמִין.

אמֶר וּבְהַונָּא: אַין מָרוֹידֵין קָטָן
לְגַבֵּסִי שְׁבִי, וְלֹא קָרָוב לְגַבֵּסִי קָטָן.
וְלֹא קָרָוב מִתְחִיקָתָן קָרָוב לְגַבֵּסִי קָטָן.

אַין מָרוֹידֵין קָטָן לְגַבֵּסִי שְׁבִי – דָלָמָא
מִפְסִיד לְהָגָה. וְלֹא קָרָוב מִתְחִיקָתָן קָרָוב
לְגַבֵּסִי קָטָן – בָּאָחִי מַאֲיָמָא. וְלֹא
קָרָוב לְגַבֵּסִי קָטָן – בַּינוֹ דָלָא מַחַיָּה.
אַתְּ לֹא חִזְקִין בֵּית.

אמֶר רְבָא, שְׁמַע מִינְיָה מִזְרָב הַונָּא:
אַין מִתְחִיקִין בְּגַבֵּסִי קָטָן.

Rav Yehuda says that Shmuel says: In the case of a captive who was taken captive and left in his field standing grain to be reaped, or grapes to be harvested, or dates to be cut, or olives to be picked, and the owner of the produce will incur significant loss if they are not harvested, the court descends to his property and appoints a steward to manage his property. And he reaps, and harvests, and cuts, and picks, and thereafter the court authorizes a relative to descend and manage his property. The Gemara asks: If that is an option, let the court always appoint a steward to manage the captive's field. The Gemara answers: We do not appoint a steward [apoteropa]¹ for the bearded,^{NH} i.e., adults. A steward is appointed only for orphans.

Rav Huna says: The court does not authorize a minor, even if he is an heir, to descend to the property of a captive.^H And the court does not authorize a relative who is an heir to descend to the property of a minor^N that has no one to tend to it. And the court does not authorize a relative due to a relative to descend to the property of a minor.

The Gemara elaborates: The court does not authorize a minor to descend to the property of a captive,^H lest he devalue the property. And the court does not authorize a relative due to a relative to descend to the property of a minor.^H The Gemara explains: It is a case where the minor has a paternal half-brother and that brother has a maternal half-brother. The concern is that the latter, who is not at all related to the minor who owns the field, will claim that he inherited the field from his brother. And the court does not authorize a relative to descend to the property of a minor. The concern is that since the minor does not protest at the appropriate time and assert that the property does not belong to his relative, that relative will come to assume presumptive ownership of the field.

Rava said: Learn from the statement of Rav Huna that one cannot assume presumptive ownership^B of the property of a minor.^{NH} Even if one took possession of and used the property of a minor for three years, this does not indicate that he has presumptive ownership of the property. Rav Huna restricted the descent specifically of relatives to the property of a minor, indicating that those are not concerns when it is a non-relative who descends to manage the field. Apparently, the reason that there is no concern is that one cannot assume presumptive ownership of the property of a minor.

HALAKHA

A steward for the bearded – אֲפּוֹטְרוֹפָא לְדִיקְנַי: Since it is difficult to find one willing to serve as a steward for adults, the court attempts to avoid appointing a permanent steward over the property of a captive. The Rema writes: If there is one who wants to perform this mitzva, all the better. Some say that an heir apparent can protest the appointment and claim that he does not want a steward appointed (Rambam Sefer Mishpatim, Hilkhos Nahalot 7:5; Shulhan Arukh, Hoshen Mishpat 285:2).

The property of a captive – נְגַבֵּסִי שְׁבִי: If a field is left standing in the field because its owner was taken captive or fled due to danger, the court intervenes and appoints a steward to oversee the harvest and sale of the grain. The steward then places the money along with the owner's movable property in the charge of the court. A relative is then appointed to manage the property. With regard to property that does not require hard work, e.g., courtyards that can be rented and the like, the court appoints an overseer, who collects money and entrusts it to the court until the fate of the captive or fugitive has been determined. This ruling is in accordance with the opinion of Shmuel (Rambam Sefer Mishpatim, Hilkhos Nahalot 7:6; Shulhan Arukh, Hoshen Mishpat 285:3).

A minor...to the property of a captive – קָטָן לְגַבֵּסִי שְׁבִי: In cases where the court authorizes a relative to manage the property of a captive, it does not authorize a minor, lest he

damage the property. Instead, a steward is appointed (Rambam Sefer Mishpatim, Hilkhos Nahalot 8:1; Shulhan Arukh, Hoshen Mishpat 285:6).

A relative to the property of a minor – קָרָוב לְגַבֵּסִי קָטָן: A relative is not authorized to manage the property of a minor who fled or was taken captive, lest he take possession of it. Neither does the court authorize the relative of a relative, i.e., one who is not himself an heir of the minor but would inherit from the heir, in accordance with the opinion of Rav Huna (Rambam Sefer Mishpatim, Hilkhos Nahalot 8:2; Shulhan Arukh, Hoshen Mishpat 285:6).

One cannot assume presumptive ownership of the property of a minor – אַין מִתְחִיקִין בְּגַבֵּסִי קָטָן: There is no presumptive ownership of the property of a minor, even after the minor reaches majority. The period during which he occupied the field while the owner was a minor is not included in the three years necessary to establish presumptive ownership. The Rema writes that even if he occupied the property for three years after the minor reached majority, he does not establish presumptive ownership, since when he first occupied the field the owner was a minor. That is the ruling according to most authorities (Rambam Sefer Mishpatim, Hilkhos To'en VeNitan 14:7; Shulhan Arukh, Hoshen Mishpat 149:19).

Perek III

Daf 39 Amud b

ואפילו הגדיל.

ולא אמרון אלָא באחוי דאבא, אבל באחוי דאמַמָּא – לית לֹן בָּה. ואחוי דאבא נמי לא אמרון אלָא באורעתא, אבל בבְּתִי – לית לֹן בָּה. ובאורעתא נמי לא אמרון אלָא דלא עבד עיטְדָא, אבל עבד עיטְדָא – קָלָא איתָה.

ולא היא, לא שנא אחוי דאבא ולא שנא אחוי דאמַמָּא, לא שנא אורעתא ולא שנא בותי, ולא שנא עבד עיטְדָא לא שנא לא עבד עיטְדָא – לא מחתין.

ההיא סבתא דהויא לה תלת בנותא, אישתבא依 איה ותרדא ברותא, איזיך תרתהי בנותא שכiba חדא מיעייחו ושבקה יוקא. אמר אביי הייב נבעיד? לוקטיניהו לנכסי בידא דאורעתא – דלמא שכיבא סבתא, ואין מוריין קרוב לנכסי – קטע. נוקטיניהו לנכסי בידא דינוקא – דלמא לא שכיבא סבתא, ואין מוריין קטע לבכיס שבי!

אמר אביי: הלכה, פלגא יהבינה לה לאחחה, ואיזיך פלגא מוקמינן ליה אפוטרוףא לינוקא. רבא אמר: מינו דמוקמינן אפוטרוףא לפלגא – מוקמינן ליה אפוטרוףא לאיזיך פלגא.

לסוף שמעו דשכיבא סבתא. אמר אביי: תילתא יהבינה לה לאחחה, ותילתא יהבינה לה לינוקא, ואיזיך תילתא יהבינה דנקא לאחחה, ואיזיך דנקא מוקמינן ליה אפוטרוףא לינוקא. רבא אמר: מינו דמוקmins אפוטרוףא לדנקא – מוקמינן נמי אפוטרוףא לאיזיך דנקא.

And even if one continues to occupy the field after the minor reached majority, he does not assume presumptive ownership, as perhaps the minor was unaware that he is the field's owner.

The Gemara comments: **And we said only in the case of paternal brothers** that the court does not authorize a relative to descend and manage the property of a minor, as they are potential heirs. **But in the case of maternal brothers we have no problem with it**, as they are not potential heirs. **And in the case of paternal brothers, we said that the court does not authorize a relative only with regard to land.** **But in the case of houses we have no problem with it**, as there are neighbors who can testify that the house does not belong to those brothers. **And with regard to land too, we said that it is only in a case where the minor's father did not draft a document of division of the property that the court does not authorize a relative.** **But in a case where the minor's father drafted a document of division, it generates publicity**, and everyone knows which portion belongs to each of the brothers.

The Gemara concludes: **But this is not so**, as there is **no difference** whether they are **paternal brothers** and there is **no difference** whether they are **maternal brothers**; it is **no different** whether it is **land**, and it is **no different** whether it is **houses**; and it is **no different** whether he **drafted a document of division**,ⁿ and it is **no different** whether he **did not draft a document of division**. **We do not authorize** a relative to descend and manage the property of a minor, to avoid that relative being regarded as the owner of the property.

§ The Gemara relates: There was a certain old woman^h who had three daughters. She and one daughter were taken captive. Of the other two daughters, one died and left behind a minor son. Abaye said: What should we do in this case with the property of the old woman? If one suggests: Let us establish the property in the possession of the surviving sister, that is problematic. There is a concern that perhaps the old woman diedⁿ in captivity, and if the old woman died, the minor inherits one-third of her property, and the court does not authorize a relative to descend and manage the property of a minor.^h If one suggests: Let us establish the property in the possession of the minor, that is also problematic. There is concern that perhaps the old woman did not die, and the court does not authorize a minor to descend and manage the property of a captive.

Abaye said: Consequently, half of the property is given to the surviving sister. If the captives died, she is the inheritor of half the property; if the captives are alive, this is a case where the court authorizes a relative to descend and manage the property of a captive. **And for the other half of the property, we establish a steward on behalf of the minor**, as it is conceivable that he inherited the property. Rava said: Once we appoint a steward for half of the property, we appoint a steward for the other half of the property, and it remains under his stewardship until the state of the captives becomes known.

Ultimately, they heard that that old woman died, and they did not hear the fate of the captive daughter. Abaye said: We give one-third of the property to the surviving daughter. And we give one-third of the property to the minor,ⁿ as he inherits it from his grandmother by virtue of his deceased mother. **And of the other one-third of the property, which belongs to the captive sister whose fate is unknown, we give one-sixth [danka]^l to the surviving sister, and for the other one-sixth, we appoint a steward on behalf of the minor**, as perhaps the sister died and the property is his. Rava said: Once we appoint a steward for one-sixth of the property, we also appoint a steward for the other one-sixth of the property, until the fate of the captive sister is known.

NOTES

And it is no different whether he drafted a document of division – **לֹא שָׁנָא עֲבֵד שְׂדֵה**: Even if a document of division was drafted, the precise distribution of the property is forgotten over time, and people will think that the property in the relative's possession is his (Rashba). Others explain that there is concern that with the passage of time the documents of division or the sharecropper agreement will be misplaced, and the relative will claim that he inherited the land (Rambam; Rabbeinu Yehonatan of Lunel; Meiri).

Perhaps the old woman died – **דְּלֹמַא שְׁכִיבָא סְבִתָּא**: Tosafot note that in general the possibility that a person died is not taken into account, but this is a case where the woman was exceptionally old. Other early commentaries note that this explanation creates other problems in understanding the Gemara (Ran; Ritva). Most commentaries adopt the second answer of Tosafot: Because they were taken captive, death is more likely.

And we give one-third of the property to the minor – **הַתְּלִקְתָּא יַהֲבִין לָהּ לְנוֹקָה**: The commentaries ask: How is property given to a minor? The court should appoint a steward for his portion as well. They answer that presumably the minor has already reached majority and he can manage his own property. Nevertheless, he is not old enough to be appointed a bailee over property that is not his (Rashba; Ran).

HALAKHA

A certain old woman, etc. – **הַהְיָא סְבִתָּא**: In the case mentioned in the Gemara, the Sages said that since the court authorizes neither a minor to manage the property of a captive nor a relative to manage the property of a minor, the court appoints a steward. Once they appoint the steward, he is appointed over all the property, in accordance with the opinion of Rava. If it ultimately becomes known that the old woman died, and there is no update about the captive daughter, then the surviving daughter takes one-third of the property, the minor takes one-third, and the court establishes a steward over the remaining one-third that belongs to the captive sister, due to the stake of the minor in it. This ruling is in accordance with the opinion of Rava (Shulhan Arukh, Hoshen Mishpat 285:9).

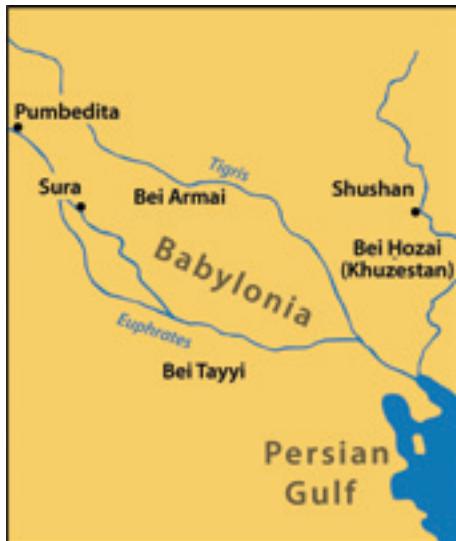
The court does not authorize a relative to descend and manage the property of a minor – **אֵין מִזְרִין לְרַבָּבָקָטָן**: The court never authorizes a relative to manage the property of a minor, even if he is related through the mother's brother, and even if they signed a sharecropper agreement or an agreement to divide the property. The Rema, citing the Ra'avad, writes that this is the ruling in a case where they do not have a common source of support and they already divided the inheritance. If the brothers did not yet divide the property and they have a common source of support, then the court authorizes a relative to manage the property of a minor. Some say that to manage the field of a minor, the court can appoint a relative as a steward, because a steward does not partake of the produce (Rambam Sefer Mishpatim, Hilkhot Nahalot 8:2; Shulhan Arukh, Hoshen Mishpat 285:7).

LANGUAGE

One-sixth [danka] – **דַּנְקָא**: The danka was a Persian monetary unit that appears in Middle Persian sources as dāng. Like the talmudic *ma'a*, it constituted one-sixth of a dinar. The term was also used to mean one-sixth, as in this passage.

BACKGROUND

Bei Hozai – בֵּי הָזָאי: In talmudic times, the Persian kingdom was ruled by the Sassanid dynasty, and the kingdom was divided into large units that paralleled ancient kingdoms or entities. Bei Hozai was one such unit. It was located in the area adjacent to the Persian Gulf and was far removed from the Jewish population centers, which were predominantly located in Bei Armai, ancient Babylonia.



Location of Bei Hozai

מִרְיִ בֶּן אִיסָּק אָתָא לִיהְ אֲחֹה מִבֵּי הָזָאי. אָמַר לְהָ: פָּלוֹג לֵי אָמַר לְהָ:
לֵא יַדְעֵנָא לֵן.

אָתָא לְקַמְיָה וּרְבָּ חֶסְדָּא. אָמַר
לְהָ: שְׁפִיר קָאָמַר לֵן, שְׁנָאָמַר "וַיֹּאמֶר
יְוָיָּךְ אֶת אֶחָיו וְהַם לֹא הַכְּרָהוּ" -
מַלְפּוֹד שִׁיאָ בְּלֹא תְּחִימָת זָקָן וּבָא
בְּחִיטָמָת זָקָן. אָמַר לְהָ: זַיְל אַיִתִי
סְהָדִי דְּאָחוֹה אָתָ. אָמַר לְהָ: אַיִתִי
סְהָדִי, וְחָלִי מִינְיָה, דְּגַבְּרָא אַלְמָא
הָוּא. אָמַר לְהָ: דְּלָאו אַחֲרָן הָוּא.
אַיִתִי סְהָדִי דְּלָאו אַחֲרָן הָוּא.

אָמַר לְהָ: דִּינָא הָכִי? הַמּוֹצִיא
מְחַבְּרוֹ עַלְיוֹ הָרְאָה! אָמַר לְהָ: הָכִי
דִּינִיאָנָא לֵן וּלְלַבְּ אַלְמָיִם דְּחָבָרָן. אָמַר
לְהָ: סְוּסָּו אָטוֹ סְהָדִי וְלֹא מְסָהָדִי!
אָמַר לְהָ: תְּרַתִּי לֹא עֲבָדָן.

לְסֻסָּו אָטוֹ סְהָדִי דְּאָחוֹה הָוּא. אָמַר
לְהָ: לְפָלוֹג לֵי נַמֵּי מְפַרְדִּים וּבּוֹסְטָנִי
דְּשַׁתְּלָ אָמַר לְהָ: שְׁפִיר קָאָמַר לֵן,
דְּתַפְּנָ: הַנִּיחָ בְּנִים גָּדוֹלִים וּקְטָנִים,
וְהַשְּׁבִיחָו גָּדוֹלִים אֶת הַנְּכָסִים -
הַשְּׁבִיחָו לֹא מְצָעָן.

§ The Gemara relates: Mari bar Isak, who was a wealthy and powerful man, had a brother whom he did not previously know, come to him from Bei Hozai,^{BNH} which was distant from central Babylonia. His brother said to him: Divide the property that you inherited from our father and give half to me, as I am your brother. Mari said to him: I do not know who you are.

The case came before Rav Hisda. He said to the brother: Mari bar Isak spoke well to you,^N as it is stated: “And Joseph knew his brothers and they knew him not” (Genesis 42:8). This teaches that Joseph left Eretz Yisrael without the trace of a beard, and he came with the trace of a beard. This proves that it is possible for brothers not to recognize each other. Mari bar Isak may be telling the truth when he claims he does not recognize you. Rav Hisda said to the brother: Go bring witnesses that you are his brother. The brother said to him: I have witnesses, but they fear Mari bar Isak because he is a violent man.^H Rav Hisda said to Mari bar Isak: You go bring witnesses^N that he is not your brother.

Mar bar Isak said to him: Is this the halakha? Isn’t there a principle in these cases that the burden of proof rests upon the claimant? Rav Hisda said to him: This is the way I judge you and all of your fellow violent people. Mari bar Isak said to him: Ultimately, if that is your concern, witnesses will come, and they will not testify in his favor. They will lie and testify in my favor. Rav Hisda said to him: They will not perform two wrongs; they will not refrain from telling the truth and also testify falsely.

Ultimately, witnesses came and testified that the person from Bei Hozai was his brother. At that point, the brother said to Mari bar Isak: Divide and give me half of the orchards and the gardens that you planted since the death of our father as well. Rav Hisda said to Mari bar Isak: He spoke well to you, as we learned in a mishna (Bava Batra 143b): If one died and left adult and minor sons,^{NH} and the adult sons enhanced the property, they enhanced the property, and the profit goes to the middle, i.e., it is divided between the adult sons and the minor sons.

NOTES

Achta l'eh ayita sadi – אֲחֹתָא לִיהְ אַיִתִי סְהָדִי: In tractate Ketubot (27b) Rashi and Tosafot explain that the younger brother was also born in Babylonia. He accompanied his father to Bei Hozai, where the father died. It was clear that Mari bar Isak knew he had a brother, but he claimed that he did not recognize this man as his brother.

Spoke well to you – שְׁפִיר קָאָמַר לֵן: Why did Rav Hisda need to say this to the brother and prove to him that Mari bar Isak’s claim was a legitimate claim? Some explain that the brother sought to prove that Mari bar Isak was a liar, and Rav Hisda said to him that there is no proof of this, as it is conceivable that Mari actually does not know him (Ramban; Rashba). Others explain that he sought to reconcile between the brothers, and he said: Perhaps Mari bar Isak does not intend to be deceitful or violent. Rather, he actually does not recognize you, but once it becomes clear he will accept you graciously (Rabbeinu Yehonatan of Lunel).

You go bring witnesses – זַיְל אַיִתִי: Most commentaries explain that this does not mean that Mari bar Isak will be required to bring witnesses that the claimant is not his brother, as the Sages were not that stringent, even with regard to a violent person. If they were, everyone would raise claims against him, which he would have no way to counter. Rather, he must enable the claimant to bring those witnesses who were previously afraid to testify, and have them testify (Rashba; see Tosafot).

Left adult and minor sons – הַנִּיחָ בְּנִים גָּדוֹלִים וּקְטָנִים: The Rivam writes that even if all the surviving sons were adults, the assumption is that brothers are willing to overlook debts and are not particular with each other (Tosafot on Bava Batra 43b).

A brother who came from a distant place – אֲחֹתָא מִמְּקוֹם: If one resides in land he inherited and another comes and claims to be his brother and demands a portion of his inheritance, the heir is not required to give anything to a person he does not recognize. This is the halakha even if there is a rumor that the owner has a brother in a distant land (Shulhan Arukh, Hoshen Mishpat 280:6).

A violent litigant – בְּעַל דָּין אַלְמָיִם: If a court knows that a defendant is violent based on evidence (Rema; see Sma), and the claimant states that he has witnesses supporting his claim who refuse to testify due to fear of the defendant, then the court

requires the defendant to bring witnesses in support of his claim, in accordance with the opinion of Rav Hisda (Rambam Sefer Shofetim, Hilkhot Edut 3:12; Shulhan Arukh, Hoshen Mishpat 28:5).

Left adult and minor sons – הַנִּיחָ בְּנִים גָּדוֹלִים וּקְטָנִים: If one died and was survived by adult and minor sons, and the older sons enhanced the value of the property, the increase in value is divided among the sons. The adult sons do not take any more than do the minors, even as payment for their labor (Rambam Sefer Mishpatim, Hilkhot Nahalot 9:2; Shulhan Arukh, Hoshen Mishpat 287:1).

Perek III

Daf 40 Amud a

ובן אמר רבה: השביחו לאַקְמָצָע. אַמְּרֵי לִיהְ אֲבֵי מֵדְמִי דְּתַם גָּדוֹלִים גַּבְּרִים קָטָנִים יְדַעַּי וְקָא בְּחַלְלִי, הַכָּא – מֵדְעַן דְּלִילִיל.

אָגָלָל מְלָתָא וּמְטָא לְקַמְּיהָ דְּרוּבִי אַמְּרֵי אָמַר לְהָה: גְּדוֹלָה מָזוֹ אַמְּרוֹת שְׁמַיִן לְהָם בְּאֶרְיסָם, הַשְׁתָּא דִידִיה לֹא יְהִבֵּין לִיהְ!

אֲהַדּוֹתָה אֲלִקְמָיהָ דְּרוּבִי אַמְּרֵי אָמַר לְהָה: מֵדְמִי דְּתַם – בְּרִשות נְחִיתָה, הַכָּא – לֹא בְּרִשות נְחִיתָה. וַעֲד: קְטוּן הָוָא, וְאַن מַוְרִידֵין קָרוֹב לְגַכְּיִקְטוּן.

אֲהַדּוֹתָה לְקַמְּיהָ דְּרוּבִי אַמְּרֵי אָמַר לְהָה: לֹא סִימְמָה קְפִי דְּקְטוּן הָוָא.

מתני' המפקיד פירות אצ'ל חבירו – הרוי זה יוציא לו חסרון, לחיטים ולאו – תשעה חצאי קבון לפור, לשעורים ולזרען – תשעה קבון לפור, לכוסמין ולזרע פשתן – שלוש סאיין לפור, הפל לפי המורה והפל לפי הזמן.

And likewise, Rabba says: They enhanced the property, and the profit goes to the middle. Abaye said to him: Are these matters comparable? There, in the case that the adult and minor brothers were together, the adults are aware that the minors exist and forgo payment for their effort on behalf of their younger brothers. Here, in the case of Mari bar Isak, was the older brother aware of the existence of the younger brother so that he could forgo payment^N for his labor?

The matter continued to develop and came before Rabbi Ami. He said to those who reported Rav Hisda's ruling: The Sages stated a more far-reaching halakha than that: In the case of relatives who tend to the property of a captive, the court appraises their work as one would appraise the work of a sharecropper.^H Although the property they tended did not belong to them at all, they receive wages for their labor. Why, then, is the ruling now, in the case of Mari bar Isak, that payment for labor on property that is his, we do not give him? Mari bar Isak should be reimbursed for his expenditures.

They returned and related this matter before Rav Hisda. Rav Hisda said to them: Are these matters comparable? There, in the case of the captive's property, it was with authorization from the court that the relative descended to tend to the property. Here, it was without authorization that Mari bar Isak descended^N to tend to the property of his brother. And furthermore, Mari bar Isak's brother was a minor when Mari inherited the property, and the court does not authorize a relative to descend and manage the property of a minor.

They returned and related this response before Rabbi Ami. Rabbi Ami said to them: They did not complete conveying all the details of the case before me, and I was unaware that Mari's brother was a minor. Rav Hisda is correct.

MISHNA In the case of one who deposits produce with another, and the bailee provides him with different produce in return, that bailee deducts from the produce that he returns an amount equal to the standard decrease of the produce.^H The decrease is calculated according to this formula: For wheat and for rice, he deducts nine half-kav^N per kor,^B which is 180 kav; for barley and millet,^B he deducts nine kav per kor; for spelt^B and flaxseed, he deducts three se'a, which total eighteen kav, per kor. The entire calculation is according to the measure, and the entire calculation is according to the time elapsed. This is the amount of produce that the bailee deducts per one kor of produce over the course of one year.

NOTES

Was the older brother aware that he could forgo payment – **מי יְדַע דְּלִילִיל:** The early commentaries ask: Aren't most commentaries of the opinion that ultimately it was proven that Mari bar Isak was aware that he had a brother? Why then does the Gemara say that he did not know? They explain that Mar bar Isak was under the impression that this brother died. Or, perhaps he assumed that his brother would remain in Bei Hozai, inherit his father's estate there, and not return to Babylonia at all (Rosh; Ritva).

Here it was without authorization that Mari bar Isak descended – **הַכָּא לֹא בְּרִשות נְחִיתָה:** Some explain the distinction as follows: In the case of a captive's property, had one sought authorization from the court, he would have received it. In this case, even had Mari requested authorization he would not have received it (Rashba).

Nine half-kav – **תשעה חצאי קבין:** The number is expressed in this manner to contrast it with the measure of nine kav that follows (Ritva).

HALAKHA

Appraises their work as one would appraise the work of a sharecropper – **שְׁמַיִן לְהָם בְּאֶרְיסָם:** In the case of one who inherits a field from his father, enhances the value of the property, and later learns that he has brothers, if the brothers were adults when he received his inheritance, then his labor is appraised as though he were a sharecropper, since he was unaware of their existence. If his brothers were minors, the enhanced value is divided equally among them (Rambam Sefer Mishpatim, Hilkhot Nahalot 9:4; Shulhan Arukh, Hoshen Mishpat 287:3).

Return of a deposit of produce – **הַזּוֹרֶת פְּקוּדָן פִּירּוֹת:** If one receives produce from another to safeguard it, and mingles it with his own produce, he must calculate the loss from the produce, take an oath, and return the deposit after deducting the proportionate amount from the deposit. The Rema writes that if the loss corresponds to the measure written in the mishna, he need not take an oath (Shulhan Arukh, Hoshen Mishpat 292:10).

BACKGROUND

Kor – **כָּבֵד:** The kor is the largest measure of volume used by the Sages. One kor contains thirty se'a, which is the equivalent of 240–480 ℥. That significant variation is due to a fundamental dispute between the authorities with regard to the method of calculating halakhic measures.

Millet [dohan] – **דוֹהָן:** Among the early commentaries, there are various opinions with regard to the identity of *dohan*. The standard identification is *Panicum miliaceum*, a type of millet from the grain family. It is a perennial grass that reaches a height of 1–1.5 m. Its flowers are long, weighty, and cylindrical, and its small seeds, 2–3 mm long, are yellow. It is often used in animal

feed or cereal, although at times it was mixed with other grains in the preparation of bread.

Spelt [kusemin] – **כֻּסְמִין:** Spelt, *kusemet* in the Bible, is identified as *Triticum spelta* L. This grain was cultivated in Eretz Yisrael and the surrounding region. Spelt is similar to wheat both in the manner of its growth and in its appearance. Nevertheless, it can be distinguished by the two rows of seeds, firmly attached to the chaff, on every stalk. The cultivation of this species is fairly uncommon, both due to the difficulty involved in separating the chaff from the grain and because its stalk disintegrates easily into small stalks.

HALAKHA

Losses from a deposit – חסרונות מפקודון: When one deposits produce with another, and the bailee mixes it with his own produce, although doing so is permitted *ab initio* only if he received permission to do so, and the bailee took supplies from this produce and does not know how much he took, when he returns the deposit, he deducts the amount that the produce decreased while in storage. For wheat and hulled rice, he deducts four and a half *kav* per *kor*, in accordance with the opinion of Rabbi Yoḥanan. For barley and millet, he deducts nine *kav* per *kor*. For spelt, flaxseed on stalks, and unpeeled rice, he deducts three *se'a* per *kor*. This is the measure of decrease per year (Rambam Sefer Mishpatim, Hilkhot She'ela UFitkadon 5:4; Shulhan Arukh, Hoshen Mishpat 292:11).

אמור ובי יוחנן בן נורי וכי מה אכפת
לchanן לעברין? והלא אוכלות בין
מוחביה ובין מקמעה! אלא, אינו יוציא
לו חסרונות אלא לכו אחד בלבד.
רבי יהודה אומר: אם היהה מידה
מורבה אין מוציאו לו חסרונות, מפני
ששותיות.

גמ' אוינו טובא חסר! אמר רבה בר
בר חנה אמר רבי יוחנן: באויו קלוף
שנינו. "לכוסמין ולרווע פשטן שלשה
סאיין לבור" וכו'. אמר רבי יוחנן אמר
רבי חייא: רעד פשטן בגבעולין שנינו.
תניא נמי הכא: לכוסמין ולרווע פשטן
ביבעלין ולאוינו שאינו קלוף - שלשה
סאיין לבור.

"הכל לפי המידה" וכו'. תניא: בן לכל
בור וכור, וכן לכל שנה ושנה.

"אמור רבי יוחנן בן נורי" וכו'. תניא,
אמור לו לרבי יוחנן: הרבה אובדות
מהן, הרבה מיתפירות מהן.

תניא: במדה דברים אמרוים - שעירבן
עם פרוטויו, אבל ייחד לו קנו זית -
ומור לו: הרי שילך לפניך.

ובו שירבן עם פרוטויו מי הוא? ליחסו
לידיה במדה הוין במסתפק מהן.

וליחסו במדה אסתפק! שלא ידע במדה
אסתפק.

רבי יהודה אומר אם היהה וכו'. במדה
מזה מרווחה? אמר רבה בר בר חנה
אמור רבי יוחנן: עשרה כורין. תניא נמי
הכא: במדה מזה מרווחה - עשרה כורין.

Rabbi Yoḥanan ben Nuri said: And what do the mice care how much produce the bailee is safeguarding? Don't they eat the same amount whether it is from much produce and whether it is from little produce? Rather, he deducts an amount equal to the standard decrease⁴ of just one *kor* of produce. Rabbi Yehuda says: If the deposit was a large measure, the bailee does not deduct the decrease from it, due to the fact that for different reasons it increases. Therefore, he returns the measure of produce that was deposited with him, because the increase offsets the decrease.

GEMARA The Gemara challenges: After decrease, rice is lacking a greater amount than what is recorded in the mishna. Rabba bar bar Ḥana says that Rabbi Yoḥanan says: It is with regard to shelled rice that the *tanna'im* taught the mishna. The mishna teaches: For spelt and flaxseed, he deducts three *se'a* per *kor*. Rabbi Yoḥanan says that Rabbi Ḥiyya says: It is with regard to flaxseed on its stalks that the *tanna'im* taught the mishna, and that is why the rate of decrease is so great. The Gemara comments: That is also taught in a *baraita*: For spelt and for flaxseed on its stalks and for unshelled rice, he deducts three *se'a* per *kor*.

The mishna teaches: The entire calculation is according to the measure, and the entire calculation is according to the time elapsed. It is taught in a *baraita*: That is the measure of decrease for each and every *kor*, and that is the measure of decrease for each and every year.

The mishna teaches: Rabbi Yoḥanan ben Nuri said: And what do the mice care how much produce the bailee is safeguarding? It is taught in a *baraita* that the Sages said to Rabbi Yoḥanan: The reduction is due not only to mice eating the produce. Much of the produce is lost,⁵ and much of the produce is scattered.

It is taught: In what cases is this statement said, that the bailee deducts these measures for the decrease? It is in a case where the bailee mixed the produce that he is safeguarding with his own produce, and he is unable to distinguish between them. But if he designated a corner for the produce that he is safeguarding, the bailee says to the owner of the produce: That which is yours is before you, and he does not calculate the decrease.

The Gemara asks: And when he mixed the produce that he is safeguarding with his own produce, what of it? Why must he calculate the decrease? Let him see how much his produce was, add the amount that was deposited with him, and calculate how much the produce diminished over time. He can then divide the loss proportionately between his produce and the deposited produce. The Gemara answers: The *baraita* is referring to a case where the bailee took supplies from that produce, and therefore it is impossible to ascertain the rate of decrease.

The Gemara asks: And let him see how much produce he took as supplies and include this in his calculation. The Gemara answers: The *baraita* is referring to a case where the bailee does not know with how much he took as supplies, and therefore he must calculate the decrease based on the measures enumerated in the mishna.

The mishna teaches that Rabbi Yehuda says: If the deposit was a large measure, the bailee does not deduct the decrease from it. The Gemara asks: How much is a large measure? Rabba bar bar Ḥana says that Rabbi Yoḥanan says: It is ten *kor*. This is also taught in a *baraita*: How much is a large measure? It is ten *kor*.

NOTES

Much of the produce is lost – הרבה אובדות מהן – Tosafot explain that the Sages said to Rabbi Yoḥanan ben Nuri that since not all of the decrease is attributable to mice and there are additional factors, decrease and dispersal are greater in a large measure

than in a small measure. According to Tosafot, this is primarily because more grain attracts more mice, as is mentioned in the Jerusalem Talmud.

תני תנא קמיה דבר נחמן: בפה דברים
אמורים – שפדר לו מותך גורנו והחזרו
לו מותך גורנו, אבל מדר לו מותך גורנו
החויר לו מותך ביתו – איןנו יוציא לו
חסנות, מפני שמותירות.

אמר ליה: וכי בשופטני עסקין, דיבבי
בכילה רבע ושלילי בכילה וטה?
הילמא בימות הגזון קאמרת: בפה דברים
אמורים – שפדר לו בימות הגזון והחויר
לו בימות הגזון, אבל מדר לו בימות
הגזון והחויר לו בימות הגשמי – אין
ויא לא חסרן, מפני שמותירות.

אמר ליה רב פפא לאבוי: אם כן לפיקע
בראי היה עובדא ופקע בדרא. איבעית
אימא: משום איצצא.

מתני יוציא לו שרות ליאן. רביה יהודה
אומר: חומש. יוציא לו שלשה לוגין שמן
בלאה, לו ממחזה שמרים, לו וממחזה
בלע, אם היה שמן מזוקק – אין יוציא
לו שמרים. אם היה קנקנים ישנים – אין
יוציא לו בלע. רביה יהודה אומר: אף
המוכר שמן מזוקק לתחבו כל ימות
השנה, הרי זה מקבל עליו לו וממחזה
שמרים למאה.

גמ' ולא פלייגי, מר כי אתריה וממר
כי אתריה. באתריה דמר חפו בקירה
ולא מייז טפי, באתריה דמר חפו
בכופרא ומײיז טפי. איבעית אימא:
משום גרגישתא, הא – מייזא טפי, וזה –
יא מייזא טפי.

The *tanna* who recited *mishnayot* and *baraitot* taught before Rav Nahman: In what case is this statement said, that the bailee deducts the decrease from the produce he returns? It is in a case where the owner of the produce measured the produce for the bailee from his own threshing floor, and the bailee returned the produce to him from his own threshing floor. The measures used in all threshing floors were equal, and tended to err on the side of increasing the amount measured. But in a case where the owner measured the produce for the bailee from his own threshing floor and the bailee returned the produce to him as measured by a measure from his own house, which were more precise than those used on the threshing floor, he does not deduct the decrease when returning the produce. This is because the produce the owner deposited was measured with the increased measure of the threshing floor, and that offsets the decrease.

Rav Nahman said to him: And are we dealing with fools, who give the deposit with a large measure and take the produce back with a small measure? Clearly, the same measure was used in both cases. Perhaps you are stating a ruling about the season of the threshing floor, and this is what it means: In what case is this statement said? It is said in a case where he measured the produce for the bailee during the season of the threshing floor and the bailee returned the produce to him during the season of the threshing floor,^h i.e., in the same period. But in a case where he measured the produce for the bailee during the season of the threshing floor and the bailee returned the produce to him during the rainy season, he does not deduct the decrease when returning the produce, because the produce that he received absorbed moisture and expanded, so that he ultimately returns the same measure.

Rav Pappa said to Abaye: If so, if the volume of the grain expands during the rainy season, the jug in which the grain is placed should burst due to that expansion. The Gemara relates: There was an incident and the jug burst. If you wish, say instead that the volume contracted due to compression.ⁿ When the produce was deposited it was loose and had greater volume. When the bailee returned it, the produce was tightly packed in the jug, resulting in lesser volume.

MISHNA When the bailee returns liquids that were deposited with him, he deducts one-sixth of the amount for wine, to offset the decrease in volume due to absorption into the cask and evaporation. Rabbi Yehuda says: He deducts one-fifth. He deducts three log^b of oil^h for one hundred log: A log and a half for sediment that sinks to the bottom of the cask, and a log and a half for absorption into the cask. If it was refined oil, he does not deduct any of the oil for sediment because it was filtered. If the oil was stored in old casks that are already saturated, he does not deduct any of the oil for absorption. Rabbi Yehuda says: Even in a case of one who sells refined oilⁿ to another^h all the days of the year, this buyer accepts upon himself that the seller will deduct a log and a half of sediment for one hundred log, as that is the standard measure of sediment.

GEMARA The Gemara comments: And the first *tanna* and Rabbi Yehuda do not disagree with regard to the halakha. Rather, this Sage ruled in accordance with the custom of his locale, and this Sage ruled in accordance with the custom of his locale. In the place of one Sage, i.e., the first *tanna*, they coat the casks with wax [*bekira*]^l and it does not absorb much. In the place of the other Sage, i.e., Rabbi Yehuda, they coat the casks with pitch and it absorbs much. If you wish, say instead that it is due to the quality of earth [*gargishta*]^l from which they make the casks. Barrels made from this earth absorb much, and barrels made from that earth do not absorb much.

HALAKHA

ביבות הגזון: During the season of the threshing floor – The calculation of loss is for a situation where the bailee received and returned the deposit during the same season of the year. If he received the deposit during the season of the threshing floor and returned it during the rainy season, he does not deduct for loss, since expansion due to moisture compensates for the loss (Rambam Sefer Mishpatim, Hilkhos She'ela Uifikadon 5:5; Shulhan Arukh, Hoshen Mishpat 292:12).

פקידות יין ושמן: Deposits of wine and oil: When a bailee mixed wine or oil that was deposited with him with his own and took supplies from them (*Sma*), he deducts one-sixth of the wine per year, and three *log* from each one hundred *log* of oil from the wine and oil that he returns to account for absorption. If the oil was refined, he does not deduct the one and a half *log* of sediment. If the wine or oil was in old casks, he does not deduct for absorption (Rambam Sefer Mishpatim, Hilkhos She'ela Uifikadon 5:5; Shulhan Arukh, Hoshen Mishpat 292:13).

המוכר שמן מזוקק להבשו: One who sells refined oil to another – When one sells refined oil to another, the buyer does not receive any sediment with his oil. If one sells oil without specifying whether it is refined or not, the buyer pays for one and a half *log* of sediment for every one hundred *log* (Rambam Sefer Kinyan, Hilkhos Mekhira 18:9; Shulhan Arukh, Hoshen Mishpat 228:20).

NOTES

משום איצצא: Due to compression – When wheat is packed tightly into a vessel, it does not expand much, even in the rainy season (see *Ritva*).

אף המוכר שמן מזוקק: Even one who sells refined oil – This is not referring to a case where one specified that he is selling him refined oil, as in that case he is required to sell him oil according to those specifications. Rather, the reference is to a case where one sells him refined oil without specifying the quality of the oil (*Rava*).

BACKGROUND

לוג – לוג: This is the fundamental liquid measure employed by the Sages. It is equivalent to the volume of six egg-bulks, a quarter-kav, or one twenty-fourth of a se'a. The range of halakhic opinions with regard to its volume is from 300–600 ml.

LANGUAGE

ワックス – κερός: Wax [*kira*] – From the Greek *κερός*, *keros*, meaning wax.

Earth [gargishta] – جرجس: The origin of this word is Semitic. It parallels the Arabic *جرجس*, *jirjis*, and refers to a type of soft earth used to seal packages and similar items.

NOTES

Rav Yehuda divided – פַּרְיסָ רַב יְהוּדָה: Rabbeinu Hananel, cited in the *Shita Mekubetzet*, and the Ra'avad explain that Rav Yehuda himself was not the storekeeper. Rather, he instructed the storekeepers to sell oil in that manner.

בְּאֶתְרִיה וּרְבֵבְיְהוּדָה רָכְמָו אֲרָבָעִים וּתְמִינִי כּוֹזֵי בְּדָנָא, אַיְלָןָא בְּשִׁיתָא זְוִי, פַּרְיסָ רַב יְהוּדָה שִׁיתָא שִׁיתָא בְּזָוָזָא.

The Gemara relates: In Rav Yehuda's place they would place the contents of forty-eight pitchers of oil into a barrel, as that was the standard size of barrels there. The barrel went for six dinars, and Rav Yehuda divided^N the oil and sold it at six pitchersful for one dinar.

Perek III**Daf 40 Amud b****NOTES**

One who profits may not profit more than one-sixth – תְּמִינָה יְהוּדָה: It can be inferred from here that it is permitted to earn a one-sixth profit, and according to those who say that Rav Yehuda instructed the storekeepers in how to sell their oil, the Gemara's question is: Why did he not allow them to take the maximal profit (Ra'avad)? There is a variant reading of the Gemara that reads here: May profit neither more than one-sixth nor less than one-sixth (Rabbeinu Hananel). According to that reading the question is clear, not based on inference. The Ritva explains that the Gemara's question is: Isn't it appropriate for a Torah scholar to earn what he is permitted to earn, so he need not rely on others for support?

And the payment for tapping – דְּמִינִי בְּרוּמִינְתָּא: Rashi offers an explanation that this means money to pay one to publicize that he has wine to sell.

When you analyze the matter you will find [keshetimtza] it necessary to say – בְּשִׁתְמָצָא לְמֹרֶךְ: Rashi here explains that *keshetimtza* derives from the term *mitzui*, meaning the process of squeezing or pressing. Here, the Gemara is saying: When you exhaustively analyze the matter, you will arrive at this conclusion. Elsewhere, Rashi explains that it derives from the term *metzia*, meaning finding: When you analyze, you will find. Some explain that this matter is contingent on variant readings in the Gemara: *Keshetimtza* is derived from *mitzui*; *keshetimtza* is derived from *metzia* (*Yad Malakhi*).

If I wished to mix sediment and sell it to you – אִם בְּשִׁי "שְׁמִינִי לְנָ": The Ritva asks: If so, why not simply give him unrefined oil to avoid dispute? He answers that in this case the buyer specified that he wanted a particular barrel of oil. Or, it is a case where the seller has only refined oil, and he may not bring unrefined oil from the market.

HALAKHA

One who profits may not profit more than one-sixth – תְּמִינָה יְהוּדָה: The court is required to appoint an official to regulate prices so that merchants of items that are life-sustaining, e.g., produce, wine, and oil, may not profit by more than one-sixth. This is the ruling for those who sell the merchandise all at once and do not exert themselves in its sale. One who sells the merchandise incrementally may add the cost of his labor and his expenses and then add one-sixth to that. This is the ruling for places where the court regulates prices. In a market where the other merchants do not conform to these restrictions, one need not sell his merchandise for prices lower than those charged by others (Rambam *Sefer Kinyan, Hilkhot Mekhira* 14:1; *Shulhan Arukh, Hoshen Mishpat* 231:20).

BACKGROUND

Payment for tapping – דְּמִינִי בְּרוּמִינְתָּא: If one wishes to completely empty a barrel, he breaks the seal and pours the wine or oil out of the barrel. If one wishes to use a bit at a time, he bores a hole in the side of the barrel, then opens and closes it as he needs. At times, a tap is placed in the hole. Since the reference is to an earthenware barrel, only a trained worker could bore the hole without causing the vessel to crack. He receives payment for tapping.

דָּל תְּלִין וּשִׁיתָא בְּשִׁיתָא, פְּשֻׂו לְהָרִיף, דָּל תְּמִינָה שְׁתוֹתִי, פְּשֻׂו לְהָרִיף
אֲרָבָעִה.

וְהַאֲמָדָר שְׁמוֹאֵל: הַמְשַׁתְּכֵר אֶל יְשַׁתְּכֵר
יוֹתֵר עַל שְׁתוֹתִי

אִיכָּא גּוֹלְפִי וּשְׁמָרִיא. אֵי דְּכִי נְפִישָׁ
לִיה טְפִי מְשֻׁתוֹתִי אִיכָּא טְרַחְתָּה וּדְמִי
בְּרוּמִינְתָּא.

אִם הָיָה שְׁמָן מְוִיקָק אֵינו יוֹצֵא לְ
שְׁמָרִים" וּכְזָבָבָן. וְהָא אֵי אָפְשָׁר דָּל אֶכְלָעָן:
אָמָר רַב נַחְמָן: בְּמוֹפְפִין שְׁנָנוּ. אַבְּיָה אָמָר:
אָפְיָלָה תִּמְאָה שְׁלָא בְּמוֹפְפִין, בֵּין דְּטָעָן.
טָעָן.

רַבִּי יְהוּדָה אָמָר: אַף הַמּוֹכֵר שְׁמָן מְוִיקָק
לְחַבְּרוֹ כֹּל יְמֹתָה הַשְּׁנָה הָרִי וְהַמְּקַבֵּל
עַלְיוֹ לְוג וְחַזָּה שְׁמָרִים לְמַמָּה". אָמָר
אַבְּיָה: בְּשִׁתְמָצָא לְמֹרֶךְ רַבִּי יְהוּדָה
מוֹתָר לְעַרְבָּ שְׁמָרִים, לְדִבְרֵי חַכְמִים אָסָר
לְעַרְבָּ שְׁמָרִים.

לְדִבְרֵי רַבִּי יְהוּדָה מוֹתָר לְעַרְבָּ שְׁמָרִים –
וְהַיָּנוּ טְעַמָּא דְּמַקְבֵּל, דְּאָמָר לְיה: אֵי
בְּשִׁי לְעַרְבָּ לְנָ – מֵלָא עַרְבָּ לְנָ, הַשְּׁתָא
נְמִי קְבִיל.

The Gemara now analyzes Rav Yehuda's calculation: Subtract thirty-six pitchersful that were sold for six dinars each, with which he recoups the purchase price of the barrel. Twelve pitchersful remained for him. Subtract eight pitchers full, which is one-sixth of the total amount, as that is the measure absorbed in the barrels. Four pitchersful remained as profit for Rav Yehuda.

The Gemara asks: But doesn't Shmuel say that one who profits from the sale of matters related to one's existence may not profit more than one-sixth?^{NH} One can infer that it is permitted for one to profit up to one-sixth. But according to the calculation, Rav Yehuda's profit was much lower. Why did he not sell the oil at a higher price?

The Gemara answers: There are the barrel and the sediment to account for. These remain in his possession, as he purchased the barrel and all its contents for six dinars, and they supplement the profit. The Gemara challenges: If so, once the barrel and sediment are taken into account, the profit is greater than one-sixth. How did Rav Yehuda profit beyond the permitted amount? The Gemara answers: There is the payment for his exertion, as he sold the oil, and there is the payment for tapping,^{NB} as a craftsman is needed to install a tap in the barrel. When those payments are included in the calculation, the profit is precisely one-sixth.

§ The mishna teaches: If it was refined oil, he does not deduct any of the oil for sediment. If they were stored in old casks that are already saturated, he does not deduct any of the oil for absorption. The Gemara asks: But isn't it impossible that the cask did not absorb any oil at all, even if it was saturated? Rav Nahman says: It is with regard to casks coated with pitch that the *tanna'im* taught the mishna, and if the cask is old and coated with pitch it does not absorb anything. Abaye said: Even if you say that the mishna is not referring to casks coated with pitch, once they are saturated they are saturated, and no more oil is absorbed.

The mishna teaches that Rabbi Yehuda says: Even in the case of one who sells refined oil to another all the days of the year, this buyer accepts upon himself that the seller will deduct a log and a half of sediment for one hundred log, as that is the standard measure of sediment. Abaye said: When you analyze the matter, you will find it necessary to say^N that according to the statement of Rabbi Yehuda, it is permitted to mix sediment that settled at the bottom of the barrel with the clear oil and sell the mixture. And according to the statement of the Rabbis, it is prohibited to mix sediment with the clear oil.

The Gemara elaborates. According to the statement of Rabbi Yehuda, it is permitted to mix sediment, and that is the reason that the buyer accepts upon himself that the seller will deduct a log and a half of sediment for one hundred log, as the seller says to him: If I wished to mix sediment and sell it to you,^N couldn't I mix it and sell it to you? Now too, accept upon yourself the deduction due to sediment.

ולימא ליה: אֵין עֲרָבָתْ לְיהָ - הַוָּה מִזְוֹבֵן
לְיָהָ, הַשְׁתָּא מָאִי עֲבֵיד לְיהָ? לְחִדְוִיהָ לְאָ
מִזְוֹבֵן לְיָהָ בְּבֶעֱלַת הַבַּיִת עַסְקִין, דִּינְחָא
לְיהָ בְּצִילָּא. ולימא ליה: מִזְלָא עֲרֵבָת
לְיָהָ - אֲחוֹלֵי אַתְּלָתָה לְיָהָ!

רַבִּי יְהוּדָה לְפִיעָמִיה, דָּלִית לְיהָ מִחְיָה.
וְתָנָן: מִכְרָה לְאַתְּ הַצְמָד - לֹא מִכְרָה לְ
אַתְּ הַבָּקָר. מִכְרָה לְאַתְּ הַבָּקָר - לֹא מִכְרָה
לְאַתְּ הַצְמָד.

רַבִּי יְהוּדָה אָמֵר: הַדְּמִים מוֹדִיעִין, בִּיצְדָּךְ?
אָמֵר לוֹ: מִכְרָה לְיָהָ זָמְדָן בְּמַמְתִּים וּוּ
הַדְּבָר יְדוּעַ שָׁאוֹן הַצְמָד בְּמַמְתִּים וּוּ
וְחַכְמִים אָומְרִים: אֵין הַדְּמִים רָאִיה.

לְדִבְרֵי חַכְמִים - אָסָרוּ לְעַרְבָּה שְׁמָרִים,
וְהַיִּשְׁתַּחֲנוּ טֻעַמָּא דְלֹא מַקְבֵּל, דָאָמֵר לְיהָ: אֵי
בְּשִׁיעַת לְעַרְבָּה - מֵהַוָּה שְׂרֵי לְגַדְעָן?
הַשְׁתָּא
נָמֵי לֹא מַקְבִּילָנוּ.

אמֵר לְיהָ רְבִי פָּפָא לְאַבְיָי: אַדְרָבָה,
איַפְּכָא מַסְתָּבָרָא. לְדִבְרֵי חַכְמִים מוֹתוֹ
לְעַרְבָּה שְׁמָרִים, וְהַיִּנוּ טֻעַמָּא דְלֹא מַקְבֵּל,
דָאָמֵר לְיהָ: מִזְלָא עֲרָבָת לְיָהָ - אֲחוֹלֵי
אַחֲלִית לְיָהָ. לְרַבְיָה רַבִּי יְהוּדָה אָסָרוּ לְעַרְבָּה
שְׁמָרִים, וְהַיִּנוּ טֻעַמָּא דְמַקְבֵּל, דָאָמֵר
לְיהָ: אֵי בְּשִׁיעַת לְעַרְבָּה - לֹא שְׁרֵי לְיָהָ לְעַרְבָּה
לְגַדְעָן, קְבוּלָה לֹא מַקְבֵּלָה, וּבָוּן תְּגִרְאָה
אַיְקוּרָה.

תְּנָא: אַחֲרֵי הַלְּוֹקָח וְאַחֲרֵי הַמַּפְקִיד
לְפְקִיטִים. מַאֲיִ לְפְקִיטִים? אַלְמָא כִּי הַיָּיִן
דְלֹקָח לֹא מַקְבֵּל פְקִיטִים, מַפְקִיד נָמֵי לֹא
מַקְבֵּל פְקִיטִים - וְלִימָא לְיהָ: פְקִיטָה מַאֲיִ
אַיְעָבָד לְהָוָה?

The Gemara asks: **And let the buyer say to him: If you had mixed sediment into the oil, it could have been sold for me to another. Now what will I do with it?** The sediment cannot be sold on its own, and I will suffer a loss. The Gemara answers: **We are dealing with a buyer who is a homeowner, not a merchant. He needs oil for his own use, and filtered oil is preferable for him, as his use of the oil is facilitated by removal of the sediment.** The Gemara asks: **And let the buyer say to him: From the fact that you did not mix the sediment with the oil for me, it is an indication that you renounced your rights to it to me.**

The Gemara answers: **Rabbi Yehuda conforms to his standard line of reasoning, as he is not of the opinion that one can presume renunciation, and therefore the buyer cannot presume that the seller renounced his right to receive the standard price, as we learned in a mishna (Bava Batra 77b): If one sold the yoke [tzemed] to another, he did not sell the cattle to him.¹⁴** Literally, tzemed means the yoke that holds the animals together [tzamud] while plowing. It can be understood as referring to the two animals held together by the yoke. If one sold the cattle to another, he did not sell the yoke to him. The sale is limited to the literal meaning of what he said.

The mishna continues: **Rabbi Yehuda says: The money informs the scope of the sale. Based on the price, one can determine what is included in the sale. How so? If the buyer said to the seller: Sell me your tzemed for two hundred dinars, the matter is well-known that a yoke does not cost two hundred dinars, and he certainly meant the cattle. And the Rabbis say: The money is not a proof, as it is possible that one of the parties renounced part of the sale price.**

The Gemara concludes its elaboration of the statement of Abaye: **According to the statement of the Rabbis, it is prohibited to mix sediment, and this is the reason that the buyer does not accept that the seller deduct a log and a half of sediment for one hundred log, as the buyer says to him: If you wished to mix sediment and sell it, would it be permitted for you to do so? Now too, I do not accept that deduction.**

Rav Pappa said to Abaye: On the contrary, the opposite is reasonable. According to the statement of the Rabbis, it is permitted to mix sediment. And this is the reason that the buyer does not accept the deduction, as the buyer said to the seller: From the fact that you did not mix the sediment for me, apparently you renounced that sum to me. According to the statement of Rabbi Yehuda, it is prohibited to mix sediment. And this is the reason that the buyer accepts the deduction, as the seller says to him: If I wished to mix sediment, it is prohibited for me to mix it for you, and if you do not accept the deduction, I earn nothing from this sale. That is unacceptable according to the maxim: One who buys and sells at the same price, is he called a merchant?

It is taught: The legal status of both one who buys and one who deposits oil with regard to residue [piktim],^{LN} e.g., olive pits floating on the oil, is the same. The Gemara asks: **What is the meaning of: With regard to residue? If we say that this is teaching: Just as the buyer does not accept upon himself a deduction in the quantity of oil to account for the residue, so too, the one who deposits the oil does not accept upon himself a deduction in the quantity of oil to account for the residue when he returns the oil and is required to return the full amount deposited with him, this is difficult. But let the bailee say to the owner: What shall I do with your residue?**

HALAKHA

Sale of cattle and a yoke – **מִכְרָה בָּקָר וְצָמֵד:** One who sells the yoke did not sell the cattle, and one who sells the cattle did not sell the yoke. This is the halakha even in a place where the yoke is referred to as cattle. If the animals were joined by a yoke, they are sold together (Rema, citing Tur), in accordance with the opinion of the Rabbis. In all these cases, the price is no proof of the identity of the sale item. If the disparity is within the range of common human error, the standard regulations against exploitation apply. If the disparity is greater, it is classified as a gift (Rambam Sefer Kinyan, Hilkhot Mekhra 27:2; Shulhan Arukh, Hoshen Mishpat 220:4).

LANGUAGE

Residue [piktim] – **פְּקִיטִים:** From the Greek πηκτός, pēktos, meaning an item that congealed, sedimented, curdled, or compacted.

NOTES

Residue – **פְּקִיטִים:** Rashi explains that this refers to the seeds and olives that float on the oil. The Rambam writes that it is murky oil that floats on oil. Others say it is murky oil adjacent to the sediment (Ra'avad; Rashba).

NOTES

Only for the seller – **אלא למכיר**: Some explain that when separating *teruma*, one may give murky oil to a priest (Ra'avad).

The measure of Tishrei...the measure of Nisan – **מידה**: Rashi explains that the price is different in Nisan and Tishrei. The Rambam explains, based on a straightforward reading of the text, that the difference in measure between Nisan and Tishrei is based on the difference between the volume of refined and murky oil.

For his purposes – **לזרכו**: The Ramah says that if one moved the barrel because he needed the space underneath it, it is considered that he moved it for its own purposes and not for his purposes.

One who steals a lamb – **הגונב טלה**: The reference here is to a case where a bailee steals a lamb he was safeguarding, and the question is whether his rights and obligations as a bailee end at the moment he moves the deposit not for its own purposes (see Rashba; Ba'al HaMaor).

אלא כי והכי דמקuid מתקבל פקטים –
ЛОЖКА НЕИ МАКБЕЛЬ ФАКТИМ. ИМИ МАКБЕЛЬ
ЛОЖКА ФАКТИМ? ИХТАНИЯ, РЕБИ ИХУДА
АЗОМО: לא אמרו שטן עכשו אלא למכיר
בלבד, שהי לожקה מכבול עלויelog
וממחזה שברום בלא פקטים.

לא קשיא: הא – דיהיבליה זוי בתשרי,
ויקא שקליל מיניה ביןין כי מידה דתשרי.
הא דיהיבליה זויי ביןין ויקא שקליל
מיניה ביןין כי מידה דניסן.

Rather, it is teaching: **Just as the one who deposits the oil accepts the residue when his oil is returned to him, so too, the buyer accepts the residue with the oil he purchases.** The Gemara asks: **And does the buyer accept upon himself a deduction for residue?** But isn't it taught in a *baraita* that Rabbi Yehuda says: The Sages stated that the loss for murky oil is only for the seller,^N as the buyer accepts upon himself a deduction for a *log* and a half of sediment without residue?^H

The Gemara answers: This is **not difficult**, as this *baraita*, in which it is taught that the buyer accepts residue, is referring to a case where the buyer gave the seller money in Tishrei, when olives are harvested, and he takes the oil from him in Nisan according to the measure of Tishrei. In Tishrei, due to the substantial supply, the price is lower, and immediately after the harvest the oil is murky. That *baraita*, in which it is taught that the loss for murky oil is only for the seller, is referring to a case where the buyer gave the seller money in Nisan, and he takes the oil from him in Nisan according to the measure of Nisan,^N as in Nisan both the buyer and the seller assume that the oil is refined.

מתני' הפטקיד חבית אצל חבריו
ולא יחו לה בעלים מקום, וטלטה
ונשברה, אם מתוך ידו נשברה,
לצורך – חייב, לעורכה – פטור. אם
משהנicha נשברה, בין לצורכו בין
לעורכה – פטור. וחדו לה הבעלים
מיוקם, וטלטה והשברה, בין מתוך
ידו ובין משהנicha, לצורך – חייב,
לעורכה – פטור.

גמ' הא מפי – רבי ישמעאל היא,
דאמר לא ביעין דעת בעלים. דתנייא:
הגונב טלה מן העדר וסלע מן הבcis –
לפוקום שנגב חביר, דבר רבי ישמעאל.
רבי עקיבא אומר:

MISHNA In the case of one who deposits a barrel with another, and the owners did not designate a specific place for the barrel to be stored in the bailee's house, and the bailee moved it and it broke, if it broke while still in his hand, there is a distinction: If he moved the barrel for his purposes,^N he is liable to pay for the damage. If he moved the barrel for its own purposes, to prevent it from being damaged, he is exempt. If, after he replaced the barrel it broke, whether he initially moved it for his purposes or whether he moved it for its own purposes, he is exempt. But if the owners designated a specific place for the barrel, and the bailee moved it and it broke, whether it broke while still in his hand or whether it broke after he replaced the barrel, if he moved it for his purposes he is liable to pay, and if he moved it for its own purposes, he is exempt.

GEMARA In accordance with **whose** opinion is this mishna? It is in accordance with the opinion of **Rabbi Yishmael**, who says: When a thief returns an item that he stole, we do not require the knowledge of the owner for the item to be considered returned, as it is taught in a *baraita*: In a case of **one who steals a lamb^N from the flock^H or a sela from the purse**, he should return it to the place from which he stole it, and it is unnecessary to inform the owner; this is the statement of **Rabbi Yishmael**. **Rabbi Akiva** says:

HALAKHA

Mixing sediment and residue – **שערוב שברום ופקטים**: It is prohibited to mix sediment with wine or oil, even a little. If one sells refined oil to another, the buyer does not receive sediment. If he sells ordinary oil, the buyer accepts a *log* and a half of sediment for one hundred, and so too murky oil, in accordance with what is common in that place. This is specifically when the buyer gives him money in Tishrei based on the large measurement, which includes sediment and cloudiness. If he purchased oil according to the measure of Nisan, he does not accept murky oil at all. The Rema writes that some say that he does not deduct sediment. Rather, it is permitted to mix sediment if he is selling ordinary oil. This is seemingly the opinion of the

Tur and the **Rosh**, who disagree with the **Rambam** (**Rambam Sefer Kinyan, Hilkhos Mekhira** 18:9–10; **Shulhan Arukh, Hoshen Mishpat** 228:19–20).

One who steals a lamb from the flock – **הגונב טלה מן העדר**: If one steals a lamb from a flock that was entrusted to his care or a coin from a purse that was deposited with him, he bears responsibility for it until he returns the lamb to the flock or the coin to the purse and informs the owner that he did so. This ruling is in accordance with the opinion of **Rabbi Akiva** (**Rambam Sefer Nezikin, Hilkhos Geneiva** 4:12; **Shulhan Arukh, Hoshen Mishpat** 355:1–2).

Perek III

Daf 41 Amud a

צְרִיךְ דַעַת בָּעֵלִים.

אֵי רֹبֶי יְשֻׁמְעָל, מַאי אַירְיאָא לֹא
חִדּוֹ? אֲפִילוֹ חִדּוֹ נִמְיָן!

לֹא מִיבְעָיא קָאָמָר, לֹא מִיבְעָיא
חִדּוֹ - דְּקָוָמָה הוּא, אַלְאָ אֲפִילוֹ
לֹא חִדּוֹ, דְּלֹא מִקְוָמָה הוּא - לֹא
בְשִׁין דַעַת בָּעֵלִים.

אַיְמָא סִיפָּא: יְחִדּוֹ לְהַבְּעֵלִים
מִקּוּם, וְטִפְלָה וְנִשְׁבָּרָה, בֵין מִתּוֹךְ
רוֹדֵן בֵין מִשְׁחִיחָה, לְצַרְבוֹ - חִיבָּ,
לְצַרְכָּה - פָטוֹר. אַתָּה לְרֹבֶי עַקְיבָּא!
דָאָמָר בְּעֵין דַעַת בָּעֵלִים!

אֵי רֹבֶי עַקְיבָּא מַאי אַירְיאָא יְחִדּוֹ?
אֲפִילוֹ לֹא יְחִדּוֹ נִמְיָן!

לֹא מִיבְעָיא קָאָמָר, לֹא מִיבְעָיא
חִדּוֹ דְּלֹא מִקְוָמָה הוּא, אַלְאָ אֲפִילוֹ
יְחִדּוֹ נִמְיָן, דְּמִקְוָמָה הוּא - בְּעֵין דַעַת
בָּעֵלִים.

רִישָׁא רֹבֶי יְשֻׁמְעָל וְסִיפָּא רֹבֶי
עַקְיבָּא! אִין, דָאָמָר רֹבֶי יוֹחָנָן: מִאן
דָמְתָרָגָם לִחְבִּית אַלְבָא דְחִדּ תְּנָא
מוֹבְלָנָא מִאנִיה בְתְּרִיה לְבִי מִסּוֹתָא.

תְּרִזְמָה רֹבֶי יְעָקָב בָּר אַבָּא קַמְיָה דָרְבָּ:
שְׁפִטְלָה עַל מִנְתָּה לְגֹזְלָה.

One requires the knowledge of the owner for the item to be considered returned.

The Gemara asks: If the *baraita* is in accordance with the opinion of Rabbi Yishmael, why did the *tanna* in the first clause of the mishna establish the case specifically where the owner did not designate a specific place for the barrel to be stored in the bailee's house? Even in a case where the owner designated a place for the barrel, the bailee should be exempt because he replaced the barrel.

The Gemara answers: The *tanna* is speaking utilizing the style: It is not necessary. It is not necessary to state the halakha in a case where the owners designated a place for the barrel, as after the bailee replaced the barrel, that is its place. But even in a case where the owner did not designate a place for the barrel, and after the bailee replaces the barrel that is not its place, we do not require the knowledge of the owners. In both cases, once he replaces the barrel, he is exempt from payment.

The Gemara asks: Say the latter clause of the mishna: If the owners designated a specific place for the barrel, and the bailee moved it and it broke,^h whether it broke while still in his hand or whether it broke after he replaced the barrel, if he moved it for his purposes he is liable to pay, and if he moved it for its own purposes, he is exempt. We arrive at the opinion of Rabbi Akiva, who says: We require the knowledge of the owners. Since the bailee moved the barrel from its place for his own purposes, he is a robber and is responsible for damages.

The Gemara asks: If the *baraita* is in accordance with the opinion of Rabbi Akiva, why did the *tanna* in the latter clause of the mishna establish the case specifically where the owner designated a particular place for the barrel to be stored in the bailee's house? Even in a case where the owner did not designate a place for the barrel, the bailee should be liable to pay, because the barrel is not considered to have been returned.

The Gemara answers: The *tanna* is speaking utilizing the style: It is not necessary. It is not necessary to state the halakha in a case where the owners did not designate a place for the barrel, as the place that the bailee placed the barrel is not its place. But even in a case where the owner designated a place for the barrel, where the place that the bailee placed the barrel is its place, we require the knowledge of the owners for it to be considered as if the bailee returned the barrel.

The Gemara asks: The result of that explanation is that the first clause of the mishna is in accordance with the opinion of Rabbi Yishmael and the latter clause is in accordance with the opinion of Rabbi Akiva. The Gemara answers: Indeed, it is as Rabbi Yoḥanan says: Anyone who explains to me both clauses of the mishna with regard to a barrel according to the opinion of one *tanna*ⁿ I will honor, and carry his garments after himⁿ to the bathhouse, and treat him as a servant treats his master.

The Gemara relates that Rabbi Ya'akov bar Abba interpreted the mishna before Rav: The mishna is referring to a case where the bailee took the barrel in order to rob the owner of it, and that is the meaning of the term: For his purposes. Since he intended to rob the owner of the barrel, he must return it to its place. In the first clause of the mishna, where the owner of the barrel did not designate a place for it, anywhere that he places it constitutes a return to its place. In the latter clause of the mishna, where the owner designated a place for the barrel, since the bailee did not return the barrel to that place, it is not considered to have been returned.

HALAKHA

תְּחִבּוֹת פְּקָדָן שְׁנִשְׁבָּרָה: In the case of one who deposits a barrel with another, whether the owners designated a place for the barrel or whether they failed to do so, if the bailee moved it for his own purposes, whether it broke before he returned it to its place or whether it broke thereafter, he is liable to pay for any damage. If he moved the barrel for its own purposes he is exempt in both cases, in accordance with Rabbi Yoḥanan's interpretation of the mishna. The halakha is not ruled in accordance with the entire mishna, as the halakha is generally ruled in accordance with the opinion of Rabbi Akiva (Rambam Sefer Mishpatim, Hilkhot Sheela UFitkadon 7:9; Shulhan Arukh, Hoshen Mishpat 292:6, and Beur HaGra there).

NOTES

אַלְכָא דְחִדּ תְּנָא: According to one *tanna* – the question of how to interpret a mishna in which there is a contradiction between its first clause and its latter clause is among the questions most commonly raised in the Talmud. The preferred approach is to resolve the contradiction in the mishna. When that is not an option, there are two additional approaches. One is to explain that each of the two clauses in the mishna reflects the opinion of a different *tanna*. A second approach maintains that each of the two clauses refers to a different case. Which of these approaches is adopted is left to the discretion of the Sages, and at times there are disputes. In tractate Sanhedrin, the Gemara notes that Rabbi Yoḥanan holds that it is preferable to attribute a contradiction in a mishna to two *tanna'im* rather than to two cases. Therefore, it is clear why he preferred to adopt the explanation that the mishna reflects the opinion of one *tanna*, but not the one in accordance with the opinions that explain that the mishna is discussing two cases.

מַוְלָלָא מִאנִיה בְתְּרִיה: This means: I will acknowledge that he is a greater Torah scholar than I, and I am prepared to publicize that I serve him like a disciple serves his master (*Torat Hayim*). Later commentaries note that a Hebrew slave does not serve his master in the bathhouse because that is demeaning work. It is permitted for a student to serve his master there only in deference to his master.

NOTES

Misappropriation – שְׁלִיחוֹת יְד: The commentaries discuss extensively the precise nature of misappropriation and the differences between misappropriation and other forms of robbery. Some explain that one who misappropriates a deposit intends to return it to the owner, whereas in cases of robbery and theft the perpetrator has no intention to return the stolen item (Ra'avad). Some explain that a bailee who misappropriated a deposit is halakhically required to pay for the entire item, even if he misappropriated only a small part of it. That is not the halakha in the case of theft (Ramban; Ran). According to the Rosh, apparently the halakha of misappropriation by a bailee is a Torah edict. Therefore, conceivably, misappropriation does not require loss.

He placed it indicates in its designated place – הַנִּיחָה בְּמָקוֹםּוֹ: The early commentaries write that it is not due to this inference that Rabbi Yohanan rejects the proposed answers. Rather, it is because he attempts to avoid establishing the mishna as referring to two different cases (*Talmid Rabbeinu Peretz*).

בְּעֵזֶן – בְּלֹא: Rashi writes that Rav attempts to explain the matter even in accordance with the opinion of Rabbi Yishmael. The Ra'avad explains: If the bailee places his staff and garments on the animal once, it is inconsequential, as the owners are indifferent, and it is not considered misappropriation. Here, the Gemara indicates that he regularly places a burden upon the animal, to the extent that it weakens the animal.

HALAKHA

Loss with regard to misappropriation – חַסְרוֹן בְּשְׁלִיחוֹת יְד: It is prohibited for a bailee to misappropriate a deposit, even if his intention is merely to use it, not to steal it, and even if he causes no damage or loss. Once he misappropriates the deposit it is considered to be his, and he is liable to pay even if any subsequent damage was due to circumstances beyond his control. This ruling is in accordance with the opinion of Rav, as the halakha is in accordance with his opinion in disputes with Levi.

In cases of misappropriation, a bailee bears responsibility from the moment that he lifts the deposit. If his intention is to use the deposit for a purpose that does not damage it, he bears responsibility only from the moment he uses it, as a borrower without the knowledge of the owner, in accordance with the opinion of Rav Sheshet. Although the mishna does not correspond with his opinion, no one disagrees with his ruling (Rambam Sefer Nezikin, Hilkhot Gezeila VaAveda 3:11; Shulhan Arukh, Hoshen Mishpat 292:1).

He abandoned his flock and went to the city – הַיְחָד שָׂדוֹר בָּא לְעֵזֶן: If a shepherd abandoned his flock and entered a city, whether he did so at a time when shepherds typically enter the city or whether he did so at a time when shepherds do not typically enter the city, if an animal came and devoured animals from the flock, some say that he bears responsibility only if he would have been able to save them with the help of other shepherds. If not, he is exempt. Others say that if he entered at a time when shepherds do not typically enter the city, he is always liable to pay, because the episode began with his negligence (Rambam Sefer Mishpatim, Hilkhot Sekhirut 3:8; Shulhan Arukh, Hoshen Mishpat 303:10, and in the comment of Rema).

תְּרוּמָה וּבִנְטָן בָּר אֲבָא קַמְתָּה דָּרְבָּן:
שְׁנַטְלָה עַל מִנְתָּה לְשִׁלּוֹחַ בָּה יְד.

בְּמַאי קַמְפְּלָגָג? בְּשְׁלִיחוֹת יְד צְרִיכָה
חַסְרוֹן. מִאן דָּאָמָר לְגַזְלָה – קַסְבָּה;
שְׁלִיחוֹת יְד צְרִיכָה חַסְרוֹן. וּמִאן דָּאָמָר
לְשִׁלּוֹחַ בָּה יְד, קַסְבָּה: שְׁלִיחוֹת יְד אֲנֵה
צְרִיכָה חַסְרוֹן.

מַתְקִיף לְהָרְבָּ שִׁשָּׁת: מִידִי נְטָלָה קַתְנִי?
טְלַטְלָה קַתְנִי אֶלְאָ אָמָר רַב שִׁשָּׁת:
הַכָּא בְּמַאי עַסְקִין – בָּגָונְ שְׁטַלְטָה
לְהַבְיאָ עַלְיהָ גּוֹזְלוֹת. וּקְאָסְבָּה: שְׁוֹאָל
שְׁלִיאָ מְרֻעָת גָּלָן קוֹי, וּכְוֹלָה רַבִּי
שְׁנַעֲלָה הַיָּא, וּסְפָא שְׁהַנִּיחָה בְּמָקוֹםּ
שְׁאַנְהָה מְקוֹמָה.

רַבִּי יוֹחָנָן: הַנִּיחָה – בְּמָקוֹםּוֹ מִשְׁמָעַ.

Rabbi Natan bar Abba interpreted the mishna before Rav: The mishna is referring to a case where the bailee took the barrel in order to misappropriate it, as one who misappropriates the property of another is responsible for any subsequent damage to it.

The Gemara asks: **With regard to what do Rabbi Ya'akov and Rabbi Natan disagree?** The Gemara answers: It is with regard to whether misappropriation^N requires loss.^H Is one liable for misappropriation only if it results in depreciation of the deposit, or is one liable for misappropriation even if he only intended to damage the deposit but there was no depreciation? **The one who says that the bailee took the barrel in order to rob the owner of it holds that misappropriation requires loss. And the one who says that the bailee took the barrel in order to misappropriate it holds that misappropriation does not require loss.**

Rav Sheshet objects to that explanation: Does the tanna teach that the bailee took it? It is taught in the mishna: The bailee moved it, indicating that he sought neither to misappropriate it nor to rob the owner of it. Rather, Rav Sheshet said: With what are we dealing here? We are dealing with a case where the bailee moved the barrel to stand upon it and bring fledglings from a nest in a tree. The bailee did not attempt to use its contents. He merely climbed on the barrel. **And the tanna of the mishna holds:** The legal status of one who borrows without the knowledge of the owners is that of a robber in terms of responsibility. **And the entire mishna is in accordance with the opinion of Rabbi Yishmael. And the latter clause is referring to a case where the bailee is responsible because he placed the barrel in a place that is not its designated place.**

The Gemara asks: **And why doesn't Rabbi Yohanan, who claimed that it is not possible to establish both clauses of the mishna in accordance with the opinion of the same tanna, explain the mishna in that manner?** He holds that the term: **He placed it, indicates that he replaced it in its designated place.**^N Therefore, the latter clause cannot be explained in accordance with the opinion of Rabbi Yishmael, and the contradiction remains.

אַיִתָּמָר, רַב וּלְבָי, חַד אָמָר: שְׁלִיחוֹת יְד
צְרִיכָה חַסְרוֹן, וְתַד אָמָר: שְׁלִיחוֹת יְד
אֲנֵה צְרִיכָה חַסְרוֹן. תְּסִתְמִים דָּרְבָּ הוּא
דָּאָמָר שְׁלִיחוֹת יְד אֲנֵה צְרִיכָה חַסְרוֹן;
דְּתַנְיָא: רֹועָה שְׁהִיָּה רֹועָה עַדְרוֹ וְהַנִּיחָה
עַדְרוֹ וּבָא לְעֵיר, וּבָא זַאֲבָ וְטַרְבָּ, וּבָא
אוֹרְזָרָס – פְּטוּר. הַנִּיחָה מְקֻלָּה וְתַרְמִילָה
עַלְיהָ – תַּיִבָּ.

וְהַוְיָה בָּה: מִשּׁוּם דְּהַפְּתִיחָה מְקֻלָּה וְתַרְמִילָה
עַלְיהָ חַיְבָ? הָא שְׁקַלְיָהוּ!

אָמָר וּבְנַחֲקָן אָמָר רַבָּה בָּר אַבְוֹהָ אָמָר
רַב: בְּעֵזֶן עַלְיהָ. וּבַי עַזְן עַלְיהָ מַאי
הַוְיָה? הָא לֹא מִשְׁכָה!

§ It was stated that there is an amoraic dispute between Rav and Levi. One says: Misappropriation requires loss. And one says: Misappropriation does not require loss. The Gemara comments: It may be concluded that it is Rav who says: Misappropriation does not require loss, as it is taught in a baraita: In the case of a shepherd who was herding his flock, which included the animals of others, and he abandoned his flock and went to the city,^H and a wolf came and devoured an animal, or a lion came and clawed an animal, the shepherd is exempt, as in any case, the attacks occurred through circumstances beyond his control. If he placed his staff and his satchel on the animal that was later attacked, he is liable to pay for the animal. Since he utilized the animal, it is as if he misappropriated it, and therefore he is liable to pay even in a case involving circumstances beyond his control.

And we discussed this baraita: Due to the fact that he placed his staff and his satchel on the animal, is he liable to pay? Didn't he already remove them? Even if he improperly used the animal, he already removed his staff and satchel, and it is tantamount to returning it to the owners.

And Rav Nahman says that Rabba bar Avuh said that Rav said: The tanna is referring to a case where the wolf devoured the animal when the staff and satchel were still on the animal.^N Since the bailee is still using the animal, it is considered his in terms of liability to pay for the damage caused. The Gemara asks: **And if the staff and satchel are still on the animal, what of it? But he did not pull the animal and therefore did not acquire it.**

ואמר ורב שמואל בר רב יצחק אמר רב:
שהפישה במקל רוצחה לפניו. והא לא
חפרה! אלא לא לאו שמע מינה; קסבר:
שליחות יד אינה אירכה חפרון.

אימא: שהקחישה במקל. דיקא גמי.
דקני שזכה במקל, שמע מינה.

ומזרב סבר שליחות יד אירכה חפרון,
לויבר שליחות יד אינה אירכה חפרון.
מאי טעמא דלווי אמור רב יוחנן משום
רב יוסף בן נהורי: משונה שליחות
יד האמורה בשומר שכר משליחות יד
האמורה בשומר חנום.

And Rav Shmuel bar Yitzḥak says that Rav says: The *tanna* is referring to a case where the shepherd struck the animal with a staff and it ran before him, which is a form of pulling. The Gemara asks: But by causing the animal to run, he did not cause a loss to the animal. Why is he liable to pay? Rather, must one not conclude from it that Rav holds: Misappropriation does not require loss?

The Gemara rejects that proof: Say that he weakened the animal with a staff, and that is the only reason that he is liable to pay. The Gemara comments: Rav's language is also precise, as he teaches: Where the shepherd struck the animal with a staff. The reason that he explains that he struck the animal with a staff, as opposed to his hand, is to indicate that the animal was weakened. The Gemara affirms: Learn from it that Rav holds that misappropriation requires loss.

The Gemara comments: And from the fact that Rav holds that misappropriation requires loss, it may be inferred that Levi holds that misappropriation does not require loss. The Gemara asks: What is the reason for the opinion of Levi? Rabbi Yoḥanan says in the name of Rabbi Yosei ben Nehorai: Misappropriation that is stated with regard to a paid bailee is different from misappropriation that is stated with regard to an unpaid bailee. There is no need for the Torah to state the *halakha* of misappropriation twice. If an unpaid bailee is liable to pay for misappropriation, all the more so is a paid bailee liable to pay. The reason that the Torah repeated this *halakha* is to teach that a paid bailee is liable to pay for misappropriation even if there is no loss.

Perek III

Daf 41 Amud b

ואני אומר: אינה משונה.

Rabbi Yoḥanan continues: And I say that misappropriation by a paid bailee is not different.

ומאי משונה? לא תאמיר שליחות יד
בשומר שכר, ותיתני משומר חנום: ומה
שומר חנום שפטור בגנבה ואברה -
שליח ביה יד חיב, שומר שכר שחיב
בגנבה ואברה - לא כל שפן: למאי
הלכטה בתבניתו רחמנא - לוורן!
שליחות יד אינה אירכה חפרון.

The Gemara elaborates: And what is meant by: Misappropriation that is stated with regard to a paid bailee is different from misappropriation that is stated with regard to an unpaid bailee? As one could claim: Let misappropriation^N not be stated with regard to a paid bailee, and derive it from misappropriation with regard to an unpaid bailee by means of an *a fortiori* inference: And if an unpaid bailee, who is exempt in cases where he claims theft and loss, misappropriated the deposit, he is liable to pay, then a paid bailee, who is liable in cases where he claims theft and loss, all the more so is it not clear that he is liable if he misappropriated the deposit? With regard to what *halakha* did the Merciful One write misappropriation in the case of a paid bailee? It is to say to you: Misappropriation does not require loss; intent to misappropriate is enough to render him liable to pay.

ואני אומר: אינה משונה, ברבי אלעזר,
וזאמר דא ור' אחת היא. מאי דא
וזרא אחת? משום דאייא למפרך: מה
לשומר חנום - שבון משלים תשלומי כפלו
בטוען טענת גנוב.

Rabbi Yoḥanan stated: And I say that it is not different, in accordance with the opinion of Rabbi Elazar, who says: This case and that case are one. The Gemara elaborates: What is the meaning of: This and that are one? It means that it was necessary to teach misappropriation in both cases due to the fact that it can be refuted by an *a fortiori* inference: What is notable about an unpaid bailee? He is notable in that he pays the double payment when he falsely states the claim that a thief stole the deposit. A paid bailee reimburses the owner only for the cost of the deposit in that case. The legal status of the paid bailee is not consistently more stringent than that of an unpaid bailee, and therefore no *a fortiori* inference is possible.

NOTES

And what is different with regard to misappropriation –
מאי משונה... שליחות יד: Misappropriation is different, as it is unnecessarily repeated in the Torah. It is different in the sense that its *halakha* is anomalous, as one is liable for misappropriation even when there is no loss to the owner (Rosh).

NOTES

The principal without an oath – **ר' ר' ר' ר' ר' ר' ר' ר' ר'**: Rashi on *Bava Kamma* 57b explains that it is possible to say that an unpaid bailee is liable to pay not because he is responsible for the loss of the item, but because the Torah penalizes him for taking a false oath.

And derive it from a borrower – **ר' ר' ר' ר' ר' ר' ר' ר' ר'**: Rashi and most early commentaries explain that misappropriation is derived from the *halakha* of a borrower itself, as the responsibility that he bears is due to his misappropriating the deposit, although it was with the knowledge and authorization of the owner. Rabbeinu Hananel explains differently. When the Gemara states: And derive it from a borrower, it means: Misappropriation should have been written only with regard to a borrower, and with regard to other bailees it would be derived by means on an *a fortiori* inference. See the Ritva, who discusses the opinion of Rabbeinu Hananel. There is another version of the text of the Gemara found in *Otzar HaGe'onim*.

One mention...and the other – **ר' ר' ר' ר' ר' ר' ר' ר'**: *Tosafot* ask: How is it possible to derive the matter by means of a verbal analogy according to the one who holds that misappropriation does not require loss, as according to that opinion both mentions of misappropriation are necessary? The Ritva, cited in the *Shita Mekubetzet*, explains that a verbal analogy based on tradition is effective even if the terms used are not superfluous in their context.

HALAKHA

And the master of the house shall approach the judges with regard to an oath – **ר' ר' ר' ר' ר' ר' ר' ר'**: *Rambam Sefer Mishpatim, Hilkhot Sekhirut 1:2; Shulhan Arukh, Hoshen Mishpat 291:1*. An unpaid bailee from whom a deposit was lost or stolen takes an oath, and he is exempt (Rambam *Sefer Nezokin, Hilkhot Geneiva 4:1*; *Shulhan Arukh, Hoshen Mishpat 352:1*).

A false oath on a deposit – **ר' ר' ר' ר' ר' ר' ר' ר'**: If an unpaid bailee claimed that a deposit was stolen and took an oath to that effect, and then witnesses testified that the oath was false, his legal status is that of a thief, and he pays double the principal. In a case where the deposit was a sheep or an ox, if the bailee slaughtered or sold it, he pays four or five times the principal, respectively (Rambam *Sefer Nezokin, Hilkhot Geneiva 4:1; Shulhan Arukh, Hoshen Mishpat 352:1*).

**ומאן דלא פרין, סבר: קרנא בלא
שבועה עדיפה מכפילה לא בשובועה.**

**רבא אמר: לא תאמיר שליחות יד לא
בשומר חנם ולא בשומר שכר, ותית
משואל: ומה שואל לדעת בעלים
כא עביד – שלח בה יד חייב, שומר
חנם ושומר שכר – לא כל שמן.**

**למה נאמר? חדא: לומר לך שליחות
יד אין צרכיה חסרון, ואיך: שלא
תאמר דיו לבא מן הדין לךות במדהו,
מהו שואל בעלים פטור – אף שומר
חנם ושומר שכר בעלים פטור.**

**ולמאן דאמר שליחות יד צרכיה
חסרון, הבני תרתי שליחות יד לממה
לו? חדא: שלא תאמר דיו לבא מן
הדין לךות בנדון.**

**ואיך – לברתניא: "ונקרב בעל הבית
אל האלהים" – לשבועה. אתה אומר
לשבועה, או אין אלא לדין? נאמרה
שליחות יד למתה, ונאמרה שליחות
יד למעלה, מה להן לשבועה – אף
כאן לשבועה.**

The Gemara comments: **And the one who does not refute the *a fortiori* inference holds:** The absolute requirement to pay the principal even without having taken a false oath^N is more stringent than the requirement to pay the double payment that is effected only with the bailee taking a false oath. In his opinion, the legal status of the paid bailee is consistently more stringent than that of an unpaid bailee, and therefore an *a fortiori* inference is possible.

Rava says: The verse should not state misappropriation, neither with regard to an unpaid bailee nor with regard to a paid bailee, and one can derive it by means of an *a fortiori* inference from misappropriation with regard to a borrower.^N **And if a borrower, who utilizes the deposit with the knowledge of the owner, misappropriated the deposit, he is liable to pay, then with regard to an unpaid bailee and a paid bailee, who may not utilize the deposit at all, all the more so is it not clear that they are liable to pay if they misappropriate the deposit?**

Why, then, is the *halakha* of misappropriation stated in the cases of the unpaid and paid bailees? **One mention is to say to you: Misappropriation does not require loss. And the other mention is so that you will not say:** With regard to this *a fortiori* inference, there is principle: It is sufficient for the conclusion inferred from an *a fortiori* inference to be like the source^B of the inference, and thereby conclude: Just as a borrower who is in partnership with the owner is exempt, so too, an unpaid bailee and a paid bailee who are in partnership with the owner are exempt. Consequently, it was necessary for the verse to mention the *halakha* of misappropriation with regard to both the paid and unpaid bailee.

The Gemara asks: **And according to the one who says: Misappropriation requires a loss, why do I need these two mentions of misappropriation?** The Gemara explains: **One mention is so that you will not say with regard to this *a fortiori* inference the principle: It is sufficient for the conclusion that emerges from an *a fortiori* inference to be like its source.**

And the other^N mention is for that which is taught in a *baraita*. It is written: **"And the master of the house shall approach the judges to determine whether he misappropriated his neighbor's goods"** (Exodus 22:7). This is stated with regard to an oath.^H **Do you say that it is stated with regard to an oath, or is it stated only with regard to judgment? Misappropriation is stated below, in a later verse in the chapter: "Whether he misappropriated his neighbor's goods"** (Exodus 22:10), and misappropriation is stated above, in an earlier verse in the chapter: "Whether he misappropriated his neighbor's goods" (Exodus 22:7). **Just as below** it is stated explicitly with regard to an oath: "The oath of the Lord shall be between them both to determine whether he misappropriated his neighbor's goods" (Exodus 22:10), **so too here**, it is stated with regard to an oath and not merely for judgment.^H

BACKGROUND

It is sufficient [*dayyo*] for the conclusion inferred from an *a fortiori* inference to be like the source – **די לבא מן הדין לךות בנדון:** This halakhic principle, referred to in shorthand as *dayyo*, restricts the conclusion that may be derived from an *a fortiori* inference. It establishes guidelines for *a fortiori* inferences to prevent the establishment of limitless leniencies or stringencies. According to the principle of *dayyo*, one may derive: Just as X

is more stringent than Y with regard to point A, X is no less stringent than Y with regard to point B. One does not derive: Just as X is more stringent than Y with regard to point A, X is similarly more stringent than Y with regard to point B. If that were the case, limitless conclusions could be derived from the inference. Still, the Gemara here contends that this principle is not in effect.

Perek III

Daf 42 Amud a

מתני' המפקיד מעות אצל חברו, ערונו והPsiשין לאחורי או שמסרם לבנו ולቤתו הקטנים ועל בפניהם שלא כראוי – חיב, שלא שיימר בדרך השומרים. ואם שיימר בדרך השומרים – פטור.

גמ' בשלה מא פולחו – שלא שיימר בדרך השומרים, אלא ערונו והPsiשין לאחורי, מי הוה ליה למיעבר? אמר רב א אמר רבי יצחק: אמר קרא יצאת הרכף בירך. אף על פי שאיןין – יחי בירך.

ואמר רבי יצחק: לעולם יהא בספו של אדים מזעי פידוי, שנאמר יצאת הרכף בירך. ואמר רבי יצחק: לעולם ישלייש בפרקמיטיא ושליש מהת' זו.

ואמר רבי יצחק: אין הברכה מציה אלא בדבר הפסמו מן העין, שנאמר יצו ה' אתך את הברכה באסמייך. תנא דבי רבי ישמאל: אין הברכה מציה אלא ברכבו שאין העין שלטה בו, שנאמר יצו ה' אתך את הברכה באסמייך.

גנו ורבנן: ההולך למוד את גורנו, אומר: י' הי רצון מלפניך ה' אלהינו שתשלה ברכה במעשהינו. התחל למוד, אומר: ברוך דשליח ברכה בכרי הארץ. מדד ואחר כך בירך – הרי זה תפילה שוא, לפי שאין הברכה מציה לא בדבר השקלול ולא בדבר המוד, ולא בדבר הפניו, אלא בדבר הפסמו מן העין, שנאמר: יצו ה' אתך את הברכה באסמייך.

MISHNA In the case of one who deposited coins with another, and that bailee bound it in a cloth and slung it behind him,^h or conveyed them to his minor son or daughter^h for safeguarding, or locked the door before themⁿ in an inappropriate, i.e., insufficient, manner to secure them, the bailee is liable to pay for the coins, as he did not safeguard the coins in the manner typical of bailees. But if he safeguarded the money in the manner that bailees safeguard items and it was nevertheless stolen, he is exempt.

GEMARA Granted, for all the other cases, the bailee is liable to pay, as he did not safeguard the money in the manner that bailees safeguard items. But if the bailee bound it in a cloth and slung it behind him, what more was he to do? Rava says that Rabbi Yitzhak said: The verse states: "And you shall bind up the money in your hand" (Deuteronomy 14:25), from which it is derived: Although it is bound, in order to safeguard the money, it must be in your hand.

And apropos that verse, Rabbi Yitzhak says: A person's money should always be found in his possession. He should not invest all of his money, leaving him with no money available for expenditures, as it is stated: "And you shall bind up the money in your hand." And Rabbi Yitzhak says: A person should always divide his money into three;ⁿ he should bury one-third in the ground, and invest one-third in business [bifrakmatya],^l and keep one-third in his possession.

And Rabbi Yitzhak says: Blessing is found only in a matter concealed from the eye, as it is stated: "The Lord will command blessing with you in your storehouses" (Deuteronomy 28:8), where the grain is concealed. The school of Rabbi Yishmael taught: Blessing is found only in a matter over which the eye has no dominion,ⁿ as it is stated: "The Lord will command blessing with you in your storehouses."

The Sages taught: One who goes to measure the grain on his threshing floor recites:^h May it be Your will, O Lord, our God, that You send blessing upon the product of our hands. If one began to measure the grain he says: Blessed is He Who sends blessing upon this pile of grain. If one measured and afterward recited this blessing, this is a prayer made in vain, because blessing is found neither in a matter that is weighed, nor in a matter that is measured, nor in a matter that is counted. Rather, it is found in a matter concealed from the eye, as it is stated: "The Lord will command blessing with you in your storehouses."

Or he locked the door before them – **ונעל בפניהם:** Rashi explains that he locked the door before the minors. The commentaries add that, although safeguarding by minors is not itself effective safeguarding, in this case, since the children are behind locked doors and cannot leave, and if a thief attempts to enter they will certainly yell, it is considered effective safeguarding. The Rif cites a variant reading: Or he locked. The reference is not to leaving the minors behind locked doors. Rather, this is a new halaka: By placing a deposit in a locked room, one effectively safeguards it. Most of the commentaries agree with this opinion (Rashba; Rosh; Ritva; Meiri).

A person should always divide his money into three – **לשליש:** An allusion to this can be found in the verse: "The Lord will command the blessing with you in your storehouses, and in all that you put your hand to, and He will

bless you in the land" (Deuteronomy 28:8). "In your storehouses" refers to the money that one keeps in his possession. "In all that you put your hand to" refers to the money one invests in business. "In the land" refers to the money that one places in the land. With regard to the one-third that one places in the land, some explain that he buries it in the ground, and others explain that he should invest it in real estate, which is a safe investment.

Over which the eye has no dominion – **שאין קשו שלטה בו:** The Sages also stated that blessing is not found in matters that create the impression that one is amassing a significant profit, e.g., using large barrels (Rosh). In general, God's blessing is bestowed discreetly. For example, in the incident recounted in II Kings, chapter 4, Elisha instructed a woman to close the door before a miracle transpired to grant her oil (*Torat Hayyim*).

HALAKHA

שמירת כספים בדרך: Safeguarding money while traveling – If one deposits money with another, and in the course of safeguarding the money the bailee must travel, he must bind the money and hold it in his hand or sling it over his shoulder in front of him. If he failed to do so and the money was lost, even if it was due to circumstances beyond his control, he is liable to pay, since the incident started with his negligence (Rambam Sefer Mishpatim, Hilkhot She'ela Uifikadon 4:6; Shulhan Arukh, Hoshen Mishpat 291:20).

מסרים: **לבן וליתר הקטנים:** If a bailee conveys the deposit to his minor son or daughter, he bears responsibility for any subsequent damage (Rambam Sefer Mishpatim, Hilkhot She'ela Uifikadon 4:8; Shulhan Arukh, Hoshen Mishpat 291:21).

הזהוץ למדוד את גורנו: One who enters his threshing floor to measure the grain there says: May it be Your will, O Lord our God, that You send blessing upon this pile of grain. He may recite this prayer even in the course of measuring the grain. If he recites the prayer after he completed measuring the grain, it is a prayer in vain. The Ramban writes: One recites this prayer only when measuring the grain in order to tithe it, as the Torah promises blessing if one separates tithes from his grain (Rambam Sefer Ahava, Hilkhot Berakhot 10:22; Shulhan Arukh, Orach Hayyim 230:2).

LANGUAGE

פרקמיטיא: Business [perakmatya] – **πραγματεία, pragmateia:** From the Greek πραγματεία, pragmateia, meaning business management or commerce.

NOTES

HALAKHA

Safeguarding for money – בְּסִירַת כְּסָפִים: Effective safeguarding of money and other valuable items is accomplished by burying them at least one handbreadth in the ground, in accordance with the conclusion of Rafram. Alternatively, they may be concealed inside the wall within one handbreadth of the ground or within one handbreadth of the roof (Rambam Sefer Mishpatim, Hilkhot She'ela Uifikadon 4:4; Shulhan Arukh, Hoshen Mishpat 291:15).

A deposit on Shabbat eve at twilight – בְּשַׁבָּב שְׁבָת בֵּין הַשְׁמַשׁוֹת: A bailee who receives a deposit of money from another during twilight on Friday evening is obligated to bury it immediately at the conclusion of Shabbat. If the depositor or the bailee is a Torah scholar, he may postpone burying the money until after havdala (Rambam Sefer Mishpatim, Hilkhot She'ela Uifikadon 4:5; Shulhan Arukh, Hoshen Mishpat 291:16, and in the comment of Rema).

Leavened bread upon which a rockslide fell – חַמֶץ עַל שָׁבֵילָה: If leavened bread was buried beneath a rockslide three handbreadths deep, one does not search for it to destroy it. Nullification is sufficient, in accordance with the opinion of Rabban Shimon ben Gamliel (Rambam Sefer Zemanim, Hilkhot Hametz UMatza 3:11; Shulhan Arukh, Orah Hayyim 433:8).

אָמַר שְׁמוּאֵל: כְּסָפִים אֵין לְהַמִּיר בָּאָדָם בְּקָרְקָע. אָמַר רְبָא: וּמוֹדֵי שְׁמוּאֵל בְּשַׁבָּב שְׁבָת בֵּין הַשְׁמַשׁוֹת, דְלֹא אַטְרָחוּ רְבָבָן, וְאֵי שָׂהָא לְמַזְצֵי שְׁבָת שְׁעוֹר לְמַקְבִּירֵינוּ וְלֹא קְבִּרֵינוּ – מַחֲיִיב. וְאֵי צַוְּרָבָא מַרְבָּן הוּא – סְבָר: דְלֹמְדָא מִבְשֵׁי לִיהְיוֹ לְאַבְדָלָתָא.

וְהָאִידְנָא דְשִׁכְיִי גְּשׁוּשָׁאֵי – אֵין לְהַמִּיר שְׁמִירָה אַלְאָ בְּשִׁמְיָרִים קֹרֶה. וְהָאִידְנָא דְשִׁכְיִי פּוֹמָאֵי – אֵין לְהַמִּיר שְׁמִירָה אַלְאָ בְּינִי אַוְבָּי. אָמַר רְבָא: וּמוֹדֵה שְׁמוּאֵל בְּכֻולָּה, אֵי נִמְיָה בֵּין הַקָּרוֹנוֹת. וְהָאִידְנָא דְשִׁכְיִי טְפַחָאֵי אֵין לְהַמִּיר שְׁמִירָה אַלְאָ בְּטְפַח הַסְּמֹוך לְקָרְקָע, אוֹ בְּטְפַח הַסְּמֹוך לְשִׁמְיָרִים קֹרֶה.

אָמַר לִיהְיוֹ רְבָב אַחֲרֵיהֶ דַּרְכֵי יוֹסֵף לְרַב אָשִׁי: הַתִּמְתַּנְתֵּן: חַמֶץ שְׁגַפֵּלה עַל יְמִינֵי מִפְולָת הַרְיָה הַוְאָ כְּמַבוּשָׁר, רְבָב שְׁמַעַן בְּגַמְלִיאָל אָוּמָר: כָל שָׁאיָן הַכְּלָב יָכוֹל לְחַפֵש אֲחָרִיו. וְתַנְתָּא: כִּמְהָ חַפֵשָׁת הַכְּלָב – שֶׁלֶשֶׁת טְפַחִים. הַכָּא מָאִי? מַיְיָה בְּעֵינָן שֶׁלֶשֶׁת טְפַחִים, אוֹ לֹא?

§ Shmuel says: There is safeguarding for money^h only in the ground.ⁿ Rava said: And Shmuel concedes if one received a deposit on Shabbat eve at twilight,^h that the Rabbis did not impose upon him to bury it in the ground immediately. And if, at the conclusion of Shabbat, he delayed and did not bury the money within the period of time needed to bury it, he is liable to pay the owner if it is stolen. And if the one who deposited the money is a Torah scholar and the bailee thought: Perhaps he requires moneyⁿ for havdala, and that is the reason that he did not bury the money immediately, then he may delay burying the money a bit longer.

The Gemara comments: And now that rummagers, who dig to find and steal buried property, are commonplace, there is safeguarding for money only in the beams of the roof of a house. The Gemara comments: And now that dismantlers, who attempt to find and steal property hidden in beams, are commonplace, there is safeguarding for money only between the bricks of a wall. Rava said: And Shmuel concedes that money can be safeguarded in the wall or, alternatively, between the corners of the house. And now that tappers, who tap on walls to find and steal property hidden there, are commonplace, there is safeguarding for money only in the handbreadth^b of the wall adjacent to the ground or in the handbreadth of the wall adjacent to the ceiling, as tapping on the wall will not reveal their existence.

Rav Aha, son of Rav Yosef, said to Rav Ashi: We learned in a mishna there (Pesahim 31b): The legal status of leavened bread upon which a rockslide fell^h is like that of leavened bread that was eliminated, as it will remain there forever. Rabban Shimon ben Gamliel says: This ruling applies in any case where the leavened bread is covered to the extent that a dog is unable to detect it. And it is taught: How much is the measure of detection of a dog? It is three handbreadths. The question is: Here, what is the halakha? Do we require the money to be buried at a depth of three handbreadths or not?

NOTES

There is safeguarding for money only in the ground – בְּסִירַת כְּסָפִים: Burying money is one of the methods employed to prevent its theft. In addition, burying it in the ground protects the coins from corrosion (Rosh). Rabbi Reuven AlBargeloni wrote, citing the Jerusalem Talmud, that safeguarding the money according to the existing conventions in that place is sufficient, and many commentaries agree (Ramban; Rashba; Ran). The Meiri wrote that Shmuel said that extreme measures must be taken in safeguarding money only in cases where the authorities are attempting to confiscate that money. In ordinary circumstances, it is sufficient for the bailee to safeguard

the money of the deposit in the manner that he safeguards his own.

Perhaps he requires money – דְלֹמְדָא מִבְשֵׁי לִיהְיוֹ וְזַיְיָ: Some explain that there is concern that the owner might require the money for havdala (Rashi). Some explain that there is concern that if the bailee is a Torah scholar and does not rely on the havdala recited in the synagogue, he will need to purchase wine for havdala. Therefore, he is allotted additional time and he need not conceal the money until after havdala (Rabbeinu Hananel).

BACKGROUND

Handbreadth – טְפַח: This measure approximates the width of a clenched fist. One handbreadth equals four fingerbreadths, which is five times the width of the middle finger, or six times the width of the little finger. According to the measures of

Rabbi Hayyim Na'e, a handbreadth equals 8 cm. According to the measures of the Hazan Ish, it is 9.6 cm. Three handbreadths are 24–28.8 cm.

אמור ליה: הַתִּמְשֹׁם וַיְחָא – בַּעֲינֵן שֶׁלֶשֶׁת טְפַחִים, הַכָּא מִשּׁוּם אִיכְסּוּי מַעֲנִיא – לֹא בַּעֲינֵן שֶׁלֶשֶׁת טְפַחִים. וּכְמָה? אָמָר רַפְרָם מִשְׁכֵּרָא: טְפַח.

זהו גברא דאפקיד זוי גבי חבריה, ואותיבניה בעץ פא דאורבנין, אונגב. אמר רב יוסף: אף על גב דלענין גנבי נטירותא היא, לעניין נורא – פשיעותה היא, זהה תחילתו בפשיעה וסופו באום – חיב, ואיכא דאמר: אף על גב דלענין נורא פשיעותה היא, לעניין גנבי נטירותה היא, ותחלתו בפשיעה וסופו באום – פטור והילכטה: תחילה בפשיעה וסופו באום – חיב.

זהו גברא דאפקיד זוי גבי חבריה, ואותיבניה אמר ליה: חב לי זונאי! אמר ליה: לא ידענא היכא אותיבניה. אתה לקפיה דרבא, אמר ליה: כל לא ידענא – פשיעותה היא, يول שלם.

זהו גברא דאפקיד זוי גבי חבריה, אשלמיינה לאימיה, ואותיבניה בקרטלייתא, אונגב. אמר רב בא: היכי נניינו דיני להאי דין?

ニמא ליה לדידה: يول שלם, אמר:

Rav Ashi said to Rav Aha: There, with regard to bread, it is due to the scent that we require three handbreadths to obscure it from the dog. Here, with regard to money, it is because it must be obscured from the eye that we bury it. Scent is not relevant, and therefore we do not need three handbreadths. The Gemara asks: And how deep must the money be buried? Rafram from Sikhera said: One handbreadth.

The Gemara relates: There was a certain man who deposited money with another, and the bailee placed it in a willow hut from which the money was stolen. Rav Yosef said: Although with regard to thieves, placing the money in the hut is effective safeguarding, with regard to fire it is negligence, as it is likely to burn. Therefore, it is a case where the incident was initially through negligence and ultimately by accident, and the bailee is liable to pay. And some say: Although with regard to fire it is negligence, with regard to thieves it is effective safeguarding. Therefore, it is a case where the beginning of the incident was negligence and ultimately the damage was caused by accident, and the bailee is exempt.^h The Gemara concludes: And the halakha is: In a case where the incident was initially through negligence and ultimately by accident, the bailee is liable to pay.

The Gemara relates: There was a certain man who deposited money with another. Eventually, the owner of the money said to the bailee: Give me my money. The bailee said to him: I do not know where I placed it. The matter came before Rava, who said to the bailee: Every circumstance where a bailee claims: I do not know, is in and of itself negligence;^h go pay.

The Gemara relates: There was a certain man who deposited^h money with another. The bailee gave the money to his mother, and she placed the money in a chest [bekartalita],^l and it was stolen. Rava said: How should judges rule in this case?

Let us say to the bailee: Go pay. But he can say: There is a principle:

NOTES

Every circumstance where a bailee claims, I do not know is in and of itself negligence – **כל לא ידענא**: The Ritva asks: Isn't it the halakha that an unpaid bailee is exempt if the deposit is lost, which is by definition a case where the bailee says: I don't know where it is? The Ra'avad explains that he is exempt only in cases where he knows that the animal fled or the money fell out of his hand and it is unrecoverable. But if the deposit was lost in a manner where the bailee does not know the circumstances, he is liable to pay.

LANGUAGE

Chest [*kartalita*] – **קרטלאטה**: An Aramaic diminutive of the Greek *κάρταλλος*, *kartallos*, meaning a basket with a pointed bottom.

HALAKHA

Negligence and damage were caused by circumstances beyond his control in two factors – **ששיהם ואננס בענין גורמים**:

If one was negligent in safeguarding a deposit by not preventing one form of damage, he is liable to pay, due to his negligence. This is the halakha even if the damage was ultimately due to another form of damage, and even if it occurred under circumstances beyond his control. In the case in the Gemara, placing money in a wood hut was negligent, as this made it likely to be damaged in a fire. Consequently, although the bailee was not negligent with regard to theft, he is still liable to pay if the money was stolen (Rambam Sefer Mishpatim, Hilkhot She'ela Uifikadon 4:6; Shulhan Arukh, Hoshen Mishpat 291:6).

Every circumstance where a bailee claims, I do not know is in and of itself negligence – **כל לא ידענא פשיעותה היא**: A bailee who forgot where he placed the deposit is negligent and is liable to pay

immediately (Rambam Sefer Mishpatim, Hilkhot She'ela Uifikadon 4:7; Shulhan Arukh, Hoshen Mishpat 291:7).

זהו גברא דאפקיד וכו': There was an incident involving one who deposited money with another, and the bailee gave it to his mother, who concealed the money in a secure place but did not bury it, and it was stolen. The Sages said: The bailee is exempt after taking an oath that he gave it to his mother, who is a member of his household. His mother is exempt after taking an oath that she concealed the money and it was stolen. The Rema writes, citing the Maggid Mishne, that if the deposit was an item other than money, the bailee need not take an oath; the oath of the mother is sufficient (Rambam Sefer Mishpatim, Hilkhot She'ela Uifikadon 4:8; Shulhan Arukh, Hoshen Mishpat 291:23).

Perek III
Daf 42 Amud b

NOTES

Molars – **כַּבְיִ**: Rashi usually explains this term to mean gums. Tosafot write that this is unlikely, and that they are actually the molars.

This ox did not have molars and other teeth with which to eat – **אֲלֹא הָוֹ לֵיה֒ כַּבְיִ וְשִׁינִּים לְמִיכְלָל**: It was necessary to knead a mixture of especially finely cut food so that the animal could swallow it without chewing (Rabbeinu Hananel).

The trader takes an oath – **מִשְׁתַּבְעַ אִיהוּ**: The merchant takes an oath. Since he sells animals, he should have been expert in their defects and therefore should have known that the animal was flawed (Rosh).

The value of the meat of the ox based on the cheapest price – **בָּנְמִי בָּשָׂר בּוֹל**: According to Rashi, this is a compromise ruling, and therefore he pays only a portion of the price. Rashi relies on several sources where it is stated that this is two-thirds of the standard price. The Ramban notes that this explanation is inappropriate here. In addition, the sources upon which Rashi relies are not talmudic sources; they are geonic. Therefore, Rabbeinu Tam explains that the trader receives a discounted price of meat not as a compromise, but due to the circumstances. Once it is discovered that an animal has no teeth, the owner slaughters it immediately and sell its meat. Since he cannot coordinate the time of the slaughter with the optimal market conditions, he is able to command only a discounted price. The Ba'al HaMaor and the Ra'avad explain that since the ox did not eat, the quality of its flesh was not optimal. Consequently, the market value of its meat was not optimal.

כָּל הַמִּפְקִיד – עַל דִּעַת אֲשֶׁתוֹ וּבְנֵיו הוּא מִפְקִיד.

נִמְאָלֶה לְאִימִיה֒: וַיְלִי שְׁלִימִי, אָמָרָה: לֹא אָמָר לְדָלָאו דִּינְהָ נִנְהָ, דָּאָכְבּוּנָה.

נִמְאָ לֵיה֒: אָמָרָ לֹא אָמָרָ לֵה֒? אָמָר: בֶּלֶשֶׁן, דְּכִי אָמְנָא לְהָדְרִי נִנְהָ, טְפִי מִזְהָרָה בָּהָוָה.

אֲלֹא אָמָר רַבָּא: מִשְׁתַּבְעַ אִיהוּ דְּהָנָהוּ וּזְוּיָא אֲשֶׁלְמִינְהָוּ לְאִימִיה֒, וּמִשְׁתַּבְעַ אֲשֶׁרְמִינְהָוּ לְאִימִיה֒ וּזְוּיָא אֲוֹתְבִּינְהָוּ בְּקָרְטְּלִיתָא וְאִגְנּוּבָ, וְפָטוּר.

הַהּוּא אֲפּוֹטְרוֹפָא דִתְהִמִּי דְּזָבֵן לְהָוֹת תָּרוֹא לִתְמִי, וּמְסֻרָה לְבָקְנָא. לֹא הָוֹ לֵיה֒ כַּבְיִ וְשִׁינִּים לְמִיכְלָל, וְמוֹתָה. אָמָר רַבִּי בָר חִיאָ: הַכִּי בְּרִנְהָן דִּינְיָהִי דִּינָא?

נִמְאָ לֵיה֒ לְאֲפּוֹטְרוֹפָא: וַיְלִי שְׁלִימִי, אָמָר: אָנָּא בְּקָרָא מִסְרָתִיה֒.

נִמְאָ לֵיה֒ לְבָקְנָא: וַיְלִי שְׁלִימִי, אָמָר: אָנָּא בְּהָדִי תּוֹרִי אָזְקִימְתִּיה֒, אָוְגְּלָא שְׁדָאִי לֵיה֒, לֹא הָהָה יְדָעֵין דָּלָא אָכֵל.

מִכְדִּי בְּקָרָא שׁוֹמֵר שְׁכָר דִתְהִמִּי הָוָה, אִיבְעֵי לְהָלְעֵינוּן. אֵי אַיְכָא פְּסִירָא דִתְהִמִּי הָכָא בְּמַאי עַסְקִין – דְלִיכָא פְּסִירָא דִתְהִמִּי דְאַשְׁבְּחוּה לְמִרְיָה דְתָרוֹא וּשְׁקוֹל יִתְמִי וּזְוּיָה.

אֲלֹא מָאן קָא טָעֵין? מִרְיָה דְתָרוֹא קָטְעֵין. אִיבְעֵי לֵיה֒ לְאַוּדָעָן! מָאי מַזְעִין לֵיה֒? מִידָעָךְ דָעַ רַמְקָח טָעוֹת הָוִי בְּכָפְסִירָא דְבָנָן מִהְכָּא מַזְבָּעָן לְהָכָא. הָלָכָן, מִשְׁתַּבְעַ אִיהוּ דָלָא הָהָה יְדָעָ, וּמְשָׁלֵם בְּקָרָא דְמִי בָשָׂר בּוֹל.

With regard to anyone who deposits an item with another, it is with the awareness that at times, the bailee's wife and his children will safeguard the item that he deposits it. Therefore, I was within my rights to give the deposit to my mother.

Let us say to his mother: Go and pay. She can say: My son did not tell me that the money is not his so that I should bury it, which is the optimal method to safeguard money.

Let us say to the bailee: Why did you not say to her that the money is not yours? He can say: All the more so that my omission of this information was preferable, as when I say to her that the money is mine, she is even more careful with it.

Rather, Rava said: The bailee takes an oath that he gave the money to his mother, and his mother takes an oath that she placed the money in the chest and it was stolen, and the bailee is exempt from payment.

The Gemara relates: There was a certain steward who acted on behalf of orphans, who purchased an ox for the orphans and passed it to the cowherd. This ox did not have molars^N and other teeth with which to eat^N and the ox died because it was unable to eat the standard food of oxen. Rami bar Hama said: How should judges rule in this case?

Let them say to the steward: Go pay for the dead ox. But he can say: I gave it to the cowherd with the expectation that he would care for it.

Let us say to the cowherd: Go pay for the dead ox. He can say: I placed the ox with other oxen and I threw food before it. We did not know that it did not eat.

The Gemara asks: After all, the cowherd is a paid bailee of the orphans. Therefore, he was required to examine the situation and ascertain if the ox was eating. The Gemara answers: If there was loss for the orphans, indeed, the cowherd would be liable to pay. And with what are we dealing here? It is a case where there is no loss incurred by the orphans, as they found the previous owner of the ox, who sold it to them, and the orphans took their money back from him after discovering that the ox had this deficiency.

The Gemara asks: Rather, who then claims compensation from the cowherd? The previous owner of the ox claims compensation from the steward: He should have informed us that the ox was not eating. The Gemara answers: What would we inform the previous owner? He knows that it is a mistaken transaction,^H as he would be aware that the ox had no teeth. The Gemara explains: This is a case with regard to a trader who buys from here and sells to there and does not know the condition of the ox. Therefore, the trader takes an oath^N that he did not know about the ox's defect, and the cowherd pays the value of the meat of the ox based on the cheapest price^N available in the market.

HALAKHA

מִשְׁקָח טָעָת: If one sells an item with a non-evident flaw that renders the merchandise worthless, the seller must return the money. For example, if one sold an ox without teeth to another, and it was placed with the rest of his herd and it died, the buyer returns the carcass to the seller, who returns the money to the buyer. If the seller was a trader who bought and sold animals and therefore did not know about the defect, the trader takes an oath that he was unaware of the defect and he is exempt, since the customer should have examined the animal. This is the ruling of the Rambam and the Shulhan Arukh. The Rema, citing the

Maggid Mishne and the *Tur*, rules that even a trader is required to pay, especially if the purchase item is an item that the customer cannot examine. The *Shakh* and the *Gra*, citing the *Bah*, write that in a case where the buyer could have examined the merchandise but failed to do so, it is his negligence that caused his loss and the seller is exempt. They explain that the ruling of the Rema applies in a case where the customer cannot examine the merchandise. Only then is the seller liable to pay (Rambam *Sefer Kinyan, Hilkhot Mekhira* 16:9–11; *Shulhan Arukh, Hoshen Mishpat* 232:18).

ההוא גברא דאפקיד בשותא גבי תבריה. היה ליה לדידה נמי בריא דכשותא. אמר ליה לקרים: מהאי רמי. אול רמא מאיך. אמר רב עמום: חיכי גדיינו דיני להא דין?

נימא ליה לדידה: זיל שלים - אמר: אנא אמר לי מהאי רמי.

נימא ליה לקרים: זיל שלים, אמר: לא אמר לי מהאי רמי ומזהאי לא תרמי.

ואז דשחא שיעור לאיתוי ליה ולא איני ליה - גלי אדרעתה דינחא ליה בדלא שחא.

סוף סוף, מי פסידא אייבא? זהא קא משטרשי ליה! אמר רב סמא בריה ררבא: דהוה שיברא חלא. רב אשוי אמר: בכייסי

The Gemara relates: There was a certain man who deposited hops,⁸ used in the production of beer, with another.⁹ The bailee himself had a pile of hops. The bailee said to his brewer: Cast hops in the beer from this pile. The brewer went and cast from the other pile, the pile of the one who deposited the hops, into the beer. Rav Amram said: How should judges rule in this case?

Let us say to the bailee: Go pay. But he can say: I said to him, i.e., the brewer: Cast hops from this pile, and I am not at fault.

Let us say to the brewer: Go pay. He can say: The bailee did not say to me: Cast hops from this pile and do not cast hops from that pile. I thought he was merely giving advice, and I did not know that he was insistent that I refrain from using the other hops.

The Gemara comments: And if the hops of the bailee were closer to where he and the brewer were located than those that were deposited with him, the bailee should be liable. As, if the brewer delayed bringing the hops for the period of time that it would take to bring the bailee hops from his own pile and he did not yet bring them to him, it is assumed that the bailee understood that the brewer had gone to bring the more distant, deposited, hops. By not objecting, the bailee revealed that he was amenable to brewing the beer from the deposited hops. The Gemara answers: This is a case where he did not delay bringing the hops, or alternatively, the two piles were equidistant from him.

The Gemara asks: Ultimately, what loss is there? But doesn't the bailee profit in this case? Let the bailee give the owner beer equal to the value of the hops that he took from the deposit and no one loses. Rav Sama, son of Rava, said: The Gemara is referring to a case where the beer ferments and becomes vinegar. Therefore, it is impossible to take the value of the hops from the beer. Rav Ashi said: It is referring to a case where the hops were mixed with thorns¹⁰ and did not enhance the beer.

NOTES

With thorns – בכייסי: Rashi explains that the hops were mixed with its own thorns. Rabbeinu Hananel and the Rif explain that the hops were not completely processed. Some ge'onim explain that it was mixed with weeds, ruining the beer brewed with them.

BACKGROUND

Hops – בשתותא: Hops is a plant that belongs to the Cannabaceae family. The various species of hops wrap themselves around other plants and extract nutrients from them. They have very thin stalks and do not have leaves. They feed by drawing nutrients through root-like ducts that penetrate the stalk of their host plant. Hops can be found throughout Eretz Yisrael, primarily attached to annual plants or small bushes.

The primary use of hops is in the beer-making process. At a certain point in the brewing process, hops are added in order to give beer its bitter taste. Poor-quality hops, and especially hops mixed with thorns, leave the beer with an unpleasant aftertaste.



Hops

HALAKHA

ההוא גברא דאפקיד בשותא גבי תבריה: If one deposits hops with another who has his own hops, and the bailee told his laborer to place his own hops into the beer, and the laborer mistakenly placed the deposited hops into the beer, the bailee and his worker take an oath that this is what happened, and they pay for what they profited. If the beer ferments and spoils, since he derived

no benefit, he pays nothing. This is the ruling only in a case where there is room for error, e.g., if two piles were adjacent, and the worker hurried to take them (*Sma*). Some say that if he is a paid bailee he is liable to pay in every case, since he should have warned the worker against taking hops from the deposit (Rambam *Sefer Mishpatim*, *Hilkhot She'ela UFitkadon* 4:9; *Shulhan Arukh*, *Hoshen Mishpat* 291:25).

Perek III
Daf 43 Amud a

NOTES

A storekeeper is like a homeowner – חנני כבעל הבית: Although the storekeeper needs money to purchase the items that he sells, he does not need it all the time, as he typically purchases those items on credit (Rashi on *Kiddushin* 54b).

ומשלם ליה דמי כייסי.

And he pays him the value of the hops mixed with thorns according to his profit.

מתנה המפקיד מעות אצל שולחן
אם צורין – לא ישתמש בהן, לפיכך
אם אבדו אין חיב באחריותן.
מוותין – ישתמש בהן, לפיכך אם אבדו
חייב באחריותן. אצל בעל הבית, בין
צורין ובין מוותין – לא ישתמש בהן.
לפיכך אם אבדו אין חיב באחריותן.
חנני כבעל הבית דבורי רב פאי מאיר. ובי
יהודה אמר: חנני בשולחן.

גמ' משום לצורין לא ישתמש בהן?
אמר ר' באסי אמר ר' יהודה: בצדורי
וחותומי שננו. ר' מריא אמר: בקשר
משונגה. איכה דאמרי, ב夷' ר' מריא: קשר
משונגה מא? תיק.

מוותין ישתמש בהן"כו. אמר ר'
הונא ואפלו נאנסו. והא אבדו קתני!
בדרביה, דאמרי רבה: גנבו – בלעטין
מוויין, אבדו – שבעה ספינטו בים.

MISHNA In the case of one who deposits money with a money changer, if the money is bound, the money changer may not use it. Therefore, if it is lost he does not bear responsibility for it. If the money was unbound, the money changer may use it. Therefore, if it is lost he bears responsibility for it. If he deposited money with a homeowner,^h whether it is bound or whether it is unbound, the homeowner may not use it, as it never entered the mind of the depositor that the homeowner might use the money. Therefore, if the homeowner lost the money, he does not bear responsibility for it. If the bailee is a storekeeper, his status is like that of a homeowner;ⁿ this is the statement of Rabbi Meir. Rabbi Yehuda says: If the bailee is a storekeeper, his status is like that of a money changer.

GEMARA The Gemara asks: Why is it that due to the fact that the money is bound the money changer may not use it? Don't people typically bind their money? Binding is no indication that the intent of the one who deposited the money is that it not be used. Rav Asi said that Rav Yehuda said: It is in a case where the money is bound and sealed, a clear indication that he does not want the bundle to be opened, that the mishna is taught. Rav Mari says: It is in a case where the money is bound with an atypical knot, also indicating that he does not want the bundle to be opened. There are those who say that there is a variant reading: Rav Mari raises a dilemma: What is the legal status of money bound with an atypical knot? Is it like that of money that is sealed or not? The Gemara concludes: The dilemma shall stand unresolved.

§ The mishna teaches that if the money is unbound the money changer may use it, and therefore he bears responsibility if it is lost. Rav Huna says: And even if it was taken from him under circumstances beyond his control he is liable to pay. The Gemara asks: But isn't it taught in the mishna: It is lost, from which it may be inferred that only if the money was lost does he bear responsibility, but not if it was taken by force? The Gemara answers: This must be understood in accordance with that which Rabba stated in a different context, as Rabba says: They were stolen; this is referring to a case where the items were stolen by force by armed bandits. They were lost; this is referring to a case where his ship sunk at sea.

HALAKHA

One who deposits money with a money changer...with a homeowner – **המפקיד מעות אצל בעל הבית:** With regard to one who deposits coins with a money changer or a storekeeper, even if they were bound, if they were neither sealed nor tied with a special knot, the money changer or storekeeper may use them. Therefore, he immediately assumes the legal status of a paid bailee and is liable for their theft and loss. Once he uses them, he is liable for damage due to circumstances beyond his control until he returns the coins to their owners. If they were bound and sealed or tied with a special knot, he may not use them and he is merely an unpaid bailee.

If one deposited the coins with a homeowner, even if they are loose, he may not use them and he is an unpaid bailee. He is exempt in cases of theft or loss unless he was negligent. This ruling is in accordance with the opinion of Rabbi Yehuda in his dispute with Rabbi Meir, and with the opinion of Rav Yehuda cited in the Gemara. It is also in accordance with the first, definite version of the statement of Rav Mari, which takes precedence over the second, indefinite version (*Rambam Sefer Mishpatim, Hilkhot She'ela UFikadon* 7:6; *Shulhan Arukh, Hoshen Mishpat* 292:7).

רֹב נָחָמֵן אָמַר: נָאנוּ לְאָ. אָמַר לֵיהֶ
רְבָא לְרֹב נָחָמֵן: לְדִין דְּאָמַרְתָּ נָאנוּ
 לְאָ, אֲלֹמָא לְאָ הָוי שׂוֹאֵל עַלְיָהוּ.
 אֵי שׂוֹאֵל לְאָ הָוי – שׁוֹמֵר שְׁכָר בְּנֵי
 לְאָ הָוי! אָמַר לֵיהֶ: בְּהָא מָודִיא לָן,
 דְּהָא לְיִלְלָה מְהֻנָּה. בְּהַהְוָה הַנְּאָה
 דְּאֵיתְמִרְפֵּם לֵיהֶ זְבִינָא דְּאֵיתְבָּהָ
 רְוּחָא זְבָן בְּהָוָה, הָוי עַלְיָהוּ שׁוֹמֵר
 שְׁכָר.

And Rav Nahman says: If it was taken from him under circumstances beyond his control, he is not liable to pay. Rava said to Rav Nahman: According to your opinion, that you said if it was taken from him due to circumstances beyond his control, he is not liable to pay; apparently, the money changer is not considered a borrower with regard to the money. If he is not a borrower, he is not a paid bailee either. Why, then, does he bear responsibility for the money if it is lost? His status should be that of an unpaid bailee, and he should be exempt. Rav Nahman said to him: In this case, I concede that he is a paid bailee, since he benefits from the money. It is with the benefit the money changer derives, based on the fact that if a profitable purchase would happen to present itself to him he can purchase it with the deposited money, that he is considered a paid bailee with regard to the money.^N

אַתְּהִיבֵּיהַ רֹב נָחָמֵן לְרֹב הָנוּא: הַמְּפֻקִיד
 מַעֲשָׂת אֲצַל שׁוֹלְחָנִי, אָם צְרוּרִין – לְאָ
 וַשְׁתַּמְשֵׁשׁ בְּהָן, לְפִיכְךָ אָם הַזְּצִיא לְאָ
 מַעַל הַגּוֹבֵר. וְאָם מַטְרִירִין – וַיְשַׁתְּמַשֵּׁשׁ
 בְּהָן, לְפִיכְךָ אָם הַזְּצִיא מַעַל הַגּוֹבֵר.

Rav Nahman raised an objection to the opinion of Rav Huna from a mishna (*Me'ilah* 21b): With regard to the Temple treasurer who deposits money with a money changer, if the money is bound, the money changer may not use it. Therefore, if he spent the money, the Temple treasurer is not liable for misuse of Temple property^N because the money changer is liable. If the money was unbound, the money changer may use it. Therefore, if the money changer spent the money, the Temple treasurer is liable for misuse of Temple property,^H as the money changer serves as an agent for the treasurer.

וְאֵי אָמַרְתָּ אֲפִילּוּ נָאנוּ, מָאִי אִירְיָה
 הַזְּצִיא? אֲפִילּוּ לְאָהָזְצִיא נִמְיָה.

Rav Nahman explains his objection: And if you say that even if the money was taken from the money changer under circumstances beyond his control, he bears responsibility for the money, why did the *tanna* specifically teach that the Temple treasurer bears responsibility if the money changer spent the money? Even if he did not spend the money the treasurer should bear responsibility. Since the Temple treasurer gave him unbound money, it is tantamount to a loan. The treasurer should be liable for misappropriation at the moment that he gave unbound money to the money changer.

אָמַר לֵיהֶ: הָוָה הַדִּין אָף עַל גַּב דְּלָא
 הַזְּצִיא, וְאִיְדִי דְתַנָּא רִישָׁא הַזְּצִיא.
 תְּנָא סִפְא נִמְיָה הַזְּצִיא.

Rav Huna said to him: The same is true even if he did not spend the money, and the treasurer is liable the moment he gives the money to the money changer. And since the *tanna* taught in the first clause of the mishna that the money changer is liable if he spent the money, the *tanna* taught in the latter clause of the mishna as well that the treasurer is liable if he spent the money, although he is liable even if he did not spend the money.

מתני' השולח יד בפקודון, בית
 שמאי אומרום: לְקָה בְּחִסְרָה בַּיּוֹת,
 ובַּיּוֹת הַלְּלָא אָמְרִים: כְּשֻׁעַת הַזְּצִיא.
 ובַּיּוֹת עֲקִיבָא אָמַר: כְּשֻׁעַת הַתְּבִיעָה.

MISHNA With regard to one who misappropriates a deposit,^H Beit Shammai say: He is penalized for its decrease and its increase. If the value of the deposit decreases, the bailee is liable to pay in accordance with its value at the time of the misappropriation. If it increases in value, he is liable to pay in accordance with its value at the time of repayment. And Beit Hillel say: He pays in accordance with its value at the time of removal. Rabbi Akiva says: He pays in accordance with its value at the time of the claim.

The halakha of misuse of consecrated property with regard to a deposit – **רַיִן מִשְׁיָה בְּפֶקְדּוֹן**: If one deposits consecrated money with a bailee who misuses the money, the bailee is liable to bring a guilt-offering, because he did not have permission to use the money. If one deposited the money with a storekeeper or a money changer who used it, and the coins were neither sealed nor tied with a special knot, both the owner and the storekeeper are exempt. The owner of the deposit is exempt because the storekeeper did not use the money at his behest,

and the bailee is exempt because he had permission to use it (Rambam Sefer Avoda, *Hilkhot Me'ilah* 7:9–10).

One who misappropriates a deposit – **הַשׁוֹלֵח יָד בְּפֶקְדּוֹן**: The legal status of one who misappropriates a deposit is that of a robber. He pays in accordance with the legal obligation of a robber, who pays according to the value of the item when he stole it (Rambam Sefer Nezikin, *Hilkhot Gezeila VaAveda* 3:1; *Shulhan Arukh, Hoshen Mishpat* 292:5).

NOTES

הַיְיָ עַלְיָהוּ – **שׁוֹמֵר שְׁכָר**: The commentaries ask: Why, according to the opinion of Rav Nahman, is there a difference between a money changer and one who finds lost money? The *halakha* with regard to the latter is that the fact that he is permitted to use the money renders him like a borrower. Why does Rav Nahman say that the money changer has the status of a paid bailee? The Ra'avad explains that since one who finds lost money believes that the owner of the lost item will not come soon, and perhaps will not come at all, he will not restrict his use of the money. That is not the case for the money changer, who is concerned that the owner might come and demand his deposit at any point.

Misuse of consecrated property – **מִשְׁיָה**: The *halakhot* of misuse of consecrated property are numerous and complex, and all of tractate *Me'ilah* is devoted to that topic.

In this context, it is important to note that misuse of consecrated property is one of the exceptions where the *halakha* is: There is an agent for a matter of transgression. If one unwittingly gave consecrated money to another, as the *halakhot* of misuse apply overwhelmingly to cases where the misuse is unwitting, and the recipient of the money is, explicitly or implicitly, his agent, if the latter spends the money or uses the consecrated item, the one who gave him the money is liable. If one spent the money or used the item without the knowledge of or against the will of the owner, the one who spent the money or used the item is liable. Therefore, in cases of misuse, it is necessary to determine the will of the person who gave or deposited the consecrated money or item, and whether his instructions were precisely followed.

HALAKHA

HALAKHA

One who robs an item and it increases in value – **הגוייל חפץ והתייקר**: If one robs another of an item and its value increases, the robber does not profit from that increase. Therefore, if one robs another of a barrel of wine worth one dinar and the wine appreciates in value and is worth four dinars, if the robber drank the wine, or sold or broke the barrel, he pays four dinars. If the barrel broke on its own or was lost, he pays only one dinar, its value when it was stolen. This ruling is in accordance with the statement of Rabba (Rambam Sefer Nezikin, Hilkhos Gezeila VaAveda 3:1-2 and Hilkhos Geneiva 1:14; Shulchan Arukh, Hoshen Mishpat 354:3, 362:10).

All robbers pay in accordance with the value of the stolen item at the moment of the robbery – **כל האנין משולין בשעת הגילנה**: If a stolen item remains intact, even if its owners have despaired of recovering it, it should be returned to the owners intact, even after the robber and his descendants have died. If the item undergoes a significant change while in the possession of the robber, even if it underwent that change before the owners despaired of recovering it, the robber pays its value (Rambam Sefer Nezikin, Hilkhos Gezeila VaAveda 3:2; Shulchan Arukh, Hoshen Mishpat 362:2, 11-12, 305:5).

גמ' אמר רביה: **האי מאן דגוי לחייבא דחומרא מוחבריה, מעיקרה שוניא וויא השטא שייא ארבעש, תברעה או שנייה - משלמים ארבעה, איטבר ממילא - משלים וויא.**

מאי טעמא - פון דאי איתה הדרא למורה בענין, היהיא שעטתא דקא שותי ליה או דקא תבר לה קא גויל מיניה, ותנו: כל האנין משלמי בשעת הגילנה. איטבר ממילא - משלים וויא. **מאי טעמא -** השטא לא עבד לה לא מידי, אמא קא מוחיבת ליה - אהיה שעטתא דגולה, היהיא שעטתא וויא הויא דשויא.

תנן, בית הלל אומרם: בשעת החזקה. **מאי בשעת החזקה? אילימא בשעת החזקה מן הצלם.**

ובמא? אי בחסר - מי איבא למאן דאמר?
וזה תנן: כל האנין משלמי בשעת הגילנה. אי ביטר - קיינו בית שמאי!

GEMARA

Rabba says: In a case of this one who robbed another of a barrel of wine, where initially it was worth one dinar and now it is worth four dinars;^h if the robber broke the barrel or drank the wine, he pays four dinars. If it broke by itself, he pays one dinar.

The Gemara elaborates: What is the reason for the difference? Since if the barrel were intact, it would return to its owner in its original state and there would be no need to calculate its price, that moment that he drank it or that he broke it is the moment that he stole from the owner of the wine. And we learned in a mishna (Bava Kamma 93b): All robbers pay in accordance with the value of the stolen item at the moment of the robbery.^{hn} Here, that is four dinars. If the barrel broke by itself, the robber pays one dinar.ⁿ What is the reason for this? He did not do anything to the barrel now. Why do you deem him liable to pay? Because of that moment that he robbed the other of it. At that moment, it was worth only one dinar.

We learned in the mishna that Beit Hillel say: One who misappropriates a deposit pays in accordance with its value at the time of removal. The Gemara asks: What is the meaning of: In accordance with its value at the time of removal? If we say it means in accordance with its value at the time of its removal from the world, when he drank the wine or broke the barrel, that is difficult.

The Gemara clarifies the difficulty: And with regard to what case is this referring? If it is with regard to a case where there was a decrease in value before its removal, is there anyone who says that the bailee pays the lower price? But didn't we learn in a mishna: All robbers pay in accordance with the value of the stolen item at the moment of the robbery, and no less than that? And if it is with regard to a case where there was an increase in value before its removal, that is the opinion of Beit Shammai,^b as the one who misappropriates a deposit always pays the higher value, not the opinion of Beit Hillel.

NOTES

All robbers pay in accordance with the value of the stolen item at the moment of the robbery – **כל האנין משולין בשעת הגילנה**: This phrase, which, according to some early commentaries, is cited here tangentially, is stated here in order to define an additional halakha: If the value of the stolen item decreased in the interim, a robber pays its value at the time that he took it and not its value at the time that he used it (*Torat Hayyim*). This is because if the item broke on its own, the robber would pay based on its value at the time it was stolen. The sinner should not be rewarded by ruling that if he uses the item he is liable to pay less.

If the barrel broke by itself the robber pays one dinar – **איטבר משלים וויא: מילא משלים וויא**: The Ramban asks: Why is the ruling here different from that of a borrower, who, in any circumstance beyond his control, whether or not it is the result of his action, is liable to pay in accordance with the deposit's value when he took it? He explains that once the robber takes an item from its owner, even if he does not use it, he is immediately liable for damage due to circumstances beyond his control, as the item is no longer legally in the possession of its owner in terms of his ability to sell or consecrate it. That is not the case with a borrower, as he assumes full responsibility only when the damage due to circumstances beyond his control takes place.

BACKGROUND

Beit Shammai and Beit Hillel – בית שמאי ובית הלל: This refers to the disciples of the Sages Hillel the Elder and Shammai the Elder. Although there are only three recorded disputes in which Hillel and Shammai disagree, their students were persistent disputants who served together in the Sanhedrin at the end of the Second Temple period and after its destruction. They engaged in disputes concerning numerous halakhic issues. Although there are exceptions, in general, the disciples of Hillel and Shammai mirrored the

personalities of their teachers, the tolerant Hillel and the exacting Shammai. In tractate *Eduyot*, the disputes where the disciples of Shammai ruled more leniently than did the disciples of Hillel are enumerated. In virtually all disputes between Beit Hillel and Beit Shammai, the halakha was established in accordance with the opinion of Beit Hillel, who constituted the majority. That explains the surprise expressed on 43b, where the suggestion is raised that Rava holds in accordance with the opinion of Beit Shammai.

Perek III
Daf 43 Amud b

אלא פשיטא בשעת הוצאה מבית בעליים. ליארבה ואמר בבית שמאי אמר לך ובה ביתר – כולי עלמא לא פליין כי פליין – בחסר

Rather, it is obvious that Beit Hillel hold that the bailee pays in accordance with its value at the time of its removal from the owner's house, i.e., at the time of the misappropriation. The Gemara asks: If so, shall we say that Rabba stated his opinion in accordance with the opinion of Beit Shammai and not the opinion of Beit Hillel? The Gemara rejects this: Rabba could have said to you: With regard to a subsequent increase in the value of the misappropriated deposit, everyone, Beit Shammai and Beit Hillel, agrees that the bailee pays in accordance with its value when the deposit was destroyed. When they disagree, it is in the case of a subsequent decrease in the value of the misappropriated deposit.

בית שמאי סבר: שליחות יד אינה ארכיה חסרן, וכי חסר – ברשותה דידיה חסר. ובית הילל סבר: שליחות יד ארכיה חסרן, וכי חסר – ברשותה דמורה חסר.

Rabba clarifies: Beit Shammai hold that misappropriation does not require loss,^N and even if the deposit remains intact, his legal status is that of a robber from the moment of misappropriation. And therefore, when the value of the misappropriated deposit decreases, it decreases in his possession. Therefore, he pays in accordance with its value at the time of misappropriation. And Beit Hillel hold that misappropriation requires loss,^H and only when the deposit decreases in value after the misappropriation is the bailee liable to pay. And therefore, when the value of the misappropriated deposit decreases, it decreases in the possession of its owner. Therefore, he pays in accordance with its value at the time that it was damaged.

אלא הוא ואמר רבא: שליחות יד אינה ארכיה חסרן, לימא רבא ואמר בבית שמאי? אלא הכא במאיעקון – בנז שטולטה להביא עלה גוזלו, ובושאיל שלא מודעת קא מיפלא.

The Gemara asks: But according to that explanation, concerning this halakha that Rava says: Misappropriation does not require loss, shall we say that the opinion that Rava stated is in accordance with the opinion of Beit Shammai? Rather, with what are we dealing here? It is with a case where the bailee moved the barrel to stand upon it and bring fledglings from a nest in a tree. And they disagree with regard to one who borrows an item without the knowledge of the owner.

בית שמאי סבר: שואל שלא מודעת גולן הו, וכי חסר – ברשותה דידיה חסר. ובית הילל סבר: שואל שלא מודעת – שואל הו, וכי חסר – ברשותה דמורה חסר.

Beit Shammai hold: The legal status of one who borrows an item without the knowledge^H of the owner is that of a robber in terms of responsibility. He is accorded that legal status the moment he moves the barrel. And therefore, when the value of the misappropriated deposit decreases, it decreases in his possession. Consequently, he pays in accordance with its value at the time that he borrowed the barrel. **And Beit Hillel hold:** The legal status of one who borrows without the knowledge of the owners is that of a borrower, and only when the barrel is broken is the bailee rendered liable to pay. And therefore, when the value of the barrel decreases, it decreases in the possession of its owner. Consequently, he pays in accordance with the barrel's value at the time that it was damaged.

NOTES

שליחות יד – אין ארכיה חסרן: Some commentaries posit a connection between the rationale for this halakha and the opinion of Beit Shammai, who hold that one is liable for intent to misappropriate a deposit. The early commentaries prove that the two are not identical. According to the opinion that misappropriation does not require loss, it is certainly possible that action, e.g., lifting, is nevertheless required. Conversely, if one is liable for intent, perhaps he is liable only for intent to perform misappropriation that entails loss (Ramban; Rosh).

HALAKHA

Misappropriation requires loss – יד ארכיה חסרן: One who misappropriates a deposit in order to use it acquires the deposit as pertains to his liability for damage caused by circumstances beyond his control. Misappropriation does not require loss; from the moment that he lifts the deposit in order to use it he is liable. This is the case only where the use that he intended to carry out is use that causes loss. If the intent was use that causes no loss, he is liable only from the moment that he uses it, at which point his legal status is that of one

who borrows an item without the knowledge of the owner, in accordance with the opinion of Rava (*Shulhan Arukh, Hoshen Mishpat* 292:1).

One who borrows without the knowledge – שואל שלא מודעת: The legal status of one who takes an item from its owner without his knowledge in order to borrow it is that of a robber, and all the liabilities of a robber apply (Rambam *Sefer Nezikin, Hilkhos Gezeila VaAveda* 3:15; *Shulhan Arukh, Hoshen Mishpat* 359:5).

NOTES

Enhancement of stolen property – שְׁבַח שֶׁל גִּילָּה: The enhancement described here does not include any increase in value; it includes only enhancement from the animal itself, e.g., wool or offspring, or enhancement due to work performed by the robber. It does not include an increase in value due to market forces.

אֲלֹא הָא דֹאמֶר רְبָא: שׁוֹאל שָׁלָא
מִדְעַת לְרַבֵּן גָּזָל הָוֵי לִימָא רְבָא דֹאמֶר
כְּבִית שְׁמָאי אֲלֹא, הַכָּא בְּשַׁבָּח שֶׁל
גִּילָּה קָמְפָלִינִי. בֵּית שְׁמָאי סְבָרִי: שְׁבָח
גִּילָּה דְּגָנָלְהָוֵי, וּבֵית הַלְּלָסְבָּרִי: שְׁבָח
גִּילָּה דְּגָנָלְהָוֵי.

וּבְפִלְגָּהָא דְּהַנִּינָּא, דְּתַנְּנָא: הַגּוֹל אֶת
הַרְחָלָל, גִּזְוָה וַיְלָדָה – מִשְׁלָם אֹתוֹתָה וְאֶת
אַיּוֹתָה וְאֶת וְלִדוֹתָה, דְּבָרָיו וּרְבִי מָאוּר.
רְבִי יְהוּדָה אָוּמֵר: גִּילָּה חַזְוֹת בְּעִינָה.

דִּיקָא נָמֵי, דְּקָתְנִי: בֵּית שְׁמָאי אָוּמְרִים:
גִּילָּה בְּחַסְרוֹ וּבְיִתְרֹ, וּבֵית הַלְּלָסְבָּרִי אָוּמְרִים:
כְּשִׁיעַת הַצָּאָה, שְׁמַעַמְּפָנָה.

רְבִי עֲקִיבָא אָוּמֵר כְּשִׁיעַת הַתְּבִיעָה.
אָמֵר רְבִי יְהוּדָה אָמֵר שְׁמוֹאֵל: הַלְכָה
בְּרַבִּי עֲקִיבָא. וּמָזְדָה רְבִי עֲקִיבָא בְּמִקּוֹם
שִׁישׁ עֲדִים. מַا טָעָמָא? דֹאמֶר קָרְאָה,
לְאָשָׁר הָוָא לוֹ יִתְנַטְּבָוּ בַּיּוֹם אֲשְׁמָתוֹ,
וּבַיּוֹם דָּאִיכָּא עֲדִים – מַהְהוּא שְׁעַתָּא
הָוָא דָאִיתְחַיֵּב לִיהְ אַשְׁמָה.

אָמֵר לִיהְ רְבִי אֲוֹשְׁעָנִיא לְרַב יְהוּדָה: רְבִי
אַתָּה אָוּמֵר קָנוֹ? הַכִּי אָמֵר רְבִי אַסִּי
אָמֵר רְבִי יְחִינָן: חַלּוֹק הָהָרָבִי עֲקִיבָא
אָפְּלָו בְּמִקּוֹם שִׁישׁ עֲדִים, מַאֲטָמָא –
דֹאמֶר קָרְאָה "לְאָשָׁר הָוָא לוֹ יִתְנַטְּבָוּ בַּיּוֹם
אֲשְׁמָתוֹ", וּבַיּוֹם דָּאִיכָּא הוּא דָקָא מַחְיַבִּי
לִיהְ אַשְׁמָה.

The Gemara asks: But according to that explanation, concerning this halakha that Rava says: The legal status of one who borrows an item without the knowledge of the owner, according to the opinion of the Rabbis, is that of a robber in terms of responsibility, shall we say that the opinion that Rava stated is in accordance with the opinion of Beit Shammai? Rather, contrary to the previous explanations, the terms decrease and increase are not referring to changes in market value. They are referring to the decrease in the value of the animal when its wool is sheared and the increase in its value due to the birth of offspring. And here, it is with regard to the enhancement of stolen property^{NH} that they disagree. Beit Shammai hold: The enhancement of stolen property belongs to the one who was robbed. And Beit Hillel hold: The enhancement of stolen property belongs to the robber.

And it is with regard to the issue that is the subject of the dispute between these tanna'im that they disagree, as it is taught in a baraita: With regard to one who robs another of a ewe, if he sheared it or if it gave birth, the robber pays the owner for it and for its fleece or for its offspring; this is the statement of Rabbi Meir. Rabbi Yehuda says: The stolen property returns to the owner in its current state.

The Gemara comments: The language of the mishna is also precise, as it is taught that Beit Shammai say: He is penalized for its decrease and its increase. And Beit Hillel say: He pays in accordance with the time of removal. When recording the opinion of Beit Shammai, the mishna does not state: He is penalized for its rise and fall in value. The Gemara affirms: Learn from the wording of the mishna that they disagree with regard to fleece and offspring.

§ The mishna teaches that Rabbi Akiva says: He pays in accordance with its value at the time of the claim. Rav Yehuda says that Shmuel says: The halakha is in accordance with the opinion of Rabbi Akiva. And Rabbi Akiva concedes in a case where there are witnesses to the misappropriation, as in that case the payment is calculated in accordance with the value of the deposit at the time of the misappropriation.^H What is the reason for that halakha? It is as the verse states concerning, among others, one who misappropriated a deposit: “To whom it appertains shall he give it on the day of his being guilty” (Leviticus 5:24). And in this case, since there are witnesses to the robbery, from that moment he is liable to pay him for his guilt. He is rendered guilty at the moment the witnesses saw him misappropriate the deposit.

Rav Oshaya said to Rav Yehuda: My teacher, is that what you say? This is what Rabbi Asi says that Rabbi Yohanan says: Rabbi Akiva was in disagreement even in a case where there are witnesses to the misappropriation. What is the reason for that halakha? It is as the verse states: “To whom it appertains shall he give it on the day of his being guilty,” and it is the court, not the witnesses, that renders him liable to pay him for his guilt.

HALAKHA

Enhancement of stolen property – שְׁבַח שֶׁל גִּילָּה: A stolen item that remained intact in the possession of the robber, even if the owner despaired of its recovery, is returned to its owner along with any enhancement or increase in its value. If the owner despaired of its recovery, the robber acquires any enhancement subsequent to the despair, and he pays the owner in accordance with the value of the stolen item when it was stolen. The Rema, citing the Rosh and the Tur, writes that the robber acquires even the enhancement that occurred prior

to despair (Rambam Sefer Nezikin, Hilkhot Gezeila VaAveda 2:2; Shulhan Arukh, Hoshen Mishpat 362:2).

One who misappropriates a deposit pays according to its value at what point in time – לְלַיְלָה אֲזַה בְּנֵן מִשְׁלָם שׁוֹלֵחַ יְד. One who misappropriates a deposit pays in accordance with its value at the time of misappropriation, in accordance with the opinion of Beit Hillel and the ruling of Rava (Rambam Sefer Nezikin, Hilkhot Gezeila VaAveda 3:11; Shulhan Arukh, Hoshen Mishpat 292:4).

אמר ליה ובי זורא לרבי אבא בר פפא: כי אולת להחט אקון אסולמא דצורך, ועל לביבה דרבי יעקב בר אידי, ובש מיטה אי שמיינא ליה לרבי זוחן הילכה ברבי עקיבא או איזו הילכה ברבי עקיבא. אמר ליה, ה'כ' אמר רבי זוחן: הילכה ברבי עקיבא לעולם.

מאי לעולם? אמר רב אשי: שלא תאמר הנני מיili – היכא דיליכא ערים, אבל היכא דאייבא ערים – לא.

ואין נמי דאהזרה לדוכחה ואייתברא, לאפוקי מרובי ישמעאל דאמור לא בעין דעת בעלים, קא משמע לו: דבעין דעת בעלים. ובא אמרו: הילכה בבית הלל.

מתני' החושב לשולח יד בפקודון בית שמאי אומרים: ח'יב, ובית הילל אומרים: אין תייב עד שישלח בו יד, שנאמר: "אם לא שלח ידו במלאתך רעהו". היטה את החבית ונintel הימנה רביעית ושבירה – אין משלם אלא ונשבירה – משלם דמי פולה.

Rabbi Zeira said to Rabbi Abba bar Pappa: When you go there, to Eretz Yisrael, take a circuitous route to the Ladder of Tyre,^b and enter before Rabbi Ya'akov bar Iди, and ask of him if he heard whether according to Rabbi Yoḥanan the *halakha* is in accordance with the opinion of Rabbi Akiva or whether the *halakha* is not in accordance with the opinion of Rabbi Akiva. He went and asked. Rabbi Ya'akov bar Iди said to him: This is what Rabbi Yoḥanan says: The *halakha* is always in accordance with the opinion of Rabbi Akiva.

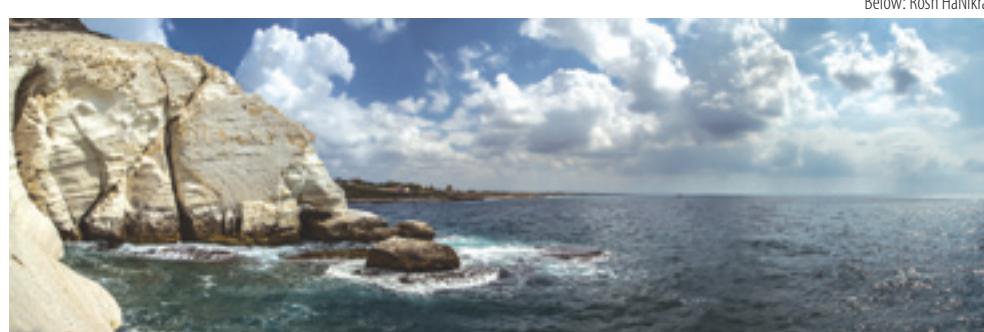
The Gemara asks: What is the meaning of always? Rav Ashi said: Rabbi Yoḥanan used this term so that you will not say the following: This statement, that the *halakha* is in accordance with the opinion of Rabbi Akiva, applies specifically in a case where there are no witnesses, but in a case where there are witnesses, no, payment is calculated in accordance with the value of the deposit when they witnessed the misappropriation.

Or alternatively, the *halakha* will not be in accordance with the opinion of Rabbi Akiva in a case where he returns the barrel to its place and it broke. Rabbi Yoḥanan stated that the *halakha* is always in accordance with the opinion of Rabbi Akiva, to exclude the opinion of Rabbi Yishmael, who says that if one stole from another and returned it we do not require the knowledge of the owners for the item to be considered returned. Rabbi Yoḥanan teaches us that the *halakha* is that we require the knowledge of the owners, in accordance with the opinion of Rabbi Akiva (see 4ob). And Rava says: Contrary to the opinion of Rabbi Yoḥanan, the *halakha* is in accordance with the opinion of Beit Hillel.

MISHNA With regard to one who intends to misappropriate a deposit^{NH} and voices that intent in the presence of witnesses, Beit Shammai say: He is liable to pay for any damage to the deposit from that point forward, and Beit Hillel say: He is liable to pay only if he actually misappropriates the deposit, as it is stated concerning a bailee: "Whether he has misappropriated his neighbor's goods" (Exodus 22:7). If he tilted the deposited barrel and took from it a quarter-log of wine for his own use, and the barrel broke, then he pays only for that quarter-log. If he lifted the barrel and took from it a quarter-log of wine, and the barrel broke, since he acquired the barrel by lifting it, he pays the value of the entire barrel.

Take a circuitous route to the Ladder of Tyre – **אקוּן אסולמא דצורך**: Nowadays, the southernmost part of the Ladder of Tyre is called Rosh HaNikra. It is a series of steep cliffs along the seacoast in the northern part of Eretz Yisrael. The boulders of the Ladder of Tyre form a kind of wall located on one side of the country. In talmudic times, in order to reach Eretz Yisrael one would take a northern path from Babylonia that passed through Antioch, currently the

city of Antakya in Turkey. There was also a southern path that passed through Damascus, from which one could take a shortcut through the Golan to the Lower Galilee. Alternatively, one could take a longer path from Damascus to the Mediterranean coast, follow the coast to Akko, and from there travel east to Tiberias. Consequently, in order to go by way of the Ladder of Tyre, it was necessary to take a long, circuitous route to Eretz Yisrael.



Right: Routes from Babylonia to Eretz Israel
Below: Rosh HaNikra



NOTES

One who intends to misappropriate a deposit – **החוֹשֵׁב לשלוח יד בפקודון**: In terms of the nature of this intent, the early commentaries disagree. Some hold that the intent is a thought alone, provided one admits to having that thought, and no action is required for liability. That is the case in all areas of *halakha* where thought is significant (Rashi on *Kiddushin*; Rosh, citing Rabbeinu Barukh).

Others hold that the intent here, as derived from the verse: "For every matter of trespass" (Exodus 22:8), refers specifically to intent expressed verbally. It is referred to as intent because it need not be stated in the presence of designated witnesses. One is liable if witnesses happened to hear him articulate his intent to misappropriate. Others say, as does Rashi here, that one is liable only for a statement of misappropriation stated expressly before two designated witnesses.

Most commentaries hold that one is liable only if he articulated his intent, and some discuss why a statement is characterized as thought. According to the Ramban, thought means intent to perform a specific action. Others say that it comes to emphasize that sometimes one says something in a frivolous or exaggerated manner. He is liable only if that statement reflects his intent.

HALAKHA

One who intends to misappropriate a deposit – **החוֹשֵׁב לשלוח יד בפקודון**: One who intends to misappropriate a deposit, even if he states that intent in the presence of witnesses, is exempt, as there is no misappropriation without action, in accordance with the opinion of Beit Hillel (Rambam *Sefer Nezikin*, *Hilkhot Gezeila VaAveda* 3:11; *Shulhan Arukh*, *Hoshen Mishpat* 292:4).

Perek III

Daf 44 Amud a

NOTES

But isn't it already stated, Whether he has misappropriated his neighbor's goods – אָמַר לְעִבּוֹ וַלְשׂוֹלוֹתָו: The Talmud does not explain what Beit Shammai said in response to the verse cited by Beit Hillel. Some explain that according to Beit Shammai one derives from this verse that one who misappropriates part of the deposit is liable to pay for the entire deposit (*Aguddat Ezov*). Others suggest that even Beit Shammai did not deem a bailee liable for mere thoughts of misappropriation. Rather, if one actually misappropriates the deposit, his liability begins from the moment he planned to do so (*Meshekh Hokma*).

He said to his slave or to his agent – אָמַר לְעִבּוֹ וַלְשׂוֹלוֹתָו: Some early commentaries write that even if one instructed his slave or his agent to take the deposit for himself, the slave's or agent's legal status is that of an agent in terms of liability (Meiri). Others hold that if the agent derived no benefit but caused damage, he is not liable for misappropriation but for the damage that he caused (*Nimukei Yosef*).

Or to his agent from where is it derived – לְעִבּוֹ וַלְשׂוֹלוֹתָו מִן: Like misuse of consecrated property, in cases of misappropriation, an exemption is made to the general halakha, and it is ruled: There is an agent for a matter of transgression. The *Sma*, the *Shakh*, and other later commentaries analyzed the different aspects of this matter extensively.

His arrows – אֲגִוי דִּיקָה: According to Rashi, the resulting empty space in the barrel of wine caused the fermentation. Several early commentaries hold that it is the movement of the wine in the barrel that caused it to ferment (Rambam; Ra'avad).

HALAKHA

שְׁלֵיחוֹת יְדַעַּת – שְׁלֵיחָה: The legal status of one who misappropriates a deposited item, whether personally or by means of an agent, is that of a robber as pertains to his liability to pay for any damage to the deposit, even damage due to circumstances beyond his control. This ruling is in accordance with the opinion of Beit Hillel (Rambam *Sefer Nezikin, Hilkhot Gezeila VaAveda* 3:11; *Shulhan Arukh, Hoshen Mishpat* 292:5).

If he tilted the deposited barrel...if the wine in the barrel fermented – הַשְׁתָּה אֶת הַכְּבִיר...וְהַמִּיםְאָה: If one tilted a deposited barrel of wine and removed a quarter-log of wine, and the remaining wine in the barrel fermented, he is liable to pay for all the wine in the barrel, as the remainder of the wine fermented due to his actions. This ruling is limited to wine, as the empty space resulting from the removal caused the fermentation. In other cases of partial misappropriation, one is liable to pay only for the amount that he took (Rambam *Sefer Nezikin, Hilkhot Gezeila VaAveda* 3:13; *Shulhan Arukh, Hoshen Mishpat* 292:3).

Once he lifted it in order to take wine from it – בְּיַיִן שְׁתַּחַבְּהָה לְטֹול: If one tilted a deposited barrel of wine, and removed a quarter-log of wine, and then the barrel broke, he is liable only for the quarter-log that he removed. If he lifted the barrel in order to remove a quarter-log of wine and it broke, he is liable to pay for the entire barrel of wine, even if it broke before he actually removed the wine. This ruling is in accordance with the opinion of Shmuel.

If a bailee lifted a purse in order to remove a coin from it, there is uncertainty whether he is liable to pay for the contents of the entire purse. The same is true in similar cases involving several units, as opposed to one unit. This is due to the uncertainty raised by Rav Ashi, which remains unresolved (Rambam *Sefer Nezikin, Hilkhot Gezeila VaAveda* 3:12; *Shulhan Arukh, Hoshen Mishpat* 292:2).

גַּם' מִנְהָנִי מִילִי? דַּתְנוּ וּבָנָן: עַל כֵּל
דָּבָר פְּשֻׁעַ – בֵּית שְׁמָאי אָמְרִים: מִלְמָדוֹ
שְׁחִיּוֹב עַל הַמְחַשְּׁבָה בְּמַשְׁחָה, וּבֵית
הַלְּלָל אָמְרִים: אַיִן חַיּוֹב עַד שִׁישְׁלָח
בּוֹ יְדָה, שְׁנָאָמָר: "אִם לֹא שָׁלַח יְדָה
בְּמַלְאָכָת רְעוּהוֹ." אִמְרוּ לְהָנָן בֵּית שְׁמָאי
לְבֵית הַלְּלָל: הַלְּלָא בְּכֶר נָאָמָר "עַל כֵּל
שְׁמָאי": וְהַלְּלָא בְּכֶר נָאָמָר "אִם לֹא שָׁלַח
יְדָה בְּמַלְאָכָת רְעוּהוֹ".

אִם בֵּן מִה תְּלִמּוֹד לֹאָמָר "עַל כֵּל דָּבָר
פְּשֻׁעַ" – שִׁיכּוֹל אַיִן לֹאָלָה הוּא, אָמְרָ
לְעִבּוֹ וַלְשׂוֹלוֹתָו מִן? תְּלִמּוֹד לֹאָמָר "עַל
כֵּל דָּבָר פְּשֻׁעַ".

הַשְׁתָּה אֶת הַחַבִּית" כּוֹ. אָמָר רַבָּה: לֹא
שְׁנָוֹ אֶלָּא נְשִׁבָּרָה, אֶבְּלָה הַחַמִּיצָה –
מִשְׁלָמָם אֶת כּוֹלָה. מַאי טֻמָּא – גַּרְיָה
דִּיקָה הוּא דְּאַהֲנוּ לָהּ.

הַגְּבִיהָה וְנוּטֵל הַיְמָנָה" כּוֹ. אִמְרוּ
שְׁמוּאֵל: לֹא נְטַל – נְטַל מִפְשָׁש, אֶלָּא בֵּין
שְׁהַגְּבִיהָה לְטוֹל אֶךָ עַל פִּי שְׁלָא נְטַל.

לִיְמָא קָא סְבָר שְׁמוֹאֵל שְׁלֵיחוֹת יְדָ
אַיִּהְךָ צְרִיכָה חִשּׁוֹן? אָמְרִי: לֹא, שָׁאַנְיָ
הַכָּא דִינְחָא לְיהָ דְּתִיְהָוִי הָא חַבִּית
כּוֹלָה בְּסִיס לְהָא רַבִּישָׁת.

בְּשִׁיעָר בָּבָא קָא שְׁיָה הַגְּבִיהָ אַרְנָקִי לְיטֹול
הַיְמָנָה דִּינָר, מַהוּ? חִמְרָא הוּא
דְּלָא מִינְטָר אֶלָּא אַגְּבָ חִמְרָא, אֶבְּלָה
וְזָא – מִינְטָר, אוֹ דְּלָמָא: שָׁאַנְיָ נְטִירָתָא
דְּאַרְנָקִי מְנִיטְרוֹתָא דִינָר? תִּיקְיָן.

הדרון על ההפיקד

GEMARA From where are these matters derived, that one is liable to pay for intent to misappropriate a deposit? It is as the Sages taught: It is written with regard to misappropriation: “For every matter of [devar] trespass” (Exodus 22:8). Beit Shammai say: The term *devar*, literally, word, teaches that one is liable to pay for a thought of misappropriation just as he is for an action. One pays for a matter of trespass even if there is no actual trespass. And Beit Hillel say: He is liable to pay only if he actually misappropriates the deposit, as it is stated: “Whether he has misappropriated his neighbor's goods” (Exodus 22:7). Beit Shammai said to Beit Hillel: But isn't it already stated: “For every matter of trespass”? Beit Hillel said to Beit Shammai: But isn't it already stated: “Whether he has misappropriated his neighbor's goods”?ⁿ

If so, what is the meaning when the verse states “for every matter of trespass”? One might have thought: I have derived only that one is liable to pay if he misappropriated the deposit himself, but if he said to his slave or to his agentⁿ to misappropriate the deposit in his possession,^h from where is it derivedⁿ that he is liable to pay due to their actions? The verse states: “For every matter of trespass,” from which it is derived that one's speech renders him liable to pay for any misappropriation.

§ The mishna teaches: If he tilted the deposited barrel, he is liable to pay only for the wine that he took. Rabba says: The Sages taught this halakha only if the barrel broke. But if the wine in the barrel fermented^h and spoiled, he pays for the entire barrel. The Gemara asks: What is the reason for this ruling? He is liable because it was his arrows,ⁿ i.e., his actions, that were effective in spoiling the wine. Although he took only a quarter-log, the wine fermented and turned rancid as a result of his opening the cask.

§ The mishna teaches: If one lifted the barrel and took from it a quarter-log of wine, he pays the value of the entire barrel. Shmuel says: When the tanna said: And took from it, it is not that he actually took the wine from the barrel. Rather, once he lifted it in order to take wine from it,^h although he did not yet take wine from it, if it breaks, he is liable to pay.

The Gemara asks: Shall we say that Shmuel holds that misappropriation does not require loss? The Sages say: No, do not draw that conclusion. It is different here, since it is preferable for the bailee that all the wine in this barrel will serve as a base for that quarter-log. Although his intent was to take a small amount of wine, since that small amount is better preserved within the full barrel of wine, it is as though he took the entire barrel.

Rav Ashi raises a dilemma based on that explanation: If one lifts a purse in order to take from it a single dinar, what is the halakha? Is it only with regard to wine, which is preserved only by means of the wine in the barrel, that if one intends to take a quarter-log, it is as though he intended to take all of the wine in the barrel, but with regard to a dinar, which is preserved even alone, intent to take one dinar does not indicate intent to take all of the coins in the purse? Or, perhaps safeguarding a purse is different from safeguarding a dinar. A single coin is easily lost, whereas a purse is not, as it is more easily safeguarded. Therefore, when the bailee intends to take one dinar, he intends to take all of the coins in the purse. The Gemara concludes: The dilemma shall stand unresolved.

Summary of Perek III

In this chapter, it was determined that after a bailee who has safeguarded a deposit accepts responsibility to pay for an item stolen from his possession, he acquires ownership rights over that item. Legally, there is an assumption that this acquisition is a condition, implicit or explicit, of the deposit agreement. Therefore, transfer of those ownership rights is not contingent on the actual payment of compensation. The mere agreement of the bailee to waive his right to take an oath and thereby exempt himself from payment for the lost or stolen deposit effects transfer of those rights. The ownership rights of the bailee are limited to those conditions stipulated by the depositor from the outset. If the bailee conveys the deposit to another, even if this entails no misappropriation, he acquires no ownership rights, unless the conveyance was with the approval of the owner.

Ownership rights to a deposited item are not transferred to the bailee in their entirety. Rather, the transfer stems from and is contingent upon fulfillment of the conditions of the guardianship that he accepted upon himself. Therefore, even when the bailee compensates the owner, he is obligated to take an oath that the deposit is not in his possession, as he has no right to take the item and pay for it without the approval of the owner. The bailee takes an oath that he provided a reasonable level of safeguarding for the deposit, commensurate with the manner in which one safeguards his own belongings. A higher level of safeguarding is required for deposits of money.

The bailee calculates a certain sum of reasonable depreciation, in accordance with the measures delineated in the mishna. If he discovers that the depreciation of the deposit is greater than expected, the bailee must inform the owner. If that is impossible, he must sell the item to prevent its total loss and return the money to the owner. Doing so constitutes safeguarding a deposit and returning of a lost item.

Misappropriation is not simple theft, but rather an abrogation of the depositor-bailee relationship. Consequently, one who misappropriates a deposit is liable to pay for the item from the moment that he performs an action involving unauthorized use of the deposit, even if that action did nothing to damage the item. Nevertheless, the bailee is liable only if he takes action. He is not liable for intent, even if he stated that intent. Since the legal status of misappropriation is that of theft, the *halakha* is that from the moment of misappropriation the item is considered stolen by the bailee. Like any other thief, he is responsible to pay for the item and for any decrease in its value.

And if you sell to your colleague an item that is sold, or acquire from your colleague's hand, you shall not exploit his brother.

(Leviticus 25:14)

And you shall not mistreat one man his colleague; and you shall fear your God; for I am the Lord your God.

(Leviticus 25:17)

And a convert shall you neither mistreat, nor shall you oppress him; for you were strangers in the land of Egypt.

(Exodus 22:20)

And when a convert lives in your land, you shall not mistreat him.

(Leviticus 19:33)

Introduction to Perek IV

This chapter examines two topics, transactions of money and commodities, and the *halakhot* of exploitation and of verbal mistreatment. One of the key questions with regard to transactions is: When and how does the transaction take effect? When ownership of an item is transferred from one person to another, at precisely what point does the one receiving the item assume ownership?

Specifically, this chapter addresses a complex question relating to the unique problem of the essence and validity of a monetary transaction: In what way is money different from other commodities? The resolution of this problem is a vital prerequisite for determining the *halakhot* of both exploitation, discussed in this chapter, and interest, discussed in Chapter Five, as in both these areas the criteria used for determining the value of items are especially significant. There is a difference between monetary transactions and other types of transactions, and the timing of the transaction is crucial for accurately assessing an item's value.

The *halakhot* of exploitation that involves monetary loss resulting from deceit and the *halakhot* of verbal mistreatment are both discussed in the Torah using the Hebrew term *ona'a*.

The Torah prohibition of commercial exploitation invites several questions. What is considered exploitation? Is there a fixed measure or fixed percentage of disparity between the value of a commodity and its sale price that constitutes exploitation, or does any disparity constitute exploitation? If commercial exploitation occurs, what can be done? What is the outcome of an exploitative transaction: Does the transaction take effect or is it null and void? Is one who is guilty of exploitation obligated to pay compensation? If so, how much does he pay? Furthermore, do the *halakhot* pertaining to exploitation apply universally, or are there individuals, items, or transactions to which they do not apply?

With regard to the prohibition of verbal mistreatment, it is necessary to ascertain its limitations. What is considered mistreatment? Are there circumstances in which it is permitted? Does the prohibition apply equally to all people?

This chapter addresses all of these questions in detail.

Perek IV

Daf 44 Amud a

מתני' הַזָּהָב קׁוֹנֶה אַתְּ הַכְּסָף
וְהַכְּסָף אִינּוֹ קׁוֹנֶה אַתְּ הַזָּהָב.

MISHNA There is a halakhic principle that when one purchases an item, the payment of the money does not effect the transaction. The transaction is effected only by means of the buyer's physically taking the item into his possession, e.g., by pulling the item. Payment of money by the buyer creates only a moral obligation for the seller to sell him the item. When two types of currency are exchanged for each other, one of the types will have the status of the money being paid, and the other will have the status of the item being purchased. Handing over the former will not effect the transaction, while handing over the latter will. The mishna teaches: When one purchases gold coins, paying with silver coins, the gold coins assume the status of the purchased item and the silver coins assume the status of money. Therefore, when one party takes possession of the gold coins,ⁿ the other party acquires the silver coins.^h But when one party takes possession of the silver coins, the other party does not acquire the gold coins.

הַנְּחַשֵּׁת קׁוֹנֶה אַתְּ הַכְּסָף, וְהַכְּסָף אִינּוֹ
קׁוֹנֶה אַתְּ הַנְּחַשֵּׁת. מִעוּdot הַרְעֻות
קוֹנוֹת אַתְּ הַיּוֹפּוֹת, וְהַיּוֹפּוֹת אִין קוֹנוֹת
אַתְּ הַרְעֻות.

אֲסִימּוֹן קוֹנֶה אַתְּ הַמְּטַבֵּעַ, וְהַמְּטַבֵּעַ
אִינּוֹ קוֹנֶה אַתְּ הַאֲסִימּוֹן. מְטַלְּטָלוֹן
קוֹנוֹן אַתְּ הַמְּטַבֵּעַ, מְטַבֵּעַ אִין קוֹנֶה
אַתְּ הַמְּטַלְּטָלוֹן.

זה הכלל: בְּלִי הַמְּטַלְּטָלוֹן קׁוֹנוֹן זה אַתְּ
זה. בַּיּוֹד? מִשְׁךְ הַיְמָנוֹ פִּרוֹת וְלֹא נָנָן
לוֹ מִעוּdot – אִינוֹ יָכֹל לְחַזּוּ בּוֹ, נָנָן לוֹ
מִעוּdot וְלֹא מִשְׁךְ הַיְמָנוֹ פִּרוֹת – יָכֹל
לְחַזּוּ בּוֹ.

In an exchange of silver coins for copper coins, when one party takes possession of the copper coins, the other party acquires the silver coins.^h But when one party takes possession of the silver coins, the other party does not acquire the copper coins. In an exchange of flawed coins for unflawed coins, when one party takes possession of the flawed coins,ⁿ the other party acquires the unflawed coins. But when one party takes possession of the unflawed coins, the other party does not acquire the flawed coins.^h

In an exchange of an unminted coin for a minted coin, when one party takes possession of an unminted coin [*asimon*],^{nl} the other party acquires a minted coin. But when one party takes possession of a minted coin, the other party does not acquire an unminted coin. In an exchange of a coin for movable property, when one party takes possession of the movable property the other party acquires the coin. But when one party takes possession of the coin, the other party does not acquire the movable property.

This is the principle: With regard to those who exchange^b all forms of movable property, each acquires the property of the other,^h i.e., the moment that one of the parties to the exchange takes possession of the item that he is acquiring, e.g., by means of pulling, the other party acquires the item from the first party. **How so?** If the buyer pulled produce from the seller, but the buyer did not yet give the seller their value in money, he cannot renege on the transaction, but if the buyer gave the seller money but did not yet pull produce from him, he can renege^h on the transaction, as the transaction is not yet complete.

HALAKHA

When one party takes possession of the gold coins the other party acquires the silver coins – **זהו קֹנֶה אַתְּ הַכְּסָף:** The status of all coins is that of money relative to a commodity. If the transaction involves coins in exchange for coins, the status of the gold coins is that of a commodity and the status of the silver coins is that of money. By one party pulling the gold coins, the other party acquires the silver coins wherever they may be, but not the reverse (*Shulhan Arukh, Hoshen Mishpat* 203:4).

When one party takes possession of the copper coins the other party acquires the silver coins – הַנְּחַשֵּׁת קׁוֹנֶה אַתְּ הַכְּסָף: Relative to silver coins, copper coins are considered a commodity. By one party's pulling the copper coins, the other party acquires the silver coins (*Shulhan Arukh, Hoshen Mishpat* 203:5).

Flawed and unflawed coins – מִעוּdot הַרְעֻות וְהַיּוֹפּוֹת: With regard to flawed coins and other coins invalidated by the authorities, or coins that do not circulate in that place, their status is that of a commodity in every respect, in accordance with the ruling of the Rambam. The same halakha applies to an unminted coin.

According to the Rema, who cites *Tosafot* and the Rosh, the category of flawed coins includes even those that were not completely invalidated but do not circulate as easily as other coins (*Shulhan Arukh, Hoshen Mishpat* 203:8).

With regard to those who exchange all movable property each acquires the property of the other – בְּלִי הַמְּטַלְּטָלוֹן קׁוֹנוֹן זה אַתְּ הַזָּהָב: Each acquires the movable property of the other by means of the transaction of exchange, which means that if one of the parties pulls one of the items the other acquires the other item (*Shulhan Arukh, Hoshen Mishpat* 198:1).

Pulling and reneging – מִשְׁיכָה וְחַזּוּה: When one pulls an item to acquire it he assumes ownership of the item, the previous owner of the item assumes ownership of the money, and neither can renege on the transaction. If one paid money for the item and the other party did not pull the item, each can renege on their decision. One who reneges is subject to the curse: He Who exacted payment, mentioned later in the mishna (*Shulhan Arukh, Hoshen Mishpat* 198:5; 204:1).

NOTES

Gold coins – הַזָּהָב: In the Jerusalem Talmud, an alternative version of the mishna is cited: When one party takes possession of the silver coins, the other party acquires the gold coins. The name of the chapter is accordingly *HaKesef*, the silver, as opposed to *HaZahav*, the gold, as it is here. This is the version of the mishna taught by Rabbi Yehuda HaNasi in his youth, discussed in the Gemara.

Flawed coins, etc. – מִעוּdot הַרְעֻות וְכָיִר: According to the Ra'avad and his student Rabbeinu Peretz, the pairs in the mishna are listed with the money first and the commodity second, so that when one party takes possession of the second item listed in each pair, the other party acquires the first item listed in that pair. For example, when one takes possession of the copper coins the other party acquires the silver coins, and when one party takes possession of the flawed coins the other party acquires the unflawed coins.

An unminted coin – אֲסִימּוֹן: According to Rashi, this is a round piece of metal that was not yet minted. *Tosafot* and other early commentaries (Ramban; Rashba) maintain that the reference is to a coin that was minted but then broke or that no longer has the form of a coin. The Meiri cites an opinion that this is a coin that was minted in a manner where the imprint is recessed rather than protruding.

LANGUAGE

Unminted coin [asimon] – אֲסִימּוֹן: From the Greek ἀσήμιον, *asemon*, meaning unminted coin.

BACKGROUND

Exchange – תְּלִיפָּן: Exchange is a legal act of acquisition formalizing the transfer of ownership of an item. Once two parties agree on the barter of one item for another, the acquisition of one of the items by one party by means of a recognized mode of acquisition, e.g., pulling, effects the simultaneous acquisition of the second item by the other party. This principle is also the basis for the transfer of ownership by means of a cloth, a symbolic form of barter that extends application of the principle of exchange to many formal legal acts of acquisition.

This chapter begins with the assumption that unlike other items, money does not effect transfer of ownership by means of exchange. For example, if one agrees to sell a donkey to another, when the donkey seller takes possession of the money it does not effect simultaneous acquisition of the donkey by the buyer. The mishna here considers the dynamics of the exchange of one type of money, e.g., gold coins, with another, e.g., silver coins. The underlying principle is that the legal status of the less fungible coin, i.e., gold, is that of merchandise capable of effecting exchange when pulled or lifted, and the legal status of the more fungible coin remains that of money. Therefore, if one party acquires the silver the other party does not simultaneously acquire the gold. In order for him to acquire the gold a separate act of acquisition is necessary.

BACKGROUND

He Who exacted payment – מי שפְּרָע: This is the formula of a curse imposed under particular circumstances. If payment is remitted for merchandise, and before a formal act of acquisition is performed on the merchandise either the buyer or the seller reneges, the court cannot compel the parties to complete the transaction. Nevertheless, the court censures, or, according to some opinions, curses, the person who reneged and failed to observe an unenforceable agreement. The formula of that censure is: He Who exacted payment from the people of the generation of the flood (see Genesis, chapter 7), and from the people of the generation of the dispersion (see Genesis, chapter 11), will in the future exact payment from whoever does not stand by his statement.

NOTES

In your youth...in your old age – בִּילֹדוּתֶךָ...בַּזְקָנָתֶךָ: The Maharshal explains that Rabbi Shimon wanted to know whether his father's change of opinion was an oversight or whether he did so consciously. In the Jerusalem Talmud it appears that Rabbi Shimon held that the original opinion of Rabbi Yehuda HaNasi is the correct ruling, and that is the version of the mishna cited there.

Gold coins which are more valuable – הַדָּבָר דָּשֵׁב: The Ritva explains that the increase in the value of gold when it is minted is greater than the increase in the value of silver when it is minted. Therefore, the Gemara says that a gold coin is more valuable.

אֲבָל אָמַרְוּ: מֵי שְׁפָרָע מְאַנְשֵׁי דָּוֹר
הַפְּבוּל וּמְדֹור הַפְּלוּגָה הוּא עַתִּיד לְהַפְּרָע
מִמֶּנּוּ שְׁאַיָּנוּ עָזָם בְּדָבָרוֹ.

רַבִּי שְׁמֻעוֹן אָוֹרֶר: כִּל שְׁהַבְּקָר בִּידָּו – יְדוֹ
עַל הַעֲלִיוֹנָה.

גַּם מְתַנֵּי לֵיה רַבִּי לְרַבִּי שְׁמֻעוֹן בְּרִיה:
הַזָּהָב קֹנֶה אֶת הַבְּקָר. אָמַר לוֹ: רַבִּי,
שְׁנִית לָנו בִּילֹדוּתֶךָ הַבְּקָר קֹנֶה אֶת
הַזָּהָב וְתַחֲווּ וְתַשְׁנַה לָנו בַּזְקָנָתֶךָ
הַזָּהָב קֹנֶה אֶת הַבְּקָר?

בִּילֹדוּתֶךָ מַאי סְבָר וּבַזְקָנָתֶךָ מַאי
סְבָר? בִּילֹדוּתֶךָ סְבָר: דָּהָבָר דְּחַשֵּׁב –
חוֹ טְבָעָא, בְּסָפָא דְּלָא חַשֵּׁב – הַוי
פְּרִיאָא, אַקְנֵי לֵיה פְּרִיאָא לְעַבְעָא. בַּזְקָנָתֶךָ
סְבָר: כְּסָפָא

But with regard to the latter case, the Sages said: He Who exacted payment^b from the people of the generation of the flood, and from the generation of the dispersion, i.e., that of the Tower of Babel, will in the future exact payment from whoever does not stand by his statement. Just as the people of those generations were not punished by an earthly court but were subjected to divine punishment, so too, although no earthly court can compel the person who reneged to complete the transaction, punishment will be exacted at the hand of Heaven for any damage that he caused.

Rabbi Shimon says: Anyone who has the money in his possession has the advantage. The Sages said it is only with regard to the seller that payment of money does not effect a transaction, so that if the buyer paid for the item and did not yet take possession of the purchase item, the seller can renege on the sale and return the money. By contrast, once the buyer paid for the item he cannot renege on his decision and demand return of his money, even if he did not yet take possession of the purchase item.

GEMARA

Rabbi Yehuda HaNasi^p would teach Rabbi Shimon, his son:^p When one party takes possession of the gold coins, the other party acquires the silver coins, consistent with the mishna. Rabbi Shimon said to him: My teacher, you taught us in your youth, in the first version of the mishna: When one party takes possession of the silver coins, the other party acquires the gold coins, and do you then teach us in your old age?ⁿ When one party takes possession of the gold coins, the other party acquires the silver coins?

The Gemara asks: In his youth, what did Rabbi Yehuda HaNasi hold, and in his maturity, what did he hold? What is the basis for his original opinion, and what led him to change his mind? The Gemara explains: In his youth he held: Gold coins, which are more valuable,ⁿ are currency; silver coins, which are relatively not valuable, are a commodity, i.e., the purchase item. The principle is: When one party takes possession of a commodity the other party acquires the currency. In his old age, he held: Silver coins,

PERSONALITIES

Rabbi Yehuda HaNasi – רַבִּי יְהוּדָה הַנָּסִי: Rabbi Yehuda HaNasi redacted the Mishna, marking the end of the tannaitic period. He was the son of Rabbi Shimon ben Gamliel II and a seventh-generation descendant of Hillel the Elder. Rabbi Yehuda lived from 135 CE until 220 CE and was a member of the fifth generation of *tanna'im*. According to tradition, Rabbi Yehuda was born on the day of Rabbi Akiva's death, leading the Sages to apply the verse: "And the sun rises and the sun sets" (Ecclesiastes 1:5), to describe that situation. Indeed, Rabbi Yehuda HaNasi was a successor to Rabbi Akiva, who had begun to assemble the contents of the Oral Torah into a format that Rabbi Yehuda later redacted as the Mishna.

During his youth, Rabbi Yehuda studied before the five great students of Rabbi Akiva: Rabbi Meir, Rabbi Yehuda bar Elai, Rabbi Yosei, Rabbi Shimon, and Rabbi Elazar, in addition to his father, Rabbi Shimon ben Gamliel. Rabbi Yehuda traveled from yeshiva to yeshiva collecting the statements of the Sages of previous generations, and he amassed most of his knowledge from his studies with Rabbi Ya'akov ben Kurshai. The breadth of his knowledge and his position as *Nasi*, to which he was appointed at age thirty after his father's death, provided him the standing to undertake the greatest Torah enterprise of the era, the redaction of the Mishna.

Rabbi Yehuda HaNasi surrounded himself with the most prominent Sages of his era to ensure the accuracy of his magnum opus. The relative political calm and his favorable relationship with the Roman government facilitated the successful completion of that ambitious project. The emperor Antoninus, most likely Marcus Aurelius Antoninus Augustus, and Rabbi Yehuda HaNasi had a special relationship dating back to their childhood, and the Talmud records numerous conversations between the two.

Due to Rabbi Yehuda's prominence as *Nasi*, the Mishna was universally accepted, superseding earlier halakhic anthologies. Its acceptance was a unifying factor, as the entire Jewish people studied a common version of the Oral Torah.

Rabbi Yehuda HaNasi lived in Beit She'arim in the southern Lower Galilee. It was there that he established his yeshiva and there that the Sanhedrin established its base of operations. He was extremely wealthy and supported less fortunate Torah scholars. A modest man, Rabbi Yehuda HaNasi did not hesitate to acknowledge when another's opinion was more logical than his own (*Nidda* 53b). Even though he was the *Nasi* and redactor of the Mishna, his rulings, even those recorded in the Mishna, were not always adopted as *halakha*. Rabbi Yehuda HaNasi was fluent in Greek, the language spoken by the elite in Eretz

Yisrael, but his fluency in Hebrew, at a time when Aramaic was the most widespread language, was noteworthy. The Gemara relates that the Sages often learned the meaning of difficult words from servants in the house of Rabbi Yehuda HaNasi (*Rosh HaShana* 26b).

In his later years, due to deteriorating health, Rabbi Yehuda moved to Tzippori. Among his students were the members of the first generation of *amora'im* of Eretz Yisrael, including Rabbi Yohanan, Rabbi Hiyya, bar Kappara, and Rav. According to the Talmud (*Gittin* 59a), Rabbi Yehuda HaNasi was the first individual since Moses to have such a broad mastery of Torah, and his great scholarship led others to refer to him in the Talmud simply as Rabbi or as Rabbeinu HaKadosh, our Holy Rabbi.

Rabbi Shimon his son – רַבִּי שְׁמֻעוֹן בָּרִיה: Rabbi Shimon was the youngest son of Rabbi Yehuda HaNasi, and he lived in the transitional generation between the tannaitic and amoraic periods. Just before his death, Rabbi Yehuda HaNasi appointed his son Rabban Gamliel to succeed him as *Nasi*, and his son Rabbi Shimon as the *ḥakham*, the primary Sage, of the yeshiva (*Ketubot* 103b). Rabbi Shimon and Rabbi Hiyya studied Torah together, and at one point the former was engaged to marry Rabbi Hiyya's daughter. Unfortunately, she died before the couple could be wed.

Perek IV

Daf 44 Amud b

דְּחִירַת – הָיוּ טְבֻעָא, דְּהָבָא וְלֹא חֶרֶב –
הָיוּ פִּירָא, וְקַנֵּן לִיהְיָה פִּירָא לְטְבֻעָא.

אמָר רַב אֲשִׁי: בִּילְדוּתִים מִסְתְּבָרָא.
מִזְקָנָתִי הַנְּחַשֶּׁת קֹנֶה אֶת הַכְּסָף.

אי אָמָרָת בְּשֶׁלֶםָא כְּסָפָא לְבַבִּי דְּהָבָא
פִּירָא הָיוּ – הַיְנוּ וְקַנֵּן הַנְּחַשֶּׁת
קֹנֶה אֶת הַכְּסָף, אֲלֹא עַל פִּי דְּלָגְבָּי
דְּהָבָא פִּירָא הָיוּ – לְבַבִּי נְחַשֶּׁת טְבֻעָא
הָיוּ. אֲלֹא יֵאָמֵר בְּכָסָפָא לְבַבִּי דְּהָבָא
טְבֻעָא הָיוּ, הַשְׁתָּא לְגַבְיָה דְּהָבָא דְּחַשֵּׁב
בְּיִיחָיָה אָמָרָת טְבֻעָא הָיוּ, לְגַבְיָה נְחַשֶּׁת
דְּאֵינוֹ חַשֵּׁב וְאֵינוֹ חֶרֶב מִבְּעִיא?

אַיִצְטָרִין, סְלָקָא דְעַתָּן אֲמִינָא: הָיוּ
פְּרִיטִי, בָּאתְרָא דְסָגִי – אַיְנָהוּ חַרְפִּי
טְפִי מִבְּסָפָא. אִימָא טְבֻעָא הָיוּ, קָא
מִשְׁמָעַ לֹא: בַּיּוֹן דְּאֵיכָא דְּכַתָּא דְלָא
סְגִי בֵּיה – פִּירָא הָיוּ.

וְאַף רַבִּי חִיָּא סְבָר דְּהָבָא טְבֻעָא הָיוּ.
רוּב אֲזִזָּר דִּינָּרִי מִבְּרִיתָה דְּרַבִּי חִיָּא,
לְסֹרֶן אֲיִקוּר דִּינָּרִי. אַתָּא לְקַמְמָה דְּרַבִּי
חִיָּא, אָמָר לֵיה: זִיל שְׁלָמִים לְהָטְבִּין
וְתִקְיָלִין. אִי אָמָרָת בְּשֶׁלֶםָא דְּהָבָא
טְבֻעָא הָיוּ – שְׁפִיר. אֲלֹא אִי אָמָרָת
פִּירָא הָיוּ, חֹהֶה לִיהְיָה סָאה בְּסָאה, וְאַסְוָה!

רַב דִּינָּרִי הוּוּ לִיה, וּבַיּוֹן דְּהָוּ לִיהְיָה דִּינָּרִי –
עַשְׂהָה כְּאֹמֵר לִיהְיָה הַלְוִין עַד שְׁבָא בְּנִי
אוֹ עד שְׁאַמְמָצָא מִפְתָּח.

which circulate, in the sense that they are universally accepted by merchants, in contrast to gold coins, which merchants are less willing to accept as payment for inexpensive items, are currency; gold coins, which do not circulate, are a commodity. And the principle is: When one party takes possession of the commodity, the other party acquires the currency.

Rav Ashi said: It is reasonable to teach the halakha in accordance with that which he taught in his youth.^N This is from the fact that the tanna teaches later in the mishna: When one party takes possession of the copper coins, the other party acquires the silver coins.

Rav Ashi explains: Granted, if you say that the silver coins relative to the gold coins are a commodity, that is the reason that the tanna teaches: When one party takes possession of the copper coins, the other party acquires the silver coins, as, even though relative to the gold coins, the silver coins are a commodity, the tanna teaches that relative to copper coins, they are currency. But if you say that the silver coins relative to the gold coins are currency the subsequent ruling is self-evident, as now, relative to the gold coins, which are more valuable than the silver coins, you say that silver coins are currency, then relative to copper coins, as the silver coins are more valuable than the copper coins and they also circulate more easily, is it necessary for the mishna to state that the silver coins are currency and the copper coins are a commodity?

The Gemara rejects this proof. Even if you teach the halakha in accordance with the opinion of Rabbi Yehuda HaNasi in his old age, it was necessary for the tanna to teach the halakha of silver and copper coins as well. This is because it might enter your mind to say that in a place where these copper *perutot* circulate, they circulate more easily than silver coins. Therefore, say that they are the currency and the silver coins are the commodity. Therefore, the tanna teaches us that since silver coins are universally accepted as currency and there is a place where copper coins do not circulate, the copper coins are a commodity.

§ The Gemara comments: And Rabbi Hiyya, as well, holds that gold coins are currency relative to silver. This is seen from the incident where Rav borrowed gold dinars^N from the daughter of Rabbi Hiyya. Ultimately, the gold dinars appreciated in value. Rav came before Rabbi Hiyya to ask his opinion. Rav was concerned that by returning more valuable dinars than he borrowed, this would violate the prohibition against paying interest. Rabbi Hiyya said to Rav: Go and pay her unflawed and weighed dinars. Return the number of dinars that you borrowed, as their monetary value is irrelevant. The Gemara asks: Granted, if you say that the gold coins are currency, this works out well, as he borrowed and repaid the same coins. But if you say that the gold coins are a commodity, this is parallel to the case of one who borrows a *se'a*^B of produce and repays a *se'a* of produce, which is prohibited, as the price of the produce may increase in the interim (see 75a).

The Gemara rejects this proof. The dinars that Rav received from the daughter of Rabbi Hiyya did not constitute a standard loan, as Rav had dinars elsewhere, but he needed money immediately. And since he had dinars, it is tantamount to saying to her: Lend me money until my son comes or until I find the key. As the mishna on 75a teaches, when the borrower possesses the same item he is borrowing, and merely does not have momentary access to it, this type of borrowing and repayment is permitted.

NOTES

In accordance with that which he taught in his youth – **כִּילְדוּתָה:** Rashi explains that this version of the mishna is in accordance with the opinion of Rabbi Meir. The reason for adopting the version that Rabbi Yehuda HaNasi taught in his youth is either that both Rabbi Meir and Rabbi Yehuda HaNasi support it, or that the halakha was ruled in accordance with the opinion of a teacher in a dispute with his student (*Hokmat Manoah*). In the Jerusalem Talmud it is stated that Rabbi Shimon, son of Rabbi Yehuda HaNasi, said that his father was especially erudite in his youth, and his reasoning was sharper than than it was in his later years.

Rav borrowed gold dinars – גַּבְעָזָה דִּינָּרִי: The early commentaries ask: If Rav was uncertain whether it was a loan that would result in his paying interest, how could he have taken the loan? The Rashba answers that Rav initially thought it was obvious that the gold is currency and only later became uncertain (see *Tosafot*). In the Jerusalem Talmud it is Rabbi Hiyya's daughter who asked her father what to do.

BACKGROUND

סְאָה – סְאָה: A *se'a* is a dry measure of volume first mentioned in Genesis 1:6. It is used by the Sages as a point of reference for all dry measures. Every *se'a* consists of six *kav*, or twenty-four *log*. Opinions with regard to the modern equivalent of a *se'a* range from 7.2 to 14.4 l.

NOTES

אַחֲרָ מְשֻׁמּוֹנָה בְּאִיסָּר – **אַתְּ אַתְּ לְקָדְשָׁךְ**: Although the Gemara later states with regard to redemption of the firstborn son that silver coins are considered a commodity, relative to copper it is clear that silver is considered currency. With regard to betrothal, the *halakha* is that a woman is betrothed with one-eighth of an Italian *issar*. The calculation of the number of *perutot* is irrelevant, as their value fluctuates (Rashba).

The difference, with regard to redemption of the firstborn son – **נֶפְקָא מִינָה פְּרוּדֵין הַבָּן**: Although it is stated in the Torah that a firstborn son is redeemed with five *sela* of silver, the reference is to four-fifths of a gold dinar, as gold is the fixed currency. The reason the Torah does not express the payment in gold is that it is simpler to speak in terms of whole coins rather than fractions (Rosh).

The silver coins are a commodity and the gold coins are currency, etc. – **בְּסָכָף פִּיאָה וְדָקָא טְבֻעָה וּכְיִ**: Many early commentaries discuss the relevance of this dispute concerning the desacralizing of second tithe to the two rulings of Rabbi Yehuda HaNasi. The Ramban writes that the connection between the two matters is unclear. The reason is that although gold is considered currency, nevertheless, since second-tithe money is used to purchase produce and other foods, which are acquired with silver rather than gold coins because storekeepers did not generally accept gold coins for small purchases, ultimately one must exchange the gold for silver coins.

kesef בְּתַלְלָל מַשְׁשָׁר: Although it is written: "And you shall bestow the *kesef* and you shall bind up the *kesef*" (Deuteronomy 14:25), the term *kesef* in this verse clearly does not mean silver but is referring to money as a means of purchase. The Torah did not determine the nature of that money (*Torat Hayyim*).

LANGUAGE

Issar – אִיסָּר: From the word *assarius*, the name of a Roman coin.

HALAKHA

פְּרוּתָה לְקָדְשָׁךְ – **אַשְׁתָּה**: A woman can be betrothed with money only if it has the value of at least one *peruta* (*Shulhan Arukh, Even HaEzer* 31:1).

Peruta, issar, dinar – פְּרוּתָה אִיסָּר דִּינָר: The *peruta* mentioned by the Sages is one-eighth of an Italian *issar*, which is one-twenty-fourth of a silver dinar. They estimated the weight of a *peruta* as one-half of a barley grain of pure silver. The measure of a *peruta* by Torah law is determined based on the value of pure silver at any given time (Rambam *Sefer Zemanim, Hilkhot Shekalim* 1:5).

Five sela for the redemption of the firstborn son – תְּמִשָּׁה: It is a mitzva for every Jew who is neither a priest or a Levite to redeem his firstborn son whose mother is an Israelite. He gives the priest five *sela*, which are worth 120 pure silver *ma'a* coins (*Shulhan Arukh, Yoreh De'a* 305:1).

Sela coins and gold dinars with regard to second tithe – סְלָלָם וְדִינָר זָהָב בְּמַשְׁשָׁר: If a person wishes to amass silver coins with which he has desacralized his second tithe and purchase gold dinars, he may do so, in accordance with the opinion of Beit Hillel (Rambam *Sefer Zera'im, Hilkhot Ma'aser Sheni* 5:13).

Desacralizing second-tithe currency with a commodity – תְּלִילָל מַעֲשָׂת מַשְׁשָׁר עַל פְּרוּתָה: One may not desacralize second-tithe money with produce. If he did so, he must take that produce to Jerusalem and consume it there (Rambam *Sefer Zera'im, Hilkhot Ma'aser Sheni* 4:6).

אָמַר רַبָּא: הָאֵי תְּנָא סְבָר דְּהָבָה – טְבֻעָה הַיִּה, דְּתְּנִינָה: פְּרוּתָה שְׁאַמְרוּ – אַחֲרָ מְשֻׁמּוֹנָה בְּאִיסָּר הַאַיְטָלָקִי. לְמַאי נֶפְקָא מִינָה – לְקָדוֹשִׁי אֲשָׁה, אִיסָּר – אַחֲרָ מַעֲשָׂרִים וְאַרְבָּעָה בְּרִינָר שְׁלֵכָה. לְמַאי נֶפְקָא מִינָה – לְפִיּוֹן הַבָּן.

Rava said: This following *tanna* also holds that the gold coins are currency, as it is taught in a *baraita*: The *peruta* of which the Sages spoke in all places in the mishna is one-eighth of an Italian *issar*.^{NL} The Gemara asks: What is the practical difference that emerges from this calculation? Ostensibly, a *peruta* is a *peruta*. The Gemara explains: Its consequences are for the betrothal of a woman^H with money, which can be effected only with money or an item worth at least one *peruta*. This *peruta* is assessed by means of the Italian *issar*. The *baraita* continues: An *issar* is one twenty-fourth of a silver dinar.^H The Gemara asks: What is the practical difference that emerges from this calculation? The Gemara answers: Its consequences are for buying and selling, to establish its value for use in commercial transactions.

דִּינָר שְׁלֵכָה – אַחֲרָ מַעֲשָׂרִים וְחַמְשָׁה בְּרִינָר שְׁלֵכָה. לְמַאי נֶפְקָא מִינָה – לְפִיּוֹן הַבָּן.

The *baraita* continues: A silver dinar is one twenty-fifth of a gold dinar. What is the practical difference that emerges from this calculation? The Gemara explains: Its consequences are with regard to redemption of the firstborn son.^{NB} The father of a firstborn gives the priest five *sela*,^H which are worth twenty silver dinars. Were he to give the priest a gold dinar he would receive five silver dinars change.

The Gemara asks: Granted, if you say that the gold coins are currency, the *tanna* calculates the value of the coins based on an item whose value is fixed. The value of the gold coin is the currency with fixed value, relative to which the silver dinar is a commodity, whose value fluctuates. But if you say that gold is a commodity, would the *tanna* calculate the value of a silver coin based on an item that appreciates and depreciates? If the value of gold fluctuates, sometimes the priest returns more than five silver dinars to the father who redeemed his son with a gold dinar, and sometimes the father must add to the gold dinar and give this additional sum along with the gold dinar to the priest to complete the sum of five *sela*. Rather, learn from it that the *tanna* holds that the gold coins are currency. The Gemara affirms: Learn from it that this is so.

תְּנָנָה תְּתִמְמָה, בֵּית שְׁמָאי אָמַרְתִּים: לְאַ
עַשְׂה אֶרֶם סְלָלָם קְלָעִין דִּינָר זָהָב, וּבֵית הַלִּלְמָדָרִי. וּבֵי יוֹחָנָן וּרְישָׁ לְקִישׁ, חַד אָמַרְתִּים: מַחְלוֹקָת בְּסָלָעִים עַל דִּינָר, דִּינָר זָהָב יְמִינָן וְדָבָדָר לְיהִי בְּהָאָה וּוּמְנִין דְּמוֹסִיף לְיהִי אַיְהוּ לְכַהְנָה. אַלְאָ שְׁמַע מִינָה: טְבֻעָה הַיִּה, שְׁמַע מִינָה.

§ We learned in a mishna there (*Ma'aser Sheni* 2:7): **Beit Shammai say: A person may not transfer silver *sela* coins of tithe money or other consecrated coins into gold dinars^H through redemption, and Beit Hillel permit doing so. Rabbi Yohanan and Reish Lakish disagreed. One said: The dispute between Beit Shammai and Beit Hillel is with regard to exchanging silver *sela* coins for gold dinars, as Beit Shammai hold that the silver coins are currency and the gold coins are a commodity, and we do not desacralize currency with a commodity.^H And Beit Hillel hold that the silver coins are a commodity and the gold coins are currency,^N and we desacralize^B a commodity with currency.^N But everyone agrees that we desacralize produce with gold dinars.**

BACKGROUND

Redemption of the firstborn son – פִּיּוֹן הַבָּן: The mitzva to redeem a firstborn son is mentioned in several places in the Torah (Exodus 13:2; Numbers 3:11–13, 34:4–5). Following the plague of the firstborn in Egypt, the Torah determined that the firstborn son to emerge from a woman's womb, not one removed by caesarean section, is sanctified to God. There is a mitzva for the boy's father to redeem the son from a priest thirty days after his birth for a fixed sum of five *sela*. If the father fails to do so, it is incumbent upon the son to redeem himself once he turns thirteen. If the father is a priest or a Levite, or if the mother is the daughter of a priest or a Levite, there is no mitzva to redeem a firstborn son.

We desacralize – מַחְלִילָנִין: After a farmer gives *teruma* to the priests and first tithe to the Levites, he separates 10 percent of

the remaining produce as second tithe. Second tithe was taken during the first, second, fourth, and fifth years of the Sabbatical cycle. Once separated, the second-tithe produce was taken to Jerusalem to be consumed there by its owner.

If distance made transporting the second-tithe produce to Jerusalem difficult, or if the produce became ritually impure, it could be desacralized for money of equivalent value (Deuteronomy 14:25). That money was brought to Jerusalem and used to purchase food. If the owner desacralized his own produce, he was obligated to add one-fifth of its value to the money that he brought to Jerusalem. Only minted coins were used in this redemption, not paper money, bullion, or any other commodity. Once the money was used to purchase food it was desacralized, and the purchased food became consecrated and assumed the status of second-tithe produce.

מאי טעמא – מינו ורוהה אבון
לבית הילל בפרק ל' בית הילל, אף על
גב רקספא לבי דרבא פירא חוי,
לגב פירא – טבעא חוי, זרב נמי
לבית שמא, אף על גב דרבא לגב
קספא פירא חוי, לגב פירא טבעא
חו. ועוד אמר: אף בפירות על דינרין
מחולקת.

ולמאן דאמר אף בפירות על דינרין
מחולקת, אדרמי פלויסי בסלען על
דינרין – לפלאג בפירות על דינרין עלי
אי אייפלאג בפירות על דינרין – הווע
אמכיניא: חני מליל – בפירות על דינרין,
אבל בסלען על דינרין – מודו לנו
קספא פירא חוי, ולא מחולין, קא
משמע ?.

תסתיים דברי יוחנן הווא דאמר אין
מחולין, דאמר רבי יוחנן:

What is the reason for the difference between sela coins and produce? The reason is just as it is with regard to silver coins according to Beit Hillel. With regard to silver coins according to Beit Hillel, although silver coins relative to gold coins are a commodity, relative to produce they are currency. So too is the status of gold coins according to Beit Shammai: Although gold coins are a commodity relative to silver coins, relative to produce they are currency. Therefore, one may desacralize produce with gold dinars. And one said: Even with regard to the exchange of produce for dinars there is a dispute between Beit Shammai and Beit Hillel.

The Gemara asks: And according to the one who says: There is a dispute even with regard to the exchange of produce for dinars, then rather than disagreeing with regard to the exchange of sela coins for dinars let them disagree with regard to the fundamental case of desacralizing, the exchange of produce for dinars. The Gemara answers: Had they disagreed with regard to the exchange of produce for dinars, I would say: This matter applies only with regard to the exchange of produce for dinars. But with regard to the exchange of sela coins for dinars, Beit Hillel concedes to Beit Shammai that gold coins relative to silver coins are a commodity, and we do not desacralize currency with a commodity. Therefore, the *tanna* teaches us that they disagree in that case as well.

The Gemara suggests: Conclude that in this dispute between Rabbi Yohanan and Reish Lakish it is Rabbi Yohanan who said: One does not desacralize produce with gold dinars, as Rabbi Yohanan said:

Perek IV

Daf 45 Amud a

אסור ללוות דינר ברכישת.

It is prohibited for one to borrow a dinar and repay the loan with a dinar,^h because if the value of the dinar changes in the interim, both the borrower and the lender will have violated the prohibition against interest.

דינר דמא? אילימא דינר של בפרק
בדינר של בפרק, לגב נפשיה כי
אייכא למאן דאמר לאו טבעא חוי?
אללא פשיטה – דינר של זרב ברכישת
של זרב. ולמאן? אי לבית הילל – הא
אמורי טבעא חוי, אללא לאו – לבית
שמעאי. ושמע מינה: רבי יוחנן הווא
דאמר אין מחולין.

The Gemara elaborates: The reference is to a dinar of what type of metal? If we say the reference is to one who borrowed a silver dinar and repaid the loan with a silver dinar, is there anyone who says that silver relative to itselfⁿ is not currency? Rather, it is obvious that the reference is to one who borrowed a gold dinar and repaid the loan with a gold dinar. The Gemara continues its analysis: And in accordance with whose opinion does Rabbi Yohanan state this halakha? If it is in accordance with the opinion of Beit Hillel, don't they say that a gold dinar is currency? Rather, isn't it in accordance with the opinion of Beit Shammai? And learn from it that it is Rabbi Yohanan who said that according to Beit Shammai we do not desacralize produce with gold dinars, as he holds that they are not considered currency.

NOTES

דינר של בפרק לגב נפשיה
The Ra'avad writes that it is clear from the Torah as well as from experience that merchandise is purchased with silver. Indeed, it is written: "If you lend silver to My people" (Exodus 22:24), indicating that not only is it permitted to lend silver, it is a mitzva (see Rosh).

HALAKHA

To borrow a dinar and repay with a dinar – **לוות דינר ברכישת:** It is prohibited to borrow any item whose value is subject to fluctuating market prices, e.g., a *se'a* of produce, and to commit to repay an equivalent item, e.g., a *se'a* of produce, due to the concern that the item may increase in value, which would be tantamount to an interest-bearing loan. It is permitted to lend minted silver coins whose value is fixed, or other items,

provided that their monetary value is assessed at the time of the loan. One may not even borrow a gold coin and commit to repay a gold coin. The Rema cites an opinion that the legal status of gold coins today is that of minted coins, and it is customary to be lenient in this regard (*Shulhan Arukh, Yoreh De'a* 162:1).

BACKGROUND

Loan – הלואַה: While the Torah encourages lending money to the needy as a positive act, it renders it prohibited to take interest on that loan. Interest is defined as any sum added to the principal when returning the loan to compensate the lender for the period that the money was in the borrower's possession. By Torah law, it is prohibited to lend or borrow money with interest (Exodus 22:24; Leviticus 25:36–37; Deuteronomy 23:20). This prohibition applies to the borrower, the lender, and any scribe, witness, or guarantor who facilitates the loan. The prohibition against interest applies both to a monetary loan and to loans of any item in a case where the borrower is not required to return the item that he borrowed and instead may return the value of the item in money or merchandise. An instance where one borrows an item and commits to return a comparable item could involve a form of interest if the value of the article to be returned is greater than the value of the loaned item at the time it was given to the borrower. All of these halakhot are discussed at length in the fifth chapter of this tractate.

NOTES

With regard to a loan as well, a gold dinar is like a commodity – **לְגַם הַלוֹאָה נִמֵּנֶת פִּירָא הָיוֹ**: The logic of this claim is that since it is clear that the legal status of a gold dinar is not always that of currency but in some cases is that of a commodity, the concern is that a change in its value relative to silver dinars is like a change in the value of a commodity, and due to the severity of the prohibition against interest, executing this kind of loan is prohibited (Ramban).

With regard to one who exchanges [happoret] copper coins of second-tithe money for a *sela* – **הַפּוֹרֶט סֶלֶעֲנִמּוֹת**: Most commentaries explain, like Rashi, that this refers to amassing coins of smaller denominations, e.g., copper *perutot*, and exchanging them for a coin of a larger denomination. The Ritva points out that there are several places where this term *poret* is employed in the sense of exchanging several less valuable coins for a coin of greater value.

The Rambam and the Meiri maintain that the meaning here is consistent with the standard usage of changing a more valuable coin into coins of lesser value. According to their opinion, both this mishna and the one concerning an individual who exchanges money in Jerusalem which follows are referring to exchanging more valuable coins for ones of lesser value, and the only difference is with regard to the location where the money is changed.

Rabbeinu Tam asks: Apparently in this dispute, the ruling of Beit Shammai is more lenient than the ruling of Beit Hillel, as they do not seem to place any restrictions on the exchanging of the coins. Why then is this dispute not included in the list of rulings in the fourth chapter of tractate *Eduyot* where Beit Shammai rule more leniently than Beit Hillel? The commentaries answer that Beit Shammai do not merely permit exchanging the *perutot* for a more valuable coin (Rashi), but they require him to do so, as it is more likely that the many copper coins will corrode. Therefore, there is also a stringency in the opinion of Beit Shammai (Ramban).

לא, לעולם איקמא לך רבוי יוחנן הוּא
דאמר מוחלטין, ושאמני הלוֹאָה, בינוֹ
דלענין מתקח וממכר שׂוֹיְהוּ וּבָנְבָן כִּי
פִּירָא, דְּאָמְרוּ אַיְהוּ יְהוָה וְאָזְקִיר וְיַלְלֵל
לְגַם הַלוֹאָה נִמֵּנֶת פִּירָא הָיוֹ

הַכִּי נִמֵּי מִסְתְּבָרָא, דְּכִי אַתָּה וּבֵין
אָמַר רַבִּי יוֹחָנָן: אָרְעָל פִּי שָׁאָמָר אָסָו
לְלוֹוֹת דִּינָר בְּדִינָר, אָבֵל מִוחְלָלִין מַעַשָּׂר
שְׁנִי עַלְיוֹ, שְׁמֻעַ מִנְהָה.

תֵּא שְׁמַע: הַפּוֹרֶט סֶלֶעֲנִמּוֹת מַעַשָּׂר
שְׁנִי, בֵּית שְׁמָאי אָמְרִים: בְּכָל הַסֶּלֶעֲנִמּוֹת,
מַעַשָּׂר, וּבֵית הַלְּלָא אָמְרִים: בְּשֶׁקֶל כִּסְף,
בְּשֶׁקֶל מִעוּדָה, דְּשַׁתָּא לְבִת שְׁמָאי לְגַם
פְּרִיטִי מִוחְלָלִין, לְגַם דְּחָבָא מִיעַבְעָא?
שְׁאַנְיִ פְּרִיטִי, בְּאַתָּרָא דְּסָגִין – חֲרִיף.

לִישְׁאָא אַחֲרִיאָא, אָמְרִי לְהָ: רַבִּי יוֹחָנָן
וּרְישָׁ לְקִישׁ, חֲדָא אָמוֹר: מְחַלּוֹקָת בְּסֶלֶעֲנִי
עַל דִּינָרִים, דְּבִית שְׁמָאי קָבָרִי: הַכִּסְף –
כִּסְף רַאשָׁוֹן, וְאַנְיִ כִּסְף שְׁנִי.

The Gemara rejects this proof: **No, actually I will say to you that it is Rabbi Yohanan who said** that even according to Beit Shammai we desacralize produce with gold dinars. **And the halakha of a loan⁸ is different from the halakha of desacralizing second tithe, as with regard to buying and selling, the Sages deemed** the legal status of a gold dinar like that of a commodity. **As we say: It is the gold that appreciates and depreciates in value, in accordance with the halakha in the mishna:** When one party takes possession of the gold coins, the other party acquires the silver coins. **With regard to a loan as well, the legal status of a gold dinar is like that of a commodity⁹, and therefore there is concern that they may violate the prohibition against interest.**

The Gemara comments: **So too, it is reasonable to say that this is Rabbi Yohanan's opinion, as when Ravin¹⁰ came from Eretz Yisrael he said that Rabbi Yohanan says:** Even though they said that it is prohibited to borrow a gold dinar and repay the loan with a gold dinar, yet, one may desacralize second tithe with a gold dinar. **Conclude from it that it is Rabbi Yohanan who said that one desacralizes second-tithe produce with a gold dinar.**

Apropos redemption of second-tithe produce with gold, the Gemara cites proof from a mishna (*Ma'aser Sheni* 2:8). **Come and hear:** With regard to one who exchanges copper coins of second-tithe money for a silver *sela*¹¹ coin to ease its transport to Jerusalem, **Beit Shammai say:** He may exchange the copper coins for the entire silver *sela*. And **Beit Hillel say:** He may exchange the copper coins for a silver shekel, which is equivalent to half a *sela*, and with regard to the other shekel, he must retain the copper coins. Now, if according to Beit Shammai we desacralize second-tithe produce with copper *perutot*, is it necessary to mention the fact that it may be desacralized with gold coins? The Gemara rejects that proof: **Perutot are different, as in a place where they are in circulation, they circulate more easily than silver coins.**

§ There is another version of this discussion, and some say that this is the dispute between **Rabbi Yohanan and Reish Lakish**. **One said:** The dispute between Beit Shammai and Beit Hillel is with regard to exchanging silver *sela* coins for gold dinars, as **Beit Shammai hold** that when the verse states: "And you shall bestow the money and you shall bind the money in your hand" (Deuteronomy 14:25), the term "**the money**" is referring to the **first money**, i.e., the very money with which the second-tithe produce was desacralized, and it is not referring to the **second money**, e.g., gold coins that became second-tithe money by virtue of their being exchanged with second-tithe silver *sela* coins. Evidently, the money with which the second-tithe produce was desacralized must be taken to Jerusalem and it may not be exchanged for other coins.

Ravin – רבין: An abbreviation of Rabbi Avin, who is called Rabbi Bun in the Jerusalem Talmud. He was the most important among those who descended from Eretz Yisrael to Babylonia during the time of the third and fourth generations of Babylonian *amora'im*.

Rabbi Avin was born in Babylonia and immigrated to Eretz Yisrael in his youth. There he studied Torah under Rabbi Yohanan, who lived to a very old age. After Rabbi Yohanan's death, Ravin studied under his many students. Rabbi Avin was appointed to be one of the Sages who were sent to Babylonia to disseminate both innovative Torah insights from Eretz Yisrael and various traditions of Eretz Yisrael that were unknown in other lands.

Rav Dimi was the emissary from Eretz Yisrael before Ravin. Ravin transmitted new and revised formulations of the *halakhot*. Therefore, he is considered an authority, and, as a rule, the *halakha* was decided in accordance with his opinion.

Ravin returned to Eretz Yisrael several times. There he served as transmitter of the Torah studied in Babylonia. His statements are often cited in the Jerusalem Talmud. Little is known about his family and the rest of his life. It is known that his father died even before he was born and that his mother died when he was born. Some say that his father's name was also Rabbi Avin and that he was named after him. Some believe that the *amora* of Eretz Yisrael Rabbi Yosei bar Bun was his son.

PERSONALITIES

ובית הילל סברוי: הכספי בכספי ריבר, ואפלו בכספי שני. אבל פירות על דינרין – דברי הכל מוחלلين, דאכתי בכספי ראשון הוא.

And Beit Hillel hold that since it is written: “**The money**,” and this second mention of **money** in that verse is superfluous, the term “**the money**” serves to **include even second money**. Accordingly, the verse teaches that money with which the produce was desacralized may be exchanged for other money that will be brought to Jerusalem. The Gemara continues its citation of this first explanation of the dispute between Beit Shammai and Beit Hillel: **But with regard to desacralizing produce with dinars, everyone agrees that we desacralize produce in that manner, as the gold dinars are still the first money used for desacralizing, as any type of money can be used for desacralizing second-tithe produce.**

וחד אמר: אף בפירות על דינרין גמ' מהלוקת.

ולמאן דאמר סלעין על דינרין מהלוקת, אדרמי פליי בסלעין על דינרין לפלוי בסלעין על סלעין?

אי אפלגי בסלעין על סלעין – זהה אמיאו: הני מייל – בסלעין על סלעין, אבל בסלעין על דינרין – מוזו לה בית הלל לביית שמאוי דרבא לבוי, בספאת פירא הוי, ולא מוחלلين, קא משמע לא.

תא שמע: הפורט סלע של מעשר שני בירושלים, בית שמאוי אומרם: בכל הפלע מועות, ובית הלל אומרם: בשקל כסף, בשקל מועות. השתא בספאת לבוי פריטי מוחלلين, ולא אמרין כסף ראשון ולא כסף שני, שני, לבוי דרבא דחשייב מיגיה, כי אמרין כסף ראשון ולא כסף שני?

אמר רבא: ירושלים קמותבתה? שאני ירושלים, דכתיב ביה: “ונתנה הכל בכל אשר תאה נפשך בפרק ובצאן.”

תא שמע: הפורט סלע ממיעות מעשר שני, בית שמאוי אומרם: בכל הפלע מועות, ובית הלל אומרם: בשקל כסף, בשקל מועות!

HALAKHA

One who exchanges a silver *sela* of second-tithe money – **הפורט סלע של מעשר שני**: One who exchanges the equivalent of a *sela* in second-tithe money may not exchange the entire sum for copper *perutot*, whether or not he is in Jerusalem. Rather, he exchanges half into copper *perutot* and the other half into silver coins, which are more durable, in accordance with the opinion of Beit Hillel (Rambam *Sefer Zera'im*, *Hilkhot Ma'aser Sheni* 5:14).

First money and not second money – **בכרי ראשון ולא כסף שני**: One may not desacralize second-tithe coins by exchanging them with other coins, neither silver coins for silver coins, nor silver coins for copper coins, nor copper coins for silver coins. If he did so, the coins are desacralized (see *Kesef Mishne* and *Radbaz*). Apparently, the Sages permitted exchange of coins for other coins if the second coins had greater circulation than the first (Rambam *Sefer Zera'im*, *Hilkhot Ma'aser Sheni* 4:5).

NOTES

One who exchanges a silver *sela* of second-tithe money into copper coins in Jerusalem – **הפורט סלע של מעשר שני בירושלים**: Apparently, Beit Shammai hold that one exchanging the *sela* in a single transaction to avoid paying a service charge to the money changer twice. Beit Hillel are concerned that the copper coins could corrode, and therefore they allow him to exchange the *sela* at his discretion (see *Ravad* and *Rash*). It is stated in the Jerusalem Talmud that Beit Shammai hold one can exchange the *sela* as he wishes, and that this dispute should certainly be included in the list of lenient rulings of Beit Shammai in tractate *Eduyot*.

Jerusalem is different – **שאנן ירושלים**: Doesn't the verse: “**And you shall bestow the money**,” refer only to the acquisition of food? How can one derive from it that one may exchange the coin for *perutot*? The *Ravad* explains that since *perutot* are the currency used to purchase the food listed in the verse, they are included in the instruction of the verse to purchase food, and no additional source is necessary. The *Rosh* writes that although the details listed in the verse are foods, the verse subsequently states: “**For whatever your soul desires**,” indicating that the money may also be exchanged for items other than food.

And one said: There is a dispute between Beit Shammai and Beit Hillel even with regard to the desacralizing of **produce with dinars**, as to whether desacralizing must be accomplished with silver or if it can be accomplished even with gold.

The Gemara challenges: **But according to the one who says:** The dispute between Beit Shammai and Beit Hillel is with regard to exchanging silver *sela* coins for gold *dinars*, rather than disagreeing with regard to exchanging of silver *sela* coins for gold *dinars*, let Beit Shammai and Beit Hillel disagree with regard to the more straightforward case of exchanging *sela* coins for *sela* coins, as according to those who forbid exchanging a *sela* for *dinars*, exchanging a *sela* for a *sela* is also forbidden, as one may not convert the second-tithe sanctity to second money.

The Gemara explains: **Had they disagreed with regard to the exchange of *sela* coins for *sela* coins, I would say:** This matter applies only with regard to exchanging *sela* coins for *sela* coins, but with regard to exchanging *sela* coins for *dinars*, Beit Hillel concede to Beit Shammai that gold coins relative to silver coins are a commodity, and we do not desacralize currency with a commodity. Therefore, the *tanna* teaches us that they disagree in the case of exchanging silver *sela* coins for gold *dinars* as well.

The Gemara suggests: **Come and hear proof to the correct ruling in this dispute from a mishna (*Ma'aser Sheni* 2:9):** With regard to one who exchanges a silver *sela* of second-tithe money for copper coins in Jerusalem,¹⁰ Beit Shammai say: With the entire *sela* he executes the exchange for copper coins; and Beit Hillel say: He may exchange half the *sela* for a silver shekel, and half the *sela* for copper coins having the value of a shekel. The Gemara analyzes the mishna: Now if we allow him to desacralize silver coins for *perutot*, and we do not say that there is a Torah decree of first money and not second money,¹¹ then with regard to gold, which is more valuable than silver, do we say that there is a Torah decree of first money and not second money?

Rava said in response: Are you raising an objection from the *halakha* of exchanging coins within Jerusalem in order to apply it to the *halakha* of exchanging coins outside of Jerusalem? The legal status of **Jerusalem is different**¹² with regard to exchanging second-tithe coins, as it is written with regard to Jerusalem: “**And you shall bestow the money for whatever your soul desires, for cattle or for sheep**” (Deuteronomy 14:26). One may utilize the money in Jerusalem in any manner he chooses.

Come and hear proof from the mishna (*Ma'aser Sheni* 2:8): With regard to one who exchanges copper coins of second-tithe money for a silver *sela* coin to ease its transport to Jerusalem, Beit Shammai say: He may exchange the copper coins for the entire silver *sela*. And Beit Hillel say: He may exchange the copper coins for a silver shekel, which is equivalent to half a *sela*, and with regard to the other shekel, he must retain the copper coins. This constitutes proof that everyone agrees one may exchange second-tithe coins for other coins.

אֶלָּא: דְכֹוֵל עַל מָא הַכְסָף כְסָף רִיבָה,
וְאֶלָּא בְסָף שְׁנִי. אֶלָּא אֵי אַיִתְמָר דָרְבִי
יְהָנָן וְרַבִי שְׁמֻעוֹן בָן לְקִישׁ – הַכִּי אַיִתְמָר,
חֲדָא אָמָר: מִתְחַלְקַת בְּסָלְעִין עַל דִינְרִין, דְבִית
שְׁמָאי סְבָרִי גּוּרִין

Rather, the Gemara abandons its previous explanation of the dispute and states that everyone agrees that since it is written: “The money,” and this second mention of money in that verse is superfluous, the term “the money” serves to include even second money. Rather, if the dispute between Rabbi Yohanan and Rabbi Shimon ben Lakish was stated, it was stated like this: One said: The dispute between Beit Shammai and Beit Hillel is with regard to the exchange of silver *sela* coins for gold dinars. As Beit Shammai hold: We issue a decree rendering it prohibited to do so,

Perek IV

Daf 45 Amud b

NOTES

It should have been phrased in terms of, we desacralize and, we do not desacralize – *מִתְחַלְלִין וְלֹא מִתְחַלְלִין*: The formulation: One may not do, indicates that one may not do so *ab initio*, whereas the formulation: We do not desacralize, indicates that even after the fact the action is ineffective even by Torah law (see Tosafot, Sukka 2a). Some explain that there is a difference between the desacralizing of produce by the owner, which requires an additional payment of one-fifth, and exchanging coins, which requires no additional payment. According to the opinion that exchanging less valuable coins for more valuable ones is permitted by Torah law, just as produce is desacralized with money, coins of less value are desacralized with more valuable ones. If, however, it is not effective by Torah law, there is no desacralization. It is merely a rabbinic ordinance instituted in the interest of convenience (*Hiddushei Rav Meir Simha*).

The form is apt to be canceled – *צְוָרָא עֲבִיאָה דְבָטָלָה*: Rashi and the Ba'al HaMaor explain that since the authorities can declare the form obsolete, the coin is considered incomplete and therefore unlike the item employed in the transaction from which the transaction of exchange is derived (see Ruth 4:7). Most commentaries (Ramban; Rashba; Ran) maintain that coins cannot effect a transaction of exchange because the party is focused on the form minted on the coin, i.e., the purpose it serves as currency, rather than its actual value as metal. The transaction of exchange can be effected only with items whose value is intrinsic. The Meiri writes that transactions are predicated on the assumption that the items exchanged will endure. Since the form of coins can be repealed, one cannot rely on the fact that they will endure.

BACKGROUND

Exchange – *תְּלִיפָן*: Exchange is a legal act of acquisition formalizing the transfer of ownership of an article. Once two parties agree on the barter of one article for another, the acquisition by one party of one of the articles through a recognized mode of acquisition, e.g., through pulling, automatically causes the second article to become the property of the other party. This principle is also the basis for the transfer of ownership by means of a cloth, a symbolic form of barter that extends the principle of exchange to many formal legal acts of acquisition. In a symbolic exchange the parties are interested in the acquisition of only one item; the other, nearly worthless, item is used only for a symbolic act of transfer. This type of symbolic exchange is referenced in the Writings (Ruth 4:7), where a shoe or a glove was employed instead of a cloth.

שְׁמָאי יְשַׁהָה עַל יְהָוָה, דִימְנָן דְלָא מְלָוּ זְוִי
בְּדִינָרָא וְלֹא מְסִיק, וּבֵית הַלְּ סְבָרִי, לֹא
גּוּרִין שְׁמָאי יְשַׁהָה עַל יְהָוָה, דְכִי לֹא מְלָוּ נְמִי
בְּדִינָרָא אַסְפִיק מְסִיק לְהָ, אַבְלָ בְּפִירּוֹת עַל
דִינָרִין – דָבָר הַכָּל מִתְחַלְלִין, דְבִינוֹן דְמְרָכְבָה
לֹא מְשַׁחֵה לְהָ.

וְחֲדָא אָמָר: אַפְילּוּ בְּפִירּוֹת עַל דִינָרִין נְמִי
מִתְחַלְקַת.

בְּשַׁלְמָא לְהָן לִישְׁנָא דְאָמָרָת דְמַדָּא רַיִתָא
מִשְׁרָא שְׁרִי, וּרְבָנָה הוּא דְגַנוּ בֵיה – הַיָּנוּ
דְקַרְתִּי יְשַׁהָה וְלֹא יְשַׁהָה. אֶלָּא לְהָן לִישְׁנָא
דְאָמָרָת דְמַדָּא רַיִתָא פְלִיגִין, מִתְחַלְלִין וְלֹא
מִתְחַלְלִין מְבָשֵׁי לְהָ קְשִׁיאָ.

אַיִתְמָר, רַב וְלוֹוי, חֲדָא אָמָר: מְטֻבָע נְשָׁה
חַלְפִין, וְחֲדָא אָמָר: אֵין מְטֻבָע נְשָׁה חַלְפִין.
אָמָר רַב פָּפָא: מַאֲי טֻמָּא דְמַאֲן דְאָמָר
אֵין מְטֻבָע נְשָׁה חַלְפִין – מְשֻׁוּם דְרַעַתִּיה
אֲצֹרְתָא, וְעֲרָתָא עֲבִיאָה דְבָטָלָה.

lest one delay his ascension to Jerusalem due to this exchange, as sometimes the silver coins do not amount to the entire gold dinar, and he will not ascend to Jerusalem until he has collected enough silver dinars to exchange for a gold dinar. And Beit Hillel hold: We do not issue a decree lest he delay his ascension, as even if the silver coins do not amount to the entire gold dinar he will ascend with the silver coins. But with regard to desacralizing produce with dinars, everyone agrees that we desacralize produce in this manner, due to the fact that since the produce rots, he certainly does not delay taking the produce to Jerusalem until they equal an entire gold dinar.

And one said: Even with regard to the exchange of produce for dinars there is a dispute, due to the concern that one will delay bringing his produce to Jerusalem until the value of his second-tithe produce is equal to a gold coin.

The Gemara asks: Granted, according to that version of the dispute in which you said that everyone agrees the exchange of silver *sela* coins for gold dinars is permitted by Torah law and it is the Sages who issued a decree forbidding it, this is the reason that the dispute between Beit Hillel and Beit Shammai is taught in terms of the formulation: One may do, and: One may not do, as this is the language of a prohibition *ab initio*. But according to that version of the dispute in which you said that it is with regard to the halakha by Torah law that they disagree, it should have been phrased in terms of the formulation: We desacralize, and: We do not desacralize,^N since if the practice is forbidden by Torah law, the exchange of silver *sela* coins for gold dinars is ineffective even after the fact. The Gemara concludes: Indeed, according to the latter version, it is difficult.

§ It was stated that there is a dispute between Rav and Levi. One said: Money can be an item used to effect exchange.^B And one said: Money cannot be the item used to effect a transaction by means of exchange,^H as that form of transaction is effective only with regard to items such as produce and vessels. Rav Pappa said: What is the reason for the opinion of the one who says that money cannot be the item used to effect a transaction by means of exchange? It is because the mind of the one acquiring the coin is on the form minted on the coin, not the value of the metal, and the value due to the form is apt to be canceled^N by the authorities. Therefore, in the eyes of the party acquiring it, the coin itself has no real value and therefore cannot be an item used to effect exchange.

HALAKHA

Money cannot be the item used to effect a transaction by means of exchange – *אֵין מְטֻבָע נְשָׁה חַלְפִין*: All movable items can effect the transaction of exchange to purchase another item, with the exception of coins, which can neither effect that transaction nor be acquired in that manner (*Shulhan Arukh, Hoshen Mishpat* 203:1).

תנ: זהב קונה את הכסף, מאי לאו
בחיליפין, ושבעו מינה: מtbody נעשה
חליפין! לא, ברומים. אֵי הַזָּהָב קוֹנָה
את הכסף? מחייב מבעי ליה! תני: זהב
מח'יב.

We learned in the mishna: When one party takes possession of the gold coins the other party acquires the silver coins.^h What, is the reference **not** to a case where the gold coins were given in order to acquire the silver coins **by means of exchange**, and therefore one can learn from it that a coin can be an item used to effect exchange? The Gemara rejects this proof: No, it is referring to a standard purchase effected by **means of giving money**. The Gemara raises a difficulty: If so, the language of the mishna is imprecise, as what is the meaning of: When one party takes possession of the gold coins, the other party acquires the silver coins? It should have stated: When one party takes possession of the gold coins, it **obligates him** to give the silver coins. The Gemara answers: Emend the text and teach: When one party takes possession of the gold coins, it **obligates himⁿ** to give the silver coins.

הכ נמי מסתברא, מדקתי סיפה: הכספי
איינו קונה את הזהב. אִם אַמְרָת בְּשָׁלְמָא
ברומים - הַיְנוּ דְאַמְרֵין דְהַבָּא פִּירָא
וכספָא טְבָעָא, וְטְבָעָא פִּירָא לְאַקְמָן.
אַלְאָא אִם אַמְרָת בְּחִילִיפִין - תְּרוּיוּיְהוּ לְקַנְןָ
אַהֲדָדִי.

ועוד, תנייא: הכספי איינו קונה את
זהב. כיוצא? מכר לו עשרים וחמשה
דינר של כסף בידיר של זהב, אף על
פי שמשך את הכספי - לא קונה עד
שים שוך את הזהב. אִם אַמְרָת בְּשָׁלְמָא
ברומים - משום ה'כ' ל'קמ. אַלְאָא
אמ'רתו בְּחִילִיפִין - נקיין!

אַלְאָא מַאֲי - בְּדָמִים? אֵי הַכִּי אִימָא
וַיְשָׁא: הַזָּהָב קוֹנָה את הכסף, ביצדר?
מכר לו דינר של זהב בעשרים וחמשה
דינר של כסף, בין שמשך את הזהב -
נקה כסף בכל מקום שהוא.

אִם אַמְרָת בְּשָׁלְמָא בְּחִילִיפִין - הַיְנוּ
דְקַתְנִין נקנה כסף בכל מקום שהוא.
אַלְאָא אִם אַמְרָת בְּדָמִים - הַאֲי נקנה
כסף בכל מקום שהוא? מחייב גברא
מבעי ליה!

The Gemara comments: So too, it is reasonable to interpret the mishna in that manner, from the fact that it teaches in the latter clause of the mishna: When one party takes possession of the silver coins, the other party does not acquire the gold coins. Granted, if you say that this is a purchase effected by means of giving money, this is the meaning of that which we said: Gold is a commodity, and silver is currency, and currency does not effect acquisition of a commodity. But if you say that the mishna is referring to an acquisition effected by means of exchange, let both acquire the coins simultaneously from each other.

And furthermore, it is taught in a *baraita*: When one party takes possession of the silver coins, the other party does not acquire the gold coins. How so? If one sold twenty-five silver dinars to another for a gold dinar,^b even though he pulled the silver into his possession, he does not acquire it until the other person pulls the gold into his possession. Granted, if you say that this is a purchase effected by means of giving money, it is due to that reason that he does not acquire the gold coins; the transaction is effected only by taking possession of the purchase item. But if you say that this is an acquisition effected by means of exchange, let him acquire the gold by pulling the silver; in a transaction of exchange the two parties acquire the two items simultaneously.

The Gemara continues: Rather, what then is the nature of the transaction? Is it a purchase effected by means of giving money? If so, then say the first clause of the *baraita*: When one party takes possession of the gold coins the other party acquires the silver coins. How so? If one sold a gold dinar to another for twenty-five silver dinars, once he pulled the gold coin into his possession the silver coins are acquired wherever they are.

The Gemara challenges: Granted, if you say that this is an acquisition effected by means of exchange, this is the meaning of that which is taught: The silver coins are acquired wherever they are, as that is the nature of the transaction of exchange. But if you say that this is a purchase effected by means of giving money, this phrase: The silver coins are acquired wherever they are, is incorrect, as the *tanna* should have stated: Once he pulled the gold coin into his possession the man is obligated to pay for his acquisition, as he is not required to pay with those particular silver coins.

HALAKHA

When one party takes possession of the gold coins the other party acquires the silver coins – **הַזָּהָב קוֹנָה את הכסף** – **הַיְנוּ** purchases gold coins with silver coins, as soon as one pulls the gold the other party is obligated to pay the silver (*Shulhan Arukh, Hoshen Mishpat* 203:4).

NOTES

Teach, when one party takes gold coins it obligates him – **תני**: This is not an emendation of the mishna. Rather, it is an interpretation of the term acquires, in the sense of assumption of an obligation (Rosh).

BACKGROUND

Dinars of gold and silver – **דִינֶרֶי זָהָב וּכֶסֶף**: In talmudic times 1 to 25, so the difference in their relative value was significant. The average ratio in value between gold and silver dinars was

HALAKHA

As they are – בָּמֹת שְׁחוֹא: One who committed to pay a silver dinar for merchandise may not deviate from paying with the coin that he stipulated, whether with a new coin or with an old coin (*Shulhan Arukh, Hoshen Mishpat* 203:4).

NOTES

To age them – לִשְׂעַן: Even if the older coins are of superior quality, the individual insists on receiving the new coins (Rabbeinu Hananel). This proves that when one sells an item, he is not selling the value of the item but the item itself. Therefore, one may not exchange the item even for a higher-quality item (*Ritva*; see *Shita Mekubbetzetz*).

This produce is hereby given – חֶרֶי פִּירֹת הַלְלוּ נְטוּנִים: Apparently this is counter to the opinion of Rabbi Meir, who holds that second-tithe produce is consecrated property and one may not give it as a gift (see *Rosh*). Some explain that the reference here is to a time before the produce was tithed, as everyone agrees that at that point it can be given as a gift.

אמר רב אשי: לעולם בזקמים, ומאי בכל מקום שהוא – בימות שחווא, ברדא אמר ליה. אֵי אָמַר לַיה מַאֲרָנָקִי חֶדֶשׁ זַיְבִּיא לְךָ – לֹא מֵצִי יְחִיב לְהָ מַאֲרָנָקִי יְשַׁנָּה אָף עַל גַּב דַּעֲדִיפִי מִינְיוֹהוּ. מַאי טַעַמָּא? דָּא מַר לְיה: לשונן קא בעינא להו.

Rav Ashi said: Actually, the reference is to a purchase effected by means of giving money. And what is the meaning of: **Wherever they are?** It means, as they are,^H i.e., exactly as the owner of the silver said to him, and he cannot replace them with a different classification of coins. How so? If the owner of the silver coins said to the owner of the gold coin: I will give you payment from a purse in which there are new coins, he cannot give him payment from a purse in which there are old coins, even though old coins are preferable relative to new coins because people trust that used coins are authentic. **What is the reason** that the owner of the gold would prefer new silver coins? It is that he says to the owner of the silver: I need them in order to age them;^N i.e., these coins will remain in my possession for a long time, and old coins will blacken in these circumstances.

אמר רב פפא: אָפִילוּ לְמַאן דָּא מַר אַיִן מִטְבָּע נָעַשָּׂה חַלְיפִין, מַיְעַבְדָּה הוּא דְלֹא עַבְדֵי חַלְיפִין, אַקְנָנוּ – בְּמִקְנָנוּ בְּחַלְיפִין, מִידִי דְהָוה אַפְירָא לְרַב נְחַמָּן. פִּירָא לְבָב נְחַמָּן, לֹא אוֹ אָף עַל גַּב דְּאִיְחוֹ לֹא עַבְדֵי חַלְיפִין אַקְנָנוּ בְּמִקְנָנוּ בְּחַלְיפִין, טְבֻעָה נָמֵי לֹא שְׁנָא.

Rav Pappa says: Even according to the one who says: Money cannot be the item used to effect a transaction by means of exchange, this means only that money does not effect a transaction of exchange; but he concedes that money is acquired by means of a transaction of exchange. If one party pulls a vessel into his possession, the other party acquires silver coins in exchange, just as it is with regard to produce, according to the opinion of Rav Nahman. Is it not the case that even though according to the opinion of Rav Nahman produce itself does not effect a transaction of exchange, nevertheless produce is acquired by means of a transaction of exchange? Currency, too, is no different.

מיתיבי הָה עוֹמֵד בְּגָנוֹן וְאַיִן בְּיַדוֹ מַעֲוֹת, אָמַר לְחַבְרוֹ: חֶרֶי פִּירֹת הַלְלוּ נְטוּנִים לְךָ בְּמִתְנָה,

The Gemara raises an objection to the opinion of Rav Pappa from a *baraita*: One was standing on the threshing floor and had no money in his hand, and wanted to desacralize his second-tithe produce without paying an additional one-fifth. The *halakha* is that one who desacralizes his own produce must add one-fifth to its value. This man wants to engage in artifice as if he sold the produce to another, thereby enabling him to desacralize it without adding one-fifth. To that end, he says to another: This produce is hereby given^N to you as a gift,

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וְתוּרוֹ וְאָמַר: הָרָי הַן מְחוֹלָלֵין עַל מַעֲוֹת שְׁשִׁים לִבְבֵית. טַעַמָּא: דָּא יַי בְּיַדוֹ מַעֲוֹת, הָא אָם יַש בְּיַדוֹ מַעֲוֹת – לַיְקַעַ לְהוּ לְאַיְדֵךְ בְּמִשְׁכָה, וְפַרְיךָ. דָּהַי עַדְךָ דְהָוה לְהַנְּכָרִי.

and then he says: This second-tithe produce that now belongs to you is hereby desacralized on coins that I have at home. The Gemara infers: The reason that it is necessary to employ this artifice is that he does not have coins in his hand. But if he has coins in his hand let him transfer ownership of the coins to the other person by means of the transaction of pulling, and then that other person will desacralize the second-tithe produce. The reason for this is that this procedure is preferable, as the one who desacralizes the produce is a stranger, not the owner of the produce. Therefore, it appears less like artifice designed to circumvent paying the additional one-fifth.^{NH}

NOTES

Artifice in the redemption of tithe – הַשְׁרָמָה בְּקָרְבָּן מַשְׁרָר: The Torah states that a person who desacralizes his own tithe must add one-fifth of its value (*Leviticus* 27:31). The same applies to the desacralizing of consecrated items. The Sages permitted employing artifice to avoid incurring this additional payment.

This is accomplished by means of a pro forma sale of the tithe, after which the owner repurchases it. When he desacralizes the tithe thereafter, it is considered that he is desacralizing another's tithe, for which one is not required to pay the additional one-fifth.

HALAKHA

Artifice in the redemption of tithe – הַשְׁרָמָה על פְּנֵין מַשְׁרָר: It is permitted to engage in artifice in the redemption of second tithe. One can give his produce as a gift while it is still untithed,

after which he declares: This produce is desacralized with coins in my house (*Rambam Sefer Zera'im, Hilkhot Ma'aser Sheni* 5:10).

- **אי אמורת מטבח נקנו בחיליפין**
ייקנו ליה מועות להיאן אגב סיידר
ולפרוקן! דלית ליה סודה. ונקיינהו
נהליה אגב קרקען דלית ליה קרקען.

הא עומדר בגוון קתני בגורן שאינו
שלו. ואיכפלתנאו לאשומען גבריא
ערטילאי, דלית ליה ולא כלום! אלא
לאו שמע מינָה: אין מטבח נקנו
בחיליפין, שמע מינָה.

ואף רב פפא הדר בהה. כי הא דרב
פפא הו ליה קריסר אלפי דינרי בי
חויא, אקיניהו לרוב שמואל בר אחא
אנב אסיפה זביהה. כי אתה – נפק
לאפיה עד הוו.

The Gemara continues to state its objection to the opinion of Rav Pappa. **And if you say a coin is acquired by means of a transaction of exchange**, then even if the owner of produce has no money in his hand, let the owner transfer ownership of the coins, wherever they are, **to the other person by means of a cloth**, as he can perform a transaction of symbolic exchange with a cloth; **and then let the other person desacralize** the produce. The Gemara answers: The case in the *baraita* is one in **which he does not have a cloth**. The Gemara challenges: **And let the owner transfer ownership of the coins to the other person by means of land**, i.e., perform an act of transaction concerning the land and include the coins in the transaction. The Gemara answers: The case in the *baraita* is one in **which he does not have land**.^N

The Gemara asks: **But isn't it taught in the baraita that he is standing on the threshing floor?** The Gemara answers: He is standing on a threshing floor that is not his. The Gemara asks: **And did the tanna go to all that trouble just to teach us the case of a naked man**, i.e., one who has nothing at all? It is unlikely that a *baraita* would be devoted to so remote a case. Rather, must one **not conclude from it that money is not acquired by means of a transaction of exchange?** The Gemara affirms: **Learn from it that this is the halakha.**

The Gemara relates: **And even Rav Pappa^P retracted his previous statement that coins are acquired by means of a transaction of exchange, as in this incident in which Rav Pappa had twelve thousand dinars that he lent to another in Bei Hozai.^B He transferred ownership of the dinars^H to his agent, Rav Shmuel bar Aha,^P by means of granting acquisition of the threshold of his house^N to him, to enable the agent to demand repayment of the loan on his own behalf. This obviated the need for him to consult Rav Pappa in the case of every contingency, which would complicate matters. It is apparent from the fact that the transaction was effected by means of granting acquisition of the threshold that Rav Pappa concedes that coins are not acquired by means of a transaction of exchange. When Rav Shmuel bar Aha came after repayment of the loan, Rav Pappa was so pleased that he went out as far as Tevakh^N to meet him.**

NOTES
ד' דלית ליה קרקען: In which he does not have land – The question is raised: If one owns no land, how does he have produce to tithe? The Ritva answers that this case is referring to a sharecropper, who works land that belongs to another and who receives a portion of the crop as wages. *Tosafot* and others ask: Why not have the produce owner admit that the produce belongs to another person, in which case it will be regarded as the latter's even without a formal act of acquisition? The Meiri and *Torat Hayyim* answer that since the produce owner's objective is to fulfill his obligation to Heaven, it cannot be accomplished by means of a false admission.

יא: איכפלתנאו: And did the *tanna* go to all that trouble – This expression, which appears throughout the Talmud, calls into question a forced interpretation of a mishna establishing that the *tanna* addressed a rare occurrence. It is unreasonable to assume that a *tanna* would teach an apparently general *halakha* that in fact applies only to unique circumstances.

יא: אסיפה דביתיה: The threshold [assippa] of his house – Rashi in *Bava Kamma* (104b) explains that the reference here is not to the threshold [saf], but to the end [sof], or corner or edge of his house.

יא: שע' תווה: As far as Tevakh – Rabbeinu Hananel explains that Tevakh is the name of a place. Some commentaries explain that when Rav Shmuel bar Aha returned, Rav Pappa met him halfway [tavekh] as an expression of joy at his successful collection of the entire sum.

BACKGROUND

יב:Bei Hozai: During the talmudic era, the Persian kingdom was divided by the Sassanid rulers into separate states. The Bei Hozai region was adjacent to the Persian Gulf, far from Jewish population centers, which were located in the Bei Armai region in what had once been ancient Babylonia.

HALAKHA

כיצד מכנקה מטבח: How does one transfer ownership of a coin – Coins cannot be acquired by means of a transaction of exchange; rather, they must be handed directly to the party acquiring them. If the coins are located elsewhere, one can transfer ownership only together with a transfer of ownership or rental of land to the recipient. This is possible only with existing coins, e.g., if they are deposited with another who admits that they belong to the owner, as indicated in the incident involving Rav Pappa (*Shulhan Arukh, Hoshen Mishpat* 203:1, 3, 9).

PERSONALITIES

Rav Pappa – ר' רב פפא: Rav Pappa was of the fifth generation of Babylonian *amora'im*. He was a student of both Abaye and Rava in Pumbedita. Rav Pappa established an academy in Nerez, where he was joined by his close friend Rav Huna, son of Rav Yehoshua, who delivered the principal lecture. After Rava's death, many of his disciples came to study with Rav Pappa, who had more than two hundred students attending his lectures.

Rav Pappa's father was a wealthy merchant who supported him throughout his many years of study. Rav Pappa became a successful and wealthy businessman in his own right as a brewer of date beer. He also prospered in other business ventures. The Talmud records that he engaged in trade with both Jews and gentiles and had a reputation for fairness and generosity in his business dealings. Rav Huna became his partner in many of those undertakings and became wealthy as well.

Rav Pappa had great respect for the Sages, and upon entering a city he would immediately call upon the rabbinic leader of the community. Once, Rav Pappa felt that he had spoken

inappropriately about one of the Sages, and he took upon himself a personal fast as penance for his act. He was reluctant to offer halakhic rulings, and he often chose to rule stringently to satisfy both opinions in a talmudic dispute rather than rule in accordance with one of the opinions.

Rav Pappa was blessed with ten sons, all of whom were Torah scholars. Traditionally, the names of the ten sons of Rav Pappa are recited as part of the formula recited upon the completion of the study of a talmudic tractate. While the source of this tradition is unclear and the identities of the sons are uncertain as well, the Rema suggests that the practice commemorates the celebrations of Rav Pappa and his sons upon completion of a course of study.

Rav Shmuel bar Aha – ר' בר שמואל בר אחא: Rav Shmuel bar Aha was a fifth-generation Babylonian *amora*. He is often mentioned in conjunction with Rav Pappa, with whom he engaged in halakhic disputes.

LANGUAGE

Tereisit – תְּרֵיסִית: This refers to the tressis, which was a Roman coin worth three issar.

BACKGROUND

Perotetot – פֶּרוֹתֶטוֹת: During certain periods people used small, sometimes silver coins, which due to their size were unminted or minted with a form that did not make them particularly distinct. Some were so small that they were not counted but were sold by weight.

NOTES

It is a purchase with money and the *tanna* is referring to *perotetot* – בָּרוּתִים וּבָפָרוּתִות: The money changer pays him money in coins, and he repays him with a commodity, i.e., the *perotetot* in his house (see Rosh).

יבָּן אָמַר עֲוָלָא: אֵין מִטְבָּע נַעֲשָׂה חַלְפִּין.
יבָּן אָמַר רַב אָסִי: אֵין מִטְבָּע נַעֲשָׂה חַלְפִּין.
וְכָן אָמַר רַבָּה בָּר בָּר חַנָּה אָמַר
לְבָבִי יוֹחָנָן: אֵין מִטְבָּע נַעֲשָׂה חַלְפִּין.

איַתְּבִּיהְ וּבָבִי אֲבָא לְעַוָּלָא: הָרִי שְׁחוּ
חַמְרִיוֹ וּפּוֹעַלְיוֹ תּוּבָעָנִי בְּשִׁיק, זַעֲמָר
לְשֻׁלְחָנִי: תַּן לִי בְּדִינָר מִעוּזָה וְאַפְרָנָסָם,
וְאֵן אָעַלְתָּ לְךָ פִּיהְ דִּינָר וּנוֹסִיתָ מִמְעוּזָה
שְׁשִׁישָׁ לִי בְּבִתְּחִי, אֵם יִשְׁלַׁמְתָּ מִמְעוּזָה – מוֹתָר,
וְאֵם לְאוֹ – אַסּוֹר. וְאֵי סְלָקָא דַעַתְךָ אֵין
מִטְבָּע נַעֲשָׂה חַלְפִּין – הָוָא לְהַלְוָה
אַסּוֹרָוּ אַשְׁתִּיק.

אָמַר לְיהָ: דָלְמָא אִידִי וְאִידִי בְּפֶרֶוטָות
שְׁנִי דְלִיכָא עַלְיָהוּ טְבֻעָא, וְאִידִי אִידִי
פָּרָא הָוּ, וּמִשּׁוּם הַכִּי גַּנְעַן בְּחַלְפִּין, אָמַר
לְיהָ: אֵין, דִיקָא נָמִי, דַקְתָּנִי: יִפְהָ דִינָר
וּטְרִיסִיתָ. וְאֵיךְ קָתַנְיִ דִינָר פֶּה וּטְרִיסִיתָ
שְׁמַע מִינָה.

רַב אֲשִׁי אָמַר: לְעוּלָם בְּדִימִים וּבְפֶרֶוטָות,
כִּיּוֹן דָאִית לְיהָ – נַעֲשָׂה כָּאֹמֵר הַלוֹעֵנִי
עַד שְׁיַבָּא בָנִי אוֹ עד שְׁאָמַצָּא מִפְתָּחָ.

תְאַ שְׁמַע: כָּל הַנַּעֲשָׂה דָמִים בְּאַחֲרָ
בֵין שִׁבְחָה זוּ – נַתְחִיבָה זֶה בְּחַלְפִּין, כָּל
הַנַּעֲשָׂה דָמִים בְּאַחֲרָ מַאי נִיחּוּ – מִטְבָּע
וּשְׁמַע מִינָה: מִטְבָּע נַעֲשָׂה חַלְפִּין!

אָמַר וּבְיְהוּדָה, הַכִּי קָאָמָר:

The Gemara adds: And likewise, Ulla says: Money cannot be the item used to effect a transaction by means of exchange. And likewise, Rav Asi says: Money cannot be the item used to effect a transaction by means of exchange. And likewise, Rabba bar bar Hana says that Rabbi Yoḥanan says: Money cannot be the item used to effect a transaction by means of exchange.

Rabbi Abba raised an objection to the opinion of Ulla from a *baraita*: With regard to one whose donkey drivers or laborers were demanding payment of their wages from him in the marketplace, and he said to the money changer: Give me coins worth a dinar and I will provide for them, and later I will give you coins worth a dinar^h and a *tereisit*,^l a coin of lesser value, from money that I have at home, then if he has money at home at that time it is permitted, as it is not considered a loan and therefore the additional payment is not interest. But if he does not have money at home at that time, it is a loan and the additional payment is forbidden as interest. And if it enters your mind that money cannot be the item used to effect a transaction by means of exchange, then even in the case where the employer had money at home, since the money changer does not acquire the employer's money at home by means of exchange, it is a loan and the additional payment is forbidden as interest. Ulla was silent.

Rabbi Abba then said the following suggestion to Ulla: Perhaps the Sages taught this *halakha* in a case where both these coins that are in his house and those coins that he took from the money changer are *perotetot*,^b small *perutot* that are unminted, and the legal status of both these coins and those coins is that of a commodity; and due to that status they are acquired by means of a transaction of exchange. Ulla said to him: Yes, that is the case in the *baraita*, and the language of the *baraita* is also precise, as it teaches: I will give you coins worth a dinar and a *tereisit*, and it does not teach: I will give you an unflawed dinar and a *tereisit*. Evidently, the *baraita* is not referring to his giving an actual dinar coin but to other coins of lesser value that equal that value. The Gemara affirms: Learn from it that this is the case.

Rav Ashi said: Actually, it can be explained that there is no transaction by means of exchange in this case. Rather, it is a purchase with money and the *tanna* is referring to *perotetot*,ⁿ and nevertheless there is no violation of the prohibition against interest. Since he has money at home, it is tantamount to saying: Lend me money until my son comes or until I find the key. That is not a loan, and the *halakhot* of interest do not apply.

The Gemara suggests: Come and hear proof from a mishna (*Kidushin* 28a): With regard to all items used as monetary value for another item, i.e., instead of a buyer paying money to the seller, they exchange items of value with each other, once one party in the transaction acquires the item he is receiving, this party is obligated with regard to the item being exchanged for it. The Gemara analyzes this mishna: With regard to all items used as monetary value for another item, what does the mishna mean in this phrase? It means a coin, and learn from the mishna that a coin can be an item used to effect exchange.

Rav Yehuda said: This is what the mishna is saying:

HALAKHA

And I will give you coins worth a dinar – יִפְהָ דִינָר:
If one's laborers demand their wages and he does not have the money to pay them, and he says to a money changer: Give me a dinar to pay them and I will give you a greater sum in unminted coins that I have at home, it is permitted, provided he has coins

in his house worth a dinar. The reason is that this is considered a sale, not an interest-bearing loan. According to the Rema, he may do so even if he has fewer less valuable coins in his house than the money changer is giving them (*Shulhan Arukh, Hoshen Mishpat* 173:6).

Perek IV

Daf 46 Amud b

**כל הניטושים דמים באחר, בין שוכנה
זה – נחתיב זה בחליפין.**

**הכי נמי מסתبرا, מדקתי סיפה:
ביעזר? החליף שור בפרה, או חמור
בשור. שמע מינה.**

**ולמאי דסליק אדעתיה מעיקרא
מטבע, מאי ביעזר? הכי קאמבר: ופיו
נמי עבדי חילפין, ביעזר? החליף שור
בפרה או חמור בשור.**

**הניטה לא הרבה ששת ר' אמר: פיר עבדי –
חליפין, אלא לא הרבה נחמן, ר' אמר: כל –
איין, אבל פיני – לא עבדי חילפין,
מאי ביעזר?**

**הכי קאמבר: יש דמים שעון בחליפין,
ביעזר? החליף דמי שור בפרה, או דמי
חמור בשור.**

**מאית עמיה רב נחמן? סבר לה כרבי
יוחנן, ר' אמר: דבר תורה מועות קונות,
ונפניהם מה אמרו משיכת קונה – גזירה
שנמא יאמר לו נשרפו חטין בעלייה.**

With regard to all items that can be appraised when used as monetary valueⁿ for another item, i.e., their value can be appraised relative to the value of another item, excluding a coin, whose value is apparent, once one party in the transaction acquires the item he is receiving, this party is obligated with regard to the item being exchanged for it.^h The novelty of the mishna is that all items, not only vessels, can be used to perform the act of acquisition of exchange. Therefore, one should not infer that the halakha is the same with regard to coins.

The Gemara comments: So too, it is reasonable to interpret the mishna in that manner, from the fact that the latter clause of that mishna teaches: How so? If one exchanges an ox for a cow, or a donkey for an ox, once this party acquires the animal that he is receiving, this party is obligated with regard to the item being exchanged for it. This clause apparently explains the previous clause, and employs the example of animals, not coins. The Gemara concludes: Learn from it that the reference in the mishna is to movable property, not to coins.

The Gemara asks: And with regard to what entered our minds initially, that a coin effects symbolic exchange, what is the meaning of the clause: How so; if one exchanges an ox for a cow, once this party acquires the animal that he is receiving, this party is obligated with regard to the item being exchanged for it? This example does not involve a coin. The Gemara explains that it was assumed that this is what the mishna is saying: Not only can a coin be used in the act of acquisition of exchange, but produce,ⁿ i.e., movable property, can also effect exchange. How so? If one exchanged the meat of an ox for a cow, or the meat of a donkey for an ox, once this party acquires the item that he is receiving, this party is obligated with regard to the item being exchanged for it.

The Gemara comments: This works out well according to the opinion of Rav Sheshet, who said: Produce effects a transaction of exchange. But according to the opinion of Rav Nahman, who said: A vessel, yes, it effects a transaction of exchange, but produce does not effect a transaction of exchange, what is the meaning of the continuation of the mishna beginning with the question: How so?

The Gemara answers that this is what the mishna is saying: There is a purchase with money where one acquires the purchase item without pulling it that is like a transaction of exchange.^h How so? It is in a case where one exchanged the monetary value of an ox for a cow, or the monetary value of a donkey for an ox. In this case, one sold his ox to another for an agreed sum of money, and after the buyer acquired the ox by pulling it, he then offered to give the seller his cow in exchange for the money that he owes him. In this case the cow is acquired without the seller having to pull it. Although this acquisition initially was to be an exchange, it is ultimately a purchase for money, as the second animal is acquired as a result of the forgiving of the monetary debt.

The Gemara inquires: What is the reason for the opinion of Rav Nahman? The Gemara explains: Rav Nahman holds in accordance with the opinion of Rabbi Yohanan, who says: By Torah law money effects acquisition,^h i.e., when one pays money he acquires the item, even if he has not yet performed another act of acquisition. And for what reason did the Sages say that pulling acquires an item and money does not? This is a rabbinic decree lest the seller say to the buyer after receiving the money: Your wheat was burned in the upper story. If a fire breaks out or some other mishap occurs after a seller receives the money, he will not bother to save the goods in his house because they no longer belong to him, and the buyer may incur a loss.

NOTES

With regard to all items that can be appraised when used as monetary value – **כל הניטושים דמים**: Rabbeinu Hananel explains that this means one must first assess the value of the item and only then does the transaction take effect. If the price was not determined, the transaction does not take effect.

Coins and produce – נטבויות ופירות: The early commentaries disagree over the legal status of livestock. Apparently, Rashi holds that any item that is not an actual vessel is produce, whatever its nature or form, including animals, and all the more so their meat. Tosafot and the Rif hold that any item that maintains its essence and value over time is deemed a vessel. Therefore, the legal status of animals is that of a vessel in terms of the halakhot of transactions, although with regard to other areas of halakha, e.g., second tithe, it is considered produce. Only the meat of animals is considered produce. The Ritva explains that any item that changes over time due to decay, as in the case of produce and meat, or because its form and value might be revoked, as in the case of coins, is considered produce.

HALAKHA

Transaction of exchange – קני חילפין: The transaction of exchange is effective with regard to all movable property whether or not the parties insist on ascertaining the value of the items. How so? If one party owns a cow and another a donkey and they agree to exchange the animals, when one party takes possession of one animal, the other party acquires the other animal wherever it may be, and neither can renege on the transaction. The Rema, citing Rabbeinu Tam, rules that once a price is established and fixed, even produce can be acquired by means of the transaction of exchange (*Shulhan Arukh, Hoshen Mishpat* 23:1 and *Beur HaGra* there).

A purchase with money that is like exchange – דמים שעון בחליפין: In a case where one sold movable property to another, and after the buyer took possession of the item, thereby obligating himself to pay for it, the seller attempts to acquire movable property belonging to the buyer, if the buyer says that the seller can acquire that property in lieu of his debt, the seller is not required to pull or lift the item to acquire that property. The reason is that the Sages do not issue decrees in uncommon cases. Therefore, the halakha reverts to the Torah law that one acquires the property with the payment of money (*Shulhan Arukh, Hoshen Mishpat* 199:2, and see the comments of Rema and Sma there).

By Torah law money effects acquisition – דבר תורה מועות קונות: By Torah law one acquires property with the payment of money. The Sages decreed that movable property can be acquired only by taking physical possession of the item, e.g., through pulling or lifting. They issued the decree in order to prevent a situation where the item remains in the hands of the seller while belonging to the buyer, as in that case, the seller would have no incentive to rescue the item if it was in danger of being damaged. This is in accordance with the opinion of Rabbi Yohanan (*Shulhan Arukh, Hoshen Mishpat* 195:1, 5).

NOTES

With regard to an uncommon matter the Sages did not issue a decree – **מִלְתָא דְלֹא שְׁכִיחָא לֹא גُוּרוּ בֵיתֶךָ רַבֵּן**: The halakhot of the Torah and its principles, as well as the ordinances instituted by the Sages, apply universally and are not dependent on particular, defined conditions. They apply to both common and uncommon cases. Therefore, although among the 613 mitzvot in the Torah there are some that cannot be fulfilled today at all, and others are contingent upon rare circumstances, the mitzvot remain in effect.

By contrast, the decrees issued by the Sages to ensure fulfillment of the mitzvot of the Torah or for the betterment of the world were instituted only for the good of the general public. Therefore, decrees were not issued with regard to uncommon cases, as no benefit will be gained by the general public in those cases.

פְּנַלְגָה – קְרִיָּה: The Meiri explains that this refers to a province without a ruler, whose inhabitants are sovereign and determine the regulations governing commerce.

LANGUAGE

Anigera – אֲנִיגֶרָה: Some hold that this term is from the Greek ἀγοραστό, *agorasto*, meaning an item that remains unbought and that is not purchasable.

HALAKHA

With *anka* and with *anigera* dinars – **בְּדִין אַנְקָא וְאֲנִיגֶרָה**: The legal status of coins that were disqualified by the government or by the residents of a particular province is that of movable property, and they may be acquired even by means of a transaction of exchange (*Shulhan Arukh, Hoshen Mishpat* 203:8).

BACKGROUND

One that the kingdom invalidated and one that a province invalidated – **חַדֵּד שְׁפָלָתוֹ מִלְכָות וְאֶחָד שְׁפָלָתוֹ מִינְהָה**: Occasionally, a government tries to remove certain coins from circulation and disqualify them as a valid medium of exchange. This step was typically taken for political reasons, for example, to delegitimize a rebellious or illegitimate ruler. Despite the government's edict, those coins continued to circulate, and in certain cases merchants preferred them over the coins minted by the government.

In addition, there were cases where local rulers would diminish the value of the coins in circulation by adulterating them with less expensive metals, e.g., by adulterating gold coins with copper and silver. Although the government promoted use of these newly minted coins, residents refused to use them.

**וּמִלְתָא דְשְׁכִיחָא – גַּוּרוּ בֵיתֶךָ רַבֵּן
מִלְתָא דְלֹא שְׁכִיחָא – לֹא גַּוּרוּ בֵיתֶךָ
רַבֵּן.**

The Sages therefore decreed that acquisition takes effect only when a buyer pulls the item. The mishna allows a transaction that indicates that one can effect acquisition using only money because that case of the mishna as explained by Rav Nahman is an uncommon occurrence. It is rare for one who has sold his animal in exchange for money to change his mind and request an animal from the purchaser instead. **And it is only with regard to a common matter that the Sages issued a decree, whereas with regard to an uncommon matter, the Sages did not issue a decree.**^N Consequently, the Sages did not apply their decree to this situation.

**וּלְרִישׁ לְקִישׁ, דָּאָמֵר: מִשְׁיכָה נִפְזָרֶת
מִן הַתּוֹרָה, הַנִּיחָא אֵי סְבָרׁ לְהַבְּרִיב
שְׁשָׁת – מִתְרַץׁ לְהַכְּרִיב שְׁשָׁת.**

The Gemara asks: **And how is the mishna explained according to the opinion of Reish Lakish, who disagrees with Rabbi Yohanan and says that pulling is explicitly stated in the Torah?** Reish Lakish maintains that the acquisition of movable property cannot be performed with money by Torah law, and therefore there can be no distinction between common and uncommon cases. **This works out well if Reish Lakish holds in accordance with the opinion of Rav Sheshet, who says that produce effects exchange.** If so, he can explain the mishna in accordance with the opinion of Rav Sheshet.

**אַלְאָ אֵי סְבָרׁ לְהַכְּרִיב נִחְמָן, דָּאָמֵר:
פִּינִי לֹא עֲבָדִי חַלְפִּין וּמִטְבָּע לֹא קְנִי
הַיכִּי מִתְרַץׁ לְהַכְּרִיב? עַל בְּחֻנָּק כְּרִיב שְׁשָׁת
מִתְרַץׁ לְהַכְּרִיב.**

But if he holds in accordance with the opinion of Rav Nahman, who says that produce does not effect exchange and a coin does not effect acquisition by Torah law or by rabbinic law, **how does he explain the mishna?** The Gemara answers: **Perforce Reish Lakish explains the mishna in accordance with the opinion of Rav Sheshet.**

**תָּנָן: כָּל הַמְּפָלְלִין קְוִינִין זֶה אֶת זוֹ.
וְאָמַר רִישׁ לְקִישׁ: וְאַפִּילוּ בַּסְּמָלָא
כְּשׁוּת בְּכִים מְלָא מִיעּוֹת. תְּרוּמָה רַב
אַחֲרָא: בְּדִין אַנְקָא וְאֲנִיגֶרָה, אַחֲרָא
שְׁפָלָתוֹ מִלְכָות מִלְכָות וְאֶחָד שְׁפָלָתוֹ
מוֹדִית.**

**וְצִירָּבָא, דָּאִי אֲשָׁמוּעִין פְּסָלָתוֹ
מִלְכָות – מִשּׁוּם דְלֹא סְגִי לְהַכְּרִיב, אַבְלָל
פְּסָלָתוֹ מִדִּינָה, דְסִגִּי לְהַכְּרִיב בְּמִדִּינָה
אַחֲרִיתִי – אִימָא אַכְתִּי מִטְבָּע הוּא,
וְאַיִן מִטְבָּע נִקְנָה בְּחַלְפִּין.**

**וְאַיִן אֲשָׁמוּעִין פְּסָלָתוֹ מִדִּינָה –
מִשּׁוּם דְלֹא סְגִי לְהַכְּרִיב לֹא בָּצְנָעָא וְלֹא
בְּפְרָהָסִיא, אַבְלָל פְּסָלָתוֹ מִלְכָות דְסִגִּי
לְהַכְּרִיב בָּצְנָעָא – אִימָא אַכְתִּי מִטְבָּע
הוּא, וְאַיִן מִטְבָּע נִקְנָה בְּחַלְפִּין –
צִירָּבָא.**

**אמֶר רַבָּה אָמֶר רַב הָונָא: "מִכּוֹר לִי
בְּאַלְוָל" – נִקְנָה,**

We learned in the mishna: With regard to those who exchange all forms of movable property, each acquires the property of the other. And Reish Lakish says: The expression: All forms of movable property, includes even a case where they exchange a money pouch full of coins for a money pouch full of coins. Apparently, coins effect exchange and are acquired by means of a transaction of exchange. The Gemara rejects this: Rav Aha interpreted that the exchange of coins is referring to the exchange of a money pouch filled with *anka* dinars and a money pouch filled with *anigera*^L dinars.^H One is a coin that the kingdom invalidated, as the king decreed that the coin will no longer be used, and one is a coin that the residents of a province invalidated,^B as they no longer use it as currency.

And it is necessary to teach the halakha in both cases, as, if the tanna taught us this halakha only with regard to a coin that the kingdom invalidated, I would have said it is not a coin due to the fact that it does not circulate at all, as the king banned its use. But with regard to a coin that the residents of a province invalidated,^N which circulates in a different state, say that its legal status is still that of a coin, and money cannot be acquired by means of a transaction of exchange.

And if the tanna taught us this halakha only with regard to a coin that the residents of a province invalidated, I would have said it is not a coin due to the fact that in that place it neither circulates in private nor in public, as the local residents do not use it as currency. But with regard to a coin that the kingdom invalidated, which could circulate in private, say that its legal status is still that of a coin, and money cannot be acquired by means of a transaction of exchange. Therefore, it was necessary to teach the halakha in both cases.

§ Rabba says that Rav Huna says: If one said to another: Sell me your item for these coins that are in my hand, and when taking the money the owner of the item did not determine the sum, the buyer acquired the article and the transaction is complete, and neither can renege on the deal.

Perek IV

Daf 47 Amud a

ויש לו עליון אונאה.

קנה אף על גב דלא משך, דכינוי דלא
קפיד – קנה, דכי חליפין דמי, ויש לו
עליו אונאה – דמכור לו באלו קא אמר
לייה רב אבא אמר רב הונא: מכור לו
באלו – קנה, ואין לו עליון אונאה.

פשייטא, דמים אין מkapid עליהן, הא
קאמרין דקני, דכחיליפין דמו, חליפין
ומkapid עליהןמאי?

And if the sum of money is one-sixth lower than the value of the item, the seller of the item has a claim of **exploitation**⁸ against the buyer,⁹ who must pay the difference to the seller.

The Gemara elaborates: The buyer acquires the item even though he did not pull it, because since the seller is not particular about the sum, the buyer acquired the item, as it is similar to a transaction effected by means of exchange. And the seller has a claim of exploitation against the buyer because the buyer said to him: Sell me your item for these coins. The use of the language of sale indicates that it will be for an acceptable price. Rav Abba says that Rav Huna says that if the buyer said: Sell me your item for these coins, the buyer acquired the item;¹⁰ and the seller of the item has no claim of exploitation against the buyer,¹¹ as it is a full-fledged transaction effected by means of exchange.

The Gemara analyzes these halakhot: It is obvious that in a case where there is a sale of an item for money and the seller is not particular about the sum, we say that the buyer acquires the item immediately upon receiving the money, as it is similar to a transaction effected by means of exchange. But if it is a transaction effected by means of exchange and one of the parties is particular that the value of the items is equal, what is the halakha? Is its legal status that of a sale, or that of a transaction effected by means of exchange?

אמור רב אדא בר אהבה, תא שמע: הרי
שהיה תופש פרתו ועומר, ובא חבירו
ואמר לו: פרתך לודח? להמורות אני צריך,
יש לי חמור שאני נוטן לך. פרתך בכמה?
בכך וכך. חמורך בכמה? בכך וכך.

Rav Adda bar Ahava says: Come and hear a resolution to the dilemma from a baraita: There is a case where one was grasping his cow and standing in place, and another came and said to him: Why is your cow standing here? The owner of the cow replied: I need a donkey, and I hope to exchange this cow for one. The other person said: I have a donkey that I can give you; for how much are you selling your cow? The owner of the cow responded: I am selling it for such and such a price. He then said: For how much are you selling your donkey? The owner of the donkey responded: I am selling it for such and such a price.

משך בעל החמור את הפרה, ולא
הספיק בעל הפרה למשוך את החמור
עד שמית החמור – לא קנה בעל החמור
את הפרה.

If, after this discussion, the owner of the donkey pulled the cow, but the owner of the cow did not manage to pull the donkey before the donkey died, the owner of the donkey did not acquire the cow, even though ostensibly this was a transaction effected by means of exchange, which is typically complete once one of the parties pulls the item he is acquiring.

שמע מינה: חליפין ומkapid עליהן – לא
קנה.

The Gemara suggests: Learn from it that in a case where there is a transaction effected by means of exchange and one of the parties is particular that the value of the items is equal, he does not acquire the item immediately. In contrast to the standard case of exchange, the owners of the cow and donkey assessed the value of the animals before the transaction. Since they are particular about the price, the acquisition is not completed until each pulls the item he is acquiring.

אמור רבא: אםו חליפין בשופטני עסקין,
דלא קפדי? אלא: כל חליפין מיקפיד
קפידי, וקנה, והכא במא ישבקין – דאמו
לייה: חמור בפרה וטלה, ומשן את הפרה
ונדרין לא משך את הטלה, דלא הויה
ליה משיכה מעלייה.

Rava said: Is that to say that in a standard case of exchange we are dealing with fools, who are not particular about the value of the items that they are acquiring? Rather, in every case of exchange, the parties are particular about the value of the items, and when one party pulls an item the other party acquires the other item immediately and pays for it later. And with what are we dealing here? The case in the baraita is where one party said to the other party: Let us exchange a donkey for a cow and a lamb,¹² and the owner of the donkey pulled the cow and did not yet pull the lamb, as in that case he has not performed a proper act of pulling.

BACKGROUND

Exploitation – אונאה: In civil law this term refers to the prohibition against taking advantage of another in a business transaction (see Leviticus 25:14). If either the buyer or the seller exploits the other, the exploited party has the right to compensation based on the actual value of the item purchased. By rabbinic law, one may claim compensation if the disparity between the value of the item purchased and the payment for that item is one-sixth the value of the item. If the disparity is greater than one-sixth of the item's value, the sale is void. If the disparity is less than one-sixth of its value, the exploited party receives no compensation, as presumably one waives his claim to compensation for a disparity within a certain limit. One may claim that he was exploited for only a limited time after the transaction, i.e., sufficient time to have taken the item for appraisal by an expert. The Gemara begins its discussion of exploitation on 49b.

HALAKHA

Sell me your item for these coins...and the seller has a claim of exploitation against the buyer – מכו ליבאלו קנה: If one takes money for an item without quantifying the item's measure or number, or if one purchases a quantity of produce without measuring it, the acquisition takes effect. If the sum given was not in accordance with the value of the sold item, the excess sum must be returned. The Rema, citing the Rosh, and the Taz state that this is unclear, as the Gemara did not reach a halakhic conclusion in this matter. Therefore, the party guilty of exploitation is not required to pay (*Shulhan Arukh, Hoshen Mishpat* 23:1).

Sell me your item for these coins, the buyer acquired the item – מכובו ליבאלו קנה: If one was holding coins in his hand but he knew neither their number nor their value, and he said to another, sell me that item of yours for these coins, and the owner of the item took the coins without determining their value, the owner of the coins acquires the item, and neither party can renege on the transaction. Since this is an uncommon case, the Sages did not apply their decree that one acquires movable property only by physically taking possession of the item and not by giving money (*Shulhan Arukh, Hoshen Mishpat* 199:1).

A donkey for a cow and a lamb – חמור בפרה וטלה: In a case of one who exchanged his donkey for the cow and lamb of another and who pulled only the cow before the donkey died, either party can renege on the transaction, as the act of acquisition of pulling was not completed (*Shulhan Arukh, Hoshen Mishpat* 23:2).

NOTES

And the seller of the item has no claim of exploitation against the buyer – אין לו עליון אונאה: Some commentaries and halakhic authorities conclude, based on this Gemara, that the halakhot of exploitation apply only to sales and not to transactions of exchange. According to that opinion, the dispute is only in a case where one employs the language of sale. Others maintain that the halakhot of exploitation apply to transactions of exchange as well. This case is different because both parties clearly indicated that they are not assessing the value of the items. Presumably, they thereby waived the right to make any claims arising from the disparity in value between the items (Ran).

HALAKHA

One effects the transaction with the vessels of the one acquiring the item – **בכליו של קונה**: A transaction of exchange is accomplished by one party giving the other a vessel of any value and stating that the vessel is in exchange for an item belonging to the first party. Even if he did not specify that intention, once the second party pulls the vessel the transaction is complete, in accordance with the opinion of Rav (*Shulhan Arukh, Hoshen Mishpat* 195:1).

Property that is not guaranteed is acquired with property that is guaranteed is acquired with property that is guaranteed – **נכסים שאין להן אחריות נקנין עם נכסים שיש להן אחריות**: In a case where one transfers ownership of both land and movable property to another, once the recipient acquires the land by means of one of the transactions effective for the acquisition of land, he acquires the movable property along with the land. This is the *halakha* in cases of a sale, a gift, or a rental (*Shulhan Arukh, Hoshen Mishpat* 220:1).

NOTES

To having the one transferring ownership of the item acquire his vessel – **דלהי מוקנה קונה**: The Ri Migash explains, in a responsum cited in *Shita Mekubetzet*, that in exchange for receipt of value beyond the price of the item, the seller resolves to transfer the item immediately, although he did not yet receive the exchange item.

Rods of fire – **פומלי דנורא**: Rashi explains this to mean that he would have excommunicated him. Other commentaries explain that this person is not subject to ostracism or excommunication at all. Instead, it means that he would have responded harshly, as if sparks were emerging from the mouth of a Torah scholar in reprimanding his disciples (Rosh).

**אמר מר: מכור לי באלו – קונה, כי
לו עליון אונאה. לימה סבר רב הונא
מטבע עשה חליפין?**

**לא, רב הונא סבר לה ברבי יוחנן
האמיר: דבר תורה מעות קונות ומפני
מה אמרו משיכת קונה – גזירה שמא
אמר לו: נשעטו חפיך בעלייה. מלתא
דשביחא – גרו בה רבנן, ומולתא דלא
שביבחא – לא גרו בה רבנן. אמר ליה:
כור הונא בריה דבר נהמן לרוב אש:
אתון ה כי מותינו לה, אנן ה כי מתניינו
לה: וכן אמר רב הונא: אין מטיבע
עשה חליפין.**

The Master, Rav Huna, said above that if one said to another: Sell me your item for these coins, the buyer acquired the article, and if the sum of money is one-sixth lower than the value of the item, the seller of the item has a claim of exploitation against the buyer. The Gemara suggests: Let us say based on that *halakha* that Rav Huna holds that a coin can be an item used to effect exchange.

The Gemara rejects this suggestion: No, Rav Huna holds in accordance with the opinion of Rabbi Yohanan, who says: By Torah law money effects acquisition. And for what reason did the Sages say that pulling acquires an item and money does not? This is a rabbinic decree lest the seller say to the buyer after receiving the money: Your wheat was burned in the upper story. And it is only with regard to a common matter that the Sages issued a decree, but with regard to an uncommon matter the Sages did not issue a decree. Therefore, in this case there is no decree, and the transaction is governed by Torah law. Mar Huna, son of Rav Nahman, said to Rav Ashi: You teach this *halakha* in that manner; we teach it in this manner, not by inference but as an explicit ruling: And likewise, Rav Huna said: Money cannot be the item used to effect a transaction by means of exchange.

¶ Above, the Gemara mentioned a form of exchange in which there are not two items of equal value being exchanged, but rather one person attempts to transfer possession of his item to the buyer by means of a symbolic exchange involving, e.g., a cloth. With regard to that symbolic transaction, the Gemara asks: With what vessel does one acquire the item in question, i.e., whose vessel is used in order to effect this symbolic transaction?

**רב אמר: בכליו של קונה, רניתה ליה
לקונה דלהי מוקנה קונה, כי היבי
דлегמר ולקמי ליה. ולוי אמר: בכליו
של מוקנה, כרבעין למימר לקמן.**

**אמר ליה רב הונא מדיסקוטא לרבא:
וללי, דאמר בכליו של מוקנה, לא קא
קמי או רעה אונב גלימה. אם כן, הוו
לייה נכסים שיש להן אחריות ונקנין
עם נכסים שאין להן אחריות, ואנן
אייפכא תנן: נכסים שאין להן אחריות
נקנין עם נכסים שיש להן אחריות!**

**אמר ליה: אי הויה לוי הכא הויה מפיק
לאפק פומלי דנורא! מי סברת גלימה
מקנה ליה? בהיותה הנאה וקא מקהל
כמיה – גמר ואקמי ליה.**

Rav says: One effects the transaction with the vessels of the one acquiring the item,^H who effects the transaction by giving the vessels to the owner of the item. The moment that the owner pulls the vessel into his possession, the transaction is complete and ownership of the item in question is transferred to his counterpart. Rav explains that the one acquiring the item is amenable to having the one transferring ownership of the item acquire his vessel,^N so that he will resolve to transfer ownership to him. And Levi says: One effects the transaction by having the one acquiring the item pull the vessels of the one transferring ownership, as we seek to explain below.

Rav Huna from Diskarta said to Rava: But according to Levi, who says that one effects the transaction with the vessels of the one transferring ownership, there is a difficulty. In a case where one acquires land by means of symbolic exchange where the item used is a cloak, it turns out that he is acquiring land by means of a cloak. If so, this is a case of property that is guaranteed, i.e., land, and it is acquired with movable property that is not guaranteed, by means of a transaction performed on the latter. And we learned the opposite in a mishna (*Kiddushin* 26a): Property that is not guaranteed is acquired with property that is guaranteed,^H i.e., land, by means of a transaction performed on the latter.

Rava said to him: If Levi, whose opinion you questioned, were here, he would take out rods of fire^N before you and flog you for your unwarranted question. Do you maintain that he said that at the moment he transfers ownership of the cloak he transfers ownership of the land to him? That is not the case; rather, in exchange for that pleasure the owner of the item experiences from the fact that the one acquiring the cloak accepted it from him, he resolves to transfer ownership to him. This is unlike the acquisition of movable items by means of a transaction of land, where both are acquired simultaneously. Here, the transfer of ownership of the cloak effects the subsequent transfer of ownership of the land.

בתנאי: "זאת לפנים בישראל על האולה ועל התמורה לקים כל דבר שלף איש נשלף ונtran לרעשו". גואלה – זו מכירה, וכן הוא אומר "לא גואלה". תמורה – זו חיליפין, וכן הוא אומר: "לא יחליפנו ולא ימירו אותנו".

"ליקים כל דבר שלף איש נשלף ונtran לרעהו" – מי נתן למני? בושע נתן לו ניאל. רב יהודה אומר: גואל נתן לבושע.

תנא: קניין בכלל, אף על פי שאין בו שווה פרוטה. אמר רב נחמן: לא שנן אלא בכלל, אבל בפרי – לא. רב ששת אמר: אפילו בפירות. מי טעם דבר נחמן? אמר קרא: "נעלו" – נעול – אין. מייד אחרינו – לא.

מי טעם מה דבר ששת? אמר קרא: "ליקים כל דבר". לרב נחמן נמי הכתוב: "ליקים כל דבר!" והוא שות נמי, הכתוב דינקין במנעל. ורב ששת נמי, הכתוב ענלו! אמר לך רב ששת: מה נעול דבר המסויים – אף כל דבר המסויים. לאפוקי חזי רמן וחזי אגוז, שלא.

אמר רב ששת בריה דבר אידי. במאן בתבין הדיאקינה: במנא דבר למקניא ביה. במנא – לאפוקי מודרב ששת. ר' אמר קניין בפירות. ר' כשר – לאפוקי מודשומאל. דאמר: קניין

The Gemara comments: This dispute between Rav and Levi is parallel to a dispute between *tanna'im*. The verse states: "Now this was the custom in former time in Israel concerning redemption and concerning substitution, to confirm all matters; a man drew off his shoe, and gave it to his neighbor" (Ruth 4:7). The verse is interpreted: "Redemption"; that is a sale. And likewise it says: "Neither shall be sold nor shall be redeemed" (Leviticus 27:28). "Substitution"; that is the transaction of exchange. And likewise it says: "He may neither exchange it nor substitute it" (Leviticus 27:10).

With regard to the phrase "To confirm all matters; a man drew off his shoe, and gave it to his neighbor," the *baraita* asks: Who gave the shoe to whom? Boaz gave his shoe to the redeemer, the closest relative of Elimelech, who had the right of first refusal to the land that Naomi, Elimelech's widow, was planning to sell. The redeemer was transferring that right to the land to Boaz, who was acquiring it by means of his shoe. Rabbi Yehuda says: The redeemer gave his shoe to Boaz. The dispute between Rav and Levi is parallel to the dispute between the first *tanna* and Rabbi Yehuda.

S It was taught: One can acquire property through a symbolic exchange by using a vessel, even if it does not have the value of one *peruta*.ⁿ Rav Nahman says: The Sages taught that this symbolic exchange can be effected only by using a vessel, but not by using produce,^h i.e., any item other than a vessel. Rav Sheshet says: It can be effected even by using produce. The Gemara explains: What is the reason for the opinion of Rav Nahman? The verse states: "His shoe" (Ruth 4:7), from which it is derived: With regard to a shoe and any other item similar to a shoe, i.e., a vessel, yes, the symbolic exchange can be effected; with regard to any item other than a vessel, no, it cannot be effected.

What is the reason for the opinion of Rav Sheshet? The verse in Ruth states: "To confirm all matters," from which it is derived that all items, even if they are not vessels, can effect the exchange. The Gemara asks: According to Rav Nahman as well, isn't it written: "To confirm all matters"? The Gemara explains: In his opinion, that phrase: "To confirm all matters," is referring to all items that can be acquired through an exchange effected by using a shoe. The Gemara asks: And according to Rav Sheshet as well, isn't it written: "His shoe"? The Gemara explains: Rav Sheshet could have said to you that from that term it is derived: Just as his shoe is a complete item, so too, every complete item can effect a symbolic exchange, to exclude half a pomegranateⁿ and half a nut, which cannot effect a symbolic exchange. A whole pomegranate or nut can be used for that purpose.

Rav Sheshet, son of Rav Ida, said: In accordance with whose opinion do we write today in documents that the transaction was effected with a vessel that is fit to acquire items with it? The Gemara explains: The term with a vessel serves to exclude the opinion of Rav Sheshet, who says: One acquires an item through a transaction of symbolic exchange by using produce. The term that is fit serves to exclude the opinion of Shmuel, who says: One acquires an item

NOTES

Even if it does not have the value of one *peruta* – אף על פי שאין בו שווה פרוטה: Tosafot ask: Why does the Gemara not state here that which it states elsewhere, that the phrase in the verse in Ruth: "And gave it to his neighbor," indicates a significant act of giving; and an item worth less than one *peruta* is insignificant (see Rosh)? The Meiri explains that the term giving in and of itself does not necessarily indicate that the article in question is worth

one *peruta*. In each case where giving is said to refer to a significant act of giving, there is a context-specific reason to justify that understanding.

Half a pomegranate – חצי רמן: He did not mention a case of half a vessel, because half a vessel can be restored or refashioned into a smaller vessel. Half a fruit cannot be restored (Ritva).

HALAKHA

Acquisition with a vessel but not with produce – קניין בכלל ולא בפרי: A transaction of exchange can be effected with any vessel, even if its value is less than one *peruta*. It cannot be effected with produce. The halakha is in accordance with the opinion of Rav

Nahman, as in monetary matters, the ruling is in accordance with his opinion in disputes with Rav Sheshet (*Shulhan Arukh, Hoshen Mishpat* 195:2).

Perek IV

Daf 47 Amud b

NOTES

Date pits – מַרְקוֹן: Some explain that this is a vessel fashioned from cattle dung (Rashi), and its legal status is unique either because it is repulsive or because it cannot be used with hot water (Rabbeinu Yehonatan). Others explain that it is a chamber pot (Ra'avad). Rabbeinu Hananel and Tosafot explain that it is a date pit, commonly used for cleaning parchment or stiches in parchment.

בְּמַרְקוֹן. לִמְקַנֵּא – לְאָפֹקִי מַדְלֵי, דָּאָמֶר
בְּכַלְיוֹ שֶׁל מַקְנָה, קָא מְשֻׁבָּעַ לְוַיְמַקְנָא –
וְלֹא לְקַנְיָה. בֵּיה – רַב פָּפָא אָמָר: לְמַעֲוטִי
מַטְבָּע, וּרְבָּה וּבְידָה וְאַתִּימָא וּרְבָּה אַשִּׁי אָמָר:
לְמַעֲוטִי אִיסּוּרִי הַנְּתָה.

אַיְכָא דָּאָמָר: בֵּיה – אָמָר רַב פָּפָא:
לְמַעֲוטִי מַטְבָּע. דָּכְשָׂר – אָמָר וּבְידָה
וְאַתִּימָא וּרְבָּה אַשִּׁי: לְמַעֲוטִי אִסּוּרִי הַנְּתָה.
אַכְלָל מַרְקוֹן לֹא אֶצְטרָךְ.

אַסְיָמוֹן קֹנוֹה אֶת הַמַּטְבָּע" וּכְרוּ. מַאי
אַסְיָמוֹן? אָמָר וּבָ: מַעֲוטִת הַנִּתְנּוֹת בְּסִיקָּן
לְבֵית הַמְּרֹחֶץ.

מִתְיַבֵּבְיָה: אֵין מְחַלְלִין מַעֲשֵׂר שְׁנִי עַל
אַסְיָמוֹן, וְלֹא עַל מַעֲוטִת הַנִּתְנּוֹת בְּסִיקָּן
לְבֵית הַמְּרֹחֶץ. מְכַלְלָה דְּאַסְיָמוֹן לֹא מַעֲוטִת
הַנִּתְנּוֹת בְּסִיקָּן לְבֵית הַמְּרֹחֶץ וְכֵי תִּמְאָה
פָּרוֹשִׁי קְמַפְרָשׁ – וְהָא לֹא תָאַתָּא הַכִּי
מְחַלְלִין מַעֲשֵׂר שְׁנִי עַל אַסְיָמוֹן, דָּבָרִי רַבִּי
הַסּוֹא. וְחַכְמִים אָמְרִים: אֵין מְחַלְלִין שְׁוֹ�^{וְשָׁוֹן}
שְׁאֵין מְחַלְלִין עַל מַעֲוטִת הַנִּתְנּוֹת בְּסִיקָּן
לְבֵית הַמְּרֹחֶץ!

אַלְאָא אָמָר רַבִּי יוֹחָנָן: מַאי אַסְיָמוֹן –
פּוֹלָא. וְאוֹדוֹא רַבִּי יוֹחָנָן לְטֻמְמִיה, דָּאָמֶר
רַבִּי יוֹחָנָן: רַבִּי דּוֹסָא וּרְבִי יִשְׁמְעָאֵל אָמָר
דָּבָר אַחֲרָךְ. רַבִּי דּוֹסָא – הָא דָאָמָר. וּרְבִי
יִשְׁמְעָאֵל מַאי הָא – דְּתַנְיָה: "זִרְתָּ חֲסָרִי
בְּזִירָךְ" – לְבּוֹת בְּלִי דָבָר הַנִּצְרָר בֵּיה, דָבָר
וּרְבִי יִשְׁמְעָאֵל. וּרְבִי עֲקִיבָּא אָמָר: לְבּוֹת
כָּל דָּבָר שִׁישׁ עַלְוֹ צִוָּה.

with date pits^N used for cleaning and smoothing parchment. The term to acquire items serves to exclude the opinion of Levi, who says that the symbolic exchange is effected by means of the vessels of the one transferring ownership of the item. This latter expression teaches us that the vessel is given to acquire and not to transfer ownership to the other.^H With regard to the term: With it, Rav Pappa said: It serves to exclude a coin, which cannot effect a symbolic exchange. And Rav Zevid, and some say Rav Ashi, said: It serves to exclude items from which deriving benefit is prohibited.^H

Some say a different version of the dispute, as follows. With regard to the term: With it, Rav Pappa said: It serves to exclude a coin, which cannot effect a symbolic exchange. With regard to the term: That is fit, Rav Zevid, and some say Rav Ashi, said: It serves to exclude items from which deriving benefit is prohibited. But according to this version, a verse to exclude date pits is not necessary, as they are of no significance at all.

§ The Gemara returns to an analysis of a passage in the mishna. When one party takes possession of an asimon, the other party acquires the minted coin. The Gemara asks: What is an asimon? Rav said: It is one of the coins given as a token to gain entry into the bathhouse, for which the bathers would pay later.

The Gemara raises an objection from a baraita: One desacralizes second-tithe produce^H neither with an asimon nor with one of the coins given as a token to gain entry into the bathhouse. This proves by inference that an asimon is not one of the coins given as tokens in a bathhouse. And if you would say the tanna is explaining the meaning of the term asimon, there is a difficulty with that explanation. But wasn't it taught in another baraita like this: One desacralizes second-tithe produce with an asimon; this is the statement of Rabbi Dosa. And the Rabbis say: One does not desacralize second-tithe produce with an asimon. And they agree that one does not desacralize the second-tithe produce by transferring its sanctity onto one of the coins given as a token to gain entry into the bathhouse. It is clear from this baraita that an asimon is not a token given in a bathhouse.

Rather, Rabbi Yoḥanan said: What is an asimon? It is a blank, i.e., a piece of metal in the shape of a coin that was not yet imprinted. The Gemara comments: And Rabbi Yoḥanan follows his standard line of reasoning, as Rabbi Yoḥanan said: Rabbi Dosa and Rabbi Yishmael said the same thing. Rabbi Dosa, as we stated, said that the legal status of an asimon is that of a coin. With regard to Rabbi Yishmael, what is his statement? It is as it is taught in a baraita: "And you shall bind up [vetzarta] the money in your hand" (Deuteronomy 14:25). This serves to include any type of money that is bound [hanitzrar] in one's hand, i.e., that has monetary value; this is the statement of Rabbi Yishmael. Rabbi Akiva says: It serves to include any type of money that has an imprint [tzura]. Rabbi Akiva requires a minted coin in order to desacralize a second-tithe produce coin, while Rabbi Yishmael says that a blank can be used as well.

HALAKHA

The vessels of the one acquiring the item – בְּכַלְיוֹ שֶׁל קֹנוֹה – A transaction of exchange can be effected only with a vessel belonging to the one acquiring the item or belonging to the witnesses, but not with the vessels belonging to the one transferring ownership (*Shulḥan Arukh, Hoshen Mishpat* 195:2).

Items from which deriving benefit is prohibited – אִיסּוּרִי הַנְּתָה: A transaction of exchange cannot be effected with items from which deriving benefit is prohibited (*Shulḥan Arukh, Hoshen Mishpat* 23:1).

חילול מַעֲשֵׂר שְׁנִי – The desacralization of second-tithe produce: Second-tithe produce can be desacralized only with money, specifically a coin minted either with an image or with writing. One may not use an unminted coin. The *Hatam Sofer* rules that the status of bills that are legal tender is that of money, but this is not the accepted practice (Rambam *Sefer Zera'im, Hilkhota Ma'aser Sheni* 4:9).

"**בַּיִצְרָד? מֵשֶׁךְ הַכְּמָנוֹ פְּיוֹת וְלֹא נִתְּן**
לוּ מִעוּזָה – אַיְנוֹ יָכֹל לְהַזְוֹר בָּו" וּכו' .
אָמֵר רַבִּי יוֹחָנָן: דָּבָר תּוֹרָה מִעֲוֹזָת קְוּנוֹת,
וּמִפְנֵי מָה אָמַרְוּ מִשְׁיכָה קְוָנה – גַּוְיִרָה
שֶׁמְאָא נִאמֶר לוּ נְשִׁרְפוּ חַטִּיךְ בְּעַלְיָה.

§ The mishna teaches: **How so?** If the buyer pulled produce from the seller, but the buyer did not yet give the seller their value in coins, he cannot renege on the transaction, but if the buyer gave the seller coins, but did not yet pull produce from him, he can renege on the transaction, as the transaction is not yet complete. **Rabbi Yoḥanan says: By Torah law money effects acquisition**,^N i.e., when one pays money he acquires the item, even if he has not yet performed another act of acquisition. **And for what reason did the Sages say that pulling acquires**^N **an item**^H and money does not? This is a rabbinic decree lest the seller say to the buyer after receiving the money: **Your wheat was burned in the upper story**. If a fire breaks out or some other mishap occurs after a seller receives the money, he will not bother to save the goods in his house because they no longer belong to him, and the buyer may incur a loss.

סֻוף סֻוף, מִאן דְּשָׂרָא דְּלִיקָה בְּעֵ
שְׁלוּמִי! אַלְאָ, גַּוְיִרָה שֶׁמְאָה תְּפּוֹל דְּלִיקָה
בָּאוּנָס. אַיְ מִוקְמָתָה לְהֹו בְּרוּשָׁוֹתִיה מִסְרָ
נְפִישָׁה, טְרָח וּמְצִיאָל, וְאַיְ לֹא – לֹא מִסְרָ
נְפִישָׁה טְרָח וּמְצִיאָל.

The Gemara asks: **Ultimately, the one who ignited the fire is required to pay for the damage caused, and the one who purchased the movable items with money will be reimbursed for his loss, so why was there a need to issue this decree? Rather, it is a rabbinic decree lest a fire be ignited spontaneously due to circumstances beyond one's control**, where no one is liable to pay for the damage caused. **If you establish the purchase item in the possession of the seller, he will expend great effort, exert himself, and rescue the item, as it is still his own property. But if you do not establish the purchase item in the possession of the seller, he will not expend great effort, exert himself, and rescue the item.** That is the opinion of Rabbi Yoḥanan.

רִישׁ לְקִישׁ אָמֵר: מִשְׁיכָה מִפּוֹרֶשֶׁת מִן
– **הַתּוֹרָה. מֵאַי טְעַמָּא דְּרִישׁ לְקִישׁ**
אָמֵר קָרְאָ: "וְכִי תִמְכְּרוּ מִמְּבָרָע לְעַמִּיתָךְ
אוֹ קָנָה מִיד עַמִּיתָךְ" – דָבָר נְקַנָּה
מִיד לִידָךְ.

Reish Lakish says: The act of acquisition of **pulling** is explicit in the Torah,^N and it is not merely by rabbinic decree that payment of money does not effect acquisition of movable property. The Gemara asks: **What is the reason for the opinion of Reish Lakish?** He derives it from the Torah, as the verse states: “**And if you sell to your colleague an item that is sold, or acquire from your colleague’s hand, you shall not exploit his brother**” (Leviticus 25:14), and the reference is to **an item that is acquired from hand to hand**, i.e., by means of pulling.

וּרְبִּי יוֹחָנָן אָמֵר: "מִיד" – לְמַעַטִּי קְרָעָ
דְּלִית בָּה אָוֹנָה.

And Rabbi Yoḥanan said: The term “**from your colleague’s hand**” is not teaching that an item can be acquired by pulling. Rather, it serves to exclude land, which is not subject to the halakha of exploitation because it is not physically handed over from one to another.

וּרְישׁ לְקִישׁ: אִם בֵּן לְכַתּוֹב קָרְאָ:
– **"וְכִי תִמְכְּרוּ מִמְּבָרָע מִיד עַמִּיתָךְ אֶל**
תוֹנוֹ, "אוֹ קָנָה" לְפָה לִי? שְׁבַע מִנְהָ
לְמִשְׁיכָה.

The Gemara asks: **And how does Reish Lakish respond to that explanation?** The Gemara answers: Reish Lakish agrees that the verse serves to exclude land from the halakha of exploitation. But if it is so that this was its only purpose, let the verse write: **And if you sell, from your colleague’s hand, an item that is sold, you shall not exploit. Why do I need the additional phrase “or acquire”? Learn from it that acquisition by Torah law is effected by means of pulling.**

HALAKHA

Money and pulling – בְּعָוֹת מִשְׁיכָה: By Torah law, money effects acquisition of movable property, but the Sages decreed that movable property can be acquired only by means of physical acquisition, i.e., pulling or lifting. The halakha is in accordance with the opinion of Rabbi Yoḥanan in disputes with Reish Lakish (*Shulhan Arukh, Hoshen Mishpat* 198:1).

By Torah law money effects acquisition – בְּדָבָר תּוֹרָה מִעֲוֹזָת קְוּנוֹת: The Ramban explains that in Rabbi Yoḥanan’s opinion only money, and not pulling, effects acquisition of movable property by Torah law, and the Sages instituted to the contrary that pulling and not money effects acquisition of movable property. Many commentaries hold that even Rabbi Yoḥanan agrees that both pulling and money are effective by Torah law and the Sages merely invalidated acquisition with money and left acquisition with pulling intact (see Rosh and Ritva).

Various proofs were cited for the principle that money effects acquisition of an item. One is based on the fact that a slave is purchased with money, from which it can be inferred *a fortiori*: If giving money can effect acquisition of a person, all the more so can it effect acquisition of property (Rabbeinu Yitzḥak of

Dampierre; Rif). Others derive this principle from the halakhot of consecrated property: If consecrated items can be purchased with coins, all the more so non-sacred property. The Rosh adds that on several occasions the Torah specifies that items were purchased with coins, e.g., the field of Ephron, or the field in the verse: “They shall buy fields with money” (Jeremiah 32:44), among other examples.

And for what reason did the Sages say that pulling acquires – בְּמִבֵּן כֵּה אֲמָרוּ מִשְׁיכָה קְוָנה: The early commentaries ask: Why did the Sages rescind the halakha of acquisition effected by means of money, which is a transaction by Torah law? Why not merely require pulling in addition to the payment of money (see Tosafot)? The Rosh explains that they did so to avoid creat-

ing difficulties in the execution of transactions by requiring two separate acts of acquisition.

Pulling is explicit in the Torah – בְּדָבָר תּוֹרָה: What difference is there whether the acts of acquisition of money or pulling are by Torah law or not? Once the Sages instituted their ordinance, everyone agreed that pulling is required. The answer is that if pulling is effective by rabbinic law, in uncommon cases where the ordinances and decrees of the Sages do not apply, the halakha would revert to Torah law. Furthermore, there are ramifications with regard to misuse of consecrated property, which is established only on the basis of acquisitions by Torah law (Tosafot, cited in *Shita Mekubetzet*; see Ritva).

HALAKHA

The seller was exploited – It is prohibited for one to exploit the other party in commercial transactions. One who exploits another, whether he is the buyer or the seller, violates a prohibition (*Shulhan Arukh, Hoshen Mishpat* 227:1).

רַבִּי יוֹחָנָן: אָוְקָנָה מִכְרָה לֵיה֒ ?מַאי עֲבִידָה לֵיה֒ ?
מִבְשֵׁעַ לֵיה֒ לְכִדְתְּנָא: וַיְכִי הַמְּכָרֶבֶן מִמְכָרֶבֶן
אֶל תּוֹנוֹן. אִין לִאְלָא שְׁפַתְאָנָה לְזָקָת,
רַחֲאָנָה מִכְרָה מִנְעָן? תַּלְמָדוֹ לְזָמָר: אָוְ
קָנָה אֶל תּוֹנוֹן.

וריש ל'קיש: תורה גמר מיניה.

תְּנָן, רַבִּי שְׁמֻעוֹן אָוָם: בְּלַל שְׁהַבְּסָר
בְּיוֹן – יְדוֹ עַל הַעֲלוֹתָה. מִכְרָה הוּא דְמִצְרָיָם
הַדָּר בֵּיהֶ, לְזָקָח לֹא מֵצִי הַדָּר בֵּיהֶ. אֵין
אָמָרָת בְּשִׁלְבָא מַעֲות קְנוֹת – מִשּׁוּם
הַכִּי מִכְרָה מֵצִי הַדָּר בֵּיהֶ, לְזָקָח – לֹא
מֵצִי הַדָּר בֵּיהֶ. אֶלָּא אֵין אָמָרָת מַעֲות
אַין קְנוֹת – לְזָקָח נִמְיָה לְהַדָּר בֵּיהֶ!

אָמָר לְךָ רִישׁ לְקִישׁ: אַלְיבָא דְרָבִי
שְׁמֻעוֹן – לֹא קָאָמִינָא, כִּי קָאָמִינָא –
אַלְיבָא דְרָבֵן.

בְּשִׁלְבָא לְרִישׁ לְקִישׁ – הַיּוֹן דְאַיכָא
בֵּין רַבִּי שְׁמֻעוֹן לְרָבֵן. אֶלָּא לְרַבִּי יוֹחָנָן,
מֵאַיְאָה בֵּין רַבִּי שְׁמֻעוֹן לְרָבֵן? אַיְאָה
בֵּין יְהוּן דָרְבָּן חַסְדָּא, אָמָר וּבְחַסְדָּא:
כָּרְךָ שְׁתַקְנוּ מִשְׁכָּה בְּפָמְכוּרִין בְּן תְּקָנוּ
מִשְׁכָּה בְּלַקְוֹחוֹת. רַבִּי שְׁמֻעוֹן לֹא תַּלְתֵּה
דָרְבָּן חַסְדָּא, וּרְבָּן אַיתָ לֹא דָרְבָּן חַסְדָּא.

תְּנָן: אֶבֶל אָמָרָו מַי שְׁפַרְעַ מִדּוֹן הַמְּבּוֹל
הוּא עַתִּיד לְיִפְרֹעַ מִפְּנֵי שְׁאַיְנוּ עוֹמֵד
בְּדִיבּוֹרָו. אֵין אָמָרָת בְּשִׁלְבָא מַעֲות
קְנוֹת – מִשּׁוּם הַכִּי קָאִי בְּאַבְלָי', אֶלָּא
אֵין אָמָרָת מַעֲות אַין קְנוֹת – אַפְאַיְאָ
קָאִי בְּאַבְלָי'? מִשּׁוּם דְרָבִים.

ברְבָרִים מֵקָאִי בְּאַבְלָי? וְהַתְּנִיאָ:

The Gemara asks: And as for Rabbi Yoḥanan, what does he do with the phrase “or acquire”? What halakha does he derive? The Gemara answers: He requires that phrase for that which is taught in a baraita: From the phrase in the verse: “And if you sell to your colleague an item that is sold...you shall not exploit,” I have derived only a case where the buyer was exploited. From where is it derived that the halakha is the same in a case where the seller was exploited?^H The verse states: “Or acquire...you shall not exploit,” indicating that it is prohibited for the one who acquires the item to exploit the seller.

The Gemara asks: And from where does Reish Lakish derive this halakha? He derives two halakhot from the phrase “or acquire from your colleague’s hand.” He derives that it is prohibited to exploit the seller and that movable items are acquired by means of pulling.

We learned in the mishna that Rabbi Shimon says: Anyone who has the money in his possession has the advantage. It is the seller who can retract from the transaction; the buyer cannot retract from the transaction. The Gemara asks: Granted, if you say that giving money effects acquisition of movable property, it is due to that reason that the seller can retract from the transaction and the buyer cannot retract from the transaction. Rabbi Yoḥanan explained that the Sages instituted pulling to complete the transaction for the benefit of the buyer so that the seller will expend great effort and rescue the item, as it is still his own property. But the seller acquires the money immediately. But if you say in general that giving money does not effect acquisition of movable property, let the buyer also renege on the transaction.

The Gemara answers: Reish Lakish could have said to you: I did not state my opinion in accordance with the opinion of Rabbi Shimon; when I stated my opinion it was in accordance with the opinion of the Rabbis.

The Gemara asks: Granted, according to Reish Lakish, that is the dispute between the opinions of Rabbi Shimon and the Rabbis, as Rabbi Shimon holds that money effects acquisition of the item and the Rabbis hold that only pulling the item effects its acquisition. But according to Rabbi Yoḥanan, what difference is there between the opinion of Rabbi Shimon and that of the Rabbis? The Gemara responds: The difference between them is with regard to the statement of Rav Hisda,^N as Rav Hisda says: Just as the Sages instituted pulling for the sellers, likewise, they instituted pulling for the buyers. Until the item is pulled, the buyer can also renege on the transaction. Rabbi Shimon does not hold in accordance with the statement of Rav Hisda, and the Rabbis hold in accordance with the statement of Rav Hisda.

We learned in the mishna: But the Sages said: He Who exacted payment from the people of the generation of the flood, and from the generation of the dispersion, will in the future exact payment from whoever does not stand by his statement. Granted, if you say that giving money effects acquisition of movable property, it is due to that reason that one who reneges on the transaction after the money is paid stands subject to the curse: But the Sages said: He Who exacted payment. But if you say that giving money does not effect acquisition of movable property, why does one who reneges after the money is paid stand subject to the curse: But the Sages said: He Who exacted payment? The Gemara answers: It is due to the fact that he reneged on a statement of his committing himself to buy the item.

The Gemara asks: And does one who reneged on a statement of commitment stand subject to the curse: But the Sages said: He Who exacted payment? But isn’t it taught in a baraita:

NOTES

The difference between them is with regard to the statement of Rav Hisda: **אַיְאָה בֵּין יְהוּן דָרְבָּן –** According to some commentaries, the reference is not to a practical difference; rather, it

is to a difference in their fundamental reasoning. It is parallel to the question: With regard to what principle do they disagree? (Ritva).

Perek IV

Daf 48 Amud a

רבי שמעון אומר: אף על פי שאמרו טלית – קונה דיר ולב, ואין דיר ולב קונה טלית – מפל מקום בך הילכה, אבל אמרו: מי שפרע מאנשי דור המבול ומאנשי דור הפלגה ומאנשי סדום ועמורה וממגינים ביהם, הוא עתיד ליפרע מפני שאיןו עומד בריבו.

והנושא ונוטן בדברים – לא קנה, והחויר בו – אין רוח חכמים נזחה הימנו.

וזה אמר רבא: אין לך אלא אין רוח חכמים נזחה הימנו. דברים ואיכא בחדיו במעות – קאי ב"אבל", דברים וליכא בהדריו במעות – לא קאי ב"אבל".

וזה אמר רבא: קרא ונתניא מסיע ליה לריש לקיש. קרא – דעתך. זיכח בטעותו בפקודן או בתשומת יד או בגין ערך את עטמו. תשומת יד – אמר רב חדא: בגין שיחד לו כל להלוותו, ערך – אמר רב חדא: בגין שיחד לו כל לעשקו.

וב' אהדריה קרא בתיב: זהה כי יחתא ואשם והשיב את הגולא אשר גול או את הדעת אשר ערך או את הפקודן אשר הפקד אותו – ואילו תשומת יד לא אהדריה. Mai Tumma – לא משומם רמחשרו מישכה?

אמר ליה רב פפא לרבה: איך מא מעשך הוא דהדר קראי הכא במא עסקין – בגין שיטלו ממנו וחזרו והפקדו אצלו.

Rabbi Shimon says: Even though the Sages said that when one party takes possession of a garment, the other party acquires a gold dinar, but when one party takes possession of a gold dinar, the other party does not acquire a garment, in any case, that is what the halakha would be.^N But the Sages said with regard to one who reneges on a transaction where one party pulled the gold dinar into his possession: He Who exacted payment from the people of the generation of the flood,^N and from the people of the generation of the dispersion, and from the inhabitants of Sodom and Gomorrah, and from the Egyptians in the Red Sea, will in the future exact payment from whoever does not stand by his statement.^H

The baraita concludes: And one who negotiates, where the negotiation culminates with a statement^H committing himself to acquire the item, did not acquire the item without a formal act of acquisition. But with regard to one who reneges on his commitment, the Sages are displeased with him.^H

And Rava says: With regard to one who reneges on his commitment, we have only^N the statement that the Sages are displeased with him, but not that he is subject to a curse. The Gemara explains: If there is a statement of commitment and there is the payment of money accompanying it, he stands subject to the curse: But the Sages said: He Who exacted payment. If there is a statement of commitment and there is no payment of money accompanying it, he does not stand subject to the curse: But the Sages said: He Who exacted payment.

S Rava says: A verse and a baraita support the opinion of Reish Lakish that money does not effect acquisition of movable property by Torah law. A verse, as it is written: “And deal falsely with his colleague in a matter of deposit, or of pledge, or of robbery, or oppressed his colleague” (Leviticus 5:21). The verse is referring to cases similar to a deposit where there is denial of an item and not merely a debt. With regard to the term “pledge,” Rav Hisda says: This is referring to a case where the debtor designated a vessel as collateral for his loan and then denies his debt. With regard to the term “oppressed,” Rav Hisda says: This is referring to a case where the employer designated a vessel for him to guarantee payment of his wages and withheld payment, resulting in his oppression.

And when the verse repeats three of these cases after stating that each individual admitted that he lied and is liable to return the item that he misappropriated, it is written: “And then it shall be, if he has sinned, and is guilty, that he shall restore that which he took by robbery, or the thing that he has gotten by oppression, or the deposit that was deposited with him” (Leviticus 5:23), while the verse does not repeat the term “pledge.” What is the reason that the verse omits that case? Is it not because it lacks pulling by the lender?^N Since the lender did not pull the item designated as collateral for the loan, he did not acquire the item and is not liable to bring an offering for taking a false oath if he fails to pay, as he denied owing an abstract debt, not an actual item. Apparently, there is no full-fledged acquisition without pulling the item into one’s possession.

Rav Pappa said to Rava: Say that it suffices that the verse repeated the case of oppression. In that case, there is also no denial of an actual item, merely of an obligation to pay one’s worker. The halakha would be the same in the case of a pledge, i.e., of a loan where the lender designated an item although there was no pulling. The Gemara rejects that contention: With what are we dealing here? We are dealing with a case where the workers took the item for their payment from the employer, and then deposited that item with him, and the employer than denied having received that deposit. Accordingly, he is denying owing an actual item, not an abstract debt.

NOTES

In any case that is what the halakha would be – **מכל מקום בהלכה:** Although the acquisition is valid by Torah law, the court does not obligate him to pay. Some explain that once the offending party is cursed, there is no more for the court to do (see Shita Mekubbetz).

From the people of the generation of the flood, etc. – **בנשׁא ונוטן בדברים – אין רוח חכמים נזחה הימנו:** One explanation for the reference to these groups in particular is that the people listed here all destroyed the societal structure with their lies and robbery (*HaBoneh*). The Rosh maintains that the tanna is mainly referring to the people of the generation of the flood, who, as the Sages teach, would deceive each other, and the Egyptians, who engaged in deceit, as they promised to liberate the children of Israel and reneged on that promise. The Meiri cites the Jerusalem Talmud where it is explained that the generation of the flood and the inhabitants of Sodom would steal in a manner in which the courts were unable to compel them to return the stolen item. The court is similarly powerless in the case of one who reneges on his commitment.

We have only, etc. – **אין לך אלא כי:** According to the Rashba, the baraita is emphasizing here that although he acted improperly he is not even subject to a curse. The Rosh maintains that Rava was unfamiliar with the baraita and inferred the halakha from the mishna.

שבועה על הלואה: According to Rashi, Tosafot, and the Rosh, only one who takes a false oath with regard to a debt linked to a specific item is liable to bring an offering for that oath. The Ramban, the Ran, and the Ritva maintain that one is liable to bring an offering even for false denial of a loan and other commitments. The dispute with regard to the verses concerns only the requirement to restore the particular item to its owner, specifically, whether or not: And he shall restore, refers to the particular item (see Rabbeinu Tam, *Sefer HaYashar*).

HALAKHA

One who reneges on an act of acquisition of giving money – **החויר מקמן מעות:** If one pays money for movable property but did not pull it, if he then reneges on his commitment, although the transaction is incomplete, he is acting inappropriately and is subject to the curse: He Who exacted payment (*Shulhan Arukh, Hoshen Mishpat* 204:1).

One who negotiates where the negotiation culminates with a statement – **הנושא ונוטן בדברים:** A commercial transaction cannot be completed verbally. Even if the two parties agreed in the presence of witnesses, it does not constitute a transaction. Therefore, either party may renege on the agreement (*Shulhan Arukh, Hoshen Mishpat* 189:1).

With regard to one who reneges on his commitment the Sages are displeased with him – **החויר:** One should keep his verbal commitments, even if they are not accompanied by an act of acquisition. The Sages are displeased with one who reneges on his commitments (*Shulhan Arukh, Hoshen Mishpat* 204:7).

LANGUAGE

Bathhouse attendant [ballan] – בָּלָן: From the Greek βαλανεύς, *balaneus*, meaning bathhouse attendant.

BACKGROUND

He is liable for misuse of consecrated property – טעלוּ: The halakhot of misuse of consecrated property are stated in the Torah (Leviticus 5:14–16) and discussed in greater detail in tractate *Me'ilah*. The basic principle is that anyone who unwittingly benefits from consecrated property, e.g., he was unaware that the property was consecrated, is liable for misuse. He is liable to bring a guilt-offering and to pay the Temple treasury the value of the benefit that he derived plus an additional payment of one-fifth of the value of that benefit. After one misuses the consecrated item it is no longer consecrated, and the money that he pays to the Temple treasury assumes consecrated status.

The Torah does not discuss the liability of one who intentionally misuses consecrated property. Therefore, atonement is neither available to him through sacrifice of a guilt-offering nor through payment of the value of the benefit plus the additional one-fifth of the value of that benefit.

הַיְנוּ פְקֹדֹן: תְּרוּ גּוֹנִי פְקֹדֹן.

אֵי הַבִּשׁוּמָת יְדַבֵּר לִהְדָרִיה וּלְקַמְמָיה
בְּגַזְן שְׁגַטְלָה הַיכְנָנו וְחַזְרָה וְהַפְקִדוֹ אַצְלָו אֵי
אֲהַדְרִיה קְרָא – לֹא תִּזְבְּתָא וְלֹא סִיעַתָּא.
הַשְׂתָּא דְלֹא אֲהַדְרִיה קְרָא – מַסְיַע לִיה.

וְתִשׁוּמָת יְד לֹא אֲהַדְרִיה קְרָא? וְהַתְּנִיא,
אָמָר רַבִּי שְׁמֻעוֹן: מִנּוּן לִיְנָן אֶת דָאָמוֹר
לְמַעַלָּה לְמַטָּה – דְכַתְּבִיב: "אוֹ מִכְלָ אָשָׁר
שְׁבַע עַלְיוֹ לְשָׁקוֹר" – וְאָמָר רַב נַחְמָן אָמָר
רַבָּה בָּר אַבּוֹה אָמָר רַב: לְרַבּוֹת תִשׁוּמָת
יְד לְהַיְשָׁבוֹן. בְּחִידָה מִיהָא לֹא אֲהַדְרִיה
קְרָא.

מִתְנִיא מַנְלָן – דְתְנִיא: נְתָנָה לְבָלָן – מַעַל
וְאָמָר רַב: זָוקָא בְּלַן הָוָא, דְלֹא מַחְסָרָא
מִשְׁכָּה. אֲבָל מִינִי אַחֲרִיתָא, דְמַחְסָרָא
מִשְׁכָּה – לֹא מַעַל עַד דְמַשְׁיכָן.

וְהַתְּנִיא: נְתָנָה לְסָפֶר – מַעַל, וְסָפֶר הָא בָעֵי
לְמַמְשָׁךְ תְּסִפּוּרָתְךָ אֶתְכָא בְּמַאֲעַסְקֵינוּ –
בְּסָפֶר נְבָרִי, דְלֹאו בָר מִשְׁכָּה הָוָא.

The Gemara challenges this explanation: That is precisely the case of a deposit that is already mentioned in the verse. What novel element is introduced by this case? The Gemara explains: There are two types of deposit: A standard deposit and the case where one deposits with a bailee an item that had previously belonged to the bailee.

The Gemara asks: If so, and that is the explanation of the verse, let the verse repeat the case of a pledge as well, and interpret it in a case where the lender took the item from him by pulling it into his possession, and then deposited that item with the debtor. The Gemara responds: If the verse had repeated the case of a pledge it would be neither a refutation of nor a support for the opinion of Reish Lakish, as the cases could be explained otherwise. Now that the verse does not repeat the case of a pledge, it supports his opinion that one acquires movable property only by means of pulling it into his possession.

The Gemara asks: And does the verse not repeat the case of a pledge? But isn't it taught in a baraita: Rabbi Shimon said: From where is it derived to apply that which is stated above, in the first verse cited from Leviticus, to the verse stated below, i.e., the second verse cited from Leviticus? It is derived as it is written: "Or anything about which he has taken a false oath" (Leviticus 5:24). And Rav Nahman says that Rabba bar Avuh says that Rav says: This clause serves to include the case of a pledge in the requirement of return, teaching that even in the case where the debtor designated an item as collateral for a loan, the lender is obligated to return the item although there was no pulling. The Gemara rejects that contention: In any event, the verse did not repeat the case of a pledge explicitly, and one derives support for the opinion of Reish Lakish from that omission.

From where do we derive support for the opinion of Reish Lakish from a baraita? It is as it is taught in a baraita: If one had consecrated money and gave it to a bathhouse attendant [leballan]¹ as payment for use of the bath, he is liable for misuse of consecrated property² as soon as he pays him, even before he uses the bathhouse. And Rav says: One can infer that it is specifically with regard to one giving the consecrated money to a bathhouse attendant that he is liable immediately, as in that case there is no lack of pulling, since he is paying for usage of the bathhouse, not for an item. But one can infer that in cases involving other matters, where the one giving the consecrated money is acquiring an item and there is a lack of pulling, he is liable for misuse only once he pulls the item he is purchasing. Apparently, by Torah law, it is only by means of pulling an item into his possession, not through payment of money, that one acquires an item.

The Gemara asks: But isn't it taught in a baraita: If one had consecrated money and gave it to a barber,³ he is liable for misuse of consecrated property immediately, as soon as he gives him the money, and in the case of a barber, doesn't he need to pull the haircut utensils in order for their transaction to be finalized? The Gemara answers: With what are we dealing here? We are dealing with a gentile barber, who is not subject to the requirement of pulling, which applies only to Jews, as it is written: "And if you sell to your colleague something that is sold." Everyone agrees that a transaction with gentiles is finalized with the payment of money.

HALAKHA

Gave it to a bathhouse attendant...gave it to a barber – נְתָנָה לְבָלָן: If one unwittingly paid a bathhouse attendant with consecrated money, he is liable for misuse of consecrated property even if he did not yet bathe, as he has the right to bathe at his discretion. Likewise, if one paid a craftsman with consecrated money he is liable for misuse of consecrated property even before the craftsman performs the contracted labor. By contrast, if one

acquires an item with consecrated money, he is liable for misuse only if he pulls the item. If he acquires the item from a gentile, he is liable at the moment that he pays the money. See the *Kesef Mishne*, who questions why the Rambam apparently rules in accordance with the opinion of Reish Lakish (Rambam *Sefer Avoda, Hilkhot Me'ilah* 6:9).

תנייא נבמי דבר: נתנה לבעל או לבעל
או לכל בעלי אופנות – לא מעיל עד
רמשן. קשין אהדר! אלא לאו שמע
מייה: באן – בספר נבר, באן בספר
ישראל, שמע מינה.

The Gemara comments: **This is also taught in a baraita:** If one had consecrated money and gave it to a barber, or to a sailor, or to any craftsmen, he is liable for misuse of consecrated property only once he pulls the item belonging to the worker. The Gemara asks: These two baraitot are difficult, as they contradict each other. The first baraita states that if one had consecrated money and he gave it to a barber, he is liable for misuse of consecrated property as soon as he gives the money. The second baraita states that he is liable for misuse of consecrated property only once he pulls the item. Rather, must one not conclude from it that here, the halakha in the first baraita is with regard to one who gives consecrated money to a gentile barber,^N who is liable when he gives the money to the barber, and there, the halakha in the second baraita is with regard to one who gives consecrated money to a Jewish barber, who is liable only once he pulls the item? The Gemara affirms: Learn from it that this is the case.

ובן אמר רב נחמן: דבר תורה מעות
קוננות. ובזכה לו במתניתה ואשכח:
נתנה לסייעון – מעיל,

The Gemara comments: **And so says Rav Nahman**, in agreement with the opinion of Rabbi Yohanan: By Torah law, the giving of money effects acquisition of movable property. The Gemara adds: **And Levi examined his compendium of baraitot, and he discovered this baraita:** If one had a consecrated ma'a and he gave it to a wholesaler [siton]^L as the first payment for a large quantity of produce, he is liable for misuse of consecrated property. This baraita describes a situation where the buyer did not pull the produce, yet he is liable for misuse. Apparently, by Torah law the giving of money effects acquisition.

NOTES

With regard to a gentle barber – בספר נבר: According to the opinion of Rabbi Yohanan, the act of acquisition of pulling is effective only in transactions a Jew has with another Jew, and giving money is the effective act of acquisition in transactions a Jew has with a gentile. Therefore, he resolves the contradiction between the two baraitot in the opposite manner. Some commentaries, among them Rabbeinu Tam, maintain that both the pulling of the item and the giving of money are effective acts of acquisition in transactions with a gentile.

LANGUAGE

Wholesaler [siton] – סיטון: From the Greek σιτώνης, sitonēs, meaning one who purchases large quantities of produce for consumption by the public at large.

Perek IV**Daf 48 Amud b**

אלא קשיא ליריש לקישו אמר לך ריש
ליקיש: דא מוי – רב שמעון היא.

But this baraita is difficult according to Reish Lakish. The Gemara answers: **Reish Lakish could have said to you:** In accordance with whose opinion is this baraita? It is in accordance with the opinion of **Rabbi Shimon**, not that of the Rabbis.

אבל אמרו כי שפער וכו. איתתו
אבי אמרו: אודושי מודען ליה, רבא
אמר: מלט ליטין ליה.

§ The mishna teaches with regard to one who reneges on a transaction after the money was paid: **But the Sages said: He Who exacted payment** from the people of the generation of the flood, and from the generation of the dispersion, will in the future exact payment from whoever does not stand by his statement. **It was stated** that there is an amoraic dispute. **Abaye said** that we inform one who seeks to renege^N on a transaction: Be aware that this is the punishment of one who does not stand by his statement. **Rava said** that we curse him with that statement.

אבי אמר אודושי מודען ליה, דכתיב
ונשיא בעמך לא תאר. רבא אמר:
מלט ליטין ליה, דכתיב בעמך
בעיטה משעה עמק.

The Gemara elaborates: **Abaye said that we inform him, as it is written:** “Nor curse^{NB} a ruler among your people” (Exodus 22:27), from which it is derived that it is prohibited to curse a ruler or any other member of the Jewish people. **Rava said that we curse him,**^H and the prohibition against cursing is not a concern, as it is written: “Among your people,” from which it is derived that the prohibition applies only with regard to one who performs an action befitting your people,^N not one who reneges on a transaction after the money is paid.

NOTES

We inform one who seeks to renege – לא תאר: The Ritva explains that the reason he is not subject to the curse is that at times one reneges because of a change in the market price, in which case he is not guilty of deceit.

Nor curse – לא תאר: Although the name of God is not included in this curse, and a curse by Torah law includes the name of God, the formula: He Who exacted payment, contains a clear reference to God and therefore is tantamount to a curse with an appellation of God (Meiri).

With regard to one who performs an action befitting your people – בעיטה משעה עמק: The Gemara in tractate Sanhedrin derives the halakha of one who curses another Jew from the verses written with regard to one who curses a ruler and one who curses a deaf person (Rosh).

BACKGROUND

Nor curse – לא תאר: It is generally prohibited by Torah law to curse any Jew (Exodus 22:27), even if the person being cursed is unaware of the curse, e.g., because he is deaf (see Leviticus 19:14). One who curses another Jew using God's name is liable by Torah law to receive lashes.

HALAKHA

The curse, He Who exacted – לא תאר: How is the curse: He Who exacted payment, imposed? The court curses him with the words: He Who exacted payment from the people of the generation of the flood, and from the people of the generation of the dispersion, and from the inhabitants of Sodom and Gomorrah, and from the Egyptians in the Red Sea, will in the

future exact payment from whoever does not stand by his statement. The Rema cites an opinion that the curse is invoked in the second person: Will in the future exact payment from you. Some hold that the curse is invoked in public (*Shulhan Arukh, Hoshen Mishpat* 204:4).

PERSONALITIES

Rabbi Hiyya bar Yosef – רבי חִיאָה בֶּר יוֹסֵף: Rabbi Hiyya bar Yosef was a second-generation Babylonian *amora* who ascended to Eretz Yisrael. During his residence in Babylonia he assumed the customary title Rav, and after he immigrated to Eretz Yisrael, he assumed the customary title Rabbi.

Rabbi Hiyya was an outstanding disciple of Rav and transmitted many statements in his name. After Rav's passing, he studied Torah with Rav's contemporary Shmuel until his move to Eretz Yisrael. In Eretz Yisrael, he was a disciple-colleague of Rabbi Yohanan, and several disputes between them are cited in the Gemara. He may have also served as a judge in Tiberias.

It is apparent from the Gemara here and elsewhere that Rabbi Hiyya earned his living from commerce.

NOTES

Would Rabbi Hiyya bar Yosef come to accept upon himself a curse of the Sages – רַבִּי חִיאָה בֶּר יוֹסֵף אָמַן? Rava assumed that Rabbi Hiyya bar Yosef believed the other party would forgive him and would not compel him to accept the curse upon himself (*Tosefta HaRosh*).

A down payment...effects acquisition of merchandise – עֲרָבוֹן קֹוְהָ: Rashi and other commentaries dispute the meaning of this case. Everyone agrees that the reference is not to an item given as collateral; rather, the reference is to a sum of money paid. Some commentaries disagree with Rashi and explain that the money is not a down payment; rather, it is a sum that the buyer commits to pay if he fails to complete the transaction (see Ramban, Rashba, and Ran).

רַבִּי יוֹסֵף conforms to his line of reasoning – תְּלֻעָמָה: The Gemara interrupts its citation of the *baraita* to insert this comment in order to assert that the dispute is not with regard to the effectiveness of the down payment but to the general issue of a transaction with inconclusive consent (*Shita Mekubbetzet*).

A transaction with inconclusive consent [*asmakhta*] – אַסְמָקְתָּא: The term *asmakhta* in the context of transactions refers to any obligation to which one commits and concerning which one accepts a penalty or payment for which he receives nothing in return or receives only a partial return. There is a tannaitic dispute whether a commitment of this sort effects a transaction. The *tanna* who holds that it does not effect a transaction maintains that since the one making this commitment is convinced that he will never be required to make that payment, there is no full-fledged transaction. Since he did not resolve to transfer ownership of the payment, the transaction does not take effect. There is a dispute among the halakhic authorities as to under what circumstances an *asmakhta* effects a transaction, e.g., where it includes a stipulation that it will take effect immediately, if the commitment was undertaken in the presence of a significant court.

אָמַר רַבִּי חִיאָה בֶּר יוֹסֵף אָמַן לְה – וַיַּרְבֵּי חִיאָה בֶּר יוֹסֵף יִקְבְּרוּ לֵיה וּזְיוּ אַפְלָחָא, לְסֹרֶךְ אַיְקוּר מִלְחָאָה. אַתָּא לְקַמְפִיה דַרְבֵּי יוֹחָנָן, אָמַר לֵיה: זַיל הַבְּלָה, וְאֵי לא – קְבִּיל עַלְיכֶיךָ מִשְׁפָרָעַ. וְאֵי אָמָרָת אָודְשָׁעִי מַזְרָעִין לֵיה, רַבִּי חִיאָה בֶּר יוֹסֵף בָּר מַזְרָעִישׁ הוּא? רַבִּי חִיאָה בֶּר יוֹסֵף אָמַן מִלְטָלִי יִלְעַמְדֵן לְהָלֵה? רַבִּי חִיאָה בֶּר יוֹסֵף אָמַן לְקַבּוּל עַלְיהָ לְטוֹתָא דַרְבָּנָן?

אָלָא רַבִּי חִיאָה בֶּר יוֹסֵף עֲרָבוֹן הוּא, דַיְהָבֵילְהָ. הוּא סָבָר: בְּגַנְגָדו הוּא קֹוְהָ, וְאָמַר לֵיה רַבִּי יוֹחָנָן: בְּגַנְגָדו כָּלוֹ הוּא קֹוְהָ.

אָתָּה מִרְאָה: עֲרָבוֹן, רַב אָמָר: בְּגַנְגָדו הוּא קֹוְהָ, וְרַבִּי יוֹחָנָן אָמָר: בְּגַנְגָדו כָּלוֹ הוּא קֹוְהָ.

מִתְהִיבֵּי: הַנוֹּתָן עֲרָבוֹן לְחַבְּרוֹן, וְאָמַר לֹא: אִם אָנָּי חִזּוֹר בַּי – עֲרָבוֹן מַחְולָל – הַבָּ, וְהַלָּה אָמַר לֹא: אִם אָנָּי חִזּוֹר בַּי – אַכְפּוֹלָל לְקָרְבָּן עֲרָבוֹן, נַתְקִימָו הַתְנָאִים, וְרַבִּי יוֹסֵף, רַבִּי יוֹסֵף לְטַעַמְהָה, דָאָמָר: אַסְמָקְתָּא קְנָא.

Rava said: From where do I say this halakha? I learned it from the incident where buyers gave Rabbi Hiyya bar Yosef^p money to purchase salt from him. Ultimately the price of salt increased, and Rabbi Hiyya bar Yosef sought to renege on the deal. He came before Rabbi Yohanan to ask his opinion. Rabbi Yohanan said to him: Go and give them the salt, and if not, accept upon yourself: He Who exacted payment. And if you say we merely inform him of this punishment, is Rabbi Hiyya bar Yosef one who must be informed? He knows the halakha. The Gemara rejects this proof: Rather, what is the alternative, that we curse him? Would Rabbi Hiyya bar Yosef come to accept upon himself a curse of the Sages?ⁿ

Rather, the details of the incident were different. It is a down payment that buyers gave Rabbi Hiyya bar Yosef. The money was paid merely to bolster the commitment to complete the transaction. Rabbi Hiyya bar Yosef held that the down payment effects acquisition of salt commensurate with its value, and therefore he wanted to give them only that portion of the salt. And Rabbi Yohanan said to him: The down payment effects acquisition of salt commensurate with the entire amount of the transaction.

§ It was stated that there is an amoraic dispute with regard to a down payment. Rav says: A down payment effects acquisition of merchandise^m commensurate with its value. And Rabbi Yohanan said: It effects acquisition of merchandise commensurate with the entire amount of the transaction.

The Gemara raises an objection from a *baraita*: With regard to one who gives a down payment to another, and says to him: If I renege, my down payment is forfeited to you, and the other person says to him: If I renege, I will double your down payment for you, the conditions are in effect; this is the statement of Rabbi Yosei. The Gemara comments: Rabbi Yosei conforms to his standard line of reasoning,ⁿ as he says: A transaction with inconclusive consent [*asmakhta*]^m effects acquisition.^h Even though it is a commitment that he undertook based on his certainty that he would never be forced to fulfill the condition, it is considered a full-fledged commitment.

The *baraita* continues: Rabbi Yehuda says: It is sufficient that the down payment effects acquisition of merchandise commensurate with the amount of his down payment. Rabban Shimon ben Gamliel said: In what case is this statement said? It is when the buyer said to the seller: My down payment will effect acquisition of the merchandise.^h But if one sold another a house or a field for one thousand dinars, and the buyer paid him five hundred dinars of that sum, he has acquired the entire house, and he returns the rest of the money to the seller even after several years have passed.^h The Gemara asks: What, is it not that the same is true with regard to movable property as well, and in a case where the agreement is unspecified, the buyer acquires the entire item, not merely commensurate with the down payment?

HALAKHA

Down payment and *asmakhta* – עֲרָבוֹן וְאַסְמָקְתָּא: In the case of one who gave a down payment to another for the purchase of an item with the stipulation that if he reneges on his agreement the other party will keep the down payment and if the seller reneges he must return the payment to the buyer and pay double the principal, if the buyer reneges the seller keeps the down payment, but if the seller reneges he is not required to pay double the principal (Rambam). The Rema, citing Rashi, the Ra'avad, and the Rosh, holds that the seller does not acquire the down payment at the time it was given because the stipulation was an *asmakhta*, and he did not resolve to fulfill it (*Shulhan Arukh, Hoshen Mishpat* 207:11).

Acquisition with a down payment – קְנָאָה בְּעֲרָבוֹן: If one gave another a down payment whose value was commensurate with a portion of the purchase item, either party can renege on the transaction, unless the buyer specifically stipulated that his down

payment will effect acquisition of the merchandise. In that case, he acquires merchandise commensurate with the value of the down payment (*Shulhan Arukh, Hoshen Mishpat* 190:9, and in the comment of Rema).

שְׂדָה שְׁלָא שִׁלְמָכְלָה: In a case where one sold a field to another and the buyer did not yet pay the entire value of the field, if the seller continues demanding payment of the balance, the buyer acquires only a portion of the field commensurate with the amount paid. If the seller does not demand payment of the balance, the buyer acquires the entire field with the down payment, and the legal status of the balance is like that of any other debt. This is the conclusion of the Gemara in several places. If the buyer gave the money as collateral, he certainly did not acquire the entire field (*Shulhan Arukh, Hoshen Mishpat* 190:10).

לא, מטלטלי בדסחמא לא קני.
ומאי שנא? קרקע דרבנן קני ליה
ממש - קני ליה לבולה, מטלטלי דלא
קני אלא לקובלי מי שפער - לא קני
ליה בוליה.

לימא כתנאי: הפליה את חברו
על המשבע ונכנסה השםיטה, אף
על פי שאינו שוה אלא פלג - אינו
משפט, דברי רבנן שמעון בן גמליאל.
רבי יהודה הנשיא אומר: אם היה
משבע נגיד הלואתו - אינו משפט,
ואם לאו - משפט.

מאי אינו משפט וכאמר רבנן שמעון
בן גמליאל? אילימה בגנו - מפליג
רבי יהודה הנשיא אמר: להן פלוגא
במי משפט?

The Gemara rejects that comparison: **No**, with regard to **movable property** in a case where the agreement is **unspecified**, the buyer **does not acquire** the entire item. The Gemara asks: **And in what way is movable property different from land?** The Gemara explains: In the case of **land**, which with the payment of **money one genuinely acquires it** in a legal sense, the buyer **acquires the entire tract of land with a down payment**. In the case of **movable property**, which with the payment of money **one acquires it only in the sense that if he reneges he will have to receive the curse: He Who exacted payment, the buyer does not acquire the entire item with a down payment.**

The Gemara suggests: **Let us say that this amoraic dispute between Rav and Rabbi Yohanan is parallel to a dispute between tanna'im.** As it is taught in a *baraita*: With regard to **one who lends money to another on the basis of collateralⁿ** and the **Sabbatical Year commenced^b**, even if the collateral is worth only half the sum of the loan, the **Sabbatical Year does not abrogate the loan**; this is the statement of **Rabban Shimon ben Gamliel**. **Rabbi Yehuda HaNasi says:** If the value of the **collateral was commensurate with the sum of his loan**, the **Sabbatical Year does not abrogate the loan, but if it was not commensurate with the sum of his loan, the Sabbatical Year abrogates the loan.**^h

The Gemara asks: **What is the meaning of the statement: The Sabbatical Year does not abrogate the loan, that Rabban Shimon ben Gamliel is saying?** If we say it means that the **Sabbatical Year does not cancel that part of the loan commensurate with the collateral**, but it does cancel the rest, this indicates by inference that **Rabbi Yehuda HaNasi holds that the Sabbatical Year also abrogates that half as well**. That is difficult, as is there not collateral commensurate with that half?

NOTES
One who lends money to another on the basis of collateral – **הפליה את חברו על המשבע**: The Sages derived that in a case where the lender has possession of the deposit, the loan is not abrogated in the Sabbatical Year. It is abrogated only in a case where the sole claim is from the lender, who demands that the borrower repay the loan. In this case, the borrower has a counterclaim that the lender return the collateral (Rosh; see Rashi).

BACKGROUND

The **Sabbatical Year commenced** – **ככנה דה שמיטה**: The **halakhot** of the **Sabbatical Year** are based on Torah law (Leviticus 25:1–7; Deuteronomy 15:1–2), but most authorities maintain that the conditions enabling the observance of the **Sabbatical Year** by Torah law have lapsed, and its present-day observance is based on rabbinic decree.

The particular regulations that apply to the **Sabbatical Year** fall into two main categories. First, all agricultural land must lie fallow. It is prohibited to work the land, except for that which is necessary to keep existing crops alive. Second, cash debts are canceled. All outstanding debts owed by Jews to each other are forgiven, according to most authorities on the last day of the **Sabbatical Year**. This does not apply to debts for which payment was set after the end of the **Sabbatical Year**, nor does it apply when collection proceedings were already initiated in court.

HALAKHA

The **Sabbatical Year with regard to loans on the basis of collateral** – **שמיטה בSELLAH BESHAVON**: The **Sabbatical Year does not abrogate the part of a loan commensurate with the collateral**. Some authorities rule that it does not abrogate any portion of the loan. The dispute is whether the **halakha** is in accordance with the opinion of **Rabban Shimon ben Gamliel** or that of **Rabbi Yehuda HaNasi** (*Shulhan Arukh, Hoshen Mishpat* 67:12).

Perek IV

Daf 49 Amud a

אליא משבעון דנקית למה ליה? אליא
לאו שבע מניה, Mai אינו משפט
ורק אמר רבנן שמעון בן גמליאל - אינו
משפט בכולו, ומאי משפט רק אמר
רבי יהודה הנשיא - להן פלוגא דלא
נקית עלייה משבעון.

ובהא קמפליגנו: דברנן שמעון בן
גמליאל אמר: נגיד בו הוא קונה,
ורבי יהודה הנשיא אמר: נגידו הוא
קונה.

לא, Mai אינו משפט וכאמר רבנן
שמעון בן גמליאל - להן פלוגא
דנקית עלייה משבעון, מכלל דברי
יהודיה הנשיא אמר: להן פלוגא
דנקית עלייה משבעון - נמי משפט,
אליא משבעון דנקית למה ליה? ליבורן
דברים בעלים.

If that half is canceled as well, **then why does he need the collateral that he is holding?** The lender clearly took the collateral to enable him to collect at least part of his debt after the **Sabbatical Year**. Rather, do we not conclude from it: **What is the meaning of the statement: The Sabbatical Year does not abrogate the loan, that Rabban Shimon ben Gamliel is saying?** It means that the **Sabbatical Year does not abrogate the entire loan**. And what is the meaning of: **The Sabbatical Year abrogates the loan, that Rabbi Yehuda HaNasi is saying?** It is referring to that half of the loan that he did not take on the basis of collateral.

And they disagree with regard to this: As **Rabban Shimon ben Gamliel holds that a down payment effects acquisition of merchandise commensurate with the entire amount of the transaction, and Rabbi Yehuda HaNasi holds that a down payment effects acquisition of merchandise commensurate with its value**. Apparently, the amoraic dispute parallels the tannaitic dispute.

The Gemara rejects that parallel: **No**, what is the meaning of the statement: **The Sabbatical Year does not abrogate the loan, that Rabban Shimon ben Gamliel is saying?** It is referring to that half of the loan that he took on the basis of collateral. This indicates by inference that **Rabbi Yehuda HaNasi holds: The Sabbatical Year also abrogates that half of the loan that he took on the basis of collateral**. The Gemara asks: **Then why does he need the collateral that he is holding?** The Gemara answers: He requires it as a **mere reminder** to increase the likelihood that the loan will be repaid, and it does not prevent cancellation of a loan.

NOTES

Give them a quantity of linen equivalent in value to the money that you received – **במאי דנקיית זוי ה' להו**: It was clear to Rav that a man of Rav Kahana's stature would not act in a manner that would lead to his incurring the curse: He Who exacted payment, and therefore the money that he already paid must have been to purchase a commensurate portion of the merchandise (Ritva).

The Gemara raises an objection, Rabbi Yosei son of Rabbi Yehuda, etc. – **מיותיב רבי יוסי ברבי יהודה וכו'**: According to most commentaries, the Gemara raises this objection to the opinion of Rav. Others explain that it poses a difficulty for the opinion of Rabbi Yohanan, as this source indicates that one who fails to fulfill his commitment is considered not only to have acted in bad faith but also to have violated a positive mitzva. The Gemara's answer is effective according to both opinions (see Ra'avad).

וזל אין בכלל – **איפה הדא**: If the Torah is particular that the larger measure of the ephah must be precise, all the more so is this the case concerning the smaller measure of a *hin*, where any discrepancy constitutes deceit (Ritva).

One matter with his mouth and one matter in his heart – אחד בפה ואחד בלב: According to Rashi, the reference is to one involved in negotiations or to one who commits to give a gift. In these cases his thoughts and statements must correspond, as he may not at that point intend to renege on his commitment (see Jerusalem Talmud). The Rambam maintains that the reference is to interactions between people in general, about which he states that it is prohibited to engage in idle flattery and shower another with insincere compliments. This is derived from the conduct of Joseph's brothers, whose treatment of Joseph corresponded to their feelings toward him (Maharatz Hayyut).

HALAKHA

ח' סROWN – **אמנה בדברים**: With regard to one who conducts his business deals by verbal assurance alone, it is proper for him to stand by his statement even if he did not pay money or leave a deposit. Whoever reneges is considered to have acted in bad faith and the Sages are displeased with him, in accordance with the opinion of Rabbi Yohanan.

The Rema writes that if he reneged due to a change in market price, he is not deemed to have acted in bad faith (Ba'al HaMaor; Rosh; Tur). Others claim that even in that case he is deemed to have acted in bad faith (Ramban; Rashba). The Arukh HaShulhan rules that although he is not deemed to have acted in bad faith if he reneged due to a change in the market price, nevertheless, if he observes his commitment even in that case, it demonstrates the attribute of piety (Shulhan Arukh, Hoshen Mishpat 204:7).

That your yes should be just and your no should be just – שׁהיא זו שׁלֵג אֶזְק וְלוּאוֹ שׁלֵג אֶזְק: One should conduct his business dealings in good faith and should fulfill both his positive and his negative statements. Such conduct is especially important in the case of a Torah scholar (Rambam Sefer HaMadda, Hilkhot Deot 5:13).

One matter with his mouth and one matter in his heart – אחד בפה ואחד בלב: It is prohibited to deceive another by verbally misrepresenting one's thoughts (Rambam Sefer HaMadda, Hilkhot Deot 5:6).

BACKGROUND

Hin – הין: A *hin* is a liquid measure of volume equal to half a *se'a*.

**רב כהנא ייהו ליה זוי אפיקנא, לסתך
אייקר ביטננא. אתחא לך פיה דרב. אמר
לייה: במאדי דנקיית זוי – ה' להו
אייך – דברים יונחו, ודברים אין בזון
משמעותי אמנה.**

**דאיתמר: דברים, רב אמר: אין בזון:
משמעות מוחשי אמנה, ורבי יוחנן אמר:
יש בהם משום מוחשי אמנה.**

**מיותיב, רבי יוסי ברבי יהודה אומר:
מה תלמוד לומר "הין צדק"? והלא
הין בכלל איפה היה? אלא לומר לך:
שׁהיא זו שלג צדק, ולאו שלג צדק!
אמר אבוי: הוהו שלא ידבר אחד
בפה ואחד בלב.**

**מיותיב, רבי שמעון אומר: אף על פי
שׁאמרו טלית קונה דינר זהב ואין
דינר זהב קונה טלית, מכל מקום בזון
הלה, אבל אמרו: מי שפרע מאנשין
דור המבול ומאנשי דור הפלגה –
הוא עתיד ליפרע מפני שאיןו עומד
בדבורי!**

**תנאי היא, דתנן: מששה ברבי יוחנן
בן מתייא שאמר לבנו: צא ושבר
לנו פועלם. החל ופסק להם מזונות.
ובשבא אל אביו אמר לו: בני, אפילה
אתה עושה להם בסעודת שלמה
בשעתו לא יצאת כי חוברת עשרה,
שהן בני אברם יצחק יעקב. אלא
עד שלא יתחל במלאה צוא ואמור
לכם: על מנת שאין לכם עלי אלא פת
קיטנית בלבך.**

§ The Gemara relates: Buyers gave money to Rav Kahana to purchase linen. Ultimately, the price of linen increased. Rav Kahana came before Rav to ask his opinion. Rav said to him: Give them a quantity of linen equivalent in value to the money that you received,^N and concerning the rest, your verbal commitment is merely a statement, and reneging on a verbal commitment that was unaccompanied by an act of acquisition does not constitute an act of bad faith.

The Gemara comments: This is as it was stated: There is an amoraic dispute with regard to reneging on a verbal commitment that was unaccompanied by an act of acquisition. Rav says: It does not constitute an act of bad faith. And Rabbi Yohanan says: It constitutes an act of bad faith.^H

The Gemara raises an objection: Rabbi Yosei, son of Rabbi Yehuda,^N says: What is the meaning when the verse states: "A just ephah, and a just *hin*,^B shall you have" (Leviticus 19:36)? But wasn't a *hin* included in an ephah?^N Why is it necessary to state both? Rather, this is an allusion that serves to say to you that your yes [hen] should be just, and your no should be just.^H Apparently, it is a mitzva for one to fulfill his promises. Abaye says: That verse means that one should not say one matter with his mouth and think one other matter in his heart.^{NH} It is prohibited for one to make a commitment that he has no intention of fulfilling. Rav Kahana made his commitment in good faith and reneged due to changed circumstances. That is not prohibited.

The Gemara raises an objection. Rabbi Shimon says: Even though the Sages said that when one party takes possession of a garment, the other party acquires a gold dinar, but when one party takes possession of a gold dinar, the other party does not acquire a garment, in any case, that is what the *halakha* would be. But the Sages said with regard to one who reneges on a transaction where one party pulled the gold dinar into his possession: He Who exacted payment from the people of the generation of the flood, and from the people of the generation of the dispersion, and from the inhabitants of Sodom and Gomorrah, and from the Egyptians in the Red Sea, will in the future exact payment from whoever does not stand by his statement. And one who negotiates, where the negotiation culminates with a statement in which he commits himself to acquire the item, did not acquire the item without a formal act of acquisition. But with regard to one who reneges on his commitment, the Sages are displeased with him. Apparently, one who reneges is considered to have acted in bad faith.

The Gemara explains: This matter is a dispute between *tanna'im*, as we learned in a mishna (Bava Metzia 83a): There was an incident involving Rabbi Yohanan ben Matya,^P who said to his son: Go out and hire laborers for us. His son went and allocated sustenance for them, as part of their employment terms, without specifying the type of sustenance. And when he came to his father, his father said to him: My son, even if you prepare for them a meal like the feast of Solomon during his era, you will not fulfill your obligation to them, as they are the descendants of Abraham, Isaac, and Jacob, and due to that status they are deserving of any meal that they want. Rather, this is what you should do: Before they begin engaging in their labor, go out and say to them: Your employment is on the condition that you have the right to claim from me only the customary meal of bread and legumes.

PERSONALITIES

Rabbi Yohanan ben Matya – רבי יוחנן בן מתייא: Although it is known that Rabbi Yohanan ben Matya was a *tanna*, it is unclear precisely when during the tannaitic era he lived. The story reported here appears in a mishna (83a), where Rabbi Shimon ben Gamliel comments that no condition had to be

stipulated with the workers. The fact that Rabban Shimon ben Gamliel reacted to an incident involving Rabbi Yohanan ben Matya indicates that the latter lived in the third generation of *tanna'im*.

ואֵי סְלָקָא דַעֲתָךְ דִבְרִים יְשִׁיבָה מְשׁוֹם
מְחֻזּוּרִי אַמְנָה – הִיכְיָה אָמָר לֵיהֶן מְחוּדָה
בְּךְ? שָׁאַנְיָה חַתְּמָה, דְפֹעָלִים גּוֹפִיָּהוּ לְאָ
סְמָכָא דַעֲתָהָיוּ. מַאי טַעַמָּא – מִידָע
וְעַד עֲבֹהָ סְמָךְ.

אֵי הַכִּי, אֲפִילּוּ הַתְּחִילָה בְמַלְאָכָה נָמִין!
הַתְּחִילָה בְמַלְאָכָה וְאֵי סְמָכָא דַעֲתָהָיָה
אָמָרָה: מִינָר אָמָר קְמִיה דְאָבָוָה, וְנִיחָא
לְיהָ.

וְקַיְמָר רַבִּי יוֹחָנָן הַכִּי? וְהַאֲמָרָר רַבָּה בָּר
בָּר חַנָּה אָמָר רַבִּי יוֹחָנָן: הָאוֹמֵר לְחַבְיוֹ
מִתְנָה אֲנִי נוֹתֵן לך – כְּלֹל לְחוֹזֶה בָוּ. כָּל
פְּשִׁיטָא אַלְאָ: מַוּתָר לְחוֹזֶה בָוּ. אָמָר רַב
פָּפָא: וּמוֹדָה רַבִּי יוֹחָנָן בְּמִתְנָה מוֹעֵטָה,
סְמָכָא דַעֲתָהָיָה.

הַכִּי נָמִין מִסְתְּבָרָא, דְאָמָר רַבִּי אַבָּהוּ:
אָמָר רַבִּי יוֹחָנָן: יִשְׂרָאֵל שָׁאָמָר לְבָנָיו לְיַיִן:
כָּרוֹ מַעֲשָׂר יְשִׁיבָה לְךָ בַּיִדְךָ – בָּנָיו רְשָׁאֵי
לְעַשְׂוֹתוֹ תְּרוּמָת מַעֲשָׂר עַל מִקּוֹם אַחֲרֵי.
אֵי אָמָרָת בְּשָׁלָמָא לֹא מֵאַיִל לְמִיהָדוּ
בִּיה – מִשּׁוּם הַכִּי רְשָׁאֵי, אַלְאָ אֵי
אָמָרָת מֵצִיא לְמִיהָדוּ בִּיה – אַפְמָא רְשָׁאֵי?
אִישְׁתַּבְחַח דְּקָא אֲכִיל טְבִילִים!

הַכָּא בְּנָמִיא עַסְקִין – בְּגַונְשְׁגַטְלָוּ מְמוֹנוֹ,
וְחוֹר וְהַפְּקִידוּ אַצְלָוּ.

אֵי הַכִּי אִימָא סִיפָא: נָתַנְנוּ לְבָנָיו לְיַיִן אַחֲרֵי –
אֵין לוֹ עַלְיוֹ אַלְאָ תְּרֻעָמָתָה. וְאֵי סְלָקָא
דַעֲתָךְ בְּגַונְשְׁגַטְלָוּ מְמוֹנוֹ וְחוֹר וְהַפְּקִידוּ
אַצְלָוּ, אַפְמָא אֵין לוֹ עַלְיוֹ אַלְאָ תְּרֻעָמָתָה?
בֵּין דִמְשְׁכִיבָה – מְמוֹנוֹ אֵית לִיהְ גְּבִיהָ
אַלְאָ לְאָוֹ שְׁמַע מִינָה – בְּדַלְאָ נְטָלוּ.
שְׁמַע בִּינָה.

The Gemara asks: **And if it enters your mind** that renegeing on a verbal commitment unaccompanied by an act of acquisition **constitutes** an act of **bad faith**, **how did Rabbi Yoḥanan ben Matya tell his son to renege?** The Gemara answers: This is not difficult; **it is different there** in that case, as the laborers themselves do not rely on the son. **What is the reason** they do not rely on the son? It is due to the fact that **they know that he relied on his father giving his approval when committing to feed them.**

The Gemara asks: **If so, then even if the laborers began engaging in their labor**, they still would not rely on the son. Why then did his father instruct him specifically to tell them of the change before they began their labor? The Gemara answers: Once **they began engaging in their labor** they would **certainly rely** on the son's commitment, as **they would say**: He must have come **before his father** and **stated** the conditions of their employment, and his father is **amenable** to those terms. Therefore, it was necessary to inform them before they began working.

The Gemara asks: **And did Rabbi Yoḥanan say this**, i.e., that one who reneges on a verbal commitment acted in bad faith? **But didn't Rabba bar bar Ḥana say that Rabbi Yoḥanan says:** One who says to another: I am giving you a gift, is able to renege on his commitment?¹⁴ The Gemara asks: **He is able to renege?** It is **obvious** that he is able to renege, as in the absence of an act of acquisition no one can compel him to give the gift. **Rather, it means:** It is **permitted** for him to renege on his commitment. Apparently, one who reneges on a verbal guarantee is not considered to have acted in bad faith. Rav Pappa said: **And Rabbi Yoḥanan concedes** that in the case of a **small gift**¹⁵ one may not renege, as the recipients **rely** on him to fulfill his verbal commitment. By contrast, in the case of a large gift the recipients are aware that one might reconsider, and therefore they do not rely on his statement and do not assume that his decision is final.

The Gemara comments: **So too, it is reasonable** to say that this is the opinion of Rabbi Yoḥanan, as **Rabbi Abbahu says that Rabbi Yoḥanan says:** With regard to an Israelite who said to a Levite:¹⁶ You have a **kor**¹⁷ of first-tithe¹⁸ produce that is **in my possession** and that I separated from my produce, the Levite **may render** all or part of this **kor teruma of the tithe** for first-tithe produce that he has in **another place**. Granted, if you say that **one is unable**, i.e., it is not permitted for him, to renege, it is **due to that reason** that the Levite **may render** it **teruma** of the tithe for other produce. But if you say that **one is able**, i.e., it is permitted for him, to renege, why may he render it **teruma** of the tithe for other produce? The owner of the produce could renege, and in that case it will **eventuate that he is consuming untithed produce**, as the **teruma** of the tithe that he separated did not belong to him.

The Gemara answers: **With what are we dealing here?** We are dealing with a case where the Levite took the first-tithe produce **from him and then deposited it with him**, so that it already belongs to the Levite.

The Gemara asks: **If so**, that this is the circumstance addressed in the statement of Rabbi Yoḥanan, say the latter clause of that halakha: If the owner of the produce gave the first-tithe produce **to a different Levite**, the first Levite has **only a grievance against** the owner, but not any legal claim. **And if it enters your mind** that this is a case where the first Levite took the first-tithe produce **from** the owner and then **deposited it with him**, **why does the Levite have only a grievance against him?** Once the first Levite pulled the produce into his possession it is his, and therefore, **he has property in** the possession of the owner of the produce. **Rather, must one not conclude from it** that this is a case where the Levite **did not take** the produce and deposit it? The Gemara affirms: **Conclude from it** that there was only a verbal commitment, and that proves that renegeing on a verbal commitment constitutes an act of bad faith.

HALAKHA

Reneging on a gift – **חוֹרָה מִתְנָה:** One who committed to give a gift to another and renege is deemed to have acted in bad faith. This is the *halakha* with regard to a small gift. In the case of a large gift he is not deemed to have acted in bad faith, as the recipient does not rely on a verbal commitment. One cannot renege on a gift to a poor person, at least in a case where he transferred possession by means of a third party, as it is considered tantamount to taking a vow to give a contribution to charity (*Shulhan Arukh, Hoshen Mishpat* 202:8, 243:4).

NOTES

A small gift – **מוֹעֵטָה מִתְנָה:** In the Jerusalem Talmud, Rav distinguishes between a gift to a wealthy person and a gift to a poor person, stating that one may not renege on a gift to a poor person.

The Sages discuss whether this *halakha* applies to a sale as well (see *Tosafot*). One opinion is that the legal status of all sales is that of small gifts, and one may not renege. Others maintain that if one renege due to a change in market prices it is not considered bad faith (*Ba'al HaMaor*; see *Rosh* and *Ran*). Others hold that only if the price changed significantly is its legal status like that of a large gift, in which case he may renege.

Who said to a Levite – **שָׁאָמָר לְבָנָיו לְיַיִן:** As the Levite did not acquire first tithe with any act of acquisition, how can he separate *teruma* of the tithe from it? The answer is that the owner of the produce is an associate of the priesthood, i.e., one who has an arrangement with a specific priest or Levite to give him their *teruma* or tithes. In those cases, it is considered as though an act of acquisition were performed. The *Rosh* maintains that it is considered as though the owner were authorizing the Levite to separate *teruma* from his produce.

BACKGROUND

Kor – **כָּרוֹ:** A *kor* is the largest measure of volume mentioned in the talmudic sources. It contains thirty *se'a*, or in modern terms 240–480 ℥. That significant variation is due to a fundamental dispute between halakhic authorities with regard to the calculation of halakhic measures.

First tithe – **כְּנֶשֶׁר רְאֵשׁ:** After the separation of *teruma*, which is the portion of the produce given to the priests, one-tenth of the remaining produce is separated to be given to the Levites. This produce is called first tithe. The owner of the produce is entitled to give first tithe to any Levite he chooses. A Levite who received first tithe is required to separate one-tenth of that as *teruma* of the tithe to be given to the priests. Whatever remains of the first tithe is the Levite's property. It has no sanctity, and the Levite may share it with anyone he chooses. The status of produce from which first tithe was not separated is that of untithed produce, whose consumption is punishable by death at the hand of Heaven. Since conscientious separation of first tithe was not universal, the Sages instituted that one separates first tithe from doubtfully tithed produce as well. In that case, it need not be given to a Levite.

NOTES

One of the Sages, etc. – **ההוא מרפק וכו'**: The commentaries dispute this issue at length, as the Gemara indicates later that the incident never transpired. Some authorities maintain that the conclusion negates both the content and the ruling in the original case. Others maintain that even if the incident never transpired, the halakhic conclusion remains intact (see Rif and the commentaries on the Rif, Ra'avad, and Ramban).

הזהא גברא דיבר זויי אשומשי, ל'סוח
אייך שומשמי, הדרו בהו ואמרו ליה:
לֹת לָן שׁוּמְשִׁי, שְׁקָול וּזָק. לֹא שְׁקָיל
זַוְיה, אֲנִינָב. אָתוֹ לְקַפֵּיה דָרְבָּא. אָמָר
לִיה: בֵּין דָאָמָר לְךָ שְׁקָול וּזָק וְלֹא
שְׁקָילָת – לֹא מִבְעִיא שׁוּמָר שְׁכָר דָלָא
הַזֶּה, אַלְאָ אֲפִילוֹ שׁוּמָר חַנְםַ נִמְלָא הַזֶּה.
אָמָר לִיה רְבָנָן לְרָבָא: וְהִיא בָּעֵילְקָבָולִי
עַלְיהָ כִּי שְׁפָרָעַ! אָמָר לְהִוָּה: הַכִּי נִמְלָא.

אָמָר רַב פַּפי אָמָר לִירְבִּינָא: לְדִידִי אָמָר
לִיה הַזֶּה מְרַבֵּן וּרְבָ טּוֹבָת שְׁמָה, וְאָמָר
לָהּ רַב שְׁמוֹאֵל בָּר זַוְרָא שְׁמָה, דָאִי
הַזֶּה יְהִיבָ לִיהָ בֶּל חַלְלָא דַעֲלָמָא לְאַחֲרָיו.
קָא בְּשִׁיעָ בְּדָבְרָה. בְּרִידִי הַזֶּה עַזְבָּדָא,
הַזֶּה יוֹמָא אֲפְנֵיא דְמַעַל שְׁבָתָא הַזֶּה,
הַזֶּה יִתְבָּנָא וְאַתָּה הַזֶּה גַּבָּרָא וְקָא
אֲבָבָא. אָמָר לִי: אַתָּה לְךָ שׁוּמְשִׁי
לִבְונִינָא?

The Gemara relates: There was a certain man who gave money as payment for sesame. Ultimately, the price of sesame increased, and the sellers reneged and said to him: We have no sesame; take your money. The buyer did not take his money, and the money was stolen. They came before Rava to adjudicate the case. Rava said to the buyer: Once they said to you: Take your money, and you did not take it, it is not necessary to say that their legal status is not that of a paid bailee. But my ruling is that their legal status is not even that of an unpaid bailee. The Sages said to Rava: But aren't the sellers who reneged required to accept upon themselves the curse: He Who exacted payment? Rava said to them: Indeed, they must pay or accept the curse.

Rav Pappi said that Ravina said to me: One of the Sagesⁿ and Rav Tavot is his name, and some say Rav Shmuel bar Zutra is his name, and he is one who even if they were to give him the entire expanse of the world he would not deviate from the truth in his speech, said to me: There was an incident in which I was involved. On that day, it was twilight on Shabbat eve, and I was sitting, and a certain man came and stood at the entrance. He said to me: Do you have sesame to sell?

Perek IV**Daf 49 Amud b****HALAKHA**

This house is before you – דָא בֵיתָא קָמָן –: One who assumes responsibility for safeguarding an item assumes the status of an unpaid bailee even if he said only: Place it before me. If he said: Place it before you, or simply: Place it, he is not even an unpaid bailee and therefore is not obligated to take the oaths incumbent upon a bailee who cannot return the deposit. The Rema writes that he is likewise not an unpaid bailee in a case where he says: This house is before you (*Shulhan Arukh, Hoshen Mishpat* 291:2).

ቤתו של בָּתָן הַזֶּה – לְקָמַח מִשְׁכָר לְמַפְרָץ: If the house of the buyer was rented to the seller, and the purchase item was placed there, the decree of the Sages is not in effect and the buyer acquires the item with the payment of money, in accordance with the Torah law (*Shulhan Arukh, Hoshen Mishpat* 198:5).

NOTES

He is not a paid bailee – שׁוּמָר שְׁכָר דָלָא הַזֶּה: The commentaries ask why it would enter one's mind that he might assume the status of a paid bailee. Some answer that even in a case where he rented out the place in his house where the person put his money, he is still not considered a paid bailee with regard to the money.

It is a case where the upper story, etc. – בָּגָן שְׁהִתָּה: There is a dispute among the early commentaries as to the reason why giving money effects acquisition in this case. Rashi and most other commentaries maintain that since the reason for the decree that movable property cannot be acquired with the giving of money is not applicable here, the *halakha* by Torah law remains in effect, and the property is acquired with the giving of money. The *Mishne LaMelekh* contends that since the upper story belongs to the buyer, he acquires the movable property by means of a courtyard. He understands this to be the opinion of the Rambam as well (see *Kesef Mishne*).

אָמָר לִיה: לֹא. אָמָר לִי: לִיהוּ הַנְּקָעַ זַוְיהָ
בְּפְקָדָן נִבְנָה, דָהָא דְשָׁכָה לִי, אָמָר לִיהָ:
הַזֶּה בֵיתָא קָמָן. אֲזַתְבִּינָהוּ בְבִתָּא,
וְאַיְגָנָב. אֲתָא לְקַפֵּיהָ דָרְבָּא, אָמָר לִיהָ:
כָל הַבֵּיתָא קָמָן, לֹא מִבְעִיא שׁוּמָר
שְׁכָר דָלָא הַזֶּה – אַלְאָ אֲפִילוֹ שׁוּמָר חַנְםַ[לִיהָ]
בְּנִי לְאַחֲרָיו. אָמָר לִיהָ: וְהִיא אָמָר [לִיהָ]
רְבָנָן לְרָבָא: אִיבְּשֵׁי לִיהָ לְקָבּוֹל עַלְיהָ כִּי
שְׁפָרָעַ! וְאָמָר לִי: לֹא הִיא דְבָרִים מַעֲולָם.

רַבִּי שְׁמֻעוֹן אָמָר בְּלָשְׁהַכְּסָפִ בִּידָוֹ
דוֹ עַל הַעֲלִיָּה" וּכו'. תְנַאֲ, אָמָר רַבִּי
שְׁמֻעוֹן: אִימְתֵּי – בְּמוֹן שְׁהַכְּסָפִ וְהַפְּרוֹת
בַּיד מַזְכָר, אֲכַל כְּסָפִ בַּיד מַזְכָר וְפְרוֹת
בַּיד לְזַקָּח – אַיְנוֹ יָכֹל לְחַזּוּ בּוֹ, מִפְנִי
שְׁכָסָפֶוּ בִּידָוֹ. בִּזְהּוּ? בִּיד מַזְכָר הוּא אַלְאָ:
מִפְנִי שְׁדָמִי בְּקָפָדוֹ.

פְּשִׁיטָא! אָמָר רַבָּא: הַכָּא בְּמַאי עַסְקִין –
בְּגָן שְׁהִתָּה עַלְיהָ שְׁלָל לְזַקָּח מִשְׁכָרָת
בַּיּוֹם מַזְכָר. טַעַמָּא מַאי תְּקִנִּי רְבָנָן
מִשְׁכָה – גַּוְיִרָה שְׁמָא יָאמָר לוֹ נְשָׁפָרָה
חַטְבָּק בְּעַלְיָה, הַכָּא בְּרִשׁוֹתָה דְלֹקָת
נִנְהָא. אֵי נְפָלָה דְלִיקָה בְּאוֹנָס – אַיְהוּ
טְרַח וּמִיְתֵּה לָהּ.

I said to him: No. He said to me: Let these dinars remain as a deposit with you, as the day has grown dark for me and I am unable to reach home before Shabbat. I said to him: This house is before you. He placed them in the house and the dinars were stolen. That man came to have his case judged before Rava, demanding his money. Rava said to him: With regard to anyone who states: This house is before you,^h it is not necessary to say that he is not a paid bailee,ⁿ but he is not even an unpaid bailee. Ravina said to Rav Tavot: But didn't the Sages say to Rava: The sesame merchant is required to accept upon himself the curse: He Who exacted payment? And Rav Tavot said to me: There were never such matters; that incident never occurred.

§ The mishna teaches that Rabbi Shimon says: Anyone who has the money in his possession has the advantage. It is taught in a *baraita*: Rabbi Shimon says: When does the one with the money in his possession have the advantage? It is when both the money and the produce are in the possession of the seller. But if the money is in the possession of the seller and the produce is in the possession of the buyer, the seller cannot renege, because his money is in his possession. The Gemara understood this to mean that the buyer still had the money in his possession, and asks: In his, i.e., the buyer's, possession? Isn't it in the possession of the seller? Rather, emend the text: Because the value of his, i.e., the buyer's, money is in his, i.e., the buyer's, possession.

The Gemara asks: Isn't it obvious that the seller cannot renege, as the buyer acquired the produce through the transaction of pulling? Rava said: With what are we dealing here? It is a case where the upper storyⁿ of the house belonging to the buyer, where the produce was stored, was rented to the seller.^h The Gemara elaborates: What is the reason the Sages instituted that pulling, and not payment of money, effects acquisition? It is a rabbinic decree, lest a seller say to the buyer: Your wheat burned in the upper story after you paid. Here, the produce is in the domain of the buyer. Therefore, if a fire is ignited due to circumstances beyond his control, the buyer will exert himself and bring the produce from the upper story.

זהו גברא דיהיב ווי אחמרא, לסתו
שמע דקא בע למסביה דבי פרוק
רופילא, אמר ליה: חבל לי זוי, לא בעינה
חטמא. אתה לקמיה דרב חסידא, אמר
לי: בדרכ שתיקנו משיכת בפובריין, בך
תיקנו משיכת בלוקחות.

מתני' האונאה ארבעה בכף משערם
או רבעה בכף לפלו, שתות לפקח. עד
ממי מוטה להחזרו? עד כדי שיראה לתגנ
או לקרובו.

הורה רבי טרפון בלוד: האונאה שמונה
כף משערם ואבע בכף לפלו, שלישי
למקח, ושמחתו תגרוי לו. אמר להם: כל
יום מוחר לזרז, אמרו לו: יניח לנו רבי
טרפון במקומינו, וחוור לזרז חכמים.

גמ' אמר ר' אמרו: שתות מקח
שנינו, ושמואל אמר: שתות מעות נמי
שנינו. שי שיטתא בחמשא, שי שיטתא
בשבעה - כוilo עילמא לא פליינ דבתר
מקח אילין, ואונאה היא. כי פליינ - שי
חמשא בשיטתא, ושי שבעה בשיטתא.

לשמואל דאמר בתר מעות אילין -
אידי אייד אונאה הוא, לרבות אמר בתר
מקח אילין - שי חמשא בשיטתא ביטול
מקח היא, שי שבעה בשיטתא - מוחילה
חויא.

The Gemara relates: There was a certain man who gave money in exchange for wine. Ultimately he heard that men from the house of Parzak the vizier [rufila]¹ sought to appropriate the wine. The buyer said to the seller: Give me my money, as I do not want the wine. The case came before Rav Hisda, who said to him: Just as the Sages instituted pulling with regard to sellers, so did they institute pulling with regard to buyers.^{NH} Since the buyer had yet to pull the wine into his possession, he can renege on the transaction.

MISHNA The measure of exploitation^H for which one can claim that he was exploited is four silver *ma'a* from the twenty-four silver *ma'a* in a *sela*, or one-sixth of the transaction. Until when is it permitted for the buyer to return the item?^H He may return it only until a period of time has passed that would allow him to show the merchandise to a merchant or to his relative who is more familiar with the market price of merchandise. If more time has elapsed he can no longer return the item, as the assumption is that he waived his right to receive the sum of the disparity.

The mishna continues: Rabbi Tarfon ruled in Lod:^B Exploitation is a measure of eight silver *ma'a* from the twenty-four silver *ma'a* of a *sela*, one-third of the transaction. And the merchants of Lod rejoiced, as this ruling allowed them a greater profit margin and rendered the nullification of a transaction less likely. Rabbi Tarfon said to them: Throughout the entire day it is permitted to renege on the transaction and not merely for the period of time it takes to show the purchase item to a merchant or a relative. The merchants of Lod said to him: Let Rabbi Tarfon leave us as we were, with the previous ruling, and they reverted to following the statement of the Rabbis in the mishna with regard to both rulings.

GEMARA It was stated that there is an amoraic dispute with regard to exploitation. Rav says: We learned that exploitation is determined by one-sixth of the transaction, i.e., one-sixth of the purchase item, not one-sixth of the money paid. And Shmuel says: We learned that exploitation is also determined by one-sixth of the money^H paid. The Gemara elaborates: With regard to an item worth six *ma'a* that was sold for five *ma'a*, or an item worth six *ma'a* that was sold for seven *ma'a*, everyone agrees that we follow the transaction, i.e., the fraction of the variation in price is determined relative to the market value of the item sold, and it is exploitation. Where Rav and Shmuel disagree is in the case of an item worth five *ma'a* sold for six *ma'a*, or an item worth seven *ma'a* sold for six *ma'a*.

According to Shmuel, who says that we also follow the fraction of the variation in price as determined by the money paid, both this case and that case are exploitation, as there is a disparity of one-sixth between the price paid and the value of the item. According to Rav, who says that we follow the transaction, when an item worth five *ma'a* sells for six *ma'a*, the halakha is that there is a nullification of the transaction, as the disparity between the value of the item and the price paid is greater than one-sixth. When an item worth seven *ma'a* sells for six *ma'a*, the halakha is that there is a waiver of the sum of the disparity, as the disparity between the value of the item and the price paid is less than one-sixth.

LANGUAGE
Vizier [rufila] – זוףילא: Apparently from the Latin rufili, the military tribune chosen by the army general. This term was also employed in reference to generals of other armies and to other types of rulers.

NOTES
So did they institute pulling with regard to buyers – ר' יקון משיכת בפלקחות: Rabbi Shlomo ben HaYatom holds that here too, the party who reneges on the transaction incurs the curse: He Who exacted payment. By contrast, the Rid explains that since this clearly resulted from circumstances beyond his control, there is no place for a curse at all, and he is not even considered to be lacking good faith (Meiri).

HALAKHA
Pulling with regard to buyers – משיכת בפלקחות: If one paid the price of an item and due to circumstances beyond one's control he was unable to take possession of it, and he seeks to renege on the transaction, then even if it is clear that the seller was not at fault, the buyer may renege on the transaction and he does not incur the curse: He Who exacted payment (*Shulhan Arukh, Hoshen Mishpat* 290:2).

How much is exploitation – בפיה היא האונאה: What is the sum of the disparity in price between the market value of an item and the price at which it was sold that one will be required to return to the exploited party? It is a disparity of one-sixth of the value of the merchandise (*Shulhan Arukh, Hoshen Mishpat* 227:2).

Until when is it permitted to return the item – עד מתי – מוחר להחזרו: Until when can the buyer reclaim the sum for which he was exploited if the disparity is one-sixth, or nullify the transaction if the disparity is greater than one-sixth? He may do so only until a period of time has passed that would allow him to show the merchandise to a merchant or to his relative (*Shulhan Arukh, Hoshen Mishpat* 227:4).

One-sixth of the transaction...one-sixth of the money – שתות מקח...שות מעות: If there is a disparity between the value of an item and the price paid for it of one-sixth, the exploited party is reimbursed for that entire amount. The cases of an item worth six *ma'a* that was sold for five or seven *ma'a*, or an item worth seven *ma'a* that was sold for six, or an item worth five *ma'a* that was sold for six are all cases in which the one-sixth is returned (*Shulhan Arukh, Hoshen Mishpat* 227:2).

BACKGROUND

Lod – לוֹד: One of the oldest towns in Judea, Lod grew in significance toward the end of the Second Temple period and served as an important cultural center for several generations after the destruction of the Temple. Some of the greatest *tanna'im* lived there, including Rabbi Eliezer ben Hyrcanus, also known as Rabbi Eliezer the Great, and Rabbi Tarfon. Several important ordinances were instituted in the attic of the house of Nitza in Lod. The significance of Lod as a Torah center increased after the bar Kokheva

revolt, as it became the center for Torah scholars in the southern region. Among the great *amora'im* who lived there were Rabbi Yehoshua ben Levi, Rabbi Simlai, Rabbi Yitzhak bar Nahmani, Rabbi Shimon ben Pazi, his son Rabbi Yehuda, and Rabbi Aha.

Lod served as the center for a variety of crafts, e.g., weaving and pottery. As it was located at the crossroads of Eretz Yisrael, it served as a commercial and an administrative center. The merchants of Lod were known as savvy for many generations.

NOTES

Waiver – אונאה חילקה: The halakhic assumption is that the sum of any disparity of less than one-sixth is waived. The reason is that as it is difficult to ascertain the precise value of an item in commercial transactions, since prices fluctuate, and even comparable items are not identical, the Sages established one-sixth as the minimum disparity with regard to which people are particular.

Exploitation in a case where there is a disparity of one-sixth – אונאה בשותת: This measure was established for the disparity in the price of an item, as determination of price is not an exact science. If there was exploitation with regard to a factor that can be determined precisely, e.g., number, weight, or measure, even the slightest discrepancy is exploitation, and even if the sum of the disparity is less than one-sixth, it must be returned.

ושׂמואל אמר: כי אומרים מחלוקת וביטול
מקח – היכא דילבָא שותת משׁנין צדדים,
אבל היכא דאייבָא שותת מצד אחד –
אונאה חילקה.

תנן: האונאה ארבעה בכספי מעשרים
וארבעה בכספי לשלען, שותת למתקה.
מאי לאו – דובין שוי עשרים בעשרין
וארבעה, ושמע מיניה שותת מעות נמי
שנינו לאו, דובין שוי עשרים וארבעה
בעשרים.

מי נתנה – מוכר. אימא סיפה: עד מתי
מותר להחזיר – בכדי שיראה להנגר או
לקרובו. ואמר רב נחמן: לא שנן אלא
локחת, אבל מוכר – לעולם חזר.

אללא דובין שוי עשרים וארבעה בעשרין
ותמניא. תנן: הורה ובוי טרפון בלבד:
האונאה שבונה כסוף מעשרים וארבעה
בכספי לשלען, שליש למתקה. Mai לאו –
דובין שוי שיחקרי בעשרים וארבעה,
ושמע מיניה שליש בעות נמי שנינו!

לא. דובין שוי עשרים וארבעה בשיטסר.
מי נתנה – מוכר. אימא סיפה: אמר
לידם כל היום מותר להחזיר, ואמר רב
נחמן: לא שנן אלא לocket, אבל מוכר
לעולם חזר! אללא דובין שוי עשרים
וארבעה בתלתין ותרין.

תניא פותיה דשמעאל: מי שהוטל עליו
דין על העלינה. כיצד? מבר לו שוה
חמסה בששה, מי נתנה – לocket, יד
ЛОקח על העלינה, ריצה – אומר תן לך
מעותי, או תן לך מה שאוניתני. מבר לו

And Shmuel says: When we say that there is a waiver^N or a nullification of the transaction,^H it is in a case where there is not a disparity of one-sixth from both aspects, i.e., both in terms of the money paid and in terms of the value of the item. But in a case where there is a disparity of one-sixth from one aspect, either in terms of the money paid or the value of the item, it is exploitation.^N

The Gemara cites proof for the opinions of Rav and Shmuel. We learned in the mishna: The measure of exploitation for which one can claim that he was exploited is four silver ma'a from the twenty-four silver ma'a in a sela, which is one-sixth of the transaction. What, is it not a case where he bought an item worth twenty ma'a for twenty-four ma'a? And accordingly, one can conclude from the mishna that we learned that exploitation is also determined by one-sixth of the money paid, in accordance with the opinion of Shmuel. The Gemara rejects this proof: No, it is a case where he sold an item worth twenty-four ma'a for twenty ma'a.

The Gemara asks: If so, who was exploited in this transaction? It is the seller. Say the latter clause of the mishna: Until when is it permitted for the buyer to return the item? In the time that it takes the buyer to show the merchandise to a merchant or to his relative. And Rav Nahman said: The Rabbis taught this halakha only with regard to a buyer, who is in possession of the item and can show it to a merchant immediately. But a seller may always renege on the transaction. Since the purchase item is not in his possession, he can determine its market price only if he happens to encounter a similar item, and there is no time frame within which this will certainly occur.

Rather, it is a case where he sold an item worth twenty-four ma'a for twenty-eight ma'a. We learned in the mishna that Rabbi Tarfon ruled in Lod: Exploitation is a measure of eight silver ma'a from the twenty-four silver ma'a of a sela, one-third of the transaction. What, is it not a case where he bought an item worth sixteen ma'a for twenty-four ma'a? And accordingly, one can conclude from the mishna that we learned that exploitation is also determined by one-third of the money paid, in accordance with the opinion of Shmuel.

The Gemara rejects this proof: No, it is a case where he sold an item worth twenty-four ma'a for sixteen ma'a. The Gemara asks: If so, who was exploited in this transaction? It is the seller. Say the latter clause of the mishna: Rabbi Tarfon said to them: Throughout the entire day it is permitted to renege on the transaction. And Rav Nahman says: They taught this halakha only with regard to a buyer, but a seller may always renege on the transaction. Rather, it is a case where he sold an item worth twenty-four ma'a for thirty-two ma'a.

The Gemara comments: It is taught in a baraita in accordance with the opinion of Shmuel: The one upon whom the exploitation was imposed has the advantage. How so? In a case where one sold him an item worth five ma'a for six ma'a, who was exploited? It is the buyer. Therefore, the buyer is at an advantage. If he wishes, he can say to the seller: Give me back my money and nullify the transaction, or he can say: Give me back the sum which you received by engaging in exploitation of me. In a case where one sold him

HALAKHA

Waiver or nullification of the transaction – מחלוקת וביטול מקח: If the disparity between the value of the item and the price paid is less than one-sixth, payment of the discrepancy is waived and the exploited party cannot renege on the transaction. Moreover, the other party is not required to return the amount of

the discrepancy. If the disparity is more than one-sixth, either in terms of the value of the item or in terms of the payment, the exploited party can either renege on the transaction or demand payment of the amount of the discrepancy (*Shulhan Arukh, Hoshen Mishpat* 227:3).

Perek IV

Daf 50 Amud a

שׁוֹה שְׁשׁ בְּחַמֵּשׁ, מִנְתָּאָנָה – מַכְרֵה, יְדֵי
מַכְרֵה עַל הַעֲלִיּוֹתָה. רְצָה – אָוֶר לוּ "תָּן
לִמְקַחֵּי", אוֹ "תָּן לִי מִמֶּה שָׁאוּנִתְנִי".

אִיבְּעֵיא לְהָוֹ פְּחוֹת מִשְׁתּוֹתָ לְרַבֵּן
לְאַלְפָתָר הוּא מְחִילָה אָוּ בְּכִרֵּי שִׁירָאָה
לְתָגֵר אוּ לְקָרוּבָו? וְאַם תִּמְצֵי לְמַפְרֵר בְּכִרֵּי
שִׁירָאָה לְתָגֵר אוּ לְקָרוּבָו, פְּנֵי אִיבְּעָא בְּנֵי
מִשְׁתּוֹתָ לְפְחוֹתָ מִשְׁתּוֹתָ?

אִיבְּאָ, דָּאַלְוָ שִׁתּוֹת – יְדוּ עַל הַעֲלִיּוֹתָה,
רְצָה – חֹזֵר, רְצָה – קָוָנָה וּמַחְזִיר אָוּנָה,
וְאַיְלוּ פְּחוֹתָ מִשְׁתּוֹתָ – קָנָה וּמַחְזִיר
אָוּנָה.

an item worth six *ma'a* for five *ma'a*, who was exploited? It is the seller. Therefore, the seller is at an advantage.^N If he wishes, he can say to the buyer: Give me back my merchandise and nullify the transaction, or he can say: Give me back the sum which you received by engaging in exploitation of me.

§ A dilemma was raised before the Sages: According to the opinion of the Rabbis that one has only until a period of time has passed that would allow him to show the merchandise to a merchant or to his relative in order to claim that he has been exploited, in a case where the disparity between the value of the purchase item and the price paid is less than one-sixth, is there a waiver^N of the discrepancy and therefore the transaction is finalized immediately, or in this case as well, is the transaction finalized only after the time that it takes the buyer to show the merchandise to a merchant or to his relative?^H And in addition, if you say that the transaction is finalized only after the time that it takes to show the merchandise to a merchant or to his relative, what difference is there between a disparity of one-sixth and a disparity of less than one-sixth?

The Gemara answers: There is a difference, as in the case of a disparity of one-sixth, the one who was exploited has the advantage, since if he wishes, he reneges on the transaction, and if he wishes, the buyer acquires the purchase item, and the one who perpetrated the exploitation returns the sum gained through his exploiting the other, while in the case of a disparity of less than one-sixth, the buyer acquires the purchase item, and the one who perpetrated the exploitation returns the sum gained through his exploiting the other, but there is no option of nullifying the transaction.

The Gemara returns to the dilemma: At what point in time is a disparity of less than one-sixth between the value of the purchase item and the price paid waived? The Gemara suggests: Come and hear a resolution of the dilemma from the mishna: Rabbi Tarfon said to them: Throughout the entire day it is permitted to renege on the transaction and not merely for the period of time it takes to show the purchase item to a merchant or a relative. The merchants of Lod said to him: Let Rabbi Tarfon leave us as we were, with the previous ruling. They reverted to following the statement of the Rabbis.

סְבָרוּהָ: פְּחוֹתָ מִשְׁלִישׁ לְרַבֵּי טְרֵפָן
כְּפְחוֹתָ מִשְׁתּוֹתָ לְרַבֵּן דָּמִי. אֵי אַמְרָתָ
בְּשִׁלְמָא פְּחוֹתָ מִשְׁתּוֹתָ לְרַבֵּן בְּכִרֵּי
שִׁירָאָה לְתָגֵר אוּ לְקָרוּבָו, וּלְרַבֵּי טְרֵפָן
כָּל הַיּוֹם – מִשּׁוּם הַכִּי חֹרוֹגָו. אַלְאָא
אַמְרָתָ פְּחוֹתָ מִשְׁתּוֹתָ לְרַבֵּן לְאַלְפָתָר
הַוְּיָא מְחִילָה,

The Gemara explains the proof. The Sages assumed^N that the legal status of a disparity of less than one-third according to the opinion of Rabbi Tarfon, who holds that one-third is the determinative disparity, is like a disparity of less than one-sixth according to the opinion of the Rabbis, who hold that one-sixth is the determinative disparity. Granted, if you say that in the case of a disparity of less than one-sixth according to the Rabbis the buyer can claim exploitation only in the time that it takes him to show the merchandise to a merchant or to his relative, and according to Rabbi Tarfon the transaction is finalized only after the entire day has passed, it is due to that reason that the merchants of Lod reverted^N to following the statement of the Rabbis, as there was some benefit to them in following the opinion of the Rabbis. But if you say that in the case of a disparity of less than one-sixth according to the Rabbis the waiver is in effect and the transaction is finalized immediately,

NOTES

זֶה מַכְרֵה עַל הַעֲלִיּוֹתָה – The seller is at an advantage – The early commentaries note that this entire discussion is in accordance with the opinion of Rabbi Yehuda HaNasi cited on 50b, and it is apparently the opinion of the *tanna* of the mishna as well. They hold that the exploited party has the right to nullify the transaction if he so chooses, or to demand payment of the sum of the discrepancy if he prefers. According to Rabbi Natan, if the disparity is one-sixth the transaction takes effect, and he must return the sum of the exploitation (Rosh; *Talmid Rabbeinu Peretz*; see Meiri).

Is there a waiver – **הַיְאָ מְחִילָה**: Both the early and later commentaries discuss whether one who exploits another violates a prohibition when the disparity is less than one-sixth, or whether there is no concern at all when the disparity is minimal and it is not classified as exploitation (see *Sefer HaHinnukh*). The Ramban holds that one violates a prohibition even if the disparity is less than one-sixth, and even if it amounts to one *peruta*. Some add that according to this opinion one should be liable to return the sum of a disparity even when it is less than one-sixth. Others comment that the assumption is that the exploited party waives the payment after the fact (*Minhat Hinnukh; Imrei Bina*).

The Sages assumed – **סְבָרוּהָ**: Why would these Sages understand the mishna in a manner that would lead to such a significant practical halakhic difference between the opinion of the Rabbis and that of Rabbi Tarfon? Some explain that since the statement of Rabbi Tarfon is formulated in a structure parallel to that of the Rabbis, it is reasonable to assume that they each hold the same opinion in their respective statements (*Shita Mekubetzet*).

It is due to that reason that they reverted – **מִשְׁשָׁמָם הַכִּי חֹרוֹגָו**: Although the Gemara states that the explanation of the dispute between the Rabbis and Rabbi Tarfon would explain only why the merchants of Lod reverted to following the opinion of the Rabbis, in fact it would also account for their initial decision to follow the opinion of Rabbi Tarfon (Ritva).

HALAKHA

When is the time of the waiver – **קְתִּי זֶם הַמְּחִילָה**: If the disparity between price and value is less than one-sixth, paying the amount of the discrepancy is waived and both the transaction

and the waiver take effect immediately (*Shulhan Arukh, Hoshen Mishpat* 227:3).

Perek IV

Daf 50 Amud b

ולרבי טרפון נמי, לאלתר הוייא מחייב.
אמאי חוו? בדורבי טרפון ניחא להו טפי,
דמאי לרבנן קא משוי להו אונאה, לרבי
טרפון הוייא מחייב.

מי סברת פחות משליש לרבי טרפון
בפחות משתות לרaben דמי? לא, משותות
עד שליש לרבי טרפון – בשותות
עטמה לרaben דמי. אי הכ, במא שמחו
מעיקרא?

תפסות דבטול מכך לרaben לעולם
חוור, וככין דאמר להו רבבי טרפון הוייא
אונאה – שמחו, כי אמר להו כל היום –
חוור.

דאילקא דעתך דבטול מכך לרaben
בכדי שיראה לך או לקרובו, במא
שמחו שמחו בשותות עצמה, לרבי
טרפון מחייב ולרבנן אונאה.

אייבשיא להו: בטול מכך לרaben לעולם
חוור, או דלמא בכדי שיראה לך או
לקרובו? ואם תמצא לו מור בכדי שיראה
ליך או לקרובו, מה אייבא בין שותות
ליתר על שותות? אייבא, דאיילו שותות –
מי שתחזקה חווור, נאיילו יתיר על שותות –
שניהם חווורים.

and according to Rabbi Tarfon too, there is a waiver of the disparity of less than one-third and the transaction is finalized immediately, why did they revert to following the statement of the Rabbis? In that case, the ruling of Rabbi Tarfon would be preferable for them, as that which the Rabbis deem exploitation, i.e., a discrepancy of one-sixth, is waived according to Rabbi Tarfon.

The Gemara rejects this proof: Do you maintain that the legal status of a disparity of less than one-third^N according to the opinion of Rabbi Tarfon is like the legal status of a disparity of less than one-sixth according to the opinion of the Rabbis? No, the legal status of a disparity ranging from one-sixth until one-third according to the opinion of Rabbi Tarfon is like the legal status of a disparity of one-sixth^N itself according to the opinion of the Rabbis, and the exploited party receives the sum of the exploitation in return. The Gemara asks: If so, for what reason did the merchants of Lod rejoice initially? They gained nothing relative to the ruling of the Rabbis.

Resolve, based on this difficulty, the dilemma raised below, and conclude that in cases of nullification of the transaction according to the Rabbis, one may always renege on the transaction. Therefore, the reaction of the merchants of Lod is understandable, as, since Rabbi Tarfon said to them that a disparity between one-sixth and one-third is merely exploitation, they rejoiced, as this would mean that the buyer has only the time it takes to show the merchandise to a merchant or a relative to renege. When he said to them that the exploited person can renege on the transaction for the entire day, they reverted to following the statement of the Rabbis.

The Gemara explains why the dilemma is resolved: As, if it enters your mind to say that nullification of the transaction according to the Rabbis is limited to only within the time that it takes for the buyer to show the merchandise to a merchant or to his relative, for what reason did they rejoice over the ruling of Rabbi Tarfon? His ruling did not enable them to sell the merchandise at a higher price than the ruling of the Rabbis did. The Gemara rejects this proof: They initially rejoiced over the case of a disparity of one-sixth itself, as according to Rabbi Tarfon there is a waiver of the disparity, and according to the Rabbis it is exploitation.

§ The Gemara cites the dilemma referenced above. A dilemma was raised before the Sages: With regard to nullification of the transaction^N according to the Rabbis, may one always renege on the transaction? Or perhaps he can renege only within the time that it takes him to show the merchandise to a merchant or to his relative. And if you say that the transaction is nullified only within the time that it takes him to show the merchandise to a merchant or to his relative, what difference is there between a disparity of one-sixth and a disparity of greater than one-sixth? The Gemara answers: There is a difference, as in the case of a disparity of one-sixth, only the one who was exploited can renege on the transaction, while in the case where the disparity is greater than one-sixth, both can renege on the transaction.

NOTES

Do you maintain that the status of a disparity of less than one-third, etc. – **מי סברת פחות משליש וכו'**: The Gemara rejects this understanding, based on its general approach that it is preferable to minimize the scope of disputes between differing opinions. Based on the Gemara's new explanation, the differences between the opinions of Rabbi Tarfon and the Rabbis are less pronounced (*Shita Mekubetzet*).

A disparity ranging from one-sixth until one-third... is like a disparity of one-sixth – **משותות ועד שלוש... בשותות**: According to

this understanding, when Rabbi Tarfon cites the case of a disparity of one-third he is not establishing a minimum disparity for exploitation. Rather, he extends the limits of exploitation beyond those established by the Rabbis and determines that the disparity that constitutes exploitation ranges from one-sixth to one-third (*Talmid Rabbeinu Peretz*).

A dilemma was raised...with regard to nullification of the transaction – **אייבשיא...בטול מכך**: Both the early and later commentaries discuss the relationship between the various dilem-

mas raised. Some maintain that this dilemma with regard to nullification of the transaction actually precedes the dilemma cited earlier, both essentially and chronologically (*Responsa Divrei Rivot*). Others contend that the Gemara raises this dilemma in an effort to resolve the previous, unresolved one (*Ritva*). Rashi indicates that the two dilemmas do not share common assumptions with regard to whether in a disparity of less than one-sixth there is immediate waiver, and with regard to the relationship between a disparity of one-sixth and a disparity of less than one-sixth.

מאי? הַא שָׁמַע: חִזּוּ לְדִבָּרִי חֲכָמִים. אֵי
אָמָרָת בְּשֶׁלֶם מִקְחָה לְבִנְןָ בְּכָרִי
שִׁירָאָה לְתָגָר אוֹ לְקוֹרוֹבּוֹ, וּלְרַבִּי טַרְפוֹן
כָּל הַיּוֹם - מִשּׁוּם הַכִּי חִזּוּ. אַלְאָ אֵי
אָמָרָת בְּטַול מִקְחָה לְבִנְןָ לְעַלְמָן חִזּוּ,
אַפְּמַאי חִזּוּ? בְּדַרְבֵּי טַרְפוֹן נִיחָא לְהֹזֶה
שְׁפִי, דְּקָא מִשּׁוּי לְהֹזֶה אַזְנָאָה כָּל הַיּוֹם
וְתוּ לֹא!

בטול מִקְחָה לֹא שְׁכִיחָה.

אמָר וּבָא, הַלְכָתָא: פְּחוֹת מִשְׁתּוֹת -
נִקְנָה מִקְחָה, יִתְרַעַל שִׁתּוֹת - בִּיטּוֹל
מִקְחָה. שִׁתּוֹת - קִנְנָה וּמִקְחָה אַזְנָאָה, וְזֹה
וְזֹה בְּכָרִי שִׁירָאָה לְתָגָר אוֹ לְקוֹרוֹבּוֹ.

תְּנִינָא כְּפָוִתִּיהִ דָּרְבָּא: אַזְנָאָה פְּחוֹת
מִשְׁתּוֹת - נִקְנָה מִקְחָה, יִתְרַעַל שִׁתּוֹת -
בִּטּוֹל מִקְחָה. שִׁתּוֹת - קִנְנָה וּמִקְחָה אַזְנָאָה:
דָּבָרִי רַבִּי נָתָן. רַבִּי יְהוּדָה הַשְׁמִינִיא אָזְמָן:
יד מִזְכָּר עַל הַעֲלֻזָּה, רֹצֶחֶת - אָזְמָר לוֹ
תְּנִינָה לִי מִקְחָה, אָזְמָן לִי מִה שְׁאַנְתָּנוּ. וְזֹה
וְזֹה בְּכָרִי שִׁירָאָה לְתָגָר אוֹ לְקוֹרוֹבּוֹ.

The Gemara returns to discuss the dilemma: **What is the halakha?** The Gemara suggests: **Come and hear a resolution of the dilemma from the mishna:** The merchants of Lod reverted to following the statement of the Rabbis. Granted, if you say that one can claim nullification of the transaction according to the Rabbis only within the time that it takes the buyer to show the merchandise to a merchant or to his relative, and according to Rabbi Tarfon one can do so for the entire day, it is due to that reason that they reverted to following the statement of the Rabbis. But if you say that one can claim nullification of the transaction according to the Rabbis and always renege on the transaction, why did they revert to following the statement of the Rabbis? In that case, the ruling of Rabbi Tarfon is preferable for them, as he deems such a disparity exploitation and rules that one can claim nullification of the transaction for the entire day and no more, which is more beneficial to the merchant.

The Gemara answers: **Nullification of the transaction is uncommon**, and therefore the merchants of Lod did not take that into consideration when calculating which ruling was most advantageous.

The Gemara cites the halakhic resolutions of these dilemmas. Rava said: The halakha is that if the disparity is less than one-sixth, the merchandise is acquired immediately. If the disparity is greater than one-sixth, either party can demand nullification of the transaction. If the disparity is precisely one-sixth, the buyer has acquired the merchandise, and the one who benefited from the exploitation returns the sum gained by the exploitation.^N And one may claim both this, nullification of the transaction, and that, return of the sum gained, only within the time that it takes to show the merchandise to a merchant or to his relative.^H

The Gemara comments: It is taught in a baraita in accordance with the opinion of Rava: In cases of exploitation, if the disparity is less than one-sixth, the merchandise is acquired immediately. If the disparity is greater than one-sixth, the transaction is nullified. If the disparity is precisely one-sixth, the buyer has acquired the merchandise, and the one who benefited from the exploitation returns the sum gained by the exploitation. This is the statement of Rabbi Natan. Rabbi Yehuda HaNasi says: In a case where the seller was exploited, the seller is at an advantage. If he wishes, he reneges on the transaction and says to the buyer: Give me my merchandise, or he can say: Give me the sum that you gained by exploiting me. And one may claim both this, nullification of the transaction, and that, return of the sum gained, only within the time that it takes to show the merchandise to a merchant or to his relative.

§ The mishna teaches: Until when is it permitted for the buyer to return the item? He may return it only until a period of time has passed that would allow him to show the merchandise to a merchant or to his relative. Rav Nahman says: The Sages taught this halakha only with regard to a buyer, but a seller may always renege on the transaction.^{HN} The Gemara suggests: Let us say that the mishna supports his opinion, as the merchants of Lod reverted to following the statement of the Rabbis. Granted, if you say that a seller may always renege on a transaction,

HALAKHA
The time to claim exploitation and nullification of the transaction – **מִזְכָּר לְעַלְמָן חִזּוּ:** The halakha of exploitation applies when the disparity between price and value is one-sixth. When the disparity is greater than one-sixth, the transaction is nullified. How long after the sale can one demand repayment of the sum of the disparity or nullify the transaction? He may do so within the amount of time that would enable him to show the merchandise to a merchant or to his relative. Once that period has elapsed he can no longer demand repayment or nullify the transaction, in accordance with the ruling of Rava (*Shulhan Arukh, Hoshen Mishpat* 227:7).

A seller may always renege on the transaction – **מִזְכָּר לְעַלְמָן חִזּוּ:** Only a buyer is limited in the amount of time after a sale when he can demand repayment of the discrepancy or nullify the transaction. Since the merchandise is in his possession wherever he goes, he can show it to others to ascertain its value at his convenience. By contrast, the seller no longer has the merchandise in his possession, and consequently he must wait until he comes across a similar item in order to determine its value. Therefore, he may always demand repayment for exploitation or nullify the transaction. If the transaction involved a standard item with a consistent market price, he can renege on it only until an amount of time has passed wherein he could have ascertained the price. Likewise, if it is discovered that the seller had previous experience with merchandise similar to the sale item, and he was aware of the disparity and did not demand repayment, he can no longer demand repayment, as he is considered to have waived the right to receive repayment at the time of the sale (*Shulhan Arukh, Hoshen Mishpat* 227:8).

The buyer has acquired the merchandise and the one who benefited returns the sum gained by the exploitation – **קִנְנָה וּמִקְחָה אַזְנָאָה:** The authorities discuss this passage at length. Does the term: Acquired, in this context mean, as Rashi explains, that the transaction takes effect even if one of the parties reneges on the transaction? Or does it mean that the transaction takes effect only if the exploited party chooses, and if he does not the transaction is nullified? They also discuss the matter of flawed merchandise. According to the Rambam,

even if the disparity due to flawed merchandise was less than the measure of exploitation, a flaw is comparable to a factor that can be determined precisely, e.g., number, weight, or measure, and therefore the transaction is nullified. In general, the commentaries discuss whether the option to nullify a transaction is the exclusive prerogative of the exploited party, or whether the party guilty of exploitation can opt to nullify the transaction as well (see Ra'avad and Meiri).

מִזְכָּר לְעַלְמָן חִזּוּ: The word: Always, is not meant in a literal sense, as he too is limited; he may renege only until he ascertains the value of the item that he sold. The term: Always, is relative in this context and means that there is no fixed interval from the outset (Rif).

Perek IV

Daf 51 Amud a

NOTES

It is rare for them to err – **לֹא שְׁכִיחַ דָּطָע**: Both the early and the later commentaries ask: According to the initial understanding that even those merchants are apt to err, why did they initially rejoice? They answer that their main concern was with regard to the validity of the sale. As long as the transaction is not nullified, they benefit (see Rashba and Ritva).

אין אונאה בבעל הבית: The commentaries disagree with regard to whether this statement refers specifically to a disparity of precisely one-sixth. According to the Rosh, nullification of the transaction for a greater disparity applies even in a purchase from a homeowner, while the Rashba and the Ritva maintain that even nullification in a case where the disparity is greater than one-sixth is not in effect in purchases from homeowners. The Rosh and Rashba do agree that if the homeowner is exploited he can claim repayment. Others rule that even if the homeowner was the exploited party the *halakhot* of exploitation do not apply, as the assumption is that a homeowner is intimately familiar with his possessions, and even if he decided to sell a possession for significantly less than its value, he cannot collect repayment (Ri Migash; Ramban; Meiri).

LANGUAGE

Strips [varshekhei] – **וּרְשָׁבֵי**: Apparently from the Persian *waršak*, meaning belt.

משוםuchi חזרו.

אֲלֹא אֵין אָמְרָתָ מַזְכֵר נָמֵי בְּלוֹקָח דָּמִי –
מַאי נַפְקָא לְהֹו מִנֵּה? בַּי הַיכִּי דָּעֶבֶד!
לִיהְ וּבְנֵן תְּקִנְתָּא לְלוֹקָח הַכִּי נָמֵי עֲבָדִי
לִיהְ וּבְנֵן תְּקִנְתָּא לְמַזְכֵר!

תְּגִירִי לוֹד לֹא שְׁכִיחַ דָּטָע.

אוֹשְׁפּוֹיכְנִיהְ דָּרְמִי בְּרַחְמָא וּבֵין חַמְרָא
וְטֻשָּׁה. אֲשֶׁר בְּהֵה דָּהֹה עַצְּבִּיבָּת? אָמָר לֵיהְ: **בְּבִינֵי חַמְרָא**
וְטֻשָּׁא. אָמָר לֵיהְ: זַיל הַדָּר בָּךְ. אָמָר
לֵיהְ: הָא שְׁהָאֵי לִי יוֹתֵר מַפְקִי שָׂאָרָה
לְתָגָר אוֹ לְקָרוֹבִי. שְׂדָרָה לְקַמְפָה דָּרָבָּן.
נַחֲמָן. אָמָר לֵיהְ: לֹא שָׁנוּ אֲלֹא לְקַחְתָּ
אֲלֹא מַזְכֵר – לְעוֹלָם חִזּוּ.

מַאי טֻעָמָא – **לְוקָח מַקְחוֹ בֵּין,** **כֹּל**
הַיְכָא דְּאַיְלָל מַחְטוּי לֵיהְ, וְאָמָר לֵיהְ
אֵין טֻעָה אֵין לֹא טֻעָה. מַזְכֵר דָּלָא נַקְטָה
מַקְמִיהָ בְּנֵיתָה, עַד דָּמִינְתָּבִי לֵיהְ
בְּבִינְתָּא כְּבִינְתָּה, וִידְעָ אֵין טֻעָה וְאֵין
לֹא טֻעָה.

הַהוּא גַּבָּרָא דָהֹה נַקְטָה וּרְשָׁבֵי לְבוֹנִין,
קָרְרֵי שִׁיטָּא וְשְׂוִיאָ חַמְשָׁא, וְאֵין הוּא הַבִּי
לִיהְ חַמְשָׁא וּפְלָגָא – **הַהוּא שְׁקִיל.** אֲתָא
הַהוּא גַּבָּרָא וְאָמָר: אֵין יִהְבָּנָא לֵיהְ
חַמְשָׁא וּפְלָגָא – **הַיְוָא מַחְיָה, אַתָּן לֵיהְ**
שִׁיטָּא וְאַתְּבָעָה לְדִינָא. אַתָּא לְקַמְפָה
דָּרָבָּא, אָמָר לֵיהְ: לֹא שָׁנוּ אֲלֹא בְּלוֹקָח
בְּן הַתָּגָר, אֲכַל בְּלוֹקָח מַבְעֵל הַבַּיִת –
אֵין לוֹ עַלְיוֹ אָונָה.

it is due to this reason that they reverted to following the statement of the Rabbis, as the sellers were in any event able to renege at any point, while Rabbi Tarfon extended the period during which the buyers could renege on the transaction.

But if you say that the legal status of a seller is also limited like that of a buyer in terms of the period of time during which he may renege, what difference is there to the merchants? Just as the Sages instituted an ordinance on behalf of a buyer enabling him to renege on the transaction, so too, the Sages instituted an ordinance on behalf of a seller. If the time afforded to the seller is equal to the time afforded to the buyer, the fact that Rabbi Tarfon extended this time would not be a reason for the merchants to revert to following the opinion of the Rabbis, as there is a benefit and a loss for the merchants according to both opinions.

The Gemara answers: With regard to the **merchants of Lod**, it is rare for them to err,^N and therefore they preferred limiting the period during which the buyer could renege over extending the period during which they themselves could renege.

The Gemara relates: **The landlord of Rami bar Hama^P sold a donkey and erred in fixing its price.** Rami bar Hama encountered him and noticed that he was sad. Rami bar Hama said to him: Why are you sad? The landlord said to him: I sold a donkey and I erred in fixing its price. Rami bar Hama said to him: Go and renege on the transaction. The landlord said to him: I have waited more than the period of time that it takes for me to show the merchandise to a merchant or to my relative. Rami bar Hama sent the landlord before Rav Nahman for a ruling and Rav Nahman said to him: The Sages taught this *halakha* only with regard to a buyer, but a seller may always renege on a transaction.

The Gemara asks: What is the reason for this? The Gemara explains: A buyer has his merchandise in his possession; therefore, anywhere that he goes he shows it to those familiar with the market price and they tell him whether he erred or whether he did not err. A seller, who does not have his merchandise in his possession, can ascertain the market price only when merchandise like his merchandise happens to come before him, and only then will he know whether he erred or whether he did not err.

§ The Gemara relates: There was a certain man who had silk strips [varshekhei]^L to sell. He announced that he was selling them for six *ma'a*, and they were worth five *ma'a*, and if they would give him five and a half *ma'a*, he would take it and sell the silk. This man, i.e., a potential buyer, came and said to himself: If I give him five and a half *ma'a*, it is a case of a waiver, and I will not be entitled to recover the difference. I will give him six *ma'a* and claim from him by law the return of the sum gained by the exploitation. He did so. The case came before Rava, who said to him: The Sages taught this *halakha* of exploitation only with regard to one who buys merchandise from a merchant, but one who buys merchandise from a regular homeowner does not have a claim of exploitation against him.^N

PERSONALITIES

Rami bar Hama – **רַמִּי בֶּן חַמְאָ**: Rami bar Hama was a fourth-generation Babylonian *amora*, a student of Rav Hisda, and a study partner of Rava. He and his brother Rav Ukva bar Hama married the daughters of Rav Hisda. In a story related in the Gemara, Rava and Rami bar Hama visited Rav Hisda and saw his young daughter sitting on his lap. Rav Hisda playfully asked her which of the Torah scholars she would prefer marrying. The girl diplomatically answered that she'd like to marry both,

whereupon Rava responded that he would defer to his colleague. Ultimately, the daughter married Rami bar Hama, and after he died, she married Rava (*Bava Batra* 12b).

Rami bar Hama was known for his sharp intellect and sought to resolve all dilemmas posed to him by employing logical reasoning rather than by seeking to cite proof from the Mishna and *baraitot*. The *amora* Ameimar was the son of Rami bar Hama's daughter.

ההוא גברא דהוה נקיט ביפוי לבונן,
קנוי שטון ושי תמסין, ואילו יהבי
ליה חמישין וחמשה הוה שקל. אַתָּה
ההוא גברא ואמר: אֵי יְהִבָּנוּ לֵיה
חֲמִשִׁין וְחֲמִשָׁה הָיוּ מִלְּחָמָה, אַתָּה לֵיה
שִׁשִׁין, וְאַתְּבָעֵה לְרִינָא. אַתָּה לְקַמְפִיה
דָּרְבָּ חֲסָדָא, אָמָר לֵיה: לֹא שָׁנָא אֶלְךָ
בְּלוּקָח מִתְּגָנָה, אֶבְלְ בְּלוּקָח מִבְּעֵל
הַבַּיִת - אֵין לוֹ עַלְיוֹ אָזְנָה.

אמר ליה رب דימי ישור, וכן אמר
רבי אלעזר ישור. וזה אמר לנו: כשים
שאוזנה להדיות אך אוזנה לתגר,
מאן הדירות לאו בעל הבית? אמר
רב חסדא: בצדrichtא, אבל מאין
תשמשתיה דיקורי עליה - לא מובן
להו אי לאו ברמי תני.

מןני אחד הלווקח ואחד המוכר יש
להן אוזנה. כשם שאוזנה להדיות
כך אוזנה לתגר. רבי יהודה אומר: אין
אוינה לתגר כי שה@email> עלי דז עלי
העלינה. ראה - אומר לו: תן לי מועתי,
או תן לי מה שאגיתני.

גמ' מנהני מילוי? דתנו רבנן: וכי
תמכרו ממבר לעמיטך... אל תונו.
אין לי אלא שנתקנה לך, נתנאנא
מווכר מני - תלמוד לומר "או קנה...
אל תונו".

ואיצטריך למכות ליקוח, ואיצטריך
למכות מווכר. דאי בתרבוחמן מווכר -
מושים דקים ליה בזביזתיה, אבל ליקוח
דלא קים ליה בובניתיה - אימא לא
אהורה ותקננא ב"לא תונו".

The Gemara relates a similar incident: There was a certain man who was holding jewelry to sell. He announced that he was selling it for sixty *ma'a*, and it was worth fifty *ma'a*, and if they would give him fifty-five *ma'a*, he would take it and sell the jewels. This man, i.e., a potential buyer, came and said to himself: If I give him fifty-five *ma'a*, it is a case of a waiver, and I will not be entitled to recover the difference. I will give him sixty *ma'a* and claim from him by law the return of the sum gained by the exploitation. He did so. The case came before Rav Hisda, who said to him: The Sages taught this *halakha* of exploitation only with regard to one who buys merchandise from a merchant, but one who buys merchandise from a regular homeowner does not have a claim of exploitation against him.

Rav Dimi said to Rav Hisda: The ruling is correct. And likewise, Rabbi Elazar said: The ruling is correct. The Gemara asks: But didn't we learn in the mishna that follows: Just as the *halakhot* of exploitation apply to a layman [*lahedyot*],^l so do the *halakhot* of exploitation apply to a merchant? Who is the layman to whom the mishna is referring? Is he not a regular homeowner as opposed to a merchant? Rav Hisda said: That mishna is referring to simple linen garments [*tzadriyyata*],^l which the homeowner crafts expressly for sale. But with regard to vessels and garments designed for the personal use of a homeowner, which are important to him, he sells them only to receive extra money,^h as people are generally hesitant to part with their belongings. Therefore, when purchasing an item from a homeowner, a buyer must consider the likelihood that his asking price is greater than the item's actual worth.

MISHNA Both the buyer and the seller are subject to the *halakhot* of exploitation. Just as the *halakhot* of exploitation apply to a layman, so do the *halakhot* of exploitation apply to a merchant. Rabbi Yehuda says: There is no exploitation for a merchant, as he is an expert in the market price of merchandise. The one upon whom the exploitation was imposed has the advantage. If he wishes, he can say to the other: Give me back my money and nullify the transaction, or he can say: Give me back the sum that you gained by exploiting me.

GEMARA The Gemara asks: From where are these matters derived,ⁿ that both the buyer and the seller are subject to the *halakha* of exploitation? As the Sages taught concerning the verse: "And if you sell to your colleague an item that is sold, or acquire from your colleague's hand, you shall not exploit his brother" (Leviticus 25:14). I have derived only a case where a buyer was exploited. From where do I derive that the *halakha* is the same in a case where the seller was exploited? The same verse states: "Or acquire from your colleague's hand, you shall not exploit his brother."

The Gemara comments: And it was necessary to write the prohibition against exploitation with regard to a buyer, and it was necessary to write the prohibition against exploitation with regard to a seller. As, had the Merciful One written this prohibition only with regard to a seller, one would conclude that it is prohibited for him because he is certainⁿ of the value of his merchandise, but with regard to a buyer, who is not certain of the value of the seller's merchandise, say that the Merciful One did not render it prohibited for him to engage in exploitation with the verse "You shall not exploit."

LANGUAGE

Layman [*hedoyot*] – הַדְּיוֹתִים: The root of this word is the Greek ἀδιάτος, *idiōtēs*, whose fundamental meaning is a common person who does not hold any office. The term typically appears in the Talmud as part of a compound noun, e.g., *kohen hedoyot*, an ordinary priest as opposed to the High Priest, and in reference to a common person or layman as opposed to one with special status or skills or one imbued with sanctity.

Simple linen garments [*tzadriyyata*] – צַדְרִיַּתָּא: From the Middle Persian *čādūr*, meaning veil. Rashi translates it as simple linen garments.

HALAKHA

One who purchases from a homeowner – הַלְּחַק מִבְּעֵל הַבַּיִת: The *halakhot* of exploitation do not apply to a homeowner selling his belongings, as it is known that he would agree to sell his belongings only for a price greater than their intrinsic value. Some authorities assert that it is only the *halakhot* of one-sixth that do not apply to homeowners but not nullification of the transaction (*Shulhan Arukh, Hoshen Mishpat* 227:23–24).

NOTES

From where are these matters derived, etc. – מנהני מילוי וכו': Ostensibly, the verses that deal with exploitation explicitly refer to both the seller and the buyer. Nevertheless, since they refer only to the sale of land until the Jubilee Year and not to transactions in general, it was necessary to cite the verses and underscore their inclusive nature in context (*Masat Aharon*).

Because he is certain – מושם זקדים ליה: Rashi explains that since the seller completed the transaction, he knows the precise scope of his profits and his losses, as opposed to others who ascertain the value of the merchandise only later.

HALAKHA

The buyer and the seller with regard to exploitation – **לְקַחַת אֹונָה לְתִגְאֵר**: It is prohibited for either a buyer or seller to exploit another in commercial transactions (*Shulhan Arukh, Hoshen Mishpat* 227:1).

Exploitation for a merchant – אֹונָה לְתִגְאֵר: The *halakhot* of exploitation apply to a merchant just as they do to anyone else, and one does not say that due to his expertise no one exploits him (*Shulhan Arukh, Hoshen Mishpat* 227:14).

ואֵי כְּתָב רְחַמְנָא לְקַח – מִשּׁוּם דָקָא
קַמִּי, דָאָמָרִי אַינְשִׁי, בְּנִית – קַמִּית. אֲבָל
מוֹכָר, דָאָבָודִי קָא מוֹבָיד, דָאָמָרִי
אַינְשִׁי, בְּפִין אָוֶבֶיךְ, אַימָא לְאַזְהָרָה
רְחַמְנָא בְלֹא תָנוּ – צָרִיכָא.

רְבִי יְהוּדָה אָוֶרֶר אֵין אֹונָה לְתִגְאֵר.
מִשּׁוּם שֶׁהָוָא תָגֵר אֵין לוֹ אֹונָה?

אָמָר רַב נַחְמָן אָמָר וּבָ: בְּתִגְרָסָר
שְׁנָוָן, בְּאֵי טַעַמָּא – מִידָע יְדָע וּבְנִיטָה
בְּפָמָה שְׂוִיא, אֲחָול אֲחָל גְּבִיה, וְהָאֵי
דוֹבָנָא הָכִי – מִשּׁוּם דָאָתְרָמָא לְיהָ
בְּעִתָּא אַחֲרִיתִי.

וְהַשְׁתָּא מִיהָא קָא הַדָּר בֵּיהָא רַב אַשִּׁי
אָמָר: מָאִין לְתָגֵר אֹונָה – אִינוּ
בְּתִhorָת אֹונָה, שָׁאָפִילוּ פָּחוֹת מִכְּדִי
אֹונָה חֹזֵר. תְּנִיא כּוֹתֵיהָ דָרְבָּנַחְמָן,
רְבִי יְהוּדָה אָוֶרֶר: תָגֵר אֵין לוֹ אֹונָה,
מִפְנֵי שֶׁהָוָא בְּקִי.

מַי שְׁהַוּפֵל עַלְיִי יְדוֹ עַל הַלְּלִיּוֹנָה וּכְזַבְּהָ
מִנִּי מִתְנִיתִין? לֹא רְבִי נַתָּן, וְלֹא רְבִי
יְהוּדָה הַנְּשִׁיא.

אֵי רְבִי נַתָּן – מִתְנִיתִין קַתְנִי "רָצָה"
וּבְרִיּוֹתָא לֹא קַתְנִי "רָצָה". אֵי רְבִי
יְהוּדָה הַנְּשִׁיא – מִתְנִיתִין קַתְנִי "לְקַח",
בְּרִיּוֹתָא קַתְנִי "מוֹכָר"!

סִינְגָן: זַיִן בְּרִישָׁה.

And had the Merciful One written this prohibition only with regard to a buyer, one would conclude that it is prohibited for him because he acquires the item and he benefits from his purchase, as people say: If you purchased an item, you acquired a durable item for yourself. But with regard to a seller, who loses from the sale, as people say: One who sells an item loses, say that the Merciful One did not render it prohibited for him to engage in exploitation with the verse “**You shall not exploit.**” Therefore, it was necessary for the Torah to write this prohibition with regard to both parties to the transaction.^h

§ The mishna teaches that Rabbi Yehuda says: There is no exploitation for a merchant.^h The Gemara expresses surprise at this statement: Due to the fact that he is a merchant, he is not subject to the *halakhot* of exploitation? Anyone could arrive at a mistaken assessment of the value of merchandise.

Rav Nahman says that Rav says: It is with regard to a merchant who is a trader, who buys and sells merchandise, that they taught the *halakha*. What is the reason that he is not subject to the *halakhot* of exploitation according to Rabbi Yehuda? He knows how much his merchandise is worth, and he waives the sum of the disparity between the value and the price for the buyer. And the reason why he sells the merchandise in that manner, knowing that he is selling it for less than its value, is due to the fact that other merchandise happens to become available to him and he needs the money to purchase that item.

The Gemara asks: But now, in any event, he retracts from the transaction, indicating that he did not waive the sum of the disparity. Rav Ashi said: What is the meaning of: There is no exploitation for a merchant? He is not subject to the principles of exploitation at all, as even if the disparity is less than the measure of exploitation, i.e., less than one-sixth, he may renege on the transaction. Since his entire livelihood is based on the slight profit margin that he earns from each transaction, he does not waive even that sum. The Gemara comments: It is taught in a *baraita* in accordance with the opinion of Rav Nahman: Rabbi Yehuda says: There is no exploitation for a merchant, because he is expert in these matters.

§ The mishna teaches: The one upon whom the exploitation was imposed has the advantage. If he wishes, he can say to the other: Give me back my money and nullify the transaction, or he can say: Give me back the sum that you gained by exploiting me. The Gemara asks: Whose opinion is expressed in the mishna? It is neither the opinion of Rabbi Natan nor the opinion of Rabbi Yehuda HaNasi.

The Gemara explains: If it is the opinion of Rabbi Natan, in the mishna the *tanna* teaches: If he wishes, he can say: Give me back my money and nullify the transaction, or he can say: Give me back the sum that you gained by exploiting me. And in the *baraita* (sob) Rabbi Natan does not teach: If he wishes, indicating that the transaction takes effect regardless of his wishes. And if it is the opinion of Rabbi Yehuda HaNasi, in the mishna the *tanna* teaches the *halakha* with regard to the buyer, and in the *baraita* Rabbi Yehuda HaNasi teaches: In a case where the seller was exploited, the seller is at an advantage, apparently to the exclusion of the buyer.

The Gemara presents a mnemonic^b device for the Sages who discussed this difficulty: *Zayin*, referring to Rabbi Elazar; *beit*, referring to Rabba; *reish*, referring to Rava; *shin*, referring to Rav Ashi.

BACKGROUND

Mnemonic – סִינְגָן: Because the Talmud was studied orally for many generations, mnemonic devices were sometimes employed to help individuals remember a series of *halakhot* and the order in which they were taught.

אָמֵר רַבִּי אֲלֹעֲגָר: אָנוֹתָה זוֹ, אֲנֵי יוֹדֵעַ מֵשְׁנָאָה. רַבָּה אָמֵר: לְעוֹלָם וּבֵן הַיּוֹם, וְתַנְיָנִי בְּבְרוּתְּתָא "דֶּצָה". רַבָּא אָמֵר: לְעוֹלָם וּבֵן יְהוּדָה הַפְּשִׁיאָה הַיּוֹם, וְמַאי דְּשִׁיר בְּמִתְנִיתֵינוּ קָא מְפַרְיִשׁ בְּבְרוּתְּתָא. אָמֵר רַב אַשִּׁי: דִּיקָא נָמֵי, דַּקְתַּנִּי "אֶחָד הַלְּקָחָה וְאֶחָד הַפּוּכָר" וּמְפַרְשׁ לִיהְיָה לְלוּקָתָה. שְׁמַע מִינֶּה שִׁירִיה שִׁירִיה לְפּוּכָר, שְׁמַע מִינֶּה.

אָיִתְמָרוּ, הָאוּמָר לְחַבְּיוֹ: עַל מִנְתָּה שָׁאַן לְקָחָה אַנְזָאָה, רַב אָמֵר: יִשׁ לוֹ עַלְיוֹ אַנְזָאָה, וְשִׁמוֹאָל אָמֵר: אַיְן לוֹ עַלְיוֹ אַנְזָאָה. לִימָא רַב דָּאָמֵר בְּרַבִּי מַאיָּר, וְשִׁמוֹאָל דָּאָמֵר בְּרַבִּי יְהוּדָה.

דִּתְנִיא: הָאוּמָר לְאַשָּׁה "הָרִי אַתְּ מִקְוָדְשָׁתָה לְעַל מִנְתָּה שָׁאַן לְקָחָה עַל שִׁיר בְּסֻותָה וְעַוּנָה - הָרִי זֶה מִקְוָדְשָׁתָה, וְתַנְאַו בְּטַל, בְּרַבִּי רַבִּי מַאיָּר. רַבִּי יְהוּדָה אָוָמֵר: בְּדַבָּר שְׁבָמְמוֹן תַּנְאַו קִים.

אָמֵר לְקָחָה וּבָ: אַנְאָ דָאָמְרִי אָפְּילָו לְרַבִּי יְהוּדָה, עַד כָּאֵן לְאַקְאָמָר וּבְרַבִּי יְהוּדָה חַתָּם - אַלְאָ דִּירָעָה וְקָא מְתַלָּה,

Rabbi Elazar says: Concerning this halakha of exploitation in the mishna, I do not know who taught it,ⁿ as it does not correspond to the opinion of any of the Sages. **Rabba said:** Actually, the mishna is the opinion of Rabbi Natan, and emend and teach that Rabbi Natan stated in the baraita as well: If he wishes. **Rava said:** Actually, the mishna is the opinion of Rabbi Yehuda HaNasi, and the ruling that Rabbi Yehuda HaNasi omits in the mishna he explicates in the baraita. The mishna and the baraita are complementary. **Rav Ashi said:** The language of the mishna is also precise, as the tanna teaches: Both the buyer and the seller, and then he proceeds to elucidate the halakha of the buyer. Learn from it that the tanna indeed omitted the halakha of the seller, but he did not exclude the seller from the halakha. The Gemara affirms: Learn from it that this is the case.

S It was stated that there is a dispute among *amora'im*. With regard to one who says to another: I will be party to this sale on the condition that you have no claim of exploitation against me,^h even if you are exploited, Rav says: The exploited party has a claim of exploitation against him, and Shmuel says: He does not have a claim of exploitation against him. The Gemara suggests: Let us say that Rav stated his opinion in accordance with the opinion of Rabbi Meir, and Shmuel stated his opinion in accordance with the opinion of Rabbi Yehuda.

This is as it is taught in a baraita: With regard to one who says to a woman: You are hereby betrothed to me on the condition that you do not have a claim against me for food, clothing, and conjugal rights that a husband is obligated to provide his wife by Torah law, she is betrothed to him and his condition is void; this is the statement of Rabbi Meir, who maintains that a person cannot stipulate a condition that negates obligations by Torah law. And Rabbi Yehuda says: In monetary matters, as opposed to personal obligations, one's condition is in effect.^{nh}

The Gemara refutes this parallel. Rav could have said to you: I stated my opinion even in accordance with the opinion of Rabbi Yehuda, as Rabbi Yehuda states his opinion that a stipulation is valid in monetary matters only there, where a woman knows that she is entitled to food and clothing but waives her rights to them.

NOTES
I do not know who taught it – אֲנֵי יוֹדֵעַ מֵשְׁנָאָה: In other words, this is a third, novel opinion of unknown authorship, as it does not appear elsewhere (Ritva). Rashi in *Yevamot* 27b explains that the Gemara is saying that an opinion that is not attributable is probably corrupted and unreliable.

בְּדַבָּר שְׁבָמְמוֹן תַּנְאַו קִים: It is stated in the Jerusalem Talmud that a woman can even relinquish her rights to conjugal relations and that when Rabbi Yehuda referred to conditions that do not involve monetary matters it was concerning a situation where one betroths a woman on the condition that she will not require a bill of divorce or that she will be exempt from levirate marriage.

HALAKHA

On the condition that you have no claim of exploitation against me – עַל מִנְתָּה שָׁאַן לְקָחָה עַל אַנְזָאָה: If one says to another: I will sell this to you on the condition that you have no claim of exploitation against me, the halakhot of exploitation apply nevertheless. This is true all the more so if he says: On the condition that the transaction is not subject to the halakhot of exploitation, as he thereby directly abrogates a Torah law (*Sma*). If the seller explicitly notifies the buyer, e.g., the seller says to the buyer: This item that you are buying for two hundred is worth only one hundred, or the like, and the buyer waives his claim of exploitation, the latter cannot later reconsider and claim that he was exploited, in accordance with the conclusion of Rava and the baraita (*Shulhan Arukh, Hoshen Mishpat* 227:21).

One who betroths a woman and exempts himself from marital obligations – המְקַדֵּשׁ אֲשֶׁר וּפְטוּר עַצְמוֹ: If a man says to a woman: Agree to become betrothed to me on the condition that you have no claim of food, clothing, and conjugal rights against me, his condition takes effect with regard to the monetary matters, i.e., food and clothing, but not with regard to her conjugal rights. The reason is that one can stipulate a condition that negates obligations by Torah law only in monetary matters but not in other matters, in accordance with the opinion of Rabbi Yehuda in his dispute with Rabbi Meir (*Shulhan Arukh, Even HaEzer* 38:5).

Perek IV

Daf 51 Amud b

אָבֵל הַכָּא – מַיְ יִדּוּ דְּמַחְלֵל?

But here, where he says: On the condition that you have no claim of exploitation against me, does the other party know that there will be exploitation so that he will consciously waive his rightsⁿ to claim compensation in the event that there is? He believes that perhaps there will be no exploitation at all.

And Shmuel says: I state my opinion even in accordance with the opinion of Rabbi Meir, as Rabbi Meir states his opinion only there, in the case of betrothal, where the husband definitely abrogates Torah law with his condition. But here, who says that either party to the sale will abrogate any Torah law?ⁿ

Does the other party know there will be exploitation so that he will waive his rights – בְּנֵי יִדּוּ דְּמַחְלֵל: The Ramban maintains that this is unrelated to the matter of stipulating a condition that negates obligations by Torah law, as a waiver never takes effect when a person is unaware of that which he is waiving. By contrast, the Riva maintains that this applies specifically in the case of a stipulation that negates obligations by Torah law, as, if one specifies a particular sum or if he is aware of a defined

item that he is waiving, he is waiving the right to the payment to which he is entitled, and it is permitted. By contrast, a waiver that is stated without one's specifying the object of that waiver runs counter to the very essence of exploitation by Torah law, and one cannot stipulate a condition that negates obligations by Torah law (see *Birkat Shmuel*).

Who says that either party will abrogate any Torah law – בְּנֵי יִדּוּ דְּקָרְבָּן מִידָּה: The Ramban writes that even in the case of a loan in the Sabbatical Year, where there is a dispute with regard to a similar stipulation, one could assert that the stipulation: On the condition that the Sabbatical Year will not abrogate the loan, is not necessarily a condition that negates an obligation by Torah law, as the borrower can opt to repay the loan before the conclusion of the Sabbatical Year.

NOTES

Rav Anan says – אמר רב ענן: The *Torat Hayyim* notes that Rav Anan's statement is unrelated to the previous discussion and appears to interrupt the discussion in the Gemara. Some early commentaries maintain that from Rav Anan's statement it is clear that Shmuel's opinion is not in accordance with the opinions of both *tanna'im*. Rather, he holds in accordance with the opinion of Rabbi Yehuda. This corresponds with Abaye's conclusion cited later (Ran).

One who conducts business on faith – הנושא והנותן באמנה: The reference here is to a case where one acquires merchandise at a given price, and when he sells it, he informs the buyer that he is adding to the price a particular sum or percentage of the amount he paid for it. In that case, even if the price is significantly higher than the value of the item, the buyer cannot claim that he was exploited, as the sale was based not on the presumed value of the merchandise but on faith (Rabbeinu Hananel; Ramban; see Rashi).

The merchandise of inferior quality on faith – הרע באמנה: The reference here is to a case where one purchased a quantity of items of differing quality at a fixed price per unit, e.g., ten items for ten dinars. He then wants to sell these items to someone else. The *baraita* is teaching that he may not sell the inferior items at the price of one dinar per item while charging the actual value for the higher-quality items, as this would constitute exploitation. Rather, he must either sell all the items for one per-item price, or sell each item according to its market value (*Tosafot Rabbeinu Peretz*; see Rashi).

How does one conduct business on faith – כיצד דורך – מישא ומונת באמנה: One who conducts business on faith may not sell items of inferior quality on faith and those of superior quality based on their value. Instead, he must sell them all on faith. He calculates the sum that he paid for the merchandise and adds his expenses, e.g., shipping, lodging, etc., and the profits, per the agreement between the parties (*Shulhan Arukh, Hoshen Mishpat* 227:28).

HALAKHA

One who conducts business on faith – הנושא והנותן באמנה: In a case where the seller says to the buyer: I bought this item for this price and I am making this much profit from its sale, neither the buyer nor the seller can claim that he was exploited (*Shulhan Arukh, Hoshen Mishpat* 227:27 and *Shakh* there).

אמור רב ענן, לדידי מפרק שא ל מיינה דמר שמואל: הדואמר לחבירו על מנת שאין לך עלי אונאה – אין לך עלי אונאה – הרי יש בו אונאה.

מייתייבי: הנושא והנותן באמנה, וזה אומר – לחבירו על מנת שאין לך עלי אונאה – אין לך עלי אונאה. לר' דאמר: אנא דאמר אי פילו לרבי יהודה, דא מני?

אמור אבוי: מחוורתא רב אמר ברבי מאיר, ושמואל דאמר ברבי יהודה.

רב בא אמר: לא קשיא; פאן – בסתם, פאן – במפרק.

הדרניא: במה ובברים אמורים – בסתם, אבל במפרק, מוכר שאמר לך במאיתים, יודע אני בו זה שאני מוכר לך במאיתים, יודע אני בו שאיתו שהה אלא מלה, על מנת שאין לך עלי אונאה – אין לך עלי אונאה. וכן לוחך שאמר למוכר: חוץ זה שאני לוחך מבוק בעניהם, יודע אני בו שישו מעתים, על מנת שאין לך עלי אונאה – אין לך עלי אונאה.

תנו רבען: הנושא והנותן באמנה – הרי זה לא ייחס את הרע באמנה ואת היפה בשווה, אלא: אז זה וזה באמנה, אז זה וזה בשווה.

ונזון לו שכר בתפקיד, שכר גמל, שכר פונדק, שכר עצמו אינו נוטל, שכר נון לו שכרו משלם.

Rav Anan says:^N This matter was explained to me personally by Mar Shmuel. In the case of one who says to another: I will be party to this sale on the condition that you have no claim of exploitation against me, the other party does not have a claim of exploitation against him, as one can waive his rights to compensation for the exploitation that he suffered. But if one said: I will be party to this sale on the condition that it is not subject to the *halakhot* of exploitation, it is subject to the *halakhot* of exploitation, as in this case it is directly counter to Torah law.

The Gemara raises an objection from a *baraita*: In the case of one who conducts business on faith,^{NH} and in the case of one who says to another: I will be party to this sale on the condition that you have no claim of exploitation against me, the exploited party does not have a claim of exploitation against the one who exploited him. According to Rav, who said: I stated my opinion even in accordance with the opinion of Rabbi Yehuda, in accordance with whose opinion is this *baraita*, as pursuant to that statement, even Rabbi Yehuda holds that in cases of exploitation one cannot stipulate counter to that which is written in the Torah?

Abaye said: Based on this proof from the *baraita* it is clear that Rav stated his opinion in accordance with the opinion of Rabbi Meir, and that Shmuel stated his opinion in accordance with the opinion of Rabbi Yehuda, and this *baraita* expresses the opinion of Rabbi Yehuda.

Rava said: It is not difficult, as there is a distinction between the cases. Here, in this *baraita*, the *tanna* is speaking in a case where the condition is stated in an ordinary case, where it is not stated explicitly that the price paid is not the market value. In that case, Rav says that Rabbi Yehuda holds that the condition is void. There, where Rabbi Yehuda would uphold the condition, the *tanna* is speaking in a case where the exploitation is explicit, i.e., both parties know that the price paid is not the market value.

This is as it is taught in a *baraita*: In what case is this statement said? It is in an ordinary case, but in a case where the exploitation is explicit, e.g., in the case of a seller who said to the buyer: Concerning this item that I am selling to you for two hundred dinars, I know about it that it is worth only one hundred dinars, and I am selling it on the condition that you have no claim of exploitation against me, the buyer has no claim of exploitation against him. And likewise, in the case of a buyer who said to the seller: Concerning this item that I am buying from you for one hundred dinars, I know about it that it is worth two hundred dinars, and I am buying it on the condition that you have no claim of exploitation against me, the seller has no claim of exploitation against him.

Apropos the mention of one who conducts business on faith, the Gemara cites a *baraita* that teaches several *halakhot* concerning such an arrangement. **The Sages taught:** When selling merchandise that one purchased in bulk, one who conducts business on faith may not calculate the price of the merchandise of inferior quality on faith^N and the price of the merchandise of superior quality at their market value. Rather, he has two options: Either the price of both this merchandise and that merchandise must be calculated on faith, or the price of both this merchandise and that merchandise must be calculated at their market value.

The *baraita* continues: And the buyer gives the seller the payment for the money he spent in hiring a porter, the payment for the money he spent in hiring a camel driver if necessary, and the payment for the lodgings he used during the time of the transaction. These expenses had been borne by the seller, so it is not exploitation if he recovers them by charging the buyer. But as for the seller's own wages, i.e., payment for the time he spent engaging in the transaction, he does not take his own wages, as the one from whom he purchased the merchandise already gave him his full wages.^H

שכּוֹ מִשְׁלָם מֵהַכְּאָקָא יְהִיב לְיָהָה?
אמָר וּבְפֶפֶא: בָּצְדּוּיִי דִּיהְבִּי אֲרֵבָע
לְמַאָה.

The Gemara asks: With regard to **his wages in full, from where did he give that to him?** With what was he paid by the one from whom he purchased the merchandise? The Gemara responds: **Rav Pappa said:** This is referring to **sellers of inexpensive garments**, where the one from whom he purchases the merchandise **gives four additional units for each one hundred units purchased**, and that functions as payment for his efforts.^h

מתני' בְּמַה תְּהִיא הַסְּלָע חַסְרָה
וְלֹא יְהִיא בָּה אָוְנָאָה? רַבִּי מֵאִיר
אָוְמָר: אֲרֵבָע אִיסָּרוֹת, אִיסָּר לְדִינָה.
רַבִּי יְהוּדָה אָוְמָר: אֲרֵבָע פּוֹנְגִּינוֹת,
פּוֹנְגִּין לְדִינָה. וַרְבִּי שְׁמֻעוֹן אָוְמָר:

MISHNA How much can the *sela* coin be eroded^{nh} through usage, and its use in a transaction at its original value will still not constitute exploitation? Rabbi Meir says: The accepted depreciation is **four issar**, which is a rate of one *issar* per dinar, or one twenty-fourth of a dinar. And Rabbi Yehuda says: The accepted depreciation is **four pundeyon**,ⁿ which is a rate of one *pundeyon* per dinar, or one-twelfth of a dinar. And Rabbi Shimon says:

HALAKHA
How much can the *sela* be eroded – **כִּמְהַת הַסְּלָע חַסְרָה**: The *halakhot* of exploitation apply to coins as well, and the measure of exploitation is one-sixth. Therefore, it is considered exploitation if one pays with a coin that was devalued due to erosion to one-sixth less than its original worth. The ruling in the *Shulhan Arukh* is in accordance with the opinion of Rabbi Shimon, based on the opinions of the Rif and the Rambam, who rule in accordance with the opinion of Rava in his dispute with Abaye. The Rema cites an opinion that the measure of exploitation with regard to coins is one-twelfth, in accordance with the opinion of Rabbi Yehuda, as the *halakha* is ruled in accordance with his opinion in disputes with Rabbi Meir and Rabbi Shimon (*Shulhan Arukh, Hoshen Mishpat* 227:16).

NOTES

How much can the *sela* coin be eroded – **בְּמַה תְּהִיא הַסְּלָע חַסְרָה**: The reference here is not to a coin whose value is diminished due to forgery or a flaw but to one that was subject to erosion from usage (Meiri). Coins in the time of the mishna were minted from precious metals, and their value was in accordance with their weight. Metal coins experience erosion over time through usage. A coin with minor erosion through usage is essentially indistinguishable from a newly minted coin, but after a certain amount of erosion, it has lost enough of its weight to be considered a significant decrease. The Rambam

writes that there is another case of exploitation involving coins, where one exchanges coins with another at the incorrect rate of exchange.

Issar and pundeyon – **אִיסָּר וּפּוֹנְגִּין**: The reason the *tanna* does not state this *halakha* in terms of *sela* and *ma'a*, as was the case in previous *mishnayot* in this chapter; and the reason even Rabbi Shimon stated the calculation in terms of *pundeyon*, is that these were the coins in circulation, while the others were less commonly used (Rosh).

Perek IV

Daf 52 Amud a

שְׁמוֹנָה פּוֹנְגִּינוֹת, שְׁבַּי פּוֹנְגִּינוֹת
לְדִינָר.

The accepted depreciation is **eight pundeyon**, which is a rate of two *pundeyon per dinar*, or one-sixth of a dinar.

עד מַתָּי מוּטָר לְהַחְזִיר? בְּפֶרְבִּים – עד
כִּדְיַעֲרָה לְשׁוֹלְחָנִי, בְּכֶפְּרִים – עד
עֲרֵבִי שְׁבָתוֹת. אָם דִּין מִפְּרִיה –
אַפְּיָלוֹ לְאַתָּרְשָׁנִים עַשְׁר חֹצֶשׁ מִקְּבָלָה
הַיִּמְנוֹ, וְאֵין לוֹ עַלְיוֹן אֶלָּא תְּרוּמָתָה.

The mishna continues: Until when is it permitted for one to return a worn coin^h once he realizes that it is defective? In the cities [bakerakim],^l one may return it only until a period of time has passed that would allow him to show it to a money changer, who is an expert in matters of coins. In the villages, where there is no money changer, one may return it only until Shabbat eves, when people purchase their Shabbat needs. Although these are the limits of how much a coin must be eroded in order for there to be exploitation, if the one who gave the coin to the aggrieved party recognized it, he must accept it back from him even after twelve months have passed no matter how little the erosion affected its value. And he has only a grievance against him, as the Gemara will explain.

וְנוֹתָנָה לְמַעַשָּׂר שְׁנִי וְאַיִן חֹשֶׁש,
שְׁאַיִן אֶלָּא נַפְשׁ רַעָה.

And one may give the slightly eroded coin for use in the desacralizing of second-tithe produce and he need not be concerned, as one who would refuse to accept a slightly eroded coin is merely a miserly soul, while the coin is in fact valid for any use.

גַּמְ' וְרַמְנִיהִי: עד בְּמַה תְּהִיא הַסְּלָע
חַסְרָה וְיָהִיה בָּה אָוְנָאָה?

GEMARA And the Gemara raises a contradiction to the mishna from a *baraita* in which the same measures of depreciation are enumerated, as in that *baraita* those measures are introduced with the question: **How much must the *sela* coin be eroded so that its use in a transaction at its original value will constitute exploitation?** That is diametrically opposed to the mishna.

HALAKHA
Until when is it permitted for one to return a worn coin – **שַׁעַד מַתָּי מַוְרָר לְהַחְזִיר**: One who receives an eroded coin may return it. He may do so in a city until enough time has passed for him to show it to a money changer, and he may do so in a village until Shabbat eve, when people spend their money. After that amount of time has elapsed, although the one who gave him the coin is not obligated to take it back, it is considered an act of piety for him to accept it back even later if it is clear that it is the same coin, as long as it still circulates, no matter how infrequently (*Shulhan Arukh, Hoshen Mishpat* 227:14).

LANGUAGE
Cities [kerakim] – **בָּרְכִּים**: This is a large city, typically surrounded by a wall. Some maintain that the term comes from the Greek χάραξ, *kharak*, meaning a place fortified by beams. Others contend that it is from a Semitic or perhaps Assyrian root and is related to the Aramaic root *kaf, reish, kaf*, meaning encirclement.

NOTES

Overpay and acquire an item for your back, and acquire at cost items for your stomach – **עשיך ושי לברסוק**: Tosafot note two difficulties with the explanation of Abaye concerning the difference between the case of a coin and the case of a garment with regard to the halakhot of exploitation: One, his explanation is useful only for the case where the buyer of the garment was exploited, but not when the seller was exploited. Two, his explanation is limited to the case of a garment alone, and would not account for the difference between the case of a coin and the case of produce with regard to the halakhot of exploitation. Tosafot explain that the Sages applied their ordinances across the board, even to cases where the rationale is not in effect. The Ramban explains that the fundamental distinction of Abaye is in fact between a coin and all other items, as a coin is not in and of itself useful, as it is useful only in that it affords one the ability to acquire other items. The garment mentioned by Abaye is merely a representative example of a functional item (see Ritva, Ran, and Meiri).

שׁוֹרְקִים – **בַּה אֶת אֶחָרִים**: With regard to a merchant, since his transactions involve a regular turnover of payment and giving change, the concern is that the devalued coin will be intermingled with the others. In the case of a violent man and a murderer, the concern is that anyone entering into a transaction with one of them will fear confronting him and will be forced to accept the devalued coins.

אָמֵר רַב פַּפָּא: לֹא קָשִׁיא; תָּנָא דִין קָשִׁיב
חַשִּׁיב מִפְתַּח לִמְעָלה, תָּנָא בָּרוּא קָא חַשִּׁיב
מִלִּמְעָלה לִמְטָה.

מַאי שְׁנָא בְּסַלָּע דְּפָלִיגִי, וְמַאי שְׁנָא בְּטַלִּית
דְּלָא פְּלִיגִי?

אָמֵר רַבָּא: מַאן תָּנָא טַלִּית – רַבִּי שְׁמֻעוֹן
הָא. אֲבִי אָמָר: טַלִּית עַד שְׂתָוֹת מַחְיֵל
אַיִשׁ, דָּאָמָר אַנְיָשׁ: עַשְׂיך לְבִבִּיך וְשִׁי
לְבִבִּיסִין. סַלָּע, פִּוּן דְּלָא סַגִּילֵה – לֹא
מַחְיֵל.

גַּופָּא: עַד בְּמִה תְּהִיא הַסְּלָע חֲסִירָה וַיהֲא בָּה
אוֹזָה? רַבִּי מַיְרָא אָמָר: אַרְבַּעַה אִיסְרוֹת,
אַיסְרָה לְדִינָר. רַבִּי יְהוּדָה אָמָר: אַרְבַּעַה
פּוֹנְדִּיוֹנוֹת, פּוֹנְדִּיוֹן לְדִינָר. רַבִּי שְׁמֻעוֹן אָמָר:
שְׁמֹונָה פּוֹנְדִּיוֹנוֹת, שְׁשִׁים פּוֹנְדִּיוֹן לְדִינָר. יְתָר
עַל כֵּן – מַוְרָה בְּשִׁיאָה.

עַד בְּמִה תִּפְחַת וַיהֲא רְשָׁאי לְקִימָה?
בְּסַלָּע עַד שֶׁקֵּל, בְּדִינָר עַד רַובָּע. פְּחוֹת
מִכֶּן אַיִשׁ – אַסְרוֹר לְהֹזִיאָה. הָרִי וְהַלָּא,
יְמִכְרֹנָה לֹא לְתַגְּזָר וְלֹא לְחָרָם וְלֹא לְהָרָג.
מִפְנֵי שְׁמַרְמִין בָּה אֶת אֶחָרִים, אַלְאָ יְקִבְנָה
וַיהֲלָה בְּצַעַר בָּנו או בְּצַעַר בָּתוֹן.

אָמֵר מָר: בְּסַלָּע עַד שֶׁקֵּל, בְּדִינָר עַד רַובָּע.
מַאי שְׁנָא בְּסַלָּע עַד שֶׁקֵּל, וְמַאי שְׁנָא בְּדִינָר
עַד רַובָּע?

Rav Pappa says: This is not difficult. The *tanna* of our mishna calculates the measures from low to high. The *tanna* says that it does not constitute exploitation up to, but not including, the levels of depreciation enumerated in the mishna. Beginning with those levels of depreciation, it is exploitation. And the external *tanna*, i.e., the *tanna* of the *baraita*, calculates from high to low. That *tanna* says that it is exploitation down to and including the levels of depreciation enumerated in the *baraita*. It is only beneath those levels that it is not considered exploitation. There is no halakhic dispute between the two *tanna'im*.

The Gemara returns to discuss the mishna and asks: What is different with regard to a *sela*, that the *tanna'im* disagree about the level of depreciation that constitutes exploitation, and what is different with regard to a garment, that the *tanna'im* do not disagree concerning whether the disparity between value and price that constitutes exploitation is one-sixth or less than one-sixth?

Rava said: Who is the *tanna* that taught the halakhot of exploitation with regard to a garment in the mishnayot cited earlier in this chapter? It is Rabbi Shimon, who maintains that even in the case of a *sela*, the measure of exploitation is one-sixth. Abaye said that the two cases are different: With regard to a garment, a person is likely to waive the disparity up to one-sixth, as people say: Overpay and acquire an item for your back, i.e., a garment, and acquire at cost items for your stomach, i.e., food. Since it is worth purchasing fine garments, the disparity is not significant. By contrast, with regard to the *sela* in question, since it does not circulate, he does not waive even the sum of a smaller disparity.

§ With regard to the matter of exploitation and coins itself, the Gemara elaborates: How much will the *sela* coin be eroded and its use in a transaction will constitute exploitation? Rabbi Meir says: Four *issar*, which is a rate of an *issar* per dinar. Rabbi Yehuda says: Four *pundeyon*, a *pundeyon* per dinar. Rabbi Shimon says: Eight *pundeyon*, two *pundeyon* per dinar. If the depreciation is greater than that, he may sell the coin at its value as metal, not for its original value.

To what extent can the coin erode and it will still be permitted for one to maintain it as a coin?¹⁴ With regard to a *sela*, it can be used as a *sela* until it erodes so that its value reaches one shekel, i.e., half a *sela*. With regard to a dinar, it can be used as a dinar until it erodes so that its value reaches one-quarter. Once it erodes to the point where its value reaches an *issar* less than that, it is prohibited to spend it. He may not sell the invalidated coin to a merchant, nor to a violent man, nor to a murderer, because they deceive others with it¹⁵ or force them to take it. Rather, he should perforate it and suspend it as an ornament on the neck of his son or the neck of his daughter.

The Gemara continues its analysis of the *baraita*. The Master said: With regard to a *sela*, it can be used as a *sela* until it erodes so that its value reaches one shekel, i.e., half a *sela*. With regard to a dinar, it can be used as a dinar until it erodes so that its value reaches one-quarter. The Gemara asks: What is different whereby with regard to a *sela*, it can be used as a *sela* until it erodes so that its value reaches one shekel, which is half a *sela*, and what is different whereby with regard to a dinar, it can be used as a dinar until it erodes so that its value reaches one-quarter [*rova*]?

HALAKHA

To what extent can the coin erode and it will be permitted to maintain it as a coin – **עַד בְּמִה תִּפְחַת וַיהֲא רְשָׁאי לְקִימָה**? If a coin eroded to the extent that it was devalued to the measure of exploitation it is prohibited to maintain it, as it can easily be used deceitfully. One may not sell it to a merchant or a violent

person, because they will use it to deceive others. One may not maintain it in its present state. It must either be melted or perforated in the middle and hung on a chain as an ornament.

If the coin eroded and depreciated to half its value it is permitted to maintain it, as it can no longer be used deceitfully. The

Rema adds that any coin whose value is determined exclusively by its weight may be maintained even after it undergoes considerable erosion (Rambam *Sefer Nezikin*, *Hilkhot Geneiva* 7:4; *Shulhan Arukh*, *Hoshen Mishpat* 227:18).

אמר אביי: מאי רובע דקתי – נמי
רובע שקל אמר רבא: דיקא נמי, דיקא
תני רובע ולא קתני רביע, שמע מיניה.

למה ליה למתליה לדיין ב שקל?
מלתא אגב אורחיה קא משמע לנו
דאיבא דינר דאתמי משקל.

מסיע ליה לרביAMI, ראמר רב ami:
דינר הבא משקל – מותר לך יומו; דינר
הבא משקל – אסור לך יומו.

פחות מין אייסר אסור להוציאה.
מאי קאומו? אמר אביי, ה כי קאומו:
פחות כלע יותר מכדי אונאה אייסר –
אסור. אמר ליה רבא: או ה כי – אפילו
משחו נמי! אלא אמר רבא: פחותה
כלע אייסר לדינר – אסור, וסתמא
רבבי נמי.

תנן חותם: סלע שנפסלה, והתקינה
שיהא שוקל בה משקלות – טמא.
עד כמה תיפחתו והוא רשאי לך יומו?
לסלע שני דינרים, פחות מין – יקוץ.

יתר על בן מאי? אמר רב הונא: פחות
מין – יקוץ, יתר על בן – יקוץ. רב
امي אמר: פחות מין – יקוץ, יתר על
בן – יקיעם.

Abaye says: What is the meaning of *rova* that the *baraita* teaches? It too is referring to a coin called *rova*, which is worth one-quarter of a shekel, which is half a dinar. **Rava said:** The language of the *baraita* is also precise in this regard, as the *tanna* teaches *rova*^N and does not teach one-quarter [*revia*]. The Gemara concludes: Learn from that inference that the reference of the *tanna* of the *baraita* is to the coin called *rova*, which is half a dinar.

The Gemara asks: Why does the *tanna* state his ruling so that the amount of erosion that disqualifies a dinar is dependent on a shekel? Why does the *tanna* state the measure as one-quarter of a shekel, rather than stating it as one-half of a dinar? The Gemara explains: By doing so, the *tanna* teaches us a matter in passing, that there are cases where a dinar originates from a shekel, e.g., a shekel that eroded and is now worth one-half its original value, i.e., one dinar.

This supports the opinion of Rabbi Ami, as Rabbi Ami says: With regard to a dinar that originated from a shekel, it is permitted to maintain it and use it as a dinar. Based on its size and shape, there is no concern that people will confuse it with a shekel. With regard to a dinar that originated from a *sela*, it is prohibited to maintain it and use it as a dinar. Due to the fact that even after erosion the coin remains the size of a *sela*, which is clearly larger than a dinar, the concern is that people will mistakenly consider it more valuable than a dinar.

S The Gemara continues its analysis of the *baraita*, which teaches: Once it erodes to the point where its value reaches an *issar* less than that, it is prohibited to spend it. The Gemara asks: What is the *tanna* saying in that statement? Abaye said that this is what the *tanna* is saying: If a *sela* eroded by the amount of an *issar* greater than the measure of exploitation, it is prohibited to spend it at its original value. Rava said to Abaye: If so, then even any amount greater than the measure of exploitation should be forbidden as well. Rather, Rava said that this is what the *tanna* is saying: If a *sela* eroded by the amount of an *issar* per dinar, it is prohibited to spend it, and this unattributed *baraita* is in accordance with the opinion of Rabbi Meir, who says in the mishna that the measure of exploitation is one *issar* per dinar.

We learned in a mishna there (*Kelim* 12:7): A *sela* that was invalidated for use as a coin, and an individual designated it so that he would weigh with it^N items that require weighing,^H is susceptible to becoming ritually impure. His designation rendered it a vessel like any other weight. To what extent can the coin erode^H and it will still be permitted to maintain it? For a *sela*, it is an erosion of two dinars, half its value. If it eroded to an extent that it was worth less than that, he must cut it into pieces to prevent its being confused with a proper coin.

The Gemara asks: If it eroded but its current value is greater than one shekel, what is the *halakha*? Rav Huna says: If it eroded and depreciated less than one shekel he must cut it into pieces,^N and if it eroded and depreciated more than that he must also cut it into pieces. Rabbi Ami says: If it eroded and depreciated less than one shekel he must cut it into pieces, and if it eroded and depreciated more than that he may maintain it, because there is no concern that one will confuse a coin that eroded to that extent with a *sela*.

מיתיבי: The Gemara raises an objection from the *baraita*:

NOTES

As the *tanna* teaches *rova* – **דיקא תני רובע**: Although *rova* is the name of a coin worth one-quarter of a dinar, the *tanna* should have been precise and avoided an ambiguous term (Rosh).

One designated it so that he would weigh with it, etc. – **ההתקינה שזיהא שוקל בה וכו'**: The Rosh maintains that this does not indicate that he altered the coin in any way. Rather, he merely decided to utilize it for the purpose of weighing items with it. The *halakha* is that items can become vessels and therefore become susceptible to contracting ritual impurity by means of thought.

Less than one shekel he must cut it into pieces – **פחות מין קוץ**: The early commentaries disagree with regard to a *sela* that eroded to half its original size. Some say that if it incurs any further loss in value, even if it is less than one-sixth, it is prohibited to maintain it, as even the smallest disparity constitutes exploitation, and in a *sela* in that condition depreciation that minor is indiscernible (Rosh). Others maintain that as long as it did not depreciate by an additional one-sixth it is permitted to maintain it (Rashba; Ran).

HALAKHA

A *sela* that was invalidated and one designated it so that he would weigh with it items that require weighing – **כלע**: To what extent can the coin erode, etc. – **עד כמה תיפחתו וכו'**: If a coin eroded and depreciated by half its value it is permitted to maintain it. If it depreciated by more than half its value he must cut it so that it is half its value, in accordance with the opinion of Rav Huna (Rambam *Sefer Nezikin*, *Hilkhot Geneiva* 7:2).

Perek IV

Daf 52 Amud b

NOTES

Greater than that – יתיר על גן: There is a difference in understanding of the phrase: Greater than that, in the question from the *baraita* and the Gemara's answer: When the Gemara asks the question, the assumption is that this phrase means that the value of the coin is greater than it would be had it depreciated by the measure of exploitation, while in the Gemara's answer the assumption is that this phrase means that the value of the coin depreciated by more than the measure of exploitation (Ritva).

Here he perforated the coin in the middle and there he perforated it from the side – **כאן באמצע אין נון הצד:** The Rif and the Rambam explain that the Gemara is not referring to where one perforated the coin, but to the place in the coin where it was flawed. If the flaw was in the middle of the coin one may keep it, as that flaw will always remain apparent. If the flaw was on the side of the coin one may not keep it, because such a flaw can be disguised by shaving the side of the coin.

Until Shabbat eves when people go to the market – **עד שבותות דסילון לשוקא:** Even in the case of a wealthy man who will not necessarily need to spend the coin immediately, typically one saves coins whose quality is clear and seeks to rid himself of dubious-quality coins by spending them as soon as possible (Sma).

LANGUAGE

Scraps [gerutot]: From the Greek γρύτη, *grutē*, meaning a collection of items of little value, or a container in which those items are placed.

BACKGROUND

The Dead Sea [Yam HaMelah] – **ים המלח:** The Hebrew name for this body of water, literally, the Sea of Salt, is occasionally employed in reference to any saltwater sea, as opposed to a freshwater lake. Typically, it refers specifically to the Dead Sea, which is also referred to as the Sea of Sodom in talmudic sources. Any object from which deriving benefit is prohibited is cast into the Dead Sea, as no fishermen or others will retrieve items from there. Alternatively, perhaps due to the high concentration of salt within it, objects cast into the Dead Sea will quickly corrode and be rendered worthless.

HALAKHA

Here he perforated the coin in the middle – **כאן באמצע –** If a *sela* depreciated to the extent that it is prohibited to keep it as a coin and its owner seeks to use it as an ornament, he may not perforate it on its side, as in that case one could file the coin and obscure the perforation. Instead, he should perforate it in the middle (*Shulhan Arukh, Hoshen Mishpat* 227:18).

יתיר על בן מוכחה בשוויה. מאין לאו שפחתה יותר מכדי אוננתה? לא, יתרה דאפקתי לא פרחתה בכדי אוננתה מוכחה בשוויה.

מתיבי: עד בפה תיפחת והוא רשאי לך יממה? בסלע עד שקל. מאין לאו רפחית פורתא פורתא? לא, דגפליל לנורא ואפרחות בחרדא יוננא.

אמר מר: יקננה ויתלה בצעור בנו או בצעור בתו. ובמי מה: לא יעתה משקל בין משקלתו, ולא יוקנה בין גרוותתו, ולא יקננה ויתלה בצעור בנו ובצעור בתו. אלא, או ישוחק או יתוך או יקוץ או יוליך לם המלחת.

אמר רבי אלעזר, ואמרי לה רב הונא אמר רבי אלעזר: לא קשיא: **כאן – באמצע,** **כאן – מן הצד:**

עד מתי מותר להחזיר, בברכים עד שיראה לשולחני, בברכים עד ערב שבותות. מאין שנא בסלע דמלגן, ומאי שנא בטלית דלא מפליג?

אמר אביי: כי תנן נמי מתרינו בטלית בברכין תנן. רבא אמר: טלית – כל איש קיםליה בגונה. סלע, בין דלאו כל איש קיםליה בגונה אלא שלחני הלבן. בברכים דאיכא שלחני – עד שנראה לשולחני; בברכים דליכא שלחני – עד ערב שבותות דסילון לשוקא.

If the erosion was greater than that,ⁿ he may sell the coin at its value as metal, not for its original value. What, is it not that it eroded more than its measure of exploitation? The Gemara rejects this claim: No, the term greater means that if it did not yet erode to its measure of exploitation, he may sell it at its value.

Another objection was raised: To what extent can the coin erode and one would still be permitted to maintain it? For a *sela* that deteriorated, it is permitted to maintain it up to a shekel, which is half its value. Does this not mean that the *sela* depreciated little by little, which indicates that even though it lost half its value, which is far greater than the measure of exploitation, it is still permitted for one to maintain it, and there is no concern about deceit? The Gemara rejects this: No, it is referring to a coin that fell into the fire and eroded all at once, and therefore no deceit is possible.

The Master said in the *baraita*: If a coin greatly depreciated he should perforate it, and suspend it as an ornament on the neck of his son or the neck of his daughter. And the Gemara raises a contradiction from a *baraita*: With regard to an eroded coin, one should not make it a weight among his weights, nor cast it among his metal scraps [*gerutotav*],¹ nor perforate it and suspend it on the neck of his son or the neck of his daughter, lest he come to use it by mistake. Rather, he should either grind it or melt it, or cut it into pieces, or take it and cast it into the Dead Sea.^b

Rabbi Elazar said, and some say Rav Huna said that Rabbi Elazar said: This is not difficult. Here, where it is permitted to fashion the coin into an ornament, it is in a case where he perforated the coin in the middle,^h and therefore it can no longer be mistaken for a valid coin; there, where it is prohibited to fashion the coin into an ornament, it is in a case where he perforated the coin from the side.ⁿ In that case the concern is that he might cut the edge of the coin and use the unperforated remainder to deceive others.

§ The mishna teaches: Until when is it permitted for one to return a depreciated coin? In the cities, one may return it only until a period of time has passed that would allow him to show it to a money changer, who is an expert in matters of coins. In the villages, where there is no money changer, one may return it only until Shabbat eves, when people purchase their Shabbat needs. The Gemara asks: What is different with regard to a *sela* whereby the *tanna* distinguishes between cities and villages, and what is different with regard to a garment whereby he does not distinguish between cities and villages?

Abaye said: When we learned the *halakha* in the mishna with regard to a garment as well, it is with regard to its sale in the cities that we learned it. Concerning the sale of a garment in a village, he can return it even at a later stage. Rava said: There is a difference between a garment and a coin. In the case of a garment, every person is certain with regard to its value, and presumably the buyer will be informed of his mistake immediately. In the case of a *sela*, since not every person is certain with regard to its value, and rather it is only a money changer who is certain, therefore, in the cities, where there is a money changer available, the buyer can return the coin until a period of time has passed that would allow him to show it to a money changer. In the villages, where there is no money changer available, he has until Shabbat eves, when people go to the market,ⁿ at which point he will discover the actual value of the *sela*.

“**אִם־הַיְהָ מִכְּרָה אֲפִילוֹ לְאַחֲרֵ שָׁנָים עַשְׂרֶת חֻזֶּשׁ כִּי־הַכְּבָא? אִי בְּפָרוֹנִי – הָא אַמְרוֹת עַד שְׂרֵבִי שְׁבָתוֹת!**

The mishna teaches: **And although these are the limits of how much a coin must be eroded in order for there to be exploitation, if the one who gave the coin to the aggrieved party **recognized it**,^h he must accept it back from him even after twelve months have passed, no matter how little the erosion affected its value; and he has only a grievance against him.** The Gemara asks: **Where did this occur? If it was in the cities, didn't you say that he has only until a period of time has passed that would allow him to show it to a money changer? If it was in the villages, didn't you say that he has until Shabbat eves?**

אמָר רַב חֶסְדָּא: מִידְתַּחֲסִידָה שְׁנוּ בָּאָן, אִי הַכִּי, אִיכְאָ סִיפָּא: אֵין לוֹ עַלְיוֹ אַלְּאַ תְּרֻעָומָת. לְמִאן? אִי לְחַסִּיד – לֹא קְבוּלִי, לִקְבָּלָה מִינָּה, וְלֹא תְּרֻעָומָת תִּיהְיֶה לָיהּ, וְאַלְּאַ לְהַאֲנָךְ רִקְבָּלָה מִינָּה, וְלֹבֶתְרָה דִּמְקְבָּלָה מִינָּה – תְּרֻעָומָת תִּיהְיֶה לָיהּ?

Rav Hisda said: The Sages taught an attribute of piety here, according to which he must accept it even after considerable time has passed. The Gemara asks: If so, say the latter clause of the mishna: **And he has only a grievance against him. For whom is there a grievance? If it is for the pious person who accepted the return of the flawed coin although he was not required to accept it, and is teaching that he may have a grievance against the one who requested of him to accept the coin, let him not accept the coin from him and let him not have a grievance. Rather, perhaps it is referring to that person from whom he accepted the coin. But after the person piously accepts return of the coin from him, is it reasonable that the one who returned the coin will have a grievance?**

הַכִּי קָאָפָר: הָא אַחֲרֵ, אָף עַל פִּי שְׁאַיִן מִקְבָּלָה הַיְמָנוּ – אֵין לוֹ עַלְיוֹ אַלְּאַ תְּרֻעָומָת.

The Gemara answers that this is what the *tanna* is saying: But with regard to another person who is not pious and does not accept the coin, although he does not accept return of the coin from him after the time has passed, the one who requested that he accept it has only a grievance against him.ⁿ One cannot compel the person from whom he received the coin to accept it in return, as although the coin maintains its value, not everyone is willing to conduct business with a coin whose value is questionable.

וְגַנְוֹתָנָה לְמַעַשָּׂר שְׁנִי וְאַיְנוֹ חֹשֶׁשׁ שָׁאַיִן אַלְּאַ נְפָשׁ רַעָה. אִםָּרָב פָּפָא: שְׁמַע מִינָה, הָאֵי מְאֹן דְּמוֹקִים אֲזֹויִ – מִיקְרִי נְפָשׁ רַעָה, וְהַנְּמִילִי הוּא דְּסִגִּי לָהּ.

§ The mishna teaches: **And one may give the slightly eroded coin for use in the desacralizing of second-tithe produce and he need not be concerned,^h as one who would refuse to accept a slightly eroded coin is merely a miserly soul, while the coin is in fact valid for any use.** Rav Pappa said: Conclude from this formulation of the mishna that **this one who insists upon the integrity of his coinsⁿ and accepts only unflawed coins is characterized as a miserly soul.**ⁿ The Gemara adds: **And this matter applies only if the flawed coins that he rejected still circulate.**^h

מְסִיעַ לִיהְ לְזִקְנִית, דָאָמָר זִקְנִית: בָּא לְפָרוֹתָה – פָּרוֹתָה בְּשִׁוְיהָ, בָּא לְחַלְלָה – מְחַלְלָה בִּיפָה.

The Gemara comments: This supports the opinion of Hizkiyya,ⁿ as Hizkiyya says: If one comes to change this flawed silver coin for copper coins, he changes it for its value, deducting several *perutot* due to erosion. If he comes to desacralize second tithe with it, he desacralizes the produce with it as though its value were that of an unflawed [*beyafa*] coin.

HALAKHA

If he recognized it – **אִם־הַיְהָ מִכְּרָה**: Although the Sages established a time limit for the return of a flawed coin, if the one who gave it to the other person recognizes it as his coin, it is appropriate for him, as an attribute of piety, to exchange it for him even after that time has elapsed. If he does not wish to do so, the recipient has no more than a grievance against him, as he is not legally bound to accept return of the coin (Rambam Sefer Kinyan, *Hilkhot Mekhira* 12:12; *Shulhan Arukh, Hoshen Mishpat* 227:17).

בְּאַיּוֹ מִטְבָּע – פּוֹדֵה בְּשָׁנָר: It is permitted *ab initio* to redeem second tithe with an eroded coin, provided the depreciation is less than the measure of exploitation and a coin of that kind remains in circulation (Rambam *Sefer Zera'im, Hilkhot Ma'aser Shenii* 4:19).

And this...applies only if the flawed coins still circulate – **בְּאַיּוֹ דְּסִגִּי לְזָהָב:** It is permitted to use a coin that eroded somewhat for payment *ab initio*, provided that it did not depreciate by the measure of exploitation, and that a coin of that kind remains in circulation (Rambam *Sefer Kinyan, Hilkhot Mekhira* 12:12; *Shulhan Arukh, Hoshen Mishpat* 227:16).

אֵין לוֹ עַלְיוֹ אַלְּאַ תְּרֻעָומָת: The early commentaries disagree as to whether demonstrating this attribute of piety, i.e., accepting back an item one clearly sold even if the disparity is less than the measure of exploitation, is commended in all cases of exploitation, or whether it applies only in the case of coins.

הָאֵי מְאֹן דְּמוֹקִים אֲזֹויִ: The novel element in this statement of Rav Pappa is that otherwise one might have understood from the mishna that although it is permitted to use a flawed *sela*, it may be used only according to the value of the metal in the coin. Rav Pappa teaches that as long as the disparity is less than the measure

of exploitation, it may be used according to its original value (Rashba; Ran).

A miserly soul – נְפָשׁ רַעָה: The source of this phrase is Ecclesiastes 6:2, which refers to miserliness as a terrible illness (*Torat Hayyim*).

מְסִיעַ לִיהְ לְזִקְנִית: This supports the opinion of Hizkiyya – The meaning of this passage is subject to a dispute between the commentaries (see Rashi, *Tosafot*, Rosh, and Ramban). The main question is whether the reference is to a coin that has depreciated by the measure of exploitation or to one that has depreciated by a lesser measure. The Ramban explains, based on the statement of Rav Pappa, that if the *sela* remains in cir-

culation, only a miserly soul would refuse to accept the coin at its original value. Therefore, one may use it to desacralize second-tithe produce according to that original value. Based on this opinion, the Gemara concludes that although it is possible that a storekeeper in Jerusalem would agree to give only the value of the metal for this coin, one can redeem second tithe in the amount commensurate with its original value.

Rashi maintains that the novel element of the statement of Hizkiyya is that a coin that has depreciated by the measure of exploitation maintains the legal status of a coin and may therefore be used in redeeming second-tithe produce. It does not assume the status of a blank, i.e., a coin that carries no imprint on it (see Ritva, Rashba, and Rosh).

HALAKHA

The second-tithe produce and its one-fifth are desacralized upon the first coins – **הוּא וְחוֹמֶשׁ מִחוּלָל עַל מִעֵדָות**: In the case of one who redeems second tithe and who has other, unredeemed second tithe whose additional payment of one-fifth is worth less than one *peruta*, it is sufficient if he says that the produce and its additional one-fifth are desacralized on the first coins. Since one cannot match the sum of money to the value of the produce precisely, the assumption is that the sum of money with which he desacralized the original produce was a bit more than the value of the produce (Rambam *Sefer Zera'im, Hilkhot Ma'aser Sheni* 5:5).

A non-priest is liable to the penalty of death for partaking of *teruma* and first fruits – **תְּרוּמָה וּבְכָרֹום חִיעִיכִים עַל יָדָם** – **מִיתָה**: A non-priest who intentionally partook of *teruma*, whether it is ritually pure or impure, is liable to receive the penalty of death at the hand of Heaven. Similarly, a non-priest who partook of first fruits after they already entered within the walls of Jerusalem is liable to receive the penalty of death at the hand of Heaven (Rambam *Sefer Zera'im, Hilkhot Terumot* 6:6 and *Hilkhot Bikkurim* 3:1).

And the Torah imposes payment of one-fifth – שְׁנִינָה: A non-priest who partook of *teruma* unwittingly pays the priest the principal and an additional payment of one-fifth of its value. The *halakha* of first fruits is the same as that of *teruma* in this respect (Rambam *Sefer Zera'im, Hilkhot Terumot* 10:1).

מַאי קָאָמָר? הֲכִי קָאָמָר: אָף עַל פִּי
כְּשֶׁבְּאָה לְפָרוּתָה – פָּרוּתָה בְּשָׂוִיה, בְּשָׂוִיה
מִחֻלָּה – מִחֻלָּה בִּיפָּה.

לִמְימָרָא דְּסִבְרָה חִזְקִיהָ דְּמוּלָלִין בְּמַעַשָּׂר
שְׁנִי וְהַאֲמָר חִזְקִיהָ: מַעַשָּׂר שְׁנִי שְׁאַיִן בְּ
שְׁוָה פָּרוּתָה, אָוֹמֶר: הַוּא וְחוֹמֶשׁ מִחוּלָל
עַל מִעֵדָות הַרְאָשׁוֹנוֹת, לְפִי שְׁאַיִן אָפְשָׁר לוֹ
לְאָדָם לְצִמְצָם מִעֵדָותָיו.

מַאי בִּיפָּה – בְּתוֹרַת יִפָּה, דְּתִירִי זִיל לֹא
מוּלָלִין בֵּיתָה.

גּוֹפָא, אָמָר חִזְקִיהָ: מַעַשָּׂר שְׁנִי שְׁאַיִן בְּ
שְׁוָה פָּרוּתָה, אָוֹמֶר: הַוּא וְחוֹמֶשׁ מִחוּלָל
עַל מִעֵדָות הַרְאָשׁוֹנוֹת, לְפִי שְׁאַיִן אָפְשָׁר לוֹ
לְאָדָם לְצִמְצָם מִעֵדָותָיו.

מִתְּחִיבֵי: הַתְּרוּמָה וּהַבְּכָרֹום חִיבֵּין
עַל יָדָם מִיתָה, וְחוֹמֶשׁ.

The Gemara asks: **What is Hizkiyya saying?** Is he merely repeating the *halakha* cited in the mishna? The Gemara explains that **this** is what he is **saying**: **Although when he comes to change into *perutot* this flawed silver coin upon which he redeemed his second-tithe produce he changes it for its actual, not its original, value, when he desacralizes second tithe with it, he desacralizes the produce with it as though it were an unflawed coin.**

The Gemara asks: **Is that to say that Hizkiyya holds that we treat second tithe with contempt**, i.e., we redeem it for less than its actual value? **But doesn't Hizkiyya say:** In the case of **second-tithe produce that does not have the value of even one peruta** and therefore cannot be redeemed, one **says**: The second-tithe produce and its one-fifth that is added when one redeems his own second-tithe produce are **desacralized upon the first coins**^h upon which I already redeemed second-tithe produce worth at least one *peruta*, because it is impossible for a person to be precise with his coins? Presumably, the value of the coins with which he redeemed the produce somewhat exceeded the value of the produce. Therefore, he can desacralize additional produce worth less than one *peruta* with those coins. Apparently, Hizkiyya holds that one may not display contempt for second-tithe produce by redeeming it on coins worth less than its value.

The Gemara explains: **What is the meaning of *beyafa*?** It means that although the coin has eroded, it is accorded **unflawed status**, and one may desacralize second-tithe produce with it. Nevertheless, it is assessed according to its actual, not its original, value, as we do not treat second tithe with **two forms of contempt**. One may use an eroded coin, but only according to its actual value.

§ Apropos the statement of Hizkiyya, the Gemara analyzes the matter itself. **Hizkiyya said:** In the case of **second-tithe produce that does not have the value of one peruta** and therefore cannot be redeemed, one **says**: The second-tithe produce and its one-fifth that is added when one redeems his own second-tithe produce are **desacralized upon the first coins** upon which I already redeemed second-tithe produce worth at least one *peruta*, because it is impossible for a person to be precise with his coins.

The Gemara raises an objection from a mishna (*Halla* 1:9): With regard to *teruma*^b and first fruits,^b a non-priest is liable to receive the penalty of death at the hand of Heaven for partaking of them^h intentionally, and the Torah imposes the payment of a penalty of **one-fifth^h** of the value of the produce for partaking of them unwittingly.

BACKGROUND

Teruma – תְּרוּמָה: Whenever the term *teruma* appears without qualification, it refers to *teruma gedola*, the portion of the produce separated and given to the priests. The Torah commands with regard to the priests: "And this is yours, the *teruma* of their gift... All the best of the oil, and all the best of the wine, and of the grain, the first part of them that they give unto the Lord, to you have I given them" (Numbers 18:11–12). The Sages extended the scope of this mitzva to include all produce. This mitzva applies only in Eretz Yisrael.

Teruma for the priests is separated after the first fruits are separated. The Torah does not specify the measure of produce to be separated as *teruma*. By Torah law, one fulfills his obligation by separating a single kernel of grain from an entire crop. The Sages established a measure: One-fortieth for a generous gift, one-fiftieth for an intermediate gift, and one-sixtieth for a miserly gift.

Today, *teruma* is not given to the priests because they are incapable of providing definite proof of their priestly lineage. Nevertheless, the obligation to separate *teruma* remains in effect and only a small portion of the produce is separated.

First fruits – בְּפִרְיוֹם: The first fruits of the new harvest were given to the priests (Deuteronomy 26:1–11). During the Temple period, a farmer would select the first fruits of the seven types of produce with which Eretz Yisrael is specially favored: Wheat, barley, grapes, figs, pomegranates, olives, and dates (Deuteronomy 8:8). The Sages instituted an ordinance that at least one-sixtieth of the harvest is brought as first fruits. The farmers would bring these fruits to the Temple in a basket, place them before the altar, and recite a formula expressing appreciation to God (see Deuteronomy 26:3–10). Afterward, the first fruits were given to the priests, who partook of them under the same conditions in which they partook of *teruma*.

The first fruits were brought to the Temple between the festivals of *Shavuot* and *Sukkot*. If they were not brought within this period, they could be brought until Hanukkah. Tractate *Bikkurim* in the Mishna and the Jerusalem Talmud are devoted to the *halakhot* and provisions governing this mitzva.

Perek IV

Daf 53 Amud a

וְאַסּוּרִים לֹרוּם, וְהַנְּכָסִי בֵּין, וְעַולִים
בְּאַחֲרֵי מִמְאָה, וְעַוְעַן רְחִיצַת יְדִים,
וְהַעֲרֵב שֶׁמֶשׁ. הַרְיָ אַלְוָ בְּתֻרּוֹמָה
בְּכָבוֹדִים, מָה שָׁאַיִן בְּמַעַשָּׂר.

And their consumption is prohibited to non-priests;^{NH} and they are the property of the priest^H in every sense, e.g., to sell them to another priest or betroth a woman with them; and if they were intermingled with non-sacred produce they are negated only if the ratio is one part *teruma* in one hundred^H parts non-sacred produce; and they require the washing of one's hands^H before partaking of them; and one who was impure and immersed must wait for sunset^H before partaking of them. These are halakhot that are in effect with regard to *teruma* and first fruits, which is not so with regard to second tithe.^H

מַאי "מָה שָׁאַיִן בְּמַעַשָּׂר?" לֹא
מִכָּלְלָה דְמַעַשָּׂר בְּטִילָה בָּרוּבָה? וְאָם
אִיתָא דְחַקִּיקָה, הוּא לִיה דָבָר שִׁישׁ לְ
מַתְרִין – כְּלָל דָבָר שִׁישׁ לְמַתְרִין!
אֲפִילוּ בָּאַלְפָן לֹא בְּטִילָה!

The Gemara asks: What is the meaning of: Which is not so with regard to second tithe? Is it not, by inference, that second tithe is negated in a majority^N of non-sacred produce? And if it is so that the opinion of Hizkiyya is correct and even second-tithe produce worth less than one *peruta* can be redeemed, second tithe is an item whose prohibition has permitting factors,^{NH} and the principle is that any item whose prohibition has permitting factors^N is not negated even if it is in a mixture with one thousand permitted parts.

וּמְמַאי דְ"מָה שָׁאַיִן בְּמַעַשָּׂר"
דְבִיטִיל בָּרוּבָה? דְלָמָא לֹא בְּטִילָה
כָּלֵל! לֹא מִצְחָת אִמְרָת הַכִּי, דְלָגָבִי
תְּרוּמָה חִוּמִי דְתְרוּמָה קַתְנִי, קִילִי
דְתְרוּמָה לֹא קַתְנִי. וְהַא קָא תְּנִי: וְתִנְ
נְכָסִי בֵּין!

The Gemara rejects this proof: And from where is it learned that from the phrase: Which is not so with regard to second tithe, one infers that second tithe is negated in a simple majority? Perhaps infer that second tithe is not negated at all. The Gemara answers: You cannot say so, as with regard to *teruma*, the *tanna* in the mishna is teaching the stringencies of *teruma* but he is not teaching the leniencies of *teruma*. The Gemara asks: But doesn't the *tanna* teach: And they are the property of the priest, which is a leniency? Apparently, the *tanna* did not restrict his treatment of the halakhot of *teruma* to stringencies.

HALAKHA

Prohibited to non-priests – פְּנִימֵי לִוּסִים: It is prohibited for non-priests to partake of *teruma* and first fruits, even in Jerusalem (Rambam *Sefer Zera'im*, *Hilkhot Terumot* 6:5 and *Hilkhot Bikkurim* 3:15).

And they are the property of the priest – פְּנִימֵי בֵּין: First fruits and *teruma* are the property of the priest, and he may use them to purchase slaves, land, or impure animals. The priest's creditor may collect his debt and his wife may collect the value of her marriage contract from that sacred produce (Rambam *Sefer Zera'im*, *Hilkhot Bikkurim* 4:14).

Negated if the ratio is one in one hundred, etc. – עַלְמָם בְּאַחֲרֵי וּמִפְאָה וּמִרְ: If one *se'a* of *teruma* or first fruits fell into one hundred *se'ot* of non-sacred food and they became intermingled, the *teruma* is negated. Nevertheless, the owner is required to separate one *se'a* and give it to a priest, as the *se'a* of *teruma* or first fruits is the property of a priest. The rest of the mixture is permitted to non-priests (Rambam *Sefer Zera'im*, *Hilkhot Terumot* 13:1 and *Hilkhot Bikkurim* 4:15).

They require the washing of one's hands – טְעַמְנָס רְחִיצַת יְדִים: One who partakes of bread or produce of *teruma* must ritually wash his hands beforehand, even if his hands were ritually pure, since the Sages instituted this measure as a safeguard for purity (Rambam *Sefer Zera'im*, *Hilkhot Terumot* 11:7).

And one must wait for sunset – וְהַעֲרֵב שֶׁמֶשׁ: One who was ritually impure and then immersed in a ritual bath may partake of *teruma* only after the sunset of the day he immersed. In this context the term after sunset refers to the emergence of the stars (Rambam *Sefer Zera'im*, *Hilkhot Terumot* 7:2).

Which is not so with regard to second tithe – מָה שָׁאַיִן בְּמַעַשָּׂר: Second tithe is considered the property of Heaven. Therefore, one may neither give it to another as a gift, nor sell it, nor purchase items with it, nor use it to betroth a woman. It may be eaten by non-priests and by an impure person who immersed himself during that day prior to sunset (Rambam *Sefer Zera'im*, *Hilkhot Maaser Sheni* 3:4, 17).

An item whose prohibition has permitting factors – דָבָר שִׁישׁ לְמַתְרִין: An item whose prohibition has permitting factors is not negated even if it was intermingled with one thousand permitted items (*Shulchan Arukh*, *Yoreh De'a* 102:1).

NOTES

And their consumption is prohibited to non-priests – פְּנִימֵי לִוּסִים: This clause in the mishna seems to be superfluous, as the *tanna* already stated that consumption of *teruma* and first fruits by non-priests is punishable by death at the hand of Heaven. It is explained in the Jerusalem Talmud that the *tanna* added this clause to include a case where a non-priest consumes less than the amount necessary to incur the punishment of death at the hand of Heaven (see Ramban). According to the Meiri, the *tanna* is teaching that not only is consumption of these items prohibited to non-priests, but deriving benefit from them is also prohibited.

Negation in a majority – בְּטִול בָּרוּב: Most authorities maintain that by Torah law all forbidden items are negated in a majority of permitted items, as by Torah law the majority is the determining factor in all matters. The Sages established particular measures for the negation of various prohibitions. They distinguished between forbidden items intermingled with items of the same type and those intermingled with items of another type. They distinguished between cases where the forbidden item is non-sacred, where negation of the forbidden item occurs when it is intermingled with a permitted item in a ratio of one to sixty; cases where the forbidden item is *teruma*, where negation of the forbidden item occurs when it is intermingled with a permitted item in a ratio of one to one hundred permitted parts; and cases where the forbidden item was *orla*,

fruit that grows during the three years after a tree is planted, or food crops that grew in a vineyard, where negation of the forbidden item occurs when it is intermingled with a permitted item in a ratio of one to two hundred permitted parts.

The Sages likewise instituted that for various reasons, certain items are not negated at all despite the great number of permitted items with which they are mingled. These reasons include the significance of the forbidden item, e.g., a cut of meat fit to serve guests; its effect on the mixture, e.g., it flavors the mixture or it curdles the mixture; the severity of its prohibition, e.g., unleavened bread on Passover; or whether its prohibition is temporary or can be permitted in some manner.

Second tithe is an item whose prohibition has permitting factors – הוּא לִיה דָבָר שִׁישׁ לְמַתְרִין: Tosafot ask: Can one not request that a halakhic authority perform dissolution of his separation of *teruma*, as separation of *teruma* is considered a type of vow, and therefore *teruma* too would be an item whose prohibition has permitting factors? They answer that there is a difference between the cases, as although the separation of *teruma* can technically be dissolved by a halakhic authority, dissolution of vows is a mitzva while dissolution of the separation of *teruma* is not. In fact, dissolution of the separation of *teruma* might even be prohibited (Meiri). Therefore, its status is not that of an item whose prohibition has permitting factors (Rosh; *Sefer HaAgudda*; Ritva).

Some commentaries ask: Is it not the case that with regard to second-tithe produce that was intermingled with other produce, even if, contrary to the opinion of Hizkiyya, the ruling is that it cannot be redeemed, its prohibition has permitting factors, as one could take the entire mixture to Jerusalem where it may be eaten? The commentaries answer that if the factor permitting the prohibition is put into play only by means of great effort or at considerable expense, it is not considered an item whose prohibition has permitting factors (see Ramban and Rashba).

כל בָּרָךְ שִׁישׁ לְמַתְרִין: These are items whose prohibition will lapse with the passage of time, e.g., an item that came into being on a Festival that will be permitted after the Festival; or that will lapse through an action, e.g., redemption or desecralization of consecrated items or requesting that a halakhic authority dissolve a vow. The Sages established that these forbidden items are not negated in a mixture, as their prohibition can cease regardless. Some explain that since the prohibition is temporary, this is tantamount to intermingling two permitted items, where there is no negation if the items are of the same type. Some maintain that even by Torah law there is no negation for an item whose prohibition has permitting factors.

BACKGROUND

שְׁנִכְנָס לַיְוֹשָׁלִים – Second tithe is brought to Jerusalem, where it is consumed by its owners. Under certain circumstances, one may desacralize the produce and transfer its sanctity to minted coins with which he will purchase food items in Jerusalem. One may desacralize only second-tithe produce that is currently outside of Jerusalem and has never been within its walls. Once it has been brought inside the walls of Jerusalem it may no longer be desacralized, even if it is subsequently taken out of the city. That produce must be brought back into Jerusalem and consumed there.

NOTES

By Torah law and by rabbinic law – **דאורייתא ודרבן**: According to Rashi and other commentaries, because by Torah law the produce that is second-tithe by Torah law should be negated, the halakhic status of the mixture is that of second tithe by rabbinic law. The Ra'avad explains that second-tithe produce worth half a *peruta* is not sacred with the sanctity of tithes and by Torah law it would be permitted to eat it anywhere *ab initio*, and it is only by rabbinic decree that it too must be redeemed.

אֲסְלָקָא דְעַתָּךְ, וְתַנְגֵּא בְהַרְבָּא: מַעַשֵּׂר
שְׁנִי צְבִיל בְּרוֹכָא. וּבְאֵיזָה מַעַשֵּׂר שְׁנִי
אָמָרוּ – בַמַּעַשֵּׂר שֶׁאָינְן בּוֹ שְׂוֹהָ פָּרוֹתָה,
וּשְׁנִכְנָס לַיְוֹשָׁלִים וּצְאָה. וְאַם אִיתָא
לְחִזְקִיה – לְעַבְדֵר לִיהְ לִזְחֹקִיה, וַיְחַלֵּ
לַיה עַל מַעֲשָׂת הַרְאָשׁוֹנוֹת! דְלָא פָּרֵיךְ.

נִיחַתִּי מַעַשֵּׂר דְאַתִּי לִיהְ, וְנִצְטְּרֵפִינְהָו!
דאורייתא ודרבן לא מצטרפי.

נִיחַתִּי דְמַאי דְלָמָא אָתִי לְאַתְוֵי וְדָאי.

נִיחַתִּי שְׁתִי פָּרוֹתֹת וְחַלֵּל עַל יְהוָה מַעַשֵּׂר
בְּפָרוֹתָה וּמְחֻצָּה, וְנִחְלֵל הָאֵי עַל הַאֲקָרֶב
יִתְרָא! מֵסְבָּרָתְ פָּרוֹתָה וּמְחֻצָּה תְּפִסָּה
שְׁתִי פָּרוֹתֹת? לֹא, פָּרוֹתָה תְּפִסָּה פָּרוֹתָה,
חַצִּי פָּרוֹתָה לֹא תְּפִסָּה. הַדָּר הוּא לִיהְ
דאורייתא ודרבן, דאורייתא ודרבן,
לֹא מִצְטְּרֵפִי.

נִיחַתִּי אִיסָּר! דְלָמָא אָתִי לְאַתְוֵי פָּרוֹתֹת.

וּשְׁנִכְנָס לַיְוֹשָׁלִים וּצְאָה." וְאַמְפָאַי?
וְלִיהְדֵר גַּעֲלֵילָה! בְשַׁנְתָּמָא. וְנִפְרָקִיהָ.
דְאַמָּר רַבִּי אֶלְזָר: מִנָּן לְמַעַשֵּׂר שְׁנִי
שַׁנְתָּמָא, שְׁפֹדֵין אָתוֹ

The Gemara states: The inference that second tithe is not negated at all should not enter your mind, as it is taught explicitly in a *baraita*: Second tithe is negated in a simple majority. And with regard to which second tithe did the Sages say this? It is with regard to second tithe that is not worth even one *peruta*, and which entered Jerusalem and exited.⁸ The Gemara states its objection to the ruling of Hizkiyya: And if it is so that the opinion of Hizkiyya is correct and even second-tithe produce worth less than one *peruta* can be redeemed, let him take action according to Hizkiyya and redeem the second tithe upon the first coins. Therefore, as an item whose prohibition has permitting factors, it should not be negated at all. The Gemara answers: This is a case where he did not redeem his second tithe, and therefore he has no first coins upon which to redeem the produce.

The Gemara asks: And let him bring other second-tithe produce worth half a *peruta* that he has, and join it to the second tithe worth half a *peruta* intermingled with the non-sacred produce, and desacralize them together. It remains an item whose prohibition has permitting factors. The Gemara answers: Second tithe by Torah law and second tithe by rabbinic law⁹ do not join. By Torah law second tithe is negated in a majority of non-sacred produce and retains no sanctity, and it is by rabbinic law that an item whose prohibition has permitting factors is not negated. Therefore, the half-*peruta* of second tithe that he brought, which is not in a mixture and is second tithe by Torah law, cannot be redeemed.

The Gemara continues: And let him bring half a *peruta* of second-tithe produce from doubtfully tithed produce [*demai*], which is by rabbinic law, and join it to the intermingled half-*peruta*. The Gemara explains: One may not do so *ab initio* lest he come to bring a half-*peruta* from produce that is definitely untithed, as in practice one treats *demai* in the same manner that he treats untithed produce.

The Gemara suggests: And let him bring two *perutot* and desacralize second tithe worth one and a half *perutot* upon them, and desacralize this half-*peruta* of second tithe upon that remaining half-*peruta*. The Gemara rejects this: Do you hold that the sanctity of second-tithe produce worth one and a half *perutot* takes effect on two *perutot*? No, the sanctity of one *peruta* takes effect on one *peruta* of the coins, and the sanctity of the half-*peruta* of produce does not take effect on anything. Once again it becomes a case of one half-*peruta* of produce that is second tithe by Torah law and the half-*peruta* in mixture that is second tithe by rabbinic law, and second tithe by Torah law and second tithe by rabbinic law do not join.

The Gemara asks: And let him bring an *issar*, worth eight *perutot*, and redeem second tithe worth almost that much, and redeem the intermingled half-*peruta* of second tithe upon the rest. The Gemara answers: One may not do so *ab initio*, lest he come to bring *perutot* to redeem the produce, in which case the sanctity of the tithe will not take effect on a half-*peruta*, and the remedy will be ineffective.

It is taught in the *baraita*: And which entered Jerusalem and exited. The Gemara asks: And why is the matter of negation in a majority relevant? Let him bring it back into Jerusalem and partake of it there. The Gemara answers: The reference is to second tithe that became ritually impure¹⁰ outside Jerusalem. The Gemara asks: But why not let him redeem it, in accordance with the statement of Rabbi Elazar? As Rabbi Elazar says: From where is it derived with regard to second-tithe produce that became ritually impure that one may redeem it

HALAKHA

Second tithe that became ritually impure – **מַעַשֵּׂר שְׁנִי שְׁנִטְמָא**: desacralized. Food purchased with its desacralization money must be eaten in a state of purity, like second-tithe produce (Rambam *Sefer Zera'im, Hilkhot Ma'aser Sheni* 3:3).

Perek IV

Daf 53 Amud b

אֲפִילוּ בֵּירוֹשָׁלָם – שְׁנָאָמֶר: "כִּי לֹא
תִּכְלַל שְׂאָתוֹ, וְאֵין "שְׂאָתוֹ אֶלָּא אֶכְלָה,"
שְׁנָאָמֶר: "וַיִּשְׂאַ מִשְׁאָות מִתְּפִ�וּ!"

אֶלָּא, בַּלְקוּחַ בְּכֶסֶף מַעַשֵּׂר שְׁנִי. לְקוּחַ
בְּכֶסֶף מַעַשֵּׂר נְבִי לְפִזְקִיהִי, דָתָן: הַלְקִיָּה
בְּכֶסֶף מַעַשֵּׂר שְׁנִי שְׁנָטָמָא – פְּרָה! בְּבִי
יְהוּדָה דָמָר: יְקֻבָּה.

אֵי רַבִּי יְהוּדָה, מַיִן אִירְיָא יִצְאָא? אֲפִילוּ
אֵין יִצְאָא נִמְיָן אֶלָּא, לְעוֹלָם בְּטָהוֹר, וּמַיִן
יִצְאָא – דָנְפּוֹל מִחְיָזֹות.

וְהִא מְרַבָּא: מִחְיָצָה לְאַכְלָל – דָאוּרִיתָא,
מוֹחִיאָות לְקָלוֹט – דָרְבָּן, וּבְגַוּרוֹ וּרְבָּן – כִּי
אִתְהָנוּ הַלְמִחְיָזֹות, בִּי לִתְהָנוּ לְמִחְיָזֹות –
לֹא גַוּרוֹ וּרְבָּן, לֹא פָלוֹג וּרְבָּן בֵין אִתְהָנוּ
לְמִחְיָזֹות בֵין לִתְהָנוּ לְמִחְיָזֹות.

רַב הָנוּא בֶּר יְהוּדָה אָמַר וּבְשִׁשָּׁת: חֲדָא
קְרִתִי: מַעַשֵּׂר שְׁנִי שְׁאָין בֹּו שָׂוָה פְּרוּתָה
שְׁנָגָנָס לְיוֹרֶשֶׁלָּים וְזָא. אַפְּמָא? וְנִיחָדָר
וְנִעְיִילָה וְנִיכְלִילָה! דָנְפּוֹל מִחְיָזֹות.

– גְּנוּרִקִיהִי, הָאָמָר רַבָּא: מִחְיָצָה לְאַכְלָל –
דָאוּרִיתָא, מִחְיָצָה לְקָלוֹט – דָרְבָּן, וּבִ
גַוּרוֹ וּרְבָּן – כִּי אִתְהָנוּ הַלְמִחְיָזֹות; בִּי לִתְהָנוּ
לְמִחְיָזֹות – לֹא גַוּרוֹ וּרְבָּן! לֹא פָלוֹג וּרְבָּן.

even in Jerusalem, although ritually pure second tithe cannot be desacralized in Jerusalem? It is as it is stated: “For you are unable to carry [se’et] it...and you shall turn it into money, and bind up the money in your hand” (Deuteronomy 14:24–25). And se’et means nothing other than eating,ⁿ as it is stated: “And he took portions [masot] from before him” (Genesis 43:34). Since ritually impure second-tithe produce may not be consumed, Rabbi Elazar holds that one may desacralize it even if it had been brought into Jerusalem.

Rather, the halakha of the baraita is taught not with regard to second-tithe produce, but with regard to food acquired with second-tithe money, which cannot be desacralized. The Gemara asks: With regard to food acquired with second-tithe money too, let him redeem it, as we learned in a mishna (*Maaser Sheni* 3:10): Food acquired with second-tithe money that became ritually impure^h should be redeemed. The Gemara answers: The baraita is in accordance with the opinion of Rabbi Yehuda, who says: Food acquired with second-tithe money that became ritually impure must be buriedⁿ and may not be redeemed.

The Gemara asks: If the baraita is in accordance with the opinion of Rabbi Yehuda, why did the tanna teach specifically a case where the food exited Jerusalem? Even if it did not exit Jerusalem, that halakha also applies, as he holds that once the food becomes ritually impure it must be buried. Rather, actually, it is taught in the baraita with regard to second tithe that is ritually pure, and what is the meaning of exited? It is not that the produce actually exited Jerusalem. Rather, the baraita is discussing a case where the partitions, i.e., the walls, surrounding the city fell. The legal status of that second-tithe produce is that of produce that exited the city.

The Gemara asks: But doesn’t Rava say: The halakha that a partition enables one to eat second-tithe produce is by Torah law, and the halakha with regard to the capability of partitions of the city to gatherⁿ second-tithe produce into the city is by rabbinic law, and when the Sages issued a decree that partitions gather second-tithe produce in terms of their being considered within the city, they did so only where there are intact partitions, but where there are no intact partitions, the Sages did not issue a decree? The Gemara answers: Once they issued the decree, the Sages did not distinguishⁿ between cases where there are intact partitions and cases where there are not intact partitions. Once the Sages issued the decree with regard to partitions and the produce being gathered they applied it globally. This is one manner of explaining the baraita.

Rav Huna bar Yehuda said that Rav Sheshet said: The tanna of the baraita is teaching one halakha: It is with regard to second-tithe produce that is not worth even one peruta and which both entered Jerusalem and then exited it. It cannot be redeemed because it is worth less than one peruta. The Gemara asks: Why? And let him bring it back into Jerusalem and partake of it there. The Gemara answers: It is a case where the partitions surrounding the city fell.

The Gemara asks: And let him redeem the second-tithe produce, as doesn’t Rava say: The halakha that a partition enables one to eat second-tithe produce is by Torah law, and the halakha with regard to the capability of partitions of the city to gather second-tithe produce into the city is by rabbinic law, and when the Sages issued a decree that partitions gather second-tithe produce in terms of their being considered within the city, they did so only where there are intact partitions, but where there are no intact partitions, the Sages did not issue a decree? The Gemara answers: The Sages did not distinguish between cases where there are intact partitions and cases where there are not intact partitions.

NOTES

Se’et means nothing other than eating – אין שְׁאָתָה שְׁאָתָה אֶלָּא אֶכְלָה: Rashi in tractate *Sanhedrin* (112b) explains that it should be understood from the verse in Deuteronomy (14:24) that there are different reasons that one redeems second-tithe produce, either if the way is too long, or if one is unable to eat it.

Food acquired with second-tithe money that became ritually impure...must be buried – הַלְקִיָּה בְּכֶסֶף מַעַשֵּׂר שְׁנִי טְבַעַת...גַּבֵּר: Although this halakha appears illogical because the opposite could be inferred *a fortiori*, i.e., if second-tithe produce itself can be redeemed, all the more so that food acquired with second-tithe money can be redeemed, as its degree of sanctity is lower, nevertheless, according to Rashi, that factor itself is the reason for the distinction: Only an item with full-fledged sanctity can be redeemed; an item with lesser sanctity cannot be redeemed. Tosafot, based on a baraita, maintain that Rabbi Yehuda derives his opinion from the verses, and the halakha that there is a distinction between second-tithe produce and food acquired with second-tithe money is a Torah edict.

מִחְיָזֹות לְקָלוֹט – Partitions of the city to gather: The verses address the matter of transporting the produce to Jerusalem and consuming it in the city (see Deuteronomy 14:24–25). According to this opinion, though, the matter of gathering within the partitions of the city was adopted by the Sages, who established that the status of any produce that enters within the walls of Jerusalem changes and it can no longer be redeemed.

תְּסִוְתָּה לְפָלָרְבָּה – The Sages did not distinguish – פָלָרְבָּה: Tosafot analyze at length the difference between the Gemara here and the parallel discussion in tractate *Sanhedrin* (112b). The Meiri states simply that the two sources reflect different opinions. The Rambam explains that here the Gemara is not dealing with produce that emerged from within the partitions but rather with a case where the produce is not within the partitions because the partitions fell. Since the produce remains within the city, the Sages did not distinguish with regard to this detail.

HALAKHA

Food acquired with second-tithe money that became ritually impure – הַלְקִיָּה בְּכֶסֶף מַעַשֵּׂר שְׁנִי טְבַעַת: Food acquired with second-tithe money can be redeemed outside the city walls only if it became ritually impure by means of a primary source of ritual impurity. Otherwise, it must be brought to Jerusalem and eaten inside the city. In this regard, the halakha of food acquired with second-tithe money is more stringent than the halakha of second-tithe produce itself (Rambam *Sefer Zeraim*, *Hilkhot Maaser Sheni* 7:1–2).

HALAKHA

Second tithe that does not have the value of one *peruta* – **בְּמַעֲשֵׂר שְׁנִי שָׁאִין בֹּו שְׁוֹהָ פרוטָה**: If second-tithe produce entered Jerusalem and then exited, and then the partitions surrounding the city fell, since there are no partitions, the produce can be neither returned to the city nor redeemed. Therefore, even if it is not worth one *peruta*, its status is that of an item whose prohibition is permanent, and it is no longer considered to carry a prohibition that has permitting factors, and therefore it can be nullified, in accordance with the explanation of Rav Huna bar Yehuda (Rambam *Sefer Zera'im, Hilkhot Ma'aser Sheni* 6:16).

Its payment of one-fifth does not have the value of one *peruta* – **אֵין בְּחֻמְשָׁה**: If one-fifth of the principal of second tithe is less than one *peruta*, one who redeems his produce need not add a payment of one-fifth. This is the ruling of the Ramban, as it is supported by the *baraita* (Rambam *Sefer Zera'im, Hilkhot Ma'aser Sheni* 5:4).

The owner says for twenty dinars, etc. – **הַבְּעָלִים אֶזְרָקִים בְּנֵשֶׁרְם וּכְךָ**: If consecrated items are to be redeemed, and the owner and others each offer twenty dinars to redeem them, the owner takes precedence, as he would need to pay twenty-five dinars. Even if others offer more, the owner continues to take precedence as long as the others do not offer more than twenty-five dinars. If the owner initially offers twenty dinars, and another offers twenty-one dinars, and then the owner offers twenty-one dinars and one *peruta*, he pays twenty-six dinars and one *peruta*, i.e., the price that he offered, twenty-one dinars and one *peruta*, plus five dinars, one-fifth of his initial offer. The Ra'avad seems to agree with Rashi that even if the owner did not make a counteroffer, he pays the sum offered by the other party and adds one-fifth to it.

This is not the case with regard to second-tithe produce. There, the one who offers the highest sum for the principal receives the produce, and the additional payment of one-fifth does not factor into the decision (Rambam *Sefer Hafla'a, Hilkhot Arakhin VaHaramim* 8:5 and *Sefer Zera'im, Hilkhot Ma'aser Sheni* 5:7).

NOTES

Its additional payment of one-fifth does not have the value of one *peruta* – **אֵין בְּחֻמְשָׁה**: Although not all authorities agree, the Rambam, based on the Jerusalem Talmud, maintains that if one-fifth of the principal is less than one *peruta*, even the principal cannot be redeemed, although the sanctity of second tithe took effect upon that produce. The Ra'avad seems to maintain that in a case where one-fifth of the value of the produce would not equal at least one *peruta*, the sanctity of second tithe does not take effect upon even that produce.

It is difficult – **קָלְבָּן**: The later commentaries ask: Why did the Gemara characterize this matter as merely difficult and not a conclusive refutation? This is a difficulty without a resolution, and the second opinion is rejected as *halakha*. That is the Rambam's ruling, although some commentaries maintain that the Rambam bases his ruling on the Jerusalem Talmud, where the attribution of the opinions is reversed. Some commentaries answer that concerning consecration there is a parallel dispute between *tanna'im* elsewhere with regard to this matter, and therefore it is possible that this *baraita* reflects the opinion of the other *tanna* (*Nefesh Hayya; Halakha LeMoshe*).

One-fifth from within or one-fifth from without – **חוּמְשָׁה אֲוֹדוֹתָה מִלְבָרָבָן**: Some commentaries ask: Since this matter appears explicitly in a mishna, how can it be raised as a dilemma? Was the one who raised the dilemma unaware of the mishna? They answer that the mishna refers to consecrated items, with regard to which, for various reasons, e.g., different formulation of the verses or different halakhic status, the *halakha* concerning second tithe might differ from the *halakha* concerning consecrated items (*Magen Gibborim*; see *Imrei Zutrei*).

אֵין הַכְּבִי מֵאַיִלָּא אֵין בֹּו שְׁוֹהָ פרוטָה? אַפְּלֹו יְשַׁ בֹּו נַמְּנִי! לֹא מִבְּעִיא קָאָמו. לֹא מִבְּעִיא יְשַׁ בֹּו, דְּקָלְטָן לִיהְ מְחִיצֹת. אַבְּלֹ אֵין בֹּו, אִימָּא לְאַקְלָתוֹ לִיהְ מְחִיצֹת – קָא מְשֻׁמָּעַ לֹן.

The Gemara comments: **If so**, why did the *tanna* teach specifically a case where the produce **does not have the value of one *peruta***? The same would hold true **even if it has the value of one *peruta***. The Gemara answers: The *tanna* is speaking utilizing the style of: **It is not necessary**.⁸ **It is not necessary** to state that if the produce has the value of one *peruta* the *halakha* is that the partitions gather it and it can no longer be redeemed, **but if it does not have the value of one *peruta***,⁹ say that the partitions do not gather it. Therefore, **he teaches us** that the partitions gather even second-tithe produce worth less than one *peruta*, and it cannot be redeemed.

הַנוּ וּרְבָּנִים: "אִם גָּאֵל אִישׁ מִפְּעִשָּׂרוֹ – מִפְּעִשָּׂרוֹ וְלֹא כָּל מִפְּעִשָּׂרוֹ, פָּרָט לִמְעַשֵּׂר שְׁנִי שָׁאִין בֹּו שְׁוֹהָ פרוטָה. אַיִלָּה אַמְּרָה: אֵין בֹּו, רַב אָסִי אָמָר: אֵין בְּחֻמְשָׁה. רַב יְהוֹנָן אָמָר: אֵין בְּרַב שְׁמַעַן בְּן לְקִישׁ אָמָר: אֵין בְּחֻמְשָׁה.

מִתְּיִיבָּה: מִשְׁעָר שְׁנִי שָׁאִין בֹּו שְׁוֹהָ פרוטָה, דַּי שְׁאָמֵר הוּא וְחוּמְשָׁה מִזְוְלָל עַל מְעֹות רַאשּׁוֹת.

בְּשַׁלְמָא לִמְאָן דָּאָמָר אֵין בְּחֻמְשָׁה – הַיְיָנוּ דְּקָלְטָן דַּי, דַּאֲרָבָן גַּב דְּדִירִיה אִיתָ בֵּיהַ, בֵּינוֹ דְּבָחָומְשָׁה לִיכָּא – שְׁפָרוֹ. אַלְאָ לִמְאָן דָּאָמָר אֵין בֹּו, מֵאֵין דַּי?

אִיבְּעִיא לְהָהּ: חֻמְשָׁא מִלְבָרָבָן אוֹ חֻמְשָׁא מִלְבָרָבָן? אָמָר רַבִּינָא, תָּא שְׁמַע: הַבְּעָלִים אֶזְרָקִים בְּשָׁרִים, וְכָל אֶרְם בְּשָׁרִים – הַבְּעָלִים קוּמִין, בְּפִנֵּי שְׁמֹוּסְפִּין וְחוּמְשָׁה. אָמָר אַחֲרָה: הָרִי עַלִּי בְּעָשָׁרִים, וְאַחֲרָה,

§ The Sages taught that it is written: “And if a man will redeem of his tithe, he shall add to it the fifth part thereof” (Leviticus 27:31), from which it is inferred: Of his tithe, but not all his tithe. This serves to exclude second tithe that does not have the value of one *peruta*, which cannot be redeemed. It was stated that there is an amoraic dispute with regard to this *halakha*. Rav Ami says: The second tithe cannot be redeemed in a case where the produce itself does not have the value of one *peruta*. Rav Asi says: The second tithe cannot be redeemed in a case where its additional payment of one-fifth does not have the value of one *peruta*.¹⁰ Other *amora'im* dispute the same issue. Rabbi Yohanan says: The produce itself does not have the value of one *peruta*. Rabbi Shimon ben Lakish says: Its additional payment of one-fifth does not have the value of one *peruta*.

The Gemara raises an objection from a *baraita*: With regard to second-tithe produce that does not have the value of one *peruta*, it is sufficient that he will say: It and its additional payment of one-fifth are desacralized upon the first coins upon which I already redeemed second-tithe produce.

The Gemara explains the objection: Granted, according to the one who says: There is not the value of a *peruta* in its additional payment of one-fifth, this is the reason that the *tanna* teaches: It is sufficient, which indicates that even though in the produce itself it has the value of one *peruta*, since there is not the value of a *peruta* in its one-fifth payment, it works out well, as it is sufficient if he redeems the produce with other second-tithe produce. But according to the one who says: It is in a case where the produce itself does not have the value of one *peruta* that the second tithe cannot be redeemed, what is the meaning of: It is sufficient? From the outset, there was never sufficient value for there to be any element of redemption. The Gemara concludes: Indeed, it is difficult¹¹ to explain the *baraita* according to that opinion.

§ Apropos the additional payment of one-fifth, a dilemma was raised before the Sages: Is the payment of one-fifth calculated from within, i.e., one-fifth of the value of the redeemed item, or is the payment of one-fifth calculated from without,¹² meaning one-quarter of the value of the redeemed item, which is one-fifth of the eventual payment, i.e., the principal plus the additional one-fifth? Ravina says: Come and hear a resolution of the dilemma from a *baraita*: In a case where the owner says he is willing to redeem consecrated property for twenty dinars,¹³ and any other person is willing to purchase the property for twenty dinars, the owners take precedence and redeem the property due to the fact that they are obligated to add one-fifth, and the Temple treasury profits more from the owner than from anyone else. If one who is not the owner said: It is incumbent upon me to desacralize it for twenty-one dinars,

BACKGROUND
The *tanna* is speaking utilizing the style of, It is not necessary: **לֹא מִבְּעִיא קָאָמו**: When a mishna discusses a specific case, the tendency is to infer that the *halakha* in the mishna applies exclusively to that case and not to others that were omitted. Occasionally, the Gemara suggests that the mishna

discussed a less obvious case and the *halakha* would all the more so apply to the more obvious case that was omitted. There is no need to mention the obvious case, as the mishna teaches that the *halakha* applies even in the less obvious case.

Perek IV

Daf 54 Amud a

הַבְּעֵלִים נוֹתִין עֲשָׂרִים וָשָׁשׁ. עֲשָׂרִים
וָשָׁשׁ – הַבְּעֵלִים נוֹתִין עֲשָׂרִים וָשָׁשׁ.
בְּעָשָׂרִים וָשָׁשׁ – הַבְּעֵלִים נוֹתִין
עֲשָׂרִים וָשָׁשׁ. בְּעָשָׂרִים וָאֶרְבֶּעָ –
הַבְּעֵלִים נוֹתִין עֲשָׂרִים וָתָשׁ.

עֲשָׂרִים וָחַמֵּשׁ – הַבְּעֵלִים נוֹתִין
שְׁלִשִׁים, לְפִי שָׁאן מוֹסִיף בְּנֵי חֻמֶּשׁ
עַל עַלְיוֹן שָׁלֹשׁ. שָׁמַע מִינָה: חֻמֶּשׁ
מִלְבָר, שָׁמַע מִינָה.

בְּתָנוֹן, יָסַף חַמְשָׁתוֹ עַלְיוֹן – שִׁיאָה
הָוֹא וְחוֹמֵשׁ חַמְשָׁה, דָבָר וּבָרִיא אֲשִׁיה.
רַבִּי יוֹנָתָן אָוּמָר: חַמְשִׁיתוֹ – חֻמֶּשׁ
שְׁלִקְנוֹן.

אִיבְּעָיא לְהָוָה: חֻמֶּשׁ מַעֲכָב אוֹ אִינוּ
מַעֲכָב? אַרְבָּעָה בְּאַרְבָּעָה פְּרִיקָה
וְאַקְנְפְּשִׁיהָ מוֹסִיף חֻמֶּשׁ, אַלְמָא
חֻמֶּשׁ לֹא מַעֲכָב. אָוֹ דְּלִמְאָה: אַרְבָּעָה
בְּחַמְשָׁה פְּרִיקָה, חֻמֶּשׁ מַעֲכָב?

אמֶר רַבִּינָא תְּאַשְׁמָע: הַדָּמָאי אִין לוֹ
חוֹמֶשׁ, וְאִין לוֹ בִּיעּוּר.

הָא קְרוּ – יְשַׁׁלוּ. מַאי טְעַמָּא? קְרוּ
וּמַעֲכָב בְּדָאוֹרִיתָא – אִיתָא בְּדָרְבָּן,
חוֹמֶשׁ דְּלָא מַעֲכָב בְּדָאוֹרִיתָא –
לִיתָא בְּדָרְבָּן.

the owner gives a payment of twenty-six dinars. Were they to enable the other person to purchase it for twenty-one dinars, the Temple treasury would incur a loss, as the principal plus one-fifth paid by the owner is greater than the payment of the other person, who must pay only the principal. Were the owner to pay only twenty for the principal and add one-fifth, the principal paid by the owner is less than the sum offered by the other person. Therefore, the owner pays the principal proposed by the other person and then adds the payment of one-fifth that he was obligated to pay based on his own offer, i.e., five dinars, for a total of twenty-six. Likewise, if the other person offers twenty-two dinars, the owner gives twenty-seven; if the other person offers twenty-three, the owner gives twenty-eight; if the other person offers twenty-four, the owner gives twenty-nine.

If the other person offers twenty-five dinars, the owner gives thirty, due to the fact that the owner does not add one-fifth based on the raise in the offer of this other person, but only on the principal according to his own offer. It is clear from these calculations that a principal of twenty plus an addition of one-fifth equal twenty-five dinars. **Learn from it that one-fifth is calculated from without**,^{NH} meaning one-quarter of the value of the redeemed item. The Gemara affirms: **Learn from it that this is the halakha.**

The Gemara comments: The two sides of this dilemma are parallel to a dispute between *tanna'im*, as it is taught in a *baraita* that it is written: “And shall add unto it one-fifth part thereof” (Leviticus 27:27). This means that the item and its additional one-fifth payment will total five parts; one-fifth is calculated from without; this is the statement of Rabbi Yoshiya. Rabbi Yonatan says: Its one-fifth means one-fifth of the principal; one-fifth is calculated from within.

§ A dilemma was raised before the Sages: Does failure to pay the additional one-fifth prevent consumption^H outside of Jerusalem of second tithe that was redeemed, or does it not prevent consumption? The dilemma is: Is second-tithe produce worth four dinars redeemed with four dinars, and the obligation to add the payment of one-fifth is an obligation incumbent upon the owner himself? In that case, apparently, failure to pay the additional one-fifth does not prevent consumption. Or perhaps second-tithe produce worth four dinars is redeemed with five dinars, no less, and failure to pay the additional one-fifth prevents consumption.

Ravina said: Come and hear a resolution to this dilemma from a mishna (*Demai* 1:2): For second tithe of doubtfully tithed produce [*demai*], whose status is that of untithed produce by rabbinic law, there is no payment of one-fifth^H if the owner redeems its second tithe, and there is no obligation of the eradication of tithes^{HB} after three years, as is the case with tithes taken from untithed produce.

Ravina explains: But by inference, there is payment of principal.^H Although there is no obligation to add one-fifth, second tithe separated from *demai* requires redemption. What is the reason for this? Apparently, concerning the principal, about which failure to pay it prevents consumption of second tithe of untithed produce by Torah law, it is also a sum that must be paid in the case of *demai* by rabbinic law. Concerning the payment of one-fifth, about which failure to pay it does not prevent consumption of second tithe of untithed produce by Torah law, it is not a sum that must be paid in the case of *demai* by rabbinic law.

NOTES

One-fifth is calculated from without – **חֻמֶּשׁ אַלְבָר**: Once this *halakha* was derived with regard to consecrated property, it was applied to all cases where there is an additional payment of one-fifth. Although the details of the various additional payments differ and each requires its own derivation, this is a general indication that this is the manner in which the additional one-fifth payment mentioned in the Torah is calculated (*Penei Yehoshua*).

HALAKHA

One-fifth is calculated from without – **חֻמֶּשׁ אַלְבָר**: One who redeems his own second-tithe produce adds one-fifth to the payment. If the produce was worth four dinars he pays five. The *halakha* is the same with regard to all matters to which an additional payment of one-fifth is added (Rambam *Sefer Zera'im, Hilkhot Ma'aser Sheni* 5:1).

Does failure to pay the additional one-fifth prevent consumption – **הַדָּמָאי חֻמֶּשׁ מַעֲכָב**: If one redeemed his own second tithe but paid only the principal and failed to pay the additional one-fifth, the redemption is effective. The Sages decreed that he may not partake of the tithe until he pays the additional one-fifth (Rambam *Sefer Zera'im, Hilkhot Ma'aser Sheni* 5:12).

For second tithe of *demai* there is no payment of one-fifth – **הַדָּמָאי אִין לוֹ חֻמֶּשׁ**: One does not add one-fifth when redeeming second tithe of *demai* (Rambam *Sefer Zera'im, Hilkhot Ma'aser Sheni* 5:4).

For *demai*...there is no obligation of the eradication of tithes – **הַדָּמָאי אִין לוֹ בְּשֻׁר**: If one has second tithe of *demai* remaining when the time of eradication of tithes arrives, he is not obligated to eradicate it (Rambam *Sefer Zera'im, Hilkhot Ma'aser Sheni* 11:8).

For *demai* there is payment of principal – **הַדָּמָאי יְשַׁׁלְּקוּ**: Second tithe of *demai* must be brought to Jerusalem and it may not be removed from Jerusalem. If the produce exited the city, it must be taken back into Jerusalem and eaten there (Rambam *Sefer Zera'im, Hilkhot Ma'aser Sheni* 2:9).

BACKGROUND

Eradication of tithes – **בְּגִיעּוֹר**: This refers to the obligation to complete the distribution of all tithes to the Levites and the poor by Passover eve. It was fulfilled once in three years, in the fourth and seventh years of the seven-year agricultural cycle. During the Temple era, on the afternoon of the seventh day of Passover in those years, one recited a formula of thanksgiving and praise. The formula also includes a declaration that the farmer has fulfilled his legal obligations to distribute the tithes (Deuteronomy 26:12–15).

NOTES

Shabbat and failure to pay the additional one-fifth prevent consumption – שֶׁבֶת חֹמֶשׁ מַעֲכָב: The commentaries ask: Perhaps failure to pay the additional one-fifth prevents consumption of second tithe and it is due to the mitzva of delighting in Shabbat that the Sages overrode this mitzva, which is by Torah law, to facilitate delighting in the Shabbat. They answer, based on the Rashba, that although in order to facilitate their ordinances the Sages override a prohibition inferred from a positive mitzva as well as a prohibition derived hermeneutically, they do not override a full-fledged prohibition (Maharatz Hayyut).

לִימָא בְּתַנְאֵי: נִתְן אֶת הַקְרָנוֹ וְלֹא נִתְן
אֶת הַחֹמֶשׁ, רַبִּי אֱלִיעֶזֶר אָמָר: אַכְלֵל,
רַבִּי יְהוֹשֻׁעַ אָמָר: לֹא יַאֲכֵל. אָמָר רַבִּי:
נְרָאֵי דְּבָרִי רַבִּי אֱלִיעֶזֶר בְּשַׁבָּת, וְדָבָרִי
רַבִּי יְהוֹשֻׁעַ בְּחֹל.

The Gemara suggests: Let us say that the two sides of this dilemma are parallel to a dispute between *tanna'im*, as it is taught in a *baraita*: In a case where one gave payment to redeem the principal but did not give payment of the additional one-fifth, Rabbi Eliezer says: One may eat it, and Rabbi Yehoshua says: One may not eat it. Rabbi Yehuda HaNasi said: The statement of Rabbi Eliezer appears correct with regard to Shabbat, when the Sages deemed it permitted for one to eat without the additional payment, in deference to Shabbat,ⁿ and the statement of Rabbi Yehoshua appears correct with regard to the days of the week.

מוֹדָאָמָר נְרָאֵי דְּבָרִי רַבִּי אֱלִיעֶזֶר
בְּשַׁבָּת – מִכְלָל דְּפָלִיגִי אַפִּילּוּ בְּחֹל,
מוֹדָאָמָר נְרָאֵי דְּבָרִי רַבִּי יְהוֹשֻׁעַ בְּחֹל –
מִכְלָל דְּפָלִיגִי אַפִּילּוּ בְּשַׁבָּת.

מַאי לֹא, בְּהָא סְבָרָא קְמִיפְלִגִּי, דְּבָרִי
אֱלִיעֶזֶר סְבָר חֹמֶשׁ לֹא מַעֲכָב, וְדָבָרִי
יְהוֹשֻׁעַ סְבָר: חֹמֶשׁ מַעֲכָב.

אָמָר וּבְפָפָא לֹא דְכוּלִי עַלְמָא חֹמֶשׁ
לֹא מַעֲכָב, וְהָכָא בְּחִישִׁין לְפִשְׁעָוֹתָא,
קְמִיפְלִגִּי, מוֹר סְבָר: חִישִׁין לְפִשְׁעָוֹתָא,
מוֹר סְבָר: לֹא חִישִׁין לְפִשְׁעָוֹתָא.

אָמָר וּבְיְוחָנָן: הַכֵּל מַודִים בְּהַקְרָדֵשׁ
שְׁחִילֵל, הַזְּאֵל וְגַבְרוֹן תּוּבָעֵן אֹתוֹ
בְּשִׁיק.

וּבְהַקְרָדֵשׁ לֹא פָלִיגִי? וְהַתְנִינָא: נִתְן
אֶת הַקְרָנוֹ וְלֹא נִתְן לוֹ אֶת הַחֹמֶשׁ,
רַבִּי אֱלִיעֶזֶר אָמָר: חִילֵל, וְחַכְמִים
אָמְרִים: לֹא חִילֵל. אָמָר וּבְיְהָנָן
דְּבָרִי וּבְיְהָנָן בְּהַקְרָדֵשׁ, וְדָבָרִי
חַכְמִים בְּמַעַשָּׂר.

The Gemara infers: From the fact that Rabbi Yehuda HaNasi says: The statement of Rabbi Eliezer appears correct with regard to Shabbat, by inference they disagree even with regard to the days of the week. Likewise, from the fact that Rabbi Yehuda HaNasi says: The statement of Rabbi Yehoshua appears correct with regard to the days of the week, by inference they disagree even with regard to Shabbat. Apparently, theirs is a fundamental dispute.

What, is it not that they disagree with regard to this reasoning, that Rabbi Eliezer holds that failure to pay the additional one-fifth does not prevent consumption, as redemption of the principal alone suffices; and Rabbi Yehoshua holds that failure to pay the additional one-fifth prevents consumption?^h

Rav Pappa said: No, perhaps the explanation is that everyone agrees that failure to pay the additional one-fifth does not prevent consumption, and here they disagree with regard to whether we are concerned for potential negligence. One Sage, Rabbi Yehoshua, holds: We are concerned for negligence, lest one fail to pay the additional one-fifth and therefore the owner may not eat the second-tithe produce until he adds the one-fifth payment. And one Sage, Rabbi Eliezer, holds: We are not concerned for negligence, and one will presumably add the one-fifth payment later.

Rabbi Yoḥanan says: Although the *tanna'im* disagree with regard to second tithe, all concede with regard to consecrated property that if the one who consecrated it paid the principal and did not add one-fifth, that he successfully desacralized the produce, since the Temple treasurers demand payment from him in the marketplace, preventing any potential negligence. Therefore, he may use the property immediately.

The Gemara asks: And do they not disagree with regard to consecrated property? But isn't it taught in a *baraita*: In a case where one gave payment to redeem the principal but did not give him payment of the additional one-fifth,^h Rabbi Eliezer says: He successfully desacralized the produce, and the Rabbis say: He did not desacralize the produce? Rabbi Yehuda HaNasi said: The statement of Rabbi Eliezer appears correct with regard to consecrated property, and the statement of the Rabbis appears correct with regard to second tithe.

HALAKHA

Consuming second-tithe produce where one did not pay one-fifth – אַכְלִיתָ מַעַשָּׂר שְׁלִיאָ נִתְן חֹמֶשׁ –: If the owner of second-tithe produce redeemed it and paid the principal but not the additional payment of one-fifth, he may not partake of the produce until he pays the one-fifth. This is the *halakha* even on Shabbat, as there is concern that due to negligence he will fail to pay the additional one-fifth, in accordance with the opinion of Rabbi Yehoshua and the conclusion of the Rabbis (Rambam *Sefer Zera'im, Hilkhot Ma'aser Sheni* 5:12).

Consecrated property where one did not pay one-fifth – הַקְרָדֵשׁ שְׁלִיאָ נִתְן חֹמֶשׁ –: If one fails to pay the additional one-fifth, the redemption of consecrated property is still effective, although the Sages rendered it prohibited for him to derive benefit from that property until he pays the one-fifth. On Shabbat they rendered it permitted for him to partake of the food even prior to paying the additional one-fifth, due to the obligation to delight in Shabbat. He is unlikely to be negligent, as the Temple treasurers will demand payment from him, in accordance with the opinion of Rabbi Yoḥanan (Rambam *Sefer Hafla'a, Hilkhot Arakhin VaHaramim* 7:3).

מִקְאָמָר נְרָאֵי דָבָר וּבַי אֲלִישָׁר בְּהַקְדֵּשׁ –
מִכְלָל דָפְלָע אֲפִילוֹ בְמַעַשֶּׂר, מַקְאָמָר נְרָאֵי
דָבָר חֲכָמִים בְמַעַשֶּׂר – מִכְלָל דָאִינָהוּ פְלִיגִי
אֲפִילוֹ בְהַקְדֵּשׁ!

אַלְאָ, אֵי אָתָּמָר הַכִּי אַתָּמָר, אָמָר רַבִּי יוֹחָנָן:
הַפְּלָל מוֹדִים בְשַׁבָּת בְהַקְדֵשׁ שְׁחִילָל, חֶדְאָ.
דָרְכְּיָב "וְקָרָאת לְשַׁבָּת עָגָן". וְעוֹד: הַזְּאֵיל
וְנַבְּרִין תּוֹבֵעַ אָתוֹת בְשָׁוֹק.

אָמָר רַמִּי בָר חַמָּא: הַרְיָ אָמָרוּ דַהֲקֵדֵשׁ אִינְיָ
מִתְחַלֵּל עַל הַקְרָקָעַ, דָרְחַמָּנוּ אָמָר "וְנִתְן
הַכְּסָף וְקָם לוֹ", חֻמְשׁוּ מַהוּ שִׁיתְחַלֵּל עַל
הַקְרָקָעַ?

תוֹרָמָה אֵינָה מִשְׁתְּלִימָת אֶלָּא מִן הַחוֹלִין,
דָרְחַמָּנוּ אָמָר "נִנְתַּן לְבָנָן אֶת הַקְרָעָשׁ" – דָבָר
הָרָאֵי לְהִזְמִין קָדְשׁ, חֻמְשָׁה מַהוּ שִׁיטְלָם
שְׁלָא מִן הַחוֹלִין?

מַעַשֶּׂר אֵין מִתְחַלֵּל עַל הַאֲסִימָן, דָרְחַמָּנוּ
אָמָר "וְצִרְתָּ הַכְּסָף בַּיְדָךְ" – לְרָבּוֹת בְּלָדְךָ
שִׁישׁ עַלְיוֹ צְוָה. חֻמְשׁוּ מַהוּ שִׁיתְחַלֵּל עַל
הַאֲסִימָן?

אָתַּה גָּלְגָּל מִלְתָא וּמִטָּא לְקַמְיהָ דָרְבָּא, אָמָר
לְהָא: אָמָר קָרְעָא "עַלְיוֹ" – לְרָבּוֹת חֻמְשׁוּ
בְּמִזְוֹתָן.

אָמָר רַבִּינָא: אָفְן גַּמְיִינָא, הַגּוֹנָב
תוֹרָמָה וְלֹא אֲכַלָּה – מַשְׁלָמָם תְּשִׁלְמֵי כְּפֵל
דָמִי תְּרָמָה. אֲכַלָּה – מַשְׁלָמָם שְׁנִי קְרָנִים
וְחֻמְשָׁן, קָרְעָא וְחֻמְשׁוּ מִן הַחוֹלִין, וְהַקָּנוּ דָמִי
תוֹרָמָה.

The Gemara infers: From the fact that Rabbi Yehuda HaNasi says that the statement of Rabbi Eliezer appears correct with regard to consecrated property, by inference they disagree even with regard to second tithe. Likewise, from the fact that Rabbi Yehuda HaNasi said that the statement of the Rabbis appears correct with regard to second tithe, by inference they disagree even with regard to consecrated property. This contradicts Rabbi Yoḥanan's statement that there is no dispute with regard to consecrated property.

Rather, if it was stated, it was stated like this: Rabbi Yoḥanan says: All concede that concerning Shabbat with regard to consecrated property that he successfully desacralized the property. One reason for this halakha is as it is written: “And you shall call Shabbat a delight” (Isaiah 58:13). The Sages sought to facilitate that delight in Shabbat by ruling leniently. And furthermore, it is desacralized without payment of the additional one-fifth, since the Temple treasurers demand payment from him in the marketplace.

§ Rami bar Ḥama says: The Sages said that consecrated property cannot be desacralized with land, as the Merciful One states with regard to the redemption of a consecrated field: “And he will give the money and it will be assured to him” (Leviticus 27:19),¹⁴ indicating that redemption is accomplished with money. The question is with regard to payment of its additional one-fifth:¹⁵ What is the halakha in terms of the possibility that it will be desacralized with land?

If a non-priest unwittingly ate teruma, his debt can be repaid to the priest only with non-sacred property,¹⁶ not with teruma, as the Merciful One states: “And if a man eats that which is sacred unwittingly... and he shall give that which is sacred to a priest” (Leviticus 22:14), from which it is derived that repayment must be with an item fit to become sacred, i.e., a non-sacred item, not teruma, which cannot be consecrated again. The question is with regard to payment of its additional one-fifth:¹⁷ What is the halakha in terms of the possibility that it will be repaid not from non-sacred items, but from teruma?

Second-tithe produce cannot be desacralized with an unminted coin, as the Merciful One states: “And you shall bind up [vetzarta] the money in your hand” (Deuteronomy 14:25), which the Sages interpret as serving to include any item that has the imprint [tzura] of a coin upon it for desacralization, not an unminted coin. The question is with regard to payment of its additional one-fifth:¹⁸ What is the halakha in terms of the possibility that it will be desacralized with an unminted coin?

Rami bar Ḥama was unable to resolve this series of dilemmas, and the matter proceeded and came before Rava, who said to the people who related the dilemmas to him: The verse states: “And shall add unto it one-fifth part thereof” (Leviticus 27:27), which serves to include its additional one-fifth within the same legal status as that of its principal.¹⁹

Ravina said: We too learn this in a mishna (Terumot 6:4): One who steals teruma²⁰ and did not partake of it pays a payment of double the principal at the price of the teruma, as a thief pays double the value of the item that he stole. Both payments are calculated based on the price of teruma, which is lower than the price of non-sacred food, as the demand for it is lower because it is eaten only by priests. If the thief ate it unwittingly, he pays a payment worth the value of two principals and adds one-fifth in this manner: He pays one principal and one-fifth from non-sacred items, like any non-priest who partakes of teruma, and with regard to the other principal, he pays it according to the price of teruma.

NOTES

And he will give the money and it will be assured to him – **וְנִתְן הַכְּסָף וְקָם לוֹ** – Tosafot in tractate Shabbat note that there is no verse with this precise formulation. Rather, the reference is to the verse: “And he will add one-fifth of the money of your valuation to it, and it will be assured to him” (Leviticus 27:19). The Sages on occasion cite a verse in abridged form, or with a slightly altered formulation, in order to underscore the main point of the verse according to their opinion. The commentaries ask: How is the halakha that one cannot utilize land to redeem consecrated property derived from this verse? Although the verse mentions money alone, the halakha is that one may utilize movable property as well to redeem consecrated property, and perhaps the same is the case with regard to land. They answer that it is derived by means of the hermeneutic principle of a generalization, a detail, and a generalization, from which one derives that redemption may be accomplished with money and all items similar to money, i.e., movable property, but not with land, documents, or slaves, which are not similar to money (Rosh; Ritva).

Only with non-sacred property – **אַלְאָ מִן הַחוֹלִין**: Rashi and other commentaries explain that one pays the priest only with non-sacred produce of a species that can be rendered as teruma. The Rambam apparently distinguishes between one who eats unwittingly and one who eats intentionally; in the latter case he can pay with any items worth money. The Ra'avad holds that non-sacred in this context serves to exclude gleanings, forgotten sheaves, produce in the corner of the field, and the like.

Its one-fifth within the same status as that of its principal – **חֻמְשׁוּ כְמוֹתָן**: Everyone agrees that this does not mean the legal status of the additional one-fifth parallels that of the principal in every sense, as there is a difference with regard to the payment of one-fifth of the one-fifth. Rather, it means that one-fifth must be paid with the same means of payment as the principal, since any restrictions that apply to the principal apply to the additional one-fifth as well (Rashba; Ba'al HaMaor).

HALAKHA

Redemption of consecrated property and its additional one-fifth – **פְּרִיּוֹן הַקְרָעָשׁ וְחֻמְשׁוּ**: One may not redeem consecrated property with land, slaves, or documents. He may do so only with money or movable property worth money. The halakha is the same with regard to the one-fifth that is added to the redemption of one's consecrated property, in accordance with the opinion of Rava (Rambam Sefer Zera'im, Hilkhot Ma'aśer Shenai 7:1-2).

Teruma and its additional one-fifth – **תְּרִימָה וְחֻמְשָׁה**: A non-priest who partakes of teruma is liable to pay a priest with non-sacred food from which teruma has already been separated. When he is liable to add one-fifth he may do so only with non-sacred property, in accordance with the opinion of Rava (Rambam Sefer Zera'im, Hilkhot Terumot 10:1, 15).

Tithe and its additional one-fifth – **מַעַשֶּׂר וְחֻמְשׁוּ**: Second tithe may be redeemed only with money. If a person redeems his own tithe and adds one-fifth, that too must be redeemed with minted coins, in accordance with the opinion of Rava (Rambam Sefer Zera'im, Hilkhot Ma'aśer Shenai 4:9).

One who steals teruma – **הַגּוֹנָב תְּרִימָה**: If one stole teruma but did not partake of it, one pays double the value of the teruma to the owner and he may utilize teruma in payment. If he stole teruma and consumed it unwittingly, he pays the principal and one-fifth from non-sacred property, and the double payment even with teruma (Rambam Sefer Zera'im, Hilkhot Terumot 10:23).

Perek IV

Daf 54 Amud b

BACKGROUND

Took a false oath to him concerning the additional one-fifth – **ונשבע לו על החומש**: The oath referred to in this Gemara is the oath on a deposit. This is a false oath taken with the intent of denying a deposit or a debt. One who owes another money or property and takes an oath denying his obligation falls into this category, whether the false oath was deliberate or the result of an honest mistake. If he subsequently has a change of heart and admits his deception, he is liable to repay his debt, add one-fifth to that payment, and bring a ram as a guilt-offering (see Leviticus 5:20–26). The Gemara here discusses a case where the individual takes a false oath that he paid the additional one-fifth that was owed due to his original false oath. In that case, he is liable to pay one-fifth of the original one-fifth.

NOTES

Nor raised as a dilemma – **ולא איבענין איינטנא**: Some explain: In the cases of robbery and *teruma* this halakha is stated in the Torah and taught in the Mishna; the case of second tithe is mentioned in neither. With regard to all three of these cases there is no question, as with regard to the first two halakhot it is clear that one pays one-fifth of one-fifth, while with regard to second tithe it is clear that one does not pay one-fifth of one-fifth. This is a prelude to the presentation of the dilemma with regard to the case of consecrated property.

Consecrated houses – **בָּתִים קָדְשָׁה**: The Ramban, the Ritva, and the Ran hold that this dilemma was raised with regard to consecration of houses and courtyards. By contrast, in the case of a consecrated impure animal, with regard to which the verse states: Its one-fifth payment, one certainly pays one-fifth of the one-fifth. One does not, however, derive the legal status of land from that of movable property.

שמע מינה חומשו במותו שמע בידך.

אמר ר' רבא: גבי גיל כתיב: "וחממשתו יסף עליו", ותנן: נתן לו את הקרן ונשבע לו על החומש – הרי זה מוסר חומש על חומש עד שיתתמעט הקרן חחות משואה פרוטה.

Learn from it that the legal status of its one-fifth payment is like that of the principal itself, in that it must be paid from non-sacred property. The Gemara affirms: Learn from it that it is so.

Rava said: With regard to robbery, it is written: “And he shall restore the robbed item that he robbed... and he shall add its one-fifth payments to it” (Leviticus 5:23–24), and we learned in a mishna (*Bava Kamma* 103a): If the robber gave the robbery victim the principal and took a false oath to him concerning the additional one-fifth⁸ payment, asserting that he had already paid it, then the additional one-fifth is considered a new principal obligation. This robber adds an additional one-fifth payment apart from the additional one-fifth payment about which he had taken a false oath. If he then takes a false oath concerning the second one-fifth payment, he is assessed an additional one-fifth payment for that oath, until the principal, i.e., the additional one-fifth payment about which he has most recently taken the false oath, is reduced to less than the value of one peruta.⁹

גבי תרומה כתיב: "איש כי יאכל קדרש בשגגה ויסף חמישתו עליו", ותנן: האוכל תרומה בשוגג משלם קרן חמיש; אחד האוכל ואחד תשותה ואחד הסך, אחד תרומה טהורה ואחד תרומה טמאה – משלם חמישת חמיש – לא מאכלה כתיב: "ויסף", ואילו גבי מעשר חמיש – לא מאכלה כתיב: "ויסף", איבענין איינטנא לנו.

Rava continues: With regard to *teruma* too, it is written: “If a man eats that which is sacred unwittingly, then he shall add its one-fifth payment to it” (Leviticus 22:14), and as we learned in a mishna (*Terumot* 6:1): One who partakes of *teruma* unwittingly pays the principal and an additional one-fifth. This is the halakha whether it concerns one who partakes of *teruma*, or one who drinks it, or one who applies oil to himself; or whether it is ritually pure *teruma* or ritually impure *teruma*. He pays its one-fifth¹⁰ payment, and if he partook of that one-fifth, he pays one-fifth of its one-fifth.¹¹ Rava concludes: While with regard to second tithe, it is neither written in the Torah, nor taught in a mishna, nor raised as a dilemma¹² before us by the amora'im.¹³

גבי קדרש כתיב: "זאת המקדש יגאל את ביתו ויסף חמישית בפרק ערכך", ותנן: הפודה את קדרשו מօסיף חמיש. חמיש – תמן, חמיש – דוחמש – לא חמיש – מא? גבי תרומה כתיב: "ויסף", גבי קדרש נמי היא כתיב: "ויסף".

The Gemara pursues a similar line of inquiry: With regard to consecrated property it is written: “And if he who consecrated it will redeem his house,¹⁴ then he shall add one-fifth of the money of your valuation unto it, and it shall be his” (Leviticus 27:15), and we learned in a mishna (55b): One who redeems his own consecrated property that he consecrated himself adds one-fifth to the sum of the redemption. We learned one-fifth; we did not learn one-fifth of the one-fifth. What is the halakha? The Gemara elaborates: With regard to *teruma* it is written: “Then he shall add,” and with regard to consecrated property too, isn’t it written: “Then he shall add”? Apparently, in a case of consecrated property one also pays one-fifth of the one-fifth.

HALAKHA

One who denies that he owes the payment of one-fifth of a robbery – **בָּטַח בְּכֹרֶב בְּחֻמֶּשׁ נָגֵל**: If a robber repaid the principal of what he stole but took a false oath that he repaid the additional one-fifth, the legal status of that one-fifth is like that of the principal in every sense. Therefore, he must pay an additional one-fifth of that one-fifth. The same is true even if he took a false oath with regard to the second one-fifth, and so forth, until the sum with regard to which he took a false oath is worth less than one peruta (Rambam *Sefer Nezikin*, *Hilkhot Gezeila VaAveda* 7:12).

The principal and one-fifth with regard to *teruma* – **קְרֻן חֻמֶּשׁ בְּבָרְחוּבָה**: If a non-priest partook of *teruma* unwittingly, whether it was ritually pure or ritually impure, he is liable to repay the principal and one-fifth. This is the halakha with regard to eating anything typically eaten, or drinking anything typically drunk,

or applying to oneself substances typically used in that manner (Rambam *Sefer Zeraim*, *Hilkhot Terumot* 10:1, 2).

חומש תרומה וחומש: If one unwittingly partook of the additional one-fifth that he gave to a priest for partaking of *teruma*, he repays the priest that one-fifth and adds one-fifth of that one-fifth, as the legal status of that one-fifth is like that of the principal in every sense (Rambam *Sefer Zeraim*, *Hilkhot Terumot* 10:15).

חומש חומש של מעשר: If one redeemed his second-tithe produce and added one-fifth, and then redeemed that redemption money, he adds only one-fifth of the principal but not one-fifth of the one-fifth, as neither in the Torah nor in the Mishna does it say that anything must be added (Rambam *Sefer Zeraim*, *Hilkhot Ma’aser Sheni* 5:3).

או וְלֹמַד אֲבָנִי תְּרוּמָה בְּתֵיב: יוֹסֵף, אָבָנִי שְׁקָלֶת לִיהְ לְוַיּוֹ דְּיוֹסֵף וְשְׁנִיתִית לִיהְ עַל "חַמִשִּׁיתוֹ" – הַהָה לִיהְ "חַמִשִּׁיתוֹ". גַּבְעַד הַקְרָשָׁת בְּתֵיב: יוֹסֵף חַמִשִּׁיתוֹ, אָרְךָ עַל גַּב דְּכִי שְׁקָלֶת לִיהְ לְוַיּוֹ דְּיוֹסֵף וְשְׁנִיתִית לִיהְ עַל "חַמִשִּׁית" – סֻוף סֻוף הַהָה לִיהְ "חַמִשֶּׁתוֹ".

וַיַּפְעַק לִיהְ דַּהָה לִיהְ הַקְרָשָׁת שְׁנִית, וְאָמָר רַבִּי יְהוֹשָׁעַ בֶּן לְוַיּוֹ אֲחַקְרָשָׁ רָאשָׁוֹן – מַוסְיָף חַזְמָשׁ, עַל הַקְרָשָׁת שְׁנִית – אַיִן מַוסְיָף חַזְמָשׁ! אָמָר לִיהְ רַבִּי פַּפִּי לְרַבִּיאָה, הַכִּי אָמָר רַבָּא: חַזְמָשׁ בְּתִיחַלְתָה הַקְרָשָׁת דָמִי.

מַאי הַהָה עַלְהָ? אָמָר רַב טַבְיוּמִי מִשְׁמִיאָה דָאָבִי: אָמָר קָרָא: "יוֹסֵף חַמִשִּׁית בְּכֶסֶף עַל כֶּבֶשׂ". מַקְשֵׁי חַזְמָשׁוֹ לְכֶסֶף עַרְבוֹן, מַה בְּכֶסֶף עַרְבוֹן מַוסְיָף חַזְמָשׁ, אָרְךָ בְּכֶסֶף חַזְמָשׁ נִמְיָן מַוסְיָף חַזְמָשׁ.

גּוֹפָא, אָמָר רַבִּי יְהוֹשָׁעַ בֶּן לְוַיּוֹ עַל הַקְרָשָׁת רָאשָׁוֹן מַוסְיָף חַזְמָשׁ, וְעַל הַקְרָשָׁת שְׁנִית אַיִן מַוסְיָף חַזְמָשׁ. אָמָר רַבָּא: מַאי טַעַמָּא דְרַבִּי יְהוֹשָׁעַ בֶּן לְוַיּוֹ? אָמָר קָרָא: "וְאִם הַמְקָדֵשׁ יִגְאַל אֶת בֵּיתוֹ – הַמְקָדֵשׁ וְלֹא הַמְתִיפֵּס".

תְּנִינִי תְּנִא קְמִיהָ דְרַבִּי אַלְעָזָר: "וְאִם בְּבָהָמָה הַטְמָאָה וְרָדָה בְּעַלְבָךְ". מַה בְּבָהָמָה טָמָאָה מִיחַרְתָה שְׁתַחַרְלִתָה הַקְרָשָׁת וְכֹלֶה לְשָׁמִים, וּמוּעָלָין בָהּ, אָרְךָ כָּל שְׁתַחַרְלִתָה הַקְרָשָׁת וְכֹלֶה לְשָׁמִים – מוּעָלָין בָהּ.

One-fifth of consecrated property – חַזְמָשׁ שֶׁל הַקְרָשָׁת: Anyone who redeems property that he consecrated adds one-fifth of the value of the property to the redemption money. The legal status of that one-fifth is that of consecrated property in every sense, even with regard to payment of one-fifth of the one-fifth (Rambam Sefer Hafla'a, Hilkhot Arakhin VaHaramim 7:2).

Or perhaps we should learn the halakha as follows: With regard to teruma it is written: "Then he shall add [veyasaf]," and the halakha of one-fifth of the one-fifth is derived in this manner: If you take the letter vav of the word *veyasaf*, and cast it to the end of the word *hamishito*, its one-fifth payment, it then becomes the plural *hamishitav*, its one-fifths payments, as it is written in the case of robbery, indicating that one pays one-fifth of one-fifth. With regard to consecrated property, it is written: "Then he shall add [veyasaf] one-fifth [hamishit]." Even when you take the vav of *veyasaf* and cast itⁿ to the end of the word *hamishit*, ultimately it is only *hamishito*, in the singular, indicating payment of only a single one-fifth. What is the halakha?

The Gemara suggests: And why not derive the halakha of consecrated property from the fact that it is tantamount to a second consecration. When one redeems consecrated property with another item, although that item is thereby consecrated, not all the halakhot of consecrated property apply to it. And Rabbi Yehoshua ben Levi says: For redemption of first consecration one adds one-fifth; for redemption of second consecration one does not add one-fifth. Rav Pappi said to Ravina that this is what Rava said: The legal status of the additional one-fifth is like that of initial consecration, not like that of second consecration.

The Gemara asks: What halakhic conclusion was reached about this dilemma? Rav Tavyumei said in the name of Abaye that the verse states with regard to one who redeems a house that he consecrated: "Then he shall add one-fifth of the money of your valuation unto it" (Leviticus 27:15). The Torah juxtaposes its payment of one-fifth to the money of its valuation, i.e., the consecrated house: Just as when redeeming the money of its valuation one adds one-fifth, so too, when redeeming the money of its one-fifth, one adds one-fifth as well.

§ The Gemara analyzes the matter itself. Rabbi Yehoshua ben Levi says: For redemption of first consecration one adds one-fifth;^h for redemption of second consecration^h one does not add one-fifth. Rava said: What is the reason for the opinion of Rabbi Yehoshua ben Levi? It is as the verse states: "And if he who consecrated it will redeem his house, then he shall add one-fifth of the money of your valuation unto it" (Leviticus 27:15), from which it may be inferred that when he who consecrates the house redeems it, he adds one-fifth, but this is not so with regard to one who associates an item with an existing sanctity, as in this case, where the sanctity of the one-fifth is derived from its association with the sanctity of the house.

The Gemara relates that the *tanna* who recited *mishnayot* and *baraitot* in the study hall taught a *baraita* before Rabbi Elazar. It is written: "And if it is of a non-kosher animal, then he shall redeem it according to your valuation" (Leviticus 27:27). This verse teaches that just as a non-kosher animal that was consecrated is unique in that it is an example of initial consecration and it is devoted entirely to Heaven, as neither the owner nor anyone else may derive benefit from it after its consecration, and one violates the prohibition against misuse of consecrated property by using it after it was consecrated, so too, with regard to any item that both undergoes initial consecration and is devoted entirely to Heaven, one violates the prohibition against misuse of consecrated property by using itⁿ after it was consecrated.

HALAKHA

First and second consecration – הַקְרָשָׁת רָאשָׁוֹן וְשְׁנִית: The halakha of payment of an additional one-fifth applies only to the initial consecration. Therefore, if one redeemed a consecrated animal with another animal, even if the owner redeems the second animal he need not add one-fifth, in accordance with the opinion of Rabbi Yehoshua ben Levi (Rambam Sefer Hafla'a, Hilkhot Arakhin VaHaramim 7:4, 5).

NOTES
דַּי שְׁקָלֶת לִיהְ... וְשְׁנִית לִיהְ...: The *Yad Ramah* explains that in circumstances where the Sages knew of a halakha transmitted to Moses from Sinai concerning which there is no explicit verse, they would employ the methodology of transferring a letter written in one word to an adjacent word so that the verse would serve as an allusion to that halakha. They did not mean to suggest that the straightforward understanding of the verse needs to be changed.

Any item that undergoes initial consecration and is devoted entirely to Heaven, one violates misuse of consecrated property by using it – בְּכֶל שְׁתַחַרְלִתָה הַקְרָשָׁת כֶּל שְׁתַחַרְלִתָה מוּעָלָין בָהּ: Some commentaries explain that the clause: One violates the prohibition against misuse of consecrated property by using it, is not the conclusion of the interpretation. Rather, it is one of the conditions, i.e., the consecrated item must also be subject to the misuse of consecrated property (see Ramban, Ritva, and Rosh, citing Rabbeinu Tam). Tosafot indicate that this is an excerpt of halakhic midrash from *Torat Kohanim*, as the Gemara cited only the relevant passage (see Ra'avad).

BACKGROUND

Offerings of lesser sanctity – קדשים קלים: This category of offerings includes the various types of individual peace-offerings: Thanks-offerings, a nazrite's ram, the male first-born of a kosher animal, animal tithes, and the Paschal offering. These offerings may be slaughtered anywhere in the Temple courtyard. With the exception of the thanks-offering, the nazrite's ram, and the Paschal offering, they may be eaten on the day that the animal was slaughtered, on the intervening night, and on the following day. They may be eaten by the priests; their wives, children, and slaves; and with the exception of the firstborn offering, by the people bringing the offerings and any ritually pure person, circumcised if he is male, that they invite. One need not partake of these offerings within the Temple courtyard; rather, they may be eaten anywhere within the walls of Jerusalem. The prohibition against misuse of consecrated property applies only to those portions of offerings consumed on the altar and takes effect only after the blood is sprinkled on the altar.

אמור ליה ובי אלעוז לתנא: בשלמה
כולה לשבטים – למעוטי קדשים קלים.
בין דעתה להו לבעים בגינויו לית
בזה מעילה. אלא תחילת הקדש
למעוטי מא? תחילת הקדש הוא
דאית ביה מעילה, סוף הקדש לית ביה
מעילה? דלמא לענין חומש קאמרת,
וכרבי יהושע בן לוי אמר ליה: אין, ה'כ'
קאמינא.

Rabbi Elazar said to the *tanna*: Granted, the statement: It is devoted entirely to Heaven, serves to exclude offerings of lesser sanctity,⁸ e.g., peace-offerings. Since the owners have a share in them, as they may partake of those offerings, they are not subject to the prohibition against misuse of consecrated property. But what does the mention of initial consecration in the *baraita* serve to exclude? Is it that initial consecration is subject to the prohibition against misuse of consecrated property and ultimate consecration is not subject to the prohibition against misuse of consecrated property? Even the property consecrated last in a series of redemptions is full-fledged consecrated property. Perhaps it is with regard to the matter of the payment of one-fifth that you are saying this,⁹ and it is in accordance with the statement of Rabbi Yehoshua ben Levi? The *tanna* said to him: Yes, that is what I am saying.

אמר ליה רבashi לרביבנן: בהמה
טמאה בתחלת הקדש איתא,

Apropos that *baraita*, Rav Ashi said to Ravina: Is it so that a non-kosher animal is subject to initial consecration

HALAKHA

The legal status of one-fifth is like that of initial consecration – חומש בתחלת הקדש: The legal status of the one-fifth that is added when redeeming consecrated property from which

one derives benefit is like that of the consecrated article itself. If one derives benefit from the one-fifth, he must add one-fifth of that one-fifth (Rambam Sefer Avoda, Hilkhot Meila 1:5).

Perek IV**Daf 55 Amud a**

באמצע הקדש ליטאת? אמר ליה: לפि
שאיינה בסוף הקדש.

but it is not subject to an intermediate stage of consecration resulting from redemption? Ravina said to him: It is due to the fact that it is not subject to ultimate consecration. A non-kosher animal does not ultimately remain consecrated, as it is used neither as an offering nor in the upkeep of the Temple. Instead, it is redeemed and its value is consecrated.

אמר ליה רב אחא מדיות לרביבנן:
באמצע הקדש מיהא איתא, ולסfine
נמי חומש! אמר ליה: הרי הוא בסוף
הקדש, מה סוף הקדש אינו מוסיף
חומש – אף אםצע הקדש אינו מוסיף
חומש.

Rav Aha of Difti said to Ravina: It is subject, at least, to an intermediate stage of consecration; and in that case, let one add one-fifth as well. Ravina said to him: Its legal status is like that of ultimate consecration: Just as one does not add one-fifth with regard to a non-kosher animal in ultimate consecration, as that category does not exist in a non-kosher animal, so too, one does not add one-fifth in a case of intermediate consecration.

אמר ליה רב זוטרא בריה דרב מרוי
לרביבנן: מאית חיות ודרמות ליה לסתור
הקדש? נרמיהה לתחלת הקדש! אמר
לייה: מסתברא, לסוף הקדש הוה ליה
לזרוי – שבן נתפס מנתקפס. אודבתה,
להחילת הקדש הוה ליה לזרוי שבן
דבר שיש אחריו קדושה מפרק שיש
אחריו קדושה.

Rav Zutra, son of Rav Mari, said to Ravina: What did you see that led you to liken the intermediate stage of consecration to ultimate consecration? Let us liken it to initial consecration. Ravina said to him: It stands to reason that he should liken it to ultimate consecration, as he thereby derives the *halakha* of an item consecrated by association with the sanctity of an item consecrated by association. The Gemara asks: On the contrary, he should have likened it to initial consecration, as he thereby derives the *halakha* of an item after which there is another stage of sanctity, the intermediate stage of consecration, from an item after which there is another stage of sanctity.

בדאמר רב בא: "העללה" – עולה בראשונה.
הכי נמי: "הטמאה" – טמאה בראשונה.

The Gemara answers: It is as Rava says: "The burnt-offering" (Leviticus 6:2), employing the definite article, indicates that the reference is to the first burnt-offering.¹⁰ So too, when it is written: The non-kosher animal, the reference is to the initial consecration of the non-kosher animal, not the intermediate stage of consecration.

NOTES

The burnt-offering, the first burnt-offering – העולה עללה: The reference to the burnt-offering as the first is due to the fact that the daily morning burnt-offering is the first offering of the day, or due to the fact that the burnt-offering was the first

offering sacrificed for dedication of the altar, or due to the fact that the first burnt-offering sacrificed by the children of Israel in the wilderness was the morning burnt-offering (Rosh).

תניא ב'ותיה ורבי יהושע בן לוי:
**פרה זו תחת פרה של הכהן, טלית
 זו תחת טלית של הכהן – הכהן
 פרוי, ייד הכהן על העלונה.**

**פרה זו בחמש סלעים תחת פרה של
 הכהן, טלית זו בחמש סלעים תחת
 טלית של הכהן – הכהן פרוי.
 על הכהן ראשון מוסף חמוץ, על
 הכהן שני אין מוסף חמוץ.**

מתני' האונאה – ארבעה בפס' –
 והטענה – שתי בפס', וההזראה
 שווה פרוטה.

חמש פרוטות הן: ההזראה שווה
 פרוטה, והאשה מתקדשת בשווה
 פרוטה, והנהנה בשווה פרוטה מן
 הכהן מעיל והמאזא שווה פרוטה
 חייב להברוי, והגוזל את חבירו שווה
 פרוטה ונשבע לו – يولיכנו אחריו
 אפילו למן.

The Gemara comments: **It is taught in a baraita in accordance with the opinion of Rabbi Yehoshua ben Levi:** If one said that **this cow is in place of that cow, which belongs to the Temple treasury,^{NH} or this garment is in place of that garment, which belongs to the Temple treasury, his consecrated property is redeemed, and the treasurer of consecrated property is at an advantage.** If the replacement item is equal to or more valuable than the original item, it belongs to the treasurer, and if it is less valuable, the one who consecrated it must pay the difference.

If he said: **This cow valued at five sela^{NH} is in place of this cow, which belongs to the Temple treasury, or: This garment valued at five sela is instead of this garment, which belongs to the Temple treasury, his consecrated property is redeemed.** Even if the second consecrated item is more valuable, it is not considered a consecration done in error. He will have to pay the difference. **He adds one-fifth** when redeeming the item that was the **initial consecration**, but when redeeming the item for which the initial consecration was redeemed, the **second consecration, he does not add one-fifth.**

MISHNA The measure of exploitation is four silver *ma'a* from the twenty-four silver *ma'a* of a *sela*. And the smallest monetary claim in court for which a plaintiff can obligate a respondent to take an oath is two silver *ma'a*. And the smallest monetary admission for which that respondent takes the oath is an admission that one owes at least the value of one *peruta*.^H

On a related note, the *tanna* adds that there are five halakhic situations involving *perutot*: The admission to part of a claim must be that one owes at least the value of one *peruta*, and a woman is betrothed with the value of one *peruta*.^H And one who derives benefit of the value of one *peruta* from consecrated property has misused consecrated property^H and is liable to bring an offering, and one who finds an item that has the value of one *peruta* is obligated to proclaim that he found it. And with regard to one who robs from another an item that has the value of one *peruta* and took an oath^H to him that he robbed nothing, when he repents and seeks to return the stolen item he must take it and follow its owner even to Medea. In that case, he may not return the item by means of a messenger; he must give it directly to its owner.

NOTES

This cow is in place of that cow which belongs to the Temple treasury – **פרה זו תחת פרה של הכהן**: The variant reading of the Ra'avad in this clause of the *baraita* is: His consecration is not redeemed. In his opinion consecrated property can be redeemed only if the property was assessed beforehand. He holds that when the *baraita* states that the Temple treasury is at an advantage, this means that although the initial consecration is not redeemed, the owner is unable to remove the second cow from its consecrated status.

This cow valued at five *sela* – **פרה זו בחמש סלעים**: According to Rashi's version, that his consecration is redeemed in both cases, the question is: What is the difference between the first case and the second? Some explain that since he did not set any value for the first cow, even if the second cow is worth far more than the consecrated cow, the Temple treasury is at an advantage. In the second passage he set the value, and therefore if there is a significant discrepancy he can claim it was consecration in error that did not take effect (Rosh).

HALAKHA

This cow is in place of that cow which belongs to the Temple treasury – **פרה זו תחת פרה של הכהן**: A consecrated item can be redeemed only after its value is assessed. If one redeems the property without assessing its value, e.g., if he said: This cow or garment is in place of that cow or garment that is consecrated property, the consecrated property is redeemed and the Temple treasury is at an advantage. How so? If the value of the second cow is greater than that of the first cow the disparity belongs to the treasury. If the value of the second cow is lower he pays the treasury the difference plus one-fifth (Rambam Sefer Hafla'a, Hilkhot Arakhin VaHaramim 7:11).

This cow valued at five sela – **פרה זו בחמש סלעים**: If one redeems consecrated property with an item whose value is set at a fixed sum, e.g., if he says: This cow, valued at five *sela*, is in place of this cow that is consecrated property, if the value of the cow used for redemption is greater and he seeks to redeem it, he adds one-fifth to the price that he set (Rambam Sefer Hafla'a, Hilkhot Arakhin VaHaramim 7:11).

The claim is two silver *ma'a* and the admission is the value of one *peruta* – **הטענה שתי כספי והזראה שווה פרוטה**: One who admits to part of a debt in response to a claim is obligated to take an oath only if his admission was to a sum of at least one

peruta, and the claim was at least two silver *ma'a* greater than the admission (Shulhan Arukh, Hoshen Mishpat 88:1).

And a woman is betrothed with the value of one *peruta* – **האשה מוקדשת בשווה פרוטה**: A man betroths a woman with money or an item worth money only if it is worth at least one *peruta* (Shulhan Arukh, Even HaEzer 31:1).

Misuse of consecrated property with the value of one *peruta* – **שעללה בפרוטה**: One who derives at least one *peruta* of benefit from consecrated property is liable to bring an offering for misuse of consecrated property (Rambam Sefer Avoda, Hilkhot Meila 1:1).

One who finds an item the value of one *peruta* – **גופיא שווה פרוטה**: One who finds lost property worth at least one *peruta* is obligated to proclaim that he found it (Shulhan Arukh, Hoshen Mishpat 262:1).

One who robs...and took an oath – **הגוזל ונשבע**: In the case of one who robbed another and took an oath that he did not do so, if the value of the stolen item was at least one *peruta* he must pursue the owners in order to return the item personally, even if they are far away (Shulhan Arukh, Hoshen Mishpat 367:1).

גמ' תנינא חדא זימנא: האונאה
אוֹרְבָּעָה בְּסִיף, מַעֲשָׂרִים וְאוֹרְבָּעָה בְּסִיף
לְפֶלֶע שְׁוֹתָה לְמַקֵּחַ! הַטְּעוֹנָה שְׁתִי בְּסִיף
וְהַהְזָדָה שְׁוֹה פְּרוֹטָה אַצְטְּרִיכָּא לָיה.

GEMARA

The Gemara asks: We already learned this on another occasion in an earlier mishna (49b): The measure of exploitation for which one can claim that he was exploited is four silver *ma'a* from the twenty-four silver *ma'a* in a *sela*, which is one-sixth of the transaction. The Gemara answers: It was necessary for the *tanna* to mention two *halakhot*: The smallest monetary claim in court for which a plaintiff can obligate a respondent to take an oath is two silver *ma'a*, and the smallest monetary admission for which that respondent takes the oath is an admission that one owes at least the value of one *peruta*. Therefore, the *tanna* cited the *halakha* of exploitation as well.

הָא נִמְיָתְנִינָא: שְׁבוּעַת הַדִּין, הַטְּעָנָה
שְׁתִי בְּסִיף וְהַהְזָדָה שְׁוֹה פְּרוֹטָה! סִיפָּא
אַצְטְּרִיכָּא לָיה, דְּקָתְנִי חַמֵּשׁ פְּרוֹטָות
הַן.

חַמֵּשׁ פְּרוֹטָות הַן" כו'. וְלִתְנִי נִמְיָתְנִינָא:
הַאֲוֹנָה פְּרוֹטָה! אָמֵר רַב בְּהָנָא: זֹאת
אוֹמְרָת אַיִן אֲוֹנָה לְפְרוֹטָות.

וְלוֹי אָמֵר: יִשְׁאָוֹנָה לְפְרוֹטָות. וּבָנָן
תַּנְיָה לְוי בְּמִתְנִיתָה: חַמֵּשׁ פְּרוֹטָות הַן:
הַאֲוֹנָה פְּרוֹטָה, וְהַהְזָדָה פְּרוֹטָה,
וְקְדוּשָׁי אֲשָׁה בְּפְרוֹטָה, וְגַל בְּפְרוֹטָה,
וַיְשִׁיבַת הַרְבִּיעַ בְּפְרוֹטָה.

וְתַנְיָה דִין מַאי טַעַמָּא לֹא קָתְנִי יְשִׁיבַת
הַרְבִּיעַ? תַנְאָ לְיהָ גַּל.

The Gemara asks: That too we already learned in a mishna (*Shevuot* 38b): The oath for admission to part of a claim imposed by the judges is in a case where the claim is two silver *ma'a*, and the admission is the value of one *peruta*. The Gemara answers: It was necessary for the *tanna* to teach the latter clause of the mishna, as it teaches: There are five halakhic situations involving *perutot*, which is not taught elsewhere.

§ The mishna teaches: There are five halakhic situations involving *perutot*. The Gemara asks: And let the *tanna* also teach^N that the measure of exploitation is one *peruta*. Rav Kahana said: That is to say that there is no exploitation concerning *perutot*.^{NH} Any disparity between value and price that is less than the value of the smallest silver coin, an *issar*, which is worth eight *perutot*, is not considered exploitation.

And Levi says: There is exploitation even for *perutot*. And likewise, Levi taught in his version of the Mishna, which parallels the Mishna redacted by Rabbi Yehuda HaNasi, that there are five halakhic situations involving *perutot*: The measure of exploitation is one *peruta*, the admission is the value of one *peruta*, and the betrothal of a woman is with one *peruta*, and the *halakha* of one who takes an oath denying a robbery applies in the case where he denies having robbed another of at least one *peruta*, and the convening of judges to adjudicate a case of monetary law is in the case where the claim is at least one *peruta*.^H

The Gemara asks: And with regard to the *tanna* of our mishna, what is the reason he does not teach the case of the convening of judges in his list of cases involving *perutot*? The Gemara answers: He taught the case of robbery, which includes all monetary claims one has against another.

NOTES

And let the *tanna* also teach – **לִתְנִי נִמְיָתְנִינָא:** Some commentaries ask why the *tanna* did not include the *halakha* that land cannot be acquired with less than one *peruta*. The Ritva answers that this *halakha* is derived from the *halakha* of the betrothal of a woman, as parallels are drawn between betrothal and the acquisition of land.

There is no exploitation concerning *perutot* – **אֲוֹנָה לְפְרוֹטָות –** Many commentaries ask: Why is exploitation different

from all other *halakhot* where silver is not explicitly written, where the measure is one *peruta*? *Torat Hayyim* explains that since in order for there to be exploitation in a transaction, the disparity between the purchase price and the market value must be one-sixth, the item being sold cannot be worth only one *peruta*, as in that case the sum of the exploitation would be less than one *peruta*, an insignificant sum. Therefore, it stands to reason that the *halakhot* of exploitation apply only to a transaction of significant value, which is an *issar* (see *Rif* and *Ra'avad*).

HALAKHA

Exploitation concerning *perutot* – **אֲוֹנָה לְפְרוֹטָות –** One who exploits another is obligated to repay him only if the sum that he exploited is more than one *peruta*. This is the Rambam's explanation, in accordance with the opinion of Rav Kahana as inferred from the language of the mishna. The Rashash explains that according to that opinion, there is no exploitation if the disparity is less than a silver *ma'a*. The Rema, citing the *Tur*, rules that there is exploitation even if the disparity is one *peruta* (*Shulhan Arukh, Hoshen Mishpat* 227:5).

The convening of judges is in the case where the claim is at least one *peruta* – **שִׁבְטַת הַדִּין בְּפְרוֹטָה –** Judges convene to hear a case only if the claim is worth at least one *peruta*. Once they began hearing a case involving one *peruta* they continue hearing the case even if the value of the item in question depreciated and is now worth less than one *peruta*. The *halakha* in accordance with the opinion of Levi. See the *Beit Yosef* who explains why the *halakha* is not in accordance with the opinion of Rav Ketina (*Shulhan Arukh, Hoshen Mishpat* 6:1).

ומני לא תני גול וקחני אבידה? הנה
אצטיריכא ליה. גול – הגול מחייבו
שוה פרוטה ונשבע לו, يولכנו אחריו
ואפלו למד. אבידה – המזיא אבידה
שוה פרוטה תיב להזכיר, ואך על גב
דול.

ולוי,מאי טעמא לא תני אבידה
בפרוטה? תנא ליה גול.

ומני לא קתני גול וקחני ישיבת הדינין?
ישיבת הדינין אצטיריכא ליה לא פוקי
מדרב קטינה. דאמר רב קטינה: בית
די נוקקי אפלו לפחות משוה
פרוטה.

ולוי,מאי טעמא לא קתני הקדש?
בחולין קמיiri, בקדושים לא קמיiri.

אלא תנא דיין דקא מيري בקדושים,
נתר מעשר בפרוטה! במאי דאמר: אין
בחומשו פרוטה. וליתני חומש מעשר
בפרוטה! בקדושא קא מيري, בחומש
לא קא מيري.

גופא, אמר רב קטינה: בית דין נוקקי
אפלו לפחות משוה פרוטה. מתייב
רבא: "ויאת אשר חטא מן הקדש
שלם".

The Gemara asks: **But doesn't the tanna teach the case of robbery and teach the case of lost property?** Apparently, he lists monetary cases that are included under the rubric of robbery. The Gemara answers: With regard to these two cases, it was necessary for the tanna to teach them separately, as there is a novel element in each. The novel element in the case of robbery is not only that a robbery of one *peruta* is considered robbery, but also in the case of one who robs an item from another worth at least one *peruta* and then took an oath to him that he robbed nothing, he must carry the stolen item and follow its owner even to Medea. The novel element in the case of lost property is that one who finds lost property the value of at least one *peruta* is obligated to proclaim that he found it, even though the lost article depreciated and is no longer worth one *peruta*.^H

The Gemara asks: **And as for Levi, what is the reason he does not teach that one is obligated to proclaim that he found lost property only if it is worth at least one *peruta*?** The Gemara answers: He taught the case of robbery, which includes all monetary claims one has against another.

The Gemara asks: **But doesn't he teach robbery and also teach the convening of judges?** Apparently, he lists monetary cases that are included under the rubric of robbery. The Gemara explains: With regard to the convening of judges it was necessary for the tanna to specify the halakha to exclude the opinion of Rav Ketina, as Rav Ketina says: The court attends to monetary claims of even less than the value of one *peruta*. Anyone wronged by another is entitled to have his case adjudicated in court.

The Gemara asks: **And as for Levi, what is the reason he does not teach the *peruta* of misuse of consecrated property?** The Gemara answers: **He is speaking with regard to non-sacred property; he is not speaking with regard to consecrated property.**

The Gemara asks: **But in the case of the tanna of our mishna, who is speaking with regard to consecrated property, let him teach the halakha that second tithe may be redeemed only if the produce is worth at least one *peruta*.** The Gemara answers: This tanna holds in accordance with the one who says: Second tithe is redeemed only if its one-fifth, which one adds when redeeming his own produce, is worth at least one *peruta*. In other words, second tithe is redeemed only if it is worth at least four *perutot*. The Gemara asks: **And let him teach that second tithe is redeemed only if its one-fifth, which one adds when redeeming his own produce, is worth at least one *peruta*.** The Gemara responds: The tanna is speaking with regard to the principal; the tanna is not speaking with regard to the one-fifth.

§ With regard to the matter itself raised in the previous discussion, the Gemara elaborates. Rav Ketina says: The court attends to monetary claims of even less than the value of one *peruta*. Rava raises an objection from a *baraita*. It is written: "And he shall make restitution for that which he has done amiss in the sacred matter" (Leviticus 5:16).

HALAKHA

Lost property that depreciated and appreciated – **אבידה – שוחלה והוקה:** If lost property was worth at least one *peruta* both when it was lost and when it was found, one is required to proclaim that he found it, although it depreciated and became worth less than one *peruta* in the interim (*Shulhan Arukh, Hoshen Mishpat* 262:1).

Perek IV

Daf 55 Amud b

HALAKHA

Misuse of consecrated property less than the value of one peruta – הַרְבָּת מִשְׁׂוֹת פָּרוּתָה: One who misuses consecrated property and derives benefit valued at less than one *peruta*, whether he did so unwittingly or intentionally, pays the principal, i.e., the value of the benefit he derived. He is not obligated to add one-fifth to the principal nor is he liable to bring a guilt-offering. Similarly, the Rambam maintains that one is not flogged for doing so (Rambam *Sefer Avoda, Hilkhot Me'ilah* 7:8).

The judges conclude even if the item in question depreciated to less than the value of one *peruta* – גּוֹמְרֵי אֲפֵלָו לְפָחוֹת מִשְׁׂוֹת פָּרוּתָה: If a court began hearing a case where the plaintiff's claim is one *peruta*, and the defendant's counterclaim is for a lesser sum, they adjudicate the latter claim as well (*Shulhan Arukh, Hoshen Mishpat* 6:1).

A non-priest who eats *teruma*, etc. – הַאֲכֵל תְּרוּמָה וּכְךָ: A non-priest who ate *teruma* unwittingly pays the principal and adds one-fifth. The same is true with regard to *teruma* of the tithe, *halla*, and first fruits. By rabbinic law, one also adds one-fifth to the *teruma* of the tithe of *dema'i* (Rambam *Sefer Zera'im, Hilkhot Terumot* 10:1, 4).

One who redeems a fourth-year sapling or second-tithe produce – הַפּוֹדֵה נֶטֶן רְבָעִי וּמְשֻׁר שְׁנִי: One who redeems his own second-tithe produce or fourth-year fruit adds one-fifth (Rambam *Sefer Zera'im, Hilkhot Ma'aser Sheni* 5:1, 9:2).

One-fifth with regard to consecrated property – חַזְמָשׁ בְּחַקְדֵּשׁ: One who derives benefit worth one *peruta* from consecrated property pays the sum of the benefit plus one-fifth. He is also liable to bring a guilt-offering for misuse of consecrated property (Rambam *Sefer Avoda, Hilkhot Me'ilah* 1:3).

LANGUAGE

Ordinary person [hediyot] – הַדִּיאַתְּ: From the Greek ἀδιάτος, *idiotes*, meaning simple citizen with no official position.

לְרָבָות פָּחוֹת מִשְׁׂוֹת פָּרוּתָה לְהַשְׁׁבוֹן.
לְקַדְשׁ – אָיו, אֲכֵל לְהַדִּיוֹת – לֹא!

This serves to include misuse of consecrated property less than the value of one *peruta*^h in the halakha of restitution to the Temple treasury. The Gemara infers: To the Temple treasury, yes, one must return that which he took; but to an ordinary person [*hediyot*]^l, no, one need not pay restitution for theft of less than one *peruta*.

אֲלֹא אֵי אָתָם הַכִּי אָתָם, אָמַר רַב
קַטְינָא: אִם הַוּקָקָו בֵּית דָין לְשֹׁוֹת
פָּרוּתָה – גּוֹמְרֵי אֲפֵלָו לְפָחוֹת מִשְׁׂוֹת
פָּרוּתָה. תְּחִילַת הַדָּין – בְּעֵינָן פָּרוּתָה,
גּוֹמְרַת הַדָּין – לֹא בְּעֵינָן פָּרוּתָה.

Rather, if Rav Ketina's ruling was stated, this is how it was stated: Rav Ketina says: If the court attends to a monetary claim of the value of one *peruta*, the judges conclude adjudicating and issue a ruling even if the item in question depreciated to less than the value of one *peruta*.^{hn} For the beginning of the legal proceedings, we require a claim worth one *peruta*, whereas for the verdict, we do not require a claim worth one *peruta*.

מַתָּנִי חַמְשָׁה חַוְמְשִׁין הָן, אַל
הָן: הַאֲכֵל תְּרוּמָה, וְתוּרָמָת מַעַשָּׂר,
וְתוּרָמָת מַעַשָּׂר שֶׁל דָמָאי, וְהַלְלוּ
וְהַבְּפּוּרִים – מַסְפִּיר חַוְמָשׁ. וְהַפּוֹדֵה
נֶטֶן רְבָעִי וּמְשֻׁר שְׁנִי שֶׁלֹּו – מַסְפִּיר
חַוְמָשׁ. הַפּוֹדֵה אֶת הַקְדֵּשׁ – מַסְפִּיר
הַחַקְדֵּשׁ, הַגְּנָה שְׂוֹה פָּרוּתָה מִן
חַבְיוֹ שְׂוֹה פָּרוּתָה וְנַשְׁבָּע לוֹ – מַסְפִּיר
חַוְמָשׁ.

MISHNA In this mishna, as in the previous one, the *tanna* enumerates several *halakhot* that share a common element. There are five halakhic situations where one-fifth is added to the value of the principal, and these are they: A non-priest who eats either *teruma*,^{hn} or *teruma* of the tithe, which the Levite separates from the first tithe and gives to a priest, or *teruma* of the tithe of *dema'i*, or *halla*,^b or first fruits; in each of these cases, he adds one-fifth when paying restitution to the priest who owned the produce. And one who redeems his own fruit of a fourth-year sapling^b or second-tithe produce^h adds one-fifth. One who redeems his own consecrated property adds one-fifth. One who derives benefit worth one *peruta* from consecrated property adds one-fifth.^h And one who robs the value of one *peruta* from another and takes a false oath in response to his claim adds one-fifth when paying restitution.

NOTES

The judges conclude adjudicating even if the item in question depreciated to less than the value of one *peruta* – גּוֹמְרֵי אֲפֵלָו לְפָחוֹת מִשְׁׂוֹת: Rashi explains that even if one of the claimants claims less than one *peruta* from the other, the court still adjudicates his claim. According to the Ritva, the Gemara is referring to a case where the market value of the claim depreciated to less than one *peruta* while the court was

in session. Or, according to the Meiri, the defendant admits that he owes a portion of the debt, and the contested portion of the debt is less than a *peruta*.

Who eats *teruma*, etc. – הַאֲכֵל תְּרוּמָה וּכְךָ: The first five cases of the mishna are all considered as one, due to their similarity.

BACKGROUND

Halla – הַלָּא: The Torah commands that one separate a portion of dough and give it to the priests (see Numbers 15:20). This portion is called *halla*, and its halakhic status parallels that of *teruma*. The Torah does not specify a measure for *halla*. The Sages required a private baker to separate one twenty-fourth of his dough and a commercial baker to separate one forty-eighth. *Halla* is taken from dough made from the flour of any of the five species of grain, wheat, barley, spelt, oats, and rye, provided that the flour is at least one-tenth of an ephah in volume.

The halakhic status of dough from which *halla* is not taken is that of untithed produce. One who partakes of it is liable to receive death at the hand of Heaven. Today, since all Jews are ritually impure, *halla*, like *teruma*, must be burned rather than given to a priest. Accordingly, the measures specified by the Sages no longer apply. Only a small portion is separated from the dough and burned, whereupon the rest of the dough may be used. A blessing is recited for the separation of *halla*. *Halla* is considered one of the mitzvot practiced particularly by women. The *halakhot* governing this mitzva are discussed comprehensively in the mishna and Jerusalem Talmud of tractate *Halla*.

Fourth-year sapling – נֶטֶן רְבָעִישׁ: For the first three years after a tree is planted, its fruits are *orla*. They may not be eaten, and it is prohibited to derive benefit from them. The legal status of fruit that grows during the fourth year parallels that of second-tithe produce. The fruit must be taken to Jerusalem and eaten there. If it cannot be taken to Jerusalem, it is redeemed, and the redemption money is taken to Jerusalem for the purchase of food and drink.

During the Temple period, the Sages instituted that it was prohibited for anyone living a single day's journey from Jerusalem to redeem his fourth-year fruit. They required that one take it to Jerusalem in order to ensure that the streets of Jerusalem would be adorned with fruit (*Beitzah* 5a). Today, the obligation to redeem fourth-year produce remains in effect, albeit for a nominal sum rather than its real value, since the redemption money is no longer taken to Jerusalem.

גמ' אמר ר' בא: קשיא ליה לובי אלעוז
תרומות מעשר של דמאי. וכי עשו
חכמים תיווק לדבריהם כשל תזרע?

אמר ורב נחמן אמר שמויאל: לא מפני -
רבי מאיר דיאו, דאמר: עשו חכמים
תויק לדבריהם כשל תורה. דתנייא:
המביא גט נקנויות הימ. נתנו לה ולא
אמר לה בפניהם נכתב ובפני נחתם -
יוציא והולך ממוי, דברי רבי מאיר.
וחכמים אמרו: אין הוילך ממוי. כיצד
עשיה? יטלו ממונה, וחזור ויתננו לה
בפני שניהם, ויאמר לה בפניהם נכתב ובפני
נחתם.

ולובי מאיר, משום שלא אמר לה בפניהם
נכתב ובפני נחתם – יוציא והולך
ממוי? אי, רבי מאיר לטעמיה, דאמרו
רב המנינו ממשמה דעוילא, ואומר ה'יה
רבי מאיר: כל המשנה ממבע שבבבון
חכמים בגיטין – יוציא והולך ממוי.

מথיב רב ששת: מחלין אותו כסך
על כסך, נחוות על נחוות, כסך על
נחוות, ונחוות על הפירות, וחזור
ויפדה את הפירות, דברי רבי מאיר.
וחכמים אמרו: יעלו פירות ויאכלו
bijouslim.

ומי מחלין כסך על נחוות? וזה
תנן: סלע של מעשר שני ושל חולין
שנתערבו – מביא בסלע מועט, ואומר
כל מקום שישנה סלע של מעשר שני
מחוללה על מועות הליל. ובויר אט
היפה שבchan, ומחללו עליה,

GEMARA Rava says: Rabbi Elazar found the *halakha* in the mishna with regard to *teruma* of the tithe of *demai* to be difficult. He asked: And since the obligation to tithe *demai* is by rabbinic law, did the Sages reinforce their pronouncements^N and render them parallel to Torah law by requiring the addition of one-fifth when paying restitution?

Rav Nahman said that Shmuel said: In accordance with whose opinion is this mishna? It is in accordance with the opinion of Rabbi Meir, who says: The Sages reinforced their pronouncements and rendered them parallel to Torah law, as it is taught in a *baraita*: With regard to an agent who brings a bill of divorce^H from a country overseas, if he gave it to the woman but did not say to her: It was written in my presence and it was signed in my presence,^N as is the requirement by rabbinic ordinance, one who marries that woman must divorce her, and any offspring born of that marriage is a *mamzer*;^B this is the statement of Rabbi Meir. And the Rabbis say: Although he is in violation of the ordinance, the offspring is not a *mamzer*. How then should the agent proceed? He should take the bill of divorce from her and give it to her again, this time in the presence of two witnesses, and say to her: It was written in my presence and it was signed in my presence.

The Gemara asks: And according to Rabbi Meir, although the bill of divorce was otherwise valid, merely due to the fact that he did not say to her: It was written in my presence and it was signed in my presence, must he divorce her and the offspring is a *mamzer*? The Gemara answers: Yes, as Rabbi Meir conforms to his standard line of reasoning, as Rav Hamnuna says in the name of Ulla that Rabbi Meir would say: In the case of anyone who gives a bill of divorce that deviates from the formula coined by the Sages with regard to bills of divorce, one who then marries the divorced woman on the basis of that bill of divorce must divorce her, and the offspring is a *mamzer*. Concerning *teruma* of the tithe of *demai* as well, Rabbi Meir reinforced the pronouncements of the Sages and rendered them parallel to Torah law.

Rav Sheshet raises an objection to this principle from a mishna (*Demai* 1:2), which teaches: One may desacralize silver coins of second tithe of *demai*^H upon other silver coins, and copper coins upon copper coins, and silver coins upon copper coins, and copper coins upon produce, and he may then redeem that produce with money; this is the statement of Rabbi Meir. And the Rabbis say: That produce that redeemed the copper coins must be taken up and eaten in Jerusalem. It may not be redeemed again.

Rav Sheshet continues: And can one desacralize silver coins with copper coins? But didn't we learn in a mishna (*Ma'aser Sheni* 2:6): In the case of a silver *sela* of second tithe and a *sela* of non-sacred property that were intermingled,^H one brings copper *ma'a* equaling the value of a *sela* and says: Wherever there is a *sela* of second tithe among these two coins, it is redeemed upon these copper *ma'a*, which assume the sanctity of second tithe. And he selects the better-quality *sela* among the two and redeems the copper coins upon that *sela*. The result is that the better-quality *sela* is second tithe, while the other *sela* and the copper coins are non-sacred.

NOTES
And did the Sages reinforce their pronouncements – בכי עשו חכמים חזון לרביהם: The early commentaries ask: Are there not many *halakhot* where the Sages reinforce their pronouncements and render them parallel to Torah law, and in certain cases render them even stricter than Torah law? The consensus of the early commentaries is that there is no uniform principle with regard to the stricture of rabbinic *halakhot*, as in certain cases the Sages ruled stringently and in others less so (Meiri). The Sages tend to rule stringently in any decree or ordinance based on Torah law (*Tosafot on Baba Batra*). Likewise, they ruled stringently in frequently occurring matters (*Tosafot on Yevamot*), in matters that people tend to treat with contempt, and in matters whose violation will cause extensive damage (Meiri). In this context, some explain that the entire prohibition of *demai* is by rabbinic law, and is structured less stringently than other rabbinic decrees, as the majority of people tithe their produce. Therefore, Rabbi Elazar wondered why there is a decree of adding one-fifth in that case, as that appears to be a decree issued to reinforce another rabbinic decree, which is generally not done (see *Hullin* 104a). In response, the Gemara cites Rabbi Meir's ruling with regard to a bill of divorce, as in that case the rabbinic decree was also due to a far-fetched concern, yet he was stringent.

It was written in my presence and it was signed in my presence – בפני נכתבת ובפני נחתמת: If a husband sent a bill of divorce from a place within Eretz Yisrael to his wife in Eretz Yisrael, it is sufficient for the agent to deliver it to his wife in the presence of witnesses. If a husband sent a bill of divorce from overseas to his wife in Eretz Yisrael, the agent must state upon delivery: It was written in my presence and it was signed in my presence. The Gemara cites different reasons for this requirement. It is either because people overseas are not expert in all the *halakhot* of writing bills of divorce or because witnesses are not available to ratify the document. If there is a flaw in the document, the woman remains married. The concern is that she will remarry based on the flawed document. The statement of the agent allays that concern.

HALAKHA

המביא גט מעשך – An agent who brings a bill of divorce, etc. – במי: If an agent who brought a bill of divorce from outside Eretz Yisrael neglected to say: It was written in my presence and it was signed in my presence, and the woman remarried after receiving the document, the agent must take it from her, give it to her again in the presence of two witnesses, and state: It was written in my presence and it was signed in my presence. This ruling is in accordance with the opinion of the Rabbis (*Shulhan Arukh, Even HaEzer* 142:7).

חולל מעשך טני – *Cholil Meuscher Sheni*: Second tithe of *demai* – של דמאי: Second tithe of *demai* may be redeemed *ab initio* if the second-tithe silver coins are redeemed with other silver coins, or silver coins with copper ones, or copper coins with copper coins, or copper coins with produce. That produce is taken to Jerusalem where it is eaten, in accordance with the opinion of the Rabbis (Rambam *Sefer Zera'im, Hilkhot Ma'aser Sheni* 4:8).

A silver *sela* of second tithe and a *sela* of non-sacred property that were intermingled – סלע של מעשר שני גושל חולין שעתערבו: If silver coins with which second-tithe produce was redeemed were intermingled with non-sacred coins, one brings coins equal in value to the tithe coins, even copper coins, and says: The second-tithe coins, wherever they may be, are desacralized with these coins. He then selects the better-quality silver coins and desacralizes the copper coins with them (Rambam *Sefer Zera'im, Hilkhot Ma'aser Sheni* 6:2).

BACKGROUND

Mamzer – מינור: A *mamzer* is a child born from a forbidden relationship that is punishable by *karet*, i.e., an adulterous or incestuous relationship. The exception to this is a child conceived by a menstruating woman, with whom sexual intercourse is punishable by *karet*. A *mamzer* inherits from his natural father

and is halakhically considered his father's son in all respects. A *mamzer* may marry only a *mamzeret*, i.e., a female *mamzer*, or a convert to Judaism. Likewise, a *mamzeret* may marry only a *mamzer* or a convert. The offspring of such unions are *mamzerim* as well.

Perek IV

Daf 56 Amud a

HALAKHA

One desacralizes second-tithe silver coins upon copper coins under duress – **מְחַלֵּלִים אֶת־זָהָב עַל נְחֹשֶׁת מְדוֹחָק**: Under duress, it is permitted to desacralize silver coins with which second tithe was redeemed upon copper coins. One should not keep those coins in that state. Rather, he should redeem the copper coins upon other silver coins at the first opportunity (Rambam Sefer Zera'im, Hilkhot Ma'aser Sheni 4:7).

The sale of demai – בְּכִירָת דָּמָאי: Anyone who distributes produce in large quantities, e.g., grain merchants or wholesalers, may sell *demai* without tithing, and one who buys or receives the *demai* is required to tithe. One who sells small quantities, e.g., a baker, must tithe himself, in accordance with the mishna in tractate *Demai* (Rambam Sefer Zera'im, Hilkhot Ma'aser 11:2).

One who purchases bread from a baker – הַלְּקָחָמָן בְּפָרְעָנָם: One who purchases bread from a baker may not tithe from a warm loaf for a cold one, lest the wheat used to bake the day before belonged to one person and the wheat used to bake today belong to another. The halakha is in accordance with the opinion of Rabbi Yehuda in his dispute with Rabbi Meir (Rambam Sefer Zera'im, Hilkhot Ma'aser 14:5).

One who separates teruma from poor-quality produce for superior-quality produce – הַתְּרוּם מִן הַרְאָשָׁה עַל הַיּוֹתָר: One separates *teruma* from one species of produce for the entire crop of that species. For these purposes, types of produce that may be planted together and do not constitute a prohibited mixture of diverse kinds are considered to be of one species. One may also separate from higher-quality produce for lower-quality produce, but not the opposite. Nevertheless, if one separated from lower-quality produce for higher-quality produce, his *teruma* is *teruma* after the fact (Rambam Sefer Zera'im, Hilkhot Ma'aser 5:3).

NOTES

Not that he will maintain them in that form – לא שיקים כן: Rashi provides several reasons why one may not maintain the copper coins. In his opinion, one is obligated to exchange them. The Meiri holds that this is merely a recommended option, teaching that if one does not wish to transport the copper coins to Jerusalem, he may exchange them.

Only a wholesaler – לְסִיטָּן בְּלָדָר: The Rambam in his Commentary on the Mishna explains that those who sell in bulk use imprecise measures and do not profit much. Therefore, the Sages absolved them from tithing. Those who sell small quantities are very precise and use precise measures. They profit from every sale and therefore can afford to tithe *demai*.

From warm bread for cold bread – מן החמה על הצוננות: According to the Rambam's Commentary on the Mishna, it appears that there is a concern that one will separate from last year's produce for this year's, which is prohibited.

And you shall bear no sin by reason of it – וְלֹא תִשְׂאֶה עַל יְלִיעָה: Some commentaries ask: Perhaps one transgresses for violating a mitzva in the Torah, but his action is nevertheless ineffective and his *teruma* is not *teruma*. They answer that it is already clear from the verse: "When you set apart the best thereof from it" (Numbers 18:30), that one must separate *teruma* from the highest-quality produce. Consequently, the verse: "And you shall bear no sin by reason of it," serves to teach that in such a case, although separating *teruma* from poor-quality produce for superior-quality produce is prohibited, it is effective in rendering the produce permitted (Rashi; Tosafot on Kiddushin 46b).

מִפְנֵי שָׁאָמָרוּ: מְחַלֵּלִין אֶת־זָהָב עַל נְחֹשֶׁת מְדוֹחָק, לֹא שִׁיקִים כֵּן אֶלָּא שְׁחוֹזֶר וּמְחַלֵּל עַל הַבָּסָר. קָתְנִי מִיתָּה: מְחַלֵּלִין מְדוֹחָק. מְדוֹחָק – אֵין, שְׁלָא! מְדוֹחָק – לֹא!

The reason one must employ this procedure is due to the fact that the Sages said: **One desacralizes second-tithe silver coins upon copper coins under duress.**^h And it is not that he will maintain them in that form;ⁿ rather, it is that he again desacralizes them upon silver coins. In any event, the *tanna* teaches that one desacralizes second-tithe coins in this manner under duress, from which it may be inferred: **Under duress, yes; not under duress, no.** This is the *halakha* with regard to redemption of second-tithe coins by Torah law. By contrast, in the case of *demai*, which is by rabbinic law, Rabbi Meir permits desacralizing it in this manner *ab initio*. Apparently, Rabbi Meir is more lenient with regard to matters of rabbinic law than he is with regard to matters of Torah law.

אָמַר רַב יוֹסֵף: אֵין עַל פִּי שְׁמִיקָּל רַבִּי מְאִיר בְּפְרָיוֹנוֹ, מַחְמִיר הַזָּהָב בְּאֲכִילָתוֹ. דָּתְנִיא: לֹא הָתַר לוּמְבָרָד דָּמָאי אֶלָּא לְסִיטָּן בְּלָדָר, וּבַעַל הַבַּיִת בֵּין בָּנָן וּבָנָה. בָּנָן צָרֵךְ לְעֵשֶׂר, דָּבָר רַבִּי מְאִיר.

וחכמים אומרים: אחד השיטון ואחד בעל הבית – מוכרי, ושולח לחבירו, וכןון לו במתנה, ואיןו חושש.

Rav Yosef said: Although Rabbi Meir is lenient with regard to redemption of second-tithe *demai*, he is stringent with regard to its consumption. This is as it is taught in a *baraita*: The Sages permitted only a wholesalerⁿ to sell *demai*.^h Since a wholesaler acquires grain from numerous sources and sells large quantities, he would suffer significant loss if he were required to separate tithes each time. But in the case of a proprietor who purchased produce from an *am ha'aretz*, whether he purchased large quantities to sell in bulk or whether he purchased small quantities to sell little by little, he must tithe the produce; this is the statement of Rabbi Meir.

The *baraita* continues: **And the Rabbis say: Both a wholesaler and a proprietor who sells in bulk may sell *demai*, or send it to another, or give it to him as a gift, and they need not be concerned.** The one who receives the produce separates the tithes and consumes the remaining produce. In this *baraita*, Rabbi Meir was stringent with regard to the concern that someone will consume *demai* without the tithes being separated.

ותיב בְּרִיבֵּינוֹ: הַלְּקָחָמָן הַפְּנִיחָתָום מַעַשֵּׂר מִן הַחֲמָה עַל הַצּוֹנָנָת, וּמִן הַצּוֹנָנָת עַל הַחֲמָה, וְאַפִּילוּ מִנְפּוּסִים הַרְבָּה, דָּבָר רַבִּי מְאִיר.

בְּשָׁלָמָא מִן הַצּוֹנָנָת עַל הַחֲמָה – בְּדָבֵר אַיִלְעָא, דָּאָמַר רַבִּי אַיִלְעָא: מִפְנֵי לְתֹוּרִים מִן הַרְאָשָׁה עַל הַיּוֹתָר שְׁתַרְוָמָתָן תְּרוּמָה – שָׁגָנָמָר: יְלֹא תְשַׂא עַלְיוֹ חֲטָא בְּהִרְיכָמָכָם אֶת חַלְבָוּ מִמְנָנוּ. אֲםָן אַיְוֹ קְדֻשָּׁ – נְשִׂיאָת חֲטָא לְמַה? מִפְּאָן לְתֹוּרִים מִן הַרְאָשָׁה עַל הַיּוֹתָר שְׁתַרְוָמָתָן תְּרוּמָה.

אֶלָּא אַפִּילוּ מִנְפּוּסִים הַרְבָּה, לִיהוּ דְּלָמָּא אַתִּי לְאַפְּרוֹשִׁי מִן הַחֲזִיב עַל הַפְּטוּר, וּמִן הַפְּטוּר עַל הַחֲזִיב?

Ravina raises an objection from a mishna (*Demai* 5:3): **One who purchases bread from a baker^h who is unreliable with regard to tithes [am ha'aretz] may tithe from warm bread for, i.e., to exempt, cold bread,ⁿ and from cold bread for warm bread, and one may do so even if the bread is in different shapes from many molds;** this is the statement of Rabbi Meir.

Granted, one may tithe from cold bread for warm bread, in accordance with the opinion of Rabbi Elai, as Rabbi Elai says: From where is it derived with regard to one who separates *teruma* from poor-quality produce for superior-quality produce that his *teruma* is *teruma*? It is as it is stated: "And you shall bear no sin by reason of it,ⁿ seeing that you have set apart from it the best thereof" (Numbers 18:32). The Torah warns the Levites not to separate *teruma* from low-quality produce. The question arises: If when one separates lower-quality produce, that produce is not sacred, why would one think that he bears sin? He did nothing. From here it is derived that although the Levite acted improperly, in the case of one who separates *teruma* from poor-quality produce for superior-quality produce,^h his *teruma* is *teruma*.

Rather, with regard to the *halakha* that one may tithe even if the bread is in different shapes from many molds, let Rabbi Meir be concerned lest the buyer come to tithe from the loaves that one is obligated to tithe for the loaves that one is exempt from titling, or from the exempt for the obligated. Since these loaves are all *demai*, it is possible that the loaves shaped in one mold were baked from produce that was tithed and the loaves shaped in another mold were baked from produce that was not tithed. Apparently, Rabbi Meir rules leniently in cases of rabbinic law, e.g., *demai*.

**אָמַר אֲבִי: רַبִּי אַלְעֹזֶר שְׁפֵיר קָא קְשִׁיא
לִיה, וְשְׁמַעְאֵל לֹא שְׁפֵיר קָא מְשִׁיעֵי לִיה.
דְּקַשְׁיאָה לִיה לְרַבִּי אַלְעֹזֶר מִתְהָ דְּבִידִ
שְׁמִים, וְמְשִׁיעֵי לִיה שְׁמַעְאֵל מִתְהָ בֵּית דִין.
דְּלַמְּאָה שְׁאֵנִי מִתְהָ בֵּית דִין דְּחַמְּרִיאָה.**

**וּבָ שְׁשַׁת לֹא שְׁפֵיר קָא מוֹתִיב לִיה
דְּקַאֲמָרִי אַינְהוּ מִתְהָ, וְמוֹתִיב וּבָ שְׁשַׁת
לְאוֹ, דְּכִתְבִּיב: "לֹא תּוּכַל לְאַכְלֵ בְּשֻׁעַרְךָ".
וְלֹא מְאֵיד דְּמוֹתִיב וּבָ שְׁשַׁת – רַב יוֹסֵף שְׁפֵיר
קָא מְשִׁיעֵי לִיה.**

**אַלְאָ רַבִּינוּ, עַד דְּמוֹתִיב מִנְחָתָום לְסִיעַ
לִיה מְפַלְּטָה. דְּתַנְּנָה: הַלּוּכָה מִן הַפְּלַטָּה –
מַעַשֵּׂר מִן כָּל דְּפָסָס וְדְפָסָס, דְּבָרִי רַבִּי מֵאִיר.**

**אַלְאָ מָאִי אֵיתָ לֹא לְמִימָר – פְּלַטָּר מִתְרִי
לִלְתָתָא גְּבָרָא זְבִינִי, נִחְתָּום נִמְיָה – מִתְדָּגְדָּג
הַוָּא זְבִינִי.**

**רַבָּא אָמַר: שְׁמַעְאֵל שְׁפֵיר קָא מְשִׁיעֵי לִיה
שֵׁם מִתְהָ בְּעוֹלָם.**

מַתָּנִי אַלְוּ דְּבָרִים שָׁאֵין לָהֶם אָוֹנָה:
הַעֲבָדִים, וְהַשְּׁטוֹת, וְהַקְּרָקוּות,
וְהַחֲקָדוֹשׁות, אַיִן לְהָנִי תְּשִׁלְמֵי כְּפָל וְלֹא
תְּשִׁלְמֵי אַרְבָּעָה וְחַמְשָׁה. שׁוֹמֵר חַנְם אִינוּ
נִשְׁבַּע, וְנוֹשֵׁא שְׁכָר אִינוּ מִשְׁלָמָם. רַבִּי שְׁמֻעָן:
אָמַר:

The Gemara returns to discuss the difficulties raised above. **Abaye said:** The problem raised by Rabbi Elazar was legitimately difficult for him, and Shmuel did not legitimately respond to his difficulty by stating that the mishna is in accordance with the opinion of Rabbi Meir. The reason the response is insufficient is that it was the case in the mishna of *teruma* of the tithe, which is punishable with death at the hand of Heaven, that was difficult for Rabbi Elazar, who was questioning whether the Sages reinforced their pronouncements concerning such a prohibition and rendered them parallel to Torah law; and Shmuel responded to him by citing Rabbi Meir's opinion concerning a bill of divorce, which involves court-imposed capital punishment. Perhaps the case involving court-imposed capital punishment is different, as it is more stringent, and Rabbi Meir renders rabbinic law parallel to Torah law only in such a case.

Abaye continued: **And Rav Sheshet does not legitimately raise an objection, as Rabbi Elazar and Shmuel are speaking about cases punishable by death, and Rav Sheshet raised his objection from a case involving a mere prohibition,**^b as it is written with regard to second tithe: “**You may not eat within your gates the tithe of your grain, or of your wine, or of your oil**” (Deuteronomy 12:17). **And to that which Rav Sheshet raised as an objection, Rav Yosef legitimately respond to his difficulty.**

But as for Ravina, the question arises: **Rather than raising an objection from this case of a baker, from which proof is cited that Rabbi Meir does not draw a parallel between rabbinic law and Torah law, let him cite support for the assessment of the opinion of Rabbi Meir from the case of a bread merchant [mipalter],**^{LN} as we learned in a mishna (*Demai* 5:4): **One who purchases bread from a merchant^H tithes separately from the bread of each and every mold; this is the statement of Rabbi Meir.** In this case, Rabbi Meir is stringent with regard to *demai*.

Rather, what have you to say in explaining why Ravina did not cite a proof from this mishna? It is because a **merchant purchases his supply from two or three people**. Therefore, Rabbi Meir holds that one must be concerned that perhaps one of the suppliers separated tithes and another did not, so the customer must separate tithes from the bread of each and every mold. But if that is the case, Ravina should not cite a proof from the case of the **baker, as well**; as the baker discussed in the mishna typically **purchases his stock of grain from only one person**. Therefore, in that case there is no concern that perhaps the customer will tithe from the loaves that he is exempt from titling for the loaves that he is obligated to tithe.

Rava said: Shmuel responds well to that which was difficult to Rabbi Elazar, as the category of death in the world is one. Therefore, it is appropriate to cite proof from the case of court-imposed capital punishment to the case of death at the hand of Heaven.

MISHNA These are matters that are not subject to the halakhot of exploitation^H even if the disparity between the value and the payment is one-sixth or greater: **Slaves, and documents, and land,^N and consecrated property.** In addition, if they are stolen, these items are subject **neither to payment of double the principal^H for theft^N nor to payment of four or five times the principal, if the thief slaughtered or sold a stolen sheep or cow, respectively. An unpaid bailee does not take an oath and a paid bailee does not pay if these items were stolen or lost.^H** **Rabbi Shimon says:**

הַעֲבָדִים וְהַשְּׁטוֹת וְהַקְּרָקוּות – Many commentaries questioned the order of these *halakhot*. The *tanna* should have listed land first, as the *halakha* in the other cases is derived from it. Some explained that documents and slaves were mentioned first because there is a novel element in those cases: Although documents and slaves resemble

movable property, they are not subject to the halakhot of exploitation (Ritva; see *Tosefot Yom Tov*).

Although it is by Torah edict that these categories of property are not subject to the halakhot of exploitation, some commentaries suggested reasons for their legal status, e.g., land has no fixed price because it exists forever (see *Sefer HaHinnukh*).

BACKGROUND

Prohibition – נִזְבֵּן: Although there are many prohibitions in the Torah that incur specific punishments, the Gemara's use of this term in this context refers specifically to those prohibitions whose violation does not incur the death penalty or death at the hand of Heaven.

LANGUAGE

Merchant [palter] – פְּלַטָּר: From the Greek πωλητήριον, *polētēr*, meaning seller, or merchant.

HALAKHA

One who purchases bread from a merchant – הַלְּקָחָה הַפְּלַטָּר: One who purchases bread from a bread merchant, even if the loaves were from different molds, may tithe from one mold for all the loaves. The *halakha* is in accordance with the opinion of Rabbi Yehuda in his dispute with Rabbi Meir in the mishna (Rambam *Sefer Zeraim, Hilkhot Ma'aser* 14:6).

Matters that are not subject to exploitation – דְּבָרִים שְׁאֵין לְהָנִי אַוְנָה: Slaves, documents, land, and consecrated property are not subject to the *halakhot* of exploitation. Even if one sold an item worth one thousand dinars for one dinar, or vice versa, there is no exploitation. The Rema, citing the Rosh and the *Tur*, wrote that this is the ruling only if the disparity is up to one-half of its value. If the disparity is greater, even these items are subject to the *halakhot* of exploitation (*Shulhan Arukh, Hoshen Mishpat* 227:29).

These items are subject neither to payment of double the principal – אין לְהָנִי תְּשִׁלְמֵי כְּפָל: One who steals slaves, documents, land, or consecrated property is not liable to pay double the principal (Rambam *Sefer Nezikin, Hilkhot Geneiva* 2:1).

Bailees with regard to land and the like – שְׁמַרְתָּם וְכַלְתָּם בָּהָה: The *halakhot* of bailees stated in the Torah are not in effect with regard to one safeguarding slaves, documents, land, or consecrated property. If these items were damaged in the care of a paid bailee or a borrower, they do not take an oath by Torah law and are not obligated to pay. Some rule that they are exempt even if the damage resulted from negligence, while others rule that they are liable in that case. In all these cases, the bailee takes an oath of inducement and any other relevant oath instituted by the Sages (*Shulhan Arukh, Hoshen Mishpat* 95:2, 301:1).

NOTES

A baker and a bread merchant – נִחְתָּום וְפְלַטָּר: Some maintain, based primarily on tractate *Pe'a* in the Jerusalem Talmud, that the dispute between Rabbi Yehuda and Rabbi Meir with regard to a baker and a bread merchant concerns the reality of the matter. Rabbi Meir holds that a bread merchant sells a large amount, and he acquires his supply of bread from several people. The baker, who sells smaller quantities, buys the grain he uses from a single source. Rabbi Yehuda holds that since a bread merchant has an established business and large quantities of merchandise, he has a steady supplier who bakes for him. A baker, who acquires grain ad hoc based on his needs, acquires it from different people, per availability at the time (see Ritva).

NOTES

Land theft – נִגְבַּת קְרָקָע: Ostensibly, the question arises: How can land be stolen? *Tosafot* on tractate *Bava Kamma* explain that the reference is to one who moved the boundary between his land and another's, to include some of the other's land in his property. Or, one stole an item that was attached to the ground, whose legal status is that of land, e.g., one uprooted a tree.

NOTES

שַׁהוּא חִיב – For which one bears responsibility – בְּאַחֲרִיוֹת: These animals are subject to the halakhot of bailees, as well as the halakhot of double payment and fourfold or fivefold payment (*Tosefot Yom Tov*).

אָף הַמּוֹכֵר סְפָר תּוֹרָה – Even one who sells a Torah scroll – Rabbi Yehuda explains (58b) that a Torah scroll is considered to be of unlimited value. Accordingly, some commentaries explain that he holds there is no exploitation only if the buyer paid more than the market value, but not if the seller was paid less than the market value (Ra'avad). The Meiri holds that where the halakhot of exploitation are applied to a transaction, if one party cannot claim that he was exploited, the other party cannot have a claim of exploitation either.

HALAKHA

כָּל טַלְטָלִין וְאָנוֹנָה – All movable property is subject to the halakhot of exploitation – בְּכָל טַלְטָלִין וְאָנוֹנָה: All movable property is subject to the halakhot of exploitation, including Torah scrolls and precious stones, in accordance with the opinion of Rabbis in the mishna (*Shulhan Arukh, Hoshen Mishpat* 227:15).

קָדְשִׁים שַׁהוּא חִיב בְּאַחֲרִיוֹת – יש לְהָנָן אָנוֹנָה, וְשָׂאַנְיוֹן חִיב בְּאַחֲרִיוֹת – אַיִן לְהָנָן אָנוֹנָה. רַבִּי יְהוּדָה אָמַר: אָף הַמּוֹכֵר סְפָר תּוֹרָה, בְּחֶמֶת, וּמְרֻגְלִית – אַיִן לְהָם אָנוֹנָה. אָמַרְוּ לוֹ: לֹא אָמַרְתָּ אֶת אַלְּוֹן.

With regard to **sacrificial animals for which one bears responsibility**ⁿ to replace them, they are subject to the *halakhot of exploitation*, as this responsibility indicates a certain aspect of ownership. And those for which one does not bear responsibility to replace them, they are not subject to the *halakhot of exploitation*. Rabbi Yehuda says: Even in the case of one who sells a Torah scroll,ⁿ an animal, or a pearl, these items are not subject to the *halakhot of exploitation*, as they have no fixed price. The Rabbis said to him: The early Sages stated that **only these items listed above are not subject to the halakhot of exploitation**.^h

GEMARA

The Gemara asks: **From where are these matters derived?** It is as the Sages taught:

It is written: “And if you sell to your colleague an item that is sold, or acquire from your colleague’s hand, one shall not exploit his brother” (Leviticus 25:14). This is referring to **an item acquired from hand to hand**. Land is excluded, as it is not movable. Slaves are excluded, as they are juxtaposed to land in several sources, and therefore their legal status is like that of land in certain respects. **Documents are excluded, as it is written:** “And if you sell to your colleague an item that is sold,” indicating an item that is itself sold and itself acquired. Documents are excluded, as they are not sold themselves and they are not acquired themselves. They have no intrinsic value, and they exist only for the proof therein.

מִכְאָן אָמַרְתָּ: הַמּוֹכֵר שְׁטוֹרוֹתָיו לְבָשָׂם – שׁ לְהָם אָנוֹנָה. פְּשִׁיטָא לְאַפְוַיִּידָר בְּהָנָא, דְּאָמַר: אַיִן אָנוֹנָה לְפָרוֹתּוֹת. קָא מְשֻׁבָּעַ לְ: יִשְׁ אָנוֹנָה לְפָרוֹתּוֹת. הַקְּדָשָׁות – אָמַר קָרָא: אַחִי – אַחִי. וְלֹא הַקְּדָשָׁ.

From here the Sages said: In the case of one who sells his documents that are no longer in use to a perfumer for use in packaging his wares, **they are subject to the halakhot of exploitation** because he is selling the paper itself. The Gemara asks: Isn’t this obvious? In that case, one sold paper, and it is no different from any other movable property. The Gemara answers: This serves to exclude the opinion of Rav Kahana, who says: **There is no exploitation for cases involving perutot**, as paper is sold for mere *perutot*. The Sages therefore teach us: **There is exploitation for cases involving perutot. Consecrated property is excluded, as the verse states:** “One shall not exploit his brother” (Leviticus 25:14), indicating that these halakhot apply only to transactions involving “his brother,” but not to transactions involving **consecrated property**.

מוֹתְקִיף לְהָ וּבָה בְּרִ מְמָלָ: כֹּל הַיָּכָא דְּכִתְבֵּי יְדוֹ יְדוֹ מְמָשָׁ חָוָא? וְהַתְּנִינָא: אִם הַמְּצָא תְּמִצָּא בְּיְדוֹ – אַיִן לִי אַלְּא יְדוֹ גַּזְוַחְצִירוֹ וְקַרְפִּפוֹ מְפֻנָּן? תְּלִמּוֹד לְפָרוֹ: אִם הַמְּצָא תְּמִצָּא” מְכָל מְקוּם.

Rabba bar Memel objects to this: Is that to say that anywhere that it is written “his hand,” the reference is to his actual hand,ⁿ and not merely to his possession, in its metaphorical sense? If that is so, that which is written: “And taken all his land from his hand” (Numbers 21:26), would you also explain here that he was holding all his land in his hand? Rather, clearly, “from his hand” means from his possession. Here too, “from your colleague’s hand” in the case of exploitation means from his possession.

כֹּל הַיָּכָא דְּכִתְבֵּי יְדוֹ לְאַו יְדוֹ מְמָשָׁ חָוָא? וְהַתְּנִינָא: אִם הַמְּצָא תְּמִצָּא בְּיְדוֹ – אַיִן לִי אַלְּא יְדוֹ גַּזְוַחְצִירוֹ וְקַרְפִּפוֹ מְפֻנָּן? תְּלִמּוֹד לְפָרוֹ: אִם הַמְּצָא תְּמִצָּא” מְכָל מְקוּם.

The Gemara asks: Is that to say that anywhere that it is written “his hand” the reference is not to his actual hand? But isn’t it taught in a *baraita*: “If the theft is found in his hand” (Exodus 22:3): I have derived from here only his hand; from where do I derive that the *halakha* is the same if the stolen item is found on his roof, in his courtyard, or in his enclosure? The verse states: “If the theft is found [himmatze timmatze]”; the use of the double verb teaches that the *halakha* applies in any case where the stolen item is in his possession.

NOTES

His hand, the reference is to his actual hand – יְדוֹ יְדוֹ מְפֻשָּׁת: It is undisputable that in most cases where the word hand is used in a verse, the reference is to an actual hand. The dispute here pertains to cases where “hand” can be understood both literally and figuratively, in the sense of possession: Which is the binding interpretation? The Gemara proves that even in those

verses where “hand” can be interpreted as referring to possession, e.g., theft and a bill of divorce, a special derivation is required to exclude the literal understanding of “hand.” Therefore, in the absence of incontrovertible evidence based on context, “hand” is interpreted literally (*Torat Hayyim*).

טעמָא דכתב רחמנא "אם המציא תמציא", הֲא לא כי – הוה אמינו: כל היכא דכתב ידו – ידו מפוש הווא. ותו, פניא: "ונתן בדיה" – אין לי אלא ידה, גהה צערה וקורפה מהני? תלמוד לומן: "ונתן מכל מקום. טעמא דכתב רחמנא" – היכא דכתב ידו – ידו מפוש.

אליא: כל ידו – ידו מפוש הווא, ושאי הותם דליך למינו דכי, אליא ברשותו.

בשי רבבי זира: שכירות יש לו אונאה או אין לו אונאה? ממכר אמר רחמנא – אבל לא שכירות, או דלמא לא שנאי? אמר ליה אבוי: מי בתייב "מכר לעלים"? מכיר סתמא בריב, והאי נמי ביומה מכירה היא.

בשי רבא: חטין וווען בקרקע, מהו? יש להם אונאה או אין להם אונאה? כמאן דשידין בקדא דמיין – יש להם אונאה, או דלמא בטליינו על גב ארעה?

היכי דמיין? אילימא דאמר איהו: שדי בא בה שיטתא, ואתו קהדי אמרו דלא שדי בא אליא חמזה – והאמור ובא: כל דבר שבמדה ושבמשקל ושבמנין – אפילו פחותות מבדי אונאה, חוץ.

אליא דאמר איהו: שדי בא בה כראבעי לה, ואיגלאי מילתא דלא שדי בא כראבעי לה, יש להם אונאה או אין להם אונאה? כמאן דשדי בקדא דמיין – יש להם אונאה, או דלמא בטליינו? אגב ארעה?

The Gemara infers: The halakha applies if the stolen item is found in his possession, and this includes any place in his possession. The reason is that the Merciful One writes: "If the theft is found [himmatze timmatze]." If that were not so, I would say that wherever He writes "his hand," the reference is to his actual hand. And furthermore, it is taught in a baraita that it is written with regard to a bill of divorce: "And place it in her hand" (Deuteronomy 24:1). I have derived only her hand; from where do I derive that the halakha is the same if he places the bill of divorce on her roof, in her courtyard, or in her enclosure? The verse states: And place, in any case that he places it in her possession. Here too, the Gemara infers: The reason that any place in her possession is included is that the Merciful One writes "and place." If that were not so, I would say that wherever He writes "his hand," the reference is to his actual hand.

Rather, the Gemara rejects Rabba bar Memel's objection and concludes: Every mention of the term "his hand" in the Torah is a reference to his actual hand. And it is different there, in the verse: "And taken all his land from his hand" (Numbers 21:26), where it cannot be said that the reference is to his actual hand. Rather, it means there: In his possession.

SRabbi Zeira raises a dilemma with regard to rental: Is it subject to the halakhot of exploitation,^{NH} or is it not subject to the halakhot of exploitation? The Gemara elaborates: Is it an item that is sold about which the Merciful One speaks, but not a rental; or perhaps there is no difference? Abaye said to him: Is it written: And if you sell an item that is sold forever? What is written is simply: "And if you sell an item that is sold," and indeed for its day the rental is considered a sale. The legal status of a rental is that of a sale for a limited period. Consequently, it is subject to the halakhot of exploitation.

Rava raises a dilemma: In a case involving wheat kernels, and one sowed them in the ground,^N what is the halakha? Are they subject to the halakhot of exploitation,^H or are they not subject to the halakhot of exploitation? The Gemara elaborates: Is their legal status like that of kernels cast into a jug, and they are subject to the halakhot of exploitation, as they remain movable property? Or, perhaps he subordinated them to the ground, and like land they are not subject to the halakhot of exploitation.

The Gemara asks: What are the circumstances? If we say that the hired laborer said: I sowed six kav of grain in the field, and witnesses came and said that he sowed only five kav in it, but doesn't Rava himself say: With regard to any item that is otherwise subject to the halakhot of exploitation, and it is sold by measure,^N or by weight, or by number, even if the disparity was less than the measure of exploitation in the transaction, the transaction is reversed.^H A disparity of one-sixth between the value of an item and its price constitutes exploitation only in cases where there is room for error in assessing the value of an item. In a case where the sale item is easily quantifiable, any deviation from the designated quantity results in a nullification of the transaction, even if the wheat kernels are subordinate to the ground.

Rather, it is a case where the hired laborer said: I cast kernels in the field as required, without quantifying the measure of the kernels that he cast, and it was discovered that he did not cast kernels in the field as required. Are they subject to the halakhot of exploitation or are they not subject to the halakhot of exploitation? Is the legal status of these kernels like that of kernels cast into a jug, and they are subject to the halakhot of exploitation? Or, perhaps the laborer subordinated them to the ground?

NOTES

שכירות – השם, it is subject to the halakhot of exploitation – **יש לו אונאה**: According to one interpretation, the reference here is to rental of land, and the dilemma is whether the same halakhot apply to rental and to sale. Most commentaries hold that rental of land is not subject to the halakhot of exploitation, and the dilemma here relates to the rental of movable property (see Ritva).

חיטם – השם, Wheat kernels and one sowed them in the ground – **חווען בעקען**: The commentaries discuss the particulars of this case. Some maintain that the question is: If a laborer hired to sow the land with the appropriate measure of wheat sowed less, does this constitute exploitation (Rambam; Ra'avad)? Others explain that the issue is: If one overcharged or undercharged when selling wheat still sown in the ground, is this case subject to the halakhot of exploitation? According to the latter understanding, a minor emendation of the language of the Gemara is necessary (Rabbeinu Hananel; Rashba; Ritva).

דבר שביבדה וכו' – השם, An item that is sold by measure, etc. – **רashi on Menahot** explains: Since one is particular about the specific measure in this case, he certainly does not waive any disparity, even if it is less than the measure of exploitation.

HALAKHA

שכירות – השם, Rental, is it subject to the halakhot of exploitation – **יש לו אונאה**: Rental of vessels and animals is subject to the halakhot of exploitation, as the legal status of rental is like that of a sale for the duration of the rental period. Therefore, one who hires a laborer to perform a task for him cannot claim exploitation, as the legal status of hiring is like that of a sale. Accordingly, the hiring of a laborer is akin to the temporary purchase of a slave, and slaves are not subject to the halakhot of exploitation. The same halakha applies to the rental of land and any items attached to land (Shulhan Arukh, Hoshen Mishpat 227:32, 33, 35).

חיטם וווען...יש לו אונאה: Wheat kernels and one sowed them...are they subject to the halakhot of exploitation – **טהון וווען...יש לו אונאה בזונה ובבנין**: If one rented land for sowing, and he claimed that he sowed it in the appropriate manner, and witnesses testified that he did not do so, there is uncertainty whether or not this constitutes exploitation. Therefore, the renter is not obligated to pay, but he is obligated by rabbinic law to take an oath of inducement (Shulhan Arukh, Hoshen Mishpat 227:34).

exploitation with regard to items sold by measure and number – **נא: אם אונאה בזונה ובבנין**: If one sells an item by measure, weight, or number, and it turns out that the measure, weight, or number of the item did not correspond to what was stated, even the smallest disparity must be returned, regardless of how long it takes for the error to be discovered. If the disparity between price and value cannot be returned, e.g., unmeasured land, the transaction is nullified (Shulhan Arukh, Hoshen Mishpat 232:1 and Sma there).

נִשְׁבַּעַנְהוּ עַלְיָהֶنֶּן, אָו אֵין נִשְׁבַּעַנְהוּ עַלְיָהֶן?
כְּמַאֲן דְּשִׁזְׁיָן בְּקֹדֶם דְּקִינְיָן וְנִשְׁבַּעַנְהוּ
עַלְיָהֶן, אָו דְּלָמָא בְּטַלְיָהֶנוּ אֲגַב
אֲרֻעָא וְאֵין נִשְׁבַּעַנְהוּ עַלְיָהֶן?

עוֹמֵר מִתְיָרֶן, אָו אֵין עוֹמֵר מִתְיָרֶן?
הַיְכִי דְמַי? אֵי דְאַשְׁרוֹש – תְּנִינָא,
אֵי דְלָא אַשְׁרוֹש – תְּנִינָא. דָרְנָן: אֲם
הַשְׁרִיּוֹת קֹדֶם לְעוֹמֵר – עוֹמֵר מִתְיָרֶן,
וְאֲם לָאו – אַסְרוֹן עַד שִׁבְּאָ עַוְמָא.

לֹא צְרִיכָא, דְחַצְדִּינָהוּ וְנַעֲשֵׂנָהוּ
קוֹדֶם לְעוֹמֵר, וְאַתָּא לְיהָעוֹמֵר וְתַלְיָף
עַלְיָהֶה, וְלֹא אַשְׁרוֹש קוֹדֶם לְעוֹמֵר.

Rava raises an additional dilemma: If the laborer admitted to part of the claim, does he take an oath with regard to the kernels or does he not take an oath with regard to the kernels? Is their legal status like that of kernels cast into a jug, and one takes an oath with regard to them?^N Or, perhaps he subordinated them to the ground, and one does not take an oath with regard to them, as the halakha is that one does not take an oath about a claim involving land.

Rava raises an additional dilemma: Does the sacrifice of the *omer offering*^B permit one to eat the produce grown from these kernels, or does the sacrifice of the *omer offering* not permit one to eat the produce? The Gemara asks: What are the circumstances? If it is a case where the kernels took root, we already learned that *halakha*. If it is a case where the kernels did not yet take root, we already learned that *halakha* also. As we learned in a mishna (*Menaḥot* 70a): If crops took root before the sacrifice of the *omer offering*, the *omer offering* renders it permitted to eat them. And if not, if they took root only after the sacrifice of the *omer offering*, it is prohibited to eat them until the time for the sacrifice of the next *omer offering* will arrive.^H

No, Rava's dilemma is not superfluous, as it is necessary to raise it in a case where one reaped grain and sowed its kernels prior to the time of the *omer offering*, and the time of the *omer offering* arrived and passed while they were in the ground, and the kernels did not take root before the sacrifice of the *omer offering*.

NOTES

One takes an oath with regard to them – נִשְׁבַּעַנְהוּ עַלְיָהֶן: The commentaries dispute the circumstances of the case discussed here. Rashi explains that one claimed that he hired a worker to sow six measures of kernels, and that the laborer sowed only five; whereupon the laborer claimed that he sowed five and a half. Some hold that this is a case where one sold the field and the wheat kernels sown therein. The seller had claimed that it contained the appropriate measure

of wheat, then admitted that there was less than the appropriate measure of wheat, although he claims that the disparity is not as great as claimed by the buyer (*Ra'avad*). According to the Rosh, one witness testified that he did not sow the appropriate measure of wheat, and, as in cases involving movable property, one is liable to take an oath based on the testimony of one witness.

BACKGROUND

Omer offering – שְׁוֹמֵר: Technically, an *omer* is a measure of grain, one-tenth of an ephah. Often, the term is used to refer to the measure of barley sacrificed in the Temple on the sixteenth of Nisan, the second day of Passover, whether it occurred on Shabbat or during the week. The *omer meal-offering* was brought from newly ripened barley that was toasted and ground into flour. The barley was harvested at the conclusion of the first festival day of Passover at night. A handful of the flour was burned on the altar and the rest of the meal-offering was eaten by the priests. In addition to the *omer meal-offering*, a male sheep was sacrificed as a burnt-

offering, accompanied by a libation of wine and two-tenths of an ephah of wheat flour as a meal-offering. Once the *omer* was offered, grain from the new harvest was permitted for consumption by individuals. Grain from the new harvest was permitted for use in meal-offerings in the Temple after the meal-offering of the two loaves was brought on *Shavuot*.

The Torah commands that forty-nine days be counted from the bringing of the *omer* to the bringing of the two loaves on *Shavuot*. This period is known as the period of the counting of the *omer*.

HALAKHA

Which produce does sacrifice of the *omer offering* render permitted – מִתְיָרֶן?: Any grain that did not take root before the sixteenth of Nisan is prohibited until the sacrifice of the *omer offering* the following year. If it took root before the sixteenth of Nisan, the *omer offering* renders that

grain permitted, even if it was reaped after the sacrifice of the *omer offering*. Some maintain that for these purposes, it takes three days for grain to take root (*Terumat HaDesheh*). Others hold that it takes two weeks (*Shulhan Arukh, Yoreh De'a* 293 and *Shakh* there).

Perek IV

Daf 57 Amud a

מהו למשקוט ומיכל מיניהו? במאן
דשדיין בכדרא דמי – ושרינוו עומר,
או דלאמן: בטלנוו אגב ארעא? תיקון.

אמר רבא אמר רב חסא בעי רביامي:
אונאה אין להם, ביטול מוקח יש להם
או אין להן? אמר רב נחמן, הדר אמר
רב חסא פשיט רביامي: אונאה אין
להם, ביטול מוקח יש להם. רבי יונה
אמר: אלה קדשות, ותרויהו ממשימה דרב יוחנן
אמרו: אונאה – אין להם, ביטול מוקח
יש להן.

מאן דאמר אלה קדשות – כל שכן
אקרקעות; מאן דאמר אקרקעות –
אבל אלה קדשות לא, בדשוואל. דאמר
שמעואל: הקדש שיה מנה שחיללו על
שה פרוטה – מחולל.

תנן חותם: אם היה קודש בעל מום
יעצא לחולין, ואיך לעשות לו דמים.
אמר רבי יוחנן: יצא לחולין – דבר תורה.
ואיך לעשות לו דמים – מדבריהם.
ויריש לקיש אמר: אף אריך לעשות לו
דמים מן התורה.

This is Rava's dilemma: What is the halakha? Is it permitted for one to take some of the kernels and eat from them? Is their legal status like that of kernels cast into a jug, and the sacrifice of the omer offering rendered their consumption permitted? Or perhaps he subordinated them to the ground,ⁿ and their legal status is that of seeds that did not take root, and they are therefore forbidden. The Gemara concludes: The dilemmas shall stand unresolved.

§ Rava said that Rav Hesa said that Rabbi Ami raises a dilemma with regard to those matters that are not subject to the halakhot of exploitation: Is the halakha that they are not subject to exploitation where the disparity in the price is one-sixth, but they are subject to nullification of the transactionⁿ when it is greater than that? Or, perhaps they are not subject to nullification of the transaction either. Rav Nahman said: Rav Hesa then said that Rabbi Ami resolved this dilemma and said: They are not subject to exploitation; they are subject to nullification of the transaction. Rabbi Yona said: This ruling applies to consecrated property. Rabbi Yirmeya said: It applies to land.^h And both of them said it in the name of Rabbi Yohanan: They are not subject to exploitation; they are subject to nullification of the transaction.

The Gemara comments: The one who states that this ruling applies to consecrated property, all the more so does it apply to land. The one who states that this ruling applies to land states it only with regard to land, but it does not apply to consecrated property, in accordance with the opinion of Shmuel, as Shmuel says: Consecrated property worth one hundred dinars that one desacralized upon a coin worth one peruta,^h is desacralized. Since consecrated property is not subject to the halakhot of exploitation at all, it is desacralized upon coins worth any sum.

We learned in a mishna there (Temura 26b): If the consecrated animal was blemished and another was substituted for it, the blemished animal leaves its consecrated state and assumes non-sacred status,^h and one is required to calculate the difference in monetary value between the two animals and pay it to the Temple treasury. Rabbi Yohanan says: It leaves its consecrated state and assumes non-sacred status by Torah law, and one is required to calculate the difference in monetary value and pay it to the Temple treasury by rabbinic law. And Reish Lakish says: Even the halakha that one is required to calculate the difference in monetary value and pay it to the Temple treasury is by Torah law.ⁿ

NOTES

בטל נינה או גוב – ארבא ענין: There are those who draw a parallel between this and the halakhot of Shabbat, and conclude the following: If one collects seeds that were sown in the ground, there is uncertainty whether he performed the prohibited labor of reaping or not (*Nishmat Adam*). The authorities reject the comparison and rule that this is a matter involving nothing more than a question of muktze.

Nullification of the transaction – בטול מוקח: According to Rashi, nullification of the transaction in the cases of matters not subject to the halakhot of exploitation is no different from the other cases cited in the Gemara, when the disparity between the market value and price paid is more than one-sixth. Rabbeinu Hananel cites proof from several sources that there is nullification of the transaction in these cases only if the disparity is extreme, i.e., half the value of the item in question. Others claim, based on the Jerusalem Talmud, that in these cases, the transaction is nullified if the disparity is one-third (see *Milhamot Hashem*).

One is required to calculate the difference in monetary value by Torah law – שרייך לעשות לו דמים מן התורה: According to this opinion, when the mishna states that the blemished animal is desacralized, it does not mean that this occurs immediately. Rather, the *tanna* is asserting that it becomes desacralized. The Ramban explains that even according to Reish Lakish, although there is a requirement to pay the total value of the animal by Torah law, it is desacralized immediately. The nullification of the transaction of a layman is void; by contrast, in this case it is clear that the Temple treasury will ultimately receive payment in full.

HALAKHA

בטול מוקח בקרכעות: Transactions involving items that are not subject to the halakhot of exploitation take effect even if an item worth one thousand dinars was sold for one dinar, or an item worth one dinar was sold for one thousand dinars. The Rema, citing the Rosh, the Tur, and *ge'onim*, rules that in transactions for these items, if the disparity is greater than half the value of the item the transaction is nullified (*Shulhan Arukh, Hoshen Mishpat* 227:29).

Consecrated property...that one desacralized upon a coin worth one peruta – **קדש שוללן על ששה פרוטה:** One who desacralizes consecrated property must do so at its value *ab initio*. If one desacralized it at less than its value, even if he redeemed consecrated property worth one hundred dinars for one peruta,

the property is desacralized. The Sages instituted that consecrated property must be assessed, and one who desacralized it at less than its value must pay the difference to the Temple treasury (Rambam *Sefer Hafla'a, Hilkhot Arakhin VaHaramim* 7:8).

הנימוקים: If one owned a blemished consecrated animal, placed it alongside a non-sacred animal, put his hand on the non-sacred animal, and said: This animal is in place of that one, the sanctity of the consecrated animal is transferred to the other animal, and the consecrated animal is desacralized. If the non-sacred animal was worth less than the consecrated animal, the Sages required him to pay the difference (Rambam *Sefer Korbanot, Hilkhot Temura* 2:1, 2).

BACKGROUND

בַּמְאֵי קָמִיפְלִי – With regard to what do they disagree? When the practical difference between two conflicting points of view is clear, but the theoretical basis of the dispute is not, the Gemara may use this expression to inquire into the theoretical issue underlying the dispute.

Ab initio – *לְכֹתֶל הַלְּבָד*: This term literally means: From the outset. It is used to describe the legitimacy of a particular action. The vantage point is before the action is performed, when the most ideal outcome is still possible.

בַּמְאֵי עֲסָקִינִין? אַלְילִמָּא בְּכִי אָוֹנָה –
בְּהָא לְמָא רִישׁ לְקִישׁ צָרִין לְשָׁוֹתָה לוֹ
דָּמִים דָּבָר תּוֹרָה? וְהַתְּנוּן: אַלְוּ דְּבָרִים
שָׁאוֹן לְהָם אָוֹנָה: הַקְּרֻקְעֹות וְהַעֲבָרִים
וְהַשְּׁטוּתָה וְהַחֲקָרָה שׂוֹתָה!

אַלְאָ בִּיטּוֹל מַקָּח – בְּהָא לִמְאָ רַבִּי
יְהוֹנָן צָרִיךְ לְעֹשֹׂת לוֹ דָּמִים מִדְבָּרִיכָם?
וְהַאֲמָרָ רַבִּי יְהוָן אַחֲרָכָרוֹת, וְרַבִּי יוֹחָנָן
אָמָר אַקְרָקָעֹות, וְתַרְיוֹיָה מִשְׁמִיחָה וְרַבִּי
יְרִמְיאָה אָמָרָ אָוֹנָה אַיִן לְהָם, בִּיטּוֹל
מַקָּח יְשִׁילְשָׁלָן לְהָם! לְעוֹלָם בִּבְיטּוֹל מַקָּח,
אַיִפְוךְּ דָּרְבִּי יוֹחָן לְרִישׁ לְקִישׁ וְרַבִּישׁ
לְקִישׁ לְרַבִּי יוֹחָן.

בַּמְאֵי קָמִיפְלִי – בְּדִשְׁמוֹאָל, דָּאָמָר
שְׁמוֹאָל: הַקְּדָשׁ שָׂוָה מִנָּה שְׁחִילָלוּ עַל
שָׂוָה פְּרוּתָה – מְחוּלָל. מָרוּ אֵיתָ לְהָ
דִּשְׁמוֹאָל, וּמָרוּ לִיתָ לְיהָ דִּשְׁמוֹאָל.

אִיבְּשָׁתָה אִיכָּא: דְּכִילִי עַלְמָא אֵיתָ לְהָ
דִּשְׁמוֹאָל, הַכָּא בְּהָא קָמִיפְלִי, מָרוּ סְבָרָ:
שְׁחִילָלוּ – אַיִן, *לְכֹתֶל הַלְּבָד* – לֹא, וּמָרוּ
כָּבֵר: אַפְּיָלוּ לְכֹתֶל הַלְּבָד.

אִיבְּשָׁתָה אִיכָּא: לְעוֹלָם בְּכִי אָוֹנָה,
לֹא תִּפְעַק. וּבְרוּב חִסְדָּא קָמִיפְלִי,
דָּאָמָר: מָאִין לְהָם אָוֹנָה – אִין
בְּתוֹרָת אָוֹנָה,

The Gemara asks: **With what are we dealing?** If we say that the difference between the value of the substitute animal and the value of the consecrated animal was the measure of exploitation, does Reish Lakish say in that case: He is required to calculate the difference in monetary value and pay it to the Temple treasury by Torah law? But didn't we learn in the mishna: These are matters that are not subject to the halakhot of exploitation: Land, slaves, documents, and consecrated property?

Rather, the difference was the measure of nullification of the transaction. In that case, would Rabbi Yoḥanan say: He is required to calculate the difference in monetary value and pay it to the Temple treasury by rabbinic law? But didn't Rabbi Yona say that this ruling applies to consecrated property, and didn't Rabbi Yirmeya say it applies to land, and both of them say in the name of Rabbi Yoḥanan: They are not subject to exploitation; they are subject to nullification of the transaction? The Gemara answers: Actually, the difference was the measure of nullification of the transaction. And reverse attribution of the opinions, so that the opinion of Rabbi Yoḥanan will be attributed to Reish Lakish, and the opinion of Reish Lakish will be attributed to Rabbi Yoḥanan.

The Gemara asks: **With regard to what do Reish Lakish and Rabbi Yoḥanan disagree?**⁸ They disagree with regard to the halakha of Shmuel, as Shmuel says: Consecrated property worth one hundred dinars that one desacralized upon a coin worth one peruta^N is desacralized. One Sage, Reish Lakish, accepts the opinion of Shmuel, and therefore the consecrated article is desacralized by Torah law and the requirement to calculate and pay the difference is by rabbinic law. And one Sage, Rabbi Yoḥanan, does not accept the opinion of Shmuel, and he therefore holds that the requirement to calculate and pay the difference is by Torah law.

If you wish, say instead that everyone accepts the opinion of Shmuel, and here they disagree about this: One Sage, Rabbi Yoḥanan, holds that yes, consecrated property worth one hundred dinars that one desacralized upon a coin worth one peruta is desacralized after the fact, but *ab initio*,^{NB} no, one may not do so. Therefore, one must nevertheless pay the difference to the Temple treasury by Torah law. And one Sage, Reish Lakish, holds that the opinion of Shmuel applies even *ab initio*. Therefore, the requirement to pay the difference to the Temple treasury is by rabbinic law.

If you wish, say instead: Actually, the difference between the actual value of the animal and the amount used to desacralize it was within the measure of exploitation, and do not reverse attribution of the opinions of Reish Lakish and Rabbi Yoḥanan. And they disagree with regard to the opinion of Rav Hisda, who said: What is the meaning of: They are not subject to the halakhot of exploitation? It means that they are not subject to the principle of exploitation^N at all. Rather, a more stringent standard applies,

NOTES

Consecrated property worth one hundred dinars that one desacralized upon a coin worth one peruta – **הַקְּדָשׁ שָׂוָה כְּנָה**: The Rid draws a parallel to the halakha of misuse of consecrated property, where at the moment that one misuses even a minimal portion of the consecrated item, the entire item is desacralized. Tosafot reject this understanding.

Desacralization of consecrated property *ab initio* – **לְכֹתֶל הַלְּבָד**: The commentaries ask: With regard to desacralization of consecrated property, there are several halakhot to ensure that the Temple treasury receives the full value of the item being desacralized; how, then, can it be permitted *ab*

initio for someone to desacralize an item worth one hundred dinars upon one peruta? Some sought to distinguish between consecrated movable property and consecrated land (see Tosafot). Others distinguish between consecrated property sold or desacralized by the Temple treasurer, who ensures that the sum will reflect the value of the item, and consecrated property that one desacralizes himself. Others distinguish between a case where one intends to redeem the item for its value, in which case he must have it assessed properly, and a case where one's initial intention was to desacralize the property for less than its value, in which case the desacralization is effective (Rashba; Ran; Ritva).

They are not subject to the principle of exploitation – **אֵין בְּתוֹרָת אָוֹנָה**: There are several explanations for Rav Hisda's opinion, that in cases of consecrated property, there is no minimum measure needed to constitute exploitation. Some explain that since the Torah explicitly insists that consecrated property must be assessed, no disparity is waived (Ra'avad). Others distinguish between transactions between laymen, where it can be said that one waives a disparity of less than one-sixth, and transactions involving consecrated property, for which there is no one to waive that disparity and any disparity constitutes exploitation (Rosh).

Perek IV

Daf 57 Amud b

רַא פִּילוֹ פְּחוֹת מִכִּדֵּי אָוְנָה חֹזֶר.

**מִתְּחִיבִי רַבִּית וְאָוְנָה לְהַדִּוּת, וְאַיִן רַבִּית
וְאָוְנָה לְהַקְרֵשׁ? מַיְ אַלְמָא מִפְתִּינִיתִי,
דִּיאָוְקִינְמָא בְּתוֹתָה אָוְנָה? הַכִּי נִמְיָ –
רַבִּית וְדִין אָוְנָה לְהַדִּוּת, וְאַיִן רַבִּית וְדִין
אָוְנָה לְהַקְרֵשׁ.**

**אֵי הַכִּי, הַיִּנוּ דְּקַתְּנִי סִיפָּא: זֶה חֹמֶר
בְּהַדִּוּת מִבְּהַקְדֵּשׁ? אֲוֹבִית. לִתְעַנְּנִי נִמְיָ
זֶה חֹמֶר בְּהַקְדֵּשׁ מִבְּהַדִּוּת אָאוְנָה!**

**הַכִּי הַשְׁתָּא! בְּשָׁלְמָא זֶה חֹמֶר בְּהַדִּוּת
מִבְּהַקְדֵּשׁ – וְנוּ לָא. אֶלָּא הַקְרֵשׁ, זֶה
חֹמֶר וְתוּ לָא?**

**רַבִּית דְּהַקְרֵשׁ הַכִּי דְּמַיִּ? אִילִימָא
דָּאוֹפִיה גָּוְרָבָה בְּמַאֲהָה וּשְׁרִים –
הַלְּאָ מִלְּגָזְבָּר, וְכִינְ שְׁמַעַל הַגָּזְבָּר
צָאוּ מְעוֹתָיו לְחַולִין וְהַוּ לְהַדִּוּת!**

**אָמַר רַב הַוְשִׁיעָא: הַכָּא בְּמַאי עַסְקִין –
בְּגֹזְן שְׁקִיבֵל עַלְיוֹ לְסִפְקָתְלָתָה מִאָרֶבֶע
וְעַמְדוּ מִשְׁלָשׁ. בְּדָתְנִיא: דְּמַקְבֵּל עַלְיוֹ
לְסִפְקָתְלָתָה מִאָרֶבֶע וְעַמְדוּ מִשְׁלָשׁ –
לְסִפְקָתְלָתָה מִאָרֶבֶע, מִשְׁלָשׁ וְעַמְדוּ מִאָרֶבֶע –
לְסִפְקָתְלָתָה מִאָרֶבֶע, שִׁיד הַקְדֵשׁ עַל הַעֲלִיּוֹת.**

in that even if the difference in price is less than the measure of exploitation, the exploited party may renege on the transaction. Rabbi Yoḥanan does not accept the opinion of Rav Hisda and Reish Lakish does.

The Gemara raises an objection to Rav Hisda's opinion from a *baraita*: Dealings with a layman are subject to the *halakhot* of interest and exploitation, but dealings with consecrated property are not subject to the *halakhot* of interest and exploitation. The Gemara answers: Is the objection from the *baraita* stronger than that from the *mishna*, which was defused when we established it to be referring to the principle of exploitation, i.e., that the principle that up to one-sixth is not considered exploitation does not apply to consecrated property? So too the *baraita* should be understood: The *halakhot* of interest and the principle of exploitation apply to dealings with a layman, but the *halakhot* of interest and the principle of exploitation do not apply to dealings involving consecrated property.

The Gemara raises a difficulty: If so, is that consistent with that which is taught in the latter clause of that *baraita*: This is the stringency with regard to the layman, in contrast to the *halakha* with regard to consecrated property?^N According to this explanation, the *halakha* with regard to consecrated property is more stringent than the *halakha* with regard to a layman. The Gemara answers: This stringency is only in the case of interest, as it is permitted to collect interest from consecrated property. The Gemara asks: If so, let the *tanna* also teach: This is the stringency with regard to consecrated property, in contrast to the *halakha* with regard to the layman in the case of exploitation.

The Gemara rejects this question: How can these cases be compared? Granted, the *mishna* states: This is the stringency with regard to the layman, in contrast to the *halakha* with regard to consecrated property, and nothing further, i.e., there are no other cases where the *halakha* is more stringent for the layman than it is for consecrated property. But with regard to consecrated property, can one say: This is the stringency, and nothing further,^N there are no other stringencies? There are many *halakhot* in which consecrated property is treated more stringently than non-sacred property.

S The Gemara asks: What are the circumstances of interest in cases of consecrated property?^N If we say that the Temple treasurer lent one hundred consecrated dinars in exchange for repayment of one hundred and twenty dinars, didn't the treasurer thereby misuse consecrated property? And once the treasurer misused the money by giving it to a layman, his money immediately leaves its consecrated state and assumes non-sacred status. And it is then money of a layman, and the *halakhot* of interest apply to it.

Rav Hoshaya said: With what are we dealing here? We are dealing with a case where one accepts upon himself to supply^N fine flour^H to the Temple at the price of four *se'a* for a *selā*, and the market price rose and stood at three *se'a* for a *selā*, as it is taught in a *baraita*: In the case of one who accepts upon himself to supply fine flour at four *se'a* for a *selā*, and their market price stood at three *se'a* for a *selā*, he is required to fulfill his commitment and supply fine flour at four *se'a* for a *selā*. If one committed to supply fine flour at three *se'a* for a *selā*, and their market price decreased until it stood at four *se'a* for a *selā*, he must supply fine flour at four *se'a* for a *selā*. This is a form of interest, as the result is that the Temple treasury is at an advantage. Although an arrangement of that kind is prohibited in transactions involving laymen, in dealings of the Temple treasury it is permitted.

NOTES

The stringency with regard to the layman in contrast to the *halakha* with regard to consecrated property – **זָהָר בְּהַדִּוּת מִבְּהַקְדֵּשׁ:** Some commentaries explain slightly differently: Typically, any item prohibited to laymen, e.g., an animal that is a *terefa*, is prohibited to consecrated property, even if the *halakha* is irrelevant to consecrated property. Interest, however, is a prohibition that applies to laymen but not to consecrated property (*Shita Mekubbetz*).

And nothing further – **אַתָּה נִמְיָ:** The commentaries ask: Are there indeed no other *halakhot*, most of which are listed here, where there is a stringency with regard to laymen greater than the stringency with regard to consecrated property? Some commentaries delete the phrase: And there are no more, as it is imprecise. Others suggest that the Gemara is referring only to *halakhot* pertaining to cases that frequently occur; cases of double or payment of four and five times the principal were assessed infrequently. The Gemara means that there are no more frequently occurring cases in which there is a stringency (Rosh).

Interest in cases of consecrated property – **רַבִּית דְּהַקְדֵּשׁ:** The reason the Gemara did not suggest the opposite case, that of a layman lending money to the Temple treasury with interest, is that the Temple treasurer does not have the authority to enter into such an arrangement (Rivash).

One accepts upon himself to supply, etc. – **קִיבְּלָל עַלְיוֹ לְסִפְקָתְלָתָה בְּלַבְּקָפָק וּכְ:** The early commentaries already noted that charging a higher price in this manner is prohibited only by Torah law. They explain that when the *baraita* rules that consecrated property is not subject to the *halakhot* of interest, it does not refer specifically to interest by Torah law. Interest by Torah law involving consecrated property is possible in the following case: One pledged to pay a certain sum to the Temple treasury, and when the treasurer came to collect the pledge, the donor requested an extension in exchange for giving a larger donation (Ramban; Rashba).

HALAKHA

Where one accepts upon himself to supply fine flour – **שְׁקִיבֵל עַלְיוֹ לְסִפְקָתְלָתָה:** To ease the burden of those obligated to bring bird-offerings or libations, the Temple treasury would enter the following arrangement: They would contract with someone to provide the birds and libations at a fixed price, which would be set every thirty days. They would then sell the birds or libations to those who needed them. In the event that the market value of the birds or libations would depreciate during the thirty days, the supplier would provide them at the lower price. In the event that the market value would rise, the supplier would supply them at the agreed-upon price. The profit that accrues to the Temple treasury from the depreciation in prices is known as the surplus of the libations, which is used for the purchase of public burnt-offerings sacrificed when there are no private offerings being sacrificed.

According to the Ra'avad, this *halakha* does not refer an arrangement with the Temple treasury. Rather, the reference is to a private individual who assumed responsibility to supply birds or libations for use in the Temple service (Rambam *Sefer Avoda, Hilkhot Kelei HaMikdash* 7:9, 13).

NOTES

One builds with non-sacred materials – בָּנֵן בְּחֹל: The reason for this halakha is simply to prevent laborers from unwittingly misusing consecrated property, as in the course of their labor they might inadvertently use the materials for their own purposes. Tosafot (*Me'ilah* 14a) add: In order that the money paid to the workers be desacralized, there needs to be a physical item that becomes consecrated in exchange for that money. Therefore, it was necessary that the building materials remain non-sacred until the time the workers were paid.

HALAKHA

One builds with non-sacred materials and one consecrates those materials thereafter – בָּנֵן בְּחֹל וְאַחֲרֵי: בְּנֵן מִקְדִּשִׁים: One does not build in the Temple with consecrated wood and stones. Rather, one builds with non-sacred materials and consecrates the building thereafter to prevent laborers from unwittingly misusing consecrated property in the course of their labor (Rambam *Sefer Avoda, Hilkhot Me'ilah* 8:4).

BACKGROUND

Generalization and a detail and a generalization – כלְלָה פְּנַט וּכְלָל: This method of derivation employs the following logic: If the Torah had intended to include all matters in a particular halakha it would have been enough to write the first generalization. If it had intended to exclude all matters except for the details mentioned, it could have written merely the details after the generalization. Since it added a further generalization after the details, it intended to add other matters that are comparable in their characteristics to those mentioned in the Torah. This system of exegesis is associated with the school of Rabbi Yishmael.

רב פָּפָא אָמָר: הַכָּא בְּאַבְנֵי בְּנֵין הַמְּסֻרוֹת לְאֹבֶר עַסְקִין, כַּדְשָׁמוֹאֵל דָּאָמָר שְׁמוֹאֵל בָּנֵן בְּחֹל, וְאַחֲרֵי מִקְדִּשִׁין.

Rav Pappa said that there is a less complicated case of interest involving consecrated property: Here we are dealing with building stones that are entrusted to the Temple treasurer, in accordance with the opinion of Shmuel, as Shmuel says: One builds the structures in the Temple with non-sacred materials^N to avoid misuse of consecrated property during construction, and one consecrates those materials thereafter.^H The treasurer has provisional possession of property that will ultimately belong to the Temple treasury. The stones are non-sacred and can be loaned to others, but nevertheless they are not subject to the halakhot of interest.

“אָنֹ בְּחֹן תְּשִׁלּוּמִי בְּפֶלֶל” כו’. מִנְהָנִי מִילִי? דָּתָנוּ רְבָנָן: “עַל כָּל דָּבָר פְּשָׁע” – בְּלָל. “עַל שׂוֹר עַל חַמּוֹר עַל שָׁה עַל שְׁלָמָה” – פְּרָט, “עַל כָּל אַבְדָּה אֲשֶׁר אָמָר” – חֹזֶר וּכְלָל,

¶ The mishna teaches: Slaves, documents, land, and consecrated property are not subject to the halakhot of payment of double the principal. The Gemara asks: From where are these matters derived? It is as the Sages taught in a baraita with regard to the verse that discusses double payment: “For any matter of trespass, whether it be for an ox, for a donkey, for a sheep, for a garment, or for any manner of lost thing about which one shall say: This is it, the claims of both of them shall come before the judges, the one whom the judges convict shall pay double to the other” (Exodus 22:8). “For any matter of trespass” is a generalization; “whether it be for an ox, for a donkey, for a sheep, for a garment” is a detail. And when the verse states: “Or for any manner of lost thing,” it then generalizes again.

כְּלָל וּפְרָט וּכְלָל אֵי אַתָּה דָן אַלְאָ בְּעֵינֵי הַפְּרָט, מִה הַפְּרָט מִפּוֹרֵשׁ דָבָר הַמְּטֻלְּלִל וְגַוְפּוֹ מִמּוֹן, אַף כָּל דָבָר הַמְּטֻלְּלִל וְגַוְפּוֹ מִמּוֹן,

Consequently, this verse contains a generalization, and a detail, and a generalization,^B and one of the thirteen rules of exegesis states that in such a case you may deduce that the verse is referring only to items similar to the detail. Therefore, just as each of the items mentioned in the detail is clearly defined as an item that is movable property and has intrinsic monetary value, so too double payment is practiced with regard to any item that is movable property and has intrinsic monetary value.

צַאוּ קְרָקוּעָות – שָׁאַיִן מַפְלָנִין יֵצְאָו עַבְדִּים – שָׁחוּקְשׁוּ לְקְרָקוּעָות, יֵצְאָו שְׁטוֹרָות – שָׁאַף עַל פִּי שְׁמַטְלָלִין אַיִן גַּוְפּוֹ מִמּוֹן, הַקְּדוּשָׁות, אָמָר קְרָא רַעֲיהָו – רַעֲיהָו וְלֹא הַקְּדוּשָׁ.

Land is excluded, as it is not movable property. Canaanite slaves are excluded, as they are compared to land in many areas of halakha. Financial documents are excluded, as, although they are movable property, they do not have intrinsic monetary value. The value of the material on which the document is written is negligible; documents are valuable only because they serve as proof for monetary claims. Finally, consecrated property is excluded because it is written in the verse that the one found liable shall pay double to the other, i.e., to another person, but not to the Temple treasury.

וְלֹא תְּשִׁלּוּמִי אַרְבָּעָה וְחַמְשָׁה” כו’. מִפְּאֵי טַעַמָּא? תְּשִׁלּוּמִי אַרְבָּעָה וְחַמְשָׁה אָמָר רְחַמְנָא, וְלֹא תְּשִׁלּוּמִי שֶׁלְשָׁה אַרְבָּעָה.

The mishna teaches: Nor payment of four and five times the principal, as these payments do not apply to consecrated animals. The Gemara asks: What is the reason for this exclusion? The Gemara explains: The Merciful One states a payment of four or five times the principal, but not payment of three and four times the principal. It has already been established that there is no double payment in the cases in the mishna. The fourfold or fivefold payment in the case of the slaughter or sale of a stolen sheep or cow comprises the principal, the double payment, and then an additional two or three times the principle, respectively. Consequently, once the double payment is subtracted, the total paid would be three or four times the principal, and the verse makes no allowance for such a payment.

”שְׁזָמֵר חָנֵם אַיִן נִשְׁבָּע” כו’. מִנְהָנִי מִילִי? דָּתָנוּ רְבָנָן: ”כִּי יִתְן אִישׁ אֶל רַעֲיהָו – בְּלָל, ”בְּסֶף אוֹ בְּלָם – פְּרָט, ”זַגְבָּן מִבֵּית הָאִישׁ – חֹזֶר וּכְלָל,

The mishna teaches: An unpaid bailee does not take an oath if these items were stolen or lost. The Gemara asks: From where are these matters derived? It is as the Sages taught in a baraita with regard to the verse that discusses an unpaid bailee: “When a man delivers to his neighbor money or vessels to safeguard, and it is stolen out of the man’s house; if the thief is found, he shall pay double. If the thief is not found, then the master of the house shall approach the judge” (Exodus 22:6–7). “When a man delivers to his neighbor” is a generalization; “money or vessels” is a detail. And when the verse states: “And it is stolen out of the man’s house,” it then generalizes again.

כָּלְלַ וּפְרַט וּכָלְלַ אֵי אַתָּה דִּין אֶלְךָ
בַּעֲשֵׂין הַפְּרַט; מִמְּה הַפְּרַט מִפּוֹרֵשׁ – דָּבָר
הַמְּטֻלְלִיטָל וְגַוְפּוֹ מִמְּזֹן, אֶךְ בְּלַדְךָ
הַמְּטֻלְלִיטָל וְגַוְפּוֹ מִמְּזֹן.

יעַצָּאוּ קְרוּקֻעָות שְׁאַיִן מַטְלָלִין,
יעַצָּאוּ עֲבָדִים שְׁהַוקְשׁוּ לְקְרוּקֻעָות;
יעַצָּאוּ שְׁטָרוֹת שָׁאָר עַל פִּי שְׁמַטְלָלִין
אַיִן גַּוְפּוֹ מִמְּזֹן. הַקְּדוּשָׁת, אָמַר קָרְבָּא

רְעוּהוֹ – רְעוּהוֹ וְלֹא שְׁלַח הַקְּדוּשָׁ.

נוֹשָׁא שָׁכַר אַיִן מִשְׁלָמָם "כו". מִנְהָנִי
מִילִיּוֹן דְּתַנְנוּ רְבָנָן: "כִּי יִתְן אִישׁ אֶל
רְעוּהוֹ – כָּלְלַ, "חִמּוֹר אוֹ שׂוֹר אוֹ
שָׁה – פְּרַט, "וְכָל בְּהַמָּה לְשָׁמֹר" –
חוֹר וְכָלְלַ.

כָּלְלַ וּפְרַט וּכָלְלַ אֵי אַתָּה דִּין אֶלְךָ
בַּעֲשֵׂין הַפְּרַט; מִמְּה הַפְּרַט מִפּוֹרֵשׁ – דָּבָר
הַמְּטֻלְלִיטָל וְגַוְפּוֹ מִמְּזֹן, אֶךְ בְּלַדְךָ
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יעַצָּאוּ שְׁטָרוֹת שָׁאָר עַל פִּי שְׁמַטְלָלִין
אַיִן גַּוְפּוֹ מִמְּזֹן. הַקְּדוּשָׁת, אָמַר קָרְבָּא

רְעוּהוֹ – רְעוּהוֹ וְלֹא שְׁלַח הַקְּדוּשָׁ.

"שָׁמֹר חַנְמָם אַיִן נִשְׁבָּע" וּכְוָ'. וּמִינָה:
בְּנֵי הָעָר שְׁשָׁלוֹחוּ אֶת שְׁקָלִין וְנִגְנְבָוּ
או שְׁאָבוֹג.

Consequently, this verse contains a **generalization**, and a **detail**, and a **generalization**, and one of the thirteen rules of exegesis states that in such a case you **may deduce** that the verse is referring only to items **similar to the detail**. Therefore, just as each of the items mentioned in the **detail** is clearly defined as an item that is **movable property** and has **intrinsic monetary value**, so too double payment is practiced with regard to any item that is **movable property** and has **intrinsic monetary value**.

Land is excluded, as it is not movable property. Canaanite slaves are excluded, as they are compared to land in many areas of halakha. Financial documents are excluded, as, although they are **movable property**, they do not have **intrinsic monetary value**. The value of the material on which the document is written is negligible; documents are valuable only because they serve as proof for monetary claims. Finally, **consecrated property**^N is excluded because it is **written** in the verse that the one found liable shall pay double to the other, i.e., to another person, **but not to the Temple treasury**.

The mishna continues: **A paid bailee does not pay if these items were stolen or lost.** The Gemara asks: **From where are these matters derived?** The Gemara answers: It is as the **Sages taught** in a *baraita* with regard to the verse that discusses a paid bailee: “When a man delivers to his neighbor a donkey, or an ox, or a sheep, or any beast to safeguard, and it dies, or is hurt, or is driven away, no man seeing it, the oath of the Lord shall be between them both... but if it be stolen from him, he shall make restitution to its owner” (Exodus 22:9–11). “**When a man delivers to his neighbor**” is a **generalization**; “**a donkey, or an ox, or a sheep**” is a **detail**. And when the verse states: “**Or any beast to safeguard**,” it then **generalizes again**.^N

Consequently, this verse contains a **generalization**, and a **detail**, and a **generalization**, and one of the thirteen rules of exegesis states that in such a case you **may deduce** that the verse is referring only to items **similar to the detail**. Therefore, just as each of the items mentioned in the **detail** is clearly defined as an item that is **movable property** and has **intrinsic monetary value**, so too double payment is practiced with regard to any item that is **movable property** and has **intrinsic monetary value**.

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¶ After determining the source of the halakhot in the mishna, the Gemara analyzes those halakhot. The mishna teaches: **An unpaid bailee does not take an oath** if these items were stolen or lost. And the Gemara raises a contradiction from a mishna. Half-shekels were donated by the people during the month of Adar and placed in a special chamber in the Temple, from where, as needed, some of the shekels were taken for use in purchasing public offerings in the coming months. This was done in order to give all of the Jewish people a share in those public offerings. Additionally, from the moment that the money is taken from there, both those shekels that arrived at the Temple and those that did not yet arrive become Temple property. The mishna teaches (*Shekalim* 5a): With regard to residents of the city who sent their shekels^{HB} to the Temple, and the coins were stolen from the agent or were lost en route, the halakha depends on the circumstances.

אם משנתרומה התרומה

If this occurred after the **contributions** of the chamber had already been **collected** from the chamber,

NOTES

An oath with regard to consecrated property and land – **שבועה בְּקָדְשׁ וּקְרֻעָות:** The early commentaries disagree as to whether or not the bailee is liable to pay in a case where it is clear that he was negligent. Some maintain that his legal status is that of one who caused direct damage, and therefore he is liable to pay (Rashi; Ra'avad; Rambam). Others hold that he is exempt even in that case, as the Torah exempted him not only from taking an oath but from all halakhot of a bailee (*Tosafot*; see Ramban and Rashba).

ובְּכָל בְּהַמָּה לְשָׁמֹר תְּחִזְקָה וְכָלְלַ – **בְּבַהֲמָה לְשָׁמֹר תְּחִזְקָה:** Rabbeinu Ovadya Bartenura cited a variant reading: “A donkey, or an ox, or a sheep, or any beast”; this is a detail. “To safeguard”; it then generalizes again (see Rashash).

HALAKHA

בְּבִיאַת הַשְׁקָלִין – **שְׁשָׁלוֹחוּ אֶת שְׁקָלִין:** If residents of a city sent their shekels with an agent, and the coins were lost or stolen, if the agent was an unpaid bailee, he takes an oath that the shekels were lost or stolen and is not liable to repay the residents. They must give their shekels again. The residents of the city cannot waive the requirement that he take the oath. If the original shekels were recovered after the agent took the oath, both the original coins and the second set of coins paid by the residents belong to the Temple treasury. The residents of the city are not exempted from giving their shekels the following year. Apparently, the Rambam holds that by giving the shekels to an unpaid bailee, the residents of the city are guilty of negligence (*Kesef Mishne*).

In a case where the agent was a paid bailee, and the shekels were lost due to circumstances beyond his control, the agent takes an oath to the Temple treasurer and the residents of the city are not required to give their shekels again. This is the halakha, provided that the coins were lost after the collection of the Temple treasury chamber was performed. If the coins were lost before the collection of the Temple treasury chamber, the agent takes an oath to the residents of the city, and they are required to give their shekels again (Rambam *Sefer Zemanim, Hilkhos Shekalim* 3:9, and see the commentaries there).

BACKGROUND

Their shekels – **שְׁקָלִין:** All male Jews over the age of twenty were required to contribute a half-shekel to the Temple annually, before the first day of Nisan. This money was used to cover Temple expenses, including the purchase of communal offerings and the cost of Temple maintenance. It was also used to maintain and repair the walls of Jerusalem. From the beginning of the month of Adar, notice was served to the public that the half-shekel contributions would soon be due. Nowadays, toward the end of the Fast of Esther on the thirteenth of Adar, just prior to the beginning of Purim, it is customary to donate money to charity to commemorate the half-shekel contribution. The halakhot of the half-shekel contribution are discussed in tractate *Shekalim*.

Perek IV

Daf 58 Amud a

NOTES

One collects shekels in the Temple chamber for those coins that are lost, etc. – **תנוקמים על האבודו וכו'**: Rashi and *Tosafot* dispute the details of this *halakha*. According to Rashi, lost coins are coins lost on the way to Jerusalem. According to *Tosafot*, lost coins are coins lost by the treasurer after they arrived in Jerusalem. According to Rashi (*Ketubot* 108a), the category of coins that are destined to be collected refers even to shekels that ultimately will not be collected at all. According to *Tosafot* it includes only those that will ultimately be collected.

Some commentaries maintain that even Rashi does not hold that one fulfills his obligation to give a half-shekel if the coins are lost; he merely has a share in public offerings.

נשבען לנוברים, ואם לאו – נשביען לבני העיר, ובמי דשיר שוקלין אחרים תחתיהם. נמצאו או שהחזרום הגנבים – אלו ואלו שקלים הם, ואין עולין להם לשנה הבאה!

the agents must take the oath of a bailee to the treasurers that they did not misappropriate the coins. If the collection of the chamber was not yet performed, the lost or stolen shekels remain the property of the residents of the city. Therefore, the agents take an oath to the residents of the city. The residents of the city then contribute other shekels in place of the original shekels. If the original shekels were then found or the thieves returned them, both these, the original shekels, and those, the replacement shekels, assume the status of consecrated shekels and belong to the Temple. But the two half-shekels that they contributed this year do not count to absolve them from their obligation to contribute the shekels for the following year. This mishna teaches that an unpaid bailee does take an oath concerning consecrated property, contrary to the mishna here.

אמר שמואל: הכא בנושא שכיר עסקין, ונשביען לטל שכרן. איה כי נשביען לנוברים? לבני העיר מבצע לייה אמר רבה: נשביען לבני העיר במעמד גוראין כי היכי דלא נחשדינוהו. ואין נמי כי היכי דלא לךו להו פושעים.

Shmuel said: Here we are dealing with paid bailees, and the purpose of the oath is not to exempt them from their liability to pay for the theft. Rather, they take an oath that they performed their task properly, in order to collect their wages. The Gemara asks: If so, is this phrase accurate: They take an oath to the treasurers? The *tanna* should have taught: They take an oath to the residents of the city, from whom they are claiming their wages. Rabba said: They take an oath to the residents of the city in the presence of the treasurers, so that the treasurers will not suspect that the residents of the city did not contribute their shekels at all. Alternatively, the agents take an oath that they executed their mission properly, so that the Temple treasurers will not call them negligent.

וזהו נגנבו או שאבדו קתני, ושומר שכיר בגיןבה ואביהה חייב מיחיב והכא נמי, נמי דשלומי לא משלם – אביהה מיהא לפסיד!

The Gemara asks: But isn't it taught in the mishna: And the coins were stolen or were lost en route, and paid bailees are liable to pay in cases of theft and loss? And here too, when safeguarding consecrated property, although paid bailees do not pay for the theft, as a paid bailee is exempt, let them at least forfeit their wages, as their responsibility to safeguard the money includes preventing theft and loss.

אמר רבה: נגנבו – בלקסטים מווין. אבדו – שטבעה ספינטו בים.

Rabba said: When the *tanna* says that they were stolen, the reference is to a case where the item was stolen by armed bandits. When he said that they were lost, the reference is to a case where the agent's ship sank at sea. Since the shekels left his possession through circumstances beyond his control, this is considered an unavoidable accident, for which a paid bailee is exempt.

רבי יוחנן אמר: הא מפי – רבוי שמעון, היא, דאמר: קדרשים שחייב באחריותן יש להן אונאה, ונשביען עליהם.

Rabbi Yohanan said: In accordance with whose opinion is this mishna? It is in accordance with the opinion of Rabbi Shimon, who says: Consecrated items for which one bears responsibility to replace them are subject to the *halakhot* of exploitation, and therefore one takes an oath concerning them.

התינה עד שלא נתרמה התרומה, משנתרמה התרומה – קדרשים שאינו חייב באחריותן נינחו. דתניא: תורמי על האבוד ועל הגבוי ועל העתיד לבות!

The Gemara asks: This works out well if the contribution of the chamber had not yet been collected into the baskets. At that stage, residents of the city bear responsibility to replace the shekels, and that is why Rabbi Shimon deems the agent liable to take an oath. But if the shekels were lost or stolen once the contribution of the chamber had been collected, the shekels are tantamount to sacrificial animals for which one does not bear responsibility, and the residents of the city should be exempt, as it is taught in a *baraita*: One collects shekels in the Temple chamber with the intention of fulfilling the obligation for those coins that are lost^N on the way, and for those that are collected but did not yet arrive, and for those that are destined to be collected in the future. Apparently, the residents of the city no longer bear responsibility for the shekels.

אֲלֹא אָמַר רَبִّי אֶלְעָזָר: שְׁבוּעָה זוּ תִּקְנַת חֲכָמִים הֵיאָ, שְׁלָא יְהוּ בְּינָה אֶרְדָם מַזְוִילִים בְּחַקְרוֹשֹׁת.

נוֹשָׂא שְׁכָר אִינוּ מִשְׁלָם. רַמְיָה לֵיהּ וּבְיַסְף בֶּן חַמְאָה לְבָהָה – תַּנִּינָן: נֹשָׂא שְׁכָר אִינוּ מִשְׁלָם, וּרְמִינָה: הַשּׁוּבָה אֶת הַפּוּעַל לְשִׁמְעוֹר אֶת הַפְּרָה, לְשִׁמְעוֹר אֶת הַתְּינָוק, לְשִׁמְעוֹר אֶת הַזָּרְעִים – אֵין נֹתְנִים לוּ שְׁכָר שְׁבָתָה. לְפִיכָךְ אֵין אַחֲרִיות שְׁבָתָה עַלְיוֹ.

הִיא שְׁכָר שְׁבָתָה, שְׁכָר חִצְשָׁן, שְׁכָר שְׁנָה, שְׁכָר שְׁבּוּעָן – נֹתְנִין לוּ שְׁכָר שְׁבָתָה, לְפִיכָךְ אַחֲרִיות שְׁבָתָה עַלְיוֹ. מַאי לֹאוּ לְשִׁלְמָן!

לֹא, לְהַפְּסִיד שְׁכָרָוּ. אֵי הַכִּי, רִישָׁא רַקְתָּנִי אֵין אַחֲרִיות שְׁבָתָה עַלְיוֹ – הַכִּי נִמְיָד דְּלַקְטִיסִיד שְׁכָרָוּ וּבַיִת לֵיהּ שְׁכָר שְׁבָתָה, וְהָא קָתַנְיָא נֹתְנִין לוּ שְׁכָר שְׁבָתָה אַשְׁתִּיקָה.

אמָר לֵיהּ: מַיִדְיָ שְׁמִיעָה לְךָ בְּהָא? אָמָר לֵיהּ: הַכִּי אָמַר רַב שְׁשֵׁת: בְּשָׁקָנִי מִידָו. וְכֵן אָמַר רַבִּי יוֹחָנָן: בְּשָׁקָנִי מִידָו.

The Gemara concludes: Rather, Rabbi Elazar said: This oath of the agents is a rabbinic ordinance, instituted so that people will not treat consecrated property with contempt. If they knew that there is no oath, they would neglect to safeguard the shekels properly.

§ The mishna teaches: A paid bailee does not pay if these items were stolen or lost. Rav Yosef bar Ḥama raises a contradiction before Rabba. We learned in the mishna: A paid bailee does not pay. And the Gemara raises a contradiction from a *baraita*: One who hires a day laborer^N to watch the red heifer^B to ensure that it is not disqualified, to watch the child to ensure that he remains ritually pure from birth in order to draw the water mixed with the ashes of the heifer, or to safeguard the seeds for the barley that will be used in the *omer* offering, does not give him wages for Shabbat. Therefore, if the items that the day laborer was entrusted to watch were lost on Shabbat, financial responsibility for their loss on Shabbat is not incumbent upon him, since he is not a paid bailee on that day.

The *baraita* continues: But if he was a laborer hired for a week, hired for a month,^N hired for a year, or hired for seven years, the one who hired him gives him wages for labor performed on Shabbat as well. Therefore, if the items were lost on Shabbat, financial responsibility for their loss on Shabbat is incumbent upon him.^H What, is it not that he is liable to pay for the loss he caused? As the list of the items being safeguarded includes consecrated items, this *baraita* apparently rules that a paid bailee bears responsibility for consecrated property.

The Gemara rejects this: No, the ruling of the *baraita* stating that the bailee is responsible is only with regard to forfeiting his wages^H because he was derelict in safeguarding the items with which he was entrusted. Rav Yosef bar Ḥama asks: If so, in the first clause of the *baraita*, which teaches that financial responsibility for their loss on Shabbat is not incumbent upon him, is this also with regard to forfeiting his wages? But does he have wages for the work he did on Shabbat? But isn't it taught that one does not give him wages for Shabbat?^B Clearly, the reference is to responsibility to pay for the safeguarded items themselves. Rabba was silent, unable to answer.

Rabba said to Rav Yosef bar Ḥama: Have you heard anything with regard to this? Rav Yosef bar Ḥama said to him that this is what Rav Sheshet says: The ruling of the latter clause is stated with regard to a case where the laborers made a commitment to the one who hired them to take responsibility for the items, and they performed an act of acquisition with the one who hired them to reinforce that commitment. And likewise Rabbi Yoḥanan says: The ruling of the latter clause is stated with regard to a case where the laborers made a commitment to the one who hired them to take responsibility for the items, and they performed an act of acquisition with him.^H

רַבִּי שִׁמְעוֹן אָמַר קָדְשִׁים שְׁחִיב בְּאַחֲרִיּוֹן יְשִׁילְחָן אֶזְעָה, וְשָׁאַיָּן חִיב בְּאַחֲרִיּוֹן אֵין לְהָנִי אֶזְעָה. תַּנִּינָן קָמִיהָ דְּרַבִּי יִצְחָק בֶּן אָבָא:

§ The mishna teaches that Rabbi Shimon says: Sacrificial animals for which one bears responsibility to replace them are subject to the halakhot of exploitation, and those for which one does not bear responsibility to replace them are not subject to the halakhot of exploitation. The Gemara relates that the *tanna* who recited *mishnayot* and *baraitot* in the study hall taught a *baraita* before Rabbi Yitzḥak bar Abba^P with regard to the source of the opinion of Rabbi Shimon. It is derived from the verse: "If anyone sins, and commits a trespass against the Lord, and deals falsely with his colleague in a matter of deposit, or of pledge, or of robbery, or has oppressed his neighbor" (Leviticus 5:21).

NOTES
One who hires a day laborer – **הַשּׁוּבָה אֶת הַפּוּעַל**: According to Rashi, this laborer was hired to safeguard some form of consecrated property. Rabbeinu Ḥananel and most commentaries prove from the original context of this *halakha* that this could be referring even to one safeguarding non-sacred property. The difficulty is not based on the fact that it is consecrated property. It is based on the fact that one is safeguarding sown seeds whose legal status is that of land, and the bailee does not take an oath concerning land.

שְׁכָר שְׁבָתָה, שְׁכָר שְׁבָתָה, שְׁכָר שְׁבָתָה: Some commentaries ask: If one may incorporate the Shabbat wages of a laborer hired for a week into his weekly wages, isn't it all the more so that one may do so with the wages of a laborer hired for a longer period? Why was it necessary for the *tanna* to list all the different periods? They explain that the *tanna* is teaching that even with regard to a laborer hired for a longer period, if he specifies that the payment is for labor on Shabbat, paying him for that labor is prohibited.

BACKGROUND

Red heifer – **רֹרֶה אֲדֹרֶמֶה**: In order to eliminate ritual impurity imparted by a human corpse, purification is effected by means of flowing water mixed in a vessel with the ashes of a red heifer (see Numbers, chapter 19). The hairs of the heifer must be red. It is a *halakha* transmitted to Moses from Sinai that two black hairs disqualify it. Similarly, it may not have any blemishes, nor may it have been used for any labor. The red heifer was slaughtered on the Mount of Olives outside of Jerusalem, and its blood was sprinkled seven times opposite the entrance of the Temple. Its body was then burned on a special pyre; cedar-wood, hyssop, and crimson wool were added to the fire (see Numbers 19:6). The ashes from this pyre were then gathered and used in the purification ritual.

Wages for Shabbat – **שְׁכָר שְׁבָתָה**: It is not prohibited by Torah law to work and earn money on Shabbat, provided that engaging in that work does not violate any of the thirty-nine prohibited labors. The Gemara here discusses serving as a bailee, where no Torah law is violated. Nevertheless, the Rabbis issued a decree and prohibited engaging in business on Shabbat, including earning and lending money. The decree addresses the concern that one will write in order to ensure the accurate disbursement of funds, and writing is one of the primary categories of labor prohibited on Shabbat by Torah law (Rambam *Sefer Zemanim*, *Hilkhot Shabbat* 23:12). The salaries of rabbis and cantors, who perform a significant part of their work on Shabbat, are technically paid only for their work during the week.

HALAKHA

Safeguarding on Shabbat – **שְׁמִירָה בְּשְׁבָתָה**: One who hires a laborer to safeguard an item for him does not pay him wages for Shabbat. Consequently, the laborer does not have the same degree of responsibility if the item is damaged on Shabbat. If one hired the laborer for one week or for a longer period of time, he can receive wages for Shabbat, in which case the laborer has the same degree of responsibility if the item is damaged on Shabbat. The hirer may not specify that he is paying the laborer for Shabbat. Rather, he incorporates the Shabbat wages in his weekly or monthly salary (*Shulhan Arukh*, *Orah Hayyim* 306:2).

Forfeit of the wages of a bailee – **הַגְּפַסְד שְׁכָר שְׁמָר**: The halakhot of bailees by Torah law do not apply to land, documents, or slaves. In those cases, a paid bailee is exempt from paying for lost or stolen items. Nevertheless, he receives his wages only if he takes an oath that he safeguarded them appropriately (*Shulhan Arukh*, *Hoshen Mishpat* 301:1).

Where they performed an act of acquisition with him – **בְּשָׁקָנִי מִזְיָן**: If an act of acquisition was performed between the bailees and the one who hired them, with the effect of expanding their liability to include items not typically included in the halakhot of bailees, they are liable (*Shulhan Arukh*, *Hoshen Mishpat* 301:4).

PERSONALITIES
Rabbi Yitzḥak bar Abba – **רַבִּי יִצְחָק בֶּן אָבָא:** Rabbi Yitzḥak bar Abba was a fourth-generation amora. Some contend that he was born in Eretz Yisrael and later moved to Babylonia. In Eretz Yisrael, he was apparently the head of a yeshiva. This is indicated

by the Gemara, which relates that the *tanna* who recited *mishnayot* and *baraitot* in the study hall taught a *baraita* before him. Others maintain that he was born in Babylonia and that his title, therefore, should be Rav Yitzḥak rather than Rabbi Yitzḥak.

LANGUAGE

Isn't it the opposite [kelapei layya] – בְּלֹא לִיְּאָ? This phrase expresses a sense of astonishment, meaning toward where [kelapei le'an]; it indicates that the opposite of what was stated is logical. Some commentaries explain that this expression should be understood as toward the tail [kelapei alya], i.e., you are facing the tail, like a person who rides an animal facing backward. It means: Your statement is the opposite of the logical approach (Rabbeinu Hananel; Arukh).

קַדְשִׁים שְׁחִיב בְּאַחֲרִוֹתָן – חִיב, שָׁאַנֵּי
קֹרֵא בָּהּ "בָּהּ" וּכְחַשׁ, וּשְׁאַנֵּי חִיב
בְּאַחֲרִוֹתָן – פָּטוֹר, שָׁאַנֵּי קֹרֵא בָּהּ
בְּעִמְתוֹ וּכְחַשׁ.

In that *baraita*, it is taught: For an oath concerning sacrificial animals for which one bears responsibility, one is liable to bring an offering for taking a false oath, as I apply the phrase “against the Lord, and deals falsely.” And for an oath concerning sacrificial animals for which one does not bear responsibility, one is exempt, as I read in their regard: With his neighbor, and deals falsely. That reading indicates that even one who deals falsely in matters related to the Lord, e.g., sacrificial animals, is liable to bring an offering for a false oath.

אמור ליה: בְּלֹא לִיְּאָ?

Rabbi Yitzhak said to him: Isn't it the opposite [kelapei layya]?¹

Perek IV**Daf 58 Amud b****NOTES**

Up to double their value – עד כבוי דמייהם: This is the halakha only in cases of animals and precious stones. According to this opinion, a Torah scroll is not subject to the halakhot of exploitation at all (*Torat Hayyim*).

אי' פְּכָא מִסְתְּבָרָא! אָמַר לִיה: אִיסְמִיָּה?

אמור ליה: לא: הִכִּי קָאָמָר: קָדְשִׁים
שְׁחִיב בְּאַחֲרִוֹתָן – חִיב, דָאִיטְרָבוֹ
מְ"בָהּ וּכְחַשׁ, וּשְׁאַנֵּי חִיב בְּאַחֲרִוֹתָן –
פָּטוֹר, דָאָמַעַט מְ"בָעִמְתוֹ וּכְחַשׁ.

The opposite is reasonable. An oath concerning sacrificial animals for which one does not bear responsibility is considered to be a matter related to the Lord even more than an oath concerning a sacrificial animal for which one bears responsibility, as in the latter case it is owned by the person in some respects. The *tanna* said to him: Should I delete this *baraita* because it is corrupted?

Rabbi Yitzhak bar Abba said to him: No, this is what the *baraita* is saying: For an oath taken concerning sacrificial animals for which one bears responsibility, one is liable to bring an offering for a false oath, as it is included due to the phrase “against the Lord, and deals falsely.” It is derived from this that one is liable for taking a false oath even with regard to an item which belongs, to a certain degree, to the Lord. And with regard to sacrificial animals for which one does not bear responsibility, one is exempt, as it is excluded by the phrase: With his neighbor and deals falsely. It is derived from this that one is liable to bring an offering for a false oath only if it pertained to property that belongs to a layman, i.e., his neighbor, but not for an item that belongs completely to God, as is the case with regard to sacrificial animals for which one does not bear responsibility.

רַבִּי יְהוּדָה אָמַר אֶל הַמּוֹכֵר סִפְרַת תּוֹרָה,
מַרְגָּלִית, וּבְהַמָּה אֵין לְהָם אָוֹנָה." תָּנָא,
רַבִּי יְהוּדָה אָמַר: אֶל הַמּוֹכֵר סִפְרַת תּוֹרָה
אֵין לְהָ אָוֹנָה, לְפִי שָׁאַן קַץ לְדָמִיה.
בְּהַמָּה וּמַרְגָּלִית אֵין לְהָם אָוֹנָה – מִפְנִי
שָׂאָרָם רֹצֶה לְיוֹנוֹן.

§ The mishna teaches: Rabbi Yehuda says: Even in the case of one who sells a Torah scroll, a pearl, or an animal, those items are not subject to the halakhot of exploitation. It is taught in a *baraita* that Rabbi Yehuda says: Even in the case of one who sells a Torah scroll, it is not subject to the halakhot of exploitation, as there is no limit to its value. It is the Torah of God, which is priceless. An animal and a pearl are not subject to the halakhot of exploitation because a person seeks to pair them. An animal is paired with an animal of similar strength so that they can be yoked together to work in the field. A pearl is paired with a similar pearl to fashion jewelry. Since there is a need to obtain a specific variant of these items, one is not particular about the price.

אָמַרְוּ לְהָ וְהַלְא הַכָּל אָדָם רֹצֶה לְיוֹנוֹן
וְנַבְּיִ יְהוּדָה: הַנִּי חַשְׁבִּי לִיהָ, וְהַנִּי לֹא
חַשְׁבִּי לִיהָ. וְעַד כָּמָה? אָמַר אַמְּיָר: עַד
כְּבָרִי דְמִיחָם.

The *baraita* continues: The Rabbis said to him: But isn't it the case that with regard to every item, a person seeks to pair them with similar items under certain circumstances? According to your explanation, the halakhot of exploitation would never apply. The Gemara asks: And what does Rabbi Yehuda respond to that question? He claims that these are significant to a person, but those are not significant to him. In other words, it is particularly important to find a precise match for an animal and a pearl. The Gemara continues to analyze Rabbi Yehuda's opinion. And up to how much can one deviate from the value of items for which exploitation does not apply, as Rabbi Yehuda is clearly not saying that any deviation is acceptable? Ameimar said: One can deviate up to double their value.^N

תניא, רבי יהודה בן בתריא אומר: אף המוכר סוס וסיף וחתיטום במילחמה אין לך אונאה, מפני שיש בהן חי נפש.

מתני' כי שם שאונאה במקח וממכר קרב אונאה ברבים. לא אמר לו בכמיה חפץ זה והוא אין ורוצה ליקח. אם היה בעל תשובה לא יאמר לו זכור מעשיך הראשונים, אם הוא בגין גרים לא יאמר לו זכור מעשה אבותיך, שנאמר: "וְגַם לֹא תִזְעַק וְלֹא תָלֶץנוּ".

גמ' תננו רבנן: "לא תונו איש את עמיתו" – באונאת דברים הכתוב מדבר. אתה אומר באונאת דברים? או אין אלא באונאת ממון? בשהוא אומר: "וכי תםכו ממכר לעמיתך או קנה מד עמיתהך" – הרי אונאת ממון אמרו. הא מה אני מקים: "לא תונו איש את עמיתו" – באונאת דברים.

הא פיעוד? אם היה בעל תשובה אל אמר לו זכור מעשיך הראשונים; אם היה בז גרים אל יאמר לו זכור מעשה אבותיך; אם היה גור ובא ללמד תורה אל ואמר לו "פה שאכל נבלות טריפות, שקצים ורמשים בא למדור תורה שנאמרה מפי הגבורה!"

אם היה יסורין באין שעלי, אם היה חלאים באין עלוי, או שהיה מ Kapoor את בניו, אל יאמר לו כרך שאמרו לו חביביו לאイוב: "הלא ויאתך בסלתן תקוטך ותס דרכיך זכר נא מיהו נקי אבד".

It is taught in a *baraita* that Rabbi Yehuda ben Beteira says: Even in the case one who sells a horse, or a sword, or a helmet [*vehatitom*]¹ during wartime, these items are not subject to the halakhot of exploitation, because they then have the capacity to preserve life,^N and a person is willing to pay any price for them.

MISHNA Just as there is a prohibition against exploitation [*ona'a*] in buying and selling,^N so is there *ona'a* in statements, i.e., verbal mistreatment. The mishna proceeds to cite examples of verbal mistreatment. One may not say to a seller: For how much are you selling this item,^N if he does not wish to purchase it. He thereby upsets the seller when the deal fails to materialize. The mishna lists other examples: If one is a penitent, another may not say to him: Remember your earlier deeds. If one is the child of converts,^N another may not say to him: Remember the deeds of your ancestors, as it is stated: "And a convert shall you neither mistreat, nor shall you oppress him" (Exodus 22:20).

GEMARA The Sages taught: It is written: "And you shall not mistreat [tonu] one man his colleague; and you shall fear your God, for I am the Lord your God" (Leviticus 25:17). The *tanna* explains: The verse is speaking with regard to verbal mistreatment. The *baraita* proceeds: Do you say that it is speaking of verbal mistreatment [*be'ona'at devarim*],^N or perhaps it is speaking only with regard to monetary exploitation [*be'ona'at mammon*]? When it says in a previous verse: "And if you sell to your colleague an item that is sold, or acquire from your colleague's hand, you shall not exploit [tonu] his brother" (Leviticus 25:14), monetary exploitation is explicitly stated. How then do I realize the meaning of the verse: "And you shall not mistreat one man his colleague"? It is with regard to verbal mistreatment.^H

How so? If one is a penitent, another may not say to him: Remember your earlier deeds. If one is the child of converts, another may not say to him: Remember the deed of your ancestors. If one is a convert and he came to study Torah, one may not say to him: Does the mouth that ate unslaughtered carcasses^B and animals that had wounds that would have caused them to die within twelve months [*tereifot*]^B, and repugnant creatures, and creeping animals,^B comes to study Torah that was stated from the mouth of the Almighty?

If torments are afflicting a person, if illnesses are afflicting him, or if he is burying his children, one may not speak to him in the manner that the friends of Job spoke to him: "Is not your fear of God your confidence,^N and your hope the integrity of your ways? Remember, I beseech you, whoever perished, being innocent?" (Job 4:6–7). Certainly you sinned, as otherwise you would not have suffered misfortune.

LANGUAGE
Helmet [*hatitom*] – **חֲטִיטוֹם**: From the Greek *καταίτυξ*, *kataitux*, meaning protective headgear or leather helmet.

NOTES
 מפני שיש **מפני שיש**: Some commentaries say the contrary: If one commits to pay an exorbitant sum for an item that has life-saving capacity, it is similar to a transaction with inconclusive consent [*asmakhta*] (see 48b): He never intended to fulfill the commitment and made it only due to the exigent circumstances. Therefore, he can retract from the transaction entirely, and can certainly claim exploitation (Rabbi Moshe Kordevero).

Just as there is exploitation in buying and selling – **כִּי יש**: The prohibition against exploitation in monetary matters is stated explicitly in the Torah, whereas the prohibition against verbal mistreatment is derived by inference from the verses. The *tanna* therefore states that verbal mistreatment is also prohibited by Torah law (*Bah*).

One may not say, For how much are you selling this item – **לֹא יִאמֶר בְּכֻפָּה חַפֵּץ**: Beyond the anguish caused to the seller, this can result in actual loss as well. A potential buyer observing this exchange might lose interest because he does not want to purchase an item coveted by another, and the seller will lose a customer (Rashi on *Pesahim*).

If one is the child of a convert – **אֵם הוּא בֶן גָּרוּם**: The *tanna* did not cite the example of one reminding a convert of his actions as a gentile because they are no longer attributed to him after conversion (Maharsha). In that sense, it is as if a convert is born into a different life upon his conversion (*Iyun Yaakov*). Still, one may not remind him that he ate revolting foods and claim that it is inappropriate for him to engage in the study of Torah.

Verbal mistreatment [*ona'at devarim*] – **אֹונָת דְּבָרִים**: The primary element of verbal mistreatment is the anguish [*ona'a*] and pain that one causes another. The *tanna* first cites a case where the verbal mistreatment could involve monetary loss: One asks the seller: How much is this item, when he does not wish to purchase it. The *tanna* then lists cases where there is only emotional anguish (Meiri).

הֲלֹא יוֹאכַת כְּסָלָתך?: Job's friends implied that he worshipped God only as long as it pleased him and contributed to his success but was never a full-fledged God-fearing individual.

HALAKHA
Verbal mistreatment – **אֹונָת דְּבָרִים**: Verbal mistreatment is especially severe, as it affects the person himself, not his belongings, and payment of restitution is impossible. Consequently, the prayers of one who cries out to Heaven after being verbally mistreated are answered immediately. The Rema rules that the prohibition against verbal mistreatment of another applies only to a Jew who observes Torah and mitzvot.

What constitutes verbal mistreatment? These are the cases given: One who inquires about the price of an item although he has no intent to purchase it; one who sends donkey drivers to another who has no goods to sell them; one who reminds a penitent of his previous indiscretions; one who reminds a convert of his ancestors' behavior; and one who says to another who is suffering that his afflictions are punishment for his sins (*Shulhan Arukh, Hoshen Mishpat* 228:1, 4).

BACKGROUND
Unslaughtered carcasses – **גבילות**: Not all animal carcasses fall within this halakhic category. Specifically, it includes the carcasses of large mammals, both kosher and non-kosher. Among kosher animals this includes an animal that died of natural causes or died as a result of an improperly performed act of ritual slaughter. It is prohibited to eat an unslaughtered animal carcass, and that carcass is a primary source of ritual impurity. Although it is prohibited to eat an unslaughtered kosher animal carcass, benefit from it is permitted. The legal status of animals with certain severe anatomical defects, e.g., a completely broken neck, is that of an unslaughtered animal carcass even while the animal with the defect is still alive.

Tereifot – **טריפות**: Generally speaking, a *tereifa* is an animal that is suffering from a condition that will cause it to die within

twelve months. It is prohibited by Torah law to eat an animal with an injury or a disease of that nature, although the source for this prohibition is a matter of dispute. Some authorities cite the verse: "You shall not eat any flesh that is torn of beasts in the field" (Exodus 22:30), while others cite the verse: "You shall not eat of anything that dies of itself" (Deuteronomy 14:21). Others contend that the prohibition is derived from both verses (*Minhat Hinnukh*).

Repugnant creatures [*shekatzim*] and **creeping animals** [*remasim*] – **שְׁקָצִים וּרְמָשִׁים**: This phrase includes all non-kosher animals. *Tosefot Yom Tov* distinguishes between the two terms: *Shekatzim* refers to small sea and land creatures, as well as birds and insects categorized as *shekatzim* in the Torah. *Remasim* refers to worms and other creatures that infest produce and were believed to spontaneously generate.

HALAKHA

הַמְלֵבִין פָּנֵי חֲבִיוֹ – One who humiliates another in public – **ברבִים:** One who coins a derogatory name for another or uses a preexisting derogatory name receives a place in the World-to-Come only if he repents fully (Rambam Sefer HaMadda, Hilkhot Deot 6:8; Hilkhot Teshuva 3:14).

הַמְכַנֶּה שְׁם רֹעַ – One who calls another a derogatory name – **לְחַבְּרוֹן:** It is even prohibited to call another by a derogatory name that he is accustomed to, if the intent is to humiliate him (Shulhan Arukh, Hoshen Mishpat 228:5).

אִם הִי חֲמֹרִים מִבְקַשִּׁין תְּבוֹאָה מִמְנוֹ
לֹא יֹאמֶר לְהָסִים לְכָו אַצְלָ פָּלוּנִי שְׁחוֹא
מוֹכֵד תְּבוֹאָה – וַיֹּודַע בּוֹ שֶׁלֹּא מִכְרָ
בְּעוֹלָם. וּבִי יְהוָה אָוּרָ: אֲפָלָ
תִּלְהָ עִינֵּי עַל הַמְּקַח בְּשָׁעָה שָׁאן
לֹא דְּמִים, שְׁחָרִי הַדָּבָר מִסּוּר לִלְבָב, וְכֹל
דָּבָר הַפְּסָרוֹ לִלְבָב נָאָמֵר בּוֹ "וַיָּירַאת
מַאֲלָהָךְ".

Likewise, if donkey drivers are asking to purchase grain from someone, and he has none, he may not say to them: Go to so-and-so, as he sells grain, if he knows about him that he never sold grain at all. He thereby causes the donkey drivers and the would-be seller anguish. Rabbi Yehuda says: One may not even cast his eyes on the merchandise for sale, creating the impression that he is interested, at a time when he does not have money to purchase it. Verbal mistreatment is not typically obvious, and it is difficult to ascertain the intent of the offender, as the matter is given to the heart of each individual, as only he knows what his intention was when he spoke. And with regard to any matter given to the heart, it is stated: "And you shall fear your God" (Leviticus 25:17), as God is privy to the intent of the heart.

אָמֵר רַבִּי יוֹחָנָן מִשּׁוּם רַבִּי שְׁמֻעוֹן בֶּן
יְחִיאֵי: גָּדוֹל אֲוֹנָאת דְּבָרִים מִאוֹנָאת
כְּמַמוֹן, שָׂוֹה נָאָמֵר בּוֹ "וַיָּירַאת מַאֲלָהָךְ"
וּזְהָ לֹא נָאָמֵר בּוֹ "וַיָּירַאת מַאֲלָהָךְ".
וּרְبִּי אַלְעָזָר אָוּרָ: וּזְהָ בְּגֻפּוֹ וּזְהָ
בְּמַמְנוֹן. רַבִּי שְׁמַואֵל בֶּרְ נַחֲמָנִי אָמֵר:
זֶה – נִתְנַן לְהַשְׁבּוֹן, וּזְהָ – לֹא נִתְנַן
לְהַשְׁבּוֹן.

Rabbi Yoḥanan says in the name of Rabbi Shimon ben Yoḥai: Greater is the transgression of verbal mistreatment^N than the transgression of monetary exploitation, as with regard to this, verbal mistreatment, it is stated: "And you shall fear your God." But with regard to that, monetary exploitation, it is not stated: "And you shall fear your God." And Rabbi Elazar said this explanation: This, verbal mistreatment, affects one's body; but that, monetary exploitation, affects one's money. Rabbi Shmuel bar Nahmani says: This, monetary exploitation, is given to restitution; but that, verbal mistreatment, is not given to restitution.

תַּנִּי תְּנַא קְמִיה דָרְבָּ נַחֲמָן בֶּרְ יְצְחָק:
כָּל הַמְלֵבִין פָּנֵי חֲבִיוֹ בְּרוּבִים כְּאֵילָ
שְׁפֵךְ דְּמִים. אָמֵר לֵיהֶ: שְׁפֵירָ קָא
אָמֵרָה, דְּחַוְּגָא לְהָ דָזְאַילָ סְוּפְקָא
וְאָתֵי חָוְרָא. אָמֵר לְהָ אַבְּיִ לִלְבָב
דִּימִי: בְּמַעֲרָבָא בְּמַאי זְהִרִי? אָמֵר
לְהָ: בְּאַחֲרוֹנִי אַפְּרִי. דָאָמֵר רַבִּי חַנִּינָא:
הַכֵּל יוֹרְדִין לְגַיְהָם, חֹזֵן מִשְׁלָשָׁה.

The Gemara relates that the *tanna* who recited *mishnayot* and *baraitot* in the study hall taught a *baraita* before Rav Nahman bar Yitzḥak: Anyone who humiliates another in public, it is as though he were spilling blood. Rav Nahman bar Yitzḥak said to him: You have spoken well, as we see that after the humiliated person blushes, the red leaves his face and pallor comes in its place, which is tantamount to spilling his blood. Abaye said to Rav Dimi: In the West, i.e., Eretz Yisrael, with regard to what mitzva are they particularly vigilant?^N Rav Dimi said to him: They are vigilant in refraining from humiliating others, as Rabbi Ḥanina says: Everyone descends to Gehenna except for three.

הַכֵּל סְלָקָא דַעֲתָךְ? אַלְאָ אִיכְמָא: כָּל
הַיּוֹרְדִין לְגַיְהָם עַולִּים, חֹזֵן מִשְׁלָשָׁה
שְׁיוֹרְדִין וְאַיִן עַולִּין, וְאַלְוָה הָהָבָא עַל
אַשְׁתָּאַיִשׁ, וְהַמְלֵבִין פָּנֵי חֲבִיוֹ בְּרוּבִים,
וְהַמְכַנֶּה שְׁם רֹעַ לְחַבְּרוֹן. מִכְנָה הַיּוֹנָה
מִלְבָבִינוּ! אַף עַל גַּב דַּרְשָׁ בֵּיהֶ בְּשָׁמִיהֶ.

The Gemara asks: Does it enter your mind that everyone descends to Gehenna? Rather, say: Anyone who descends to Gehenna ultimately ascends, except for three who descend^N and do not ascend, and these are they: One who engages in intercourse with a married woman, as this transgression is a serious offense against both God and a person; and one who humiliates another in public;^H and one who calls another a derogatory name.^H The Gemara asks with regard to one who calls another a derogatory name: That is identical to one who shames him; why are they listed separately? The Gemara answers: Although the victim grew accustomed to being called that name in place of his name, and he is no longer humiliated by being called that name, since the intent was to insult him, the perpetrator's punishment is severe.

אָמֵר וְבָהּ בָּרוּ בְּרַחֲנָה אָמֵר רַבִּי יוֹחָנָן:

Rabba bar bar Ḥana says that Rabbi Yoḥanan says:

NOTES

_greater is the transgression of verbal mistreatment – **דוֹלָא אַיְמָא:** The Maharsha adds that one who verbally mistreats another seeks to create the impression that he does not intend to cause the other pain. He fears the opprobrium of people more than that of God, and the Sages stated: Anyone who conducts himself in that manner receives a more severe punishment.

In the West with regard to what mitzva are they particularly vigilant – **בְּמַעֲרָבָא בְּמַאי זְהִרִי?**: They were particularly vigilant about this matter in Eretz Yisrael because of the parallel drawn

between one who humiliates another in public and one who sheds blood. The Torah harshly condemned bloodshed in Eretz Yisrael, as it renders the Holy Land impure and brings calamity to it (*Iyyun Ya'akov*).

Except for three who descend – **חֹזֵן מִשְׁלָשָׁה שְׁיוֹרְדִין**: The Meiri states that people tend to be less than diligent in repenting transgressions violated without awareness of the gravity of the transgression. Since one who humiliates another believes that he did not commit a serious transgression, he will not repent (see Rambam Sefer HaMadda, Hilkhot Teshuva).

Perek IV
Daf 59 Amud a

נוֹחַ לֹאָדָם שִׁבְוא עַל סֶפֶק אֲשֶׁת
אִישׁ וְאֶלְיָבֵן פִּנִּי חֲבִירוֹ בָּרְבִּים. מִנֶּא
לֹא? מִדְרֶשׁ רַבָּא. דָּרוֹשׁ רַבָּא: מַאי
דָּרְכִּיבָּ: יָבָצְלָעַ שְׁמַחוֹ נְגַאַסְפָּו... קָרְעָיו
לְאַדְמוֹ. אָמָר דָּדוֹ לִפְנֵי הַקָּדוֹשׁ בָּרוּךְ הוּא:
וּבָנוּ שְׁלֹל עַלְמָם, גָּלוּ וַיַּדַּע לְפִנֵּיכֶם
שָׁם הִי מִקְרָעִים בָּשָׂרִי לֹא הִיא דָמִי
שׂוֹתָת לְאָרֶץ.

וְלֹא עוֹד, אַלְאָא אָפִילוּ בְשֻׁעָה שְׁעוּסְקִין
בְּגָנְעִים וְאֲהָלֹת אָוּרִים לֹא: דָוד, הַבָּא
עַל אֲשֶׁת אִישׁ מִתְּתוֹ בָּמוֹ? אָמָר אָמָר
לְהָם: מִתְּתוֹ בָּחָנָק, וַיָּשׁוֹלְקָל לְעוֹלָם
הַבָּא, אַבְלָל הַמְּלָבִין אֶת פִּנִּי חֲבִירָוּ
בְּבִבִּים – אֵין לוֹ חָלָק לְעוֹלָם הַבָּא.

וְאָמָר מָר זָטְרָא בֶּר טָבִיה אָמָר רַב,
וְאָמְרִי לְהָא אָמָר רַב חַנָּא בֶּר בְּיַנְאָא אָמָר
רַבִּי שְׁמֻעוֹן חַסִּידָא, וְאָמְרִי לְהָא אָמָר רַבִּי
יּוֹחָנָן מִשּׁוּם רַבִּי שְׁמֻעוֹן בֶּן יוֹחָנָן: נָנוּ
לוּ לְאָדָם שְׁיפִיל עַצְמוֹ לְכַבְּשׁוֹן הַאֲשָׁר
וְאֶל יְלָבִין פִּנִּי חֲבִירָוּ בָּרְבִּים. מִנֶּא
לוּ – מִתְּהִרְבָּר, דְּכַתְּבָּ: "הִיא מִזְאַת וְהִיא
שִׁלְוחָה אֶל חַמִּיהָ".

אָמָר רַב חַנְנָא בֶּרְיהָ דָרְבָּ אִידִי: מַאי
דְּכַתְּבָּ: "וְלֹא תֹנוּ אִישׁ אֶת עַמִּיתּוֹ" –
עַם שָׁאַתָּךְ בְּתוֹרָה וּבְמִצְוֹת אֶל תֹּזְנִיהָ.
אָמָר רַב: לְעוֹלָם יְהָא אָדָם זָהָר
בְּאוֹנָאת אֲשֶׁתוֹ, שְׁמַתוֹן שְׁדָמָעַת
מְעוֹיה אֲנוֹתָה קָרְבָּה.

אָמָר רַב בְּיַעֲלֹוּ: מִיּוֹם שְׁנַחֲרָב בֵּית
הַמִּקְדָּשׁ גַּנְעָלָו שְׁעָרֵי תְּפִילָה, שְׁנָאָמָר:
"זָם בַּי אָזְעַק וְאָשְׁועַ שְׁתַם תְּפִלְתִּי".
וְאַף עַל פִּי שְׁשָׁעָרֵי תְּפִילָה גַּנְעָלָו שְׁעָרֵי
דְּמָעוֹת לֹא גַּנְעָלָו, שְׁנָאָמָר: "שְׁמַעַה
תְּפִלִּי הִי וְשׁוֹעַתִּי הָאֲזִינָה אֶל דְּמָעַת
אֶל תְּחִרְשָׁה".

It is preferable for a person to engage in intercourse with a woman whose married status is uncertain and not humiliate another in public. The Gemara asks: **From where do we derive this?** The Gemara answers: It is from that which Rava interpreted, as Rava interpreted: What is the meaning of that which is written: “And when I limped they rejoiced and gathered...they tore and did not cease [damu]” (Psalms 35:15)? The term “damu” can also be understood as a reference to blood. Concerning the fasting he undertook to atone for his sin with Bathsheba (see II Samuel, chapters 11–12), David said before the Holy One, Blessed be He: Master of the Universe, it is revealed and known before You that if my tormentors were to tear my flesh, my blood [dami] would not flow to the ground, due to excessive fasting.

And moreover, they torment me to the extent that even at the time when they are engaged in the public study of the halakhot of leprosy sores and tents^N in which there is a corpse, i.e., halakhic matters that have no connection to my sin, they say to me: David, one who engages in intercourse with a married woman, his death is effected with what form of execution? And I say to them: One who engages in intercourse with a married woman^H before witnesses and with forewarning, his death is by strangulation, but he still has a share^N in the World-to-Come. But one who humiliates another in public has no share in the World-to-Come. The transgression of you, who humiliate me, is more severe than my transgression.

And Mar Zutra bar Toviyya says that Rav says; and some say Rav Ḥana bar Bizna says that Rabbi Shimon Ḥasida says; and some say Rabbi Yohanan says in the name of Rabbi Shimon ben Yoḥai: It is more comfortable for a person to cast himself into a fiery furnace, than to humiliate another in public to avoid being cast into the furnace. **From where do we derive this?** From Tamar, daughter-in-law of Judah. When she was taken out to be burned, she did not reveal that she was pregnant with Judah's child. Rather, she left the decision to him, to avoid humiliating him in public, as it is written: “And Judah said: Bring her forth, and let her be burnt. When she was brought forth, she sent to her father-in-law, saying: I am pregnant by the man to whom these belong. And she said: Examine these, whose are these, the signet, and the cords, and the staff?” (Genesis 38:24–25).

§ Rav Ḥinnana, son of Rav Iди, says: What is the meaning of that which is written: “And you shall not mistreat each man his colleague [amito]” (Leviticus 25:17)? The word *amito* is interpreted as a contraction of *im ito*, meaning: One who is with him. With one who is with you in observance of Torah and mitzvot, you shall not mistreat him. Rav says: A person must always be careful about mistreatment of his wife.^{NH} Since her tear is easily elicited, punishment for her mistreatment is immediate.

Rabbi Elazar says: Since the day the Temple was destroyed^N the gates of prayer were locked, and prayer is not accepted as it once was, as it is stated in lament of the Temple's destruction: “Though I plead and call out, He shuts out my prayer” (Lamentations 3:8). Yet, despite the fact that the gates of prayer were locked with the destruction of the Temple, the gates of tears were not locked, and one who cries before God may rest assured that his prayers will be answered, as it is stated: “Hear my prayer, Lord, and give ear to my pleading, keep not silence at my tears” (Psalms 39:13).

NOTES

Leprous sores and tents – **גַּעֲשִׁים וְאַהֲלֹת:** These *halakhot* were chosen because they are totally unrelated to the *halakhot* of a married woman. The story thereby teaches us that David's tormentors taunted him even when there was no reasonable catalyst to do so. Others explain that David's tormentors were not cowed by the fact that the Sages state that leprosy is a punishment for evil speech. Despite that association, they denounced him publicly.

His death is by strangulation and he has a share – **מִתְּחִתָּו בְּבָנָק יִשְׁלַׁח חָלָק:** Although the Gemara earlier listed engaging in intercourse with a married woman among those sins for which the offender descends to hell and does not ascend, the reference here is to one who repented (Rid). Alternatively, it could be explained that the death penalty atones for his sins (Ritva). Another possibility is that the statement that the phrase: He does not ascend, is referring to an adulterous relationship that resulted in the birth of a *mamzer*. In such a case, since his sin has permanent negative consequences, he is unable to fully atone for it (see *Tosafot* on *Hagiga*).

Mistreatment of his wife – **אָוֹנָאת אֲשֶׁת:** One must be careful about the mistreatment of any woman. It is incumbent upon a man to honor his wife more than he honors himself (*Iyun Yaakov*).

Since the day the Temple was destroyed – **מִיּוֹם שְׁנַחֲרָב בֵּית הַמִּקְדָּשׁ:** When Solomon built the Temple, he requested that all prayers should ascend to Heaven by means of the Temple. Once it was destroyed, it was tantamount to the gates of Heaven being sealed (*Maharsha*).

HALAKHA

One who engages in intercourse with a married woman – **בְּקָא עַל אֲשֶׁת אִישׁ:** A man and married woman who engage in intercourse are executed by strangulation (*Rambam Sefer Kedusha, Hilkhot Issurei Bia* 1:6).

Mistreatment of his wife – **אָוֹנָאת אֲשֶׁת:** A man must be careful not to upset his wife, as her tears are easily elicited (*Shulhan Arukh, Hoshen Mishpat* 228:3).

NOTES

The gates of prayer for victims of verbal mistreatment were not locked – **שערו אונאה לא ננעלו**: This does not mean that the prayers of other supplicants will be rejected. Rather, in the context of this parable, one who knocks on a gate to seek entry typically waits for one to open the gate before him. The gates of mistreatment are always open, and the moment that the victim cries out his prayers are answered (*Torat Hayim*).

HALAKHA

The gates of prayer for victims of verbal mistreatment were not locked – **שערו אונאה לא ננעלו**: The prayers of anyone who cries out due to verbal mistreatment are answered immediately (*Shulhan Arukh, Hoshen Mishpat* 228:1).

LANGUAGE

Curtain [pargod] – **חַרְנוֹד**: Apparently from the Persian pargad, screen. It refers to the screen that divides the king from his palace retinue.

וְאָמֵר רַב: כִּל הַהֲולֵךְ בְּעֵצֶת אַשְׁתָּו
נוֹפֵל בְּגַיהֲנָם, שָׁנָאָמָר: "רַק לְאַהֲרֹן
כְּאַחֲרָב" וּגוֹ. אָמֵר לֵיהּ רַב פַּפָּא
לְאַבְנֵי וְהָא אָמְרֵי אַיִלְשִׁי: אִיתְתָּר
גּוֹצָא גּוֹחֵן וְתַלְחוֹשׁ לְהָא לְאַקְשִׁיא,
הָא - בְּמִילִי דַעַלְמָא, וְהָא - בְּמִילִי
דַשְׁמִיא, וְהָא - בְּמִילִי דַעַלְמָא.

And Rav says: Nevertheless, anyone who follows the counsel of his wife descends into Gehenna, as it is stated: “But there was none like Ahab, who did give himself over to do that which was evil in the sight of the Lord, whom Jezebel his wife incited” (1 Kings 21:25). Rav Pappa said to Abaye: But don’t people say a popular proverb: If your wife is short, stoop and whisper to her and consult with her? The Gemara answers: This is not difficult, as this statement of Rav instructs that one not follow her counsel in general matters; and that proverb instructs that one follow her counsel in household matters. The Gemara presents another version of this distinction: This statement of Rav maintains that one should not follow her counsel in divine matters; and that proverb maintains that one should follow her counsel in general matters.

אָמֵר רַב חַסְדָּא: כִּל הַשּׁוּרִים נָנְעָלִים
חוֹזֵץ מִשְׁעָרֵי אַונָּה, שָׁנָאָמָר: "חַנְחָה ה'
נָצַב עַל חֹומָת אַנְךְ וּבְדוֹ אַנְךְ". אָמֵר
רַבִּי אֶלְזָאָר: כִּל נְפָרָע בֵּין שְׁלֵיחָה
חוֹזֵץ מִאוֹנָה, שָׁנָאָמָר: "וּבְדוֹ אַנְךְ".

Rav Hisda says: All the gates of Heaven are apt to be locked, except for the gates of prayer for victims of verbal mistreatment,^{NH} as it is stated: “And behold, the Lord stood upon a wall built with a plumb line,⁸ and a plumb line in His hand” (Amos 7:7). God stands with the scales of justice in His hand to determine if one has been subjected to injustice. Rabbi Elazar says: In response to all transgressions, God punishes the perpetrator by means of an agent, except for mistreatment [*ona'a*], as it is stated: “And a plumb line [*anakh*] in His hand.” The term for mistreatment and the term for plumb line are spelled in a similar manner, indicating that God Himself inflicts retribution.

אָמֵר רַבִּי אַבְהָה: שְׁלֵשָׁה אֵין הַפְּרוּגָד
נָנְעָל בְּפִנֵּיכֶם: אַונָּה, גּוֹל, וְעַבְדָּה
וּרְהָא. אַונָּה - דְּרָכִיב: יַבְדוֹ אַנְךְ/
גּוֹל - דְּכַתִּיב: "חַקְס וְשַׁד יְשִׁמְעַ
בָּה עַל פְּנֵי תְמִיד", עַבְדָּה וּרְהָא -
דְּרָכִיב: "הַעַם הַמְּכֻעִים אָתִי עַל
פְּנֵי תְמִיד" וּגוֹ.

Rabbi Abbahu says: There are three sins before whose transgressors the curtain [hapargod]¹ between the world and the Divine Presence is not locked; their sins reach the Divine Presence. They are: Verbal mistreatment, robbery, and idol worship. Mistreatment, as it is stated: “And a plumb line in His hand”; robbery, as it is stated: “Violence and robbery are heard in her, they are before Me continually” (Jeremiah 6:7); idol worship, as it is stated: “A people that angers Me before Me continually; that sacrifice in gardens, and burn incense upon bricks” (Isaiah 65:3).

BACKGROUND

Plumb line – אַנְךָ: A plumb line is a string tied to a plumb bob, a small, heavy object that makes the string hang straight. A plumb line is used to measure the angle of vertical objects with the ground. Plumb lines are most commonly used to assess whether or not a wall is at a perfect 90-degree angle with the floor.



Plumb line hanging from a wall

אמור רב יהודה: לעולם יהא אדם זכי
בתבואה בתוך ביתו, שאין מריביה
מצואה בתוך ביתו של אדם אלא על
עסקי תבואה, שאמרו: "השם נבולן"
שלום חלב חיטים ושביעין. אמר רב פפא:
הינו דאמרינו איןishi: כמשלם שעורי מפרא
בקיש ואתי תורה בevity.

אמור רב חנינא בר פפא: לעולם יהא
אדם זהי בתבואה בתוך ביתו, שלא
נקראו ישראל דלים אלא על עסקי
תבואה, שנאמר: "זהה אם ורע ישראל"
נו. וככתוב: "ויחנו עליהם" גו, וככתוב:
זידיל ישראל מאד מפני מזון.

אמור רבי חלפו: לעולם יהא אדם זהי
בכבוד אשתו, שאין ברכה מצואה בתוך
ביתו של אדם אלא בשבייל אשתו,
שנאמר: "ולא ברם הטיב בעבורה". והיינו
האמור להו רבא לבני מחותא: אוקירו
לשיכנו כי היכי דתתעתרו.

תמן הטעם: חתכו חוליות ונתן חול בין
חוליא לחוליא, ובו אליעזר מטהר
חכמים מטמאין.

Apropos the topic of how man should approach his household, Rav Yehuda says: A person must always be careful about ensuring that there is grain inside his house, as discord is found in a person's house only over matters of grain, as it is stated: "He makes your borders peace; He gives you plenty with the finest wheat" (Psalms 147:14). If there is the finest wheat in your house, there will be peace there. Rav Pappa said: This is in accordance with the adage that people say: When the barley is emptied from the jug,^N quarrel knocks and enters the house.

And Rav Hinnana bar Pappa says: A person must always be careful about ensuring that there is grain inside his house, as the Jewish people were characterized as poor only over matters of grain, as it is stated: "And it was, if Israel sowed, and Midian and the children of the east ascended" (Judges 6:3); and it is written: "And they encamped against them and they destroyed the crops of the land" (Judges 6:4); and it is further written: "And Israel was greatly impoverished due to Midian" (Judges 6:6).

And Rabbi Helbo says: A person must always be careful about sustaining the honor of his wife,^H as blessing is found in a person's house only because of his wife, as it is stated in allusion to this: "And he dealt well with Abram for her sake, and he had sheep and oxen" (Genesis 12:16). And that is what Rava said to the residents of Mehoza,^B where he lived: Honor your wives, so that you will become rich.

§ Apropos the topic of verbal mistreatment, we learned in a mishna there (*Kelim* 5:10): If one cut an earthenware oven widthwise into segments,^H and placed sand^N between each and every segment, Rabbi Eliezer deems it ritually pure. Because of the sand, its legal status is not that of a complete vessel, and therefore it is not susceptible to ritual impurity. **And the Rabbis deem it ritually impure**, as it is functionally a complete oven.

NOTES

כמשלם שעורי מפרא: Barley was typically eaten by the poor, or fed by people to their animals. If one's poverty is so great that he has neither wheat, which was typically eaten by people, nor barley, which was eaten only by the poor, this will certainly lead to discord (Iyyun Yaakov).

>If one cut an earthenware oven widthwise into segments and placed sand – **חתכו חוליות ונתן חול:** The Ra'avad explains that the sand prevents the segments from being properly

reconnected. With regard to the halakha in this case, there are differing opinions. Many authorities hold that this oven was originally constituted in this manner (Rambam; Ra'avad). Others hold that the reference is to an oven that became ritually impure, and the owner broke it apart so that it would no longer be ritually impure (*Talmid Rabbeinu Peretz*). He now seeks to repair it and requires the sand because the segments were slightly damaged when cut, and the sand fills the spaces created by that damage (Ritva).

HALAKHA

The honor of his wife – **כבד אשתו:** The Sages mandate that a man must love his wife as he loves himself, and honor her more than he honors himself (Rambam *Sefer Nashim, Hilkhot Ishut* 15:19).

One cut an earthenware oven widthwise into segments – **חתכו חוליות:** If one cut an earthenware oven widthwise into segments and coated the outer surface of the oven with mortar, it is susceptible to contracting ritual impurity. This is the case even if he placed sand between the segments when reconstituting the oven, in accordance with the opinion of the Rabbis (Rambam *Sefer Tahara, Hilkhot Kelim* 16:5).

BACKGROUND

Mehoza – **מְחוֹזָה:** Mehoza was a city on the Tigris River located near the Malka River. It was a large commercial city, most of whose inhabitants were Jews. Unlike the Jews of most other Jewish communities, the Jews in Mehoza generally earned their living from commerce. Many Jews in Mehoza were converts or immigrants from other countries. After Neharde'a was destroyed in 259 CE, many of the scholars from its yeshiva

relocated to Mehoza, which became a center for leading Torah scholars, including Rav Nahman; Rav Sheshet; Rava, who later became head of the yeshiva in Mehoza; Ameimar; and Rav Kahana, who was Rav Ashi's teacher. After Abaye's death in approximately 340 CE, the yeshiva in Pumbedita, then headed by Rava, also relocated to Mehoza for a period of time.

Perek IV

Daf 59 Amud b

BACKGROUND

The oven of *akhnai* – תנור של עכנאי: According to Rabbi Eliezer, if an oven is cut widthwise, according to the parallel lines in the illustration, it is considered a broken vessel incapable of contracting ritual impurity, even if it is later reassembled.

Likeness of the oven of *akhnai*, based on an oven discovered at Masada

Cubit [amma] – אַמָּה: Several different lengths are referred to by this name. The physical origin of the cubit is the distance from the elbow to the end of the middle finger. This part of the body is called *ama* in Hebrew. The standard cubit is six handbreadths long, equaling 48 cm according to one opinion and 57.6 cm according to another. In the Talmud one also finds mention of a short cubit, which is five handbreadths long. In addition, there were two other cubits that were used in the Temple for special measurements: A compressed cubit, which was half a fingerbreadth longer than the standard cubit, and an expansive cubit, which was a full fingerbreadth longer than the standard cubit.

וְהִזֶּה הוּא תַּנּוֹר שֶׁל עֲכָנָאִי. מַיִן עֲכָנָאִי?
אמָר ר֔ב יְהוּדָה אָמָר שְׁמוּאֵל: שְׁחִקְפּוֹ
דְּבָרִים בְּעַכְנָא זֶה, וְטִמְאָוָה. תְּנָא: בָּאוֹת
הַיּוֹם הַשִּׁבְעִינִי רַبִּי אַלְשָׁוֹר בְּלִי תְּשֻׁבוֹת
שְׁבָעָלִים וְלֹא קִיבְלוּ הַיְמָנוֹ.

And this is known as the oven of *akhnai*.⁸ The Gemara asks: What is the relevance of *akhnai*, a snake, in this context? Rav Yehuda said that Shmuel said: It is characterized in that manner due to the fact that the Rabbis surrounded it with their statements like this snake,ⁿ which often forms a coil when at rest, and deemed it impure. The Sages taught: On that day, when they discussed this matter, Rabbi Eliezer answered all possible answers in the world to support his opinion, but the Rabbis did not accept his explanations from him.

אמָר לְהָם: אִם הַלְּכָה כְּמוֹתִי – חֲרוּב זה
יוֹכִיחַ. נַשְׁקֵר חֲרוּב מִפְּקוּדוֹ מֵאַמָּה,
וְאָמָר לְהָם: אַרְבַּע מֵאוֹת אַמָּה. אָמְרוּ לוֹ:
אֵין מִבְּיאֵין רָאֵיה מִן הַחֲרוּב. חֲרוּב וְאָמָר
לְהָם: אִם הַלְּכָה כְּמוֹתִי אַפְתָּה הַמִּזְבֵּחַ
חֲרוּב אַפְתָּה הַמִּזְבֵּחַ לְאַחֲרָיוּם. אָמְרוּ לוֹ: אֵין
מִבְּיאֵין רָאֵיה מִאַפְתָּה הַמִּזְבֵּחַ.

After failing to convince the Rabbis logically, Rabbi Eliezer said to them: If the *halakha* is in accordance with my opinion, this carob tree will prove it. The carob tree was uprooted from its place one hundred cubits,^b and some say four hundred cubits. The Rabbis said to him: One does not cite halakhic proof from the carob tree. Rabbi Eliezer then said to them: If the *halakha* is in accordance with my opinion, the streamⁿ will prove it. The water in the stream turned backward and began flowing in the opposite direction. They said to him: One does not cite halakhic proof from a stream.

חֲרוּב וְאָמָר לְהָם: אִם הַלְּכָה כְּמוֹתִי –
כּוֹתְלִי בֵּית הַמְּדֻרֶשׁ יוֹכִיחַ. הַטָּו כּוֹתְלִי
בֵּית הַמְּדֻרֶשׁ לִיּוֹל. גַּשֵּׁר בְּהָם רַבִּי יְהוֹשֻׁעַ,
אָמָר לְהָם: אִם הַלְּכָה כְּמוֹתִי תְּחִנְצִים
זֶה אָתָּה וְזֶה בְּהַלְּכָה – אַתֶּם מַה טִּיבְכֶם?
לֹא נִפְלֹא מִפְנֵי כְּבוֹדוֹ שֶׁרַבִּי יְהוֹשֻׁעַ, וְלֹא
זְקִפוּ מִפְנֵי כְּבוֹדוֹ שֶׁרַבִּי אַלְשָׁוֹר, וְלֹא
מִפְנֵי עֲזָמָדֵין.

חֲרוּב וְאָמָר לְהָם: אִם הַלְּכָה כְּמוֹתִי – מִן
הַשָּׁמָמָן יוֹכִיחַ. יֵצֵאתָה בְּתִיקְוָה
מִהַּלְּכָה אַצְלָן רַבִּי אַלְשָׁוֹר שְׁהַלְּכָה כְּמוֹתִי
בְּכָל מִקְוּם!

Rabbi Eliezer then said to them: If the *halakha* is in accordance with my opinion, the walls of the study hall will prove it. The walls of the study hall leaned inward and began to fall. Rabbi Yehoshua scolded the walls and said to them: If Torah scholars are contending with each other in matters of *halakha*, what is the nature of your involvement in this dispute? The Gemara relates: The walls did not fall because of the deference due Rabbi Yehoshua, but they did not straighten because of the deference due Rabbi Eliezer, and they still remain leaning.

Rabbi Eliezer then said to them: If the *halakha* is in accordance with my opinion, Heaven will prove it. A Divine Voice emergedⁿ from Heaven and said: Why are you differing with Rabbi Eliezer, as the *halakha* is in accordance with his opinion in every place that he expresses an opinion?

NOTES

That they surrounded it with their statements like this snake – **שְׁחִקְפּוֹ דְּבָרִים בְּעַכְנָא זֶה**: Just as a snake coils into a circle to prevent any possible escape, so too the Sages surrounded Rabbi Eliezer with answers and refuted all his claims, leaving him with no response (Rabbeinu Nissim Gaon).

Carob tree...stream – חֲרוּב...מִזְבֵּחַ: The early commentaries discuss this passage extensively. They explain that just as miracles were performed for the prophets in biblical times, so too they are performed for the righteous throughout the generations. Since Rabbi Eliezer was seeking to ascertain the truth of Torah, God came to his assistance by performing these wonders (see Rabbeinu Hananel and Rabbeinu Nissim Gaon). The Maharsa offers homiletic interpretations to explain the fact that the miracles were performed specifically with the carob tree, the stream, and the walls of the house of study. Rabbeinu Hananel cites an explanation that these miracles appeared as a vision seen in a dream

by one of the Sages of that generation. Since it was a vivid dream with an aspect of prophecy, they gave credence to his dream.

A Divine Voice emerged – לִיּוֹל צִיּוֹת בְּתִיקְוָה: The commentaries discuss at length how this Divine Voice could have supported Rabbi Eliezer's opinion, when in fact the *halakha* was not in accordance with his opinion. Some explain that the Divine Voice was ambiguous and did not explicitly state that the *halakha* is in accordance with the opinion of Rabbi Eliezer. Alternatively, it was a test to see if the Sages would stand firm in their opinion (Rabbeinu Nissim Gaon). Rabbi Shlomo Molkho explains that Rabbi Eliezer was correct. Fundamentally, the *halakha* is that the oven is ritually pure. Nevertheless, the Rabbis decreed it ritually impure lest one fashion a similar oven without placing sand between the segments, which everyone agrees would be susceptible to ritual impurity. Because they established a safeguard to prevent violation of Torah law, there is a basis and a source for their opinion.

עָמֵד רַבִּי יְהוֹשֻׁעַ עַל גָּלָיו וַיֹּאמֶר: "לֹא בְשָׁמִים הִיא." מַאֲи "לֹא בְשָׁמִים הִיא"? אָמֵר רַבִּי יְרַמְּיהַ: שֶׁכְּבָר נְתָנָה תּוֹרָה מְהֻרָּה סִינְיָה, אַיִן אָנוּ מִשְׁגִּיחַ בְּבֵית קֹל, שֶׁכְּבָר כְּתַבְתָּ בְּהָרָ כְּסֵיף בְּתוֹרָה: "אַחֲרֵי וּבְפִים לְהַטָּת". אַשְׁבֵּחַ רַבִּי נָתָן לְאַלְיָהּ, אָמֵר לַיהָ: מַאֲי עַבְדִּים קֹוְשָׁא בְּרוּךְ הוּא בְּהָהִיא שְׁעַתָּא? אָמַר לַיהָ: קָא חַיָּק וְאָמַר נַצְחָוִין בְּנֵי, נַצְחָוִין בְּנֵי.

אָמְרוּ: אָזֶה הַיּוֹם הַבָּיאוּ כָּל טְהָרוֹת שְׁטִיחָר וַיַּבְּרִיכָוּ וְשָׂרְפוּ בְּאָשׁ, וְנִמְנוּ עַלְיוֹ בְּרִכּוֹתָהוּ וְאָמְרוּ: מַיְלֵךְ יְהוָה? אָמַר לְהָם רַבִּי עֲקִיבָא: אַנְיָא אַלְקָן, שֶׁמְאָה לְאַדְם שְׁאַיָּנוּ הַנּוּן יוֹדְיעַ, נִמְצָא מַחְרִיב אֶת כָּל הַעוֹלָם בּוֹלָם.

פרק ע

מַה עָשָׁה רַבִּי עֲקִיבָא? לְבָשׂ שְׁחוֹרִים, וַיַּתְעַטֵּר שְׁחוֹרִים, וַיֵּשֶׁב לְפָנָיו בְּרִיחָוֹק אַרְבָּע אַמֹּתָה. אָמַר לוֹ רַבִּי אַלְיָהּ: עֲקִיבָא. מַה יּוֹם מִיּוֹמִים? אָמַר לוֹ: רַבִּי, כְּמַדּוֹפהּ לַיְלָה שְׁחָבִירִים בְּדָוִלִים מִמֶּן. אָף הַוָּא קָרָע בְּגָדוֹ וְחַלְזָן מִזְעָלָיו, וַיָּשָׁמַט וַיֵּשֶׁב עַל גָּבָי.

וְלֹא עִינֵּיו דְּמָעוֹת, לְקָה הַעֲלָם שְׁלִישִׁים בְּחִיטִים, וְשָׁלַשׁ בְּחִיטִים, וְשָׁלֵישׁ בְּשָׁעוֹרִים. וַיָּשָׁאֵל אָמְרוֹתָם: אָף בָּאָזְקָ שְׁבָדִי אַשְׁהָ טָפָה. תֹּנוּ: אָף גָּדוֹל הִיא בְּאָזֶה הַיּוֹם, שְׁבָכֶל מָקוֹם שְׁנָתוֹן בּוֹ עִינֵּיו וַיַּבְּרִיכָוּ נְשָׁרָה.

וְאָרֶבֶן גַּמְלַיאֵל הִיא בָּא בְּפְפִינָה, עַמְּדָה עַלְיוֹ נְחַשּׁוֹל לְטַבְעָו. אָמַר: כְּמַדּוֹפהּ לַיְלָה שְׁאַיָּה זֶה אַלְאָ בְּשָׁבֵיל וַיַּבְּרִיכָוּ בְּנֵי אַלְיָהּ בְּנֵי הַוּרְקָנָס. עַמְּדָה עַל גָּלָיו וְאָמַר: רַבּוּ נְשָׁל עַולָּם, גָּלוּ וְזָדוּ לְפִנֵּיךְ שְׁלָא לְכָבוֹד עֲשִׂיתִי, וְלֹא לְכָבוֹד בֵּית אָבָא עֲשִׂיתִי, אַלְאָ לְכָבוֹד קָדְךָ, שְׁלָא יְרַב מִתְּלֻקּוֹת בִּישָׂרָאֵל. נַח הַיּוֹם מִזְעָפָה.

Rabbi Yehoshua stood on his feet and said: It is written: “It is not in heaven” (Deuteronomy 30:12).^h The Gemara asks: What is the relevance of the phrase “It is not in heaven” in this context? Rabbi Yirmeya says: Since the Torah was already given at Mount Sinai, we do not regard a Divine Voice, as You already wrote at Mount Sinai, in the Torah: “After a majority to incline” (Exodus 23:2). Since the majority of Rabbis disagreed with Rabbi Eliezer’s opinion, the halakha is not ruled in accordance with his opinion. The Gemara relates: Years after, Rabbi Natan encountered Elijah the prophet and said to him: What did the Holy One, Blessed be He, do at that time, when Rabbi Yehoshua issued his declaration? Elijah said to him: The Holy One, Blessed be He, smiled and said: My children have triumphed over Me;ⁿ My children have triumphed over Me.

The Sages said: On that day, the Sages brought all the ritually pure items deemed pure by the ruling of Rabbi Eliezer with regard to the oven and burned them in fire, and the Sages reached a consensus in his regard and ostracized him.ⁿ And the Sages said: Who will go and inform him of his ostracism? Rabbi Akiva, his beloved disciple, said to them: I will go, lest an unseemly person go and inform him in a callous and offensive manner, and he would thereby destroy the entire world.

What did Rabbi Akiva do? He wore blackⁿ and wrapped himself in black, as an expression of mourning and pain, and sat before Rabbi Eliezer at a distance of four cubits, which is the distance that one must maintain from an ostracized individual. Rabbi Eliezer said to him: Akiva, what is different about today from other days, that you comport yourself in this manner? Rabbi Akiva said to him: My teacher, it appears to me that your colleagues are distancing themselves from you. He employed euphemism, as actually they distanced Rabbi Eliezer from them. Rabbi Eliezer too, rent his garments and removed his shoes, as is the custom of an ostracized person, and he dropped from his seat and sat upon the ground.

The Gemara relates: His eyes shed tears, and as a result the entire world was afflicted: One-third of its olives were afflicted, and one-third of its wheat, and one-third of its barley. And some say that even dough kneaded in a woman’s hands spoiled. The Sages taught: There was great anger on that day, as any place that Rabbi Eliezer fixed his gaze was burned.

And even Rabban Gamliel, the *Nasi* of the Sanhedrin at Yavne, the head of the Sages who were responsible for the decision to ostracize Rabbi Eliezer, was coming on a boat at the time, and a large wave swelled over him and threatened to drown him. Rabban Gamliel said: It seems to me that this is only for the sake of Rabbi Eliezer ben Hyrcanus,^p as God punishes those who mistreat others. Rabban Gamliel stood on his feet and said: Master of the Universe, it is revealed and known before You that neither was it for my honor that I acted when ostracizing him, nor was it for the honor of the house of my father that I acted; rather, it was for Your honor, so that disputes will not proliferate in Israel. In response, the sea calmed from its raging.

HALAKHA

It is not in heaven – **לֹא בְשָׁמִים הִיא**: From the verse: “It is not in heaven,” one derives that a prophet cannot innovate a halakha in the Torah by claiming that he was told to do so in a prophecy. Even if a prophet performs wonders and miracles, if he claims that God has sent him to add or subtract mitzvot from the Torah or seeks to reinterpret a mitzva or a halakha, he is a false prophet (Rambam Sefer HaMadda, Hilkhot Yesodei HaTorah 9:1).

NOTES

My children have triumphed over Me – **גַּנְחָוִין בְּנֵי**: The commentaries discuss at length why God smiled while He said this. Some explain that God was pleased with the Rabbi’s persistence, as their rejection of the Divine Voice demonstrated their belief in the eternity of the halakhic decision process set forth in the Torah, which cannot be changed even by a prophet. See Rambam’s introduction to *Mishne Torah*.

And they...ostracized him – **יָבַרְכָוּוּ**: According to Rashi, Rabbi Eliezer was ostracized (see *Tosafot*). The Ramban and other commentaries hold that this was more serious than ostracism, and Rabbi Eliezer was actually excommunicated. The Rabbis did this because he refused to accept the majority opinion and agitated against them. He was like a rebellious elder (see Rashi on *Berakhot* 19a).

He wore black – **לְבָשׂ שְׁחוֹרִים**: In deference to his teacher, Rabbi Akiva conducted himself as though he, not Rabbi Eliezer, was the one ostracized. He employed a similar style in the way that he spoke, as he did not say that his colleagues distanced Rabbi Eliezer from them, but rather that they distanced themselves from him (Maharsha).

PERSONALITIES

Rabbi Eliezer ben Hyrcanus – When the name Rabbi Eliezer occurs in the Talmud without a patronymic, it refers to Rabbi Eliezer ben Hyrcanus, also known as Rabbi Eliezer the Great, who was one of the leading Sages in the period after the destruction of the Second Temple. Rabbi Eliezer was born to a wealthy family of Levites, who traced their lineage back to Moses. Rabbi Eliezer began studying Torah late in life, but he quickly became an outstanding disciple of Rabban Yohanan ben Zakkai, who was a disciple of Beit Hillel, and many fundamental halakhic disputes between these Sages are recorded in the Mishna. Hyrcanus on the other, he would outweigh them all.

Rabbi Eliezer was blessed with a remarkable memory. All his life, in his Torah study and his halakhic rulings, he attempted to follow the traditions of his Rabbis without adding to them. Nevertheless, although he was the primary student of Rabban Yohanan ben Zakkai, who was a disciple of Beit Hillel, he was considered one who tended toward the opinions of Beit Shammai. Rabbi Eliezer’s close friend, Rabbi Yehoshua ben Hananya, completely followed the opinions of Beit Hillel, and many fundamental halakhic disputes between these Sages are recorded in the Mishna.

Because of his staunch and unflinching adherence to tradition, Rabbi Eliezer was unwilling to accede to the majority opinion. Rabbi Eliezer’s conduct generated so much tension among the Sages that Rabban Gamliel, who was the brother of his wife, Imma Shalom, was forced to excommunicate him to prevent controversy from proliferating. This ban was lifted only after Rabbi Eliezer’s death. All of the Sages of the next generation were Rabbi Eliezer’s students, most prominent among them Rabbi Akiva. Rabbi Eliezer’s son, also named Hyrcanus, was a Sage of the following generation.

NOTES

מִבֵּית אָבִי אָבֶא – Tosafot

From the house of the father of my father – *Tosafot* and the *Ritva* explain that Rabbi Eliezer's wife received this tradition from Rabban Gamliel himself, or from his father, Rabban Shimon.

Except for the gates of prayer of victims of verbal mistreatment – **חוֹץ מְשֻׁעִי אָוְנָה**: Although the Sages acted properly, they were punished for Rabbi Eliezer's pain and anguish (*Ya'avetz*).

HALAKHA

DISTRESSING A CONVERT – **אוֹנָה הַגָּר**: One must make certain neither to exploit a convert in monetary dealings nor mistreat him verbally or physically, as the Torah warned against doing so in several places (*Shulhan Arukh, Hoshen Mishpat* 228:2).

LANGUAGE

His family [deyotkei] – **דִּיאָתָקְהַה**: From the Middle Iranian dūdāg, meaning family.

אִיפָּא שְׁלֹם דְּבִתָּהוּ דָּרְבִּי אַלְיעָרוֹ
אֲחַתְּתָה דָּרְבָּן גַּמְלִיאֵל הַוָּאִי. מִמְּהָוָא
מַעַשָּׂה וְאַילְכָּן לֹא הוֹה שְׁבָקָה לְהָ לְרָבִּי
אַלְיעָרָן לְמִפְּלָל עַל אַפְּיָה. הַהָּוָא יוֹמָא רִישָׁ
וַחֲחָה הוֹה, וְאַיְחָלָף לְהָ בֵּין מְלָא לְחַסְרָ.
אַיְכָּא דְּאָמְרוּ: אַתָּא עַנְנָא וְקָא אַבְּבָא.
אַפְּיקָא לְיהָ רִיפְתָּא.

אֲשְׁבָּחָתִיהָ דְּגַנְּפָל עַל אַנְפִּיהָ, אָמְרָה לְיהָ:
קוֹם, קַטְלִית לְאָחִי. אַזְדָּכִי נַפְקֵשׁ יְפּוּרָא
מִבֵּית רַבְּן גַּמְלִיאֵל דְּשַׁבָּב. אָמְרָה לְהָ מִנְאָ
דְּרָעָתָ? אָמְרָה לְיהָ: בֶּן מַקְבָּלִי מִבֵּית
אַבְּיָ אָבָא: כָּל הַשּּׁׁעָרִים גַּנְעָלִים חַוֵּ
מִשְׁעָרִי אָוְנָה.

תַּנוּ רַبָּנִים: הַמְּאָנָה אֶת הַגָּר עָוֹר בְּשַׁלְשָׁה
לְאוֹן, וְהַלְחָצָו עָוֹר בְּשַׁנְנִים.

מַאי שְׁנָא מְאָנָה – דְּכַתְּבִּי שַׁלְשָׁה
לְאוֹן: "עָגָר לֹא תַּוְנֵּה," וּבַיּוֹר אַתְּנֵ
גָּר בְּאַרְצָכֶם לֹא תַּוְנֵּה אָטוֹ," וְלֹא תַּוְנֵּ
אָשָׁת עַמִּיתָו" – גַּוְרָ בְּכָל עַמִּיתָו הָוָא.
לוֹחָצָנוּ מִמְּיָה, שַׁלְשָׁה בְּתַבִּיבִי, "וְלֹא תַּלְחַצֵּנוּ"
– "עָגָר לֹא תַּלְחַצֵּן," וְלֹא תַּהֲיֵה לוֹ כְּנֶשֶׁה" –
גַּוְרָ בְּכָל הָוָא! אַלְאָ: אַחֲרָה וְאַחֲרָה
בְּשַׁלְשָׁה.

תַּנִּינִיא, רַבִּי אַלְיעָרָן הַגָּדוֹל אָמְרָ: מִפְנֵי מָה
הַזְּהִירָה תּוֹרָה בְּשַׁלְשִׁים וְשַׁהָּ מִקְמוֹת,
וְאָמְרָ לְהָ בְּאַרְבָּעִים וְשַׁהָּ מִקְמוֹת
בְּגָר – מִפְנֵי שְׁפָוּרָו רָע.

מַאי דְּכַתְּבִּ: "עָגָר לֹא תַּוְנֵּה וְלֹא תַּלְחַצֵּנוּ
כִּי גִּרְזִים הַיִּתְּמָם בָּאָרֶץ מִצְרָיִם?" תַּנִּינִיא רַבִּי
נְתַן אָוּמוֹ: מָוֵם שְׁבָנָן אַל תַּאֲמֵר לְחַבְרָה,
הַיּוֹנוֹ דְּאָמְרוּ אַיִּשְׁנִי: דִּזְקִיף לְיהָ וְקִיפָּ
בְּרוּתָקִיהָ לֹא נִמְאָה לְיהָ לְחַבְרִיהָ "זִקְיף
בִּיעַתָּא".

מַתְנִיא אֵין מִעֲרָבִין פִּירּוֹת בְּפִירּוֹת אַפְּיָלוֹ
תְּחִדְשִׁים בְּתְּחִדְשִׁים.

The Gemara further relates: Imma Shalom, the wife of Rabbi Eliezer, was the sister of Rabban Gamliel. From that incident forward, she would not allow Rabbi Eliezer to lower his head and recite the *tahanun* prayer, which includes supplication and entreaties. She feared that were her husband to bemoan his fate and pray at that moment, her brother would be punished. A certain day was around the day of the New Moon, and she inadvertently substituted a full thirty-day month for a deficient twenty-nine-day month, i.e., she thought that it was the New Moon, when one does not lower his head in supplication, but it was not. Some say that a pauper came and stood at the door, and she took bread out to him. The result was that she left her husband momentarily unsupervised.

When she returned, she found him and saw that he had lowered his head in prayer. She said to him: Arise, you already killed my brother. Meanwhile, the sound of a *shofar* emerged from the house of Rabban Gamliel to announce that the *Nasi* had died. Rabbi Eliezer said to her: From where did you know that your brother would die? She said to him: This is the tradition that I received from the house of the father of my father.^N All the gates of Heaven are apt to be locked, except for the gates of prayer for victims of verbal mistreatment.^N

§ The Sages taught: One who verbally mistreats the convert violates three prohibitions, and one who oppresses him in other ways violates two.

The Gemara asks: What is different with regard to verbal mistreatment, that three prohibitions are written concerning it: "And you shall neither mistreat a convert" (Exodus 22:20); "And when a convert lives in your land, you shall not mistreat him" (Leviticus 19:33); "And you shall not mistreat, each man his colleague" (Leviticus 25:17), and a convert is included in the category of colleague? With regard to one who also oppresses a convert as well, three prohibitions are written: "And you shall neither mistreat a convert, nor oppress him" (Exodus 22:20); "And you shall not oppress a convert" (Exodus 23:9); "And you shall not be to him like a creditor" (Exodus 22:24). This last prohibition is a general prohibition, in which converts are included. Consequently, it is not correct that one who oppresses a convert violates only two prohibitions. Rather, both this one, who verbally mistreats a convert, and that one, who oppresses him, violate three prohibitions.

It is taught in a *baraita* that Rabbi Eliezer the Great says: For what reason did the Torah issue warnings in thirty-six places, and some say in forty-six places, with regard to causing any distress to a convert?^H It is due to the fact that a convert's inclination is evil, i.e., he is prone to return to his previous way of living.

What is the meaning of that which is written: "And you shall not mistreat a convert nor oppress him, because you were strangers in the land of Egypt" (Exodus 22:20)? We learned in a *baraita* that Rabbi Natan says: A defect that is in you, do not mention it in another. Since the Jewish people were themselves strangers, they are not in a position to demean a convert because he is a stranger in their midst. And this explains the adage that people say: One who has a person hanged in his family [*bidyatkei*],^L does not say to another member of his household: Hang a fish for me, as the mention of hanging is demeaning for that family.

MISHNA One may not intermingle produce bought from one supplier with other produce, even if he intermingles new produce with other new produce and ostensibly the buyer suffers no loss from his doing so.

Perek IV

Daf 60 Amud a

וְאֵין צַרְיךָ לֹמֶר חֲדָשִׁים בִּשְׁנִים.

בְּאַמְתָּה אָמְרוּ: בֵּין הַתְּיוּרָה לְעֵerb
קְשָׁה בָּרָךְ, מִפְנֵי שָׂהָוָא מִשְׁבָּחוֹ. אֵין
מִעֲרָבִי שָׂמֵר יְיֻן בֵּין, אֲבָל נוֹתֵן לוֹ
אֶת שְׁמָרוֹן.

מִי שְׁנַת עֲרָבָה מִים בֵּינוֹ לֹא יַמְכַרְנוּ
בְּחֻנּוֹת, אֲלָא אֶם כֵּן הַזְּדִיעָה. וְלֹא
לְתַגְּרָא עַל פִּי שְׁחוֹדִיעָה, שָׂאַנוּ אֲלָא
לְרָמוֹת בּוֹ. מִקּוֹם שְׁנָהָנוּ לְהַטִּיל מִים
בֵּין – יְטִילוֹ.

הַתְּגָרָן נוֹטֵל מִיחַמֵּשׁ גָּרוֹנוֹת וְנוֹתֵן לְתוֹךְ
מִגְוָה אַחֲרָה, מִחְמַשׁ בְּתוֹת וְנוֹתֵן לְתוֹךְ
פִּיטּוֹם אַחֲרָה, וּבְלֹבֶר שָׁלָא יְהָא מִתְּכּוֹן
לְעֵerb.

גַּם תְּנוּ רְבָּן: אֵין צַרְיךָ לֹמֶר חֲדָשָׁות
מִאֲרָבָה וִישְׁנוֹת מִשְׁלֵשׁ דָּאי מִעֲרָבִי,
אֲלָא אֲפִילוֹ חֲדָשָׁות מִשְׁלֵשׁ וִישְׁנוֹת
מִאֲרָבָה – אֵין מִעֲרָבִי, מִפְנֵי שָׂאַדְם
רוֹצֵחַ לִישְׁמָן.

בְּאַמְתָּה אָמְרוּ: בֵּין הַתְּיוּרָה לְעֵerb קְשָׁה
בָּרָךְ מִפְנֵי שָׂהָוָא מִשְׁבָּחוֹ" וּכוֹ. אָמָר
רַבִּי אֶלְעֹזֶר: עֲדָא אָמְרָה בֶּל בְּאַמְתָּה
אָמְרוֹ – הַלְּכָה הִיא.

אָמָר רַב נַחֲמָן: וּבֵין הַגִּיטוֹת שְׁנִים.

A mixture of produce – תְּשִׁלְבָת פְּרוּתָה: Rashi explains that combining produce from different fields is problematic. Perhaps the customer might insist on produce from a particular field, as it is impossible for all the produce to be identical in every sense. According to the Ra'avad and the Rosh, the *tanna* is referring only to mixing a small amount of inferior produce with superior produce.

It will be used for nothing other than deceit – שְׁאַיְתָן אַלְאָה: The merchant typically sells products to a storekeeper and does not always inform him that they are a mixture, espe-

And needless to say, one may not intermingle new produce with old produce,^{NH} in the event that the old produce is superior, as with grains, since intermingling lowers its value.

Actually, they said: With regard to wine, they permitted one to mix strong wine with weak wine,^H because one thereby enhances it. One may not intentionally mix wine sediment with the wine, but one may give the buyer wine with its sediment; the seller is not required to filter the wine.

One who had water mix with his wine^H may not sell it in the store, unless he informs the buyer that it contains water. And he may not sell it to a merchant, even if he informs him of the mixture, as, although he is aware that there is water mixed with the wine, it will be used for nothing other than deceit^N because the merchant will likely not inform the buyer that it is diluted. In a place where they are accustomed to place water into the wine to dilute it and everyone is aware of that fact, one may place water in the wine.^H

The prohibition against mixing different types of produce applies only to an individual selling the produce of his field. By contrast, a merchant may take grain from five threshing floors belonging to different people, and place the produce in one warehouse. He may also take wine from five winepresses and place the wine in one large cask [pitom],^L provided that he does not intend to mix low-quality merchandise with high-quality merchandise.^H

GEMARA The Sages taught: **Needless to say**, if the price of the new produce is four *se'a* for a *sela* and the price of the old produce is three *se'a* for a *sela*, one may not intermingle them together. That is full-fledged deceit, as one is selling inexpensive produce at the price of expensive produce. Rather, even if the price of the new produce is three *se'a* for a *sela* and the price of the old produce is four *se'a* for a *sela*, one may not intermingle them. This is because in this case the price of the new produce is higher, as people want to age the produce, i.e., new produce is more valuable to those who seek to place it in storage for a lengthy period, although it may be of inferior quality compared to old produce.

The mishna teaches: **Actually, they said:** With regard to wine, they permitted one to mix strong wine with weak wine because mixing the wine enhances it. Rabbi Elazar said: That is to say, every time a *halakha* is introduced with the phrase: **Actually they said**,^N it is an established *halakha* with regard to which there is no uncertainty.

Rav Nahman says: And it is with regard to the period when the wine is among the winepresses,^N i.e., before the wine ferments, that they taught this *halakha*. When the wine is still in the process of fermentation, if different wines are mixed and ferment together, this enhances their flavor. By contrast, if they are mixed at a later stage, this will harm their flavor.

NOTES

A mixture of produce – תְּשִׁלְבָת פְּרוּתָה: Rashi explains that combining produce from different fields is problematic. Perhaps the customer might insist on produce from a particular field, as it is impossible for all the produce to be identical in every sense. According to the Ra'avad and the Rosh, the *tanna* is referring only to mixing a small amount of inferior produce with superior produce.

It will be used for nothing other than deceit – שְׁאַיְתָן אַלְאָה: The merchant typically sells products to a storekeeper and does not always inform him that they are a mixture, espe-

cially since he can rationalize the matter, telling himself that he is not the one who mixed them.

Every time a halakha is introduced with the phrase, Actually they said – בְּאַמְתָּה אָמְרוּ: Rashi explains that since the *tanna* provides a reason for the *halakha*, it is clearly an established *halakha*. The Sages applied this principle to other places where this expression appears. Rabbeinu Yehonatan suggests that the phrase: **Actually they said**, is a declaration in the form of an oath to underscore the matter in question. The Rambam maintains that the phrase: **Actually they said**, indicates that the *halakha*

HALAKHA
Mixing produce with produce – עַירְוב פְּרוּתָה בְּפְרוּתָה: It is prohibited to mix a small amount of low-quality produce with a large amount of high-quality produce and sell the mixture all as high-quality produce. It is prohibited to mix new produce with new produce from a different source, and all the more so is it prohibited to mix new produce into old produce. It is even prohibited to mix old produce into new produce, even if the former is more expensive, as the buyer might prefer produce that he can age (*Shulhan Arukh*, *Hoshen Mishpat* 228:10).

With regard to wine they permitted one to mix, etc. – בֵּין הַתְּיוּרָה לְעֵerb וּבֵין הַדְּבָרִים: One may mix strong wine into weak, and vice versa (Rema). This applies to wine from different winepresses, as doing so enhances the taste. If it is clear from the taste that the resultant wine is a mixture, it is always permitted to mix wines, in accordance with the mishna and the statements of Rav Nahman and Rav Pappa (*Shulhan Arukh*, *Hoshen Mishpat* 228:11).

One who had water mix with his wine – מִי שְׁנַת עֲרָבָה מִים – בֵּין הַיְמִינָה: It is prohibited to dilute wine with water. If one's wine was mixed with water, he may sell it in a store only if he informs the customer. He may not sell it to a merchant even if he informs him that it is diluted, lest the merchant use it to deceive others (*Shulhan Arukh*, *Hoshen Mishpat* 228:12).

Mixing among the presses – מִיקְרָם שְׁנָהָנוּ בְּלֹבֶר: In a place where it is customary to mix wine among the presses, it is permitted to mix the standard amount (*Shulhan Arukh*, *Hoshen Mishpat* 228:13).

A merchant mixes produce from several places – הַתְּגָרָן מִפְנַמָּה מִקּוֹמוֹת: It is permitted for a merchant to take wine from several presses or produce from different threshing floors and mix them together, as it is well known that merchants do not purchase all their produce from one source. He may not, however, mix them in a deceptive manner (*Shulhan Arukh*, *Hoshen Mishpat* 228:15).

LANGUAGE

Large cask [pitom] – פִּיטּוֹם: This should read *pitos*, from the Greek πίθος, *pithos*, meaning large earthenware wine jar.

is one transmitted to Moses from Sinai. The Rosh explains this it was not necessarily transmitted directly to Moses, but rather it is a *halakha* that is as clear as a *halakha* transmitted to Moses from Sinai.

Among the winepresses – בֵּין הַגִּיטוֹת: The Ritva and the Meiri explain that if one mixes the wine at a later stage, the mixture will not remain intact and the different wines will separate. In that case, one will not have enhanced the wine at all but merely deceived the consumers.

HALAKHA

יעיר בבר בטעם: Mixing in an item that is tasted –

In a place where it is customary for a buyer to sample wine before purchasing it, it is always permitted to mix wines, provided that the seller does so with a measure that is easily detected. If, however, not everyone tastes the wine, this is prohibited. This ruling is in accordance with the opinion of Rabbi Aḥa, as the halakhic discourse is in accordance with his opinion (*Shulhan Arukh, Hoshen Mishpat* 228:14).

תערובת שמרים: It is prohibited to mix wine sediment with wine. Even if a customer is buying two barrels of wine, the seller may not mix the sediment from one barrel with the wine of the other. Nevertheless, if a customer purchases a certain measure of wine, it is permitted for the seller to mix the amount of sediment usually present in that measure of wine with the wine and sell them together (*Shulhan Arukh, Hoshen Mishpat* 228:15 and *Sma* there).

אחסן תוספות: A storekeeper who distributes toasted grain and nuts – It is permitted for a storekeeper to distribute toasted grain, nuts, and the like to children, in order to attract them to his store. Similarly, if one wishes to sell at prices lower than his competition, the other shopkeepers cannot object, in accordance with the opinion of the Rabbis. The *Arukha HaShulhan* maintains that this *halakha* applies only to food, but not to other merchandise (*Shulhan Arukh, Hoshen Mishpat* 228:18).

NOTES

מיוגא דידי: Typically, diluted wine was one part wine and two parts water. Rava's was one part wine and three parts water.

לא יטב... ולא יטוחת: May not hand out...and one may not reduce – With regard to both *halakhot*, the Rabbis disagree with Rabbi Yehuda. The Rabbis merely permitted the distribution of toasted grains and nuts, while they said that one who reduces prices should actually be blessed (*Iyyun Yehosef*).

וְהִיא נָא דַקָּא מִעֲרֵבִי טֶלֶא בֵין
הַגִּתּוֹת אָמַר רַב פָּפָא: דִּינֵׁי וְקָא
מְחַלֵּי, וְבָאָחָא בָּרוּה דָּרָבָא אַיָּקָא אָמַר:
הָא מַפִּי – רַבִּי אָחָא הָיא. דַּתְּנֵיָא: רַבִּי
אָחָא מַתִּיר בְּדָבָר הַנְּטָעָם.

אֵין מִעֲרֵבִין שְׂמִיעִין בֵּין אֶבֶל נָטוּן
לֹא אֶת שְׁמָרוּיָה וּכְרָ. וְהָא אַמְרָתָ רְשָׁא
אֵין מִעֲרֵבִין בְּלִילִי! וְכֵי תִּמְאָם מֵאַיִלְנָוָן
לֹא אֶת שְׁמָרוּיָה – דַקָּא מַזְעֵד לְיהָ, הָא
מִדְקַנְתִּי סִפְאָא לֹא יִמְכְּרֵנוּ בְּחִנּוֹת אַלְאָ
אָסָם בָּן מַזְעֵד, וְלֹא לְתַגְּזֵר אָרְךָ עַל פִּי
שְׁמוֹדְעָיו – מַכְלֵל דָרִישָׁא אָפָעַל גַּבְעָה
דַּלָּא מַזְעֵד לְיהָ!

אָמַר רַב יְהוּדָה: הַכִּי קָאָמַר: אֵין
מִעֲרֵבִין שְׂמִיעִים שֶׁל אַמְשׁ בְּשֶׁל יוֹם,
וְלֹא שֶׁל יוֹם בְּשֶׁל אַמְשׁ, אֶבֶל נָטוּן לוֹ
אֶת שְׁמָרוּיָה. תְּנֵיא נָמֵי הַכִּי: רַבִּי יְהוּדָה
אָוּמָר: הַשּׁוֹפָה יָן לְחִבּוּרָו – הַרְיָה וְהָ
לֹא יַעֲרֵב שֶׁל אַמְשׁ בְּשֶׁל יוֹם, וְלֹא שֶׁל
יוֹם בְּשֶׁל אַמְשׁ. אֶבֶל מַעֲרֵב שֶׁל אַמְשׁ
בְּשֶׁל אַמְשׁ, וְשֶׁל יוֹם בְּשֶׁל יוֹם.

מֵי שְׁנַת עֲרָב מִים בֵּינוֹ הָרִי זֶה לֹא
יִמְכְּרֵנוּ בְּחִנּוֹת אַלְאָ אָסָם בָּן מַזְעֵדָו
וּכְרָ. רַבָּא אַיִלָּוּ לְיהָ חִמְרָא מְחִנּוֹתָא,
מַזְגִּי, טֻמְמִיה, לֹא הוּה בְּסִים, שְׁדָרִיה
לְחִנּוֹתָא. אָמַר לְיהָ אַבִּי: וְהָא אָנָן תְּנֵן:
וְלֹא לְתַגְּזֵר אָרְךָ עַל יִשְׁוֹרְעָיו! אָמַר
לְיהָ: מַיּוֹגָא דִידִי מַידָּע יְדִיעָ. וְכֵי תִּמְאָם
דְּטִיפָּה וּמְחִילָה וּמְבוֹן לְיהָ – אָסָם
אָיִן לְדָבָר סּוֹף.

מִקְומָן שְׁנַחֲנוּ לְהַטִּיל מִים בֵּין טִילָּוֹ
וּכְרָ. תְּנֵא: לְמִמְחַצָּה לְשֶׁלֶשׁ וּלְרְבִיעַ.
אָמַר רַב: וּבֵין הַגִּתּוֹת שְׁנָה.

מתני' רַבִּי יְהוּדָה אָוּמָר: לֹא יַחֲלֵק
הַחֲנֹנִי קְלִילָות וְאַגְּזִין לְתִינּוֹת, מִפְנִי
שְׁהָוָא מַרְגִּילָן לְבָא אַצְלוֹ. וְחַכְמִים
מַתִּירִין. וְלֹא יַפְּחוֹת אַתְּ הַשּׁעָר,
וְחַכְמִים אָוּמָרים: וְכוֹרַ לְטוֹב.

The Gemara asks: And today, when people mix old and new wine even when the wine is not among the winepresses, on what basis is mixing permitted? Rav Pappa said: It is because buyers are aware of the potential loss and waive it. Rav Aḥa, son of Rav Ika, said: In accordance with whose opinion is this mishna? It is the opinion of Rabbi Aḥa, as it is taught in a *baraita*: Rabbi Aḥa permits mixing in a case where the product will be tasted before its purchase. Then there is no deceit, as when the buyer tastes it, he is immediately aware that it is a mixture, and the choice of whether or not to purchase the product is his.^h

The mishna teaches: And one may not intentionally mix wine sediment with the wine, but one may give the buyer wine with its sediment.^h The Gemara asks: But didn't you say in the former clause of the mishna that one may not mix sediment at all? And lest you say: What is the meaning of: He may give the buyer wine with its sediment; it means that he informs the buyer that the wine contains sediment, this suggestion is not tenable. From the fact that the latter clause teaches: One may not sell it in the store unless he informs the buyer and he may not sell it to a merchant even if he informs him, it may be inferred that the former clause is speaking of a situation where one may sell it in the store even if he does not inform the buyer.

Rav Yehuda said: This is what the *tanna* is saying: One may neither mix sediment remaining from wine that he poured the night before with the wine of the next day, nor the sediment of the next day with the wine of the night before. But he may give the buyer sediment of that wine itself. That is also taught in a *baraita*: Rabbi Yehuda says: With regard to one who pours wine for another, attempting to pour the liquid while leaving the sediment in the cask, that person may neither mix sediment remaining from wine that he poured the night before with the wine of the next day, nor the sediment of the next day with the wine of the night before. But he may mix the sediment of the night before with the wine poured the night before, and the sediment of the next day with the wine of the next day.

The mishna teaches: One who had water mix with his wine may not sell it in the store, unless he informs the buyer that it contains water. The Gemara relates: They brought wine to Rava from a store. He diluted it with water, tasted it, and it was not tasty. He sent it back to the store, so they could sell it there. Abaye said to him: But didn't we learn in the mishna: And he may not sell it to a merchant, even if he informs him? Rava said to him: My dilution of the wineⁿ is evident to all, as I add more water than is typically added. And lest you say that the storekeeper will add wine, and sweeten the mixture, and sell it again, when the dilution is no longer evident, if this is a concern, there is no end to the matter. It should be prohibited to sell any wine to a merchant due to the concern lest he engage in deceit in its resale.

The mishna teaches: In a place where they are accustomed to place water into the wine to dilute it and everyone is aware of that fact, one may place water in the wine. It was taught: One may dilute the wine by adding water that will constitute one-half, one-third, or one-fourth of the mixture, in accordance with the local custom. Rav says: And it is with regard to the period when the wine is among the winepresses, before the wine ferments, that they taught this *halakha*. If wine is diluted at a later stage, the dilution will cause the wine to spoil.

MISHNA Rabbi Yehuda says: A storekeeper may not hand out toasted grain and nuts to children who patronize his store, due to the fact that he thereby accustoms them to come to him at the expense of competing storekeepers. And the Rabbis permit doing so.^h And one may not reduceⁿ the price of sale items below the market rate. And the Rabbis say: If he wishes to do so, he should be remembered positively.

לא יבור את הגрисין, דברי אבא שאול, וחכמים מתיירין. ומודים שלא יבור מעל פִּי מגורה, שאין מפרנסין אלא בגיןב את העז. אין מפרנסין לא את האדים ולא את הבתמה ולא את הפלמים.

גמ' מאי טעמיחו דרבנן? דאמרי ליה: אנא מפליגננא אמרנוו, ואט פליג שיסקן.

"ולא יפחות את השער וחכמים אומרים: כבו לטוב" וכו'. מאי טעמא דרבנן?

One **may not sift ground beans** to remove the waste, lest he charge an inappropriately high price for the sifted meal, beyond its actual value; this is the **statement of Abba Shaul**.^N And the Rabbis permit doing so. And the Rabbis concede that one **may not sift** the meal only from the beans that are close to the **opening of the bin**^H to create the impression that the contents of the entire bin were sifted, as this is nothing other than **deception**. One **may neither adorn a person** before selling him on the slave market, nor **an animal nor vessels** that he seeks to sell. Rather, they must be sold unembellished, to avoid deceiving the buyer.

GEMARA The Gemara asks: **What is the reason for the opinion of the Rabbis**, who permit the free distribution of toasted grain and nuts? It is because the storekeeper can **say to his competitors**: I hand out nuts; and you hand out jujubes [*shiskei*].^I All merchants are able to hand out goods that will attract children, and consequently this is not unfair competition.

The mishna teaches: **And one may not reduce the price of items below the market rate**. And the Rabbis say: If he wishes to do so, he should be **remembered positively**. The Gemara asks: **What is the reason for the opinion of the Rabbis**, who not only condone the practice but even praise the person, saying that he should be remembered positively?

NOTES

הרב אבא שאול: The Ritva cites a variant reading: In accordance with the statement of Abba Shaul, meaning: According to the practice and opinion of Abba Shaul. He was a merchant himself, and he ruled very stringently with regard to his own transactions to avoid any suspicion of defrauding his buyers.

HALAKHA

יבור מעל פִּי מגורה: A merchant may sift the waste from produce to improve its appearance and enable him to charge a higher price, provided that he does not do so only at the top of the barrel to conceal the waste beneath it (*Shulhan Arukh, Hoshen Mishpat* 228:17).

LANGUAGE

Jujubes [shiskei] – **שיסקן**: The commentaries explained this word in different ways. Apparently, it is a form of the Hebrew *sheizaf*, meaning the fruit of the jujube tree, *Ziziphus vulgaris*.



Jujube fruit

Perek IV**Daf 60 Amud b**

משמעות דקה מרווח לתרעעה.

"ולא יבור את הגריסין, דברי אבא שאול, וחכמים מתיירין וכו'. מאן חכמים – רבי אחא, דתנייא: רבי אחא מתיר בדבר הנראת."

The Gemara explains: It is due to the fact that by lowering the price he **eases the market rate**, i.e., his actions lead to the establishment of a lower market price.

The mishna teaches: **And one may not sift ground beans** to remove the waste and charge a higher price; this is the **statement of Abba Shaul**. And the Rabbis permit doing so. The Gemara comments: Who are the Rabbis whose opinion is cited in the mishna? It is Rabbi Aha, as it is taught in a *baraita*: Rabbi Aha permits mixing, and sifting, and the like, in the case of an item in which the change is obvious.

"אין מפרנסין לא את האדים וכו' ולא את הפלמים". פנו רבנן: אין משרבטין את הבתמה, ואין נופחין בקרובים, אין שוריין את הבשר בפם. מייא אין משרבטין? הכא תנאים: מיא דחוואר. שייר אמר רב קהנא: מוקפתא."

The mishna taught: **One may neither adorn a person**,^N nor an animal, nor vessels. The Sages taught: **One may neither stiffen the hair of an animal** to create the impression that it is more voluminous than it is, nor **inflate innards** sold as meat to create the impression that it is a more substantial piece of meat, nor **soak meat in water** in order to change its color and create the impression that it is a choice cut. The Gemara asks: **What is the meaning of: One may not stiffen the hair of an animal?** Here, in Babylonia, they explained that it means to feed the animal bran water, which inflates its intestines and causes its hair to stand on end. Ze'eiri said in the name of Rav Kahana: It means scrubbing the hair clean to increase its volume.

NOTES

אדור נשים – **ירכום ארים**: Ya'avetz discusses whether it is permitted for a woman to adorn herself to improve her marital prospects, and in what circumstances doing so is considered deceitful.

NOTES

Fringes [tumei] on a cloak – תומוי לкрבלא: The Ra'avad explains that means sewing pairs of fringes, so that they hang from a garment to reinforce and adorn it. According to this explanation, *tumei* is from *teomei*, meaning twin.

New and old merchandise – חותמי ועתיקי: One is prohibited from selling old garments that are adorned, even if he informs the buyer that they are old, because the adornment still masks flaws. Failure to inform the buyer constitutes full-fledged exploitation (Ritva; Meiri).

A certain elderly slave – מהו עבדא סבא: According to the Rashba, this man was a Jew who wanted to be hired as a type of Hebrew slave. Rashi explains that he was a Canaanite slave, perhaps one who was renounced ownerless by his previous master without being emancipated. The Rashba says that he was a gentile sold as a slave.

That I am older than your father – דאנא קשיש מאבון: The halakha is that all elderly people, Jew or gentiles, are entitled to a certain measure of respect. Therefore, this elderly man should not be used to provide personal services (Maharsha).

The righteous person is delivered from trouble – צדיק: Rav Pappa alluded to the fact that Rava was more righteous than he, as Rava fulfilled the mishna's directives with regard to the poor and was therefore spared trouble (*Iyyun Yaakov*).

HALAKHA

Adornment of merchandise – יפי קהורה: It is prohibited to adorn an item for sale. This prohibition applies to people, animals, and vessels. For example, one may neither dye a slave's beard to provide him with a younger appearance; nor may one stiffen, scrape, or scrub the hair of an animal to create the impression that it is of higher quality; nor may one dye old garments so that they will appear new. Similarly, one may not soak meat or inflate entrails to improve their appearance, unless it is customary for all merchants to do so. It is permitted to dye and adorn new vessels, as they are new, high-quality items anyway (*Shulhan Arukh, Hoshen Mishpat* 228:9 and *Sma* there).

Let the poor be members of your household – ימי בני ביתך: It is preferable that one have paupers and orphans in his house whom he supports and employs to assist in his labor, rather than acquire slaves for that purpose (*Shulhan Arukh, Yoreh De'a* 251:6 and *Shakh* and *Taz* there).

שמעואל שרא למרמא ותומי לסובלא. רב ה'ודה שרא לבספסי קרמי. רב שרא למידק עדרי. רבא שרא לצלמי גיר. רב פפא בר שמעואל שרא לצלמי דיקול. וזה אנן תנן: אין מפרנסין לא את האדם ולא את הבמה ולא את הכלים? לא קשיא, הא – בחרדי, הא – בעתיקי.

The Gemara relates: Shmuel permitted sellers to place fringes on a cloak;^N Rav Yehuda permitted them to clean and adorn ornamented garments; Rabba permitted them to taper linen garments to cause them to appear more fine; Rava permitted them to draw arrows to ornament garments; Rav Pappa bar Shmuel permitted them to draw ladders for ornamentation. The Gemara asks: But didn't we learn in the mishna: **One may neither adorn a person, nor an animal, nor vessels?** The Gemara answers: This is not difficult, as this series of cases, where the Sages permitted adorning merchandise, are cases of **new merchandise**. It may be decorated, as doing so merely enhances its intrinsic beauty. **That ruling in the mishna, according to which adornment is prohibited, is referring to cases of old merchandise,**^N as the adornment is meant to conceal its flaws.^H

פרנסים דאדם מאוי הייא? כי הא, דזהו עבדא סבא דאונל צבעעה לרישיה ולדיקניה. אתה לך מיה ורבא אמר ליה: זבנן אמר ליה: יהיו עניים בני ביתך.

אתה לך מיה דרב פפא בר שמעואל, בבייה. זטמא חד אמר ליה: אשקנין כיא, איל חווורה לרישיה ולדיקניה. אמר ליה: חוי דאנא קשיש מאבון, קרי אנפשיה צדיק מזכה נחלה זבבא אמר תחתוי.

הדרן על' הזהב

The Gemara asks: **Adornment of a person, what is it?** The Gemara relates: It is as in that incident involving a certain elderly slave^N who went and dyed his head and beard black to create a younger impression. He came before Rava and said to him: Purchase me as your slave. Rava said to him that there is a rabbinic adage: **Let the poor be members of your household.**^H I follow their advice and therefore do not require a slave. If I need assistance, the paupers who frequent my house can assist me.

The slave came before Rav Pappa bar Shmuel, who purchased him. One day Rav Pappa said to the slave: Give me water to drink. The slave went and removed the dye and whitened the hair on his head and his beard. The slave said to Rav Pappa: See that I am older than your father,^N and I am unfit to serve you. Rav Pappa read about himself: **The righteous person is delivered from trouble,^N and another comes in his stead** (see Proverbs 11:8). Rav Pappa applied the verse to the incident of the slave. The righteous person, Rava, was spared the problem of the slave; while another, Rav Pappa bar Shmuel, came in his stead.

Summary of Perek IV

In this chapter, several conclusions were reached with regard to the *halakhot* of transactions. One conclusion is that, by Torah law, monetary transactions are proper transactions. By rabbinic law, a commodity can be acquired only by pulling it or lifting it, i.e., modes of transaction that involve physically taking possession of the item. Evidently, what is defined as money is not fixed. Even coins used in commerce are not always considered currency, but rather a commodity. The principle is that market value is calculated based on the price of silver, and even other coins are considered commodities vis-à-vis silver. At the same time, all coins have the legal status of currency relative to commodities.

With regard to the *halakhot* of exploitation, several fundamental *halakhot* were decided. The *halakhot* of exploitation do not apply to transactions involving land, slaves, or documents. Rather, exploitation can exist only in transactions involving movable property. There is a minimum measure when considering the question of which transactions constitute exploitation: The disparity between the value of a commodity and its sale price must be at least one *peruta*, and a transaction is exploitative only if the seller overcharged or undercharged the buyer by one-sixth of the item's market value. If the disparity is less than one-sixth, it is a standard transaction, not an exploitative one. If the disparity is greater than one-sixth, the transaction is null and void if either party in the transaction wishes to void it. The one-sixth measure pertains specifically to the value of the items. In cases of exploitation that involve objectively definable features of the commodity, e.g., measure or weight, the transaction is nullified even if the disparity is less than one-sixth. The prohibition and *halakhot* of exploitation apply whether it is the seller or the buyer that is exploited, although there is a difference between the buyer and the seller with regard to how long after the transaction he can challenge its validity. Likewise, the *halakhot* of exploitation apply whether the exploited party is a layman or a merchant, and even if he is an expert merchant.

The *halakha* is established that the prohibition of verbal mistreatment is more stringent than the prohibition of exploitation, both because no compensation can be paid for it and because the damage caused by verbal mistreatment is greater. It is impossible to prove whether the verbal mistreatment was intentional, and consequently there is no way to adjudicate the matter in court. Therefore, the sentence of the guilty party is adjudicated in the Heavenly court, whose sentences are more severe. Verbal mistreatment includes any statement that could offend one who hears it, whether it is an insult or a reprimand. Even a remark said jokingly or playfully is included in the prohibition. There is a prohibition against verbally mistreating anyone, but the violation is especially serious if the offended party is disadvantaged, and it is particularly severe when the offended party is a convert, with regard to whose mistreatment there is an explicit Torah prohibition.

Common Acronyms

Since the publication of the first volume of the *Koren Talmud Bavli* we have employed some transliterated acronyms, such as Rambam, to give the translation a more authentic flavor. These acronyms are used throughout this volume where they are well known and where the acronym helps readers easily identify the author in question. The following chart provides the full name of each author or work alongside its common acronym.

Acronym	Full Name
HaAri	Rabbi Yitzḥak Luria
Ba'al HaMaor	Rabbi Zeraḥya HaLevi
Baḥ	<i>Bayit ḥadash</i>
Beur HaGra	Commentary of Rabbi Eliyahu of Vilna on the <i>Shulḥan Arukh</i>
Derashot Mahari Mintz	Homilies of Rabbi Yehuda Mintz
Derashot Ra'ananah	Homilies of Rabbi Eliyahu ben Ḥayyim
Geranat	Rabbi Naftali Trop
Gilyon Maharsha	Marginalia of Rabbi Shlomo Eiger
Gra	Rabbi Eliyahu of Vilna, the Vilna Gaon
Graḥ	Rabbi Ḥayyim Soloveitchik
Grib	Rabbi Yehuda Bakhrakh
Griz	Rabbi Yitzḥak Ze'ev Soloveitchik
Haggahot HaGra	Comments of Rabbi Eliyahu of Vilna on the Talmud
Haggahot Mahersha	Comments of Rabbi Shmuel Eliezer Eidels
Hassagot HaRa'avad	Comments of Rabbi Avraham ben David on the Rambam's <i>Mishne Torah</i>
Ḥida	Rabbi Ḥayyim David Azulai
Ḥiddushei Aggadot LaMaharal	Ḥiddushei Aggadot by Rabbi Yehuda Loew of Prague
Ḥiddushei Aggadot LaRashba	Ḥiddushei Aggadot by Rabbi Shlomo ben Adderet
Ḥiddushei HaGeranat	Ḥiddushei Rabbi Naftali Trop
Ḥiddushei HaGriz	Ḥiddushei Rabbi Yitzḥak Ze'ev Soloveitchik
Ḥiddushei HaRim	Ḥiddushei Rabbi Yitzḥak Meir of Gur
Ḥiddushei Ri Ḥaver	Ḥiddushei Rabbi Yitzḥak Isaac Ḥaver
Kitzur Piskei HaRosh	Abridged Halakhic Rulings of Rabbeinu Asher ben Rabbi Yeḥiel
Mabit	Rabbi Moshe ben Yosef di Trani

Acronym	Full Name
Maharal	Rabbi Yehuda Loew of Prague
Maharam Alashkar	Rabbi Moshe Alashkar
Maharam Brisk	Rabbi Mordekhai Brisk
Maharam Ḥalawa	Rabbi Moshe Ḥalawa
Maharam Lublin	Rabbi Meir of Lublin
Maharam Mintz	Rabbi Moshe Mintz
Maharam of Rothenburg	Rabbi Meir of Rothenburg
Maharam Padua	Rabbi Meir of Padua
Maharam Schick	Rabbi Moshe Schick
Maharam Schiff	Rabbi Meir Schiff
Maharatz Ḥayyut	Rabbi Tzvi Hirsch Chajes
Mahari Abu hav	Rabbi Yitzḥak Abu hav
Mahari Bassan	Rabbi Yehiel Bassan
Mahari Beirav	Rabbi Ya'akov Beirav
Mahari ben Lev	Rabbi Yosef ben Lev
Mahari ben Malkitzedek	Rabbi Yitzḥak ben Malkitzedek
Mahari Berona	Rabbi Yisrael Berona
Mahari Kurkus	Rabbi Yosef Kurkus
Mahari Mintz	Rabbi Yehuda Mintz
Mahari Weil	Rabbi Ya'akov Weil
Mahariḥ	Rabbi Yehezkiyah ben Ya'akov of Magdeburg
Maharik	Rabbi Yosef Colon
Maharikash	Rabbi Ya'akov Castro
Maharil	Rabbi Ya'akov HaLevi Molin
Maharit	Rabbi Yosef di Trani
Maharit Algazi	Rabbi Yom Tov Algazi
Maharsha	Rabbi Shmuel Eliezer Edels
Maharshal	Rabbi Shlomo Luria
Malbim	Rabbi Meir Leibush ben Yehiel Michel Wisser
Netziv	Rabbi Naftali Tzvi Yehuda Berlin
Nimmukei HaGrib	Comments of Rabbi Yehuda Bakhrakh on the Maharsha
Piskei HaRid	Halakhic Rulings of Rabbi Yeshaya di Trani the Elder
Piskei Riaz	Halakhic Rulings of Rabbi Yeshaya di Trani the Younger
Ra'ah	Rabbi Aharon HaLevi
Ra'anah	Rabbi Eliyahu ben Ḥayyim
Ra'avad	Rabbi Avraham ben David
Ra'avan	Rabbi Eliezer ben Natan
Ra'avya	Rabbi Eliezer ben Yoel HaLevi
Rabbi Avraham ben HaRambam	Rabbi Avraham, son of the Rambam

Acronym	Full Name
Rabbi Shlomo ben Rashbatz	Rabbi Shlomo, son of Rabbi Shimon ben Tzemah Duran
Radak	Rabbi David Kimḥi
Radbaz	Rabbi David ben Zimra
Ralbag	Rabbi Levi ben Gershon
Ramah	Rabbi Meir HaLevi
Rambam	Rabbi Moshe ben Maimon
Ramban	Rabbi Moshe ben Nahman
Ran	Rabbeinu Nissim ben Reuven of Gerona
Rashash	Rabbi Shmuel Strashun
Rashba	Rabbi Shlomo ben Adderet
Rashbam	Rabbi Shmuel ben Meir
Rashbatz	Rabbi Shimon ben Tzemah Duran
Rashi	Rabbi Shlomo Yitzḥaki
Re'ém Horowitz	Rabbi Elazar Moshe Horowitz
Rema	Rabbi Moshe Isserles
Ri HaLavan	Rabbeinu Yitzḥak ben Ya'akov of Prague
Ri Haver	Rabbi Yitzḥak Isaac Ḥaver
Ri Migash	Rabbi Yosef Migash
Riaf	Rabbi Yoshiya Pinto
Riaz	Rabbi Yeshaya di Trani the Younger
Rid	Rabbi Yeshaya di Trani the Elder
Ridvaz	Rabbi Ya'akov David ben Ze'ev Wilovsky
Rif	Rabbi Yitzḥak Alfasi
Rim	Rabbi Yitzḥak Meir of Gur
Ritva	Rabbi Yom Tov ben Avraham Asevilli (of Seville)
Riva	Rabbeinu Yitzḥak ben Asher
Rivam	Rabbi Yitzḥak ben Meir
Rivan	Rabbi Yehuda bar Natan
Rivash	Rabbi Yitzḥak ben Sheshet
Rosh	Rabbeinu Asher ben Rabbi Yehiel
Shakh	<i>Siftei Kohen</i> by Rabbi Shabtai Cohen Rappaport
Shas	The Six Orders of the Mishna
She'elat Ya'avetz	Responsa of Rabbi Ya'akov Emden
Shela	<i>Shenei Luhot HaBerit</i> by Rabbi Yeshaya HaLevi Horowitz
Siddur Rashi	Siddur compiled by Rashi's students
Sma	<i>Sefer Meirat Einayim</i> by Rabbi Yehoshua Falk
Smag	<i>Sefer Mitzvot Gadol</i> by Rabbi Moshe of Coucy
Smak	<i>Sefer Mitzvot Katan</i> by Rabbi Yitzḥak ben Yosef of Corbeil
Talmid HaRa'ah	A student of Rabbi Aharon HaLevi

Acronym	Full Name
<i>Talmid HaRashba</i>	A student of Rabbi Shlomo ben Adderet
<i>Tashbetz</i>	Responsa of Rabbi Shimon ben Tzemah Duran
<i>Taz</i>	<i>Turei Zahav</i> by Rabbi David HaLevi
<i>Tosefot HaRosh</i>	<i>Tosefot</i> of Rabbeinu Asher ben Rabbi Yehiel
<i>Tosefot Ri HaLavan</i>	<i>Tosefot</i> of Rabbeinu Yitzḥak ben Ya'akov of Prague
<i>Tosefot Rid</i>	<i>Tosefot</i> of Rabbi Yeshaya di Trani the Elder
<i>Tur</i>	<i>Sefer HaTurim</i> by Rabbi Ya'akov ben Asher
<i>Tzlaḥ</i>	<i>Tziyun LeNefesh Ḥayya</i> by Rabbi Yehezkel Landau
Ya'avetz	Rabbi Ya'akov Emden

ה	<p>212...It spoiled – הַדְבִּישׁ 14...Conspiring witnesses – הַזָּהָה 272...<i>Hin</i> – הַין 252...Loan – הַלְּאָהָה 81...Ratification – הַפְּקָד 172...You shall furnish – הַעֲנֵיק תְּשִׁיעֵנִיךְ 164...Ownerless property – הַפְּנָס 191...One who rents – הַשְׂכִּיר</p>
וּ	<p>160...White glass – וְגִימָתָא חִוּרָתָא</p>
ח	<p>23...Presumption [<i>hazaka</i>] – חַזָּקָה 200...Sin-offering – חַטָּאת 13...Fat – חֶלֶב 304...<i>Halla</i> – חֶלֶה 247, 254...Exchange – חֶלְפִּין 80...<i>Halitzah</i> – חֶלְצָה 43...The donkey and its halter – חַמְרוֹ וְבִתְּחִנָּה The <i>baraita</i> is incomplete – חַסְרוֹ מִחְפָּצָא וְהַיְּתִינִי 34...and this is what it is teaching 59...A deaf-mute, an imbecile, or a minor – חַרְשָׁתָה וְקַטָּן</p>
ט	<p>212...Untithed produce – טָבֵל 146...Ring – טְבֻעָת 232...Handbreadth – טְפֵחָה 319...<i>Tereifot</i> – טְרִיפּוֹת</p>
וּ	<p>109...Despair – יָאֹשָׁה 80...Your <i>yavam</i> – יָבָםִים 127...Wine – יְין 288...The Dead Sea [<i>Yam HaMelah</i>] – יַם הַמֶּלֶת</p>
כּ	<p>כִּי שִׁיאָנָע אַחֲרוֹן...לְנָגֵר פָּרָת – כִּי שִׁיאָנָע אַחֲרוֹן...לְנָגֵר פָּרָת 150...the Euphrates River – כְּלָלָה 221...Spelt [<i>kusemin</i>] – פְּסָמִין 221, 273...<i>Kor</i> – כוֹר 115...<i>Kiyitten</i>...<i>ki yuttan</i> – כִּי תַּעֲתִין...כִּי יַעֲתִין 135...Pouch – כֶּסֶף 107...Baker's loaves – כְּבָרוֹת שְׁלֵחָתָם 158...Silver vessels or copper vessels – כְּלֵי כְּסָף וּכְכִּילָה נְזֹשָׁת Generalization and a detail – כְּלֵי כְּסָף וּכְכִּילָה נְזֹשָׁת 314...and a generalization – כְּלֵי כְּסָף וּכְכִּילָה נְזֹשָׁת 28...<i>Kafrei</i> – כְּפָרִי 235...Hops – כְּשָׂוֹתָא 34...Marriage contract – בְּתִבְחָה</p>
לּ	<p>לֹא אָמַר בְּלֹם – לֹא אָמַר בְּלֹם 210...Teaches not only this but also that – לֹא זֶה אָף וְקַתְנִי The <i>tanna</i> is speaking utilizing – לֹא מִיבְעָדָא קָאָמָר 294...the style of, It is not necessary – לֹא נִיְאָשָׁשׁ רַבְעָלִי 31...The owner did not despair – לֹא נִזְהַרְתָּא 269...Nor curse – לֹא תָּאֹר 307...Prohibition – לֹא 223...<i>Log</i> – לֹג 275...Lod – לוֹד</p>

לּ	<p>152...A lost item belongs to the king – לְמַלְכָּא 99...Bundle – אֲגָדָה 24...Marsh [<i>agam</i>] – אֲגָם 131...Rim – אֲוֹגָן 261...Exploitation – אֲוֹנוֹתָה One that the – אֲזָה שְׁפָלָגָה מִلְּוֹת אֶחָד שְׁפָלָגָה מִדְּנִיה kingdom invalidated and one that 260...a province invalidated Had I not – אִי לֹא דָרְלָא לְקַשְׁפָא לֹא מִשְׁבְּחָת מִרְגְּנִיתָא תּוֹתָה lifted up the shard for you, you would not have found 86...a pearl beneath it One cannot assume – אִין כְּחִזְקָין 218...presumptive ownership – אִינְפּוֹן 34...Reverse – אִירּוֹסִין 86...Betrothal – אַלְאָ אֵי אַתְּבָרְךָ אַתְּבָרְךָ Rather, if it was stated, – אַלְאָ אֵי אַתְּבָרְךָ אַתְּבָרְךָ 132...this is how it was stated Rather it is clearly – אַלְאָ מַתְּוֹרָתָא כְּדֵשָׁן מַשְׁקָּעָה 10...as we explained initially 108, 324...Cubit [<i>amma</i>] – אַמָּה 322...Plumb line – אַמְּקָדָה Take a circuitous route – אַקְרִין אַסְוָלָמָא דְּצָוָה 241...to the Ladder of Tyre 20...Four bailees – אַרְבָּעָה שְׁׂמָרִין 200...Guilt-offering – אַשְׁמָה 126...Garbage dump [<i>ashpa</i>] – אַשְׁפָה</p>
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