The excluded area need not be so large; rather, three courtyards each containing two houses are sufficient for this purpose. And Rav Hama bar Gurya said that Rav said: The halakha is in accordance with the opinion of Rabbi Shimon; and who disagrees with Rabbi Shimon on this matter? It is Rabbi Yehuda. Didn’t you say: In disputes between Rabbi Yehuda and Rabbi Shimon, the halakha is in accordance with the opinion of Rabbi Yehuda? Rather, can we not conclude from this mishna that these principles should not be relied upon?

The Gemara rejects this argument: What is the difficulty posed by this ruling? Perhaps where it is stated explicitly to the contrary, it is stated, but where it is not stated explicitly to the contrary, it is not stated, and these principles apply.

Rather, the proof is from that which we learned elsewhere in a mishna: If a city that belongs to a single individual subsequently becomes one that belongs to many people, one may establish an eiruv of courtyards for all of it. But if the city belongs to many people, and it falls into the possession of a single individual, one may not establish an eiruv for all of it, unless he excludes from the eiruv an area the size of the town of Hadasha in Judea, which contains fifty residents; this is the statement of Rabbi Yehuda.

Rabbi Shimon says:

The excluded area need not be so large; rather, three courtyards each containing two houses are sufficient for this purpose. And Rav Hama bar Gurya said that Rav said: The halakha is in accordance with the opinion of Rabbi Shimon; and who disagrees with Rabbi Shimon on this matter? It is Rabbi Yehuda. Didn’t you say: In a case where Rabbi Yehuda and Rabbi Shimon disagree, the halakha is in accordance with the opinion of Rabbi Yehuda? This teaches that one should not rely on these principles.

The Gemara rejects this argument as well: What is the difficulty here? Perhaps here, too, where it is stated explicitly to the contrary, it is stated, but where it is not stated explicitly, it is not stated, and the principle that the halakha is in accordance with the opinion of Rabbi Yehuda applies.

Rather, the proof is from that which we learned elsewhere in a mishna: With regard to one who left his house without making an eiruv of courtyards, and established residence for Shabbat in a different town, whether he was a gentile or a Jew, his lack of participation prohibits the other residents of the courtyards in which he has a share to carry objects from their houses to the courtyard, because he did not establish an eiruv with them, and failure to include a house in the eiruv imposes restrictions upon all the residents of the courtyard. This is the statement of Rabbi Meir.

Rabbi Yehuda says: His lack of participation does not prohibit the others to carry, since he is not present there. Rabbi Yosei says: Lack of participation in an eiruv by a gentile who is away prohibits the others to carry, because he might return on Shabbat; but lack of participation by a Jew who is not present does not prohibit the others to carry, as it is not the way of a Jew to return on Shabbat once he has already established his residence elsewhere. Rabbi Shimon says: Even if he left his house and established residence for Shabbat with his daughter in the same town, his lack of participation does not prohibit the residents of his courtyard to carry, even though he is permitted to return home, because he has already removed it, i.e., returning, from his mind.
And Rav Hama bar Gurya said that Rav said: The halakha is in accordance with the opinion of Rabbi Shimon. And who disagrees with him? It is Rabbi Yehuda. Didn't you say: When there is a dispute between Rabbi Yehuda and Rabbi Shimon, the halakha is in accordance with the opinion of Rabbi Yehuda? This teaches that one cannot rely upon these principles.

The Gemara rejects this argument again: What is the difficulty here? Perhaps here, too, where it is explicitly stated that the halakha is in accordance with the opinion of Rabbi Shimon, it is stated; but where such a ruling is not stated, it is not stated, and the principle that the halakha is in accordance with the opinion of Rabbi Yehuda is relied upon.

Rather, the proof is from that which we learned in the mishna. And that is what the Sages meant when they said: A pauper can establish an eiruv with his feet; that is to say, he may walk to a place within his Shabbat limit and declare: Here shall be my place of residence, and then his Shabbat limit is measured from that spot. Rabbi Meir says: We apply this law only to a pauper, who does not have food for two meals; only such a person is permitted to establish his eiruv by walking to the spot that he wishes to acquire as his place of residence.

Rabbi Yehuda says: This allowance applies both to a pauper and to a wealthy person. Indeed, they said that one can establish an eiruv with bread only in order to make placing an eiruv easier for a wealthy person, so that he need not trouble himself and go out and establish an eiruv with his feet, but the basic eiruv is established by walking to the spot one will acquire as his place of residence.

And Rav Hiyya bar Ashi once taught this law to Hiyya bar Rav in the presence of Rav, saying: This allowance applies both to a pauper and to a wealthy person, and Rav said to him: When you teach this law, conclude also with this ruling: The halakha is in accordance with the opinion of Rabbi Yehuda.

The Gemara asks: Why do I need a second ruling? Didn’t you already say: When there is a dispute between Rabbi Meir and Rabbi Yehuda, the halakha is in accordance with the opinion of Rabbi Yehuda? The fact that Rav needed to specify that the halakha is in accordance with the opinion of Rabbi Yehuda on this matter indicates that he does not accept the general principle that when there is a dispute between Rabbi Meir and Rabbi Yehuda, the halakha is in accordance with the opinion of Rabbi Yehuda.

The Gemara rejects this reasoning: What is the difficulty here? Perhaps Rav does not accept these principles, but the other Sages accept them.

Rather, the Gemara brings a proof from that which we learned in another mishna with regard to a woman waiting for her brother-in-law, i.e., a woman whose husband died without children but who is survived by a brother. The brother-in-law is obligated by Torah law either to perform levirate marriage with his deceased brother’s widow, or to free her to marry others by participating in halitza. The woman waiting for her brother-in-law may neither participate in halitza nor undergo levirate marriage until three months have passed following her husband’s death, due to concern that she may be pregnant from him, in which case she is exempt from levirate marriage and halitza. After the three-month waiting period it will become clear whether she is pregnant from her husband.

And similarly, all other women may not be married or even betrothed until three months have passed following their divorce or the death of their husbands, whether they are virgins or non-virgins, whether they are widows or divorcees, and whether they became widowed or divorced when they were betrothed or married. In all cases, the woman may not marry for three months. Otherwise, if she is within the first three months of her pregnancy from her first husband, and she gives birth six months later, a doubt would arise as to the identity of the father. The Sages did not differentiate between cases where this concern is applicable and where it is not; rather, they fixed a principle that applies universally.
A sexually underdeveloped woman (אַיְילוֹנִית) is incapable of giving birth, because she lacks certain secondary female sexual characteristics, probably as a result of a congenital defect of the hormonal system. In various places the Talmud discusses the definition of a sexually underdeveloped woman (אַיְילוֹנִית) and the implications in Jewish law.

**BACKGROUND**

Waiting before marriage – כּוּלָּן

A sexually underdeveloped woman, because she lacks certain secondary female sexual characteristics, is incapable of giving birth. In various places the Talmud discusses the implications in Jewish law.

**HALAKHA**

The halakha in accordance with Rabbi Meir with respect to his decrees

The halakha in accordance with Rabbi Meir with respect to his decrees (See Migdal Oz and Hagahot Maimoniyot; Shulhan Arukh, Even HaEzer 71:1).

**NOTES**

The Gemara rejects this argument: Why do I need Rabbi Yohanan to state that the halakha is in accordance with Rabbi Yosei? Didn’t you say: In a dispute between Rabbi Meir and Rabbi Yosei, the halakha is in accordance with the opinion of Rabbi Yosei, and therefore the halakha should be in accordance with him here as well? This implies that the principle is not to be relied upon.

The Gemara rejects this argument: What is the difficulty here? Perhaps this ruling comes to exclude what Rav Nahman said that Shmuei said: Although there are many cases in which the halakha is not in accordance with the opinion of Rabbi Meir, nonetheless, the halakha is in accordance with Rabbi Meir with respect to his decrees, i.e., in those cases where he imposed a restriction in a particular case due to its similarity to another case. For this reason Rabbi Yohanan had to say that the halakha here is in accordance with the opinion of Rabbi Yosei, notwithstanding its opposition to Rabbi Meir’s decree.

Rabbi Yehuda says: A woman who had been married when she became widowed or divorced may be betrothed immediately, as couples do not have relations during the period of their betrothal. However, she may not marry until three months have passed, in order to differentiate between any possible offspring from the first and second husband.

And we said with regard to this: It once happened that Rabbi Eliezer did not come to the study hall. He met Rabbi Asi, who was standing, and said to him: What did they say today in the study hall? He said to him that Rabbi Yohanan said as follows: The halakha is in accordance with the opinion of Rabbi Yosei. Rabbi Eliezer asked: By inference, can it be inferred from the fact that the halakha is in accordance with his opinion that only a single authority disagrees with him?

Rabbi Asi answered: Yes, and so it was taught in the following baraita: If a woman was eager to go to her father’s house and did not remain with her husband during his final days, or if she was angry with her husband and they separated, or if her husband was elderly or sick and could not father children, or if she was sick, or barren, or an elderly woman, or a minor, or a sexually underdeveloped woman who is incapable of bearing children, or a woman who was unfit to give birth for any other reason, or if her husband was imprisoned in jail, or if she had miscarried after the death of her husband, so that there is no longer any concern that she might be pregnant from him, all these women must wait three months before remarrying or even becoming betrothed; this is the statement of Rabbi Meir, who maintains that this decree applies to all women, even when the particular situation renders it unnecessary. In all these cases Rabbi Yosei permits the woman to be betrothed and to marry immediately.

A woman who had only been betrothed when she became widowed or divorced may be married immediately, as it may be assumed that the couple did not have relations during the period of their betrothal. This is except for a betrothed woman in Judea, because there the bridegroom’s heart is bold, as it was customary for couples to be alone together during the period of betrothal, and consequently there is a suspicion that they might have had relations, in which case she might be carrying his child. However, no similar concern applies in other places.

Rabbi Yosei says: All the women listed above may be betrothed immediately, because the decree applies only with regard to marriage; this is except for a widow, who must wait for a different reason, because of the mourning for her deceased husband.

The halakha is in accordance with Rabbi Meir’s decrees (See Migdal Oz and Hagahot Maimoniyot; Shulhan Arukh, Even HaEzer 71:1).

The early commentators distinguish between Rabbi Meir’s decrees and his monetary penalties. With regard to Rabbi Meir’s decrees, the halakha is in accordance with his opinion; with regard to his monetary penalties, his rulings are not accepted. The rationale for this difference is that decrees involve specific cases which are prohibited due to their similarity to another case, but not prohibited in and of themselves. The concern that she might be pregnant from him, or a woman who was unfit to give birth or a woman who was unable to bear children, or a woman who was not fit to give birth for any other reason, or if her husband was imprisoned in jail, or if she had miscarried after the death of her husband, so that there is no longer any concern that she might be pregnant from him, all these women must wait three months before remarrying or even becoming betrothed; this is the statement of Rabbi Meir, who maintains that this decree applies to all women, even when the particular situation renders it unnecessary. In all these cases Rabbi Yosei permits the woman to be betrothed and to marry immediately.

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The Gemara rejects this argument: What is the difficulty here? Perhaps this ruling comes to exclude what Rav Nahman said that Shmuei said: Although there are many cases in which the halakha is not in accordance with the opinion of Rabbi Meir, nonetheless, the halakha is in accordance with Rabbi Meir with respect to his decrees, i.e., in those cases where he imposed a restriction in a particular case due to its similarity to another case. For this reason Rabbi Yohanan had to say that the halakha here is in accordance with the opinion of Rabbi Yosei, notwithstanding its opposition to Rabbi Meir’s decree.
Rather, the proof that these principles do not apply is from that which was taught in the following baraita: One may go to a fair of idolatrous gentiles and buy animals, slaves, and maidservants from them, as the purchase raises them to a more sanctified state; and he may buy houses, fields, and vineyards from them, due to the mitzva to settle Eretz Yisrael; and he may write the necessary deeds and confirm them in their gentle courts with an official seal, even though this involves an acknowledgement of their authority, because it is as though he was rescuing his property from their hands, as the court’s confirmation and stamp of approval prevents the sellers from appealing the sale and retracting it.

And if he is a priest, he may become ritually impure by going outside Eretz Yisrael, where the earth and air are impure, in order to litigate with them and to contest their claims. And just as a priest may become ritually impure by going outside Eretz Yisrael, so may he become ritually impure for this purpose by entering into a cemetery.

The Gemara interrupts its presentation of the baraita to express surprise at this last ruling: Can it enter your mind to say that a priest may enter a cemetery? This would make him ritually impure by Torah law. How could the Sages permit a priest to become ritually impure by Torah law?

The baraita continues: And a priest may likewise become ritually impure and leave Eretz Yisrael in order to marry a woman or to study Torah there. Rabbi Yehuda said: When does this allowance apply? When he cannot find a place to study in Eretz Yisrael. But if the priest can find a place to study in Eretz Yisrael, he may not become ritually impure by leaving the country.

Rabbi Yosei says: Even when he can find a place to study Torah in Eretz Yisrael, he may also leave the country and become ritually impure, because he may become ritually impure by going outside Eretz Yisrael, so may he become ritually impure in this case as well.

In the Mishna but not in a baraita – הלכה. Rashi explains that it is possible that the opinions were reversed in a baraita, since baraitot were not always transmitted precisely. Elsewhere, the Sages express the concern not only about a reversal of the teachings, but also about a general lack of accuracy and inexact citation of the words of tannaim. Consequently, the principles with regard to the Mishna do not always apply to the baraitot, even when the identity of the author is established. It is also possible that a principle was stated that takes into account everything stated in the mishnayot, whereas there is no way of knowing everything stated in all of the baraitot.

NOTES

HALAKHA

Going to a fair of gentiles – הלכות מיר. One is permitted to go to a market fair held in honor of idolatry in order to purchase things from the local farmers, especially if refraining from doing so would cause him significant financial loss. However, he may not buy from a merchant at such a fair, since part of his profits go to idolatry (Shulhan Arukh, Yoreh De’ah 149:3).

When may a priest become ritually impure – הלכות מיר. A priest is permitted to become ritually impure with rabbinic impurity if he walks in an area where there is uncertainty with regard to the location of a grave or a corpse (beit haperas), or if he leaves Eretz Yisrael in order to marry a woman, learn Torah, or fulfill other mitzvot that he cannot perform in Eretz Yisrael (Shulhan Arukh, Yoreh De’ah 321:1).

NOTES

Buy animals . . . from them – הלכות מיר. An alternate rationale for this leniency is that animals and slaves and the other items listed here are not always readily available. The Sages waived their decrees in such cases of loss or irretrievable opportunity (Rivah).

Confirm in their courts – הלכות מיר. The Sages prohibited litigation in gentile courts, even where they judge according to Jewish law, because this belittles the Jewish court and honors the gentile court.

Perek IV

Daf 47 Amud b

In the Mishna but not in a baraita – הלכה. Rashi explains that it is possible that the opinions were reversed in a baraita, since baraitot were not always transmitted precisely. Elsewhere, the Sages express the concern not only about a reversal of the teachings, but also about a general lack of accuracy and inexact citation of the words of tannaim. Consequently, the principles with regard to the Mishna do not always apply to the baraitot, even when the identity of the author is established. It is also possible that a principle was stated that takes into account everything stated in the mishnayot, whereas there is no way of knowing everything stated in all of the baraitot.
Since no proof has been found to support Rav Mesharshiya's statement that there are no principles for issuing halakhic rulings, the Gemara emends his statement. Rather, this is what Rav Mesharshiya is saying: These principles were not accepted by all authorities, as in fact Rav did not accept these principles, as demonstrated above.

The Gemara returns to addressing acquisition of residence. Rav Yehuda said that Shmuel said: Objects belonging to a gentile do not acquire residence and do not have a Shabbat limit, either on their own account or due to the ownership of the gentile. Accordingly, if they were brought into a town from outside its limits, a Jew may carry them two thousand cubits in each direction.

The Gemara asks: In accordance with whose opinion was this statement made? If you say that it was made in accordance with the opinion of the Rabbis, it is obvious. Now, if unclaimed objects, which do not have owners, do not acquire residence, it is necessary to say that a gentile's objects, which have an owner, do not acquire residence?

Rather, this statement must have been made in accordance with the opinion of Rabbi Yoĥanan ben Nuri, and Shmuel is teaching us that when we say that Rabbi Yoĥanan ben Nuri said that objects acquire residence, this applies only to unclaimed objects, which have no owners; but it does not apply to objects belonging to a gentile, which have owners.

The Gemara raises an objection from a baraita. Rabbi Shimon ben Elazar says: With regard to a Jew who borrowed a utensil from a gentile on a Festival, and similarly with regard to a Jew who lent a utensil to a gentile on the eve of a Festival and the gentile returned it to him on the Festival, and likewise utensils or bins that acquired residence within the city's Shabbat limit, in all these cases the utensils have, i.e., can be moved, two thousand cubits in each direction. But if a gentile brought the Jew produce from outside the Shabbat limit, the Jew may not move it from its place.

Granted if you say that Rabbi Yoĥanan ben Nuri holds that objects that belong to a gentile acquire residence, one can say that this baraita is in accordance with whose opinion? It is in accordance with the opinion of Rabbi Yoĥanan ben Nuri, that even a gentile's objects acquire residence.

However, if you say that Rabbi Yoĥanan ben Nuri holds that objects belonging to a gentile do not acquire residence, in accordance with whose opinion is this baraita? It is neither in accordance with that of Rabbi Yoĥanan ben Nuri nor that of the Rabbis.

The Gemara answers: Actually, say that Rabbi Yoĥanan ben Nuri holds that a gentile's objects acquire residence, and that Shmuel, who said that they do not acquire residence, spoke in accordance with the opinion of the Rabbis. And with regard to that which you said, that according to the opinion of the Rabbis, it is obvious that a gentile's objects do not acquire residence, so this ruling need not have been stated at all. The Gemara answers: That is incorrect, as you might have said that the Sages should issue a decree in the case of gentile owners that his objects acquire residence in his location and that they may not be carried beyond two thousand cubits from that spot, lest people carry objects belonging to a Jewish owners beyond their two-thousand-cubit limit. Therefore, it is teaching us that no decree was issued.

Rav Hiyya bar Avin, however, said that Rabbi Yoĥanan said: Objects that belong to a gentile indeed acquire residence, due to the aforementioned decree issued in the case of gentile owners due to the case of Jewish owners.
The Gemara relates that certain rams were brought to the town of Mavrkha on Shabbat. Rava permitted the residents of Mehoza to purchase them and take them home, although Mavrkha was outside the Shabbat limit of Mehoza and could be reached by the residents of Mehoza only by way of an eiruv of Shabbat limits.

Ravina said to Rava: What is your reasoning in permitting these rams? You must rely upon that which Rav Yehuda said that Shmuel said: Objects belonging to a gentile do not acquire residence, and so they are permitted even if they were brought to Mehoza from outside the Shabbat limit.

Isn’t the principle, in disputes between Shmuel and Rabbi Yohanan, that the halakha is in accordance with the opinion of Rabbi Yohanan? And Rav Hyya bar Avin already said that Rabbi Yohanan said: Objects that belong to a gentile acquire residence, based on a decree in the case of a gentile owner, due to the case of a Jewish owner. The halakha is in accordance with his opinion.

Rava reconsidered and said: Let the rams be sold only to the residents of Mavrkha. Although the rams acquired residence, and may be moved only four cubits as they were taken beyond their Shabbat limit, the legal status of all Mavrkha is like four cubits for them. However, they may not be sold to the residents of Mehoza, as the halakha is in accordance with the opinion of Rabbi Yohanan.

Rabbi Hyya taught a baraita: A water-filled ditch [herem] that lies between two Shabbat limits requires an iron partition to divide it into two separate areas, so that the residents of both places may draw water from it. Rabbi Yosei, son of Rabbi Hanina, would laugh at this teaching, as he deemed it unnecessary.

The Gemara asks: Why did Rabbi Yosei, son of Rabbi Hanina, laugh? If you say that it is because Rabbi Hyya taught the baraita stringently, in accordance with the opinion of Rabbi Yohanan ben Nuri, saying that ownerless objects acquire a place of residence, and Rabbi Yosei, son of Rabbi Hanina holds leniently, in accordance with the opinion of the Rabbis and says that those objects do not acquire residence, this is difficult. Just because he holds leniently, does he laugh at one who teaches stringently?

Rather, he must have laughed for a different reason, as it was taught in a baraita: Flowing rivers and streaming springs are like the feet of all people, as the water did not acquire residence in any particular spot. Consequently, one who draws water from rivers and springs may carry it wherever he is permitted to walk, even if it had previously been located outside his Shabbat limit. According to Rabbi Yosei, son of Rabbi Hanina, the same halakha should apply to the water in the ditch.

The Gemara rejects this argument: No proof can be brought from this ruling concerning rivers and springs, as perhaps we are dealing here with a ditch of still, collected water that belongs exclusively to the residents of that particular place.