

BACKGROUND

An outbreak of snakes and scorpions – שילוח נחשים – עקרבִים: Large groups of animals will often move from place to place as a result of a natural disaster, e.g., floods and fires, or as a result of a population explosion. Often this phenomenon is accompanied by a behavioral change in the animals, as they grow more aggressive. In an outbreak of this kind, animals that would normally avoid humans have been known to attack and bite them.

NOTES

We rely on that which people say – סמכי אדאמרי אינשי – Some commentaries explain that as she believes that even in a time of plague people do not die before their time, she would not be afraid to remain with him, but would stay by her husband's side until his death. Therefore, her claim is deemed credible (Arukh LaNer).

מפולת – הרי הוא כמלחמה, דאמרה בדדמי. שילוח נחשים ועקרבִים – הרי הן כמלחמה, דאמרה בדדמי.

דבר, אמרי לה: הרי הוא כמלחמה, ואמרי לה: אינו כמלחמה. אמרי לה: הרי הוא כמלחמה – דאמרי בדדמי, ואמרי לה: אינו כמלחמה, דסמכי אדאמרי אינשי: שב שגון הוה מותנא ואינש בלא שני לא אויל.

איבעיא להו: החזיקה היא מלחמה בעולם מהו? מי אמרינן מה לה לשקר.

Similarly, a rockslide is like war,<sup>h</sup> as she will say what she imagines to be the case, and she might not meticulously examine the facts to see if he was possibly saved. Furthermore, an outbreak of snakes and scorpions<sup>BH</sup> is like war, as she will say what she imagines to be the case.

In a case of pestilence<sup>h</sup> or a similar plague, some say it is like war, and some say it is not like war. The Gemara explains: Some say it is like war, as she will say what she imagines to be the case, because she assumes that if most everyone died in the plague her husband could not have survived. Conversely, some say it is not like war, because we rely on that which people say<sup>n</sup> in the common expression: For seven years there was pestilence and not a person left, i.e., died, before his time. In other words, with regard to natural disasters of this kind it is known sometimes that one can avoid harm, and therefore if a woman testifies that her husband died she certainly witnessed his death.

§ A dilemma was raised before the scholars: If she maintains that there is a war<sup>h</sup> in the world, i.e., if the court was not aware of a war in that place, but the wife comes and claims that there was a war, and she went on to say that her husband died in this war, what is the halakha in this case? Do we say: Why should she lie? In other words, if she was lying she would have issued a more advantageous claim. Since she herself informed the court that there was a war, which undermines her claim that her husband died, there is no legitimate reason to suspect her of lying.

HALAKHA

A rockslide is like a war – מפולת הרי הוא כמלחמה: A woman who says that her husband died in a rockslide is not deemed credible, as a rockslide is considered like a war with regard to this halakha (Rambam Sefer Nashim, Hilkhoh Geirushin 13:4; Shulhan Arukh, Even HaEzer 17:51).

An outbreak of snakes or scorpions – שילוח נחשים ועקרבִים: The Rema, citing Beit Yosef, says that if there was an attack of snakes or scorpions and a woman says her husband died of a snakebite or a scorpion's sting, she is not deemed credible, as this is considered like a time of war (Rambam Sefer Nashim, Hilkhoh Geirushin 13:4; Shulhan Arukh, Even HaEzer 17:51).

Pestilence in the world – דבר בעולם: If at a time of pestilence a

wife said that her husband died of that plague, she is deemed credible (Rambam Sefer Nashim, Hilkhoh Geirushin 13:7; Shulhan Arukh, Even HaEzer 17:55).

She maintains there is a war – החזיקה היא מלחמה: The Rema, citing Tur and the Rosh, holds that if a wife comes and says there was a war in another region and her husband died in that war, but the court had no knowledge of that war taking place, she may not remarry ab initio. However, if she did remarry she need not leave her new husband. Others claim that she must leave her new husband, as when she married him she was a woman with regard to whom there was uncertainty whether she was married (Rambam Sefer Nashim, Hilkhoh Geirushin 13:3; Shulhan Arukh, Even HaEzer 17:49).

Perek XV  
Daf 115 Amud a

דאי בעיא אמרה שלום בעולם, או דלמא: בין דאיחזיקה – אמרה בדדמי, ולא אתי "מה לי לשקר" וימרע חזקתיה?

Because if she wanted to lie she would have said: There was peace in the world, and the court would have accepted her testimony. Or perhaps it can be argued: Since she has maintained that there was a war and this claim of hers has already been accepted, with regard to her report concerning her husband, she will say what she imagines to be the case, and the argument of: Why would I lie, does not come<sup>n</sup> and undermine the established presumption that there was a war.

NOTES

Why would I lie, does not come – ל:א אתי מה לי לשקר: The Gemara is apparently discussing the question of whether the argument that a liar would have issued a more advantageous claim can override the factual presumptions accepted by the court. This question is discussed elsewhere in the Gemara (see Tosafot). However, in this context the entire argument of: Why would she lie, is problematic. This is because according to most commentaries there is no suspicion in these cases that the wife is attempting to lie. Instead, the difficulties with her testimony arise because she is prone to error, either as a result of innocent mistakes or due to her hatred of her husband.

Evidently, the argument: Why would she lie, has a different meaning in this case than in other areas of halakha. The idea is that as she speaks so precisely and relates the whole event as it happened, she is presumably also speaking accurately when she says her husband died (Rashba; Ritva). Likewise, the presumption mentioned here does not mean there is a presumption that there was a war. Rather, it is a presumption that people often do not speak accurately in situations of this kind (see Tosafot Rid).

**עִישֵׁינוּ עָלֵינוּ – נִפְּלוּ עָלֵינוּ לִיְסֻטִים** – They set our house on fire, with smoke – **בֵּית**: If a wife said: People set our house on fire and my husband died while I was saved, she is not deemed credible (Rambam *Sefer Nashim, Hilkhot Geirushin* 13:5; *Shulḥan Arukh, Even HaEzer* 17:52).

**בַּנְּפִלּוֹת עָלֵינוּ לִיְסֻטִים** – Bandits attacked us – **נִפְּלוּ עָלֵינוּ לִיְסֻטִים**: If a wife said that bandits or gentiles attacked her and her husband, and he died while she was saved, she is deemed credible (Rambam *Sefer Nashim, Hilkhot Geirushin* 13:6; *Shulḥan Arukh, Even HaEzer* 17:54).

## BACKGROUND

**עִישֵׁינוּ עָלֵינוּ בֵּית** – They set our house on fire, with smoke – This was a technique used principally in times of war. If people were entrenched in a well-protected house or cave, then in order to force them to exit their enemies would set fire to the house or the entrance to the cave, causing the house or cave to fill with smoke. The people inside would have to leave, or stay and die from smoke inhalation.

תָּא שָׁמַע: "עִישֵׁינוּ עָלֵינוּ בֵּית", "עִישֵׁינוּ עָלֵינוּ מַעְרָה", "הוּא מַתּ וְאֵנִי נִצַּלְתִּי" – אינָה נֶאֱמָנָת. שָׂאֵנִי הֵתֵם דְּאָמַר לָהּ: כִּי הֵיכִי דְלִדְיָךְ אִיתְרַחֵישׁ נִסָּא – לְדִידֵיהּ נִמְי אִיתְרַחֵישׁ נִסָּא.

The Gemara cites a *baraita* in an attempt to resolve this dilemma. **Come and hear:** It was taught that if a woman comes and says: **They set our house on fire and the house became filled with smoke,**<sup>HB</sup> or: **They set our cave on fire to smoke us out, and she adds:** My husband died and I was saved, **she is not deemed credible.** In this case, she herself related the entire story, and even so her version of events is not accepted. The Gemara answers that this is no proof. **There, in the case of the fire, it is different, as one says to her: Just as a miracle occurred for you and you were saved, likewise a miracle might have occurred for your husband and he too survived.**

תָּא שָׁמַע: "נִפְּלוּ עָלֵינוּ גּוֹיִם", "נִפְּלוּ עָלֵינוּ לִיְסֻטִים", "הוּא מַתּ וְנִצַּלְתִּי" – נֶאֱמָנָת. הֵתֵם כְּדָרְבַּ אִידִי, דְּאָמַר רַב אִידִי: אִשָּׁה כְּלִי וַיִּנָּה עָלֶיהָ.

**Come and hear a proof from another *baraita*.** If a woman comes and says: A group of **gentiles attacked us,**<sup>N</sup> or: A group of **bandits attacked us,**<sup>H</sup> and she adds: My husband died and I was saved, **she is deemed credible.** This indicates that her testimony is accepted due to the argument of: Why should she lie? The Gemara rejects this proof. **There, in that *baraita*, her testimony is accepted because it stands to reason that she is speaking the truth, in accordance with the opinion of Rav Idi. As Rav Idi said:** With regard to a woman, **her weapons are upon her.** In other words, a woman is generally not killed by thieves, because the very fact of her being a woman protects her. They would most likely rape her and not kill her. Consequently, it is reasonable to assume that she is speaking the truth.

הָהוּא גְבַרָא דְבִשְׁיִלְהֵי הַלְלוּיָהּ אִיתְלִי נֹרָא בֵּי גַנְנֵי. אָמְרָה לָהּ דְּבִיתָהּ: חֲזוּ גְבַרָאִי, חֲזוּ גְבַרָאִי! אָתוּ חֲזוּ גְבַרָא חְרוּכָא דְשָׂדִי וּפְסָתָא דִּידָא דְשָׂדִיא.

§ The Gemara relates: There was a **certain man who got married. At the end of his wedding a fire broke out in the bridal chamber, where the bride and groom were standing, during the ceremony. His wife screamed and said to them: Look at my husband, look at my husband!**<sup>N</sup> They went and saw an unrecognizable **burnt man fallen down, and a palm of a hand lying there.**

סָבַר רַב חֵייאָ בַר אֲבִין לְמִימַר: הֵינֵנוּ "עִישֵׁינוּ עָלֵינוּ בֵּית", "עִישֵׁינוּ עָלֵינוּ מַעְרָה". אָמַר רָבָא: מִי דְמִי? הֵתֵם – לֹא קָאֲמְרָה "חֲזוּ גְבַרָאִי חֲזוּ גְבַרָאִי", וְעוּד: גְבַרָא חְרוּכָא דְשָׂדִי וּפְסָתָא דִּידָא דְשָׂדִיא.

Rav Ḥiyya bar Avin thought to say: This is the same as the case of: **They set our house on fire and the house became filled with smoke, or: They set our cave on fire to smoke us out, i.e., we cannot rely on her claim that her husband died. Rava said:** Is this case comparable to those? **There she did not say: Look at my husband, look at my husband. And furthermore, there is another difference:** Here, there is a **burnt man who has fallen down and a palm that is lying there.** In other words, her statement is substantiated by facts.

וְרַב חֵייאָ בַר אֲבִין: גְבַרָא חְרוּכָא דְשָׂדִיא – אִימָא אִינִישׁ אַחְרִינָא אָתָא לְאֵעוּלִי, וְאִכְלִיתָהּ נֹרָא. וּפְסָתָא דִּידָא דְשָׂדִיא – נֹרָא אִיתְלִיא, וְאִתְלִיד בֵּיהּ מוּמָא, וּמְחַמַּת כִּיסוּפָא אִזְל וְעָרַק לְעֵלְמָא.

And why didn't Rav Ḥiyya bar Avin accept her testimony? In his opinion, a **burnt man who has fallen down** is not conclusive proof, as one might still say: Perhaps **another person came to the rescue and the fire burned him. And as for the palm lying there, perhaps the fire burned him and caused a deformity through which he lost his hand, and due to his embarrassment<sup>N</sup> he went and ran away to somewhere else in the world, but he is still alive.** Consequently, Rav Ḥiyya bar Avin did not want to rely upon the testimony of the wife.

## NOTES

**A group of gentiles attacked us – נִפְּלוּ עָלֵינוּ גּוֹיִם**: The Gemara indicates that an attack by thieves or gentiles is comparable to a small-scale war. The difference is that in a case of an actual war the wife would be afraid to remain in order to see whether her husband actually died (*Tosefot Yeshanim*). This is because in war the combatants continually shoot arrows and other weapons, and she is concerned that she too will be wounded. By contrast, if they were faced with a small number of enemies who have left the scene she is not scared for her life.

**Look at my husband – חֲזוּ גְבַרָאִי**: Some commentaries explain that she was saying: See my husband, who is seized

by the fire (*Hazon Ish*). This statement indicates that her husband was there and did not run away beforehand, and therefore there is reason to believe that he was the man who was burnt.

**Due to his embarrassment, etc. – מְחַמַּת כִּיסוּפָא וכו'**: Some authorities rule stringently, in accordance with the opinion of Rav Ḥiyya bar Avin, as his opinion is not rejected (*Tosefot Rid; Rosh*). One proof cited in support of this ruling is the phrase: Rav Ḥiyya bar Avin thought to say, which indicates that this was his initial opinion, but he abandoned this reasoning due to Rava's comment (*Rashba*).

BACKGROUND

Beit D'li – בית דלי: Beit D'li, or Bidla as it is called in the Jerusalem Talmud, is located in Eretz Yisrael. It is likely that Neḥemya of Beit D'li fled to Babylonia due to persecutions, and he retained his connection to Eretz Yisrael by calling himself after his hometown. The location of Beit D'li is unknown, although a number of suggestions have been suggested. Some identify it with a similarly named village on the Hauran plateau, which is not far from the Golan Heights, in modern southwestern Syria. During the talmudic period there was a large Jewish community in that area, which was on the road to Babylonia.

LANGUAGE

I said [namti] – נמתי: From the word ne'um, speech, this term appears frequently in the Bible and in statements of the Sages. However, the verb came to be used as though it was derived from the roots n-m-m, or n-v-m, which led to namti, or nomiti.

HALAKHA

One witness during a war – עד אחד במלחמה: In the case of one witness who comes and claims he saw a man die in a war or due to a rockslide and the like, if he says: I buried him, he is deemed credible and the woman may remarry based upon his testimony. If he does not state this she may not marry ab initio, but if she did she need not leave her new husband. According to most commentaries, this problem is connected with a subsequent discussion in the Gemara (121a), which concludes that the claim of one witness: He died and I buried him, is accepted (Rambam). However, the basic question of the trustworthiness of one witness is left unresolved by the Gemara. The Rif maintains that if the witness did not state: I buried him, she must leave her new husband, while the Tosafot and the Ramban hold that one witness is entirely trustworthy in all these cases (Rambam Sefer Nashim, Hilkhoh Geirushin 13:19; Shulḥan Arukh, Even HaEzer 17:33).

איבעיא להו: עד אחד במלחמה מהו? טעמא דעד אחד מהימן – משום דמילתא דעבדא לאיגלווי הוא, לא משקר, הכא נמי לא משקר, או דלמא: טעמא דעד אחד – משום דהיא גופא דייקא ומינסבא, והכא [בין דוימנין דסניא ליה] – לא דייקא ומינסבא?

אמר רמי בר חמא: תא שמע, אמר רבי עקיבא: כשיורדתי לנהרדעא לעבר השנה, מצאתי נחמיה איש בית דלי, ואמר לי: שמעתי שאין משיאין את האשה בארץ ישראל על פי עד אחד אלא רבי יהודה בן בבא. ונמתי לו: בן הדברים. אמר לי: אמור להם משמי: אתם יודעים המדינה הזו משובשת בגיטות, כך מקובלני מרבן גמליאל הוקן: שמשיאין האשה על פי עד אחד.

מאי מדינה משובשת בגיטות? לאו אף על גב דמדינה זו משובשת, כך מקובלני שמשיאין על פי עד אחד. אלמא: עד אחד מהימן.

A dilemma was raised before them: In the case of one witness who testifies to the death of someone during a war,<sup>n</sup> what is the halakha? The Gemara explains the sides of the dilemma: The reason that one witness is deemed credible when he provides testimony concerning the death of a husband is because the husband being alive is a matter that is likely to be revealed, and one would not lie in a case of this kind. Here, too, one witness would not lie. Or perhaps the reason that one witness is trusted is because his account is supported by the fact that she herself is exacting in her investigation before she marries again. And here, since sometimes she hates him, and war is a situation that requires especially careful investigation and it is tempting for her to rely on the witness, she is not exacting in her investigation before she marries again, and therefore the testimony of one witness is not accepted.

Rami bar Ḥama said: Come and hear a resolution to this dilemma. Rabbi Akiva said: When I descended to Neharde'a in Babylonia to intercalate the year,<sup>n</sup> I found there the Sage Neḥemya of Beit D'li,<sup>b</sup> and he said to me: I heard that the Sages do not allow a woman to marry in Eretz Yisrael based on the testimony of one witness, apart from Rabbi Yehuda ben Bava, as the other Sages are reluctant to rely on his opinion. And I said [namti]<sup>l</sup> to him: This is so. He said to me: Say to them in my name: Do you know that this country is riddled with troops? This is the tradition that I received from Rabban Gamliel the Elder, that the Sages do allow a woman to marry based on one witness.

The Gemara analyzes this baraita in relation to the issue at hand. What is the significance of his comment that this country is riddled with troops? Isn't he saying: Even though this country is riddled with troops, this is the tradition that I received, that the Sages do allow a woman to marry based on one witness, notwithstanding the war. Apparently, one witness is deemed credible<sup>h</sup> in the case of a missing husband during a time of war.

NOTES

One witness during a war – עד אחד במלחמה: There are numerous opinions among commentaries and halakhic authorities with regard to this passage. The principle that people do not lie with regard to a matter likely to be revealed is a consideration that leads to the acceptance of the testimony of one witness in this case. By contrast, when a wife testifies, there are grounds for suspecting that she is not sufficiently thorough in her investigation, either due to the argument stated in the Gemara, i.e., that sometimes a woman despises her husband, or for some other reason. However, the Gemara mentions this factor in reference to a wife, not a regular witness, and therefore its relevance to the issue at hand is unclear. Some commentaries explain that the Gemara is basically suggesting that during a war the testimony of one witness is suspect for the same reason that the testimony of a wife is suspect in general, i.e., that he too might imagine that what he saw inevitably led to the husband's death. Alternatively, one witness is not deemed credible because his presence might lead the woman to be less exacting in her investigation and to conclude that her husband is dead without thorough examination (Tosafot).

With regard to the halakha, some authorities argue that a lone witness who is unrelated to the husband would not have come forward to testify if he was unsure of the facts. According to this opinion, the fact that one witness is deemed credible when he testifies that the man died and he buried him is an indication that one witness is always trusted with regard to testimony of a missing husband (Ramban). Meanwhile, the Rif claims the opposite, i.e.,

that this halakha proves that unless the witness actually testifies that he buried the husband the court suspects that he too might have leapt to a conclusion with insufficient evidence. Therefore, the wife must leave her new husband. For this reason the Rif maintains that not even two witnesses are considered reliable during a time of war, although most early commentaries dispute this ruling.

Some authorities contend that as this is an uncertainty involving a Torah prohibition, even if she herself said: I buried him, she should not remarry ab initio, although she may stay with her new husband after the fact (Rabbeinu Ḥananel). Others maintain that the concern is that the witness might have said what he imagines to be the case, not whether someone lies with regard to a matter likely to be revealed (Rambam). Consequently, if he did not say: I buried him, his testimony is not accepted. In the Jerusalem Talmud it is explicitly stated that the concern is that a single witness might testify based on conjecture, and the ruling of the Gemara there is that if the wife remarried she need not leave her husband. Apparently the Rambam, as is often the case, relied on the Jerusalem Talmud and explained the Gemara here accordingly.

When I descended...to intercalate the year – כשיורדתי...לעבר השנה: It is an established tradition that one may intercalate the year only in Eretz Yisrael. However, in an emergency, when there are no great Torah scholars in Eretz Yisrael, the greatest Sage of the generation may intercalate the year elsewhere, as Rabbi Akiva did here (see Tosafot).

The testimony of one witness enabling a woman to remarry – עַד אֶחָד בְּעֵדוּת אִשָּׁה הִשְׂיָא: The testimony of one witness that a woman's husband died is accepted, even if he is ordinarily disqualified from delivering testimony, e.g., if he is a close relative. However, this does not apply in a time of war. The *halakha* is in accordance with the report of Neḥemya of Beit D'li (Rambam *Sefer Nashim, Hilkhot Geirushin* 12:15, 13:19; *Shulḥan Arukh, Even HaEzer* 17:3).

אָמַר רַבָּא: אִי הָבִי, מֵאִי שָׁנָא מְדִינָה זֹאת? כָּל מְקוֹם שֶׁיֵּשׁ גַּיִסוֹת מִיַּבְעֵי לַיָּהּ! אֲלָא אָמַר רַבָּא, הָבִי קְאָמַר: אַתֶּם יוֹדְעִים שֶׁמְדִינָה זֹאת מְשׁוּבָשֶׁת בְּגַיִסוֹת, וְלֹא אֶפְשָׁר לִי לְמַשְׁבֵּק אֲנִישֵׁי בֵּיתִי וּמֵיִתִּי קָמִי רַבְנָן, כִּדְ מְקוּבְלָנִי מִרַבָּן גַּמְלִיאֵל: שְׂמִישְׂאִין הָאִשָּׁה עַל פִּי עַד אֶחָד.

Rava said: If this is how you interpret the matter, in what way is this country different from any other? In other words, why did Neḥemya of Beit D'li mention a particular place? He should have said: Any place where there are troops. Rather, Rava said: This is what he said: You know that this country is riddled with troops, and I cannot leave the members of my household and come before the Sages, due to the danger. Therefore, I cannot testify in person that this is the tradition that I received from Rabban Gamliel the Elder, that the Sages allow a woman to marry based on one witness. According to this interpretation, his statement has no bearing on the matter at hand.

תָּא שְׂמַע: מַעֲשֶׂה בְּשֵׁנֵי תַלְמִידֵי חֲכָמִים שֶׁהָיוּ בָּאִין עִם אַבָּא יוֹסִי בֶן סִימַאי בְּסַפִּינָה, וְטָבְעָה, וְהִשְׂיָא רַבִּי נְשׁוֹתֵיהֶן עַל פִּי נָשִׁים. וְהָא מִים כְּמַלְחָמָה דְּמוּ, וְנָשִׁים, אֶפְלוּ מֵאָה – כְּעַד אֶחָד דְּמוּ, וְקָתְנֵי הִשְׂיָא!

The Gemara continues. Come and hear a *baraita* that relates an incident involving two Torah scholars who were coming with Abba Yosei ben Simai by boat, and that boat sank. And Rabbi Yehuda HaNasi allowed their wives to marry based on the testimony given by women that these men were dead. But consider: Water, i.e., the sea, is like war with respect to this *halakha*, as there is room in both cases for conjecture and error. And women, even one hundred of them, are considered as one witness with regard to their testimony about a husband's death. And yet the *baraita* taught: He allowed them to marry,<sup>h</sup> which indicates that one may rely on one witness even during a war.

וְתִסְבְּרָא? מִים שְׂאִין לָהֶם סוּף נִיגְהוּ, וּמִים שְׂאִין לָהֶם סוּף אֲשֶׁתּוֹ אֲסוּרָה! אֲלָא הִכִּי דְּמִי – דְּאָמְרֵי אֲסִיקְיָנְהוּ קָמָן

The Gemara rejects this proof. And how can you understand it that way? Apparently, the women testified only that the boat sank, and this is a case of an endless body of water, as the boat sank at sea in a spot from which it is impossible to see the shore. And the *halakha* is that if a man was on a boat that sank in an endless body of water his wife is prohibited to marry, as there is no proof that he actually drowned and didn't emerge from the water on a different shore. Rather, one must say: What are the circumstances? That those women said: Those drowned men were brought up before us

Perek XV  
Daf 115 Amud b

וְחִזְיָנְהוּ לְאֵלְתֵּר, וְקָאָמְרֵי סִימְנִין, דְּלָאוּ עֲלֵיהוּ סְמְכִינָן – אֲלָא אֲסִיקְיָנָם.

and we saw them immediately<sup>n</sup> when they came out of the water, and the women stated distinguishing marks<sup>n</sup> that identified these people. As, in this case we do not rely upon the women, but upon the distinguishing marks.

הָהוּא גִבְרָא דְּאֶפְקִיד שׁוּמְשָׂמֵי גִבִּי חֲבֵרָה, אָמַר לִיה: הֵב לִי שׁוּמְשָׂמֵי! אָמַר לִיה: שְׂקִילְתֵּינְהוּ. וְהָא כֵּן וְכֵן הָוִין, וּבְחֵבִיתָא רַמְיִין! אָמַר לִיה: דִּידָךְ – שְׂקִילְתֵּינְהוּ, וְהֵנּוּ אַחֲרֵינִי נִיגְהוּ.

§ The Gemara relates: There was a certain man who deposited sesame plants with his friend. Sometime later he said to him: Give me the sesame plants. The friend said to him: You already took them. The owner replied: But they were of such-and-such an amount, and placed in a barrel; go and check that barrel and you will see that I am right. The bailee said to him: You took your sesame plants, and these in the barrel at my house are other ones.

NOTES

And we saw them immediately – וְחִזְיָנְהוּ לְאֵלְתֵּר: Rashi explains that this comment is necessary because the faces and distinguishing markings of drowned people who remain submerged in the water for a long period of time inevitably change. Some challenge this interpretation, and maintain that after one removes a drowned person from the water his features are likely to change quickly (*Tosafot*). Yet others state that the Gemara mentions this detail because it might be suggested that the women were basing their claim on an assumption, i.e., they did not actually recognize the deceased but simply assumed

that it must be them. However, as the bodies were brought out immediately this is not a concern (*Tosefot Yeshanim*).

And they stated distinguishing marks – וְקָאָמְרֵי סִימְנִין: The early commentaries debate whether the distinguishing marks are absolutely necessary, as without them there is a concern that the identification might be based on mere conjecture, or whether the marks are mentioned only because that is what actually happened in practice, i.e., the women who testified did not simply recognize the drowned men but were able to indicate signs of identification (see Rashba and Meiri).

HALAKHA

One who deposits an article to another and provides distinguishing marks – המפקיד ונתן סימנים: In a case of one who deposits an object and comes to collect it, even if he provides distinguishing signs identifying the article, e.g., if he said that he deposited with him a certain quantity of wheat, which he placed in a certain spot, and it is found as he described, the bailee is deemed credible if he claims that he returned the article and the barrel contains other wheat. The halakha is in accordance with the conclusion (116a) of Rava and Ravina (Rambam Sefer Mishpatim, Hilkhot She'ela UFikadon 6:4; Shulhan Arukh, Hoshen Mishpat 297).

If one found a vessel on which a letter... was written, etc. – מצא כלי וכתוב עליו וכו' – מצא כלי וכתוב עליו וכו': If someone found a vessel with the letter mem written on it, its contents are ma'aser sheni, second tithe; if it has a tet it is tevel, untithed produce; a tav signifies teruma; dalet is damai, doubtfully tithed produce; and kuf means a korban, an offering. If it was a metal vessel without an inscription, both the value of vessel itself and its contents must be used for the purchase of an offering. The reason for these halakhot is that they would write these letters during periods of religious persecution (Rambam Sefer Zera'im, Hilkhot Ma'aser Sheni 6:8).

BACKGROUND

Found a vessel on which... was written – מצא כלי וכתוב עליו:



Stone vessel with the inscription korban, from the Second Temple era, found near the Temple Mount

LANGUAGE

Preserve [panahya] – פנחיא: Apparently from the Middle Persian panāhīh, meaning protection.

סבר רב חסדא למימר: היינו שני תלמידי חכמים, ולא אמרין הנך אלו לעלמא והני אחריני נגהו.

אמר ליה רבא: מי דמי? התם קאמרי סימנים, הכא – שומשמי מאי סימנא אית להו? ודקאמר בן וכן הויין – אימר חושבנא איתרמי.

אמר ליה מר קשישא בר רב חסדא לרב אשי: ומי חיישינן שפמא פנין? והתנן: מצא כלי וכתוב עליו קוף – קרבן, מ"ם – מעשר, דל"ת – דמוע, ט"ת – טבל, ת"ו – תרומה. שבשעת הפסגה היו כותבין ת"ו תחת תרומה.

אמר ליה רבנא לרב אשי: ולא חיישינן שפמא פנין? אימא סיפא, רבי יוסי אומר: אפילו מצא חבית וכתוב עליה תרומה – הרי אלו חולין, שאני אומר: אשתקד הוה מלא תרומה, ופינה.

אלא: דכולי עלמא חיישינן שפמא פנין, והכא בהא קמיפלגי: מר סבר: אם איתא דפינהו – מכפר הוה כפר, ואידך: אימר אישתלוויי אישתלוי, אי נמי: לפנחיא שבקיה.

The case came before the Sages for a ruling. Rav Hisda thought to say: This situation is the same as the situation involving the two Torah scholars who drowned, when they used distinguishing marks to identify them. And we do not say in that case: Those men were elsewhere in the world, and these men who floated up are different people. Here too one may rely upon the distinguishing marks of the sesame plants given by the owner, and there is no reason to think that these sesame plants are different ones.<sup>H</sup>

Rava said to Rav Hisda: Is it comparable? There they said distinguishing marks that identified the victims. Here, in the case of sesame plants, what distinguishing marks might they have, by which they could be identified? And as for that which he said: They were of such-and-such an amount, one can say it happened by chance that this second time it was the same amount,<sup>N</sup> and there is no proof that these are the same sesame plants.

With regard to the same issue, Mar Kashisha, son of Rav Hisda, said to Rav Ashi: And are we concerned that perhaps the one guarding the plants moved them from their place? But didn't we learn in a mishna (Ma'aser Sheni 4:11): If one found a vessel on which the letter kuf was written,<sup>HB</sup> all objects inside the vessel are designated for a korban, an offering; if the letter mem was written on it, it is ma'aser, tithes; if it was the letter dalet, it is dimua, a mixture of teruma and non-sacred produce; if tet, it signifies tevel, untithed produce; and finally, if it is a tav, it indicates teruma. As during a time of danger, i.e., religious persecution against Jews, they would write, for example, tav instead of teruma. In this case, no concern is expressed that someone might have moved the teruma from that vessel to somewhere else.

In response to this claim, Ravina said to Rav Ashi: And aren't we concerned that perhaps someone moved the teruma from their place? Say the latter clause of that same mishna Rabbi Yosei says: Even if one found a barrel on which the full word teruma was written, these contents are non-sacred. As I say: Last year it was full of teruma, and someone removed the contents and replaced them with non-sacred produce. This proves that the possibility that someone moved the original contents is taken into consideration.

Rather, say as follows: Everyone agrees that we are concerned that perhaps someone moved<sup>N</sup> the contents of a container from their place, and here, with regard to the marked vessels, they disagree about this issue: The Sage who claims that one may rely on the inscription holds that if it is so, that he moved the teruma, he would have erased the inscription. And the other Sage, Rabbi Yosei, responds that one can say he forgot to do so. Alternatively, he left the label to preserve [panahya]<sup>L</sup> the contents, so that people would mistakenly think that it contained teruma and would refrain from taking the produce.

NOTES

It happened by chance that it was the same amount – חושבנא: The early commentaries question this statement in light of the ruling in tractate Bava Metzia that size and weight are distinguishing markers for a lost object, and ask why Gemara states here that there is a concern that those factors might have aligned by chance. Some commentaries explain that this is referring to an established measure which is not a clear marker, i.e., if it was customary to place this amount of produce in barrels of this kind. By contrast, the case of a found object is dealing with uncommon sizes and weights (Tosefot HaRosh).

Some commentaries maintain that there is a fundamental difference between these two cases. With regard to a lost object the finder has no presumption of ownership, whereas here the one who was entrusted with the item claims that the object is his, and one may not remove an article from someone based on

a marker that doesn't identify the object itself (Ritva; see Tosafot and Otzar HaShitot). Other commentaries conclude from here that there are different levels of distinguishing marks in cases of identification of a deceased husband.

Everyone agrees that we are concerned that perhaps someone moved: דכולי עלמא חיישינן שפמא פנין – The mishna does not conclusively prove that this is the case, as one can argue that the first tanna of the mishna and Rabbi Yosei disagree about this very issue. However, it is a reasonable claim that people do move articles from a vessel, and the commentaries cite a story to this end from the Jerusalem Talmud (Tosafot, citing Rabbeinu Hananel; see Otzar HaShitot). Furthermore, this is probably why Ravina gives an alternative explanation of the dispute (Tosefot HaRosh).

**Cortva** – קורטבא: Based on context, this apparently is referring to the city Cordoba in Spain. Ancient Cordoba, established by the Phoenicians, was an important city in the time of the Talmud, and served as the capital of the Roman province H. Baetica.

**Spain [Aspamyā]** – אַספּאַמיאַ: It is likely that *Aspamyā* refers to present day Spain, called Hispania in Latin and Greek. Alternatively, perhaps it is referring specifically to the largest of the three Roman provinces in Spain, H. Tarraconensis, which covered the majority of Spain's land mass.

## HALAKHA

**Are we concerned about two men named Yitzhak** – מי חיישינן לתרי יצחק: If a messenger arrives from foreign parts and announces: So-and-so, son of so-and-so, died, but he does not know the deceased himself, then if it is known that someone by that name was living in the place from where the messenger came, it is permitted for his wife, who is in the place where the messenger arrived, to remarry. There is no concern that the deceased might be someone else with the same name. This *halakha* applies only if there are not two people with the same name known to reside in that place, or, alternatively, if there are two men of the same name but it is known with certainty that one of them is still alive. The *halakha* is in accordance with the opinion of Rava, whose opinions are generally accepted in his disputes with Abaye (Rambam; Razah; Rosh).

Some commentaries claim that it is permitted for the wife to remarry only if the messenger stated the name of the city, but if he did not mention the city, even if it is known that someone by this name went missing in that city, she cannot rely on his report (Ramban; Rashba). Others say that if the messenger mentioned the husband's name and his father's name it does not matter that he did not state the name of the city (Rosh). The Maharik holds that if there are other indications that her husband is the man in question, one may be lenient and rely on the opinion that the messenger need not state the city by name (Rambam *Sefer Nashim*, *Hilkhot Geirushin* 12:24; *Shulhan Arukh*, *Even HaEzer* 17:18).

## LANGUAGE

**Colonial [kelonya]** – קלוינא: From the Latin *colonia*, meaning colony, settlement, or village, usually a colony of discharged Roman soldiers. Many places in the world bear this name, some of which developed into important cities after the initial settlement period.

## PERSONALITIES

**The father of Shmuel** – אביו דשמואל: This is the prominent sage Abba bar Abba, who is generally called the father of Shmuel after his son, the great *amora*. Abba bar Abba, who traveled far and wide as a professional dealer in silk, spent some time in Eretz Yisrael and developed close ties with Rabbi Yehuda HaNasi and his sons. He lived a long life, and his other son, Rav Pinhas, was also a Sage.

Abba bar Abba was one of the great Torah scholars of his generation. Although he never held an official position, he was considered an important man in his hometown of Neharde'a and was placed in charge of the affairs of the city. He was highly involved in the ransom of Jewish captives and was known as a great distributor of charity. When the Sage Levi ben Sisi came to Babylonia he became close friends with him, and when Rava returned to Babylonia he treated Abba bar Abba with great respect.

Abba bar Abba's statements appear throughout both the Babylonian Talmud and the Jerusalem Talmud. Much is related about his strong ties with academies in Eretz Yisrael and that he would often send questions to the Sages living there, where he was held in great esteem.

יִצְחָק רִישׁ גְּלוּתָא בְּרַחֲמֵיהּ דְּרַב בִּיבִי הוּהוּ קְאָוִיל מְקוֹרְטָבָא לְאַסְפְּמִיא וּשְׂכִיב. שְׁלַחוּ מֵהַתָּם: יִצְחָק רִישׁ גְּלוּתָא בְּרַחֲמֵיהּ דְּרַב בִּיבִי הוּהוּ קְאָוִיל מְקוֹרְטָבָא לְאַסְפְּמִיא וּשְׂכִיב. מִי חֵיִשְׁיָנָן לְתֵרֵי יִצְחָק, אִו לָא? אַבְיִי אָמַר: חֵיִשְׁיָנָן, רַבָּא אָמַר: לָא חֵיִשְׁיָנָן.

**S** The Gemara relates a story that deals with the permission of a woman to remarry. **Yitzhak the Exilarch**,<sup>N</sup> son of the sister of Rav Beivai, was walking from Cortva<sup>B</sup> to Spain<sup>B</sup> and died along the way. **They sent this message from Spain: Yitzhak the Exilarch, son of the sister of Rav Beivai, was walking from Cortva to Spain and died.** The Gemara asks: **Are we concerned about the possibility of two men named Yitzhak<sup>H</sup> or not?** Perhaps there is someone else with the same name, and therefore the mention of his name is not a sufficiently distinguishing mark. **Abaye said: We are concerned about this possibility. Rava said: We are not concerned.**

אָמַר אַבְיִי: מִנָּה אָמְנֵנָא לָהּ – דִּהְוּוּ גֵיטָא דְאַשְׁתַּפַּח בְּנִהְרְדָעָא, וּכְתִיב: בְּצַד קְלוּנְיָא מְתָא. אָנָּה אַנְדְּרוּלִינְיָא נִהְרְדָעָא פְּטָרִית וּתְרַכִּית יַת פְּלוּנִית אַנְתִּיתִי וּשְׁלַחָה אָבוּהָ דְשְׁמוּאֵל לְקַמְיָה דְרַבִּי יְהוּדָה נְשִׂיאָהּ, וּשְׁלַח לִיה: תִּיבְדַק נִהְרְדָעָא כּוּלָּהּ.

וּרְבָא אָמַר: אִם אֵיתָא – יבְדַק כָּל הָעוֹלָם מִיבְעֵי לִיה, אֶלָּא מְשׁוּם כְּבוֹדוֹ דְאַבְיָה דְשְׁמוּאֵל הוּא דְשְׁלַח הָכִי.

**Abaye said: From where do I say my reasoning<sup>N</sup> that there might be another man with the same name? As a certain bill of divorce was found in the city of Neharde'a, and this passage was written on it: On the colonial [kelonya]<sup>L</sup> side of the city, I, Androlinai of Neharde'a, excused, sent away, and divorced my wife so-and-so.** Androlinai's wife requested permission to remarry based on this bill of divorce, but they did not know if he was the man who gave the divorce or if it was given by another man of the same name. **And the father of Shmuel<sup>P</sup> sent this question before Rabbi Yehuda Nesia in Eretz Yisrael. And Rabbi Yehuda Nesia sent a message to him: All of Neharde'a must be examined,<sup>N</sup> to see whether there is another man by that name.** This shows that one must be concerned that there might be two people with the same name.

**And Rava said:** This story provides no proof. **If it is so, that there were grounds to suspect that someone else of the same name wrote the bill of divorce, Rabbi Yehuda Nesia should have said: The entire world must be examined,** in case there is someone else with the same name somewhere. Since he did not say this, evidently there was no legitimate reason for this suspicion at all. Why, then, did Rabbi Yehuda Nesia send instructions to examine all of Neharde'a? **Rather, Rava added, it was due to respect for the father of Shmuel that he sent this message.** He did not want to write explicitly that Shmuel's father had inquired unnecessarily, and therefore he wrote his reply in a manner which indicated his partial agreement with the concern.

## NOTES

**Yitzhak the Exilarch** – יִצְחָק רִישׁ גְּלוּתָא: The early commentaries ask how there can be a doubt about the identity of someone so famous in his generation as the Exilarch. In fact, the genealogy of Rav Sherira Gaon indicates that there was no Exilarch by this name; neither was there such a person in Spain. Therefore, the commentaries interpret this case in various ways. Some claim that this individual was actually not the Exilarch and this was simply his nickname, perhaps because he was connected to, or a servant of, the Exilarch (Rid). Others explain that this is not referring to the Exilarch in Babylonia but to a man who was an Exilarch in the city of Cortva (Rashba). There are records of men with a similar title in several lands, e.g., southern France.

The Alsheikh maintains that the question did not concern that particular person at all. Rather, the incident led to a discussion of less clear-cut cases, when there is a genuine possibility of confusion between two people with the same name. He finds support for his interpretation in Rashi's comments here, as Rashi refers to two people called Yosef ben Shimon. Alternatively, the messenger did not provide all these distinguishing marks; rather, he said only some of them, which is why the problem arose (see *Arukh LaNer*).

**From where do I say it** – מִנָּה אָמְנֵנָא לָהּ: This dispute between Abaye and Rava is related to several issues discussed in tractate *Gittin*. The early commentaries attempt to reconcile the various passages. The main problem is that the Gemara there apparently deals with two additional questions. First, has it been established that there is someone else with this name in the same place? Second, is this an isolated place or a location with caravans, which would mean that there is a concern that other people regularly pass through? The dispute between the early commentaries is whether the principle of: It was where it was found, i.e., that an item found in a certain place is presumed to come from that place, is applicable in this case, and therefore there would be no concern about travelers from other places, or whether the possible presence of other people with the same name must be taken into account (see HALAKHA).

**All of Neharde'a must be examined** – תִּיבְדַק נִהְרְדָעָא כּוּלָּהּ: Some commentaries explain that the instruction was to check the entire region of Neharde'a. In other words, they were told to examine not only the city itself, but any place where they use the weights and measures of Neharde'a (Ramban; Rashba).

חבי בר ננאי וננאי – Havai bar Nanai and Nanai bar Havai – In a case where there are two people with identical names, and one of them produces a promissory note indicating that someone owes him money, the purported borrower may not say: I do not owe you, as the money is owed to your colleague of the same name. It is presumed that anyone who in possession of a promissory note is the owner of that bill. The *halakha* is in accordance with the action of Rava bar Avuh (Rambam *Sefer Mishpatim, Hilkhot Malve VeLoveh* 24:8; *Shulhan Arukh, Hoshen Mishpat* 49:7).

אמר רבא: מנא אמינא לה – דהנהו תרי שטרי דנפקי במחוזא, וכתבי בהו: חבי בר ננאי וננאי בר חבי, ואגבי בהו רבא בר אבוה זוי. והא חבי בר ננאי וננאי בר חבי במחוזא שכיחי טובא. ואביי.

Rava said: From where do I say my reasoning that we are not concerned about two people with identical names? As there were two promissory notes produced in Mehoza, and these names of the creditors were written on them: Havai bar Nanai and Nanai bar Havai, and Rava bar Avuh collected dinars for them with these promissory notes, without concerning himself with the possibility that they might be referring to other people. And the names Havai bar Nanai and Nanai bar Havai<sup>h</sup> are very common in Mehoza, i.e., there are certainly other people with these names, and yet he was not worried about this matter. The Gemara asks: And Abaye, how does he answer this proof?

Perek XV  
Daf 116 Amud a

NOTES

And witnesses came and said...he was with us, etc. – *Tosefot Had Mikamma'ei* cites an opinion that is not found among the other early commentaries: These witnesses testify that the second Anan who was in Neharde'a also wrote a bill of divorce for his wife. In other words, there are grounds for concern that the bill of divorce belongs to this other Anan.

למאי ניהוש לה? אי לנפילה – מזהר זהיר ביה, אי לפקדון – כיון דשמייה בשמייה לא מפקיד גביה.

With regard to what should we be concerned in the case of the promissory note? If we are concerned about the possibility of falling, i.e., that the promissory note might have dropped from this person's hand and the other one found it, the former is certainly careful with it so as not to lose it, as he knows there is someone else in the city with the same name. If we are concerned about the possibility that it was given as a deposit for safekeeping, i.e., that the actual owner might have given it to the one in possession of it, since his name is the same as the name of the bailee, the owner would not deposit his contract with him without some insurance.

מאי אמרת: דלמא מסר ליה – אותיות נקנות במסירה.

If you say that perhaps the actual owner passed, i.e., transferred the promissory note to this person whose name is the same as his own, i.e., he gave or sold it to him so he may collect it for himself, in that case the one in possession is entitled to collect the money, as letters of credit are acquired through passing.<sup>h</sup> There is no need for an additional act of acquisition here, which means that the promissory note belongs to the one in possession of it, despite the fact that it was not originally written for him. Consequently, no proof can be brought from this case with regard to whether or not one should be concerned about two people with identical names.

ההוא גיטא דאשתכח בסורא וכתבי ביה הכי: בסורא מתא, אנא ענן בר חייא נהרדעא פטריית ותרביית פלונית אנתתי. ובדקו רבנן מסורא ועד נהרדעא ולא הוה ענן בר חייא אחריןא לבר מענן בר חייא מתגרא, דהוה בנהרדעא. ואתו סהדי ואמור דההוא יומא כי איפתב ההוא גיטא – ענן בר חייא מתגרא גבן הוה.

The Gemara relates: There was a certain bill of divorce that was found in the city of Sura<sup>h</sup> and the following was written in it: In the city of Sura, I, Anan bar Hiyya of Neharde'a, excused and sent away and divorced my wife, so-and-so. And the Sages examined the area from Sura to Neharde'a, throughout almost all of Babylonia, and there was no other Anan bar Hiyya than the one they knew, apart from an Anan bar Hiyya of Hagra who was in Neharde'a. And yet witnesses came and said that on that day, when that bill of divorce was written: Anan bar Hiyya of Hagra was with us<sup>n</sup> in Neharde'a, not in Sura.

HALAKHA

How letters are acquired – כיצד אותיות נקנות – Promissory notes are acquired only through writing and passing. In other words, one who sells a promissory note to another must write to him: Acquire for yourself this note and any indebtedness that it includes. If he did not write this, the note is not acquired, not even the paper upon which it was written, and it must be returned. The *halakha* is in accordance with the opinion of Rava, rather than Abaye (*Shulhan Arukh, Hoshen Mishpat* 66:1).

who drops it in a city where there are caravans, or a place where there are no caravans but there were two men with identical names in that place, if he does not have distinguishing marks for the bill of divorce and a bill of divorce with this name is found, there is a concern that this might not be the bill of divorce that the messenger dropped. This is the case even if witnesses testified that the other man with the same name was out of the city when the bill of divorce was written. The *halakha* is in accordance with the opinion of Rava, as the *halakha* invariably follows him rather than Abaye (Rambam *Sefer Nashim, Hilkhot Geirushin* 3:10; *Shulhan Arukh, Even HaEzer* 132:4).

A certain bill of divorce that was found in Sura – ההוא גיטא – דאשתכח בסורא: In a case of a messenger bearing a bill of divorce