

One says he died and the other one says he did not die – **אחת אומרת מת ואחת אומרת לא מת**: If two rival wives come to court, and one testifies that the husband died and the other testifies that he did not die, the one who testified that he died may remarry, as the testimony of her rival wife is entirely discounted with regard to her. The *halakha* is in accordance both with the unattributed opinion of the mishna, as stated by Rabbi Yoḥanan, and with the majority opinion, as maintained by Rabbi Elazar (Rambam *Sefer Nashim*, *Hilkhot Geirushin* 12:24; *Shulḥan Arukh*, *Even HaEzer* 17:43).

Did he die or was he killed – **מת או נהרג**: If one wife says the husband died naturally and her rival wife says he was killed, it is permitted for both of them to remarry. The *halakha* is in accordance with the opinion shared by Rabbi Yehuda and Rabbi Shimon, not that of Rabbi Meir (Rambam *Sefer Nashim*, *Hilkhot Geirushin* 12:24; *Shulḥan Arukh*, *Even HaEzer* 17:9, 47).

מהו דתימא: כי אילינן בתר רוב דעות לחומרא, אבל לקולא לא, קא משמע לן.

The Gemara answers. This case is also necessary, lest you say that when we follow the majority of opinions, this is only when it leads to a stringency, but when this principle would lead to a leniency, to permit her to marry based on the majority of opinions, we do not follow the majority opinion. Therefore, the mishna teaches us that there is no difference in this regard, as the majority of opinions is accepted whether this leads to a lenient or a stringent outcome.

מתני' אחת אומרת: "מת", ואחת אומרת: "לא מת", זו שאומרת: "מת" – תנשא, ותטול כתובתה. וזו שאומרת: "לא מת" – לא תנשא ולא תטול כתובתה.

MISHNA If two women who were married to the same man come forward, and one of them says that the husband died, and the other one says he did not die,^H the one who says he died may marry on the basis of her own testimony, and she takes the money of her marriage contract. And the one who said he did not die may not marry, and does not take the money of her marriage contract.

אחת אומרת: "מת" ואחת אומרת: "נהרג", רבי מאיר אומר: הואיל ומכחישות זו את זו – הרי אלו לא ינשא. רבי יהודה ורבי שמעון אומרים: הואיל זו וזו מודות שאין קיים – ינשא. עד אומר: "מת" ועד אומר: "לא מת",

If one wife says: He died in a normal manner, and the other one says: He was killed,^{NH} Rabbi Meir says: Since they contradict one another, these women may not marry. Rabbi Yehuda and Rabbi Shimon say: Since they both agree that he is not alive they may marry, despite the fact that they dispute the circumstances of his demise. If a witness says: He died, and a witness says: He did not die,

NOTES

אחת אומרת מת – **אחת אומרת מת**: Some commentaries maintain that the dispute between Rabbi Meir and Rabbi Yehuda is based on a fundamental question: Is the credibility of one witness in the case of a missing husband like that of any other witness's testimony, or is his credibility a special decree by Torah law? If the testimony of one witness in this case is basically considered like that of any other witness, then when the two witnesses contradict each other with regard to the details

their testimony should be rejected, notwithstanding the fact that they both testify that the man is dead (*Mei Naftoah*). However, if a witness with regard to the death of a husband is deemed credible by a special decree of the Torah, then it does not matter that the two witnesses here dispute the circumstances of his demise. In fact the Jerusalem Talmud discusses whether these two conflicting accounts should be considered a single, self-contradictory testimony.

She was silent – **הא אישתיקא**: If one of two rival wives testifies that their husband died, while the other wife remains silent, the first wife may remarry on the basis of her own testimony. Her rival wife remains prohibited to remarry, as one rival wife may not testify on behalf of another (*Shulḥan Arukh*, *Even HaEzer* 17:45).

Perek XV
Daf 118 Amud a

אשה אומרת: "מת", ואשה אומרת: "לא מת" – הרי זו לא תנשא.

or one woman says: He died, and another woman says: He did not die, this woman may not marry.

גמ' טעמא דאמרה: "לא מת", היא אישתיקא – תנשא. היא אין צרה מעידה לחברתה!

GEMARA The mishna taught that if one rival wife says their husband died, while the second maintains that he did not die, the one who says he did not die may not remarry. The Gemara infers: The reason is that the second rival wife said explicitly: He did not die, from which it may be inferred that if she was silent^H and said nothing, she is permitted to marry based on the testimony of the first. However, this conclusion is problematic, as there is a principle that one rival wife may not testify on behalf of another, and if so, how can she rely on the testimony of her rival wife?

It was necessary...to state, he did not die – לא מת – איצטריכא ליה: The early commentaries ask: Can't one argue precisely the opposite, that the novelty concerns the woman who says he died, that although another woman contradicts her statement, even so it is permitted for her to marry? Various answers are given. Some write that if this were the novelty of the mishna it would have included the dissenting opinion of Rabbi Meir with regard to conflicting testimonies, as in the previous mishna (Rashba).

And with regard to that which she says, he did not die, etc. – והא דקאמרה לא מת וכו': Another argument in favor of this conclusion is that if she knew her husband did not die she could simply have remained silent; why should she concern herself with her rival wife, who apparently seeks to act to her own detriment? This supports the claim that she is lying, as she has come to the court specifically to ruin her rival wife (*Tosefot Rid*). Some commentaries add that according to the conclusion here, even if she cites a plausible justification for her earlier untrue statement they will not permit her to marry (*Tosafot*; see Meiri).

Taught as a dispute, etc. – במחלוקת שנויה וכו': Some commentaries point out that the reasoning provided by Rabbi Yehuda and Rabbi Shimon apparently proves that this case is not subject to the dispute with Rabbi Meir, as they did not say that the rival wife's statement is rejected, but that both wives assert that the husband is not alive. One answer is that Rabbi Yehuda and Rabbi Shimon themselves do not need this argument, and they said it only to counter Rabbi Meir's opinion, to ascertain if he concedes that they are correct in this instance (*Tosefot Yeshanim*, citing Rivan).

In this case even Rabbi Meir concedes – בהא אפילו – רבי מאיר מודה: The question of whether or not the first clause in the mishna is subject to dispute also appears in the Jerusalem Talmud. The Gemara there explains the difference between the first case and the second case in the following manner: In the first case, when one rival wife says: He died, and the other says: He did not die, the first testimony is not taken into consideration with regard to the second wife, as explained in the following mishna. However, in the second case, the fact that it is permitted for both of them to marry indicates that the two testimonies are accepted together, which is inconsistent. Some commentaries explain in this manner of their own accord, without mentioning the Jerusalem Talmud (*Hazon Ish*).

One woman says he died, etc. – אשה אומרת מת וכו': Rabbi Yohanan could possibly say that this is referring only to a random woman and not a rival wife. However, this explanation is unlikely, as if so there would be no reason for stating this case, since this is exactly the same as when one witness says he died. Since the mishna states this case separately it must be teaching that this is the *halakha* even in the case of a rival wife (Rambam; *Tosefot HaRosh*).

“לא מת” איצטריכא ליה. סלקא דעתך אמינא הא מית, והא דקאמרה: “לא מת” – לקוללה לצרה היא דקמכוונא, וְתַמּוּת נַפְשָׁה עִם פְּלִשְׁתִּים” קאמרה, קמִשְׁמַע לָן.

“אחת אומרת: מת” כו' וליפלוג רבי מאיר ברישא! אמר רבי אלעזר: במחלוקת שנויה, ורבי יהודה ורבי שמעון היא. ורבי יוחנן אמר: אפילו תימא רבי מאיר, בהא – אפילו רבי מאיר מודה, דכל “לא מת” בעיות אשה – לאו הכחשה היא.

תנן: עד אומר “מת” ועד אומר “לא מת”, אשה אומרת “מת” ואשה אומרת “לא מת” – הרי זו לא תנשא. בשלמא לרבי אלעזר – סתמא כרבי מאיר, אלא לרבי יוחנן קשיא! קשיא.

מתני' האשה שהלכה היא ובעלה למדינת הים, ובאה ואמרה: “מת בעלי” – תנשא, ותטול כתובתה, וצרתה אסורה. היתה בת ישראל לכהן – תאכל בתרומה, דברי רבי טרפון.

רבי עקיבא אומר: אין זו דרך מוציאת מידי עבירה, עד שתהא אסורה לנשא ואסורה מלאכול בתרומה.

The Gemara answers that this inference is incorrect, as it was necessary for the mishna to state: **He did not die**,^N as it might enter your mind to say that this man did in fact die, and with regard to that which she says: **He did not die**,^N she intends to ruin her rival wife. And as for herself she says: **Let her die with the Philistines**. This is a paraphrase of the verse: “Let me die with the Philistines” (Judges 16:30), which is a shorthand expression for one's desire to hurt his enemies even if he suffers the same fate himself. In this case it means that she is prepared to testify falsely that their husband did not die, so as to ruin her rival wife. Therefore the mishna teaches us that this is not the case, and she is not permitted to marry based on the testimony of her rival wife.

§ The mishna taught that if one wife says: **He died**, and one says: **He was killed**, Rabbi Meir says that as they contradict one another, they may not remarry. The Gemara asks: **And let Rabbi Meir also disagree in the first clause**, when one witness says the husband died and the other claims he did not die. **Rabbi Elazar said**: This is taught as a tannaitic dispute.^N In other words, Rabbi Meir also disagreed with the first clause, and the unattributed opinion in the mishna is that of Rabbi Yehuda and Rabbi Shimon. **And Rabbi Yohanan said**: You can even say that the first clause is in accordance with the opinion of Rabbi Meir, as in this case even Rabbi Meir concedes^N that any claim of: **He did not die, with regard to testimony enabling a woman to remarry, is not considered contradictory**.

The Gemara raises a difficulty with regard to this answer. **We learned in the mishna** If one witness says: **He died**,^H and one witness says: **He did not die**, or if one woman says: **He died**,^N and another woman says: **He did not die**, she may not marry. **Granted, according to the opinion of Rabbi Elazar, the unattributed statement in this mishna is in accordance with the opinion of Rabbi Meir**, that when a rebuttal contradicts the original testimony, one cannot rely upon the testimony that the husband died. **However, according to the opinion of Rabbi Yohanan, this is difficult**. The Gemara answers: Yes, this is difficult.

MISHNA In the case of a woman who went, she and her husband, overseas, and she comes and says: **My husband died, she may marry, and she takes her marriage contract based on her own testimony. And it remains prohibited for her rival wife to remarry, as a woman cannot testify on behalf of her rival wife. If the rival wife was an Israelite woman married to a priest, she may continue to partake of teruma**,^H as she is not permitted to remarry, and therefore the presumption that the husband is still alive is maintained in relation to her. This is the statement of Rabbi Tarfon.

Rabbi Akiva says: **This is not the way to spare someone from transgression**. According to the opinion of Rabbi Tarfon, there is a concern that she might be eating *teruma* unlawfully. There is no remedy for this situation unless it is prohibited for the rival wife to marry, as she cannot rely on the testimony of her rival wife, and it is also prohibited for her to partake of *teruma*, lest the other woman was speaking the truth. In other words, the *halakha* is stringent on both counts.

HALAKHA

One witness says he died, etc. – עד אומר מת וכו': If one witness testifies that a woman's husband died, but before the court permitted her to remarry another witness comes and testifies that he did not die, she may not marry. If she does remarry she must leave her new husband (Rambam *Sefer Nashim, Hilkhot Geirushin* 12:18; *Shulhan Arukh, Even HaEzer* 17:37).

She may partake of *teruma* – תאכל בתרומה – If a priest had two wives, one of whom testifies that her husband died, it is permitted for her to remarry but her rival wife may not remarry. The rival wife continues to partake of *teruma*, like a priest's wife. The *halakha* is in accordance with the opinion of Rabbi Tarfon (Rambam *Sefer Zera'im, Hilkhot Teruma* 9:4).

אמרה: "מת (לי) בעלי ואחר כך מת חמי" – תנשא, ותטול כתובתה, וחמותה אסורה. היתה בת ישראל לכהן – תאכל בתרומה, דברי רבי טרפון. רבי עקיבא אומר: אין זו דרך מוציאה מידי עבירה, עד שתהא אסורה לינשא, ואסורה מלאכול בתרומה.

גמ' וצריכא, דאי איתמר הך קמייטא – בהא קאמר רבי טרפון, משום דצערא דגופה, אבל חמותה, דצערא מילי דעלמא, אימא מודי ליה לרבי עקיבא.

ואי איתמר בהא – בהא קאמר רבי עקיבא, אבל בהך אימא מודה ליה לרבי טרפון, צריכא.

אמר רב יהודה אמר שמואל: הלכה כרבי טרפון. אמר אבוי: אף אנו נמי תנינא: "גיתן לי בן במדינת הים, מת בני ואחר כך בעלי" – נאמנת. "בעלי ואחר כך בני" – אינה נאמנת.

וחוששין לדבריה, וחולצת ולא מתנייבמת. לדבריה הוא דחוששין, הא לדברי צרה אין חוששין, שמע מינה.

The mishna discusses a similar case. If a woman said: **My husband died and afterward my father-in-law died, she may marry and take her marriage contract, and it is prohibited for her mother-in-law to remarry, as a woman may not testify on behalf of her mother-in-law. If the mother-in-law was the daughter of an Israelite married to a priest, she may partake of *teruma*; this is the statement of Rabbi Tarfon. Rabbi Akiva says: This is not the way to spare her from transgression; there is no remedy unless it is prohibited for the mother-in-law to marry and also prohibited for her to partake of *teruma*.**

GEMARA The mishna states the dispute between Rabbi Tarfon and Rabbi Akiva with regard to two apparently identical cases. The Gemara explains: And it is necessary to state both of these examples. **As, had the mishna stated the dispute only in this first case,**^N I would have said: It is in this case that **Rabbi Tarfon said** the wife is suspected of lying, **because the suffering is physical, i.e.,** she is jealous of her rival wife, with whom she shares her husband. **However,** with regard to **her mother-in-law, where the suffering is merely verbal** and not physical, one might say that **he concedes to Rabbi Akiva, i.e.,** that she is not considered a liar, and therefore it should be prohibited for her mother-in-law to partake in *teruma*.

And vice-versa: **Had the mishna stated the dispute only in this second case,** I would have said: It is in this case that **Rabbi Akiva said** that the mother-in-law must refrain from eating *teruma* in case the daughter-in-law is not lying, **but in this other case of the rival wife, you might say that he concedes to Rabbi Tarfon** that she may eat *teruma*, as a rival wife is certainly not telling the truth. Therefore, it is necessary for the mishna to state the dispute in both two cases.

S Rav Yehuda said that Shmuel said: The *halakha* is in accordance with the opinion of Rabbi Tarfon. The testimony of a woman who is suspected of harboring ill will toward another is entirely rejected with regard to that other person, and no credence is given to her account at all. **Abaye said: Likewise, we, too, learn in a mishna (118b):** If a woman came and said: **A son was born to me overseas, and my son died and afterward my husband died, she is deemed credible in all regards, and she enters into levirate marriage. If she said: My husband died and afterward my son died, which means she is exempt from levirate marriage, she is not deemed credible.**

That mishna adds: **But in any case, the court is concerned about her statement, and she must perform *halitza* and she does not enter into levirate marriage.** In other words, the court takes into consideration the possibility that she is speaking the truth, and if her son did die after her husband it is prohibited for her to enter into levirate marriage. Abaye infers from the language of the mishna on 118b: **It is with regard to her own statement that the court is concerned.** This indicates that the court is **not concerned** at all about the statement of her rival wife who testified with regard to her. The Gemara concludes: **Learn from here** that this is the case.

NOTES

צריכא דאי – It is necessary, as had it stated in this first case, etc. – אייתמר הך קמייטא וכו': With regard to the novelty of the second case, the commentaries suggest various other explanations. Some write that based on this testimony she is no longer the woman's mother-in-law at all, which means she is qualified to testify on her behalf, and even so Rabbi Tarfon does not take her testimony into consideration (*Tosefot Rid*).
Alternatively, in the first case, when she testifies about her

husband, Rabbi Akiva's concern is clear, as the husband is treated as dead based on this testimony and it is permitted for her to marry another man. How, then, can the same testimony be entirely disregarded in relation to the rival wife? By contrast, in the second case, the two testimonies are not contingent upon one another, as they concern different men. Therefore one might have thought that even Rabbi Akiva agrees that there is no reason to be so stringent with her.

HALAKHA

He betrothed one of five women – קידש אחת מחמש נשים: If a man betrothed one of five women and wrote her a marriage contract but he does not know which one of the women he betrothed, and each of them claims that she was betrothed by him, all of their immediate female relatives are forbidden to him and he must give a bill of divorce to each and every one of the five women. As for the marriage contract, he leaves it with them and departs. If he betrothed her by means of sexual intercourse the Sages penalize him by requiring him to pay the marriage settlement to each of the women. The *halakha* is in accordance with the opinion of Rabbi Akiva, as explained by Rabbi Shimon ben Elazar (Rambam *Sefer Nashim, Hilkhot Ishut* 9:21; *Shulhan Arukh, Even HaEzer* 49:1).

He stole money from one of five people – גזל אחד מחמשה: If a person stole from one of five people and does not know from whom he stole, and each of them claims he stole from him, each of them swears that the stealer stole from him and the stealer pays the stolen money to each of them. The *halakha* is in accordance with the opinion of Rabbi Akiva, as explained by Rabbi Shimon ben Elazar (Rambam *Sefer Nezikim, Hilkhot Gezeila VaAveda* 4:9; *Shulhan Arukh, Hoshen Mishpat* 365:1).

He purchased an item from one of five people – לקח מקח – מחמשה בני אדם: If a person purchased an item from one of five people and does not know which one of them it was, and each one claims to be the seller, he leaves the money among them and departs. This means that the money is deposited with the court until the five people come to an agreement or until Elijah the Prophet arrives and clarifies the matter. The *halakha* is in accordance with the opinion of Rabbi Shimon ben Elazar, who holds that everyone agrees with regard to a transaction. If the buyer is especially righteous he pays each of them (Rambam *Sefer Kinyan, Hilkhot Mekhira* 20:2; *Shulhan Arukh, Hoshen Mishpat* 222:2).

NOTES

He leaves the marriage contract – מניח כתובה: The mishna indicates that a betrothed woman is entitled to the payment of a marriage contract. This apparently contradicts the opinion of the *ge'onim*, who hold that a betrothed woman receives the payment of a marriage contract only if the man explicitly obligated himself to provide her with one. In fact, some early commentaries cite this passage as proof against the opinion of the *ge'onim* (*Tosefot Rid*; see Rashba).

However, other interpretations of the mishna have been suggested. For example, some say that the man did obligate himself to pay the marriage contract, but he omitted the name of the woman from the marriage contract, or that the names of the different women were identical (Rambam). Alternatively, he performed an act of acquisition on behalf of a particular woman in the presence of witnesses so that she should acquire the marriage contract, and subsequently the witnesses traveled far away or died (Rashba); or he admitted that he wrote a marriage contract but the woman he betrothed lost the document (Meiri; see *Tur*).

It is not taught that he had sexual intercourse – בעל: There are differences of opinion with regard to the penalty for betrothal by sexual intercourse. Most early commentaries maintain that the reason for the penalty is that there is a rabbinic prohibition against betrothal by sexual intercourse due to licentiousness (*ge'onim*). Others state that the husband is penalized because he disgraced the woman by having sexual relations with her (Rashi; *Tosefot Rid*).

מתני' קידש אחת מחמש נשים ואין יודע אי זו קידש, כל אחת ואמרת: "אותי קידש" – נותן גט לכל אחת ואחת, ומניח כתובה ביניהן ומסתלק, דברי רבי טרפון.

רבי עקיבא אומר: אין זו דרך מוציא מידי עבירה, עד שיתן גט וכתובה לכל אחת ואחת. גזל אחד מחמשה ואין יודע מאיזה גזל, כל אחד ואומר: "אותי גזל" – מניח גזילה ביניהן ומסתלק, דברי רבי טרפון. רבי עקיבא אומר: אין זו דרך מוציא מידי עבירה, עד שישלם לכל אחד ואחד.

גמ' קידש" – קתני: "בעל" – לא קתני: "גזל" – קתני: "לקח" – לא קתני: מני מתניתין? לא תנא קמא ולא רבי שמעון בן אלעזר:

דתניא, רבי שמעון בן אלעזר אומר: לא נחלקו רבי טרפון ורבי עקיבא על שקידש אחת מחמש נשים ואינו יודע איזו קידש – שמניח כתובה ביניהן ומסתלק. על מה נחלקו – על שבעל רבי טרפון אומר: מניח כתובה ביניהן ומסתלק, רבי עקיבא אומר: עד שישלם לכל אחת ואחת.

לא נחלקו רבי טרפון ורבי עקיבא על שלקח מקח מחמשה בני אדם ואין יודע מאיזה מהן לקח – שמניח דמי מקח ביניהן ומסתלק. לא נחלקו אלא שגזל מחמשה, שאמר רבי טרפון: מניח גזילה ביניהן ומסתלק, ורבי עקיבא אומר: עד שישלם גזילה לכל אחד ואחד.

MISHNA In relation to the dispute between Rabbi Tarfon and Rabbi Akiva in the previous mishna, in which Rabbi Akiva states that one must avoid a possible transgression, the mishna cites two similar cases involving other topics. With regard to one who betrothed one of five women,^h and he does not know which of them he betrothed, and each one of them says: **He betrothed me**, if he does not want to marry any of them **he gives a bill of divorce to each and every one** of them so none will have the status of a woman with regard to whom there is uncertainty whether she is divorced. **And he leaves the marriage contractⁿ among them and departs.** The marriage contract remains in dispute between the women until they clarify which of them is entitled to the money. This is the statement of Rabbi Tarfon.

Rabbi Akiva says: This is not the way to spare someone from transgression, as perhaps the woman he actually betrothed will not receive the money to which she is entitled. There is no remedy unless he gives a bill of divorce and a marriage contract payment to each and every one. And likewise, in the case of one who stole money from one of five people^h and does not know from which of them he stole, and each one says: **He stole from me**, he leaves the stolen money among them and departs, and they will decide among themselves how to distribute the money; this is the statement of Rabbi Tarfon. Rabbi Akiva says: This is not the way to spare him from transgression; there is no remedy unless he pays each and every one of them.

GEMARA The Gemara infers: It is taught in the mishna that he betrothed one of five women, whereas it is not taught that he had sexual intercourseⁿ with one of five women, as a different ruling applies in this case. Similarly, with regard to the second case, it is taught that he stole from one of five people, and it is not taught that he purchased an item from one of five people. If so, whose opinion is expressed in the mishna? It is not in accordance with the opinion of the first *tanna* and it is also not in accordance with the opinion of Rabbi Shimon ben Elazar.

The Gemara elaborates. As it is taught in a *baraita* that Rabbi Shimon ben Elazar says: Rabbi Tarfon and Rabbi Akiva did not dispute the case of a man who betrothed one of five women and he does not know which of them he betrothed, as everyone agrees in this case that he leaves the money of the marriage contract among them and departs. With regard to what did they disagree? With regard to the case of one who had sexual intercourse with one of them for the purpose of betrothal. Rabbi Tarfon says: He leaves the money among them and departs, while Rabbi Akiva says: He does not fulfill his obligation unless he pays each and every one of them. Since he married in an inappropriate manner, the Sages penalized him by compelling him to pay all the women.

Likewise, Rabbi Tarfon and Rabbi Akiva did not dispute the case of one who purchased an item from one of five people^h and he does not know from which of them he purchased it. Everyone agrees in this case that he leaves the price of the purchase among them and departs. They disagree only with regard to one who stole from five people, as Rabbi Tarfon says: He leaves the stolen money among them and departs, and Rabbi Akiva says: He does not fulfill his obligation unless he pays the stolen money to each and every one of them. In this case, as he committed a transgression, he must ensure that the stolen money is restored to its proper owner.

Who went, she and her husband...and her son – שְׁהָלְכָה – היא ובעלה...ובנה: If a woman went with her husband and her son overseas and when she returned she said that her husband died and afterward her son died, she is deemed credible. However, if she said that her son died and afterward her husband died, she is not deemed credible with regard to levirate marriage, and she must perform *halitza* (Rambam *Sefer Nashim, Hilkhot Yibbum* 3:13; *Shulhan Arukh, Even HaEzer* 156:11).

A son was born to me overseas – ניתני לי בן במדינת הים: If a childless woman goes with her husband overseas and returns and says that a son was born to her there but he died and then her husband died, she is deemed credible and she enters into levirate marriage. However, if she says that her husband died and afterward her son died, she is not deemed credible. However, her statement is not disregarded, and therefore she must perform *halitza* and she does not enter into levirate marriage (Rambam *Sefer Nashim, Hilkhot Yibbum* 3:14; *Shulhan Arukh, Even HaEzer* 156:12).

NOTES

We are concerned for her statement – חוששין לדבריה: The Jerusalem Talmud compares these statements with the dispute between Rabbi Akiva and Rabbi Tarfon as to whether the testimony of a *yevama* who testified that her husband died is accepted with regard to her rival wife. In this case too, although the woman's testimony is not fully accepted, there is a concern that she may be speaking the truth. The Gemara there concludes that in this case everyone agrees that some credence is granted to her statement, as this does not lead to the contradictory conclusion that her testimony is accepted with regard to herself but not with regard to another.

מדקאמר רבי שמעון בן אלעזר ב"קידוש" ו"לקח" לא פליגי – מכיל דתנא קמא סבר פליגי מני?

The Gemara states: From the fact that Rabbi Shimon ben Elazar said that Rabbi Tarfon and Rabbi Akiva do not disagree with regard to the cases of one who betrothed and one who purchased, one may learn by inference that the first *tanna*, with whom he disagrees, holds that they do disagree about the cases of betrothed and purchased, whereas with regard to one who had sexual intercourse and one who stole an item Rabbi Tarfon agrees with Rabbi Akiva. With this in mind, who is the author of the mishna?

אי תנא קמא – ליתני "קידוש" ו"לקח", אי רבי שמעון בן אלעזר – ליתני "בעל" ו"גול"!

The Gemara elaborates: If the mishna is in accordance with the opinion of the first *tanna*, let it teach the cases of betrothed and also purchased, but not that of one who stole or one who had intercourse, as the first *tanna* maintains that Rabbi Tarfon agrees with Rabbi Akiva in those cases. If it is in accordance with the opinion of Rabbi Shimon ben Elazar, let it teach the cases of one who had sexual relations and that of one who stole. Rabbi Shimon ben Elazar holds that Rabbi Tarfon and Rabbi Akiva disagree in the case of one who had sexual relations, not in the case of a man who betrothed one of five women. Likewise, he maintains that they disagree in the case of one who stole from five people, not one who purchased an item from five people.

לעולם רבי שמעון בן אלעזר, ומאי "קידוש" – קידוש בביתא. תנא "קידוש" – להודיעך חזו דרבי עקיבא.

The Gemara answers: Actually, the mishna is in accordance with the opinion of Rabbi Shimon ben Elazar, and what is the meaning of the term: Betrothed? It means that he betrothed one of the women by means of sexual intercourse. And the mishna taught the term betrothed to convey to you the far-reaching nature of the stringent opinion of Rabbi Akiva.

דאף על גב דאיסורא דרבנן עבד – קנים. תנא "גול" – להודיעך חזו דרבי טרפון, דאף על גב דאיסורא דאורייתא עבד – לא קנים.

The Gemara explains: As, although this man performed an act that violated a prohibition that applies by rabbinic law, i.e., he did not have licentious sexual relations with her but rather engaged in intercourse for the purpose of betrothal, which is in violation of a rabbinic prohibition that one may not betroth a woman by sexual intercourse *ab initio*, even so Rabbi Akiva penalizes him. And the mishna taught the case of one who stole so as to convey to you the far-reaching nature of the lenient opinion of Rabbi Tarfon, as although he performed an act that violated a prohibition that applies by Torah law, nevertheless he does not penalize him even in this case.

מתני' האשה שהלכה היא ובעלה למדינת הים, ובנה עמהם, ובאת ואמרה: "מת בעלי ואחר כך מת בני" – נאמנת. "מת בני ואחר כך מת בעלי" – אינה נאמנת, וחוששין לדבריה, וחולצת ולא מתייבמת.

MISHNA In the case of a woman who went, she and her husband, overseas, and her son was with them,^h and later she came back and said: My husband died and afterward my son died, she is deemed credible. It is permitted for her to remarry, and she is exempt from levirate marriage. The reason is that she had children when she left, and therefore she retains her presumptive status of one who is exempt from levirate marriage. However, if she said: My son died and afterward my husband died, she is not deemed credible, i.e., she may not enter into levirate marriage. And yet we are concerned and give some credence to her statement,ⁿ in case she was actually widowed by a childless husband, and therefore she performs *halitza* to exempt her from the levirate bond with her *yavam*, and she does not enter into levirate marriage.

"ניתני לי בן במדינת הים" ואמרה: "מת בני ואחר כך מת בעלי" – נאמנת; "מת בעלי ואחר כך מת בני" – אינה נאמנת, וחוששין לדבריה, וחולצת ולא מתייבמת;

If she went with her childless husband and returned alone and testified: A son was born to me overseas,^h and she further said: My son died and afterward my husband died, she is deemed credible and may even enter into levirate marriage, as she was presumed to be childless when she left and consequently she retains that presumptive status. However, if she said: My husband died and afterward my son died, she is not deemed credible for the purpose of exempting her from levirate marriage, but the court is concerned about her statement. And therefore she must perform *halitza* and she does not enter into levirate marriage.

A man who confers possession of a bill of divorce... when she has a *yavam* – המזכה גט... במקום יבם – The early commentaries debate the various aspects of this *halakha*. Although the Gemara does not resolve the case of an ordinary *yavam*, some commentaries maintain that if the *yavam* is a minor or an apostate, everyone agrees that the bill of divorce is to her advantage (*Tosefot Yeshanim*; see Meiri and *Yam shel Shlomo*).

“ניתן לי יבם במדינת הים”, אמרה: “מת בעלי ואחר כך מת יבמי”, יבמי ואחר כך בעלי – נאמנת;

הלכה היא ובעלה ויבמה למדינת הים, אמרה: “מת בעלי ואחר כך יבמי”, יבמי ואחר כך בעלי – אינה נאמנת, שאין האשה נאמנת לומר “מת יבמי”, שתנשא, ולא “מתה אחותה”, שתכנס לביתו, ואין האיש נאמן לומר “מת אחי”, שייבם אשתו, ולא “מתה אשתו”, שישא אחותה.

גמ' בעא מיניה רבא רבא מרב נחמן: המזכה גט לאשתו במקום יבם מהו? כיון דסניא ליה – זכות הוא לה, וזכין לאדם שלא בפניו. או דלמא: כיון דזימנין דרחמא ליה – חוב הוא לה, ואין חבין לאדם שלא בפניו?

אמר ליה, תנינא: וחוששין לדבריה, וחולצת ולא מתייבמת.

If she said: A *yavam* was born for me^H overseas, i.e., when the family left the country her husband did not have a brother, and she claims that in the meantime a brother was born to her husband, and she also said: My husband died and afterward my *yavam* died, or: My *yavam* died and afterward my husband died, in either case she is deemed credible. This is because when she left she was not presumed to require levirate marriage, and the suggestion that her husband now has a brother is based solely on her testimony.

However, if she went, she and her husband and her *yavam*,^H overseas, and upon her return she said: My husband died and afterward my *yavam* died, or: My *yavam* died and afterward my husband died, she is not deemed credible, as a woman is not deemed credible if she says: My *yavam* died, in order that she may marry another man. And she is not deemed credible if she says that her sister died, in order that she may enter the house of her sister's husband. And a man is not deemed credible if he says: My brother died, so that he may enter into levirate marriage with his brother's wife, and he is not deemed credible when he says that his wife died, in order that he may marry his wife's sister.^H The Sages accepted impaired testimony of this kind only when there was a concern about creating a situation of a deserted wife.

GEMARA Rava raised a dilemma before Rav Nahman: In the case of a man who confers possession of a bill of divorce to his wife, i.e., he appoints an agent to take the bill of divorce to his wife, when she has a potential *yavam*,^{NH} what is the *halakha* if her husband dies before she is divorced? One might say that since she hates her *yavam*, receiving the bill of divorce is for her benefit, as this act renders her prohibited to him, and it is a principle that one may act in a person's interest in his absence.^H If so, as soon as the husband gives the bill of divorce to the agent she is divorced. Or perhaps, since she sometimes loves her *yavam*, this bill of divorce is to her disadvantage, and one may not act against a person's interest in his absence. Consequently, she is not divorced until the bill of divorce reaches her possession.

Rav Nahman said to Rava that we learned an answer to this dilemma in the mishna And we are concerned about her statement, and she must perform *halitza* and she does not enter into levirate marriage. The mishna states that the court gives her statement some credence in either case, both when her testimony would exempt her from levirate marriage and when it would allow her to marry her *yavam*. This indicates that levirate marriage is considered neither in her interest nor a disadvantage for her. Rather, its classification is uncertain.

HALAKHA

A *yavam* was born for me – ניתן לי יבם: If a family went away overseas, and the wife came and said that a *yavam* was born there and he and her husband died, she is deemed credible whether she said her husband died first or the *yavam* died first (Rambam *Sefer Nashim*, *Hilkhot Yibbum* 3:12; *Shulhan Arukh*, *Even HaEzer* 158:2).

She went, she and her husband and her *yavam* – הלכה היא ובעלה ויבמה: If a woman went with her husband and *yavam* to a country overseas, and she returned and said that her husband and her *yavam* died, she is not deemed credible with regard to the death of the *yavam* (Rambam *Sefer Nashim*, *Hilkhot Yibbum* 3:12; *Shulhan Arukh*, *Even HaEzer* 158:1).

There is no credibility with regard to the death of other close relatives – אין נאמנות לגבי מיתת קרובים אחרים – A woman is not deemed credible when she says that her sister died, so that it would be permitted for her to marry her sister's husband, and a man is not deemed credible when he says that his wife died, to render her sister permitted to him, or that his brother died so that he may enter into levirate marriage with his brother's wife. In these cases the court accepts only the testimony

of two qualified witnesses (Rambam *Sefer Nashim*, *Hilkhot Yibbum* 3:11).

A man who confers possession of a bill of divorce... when she has a *yavam* – המזכה גט... במקום יבם: In the case of a deathly ill man who gave a bill of divorce to an agent and said: Take this bill of divorce on behalf of my wife so that she will not require levirate marriage, if he died before the bill of divorce reached her hand, her status as a divorced woman is questionable, as this issue is left unresolved in the Gemara. Some suggest that nowadays, when levirate marriage is not practiced, everyone agrees that it is in her interest to receive a bill of divorce to avoid having to perform *halitza* before she is permitted to remarry (Rambam *Sefer Nashim*, *Hilkhot Geirushin* 9:21; *Shulhan Arukh*, *Even HaEzer* 145:10).

One may act in a person's interest in his absence – כיון לאדם – שלא בפניו: In the case of one who bestows a gift to his friend by means of an agent, as soon as the agent takes possession of the gift, he has acquired it on behalf of the recipient to the extent that the giver may not take it back. However, the recipient may still refuse the gift (Rambam *Sefer Kinyan*, *Hilkhot Zekhiya UMatana* 4:2; *Shulhan Arukh*, *Hoshen Mishpat* 243:1).

One who confers possession of a bill of divorce... when there was a quarrel – במקום קטטה – המזכה גט: If a man gives a bill of divorce to his wife by means of his agent, even if the husband was stricken with boils or if there was a quarrel between the couple, she is not divorced. This is in accordance with the principle that a woman prefers to be married, i.e., that it is not in her interest to receive a bill of divorce (Rashba). The Ran claims that her status as a divorced woman is uncertain, as the Gemara leaves this issue unresolved (*Shulḥan Arukh, Even HaEzer* 140:5).

LANGUAGE

As two [*tan du*] – טן דו: The source of this expression is from the Middle Persian *tan dō*, meaning together, or literally, two bodies. The same meaning is attested in Zoroastrian ritual texts in the term *tan êw*, which means one body, where it has the connotation of alone.

Wool comber [*naftza*] – נפצא: Some read *nafsa*, which may be derived from *menafes*, similar to *menapetz*, meaning to comb the impurities out of raw wool. Alternatively, it may be from the Latin *napus*, meaning a kind of turnip (*Arukh*). Others associate it with the Greek *νηπιος*, *nēpios*, meaning childish or ignorant.

Cabbage heads [*kulsa*] – קולסא: From the Greek *καυλος*, *kaulos*, meaning the stalk of a plant, particularly the thick stalks of varieties of cabbage. Some explain that it is referring to a man whose job it is to guard cabbages, i.e., a fellow likely to be lacking in any other marketable skills (*Arukh*).

NOTES

בוֹרְסִיָּה בֵּי חֲרָתָא – רַבּוּ לָהּ: Some commentaries explain that the noblewomen themselves prepare for her a place to sit among them. Regardless of her husband's standing, every woman improves her status by marriage (*ge'onim*).

דִּנְפָצָא גְבָרָא – נַפְצָא: Many early commentaries read: *nafsa*. Some explain that he looks like a *nafus*, a type of long radish with many leaves. In other words, although her husband has an unpleasant appearance, even so she has him sit with her on the threshold, as she is proud to be married to him (*ge'onim*).

דְּקוּלְסָא גְבָרָא – קוּלְסָא: Some commentaries explain: Even if he is like a head of cabbage in appearance, he is kind to her and sweetens her pot so much that she does not need to add spice or lentils (*ge'onim*). Alternatively, *kulsa* is related to the term *kalsa*, disgrace; although he is disgraceful she still desires him (Rabbeinu Ḥananel). According to other explanations, these maxims all refer to parts of the body.

וְכֹלֵן מִנִּגְוֹת – וְכֹלֵן מִנִּגְוֹת: At the very least, a married woman has the advantage of being able to pass off the offspring of an adulterous relationship as the child of her husband (*ge'onim*).

אָמַר לִיהָ רַבִּינָא לְרַבָּא: הַמְזִכָּה גֵּט לְאִשְׁתּוֹ בְּמָקוֹם קְטֻטָּה מַהוּ? בֵּינָן דְּאִית לָהּ קְטֻטָּה בְּהַדְרָה זְכוּת הוּא לָהּ, אוּ דְלִמָּא נִחָא דְגוּפָא עֲדִיף לָהּ? תָּא שְׂמַע, דְּאָמַר רִישׁ לְקִישׁ: טַב לְמִיתָב טַן דוּ מְלִיתָב אֲרַמְלוּ.

אָבִי אָמַר: דְּשׁוּמְשָׁמְנָא גְבָרָא – בּוֹרְסִיָּה בֵּי חֲרָתָא רְמוּ לָהּ. רַב פָּפָא אָמַר: דִּנְפָצָא גְבָרָא – תִּיקְרִי בְּסִפִּי גְבָרָא וְתִיתִיב.

רַב אֲשִׁי אָמַר: דְּקוּלְסָא גְבָרָא – לָא בְּעִיָּא טְלַפְחֵי לְקִיּוּדְרָא. תְּנָא: וְכֹלֵן מִנִּגְוֹת וְתוֹלוֹת בְּבַעְלֵיהוֹן.

הדרן עלך האשה שלום

§ Ravina said to Rava: With regard to one who confers possession of a bill of divorce to his wife through an agent in a situation when there was a quarrel¹ between them, what is the *halakha*? The Gemara explains both sides of the question: Since she has a quarrel with him, the bill of divorce might be considered for her benefit. Or perhaps, her physical comfort is preferable to her, as she prefers to remain married despite the quarrel between her and her husband. Come and hear a resolution, as Reish Lakish said: There is a popular idiom among women: It is better to sit as two [*tan du*]² than to sit lonely as a widow, i.e., a woman prefers the companionship of any husband over being alone.

Abaye said a similar popular expression: One whose husband is small as an ant, she places her seat among the noblewomen,³ as she considers herself important merely by virtue of being married. Rav Pappa said a different maxim: One whose husband is a wool comber [*naftza*],⁴ a lowly occupation, she calls him to sit with her at the entrance to the house, to display herself as a married woman.

Similarly, Rav Ashi says: One whose husband sells cabbage heads [*kulsa*]⁵ does not require lentils for her pot. She is so happy she is married that she does not mind even if he does not provide her with food. The Gemara comments: A Sage taught: And all of these women who appear so satisfied with their marriage, they all commit adultery⁶ and attribute the children to their husbands. This is another reason why they are so keen to be married. This shows that even when there are quarrels between a couple, the wife still prefers the status of a married woman, and therefore the bill of divorce is not considered in her interest.