בְּאוֹרְתָא אֲמַר רָבָא הָכִי, וּבְצַפְרָא הֲדַר בֵּיהּ. אָמַר לֵיהּ: שָׁרֵיתוּ? יְהֵא רַעֲוָא דְּתִשְׁתְּרוּ אַף תַּרְבָּא.

In the evening Rava stated this ruling in accordance with the way you cited him, **but in the morning he retracted** his opinion and ruled as I cited him. Rav Mesharshiyya **said to him: Do you** really **permit** her to marry without *ḥalitza*? He added sarcastically: **May it be** God's **will that you will even permit** forbidden **fats** [***tarba***][N] as well. In Rav Mesharshiyya's opinion, the prohibition against the widow remarrying without *ḥalitza* was as obvious as the prohibition of forbidden fats.

הָכָא גַּבֵּי מְעוּבֶּרֶת חֲבֵירוֹ וּמֵינֶקֶת חֲבֵירוֹ הַנְשׂוּאָה לְכֹהֵן, מַאי? מִי עֲבוּד רַבָּנַן תַּקָּנְתָּא לְכֹהֵן, אוֹ לָא?

After citing this dispute, Rav Ashi said to Rav Hoshaya, son of Rav Idi: According to Rava's citation of Rav, when a woman is married to a priest, the Sages were more lenient in order to allow the couple to remain married. **Here, with regard to a woman who is pregnant** with the child **of another** man **or a woman who is nursing** the child **of another** man, **who is married to a priest, what** is the *halakha*? **Did the Sages enact an ordinance for** the benefit of **a priest** and say that it is sufficient for him to separate from his wife and he does not need to divorce her, **or not?**

אֲמַר לֵיהּ: הָכִי הָשְׁתָּא! בִּשְׁלָמָא הָתָם, כֵּיוָן דְּאִיכָּא רַבָּנַן דְּפָלְגִי עֲלֵיהּ דְּרַבָּן שִׁמְעוֹן בֶּן גַּמְלִיאֵל, דַּאֲמְרִי: אַף עַל גַּב דְּלָא שָׁהָא וָלָד מַעֲלָיָא הָוֵי, גַּבֵּי אֵשֶׁת כֹּהֵן, כֵּיוָן דְּלָא אֶפְשָׁר, עָבְדִינַן כְּרַבָּנַן.

He said to him: How can these cases **be compared? Granted, there,** in the case where the offspring died during its first thirty days of life, **since there are the Rabbis who disagree with Rabban Shimon ben Gamliel concerning it, as they say** that **although** the offspring **did not survive** for thirty days **it is** nevertheless considered **a full-fledged,** i.e., viable, **offspring,** therefore, **with regard to** the **wife of a priest, since it is not possible** for her to perform *ḥalitza* and remain permitted to her husband, **we** will be lenient and **act in accordance with** the opinion **of the Rabbis.**

אֲבָל הָכָא, כְּמַאן נַעֲבִיד? אִי כְּרַבִּי מֵאִיר – הָא אֲמַר יוֹצִיא וְלֹא יַחֲזִיר עוֹלָמִית, וְאִי כְּרַבָּנַן – הָאָמְרִי בְּגֵט.

However, here, in the case of a woman who is pregnant with or nursing the child of another man, **in accordance with whose** opinion **should we act? If** we act **in accordance with** the opinion of **Rabbi Meir,** it will be of no benefit to the priest because Rabbi Meir **said** even with regard to the wife of an Israelite that **he must divorce** her **and may never take** her **back. And if** we act **in accordance with** the opinion of **the Rabbis,** it will also be of no benefit to the priest because **they say** he must send her out **with a bill of divorce** and only remarry her at a later point. Since there is no opinion that does not require a bill of divorce to be given, there is no possibility to be lenient in this case by not requiring a bill of divorce to be given.

אִיתְּמַר, קִדְּשָׁהּ בְּתוֹךְ שְׁלֹשָׁה וּבָרַח פְּלִיגִי בָּהּ רַב אַחָא וְרַפְרָם, חַד אָמַר: מְשַׁמְּתִינַן לֵיהּ, וְחַד אָמַר: עֵירוּבֵי מִסְתַּיֵּיהּ. הֲוָה עוּבְדָא, וְאָמַר לְהוּ רַפְרָם: עֵירוּבֵי מִסְתַּיֵּיהּ.

A pregnancy is generally noticeable only after three months have passed. Therefore, during the first three months after a woman is divorced or widowed, she may not remarry due to the possibility that she is pregnant. The Sages decreed that even betrothing her during that time is prohibited, lest one also marry her (see 41a). Concerning this, an amoraic dispute **was stated:** In a case in which a man **betrothed** a woman **during** the **three months** following her divorce or her husband's death, **and** then **he fled,**[H] **Rav Aḥa and Rafram disagree over** what should be done. **One said: We excommunicate him** for violating the prohibition. **And** the other **one said: His flight is sufficient for him,**[N] since it proves that he does not intend to marry her until it is determined that she is not pregnant. Therefore, there is no need to penalize him further. The Gemara relates: **There was an incident** like that, **and Rafram said to those** who asked what to do: **His flight is sufficient for him.**

NOTES

That you will even permit fats [*tarba*] – דְּתִשְׁתְּרוּ אַף תַּרְבָּא: Why did Rav Mesharshiyya specifically refer to the prohibition of forbidden fats? The *Arukh LaNer* suggests that Rav Mesharshiyya was hinting at the practice of the priests in the Temple to rely upon the opinions that it is permitted to eat the fats lining the stomach of an animal (see *Ḥullin* 49a). Accordingly, Rav Mesharshiyya was suggesting that since Rava's intention was to issue a ruling that would assist the priesthood, he should continue on that path and also rule that the fats lining the stomach are permitted.

Some early commentaries had a different version of the Gemara's text. In place of the word *tarba*, meaning fats, their text had *tarka*, meaning a divorcée. Accordingly, Rav Mesharshiyya was saying that if one permits a *yevama* to marry without *ḥalitza* then one will eventually also permit other types of forbidden marriages, even a divorcée to a priest (*Tosefot HaRosh*; Ritva on *Shabbat* 136b).

His flight is sufficient for him – עֵירוּבֵי מִסְתַּיֵּיהּ: The early commentaries discussed why the fact that he fled should save him from being excommunicated. The discussion surrounds the question of why he is excommunicated if he does not flee. Rashi, Ra'avad, and others explain that he is excommunicated in order to compel him to divorce his wife, so that he will not engage in intercourse before the appropriate time. Therefore, if he flees and it is clear that he has no intention of doing so in the immediate future, there is no need to excommunicate him. Accordingly, it is even appropriate to advise the husband in such a situation to flee rather than divorce his wife or suffer excommunication (Rosh). According to other opinions, the reason he is excommunicated is as a punishment for violating the pronouncements of the Sages (Rambam; see Ritva and *Maggid Mishne*). If so, it would seem that when he flees from his wife, he is not excommunicated because the very fact that he is unable to return to her until the appropriate time is itself considered a sufficient punishment.

HALAKHA

He betrothed her during the three months, and then he fled – קִידְּשָׁהּ בְּתוֹךְ שְׁלֹשָׁה וּבָרַח: One who betroths a woman during the three months following her divorce or her husband's death is excommunicated. Some say that he must divorce her, and then, if he is an Israelite and she is not pregnant, he may remarry her after three months. However, if he is a priest, he will be prohibited from remarrying her (*Tur*). Some say that if he betrothed her and was unaware of the fact that this was prohibited, he need not divorce her, and it is sufficient for the couple to separate (Mahari Weil). Others argue that even such a case requires a divorce (*Terumat HaDeshen*). In a case where the man is a priest, one may rely on the lenient opinion (Rema).

If he betrothed her and then fled, he is not excommunicated. This is in accordance with the opinion of Rafram in the Gemara. Furthermore, he even may be advised to flee *ab initio* (*Tur*). In a case in which not only did he betroth her, but he also married her, the Rambam rules that it is still sufficient for him to flee, whereas others (*Beit Shmuel*) rule that in such a case he must divorce her (Rambam *Sefer Nashim*, *Hilkhot Geirushin* 11:28; *Shulḥan Arukh*, *Even HaEzer* 13:10).

״סָפֵק בֶּן תֵּשַׁע״ וכו׳. אֲמַר לֵיהּ רָבָא לְרַב נַחְמָן: לֵימָא הַלֵּךְ אַחַר רוֹב נָשִׁים, וְרוֹב נָשִׁים לְתִשְׁעָה יָלְדָן!

§ The mishna states that if a *yevama* consummated the levirate marriage and gave birth seven months later, there is **an uncertainty whether** the child **is nine** months **old,** counting from conception, and is the offspring of the first husband, i.e., the deceased brother, or whether the child is only seven months old and is the offspring of the second husband. If it is the child of the first husband, then there was never any obligation of levirate marriage, and the supposed consummation was in fact forbidden by penalty of *karet*. Due to that possibility, both the man and the woman are obligated to bring a guilt-offering for uncertainty. **Rava said to Rav Naḥman:** How can they bring a guilt-offering for uncertainty? **Let us say: Follow** the **majority of women, and** since the **majority of women give birth after nine** months, it should be presumed that the child is the offspring of the deceased brother. Accordingly, the couple would be obligated to bring a certain sin-offering, not a guilt-offering for uncertainty.

אֲמַר לֵיהּ: נָשֵׁי דִּידַן – לִשְׁבְעָה יָלְדָן. אָמַר לֵיהּ: נָשֵׁי דִּידְכוּ הָווּ רוּבָּא דְּעָלְמָא?

Rav Naḥman **said to him:** The **women of our** family regularly **give birth after seven** months. Therefore, how can you presume that this woman gave birth after nine months? Rava **said to him: Do** the **women of your** family **constitute the majority of** the women of **the world?** Ultimately, the majority of women give birth after nine months, and one should therefore presume accordingly in a case of uncertainty.

אָמַר לֵיהּ: הָכִי קָאָמִינָא, רוֹב נָשִׁים יָלְדָן לְתִשְׁעָה וּמִיעוּט לִשְׁבְעָה, וְכָל הַיּוֹלֶדֶת לְתִשְׁעָה – עוּבָּרָהּ נִיכָּר לִשְׁלִישׁ יָמֶיהָ. וְזוֹ, הוֹאִיל וְלֹא הוּכַּר עוּבָּרָהּ לִשְׁלִישׁ יָמֶיהָ – אִיתְּרַע לֵיהּ רוּבָּא.

Rav Naḥman **said to him: This is what I am saying:** Although it is true that the **majority of women give birth after nine** months **and** only **a minority** give birth **after seven,** still, in the case of **every** woman **who gives birth after nine** months, **her fetus is** already **recognizable after a third of her days,** i.e., in the third month of her pregnancy. Accordingly, in the case of **this** woman, **since her fetus was not recognizable after a third of her days,** as were it already recognizable at that point then it would be obvious that the child was the offspring of the first husband, therefore, the ability to presume she is like the **majority** of women **is compromised,** and the uncertainty as to who the father of the child is remains. Consequently, the *yavam* and *yevama* should each bring a guilt-offering for uncertainty.

אִי כָּל הַיּוֹלֶדֶת לְתִשְׁעָה עוּבָּרָהּ נִיכָּר לִשְׁלִישׁ יָמֶיהָ, הָא מִדְּלָא הוּכַּר לִשְׁלִישׁ יָמֶיהָ – עוּבָּרָהּ וַדַּאי בַּר שִׁבְעָה לְבָתְרָאָה הוּא! אֶלָּא אֵימָא: רוֹב הַיּוֹלֶדֶת לְתִשְׁעָה עוּבָּרָהּ נִיכָּר לִשְׁלִישׁ יָמֶיהָ, וְהָאי מִדְּלָא הוּכַּר לִשְׁלִישׁ יָמֶיהָ – אִיתְּרַע לֵיהּ רוּבָּא.

The Gemara asks: **If** it is true that in the case of **every** woman **who gives birth after nine** months, **her fetus is** already **recognizable after a third of her days,** then with regard to **this** woman, **from** the fact that her fetus **was not recognized after a third** of her days, it follows that **her fetus was certainly** only **seven** months **old** and is the offspring **of the latter** husband, i.e., the *yavam*. If so, it is clear the *yavam* is father of the child and there should be no need to bring an offering at all. **Rather,** one must emend Rav Naḥman's words and **say:** In the **majority** of cases, with regard to a woman **who gives birth after nine** months, **her fetus is** already **recognizable after a third of her days, and** with regard to **this** woman, **from** the fact that her fetus **was not recognized after the a third** of her days, the ability to presume she is like the **majority** of women **is compromised.**

תָּנוּ רַבָּנַן: רִאשׁוֹן רָאוּי לִהְיוֹת כֹּהֵן גָּדוֹל, וְשֵׁנִי מַמְזֵר מִסָּפֵק. רַבִּי אֱלִיעֶזֶר בֶּן יַעֲקֹב אוֹמֵר: אֵין מַמְזֵר מִסָּפֵק.

§ The mishna states that the child of the *yevama* has unflawed lineage since regardless of whether it is the offspring of the deceased husband or the *yavam*, there was no transgression involved in its conception. With regard to this case, **the Sages taught** in a *baraita*: The **first** child **is** even **fit to become a High Priest.** However, since it is possible that the child is the offspring of the deceased husband, in which case the widow remains forbidden to the *yavam* as his brother's wife, if she has a **second** child with her *yavam* then that child is a ***mamzer* due to an uncertainty** with regard to his status. **Rabbi Eliezer ben Ya'akov says: One is not** rendered a ***mamzer* due to uncertainty.**

מַאי קָאָמַר? אָמַר אַבַּיֵי: הָכִי קָאָמַר, רִאשׁוֹן רָאוּי לִהְיוֹת כֹּהֵן גָּדוֹל, וְשֵׁנִי – סָפֵק מַמְזֵר, וְאָסוּר בְּמַמְזֶרֶת. רַבִּי אֱלִיעֶזֶר אוֹמֵר: אֵינוֹ סָפֵק מַמְזֵר אֶלָּא וַדַּאי מַמְזֵר, וּמוּתָּר בְּמַמְזֶרֶת.

The meaning of Rabbi Eliezer ben Ya'akov's statement and how he differs from the first *tanna* is unclear. The Gemara clarifies: **What is** the *baraita* **saying? Abaye said: This is what it is saying:** The **first** child **is** even **fit to become a High Priest. And** if she has **a second** child, his status as **a *mamzer*** is **uncertain and** therefore he is both prohibited from marrying an Israelite woman of unflawed lineage, since he might actually be a *mamzer*, **and he is** also **prohibited from** marrying **a *mamzeret*,** since he might not be a *mamzer*. **Rabbi Eliezer** ben Ya'akov **says: He is not** treated like one whose status as **a *mamzer*** is **uncertain; rather,** due to the uncertainty concerning his status **he is** treated like one who is **definitely a *mamzer*, and he is permitted to** marry **a *mamzeret*.** In other words, Rabbi Eliezer ben Ya'akov holds that even one whose status as a *mamzer* is uncertain is permitted to marry one who is definitely a *mamzeret*.

רָבָא אָמַר, הָכִי קָאָמַר: רִאשׁוֹן – רָאוּי לִהְיוֹת כֹּהֵן גָּדוֹל, וְשֵׁנִי – מַמְזֵר וַדַּאי מְסֻפָּק, וּמוּתָּר בְּמַמְזֶרֶת. וְרַבִּי אֱלִיעֶזֶר בֶּן יַעֲקֹב אוֹמֵר: אֵין וַדַּאי מַמְזֵר מְסֻפֵּק, אֶלָּא סָפֵק מַמְזֵר, וְאָסוּר בְּמַמְזֶרֶת.

Rava said: This is what the *baraita* **is saying:** The **first** child **is** even **fit to become a High Priest. And** if she has **a second** child, he is treated as though he **is definitely a *mamzer* due to** the **uncertainty** concerning his status,[N] **and** therefore **he is permitted to** marry a ***mamzeret***, i.e., this *tanna* holds that even one whose status as a *mamzer* is uncertain is permitted to marry one who is definitely a *mamzeret*. **And Rabbi Eliezer ben Ya'akov says: He** is **not** treated as though he is **definitely a *mamzer* due to an uncertainty** concerning his status; **rather,** his status as **a *mamzer*** is **uncertain**[H] and he is treated accordingly, **and** therefore he is both prohibited from marrying an Israelite woman of unflawed lineage since he might be a *mamzer*, **and he is** also **prohibited from** marrying **a *mamzeret*** since he might not be a *mamzer*.

וְקָמִיפַּלְגִי בִּדְרַבִּי אֶלְעָזָר. דְּתָנָא, רַבִּי אֶלְעָזָר אוֹמֵר: וַדָּאן בְּוַדָּאן – מוּתָּר. וַדָּאן בִּסְפֵקָן, וּסְפֵקָן בְּוַדָּאן, וּסְפֵקָן בִּסְפֵקָן – אָסוּר.

The Gemara explains: **And** Abaye and Rava **disagree with regard to** whether the *halakha* is decided in accordance with the opinion of **Rabbi Elazar. As we learned** in a mishna (*Kiddushin* 74a): With regard to the prohibition against marrying people with certain types of flawed lineage, **Rabbi Elazar said:** The marriage of **those** people whose flawed lineage status is **certain to those** whose status is **certain is permitted,** but the marriage of **those** whose status is **certain to those** whose status is **uncertain, and** the marriage of **those** whose status is **uncertain to those** whose status is **certain, and** even the marriage of **those** whose status is **uncertain to those** whose status is **uncertain, is prohibited.**[H]

וְאֵלּוּ הֵן סְפֵקָן: שְׁתוּקִי וַאֲסוּפִי וְכוּתִי,

The mishna concludes: **And these are those** who are considered to have an **uncertain** status:[H] **A child of unknown paternity** [***shetuki***], although his mother's identity is known; **and a foundling** who was found abandoned in the streets; **and a Samaritan** [***Kuti***],[B] who is possibly a *mamzer* since the Samaritans do not accept and abide by the *halakhot* of marriage.

וַאֲמַר רַב יְהוּדָה אֲמַר רַב: הֲלָכָה כְּרַבִּי אֶלְעָזָר. כִּי אָמְרִיתָהּ קַמֵּיהּ דִּשְׁמוּאֵל אֲמַר לִי: הִלֵּל שָׁנָה עֲשָׂרָה יוֹחָסִין עָלוּ מִבָּבֶל: כֹּהֲנֵי, לְוִיֵּי, וְיִשְׂרְאֵלֵי, חֲלָלֵי, גֵּירֵי, חֲרוּרֵי, מַמְזֵרֵי, נְתִינֵי, שְׁתוּקֵי, וַאֲסוּפֵי. וְכוּלָּן מוּתָּרִין לָבֹא זֶה בָּזֶה,

And with regard to this mishna **Rav Yehuda said** that **Rav said:** The ***halakha* is in accordance with** the opinion of **Rabbi Elazar.** But **when I said this** *halakha* of Rav's **in** the **presence of Shmuel, he said to me: Hillel taught** in a *baraita* that **ten** categories of **lineage came up from Babylon** to Eretz Yisrael: **Priests; Levites; and Israelites; priests disqualified due to flawed lineage** [***ḥalallim***]; **converts; freed slaves; *mamzerim*; Gibeonites; *shetukei*; and foundlings. And it is permitted** for **all** men and women in these categories **to marry one another,** i.e., the list is arranged such that the marriage between people in any two categories that are adjacent to one another is permitted. This is possible only if one assumes that it is permitted for one whose flawed lineage status is uncertain to marry one whose flawed lineage status is certain.

NOTES

He is definitely a *mamzer* due to the uncertainty concerning his status – מַמְזֵר וַדַּאי מְסֻפָּק: In tractate *Kiddushin*, Rava is cited as saying that one whose status as a *mamzer* is uncertain is permitted to marry an Israelite woman of unflawed lineage. However, this would appear to conform to neither opinion in the *baraita*, according to the way Rava explains it. Some have suggested that a distinction should be drawn between different cases of uncertainty. The *baraita* here concerns a case where there is a specific reason to be concerned that the child is a *mamzer*; if the first child is the son of the previous husband then the second one will be a *mamzer*. Therefore, Rava rules stringently. However, in tractate *Kiddushin*, Rava is considering the cases of a child whose father is entirely unknown and that of a foundling. In those cases, there are no specific indications that the child might be a *mamzer*; rather, there is simply a total lack of knowledge about the child's lineage. Rava therefore rules leniently that there is no need to open a Pandora's box of possibilities, and therefore in such a case there is no prohibition preventing him from marrying an Israelite woman of unflawed lineage (*Mei Naftoaḥ*). Alternatively, one could suggest a resolution based on the opinion of the Rambam that according to Torah law, one whose status as *mamzer* is uncertain is actually permitted to marry an Israelite woman of unflawed lineage. Accordingly, it can be explained that Rava in tractate *Kiddushin* was referring to Torah law, whereas here he is referring to the fact that according to rabbinic law it is prohibited.

HALAKHA

He is not definitely a *mamzer* due to an uncertainty, rather his status as a *mamzer* is uncertain – אֵין וַדַּאי מַמְזֵר מְסֻפָּק אֶלָּא סָפֵק מַמְזֵר: If a *yevama* and her *yavam* consummate the levirate marriage within three months of her husband's death, and then she gives birth to a viable child and there is an uncertainty whether the child was born after nine months of gestation and is the offspring of the first husband, or whether it was born after only seven months of gestation and is the offspring of the *yavam*, that child has unflawed lineage. If the *yavam* does not divorce her, and they have another child together, the second child's status as a *mamzer* is uncertain. He is therefore prohibited from marrying an Israelite woman of unflawed lineage, since he might be a *mamzer*; and he is also prohibited from marrying a *mamzeret*, as he might not be a *mamzer*. This is in accordance with the opinion of Rabbi Eliezer ben Ya'akov, as explained by Rava (Rambam *Sefer Nashim*, *Hilkhot Yibbum* 1:23; *Shulḥan Arukh*, *Even HaEzer* 4:25; 164:6).

Certain and uncertain disqualifications from marriage – פְּסוּלֵי חִיתּוּן וַדַּאי וְסָפֵק: By Torah law one whose status as a *mamzer* is uncertain is permitted to marry an Israelite of unflawed lineage. However, by rabbinic law it is prohibited. Only one who is definitely a *mamzer* is permitted to marry a *mamzeret*; if the status of the man, the woman, or both is uncertain, then they are prohibited from marrying one another (Rambam *Sefer Kedusha*, *Hilkhot Issurei Bia* 15:21; *Shulḥan Arukh*, *Even HaEzer* 4:24).

Uncertainties with regard to one's status as a *mamzer* – סְפֵקֵי מַמְזֵר: An uncertainty whether one is a *mamzer* can be created in various ways, e.g., whenever a child is born to a woman from a man who is not her husband in a case where her marital status is uncertain. This can occur either when there is uncertainty concerning the validity of the original betrothal or when there is uncertainty concerning the divorce from, or death of, her husband. A child whose father's identity is not known is also considered to be one whose status as a *mamzer* is uncertain (Rambam *Sefer Kedusha*, *Hilkhot Issurei Bia* 15:21; *Shulḥan Arukh*, *Even HaEzer* 4:24, 31, 36).

BACKGROUND

Samaritan [*Kuti*] – כּוּתִי: This term is used to describe the non-Jews who settled in Samaria and the surrounding territory after the exile of the ten tribes. Though they converted to Judaism, they had ulterior motives for doing so (see II Kings, chapter 17), and were not scrupulous in their observance of the mitzvot. Accordingly, it was a matter of debate among the Sages whether or not they were to be considered as Jews. In later generations, they abandoned Jewish practices entirely, and the Sages decreed that they should be treated as non-Jews.

וְאַתְּ אָמַרְתְּ הֲלָכָה כְּרַבִּי אֶלְעָזָר?!

After citing the baraita taught by Hillel, which assumes that it is permitted for one whose flawed lineage status is uncertain to marry one whose flawed lineage status is certain, Shmuel concluded: The *halakha* is certainly decided in accordance with the opinion of Hillel, **and** yet **you,** Rabbi Yehuda, **said** the ***halakha* is in accordance with** the opinion of **Rabbi Elazar,** which states that a marriage between two people whose flawed lineage status is uncertain is prohibited; your ruling is incorrect.

אַבַּיֵי סָבַר לָהּ כְּשְׁמוּאֵל דְּאָמַר הֲלָכָה כְּהִלֵּל, וּמוֹקֵי לָהּ רַבִּי אֱלִיעֶזֶר בֶּן יַעֲקֹב אַלִּיבָּא דְּהִלְכְתָא כִּי הֵיכִי דְּלָא תִּקְשֵׁי הִלְכְתָא אַהִלְכְתָא.

The Gemara proceeds to explain the dispute between Abaye and Rava: **Abaye holds in accordance with** the opinion of **Shmuel, who said** that the ***halakha* is** decided **in accordance with** the opinion of **Hillel** that it is permitted for one whose flawed lineage status is uncertain to marry one whose flawed lineage status is certain. Therefore, Abaye **establishes that** opinion of **Rabbi Eliezer ben Ya'akov** to be **in accordance with** this ***halakha*, in order that there should not be a contradiction between** one ***halakha***, i.e., that the *halakha* is always decided in accordance with the opinion of Hillel, **and** another ***halakha***, i.e., that the *halakha* is always decided in accordance with the opinion of Rabbi Eliezer ben Ya'akov.

רָבָא סָבַר לָהּ כְּרֵב, דְּאָמַר הֲלָכָה כְּרַבִּי אֶלְעָזָר, וּמוֹקֵי לָהּ לִדְרַבִּי אֱלִיעֶזֶר בֶּן יַעֲקֹב אַלִּיבָּא דְּהִלְכְתָא, כִּי הֵיכִי דְּלָא תִּקְשֵׁי

Rava, however, **holds in accordance with** the opinion of **Rav, who said:** The ***halakha* is** decided **in accordance with** the opinion of **Rabbi Elazar** that the marriage of those whose status is certain to those whose status is uncertain is prohibited. Therefore, Rava **establishes that** opinion **of Rabbi Eliezer ben Ya'akov** to be **in accordance with** this ***halakha*, so that there should not be a contradiction** between

Perek **IV**
Daf **37** Amud **b**

הִלְכְתָא אַהִלְכְתָא.

one ***halakha***, i.e., that the *halakha* in this case is in accordance with the opinion of Rav, **and** another ***halakha***, i.e., that the *halakha* is always decided in accordance with the opinion of Rabbi Eliezer ben Ya'akov.

אֲמַר אַבַּיֵי: מְנָא אָמִינָא לָהּ דְּכָל סְפֵיקָא לְרַבִּי אֱלִיעֶזֶר בֶּן יַעֲקֹב כְּוַדַּאי מְשַׁוֵּי לֵיהּ –

Abaye said: From where do I say that concerning **anyone** whose status as a *mamzer* is **uncertain, according to** the opinion of **Rabbi Eliezer ben Ya'akov** they **are treated equivalently to** one who is **definitely** a *mamzer*?

דְּתַנְיָא, רַבִּי אֱלִיעֶזֶר בֶּן יַעֲקֹב אוֹמֵר: חֲרֵי שָׁבָא עַל נָשִׁים הַרְבֵּה וְאֵין יוֹדֵעַ עַל אֵיזֶהוּ מֵהֶן בָּא. וְכֵן הִיא, שֶׁבָּאוּ עָלֶיהָ אֲנָשִׁים הַרְבֵּה וְאֵינָהּ יוֹדַעַת מֵאֵיזֶה מֵהֶן קִבְּלָה, נִמְצָא אָב נוֹשֵׂא אֶת בִּתּוֹ וְאָח נוֹשֵׂא אֶת אֲחוֹתוֹ, וְנִתְמַלֵּא כָּל הָעוֹלָם כּוּלּוֹ מַמְזֵרִין, וְעַל זֶה נֶאֱמַר "וּמָלְאָה הָאָרֶץ זִמָּה".

As it is taught in a *baraita* that **Rabbi Eliezer ben Ya'akov says:** With regard to one **who engaged in intercourse with** and impregnated **many women, but he does not know with which** women **he had intercourse, and similarly,** with regard to a woman, if **many men had intercourse with her** and she became pregnant, **but she does not know from which** man **she received** the seed that caused her to become pregnant, since the identities of the parents of those children are not known, **it could emerge** that **a father marries his daughter, and a brother marries his sister. And** in this way, **the entire world could become filled with *mamzerim*. And concerning this, it is stated: "And lest the land become full of lewdness"** (Leviticus 19:29). Abaye demonstrates his claim from the fact that even though it is not certain that the children in this situation are *mamzerim*, nevertheless, Rabbi Eliezer ben Ya'akov labels them as *mamzerim* and not as those whose status as a *mamzer* is uncertain.[N]

וְרָבָא אָמַר לָךְ: הָכִי קָאָמַר: "זוֹ מַה הִיא".

And Rava could have **said to you: This is what** the verse **is saying:** The word "lewdness [*zima*]" can be understood as an acronym of the words: *Zo ma hi*, meaning: **What is this.**[N] It is plausible to say that Rabbi Eliezer ben Ya'akov's citation of this verse indicates that he regards their status to be uncertain.

NOTES

One whose status as a *mamzer* is uncertain is treated the same way as one who is definitely a *mamzer* – סְפֵיקָא כְּוַדַּאי: Rashi explains that Abaye derives his proof from the fact that Rabbi Eliezer ben Ya'akov relates to the children whose *mamzer* status is uncertain as though they were definitely *mamzerim*. Another possible interpretation is that Abaye's proof is derived from Rabbi Eliezer ben Ya'akov's extended formulation. It would have been sufficient if he had highlighted the possibility that a father might marry his daughter and a brother his sister; why did he continue to emphasize: The entire world will become filled with *mamzerim*? Apparently, Rabbi Eliezer ben Ya'akov was also concerned that the children in these cases, whose status as a *mamzer* would be uncertain, would later marry people who are definitely *mamzerim* and in that way the number of *mamzerim* in the world would be greatly increased. The only reason to be concerned for that possibility is if one holds that one whose status as a *mamzer* is uncertain is permitted to marry one who is definitely a *mamzer*. From here Abaye derives his proof (*Yosef Lekaḥ*).

What is this – זוֹ מַה הִיא: According to Rava, the verse should not be understood as labeling the children in such cases as *mamzerim*; rather, that if one is not careful the world could become filled with people whose lineage status is not known (Rivan).

יָתֵר עַל כֵּן אָמַר רַבִּי אֱלִיעֶזֶר בֶּן יַעֲקֹב: לֹא יִשָּׂא אָדָם אִשָּׁה בִּמְדִינָה זוֹ, וְיֵלֵךְ וְיִשָּׂא אִשָּׁה בִּמְדִינָה אַחֶרֶת, שֶׁמָּא יִזְדַּוְּגוּ זֶה לָזֶה וְנִמְצָא אָח נוֹשֵׂא אֶת אֲחוֹתוֹ.

The Gemara cites the continuation of the *baraita*: **Furthermore, Rabbi Eliezer ben Ya'akov said** that even in marriage, one should be careful not to create a situation that could lead to the birth of *mamzerim*. Therefore, **a man should not marry a woman in this country and** then **go and marry** another **woman in a different country,**[H] **lest** a son from one marriage and a daughter from the other, unaware that they are both children of the same father, **unite with one another, and it could emerge** that **a brother marries his sister,** the children of whom would be *mamzerim*.

אִינִי? וְהָא רַב, כִּי אִיקְלַע לְדַרְדְּשִׁיר [מַכְרִיז] וְאָמַר: מַאן הָוְיָא לְיוֹמָא. וְרַב נַחְמָן, כִּי אִיקְלַע לִשְׁכַּנְצִיב [מַכְרִיז] וְאָמַר: מַאן הָוְיָא לְיוֹמָא!

The Gemara asks: **Is that so;** is there really such a prohibition? **But didn't Rav, when he happened** to come **to Dardeshir, make a public announcement saying: Which** woman **will be** my wife **for the day,** i.e., for the duration of his visit? Since his wife did not accompany him to Dardeshir, he wished to be married to another woman while he was there, in order to avoid a situation that could lead him to having forbidden thoughts. **And** also **Rav Naḥman, when he happened** to come **to Shakhnetziv, made a public announcement saying: Which** woman **will be** my wife **for the day?**[N] It would appear, from the fact that both Sages married wives in two different places, that there is no prohibition in doing so.

שָׁאנֵי רַבָּנַן דִּפְקִיעַ שְׁמַיְיהוּ.

The Gemara rejects the proof: **Sages are different, as their names are renowned,** and therefore their children are always identified by their connection to their father. Therefore, Rabbi Eliezer ben Ya'akov's concern does not apply to them.

וְהָאֲמַר רָבָא: תְּבָעוּהָ לִינָּשֵׂא וְנִתְפַּיְּסָה – צְרִיכָה לֵישֵׁב שִׁבְעָה נְקִיִּים!

The Gemara examines Rav and Rav Naḥman's actions: **But didn't Rava say:** With regard to a woman **who had an offer of marriage and accepted,** the emotional excitement may have caused her to have a flow of menstrual blood, which would making her ritually impure and prohibit her from engaging in intercourse. Even if she was unaware of any flow, she must consider the possibility that it occurred. To purify herself, **she needs to wait seven** consecutive days that are **clean**[B] from any flow of menstrual blood[H] and then immerse in a ritual bath. Only then may she marry. If so, how could Rav and Rav Naḥman marry women on the day they arrived?

NOTES

Which will be for the day – מַאן הָוְיָא לְיוֹמָא: The commentaries discuss why Rav and Rav Naḥman required a wife for one day, as there are many instances recounted in the Talmud where the same Sages went to different places, and they did not take a wife on those occasions. Moreover, if they intended to divorce these wives, they would be in violation of the dictum that one may not marry a woman with the intention of divorcing her. Indeed, the Rif and the Rosh do not quote this practice, and it appears that they do not consider it to be *halakha*.

Some later authorities suggest that Rav and Rav Naḥman were traveling to meet with the non-Jewish ruler, and it was the custom of the ruler to provide a mistress for those who visited him (see *Avoda Zara* 76b). Therefore, Rav and Rav Naḥman asked to marry a wife so that they would not be offered a mistress by the ruler, since the custom was to offer a mistress only to one who came without his wife (*Imrei David*).

HALAKHA

One should not marry women in different countries – לֹא יִשָּׂא נָשִׁים בִּכְמָה מְדִינוֹת: A man should not marry a woman in one country and then go and marry another woman in a different country, lest a son from one marriage and a daughter from the other unite with one another and have children, who would be *mamzerim*. This is in accordance with the ruling of Rabbi Eliezer ben Ya'akov. However, if the man is renowned such that any children he has will be identified by their connection to their father, then it is permissible. This is in accordance with the Gemara's initial explanation of the actions of Rav and Rav Naḥman. The *Beit Shmuel* notes that the Rif and Rosh do not refer to this exception, and it would seem that they hold that the Gemara retracted this explanation in its conclusion. This is possible if one assumes that according to the conclusion of the Gemara, Rav and Rav Naḥman never actually married the women in the towns they visited (Rambam *Sefer Kedusha*, *Hilkhot Issurei Bia* 21:29; *Shulḥan Arukh*, *Even HaEzer* 2:11).

A woman who has an offer of marriage must wait seven clean days – תְּבָעוּהָ לִינָּשֵׂא יוֹשֶׁבֶת שִׁבְעָה נְקִיִּים: A woman who had an offer of marriage and accepted may not marry immediately; rather, she must count seven clean days since she may have experienced a flow of blood without being aware of it. She must check herself during those seven days to ensure she has not experienced any additional flow. Ideally, this should be done each day (Rema, based on the *Beit Yosef*). The Rambam rules that if the husband is a Torah scholar then she may marry him immediately, since he can be trusted to be careful not to engage in sexual relations with her. This ruling is based on the Gemara here. The Ra'avad disagrees and rules that the prohibition applies to a Torah scholar as well. It would appear that the majority of halakhic authorities concur with the opinion of the Ra'avad (Rambam *Sefer Kedusha*, *Hilkhot Issurei Bia* 11:9; *Shulḥan Arukh*, *Yoreh De'a* 192:1).

BACKGROUND

Seven clean days – שִׁבְעָה נְקִיִּים: When a woman accepts an offer of marriage, the emotional excitement can bring on early menstruation. This is especially true for a woman whose cycle is not totally regular. Furthermore, it is possible that out of her desire for her future husband, she may have experienced other vaginal secretions that masked the sensation of the flow of blood; therefore, even if she did not see or feel the release of blood, she must consider the possibility that there was blood. Consequently, she must observe the purification process for a menstruating woman and wait seven clean days before immersing in a ritual bath.

רַבָּנַן שְׁלוּחַיְיהוּ הָווּ מְשַׁדְּרִי, וּמוֹדְעִי לְהוּ, וְאִיבָּעֵית אֵימָא: לְרַבָּנַן יְחוּדֵי בְּעַלְמָא הוּא דְּמְיַחֲדִי לְהוּ, דַּאֲמַר מָר: אֵינוֹ דּוֹמֶה מִי שֶׁיֵּשׁ לוֹ פַּת בְּסַלּוֹ לְמִי שֶׁאֵין לוֹ פַּת בְּסַלּוֹ.

The Gemara explains: These **Sages would send messengers** seven days ahead of their arrival and **they** would **inform** the women of the Sage's arrival. In this way, the woman who agreed to marry the Sage would have time to count the seven clean days. **And if you wish, say** that **the Sages'** intentions **were merely to be in seclusion** [***meyaḥadi***] **with** the woman[N] but not to engage in intercourse with her. Therefore, it was permitted to marry her even if she became ritually impure. Being in seclusion with a woman was sufficient to help the Sages avoid any forbidden thoughts, **as the Master said: One who has bread in his basket[N] is incomparable to one who does not have bread in his basket,** i.e., just as the knowledge that food is readily available is sufficient to psychologically alleviate one's feelings of hunger, so too, the knowledge that one's sexual desires could be met lessens the strength of the desire itself.

תָּנָא, רַבִּי אֱלִיעֶזֶר בֶּן יַעֲקֹב אוֹמֵר: לֹא יִשָּׂא אָדָם אִשְׁתּוֹ וְדַעְתּוֹ לְגָרְשָׁהּ, מִשּׁוּם שֶׁנֶּאֱמַר ״אַל תַּחֲרֹשׁ עַל רֵעֲךָ רָעָה וְהוּא יוֹשֵׁב לָבֶטַח אִתָּךְ״.

The Gemara cites an additional statement of Rabbi Eliezer ben Ya'akov: It is **taught** in a *baraita* that **Rabbi Eliezer ben Ya'akov says: A man should not marry his wife** when at the same time **his intention is to divorce her,[NH] because it is stated: "Do not devise evil against your neighbor, as he dwells securely with you"** (Proverbs 3:29). It is wrong for one to intend to undermine the feelings of security that another has with him.

סָפַק וְיָבָם שֶׁבָּאוּ לַחֲלוֹק בִּנְכְסֵי מִיתְנָא.

§ The mishna raises a case in which a *yavam* consummated the levirate marriage with his *yevama* and seven months later she gave birth. With respect to that child, there is an uncertainty whether he is the child of the deceased brother or whether he is the child of the *yavam*. The Gemara discusses the ramifications of this uncertainty in a dispute concerning inheritance. The case concerns one whose identity as the son of the deceased is **uncertain, and a *yavam*** who consummated the levirate marriage with the *yevama*, **who** both **came to divide up[N]** the **possessions of the deceased** brother[H] and each one claims to be the sole heir.

HALAKHA

A man should not marry his wife when at the same time his intention is to divorce her – לֹא יִשָּׂא אָדָם אִשְׁתּוֹ וְדַעְתּוֹ לְגָרְשָׁהּ: It is prohibited for a man to marry a woman if at the same time his intention is to divorce her, because it is stated: "Do not devise evil against your neighbor, as he dwells securely with you" (Proverbs 3:29). This is in accordance with the ruling of Rabbi Eliezer ben Ya'akov. The Rambam and *Shulḥan Arukh* rule that if he informs her in advance that his intention is only to be married for a short time, then it is permissible. It would appear that this ruling is based on the Gemara here (*Beit Yosef*; see *Derisha*; Rambam *Sefer Kedusha*, *Hilkhot Issurei Bia* 21:28 and *Sefer Nashim*, *Hilkhot Geirushin* 10:21; *Shulḥan Arukh*, *Even HaEzer* 2:10; 119:1).

The son of uncertain descent and the *yavam* who came to divide up the possessions of the deceased brother – סָפַק וְיָבָם שֶׁבָּאוּ לַחֲלוֹק בִּנְכְסֵי הַמֵּת: If a *yavam* consummated the levirate marriage within three months of his brother's death and seven months later the *yevama* gave birth, then there is an uncertainty whether that child is the offspring of the deceased brother or of the *yavam*. If that child and the *yavam* come to divide up the possessions of the deceased, the possessions are to be divided up equally between them (Rambam *Sefer Mishpatim*, *Hilkhot Naḥalot* 5:4; *Shulḥan Arukh*, *Even HaEzer* 163:3).

NOTES

Their intentions were merely to be in seclusion [*meyaḥadi*] with the woman – יְחוּדֵי בְּעַלְמָא הוּא דְּמְיַחֲדִי לְהוּ: This statement of the Gemara raises numerous difficulties: If a newlywed bride became impure from experiencing a menstrual flow before the couple had managed to consummate their marriage, it is prohibited for them to be in seclusion together, even if they do not engage in relations. Why, then, was it permitted for these Sages? Furthermore, since it was actually prohibited to engage in relations with these women, how was the Sages' seclusion with them considered like the case of one who has bread in his basket? Rabbi Avraham min HaHar raises an additional question: According to the opinion of the Rambam, one may not marry a woman who is ritually impure following her menstruation since there is no immediate possibility of engaging in relations with her. Why, then, was it permitted for these Sages to marry in such a manner?

With regard to the prohibition against being secluded with a bride who experienced a menstrual flow, numerous resolutions have been offered: *Tosafot* on *Yoma* 18b suggest that the prohibition does not actually apply to a newlywed couple but only to an unmarried man and his future bride. However, once they are married, there is no prohibition. The Rambam suggests that the prohibition is only due to the concern that the couple will not be able to withstand their desires and will engage in relations. This concern does not apply to a Torah scholar, and therefore he may be secluded with his newlywed wife in all circumstances.

The Rid interprets the prohibition as being limited to being in the same room; however, it is permitted for the couple to be in the same house. *Tosafot* here explain that from the outset the Sages would inform the women that their intention was only to be secluded with them, but not to engage in relations. Therefore, the excitement of marriage was not so great that it would lead to the women experiencing a flow. Accordingly, it was actually perfectly permissible for them to marry these women, and therefore the Sages could certainly be considered like one who has bread in his basket.

Other commentaries read the Gemara in a way that avoids the questions altogether. The Ra'avad and Meiri claim that these Sages never actually married these women. When the Gemara says *meyaḥadi*, the intention is not that the Sages were in seclusion with them; rather, they would merely designate them to be available to marry. Therefore, there was no question of any prohibition involved. Alternatively, the Ramban explains that the statement that they would merely be in seclusion with the women is not an alternative answer but a continuation of the first answer: They would inform the women of their arrival ahead of time, and even so, due to Rabbi Eliezer ben Ya'akov's concerns, they would not actually engage in relations with them. This answer also resolves a further difficulty raised by some of the early commentaries: If the Gemara's original suggestion that the Sages' names are renowned was rejected, then what would happen if these new wives did become pregnant and give birth to a child? Couldn't this lead to the eventual creation of *mamzerim*? However, according to the Ramban's explanation there was never any possibility of actually having children.

One who has bread in his basket – מִי שֶׁיֵּשׁ לוֹ פַּת בְּסַלּוֹ: The term: Bread in one's basket, is used literally to explain why the manna caused suffering to the Jews in the desert, as they did not have bread in their basket for the next day (*Yoma* 74b). However, bread is also a euphemism for a wife, as the Torah says with regard to Potiphar that he did not deny Yosef anything "save the bread that he did eat" (Genesis 39:6), and the Sages understand this to be a reference to his wife (*Bereshit Rabba* 86:6). Rashi also uses the same euphemism to explain Jethro's words with regard to Moses: "Call him, that he may eat bread" (Exodus 2:20) as a reference to the possibility that Moses will marry one of his daughters (*Menuḥat Aharon*).

A man should not marry his wife when at the same time his intention is to divorce her – לֹא יִשָּׂא אָדָם אִשְׁתּוֹ וְדַעְתּוֹ לְגָרְשָׁהּ: The reason for the prohibition is that doing so undermines the woman's trust, as indicated by the biblical source of the prohibition. Therefore, if the man would first inform the woman of his intentions to divorce her, it would be permitted (see HALAKHA). Therefore, it must be that in the cases of Rav and Rav Naḥman cited in the Gemara, they would make their intentions clear before marrying the women for the duration of their visits, as is already hinted to by the concluding phrase of their requests: Which woman will be my wife for the day (Rid; see Meiri).

One whose identity is uncertain and a *yavam* who came to divide up – סָפַק וְיָבָם שֶׁבָּאוּ לַחֲלוֹק: The Rashba asks: Since the *yavam* consummated the levirate marriage, the possessions are considered to be under his control. Therefore, even if an uncertainty arises concerning who has a right to those possessions, that uncertainty should not be significant enough to allow the possessions to be removed from his control and divided up between the two sides. In resolution of this difficulty, the Rashba explains that the fact that in the majority of cases a woman gives birth after nine months supports the claim of the son of uncertain descent that he is in fact the son of the deceased, since he was born less than nine months after his mother remarried. The Gemara later explains that the force of this majority is not sufficient to award the inheritance to him; since her pregnancy was not noticeable after three months, the ability to presume that she is like the majority of women is compromised. Nevertheless, the force of the majority is still sufficient to allow the possessions to be removed from the control of the *yavam* and then, due to the uncertainty, to be divided up between them.

NOTES

This is property of uncertain ownership – הֲוֵי מָמוֹן הַמּוּטָל בְּסָפֵק: Normally, in cases of property of uncertain ownership the *halakha* is that the property is left with the one who currently has control of it, based on the principle: The burden of proof rests upon the claimant. However, since in this case neither litigant has stronger control over the possessions, they are divided equally between the two sides (*Tosafot*; see the comments of Rashba cited on the previous page). The Ritva adds that since the case is one of inheritance, each side is considered to be equally in control of the possessions. He explains that this is why it is not appropriate in this case to remove the possessions from the parties and then award them based upon the discretion of the court, or alternatively to allow the parties to settle their differences by themselves and award the possessions according to their resolution. Furthermore, the court only ever resorts to using these methods when there is a possibility that the uncertainty will be resolved; however, in this case, the uncertainty is intractable.

HALAKHA

The son of uncertain descent and the sons of the *yavam* – סָפֵק וּבְנֵי יָבָם: If the son of uncertain descent and the sons of the *yavam* come to divide up the possessions of the deceased, then since the sons of the *yavam* concede that at the very least the son of uncertain descent has a right to a portion as one of the brothers, he takes that portion. The rest of the possessions are then divided into two, half going to the son of uncertain descent and the other half being split between the sons of the *yavam* (Rosh; *Tur*, citing Rashi). The Rambam rules that all of the deceased's possessions are to be split equally between the son of uncertain descent and the sons of the *yavam* (Rambam *Sefer Mishpatim*, *Hilkhot Naḥalot* 5:4; *Shulḥan Arukh*, *Even HaEzer* 163:4).

סָפֵק אָמַר: אֲנָא בַּר מִיתְנָא הוּא, וְנִכְסֵי דִּידִי הוּא. וְיָבָם אָמַר: אַתְּ בְּרַאי דִּידִי אַתְּ, וְלֵית לָךְ וְלֹא מִידֵי בְּנִכְסֵי. הֲוֵי מָמוֹן הַמּוּטָל בְּסָפֵק, וּמָמוֹן הַמּוּטָל בְּסָפֵק – חוֹלְקִין.

The one of **uncertain** descent **said: I am the son of the deceased, and** therefore, as the only heir, his **possessions are mine. And the *yavam* said** to him: **You are my son, and you have absolutely no** rights **to** the **possessions;** rather, by virtue of the fact that I consummated the levirate marriage with the widow of the deceased, I should inherit him. The Gemara rules on this case: This **is** a case of **property of uncertain ownership,**[N] as there is no way to determine who is the rightful heir, and the *halakha* is that **property of uncertain ownership** the claimants **divide up** between them.

סָפֵק וּבְנֵי יָבָם שֶׁבָּאוּ לַחֲלוֹק בְּנִכְסֵי מִיתְנָא, סָפֵק אָמַר: הַהוּא גַּבְרָא בַּר מִיתְנָא הוּא, וְנִכְסֵי דִּידִי הוּא. בְּנֵי יָבָם אָמְרִי: אַתְּ אָחִינוּ אַתְּ, וּמָנָתָא הוּא דְּאִית לָךְ בַּהֲדָן.

The Gemara brings another case, that of one concerning whom there is **uncertainty** whether he is the son of the deceased or of the *yavam* **and the sons of** the ***yavam*,**[H] who consummated the levirate marriage with the *yevama* and has since died, **who came to divide up** the **possessions of the deceased,** and each one makes claim to the inheritance. The one of **uncertain** descent **said: That man**, referring to himself, **is the son of the deceased, and** therefore, as his sole heir, his **possessions are mine.** And the **sons of the *yavam* said** to him: **You are our brother, and** our uncle, the deceased, was not survived by any offspring and so by virtue of our father's levirate marriage he inherited our uncle's possessions, and now that our father has died and we are dividing up his possessions **you have** a right to inherit only **a portion** of the inheritance **together with us.**

סְבוּר רַבָּנַן קַמֵּיהּ דְּרַב מְשַׁרְשִׁיָא לְמֵימַר: מַתְנִיתִין הֵיא, דְּתָנַן: הוּא אֵינוֹ יוֹרֵשׁ אוֹתָם, וְהֵם יוֹרְשִׁין אוֹתוֹ.

The Rabbis who studied **before Rav Mesharshiyya thought to say:** This case **is** analogous to a case in **a mishna, as we learned** a similar case in a mishna (100a) in which a woman gave birth shortly after remarrying and there is uncertainty whether the child's father is the first or second husband. The mishna considers a case in which the husbands died and were each survived by a set of sons: If a son from either set died, the other sons of that set will inherit from him because as brothers they have an uncontested claim to the inheritance. However, **he,** the son of uncertain descent, **does not inherit** from **them** because his claim as a brother is uncertain and is therefore not powerful enough to allow him to take part of the inheritance from the other sons. **However,** if the son of uncertain descent died, **they,** the sons of both husbands, **will** jointly **inherit** from **him.** The claims of each set of sons to be his brothers are equally uncertain; therefore, since there is no one who has a definite claim to his inheritance, his possessions are split between them.

וְהָכָא אִיפְּכָא, הָתָם אָמְרִי לֵיהּ: אַיְיתֵי רְאָיָה וּשְׁקוֹל.

The Rabbis qualify their comparison of the cases: **But here,** the positions are **in reverse,** as follows: **There,** in the case of the mishna, when one of the sons dies, **they,** the other sons of that set, can **say to him,** the son of uncertain descent: **Bring proof** that you are actually a son of our father **and** only then can you **take** a portion. Since he cannot prove this, he will not receive any of the inheritance.

הָכָא אָמַר לְהוּ: אַיְיתוּ רְאָיָה וּשְׁקוֹלוּ.

However, **here,** in the case where the son of uncertain descent is in dispute with the sons of the *yavam*, **he,** the son of uncertain descent, can **say to them: Bring proof** that I am not the son of the deceased, **and** only then can you **take** a portion together with me. The Rabbis claim that the principle in both cases is identical: When one party has an uncontested claim to the inheritance, and another party advances a claim to receive part of the inheritance that is based on an uncertainty, the uncertain claim is not accepted. In the mishna's case, it is the son of uncertain descent who has an uncertain claim. The Rabbis suggest that the reverse is true in the Gemara's case: The son of uncertain decent has an uncontested claim to the inheritance because whether he is the son of the first or second husband, he certainly has a right to some inheritance. It is the sons of the *yavam* who have an uncertain claim because they have a right to the inheritance only if the son of uncertain decent is actually their brother.

אֲמַר לְהוּ רַב מְשַׁרְשִׁיָא: מִי דָּמֵי? הָתָם – אִינְהוּ וַדַּאי, וְאִיהוּ סָפֵק. הָכָא – אִידִי וְאִידִי סָפֵק.

Rav Mesharshiyya said to them: Is the case in the mishna really **comparable? There,** in the mishna's case, when one of the sons dies, **they,** the other sons in that set, have a **definite** claim to the inheritance, since their claim is based on the fact that they are the dead son's brothers, which is certainly true, **and he,** the son of uncertain descent, only has an **uncertain** claim. However, **here, each** party has only an **uncertain** claim.[N] Although the son of uncertain descent claims that ultimately, whatever the nature of his relationship with the deceased is, he should have the right to inherit, nevertheless, since it is not actually known what that relationship is, his claim in reality is merely a composite of uncertain claims.

אֶלָּא, אִי דָּמְיָא לְמַתְנִיתִין – [לְהָא] דָּמְיָא: לְסָפֵק וּבְנֵי יָבָם שֶׁבָּאוּ לַחֲלוֹק בִּנְכְסֵי יָבָם גּוּפֵיהּ, דְּהָתָם אָמְרִי לֵיהּ: אַיְיתֵי רְאָיָה דְּאָחוּנָא אַתְּ וּשְׁקוֹל.

Having rejected the analogy offered by the Rabbis, Rav Mesharshiyya offers his own analogy to the case in the mishna that the Rabbis cited: **Rather, if** there is a case that **is analogous to** the case in **the mishna,** then it is **to this** following case that it is **analogous:** It is comparable **to** a case in which following the levirate marriage a son was born, and there is uncertainty whether he is the son of the deceased or of the *yavam*, and that son of **uncertain** descent **and** the **sons of the *yavam* come to divide up** the **possessions of the *yavam* himself. As there,** those who are unquestionably the sons of the *yavam* have a definite claim; therefore, **they** can **say to him,** the son of uncertain descent: **Bring proof that you are** actually **our brother and** only then can you **take** a portion. Since he cannot prove this, he will not receive any of the inheritance.

סָפֵק וּבְנֵי יָבָם שֶׁבָּאוּ לַחֲלוֹק בִּנְכְסֵי יָבָם, לְבָתַר דְּפָלַג יָבָם בִּנְכְסֵי מִיתְנָא.

The Gemara brings yet another case, that of one concerning whom there is an **uncertainty** whether he is the son of the deceased or of the *yavam* **and** the **sons of the *yavam,*** i.e., the sons of the man who consummated the levirate marriage with the *yevama* and has since died, **who came to divide up** the **possessions of the *yavam***[H] **after the *yavam* had** already **divided up**[N] the **possessions of the deceased** brother between himself and the son of uncertain descent, as per the Gemara's ruling in the first case above.

בְּנֵי יָבָם אָמְרִי: אַיְיתֵי רְאָיָה דְּאָחוּנָא אַתְּ וּשְׁקוֹל. אָמַר לְהוּ סָפֵק: מַה נַּפְשַׁיְיכוּ, אִי אֲחוּכוֹן אֲנָא – הָבוּ לִי מְנָתָא בַּהֲדַיְיכוּ, וְאִי בַּר מִיתְנָא אֲנָא – הָבוּ לִי פַּלְגָּא דְּפָלַג אֲבוּכוֹן בַּהֲדַאי.

The *yavam* then died and his sons and the son of uncertain descent each made a claim to the inheritance: **The sons of the *yavam* say** to the son of uncertain descent: **Bring proof that you are our brother, and** only then can you **take** a portion. The son of **uncertain** descent **said to them: Whichever way you** look at it, I should receive a portion of the inheritance. **If** you assume that **I am your brother,** then **give me a portion** of the inheritance **together with** all of **you, and if** you assume that **I am the son of the deceased,** then **give me the half** of the possessions **that your father** took when he **divided up** the possessions **with me** upon the deceased's death, because if you assume I am his son, then I am his sole heir and your father never had any rights to his possessions.

NOTES

Each party has only an uncertain claim – אִידִי וְאִידִי סָפֵק: Ostensibly, Rav Mesharshiyya's claim that in the Gemara's case each party has only an uncertain claim is difficult, because, as the Rabbis explained, whether the son of uncertain descent is the son of the first or second husband, he has a claim to the possessions. Why then does Rav Mesharshiyya's state that his claim is considered uncertain? Rashi explains that the key issue in defining a claim as certain is whether the potential heir can substantiate the nature of his relationship with the deceased. Since in this case he cannot, his claim is defined as uncertain. The later commentaries explain that this is uniquely true of inheritance rights. In regular monetary disputes, it is indeed sufficient to demonstrate that whatever the situation is, one has a right to the possessions. This is because the basis of one's rights to the possessions is one's acquisition of them, which exists even if unverified. However, in the *halakhot* of inheritance, one's rights to the possessions are merely a function of having the status of an heir, which is based on one's relationship to the deceased. That status can be established only once the relationship is verified. Therefore, as long as one cannot substantiate the precise nature of one's relationship with the deceased, one's claim is always defined as uncertain.

Had already divided up – פָּלַג: The Gemara does not consider what the *halakha* would be had the possessions of the deceased not yet been divided between the son of uncertain descent and the *yavam*. The Rashba, *Tosafot*, and others assume that in such a case, the claim of the son of uncertain descent would certainly be accepted.

The Rashba notes that since the *yavam* consummated the levirate marriage, it would seem that at that time he had an undisputed claim to the possessions. If so, this case should be dependent on the dispute between Admon and the Rabbis cited later in the Gemara, yet the Gemara does not connect the two. Therefore, it would seem that a distinction should be drawn between the two cases. The dispute between Admon and the Rabbis concerns a case where one's rights to the possessions were achieved through an act of acquisition. Only in this case is it possible to say that his act of acquisition strengthens his claim to the extent that it can withstand certain future developments that would have otherwise undermined his rights. However, in a case of inheritance, the fact that someone claimed to have a right to the inheritance and took control of those possessions does not strengthen his claim in any way.

HALAKHA

The son of uncertain descent and the sons of the *yavam*, with regard to the possessions of the *yavam* – סָפֵק וּבְנֵי יָבָם בִּנְכְסֵי יָבָם: If the son of uncertain descent and the sons of the *yavam* come to divide up the possessions of the *yavam* after the *yavam* had previously divided up the possessions of his deceased brother between himself and the son of uncertain descent: If the son of uncertain descent claims that he is either willing to return the portion of the possessions of the deceased that he originally received and instead receive an portion equal to the sons of the *yavam*, or he will insist on receiving all of the possessions of the deceased, his claim is not heeded. This is in accordance with the opinion of Rav, who holds that the original verdict stands. However, the *Taz* and others rule that the original verdict is reconsidered (based on the *Tur*, citing Rosh). According to the *Beit Shmuel*, if the possessions of the deceased had not yet been divided up between the *yavam* and the son of uncertain descent, then the claim would be successful. Furthermore, if the son of uncertain descent had already obtained control of the possessions, they would not be removed from him (Rambam *Sefer Mishpatim*, *Hilkhot Naḥalot* 5:4; *Shulḥan Arukh*, *Even HaEzer* 163:5).

רַבִּי אַבָּא אָמַר רַב: קָם דִּינָא. רַבִּי יִרְמְיָה אָמַר: הֲדַר דִּינָא.

The son of uncertain descent's claim assumes that the original verdict to divide up the possessions of the deceased between the two sides may be reexamined in light of later developments. This assumption, however, is subject to a dispute: **Rabbi Abba said** that **Rav** said: **The** original **verdict stands,**[N] i.e., the original division of the deceased's possessions is considered a closed matter, and the new dispute concerning the possessions of the *yavam* is considered independently of it. Accordingly, the son of uncertain descent's claim cannot succeed, and so he receives no portion of the inheritance of the *yavam*. **Rabbi Yirmeya said: The** original **verdict is reconsidered** in light of the new circumstances, and therefore in this case the son of uncertain descent can put forward his undeniable claim to some of the possessions of the *yavam* based on the original uncertainties that existed with regard to the division of the deceased's possessions.

לֵימָא בְּפִלּוּגְתָּא דְּאַדְמוֹן וְרַבָּנַן קָמִיפַּלְגִי, דִּתְנַן: מִי שֶׁהָלַךְ לִמְדִינַת הַיָּם וְאָבְדָה לוֹ דֶּרֶךְ שָׂדֵהוּ, אַדְמוֹן אָמַר: יֵלֵךְ בַּקְּצָרָה. וַחֲכָמִים אוֹמְרִים: יִקַּח לוֹ דֶּרֶךְ בְּמֵאָה מָנֶה, אוֹ יִפְרַח בָּאֲוִיר.

Let us say that Rabbi Abba and Rabbi Yirmeya **disagree over the dispute between Admon**[P] **and the Rabbis. As we learned** in a mishna (*Ketubot* 109b): With regard to **one** who owns a field and has the rights to a path that passes through land belonging to another, and **he traveled to a country overseas, and** when he returned the **path to his field was lost,**[H] i.e., he forgot where the path was located, **Admon says: He may go** only **on the shortest** path to his field, as although it is not known where the path is, he definitely did have a path, and therefore at the very least he has a right to the shortest path. **The Rabbis say: He must** either **purchase for himself** a new **path for** whatever price is asked, even if it is **one hundred dinars, or he will** have to **fly through the air** to reach his field, i.e., as long as he cannot prove where the original path was, he has no rights to any other path.

וְהֲוֵינַן בָּהּ: לָרַבָּנַן, שַׁפִּיר קָאָמַר אַדְמוֹן! וַאֲמַר רַב יְהוּדָה אֲמַר רַב: הָכָא בְּמַאי עָסְקִינַן – כְּגוֹן שֶׁהִקִּיפוּהָ אַרְבָּעָה בְּנֵי אָדָם מֵאַרְבַּע רוּחוֹת.

And we discussed the mishna and thereby established the parameters of the dispute as follows: It is difficult **for the Rabbis** because **Admon is saying well,** i.e., the logic of his opinion would seem to be compelling. **And** in defense of the Rabbis' opinion, **Rav Yehuda said** that **Rav said: With what are we dealing here?** It is with a case **where** his field was **surrounded by four individuals** who owned the land **on** each of its **four sides.** Therefore, he cannot demand a path from any one of the surrounding owners, since each one can deflect his claim by suggesting that the path might have passed through one of the other owners' land.

אִי הָכִי, מַאי טַעְמָא דְּאַדְמוֹן? וַאֲמַר רָבָא: בְּאַרְבָּעָה דְּאָתוּ מִכֹּחַ אַרְבָּעָה, וְאַרְבָּעָה דְּאָתוּ מִכֹּחַ חַד – כּוּלֵּי עָלְמָא לָא פְּלִיגִי, דְּמָצוּ מַדְחֵי לֵיהּ.

However, this creates a further difficulty: **If so,** that the surrounding land is owned by different people, **what is Admon's rationale** for ruling that the owner of the field has a claim to the shortest path? **And** in order to justify Admon's opinion, **Rava said: With regard to** a case in which there are **four** current owners **who came** to own their land **on the basis of** purchase from **four** previous owners, i.e., each of the current owners acquired their land from a different previous owner, **and** also in a case in which there are **four** current owners **who came** to own their land **on the basis of** purchase from **one** previous owner who originally owned all four pieces of land, **everyone agrees that** the current owners **are able to deflect him** and his claim to a path.

כִּי פְּלִיגִי – בְּחַד דְּאָתֵי מִכֹּחַ אַרְבָּעָה. אַדְמוֹן סָבַר: מָצֵי אָמַר לֵיהּ: מִכֹּל מָקוֹם דַּרְכִּי גַּבָּךְ הוּא. וְרַבָּנַן סָבְרִי, דְּאָמַר לֵיהּ: אִי שָׁתְקַתְּ – שָׁתְקַתְּ, וְאִי לָא – מַהַדְּרְנָא שְׁטָרָא לְמָרַיְיהוּ, וְלֹא מָצֵית לְאִשְׁתַּעוּיֵי דִּינָא בַּהֲדַיְיהוּ.

When they disagree, it is **in** a case in **which** there is only **one** current owner of all four pieces of land, **who came** to own his land **on the basis of** purchase from **four** previous owners. **Admon holds** that the owner of the field **can say to** the current owner of the surrounding land: **Whichever way** you construe the case, **my path** to my field is somewhere **with you** in the surrounding land. **And the Rabbis hold** that the owner of the surrounding land can deflect this claim because **he can say to him: If you** do not press your claim and **are silent,** then **be silent,** and I will sell you a path at a reasonable price. **But if not,** and you insist on pressing your claim, then **I will return the bills** of purchase of the land **to their** previous **owners,**[N] **and** then **you will not be able to** successfully **engage in a legal dispute with them,** as each one could claim that the path went through one of the other pieces of land not owned by them.

NOTES

The verdict stands – קָם דִּינָא: The *Terumat HaDeshen* suggests a rationale for this opinion: At the time of the original verdict to split up the possessions, it is assumed that the parties accepted the verdict and gave up any rights to those possessions awarded to the other party. This is true even though they believe the verdict to have been in error. Therefore, it is obvious that they cannot come later and try to regain those rights. See the Jerusalem Talmud for further discussion of this topic. From the discussion there it would appear that in the case of the sons of *yavam*, they would be able to offer a claim based on a reconsideration of the original verdict.

I will return the bills of purchase of the land to their previous owners – מַהַדְּרְנָא שְׁטָרָא לְמָרַיְיהוּ: *Tosafot* ask: Why doesn't the field owner respond: True, if you actually return the surrounding land to the previous owners then I would not able to make a claim to my path; however, until you actually do so, my claim is valid and you should provide me with a path? The early commentaries answer that the statement of the owner of the surrounding land is not to be taken as a threat. Indeed, it is possible that the previous owners will not be interested in repurchasing the land. Rather, his statement is simply his way of highlighting the fact that the land was originally in the possession of four previous owners who could have easily deflected the field owner's claim to a path. He therefore claims that since they could have done so, and he purchased the land from them, he also has the right to do so (Ritva; *Nimmukei Yosef*).

PERSONALITIES

Admon – אַדְמוֹן: The Admon cited here is Admon ben Gaddai, one of the Sages of Jerusalem in the generation before the destruction of the Temple. Admon was one of two edict judges in Jerusalem who stood at the head of the city judges. It was their responsibility, and part of their authority, to establish amendments and pass permanent public edicts in matters of robbery or damages. Several halakhic rulings are presented in Admon's name in tractate *Ketubot* (108b–110a).

HALAKHA

One whose path to his field was lost – מִי שֶׁאָבְדָה דַּרְכּוֹ שָׂדֵהוּ: With regard to one who owns a field and has the rights to a path leading to his field that passes through land belonging to another, and he traveled to a country overseas and when he returned the path to his field was lost, if the surrounding land currently belongs to a single owner and had always belonged to a single owner, then the field owner may demand that the owner of the surrounding land provide him with at least the shortest path to his field. This is in accordance with the conclusion of the Gemara that in such a case everyone agrees with the ruling of Admon. However, if the surrounding land is currently owned by numerous individuals, even if they purchased their pieces of land from a single previous owner, then the owner of the field has no right to claim a path, and if he wants one, he much purchase it. This is also the ruling if the land is currently owned by a single individual who purchased it from numerous previous owners. This is in accordance with the opinion of the Rabbis (Rambam *Sefer Mishpatim*, *Hilkhot To'en VeNitan* 15:11; *Shulḥan Arukh*, *Ḥoshen Mishpat* 178:1–2).

לֵימָא רַבִּי אַבָּא דְּאָמַר כְּרַבָּנַן,

Having established the parameters of the dispute, the Gemara suggests: **Let us say** that the statement of **Rabbi Abba, who said** that the original verdict stands, **is in accordance with** the opinion of **the Rabbis.** When the owner of the field forgot where his path was located, the surrounding land was owned by four different owners, and therefore at that time the verdict was that he had no ability to successfully claim his path. The Rabbis apparently assume that that verdict stands, and therefore the field owner is considered to have lost any rights to the path. Consequently, even if the surrounding pieces of land are later purchased by a single person, the owner of the field cannot make a claim for his path.

וְרַבִּי יִרְמְיָה דְּאָמַר כְּאַדְמוֹן?

The Gemara continues: **And** the statement of **Rabbi Yirmeya, who said** that the original verdict is repealed, **is in accordance with** the opinion of **Admon.** Admon apparently assumes that although the original verdict was that the field owner has no ability to successfully claim his path, nevertheless, that does not mean he loses his rights to the path. Rather, once the situation changes and the surrounding pieces of land are purchased by a single person, the original uncertainty is revived to allow him to make a claim for at least the shortest path to his field.

אָמַר לָךְ רַבִּי אַבָּא: אֲנָא דַּאֲמָרִי אֲפִילּוּ כְּאַדְמוֹן. עַד כָּאן לָא קָאָמַר אַדְמוֹן הָתָם – אֶלָּא מִשּׁוּם דְּאָמַר לֵיהּ: מִמַּה נַּפְשָׁךְ

The Gemara rejects the comparison: **Rabbi Abba** could have **said to you: When I stated** my ruling, it was **even in accordance with** the opinion of **Admon. Admon states** his ruling **only there,** in the case of the lost path, **because** the field owner **said to** the owner of the surrounding land: **Whichever way you** look at it,

Perek **IV**
Daf **38** Amud **a**

דַּרְכִּי חַד גַּבָּךְ הוּא, אֲבָל הָכָא – מִי אִיכָּא לְמֵימַר הָכִי?

my one path is with you[N] in one of your pieces of land. Since his claim is based on facts that are clear and certain, his claim is successful. **However, here,** in the dispute over the inheritance, **is** the son of uncertain descent **able to state** a claim like **this?** Although the son of uncertain descent claims that ultimately, whatever the nature of his relationship with the deceased is, he should have the right to inherit, nevertheless, since it is not actually known what that relationship is, his claim in reality is merely a composite of uncertain claims.

וְרַבִּי יִרְמְיָה אָמַר לָךְ: אֲנָא דַּאֲמָרִי אֲפִילּוּ לְרַבָּנַן, עַד כָּאן לָא קָאָמְרִי רַבָּנַן הָתָם אֶלָּא מִשּׁוּם דְּאָמַר לֵיהּ: אִי שָׁתְקַתְּ – שָׁתְקַתְּ, וְאִי לָא – מַהֲדַרְנָא שְׁטָרָא לְמָרַיְיהוּ, וְלָא מָצֵית לְאִשְׁתַּעוּיֵי דִּינָא בַּהֲדַיְיהוּ. אֲבָל הָכָא – מִי אִיכָּא לְמֵימַר הָכִי?

And Rabbi Yirmeya could have **said to you: I stated** my ruling **even in accordance with** the opinion of **the Rabbis,** since perhaps **the Rabbis state** their ruling **only there,** in the case of the lost path, **because** the owner of the surrounding land **said to** the field owner: **If you** do not press your claim and **are silent,** then **be silent** and I will sell you the path at a reasonable price; **but if not,** then **I will return the bills** of purchase of the pieces of land **to their** previous **owners and** then **you will not be able to** successfully **engage in a legal dispute with them.** He is successful with this claim because it is within his power to return the fields and thereby recreate the original circumstances in which the owner of the field would forfeit the path. **However, here, are** the sons of the *yavam* **able to state** a claim like **this?** The original circumstance, in which the inheritance of the deceased had still not been divided, cannot be recreated. Therefore, a claim based on that circumstance will be unsuccessful.

NOTES

My one path is with you – דַּרְכִּי גַּבָּךְ הִיא: The commentary here is in accordance with the explanation of Rashi that the distinction between the two cases is whether or not the claim is definite or uncertain. Other commentaries suggest a different interpretation: The distinction lies in whether it is possible to offer a claim based on the current situation. In the case of the path, the field owner's claim is tendered irrespective of any dealings he had with the previous owners of the surrounding pieces of land; it is made against the current owner of the surrounding land based on his ownership of it. However, in the dispute over the inheritance, the claim relates to the original situation, before the inheritance was divided; a situation that no longer exists (Rid; Rabbi Avraham min HaHar).