The Sages penalized her – בעַדַּתֵּם One explanation is that this penalty refers to her inability to marry another man without first receiving a bill of divorce. However, most commentators accept the Jerusalem Talmud’s interpretation that they penalized her to provide a clear sign that the first man cannot remarry her.

The first clause, where she violated a prohibition – תְּרוּמָה The early authorities explain that there are three possible situations here: The first is a situation where one acted entirely unwittingly, e.g., he was unaware that the produce was ritually impure. The second is where one acted unwittingly but was close to acting intentionally, such as in the case of someone who knew the produce was impure but was unaware that it is prohibited to separate teruma from impure food. This is similar to the claim of Tosafot that one who set aside a serpent melon that turned out to be bitter is virtually an intentional sinner. Finally, there is the case of the intentional sinner who knows that the produce is impure and that he should not be separating teruma for pure produce from it (see Keren Ora). Based on these categories, his teruma is either valid teruma, or it is considered teruma but he must separate teruma again, or it is not teruma at all (see Meil).

HALAKHA

One who separates from the ritually impure in order to exempt the pure – גְּרִיוָא. It is prohibited to separate teruma from ritually impure produce instead of from pure produce. If one did so unwittingly, his teruma is considered teruma, but if he acted intentionally the produce remains untithed, and he must separate teruma again. However, the part he set aside as teruma is also teruma. The halakha is in accordance with the opinion of Rav Natan, son of Rabbi Oshaya, as the Gemara follows his ruling (Rambam Sefer Zera’im, Hilkhot Terumot 3:8).

BACKGROUND

Griva – גְּרִיוָא. According to the Sages, a griva is a unit of measure equal to a sela in volume.

The Gemara asks: If so, in the first clause too, they will say it was a mistaken marriage. The Gemara explains: What is the reason that the Sages instituted a marriage contract in general, for an ordinary woman? So that she will not be demeaned in his eyes such that he will easily divorce her. The necessity to find money for her marriage contract will prevent a hasty decision to divorce her. However, in the case of this woman, on the contrary, the Sages actually prefer that she will be demeaned in his eyes such that he will easily divorce her, as the marriage was forbidden and she may not remain with him. Consequently, they eliminated her marriage contract to encourage him to divorce her.

The Gemara answers: The Sages penalized her by requiring her to receive a bill of divorce, lest people say she divorced this man and went back and married the first one. The Gemara counters: If so, in the latter clause of the mishna let us also penalize her. The Gemara responds: The first clause involves a situation where she violated a prohibition through her intercourse, and therefore the Sages penalized her. Conversely, in the latter clause, when she did not violate a prohibition, as she simply became betrothed, the Sages did not penalize her.

The mishna taught that this woman does not have, i.e., she is not entitled to, the payment of her marriage contract. The Gemara explains: What is the reason that the Sages instituted a marriage contract in general, for an ordinary woman? So that she will not be demeaned in his eyes such that he will easily divorce her. The necessity to find money for her marriage contract will prevent a hasty decision to divorce her. However, in the case of this woman, on the contrary, the Sages actually prefer that she will be demeaned in his eyes such that he will easily divorce her, as the marriage was forbidden and she may not remain with him. Consequently, they eliminated her marriage contract to encourage him to divorce her.

The mishna further states that she does not have claim to profits, or sustenance, or worn clothes. Why not? Because the stipulations in the marriage contract, i.e., all the rights of a wife stemming from the stipulations that are part of a marriage contract, are considered like the marriage contract itself. Since she has no marriage contract, she does not have the stipulations in a marriage contract either.

The mishna also teaches that if she took any of the above from this man or from that one she must return anything she took. The Gemara comments: This is obvious. Since she is not entitled to these articles, of course she must give them back. The Gemara explains: It is necessary; lest you say that since she has already taken hold of them we do not remove them from her possession, as this is merely a penalty and she obtained nothing that did not legally belong to her. The tanna therefore teaches us that the court requires her to return even these items.

The mishna taught that the child of either of the men is a manzer. To clarify this issue, the Gemara cites a different discussion. We learned in a mishna elsewhere (Terumot 2:2): One may not separate teruma from ritually impure produce in order to exempt ritually pure food, and if he separated teruma from impure food unwittingly, his teruma is considered teruma. If he acted intentionally, he has done nothing, that is, his action is of no effect. The Sages debated: What is the meaning of the expression: He has done nothing? Rav Hisda said: He has done nothing at all, meaning that even that griva of produce he set aside as teruma returns to its former untithed state, as his entire act is completely disregarded.
Rav Natan, son of Rabbi Oshaya, said: He has done nothing with regard to preparing the remaining produce from which he separated teruma, but the fruit he separated is itself teruma. Although the portion he set aside is sanctified as teruma, this does not exempt him from separating more teruma from ritually pure produce. The Gemara clarifies the two opinions: Rav Hisdai did not say his opinion in accordance with the opinion of Rav Natan, son of Rabbi Oshaya, that, if you say it is teruma, on occasion he will be negligent and not separate anything more, assuming that if the portion he set aside has the status of teruma he must certainly have done everything required.

The Gemara asks: In what way is this case different from that which we learned in a mishna (Terumot 31a): With regard to one who separates teruma from a serpent melon [kishuvironment] and it was discovered to be bitter, or from a watermelon and it was discovered to be spoiled, it is teruma, and yet he must go back and separate teruma from another serpent melon or watermelon. No concern is expressed in this mishna that one might neglect to set aside teruma a second time. The Gemara answers: Are you raising a contradiction between the case of an unwitting sinner and that of an intentional sinner? There is a difference between them, as one who was unwitting did not commit a transgression and consequently does not deserve to be penalized, whereas one who was an intentional sinner did commit a transgression.

And the Gemara raises a contradiction between this ruling involving an unwitting sinner and another halakha of an unwitting sinner: Here, it is taught that if the one who separated ritually impure produce instead of ritually pure produce was unwitting, his teruma is teruma, which indicates that he does not have to separate teruma again. However, there, with regard to rotten fruit, it is taught that it is teruma and yet he must separate teruma again.

And the Gemara also raises a contradiction between one case involving an intentional sinner and another case of an intentional sinner. Here, it is taught that in the case of an intentional sinner who separates teruma, he has done nothing. There, we learned in a mishna (Demai 51b), that with regard to one who separates teruma from produce growing in a vessel that is not perforated, for produce that grew in a perforated vessel, which is considered connected to the ground, it is teruma, but he must go back and separate teruma a second time. This ruling is based on the principle that anything that grew in a pot without a hole does not require separation of teruma by Torah law. In this case, the fact that he must again set aside teruma does not mean that the portion he separated is not consecrated at all.

The Gemara answers: In a case involving two vessels he will listen. Since the difference between the two vessels is clear to the eye, if the owner is told he must separate teruma again, it can be assumed that he will comply. In contrast, in the case of one vessel he will not listen, as ritually impure and pure produce look the same to him. Consequently, if he is informed that he must set aside teruma a second time despite the fact that the produce he already set aside has the status of teruma, he will take no notice.

The Gemara asks another question: And according to the opinion of Rav Natan, son of Rabbi Oshaya, who said that he has done nothing with regard to preparing the remaining produce but it is nevertheless teruma,
From a perforated pot for that which is from a non-perforated pot – Terumah from produce that grew in a perforated vessel for produce that grew in a non-perforated vessel, it is teruma, but it may be eaten only after teruma and tithes have been separated for that teruma itself from elsewhere (Rambam, Sefer Zedim, Hilkhut Terumot 5:16).

One who separates teruma from poor-quality produce for superior-quality produce – ha’hakravenu min ha’murum, ha’rakmedianu min ha’tehavenu. It is permitted to separate teruma from good produce for the bad, provided that they are of the same type, i.e., together they do not constitute diverse kinds. In contrast, one may not separate from the bad for the good. However, if he did do so his teruma is teruma, apart from one who separates from vetch for wheat, as vetch is untithed and tithed from another place.

The Gemara answers: Here, with regard to ritual impure teruma, it is different, as by Torah law it is in fact full-fledged teruma, but the Sages penalized him by making him separate teruma again. This is in accordance with the opinion of Rabbi Elia, as Rabbi Elia said: From where is it derived with regard to one who separates teruma from poor-quality produce for superior-quality produce that his teruma is teruma? As it is written with regard to teruma: “And you shall bear no sin by reason of it, seeing that you have set apart the sanctity of teruma, apart from that which we learned in what way is this case different from that which we learned in a mishna (Demai 5:10): If one separates teruma from that which grew in a perforated pot for that which is from a non-perforated pot, its teruma is teruma, but it may not be eaten until he removes on behalf of that portion itself teruma and tithe from another place?” In other words, the portion he separated as teruma is not entirely consecrated, as it too is considered untithed produce in the sense that teruma must be separated for it. In contrast, one who sets aside impure teruma does not have to separate teruma from that portion itself.

The Sages did not separate from the bad for the good. However, if he did so his teruma is teruma, apart from one who separates from vetch for wheat, as vetch is untithed, apart from another place. Then, the early authorities point out that this issue itself does not preclude him from separating for the bad, provided that the transgression is still in effect, as Rabbi Elia did not consider a transgression. From our here we learn with regard to one who separated from the bad for the good that his teruma is teruma after the fact. Similarly, the teruma of one who separates ritually impure food for pure food is valid teruma by Torah law.

After clarifying the opinions themselves, the Gemara analyzes the case in greater detail. Rabba said to Rav Hisda: According to your opinion, that you said he has done nothing at all, meaning that even that se’a he set aside returns to its former untithed state, what is the reason for this? It is a rabbinic decree, as perhaps he will be negligent and will not separate teruma a second time. However, is there anything that by Torah law is teruma, as stated by Rabbi Elia, and yet due to the concern: Perhaps he will be negligent, the Sages removed its status as sacred and gave to it the status of non-sacred food? And can the court stipulate and enact a decree to uproot something that applies by Torah law?

Rav Hisda said to Rabba: And you, do you not hold that the Sages have the power to do so? But didn’t we learn in the mishna that the child is a mamzer from this one and from that one? Granted, the child from the second man is a mamzer, as he was born to a married woman from a man who was not her husband. However, with regard to the child from the first husband, why is he a mamzer? After all, she is his wife, and by Torah law their son is a full-fledged Jew. And the Sages’ declaration that he is a mamzer cannot be seen as a mere stringency, as they thereby permit him to a manzeret. This shows that a rabbinic decree can uproot a Torah prohibition.

Rabba said to Rav Hisda that Shmuel said as follows: It is forbidden for the child of the first husband to marry a mamzeret. And similarly, when Ravin came from Eretz Yisrael, he said that Rabbi Yoḥanan said that the child is forbidden to a manzeret. And if so, why does the mishna call him a mamzer? This is to teach us that the Sages are stringent and render it prohibited for him to marry a regular Jewish woman. With regard to the issue at hand, as he may not marry a manzeret, the Sages did not in fact uproot a mitzva that applies by Torah law.
Rav Hisd sent a proof to Rabba, in the hand of Rav Aha bar Rav Huna: And can the court not stipulate to uproot something prohibited by Torah law? But isn’t it taught in a baraita: When do a man inherit from his minor wife? 10:14 Rav Shammiyya says: When she stands at her fully developed height, i.e., when she reaches the age of maturity. And Beitz Hillel says: When she enters the wedding canopy. And Rav Eliezer says: When she has any sexual relations. As soon as she is considered his wife, all the halakhot of a wife apply to her. And he inherits from her and becomes impure for her if she dies, even if he is a priest, and she eats teruma on his account if he is a priest.

The Gemara first clarifies various details of this baraita. Rav Shammiyya says: When she stands at her height. The Gemara expresses surprise at this statement: Is this the case even though she has not yet entered the wedding canopy? Betrothal alone, without the marriage canopy, is not enough to enable a man to inherit from an adult woman, let alone a minor. The Gemara answers: You must say that Beitz Shammiyya meant from when she stands at her fully developed height and enters the wedding canopy. And Beitz Shammiyya said to Beitz Hillel as follows: That which you said, that he inherits her from when she enters the wedding canopy, is not enough. Rather, if she stands at her fully developed height, the wedding canopy is effective for bringing about her marriage, and if not, the wedding canopy is not effective for bringing about her marriage.

The Gemara continues its analysis of the baraita. Rav Eliezer says: From when she has sexual relations. The Gemara again expresses surprise: But didn’t Rav Eliezer say that the actions of a minor girl are nothing, which indicates that marriage and intercourse with her are not considered an act of acquisition. Rather, we must say that he meant from when she matures and has sexual relations.

The Gemara returns to the issue at hand, whether the court can stipulate to uproot something prohibited by Torah law. In any event the baraita is teaching that he inherits from her. But here is a case where by Torah law her father, i.e., his relatives, as he is dead, inherits from her, as a minor orphan cannot marry by Torah law, and yet by rabbinic law the husband inherits from her. 10:14 This shows that the Sages can uproot a Torah mitzva. The Gemara answers: This is no proof, as in monetary matters property declared ownerless by the court is ownerless, 10:14 and therefore the court can allocate her inheritance as they see fit.

As Rabbi Yitzhak said: From where is it derived that property declared ownerless by the court is ownerless? As it is stated: “And whoever does not come within three days, according to the council of the princes and the Elders, all his property should be forfeited, and himself separated from the congregation of the captives” (Ezra 10:8). This verse indicates that the court can confiscate anyone’s possessions.

Rabbi Elazar says that the proof that the court can declare property ownerless is from here: “These are the inheritances that Elazar the priest, and Joshua, son of Nun, and the heads of the fathers’ houses of the tribes of the children of Israel distributed for inheritance” (Joshua 13:1). What do heads have to do with fathers? The expression “the heads of the fathers’ houses of the tribes” is unusual and vague. Rather, this comes to tell you: Just as fathers bequeath to their sons anything they want to, so too, the heads, i.e., the leaders and judges of the people, bequeath to the people anything they want to. This shows that the leaders can take property from one individual and give it to another.
A corpse with no one to bury it [met mitzva] —

It is an important mitzva to tend to a corpse, so that it is not left unburied in a degrading state. This mitzva, based on the ideal of human dignity, is so important that even a High Priest and a nazirite, for whom it is prohibited to become ritually impure, are obligated to become impure for a met mitzva.

If one calls and others would answer him —

Several explanations of this phrase have been suggested that affect the rest of the discussion. Some commentators, based on the Jerusalem Talmud, claim that it is the one who discovers the body who calls out for help, to no avail (Rambam). Others maintain that the sick man cried out unanswered before his death, either because no one was present, or because the relatives who would take care of him were absent (Rambam).

She would call and they would not answer her —

Even if she had no inheritance at all, her relatives would presumably tend to her burial. Here, however, since her inheritance was actively transferred from them to the husband they have no wish to care for her (Tosafot HaRoth). Others similarly explain that as the relatives will not handle her burial she is a full-fledged met mitzva (Ramban). The reason is that in all such cases the priest could theoretically hire workers to care for the dead, but the Torah did not oblige him to do so. Here too, the husband does not have to go to the trouble of finding others to bury her (Rashi; see Tosafot).

Which is a met mitzva —

A met mitzva is a corpse found on the wayside or in a city of gentiles, in a place where no one is available to bury it, and where the finder cannot call on other Jews to come and help him tend to it. A corpse in this state may not be moved. Rather, the finder himself must take care of it and bury it in its place, provided that it will be preserved there (see Eiruvin 17b). Even if the finder is a priest he must become ritually impure in this situation (Rambam). The Gemara asks: And is she in fact a met mitzva? But isn’t it taught in a baraita: Which corpse is a met mitzva? Any corpse that does not have anyone to bury it. If it was in a place where if one calls and others would answer him, this is not a met mitzva. In contrast, this girl does have relatives who can bury her, if necessary. The Gemara answers: Here too, since the members of her father’s family do not inherit from her, she would call and they would not answer her, as they have no desire to go to any trouble for her. Since her husband inherits from her, it is his duty to tend to her burial, and he must therefore become impure for her, as she has the status of a met mitzva.

It was further taught: And she eats teruma on his account. The Gemara explains: This is referring to teruma that applies by rabbinic law, not by Torah law. The Gemara attempts to offer a proof for this claim. Come and hear a baraita: If a non-priest ate ritually impure teruma of a priest, he must pay him with ritually pure, non-sacred produce. In a case where he paid with impure, non-sacred food, Sumakhos says in the name of Rabbi Meir that if he did so unwittingly, his payment is considered payment, but if he acted intentionally, his payment is not payment at all. And the Rabbis say: Both in this case and that one his payment is a valid payment, and the food has the sanctity of teruma, although it is ritually impure, and he must also go back and pay him again with pure, non-sacred food.

If he did so unwittingly his payment is payment —

There is a dispute among the early authorities with regard to the meaning of this statement (see Tosafot). Most commentators maintain that the terms unwitting and intentional refer solely to the payment, whereas the eating itself was unwitting, as whenever a non-priest eats teruma by accident his repayment to a priest, both the principal and the added fifth, is consecrated as teruma. However, some explain that the issue here is whether he ate the teruma unwittingly or intentionally (Riva). If a non-priest ate teruma intentionally, then even though he must compensate the priest, like anyone who damages the property of another, the payment is not consecrated. According to this second opinion, the Gemara’s comment that he should be blessed if he repays him with impure, regular produce is understandable, as this food is fit for a priest. However, according to Rashi’s interpretation this is difficult, as noted by Rashi himself: If this produce becomes impure teruma upon his repayment, why is he praised? Tosafot and other early authorities explain that he is worthy of a blessing because he himself forfeits more than the value of impure teruma. Others state, as explained in the commentary to the text, that when he set aside this produce it was suitable for the priest, and it is only after it reached the latter’s possession that it became unfit for him (Ritva).