

NOTES

The agent is like a widow – שליח כאלמנה: Rav Hai Gaon concluded, apparently from here, that an agent, like a widow, may not sell on his own and must have three laymen with him. However, most authorities did not accept this opinion.

Since there are those who separate, etc. – בין דאיכא: The author of *Hatam Sofer* explains that since the homeowner knows that there are three types of donors, by not telling the agent how much he would like him to separate, he indicates that he relies upon the agent's judgment to guess the amount that he wishes to be separated. By contrast, the land has an objective value, and the land owner has no reason to assume that his agent will err in evaluating property. Therefore, it is in no way left to the agent's discretion.

The court appoints a steward for them – מעמידין להן: Rashi and Rabbeinu Hananel explain that a steward is appointed for each of the minors to look out for each orphan's interests, and it is the stewards who select the portions for his charge. The Rosh explains that it could be that there is only one steward appointed for all of the orphans, and it is the court that selects the property for the orphans. This would explain why at first the singular is used for the word steward, while the verb selecting appears in the plural.

HALAKHA

An agent is like a widow – שליח כאלמנה: If an agent disregarded his employer's instructions or if he erred, even by a very small amount, then the sale that he conducted is void. This is true even if he was an agent of the court (Rosh; *Tur*, citing Rabbeinu Tam).

The Rema writes that there are opinions that if one acting as a state-appointed judge sold property through an agent, his agent has the same advantages as a court (Rivash; Rambam *Sefer Kinyan, Hilkhoh Mekhira* 13:9, *Hilkhoh Sheluḥin VeShutafin* 1:2; *Shulḥan Arukh, Even HaEzer* 104:6, *Hoshen Mishpat* 109:6).

Orphans who came to divide, etc. – יתומים שבאו לחלוק: If both adult and minor orphans wish to divide up their father's estate so that the adults can claim their share, then the court appoints a steward for the minors who selects a fair portion for them. Once they have matured, they are not able to protest the division, since the matter took place in the courts.

However, if the court erred in their assessment and underestimated the value of the share of the orphans by one-sixth, then they are able to protest, and the property will be redistributed once they have grown. This is in accordance with the opinion of Rav Nahman and the conclusion of the Gemara (Rambam *Sefer Mishpatim, Hilkhoh Nahalot* 10:4; *Shulḥan Arukh, Hoshen Mishpat* 289:1).

רבא אמר רב נחמן: שליח בדינין. רב שמואל בר ביסנא אמר רב נחמן: כאלמנה.

רבא אמר רב נחמן: שליח בדינין; מה דינין – לאו לדידהו, אף שליח נמי – לאו לדידהו, לאפוקי אלמנה דלדידהו.

רב שמואל בר ביסנא אמר רב נחמן: כאלמנה, מה אלמנה יחידה – אף שליח יחיד, לאפוקי בית דין – דרבם גינהו. והלכתא: שליח כאלמנה.

ומאי שנא מהא דתנן: האומר לשלוחו "צא ותרום" – תרום כדעת בעל הבית. ואם אינו יודע דעתו של בעל הבית – תרום בבינונית, אחד מחמשים. פיתח עשרה או הוסיף עשרה – תרומו? תרומו?

התם, בין דאיכא דתרום בעין רעה, ואיכא דתרום בעין יפה – אמר ליה: להכי אמדתיך. אבל הכא – טעותא הוא, אמר ליה: לא איבעי לך למיטעי.

אמר רב הונא בר חנינא אמר רב נחמן: הלכה כדברי חכמים. ולית ליה לרב נחמן מה ב"ח בית דין יפה? והאמר רב נחמן אמר שמואל: יתומים שבאו לחלוק בנכסי אביהן – בית דין מעמידין להן אפוטרופוס, ובוררין להם חלק יפה. הגדילו – יכולין למחות. ורב נחמן דידיה אמר: הגדילו – אין יכולין למחות, אם כן מה ב"ח בית דין יפה!

לא קשיא: הא – דטעו, הא – דלא טעו.

Rava said that Rav Nahman said: The *halakha* with regard to the agent is like the *halakha* pertaining to the judges. Rav Shmuel bar Bisna said that Rav Nahman said: The *halakha* with regard to the agent is like the *halakha* with regard to a widow.

Rava said that Rav Nahman said: The *halakha* with regard to the agent is like the *halakha* with regard to the judges. Just as the judges have an advantage because they do not assess the value of property for their own benefit, so too, the agent also does not act for his own benefit; this is to the exclusion of a widow who sells for her own benefit.

Rav Shmuel, son of Bisna, said that Rav Nahman said: The *halakha* with regard to the agent is like the *halakha* with regard to a widow.^N Just as a widow is an individual, so too the agent is an individual. This is to the exclusion of the court, which is composed of many people. The Gemara concludes: And the *halakha* is that with regard to this matter, an agent is like a widow.^H

The Gemara asks: And in what way is that case different from this case? As we learned in a mishna (*Terumot* 4:4): In the case of one who says to his agent: Go out and separate *teruma*, the agent separates *teruma* in accordance with the mind-set of the homeowner. And if he does not know the mind-set of homeowner, he separates an intermediate measure, i.e., one-fiftieth of the produce. If he subtracted ten from the denominator and separated one-fortieth or added ten to the denominator and separated one-sixtieth of the produce, his *teruma* is considered *teruma*. If the agent is comparable to a widow, then why isn't the *halakha* that the *teruma* that he has separated is nullified, since he did not act in accordance with the wishes of the homeowner?

The Gemara answers: There, since there are those who separate^N in a miserly fashion one-sixtieth, and there are those who separate generously one-fortieth, the agent can say to his employer: I estimated you to be generous or miserly. However, here there is no logical reason for the mistake made by the agent. It is simply an error on the part of the agent, and so the creditor can say to him: You ought not to have erred.

§ Rav Huna bar Hanina said that Rav Nahman said: The *halakha* is in accordance with the statement of the Rabbis in the mishna. The Gemara asks: Does Rav Nahman not agree with the argument: What advantage is there to the power of the court? Didn't Rav Nahman say that Shmuel said: In a case of orphans who came to divide^H their father's property, the court appoints a steward [*apotropos*] for them^N and selects for the orphans appropriate portions and divides the property accordingly. Afterward, once the orphans have matured, they are able to protest this division of the property. And Rav Nahman said his own statement: Once the orphans have matured, they are not able to protest, as if they were able to do so, what advantage would there be to the power of the court? This proves that Rav Nahman agrees with Rabban Shimon ben Gamliel.

The Gemara answers: This is not difficult. The case of the mishna was one where the judges erred in their assessment, and therefore Rav Nahman said that the sale is void in accordance with the Rabbis. However, the case of the division of property among the orphans is one where they did not err, and so he ruled in accordance with the principle of Rabban Shimon ben Gamliel, that the court is given an advantage and the orphans are not able to protest the division.

Perata – פֶּרְטָא: Perata came from a family of Sages, three generations of which are mentioned here: Rabbi Perata the Great, who apparently lived at the time of the destruction of the Temple; his son, Rabbi Elazar ben Perata, who was among the Sages of the Sanhedrin in Yavne and who lived long enough to see the harsh decrees of the emperor Hadrian and was miraculously saved from execution; and his son Perata, who lived in the time of Rabbi Yehuda HaNasi. It is possible that there was another Rabbi Elazar ben Perata, who was the son of this Perata and who lived during the first and second generations of the *amora'im* in Eretz Yisrael.

אי דלא טעו במאי יכולין למחות?
ברוחות.

The Gemara asks: If the case is one where the judges did not err, with regard to what could the orphans protest? After all, the judges acted correctly. The Gemara answers: They can protest with regard to the locations; one of the orphans can contend that he prefers property in a different location than he was given.

כי אתא רב דימי אמר: מעשה ועשה רבי
בדברי חכמים. אמר לפניו פרטא בנו של
רבי אלעזר בן פרטא בן בנו של רבי פרטא
הגדול: אם בן מה בתי בית דין יפה? והחזיר
רבי את המעשה.

When Rav Dimi came from Eretz Yisrael, he said: A similar incident occurred and Rabbi Yehuda HaNasi acted in accordance with the statement of the Rabbis of the mishna. Perata,^p son of Rabbi Elazar ben Perata, grandson of Rabbi Perata the Great, said before him: If that is the case, what advantage is there to the power of the court over an ordinary person? And Rabbi Yehuda HaNasi reversed his ruling about the incident.

רב דימי מתיי הכי. רב ספרא מתיי הכי:
מעשה וביקש רבי לעשות בדברי חכמים,
אמר לפניו פרטא בנו של רבי אלעזר בן
פרטא בן בנו של רבי פרטא הגדול: אם
בן מה בתי בית דין יפה? לא עשה רבי
את המעשה.

Rav Dimi would teach the incident in this way, as described above. Rav Safra would teach it in this slightly altered way: There was an incident, and Rabbi Yehuda HaNasi wished to act in accordance with the statement of the Rabbis of the mishna. Perata, son of Rabbi Elazar ben Perata, grandson of Rabbi Perata the Great, said before him: If that is the case, what advantage is there to the power of the court over an ordinary person? Consequently, Rabbi Yehuda HaNasi did not take action according to the statement of the Rabbis.

לימא בהא קמילגי: מר סבר: טעה בדבר
משנה – חוזר, ומר סבר: אינו חוזר.

The Gemara suggests: Let us say that they disagree about this: One Sage, Rav Dimi, holds that if one erred in a matter that appears in the Mishna, the decision is revoked. And one Sage, Rav Safra, holds that if one erred in this manner the decision is not revoked. This is why, in Rav Safra's version, Rabbi Yehuda HaNasi changed his mind before issuing his ruling.

לא, דכולי עלמא טעה בדבר משנה –
חוזר. ומר סבר: הכי הוה מעשה, ומר סבר:
הכי הוה מעשה.

The Gemara rejects this: No, everyone agrees that if one erred in a matter that appears in the Mishna, the decision is revoked.¹⁴ There is no fundamental dispute between them, only a disagreement as to the details of the case. One Sage holds that the incident occurred in this way, and one Sage holds that the incident occurred in this way.

אמר רב יוסף: ארמלתא דזבינה – אחריות
איתמי, ובית דין דזבין – אחריות איתמי.

S Rav Yosef said: In the case of a widow who sold property to support herself or as payment of her marriage contract, the property guarantee rests upon the orphans. Therefore, if she sold liened property that was then seized from the purchasers in payment of a previous debt, the buyers are entitled to be reimbursed from the property of the orphans. And so too, if the court sold property for the same purpose, the property guarantee rests upon the orphans.

פשיטא!

The Gemara asks: Isn't this obvious? The widow does not sell her own property, but rather she sells property from her husband's estate to pay off his debts to her, and so clearly the guarantee rests on his properties that now belong to the orphans.

אלמנה לא איצטריכא ליה, כי איצטריך
ליה – בי דינא. מהו דתימא:

The Gemara answers: In truth, it was not necessary for Rav Yosef to mention this with regard to the widow, as it is clear that the property guarantee rests upon the orphans. Where it was necessary for him to mention this *halakha* was with regard to the court. Lest you say:

HALAKHA

If one erred in a matter that appears in the Mishna it is revoked – matter that is not clearly recorded in the Mishna or Gemara, then they are able to disagree with the decision of the early halakhic authorities (*Tur*, citing Rosh). However, it is noted in the *Piskei Maharai* that one may not be lenient in a matter that the authorities were stringent about once the stringency has become well accepted by the majority of the Jewish people, unless one's teachers taught him that what is recorded in the books is not the accepted practice (Rambam *Sefer Shofetim*, *Hilkhot Sanhedrin* 6:1; *Shulhan Arukh*, *Hoshen Mishpat* 25:1).

The Rema cites the opinion that if the judge and his contemporaries are of the opinion that the *halakha* is different than that which is recorded in the books of the halakhic authorities, in a

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With the understanding that the sale generates publicity – אֲדַעְתָּא לְמִיפָק לִיה קְלָא: Rashi, whose opinion was accepted by most of the commentaries, explains as follows. One who bought from the court assumes that there can be no problem with his purchase, since the transaction took place with announcements and with much publicity and no one came forward to protest the sale. Therefore, if one did not state explicitly that he wants to buy the land with a guarantee, it considered as if he purchased the land without a guarantee (see Rid). The Rivan explains this differently. He says that one who buys from the court assumes that the transaction has the same force behind it as an act of the court and therefore no one is able to appeal or nullify it (see Rashash and *Eshel Avraham*).

Announcement – הַכְרָה: In tractate *Arakhin* it is taught how this announcement was made. For orphans selling land they would either make an announcement for thirty consecutive weekdays or they would do so over the course of sixty days, making announcements each Monday and Thursday, when people came to town to hear the Torah read, to go to the courts, and for other purposes.

Although in the second scenario they make announcements only for a total of eighteen days, since this takes place over the course of two months, one can nevertheless reasonably assume that all interested parties will have had an opportunity to hear about the sale. The court will conduct an early assessment of the value of the land. Part of the announcement is also for the potential buyer of the land, as there are times that a buyer will prefer to purchase from the widow or from the orphans because he can make special arrangements with them. This announcement is made in the morning, when workers leave for their jobs, so that they can tell their employers about the property for sale. It is also made in the evening, when they come home from work, so that if someone wants to see the land for himself he can decide to get up early the following morning in order to do so.

HALAKHA

Sold without an announcement – מְכָרוּ בְלֹא הַכְרָה: A court that sold without making an announcement is considered to have made an error in a matter that appears in the Mishna. The sale is void and the property is resold with an announcement, in accordance with the opinion of Rav Yosef.

The Rema wrote that if they sold the property at a time when people are not buying, for example during a time of war or of plague, some say that what is done is done and the sale is valid. Others say that it is considered like a case where they sold without making an announcement (Rambam *Sefer Mishpatim*, *Hilkhot Malve VeLoveh* 12:10; *Shulhan Arukh*, *Even HaEzer* 104:2 and *Hoshen Mishpat* 109:3).

The assessment of the orphans is for thirty days – שום היתומין שלשים יום: When the court needs to sell property belonging to orphans, they assess the value of the land and then make announcements over the course of thirty consecutive days. Alternatively, they do so every Monday and Thursday over the course of sixty days. The announcements are made both in the morning and in the evening, at times when the workers go to and return home from work. This is in accordance with the opinion expressed in the mishna cited here (Rambam *Sefer Mishpatim*, *Hilkhot Malve VeLoveh* 12:8; *Shulhan Arukh*, *Even HaEzer* 104:1 and *Hoshen Mishpat* 109:1).

The assessment for consecrated property – שום ההקדש: If the court comes to sell a field that had been consecrated, they first assess its value and then they make announcements over the course of sixty consecutive days, in the morning and in the evening. This is in accordance with the mishna cited here (Rambam *Sefer Hafla'a*, *Hilkhot Arakhin* 4:27).

כָּל דֹּבֵין מִבֵּי דִינָא – אֲדַעְתָּא לְמִיפָק לִיה קְלָא הוּא דִּבְיֵין. קָא מְשַׁמְעָ לָּו.

”רַבֵּן שְׁמַעוֹן בֶּן גַּמְלִיאֵל אוֹמֵר” כּוֹ. וְעַד בְּמָה? אָמַר רַב הוּנָא בְּרִי הוֹדָה אָמַר רַב שִׁשֶׁת: עַד פְּלָגָא.

תִּנְיָא נִמְי הֲבֵי, אָמַר רַבֵּן שְׁמַעוֹן בֶּן גַּמְלִיאֵל: בֵּית דִּין שְׁמַכְרוּ שְׂוֵה מְאֵתִים בְּמַנְה, אוֹ שְׂוֵה מְנָה בְּמֵאֵתִים – מְכָרֵן קָיִים.

אָמַר אֲמֵימַר מְשַׁמְיָה דְרַב יוֹסֵף: בֵּית דִּין שְׁמַכְרוּ בְּלֹא הַכְרָה – נִעְשָׂו כְּמִי שְׁטַעְו בְּדַבְרֵי מְשַׁנְה, וְחֻזְרִין.

נִעְשָׂו? וְדַאי טַעוּ! דְתַנְן: שׁוּם הִתְוֹמִין שְׁלִשִׁים יוֹם, וְשׁוּם הַהֶקְדֵּשׁ שְׁלִשִׁים יוֹם, וּמְכָרִין בְּבִקְרָוּ וּבְעֶרֶב.

אִי מַהֲהִיא הוּה אֲמִינָא: הֲנִי מִיִּלִּי – שְׁלִיחַ, אֲבָל בֵּית דִּין – לֹא, קָא מְשַׁמְעָ לָּו.

אִיתִיבִיה רַב אֲשִׁי לְאֲמִימַר: שׁוּם הַדִּינָין, שְׁפַחְתּוּ שְׁתוֹת אוֹ הוֹתִירוּ שְׁתוֹת – מְכָרֵן בְּטֵל. הָא שְׂוֵה בְּשׂוֹה – מְכָרֵן קָיִים. מֵאִי לָאוּ – דְלֹא אֲכָרוּ? לֹא, בְּדַאֲכָרוּ.

הָא מְדַסִּיפָא בְּדַאֲכָרוּ – הוּוּ רִישָׁא בְּדַלָּא אֲכָרוּ. דְקַתְמִי סִיפָא: אִם עָשׂוּ אֲגָרַת בְּקוֹרַת, אֲפִילוּ מְכָרוּ שְׂוֵה מְנָה בְּמֵאֵתִים, אוֹ שְׂוֵה מְאֵתִים בְּמַנְה – מְכָרֵן קָיִים!

Everyone who buys from the court buys with the implicit understanding that the sale generates publicity,^N as a court sale is conducted in public with notices. The buyer could therefore think to himself that if no claimants came forward until the time of the actual purchase, then it is certain that there can be no problem with his purchase and he forgoes his property guarantee. Lest you say this, Rav Yosef teaches us that there is nevertheless a guarantee on the property, and it rests upon the orphans and not on the court.

S The mishna teaches: **Rabban Shimon ben Gamliel says that even if the judges err, the transaction is not void because of the prerogative of the court. The Gemara asks: And to what extent can they err without causing the deal to be reversed? Rav Huna bar Yehuda said that Rav Sheshet said: Until half of the value.**

That is also taught in a *baraita*: **Rabban Shimon ben Gamliel said: A court that sold property worth one hundred dinars for two hundred dinars, or property worth two hundred dinars for one hundred dinars, their sale is valid.** Since he doesn't give as an example a larger gap between the market value and the sale price, this must be the most extreme case in which the transaction is not reversed.

Ameimar said in the name of Rav Yosef: With regard to a court that sold without an announcement,^H it is considered as if they erred in a matter that appears in the Mishna and their decision is reversed.

The Gemara asks: Why does Rav Yosef say that it is considered as if the court erred in a matter that appears in the Mishna, when it certainly erred in this manner? **As we learned in a mishna (*Arakhin* 21b): The assessment of the orphans is for thirty days,^H and the assessment for consecrated property^H is for sixty days, and they make announcements during the thirty and the sixty days respectively both in the morning and in the evening.^N The mishna states explicitly that announcements must be made. If the court did not make the announcements, it clearly erred in a matter that appears in the Mishna.**

The Gemara answers: **If all the information that I had were from that mishna, I would say that this applies to an agent but not to a court.** Therefore, Rav Yosef teaches us that even a court that sold property without making announcements has erred.

Rav Ashi raised an objection to the statement of Ameimar: The mishna teaches that the *halakha* with regard to the assessment of the value of a piece of property in order to sell it through the judges is as follows: In a case where they decreased the price by one-sixth of its market value or added one-sixth to its market value, **their sale is void.** One can see from here that if the judges sold the property for its value, their sale is valid. **What, is the mishna not discussing a case where no announcement was made? Ameimar replied: No, the case under discussion is one where they did make an announcement.**

The Gemara asks: Since the last clause is referring to a case where the court made an announcement, the first clause must be referring to a case where they did not make announcements, as it teaches in the final clause: **If they made a document of inspection and announced the sale publicly, then even if they sold property worth one hundred dinars for two hundred dinars or property worth two hundred dinars for one hundred dinars, their sale is valid.**

Here, referring to items for which one makes an announcement, etc. – **כָּאן בְּדָבָרִים שֶׁמְכָרִין עֲלֵיהֶן וְכוּ'** – Rav Hai Gaon and the Rosh, following his opinion, hold that this is how to understand matters here: In cases where no announcement is made, either because the item is one for which no announcement need be made; or the court is selling it at a time when no announcement need be made; or the court is selling it in a locale where it is not customary to announce the sale of property, if the court made an announcement anyway, then the sale is treated like any other property sold with an announcement. This means that the sale is not void unless the court erred in their assessment by more than half the value of the property.

However, the Rif, the Rambam, and others explain that when there is no obligation to make an announcement about the impending sale of property, then if the court makes an announcement, the sale is reversed, even if the error was only by one-sixth of the value of the property (see Ra'ah).

Slaves, etc. – **הָעֶבְדִּים וְכוּ'**: The Rosh explains that even though one cannot collect a debt from orphans in any way other than by taking land they inherited from the deceased, sometimes the court or the steward will decide that it is better to sell slaves, movable property, or contracts instead of selling land. *Tosafot* explain that the Gemara is discussing a case where these items were seized while the debtor was still alive.

And contracts – **וְשִׁטּוֹת**: The reason one would sell a contract rather than collect on it is possibly because the due date for payment has not yet arrived and the orphans need the money. Another possibility is that the debtor is a difficult person and they are concerned that they will not be able to collect from him. Since in these cases one usually sells the contract for less than the amount recorded in the document, it was necessary for the Gemara to state that one still does not need to announce their sale.

And for burial – **וְלִקְבֻרָה**: The Ramban explains that it is obvious that one does not wait the entire thirty-day period required for the announcements when it comes to burying someone who died. It is clear that the burial would never be held up for that long. Rather, the Gemara wishes to teach that one does not even have to make a single announcement.

Tosafot and the other halakhic authorities explain that the sale still takes place without announcements, although money was borrowed to pay for the burial, so that there is no urgency to sell immediately. The reason for this leniency is explained by the Ramban. Since the lender performed an act of kindness for the orphans and gave them the required funds right away in their time of need, he should not have to wait an extensive period of time so that the announcements could be made. If one were forced to wait, people would refrain from lending out money in these circumstances.

BACKGROUND

The Sages of Neharde'a – **נְהַרְדְּעִי**: The Gemara states elsewhere that anonymous statements attributed to the Sages of Neharde'a were authored by Rav Hama from Neharde'a, who served as the head of the yeshiva of Neharde'a for several years following the passing of Rav Nahman bar Yitzhak. It is also possible that this is the same Rav Hama who met with the king of Persia and discussed Torah matters with him.

אֵלָּא לְעוֹלָם בְּדִלָּא אֶכְרוּ, וְלֹא קִשְׁיָא; כָּאן – בְּדָבָרִים שֶׁמְכָרִין עֲלֵיהֶן, כָּאן – בְּדָבָרִים שֶׁאֵין מְכָרִין עֲלֵיהֶן.

Rather, this should be understood differently. Actually, the first clause of the mishna is referring to a case where they did not make an announcement, and this is not difficult. Here, Ameimar is referring to items for which one makes an announcement,^N and if this was not done then the sale is void. There, the mishna is speaking of items for which one does not make announcements.^H

וְאֵלּוּ הֵן דְּבָרִים שֶׁאֵין מְכָרִין עֲלֵיהֶן: הָעֶבְדִּים, וְהַמְטַלְטְלִין, וְהַשְּׁטוֹת. עֲבָדִים טַעֲמָא מְאִי – שְׂמָא יִשְׁמְעוּ וְיִבְרָחוּ, מְטַלְטְלִין וְשְׁטוֹת – שְׂמָא יִגְנְבוּ.

And these are the items for which one does not make an announcement:^H Slaves,^N movable property, and contracts.^N The Gemara explains: What is the reason that slaves are sold without an announcement? Slaves are sold without an announcement lest they hear that they are about to be sold and escape. Why is the sale of movable property and contracts also not announced? Lest they be stolen.

וְאִיבְעִית אֵימָא: כָּאן – בְּשַׁעָה שֶׁמְכָרִין, כָּאן – בְּשַׁעָה שֶׁאֵין מְכָרִין.

And if you wish, say instead that here Ameimar is referring to a time when one makes an announcement, while there the mishna is referring to a time when one does not make an announcement.^H

דְּאִמְרֵי נְהַרְדְּעִי: לְכַרְגָּא, לְמוֹזְנֵי וְלִקְבֻרָה – מִזְבֵּינֵן בְּלֹא אֶכְרוּתָא.

When does one not make an announcement? As the Sages of Neharde'a^B say: For the purpose of paying head tax, and for payment to provide for children's sustenance, and for burial,^N the court sells property inherited by orphans without an announcement because these are pressing needs. There is no time to wait for an announcement.^H

וְאִיבְעִית אֵימָא: כָּאן – בְּמִקוֹם שֶׁמְכָרִין, כָּאן – בְּמִקוֹם שֶׁאֵין מְכָרִין. דְּאִמְרֵי רַב נַחֲמָן: מְעוֹלָם לֹא עָשׂוּ אֶגְרָת בִּקְוֹת בְּנְהַרְדְּעָא.

And if you wish, say instead that here, Ameimar is referring to a locale where one makes an announcement, while there, the mishna is referring to a locale where one does not make an announcement,^H as Rav Nahman said: They never made a document of inspection in Neharde'a.

HALAKHA

Of items for which one does not make announcements – **בְּדָבָרִים שֶׁאֵין מְכָרִין עֲלֵיהֶן**: In a situation where the court sold items that do not require an announcement and they erred in their assessment, if the error is up to one-sixth of the value of the item, the sale is valid. If it exceeded that amount, then the sale is void.

The Rema writes that there are some (*Tur*, citing Rosh) who say that this is true only if the court did not make an announcement. However, if they did make an announcement, then as long as their error did not exceed the equivalent of half of the value of the property, the sale is valid (Rambam *Sefer Mishpatim*, *Hilkhot Malve VeLoveh* 12:11; *Shulhan Arukh*, *Even HaEzer* 104:4 and *Hoshen Mishpat* 109:3).

Items for which one does not make an announcement – **דְּבָרִים שֶׁאֵין מְכָרִין עֲלֵיהֶן**: One does not make an announcement for the sale of slaves, movable property, or contracts. This ruling is in accordance with the Gemara here (Rambam *Sefer Mishpatim*, *Hilkhot Malve VeLoveh* 12:11; *Shulhan Arukh*, *Even HaEzer* 104:4 and *Hoshen Mishpat* 109:3).

At a time when one does not make an announcement – **בְּשַׁעָה שֶׁאֵין מְכָרִין**: If the court sold property during a time when no announcement is required, and they erred by one-sixth of the value of the land, the sale is void even if they made an announcement. If they erred by less than one-sixth, the sale is valid even if they did not make any announcement. According to the Rosh

and the *Tur*, since they announced the sale, it is valid as long as they did not err by more than double the actual value of the property (Rambam *Sefer Mishpatim*, *Hilkhot Malve VeLoveh* 12:11; *Shulhan Arukh*, *Even HaEzer* 104:4 and *Hoshen Mishpat* 109:3).

When does one not make announcements – **מִתִּי אֵין מְכָרִין**: No announcement is made when land is sold in order to pay for a burial, to provide sustenance for a wife and daughters, or to pay taxes due to the king, in accordance with the opinion of the Sages of Neharde'a.

Similarly, if money was borrowed for the above-mentioned purposes, when the creditors come to take payment of the loans, no announcement is made (*Tur* and *Maggid Mishne* citing *Tosafot*) (Rambam *Sefer Mishpatim*, *Hilkhot Malve VeLoveh* 12:11; *Shulhan Arukh*, *Even HaEzer* 104:4 and *Hoshen Mishpat* 109:3).

A locale where it is not the custom to make announcements – **מִקוֹם שֶׁאֵין נוֹהֲגִים לְהַכְרִיז**: If the court sold property in a locale where no announcement is required and they erred by one-sixth of the property's value, the sale is void. The Rema writes that according to the Rosh and the *Tur*, if they announced the sale despite the fact that they were not required to do so, the sale is valid, provided the error is not more than double the actual value of the property (Rambam *Sefer Mishpatim*, *Hilkhot Malve VeLoveh* 12:11; *Shulhan Arukh*, *Hoshen Mishpat* 109:3 and *Even HaEzer* 104:4, and in the comment of Rema).

HALAKHA

Is...sold immediately, etc. – מוכרין אותן לאלתר וכו' – Movable property that belongs to orphans is assessed by the court and is sold immediately. If the market is not too distant, the items are taken there. This ruling is in accordance with the conclusion of the Gemara (Rambam *Sefer Mishpatim, Hilkhot Malve VeLoveh* 12:11; *Shulhan Arukh, Even HaEzer* 104:4 and *Hoshen Mishpat* 109:3).

LANGUAGE

Deteriorate [itzatzta] – איצצתא: According to Rashi, this word means a slight souring. Some have found a source for this word in the Greek *ὀξύτης, oxutēs*, but while it bears a similar meaning, it is apparently not its linguistic source. To this day there are cheap wines that over time become somewhat sour, and even completely turn into vinegar. However, Rabbeinu Gershom, quoted in the *Arukh*, explains *itzatzta*, or in his version, *utza*, as meaning depreciation of monetary value, since when everyone comes to sell their wines, they are sold for less. Even so, there is still a certain profit from selling at this time as then other things can likewise be bought for less.

PERSONALITIES

Ravina the younger – רבינא זוטרי: Ravina the younger is Ravina the later *amora*. It is explained in the *Iggeret Rav Sherira Gaon* that his name was Ravina bar Rav Huna. He was a student of Rav Ashi and his successor in the job of redacting the Talmud. The tenure of Ravina and Rav Ashi marked the conclusion of organized teaching. With the death of Ravina, the period of the *amora'im* ended and the period of the *savora'im* began.

As described here in the Gemara, Ravina's father died when he was young and left him an orphan under the aegis of his uncle, who was also named Ravina and who had been a student of Rava and a colleague of Rav Ashi.

סבור מינה משום דבקיאי בשומא. אמר ליה רב יוסף בר ממימי: לדידי מיפרשא לי מיניה דרב נחמן: משום דקרו להו "במי אכלי נבסי דאכרוזתא".

אמר רב יהודה אמר שמואל: מטלטלין של יתומים שמין אותן, ומוכרין אותן לאלתר. רב חסדא אמר אבימי: מוכרין אותן לשווקים.

ולא פליגי. הא – דמיקרב שוקא, הא – דמרחק שוקא.

רב כהנא הוה בידיה שכרא דרב משרשיא בר חילקאי יתמא. שהיה עד ריגלא. אמר: אף על גב דנפל ביה איצצתא – מייתי זוזא חריפא.

רבינא הוה בידיה חמרא דרבינא זוטרי יתמא. בר אחתייה. הוה לדידיה נמי חמרא. הוה קמסיק ליה לסיכרא.

אתא לקמיה דרב אשי, אמר ליה: מהו לאמטויי בהדן? אמר ליה: זיל, לא עדיף מדידך.

Rav Yosef bar Minyumi understood from Rav Nahman's statement that no announcements were made in Neharde'a because the Sages there were all expert in the appraisal of an article's value. Rav Yosef bar Minyumi said to him: This was explained to me personally by Rav Nahman himself: It was because those who purchase the property are called: People who consume property that was publicly announced. This disparaging nickname was given because the purchasers were perceived as taking advantage of the distress of others by running to buy the property of someone in trouble. Since decent, honest people did not wish to buy property whose sale had been announced, they stopped making announcements.

Rav Yehuda said that Shmuel said: Movable property that belongs to orphans is appraised and sold immediately^H so that it not deteriorate over time. Rav Hilda said that Avimi said: The movable property is sold on a market day, when there are many potential buyers and the items will sell for a proper price.

The Gemara notes: And they do not disagree with each other. Rather, this opinion, that the items are sold on a market day, applies when the market day is approaching,^N so the property is not sold immediately. That opinion, that the items are sold immediately, applies when the market day is far off.

Rav Kahana was in possession of beer that belonged to Rav Mesharshiyya bar Hilkai, who was an orphan.^N He delayed selling it until the Festival. He explained the rationale for his actions and said: Although it is possible that it may deteriorate [itzatzta]^L and sour a little, it nevertheless brings in money at the time of the Festival, as it will sell for a higher price and for money, not credit. Consequently, it is in the best interests of Rav Mesharshiyya bar Hilkai to hold off and sell the beer at the next Festival.

It is also related that Ravina was in possession of wine belonging to the orphan Ravina the younger,^P who was his sister's son. He also had wine of his own, which he was taking to Sikhra to sell.

He came before Rav Ashi and said to him: What is the halakha here, am I able to bring his wine along with my wine, or must I wait for a more opportune time to sell it? He said to him: Go to Sikhra and take his wine along as well, as his is no better than yours,^N and if you sell your own wine in this manner, it is clear that you think this is the best way to sell, and it is permitted for you to sell his wine in this manner.

NOTES

Because they are called – משום דקרו להו: Most of the commentaries explain along the lines of Rashi that this was a denigrating nickname for the people buying property whose sale had been announced. The transaction gave the purchaser a bad name, as he was suspected of taking advantage of the sellers who needed to sell these properties and of paying less than the full price for them. The Rivan offers two other explanations for this: In one interpretation, this was a nickname given to the sellers who were seen as poor unfortunates needing to sell land by making announcements. Alternatively, this was a nickname given to the ones making the announcements.

The market day is approaching – דמיקרב שוקא: Rashi, the Rivan, and others explain that the Gemara means that if the market day is approaching, the court or steward waits until then to sell the movable property, as it is certainly easier to sell the items on a market day. The Rambam explains differently,

that the Gemara means that if the market is located nearby, then the movable property is sold there; but if it is far away, it is preferable to sell where they are, lest the items become damaged en route.

Orphan – יתמא: This took place when Rav Mesharshiyya bar Hilkai was an orphaned minor, before he grew up and became one of the leading Sages of his day (see Rivan).

Is no better than yours – לא עדיף מדידך: The Rambam explains that the steward may transport the items only if they may become ruined if they are left waiting for buyers. However, if the items will not spoil if they are left until buyers are found, the steward is prohibited from jeopardizing them by taking them along on a journey. Although one is permitted to assume this risk with his own money, he may not risk the orphan's money in this way.

A minor girl who refuses to continue living with her husband etc. – הַמְמָאֲנָת וְכוּ: A minor who was betrothed during her childhood and then refuses to remain with her husband does not receive the principal of her marriage contract, but she does receive any additional sums that were incorporated into the document. If the husband consumed produce from her property, he is not compelled to reimburse her. If she borrowed money to pay for her sustenance or to ransom herself, after which she exercised her right of refusal, the husband is not compelled to reimburse her for this expense (Rambam *Sefer Nashim, Hilkhot Ishut* 24:5; *Shulhan Arukh, Even HaEzer* 116:5).

A woman who is a secondary forbidden relative etc. – הַשְּׂנֵיָה וְכוּ: A woman who marries a secondary relative forbidden by rabbinic law is not entitled to the principle of her marriage contract, she does not receive benefit from any of the additional conditions, she is not entitled to receive sustenance, and her husband does not have to reimburse her for produce that he consumed from her property while they were married. However, she does receive the additional sum stipulated in her marriage contract (Rambam *Sefer Nashim, Hilkhot Ishut* 24:2; *Shulhan Arukh, Even HaEzer* 116:4).

A widow who married a High Priest, etc. – גְּדוּל וְכוּ: If one marries a woman who is forbidden to him by Torah law, and if he knew that she was forbidden to him at the time when they were wed, then she is entitled to her marriage contract. This *halakha* is in accordance with the mishna here (Rambam *Sefer Nashim, Hilkhot Ishut* 24:4; *Shulhan Arukh, Even HaEzer* 116:1).

One who refuses to continue living with her husband is not disqualified, etc. – מְמָאֲנָת לֹא פְסֻלָּה וְכוּ: A minor girl who exercises her right of refusal is not entitled to collect payment of her marriage contract. She is not disqualified from marrying one of the brothers or other relatives of her previous husband, nor is she disqualified from marrying a priest. She also does not need to wait three months before remarrying. This is in accordance with the opinion of Shmuel (Rambam *Sefer Nashim, Hilkhot Geirushin* 11:16–17, 22; *Shulhan Arukh, Even HaEzer* 155:10).

One who is divorced with a bill of divorce, etc. – יוֹצֵאָה: If a minor who was married off by her mother or her brother was divorced from her husband with a bill of divorce, then she is entitled to payment of her marriage contract, and he is prohibited from marrying any of her relatives. She is also prohibited from marrying his relatives and from marrying a priest, and she needs to wait three months before remarrying. This is in accordance with the opinion of Shmuel (Rambam *Sefer Nashim, Hilkhot Geirushin* 11:16–17, 22; *Shulhan Arukh, Even HaEzer* 155:10).

Shmuel also said: **One who refuses to continue living with her husband is not disqualified^H from marrying one of the brothers of her husband.** Her refusal annuls the marriage, and it is as if it never happened. **And for the same reason, unlike a divorcée, this girl is not disqualified from marrying a member of the priesthood.** However, **one who is divorced with a bill of divorce^H is disqualified from marrying one of the brothers and is also disqualified from marrying a member of the priesthood.**

MISHNA An orphan girl who was married off by her mother or brother before reaching the age of majority may refuse to continue living with her husband upon reaching the age of majority, thereby retroactively annulling their marriage. In the case of **one who refuses to continue living with her husband^H** in this manner; and in the case of a woman who is a **secondary forbidden relative^H** by rabbinic law; and in the case of a **sexually underdeveloped woman [ailonit]**, who is incapable of bearing children, each of these women is **not entitled to payment of a marriage contract; and they are not entitled to remuneration for the produce^N** that the husband consumed; and they are **not entitled to sustenance; and they are not entitled to their worn clothes** that were brought in to the marriage as part of their dowry and became worn out during the marriage.

If, from the start, he married her with the understanding that she is an ailonit, then she is entitled to payment of a marriage contract.

In the case of a **widow who married a High Priest,^{HN} or a divorcée or a yevama who performed halitza and later married a common priest; or a daughter born from an incestuous or adulterous relationship [mamzeret] who married an Israelite; or a Gibeonite woman who married an Israelite; or a Jewish woman who married a Gibeonite or a mamzer,** although each of these unions is prohibited by Torah law, the woman is still **entitled to payment of a marriage contract.**

GEMARA Rav taught that a **minor girl who was married off by her mother or by her brother and who is divorced with a bill of divorce is not entitled to her marriage contract.** According to Torah law, this marriage never took effect, and it was never established that in this situation she would receive a marriage contract. **And all the more so, one who refuses to continue living with her husband and annuls the marriage herself is not entitled to payment of a marriage contract.**

Shmuel taught that one who refuses to continue living with her husband is not entitled to her marriage contract, but one who is divorced with a bill of divorce is entitled to her marriage contract.

The Gemara notes: **And Shmuel follows his line of reasoning, as Shmuel said: One who refuses to continue living with her husband is not entitled to her marriage contract, but one who is divorced with a bill of divorce is entitled to her marriage contract.**

Shmuel also said: **One who refuses to continue living with her husband is not disqualified^H from marrying one of the brothers of her husband.** Her refusal annuls the marriage, and it is as if it never happened. **And for the same reason, unlike a divorcée, this girl is not disqualified from marrying a member of the priesthood.** However, **one who is divorced with a bill of divorce^H is disqualified from marrying one of the brothers and is also disqualified from marrying a member of the priesthood.**

מתני' הממאנת השנייה, והאילונית – אין להן כתובה, ולא פירות, ולא מוונות, ולא בלאות.

אם מתחלה נשאָה לשים אילונית – יש לה כתובה.

אלמנה לכהן גדול, גרושה וחרושה לכהן הדיוט, ממורת ונתינה לישראל, בת ישראל לנתין ולממור – יש להם כתובה.

גמ' רב תני: קטנה יוצאה בגט – אין לה כתובה, וכל שכן ממאנת.

שמואל תני: ממאנת – אין לה כתובה, אבל יוצאה בגט – יש לה כתובה.

ואודא שמואל לטעמיה, דאמר שמואל: ממאנת – אין לה כתובה. יוצאה בגט – יש לה כתובה.

ממאנת – לא פסלה מן האחיין, ולא פסלה מן הכהונה. יוצאה בגט – פסלה מן האחיין ופסלה מן הכהונה.

NOTES

And not the produce – ולא פירות: The commentaries disagree with regard to the meaning of this phrase, since it cannot be understood literally, as the husband and not the wife has the right to the produce of the wife's property. Rashi and others explain that it is referring to her right, enacted by the Sages, that in exchange for receiving the produce from her property, the husband must pay her ransom if she is taken captive. These women, however, are not entitled to this benefit. Another explanation is that she is not reimbursed for the produce that her husband used (Jerusalem Talmud; Rashi; Rambam).

A widow who married a High Priest – אלמנה לכהן גדול: It is confusing that in the cases where the marriage is prohibited by rabbinic law, a woman loses all of her rights and privileges, but there are cases where the marriage is prohibited by Torah law, e.g., when a widow marries a High Priest, in which the woman does not lose her rights. There are two solutions to this problem offered by the Jerusalem Talmud and the Babylonian Talmud (*Yevamot* 85b). One explanation is that people are careful about a Torah prohibition. The Sages therefore chose to reinforce rabbinic prohibitions to a greater extent than Torah law prohibitions, so that people not think lightly of them. Another

explanation is that in cases where the marriage is prohibited by rabbinic law, it is primarily the woman who is interested in the marriage. Although it is a prohibited union, she is not discouraged from entering it because she will not be disqualified from marrying a priest and her children will not be *mamzerim*. Therefore, the Sages penalized her as a deterrent. However, in cases where there is a prohibition by Torah law, it is primarily the man who is interested in the marriage, as through the marriage she becomes disqualified from marrying a priest, and her children will be *mamzerim*. For this reason, the Sages had no reason to penalize her, and she retains her rights.

HALAKHA

The act of a minor girl is something, etc. – מעשה
מקטנה בלום וכו'. In the case of a minor girl who was married off by her mother or brother, while she is married her husband has rights to any lost object that she finds and to any wages that she earns. If she dies while married to him, he is the one to inherit her possessions. This ruling is in accordance with the opinion of Rabbi Yehoshua, as the *halakha* is in accordance with his opinion in disputes between him and Rabbi Eliezer (Rambam *Sefer Nashim*, *Hilkhot Ishut* 22:4; *Shulhan Arukh*, *Even HaEzer* 155:10).

NOTES

And he is able to annul her vows, etc. – ובהפרת
וכו'. Rabbi Yehoshua's statement that a husband of a minor girl has monetary rights to her property should be understood as a rabbinic enactment, as the Sages have the authority to enact monetary ordinances and to confiscate money from one person to give it to another.

What is more difficult to understand is this husband's special status outside of the monetary realm, as he is able to annul her vows and is allowed to become ritually impure for her. In tractate *Nidda*, it is explained that since she is a minor, her vows have no efficacy according to Torah law, and they take effect on a rabbinic level. The Sages, therefore, have the authority to grant the husband the ability to annul her vows. This is problematic according to the opinion that within one year of reaching the age of maturity, the vows of a minor are effective according to Torah law, provided that the child understands the concept of vows and how they operate. In that case, one must follow the opinion of Rava, that any wife who takes a vow does so on the condition that it meets her husband's approval. This same reasoning applies in the case of a minor girl.

With regard to the husband being allowed to become ritually impure for her, *Tosafot* explain, based on the Gemara, that since he is the one who inherits from her, the wife's relatives are unwilling to take care of her. She is then considered a *met mitzva*, a corpse with no one to bury it, and the *halakha* is that even a priest is obligated to bury a *met mitzva*.

The principle – כָּלֵל שֶׁל דָּבָר: The Maharsha asks what else is included by stating a principle that was not already stated explicitly by Rabbi Yehoshua. He answers that it teaches that the husband is obligated to provide her with a marriage contract. *Tosafot* in tractate *Yevamot* explain that it teaches that if she were the daughter of an Israelite who is married to a priest, she may also partake of the *teruma* given to her husband.

ממאנת אינה צריכה להמתין שלשה חודשים.

Another difference between a woman who refuses to continue living with her husband and a woman who was divorced normally is the following: **One who refuses to continue living with her husband does not need to wait three months** before remarrying, as other women who separate from their husbands must.

יוצאה בגט – צריכה להמתין שלשה חודשים.

One who leaves the marriage union through a bill of divorce is required to wait three months before remarrying.

מאי קא משמע לן? תנינא כולהו: הממאנת באיש – הוא מותר בקרובותיה, והיא מותרת בקרוביו, ולא פסלה מן הכהונה. נתן לה גט – הוא אסור בקרובותיה, והיא אסורה בקרוביו, ופסלה מן הכהונה!

The Gemara asks: **What is Shmuel teaching us** by telling us all of this? We already learned it all in *Yevamot* (108a): In the case of **one who refuses to continue living with a certain man, he is permitted to her relatives and she is permitted to his relatives, and she is not disqualified from marrying into the priesthood. If he gave her a bill of divorce, then he is forbidden to her relatives and she is forbidden to his relatives, but she is not disqualified from marrying into the priesthood.**

צריכה להמתין שלשה חודשים, איצטריכא ליה, דלא תנן.

The Gemara answers: **It was necessary for him** to mention that if she receives a bill of divorce, **she is required to wait three months** before remarrying, **as we did not learn that halakha** in the mishna. Once Shmuel mentioned the difference between one who refuses to continue living with her husband and one who is divorced, he mentioned the other differences between the two cases.

לימא בתנאי, רבי אליעזר אומר: אין מעשה קטנה בלום, ואין בעלה זכאי במציאתה, ולא במעשה ידיה, ולא בהפרת נדריה, ואינו יורשה, ואינו מיטמא לה. כללו של דבר: אינה כאשתו לכל דבר, אלא שצריכה מיאון.

The Gemara suggests: **Let us say that this dispute between Rav and Shmuel is parallel to a dispute between tanna'im**, as the *baraita* teaches: **Rabbi Eliezer says: The act of marriage by a minor girl is nothing**, i.e., has no legal impact, when she is married off not by her father, and **her husband is not entitled to any lost article that she finds, and not to her earnings; and he is not able to annul her vows; and he does not inherit from her; nor does he become impure for her if he is a priest. The principle is that her legal status is not that of his wife in every sense, only that she requires a refusal in order to leave the marriage.**

רבי יהושע אומר: מעשה קטנה בלום, ובעלה זכאי במציאתה ובמעשה ידיה ובהפרת נדריה, ויורשה, ומיטמא לה. כללו של דבר: הרי היא כאשתו לכל דבר, אלא שיוצאה במיאון.

Rabbi Yehoshua says: **The act of marriage by a minor girl is something**,^H i.e., has legal impact, and **her husband is entitled to any lost article that she finds and to her earnings; and he is able to annul her vows;^N and he inherits from her; and he becomes impure for her, even if he is a priest. The principle^N is that her legal status is that of his wife in every sense, except for the fact that she leaves this union through refusal and does not need a bill of divorce.**

לימא רב דאמר רבבי אליעזר, ושמואל דאמר רבבי יהושע?

Shall we say that Rav said that she does not receive payment of her marriage contract in accordance with the opinion of Rabbi Eliezer, who holds that her marriage did not take effect, **and that Shmuel said that she does receive payment of her marriage contract in accordance with the opinion of Rabbi Yehoshua**, who holds that her marriage did take effect?

אליבא דרבי אליעזר – כולי עלמא לא פליגי.

The Gemara rejects this: **According to the opinion of Rabbi Eliezer, everyone agrees that a minor girl's marriage has no legal standing and, as Rav said, she is not entitled to payment of her marriage contract.**

כי פליגי – אליבא דרבי יהושע. שמואל – רבבי יהושע, ורב: עד כאן לא קאמר רבי יהושע התם אלא מדידה לדידה, אבל מדידה לדידה – לא.

When they disagree, they disagree in accordance with the opinion of Rabbi Yehoshua. Shmuel is in accordance with the literal opinion of Rabbi Yehoshua. And Rav says that when Rabbi Yehoshua said there that a minor girl has a legal status of his wife in every sense, it was only with regard to her obligations toward him. But with regard to his obligations toward her, since according to Torah law they are not married, the Sages could not obligate the husband to pay her anything.