מְמָאֵנֶת אֵינָהּ צְרִיכָה לְהַמְתִּין שְׁלֹשָׁה חֳדָשִׁים,

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.

Perek **XI**
Daf **101** Amud **a**

יוֹצְאָה בְּגֵט – צְרִיכָה לְהַמְתִּין שְׁלֹשָׁה חֳדָשִׁים.

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

מַאי קָא מַשְׁמַע לָן? תָּנֵינָא כּוֹתֵלָהּ: הַמְמָאֶנֶת בְּאִישׁ – הוּא מוּתָּר בְּקֵרוֹבוֹתֶיהָ, וְהִיא מוּתֶּרֶת בְּקֵרוֹבָיו, וְלֹא פְּסָלָהּ מִן הַכְּהוּנָּה. נָתַן לָהּ גֵּט – הוּא אָסוּר בְּקֵרוֹבוֹתֶיהָ, וְהִיא אֲסוּרָה בְּקֵרוֹבָיו, וּפְסָלָהּ מִן הַכְּהוּנָּה!

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.**

צְרִיכָה לְהַמְתִּין שְׁלֹשָׁה חֳדָשִׁים, אִיצְטְרִיכָא לֵיהּ, דְּלָא תְּנַן.

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.

לֵימָא כְּתַנָּאֵי, דְּרַבִּי אֱלִיעֶזֶר אוֹמֵר: אֵין מַעֲשֵׂה קְטַנָּה כְּלוּם, וְאֵין בַּעְלָהּ זַכַּאי בִּמְצִיאָתָהּ, וְלֹא בְּמַעֲשֵׂה יָדֶיהָ, וְלֹא בַּהֲפָרַת נְדָרֶיהָ, וְאֵינוֹ יוֹרְשָׁהּ, וְאֵינוֹ מְטַמֵּא לָהּ. כְּלָלוֹ שֶׁל דָּבָר: אֵינָהּ כְּאִשְׁתּוֹ לְכָל דָּבָר, אֶלָּא שֶׁצְּרִיכָה מֵיאוֹן,

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.

רַבִּי יְהוֹשֻׁעַ אוֹמֵר: מַעֲשֵׂה קְטַנָּה כְּלוּם, וּבַעְלָהּ זַכַּאי בִּמְצִיאָתָהּ וּבְמַעֲשֵׂה יָדֶיהָ וּבַהֲפָרַת נְדָרֶיהָ, וְיוֹרְשָׁהּ, וּמְטַמֵּא לָהּ. כְּלָלוֹ שֶׁל דָּבָר: הֲרֵי הִיא כְּאִשְׁתּוֹ לְכָל דָּבָר, אֶלָּא שֶׁיּוֹצְאָה בְּמֵיאוֹן.

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.

לֵימָא רַב דַּאֲמַר כְּרַבִּי אֱלִיעֶזֶר, וּשְׁמוּאֵל דַּאֲמַר כְּרַבִּי יְהוֹשֻׁעַ?

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?

אַלִּיבָּא דְּרַבִּי אֱלִיעֶזֶר– כּוּלֵּי עָלְמָא לָא פְּלִיגִי.

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.

כִּי פְּלִיגִי – אַלִּיבָּא דְּרַבִּי יְהוֹשֻׁעַ. שְׁמוּאֵל – כְּרַבִּי יְהוֹשֻׁעַ, וְרַב: עַד כָּאן לָא קָאָמַר רַבִּי יְהוֹשֻׁעַ הָתָם אֶלָּא מִדִּידָהּ לְדִידֵיהּ, אֲבָל מִדִּידֵיהּ לְדִידָהּ – לָא.

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.

HALAKHA

The act of a minor girl is something, etc. – מַעֲשֵׂה קְטַנָּה כְּלוּם 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; *Shulḥan Arukh*, *Even HaEzer* 155:10).

NOTES

And he is able to annul her vows, etc. – וּבַהֲפָרַת נְדָרֶיהָ 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 – כְּלָלוֹ 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.

״וְלֹא בְּלָאוֹת״. אָמַר לֵיהּ רַב הוּנָא בַּר חִיָּיא לְרַב כָּהֲנָא: אָמְרַתְּ לָן מִשְּׁמֵיהּ דִּשְׁמוּאֵל: לֹא שָׁנוּ אֶלָּא נִכְסֵי מְלוֹג, אֲבָל נִכְסֵי צֹאן בַּרְזֶל – אִית לָהּ.

§ The mishna teaches that a girl who refuses to continue living with her husband, a woman who is forbidden by rabbinic law as a secondary relative, and an *ailonit* are not entitled to payment of a marriage contract **and** are **not** entitled to their **worn clothes. Rav Huna bar Ḥiyya said to Rav Kahana: You told us in the name of Shmuel: They taught** that she is not entitled to her worn clothes **only** with regard to the worn-out items of **usufruct property** [***nikhsei melog***],[L] **but she does have** rights to the worn-out items of her **guaranteed property** [***tzon barzel***].[L]

הֲווֹ בָּהּ רַב פַּפָּא: אַהַיָּיא? אִילֵימָא אַמְּמָאֲנַת, אִי דְּאִיתְנְהוּ – אִידֵי וְאִידֵי שָׁקְלָא, וְאִי דְּלֵיתְנְהוּ – אִידֵי וְאִידֵי לָא שָׁקְלָא!

Rav Pappa discussed it and wondered: **To which** part of the mishna is this referring? **If we say** that it is referring **to one who refuses** to continue living with her husband, then **if** the worn-out articles **are still** in existence, **she takes both** the usufruct and the guaranteed properties. Since the marriage is annulled, she takes whatever belongs to her. **And if they are no longer** in existence and were completely worn out over the course of time, **then she does not take** compensation for **either** of them, as the husband was within his rights to make use of them.[H]

אֶלָּא אַמְּיַילוֹנִית, אִי דְּאִיתְנְהוּ – אִידֵי וְאִידֵי שָׁקְלָא, אִי דְּלֵיתְנְהוּ – אִיפְּכָא מִיבָּעֵי לֵיהּ: נִכְסֵי מְלוֹג, דִּבְרִשׁוּתָהּ קַיְימֵי – אִית לָהּ, נִכְסֵי צֹאן בַּרְזֶל, דְּלָאו בִּרְשׁוּתָהּ קַיְימֵי – לֵית לָהּ.

Rather, it must be that Shmuel's statement is in reference **to an *ailonit*.** This too is difficult as, in that case, **if** the articles **are still** in existence **she takes both** the usufruct and the guaranteed properties. **If they are no longer** in existence, then Shmuel **should have** stated the **opposite** and said: With regard to the **usufruct property, which remains in her possession** during the marriage, **she does** receive compensation for it in the event that the marriage is annulled. However, **she does not** receive compensation for **the guaranteed property, which does not remain in her possession** during the marriage but in the possession of her husband.[H]

אֶלָּא אַשְׁנִיָּה, וְקָנְסוּ רַבָּנַן לְדִידָהּ בְּדִידֵיהּ, וּלְדִידֵיהּ בְּדִידָהּ.

Rather, it must be that Shmuel's statement is in reference **to a secondary** forbidden **relative,**[H] **and** the rationale for this *halakha* is that the **Sages penalized** both the husband and the wife for violating a rabbinic prohibition. The Sages assigned a penalty **to her with regard to his** obligations to her, and she is not reimbursed for the worn-out usufruct property. **And** they assigned a penalty **to him with regard to her** obligations to him so that he is responsible for reimbursing her for the worn-out guaranteed property.

LANGUAGE

Usufruct property [*nikhsei melog*] – נִכְסֵי מְלוֹג: The early commentaries found it difficult to explain the source of this word. There are those who said that it is connected to the root *mem*, *lamed*, *gimmel*, meaning scalding in order to remove hair from skin. In a similar vein, the husband removes the profits from the properties. Others explain that it is derived from the Greek λόγος, *logos*, meaning word, or speech, in the sense that these are properties acquired by a person through the power of speech and agreement. However, it seems that the most likely explanation is that this word has its own inherent meaning, as it was demonstrated that it has its parallel in Akkadian, where it meant properties that the wife brings to the husband.

Guaranteed property [*tzon barzel*] – צֹאן בַּרְזֶל: The Hebrew literally means iron sheep. It is an evocative expression, similar to a term found in Roman law, which describes the legal standing of these properties. The property serves as a flock of iron sheep for its owner in that its value is guaranteed by someone, in this case the husband. The metaphor is apt in another way as well, as these properties bring no profit to their owners but only preserve their own value.

HALAKHA

The worn-out articles of one who refuses to remain married to her husband – בְּלָאוֹת מְמָאֶנֶת: The husband of a minor girl who refuses to remain married is not obligated to reimburse her for any property that was lost or was stolen during the period in which they were married, regardless of whether the property was usufruct or guaranteed property. She takes with her only whatever remains from her possessions and leaves him. In the *Shulḥan Arukh*, it is explained that the husband has to return her guaranteed property. This is in accordance with the opinion of the Ran, that it is only in cases where the articles were worn out through use that he does not have to recompense her for them. But if he takes over the property itself, then he must provide her with compensation (Rambam *Sefer Nashim*, *Hilkhot Ishut* 24:9; *Shulḥan Arukh*, *Even HaEzer* 155:10).

The worn-out articles of an *ailonit* – בְּלָאוֹת אַיְילוֹנִית: If a man's wife is discovered to be an *ailonit* or to be forbidden to him by Torah law, and he was unaware of this, he is not obligated to reimburse her for any of the guaranteed properties that were lost, stolen, or worn out during their marriage. However, he is obligated to reimburse her for anything that was lost or stolen from the usufruct property (Rambam *Sefer Nashim*, *Hilkhot Ishut* 24:8; *Shulḥan Arukh*, *Even HaEzer* 116:1).

In reference to a secondary forbidden relative – אֶלָּא אַשְׁנִיָּה: In the case of a woman who is forbidden to her husband as a secondary relative by rabbinic law, although she is not entitled to payment of a marriage contract, she has the same rights as all other women with regard to her dowry. The husband is responsible for the guaranteed property that she brings to the marriage, but not for the usufruct property. If the usufruct property is stolen or lost, it is her loss, and he is not obligated to reimburse her (Rambam *Sefer Nashim*, *Hilkhot Ishut* 24:7–8; *Shulḥan Arukh*, *Even HaEzer* 116:4).

אֲמַר רַב שִׁימִי בַּר אַשִׁי: שְׁמַע מִינָּהּ מִדְּרַב כָּהֲנָא: עַיֵּילָא לֵיהּ גְּלִימָא – קָרְנָא הָוֵי, וְלָא מְכַסֵּי לָהּ וְאָזֵיל עַד דְּבָלֵי.

Rav Shimi bar Ashi said: Conclude from the statement **of Rav Kahana**[N] that **if** a wife **brought** home **to** her husband **a cloak**[H] after they were already married, **it is** viewed as **capital, and he may not go and cover himself with it until it wears out.** With regard to land that the wife obtains during the marriage, the husband has the right to benefit from it by consuming its produce. From the fact that Rav Kahana stated that it is only in this particular case that the woman is not reimbursed for clothing that became worn out through her husband's use, one can infer that generally, the husband does not have the right to use a garment she obtains, to the degree that it becomes worn out.

וְהָאָמַר רַב נַחְמָן: פֵּירָא הָוֵי! דְּרַב נַחְמָן פְּלִיגָא.

The Gemara asks: **But didn't Rav Naḥman say** that use of the cloak **is** considered **the produce** of her property, to which the husband is entitled? The Gemara answers: The statement **of Rav Naḥman** is in **disagreement** with that opinion.

"אֵין לָהֶן כְּתוּבָּה". אָמַר שְׁמוּאֵל: לֹא שָׁנוּ אֶלָּא מָנֶה מָאתַיִם, אֲבָל תּוֹסֶפֶת – יֵשׁ לָהֶן.

§ The mishna teaches that these specific women **are not entitled to** payment of **a marriage contract. Shmuel said: They taught this only** with regard to the principal of the marriage contract, which the Sages instituted for all women, amounting to **one hundred dinars** for a widow and **two hundred** dinars for a virgin. **However,** the **additional** sum listed in the marriage contract, which their husband specified for them of his own accord, is considered a gift and **they are entitled to** it.[H]

תַּנְיָא נָמִי הָכִי: נָשִׁים שֶׁאָמְרוּ חֲכָמִים "אֵין לָהֶן כְּתוּבָּה", כְּגוֹן הַמְמָאֶנֶת וְחַבְרוֹתֶיהָ – אֵין לָהֶן מָנֶה מָאתַיִם, אֲבָל תּוֹסֶפֶת יֵשׁ לָהֶן.

The Gemara notes: **That is also taught** in a *baraita*: **Women** with regard to **whom the Sages said: They are not entitled to** payment of **a marriage contract, for example, one who refused** to remain married to her husband, **and her companions,**[N] **they are not entitled** to the principal of **one hundred dinars** or **two hundred** dinars. **But** as for the **additional** sum stipulated in the marriage contract that the husband added of his own accord, **they are entitled to** it.

נָשִׁים שֶׁאָמְרוּ חֲכָמִים "יוֹצְאוֹת שֶׁלֹּא בִּכְתוּבָּה", כְּגוֹן עוֹבֶרֶת עַל דָּת וְחַבְרוֹתֶיהָ – אֵין לָהֶן תּוֹסֶפֶת, וְכָל שֶׁכֵּן מָנֶה מָאתַיִם. וְהַיּוֹצֵאת מִשּׁוּם שֵׁם רַע – נוֹטֶלֶת מַה שֶּׁלְּפָנֶיהָ וְיוֹצְאָה.

However, **women** with regard to **whom the Sages said: They are divorced**[N] **without** receiving payment for their **marriage contract, for example, a woman who violates** the **precepts** of *halakha* or Jewish custom, **and her companions,**[H] **are not entitled to the additional** sum stipulated by their husbands in the marriage contract. **And** since they violated and transgressed the mitzvot, it is **all the more so** that they are not entitled to receive the principal **one hundred dinars** or **two hundred** dinars, as the Sages penalized them and negated all of their husband's obligations that are recorded in the marriage contract. **And one who is divorced because** she received **a bad reputation** for licentiousness **takes what is left** of her usufruct property **and is divorced.**

מְסַיַּיע לֵיהּ לְרַב הוּנָא. דְּאָמַר רַב הוּנָא: זִינְּתָה – לֹא הִפְסִידָה

The Gemara notes: This *baraita* **supports** the opinion **of Rav Huna, as Rav Huna said:** A woman who **was licentious has not lost**

NOTES

Conclude from the statement of Rav Kahana – שְׁמַע מִינָּהּ מִדְּרַב כָּהֲנָא: Rashi explains that the inference is from Rav Kahana's statement that is only in the case of a secondary forbidden relative that the woman is not reimbursed for clothing that became worn out through her husband's use. The Ra'ah and his students explained differently: Since Rav Kahana explained that the worn-out articles referred to in the mishna are usufruct property, it is implied that the use of the cloak is considered the principal. It could not be considered the produce or profits of the principal, as it has already been explained in the mishna that the wife is not entitled to the produce, meaning that the husband does not reimburse her for the produce that he consumed from her property. The Ritva wrote that Rashi did not explain the Gemara in this way, although it is arguably a simpler way to understand the Gemara. Rashi explained differently, as according to his opinion the produce in the mishna is referring to the husband's obligation to redeem his wife if she is taken captive, which is an obligation enacted by the Sages in exchange for his rights to the produce of her property.

One who refused to remain married to her husband, and her companions – הַמְמָאֶנֶת וְחַבְרוֹתֶיהָ: The Rif is of the opinion that the phrase: Her companions, is referring to the other women listed in the mishna together with her and includes the *ailonit*. The Rambam is of the same opinion. Several of the early commentaries, including the Ra'avad, questioned this opinion, as it is clear that in the case of an *ailonit* the whole marriage was a transaction conducted in error, and there is no reason for her to receive the additional sums stipulated in the marriage contract. The Ramban, although not wholly satisfied with the opinion of the Rif, nevertheless tries to explain it by saying that since he married her and wants to be with her, as long as she is married to him one is able to say that he agrees to give her this additional amount as a gift. The Ra'ah and others are of the opinion that this *halakha* applies only in the case of a woman who is a forbidden secondary relative, but it does not apply in the case of a mistaken transaction, e.g., with an *ailonit* or with a woman found to possess flaws.

Women with regard to whom the Sages said: They are divorced, etc. – נָשִׁים שֶׁאָמְרוּ חֲכָמִים יוֹצְאוֹת וכו': According to Rashi, it seems that the distinction between the two groups is based on the difference between the phrase: They are not entitled to payment of a marriage contract, and: They are divorced without a marriage contract. The Ramban and his students explain that the distinction is not because of the different phrases and is not derived from the differences between the phrases. It is inferred from the differences between the two types of situations themselves. One situation is where the woman was never supposed to marry this man and is not entitled to the rabbinic enactment of the marriage contract. However, any additional sums that the husband added of his own accord and independent of the enactment of the Sages belong to her. By contrast, those women who are divorced because they received a reputation for licentiousness and the others about whom the Sage said that they are divorced without receiving payment of their marriage contracts were originally entitled to payment of a marriage contract. They were penalized by the Sages for misdeeds committed during their marriage, and the Sages instituted an ordinance that they forfeit both the principal and the additional amounts of the marriage contract. It is explained in the *Nimmukei Yosef* that this reason is not applicable to women that are being divorced because they possess deficiencies or because they had taken certain types of vows (see 72b). One must say, otherwise, that with regard to women who are forbidden to their husbands, although they are not entitled to payment of a marriage contract, the husband nevertheless wants to be with them and that is why the additional amounts in the contract can be seen as a gift to the woman. However, with regard to one who performed misdeeds or one in whom a deficiency of one kind or another was discovered, one can't say that the husband is interested in remaining married to her. As such, he certainly did not intend to present her with any gifts, so she loses both the principal and the additional amounts.

HALAKHA

A wife brought home to her husband a cloak – עַיֵּילָא לֵיהּ גְּלִימָא: If a wife brings to the marriage articles or utensils as part of her usufruct property, the husband can use them until they become worn out. If they divorce, he is not obligated to reimburse her for the wear and tear on the usufruct property that she brought to the marriage. This ruling is in accordance with the opinion of Rav Naḥman, who says that the use one derives from articles and utensils is considered profit and is not considered benefit from the principal (Rambam *Sefer Nashim*, *Hilkhot Ishut* 22:34; *Shulḥan Arukh*, *Even HaEzer* 85:13).

The additional sum, they are entitled to it – תּוֹסֶפֶת יֵשׁ לָהֶן: If one marries a woman without realizing that she is an *ailonit* or that she is prohibited by Torah law from marrying him, or one marries a secondary forbidden relative, or one's minor wife refuses to remain married to him, although these women are not entitled to receive the principal of the marriage contract or to take advantage of the stipulations of the marriage contract, they nevertheless receive the additional sum awarded them by their husband in the contract. This is in accordance with the opinion of Shmuel (Rambam *Sefer Nashim*, *Hilkhot Ishut* 24:2, 5; *Shulḥan Arukh*, *Even HaEzer* 116:1, 5, 155:10).

A woman who violates the precepts of *halakha* or Jewish custom, and her companions – עוֹבֶרֶת עַל דָּת וְחַבְרוֹתֶיהָ: Neither an adulterous woman, nor a woman who transgresses Torah law or custom, nor a woman who is divorced because she received a reputation for licentiousness are entitled to the principal, the stipulations of, or the additional sum added to the marriage contract. These women receive whatever is left of their dowry, and the husband is not obligated to reimburse them for anything that either lost value or was lost from their property. This is in accordance with the *baraita* cited here (Rambam *Sefer Nashim*, *Hilkhot Ishut* 24:10; *Shulḥan Arukh*, *Even HaEzer* 115:5).

בְּלָאוֹתֶיהָ קַיָּימִין.

her right to **her worn clothes** that are in **existence.** She retains possession of her clothes and all of the other items that she brought with her to the marriage that have not been worn out.

תָּנֵי תַּנָּא קַמֵּיהּ דְּרַב נַחְמָן: זִינְּתָה – הִפְסִידָה בְּלָאוֹתֶיהָ קַיָּימִין. אָמַר לֵיהּ: אִם הֵיא זִינְּתָה, כֵּלֶיהָ מִי זָנוּ? תְּנֵי: לֹא הִפְסִידָה בְּלָאוֹתֶיהָ קַיָּימִין.

The *tanna* teaches a *baraita* **before Rav Naḥman:** A woman who **was licentious lost** her right to **her extant, worn clothes,** i.e., when they divorce, she does not keep her clothing. **He said to him: If she** was unfaithful and **engaged in sexual intercourse** with another, **were her items** also **licentious?** Certainly she is not penalized by losing her right to her property, and therefore **teach** the opposite: A woman who was licentious **has not lost** her right to **her extant worn clothes.**

אָמַר רַבָּה בַּר בַּר חָנָה אָמַר רַבִּי יוֹחָנָן: זוֹ דִּבְרֵי רַבִּי מְנַחֵם סְתִימְתָאָה. אֲבָל חֲכָמִים אוֹמְרִים: זִינְּתָה – לֹא הִפְסִידָה בְּלָאוֹתֶיהָ קַיָּימִין.

Similarly, **Rabba bar bar Ḥana said** that **Rabbi Yoḥanan said: This** *baraita* taught by the *tanna* **is the statement of Rabbi Menaḥem,**[N] **the unattributed,** as his opinion is cited in several places as the unattributed mishna. **However, the Rabbis say** that if **she was licentious, she has not lost** her right to **her extant worn clothes.**

״אִם מִתְּחִלָּה נְשָׂאָהּ״ כו׳. אָמַר רַב הוּנָא: אַיְלוֹנִית – אִשָּׁה וְאֵינָהּ אִשָּׁה, אַלְמָנָה – אִשָּׁה גְּמוּרָה.

§ The mishna teaches that **if, from the start, he married** her with the understanding that she is an *ailonit,* she is entitled to payment of her marriage contract. **Rav Huna said: An *ailonit*[B] is a wife and she is not a wife,** while **a widow** who is married to a High Priest is **entirely a wife.**

אַיְלוֹנִית אִשָּׁה וְאֵינָהּ אִשָּׁה, הִכִּיר בָּהּ – יֵשׁ לָהּ כְּתוּבָּה, לֹא הִכִּיר בָּהּ – אֵין לָהּ כְּתוּבָּה. אַלְמָנָה אִשָּׁה גְּמוּרָה, בֵּין הִכִּיר בָּהּ בֵּין לֹא הִכִּיר בָּהּ – יֵשׁ לָהּ כְּתוּבָּה.

The Gemara explains: **An *ailonit*** is sometimes treated as **a wife and she** is sometimes **not** treated as **a wife.** How so? If **he knew about her** that she was an *ailonit* before marrying her, **she is entitled to** payment of her **marriage contract** like any other wife. But if **he did not know about her** that she was an *ailonit* before marrying her, **she is not entitled to** payment of her **marriage contract. A widow** is **entirely** considered **a wife. Whether he knew about her** that she was a widow before marrying her **whether he did not know** this **about her, she is entitled to** payment of her **marriage contract.**

וְרַב יְהוּדָה אוֹמֵר: אַחַת זוֹ וְאַחַת זוֹ אִשָּׁה וְאֵינָהּ אִשָּׁה, הִכִּיר בָּהּ – יֵשׁ לָהּ כְּתוּבָּה, לֹא הִכִּיר בָּהּ – אֵין לָהּ כְּתוּבָּה.

And Rav Yehuda says: Both the *ailonit* and **the** widow are sometimes treated as **a wife and** sometimes **not** treated as **a wife.** Even in the case of a widow who marries a High Priest, if **he knew about her** that she was a widow before marrying her, **she is entitled to** payment of her **marriage contract.** But if **he did not know about her** that she was a widow, **she is not entitled to** payment of her **marriage contract.**

מֵיתִיבִי: כְּנָסָהּ בְּחֶזְקַת שֶׁהִיא כֵּן, וְנִמְצֵאת שֶׁהִיא כֵּן – יֵשׁ לָהּ כְּתוּבָּה. הָא סְתָמָא – אֵין לָהּ כְּתוּבָּה!

The Gemara raises an objection to Rav Huna's statement from a *baraita*: If **he married** the woman **with the presumption that she is so,** that she has some deficiency or that she is forbidden to him, **and it is found that she is so** as he thought from the start, then **she is entitled to** payment of her **marriage contract.** One can infer from here: If he married her **without specification,** and it turns out that she has a deficiency or that she is forbidden to him, **she is not entitled to** payment of her **marriage contract.**

NOTES

This is the opinion of Rabbi Menaḥem – זוֹ דִּבְרֵי רַבִּי מְנַחֵם: The Ritva wrote that there is no dispute here with Rav Naḥman, who changed the formulation of the *baraita*. Rav Naḥman changed the *baraita* to ensure that it reflected the *halakha*, since when the *tanna* teaches it in an anonymous fashion, the implication is that the *halakha* is in accordance with it. This is why it was important for Rav Naḥman to make the change, so that the correct *halakha* is taught. Rabbi Yoḥanan is cited in order to teach that the *tanna* was not incorrect in what he said as far as the *baraita* goes, as there is this alternative halakhic opinion.

BACKGROUND

***Ailonit* – אַיְלוֹנִית:** From the detailed discussions in the Talmud, mainly in tractate *Yevamot*, it appears that an *ailonit* suffers from a genetic disorder that does not allow her to have children, in contrast to a barren woman, whose physical and sexual development is ordinarily normal, but she cannot have children because of some other deficiency or impediment. From those descriptions, it appears that an *ailonit* can be recognized by certain unique physical traits, including a lack of secondary sex characteristics, like pubic hairs. Furthermore, it appears from the Gemara that there are different types of *ailoniyyot*, ranging from women who have an overabundance of male hormones to those who suffer from Turner syndrome, where only one X chromosome is present and fully functioning. Approximately 98 percent of all fetuses with Turner syndrome spontaneously abort. The incidence of Turner syndrome in live female births is believed to be about one in 2,500.

Within Jewish law, there are many discussions about the status of an *ailonit*, mainly concerning her lack of secondary female sex characteristics and her physical development at a relatively advanced age. The Gemara therefore raises questions about when an *ailonit* is considered to have reached the age of adulthood, which *halakha* ordinarily defines as physical maturity.

לָא תֵּימָא: הָא סְתָמָא אֵין לָהּ כְּתוּבָּה. אֶלָּא אֵימָא: כְּנָסָהּ בְּחֶזְקַת שֶׁאֵינָהּ בַּן, וְנִמְצֵאת שֶׁהִיא בַּן – אֵין לָהּ כְּתוּבָּה.

The Gemara answers: **Do not say** this implies **that** if he married her **without specification she is not entitled to** payment of her **marriage contract. Rather, say** the following inference: If **he married her with the presumption that she is not so and it is found that she is so, she is not entitled to** payment of her **marriage contract.**

אֲבָל סְתָמָא מַאי? אִית לָהּ. אַדְּתָנֵי בְּחֶזְקַת שֶׁהִיא בַּן וְנִמְצֵאת שֶׁהִיא בַּן יֵשׁ לָהּ כְּתוּבָּה, לַשְׁמְעִינַן סְתָמָא וְכָל שֶׁכֵּן הָא!

The Gemara asks: **But** if he married her **without specification, what** would the *halakha* be? The *halakha* would be that **she is entitled** to payment of her marriage contract. If that is the case, instead **of teaching** the case where he married her **with the presumption that she is so and she is found to be so** and **she is entitled to** payment of her **marriage contract, let him teach us** the case where he marries her **without specification.** If in a case where he marries her without specification she is entitled to payment of her marriage contract, then **all the more so** in **this** case, where he marries her knowingly, she must be entitled to it.

וְעוֹד תָּנֵי: כְּנָסָהּ בְּיָדוּעַ, וְנִמְצֵאת בְּיָדוּעַ – יֵשׁ לָהּ כְּתוּבָּה, כְּנָסָהּ סְתָם – אֵין לָהּ כְּתוּבָּה. תִּיוּבְתָּא דְּרַב הוּנָא!

And further, it **is taught** explicitly in another *baraita*: If **he married her knowing** that she has a deficiency, **and it is found** that she does have the deficiency **as was known, she is entitled to** payment of her **marriage contract.** If he married her **without specification, she is not entitled to** payment of her **marriage contract.** This is **a conclusive refutation of** the opinion of **Rav Huna.**

רַב הוּנָא מַתְנִיתִין אַטְעִיתֵיהּ. הוּא סָבַר: מְדְּקָא מַפְלִיג בְּאַיְלוֹנִית וְלָא קָמַפְלִיג בִּאַלְמָנָה – מִכְּלָל דְּאַלְמָנָה אֲפִילּוּ בְּסְתָמָא נַמִּי אִית לָהּ, וְלָא הִיא; כִּי קָתָנֵי לָהּ לְאַלְמָנָה – אַפְלוּגְתָּא דְּאַיְלוֹנִית קָאֵי.

The Gemara explains: **Rav Huna was misled by** the language of **the mishna** and made an inference that caused him to say something that is not in keeping with the *halakha*. **He thought that since** the mishna **differentiates** between a case where the husband was aware of her situation and a case where he was not aware **with** regard to **an *ailonit*, but** the mishna **does not differentiate with** regard to **a widow, by inference** one can say **that** with regard to **a widow, even where** one merely marries her without knowing that she is a widow, **she is entitled** to payment of her marriage contract. In truth, however, **that is not so. When** the mishna **teaches** the *halakha* **of the widow, it** is based **on the differentiation** stated **with** regard to **the *ailonit*.** The mishna intended for the distinction between whether the husband was aware of her situation before the marriage, which was stated in the case of an *ailonit*, to apply in the case of the widow as well.

הדרן עלך אלמנה ניזונת

מתני׳ הַנּוֹשֵׂא אֶת הָאִשָּׁה וּפָסְקָה עִמּוֹ כְּדֵי שֶׁיָּזוֹן אֶת בִּתָּהּ חָמֵשׁ שָׁנִים – חַיָּיב לְזוֹנָהּ חָמֵשׁ שָׁנִים.

MISHNA

One who marries a woman, and she stipulated with him that he would sustain her daughter from another man for **five years,**[H] **is obligated to sustain her** daughter for **five years.**

נִיסֵּת לְאַחֵר וּפָסְקָה עִמּוֹ כְּדֵי שֶׁיָּזוֹן אֶת בִּתָּהּ חָמֵשׁ שָׁנִים – חַיָּיב לְזוֹנָהּ חָמֵשׁ שָׁנִים. לֹא יֹאמַר הָרִאשׁוֹן: לְכְשֶׁתָּבֹא אֶצְלִי אֲזוֹנָהּ, אֶלָּא מוֹלִיךְ לָהּ מְזוֹנוֹתֶיהָ לְמָקוֹם שֶׁאִמָּהּ.

If, in the course of those five years they were divorced and the woman **was married to another** man, **and she stipulated with him**[H] **that he would sustain her daughter** for **five years, he** too **is obligated to sustain her** for **five years. The first** husband **may not say: When she comes to me, I will sustain her. Rather, he brings her sustenance to her, to the place where her mother** lives.

וְכֵן לֹא יֹאמְרוּ שְׁנֵיהֶם: הֲרֵי אָנוּ זָנִין אוֹתָהּ כְּאֶחָד. אֶלָּא, אֶחָד זָנָהּ וְאֶחָד נוֹתֵן לָהּ דְּמֵי מְזוֹנוֹת.

And likewise, both of them may not jointly **say: We will sustain** the girl **as one** in a partnership. **Rather, one sustains her,** providing her with food, while **the other gives her the monetary** value **of the sustenance.**

נִיסֵּת – הַבַּעַל נוֹתֵן לָהּ מְזוֹנוֹת, וְהֵן נוֹתְנִין לָהּ דְּמֵי מְזוֹנוֹת. מֵתוּ – בְּנוֹתֵיהֶן נִיזּוֹנוֹת מִנְּכָסִים בְּנֵי חוֹרִין, וְהִיא נִיזּוֹנֶת מִנְּכָסִים מְשׁוּעְבָּדִים, מִפְּנֵי שֶׁהִיא כְּבַעֲלַת חוֹב.

If the daughter **was married** during this period, her **husband provides**[H] **her** with the **sustenance** customarily provided by a husband for his wife, **and** the two men obligated to sustain her due to agreements with her mother **provide her with the monetary value of the sustenance.** If the two husbands of the mother **died, their daughters are sustained from unsold property, and she,** their wife's daughter, whom they agreed to sustain, **is sustained** even **from liened property** that was sold. This is **due to** the fact **that her** legal status is **like** that of **a creditor,** given that he is contractually obligated to support her.

הַפְּקֻחִים הָיוּ כּוֹתְבִים: עַל מְנָת שֶׁאָזוֹן אֶת בִּתֵּךְ חָמֵשׁ שָׁנִים כָּל זְמַן שֶׁאַתְּ עִמִּי.

The perspicacious ones **would write**[H] an explicit stipulation into the agreement: I agree **on the condition that I will sustain your daughter for five years** only **as long as you are with me.** Then they would not be obligated to sustain a girl who is not their daughter when they are no longer married to the girl's mother.

גמ׳ אִתְּמַר, הָאוֹמֵר לַחֲבֵירוֹ: חַיָּיב אֲנִי לְךָ מָנֶה, רַבִּי יוֹחָנָן אָמַר: חַיָּיב, וְרֵישׁ לָקִישׁ אָמַר: פָּטוּר.

GEMARA

It was stated with regard to **one who says to another: I am obligated to** pay **you one hundred dinars,**[HN] that **Rabbi Yoḥanan said:** He is **obligated** to pay, **and Reish Lakish said:** He is **exempt.**

הֵיכִי דָּמֵי? אִי דַּאֲמַר לְהוּ ״אַתֶּם עֵדַיי״ – מַאי טַעֲמָא דְּרֵישׁ לָקִישׁ דְּקָפָטַר? אִי דְּלָא אֲמַר לְהוּ ״אַתֶּם עֵדַיי״ – מַאי טַעֲמָא דְּרַבִּי יוֹחָנָן דְּקָמְחַיֵּיב?

The Gemara seeks to clarify: **What are the circumstances** of this case? **If he said to** the people present: **You are my witnesses, what is the reasoning of Reish Lakish, who exempts** him from payment? He confessed before witnesses that he owes the money. **If he did not say to them: You are my witnesses,**[N] **what is the reasoning of Rabbi Yoḥanan, who obligates** him to pay?

HALAKHA

She stipulated with him that he would sustain her daughter for five years – פָּסְקָה עִמּוֹ כְּדֵי שֶׁיָּזוֹן אֶת בִּתָּהּ חָמֵשׁ שָׁנִים: If one marries a woman and agrees to provide support for her daughter for a period of five years, he is obligated to support her with food and drink for the first five years after the wedding, regardless of the price of these commodities (Rambam *Sefer Nashim*, *Hilkhot Ishut* 23:17; *Shulḥan Arukh*, *Even HaEzer* 114:1).

The woman was married to another man and she stipulated with him – נִיסֵּת לְאַחֵר וּפָסְקָה עִמּוֹ: If a woman stipulated with her husband that he will support her daughter for five years and was then divorced from him and was married to another man and came to the same terms with him, one of the two husbands provides the daughter with the actual sustenance, while the other gives her money equal to the value of the sustenance (Rambam *Sefer Nashim*, *Hilkhot Ishut* 23:17; *Shulḥan Arukh*, *Even HaEzer* 114:8).

If the daughter was married, her husband provides, etc. – נִיסֵּת, הַבַּעַל נוֹתֵן וכו׳: If the daughter marries during the time period in which her mother's two husbands agreed to provide her with support, the husband of the girl provides her with the actual sustenance, while her mother's two husbands give her money equal to the value of the sustenance (Rambam *Sefer Nashim*, *Hilkhot Ishut* 23:18; *Shulḥan Arukh*, *Even HaEzer* 114:10).

The perspicacious ones would write, etc. – הַפְּקֻחִים הָיוּ כּוֹתְבִים וכו׳: If a man wrote to his wife that he will support her daughter as long as his wife is with him, then, if the mother dies or is divorced, he is no longer obligated to support the girl (*Shulḥan Arukh*, *Even HaEzer* 114:11).

I am obligated to pay you one hundred dinars – חַיָּיב אֲנִי לְךָ מָנֶה: One may accept upon himself an obligation to pay money to another individual. Consequently, if one says to witnesses: Be my witnesses that I owe so-and-so one hundred dinars; or if one writes in a contract to someone else: I owe you one hundred dinars, and gives it to him in the presence of witnesses; or if one tells someone in front of witnesses: I owe you one hundred dinars as recorded in a document, even if he did not say to them: You are my witnesses, he is liable to pay. In all these cases, even if both agree that he did not previously owe the other any money, and the witnesses know that as well, since he obligated himself to pay, he must pay. This is in accordance with the opinion of Rabbi Yoḥanan (Rambam *Sefer Kinyan*, *Hilkhot Mekhira* 11:15; *Shulḥan Arukh*, *Ḥoshen Mishpat* 40:1).

NOTES

I am obligated to pay you one hundred dinars – חַיָּיב אֲנִי לְךָ מָנֶה: There are two basic approaches to understanding this passage. According to Rashi and *Tosafot*, the passage is attempting to determine the conditions under which an individual's admission of liability causes him to be obligated to pay. The conclusion of the Gemara is that according to Rabbi Yoḥanan, he becomes obligated if he gives the other individual a contract that was not signed (Rashi) and not written in his own handwriting (*Tosafot*), in which it states that he is obligated to pay. However, according to the Rif and many others, the main topic of discussion is whether one can obligate himself to pay money that he does not actually owe (see Ritva). In the Jerusalem Talmud it seems that the discussion is understood as it is explained by the Rif, as it goes on to address the issue of one who obligates himself to do something that he is not really obligated to do. However, it is stated there that Rabbi Yoḥanan and Reish Lakish both agree that one cannot obligate himself in such a case.

If he did not say to them: You are my witnesses – אִי דְּלָא אֲמַר לְהוּ אַתֶּם עֵדַיי: *Tosafot* and other early authorities explain that if he said: I owe you one hundred dinars, on his own accord without the other having sued him for it first, he could claim that he said it only because: A person is in the habit of disclaiming wealth for himself (*Bava Batra* 175a), i.e., one may not want others to know how wealthy he is, and he might therefore pretend to owe money to others. If he said this after the other sued him for the money, he could contend that since he did not confess to owing him the money in the presence of proper witnesses, he was not being serious when he admitted to owing the money.

לְעוֹלָם דְּלָא קָאָמַר לְהוּ ״אַתֶּם עֵדַיי״, וְהָכָא בְּמַאי עָסְקִינַן – דְּאָמַר לֵיהּ: חַיָּיב אֲנִי לְךָ מָנֶה בִּשְׁטָר. רַבִּי יוֹחָנָן אָמַר: חַיָּיב, אֵלִּימָא מִילְּתָא דִּשְׁטָרָא כְּמַאן דַּאֲמַר לְהוּ ״אַתֶּם עֵדַיי״ דָּמֵי. רֵישׁ לָקִישׁ אָמַר: פָּטוּר, לָא אֵלִּימָא מִילְּתָא דִּשְׁטָרָא.

The Gemara answers: **Actually,** it is a case **where he did not say to** those present: **You are my witnesses.** However, **here we are dealing with** a case **where he said to** the other: **I am obligated to** give **you one hundred dinars,** and he did so **in a contract,** i.e., he gave him an unsigned contract in which he stated that he is obligated to give him one hundred dinars. **Rabbi Yoḥanan said: He is obligated** to pay, since his **word** given through **a contract is** legally **as authoritative**[N] **as one who said to** the bystanders: **You are my witnesses. Reish Lakish said: He is exempt** from payment, because his **word** given through **a contract is** legally **not** sufficiently **authoritative** to be considered a bona fide admission.

תְּנַן: הַנּוֹשֵׂא אֶת הָאִשָּׁה וּפָסְקָה עִמּוֹ לָזוּן אֶת בִּתָּהּ חָמֵשׁ שָׁנִים – חַיָּיב לְזוּנָהּ חָמֵשׁ שָׁנִים. מַאי לָאו כִּי הַאי גַּוְונָא?

The Gemara presents a challenge to the opinion of Reish Lakish. **We learned** in the mishna: **One who marries a woman, and she stipulated with him** that he is obligated **to sustain her daughter** for **five years, is obligated to sustain her** for **five years. What, is it not** that the mishna is discussing **a case like this,** where he gave her a contract that lacks proper signatures and it is nevertheless legally binding, in accordance with the opinion of Rabbi Yoḥanan? If you say otherwise, where is the novelty in the teaching of the mishna?

NOTES

His word given through a contract is legally as authoritative – אֵלִּימָא מִילְּתָא דִּשְׁטָרָא: Rashi and *Tosafot* explain that he actually gave the other individual a document saying he was obligated to pay. Rashi holds that he wrote the document but it was not signed, while *Tosafot* argue that it was written by a third party, and he merely handed it to the other individual (see Rabbeinu Tam, *Sefer HaYashar*).

An entirely different opinion is presented by Rabbeinu Ḥananel, who explains that no written document is changing hands in this case. Rather, the individual states that he owes the other individual money and that this obligation is recorded in a document. This confession is considered more significant than simply a statement of liability, and therefore, according to Rabbi Yoḥanan, he cannot claim that he was merely pretending to owe money so as not to look wealthy, or that he was simply joking. The Rivan offers a similar analysis in his second interpretation of the Gemara.

Perek **XII**
Daf **102** Amud **a**

HALAKHA

How much do you give your son, etc. – כַּמָּה אַתָּה נוֹתֵן לִבְנְךָ וכו׳: A man and woman agree to marry, and he asks her how much she is bringing into the marriage. She tells him an amount, and then she asks him how much he is bringing in to the marriage and he tells her an amount. Alternatively, parents who are making marriage arrangements for their children stipulate a certain amount that they will be giving to the couple. In both cases, when the couple performs the betrothal, they acquire rights to the stated sums, even though no act of acquisition took place. These are acquisitions that are obtained verbally, in accordance with the view of Rav Giddel (Rambam *Sefer Kinyan*, *Hilkhot Zekhiya UMattana* 6:17; *Shulḥan Arukh*, *Even HaEzer* 51:1).

If he wrote to a priest, etc. – כָּתַב לְכֹהֵן וכו׳: If one wrote a contract to a priest stating that he was obligated to pay him five *sela* for the redemption of his firstborn son, he is obligated to give him the money, but his son is still not redeemed. This is in accordance with the mishna cited here (Rambam *Sefer Zera'im*, *Hilkhot Bikkurim* 11:7; *Shulḥan Arukh*, *Yoreh De'a* 305:4).

BACKGROUND

Redemption of the firstborn son – פִּדְיוֹן הַבֵּן: The mitzva to redeem a firstborn son is mentioned in several places in the Torah (Exodus 13:2; Numbers 3:11–13, 44–51). Following the plague of the firstborn, the Torah proclaims that a Jewish woman's firstborn son is holy to God. The boy's father must therefore redeem the son from a priest for a fixed sum of five *sela*. This mitzva is not performed on a firstborn son whose father is a Levite or a priest, or one whose mother is the daughter of a Levite or a priest.

לָא, בִּשְׁטָרֵי פְּסִיקְתָּא וְכִדְרַב גִּיּדֵל.

The Gemara rejects this: **No,** the mishna is referring to a case **of documents of stipulation** that record the amounts that parents agree to provide to their son or daughter, **and** this is **in accordance with** the opinion of **Rav Giddel.**

דְּאָמַר רַב גִּיּדֵל אָמַר רַב: ״כַּמָּה אַתָּה נוֹתֵן לִבְנְךָ״? – ״כָּךְ וְכָךְ״ – ״וְכַמָּה אַתָּה נוֹתֵן לִבְתְּךָ״? – ״כָּךְ וְכָךְ״. עָמְדוּ וְקִידְּשׁוּ – קָנוּ, הֵן הֵן הַדְּבָרִים הַנִּקְנִין בַּאֲמִירָה.

As Rav Giddel said that **Rav said:** When two families negotiate the terms of marriage for their respective children, one side says to the other: **How much do you give your son?**[H] And the second side answers: **Such and such** amount. **How much do you give your daughter?** And the first side responds: **Such and such** amount. Then, if the son and daughter **arose and performed the betrothal,** all of these obligations are **acquired** and therefore binding. **These are** among **the things that are acquired through words** alone, without the need for an additional act of acquisition. The mishna is referring to a document that records such an agreement.

תָּא שְׁמַע: כָּתַב לְכֹהֵן ״שֶׁאֲנִי חַיָּיב לְךָ חֲמֵשׁ סְלָעִים״ – חַיָּיב לִיתֵּן לוֹ חֲמֵשׁ סְלָעִים, וּבְנוֹ אֵינוֹ פָּדוּי!

Come and **hear** another challenge to the opinion of Reish Lakish, based upon the following mishna (*Bekhorot* 51a): If **he wrote to a priest**[H] with whom he wants to perform the redemption of his firstborn son: **I am obligated to** pay **you five *sela*,**[N] then **he is obligated to give him five *sela* and his son is not redeemed**[BN] even once he pays the money. This *baraita* apparently supports the opinion of Rabbi Yoḥanan.

שָׁאנֵי הָתָם, דְּמִשּׁוּעְבַּד לֵיהּ מִדְּאוֹרַיְיתָא. אִי הָכִי אַמַּאי כָּתַב? כְּדֵי לְבָרֵר לוֹ כֹּהֵן.

The Gemara answers: **It is different there, because he is obligated** to give the five *sela* **to him by Torah** law in order to fulfill his obligation of redeeming his firstborn son, even without writing a contract. The Gemara asks: **If that is so, why did he write** the contract at all? The Gemara answers: **In order to select for himself a** specific **priest** with whom to perform the redemption of his son.

NOTES

I am obligated to pay you five *sela* – שֶׁאֲנִי חַיָּיב לְךָ חֲמֵשׁ סְלָעִים: As with the rest of the passage, two explanations are offered here. According to Rashi, the case is about someone who admits to a loan, and the question is whether an admission made through an improperly written promissory note is sufficient to actually obligate him. According to others, the discussion is about the basic question of whether one can obligate himself to pay money that he does not actually owe (see *Tosafot*).

And his son is not redeemed – וּבְנוֹ אֵינוֹ פָּדוּי: This expression indicates that even after the father gives the priest the money, the son is still not redeemed. This is so despite the fact that the father gave the priest the five *sela* for the sake of the redemption and he knows that the father doesn't owe him anything. Apparently, it must be explained that when the father wrote the contract stating that he was obligated to pay the priest five *sela*, that contract created an independent monetary obligation, in accordance with the opinion of Rabbi Yoḥanan. Consequently, when the father pays the priest, he is fulfilling that obligation rather than paying for the redemption of his son.