לְעוֹלָם דְּלָא קָאָמַר לְהוּ ״אַתֶּם עֵדַיי״, וְהָכָא בְּמַאי עָסְקִינַן – דְּאָמַר לֵיהּ: חַיָּיב אֲנִי לְךָ מָנֶה בְּשִׁטָּר. רַבִּי יוֹחָנָן אָמַר: חַיָּיב, אֶלֶּא מֵילְתָא דְּשִׁטָּרָא כְּמַאן דַּאֲמַר לְהוּ ״אַתֶּם עֵדַיי״ דָּמֵי. רֵישׁ לָקִישׁ אָמַר: פָּטוּר, לָא אַלֶּא מֵילְתָא דְּשִׁטָּרָא.

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 – אַלֶּא מֵילְתָא דְּשִׁטָּרָא: 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 לִבְנֶךָ 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, בְּשִׁטָּרֵי 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 לִבְנֶךָ״? – ״כָּךְ וְכָךְ״ – ״וְכַמָּה אַתָּה נוֹתֵן לִבְתֶּךָ״? – ״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 חָמֵשׁ סְלָעִים״ – חַיָּיב לִיתֵּן לוֹ חָמֵשׁ 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, דִּמְשׁוּעְבַּד 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 חָמֵשׁ 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.

אִי הָכִי בְּנוֹ אַמַּאי אֵינוֹ פָּדוּי? כִּדְעוּלָּא. דְּאָמַר עוּלָּא: דְּבַר תּוֹרָה – פָּדוּי לְכָשֶׁיִּתֵּן, וּמַאי טַעְמָא אָמְרוּ: בְּנוֹ אֵינוֹ פָּדוּי – גְּזֵירָה שָׁמָּא יֹאמְרוּ: פּוֹדִין בִּשְׁטָרוֹת.

The Gemara asks: **If that is so, why is his son not redeemed** once he pays the money? The Gemara answers: This is **in accordance with** the opinion of **Ulla. As Ulla said, by Torah law** a son **is redeemed when** the father **gives** the money. **And for what reason did** the **Sages say: His son is not redeemed?** It is a rabbinic **decree** that was enacted **lest** people **say** that **one can redeem** a firstborn son **with documents,** i.e., by giving a document allowing the priest to collect a debt from a third party. This is not effective, since the Torah requires that one redeem his son with actual money.

אָמַר רָבָא: כְּתַנָּאֵי, עָרֵב הַיּוֹצֵא אַחַר חֵיתוּם שְׁטָרוֹת – גּוֹבֶה מִנְּכָסִים בְּנֵי חוֹרִין.

Rava said: The dispute between Rabbi Yoḥanan and Reish Lakish is **like** a dispute between ***tanna'im*** over the same matter in the following mishna (*Bava Batra* 175b): In a case where **a guarantor appears after the signatures** in **contracts,** i.e., someone wrote that he is a guarantor for a loan after the contract was signed, the creditor **collects** only **from** the **unsold property**[N] of the guarantor. Since the guarantee is not viewed as though it were written in the document, it is like a loan by oral agreement, which is collected only from unsold property.

מַעֲשֶׂה בָּא לִפְנֵי רַבִּי יִשְׁמָעֵאל וְאָמַר: גּוֹבֶה מִנְּכָסִים בְּנֵי חוֹרִין. אָמַר לוֹ בֶּן נַנָּס: אֵינוֹ גּוֹבֶה לֹא מִנְּכָסִים בְּנֵי חוֹרִין וְלֹא מִנְּכָסִים מְשׁוּעְבָּדִים.

An incident came before Rabbi Yishmael, and he said: The creditor **collects from unsold property. Ben Nannas**[P] **said to him: He does not collect** from the guarantor at all; **not from unsold property, nor from liened property** that was sold, since what the guarantor wrote has no legal standing whatsoever.

אָמַר לוֹ: לָמָּה? אָמַר לוֹ: הֲרֵי שֶׁהָיָה חוֹנֵק אֶת חֲבֵירוֹ בַּשּׁוּק, וּמָצָא חֲבֵירוֹ וְאָמַר לוֹ: הַנַּח לוֹ וַאֲנִי אֶתֵּן לְךָ – פָּטוּר, שֶׁלֹּא עַל אֱמוּנָתוֹ הִלְוָהוּ.

Rabbi Yishmael **said to him: Why?** Ben Nannas **said to him:** If someone **was strangling another in the marketplace** and demanding money that is owed to him, **and a friend** of the victim **found** him **and said to** the strangler: **Leave him** alone **and I will give you** what you are demanding from him, the friend of the victim is **exempt** from having to make any payment. This is because the creditor **did not lend the money based on his trust** in the friend of the victim, as the friend promised to repay the loan only after the money had been loaned. The same should apply in the case of the guarantor who comes after the contracts were already signed.

לֵימָא רַבִּי יוֹחָנָן דְּאָמַר כְּרַבִּי יִשְׁמָעֵאל, וְרֵישׁ לָקִישׁ דְּאָמַר כְּבֶן נַנָּס?

Rava concludes: **Let us say** that **Rabbi Yoḥanan stated** his ruling **in accordance with** the opinion of **Rabbi Yishmael,** that the obligation that one accepts upon himself is binding, **and Reish Lakish stated** his ruling **in accordance with** the opinion of **ben Nannas.**[L]

אַלִּיבָּא דְּבֶן נַנָּס – כּוּלֵּי עָלְמָא לָא פְּלִיגִי,

The Gemara responds: **According to** the opinion **of ben Nannas, everyone agrees** that if he wrote in a contract: I owe you one hundred dinars, he is not obligated to pay.

Perek **XII**
Daf **102** Amud **b**

כִּי פְּלִיגִי – אַלִּיבָּא דְּרַבִּי יִשְׁמָעֵאל. רַבִּי יוֹחָנָן – כְּרַבִּי יִשְׁמָעֵאל. וְרֵישׁ לָקִישׁ – עַד כָּאן לָא קָאָמַר רַבִּי יִשְׁמָעֵאל הָתָם אֶלָּא דְּשַׁיְּיךְ לֵיהּ לִשְׁיעְבּוּדָא דְּאוֹרַיְיתָא, אֲבָל הָכָא – לָא שַׁיְּיךְ שִׁיעְבּוּדָא דְּאוֹרַיְיתָא.

When they disagree, it is in accordance with the opinion of **Rabbi Yishmael. Rabbi Yoḥanan** stated his ruling **in accordance with** the simple interpretation of the opinion of **Rabbi Yishmael. And Reish Lakish** holds that **Rabbi Yishmael states** his opinion **only there,** in the case of the guarantor, **which relates to an obligation of Torah** law, since a guarantor is obligated by Torah law to pay. **But here,** where the case **does not relate** to **an obligation of Torah** law, as the man did not owe any money until he accepted this obligation upon himself, even Rabbi Yishmael would exempt him from paying.

NOTES

The creditor collects only from the unsold property – גּוֹבֶה מִנְּכָסִים בְּנֵי חוֹרִין: There is a principle that one may not collect payment from liened property that was sold unless the debt is recorded in a contract. The reason for this is that through the contract and the witnesses who signed on it, word of the obligation becomes public knowledge. Therefore, anyone who subsequently purchases property from the debtor will realize that the property has a lien attached to it. Conversely, a creditor may not collect payment of a loan made by oral agreement from liened property that was sold, because it is likely that the buyer of the property did not have any knowledge of the loan when he purchased the property.

In the case under discussion, the contract was signed by the witnesses before the obligation of the guarantor was recorded. In such a case, the guarantee is viewed as a verbal agreement rather than an obligation recorded in a document (see *Tosafot*).

PERSONALITIES

Ben Nannas – בֶּן נַנָּס: This Sage, whose full name was Rabbi Shimon ben Nannas, was a contemporary of Rabbi Akiva and Rabbi Yishmael. We do not have information about the events of his life; we know only that his teachings and disputes with his contemporaries are found mainly in the Mishna. In the source of this passage (*Bava Batra* 175b), the following words of praise for him are stated by Rabbi Yishmael: One who wants to acquire wisdom should occupy himself with monetary law… and one who wants to occupy himself with monetary law should serve Shimon ben Nannas.

LANGUAGE

Ben Nannas – בֶּן נַנָּס: This is a Greek name. Some believe that it is from the word **νᾶνος**, *nanos*, meaning dwarf or midget. However, it is likely that the name derives from **νάννας**, *nannas*, meaning a maternal uncle.

גּוּפָא, אָמַר רַב גִּידֵּל אָמַר רַב: ״כַּמָּה אַתָּה נוֹתֵן לְבִנְךָ״? ״כָּךְ וְכָךְ״. ״וְכַמָּה אַתָּה נוֹתֵן לְבִתְּךָ״? ״כָּךְ וְכָךְ״. עָמְדוּ וְקִיְּימוּ – קָנוּ. הֵן הֵן הַדְּבָרִים הַנִּקְנִים בְּאַמִּירָה.

§ The Gemara continues to analyze **the** matter **itself** mentioned earlier: **Rav Giddel said** that **Rav said:** When two families negotiate the terms of marriage for their respective children and one side says to the other: **How much do you give your son?**[N] 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,[H] without the need for an additional act of acquisition. The mishna is referring to a document that records such an agreement.

אָמַר רָבָא: מִסְתַּבְּרָא מִילְּתָא דִּרַב – בִּבְתוּלָה נַעֲרָה, דְּקָא מָטֵי הֲנָאָה לִידֵיהּ. אֲבָל בּוֹגֶרֶת, דְּלָא מָטֵי הֲנָאָה לִידֵיהּ – לָא.

Rava said: Rav's statement is reasonable in a case of a father **whose daughter** is **a young woman, since** the father **derives benefit** from this betrothal. The money given by the groom for the betrothal, as well as the rights to the bride's marriage contract, belongs to the father of the bride. Consequently, he accepts through verbal agreement alone the obligation to pay the money he specified. **However,** in the case of **a grown woman,**[B] **where the** father **does not derive benefit** from the betrothal because the rights to the betrothal money and marriage contract belong to the woman herself, **no,** the father does not become obligated to pay the money he specified through verbal agreement alone.

וְהָאֱלֹהִים! אָמַר רַב אֲפִילּוּ בּוֹגֶרֶת. דְּאִי לָא תֵּימָא הָכִי – אֲבִי הַבֵּן מַאי הֲנָאָה אִיתָּא לִידֵיהּ? אֶלָּא, בְּהַהִיא הֲנָאָה דְּקָמִיחַתְנִי אַהֲדָדֵי – גְּמִירִי וּמַקְנֵי לַהֲדָדֵי.

Rava continues: **But by God! Rav said** his ruling **even** with regard to **a grown woman, as, if you do not say so,** in the case of **the father of the groom, what** monetary **benefit does he derive** from the betrothal? **Rather,** it must be explained that **in** exchange for **that benefit,** i.e., **that** the groom and bride **marry each other,** the fathers **fully transfer the rights** to the respective payments **to each other.**

אָמַר לֵיהּ רָבִינָא לְרַב אַשִׁי: דְּבָרִים הַלָּלוּ נִיתְּנוּ לִיכָּתֵב? אוֹ לֹא נִיתְּנוּ לִיכָּתֵב? אָמַר לֵיהּ: לֹא נִיתְּנוּ לִיכָּתֵב.

Ravina said to Rav Ashi: Are these matters, i.e., verbal agreements concerning an upcoming marriage, **allowed to be written** down[N] afterward in a proper contract, **or** are they **not allowed to be written** down afterward in a proper contract? Rav Ashi **said to him: They are not allowed to be written** down.[H]

אֵיתִיבֵיהּ: הַפִּקְחִין הָיוּ כּוֹתְבִין ״עַל מְנָת שֶׁאָזוֹן אֶת בִּתְּךָ חָמֵשׁ שָׁנִים כָּל זְמַן שֶׁאַתָּה עִמִּי״. מַאי ״כּוֹתְבִין״ – אוֹמְרִים.

Ravina **raised an objection to** this from the mishna: **The perspicacious** ones **would write**[N] 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.** This indicates that one may document these verbal agreements. Rav Ashi responded: **What** is the meaning of the term **write** in this case? It means **say.**

HALAKHA

These are among the things that are acquired through words alone – הֵן הֵן הַדְּבָרִים הַנִּקְנִים בְּאַמִּירָה: If the fathers of a bride and a groom agree to provide their children with specific sums of money upon their marriage and the bride and groom then perform the betrothal, the fathers are required to provide the sums they specified in their verbal agreement. This applies whether the bride is a young woman or a grown woman. It applies only to the fathers of the bride and groom and not to other relatives. It is also limited to a case of a first marriage for both the bride and the groom (Jerusalem Talmud). The fathers can obligate themselves to pay these sums only if the funds are currently in their possession, since one cannot transfer ownership of something that has not yet come into the world (Rambam *Sefer Nashim*, *Hilkhot Ishut* 23:13; *Sefer Kinyan*, *Hilkhot Zekhiya UMattana* 6:17; *Shulḥan Arukh*, *Even HaEzer* 51:1).

They are not allowed to be written down – לֹא נִיתְּנוּ לִיכָּתֵב: The sums of money that parents allocate for their children are not meant to be written down, and therefore, even if the terms were recorded in writing, the sums may not be collected by repossessing liened property. This is in accordance with the view of Rav Ashi. The author of *Beit Shmuel* explains that if the two fathers wrote a document, it would certainly be treated like any other document and the sums could be collected by repossessing liened property. The Gemara here is discussing only a document written as a reminder of the verbal commitments (Rambam *Sefer Nashim*, *Hilkhot Ishut* 23:13 and *Sefer Kinyan*, *Hilkhot Zekhiya UMattana* 6:17; *Shulḥan Arukh*, *Even HaEzer* 51:1).

BACKGROUND

A young woman and a grown woman – נַעֲרָה וּבוֹגֶרֶת: Jewish law recognizes three distinct stages in the maturation of women from childhood to adulthood. A female minor is a girl who has not yet reached puberty, which is generally assumed to take place at the age of twelve. As long as she is a minor, her father may sell her as a Hebrew maidservant and may also accept betrothal on her behalf, even without her consent. Her father is also entitled to receive payment of his minor daughter's marriage contract, and he alone has the right to accept a bill of divorce on her behalf.

Once a girl reaches puberty she is legally considered a young woman. Although she is no longer considered a minor during this period, she is not yet considered an adult, and accordingly, her father retains a certain authority over her. Consequently, for example, whereas she may accept betrothal for herself, her father may also accept betrothal on her behalf, even without her consent.

Six months after reaching puberty, she is legally considered a grown woman. From this time onward she is considered an independent adult, and her father no longer has the authority to make any decisions on her behalf.

NOTES

How much do you give your son – כַּמָּה אַתָּה נוֹתֵן לְבִנְךָ: According to the Jerusalem Talmud, the verbal agreement is binding only between the fathers of the bride and groom, and only when the couple is entering a first marriage. The reason for this is apparently as explained by Rava, that it is due to the parents' joy over the union of their children that they accept these obligations as binding.

The Meiri writes that it would seem that this *halakha* applies as well when it is the husband and the wife that are themselves pledging and obligating to each other, as implied by the mishna, which the Gemara established earlier to be presenting the view of Rav. It is also understood from the mishna that in this case there is no difference between a first and a second marriage (see HALAKHA).

Allowed to be written down – נִיתְּנוּ לִיכָּתֵב: There are several ways to explain this expression, which result in different understandings of the entire passage. Although Rashi's comments here are somewhat cryptic, it seems that according to him the question is as follows: Is it permitted to write down these stipulations, in the same way that any transaction that was executed with an action of acquisition is recorded in writing, and then to collect payment even from liened property, or is it not permitted to write them down, and one may collect only from unsold property? This is how the Rivan, in one of his explanations, and *Tosefot Rid* understand the question as well. Conversely, Rabbeinu Ḥananel and Rabbeinu Tam explain that the question is this: Is it necessary to record these stipulations in a contract to permit collection even from unsold property? Perhaps even if a contract is not written one may collect from unsold property. According to this opinion, one may never repossess liened property unless a proper action of acquisition was employed, even if a contract was written in addition to the verbal agreement. Ra'avad and Razah explain that the question is as follows: May one write down these verbal agreements, which serve as a reminder of the terms of the agreement but do not create a lien on property, or would recording the agreements in writing produce a lien on property, in which case the agreements may not be recorded in writing without the agreement of both parties? It seems that the Rambam agrees with the interpretation of the Ra'avad.

The perspicacious ones would write – הַפִּקְחִין הָיוּ כּוֹתְבִין: The meaning of this objection depends upon the different interpretations of Ravina's question as to whether the agreement may be recorded in writing. According to Rabbeinu Ḥananel and Rabbeinu Tam, who understand Ravina's question to be whether it is necessary for the stipulations to be written as a formal contract in order for one side to collect, it must be explained why the perspicacious ones would allow the stipulation to be recorded in writing, thus exposing themselves to monetary liability. According to those who interpret Ravina's question to be whether writing down the verbal agreements creates a lien, it must be explained why writing down a verbal agreement can be regarded as clever, since by doing so one imposes upon himself a lien (see Rabbeinu Crescas Vidal and *Shita Mekubbetzet*).

וְקָרֵי לֵיהּ לַאֲמִירָה ״בְּתִיבָה״? אֵין, וְהָתְנַן: הַכּוֹתֵב לְאִשְׁתּוֹ ״דִּין וּדְבָרִים אֵין לִי בְּנָכְסַיִךְ״ וְתָנֵי רַבִּי חִיָּיא: הָאוֹמֵר לְאִשְׁתּוֹ.

Ravina continued to ask: **Does** the *tanna* **refer to saying** as **writing?** Rav Ashi replied: **Yes. And so we learned** in the mishna (83a): **One who writes to his wife: I have no legal** dealings **or involvement in your properties, and Rabbi Ḥiyya taught** in explanation, that it means: **One who says to his wife.** This proves that verbal agreements are sometimes referred to in the Mishna as writing.

תָּא שְׁמַע: אֵין כּוֹתְבִין שְׁטָרֵי אֵירוּסִין וְנִשּׂוּאִין אֶלָּא מִדַּעַת שְׁנֵיהֶם. הָא מִדַּעַת שְׁנֵיהֶם – כּוֹתְבִין. מַאי לָאו – שְׁטָרֵי פְּסִיקְתָּא!

The Gemara suggests: **Come** and **hear** a proof from the following mishna (*Bava Batra* 167b): **One writes documents of betrothal and marriage only with the consent of both of them.**[H] It may be derived from here that **with the consent of both of them, one** may **write** the documents. **What, is it not** that this mishna is discussing **documents of stipulation** that specify the agreements accepted by each side before the marriage?

לָא שְׁטָרֵי אֵירוּסִין מַמָּשׁ, כִּדְרַב פַּפָּא וְרַב שֵׁרְבְיָא. דְּאִיתְמַר, כְּתָבוֹ לִשְׁמָהּ וְשָׁלְחוֹ מִדַּעְתָּהּ, רַבָּה וְרָבִינָא אָמְרִי: מְקוּדֶּשֶׁת, רַב פַּפָּא וְרַב שֵׁרְבְיָא אָמְרִי: אֵינָהּ מְקוּדֶּשֶׁת.

The Gemara rejects this: **No,** the discussion concerns **actual betrothal documents.** In other words, in a case where a man betroths a woman by giving her a document that states: You are hereby betrothed to me, the document must be written with the consent of both the man and the woman, **in accordance with** the opinions of **Rav Pappa and Rav Sherevya. As it was stated:** If the husband **wrote** a betrothal document **for the sake of** a specific woman and gave it to her, **but** he wrote it **without her consent,**[HN] **Rabba and Ravina say: She is betrothed** to this man. **Rav Pappa and Rav Sherevya say: She is not betrothed.**

תָּא שְׁמַע: מֵתוּ – בְּנוֹתֵיהֶן נִיזּוֹנוֹת מִנְּכָסִים בְּנֵי חוֹרִין, וְהִיא נִיזּוֹנֶת מִנְּכָסִים מְשׁוּעְבָּדִים, מִפְּנֵי שֶׁהִיא כְּבַעֲלַת חוֹב.

The Gemara suggests further: **Come** and **hear** another proof that verbal agreements may be written down, based upon the mishna: If the two husbands **died, their daughters are sustained from unsold property, and she,** their wife's daughter, whom they agreed to sustain for five years, **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 they are contractually obligated to pay her. The fact that she is able to repossess liened property indicates that the agreement is recorded in a document.

הָכָא בְּמַאי עָסְקִינַן בְּשֶׁקָּנוּ מִיָּדוֹ.

The Gemara rejects this proof: **Here, we are dealing with** a case **where** the woman **acquired from** each husband[H] the right to her daughter's sustenance, i.e., they performed an act of acquisition and did not suffice with a mere verbal agreement. Consequently, the agreement may be recorded in a document.

אִי הָכִי, בָּנוֹת נַמִּי! בְּשֶׁקָּנוּ לָזוֹ וְלֹא קָנוּ לָזוֹ.

The Gemara asks: **If that is so,** that a proper mode of acquisition was employed, then let the husbands' own **daughters also** repossess liened properties that were sold. The Gemara answers: The case is such **where they acquired** the right to receive sustenance **for this** daughter of the wife, **and they did not acquire** this right **for that** daughter, i.e., they did not perform an act of acquisition confirming their obligations to provide sustenance for their own daughters.

וּמַאי פָּסְקָא? אֵימָא דַּהֲוַאי בִּשְׁעַת קִנְיָן – מְהַנֵּי לָהּ קִנְיָן, בָּנוֹת דְּלָא הֲווּ בִּשְׁעַת קִנְיָן – לָא מְהַנֵּי לְהוּ קִנְיָן.

The Gemara asks: **What** makes it **necessary** to say that the case is one in which an acquisition was made on behalf of the wife's daughter and not on behalf of the husbands' own daughters? The Gemara answers: **She,** the wife's daughter from a previous marriage, **was present at the time of the transaction** when her mother was wed. Consequently, **for her the transaction is effective.** With regard to the **daughters** of the husbands, **who** were born after their parents' marriage and **were not present at the time of the transaction, for them the transaction is not effective.**

מִי לָא עָסְקִינַן דַּהֲוַאי בִּשְׁעַת קִנְיָן, וְהֵיכִי דָּמֵי – כְּגוֹן דְּגֵרְשָׁהּ וְאַהֲדְרָהּ!

The Gemara asks: **Are we not** also **dealing with** a situation where the husband's daughters **were present at the time of the transaction? And what are the circumstances** that would allow for such a reality? This could occur in a situation **such as where** each one **divorced** his wife **and then took her back,** and they had a daughter from their first marriage.

HALAKHA

One writes documents of betrothal and marriage only with the consent of both of them – אֵין כּוֹתְבִין שְׁטָרֵי אֵירוּסִין וְנִשּׂוּאִין אֶלָּא מִדַּעַת שְׁנֵיהֶם: One does not write betrothal documents, marriage documents, or documents of allocation without first gaining the mutual consent of both parties (Rambam *Sefer Mishpatim*, *Hilkhot Malve VeLoveh* 24:1; *Tur*, *Even HaEzer* 51).

For the sake of a specific woman but without her consent – לִשְׁמָהּ וְשָׁלַח מִדַּעְתָּהּ: The document with which one betroths a woman must be written with a specific woman in mind and it must be written with her consent. The Rambam rules that if it was written with a specific woman in mind but not with her consent, even if it was given to her with her consent in front of witnesses, she is not betrothed, in accordance with the views of Rav Pappa and Rav Sherevya. According to the *Shulḥan Arukh*, based upon the view of the Rosh, her betrothal is considered a matter of uncertainty, since the issue is disputed in the Gemara and among the early authorities (Rambam *Sefer Nashim*, *Hilkhot Ishut* 3:4; *Shulḥan Arukh*, *Even HaEzer* 32:1; see *Beit Shmuel*).

Where the woman acquired from each husband – בְּשֶׁקָּנוּ מִיָּדוֹ: In the case of one who obligates himself to support his wife's daughter, if a formal action of acquisition is conducted, or a contract is written, after he dies the daughter will be able to collect payment even from liened properties that had been sold. However, if no formal action of acquisition is conducted and no formal contract is written, the girl will be unable to repossess properties that had been sold (Rambam *Sefer Nashim*, *Hilkhot Ishut* 23:18; *Shulḥan Arukh*, *Even HaEzer* 114:4).

NOTES

For the sake of a specific woman but without her consent – לִשְׁמָהּ וְשָׁלַח מִדַּעְתָּהּ: The basis for this dispute, which is primarily discussed in tractate *Kiddushin*, is how to understand the lesson derived from the verbal analogy between betrothal and divorce. Those who hold that a betrothal document may be written without a woman's consent derive this from the comparison to a bill of divorce, which can be written at the behest of a man and does not require the woman's consent. Those who argue that the betrothal document requires a woman's consent interpret the comparison to divorce differently: Just as in a divorce, the man gives up his hold on the woman and therefore his consent is required, so too, in the case of betrothal, since it is the woman who relinquishes control over herself to the man, her consent is required.

אֶלָּא, אִיהִי דְּלֵיתָא בְּתְנַאי בֵּית דִּין – מְהַנֵּי לָהּ קְנָיָן, בָּנוֹת דְּאִיתְנְהוּ בִּתְנַאי בֵּית דִּין – לָא מְהַנֵּי לְהוּ קְנָיָן.

Rather, the distinction is as follows: **She,** the wife's daughter, **is not included in the stipulation of the court** requiring a husband to support his daughters. Consequently, **for her the transaction is effective.** However, with regard to the husband's own **daughters, who are included in the stipulation of the court, for them the transaction is not effective.**

מִגַּרַע גָּרְעֵי?! אֶלָּא, בְּנוֹתָיו הַיְינוּ טַעְמָא: כֵּיוָן דְּאִיתְנְהוּ בִּתְנַאי בֵּית דִּין, אֵימַר צְרָרֵי אַתְּפְסִינְהוּ.

The Gemara wonders about this: Because they are included in the stipulation of the court **they are worse off?** On the contrary, since the stipulation of the court demands that they be supported, they should wield more power. **Rather, this is the reason** that **his** own **daughters** do not collect from liened property: **Since they are included in the stipulation of the court,** and it is therefore the norm for fathers to take care to provide their support, **say that** their father **gave them bundles of money** while he was still alive. Due to this concern, they cannot repossess liened property. However, in the case of the wife's daughter, who is not included in the stipulation of the court, there is no concern that the husband gave her anything prior to his death.

״לֹא יֹאמַר הָרִאשׁוֹן״. אָמַר רַב חִסְדָּא: זֹאת אוֹמֶרֶת בַּת אֵצֶל אִמָּהּ.

§ We learned in the mishna that **the first** husband **may not say** that he will provide his wife's daughter with support only when she is with him. Rather, he must bring the sustenance to her in the place where her mother lives. **Rav Ḥisda said: That is to say** that in a case of divorce, a **daughter** lives **with her mother.**[H]

מַמַּאי דְּבִגְדוֹלָה עָסְקִינַן? דִּלְמָא בִּקְטַנָּה עָסְקִינַן, וּמִשּׁוּם מַעֲשֶׂה שֶׁהָיָה.

The Gemara asks: **From where** do we know that **we are dealing with** a case **of an adult woman** and there is a general guideline that in cases of divorce, a girl lives with her mother? **Perhaps we are dealing with** a case of **a minor girl, and** she lives with her mother because of concern for her safety, **due to an incident that occurred.**

דְּתַנְיָא: מִי שֶׁמֵּת וְהִנִּיחַ בֵּן קָטָן לְאִמּוֹ, יוֹרְשֵׁי הָאָב אוֹמְרִים: יְהֵא גָּדֵל אֶצְלֵנוּ, וְאִמּוֹ אוֹמֶרֶת: יְהֵא בְּנִי גָּדֵל אֶצְלִי – מַנִּיחִין אוֹתוֹ אֵצֶל אִמּוֹ, וְאֵין מַנִּיחִין אוֹתוֹ אֵצֶל רָאוּי לְיוֹרְשׁוֹ. מַעֲשֶׂה הָיָה וּשְׁחָטוּהוּ עֶרֶב הַפֶּסַח!

As it is taught in a *baraita*: In the case of **one who died and left a minor son to** the care of **his mother,** and **the heirs of the father say:** The son **should grow up with us, and his mother says: My son should grow up with me,** the *halakha* is that **one leaves** the child **with his mother, and one does not leave** the child **with** one who is **fit to inherit** from **him,** i.e., the father's heirs. **An incident occurred,** and the boy lived with his father's heirs, **and they slaughtered him on the eve of Passover.**[N] So too, a minor girl is not left in the care of those who are obligated to sustain her and who have a financial interest in her demise.

אִם כֵּן, לִיתְנֵי לְמָקוֹם שֶׁהִיא,

The Gemara answers: **If that is so, let** the mishna **teach** that the husband must bring the sustenance **to the place where she,** the daughter, is located.

HALAKHA

A daughter lives with her mother – בַּת אֵצֶל אִמָּהּ: If parents get divorced, a daughter stays with her mother permanently, even if her mother marries someone else. If her father has money, funds are taken from him in order to support her until she is grown. After he dies, she is supported from his estate in accordance with the conditions of the marriage contract. This is in accordance with the view of Rav Ḥisda. The Rema writes, based on Maharam Padua, that this is true only if the court sees that it is good for the daughter to be with her mother. If the court determines that it is not in her best interests to be with her mother, the mother cannot force the daughter to live with her, and she lives wherever the court deems it best for her (Rambam *Sefer Nashim*, *Hilkhot Ishut* 21:18; *Shulḥan Arukh*, *Even HaEzer* 82:7).

NOTES

And they slaughtered him on the eve of Passover – וּשְׁחָטוּהוּ עֶרֶב הַפֶּסַח: In manuscript editions of the Talmud, in the early commentaries and in some new printings of the Talmud, the text states, as it does here, that he was slaughtered on the eve of Passover. The *Ya'avetz* explains that this emphasizes that they were so eager to be rid of the child that they were not concerned about killing him on the eve of Passover and thereby becoming ritually impure. Other editions of the Talmud read: The eve of Rosh HaShana. Some explain that according to this version of the text, the point is that the heirs were not concerned that they would soon be standing in judgment before God (*Eshel Avraham*). It would appear that the original phrase was the eve of Passover, and it was changed due to the fear of blood libels.

Perek **XII**
Daf **103** Amud **a**

מַאי לְמָקוֹם שֶׁאִמָּהּ? שָׁמְעַתְּ מִינָּהּ: בַּת אֵצֶל הָאֵם, לָא שְׁנָא גְּדוֹלָה וְלָא שְׁנָא קְטַנָּה.

What is the purpose of emphasizing: **To the place where her mother** lives? **Conclude from here** that a **daughter** lives **with** her **mother;** it is **no different** if she is **an adult woman, and** it is **no different** if she is **a minor girl.**[N]

NOTES

It is no different if she is an adult woman, and it is no different if she is a minor girl – לָא שְׁנָא גְּדוֹלָה וְלָא שְׁנָא קְטַנָּה: Aside from the concern for the safety of the girl, another reason to leave a minor daughter with her mother is so that her mother can care for her. For this reason, minor boys also reside with their mothers in the event of a divorce or the death of the father.

Two reasons have been suggested for why an adult daughter stays with her mother in the case of her father's death. First, her mother is responsible for her education. Additionally, living with her father's family may very well lead to her transgressing the prohibition of seclusion with a man, whereas living with her mother will prevent such a circumstance (see Rivan).