אָמַר רַב שִׁימִי בַּר אַשִׁי: נַעֲשָׂה כְּמִי שֶׁטָּעָנוּ רִימּוֹן בְּקִלִּיפָּתוֹ. מַתְקִיף לָהּ רָבִינָא: רִימּוֹן בְּלֹא קְלִיפָּתוֹ – לָא מִינְטַר, שֶׁמֶן – מִינְטַר בְּלֹא קַנְקַנִּים!

**Rav Shimi bar Ashi said:** The case of the mishna is not similar to that of wheat and barley, as those two types are not connected to one another. Rather, the case of jugs of oil **is** more **like** that of **one who claimed** that **the other** owed him **a pomegranate in its peel,** as the jugs are as necessary for the oil as the peel of a pomegranate protecting its fruit. **Ravina strongly objects to this:** The comparison between these cases does not bear close scrutiny. **A pomegranate without its peel cannot be preserved,** and therefore it is obvious that when one claims a pomegranate, he must be referring to the peel as well. By contrast, **oil can be preserved without** the **pitchers,** as it can be placed in another receptacle.

אֶלָּא הָכָא בְּמַאי עָסְקִינַן? דַּאֲמַר לֵיהּ: עֲשָׂרָה כַּדֵּי שֶׁמֶן יֵשׁ לִי אֶצְלָךְ, וַאֲמַר לֵיהּ אִידָךְ: שֶׁמֶן – לֹא הָיוּ דְּבָרִים מֵעוֹלָם, קַנְקַנִּים נַמִּי – חֲמִשָּׁה אִית לָךְ, וַחֲמִשָּׁה לֵית לָךְ.

**Rather, here we are dealing with** a case where one **said to** another: **I have ten jugs of oil**[H] **with you, and the other said to him:** With regard to the **oil, these matters never occurred;** I never borrowed oil from you. Concerning the **pitchers as well, you do have five** of them with me and these I admit I took from you, **but you do not have** the other **five** you claim.

אַדְמוֹן אוֹמֵר: יֵשׁ בַּלָּשׁוֹן הַזֶּה לְשׁוֹן קַנְקַנִּים, וּמִגּוֹ דְּקָמְשַׁתַּבַּע אַקַּנְקַנִּים – מִשְׁתַּבַּע נַמִּי אַשֶּׁמֶן, עַל יְדֵי גִּלְגּוּל, וְרַבָּנַן סָבְרִי: אֵין בַּלָּשׁוֹן הַזֶּה לְשׁוֹן קַנְקַנִּים, מַה שֶּׁטָּעָנוּ – לֹא הוֹדָה לוֹ, וּמַה שֶּׁהוֹדָה לוֹ – לֹא טָעָנוּ.

**Admon says: This expression includes** a reference to **pitchers, and since he takes an oath about the pitchers,** as he partially admitted to owing them, **he takes an oath about the oil as well, by means of an extension** of the first oath. **And the Rabbis hold** that **this expression does not include** a reference to the **pitchers,** and therefore **that which** the first person **claimed from him** the second person **did not admit to** at all, **and that which** the second person **admitted to,** the first person **had not claimed from him.** The second individual denied owing any oil, and as for his partial admission with regard to the pitchers, there was no claim about pitchers at all. Consequently, no oath is required whatsoever.

**מַתְנִי׳** הַפּוֹסֵק מָעוֹת לְחָתְנוֹ, וּפָשַׁט לוֹ אֶת הָרֶגֶל

MISHNA The mishna states another case involving a ruling of Admon. With regard to one who promises and **apportions money for his son-in-law** as a dowry, **and he went bankrupt,**[N] and he now claims that he does not have the money to fulfill his financial obligations,

**HALAKHA**

**Ten jugs of oil, etc. – עֲשָׂרָה כַּדֵּי שֶׁמֶן וכו׳:** If one said to another: I have ten jugfuls of oil in your pit, and the other admitted to the pitchers alone, he is exempt from an oath, as the claim referred to oil and he admitted to owing pitchers. However, if one claimed: I have ten jugs of oil in your possession, and the other concedes to the containers, he must take an oath. The *halakha* is in accordance with the opinion of Admon, as stated on 109a (*Maggid Mishne*). Some commentaries (Rema; *Tur*, based on Rosh) claim that if one said: Ten jugs of oil, this refers to oil alone, not to the containers (Rambam *Sefer Mishpatim*, *Hilkhot To'en VeNitan* 3:13; *Shulḥan Arukh*, *Ḥoshen Mishpat* 88:18).

**NOTES**

**And he went bankrupt – וּפָשַׁט לוֹ אֶת הָרֶגֶל:** This expression, which literally means: And he stretched his leg toward him, is interpreted in several ways. Rashi offers two possibilities, while the Rivan suggests three. One explanation is that it is a form of derision, as though one stretches his leg toward the other and says: Take the mud off the sole of my foot, as I will not give you any more. Alternatively, he is saying: Even if you hang me from a tree by my foot, I cannot give you anything (Rashi). A third possibility is: You can take my foot, but I do not have any money to give you (Rivan). Yet another suggestion is that it means that he has gone off to another place, i.e., the father has left the area and is no longer available to pay the promised sum (Rambam; Ra'avad; Ritva). Finally, it might mean that he stretched out his foot and died, i.e., an expression of death, similar to: He kicked the bucket (Meiri).

Perek **XIII**
Daf **109** Amud **a**

**HALAKHA**

**She can say, etc. – יְכוֹלָה הִיא שֶׁתֹּאמַר וכו׳:** With regard to one who apportions money for his son-in-law and then goes abroad (Rambam) or subsequently does not have the money to pay (Rashi), the bride may say to her groom: I did not apportion the money for myself, so what can I do? Either marry me without a dowry or release me by means of a bill of divorce. This *halakha* is in accordance with the opinion of Admon (Rambam *Sefer Nashim*, *Hilkhot Ishut* 23:16; *Shulḥan Arukh*, *Even HaEzer* 52:1).

תֵּשֵׁב עַד שֶׁתַּלְבִּין רֹאשָׁהּ. אַדְמוֹן אוֹמֵר: יְכוֹלָה הִיא שֶׁתֹּאמַר: אִילּוּ אֲנִי פָּסַקְתִּי לְעַצְמִי – אֵשֵׁב עַד שֶׁתַּלְבִּין רֹאשִׁי, עַכְשָׁיו שֶׁאַבָּא פָּסַק – מָה אֲנִי יְכוֹלָה לַעֲשׂוֹת? אוֹ כְּנוֹס אוֹ פְּטוֹר. אָמַר רַבָּן גַּמְלִיאֵל: רוֹאֶה אֲנִי אֶת דִּבְרֵי אַדְמוֹן.

the betrothed woman can be left to **sit** unwed in her father's house **until her head turns white.**[N] If the groom does not wish to marry without a dowry he cannot be forced to do so, as the father failed to fulfill his promise. **Admon says** that **she can say:**[H] **Had I apportioned** the money **myself** and broken my promise, I would agree to **sit until my head turns white.** However, **now that** my **father** was the one who **apportioned** the dowry, **what can I do? Either marry** me **or release** me by a bill of divorce. **Rabban Gamliel said: I see** as correct **the statement of Admon.**

**NOTES**

**Sit until her head turns white – תֵּשֵׁב עַד שֶׁתַּלְבִּין רֹאשָׁהּ:** The commentaries ask why the court does not force the father to pay his obligations (*Tosafot*). Some state that according to the interpretation that the mishna is referring to a father who has no money, it is impossible to extract any money from him even by force or by taking over his property. However, according to those who say that the case involves a father who does not want to pay, the question remains difficult (Ritva). Furthermore, the Gemara stated earlier in the name of Rav Giddel (102a) that the sum of money that the father of a bride apportions for his daughter is acquired by verbal promise, which means that the groom already owns this money.

Several responses have been suggested in response to this last point. Some maintain that this form of acquisition is binding only if the betrothal is performed without delay, whereas in this case the betrothal did not happen immediately after the father's promise (Rashbam in *Tosafot*). Alternatively, as stated in the Jerusalem Talmud, this verbal acquisition applies only in the case of a first marriage.

With regard to the question of whether or not the father has money, some maintain that if he does have the funds it is easier to understand the ruling that she can say to the groom: Either marry me or release me, as the groom can sue the father and force him to pay (*Penei Yehoshua*, citing Ran). The later commentaries further discuss whether a father who does not have enough money for the dowry is considered the victim of an unavoidable accident to the extent that it is as though he has fulfilled the condition.

גמ׳ מַתְנִיתִין דְּלָא כִּי הַאי תַּנָּא דְּתַנְיָא, אָמַר רַבִּי יוֹסֵי בְּרַבִּי יְהוּדָה: לֹא נֶחְלְקוּ אַדְמוֹן וַחֲכָמִים עַל הַפּוֹסֵק מָעוֹת לַחֲתָנוֹ, וּפָשַׁט לוֹ אֶת הָרֶגֶל, שֶׁיְּכוֹלָה הִיא שֶׁתֹּאמַר: אַבָּא פָּסַק עָלַי, מָה אֲנִי יְכוֹלָה לַעֲשׂוֹת?

GEMARA **The mishna is not in accordance with** the opinion of **this *tanna*, as it is taught** in the *Tosefta* (13:1) that **Rabbi Yosei, son of Rabbi Yehuda, said: Admon and the Rabbis did not disagree with regard to one who** promises and **apportions money for his son-in-law** as a dowry **and** subsequently **went bankrupt, that** the betrothed woman **can say:** My **father apportioned** money **for me; what can I do?**

עַל מַה נֶּחְלְקוּ – עַל שֶׁפָּסְקָה הִיא עַל עַצְמָהּ. שֶׁחֲכָמִים אוֹמְרִים: תֵּשֵׁב עַד שֶׁתַּלְבִּין רֹאשָׁהּ, אַדְמוֹן אוֹמֵר: יְכוֹלָה הִיא שֶׁתֹּאמַר: כְּסָבוּרָה אֲנִי שֶׁאַבָּא נוֹתֵן עָלַי, וְעַכְשָׁיו שֶׁאֵין אַבָּא נוֹתֵן עָלַי – מָה אֲנִי יְכוֹלָה לַעֲשׂוֹת? אוֹ כְּנוֹס אוֹ פְּטוֹר. אָמַר רַבָּן גַּמְלִיאֵל: רוֹאֶה אֲנִי אֶת דִּבְרֵי אַדְמוֹן.

**With regard to what did they disagree?** It is **with regard to** a case **where she apportioned** money **for herself,**[H] **as the Rabbis say: Let her sit until her head turns white,** as she did not fulfill her promise. However, **Admon says** that **she can say: I thought that** my **father would give** the money **for me, and now that** my **father is not giving** the money **for me, what can I do? Either marry** me **or release** me. And it is with regard to this case that **Rabban Gamliel said: I see** as correct **the statement of Admon,** as the betrothed woman has no money of her own, and she was clearly relying on her father to provide the dowry.

תָּנָא: בַּמֶּה דְּבָרִים אֲמוּרִים – בִּגְדוֹלָה. אֲבָל בִּקְטַנָּה – כּוֹפִין. כּוֹפִין לְמַאן? אִילֵימָא לָאָב – אִיפְּכָא מִיבָּעֵי לֵיהּ! אֶלָּא אָמַר רָבָא: כּוֹפִין לַבַּעַל לִיתֵּן גֵּט.

§ It is **taught: In what** case **is this statement said?** It is said in the case **of an adult**[H] woman. **However,** with regard **to a minor** girl, the court **compels** payment.[N] The Gemara asks: **Whom do they compel? If we say** that they coerce the **father** to pay, the *tanna* **should have stated the opposite.** It is more reasonable to suggest that the father is compelled to pay when an adult woman promises the money, as the promises of an adult are legally valid, whereas a minor is not legally competent and therefore her promises are of no consequence. **Rather, Rava said:** In the case of a minor, the court **compels the groom** either **to give** her **a bill of divorce** or to marry her.

אָמַר רַבִּי יִצְחָק בֶּן אֶלְעָזָר מִשְּׁמֵיהּ דְּחִזְקִיָּה: כָּל מָקוֹם שֶׁאָמַר רַבָּן גַּמְלִיאֵל ״רוֹאֶה אֲנִי אֶת דִּבְרֵי אַדְמוֹן״ – הֲלָכָה כְּמוֹתוֹ. אָמַר לֵיהּ רָבָא לְרַב נַחְמָן: אֲפִילּוּ בְּבָרַיְיתָא? אָמַר לֵיהּ: מִי קָאָמְרִינַן בַּמִּשְׁנָה? בְּכָל מָקוֹם שֶׁאָמַר רַבָּן גַּמְלִיאֵל קָאָמְרִינַן.

§ **Rabbi Yitzḥak ben Elazar said in the name of Ḥizkiyya: Anywhere** it is recorded **that Rabban Gamliel said: I see** as correct **the statement of Admon, the *halakha* is in accordance with his** opinion. **Rava said to Rav Naḥman:** Does this halakhic principle apply **even** when the debate between Admon and the Rabbis is recorded **in a *baraita*?**[B] Rav Naḥman **said to him: Did we say:** Anywhere it is recorded **in the Mishna? We said: Anywhere** it is recorded **that Rabban Gamliel said,** which means even in a *baraita*.

אָמַר רַבִּי זֵירָא אָמַר רַבָּה בַּר יִרְמְיָה: שְׁנֵי דְּבָרִים שֶׁאָמַר חָנָן – הֲלָכָה כַּיּוֹצֵא בּוֹ, שִׁבְעָה דְּבָרִים שֶׁאָמַר אַדְמוֹן – אֵין הֲלָכָה כַּיּוֹצֵא בּוֹ. מַאי קָאָמַר?

**Rabbi Zeira said** that **Rabba bar Yirmeya said:** With regard to the **two statements that Ḥanan said,** the ***halakha* is in accordance with** he who ruled **similarly to him,**[N] i.e., Rabban Yoḥanan ben Zakkai (see 107b); however, with regard to the **seven statements that Admon said,** the ***halakha* is not in accordance with** he who ruled **similarly to him,** i.e., Rabban Gamliel. The Gemara asks: **What is he saying?** What does this ruling mean?

אִילֵימָא הָכִי קָאָמַר: שְׁנֵי דְּבָרִים שֶׁאָמַר חָנָן הֲלָכָה כְּמוֹתוֹ וְכַיּוֹצֵא בּוֹ, וְשִׁבְעָה דְּבָרִים שֶׁאָמַר אַדְמוֹן – אֵין הֲלָכָה כְּמוֹתוֹ וְלֹא כַּיּוֹצֵא בּוֹ, וְהָאָמַר רַבִּי יִצְחָק בֶּן אֶלְעָזָר מִשְּׁמֵיהּ דְּחִזְקִיָּה: כָּל מָקוֹם שֶׁאָמַר רַבָּן גַּמְלִיאֵל רוֹאֶה אֲנִי אֶת דִּבְרֵי אַדְמוֹן – הֲלָכָה כְּמוֹתוֹ!

**If we say** that **this is what** he **is saying:** With regard to the **two statements that Ḥanan said,** the ***halakha* is in accordance with his** opinion **and in accordance with** he who ruled **similarly to him, and** with regard to the **seven statements that Admon said,** the ***halakha* is not in accordance with his** opinion **and** also **not in accordance with** he who ruled **similarly to him, but didn't Rabbi Yitzḥak ben Elazar say in the name of Ḥizkiyya: Anywhere** it is recorded **that Rabban Gamliel said: I see** as correct **the statement of Admon,** the ***halakha* is in accordance with his** opinion.

אֶלָּא הָכִי קָאָמַר: שְׁנֵי דְּבָרִים שֶׁאָמַר חָנָן – הֲלָכָה כְּמוֹתוֹ וְכַיּוֹצֵא בּוֹ, שִׁבְעָה דְּבָרִים שֶׁאָמַר אַדְמוֹן – אֵין הֲלָכָה כַּיּוֹצֵא בּוֹ, הָא כְּמוֹתוֹ – הֲלָכָה בְּכוּלְּהוּ,

**Rather, this is what** Rabbi Zeira **is saying:** With regard to the **two statements that Ḥanan said,** the ***halakha* is in accordance with his** opinion **and is** also **in accordance with** he who ruled **similarly to him,** i.e., Rabban Yoḥanan ben Zakkai. With regard to the **seven statements that Admon said, the *halakha* is not** only **in accordance with** the ruling of Rabban Gamliel, who ruled **similarly to** Admon in three of these cases. Rather, **the *halakha* is in accordance with** Admon's ruling **in all** seven cases.

**HALAKHA**

**She apportioned for herself – פָּסְקָה הִיא עַל עַצְמָהּ:** If a woman negotiated her own dowry, for which she apportioned money, and now she is unable to pay, she may be left an unwed betrothed woman until she can raise the funds or until she dies. The groom is not obligated to release her by means of a bill of divorce. This *halakha* is in accordance with the opinion of the Rabbis in the *baraita* (Rambam *Sefer Nashim*, *Hilkhot Ishut* 23:16; *Shulḥan Arukh*, *Even HaEzer* 52:1).

**This statement…is said of an adult, etc. – דְּבָרִים אֲמוּרִים בִּגְדוֹלָה וכו׳:** The statement that a betrothed woman must sit unwed and wait until she comes into possession of the money owed to the groom relates to a case where she apportioned the sum of the dowry on her own behalf as an adult. However, if she is a minor, the court forces the groom to give her a bill of divorce if he is unwilling to marry her without a dowry. Some claim that this applies only if she cannot pay the promised sum, but if she has the available funds she must give the groom the money her father apportioned and may not say: Either marry me or release me (Rema, citing *Haggahot Alfasi*). Furthermore, these *halakhot* apply only prior to the wedding; after the wedding he cannot divorce her on the grounds that she did not give him the sum that was promised (*Haggahot Mordekhai*; Rambam *Sefer Nashim*, *Hilkhot Ishut* 23:16–17; *Shulḥan Arukh*, *Even HaEzer* 52:1).

**NOTES**

**However, with regard to a minor girl the court compels – אֲבָל בִּקְטַנָּה כּוֹפִין:** Some explain that in the case of a grown woman, she must have been aware that her father did not intend to pay the promised sum. However, a minor girl is certainly not guilty of deception, and therefore the court compels the groom to act (Meiri).

**The *halakha* is in accordance with he who ruled similarly to him – הֲלָכָה כַּיּוֹצֵא בּוֹ:** This translation follows Rashi, Rivan, and Ritva. Others explain: The *halakha* is in accordance with this opinion in all similar cases (Rabbeinu Ḥananel; Rif).

**BACKGROUND**

***Baraita* – בָּרַיְיתָא:** Literally, this term means external or outside, and refers to tannaitic material that was not included in the final compilation of the Mishna. When Rabbi Yehuda HaNasi redacted the collection of tannaitic material he decided to exclude much of it from the framework of the Mishna. These tannaitic statements, some of which are included in other collections, are known as *baraitot*. These *baraitot* contain variant texts and other important material.

וְהָאָמַר רַבִּי יִצְחָק בֶּן אֶלְעָזָר מִשְּׁמֵיהּ דְּחִזְקִיָּה: כָּל מָקוֹם שֶׁאָמַר רַבָּן גַּמְלִיאֵל "רוֹאֶה אֲנִי אֶת דִּבְרֵי אַדְמוֹן" – הֲלָכָה כְּמוֹתוֹ. אָמַר – אִין, לֹא אָמַר – לָא!

The Gemara questions this interpretation: **Didn't Rabbi Yitzḥak ben Elazar say in the name of Ḥizkiyya: Anywhere** it is recorded **that Rabban Gamliel said: I see** as correct **the statement of Admon,** the *halakha* **is in accordance with his** opinion? It may be inferred from here that in those cases concerning which Rabban Gamliel **said** his statement, **yes,** the *halakha* is in accordance with Admon's ruling, but in those cases where Rabban Gamliel **did not say** his statement, **no,** the *halakha* is not in accordance with the opinion of Admon.

אֶלָּא הָכִי קָאָמַר: שְׁנֵי דְּבָרִים שֶׁאָמַר חָנָן הֲלָכָה כְּמוֹתוֹ וְכַיּוֹצֵא בּוֹ, שִׁבְעָה דְּבָרִים שֶׁאָמַר אַדְמוֹן יֵשׁ מֵהֶן שֶׁהֲלָכָה כְּמוֹתוֹ וְכַיּוֹצֵא בּוֹ וְיֵשׁ מֵהֶן שֶׁאֵין הֲלָכָה כְּמוֹתוֹ אֶלָּא כַּיּוֹצֵא בּוֹ.

**Rather, this is what** Rabbi Zeira **is saying:** With regard to the **two statements that Ḥanan said,** the ***halakha* is in accordance with his** opinion **and** is also **in accordance with** he who ruled **similarly to him.** With regard to the **seven statements that Admon said, there are among** these rulings **those** in **which** the ***halakha* is in accordance with his** opinion **and in accordance with** he who ruled **similarly to him, and there are among** these rulings **those** in **which** the ***halakha* is not in accordance with his** opinion **but in accordance with** he who ruled **similarly to him.**

בְּכָל מָקוֹם שֶׁאָמַר רַבָּן גַּמְלִיאֵל "רוֹאֶה אֲנִי אֶת דִּבְרֵי אַדְמוֹן" – הֲלָכָה כְּמוֹתוֹ, אִינָךְ – לָא.

The Gemara explains the above statement. In other words, **anywhere** it is recorded **that Rabban Gamliel said: I see** as correct **the statement of Admon,** the ***halakha* is in accordance with his** opinion, whereas in those **other** cases, where Rabban Gamliel remained silent, indicating that he did not agree with him, the *halakha* is **not** in accordance with Admon.

**מתני'** הָעוֹרֵר עַל הַשָּׂדֶה וְהוּא חָתוּם עָלֶיהָ בְּעֵד, אַדְמוֹן אוֹמֵר: "הַשֵּׁנִי נוֹחַ לִי וְהָרִאשׁוֹן קָשֶׁה הֵימֶנּוּ".

**MISHNA** With regard to **one who contests** ownership **of a field,**[H] claiming that a field under the control of someone else actually belongs to him, **and** the claimant himself **is signed as a witness on** the bill of sale to that other person, **Admon says:** His signature does not disprove his claim of ownership of the property, as it is possible that the claimant said to himself: **The second** person **is easier for me,** as I can reason with him, **but the first** owner, who sold the field to the current holder, **is more difficult** to deal with **than him.** The claimant might have been afraid to protest against the first one, who is perhaps violent, and therefore he was even willing to sign as a witness to transfer the field to the control of someone more amenable to his ensuing protest.

וַחֲכָמִים אוֹמְרִים: אִיבֵּד אֶת זְכוּתוֹ. עָשָׂאָהּ סִימָן לְאַחֵר – אִיבֵּד אֶת זְכוּתוֹ.

**And the Rabbis say: He** has **lost his right** to contest ownership, as he signed a bill of sale that states that the field belongs to the present holder. If **he established** that field **as a marker for another**[H] field, everyone agrees that **he** has **lost his right.**[N] In other words, if the claimant wrote a document concerning another field and in that document he listed the first field as a boundary marker and described it as belonging to someone else, even Admon concedes that he has lost his right, as he had no reason to say it belonged to someone else other than his belief this was in fact the case.

**גמ'** אָמַר אַבַּיֵי: לֹא שָׁנוּ אֶלָּא עֵד, אֲבָל דַּיָּין – לֹא אִיבֵּד אֶת זְכוּתוֹ. דְּתָנֵי רַבִּי חִיָּיא: אֵין הָעֵדִים חוֹתְמִין עַל הַשֶּׁטַר אֶלָּא אִם כֵּן קְרָאוּהוּ,

**GEMARA** **Abaye said: They taught** this dispute **only** with regard to **a witness**[H] who signed on a bill of sale. **However, a judge** who was contesting the ownership of a field and at the same time sat on a court that certified the bill of sale for that very tract of land **has not lost his right.** This is **as Rabbi Ḥiyya taught: Witnesses do not sign**[H] **a document unless they have read it,** which means that a witness cannot reasonably claim that he is certifying only part of document; it is assumed that he read and is aware of everything it contains.

**HALAKHA**

**One who contests ownership of a field, etc. – הָעוֹרֵר עַל הַשָּׂדֶה וכו':** The case is as follows; Reuven sold a field to Shimon, and Levi is one of the witnesses who signed the bill of sale. After the transaction Levi contests the ownership of the property, saying that this field that Reuven sold did not belong to him but rather belongs to Levi and that it had been stolen from him. In this case, the court pays no heed to him, nor to any evidence he may produce, as the fact that he signed the bill of sale is an admission on his part that the field belonged to Reuven at the time of the sale. This *halakha* is in accordance with the opinion of the Rabbis, but is effective only if he signed together with another witness; if he was the sole signatory on the bill he has not lost his right to contest ownership, as he knew that one witness on a contract is meaningless (Ritva). Likewise, if he added his signature as an honorary gesture in addition to those of the two witnesses who had already signed the document, he has not lost his right (Rivash). If the claimant leased the field from the one in control of the field it is as though he signed on the bill of sale (Rosh). If the guardian of orphans or the court signed in this manner for a field whose ownership is contested by the orphans, they have not lost their rights to it (Rivash; Rambam *Sefer Mishpatim*, *Hilkhot To'en VeNitan* 16:1; *Shulḥan Arukh*, *Ḥoshen Mishpat* 147:1).

**He established it as a marker for another – עֲשָׂאָהּ סִימָן לְאַחֵר:** If a claimant to the ownership of a field had previously signed a document which states that another field borders this one, which belongs to someone else, he has lost his right to protest, as explained in the Jerusalem Talmud. This is the case all the more so if the claimant himself writes a document which describes it as someone else's field (Rambam *Sefer Mishpatim*, *Hilkhot To'en VeNitan* 16:1 and *Maggid Mishne* there; *Shulḥan Arukh*, *Ḥoshen Mishpat* 147:4).

**They taught only with regard to a witness – לֹא שָׁנוּ אֶלָּא עֵד:** A witness may not contest the ownership of land listed in the document upon which he signed. However, if the claimant is a judge who happened to have certified that particular document, he retains the right to contest ownership of the land, as he can claim that he did not read the entire contents of the document prior to certifying it. This *halakha* is in accordance with the opinion of Abaye (Rambam *Sefer Mishpatim*, *Hilkhot To'en VeNitan* 16:2; *Shulḥan Arukh*, *Ḥoshen Mishpat* 147:4).

**Witnesses do not sign, etc. – אֵין הָעֵדִים חוֹתְמִין וכו':** Witnesses may sign a document only if they have read it and are familiar with its contents (Rambam *Sefer Mishpatim*, *Hilkhot To'en VeNitan* 16:1 and *Hilkhot Malve VeLoveh* 24:4; *Shulḥan Arukh*, *Ḥoshen Mishpat* 45:2, 5; see 68:2).

**NOTES**

**He has lost his right – אִיבֵּד אֶת זְכוּתוֹ:** The early commentaries write that he has lost all rights to this field, i.e., even if he brings witnesses testifying to his ownership of the land or that it was stolen, their testimony is not accepted, as listing a field as a boundary marker for another field is considered an admission that it does not belong to him (see Rambam).

אֲבָל דַּדַּיָּנִין חוֹתְמִים אַף עַל פִּי שֶׁלֹּא קְרָאוּהוּ.

**However, judges do sign**[H] **a document even though they have not read it,** as they are merely certifying the signatures without relating to the content of the document at all.

"עֲשָׂאָהּ סִימָן לְאַחֵר". אָמַר אַבַּיֵי: לֹא שָׁנוּ אֶלָּא לְאַחֵר, אֲבָל לְעַצְמוֹ – לֹא אִיבֵּד אֶת זְכוּתוֹ.

§ The mishna taught that if someone **established** a field **as a marker for another** field, everyone agrees that he has lost his right to contest its ownership. **Abaye said: They taught** this **only** in a case where he stated this in a document unrelated to the field in question, which was written **for another** person. **However,** if he established it as a marker **for himself,**[H] when he was buying a different field owned by the person who is in possession of the contested field, he has **not**[N] **lost his right.**

דַּאֲמַר: אִי דְּלָא עֲבַדִי לֵיהּ הָכִי – לָא הֲוָה מְזַבֵּין לָהּ נַיְהֲלִי. מַאי אִית לָךְ לְמֵימַר – אֵיבָּעֵי לִי לְמֵימְסַר מוֹדָעָא – חַבְרָךְ חַבְרָא אִית לֵיהּ, וְחַבְרָא דְּחַבְרָךְ חַבְרָא אִית לֵיהּ.

The reason is **that** the claimant can **say: Had I not done this** act of writing that the field belongs **to him, he would not have sold me this other** field. **What have you to say** against this argument? Will you say that **I should have put out a notice** and declared in the presence of witnesses that I am forced to write this way in the contract? I was concerned about doing this, as **your friend has a friend and your friend's friend has a friend.** In other words, it is hard to keep an announcement of this kind secret, and ultimately my notice would have become public knowledge and would have reached the owner of the field himself, and he would have refused to sell me the other tract of land.

הַהוּא דַּעֲשָׂאָהּ סִימָן לְאַחֵר, עְרֵעֵר וּשְׁכִיב, וְאוֹקִים אַפּוֹטְרוֹפָּא. אֲתָא אַפּוֹטְרוֹפּוֹס לְקַמֵּיהּ דְּאַבַּיֵי. אָמַר לֵיהּ: עֲשָׂאָהּ סִימָן לְאַחֵר – אִיבֵּד אֶת זְכוּתוֹ.

§ The Gemara relates: There was **a certain** individual **who established** a field **as a marker for another** field, with ownership of the first field ascribed to someone else. Later he **contested** the ownership of the first field, claiming it as his own, **and** he subsequently **died. And** prior to his death he had **appointed a steward** to manage the properties of his orphans. **The steward came before Abaye.** Abaye **said to him:** The deceased **established** the field **as a marker for another, and** therefore **he has lost his right** to contest ownership of the land.

אַמַּר: אִי הֲוָה אֲבוּהוֹן דְּיָתְמֵי קַיָּים הֲוָה טָעֵין וַאֲמַר: תֻּלָּם אֶחָד עֲשִׂיתִי לָךְ. אָמַר לֵיהּ: שַׁפִּיר קָאָמְרַתְּ, דְּאָמַר רַבִּי יוֹחָנָן: אִם טָעַן וְאָמַר תֻּלָּם אֶחָד עֲשִׂיתִי לָךְ – נֶאֱמָן, זִיל הַב לֵיהּ מִיהַת תֻּלָּם אֶחָד.

The steward **said** to Abaye: **If the father of** these **orphans were alive he would have claimed and said: I established one furrow** for **you.** In other words, the marker I established by means of this field was not meant as a reference to the entire field but only to a furrow at the edge of the field. Abaye **said to him: You have spoken well, as Rabbi Yoḥanan said: If he claimed and said: I established one furrow** for **you,**[H] **he is deemed credible. Go** and **give him one furrow in any event,** as you freely admit that at least one furrow belongs to the one currently in control of the property.

הֲוָה עֲלָהּ רִיכְבָּא דְּדִיקְלֵי, אֲמַר לֵיהּ: אִי הֲוָה אֲבוּהוֹן דְּיָתְמֵי קַיָּים – הֲוָה טָעֵין וְאָמַר: חֲזַרְתִּי וְלָקַחְתִּי מִמֶּנּוּ. אָמַר לֵיהּ: שַׁפִּיר קָאָמְרַתְּ, דְּאָמַר רַבִּי יוֹחָנָן: אִם טָעַן וְאָמַר חֲזַרְתִּי וּלְקַחְתִּיו מִמֶּנּוּ – נֶאֱמָן. אֲמַר אַבַּיֵי: הַאי מַאן דְּמוֹקֵים אַפּוֹטְרוֹפָּא – נוֹקִים כִּי הַאי, דְּיָדַע לְאַפּוּכֵי בִּזְכוּתָא דְּיָתְמֵי.

**On that** particular furrow **there was a row of palm trees,** which the steward did not want to lose. **He said to** Abaye: **If the father of** these **orphans were alive he would have claimed and said:** I did in fact sell the field to him, but **I went back and bought** it **from him**[H] sometime later. Abaye **said to him: You have spoken well, as Rabbi Yoḥanan said: If he claimed and said: I went back and bought it from him, he is deemed credible.** After the steward won his suit in court, **Abaye said: One who** wants to **appoint a steward**[H] **should appoint** someone **like this** person, **who knows how to look out for the rights of the orphans** and how to argue on their behalf.

**מתני'** מִי שֶׁהָלַךְ לִמְדִינַת הַיָּם וְאָבְדָה דֶּרֶךְ שָׂדֵהוּ, אַדְמוֹן אוֹמֵר: יֵלֵךְ לוֹ בַּקְּצָרָה. וַחֲכָמִים אוֹמְרִים: יִקְנֶה לוֹ דֶּרֶךְ בְּמֵאָה מָנֶה, אוֹ יִפְרַח בַּאֲוִיר.

MISHNA With regard to **one who went overseas and** in the meantime **the path** leading **to his field was lost,**[H] e.g., the path he used to reach his land was taken over by the owner of the field through which it passed, so that its exact position is now unknown, **Admon says: Let him go** to his field **by the shortest** possible route. **And the Rabbis say: Let him buy himself a path** from an owner of a neighboring field at whatever price he can, even if it is **one hundred dinars** [*maneh*]**, or let him fly through the air.**

**HALAKHA**

**However judges do sign, etc. – אֲבָל דַּדַּיָּנִין חוֹתְמִים וכו':** Judges certify a document simply by affirming the signatures affixed to it. There is no need for them to read and analyze the entire contents of the document (Rambam *Sefer Mishpatim*, *Hilkhot To'en VeNitan* 16:2 and *Sefer Shofetim*, *Hilkhot Edut* 6:8; *Shulḥan Arukh*, *Ḥoshen Mishpat* 46:20, 147:4).

**Established it as a marker for himself – ...עֲשָׂאָהּ סִימָן לְעַצְמוֹ:** This *halakha* is not mentioned by the Rambam or the *Shulḥan Arukh*. Some suggest that it might have been omitted because it can be inferred from the phrase: He established it a marker for another, that the ruling is different if he did so for himself (*Beit Yosef*). The basic *halakha* is that if the contester sold or purchased a tract of land and marked the contested land as a landmark in the bill of sale, it is no proof of admission with regard to the disputed property and he has not lost his right to it (see Rashi and Rif; Rambam *Sefer Mishpatim*, *Hilkhot To'en VeNitan* 16:1, and *Maggid Mishne* there; *Tur*, *Ḥoshen Mishpat* 147, and *Beit Yosef* there; see *Arukh HaShulḥan*, *Ḥoshen Mishpat* 147:2).

**I established one furrow for you – תֻּלָּם אֶחָד עֲשִׂיתִי לָךְ:** If the claimant claims that he did not intend for the entire field to serve as his landmark but only one furrow, his argument is accepted and he is permitted to contest the ownership of the entire field apart from that particular furrow, in accordance with the statement of Rabbi Yoḥanan (Rambam *Sefer Mishpatim*, *Hilkhot To'en VeNitan* 16:2; *Shulḥan Arukh*, *Ḥoshen Mishpat* 46:3)

**I went back and bought it from him – חֲזַרְתִּי וְלָקַחְתִּי מִמֶּנּוּ:** In a case where the claimant said: I later bought back from him even the single furrow I had used as a land marker for the border, if there is no evidence in his own handwriting to the contrary, or if he was actually in possession of the piece of property, he is deemed credible, in accordance with the statement of Rabbi Yoḥanan (*Shulḥan Arukh*, *Ḥoshen Mishpat* 46:3, and in the comment of Rema).

**One who wants to appoint a steward, etc. – הַאי מַאן דְּמוֹקֵים אַפּוֹטְרוֹפָּא וכו':** When the court appoints a steward to conduct the business of orphans, they search for a trustworthy, conscientious individual who will care for the rights of the orphans and has connections in the business world, so that he can manage their estate properly and keep it profitable, as stated by Abaye (Rambam *Sefer Mishpatim*, *Hilkhot Naḥalot* 10:6; *Shulḥan Arukh*, *Ḥoshen Mishpat* 290:2).

**One whose path to his field was lost – מִי...שֶׁאָבְדָה דֶּרֶךְ שָׂדֵהוּ:** With regard to one who went abroad and the path to his field was lost, if the four fields surrounding his own belonged to four different people, or if they all belonged to one person but he had acquired them from four different owners, each can put him off, and he has no alternative but to buy himself a path. However, if the four fields always belonged to the same individual, the one whose path was lost chooses for himself the shortest route to his field. If he took possession of a certain path, claiming that it is his, he cannot be removed from it without clear evidence, as he acted on the basis of a definite claim (*Maggid Mishne*; Rambam *Sefer Mishpatim*, *Hilkhot To'en VeNitan* 15:11; *Shulḥan Arukh*, *Ḥoshen Mishpat* 148:1–2).

**NOTES**

**However, for himself he has not – אֲבָל לְעַצְמוֹ לֹא:** Rashi explains that the one in possession of the contested field sold to the claimant another tract of land that is adjacent to the first field. The version of the text in the Gemara is in accordance with Rashi's opinion. However, most early commentaries maintain that the Gemara is referring to the opposite case, i.e., the claimant sold a field to the one in control of the adjacent contested property (*ge'onim*; Rabbeinu Ḥananel; see *Tosafot*).

**גמ׳** מַאי טַעְמָא דְּרַבָּנַן? שַׁפִּיר קָאָמַר אַדְמוֹן! אָמַר רַב יְהוּדָה אָמַר רַב: כְּגוֹן שֶׁהִקִּיפוּהָ אַרְבָּעָה בְּנֵי אָדָם מֵאַרְבַּע רוּחוֹתֶיהָ. אִי הָכִי מַאי טַעְמָא דְּאַדְמוֹן?

GEMARA The Gemara asks: **What is the reason** for the opinion **of the Rabbis** that he is not automatically entitled to a path leading to his field? After all, **Admon speaks well,** as it was established that he owned a path beforehand. **Rav Yehuda said** that **Rav said:** The mishna is dealing with a case **where** the field **was surrounded on four sides by** the property of **four different people.** Each of the four properties adjoining his field belonged to a different person, each of whom denied that his path cut through his land. Since he is unable to prove his claim with regard to each one of them, he has no choice but to buy himself a new path. The Gemara asks: **If so, what is the reason** for the opinion **of Admon?**

אֲמַר רָבָא: בְּאַרְבָּעָה דְּאָתוּ מִכֹּחַ אַרְבָּעָה, וְאַרְבָּעָה דְּאָתוּ מִכֹּחַ חַד – כּוּלֵּי עָלְמָא לָא פְּלִיגִי, דְּמָצֵי מַדְחֵי לֵיהּ. כִּי פְּלִיגִי – בְּחַד דְּאָתֵי מִכֹּחַ אַרְבָּעָה.

**Rava said:** In a case **where** there are **four** owners of fields **who come by virtue of four** previous owners, **and** in a case where there are **four** owners **who come by virtue of one** previous owner of all four properties, **everyone agrees that they** may **put off** the claims of the owner of the field in the middle, as each can say: Your path did not cut through my property. **When they disagree** is in a case **where** there is **one** current owner of four fields **who comes by virtue of four** previous owners.

אַדְמוֹן סָבַר: מִכָּל מָקוֹם דַּרְכָּא אִית לִי גַּבָּךְ, וְרַבָּנַן סָבְרִי: אִי שָׁתְקַתְּ – שָׁתְקַתְּ, וְאִי לָא – מַהַדְרְנָא שְׁטָרָא לְמָרַיְיהוּ, וְלָא מָצֵית לְאִשְׁתַּעוּיֵי דִּינָא בַּהֲדַיְיהוּ.

Rava elaborates: **Admon holds** that the claimant can say to the landowner: **In any case, I have a path through your** property. Although he cannot prove where the path ran, it was certainly within the perimeter of the landowner's property that borders his own tract of land, and for this reason he selects the shortest route. **And the Rabbis hold** that the landowner can say to the man: **If you will stay silent,** then **stay silent** and we will compromise; **and if not, I will return the document** of each field **to its** previous **owner**[N] **and you will not be able to negotiate with them,** as you do not know through which field your path passed.

הַהוּא דַּאֲמַר לְהוּ: דִּיקְלָא לִבְרַת. אֲזוֹל יַתְמֵי פְּלוֹג לְנִכְסֵי, לָא יְהֲבוּ לָהּ דִּיקְלָא. סָבַר רַב יוֹסֵף לְמֵימַר: הַיְינוּ מַתְנִיתִין.

§ The Gemara relates: There was **a certain** man **who said to** his heirs, in his will: I am leaving **a palm tree for my daughter.**[H] **The orphans went** and **divided up the property** and **they did not give** the daughter **a palm tree** at all. **Rav Yosef thought to say that this is** exactly like the case of **the mishna,** as each heir can say to her: The tree designated for you is not in my portion but in that of a different heir.

אָמַר לֵיהּ אַבַּיֵי: מִי דָּמֵי? הָתָם – כָּל חַד וְחַד מָצֵי מַדְחֵי לֵיהּ, הָכָא – דִּיקְלָא גַּבַּייהוּ הוּא. מַאי תַּקַּנְתַּייהוּ? לֵיתְבוּ לָהּ דִּיקְלָא, וְלִיהְדְּרוּ וְלִיפְלְגוּ מֵרֵישָׁא.

**Abaye said to him: Are** the cases **comparable? There, each and every one** of the fields' owners **can put him off,** as in fact the path might not have passed through his property, whereas **here, the palm tree is in their** possession,[N] i.e., they all share the obligation to give her a tree, and each is illegally holding on to a share of it. Abaye adds: **What is their remedy? Let them give her a palm tree and go back and divide** the inherited property once again **from the outset.** Since the palm tree will be taken from one of the shares, they must redistribute the estate afresh.

הַהוּא דַּאֲמַר לְהוּ: דִּיקְלָא לִבְרַת. שְׁבִיב, וְשָׁבִיק תְּרֵי פַּלְגֵי דְּדִיקְלָא,

The Gemara relates a similar story: There was **a certain** man **who said to** his heirs, in his will: I am leaving **a palm tree for my daughter. He died and left behind two halves of palm trees,** as there had been two trees he had shared with different business partners. The heirs wished to give the girl these two halves, despite the fact that tending to them would involve considerably more trouble than taking care of a single tree.

יָתֵיב רַב אַשִׁי וְקָא קַשְׁיָא לֵיהּ: מִי קָרוּ אֱינָשֵׁי לִתְרֵי פַּלְגֵי דִּיקְלֵי דִּיקְלָא, אוֹ לָא? אֲמַר לֵיהּ רַב מָרְדְּכַי לְרַב אַשִׁי, הָכִי אֲמַר אֲבִימִי מֵהגְרוֹנְיָא מִשְּׁמֵיהּ דְּרָבָא: קָרוּ אֱינָשֵׁי לִתְרֵי פַּלְגֵי דִּיקְלֵי דִּיקְלָא.

**Rav Ashi sat and posed a difficulty to** the proposal of the heirs. **Do people refer to two halves of a palm tree** as a whole **palm tree or not?** If the statement of the dying father can reasonably be interpreted as referring to these two halves she is at a disadvantage, as the burden of proof rests upon the claimant. Alternatively, if this is an unreasonable explanation of his wishes, they must give her a whole tree. Which alternative is correct? **Rav Mordekhai said to Rav Ashi: Avimi of Hagronya said as follows in the name of Rava: People do** in fact **refer to two halves of a palm tree**[H] **as** a whole **palm tree.** Consequently, the heirs may fulfill their father's dying wish by giving the girl the two halves they inherited.

**NOTES**

**I will return the document to its owner – מַהַדְרְנָא שְׁטָרָא לְמָרַיְיהוּ:** The early commentaries are puzzled by this claim, as the contestant can simply say: If you wish, give back the deeds, but in the meantime you are in possession of the fields and I have a claim against you (Ritva). Some say that since he can freely give the deeds back, it is considered as though he has done so. Others contend that this is merely an expression, and the decisive factor is not the actual return of the deeds. Rather, the Gemara means that as he bought the properties from four separate owners, he acquired their rights as well, including the fact that this man cannot take a path without their consent.

**Here the palm tree is in their possession – הָכָא דִּיקְלָא גַּבַּייהוּ הוּא:** This observation alone is insufficient to establish a difference between the two cases, as one can also say that the path is in the possession of the owners of the other fields. Rather, in the case of the path he has a claim against only one of the four, whereas here they all benefit from the fact that she is not given a palm tree, as each received a slightly larger portion of the inheritance (see Rivan and *Talmidei Rabbeinu Yona*)

**HALAKHA**

**Who said to them I am leaving a palm tree for my daughter – דַּאֲמַר דִּיקְלָא לִבְרַת:** In a case where one wrote in his will that a palm tree or a field of his estate should go to a certain individual, and when the heirs divided up the estate they did not give that individual anything, the distribution is void. The individual is given what the deceased ordered and the remaining estate is redivided, in accordance with the opinion of Abaye. Some authorities (Rema; *Tur*, citing Rosh) rule that if one of the heirs wishes to maintain the existing division of the estate and volunteers to give up a tree from his own property while the other heirs will reimburse him with money, he may do so (Rambam *Sefer Mishpatim*, *Hilkhot Naḥalot* 10:2; *Shulḥan Arukh*, *Ḥoshen Mishpat* 288:2).

**Two halves of a palm tree – תְּרֵי פַּלְגֵי דִּיקְלֵי:** If a dying person bequeathed a palm tree to a certain individual, and he died, leaving behind two halves of different palm trees, the individual takes them, as these two halves can be called one whole tree, in accordance with the opinion of Avimi of Hagronya. Some write that even if the deceased left behind whole trees, the heirs can still say that he was referring to these two halves (*Tur*, based on Rosh). See the *Sma*, who maintains that the *Beit Yosef* disputes this ruling (Rambam *Sefer Kinyan*, *Hilkhot Zekhiya UMattana* 11:22; *Shulḥan Arukh*, *Ḥoshen Mishpat* 253:22).