

מי אמרין דלא מעליז עלויי מעלה, ולפי שעתא טרדא. מידי דהוה אחמרא, דאמר מר השותה רביעית יין אל יורה. ואיבעית אימא: לא קשיא: הא – מקמי נהמא, הא – לבתר נהמא. דאמר אביי, אמרה לי אם: תמרי מקמי נהמא – כי נרגא לדיקולא, בתר נהמא – כי עברא לך שא.

The Gemara answers that there is no contradiction. Did we say that they are not exemplary? They are exemplary, and at the same time cause temporary distraction and intoxication, just as it is in the case of wine, as the Master said: One who drinks a quarter-log of wine should not issue halakhic rulings. And if you wish, say instead: This apparent contradiction is not difficult. This statement, which prohibits issuing a ruling under the influence of dates, is referring to one eating dates before he eats bread, when eating them can lead to intoxication. That statement, which enumerates the salutary effects of dates, is referring to one eating dates after he eats bread. As Abaye said: My mother told me that dates eaten before eating bread are destructive like an ax to a palm tree; dates eaten after eating bread they are beneficial like a bolt to a door, which provides support.

דשא, אמר רבא: דרך שם. דרגא, אמר רבא: דרך גג. פוריא, אמר רב פפא: שפרין ורבין עליה. אמר רב נחמן בר יצחק:

Apropos the term door [*dasha*], the Gemara cites statements referring to its etymology as well as that of several other Aramaic terms. With regard to the word *dasha*, door, Rava said: It is an acrostic for *derekh sham*, meaning through there. With regard to the word *darga*, ladder or stair, Rava said: It is an acrostic for *derekh gag*, meaning way to the roof. With regard to the word *purya*, bed, Rav Pappa said: It is an acrostic for *parin veravin aleha*, meaning one procreates upon it. Rav Nahman bar Yitzhak said:

Perek I
Daf 11 Amud a

אף אנו נאמר: איילונית – דוכרנית דלא ילדה.

We too will say: *Ailonit*, a sexually underdeveloped woman,⁸ is a term meaning: Like a ram [*dukhranit*],¹ because like a male sheep [*ayyil*] she does not bear children.

מתני' הגיורת והשבוייה והשפחה, שנפדו ושנתגירו ושנשתחררו פחותות מבנות שלש שנים ויום אחד – בתובתן מאתים, ויש להן טענת בתולין.

MISHNA With regard to a female convert, or a captive woman,^N or a maidservant,^B who were ransomed with regard to the captive, or who converted with regard to the convert, or who were freed with regard to the maidservant, when they were less than three years and one day old,^H their marriage contract is two hundred dinars, as their presumptive status is that of a virgin. Even if they were subject to intercourse when they were younger than that age, the hymen remains intact. And they are subject to a claim concerning their virginity.

BACKGROUND

Sexually underdeveloped woman (*ailonit*) – איילונית: From the detailed discussions in the Talmud, primarily in tractate *Yevamot*, an *ailonit* is apparently a woman suffering from a genetic condition that renders her unable to have children. This is not to be confused with sterility, which is a condition caused by certain secondary defects; the physical and sexual development of a sterile woman is standard. The *ailonit* is also characterized by different physical development in secondary sexual characteristics, e.g., growth of pubic hair. There are different theories as to the causes of this condition, ranging from those who attribute it to overproduction of male hormones to those who identify it as Turner's syndrome.

There are detailed halakhic discussions with regard to the legal status of an *ailonit*, primarily due to the total lack or delayed development of secondary sexual characteristics. As a result, various questions are raised with regard to determining when the *ailonit* assumes the status of a young woman and a grown woman.

Maidservant – שפחה: This refers to a Canaanite maidservant, a female gentile purchased by a Jew as a slave. Like a male Canaanite slave, after she is purchased she must be immersed in a ritual bath and subsequently her personal status changes: She henceforth must observe all of the Torah's prohibitions and is obligated to observe positive mitzvot that apply to a Jewish woman. Nevertheless, she is not fully Jewish and may not marry a Jewish man, except under special circumstances, where her master arranges a marriage for her with a Hebrew slave for the purpose of producing children whose status is like her own. As with a male Canaanite slave, it is permitted to sell a maidservant to other Jews but not to non-Jews. Although the *halakha* is that her master is ordinarily prohibited from freeing her, if she receives a bill of manumission, it takes effect, and her status as a freed maidservant is similar to that of a convert.

LANGUAGE

Like a ram [*dukhranit*] – דוכרנית: In Aramaic a ram [*ayyil*] is called *dikhra*, meaning male. Consequently, the term *ailonit* is derived from the Hebrew word for ram, whose Aramaic equivalent means male or masculine. An *ailonit*, therefore, is a woman incapable of having children, often masculine in appearance.

NOTES

A female convert, or a captive woman, etc. – הגיורת והשבוייה וכו': The Ritva points out that the order of the verbs: Ransomed, converted, and freed, does not correspond to the order of the subjects: Convert, captive, and maidservant. He explains that both the subjects and the verbs are listed in their respective order of importance. Converts, as people who consciously chose to join the Jewish people, are listed before victims of captivity and maidservants. Likewise, ransoming, i.e., fulfilling the mitzva of freeing captives, is the highest form of lovingkindness and takes precedence over conversion. Conversion, in turn, takes precedence over the freeing of slaves, as the latter is generally prohibited.

HALAKHA

A female convert...less than three years and one day old, etc. – פחותות מבנות שלש שנים ויום אחד וכו': A female convert, redeemed captive, or freed slave who converted or was redeemed or freed when she was less than three years and one day old retains the presumptive status of a virgin. Therefore, she is entitled to a marriage contract of two hundred dinars and her husband may make a claim concerning her virginity (Rambam *Sefer Nashim, Hilkhot Ishut* 11:1; *Shulhan Arukh, Even HaEzer* 67:3).

With regard to a convert who is a minor, one immerses him with the consent of the court – גר – קטן מטבילין אותו על דעת בית דין: A gentile minor may be immersed in a ritual bath for the purpose of conversion with the consent of the court, because the conversion is considered to be to his benefit, in accordance with the opinion of Rav Huna (Rambam *Sefer Kedusha, Hilkhot Issurei Bia* 13:7; *Shulhan Arukh, Yoreh De'a* 268:7).

One may act in a person's interests in his absence – נכין לאדם שלא בפניו: One may accept a gift on another's behalf or perform actions that benefit him without his knowledge; however, one may not act on his behalf to his detriment without his agreement (Rambam *Sefer Kinyan, Hilkhot Zekhiya* 4:2; *Shulhan Arukh, Hoshen Mishpat* 243:1).

גמ' אמר רב הונא: גר קטן מטבילין אותו על דעת בית דין.

מאי קא משמע לן – דזכות הוא לו וזכין לאדם שלא בפניו – תנינא: זכין לאדם שלא בפניו, ואין חבין לאדם שלא בפניו!

מהו דתימא: גוי בהפקירא ניחא ליה, דהא קיימא לן דעבד ודאי בהפקירא ניחא ליה.

קא משמע לן: דהני מילי – גדול, דטעם טעם דאיסורא. אבל קטן – זכות הוא לו.

לימא מסייע ליה: הגירות והשבויה והשפחה שנפדו ושנתגירו ושנשתחררו פחותות מבנות שלש שנים ויום אחד. מאי לאו – דאטבלינהו על דעת בית דין?

GEMARA Rav Huna said: With regard to a convert who is a minor,^N one immerses him^N in a ritual bath with the consent of the court.^H As a minor lacks the capacity to make halakhic decisions, the court is authorized to make those decisions in his stead.

What is Rav Huna coming to teach us? Is he teaching that it is a privilege for the minor to convert,^N and one may act in a person's interests even in his absence?^{HN} We already learned that explicitly in a mishna (*Eiruv* 81b): **One may act in a person's interests in his absence, but one may not act against a person's interests in his absence.**

Rav Huna's statement was necessary lest you say: With regard to a gentile, licentiousness is preferable for him, so conversion is contrary to his interests, just as we maintain that with regard to a slave, licentiousness is certainly preferable.^N Just as a slave has no interest in assuming the restrictions that come with freedom, in that a freed Canaanite slave is a convert to Judaism, a gentile would have the same attitude toward conversion.

Therefore, Rav Huna teaches us: **That applies** only with regard to an adult, who has experienced a taste of prohibition. Therefore, presumably he prefers to remain a slave and indulge in licentiousness. **However,** with regard to a minor, who did not yet engage in those activities, **it is a privilege for him^N** to convert.

The Gemara suggests: **Let us say** that the mishna supports Rav Huna's statement: With regard to a female convert, or a captive woman, or a maidservant, who were ransomed with regard to the captive, or who converted with regard to the convert, or who were freed with regard to the maidservant, when they were less than three years and one day old; what, is it not referring to a case where they immersed the minor converts and the maidservants with the consent of the court? Apparently, a conversion of that sort is valid.

NOTES

A convert who is a minor – גר קטן: Rashi explains that this case is one of a fatherless, gentile child, whose mother is bringing him to be converted. The early commentaries seek to clarify: If the reference is to a case where the mother is converting with the child, then that is identical to the case cited later of a father converting his children; there is no distinction between the father and the mother in this matter (see Rashba). Some explain that this is a case where both the father and the mother want the child to convert, although they themselves are not converting (Ritva, citing Rashi). Others say that the child comes on his own initiative, as although he has not reached majority, he has the capacity, albeit limited, to make advised decisions.

Later commentaries explain, based on various sources, that the determination of majority as the age when one is halakhically capable of independent decision is a Torah law that applies uniquely to Jews. With regard to gentiles, that capacity is determined based on the ability of each individual, unrelated to age. According to all these opinions, the initiative for this conversion must originate either with the convert or with his parents; the court does not proselytize (see Mordekhai, citing Ra'avaya). The Ran holds that if the court initiates conversion, the conversion is valid after the fact.

One immerses him – מטבילין אותו: The early commentaries ask why Rav Huna did not mention the requirement of circumcision. They explain that he sought to address conversion that applies to all, not only to males (Ritva). The Meiri concurs, adding that the conversion process culminates with immersion even for males. The Rashba adds that there is a novel element with regard to immersion. Circumcision performed when one is a minor obviously remains into his adulthood. However, with regard to immersion, which leaves no lasting imprint, one might have thought that when he reaches majority he would require an additional immersion.

The *Shita Mekubbetzet* cites an opinion that since immersion is wholly beneficial, one may therefore act in the minor's interests and immerse him. However, circumcision is accompanied by pain,

and therefore it is not an unadulterated privilege and cannot be performed for a minor convert. According to this explanation, Rav Huna is referring to a convert who is already circumcised.

It is a privilege for the minor to convert – זכות הוא לו: *Tosafot* ask how the principle that one can act in another's interests even in his absence can be applied in this case. That principle is based on agency, and both a child and a gentile are halakhically incapable of appointing an agent. The *Shakh* explains in the book *Nekuddot HaKesef* that the conversion is not effected for the gentile child based on agency, but rather on the authority of the court to act on his behalf.

One may act in a person's interests in his absence – נכין לאדם – שלא בפניו: The *Shita Mekubbetzet* cites an opinion that provided an action is not completely to the detriment of another, it can be considered to be in his interests. That is why although converting to Judaism carries with it certain difficulties, e.g., the onus of the mitzvot, it is considered to be in his interests.

We maintain that with regard to a slave licentiousness is certainly preferable – דהא קיימא לן דעבד ודאי בהפקירא ניחא ליה: *Tosafot* note that only according to Rabbi Meir is freeing a slave considered contrary to his interests, as he prefers his unrestricted lifestyle. According to the Rabbis, that is not the case. *Tosafot* ask why the Gemara cites that opinion as the consensus. For this reason, some early commentaries prefer a variant reading of the Gemara: With regard to a gentile, licentiousness is certainly preferable. The Ritva explains that even the Rabbis concede that the slave prefers his unrestricted lifestyle; however, they hold that the prospect of freedom outweighs that preference.

With regard to a minor, it is a privilege for him – זכות הוא לו: Some maintain that until he reaches majority he is a convert by rabbinic law. Only upon reaching majority and accepting the mitzvot does he become a full-fledged convert by Torah law. The Ritva and others prove that he is considered a full-fledged convert by Torah law immediately, although he may renounce his conversion when reaching majority.

They are content with whatever their father does – **נִתְקָא לְהוּ בְּמַאי דְּעֵבִיד אַבְהוֹן**: A gentile child may be converted to Judaism by his father (*Shulḥan Arukh, Yoreh De'at* 268:7).

When they reach majority they can protest – **יְכוּלִין לְמַחֲוֹת**: A child who converted to Judaism, whether he converted alone with the consent of the court, or whether he converted with his father or mother, may protest and renounce the conversion once he reaches majority. According to some authorities, if the child converted together with his parents, he may not renounce his conversion when he comes of age (*Ba'al Halakhot Gedolot*; see Rambam; *Ḥatam Sofer, Pithei Teshuva*; Rambam *Sefer Shofetim, Hilkhhot Melakhim* 10:3; *Shulḥan Arukh, Yoreh De'at* 268:7).

Once she has reached majority – **לְכִי גְדֻלָּה**: If a female child who converted marries and is then widowed or divorced, her marriage contract remains in the hands of the court until she reaches majority. This is in order to prevent a situation where she will protest her conversion and renounce her Judaism upon reaching adulthood, and benefit from payment of the marriage contract as a gentile (*Rambam Sefer Shofetim, Hilkhhot Melakhim* 10:3).

Once she reached majority for even one moment – **בֵּינָן – שְׁהַגְדִּילָה שְׁעָה אַחַת**: If a child who converted reaches majority and continues to practice Jewish customs he is considered a full-fledged convert. He can no longer protest his conversion and abandon Judaism. This is in accordance with the opinion of Rav Yosef, as explained by *Tosafot* (*Rambam Sefer Shofetim, Hilkhhot Melakhim* 10:3; *Shulḥan Arukh, Yoreh De'at* 268:8).

BACKGROUND

Samaritan – **בְּתוּי**: The Samaritans are the descendants of the nations displaced by Sennacherib, King of Assyria, and relocated to Eretz Yisrael. Eventually, they accepted upon themselves several mitzvot (II Kings 17). At the beginning of the Second Temple period, during the times of Ezra and Nehemiah, relations between the Samaritans and the Jews deteriorated. Later, the Samaritans established a center of worship on Mount Gerizim, as they claimed that the sanctity of that mountain was established by one of the Ten Commandments.

Some generations of Sages recognized Samaritans as half Jewish. They went so far as to say: In the mitzvot that the Samaritans adopted, they are extremely exacting in their fulfillment, even more than the Jews are. Ultimately, as the Samaritans continued to distance themselves from the Jewish people in virtually every regard, they were accorded the legal status of gentiles.

לא. הָכָא בְּמַאי עֲסָקִינָן, בְּגַר שְׁנֵי גֵיּוֹרֵי בְּנֵי וּבְנוֹתָיו עִמּוֹ, דְּנִתְקָא לְהוּ בְּמַאי דְּעֵבִיד אַבְהוֹן.

אָמַר רַב יוֹסֵף: הַגְּדִילוּ יְכוּלִין לְמַחֲוֹת. אִי תִּמְבִּיחַ אֲבִי: הַגְּיֹרֵת וְהַשְּׂבוּיָה וְהַשְּׁפָחָה שְׁנִפְדּוּ וְשִׁנְתְּגֵיּוֹרוֹ וְשִׁנְשַׁתְּחָרוּ פְּחוּתוֹת מִבְּנוֹת שְׁלֹשׁ שָׁנִים וְיוֹם אֶחָד – כְּתוּבָתָן מֵאֲתָם. וְאִי סָלְקָא דְּעֵתָךְ הַגְּדִילוּ יְכוּלִין לְמַחֲוֹת – יְהִיבִינָן לָהּ כְּתוּבָה דְּאֻלָּה וְאֶכְלָה בְּגִיּוּתָהּ?

לְכִי גְדֻלָּה. לְכִי גְדֻלָּה נִמְי מִמְּחִיָּא וְנִפְקָא! בֵּינָן שְׁהַגְדִּילָה שְׁעָה אַחַת וְלֹא מִיַּחְתָּה – שׁוּב אֵינָה יְכוּלָה לְמַחֲוֹת.

מְתִיב רַבָּא: אֵלוּ נְעוּרֹת שִׁישׁ לָהּ קָנַס: הָכָא עַל הַמְּזוּרָה, וְעַל הַנְּתִיבָה, וְעַל הַבְּוִיָּה, וְעַל הַגְּיֹרֵת, וְעַל הַשְּׂבוּיָה, וְעַל הַשְּׁפָחָה שְׁנִפְדּוּ וְשִׁנְתְּגֵיּוֹרוֹ וְשִׁנְשַׁתְּחָרוּ פְּחוּתוֹת מִבְּנוֹת שְׁלֹשׁ שָׁנִים וְיוֹם אֶחָד – יֵשׁ לָהּ קָנַס. וְאִי אָמַרְתָּ הַגְּדִילוּ יְכוּלִין לְמַחֲוֹת – יְהִיבִינָן לָהּ קָנַס דְּאֻלָּה וְאֶכְלָה בְּגִיּוּתָהּ!

לְכִי גְדֻלָּה. לְכִי גְדֻלָּה נִמְי מִמְּחִיָּא וְנִפְקָא! בֵּינָן שְׁהַגְדִּילָה שְׁעָה אַחַת וְלֹא מִיַּחְתָּה – שׁוּב אֵינָה יְכוּלָה לְמַחֲוֹת.

The Gemara rejects that proof: No, with what are we dealing here? It is with a convert whose minor sons and daughters converted with him, as they are content with whatever their father does^{HN} in their regard. However, that does not apply to a child who is converting on his own.

Rav Yosef said: In any case where minors convert, when they reach majority^N they can protest^{HN} and annul their conversion.^N Abaye raised an objection to his opinion from the mishna: With regard to a female convert, or a captive woman, or a maid-servant who were ransomed, or who converted, or who were freed when they were less than three years and one day old, their marriage contract is two hundred dinars. And if it enters your mind to say that when they reach majority they can protest and annul their conversion, do we give her the payment of the marriage contract that she will go and consume in her gentile state?

The Gemara answers: She receives payment of her marriage contract once she has reached majority^H and does not protest, but not while still a minor. The Gemara asks: When she reaches majority too, is there not the same concern that she will protest and abandon Judaism? The Gemara answers: Once she reached majority for even one moment^H and did not protest, she may no longer protest. This mishna poses no difficulty to the opinion of Rav Yosef.

Rava raised an objection from a mishna (29a): These are the cases of young women for whom there is a fine paid to their fathers by one who rapes them: One who engages in intercourse with a mamzeret; or with a Gibeonite woman [netina], who are given [netunim] to the service of the people and the altar (see Joshua 9:27); or with a Samaritan^B woman [kutit]. In addition, the same applies to one who engages in intercourse with a female convert, or with a captive woman, or with a maid-servant, provided that the captives were ransomed or that the converts converted, or that the maidservants were freed when they were less than three years and one day old, as only in that case do they maintain the presumptive status of a virgin. In all of these cases, there is a fine paid to their fathers if they are raped. And if you say that when they reach majority they can protest and annul their conversion, do we give her payment of the fine that she will go and consume in her gentile state?

The Gemara answers: Her father receives payment of the fine once she has reached majority and does not protest, but not while she is still a minor. The Gemara asks: When she reaches majority too, is there not the same concern that she will protest and abandon Judaism? The Gemara answers: Once she reached majority for even one moment and did not protest, she may no longer protest.

NOTES

As they are content with whatever their father does – **נִתְקָא**: According to the Rashba, there is no difference between a father and a mother in this regard. In fact, it is reasonable to assume that the child would tend more to follow his mother. The Meiri, however, suggests that the Sages stated this *halakha* only with regard to the father.

When they reach majority – **הַגְּדִילוּ**: *Talmidei Rabbeinu Yona* ask: As majority is reached at a given moment, just prior to that moment he is a minor and just after that moment he is an adult. How, then, is it possible to determine the precise moment when she may protest and renounce the conversion? *Tosafot* explain that reaching majority and conducting oneself as a Jew indicates that he is not protesting. The Rosh elaborates: If after reaching majority one performs an action unmistakably characteristic of Judaism, this would indicate he is not protesting. Others explain that the protest need not coincide precisely

with reaching majority. Rather, when the convert comes of age he is informed of the onus of mitzvot. If he accepts, he is a full-fledged Jew (*Ritva*).

The Ra'avad and the Rashba require that the process of acceptance or rejection of Judaism must begin during the latter stages of a child's minority and continue into the beginning of majority. According to *Tosefot Rid*, the process must be completed during the final days of minority, when the minor has the intellectual capacity to make decisions but has not yet reached the age of legal capacity to accept the mitzvot as a Jew.

הַגְּדִילוּ יְכוּלִין – **לְמַחֲוֹת**: The halakhic authorities disagree whether this applies only to a case where the child is converted with the consent of the court, or even in a case where he converted with his father. The Rashba and others cite the fact that Rav Yosef formulated

his statement in the plural, indicating that it applies in the case of all child converts.

יְכוּלִין לְמַחֲוֹת – **They can protest and annul their conversion**: The question is asked: Once the convert renounces Judaism, is he retroactively considered a gentile who never converted? There is a practical ramification to this question with regard to wine with which he came into contact prior to his protest. If he is retroactively considered a gentile, the wine is forbidden. The *Ḥatam Sofer* maintains that this is the ruling, although he was unaware of that which the Meiri cited in the name of the *ge'onim*, that the wine is not forbidden after the fact. Fundamentally, the prohibition of wine with which a gentile child came into contact is by rabbinic decree. As it is uncommon for converts to renounce their Judaism, the Sages do not issue decrees in uncommon cases.

אָבַי לֹא אָמַר כְּרַבָּא – הֵתָם קָנְסָא,
הֵינּוּ טַעְמָא שְׁלֵא יְהֵא חוּטָא נְשָׁכָר.

Abaye did not state his objection from the same source as did Rava, because **there**, in the mishna cited by Rava, it is referring to a fine, and in that case **this is the reason: So that the sinner will not profit**. The Sages did not absolve the rapist from payment of the fine merely due to the concern that the woman he raped may ultimately negate the conversion.

רַבָּא לֹא אָמַר כְּאָבַי – כְּתוּבָה הֵינּוּ
טַעְמָא – שְׁלֵא תְהֵא קְלָה בְּעֵינָיו
לְהוֹצִיאָהּ.

Rava did not state his objection from the same source as did Abaye, as with regard to a marriage contract, **this is the reason^{NH}** that the Sages instituted it: **So that his wife will not be inconsequential in his eyes, enabling him to easily divorce her**. As long as this woman does not negate her conversion, she is a Jewish woman and the Sages saw to her interests.

מִתְנִי' הַגְדוּל שְׁבָא עַל הַקְטָנָה, וְקָטָן
שְׁבָא עַל הַגְדוּלָה, וּמוֹכֵת עֵץ – כְּתוּבָתָן
מֵאֲתַיִם, דְּבָרֵי רַבִּי מֵאִיר. וְחֻכְמִים
אוֹמְרִים: מוֹכֵת עֵץ – כְּתוּבָתָהּ מִנָּה.

MISHNA With regard to an adult man who engaged in intercourse with a minor girl less than three years old; or a minor boy less than nine years old who engaged in intercourse with an adult woman;^H or a woman who had her hymen ruptured by wood or any other foreign object, for all these women **their marriage contract is two hundred dinars**, as their legal status is that of a virgin. This is **the statement of Rabbi Meir. And the Rabbis say: The marriage contract of a woman whose hymen was ruptured by wood is one hundred dinars,^H** as physically, since her hymen is not intact, she is no longer a virgin.

בְּתוּלָה, אֶלְמָנָה, גְרוּשָׁה וְחִלוּצָה מִן
הַנִּשְׁוֹאִין – כְּתוּבָתָן מִנָּה,

With regard to a virgin who is either a widow, a divorcée, or a *halutz* who achieved that status from a state of marriage,^{NH} for all these women **their marriage contract is one hundred dinars**,

NOTES

With regard to a marriage contract this is the reason, etc. – **כְּתוּבָה הֵינּוּ טַעְמָא וְכוּ'**: The Ritva explains this in a unique manner: If he doesn't give her a marriage contract at all the concern is that she will consider the lack of a marriage contract demeaning, as the lack will ease the way for her husband to divorce her. That itself may lead to her renunciation of Judaism.

A virgin...from a state of marriage – **מִן הַנִּשְׁוֹאִין**: In explaining why a virgin who was married receives a marriage contract of only one hundred dinars, Rashi writes that upon entering the wedding canopy, she assumes the presumptive status of a non-virgin. The early commentaries add that this is the ruling even if she claims that she is still a virgin and brings

proof to that effect. Nevertheless, the concern is that she is seeking to be valued more highly by her groom, and the witnesses share that objective.

Although there are certainly cases where it is clear that she did not engage in intercourse, the Sages did not distinguish between the cases. The Rashba explains the reason for this *halakha* based on the Jerusalem Talmud: A virgin receives a marriage contract of two hundred dinars from the groom because she finds favor in his eyes. The fact that she previously entered the wedding canopy with another man mitigates that favor. That is also the reason that according to one opinion, a woman whose hymen was ruptured by a foreign object receives a marriage contract of one hundred dinars.

HALAKHA

With regard to a marriage contract this is the reason – **כְּתוּבָה – מוֹכֵת עֵץ כְּתוּבָתָהּ מִנָּה**: The Sages instituted payment of the marriage contract to the wife so that she will not be inconsequential in her husband's eyes, enabling him to easily divorce her (Rambam *Sefer Nashim, Hilkhot Ishut* 10:7; *Tur, Even HaEzer* 66).

With regard to an adult man who engaged in intercourse with a minor girl, or a minor boy who engaged in intercourse with an adult woman – **עַל הַקְטָנָה וְקָטָן שְׁבָא עַל הַגְדוּלָה**: A girl who engaged in intercourse when she was less than three years and one day old, even if it was with an adult man, is entitled, when she marries, to a marriage contract of two hundred dinars. Similarly, an adult woman who engaged in intercourse with a boy less than nine years and one day old is entitled, when she marries, to a marriage contract of two hundred dinars (Rambam *Sefer Nashim, Hilkhot Ishut* 11:3; *Shulhan Arukh, Even HaEzer* 67:4).

The marriage contract of a woman whose hymen was ruptured by wood is one hundred dinars – **מִן הַנִּשְׁוֹאִין**: A woman whose hymen was ruptured by means of a foreign object, not through intercourse, is entitled to a marriage contract of one hundred dinars, in accordance with the opinion of the Rabbis (Rambam *Sefer Nashim, Hilkhot Ishut* 11:3; *Shulhan Arukh, Even HaEzer* 67:5).

A virgin...from a state of marriage – **מִן הַנִּשְׁוֹאִין**: A woman who was widowed or divorced or who underwent *halitza* after marriage, even if the marriage was not consummated, no longer has the legal status of a virgin, and is entitled to a marriage contract of one hundred dinars. In addition, her husband cannot later make a claim concerning her virginity (Rambam *Sefer Nashim, Hilkhot Ishut* 11:1; *Shulhan Arukh, Even HaEzer* 67:2).

ואין להן טענת בתולים.

הגירות והשבוייה והשפחה שנפדו ושנתגייירו ושנשתחררו יתירות על בנות שלש שנים ויום אחד – כתובתן מנה, ואין להן טענת בתולין.

גמ' אמר רב יהודה אמר רב: קטן הבא על הגדולה עשאה מוכת עץ. כי אמריתה קמיה דשמואל, אמר: אין מוכת עץ בבשר.

איבא דמתני לה להא שמעתא באפי נפשה: קטן הבא על הגדולה, רב אמר: עשאה מוכת עץ, ושמואל אמר: אין מוכת עץ בבשר.

מתב רב אושעיא: גדול שבא על הקטנה, וקטן הבא על הגדולה, ומוכת עץ – כתובתן מאתים, דברי רבי מאיר. וחקמים אומרים: מוכת עץ כתובתה מנה!

אמר רבא: הכי קאמר גדול הבא על הקטנה – ולא כלום. דפחות מכאן בנותן אצבע בעין דמי. וקטן הבא על הגדולה – עשאה מוכת עץ, ומוכת עץ גופא – פלוגתא דרבי מאיר ורבנן.

and they are not subject to a claim concerning their virginity. Since they were married, even if they did not engage in intercourse with their husband, their presumptive status is that of non-virgins, and the second husband cannot claim that he was misled with regard to their status as virgins.

And similarly, with regard to a female convert, or a captive woman, or a maidservant, who were ransomed with regard to the captive, or who converted with regard to the convert, or who were freed with regard to the maidservant, when they were more than three years and one day old,^{NH} their marriage contract is one hundred dinars and they are not subject to a claim concerning their virginity. When they married, their presumptive status was that of a non-virgin.

GEMARA Rav Yehuda said that Rav said: A minor boy who engaged in intercourse with an adult woman^N renders her as one whose hymen was ruptured by wood, as the act is not considered full-fledged intercourse. Rav Yehuda continues: When I said this statement before Shmuel, he said to me: A woman does not achieve the status of one whose hymen was ruptured by wood by means of flesh,^H i.e., intercourse.

Some teach this *halakha* independent of Rav Yehuda: With regard to a minor boy who engaged in intercourse with an adult woman, Rav said: He renders her as one whose hymen was ruptured by wood. And Shmuel said: A woman does not achieve the status of one whose hymen was ruptured by wood by means of flesh.

Rav Oshaya raised an objection to the opinion of Rav from the mishna: With regard to an adult man who engaged in intercourse with a minor girl less than three years old, or a minor boy less than nine years old who engaged in intercourse with an adult woman, or a woman who had her hymen ruptured by wood^B or any other foreign object, the marriage contract for each of these women is two hundred dinars. This is the statement of Rabbi Meir. And the Rabbis say: The marriage contract of a woman whose hymen was ruptured by wood is one hundred dinars. Contrary to Rav's opinion, the Rabbis distinguish between the *halakha* in the case of the intercourse of a minor boy and the *halakha* in the case of a woman whose hymen was ruptured by wood.

Rava said that this is what the mishna is saying: An adult man who engaged in intercourse with a minor girl less than three years old has done nothing, as intercourse with a girl less than three years old is tantamount to poking a finger into the eye. In the case of an eye, after a tear falls from it another tear forms to replace it. Similarly, the ruptured hymen of the girl younger than three is restored. And a young boy who engaged in intercourse with an adult woman renders her as one whose hymen was ruptured by wood. And with regard to the case of a woman whose hymen was ruptured by wood itself, there is a dispute between Rabbi Meir and the Rabbis. Rabbi Meir maintains that her marriage contract is two hundred dinars, and the Rabbis maintain that it is one hundred dinars.

NOTES

יתירות על בנות שלש – שנים ויום אחד: More than three years and one day old – שנים ויום אחד: In all these cases, these women no longer have the presumptive status of a virgin either due to the fact that they are subject to the control of others or because chastity is not their concern. This is not age dependent; however, for a girl younger than three, intercourse is not considered intercourse at all.

A minor boy who engaged in intercourse with an adult woman – קטן הבא על הגדולה: With regard to the dispute between Rav and Shmuel, there are two primary approaches. According to *Tosafot*, they disagree with regard to a case where her hymen remained intact. The dispute is whether a woman who engaged in intercourse with a boy younger than nine is comparable to a woman whose hymen was ruptured by a foreign object according to the opinion of the Rabbis that her marriage contract is one hundred dinars, or whether that does not apply in this case as the intercourse of a boy less than nine is inconsequential.

Tosefot Rid, however, maintains that they disagree even in a case where the hymen was ruptured. Based on the understanding that the amount in the marriage contract is determined based on the degree that the woman finds favor in the eyes of the groom, the definition of virgin is not necessarily dependent on whether or not the hymen is intact. Rather, it is dependent on whether or not she engaged in intercourse. The *Rid* explicitly writes that if she herself ruptured her hymen, she is still considered a virgin. According to Rav, intercourse with a boy less than nine years old is considered intercourse in the sense that it mitigates the favor that she finds in the eyes of the groom. The same is true of a woman whose hymen was ruptured by a foreign object according to the Rabbis. According to Shmuel, intercourse with a minor is not considered intercourse at all, and it carries with it less of a stigma than a woman whose hymen was ruptured by a foreign object according to the Rabbis.

HALAKHA

A female convert... more than three years and one day old – הגירות... יתירות על בנות שלש שנים ויום אחד: A female gentile, captive, or slave who was converted, redeemed, or freed respectively when she was more than three years and one day old has lost her presumptive status of a virgin and is entitled to a marriage contract of only one hundred dinars. On the other hand, her husband cannot make a claim concerning her virginity (Rambam *Sefer Nashim*, *Hilkhot Ishut* 11:1; *Shulhan Arukh*, *Even HaEzer* 67:3).

A woman does not achieve the status of one whose hymen was ruptured by wood by means of flesh – אין מוכת עץ בבשר: If a grown woman engages in intercourse with a boy younger than nine years old, she is still entitled to a marriage contract of two hundred dinars in accordance with the opinion of Shmuel, as the *halakha* is ruled in accordance with his opinion in civil matters. This ruling applies only if the woman's hymen was not ruptured as a result of that intercourse; however, if the hymen was ruptured, she is entitled to a marriage contract of one hundred dinars, like a woman whose hymen was ruptured by a foreign object (*Tosafot*; Rambam *Sefer Nashim*, *Hilkhot Ishut* 11:3; *Shulhan Arukh*, *Even HaEzer* 67:4).

BACKGROUND

A woman who had her hymen ruptured by wood – מוכת עץ: Penetration of the vagina with a hard, foreign object can rupture the hymen, e.g., if a girl falls and a hard, protruding

object comes into contact with the vagina (see 36b). This is an unlikely occurrence, as a typical fall would not lead to such a result (see *Tosafot* 9b).

Likens her to a grown woman – מדמי לה לבוגרת – The commentaries agree that the comparison is not perfect, as in the case of a grown woman, whose hymen, as a result of the maturation process, does not completely obstruct the orifice, whether or not her husband was aware of that phenomenon her marriage contract is two hundred dinars (Rashba). In the Jerusalem Talmud this discussion is tied to the matter of a woman whose hymen was ruptured by a foreign object, in terms of the degree in which the woman finds favor in the eyes of the groom. Does a woman whose hymen was ruptured by a foreign object receive a marriage contract of two hundred dinars like a grown woman, who receives two hundred dinars, even though her hymen does not completely obstruct the orifice due to maturation?

She says I am one whose hymen was ruptured by wood – היא אומרת מוכת עץ אני – The early commentaries ask: Why doesn't the Gemara explain that the woman claims that her husband was aware of the fact that her hymen was ruptured; and he claims that he was unaware, and that he married her assuming that she was a virgin but she in fact engaged in intercourse with a man (Rashba; Ritva)? They add that this is the explanation in the Jerusalem Talmud. According to the Gemara here, apparently, in that case where there is a dispute between the groom and the bride with regard to the nature of the agreement between them, there is no reason why Rabban Gamliel would accord credibility specifically to the woman.

Slander – הוצאת שם רע – This source of the *halakha* of a man who accuses his wife of adultery and claims that she was not a virgin is from the Torah (Deuteronomy 22:13–21), and is explained at length by the Gemara (44b–46b). The conclusion drawn from the verses is that it is not merely the claim of a suspicious groom but is a claim corroborated by witnesses. The difference between the various cases depends on the essence of the witnesses' testimony and an examination of their credibility.

She is subject to execution by stoning – בת סקילה היא – The Rashba writes that it does not mean that she will actually be executed, as stoning is administered only after forewarning. It means that if there are witnesses that she committed adultery she does not receive payment of her marriage contract at all, as a *sota*, a woman suspected of adultery, also does not receive payment.

אמר רמי בר חמא: מחלוקת כשהכיר בה; דרבי מאיר מדמי לה לבוגרת, ורבנן מדמו לה לבעולה. אבל לא הכיר בה – דברי הכל ולא כלום.

ורבי מאיר אמאי מדמי לה לבוגרת? נדמייה לבעולה! בעולה איתעביד בה מעשה בידי אדם. הא – לא איתעביד בה מעשה בידי אדם. ורבנן. אדמדמו לה לבעולה נדמייה לבוגרת! בוגרת לא איתעביד בה מעשה כלל, הא – איתעביד בה מעשה.

אבל לא הכיר בה – לדברי הכל ולא כלום. מתיב רב נחמן: היא אומרת "מוכת עץ אני" והוא אומר "לא בני, אלא דרוסת איש את". רבן גמליאל ורבי אליעזר אומרים: נאמנת!

אלא אמר רבא: בין הכיר בה ובין לא הכיר בה, לרבי מאיר – מאתים, לרבנן; הכיר בה – מנה, לא הכיר בה – ולא כלום.

והדר ביה רבא, דתניא: ביצד הוצאת שם רע? בא לבית דין ואמר: פלוני, לא מצאתי לבתך בתולה. אם יש עדים שזינתה תחתיו – יש לה כתובה מנה. אם יש עדים שזינתה תחתיו?! בת סקילה היא! הכי קאמר: אם יש עדים שזינתה תחתיו – בסקילה, זינתה מעיקרא – יש לה כתובה מנה.

Rami bar Hama said: This dispute is specifically in a case where the husband was aware that her hymen was ruptured by wood, as in that case Rabbi Meir likens her to a grown woman,ⁿ whose hymen does not completely obstruct the orifice as a result of the maturation process. Nevertheless, her marriage contract is that of a virgin, two hundred dinars. And the Rabbis liken her to a non-virgin who engaged in intercourse in the past. Her marriage contract is one hundred dinars. However, if he was not aware that her hymen was ruptured by wood and was under the impression that she was a full-fledged virgin, everyone agrees that she receives no marriage contract at all when he becomes aware of her condition, as the marriage was a mistaken transaction.

The Gemara asks: And why does Rabbi Meir liken her to a grown woman? Let him liken her to a non-virgin, who engaged in intercourse in the past. The Gemara answers: In the case of a non-virgin, an action was performed on her by a person; but with regard to this woman, whose hymen was ruptured by wood, an action was not performed on her by a person. The Gemara asks: And with regard to the Rabbis, rather than likening her to a non-virgin, let them liken her to a grown woman. The Gemara answers: In the case of a grown woman, no action was performed on her; but with regard to this woman, whose hymen was ruptured by wood, an action was performed on her.

Rami bar Hama concluded his statement: However, if he was not aware that her hymen was ruptured by wood, everyone agrees that she receives no marriage contract at all. Rav Nahman raised an objection from a mishna (13a): In a case where she says: I am one whose hymen was ruptured by wood,ⁿ i.e., she admits that her hymen is not intact but claims that it was not ruptured through intercourse, and the groom says: No; rather, you are one who was violated by a man and you are no longer a virgin, Rabban Gamliel and Rabbi Eliezer say: She is deemed credible and her claim is accepted. In that case, she is claiming that she is entitled to a marriage contract. Despite the fact that the groom had no prior awareness of her condition, Rabban Gamliel and Rabbi Eliezer maintain that she is deemed credible and receives a marriage contract of at least one hundred dinars. Apparently, not everyone agrees that in that case she receives nothing at all.

Rather, Rava said: This is what the mishna is saying: Whether the husband was aware that her hymen was ruptured by wood and whether he was not aware of her condition, according to Rabbi Meir she receives a marriage contract of two hundred dinars and it is not a mistaken transaction. According to the Rabbis, if he was aware of her condition she receives a marriage contract of one hundred dinars like a non-virgin; if he was not aware of her condition she receives no marriage contract at all, since it is a mistaken transaction, as when he married her he believed that her hymen was intact. According to this explanation, the mishna cited by Rav Nahman is in accordance with the opinion of Rabbi Meir.

And Rava retracted his opinion, as it is taught in a *baraita*: How does the slanderⁿ described in the Torah come about? If the groom comes to court and says: So-and-so, father of the bride, I did not find in your daughter an intact hymen. If there are witnesses that she committed adultery while under the husband's jurisdiction after betrothal, she receives a marriage contract of one hundred dinars. The Gemara asks: If there are witnesses that she committed adultery while under his jurisdiction after betrothal, she is subject to execution by stoning.ⁿ Obviously, she is in no position to receive a marriage contract. The Gemara answers that this is what the mishna is saying: If there are witnesses that she committed adultery while under his jurisdiction after betrothal, she is subject to execution by stoning. However, if she engaged in intercourse initially, prior to betrothal, she receives a marriage contract of one hundred dinars, like any non-virgin.

Mistaken transaction indicates that the betrothal is dissolved totally – **מקח טעות לגמרי משמע** – If a man marries a woman under the assumption that she is a virgin and he discovers that she was not a virgin, even if it was due to rape, the marriage contract is voided and she receives no payment, in accordance with the ruling of Rav Sheshet (Rambam *Sefer Nashim, Hilkhhot Ishut* 11:3; *Shulhan Arukh, Even HaEzer* 67:5).

If she was discovered to be one whose hymen was ruptured by wood – **נמצאת מוכת עץ** – A woman whose hymen was ruptured by a foreign object is entitled to a marriage contract of one hundred dinars. Even if the groom married her under the assumption that she was a virgin and he discovers that her hymen was ruptured by a foreign object, she is still entitled to a marriage contract of one hundred dinars, in accordance with the opinion of Rami bar Hama, as Rava eventually conceded to his opinion (Rambam *Sefer Nashim, Hilkhhot Ishut* 11:3; *Shulhan Arukh, Even HaEzer* 67:5).

The second husband cannot make a claim concerning virginity – **אין השיני יכול לטעון טענת בתולים** – If a woman was widowed or divorced or underwent *halitza*, she is entitled to a marriage contract of only one hundred dinars when she remarries. The second husband cannot make a claim with regard to her virginity, even if there are witnesses who testify that she never entered into seclusion with her first husband (*Shulhan Arukh, Even HaEzer* 67:2).

ואמר רב חייה בר אבין בר אבין אמר רב ששת: זאת אומרת בנכסה בחזקת בתולה ונמצאת בעולה – יש לה בתובה מנה. ומתיב רב נחמן: הנושא את האשה ולא מצא לה בתולים, היא אומרת "משארסתי נאנסתי ונסתחפה שדהו" והוא אומר "לא בני, אלא עד שלא אירסתני, והיה מקחי מקח טעות", ולית לה כלל?

And Rav Hiyya bar Avin said that Rav Sheshet said: That is to say, if the groom married a woman with the presumptive status of a virgin and she is found to be a non-virgin, she receives a marriage contract of one hundred dinars. And Rav Nahman raised an objection to the statement of Rav Sheshet from a mishna (12b): There is a case of one who marries a woman and did not find her hymen intact, and she says: After you betrothed me I was raped, and his, i.e., her husband's, field was inundated, meaning that it is his misfortune that she is not a virgin, as she was raped after betrothal. And he says: No; rather, you were raped before I betrothed you, and my transaction was a mistaken transaction. The betrothal was predicated on your presumptive status as a virgin and in fact, you were not a virgin then. In that case, she does not receive any marriage contract at all.

ואמר להו רב חייה בר אבין: אפשר רב עמרם וכל גדולי הדור יתבי כי אמר רב ששת להא שמעתא. וקשיא להו, ושני: מאי מקח טעות – נמי ממתנים, אבל מנה – אית לה. ואת אמרת לית לה כלל?

And Rav Hiyya bar Avin said to those present: Is it possible that Rav Amram and all the prominent Sages of the generation were sitting when Rav Sheshet said this *halakha*, and Rav Nahman's question was difficult for them, and they answered: What is the meaning of mistaken transaction in this context? It too means that he is absolved from his commitment to pay the marriage contract of a virgin, two hundred dinars, because she is not entitled to that sum. However, she is entitled to one hundred dinars. And, contrary to that consensus, you say that she does not receive any marriage contract at all?

ואמר רבא: מאן דקא מותיב – שפיר קא מותיב, מקח טעות – לגמרי משמע. ואלא קשיא הך! תריץ ואימא הכי: אם יש עדים שזינתה תחתי – בסקילה, זינתה מעיקרא – ולא כלום, נמצאת מוכת עץ – יש לה בתובה מנה.

And Rava said: The one who raised the objection, Rav Nahman, raises the objection well, as the term: Mistaken transaction, indicates that the betrothal is dissolved totally.^h The Gemara asks: But that *baraita* with regard to slander remains difficult, as in that case, if he discovered that she was not a virgin, she receives a marriage contract of one hundred dinars. The Gemara answers: Resolve the apparent contradiction and say this in the text of the *baraita*: If there are witnesses that she committed adultery while under his jurisdiction after betrothal, she is subject to execution by stoning. If she engaged in intercourse initially, prior to betrothal, she receives nothing at all. If she was discovered to be one whose hymen was ruptured by wood,^h she is entitled to a marriage contract of one hundred dinars.

והא רבא הוא דאמר לרבנן לא הכיר בה ולא כלום! אלא שמע מינה: הדר ביה רבא מההיא.

But isn't it Rava himself who said that according to the Rabbis, in the case of a woman whose hymen was ruptured by wood, if he was not aware of her condition she receives no marriage contract at all? Rather, conclude from it that Rava retracted that statement, and he holds that even according to the Rabbis, even if he was unaware of her condition she receives a marriage contract of one hundred dinars.

תנו רבנן: בנכסה ראשון לשים נישואין, ויש לה עדים שלא נסתרה. אי נמי, נסתרה ולא שהתה בדי ביאה – אין השיני יכול לטעון טענת בתולים, שהרי בנכסה ראשון.

S The Sages taught: If her first husband brought her into his home for the purpose of marriage,ⁿ and she has witnesses who testified that she did not seclude herself with him,ⁿ or alternatively, they testified that she secluded herself with him and did not stay in seclusion with him for a period equivalent to the time required to engage in intercourse, if the first husband dies or divorces her and she remarries, despite the testimony of the witnesses, the second husband cannot make a claim concerning virginity,^h and say the betrothal was predicated on the assumption that she was a virgin and she should lose her marriage contract. Since the first husband brought her into his home, the second husband should have considered that a woman who entered her husband's home is no longer a virgin.

NOTES

If her first husband brought her into his home for the purpose of marriage – **בנכסה ראשון לשים נישואין**: Some conclude based on the mishna and other sources that once the woman enters the wedding canopy, which is a prelude to consummation of the marriage, she loses her presumptive status of virginity even though intercourse did not actually take place yet.

attempting to have the husband value her more highly. However, in the case where the witnesses testify that she entered into seclusion but did not remain there long, since they testified that she entered the wedding canopy, they are clearly not seeking to praise her; therefore, one might have thought that their testimony is reliable. Furthermore, when they testify that she did not enter into seclusion, perhaps their testimony is not accurate, as their intention was not to observe in order to testify; however, when they testify that she entered into seclusion and they indicate that they had calculated its duration, one might have thought that their testimony is reliable.

Witnesses that she did not seclude herself with him – **עדים שלא נסתרה**: In the *Shita Mekubbetz* an explanation appears why these two examples were cited. In the case where the witnesses testified that she did not seclude herself with him there is room for concern that she was indeed secluded, as perhaps they are