NOTES

Because the first husband brought her into his house – שֶׁהֲרֵי רִאשׁוֹן כְּנָסָהּ: The commentaries ask: Ostensibly, the distinction suggested by the Gemara is obvious, as the reason for the *halakha* is written explicitly. Why did Rabba think otherwise? The Rivam, cited in *Tosafot*, explains that Rabba understood the phrase to mean that since the first husband brought her into his house and caused her to receive a marriage contract of one hundred dinars, the second husband can no longer make a claim with regard to the other hundred dinars, as a claim of virginity can affect only the hundred dinars to which a virgin is entitled. The Ramban explains that Rabba understood that the phrase adds a novel element, as although he could claim that he relied on the witnesses and did not pay the additional amount of the marriage contract, he would not have married her if he did not believe that she was a virgin. Therefore, even though he could say that he relied on the witnesses, and even though he did not add anything to the one hundred dinars of the marriage contract, he would not have married her had he not thought she was a virgin. Therefore, it states that since she entered the wedding canopy, he can no longer be said to be certain that she is a virgin.

Because she entered the wedding canopy – שֶׁהֲרֵי נִכְנְסָה לַחוּפָּה: Rabbeinu Ḥananel writes that since the groom should have determined whether or not the bride previously engaged in intercourse, as there were indications that this was the case, and he failed to investigate, he appears to have assumed that she was not a virgin. The Ramban and others explain that since she had entered the wedding canopy, she no longer finds favor in the eyes of the groom in the manner that a full-fledged virgin does.

אָמַר רַבָּה: זֹאת אוֹמֶרֶת: כְּנָסָהּ בְּחֶזְקַת בְּתוּלָה וְנִמְצֵאת בְּעוּלָה יֵשׁ לָהּ כְּתוּבָּה מָנֶה. רַב אַשִׁי אָמַר: בְּעָלְמָא לְעוֹלָם אֵימָא לָךְ – לֵית לָהּ כְּלָל, וְשָׁאנֵי הָכָא – שֶׁהֲרֵי כְּנָסָהּ רִאשׁוֹן.

Rabba said: That is to say, if **one married** a woman **with the presumptive status of a virgin,** as there were witnesses that she did not engage in intercourse, **and she was found** to be **a non-virgin, she is** entitled to **a marriage contract of one hundred dinars.** The Gemara rejects the proof. **Rav Ashi said: In general, actually, I** would **say to you** that in that case **she does not** receive a marriage contract **at all,** as it is a mistaken transaction. **But here it is different,** and she does not totally lose her marriage contract, **because the first** husband **brought her into** his house.[N] Therefore, the second husband should have considered that a woman who entered her husband's home is no longer a virgin.

וְנֵיחוּשׁ שֶׁמָּא תַּחְתָּיו זִינְּתָה! אָמַר רַב שֵׁרֵבְיָא: כְּגוֹן שֶׁקִּידֵּשׁ וּבָעַל לְאַלְתַּר.

The Gemara asks: **And** since there are witnesses that she did not engage in intercourse with the first husband, **let us be concerned that perhaps she committed adultery** after betrothal, **while under** the jurisdiction of the second husband, and rule that she is forbidden to him due to suspicion of adultery and is not entitled to a marriage contract at all. **Rav Sherevya said:** The *baraita* is referring to a case **where he betrothed** her **and engaged in intercourse immediately.** Therefore, there was no opportunity to engage in adultery between her betrothal and her marriage to the second husband.

וְאִיבָּא דְּמַתְנֵי לָהּ אַמַּתְנִיתִין: בְּתוּלָה אַלְמָנָה, גְּרוּשָׁה, חֲלוּצָה, מִן הַנִּישׂוּאִין – כְּתוּבָּתָן מָנֶה, וְאֵין לָהֶן טַעֲנַת בְּתוּלִין. בְּתוּלָה מִן הַנִּישׂוּאִין הֵיכִי מַשְׁכְּחַתְּ לָהּ? כְּגוֹן שֶׁנִּכְנְסָה לַחוּפָּה וְלֹא נִבְעֲלָה.

Others taught this statement of Rabba **with regard to the mishna:** Concerning **a virgin** who is **a widow, a divorcée,** or **a *ḥalutza*** who achieved that status **from** a state of **marriage,** for all these women **their marriage contract is one hundred dinars, and they are not subject** to **a claim** concerning their **virginity.** The Gemara asks: **How can you find a virgin from** a state of **marriage?** It is in a case **where she entered the wedding canopy and did not engage in intercourse.**

אָמַר רַבָּה: זֹאת אוֹמֶרֶת: כְּנָסָהּ בְּחֶזְקַת בְּתוּלָה וְנִמְצֵאת בְּעוּלָה – כְּתוּבָּתָהּ מָנֶה. רַב אַשִׁי אָמַר: בְּעָלְמָא לְעוֹלָם אֵימָא לָךְ – לֵית לָהּ כְּלָל, וְשָׁאנֵי הָכָא – שֶׁהֲרֵי נִכְנְסָה לַחוּפָּה.

Rabba said: That is to say, if **one married** a woman **with the presumptive status of a virgin and she was found** to be **a non-virgin, her marriage contract is one hundred dinars.** The Gemara rejects the proof. **Rav Ashi said: In general, actually, I** would **say to you** that **in general, she does not** receive a marriage contract **at all,** as it is a mistaken transaction. **But here it is different,** and she does not totally lose her marriage contract, **because she entered the wedding canopy.**[N] Therefore, the second husband should have considered that a woman who entered her husband's home is no longer a virgin.

וְנֵיחוּשׁ שֶׁמָּא תַּחְתָּיו זִינְּתָה! אָמַר רַב שֵׁרֵבְיָא: כְּגוֹן שֶׁקִּידֵּשׁ וּבָעַל לְאַלְתַּר.

The Gemara asks: **And let us be concerned that perhaps she committed adultery** after betrothal, **while under** the jurisdiction of the second husband. **Rav Sherevya said:** The *baraita* is referring to a case **where he betrothed** her **and engaged in intercourse immediately.** Therefore, there was no opportunity to engage in adultery between her betrothal and her marriage to the second husband.

מַאן דְּמַתְנֵי לָהּ אַבָּרַיְיתָא – כָּל שֶׁכֵּן אַמַּתְנִיתִין, וּמַאן דְּמַתְנֵי לָהּ אַמַּתְנִיתִין – אֲבָל אַבָּרַיְיתָא לָא, מִשּׁוּם דְּמָצֵי אָמַר לָהּ: אֲנָא אַעֵדִים סָמְכִי.

The Gemara notes: **The one who taught** the exchange between Rabba and Rav Ashi **with regard to the *baraita,*** where there is explicit testimony that she did not engage in intercourse with the first husband and nevertheless no proof can be brought that if he discovers that she is not a virgin she receives a marriage contract of one hundred dinars, **all the more so** would he say that the same is true **with regard to the mishna.** And **the one who taught** the exchange **with regard to the mishna, however,** would **not** say the same **with regard to the *baraita*, due to** the fact **that** the husband could **say to her: I relied on witnesses.** Therefore, proof can be brought from the *baraita* that if he discovered that she is not a virgin, she receives a marriage contract of one hundred dinars.

מתני׳ הָאוֹכֵל אֵצֶל חָמָיו בִּיהוּדָה שֶׁלֹּא בְּעֵדִים – אֵינוֹ יָכוֹל לִטְעוֹן טַעֲנַת בְּתוּלִים, מִפְּנֵי שֶׁמִּתְיַיחֵד עִמָּהּ.

MISHNA

A man **who eats at** the house of **his father-in-law**[HN] **in Judea** after betrothal and **without witnesses** to attest to the fact that he was not alone with his betrothed **is unable to make a claim concerning virginity** after marriage **because** in accordance with the custom in Judea, the assumption is **that he secluded himself with her,** and the concern is that it was he who engaged in intercourse with her.

גמ׳ מִדְּקָתָנֵי ״הָאוֹכֵל״ מִכְּלָל דְּאִיכָּא דּוּכְתָּא בִּיהוּדָה נַמִּי דְּלָא אָכִיל! אֲמַר אַבַּיֵי: שְׁמַע מִינָּהּ בִּיהוּדָה נַמִּי מְקוֹמוֹת מְקוֹמוֹת יֵשׁ. כִּדְתַנְיָא, אָמַר רַבִּי יְהוּדָה: בִּיהוּדָה, בָּרִאשׁוֹנָה הָיוּ מְיַיחֲדִין אֶת הֶחָתָן וְאֶת הַכַּלָּה שָׁעָה אַחַת קוֹדֶם כְּנִיסָתָן לַחוּפָּה, כְּדֵי שֶׁיְּהֵא לִבּוֹ גַּס בָּהּ. וּבַגָּלִיל לֹא הָיוּ עוֹשִׂין כֵּן.

GEMARA

The Gemara infers: **From** the fact **that** the mishna **teaches** the *halakha* employing the phrase: A man **who eats, by inference** one may conclude **that there is also a place in Judea where** the groom **does not eat** at the house of his father-in-law, and does not enter into seclusion with his betrothed. **Abaye said: Conclude from it that in Judea too there are** different **places** with different customs, **as it is taught** in a *baraita* that **Rabbi Yehuda said: In Judea, at first they would seclude the groom and bride** together **for a brief period before their entry into the wedding canopy, so that he would** grow **accustomed to her** companionship in order to ease the awkwardness when they would consummate the marriage. **And in the Galilee they did not do so.**

בִּיהוּדָה, בָּרִאשׁוֹנָה הָיוּ מַעֲמִידִין לָהֶם שְׁנֵי שׁוּשְׁבִינִין, אֶחָד לוֹ וְאֶחָד לָהּ, כְּדֵי לְמַשְׁמֵשׁ אֶת הֶחָתָן וְאֶת הַכַּלָּה בִּשְׁעַת כְּנִיסָתָן לַחוּפָּה, וּבַגָּלִיל לֹא הָיוּ עוֹשִׂין כֵּן.

The *baraita* continues. **In Judea, at first they would appoint for them two groomsmen** [***shushvinin***],[LN] **one for him and one for her, in order to examine**[N] **the groom and the bride at the time of their entry into the wedding canopy** and thereafter, to ensure that neither would engage in deception with regard to the presence or absence of blood from the rupture of the hymen. **And in the Galilee**[B] **they would not do so.**[N] As the custom of appointing groomsmen would be relevant only in a case where the groom and the bride had not been together in seclusion prior to marriage, this is apparently a custom in Judea different from the first custom cited in the mishna, where they would enter into seclusion prior to marriage.

בִּיהוּדָה, בָּרִאשׁוֹנָה הָיוּ שׁוּשְׁבִינִין יְשֵׁנִים בַּבַּיִת שֶׁחָתָן וְכַלָּה יְשֵׁנִים בָּהּ, וּבַגָּלִיל לֹא הָיוּ עוֹשִׂין כֵּן.

The *baraita* continues. **In Judea, at first the groomsmen would sleep in the house in which the groom and bride sleep,** in order to examine the sheet on which the marriage was consummated immediately following intercourse. This was in order to ensure that the groom would not attempt to obscure the blood of the rupture of the hymen and claim that the bride was not a virgin. **And in the Galilee they would not do so.**

HALAKHA

A man who eats at the house of his father-in-law – הָאוֹכֵל אֵצֶל חָמָיו: If the groom enters into seclusion with the bride before the wedding, he cannot then make a claim concerning her virginity. See, however, *Beit Shmuel*, which points out that according to *Tosafot*, this applies only in places where the seclusion is sanctioned according to local custom, not where it happened unsanctioned (Rambam *Sefer Nashim*, *Hilkhot Ishut* 11:8; *Shulḥan Arukh*, *Even HaEzer* 68:1).

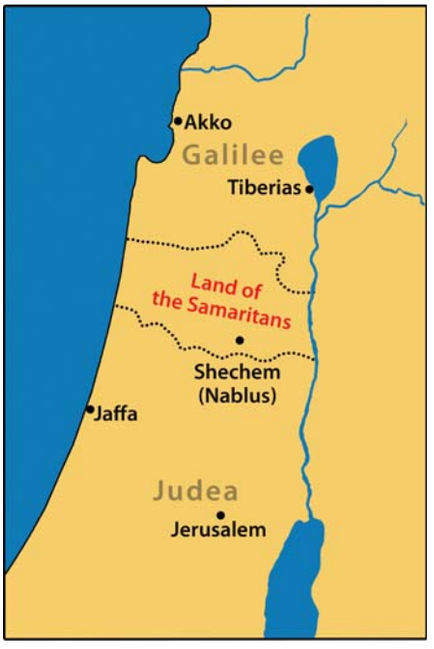
LANGUAGE

Groomsmen [*shushvinin*] – שׁוּשְׁבִינִין: This word, which appears in both Aramaic and Hebrew, apparently derives from Syriac. Some assert that it is from the root *yod, shin, beit*, meaning sit, indicating the one who seats the groom at the wedding. In Aramaic, *shushvinim* are the friends and those who accompany the groom. Apparently, during the mishnaic and talmudic eras the *shushvinim* did not merely fill the symbolic function of escorting the groom to the wedding; rather, they gave him gifts and assisted him at the wedding.

The role of *shushvin* was firmly established to the extent that it was considered a legal obligation for the groom, or his family, to reciprocate and serve as groomsman at the wedding of his groomsman or members of his family. This Gemara notes that the groomsman filled the additional role of ensuring that there was no deception on the part of the groom or the bride with regard to claims concerning virginity.

BACKGROUND

Judea and Galilee – יְהוּדָה וְגָלִיל:



Location of Judea and Galilee

NOTES

A man who eats at the house of his father-in-law – הָאוֹכֵל אֵצֶל חָמָיו: The reason for this custom in Judea is cited by several commentaries in the Jerusalem Talmud. It was related to the Roman decree that virgin brides submit to intercourse with the prefect first. To ensure that the woman would not submit to the prefect willingly, they sought in Judea to bolster the relationship between the bride and groom by cultivating a more intimate relationship between them. Rabbeinu Yehonatan adds that once the prefect discovered that the woman was not a virgin, he would not be insistent in exercising his right. From most commentaries it appears that this seclusion included physical intimacy and at times involved intercourse. The Meiri writes that when they entered into seclusion they would make a festive meal, and this is why it is referred to as: A man who eats in the house of his father-in-law. In the Jerusalem Talmud it is noted that the custom remained in effect in Judea even after the decree was revoked.

In Judea at first they would appoint for them two groomsmen – בִּיהוּדָה בָּרִאשׁוֹנָה הָיוּ מַעֲמִידִין לָהֶם שְׁנֵי שׁוּשְׁבִינִין: The Rashba and the Ritva explain that this custom was prevalent specifically in Judea because the people of Judea were deceitful and required supervision. It appears from several sources that Judeans were educated and quick witted, in contrast to those in the Galilee who were simpler people.

The Meiri explains that there is a connection between this custom and the custom to enter into seclusion. Since it was common in Judea for the bride to enter the wedding canopy when no longer a virgin, there was naturally more suspicion as well as additional opportunity for deception by both the groom and the bride. Others explain that the examination by the groomsmen was effective only with regard to the claim of blood from the rupture of the hymen, but not with regard to the claim of an unobstructed orifice. The Meiri writes that in places where there was suspicion with regard to these matters, women would be enlisted to examine the bride and ensure that she was not seeking to deceive the groom with regard to her virginity.

Examination – מְשַׁמּוּשׁ: The meaning of this term here and elsewhere (see Genesis 31:37), is examination. This examination was to ensure that the bride did not bring a bloodstained sheet and replace the sheet of the marriage bed with it, and also that the groom did not bring a clean sheet and replace the bloodstained sheet of the marriage bed with it in order to make a false claim against the bride. See the Meiri and other sources, who point out that there were other forms of deception employed by the bride on the wedding night in order to create an impression that she was indeed a virgin. The examination was designed to prevent all forms of deception.

And in the Galilee they would not do so – וּבַגָּלִיל לֹא הָיוּ עוֹשִׂין כֵּן: The Rashba writes that even though there were groomsmen in the Galilee, these would examine the bride to ensure that she did not bring a cloth already stained with blood, but they would not examine the groom.

וְכָל שֶׁלֹּא נָהַג כַּמְּנָהָג הַזֶּה אֵינוֹ יָכוֹל לִטְעוֹן טַעֲנַת בְּתוּלִים. אַהַיְיא? אֵילֵימָא אַרִישָׁא – ״כָּל שֶׁנָּהַג״ מִיבָּעֵי לֵיהּ!

The *baraita* concludes: **And anyone who did not conduct** himself **in accordance with this custom cannot make a claim concerning virginity** against the bride. The Gemara asks: **Concerning which** case in the *baraita* was this principle stated? **If we say** it is **concerning the first clause** of the *baraita*, regarding the custom to seclude the couple prior to marriage, in that case, the phrase: **Anyone who conducted** himself in accordance with this custom cannot make a claim concerning virginity, is what **it needed to say,** due to the concern that perhaps they had sexual relations before the marriage.

אֶלָּא אַסֵּיפָא – ״כָּל שֶׁלֹּא מוּשְׁמָשׁ״ מִיבָּעֵי לֵיהּ!

Rather, it is **concerning the latter clause** of the *baraita*: They would appoint for them two groomsmen to examine them, that the principle was stated. In that case, the phrase: **Anyone who was not examined**[H] by the groomsmen, is what **it needed** to say, as it is dependent on the family of the bride, and not the phrase: Anyone who did not conduct himself in accordance with this custom, which indicates that it depends on him.

אֲמַר אַבַּיֵי: לְעוֹלָם אַרִישָׁא, וּתְנֵי: ״כָּל שֶׁנָּהַג״. אֲמַר לֵיהּ רָבָא: וְהָא ״כָּל שֶׁלֹּא נָהַג״ קָתָנֵי! אֶלָּא אֲמַר רָבָא, הָכִי קָאָמַר: כָּל שֶׁלֹּא נָהַג מִנְהַג גָּלִיל בַּגָּלִיל אֶלָּא מִנְהַג יְהוּדָה בַּגָּלִיל אֵינוֹ יָכוֹל לִטְעוֹן טַעֲנַת בְּתוּלִים. רַב אַשִׁי אֲמַר: לְעוֹלָם אַסֵּיפָא, וּתְנֵי: ״כָּל שֶׁלֹּא מוּשְׁמָשׁ״.

Abaye said: Actually, the principle is stated **concerning the first clause; and** emend the *baraita* **and teach: Anyone who conducted** himself in accordance with this custom. **Rava said to him: But isn't it teaching** explicitly: **Anyone who did not conduct** himself in accordance with this custom? One should not corrupt a *baraita* due to a difficulty that arose in understanding it. **Rather, Rava said** that **this is what** the *baraita* **is saying: Anyone who did not practice the custom of the Galilee in the Galilee, but** instead observed **the custom of Judea in the Galilee, cannot make a claim concerning virginity** against the bride. **Rav Ashi said: Actually,** this principle could be applied **concerning the latter clause, and teach: Anyone who was not examined.**[N] When it said in the *baraita*: Anyone who did not conduct himself in accordance with this custom, it is referring to the custom of being examined.

מתני׳ אַחַת אַלְמָנַת יִשְׂרָאֵל וְאַחַת אַלְמָנַת כֹּהֲנִים כְּתוּבָּתָהּ מָנֶה. בֵּית דִּין שֶׁל כֹּהֲנִים הָיוּ גּוֹבִין לִבְתוּלָה אַרְבַּע מֵאוֹת זוּז, וְלֹא מִיחוּ בְּיָדָם חֲכָמִים.

MISHNA For **both a widow** who is **an Israelite woman**[N] **and a widow** who is the daughter **of priests, her marriage contract is one hundred dinars. A court of priests**[NB] **would collect** a marriage contract of **four hundred dinars for a virgin** daughter of a priest, twice the sum of the standard marriage contract for a virgin, **and the Sages did not reprimand them.**[N]

גמ׳ תָּנָא: וְאַלְמָנַת כֹּהֲנִים כְּתוּבָּתָהּ מָאתַיִם. וְהָאֲנַן תְּנַן: אַחַת אַלְמָנַת יִשְׂרָאֵל וְאַחַת אַלְמָנַת כֹּהֲנִים כְּתוּבָּתָן מָנֶה!

GEMARA A Sage **taught** in a *baraita*: **And** for **a widow** who is the daughter **of priests, her marriage contract is two hundred** dinars. The Gemara asks: **But didn't we learn** in the mishna: For **both a widow** who is **an Israelite woman and a widow** who is the daughter **of priests, their marriage contract is one hundred dinars?**

אֲמַר רַב אַשִׁי: שְׁתֵּי תַּקָּנוֹת הָווּ; מֵעִיקָּרָא תַּקִּינוּ לִבְתוּלָה אַרְבַּע מֵאוֹת זוּז, וּלְאַלְמָנָה מָנֶה.

Rav Ashi said: There were two ordinances[N] instituted: **Initially, the** court of priests **instituted for a virgin** daughter of a priest a marriage contract of **four hundred dinars, and for a widow,** a marriage contract of **one hundred dinars.**

HALAKHA

Anyone who was not examined – כָּל שֶׁלֹּא מוּשְׁמָשׁ: If it is the local custom to appoint witnesses to examine the bride and groom to prevent deception with regard to the groom's claim concerning virginity, and none were appointed, the husband cannot make a claim. However, in places where this is not the custom, the husband's claim is accepted based on the presumption that a person does not exert himself to prepare a wedding feast and then cause it to be lost (*Ḥelkat Meḥokek*; *Shulḥan Arukh*, *Even HaEzer* 68:2).

NOTES

And teach: Anyone who was not examined – וּתְנֵי כָּל שֶׁלֹּא מוּשְׁמָשׁ: The Rivam explains that Rav Ashi disagrees with the presumption: A person does not exert himself to prepare a wedding feast and then cause it to be lost (10a), because in his opinion whether the groom can make a claim concerning virginity is dependent upon the examination. Rabbeinu Tam says that Rav Ashi does not disagree with the presumption, but that he adds that since in Judea the custom was to be examined and the groom failed to observe it, there is suspicion that the failure was not due to forgetfulness but rather it was intentional, in order to cast aspersions on the bride. Therefore, his claim is groundless (*Tosefot Yeshanim*; Rosh).

Both a widow who is an Israelite woman – אַחַת אַלְמָנַת יִשְׂרָאֵל: Rabbeinu Yehonatan writes that the basis for specifying this is that since this mishna is discussing even a woman marrying a priest, one might say that since she is improving her social status she would be satisfied with any amount, even less than one hundred dinars.

A court of priests – בֵּית דִּין שֶׁל כֹּהֲנִים: It is explained in the name of the *ge'onim* that these were courts that were in cities in which the majority of the population consisted of priests. Such cities existed during the second Temple period and thereafter.

And the Sages did not reprimand them – וְלֹא מִיחוּ בְּיָדָם חֲכָמִים: Some explain that the Sages approved of this practice, and that even if the sum was not explicitly written in the marriage contract they would collect this amount based on general agreement (Ritva). Others explains that despite the potential for jealousy caused by the inequality, the Sages did not reprimand them (Meiri).

Two ordinances – שְׁתֵּי תַּקָּנוֹת: The early commentaries discuss: How did they arrive at a total of two ordinances, and how do they know that there were two ordinances? According to Rav Ashi it was only one ordinance, which was later revoked. Rashi explains that there were two steps taken for the benefit of the widows of priests, as both the original ordinance and its subsequent repeal were for their benefit.

BACKGROUND

A court of priests – בֵּית דִּין שֶׁל כֹּהֲנִים: Based on descriptions in various talmudic sources, there were apparently several courts under the jurisdiction of the Great Sanhedrin that convened in the Temple and that addressed different problems. One of those courts was the court of priests. This court addressed problems relating to the Temple and its service, e.g., examining the lineage of the priests who came to serve, as well as additional matters, and there are sources indicating that it was the responsibility of this court to establish the New Moon. The court, and the priests in general, had special traditions and customs. See later in the Gemara (14a), where it says that the priests would not always accept the rulings of other courts with regard to the lineage of the priests. Based on the Gemara here, this tribunal also served as the official court of the priests, establishing matters applicable to all priests.

כֵּיוָן דַּחֲזוּ דְּמְזַלְזְלִי בְּהוּ – תַּקִּינוּ לְהוּ מָאתָן. כֵּיוָן דַּחֲזוּ דְּקָא פָּרְשִׁין מִינַּייהוּ, דְּאָמְרִי: עַד דְּנִסְבִינַן אַלְמָנַת כֹּהֲנִים – נִיזִיל נִיסֵּיב בְּתוּלָה בַּת יִשְׂרָאֵל, אֲהַדְּרִינְהוּ לְמִלְּתַייְהוּ.

Once the members of the court **saw that** the priests **were demeaning** the widows, **they instituted for them** a marriage contract of **two hundred** dinars, so that they would treat them with greater esteem. **Once they saw that** the grooms **were distancing** themselves **from them, as they said: Instead of marrying a widow** who is the daughter of **priests** and paying a marriage contract of two hundred, **let us go marry a virgin Israelite woman** for the same price. Since men would no longer marry widows from priestly families, **they restored** matters **to their** original **status.** This indicates that the mishna and the *baraita* are addressing different time periods and different ordinances.

״בֵּית דִּין שֶׁל כֹּהֲנִים״ כּוּ׳. אָמַר רַב יְהוּדָה אָמַר שְׁמוּאֵל: לֹא בֵּית דִּין שֶׁל כֹּהֲנִים בִּלְבַד אָמְרוּ, אֶלָּא אֲפִילּוּ מִשְׁפָּחוֹת הַמְיוּחָסוֹת בְּיִשְׂרָאֵל, אִם רָצוּ לַעֲשׂוֹת כְּדֶרֶךְ שֶׁהַכֹּהֲנִים עוֹשִׂין – עוֹשִׂין.

§ It is stated in the mishna that **a court of priests** would collect a marriage contract of four hundred dinars for a virgin daughter of a priest. **Rav Yehuda said** that **Shmuel said: Not only with regard to a court of priests did** the Sages **say** that[H] they could collect a greater sum for the marriage contract of their daughters, **but even families of distinguished lineage**[N] **in Israel. If they wanted to act as the priests do, they may act** in that manner.

מֵיתִיבִי: הָרוֹצֶה לַעֲשׂוֹת כְּדֶרֶךְ שֶׁהַכֹּהֲנִים עוֹשִׂין, כְּגוֹן בַּת יִשְׂרָאֵל לְכֹהֵן וּבַת כֹּהֵן לְיִשְׂרָאֵל – עוֹשִׂין. בַּת יִשְׂרָאֵל לְכֹהֵן, וּבַת כֹּהֵן לְיִשְׂרָאֵל הוּא דְּאִיכָּא צַד בְּהוּנָּה, אֲבָל בַּת יִשְׂרָאֵל לְיִשְׂרָאֵל – לָא!

The Gemara **raises an objection** from a *baraita*: **One who sought to act as the priests do,** as in cases **where an Israelite woman** is married **to a priest, or the daughter of a priest** is married **to an Israelite, may act** in that manner. The Gemara infers: This allowance is specifically in cases where **an Israelite woman** is married **to a priest, or the daughter of a priest** is married **to an Israelite, where there is an aspect of priesthood**[N] involved. **However,** apparently, in a case where **the daughter of an Israelite** is married **to an Israelite, no,** it is not allowed.

לָא מְבָעְיָא קָאָמַר; לָא מְבָעְיָא בַּת יִשְׂרָאֵל לְיִשְׂרָאֵל, דְּלָא מָצֵי אָמַר לָהּ עַלּוּיֵי קָא מַעֲלִינַן לֵיךְ, אֲבָל בַּת יִשְׂרָאֵל לְכֹהֵן, דְּמָצֵי אָמַר לָהּ עַלּוּיֵי קָא מַעֲלִינַן לֵיךְ, אֵימָא לָא – קָא מַשְׁמַע לָן.

The Gemara rejects that inference. The *baraita* **is stated** employing the style of: **It is not necessary. It is not necessary** to state a case where **the daughter of an Israelite** is married **to an Israelite, as** in that case the groom **cannot say to her:** By marrying you, **I am raising your** social status, and it is clear that women from distinguished families would demand a marriage contract with a greater sum. **However,** in a case where **an Israelite woman** is married **to a priest,**[N] **where he can say to her: I am raising your** social status, as you are marrying into the priesthood, you might think to **say no,** the woman cannot demand a marriage contract with a greater sum. Therefore, the *baraita* **teaches us** that even in the case of a woman from a distinguished family of Israelites marrying a priest, she may demand a marriage contract with a greater sum.

HALAKHA

Not only with regard to a court of priests did the Sages say that – **לֹא בֵּית דִּין שֶׁל כֹּהֲנִים בִּלְבַד אָמְרוּ:** If a family has a custom to write in their marriage contract a sum greater than the standard sum established by the Sages, they are not reprimanded. Furthermore, if a member of that family did not write a marriage contract for his wife, the court collects payment for her in the amount corresponding to the family custom (*Ḥelkat Meḥokek*; *Shulḥan Arukh*, *Even HaEzer* 66:7).

NOTES

But even families of distinguished lineage – **אֶלָּא אֲפִילּוּ מִשְׁפָּחוֹת הַמְיוּחָסוֹת:** The courts would support this practice and collect the greater sum for the women according to the family custom. It was necessary to state this in order to emphasize that this practice does not constitute violation of the rabbinic ordinance of two hundred dinars for a virgin and one hundred for a non-virgin (*Tosefot Rid*). The *ge'onim* note that despite the approval expressed in the Gemara, this practice was not adopted in Babylonia. The Meiri writes that this *halakha* applies only to families of distinguished lineage.

Where there is an aspect of priesthood – **דְּאִיכָּא צַד בְּהוּנָּה:** This explanation appears strange, since the reason for the greater sum is relevant only to the daughter of a priest but not to the daughter of a non-priest. Ritva explains that the priests did not want to flaunt their prominence conspicuously, so they instituted a marriage contract with a greater sum in any case involving a priestly family, even if the groom was the priest and the bride the daughter of a non-priest. Rashba explains the matter in terms of interpersonal relationships. Were the daughter of a non-priest marrying a priest to receive a standard marriage contract, lower than the one received by her mother-in-law and sister-in-law, she would be jealous and resentful of them.

An Israelite woman married to a priest – **בַּת יִשְׂרָאֵל לְכֹהֵן:** In the Jerusalem Talmud, explanations are cited supporting the payment of a greater sum in each of the cases. On the one hand, the daughter of a priest marrying a non-priest should receive a greater sum in her marriage contract, as in general priests receive gifts from non-priests, and in contrast, the daughter of a non-priest marrying a priest should suffice with her newly acquired elevated social status and no additional sum should be necessary.

On the other hand, the daughter of a non-priest marrying a priest should receive a greater sum in her marriage contract because she is now being elevated into the priesthood, i.e., she may now partake of *teruma*. Her marriage contract should reflect that elevated status. And in contrast, the daughter of a priest marrying a non-priest should receive a standard marriage contract since she thereby forfeits all rights of the priesthood.

The conclusion is that in both cases there is a marriage contract with a greater sum. In addition, in order to encourage people to marry within their own tribe, the Sages levied a fine penalizing the non-priest groom who marries the daughter of a priest.

HALAKHA

She says: After you betrothed me I was raped – הִיא אוֹמֶרֶת מְשָׁאֲרַסְתַּנִי נֶאֱנַסְתִּי: A woman who married with the presumptive status of a virgin, whose husband discovered that she was not, and she admits that she is not a virgin but claims that she was raped after the betrothal, is accorded credibility and is entitled to a marriage contract of two hundred dinars in accordance with the opinions of Rabban Gamliel and Rabbi Eliezer. However, in an effort to ensure that the woman is telling the truth, the *ge'onim* instituted that the husband may request that the court excommunicate her if it is discovered that she made a false claim in order to obligate him to pay money (Rambam *Sefer Nashim*, *Hilkhot Ishut* 11:11; *Shulḥan Arukh*, *Even HaEzer* 68:9).

One says I have one hundred dinars in your possession and the other says I don't know – מָנֶה לִי בְּיָדֶךָ וְהַלָּה אוֹמֵר אֵינִי יוֹדֵעַ: If one claims that another owes him money that he loaned him or deposited with him, and the other person asserts that he is uncertain whether he borrowed money or received the deposit from the claimant, the respondent is exempt from payment in accordance with the opinions of Rav Naḥman and Rabbi Yoḥanan. However, he is required by rabbinic law to take an oath of inducement, instituted to induce him to tell the truth, that he does not know. Furthermore, one may request the court to excommunicate anyone making false claims to collect money from him (Rambam *Sefer Mishpatim*, *Hilkhot To'en VeNitan* 1:9; *Shulḥan Arukh*, *Ḥoshen Mishpat* 75:9).

מתני׳ הַנּוֹשֵׂא אֶת הָאִשָּׁה וְלֹא מָצָא לָהּ בְּתוּלִים, הֵיא אוֹמֶרֶת: מְשָׁאֲרַסְתַּנִי נֶאֱנַסְתִּי, וְנִסְתַּחֲפָה שָׂדֵהוּ. וְהוּא אוֹמֵר: לֹא כִי, אֶלָּא עַד שֶׁלֹּא אֵרַסְתִּיךְ, וְהָיָה מַקָּחִי מֻקָּח טָעוּת. רַבָּן גַּמְלִיאֵל וְרַבִּי אֱלִיעֶזֶר אוֹמְרִים: נֶאֱמָנֶת. רַבִּי יְהוֹשֻׁעַ אוֹמֵר: לֹא מִפִּיהָ אָנוּ חַיִּין, אֶלָּא הֲרֵי זוֹ בְּחֶזְקַת בְּעוּלָה עַד שֶׁלֹּא תִתְאָרֵס וְהִטְעַתּוּ, עַד שֶׁתָּבִיא רְאָיָה לִדְבָרֶיהָ.

MISHNA 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,**[H] **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. Rabban Gamliel and Rabbi Eliezer say: She is deemed credible.**[N] **Rabbi Yehoshua says:** It is **not** based on the statement emerging **from her mouth** that **we conduct our lives;**[N] **rather, this** woman assumes **the presumptive status of one who engaged in intercourse when she was not yet betrothed and she misled him, until she brings proof** supporting **her statement.**

גמ׳ אִתְּמַר: ״מָנֶה לִי בְּיָדֶךָ״ וְהַלָּה אוֹמֵר ״אֵינִי יוֹדֵעַ״. רַב יְהוּדָה וְרַב הוּנָא אָמְרִי: חַייָב, וְרַב נַחְמָן וְרַבִּי יוֹחָנָן אָמְרִי: פָּטוּר. רַב הוּנָא וְרַב יְהוּדָה אָמְרִי: חַייָב, בָּרִי וְשֶׁמָּא – בָּרִי עָדִיף. רַב נַחְמָן וְרַבִּי יוֹחָנָן אָמְרִי: פָּטוּר, אוֹקֵי מָמוֹנָא בְּחֶזְקַת מָרֵיהּ.

GEMARA **It was stated:** With regard to one who approaches another and says: **I have one hundred dinars in your possession, and the other says: I don't know,**[H] **Rav Yehuda and Rav Huna say:** The respondent is **obligated** to pay, because he did not deny the claim, **and Rav Naḥman and Rabbi Yoḥanan**[N] **say:** He is **exempt** from payment. The Gemara elaborates. **Rav Huna and Rav Yehuda say** that the respondent is **obligated** to pay based on the principle: When there is a **certain** claim, e.g., that of the claimant, **and an uncertain** claim,[N] e.g., that of the respondent, the **certain** claim **prevails.**[N] **Rav Naḥman and Rabbi Yoḥanan say:** The respondent is **exempt** based on the principle: **Establish the money in the possession of its owner,** and the burden of proof rests upon the claimant. Since the claimant does not support his claim with proof, the money remains in the possession of the respondent.

אָמַר לֵיהּ אַבַּיֵי לְרַב יוֹסֵף: הָא דְּרַב הוּנָא וְרַב יְהוּדָה – דִּשְׁמוּאֵל הִיא. דְּתַנְיָא: הָיְתָה מְעוּבֶּרֶת, וְאָמְרוּ לָהּ: מַה טִּיבוֹ שֶׁל עוּבָּר זֶה? מֵאִישׁ פְּלוֹנִי, וְכֹהֵן הוּא. רַבָּן גַּמְלִיאֵל וְרַבִּי אֱלִיעֶזֶר אוֹמְרִים: נֶאֱמָנֶת. וְאָמַר רַב יְהוּדָה אָמַר שְׁמוּאֵל: הֲלָכָה כְּרַבָּן גַּמְלִיאֵל.

Abaye said to Rav Yosef: This ruling **of Rav Huna and Rav Yehuda is** essentially the statement **of Shmuel, as we learned** in a mishna (13a): In the case of an unmarried woman **who was pregnant, and** the Sages **said to her: What is the nature of this fetus,** i.e., who is the father. And she says: It is **from a man** called **so-and-so and he is a priest** and is certainly of valid lineage. **Rabban Gamliel and Rabbi Eliezer say: She is deemed credible,** and the fetus is deemed to be of valid lineage. **Rav Yehuda said** that **Shmuel said: The *halakha* is in accordance with** the opinion of **Rabban Gamliel.**

NOTES

She is deemed credible – נֶאֱמָנֶת: In the Jerusalem Talmud the question is raised: If she is accorded credibility then there is no case where the groom's claim concerning virginity would be accepted. It would be far-fetched to explain that all the discussions concerning that claim up to this point were exclusively according to the opinion of Rabbi Yehoshua. The explanation there is that there is a distinction between a case where the bride denies the groom's claim and asserts that she was a virgin, in which case the groom's certain claim that she was not is accorded credibility; and a case where she admits that she was not a virgin but provides an alternative explanation for the situation (see *Tosefot Rid*).

It is not based on the statement emerging from her mouth that we conduct our lives – לֹא מִפִּיהָ אָנוּ חַיִּין: This unique formulation contains an allusion to a mishna in tractate *Avot* (1:18), which states: On three matters does the world stand, on truth, on justice, and on peace. Since Rabbi Yehoshua maintains that she is not deemed credible and that she is not telling the truth, then based on that mishna he says: It is not based on her statement that we conduct our lives; it is based on truth (Ritva; Radbaz; *Melekhet Shlomo*, citing the Ari).

Rav Naḥman and Rabbi Yoḥanan – רַב נַחְמָן וְרַבִּי יוֹחָנָן: It is unusual that Rav Naḥman is cited before Rabbi Yoḥanan, as not only was Rabbi Yoḥanan greater than Rav Naḥman, he preceded him chronologically as well. The Rosh explains that this *halakha* was formulated in Babylonia, where Rav Naḥman's opinion was the only one known. Later, when the Sages discovered that Rabbi Yoḥanan shared his opinion, they appended his name to the statement.

A certain claim and an uncertain claim – בָּרִי וְשֶׁמָּא: *Tosafot* and many early commentaries analyze at length the various issues concerning the subject of certain and uncertain claims as it relates to different areas of *halakha*, and in terms of how the various opinions can be reconciled with the sources. They explain that although in general a certain claim prevails over an uncertain claim, there are distinctions drawn between different types of claims. Some claims have lesser certainty, due to additional factors and considerations that oppose them, e.g., presumptions, majorities, or logic. Similarly, there are uncertain claims that are enhanced in a situation where there is no way for the claimant to ascertain the facts, and all the more so where there are elements supporting his contention. When one claims: I don't know, in the case of a loan, this would be an inferior uncertain claim, because he should know whether or not there was a loan. However, the uncertain claim of the husband is enhanced by the fact that the rape never became public, even though rape is usually publicized.

The certain claim prevails – בָּרִי עָדִיף: In the *Penei Yehoshua* the question is raised: Why is this principle not applied to lost articles? The finder can make only an uncertain claim, as he does not know whether he is the owner, and the owner can claim with certainty that it belongs to him. Why must the owner must provide identifying indicators that the item belongs to him? He answers that since the article could have belonged to anyone and the majority of the world is not the one claiming ownership, the claim of the finder is supported by that majority. Others explain that even one making an uncertain claim can request time to clarify the matter, and in this case the finder could say that he prefers waiting before returning the article, as someone else may claim it and provide indicators or witnesses (*Ḥatam Sofer*).

Rav Ḥayyim Soloveitchik explains that with regard to returning lost articles there is another consideration, since the verse states: "And it shall be with you until your brother demands it" (Deuteronomy 22:2), meaning that it is incumbent upon the finder to investigate whether the claimant is indeed the one who lost it. Therefore, even a certain claim does not suffice.

וְאָמַר לֵיהּ רַב שְׁמוּאֵל בַּר יְהוּדָה לְרַב יְהוּדָה: שִׁינָּנָא, אָמְרַתְּ לָן מִשְּׁמֵיהּ דִּשְׁמוּאֵל הֲלָכָה כְּרַבָּן גַּמְלִיאֵל אַף בָּרִאשׁוֹנָה. מַאי ״אַף בָּרִאשׁוֹנָה״? אַף עַל גַּב דְּאִיכָּא לְמֵימַר אוֹקֵי מָמוֹנָא בְּחֶזְקַת מָרֵיהּ – אֲמַר רַבָּן גַּמְלִיאֵל בָּרֵי עָדִיף.

And Rav Shmuel bar Yehuda said to Rav Yehuda: Big-toothed one [*shinnana*],[L] **you said to us in the name of Shmuel** that the ***halakha* is in accordance with** the opinion of **Rabban Gamliel even in the first** dispute, the dispute cited in the mishna, which is the first in a series of disputes with regard to conflicting claims. The Gemara asks: **What** is the meaning of **even the first?** What is unique about that dispute relative to the others? The Gemara answers: The novel element in the first dispute is that the claim of the bride is accepted **despite the fact that** although **there is** room **to say: Establish the money in the possession of its owner,** and since the money is in the possession of the husband and the woman is the claimant, **Rabban Gamliel said** that the **certain** claim of the bride **prevails** over the uncertain claim of the groom, who can only speculate about when she was raped.

לֵימָא רַב יְהוּדָה וְרַב הוּנָא דְּאָמְרִי כְּרַבָּן גַּמְלִיאֵל, וְרַב נַחְמָן וְרַבִּי יוֹחָנָן דְּאָמְרִי כְּרַבִּי יְהוֹשֻׁעַ?

The Gemara suggests: **Let us say** that it is **Rav Yehuda and Rav Huna who say** their ruling **in accordance with** the opinion of **Rabban Gamliel,** who says that a certain claim prevails over an uncertain one even to collect money from the possession of the respondent. **And** it is **Rav Naḥman and Rabbi Yoḥanan who say** their ruling **in accordance with** the opinion of **Rabbi Yehoshua,** that one does not collect money based merely on a claim.

אֲמַר לָךְ רַב נַחְמָן: אֲנָא דַּאֲמָרִי אֲפִילּוּ כְּרַבָּן גַּמְלִיאֵל, עַד כָּאן לֹא קָאָמַר רַבָּן גַּמְלִיאֵל הָתָם אֶלָּא דְּאִיכָּא מִגּוֹ, אֲבָל הָכָא – מַאי מִגּוֹ אִיכָּא?

The Gemara rejects that suggestion. **Rav Naḥman** could have **said to you:** That **which I said, is even in accordance with** the opinion of **Rabban Gamliel. Rabban Gamliel says his ruling only there,** with regard to claims of a groom and a bride, **where there is a *miggo*,**[N] a halakhic argument that the ability to make a more advantageous claim grants credibility to the claim one actually makes, that bolsters the bride's claim. She could have claimed that she wasn't raped at all, but rather that her hymen was ruptured by wood. That is a more advantageous claim because she is not disgraced in the eyes of the groom. Therefore, her claim that she was raped is accorded credibility. **However here,** where one claims that another owes him money, **what *miggo* is there** bolstering his claim and according it credibility?

אִי נָמִי, עַד כָּאן לֹא קָאָמַר רַבָּן גַּמְלִיאֵל הָתָם אֶלָּא דְּאָמְרִינַן אוֹקְמַהּ אַחֶזְקָה, אֲבָל הָכָא – מַאי חֶזְקָה אִית לֵיהּ לְהַאי?

Alternatively, Rav Naḥman could have said to you: **Rabban Gamliel says his ruling only there, where we say: Establish her** legal status according to her **presumptive status**[N] as a virgin, and the husband's claim seeks to undermine that presumptive status. **However here, what presumptive status does this** claimant **have** supporting the claim that another owes him money? Therefore, even Rabban Gamliel would concede that his certain claim does not prevail.

הָכִי נָמֵי מִסְתַּבְּרָא כִּדְקָא מְשַׁנֵּינַן, דְּרַב נַחְמָן הוּא דַּאֲמַר כְּרַבָּן גַּמְלִיאֵל.

The Gemara notes: **Indeed,** it is **also reasonable** to explain **as we are teaching, that it is Rav Naḥman who said** his ruling **in accordance** with the opinion of **Rabban Gamliel.**

LANGUAGE

Big-toothed one [*shinnana*] – שִׁינָּנָא: A nickname for Rabbi Yehuda, appearing in several places in the Talmud, that was explained by several commentaries to mean sharp or brilliant. However, the *ge'onim* assert that they are certain that this is an expression describing one with large teeth, noting that the expression was still employed in their time.

NOTES

Where there is a *miggo* – דְּאִיכָּא מִגּוֹ: The *miggo* in this case is that the bride could have claimed that her hymen was ruptured by a foreign object. This is a more advantageous claim, as it does not disqualify her from marrying a priest. Moreover, an additional advantage of that claim is that the stigma associated with a claim of rape does not exist (Meiri).

Many reservations were raised with regard to the applicability of the principle of *miggo* in this context. In fact, there are variant readings in which the reason of *miggo* does not appear and only the second reason of presumptive status is cited (see Ritva and Rabbi Aharon HaLevi). The primary difficulty is that, according to most authorities, *miggo* is effective only to exempt from payment, not to collect payment from the possession of its owner, and in this case the bride is receiving payment of her marriage contract from the husband.

Several early commentaries conclude based on this discussion that the principle of *miggo* is effective to collect payment as well (Maharshak; *Haggahot Mordekhai*). Others explain that in this case it is not the *miggo* that is effective in collecting the money. Rather, it is that the certain claim prevails over the uncertain claim (see Ritva and Meiri).

Establish her legal status according to her presumptive status – אוֹקְמַהּ אַחֶזְקָה: This is referring to the presumptive status of the bride's body; since she was born as a virgin, she maintains that status until proven otherwise. The Rid and the Rosh add that although the bride does not receive payment of her marriage contract before she enters the wedding canopy, fundamentally, she is entitled to it even after betrothal. They did not want to rely solely on her presumptive status of virginity; that presumption itself was undermined, as she is no longer a virgin when the claim is made. Later commentaries discuss this subject extensively, from various perspectives (see Maharam Schiff and *Shev Shemateta*).