בְּקָרוֹנוֹת שֶׁל צִיפּוֹרִי הָיָה מַעֲשֶׂה, וְכִדְרַבִּי אַמִּי, דְּאָמַר רַבִּי אַמִּי: וְהוּא שֶׁהָיְתָה סִיעָה שֶׁל בְּנֵי אָדָם כְּשֵׁרִין עוֹבֶרֶת לְשָׁם, וְכִדְרַבִּי יַנַּאי. דְּאָמַר רַבִּי יַנַּאי: נִבְעֶלֶת בְּקָרוֹנוֹת – כְּשֵׁרָה לִכְהוּנָּה.

The **incident** transpired **among the wagons** [***keronot***][LN] in the marketplace **of Tzippori**[B] on the market day, and this *halakha* is **in accordance with** the statement of **Rabbi Ami, as Rabbi Ami said: And this is** the ruling only in a case **where there was a contingent of men of unflawed lineage passing there.**[N] Due to the fact that both the lineage of the majority of the people of the city where the girl was raped and the lineage of the majority of the passersby is unflawed, the rape is attributed to a man of unflawed lineage. **And** this ruling is **in accordance with** the statement of **Rabbi Yannai, as Rabbi Yannai said: If she engaged in intercourse in the wagons, she is fit to** marry a member of the **priesthood.**

בְּקָרוֹנוֹת סָלְקָא דַּעְתָּךְ?! אֶלָּא: נִבְעֶלֶת בִּשְׁעַת קָרוֹנוֹת – כְּשֵׁרָה לִכְהוּנָּה. אֲבָל פֵּירֵשׁ אֶחָד מִצִּיפּוֹרִי וּבָעַל – הַוָּלָד שְׁתּוּקִי.

The Gemara asks: Does it **enter your mind** to say that the woman was raped **in the wagons,** in the crowded area of the marketplace where business is conducted? **Rather,** Rabbi Yannai is saying that if **she** was forced to **engage in intercourse at the time of the wagons,** i.e., when the convoys pass, **she is fit to** marry a member of the **priesthood. However,** if **one** individual, whose lineage is unknown, **left Tzippori**[N] **and engaged in intercourse** with a woman, **the child is a *shetuki*** and deemed unfit to marry into the priesthood even though the majority of the inhabitants of city are of unflawed lineage.

כִּי הָא דְּכִי אֲתָא רַב דִּימִי אָמַר זְעֵירִי אָמַר רַבִּי חֲנִינָא, וְאָמְרִי לָהּ אָמַר זְעֵירִי אָמַר רַבִּי חֲנִינָא: הוֹלְכִין אַחַר רוֹב הָעִיר, וְאֵין הוֹלְכִין אַחַר רוֹב סִיעָה.

The Gemara notes: That is **similar** to **this** statement **that when Rav Dimi came** from Eretz Yisrael to Babylonia, **Ze'eiri said** that **Rabbi Ḥanina said, and some say** directly that **Ze'eiri said** that **Rabbi Ḥanina said: One follows the** flawed lineage of the **majority of** the people in **the city and one does not follow** the unflawed lineage of **the majority of the** traveling **contingent,** and the woman who engaged in intercourse with a member of the itinerant contingent is deemed unfit to marry into the priesthood.

כְּלַפֵּי לַיָּיא?! הָנֵי נָיְידֵי וְהָנֵי קְבִיעִי וְקַיְימִי!

The Gemara asks: **On the contrary** [***kelapei layya***],[L] the opposite is logical. **These** members of the contingent **are moving,** and in that case the principle is that one follows the majority. **And these** people of the city **are fixed and standing** in one place, and in that case the principle is that even if the lineage of the majority is unflawed, the uncertainty is treated as if it were equally balanced.

LANGUAGE

Wagons [*keronot*] – קְרוֹנוֹת: From the Latin carrum, and perhaps the Greek κάρρον, *karron*, meaning carriage or wagon. In the Jerusalem Talmud, the phrase *kerona shel Tzippori* appears, which based on context is from the Greek κρήνη, *krēnē*, meaning spring or well. According to that understanding, the reference would be to the spring in Tzippori, corresponding to the mishna that is referring to a young girl who descended to the spring.

On the contrary [*kelapei layya*] – כְּלַפֵּי לַיָּיא: This expression is employed in response to a statement that seems contrary to reason. Some say it is a variation of the phrase *kelapei le'an*, meaning: Toward where are you going? Shouldn't you be going in the opposite direction? Some explain it as a contraction of *kelapei alya*, meaning toward the tail, evoking the image of riding a horse facing the tail. That too is contrary to reason.

BACKGROUND

Tzippori – צִיפּוֹרִי: Tzippori was a large town in the Upper Galilee and the perennial rival of Tiberias for recognition as the religious capital of Galilee. During the Second Temple period it enjoyed special status among the towns of the Galilee because of its large and learned Jewish community. Among the *tanna'im* who lived there were Rabbi Yoḥanan ben Nuri, Rabbi Ḥalafta, and his renowned son Rabbi Yosei.

Rabbi Yehuda HaNasi moved to Tzippori toward the end of his life, and it was the seat of the Sanhedrin for approximately one generation. Rabbi Yehuda HaNasi's leading disciples lived in Tzippori: Rabbi Yishmael, son of Rabbi Yosei; Rabban Gamliel, son of Rabbi Yehuda HaNasi, who later succeeded his father as *Nasi*; his brother Rabbi Shimon; Rabbi Ḥanina bar Ḥama, who later headed the Tzippori yeshiva; and Rabbi Yannai. Even after the Sanhedrin moved to Tiberias, Torah scholars continued to live in Tzippori, among them the prominent *amora'im* of Eretz Yisrael, Rabbi Ḥanina of Tzippori and Rabbi Mana.

Ruins at Tzippori

NOTES

Among the wagons – בְּקָרוֹנוֹת: Most commentaries explain that the reference here is to wagons that travel from place to place. Others explain that the reference is to the place where the wagons stop and sell their merchandise, i.e., the marketplace (*Talmidei Rabbeinu Yona*).

And this is where there was a contingent of men of unflawed lineage passing there – וְהוּא שֶׁהָיְתָה סִיעָה שֶׁל בְּנֵי אָדָם כְּשֵׁרִין עוֹבֶרֶת לְשָׁם: There are different opinions regarding the connection of this matter to the dispute between Rabban Gamliel and Rabbi Yehoshua, leading to different halakhic conclusions. According to Rashi, this is in accordance with the opinion of Rabbi Yehoshua; however, he does not explain what Rabban Gamliel would hold in this case. The Ritva explains that according to Rashi, Rabban Gamliel holds that two majorities are no more effective than one, just as he holds that a compound uncertainty is insignificant when the woman's claim is certain. According to most commentaries, there is no dispute between Rabban Gamliel and Rabbi Yehoshua in this case.

Rabbeinu Zeraḥya HaLevi understands Rashi's opinion differently. He explains that this entire discussion is conducted according to the opinion of Rabbi Yehoshua; however, Rabban Gamliel does not require two majorities at all. See the Ramban in *Milḥamot Hashem* with the Ra'avad, both of whom reject that opinion.

However if one left Tzippori – אֲבָל פֵּירֵשׁ אֶחָד מִצִּיפּוֹרִי: Most of the early commentaries hold that this ordinance requiring two majorities is universally applied. Therefore, even if it is known that the man with whom she engaged in intercourse was from the city, in the absence of a second majority the child is of flawed lineage. The Meiri disagrees and holds that in this case one majority is sufficient.

אֶלָּא: הוֹלְכִין אַחַר רוֹב הָעִיר וְהוּא דְּאִיכָּא רוֹב סִיעָה בַּהֲדָהּ. וְאֵין הוֹלְכִין אַחַר רוֹב הָעִיר גְּרִידְתָּא וְלֹא אַחַר רוֹב סִיעָה גְּרִידְתָּא. מַאי טַעְמָא – גְּזֵרָה רוֹב סִיעָה אַטּוּ רוֹב הָעִיר.

Rather, this is what Rabbi Yannai is saying: **One follows the** lineage of the **majority of the city,**[N] **and that is** specifically in a case **where there is a majority** of men of unflawed lineage in the passing **contingent**[H] together **with** the city's unflawed majority. In that case, from both perspectives the intercourse can be attributed to a man of unflawed lineage. **However, neither does one follow the** unflawed lineage of the **majority of the city alone, nor** does he **follow the** unflawed lineage of the **majority of the contingent alone. What is the reason** that one does not follow the lineage of the majority of the moving contingent? It is because the Sages issued **a decree** not to follow **the majority of the contingent**[N] **due to the majority of the city,** where one does not follow the majority.

וְרוֹב הָעִיר נַמִּי, אִי דְּקָא אָזְלֵי אִינְהוּ לְגַבָּהּ – כָּל דְּפָרֵישׁ מֵרוּבָּא פָּרִישׁ! לָא צְרִיכָא, דְּקָא אָזְלָא אִיהִי לְגַבַּייהוּ, דַּהֲוָה לֵיהּ קָבוּעַ, וְאָמַר רַבִּי זֵירָא: כָּל קָבוּעַ כְּמֶחֱצָה עַל מֶחֱצָה דָּמֵי.

The Gemara asks: **But** aren't there cases where one follows **the majority of the city as well,** as, **if** one of the residents of the city **goes** out of the city **to her** and rapes her, the principle is: The legal status of **any** item **that is separated** from the group is that of one **separated from the majority?**[N] Therefore, there is no reason to issue a decree. The Gemara answers: The decree is **necessary only** due to a case **where she went**[N] into the city **to them,** in which case the rapist **is** an indistinguishable member of a **fixed** set, **and Rabbi Zeira said:** The legal status of uncertainty with regard to **any** item **fixed** in its place is that of an uncertainty that is **equally balanced,** and one does not follow the majority.

וּמִי בָּעֵינַן תְּרֵי רוּבֵּי? וְהָתַנְיָא: תֵּשַׁע חֲנוּיוֹת, כּוּלָּן מוֹכְרוֹת בְּשַׂר שְׁחוּטָה, וְאַחַת מוֹכֶרֶת בְּשַׂר נְבֵלָה, וְלָקַח מֵאַחַת מֵהֶן וְאֵינוֹ יוֹדֵעַ מֵאֵי זֶה מֵהֶן לָקַח – סְפֵיקוֹ אָסוּר. וּבַנִּמְצָא – הַלֵּךְ אַחַר הָרוֹב!

The Gemara questions the statement of Rabbi Ami: **And do we require two majorities** to overcome the minority? **Isn't it taught** in a *baraita*: With regard to **nine stores**[N] in a city, **all of which sell** kosher **meat** from **a slaughtered** animal,[H] **and one** other store that **sells meat** from unslaughtered **animal carcasses, and** a person **bought** meat **from one of** the stores **and he does not know from which** store **he bought** the meat, in this case of **uncertainty,** the meat **is prohibited.** The legal status of uncertainty with regard to any item fixed in its place is that of an uncertainty that is equally balanced, and one does not follow the majority. This *baraita* continues: **And in** the case of meat **found** in the street, outside the stores, **follow the majority**[H] of stores that sell kosher meat. In other words, the meat is kosher.

NOTES

Rather, one follows the lineage of the majority of the city – אֶלָּא הוֹלְכִין אַחַר רוֹב הָעִיר: The Rashba notes that the language used here appears to indicate that the majority of the city is the primary consideration. However, it is clear from the context that this is not the case, as the majority of the city is a fixed majority. Therefore, in order to reconcile the sources, he explains that although the majority of the city is not as significant as the majority of the contingent, it is required in support of the majority of the contingent.

A decree not to follow the majority of the contingent – גְּזֵרָה רוֹב סִיעָה: The Ritva explains that although the fundamental *halakha* in this case is a decree, the second decree is not issued to prevent violation of the first, as both were issued as one decree. In terms of the halakhic ruling, in the *Penei Yehoshua* it is explained based on the *Beit Shmuel* that ultimately, the final conclusion of the Gemara is that this is not a decree. Rather, there is a special ordinance instituted by the Sages to require two majorities in cases relating to lineage. The practical halakhic difference would be in a case where all the people in the city are of unflawed lineage. In that case the decree would not be relevant, even if it is a case where the residents of the city are fixed (see Rashash).

Any item that is separated is separated from the majority – כָּל דְּפָרֵישׁ מֵרוּבָּא פָּרִישׁ: The early commentaries explain, and thereby resolve a related contradiction in tractate *Kinnim*, that even though those separated from the majority ultimately returned to their original fixed state, as the man with whom she engaged in intercourse ultimately went home, the determining moment is when the incident took place (Rosh).

The decree is necessary only due to a case where she went – לָא צְרִיכָא דְּקָא אָזְלָא אִיהִי: There is a variant reading: There are cases where she went. There is a significant difference between the two versions. According to the version in the Gemara, two majorities are required only in a case where it is clear that she went to them. According to the variant reading (Rashi; *Yam shel Shlomo*), the very concern that perhaps she went to them is sufficient for the decree to be issued, and the decree is in effect even in cases where it is unclear whether or not she went to them (see *Beit Yosef*).

Nine stores – תֵּשַׁע חֲנוּיוֹת: The distinction here is between fixed items and items that are not fixed. Rabbeinu Ḥananel explains that one does not follow the majority of kosher stores because the price of non-kosher meat is lower and therefore the likelihood that he bought meat in the non-kosher store is greater. Some ask: Even in the case of meat that was found, presumably the meat fell from someone who had purchased it in one of the stores. Why, then, isn't the ruling that it is an equally balanced uncertainty? They answer that the determining moment is the moment that the uncertainty developed. When the question with regard to its status was raised, the item was not fixed (*Shita Mekubbetzet*).

HALAKHA

A majority of the city and a majority of the contingent – רוֹב הָעִיר וְרוֹב סִיעָה: With regard to an unmarried woman who engaged in intercourse, even if she became pregnant, and she claims that the man is of unflawed lineage, her claim is accepted and she and her daughter are both fit to marry into the priesthood. That is the *halakha*, provided the majority of the passersby are of unflawed lineage and the majority of the residents of the city from which the passersby came are of unflawed lineage. The Sages established a higher standard with regard to lineage, requiring two majorities.

If there was only one majority, either of the city or of the passersby, she may not marry a priest. However, if she went ahead and married a priest, even if there was a majority of people of flawed lineage, they may remain married (Rambam). If she does not claim that the man was of unflawed lineage, e.g., she did not know his identity, some say that according to the Rambam, unless there are two majorities, she may not marry a priest *ab initio*, and if she does, they may not remain married (*Maggid Mishne*; see Ramban; Rashba; Ran).

Others hold that according to the Rambam, even if there are two majorities, she may not marry a priest *ab initio* (*Beit Yosef*). Others hold that if she claims that she is certain that the man was of unflawed lineage she may marry a priest *ab initio* even if there is only one majority. Furthermore, even if there is a majority of people of unflawed lineage, she may remain married after the fact (Rambam *Sefer Kedusha*, *Hilkhot Issurei Bia* 18:13–14; *Shulḥan Arukh*, *Even HaEzer* 6:17).

Nine stores all of which sell meat from a slaughtered animal – תֵּשַׁע חֲנוּיוֹת כּוּלָּן מוֹכְרוֹת בְּשַׂר שְׁחוּטָה: If the majority of stores in the city sell kosher meat and a minority of stores sell non-kosher meat, and a person entered one of the stores and purchased meat and does not know which store he entered, since it is a fixed majority, its legal status is that of a balanced uncertainty and the meat is forbidden (Rambam *Sefer Kedusha*, *Hilkhot Ma'akhalot Assurot* 8:11; *Shulḥan Arukh*, *Yoreh De'a* 110:3).

And in the case of meat found outside follow the majority – וּבַנִּמְצָא הַלֵּךְ אַחַר הָרוֹב: With regard to one who finds meat in the marketplace or in the possession of a gentile, one follows the majority; if the majority of stores sell kosher meat, the meat is permitted by Torah law. However, the Sages prohibited all meat that is found and all meat that was out of the sight of Jews even if all those who slaughter and sell meat are Jewish, unless it is clear that it is kosher (Rambam *Sefer Kedusha*, *Hilkhot Ma'akhalot Assurot* 8:11; *Shulḥan Arukh*, *Yoreh De'a* 63:1, 110:3).

וְכִי תֵּימָא בְּשֶׁאֵין דַּלְתוֹת מְדִינָה נְעוּלוֹת, דְּקָא אָתֵי לָהּ רוּבָּא מֵעָלְמָא – וְהָא אָמַר רַבִּי זֵירָא: אַף עַל פִּי שֶׁדַּלְתוֹת מְדִינָה נְעוּלוֹת! מַעֲלָה עָשׂוּ בְּיוּחֲסִין.

And if you would say that one follows the majority only in a case **where the gates of the city are unlocked, where** the meat could have **come** to the city **from the majority** of kosher meat **outside** the city and only by combining that majority with the majority of kosher meat stores inside the city, creating two majorities, is the meat ruled kosher; **but didn't Rabbi Zeira say: Even if the city gates are locked,** one follows the majority and the meat is kosher even without a double majority? The Gemara answers: The Sages require two majorities only in cases such as establishing the identity of the child's father, because they **established a higher standard with regard to** matters of **lineage.** However, in other cases, e.g., concerning kosher meat, a single majority is sufficient.

גּוּפָא, אָמַר רַבִּי זֵירָא: כָּל קָבוּעַ כְּמֻחֲצָה עַל מֻחֲצָה דָּמֵי, בֵּין לְקוּלָּא בֵּין לְחוּמְרָא.

§ In terms of the matter **itself, Rabbi Zeira said:** The legal status of uncertainty with regard to **any** item **fixed** in its place is that of an uncertainty that is **equally balanced, both** when it leads to **leniency,** e.g., in a case where, were one to follow the majority, the ruling would be stringent, and when it leads to **stringency,** e.g., in a case where, were one to follow the majority, the ruling would be lenient.

מְנָא לֵיהּ לְרַבִּי זֵירָא הָא? אִילֵימָא מִתֵּשַׁע חֲנוּיוֹת כּוּלָּן מוֹכְרוֹת בְּשַׂר שְׁחוּטָה וְאַחַת בְּשַׂר נְבֵלָה, וְלָקַח מֵאַחַת מֵהֶן, וְאֵינוֹ יוֹדֵעַ מֵאֵיזֶה מֵהֶן לָקַח – סְפֵיקוֹ אָסוּר, וּבַנִּמְצָא – הַלֵּךְ אַחַר הָרוֹב, הָתָם לְחוּמְרָא!

The Gemara asks: **From where does Rabbi Zeira** learn that the legal status of uncertainty with regard to any item fixed in its place is that of an uncertainty that is equally balanced, both when it leads to leniency and when it leads to stringency? **If we say** that it is derived **from** the case of **nine stores** in a city, **all of which sell** kosher **meat** from **a slaughtered** animal, **and one** other store that sells **meat** from unslaughtered **animal carcasses, and** a person **bought** meat **from one of** the stores **and he does not know from which** store **he bought** the meat, in this case of **uncertainty** the meat **is prohibited. And in the** case of meat **found** in the street, outside the stores, **follow the majority** of stores that sell kosher meat, and therefore the meat would be kosher. **There,** in the first case, ruling it an equally balanced uncertainty is **a stringency,** as there is a majority of kosher stores.

אֶלָּא, מִתֵּשְׁעָה צְפַרְדְּעִים וְשֶׁרֶץ אֶחָד בֵּינֵיהֶם, וְנָגַע בְּאֶחָד מֵהֶן וְאֵינוֹ יוֹדֵעַ בְּאֵיזֶה מֵהֶן נָגַע, סְפֵיקוֹ טָמֵא. הָתָם נַמִּי לְחוּמְרָא!

Rather, Rabbi Zeira learns that *halakha* **from** a different *baraita*. If there were **nine frogs,** which is a creeping animal that does not impart ritual impurity while alive or when dead, **and one** ritually impure **creeping animal,**[HB] whose carcass imparts ritual impurity, **among them, and** a person **touched one of the** ten creatures, **and he does not know which of them he touched,** in this case of **uncertainty** the person is **ritually impure. There too,** ruling it an equally balanced uncertainty is **a stringency,** as the majority of the creeping animals do not impart impurity.

אֶלָּא מִתִּשְׁעָה שְׁרָצִים וּצְפַרְדֵּעַ אֶחָד בֵּינֵיהֶם, וְנָגַע בְּאֶחָד מֵהֶן, וְאֵינוֹ יוֹדֵעַ בְּאֵיזֶה מֵהֶן נָגַע, בִּרְשׁוּת הַיָּחִיד סְפֵיקוֹ טָמֵא, בִּרְשׁוּת הָרַבִּים סְפֵיקוֹ טָהוֹר.

Rather, Rabbi Zeira learns that *halakha* **from** the continuation of that *baraita*. If there are **nine creeping animals,** whose carcasses impart ritual impurity, **and one frog**[H] **among them, and** a person **touched one of them, and he does not know which of them he touched,** if it was **in the private domain,** in this case of **uncertainty** the person is **ritually impure,** as all cases of uncertainty with regard to ritual impurity are ruled impure in the private domain. This is derived from the case of *sota*. However, **in the public domain,** in that case of **uncertainty** the person is **ritually pure.**[N] Although contact with a creeping animal from the majority would render him ritually impure, since the uncertainty is with regard to a fixed group, its legal status is that of an equally balanced uncertainty, and in the public domain he is ritually pure. Rabbi Zeira learns that *halakha* from this case of leniency.

HALAKHA

Nine frogs and one creeping animal – תִּשְׁעָה צְפַרְדְּעִים וְשֶׁרֶץ אֶחָד: If there were nine frogs and one ritually impure creeping animal among them in the private domain, and a person touched one of them but he does not know which, he is ritually impure, as uncertain ritual impurity in the private domain is ritually impure (Rambam *Sefer Tahara*, *Hilkhot Avot HaTumot* 18:2).

Nine creeping animals and one frog – תִּשְׁעָה שְׁרָצִים וּצְפַרְדֵּעַ אֶחָד: If there were nine creeping animals and one frog among them in the private domain, and a person touched one of them and he does not know which, he is ritually impure, as uncertain ritual impurity in the private domain is ritually impure. However, in the public domain he is ritually pure, because the legal status of a fixed majority is that of an equally balanced uncertainty, and uncertain ritual impurity in the public domain is ritually pure (Rambam *Sefer Tahara*, *Hilkhot Avot HaTumot* 18:2).

BACKGROUND

Creeping animal – שֶׁרֶץ: Generally, this term includes rodents, lizards, insects, and any other small creature that crawls. Ritual impurity is imparted by the carcasses of the eight creeping animals enumerated in Leviticus (11:29–37), and the Talmud often refers to these eight creatures with the unmodified term creeping animal. The Sages stated that since the smallest of these eight animals was at least the size of a lentil-bulk at birth, one contracts ritual impurity only through contact with a portion of the carcass of a creeping animal no smaller than a lentil-bulk. Moreover, one is liable to receive lashes for eating a lentil-bulk of a creeping animal.

NOTES

In the public domain, in that case of uncertainty the person is ritually pure – בִּרְשׁוּת הָרַבִּים סְפֵיקוֹ טָהוֹר: The distinction between the private and public domains with regard to uncertain ritual impurity is derived from the case of *sota*, as the *halakha* is that she is forbidden to her husband in a case of uncertainty and her status is expressed in the Torah in terms of ritual impurity. Just as in the case of *sota* the uncertainty developed when the woman entered into seclusion with the man with whom her husband warned her not to seclude herself, which was clearly in the private and not the public domain, so too in a case of uncertain ritual impurity, the person is deemed impure only in the private domain.

Additional details are also derived from *sota*, e.g., the distinction between an item that does not have knowledge to be asked, which is deemed ritually pure in a case of uncertainty, and an item that has knowledge to be asked, which is deemed ritually impure in that case.

HALAKHA

Only in a case where he intends to kill him – עַד שֶׁיִּתְכַּוֵּין לוֹ: One who intended to kill one person but killed another is exempt from court-imposed execution, from payment, and from exile. Therefore, one who throws a stone into a crowd and kills one of those present is exempt, even if the crowd consisted only of Jews.

The Ra'avad wonders why the Rambam ruled in accordance with the opinion of Rabbi Shimon, which is an individual opinion. Some explain that the ruling of the Rambam is not in accordance with the opinion of Rabbi Shimon. Rather, it is in accordance with the opinion of the Sages of the school of Ḥizkiyya (38a), as the discourse in the Gemara is according to his opinion (*Migdal Oz*; *Kesef Mishne*). The second explanation in the *Kesef Mishne* says that the Rambam holds in accordance with the opinion of the Rabbis, and the reason the murderer is exempt is due to the lack of forewarning (Rambam *Sefer Nezikin*, *Hilkhot Rotze'aḥ UShmirat HaNefesh* 4:1).

וּמִדְּאוֹרַיְיתָא מְנָא לָן? אָמַר קְרָא ״וְאָרַב לוֹ וְקָם עָלָיו״ – עַד שֶׁיִּתְכַּוֵּין לוֹ. וְרַבָּנַן? אָמְרִי דְּבֵי רַבִּי יַנַּאי: פָּרַט לַזּוֹרֵק אֶבֶן לְגוֹ.

After citing a tannaitic source for Rabbi Zeira's opinion, the Gemara asks: **And from where in the Torah do we** derive that the legal status of any item fixed in its place is like that of an uncertainty that is equally balanced, both when it leads to leniency and when it leads to stringency? It is derived from **the verse** that **states** with regard to a murderer: **"And lie in wait for him, and rise up against him"** (Deuteronomy 19:11), indicating that one is liable **only** in a case **where he intends to** kill **him.**[HN] One who intended to kill one person and inadvertently killed another is exempt from punishment. **And** how do **the Rabbis,** who hold that one is liable in that case, interpret that verse? The Sages **of the school of Rabbi Yannai say:** It **excludes** the case **of** one who **throws a stone into a crowd** and did not intend to kill a specific person.

הֵיכִי דָּמֵי? אִילֵימָא דְּאִיכָּא תִּשְׁעָה גּוֹיִם וְאֶחָד יִשְׂרָאֵל בֵּינֵיהֶם – וְתֵיפּוֹק לֵיהּ דְּרוּבָּא גּוֹיִם נִינְהוּ! אִי נַמִי פַּלְגָּא וּפַלְגָּא – סְפֵק נְפָשׁוֹת לְהָקֵל!

The Gemara asks: **What are the circumstances** of the case where he threw the stone and is exempt? **If we say that there are nine gentiles** in the crowd **and one Jew among them,** even without the verse, **let him derive** the exemption from the fact **that they are a majority of gentiles. Alternatively,** even if we say that **half** of the ten people are considered gentiles **and half** are considered Jews, let him derive the exemption from the principle: In a case of **uncertainty** concerning a **life-threatening** situation, the *halakha* **is lenient.**

לָא צְרִיכָא, דְּאִיכָּא תִּשְׁעָה יִשְׂרְאֵלִים וְגוֹי אֶחָד בֵּינֵיהֶם, דַּהֲוָה לֵיהּ גּוֹי קָבוּעַ, וְכָל קָבוּעַ כְּמֻחֲצָה עַל מֻחֲצָה דָּמֵי.

The Gemara answers: **No,** the verse is **necessary** only in a case where **there are nine Jews and one gentile among them.** Were the ruling to follow the majority the one who threw the stone would be liable. But in that case, **because the gentile is fixed** among them, **and** the legal status of **any** item **fixed** in its place is **like** that of an uncertainty that is **equally balanced,** he is exempt, based on the principle: In a case of uncertainty concerning a life-threatening situation, the *halakha* is lenient. Apparently, even in cases of Torah law in which the result would be a leniency, i.e., exemption from the death penalty for murder, the legal status of any item fixed in its place is like that of an uncertainty that is equally balanced.

אִיתְּמַר רַב חִיָּיא בַּר אַשִׁי אָמַר רַב: הֲלָכָה כְּרַבִּי יוֹסֵי, וְרַב חָנָן בַּר רָבָא אָמַר רַב: הוֹרָאַת שָׁעָה הָיְתָה.

§ With regard to the matter of following the majority in cases of lineage, it **was stated** that there is an amoraic dispute: **Rav Ḥiyya bar Ashi** said that **Rav said: The *halakha*** is **in accordance with** the opinion of **Rabbi Yosei** in the mishna, and it is permitted for the young girl who was raped to marry a priest. **And Rav Ḥanan bar Rava** said that **Rav said:** That **was a provisional edict**[N] issued in exigent circumstances. However, typically, with regard to matters of lineage two majorities are required.

מְתִיב רַבִּי יִרְמְיָה: וּלְיוֹחֲסִין לָא בָּעֵינַן תְּרֵי רוּבֵי? וְהָתְנַן:

Rav Yirmeya raised an objection to the ruling of Rav Ḥiyya bar Ashi, who apparently ruled that even in cases where there is one majority the *halakha* is in accordance with the opinion of Rabbi Yosei: **And in matters of lineage, do we not require two majorities,** a majority of the city's inhabitants and a majority of the passing contingent? **But didn't we learn** in a mishna (*Makhshirin* 2:7):

NOTES

Only in a case where he intends to kill him – עַד שֶׁיִּתְכַּוֵּין לוֹ: According to Rabbi Shimon, one is liable to be executed for murder only if he intended to murder a specific individual. This is consistent with Rabbi Shimon's opinion in many areas of *halakha*; an action is significant only if the result reflects the perpetrator's specific intent. Even according to the opinion of the Rabbis, who hold that one can be liable even if the action does not reflect his specific intent, the question is raised: How can the murderer be executed? Even if he was forewarned, wasn't the forewarning an uncertain forewarning, which is ineffective? The commentaries answer: Since it is possible to forewarn the murderer with regard to both individuals present, it is no longer considered an uncertain forewarning (*Shita Mekubbetzet*).

That was a provisional edict – הוֹרָאַת שָׁעָה הָיְתָה: The simple understanding is that the provisional edict was to be lenient; the Sages issued the edict due to reasons for leniency that existed at that time (see Rashi). However, early commentaries commented that the term provisional edict could be understood in various ways. Some explained that the edict was to be stringent and require two majorities (see *Shita Mekubbetzet*).

מָצָא בָּהּ תִּינוֹק מוּשְׁלָךְ, אִם רוֹב גּוֹיִם – גּוֹי, אִם רוֹב יִשְׂרָאֵל – יִשְׂרָאֵל, מֶחֱצָה עַל מֶחֱצָה – יִשְׂרָאֵל.

If there is a city in which both Jews and gentiles reside, and **one found** an unidentified, **abandoned baby in** the city,[N] **if** there is a **majority of gentiles** in the city the baby is deemed **a gentile; if** there is a **majority of Jews** in the city the baby is deemed **a Jew.** If **half** the population is gentile and **half** Jewish, the baby is deemed **a Jew.**

וְאָמַר רַב: לֹא שָׁנוּ אֶלָּא לְהַחֲיוֹתוֹ, אֲבָל לְיוֹחֲסִין – לֹא, וּשְׁמוּאֵל אָמַר: לְפַקֵּחַ עָלָיו אֶת הַגַּל!

And Rav said with regard to this mishna: The Sages **taught** that if there is a majority of Jews in the city the baby is deemed a Jew **only** with regard **to sustaining him;**[NH] **however,** with regard **to lineage,** e.g., marrying him to a Jewish woman, **no,** he is not deemed a Jew based on the majority and would require conversion. **And Shmuel said:** It was taught that he is deemed a Jew in order **to create an opening** in **a heap** of debris **on his** behalf on Shabbat, i.e., desecrating Shabbat in order to save his life. Apparently, contrary to the ruling of Rav Ḥiyya bar Ashi, Rav holds that a single majority is insufficient to deem him Jewish in matters of lineage.

אִשְׁתַּמִּיטַתֵּיהּ הָא דְּאָמַר רַב יְהוּדָה אָמַר רַב: בִּקְרוֹנוֹת שֶׁל צִפּוֹרִי הָוָה מַעֲשֶׂה.

The Gemara answers: Rav Yirmeya **overlooked that which Rav Yehuda said** that **Rav said** with regard to the mishna: The **incident** of the rape of the young girl transpired **among the wagons** in the marketplace **of Tzippori,** and there were two majorities; the majority of the inhabitants of the city and the majority of the passing contingent. Therefore, when Rav Ḥiyya bar Ashi ruled that the *halakha* is in accordance with the opinion of Rabbi Yosei, i.e., that the young girl may marry a priest, it was in a case of two majorities.

וּלְרַב חָנָן בַּר רָבָא דְּאָמַר: הוֹרָאַת שָׁעָה הָיְתָה, קַשְׁיָא. הָא! מַאן דְּמַתְנֵי הָא לָא מַתְנֵי הָא.

The Gemara asks: **And** if the case in the mishna is one of two majorities, according **to Rav Ḥanan bar Rava who said** in the name of Rav: **That was a provisional edict** issued in exigent circumstances, meaning that two majorities were required in that case but typically one majority is sufficient, it is **difficult.** Didn't Rav say that in matters of lineage one majority is insufficient? The Gemara answers: **That** is not difficult. **The one who teaches this,** that the ruling in our mishna was a provisional edict, **does not teach that**[N] statement that Rav Yehuda said that Rav said that the incident took place among the wagons in the marketplace of Tzippori. Rather, he holds that there was a single majority and nevertheless, due to exigent circumstances, the girl was permitted to marry into the priesthood, although generally two majorities are required in cases of lineage.

גּוּפָא, מָצָא בָּהּ תִּינוֹק מוּשְׁלָךְ, אִם רוֹב גּוֹיִם – גּוֹי, אִם רוֹב יִשְׂרָאֵל – יִשְׂרָאֵל, מֶחֱצָה עַל מֶחֱצָה – יִשְׂרָאֵל, אָמַר רַב: לֹא שָׁנוּ אֶלָּא לְהַחֲיוֹתוֹ, אֲבָל לְיוֹחֲסִין – לֹא, וּשְׁמוּאֵל אָמַר: לְפַקֵּחַ עָלָיו אֶת הַגַּל.

§ Apropos the case of the abandoned baby, the Gemara analyzes the matter **itself:** If there is a city in which both Jews and gentiles reside, and **one found** an unidentified, **abandoned baby in** the city, **if** there is a **majority of gentiles** in the city the baby is deemed **a gentile. If** there is a **majority of Jews** in the city the baby is deemed **a Jew.** If **half** the population is gentile and **half** Jewish, the baby is deemed **a Jew. Rav said:** The Sages **taught** that the baby is deemed a Jew **only** with regard **to sustaining him; however,** with regard **to lineage, no.**[H] **And Shmuel said:** It was taught that he is deemed a Jew in order **to create an opening** in **a heap** of debris **on his** behalf on Shabbat.

NOTES

One found an unidentified abandoned baby in the city – מָצָא בָּהּ תִּינוֹק מוּשְׁלָךְ: The commentaries ask: Why not resolve the problem by immersing the child for the purpose of conversion? In that way he will grow among the Jews and his legal status will be that of a full-fledged Jew. Several explanations were suggested. According to the opinion that the court converts only a minor who initiates the conversion or who is brought by his parents, in this case conversion is impossible. According to the opinion that the court can initiate conversion, since upon reaching majority the convert can reconsider his conversion, the conversion does not solve the problem (*Shita Mekubbetzet*).

To sustaining him – לְהַחֲיוֹתוֹ: Although it is possible to explain that the term: To sustaining him [*lehaḥayoto*], means saving his life according to Rav, who agrees with Shmuel, the language and context indicate that this was not his intention. Based on this understanding, there is a novel element in Rav's opinion that a Jew is required not merely to save his life but even to tend to his daily needs. There is a novel element in the opinion of Shmuel as well: One may save his life even if it involves desecrating Shabbat.

The one who teaches this does not teach that – מַאן דְּמַתְנֵי הָא לָא מַתְנֵי הָא: Rabbeinu Ḥananel and Rabbi Zeraḥya HaLevi explain: That which Rav Ḥanan does not teach is the segment of Rav's statement: However, with regard to lineage, no. Most of the early commentaries reject that explanation (*Tosafot*; Ramban; Rashba). Most commentaries agree with Rashi, who explains that Rav Ḥanan does not teach the statement cited in the name of Rav that the incident transpired among the wagons of Tzippori. Although that explanation is somewhat problematic as well, as it is difficult to say that their dispute is with regard to the details of an incident that transpired, most early commentaries accept it.

The Ramban in *Milḥamot Hashem* cites a third approach: This *halakha* was not taught in reference to the case of an abandoned baby that was found. Rather, a question was raised from the statement of Rav Yehuda in the name of Rav, who requires two majorities, on the statement of Rav Ḥanan. The Gemara answers that there are two traditions cited in the name of Rav. Early commentaries noted that the expression: The one who teaches this does not teach that, is not typically employed to describe a dispute between two opinions. Rather, it is employed to describe two statements that are redundant or inconsistent in their formulation.

HALAKHA

To sustaining him – לְהַחֲיוֹתוֹ: The legal status of an abandoned baby found in a city with a Jewish majority is that of a Jew in terms of sustaining him. Likewise, if half the population is Jewish and half is gentile, there is a mitzva to sustain the baby (Rambam). The Rema writes that there are those who say that there is a mitzva to sustain him only if there is a Jewish majority (Rashi; *Tosafot*). The dispute is whether Rav's statement in the Gemara addresses the first *halakha* cited in the mishna or the second one (Vilna Gaon; Rambam *Sefer Kedusha*, *Hilkhot Issurei Bia* 15:26; *Shulḥan Arukh*, *Even HaEzer* 4:34).

However, with regard to lineage, no – אֲבָל לְיוֹחֲסִין לֹא: The legal status of an abandoned baby found in a city with a population of Jews and gentiles, even if there is a Jewish majority, is that of a gentile whose status is uncertain with regard to his lineage. If, after reaching majority, he betrothed a Jewish woman, if he seeks to divorce her he may do so only by giving her a bill of divorce due to that uncertainty, in accordance with the statement of Rav. If he was immersed and converted by the court, or if he himself converted, when he reaches majority his legal status is that of a foundling, and his conversion is effective only in the sense that he is no longer considered a gentile (Rambam *Sefer Kedusha*, *Hilkhot Issurei Bia* 15:25–26; *Shulḥan Arukh*, *Even HaEzer* 4:33).

וּמִי אֲמַר שְׁמוּאֵל הָכִי? וְהָאָמַר רַב יוֹסֵף אָמַר רַב יְהוּדָה אָמַר שְׁמוּאֵל: אֵין הוֹלְכִין בְּפִיקּוּחַ נֶפֶשׁ אַחַר הָרוֹב! אֶלָּא, כִּי אֵיתְּמַר דְּשְׁמוּאֵל – אֲרִישָׁא אִתְּמַר: אִם רוֹב גּוֹיִם – גּוֹי, אָמַר שְׁמוּאֵל: וּלְפַקֵּחַ עָלָיו אֶת הַגַּל – אֵינוֹ כֵּן.

The Gemara asks: **And did Shmuel say that? But didn't Rav Yosef say** that **Rav Yehuda said** that **Shmuel said: One does not follow the majority in matters** involving **saving a life?**[N] Even if there is the slightest concern that the life of a Jew may be in danger, one takes all steps necessary to save him, even on Shabbat. **Rather, when the statement of Shmuel was stated** with regard to saving a life **it was stated concerning the first clause** of the mishna: **If** there is a **majority of gentiles**[N] in the city the baby is deemed **a gentile. Shmuel said: And** with regard **to creating an opening** in **a heap** of debris **on his** behalf [***lefake'aḥ alav et hagal***][HN] on Shabbat, **that is not so.** Even if there is a gentile majority in the city, one does not follow the majority in cases involving the saving of a life.

"אִם רוֹב גּוֹיִם – גּוֹי". לְמַאי הִלְכְתָא? אָמַר רַב פַּפָּא: לְהַאֲכִילוֹ נְבֵילוֹת.

The mishna continues: **If** there is a **majority of gentiles** the baby is deemed **a gentile.** The Gemara asks: With regard **to what *halakha*** was this stated? **Rav Pappa said:** It was stated in order **to feed** the baby **animal carcasses,**[H] i.e., non-kosher food.

"אִם רוֹב יִשְׂרָאֵל – יִשְׂרָאֵל, לְמַאי הִלְכְתָא? אָמַר רַב פַּפָּא: לְהַחֲזִיר לוֹ אֲבֵידָה.

And it is taught in the mishna: **If** there is a **majority of Jews** the baby is deemed **a Jew.** The Gemara asks: With regard **to what *halakha*** was this stated?[N] **Rav Pappa said:** It was stated in order **to return lost property to him,**[HN] as one is required to return lost property to a Jew.

HALAKHA

To create an opening in a heap of debris on his behalf – לְפַקֵּחַ עָלָיו אֶת הַגַּל: One may create an opening in a heap of debris on Shabbat on behalf of an abandoned baby found in a city in which half the population is Jewish and half is gentile. However, if there is a gentile majority in the city one may not desecrate Shabbat on his behalf. This is the ruling of the Rambam, who holds that Rav and Shmuel disagree about this matter, and the ruling in disputes between Rav and Shmuel is in accordance with the opinion of Rav in ritual matters.

The Rambam, in his responsa to the Sages of Lunel, cites proof from the related discourse in tractate *Yoma* (84b–85a). The Rema cites the opinion of the *Tur* based on the Ramban and the Rashba, which agrees with the opinions of Rashi and *Tosafot*, that even in a city with a gentile majority one may create an opening in a heap of debris on Shabbat on behalf of an abandoned baby that was found. This is because they hold that Rav and Shmuel did not disagree about this matter (Vilna Gaon; Rambam *Sefer Kedusha*, *Hilkhot Issurei Bia* 15:26 and *Sefer Zemanim*, *Hilkhot Shabbat* 2:21; *Shulḥan Arukh*, *Even HaEzer* 4:34).

To feed the baby animal carcasses – לְהַאֲכִילוֹ נְבֵילוֹת: The legal status of an abandoned baby found in a city with a gentile majority is that of a gentile, and one may feed him foods forbidden to Jews, in accordance with the opinion of Rav Pappa (Rambam *Sefer Kedusha*, *Hilkhot Issurei Bia* 15:26; *Shulḥan Arukh*, *Even HaEzer* 4:34).

To return lost property to him – לְהַחֲזִיר לוֹ אֲבֵידָה: The legal status of an abandoned baby found in a city with a Jewish majority is that of a Jew, and one who found lost objects belonging to him returns them to him, in accordance with the opinion of Rav Pappa (Rambam *Sefer Kedusha*, *Hilkhot Issurei Bia* 15:26; *Shulḥan Arukh*, *Even HaEzer* 4:34).

NOTES

One does not follow the majority in matters involving saving a life – אֵין הוֹלְכִין בְּפִיקּוּחַ נֶפֶשׁ אַחַר הָרוֹב: The reason that one does not follow a majority in that case is that once the Gemara interpreted the verse: "And he shall live by them" (Leviticus 18:5) and not that he shall die by them, it means that under no circumstances may he be allowed to die. Therefore, in every case of uncertainty with regard to saving a life, whether due to the situation or due to the identity of the person in danger, one must take the minority into consideration and may not act on the basis of the majority (*Tosafot Yeshanim*; Rosh).

If there is a majority of gentiles – אִם רוֹב גּוֹיִם: Some explain that this question is posed specifically according to the opinion of Shmuel, as it is possible to say that Rav disagrees with Shmuel and holds that in a case where there is a gentile majority one does not rescue the person from beneath the debris (Ramban). Others disagree, as they maintain that Rav and Shmuel do not disagree with regard to that matter.

To create an opening in a heap of debris on his behalf [*lefake'aḥ alav et hagal*] – לְפַקֵּחַ עָלָיו אֶת הַגַּל: The root *peh*, *kuf*, *ḥet* in this context is employed in the manner that it is employed throughout the Talmud, in the sense of observation or examination. It refers to opening one's eyes in order to ascertain whether the person under the debris remains alive and to extract him from beneath it. Some explain that it refers not to opening one's eyes but to creating an opening in the heap to release the person who is trapped.

If there is a majority of Jews…with regard to what *halakha* was this stated – אִם רוֹב יִשְׂרָאֵל…לְמַאי הִלְכְתָא: Here too, some explain that this question is posed specifically according to the opinion of Shmuel, who holds that even if there is a gentile majority one rescues the person from beneath the debris (*Shita Mekubbetzet*). Others explain that this question is based on the previous question: If you say that the *halakha* is not in accordance with the opinion of Rav, what is the difference between a situation where the population is half Jewish and half gentile, and a Jewish majority?

To return lost property to him – לְהַחֲזִיר לוֹ אֲבֵידָה: The commentaries ask: Why is the case of lost property different from the case of damages? The person who found the lost object should say to a person with regard to whom there is uncertainty whether or not he is a Jew who is seeking to recover the lost object: Prove that you are a Jew and take your object. Although there is a Jewish majority, it is not effective in removing property from the hands of the person possessing it.

They answer that there is a distinction between damages and a lost object. In the case of damages, the victim is seeking to receive damages from money that is clearly in the possession of the one who caused the damage. In that case the principle is: The burden of proof is incumbent upon the claimant. However, concerning a lost object, it is not considered completely in the possession of the one who found it, and therefore the majority is effective in facilitating recovery of the object (Ramban; Rashba).

Some later commentaries explain that although in a standard case of one seeking to exact payment from another, possession of the property is the determining factor, in the case of recovery of a lost object, since there is a mitzva to return it, the fact that the object is in one's possession does not supersede the mitzva to return it. See *Tosafot*, where this matter is discussed from a different perspective.

״מֶחֱצָה עַל מֶחֱצָה – יִשְׂרָאֵל״ לְמַאי הִלְכְתָא? אָמַר רֵישׁ לָקִישׁ: לְנָזְקִין. הֵיכִי דָּמֵי? אִי נִיתְּמָא דְּנָגְחֵיהּ תּוֹרָא דִּידָן לְתוֹרָא דְּיִדֵּיהּ – לֵימָא לֵיהּ: אַיְיתֵי רְאָיָה דְּיִשְׂרָאֵל אַתְּ וּשְׁקוֹל!

And it is taught in the mishna: If **half** the population is gentile and **half** Jewish, the baby is deemed **a Jew.** The Gemara asks: With regard **to what *halakha*** was this stated? **Reish Lakish said:** It was stated with regard **to damages.**[H] In terms of payment of damages, the courts judge him as a Jew. The Gemara asks: **What are the circumstances? If we say that our ox,** one belonging to a Jew, **gored his ox,** one belonging to a person of uncertain status, and he claims that he should be compensated for the damages as a Jew, **let the** owner of the ox that gored **say to him: Bring proof that you are a Jew, and take** payment. Due to the uncertainty surrounding his status, he is unable to produce any proof.

לָא צְרִיכָא, דְּנָגְחֵיהּ תּוֹרָא דִּידֵיהּ לְתוֹרָא דִּידָן. פַּלְגָא – מְשַׁלֵּם, וְאִידָךְ פַּלְגָא – אָמַר לְהוּ: אַיְיתֵי רְאָיָה דְּלָאו יִשְׂרָאֵל אֲנָא, וְאָתֵן לְכוֹן.

Rather, this *halakha* is **necessary only** in a case **where his ox gored our ox,** one belonging to a Jew. In that case, there is no question that **he pays half** the damage, which is the payment when an innocuous ox belonging to a Jew gores an ox belonging to a Jew. **And** with regard to **the other half,** which the owner of the gored ox is claiming, asserting that this person of uncertain status is a gentile and therefore liable to pay full damages, the owner of the ox that gored can **say to** the claimants:[N] **Bring proof that I am not a Jew and I will give you** payment of the other half of the damages. It is with regard to that case that Reish Lakish ruled that in a case of uncertainty, the baby has the presumptive status of a Jew, and it is incumbent upon the claimant to prove otherwise.

הרדן עלך בתולה נשאת

HALAKHA

With regard to damages – לְנָזְקִין: In a case where one caused damage to a person who was an abandoned baby found in a city in which half the population is Jewish and half is gentile, or even in a city with a Jewish majority, it is a standard case of uncertainty with regard to monetary matters and the burden of proof is incumbent upon the claimant. If his innocuous ox gored the ox of a full-fledged Jew, he pays half the damage. If the Jew wishes to collect the other half he must bring proof that the owner of the ox is a gentile. If the innocuous ox of a Jew gores his ox, the Jew need not pay him damages, because the owner of the gored ox cannot prove that he is a Jew (Rambam *Sefer Kedusha*, *Hilkhot Issurei Bia* 15:26; *Tur*, *Even HaEzer* 4:34).

NOTES

And with regard to the other half, he can say to the claimants – וְאִידָךְ פַּלְגָא אָמַר לְהוּ: The question is raised: Isn't this a case of partial admission in response to a claim, where one is obligated to take an oath on the portion of the claim that he denies? Based on the principle: One who is obligated to take an oath and is unable to take that oath is required to pay, since he is unable to take the oath because there is uncertainty whether he is Jewish, he should be obligated to pay. However, this is not a problem according to the opinion that this principle applies only in a case where there is a reasonable expectation that he could have known what happened but refuses to take an oath; here, therefore, since there is no way to ascertain whether he is a Jew or a gentile he is not required to pay. Even according to those who say that one is required to pay even if he did not take the oath because there is no way for him to know what happened, here he is not required to take an oath at all, as both the claim of the claimant and the claim of the respondent are uncertain (Ritva; *Shita Mekubbetzet*).

מתני׳ הָאִשָּׁה שֶׁנִּתְאַרְמְלָה אוֹ שֶׁנִּתְגָּרְשָׁה, הֵיא אוֹמֶרֶת: בְּתוּלָה נְשָׂאתַנִי, וְהוּא אוֹמֵר: לֹא כִי, אֶלָּא אַלְמָנָה נְשָׂאתִיךְ. אִם יֵשׁ עֵדִים שֶׁיָּצְאַת בְּהִינּוּמָא וְרֹאשָׁהּ פָּרוּעַ – כְּתוּבָּתָהּ מָאתַיִם. רַבִּי יוֹחָנָן בֶּן בְּרוֹקָה אוֹמֵר: אַף חִילּוּק קְלָיוֹת רְאָיָה.

MISHNA With regard to **a woman who was widowed or divorced,** and is now claiming payment of her marriage contract that is not before the court, and **she says: You married me** as **a virgin,** who is entitled to two hundred dinars, **and he says: No; rather, I married you** as **a widow,** who is entitled to one hundred dinars, then, **if there are witnesses that she went out** of her father's house to her wedding **with a *hinnuma*** [HL] **or** with **her hair uncovered,** in a manner typical of virgins, payment of **her marriage contract is two hundred** dinars. **Rabbi Yoḥanan ben Beroka says: Even** testimony that there was **distribution of roasted grain,** which was customary at weddings of virgins, constitutes **proof** that she is a virgin.

וּמוֹדֶה רַבִּי יְהוֹשֻׁעַ בְּאוֹמֵר לַחֲבֵירוֹ: שָׂדֶה זוֹ שֶׁל אָבִיךָ הָיְתָה, וּלְקַחְתִּיהָ הֵימֶנּוּ – שֶׁהוּא נֶאֱמָן.

Several disputes between Rabban Gamliel and Rabbi Yehoshua were cited previously with regard to the credibility accorded to the respective claims of parties to a dispute. Based on one of those disputes, the *tanna* adds: **And Rabbi Yehoshua concedes in** a case where **one says to another: This field,** which is currently in my possession, **belonged to your father and I purchased it from him, that he is deemed credible,** and his entire claim is accepted. The court accepts not only his admission that it once belonged to the other's father, but also his statement that he purchased it.

HALAKHA

If there are witnesses that she went out with a *hinnuma* – אִם יֵשׁ עֵדִים שֶׁיָּצְאַת בְּהִינּוּמָא: A woman claims that she was a virgin when she got married and is consequently entitled to a marriage contract of two hundred dinars, and her husband claims or his heirs claim that she was not a virgin and is entitled to a marriage contract of one hundred dinars, and the marriage contract was lost or, in keeping with local custom, was never written. In such a case, if there are witnesses testifying that actions characteristic of a virgin's wedding were performed at her wedding, she is entitled to a marriage contract of two hundred dinars (Rambam *Sefer Nashim*, *Hilkhot Ishut* 16:25; *Shulḥan Arukh*, *Even HaEzer* 96:15).

LANGUAGE

***Hinnuma* – הִינּוּמָא:** Scholars disagree with regard to the precise source of this word. Many maintain that it is from the Greek **ὑμέναιος**, *hymenaios*, meaning a song sung at a wedding, and it is also used as a general term for a wedding. Rabbeinu Ḥananel suggests that its source is the Greek **ἔννομος**, *ennomos*, a matter performed according to the law (*Arukh*). Others assert that it is related to the Greek **ὑμήν**, *hymen*, meaning thin scarf, or a thin membrane such as the hymen.

Based on the dispute cited in the Gemara (17b) with regard to the precise meaning of this term, and based on the fact that there is a parallel dispute in the Jerusalem Talmud, apparently, the term *hinnuma* does not refer to a specific object but rather to a fixed custom or component of the wedding of a virgin.

שֶׁהַפֶּה שֶׁאָסַר הוּא הַפֶּה שֶׁהִתִּיר. וְאִם יֵשׁ עֵדִים שֶׁהָיָא שֶׁל אָבִיו, וְהוּא אוֹמֵר: ״לְקַחְתִּיהָ הֵימֶנּוּ״ אֵינוֹ נֶאֱמָן.

This is so, **as the mouth that prohibited,** i.e., claimed that the field had belonged to the other's father, **is the mouth that permitted,** [N] i.e., claimed that he purchased the field. Even if he had not admitted that it had belonged to the other's father, the field would have remained in his possession. Therefore, his claim is accepted. **However, if there are witnesses that the field belonged to his father, and** the one who has the field in his possession **says: I purchased it from him, he is not deemed credible** and his claim is rejected.

NOTES

The mouth that prohibited is the mouth that permitted – הַפֶּה שֶׁאָסַר הוּא הַפֶּה שֶׁהִתִּיר: Later commentaries sought to clarify whether this principle is an independent legal principle or whether it is based on *miggo*. A *miggo* is a halakhic argument that the ability to make a more advantageous claim grants credibility to the claim one actually makes. That the one who claimed he owned the field could have opted to remain silent but instead admitted that the field was originally not his and that he purchased it indicates that he is telling the truth. The difference between these two understandings is in a case where the two parts of his statement were not stated together. In that case, if his credibility is based on *miggo*, his claim would not be accepted, because a *miggo* cannot be invoked retroactively. The simple understanding of the Gemara is that his credibility is based on *miggo*. However, it is apparent from the early commentaries that they hold that this is an independent principle (see *Kovetz Shiurim*): If one is deemed credible with regard to the statement that is contrary to his interests, there is no reason not to deem him credible with regard to the statement that furthers his interests. This is similar to the reasoning later in the Gemara (26b).