

כְּלָה כְּמוֹת שְׁהִיא, וּבֵית הַלֵּל אוֹמְרִים: כְּלָה נְאֻה וְחִסְדָּה. אָמְרוּ לָהֶן בֵּית שְׁמַאי לְבֵית הַלֵּל: הֲרֵי שְׁהִיְתָה חֵיגָרָה אוֹ סוּמָא, אוֹמְרִים לָהּ "כְּלָה נְאֻה וְחִסְדָּה"? וְהַתּוֹרָה אָמְרָה "מְדַבֵּר שְׂקָר תִּרְחַק"! אָמְרוּ לָהֶם בֵּית הַלֵּל לְבֵית שְׁמַאי: לְדַבְּרֵיכֶם, מִי שְׂלָקַח מִקַּח רַע מִן הַשּׁוּק – יִשְׁבַּחְנוּ בְּעֵינָיו אוֹ יִגְנְנוּ בְּעֵינָיו? הֲיֵי אֹמֵר – יִשְׁבַּחְנוּ בְּעֵינָיו. מִכָּאן אָמְרוּ חֲכָמִים: לְעוֹלָם תִּהְיָ דַעְתּוֹ שֶׁל אָדָם מְעוֹרְבָת עִם הַבְּרִיּוֹת.

כִּי אֵתָא רַב דִּימִי אֵמַר: הֲכִי מִשְׁרוֹ קָמִי כְּלָתָא בְּמַעְרַבָא. "לֹא כַחַל וְלֹא שְׂרָק וְלֹא פִירְבוּס, וְיַעֲלֵת חֵן." כִּי סָמְכוּ רַבְנֵי לְרַבִּי זְעִירָא שְׁרוּ לֵיהּ הֲכִי: "לֹא כַחַל וְלֹא שְׂרָק וְלֹא פִירְבוּס וְיַעֲלֵת חֵן."

כִּי סָמְכוּ רַבְנֵי אֲמִי וְלְרַבִּי אֲסִי שְׁרוּ לְהוּי הֲכִי: "כֹּל מִן דִּין וְכֹל מִן דִּין סְמוּכוּ לְנָא, לֹא תִסְמְכוּ לְנָא לֹא מִן סַרְמִיסִין וְלֹא מִן סַרְמִיטִין." וְאָמְרוּ לָהּ: "לֹא מִן חֲמִיסִין וְלֹא מִן טוּרְמִיסִין."

רַבִּי אַבְהוּ, כִּי הוּא אֵתִי מִמְתִּיבְתָא לְרַבִּי קִיסָר, נִפְקֵן אִמְהַתָּא דְבִי קִיסָר לְאַפִּיָּה, וּמִשְׁרִין לֵיהּ הֲכִי: "רַבָּא דְעַמִּיָּה וּמַדְבְּרָנָא דְאוּמַתִּיָּה, בּוֹצֵינָא דְנְהוֹרָא, בְּרִיךְ מְתִינִיךְ לְשָׁלָם."

אָמְרוּ עֲלָיו עַל רַבִּי יְהוּדָה בַּר אֵילְעָאִי שְׁהִיָּה נוֹטֵל בַּד שֶׁל הַדָּס וּמְרַקֵּד לְפָנֵי הַכְּלָה, וְאָמְרוּ: "כְּלָה נְאֻה וְחִסְדָּה." רַב שְׁמוּאֵל בַּר רַב יִצְחָק מְרַקֵּד אֶתְלַת אָמַר רַבִּי זְעִירָא: קָא מְכַסִּין לָן סַבָּא. כִּי נַח נְפִישִׁיָּה אִיפְסִיק עַמּוּדָא דְנוּרָא בֵּין דִּידֵיהּ לְכוּלֵי עַלְמָא, וְגַמְרִי דְלֹא אִפְסִיק עַמּוּדָא דְנוּרָא אִלָּא אִי לַחַד בְּדָרָא אִי לְתַרֵּי בְּדָרָא.

One recites praise of the bride as she is,ⁿ emphasizing her good qualities. And Beit Hillel say: One recites: A fair and attractiveⁿ bride.^h Beit Shammai said to Beit Hillel: In a case where the bride was lame or blind, does one say with regard to her: A fair and attractive bride? But the Torah states: "Keep you from a false matter" (Exodus 23:7). Beit Hillel said to Beit Shammai: According to your statement, with regard to one who acquired an inferior acquisition from the market, should another praise it and enhance its value in his eyes or condemn it and diminish its value in his eyes? You must say that he should praise it and enhance its value in his eyes and refrain from causing him anguish. From here the Sages said: A person's disposition should always be empathetic with mankind, and treat everyone courteously. In this case too, once the groom has married his bride, one praises her as being fair and attractive.

When Rav Dimi came from Eretz Yisrael to Babylonia, he said: This is what they sing before brides in the West, in Eretz Yisrael: No eye shadow, and no rouge, and no braiding of the hair, and yet she is comparable to a graceful ibex. The Gemara relates: When the Sages ordained Rabbi Zeira, this is what they metaphorically sang with regard to him in his praise: No eye shadow, and no rouge, and no braiding of the hair, and yet she is comparable to a graceful ibex.

On a related note, the Gemara relates: When the Sages ordained Rabbi Ami and Rabbi Asi, this is what they sang to them: Anyone from people of this kind and anyone from people of that kind, ordain them for us. Do not ordain for us others, neither from those who corrupt [sarmisin]ⁿ halakhot, nor from those who are worthless [sarmitin]. And some say: Not from those who provide only one-fifth [hamisin] of the reason for a halakha, and not from those whose knowledge is incomplete [turmisin].^l

The Gemara relates another instance of singing the praise of the Sages: When Rabbi Abbahu would come from the academy to the house of the emperor,^b the maidservants of the emperor's house would go out to greet him, and this is what they sang to him: Master of his people and leader of his nation, candle of illumination, blessed is your arrival in peace.

With regard to the mitzva of bringing joy to the bride and groom, the Gemara relates: The Sages said about Rabbi Yehuda bar Elai that he would take a myrtle branch and dance before the bride, and say: A fair and attractive bride. Rav Shmuel bar Rav Yitzhak^p would base his dance on three myrtle branches that he would juggle. Rabbi Zeira said: The old man is humiliating us, as through his conduct he is demeaning the Torah and the Torah scholars. It is further related: When Rav Shmuel bar Rav Yitzhak died, a pillar of fire demarcated between him and everyone else, and we learn through tradition that a pillar of fire demarcates only for either one person in a generation or for two people in a generation.

PERSONALITIES

Rav Shmuel bar Rav Yitzhak – רַב שְׁמוּאֵל בַּר רַב יִצְחָק: A member of the second generation of Babylonian *amora'im*, Rav Shmuel bar Rav Yitzhak was apparently one of the younger disciples of Hava and afterward studied Torah under the tutelage of Rav Huna.

Like many students of Rav Huna, he came to Eretz Yisrael and studied Torah from the preeminent Torah luminary of that generation, Rabbi Yohanan. He was already middle-aged when he arrived there. Although no statements in the name of Rabbi Yohanan are cited in the Talmud, he engaged in Torah discourse

with the students of Rabbi Yohanan, some of whom cite statements in his name. His aggadic and halakhic statements are cited in both the Babylonian Talmud and the Jerusalem Talmud. There is no information as to how he earned his livelihood. In terms of his family, it is known that his daughter married Rabbi Hoshaya.

Rav Shmuel bar Rav Yitzhak conducted himself with great humility, deferring even to those younger than he. A slightly different version of his custom to dance before the bride along with the rest of the incident is related in the Jerusalem Talmud.

NOTES

The bride as she is – כְּלָה כְּמוֹת שְׁהִיא: Most commentaries explain as does *Tosafot*, that as she is means according to her good qualities, as every bride has some good quality, e.g., beauty, personality, lineage, or wealth, for which she is praiseworthy. Others explain that the bride as she is means just that, as God created her. It is a neutral statement containing no falsehood.

And attractive – וְחִסְדָּה: Rashi and others explain that there is a thread of charm drawn over her. This is praise not of her spiritual qualities but of her physical beauty, which attracts onlookers. That is the meaning of the term based on the discussion that follows.

Sarmisin, etc. – סַרְמִיסִין וְכוּ': The meaning of these words is not clear even though they all have clearly negative connotations. Rashi explains *sarmisin* as meaning those who corrupt *halakhot*. The *ge'onim* explain that *sarmisin* refers to items that are ruined, e.g., a ball of thread that became entangled. Rabbeinu Hananel explains that it is an abbreviation for the term: *Sar hamishim*, master of fifty, referring to one proficient in only fifty chapters of mishna. Apparently, he interprets the term *hamisin* in a similar fashion.

Rashi explains *sarmitin* as a variation of the word *semartutum*, meaning rags. Others cite the interpretation of the *ge'onim* that this refers to untidy penmanship. Rashi interprets *hamisin* in tractate *Sanhedrin* as being related to the term *hamsanut*, meaning forcibly taking items from another and paying, which in this context refers to people who state matters but do not reveal their reasons, which is also an action that is improperly performed. The *Arukh* explains that it refers to someone who learns only one-fifth [*hamishit*] of a tractate, while others have the variant reading of *hamitin*, which means wafer and refers to those who snatch items like one snatches a wafer.

In the commentary attributed to Rashi, *turmisin* is linked to the term *tulmisin*, meaning a wicked person. Others cite the *ge'onim*, who explain that dough that is not prepared properly and that remains in the shape of a ball is referred to as *turmisin*. In this context, it refers to people who are incomplete and unrefined. Rabbeinu Hananel links it to the term *turmus*, lupine, referring to those whose reasoning is bitter like lupine.

HALAKHA

A fair and attractive bride – כְּלָה נְאֻה וְחִסְדָּה: It is a mitzva to bring joy to the bride and the groom and to dance before them and recite: A fair and attractive bride, in accordance with the opinion of Beit Hillel (*Shulhan Arukh, Even HaEzer* 65:1).

LANGUAGE

Those whose knowledge is incomplete [*turmisin*] – טוּרְמִיסִין: Possibly from the Latin *tremissis*, meaning a Roman coin worth one-third of a dinar. It is used here as a metaphor for people whose knowledge is partial. There is a variant reading, *tolmisin*, from the Greek *τόλμησις*, *tolmessis*, which is pejorative and means boldness.

BACKGROUND

The house of the emperor – בֵּי קִיסָר: Rabbi Abbahu lived in Caesarea and was held in high regard by the Roman authorities. Although he had no official position, he was the acting representative of the Jewish people. The emperor's house in this context is apparently the residence of the Roman governor stationed in Caesarea, where Rabbi Abbahu headed his own yeshiva.

NOTES

One reroutes a corpse to yield before a bride – מעבירין את המת מלפני כלה: The Ramban and the Ra'ah maintain this as a principle: The marriage of a bride takes precedence over burial of a corpse, not only in terms of deference, but also in terms of the allocation of public funds and the like. The reason is that since both of these mitzvot are based on the principle of human dignity, actions designed to enhance the dignity of the living take precedence over those designed to enhance the dignity of the dead. However, others note that the Rambam disagrees.

LANGUAGE

Agrippa [Agrippas] – אגריפס: *Agrippas*, *Αγρίππας*, is the Greek rendition of the Roman name Agrippa.

PERSONALITIES

King Agrippa – אגריפס המלך: This is apparently Agrippa I, the grandson of Herod and Miriam the Hasmonean, who died in 44 CE. Although he spent his youth in Rome involved in the debauchery and machinations of the emperor Tiberius's court, when he ultimately came to Eretz Yisrael and was appointed king over all of the territories that Herod ruled, he underwent a major spiritual transformation that led to the development of a close relationship with the Sages and to scrupulous adherence to the mitzvot. Although the Sages never officially recognized his monarchy, they treated him with deference, and the Talmud recounts several of his good deeds.



Coin with the visage of Agrippa I

אמר רבי זירא: אהנייה ליה שוטייה לסבא, ואמרי לה: שוטייה לסבא, ואמרי לה: שוטייה לסבא, ואמרי לה: שוטייה לסבא.

רב אחא מרביב לה אבתפיה ומרקד. אמרי ליה רבנן: אנו מהו למיעבד הכי? אמר להו: אי דמיין עליכו ככשורא – לחיי, ואי לא – לא.

אמר רבי שמואל בר נחמני אמר רבי יונתן: מותר להסתכל בפני כלה כל שבועה, כדי לחבבה על בעלה. ולית הלכתא כוותיה.

תנו רבנן: מעבירין את המת מלפני כלה, וזה וזה מלפני מלך ישראל. אמרו עליו על אגריפס המלך שיעבר מלפני כלה, ושבוהו חכמים.

שבוהו – מפלל דשפיר עבד? והא אמר רב אשי: אפילו למאן דאמר נשיא שמחל על כבודו – כבודו מחול, מלך שמחל על כבודו – אין כבודו מחול; דאמר מר: שום תשים עליך מלך – שתהא אימתו עליך! פרשת דרכים הוא.

Rabbi Zeira said: His branch [*shotitei*] was effective for the old man, as it is due to this mitzva that he fulfilled so enthusiastically that he was privileged to receive this great reward. And some say that Rabbi Zeira said: His nonsense [*shetutei*] was effective for the old man. And some say that he said: His method [*shittatei*] was effective for the old man.

Rav Aha would place the bride on his shoulders and dance. The Sages said to him: What is the ruling? Is it permitted for us to do so as well? He said to them: If brides are comparable for you to a beam, fine, but if not, no, you may not.

Rabbi Shmuel bar Nahmani said that Rabbi Yonatan said: It is permitted to look at the face of a bride^h throughout all seven days of the wedding celebration, in order to endear her to her husband, whose appreciation of her beauty will be thereby enhanced. The Gemara notes: And the *halakha* is not in accordance with his opinion, as it is prohibited to look at any married woman, even a bride.

S The Sages taught: One reroutes the funeral procession for burial of a corpse to yield before the wedding procession of a bride.^{nh} And both this, the funeral procession, and that, the wedding procession, yield before a king of Israel.^h They said about King Agrippa [Agrippas]^{lp} that although he was not required to do so, he rerouted his entourage before the wedding procession of a bride, and the Sages praised him for doing so.

The Gemara asks: The Sages praised him; is that to say by inference that he did well in yielding? But didn't Rav Ashi say: Even according to the one who said with regard to a *Nasi* who relinquishes the honor due him^h that his honor is relinquished, i.e., he may do so, with regard to a king who relinquishes the honor due him,^h his honor is not relinquished. As the Master said that the meaning of the verse "You shall place a king over you" (Deuteronomy 17:15) is that his awe shall be upon you. The Torah established that the subjects' awe is an essential component of kingship and it is not the prerogative of the king to waive it. The Gemara answers: It was at a crossroads that he encountered the wedding procession, and the fact that he yielded to the bride was not obvious to onlookers. Therefore, the honor due the king was not compromised.

HALAKHA

To look at the face of a bride – להסתכל בפני כלה: It is prohibited to look at the bride, just as it is prohibited to look at any other married woman (*Shulhan Arukh, Even HaEzer* 65:2).

One reroutes a corpse to yield before a bride – מעבירין את המת מלפני כלה: If a wedding procession and a funeral procession meet, the funeral procession yields to the wedding procession (*Rambam Sefer Shofetim, Hilkhot Evel* 14:8; *Shulhan Arukh, Even HaEzer* 65:4).

And both this and that before a king of Israel – וזה וזה מלפני מלך ישראל: Both a funeral procession and a wedding procession yield to a king of Israel, in accordance with the *baraita* (*Rambam Sefer Shofetim, Hilkhot Evel* 14:8).

נשיא שמחל על כבודו – A *Nasi* who relinquishes the honor due him: One who sees the *Nasi* of the Sanhedrin stands until the *Nasi* is no longer visible. If a Torah scholar, or even the *Nasi*, relinquishes the honor due him, his honor is relinquished. Nevertheless, it is appropriate to honor him and show him symbolic deference by engaging in a standing-like motion (*Rambam Sefer HaMadda, Hilkhot Talmud Torah* 6:6; *Shulhan Arukh, Yoreh De'a* 244:14).

מלך שמחל על כבודו – A king who relinquishes the honor due him: A king may not relinquish the honor due him, even for the purpose of a mitzva (*Rambam Sefer Shofetim, Hilkhot Melakhim* 2:3).

Gate of the city [*abbula*] – אַבּוּלָא: Most commentaries define *abbula* as the gate of the city, from the Greek *ἐμβολος*, *embolos*, meaning gatehouse or city gate.

תנו רבנן: מבטלין תלמוד תורה להוצאת המת ולהכנסת פלה, אמרו עליו על רבי יהודה ברבי אלעאי שהיה מבטל תלמוד תורה להוצאת המת ולהכנסת פלה. במה דברים אמורים – בשאין עמו כל צרכו, אבל יש עמו כל צרכו – אין מבטלין.

The Sages taught: One suspends the study of Torah to attend the removal of a corpse^H for burial and to attend the entry of a bride into the wedding canopy. The Sages said about Rabbi Yehuda, son of Rabbi Elai, that he would suspend the study of Torah to attend the removal of a corpse for burial and to attend the entry of a bride into the wedding canopy. In what case is this statement said? In a case where there are not enough people with him, i.e., accompanying the corpse, to satisfy all his needs, i.e., to appropriately honor him. However, if there are enough people with him to satisfy all his needs, one does not suspend Torah study.

וכמה כל צרכו? אמר רב שמואל בר איבי משמיה דרב: תריסר אלפי גברי ושיתא אלפי שיפורי. ואמרי לה: תליסר אלפי גברי, ומינייהו שיתא אלפי שיפורי. עולא אמר: כגון דחייצי גברי מאבולא ועד סיכרא. רב ששת ואיתימא רבי יוחנן אמר: נטילתה כנתינתה, מה נתינתה בששים רבוא – אף נטילתה בששים רבוא. והני מילי – למאן דקרי ותני,

The Gemara asks: And how many people constitute all his needs?^{HN} Rav Shmuel bar Eini said in the name of Rav: Twelve thousand men and six thousand additional men each sounding a shofar to herald the approaching funeral procession. And some say: Thirteen thousand men and, among them, six thousand men sounding a shofar. Ulla said: All his needs means a crowd large enough so that the men in the funeral procession form a partition stretching from the gate of the city [*abbula*]^L until the cemetery. Rav Sheshet, and some say Rabbi Yoḥanan, said: The number of people required for taking of the Torah from the Jewish people with the death of a Torah scholar is equivalent to the number present at its giving to the Jewish people. Just as its giving took place with six hundred thousand men present at Sinai, so too, the taking of the Torah at the funeral of a Torah scholar is with six hundred thousand men. The Gemara notes: This applies only to one who read the Bible and studied mishna,^N i.e., one who is a student of Torah, and consequently worthy of that honor.

HALAKHA

One suspends the study of Torah to attend the removal of a corpse – מבטלין תלמוד תורה להוצאת המת – One suspends Torah study for a funeral procession if there are not enough people with the corpse to satisfy all his needs. This is also true for a wedding celebration. However, in both these cases, if there are enough people present one does not suspend Torah study (Rambam *Sefer Shofetim*, *Hilkhot Evel* 14:9; *Shulḥan Arukh*, *Yoreh De'á* 361:1).

And how many constitute all his needs – וכמה כל צרכו: How many attendees are considered sufficient for a funeral? If the deceased was unlearned in both Bible and mishna, ten men are

sufficient. If he was a Torah scholar who studied Bible or mishna himself, which according to the Rema, citing the *Smag*, is the presumptive status of all Jewish people nowadays, six hundred thousand is the requisite number. If he taught Torah to others, everyone must attend his funeral. Nowadays, the prevalent custom is based on the Gemara (*Moed Katan* 27b): In a place where there are different burial societies, each group buries its own dead. Nevertheless, when encountering another funeral procession, one briefly joins the procession in deference to the dead (Rambam *Sefer Shofetim*, *Hilkhot Evel* 14:11; *Shulḥan Arukh*, *Yoreh De'á* 361:1).

NOTES

And how many constitute all his needs – וכמה כל צרכו: The *ge'onim* write that one may learn from here that although there are prescribed limits to the number of people required to attend a funeral, there is no limit to the number of people required to attend a wedding.

To one who read the Bible and studied mishna – למאן דקרי ותני: The early commentaries, some of whom cite the *She'iltot*, which is the first source for this opinion, write that for one who

has not read any Bible or learned any Mishna, ten men are sufficient to engage in his burial. The commentaries are divided with regard to the burial of a woman. Some say that since she too has presumably neither read the Bible nor learned Mishna, the same applies to her. Others maintain that since the woman has no obligation to study Torah, the legal status of her burial would equal that of a man who read the Bible and learned Mishna, especially if she was a righteous woman (*Talmidei Rabbeinu Yona*).

LANGUAGE

Surhav – סורחב: This name is related to the Persian suxr, meaning ruddy or red. There are similar names and epithets attached to various Sages, e.g., Yitzhak the Red [sumka].

Veil [kerita] – קריתא: There are various opinions with regard to the meaning of this term. Some define it as a diminutive form of the word *kirya*, meaning city. Rabbeinu Hananel, cited in the *Arukh*, explains that it is a tiara in the shape of a city that would be placed on the head of the bride. Others say that it was a small structure in which the bride would be seated, or a sedan chair in which the bride was carried. The etymology of the word is unclear.



Roman statue of woman wearing a tiara in the shape of a city

HALAKHA

אם – If there are witnesses that it was the father's field – אם יש עדים שהיא שלו: If one person has witnesses that he is the previous owner of a field currently in the possession of another, and the other person claims that he purchased it from the first, who denies that he sold it and claims that the field is stolen, the first person is deemed credible. He takes an oath of inducement, instituted by the Sages to induce a person to tell the truth, and repossesses his field (Rambam *Sefer Mishpatim*, *Hilkhot To'en VeNitan* 14:3; *Shulhan Arukh*, *Hoshen Mishpat* 140:1).

אבל למאן דמתני – לית ליה שיעורא.

”ואם יש עדים שיעצתה בהינומא” וכו'. מאי הינומא? סורחב בר פפא משמיה דזעירי אמר: תנורא דאסא. רבי יוחנן אמר: קריתא דמנמנה בה בלתא.

”רבי יוחנן בן ברוקא אומר” וכו'. תנא: ביהודה – ראיה, בבבל מאי? אמר רב: דרדוגי דמשחא ארישא דרבנן. אמר ליה רב פפא לאביי: משחא דחפיותא קאמר מר?! אמר ליה: יתמא, לא עבדא לך אמך דרדוגי משחא ארישא דרבנן בשעת מעשה? בי האי דהוא מרבנן דאיסק ליה לבריה בי רבה בר עולא. ואמרי לה רבה בר עולא איסק ליה לבריה בי ההוא מרבנן, ודרדיג משחא ארישא דרבנן בשעת מעשה.

ארמלתא מאי? תאני רב יוסף: ארמלתא לית לה ביסני.

”ומודה רבי יהושע באומר לחבירו” כו'. וליתני: מודה רבי יהושע באומר לחבירו שדה זו שלך היתה ולקחתיה ממך!”

משום דקא בעי למיתני סיפא: אם יש עדים שהיא שלו, והוא אומר: “לקחתיה ממנו” – אינו נאמן. היכי דמי?

However, for one who taught others, there is no measure for the number of people attending the funeral.

The mishna continues: **And if there are witnesses that she went out of her father's house to her wedding with a *hinnuma* her marriage contract is two hundred dinars.** The Gemara asks: **What is a *hinnuma*?** Surhav^l bar Pappa said in the name of Ze'eiri: It is a canopy of myrtle over the bride's head. Rabbi Yohanan said: It is a veil [*kerita*]^l covering the bride's face under which the bride dozes [*menamna*].

The mishna continues: **Rabbi Yohanan ben Beroka says: Even testimony that there was distribution of roasted grain constitutes proof that she is a virgin.** It was taught with regard to the mishna: **In Judea, that is proof; however, what are the customs at the weddings of virgins in Babylonia?** Rav said: **Smearing fragrant oil on the heads of the Sages was customary.** Rav Pappa, who was unfamiliar with that practice, said to Abaye: **Is the Master saying oil for shampooing the hair?** Calling him an orphan because he was ignorant of the custom, he said to him: **Orphan, didn't your mother perform for you smearing of oil on the heads of the Sages at the time of the performance of your wedding ceremony?** As this was the case when one of the Sages who arranged for his son to marry into the family of Rabba bar Ulla attended the wedding, and some say that it was Rabba bar Ulla who arranged for his son to marry into the family of one of the Sages; and he smeared oil on the heads of the Sages at the time of the performance of the wedding ceremony.

The Gemara asks: **What is the custom at the wedding of a widow?** Rav Yosef taught: **A widow does not have roasted grain [*kisanei*]^N distributed at her wedding.**

The mishna continues: **And Rabbi Yehoshua concedes in a case where one says to another: This field belonged to your father, and I purchased it from him, that he is deemed credible.** The Gemara asks: **And let the mishna teach: Rabbi Yehoshua concedes in a case where one says to another: This field belonged to you, and I purchased it from you.**

The Gemara answers: Although Rabbi Yehoshua concedes that his claim is accepted even in that latter case, he addressed the case where the field originally belonged to the father **due to the fact that the *tanna* wanted to teach in the latter clause that if there are witnesses that it was the father's field,^H and he says: I purchased it from him, he is not deemed credible.** That is the *halakha* only with regard to a field that belonged to the father, and not to the claimant himself. Were it referring to a field that he purchased from the claimant, **what are the circumstances?**

NOTES

A widow does not have roasted grain [*kisanei*] – ארמלתא לית לה ביסני: The text of the Gemara is difficult, as the Gemara asks what was the practice characteristic of the wedding of a widow and no answer is provided. *Tosafot* explain that to avoid any potential error, they would take pains to make certain that there was no roasted grain at the wedding of a widow. However, the Ritva cites the opinion of Rabbeinu Tam, who interprets the question as relating to the case of a widow who seized property from her husband's estate and claimed that she had been a virgin. The Gemara answers that if there are witnesses to testify that there was no roasted grain at the wedding ceremony, it serves as proof that she was not a virgin. Since bringing grain does not

involve exertion, she cannot claim that there was no grain due to circumstances beyond her control.

Many early commentaries (Rabbeinu Tam in *Sefer HaYashar*; Ramban) cited a variant reading of the text: A widow has *kisanei* at her wedding to distinguish it from the wedding of a virgin, where *kelayot* are brought instead. The *ge'onim* explain that *kisanei* is a dish of wheat, cooked beans, and raisins, and *kelayot* are toasted grain. Rabbeinu Tam explains that *kisanei* is grain toasted in the oven. At the wedding ceremony of a virgin they would bring freshly toasted grain, symbolizing her virginity, and at the wedding of a widow they would bring dried toasted grain.

Years necessary to establish presumptive ownership – שְׁנֵי חֲזָקָה: The presumptive ownership under discussion here is the ostensible proof that the property legally belongs to the one currently in possession of it. The primary *halakhah* of presumptive ownership are elucidated in tractate *Bava Batra*. Fundamentally, in addition to physical possession of the property, there must also be a claim to legal ownership, i.e., inheritance, purchase, or receipt as a gift. To establish presumptive ownership of land, one must prove that he utilized the land, e.g., that he ate the produce of a field, for three years. Even after three years have elapsed, presumptive ownership does not constitute absolute proof of ownership. Rather, it is effective in that if one claims that he owned the field and brings proof to that effect, and the one in possession of the field claims that ownership was legally transferred to him, he need not document that legal transfer. After three years of uncontested possession of the property, the one in possession of the property is not expected to safeguard the relevant documents any longer.

Even after he reached majority – אֶפְיִלוּ הַגְּדִיל: With regard to the practical *halakha*, there are several opinions (see HALAKHA). According to the Rambam the years of possession while the heir was a minor are not included in establishing presumptive ownership; it is established only by means of three years of possession subsequent to his reaching majority. Other early commentaries dispute the Rambam's opinion and contend that since possession of the field began while the heir was a minor and unfamiliar with his father's properties, it is unreasonable to expect him to be familiar with those properties even after he reaches majority. Therefore, they explain, apparently in agreement with the *geonim*, that presumptive ownership is established only if possession of the field began after the heir reached majority.

The Rashba explains at length that while the heir is a minor, he lacks the halakhic ability to transfer ownership of the property. A third, and even more extreme, opinion is that of the Rashbam, cited by *Tosafot*, who asserts that in any case where one claims that he assumed possession of the property during the father's lifetime, presumptive ownership cannot be established, as, based on a principle cited in several places in the Talmud, the legal status of an adult heir is equivalent to that of a minor in terms of familiarity with the disposition of his father's properties.

אי דאכלה שני חזקה – אמאי לא מהימן? ואי דלא אכלה שני חזקה – פשיטא דלא מהימן!

If it is a case where the one in possession of the field consumed its produce for the three years necessary to establish presumptive ownership,^{NH} why is his claim that he purchased the field not deemed credible? After three years of unchallenged possession, the purchaser's claim is sufficient to establish ownership without documentation. And if he did not consume its produce for the three years necessary to establish presumptive ownership, it is obvious that his claim is not deemed credible. Since the distinction between a case where witnesses are present and a case where there are no witnesses present does not apply when the field in question was the property of the claimant, the *tanna* cited a case where the field belonged to the father.

אי הכי גבי אביו נמי, אי דאכלה שני חזקה – אמאי לא מהימן? ואי דלא אכלה שני חזקה – פשיטא דלא מהימן!

The Gemara asks: If so, the same difficulty may be raised with regard to a field belonging to the claimant's father as well: If the one in possession of the field consumed its produce for the three years necessary to establish presumptive ownership, why is his claim that he purchased the field not deemed credible? And if he did not consume its produce for the three years necessary to establish presumptive ownership, it is obvious that his claim is not deemed credible. The latter clause is no more applicable to the father's field than it is to the claimant's field. Why did the *tanna* prefer to cite a case where the field belonged to the claimant's father?

בשלמא גבי אביו – משבחת לה, כגון שאכלה שתיים בחיי האב ואחת בחיי בנו, וכדבר הונא. דאמר רב הונא: אין מחזיקין בנכסי קטן אפילו הגדיל.

The Gemara answers: Granted, with regard to the case where the field belonged to his father, a circumstance can be found where there is uncertainty with regard to the presumptive ownership of the field, where the one in possession of the field consumed its produce for two of the three years necessary to establish presumptive ownership during the lifetime of the father^H and one year during the lifetime of the son after the death of his father. And this is in accordance with the opinion of Rav Huna, as Rav Huna said: One cannot establish presumptive ownership of the property of a minor, even after he reached majority.^H This is because the minor is unaware of the property owned by his father, the fact that he did not challenge the claim of the one in possession of the field proves nothing. Therefore, only two of the three years necessary to establish presumptive ownership have passed.

ורב הונא מתניתין אתא לא שמועין? איבעית אימא: רב הונא דיקא דמתניתין קאמר. ואיבעית אימא: "אפילו הגדיל" קא משמע לן.

The Gemara asks: And since the mishna can be explained only in the case delineated by Rav Huna, did Rav Huna come to teach us a mishna? There is no need for an *amora* to teach matters that appear in a mishna, as the content of *mishnayot* is known by all. The Gemara answers: If you wish, say that Rav Huna is stating the inference from the mishna, as the circumstances are not written explicitly in the mishna. And if you wish, say instead that he is teaching us that even if during the year after the father died his son was no longer a minor, one may not establish presumptive ownership of the property of a minor, even after he reached majority.^N From the mishna, one could learn only a case where, during the third year the son was still a minor.

HALAKHA

Consumed its produce for the three years necessary to establish presumptive ownership – אֶכְלָה שְׁנֵי חֲזָקָה: If one occupied a field for three years and claims that he acquired it legally, and the previous owner claims that the field was stolen, the first takes an oath of inducement by rabbinic law and maintains possession of the field (Rambam *Sefer Mishpatim, Hilkhot To'en VeNitan* 12:8; *Shulhan Arukh, Hoshen Mishpat* 140:1).

Where one consumed its produce for two years during the lifetime of the father – אֶכְלָה שְׁתַּיִם בְּחַיֵּי הָאָב: If one consumed the produce of the field for one year during the lifetime of the previous owner and an additional two years during the lifetime of his son, or if he consumed the produce of the field for two

years during the lifetime of the previous owner and an additional year during the lifetime of his son, he thereby established presumptive ownership (Rambam *Sefer Mishpatim, Hilkhot To'en VeNitan* 12:8; *Shulhan Arukh, Hoshen Mishpat* 144:4).

One cannot establish presumptive ownership of the property of a minor, even after he reached majority – אין מתחזקין – בנכסי קטן אפילו הגדיל: The *halakha* of presumptive ownership does not apply to a minor's property, even after he reached majority. For example, if one consumed the produce of the field after the father's death for one year while the son was a minor, and two additional years after he reached majority, presumptive ownership is not established. Only if he maintains

possession for three consecutive years after the son reached majority is presumptive ownership established. This is the ruling of the Rambam based on the opinion of the Ri Migash, and the *Shulhan Arukh*. The Rema, however, rules in accordance with those who disagree with the Rambam, that even if three years passed since the son reached majority, presumptive ownership was not established, as the son may be unaware that the field was stolen from his father (Rashi; Ra'avad; Ramban; Rashba). Some note that both opinions are based on the Gemara here, which is inconclusive (Rambam *Sefer Mishpatim, Hilkhot To'en VeNitan* 14:7 and *Maggid Mishne* there; *Shulhan Arukh, Hoshen Mishpat* 149:19).

וְלִיתְנִייה בְּדִידִיה, וְלוֹקְמָה כְּגוֹן שְׂאֵבְלָה
שְׂתִים בְּפָנָיו וְאַחַת שְׂלָא בְּפָנָיו, וְכְגוֹן
שְׂבָרַח?

The Gemara asks: **And let the tanna teach the halakha** in a case where the one in possession of the field says that he purchased the field from the claimant **himself. And let him establish** the mishna in a case **where** the one in possession of the field **consumed** its produce **in the presence** of the claimant, who was the original owner of the field, for **two** of the three years necessary to establish presumptive ownership, **and** consumed its produce **not in his presence** for **one** year. **And** that scenario is in a case **where** the claimant **fled** and therefore, the fact that he did not challenge the claim of the one in possession of the field proves nothing.

בְּרַח מִחֻמַּת מָאִי? אִי דְבָרַח מִחֻמַּת
נַפְשוֹת – פְּשִׁיטָא דְלֵא מְהִימָן, דְּלֵא מְצִי
מַחֲוִי. וְאִי דְבָרַח מִחֻמַּת מָמוֹן – אִיבְעִי לִיה
לְמַחֲוִי, דְּקִימָא לֵן: מְחָאָה שְׂלָא בְּפָנָיו –
הוּיָא מְחָאָה!

The Gemara asks: That scenario is referring to one who **fled due to what reason?** If it is **that he fled due to** the fact that his life was in jeopardy, it is **obvious** that the one claiming presumptive ownership is **not deemed credible**, since the owner of the field is **unable to protest**, as he fears for his life. **And if he fled due to money** that he owes,^H and that is why he does not return to protest the possessor's occupation of the field, **he ought to protest** from afar, as we maintain that a **protest lodged not in the presence** of the one using the field^H is a **legitimate protest**. He could have lodged in a court in his place of exile his protest against the illegal occupation of his field.

דְּתַנּוּ: שְׂלֵשׁ אֲרָצוֹת לְחֻזְקָה, יְהוּדָה וְעֵבֶר
הַיַּרְדֵּן וְהַגְּלִיל. הִיא בִּיהוּדָה וְהַחֲזִיק בְּגָלִיל,
בְּגָלִיל וְהַחֲזִיק בִּיהוּדָה – אֵינָה חֻזְקָה, עַד
שִׁיָּהָא עִמּוֹ בְּמַדִּינָה.

This is as we learned in a mishna (*Bava Batra* 38a): There are **three independent lands** in Eretz Yisrael with regard to establishing **presumptive ownership: Judea, Transjordan, and the Galilee**. If the original owner of the field was **in Judea** and another occupied his field **in the Galilee**, or if he was **in the Galilee** and another occupied his field **in Judea**, that does **not establish presumptive ownership**, until the one occupying the field **will be with** the original owner **in the same country**.

וְהוּיָנָן בֵּה: מָאִי קִסְבֵּר: אִי קִסְבֵּר מְחָאָה
שְׂלָא בְּפָנָיו הוּיָא מְחָאָה – אֶפִּילוּ בִּיהוּדָה
וְגָלִיל נְמִי, וְאִי קִסְבֵּר מְחָאָה שְׂלָא בְּפָנָיו
לֵא הוּיָא מְחָאָה – אֶפִּילוּ יְהוּדָה וְיְהוּדָה
נְמִי לֵא!

And we discussed that mishna: **What does this tanna hold?** If he holds that a **protest lodged not in the presence** of the one using the field is a **legitimate protest**, then **even** in the case where one is in **Judea** and one is in the **Galilee** the protest should **also** be legitimate. **And if he holds that a protest lodged not in the presence** of the one using the field is **not a legitimate protest**, then **even** in the case where one is in **Judea** and the other one is in **Judea** as well, the protest should **also not** be legitimate.

אָמַר רַבִּי אַבְבָּא בַר מֵמֶל: לְעוֹלָם קִסְבֵּר
מְחָאָה שְׂלָא בְּפָנָיו הוּיָא מְחָאָה. וּמִתְמַתִּין
בְּשַׁעַת חִירוֹם שָׁנָה.

Rabbi Abba bar Memel said: **Actually the tanna holds that a protest lodged not in the presence** of the one using the field is a **legitimate protest**, and the Sages taught this mishna with regard to a **crisis period**, when travel is perilous and information cannot be transmitted from Judea to the Galilee. Therefore, although no protest was received from the original owner, the occupier does not establish presumptive ownership of the field, because the lack of protest can be attributed to the perilous situation.

וּמָאִי שָׂנָא יְהוּדָה וְגָלִיל דְּנִקְט,

The Gemara asked: **And if it is due only to the exigent circumstances** that the protest is ineffective, **what is different** about **Judea and the Galilee** that the *tanna* cited specifically these two lands? Ostensibly, even within one of the three lands, if travel and communications are restricted, the same *halakha* would apply.

HALAKHA

Fled due to the fact that his life was in jeopardy...fled due to money he owes – בְּרַח מִחֻמַּת נַפְשוֹת...בְּרַח מִחֻמַּת מָמוֹן – If the owner of the field was forced to flee due to the fact that his life was in jeopardy, presumptive ownership of his property cannot be established, because his failure to protest is attributable to the fear that his whereabouts will be discovered. However, based on the Gemara here and in *Bava Batra* (38b), if he fled due to money that he owes, presumptive ownership can be established (Rambam *Sefer Mishpatim*, *Hilkhot To'en VeNitan* 14:10; *Shulḥan Arukh*, *Hoshen Mishpat* 143:3).

A protest lodged not in the presence of the one using the field – מְחָאָה שְׂלָא בְּפָנָיו – The protest of the previous owner of a field lodged against the occupation of his field by another negates the other's presumptive ownership, even if the protest was not lodged in the other's presence, and even if the protest was lodged in another country, provided lines of communication between the two countries are open (Rambam *Sefer Mishpatim*, *Hilkhot To'en VeNitan* 11:5; *Shulḥan Arukh*, *Hoshen Mishpat* 146:1).