וּמַגְבִּינַן בֵּיהּ כְּבִשְׁטָרָא מַעֲלְיָא? וְאַמַּאי? תְּרֵי וּתְרֵי נִינְהוּ!

The Gemara asks: **And** if the testimony of these witnesses is not accepted, is that to say **that we collect** debts with that document **as** one would collect debts **with a valid document? And why** would that be the case? **Aren't** the **two** signatories whose signatures were ratified **and** the **two** witnesses from the marketplace whose testimony invalidates the document contradictory witnesses?[N] Therefore, the document cannot be used to collect payment.

אָמַר רַב שֵׁשֶׁת: זֹאת אוֹמֶרֶת הַכְחָשָׁה תְּחִלַּת הֲזָמָה הִיא,

Rav Sheshet said: That is to say that **contradiction** of their testimony **is the first** stage in **rendering** them **false, conspiring witnesses,**[H] in the sense that certain restrictions that apply to the latter apply to the former as well.

NOTES

Aren't the two signatories and the two witnesses contradictory witnesses – תְּרֵי וּתְרֵי נִינְהוּ: Most commentaries explain that this refers to a case where the second pair of witnesses testifies to invalidate the testimony of the first pair of witnesses, without impugning the witnesses themselves, e.g., the witnesses were minors, relatives, or compelled to sign the document due to a threat to their lives. However, if they testify that the first witnesses are disqualified due to transgressions that they performed, the ruling in that case is like any other case where witnesses testify to disqualify other witnesses, and the testimony of the latter pair of witnesses is accepted (Ri Migash; *Tosafot*; Ramban; Rashba). Others explain that because the first pair of witnesses is dead, even if the second pair of witnesses testifies that the first set is disqualified because they were robbers or the like, the testimony of the second set is considered testimony to contradict their testimony, not to invalidate the witnesses. Therefore, it is a case of contradictory witnesses who negate each other's testimony (*Ba'al HaMaor*; Ritva).

HALAKHA

Contradiction of their testimony is the first stage in rendering them false, conspiring witnesses – הַכְחָשָׁה תְּחִלַּת הֲזָמָה הִיא: Witnesses whose testimony was contradicted and who were later rendered false, conspiring witnesses are subject to the full range of punishments administered to false, conspiring witnesses: Death, lashes, and monetary payment, as contradiction of their testimony is the first stage in rendering them false, conspiring witnesses, in accordance with the statements of Rav Sheshet and Rava (Rambam *Sefer Shofetim*, *Hilkhot Edut* 18:4; *Tur*, *Ḥoshen Mishpat* 38).

Perek **II**
Daf **20** Amud **a**

וּכְשֵׁם שֶׁאֵין מְזִימִין אֶת הָעֵדִים אֶלָּא בִּפְנֵיהֶם כָּךְ אֵין מַכְחִישִׁין אֶת הָעֵדִים אֶלָּא בִּפְנֵיהֶם.

And just as witnesses **render** other **witnesses false, conspiring** witnesses **only in their presence,** because with their testimony they render them liable to be punished, **so too,** witnesses **contradict** the testimony of other witnesses **only in their presence.**[N] Since the signatories to the document are dead, their testimony cannot be contradicted.

NOTES

Contradiction of testimony and rendering witnesses false, conspiring witnesses – הַכְחָשָׁה וְהֲזָמָה: There are several differences between these two forms of disallowing the testimony of witnesses. With regard to the testimony of the second pair of witnesses, they render the first pair of witnesses false, conspiring witnesses by testifying that they could not have witnessed what they claim to have witnessed because they were not in the place where they claimed that the incident they witnessed transpired. They contradict the testimony of the first pair of witnesses by partially or completely disputing the content of their testimony.

With regard to the respective consequences, when witnesses are rendered false, conspiring witnesses they receive the punishment that they sought to inflict on the person against whom they testified. The details of these *halakhot* and the exceptions to them are discussed in tractate *Makkot*. In the case of contradiction of testimony, although the first pair of witnesses is suspected of lying, they are not disqualified from testifying in other cases, and they certainly receive no punishment. In addition, with regard to rendering witnesses false, conspiring witnesses, there is a Torah decree that the testimony of the second pair of witnesses is accepted to disqualify the first witnesses. With regard to contradiction of testimony, the testimony of one pair of witnesses is no more accepted than the testimony of the other; they simply neutralize each other (*Talmidei Rabbeinu Yona*).

Rav Sheshet's opinion that contradiction of the witnesses' testimony is the first stage in rendering them false, conspiring witnesses is especially significant with regard to Rava's opinion cited in tractate *Bava Kamma*, which is also the halakhic ruling, that if the testimony of witnesses was contradicted and then those first witnesses were rendered false, conspiring witnesses, they are subject to the full range of punishments administered to false, conspiring witnesses. One does not say that because their testimony was contradicted they are no longer witnesses and cannot be rendered false, conspiring witnesses. The reason is that contradicting witnesses and rendering witnesses false, conspiring witnesses are essentially similar (see Ritva). However, Rabbi Abbahu maintains that since there is so substantive a difference between contradicting witnesses and rendering them false, conspiring witnesses, one cannot derive that restrictions that apply to one apply to the other as well.

אֲמַר לֵיהּ רַב נַחְמָן: אִילּוּ הָווּ קַמָּן וּמַכְחִישִׁין לְהוּ – הֲוָה הַכְחָשָׁה, וְלָא הֲוָה מַשְׁגִּיחִין בְּהוּ, דְּהָווּ לָהּ עֵדוּת מוּכְחֶשֶׁת. הָשְׁתָּא דְּלֵיתְנֵהוּ, דְּאִילּוּ הָווּ לְקַמָּן דִּלְמָא הָווּ מוֹדוּ לְהוּ, מְהֵימְנֵי?

Rav Naḥman said to Rav Sheshet: **If** the first pair of witnesses **was before us and** the second pair would **contradict** their testimony, **that is contradiction, and we would not consider their** testimony and would not collect money with the document, **as it is contradicted testimony. Now that they are not** before us, and in a case **where if they were before us perhaps they would have admitted to** the second witnesses that the testimony of the second witnesses is correct, **are they deemed credible,** and the document that they signed valid?

אֶלָּא אֲמַר רַב נַחְמָן: אוֹקֵי תְּרֵי לְהַדֵּי תְּרֵי, וְאוֹקֵי מָמוֹנָא בְּחֶזְקַת מָרֵיהּ. מִידֵּי דַּהֲוָה אַנִּכְסֵי דְּבַר שָׁטְיָא. דְּבַר שָׁטְיָא זַבִּין נִכְסֵי. אָתוּ בֵּי תְּרֵי אָמְרִי: כְּשֶׁהוּא שׁוֹטֶה זַבִּין, וַאֲתוּ בֵּי תְּרֵי וְאָמְרִי: כְּשֶׁהוּא חָלִים זַבִּין.

Rather, Rav Naḥman said in the case where the testimony of the first witnesses is contradicted not in their presence, the ruling is: **Establish two** witnesses **against** the **two** witnesses[NH] who contradict their testimony, thereby neutralizing both testimonies, **and establish the money in the possession of its owner, just as it was** in the case **of the property of bar Shatya.**[L] **As** when **bar Shatya,** a man who suffered from periodic bouts of insanity, **sold** his **property, two** witnesses **came** and **said: He sold** it **when he was insane; and two** other witnesses **came** and **said: He sold** it **when he was sane.**[B]

אֲמַר רַב אַשִׁי: אוֹקֵי תְּרֵי לְהַדֵּי תְּרֵי, וְאוֹקֵי מָמוֹנָא בְּחֶזְקַת בַּר שָׁטְיָא. וְלָא אֲמָרַן אֶלָּא דְּאִית לֵיהּ חֶזְקָה דַּאֲבָהָתֵיהּ, אֲבָל לֵית לֵיהּ חֶזְקָה דַּאֲבָהָתֵיהּ – אָמְרִינַן: כְּשֶׁהוּא שׁוֹטֶה זָבַן, וּכְשֶׁהוּא שׁוֹטֶה זַבִּין.

Rav Ashi said in that case: **Establish two** witnesses **against** the **two** witnesses who contradict the testimony of the first pair, **and establish the money in the possession of bar Shatya.**[NH] The Gemara notes: **We say** that the property remains in the possession of bar Shatya **only when he has** possession of the property based on **the possession of his fathers. However, if he does not have** possession of the property based on **the possession of his fathers,** but he acquired the property himself, **we say: He purchased** his properties **when he was insane, and he sold them when he was insane.** He does not have presumptive ownership of them. Therefore, the property remains in the possession of the person to whom bar Shatya sold it.

אָמַר רַבִּי אַבָּהוּ: אֵין מְזִימִין אֶת הָעֵדִים אֶלָּא בִּפְנֵיהֶן, וּמַכְחִישִׁין אֶת הָעֵדִים שֶׁלֹּא בִּפְנֵיהֶן. וַהֲזָמָה שֶׁלֹּא בִּפְנֵיהֶן, נְהִי דַּהֲזָמָה לָא הֲוֵי – הַכְחָשָׁה מִיהָא הָוְיָא.

Rabbi Abbahu disagrees with the opinion of Rav Sheshet and **says:** Witnesses **render** other **witnesses false, conspiring** witnesses **only in their presence,**[H] **but** witnesses **contradict** the testimony of other witnesses **not in their presence. And** with regard to **rendering** other **witnesses false, conspiring** witnesses **not in their presence, although it is not** effective in **rendering them false, conspiring** witnesses in the sense that they are punished for their false testimony, **in any case, it is contradiction** of their testimony.

אָמַר מָר: אִם יֵשׁ עֵדִים שֶׁכָּתַב יָדָם הוּא זֶה, אוֹ שֶׁהָיָה כָּתַב יָדָם יוֹצֵא מִמָּקוֹם אַחֵר, מִשְׁטָר שֶׁקָּרָא עָלָיו עַרְעָר וְהוּחְזַק בְּבֵית דִּין – אֵין נֶאֱמָנִין. קָרָא עָלָיו עַרְעָר – אִין, לֹא קָרָא עָלָיו עַרְעָר – לָא, מְסַיַּיע לֵיהּ לְרַבִּי אַסִי, דְּאָמַר רַבִּי אַסִי: אֵין מְקַיְּימִין אֶת הַשְׁטָר אֶלָּא מִשְׁטָר שֶׁקָּרָא עָלָיו עַרְעָר וְהוּחְזַק בְּבֵית דִּין.

§ **The Master said** in the *baraita* cited previously: **If there are** other **witnesses** who testify **that it is their handwriting, or if their handwriting emerges from another place, from a document that one challenged and** that **was deemed valid in court,** these witnesses are **not deemed credible.** The Gemara infers: From a document **that one challenged, yes,** the signatures are authenticated and the testimony of the other witnesses is not accepted; however, **if one did not challenge** the document, **no,** the document cannot be used to authenticate their signatures. This **supports** the statement of **Rabbi Asi, as Rabbi Asi said: One ratifies a document** by authenticating the witnesses' signatures **only from a document that** someone **challenged and** that **was deemed valid in court.**[N]

NOTES

Establish two witnesses against the two witnesses – אוֹקֵי תְּרֵי לְהַדֵּי תְּרֵי: A simple question may be raised: What difference is there whether or not the witnesses are deemed credible? In either case, the money remains with the one in whose possession it is found and the borrower pays nothing. In fact, some commentaries are of the opinion that the only difference is that if the second pair of witnesses is deemed credible, the document is destroyed on the basis of their testimony. If they are not deemed credible, the document is not destroyed, as the borrower could provide another proof. However, most early commentaries agree with Rashi, that the difference between whether or not their testimony is deemed credible is in a case where the lender seizes the property of the borrower. If the witnesses are deemed credible, the lender is not compelled to return the property to the borrower.

Bar Shatya – בַּר שָׁטְיָא: This discussion is based on the principle that the halakhic status of a person who has intermittent periods of sanity and insanity is determined by his condition at the time of his action. During his bouts of insanity, he is not responsible for his actions (Ritva).

One ratifies a document only – אֵין מְקַיְּימִין אֶת הַשְׁטָר אֶלָּא: There are two fundamental versions of this statement. The version in the Gemara here, which is the version of Rashi and also the Ri Migash, is: One ratifies a document by authenticating the witnesses' signatures only from a document that one challenged. Apparently, one cannot authenticate the signatures by means of a document ratified by the court if that document was not challenged. The reason is that the authentication process is meticulous only when the validity of a document is challenged; therefore one knows that the document is reliable. The Rosh, however, holds that even according to Rashi's version there is no requirement that the proof will be brought from a document that was challenged.

The version of Rif is: One ratifies a document by authenticating the witnesses' signatures from a document that one challenged only if it was deemed valid in court. That is the ruling of several authorities, including the Ramban and the Ritva.

HALAKHA

Establish two witnesses against the two witnesses – אוֹקֵי תְּרֵי לְהַדֵּי תְּרֵי: The witnesses who signed a promissory note died, and other witnesses came to authenticate the signature but claimed that there was some factor disqualifying the signatory witnesses or their signing of the contract. In that case, if there are other witnesses authenticating the signatures, or if their signatures are authenticated by another document that they signed, the document is not destroyed, but the money remains in the possession of the borrower (Rambam *Sefer Shofetim*, *Hilkhot Edut* 7:7; *Shulḥan Arukh*, *Ḥoshen Mishpat* 46:37).

And establish the money in the possession of bar Shatya – וְאוֹקֵי מָמוֹנָא בְּחֶזְקַת בַּר שָׁטְיָא: If one who suffers from bouts of insanity sells his property, and one pair of witnesses testifies that he was sane at the time of the sale while another pair of witnesses testifies that he was insane, the status quo is upheld. Therefore, if he sold movable property, it remains in the possession of the buyer. If he sold real estate, it remains in the possession of the seller. Some (*Beit Yosef*; and see the commentary of Rabbi Akiva Eiger to *Shulḥan Arukh*) rule that this is the *halakha* only in the case of inherited real estate, which is in the presumptive possession of the seller (Rambam *Sefer Kinyan*, *Hilkhot Mekhira* 29:5; *Shulḥan Arukh*, *Ḥoshen Mishpat* 235:21).

Witnesses render other witnesses false, conspiring witnesses only in their presence – אֵין מְזִימִין אֶת הָעֵדִים אֶלָּא בִּפְנֵיהֶן: A pair of witnesses may contradict the testimony of a pair of witnesses that testified previously, even not in their presence. However, they can render the first pair false, conspiring witnesses only if they are present. Nevertheless, if they testify that the first pair of witnesses was with them elsewhere and could not have witnessed the incident about which they testified, the testimony of the first pair is contradicted, in accordance with the opinion of Rabbi Abbahu (Rambam *Sefer Shofetim*, *Hilkhot Edut* 18:5).

LANGUAGE

Bar Shatya – בַּר שָׁטְיָא: *Bar* in this context does not mean son of; rather, it is a Hebrew prefix denoting one's attributes, e.g., *ben ḥayil*, referring to a courageous person and *ben beliyya'al*, referring to a wicked person. The term is also used in Aramaic expressions like *bar mitzva*, or *bar pelugta*, referring to an adversary. Here too, bar Shatya refers to one who is known for his insanity.

BACKGROUND

At times sane, at times insane – עִתִּים חָלִים עִתִּים שׁוֹטֶה: Certain types of mental illness, especially bipolar afflictions, are cyclical, where the mentally ill person experiences periods when he is completely sane and periods when his condition deteriorates and his judgment is impaired. The transition from sanity to insanity is gradual. Therefore, there are periods when it is difficult to determine his condition at that point.

אָמְרִי נְהַרְדְּעֵי: אֵין מְקַיְּימִין אֶת הַשְּׁטָר אֶלָּא מִשְּׁתֵּי כְּתוּבּוֹת [אוֹ] מִשְּׁתֵּי שָׂדוֹת, וְהוּא שֶׁאָכָלוּם בַּעֲלֵיהֶן שָׁלֹשׁ שָׁנִים וּבְשׁוֹפִי.

The Sages **of Neharde'a**[B] **say:**[N] **One ratifies a document** by authenticating the witnesses' signatures **only from two marriage contracts**[N] **or from** the bills of sale for **two fields** that those witnesses signed. **And** those bills of sale are effective **only** in a case **where their owner ate their** produce for **three years,** the requisite period to establish presumptive ownership of the field, **and in peace,** undisturbed by protest. In that case we can rely on the signatures, and the documents are considered valid.

אָמַר רַב שִׁימִי בַּר אַשִׁי: וּבְיוֹצֵא מִתַּחַת יַד אַחֵר, אֲבָל מִיַּד עַצְמוֹ – לָא. מַאי שְׁנָא תַּחַת יַד עַצְמוֹ דְּלָא – דִּלְמָא זַיּוּפֵי מְזַייֵף, מִתַּחַת יְדֵי אַחֵר נַמִּי – דִּלְמָא אָזַל וַחֲזָא, אָתָא וְזַייֵף! כּוּלֵי הַאי לָא מָצֵי מְכַוֵּין.

Rav Shimi bar Ashi said: Authentication of signatures by comparison to other documents can be accomplished specifically **when** the documents **emerge from the possession of another.**[H] **However,** when the documents emerge **from the possession of** the litigant **himself, no,** they may not be used to authenticate the signatures. The Gemara asks: **What is different** in a case where the documents emerge **from the possession of** the litigant **himself that** they may **not** be used to authenticate the signatures? It is that **perhaps** while the documents were in his possession he learned how to copy the signatures and **forged** them. If so, **also** in a case where the documents emerge **from the possession of another, perhaps he went and saw** the signatures, and **came** back **and forged** them. The Gemara answers: In that case, **he would not be able** to **accurately** reproduce the signatures **to that extent** based on memory alone.

תָּנוּ רַבָּנַן: כּוֹתֵב אָדָם עֵדוּתוֹ עַל הַשְּׁטָר, וּמֵעִיד עָלֶיהָ אֲפִילּוּ לְאַחַר כַּמָּה שָׁנִים. אָמַר רַב הוּנָא: וְהוּא שֶׁזּוֹכֵרָה מֵעַצְמוֹ. רַבִּי יוֹחָנָן אָמַר: אַף עַל פִּי שֶׁאֵין זוֹכֵרָה מֵעַצְמוֹ. אָמַר רַבָּה: שְׁמַע מִינָּהּ מִדְּרַבִּי יוֹחָנָן: הָנֵי בֵּי תְּרֵי דַּיָּדֵי סַהֲדוּתָא, וּמְנְשֵׁי חַד מִנַּייְהוּ – מַדְכַּר חַד לְחַבְרֵיהּ.

§ **The Sages taught: A person may write his testimony in a document**[H] **and testify on its** basis **even after several years** have passed. **Rav Huna said: And** that **is** the *halakha* only **if he remembers** the testimony **on his own** and he uses the document merely to refresh his memory with regard to certain details. **Rabbi Yoḥanan said:** One may rely on that written testimony **even if he does not remember** the testimony **by himself** at all. **Rabba said: Conclude from** this statement of **Rabbi Yoḥanan:** With regard to **these two witnesses who know testimony** in a certain case, **and one of them forgot** the testimony, **one** witness **may remind his fellow** witness[H] of the testimony, as according to Rabbi Yoḥanan, even if the witness remembers the testimony only by means of an external stimulus, the testimony is valid.

אִיבַּעְיָא לְהוּ: עַצְמוֹ מַאי? רַב חֲבִיבָא אָמַר: אֲפִילּוּ עַצְמוֹ. מָר בְּרֵיהּ דְּרַב אַשִׁי אָמַר: עַצְמוֹ לָא. וְהִלְכְתָא: עַצְמוֹ לָא.

A dilemma was raised before the Sages: If the litigant **himself** reminds the witness of the testimony, **what is** the ruling? **Rav Ḥaviva said: Even** if the litigant **himself** reminds the witness, he may testify. **Mar, son of Rav Ashi, said:** If the litigant **himself** reminds the witness, he **may not** testify. **And** the Gemara concludes that **the *halakha* is** that if the litigant **himself** reminds the witness of the testimony, the witness **may not** testify, due to the concern that the litigant influenced the nature of his testimony.

BACKGROUND

The Sages of Neharde'a – נְהַרְדְּעֵי: The Gemara in tractate *Sanhedrin* explains that this is a reference to Rav Ḥama, a fourth-generation Babylonian *amora*. He apparently lived a long life, as his discussions with Sages of the previous generation are recorded in the Talmud. Since he served for over twenty years at the head of the yeshiva in Neharde'a following the death of Rav Naḥman bar Yitzḥak, his *halakhot* are attributed to the Sages of Neharde'a. Apparently, Rav Ḥama was a relative of and served as the scholar of the house of the Exilarch. It is also possible that this is the same Rav Ḥama who met with the king of Persia and discussed matters of Torah with him.

NOTES

The Sages of Neharde'a say – אָמְרִי נְהַרְדְּעֵי: According to most commentaries, there is no dispute here, and the Sages of Neharde'a, supported by the *baraita*, come to complete the statement of Rav Asi. However, there is a dispute with regard to the details. Some explain that to authenticate the witnesses on a document, the Sages of Neharde'a require two ratified documents; one is insufficient (*Halakhot Gedolot*; Ra'avad). Others explain that the Sages of Neharde'a hold that in the absence of one ratified document, one may rely on two unratified documents to authenticate a third, when there are indications that they are indeed authentic signatures (Ritva, citing *Tosafot*).

From two marriage contracts – מִשְּׁתֵּי כְּתוּבּוֹת: The Mordekhai explains that the reason two documents are required is that sometimes signatures are not perfectly consistent, and differences may arise due to the surface on which the witnesses signed their names, or due to the fact that they needed to fit their signatures in limited space. Therefore, two documents present a more complete picture. The Meiri explains that a marriage contract is used for authentication of the signatures because those documents are typically signed in public, and there is no suspicion of forgery. He adds that a document of sale whose accuracy is confirmed by the seller may be used for authentication. In the Jerusalem Talmud there is a discussion with regard to relying on books and letters written by the witnesses, and the Meiri and the Ritva disagree with regard to the interpretation of that discussion. Nevertheless, they both agree that it is problematic to authenticate documents with letters, either because it is unclear who wrote them or because one is not meticulous when writing letters, leading to inconsistencies in the writer's penmanship.

HALAKHA

How his handwriting emerges from another place – כֵּיצַד כְּתַב יָדוֹ יוֹצֵא מִמָּקוֹם אַחֵר: The court authenticates the signatures on a document by comparing them with the signatures on other documents, e.g., two marriage contracts or two deeds of sale of real estate where the purchaser has openly consumed the produce of the field for three years without concern and without protest, in accordance with the opinion of the Sages of Neharde'a. This is the *halakha*, provided that the authenticating document was not produced by the party seeking authentication of the document, due to the suspicion that he forged the signatures, in accordance with the opinion of Rav Shimi bar Ashi. The Rema, citing the *Tur*, rules that this caveat applies even if these documents were ratified, but the Ran, citing the Rambam, disputes this. Similarly, documents whose validity was challenged and that were then ratified by the court may be used to authenticate signatures, in accordance with the *baraita* and the opinion of Rabbi Asi (Rashi; Ra'ah; *Beit Yosef*, citing Rambam). The *Shulḥan Arukh* and the Rema also cite the opinion that ratified documents may be used even if their validity was never challenged (Rosh; *Shakh*, citing Rif and Rambam; Rambam *Sefer Shofetim*, *Hilkhot Edut* 6:3; *Shulḥan Arukh*, *Ḥoshen Mishpat* 46:7).

A person may write his testimony in a document – כּוֹתֵב אָדָם עֵדוּתוֹ עַל הַשְּׁטָר: A witness is permitted to write notes to support his memory and to consult them before testifying, in accordance with the *baraita*. Even if he was unable to remember the incident without consulting the notes, he may testify, in accordance with the opinion of Rabbi Yoḥanan, as the *halakha* is ruled in accordance with his opinion even in disputes with Rav, who was Rav Huna's teacher, and all the more so in disputes with Rav Huna. However, they may testify only if they recall the incident after consulting the notes; they may not testify solely on the basis of what is written (*Tosafot*; Rambam *Sefer Shofetim*, *Hilkhot Edut* 8:1; *Shulḥan Arukh*, *Ḥoshen Mishpat* 28:13).

One witness may remind his fellow witness – מַדְכַּר חַד לְחַבְרֵיהּ: If one is reminded of an incident by another, he may testify, even if the one reminding him is his fellow witness. However, if the one reminding him is a litigant in the case, he may not testify, even if after being reminded he recalls the events himself, in accordance with the opinion of Rabba and Mar bar Rav Ashi (Rambam *Sefer Shofetim*, *Hilkhot Edut* 8:2; *Shulḥan Arukh*, *Ḥoshen Mishpat* 28:14).

וְאִי צוּרְבָא מֵרַבָּנַן הוּא – אֲפִילּוּ עַצְמוֹ. כִּי הָא דְּרַב אַשִׁי הֲוָה יָדְעַ לֵיהּ בְּסַהֲדוּתָא לְרַב כָּהֲנָא. אֲמַר לֵיהּ: מִי דְּכִיר מָר הַאי סַהֲדוּתָא? אֲמַר לֵיהּ: לָא. וְלָאו הָכִי וְהָכִי הֲוָה? אֲמַר לֵיהּ: לָא יָדַעְנָא. לְסוֹף אִידְכַּר רַב אַשִׁי, אַסְהֵיד לֵיהּ. חֲזָיֵיהּ לְרַב כָּהֲנָא דַּהֲוָה מְחַסֵּם. אֲמַר לֵיהּ: מִי סָבְרַתְּ עֲלָךְ קָא סָמֵיכְנָא? אֲנָא הוּא דְּרַמַאי אַנַּפְשַׁאי וְאִדַּכְּרִי.

And if the witness **is a Torah scholar,**[NH] then **even** if the litigant **himself** jogged the witness's memory, the witness may testify. A Torah scholar would not testify if he did not actually remember the testimony himself, **as** in **that** case **involving Rav Ashi,**[P] **who knew testimony** relating **to Rav Kahana.** Rav Kahana **said to** Rav Ashi: **Does the Master remember this testimony?** Rav Ashi **said to him: No.** Rav Kahana said to him: **Didn't** the incident transpire in **such and such** a manner? Rav Ashi **said to him: I don't know. Ultimately, Rav Ashi remembered** the testimony and **testified for** Rav Kahana. **He saw that Rav Kahana was hesitant** [*meḥassem*][L] with regard to accepting his testimony, concerned that he had influenced the content of Rav Ashi's testimony. Rav Ashi **said to him: Do you think** that **I am relying on you? I made an effort, and I remembered** the incident.

תְּנַן הָתָם: הַתְּלוּלִיּוֹת הַקְּרוֹבוֹת בֵּין לָעִיר וּבֵין לַדֶּרֶךְ, אֶחָד חֲדָשׁוֹת וְאֶחָד יְשָׁנוֹת – טְמֵאוֹת. הָרְחוֹקוֹת, חֲדָשׁוֹת – טְהוֹרוֹת, יְשָׁנוֹת – טְמֵאוֹת. אֵיזוֹהִי קְרוֹבָה? חֲמִשִּׁים אַמָּה, וְאֵיזוֹ הִיא יְשָׁנָה? שִׁשִּׁים שָׁנָה. דִּבְרֵי רַבִּי מֵאִיר. רַבִּי יְהוּדָה אוֹמֵר: קְרוֹבָה – שֶׁאֵין קְרוֹבָה הֵימֶנָּה, יְשָׁנָה – שֶׁאֵין אָדָם זוֹכְרָהּ.

§ Apropos recalling testimony, the Gemara adds that **we learned there** in a mishna (*Oholot* 16:2): **Mounds of dirt**[H] **that are near either to a city or a path, whether** these mounds **are new or whether** they are **old, are ritually impure** due to the concern that a corpse is buried there. With regard to **the** mounds **that are distant** from the city: If they are **new** they are **ritually pure,** as, were there a corpse buried there, someone would remember, and if they are **old** they are **impure.** The mishna elaborates: **What is** a mound that is **near?** It is one at a distance of up to **fifty cubits. And what is** a mound that is **old?** It is one that was there for more than **sixty years;** this is **the statement of Rabbi Meir. Rabbi Yehuda says:** A mound that is **near** is one that there is **no** mound **closer than it. Old** is referring to a mound **that no one remembers.** According to Rabbi Yehuda, the parameters are not quantifiable.

מַאי עִיר וּמַאי דֶּרֶךְ? אִילֵימָא עִיר – עִיר מַמָּשׁ, דֶּרֶךְ – דֶּרֶךְ מַמָּשׁ, מִסְפֵּיקָא מִי מַחֲזִיקִינַן טוּמְאָה? וְהָאָמַר רֵישׁ לָקִישׁ: עִילָּה מָצְאוּ וְטִהֲרוּ אֶרֶץ יִשְׂרָאֵל! אָמַר רַבִּי זֵירָא: עִיר – עִיר הַסְּמוּכָה לְבֵית הַקְּבָרוֹת, וְדֶרֶךְ – דֶּרֶךְ בֵּית הַקְּבָרוֹת.

The Gemara asks: **What is a city and what is a path** in this context? **If you say city means an actual city and a path is an actual path** and the mishna is referring to any city or path, the question arises: **Do we presume** the existence of **ritual impurity** in Eretz Yisrael? **But didn't Reish Lakish say** in explaining how the Sages, based on meager proof, deemed an area in Eretz Yisrael ritually pure where uncertainty arose with regard to its purity: **They found a pretext and deemed Eretz Yisrael ritually pure.** Apparently, one does not presume ritual impurity in Eretz Yisrael. Why, then, does the mishna declare that every mound of dirt near a city or a path is impure? **Rabbi Zeira said:** The word **city** in the mishna is referring to **a city adjacent to the cemetery, and** the word **path is** referring to the **path** leading **to the cemetery.** Therefore, the concern that a corpse may be buried in the mound is a reasonable one.

בִּשְׁלָמָא דֶּרֶךְ בֵּית הַקְּבָרוֹת – דְּזִמְנִין דְּמִתְרַמֵּי בֵּין הַשְּׁמָשׁוֹת, וּמַקְּרוּ קְבוּרוֹ בְּתֵל. אֶלָּא עִיר הַסְּמוּכָה לְבֵית הַקְּבָרוֹת – כּוּלְּהִי לְבֵית הַקְּבָרוֹת אָזְלִי!

The Gemara asks: **Granted,** with regard to a mound located adjacent to **the path** leading **to the cemetery,** there is concern that a corpse is buried in the mound, **as sometimes one happens** to go to bury the corpse on Shabbat eve **at twilight,** and to avoid desecrating Shabbat, **it happened that they buried** the corpse **in a mound** on the path. **However,** with regard to **a city adjacent to the cemetery, everyone goes to the cemetery** to bury their dead. Why would anyone bury a corpse in a mound adjacent to the city?

NOTES

And if the witness is a Torah scholar – וְאִי צוּרְבָא מֵרַבָּנַן הוּא: Most commentaries follow Rashi, who explains that if the witness is a Torah scholar, even if the litigant reminded him of the facts, he may testify if he ultimately remembers the incident, since a Torah scholar would not testify unless he was certain, and he would not change his testimony due to the influence of the litigant. This can be demonstrated from the incident involving Rav Ashi and Rav Kahana. However, some early commentaries cite an alternative explanation, citing Rav Hai Gaon, that if the litigant is a Torah scholar, it is permitted for him to remind the witness of the incident, since a Torah scholar would certainly relate the circumstances in a manner that will not lead to a perversion of justice and will merely state the facts (Rambam). However, most early commentaries question that explanation, both due to its content, and because it is not supported by the incident involving Rav Ashi.

HALAKHA

And if the witness is a Torah scholar – אִי צוּרְבָא מֵרַבָּנַן הוּא: If the witness is a Torah scholar he may testify, even if the litigant himself reminded him of the incident in question. The Rambam explains that the Gemara is referring to a case where one of the litigants is a Torah scholar. See *Tur* and *Derisha*, who rule according to both interpretations (Rambam *Sefer Shofetim*, *Hilkhot Edut* 8:2; *Shulḥan Arukh*, *Ḥoshen Mishpat* 28:14).

Mounds of dirt – הַתְּלוּלִיּוֹת: The presumptive status of mounds near a city that is adjacent to a graveyard or to the path leading to a graveyard, whether they are new or old, is that they contain impurity imparted by a corpse, in accordance with the mishna in *Oholot* cited in the Gemara. The word near in this context is referring to the mounds closest to the city, with none closer. However, the presumptive status of a mound that is not near a city is impure only if it is old, which in this context means that no one remembers when it came into being, in accordance with the opinion of Rabbi Yehuda in his dispute with Rabbi Meir, and in accordance with the explanation of Rabbeinu Ḥananel (Rambam *Sefer Tahara*, *Hilkhot Tumat Met* 8:3 and *Kesef Mishne* there).

LANGUAGE

Hesitant [*meḥassem*] – מְחַסֵּם: There are many variant readings of this term in manuscripts and other sources. There are three principal versions: *Meḥassem*, *mehassem*, and *mehasses*. The last of the three is the one adopted in the Hebrew language, although the other possibilities are also viable. It is unclear whether there is a unique verb form of the root *ḥet*, *samekh*, *mem* in the sense of hesitancy or uncertainty, or whether it is somehow related to other meanings of that verb, e.g., strengthened or withstood.

PERSONALITIES

Rav Ashi – רַב אַשִׁי: Rav Ashi was a sixth-generation Babylonian Sage whose primary undertaking was the redaction of the Babylonian Talmud together with Ravina. He was born in the year 352 and studied with Rav Kahana. Rav Ashi reestablished the academy in Sura, which had been closed since the time of Rav Ḥisda, and he led the yeshiva for sixty years.

Rav Ashi and Ravina were not the first to edit the Oral Torah, as there are many discussions in the Talmud whose language and style indicate that they were edited long before the time of Rav Ashi. Rav Ashi arranged the material that he received from previous generations, which emanated from different academies and that was written in different styles, to produce an organized and uniform Talmud.

Various factors contributed to Rav Ashi's success in this great project, which ultimately was completed over a period of several hundred years. It is likely that Rav Ashi was assisted by a committee of Sages, who assembled in the academy in Sura. Nevertheless, it was only because of the unique political environment and economic conditions at the time that a project of this scope could be launched. The Persian king Yazdegerd I treated all of his citizens fairly, and expressed particular interest in the Jewish community, whose Sages he respected. Under his regime, the economic situation of the Jews of Babylonia was excellent, and they enjoyed relative freedom. These conditions allowed the Babylonian Sages to commit themselves to this vast enterprise.

אָמַר רַבִּי חֲנִינָא: מִתּוֹךְ שֶׁהַנָּשִׁים קוֹבְרוֹת שָׁם נִפְלֵיהֶן, וּמוּבֵי שְׁחִין זְרוֹעוֹתֵיהֶם, עַד חֲמִשִּׁים אַמָּה – אָזְלָא אִיהִי לְחוּדָהּ, טְפֵי – דַּבְרָא אִינִישׁ בַּהֲדָהּ, וּלְבֵית הַקְּבָרוֹת אָזְלָא. הִלְכָךְ, טוּמְאָה בְּאֶרֶץ יִשְׂרָאֵל לָא מַחֲזִקִינַן.

Rabbi Ḥanina said: The mounds could be impure, **since women bury their stillborn** babies adjacent to the city,[N] as there is no funeral in that case, **and** because those **afflicted with boils**[B] bury **their arms**[N] that withered and fell from their bodies. **Until** a distance of **fifty cubits**[N] from the city, the woman **goes alone** and buries the stillborn in a mound. **More** than that distance, **she takes a person with her,** as she fears going alone, **and she goes to the cemetery. Therefore, we are not presuming** the existence of **ritual impurity in Eretz Yisrael.** The case of the mounds is an exception, as there is basis for deeming them impure.

אָמַר רַב חִסְדָּא: שְׁמַע מִינָּהּ מֵרַבִּי מֵאִיר: הַאי סַהֲדוּתָא, עַד שִׁיתִּין שְׁנִין – מִידְּכַר, טְפֵי – לָא מִידְּכַר. וְלָא הִיא: הָתָם הוּא דְּלָא רָמְיָא עֲלֵיהּ, אֲבָל הָכָא, כֵּיוָן דְּרָמֵי עֲלֵיהּ – אֲפִילּוּ טוּבָא נַמִי.

Rav Ḥisda said: Conclude from the statement of **Rabbi Meir,** who established a time limit beyond which a mound is considered an old mound, that with regard to **testimony, until sixty years** have passed, it is **remembered,** and if **more** than sixty years have passed, it is **not remembered. And** the Gemara rejects that conclusion: **That is not** so. **There,** with regard to the mounds, **it is** a case **where** responsibility to attest to the status of the mound **was not imposed upon him,** and the matter is forgotten after the passage of sixty years. **However, here,** with regard to testimony in general, **since** responsibility to testify **was imposed upon him,**[H] he remembers the testimony **even** after **a greater** period of time than sixty years has passed.

מתני׳ זֶה אוֹמֵר ״כְּתַב יָדִי, וְזֶה כְּתַב יָדוֹ שֶׁל חֲבֵירִי״, וְזֶה אוֹמֵר: ״זֶה כְּתַב יָדִי, וְזֶה כְּתַב יָדוֹ שֶׁל חֲבֵירִי״ – הֲרֵי אֵלּוּ נֶאֱמָנִין. זֶה אוֹמֵר: ״זֶה כְּתַב יָדִי״, – וְזֶה אוֹמֵר זֶה כְּתַב יָדִי צְרִיכִין לְצָרֵף עִמָּהֶם אַחֵר, דִּבְרֵי רַבִּי. וַחֲכָמִים אוֹמְרִים: אֵינָם צְרִיכִין לְצָרֵף עִמָּהֶן אַחֵר, אֶלָּא נֶאֱמָן אָדָם לוֹמַר ״זֶה כְּתַב יָדִי״.

MISHNA If **this** witness whose name is signed on a document **says:** This is **my handwriting**[H] **and this is the handwriting of my fellow** witness, **and that** witness **says: This is my handwriting and that is the handwriting of my fellow** witness, **these** witnesses **are deemed credible** and the document is ratified, as together they provide testimony authenticating both signatures. If **this** witness **says: This is my handwriting, and that** witness **says: This is my handwriting,** and neither testifies with regard to the signature of the other, **they must add another** witness **with them** who will authenticate the signatures of the two witnesses, as otherwise, each of the witnesses would be testifying with regard to half the sum in the document; this is **the statement of Rabbi** Yehuda HaNasi. **And the Rabbis say: They need not add another** witness **with them. Rather, a person is deemed credible to say: This is my handwriting.** The testimony of the two signatories about their own signatures is sufficient.

גמ׳ כְּשֶׁתְּימְצִי לוֹמַר לְדִבְרֵי רַבִּי

GEMARA The Gemara says: **When you analyze** the reasoning for the opinions of the *tanna'im*, **say**[N] that according **to** the **statement of Rabbi** Yehuda HaNasi,

BACKGROUND

Boils – שְׁחִין: Here the reference is to a variety of the disease that causes limbs to fall off the body. The Gemara describes this affliction in detail later in the tractate (77b).

HALAKHA

Since responsibility to testify was imposed upon him – כֵּיוָן דְּרָמֵי עֲלֵיהּ: Provided a witness recalls an incident that he witnessed, he may testify about that incident forever, and there is no concern that he no longer remembers what transpired (*Shulḥan Arukh*, *Ḥoshen Mishpat* 28:13).

If this witness says, this is my handwriting – זֶה אוֹמֵר כְּתַב יָדִי: If the two witnesses come to authenticate their signatures, and each one says: This is my handwriting and that is the handwriting of my fellow witness, they are deemed credible. Moreover, the document is ratified even if each authenticates only his own signature, provided that they remember the events recorded in the document, according to the Rambam, who ruled in accordance with the opinion of the Rabbis in their dispute with Rabbi Yehuda HaNasi. Others say that the document is ratified even if the witnesses do not remember the incident and they testify about their signatures alone, provided that an additional witness testifies with regard to both signatures. This ensures that there will be two witnesses for each signature (*Tosafot*, Rosh; *Tur*; Rambam *Sefer Shofetim*, *Hilkhot Edut* 6:2, 8:4; *Shulḥan Arukh*, *Ḥoshen Mishpat* 46:7, 10).

NOTES

Since women bury their stillborn babies adjacent to the city – מִתּוֹךְ שֶׁהַנָּשִׁים קוֹבְרוֹת שָׁם נִפְלֵיהֶן: Neither miscarried fetuses nor dismembered limbs require a funeral. They must be buried, however, and it is likely that the public is unaware of the burial and its location. Others suggest that since these women and lepers are ashamed of their situation, the burial is performed as inconspicuously as possible (see *Shita Mekubbetzet*).

And those afflicted with boils bury their arms – וּמוּבֵי שְׁחִין זְרוֹעוֹתֵיהֶם: Corpses and their body parts impart ritual impurity. The *halakha* is that limbs severed from a living person also impart impurity like the limb of a corpse, where the limb is defined as containing bone, flesh, and sinew.

Until fifty cubits – עַד חֲמִשִּׁים אַמָּה: There are variant readings of the text resulting in different explanations of the Gemara here. The version of the Gemara cited by Rashi is merely: She takes a person with her, and he explains that as the woman would not go a distance greater than fifty cubits by herself but would take another with her, the companion would tell others and the burial would be publicized. Therefore, if there was no publicity, it is possible to conclude that nothing is buried there. According to this interpretation, all old mounds are impure, new mounds close to the city are impure, and new mounds distant from the city are pure.

The version of the Gemara cited by Rabbeinu Ḥananel is as it appears in this edition. If the cemetery is beyond fifty cubits, she takes another with her and performs the burial in the cemetery. Most early commentaries (see *Tosafot*) explain that according to Rabbeinu Ḥananel, there is concern with regard to mounds more than fifty cubits from the city only if they are old, as in the past, there might have been a city or road closer to the mound.

When you analyze the reasoning say – כְּשֶׁתְּימְצִי לוֹמַר: This term used here comes from the Hebrew root meaning exhaust, and in this context means: When one subjects the explicit dispute to exhaustive analysis, one may arrive at a different understanding of the dispute.