

בְּמִסְיַח לְפִי תוֹמוֹ, כִּי הָאָדָם רַב יְהוּדָה
אָמַר שְׂמוּאֵל: מַעֲשֵׂה בְּאָדָם אֶחָד שֶׁהִיָּה
מִסְיַח לְפִי תוֹמוֹ, וְאָמַר: זְכוּרִי בְּשֵׂאֲנֵי תִינוּק
וּמוֹרָבָב עַל פְּתִיפוֹ שֶׁל אָבִיא, וְהוֹצִיאֹנִי
מִבֵּית הַסֵּפֶר וְהַפְּשִׁיטוּנִי אֶת בּוֹתְנָתִי,
וְהַטְבִּילוּנִי לְאֹכֹל בְּתֵרוּמָה לְעֶבֶר.

וְרַבֵּי חֵיָּיא מְסַיֵּם בָּהּ: וְחַבְרִי בְּדִלְוִין מְמַנֵּי.
וְהָיוּ קוֹרְוִין אוֹתוֹ "יוֹחָנָן אוֹכֵל חִלּוֹת", וְהַעֲלָהּ
רַבֵּי לְכַהֲנָה עַל פִּיו.

תַּנְיָא, רַבֵּי שְׁמַעוֹן בֶּן אֶלְעָזָר אוֹמֵר: בְּשֵׁם
שְׂתֵרוּמָה חֻקָּה לְכַהֲנָה – כִּךְ מַעֲשֵׂר רֵאשׁוֹן
חֻקָּה לְכַהֲנָה, וְהַחֹלֵק בְּבֵית דִּין – אֵינָה
חֻקָּה.

מַעֲשֵׂר רֵאשׁוֹן דְּלוֹי הוּא! כְּרַבֵּי אֶלְעָזָר בֶּן
עֲזַרְיָה. דְּתַנְיָא: תְּרוּמָה לְכַהֲנָה, מַעֲשֵׂר רֵאשׁוֹן
לְלוֹי, דְּבָרֵי רַבֵּי עֲקִיבָא. רַבֵּי אֶלְעָזָר בֶּן עֲזַרְיָה
אוֹמֵר: מַעֲשֵׂר רֵאשׁוֹן אֵף לְכַהֲנָן. אֵימּוֹר דְּאָמַר
רַבֵּי אֶלְעָזָר בֶּן עֲזַרְיָה אֵף לְכַהֲנָן, לְכַהֲנָן וְלֹא
לְלוֹי מִי אָמַר?

The Gemara answers: Rabbi Hiyya is speaking of a case where the brother speaks offhandedly^h in the context of a conversation about a different topic. It was understood from this that his brother is a Levite. This is similar to that which Rav Yehuda said that Shmuel said: There was an incident involving a person who was speaking offhandedly and said: I remember when I was a child and still young enough to be carried on my father's shoulder, and they took me out of school, and removed my cloak, and immersed me to purify me from any possible ritual impurity, so that I would be able to partake of *teruma* that evening.

And Rabbi Hiyya, who related that incident, concluded the storyⁿ and related that the man said: And my friends distanced themselves from me, and would call me: Yohanan who partakes of *hallot*, as it was prohibited for his friends, who were non-priests, to eat *halla* and *teruma*. And Rabbi Yehuda HaNasi elevated him to priesthood based on his statement. Just as one's offhanded statement is reliable, so too, is the offhanded statement of one's brother.

It is taught in a *baraita* that Rabbi Shimon ben Elazar says: Just as *teruma* establishes the presumptive status for priesthood, so too the first tithe^b establishes the presumptive status for priesthood. And one who receives a share of *teruma* in court does not establish the presumptive status of priesthood.

The Gemara asks: First tithe is given to a Levite. How does it establish the presumptive status of priesthood? The Gemara answers: This is in accordance with the opinion of Rabbi Elazar ben Azarya, as it is taught in a *baraita*: *Teruma* is given to a priest,^h first tithe^h is given to a Levite; this is the statement of Rabbi Akiva. Rabbi Elazar ben Azarya says: First tithe is given to a priest as well.ⁿ The Gemara asks: Say that Rabbi Elazar ben Azarya said: To a priest as well. Did actually he say to a priest and not to a Levite? Since it is given to both a Levite and a priest, first tithe cannot establish the presumptive status of priesthood.

NOTES

And Rabbi Hiyya concluded the story – רַבֵּי חֵיָּיא מְסַיֵּם בָּהּ – This addition by Rabbi Hiyya seems to add nothing of significance. In *Beit Ya'akov*, the explanation is that Rabbi Hiyya's statement is consistent with his opinion, as in a previous discussion, Rabbi Hiyya maintains that the fact that it is within the father's purview to feed his son *teruma* is not sufficient to deem him credible to testify that his son may partake of *teruma* (25b). Here too, one could say that the fact that his father fed him *teruma* is no proof that he is a priest. Therefore, Rav Hiyya added that all of this person's friends referred to him as one who eats *hallot*, and this proves that not only his father, but everyone else, knew that he was a priest.

First tithe is given to a priest as well – מַעֲשֵׂר רֵאשׁוֹן אֵף לְכַהֲנָן – Both early and later commentaries discuss this matter at length. From Rashi's and Rashbam's explanations in tractate *Bava Batra* (81b), apparently the dispute arose after the penalty was imposed by Ezra, as, according to Rabbi Akiva, although Ezra penalized the Levites, he established that first tithe would be given to the poor,

not to priests. *Tosafot* discuss whether the reference is to the poor in general or only to poor priests. According to Rabbi Elazar ben Azarya, Ezra established that first tithe be given exclusively to priests.

However, according to most commentaries, the dispute is not with regard to the period after the penalty was imposed but with regard to the Torah law itself. According to Rabbi Akiva, first tithe is given exclusively to the Levites, whereas Rabbi Elazar ben Azarya maintains that even by Torah law, the priests are included among the Levites. The Gemara notes in several places that in twenty-four places in the Bible priests are referred to as Levites. However, with regard to the situation after Ezra imposed a penalty, there is a dispute between the early commentaries. Some say that Rabbi Akiva agrees that from then on first tithe was given exclusively to priests, while others contend that even after the decree it was given to Levites, but it could also be given to priests. Most commentaries prefer the latter explanation because it corresponds to the numerous places in the Talmud that refer to a Levite receiving first tithe.

HALAKHA

The brother speaks offhandedly – מִסְיַח לְפִי תוֹמוֹ – If it emerges from one's unconsidered remarks that he is a priest, he assumes the presumptive status of priesthood, which today entitles him to eat *teruma* by rabbinic law. This ruling is based on the incident related in the Gemara about the child who was taken from school and immersed in order to eat *teruma*; and his friends distanced themselves from him and called him: Yohanan who partakes of *hallot*; and he was elevated to priesthood based on his statement. The *Beit Yosef* and *Beit Shmuel* cite an explanation of *Tosafot* that says that it was necessary to include that this boy was taken from school to establish that he was not a slave. The *Tur* disagrees and holds that all families have the presumptive status of unflawed lineage and no testimony is required to establish that he is not a slave (Rambam *Sefer Kedusha*, *Hilkhot Issurei Bia* 20:14; *Shulhan Arukh*, *Even HaEzer* 3:1).

Teruma is given to a priest – תְּרוּמָה לְכַהֲנָן – Priests, both minor and adult, male and female, are exclusively entitled to partake of *teruma* and the *teruma* of the tithe given by the Levite to the priest from the first tithe. Their wives, their slaves, and their animals are permitted to partake of *teruma* due to their connection to the priest (Rambam *Sefer Zera'im*, *Hilkhot Terumat* 6:1).

First tithe – מַעֲשֵׂר רֵאשׁוֹן – If a priest has first tithe or any of the priestly gifts, he is not required to give it to a Levite or a priest. Moreover, Ezra penalized the Levites of his generation, decreeing that first tithe be given to priests instead of Levites. Some note that this penalty was in effect only during Ezra's era; however, in later generations the tithe was given both to Levites and priests. According to that understanding, the ruling of the Rambam could be explained according to all opinions (*Kesef Mishne*; Rambam *Sefer Zera'im*, *Hilkhot Ma'aser Sheni* 1:4).

BACKGROUND

First tithe – מַעֲשֵׂר רֵאשׁוֹן – After *teruma* is separated, one-tenth of the remaining produce is given to the Levites. This produce is called first tithe. The owner is permitted to give first tithe to any Levite he chooses. A Levite who received first tithe is required to set aside one-tenth of that produce as *teruma* of the tithe and give it to a priest. The remaining first tithe remains the Levite's property. It has no sanctity and may be eaten by anyone. The legal status of produce from which first tithe was not separated is that of untithed produce and may not be eaten.

But perhaps by happenstance – וְדַלְמָא אִיקְרוּ: The Meiri explains that this is possible in a situation where there are no priests at all. Although Ezra penalized the Levites, he did not want to completely abrogate the mitzva of the first tithe. Therefore, it was occasionally given to the Levites.

אין, בתר דקנסיהו עזרא. ודלמא איקרו ויהבו ליה! אמר רב חסדא: הקא במאי עסקינן – בגון דמוחזק לן באבוה דהאי דכהן הוא, ונפק עליה קלא דבן גרושה וכן חלוצה הוא, וחלקו ליה לדידיה מעשר בבית הגרנות.

The Gemara answers: Yes, first tithe can establish the presumptive status of priesthood. After Ezra penalized the Levites for failure to return to Eretz Yisrael from Babylonia, he decreed that the people should not give them first tithe. Although by Torah law first tithe may be given to both Levites and priests, after that decree, it was given only to priests. The Gemara asks: How can the presumptive status of priesthood be established? But perhaps in this case he was actually a Levite, and by happenstanceⁿ they gave him first tithe. Rav Hisda said: With what are we dealing here? It is a case where the father of that man established the presumptive status of priesthood before us, and a rumor emerged about the son that he is the son of a divorced woman or the son of a *halutza*. As a *halal*, who is disqualified from the priesthood, his legal status is that of an Israelite. And it was seen that the son himself received a share of first tithe at the threshing floor.

לוי – דלאו לוי הוא, מאי איכא למימר – בן גרושה או בן חלוצה הוא, לא מיבעיא למאן דאמר מעשר ראשון אסור לזרים, דלא הווי יהבי ליה, אלא אפילו למאן דאמר מעשר ראשון מותר לזרים, הני מילי – למיספק להו, אבל בתורת חלוצה – לא יהבי ליה.

Therefore, with regard to Levite status, it is clear that he is not a Levite, as his father is a priest. The Gemara asks: What then is there to say? Is it that he is the son of a divorced woman or the son of a *halutza*? It is not necessary to say that according to the one who says that first tithe is forbidden to non-priests, they would not have given first tithe to the son of the divorcée, as his legal status is that of a non-priest. However, even according to the one who says that first tithe is permitted for non-priests,^h and therefore the fact that he received first tithe proves nothing, that *halakha* applies only to the fact that it is permitted for one to whom first tithe produce was distributed to provide it to non-priests. However, in the form of a share of first tithe at the threshing floor, one does not give it to a non-priest. Therefore, according to Rabbi Elazar ben Azarya, the fact that one receives a share at the threshing floor proves that he is a priest of unflawed lineage.

”והחולק בבית דין אינה חזקה.” אי בבית דין לא הויא חזקה – היכא הויא חזקה? אמר רב ששת הכי קאמר: החולק תרומה בנכסי אביו עם אחיו בבית דין – אינה חזקה.

It is taught in the same *baraita*: And one who receives a share of *teruma* in court does not establish the presumptive status of priesthood. The Gemara asks: If in court it does not establish the presumptive status, where does it establish the presumptive status? Isn't court the place where matters are optimally clarified? Rav Sheshet said that this is what the *tanna* is saying: One who receives a share of *teruma* from his father's property with his brothers in court^h as his portion of the inheritance, in doing so does not establish presumptive status of priesthood. Even if he is a *halal* and therefore a non-priest, it could be that he owns the *teruma* as part of his inheritance.

פשיטא! מהו דתימא: מדהנדך לאכילה האי נמי לאכילה, קא משמע לן: הנך – לאכילה, האי – לזבוגי.

The Gemara asks: It is obvious that receiving *teruma* in court does not establish the presumptive status. The Gemara answers: Lest you say that from the fact that these brothers receive the *teruma* to partake of it, it can be deduced that that brother also receives the *teruma* to partake of it, the *tanna* therefore teaches us that these brothers receive the *teruma* to partake of it and that brother receives it to sell it. The fact that he may not eat the *teruma* does not prevent him from selling it.

HALAKHA

מעשר ראשון מותר לזרים – First tithe is permitted for non-priests – First tithe may be eaten by non-Levites. Some note that although there is a tannaitic dispute whether or not first tithe may be eaten by non-Levites, the *halakha* is in accordance with the opinion of the Rabbis in their dispute with Rabbi Meir in tractate *Yevamot* (85b) that pertains to the sanctity of first tithe (Rambam *Sefer Zera'im, Hilkhoh Ma'aser Sheni* 1:2).

חולק... בבית דין: One who receives a share of *teruma*...in court – If witnesses testify that the son of a priest inherited in court his father's *teruma* in his portion of the inheritance, he does not assume the presumptive status of priesthood. This is because it is conceivable that he is a *halal* who plans to sell his share of the *teruma* (Rambam *Sefer Kedusha, Hilkhoh Issurei Bia* 20:12).

”רבי יהודה אומר: אין מעלין לכהונה על פי עד אחד” וכו’. רבן שמעון בן גמליאל היינו רבי אליעזר! וכי תימא: ערער חד איכא בנייהו: דרבי אליעזר סבר: ערער חד, ורבן שמעון בן גמליאל סבר ערער תרי. האמר רבי יוחנן: דברי הכל אין ערער פחות משנים!

S We learned in the mishna that Rabbi Yehuda says: **One does not elevate a man to priesthood on the basis of one witness.** Rabbi Elazar says: In a case where there are no challengers, one elevates a man to priesthood on the basis of one witness. Rabban Shimon ben Gamliel says: One elevates a man to priesthood on the basis of one witness. The Gemara asks: The opinion of Rabban Shimon ben Gamliel is identical to the opinion of Rabbi Eliezer,^N as they agree that one elevates a man to priesthood on the basis of one witness when there are no challengers. **And if you would say that there is a difference between them in a case where there is a challenge posed by one witness, as Rabbi Eliezer holds: A challenge posed by one witness is sufficient to undermine one’s presumptive status of priesthood and two witnesses are required to overcome that challenge, and Rabban Shimon ben Gamliel holds: An effective challenge requires two witnesses, didn’t Rabbi Yoḥanan say: Everyone agrees that there is no effective challenge with fewer than two witnesses?**

אלא, הכא במאי עסקינן דמוחק לן באבוייה דהאי דכהן הוא, ונפק עליה קלא דבן גרושה או בן חלוצה הוא, ואחתיניה, ואתא עד אחד ואמר: ידענא ביה דכהן הוא.

Rather, with what case are we dealing here? It is in a case where the father of that man established his presumptive status of priesthood before us, and a rumor emerged about the son^{NH} that he is the son of a divorced woman or the son of a *halutza*, and therefore we downgraded him from the presumptive status of priesthood. **And one witness came and said: I know that he is a priest of unflawed lineage,**

NOTES

The opinion of Rabban Shimon ben Gamliel is identical to the opinion of Rabbi Eliezer – רבן שמעון בן גמליאל היינו רבי אליעזר: This version of the text is Rashi’s version, but in manuscripts in the possession of the early commentaries there is a variant reading: The opinion of Rabban Shimon ben Gamliel is identical to the opinion of the first *tanna* (see Rabbeinu Hananel). Some explain that there is no difference between the two versions, as the first *tanna* is the first *tanna* whose opinion Rabban Shimon ben Gamliel disputes, i.e., Rabbi Eliezer (Ritva). However, others understand that it is indeed referring to the first *tanna* of the mishna, who says that two men are each deemed credible to testify that their counterpart is a priest. According to this understanding, the difference between the two versions pertains to the matter of collusion. The first *tanna*

holds that one witness is deemed credible even when there is suspicion of collusion, and Rabbi Eliezer and Rabban Shimon ben Gamliel disagree (see Ramban).

And a rumor emerged about the son – ונפק עליה קלא: The Ritva explains that the reference here is to a rumor that was confirmed in court. Although there was no clear testimony, the rumor was examined in court and deemed reliable. Therefore, the court decided to downgrade this person from his presumptive status of priesthood. Rashi and *Piskei Riaz* explain that the rumor is unconfirmed, but because of the higher standard set for the priesthood, the rumor is not dismissed, and his status remains uncertain until the matter is clarified.

HALAKHA

And a rumor emerged about the son – ונפק עליה קלא: If one’s father has the presumptive status of priesthood and a rumor emerges that he was the son of a divorcée or a *halutza*, the son is downgraded from the presumptive status of priesthood based on the rumor. If one witness then comes and testifies that the son is a legitimate priest, the son is restored to the priesthood. If two witnesses then testify that the son is a *halal*, he is again downgraded. If another single witness then testifies that his lineage is unflawed, his testimony is combined with the testimony of the other witness who testified that he is a legiti-

mate priest, and two witnesses contradict the two who testified against him, so he is restored to his original presumptive status as a legitimate priest, as far as partaking of *teruma* by rabbinic law is concerned (*Beit Shmuel*). This ruling is in accordance with the opinion of Rabban Shimon ben Gamliel and Rav Ashi’s explanation, which is the latest amoraic opinion cited, and the principle is that the halakhic ruling is in accordance with the latest opinion (Rambam *Sefer Kedusha, Hilkhot Issurei Bia* 20:16; *Shulḥan Arukh, Even HaEzer* 3:7).

HALAKHA

עדים שלא – וְאִסְקִינִיהּ... In monetary cases, the testimony of two witnesses is joined, even if they witnessed an event at different times, in accordance with the opinion of Rabbi Yehoshua ben Korḥa and the ruling in *Sanhedrin* 30a (Rambam *Sefer Shofetim*, *Hilkhot Edut* 4:1, 3; *Shulḥan Arukh*, *Hoshen Mishpat* 30:6).

וְאִסְקִינִיהּ. וְאֵתוּ בֵּי תְרֵי וְאִמְרֵי: בְּן גְרוּשָׁה וּבֶן חִלּוּצָה הוּא, וְאִחְתֵּינִיהּ. וְאֵתָא עַד אַחַד וְאִמְרֵי: יָדַעְנָא בֵּיה דְכֹהֵן הוּא. וְדְכוּלֵי עֲלָמָא מְצַטְרְפִין לְעֵדוּת,

and therefore we elevated him back to the priesthood, as one witness is sufficient to negate the rumor. And then two witnesses came and said: He is the son of a divorced woman or the son of a *halutza*, and then we downgraded him^N from the priesthood, as two witnesses negated the testimony of one witness. Then one witness came and said: I know that he is a priest of unflawed lineage. And everyone agrees that the two single witnesses join together and constitute two witnesses for the purpose of testimony that he is a priest of unflawed lineage, and fundamentally his presumptive status of priesthood should be restored.

וְהִכָּא – בְּמִיחָשׁ לְזִילוּתָא דְבֵי דִינָא קְמִיפְלִגִי. תְּנָא קְמָא סָבַר: בִּיּוֹן דְאִחְתֵּינִיהּ – לֹא מְסַקִּינָן לִיהּ, חִיּוּשִׁין לְזִילוּתָא דְבֵי דִינָא. וּרְבִן שְׂמַעוֹן בֶּן גַּמְלִיאֵל סָבַר: אֲנִן אִחְתֵּינִין לִיהּ, וְאֲנִן מְסַקִּינָן לִיהּ, וְלִזְלוּתָא דְבֵי דִינָא לֹא חִיּוּשִׁין.

And here it is with regard to concern that it will lead to contempt for the court that they disagree. The first *tanna*, Rabbi Eliezer, holds: Once we downgraded him from the priesthood, we do not then elevate him. We are concerned that it will lead to contempt for the court, as the reversal in the court decisions create the impression that the court does not know what it is doing. And Rabban Shimon ben Gamliel holds: We downgrade him from the priesthood and we then elevate him,^N and as for the possibility that it will lead to contempt for the court, we are not concerned about it. The primary concern is that the matter be determined based on the relevant testimonies.

מְתַקִּיף לָהּ רַב אֲשִׁי: אִי הָכֵי אֲפִילוּ תְרֵי וְתֵרֵי נְמִי!

Rav Ashi strongly objects: If so, if they disagree with regard to contempt for the court, why is it necessary to establish the dispute in a case where the witnesses who testified that he is a priest of unflawed lineage came individually? If so, then even if two witnesses testify together that he is unfit for the priesthood, and the court downgraded him, and two witnesses testify together that he is fit for the priesthood, and the court elevated him, the *tanna'im* would also disagree, as the same concern for contempt of court applies.

אֵלָּא אֲמַר רַב אֲשִׁי: בְּמַצְטְרְפִין לְעֵדוּת קְמִיפְלִגִי, וּבְפְלוּגָתָא דְהִנֵּי תְנָאִי. דְתַנָּאִי: אִין עֵדוּתֵן מְצַטְרְפָת עַד שְׂרָאוּ שְׁנֵיהֶם בְּאַחַד, רַבִּי יְהוֹשֻׁעַ בֶּן קֶרְחָה אָמַר: אֲפִילוּ בְּזֶה אַחַר זֶה. וְאִין עֵדוּתֵן מְתַקִּימָת בְּבֵית דִּין עַד שְׂרָעִידוּ שְׁנֵיהֶם בְּאַחַד,

Rather, Rav Ashi said: It is with regard to whether two single witnesses join together and constitute two witnesses for the purpose of testimony^N that they disagree, and it is in the dispute between these *tanna'im* that they disagree, as it is taught in a *baraita*: The testimony of individual witnesses merges into the testimony of two witnesses only if the two of them saw the incident transpire together, as one. Rabbi Yehoshua ben Korḥa says: Their testimony merges even in a case where this witness saw the incident after that witness;^H however, the testimony of witnesses is validated in court only if the two of them testify together as one.

NOTES

And we elevated him... and we downgraded him – וְאִסְקִינִיהּ... וְאִחְתֵּינִיהּ: The Ramban writes, emphasizing Rashi's comments, that there is a difference between the first time and the second time that the Sages said: We downgraded him. The first time was not a full-fledged downgrade from his presumptive status, as it was merely due to a rumor. In that case, he is temporarily barred from enjoying the benefits of the priesthood until the matter is clarified.

We downgrade him from the priesthood and we then elevate him – אֲנִן אִחְתֵּינִין לִיהּ וְאֲנִן מְסַקִּינָן לִיהּ – The Rid writes that although this is a case of two witnesses contradicting two others, which, certainly according to the Rid, creates a situation of uncertainty with regard to Torah law, because the discussion here pertains to elevating a person to be eligible to partake of *teruma* by rabbinic law, the uncertainty is with regard to rabbinic law. Rashi asks: Even if there is uncertainty with regard to rabbinic law, why should one be elevated to the priesthood? He

explains that this person is restored to the priesthood based on the presumptive status created by the first witness.

Most commentaries reject this explanation and ask: In a case where two witnesses testify that one is a priest, and two others contradict them, clearly one does not assume the presumptive status of priesthood on the basis of the testimony of the first pair of witnesses (see Rashba and Ra'ah). Therefore, most commentaries explain that he is elevated to the priesthood based on the status of his father, who is certainly a priest. That is the formulation of the Rambam as well. The Rosh asks: Wasn't that presumptive status undermined by the rumor that emerged about him, and he was downgraded from the priesthood due to that rumor? On the basis of what presumptive status is he a priest? Although, according to Rashi's opinion, the rumor was not verified in court and it is not sufficiently substantive to undermine his presumptive status, according to others who hold that it was verified in court, the difficulty remains. The Rosh answers that a rumor is dismissed only when its source

cannot be determined and refuted. However, here, once witnesses came and rendered him unfit, the source of the rumor is clear. Once those witnesses were contradicted, the rumor no longer has credence.

It is with regard to whether two single witnesses join together and constitute two witnesses for the purpose of testimony – בְּמַצְטְרְפִין לְעֵדוּת: The question arises: If the dispute is with regard to single witnesses joining together, the Gemara could have simply established it in a case where the witnesses did not come to court together. The Ran answers that there is a novel element in the case cited here in the Gemara, as the witnesses join together even in the case cited in the Gemara, where action is taken on the basis of one witness, then rescinded on the basis of two witnesses, and then a second witness testifies. Due to the pair of witnesses that testified in the interim, it appears that the court is relying on one witness.

She is forbidden to her husband – אסורה לבעלה – Tosafot state explicitly, and it seems that Rashi maintains, that she is forbidden to her husband even if he is not a priest, due to the following concern: Since she is aware that she or her husband was sentenced to execution never to return, she will willingly submit to the prison guards and engage in intercourse with them, in the hope that it will provide her with an opportunity to be rescued.

Furthermore, since the mishna stated without qualification: She is forbidden to her husband, the indication is that she is forbidden even if her husband is a non-priest. However, most early commentaries explain that the reference is specifically to a case where her husband is a priest, and the concern is that she was raped. The Ramban, the Rashba, and the Ritva cite several proofs that there is no concern that she submitted willingly, as the presumption is that Jewish women are not suspected of doing so.

Citing Rabbeinu Hananel, some write that in the case of a non-priest, there is a multiple uncertainty: Did she engage in intercourse? If she did, did she do so willingly? In cases of multiple uncertainties, the ruling is lenient. The formulation of the mishna is without qualification because all of the *halakhot* cited in the mishna with regard to women taken captive relate to the wives of priests.

The authority of the nations of the world is dominant – די אומות העולם תקיפה – The Meiri writes that there is concern when the authority of the nations is dominant, specifically in a place where there is no established regime. However, in a place where there are gentile judges who conduct themselves according to their laws, this is not a concern.

If you deem the witnesses credible – אם אתם מאמינים – The Rashba and the Ritva explain that these witnesses that testified about the woman must not have been fit witnesses, as the family would have no doubt accepted the testimony of two fit witnesses. Apparently, these witnesses were slaves or maidservants that the family hesitated to deem reliable. The *Penei Yehoshua* cites support from the language of the mishna: Her witnesses, indicating that they were people close to her, e.g., her servants.

BACKGROUND

Ashkelon – אשקלון – In the biblical times, Ashkelon was a Philistine city. It became a Hellenist city under the Greeks, although its residents continued to observe aspects of their former religion. Even at the pinnacle of their reign, Ashkelon was never conquered by the Hasmoneans. Under Roman rule it was a free city, where Jews resided; however, it remained a place where the authority of the gentiles was dominant.

רבי נתן אומר: שומעין דבריו של זה היום, וכשיבא חברו למחר – שומעין דבריו.

Rabbi Natan says: They need not even testify together, but even if the court hears the statement of this witness today, and when his fellow witness comes tomorrow the court hears his statement,^h their testimonies merge. Rabbi Eliezer holds in accordance with the opinion of Rabbi Yehoshua ben Korha, and therefore the testimony of the second witness cannot be merged with the testimony of the first witness and the person remains a *halal*. Rabban Shimon ben Gamliel holds that the testimony of the two witnesses that he is a priest of unflawed lineage is merged, and his presumptive status of priesthood is restored, as it was already established that his father is a priest.

מתני' האשה שנחבשה בידי גוים, על ידי ממון – מותרת לבעלה, על ידי נפשות – אסורה לבעלה.

MISHNA In the case of a woman who was imprisoned^h by gentiles due to a monetary offense committed by her husband, once she is released after he pays his debt, she is permitted to her husband, even if he is a priest. There is no concern that they violated her because their objective is to coerce the husband to pay his debt in exchange for her release. Were they to abuse her, it is possible that he would be unwilling to pay. However, if a woman was imprisoned due to a capital offense and sentenced to death, once she is released she is forbidden to her husbandⁿ even if he is not a priest due to the concern that perhaps her captors violated her, and she acquiesced to one of them.

גמ' אמר רב שמואל בר רב יצחק אמר רב: לא שנו אלא שיד ישראל תקיפה על אומות העולם אבל יד אומות העולם תקיפה על עצמן – אפילו על ידי ממון אסורה לבעלה.

GEMARA Rav Shmuel bar Rav Yitzhak said that Rav said: They taught this mishna only in a case where the authority of the Jewish people is dominant^h over the nations of the world, and the gentiles are law-abiding citizens. However, when the authority of the nations of the world is dominantⁿ over themselves, a euphemism for dominance over the Jewish people, even a woman who was imprisoned due to a monetary offense is forbidden to her husband, as there is nothing preventing her jailers from violating her.

מתבי רבא: העיד רבי יוסי הכהן ורבי זכריה בן הקצב על בת ישראל שהורהנה באשקלון וריחקה בני משפחתה, ועדיה מעידים אותה שלא נסתרה ושלא נטמאה. ואמרו להם חכמים: אם אתם מאמינים שהורהנה – האמינו שלא נסתרה ושלא נטמאה, ואם אי אתם מאמינים שלא נסתרה ושלא נטמאה – אל תאמינו שהורהנה.

Rava raised an objection from a mishna (*Eduyyot* 8:2): **Rabbi Yosei the priest and Rabbi Zekharya ben HaKatzav testified about a Jewish woman about whom witnesses testified that she was taken as collateral for a debt in Ashkelon.^b And the members of her family, who suspected that she engaged in intercourse there, distanced themselves from her, but her witnesses testified about her that she neither entered into seclusion nor was violated. And the Sages said to the members of the family: If you deem the witnesses credibleⁿ to testify that she was taken as collateral, deem the witnesses credible to testify that she neither entered into seclusion nor was violated. And if you do not deem the witnesses credible to testify that she neither entered into seclusion nor was violated, do not deem the witnesses credible to testify that she was taken as collateral at all. In either case, she is permitted to her husband.**

והא אשקלון, די אומות העולם תקיפה על עצמן, וקתני:

Rava asks: But this took place in Ashkelon, which is a place where the authority of the nations of the world is dominant over themselves, as it was a city of gentiles, and it is taught:

HALAKHA

שנים המעידים – Two witnesses who do not testify at one time – In monetary cases, the witnesses are not required to testify together. Rather, even if they testify on different days, their testimonies are combined into a single testimony and accepted. This ruling is in accordance with the opinion of Rabbi Natan, as he apparently agrees with Rabbi Yehoshua ben Korha, in accordance with whose opinion the *halakha* is ruled in the previous note (*Kesef Mishne*; Rambam *Sefer Shofetim*, *Hilkhot Edu* 4:4; *Shulhan Arukh*, *Hoshen Mishpat* 30:9).

האשה שנחבשה – A woman who was imprisoned – If a woman was imprisoned by gentiles for a monetary offense, she is permitted to her husband even if he is a priest. However, if she

was imprisoned for a capital offense, she is disqualified from marrying a priest; if she is the wife of a priest, she is forbidden to him.

The Rema cites *Tosafot* and the *Tur*, who rule that if she was imprisoned for a capital offense, she is forbidden to her husband, even if he is not a priest, as she is suspected of willingly submitting to her captors. The Rema cites a distinction between a case where the woman is accused of a capital crime, in which she is rendered unfit, and a case where it is her husband who is accused, in which she is not rendered unfit. Others add that even when she is the one accused, if there is a manner in which she could be redeemed, she is not rendered unfit because were they to abuse her, it is possible that she

would not be redeemed. During periods of persecution, the ruling of the Rambam, which was more lenient, was adopted (*Terumat HaDeshen*; Rambam *Sefer Kedusha*, *Hilkhot Issurei Bia* 18:30; *Shulhan Arukh*, *Even HaEzer* 7:11).

In a case where the authority of the Jewish people is dominant – שיד ישראל תקיפה – The ruling that a woman is permitted to her husband if she is imprisoned for a monetary offense applies only if the authority of the Jewish people is dominant over the gentiles. Otherwise, she is forbidden to her husband even in a monetary case, unless witnesses testify explicitly that she was not violated (Rambam *Sefer Kedusha*, *Hilkhot Issurei Bia* 18:30; *Shulhan Arukh*, *Even HaEzer* 7:11).