

הוֹרְהָנָה - אִין, נְחֻבְשָׁה - לֹא! הוּא הָדִין
אִפְלוּ נְחֻבְשָׁה, וּמַעֲשֵׂה שְׁהִיָּה - כִּךְ הִיָּה.

אִיכָא דְאָמְרִי, אָמַר רַבָּא: אִף אֲנִן נִמְי
תַּנְנָא: הָעֵיד רַבִּי יוֹסֵי הַכֹּהֵן וְרַבִּי זְכַרְיָה בֶּן
הַקָּצֵב עַל בֵּית יִשְׂרָאֵל שֶׁהוֹרְהָנָה בְּאֶשְׁקְלוֹן
וְרִיחֻקוֹהָ בְּנֵי מִשְׁפַּחְתָּהּ, וְעֵדֶיהָ מְעִידִים
עָלֶיהָ שְׁלֵא נִסְתְּרָה וְשְׁלֵא נִטְמָאָה, וְאָמְרוּ
חֲכָמִים: אִם אַתֶּם מְאֻמִּינִים שֶׁהוֹרְהָנָה -
הָאֻמִּינוּ שְׁלֵא נִסְתְּרָה וְשְׁלֵא נִטְמָאָה, וְאִם
אִין אַתֶּם מְאֻמִּינִים שְׁלֵא נִסְתְּרָה וְשְׁלֵא
נִטְמָאָה - אֵל תֵּאֻמִּינוּ שֶׁהוֹרְהָנָה,

וְהָא אֶשְׁקְלוֹן דְּעַל יְדֵי מְמוֹן הוּא, וְטַעֲמָא
דְּעֵידִים מְעִידִין אוֹתָהּ, הָא אִין עֵידִים מְעִידִין
אוֹתָהּ - לֹא, מֵאִי לֹא לֹא שְׁנָא הוֹרְהָנָה
וְלֹא שְׁנָא נְחֻבְשָׁה! לֹא, הוֹרְהָנָה שְׁאִינִי.

אִיכָא דְרַמִּי לֵה מִירְמָא, תַּנְן: עַל יְדֵי מְמוֹן -
מוֹתְרַת לְבַעְלָהּ, וְרַמִּינָהּ: "הָעֵיד רַבִּי יוֹסֵי"
כו', וְהָא אֶשְׁקְלוֹן דְּעַל יְדֵי מְמוֹן, וְקַתְנִי
טַעֲמָא דְעֵידִים מְעִידִים אוֹתָהּ, הָא אִין
עֵידִים מְעִידִין אוֹתָהּ - לֹא!

וּמִשְׁנֵי: אָמַר רַב שְׁמוּאֵל בַּר רַב יִצְחָק: לֹא
קָשִׁיָּא, כָּאִן שִׁיד יִשְׂרָאֵל תְּקִיפָה עַל אוֹמוֹת
הָעוֹלָם, כָּאִן שִׁיד אוֹמוֹת הָעוֹלָם תְּקִיפָה
עַל עַצְמוֹ.

If she was taken as security, in a case where her husband stipulated that if he fails to pay a debt the gentiles may take his wife and do with her as they please, yes, she requires witnesses to testify that she was not violated. However, if she was imprisoned by the authorities, no, she is deemed untainted even without witnesses. Apparently, the distinction is not based on the dominance of the Jewish people. Rather, it is based on the manner in which she was apprehended. The Gemara answers: **The same is true** that she is forbidden to her husband even if she was imprisoned, and the reason that the *tanna'im* testified about a case where she was taken as security is because the incident that transpired, transpired in that manner.

Some say a different version of this tradition. Rava said that we too learn a proof from a mishna for the statement that Rav Shmuel bar Rav Yitzhak said that Rav said: **Rabbi Yosei the priest and Rabbi Zekharya ben HaKatzav testified about a Jewish woman about whom witnesses testified that she was taken as security for a debt in Ashkelon. And the members of her family, who suspected that she engaged in intercourse there, distanced themselves from her, and 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 believe the witnesses that she was taken as collateral, believe the witnesses who say that she neither entered into seclusion nor was violated. And if you do not believe the witnesses that she neither entered into seclusion nor was violated, do not believe the witnesses that she was taken as collateral at all.**

Rava asks: **But in the case in Ashkelon that was due to a monetary offense, the reason that she was permitted is that witnesses testified about her that she was untainted. However, if witnesses did not testify about her, no, she would not be permitted to her husband, although she was taken due to a monetary offense. What, is it not that it is no different if she was taken as collateral and it is no different if she was imprisoned?** Apparently, if the authority of the gentiles is dominant, even if she was imprisoned for the sake of money there is concern that she was violated. The Gemara rejects the proof: **No, the case where the woman is taken as collateral is different, and only in that case, where her husband stipulated that the gentiles could take her, would the gentiles allow themselves to violate her. However, in a case where she is imprisoned there is no concern of that sort.**

Some raise it as a contradiction between the sources. We learned in the mishna: A woman who was taken hostage due to a monetary offense is permitted to her husband. And they raise a contradiction from the mishna in *Eduyyot*: **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. But this is not the case in Ashkelon, which was due to a monetary offense, and it is taught that the reason that the woman was permitted is that witnesses testified about her that she was untainted. However, if witnesses did not testify about her, no, she would not be permitted, although she was taken for the sake of money.**

And he answers that Rav Shmuel bar Rav Yitzhak said: **This is not difficult. Here, the mishna is referring to a period when the authority of the Jewish people is dominant over the nations of the world. Then, a woman taken hostage for the sake of money is permitted. There it is referring to a period when the authority of the nations of the world is dominant over themselves and over the Jewish people. Therefore, even a woman taken because of a monetary offense is forbidden unless witnesses testify that she is untainted.**

Ben Donai – בן דונאי: Ben Donai is mentioned as a famous murderer in tractate *Sota*, where he is called Elazar ben Dinai, a more common rendition of his name. He was also known as Tehina ben Perisha.

Ben Dinai is also mentioned in the book of his contemporary Josephus Flavius, where it is related that for a period of approximately twenty years ben Dinai led a gang of robbers and murderers in the Galilee, until he was ultimately deceived and apprehended by the Roman governor and taken to Rome.

Although it is not explicitly stated, apparently ben Dinai was not merely a professional robber. There was a political aspect to his activities, as he was the head of a group of partisans that battled the Romans. Josephus characterizes several leaders of the revolt against Rome as robbers. Perhaps it is due to that political aspect that the Romans opted to try him in Rome rather than trying him in Eretz Yisrael.

According to Roman law at that time, political prisoners who revolted against the government were stripped of all property. In this context, Levi's statement is understandable, as it is only in cases of this kind that the wife of the accused is abandoned and available to all.

NOTES

Where the husbands were sentenced to death – שְׁגִמְרָה: Although ostensibly the discussion here refers to women apprehended due to the crimes of their husbands, some early commentaries explain that the women are also accused of crimes, as the assumption is that these women were aware of their husbands' actions and possibly even abetted them in their crimes. In the Jerusalem Talmud, it is stated explicitly: Once the court issued her death sentence. This indicates that the woman herself was condemned to death.

A military unit that entered a city during peacetime – בְּלֶשֶׁת שְׂבָאָה לְעִיר בְּשַׁעַת שְׁלוֹם: The Meiri explains that the reference is to soldiers who enter a city, not to wage war, but rather to be temporarily quartered there. During their stay, the authorities empower them to support themselves from the property of the residents of the city. Therefore, the assumption is that they availed themselves of all the open barrels. However, it is clear that they did not touch the sealed barrels, as they would not have expended the effort to reseal barrels that they opened. As mentioned, the concern here is not merely that idolaters came into contact with the wine, but that they actually used it as libation for idolatry, as it was customary to do so before drinking the wine in the barrel.

“עַל יְדֵי נְפֻשׁוֹת אֲסוּרָה” וכו'. אָמַר רַב: כְּגוֹן נָשִׁי גְנָבִי. וְלֹא אָמַר: כְּגוֹן אֲשֶׁתוֹ שֶׁל בֶּן דּוֹנָאִי. אָמַר הַזְּקֵיָה: וְהוּא שְׁגִמְרָה דִּינָן לְהַרְיָגָה. וְרַבִּי יוֹחָנָן אָמַר: אִף עַל פִּי שְׂלֵא נְגִמְרָה דִּינָן לְהַרְיָגָה.

S We learned in the mishna: A woman who was imprisoned because of a capital offense^H is forbidden to her husband. **Rav said:** The mishna is referring to a case where the wives of thieves are involved, as when thieves were apprehended and hanged, their wives were abandoned and made available to all, and they were not protected from potential rapists. **And Levi said:** The mishna is referring to a case where the wife of ben Donai,^P a murderer, is involved, as in that case the government abandons his wife and makes her available to all, which is not the case when one is condemned for theft. **Hizkiyya said:** And this abandonment is only in a case where the husbands were sentenced to death.^N **And Rabbi Yohanan said:** Although their husbands were not sentenced to death, if the imprisonment is because of a capital offense, the women are abandoned and available to all.

מתני' עיר שֶׁכְּבָשׁוּהָ כְּרֹכּוֹם – כָּל כְּהֹנֵת שֶׁנִּמְצְאוּ בְּתוֹכָהּ פְּסוּלוֹת. וְאִם יֵשׁ לָהֶן עֵדִים, אֶפְיָלוּ עֶבֶד, אֶפְיָלוּ שִׁפְחָה – הָרִי אֵלּוּ נְאֻמָּנִין. וְאִין נְאֻמָּן אָדָם עַל יְדֵי עֲצוּמוֹ.

MISHNA With regard to a city that was conquered by an army laying siege,^H all the women married to priests located in the city are unfit and forbidden to their husbands, due to the concern that they were raped. **And if they have witnesses,^H even if the witness is a slave, even if the witness is a maidservant, both of whom are generally disqualified as witnesses, they are deemed credible. And a person is not deemed credible to establish his status by his own testimony.** Therefore, a woman is not deemed credible to claim that she was not violated.

גמ' ורמיהו: בְּלֶשֶׁת שְׂבָאָה לְעִיר; בְּשַׁעַת שְׁלוֹם, חֲבִיט פְּתוּחוֹת – אֲסוּרוֹת, סְתוּמוֹת – מוֹתָרוֹת. בְּשַׁעַת מְלַחְמָה – אֵלּוּ וְאֵלּוּ מוֹתָרוֹת, לְפִי שְׂאִין פְּנָאִי לְנִסְךְ!

GEMARA The Gemara raises a contradiction from a mishna (*Avoda Zara* 70b): If there is a gentile military unit that entered a city,^H if it entered during peacetime,^N after the soldiers leave, the open barrels of wine are forbidden and the wine in them may not be drunk, due to suspicion that the gentile soldiers may have poured this wine as a libation for idolatry. The sealed barrels are permitted. However, if the unit entered in wartime, both these and those are permitted because in wartime there is no respite to pour wine for idolatry. One can be certain that the soldiers did not do so because the soldiers were preoccupied with preparations for a potential attack by the enemy. Why, then, is the mishna concerned that perhaps the soldiers laying siege to the city rape the women?

HALAKHA

Because of a capital offense – עַל יְדֵי נְפֻשׁוֹת: If the wife of a priest (Rambam) or the wife of a non-priest (*Tosafot*) was imprisoned by gentiles for a capital offense, she is forbidden to her husband. The language of the Rambam cited in the *Shulhan Arukh* indicates that he rules in accordance with the opinion of Rav, and the case is one where the women themselves are suspected by the authorities of being aware of their husbands' actions and abetting them. The ruling is in accordance with the opinion of Rav, who, although he was younger than Levi, was the most prominent Sage of his generation and greater than Levi. The fact that the Rambam does not mention that this applies only after the woman was sentenced to death indicates that he rules in accordance with the opinion of Rabbi Yohanan in his dispute with his teacher Hizkiyya, as that is the Rambam's ruling in virtually all disputes between them (see *Maggid Mishne* and *Beit Yosef*). The Rema writes that women imprisoned due to capital crimes are forbidden to their husbands only if they were accused of the crime. However, if they were imprisoned due to the accusations against their husbands, they would not be victimized until their husbands were actually convicted, in accordance with the opinions of Levi and Hizkiyya (Rambam *Sefer Kedusha*, *Hilkhot Issurei Bia* 18:30; *Shulhan Arukh*, *Even HaEzer* 7:1).

A city that was conquered by an army laying siege – עִיר שֶׁכְּבָשׁוּהָ כְּרֹכּוֹם: If a city was besieged to the extent that no woman could escape, the legal status of all the women in the city is that of captive women. They are forbidden to priests due to the concern that they were raped (Rambam *Sefer Kedusha*, *Hilkhot Issurei Bia* 18:26; *Shulhan Arukh*, *Even HaEzer* 7:10).

And if they have witnesses – וְאִם יֵשׁ לָהֶן עֵדִים: A woman who was taken captive or was in a city conquered by gentiles and has witnesses that she did not enter into seclusion with a gentile is permitted to a priest. Even a relative, a slave, or a maidservant is deemed credible to testify on her behalf. However, neither her own testimony nor the testimony of her husband, whose legal status is equal to her own for these purposes, is accepted (Rambam *Sefer Kedusha*, *Hilkhot Issurei Bia* 18:19; *Shulhan Arukh*, *Even HaEzer* 7:1).

A military unit that entered a city – בְּלֶשֶׁת שְׂבָאָה לְעִיר: If soldiers entered a city and entered the homes of Jews in peacetime, all the wine in open barrels is forbidden, even if the cover was replaced. However, the wine in the sealed barrels is permitted. If the soldiers pass through a city in wartime, even the wine in the open barrels is permitted (Rambam *Sefer Kedusha*, *Hilkhot Ma'akhalot Assurot* 12:24; *Shulhan Arukh*, *Yoreh De'a* 129:12).

NOTES

To the siege of a city under the rule of the same monarchy – בְּכִרְכּוּם שֶׁל אוֹתָהּ מְלָכוֹת: The Gemara text was emended based on the explanation of Rashi (Rabbeinu Tam in Sefer HaYashar). However, almost all of the commentaries and authorities do not accept Rashi's explanation and explain the Gemara differently. The main difference between them is that according to the other commentaries, the siege of a city under the rule of the same monarchy is more dangerous for the women of that city (Rabbeinu Hananel; see Tosafot; Rambam; Ramban). Since the soldiers need not fear the local army, as they are their comrades in arms, they can ravage the city and its inhabitants at their leisure. The Rashbatz adds that these are troops deployed to suppress a local rebellion, which is typically undertaken ruthlessly. However, when laying siege to a city under the rule of another monarchy, the soldiers fear the local army and cannot proceed at their leisure. According to this opinion, in the Gemara's question: Even in the siege of a city under the rule of the same monarchy, it is impossible that one of them did not wander off, the verb is not masculine, referring to one of the soldiers; rather it is feminine, referring to the women in the city. The siege is typically not so tightly enforced that it would be impossible for one of the besieged people to elude the siege. Indeed, it is related in the Jerusalem Talmud that a blind woman fled the city during a siege. Since the potential of flight exists, the Sages rule leniently with regard to all women in the city. Therefore, Rabbi Levi answered that the reference here is to a particularly harsh siege from which no escape is possible. In the Jerusalem Talmud, the question and the answer correspond to this explanation.

LANGUAGE

Branches [gavza] – גַּוְזָא: This term comes from the Iranian languages, where it can refer to a mortar, as in Middle Persian gawāz, or a goad or prod, as in the Parthian word gawāz. In Babylonian Jewish Aramaic, it can refer simply to sticks and cut branches.

BACKGROUND

Geese – אַוּוּזָא: Geese, particularly the ganders, guard their feeding grounds, honking loudly and even attempting to attack any intruder seeking to enter. Therefore, geese were used in lieu of guard dogs to guarantee that trespassers would not pass through certain areas.

אָמַר רַב מַרִּי: לְבַעוּל – יֵשׁ פְּנָאֵי, לְנִסָּךְ – אֵין פְּנָאֵי. רַבִּי יִצְחָק בַּר אֶלְעָזָר מְשַׁמֵּיחַ דְּחֻזְקִיָּה אָמַר: כָּאֵן – בְּכִרְכּוּם שֶׁל אוֹתָהּ מְלָכוֹת, כָּאֵן – בְּכִרְכּוּם שֶׁל מְלָכוֹת אַחֲרָת.

שֶׁל אוֹתָהּ מְלָכוֹת נָמִי אֵי אֶפְשָׁר דְּלֵא עֵרַק חַד מִיַּמֵּיהוּ! אָמַר רַב יְהוּדָה אָמַר שְׂמוּאֵל: כְּשִׁמְשִׁמּוֹת רוֹאוֹת זוֹ אֶת זוֹ. אֵי אֶפְשָׁר דְּלֵא נִימָא פּוֹרְתָא! אָמַר רַבִּי לְוִי: כְּגוֹן דְּמַהְדֵּר לָהּ לְמַתָּא שׁוֹשִׁילְתָּא וְכַלְבָּא וְגוּוּזָא וְאוּוּזָא.

אָמַר רַבִּי אַבְבָּא בַר זְבִדָּא: פְּלִיגִי בְּהָ רַבִּי יְהוּדָה נְשִׂיאָהּ וּרְבִנָּהּ, חַד אָמַר: כָּאֵן בְּכִרְכּוּם שֶׁל אוֹתָהּ מְלָכוֹת, כָּאֵן בְּכִרְכּוּם שֶׁל מְלָכוֹת אַחֲרָת, וְלֵא קְשִׁיָּא לִיָּהּ וְלֵא מִיַּדִּי וְחַד קְשִׁיָּא לִיָּהּ כֹּל הֵינִי, וּמִשְׁנֵי: כְּגוֹן דְּמַהְדֵּר לִיָּהּ לְמַתָּא שׁוֹשִׁילְתָּא וְכַלְבָּא וְגוּוּזָא וְאוּוּזָא.

אָמַר רַב אִידִי בַר אֲבִין אָמַר רַבִּי יִצְחָק בַּר אֲשִׁיָּא: אִם יֵשׁ שָׁם מַחְבּוֹאָה אַחַת – מְצִלָּת עַל הַבְּהֻנוֹת בּוּלָן.

בְּעֵי רַבִּי יִרְמְיָהּ: אֵינָהּ מְחֻזְקַת אֱלָא אַחַת, מַהוּ? מִי אֶמְרִינָן: כָּל חֲדָא וְחֲדָא – הֵינִי הָא. אוּ דְלִמָּא לָא אֶמְרִינָן?

Rav Mari said: To engage in intercourse there is respite;^h to pour wine for idolatry there is no respite. Rabbi Yitzhak bar Elazar said in the name of Hizkiyya: There is a different distinction between the cases. There, the mishna is referring to the siege of a city under the rule of the same monarchy.^{nh} In that case, the soldiers, acting as the enforcement body of the monarchy, seek to minimize unnecessary damage to the city and will refrain from ruining the wine and raping the women. Here, the mishna is referring to the siege of a city under the rule of a different monarchy. Therefore, there are no restraints with regard to ruining the wine or raping the women.

The Gemara asks: Even in the siege of a city under the rule of the same monarchy, it is impossible that one of the soldiers did not wander off and rape a woman. Rav Yehuda said that Shmuel said: This is referring to a case where the sentries see each other and do not allow the soldiers to plunder the city. The Gemara asks: It is impossible that the sentries would not doze a bit, enabling some soldiers to enter and plunder the city. Rabbi Levi said: It is referring to a case where they surround the city with chains, and dogs, and branches [gavza],^l and geese,^b as obstacles preventing unauthorized entry.

Rabbi Abba bar Zavda said: Rabbi Yehuda Nesia, grandson of Rabbi Yehuda HaNasi, redactor of the mishna, and the Rabbis dispute this matter. One said: There, the mishna is referring to the siege of a city under the rule of the same monarchy. Here, the mishna is referring to the siege of a city under the rule of a different monarchy, and it was not difficult for him at all, as in that case there is no concern that perhaps an individual soldier would enter the city. And for the other one, all these questions were difficult, and he answers: It is referring to a case where they surround the city^h with chains, and dogs, and branches, and geese.

With regard to the ruling in the mishna, Rav Idi bar Avin said that Rabbi Yitzhak bar Ashyan said: If there is a single hideaway there^h in the city, where the women could hide from the soldiers, it saves all the women married to priests. Due to the uncertainty, the presumption is that each of the women found the hideaway, and therefore they are not forbidden to their husbands.

Rabbi Yirmeya raises a dilemma: If the hideaway holds only one woman, what is the ruling? Do we say that with regard to each woman who appears before us, this is the one who hid there, and each is permitted to her husband? Or, perhaps we do not say that.

HALAKHA

To engage in intercourse there is respite – לְבַעוּל יֵשׁ פְּנָאֵי: Some authorities say that this is the ruling even if the city was occupied by a foreign army who must be wary of local forces, because the soldiers will find time to engage in intercourse. This ruling is in accordance with the opinion of Rav Mari (Rif; Ramban; Rashba; Rosh; Shulḥan Arukh, Even HaEzer 7:10).

To the siege of a city under the rule of the same monarchy – בְּכִרְכּוּם שֶׁל אוֹתָהּ מְלָכוֹת: The women in the besieged city are forbidden to priests only if the occupying soldiers are from the army of that country, who need not fear local forces, and they have respite to engage in intercourse. However, if the city is occupied by a foreign army whose soldiers are wary of the local army, the women are permitted to priests, in accordance with the statement of Rabbi Yitzhak bar Elazar in the name of Hizkiyya and the explanation of Rabbeinu Hananel (Rambam Sefer Kedusha, Hilkhot Issurei Bia 18:29; Shulḥan Arukh, Even HaEzer 7:10).

Where they surround the city – כְּגוֹן דְּמַהְדֵּר לִיָּהּ לְמַתָּא: All the women in the city are forbidden to priests only if the city was surrounded in a manner that renders escape impossible. If it is possible for a woman to flee undetected, the case is parallel to the case of a hideaway with room for one woman, and all the women are permitted. This ruling is in accordance with the opinion of Levi, as explained by Rabbeinu Hananel (Rambam Sefer Kedusha, Hilkhot Issurei Bia 18:27; Shulḥan Arukh, Even HaEzer 7:10).

If there is a single hideaway there – אִם יֵשׁ שָׁם מַחְבּוֹאָה אַחַת: If there is a place to hide in the besieged city, even if there is room for only one woman, none of the women are forbidden to priests; this is in accordance with the opinion of Rabbi Yitzhak bar Ashyan. Although this question remains unresolved in the Gemara, the ruling is lenient because the prohibition of a captive woman is based on a rabbinic concern that she was violated (Rambam Sefer Kedusha, Hilkhot Issurei Bia 18:27; Shulḥan Arukh, Even HaEzer 7:10).

ומאי שנא משני שבילין, אחד טמא ואחד טהור, והלך באחד מהן ועשה טהרות, ובא חבירו והלך בשני ועשה טהרות.

The Gemara asks: **And in what way is this different from the case of two paths?**^H As we learned in a mishna: There were two paths, one that was ritually impure due to a corpse buried there and one that was ritually pure. And one walked on one of them, but he does not remember which, and afterward engaged in handling items of ritual purity, e.g., *teruma* or consecrated items. And another person came and walked on the second path, and he too does not remember which path it was, and he also engaged in handling items of ritual purity.

רבי יהודה אומר: אם נשאל זה בפני עצמו וזה בפני עצמו – טהרות, שניהם כאחת – טמאות. רבי יוסי אומר: בין כך ובין כך טמאין.

Rabbi Yehuda says: **If this one asked a Sage in and of himself, and that one asked a Sage in and of himself, they are both pure.** When considered separately, each person retains his presumptive status of ritual purity. However, if they both came to ask at the same time, they are both ritually impure. Since one of the two certainly passed on the impure path, although it is uncertain which, both are deemed impure due to that uncertainty. Rabbi Yosei says: **One way or another they are both ritually impure.**

ואמר רבא ואיתמיא רבי יוחנן: בבית אחת דברי הכל טמאין, בזה אחר זה דברי הכל טהורים. לא נחלקו אלא בבא לישאל עליו ועל חבירו, מר מדמי ליה לבבת אחת, ומר מדמי ליה לבזה אחר זה. והכא נמי, בין דשרי להו לבוליהו – בבית אחת דמי.

And Rava said, and some say it was Rabbi Yoḥanan who elaborates: If they came at the same time, everyone agrees that they are ritually impure, as even Rabbi Yehuda concedes that this is the *halakha*. If they came independently, this one after that one, everyone agrees that they are ritually pure. They disagree only with regard to a case where one comes to ask about himself and about the other.^N One Sage, Rabbi Yosei, likens it to a case where they come to ask at the same time, and Rabbi Yehuda likens it to a case where this one comes after that one. The Gemara concludes the analogy: **And here too**, where there was room in the hideout for only one woman, although they came and asked individually, since they seek to render all the women married to priests permitted to their husbands based on that hideout, it is tantamount to asking about them all at the same time, and they should be deemed forbidden to their husbands.

הכי השתא?! התם – ודאי איכא טומאה, הכא – מי יימר דאיטמי!

The Gemara asks: **How can these cases be compared?** There, in the case of the two paths, there is certainly ritual impurity in one of the paths, and therefore there is certainly one man who is impure. Here, who says any of the women was violated? Since there is uncertainty whether any woman was violated at all, one is more likely to rule that each woman was the one who hid than it is to rule that each of the men walked on the ritually pure path.

בעי רב אשי: אמרה "לא נחבאתי ולא נטמאתי" מהו? מי אמרינן:

Rav Ashi raises a dilemma: If there was a hideaway in the city and a woman married to a priest says: **Neither did I hide nor was I violated, what is the ruling? Do we say the principle:**

Two paths – שני שבילין: If there are two paths, one ritually impure due to a buried corpse and one ritually pure, and one walked on one of them, but he does not remember which, and afterward he engaged in handling items of ritual purity, and another person came and walked on the second path, and he too does not remember which path it was, and he also engaged in handling items of ritual purity, if each comes separately to ask about those items, the ruling is that the items remain ritually pure. If they come together, the ruling is that both items are ritually impure, and they are burned. This ruling is in accordance with the Gemara's conclusion that everyone agrees in a case where these people come together and a case where they come separately. In a case where one of the men asks about his own food and that of another, the ruling is that both items are ritually impure and must be burned, in accordance with the opinion of Rabbi Yosei in his dispute with Rabbi Yehuda (Rambam *Sefer Tahara, Hilkhot She'ar Avot HaTumot* 19:2).

NOTES

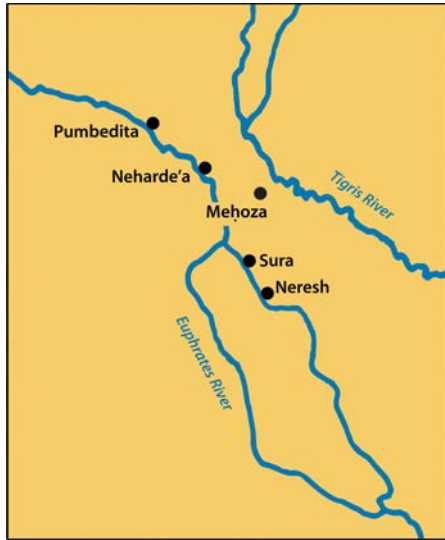
Where one comes to ask about himself and about the other – בבא לישאל עליו ועל חבירו – Rashi explains, according to the straightforward meaning of the Gemara, that one comes to ask about himself and about the other person at the same time. However, *Tosafot* state that if one asks about himself and the other person at the same time, even Rabbi Yehuda concedes that he is impure. Therefore, they explain that the case here concerns one who asks first about himself and later he asks about the other person. According to that understanding, the

question raised by the Gemara with regard to the hideaway is according to all opinions (see Ritva).

The Ran supports Rashi's explanation that one asks about both of them at the same time: Just as the knowledge that the hideaway is not sufficiently large to house all of the women does not result in a stringent ruling, here too, there is no distinction whether the question is posed at the same time or separately. In both cases, there is awareness of the uncertainty, and nevertheless the ruling is not stringent.

BACKGROUND

Neresh – נְרֶשׁ: Neresh is a Babylonian city south of Sura. This was an important agricultural and commercial center that was home to a large number of date palm farmers and alcoholic beverage producers. The city's inhabitants were considered uncultured. Nevertheless, it was home to a Jewish community for many generations, and generated no small number of Sages. At one point, the prominent sage Rav Pappa was the head of the yeshiva in Neresh.



Location of Neresh

NOTES

Why would I lie, in a situation where there are witnesses – מַה לִּי לְשַׁקֵּר בְּמִקּוּם עֵדִים: The authorities unanimously rule in accordance with the opinion of Abaye that the principle of *miggo* does not establish credibility when there are witnesses testifying to the contrary. Clearly, no claim, even one supported by a *miggo*, is effective when it is contradicted by witnesses, as *miggo* establishes that a certain claim is reasonable, while the testimony of witnesses establishes facts. Furthermore, the Ritva writes that in a case where there is explicit testimony contradicting the claim supported by a *miggo*, even Rava would concede that the *miggo* is ineffective. The dispute is only in a case where there is no actual testimony; but instead the *miggo* runs counter to facts that are common knowledge, to which we are all witness, in a sense. Therefore, the principle: Why would I lie, is effective in supporting a claim that cannot otherwise be proven. He is deemed credible due to the assumption that he would not lie unnecessarily, especially when he could have told a more effective lie. However, when there is a reason or witnesses that lead to question the veracity of the claim, the claim is not deemed credible on the basis of *miggo* alone.

מה לי לשקר, או דלמא לא אמרינן?

ומאי שנא מההוא מעשה, דההוא גברא דאגר ליה חמרא לחבריה, אמר ליה: לא תיזיל באורחא דנהר פקוד, דאיכא מיא, זיל באורחא דנרש דליכא מיא, ואזל איהו באורחא דנהר פקוד, ומית חמרא.

אתא לקמיה דרבא. אמר ליה: אין, באורחא דנהר פקוד אזלי, מיהו לא הו מיא. אמר רבא: מה לי לשקר: אי בעי אמר ליה: באורחא דנרש אזלי. ואמר ליה אבוי: "מה לי לשקר" במקום עדים לא אמרינן!

הכי השתא?! התם – ודאי איכא עדים דאיכא מיא, הכא – ודאי אישמי? חששא הוא, ובמקום חששא – אמרינן.

"אם יש עדים אפילו עבד ואפילו שפחה נאמנין". ואפילו שפחה דידה מהימנא? ורמינה: לא תתייחד עמו אלא על פי עדים.

Why would I lie in so ineffectual a manner, and deem her credible? Had she wanted to lie, she could have claimed that she hid, which is a more effective claim. Or perhaps we do not say that principle.

The Gemara asks: And in what way is this different from that incident where a certain man who rented a donkey to his colleague said to the renter: Do not go on the path of the Pekod River, where there is water, and the donkey is likely to drown. Go on the path of Neresh,^b where there is no water. And he went on the path along the Pekod River and the donkey died.

The renter came before Rava and said to him: Yes, I went on the path along the Pekod River; however, there was no water there. The donkey's death was caused by other factors. Rava said: His claim is accepted based on the principle: Why would I lie. If he wanted to lie, he could have said to him, I went on the path of Neresh. And Abaye said to Rava: We do not say the principle: Why would I lie, in a situation where there are witnesses.^{NH} This principle, which is a form of *miggo*, is effective only when his claim does not contradict established facts. In this case, since it is known to all that there is water on the path along the Pekod River, his claim is not accepted. Similarly, as it is an established fact that the women taken captive were certainly raped, her claim is not accepted even though it is based on a *miggo*.

The Gemara asks: How can these cases be compared? There, in the case of the donkey, there are certainly witnesses capable of confirming that there is water along that path. Here, in the case of the women, is it clearly established that she was definitely defiled? It is merely a concern, and in a situation where there is merely a concern and not an established fact we say the principle: Why would I lie,^H and her claim is accepted.

¶ We learned in the mishna: If they have witnesses, even if the witness is a slave and even if the witness is a maidservant, they are deemed credible. The Gemara asks: And is even her personal maidservant deemed credible? The Gemara raises a contradiction from a mishna (*Gittin* 73a): With regard to one who divorced his wife conditionally, and the condition was not yet fulfilled, the woman may enter into seclusion with him only on the basis of the presence of witnesses,^H due to the concern that they will engage in intercourse. If between the drafting of a bill of divorce and its taking effect the husband and wife enter into seclusion together, the bill of divorce must be discarded and a new document drafted in its place.

HALAKHA

Why would I lie, in a situation where there are witnesses – מַה לִּי לְשַׁקֵּר בְּמִקּוּם עֵדִים: In a case where one rents a donkey to another and tells him to avoid the path along the Pekod River where there is water, and the donkey died, if the renter admits that he took that path but claims that he encountered no water there, he is liable to compensate the owner for the damage to the donkey because of the concept: We are witnesses, i.e., it is common knowledge, that there is water along that route, and we do not say the principle: Why would I lie, in a situation where there are witnesses (Rambam *Sefer Mishpatim, Hilkhot Sekhirut* 4:3).

And in a situation where there is merely a concern, we say the principle: Why would I lie – ובמקום חששא אמרינן: If there was a hideaway in the city, every woman who claims that she was not defiled is deemed credible, as she could have claimed

that she hid. When the prohibition is based on uncertainty, the principle of *miggo* is effective, even in a situation where there are witnesses (Rambam *Sefer Kedusha, Hilkhot Issurei Bia* 18:28; *Shulhan Arukh, Even HaEzer* 7:10).

The woman may enter into seclusion with him only on the basis of the presence of witnesses – לא תתייחד עמו אלא על פי עדים: If a husband divorced his wife conditionally and the condition was not yet fulfilled, he may not enter into seclusion with her unless there is a person with them, even if that person is typically disqualified as a witness, e.g., a relative, a slave, or a maidservant. However, he may not enter into seclusion with her if that other person is her own maidservant to whom she is accustomed (Rambam *Sefer Nashim, Hilkhot Geirushin* 8:2; *Shulhan Arukh, Even HaEzer* 148:2).

This is with regard to her maidservant – **היא בשפחה דידיה** – A maidservant is deemed credible to testify that a captive woman was not raped. The woman's own maidservant, however, is not deemed credible, in accordance with the opinion of Rav Pappa. The Ra'avad, however, rules in accordance with the opinion of Rav Ashi, that even her own maidservant is deemed credible (Rambam *Sefer Kedusha, Hilkhot Issurei Bia* 18:19; *Shulhan Arukh, Even HaEzer* 7:1, 2).

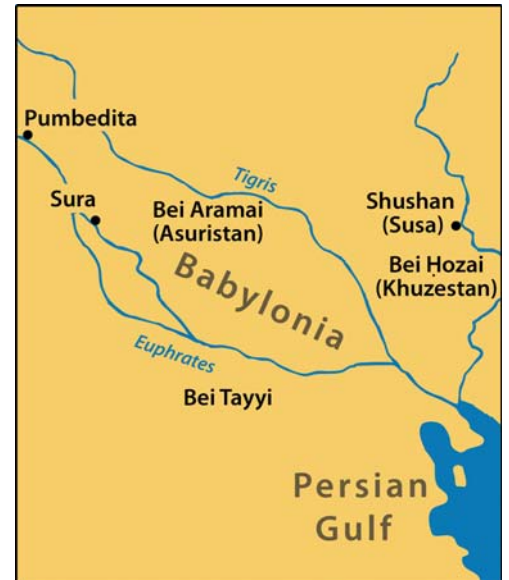
PERSONALITIES

Mari bar Isak – **מרי בר איסק**: Mari is mentioned in various places in the Talmud. Some say that there were two people with this name (*Tosafot, Yevamot* 21b), although perhaps the reference is to the same person who lived a long life.

Mari bar Isak was very wealthy, and several of the Sages were visitors to his home. However, as it is stated here, the Sages believed that he used his wealth improperly. That led them to reverse the standard regulations of evidence and place the onus of evidence upon him. His displays of generosity were also treated with suspicion.

BACKGROUND

Bei Hoza'a – **בי חוּזָאָה**: Bei Hoza'a, or Bei Hozai, was one of the larger provinces in the Persian Empire. Today it is known by its Persian name, Hozistan. This province was far removed from the principal Jewish settlements in Babylonia, which were officially called *Bei Aramai*, and travel between the two was long and arduous. Nevertheless, there were Jewish merchants who traveled there on business, and there was a Jewish community there. Due to the distances and the difficult terrain, ties with Bei Hozai were tenuous, and news of events that transpired there did not always reach the major Jewish population centers.



Location of Bei Hozai

ואפילו על פי עבד. ועל פי שפחה, חוץ משפחתה, מפני שלבה גם בשפחתה! אמר רב פפי: בשבויה הקילו.

And she may enter into seclusion even on the basis of the presence of a slave and on the basis of the presence of a maidservant, except for her personal maidservant, due to the fact that she is accustomed to her maidservant, and her presence will not serve as an impediment that would prevent her from engaging in intercourse. Therefore, with regard to the woman taken captive as well, the testimony of the maidservant is not accepted to establish that she was not defiled. Rav Pappi resolved the contradiction and said: With regard to a captive woman, the Sages ruled leniently. Because the prohibition against intercourse with a captive woman is based on the concern that she was violated, the Sages relied on the testimony of her personal maidservant.

רב פפא אמר: היא בשפחה דידיה, היא בשפחה דידיה.

Rav Pappa resolved the contradiction and said: This halakha in the case of conditional divorce is stated with regard to her maidservant,^h who is not deemed credible even in the case of a captive woman. That halakha in the case of the captive woman, where they said even the testimony of the maidservant is accepted, is stated with regard to his maidservant to whom the woman is not so accustomed, and therefore her presence serves as an impediment.

ושפחה דידיה לא מהימנא? היא קתני: אין אדם מעיד על עצמו, היא שפחה דידיה – מהימנא! שפחתה נמי בעצמה דימי.

The Gemara asks: And is her maidservant not deemed credible? But isn't it taught in the mishna: A person is not deemed credible to establish his status by his own testimony? From that statement it may be inferred that the woman is not deemed credible to testify about herself, but her maidservant is deemed credible. The Gemara answers: The legal status of her maidservant is like her own status. Neither is deemed credible.

רב אשי אמר: היא והא בשפחה דידיה, ושפחה מיחזא חזיא ושתקה. התם, דשתיקתה מותרתה – לא מהימנא. הכא דשתיקתה אוסרתה – מהימנא.

Rav Ashi resolved the contradiction and said: Both halakhot are stated with regard to her maidservant, but there is a distinction between the cases. A maidservant sees what transpires and is silent, but does not testify falsely. Therefore, there, in the case of conditional divorce, where the maidservant's silence with regard to whether her mistress engaged in intercourse renders the woman permitted, as it is sufficient for the maidservant to say merely: I was there, she is not deemed credible due to the concern lest she witnessed them engaging in intercourse and remained silent. However, here, in the case of the captive woman, where the maidservant's silence would render her mistress forbidden, as a captive woman is presumed to have been violated and the only way to render her permitted is by saying: She was not defiled, she is deemed credible.

השתא נמי אתיא ומשקרא! תרתמי לא עבדה.

The Gemara asks: Here too there should be concern that she will come and lie for the benefit of her mistress. The Gemara answers: She would not perform two acts of dishonesty. Although there is suspicion that she will refrain from telling the truth, there is no suspicion that she will lie as well. Therefore, if she relates that her mistress was not defiled, she is deemed credible.

פי היא דמרי בר איסק, ואמרי לה חנא בר איסק, אתא ליה אחא מבי חוּזָאָה. אמר ליה: פלוג לי בנכסי דאבא. אמר ליה: לא ידענא לך. אתא לקמיה דרב חסדא, אמר ליה: שפיר קאמר לך, דכתיב "ויבר יוסף את אחיו והם לא הכירוהו" מלמד שיצא בלא חתימת זקן ובה בחתימת זקן.

Proof that one is not suspected of both concealing the truth and lying is cited, as in that case of Mari bar Isak,^p and some say it was Hana bar Isak, where someone claiming to be his brother came to him from Bei Hoza'a,⁸ a district located far from the Jewish population centers in Babylonia. This brother said to him: Apportion me a share in my father's property. Mari said to him: I do not know you. The brother came before Rav Hisda seeking a legal remedy. Rav Hisda said to him: Your brother is speaking well and his response is well founded, as it is written: "And Joseph recognized his brothers but they recognized him not" (Genesis 42:8). This teaches that Joseph left the land of Canaan without the trace of a beard and came to meet his brothers with the trace of a beard.

This is how I render judgment for you and for all your fellow violent men – הכי דאיננא לך ולכולהו אלמי חבך – If the court knows that the defendant is a violent person, and the claimant asserts and brings proof that his witnesses are afraid to testify, the court places the onus of proof upon the defendant and he must bring witnesses to support his claim, in accordance with the opinion of Rav H̄isda (Rambam *Sefer Shofetim, Hilkhot Eduṭ* 3:12; *Shulḥan Arukh, Ḥoshen Mishpat* 28:5).

A minor who was making an unconsidered, incidental remark – מסיח לפי תומו – The statement of a minor who makes an unconsidered remark with regard to a captive woman is deemed credible by the court. This is the understanding of Rambam, who explained the incident involving Rabbi Yehuda HaNasi as dealing with a minor and related to the first *baraita*, which listed those deemed credible to testify on behalf of the woman (*Maggid Mishne*). Others rule that a minor's statement is deemed credible even if he intended to testify. That corresponds to the plain understanding of the Gemara that the incident involving Rabbi Yehuda HaNasi relates to the second *baraita* (Ran). According to this understanding, a relative, either minor or adult, is deemed credible only when making incidental remarks, but an unrelated minor is deemed credible to testify directly (Rambam *Sefer Kedusha, Hilkhot Issurei Bia* 18:18; *Shulḥan Arukh, Even HaEzer* 7:1).

A person cannot testify about himself – אין אדם מעיד על – עצמו – A captive woman's husband is not deemed credible to testify that she was not defiled, because one is not deemed credible to testify about himself, and the status of testimony about his wife is like that of testimony about himself. Others add that this applies only if his testimony was required. However, if the husband was the only one who knew that his wife was taken captive, and he is certain that she was not violated, she is permitted to him (Rambam *Sefer Kedusha, Hilkhot Issurei Bia* 18:19; *Shulḥan Arukh, Even HaEzer* 7:2).

PERSONALITIES

Rabbi Zekharya ben HaKatzav – רבי זכריה בן הקצב – Rabbi Zekharya ben HaKatzav was a priest and a *tanna* who lived in the generation of the destruction of the second Temple. Apparently, he was one of the older students of Rabbi Yoḥanan ben Zakkai, and that is why he appears both in statements of Rabbi Yoḥanan ben Zakkai's students, where he is cited by name, and in joint statements. Very few of his statements appear in the Mishna, the *Tosefta*, and the Talmud.

אמר ליה: זיל אייתי סהדי דאחיה את. אמר ליה: אית לי סהדי ומסתפינו מיניה. דגברא אלמא הוא. אמר ליה לדידיה: זיל אייתינהו את דלאו אחוך הוא. אמר ליה: דינא הכי! המוציא מחבירו עליו הראיה! אמר ליה: הכי דאיננא לך ולכולהו אלמי חבך. – השתא נמי אתו ומשקרי! תרתי לא עבדי.

לימא בתנאי: זו עדות איש ואשה, תינוק ותנוקה, אביה ואמה ואחיה ואחותה, אבל לא בנה ובתה, לא עבדה ושפחה. ותנאי אידך: הכל נאמנין להעיד, חוץ מהימנה ובעלה.

דבר פפי ודרב אשי – תנאי היא. דרב פפא [מי] לימא תנאי היא?

אמר לך רב פפא: בי תנאי ההיא – במסיחה לפי תומה.

בי הא דכי אתא רב דימי אמר, רב חנן קרטיןנאך משתעי מעשה בא לפני רבי יהושע בן לוי, ואמרי לה רבי יהושע בן לוי משתעי מעשה בא לפני רבי בא אבא אחד שהיה מסויח לפי תומו, ואמר: אני ואמי נשבינו לבין הגוים, יצאתי לשאוב מים – דעתי על אמי, ללקט עצים – דעתי על אמי, והשיאה רבי לכהונה על פיו.

מתני' אמר רבי זכריה בן הקצב: המעון הזה! לא זזה ידה מתוך ידי משעה שנכנסו גוים לירושלים ועד שיצאו. אמרו לו: אין אדם מעיד על עצמו.

Rav H̄isda said to him: Go bring witnesses that you are his brother. He said to Rav H̄isda: I have witnesses, but they are afraid of Mari, who is a violent man, and will not testify. Rav H̄isda said to Mari: Go bring witnesses that he is not your brother. Mari said to him: Is that the *halakha*? Isn't the guiding principle in cases of this sort: The burden of proof rests upon the claimant? Let the man claiming part of my inheritance bring proof supporting his claim. Rav H̄isda said to him: This is how I render judgment for you and for all your fellow violent men;^H I place the burden of proof upon them. The Gemara asks: Now too, witnesses will come and lie in fear of Mari, and what is accomplished by requiring Mari to bring the witnesses? Apparently, one is not suspected of performing two acts of dishonesty, to both conceal the truth and to lie.

The Gemara suggests: Let us say that the opinions of the *amora'im* with regard to the testimony of her maidservant are subject to this dispute between *tanna'im*. It is taught in one *baraita*: This testimony that a captive woman was not defiled with regard to which a man and a woman, a male child or a female child, the woman's father, and her mother, and her brother, and her sister are deemed credible, but not her son and her daughter, and not her slave or maidservant. And it is taught in another *baraita*: All are deemed credible to testify with regard to a captive woman, except for her and her husband.

The Gemara notes: The opinion of Rav Pappi and the opinion of Rav Ashi are certainly subject to the dispute between *tanna'im*, as they hold that her maidservant is deemed credible contrary to the first *baraita* cited. However, with regard to the opinion of Rav Pappa, who distinguishes between her maidservant, who is not deemed credible, and his maidservant, who is, do we say that it is subject to the dispute between *tanna'im*? Perhaps the *tanna* in each *baraita* holds that her maidservant is not deemed credible, and the *baraita* that deems everyone credible except for the woman and her husband could be explained in another manner, e.g., the legal status of her maidservant is like her own status.

The Gemara says: There is no proof that Rav Pappa's opinion is contingent upon the tannaitic dispute, as Rav Pappa could have said to you: When that *baraita* that deems everyone credible except for the woman and her husband is taught, it is taught in a case where she is making an unconsidered, incidental remark in the context of a conversation about an unrelated matter. However, direct testimony of her maidservant is not accepted.

As in that case when Rav Dimi came from Eretz Yisrael to Babylonia; he said that Rav Hanan of Carthage relates: An incident came before Rabbi Yehoshua ben Levi for judgment; and some say that Rabbi Yehoshua ben Levi relates: An incident came before Rabbi Yehuda HaNasi, with regard to a person who was making an unconsidered, incidental remark,^H and said: My mother and I were taken captive among the gentiles. When I went out to draw water, my thoughts were about my mother; to gather wood, my thoughts were about my mother. We were never separated. And Rabbi Yehuda HaNasi deemed her fit to marry into the priesthood on the basis of those remarks, even though with regard to testimony about his mother, a son is disqualified as a witness. The same is true of the woman's maidservant.

MISHNA Rabbi Zekharya ben HaKatzav^P said: I swear by this abode of the Divine Presence that my wife's hand did not move from my hand from the time that the gentiles entered Jerusalem until they left, and I know for a fact that she was not defiled. The Sages said to him: A person cannot testify about himself.^H The legal status of one's wife is like his own status in this regard. Therefore, your testimony is not accepted, and your wife is forbidden to you.

גמ' תנא: ואף על פי כן ייחד לה בית בחצרו, וכשהיא יוצאת - יוצאת בראש בניה, וכשהיא נכנסת - נכנסת בסוף בניה.

GEMARA The *tanna* taught in the *Tosefta*: **And even so**, despite the fact that the Sages ruled his wife forbidden to him because he was a priest, he did not divorce her. **He designated a house in his courtyard for her,**^{NH} but did not enter into seclusion with her, **and when she would go out of the courtyard she would go out before her sons** so that she would not be alone in the courtyard with her husband, **and when she would enter the house, she would enter after her sons**, for the same reason.

בעי אביי: מהו לעשות בגרושה כן? התם הוא - דבשבוייה הקילו, אבל הכא - לא, או דלמא לא שניא?

Abaye raises a dilemma: What is the *halakha* regarding whether we have to do likewise with a divorcée? Can a priest who divorces his wife designate a house for her in the courtyard and rely on the children to ensure that the couple will not enter into seclusion? **Is it specifically there**, in the case of Rabbi Zekharya ben HaKatzav because with regard to a captive woman the Sages ruled leniently, since the prohibition is based on suspicion and not certainty; **however here**, in the case of a divorcée, where there is a certain Torah prohibition, **no**, he may not designate a residence for her in the courtyard? **Or perhaps**, the case of a divorcée is no different.

תא שמע, דתנא: המגרש את אשתו - לא תנשא בשכונתו,

The Gemara cites proof to resolve the dilemma: **Come and hear proof as it is taught in a *baraita***: With regard to one who divorces his wife, she may not marry and live in his immediate vicinity, i.e., his courtyard, due to the concern that because of the intimacy they once shared, her living there will lead to transgression.

NOTES

ואף על - for her - ר' יוחנן: רש"י מפרש: ואף על פי כן ייחד לה בית בחצרו: Rashi explains the phrase: Even so, to mean that although she is forbidden to him, by allowing her to live with him, he treated her in a manner atypical of the manner that a priest treats a woman forbidden to him. However, others explain to the contrary, citing the *ge'onim*; although he knew that she had not been defiled, he took these steps to distance her from him to ensure that he would not enter into seclusion with her.

HALAKHA

ייחד - He designated a house in his courtyard for her - ל' בית בחצרו: Since the fact that a captive woman is forbidden to a priest is a stringency based on uncertainty, she may continue living in the same courtyard with him, provided that their children are present to ensure that he does not enter into seclusion with her, as was the case in the incident involving Rabbi Zekharya ben HaKatzav (Rambam *Sefer Kedusha, Hilkhot Issurei Bia* 18:25; *Shulhan Arukh, Even HaEzer* 7:9).

NOTES

Alleyway and proximity - מבוי ושכונה: There is a dispute among the commentaries with regard to the definition of these terms. *Tosafot* explain that alleyway refers to a small street, and proximity refers to three adjacent houses. However, the *Ran* explains that proximity is larger than an alleyway, as the reference is to an entire residential area. This matter depends on the variant readings of the text, as well as on different explanations that led to the development of the variant readings. There are also halakhic ramifications, e.g., whether the legal status of a small village is that of a proximity or an alleyway.

However, the issue is related to a more fundamental dispute with regard to the *halakhot* of distance between the man and the woman. According to the Rambam, the required distance is relative to the severity of the relevant prohibition. Therefore, if the divorcée was married to a non-priest, and not yet remarried, only slight separation would be required, as the prohibition is no more than the prohibition of relations with an unmarried woman. If she was married to a priest, and it is prohibited by Torah law for them to engage in relations, greater separation would be required; and if she remarried, even greater separation would be required, as relations carry the penalty of death. According to *Tosafot* the opposite is true; the more severe the prohibition, the less likely it is that they will violate the prohibition, and less distance is required.

Perek II
Daf 28 Amud a

ואם היה בהן - לא תדור עמו במבוי. אם היה כפר קטן, זה היה מעשה, ואמרו: כפר קטן נידון כשכונה.

And if he was a priest she may not live with him even in one alleyway that opens into several courtyards, even if she did not remarry, as she is forbidden to him forever. What is the ruling if it was a small village? May she live with her ex-husband in the same village? The Gemara relates that **this case of his divorcée and a small village was an incident that transpired and the Sages said: A small village is judged as his immediate proximity.**^{NH}

מי נדחה מפני מי? תא שמע, דתנא: היא נדחית מפניו, ואין הוא נדחה מפניה. ואם היתה חצר שלה - הוא נדחה מפניה.

The Gemara asks: In cases where they may not reside in the same courtyard or alleyway, **who is ousted in favor of whom?**^H Which of them must leave? The Gemara suggests: **Come and hear proof as it is taught in a *baraita***: She is ousted in favor of him, and leaves, and he is not ousted in favor of her. **But if it was her courtyard, he is ousted in favor of her.**

HALAKHA

Distance from his divorcée - הרחקה מגרושתו: A man who divorces his wife may not reside in the same courtyard with her lest they engage in a promiscuous relationship. If the man is a priest, he may not even live with his divorcée in the same alleyway, which includes several courtyards. According to the Rambam, the legal status of a small village is that of an alleyway. The *Maggid Mishne* notes that the Rambam apparently had a variant reading of the Gemara. The Rema adds that if she remarried, even if her former husband was a non-priest, she may not even live in the same alleyway as her former husband (Rambam

according to the *Ran*; Rambam *Sefer Kedusha, Hilkhot Issurei Bia* 21:27; *Shulhan Arukh, Even HaEzer* 119:7).

Who is ousted in favor of whom - מי נדחה מפני מי: If a man divorced his wife, and it is prohibited for them to reside in the same courtyard: If it is co-owned or co-rented by both of them, the wife must relocate and her ex-husband may remain. However, if it belonged exclusively to her, he must relocate (Rambam *Sefer Kedusha, Hilkhot Issurei Bia* 21:27; *Shulhan Arukh, Even HaEzer* 119:7).