

גמ' תנא: ואף על פי כן ייחד לה בית בחצרו, וכשהיא יוצאה – יוצאה 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? ה"מ 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

And even so, he designated a house... for her – **ואף על פי כן ייחד לה בית**: 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

He designated a house in his courtyard for her – **ייחד לה 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, Hilkhhot 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, ואמר: 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 – היא 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, Hilkhhot 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, Hilkhhot Issurei Bia* 21:27; *Shulhan Arukh, Even HaEzer* 119:7).

The dislocation of a man is more difficult for him than the dislocation of a woman is for her – **טלטולי דגברא קשין** – **מדאיתתא**: Some commentaries explain that this is because people are more compassionate toward women and even if she is the one required to relocate, she, unlike a man, will have others tend to her needs (Maharsha in tractate *Sanhedrin*). Others explain that this relates to their potential remarriage, as typically the man is responsible for building the house for his wife, and the Sages derived from language in the Torah that it is proper to do so. Therefore, were he required to relocate, he would need to build a new house, unlike a woman, who moves into the house of her new husband (Rashbatz).

We also flog them with lashes – **נגודי נמי מנגדין להו**: Although the authenticity of this phrase is uncertain (see *Tosafot*), some explain for various reasons that Rav Huna, son of Rav Yehoshua, seeks to add to the statement of Rav Pappa: Not only are they ostracized, they are also flogged (see *Tosafot*; Ritva). However, the Rambam maintains that Rav Huna, son of Rav Yehoshua, is not suggesting an additional punishment but rather an alternative punishment, the administration of which is left to the discretion of the judges. See *Mo'ed Katan* 17a for a discussion concerning which punishment is considered more severe. Others explain that the punishment according to the Rambam is dependent upon whether she was married to a priest or a non-priest.

Evel Rabbati – **אבל רבתי**: *Evel Rabbati* is one of the minor tractates appended to the Talmud, typically printed at the end of *Seder Nezikin*. These tractates are anthologies of *baraitot* compiled and collected during different periods and they typically address well-defined topics. *Evel Rabbati* addresses the entire range of *halakhot* surrounding death, from the time one is on his deathbed, through burial and mourning. This tractate is euphemistically called tractate *Semahot*, celebrations. *Evel Rabbati* literally means greater mourning. A shorter tractate, called *Evel Zutrati*, i.e., lesser mourning, addresses the same subject matter and was published from manuscript relatively recently.

HALAKHA

A priest who borrowed from his wife from usufruct property that she inherited from her father – **לוה הימנה**: **בנכסי אביה**: If a man borrowed money from his wife and then divorced her, he must repay her by means of an agent, not directly, in accordance with the *baraita* (Rambam *Sefer Kedusha*, *Hilkhot Issurei Bia* 21:27; *Shulhan Arukh*, *Even HaEzer* 119:8).

If they came before us for judgment – **אי אתו לקמן לדינא**: If a divorced couple come to court together for judgment, they are ostracized or flogged, as no ruling was issued in the dispute about this matter (*Maggid Mishne*). Others note that according to the Rosh, they are ostracized only if the husband is a priest or if the divorcée remarried (*Beit Shmuel*, citing *Beit Yosef*; see *Bah*; Rambam *Sefer Kedusha*, *Hilkhot Issurei Bia* 21:27; *Shulhan Arukh*, *Even HaEzer* 119:9).

When she was divorced from betrothal – **כשנתגרשה מן**: **האירוסין**: If a man divorces his betrothed bride, they may reside in the same courtyard and come together to court, in accordance with the opinion of Rav Nahman. However, if that they are accustomed to each other they may not do so, in accordance with the opinion of Rava (Rambam *Sefer Kedusha*, *Hilkhot Issurei Bia* 21:27; *Shulhan Arukh*, *Even HaEzer* 119:10).

This is my father's handwriting – **זה כתב ידו של אבא**: An adult is deemed credible to authenticate the signatures of his father, his teacher, and his brother that he witnessed as a child, provided that he testifies with another witness who witnessed the signature as an adult, in accordance with the opinion of Rav Huna, son of Rav Yehoshua (Rosh, based on the Jerusalem Talmud; *Shakh*; Rambam *Sefer Shofetim*, *Hilkhot Eduv* 7:1, 14:3; *Shulhan Arukh*, *Hoshen Mishpat* 35:4).

איבעיא להו: היתה חצר של שניהם **מהו? תא שמע: היא נדחית מפניו**. **במאי עסקינן? אילימא בחצר שלו** – **פשיטא! ואלא בחצר שלה** – **והתנא: אם היתה חצר שלה** – **הוא נדחה מפניה**. **אלא לאו** – **כי האי גוונא דלמא דאגיר מינר**.

מאי הוי עליה? תא שמע: "הנה ה' מטלטלך טלטלה גבר" ואמר רב: טלטולי דגברא קשין מדאיתתא.

תנו רבנן: לזה הימנה בנכסי אביה – **אינה נפרעת אלא על ידי אחר**. **אמר רב ששת: ואי אתו לקמן לדינא לא מודקנין להו**. **רב פפא אמר: שמותי משמתין להו**. **רב הונא בריה דרב יהושע אמר: נגודי נמי מנגדין להו**. **אמר רב נחמן: תנא באבל רבתי: במה דברים אמורים** – **שנתגרשה מן הנשואין**. **אבל כשנתגרשה מן האירוסין** – **נפרעת על ידי עצמה, שאין לבו גס בה**.

הוא ארוס וארוסתו דאתו לקמיה דרבא ותיב רב אדא בר מתנא קמיה, אוקי רבא שלוחא בינתייהו. **אמר ליה רב אדא בר מתנא: והאמר רב נחמן, תנא באבל רבתי כו! אמר ליה: קא חזינו דקא גייסי בהדדי**.

איכא דאמר: לא אוקי רבא שלוחי בינתייהו. **אמר ליה: רב אדא בר מתנא: ניקום מר שלוחא בינתייהו!** **אמר ליה: והא [אמר] רב נחמן: תנא באבל רבתי כו! אמר ליה: הני מילי – היכא דלא גייסי בהדדי, אבל הני – קא חזינו להו דגייסי בהדדי**.

מתני' ואלו נאמנו להעיד בגודלן מה שראו בקוטנן: נאמן אדם לומר "זה כתב ידו של אבא" ו"זה כתב ידו של רבי" ו"זה כתב ידו של אחי".

A dilemma was raised before the Sages: If it was a courtyard belonging to both of them, what is the *halakha*; who is ousted in favor of whom? The Gemara suggests: **Come and hear proof as it is taught in a baraita: She is ousted in favor of him**. The Gemara elaborates: **With what circumstances are we dealing? If we say that the subject of the baraita is with regard to his courtyard, it is obvious that she is ousted. But rather, is it with regard to her courtyard? Isn't it taught in a baraita: If it was her courtyard, he is ousted in favor of her? Rather, is it not that the baraita is dealing with a case like this**, where it was a courtyard belonging to both of them? The Gemara rejects this proof: **Perhaps the baraita is teaching that even in a case where he rented the courtyard she is ousted in his favor**. Therefore, the dilemma with regard to a courtyard belonging to both of them is unresolved.

The Gemara asks: **What halakhic conclusion was reached about this matter?** The Gemara suggests: **Come and hear proof from the verse: "The Lord will dislocate you the dislocation of a man" (Isaiah 22:17), and Rav said: This indicates that the dislocation of a man is more difficult for him than the dislocation of a woman is for her.**^N Therefore, the woman is ousted.

The Sages taught: With regard to a priest who borrowed from his wife from usufruct property that she inherited from her father^H and then he divorced her, she is repaid only by means of another person and not directly from her husband, to prevent them from engaging in business dealings. **Rav Sheshet said: And if after engaging in business dealings they came before us for judgment,**^H **we do not attend to them** because by engaging in those dealings they were in violation of a transgression. **Rav Pappa said: We excommunicate them** for violating that transgression. **Rav Huna, the son of Rav Yehoshua, said: We also flog them with lashes.**^N **Rav Nahman said: The tanna taught in Evel Rabbati,**^N one of the minor tractates that deals primarily with the *halakhot* of mourning: **In what case is this statement said? It is in a case where she was divorced from marriage. However, when she was divorced from betrothal,**^H **she is repaid even directly by means of receiving the money herself, because, in that case, he is not yet accustomed to her**. Since they never shared intimacy, there is no concern that it will lead to transgression.

The Gemara relates: There was an incident concerning this divorced, betrothed man and his betrothed who came before Rava for judgment, and Rav Adda bar Mattana was sitting before him at the time. **Rava placed an intermediary to separate between them**. **Rav Adda bar Mattana said to Rava: But didn't Rav Nahman say: The tanna taught in Evel Rabbati that if she was divorced from betrothal she is paid directly? Rava said to him: This applies only in a case where they are not accustomed to each other. However, with regard to these people, we see that they are accustomed to each other, and therefore they must be separated.**

Some say that Rava did not place an intermediary to separate between them. **Rav Adda bar Mattana said to Rava: Let the Master place an intermediary to separate between them**. **Rava said to Rav Adda bar Mattana: But didn't Rav Nahman say: The tanna taught in Evel Rabbati that if she was divorced from betrothal she is paid directly? Rav Adda bar Mattana said to Rava: This applies only in a case where they are not accustomed to each other. However, with regard to these people, we see that they are accustomed to each other, and therefore they must be separated.**

MISHNA And these are deemed credible to testify in their majority with regard to what they saw in their minority. **A person is deemed credible to say: This is my father's handwriting,**^H and to say: **This is my teacher's handwriting; and to say: This is my brother's handwriting, even though he never saw their handwriting after reaching majority.**

Who went out with a *hinnuma* – שִׁינְאַה בְּהִינּוּמָא: An adult is deemed credible to testify that as a child he saw a bride go out with a *hinnuma*, and thereby entitle her to the 200-dinar marriage contract of a virgin, provided that he testifies with another witness who witnessed the event as an adult (Ran; Rosh; and contrary to the *Maggid Mishneh*; Rambam *Sefer Nashim*, *Hilkhot Ishut* 16:25; *Shulhan Arukh*, *Even HaEzer* 96:15).

To immerse in order to partake of *teruma* – לְטָבֹל לְאָכֹל: An adult is deemed credible to testify that as a child he saw someone immerse himself in order to eat *teruma*, and thereby confer the post-Temple presumptive status of priesthood upon that person, and it is permitted for him to eat *teruma* from produce from which one is obligated by rabbinic law to separate *teruma* (Rambam *Sefer Kedusha*, *Hilkhot Issurei Bia* 20:15; *Shulhan Arukh*, *Even HaEzer* 3:5 and *Hoshen Mishpat* 35:6).

It is prohibited for a person to teach his slave Torah – אָסוּר לְאָדָם שְׂלִימָד אֶת עַבְדּוֹ תּוֹרָה: A master may not teach his slave Torah, in accordance with the opinion of Rabbi Yehoshua ben Levi (Rambam *Sefer Kinyan*, *Hilkhot Avadim* 8:18; *Shulhan Arukh*, *Yoreh De'a* 267:7).

LANGUAGE

Beit haperas – בֵּית הַפְּרָס: There are differing opinions with regard to the derivation of this term. Rashi and *Tosafot* assert that it is from the term *paras*, meaning break, as a *beit haperas* is impure due to the bones in the grave that are broken by the plow. From the Rambam it appears that this term comes from the word *perisa*, spread, due to the fact that the impurity is spread across the entire field. Others claim that it comes from the Greek *παρος*, *paros*, meaning placed before, in the sense that the field is the courtyard of a grave. Yet others attribute it to the Greek *ἀπορος*, *aporos*, without passage, having no way in or out.

NOTES

Until here we would come on Shabbat – עַד כָּאֵן הֵיינו: This testimony is with regard to marking the two-thousand-cubit Shabbat boundary measured from the outskirts of the city, beyond which it is prohibited to walk on Shabbat.

And when there is a witness who saw the handwriting as an adult testifying with him – והוא שִׁישׁ גְּדוּל עִמּוֹ: According to most commentaries, this refers only to testimony about the handwriting of witnesses and the case of the *hinnuma*, which involve a certain monetary element, but not to other matters (see *Tosafot*; *Shita Mekubbetzet*). However, the Ran apparently holds that this *halakha* applies to the case of *teruma* as well, and from Rabbeinu Tam's comments in *Sefer HaYashar*, apparently, it applies to all the matters mentioned in the mishna.

But with regard to his brother's handwriting... say no – אָבֵל אָחִיו... אֵימָא לָא: Some early commentaries say that since the testimony about events that he witnessed in his childhood concerning his brother is deemed credible, the same would be true with regard to others (*Sefer Hattur*; *Razah*; *Ritva*). Others cite proof from the Jerusalem Talmud which states: Provided that it is with regard to matters about which they are familiar. Testimony about what they witnessed as minors is deemed credible exclusively with regard to close relatives with whose signatures they were familiar (Rosh; Meiri).

And perhaps he is the slave of a priest – וְדִלְמָא עֶבֶד כֹּהֵן: The *Ritva* explains that this concern was raised specifically here, and not in every case where a witness testifies with regard to one partaking of *teruma*; because it was a minor who witnessed the event, the concern is that he did not pay attention to detail, and consequently became confused between a priest and his slave.

זְכוּר הֵייְתִי בְּפִלּוּנֵי שִׁינְאַה בְּהִינּוּמָא וְרֵאשָׁה פְּרוּעָה. וְשִׁהִיָּה אִישׁ פְּלוּנִי יוֹצֵא מִבֵּית הַסֵּפֶר לְטָבֹל לְאָכֹל בְּתַרּוּמָה. וְשִׁהִיָּה חוֹלֵק עִמָּנוּ עַל הַגִּרְוֹן. וְהַמְקוֹם הַזֶּה בֵּית הַפְּרָס. וְעַד כָּאֵן הֵיינו בָּאֵין בְּשַׁבָּת.

Similarly, one is deemed credible to say: I was reminded of the wedding of so-and-so, who went out with a *hinnuma*,^H or with her hair uncovered in a manner typical of virgins, and therefore, her marriage contract is two hundred dinars; and to say that so-and-so would leave school to immerse in order to partake of *teruma*,^H and that he would share *teruma* with us at the threshing floor and therefore he is a priest. Similarly, one is deemed credible to say: This place is a *beit haperas*,^L a field with a grave that was plowed, scattering the bones, and rendering the field a place of uncertain ritual impurity; and to say: Until here we would come on Shabbat^N and thereby determine the Shabbat boundary.

אָבֵל אֵין אָדָם נֶאֱמָן לומר "דָּרֵךְ הִיָּה לְפִלוּנִי בְּמְקוֹם הַזֶּה, מֵעַמֵּד וּמִסֵּפֶר הִיָּה לְפִלוּנִי בְּמְקוֹם הַזֶּה."

However, a person is neither deemed credible to say: So-and-so had a path in this place; nor to say: So-and-so had a tract of land where they would perform the ritual of standing and sitting and deliver a eulogy in that place, thereby attesting that the land belongs to that person. The reason he is not deemed credible in those cases is that full-fledged testimony is required to remove property from the possession of its presumptive owner.

גַּמ' אָמַר רַב הוּנָא בְּרִיהַ דְּרַב יְהוֹשֻׁעַ: וְהוּא שִׁישׁ גְּדוּל עִמּוֹ.

GEMARA Rav Huna, son of Rav Yehoshua, said: And the mishna said that one is deemed credible to testify about handwriting he saw as a minor only when there is a witness who saw the handwriting as an adult testifying with him.^N

וְצִרְכָּא, דְּאֵי אֲשַׁמְעִינן אָבִיו – מִשּׁוּם דְּשִׁכִּיחַ גְּבִיָּה, אָבֵל רַבּוֹ – לָא. וְאֵי אֲשַׁמְעִינן רַבּוֹ – מִשּׁוּם דְּאֵית לִיהַ אִימְתִיָּה דְּרַבִּיָּה, אָבֵל אָבִיו – לָא.

And all of these cases – necessary, as one could not have been derived from the other. As, if the *tanna* had taught us the case of his father's handwriting, one might have thought that he is deemed credible due to the fact that he is often found with his father and is familiar with his handwriting; but with regard to his teacher's handwriting, no, he is not deemed credible. And if the *tanna* had taught us the case of his teacher's handwriting, one might have thought that he is deemed credible due to the fact that he has a sense of awe of his teacher and therefore pays attention to his handwriting; but with regard to his father's handwriting, no, he is not deemed credible.

וְאֵי אֲשַׁמְעִינן הֵי תַרְתֵּי, אָבִיו – דְּשִׁכִּיחַ גְּבִיָּה, וְרַבּוֹ – דְּאֵית לִיהַ אִימְתִיָּה, אָבֵל אָחִיו דְּלִית לִיהַ לָא הָא וְלָא הָא – אֵימָא לָא, קָא מִשְׁמַע לֵן: בִּין דְּקִיָּים שְׁטָרוֹת מְדַרְבְּנָן – הֵימְנוּהוּ רַבְּנָן בְּדַרְבְּנָן.

And if the *tanna* had taught us these two cases, one might have thought that he is deemed credible with regard to his father's handwriting due to the fact that he is often found with him, and his teacher's handwriting due to the fact that he has a sense of awe of him. But with regard to his brother's handwriting, which has neither this factor nor that factor, say no,^N he is not deemed credible. Therefore, the *tanna* teaches us: Since ratification of documents is required by rabbinic law, as by Torah law, the signatories are sufficient proof of a document's validity; the Sages deemed him credible to testify in cases that he witnessed as a minor in matters that are by rabbinic law, including the case of his brother.

זְכוּר הֵייְתִי בְּפִלּוּנֵי שִׁינְאַה בְּהִינּוּמָא וְרֵאשָׁה פְּרוּעָה. מֵאֵי טַעְמָא? בִּין דְּרַבּוֹ נְשִׂים בְּתוּלוֹת נִישְׂאוֹת, גְּלוּי מְלֵתָא בְּעִלְמָא הוּא.

And the mishna states that one is deemed credible to say: I was reminded of the wedding of so-and-so, who went out with a *hinnuma*, or with her hair uncovered. What is the reason that he is deemed credible? Since most women are married as virgins, her presumptive status is that of a virgin even without his testimony. His testimony with regard to what he saw as a minor is merely revealing of a matter already presumed true, not actual testimony.

וְשִׁהִיָּה אִישׁ פְּלוּנִי יוֹצֵא מִבֵּית הַסֵּפֶר לְטָבֹל לְאָכֹל בְּתַרּוּמָה. וְדִלְמָא עֶבֶד כֹּהֵן הוּא? מִסְּיַע לִיהַ לְרַבִּי יְהוֹשֻׁעַ בֶּן לֵוִי. דְּאָמַר רַבִּי יְהוֹשֻׁעַ בֶּן לֵוִי: אָסוּר לְאָדָם שְׂלִימָד אֶת עַבְדּוֹ תּוֹרָה.

And the mishna states that one is deemed credible to say that so-and-so would leave school to immerse in order to partake of *teruma*, and therefore he is a priest. The Gemara asks: And perhaps he is the slave of a priest,^N who is also eligible to partake of *teruma*. The Gemara notes: This mishna provides support for the opinion of Rabbi Yehoshua ben Levi, as Rabbi Yehoshua ben Levi said: It is prohibited for a person to teach his slave Torah.^H Since the testimony is that he was in school, apparently he is not a slave. Therefore, the fact that he partook of *teruma* indicates that he is a priest.

ולא? והתנא: לזה הימנו רבו, או שעשאו רבו

The Gemara asks: **And** may one **not** teach his slave Torah? **But isn't it taught** in a *baraita*: A slave whose master borrowed from him, or whose master made him

Perek II
Daf 28 Amud b

HALAKHA

לא יצא – Did not necessarily emerge to freedom – Even if a master borrows money from his slave, or appoints him steward of his property; or if the slave dons phylacteries or reads from the Torah before his master and the master does not protest, the slave is not thereby liberated, in accordance with the *baraita* (Rambam *Hilkhot Avadim* 8:17; *Shulhan Arukh, Yoreh De'a* 267:70).

One distributes *teruma* to a slave only if his master is with him – אין חולקין תרומה לעבד אלא – One does not distribute *teruma* to a slave at the threshing floor lest people mistakenly conclude that he is a priest (Rambam *Sefer Zera'im, Hilkhot Terumot* 12:22).

אפוטרופוס, או שהניח תפילין בפני רבו, או שקרא שלשה פסוקים בבית הכנסת – הרי זה לא יצא לחירות! התם דאיכרי עבד מדעתו, בי קאמרין – דקא נהיג ביה מנהג בני. "לטבול לאכול בתרומה". בתרומה דרבנן.

steward over his property, or who **donned phylacteries in his master's presence**, or who **read three verses from the Torah scroll in the synagogue, did not necessarily emerge to freedom.**^h Apparently, there are slaves who learn Torah to the extent that they are capable of reading the Torah in the synagogue, and conceivably that Torah is learned in school. The Gemara answers that there is no proof from the *baraita*, as **there** it is a case **where the slave read at his own initiative**, and conceivably he taught himself to read the Torah as well. **When we say** in the mishna that it is proof that he is a priest, it is in a case **where he treats him with treatment typical of children**, not slaves, and sends him to school. When the mishna states that he is deemed credible to testify that as a minor he saw that others went to **immerse** in order to partake of *teruma*, the Sages permit them only to partake of *teruma* by rabbinic law.

"ושיהיה חולק עמנו על הגורן". ודלמא עבד כהן הוא? תנן כמאן דאמר: אין חולקין תרומה לעבד אלא אם כן רבו עמו. דתנא: אין חולקין תרומה לעבד אלא אם כן רבו עמו, דברי רבי יהודה. רבי יוסי אומר: יכול הוא שיאמר: אם כהן אני – תנו לי בשביל עצמי, ואם עבד כהן אני – תנו לי בשביל רבי.

And the mishna states that he is deemed credible to say that they saw that so-and-so would share *teruma* with us at the threshing floor, and therefore he is a priest. The Gemara asks: **And perhaps he is the slave of a priest?** The Gemara answers: **We learned the mishna according to the one who says: One distributes *teruma* to a slave only if his master is with him.**^h Therefore, it is clear that the one sharing *teruma* with them was a priest, not a slave, as it is taught in a *baraita*: In the case of the son of a priest's wife and the son of a priest's maidservant who were intermingled at birth, both mothers go to the threshing floor together based on the principle: **One distributes *teruma* to a slave only if his master is with him**; this is the statement of Rabbi Yehuda. Rabbi Yosei says: It is possible that each will say: **If I am a priest, give me *teruma* for my own sake, and if I am the slave of a priest, give me *teruma* for the sake of my master.**

במקומו של רבי יהודה היו מעלין מתרומה ליוחסין, במקומו של רבי יוסי לא היו מעלין מתרומה ליוחסין.

The dispute in the *baraita* is based on the fact that **in the place of Rabbi Yehuda, they would elevate** one who eats *teruma* to the presumptive status of priesthood for the purpose of lineage. Therefore, he permitted distributing *teruma* to the slave of a priest only if his master is present, due to the concern that if he were given *teruma* directly, he would be elevated to priesthood. **In the place of Rabbi Yosei, they would not elevate from *teruma* to lineage.** Therefore, he permitted distributing *teruma* directly to the slave of a priest, as there is no concern that the slave would be mistaken for a priest.

תנא, אמר רבי אלעזר ברבי יוסי: מימי לא העדתי, פעם אחת העדתי, והעלו עבד לכהונה על פי. העלו סלקא דעתך? השתא, ומה בהמתן של צדיקים אין הקדוש ברוך הוא מביא תקלה על ידם – צדיקים עצמם לא כל שכן!

It is taught in a *baraita* that Rabbi Elazar, son of Rabbi Yosei, said: **In all my days, I never had occasion to testify in court. One time I testified, and the court elevated a slave to priesthood on the basis of my testimony.** The Gemara asks: **Does it enter your mind that they actually elevated the slave to priesthood? Now, just as with regard to the animals of the righteous the Holy One, Blessed be He, does not engender a pitfall on their account,** as the Gemara relates with regard to the donkey of Rabbi Pinhas ben Yair that it would not eat untithed produce (*Hullin* 7a), **all the more so will He not engender a pitfall on account of the righteous themselves.**

אלא, בקשו להעלות עבד לכהונה על פי. תוא באתריה דרבי יוסי, ואזל ואסהיד באתריה דרבי יהודה.

Rather, the Gemara emends the statement of Rabbi Elazar, son of Rabbi Yosei: **They sought to elevate a slave to priesthood on the basis of my testimony, but ultimately they did not.** Rabbi Elazar saw *teruma* distributed directly to the slave of a priest **in the place of Rabbi Yosei, where one does not elevate from *teruma* to priesthood, and he went and testified about what he saw in the place of Rabbi Yehuda, where one elevates from *teruma* to priesthood.**

שְׁהַמְקוּם הַזֶּה בֵּית הַפְּרָס הוּא – That this place is a *beit haperas* – The mishna states that a man is deemed credible to testify that when he was a child he saw that a certain place was a *beit haperas*, because the impurity of a *beit haperas* is by rabbinic law (Rambam *Sefer Shofetim*, *Hilkhot Edut* 1:3; *Shulhan Arukh*, *Hoshen Mishpat* 35:5).

A person who passes through a *beit haperas* may blow – מְנִיפָה אֶדָם בֵּית הַפְּרָס: If one is passing through a *beit haperas*, he may blow on the earth in his path and proceed, and if he does not encounter any bones and thereby does not become ritually impure, he is eligible to sacrifice the Paschal lamb, in accordance with the opinion of Rabbi Yehuda. Likewise, if the *beit haperas* has already been trampled, he may sacrifice the offering (Rambam *Sefer Korbanot*, *Hilkhot Korban Pesah* 6:8).

עַד כָּאן הָיִינוּ בָּאִין – Until here we would come – An adult is deemed credible to testify that he recalls that when he was a child, people would walk only until a certain point on Shabbat (Rambam *Sefer Zemanim*, *Hilkhot Shabbat* 28:19; *Shulhan Arukh*, *Orah Hayyim* 399:10).

מִשְׁפָּחָה זֹו בְּשֵׁרָה – This family is of unflawed lineage – One is deemed credible to testify that he remembers that when he was a child, people would give priestly gifts and *halla* to a certain priest. Likewise, he is deemed credible to testify that he remembers that as a child his father told him that a certain family was of flawed or unflawed lineage, or that a *ketzatta* ceremony was performed after the wedding of a certain man to a certain woman. Some authorities rule that the testimony of the witness is effective to establish the status of the family's lineage as well as to enable the priest to partake of *teruma*. Others say that only if two witnesses testify in this manner is a definitive determination reached based on their testimony and the family is deemed to be of flawed lineage. If he is one witness, his testimony is sufficient only to cast doubt with regard to the lineage of the family (*Kesef Mishne*, citing Ra'avad; Rambam *Sefer Shofetim*, *Hilkhot Edut* 1:3; *Shulhan Arukh*, *Hoshen Mishpat* 35:6).

וְשֵׁהַמְקוּם הַזֶּה בֵּית הַפְּרָס הוּא. מאי טעמא? בית הפרס דרבנן. דאמר רב יהודה אמר שמואל: מניפה אדם בית הפרס והולך. ורב יהודה בר אמי משמיה דרב יהודה אמר: בית הפרס שנידש – טהור. מאי טעמא – אי אפשר לעצם בשעורה שלא נידש ברגל.

And the mishna states that one is deemed credible to testify in his adulthood that as a minor he saw that this place is a *beit haperas*.^{HN} The Gemara asks: **What is the reason that he is deemed credible to testify what he witnessed as a minor?** The Gemara answers: The ritual impurity of a *beit haperas* is by rabbinic law,^N as Rav Yehuda said that Shmuel said: **A person who passes through a *beit haperas* may blow^H on the dust before taking each step, so that if there is a bone beneath the dust he will expose it, avoid it, and proceed.** One may not rely on that method of examination with regard to impurity by Torah law. **And Rav Yehuda bar Ami, in the name of Rav Yehuda, said: A *beit haperas* that has been trodden underfoot, creating a path, is pure. What is the reason? It is that it is impossible for a bone the size of a grain of barley, whose possible presence led to the decree of impurity, not to have been trodden underfoot and rendered smaller.** This presumption is possible only in cases of impurity by rabbinic law.

“עַד כָּאן הָיִינוּ בָּאִין בְּשַׁבָּת.” קסבר: תחומין דרבנן.

And the mishna states that one is deemed credible to testify, in his adulthood, that he saw as a minor: **Until here we would come^H on Shabbat.** The Gemara explains: This *tanna* maintains that the Shabbat boundaries, beyond which one may not go outside the city on Shabbat, are mandated by rabbinic law, and the Sages deemed him credible in matters of rabbinic law.

“וְאִין נֶאֱמַן לומר דרך היה לפלוגי במקום הזה, מעמד ומספר היה לפלוגי במקום הזה.” מאי טעמא? אפוקי ממונא – לא מפקינן.

And the mishna states that **one is neither deemed credible to say: So-and-so had a path in this place; nor to say: So-and-so had a tract of land where they would perform the ritual of standing and sitting and deliver a eulogy in that place.** The Gemara asks: **What is the reason that he is not deemed credible? It is due to the fact that we do not remove money from the possession of its presumptive owner on the basis of testimony about a matter that he witnessed as a minor.**

תנו רבנן: נאמן התינוק לומר כך אמר לי אבא: “משפחה זו טהורה, משפחה זו טמאה.” טהורה וטמאה סלקא דעתך?! אלא, משפחה זו בשרה, ומשפחה זו פסולה.

The Sages taught: **A child is deemed credible to say when he reaches majority that this is what my father told me when I was a minor: This family is pure, that family is impure.** The Gemara asks: **Does it enter your mind that his father said pure and impure? What do those concepts mean with regard to a family? Rather, his father said to him: This family is of unflawed lineage,^{HN} and this family is of flawed lineage.**

NOTES

Beit haperas – בית הפרס: There are different types of *beit haperas*, but the most common is a field where it is known that there is a grave, and which was consequently plowed. The concern is that bones from the dead body were scattered by the plow, which could render one ritually impure. Therefore, the Sages decreed that an area of one hundred square cubits around the grave would be impure. However, since the decree is based merely on a concern, and one could become impure only by means of impurity imparted by means of a tent (Rashi), and the scattered bones were not sufficiently large to impart impurity in that manner, the Sages relied on the pretext that the bones were trampled, or upon a cursory search, in order to deem anyone who passed through the field ritually pure. The simple understanding of the Gemara is that the testimony given is that the field is impure. However, *Tosafot* suggest that the witness is testifying how far the boundary of the *beit haperas* reaches, beyond which the field is pure. Since the impurity is by rabbinic decree, that testimony is deemed credible.

The impurity of a *beit haperas* is by rabbinic law – בית הפרס דרבנן: The early commentaries dispute whether this testimony is accepted completely or only partially. The *Rid* and *Tosafot*

maintain that the testimony is deemed credible with regard to what he saw as a child. This is in order to establish that areas previously presumed ritually impure are beyond the boundaries of the *beit haperas* and thereby can be rendered pure. However, the *Ritva*, among others, maintains that he is not deemed credible to purify an area presumed to be part of a *beit haperas*. Rather, he is deemed credible to establish that a certain area is a *beit haperas* and must be treated as ritually impure.

This family is of unflawed lineage – משפחה זו בשרה: The early commentaries dispute the nature of this testimony and its effect, as ostensibly, even were the father himself to make this claim, it would be considered merely the testimony of one person. The Ra'avad explains that these childhood memories are relied upon only with regard to suspicions about this family's lineage. However, if there were two witnesses, that is full-fledged testimony, which would establish that their lineage was flawed. According to the *Ran*, this testimony is effective only in a case where it is already known that the lineage of one of two families is flawed, but the identity of that family is unknown, as in that case the testimony can be viewed as merely revealing matters that are already known.

That we ate at the *ketzatta* – שאכלנו בקצצה: An adult is deemed credible to testify that as a child he ate fruit at a *ketzatta* ceremony held by a certain family to inform the public that one of its sons married a woman unfit for him. The Rema writes that a family has the right to reprimand one of its members who marries an unfit woman, and if he fails to heed their reprimand, they should stage a demonstration to apprise the public of his actions (*Shulhan Arukh, Even HaEzer 2:1*).

And with regard to all these testimonies, if he was a gentile – וכילן אם היה גוי: Although in all these cases an adult is deemed credible to testify with regard to events that he witnessed as a child, a convert or an emancipated slave is not deemed credible to testify with regard to events that he witnessed as a gentile or a slave respectively, in accordance with the unattributed opinion in the *baraita* (Rambam *Sefer Shofetim, Hilkhot Edut 14:4; Shulhan Arukh, Hoshen Mishpat 35:7*).

ו"שאכלנו בקצצה של בת פלוני לפלוני". ו"שהיינו מוליכים חלה ומתנות לפלוני כהן". על ידי עצמו, אבל לא על ידי אחר. וכילן, אם היה גוי ונתגייר, עבד ונשתחרר – אין נאמנים. ואין נאמן לומר "דרך היה לפלוני במקום הזה", "מעמד ומספר היה לפלוני במקום הזה". רבי יוחנן בן ברוקא אומר: נאמנים.

רבי יוחנן בן ברוקא אהייא? אילימא אסיפא – אפוקי ממונא הוא! אלא ארישא: וכולם אם היה גוי ונתגייר, עבד ונשתחרר – אין נאמנים. רבי יוחנן בן ברוקא אומר: נאמנים.

במאי קמפילגי? תנא קמא סבר: כיון דגוי הוא – לא היה דייק, ורבי יוחנן בן ברוקא סבר: כיון דדעתיה לאייגורי – מידק היה דייק.

מאי קצצה? דתנו רבנן: כיצד קצצה? אחד מן האחים שנשא אשה שאינה הוגנת לו, באין בני משפחה ומביאים תבית מליאה פירות, ושוברים אותה באמצע רחבה, ואומרים: אחינו בית ישראל, שמעו! אחינו פלוני נשא אשה שאינה הוגנת לו, ומתיראים אנו שמא יתערב זרעו בזרענו, בואו וקחו לכם דוגמא לדורות, שלא יתערב זרעו בזרענו. וזו היא קצצה שהתינוק נאמן להעיד עליה.

הדרן עלך האשה שנתארמלה

And he is deemed credible to say that we ate at the *ketzatta*^h that took place to publicize that the marriage of the daughter of so-and-so to so-and-so was unsuitable; and to say that we would bring *halla* and priestly gifts to so-and-so, who is a priest. In that case, he is deemed credible only to testify that he brought the *halla* by himself, but not by means of another, as one is certain of matters that he performed himself, even as a minor. However, he is not deemed credible to testify about actions performed by others when he was a minor. And with regard to all these testimonies, if he was a gentile^h and he converted, or a slave and he was liberated, they are not deemed credible to testify after their conversion and liberation about matters that transpired beforehand when they were disqualified as witnesses. And one is neither deemed credible to say that he remembers that when he was a minor, so-and-so had a path in this place; nor that so-and-so had a tract of land where they would perform the ritual of standing and sitting and deliver a eulogy in that place. Rabbi Yoḥanan ben Beroka says: They are deemed credible.

The Gemara asks: With regard to which clause in the *baraita* is Rabbi Yoḥanan ben Beroka disputing? If we say he is disputing the last clause of the *baraita*, which concerns testimony about a path or a place for mourning, it is a case of removing money from the possession of its presumptive owner. How could his testimony be deemed credible? Rather, Rabbi Yoḥanan ben Beroka is certainly disagreeing with the former clause of the *baraita*: And with regard to all these testimonies, if he was a gentile and he converted, or a slave and he was liberated, they are not deemed credible. It is with regard to that *halakha* that Rabbi Yoḥanan ben Beroka says: They are deemed credible.

The Gemara asks: With regard to what principle do they disagree? The Gemara explains that the first *tanna* maintains: Since he was a gentile, he was not exacting in scrutinizing the matter, as it was irrelevant to him. Therefore, even after he converted he is not deemed credible. And Rabbi Yoḥanan ben Beroka maintains: Since it was his intention to convert, he took interest in Judaism and he was exacting in scrutinizing the matter, and he is deemed credible.

The Gemara asks about a term employed in the *baraita*: What is the meaning of *ketzatta*? It is as the Sages taught: How is *ketzatta* performed? If a situation where one of the brothers who married a woman who is unsuited for him, due to flawed lineage, occurs, the family members come and bring with them a barrel full of fruits, and break it in the middle of a public square to publicize the matter, and they say: Our brothers, the house of Israel, listen. Our brother so-and-so married a woman who is unsuited for him, and we fear lest his descendants become intermingled with our descendants. In order to further underscore the matter, they continue: Come and take for yourselves a sample as an indicator for future generations, so that his descendants will not intermingle with our descendants. The gathering of the large crowd to take the fruit generates publicity. And this is the *ketzatta* that a child who witnessed it is deemed credible to testify about it when he is an adult.