

**מתני' אלו נערות שיש להן קנס: הבא על הממזרת, ועל הנתינה, ועל הכותית. הבא על הגיורת, ועל השבויה. ועל השפחה שנפדו ושנתגיירו ושנשתחררו פחותות מבנות שלש שנים ויום אחד.**

**MISHNA** These<sup>N</sup> are the cases of young women<sup>HB</sup> for whom there is a fine<sup>N</sup> paid to their fathers by one who rapes them: **One who engages in intercourse with a mamzeret,<sup>N</sup> or with a Gibeonite woman [netina],<sup>N</sup> who are given [netunim] to the service of the people and the altar (see Joshua 9:27), or with a Samaritan woman [kutit].<sup>N</sup> In addition, the same applies to one who engages in intercourse with a female convert,<sup>NH</sup> or with a captive woman, or with a maidservant, provided that the captives were ransomed, or that the converts converted, or that the maidservants were liberated when they were less than three years and one day old, as only in that case do they maintain the presumptive status of a virgin.**

NOTES

**אלו** – These: There was a variant version of the text before the early commentaries that read: And these are the young women. The Rosh justifies the version that appears in the mishna, as the phrase: And these, indicates continuation, and a new topic is addressed in this chapter. However, in the *Shita Mekubbetzet*, the version: And these, is explained. After the women who receive marriage contracts of one hundred or two hundred dinar were enumerated in the earlier chapters, the *tanna* cites an additional list comprised of women for whom there is a fine for rape. In the *Meleket Shlomo*, support for that contention is cited, as that accounts for the fact that the *tanna* included only young women who are of flawed lineage or otherwise unfit in this list. In addition to the women of unflawed lineage mentioned in the previous chapters, these women, too, are entitled to the fine.

**שיש להן קנס** – For whom there is a fine: In addition to the fine, the rapist pays compensation for humiliation and degradation as well. However, the *tanna* did not mention those payments here, as he based himself on the verse, which mentions only the fine in the context of a young woman who was raped (*Shita Mekubbetzet*).

**הבא על – הממזרת** – One who engages in intercourse with a mamzeret: In the *Shita Mekubbetzet*, the reason that the mishna is formulated in terms of the rapist: One who engages in intercourse with, instead of simply: These are the young women... a mamzeret, a Gibeonite, etc., is addressed. The explanation supports Rabbi Yoḥanan's opinion cited later that the mishna is referring to a case where the rapist was not forewarned. The formulation: One who engages in intercourse with a mamzeret, indicates that there was no forewarning.

**נתינה** – Gibeonite woman: The halakhic status of the descendants of the Gibeonites is addressed in several places in the Talmud, primarily in tractates *Yevamot* and *Kiddushin*. Nevertheless, several fundamental questions are not completely resolved and are addressed by the early and later commentaries. From Rashi's commentary here, it appears that the prohibition against the Gibeonites entering the congregation of Israel is not by Torah law but by rabbinic law in the broadest sense of the term, as everyone agrees that it is an early decree dating back to the time of Moses or King David. *Tosafot*, based on the context here and other sources, explain at length that this cannot be the case, and they assert that the prohibition is in fact by Torah law. There are also different opinions with regard to the nature of the prohibition. Some claim that the decree was that the Gibeonites were to be slaves and as such may not marry Jews. That is problematic, because if the legal status of a Gibeonite woman were that of a slave, she would not be entitled to a fine at all. In the Jerusalem Talmud it is explained that the Sages prohibited the Gibeonites from entering the congregation due to concerns about their flawed lineage, although they are still considered Jews. Others explain that the decree accords them the halakhic status of slaves, although fundamentally, they are not actual slaves. Most commentaries contend that Gibeonites are Canaanites, to whom the prohibition "You shall not marry them" (Deuteronomy 7:3) takes effect only after they converted.

Some early commentaries suggest an intermediate opinion.

They contend that the first generation of Gibeonites was forbidden by the Torah prohibition: "You shall not marry them"; however, that prohibition did not apply to their children. The extension of the prohibition to their descendants is a decree issued by Joshua or King David (*Talmid HaRa'ah*). *Talmidei Rabbeinu Yona* state, in the name of *Tosefot Rabbi Shimshon of Saens*, that the *tanna* lists a Gibeonite together with a mamzeret because they appear together in other contexts, much as a divorcée and a *halutza* are enumerated together as women forbidden to a priest. In both cases, one is prohibited by Torah law, i.e., the mamzeret and the divorcée, and one is prohibited by rabbinic law, i.e., the Gibeonite and the *halutza*. The Ritva responds that although there is similarity that would justify listing a divorcée and a *halutza* together, there is no similarity between a mamzeret and a Gibeonite. The only justification for listing them together is if they are both prohibited by Torah law.

**כותית** – Samaritan woman: The status of Samaritans is also subject to a dispute between *tanna'im*. There are two aspects to this matter. First, with regard to their status: Are they considered Jews at all? Second, how does one relate to them in practice? Some *tanna'im* hold that Samaritans are converts coerced by lions (see II Kings, chapter 17), whose conversion never took effect, and they are therefore full-fledged gentiles. The fact that they practice certain mitzvot of the Written Torah does not render them part of the congregation of Israel. Others maintain that they are actual converts. Although they did not initially convert with sincere motives, they later accepted Judaism. According to this opinion, they are full-fledged Jews, despite the fact that their practices deviate from normative *halakha*. Yet even those Sages who deem them Jews disagree with regard to the attitude toward them. Some contend that due to their treatment of the Jewish people, their idolatrous practices, and other reasons, they were penalized to the extent that not only are they kept at a distance, but they are treated as though they are not Jews at all, in the same manner as Jewish apostates. Others assert that it is prohibited to marry them due to concern about their lineage in terms of mamzerim, resulting from their lack of observance of *halakha*.

*Tosafot*, who discuss various aspects of this issue, maintain contrary to the opinion of Rashi that the *tanna* of this mishna holds in accordance with the opinion of Rabbi Meir that the Samaritans were genuine converts. Although Rabbi Meir himself holds that sanctions were imposed upon them with regard to certain monetary matters, he concedes that the fine for rape remains in place, so that the sinner would not profit from his wrongdoing. In the Jerusalem Talmud it is explicitly stated that the mishna is in accordance with the opinion of Rabbi Meir.

**הבא על הגיורת וכו'** – One who engages in intercourse with a female convert, etc.: The Rashash asks why the *tanna* did not list those women forbidden by a standard prohibition, e.g., a mamzeret, first, followed by those forbidden by a prohibition punishable by *karet*, e.g., one's sister. Why did he insert the convert between them? The Rashash explains that the *tanna* did so to underscore that although the lineage of a mamzeret, a Gibeonite, etc., is flawed, her status is unlike that of a convert or a woman taken captive, whose circumstances rob them of their presumptive status as a virgin.

HALAKHA

**אלו נערות** – These are the cases of young women, etc. – **וכו'**: With regard to one who rapes or seduces a virgin who was forbidden to him by a standard Torah prohibition or by a prohibition punishable by *karet*, if he was forewarned he is flogged and does not pay the fine. If he was not forewarned, he is not flogged, and he pays the fine (Rambam *Sefer Nashim*, *Hilkhot Na'ara Betula* 1:11; *Tur*, *Even HaEzer* 177).

**הבא על הגיורת וכו'** – One who engages in intercourse with a female convert, etc.: If a gentile converted, a woman taken captive was redeemed, or a maidservant was freed when they were three years old or less, they are entitled to the fine for rape (Rambam *Sefer Nashim*, *Hilkhot Na'ara Betula* 1:10; *Tur*, *Even HaEzer* 177).

BACKGROUND

**נערה** – A young woman: The *halakha* recognizes three distinct stages in the development of a woman from childhood to adulthood.

A female minor is a girl who has not yet reached puberty, which takes place at or about age twelve. As a minor, her father has the right to sell her to be a Hebrew maidservant or to betroth her to a man. If he does so, the result is a full-fledged betrothal in every sense. The father also receives his minor daughter's marriage contract and has the exclusive right to accept a bill of divorce on her behalf.

Once she reaches puberty, her legal status is that of a young woman. Although she is no longer a minor, she is not yet a full-fledged adult. Accordingly, her father retains certain authority over her.

Six months later, her legal status is that of a grown woman. From that point on, she is a fully independent adult, and her father no longer has any authority to make decisions on her behalf.

הבא על אחותו ועל אחות אביו ועל אחות אמו ועל אחות אשתו ועל אשת אחיו ועל אשת אחי אביו ועל הנדה - יש להם קנס, אף על פי שהן בהכרת - אין בהן מיתת בית דין.

גמ' הני נערות פסולות - אית להו קנס, בשיירות - לא?! הכי קאמר: אלו נערות פסולות שיש להם קנס: הבא על הממזרת ועל הנתינה ועל הכותית.

נערה - אין, קטנה - לא, מאן תנא?

Similarly, one who engages in intercourse with his sister, i.e., he rapes her, or with his father's sister, or with his mother's sister, or with his wife's sister, or with his brother's wife,<sup>N</sup> or with his father's brother's wife after they divorced, or with a menstruating woman, there is a fine paid. Although there is *karet* for engaging in relations with any of the women enumerated in this list, one is liable to pay the fine because there is no court-imposed capital punishment. In cases where there is a court-imposed death penalty, the rapist would be exempt from paying the fine.

**GEMARA** The Gemara wonders: Is it these young women with flawed lineage<sup>N</sup> listed in the mishna, for whom there is a fine paid if they are raped, while for young women with unflawed lineage, no, there is no fine? The Gemara explains that this is what the *tanna* is saying: These are the young women with flawed lineage for whom there is a fine paid if they are raped. This is not a comprehensive list; rather, the *tanna* enumerates those young women for whom a fine is paid despite their flawed lineage: One who has relations with a *mamzeret*, or with a Gibeonite woman, or with a Samaritan woman.

The mishna teaches the *halakha* with regard to a young woman, from which the Gemara infers: With regard to a young woman, yes, one is liable to pay the fine if he rapes her, but with regard to a minor, no,<sup>N</sup> one is not liable to pay the fine. Who is the *tanna*<sup>N</sup> who maintains that one is liable for raping a young woman but not a minor?

#### NOTES

Or with his brother's wife, etc. - ועל אשת אחיו וכו' - The early commentaries note that the women listed in the mishna as the wife of his brother or of his father's brother are either widowed or divorced, as one who has relations with a married woman is liable to receive the death penalty. Furthermore, they must have been widowed or divorced when they were betrothed, not married, as the fine is imposed only on one who raped or seduced a virgin young woman. A married woman can no longer be considered a virgin young woman even if she did not engage in conjugal relations. That is the understanding that emerges from a careful reading of Rashi. In the Jerusalem Talmud the following question is raised: The wife of one's childless deceased brother is a *yevama*, with regard to whom there is neither prohibition nor fine, as it is a mitzva to have relations with her. They explain that the reference is to the widow of a brother who had children with another woman. Therefore, there is no mitzva of levirate marriage, and the prohibition against relations with one's brother's wife remains intact. Rashi resolves this difficulty by explaining that she is a divorcée, with regard to whom there is no mitzva of levirate marriage.

These young women with flawed lineage, etc. - הני נערות פסולות וכו' - The Ritva reinforces this question, as he explains that the term: These, is typically exclusionary, meaning: These and not others. Other early commentaries, however, contend that the term does not always bear that connotation, especially in this case, where there is another list in the next mishna. See also previous note, with regard to the textual variant: And these. A different problem, raised by the Ramban, is that not all of these young women are unfit for marriage; converts, for example, are certainly not barred from entering the congregation of Israel. Therefore, some commentaries explain unfit in this context as referring to women whose lineage is flawed because they were born of a forbidden union or for a different reason. The Ramban himself explains, citing *Tosafot*, that the mishna is referring to a convert, redeemed captive, or liberated slave who was raped by a priest. Since they are forbidden to priests, through intercourse with a priest they are rendered unfit. See the Ritva, who writes contrary to that approach. Several later commentaries question that explanation as well.

*Tosafot* אין, קטנה לא - א young woman, yes; a minor, no - The Gemara could have inferred: Young women, yes; adult women, no, and then the mishna would be in accordance with the opinions of all the *tanna'im*. *Tosafot* and other early commentaries explain that the inference is based not on the language of the mishna but on the statement later in the Gemara (40b) that the unattributed mishna is in accordance with the opinion of Rabbi Meir. It is therefore reasonable to posit that this mishna follows the same approach. The Ramban explains that had the *tanna* intended merely to exclude grown women, he could have stated: And these are they for whom there is a fine, as it is clear that grown women receive no fine for rape. By specifying young women, he indicates that the *halakha* applies exclusively to young women and not to minors. In the *Shita Mekubbetzet* it is explained that in cases involving a dispute between *tanna'im*, the *tanna* of the mishna usually enters into greater detail. Therefore, the assumption is that he mentioned young women specifically to take a side in the dispute. The *Yam shel Shlomo* explains that had the *tanna* sought to exclude grown women, he could have written: And these are the virgins, as adult women are not considered full-fledged virgins, since in the course of their physical development their hymens do not remain completely intact.

Who is the *tanna* - מאן תנא - *Tosafot* at the beginning of tractate *Moed Katan* state that typically, the Gemara does not ask: Who is the *tanna*, with regard to a mishna that is in accordance with the opinion of Rabbi Meir, as there is a principle that opinions cited in an unattributed mishna are recognized as those of Rabbi Meir. Still, the question is raised here, and the mishna is attributed to Rabbi Meir. In the *Shita Mekubbetzet* it is explained that since the entire mishna is not in accordance with the opinion of Rabbi Meir, as proven later from the *halakha* of one who rapes his daughter, and according to some commentaries from the *halakha* of a Samaritan woman as well, it was therefore necessary to assert that the primary *halakha* in the mishna is in fact in accordance with the opinion of Rabbi Meir. Other commentaries cite this as proof that the *halakha* is not in accordance with the opinion of Rabbi Meir, as the Gemara's question indicates that this is not an unattributed mishna, in accordance with which the *halakha* is ruled, but the opinion of an individual Sage (see *Mishne LaMelekh*).

יש לה מכר – The father of a minor girl may sell her as a Hebrew maidservant from the day of her birth until she completes her twelfth year and grows two pubic hairs. However, once she has grown two pubic hairs, he may no longer sell her (Rambam *Sefer Kinyan, Hilkhoh Avadim* 4:1).

מתי יש לה קנס – A virgin is entitled to a fine for rape from the age of three years and one day old until puberty, in accordance with the opinion of the Rabbis. Although the unattributed mishna is in accordance with the opinion of Rabbi Meir and as a rule the *halakha* is ruled accordingly, the Gemara indicates that the mishna reflects an individual opinion. That is the ruling of Rif, the Rambam, and the Rosh. Rabbeinu Hananel and the Ra'avad rule in accordance with the unattributed mishna (Rambam *Sefer Nashim, Hilkhoh Na'ara Betula* 1:8; *Shulhan Arukh, Even HaEzer* 177:1).

NOTES

והני בני קנסא ניהו – Rashi indicates that this marks the beginning of a new discussion in which the Gemara analyzes the mishna itself. In the *Shita Mekubbetzet* there is an attempt to tie this matter to the previous one. Had the Gemara explained that the mishna is dealing only with the practical *halakha*, the mishna could be explained as teaching that the young women of flawed lineage are not entitled to the fine by Torah law. The Rabbis instituted that the fine should be paid, for the following reason: So that a sinner will not profit. After asserting that the mishna is dealing with Torah law, and that the fine is paid to the father of a young woman and not the father of a minor, this must be reconciled with the verses in the Torah.

I read here: “And to him she shall be a wife” – איקרי – The Ritva contends that this difficulty does not stem from the verse itself, as the verse can be explained in the opposite manner, i.e., that a rapist must marry the woman he raped even if she is unfit to marry him. The *Tosefot Rid* cites the Gemara later (40a), where the question is raised: Why doesn't the positive mitzva to marry the young woman override the prohibition against marrying her? Rather, the difficulty is based primarily on the interpretation of the Sages that “she shall be a wife” refers to a woman suitable for him.

If one engaged in forced intercourse with a young woman and she died – בא עליה ומתה – If a young woman raped by a man died before he stood trial, he is exempt from paying the fine, as per the opinion of Abaye (Rambam *Sefer Nashim, Hilkhoh Na'ara Betula* 1:15; *Tur, Even HaEzer* 177).

אמר רב יהודה אמר רב: רבי מאיר היא. דתנאי: קטנה, מבת יום אחד ועד שתביא שתי שערות – יש לה מכר ואין לה קנס. ומשתביא שתי שערות ועד שתביא קנס ואין לה מכר. דברי רבי מאיר. שהיה רבי מאיר אומר: כל מקום שיש מכר – אין קנס. וכל מקום שיש קנס – אין מכר.

Rav Yehuda said that Rav said: The *tanna* is Rabbi Meir, as it is taught in a *baraita*: With regard to a minor from the age of one day old until she grows two pubic hairs, there is the possibility of sale for her,<sup>h</sup> as her father may sell her as a Hebrew maidservant, but there is no fine paid for her if she is raped. And once she grows two pubic hairs, from that point until she matures into a grown woman there is a fine for her, as during that period she is a young woman, with regard to whom the Torah law of a rapist and a seducer applies, but there is no possibility of sale for her. Once she grows two hairs she is no longer under her father's control and can no longer be sold. This is the statement of Rabbi Meir, as Rabbi Meir would state a principle: Any place where there is a sale, there is no fine; and any place where there is a fine, there is no sale.

וחכמים אומרים: קטנה, מבת שלש שנים ויום אחד ועד שתביא שתי שערות – יש לה קנס. קנס אין מכר לא! אימא:

And the Rabbis say: With regard to a minor from the age of three years and one day old until she matures into a grown woman, there is a fine for her.<sup>h</sup> The Gemara asks: Is that to say that a fine, yes, there is, but a sale, no, there is not? Do the Rabbis maintain that the father has no right to sell his minor daughter? The Gemara emends the text: Say:

Perek III  
Daf 29 Amud b

אף קנס במקום מכר.

There is a fine even in a place where there is sale. That is, not only can a minor girl from the age of three be sold until she matures, but she also receives payment of the fine.

והני בני קנסא ניהו? ואמאי איקרי כאן ולו תהיה לאשה – אשה הראויה לו אמר ריש לקיש: “נערה”, “נערה”, “הנערה”; חד – לגופיה, חד – לאתניי חייבי לאוין, וחד – לאתניי חייבי כריתות.

S The Gemara questions the basic *halakha* that one who rapes young women of flawed lineage is liable to pay the fine: **And are these young women entitled to the fine?**<sup>N</sup> But why? I read here with regard to a rapist: “And to him she shall be as a wife” (Deuteronomy 22:29),<sup>N</sup> from which the Sages derived that only a wife who is suitable for him is eligible to receive payment of a fine from a rapist. Reish Lakish said that one verse states: “If a man finds a young woman” (Deuteronomy 22:28), and another states: “And he shall give to the father of the young woman” (Deuteronomy 22:29). This is tantamount to three mentions: **Young woman, young woman, the young woman**, as the superfluous definite article is interpreted as a third mention of the term. **One** mention is required to teach the matter itself, that one who rapes a young woman is liable to pay a fine; **and one** is to include payment of a fine to those young women for whose rape one is liable for violating prohibitions; **and one** is to include payment of a fine to those young women for whose rape one is liable to receive *karet*.

רב פפא אמר: “בתולה”, “בתולות”, “הבתולות” חד – לגופיה, וחד – לאתניי חייבי לאוין, וחד – לאתניי חייבי כריתות.

Rav Pappa said: This is derived from the *halakha* of the seducer, as the verses state: “And if a man seduce a virgin ... he shall weigh money like the dowry of the virgins” (Exodus 22:15–16). This is tantamount to three mentions: **Virgin, virgins, the virgins**. **One** mention is required to teach the matter itself; **and one** is to include those young women for whose rape one is liable for violating prohibitions; **and one** is to include those young women for whom one who rapes them is liable to receive *karet*.

ורב פפא מאי טעמא לא אמר כריש לקיש? ההוא מיבעי ליה לכדאביי. דאמר אביי: בא עליה ומתה – פטור, שנאמר “ונתן לאבי הנערה” – לאבי נערה ולא לאבי מתה.

The Gemara asks: **And Rav Pappa, what is the reason that he did not cite the source as Reish Lakish did?** The Gemara answers: **That derivation from the three instances of the term young woman is required by him to teach in accordance with that which Abaye said, as Abaye said:** If one engaged in forced intercourse with a young woman and she died<sup>h</sup> before he stood trial, he is exempt from paying the fine, as it is stated: “And he shall give to the father of the young woman” (Deuteronomy 22:29). From the fact that the verse does not simply say: To her father, it is inferred: **To the father of the young woman and not to the father of a dead woman**. He is liable only if the young woman is still alive.

BACKGROUND

Verbal analogy – גזירה שוה: This is a fundamental talmudic principle of biblical interpretation, appearing in all standard lists of exegetical principles: If the same word or phrase appears in two places in the Torah, and a certain halakha is stated explicitly in one of these places, one may infer, on the basis of a verbal analogy, that the same applies in the other case as well. Consequently, inferences drawn on the basis of verbal analogy rely on verbal identity rather than on conceptual similarity. For example, the Torah states concerning those convicted of certain types of sorcery: "Shall be put to death; they shall stone them with stones; their blood shall be upon them" (Leviticus 20:27). Since this verse employs the expression "their blood shall be upon them" when speaking of death by stoning, the Talmud infers by verbal analogy that in all cases where this expression is used, the punishment is capital punishment by stoning.

Generally, inferences are drawn through verbal analogy only if the same word or phrase appears in both of the verses being compared, although verbal analogies are occasionally drawn even if the terms are not identical, if their meanings are similar.

HALAKHA

That this should be like the dowry of the virgins – שיהא זה כמוהו הבתולות: One who seduces or rapes a virgin young woman must pay a fine of fifty silver sela (Rambam Sefer Nashim, Hilkhhot Na'ara Betula 1:1).

A woman who is suitable for him to sustain – אשה הראויה לקיימה: Although the Torah states that a rapist is obligated to marry his victim, if she is forbidden to him, even if the prohibition is due to a positive mitzva or by rabbinic law, he may not marry her, in accordance with the opinion of Rabbi Shimon ben Menasya (see Kesef Mishne and Lehem Mishne). The Halakhot Gedolot states that this halakha is based on the later mishna (40a) (Rambam Sefer Nashim, Hilkhhot Na'ara Betula 1:5; Shulhan Arukh, Even HaEzer 177:4).

וריש לקיש מאי טעמא לא אמר רב פפא? ההוא מיבעי ליה לגזירה שוה. דתנא: "בסקף ישקול כמוהו הבתולות" – שיהא זה כמוהו הבתולות, ומוהו הבתולות כוה. וריש לקיש נמי, מיבעי ליה לכדאביי, ורב פפא נמי מיבעי ליה לגזירה שוה!

אלא שיתא קראי בתיבי: "נערה" "נערה" "הנערה" "בתולה" "בתולות" "הבתולות", תרי – לגופיהו, חד – לכדאביי, וחד – לגזירה שוה. איתרו ליה תרי, חד – לאתויי חייבי לאוין, וחד – לאתויי חייבי כריתות.

ולאפוקי מהאי תנא: דתנא: "ולו תהיה לאשה", שמעון התימני אומר: אשה שיש בה הויה. רבי שמעון בן מנסאי אומר: אשה הראויה לקיימה.

מאי בינייהו? אמר רבי יודא: ממזרת ונתניה איכא ביניהו. למאן דאמר יש בה הויה – הא נמי יש בה הויה, למאן דאמר ראויה לקיימה – הא אינה ראויה לקיימה.

The Gemara asks: And Reish Lakish, what is the reason that he did not cite the source as Rav Pappa did? The Gemara answers: That derivation from the three instances of the term virgin is required by him to derive a verbal analogy,<sup>8</sup> as it is taught in a baraita that it is written with regard to a seducer: "He shall weigh [yishkol] money like the dowry of the virgins" (Exodus 22:16), from which it is derived that this fine of a seducer should be a sum of fifty sela like the dowry of the virgins<sup>9</sup> specified in the case of a rapist; and the dowry of the virgins must be paid in sela like this fine of the seducer. Therefore, Reish Lakish holds that no additional matters may be derived from the term virgins. The Gemara asks: And for Reish Lakish too, isn't it required by him to teach in accordance with that which Abaye said? And similarly, for Rav Pappa, isn't it required by him to derive a verbal analogy?

Rather, there are six verses written,<sup>10</sup> and both Reish Lakish and Rav Pappa derive matters from all of them. In the two passages discussing the rapist and the seducer, it is written: Young woman, young woman, the young woman; virgin, virgins, the virgins. Two mentions are required to teach the matters themselves, the basic halakhot of a rapist and a seducer; one mention is needed to teach in accordance with that which Abaye said; and one mention is necessary to derive a verbal analogy with regard to the dowry of virgins. Two mentions of the term remain for him; one is to include those young women for whose rape one is liable for violating prohibitions, and one is to include those young women for whom one who rapes them is liable to receive karet. Reish Lakish and Rav Pappa do not disagree; the derivation of each complements that of the other.

The Gemara comments: And the mishna comes to exclude the opinion of this tanna,<sup>11</sup> as it is taught in a baraita that it is written: "And to him she shall be [tithye] as a wife" (Deuteronomy 22:29). Shimon HaTimni says: This is referring to a woman for whom there is betrothal [havaya].<sup>12</sup> If one betroths a woman with whom relations are punishable by karet, the betrothal does not take effect. Rabbi Shimon ben Menasya says: This is referring to a woman who is suitable for him to sustain,<sup>13</sup> whom he need not divorce due to her flawed lineage.

The Gemara begins its analysis of the baraita with the question: What is the practical difference between the statements of Shimon HaTimni and Rabbi Shimon ben Menasya? The Gemara explains that Rabbi Zeira said: The difference between their opinions is with regard to a mamzeret or a Gibeonite woman, or any other woman who is forbidden but for whom betrothal takes effect. According to the one who said that the criterion is whether there is betrothal, for this woman there is also betrothal. If a Jewish man betroths a mamzeret or a Gibeonite woman, although it is prohibited to do so, the betrothal takes effect. However, according to the one who said that the criterion is whether the woman is suitable for him to sustain, this woman is not suitable for him to sustain, since due to the prohibition he is obligated to divorce her.

NOTES

There are six verses written – שיתא קראי בתיבי: In other words, there is no dispute between Reish Lakish and Rav Pappa. Each cited different aspects of the same exposition. One of them specified the terms that include those liable for violating prohibitions, while the other explained the terms that include those liable to receive karet (Ritva).

And to exclude the opinion of this tanna – ולאפוקי מהאי תנא: The Tosafot Yeshanim and the Rosh maintain that the mishna is actually excluding the opinions of two tanna'im, Shimon HaTimni and Rabbi Shimon ben Menasya, and the phrase: This tanna, is referring to the tanna who taught that baraita in which their opinions were cited. However, see the alternative ver-

sions of the text for readings that do not require this somewhat implausible interpretation.

For whom there is betrothal [havaya] – שיש בה הויה: The term havaya is taken from the term used in the Torah: "And if a priest's daughter be married [tithye] to a common man" (Leviticus 22:12); "And to him she shall be [tithye] as a wife" (Deuteronomy 22:29). Havaya, which literally means being, means that the betrothal is effective. Although there is a fundamental dispute between amora'im in tractate Temura with regard to whether performance of a prohibited action can lead to a halakhically valid result, it is clear from the verses that in certain cases betrothal is effective even though it contravenes Torah law. This is true

even according to the extreme opinion of Rabbi Akiva, who says that as a rule, even in cases where one merely violated a prohibition, a child born of that union is a mamzer. In this regard, there are many different levels of prohibition and circumstances that affect betrothal differently. Clearly, betrothal of an object or an animal does not take effect. Similarly, since betrothal and marriage are relevant only within the Jewish people, betrothal of a gentile or a slave does not take effect. With regard to other prohibitions there are differences of opinion as to whether the prohibition prevents the betrothal from taking effect, or whether it takes effect only in the sense that it is prohibited for the woman to marry another without first receiving a bill of divorce.

And according to Rabbi Akiva – וְלִרְבִּי עֲקִיבָא – *Tosafot* note that this question is irrelevant according to the opinion of Rabbi Shimon HaTimni, as the Gemara in *Yevamot* states explicitly that he disagrees with Rabbi Akiva in this regard and maintains that betrothal takes effect in cases of women for whom one who rapes them is liable for violating a prohibition. Instead, the difficulty is in accordance with the opinion of Rabbi Shimon ben Menasya, whose opinion the Gemara seeks to reconcile with that of Rabbi Akiva. The Ramban cites a similar answer in the name of Rabbi Avraham Av Bet Din, and other early commentaries explain likewise. The Ra'ah, however, maintains that the question here is not how to reconcile the opinions of these *tanna'im* with that of Rabbi Akiva. Rather, the Gemara is asking: According to Rabbi Akiva, is there a difference between the two interpretations: A woman for whom there is betrothal, and: A woman who is suitable for him to sustain?

He creates *hillulin* – חִילּוּלִין הוּא עוֹשֶׂה – *Tosafot* discuss a different aspect of this dilemma at length: Is *mamzer* status of offspring tied to the question of whether or not there is *havaya*, i.e., whether or not betrothal takes effect, between the man and the woman? They maintain that according to most opinions, *mamzer* status is causally related to the betrothal taking effect. In other words, in any case where betrothal does not take effect, the offspring is a *mamzer*. Admittedly, there are exceptions to this principle, as the child of a Jewish man and a gentile woman or a maidservant is not a *mamzer*. However, that is because no relationship outside the congregation of Israel leads to *mamzer* status, which exists only with regard to Jews. See *Tosafot* for their proof that not everyone agrees that there is necessarily a link between the betrothal not taking effect and *mamzer* status.

וְלִרְבִּי עֲקִיבָא, דְּאָמַר: אִין קִידוּשִׁין תּוֹפְסִין בְּחִיבֵי לְאוּיָן, מַאי בִּינְיָהוּ? אִיכָא בִּינְיָהוּ אֲלִמְנָה לְכַהֵן גְּדוּל, כְּרַבִּי סִימַאי, דְּתַנָּא, רַבִּי סִימַאי אָמַר: מִן הַכֹּהֵן עוֹשֶׂה רַבִּי עֲקִיבָא מִמְזוּרִין, חוּץ מֵאֲלִמְנָה לְכַהֵן גְּדוּל, שְׁהָרִי אִמְרָה תוֹרָה "לֹא יִקַּח... וְלֹא יִחַלְלֶה" – חִילּוּלִין הוּא עוֹשֶׂה, וְאִין עוֹשֶׂה מִמְזוּרִין.

The Gemara asks: **And according to Rabbi Akiva,<sup>N</sup> who said: Betrothal does not take effect for women for whose rape one is liable for violating prohibitions, what is the difference between them?** According to his opinion, betrothal of a *mamzeret* does not take effect either. The Gemara answers: The difference **between their statements is the case of a widow raped by a High Priest, in accordance with the opinion of Rabbi Simai, as it is taught** in a *baraita* that **Rabbi Simai says: Rabbi Akiva deems children from all illicit relations *mamzerim*, except for a child born from a widow to a High Priest, as the Torah said: "A widow and a divorcée he shall not take... and he shall not profane [*yeḥallel*] his seed among his people"** (Leviticus 21:14–15), from which it is derived: If he has a child with a widow **he creates *hillulin*,<sup>N</sup> i.e., the male offspring of those relations is a *halal*, disqualified from the priesthood, and the female offspring is a *halala*, unfit to marry a priest, but he does not create *mamzerim*.** Apparently, in that case, the betrothal does take effect.

וְלִרְבִּי יֵשֶׁבֶב, דְּאָמַר: בּוֹאוּ וְנִצּוּחַ עַל עֲקִיבָא בֶן יוֹסֵף, שְׁהִיָּה אָמַר: כָּל שְׂאִין לוֹ בֵּיאָה בְּיִשְׂרָאֵל הוֹלֵד מִמְזוּר, מַאי בִּינְיָהוּ? אִיכָא בִּינְיָהוּ

The Gemara asks: **And according to Rabbi Yeshevav, who said: Come, let us scream at Akiva ben Yosef, who is proliferating *mamzerim*, as he would say: With regard to anyone who does not have the possibility of permitted relations in the Jewish people, including a widow with a High Priest, the offspring is a *mamzer*, what is the difference between their opinions, between the one who said that a fine is paid to women with whom the betrothal takes effect and the one who said that a fine is paid to women suitable for one to sustain?** Rabbi Yeshevav maintains that betrothal does not take effect even in the case of a widow to a High Priest. The Gemara answers: **There is a difference between them with regard to**

### Perek III

#### Daf 30 Amud a

חִיבֵי עֲשֶׂה – מִצְוֵי וְאֲדוּמִי.

intercourse with women for which one is liable for violating a positive mitzva,<sup>N</sup> e.g., an Egyptian convert and an Edomite convert (see Deuteronomy 23:8–9). If he raped a first- or second-generation Egyptian or Edomite convert, even Rabbi Yeshevav agrees that the child is not a *mamzer*, as the betrothal takes effect. On the other hand, it is prohibited for him to sustain her as a wife.

הִנִּיחָא לְרַבִּי יֵשֶׁבֶב, אִי לְאִפּוּקִי מִטְעָמָא דְּרַבִּי סִימַאי קָאָתִי – שְׁפִיר, אֲלֵא אִי טְעָמָא דְּנִפְשִׁיהּ קָאָמַר, כָּל שְׂאִין לוֹ בֵּיאָה בְּיִשְׂרָאֵל הוֹלֵד מִמְזוּר – וְאִפּוּלּוֹ חִיבֵי עֲשֶׂה, מַאי בִּינְיָהוּ?

The Gemara asks: **This works out well according to Rabbi Yeshevav if he is coming to reject the opinion of Rabbi Simai.** If Rabbi Yeshevav merely takes issue with Rabbi Simai, who said that all offspring of forbidden relations are *mamzerim* according to Rabbi Akiva except for those resulting from relations between a widow and a High Priest, then it may well be explained that Rabbi Yeshevav holds that Rabbi Akiva rules that betrothal does not take effect and that there is *mamzerut* when one violates the prohibitions of the priesthood. **However, if he is stating his own opinion, independent of Rabbi Simai's statement, his ruling is more comprehensive and leads to the conclusion that in the case of relations with anyone who does not have the possibility of permitted relations among the Jewish people, the child is a *mamzer*, and this is true even of women for relations with whom one is liable for violating positive mitzvot, e.g., Egyptian or Edomite converts.** In that case, **what is the difference between the opinions of Shimon HaTimni and Rabbi Shimon ben Menasya?**

Intercourse with women for which one is liable for violating a positive mitzva – חִיבֵי עֲשֶׂה: The category of positive mitzvot includes all prohibitions that are formulated as a positive mitzva rather than using a negative phrase, e.g.: You may not, lest, do not, take care. One who transgresses and fails to fulfill the command has violated a positive mitzva. In the beginning of tractate *Yevamot* and elsewhere, the Gemara discusses the relative significance of positive mitzvot and prohibitions. There is a fundamental difference between them with regard to punishment: Prohibitions are generally punishable by lashes, whereas positive mitzvot are not. Sexual relations with an Egyptian or Edomite convert are forbidden by a positive mitzva, as explained by Rashi, but there are also other examples of relations forbidden by a positive mitzva. As the Gemara will immediately explain, relations between a non-virgin and a High Priest are also forbidden by a positive mitzva.