

NOTES

Due to virtuous women and due to licentious women – משום צנועות ומשום פרוצות: Most commentaries explain that a virtuous woman is one who is concerned that perhaps there was some extenuating circumstance and she will therefore remain unmarried indefinitely, despite the fact that the failure of the husband to return was obviously due to circumstances not beyond his control and clearly the courts would permit her to remarry. In contrast, licentious women are those who remarry despite the clear impression, although it falls short of actual testimony, that the husband's failure to arrive is attributable to circumstances beyond his control (*Tosafot*; Ritva).

The Rashba writes that a licentious woman is one who, without basis, resolutely concludes that her husband's failure to arrive was not due to unavoidable circumstances, and she marries without seeking to ascertain the truth.

Rabbi Aharon HaLevi and others explain that the term licentious is a misnomer, as the court permitted them to remarry. Relative to the virtuous women, who take special precautions to avoid any possible impropriety, these women are characterized as licentious.

וְלָמָּא אֲוֹנָסָא דְשִׁבְיָה שְׂאֵנִי, דְּבִיּוֹן דְּאִיבְעֵי לִיהּ לְאַתְנֻוּי וְלֹא אֲתַנֵּי – אִיהוּ דְּאַפְסִיד אֲנַפְשִׁיהּ!

The Gemara rejects that proof: **And perhaps unavoidable circumstances that are common and could be anticipated, e.g., the ferry is located at the other side of the river, are different, since he should have stipulated that exception when establishing the condition, and he did not stipulate it, he brought the failure to arrive upon himself.** Although he regrets it now, at the time his intent was that even if the condition were fulfilled due to that circumstance, the divorce would take effect. In contrast, however, if the condition is fulfilled due to an uncommon circumstance that could not have been anticipated, the divorce would not take effect.

אֵלָּא רַבָּא סְבָרָא דְנַפְשִׁיהּ קָאָמַר, מְשֻׁם צְנוּעוֹת וּמְשֻׁם פְּרוּצוֹת; מְשֻׁם צְנוּעוֹת, דְּאִי אָמְרַת לֹא לְהוּי גַּט

Rather, Rava is stating a *halakha* based on his own reasoning. Circumstances beyond one's control are not a factor in determining whether or not a condition is fulfilled, and this is **due to virtuous women and due to licentious women.**<sup>N</sup> The Gemara articulates: There is concern **due to virtuous women is, as, if you said: Let it not be a bill of divorce, if the reason that the condition was not fulfilled was due to circumstances beyond his control,**

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זִמְנִין דְּלֹא אָנִים, וְסִבְרָה דְּאָנִים, וּמִיַּעֲגָנָא וְיִתְבָּה. וּמְשֻׁם פְּרוּצוֹת, דְּאִי אָמְרַת לֹא לְהוּי גִּטָּא, זִמְנִין דְּאָנִים וְאָמְרַה לֹא אָנִים, וְאִזְלָא וּמִיַּנְסָבָא, וְנִמְצָא גַּט בְּטֵל וּבְנֵיהּ מִמְזוּרִים.

then sometimes, where he was not detained unavoidably but he fulfilled the condition willingly to effect the divorce, and the wife thinks that he was detained unavoidably, she will sit deserted, forever unable to remarry. **And the concern due to licentious women is, as, if you said: Let it not be a bill of divorce, then sometimes, when he was detained unavoidably and she thinks that he was not detained unavoidably, she goes and remarries. And the result will be that the bill of divorce is void, and her children from the second marriage will be mamzerim, products of an adulterous relationship.**

וּמִי אִיבָא מִיָּדִי דְּמִדְּאוּרֵייתָא לֹא לְהוּי גַּט וּמְשֻׁם צְנוּעוֹת וּמְשֻׁם פְּרוּצוֹת שְׂרִינֵן אִשְׁתּוּ אִישׁ לְעֵלְמָא?!

The Gemara questions the following premise: By Torah law, a condition that is unfulfilled due to circumstances beyond one's control is considered fulfilled, and it is merely by rabbinic ordinance that it is deemed unfulfilled: **And is there a matter<sup>N</sup> where by Torah law it is not a bill of divorce, but due to virtuous women and due to licentious women we permit a married woman to others?**

אִין, כֹּל דְּמִקְדָּשׁ – אִדְעָתָא דְּרַבְּנֵן מְקַדְּשׁ, וְאִפְקַעֲנֵיהּ רַבְּנֵן לְקִידוּשֵׁי מִינְיָהּ.

The Gemara answers: **Yes, it is within the authority of the Sages to institute an ordinance freeing the woman from the marriage, as anyone who betroths a woman, betroths her contingent upon the agreement of the Sages, and in certain cases, such as those mentioned above, the Sages invalidated his betrothal<sup>N</sup> retroactively.**

NOTES

**And is there a matter** – וּמִי אִיבָא מִיָּדִי: The commentaries ask: Why is this difficulty not raised earlier, before the reason for Rava's opinion is analyzed? Some suggest that at that stage the thinking was that although the fact that unavoidable circumstances are halakhically significant is derived from the passage in the Torah with regard to a betrothed young woman who was raped (Deuteronomy 22:25–26), perhaps Rava holds that the claim of unavoidable circumstances is not relevant in all cases, and it has no legal standing with regard to bills of divorce. However, once it became clear that Rava holds that it is only by rabbinic law that those circumstances are ignored, and the bill of divorce is ruled effective, the question is raised: How can the Sages rule that a woman married by Torah law is divorced?

**The Sages invalidated his betrothal** – אִפְקַעֲנֵיהּ רַבְּנֵן לְקִידוּשֵׁי מִינְיָהּ: This *halakha* that the Sages retroactively invalidated the betrothal is applied only in a few specific cases throughout

the Talmud, and is not a panacea to be applied in every case that a problem arises, even if the problem is a severe one, e.g., a deserted wife.

Many early commentaries state that this solution is applied only in cases where there is a bill of divorce of some kind (Ramban; Rashba; Rabbi Aharon HaLevi). The Meiri proves that in certain cases, when halakhic problems arise with regard to the betrothal itself, the Sages used this procedure to invalidate it.

The early and later commentaries discussed at length the precise mechanism through which the Sages invalidate the betrothal retroactively. Some explain that just as a man can betroth a woman and stipulate that it will take effect contingent on the approval of his father, so too, in every act of betrothal there is an implicit stipulation: This betrothal will take effect contingent upon the approval of the Sages, or on the condition that the Sages do not object to it (Ritva).

Rashi goes a step further and asserts that the betrothal takes effect only when the Sages actively ratify it. Apparently, that is the opinion of *Tosafot*, who explain that this is the reason that the groom adds, when reciting the formula of the betrothal: In accordance with the law of Moses and Israel, which acknowledges that the betrothal takes effect in accordance with the provisions of both Torah and rabbinic law.

The explanation in *Sefer Hafla'a* is that there are two complementary mechanisms mentioned in the Gemara that together resolve potential difficulties. On the one hand, it is difficult to explain how the Sages can invalidate the betrothal by rendering the money with which the man betrothed the woman, which is no longer in existence, ownerless retroactively. On the other hand, there is the concern that certain people will not make their betrothal contingent on rabbinic approval. The combination of both mechanisms facilitates invalidation of the betrothal in all cases.

That works out well if he betrothed her with money – תינה קדיש בכספא – Rashi rejects the explanation raised by several commentaries, that betrothal effected with money can be invalidated because this means of betrothal is not effective by Torah law. According to the Rambam, only betrothal effected by means of sexual intercourse or with a betrothal document is by Torah law. Rather, the simple explanation is that the courts have the power to declare the money ownerless, thereby retroactively invalidating the betrothal.

With regard to betrothal through sexual intercourse, many explain the difficulty raised by the Gemara as: How can the Sages retroactively transform an action performed as a mitzva into a transgression? (see *Tosafot*). With regard to invalidation of betrothal with a betrothal document, some explain that the Sages retroactively disqualify the witnesses who signed the document (*Tashbetz*).

Unavoidable circumstances have legal standing with regard to bills of divorce – יש אונס בגיטין: A related dilemma is raised in the Jerusalem Talmud with regard to betrothal: If a man stipulated that his betrothal is contingent on fulfillment of a certain condition, and the condition was not fulfilled due to circumstances beyond his control, is the betrothal nevertheless valid? The dilemma remains unresolved.

אמר ליה רבינא לרב אשי: תינה קדיש בכספא, קדיש בבניאה מאי איכא למימר? שויויה רבנן לבעילתו בעילת זנות.

Ravina said to Rav Ashi: That works out well if he betrothed her with money,<sup>N</sup> as in that case, the courts could declare the money ownerless, and one cannot betroth a woman with money that is not his. However, if he betrothed her with intercourse, what can be said? Rav Ashi answered: The Sages rendered his intercourse licentious intercourse.

איכא דאמרי, אמר רבא: וכן לענין גיטין. אלמא קסבר רבא: יש אונס בגיטין.

Some say, to the contrary, that Rava said: Just as with regard to postponement of a wedding due to circumstances beyond his control, the groom is not obligated to provide sustenance for his betrothed, the same is true with regard to the matter of bills of divorce. The Gemara concludes that apparently Rava maintains: Unavoidable circumstances have legal standing with regard to bills of divorce.<sup>N</sup>

מיתיבי: הרי זה גיטיך אם לא באתי מכאן ועד שנים עשר חדש ומת בתוך שנים עשר חדש – אינו גט. מת – הוא דאינו גט, הא חלה – הרי זה גט!

The Gemara raises an objection from a mishna (*Gittin* 76b): With regard to one who said to his wife: This is your bill of divorce if I do not return from now until the conclusion of twelve months, and he died within those twelve months, the document is not a bill of divorce. The Gemara infers: If he died, that is when it is not a bill of divorce, since a divorce cannot take effect posthumously. However, in cases involving other circumstances beyond his control, e.g., if he fell ill and therefore did not return, it is a bill of divorce and it does take effect.

לעולם אימא לך חלה נמי אינו גט, והיא גופה קא משמע לך, דאין גט לאחר מיתה.

The Gemara answers: Actually, I will say to you that in the case where one falls ill it is also not a bill of divorce, and death is merely an example of circumstances beyond one's control. And the fact that the mishna cited that example itself teaches us that there is no bill of divorce posthumously.

אין גט לאחר מיתה – הא תנא ליה רישא! דלמא לאפוקי מדרבתינו.

The Gemara asks: Does it come to teach that there is no bill of divorce posthumously? Wasn't it already taught in the first clause of that mishna? The Gemara answers: Perhaps it was necessary for the first clause to mention specifically the case of death, to exclude the opinion of our Rabbis.

תא שמע: מעבשיו אם לא באתי מכאן ועד שנים עשר חדש ומת בתוך שנים עשר חדש – הרי זה גט. מאי לאו – הוא הדין לחלה? לא, מת דוקא, דלא ניתא ליה דתפול קמי יבם.

Come and hear an additional proof from the latter clause of that mishna: If one said: This is your bill of divorce from now if I have not returned from now until the conclusion of twelve months, and he died within those twelve months, then this document is a bill of divorce. What, is it not that the same is true if his failure to return is due to the fact that he fell ill? The Gemara rejects that proof. The divorce takes effect specifically in the case where he died, and he wrote the bill of divorce because he was not amenable to have his wife happen before her *yavam*, his brother, for levirate marriage if he had no children. However, in cases where that is not a consideration, if other circumstances beyond his control caused the condition to be fulfilled, his intention is that the bill of divorce will not take effect.

תא שמע: מדהוא דאמר להו: אי לא איתינא מכאן ועד שלשים יום ליהו גיטא, אָתא בסוף תלתין יומין ופסקיה מברא, ואמר להו: חזו דאתאי, חזו דאתאי! ואמר שמואל: לא שמיא מתניא.

Come and hear an additional proof from the case of a certain man who said to the agents with whom he entrusted the bill of divorce: If I do not return from now until thirty days have passed, let this be a bill of divorce. He came at the end of thirty days, before the deadline passed, but was prevented from crossing the river by the ferry that was located on the other side of the river, so he did not come within the designated time. He said to the people across the river: See that I have come, see that I have come. Shmuel said: It is not considered to be a return. Apparently, even if the condition was fulfilled due to circumstances beyond his control, the condition is considered fulfilled.

אונסא דשכיח שאני, דבין דאיבעי ליה לאתנויי ולא אתני – איהו הוא דאפסיד אנפשיה.

The Gemara rejects that proof: Perhaps unavoidable circumstances that are common and could be anticipated, e.g., the ferry being located at the other side of the river, are different, since he should have stipulated that exception when giving his wife the bill of divorce. And since he did not stipulate it, he brought the failure upon himself.

אמר רב שמואל בר יצחק: לא שנו אלא מתקנת עזרא ואילך, שאין בתי דינין קבועין אלא בשני ימים ובחמישי. אבל קודם תקנת עזרא, שבתאי דינין קבועין בכל יום – אשה נשאת בכל יום.

קודם תקנת עזרא? מאי דהיה הוה! הדין קאמר: אי איכא בתי דינין דקבועין האידינא בקודם תקנת עזרא – אשה נשאת בכל יום.

הא בעינן שקדו! דטריח ליה.

**S Rav Shmuel bar Yitzhak said:** The Sages teach that this *halakha* that a virgin is married on Wednesday is in effect **only** from the institution of the ordinance of Ezra<sup>NB</sup> that courts are in regular session only on Monday and Thursday. However, prior to the institution of the ordinance of Ezra, when courts were in regular session every day,<sup>NH</sup> a woman was married on any day of the week.

The Gemara asks: **Prior to the institution of the ordinance of Ezra? What was in the past was in the past.** There are no halakhic ramifications to that statement. The Gemara answers: **This is what Rav Shmuel bar Yitzhak is saying: If there are courts in regular daily session today, as they were prior to the institution of the ordinance of Ezra, a woman is married on any day of the week.**<sup>N</sup>

The Gemara asks: **Don't we require** the additional reason that a virgin is married on Wednesday because the Sages were assiduous in seeing to the well-being of Jewish women and made certain that the groom would have several days to prepare for the wedding feast prior to the wedding? The Gemara answers: This is referring to a case where he already exerted himself<sup>N</sup> and prepared everything before Shabbat, so the feast will be prepared even if the wedding is Sunday or Monday.

#### NOTES

**The ordinance of Ezra – תקנת עזרא:** The early commentaries ask: What was the objective of the ordinance? Did Ezra seek to limit the activity of the courts? They answer that prior to the ordinance, the court convened each day in a different city, or there were no fixed hours when the court was in session. Ezra instituted an ordinance to ensure that in each city, the courts would regularly convene in session at fixed hours (Ritva; *Shita Mekubbetzet*).

**When courts are in regular session every day – שבתאי דינין – קבועין בכל יום:** The early commentaries ask: Based on the principle that one court can abrogate ordinances instituted by another court only if the court is greater in wisdom and number, even if the reason for the ordinance is obsolete, how could a court abrogate the ordinance of the court of Ezra that determined Wednesday as the day for the marriage of a virgin, since no court was greater than the court of Ezra? Some suggest that in the original ordinance there was a provision that if the court schedule changed, the marriage day would change accordingly (Ritva). On a similar note, others explain that the essence of the original ordinance was that a wedding should take place on the day before the court is in session. If the court convenes daily, every day is suitable for a wedding (*Hatam Sofer*).

**A woman is married on any day of the week – אשה נשאת –**

**בכל יום:** Some hold that the phrase every day is not to be taken literally, as the courts do not convene on Friday or Shabbat, and there are other reasons precluding getting married on those days. They explain that although the courts do not convene on Friday on a regular basis, when the need arose, they would convene on that day as well. In addition, since today betrothal, marriage, and consummation of the marriage take place consecutively on the same day, the primary reason for limiting weddings to the day before the courts convene is no longer in effect, and weddings may be held any day of the week.

**Where he already exerted himself – דטריח ליה:** Rav Aḥai writes that even today, when the reasons relating to the court convening on Thursday are no longer relevant, a distinction remains between Wednesday and other days. When the wedding is on Wednesday, the groom's claim that he exerted himself in preparing the wedding feast is accorded credibility. When the wedding is on other days, he must provide proof to support his claim. Some prove from here that although the Sages remain insistent with regard to ensuring that the groom exert himself in preparing the feast, even when the wedding takes place on a day other than Wednesday, there is no such insistence with regard to ensuring that the wedding take place on a day when the blessing for procreation was stated (Ritva).

#### BACKGROUND

**The ordinance of Ezra – תקנת עזרא:** The Gemara (*Bava Kamma* 82a) cites a tradition that Ezra the Scribe instituted ten ordinances whose purpose was to promote fulfillment of Torah law and observance of ancient customs. The focus of these ordinances was to imbue the daily existence of the people with sanctity. For example, by Torah law, one who experiences a seminal emission is ritually impure, and it is prohibited for him

to partake of consecrated foods. In his ordinance, Ezra instituted that the individual must immerse himself for purification before praying or engaging in Torah study. Although this ordinance was repealed several generations later, it remained the custom in many communities, as well as a custom of the pious throughout the generations.

#### HALAKHA

**When courts are in regular session every day – שבתאי דינין – קבועין בכל יום:** In places where the courts convene only on Monday and Thursday, a virgin is married on Wednesday. In places where the courts convene every day, or where they do not regularly convene on any particular day, she may marry on any day of the week, provided that the groom exerted himself in preparing the feast three days prior to the wedding.

Some early commentaries (Ran; Meiri) rule that since today

betrothal, marriage, and consummation of the marriage take place consecutively on the same day, the primary reason for limiting weddings to the day before the courts convene, i.e., so that the groom can make a claim concerning virginity, is no longer in effect, and therefore weddings may be held on any day of the week (Rambam *Sefer Nashim, Hilkhhot Ishut* 10:14–15; *Shulḥan Arukh, Even HaEzer* 64:3).

מאי שקדו? דתנא: מפני מה אמרו בתולה נשאת ליום הרביעי – שאם היה לו טענת בתולים היה משכים לבית דין. ותנשא באחד בשבת, ואם היה לו טענת בתולים – היה משכים לבית דין! שקדו חכמים על תקנת בנות ישראל, שיהא אדם טורח בסעודה שלשה ימים: אחד בשבת, ושני בשבת, ושלישי בשבת, וברביעי בנסה.

ומספנה ואילך נהגו העם לכנס בשלישי, ולא מיוח בידם חכמים. ובשני לא יכנס, ואם מחמת האונס – מותר. ומפרישין את החתן מן הכלה לילי שבת תחלה, מפני שהוא עושה חבורה.

מאי ספנה? אילימא דאמרי: בתולה הנשאת ליום הרביעי תיהרג, נהגו! לגמרי ניעקריה!

אמר רבה, דאמרי: בתולה הנשאת ביום הרביעי – תיבעל להגמון תחלה האי ספנה? אונס הוא! משום דאיכא צנעויות דמסרו נפשיהו לקטלא, ואתוין לדי ספנה.

The Gemara asks: **What is the meaning of: The Sages were assiduous?**<sup>N</sup> It is as it is taught in a *baraita*: **Due to what reason did the Sages in the mishna say that a virgin is married on Wednesday?** It is so that if the husband had a claim concerning the bride's virginity, he would go early the next day to court and make his claim. The *baraita* continues: **But if that is the reason, let her marry on Sunday, as then too, if the husband had a claim concerning the bride's virginity, he would go early the next day to court and make his claim.** The Gemara answers: The Sages were assiduous in seeing to the well-being of Jewish women and preferred Wednesday, so that the husband would exert himself in arranging the wedding feast for three days, Sunday, Monday and Tuesday, and on Wednesday, he marries her.

The *baraita* continues: **And from the time of danger and onward, the people adopted the custom to marry on Tuesday as well, and the Sages did not reprimand them. And on Monday one may not marry even in time of danger. However, if it is due to the coercion, it is permitted.**<sup>N</sup> The *baraita* concludes: **One isolates the groom from the virgin bride, so that he will not engage in intercourse with her for the first time on Shabbat evening, because by rupturing the hymen he inflicts a wound, which is a labor prohibited on Shabbat.**

The Gemara elaborates: **What is the danger mentioned in the baraita? If we say it is referring to a situation where the government said that a virgin who is married on Wednesday will be executed, would the response be merely that they adopted the custom to marry on Tuesday? Let them totally abolish the ordinance**<sup>N</sup> to marry on Wednesday in the face of life-threatening danger.

Rabba said: The *baraita* is referring to a period where the government said that a virgin who is married on Wednesday will submit to intercourse with the prefect [*hegmon*]<sup>1</sup> first.<sup>B</sup> The Gemara questions the formulation of the *baraita*: **Is that characterized as danger? It is coercion.** The Gemara answers: There is also danger involved, as there are virtuous women who give their lives rather than allow themselves to be violated, and they will come to mortal danger.

NOTES

**מאי שקדו – מאי שקדו:** What is the meaning of the Sages were assiduous – Why is this question raised here when the assiduousness of the Sages was mentioned earlier? Rashi explains that the Gemara is not seeking to ascertain the meaning of their assiduousness but is attempting to determine its tannaic source. An explanation more in keeping with the language of the Gemara is cited in the *Shita Mekubbetzet*: One of the reasons for the ordinance to marry on Wednesday is to ensure that the groom prepare the wedding feast. This was discussed extensively. However, the other reason cited, that the wedding take place on the day that the blessing of procreation was given, was not discussed at length. What was the significance of the former reason that led the Sages to devote so much discussion to it? The Gemara cites the *baraita* that indicates that the Sages were so insistent about preparations for the wedding feast that they enforced its observance even in the face of danger.

Others explain that the question is: Where in the mishna is there an allusion to the assiduousness of the Sages on this matter (*Sefer Hafila'a*)? Their answer, based on the Rosh, is that the Sages were particularly assiduous in ensuring that the groom exert himself for three days in preparing the wedding to prevent any possibility of making false allegations against his bride. That also answers the difficulty raised by the Ran: Why must the three days be consecutive? The answer is that the Sages wanted the groom to be busy preparing the wedding feast during the three days immediately prior to the wedding to prevent discord between the bride and the groom.

**Adopted the custom...permitted – נהגו...מותר:** Rashi explains: They adopted the custom, means that most people accepted it as the norm. It is permitted, means that if one did so, it is acceptable after the fact.

*Tosafot* explain to the contrary: They adopted the custom, means that it is permitted after the fact, and: It is permitted, means that it is permitted even *ab initio*. Support for the opinion of Rashi appears in the Jerusalem Talmud, where it is stated that only in exigent circumstances may one marry on Monday. The reason for that statement is that the longer the break between consummating the marriage and convening the court, the greater the chance that the groom's resolve will cool.

**They adopted the custom, let them totally abolish the ordinance – לנגמרי ניעקריה:** Some explain this as an answer to the question: If it was a decree of religious persecution, why weren't they required to sacrifice their lives as martyrs rather than violate Jewish customs, and all the more so rabbinic ordinances? They answer that since the decree was directed at the women, the Sages, who were not directly affected by the decree, would have been free to repeal their ordinance, thereby negating the prohibition altogether (Rivash). A slight variation of that explanation is that although in that situation it is prohibited to violate a rabbinic ordinance, the court should initiate a repeal of the ordinance and create a situation where martyrdom would not be required (*Shita Mekubbetzet*).

LANGUAGE

**Prefect [*hegmon*]** – הַגְמוֹן: From the Greek ἡγεμών, *hegemon*, meaning leader, in particular a military leader. In a later period, this served as the title for local Roman governors. In the Talmud it is a term meaning general or high government official.

BACKGROUND

**Will submit to intercourse with the prefect first – תיבעל להגמון תחלה:** These decrees, which underscore the total domination by a ruler of his subjects, were in effect in several countries in the ancient world. Even in the Middle Ages, *jus primae noctis*, the right of the first night, was one of the rights the feudal lords held over their serfs and vassals. There are several sources of uncertain credibility indicating that a decree of this kind was in effect in the period prior to the Hasmonean revolt.

**שְׁמָדָא** – Decree of religious persecution [*shemada*]: The term: Decree of religious persecution was changed by the Christian censor to decree or royal decree. The term *shemada* is a pejorative term describing the act of a Jew adopting another religion in general, Christianity in particular. The *ge'onim* explain that the term is from the Aramaic term *amad*, meaning wash or immerse. However, there is also a secondary meaning, something disgusting, e.g., a container filled with urine. The term *meshumad*, apostate, literally means immersed. However, *shemada* is commonly used in reference to any law or punitive action designed to convert Jews to other religions. In addition, it is associated with the related Hebrew term *hashmada*, destruction.

וְלִידְרוּשׁ לְהוּ דְאוּנָס שְׂרִי! אִיכָא פְרוּצוֹת,  
וְאִיכָא נְמִי בְהִנּוּת.

וְלִיעֲקָרְיָהּ! שְׁמָדָא עֲבִידָא דְבִטְלָא וְתַקְנֵתָא  
דְרַבְנָן מִקְמֵי שְׁמָדָא לָא עֲקָרִינָן. אִי הָכִי  
בְשָׁלִישֵׁי נְמִי אֲתֵי וּבְעִיל! מְסַפֵּיקָא לָא עֲקָר  
נְפִישִׁיהּ.

וּבְשָׁנֵי לָא יְכַנּוּס, וְאִם מִחֲמַת הָאוּנָס –  
מוֹתֵר. מַאי אוּנָס? אִילִימָא הָא דְאֲמָרָן –  
הָתָם קָרִי לִיָּה סַכְנָה וְהָכָא קָא קָרִי לִיָּה  
אוּנָס? וְתוּ, הָתָם נְהַגוּ, הָכָא – מוֹתֵר!

The Gemara asks: **And if so, let the Sages instruct** these women **that in cases of coercion it is permitted<sup>N</sup>** to submit to violation rather than sacrifice their lives, and they will not be forbidden to their husbands. The Gemara answers: The Sages cannot issue an instruction of that sort, because **there are licentious women<sup>N</sup>** who would exploit the situation to engage in intercourse willingly, rendering them forbidden to their husbands. **And furthermore, there are also women married to priests,<sup>N</sup>** who are rendered forbidden to their husbands even if they are raped.

The Gemara asks: **And let the Sages completely abolish** the ordinance to marry on Wednesday and establish marriage on a different day. The Gemara answers: **A decree of religious persecution [*shemada*]<sup>1</sup> is likely to be abrogated, and we do not abolish a rabbinic ordinance in the face of a decree of religious persecution.<sup>N</sup>** Rather, a lenient ruling is issued instructing them not to follow the ordinance, as long as the decree of persecution is in effect. The Gemara asks: **If so, what is accomplished by moving the marriage to Tuesday?** The prefect **will come on Tuesday too, to violate them.** The Gemara answers: The date of the marriage is not fixed, and **for a situation of uncertainty the prefect will not uproot himself to violate the bride.**

The *baraita* continues: **And on Monday one may not marry** even in time of danger. **However, if it is due to the coercion, it is permitted.** The Gemara asks: **What is the coercion<sup>N</sup> mentioned in the *baraita*?** **If we say it is referring to that which we mentioned with regard to the decree of *prima nocta* it is difficult, as there the *tanna* calls it danger, and here he calls it coercion.** **Furthermore, there it says that they adopted the custom to marry on Tuesday; here it states that it is permitted.**

## NOTES

**That in cases of coercion it is permitted** – דְאוּנָס שְׂרִי: Although one forced to perform a forbidden action under duress is not considered a transgressor, in this case, two difficulties arise. First, this is a case involving forbidden sexual relations, which is one of the three transgressions for which one is required to sacrifice his life rather than violate them. Second, this was a decree of religious persecution, for which one must be killed even if it involves a minor transgression.

Several solutions are suggested. *Tosafot* explain that one must give his life rather than perform a forbidden action. However, since the woman plays a passive role in intercourse, she need not submit to being killed.

*Tosafot* cite a second explanation in the name of Rabbeinu Tam: Intercourse with a gentile does not fall into the category of forbidden sexual relations that require martyrdom. The Ramban explains that there is a distinction between a decree intended to cause apostasy among the Jews, in which case one must be killed rather than violate the prohibition, and a decree motivated by self-gratification, for which martyrdom is not required. The Ra'avad disagrees.

**There are licentious women** – אִיכָא פְרוּצוֹת: The commentaries raise the question: Must virtuous women give their lives due to the concern that licentious women will engage in illicit relations? They answer that the existence of licentious women is not the reason that the Sages did not issue a ruling that a raped woman is permitted to her husband. Rather, it is the reason that the Sages allowed the ordinance to be changed. Because there are licentious women who are likely to be forbidden to their husbands by willingly engaging in intercourse, it is preferable to change the

day designated for marriage and avoid that pitfall (*Shita Mekubbetzet*). The *Hatam Sofer* writes that there is an additional concern that once licentious women are aware that intercourse with the prefect is permitted, they will allow themselves to engage in forbidden intercourse with others, as once the woman is no longer a virgin, it is impossible to ascertain with whom they engaged in intercourse.

**And there are also women married to priests** – וְאִיכָא נְמִי בְהִנּוּת: Since women married to priests know they will be rendered forbidden to their husbands if raped, they will give their lives rather than submit to the rape. Therefore, there is mortal danger involved (*Ritva*).

**And we do not abolish a rabbinic ordinance in the face of a decree of religious persecution** – וְתַקְנֵתָא דְרַבְנָן מִקְמֵי שְׁמָדָא: With regard to the decree that anyone who marries on Wednesday will be killed, the Sages explicitly abolished the ordinance to marry on Wednesday. However, in this case, where the decree would not necessarily lead to death, as it is permitted for women to submit to rape, the Sages did not want to abolish the ordinance, due to licentious women and the wives of priests who opted to give their lives rather than submit to rape (*Ritva*).

**What is the coercion** – מַאי אוּנָס: In the Jerusalem Talmud, the phrase: Due to the coercion, is explained to mean due to sorcery. Some explain that the concern is that the gentiles will attribute the fact that Jews insist on marrying on the same day as due to sorcery (*Penei Moshe*). Others explain that the concern is that if the sorcerers knew when the wedding was taking place, they would cast a spell on the bride and the groom (*Korban HaEda*).

Entourage [asperava] – אַסְפְּרוּוּא: The source of this word and its precise meaning are unknown. Some claim that it is the Persian form of the Greek *σπειρα*, *speira*, meaning the garrison of a military unit, a group of people stationed around a temple, or an organization.

## HALAKHA

If one's bread was baked... and the father of the groom or the mother of the bride died – וְיָמָת... וְיָמָת: If the groom's father dies after the wedding preparations were completed, and it is a place where the prepared items cannot be sold and will be lost if the wedding is postponed, or similarly, if the bride's mother dies and it will be impossible to reproduce the preparation invested in the hair, clothing, and jewelry of the bride, the corpse is placed in a separate room, and the wedding proceeds as planned. The groom engages in intercourse with the bride to fulfill the mitzva, and this is followed by the seven-day period of rejoicing. During this period, mourning is observed in private. Therefore, the couple may not engage in conjugal relations, nor may they sleep in the same room. Afterward, the seven-day period of mourning is observed.

If, however, the bride and groom are in a place where the prepared items can be sold, and no loss will be incurred if the wedding is postponed, or if it was the groom's mother or the bride's father who died and the groom's father and the bride's mother will be able to assist in preparations for the postponed wedding (see 4a), then the deceased is buried immediately and the seven-day mourning period ensues. Afterward, the wedding takes place, followed by seven days of rejoicing (Rambam *Sefer Shofetim*, *Hilkhot Evel* 11:8; *Shulhan Arukh*, *Yoreh De'a* 342:1).

## HALAKHA

ואין – And one does not withhold jewels from the bride – מוֹנְעִין תְּכֵשִׁיטִין מִן הַכֶּלֶה: A bride whose close relative dies within thirty days after the marriage ceremony need not refrain from adorning herself, even during the seven-day mourning period (see Rashi; Rambam *Sefer Shofetim*, *Hilkhot Evel* 11:8; *Shulhan Arukh* *Yoreh De'a* 342, 381:6).

אמר רבא: דאמרי שר צבא בא לעיר. היכי דמי? אי דאתי וחליף – ליעבב! לא צריכא, דאתי וקבע בשלישי מיהא לכנוס! אספרווא דידיה בשלישי קאתו.

Rava said: Coercion refers to a case where they said: A general and his army are coming to the city on Wednesday, and the concern is that the troops will appropriate the supplies for the feast. What are the circumstances? If it is a situation where the general comes and passes through, let them postpone the wedding until the following week. Rather, it is necessary to teach the *halakha* with regard to the general only in a case where he comes and establishes himself there. The Gemara asks: In any case, let one marry on Tuesday. Why does the *baraita* permit marrying on Monday? The Gemara answers: It was necessary to move the wedding to Monday because his entourage [asperava]<sup>l</sup> arrives on Tuesday.

ואיבעית אימא: מאי מחמת האונס – בדתנא: הרי שהיה פתו אפוי, וטבחו טבוח, ויניו מזוג, ומת אביו של חתן או אמה של כלה – מכניסין את המת לחדר, ואת החתן ואת הכלה לחופה.

And if you wish, say instead: What is the meaning of: Due to the coercion? It is as it is taught in a *baraita*: If one's bread was baked, and his animal slaughtered, and his wine diluted, and all preparations for the wedding feast were complete, and the father of the groom or the mother of the bride died<sup>h</sup> before the wedding, then before burying the deceased, which would trigger the onset of mourning, one moves the corpse into a room, and the bride and groom are ushered to the wedding canopy and they are married.

## Perek I

## Daf 4 Amud a

ובועל בעילת מצוה ופורש, ונהג שבעת ימי המשתה, ואחר כך נהג שבעת ימי אבילות. וכל אותן הימים הוא ישן בין האנשים והיא ישנה בין הנשים. ואין מונעין תכשיטין מן הכלה כל שלשים יום.

And the groom then engages in intercourse with the bride to fulfill the mitzva,<sup>n</sup> and then he withdraws<sup>n</sup> from his wife, and the corpse is buried. And the groom then observes the seven days of the wedding feast, which are a personal festival for him, when the obligation of mourning rites does not take effect, and thereafter he observes the seven days of mourning. And throughout those days of rejoicing and mourning, the groom sleeps among the men, and the bride sleeps among the women, and they are not permitted to enter into seclusion. And in the event of mourning, one does not withhold jewels from the bride<sup>HN</sup> for the entire thirty-day period after the wedding, so that she not be undesirable to her husband.

## NOTES

And the groom then engages in intercourse to fulfill the mitzva – וְבוֹעֵל בְּעִילַת מִצְוָה: Until the deceased is buried, the *halakhot* of mourning are not in effect. However, between the death and the burial, there is a period of acute mourning. During that period, various leniencies are in effect to allow the mourner to tend to the burial. Some maintain that, fundamentally, none of those matters forbidden to a mourner are forbidden to an acute mourner, and therefore the Rambam writes that he may bathe, smear himself with oil, eat meat, drink wine, and engage in sexual relations. Only eating consecrated foods and performing the Temple service are prohibited. According to that opinion, it is clear why the groom would be permitted to engage in the initial intercourse to fulfill the mitzva. According to the Ramban and others, it is prohibited by rabbinic law for an acute mourner to engage in sexual relations; however, the Sages permitted the groom to do so in order to fulfill a mitzva (Meiri).

With regard to the concept that the wedding celebration overrides mourning, some explain that even on the day of death and burial, there is no explicit mitzva of mourning by

Torah law. The Sages derived this from the verse “And I will make it as the mourning for an only son, and the end thereof as a bitter day” (Amos 8:10). Similarly, the mitzva of the wedding celebration is not by Torah law, but according to Rabbi Meir HaLevi there is an allusion from the verse “On the day of his marriage and the day of the gladness of his heart” (Song of Songs 3:11). According to the Meiri, it is derived from the verse “The voice of mirth and the voice of gladness, the voice of the bridegroom and the voice of the bride” (Jeremiah 16:9). Since failure to perform the wedding would lead to financial loss, and there is concern that postponement would undermine the wedding celebration, the week of rejoicing is not postponed. The Radbaz adds that since the mourning is not completely annulled, but merely postponed, no Torah law or rabbinic law is actually being abrogated.

ובועל... ופורש – ובוועל: Rashi explains that after intercourse the husband withdraws and the deceased is immediately buried (see *Tosafot*). Others say that were they to bury the deceased immediately, that day

would be the day of death and burial on which, according to many opinions, the mourning would be by Torah law. If so, it would be prohibited to engage in intercourse that day. Therefore, they maintain that the deceased is buried only the next day, at which point the mourning period begins. In this case, one is allowed to postpone the burial. Although postponing a burial is generally prohibited so as not to compromise the dignity of the deceased, doing so here is permitted, as it enhances the dignity of the deceased by preventing the humiliation his son would suffer by postponing his wedding (Meiri). The Ramban, however, prohibits postponing the burial, as doing so violates a Torah prohibition. Rather, once the groom consummates the marriage, the deceased is buried that same day.

ואין – And one does not withhold jewels from the bride – מוֹנְעִין תְּכֵשִׁיטִין מִן הַכֶּלֶה: Rashi explains that this refers to a bride whose mourning period was postponed due to the wedding. Most commentaries interpret it as referring to any bride in mourning.