

Perek III  
Daf 36 Amud a

ערויות ממש, שניות – מדברי סופרים, בין דמדאורייתא חזיא ליה – אמאי אין להן קנס? אלא: ערויות – חייבי מיתות בית דין, שניות – חייבי כריתות, אבל חייבי לאוין – יש להן קנס, ומני – שמעון התמימי היא.

actual forbidden relatives<sup>N</sup> prohibited by Torah law, and secondary relatives means, as it does in most cases, relatives prohibited by rabbinic law,<sup>N</sup> that cannot be, for since those secondary relatives are suitable for him to marry and are not prohibited by Torah law,<sup>N</sup> why do they not receive a fine if they are raped or seduced? Rather, the meaning of these terms in this context is different: Forbidden relatives are those for which one is liable to receive a court-imposed death penalty; secondary relatives are those for which one is liable to receive *karet*, which are relatively less severe than those for which one is executed. However, those liable for violating regular prohibitions receive payment of a fine if they are raped or seduced. And according to whose opinion is the *baraita* taught? It is the opinion of Shimon HaTimni, who exempts from paying a fine only one who rapes a woman with whom betrothal is ineffective.

איכא דאמרי: ערויות – חייבי מיתות ב"ד וחייבי כריתות, שניות – חייבי לאוין, מני – רבי שמעון בן מנסיא היא.

Some say that we can explain that forbidden relatives refers to all relatives with whom relations are forbidden by severe prohibitions, both those for which one is liable to death by the court and those for which he is liable to *karet*, and secondary relatives refers to those relatives with whom one who engages in relations is liable for violating regular prohibitions. According to this approach, whose opinion does this follow? It is that of Rabbi Shimon ben Menasya, who maintains that even a woman raped by a man forbidden to her by a regular prohibition is not entitled to the fine, despite the fact that betrothal is effective in that case.

”הממאנת אין לה לא קנס ולא פיתוי.” הא קטנה בעלמא – אית לה, מני – רבנן היא, דאמרי: קטנה יש לה קנס. אימא סיפא: איילונית אין לה לא קנס ולא פיתוי. אתא לרבי מאיר, דאמר: קטנה אין לה קנס, והא – מקטנותה יצתה לבגור. רישא רבנן וסיפא רבי מאיר!

§ The *baraita* stated: A girl who refuses to remain married to her husband receives neither payment of a fine for rape nor payment of a fine for seduction, because she was married and therefore lost her presumptive status as a virgin. The Gemara infers: But an ordinary minor girl has a fine for rape. If so, in accordance with whose opinion is the *baraita* taught? It is the opinion of the Rabbis, who say: A minor girl has a fine for rape. The Gemara asks: Say the latter clause of the *baraita*: A sexually underdeveloped woman [*ailonit*] has neither a fine for rape nor a fine for seduction, as she will not develop the signs of puberty and her legal status is that of a minor until she is twenty, at which point she assumes the status of a grown woman. In that *halakha*, the *baraita* comes to the opinion of Rabbi Meir, who said: A minor girl does not have a fine for rape, and the same is true for this *ailonit*, who emerged from her status as a minor at the age of twenty to the status of a grown woman, skipping the stage of a young woman. The first clause of the *baraita* is in accordance with the opinion of the Rabbis, and the latter clause is in accordance with the opinion of Rabbi Meir.

NOTES

Actual forbidden relatives – ערויות ממש: The phrase: Actual forbidden relatives, refers to those relatives with whom relations are prohibited by Torah law (see Leviticus, chapter 18). An intermediate category of people with whom relations are prohibited by Torah law, even though they do not fall into the category of actual forbidden relatives, is omitted from the *baraita*, which is an additional reason the term: Secondary relatives, should not be interpreted in the standard manner.

In the second chapter of *Yevamot*, sixteen women are listed as secondary relatives, with whom marriage takes effect but the man is required to divorce her; the Sages penalized these women by stripping them of the right to a marriage contract and other rights to which a married woman is entitled. However, a child born of such a relationship is not rendered unfit, and the woman herself is not disqualified from marrying a priest due to this marriage.

to the fine, is by no means obvious. It could be asserted that since he is required to divorce her and is not allowed to sustain her as his wife, even though it is by rabbinic decree, he does not fulfill the requirement “And to him she shall be as a wife” (Deuteronomy 22:19). The fact is that a Gibeonite woman, who is prohibited by rabbinic law, is listed in the mishna together with a *mamzeret*.

The answer given is that there is a distinction between the *halakha* of a Gibeonite, with regard to whom there is a general rabbinic decree prohibiting her from entering the congregation of Israel, and secondary prohibitions, prohibited as a safeguard, with regard to which the Sages certainly did not deny them their right to the fine (*Shita Mekubbetzet; Beit Aharon*).

Secondary relatives by rabbinic law – שניות מדברי סופרים: As explained by Rashi, there is a list of secondary forbidden relatives, women who are not close relatives by Torah law but are prohibited by rabbinic decree as a safeguard to Torah law.

Since they are suitable for him by Torah law – בין דמדאורייתא – חזיא ליה: The question is raised: With regard to a woman in the category of a secondary forbidden relative, the assertion that since she is suitable for him by Torah law, she is entitled

Until when can a girl refuse to remain married – עד מתי הבת – **ממאנת**: A girl can refuse to remain married to her husband until two pubic hairs emerge after she reaches the age of twelve years and one day. The *halakha* is in accordance with the opinion of Rabbi Meir in this regard, as the discussion in several places in the Gemara is according to his opinion. If two hairs did not grow and she did not give birth, as that is also a sign of puberty, she remains a minor even after the age of twelve. This applies only if it was definitely determined that the hairs did not grow, as the assumption is that two hairs are present in a girl that age. Even if she was examined and no hairs were discovered, if she engaged in sexual intercourse the assumption is that the hairs were severed as a result. Some authorities maintain that today one should rule stringently and not allow refusal after she reaches the age of twelve under any circumstances (Rambam *Sefer Nashim, Hilkhot Geirushin* 11:4; *Shulhan Arukh, Even HaEzer* 155:12, and see 19–22).

NOTES

Until the black is greater than the white – עד שירבה שחור על – **הלבן**: Although everyone agrees that the girl becomes a young woman as soon as two pubic hairs emerge, there is a distinction between a young woman and a grown woman, one of whose characteristic signs is the area covered by the black pubic hairs is greater than the white skin of the genital area. A young woman is in certain respects an intermediate stage between a minor and a grown woman, as her father retains certain rights over his daughter while she is still a young woman. Therefore, one might have thought that until she becomes a grown woman, she can refuse to remain married to her husband and dissolve a marriage into which she entered as a minor. According to one opinion in tractate *Yevamot*, even a woman with children can refuse and thereby dissolve a marriage that she entered as a minor.

Rav should have said: This is the statement of Rabbi Meir and Rabbi Yehuda – זו דברי רבי מאיר ורבי יהודה מיבעי ליה: This question is unusual, as there is no expectation that all the Sages who share a particular opinion would be listed. Indeed, *Tosafot* prove that other *tanna'im* also agree with Rabbi Meir's opinion. Here, however, the Gemara should have mentioned that this is the opinion of Rabbi Yehuda as well, both because he disagrees with Rabbi Meir with regard to several *halakhot* related to this topic, and because there is an attempt to prove that the *mishnayot* in this chapter are not necessarily all in accordance with the opinion of Rabbi Meir (see *Shita Mekubbetzet*).

They have a claim concerning virginity – יש להן טענת בתולים – There are two distinct, albeit similar, interpretations of this expression. According to Rashi, it means these women can claim they are virgins, whereas the Rid and Ramban maintain that others can register a claim that contrary to pre-marriage expectations, she was not a virgin. The novel element here is that the Sages did not enact a marriage contract for a deaf-mute, so if there is a claim concerning virginity, the husband must have written a marriage contract for her as a virgin, and he now claims that his was an erroneous transaction.

וכי תימא: כולה רבי מאיר היא, ובממאנת סבר לה רבי יהודה; ומי סבר לה?! והתניא: עד מתי הבת ממאנת? עד שתביא שתי שערות, דברי רבי מאיר. רבי יהודה אומר: עד שירבה שחור על הלבן!

אלא רבי יהודה היא, ובקטנה סבר לה רבי מאיר. ומי סבר לה? והאמר רב יהודה אמר רב: זו דברי רבי מאיר. ואם איתא, זו דברי רבי מאיר ורבי יהודה מיבעי ליה! האי תנא סבר לה רבי מאיר בתרא, ופליג עליה בתרא.

רפם אמר: מאי ממאנת – הראוי לה למאן. וליהני קטנה! קשיא.

“אילונית אין לה לא קנס ולא פיתוי.” ורמינהי: החרשת והשוטה והאילונית יש להן קנס ויש להן טענת בתולים! והא מאי רומיא? הא – רבי מאיר, הא – רבנן. ודקארי לה מאי קארי לה?

And if you say that the entire *baraita* is in accordance with the opinion of Rabbi Meir, and with regard to a girl who refuses to remain married Rabbi Meir holds in accordance with the opinion of Rabbi Yehuda, that not only a minor girl but a young woman may also end her marriage through refusal, and the *baraita* is referring to a young woman and not to a minor; but does he maintain that opinion? But isn't it taught in a *baraita* that he disagrees with Rabbi Yehuda in this matter? It was taught: **Until when can a girl refuse to remain married?**<sup>H</sup> **Until she develops two pubic hairs**, signs of puberty rendering her a young woman; this is the statement of Rabbi Meir. **Rabbi Yehuda says:** She can refuse until the area covered by the black pubic hairs is greater than the white<sup>NB</sup> skin of the genital area. That occurs approximately six months later, at which point she becomes a grown woman.

Rather, the Gemara suggests: The *baraita* is in accordance with the opinion of Rabbi Yehuda, and with regard to a minor girl, he holds in accordance with the opinion of Rabbi Meir, who says that a minor girl does not receive payment of a fine for rape, and therefore, an *ailonit* is not entitled to payment. The Gemara asks: **But does he maintain that opinion? But didn't Rav Yehuda say that Rav said with regard to the mishna below (40b),** which states: Any case where there is the right of a father to effect the sale of his daughter as a Hebrew maidservant, i.e., when she is a minor, there is no fine if she is raped, **this is the statement of Rabbi Meir? And if it is so that Rabbi Yehuda maintains that opinion, Rav should have said: This is the statement of Rabbi Meir and Rabbi Yehuda.**<sup>N</sup> Rather, **this tanna** of the *baraita* holds in accordance with the opinion of Rabbi Meir with regard to one *halakha*, that there is no fine for the rape of a minor, and disagrees with him with regard to one *halakha*, that a young woman may conclude her marriage through refusal.

Rafam said: This entire *baraita* is in accordance with the opinion of Rabbi Meir, and what is the meaning of the statement: With regard to a girl who refuses, there is neither a fine for rape nor a fine for seduction? It is referring to one who is fit to refuse, i.e., as long as she is a minor she is not entitled to the fine. The Gemara asks: **And if that is the case, let the tanna simply teach the halakha with regard to a minor.** Why teach a simple *halakha* in so convoluted a manner? The Gemara concludes: Indeed, this is difficult.

**S** The *baraita* stated: **An ailonit has neither a fine for rape nor a fine for seduction. And the Gemara raises a contradiction from a baraita: A deaf-mute, an imbecile, and an ailonit have a fine for rape and they have a claim concerning virginity.**<sup>N</sup> If one of these women married with the presumptive status of a virgin and received a corresponding marriage contract, her husband can cause her to lose her marriage contract by claiming that she was not a virgin. The Gemara rejects this argument: **And what is the contradiction in this?** It can be explained simply: **This baraita**, in which it was taught that the *ailonit* receives no fine, is in accordance with the opinion of Rabbi Meir; that *baraita*, in which it was taught that the *ailonit* receives a fine, is in accordance with the opinion of the Rabbis. The Gemara is puzzled: **And as the resolution is so obvious, he who raised the contradiction, why did he raise it?** The dispute between Rabbi Meir and the Rabbis in this matter is known.

BACKGROUND

עד שירבה שחור – על הלבן: One of the first stages is the appearance of pubic hair, which indicates the passage from minority to majority. Only after the passage of time do hairs cover most of the

pubic region. The *halakha* does not require that the entire area be covered with hair, but once the area covered by the black pubic hairs is greater than the white skin of the genital area is she considered a grown woman.

**A grown woman – הבוגרת:** The marriage contract of a grown woman is two hundred dinars, and there is a claim concerning her virginity (Rambam *Sefer Nashim, Hilkhot Ishut* 11:4; *Shulhan Arukh, Even HaEzer* 68:1).

The claim concerning virginity with regard to a deaf-mute, an imbecile, and a woman whose hymen was torn not in the course of sexual relations – טענת בתולים בהרשת – ובשטטה ובמוכת עץ: Any woman whose marriage contract is one hundred dinars, or for whom the Sages did not institute a marriage contract, is not vulnerable to a claim concerning her virginity. The marriage contract of a woman whose hymen was accidentally torn is one hundred dinars, there is no marriage contract for a deaf-mute, and the marriage of an imbecile does not take effect (Rambam *Sefer Nashim, Hilkhot Ishut* 11:4–5; *Shulhan Arukh, Even HaEzer* 66:1, and see 67:5 and 67:7–8).

**A blind woman and an ailonit – הסומא ואיילונית:** For a virgin who is blind or an *ailonit* whose status was known at the time of her betrothal, there is a marriage contract of two hundred dinars, and they are vulnerable to a claim concerning their virginity (Rambam *Sefer Nashim, Hilkhot Ishut* 11:4; *Shulhan Arukh, Even HaEzer* 67:6; 68:1).

**Give a grown woman the entire first night – בוגרת נותנין לה – לילה הראשון:** Fundamentally, as long as a grown woman has not seen the blood of virginity, any blood that she sees after intercourse is attributed to losing her virginity and she is not rendered impure. However, the daughters of Israel imposed a stringency upon themselves, and therefore, even a man who marries a minor virgin must refrain from contact with her after fulfilling the mitzva of consummating the marriage (Rambam *Sefer Kedusha, Hilkhot Issurei Bia* 4:9, 11:8; *Shulhan Arukh, Yoreh De'a* 193:1).

משום דאית ליה למימא אחריתי עילויה: החרשת והשטטה והבוגרת ומוכת עץ – אין להן טענת בתולים, הסומא ואיילונית – יש להן טענת בתולים. סומכוס אומר משום רבי מאיר: סומא אין לה טענת בתולים!

אמר רב ששת: לא קשיא: הא – רבן גמליאל, והא – רבי יהושע. אימר דשמעת ליה לרבן גמליאל היבא דקא טענה איהי, היבא דלא קא טענה איהי מי שמעת ליה? אין בין דאמר רבן גמליאל מהימנא, כגון זו פתח פיך לאלים הוא.

”והבוגרת אין לה טענת בתולים.” והאמר רב: בוגרת נותנין לה לילה הראשון!

The Gemara answers: He cited this *baraita* due to the fact that he has another *baraita* from which to raise as a contradiction to it: **A deaf-mute, and an imbecile, and a grown woman,<sup>h</sup> and a woman whose hymen was torn not in the course of sexual relations,<sup>h</sup> do not have a claim concerning virginity,** as they do not have the presumptive status of a virgin. However, **a blind woman and an ailonit<sup>h</sup> have a claim concerning virginity.** Sumakhos says in the name of Rabbi Meir: **A blind woman does not have a claim concerning virginity.** The *baraitot* contradict each other with regard to the claim concerning virginity of a deaf-mute and an imbecile.

Rav Sheshet said: This is not difficult, as this *baraita* is in accordance with the opinion of Rabban Gamliel,<sup>n</sup> who holds that a woman who, in response to a claim concerning her virginity, is believed if she says that she was raped after her betrothal and therefore does not lose her marriage contract. And that *baraita* is in accordance with the opinion of Rabbi Yehoshua, who says that a woman is not believed if she makes that claim, and therefore she loses her marriage contract. The Gemara asks: **Say that you heard that Rabban Gamliel accepts her contention in a case where she claims that she was raped after the betrothal; however, in a case where she did not claim that that was the case, did you hear that he accepts her contention?** The Gemara answers: **Yes, since Rabban Gamliel said she is believed when she states that she was raped after betrothal, the deaf-mute and the imbecile are also believed even though they are unable to make the claim, as in a cases like that, it is a case of: “Open your mouth for the mute”** (Proverbs 31:8). When a person lacks the capacity to proffer the claim on his own, the court makes the claim on her behalf.

**S** The *baraita* stated: **A grown woman does not have a claim concerning virginity<sup>b</sup>** because of changes as her body matures, her hymen is no longer completely intact. The Gemara asks: **But didn’t Rav say:** The Sages give a grown woman who had relations on her wedding night, the entire first night,<sup>h</sup> during which she may have relations with her husband several times? Any blood seen during that night is attributed to the blood of her hymen, which is ritually pure, and not menstrual blood. Apparently, even a grown woman has her hymen intact.

## NOTES

This *baraita* is in accordance with the opinion of Rabban Gamliel – הא רבן גמליאל – Rashi explains that this refers to the claim: I was raped after you betrothed me. In the first chapter of this tractate, Rabban Gamliel maintains that a woman is believed when she makes that claim. According to his opinion, although a deaf-mute lacks the halakhic intelligence to make that claim, the court makes the claim on her behalf. The Ramban asks: Isn’t a case conceivable where he betrothed her and then consummated the marriage immediately, in which case that claim would not be accepted even from a woman with halakhic intelligence; so how can the court make that claim on behalf of a deaf-mute? Therefore, he explains that the claim made on her behalf is that her hymen was accidentally torn, which is effective even if they had relations immediately after

betrothal. Rabbi Meir maintains that a woman in that condition is entitled to a marriage contract of two hundred dinars. This interpretation is especially apt according to Rabbi Shmuel HaNagid’s variant reading: This is the opinion of Rabbi Meir in the name of Rabban Gamliel; this is the opinion of Rabbi Meir in the name of Rabbi Yehoshua. Rabbi Zerahya HaLevi contends that the reference is to Rabban Gamliel and Rabbi Yehoshua’s opinion with regard to the presumptive status of her body. He explains that Rabban Gamliel considers her presumptive status of virginity to be the determining factor, whereas Rabbi Yehoshua rules that the burden of proof is incumbent upon the claimant and the husband’s possession of the money is the determining factor (see Ramban and *Tosafot*; Rashba; Rabbi Aharon HaLevi).

## BACKGROUND

**A grown woman does not have a claim concerning virginity – הבוגרת אין לה טענת בתולים –** Most women have a natural opening in the hymen, although the ratio between open and blocked areas varies in each woman, just as there are significant differences in the size of the vagina. In any event, while the girl matures and her body develops, the opening in the hymen also

grows. In certain cases, the opening can become large enough that a grown woman who is a virgin could have sexual relations with no tearing of the hymen whatsoever. Even in a case where the hymen is torn and bleeds, the hymen might be so small that the husband would not feel its presence at all, and be under the impression that he encountered an open entrance.

NOTES

**כולהו נמי חבוטי מיתבטי** – כוליהו נמי חבוטי מיתבטי – Although the Sages stated that the case of a woman's hymen accidentally tearing is rare, there is a difference between one whose genitals tear from direct contact and one whose genitals tear from a fall. Furthermore, only if she was struck with a heavy blow could her hymen be broken (see Rashba). Rabbi Pinehas HaLevi, cited by the Ritva, explains that the statement: When all of the other girls fall they see and show, is for two reasons. First, they can see their surroundings and avoid a heavy blow; and second, if they fall they would show the blood to their mothers.

**One who leaves due to a bad reputation** – **היציאת משום** – The Gemara's initial assumption is based on the idea that the expression: One who leaves due to a bad reputation, refers to a married woman who was divorced due to rumors of adultery. It cannot be explained that she was divorced due to the rape itself, e.g., if he raped a betrothed maiden, as that is addressed in the next mishna, which enumerates those to whom the fine is not paid based on the principle: One receives the greater of the punishments, in this case, stoning. According to Rashi and most early commentaries, witnesses came and testified that she solicited them to engage in relations with her, and the assumption is that someone accepted her offer and she is no longer a virgin. The Rambam, however, explains that once witnesses testified that she solicited them to engage in relations with her, the claim that she was raped or seduced is rejected, as based on her conduct chances are that she initiated the relations, which exempts him from the fine. The Ran notes that the discussion in the Gemara does not support that interpretation, but several later commentaries explain the Rambam's approach at length, and reconcile it with the Gemara.

**He said to us forge a document for me** – **לדידהו אמר להו** – The Ritva cites the opinion of certain Sages that if one issued a general request: Forge a document for me, all documents that he produces are suspect. He likewise states in the name of Rabbi Aharon HaLevi that once a person solicits a forgery, any document that he produces is suspected of being forged. The Meiri cites similar opinions (see HALAKHA).

HALAKHA

**If a rumor emerged about a woman in a town as one who engaged in promiscuous sexual relations** – **יצא לה שם מונה** – If a woman had a reputation of having engaged in promiscuous sexual relations, those rumors are ignored, as per the statement of Rava (Rambam *Sefer Kedusha, Hilkhhot Issurei Bia* 17:21; *Shulhan Arukh, Even HaEzer* 6:16).

**She propositioned us to engage in forbidden relations** – **לדידהו תבעתנהי באיסורא** – If a young woman had a bad reputation, as two men testified that she solicited them to engage in sexual relations, she is not entitled to the fine (Rambam *Sefer Nashim, Hilkhhot Na'ara Betula* 1:9; *Shulhan Arukh, Even HaEzer* 177:4).

**He said to us forge a document for me** – **לדידהו אמר להו זייפו לי** – If a person produced a promissory note and two witnesses claimed that he had asked them to forge that document, even if the document was ratified by its signatories, it cannot be used to collect the debt. The only way to collect the debt is by producing the witnesses who signed the document to testify that they witnessed the loan, or for others to testify that they saw the pair signing the document and the signatories testify that it is their signature. The Rema states that some authorities disagree and maintain that the testimony validating their signatures is ineffective (*Tur*, citing Rabbi Meir HaLevi). However, with regard to other documents that this man produces that affect other people, the debts may be collected, and there is no suspicion that they too were forged (*Shakh*, citing Ran and Rosh; Rambam *Sefer Shofetim, Hilkhhot Edut* 11:4; *Shulhan Arukh, Hoshen Mishpat* 63:2).

**אי דקא טעין טענת דמים** – אי דקא טעין טענת דמים – **הכא במאי עסקינן** – דקטעין טענת פתח פתוח.

**סומכוס אומר משום רבי מאיר** – סומכוס אומר משום רבי מאיר – **סומא אין לה טענת בתולים** – סומא אין לה טענת בתולים? **אמר רבי זירא** – אומר רבי זירא: **טעמא דסומכוס על גבי קרקע** – טעמא דסומכוס על גבי קרקע. **כולהו נמי חבוטי מיתבטי** – כולהו נמי חבוטי מיתבטי! **כולהו רואות ומראות לאמן** – כולהו רואות ומראות לאמן, **ואינה מראה לאמה** – ואינה מראה לאמה.

**והיציאת משום שם רע אין לה** – והיציאת משום שם רע אין לה לא קנס ולא פיתוי. **היציאת משום שם רע בת סקילה היא** – היציאת משום שם רע בת סקילה היא! **אמר רב ששת** – אמר רב ששת: **הכי קאמר** – הכי קאמר: **מי שיצא עליה שם רע בילדותה** – מי שיצא עליה שם רע בילדותה – **אין לה לא קנס ולא פיתוי** – אין לה לא קנס ולא פיתוי.

**אמר רב פפא** – אמר רב פפא: **שמע מינה** – שמע מינה, **האי שטרך ריעא לא מגבינן ביה** – האי שטרך ריעא לא מגבינן ביה. **היכי דמי? אילימא דנפק קלא עליה** – היכי דמי? אילימא דנפק קלא עליה **דשטרך דזייפא הוא** – דשטרך דזייפא הוא. **דכוותה הכא** – דכוותה הכא – **דנפק עליה קלא דונאי** – דנפק עליה קלא דונאי, **והא אמר רבא** – רבא: **יצא לה שם מונה בעיר** – יצא לה שם מונה בעיר – **אין חוששין לה!** – אין חוששין לה!

**אלא** – אלא, **דאתו בי תרי ואמרי** – דאתו בי תרי ואמרי: **לדידהו תבעתנהי באיסורא** – לדידהו תבעתנהי באיסורא. **דכוותה הכא** – דכוותה הכא – **דאתו בי תרי ואמרי** – דאתו בי תרי ואמרי: **לדידהו אמר להו** – לדידהו אמר להו: **זייפו לי** – זייפו לי. **בשלמא התם** – בשלמא התם – **שכיחי פרוצין** – שכיחי פרוצין, **אלא הכא** – אלא הכא – **אם הוא הוחזק** – אם הוא הוחזק – **כל ישראל מי הוחזקו!** – כל ישראל מי הוחזקו!  
**הכא נמי** – הכא נמי, **בין דקא מדר אויפא** – בין דקא מדר אויפא – **אימר זייפי זיין וכתב** – אימר זייפי זיין וכתב.

The Gemara answers: **If he proffers a claim** that there was no blood after consummating the marriage, **indeed** he can cause her to lose her marriage contract with that claim. However, **with what are we dealing here** in the *baraita*? We are dealing with one who **proffers a claim** that he encountered an **open entrance**, i.e., there was no hymen. As the hymen of an adult woman is no longer completely intact, the claim is of no consequence.

The *baraita* continues: **Sumakhos says in the name of Rabbi Meir**: **A blind woman does not have a claim concerning virginity**. The Gemara asks: **What is the rationale** for the statement of Sumakhos? **Rabbi Zeira said**: **Due to the fact that a blind woman is struck by falling onto the ground**, causing her hymen to break. The Gemara asks: **All girls tend to be struck** by falling onto the ground as well,<sup>N</sup> what is unique about blind girls? The Gemara answers: **When all of the other girls fall, they see the blood flow and show it to their mother**. The mother would then examine them and discover that her hymen was broken. **This blind girl does not see the flow of blood and therefore does not show it to her mother**. Due to that possibility, the man who married the blind woman must have considered the likelihood that her hymen is not intact, and therefore he cannot make a claim concerning virginity.

§ The previous *baraita* concluded: **And one who leaves her husband due to a bad reputation<sup>N</sup> has neither a fine for rape nor a fine for seduction**. The initial understanding is that the *baraita* is referring to a young betrothed woman who leaves her husband because she committed adultery. The Gemara asks: **One who leaves her husband due to a bad reputation is subject to stoning** as an adulteress; clearly she is not entitled to the fine. **Rav Sheshet said**: **This is what the baraita is saying**: **One about whom a bad reputation emerged in her youth** that she engaged in sexual relations **has neither a fine for rape nor a fine for seduction**, as the assumption is that she is no longer a virgin.

Rav Pappa said: **Conclude from it with regard to this tainted document** whose authenticity was compromised that **we do not collect a debt with it**. The Gemara asks: **What are the circumstances?** **If you say that a rumor emerged about it that it is a forged document**, and in the corresponding case here, the case of a bad reputation, **that a rumor emerged about her that she engaged in promiscuous sexual relations; but didn't Rava say**: **If a rumor emerged about a woman in a town as one who engaged in promiscuous sexual relations,<sup>H</sup> one need not be concerned about it?** The assumption is that it is insubstantial, as a reputation based on rumor is disregarded.

Rather, it is that **two witnesses came and said**: **She propositioned us to engage in forbidden relations,<sup>H</sup> and in the corresponding case here** with regard to a document, it is a case where **two people came and said that he said to us**: **Forge a document for me.**<sup>NH</sup> The Gemara asks: **Granted, there**, in the case of the rumor of promiscuity, **immoral men are common**, and even if they refused her, presumably she found someone willing to engage in relations with her. **However, here**, with regard to forgery, even if he assumed presumptive status as one seeking a forgery, **do all the Jewish people assume presumptive status as forgers?** Why is the assumption that the document was forged? The Gemara answers: **Here too, since he is actively seeking a forgery, say that he forged the document and wrote it**. Even if others are not suspected of cooperating with him, there is suspicion with regard to the document. Therefore, the case of the tainted document and the woman with a bad reputation are comparable.

A captive woman with regard to the matter of a fine – **שְׁבוּיָהּ לְעֵנֵן קֶנֶס**: The early commentaries ask: Doesn't everyone agree that there is merely a suspicion that a captive woman was violated, and it is a rabbinic decree that she does not have the presumptive status of a virgin, so how does the mishna rule unequivocally that she is not entitled to a fine? *Tosafot* explain that if a captive woman was entitled to a fine there is concern lest she marry a priest. In the *Shita Mekubbetzet* it is explained that even though it is based merely on suspicion, her presumptive status as a virgin was undermined, and one does not collect money based on weakened presumptive status.

**One who engages in intercourse with his daughter – הִבָּא עַל בִּתּוֹ**: In the Jerusalem Talmud the question is raised: If she had relations with another, her father would be entitled to the fine, and therefore it is obvious in this case that she does not receive payment of the fine, as it is her father who would be entitled to the payment. One answer is that this refers to a case where the father died in the meantime, and the fine would therefore have been collected from his estate; his heirs would then have no right to it. The Rashba adds that it could also be referring to a girl who was betrothed and divorced, in accordance with the opinion that in that case the fine is paid to her, as her father is not entitled to the payment after her divorce.

**With his daughter's daughter, etc. – עַל בִּתּוֹ וְכוּ'**: As the mishna includes forbidden relatives by marriage, e.g., relations with his wife's daughter, why doesn't it list his daughter-in-law and other relatives? *Tosafot* maintain that the *tanna* could indeed have enumerated those cases as well, but he taught some cases and omitted others. In the *Shita Mekubbetzet* the suggestion is made that the mishna lists only those cases with regard to which all the Sages agree, even those Sages who maintain that one who was betrothed and divorced is not entitled to the fine.

**Rabbi Yehuda and Rabbi Dosa – רַבִּי יְהוּדָה וְרַבִּי דוֹסָא**: In the Jerusalem Talmud, these opinions are also cited, with certain differences. There Rabbi Yoḥanan said that Rabbi Yehuda referred only to the fine, while the Sage of the school of Rabbi Hiyya said that Rabbi Yehuda was also referring to the marriage contract, as in the *baraita* quoted below. Reish Lakish alone maintains that the two opinions are equal in all regards, including with regard to the *halakha* of *teruma*.

**As it is taught in a baraita: A captive partakes of teruma – דִּתְנֵינָא שְׁבוּיָהּ אוֹכְלַת בְּתוּמָה**: Although fundamentally, this *halakha* appears in a mishna in tractate *Eduyyot*, since the Gemara adds Rabbi Dosa's rationale for his ruling, which does not appear in the mishna, it introduces the entire passage: As it is taught in a *baraita*.

**MISHNA** And these are the cases of young women who do not have a fine paid to their fathers when they are raped or seduced: **One who has intercourse with a convert<sup>H</sup> or with a captive<sup>N</sup> woman or with a gentile maid-servant, who were redeemed, converted, or emancipated when they were more than three years and one day old, as presumably they are no longer virgins. Rabbi Yehuda says: A captive woman who was redeemed remains in her state of sanctity even though she is an adult, as it cannot be stated that she certainly engaged in intercourse.**

The mishna resumes its list of the cases of young women who are not entitled to a fine when raped or seduced by the following men: In the case of **one who engages in intercourse with his daughter,<sup>NH</sup> with his daughter's daughter,<sup>N</sup> with his son's daughter, with his wife's daughter, with her son's daughter, or with her daughter's daughter; they do not receive payment of a fine.** That is due to the fact that he is liable to receive the death penalty, and that their death penalty is administered by the court, and anyone who is liable to receive the death penalty does not pay money, as it is stated: "And yet no harm follow, he shall be punished" (Exodus 21:22). This verse indicates that if a woman dies and the one who struck her is liable to receive the death penalty, he is exempt from payment.

**GEMARA** Rabbi Yoḥanan said: Rabbi Yehuda and Rabbi Dosa<sup>N</sup> said one and the same thing with regard to a captive woman. The statement of Rabbi Yehuda is that which we said in the mishna. The statement of Rabbi Dosa is as it is taught in a *baraita*: A captive daughter or wife of a priest, who was redeemed, partakes of *teruma*;<sup>NH</sup> this is the statement of Rabbi Dosa. In explanation, Rabbi Dosa said: **And what did this Arab who took her captive do to her? And due to the fact that he lasciviously squeezed between her breasts, did he render her unfit to marry into the priesthood?** Although he may have taken liberties with her, there is no concern that he had relations with her.

**Rabba said: Perhaps that is not so, and their opinions differ.** Perhaps Rabbi Yehuda states his opinion only here with regard to payment of a fine, so that the sinner will not profit through exemption from the fine because this girl was taken captive in her youth. However, there, with regard to *teruma*, he holds in accordance with the opinion of the Rabbis, and she is unfit to marry a priest. Alternatively, there is another distinction between their opinions. Perhaps Rabbi Dosa stated his opinion only there, with regard to *teruma* whose legal status today is by rabbinic law, and therefore he rules leniently. However, with regard to payment of a fine, which is mandated by Torah law, he holds in accordance with the opinion of the Rabbis, and the rapist is exempt from payment based on the principle: The burden of proof is incumbent upon the claimant, and she cannot prove that her captors did not engage in intercourse with her and that she is a virgin.

**מתני'** ואלו שאין להן קנס: הבא על הגיורת, ועל השבויה, ועל השפחה, שנפדו ושנתגירו ושנשתחררו יתירות על בנות שלש שנים ויום אחד. רבי יהודה אומר שבויה שנפדית הרי היא בקדושתה, אף על פי שגדולה.

הבא על בתו, על בת בתו, על בת בנו, על בת אשתו, על בת בנה, על בת בתה – אין להן קנס, מפני שמתחייב בנפשו, שמיתתן בידי בית דין, וכל המתחייב בנפשו אין משלם ממון, שנאמר 'ואם לא יהיה אסון ענוש יענשו'.

**גמ'** אמר רבי יוחנן: רבי יהודה ורבי דוסא אמרו דבר אחד; רבי יהודה – הא דאמרן, רבי דוסא – דתנינא: שבויה אוכלת בתרומה, דברי רבי דוסא אמר רבי דוסא: וכי מה עשה לה ערבי הלז? וכי מפני שמייעך לה בין דדיה פסקיה מן הכהונה?

אמר רבה: דלמא לא היא; עד כאן לא קאמר רבי יהודה הכא אלא שלא יהא חוטא נשבר, אבל התם – כרבנן סבירא ליה. אי נמי: עד כאן לא קאמר רבי דוסא התם – אלא בתרומה דרבנן, אבל קנס דאורייתא – כרבנן סבירא ליה.

#### HALAKHA

**A convert, etc. – הגיורת וכו'**: A gentile woman older than the age of three who converted, and likewise a captive older than the age of three who was redeemed, and similarly a maidservant older than the age of three who was freed are not entitled to the fine. The *halakha* is in accordance with the mishna, contrary to the individual opinion of Rabbi Yehuda (Rambam *Sefer Nashim, Hilkhot Na'ara Betula* 1:10).

**One who engages in intercourse with his daughter, etc. – הבא על בתו וכו'**: One who rapes a woman for whom he is liable to receive a court-administered death penalty, e.g., his daughter or his wife's daughter, whether or not he was forewarned, is

exempt from paying the fine (Rambam *Sefer Nashim, Hilkhot Na'ara Betula* 1:13–14).

**שבויה – באכילת תרומה**: The wife of a priest who was taken captive may not eat *teruma*, due to the concern that she was violated by her gentile captor. However, if she claims that she is pure, or if there were witnesses to that effect, she is permitted to her husband the priest, and she is permitted to eat *teruma*. The *halakha* is in accordance with the opinion of the Rabbis in their dispute with Rabbi Dosa (Rambam *Sefer Zera'im, Hilkhot Terumot* 6:11).

אמר ליה אבוי: וטעמיה דרבי יהודה הכא שלא יהא חוטא נשכר הוא? והא תניא, רבי יהודה אומר: שבוייה שנשבית הרי היא בקדושתה, אפי' בת עשר שנים כתיבתה מאתים, והתם - מאי שלא יהא חוטא נשכר איכא? התם נמי דלמא מימנעי ולא נסבי לה.

וסבר רבי יהודה בקדושתה קיימה? והתניא: הפודה את השבוייה ישאנה; מעיד בה - לא ישאנה. רבי יהודה אומר: בין כך ובין כך - לא ישאנה! הא גופה קשיא; אמרת: הפודה את השבוייה ישאנה, והדר תנא: מעיד בה - לא ישאנה, משום דמעיד בה לא ישאנה!?

הא לא קשיא: הכי קאמר: הפודה את השבוייה ומעיד בה - ישאנה, מעיד בה כדי - לא ישאנה.

מכל מקום קשיא לרבי יהודה! אמר רב פפא: אימא: רבי יהודה אומר בין כך ובין כך - ישאנה. רב הונא בריה דרב יהושע אומר: לעולם כדקתני, רבי יהודה לדבריהם דרבנן קאמר להו: לדידי - בין כך ובין כך ישאנה, אלא לדידכו - בין כך ובין כך לא ישאנה מבועי ליה!

ורבנן? הפודה את השבוייה ומעיד בה ישאנה - לא שדי איניש זוזי בכדי, מעיד בה כדי לא ישאנה - שמוא עינו נתן בה.

רמי ליה רב פפא בר שמואל לרב יוסף:

Abaye said to Rabba: **And is the rationale for the opinion of Rabbi Yehuda here, in the case of a fine, to ensure that the sinner will not profit? But isn't it taught in a baraita that Rabbi Yehuda says: A captive woman who was taken captive remains in her state of sanctity with the presumptive status of a virgin? Even if she was in captivity when she was ten years old, her marriage contract is two hundred dinars. And there, in that case, what relevance is there for the rationale: To ensure that the sinner will not profit?** That *baraita* refers to a marriage contract and no transgression is involved. The Gemara answers: **There too**, Rabbi Yehuda issues the same ruling for a different reason. She receives the marriage contract of a virgin because if she didn't, **perhaps men would refrain and not marry her**, due to their suspicion that her captors violated her.

The Gemara asks: **And does Rabbi Yehuda maintain that a captive woman remains in her state of sanctity? But isn't it taught in a baraita: One who redeems a captive may marry her, even if he is a priest, but if he testifies<sup>h</sup> that she did not engage in sexual relations while in captivity, he may not marry her?** Rabbi Yehuda says: **Both in this case, where he redeemed her, and in that case, where he testified, he may not marry her**, lest she was violated and rendered unfit to marry a priest. The Gemara comments: **This baraita itself is difficult.** On the one hand you said: **One who redeems a captive may marry her, and then it was taught:** If he testifies that she did not engage in sexual relations while in captivity, **he may not marry her.** Is that to say that **due to the fact that he also testifies that she was not violated he may not marry her?**

The Gemara answers: This is **not difficult**, as **this is what the baraita is saying: One who redeems a captive woman and testifies that she was not violated may marry her.** However, if he **only testifies that she was not violated he may not marry her.**

With regard to the apparent contradiction between the two statements of Rabbi Yehuda, the Gemara says: **In any case**, this *baraita* is **difficult according to Rabbi Yehuda**, as contrary to his earlier statement, he states that a captive woman does not retain the presumptive status of a virgin. **Rav Pappa said:** Emend the text and say that **Rabbi Yehuda says:<sup>n</sup> Both in this case and in that case he may marry her.** **Rav Huna, son of Rav Yehoshua, says:** **Actually, do not emend the baraita and learn it as it was taught.** In the *baraita*, **Rabbi Yehuda spoke to them according to the statement of the Rabbis.** According to my opinion, that the presumptive status of a redeemed captive woman is that of a virgin, **both in this case and in that case he may marry her.** However, according to your opinion that there is concern lest she was violated, the *halakha* should be that **both in this case and in that case he may not marry her.**

The Gemara asks: **And how do the Rabbis explain their ruling?** They explain: **One who redeems a captive woman and testifies that she was not violated may marry her, as a person does not throw away money for nothing.** If he paid the ransom to redeem her, he must be certain that she is a virgin. One who **only testifies that she was not violated may not marry her, lest he had his eye on her to marry her and is prepared to lie to facilitate that marriage.**

**Rav Pappa bar Shmuel raised a contradiction before Rav Yosef:**

**HALAKHA**

**המעיד על השבוייה -** If a priest testifies that a captive woman is pure, he is not permitted to marry her based on his testimony, due to the concern that he lied because he had his eye on marrying her. However, his testimony is accepted to permit her to others (*Beit Shmuel*).

If he was not certain that she was not violated, he would not have redeemed her, as he would not have spent his money. If he redeemed her and testified in her regard, he may marry her (*Rambam Sefer Kedusha, Hilkhoh Issurei Bia 18:20; Shulhan Arukh, Even HaEzer 7:3*).

**NOTES**

Say that Rabbi Yehuda says - **אימא רבי יהודה אומר וכו'** - The Ritva questions the suggestion that the attribution of the opinion in the *baraita* can be reversed in this manner. He therefore claims

that perhaps Rav Pappa is suggesting that Rabbi Yehuda's statement can be read as a question: And may he not marry her? He cites similar instances from elsewhere in the Talmud.