

NOTES

**She has no claim upon him – אין לה עליו כלום:** The Gemara provides different explanations for a divorcée and a widow because the reason for the marriage contract varies in each case. With regard to a divorcée the Sages instituted a marriage contract so that her husband would not divorce her lightly, and the Gemara therefore states that there is no need for that ordinance for a rape victim, as he cannot divorce her at all; therefore, she has no claim upon him. In the case of a widow the purpose of her marriage contract is to make her a more attractive marriage prospect, and therefore the Gemara states that she has already received the money in payment of the fine (*Tosafot*; Rosh; Ritva). The Rosh adds that even according to those who maintain that the obligation of the marriage contract of a virgin is by Torah law, since the verse states: “Like the dowry of the virgins” (Exodus 22:16), it is clear that the fine replaces the marriage contract.

**The marriage contract of a raped woman – כתובת אנוסה:** The ruling authorities disagree with regard to the basic question of whether or not a rape victim receives a marriage contract. The Rambam maintains that she is not entitled to a marriage contract, whereas the Ra’avad states that she receives a marriage contract of one hundred dinars, like any other non-virgin. The conclusion in the Jerusalem Talmud seems to support the opinion of the Ra’avad. The Gemara there discusses whether a seduced woman or a raped woman is entitled to the other conditions of a marriage contract, such as provision for her male children that predated her marriage, and sustenance for her daughters, among other stipulations.

HALAKHA

**The money of her fine offsets her marriage contract – יצא בכסף קנסה בכתובתה:** The Sages did not institute a marriage contract for a raped young woman, as it is prohibited for her husband to divorce her. She does not even receive payment of the marriage contract in the event of his death, in accordance with the opinion of the first *tanna* (Rambam *Sefer Nashim, Hilkhhot Na’ara Betula* 1:4; *Shulhan Arukh, Even HaEzer* 177:3).

רַבָּא לֹא אָמַר כְּאַבְיֵי, כִּינּוּ דְקָא מְשַׁלְּמִים קֶנֶס – לְאוּ חוּטָא נִשְׁכָּר הוּא. אַבְיֵי לֹא אָמַר בְּרַבָּא, מִפְּתָה דְאִיהוּ מְצִי מְעַב – אַבְיֵיהּ נִמְי מְצִי מְעַב, אוּנְסָה דְאִיהוּ לֹא מְצִי מְעַב – אַבְיֵיהּ נִמְי לֹא מְצִי מְעַב.

The Gemara elaborates: **Rava did not say in accordance with the explanation of Abaye, as since the rapist pays the fine he is not a sinner who profits, as he too must pay the dowry of a virgin even if he marries her. Likewise, Abaye did not say in accordance with the explanation of Rava because in the case of a seducer, where the seducer himself can prevent the marriage, her father can also prevent the marriage. In the case of a rapist, where the rapist himself cannot prevent the marriage, her father also cannot prevent the marriage.**

תַּנְיָא אִידְךָ: אֵף עַל פִּי שְׂאֲמְרוּ אוּנְסָה נוֹתֵן מִיָּד, כְּשִׁיּוֹצִיא הוּא – אֵין לָהּ עָלָיו כְּלוּם. כְּשִׁיּוֹצִיא? מִי מְצִי מִפִּיק לָהּ? אֵימָא: כְּשִׁתְּצִיא הִיא – אֵין לָהּ עָלָיו כְּלוּם. מֵת – יֵצֵא כְּסָף קֶנֶסָה בְּכִתּוּבָתָהּ. רַבִּי יוֹסֵי בְּרַבִּי יְהוּדָה אוֹמֵר: יֵשׁ לָהּ כְּתוּבָה מְנָה.

It was taught in another *baraita*: **Although the Sages said that the rapist gives payment immediately, when he releases her she has no claim upon him.**<sup>N</sup> The Gemara asks: **When he releases her? Can he release her?** It is prohibited by Torah law for him to do so. Rather, emend the *baraita* and say: **When she leaves, if she seeks to divorce him and demands a bill of divorce, she has no monetary claim upon him.** Similarly, if he died, the money of her fine offsets her marriage contract.<sup>H</sup> The fine, which was the equivalent of the dowry of virgins, replaces her marriage contract. **Rabbi Yosei, son of Rabbi Yehuda, says: Even a rape victim has a marriage contract of one hundred dinars,**<sup>N</sup> like the marriage contract of all non-virgin wives.

בְּמַאי קָמוּפְלִגִּי? רַבְּנֵי סַבְרִי: טַעְמָא מַאי תַקִּינוּ רַבְּנֵי כְּתוּבָה – בְּדִי שְׁלֵא תִהְיֵה קְלָה בְּעֵינֵי לְהוֹצִיאָהּ, וְהָא לֹא מְצִי מִפִּיק לָהּ. וְרַבִּי יוֹסֵי בְּרַבִּי יְהוּדָה סַבֵּר: הָא נִמְי מְצִיעַר לָהּ עַד דְאִמְרָה הִיא “לֹא בְּעֵינֵי לָךְ.”

The Gemara asks: **With regard to what principle do they disagree?** The Gemara explains: **The Rabbis maintain: What is the reason that the Sages instituted a marriage contract for the woman? They instituted it so that she will not be inconsequential in his eyes, enabling him to easily divorce her.** Because divorcing her will cost money, he will not do so rashly. **And this woman whom he raped, he cannot release her by Torah law, obviating the need for a marriage contract. And Rabbi Yosei, son of Rabbi Yehuda, maintains: With regard to this woman too, although he cannot divorce her, he can torment her until she says: I do not want you.** When she initiates the divorce, he can divorce her. Therefore, the Sages instituted that she receives the marriage contract of a non-virgin to prevent him from doing so.

“אוּנְסָה שׁוֹתֵה בְּעֵצִיו.” אָמַר לִיה רַבָּא מִפְּרוּקִיא לְרַב אֲשִׁי: מִגְּמַר גְּמָרִי מִהֲדָדִי

The mishna continues: **A rapist drinks from his vessel, and the seducer is not obligated to marry the woman he seduced. Rava from Parzakya said to Rav Ashi: Since the halakhot of a rapist and a seducer are derived from each other with regard to the sum of the fine,**

Perek III  
Daf 40 Amud a

לְהָא מִיִּלְתָּא נִמְי לִיגְמְרוּ מִהֲדָדִי! אָמַר קְרָא: “מִהוּ יִמְהַרְנָה לוֹ לְאִשָּׁה” לוֹ – מִדְּעָתוֹ.

for this matter too, marrying the woman against his will, let them be derived from each other. Rav Ashi replied that the verse says with regard to a seducer: **“He shall pay a dowry for her to be a wife to him”** (Exodus 22:15);<sup>N</sup> “to him” means in accordance with his will.

NOTES

**מִהוּ יִמְהַרְנָה** – indicating that the seducer’s agreement is required. *Talmidei Rabbeinu Yona* maintain that the difference is whether the term “to him” appears at the beginning of a sentence, in which case there is no indication that his agreement is necessary, or whether it appears at the end of the verse, which indicates that his consent is required.

**מִהוּ יִמְהַרְנָה לוֹ לְאִשָּׁה** – *Tosafot* ask: If the term “to him” indicates that his consent is required, why not derive a similar *halakha* with regard to a rapist, where it is written: “And to him she shall be as a wife”? The Ritva explains that the derivation is not from the term “to him” but from the phrase “He shall pay a dowry for her,” indicat-

Circumcision of a foreskin afflicted with leprosy – **מילה בצרעת**: The mitzva of circumcision overrides the prohibition against severing leprosy, whether or not the circumcision is performed at its proper time. Therefore, if there was a leprosy spot on the foreskin, one may perform the circumcision and sever it, despite the fact that severing leprosy is prohibited by Torah law (Rambam *Sefer Ahava, Hilkhos Milla Betula* 1:9; *Shulhan Arukh, Yoreh De'a* 266:1).

One who rapes her is obligated to pay the fine and one who seduces her is exempt – **האונס חייב והמפתה פטור**: If a young woman who was betrothed and divorced was raped, the fine is paid to her. If she was seduced she is not entitled to the fine, as she consented to the act. The *halakha* is in accordance with the opinion of Rabbi Elazar and the ruling of Rav (Rambam *Sefer Nashim, Hilkhos Na'ara Betula* 2:14, 16; *Tur, Even HaEzer* 177).

“מיצד שותה בעציו” כו'. אמר רב כהנא. אמריתא לשמעתיא קמיה דרב זבדי מנהרדעא: יתי עשה ונדחה לא תעשה!

§ The mishna continues: **How does the rapist drink from his vessel?** The mishna proceeds to explain that he is obligated to marry her despite the physical flaws she might have. However, if the marriage is prohibited, either due to the fact that she committed adultery or due to her flawed lineage, he is not obligated to marry her, and therefore he may not marry her. **Rav Kahana said: I stated this halakha before Rav Zevid of Neharde'a, and I asked him: Let the positive mitzva: "And to him she shall be as a wife" (Deuteronomy 22:29), come and override the prohibition<sup>N</sup> of marriage to a woman who is forbidden to him, according to the principle that positive mitzvot override prohibitions.**

אמר לי: היכא אמרינן יתי עשה ונדיחי לא תעשה – בגון מילה בצרעת, דלא אפשר לקוימיה לעשה. אבל הכא, אי אמרה דלא בעינא מי איתיה לעשה כלל?

**He said to me: Where do we say the principle that a positive mitzva comes and overrides a prohibition?** It is in a case where one performs **circumcision of a foreskin afflicted with leprosy.**<sup>H</sup> Although there is a prohibition against removing leprosy skin, the positive mitzva of circumcision overrides that prohibition, as it is not possible to fulfill the positive mitzva without violating the prohibition. **However, here, in the case of the rapist, if she says: I do not want him as a husband, is there a positive mitzva at all?**<sup>N</sup> Since in that case the mitzva need not be performed, as it is negated when the woman refuses to marry him, it does not override the prohibition.

מתני' יתומה שנתארסה ונתגרשה, רבי אלעזר אומר: האונס חייב, והמפתה פטור.

**MISHNA** With regard to an orphan who was betrothed<sup>N</sup> and divorced, Rabbi Elazar says: **One who rapes her is obligated to pay the fine, as she is a virgin young woman, and one who seduces her is exempt<sup>H</sup> from payment.** Because she is an orphan, or because she was betrothed and divorced, she is independent, and by consenting to the seduction she forgoes her right to the fine.

NOTES

**A positive mitzva and a prohibition – עשה ולא תעשה:** The Gemara at the beginning of *Yevamot* explains at length that when there is a conflict between a positive mitzva and a prohibition, and it is impossible to fulfill both, the positive mitzva overrides the prohibition. That is the ruling despite the fact that the punishment for violating a prohibition is generally more severe than the punishment for failure to fulfill a mitzva.

Several questions arise in this regard. One basic issue is the identity of the prohibition in question. Rashi, and most commentaries, explains that it refers to the prohibition of the woman, e.g., a *mamzeret*. *Tosafot* question this approach, as it is derived from the verse “And to him she shall be as a wife” that a rapist is under no obligation to marry a woman prohibited to him. They suggest various answers. Other early commentaries elaborate on *Tosafot's* answers, and suggest additional answers. The Ramban prefers *Tosafot's* final answer and explains the Gemara's difficulty as follows: As the Torah establishes here that this positive mitzva does not override a prohibition, why not derive a principle from here that a positive mitzva does not in fact override a prohibition?

Rabbi Aharon HaLevi and his disciples explain that the verse “And to him she shall be as a wife” comes primarily to teach that her consent is required for marriage to the rapist, and it is cited as a mere support for the *halakha*, as the source of that *halakha* is in fact the reason articulated here (see *Tosafot*). The Ritva attributes this approach to the Ramban. The Ramban also maintains that this can be explained in a fundamentally different manner, that the Gemara is not referring to a prohibition of lineage, but to a woman forbidden due to adultery. We can therefore say that even if he found her acting immorally after marriage he is obligated to retain her as a wife, because she was suitable for him when they married. The Ramban is not bothered by *Tosafot's* rejection of that approach.

**Is there a positive mitzva at all – מי איתיה לעשה כלל:** Rashi explains that because she can neutralize the positive mitzva for the rapist, she is instructed to refuse him. The problem with this interpretation is what happens if the woman does not comply

and insists on marrying him? The Ramban answers that according to Rashi it is self-evident that a woman would not want to wed a man with whom marriage is prohibited, and therefore she is induced to refuse him. Most commentaries, however, maintain that the Gemara does not mean that the victim must refuse to marry him. Rather, the very fact that she has the right to do so indicates that it is an insubstantial mitzva and therefore does not override a prohibition (see *Tosafot*, Rid, Ran, and Ramban). The Rid adds that her right of refusal indicates that it is not a full-fledged positive mitzva; rather it is one designed to appease her.

Rabbeinu Crescas Vidal adopts the reading: A positive mitzva overrides a prohibition only when there is no alternative to fulfilling the mitzva and he is completely obligated to perform it. Here, however, the positive mitzva can be bypassed, and therefore it does not negate the prohibition. *Tosafot Yeshanim* suggest that even though the prohibition is overridden by the positive mitzva from the man's perspective, it is also prohibited for her to violate the negative command, and it is certainly not permitted for her to violate a prohibition due to a mitzva incumbent upon him.

**An orphan who was betrothed, etc. – יתומה שנתארסה וכו':** In the *Shita Mekubbetzet* there are four different interpretations of the term orphan. One possibility is that the mishna is speaking of a single case, an orphan who was betrothed and divorced. Another possibility is that it is referring to a daughter who was betrothed and divorced, and she is called an orphan because her legal status is that of an orphan. A third option is that there are two entirely separate cases; one, an orphan, the other, one who was betrothed and divorced. Finally, the mishna can be explained as dealing with two cases in which the *halakha* is different; an orphan receives no payment, and although a girl who was betrothed and divorced is not entitled to the fine, she receives the payment for degradation. Indeed, the commentaries adopt various interpretations of the mishna. The Ritva explains at length that according to Rashi the word orphan refers literally to a girl without a father and also indicates that the legal status of a girl who was betrothed and divorced is that of an orphan.

An orphan...one who was betrothed and divorced – **יתומה**...מי שנתארסה ונתגרשה: The fine for the rape of a girl without a father is paid to her; the same is true for a young woman who was betrothed and divorced (Rambam *Sefer Nashim, Hilkhot Na'ara Betula* 2:14, 16; *Tur, Even HaEzer* 177).

It is all based on the one who humiliated and the one who was humiliated – **הכל לפי המבייש והמתבייש**: How is the humiliation of a raped woman assessed? It is all based on the one who humiliated and the one who was humiliated. The humiliation of a young woman of significance from a distinguished family is not comparable to the humiliation of a poor girl of lowly lineage. Likewise, the payment to a woman humiliated by a man of significance is lower than the payment to one humiliated by a lowly person (Rambam *Sefer Nashim, Hilkhot Na'ara Betula* 2:4; *Shulhan Arukh, Even HaEzer* 407:24).

The sum of the fine is equal for all people – **קנס שוה** – **בבבל אדם**: Whether one had relations with the daughter of a High Priest or a *mamzer*, the fine is fifty silver coins (Rambam *Sefer Nashim, Hilkhot Na'ara Betula* 2:3; *Tur, Even HaEzer* 177).

PERSONALITIES

Rabbi Elazar – **רבי אלעזר**: This is Rabbi Elazar ben Shammua, a *tanna* in the generation prior to the redaction of the Mishna and among the greatest of Rabbi Akiva's students. Rabbi Elazar was a leader of the Jewish people in the years following the persecution in the wake of the failure of the bar Kokheva rebellion. Despite the dire situation, many students studied with him. One of his primary students was Rabbi Yehuda HaNasi, the redactor of the Mishna. Not many of Rabbi Elazar's *halakhot* are cited in the Mishna; however, he was held in high esteem by the Sages of the following generations. Rav, an *amora*, referred to him as the happiest of the Sages, and Rabbi Yohanan said of him: The hearts of the early Sages were like the Entrance Hall to the Sanctuary. In the Mishna and in *baraitot*, he is called simply Rabbi Elazar.

Rabbi Elazar ben Shammua lived a long life. According to one tradition he was 105 years old when he was killed. He is listed among the ten martyrs executed by the Romans.

**גמ' אמר רבא בר בר חנה אמר רבי יוחנן: רבי אלעזר בשישת רבי עקיבא רבו אמרה, דאמר: יש לה קנס, והנסה לעצמה. ממאי – מדקתני: יתומה, רבי אלעזר אומר: האוים חייב והמתפתה פטור.**

**יתומה פשיטא! אלא הא קא משמע לן: דנערה שנתארסה ונתגרשה ביתומה, מה יתומה לעצמה – אף נערה שנתארסה ונתגרשה לעצמה.**

**אמר רבי יזרא אמר רבא בר שילא אמר רב המנונא סבא אמר רב אדא בר אבהו אמר רב: הלכה כרבי אלעזר. קרי רב עליה דרבי אלעזר: טובינא דחכימי.**

**מתני' איזהו בושת? הכל לפי המבייש והמתבייש. פגם – רואין אותה כאילו היא שפחה נמברת בשוק, כמה הייתה יפה וכמה היא יפה. קנס שוה בכל אדם. וכל שיש לו קצבה מן התורה – שוה בכל אדם.**

**GEMARA** Rabba bar bar Hana said that Rabbi Yohanan said: Rabbi Elazar stated his opinion in accordance with the opinion of Rabbi Akiva, his teacher,<sup>N</sup> as with regard to a young woman who was betrothed and divorced and then raped, Rabbi Akiva said in an earlier mishna: She is entitled to a fine for rape and her fine is paid to her. Rabbi Yosei HaGelili says: She is not entitled to a fine for rape. **And from where do we know that Rabbi Elazar's opinion corresponds to the opinion of his teacher? From the fact that the mishna teaches with regard to an orphan that Rabbi Elazar says: One who rapes her is obligated to pay the fine and one who seduces her is exempt from payment.**

The Gemara asks: **An orphan?** That is obvious, as she has no father and is not subject to the authority of anyone else. Clearly the seducer is exempt from payment because she was complicit. **Rather, this is what the mishna is teaching us: That the legal status of a young woman who was betrothed and divorced, even if her father is alive, is like that of an orphan: Just as with regard to an orphan, payment of the fine is to her, so too, with regard to a young woman who was betrothed and divorced,<sup>H</sup> payment of the fine is to her.**

Rabbi Zeira said that Rabba bar Sheila said that Rav Hamnuna the Elder said that Rav Adda bar Ahava said that Rav said: **The halakha is in accordance with the opinion of Rabbi Elazar.**<sup>PN</sup> Rav would exclaim about Rabbi Elazar: He is the happiest of the Sages, as he held that the *halakha* was ruled in accordance with his opinion in many instances.

**MISHNA** What is humiliation?<sup>N</sup> How is the payment for humiliation during rape or seduction assessed? It is all based on the one who humiliated and the one who was humiliated.<sup>HN</sup> The price will vary depending on the lineage of the family of the rape victim and the nature of the attacker. How is her degradation assessed? **One considers her as though she were a maidservant sold in the marketplace, and assesses how much she was worth beforehand and how much she is currently worth, after the rape or seduction. The sum of the fine is equal for all people,<sup>H</sup> and the principle is: Any payment that has a fixed sum by Torah law is equal for all people, regardless of the lineage and the physical state of the attacker or the victim.**

NOTES

Stated it in accordance with the opinion of Rabbi Akiva, his teacher – **בשישת רבי עקיבא רבו אמרה**: The Ramban explains that the Gemara is not saying that Rabbi Elazar agrees with Rabbi Akiva as opposed to Rabbi Yosei HaGelili, as that is self-evident. Rather, it is emphasizing that he accepts Rabbi Akiva's opinion cited in the mishna, not the opinion attributed to him in the *baraita*. The Gemara therefore asks: From where is that known; perhaps he agrees with Rabbi Akiva of the *baraita* and that is why he referred specifically to an orphan, as the fine for one who is not an orphan is paid to her father? The Gemara answers that since the mishna mentions an orphan, and there is nothing novel in that *halakha*, as she certainly does not receive payment for willingly performing an act, it is clear that the reference is to a girl who is not an orphan but rather one who was betrothed and divorced. The Ritva adds that by specifying that one who seduces her is exempt, Rabbi Elazar is demonstrating that he is not referring to a literal orphan, as there is no need to state that she receives no payment when she is seduced. Rather, he mentions an orphan in order to explain why she does not receive the fine; a young woman who was betrothed and divorced is considered an orphan in her father's lifetime.

The *halakha* is in accordance with the opinion of Rabbi Elazar – **הלכה כרבי אלעזר**: The question is raised: Since Rabbi

Elazar's opinion is in accordance with the opinion of Rabbi Akiva, why did the Gemara not issue the ruling in accordance with the source of his opinion, Rabbi Akiva? The Ritva explains that had the Gemara issued a ruling in accordance with Rabbi Akiva, there would have been uncertainty whether the reference was to his opinion as cited in the mishna or to the opinion cited in the *baraita*. The Gemara therefore preferred to state that the *halakha* is in accordance with the opinion of Rabbi Elazar, who adopts the opinion of Rabbi Akiva in the mishna, as stated above. The Ritva adds that this is why Rabbi Elazar is called the happiest of the Sages, as he was able to accurately approximate the opinion of his teacher. According to the *Yam shel Shlomo*, Rabbi Elazar indeed adds to Rabbi Akiva's opinion; he teaches that this *halakha* applies to the payments of humiliation and degradation as well as to the fine. This also accounts for the fact that this mishna is placed here, rather than adjacent to Rabbi Akiva's opinion.

What is humiliation – **איזהו בושת**: The appropriate question would appear to be: How much is the payment of humiliation? After all, that is the topic of the mishna. The *Meleket Shlomo* explains that since one might have thought that the humiliation and degradation of a rape victim are identical, the mishna underscores that these are two separate *halakhot*.

It is all based on the one who humiliated and the one who was humiliated – **הכל לפי המבייש והמתבייש**: Rashi here explains that humiliation is greatest when the humiliator is neither particularly prominent nor particularly inconsequential. If he is a person of importance her humiliation is less, and similarly the action of a man of lowly standing is considered insignificant and the humiliation in that case is less. The Rid agrees.

The Ran maintains that this is the case in standard instances of humiliation, but a rape victim is humiliated more when she is violated by a man of lowly standing. He agrees though that a woman raped by a great man suffers less humiliation. See, however, the *Yam shel Shlomo*, who argues to the contrary, and concludes that each case must be considered on its own merits, dependent on time and place. The Meiri agrees with Ran, and cites proof from the Jerusalem Talmud, where it states that the humiliation suffered by a great man is extensive and his humiliation of others is minor, while the humiliation suffered by a lowly man is insignificant while his humiliation of others is major. He explains that the humiliation suffered by a great person corresponds to his significance, and therefore the humiliation payment for a woman of significance will be greater, whereas his humiliation of others is relatively insignificant.

Commoners [*hedyotot*] – הדייטות: From the Greek ἰδιώτης, *idiotēs*, meaning a common man with no official office. The Sages use it to distinguish between a common person, e.g., a common priest, and one with a special position.

Pearls [*margaliyyot*] – מרגליות: From the Greek μαργαρίτης, *margarites*, meaning pearl. Sometimes it is used as a general term for a precious stone, both in Greek and in the language of the Sages.

## BACKGROUND

A slave who pierces precious pearls – עבד מרגליות: Since pearls, especially valuable ones, were usually made into necklaces, they had to be pierced. This was a specialized form of craftsmanship that required expertise. The artisan would choose the ideal place to pierce the jewel, and the resultant hole had to be completely straight so as not to mar the beauty of the pearl. That craftsman was well paid, and a slave who could perform this task would be considered highly valuable.

## NOTES

And one anal intercourse – ואחד שלא כדרכה: The authorities disagree as to whether a rapist or seducer by means of anal intercourse is liable to pay the fine. According to the Rambam there is no fine for anal intercourse, whereas the Ra'avad deems the rapist liable, as do *Tosafot*. These opinions both depend upon and influence the interpretation of the Gemara. According to those who maintain that there is no fine for anal intercourse, the Gemara is referring to two women, one of whom engaged in anal intercourse before engaging in vaginal intercourse. The Gemara is stating that there is no difference with regard to the sum of the fine for the vaginal intercourse. The other opinion maintains that the Gemara is referring to one woman who receives payment of the fine both from the one who engaged in anal intercourse with her as well as from the one who engaged in vaginal intercourse with her, despite her impaired status. The early commentaries add that it appears that Rashi, at least according to his interpretation here, agrees with the Rambam that the reference is to two women. The Ritva and others note that in the Jerusalem Talmud it is clear that one who performs anal intercourse is also liable to pay the fine.

And say that these additional payments are paid to her – ואימא לדידה: This difficulty hearkens back to the earlier statements of Abaye and Rava. According to Rabbi Zeira's reasoning this is not a question, as he holds that the need to emphasize that fifty *sela* is the sum of the fine is to prevent mistaken impressions and to indicate that the humiliation and degradation are paid to the same person to whom the fine is paid. However, according to Abaye and Rava, who derive this from a verse that indicates that the fine is paid as compensation only for the torment of the intercourse, the question can be raised: Who is entitled to the other payments? (*Shita Mekubbetzet*).

גמ' ואימא חמשים סלעים אמר רחמנא, מכל מילי אמר רבי זירא: יאמרו בעל בת מלכים – חמשים, בעל בת הדייטות? חמשים! אמר ליה אביי: אי הכי, גבי עבד נמי יאמרו: עבד נוקב מרגליות – שלשים, עבד עושה

**GEMARA** The Gemara asks: **And say that the Merciful One said that the payment is fifty sela from all these matters**, i.e., the fine, degradation, humiliation, and pain. **Rabbi Zeira said: That cannot be, as they will say: If one who engaged in forced intercourse with a daughter of kings pays a sum of fifty sela, does one who engaged in forced intercourse with the daughter of commoners [*hedyotot*]<sup>L</sup> also pay fifty sela?** **Abaye said to him:** This is not a decisive argument, as if so, with regard to a Canaanite slave killed by an ox, the Torah says that the owner of the ox pays the master of the slave thirty sela. There too, **they will say:** For a slave who pierces precious pearls [*margaliyyot*],<sup>LB</sup> a valuable skill, the fine is thirty sela, and for a slave who performs

## Perek III

## Daf 40 Amud b

מעשה מחט שלשים!?

אלא אמר רבי זירא: אילו באו עליה שנים, אחד כדרכה ואחד שלא כדרכה, יאמרו: בעל שלימה חמשים, בעל פגומה – חמשים! אמר ליה אביי: אי הכי, גבי עבד נמי יאמרו: עבד בריא – שלשים, עבד מוכה שחין – שלשים!?

אלא אמר אביי: אמר קרא "תחת אשר עינה", הני – תחת אשר עינה, מכלל דאיכא בושת ופגום. רבא אמר: אמר קרא "ונתן האיש השוכב עמה לאבי הנערה חמשים כסף" הנאת שכיבה – חמשים, מכלל דאיכא בושת ופגום.

ואימא לדידה? אמר קרא: "בנעוריה בית אביה" – כל שבח נעוריה לאביה.

the needlecraft of a tailor, a common, less valuable skill, is the fine also thirty sela? Rather, just as with regard to the slaves, the sum is not dependent on the standing of the victim, so too with regard to a woman who was raped.

Rather, Rabbi Zeira said a different proof: **Had two men engaged in forced intercourse with her, one vaginal intercourse, and one anal intercourse,<sup>N</sup> they will say:** If one who engaged in forced intercourse with an untainted virgin pays fifty sela, does one who engaged in forced intercourse with her when she is tainted, i.e., after she has engaged in anal intercourse, also pay fifty sela? Apparently, the fifty sela is the fixed sum of the fine, while the rest of the payment varies on a case-by-case basis. **Abaye said to him:** This too is no proof, as if so, with regard to a slave as well, they will say if one whose ox gored a healthy slave pays thirty sela, does one whose ox gored a slave afflicted with boils also pay thirty sela?

Rather, Abaye said a different proof. **The verse says:** "Fifty shekels of silver... because he tormented her" (Deuteronomy 22:29); these fifty sela are the fine paid because he tormented her. From which it may be inferred that there are the additional payments of humiliation and degradation beyond that sum mentioned in the verse. **Rava said an alternative proof. The verse says:** "And the man who lay with her shall give to the father of the young woman fifty shekels of silver" (Deuteronomy 22:29). For the pleasure of lying with her he pays fifty sela;<sup>H</sup> from which it may be inferred that there are the additional payments of humiliation and degradation, beyond payment of the fine.

The Gemara asks: **And say that these additional payments are paid to her?**<sup>N</sup> The Gemara answers that the verse says: "Between a father and his daughter, being in her young womanhood, in her father's house" (Numbers 30:17), from which it is derived that all profits of her young womanhood go to her father.<sup>H</sup>

## HALAKHA

The pleasure of lying is fifty sela – הנאת שכיבה חמשים: The fine of fifty sela paid by a rapist or a seducer is for the pleasure of the act itself. It does not include other forms of indemnity that he owes her (Rambam *Sefer Nashim*, *Hilkhot Na'ara Betula* 2:1; *Shulhan Arukh*, *Even HaEzer* 177:1).

כל – הנאת שכיבה חמשים: All profits of her young womanhood go to her father – כל שבח נעוריה לאביה: The four categories of indemnity owed by a rapist and the three owed by a seducer are paid to the girl's father, as all profits of her young womanhood go to her father (Rambam *Sefer Nashim*, *Hilkhot Na'ara Betula* 2:15).

The handiwork of the daughter goes to her father – מעשה הבת לאביה: The handiwork of a minor girl, until she becomes a young woman, goes to her father (Rambam *Sefer Nashim, Hilkhot Ishut* 3:11; *Shulhan Arukh, Even HaEzer* 37:1).

Assessment of degradation – אומדן הפגם: How is the degradation of a rape victim assessed? She is considered as though she was a maidservant for sale in the slave market and the difference between her value as a virgin and her value as a non-virgin is assessed, as a person would pay more for a virgin maidservant in order to marry her to a slave whom he wishes to please (Rambam *Sefer Nashim, Hilkhot Na'ara Betula* 2:6).

ואלא הא דאמר רב הונא אמר רב: מנין שמעשה הבת לאביה? שנאמר 'וכי ימכור איש את בתו לאמה' מה אמה מעשה ידיה לרבה, אף בת מעשה ידיה לאביה – למה לי? תיפוק ליה מ'בנעוריה בית אביה'! אלא, ההיא בהפרת נדרים הוא דכתיב.

וכי תימא: גילף מיניה – ממונא מאיסורא לא ילפינן. וכי תימא: גילף מקנסא – ממונא מקנסא לא ילפינן. אלא מסתברא דאביה הוי דאי בעי – מסר לה למנוול ומוכדה שחיין.

'פגם – רואין אותה כאילו היא שפחה נמכרת'. היכי שיימינן לה? אמר אבוי דשמואל: אומדן כמה אדם רוצה ליתן בין שפחה בתולה לשפחה בעולה לשמשו.

מאי נפקא ליה מינה? אלא: בין שפחה בעולה לשפחה שאינה בעולה להשיאה לעבדו. ולעבדו מאי נפקא ליה מינה? בעבד שיש לו לרבו קורת רוח הימנו.

The Gemara asks: However, with regard to that which Rav Huna said that Rav said: From where is it derived that the handiwork of the daughter goes to her father?<sup>H</sup> It is as it is stated: “And if a man sells his daughter as a maidservant” (Exodus 21:7), juxtaposing his daughter to a maidservant: Just as a maidservant, her handiwork belongs to her master, as she was sold for that purpose; so too a daughter, her handiwork goes to her father. Why do I need this complicated proof? Let him derive it directly from the verse “Being in her young womanhood, in her father’s house.” Rather, this cannot be derived from that verse because that verse is written with regard to the nullification of vows. A young woman is subject to her father’s authority with regard to her vows, which he has the right to nullify. The matter of monetary rights is not addressed in that verse.

And if you say: Let us derive monetary matters from vows, i.e., just as she is subject to her father’s authority with regard to vows the same is true with regard to monetary matters, we do not derive monetary matters from ritual matters. And if you say: Let us derive that her father receives payment from the halakha of a fine, i.e., just as the fine is paid to her father, as explicitly stated in the Torah, so too, other payments are also paid to her father, we do not derive monetary matters from fines.<sup>N</sup> The payment of a fine is a novel element decreed by the Torah and cannot serve as a paradigm for standard monetary matters. Rather, the Gemara explains that it is reasonable that the payments of humiliation and degradation are paid to her father, as if he wished to do so he could give her hand in marriage to a repulsive man<sup>N</sup> or one afflicted with boils, thereby humiliating her. Since her humiliation is under his control, payment for her humiliation is similarly his.

The mishna continues: How is her degradation assessed? One considers her as though she was a maidservant sold in the marketplace, and assesses how much she would have been worth beforehand and how much she would be worth currently. The Gemara asks: How do we assess her value? Shmuel’s father said: One estimates the difference between how much a person is willing to give to purchase a virgin maidservant and how much he is willing to give to purchase a non-virgin maidservant<sup>N</sup> to serve him.

The Gemara asks: With regard to a non-virgin maidservant to serve him; if he purchases her for service, what difference is there to him whether or not she is a virgin? Rather, the difference between a maidservant who engaged in intercourse and a maidservant who did not engage in intercourse is with regard to how much one is willing to marry her to his slave. The Gemara further asks: And with regard to marrying her to his slave, what difference is there to him whether or not she is a virgin? The Gemara answers: It is with regard to a slave from whom his master has a sense of satisfaction, and he seeks a virgin for the slave in order to reciprocate. The difference between the price that the master is willing to pay for each of the maidservants is the degradation that the offender pays the victim.<sup>H</sup>

NOTES

We do not derive monetary matters from fines – ממונא מאיסורא: The students of the Rashba cite in his name that the reason for this principle is not due to any fundamental difference between payments of money and fines, like the difference between ritual matters and monetary payment. Rather, fines are a novel halakha from which a general principle cannot be derived. Consequently, everyone agrees that the halakhot of fines can be derived from the halakhot of payments of money.

As if he wished to do so he could give her hand in marriage to a repulsive man, etc. – דאי בעי מסר לה למנוול וכו': Rav Hai Gaon explains that he can betroth her to any man he chooses

while she is a minor, and the humiliation, degradation, and even the pain resulting from that betrothal would continue into her young womanhood. Therefore, her humiliation and degradation belong to her father. The problem with this explanation is that the same reasoning leads to the conclusion that the humiliation and degradation of a grown woman should also be paid to her father. Rabbi Aharon HaLevi answers that since a grown woman has completely left her father’s control, he retains no rights to anything of hers (see Ramban and Rashba).

One estimates...between purchasing a virgin maidservant and purchasing a non-virgin maidservant, etc. – אומדן...בין: Tosafot explain that this does

not mean every woman is evaluated as though she were a maidservant, as there is certainly no comparison between the degradation of a maidservant to that of an woman of significance from a distinguished family. Rather, the Gemara cited a common case, as only a maidservant can be married to a slave. However, with regard to every woman, the assessment involves that particular woman and how much more a man would be willing to give for her as a virgin. Tosafot Yeshanim maintain that degradation is always assessed in terms of a maidservant, as the difference between injury of a woman of significance and injury of a maidservant is covered by the payment for humiliation.

כל מקום שיש – Any place where there is a sale, etc. – מִכְרָ וְכִי: The *Tosefot Yom Tov* explains that this principle does not teach anything new; it merely serves as a mnemonic for the fact that a minor can be sold but is not entitled to a fine. The *Meleket Shlomo* contends that there is a new *halakha* that emerges from this principle: Since even a young woman for whom there is no payment of humiliation or degradation, e.g., a deaf-mute or an imbecile, can be sold as a minor, she is entitled to the fine as a young woman.

נערה מלא – *Na'ara*, with and without the letter *heh* – תְּקַדֵּר: Throughout the Torah the word *na'ara* is written without a *heh*, with the lone exception in the case of a slanderer. Admittedly, in certain very ancient Torah scrolls predating Ezra, *na'ara* is consistently written with a *heh*; however, the Masoretic tradition is without the *heh*. As for the derivation itself, one explanation is that when the word is written without a *heh*, it refers to both males and females, and it is only the vocalization that distinguishes between them. Therefore, when it is written without a *heh* it refers even to a minor girl, whose development into a young woman is not yet discernible and is therefore not clearly distinguishable from a male.

נערה – The verse spoke of *na'ara* written in full – מְלֵא דִיבֵר הַכְּתוּב: In the Jerusalem Talmud the question is raised: In the verses concerning the slanderer, other than the single instance where it is written with a *heh*, *na'ara* is written without a *heh* as well. The Gemara there answers that in that context, the fact that it is written without a *heh* indicates that it does not include a minor, but comes to include anal intercourse, which is common to both males and females.

וקטנה – And a minor is not subject to punishment – לְאוֹ בֵּת עוֹנֵשִׁין הִיא: *Tosafot* ask: Perhaps the *halakha* of a slanderer applies even if she was a minor, and it is merely the punishment for adultery that is not administered to a minor. They answer that the case of a slanderer is one where a husband is trying to frame his wife and have her executed. As he cannot cause a minor to be executed, he cannot be punished as a slanderer.

#### HALAKHA

קטנה יש לה קנס – A minor is entitled to a fine – רַע עוֹנֵשִׁין הִיא: With regard to a minor three years and one day old and older, although she can be sold she is nonetheless entitled to the fine if she was raped or seduced, in accordance with the opinion of the Rabbis (Rambam *Sefer Nashim, Hilkhot Na'ara Betula* 1:8; *Shulhan Arukh, Even HaEzer* 177:1).

המוציא שם רע על – One who slanders a minor girl is exempt from both the fine and lashes, as the term *na'ara* is written with a *heh* in the verse where the punishment is mentioned (Rambam *Sefer Nashim, Hilkhot Na'ara Betula* 3:2).

**MISHNA** Any place where there is sale<sup>N</sup> by a father of his minor daughter as a Hebrew maidservant, there is no fine if she is raped. And any place where there is a fine, when a young woman is raped; there is no sale by the father. The Gemara specifies: **A minor is subject to sale by her father, and she is not entitled to a fine if she is raped. A young woman is entitled to a fine if she is raped and is not subject to sale. A grown woman is neither subject to sale nor entitled to a fine.**

**GEMARA** Rav Yehuda said that Rav said: This *halakha* in the mishna is the statement of Rabbi Meir, but the Rabbis say: She is entitled to a fine even where there is a sale, as it is taught in a *baraita*: A minor girl, from one day old until she grows two pubic hairs, is subject to sale and is not entitled to a fine. From when she grows two pubic hairs and becomes a young woman until she matures into a grown woman, she is entitled to a fine and she is not subject to sale; this is the statement of Rabbi Meir, as Rabbi Meir would state the principle: Any place where there is a sale there is no fine, and any place where there is a fine there is no sale. And the Rabbis say: A minor girl from the age of three years and one day until she matures into a grown woman is entitled to a fine.

The Gemara questions the statement of the Rabbis in the *baraita* with regard to a girl more than three years of age: A fine, yes, but sale, no? Do the Rabbis maintain that a father cannot sell his minor daughter as a Hebrew maidservant? Rather, emend the text and say: She is even entitled to a fine<sup>H</sup> where she is subject to sale. Rav Hisda said: What is the rationale for the opinion of Rabbi Meir? It is as the verse says with regard to a rapist: “And the man who lay with her shall give to the father of the young woman fifty sela, and to him she shall be as a wife” (Deuteronomy 22:29). The verse is speaking with regard to one halakhically competent to marry by herself, which means she must be a young woman. The Gemara asks: And what is the rationale for the opinion of the Rabbis? Reish Lakish said that the verse says “young woman [*na'ara*]”; however, although the term is pronounced *na'ara*, it is written as *na'ar*,<sup>N</sup> without the letter *heh*, and even a minor girl is indicated by that term.

The Gemara relates: Rav Pappa, son of Rav Hanan, from a place called Bei Keloḥit, heard this *halakha* and went and said it before Rav Shimi bar Ashi. Rav Shimi said to him: You teach this statement concerning that matter. We, based on our traditions, teach it concerning this matter, as Reish Lakish said: One who slanders a minor girl, falsely claiming that she was not a virgin on the wedding night, is exempt from paying the fine, as it is stated: “And they shall give them to the father of the young woman [*na'ara*]” (Deuteronomy 22:19). The verse spoke of *na'ara*, not only pronounced but written in full,<sup>N</sup> indicating that this payment is in effect only with regard to a young woman, not a minor girl.<sup>H</sup> However, in places where the term is written *na'ar*, even a minor girl would be included.

Rav Adda bar Ahava strongly objects to this: The reason is that the Merciful One writes “*na'ara*” with a *heh*. Is that to say that if that were not the case I would have said that this *halakha* applies even to a minor girl? How is that possible? But isn't it written: “And if this matter was true, that the hymen of this young woman was not found intact; then they shall remove the young woman to the entrance of her father's house and stone her” (Deuteronomy 22:20–21). And this verse clearly refers to a young woman old enough to be punished, as a minor is not subject to punishment.<sup>N</sup> Rather, here, with regard to the payment of a slanderer, the verse speaks of a *na'ara*, written with a *heh*, and a minor is excluded. This is a paradigm from which it may be inferred that in any place that it is stated “*na'ara*” without a *heh*, even a minor girl is indicated.

מתני' כל מקום שיש מכר – אין קנס, וכל מקום שיש קנס – אין מכר. קטנה – יש לה מכר ואין לה קנס, נערה – יש לה קנס ואין לה מכר. הבוגרת – אין לה לא מכר ולא קנס.

גמ' אמר רב יהודה אמר רב: זו דברי רבי מאיר. אבל חכמים אומרים: יש לה קנס במקום מכר. דתנאי: קטנה מבת יום אחד ועד שתביא שתי שערות – יש לה מכר ואין לה קנס, משתביא שתי שערות עד שתבגר יש לה קנס ואין לה מכר, דברי רבי מאיר, שהיה רבי מאיר אומר: כל מקום שיש מכר – אין קנס, וכל מקום שיש קנס – אין מכר. וחכמים אומרים: קטנה מבת שלש שנים ויום אחד ועד שתבגר – יש לה קנס.

קנס אין, מכר לא! אימא: אף קנס במקום מכר. אמר רב חסדא: מאי טעמא דרבי מאיר – אמר קרא “ולו תהיה לאשה” – במהוה עצמה הכתוב מדבר. ורבנן? אמר ריש לקיש: אמר קרא “נער” – אפילו קטנה במשמע.

שמעה רב פפא בריה דרב חנן מבי בלוחית, אול אמרה קמיה דרב שימי בר אשי. אמר ליה: אתון אהא מתניתו לה, אנו אהא מתנינן לה: אמר ריש לקיש: המוציא שם רע על הקטנה – פטור, שנאמר “ונתנו לאבי הנערה” – נערה מלא דיבר הכתוב.

מתקיף לה רב אדא בר אבהו: טעמא דכתב רחמנא “נערה”, הא לאו הכי – הוה אמינא אפילו קטנה? והא כתיב “ואם אמת היה הדבר הזה לא נמצאו בתולים לנערה והוציאו את הנערה אל פתח בית אביה וסקלוה” – וקטנה לאו בת עונשין היא! אלא: כאן – נערה, הא כל מקום שנאמר “נער” – אפילו קטנה במשמע.