אִי הָכִי, תַּלְמוּד לוֹמַר ״וְכִחֵשׁ״? תַּלְמוּד לוֹמַר ״וְנָתַן״ מִיבָּעֵי לֵיהּ!

The Gemara raises a difficulty: **If so,** that the main source for this *halakha* is the phrase "shall give [*venatan*]," when it was taught in the *baraita* that a man who rapes or seduces a woman is not liable to bring the offering for a false oath in denial of a monetary claim, rather than saying that this is derived from the fact that **the verse states "and deal falsely,"** he **should have** said that it is derived from the fact that **the verse states "shall give,"** as this is the phrase that teaches that the payment is considered a fine even after he has stood trial.

אֲמַר רָבָא: כִּי אִיצְטְרִיךְ ״וְכִחֵשׁ״ – כְּגוֹן שֶׁעָמְדָה בַּדִּין, וּבָגְרָה וּמֵתָה. דְּהָתָם כִּי קָא יָרֵית אֲבִיהָ – מִינָּהּ דִּידָהּ קָא יָרֵית.

In answer to this question, **Rava said: When it was necessary** to cite a proof from **"and deal falsely,"** it was with regard to a situation **where** the young woman's case was **brought to trial,** and the court ruled in her favor, **and she reached majority and** subsequently **died** before the money was paid. The reason that "and deal falsely" is necessary in that case is because **there, when the father inherits,** it is **from her** that **he inherits.**[N]

אִי הָכִי יָצְאוּ אֵלּוּ שֶׁהֵן קְנָס? מָמוֹן הוּא! אָמַר רַב נַחְמָן בַּר יִצְחָק: יָצְאוּ אֵלּוּ שֶׁעִיקָּרָן קְנָס.

The Gemara raises another difficulty: **If so,** the language of the *baraita*: **Excluding these, as they are a fine,** is inaccurate, as **it is** a regular **monetary** payment, not a fine. In answer to this question, **Rav Naḥman bar Yitzḥak said** that this phrase means: **Excluding these, as they are originally a fine,** and it is only once the court orders the man to pay that they are viewed as regular monetary payments.

אֵיתִיבֵיהּ: רַבִּי שִׁמְעוֹן פּוֹטֵר, שֶׁאֵינוֹ מְשַׁלֵּם קְנָס עַל פִּי עַצְמוֹ. טַעֲמָא, דְּלָא עָמַד בַּדִּין. הָא עָמַד בַּדִּין, דִּמְשַׁלֵּם עַל פִּי עַצְמוֹ – קָרְבַּן שְׁבוּעָה נַמִּי מֵיחַיַּיב!

Abaye **raised an objection to** this explanation of the opinion of Rabbi Shimon, based upon the mishna in *Shevuot* cited above (42a), which states: **Rabbi Shimon exempts** him, **as he does not pay a fine on his own** admission. The Gemara infers: **The reason that** he is not liable to bring a guilt-offering is because **he has not stood trial.** However, if **he has stood trial** and been found guilty, **in which case he pays on his own** admission when he later admits that he was already convicted in court, **he should also be liable to** bring **an offering** if he denies that he was convicted in court and takes **an oath** to that effect. This contradicts the claim that, according to Rabbi Shimon, even after one is convicted in court, the payment is still considered a fine.

רַבִּי שִׁמְעוֹן לְדִבְרֵיהֶם דְּרַבָּנַן קָאָמַר לְהוּ: לְדִידִי, אַף עַל גַּב דַּעֲמַד בַּדִּין רַחֲמָנָא פְּטְרֵיהּ מ״וְכִחֵשׁ״. אֶלָּא לְדִידְכוּ, אוֹדוּ לִי מִיהַת הֵיכָא דְּלָא עָמַד בַּדִּין, דְּכִי קָא תָּבַע – קָנָסָא קָא תָּבַע.

The Gemara answers: **Rabbi Shimon stated** his opinion **to them in accordance with the statement of the Rabbis** themselves, as follows: **According to my** opinion, **although he has stood trial, the Merciful One exempts him** from the offering, as derived **from** the verse: "**And deal falsely** with his neighbor in a matter of a deposit" (Leviticus 5:21), which indicates that he is liable only for a claim that originally concerned regular a monetary payment. **However, according to your** opinion, you should **at least concede to me** in a case **where he has not stood trial, that when one claims** the money, he **claims a fine** and not a regular monetary payment.

Perek **IV**
Daf **43** Amud **a**

וּמוֹדֶה בִּקְנָס פָּטוּר. וְרַבָּנַן סָבְרִי: כִּי קָא תָּבַע – בּוֹשֶׁת וּפְגָם קָא תָּבַע.

And the principle is that **one who admits** that he is liable to pay **a fine is exempt.** Since the man would not have been liable to pay even if he had admitted his guilt, his denial of guilt is not considered a denial of monetary liability, and even if he swears falsely that he is not liable, he still does not become liable to bring an offering. **And the Rabbis hold** that **when** the father **claims** payment in court, it is the compensation for the **humiliation and degradation** that **he claims.** His main focus is not on the fine, and therefore the denial refers to a regular monetary claim.

NOTES

It is from her that he inherits – מִינָּהּ דִּידָהּ קָא יָרֵית: According to Rabbi Shimon, if the young woman reaches majority before the penalty is paid, she becomes the recipient of the payment. Furthermore, since the phrase "shall give" is stated with regard to money paid to the father, it is limited to that case. If the woman is the recipient, the payment is considered a regular monetary payment rather than a fine, and therefore when she dies, her father inherits the rights to this regular monetary payment. Consequently, the verse states "and deal falsely" to teach that even in this case, where the money has the status of a regular monetary payment rather than a fine, if the rapist denies that he owes the money, he is exempt from bringing an offering because the payment originated as a fine.

בְּמַאי קָא מִיפַּלְגִי? אָמַר רַב פַּפָּא: רַבִּי שִׁמְעוֹן סָבַר: לָא שָׁבִיק אִינִישׁ מִידֵּי דְּקִיץ וְתָבַע מִידֵּי דְּלָא קִיץ. וְרַבָּנַן סָבְרִי: לָא שָׁבִיק אִינִישׁ מִידֵּי דְּכִי מוֹדֵי בֵּיהּ לָא מִיפַּטַר, וְתָבַע מִידֵּי דְּכִי מוֹדֵה בֵּיהּ מִיפַּטַר.

The Gemara asks: If this explanation is correct, **with regard to what do** the *tanna'im* **disagree? Rav Pappa said: Rabbi Shimon holds** that **a person does not leave** aside **something that** is **fixed,** e.g., a fine, **and claim something that** is **not fixed,** e.g., the compensation for humiliation and degradation, which need to be assessed by the court. Consequently, a claim of rape is essentially a demand for the fine. **And** conversely, **the Rabbis hold** that **a person does not leave** aside **something that, if** the defendant **admits to it, he is not exempt** from payment, e.g., humiliation and degradation, **and claim something that, if** the defendant **admits to it, he is exempt** from payment. Consequently, they contend that the lawsuit is mainly focused on the compensation for the humiliation and degradation.

בָּעָא מִינֵּיהּ רַבִּי אָבִינָא מֵרַב שֵׁשֶׁת: בַּת הַנִּיזּוֹנֶת מִן הָאַחִין מַעֲשֶׂה יָדֶיהָ לְמִי?

§ **Rabbi Avina raised a dilemma before Rav Sheshet:** With regard to **a daughter who is sustained by** her **brothers,** i.e., an orphan whose brothers provide her with her sustenance from their father's estate, in accordance with the stipulation in the marriage contract between their parents that requires the father to pay for his daughter's sustenance from his property, **to whom do her earnings** belong?

בִּמְקוֹם אָב קַיְימִי: מָה הָתָם – מַעֲשֶׂה יָדֶיהָ לָאָב, הָכָא נַמִּי – מַעֲשֶׂה יָדֶיהָ לָאַחִין. אוֹ דִלְמָא, לָא דָּמֵי לָאָב: הָתָם – מִדִּידֵיהּ מִיתְזְנָא, הָכָא – לָאו מִדִּידְהוּ מִיתְזְנָא?

Rabbi Avina explains the sides of the dilemma. One might say that the brothers **stand in place of** the **father: Just as there,** if their father is alive, **her earnings** go **to the father, here too her earnings** go **to the brothers. Or perhaps** this is **not similar** to the case of a living **father.** Why not? Because **there, she is sustained from his** own property, and therefore he is entitled to receive her earnings, whereas **here, she is not sustained from their** possessions but from the estate of their father, and consequently they should not receive her earnings.

אָמַר לֵיהּ: תְּנֵיתוּהָ: אַלְמָנָה נִיזּוֹנֶת מִנִּכְסֵי יְתוֹמִים, וּמַעֲשֶׂה יָדֶיהָ שֶׁלָּהֶן.

Rav Sheshet **said to him: You** already **learned** the answer to this dilemma from a mishna (*Ketubot* 81a): **A widow is sustained from the property of the orphans,**[H] **and her earnings are theirs.** This indicates that although a widow receives her sustenance from the estate of her deceased husband, in accordance with the stipulations of the marriage contract, the orphans are nevertheless entitled to her earnings. The same reasoning should apply to an orphan sustained by her brothers.

מִי דָּמֵי? אַלְמָנָתוֹ – לָא נִיחָא לֵיהּ בְּהַרְוָוחָה, בִּתּוֹ – נִיחָא לֵיהּ בְּהַרְוָוחָה.

The Gemara refutes this argument: **Are** the two situations **comparable?** In the case of **his widow,** the deceased **is not** necessarily **amenable** to **her** living **in comfort.**[N] Consequently, she is entitled only to the minimum guaranteed to her in the marriage contract, while her earnings go to his heirs. Conversely, with regard to **his daughter, he is amenable** and is interested **in her** living in **comfort,** and therefore he allows her to retain her earnings so that she can have the extra money.

לְמֵימְרָא דִּבְתּוֹ עֲדִיפָא לֵיהּ מֵאַלְמָנָתוֹ? וְהָאָמַר רַבִּי אַבָּא אָמַר רַבִּי יוֹסֵי: עָשׂוּ אַלְמָנָה אֵצֶל הַבַּת כְּבַת אֵצֶל אַחִין בִּנְכָסִין מוּעָטִין,

The Gemara asks: **Is that to say that** the welfare of **his daughter is** more **preferable to him than** that of **his widow? But didn't Rabbi Abba say** that **Rabbi Yosei said:** The Sages **established** the *halakha* of **a widow with regard to the daughter,** who is also entitled to sustenance from the estate, **like** the *halakha* of **a daughter with regard to** the **brothers in** a case of **a small estate** that is insufficient for the livelihoods of both the girl and her brothers?

מָה הַבַּת אֵצֶל אַחִין – הַבַּת נִיזּוֹנֶת וְהָאַחִין יִשְׁאֲלוּ עַל הַפְּתָחִים, אַף אַלְמָנָה אֵצֶל הַבַּת – אַלְמָנָה נִיזּוֹנֶת וְהַבַּת תִּשְׁאַל עַל הַפְּתָחִים! לְעִנְיַן זִילוּתָא – אַלְמָנָתוֹ עֲדִיפָא לֵיהּ, לְעִנְיַן הַרְוָוחָה – בִּתּוֹ עֲדִיפָא לֵיהּ.

Rabbi Abba explains: **Just as** in the case of **a daughter with regard to** the **brothers,** the *halakha* is that **the daughter is sustained** from the father's estate, **and** if **the brothers** have nothing to eat they must go and **beg**[N] for charity **at** people's **doors,**[H] **so too,** in the case of **a widow with regard to the daughter,**[H] **the widow is sustained and the daughters beg** for charity **at** people's **doors.** This indicates that a man is more concerned for his widow than his daughter. The Gemara explains: The two cases are not comparable. **With regard to degradation, one's widow is preferable to him,** i.e., if one of them must be forced to go around requesting handouts, a man would rather it be his daughter than his widow. By contrast, **with regard to comfort,** the comfort of **his daughter is** more **preferable to him** than that of his widow.

HALAKHA

A widow is sustained from the property of the orphans – אַלְמָנָה הַנִּיזּוֹנֶת מִנִּכְסֵי יְתוֹמִים: A widow is entitled to sustenance from the estate of her deceased husband throughout the period of her widowhood, provided that she has not claimed payment of her marriage contract. The right to sustenance applies even if it is not explicitly stated in the document itself. Since the heirs are obligated to sustain the widow, her earnings belong to them (Rambam *Sefer Nashim*, *Hilkhot Ishut* 18:1; *Shulḥan Arukh*, *Even HaEzer* 93:3, 95:1).

The daughter is sustained and the brothers must beg for charity at people's doors – הַבַּת נִיזּוֹנֶת וְהָאַחִין יִשְׁאֲלוּ עַל הַפְּתָחִים: If a man died and left sons and daughters, the sons inherit his entire estate. However, their sisters are entitled to sustenance until they mature or are betrothed. This is referring to one who left behind enough property to provide for both his sons and daughters. If his estate suffices only for the daughters, they claim their sustenance from this property, while the sons must go begging if necessary (Rambam *Sefer Nashim*, *Hilkhot Ishut* 19:17; *Shulḥan Arukh*, *Even HaEzer* 112:11).

A widow with regard to the daughter – אַלְמָנָה אֵצֶל הַבַּת: If a man left behind a widow and a daughter, and his estate is not large enough to provide for them both, the widow receives her sustenance from the inheritance while the daughter must beg for charity. This is the ruling of the Rambam, in accordance with the opinion of Rabbi Abba here. Others accept the opinion cited in the Jerusalem Talmud (*Bava Batra* 9:1), that each has equal rights to the property, and therefore they may both draw their sustenance from it until nothing is left. It is only in a case of a widow, a son, and a daughter where the children must go and seek charity, while the widow alone receives her sustenance (*Tosafot*; Rosh). The *Shulḥan Arukh* cites the Rambam's opinion as the main ruling, while that of *Tosafot* is mentioned as an alternative opinion (Rambam *Sefer Nashim*, *Hilkhot Ishut* 19:21; *Shulḥan Arukh*, *Even HaEzer* 93:4).

NOTES

In the case of his widow, the deceased is not necessarily amenable to her living in comfort – אַלְמָנָתוֹ לָא נִיחָא לֵיהּ בְּהַרְוָוחָה: The later authorities explain that a father wants his daughter to get married, which is why he provides her with a dowry in his lifetime, and even after his death he wants her to retain some money that she can add to her dowry. By contrast, he has no particular interest in his widow's marriage to another man. Similarly, with regard to degradation, a man does not want his widow to be degraded and feel the need to marry someone to avoid reliance on others, whereas he prefers that his daughter marry as soon as possible (*Ḥaver ben Ḥayyim*; *Sukkat David*).

The daughter is sustained and the brothers must beg – הַבַּת נִיזּוֹנֶת וְהָאַחִין יִשְׁאֲלוּ: The reason for this difference is that the daughter is entitled to her sustenance due to the stipulation in her mother's marriage contract, which is like any other debt that must be paid from the father's estate. Consequently, although the sons are his heirs, there is a lien upon the father's estate ensuring payment for his daughter's sustenance, and therefore her claim takes precedence over the rights of her brothers. In a case of a widow and a daughter, who are both supported by virtue of the marriage contract, it is necessary to consider other factors to decide between them (see *Tosafot*).

מְתִיב רַב יוֹסֵף: מַעֲשֶׂה יָדֶיהָ וּמְצִיאָתָהּ, אַף עַל פִּי שֶׁלֹּא גָּבְתָה, מֵת הָאָב – הֲרֵי הֵן שֶׁל אַחִין. טַעֲמָא – דִּבְחַיֵּי הָאָב, הָא לְאַחַר מִיתַת הָאָב – לְעַצְמָהּ. מַאי לָאו – בְּנִיזוֹנֶת? לָא בְּשֶׁאֵינָהּ נִיזוֹנֶת.

Rav Yosef raised an objection to Rav Sheshet's conclusion that the orphan girl's earnings belong to the brothers, from the mishna: With regard to **her earnings and** the lost **items** that **she** has **found, although she has not collected** them, if **the father died, they** belong to **her brothers.** Rav Yosef infers: **The reason** for this *halakha* is that she acquired her earnings **in** her **father's lifetime,** which indicates that the money she earns **after the father's death** belongs **to her. What, is it not** referring even **to** a daughter **who is sustained** from his estate? The Gemara refutes this claim: **No,** it deals **with** a daughter **who is not sustained** from his property but who sustains herself through her own earnings.

אִי בְּשֶׁאֵינָהּ נִיזוֹנֶת מַאי לְמֵימְרָא? אֲפִילּוּ לְמַאן דַּאֲמַר: יָכוֹל הָרַב לוֹמַר לְעֶבֶד ״עֲשֵׂה עִמִּי וְאֵינִי זָנֶךָּ״, הָנֵי מִילֵּי בְּעֶבֶד כְּנַעֲנִי, דְּלָא כְּתִיב בֵּיהּ ״עִמָּךְ״,

The Gemara asks: **If** the mishna is speaking **of** one **who is not sustained** from his estate, **what** is the purpose **of stating** this? It is obvious that this is the *halakha*, as **even according to the one who said** that **a master can say to** his **slave: Work for me but I will not feed you,**[H] i.e., a master is not legally obligated to provide sustenance to his slave, **this applies only to a Canaanite slave, with regard to whom it is not written** in the Torah: **"With you,"**[N] and therefore his master is not obligated to feed him.

אֲבָל עֶבֶד עִבְרִי דִּכְתִיב בֵּיהּ ״עִמָּךְ״ לָא, כָּל שֶׁכֵּן בִּתּוֹ!

However, in the case of **a Hebrew slave, as it is written with regard to him: "With you"** (Deuteronomy 15:16), which indicates that he is entitled to live with his master as an equal, the master **may not** compel the slave to serve him unless he feeds him. **All the more so** concerning **his daughter,** it cannot be the case that this young woman has to work and give her wages to the brothers if they are not obligated to sustain her at the same time.

אֲמַר רַבָּה בַּר עוּלָּא: לֹא נִצְרְכָה אֶלָּא לְהַעֲדָפָה. אֲמַר רָבָא: גַּבְרָא רַבָּה כְּרַב יוֹסֵף לָא יָדַע דְּאִיכָּא הַעֲדָפָה, וְקָמוֹתִיב תִּיוּבְתָּא?!

Rabba bar Ulla said: It is **necessary only for the surplus.** The mishna is not stating that the brothers take her earnings and do not sustain her, leaving her with nothing. Rather, the question concerns a young woman whose earnings provide her with more than she needs for her sustenance, leaving her with a surplus. It is this surplus that belongs to her brothers. **Rava said** in response to Rabba bar Ulla's explanation: Is it possible that **a man** as **great as Rav Yosef does not know that there is** an explanation according to which the mishna is referring to the **surplus, and** in his ignorance **he raises a refutation** against Rav Sheshet? This certainly cannot be the case.

אֶלָּא אֲמַר רָבָא: רַב יוֹסֵף מַתְנִיתִין גּוּפָא קַשְׁיָא לֵיהּ, דְּקָתָנֵי: מַעֲשֶׂה יָדֶיהָ וּמְצִיאָתָהּ, אַף עַל פִּי שֶׁלֹּא גָּבְתָה. מְצִיאָתָהּ מִמַּאן גָּבְיָא?

Rather, Rava said: The mishna itself poses **a difficulty to** the opinion of Rav Sheshet, and this difficulty led **Rav Yosef** to his conclusion. This is **as** the mishna **teaches: Her earnings and** the lost **items** that **she** has **found, although she has not collected** them. Rava analyzes this statement: With regard to **items** that **she** has **found, from whom does she collect** them?[N] The concept of collecting is inappropriate in this case.

אֶלָּא לָאו – הָכִי קָאָמַר: מַעֲשֶׂה יָדֶיהָ כְּמְצִיאָתָהּ, מַה מְּצִיאָתָהּ – בְּחַיֵּי הָאָב לָאָב, לְאַחַר מִיתַת הָאָב לְעַצְמָהּ, אַף מַעֲשֶׂה יָדֶיהָ נַמִּי, בְּחַיֵּי הָאָב לָאָב, לְאַחַר מִיתַת הָאָב לְעַצְמָהּ, שְׁמַע מִינָּהּ.

Rather, is it not the case that **this is what** the mishna **said: Her earnings** are **like items she** has **found: Just as items she** has **found in** her **father's lifetime** belong **to** her **father,** and **after the father's death** they belong **to her, so too,** the same rule applies to **her earnings as well: In the father's lifetime,** they go **to the father,** and **after the father's death** they belong **to her,** even when she is sustained from the inheritance. The Gemara concludes: We can **learn from this** inference that the mishna deals with her earnings themselves, not their surplus, in contrast to the interpretation of Rav Sheshet.

אִיתְּמַר נַמִּי, אָמַר רַב יְהוּדָה אָמַר רַב: בַּת הַנִּיזוֹנֶת מִן הָאַחִין מַעֲשֶׂה יָדֶיהָ לְעַצְמָהּ. אָמַר רַב כָּהֲנָא: מַאי טַעְמָא – דִּכְתִיב ״וְהִתְנַחַלְתֶּם אוֹתָם לִבְנֵיכֶם אַחֲרֵיכֶם״, אוֹתָם לִבְנֵיכֶם, וְלֹא בְּנוֹתֵיכֶם לִבְנֵיכֶם, מַגִּיד שֶׁאֵין אָדָם מוֹרִישׁ זְכוּת בִּתּוֹ לִבְנוֹ.

This *halakha* **was also stated** by *amora'im*, as **Rav Yehuda said** that **Rav said:** In the case of **a daughter who is sustained by the brothers,**[H] **her earnings** nevertheless belong **to her. Rav Kahana said: What is the reason** for this? **As it is written** with regard to slaves: **"And you may make them an inheritance for your sons after you"** (Leviticus 25:46), from which it is inferred: It is **them,** slaves alone, that you bequeath **to your sons, and** you do **not** bequeath **your daughters to your sons.** This verse **teaches that a man does not bequeath a right** that he has over his **daughter to his son.** All the rights a man possesses over his daughter are personal rights, which are not transferable by inheritance.

HALAKHA

Work for me but I will not feed you – עֲשֵׂה עִמִּי וְאֵינִי זָנֶךָּ: A master may say to his Canaanite slave: Work for me but I will not feed you. However, he is obligated to feed a slave who is his wife's usufruct property (Rif; Rambam). The Rema writes that according to some authorities, this *halakha* applies only in normal times. However, during famines, when no one will take pity on the slave and give him charity when he goes begging, the master is required to feed him (*Tosafot*; Rosh; *Tur*; see *Gittin* 12a). Nevertheless, even in this situation, if the slave earns money, the master can tell him to feed himself from his earnings, despite the paucity of the sum (Rambam *Sefer Kinyan*, *Hilkhot Avadim* 8:2; *Shulḥan Arukh*, *Yoreh De'a* 267:20).

A daughter who is sustained by the brothers – בַּת הַנִּיזוֹנֶת מִן הָאַחִין: When a girl receives her sustenance from her father's estate after his death, her earnings and the items that she has found belong to her. The *halakha* is not in accordance with the opinion of Rav Sheshet. Rather, it follows Rav Ashi's later ruling in accordance with the opinion of Rav, as stated by the Gemara on 43b (Rambam *Sefer Nashim*, *Hilkhot Ishut* 19:10; *Shulḥan Arukh*, *Even HaEzer* 112:2).

NOTES

With regard to whom it is not written in the Torah: With you – דְּלָא כְּתִיב בֵּיהּ עִמָּךְ: Some explain that this is referring to the verse "As a hired worker, and as a settler, he shall be with you" (Leviticus 25:40), which is stated in the form of a command (*Tosafot*). Others maintain that the Gemara is referring to the verse "Because he fares well with you" (Deuteronomy 15:16), which clearly indicates that one must treat a Hebrew slave well, by ensuring that his living conditions are no worse than those of his master (Meiri).

Items she has found, from whom does she collect them – מְצִיאָתָהּ מִמַּאן גָּבְיָא: According to Rav Yosef, it was seemingly unnecessary for the mishna to mention the case of items she has found. Consequently, he understands that it is mentioned in order to indicate that the status of her earnings is like that of items she has found (Ritva).

מַתְקִיף לָהּ רַבָּה: וְאֵימָא בְּפִיתּוּי הַבַּת וּקְנָסוֹת וַחֲבָלוֹת הַכָּתוּב מְדַבֵּר? וְכֵן תָּנָא רַב חֲנִינָא: בְּפִיתּוּי הַבַּת וּקְנָסוֹת וַחֲבָלוֹת הַכָּתוּב מְדַבֵּר.

Rabba strongly **objects to this** explanation that the verse is referring to a man's rights to his daughter's earnings: **But** one can **say** that **the verse is speaking of the** fine that a father is paid in the case of the **seduction**[N] **of** his **daughter, and** the **fines** paid to him if she is raped, **and** compensation due to him for **injuries** that she suffered, and the verse indicates that these rights are not bequeathed to his heirs. **And Rav Ḥanina likewise** explicitly **taught** that **the verse is speaking of** payments a father is paid in the case of **the seduction of** his **daughter, and** the **fines** due to him if she is raped, **and** compensation for **injuries** she has suffered.

חֲבָלוֹת – צַעֲרָא דְּגוּפָא נִינְהוּ! אָמַר רַבִּי יוֹסֵי בַּר חֲנִינָא:

The Gemara questions this interpretation: With regard to **injuries, they are** the result of **her bodily pain,** and the guiding principle is that any compensation for a daughter's physical pain does not belong to her father, who merely keeps it in trust for her. If so, the category of injuries should not have been included in this list. **Rabbi Yosei bar Ḥanina said:**

NOTES

But one can say that the verse is speaking of the fine a father is paid in the case of the seduction, etc. – וְאֵימָא בְּפִיתּוּי...הַכָּתוּב מְדַבֵּר וכו׳: On what grounds can one distinguish between the rights to the fine and her earnings? Rashi explains that her earnings are a more common payment, and therefore her retaining of this money is more likely to cause enmity. Others state that according to the opinion of Rav Sheshet, the main concern of the Torah is that the girl's body not be subjugated, and therefore the brothers do not inherit any right that pertains to her body. Since her earnings are merely a monetary right, the daughter does not suffer a loss of dignity if they pass to her brothers (Rabbeinu Crescas Vidal).

Perek **IV**
Daf **43** Amud **b**

HALAKHA

When he injured her in her face – שֶׁפְּצָעָהּ בְּפָנֶיהָ: With regard to one who hurts someone's minor daughter in a manner that reduces her value, whether for work or marriage, e.g., a facial injury, he must pay damages and loss of livelihood to her father. Damages that do not affect her value and the payments for pain, medical costs, and humiliation, belong to the girl herself. Similarly, one who harms his own minor daughter must pay for her pain, medical costs, and humiliation, as stated by Rabbi Yosei bar Ḥanina here and Rabbi Yoḥanan in *Bava Kamma* 88a (Rambam *Sefer Nezikin*, *Hilkhot Ḥovel* 4:14; *Shulḥan Arukh*, *Ḥoshen Mishpat* 424:6).

BACKGROUND

The honorifics of Rav and Rabbi – תָּנְיָא רַב וְרַבִּי: By Torah law, only scholars who received ordination are permitted to serve as judges, as they receive their authority in a chain of transmission reaching back to the court of Moses. Toward the end of the Second Temple period, the custom of addressing ordained Sages with the title of Rabbi was introduced. As explained in *Sanhedrin* 14a, the ordination of Sages may be performed only in Eretz Yisrael. For this reason, even Sages of Babylonia who taught Torah to the masses were entitled Rav rather than Rabbi.

Some Babylonian Sages who ascended to Eretz Yisrael but were not ordained there continued to be called Rav. However, others did receive ordination in Eretz Yisrael (see 17b). Some of these Sages, e.g., Rabbi Abba and Rabbi Elazar, moved to Eretz Yisrael and were ordained when they were young, and therefore they are always referred to in the Gemara as Rabbi. Others, e.g., Rabbi Ami and Rabbi Asi, moved to Eretz Yisrael when they were already prominent Sages. At times they are referred to in the Gemara as Rav, and at times they are referred to by their later title, Rabbi. The case of Rabbi Zeira is similar, as his title serves to distinguish between the *halakhot* he taught in Babylonia, with regard to which he is called Rav Zeira, and his statements in Eretz Yisrael, under the title of Rabbi Zeira.

שֶׁפְּצָעָהּ בְּפָנֶיהָ. אָמַר רַב זֵירָא אָמַר רַב מַתָּנָה אָמַר רַב, וְאָמְרִי לָהּ אָמַר רַבִּי זֵירָא אָמַר רַב מַתָּנָה אָמַר רַב: בַּת הַנִּיזוֹנֶת מִן הָאַחִין – מַעֲשֶׂה יָדֶיהָ לְעַצְמָהּ, דִּכְתִיב ״וְהִתְנַחַלְתֶּם אוֹתָם לִבְנֵיכֶם אַחֲרֵיכֶם״ אוֹתָם לִבְנֵיכֶם וְלֹא בְּנוֹתֵיכֶם לִבְנֵיכֶם, מַגִּיד שֶׁאֵין אָדָם מוֹרִישׁ זְכוּת בְּתוֹ לִבְנוֹ.

We are dealing with a case **when he injured her in her face,**[HN] and therefore he must also pay for the loss of her value, a sum that belongs to her father. **Rav Zeira said** that **Rav Mattana said** that **Rav said, and some say Rabbi Zeira**[B] **said** that **Rav Mattana said** that **Rav said:** With regard to **a daughter who is sustained by the brothers, her earnings** belong **to her, as it is written: "And you may make them an inheritance for your sons after you"** (Leviticus 25:46), which indicates: It is **them,** slaves, that you bequeath **to your sons, and not your daughters to your sons.** This verse **teaches that a man does not bequeath a right** that he has over his **daughter to his son.**

אָמַר לֵיהּ אֲבִימִי בַּר פַּפִּי: שָׁקוּד אֲמָרָהּ. שָׁקוּד מַנּוּ – שְׁמוּאֵל, הָא רַב אֲמָרָהּ! אֵימָא אַף שָׁקוּד אֲמָרָהּ. אָמַר מָר בַּר אָמֵימַר לְרַב אַשִׁי: הָכִי אָמְרִי נְהַרְדְּעֵי, הִלְכְתָא כְּוָותֵיהּ דְּרַב שֵׁשֶׁת. רַב אַשִׁי אָמַר: הִלְכְתָא כְּוָותֵיהּ דְּרַב. וְהִלְכְתָא כְּוָותֵיהּ דְּרַב.

Avimi bar Pappi said to Rabbi Zeira: **Shakud**[N] **said** this *halakha*. The Gemara asks: **Who is Shakud?** This is a nickname for **Shmuel.** The Gemara asks: **Didn't Rav say it?** The Gemara answers: One should **say** that Avimi bar Pappi meant that **even Shakud said it,** i.e., Shmuel also agreed with this ruling. **Mar bar Ameimar said to Rav Ashi:** The Sages **of Neharde'a say as follows: The *halakha* is in accordance with** the opinion of **Rav Sheshet,** that brothers who are sustaining their sister are entitled to her earnings. **Rav Ashi said: The *halakha* is in accordance with** the opinion of **Rav,** that her earnings belong to her. The Gemara concludes: **And the *halakha* is in accordance with** the opinion of **Rav.**

NOTES

When he injured her in her face – שֶׁפְּצָעָהּ בְּפָנֶיהָ: Rashi here explains that her facial injury reduces her value, which is a loss suffered by her father, as he has the right to sell her as a Hebrew maidservant. Others cite an alternative explanation from a manuscript version of Rashi, that an injury to her face causes humiliation to the rest of her family (*Shita Mekubbetzet*). Yet others explain the Gemara's discussion as follows: If the payment is for her pain, the father has no rights to it at all, and if it is for her loss of livelihood, this certainly belongs to her father, as it is compensation for her inability to work. As for medical costs, these are paid to the doctor. Consequently, there seems to be no reason to state the category of injuries here at all. The Gemara answers that she was injured in the face in a manner which entitles her only to payment for her degradation (Ritva).

Shakud – שָׁקוּד: Rashi explains that Shmuel was diligent [*shakud*] in his studies in order to issue proper halakhic rulings, and in fact, the *halakha* is generally in accordance with his opinion in questions of monetary law. Alternatively, this name reflects in a more general manner Shmuel's great diligence in his studies, unrelated to his preparation when issuing halakhic rulings (see Jerusalem Talmud, *Nedarim* 8:2; *Arukh*). Others interpret *shakud* as speedy. Jeremiah speaks of an almond tree [*makel shaked*], which represents a fast-approaching event (see Jeremiah 1:11–12), because an almond tree bears fruit earlier than other fruit trees. In other words, Shmuel would learn quickly and was able to study large amounts of material (*Ramat Shmuel*). All these interpretations fit the Jerusalem Talmud's version of Shmuel's nickname Shoked. Yet others suggest that Shmuel was called by this name because Rabbi Yehuda HaNasi strove [*shoked*] to ordain him without success.

מתני׳ הַמְאָרֵס אֶת בִּתּוֹ וְגֵרְשָׁהּ, אֵירְסָהּ וְנִתְאַרְמְלָה – בְּתוּבָתָהּ שֶׁלּוֹ. הִשִּׂיאָהּ וְגֵרְשָׁהּ, הִשִּׂיאָהּ וְנִתְאָרְמְלָה – כְּתוּבָּתָהּ שֶׁלָּהּ. רַבִּי יְהוּדָה אוֹמֵר: הָרִאשׁוֹנָה שֶׁל אָב. אָמְרוּ לוֹ: אִם מִשֶּׁהִשִּׂיאָהּ – אֵין לְאָבִיהָ רְשׁוּת בָּהּ.

MISHNA

One who betroths his minor **daughter** to a man,[H] **and** the man subsequently **divorces her,** and her father then **betroths her** to another, **and she is widowed,** the payment specified in **her marriage contract,** even from her second husband, **is his,** i.e., it belongs to the father. However, if her father **married her** off **and** her husband **divorced her,**[H] and her father then **married her** to another man **and she was widowed,** even the payment specified in **her marriage contract** from her first marriage **is hers. Rabbi Yehuda says** that the payment specified in **the first** marriage contract belongs **to** the **father. They said to him: If** it **was after he married her** off, even the first time, **her father no** longer **has authority over her.**

גמ׳ טַעֲמָא – דְּהִשִּׂיאָהּ וְגֵרְשָׁהּ, הִשִּׂיאָהּ וְנִתְאַרְמְלָה, אֲבָל נִתְאָרְמְלָה תְּרֵי זִמְנֵי – תּוּ לָא חֲזֵיָא לְאִינְסוּבֵי. וְאַגַּב אוֹרְחֵיהּ קָא סָתֵים לָן תַּנָּא כְּרַבִּי, דְּאָמַר: בִּתְרֵי זִמְנֵי הָוְיָא חֲזָקָה.

GEMARA

The Gemara infers from the language of the mishna: The **reason** is **that** he **married her** off, **and** the husband **divorced her,**[N] and he **married her** off to another man, **and she was widowed. However,** if **she was widowed twice**[H] **she is no longer fit to be married,** due to the concern that she is the cause of her husbands' early demise. The Gemara comments: **And** the *tanna* **incidentally** teaches **an unattributed** opinion **in accordance with** the opinion of **Rabbi** Yehuda HaNasi, **who said** that **presumption is** established **by two occasions.** Consequently, she is already considered a danger after two husbands have passed away, as opposed to the opinion that three incidents are required to establish a presumption.

״רַבִּי יְהוּדָה אוֹמֵר: הָרִאשׁוֹנָה שֶׁל אָב״. מַאי טַעֲמָא דְּרַבִּי יְהוּדָה? רַבָּה וְרַב יוֹסֵף דְּאָמְרִי תַּרְוַיְיהוּ: הוֹאִיל וּמִשְׁעַת אֵירוּסִין זָכָה בָּהֶן הָאָב.

§ The mishna taught that **Rabbi Yehuda says** the payment specified in **the first** marriage contract belongs **to** the **father.** The Gemara asks: **What is the reason of Rabbi Yehuda?**[N] The Gemara explains that **Rabba and Rav Yosef both say: Since the father is entitled to** the payments of the marriage contract **from the time of** her **betrothal,** when the first husband obligated himself to pay her marriage contract, as the girl was under her father's authority at the time, the father receives the money. Although the money is actually paid only after the girl was married and divorced, at which time she is under her own jurisdiction, her father acquired his right to the marriage contract from the time of her betrothal, when she was under his authority.

HALAKHA

One who betroths his minor daughter to a man, etc. – הַמְאָרֵס אֶת בִּתּוֹ: A father who betrothed his daughter to a man when she was a minor or a young woman is entitled to the payment of her marriage contract if she is widowed or divorced before she reaches majority or before she marries, i.e., while she is still betrothed. This applies even if he then betroths her to another man and she is again widowed or divorced before she reaches majority or before she marries (Rambam *Sefer Nashim*, *Hilkhot Ishut* 3:11, 10:11; *Shulḥan Arukh*, *Even HaEzer* 37:3).

If he married her off and her husband divorced her – הִשִּׂיאָהּ וְגֵרְשָׁהּ: Even in the case of a minor daughter, and certainly in the case of a young woman, if she was married off by her father and was subsequently widowed or divorced during his lifetime, she is under her own authority and her father retains no rights over her. Therefore, if she is betrothed again, the marriage contract belongs to her, in accordance with the unattributed opinion in the mishna (Rambam *Sefer Nashim*, *Hilkhot Ishut* 3:12; *Shulḥan Arukh*, *Even HaEzer* 37:3, 55:7).

If she was widowed twice – נִתְאָרְמְלָה תְּרֵי זִמְנֵי: If a woman was married or even betrothed to two men who both died, she may not wed a third, as she has a presumption of one whose husbands die, as stated by Rabbi Yehuda HaNasi. If she did marry, or even if she was merely betrothed, her husband does not have to divorce her. Some authorities state that this *halakha* applies only if both husbands became ill and died, but not if one of them died either from a plague that affected a large number of people or from unnatural causes. The Rema notes the practice of many to be lenient with regard to this prohibition (Rambam *Sefer Kedusha*, *Hilkhot Issurei Bia* 21:31; *Shulḥan Arukh*, *Even HaEzer* 9:1).

NOTES

The reason is that he married her off and the husband divorced her, etc. – טַעֲמָא דְּהִשִּׂיאָהּ וְגֵרְשָׁהּ וכו׳: If a woman marries multiple men and they die, she is not permitted to remarry, due to the concern that she may be the cause of her husbands' deaths (see *Yevamot* 64b). The *tanna'im* dispute whether this prohibition applies only after the woman's third husband has died or even after her second husband has died. As for the reasoning for this *halakha*, the *amora'im* argue whether it is because her bad fortune causes her husbands to die on her account or whether it is assumed that she has an illness or defect that leads to her husbands' death. There is a practical difference between these two explanations in the case of a woman whose husbands died during their betrothal and in an instance where the husbands passed away as a result of some other clear cause unrelated to their wife, e.g., a war or an accident.

Although the mishna here is not discussing this prohibition, the *tanna* of the mishna did not want to give an example of a tragic case where a woman would not be permitted to remarry (Rashi). According to Rabbi Moshe bar Rabbi Yosef of Narbonne, just as a woman may not remarry after her second husband has died, due to the possibility that she was the cause of his death, she also does not receive payment of her marriage contract from the estate of her second husband. However, the Ramban and Ritva reject this opinion.

The Gemara's inference is based upon the fact that the mishna does not say that she was widowed twice. Rather, it states that she was divorced and widowed. Some commentaries contend, based on Rashi in *Yevamot* (26a), that for this very reason the *tanna* also did not say that she was divorced twice, as a woman who has divorced twice is also prohibited from remarrying. However, others refute this idea, arguing that there is no reason to harbor suspicions against a woman due to a divorce, which must be carried out by her husband (Ritva).

Some commentaries hold that the prohibition against a woman remarrying after two husbands have died applies only if they died after marriage, but not if they died when they were betrothed to her. Nevertheless, the mishna states that the woman was divorced and widowed, instead of widowed twice, even in the first clause, so that the cases would be parallel to the cases mentioned in the mishna's latter clause (Ri HaLavan; Meiri). However, according to the Rambam, even if the husbands died after betrothal and before marriage, the woman is prohibited from remarrying.

What is the reason of Rabbi Yehuda – מַאי טַעֲמָא דְּרַבִּי יְהוּדָה: As opposed to the Gemara here, which relates the dispute to the time of the acquisition of the marriage contract, in the Jerusalem Talmud it is stated that according to the opinion of Rabbi Yehuda, the Sages entitled a father to his daughter's marriage contract in the case under discussion, even if his daughter was married and not merely betrothed, so that he would grant her a generous dowry. Although the *halakha* is in accordance with the opinion of the Sages, in later generations, scholars of several places enacted various decrees obligating the return of all or part of a dowry if the woman dies without children a short while after the marriage.

מְתִיב רָבָא: רַבִּי יְהוּדָה אוֹמֵר: הָרִאשׁוֹנָה שֶׁל אָב, וּמוֹדֶה רַבִּי יְהוּדָה בִּמְאָרֵס אֶת בִּתּוֹ כְּשֶׁהִיא קְטַנָּה, וּבָגְרָה, וְאַחַר כָּךְ נִשֵּׂאת – שֶׁאֵין לְאָבִיהָ רְשׁוּת בָּהּ. אַמַּאי? הָכָא נַמִּי לֵימָא: הוֹאִיל וּמִשְּׁעַת אֵירוּסִין זָכָה בָּהֶן הָאָב!

Rava raised an objection from a *baraita*: **Rabbi Yehuda says** that the payment specified in **the first** marriage contract belongs **to** her **father. And Rabbi Yehuda concedes** in the case **of one who betroths his daughter when she is a minor, and she matures and subsequently marries, that her father no** longer **has authority over her** once she becomes an adult, and he does not retain his rights to her marriage contract. According to the above explanation, **why** does Rabbi Yehuda agree in that case? **Here too, let him say: Since the father is entitled to** the payment of her marriage contract **from the time of** her **betrothal,** he receives the payment even if she married after she reached majority.

אֶלָּא, אִי אִתְּמַר הָכִי אִתְּמַר: רַבָּה וְרַב יוֹסֵף דְּאָמְרִי תַּרְוַיְיהוּ: הוֹאִיל וּבִרְשׁוּתוֹ נִכְתָּבִין.

Rather, if this statement **was stated, it was stated as follows: Rabba and Rav Yosef both say: Since** the amounts of the marriage contract **are written under his authority,** as the marriage contract is drafted right before the marriage, at which point the girl was still under her father's jurisdiction, he is therefore entitled to the money. This explains why the ruling is different if she reached majority before her marriage. In this case, the marriage contract was written when she was no longer under her father's jurisdiction, and therefore her father is not entitled to the payment of her marriage contract.

וּמִיגָּבָא מֵאֵימַת גָּבְיָא?

And now that it has been established that even according to the opinion of Rabbi Yehuda, the rights to a marriage contract are determined based upon the time of marriage and not the time of betrothal, despite the fact that its sum is fixed at that time, the Gemara asks: **From when** does the husband's property become liened to ensure **collection** of his wife's marriage contract?[NH] Does the monetary claim take effect at the time of betrothal, so that there is a lien on any property he owned at that time, or is there a lien only on property that the husband owned at the time of marriage?

אָמַר רַב הוּנָא: מָנֶה, מָאתַיִם – מִן הָאֵירוּסִין, וְתוֹסֶפֶת – מִן הַנִּשּׂוּאִין. וְרַב אַסִי אָמַר: אֶחָד זֶה וְאֶחָד זֶה – מִן הַנִּשּׂוּאִין.

Rav Huna said: With regard to the **one hundred dinars** for a non-virgin and the **two hundred** for a virgin, the basic sums of a marriage contract instituted by the Sages, she has a lien on her husband's property **from the** time of the **betrothal,** as she acquired this amount when she was betrothed, **but** with regard to the **addition,** i.e., additional sums of money stipulated by the husband himself, the wife's lien on his property takes effect only **from** the time of **the marriage. And Rav Asi said:** The lien for **both this and that** take effect only **from the** time of their **marriage.**[N]

וּמִי אָמַר רַב הוּנָא הָכִי? וְהָאִתְּמַר: הוֹצִיאָה עָלָיו שְׁתֵּי כְּתוּבּוֹת, אַחַת שֶׁל מָאתַיִם וְאַחַת שֶׁל שְׁלֹשׁ מֵאוֹת. וְאָמַר רַב הוּנָא: בָּאתָה לִגְבּוֹת מָאתַיִם – גּוֹבָה מִזְּמַן רִאשׁוֹן, שְׁלֹשׁ מֵאוֹת – גּוֹבָה מִזְּמַן שֵׁנִי.

The Gemara asks: **And did Rav Huna** actually **say this,** that a woman has a lien on her husband's property from the time of betrothal with regard to payment of the one hundred or two hundred dinars that constitute the main sum of her marriage contract? **But wasn't it stated** that *amora'im* discussed the case of a woman who **produced against** her husband, upon their divorce, **two marriage contracts,** written at different times, **one of two hundred** dinars **and** the other **one of three hundred? And Rav Huna said:** Since she can claim only one marriage contract, if **she came to collect** the first sum of **two hundred** dinars, **she** can **collect** that amount even **from** property her husband sold after **the first** point in **time,** when this marriage contract was written, and if she wishes to collect the one worth **three hundred** dinars, **she** can **collect from** property her husband sold after **the second** point in **time.**

NOTES

From when does the husband's property become liened to ensure collection of his wife's marriage contract – מִיגָּבָא מֵאֵימַת גָּבְיָא: The commentaries disagree about how to understand the dispute about whether the lien applies from the time of betrothal or from the time of the marriage. According to Rashi, a woman is legally entitled to a marriage contract from the time of betrothal, and if she would be divorced or widowed after betrothal, she would be entitled to payment even if no document had been written. However, it is common custom to write the document right before the marriage. The dispute here is whether the lien on the man's property takes effect from the time when the woman obtains the right to a marriage contract or from the time when the contract is actually written, in accordance with the general policy that only monetary debts for which there is a contract cause a lien on the debtor's property.

Conversely, Rabbeinu Ḥananel holds that a woman is not entitled to a marriage contract until the time of the marriage, but the husband may write one from the time of betrothal if he wishes. The case under discussion is one in which the husband wrote a marriage contract at the time of betrothal for the amount required by the Sages, and then he wrote a new contract at the time of the marriage, which included the obligation to pay an additional sum of money. The question is whether this second contract nullifies the first one, in which case the lien on the husband's property applies only to that which he owned at the time of the marriage, or whether the second contract merely adds an additional sum of money to the previous contract, in which case the lien on his property for the amount specified in the first contract applies to whatever he owned at the time of betrothal, when the first contract was written (see Rosh and Ritva).

Both this and that take effect only from the time of their marriage – אֶחָד זֶה וְאֶחָד זֶה מִן הַנִּשּׂוּאִין: Rav Sherira Gaon's opinion, which provides the basis for the Rambam's ruling, is similar to that of Rabbeinu Ḥananel, only more extreme. He agrees with Rabbeinu Ḥananel that a woman is not entitled to a marriage contract from the time of betrothal. Therefore, even if the husband voluntarily writes a marriage contract, it can be assumed that he does not intend to limit his ability to conduct business by creating a lien on his property before marriage.

HALAKHA

From when does the husband's property become liened to ensure collection of his wife's marriage contract – מִיגָּבָא מֵאֵימַת גָּבְיָא: With regard to one who betrothed a woman and wrote a marriage contract for her but died or divorced her before their marriage, she may collect the basic sum of the marriage contract from property that belonged to her husband at the time of his death. She may not collect her payment from property her husband sold after the betrothal, nor may she collect any additional sum beyond the basic sum of one hundred dinars for a non-virgin or two hundred for a virgin. This is the ruling of the Rambam, in accordance with the opinion of Rav Sherira Gaon. Others rule that she may claim the basic sum of the marriage contract even from property her husband sold after the betrothal (Rambam *Sefer Nashim*, *Hilkhot Ishut* 10:11; *Shulḥan Arukh*, *Even HaEzer* 55:6, and *Beit Shmuel* there).

וְאִם אִיתָא – תִּיגְבֵּי מָאתַיִם מִזְּמַן רִאשׁוֹן, וּמֵאָה מִזְּמַן שֵׁנִי!

The Gemara explains the difficulty: **And if it is so,** that Rav Huna maintains that the lien for the basic sum and the addition can be ascribed to different dates, **let her collect two hundred** dinars **from** property sold after **the first** point in **time,** as she was already entitled to the basic sum of her marriage contract from that day, **and** she can collect **the** additional **one hundred** dinars **from** property sold after **the second** point in **time.**

וּלְטַעֲמֵיךְ תִּיגְבֵּי חֲמֵשׁ מֵאוֹת כּוּלָּם, מָאתַיִם מִזְּמַן רִאשׁוֹן, תְּלַת מֵאָה מִזְּמַן שֵׁנִי!

The Gemara refutes this argument: **And** even **according to your reasoning, let her collect the entire five hundred** dinars, the sum of both marriage contracts. She should be able to collect **two hundred from** property sold after **the first** point in **time** and **three hundred from** property sold after **the second** stipulated **time.**

אֶלָּא: חֲמֵשׁ מֵאוֹת מַאי טַעֲמָא לָא גָּבְיָא – כֵּיוָן דְּלָא כָּתַב לָהּ ״צָבִיתִי וְאוֹסִיפִית לָךְ תְּלַת מֵאָה אַמָּאתַיִם״ הָכִי קָאָמַר לָהּ: אִי מִזְּמַן רִאשׁוֹן גְּבִיאַת – גָּבְיָא מָאתַיִם, אִי מִזְּמַן שֵׁנִי גְּבִיאַת – גָּבְיָא תְּלַת מֵאָה.

Rather, what is the reason that **she may not collect** the entire sum of **five hundred** dinars? **Since** he did **not write to her** in the second marriage contract: **I chose** to **add to** the payment of **your** marriage contract, and therefore I am writing a contract for **three hundred** dinars in addition **to** the first **two hundred** dinars, it is apparent that **this is what he** meant to **say to her** by writing a second marriage contract: **If you collect from** property sold after **the first** point in **time, you may collect two hundred** dinars; **if you collect from** property sold after **the second** point in **time, you may collect three hundred** dinars.

Perek **IV**
Daf **44** Amud **a**

הָכָא נַמִּי הַיְינוּ טַעֲמָא דְּלָא גָּבְיָא, מִדְּלָא כָּתַב לָהּ ״אוֹסִיפִית לָךְ מֵאָה אַמָּאתַיִם״ – אַחוּלֵי אַחֵילְתֵּיהּ לְשִׁעְבּוּדָא קַמָּא.

Here too, this is the reasoning for the ruling **that she does not collect** the additional one hundred dinars from the second stipulated time, **as he did not write to her** in the second marriage contract: **I added one hundred** dinars **to your** original marriage contract **of two hundred** dinars. Evidently, he did not add to the existing marriage contract. Rather, **she forgave** her rights **to the first** marriage contract, including the **lien** on his property from the date it was written, in order to accept the second marriage document.

אֲמַר מָר: אִי בָּעְיָא בְּהַאי – גָּבְיָא, אִי בָּעְיָא בְּהַאי גָּבְיָא, לֵימָא פְּלִיגָא דְּרַב נַחְמָן, דְּאָמַר רַב נַחְמָן: שְׁנֵי שְׁטָרוֹת הַיּוֹצְאִין בָּזֶה אַחַר זֶה – בִּיטֵּל שֵׁנִי אֶת הָרִאשׁוֹן!

§ After clarifying Rav Huna's opinion, the Gemara turns its attention to a more general issue, connected to his last statement. **The Master,** i.e., Rav Huna, **said,** as indicated in the above discussion, that **if she wishes** she can **collect** the sum specified in **this** marriage contract, and **if she wishes** she can **collect** the sum specified in **that** marriage contract.[H] The Gemara asks: **Shall we say** that this opinion **disagrees** with **that** of **Rav Naḥman? As Rav Naḥman said:** With regard to **two documents**[N] that pertain to the same issue and **that are produced one after the other,**[H] e.g., a pair of documents that ascribe the transfer of ownership over a particular field to different times, the **second,** later document **nullifies the first.** Here too, the second marriage contract should negate the first one entirely.

HALAKHA

She produced two marriage contracts – הוֹצִיאָה שְׁתֵּי כְּתוּבּוֹת: If a woman had two marriage contracts of equal value, the later document cancels the earlier one. She has a lien on her husband's property from the time when the second document was written. If they are not of equal value, she may use whichever one she wishes, and the other is nullified. If the husband wrote in the second document that he was adding an additional sum to that specified in the first document, she has a lien on his property from the time the first document was written vis-à-vis the sum specified in that document, and she has a lien on his property from the time the second document was written vis-à-vis the additional sum specified in that document (Rambam *Sefer Nashim*, *Hilkhot Ishut* 16:29; *Shulḥan Arukh*, *Even HaEzer* 100:14).

Two documents that are produced one after the other – שְׁנֵי שְׁטָרוֹת הַיּוֹצְאִין בָּזֶה אַחַר זֶה: If two identical documents were written about the same transaction, whether a sale or a gift, the second cancels the first. Consequently, if a field is repossessed by creditors of the seller, thereby requiring the seller to compensate the purchaser for his loss, the purchaser may repossess property from the seller only on the basis of the lien created by the second document. If a tax is owed for the field from the period of time between the writing of the two documents, the seller is responsible to pay it. If the purchaser consumed the field's produce during this period of time, he must reimburse the seller. However, some hold that although the purchaser is not entitled to the produce from this period, he does not have to reimburse the owner for anything he took (*Tur*, based on Rosh). The authorities further state that the reputation of the witnesses who signed on the first document is not impaired by this incident, as it is assumed that they acted in good faith (Rambam *Sefer Kinyan*, *Hilkhot Zekhiya* 5:9; *Shulḥan Arukh*, *Ḥoshen Mishpat* 240:2; *Sefer Me'irat Einayim*).

NOTES

Two documents – שְׁנֵי שְׁטָרוֹת: Some state that this *halakha* applies only to documents of sale, a gift, or a marriage contract. However, with regard to documents of loans, even if the two amounts were identical but from different dates, they are assumed to refer to different loans (Rif; *ge'onim*). Other early authorities cite support for this opinion from the Jerusalem Talmud in *Ketubot* 9:10 (Ritva). The Gemara there discusses whether one who lends another for a second time, before the first debt is paid off, is required to specify in the second document that he is lending him again. The Gemara concludes that although this is the advisable course of action, as it prevents error, if one does not do so he may nevertheless collect the loans mentioned in both documents.