

**שְׂאֵרָה אֵלּוּ מְזוֹנוֹת וכו' – She'era**, this is sustenance, etc. – Apparently, these *tanna'im* maintain that a husband's obligation to provide his wife with sustenance and clothing applies by Torah law. Some suggest that Rava did not explicitly mention this with regard to clothing because all opinions mentioned in the *baraita* agree that it is the plain meaning of the word *kesuta* in the verse, and something that is stated explicitly in the Torah does not have to be mentioned (Ran). However, the Ramban claims that the duties of sustenance and clothing apply by rabbinic law, in accordance with the interpretation of the verse provided by Rav Yosef (see Ramban's Commentary to the Torah, Exodus 21:10).

**עֲנִיָּה וכו' – Onata**, etc. – The commentaries explain that the term "*onata*" can refer to a period of time [*ona*] as well as suffering [*inui*] (*HaBoneh*). See Rashash, who argues that these *tanna'im* interpret "*onata*" as the prevention of her suffering.

## HALAKHA

**שְׂאֵר כְּסוּת וְעוֹנָה – Food, clothing, and conjugal rights** – By Torah law, there are three obligations of a husband toward his wife: He must provide her with food and with clothing, and he must engage in intercourse with her at regular intervals. This is the ruling of the Ramban, in accordance with the unattributed opinion in the *baraita*. By contrast, the Ramban maintains that only conjugal rights are a Torah obligation, whereas providing her with food and clothing is required by rabbinic law. Some claim (*Maggid Mishne*; see *Beit Shmuel*) that the conjugal rights and clothing apply by Torah law, while providing her with food is by rabbinic law (Rambam *Sefer Nashim*, *Hilkhot Ishut* 12:2; *Shulhan Arukh*, *Even HaEzer* 69:2).

## NOTES

**שְׂאֵרָה כְּסוּתָה – She'era and kesuta** – *Tosafot* quote the rest of the *baraita*, which appears in the *Mekhilta* and is also cited in the Jerusalem Talmud (*Ketubot* 5:7). The *baraita* adds that Rabbi Eliezer ben Ya'akov derives the obligations of sustenance and conjugal relations by an *a fortiori* inference. Since a law derived via an *a fortiori* inference has the status of Torah law, *Tosafot* claim that the question of the identity of the *tanna* cited on 47b who maintains that the Sages instituted that a husband must provide food for his wife in exchange for his right to her earnings, indicating that the responsibility to provide her with food is of rabbinic origin, is left unresolved. However, many other early authorities contend that the *baraita* cited by Rav Yosef, which maintains that *she'era* means closeness of flesh, indicates that a husband's obligation to provide food for his wife is of rabbinic origin.

**מְנַהֵג פְּרָסִיִּים – The manner of Persians** – Some commentaries connect this to a statement in *Berakhot* (8a). The problem is that there the Gemara is apparently praising the Persians for their modest conduct during intercourse, whereas here it rejects their conduct. Some commentaries state that even if the husband claims to be acting for reasons of modesty, he must divorce her and pay her the marriage contract (*Ritva*). Others note the Gemara elsewhere praises those who have relations in their clothes (*Magen Avraham* on *Shulhan Arukh*, *Orah Hayyim* 240:8). The *Magen Avraham* rules that if both partners agree, it is considered a form of modesty (see *Mishna Berura* and *Sha'ar HaTziyyun* on *Shulhan Arukh*, *Orah Hayyim* 240:8).

Abaye said: The Sages instituted a common obligation in exchange for a common right, and they instituted an uncommon obligation in exchange for an uncommon right. In other words, the Sages instituted a husband's obligation to provide his wife with sustenance, which is relevant on a regular basis, in exchange for his right to her earnings, which also applies regularly. The other obligations and rights of a husband are relevant less frequently.

Rava said: This *tanna*, in the *baraita* cited below, maintains that the obligation of a husband to provide his wife's sustenance applies by Torah law, as it is taught with regard to the verse pertaining to a husband's obligations toward his wife: "If he takes another wife for himself, her food [*she'era*], her clothing [*kesuta*], and her conjugal rights [*onata*], he shall not diminish" (Exodus 21:10). "*She'era*"; this is sustenance,<sup>n</sup> and it likewise states: "Who also eat the flesh [*she'er*] of my people" (Micah 3:3). "*Kesuta*" is understood in its literal sense as referring to clothing. "*Onata*";<sup>n</sup> this is her conjugal rights, which is stated in the Torah, and so it says: "If you shall afflict [*te'aneh*] my daughters" (Genesis 31:50), which indicates that a husband may not deprive his wife of her conjugal rights.<sup>h</sup>

The *baraita* continues: Rabbi Elazar says: "*She'era*"; this is her conjugal rights, and so it says: "None of you shall approach to any who is near [*she'er*] of kin to him, to uncover their nakedness" (Leviticus 18:6), which demonstrates that the word *she'er* is used in the context of sexual relations. "*Kesuta*" is understood in its literal sense as referring to clothing. "*Onata*"; this is sustenance, and so it says: "And He afflicted you [*vayanekeha*], and made you suffer hunger, and fed you with manna" (Deuteronomy 8:3).

אָמַר אַבְיֵי: תִּיקְנוּ מְצוּי לְמְצוּי, וְשְׂאֵינּוּ מְצוּי לְשְׂאֵינּוּ מְצוּי.

אָמַר רַבָּא: הָאֵי תְנָא סְבַר מְזוֹנוֹת מְדַאֲוֵרִיָּתָא, דְּתַנְיָא: "שְׂאֵרָה" – אֵלּוּ מְזוֹנוֹת, וְכֵן הוּא אֹמֵר "וְאִשׁוֹר אֶכְלוּ שְׂאֵר עִמִּי." כְּסוּתָה – כְּמִשְׁמַעוּ. "עֲנִיָּה" – זֶה עֲנִיָּה, הָאִמּוֹרָה בְּתוֹרָה, וְכֵן הוּא אֹמֵר "אִם תִּעַנֶּה אֶת בְּנוֹתֵי."

רַבִּי אֶלְעָזָר אֹמֵר: "שְׂאֵרָה" – זֶה עֲנִיָּה, וְכֵן הוּא אֹמֵר "אִישׁ אִישׁ אֶל כָּל שְׂאֵר בְּשׂוֹר לֹא תִקְרְבוּ לְגִלּוֹת עֲרוּהָ." כְּסוּתָה – כְּמִשְׁמַעוּ. "עֲנִיָּה" אֵלּוּ מְזוֹנוֹת, וְכֵן הוּא אֹמֵר "וַיַּעַנְךָ וַיִּרְעִיבְךָ."

## Perek IV

## Daf 48 Amud a

רַבִּי אֶלְעָזָר בֶּן יַעֲקֹב אֹמֵר: "שְׂאֵרָה כְּסוּתָה" – לְפִנֵּי שְׂאֵרָה תֵּן כְּסוּתָה. שְׂאֵרָה יִתֵּן לָהּ לֹא שֶׁל יְלֵדָה לְזִקְיָנָה, וְלֹא שֶׁל זִקְיָנָה לְיְלֵדָה. "כְּסוּתָה וְעֲנִיָּה" – לְפִנֵּי עֲנִיָּה תֵּן כְּסוּתָה, שְׂאֵר יִתֵּן חֲדָשִׁים בְּיָמוֹת הַחֹמָה וְלֹא שְׂחָקִים בְּיָמוֹת הַגְּשָׁמִים.

תַּנֵּי רַב יוֹסֵף: "שְׂאֵרָה" – זֶה קְרוֹב בְּשָׂר, שְׂאֵרָה יִנְהַג בָּהּ מְנַהֵג פְּרָסִיִּים, שְׂמִשְׁמִשִּׁין מְטוֹתֵיהֶן בְּלְבוּשֵׁיהֶן. מִסְּיַע לֵיהּ לְרַב הוֹנָא, דְּאָמַר רַב הוֹנָא: הָאֹמֵר "אִי אֶפְשִׁי אֶלָּא אֲנִי בְּבִגְדֵי וְהִיא בְּבִגְדָה" – יוֹצִיא וְנָתַן בְּתוֹבָה.

Rabbi Eliezer ben Ya'akov says that *she'era* and *kesuta*<sup>n</sup> should be interpreted as follows: In accordance with her flesh [*she'era*], i.e., her age, give her clothing [*kesuta*]. This means that he should not give the garments of a young girl to an elderly woman, nor those of an elderly woman to a young girl. Similarly, *kesuta* and *onata* are linked: In accordance with the time of year [*onata*], give her clothing [*kesuta*], meaning that he should not give new, heavy clothes<sup>h</sup> in the summer, nor worn-out garments in the rainy season, i.e., the winter, when she requires heavier, warmer clothes. The entire phrase, therefore, refers only to a husband's obligation to provide clothing for his wife.

Rav Yosef taught the following *baraita*: "*She'era*," this is referring to closeness of flesh during intercourse, which teaches that he should not treat her in the manner of Persians,<sup>n</sup> who have conjugal relations in their clothes. The Gemara comments: This *baraita* supports the opinion of Rav Huna, as Rav Huna said: With regard to one who says: I do not want to have intercourse with my wife unless I am in my clothes<sup>h</sup> and she is in her clothes, he must divorce his wife and give her the payment for her marriage contract. This is in keeping with the opinion of the *tanna* of the *baraita* that the Torah mandates the intimacy of flesh during sexual relations.

## HALAKHA

לֹא יִתֵּן חֲדָשִׁים וכו' – He should not give new, heavy clothes, etc. – A husband is obligated to provide his wife with suitable clothing in the winter and the summer, in accordance with the opinion of Rabbi Eliezer ben Ya'akov and the ruling of the mishna in *Ketubot* 64b (Rambam *Sefer Nashim*, *Hilkhot Ishut* 13:1; *Shulhan Arukh*, *Even HaEzer* 73:1).

אֲנִי בְּבִגְדֵי וכו' – I am in my clothes, etc. – If a husband says he is willing to have relations with his wife only if they both remain clothed, he must divorce her and pay her the marriage contract, as stated by Rav Huna (*Shulhan Arukh*, *Even HaEzer* 76:13).

Where it is the common custom for his family, etc. – בגון דאורחיה דידיה וכו'. Some commentaries ask: If the dispute is over whether to follow the custom of his family or hers in a case when his family's custom is to perform a public eulogy for women and her family's custom is not to do so, why does Rabbi Yehuda specify a particular number of flutes that must accompany the eulogy? He should simply state that the eulogy must follow the custom of the husband's family. One answer is that this refers to a situation where his family had the custom to perform a public eulogy, but did not have a clearly defined custom with regard to the number of flutes. Rabbi Yehuda rules that it is not considered a public eulogy, even for the poorest Jew, with fewer than two flutes (*Talmidei Rabbeinu Yona*). Alternatively, even if he is required to arrange a public eulogy, in accordance with the custom of his family, he does not have to provide a eulogy that exactly matches the custom of his family. Rather, it enough if he hires two flutes and a lamenting woman (Ritva).

But not his sons and daughters – אביל לא בניו ובנותיו. Later in the Gemara (see 49a–b) there is a detailed discussion of a father's obligation to provide for his children. The duty of a husband to support his wife is either a Torah commandment (see 47b), or an obligation imposed through the marriage contract he gave her. Conversely, with regard to his children there is a difference between children younger than six, minors over the age of six, and grown children.

In addition to the legal obligation, there is also the consideration of whether the court may rely on the fact that the man was supporting his children before he left and can therefore assume that he would want to continue supporting them (see Meiri and Ran).

”רבי יהודה אומר: אפילו עני שבשיראל” וכו'. מפלל דתנא קמא סבר הני לא. היכי דמי? אי דאורחה – מאי טעמא דתנא קמא דאמר לא? ואי דלא אורחה – מאי טעמא דרבי יהודה?

לא צריכא. בגון דאורחיה דידיה ולא אורחה דידיה. תנא קמא סבר: בי אמרינן עולה עמו ואינה יורדת עמו – הני מילי מוחיים, אביל לאחר מיתה – לא.

ורבי יהודה סבר: אפילו לאחר מיתה. אומר רב חסדא אומר מר עוקבא: הלכה כרבי יהודה.

ואמר רב חסדא אומר מר עוקבא: מי שנשתטטה – בית דין יורדין לנכסיו, וזנין ומפרנסין את אשתו ובניו ובנותיו ודבר אחר. אומר ליה רבינא לרב אשי. מאי שנא מהא דתנא: מי שהלך למדינת הים ואשתו תובעת מזונות – בית דין יורדין לנכסיו וזנין ומפרנסין את אשתו, אביל לא בניו ובנותיו, ולא דבר אחר!

אמר ליה: ולא שאני לך בין יוצא לדעת ליוצא שלא לדעת?

§ The mishna teaches that Rabbi Yehuda says: Even the poorest man of the Jewish people may not provide fewer than two flutes and a lamenting woman for his wife's funeral. The Gemara infers: This proves by inference that the first, anonymous *tanna* cited in the mishna holds that these are not part of a husband's obligations. The Gemara asks: What are the circumstances? If this is the common custom in her family at funerals, what is the reason for the opinion of the first *tanna* who said that he does not have to do so? If he neglected to provide these items he would be treating her with disrespect. And if this is not the common custom in her family, what is the reason for the opinion of Rabbi Yehuda?

The Gemara answers: No, it is necessary to state their dispute in a case where it is the common custom for his family<sup>n</sup> according to its social status, but it is not common for her family according to its social status. The first *tanna* holds: When we say that a woman who marries a man ascends with him, i.e., she must be treated as equal in status to her husband if his social status is higher than hers, and does not descend with him if he is from a lower social status, this applies only when they are alive, but after death the Sages did not enforce this rule.

And Rabbi Yehuda maintains: Even after death she must be treated in accordance with his status, which means that if those in his family are mourned with flutes and lamenting women, he must provide the same for her funeral. Rav H̄isda said that Mar Ukva said: The *halakha* is in accordance with the opinion of Rabbi Yehuda.

Apropos this ruling, the Gemara cites another statement that Rav H̄isda said that Mar Ukva said: With regard to one who became insane,<sup>h</sup> the court enters his property and feeds and provides a livelihood for his wife, his sons, and his daughters, and it also gives something else, as will be explained. Ravina said to Rav Ashi: In what way is this case different from that which is taught in a *baraita*: In the case of one who went overseas<sup>h</sup> and his wife claims sustenance, the court descends to his property and feeds and provides a livelihood for his wife, but not for his sons and daughters<sup>n</sup> and does not give something else. If a father is not obligated to sustain his children in his absence, what is different about a situation where he is mad?

Rav Ashi said to Ravina: Is there no difference for you between a man who leaves his responsibilities knowingly and one who leaves them unknowingly? A father who lost his sanity did not do so by his own choice, and therefore it can be assumed that he would want to provide for his children from his possessions, despite the fact that he is not obligated to do so. By contrast, if he went overseas he freely decided to depart, and one would think that he would leave enough for his sons and daughters. If he failed to do so, he has demonstrated that he does not want to provide for them.

## HALAKHA

One who became insane, etc. – מי שנשתטטה וכו': If a man lost his sanity, the court uses his property to provide for his wife, as well as for his sons and daughters until their maturity. This is in accordance with the opinion of the *Tur* and the Ran as opposed to that of the Rambam, who rules that if he is not wealthy his property is used to support only his children who are less than six years old (*Helkat Meḥokek*; Rambam *Sefer Nashim*, *Hilkhot Ishut* 12:17 and *Kesef Mishne* there; *Shulḥan Arukh*, *Even HaEzer* 71:3).

One who went overseas, etc. – מי שהלך למדינת הים וכו': If a man left his wife and children and traveled overseas, after three

months the court uses his property to support his wife and his children who are younger than six. However, his property is not used to support his children who are age six and older. Some authorities maintain that if the man had been supporting his children before his departure, the court uses his property in order to continue supporting them (Rema, citing Mordekhai). According to the *Tur*, if he is a man of means the court provides sustenance for his older children in all cases. The Rambam disagrees with this ruling (Rambam *Sefer Nashim*, *Hilkhot Ishut* 12:16; *Shulḥan Arukh*, *Even HaEzer* 70:5; 71:2).

מאי דבר אחר? רב חסדא אמר: זה תבשיט – רב יוסף אמר: צדקה. מאן דאמר תבשיט – כל שכן צדקה, מאן דאמר צדקה – אבל תבשיט יהבינן לה, דלא נחא ליה דתינוול.

אמר רב חייא בר אבין אמר רב הונא: מי שהלך למדינת הים ומתה אשתו – בית דין יורדין לנכסיו, וקוברין אותה לפי כבודו. לפי כבודו ולא לפי כבודיה?!

אימא: אף לפי כבודו. הא קא משמע לן: עולה עמו ואינה יורדת עמו, ואפילו לאחר מיתה.

אמר רב מתנה: האומר "אם מתה לא תקברוה מנכסיו" – שומעין לו. מאי שנא בי אמר – דנפלו נכסי קמי יתמי, בי לא אמר נמי – נכסי קמי יתמי רמו!

אלא, האומר "אם מת הוא לא תקברוה מנכסיו" – אין שומעין לו, לאו כל הימנו שיעשיר את בניו, ויפיל עצמו על הצבור.

מתני' לעולם היא ברשות האב עד שתכנס

The Gemara asks: **What is this something else<sup>N</sup> mentioned in the baraita?** Rav Hisda said: **This is a wife's ornaments,**<sup>H</sup> to which she is entitled in addition to her sustenance. Rav Yosef said: **It is money for charity.**<sup>H</sup> The Gemara comments: According to **the one who says that the court does not pay for a woman's ornaments from her husband's property if he has gone overseas, all the more so he maintains that the husband's property is not taken for charity.** Conversely, **the one who says that the court does not give money for charity holds that this applies only to charity, but it does give her ornaments, as it is assumed that it is not satisfactory for him that his wife be demeaned by a lack of jewelry.**

Rav Hiyya bar Avin said that Rav Huna said: **In the case of one who went overseas and his wife died, the court enters his property and buries her<sup>H</sup> in accordance with his dignity.** The Gemara asks: **Does the court act in accordance with his dignity and not in accordance with her dignity?**<sup>N</sup> What if she came from a more dignified family than her husband?

The Gemara answers: **Say that Rav Hiyya bar Avin meant: Even in accordance with his dignity, i.e., if his family was more distinguished than hers, he must bury her in accordance with the dignity of his family.** The Gemara adds: **This comes to teach us that she ascends with him to his social status and does not descend with him, and this principle applies even after her death, in accordance with Rabbi Yehuda's opinion in the mishna.**

Rav Mattana said: **In the case of one who says that if his wife dies, they should not bury her using funds from his property, the court listens to him.** The Gemara asks: **What is different about the case when he says this command that induces the court to comply with his wishes?** It is due to the fact **that the property has come before the orphans as an inheritance, while the obligation to bury her is not incumbent upon them but is a duty of the inheritors of her marriage contract.** However, **even if he did not state the above preference, the property is cast before the orphans and it belongs to them.** What does it matter whether or not the husband issued a command to this effect?

Rather, the Gemara amends Rav Mattana's statement: **With regard to one who says that if he himself dies, they should not bury him using funds from his property,<sup>H</sup> one does not listen to him, but the court spends his money without resorting to charity.** The reason for this is that it is **not in his power to enrich his sons by saving them this expense and to cast himself as a burden on the community.**

**MISHNA** Even after she is betrothed, a daughter is always under her father's authority until she enters

**Something else – דבר אחר:** Although the Sages established a fixed sum in a marriage contract for the purchase of cosmetics, which is the ornamentation referred to here, since the purpose of these cosmetics is to endear the woman to her husband, one can understand why they are not given to a woman whose husband is overseas (Rivan). This is especially true according to another version of the text, which reads: It is satisfactory for him that his wife be demeaned, i.e., an absent husband has no interest in his wife looking her best, so as not to attract the attentions of other men. Others, who probably had a similar version of the Gemara, maintain that one does not provide ornaments to a wife of a man who lost his sanity, as he does not have the state of mind to desire her (Rid). Yet others explain, in accordance with the standard version of the text, that the court does not force a woman whose husband has become insane to be without cosmetics on a permanent basis, whereas a husband who has gone overseas is expected to return, and therefore she can temporarily do without ornaments (Beit Shmuel).

**In accordance with his dignity and not in accordance with her dignity – לפי כבודו ולא לפי כבודיה:** Some commentaries note that this question pertains to all opinions, as even those Sages who maintain that she does not ascend with him after death agree that she does not descend from her previous status (Rid).

#### HALAKHA

**Ornaments – תבשיט:** If a husband traveled overseas and the court ruled that his wife is entitled to receive sustenance, they do not give her money for ornaments. However, a woman whose husband became insane does get an allowance for this purpose. Apparently, the Rambam rules in accordance with the opinion of Rav Hisda; however, there are various versions of the text, and therefore it is possible that the Rambam follows Rav Yosef's opinion (Rambam *Sefer Nashim, Hilkhot Ishut* 13:7; *Shulhan Arukh, Even HaEzer* 70:5–6).

**Charity – צדקה:** If a husband became insane, the court determines the appropriate amount of charity that should be given from his estate (Rambam *Sefer Mishpatim, Hilkhot Nahalot* 11:1; *Shulhan Arukh, Hoshen Mishpat* 290:15).

**Burial – קבורה:** In the case of a man who went overseas and his wife died, if necessary the court will sell his property without issuing a public announcement, and bury her in accordance with her husband's status and means, or in accordance with her own status if she came from a more distinguished family. The *halakha* is in accordance with the opinion of Rabbi Yehuda (Rambam *Sefer Nashim, Hilkhot Ishut* 14:24; *Shulhan Arukh, Even HaEzer* 89:3).

**They should not bury him using funds from his property – לא תקברוהו מנכסיו:** In the case of one who commands his heirs not to pay for his burial with funds from his estate, the court takes no heed of this directive and forces the heirs to pay for his burial, as well as other items customary for the dead, including a tombstone, in accordance with the opinion of Rav Mattana (Rambam *Sefer Kinyan, Hilkhot Zekhiya* 11:24; *Shulhan Arukh, Yoreh De'a* 348:2).

NOTES

**Her husband's authority in marriage** – רשות הבעל – לנשואין: This is the version of the text that Rashi had. However, most early authorities accepted an alternate version of the text that read: A daughter is always under the authority of her father until she enters the wedding canopy. They rejected Rashi's text because of its unusual style and in light of the subsequent Gemara, which appears to quote the mishna in raising a difficulty against the opinion of Rav Asi and cites the alternate version of the text. According to Rashi, it must be explained that the Gemara was citing the meaning of the mishna without quoting it precisely. It appears from the Jerusalem Talmud that the correct version is the text of the authorities who differ with Rashi (see Ritva).

**Rav Asi said she is under her husband's authority even with regard to teruma** – רב אסי אומר אף לתרומה: Rashi explains the dispute between Rav and Rav Asi on the basis of a disagreement (57b) with regard to the reason for the rabbinic decree that a woman whose father is not a priest and who is betrothed to a priest may not partake of *teruma*. Rav Asi follows the opinion that she is prohibited to partake of *teruma* due to a concern that she might give some of it to her brothers and sisters, who are not entitled to eat it. Consequently, as soon as she has been delivered to the husband's messengers, when this concern no longer applies, she may partake of *teruma*. Conversely, Rav accepts the opinion that the concern is that her husband might discover a bodily defect in her which will lead to the retroactive annulment of the marriage, in which case she would have retroactively eaten *teruma* unlawfully. This concern is relevant even after she has been delivered to the husband's messengers, until she actually enters the wedding canopy.

*Tosafot* question Rashi's explanation, as it apparently does not fit in with the conclusion of the Gemara there, which states that the dispute was only according to the initial version of the mishna; however, according to final *halakha*, which is that a woman betrothed to a priest may not partake of *teruma* until she is married, even if the time designated for the wedding has arrived, all agree that the sole reason is the concern for the discovery of a bodily defect. However, the Rashba claims that this difficulty of *Tosafot* is not irrefutable, as one can explain according to Rashi that Rav Asi offers a third opinion, in addition to the two mentioned in the Gemara there, as he maintains that even according to the final *halakha*, the concern is that she might share *teruma* with her siblings. See the *Shita Mekubbetzet* for a variation of this answer.

**Shmuel said she is under her husband's authority only with regard to her inheritance** – שמואל אומר לירושתה: There are differences of opinion among the early commentaries with regard to Shmuel's opinion. Rashi maintains that he is referring only to her inheritance, whereas she is treated as a betrothed woman with regard to all other matters. This explanation widens the gap between the opinion of Shmuel and that of Rav. Conversely, *Tosafot* hold that Shmuel means simply that she is considered married in that her husband inherits from her, but she is not considered married with regard to partaking of *teruma*. According to this opinion, Shmuel agrees with the opinion of Rav cited previously.

לרשות הבעל לנשואין. מסר האב לשלוחי הבעל – הרי היא ברשות הבעל. הלך האב עם שלוחי הבעל, או שהלכו שלוחי האב עם שלוחי הבעל – הרי היא ברשות האב. מסרו שלוחי האב לשלוחי הבעל – הרי היא ברשות הבעל.

**גמ' מאי לעולם? לאפוקי ממשנה ראשונה.** דתנן: הגיע זמן ולא נישא – ואוכלות משלו ואוכלות בתרומה. קא משמע לן: לעולם.

”מסר האב לשלוחי הבעל הרי היא ברשות הבעל” וכו'. אומר רב: מסירתה לכל, חוץ מתרומה. ורב אסי אומר: אף לתרומה.

איתיביה רב הונא לרב אסי, ואמר: לה חייא בר רב רב אסי: לעולם היא ברשות האב, עד שתקנס לחופה! אומר להו: רב: לאו אמינא לכו: לא תיילו בתר איפכא? יכול לשנויי לכו: מסירתה זו היא כניסתה לחופה.

ושמואל אומר: לירושתה.

ריש לקיש אומר: לכתובתה. כתובתה מאי היא – דאי מתה ירית לה, היינו דשמואל! אומר רבינא: לומר כתובתה מאחר – מנה.

her husband's authority in marriage<sup>N</sup> via the wedding canopy. If the father delivered his daughter to the husband's messengers to bring her to her husband and the wedding canopy, once she has been handed over she is under the husband's authority. However, if the father went with the husband's messengers, or if the father's messengers went with the husband's messengers, she is still under the father's authority, as he has not fully delivered her to the husband's messengers. If her father sent her with his own messengers and the father's messengers delivered the woman to the husband's messengers, from that moment onwards she is under her husband's authority.

**GEMARA** The mishna taught that a daughter always remains under her father's authority until she has fully entered her husband's jurisdiction. The Gemara asks: **What is the significance of the term: Always, in the mishna?** The Gemara explains: This comes to exclude the opinion stated in the initial version of the mishna. **As we learned in a mishna (57a):** If the time that the groom designated for the wedding arrived, and the wedding was postponed, and they were not married, the brides are entitled to eat from his food and, if he is a priest, eat *teruma*, like married women. The mishna here teaches us that the *halakha* is not in accordance with this earlier ruling cited in that mishna. Rather, they are always under their father's authority until they actually enter the wedding canopy.

§ The mishna taught that if the father delivered his daughter to the husband's messengers, she is under the husband's authority, unless the father or his messengers accompanied them. **Rav said:** When her father delivers her she leaves his jurisdiction in all respects, apart from the issue of partaking of *teruma*. Even if her husband is a priest, if she is not from a family of priests, she may not partake of *teruma* until she is fully married. **And Rav Asi said** that once she has been delivered to the husband's messengers she is under her husband's authority even with regard to *teruma*.<sup>N</sup>

Rav Huna raised an objection to the opinion of Rav Asi, and some say that it was **Hiyya, son of Rav**, who raised an objection to the opinion of Rav Asi: The mishna states that she is always under her father's authority until she enters the wedding canopy. According to Rav Asi, however, as soon as her father delivers her to the husband's messengers she is no longer under her father's authority. **Rav said to them: Didn't I tell you not to follow**, i.e., attempt to refute rulings, on the basis of sources that can be explained in opposing manners? **Rav Asi can answer you** that the mishna means that her delivery to the husband's messengers is equivalent to her entrance to the wedding canopy, and the same *halakhot* apply in both cases.

**And Shmuel said** that once a woman's father has delivered her to the messengers of her husband, she is under her husband's authority only with regard to her inheritance,<sup>N</sup> i.e., her husband inherits her property upon her death as though she had already entered the wedding canopy.

**Reish Lakish said:** Her delivery is also effective with regard to her marriage contract. The Gemara asks: **What is Reish Lakish referring to when he says that she is under her husband's authority with regard to her marriage contract?** If you say it means that if she dies he inherits all her property, including the dowry specified in her marriage contract, that is the same as the statement of Shmuel, and Reish Lakish has added nothing to his ruling. **Ravina said:** Reish Lakish is coming to say that if the man dies before marrying her, and she then marries someone else, her marriage contract from the other man is one hundred dinars, as she is considered a widow from marriage rather than a widow from betrothal.

A refutation of all of them – תְּיִוְבְּתָא דְכֹוֹלְהוּ – Rashi and most early authorities maintain that the phrase: All of them, should not be understood literally, as it refers only to those *amora'im* who said that handing her over is effective for everything except inheritance (see *Tosafot*). Apparently, the refutation applies to the opinion of Rav as well, despite the fact that he maintains that the woman cannot partake of *teruma*, as he indicates that it is effective for all other matters, whereas the *baraita* indicates that it affects only the husband's status as her heir (Rabbeinu Crescas Vidal).

Others maintain that the opinion of Reish Lakish is not refuted, as one can say that the *baraita* is speaking only about the relationship between husband and wife, not her relationship with anyone else (Rabbeinu Hananel; see Ritva). However, Rabbeinu Hananel also had a variant reading of this *baraita*, which states in its first part: He had a different courtyard. He explains that according to the *baraita*, the delivery of a daughter is effective for the husband to inherit from her only if two conditions are fulfilled, namely that she is handed over to the husband or his messengers and that this is performed in a courtyard belonging to him. Accordingly, even Shmuel's opinion that her delivery is effective only for the inheritance is refuted by the *baraita*. Others cite various proofs demonstrating that this version does not fit in well with the continuation of the Gemara, and they stress that the phrase: All of them, does not necessarily mean the refutation of every single opinion (Ramban).

His courtyard and hers – חֲצֵר שְׁלוֹ וְשִׁלְיָהּ – Since the wedding canopy is not a sacred ritual but merely a symbolic act by which the groom welcomes his bride into his house to commence their married life together, if the groom brings his bride into a courtyard, that may also be considered the equivalent of a wedding canopy. The discussion of the Gemara concerns only the details: When is their lodging together considered a chance event that does not signify his bringing her into his house, and when it is viewed as the equivalent of a wedding canopy (see Meiri and *Shita Mekubbetzet*).

Rabbi Yoḥanan and Rabbi Ḥanina both say that a woman's delivery to the messengers of her husband causes her to be under his authority for all matters, even including partaking of *teruma*.

The Gemara raises an objection from the *Tosefta* (*Ketubot* 4:4): If the father went with the husband's messengers, or if the father's messengers went with the husband's messengers, or if she owned a courtyard along the way and she entered with her groom to lodge, not for the purpose of marriage but merely to stay overnight until they arrive at his residence, then even if the dowry specified in her marriage contract is already in her husband's house, if she dies, her father inherits from her, as she is not considered to have entered her husband's domain.

Conversely, if the father delivered her to the husband's messengers, or if the father's messengers delivered her to the husband's messengers, or if the groom owned a courtyard along the way and she entered with him for the purpose of marriage, then even if the dowry specified in her marriage contract is still in her father's house and has not yet been given to her husband, if she dies, her husband inherits from her.<sup>11</sup>

The *Tosefta* concludes: In what case is this statement said? It is stated with regard to the husband's right to inherit from her. However, with regard to *teruma*, the *halakha* is that a woman who marries a priest may not partake of *teruma*<sup>12</sup> until she actually enters the wedding canopy. This *baraita* is apparently a refutation of all of them,<sup>13</sup> i.e., all of the opinions cited previously that hold that once the woman is delivered to the husband's messengers, if the husband is a priest, the woman may partake of *teruma*. The Gemara concludes: Indeed, this is a conclusive refutation.

The Gemara asks: This matter itself is difficult. You said in the *Tosefta* that if she entered with him to her courtyard to lodge for one night, and she dies, her father inherits her property. The reason is because it specified that they entered only to lodge there, from which it may be inferred that if they entered without specification it is as though she entered for the sake of marriage. Say the latter clause of the *Tosefta*: If she entered with him to his courtyard for the purpose of marriage, and she dies, her husband inherits her property. This indicates that if she entered without specification, i.e., without saying that they were doing so for marriage, it is considered as though they entered merely to lodge. The inferences from these two clauses of the *Tosefta* apparently contradict one another.

Rav Ashi said: This is an incorrect interpretation, as the *tanna* taught the *halakha* of entering one type of courtyard without specification and the *halakha* of entering a different type of courtyard without specification, as follows: If they entered her courtyard without specification it is assumed that they entered merely to lodge, whereas if they entered his courtyard without specification, it is assumed that they did so for the sake of marriage, unless they expressly stated that they had another purpose in mind.<sup>14</sup>

רבי יוחנן ורבי חנינא דאמרי תרוניהו: מסיירתה לכל, אף לתרומה.

מיתבי: הלך האב עם שלוחי הבעל, או שהלכו שלוחי האב עם שלוחי הבעל, או שהיתה לה חצר בדרך ונכנסה עמו ללון, אף על פי שכתובתה בבית בעלה, מתה – אביה ירשה.

מסר האב לשלוחי הבעל, או שמסרו שלוחי האב לשלוחי הבעל, או שהיתה לו חצר בדרך ונכנסה עמו לשם נישואין, אף על פי שכתובתה בבית אביה, מתה – בעלה ירשה.

במה דברים אמורים – לירושתה. אבל לתרומה – אין אשה אוכלת בתרומה עד שתכנס לחופה. תיובתא דכולהו! תיובתא.

הא גופא קשיא: אמרת: נכנסה עמו ללון, טעמא דללון, הא סתמא – לשם נישואין; אימא סתמא: נכנסה עמו לשם ללון! הא סתמא – ללון!

אמר רב אשי: סתמי סתמי קתני; סתם חצר דידיה – ללון, סתם חצר דידיה – לנישואין.

#### HALAKHA

מאימתי יורש – From when does one inherit from his wife – With regard to a woman who was betrothed, and delivered by her father or his messengers to the husband or his messengers, if she died along the way before the wedding canopy, her husband inherits her property. This is so even if her dowry is still in her father's house. However, the *Tur*, citing the Ran, disagrees in this case, in accordance with the opinion of Rabbeinu Tam. Her husband likewise inherits her property if the father or his messengers accompanied her, and along the way the couple entered a courtyard and was secluded for the purpose of marriage. However, if her father or his messengers went with the husband or his messengers and stayed in a

courtyard, in the manner of travelers, then since the husband was not secluded with his wife for the sake of marriage, her father inherits from her if she dies, even if the dowry was in the husband's house. This ruling is as stated in the *baraita* and in accordance with the opinion of Shmuel, consistent with the principle that the *halakha* follows the rulings of Shmuel in monetary law.

Some claim that if the pair entered the husband's courtyard or one that belonged to them both, it is assumed that they were secluded for marriage; whereas if the courtyard belonged to her or if it was not owned by either of them, their seclusion was presumably for the purpose of lodging, as stated by Rav Ashi

(Rema; *Maggid Mishneh*, citing Ramban and Rashba; Ran). The *Ḥelkat Mehokek* maintains that this opinion does not dispute the previous ruling of the Rambam (Rambam *Sefer Nashim, Hilkhot Ishut* 22:2; *Shulḥan Arukh, Even HaEzer* 57:1).

Partaking of *teruma* – אכילת תרומה: An Israelite woman who marries a priest may partake of *teruma*. By Torah law she may partake of *teruma* from the time of her betrothal, but the Sages prohibited her from doing so until she enters the wedding canopy, as stated by Rav (Rambam *Sefer Zera'im, Hilkhot Terumat* 6:3).

NOTES

If the father delivered... she is sentenced to strangulation – מיתת הנואפת – מייתת הנואפת: Some commentaries write that this *baraita* does not prove that delivering a woman to her husband's messengers changes her status to that of a married woman, and therefore it has no bearing on the earlier dispute (*Shita Mekubbetzet*). This is because the *baraita*, as the Gemara explains, merely proves that a bride who has been transferred to her husband's messenger is no longer classified as a betrothed young woman, as she is not in her father's house. However, this does not necessarily mean that she is considered a married woman (see Rivan).

HALAKHA

The execution of an adulteress – מיתת הנואפת: If a betrothed young woman committed adultery, she and the one with whom she committed adultery are sentenced to stoning. If she was a grown woman, or if she had entered the wedding canopy, even if she had not yet engaged in intercourse with her husband, or if her father had delivered her to the husband's messengers, even before the wedding canopy, she is liable to be executed by strangulation, like a regular married woman who committed adultery (Rambam *Sefer Kedusha, Hilkhot Issurei Bia* 3:4).

תנא: מסר האב לשלוחי הבעל וזונתה – הרי זו בחנק. מנא הני מילי? אמר רבי אמי בר חמא: אמר קרא "לזנות בית אביה" – פרט לשמסר האב לשלוחי הבעל.

ואימא פרט שנכנסה לחופה ולא נבעלה!

אמר רבא, אמר לי אמי: חופה בהדיא כתיבא. "כי יהיה נערה בתולה מאורשה לאיש, נערה" – ולא בוגרת: "בתולה" – ולא בעולה: "מאורשה" – ולא נשואה.

מאי נשואה? אימא נשואה ממש – היינו בתולה ולא בעולה. אלא לאו – שנכנסה לחופה ולא נבעלה.

**S** A Sage taught in a *baraita*: If the father delivered his daughter to the husband's messengers and she subsequently committed adultery, she is sentenced to strangulation,<sup>N</sup> in accordance with the *halakha* of a married woman who committed adultery, rather than stoning, which is the punishment for a betrothed woman who commits adultery.<sup>H</sup> The Gemara asks: **From where are these matters derived? Rabbi Ami bar Hama said that the verse states, in the context of the command to stone a young woman who commits adultery during betrothal: "To play the whore in her father's house" (Deuteronomy 22:21), which excludes a case when the father has delivered her to the husband's messengers, when she is no longer in her father's house.**

The Gemara raises a difficulty: **But one can say that the verse is excluding a case where she has entered the wedding canopy but she has not yet had intercourse, whereas if her father has merely delivered her to the husband's messengers she is still considered to have sinned in his house and is punishable by stoning like any other betrothed woman.**

In answer to this question, **Rava said:** The verse cannot be excluding that case, as **Ami said to me** that the case where she already entered the wedding canopy is not derived by inference from that verse; it is explicitly written in the following verse: **"If there is a young woman who is a virgin betrothed to a man" (Deuteronomy 22:23).** The terminology of the verse indicates that it applies to a **"young woman" and not to a grown woman; to a "virgin" and not to a non-virgin; and to a "betrothed" woman and not to a married woman.**

The Gemara analyzes this statement: **What is the meaning of the term: A married woman, in this context? If we say that she is actually married and has already engaged in intercourse with her husband, this ruling is the same as the previous one, that she must be a virgin and not a non-virgin. Rather, is it not the case that it is referring to a woman who has entered the wedding canopy but has not had intercourse, and yet if she committed adultery at this stage she is sentenced to strangulation, like one who had engaged in relations with her husband? Consequently, the other verse, cited by Rabbi Ami bar Hama, cannot be referring to this case.**

Perek IV  
Daf 49 Amud a

ואימא: היכא דהדרא לבי נשא – הדרא למילתא קמייתא! אמר רבא: ההוא כבר פסקה תנא דבי רבי ישמעאל!

דתנא דבי רבי ישמעאל: "ונדר אלמנה וגרושה כל אשר אסרה על נפשה יקום עליה", מה תלמוד לומר? והלא מוצאת מכלל אב ומוצאת מכלל בעל!

The Gemara asks another question: **But say that in a case where she returns to her father's house, she returns to the previous matter, i.e., her former status, as though she had never left her father's authority. Rava said: That question has already been resolved by the *tanna* of the school of Rabbi Yishmael.**

This is as the *tanna* of the school of Rabbi Yishmael taught: **"But the vow of a widow or of a divorcee, everything with which she has bound her soul shall stand against her" (Numbers 30:10).** What is the meaning when the verse states this? **Is it not already known that if she is widowed or divorced she has already been removed from the category of one under the authority of her father and she has likewise been removed from the category of one under the authority of her husband? Who, then, could possibly nullify her vows?**