רַבִּי אַמִּי וְרַבִּי אַסִּי סְבוּר לְמֵיזָן מִמְּטַלְטְלֵי. אֲמַר לְהוּ רַבִּי יַעֲקֹב בַּר אִידִי: מִילְּתָא דְּרַבִּי יוֹחָנָן וְרֵישׁ לָקִישׁ לָא עָבְדוּ בָּהּ עוּבְדָא, אַתּוּן עָבְדִין בָּהּ עוּבְדָא?!

The Gemara further relates: **Rabbi Ami and Rabbi Asi thought** to issue a ruling requiring a man's heirs **to sustain** his daughters **from** the man's **movable property. Rabbi Ya'akov bar Idi said to them:** This is **a matter** about **which Rabbi Yoḥanan and Reish Lakish did not take action,** i.e., they did not issue a ruling to this effect; will **you take action in** this regard? If those great Sages were not sure enough of the *halakha* to issue a practical ruling, how can you do so?

רַבִּי אֶלְעָזָר סָבַר לְמֵיזָן מִמְּטַלְטְלִין, אֲמַר לְפָנָיו רַבִּי שִׁמְעוֹן בֶּן אֶלְיָקִים: רַבִּי, יוֹדֵעַ אֲנִי בְּךָ שֶׁאֵין מִדַּת הַדִּין אַתָּה עוֹשֶׂה אֶלָּא מִדַּת רַחֲמָנוּת, אֶלָּא, שֶׁמָּא יִרְאוּ הַתַּלְמִידִים וְיִקְבְּעוּ הֲלָכָה לְדוֹרוֹת.

The Gemara relates that **Rabbi Elazar thought** to issue a ruling requiring a man's heirs **to sustain** his daughters **from** his **movable property. Rabbi Shimon ben Elyakim said before him: My teacher, I know about you that you are not acting** according to **the letter of the law,** but **rather** out of **pity** for these daughters, who have no other source of support. **However,** you should still not do this, **lest the students observe and** mistakenly **establish** the ***halakha*** accordingly **for** future **generations.**

הַהוּא דַּאֲתָא לְקַמֵּיהּ דְּרַב יוֹסֵף, אֲמַר לְהוּ: הָבוּ לָהּ מִתַּמְרֵי דְּעַל בּוּדְיָא. אֲמַר לֵיהּ אַבַּיֵי: אִילּוּ בַּעַל חוֹב הֲוָה, כִּי הַאי גַּוְונָא מִי הֲוָה יָהֵיב לֵיהּ מָר?

A certain person **came before Rav Yosef** to inquire about this matter. Rav Yosef **said to** the sons of the deceased man: **Give** the daughter her sustenance **from the dates** that are laid out to dry **on the mats** [***budya***].[BL] These fruits are certainly movable property. **Abaye said to** Rav Yosef: **If it was a creditor** who came to collect a debt, **would the Master give him** the right to collect it **in this** manner? Even a creditor, who may collect his claim by repossessing property that the debtor has sold, cannot take movable property from the possession of orphans. A daughter, who cannot collect her sustenance from property that her father sold, should certainly not have the right to collect her sustenance from movable property that belongs to the male orphans.

אֲמַר לֵיהּ: דְּחַזְיֵיא לְבוּדְיָא קָאָמִינָא.

Rav Yosef **said to** Abaye: I did not mean actual dates lying on mats; rather, **I spoke** of ripe dates ready for plucking, **which are fit for mats.** Since they are still attached to the ground, they are not considered movable property.

BACKGROUND

Dates laid out to dry on the mats – תַּמְרֵי דְּעַל בּוּדְיָא: Some varieties of dates must be harvested as soon as they ripen, as otherwise they will spoil. Others do not need to be harvested as quickly. It was common to spread mats underneath trees of this latter type, and to allow the dates to fall on their own, after which the dates would be left to dry on the mats. This is what Rav Yosef was referring to.

LANGUAGE

Mats [*budya*] – בּוּדְיָא: An alternative reading is *burya*. This is the Aramaic form, which is derived from the Akkadian burū, meaning reed mat.

Perek **IV**
Daf **51** Amud **a**

סוֹף סוֹף, כָּל הָעוֹמֵד לִגְזוֹז כִּגְזוּז דָּמֵי! דְּצִרִיכָא לְדִיקְלָא קָאָמִינָא.

Abaye asked him: **Ultimately, anything that is about to be sheared is considered sheared,** and therefore these dates should already be classified as movable property, from which her sustenance cannot be collected. Rav Yosef replied: **I spoke** of a case when the fruit is nearly fully ripe, but **is still in need of the palm tree.** Since they are attached to the ground, they may be used for the daughter's sustenance.

הַהוּא יָתוֹם וִיתוֹמָה דְּאָתוּ לְקַמֵּיהּ דְּרָבָא, אֲמַר לְהוּ רָבָא: הַעֲלוּ לַיָּתוֹם בִּשְׁבִיל יְתוֹמָה. אָמְרִי לֵיהּ רַבָּנַן לְרָבָא: וְהָא מָר הוּא דַּאֲמַר: מְמַקְּרְקְעֵי וְלָא מִמְּטַלְטְלֵי, בֵּין לְמָזוֹנֵי, בֵּין לִכְתוּבָּה וּבֵין לְפַרְנָסָה!

The Gemara relates: There were **a certain** minor **orphan boy and orphan girl who came before Rava. Rava said to** the trustees of the father's estate: **Increase** the amount you give **to the orphan boy,** so that there should be enough **for the orphan girl** as well. **The Sages said to Rava: But it was the Master who said** that one may collect **from land but not from movable property, whether for sustenance, whether for the marriage contract, or whether for** the daughters' **livelihood.** In this case only movable property was available.

אֲמַר לְהוּ: אִילּוּ רָצָה שִׁפְחָה לְשַׁמְּשׁוֹ – מִי לָא יָהֲבִינַן לֵיהּ? כָּל שֶׁכֵּן הָכָא, דְּאִיכָּא תַּרְתֵּי.

Rava **said to them: If** this orphan **wanted a maidservant to serve him, would we not give him** one? The court would use his father's property to fund this acquisition. **All the more so here, where there are two** factors, as she is his sister and she will serve him as well. It is therefore appropriate to act in this manner, which is to the benefit of both the boy and the girl.

תָּנוּ רַבָּנַן: אֶחָד נְכָסִים שֶׁיֵּשׁ לָהֶן אַחֲרָיוּת וְאֶחָד נְכָסִים שֶׁאֵין לָהֶן אַחֲרָיוּת – מוֹצִיאִין לְמָזוֹן אִשָּׁה וְלַבָּנוֹת, דִּבְרֵי רַבִּי. רַבִּי שִׁמְעוֹן בֶּן אֶלְעָזָר אוֹמֵר: נְכָסִים שֶׁיֵּשׁ לָהֶן אַחֲרָיוּת – מוֹצִיאִין לַבָּנוֹת מִן הַבָּנוֹת, וְלַבָּנִים מִן הַבָּנִים.

§ **The Sages taught:** With regard to **both property that has a guarantee,** i.e., real estate, **and property that does not have a guarantee,** i.e., movable objects, the court **removes** them from the orphan heirs **for the sustenance of the wife and for the daughters.** This is **the statement of Rabbi** Yehuda HaNasi. **Rabbi Shimon ben Elazar says:** With regard to **property that has a guarantee,** the court **removes** it **from** the possession of **the sons,** who are the heirs, **for** the sake of the sustenance of **the daughters.**[N] If the deceased had only daughters, and the adult daughters have taken possession of the estate, the court takes some of the property **from the** adult **daughters** in order to give an equal share **to the** young **daughters. And** likewise, one takes some of the property **from the** adult **sons** in order to give an equal share **to the** younger **sons.**

וְלַבָּנִים מִן הַבָּנוֹת בִּנְכָסִים מְרוּבִּין, אֲבָל לֹא לַבָּנִים מִן הַבָּנוֹת בִּנְכָסִים מוּעָטִין.

And in a case where the estate has **a large** amount **of property,** so that there is more than enough to provide sustenance for the daughters, the court takes **from the daughters** the property that is not needed to provide for their sustenance and gives it **to the sons,** who are the true heirs. **However,** in a case where the estate has **a small** amount of **property,** one does not take it **from the daughters** in order to give it **to the sons.**

נְכָסִים שֶׁאֵין לָהֶן אַחֲרָיוּת – מוֹצִיאִין לַבָּנִים מִן הַבָּנִים, וְלַבָּנוֹת מִן הַבָּנוֹת, וְלַבָּנִים מִן הַבָּנוֹת, אֲבָל לֹא לַבָּנוֹת מִן הַבָּנִים.

By contrast, with regard to **property that does not have a guarantee,** i.e., movable property, the court **removes** some of it from the possession of **the** adult **sons,** if they have taken it, in order to give a fair share **to the** young **sons, and** similarly, some property is taken **from the** adult **daughters** in order to give a fair share **to the** young **daughters. And** if there are both sons and daughters and the daughters have seized the movable property, it is taken **from the daughters,** who are not entitled to sustenance from movable property, and given **to the sons,** who are the heirs. **However,** they do **not** take any **property from the sons** in order to give it **to the daughters.**

אַף עַל גַּב דְּקַיְימָא לָן הֲלָכָה כְּרַבִּי מֵחֲבֵירוֹ – הָכָא הֲלָכָה כְּרַבִּי שִׁמְעוֹן בֶּן אֶלְעָזָר. דַּאֲמַר רָבָא: הִלְכְתָא; מִמְקַרְקְעֵי וְלָא מִמְּטַלְטְלֵי, בֵּין לִכְתוּבָּה בֵּין לְמָזוֹנֵי בֵּין לְפַרְנָסָה.

The Gemara comments: **Even though we maintain** in general that **the *halakha* is in accordance with** the opinion of **Rabbi** Yehuda HaNasi in disputes with **his colleague,** and therefore the *halakha* should follow his ruling rather than that of Rabbi Shimon ben Elazar, **here the *halakha* is in accordance with** the opinion of **Rabbi Shimon ben Elazar. As Rava said: The *halakha*** is that a woman can collect her claim **from land but not from movable property, whether for the marriage contract,**[H] **for sustenance,**[H] **or for** her **livelihood.**

מתני׳ לֹא כָּתַב לָהּ כְּתוּבָּה – בְּתוּלָה גּוֹבָה מָאתַיִם, וְאַלְמָנָה מָנֶה, מִפְּנֵי שֶׁהוּא תְּנַאי בֵּית דִּין. כָּתַב לָהּ שָׂדֶה שָׁוֶה מָנֶה תַּחַת מָאתַיִם זוּז. וְלֹא כָּתַב לָהּ "כָּל נְכָסַי דְּאִית לִי אַחֲרָאִין לִכְתוּבָּתֵיךְ" – חַיָּיב. שֶׁהוּא תְּנַאי בֵּית דִּין.

MISHNA If a husband **did not write a marriage contract for** his wife,[H] **a virgin collects two hundred** dinars **and a widow one hundred dinars** upon divorce or the husband's death, **because it is a stipulation of the court** that a wife is entitled to these amounts. If **he wrote** in **her** marriage contract that she is entitled to **a field worth one hundred dinars**[H] **instead of** the **two hundred dinars** to which she is actually entitled, **and he did not** additionally **write for her: All property I have** shall serve as a **guarantee for** the payment of **your marriage contract,** he is nevertheless **obligated** to pay the full two hundred dinars; and he cannot say that she should take only a mortgaged field for payment of her marriage contract, **as it is a stipulation of the court** that all his property is held as surety for the entire sum.

HALAKHA

From what may a marriage contract be claimed – מִמָּה נִגְבֵּית כְּתוּבָּה: According to the original rabbinic enactment, the sum specified in a marriage contract can be collected only from land. However, the *ge'onim* instituted that it can be claimed even from movable property because in their time, most people did not possess land and relied instead on movable objects. The text of the marriage contract reflects this change. Consequently, a widow may also claim her one hundred dinars from movable property (Rambam *Sefer Nashim*, *Hilkhot Ishut* 16:7; *Shulḥan Arukh*, *Even HaEzer* 100:1).

From what may a woman collect sustenance – מִמָּה גּוֹבִים מְזוֹנוֹת: As ruled by the Gemara, the sustenance of a widow and the daughters of the deceased may be collected solely from his land. If he left behind only movable property, the court does not give any of it to his daughters. However, the *ge'onim* instituted that money owed due to the marriage contract and its stipulations may be claimed from movable property as well, with the exception of the marriage document concerning male children. Consequently, daughters receive their sustenance even from movable property. However, even if the estate is small, they cannot collect the entire estate, leaving nothing for the heirs, as they have the right to collect movable property by the enactment of the *ge'onim* and not according to the original letter of the law (*Shulḥan Arukh*, *Even HaEzer* 112:7).

If a husband did not write a marriage contract for his wife – לֹא כָּתַב לָהּ כְּתוּבָּה: Even if a husband neglected to write a marriage contract for his wife, she is entitled to the basic sum of a marriage contract, i.e., two hundred dinars for a virgin and one hundred dinars for a widow (Rambam *Sefer Nashim*, *Hilkhot Ishut* 12:5; *Shulḥan Arukh*, *Even HaEzer* 69:1).

If he wrote in her marriage contract that she is entitled to a field worth one hundred dinars, etc. – כָּתַב לָהּ שָׂדֶה שָׁוֶה מָנֶה וכו׳: If a husband failed to write in the marriage contract: All property I have shall serve as a guarantee for the payment of your marriage contract, even if he set aside land for her that was worth less than the sum specified in the marriage contract, he is responsible to pay the entire amount, as this is a stipulation of the court (Rambam *Sefer Nashim*, *Hilkhot Ishut* 16:10; *Shulḥan Arukh*, *Even HaEzer* 100:1).

NOTES

The court removes it…for the sake of the sustenance of the daughters, etc. – מוֹצִיאִין לַבָּנוֹת וכו׳: When a deceased individual has both sons and daughters, only the sons inherit his estate. However, it is a stipulation of the marriage contract that the right of the widow and daughters to receive their sustenance from the estate is considered a preexisting claim, comparable to a lien on the estate due to a debt that the father owed to a third party. Consequently, their sustenance overrides the claims of the heirs to the estate. If the estate is not large, there may be nothing left for the sons once the sustenance is provided to the widow and daughters. However, according to Rabbi Shimon ben Elazar, the stipulations of the marriage contract may be claimed only from real estate and not from movable property.

לֹא כָּתַב לָהּ ״אִם תִּשְׁתַּבֵּאי אֶפְרְקִינָךְ וְאוֹתְבִינָךְ לִי לְאִינְתּוּ״ וּבְכֹהֶנֶת ״אֲהַדְּרִינָךְ לְמְדִינָתֵךְ״ – חַיָּיב, שֶׁהוּא תְּנַאי בֵּית דִּין.

Similarly, if **he did not write for her** in the marriage contract: **If you are taken captive**[H] **I will redeem you and restore you to me as a wife, and in** the case **of a priestess,** i.e., the wife of a priest, who is prohibited to return to her husband if she has intercourse with another man even if she is raped, if he did not write: **I will return you**[H] **to your** native **province,** he is nevertheless **obligated** to do so, **as it is a stipulation of the court.**

נְשָׂבִית – חַיָּיב לְפָדוֹתָהּ. וְאִם אָמַר: ״הֲרֵי גִּיטָּהּ וּכְתוּבָּתָהּ, וְתִפְדֶּה אֶת עַצְמָהּ״ – אֵינוֹ רַשַּׁאי. לָקְתָה – חַיָּיב לְרַפְּאוֹתָהּ. אָמַר ״הֲרֵי גִּיטָּהּ וּכְתוּבָּתָהּ, תְּרַפֵּא אֶת עַצְמָהּ״ – רַשַּׁאי.

If a woman **was taken captive,** her husband is **obligated to redeem her.**[H] **And if he said:** I **hereby** give my wife **her bill of divorce and** the payment of **her marriage contract, and let her redeem herself, he is not permitted** to do so, as he already obligated himself to redeem her when he wrote the marriage contract. If his wife **was struck** with illness, he is **obligated to heal her,**[H] i.e., to pay for her medical expenses. In this case, however, if **he said:** I **hereby** give my wife **her bill of divorce and** the payment of **her marriage contract, and let her heal herself, he is permitted** to do so.[N]

גמ׳ מַנִּי? רַבִּי מֵאִיר הִיא, דְּאָמַר: כָּל הַפּוֹחֵת לִבְתוּלָה מִמָּאתַיִם וּלְאַלְמָנָה מִמָּנֶה – הֲרֵי זוֹ בְּעִילַת זְנוּת.

GEMARA The Gemara asks: **Who is** the author of the mishna? **It is Rabbi Meir, who said: Anyone who decreases** the sum guaranteed **to a virgin**[H] in her marriage contract to less **than two hundred** dinars, **or** the sum guaranteed **to a widow** to less **than one hundred dinars,** and proceeds to live with his wife, **this is licentious sexual intercourse.** These sums are fixed by the Sages, and a husband is not permitted to pledge less than the established sum.

דְּאִי רַבִּי יְהוּדָה – הָאָמַר: רָצָה – כּוֹתֵב לִבְתוּלָה שְׁטָר שֶׁל מָאתַיִם, וְהִיא כּוֹתֶבֶת ״הִתְקַבַּלְתִּי מִמְּךָ מָנֶה״, וּלְאַלְמָנָה מָנֶה, וְהִיא כּוֹתֶבֶת ״הִתְקַבַּלְתִּי מִמְּךָ חֲמִשִּׁים זוּז״.

For if you say the mishna is in accordance with the opinion of **Rabbi Yehuda, didn't he say** that if the husband **wants, he may write a document** as a marriage contract **for a virgin** in which he pledges **two hundred** dinars, **and she may** immediately **write: I have received from you one hundred dinars,** thereby waiving her rights to half the sum, so that in practice she gets only one hundred dinars? **And** similarly, **he may pledge one hundred dinars** in the marriage contract **of a widow, and she may write: I have received from you fifty dinars.** This is not in accordance with the mishna, which indicates that he cannot give her less than the minimum amount even with her consent.

אֵימָא סֵיפָא: כָּתַב לָהּ שָׂדֶה שָׁוֶה מָנֶה תַּחַת מָאתַיִם זוּז, וְלֹא כָּתַב לָהּ ״כָּל נְכָסַיִם דְּאִית לִי אֲחֲרָאִין לִכְתוּבְּתֵיךְ״ – חַיָּיב, שֶׁהוּא תְּנַאי בֵּית דִּין. אֲתָאן לְרַבִּי יְהוּדָה, דְּאָמַר: אַחֲרָיוּת – טָעוּת סוֹפֵר הוּא.

The Gemara raises a difficulty: But now **say the latter clause** of the mishna: If **he wrote** in **her** marriage contract that she is entitled to **a field worth one hundred dinars instead of** the **two hundred dinars** to which she is actually entitled, **and he did not** additionally **write for her: All property I have** shall serve as a **guarantee for** the payment of **your marriage contract,** he is nevertheless **obligated** to pay the full two hundred dinars, **as it is a stipulation of the court** that all his property is held as surety for the entire sum. In this clause, **we come to** the opinion of **Rabbi Yehuda, who said** that omission of the **guarantee** from a document **is** presumed to be **a scribal error,** unless the document explicitly states that the property of the individual who wrote the document is not liened to guarantee the transaction.

דְּאִי רַבִּי מֵאִיר – הָאָמַר: אַחֲרָיוּת לָאו טָעוּת סוֹפֵר הוּא. דִּתְנַן: מָצָא שִׁטְרֵי חוֹב, אִם

For if this is the opinion of **Rabbi Meir, didn't he say** that omission of the **guarantee** from a document **is not a scribal error,** i.e., a lien can be placed on the property to guarantee the transaction only if the document explicitly states this to be the case. The Gemara cites the source of this dispute. **As we learned** in a mishna (*Bava Metzia* 12b): With regard to one who **found promissory notes, if**

HALAKHA

If he did not write for her: If you are taken captive, etc. – לֹא כָּתַב לָהּ אִם תִּשְׁתַּבֵּאי וכו׳: If a husband did not write for his wife that if she is taken captive he will redeem her and restore her as his wife, he is nevertheless obligated to do so, as this is a stipulation of the court (Rambam *Sefer Nashim*, *Hilkhot Ishut* 12:5; *Shulḥan Arukh*, *Even HaEzer* 69:1).

And in the case of a priestess, if he did not write: I will return you, etc. – וּבְכֹהֶנֶת אֲהַדְּרִינָךְ וכו׳: A priest must write in his wife's marriage contract: If you are captured I will redeem you and restore you to your native province. Even if he did not include this sentence in the marriage contract, he is obligated to redeem her and return her to her father's house, as it is a stipulation of the court. The reason is that if she is raped by her captors she is prohibited to return to her husband (Rambam *Sefer Nashim*, *Hilkhot Ishut* 14:18; *Shulḥan Arukh*, *Even HaEzer* 78:6).

If a woman was taken captive her husband is obligated to redeem her – נְשָׂבִית חַיָּיב לְפָדוֹתָהּ: If a man's wife was captured he is obligated to redeem her, and he cannot say: Here is your bill of divorce and the money guaranteed to you in your marriage contract; go and redeem yourself (Rambam *Sefer Nashim*, *Hilkhot Ishut* 14:18; *Shulḥan Arukh*, *Even HaEzer* 78:1).

If his wife was struck with illness he is obligated to heal her – לָקְתָה חַיָּיב לְרַפְּאוֹתָהּ: If a woman becomes ill, her husband is obligated to pay her medical expenses. If the husband, seeing that it is a protracted illness, says to her: Either pay for your own expenses with the money of your marriage contract or I will divorce you and give you the marriage contract, he is permitted to do so, but this is not the proper way to behave. Some authorities note that he can remain married to her in this manner only if he allows her to spend the sum of money he included in the marriage contract that is beyond the basic sum required by law, as a couple may not stay together with a marriage contract of less than the minimum amount (*Perisha*). Others add that if she is bedridden he may not divorce her until she recuperates (*Maggid Mishne*, citing Rashba). Nowadays, after Rabbeinu Gershom disallowed divorce that is undertaken without the consent of the wife, it is certainly prohibited to divorce her against her will (see *Ḥelkat Meḥokek* and see *Beit Shmuel*, citing Maharshal; Rambam *Sefer Nashim*, *Hilkhot Ishut* 14:17; *Shulḥan Arukh*, *Even HaEzer* 79:1, 3).

Anyone who decreases the sum guaranteed to a virgin, etc. – כָּל הַפּוֹחֵת לִבְתוּלָה וכו׳: If a man provides a marriage contract for his wife that specifies a sum that is less than the required amount of two hundred dinars for a virgin or one hundred dinars for a widow, they are not permitted to live together. If they have intercourse, it is considered a licentious act. In this regard, it makes no difference whether he initially wrote a smaller sum or if she wrote that she had received part of her marriage contract. However, the Sages disagreed as to whether this document is of any value. Some maintain that any such document or condition reducing her marriage contract is entirely void and the woman is entitled to the full sum of a marriage contract (Rambam), whereas others rule that if she wrote that she had already received part of the payment, although they may not live together, the document is binding (*Tur*; Rambam *Sefer Nashim*, *Hilkhot Ishut* 12:8; *Shulḥan Arukh*, *Even HaEzer* 66:9).

NOTES

Redemption and medical treatment – פִּדְיוֹן וְרִיפּוּי: The early authorities addressed the question of why a husband may not absolve himself of the obligation to redeem his wife from captivity by divorcing her, whereas he may absolve himself of the obligation to pay for her medical expenses in this manner. The obligation to redeem one's wife from captivity is treated stringently in general, such that the wife cannot absolve her husband of this obligation (see *Tosafot* on 47b), a factor that may play a role in this discussion. Some commentaries explain that providing medical care is a form of sustenance and, consequently, is limited according to the rules of providing sustenance. Since a man who divorces his wife is no longer obligated to provide her with sustenance, he is also exempt from paying for her medical needs at that time. Conversely, as soon as the woman is taken captive, her husband becomes obligated to redeem her. That preexisting obligation is not canceled by divorce (Rashi; Ramah). Furthermore, the obligation to redeem captives is treated stringently so as to avoid the possibility that the captive will be assimilated among gentiles.

יֵשׁ בָּהֶן אַחֲרָיוּת נְכָסִים – לֹא יַחֲזִיר, שֶׁבֵּית דִּין נִפְרָעִין מֵהֶן.

they include a property guarantee he may not return them to the lender, as he does not know who lost them. It is possible that the debt has already been paid and the documents were returned to the borrower, and he lost them. He may not give them back to the lender even if the borrower admits that he still owes the money, **as the court collects** the debt **from** purchasers of the borrower's property. There is a concern that the borrower has repaid the loan and he is saying that he did not yet repay it because he has conspired with the lender to convince the court to confiscate liened property that the borrower sold, and the lender and borrower will divide the proceeds.

אֵין בָּהֶן אַחֲרָיוּת נְכָסִים – יַחֲזִיר, שֶׁאֵין בֵּית דִּין נִפְרָעִין מֵהֶן, דִּבְרֵי רַבִּי מֵאִיר. וַחֲכָמִים אוֹמְרִים: אֶחָד זֶה וְאֶחָד זֶה לֹא יַחֲזִיר, שֶׁבֵּית דִּין נִפְרָעִין מֵהֶן.

If, however, the documents were of the kind that **do not include a property guarantee he returns them, as** in this case **the court does not collect from** purchasers of the borrower's property. This is **the statement of Rabbi Meir. And the Rabbis say:** In **both this** case **and that** one, **he may not return** the promissory notes, **as the court collects from** purchasers of the borrower's property[H] regardless, as it is assumed that the omission of the property guarantee from a document is merely a scribal error.

רֵישָׁא רַבִּי מֵאִיר וְסֵיפָא רַבִּי יְהוּדָה! וְכִי תֵּימָא: כּוּלָּהּ רַבִּי מֵאִיר הִיא, וְשָׁאנֵי לֵיהּ לְרַבִּי מֵאִיר בֵּין כְּתוּבָּה לִשְׁטָרֵי – וּמִי שָׁאנֵי לֵיהּ?

If so, **the first clause** of the mishna here **is** in accordance with the opinion of **Rabbi Meir, and the latter clause is** in accordance with the opinion of **Rabbi Yehuda. And if you would say** that the **entire** mishna **is** in accordance with the opinion of **Rabbi Meir, and there is a difference for Rabbi Meir between a marriage contract and** other **documents,** i.e., the guarantee of a marriage contract applies even if it is omitted but the property guarantee in other contracts does not, **is there** really **a difference for him** between the two types of documents?

וְהָתַנְיָא: חֲמִשָּׁה גּוֹבִין מִן הַמְּחוֹרָרִין, וְאֵלּוּ הֵן: פֵּירוֹת, וְשִׁבַּח פֵּירוֹת, וְהַמְקַבֵּל עָלָיו לָזוּן אֶת בֶּן אִשְׁתּוֹ וּבַת אִשְׁתּוֹ, וְגֵט חוֹב שֶׁאֵין בּוֹ אַחֲרָיוּת, וּכְתוּבַּת אִשָּׁה שֶׁאֵין בָּהּ אַחֲרָיוּת.

Isn't it taught in a *baraita*: **Five** claims **may be collected** only **from free** assets, **and they are as follows: Produce,**[H] **and enhancement** to the **produce.**[HN] **And** likewise, in the case of **one who accepts upon himself** the duty **to sustain his wife's son or his wife's daughter**[H] and then dies, they receive their support only from the estate's free assets. **And** other claims that may be collected only from free assets are **a document of debt that does not include** the clause of property **guarantee, and the marriage contract of a wife that does not include** the clause of property **guarantee.**

מַאן שָׁמַעְתְּ לֵיהּ דְּאָמַר אַחֲרָיוּת לָאו טָעוּת סוֹפֵר הוּא – רַבִּי מֵאִיר, וְקָתָנֵי: כְּתוּבַּת אִשָּׁה!

The Gemara reasons: **Whom have you heard say** that omission of the property **guarantee** from a document **is not a scribal error? Rabbi Meir, and** yet the *baraita* **teaches** that the same applies to the **marriage contract of a wife.** This proves that according to Rabbi Meir, there is no difference between a marriage contract and other documents.

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As the court collects from purchasers of the borrower's property – שֶׁבֵּית דִּין נִפְרָעִין מֵהֶן: With regard to one who finds promissory notes, even if they do not include a clause of guarantee and the borrower admits to owing the money, he may not give them back to the lender. This is the case even if the debt is accredited by others, and even if it is within the time stipulated on the document. The reason is that there is a concern that the pair might have conspired to cheat the purchasers of the borrower's property, as stated by the Rabbis. However, if the document explicitly states that it does not include a guarantee, and the borrower admits he owes the money, it may be returned to the lender. Since property sold by the purchaser cannot be repossessed in this case, there is no concern about a conspiracy, and therefore even the Rabbis concede in this case (*Beit Yosef*; Vilna Gaon; Rambam *Sefer Nezikim*, *Hilkhot Gezeila VaAveda* 18:1; *Shulḥan Arukh*, *Ḥoshen Mishpat* 65:6).

Produce – פֵּירוֹת: If someone stole land and ruined it or consumed its produce, when the owner claims reimbursement for the damage or the produce, he may collect it only from the free assets of the robber, but not from property that he sold after he stole the land (Rambam *Sefer Nezikim*, *Hilkhot Gezeila VaAveda* 9:5; *Shulḥan Arukh*, *Ḥoshen Mishpat* 372:1).

Enhancement to the produce – שִׁבַּח פֵּירוֹת: If someone stole a field and sold it, and the purchaser enhanced it, when the field is later restored to its original owner the following calculation is made: If the added value of the property is greater than the expenses the buyer incurred for this undertaking, the buyer claims his expenses from the owner of the field, while the principal, i.e., the amount he paid for the field, as well as the difference between the expenses he collects from the owner and the amount by which his enhancements raised the value of the field, he collects from the robber. He may claim the principal even by repossessing other property that the robber sold, whereas the added value can be collected only from free assets (Rambam *Sefer Nezikim*, *Hilkhot Gezeila VaAveda* 9:7; *Shulḥan Arukh*, *Ḥoshen Mishpat* 373:1).

One who accepts upon himself the duty to sustain his wife's children – הַמְקַבֵּל עָלָיו לָזוּן יַלְדֵי אִשְׁתּוֹ: In the case of a husband who obligated himself to sustain his wife's children from a previous marriage and then died, if this duty was accepted by an act of acquisition or written in a document, the children collect their sustenance even from property that the man sold after accepting this obligation. If he merely gave a verbal promise they may collect their sustenance only from free assets (Rambam *Sefer Nashim*, *Hilkhot Ishut* 23:18; *Shulḥan Arukh*, *Even HaEzer* 104:4).

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Produce and enhancement to the produce – פֵּירוֹת וְשִׁבַּח פֵּירוֹת: Rashi explains that this is referring to a case where one inadvertently buys stolen property, e.g., a field, which is then repossessed by its rightful owner, together with the produce growing in the field. The purchaser then has a right to claim reimbursement from the seller for the field, the produce that was growing in the field, and the enhancements that the purchaser made to the field, which are referred to here as enhancement to the produce. The purchaser may collect his claim on the value of the field even from property that the seller sold to others after he sold the stolen property to this purchaser. However, he can collect the value of the produce and the enhancements that he made to the property only from free assets, i.e., assets currently held by the seller. He may not collect these claims from property the seller sold to others because, if he could, there would be no way for the later purchasers to assess the risk that their purchases would be repossessed.

The Ritva comments that the *tanna* specifies these five claims because they may be collected only from free assets even if the individual has a document attesting to his claims. However, all claims that are not documented may be collected only from free assets.

אֵיבָּעֵית אֵימָא רַבִּי מֵאִיר, וְאֵיבָּעֵית אֵימָא רַבִּי יְהוּדָה; אֵיבָּעֵית אֵימָא רַבִּי יְהוּדָה: הָתָם – כָּתְבָה לֵיהּ ״הִתְקַבַּלְתִּי״. הָכָא – לָא כָּתְבָה לֵיהּ ״הִתְקַבַּלְתִּי״.

The Gemara answers: **If you wish, say** that the mishna here is in accordance with the opinion of **Rabbi Meir, and if you wish, say** that it is in accordance with the opinion of **Rabbi Yehuda.** The Gemara elaborates: **If you wish, say** that the mishna is in accordance with the opinion of **Rabbi Yehuda,** and **there,** in the other mishna (54b), the case is where **she wrote to him: I have received** it,[N] thereby waiving her right to part of the marriage contract. In contrast, **here, she did not write to him: I have received** it, and therefore she collects the entire sum from him even if he did not write a marriage contract.

אֵיבָּעֵית אֵימָא רַבִּי מֵאִיר: מַאי חַיָּיב דְּקָתָנֵי – מִן הַמְּחוֹרָרִין.

Conversely, **if you wish, say** that the mishna is in accordance with the opinion of **Rabbi Meir.** According to this interpretation, **what is** the meaning of the phrase: He is **obligated, which is taught** in the latter clause of the mishna with regard to the case where the marriage contract did not specify that the husband's property will serve as a guarantee of his obligations toward his wife? It means that the wife's claims may be collected only **from the** husband's **free** assets, i.e., she does not have a lien on his property.

״לֹא כָּתַב לָהּ״ וכו׳. אָמַר אֲבוּהּ דִּשְׁמוּאֵל: אֵשֶׁת יִשְׂרָאֵל שֶׁנִּשְׁבְּתָה – אֲסוּרָה לְבַעְלָהּ, חָיְישִׁינַן שֶׁמָּא תְּחִלָּתָהּ בְּאוֹנֶס וְסוֹפָהּ בְּרָצוֹן.

§ The mishna taught that if the husband **did not write for her** that he would redeem her from captivity and restore her to him, he is nevertheless obligated to do so, as this is a stipulation of the court. **Shmuel's father said: The wife of an Israelite who was raped is forbidden to her husband,** as **we are concerned** that **perhaps her** ordeal **started as rape and ended willingly,** i.e., during the act she may have acquiesced, and a married woman who willingly had relations with another man is forbidden to her husband.

אֵיתִיבֵיהּ רַב לַאֲבוּהּ דִּשְׁמוּאֵל: ״אִם תִּשְׁתַּבָּאִי אֶפְרְקִינֵךְ וְאוֹתְבִינֵךְ לִי לְאִינְתוּ״! אִישְׁתִּיק.

Rav raised an objection to the opinion of **Shmuel's father** from the mishna, which states that one of the stipulations of the marriage contract reads: **If you are taken captive I will redeem you and restore you to me as a wife.** This indicates that despite the possibility that she might have been raped during captivity, she remains permitted to her husband if he is not a priest, and there is no concern that she might have ultimately agreed to the act. Shmuel's father **was silent** and did not respond.

קָרֵי רַב עֲלֵיהּ דַּאֲבוּהּ דִּשְׁמוּאֵל: ״שָׂרִים עָצְרוּ בְמִלִּים וְכַף יָשִׂימוּ לְפִיהֶם״. מַאי אִית לֵיהּ לְמֵימַר – בִּשְׁבוּיָה הֵקֵילוּ.

Rav recited the following verse **about Shmuel's father: "The princes refrained from talking and laid a hand upon their mouths"** (Job 29:9). The Gemara comments: The application of this verse to Shmuel's father indicates that he refrained from responding despite the fact that an answer was available. But **what is there for him to say** in reply? The Gemara answers: He could have said that **in** the case of **a captive woman they were lenient.** Since it is uncertain whether she was in fact raped during her captivity, the Sages were lenient. However, it is possible that they were more stringent in the case of a woman who was definitely raped.

וְלַאֲבוּהּ דִּשְׁמוּאֵל, אוֹנֶס דְּשַׁרְיָא רַחֲמָנָא הֵיכִי מַשְׁכַּחַתְּ לָהּ? כְּגוֹן דְּקָאָמְרִי עֵדִים שֶׁצִּוְּחָה מִתְּחִלָּה וְעַד סוֹף.

The Gemara further asks: **According to Shmuel's father, how can you find** a case of **rape where the Merciful One permits** the victim to remain married to her husband? It is always possible that she might have ultimately acquiesced. The Gemara answers: **For example, where witnesses say that she screamed** continuously **from beginning to end.**

וּפְלִיגָא דְּרָבָא, דְּאָמַר רָבָא: כָּל שֶׁתְּחִלָּתָהּ בְּאוֹנֶס וְסוֹף בְּרָצוֹן אֲפִילּוּ הִיא אוֹמֶרֶת: הַנִּיחוּ לוֹ, שֶׁאִלְמָלֵא (לֹא) נִזְקַק לָהּ הִיא שׁוֹכַרְתּוֹ – מוּתֶּרֶת, מַאי טַעְמָא – יֵצֶר אַלְבָּשָׁהּ.

The Gemara comments: **And** Shmuel's father **disagrees** with the opinion **of Rava. As Rava said:** With regard to **any** case **that starts as rape and ends willingly,**[H] **even** if **she** ultimately **says: Leave him,** and she further states **that if he had not** forcibly initiated **intercourse with her, she** would **have hired him** for intercourse, **she is** nevertheless **permitted** to her husband. **What is the reason** for this? **The** evil **inclination took hold of her** during the act, and therefore she is still considered to have engaged in intercourse against her will.

NOTES

There the case is where she wrote to him: I have received it – הָתָם כָּתְבָה לֵיהּ הִתְקַבַּלְתִּי: In other words, even Rabbi Yehuda agrees that one cannot violate the enactment of the Sages by writing a marriage contract for less than the minimum amount. His dispute with Rabbi Meir concerns a situation where he accepted the full obligation of the marriage contract, and his wife relinquished her right to part of that sum. In that case it is possible to claim that the marriage was performed appropriately, and she merely forgave him a portion of her monetary claim (Rabbi Aharon HaLevi).

HALAKHA

Starts as rape and ends willingly – תְּחִלָּתָהּ בְּאוֹנֶס וְסוֹף בְּרָצוֹן: If the wife of a regular Israelite, was raped, she is permitted to remain married to her husband. In any situation where the intercourse began against her will she is considered the victim of a rape even if she later consented. The *halakha* is in accordance with the opinion of Rava, as his ruling is supported by a *baraita* (Rambam *Sefer Kedusha*, *Hilkhot Issurei Bia* 1:9; *Shulḥan Arukh*, *Even HaEzer* 6:11).

תַּנְיָא כְּוָותֵיהּ דְּרָבָא: ״וְהִיא לֹא נִתְפָּשָׂה״ – אֲסוּרָה. הָא נִתְפְּשָׂה – מוּתֶּרֶת. וְיֵשׁ לָךְ אַחֶרֶת שֶׁאַף עַל פִּי שֶׁלֹּא נִתְפְּשָׂה – מוּתֶּרֶת. וְאֵיזוֹ – זוֹ כָּל שֶׁתְּחִלָּתָהּ בְּאוֹנֶס וְסוֹפָהּ בִּרְצוֹן.

It **is taught** in a *baraita* **in accordance with** the opinion of **Rava:** The verse states with regard to a *sota*: "And a man lies with her… **and she was not taken**" (Numbers 5:13). This is referring to a woman who had intercourse but was not taken forcefully, i.e., raped, and therefore **she is forbidden** to her husband. It may be inferred from this that if she **was taken** forcefully, she is **permitted** to him. **And** the word "she" teaches **that you have** a case of **another** woman, **where even though she was not taken** forcefully **she is permitted.**[N] **And which** case **is this? This is any** case **that starts as rape and ends willingly.** Although at the conclusion of the act she was not taken forcefully, she is nevertheless permitted to her husband, as stated by Rava.

תַּנְיָא אִידָךְ: ״וְהִיא לֹא נִתְפָּשָׂה״ – אֲסוּרָה, הָא נִתְפְּשָׂה – מוּתֶּרֶת. וְיֵשׁ לָךְ אַחֶרֶת שֶׁאַף עַל פִּי שֶׁנִּתְפְּשָׂה אֲסוּרָה, וְאֵיזוֹ – זוֹ אֵשֶׁת כֹּהֵן.

A different inference from the same verse **is taught** in **another** *baraita*: **"And she was not taken"; in** this case, the woman **is forbidden** to her husband. It may be inferred that if **she was taken** forcefully, **she is permitted** to her husband. **And you have another** case **where, even though she was taken** forcefully, **she is forbidden** to her husband. **And which** case **is this? This is** the case of **the wife of a priest,** who is forbidden to her husband even if she is the victim of a rape.[H]

אָמַר רַב יְהוּדָה אָמַר שְׁמוּאֵל מִשּׁוּם רַבִּי יִשְׁמָעֵאל: ״וְהִיא לֹא נִתְפָּשָׂה״ – אֲסוּרָה, הָא נִתְפְּשָׂה – מוּתֶּרֶת, וְיֵשׁ לָהּ אַחֶרֶת שֶׁאַף עַל פִּי שֶׁלֹּא נִתְפְּשָׂה מוּתֶּרֶת, וְאֵיזוֹ – זוֹ שֶׁקִּידּוּשֶׁיהָ קִדּוּשֵׁי טָעוּת, שֶׁאֲפִילּוּ בְּנָהּ מוּרְכָּב עַל כְּתֵיפָהּ מְמָאֶנֶת וְהוֹלֶכֶת לָהּ.

Rav Yehuda said another exposition of this same verse that **Shmuel said in the name of Rabbi Yishmael: "And she was not taken"; in** this case **she is forbidden** to her husband. It may be inferred that if she **was taken** forcefully **she is permitted** to her husband. **And there is** a case of **another** woman **where, even though she was not taken** forcefully, she nevertheless remains **permitted. And which** case **is this? This** is referring **to** one **whose betrothal was a mistaken betrothal,**[H] **as, even if her son** from this marriage **is riding on her shoulders she may refuse** to remain with her husband **and go** off as pleases **her.** Since she was not really married to begin with, an act of intercourse with another man does not render her forbidden to the man with whom she performed a mistaken betrothal.

אָמַר רַב יְהוּדָה: הָנֵי נָשֵׁי דְּגָנְבוּ גַּנָּבֵי – שַׁרְיָין לְגוּבְרַייְהוּ. אָמְרִי לֵיהּ רַבָּנַן לְרַב יְהוּדָה: וְהָא קָא מַמְטְיָין לְהוּ נַהֲמָא! מֵחֲמַת יִרְאָה. וְהָא קָא מְשַׁלְּחָן לְהוּ גִּירֵי! מֵחֲמַת יִרְאָה. וַדַּאי, שְׁבַקִינְהוּ וְאָזְלָן מִנַּפְשַׁייְהוּ – אֲסִירָן.

Rav Yehuda said: Those women stolen by kidnappers[H] **are permitted to their husbands,** as, even if they had intercourse with their captors it is considered rape. **The Rabbis said to Rav Yehuda: But** while they are captives **they bring**[N] their kidnappers **bread.** This indicates that they are not acting under duress. He replied: They do so **due to fear.** The Rabbis further inquired: **But they send them arrows.** Rav Yehuda again replied: This too is **due to fear.** However, I **certainly** agree that if the kidnappers **leave them alone, and they go** back to them **of their own accord, they are forbidden** to their husbands, as it is clear that they are no longer acting out of fear.

תָּנוּ רַבָּנַן: שְׁבוּיֵי מַלְכוּת – הֲרֵי הֵן כִּשְׁבוּיִין, גְּנוּבֵי לִיסְטִים – אֵינָן כִּשְׁבוּיִין. וְהָתַנְיָא אִיפְכָּא!

The Sages taught: With regard to women **captured by the monarchy** for the purpose of having intercourse with the king, **they are** considered to be **like captives,** i.e., they are assumed to have been raped but not to have consented to intercourse. However, **those stolen by bandits are not** considered to be **like captives,**[N] as there is a concern that they might have consented to their captors, thinking that they will marry them. The Gemara raises a difficulty: **But isn't it taught** in a *baraita* that **the reverse** is the case, i.e., women taken by the monarchy are not classified as captives, whereas this status does apply to those abducted by bandits?

NOTES

Where even though she was not taken forcefully she is permitted – שֶׁאַף עַל פִּי שֶׁלֹּא נִתְפְּשָׂה מוּתֶּרֶת: Some commentaries explain this exposition as follows: The term "and she" in the verse is unnecessary, as it is implied by the feminine conjugation of the verb "taken." By adding this extra term, the Torah indicates that as long as there is any compulsion, even if, by the end of the act, the woman was willing, she is not forbidden to her husband (*Talmidei Rabbeinu Yona*). The author of *Shita Mekubbetzet* notes that Rashi explains this differently, that the term "and she" always implies a limitation of the *halakha* stated in the verse.

But while they are captives they bring, etc. – וְהָא קָא מַמְטְיָין וכו׳: By behaving in this manner, these women apparently demonstrate that they are not acting under any immediate threat, as they go off and bring bread back to their captors. Similarly, they hand arrows to their captors while they are engaged in combat, despite the fact that they could increase the chances of the bandits being killed if they were to refrain from doing so (*Shita Mekubbetzet*).

Are not considered like captives – אֵינָן כִּשְׁבוּיִין: Some write that whenever a woman is considered to have engaged in intercourse willingly and was not raped, the obligation to redeem her is no longer in effect, as a penalty for her acquiescence to the act (Rabbi Shmuel HaNagid, citing *ge'onim*).

HALAKHA

The wife of a priest who was raped – אֵשֶׁת כֹּהֵן שֶׁנֶּאֱנְסָה: If the wife of a priest had intercourse with another man, even against her will, she is forbidden to her husband (Rambam *Sefer Kedusha*, *Hilkhot Issurei Bia* 18:8; *Shulḥan Arukh*, *Even HaEzer* 6:10).

Whose betrothal was a mistaken betrothal – שֶׁקִּידּוּשֶׁיהָ קִדּוּשֵׁי טָעוּת: Any woman who is not married or betrothed by Torah law is considered a single woman. Even if she is married by rabbinic law and she has intercourse with another man, she remains permitted to her husband, even if he is a priest (Rambam *Sefer Kedusha*, *Hilkhot Issurei Bia* 3:2, and *Maggid Mishne* there).

Women stolen by kidnappers – נָשֵׁי דְּגָנְבוּ גַּנָּבֵי: Women who were snatched by bandits are permitted to their husbands if they are non-priests, as it is assumed that the women were raped. However, if they returned to their captors of their own free will after they were released they are forbidden to their husbands, in accordance with the opinion of Rav Yehuda (Rambam *Sefer Nashim*, *Hilkhot Ishut* 24:20).

מַלְכוּת אַמַּלְכוּת לָא קַשְׁיָא; הָא – בְּמַלְכוּת אֲחַשְׁוֵרוֹשׁ, הָא – בְּמַלְכוּת בֶּן נֶצֶר.

The Gemara answers: The apparent contradiction between the ruling of one *baraita* with regard to those captured by the **monarchy** and the ruling of the other *baraita* with regard to those captured by the **monarchy** is **not difficult: This** first *baraita* is referring **to the monarchy of Ahasuerus,** i.e., a powerful king, as the woman is aware that he is merely using her to satisfy his lust and will certainly not marry her, whereas **that** other *baraita* is dealing **with the monarchy of ben Netzer,**[P] a man who established for himself a minor kingdom through robbery and small-scale conquests. It is possible for a woman to suppose that a king like ben Netzer will eventually marry her.

לִיסְטוּת אַלִּיסְטוּת לָא קַשְׁיָא; הָא – בְּבֶן נֶצֶר, הָא – בְּלִיסְטִים דְּעָלְמָא. וּבֶן נֶצֶר, הָתָם קָרֵי לֵיהּ מֶלֶךְ וְהָכָא קָרֵי לֵיהּ לִיסְטִים! אִין, גַּבֵּי אַחַשְׁוֵרוֹשׁ – לִיסְטִים הוּא, גַּבֵּי לִיסְטִים דְּעָלְמָא – מֶלֶךְ הוּא.

Similarly, the apparent contradiction between the ruling of one *baraita* with regard to those kidnapped by **bandits** and the ruling of the other *baraita* with regard to those kidnapped by **bandits** is **not difficult: This** first *baraita* is referring **to** the banditry of **ben Netzer,**[N] as she might agree to his advances, hoping to become the wife of a king. Conversely, **that** other *baraita* is dealing **with regular bandits** [***listim***],[L] as it can be assumed that the woman did not acquiesce to having intercourse, as, even if he wanted to marry her she would not agree. The Gemara asks: **And** this **ben Netzer,** how can it be that **there he is called a king and here he is called a bandit?** The Gemara answers: **Yes,** when considered **alongside Ahasuerus he is** merely **a bandit,** but when considered **alongside a regular bandit he is** deemed **a king.**

״וּבִכְהֻנָּת אֲהַדְּרִינָךְ לְמִדְיָנָתֵךְ״ וכו׳. אָמַר אַבַּיֵי: אַלְמָנָה לְכֹהֵן גָּדוֹל – חַיָּיב לְפַדּוֹתָהּ, שֶׁאֲנִי קוֹרֵא בָּהּ ״וּבִכְהֻנָּת אֲהַדְּרִינָךְ לְמִדְיָנָתֵךְ״.

§ The mishna taught: **And in** the case of **a priestess,** i.e., the wife of a priest, even if her husband did not write: If you are taken captive **I will** redeem you and **return you to your** native **province,** he is obligated to do so. **Abaye said:** In the case of **a widow** who was married **to a High Priest,** although the marriage is prohibited by Torah law, if she is taken captive he is **obligated to redeem her, as I apply** to **her** the clause: **And in** the case of **a priestess: I will return you to your** native **province.** Her husband can, and therefore must, fulfill this clause just as he could if he had married a woman who is permitted to him.

LANGUAGE

Bandits [*listim*] – לִסְטִים: From the Greek λῃστής, *lēstēs*, meaning robber or bandit.

PERSONALITIES

Ben Netzer – בֶּן נֶצֶר: Ben Netzer is the original family name of a man known as Odenathus, from the city of Tadmor, also known as Palmyra, Syria. Odenathus ruled Palmyra in the middle of the third century, and he succeeded in exploiting the extended conflict between the Romans and the Persians, a war with no clear victor, to increase his power and influence far beyond his city. After he allied himself with the Romans and fought against Shapur I, king of Persia, the Romans appointed him governor of all the adjacent provinces. Nevertheless, he tried to establish his own independent kingdom. Odenathus was murdered in 267 CE, and his grave is found among the ruins of ancient Palmyra. His widow, Queen Zenobia, who ruled in his stead, was able to expand his kingdom as far as the Egyptian border before she was murdered by the Romans. The Sages held this kingdom and its rulers in very low regard, apparently due to their hostile stance toward Jews, as exemplified by their conquest and destruction of the city of Neharde'a, a Jewish center. The Gemara describes ben Netzer's status as somewhere between a king and a bandit.

NOTES

This is referring to ben Netzer – הָא בְּבֶן נֶצֶר: There are differences of opinion as to why women who are captives of the kingdom of ben Netzer differ from captives of other kings or bandits. Some explain that a woman who has relations with a powerful king knows that he has no intention of marrying her, and therefore does not engage in the act willingly. In contrast, ben Netzer was a small-scale king and therefore it is possible that she participated willingly, thinking that he might marry her. In the case of a regular bandit she harbors no desire to marry him, and therefore she is presumed to have been raped (Rashi; Rid; Meiri). Others question this interpretation, claiming that it is unreasonable to suspect a woman of agreeing to intercourse in order to marry her captor (Ramban).

An alternative suggestion is that in the case of a powerful king like Ahasuerus, the woman is aware that there is no escape from him, and she does not bother to scream out in protest. With regard to ben Netzer, however, who was not so powerful, she might have been rescued had she cried out, and therefore if she did not cry out, it is assumed that she participated willingly (Rabbeinu Ḥananel). The Ramban raises various objections to this interpretation as well. One of his difficulties is that according to this reasoning she should be forbidden to her husband in the case of a regular bandit as well. She should certainly have hoped for rescue and cried out, and if she didn't the assumption is that she participated willingly. He further states that Rabbeinu Ḥananel's explanation can be accepted if one adds that in the case of an ordinary bandit she is afraid that he might kill her, whereas it was beneath ben Netzer's dignity to hurt or rape women in his status as king, and therefore he would have let her go had she resisted. A king as powerful as Ahasuerus, however, does not care what others think of him. A different interpretation cited by the Ramban, which he prefers, is that for various reasons they refrained from raping women in the kingdom of ben Netzer, and therefore a woman who had intercourse there must have done so willingly (see also *Nimmukei Yosef*).