לְשֶׁבַח, לִשְׁבוּעָה, וְלַשְּׁבִיעִית,

It is also relevant **to an increase in value,**[H] as she does not collect the main or additional sums from the increased value of the property in a case where the husband's estate was not sufficient at the time of his death to pay the entire cost of her marriage contract but the heirs later increased the value of the property; **to an oath,**[H] because if the wife is required to take an oath in order to receive her marriage contract, the additional sum is also included in that oath; **and to the Sabbatical Year,**[BH] as the marriage contract is not annulled with other debts in the Sabbatical Year, and this includes the additional sum as well.

וְלַכּוֹתֵב כָּל נְכָסָיו לְבָנָיו, לִגְבּוֹת מִן הַקַּרְקַע, וּמִן הַזִּיבּוּרִית, וְכָל זְמַן שֶׁהִיא בְּבֵית אָבִיהָ, וְלִכְתּוּבַּת בְּנֵי דִּכְרִין.

And with regard **to one who writes** a document transferring **all of his property to his sons**[H] and leaves his wife a specific plot of land for her marriage contract, this teaches that she receives both the main and the additional sums of her contract only from that land. The aforementioned *halakha* also teaches that she **collects** the payment only **from land,**[H] **and** specifically **from land of inferior quality;**[BH] **and** that a widow loses her ability to collect the main and additional sums **as long as she is in her father's home**[HN] for more than twenty-five years after her husband's death; **and** the principle also applies **to** the stipulation in the **marriage contract** that the **male offspring** inherit their mother's dowry[H] when her husband passes away in addition to the inheritance they receive together with their other brothers. These *halakhot* apply equally to the additional sum of the marriage contract.

HALAKHA

To an increase in value – לְשֶׁבַח: The wife does not receive payment for the main sum or the additional sum of her marriage contract from the increase in value of her husband's property after his death. There are, however, different opinions with regard to a situation where she is the one who caused the property to increase in value (Rambam *Sefer Nashim*, *Hilkhot Ishut* 16:5; *Shulḥan Arukh*, *Even HaEzer* 95:7, 100:2).

To an oath – לִשְׁבוּעָה: The woman does not collect the main or additional sums of her marriage contract until after she has sworn to the heirs that her husband did not leave her any other property and that she did not sell or relinquish the contract (Rambam *Sefer Nashim*, *Hilkhot Ishut* 16:4; *Shulḥan Arukh*, *Even HaEzer* 96:1).

And to the Sabbatical Year – וְלַשְּׁבִיעִית: A widow in possession of her marriage contract is always entitled to collect payment. The obligation of the husband's heirs to pay is not canceled by the Sabbatical Year, unless she already received a portion of it or solicited payment and converted it into a straightforward loan (Rambam *Sefer Zera'im*, *Hilkhot Shemitta VeYovel* 9:13; *Shulḥan Arukh*, *Even HaEzer* 101:1).

To one who writes a document transferring all of his property to his sons – לַכּוֹתֵב כָּל נְכָסָיו לְבָנָיו: In the case of one who wrote a document transferring all of his property to his sons or daughters, and set aside a specific plot of land to give his wife as payment for her marriage contract, if she was aware of this and did not challenge it, she collects her payment from that piece of land and loses her rights to the remainder of her marriage contract, both the main and additional sums (Rambam *Sefer Kinyan*, *Hilkhot Zekhiya UMattana* 6:9; *Shulḥan Arukh*, *Even HaEzer* 106:1).

Collects the payment only from land – לִגְבּוֹת מִן הַקַּרְקַע: Originally, the main and additional sums of the marriage contract were paid only in land. However, the *ge'onim* ordained that a woman can take her marriage contract from movable property as well, and this ordinance spread throughout the Jewish people (Rambam *Sefer Nashim*, *Hilkhot Ishut* 16:7–10; *Shulḥan Arukh*, *Even HaEzer* 100:1).

From land of inferior quality – מִן הַזִּיבּוּרִית: Originally, the main and additional sums of the marriage contract were taken from land of the lowest quality in the husband's possession. However, nowadays the accepted custom is to write in the marriage contract: The best and choicest property. The wife thereby collects her marriage contract from the land of the highest quality (Rambam *Sefer Nashim*, *Hilkhot Ishut* 16:3; *Shulḥan Arukh*, *Even HaEzer* 100:2; see *Tur*, *Ḥoshen Mishpat* 108).

As long as she is in her father's home – כָּל זְמַן שֶׁהִיא בְּבֵית אָבִיהָ: In a case where a widow is not in possession of her marriage document and is living in her father's home, if she does not demand payment within twenty-five years, she cannot collect anything later, as she has presumably relinquished her claim to the marriage contract. This applies equally to the main and additional sums of the marriage contract, as discussed in the Gemara (Rambam *Sefer Nashim*, *Hilkhot Ishut* 16:23, and *Maggid Mishne* and *Kesef Mishne* there; *Shulḥan Arukh*, *Even HaEzer* 101:1).

To the stipulation in the marriage contract that the male offspring inherit their mother's dowry – לִכְתּוּבַּת בְּנֵי דִּכְרִין: One of the conditions of the marriage contract is that if the wife dies before the husband, then when the husband dies, their male children inherit her dowry and the property set aside for their mother's marriage contract, in addition to their portions of the remainder of their father's estate, divided together with their brothers from other wives. The *Shulḥan Arukh* writes that there are some who include the additional sum of the marriage contract in this. The *Beit Shmuel*, *Ḥelkat Meḥokek*, and the Vilna Gaon all express bewilderment at the wording of the *Shulḥan Arukh*, as it implies that there are some who disagree with this ruling. In fact, even the Rambam, who did not explicitly mention the additional sum in this context, seems to agree with this ruling, in accordance with the Gemara here (Rambam *Sefer Nashim*, *Hilkhot Ishut* 19:1; *Shulḥan Arukh*, *Even HaEzer* 111:1).

BACKGROUND

Sabbatical Year – שְׁבִיעִית: This is the last year of the seven-year Sabbatical cycle. The first such cycle began after the conquest of Canaan by Joshua. The Sabbatical Year is also known as *Shemitta*, which literally means abandonment or release. The *halakhot* of the Sabbatical Year are based on Torah law (see Leviticus 25:1–7 and Deuteronomy 15:1–6), but most authorities maintain that the conditions for the applicability of the Torah mitzva are currently not in effect, and consequently its present-day observance is based on rabbinic decree.

The particular regulations that apply to this year fall into two main categories of *halakhot*: Those pertaining to the imperative that all agricultural land lie fallow, and those pertaining to the cancellation of debts due to loans, as on the last day of the Sabbatical Year all outstanding debts that Jews owe to each other as a result of loans are canceled. This *halakha* does not apply to debts whose payment is not yet due on this day, nor does it apply when collection proceedings have already been initiated in court.

Land of inferior quality – זִיבּוּרִית: When one pays a debt with land rather than with money, differences among gradations of land quality must be taken into consideration. Although the monetary value of the land one receives will be equal whether the debt is paid with a larger portion of inferior-quality land, a smaller quantity of better-quality land, there is nevertheless an established principle that people prefer to receive smaller quantities of high-quality land, as this requires less maintenance. The Torah says explicitly that injured parties receive their damages from highest quality land: "Of the best of his own field, and of the best of his own vineyard, shall he make restitution" (Exodus 22:4). In principle, creditors receive their payment from inferior quality land, but the Sages decreed that a creditor collects from medium-quality land, so as to maintain the incentive to lend money.

NOTES

And as long as she is in her father's home – וְכָל זְמַן שֶׁהִיא בְּבֵית אָבִיהָ: This phrase hints to the distinction between a widow who remains in her late husband's home and one who returns to her father's home. This distinction is the subject of a debate among the *tanna'im* (see 104a). According to Rabbi Meir, if she returns to her father's home she can collect payment of the marriage contract whenever she wishes, but if she remains in her husband's home she can collect it for up to only twenty-five years. According to the Rabbis, it is reversed: In her father's home, she can collect for up to twenty-five years and in her husband's home she can collect forever.

Most of the commentaries explain the statement here in accordance with the opinion of the Rabbis: If she returns to her father's home, just as she loses the ability to collect the main sum of the marriage contract after twenty-five years, she also loses the additional sum. However, some explain the statement according to the opinion of Rabbi Meir, meaning that as long as she is in her father's home she can collect her marriage contract, and that this includes the additional sum (Rivan; see *Shita Mekubbetzet*).

PERSONALITIES

The Sages of Pumbedita – פּוּמְבַּדִיתָא: In tractate *Sanhedrin* (17b), a number of Sages from Pumbedita are identified by name in order to distinguish between the judges of Pumbedita, the sharp-witted scholars of Pumbedita, and the Elders of Pumbedita. The passage here does not clarify to which group it is referring. It appears that this dispute dates to a later period, as Mata Meḥasya did not become an important center of Torah study until the generation of Rav Ashi, near the end of the period of the *amora'im*. From this period onward, there were in fact two great academies: The academy of Pumbedita and the academy of Sura, which is identified with Mata Meḥasya. These academies differed on many matters.

HALAKHA

It is not seized from liened property that has been sold – לָא טָרְפָא מִמְּשַׁעְבְּדֵי: Sons who inherit the property set aside for their mother's marriage contract, based on the stipulation in the marriage contract concerning male children (see previous note), may not collect from liened property, but only from unclaimed property, as with any other inheritance (Rambam *Sefer Nashim*, *Hilkhot Ishut* 19:9; *Shulḥan Arukh*, *Even HaEzer* 111:13).

If he set aside land for her – יִיחַד לָהּ אַרְעָא: If one set aside land for his wife from which she will collect her marriage contract, whether he marked the land off on all of its borders or only on one side, she may take the land without an oath, in accordance with the opinion of the Sages of Pumbedita (Rambam *Sefer Nashim*, *Hilkhot Ishut* 19:9; *Shulḥan Arukh*, *Even HaEzer* 111:13).

אִיתְּמַר כְּתוּבַּת בָּנִין דְּכָרִין, פּוּמְבַּדִיתָא אָמְרִי: לָא טָרְפָא מִמְּשַׁעְבְּדֵי, "יִירְתוּן" תְּנַן,

§ **It was stated** that there was a debate among the Sages with regard to the stipulation in the **marriage contract** that the **male offspring** inherit the sum stipulated in their mother's marriage contract. The Sages of **Pumbedita**[P] **say: It is not seized from liened** property that has been sold[H] by the father. This is because **we learned** in a mishna (52b) that the text of the stipulation is: **They will inherit** the money set aside for their mother's marriage contract. From this phrase it is clear that the stipulation follows the *halakhot* of inheritance, and therefore their inheritance can be taken only from property in the father's possession at the time of his death, but not from property that he had sold.

בְּנֵי מָתָא מְחַסְיָא אָמְרִי: טָרְפָא מִמְּשַׁעְבְּדֵי, "יִסְבּוּן" תְּנַן. וְהִלְכָתָא: לָא טָרְפָא מִמְּשַׁעְבְּדֵי, "יִירְתוּן" תְּנַן.

The residents of Mata Meḥasya say: It is seized from liened property that has been sold. Their tradition is that **the mishna states** that the text of the stipulation is: **They will take** the money set aside for their mother's marriage contract. It is as if the husband transferred this property to the sons, and as their acquisition precedes those of the other buyers, they may seize the sold property from the buyers. The Gemara concludes that **the *halakha* is that it is not seized from liened** property that has been sold, as **the mishna states: They will inherit.**

מְטַלְטְלֵי וְאִיתְּנְהוּ בְּעֵינַיְיהוּ – בְּלָא שְׁבוּעָה.

There is another dispute between the Sages of Pumbedita and the residents of Mata Meḥasya, with regard to one who set aside payment for his wife's marriage contract from **movable property, and** these objects **are in their pure,** unadulterated state at the time of the execution of the marriage contract after the husband's death. In this case, all agree that the widow may take them **without an oath** that confirms that her husband did not leave her any other money for the payment of her marriage contract, as it is clear that he set aside these objects for that purpose.

לֵיתְנְהוּ בְּעֵינַיְיהוּ, פּוּמְבַּדִיתָא אָמְרִי: בְּלָא שְׁבוּעָה, בְּנֵי מָתָא מְחַסְיָא אָמְרִי: בִּשְׁבוּעָה. וְהִלְכָתָא: בְּלָא שְׁבוּעָה.

However, if the movable objects **are not in their pure,** unadulterated state,[N] e.g., they were lost, the Sages of **Pumbedita say** that she takes the payment for her marriage contract from other property, as all of the husband's property is liened to the marriage contract **without an oath. The residents of Mata Meḥasya say** she takes her payment only **with an oath,** because of a concern that she may have already received other property as payment for her marriage contract. **And the *halakha* is** that she may take it **without an oath,** in accordance with the opinion of the Sages of Pumbedita.

יִיחַד לָהּ אַרְעָא, בְּאַרְבָּעָה מִצָּרָנָהָא – בְּלָא שְׁבוּעָה. בְּחַד מִצָּרָא, פּוּמְבַּדִיתָא אָמְרִי: בְּלָא שְׁבוּעָה, בְּנֵי מָתָא מְחַסְיָא אָמְרִי: בִּשְׁבוּעָה. וְהִלְכָתָא: בְּלָא שְׁבוּעָה.

If **he set aside land for her,**[H] which he demarcated **on** all **four of its borders,** she seizes the land **without an oath.** If he demarcated it **on** only **one border,**[N] which is not as clear an indication, the Sages of **Pumbedita say** she takes it **without an oath,** and **the residents of Mata Meḥasya say** she takes it **with an oath. And the *halakha* is** that she takes it **without an oath.**

NOTES

Are not in their pure unadulterated state – לֵיתְנְהוּ בְּעֵינַיְיהוּ: Rashi and some other commentaries explain this literally. Even if the objects set aside for her marriage contract are lost forever, she nevertheless collects the payment from other property without an oath. Rashi explains that the reason for a potential oath is due to concern that during the husband's lifetime, he may have given his wife payment for her marriage contract. In the case where the husband gave her objects for her marriage contract while he was alive, if those objects are still available in their original, unadulterated state, there is obviously no concern that he had given her something else as well. However, if those objects were lost, the Sages debated whether there is a concern that he may have reimbursed her with other property, in which case she may be required to take an oath. The conclusion is that one may assume he would not set aside other objects for her, and therefore she may take the payment for her marriage contract without an oath.

However, many of the early authorities explain the statement differently, in accordance with the opinion of Rav Hai Gaon and other *ge'onim*, that this is a case in which the first set of objects are not available, but there are other objects that are known to have been given in place of the original ones. In this case, there is no reason to suspect that he set aside something else for her. Some note that the language of the Gemara supports this explanation, as it does not simply say: They do not exist, but rather: They are not in their pure, unadulterated state, which suggests that there are other objects meant to replace the original ones (Rid). The Ra'avad and the Meiri also discuss whether this applies to an ordinary creditor as well.

On only one border – בְּחַד מִצָּרָא: If one demarcates the field on all sides, it is clear that he set the field aside for his wife's marriage contract. However, if he demarcated only one side of the field, it is possible that he meant to leave her only the small strip of land immediately next to the border (Rivan).

אֲמַר לְעֵדִים ״כִּתְבוּ וְחִתְמוּ וְהַבוּ לֵיהּ״, קָנוּ מִינֵּיהּ – לָא צָרִיךְ אֵימְלוּכֵי בֵּיהּ, לָא קָנוּ מִינֵּיהּ, פּוּמְבַּדִּיתָא אָמְרִי: לָא צָרִיךְ אֵימְלוּכֵי בֵּיהּ, בְּנֵי מָתָא מְחַסְיָא אָמְרִי: צָרִיךְ אֵימְלוּכֵי בֵּיהּ. וְהִלְכְתָא: צָרִיךְ אֵימְלוּכֵי בֵּיהּ.

Furthermore, they had a dispute in a case where someone **told witnesses: Write and sign** a deed of gift **and give it to** the intended recipient[H] of the gift. In such a case, if the witnesses **acquired it from him** on behalf of the recipient by performing a formal act of acquisition, **they do not need to consult with him** again, as there can be no retraction after a formal acquisition. But if **they did not acquire it from him,** the Sages of **Pumbedita say they do not need to consult with him** again, and **the residents of Mata Meḥasya say they must consult with him. And the *halakha* is that they must consult with him** again.

״רַבִּי אֶלְעָזָר בֶּן עֲזַרְיָה״ וכו׳. אִיתְּמַר, רַב וְרַבִּי נָתָן. חַד אֲמַר: הֲלָכָה כְּרַבִּי אֶלְעָזָר בֶּן עֲזַרְיָה, וְחַד אֲמַר: אֵין הֲלָכָה כְּרַבִּי אֶלְעָזָר בֶּן עֲזַרְיָה.

§ The mishna states that **Rabbi Elazar ben Azarya** says that a woman who collects the payment for her marriage contract after marriage receives the main and additional sums, while one who collects it after betrothal receives only the main sum. **It was stated: Rav and Rabbi Natan** differed with regard to this issue. **One said** the ***halakha* is in accordance with** the opinion of **Rabbi Elazar ben Azarya. And one said** the ***halakha* is not in accordance with** the opinion of **Rabbi Elazar ben Azarya.**

תִּסְתַּיֵּים דְּרַבִּי נָתָן הוּא דְּאָמַר הֲלָכָה כְּרַבִּי אֶלְעָזָר בֶּן עֲזַרְיָה, דְּשָׁמְעִינַן לֵיהּ לְרַבִּי נָתָן דְּאָזֵיל בָּתַר אוּמְדָּנָא. דְּאָמַר רַבִּי נָתָן: הֲלָכָה כְּרַבִּי שִׁמְעוֹן שְׁזוּרִי בִּמְסוּכָּן,

It may be concluded that Rabbi Natan is the one who said that the ***halakha* is in accordance with** the opinion of **Rabbi Elazar ben Azarya, as we have heard that Rabbi Natan follows** the principle of **assessing** intention. Even if one did not make an explicit statement, the court assesses what his intention must have been and decides the *halakha* based on that assessment. It is clear that he follows this principle, **as Rabbi Natan said** that the ***halakha* is in accordance with** the opinion of **Rabbi Shimon Shezuri in** the case of an ill person **in danger.**[H] If this person says: Write a bill of divorce for my wife, that is understood as: Write it and give it to her, as his intention is to absolve her from the requirement of levirate marriage by means of the bill of divorce. Although he did not explicitly state this, Rabbi Natan holds that in such a situation the court assesses that this was the husband's intent and follows it.

HALAKHA

Someone told witnesses: Write and sign a deed of gift and give it to the intended recipient – אֲמַר לְעֵדִים כִּתְבוּ וְחִתְמוּ וְהַבוּ לֵיהּ: If one lends money in the presence of witnesses and performs an act that formalizes the transaction, known as an act of acquisition, the witnesses should record the transaction in a document and give it to the lender, as acquisitions are generally performed in order to be written down. However, if one did not perform an act of acquisition, the witnesses should not write anything unless the borrower requests that they write a document and give it to the lender.

If the borrower requested that the witnesses write it down and deliver the document to the lender, they must return and consult with the borrower before actually giving the document to the lender (Rambam). However, other authorities dispute this ruling and say that it is not necessary to consult with him again. The *Shakh* states that the opinion of most authorities (Rashi; Ra'avad; *Sefer Halttur*; Ran; *Mishne LaMelekh*) is that the requirement to consult applies only when giving a gift of land or something similar (Rambam *Sefer Mishpatim*, *Hilkhot Malve VeLoveh* 11:1; *Shulḥan Arukh*, *Ḥoshen Mishpat* 39:2–3).

Person in danger – בִּמְסוּכָּן: Usually, if one says: Write a bill of divorce for my wife, the bill of divorce is not delivered to the wife until he explicitly says to do so. However, the *halakha* is different if the husband is departing to travel with a convoy or to sail at sea, or if he is being taken prisoner and led out in chains, or if he has suddenly became severely ill. In all of these cases, if he merely says: Write a bill of divorce for my wife, the bill of divorce is written and delivered to his wife immediately, in accordance with the opinion of Rabbi Shimon Shezuri (Rambam *Sefer Nashim*, *Hilkhot Geirushin* 2:12; *Shulḥan Arukh*, *Even HaEzer* 141:16).

Perek **V**
Daf **55** Amud **b**

וּבִתְרוּמַת מַעֲשֵׂר שֶׁל דְּמַאי.

And the *halakha* is also in accordance with his opinion **with regard to the *teruma* of the tithe[B] from doubtfully tithed produce [*demai*].**[H] Produce purchased from a common, uneducated person [*am ha'aretz*] is considered *demai* and by rabbinic law it is regarded as uncertain whether the seller separated tithes and *teruma* of the tithe from it. Rabbi Natan rules in accordance with Rabbi Shimon Shezuri's opinion in a case where, after one bought *demai* and separated *teruma* of the tithe, this *teruma* becomes mingled with the produce from which it was separated. If all of the produce were treated as actual *teruma*, the only solution would be to sell all of the produce to a priest at low cost, as he is the only one who may use it. Rabbi Shimon Shezuri, however, rules that in the case of *demai*, the owner may ask the fruit seller if he properly separated the tithes. If the seller responds that he did, the owner may rely on that, despite the fact that the seller is an *am ha'aretz*, as the Sages do not apply their decree in a case where it would cause significant financial loss.

BACKGROUND

The *teruma* of the tithe – תְּרוּמַת מַעֲשֵׂר: The Levites are commanded to separate one-tenth of the tithe given to them and transfer it to the priests. The Torah calls this "a tithe from the tithe," and the Sages refer to it as the *teruma* of the tithe (see Numbers 18:26–32). All the *halakhot* that apply to *teruma* also apply to *teruma* of the tithe. Even nowadays, *teruma* of the tithe must be separated from produce grown by a Jew in Eretz Yisrael. However, since all Jews today are in a perpetual state of ritual impurity, it cannot be used.

HALAKHA

And with regard to the *teruma* of the tithe from doubtfully tithed produce – וּבִתְרוּמַת מַעֲשֵׂר שֶׁל דְּמַאי: There are differing opinions as to the interpretation of this *halakha*. The Rambam says that it concerns one who is not generally afforded credibility with regard to tithes. In this case, he was seen to separate the *teruma* of the tithe from doubtfully tithed produce and that *teruma* became mixed with other produce. If he says that he subsequently corrected the problem, he is deemed credible, as an *am ha'aretz* is generally cautious with a mixture of *teruma*.

The Ra'avad explains that in a case where the *teruma* fell into the ordinary produce, even if the *teruma* constitutes less than one percent of the mixture, if an *am ha'aretz* reports that he had already separated tithes from the produce and in fact did not need to separate the *teruma* of the tithe, he is deemed credible, as he is presumed to be cautious with a mixture of *teruma* (Rambam *Sefer Zera'im*, *Hilkhot Ma'asrot* 12:4, and *Kesef Mishne* there; see Radbaz).

וְרַב לָא אָזֵיל בָּתַר אוּמְדָּנָא? וְהָא אִיתְּמַר, מַתָּנַת שְׁכִיב מְרַע שֶׁכָּתוּב בָּהּ קִנְיָן, בְּבֵי רַב מְשַׁמֵּיהּ דְּרַב אָמְרִי: אָרְכְּבֵיהּ אַתְּרֵי רְכְשֵׁי, וּשְׁמוּאֵל אֲמַר: לָא יָדַעְנָא מַאי אֵידוֹן בָּהּ,

Having established that Rabbi Natan follows the principle of assessment, the Gemara asks: **And does Rav not follow** this principle of **assessing** intention? **But it was stated** that Rav and Shmuel disagreed about a specific case with regard to the **gift** of a person **on his deathbed,**[N] **in which** it was also **written** that the gift was given with an act of **acquisition.**[H] There is a rabbinic ordinance that one on his deathbed can effect the transfer of property without the ordinarily required act of acquisition, but in this case such an act was performed anyway. **In the school of Rav, they say in the name of Rav: He had him ride on two horses,**[N] meaning that he gave him a gift with a document strengthened in two different ways. **And Shmuel said: I do not know what to decide about it.**

בְּבֵי רַב מְשַׁמֵּיהּ דְּרַב אָמְרִי: אָרְכְּבֵיהּ אַתְּרֵי רְכְשֵׁי, חֲדֵי הִיא כְּמַתָּנַת בָּרִיא, וַחֲדֵי הִיא כְּמַתָּנַת שְׁכִיב מְרַע.

The Gemara explains the two opinions: **In the school of Rav, they say in the name of Rav: He had him ride on two horses,** meaning that he performed the transfer in a manner that took advantage of two separate *halakhot* to strengthen its validity. In one aspect, **it is similar to** the **gift of a healthy** person, **and** in a different way **it is similar to** the **gift** of a person **on his deathbed.** Both of these aspects act to strengthen the transfer.

חֲדֵי הִיא כְּמַתָּנַת בָּרִיא – דְּאִם עָמַד אֵינוֹ יָכוֹל לַחֲזוֹר בּוֹ, חֲדֵי הִיא כְּמַתָּנַת שְׁכִיב מְרַע – שֶׁאִם אָמַר ״הִלְוָאָתִי לְפְלוֹנִי״ – הִלְוָאָתוֹ לְפְלוֹנִי.

On the one hand, **it is similar to** the **gift of a healthy** person in **that if he arose** from the bed and recovered **he cannot retract it,** since he performed a proper act of acquisition. On the other hand, **it is like** the **gift** of a person **on his deathbed** in **that if he said: My loan,** i.e., money owed to me, is transferred **to so-and-so**[N] as a gift, **his loan** is in fact transferred **to so-and-so.** Although ordinarily ownership of a debt cannot be transferred without a formal transference of the promissory note, the verbal statement is sufficient to effect the transfer since this is a gift of a person on his deathbed.

וּשְׁמוּאֵל אֲמַר: לָא יָדַעְנָא מַאי אֵידוֹן בָּהּ – שָׁמָּא לֹא גָּמַר לְהַקְנוֹתוֹ אֶלָּא בִּשְׁטָר, וְאֵין שְׁטָר לְאַחַר מִיתָה.

And Shmuel said: I do not know what to decide about it. Perhaps his performance of an act of acquisition indicates that **he resolved to transfer it** to him **only with a bill** of sale. **And** since his intention is that the sale not take effect until he also gives a bill of sale, the transfer does not take effect, as a **bill** of sale is not effective **after the death** of the owner.

HALAKHA

The gift of a person on his deathbed in which it was also written that the gift was given with an act of acquisition – מַתָּנַת שְׁכִיב מְרַע שֶׁכָּתוּב בָּהּ קִנְיָן: If one on his deathbed gives a gift and an act of acquisition is also written in the document, whether the gift involves a portion of his property or all of it, there is a concern that the owner may have meant to give this gift through a document using the ordinary procedures. The gift is therefore annulled, because a deed of transfer of property is not written after the death of the owner. This ruling is in accordance with the opinion of Shmuel, whose opinion is authoritative in monetary matters. However, if the owner explicitly stated that the act of acquisition was performed only in order to give additional force to the transfer, or if this was apparent from his language, the gift is not annulled (Rambam *Sefer Kinyan*, *Hilkhot Zekhiya UMattana* 8:10; *Shulḥan Arukh*, *Ḥoshen Mishpat* 250:17–19).

NOTES

The gift of a person on his deathbed – מַתָּנַת שְׁכִיב מְרַע: The Sages established special enactments with regard to gifts given by one on his deathbed. One unique aspect of these gifts is that the Sages exempted them from acts of acquisition, which are ordinarily required. This is because certain items cannot be transferred immediately, and the inability to do so may distress the ill person and cause his condition to worsen. The Sages also established that these special provisions apply only in situations where the ill person gave away all of his property. In that case, all of the gifts are annulled if he becomes healed, as it is apparent that he made these transfers only because he believed he was about to die.

Horses [*rikhshei*] – רְכְשֵׁי: The Hebrew word *rekhesh* appears in the Bible (I Kings 5:8) and seems to indicate an animal used for riding, such as a horse or mule.

If he said: My loan is transferred to so-and-so – אִם אָמַר הִלְוָאָתִי לְפְלוֹנִי: According to Rashi, the novel element in this statement is that he is able to transfer the ownership of money. Money generally cannot be acquired with an exchange transaction, and therefore the act of acquisition is irrelevant with regard to the loan. But in this case, since it is a gift of one on his deathbed, the transaction is effective. However, *Tosafot* and some other early commentaries challenge this explanation. They suggest instead that the novel element is the ability to transfer a loan. Since a loan is not something concrete, under normal circumstances, it cannot be transferred to another using ordinary acts of acquisition.

According to Rabbeinu Ḥananel, this passage is referring to the transference of a promissory note. Although the typical method of transferring a debt is by writing a new document and giving it to the purchaser, in the case of a gift of one on his deathbed, the original document itself can be transferred.