אֶלָּא, תַּרְוַיְיהוּ אָזְלֵי בָּתַר אוּמְדָנָא.

In any case, it has been established that Rav also follows the principle of assessing one's intention, which calls into question the conclusion that Rabbi Natan is the one who said that the *halakha* is in accordance with the opinion of Rabbi Elazar ben Azarya. **Rather,** the Gemara concludes: **Both** Rav and Rabbi Natan **follow** the principle of **assessing** intention,[H] and the debate can be explained in a different way.

מַאן דַּאָמַר הֲלָכָה – שַׁפִּיר, מַאן דַּאָמַר אֵין הֲלָכָה – הָכָא נַמִּי אוּמְדָּן דַּעְתָּא הוּא: מִשּׁוּם אִיקְרוּבֵי דַּעְתָּא הוּא, וְהָא אִיקְּרְבָא לֵיהּ דַּעְתָּא.

According to **the one who says** the ***halakha*** is in accordance with the opinion of Rabbi Elazar ben Azarya, this works out **well.** According to **the one who says** the ***halakha* is not** in accordance with the opinion of Rabbi Elazar ben Azarya, **here too, this is an assessment** of his **intention.** Why did he give her the additional sum of the marriage contract? **It was due to a sense of intimacy** between them, as they were betrothed and were planning to get married. Since **he did** demonstrate **a sense of intimacy** with her, the assessment is that he intended to give her the additional sum.

יָתֵיב רַב חֲנִינָא קַמֵּיהּ דְּרַבִּי יַנַּאי, וְקָאָמַר: הֲלָכָה כְּרַבִּי אֶלְעָזָר בֶּן עֲזַרְיָה. אֲמַר לֵיהּ: פּוֹק קְרֵי קָרָאךְ לְבָרָא! אֵין הֲלָכָה כְּרַבִּי אֶלְעָזָר בֶּן עֲזַרְיָה.

Rav Ḥanina,[P] who was known for teaching biblical verses, **sat before Rabbi Yannai and said:** The ***halakha* is in accordance with** the opinion of **Rabbi Elazar ben Azarya.** Rabbi Yannai **said to him: Go out** and **read your verses outside.** Your area of expertise is biblical verses, not *halakha*. What you said is incorrect and should not be said in the study hall, as the ***halakha* is** actually **not in accordance with** the opinion of **Rabbi Elazar ben Azarya.**

אָמַר רַב יִצְחָק בַּר אַבְדִּימִי מִשּׁוּם רַבֵּינוּ: הֲלָכָה כְּרַבִּי אֶלְעָזָר בֶּן עֲזַרְיָה. אָמַר רַב נַחְמָן אָמַר שְׁמוּאֵל: הֲלָכָה כְּרַבִּי אֶלְעָזָר בֶּן עֲזַרְיָה.

Rav Yitzḥak bar Avdimi said in the name of our teacher, Rabbi Yehuda HaNasi: The ***halakha* is in accordance with** the opinion of **Rabbi Elazar ben Azarya. Rav Naḥman said** that **Shmuel said:** The ***halakha* is in accordance with** the opinion of **Rabbi Elazar ben Azarya.**

וְרַב נַחְמָן דִּידֵיהּ אָמַר: אֵין הֲלָכָה כְּרַבִּי אֶלְעָזָר בֶּן עֲזַרְיָה. וּנְהַרְדְּעֵי מְשַׁמֵּיהּ דְּרַב נַחְמָן אָמְרִי: הֲלָכָה כְּרַבִּי אֶלְעָזָר בֶּן עֲזַרְיָה. וְאַף עַל גַּב דְּלָט רַב נַחְמָן, וַאֲמַר: כָּל דַּיָּינָא דְּדָאִין כְּרַבִּי אֶלְעָזָר בֶּן עֲזַרְיָה – הָכִי וְהָכִי תֵּיהֱוֵי, אֲפִילּוּ הָכִי הֲלָכָה כְּרַבִּי אֶלְעָזָר בֶּן עֲזַרְיָה. וַהֲלָכָה לְמַעֲשֶׂה – כְּרַבִּי אֶלְעָזָר בֶּן עֲזַרְיָה.

And Rav Naḥman also **said his** own statement: The ***halakha* is not in accordance with** the opinion of **Rabbi Elazar ben Azarya. And** the Sages **of Neharde'a say in the name of Rav Naḥman:** The ***halakha* is in accordance with** the opinion of **Rabbi Elazar ben Azarya.** The Gemara comments: **And although Rav Naḥman cursed** them **and said: Any judge who rules in accordance with** the opinion of **Rabbi Elazar ben Azarya, such and such** unspecified misfortune **will happen to him, even so** the ***halakha* is in accordance with** the opinion of **Rabbi Elazar ben Azarya.** Since the Gemara presented a number of different opinions, it concludes: **And the practical *halakha* is in accordance with** the opinion of **Rabbi Elazar ben Azarya.**[H]

בָּעֵי רָבִין: נִכְנְסָה לַחוּפָּה וְלֹא נִבְעֲלָה מַהוּ? חִיבַּת חוּפָּה קוֹנָה אוֹ חִיבַּת בִּיאָה קוֹנָה?

§ Since the practical *halakha* is that a woman who was divorced or widowed after betrothal receives the main sum of her marriage contract but not the additional sum, **Ravin asks: What is** the *halakha* with regard to a woman who **entered the wedding canopy and** is then widowed or divorced **without having had sexual intercourse?** Does the **affection** manifest in the **wedding effect** the marriage, and therefore she receives the additional sum as a married woman? **Or,** is it the **affection** manifest in the **intercourse** that **effects** the marriage, and consequently this woman is no different than a betrothed woman for the purpose of this *halakha*?

HALAKHA

Follow the principle of assessing intention – אָזְלֵי בָּתַר אוּמְדָנָא: The court always assesses the intention of one who gives a gift, and if the circumstances indicate what he was thinking, the *halakha* follows this assessment, even if he did not explicitly state his intention (Rambam *Sefer Kinyan*, *Hilkhot Zekhiya UMattana* 6:1; *Shulḥan Arukh*, *Ḥoshen Mishpat* 246:1).

The practical *halakha* is in accordance with the opinion of Rabbi Elazar ben Azarya – הֲלָכָה לְמַעֲשֶׂה כְּרַבִּי אֶלְעָזָר בֶּן עֲזַרְיָה: In the case of one who betrothed a woman and wrote main and additional sums in her marriage contract, if he divorces her or he dies without marrying her, she receives only the main sum but not the additional sum (Rambam *Sefer Nashim*, *Hilkhot Ishut* 10:11; *Shulḥan Arukh*, *Even HaEzer* 55:6).

PERSONALITIES

Rav Ḥanina – רַב חֲנִינָא: The Rav Ḥanina referred to here is the one generally known as Rav Ḥanina the Bible expert. He was a second-generation *amora* in Eretz Yisrael and a disciple of Rabbi Ḥanina bar Ḥama, known as Rabbi Ḥanina the Great, and of Rabbi Yannai. It appears that he taught Bible to children and also read from the Torah in the synagogue. For this reason, he was sometimes rebuked with the expression: Go out and read your verses outside.

תָּא שְׁמַע, דְּתָנֵי רַב יוֹסֵף: שֶׁלֹּא כָּתַב לָהּ אֶלָּא עַל חִיבַּת לַיְלָה הָרִאשׁוֹן. אִי אָמְרַתְּ בְּשִׁלָּמָא חִיבַּת חוּפָּה קוֹנָה – הַיְינוּ דְּאָמַר לַיְלָה הָרִאשׁוֹן, אֶלָּא אִי אָמְרַתְּ חִיבַּת בִּיאָה קוֹנָה – בִּיאָה בְּלַיְלָה הָרִאשׁוֹן אִיתָּא, מִכָּאן וְאֵילָךְ לֵיתָא?!

Come and **hear that Rav Yosef taught** the following *baraita*: **He wrote** the additional sum in the marriage contract **for her only on account of the affection** characteristic **of the first night** of the marriage. The Gemara asks: **Granted, if you say** that the **affection** manifest in the **wedding effects** the marriage, **this is** why **it says the** affection characteristic of **the first night,** as the wedding ceremony is performed on the first night only. **But if you say** that the **affection** manifest in the **intercourse effects** the marriage, **is there intercourse** only **on the first night** and then **from this** point **forward there is none?** Consequently, the *baraita* implies that the affection manifest in the wedding effects the marriage, and from that point on she is entitled to the additional sum of the marriage contract.

וְאֶלָּא מַאי – חוּפָּה, חוּפָּה בַּלַּיְלָה אִיתָּא, בִּימָמָא לֵיתָא? וּלְטַעֲמֵיךְ, בִּיאָה בַּלַּיְלָה אִיתָּא, בִּימָמָא לֵיתָא? הָא אֲמַר רָבָא: אִם הָיָה בְּבַיִת אָפֵל – מוּתָּר! הָא לָא קַשְׁיָא, אוֹרַח אַרְעָא קָא מַשְׁמַע לָן, דְּבִיאָה בַּלַּיְלָה.

The Gemara rejects this proof: **But rather, what** is the advantage of interpreting the expression: Affection characteristic of the first night, as a reference to the **wedding? Is there a wedding** only **at night** and **not during the day?** The Gemara responds: **And according to your reasoning, is there intercourse** only **at night** and **not during the day?** Didn't **Rava say** that although the Sages generally prohibited engaging in intercourse during the day, **if it was in a dark house**[N] it is **permitted?**[H] The Gemara rejects this question: **This** is **not difficult.** By employing this phrase, **it teaches us the ordinary mode of behavior,** i.e., **that intercourse** generally takes place **at night.**

אֶלָּא חוּפָּה קַשְׁיָא! חוּפָּה נַמִּי לָא קַשְׁיָא: כֵּיוָן דְּסִתָּם חוּפָּה לְבִיאָה קָיְימָא – אוֹרַח אַרְעָא קָא מַשְׁמַע לָן, דְּבַלַּיְלָה.

Rather, the opinion that the expression is a reference to the **wedding is difficult,** as a wedding does not have to take place at night. The Gemara responds: **The wedding** reference is **also not difficult, since** a reference to **a wedding without specification** means a wedding that **takes place** in order to lead directly **to intercourse.** By using this phrase, **it** similarly **teaches us the ordinary mode of behavior,** i.e., that intercourse generally takes place **at night.** Consequently, this *baraita* cannot be used as a proof for either possibility.

בָּעֵי רַב אַשִׁי: נִכְנְסָה לַחוּפָּה וּפֵירְסָה נִידָּה מַהוּ? אִם תִּימְצֵי לוֹמַר חִיבַּת חוּפָּה קוֹנָה – חוּפָּה דְּחָזְיָא לְבִיאָה, אֲבָל חוּפָּה דְּלָא חָזְיָא לְבִיאָה – לָא, אוֹ דִלְמָא לָא שְׁנָא? תֵּיקוּ.

Rav Ashi asks a question similar to Ravin's: If the bride **entered the wedding canopy and began menstruating,** and the husband then died without ever engaging in intercourse with his wife, **what is** the *halakha* with regard to the additional sum of the marriage contract? **If you say** that the **affection** manifest in the **wedding effects** the marriage,[H] does this refer specifically to **a wedding** in which the couple is **fit to** engage in **intercourse,** which involves greater affection, **and a wedding** in which the couple **is not fit to** engage in **intercourse** does **not** effect the marriage? **Or, perhaps it is not different.** The Sages could not answer this, so the question **shall stand** unresolved.

NOTES

If it was in a dark house – אִם הָיָה בְּבַיִת אָפֵל: The Gemara explains that engaging in sexual relations during the daytime is prohibited, because the husband might see something on his wife's body that would cause him to be disgusted with her (*Nidda* 17a). In addition, it says that it is more modest to engage in intercourse in the dark. This demonstrates that relations are not necessarily prohibited during the day; the main point is that it must be dark (see Meiri).

HALAKHA

If it was in a dark house it is permitted – אִם הָיָה בְּבַיִת אָפֵל מוּתָּר: It is prohibited to engage in sexual relations during the daytime, except in a dark house (*Shulḥan Arukh*, *Oraḥ Ḥayyim* 240:11).

The affection manifest in the wedding effects the marriage – חִיבַּת חוּפָּה קוֹנָה: Once a betrothed woman has entered the wedding canopy, even if she has not yet engaged in sexual intercourse with her husband, she has the status of a married woman for all purposes, e.g., inheritance, her ability to receive the entire sum of her marriage contract, and a priest's obligation to become impure on behalf of his wife if she dies. However, this applies only in a case where she was permitted to engage in sexual relations when she entered the wedding canopy. If she was a menstruating woman at that time, she maintains the status of a betrothed woman for all purposes. The Rosh, however, holds that in the latter case the woman maintains the status of a betrothed woman only with regard to the additional sum of her marriage contract, but for all other matters she has the status of a married woman (Rambam *Sefer Nashim*, *Hilkhot Ishut* 10:2; *Shulḥan Arukh*, *Even HaEzer* 61:1).

״רַבִּי יְהוּדָה אוֹמֵר: רָצָה – כּוֹתֵב לִבְתוּלָה״ וכו׳. וְסָבַר רַבִּי יְהוּדָה דְּכוֹתְבִין שׁוֹבֵר? וְהָתְנַן: מִי שֶׁפָּרַע מִקְצָת חוֹבוֹ, רַבִּי יְהוּדָה אוֹמֵר: יַחֲלִיף, רַבִּי יוֹסֵי אוֹמֵר: יִכְתּוֹב לוֹ שׁוֹבֵר!

§ The mishna states: **Rabbi Yehuda says:** If **he wishes, he may write** a marriage contract **for a virgin** for two hundred dinars, and she may then write a receipt as if he had paid part of that sum. They ask: **And** did **Rabbi Yehuda hold** that one **writes a receipt**[N] for partial payment of a debt? **But didn't we learn** in a mishna (*Bava Batra* 170b): In the case of **one who repaid part of his debt,**[H] **Rabbi Yehuda says: He should exchange** the original promissory note for a new one that states the amount still owed, and **Rabbi Yosei says:** The lender **should write him a receipt** for the money he received? According to Rabbi Yehuda, a new note is preferable to a receipt because if the borrower loses the receipt, the lender is still in possession of a promissory note for the full amount and can collect a second time.

אָמַר רַבִּי יִרְמְיָה: כְּשֶׁשּׁוֹבַרְתָּהּ מִתּוֹכָהּ.

Rabbi Yirmeya said: In the mishna, Rabbi Yehuda is referring to a case **where the receipt is** written **within** the marriage contract itself[N] and not as a separate document. The husband is therefore not required to hold on to a receipt, and consequently Rabbi Yehuda's restriction against writing a receipt is not necessary.

אַבָּיֵי אָמַר: אֲפִילּוּ תֵּימָא בְּשֶׁאֵין שׁוֹבַרְתָּהּ מִתּוֹכָהּ, בִּשְׁלָמָא הָתָם – וַדַּאי פָּרְעֵיהּ, דִּלְמָא מִירְכַּס תִּבְרְתָּא, וּמַפֵּיק לֵיהּ לִשְׁטָרָא, וַהֲדַר גָּבֵי זִימְנָא אָחֲרִינָא. הָכָא – וַדַּאי יָהֵב לָהּ? מִילְתָא בְּעָלְמָא הִיא דְּאָמְרָה לֵיהּ, אִי נָטְרִיהּ – נָטְרִיהּ. אִי לָא נָטְרִיהּ – אִיהוּ הוּא דְּאַפְסִיד אַנַּפְשֵׁיהּ.

Abaye said: Even if **you say** that the mishna is referring to a case **where the receipt is not** written **within it,** it is logical that Rabbi Yehuda would make an exception in this case. **Granted, there,** in an ordinary case of a receipt, **it is certain** that the borrower **repaid** part of the loan, and consequently there is concern that **perhaps** he **will lose the receipt** and the lender will **take out the** promissory **note and return and collect** the entire payment **again.** But **here,** in the mishna, did the husband **definitely give** the wife part of the payment for the marriage contract? The receipt **merely** amounts to **something she said to him** in order to waive part of the payment, although she did not actually receive it. **If he saved** the receipt, **he saved it; if he did not save it, it is he himself who will lose.** Therefore, in this case, Rabbi Yehuda agrees that one writes a receipt.

בִּשְׁלָמָא אַבָּיֵי לָא אָמַר כְּרַבִּי יִרְמְיָה לָא קָתָנֵי שׁוֹבַרְתָּהּ מִתּוֹכָהּ, אֶלָּא רַבִּי יִרְמְיָה מַאי טַעְמָא לָא אָמַר כְּאַבָּיֵי? גְּזֵירָה שׁוֹבֵר דְּהָכָא אַטּוּ שׁוֹבֵר דְּעָלְמָא.

They ask: **Granted,** it is understandable why **Abaye did not say** his explanation **in accordance with** the opinion of **Rabbi Yirmeya,** as the mishna **does not teach** explicitly that the **receipt is** written **within** the marriage contract. **However, what is the reason** that **Rabbi Yirmeya did not say** an explanation **in accordance with** the opinion of **Abaye?** Why does Rabbi Yirmeya limit the mishna to a case where the receipt was written within the marriage contract? The Gemara responds: Although this is an unusual case, as there is no concern that the receipt may be lost, there is nevertheless a rabbinic **decree** with regard to **this receipt due to the typical** case of **receipts.** Therefore, Rabbi Yehuda would not allow a receipt unless it was written into the marriage contract itself.

טַעְמָא – דְּכָתְבָה לֵיהּ, אֲבָל עַל פֶּה – לָא. אַמַּאי? דָּבָר שֶׁבְּמָמוֹן הוּא, וְשָׁמְעִינַן לֵיהּ לְרַבִּי יְהוּדָה דְּאָמַר: דָּבָר שֶׁבְּמָמוֹן – תְּנָאוֹ קַיָּים!

With regard to the crux of the issue, the Gemara notes: **The reason** that Rabbi Yehuda holds that the wife can waive part of the main sum of her marriage contract **is** specifically because **she wrote him** a receipt. **However,** if she said it **verbally, no,** it is not effective, even according to Rabbi Yehuda. The Gemara asks: **Why** not? **This is a monetary matter, and we** have **heard that Rabbi Yehuda said:** With regard to **monetary matters** in which someone makes a verbal stipulation, **his stipulation stands.**

דְּתַנְיָא, הָאוֹמֵר לְאִשָּׁה: הֲרֵי אַתְּ מְקוּדֶּשֶׁת לִי עַל מְנָת שֶׁאֵין לַיִּךְ עָלַי שְׁאֵר, כִּסּוּת וְעוֹנָה – הֲרֵי זוֹ מְקוּדֶּשֶׁת, וּתְנָאוֹ בָּטֵל, דִּבְרֵי רַבִּי מֵאִיר. רַבִּי יְהוּדָה אוֹמֵר: בְּדָבָר שֶׁבְּמָמוֹן – תְּנָאוֹ קַיָּים.

This is **as it is taught** in the *Tosefta* (*Kiddushin* 3:7): In the case of **one who says to a woman: You are hereby betrothed to me on the condition that you have no** ability to claim **from me food, clothing, or conjugal rights,**[H] **she is betrothed and his stipulation is void;** this is **the statement of Rabbi Meir. Rabbi Yehuda says:** With regard to **monetary matters,** such as food and clothing, **his stipulation stands;** therefore, if she verbally waives part of the marriage contract, and thereby makes a stipulation about a monetary matter, it should be effective.

NOTES

And did Rabbi Yehuda hold that one writes a receipt – וְסָבַר רַבִּי יְהוּדָה דְּכוֹתְבִין שׁוֹבֵר: The Rashba and the Ritva ask: How can this receipt for partial payment of the marriage contract be compared to other receipts? Rabbi Yehuda prohibits use of a receipt only when doing so against the wishes of the borrower, who says that he does not want to be obligated to hold on to the receipt. However, in this case, when it is done with the knowledge and agreement of the husband, why can't she write a receipt? They suggest that since according to Rabbi Yehuda a receipt is not ordinarily used to prove partial payment of a debt, it should not be used in this case either, out of concern that people will see this and demand the use of receipts in other cases. Rather, Rabbi Yehuda should have suggested that the husband write a marriage contract for the full amount and then have the wife return it to him and replace it with a modified contract for the smaller amount.

Where the receipt is written within the marriage contract itself – כְּשֶׁשּׁוֹבַרְתָּהּ מִתּוֹכָהּ: The simplest interpretation of this is that the woman writes the receipt on the marriage contract itself. However, a number of commentaries point out that if this were an acceptable solution, it could also be used in an ordinary case where a borrower paid part of a debt. It must be that this is not allowed, due to concern that the lender cut out or erased the receipt from the document. But if that is so, the question remains: Why does that concern not apply equally to a marriage contract?

A close reading of Rashi's commentary leads to the interpretation that the Gemara means that the receipt must be written into the actual text of the marriage contract itself, before the witnesses sign it. According to this, it is clear that this solution cannot be employed in the case of a promissory note (Ritva; Meiri).

HALAKHA

One who repaid part of his debt – מִי שֶׁפָּרַע מִקְצָת חוֹבוֹ: If one repays part of his debt, then if the lender wishes, the court, but not the witnesses, may write a new document with the remaining amount still owed, and the lender can then collect that amount based on the original date of the loan. Alternatively, the lender may instead write a receipt, even though this will require the borrower to retain the receipt. However, some say that this applies only when the time for payment of the entire loan has come due; if at least part of the money is not yet due, the borrower can demand that the lender have the loan document replaced or record the payment on the document itself (*Shakh*). This ruling is in accordance with the conclusion of the Gemara in tractate *Bava Batra* 170b (Rambam *Sefer Mishpatim*, *Hilkhot Malve VeLoveh* 23:15; *Shulḥan Arukh*, *Ḥoshen Mishpat* 54:1).

On the condition that you have no ability to claim from me food, clothing, or conjugal rights – עַל מְנָת שֶׁאֵין לַיִּךְ עָלַי שְׁאֵר, כִּסּוּת וְעוֹנָה: If the husband made a stipulation with his wife at the time of betrothal that she has no rights to food or clothing, his stipulation stands and he is not obligated to provide food or clothing. However, if he made a stipulation that he will not be required to provide conjugal rights, this stipulation is annulled and he is still obligated to provide them, in accordance with the opinion of Rabbi Yehuda (Rambam *Sefer Nashim*, *Hilkhot Ishut* 6:9–10, 12:6; *Shulḥan Arukh*, *Even HaEzer* 38:5, 69:6).

HALAKHA

The marriage contract is a rabbinic law – כְּתוּבָּה דְּרַבָּנַן: Most of the halakhic authorities agree that the marriage contract is a rabbinic law (*ge'onim*; Rabbeinu Ḥananel; Rif; Rambam; Maharam of Rothenburg). While some disagree (Rabbeinu Tam; Ri), the *halakha* does not follow this minority (Rambam *Sefer Nashim*, *Hilkhot Ishut* 10:7, 11:14, 12:2; *Shulḥan Arukh*, *Even HaEzer* 66:6).

He may actually consume the produce of the produce – לְעוֹלָם הוּא אוֹכֵל פֵּירֵי פֵּירוֹת: If one writes or says to his betrothed that he does not have any claim to her property and its produce, then he may not consume the produce, but he may sell it and buy land for his wife with the funds and then consume the produce of the produce. This is the case unless he wrote that he has no claim to her property, its produce, or the produce of its produce forever, in which case only the wife may consume the produce, in accordance with the opinion of Rabbi Yehuda (Rambam *Sefer Nashim*, *Hilkhot Ishut* 23:4; *Shulḥan Arukh*, *Even HaEzer* 92:5).

קָסָבַר רַבִּי יְהוּדָה: כְּתוּבָּה דְּרַבָּנַן, וַחֲכָמִים עָשׂוּ חִיזּוּק לִדְבֵרֵיהֶם יוֹתֵר מִשֶּׁל תּוֹרָה.

Rabbi Yehuda holds: The **marriage contract is a rabbinic** law,[H] **and the Sages reinforced their pronouncements with greater** force **than Torah law.** Therefore, if the wife waives part of the main sum of the marriage contract, Rabbi Yehuda holds that her declaration has no force unless it is written down. However, a Torah obligation, such as food and clothing, does not require this reinforcement, and consequently the wife may waive it with a verbal stipulation.

הֲרֵי פֵּירוֹת דְּרַבָּנַן, וְלָא עָבְדוּ לְהוּ רַבָּנַן חִיזּוּק! דְּתָנַן, רַבִּי יְהוּדָה אוֹמֵר: לְעוֹלָם הוּא אוֹכֵל פֵּירֵי פֵּירוֹת, עַד שֶׁיִּכְתּוֹב לָהּ ״דִּין וּדְבָרִים אֵין לִי בְּנָכְסַיִךְ וּבְפֵירוֹתֵיהֶן וּבְפֵירוֹת פֵּירוֹתֵיהֶן עַד עוֹלָם״.

The Gemara challenges this answer: The husband's entitlement to the **produce** of his wife's property **is a rabbinic** decree, **and** nevertheless **the Sages did not reinforce** his rights to **them, as we learned** in a mishna (83a): **Rabbi Yehuda says:** Even if the husband wrote that he waived his rights to the produce of his wife's property, **he may actually consume the produce of the produce**[H] of her property, meaning that he could invest the produce in additional property, which would also belong to his wife, but he would consume its produce. This applies **unless he** explicitly **writes** to **her: I do not have any claim to your property, its produce, or the produce of its produce, forever.**

Perek **V**
Daf **56** Amud **b**

וְקַיְימָא לָן: מַאי כּוֹתֵב – אוֹמֵר!

And we maintain on this issue: **What is** the meaning of: **Writes?** It means: **Says.** In order to relinquish one's claim to produce of the produce of his wife's property, he does not necessarily need to write this in a document; it is sufficient to say it verbally in front of witnesses. It seems, therefore, that Rabbi Yehuda holds that a verbal stipulation is sufficient for a monetary matter of rabbinic law.

אֲמַר אַבַּיֵי: לַכֹּל יֵשׁ כְּתוּבָּה, וְלֹא לַכֹּל יֵשׁ פֵּירוֹת?! מִילְּתָא דְּשָׁכִיחָא עָבְדוּ בָּהּ רַבָּנַן חִיזּוּק, מִילְּתָא דְּלָא שָׁכִיחָא – לָא עָבְדוּ בָּהּ רַבָּנַן חִיזּוּק.

Abaye said: There is a distinction between the two cases. **Every** married woman **has a marriage contract, but not all** husbands **have** the right to **produce,** as not every woman brings property with her into the marriage. Therefore, in relation to **a common matter,** such as a marriage contract, **the Sages reinforced** their pronouncements **about it** by insisting that any stipulations to change the terms must be in writing. However, with regard to **an uncommon matter,** such as the produce of property, **the Sages did not reinforce** their pronouncements **about it,** and a verbal declaration is sufficient.

הֲרֵי חַמָּרִים דְּשָׁכִיחִי, וְלָא עָבְדוּ לָהּ רַבָּנַן חִיזּוּק!

The Gemara challenges this answer: But with regard to the *halakha* of **donkey drivers, which is a common** matter, Rabbi Yehuda does **not** hold that **the Sages reinforced** their pronouncements **about it.**

דְּתָנַן: הַחַמָּרִין שֶׁנִּכְנְסוּ לָעִיר, וְאָמַר אֶחָד מֵהֶן: שֶׁלִּי חָדָשׁ, וְשֶׁל חֲבֵרַי יָשָׁן, שֶׁלִּי אֵינוֹ מְתוּקָּן וְשֶׁל חֲבֵרַי מְתוּקָּן, אֵין נֶאֱמָנִים. רַבִּי יְהוּדָה אוֹמֵר: נֶאֱמָנִים.

This is **as we learned** in a mishna (*Demai* 4:7): In the case of **donkey drivers who entered a city** to sell their wares, **and one of them said: My** produce **is** from the **new** crop and is still moist and not as good, **but my associate's** produce **is** from the **old** crop, or he said: **Mine is not fit** for use, i.e., tithes have not been separated, **but my associate's** produce **is fit** for use, the drivers **are not afforded credibility.** There is a suspicion that they may be lying. They may have an arrangement between them where one will make this statement in one city and in the next city they will alternate, in order to appear credible, so that one will always be able to sell his wares. **Rabbi Yehuda says: They are deemed credible.** This indicates that Rabbi Yehuda holds that a verbal stipulation is sufficient even for a common monetary matter of rabbinic law.

אָמַר אַבָּיֵי: וַדַּאי דְּדִבְרֵיהֶם עָבְדוּ רַבָּנַן חִיזּוּק, סָפֵק דְּדִבְרֵיהֶם – לָא עָבְדוּ רַבָּנַן חִיזּוּק. רָבָא אָמַר: בִּדְמַאי הֵקֵילוּ.

Abaye said: There is a distinction between the cases. With regard to **a certain** matter **involving a rabbinic** decree, such as the main sum of the marriage contract, **the Sages reinforced** their pronouncements, but with regard to **an uncertain** matter **involving a rabbinic** decree, such as the case of the donkey drivers, the **Sages did not reinforce** their pronouncements. **Rava said: The Sages** did not reinforce their pronouncements in the case of the donkey drivers because, in general, **they were lenient about** questions concerning the prohibition of **doubtfully tithed produce** [***demai***], since the *halakha* of *demai* is itself a stringency, as most *amei ha'aretz* separate tithes from their produce.

״רַבִּי מֵאִיר אוֹמֵר: כָּל הַפּוֹחֵת״ וכו׳. כָּל הַפּוֹחֵת – אֲפִילּוּ בְּתְנָאָה. אַלְמָא קָסָבַר: תְּנָאוֹ בָּטֵל, וְאִית לָהּ. וְכֵינָן דַּאֲמַר לָהּ ״לֵית לִיךְ אֶלָּא מָנֶה״ – לָא סָמְכָא דַּעְתָּהּ, וְהָוְיָא לָהּ בְּעִילָתוֹ בְּעִילַת זְנוּת.

§ The mishna says: **Rabbi Meir says:** In the case of **anyone who reduces** the amount of the marriage contract to less than two hundred dinars for a virgin or one hundred dinars for a widow, this marriage amounts to licentious sexual intercourse. The Gemara makes an inference from the language of the mishna: The phrase: **Anyone who reduces** the amount of the marriage contract, means **even if** he made **a stipulation**[NH] and she agreed. **Apparently,** Rabbi Meir **held** that **his stipulation** in this case **is void and she has** the ability to collect the entire amount set by the Sages, **but** nevertheless **since he said to her: You have only one hundred** dinars, **she does not rely** on the marriage contract and does not see it as a true marriage, **and** therefore the intercourse **becomes licentious sexual intercourse.**

וְהָא שָׁמְעִינַן לֵיהּ לְרַבִּי מֵאִיר, דְּאָמַר: כָּל הַמַּתְנֶה עַל מַה שֶּׁכָּתוּב בַּתּוֹרָה – תְּנָאוֹ בָּטֵל, הָא בִּדְרַבָּנַן – תְּנָאוֹ קַיָּים! קָסָבַר רַבִּי מֵאִיר כְּתוּבָּה דְּאוֹרַיְיתָא.

But we have **heard** that **Rabbi Meir said** that **anyone who stipulates counter to that which is written in the Torah, his stipulation is void.** This implies that if someone makes a stipulation **on a rabbinic** law **his stipulation** does **stand,** and therefore there is still a question as to why the stipulation about the marriage contract is void, as a marriage contract is a rabbinic ordinance. The Gemara responds: **Rabbi Meir holds** that **a marriage contract is** a requirement of **Torah** law. Consequently, if one made a stipulation to reduce the amount of the marriage contract, this is a stipulation counter to that which is written in the Torah, and it is void.

תַּנְיָא רַבִּי מֵאִיר אוֹמֵר: כָּל הַפּוֹחֵת לִבְתוּלָה מִמָּאתַיִם, וּלְאַלְמָנָה מִמָּנֶה – הֲרֵי זוֹ בְּעִילַת זְנוּת. רַבִּי יוֹסֵי אוֹמֵר: רַשַּׁאי. רַבִּי יְהוּדָה אוֹמֵר: רָצָה, כּוֹתֵב לִבְתוּלָה שְׁטָר שֶׁל מָאתַיִם, וְהִיא כּוֹתֶבֶת לוֹ ״הִתְקַבַּלְתִּי מִמְּךָ מָנֶה״. וּלְאַלְמָנָה מָנֶה, וְהִיא כּוֹתֶבֶת לוֹ ״הִתְקַבַּלְתִּי מִמְּךָ חֲמִשִּׁים זוּז״.

It **is taught** in a *baraita*: **Rabbi Meir says:** In the case of **anyone who reduces** the amount of the marriage contract to lower **than two hundred** dinars **for a virgin or one hundred** dinars **for a widow, this** marriage amounts to **licentious sexual intercourse. Rabbi Yosei says: One is permitted** to reduce the amount by making a verbal stipulation, provided the wife agrees. **Rabbi Yehuda says: If one wishes, he may write for a virgin a document for two hundred** dinars, **and she may write him** a receipt stating: **I received one hundred** dinars **from you. And** similarly, **for a widow** one may write **one hundred** dinars **and she may write** for **him: I received fifty dinars from you.**

וְכָסָבַר רַבִּי יוֹסֵי רַשַּׁאי? וּרְמִינְהִי: אֵין עוֹשִׁין כְּתוּבַּת אִשָּׁה מִטַּלְטְלִין מִפְּנֵי תִּיקּוּן הָעוֹלָם. אָמַר רַבִּי יוֹסֵי: וְכִי מַה תִּיקּוּן הָעוֹלָם יֵשׁ בְּזוֹ? וַהֲלֹא אֵין קְצוּבִין, וּפוֹחֲתִין!

The Gemara asks: **And** does **Rabbi Yosei** actually **hold** that **he is permitted** to reduce the amount? The Gemara **raises a contradiction** based on a *baraita*: Collection of **a woman's marriage contract may not be made** dependent upon **movable property.** This is a rabbinic decree enacted **for the betterment of the world. Rabbi Yosei said: What betterment of the world is** accomplished **by this** decree? The Gemara answers: The price of the movable property **is not fixed,** and therefore it might **become devalued.**

תַּנָּא קַמָּא נַמִּי ״אֵין עוֹשִׁין״ קָאָמַר! אֶלָּא לָאו – הָכִי קָאָמַר: בַּמֶּה דְּבָרִים אֲמוּרִים – בְּשֶׁלֹּא קִבֵּל עָלָיו אַחֲרָיוּת. אֲבָל קִבֵּל עָלָיו אַחֲרָיוּת – עוֹשִׁין. וְאָתָא רַבִּי יוֹסֵי לְמֵימַר: כִּי קִיבֵּל עָלָיו אַחֲרָיוּת – אַמַּאי עוֹשִׁין? וַהֲלֹא אֵין קְצוּבִין וּפוֹחֲתִין.

The Gemara analyzes the text of the *baraita*: **The first *tanna* also said:** A marriage contract may **not be made** dependent on movable property. What is Rabbi Yosei's disagreement with him? **Rather, is it not** that **this is what** the first *tanna* **said: In what** case **is this statement said?** In a case where **one did not provide a guarantee** for the movable property. **But** if **one did provide a guarantee,** the marriage contract **may be made** dependent on it.[H] **And Rabbi Yosei comes to say:** Even **if one provided a guarantee, why can** the marriage contract **be made** dependent on it? The price **is not fixed, and** it may **become devalued.**

NOTES

Anyone who reduces the amount of the marriage contract, even if he made a stipulation – כָּל הַפּוֹחֵת אֲפִילּוּ בְּתְנָאָה: The early authorities identified two primary difficulties with this statement. The first problem is how this conclusion was derived from Rabbi Meir's statement. Rashi offers one explanation, that it is based on the fact that Rabbi Meir said: Anyone who reduces the amount of the marriage contract, as opposed to: Any woman whose marriage contract does not contain two hundred dinars for a virgin or one hundred dinars for a widow. The language of the statement therefore includes a case where the husband makes a condition that is not effective, so that the wife actually does have the ability to collect the full amount, but since he made a condition reducing the amount, their relationship nevertheless amounts to licentious sexual intercourse.

The Razah and the *Nimmukei Yosef* give a slightly different explanation: Since the language is: Anyone who reduces, and not: One who reduces, this includes one who made a condition to reduce the amount but the condition was not fulfilled. Rabbi Aharon HaLevi suggests another interpretation: This language is meant to include a woman who has a marriage contract but believes she does not have one. This situation can occur only when there is an invalid condition limiting the marriage contract.

HALAKHA

Anyone who reduces the amount of the marriage contract, even if he made a stipulation – כָּל הַפּוֹחֵת אֲפִילּוּ בְּתְנָאָה: If one makes a condition with his wife that the value of her marriage contract will be less than the amount determined by the Sages, that is to say two hundred dinars for a virgin or one hundred dinars for a widow, this condition is void. This ruling is not due to the reason given by Rabbi Meir, but rather it is in accordance with the opinion of Rabbi Yehuda, that the Sages reinforced their pronouncements with greater severity than they applied to Torah law (Rambam *Sefer Nashim*, *Hilkhot Ishut* 12:8 and *Maggid Mishne* there; *Shulḥan Arukh*, *Even HaEzer* 66:9, 69:6).

But if one did provide a guarantee, the marriage contract may be made dependent upon it – אֲבָל קִבֵּל עָלָיו אַחֲרָיוּת, עוֹשִׁין: In a situation where it is not possible for the husband to write a marriage contract, e.g., if it is Shabbat, or if he forgets to write it, he may give her movable property in lieu of her marriage document and provide a guarantee for that property in the event that it is lost or devalued. If he does this, she is permitted to him until he has the opportunity to write her a proper marriage contract, as explained elsewhere by the Gemara (7a) and in accordance with the opinion of the first *tanna* here (*Shulḥan Arukh*, *Even HaEzer* 66:2).

PERSONALITIES

Rami bar Ḥama – רַמִי בַּר חָמָא: Rami, an abbreviation of Rav Ami, bar Ḥama was a prominent fourth-generation Babylonian *amora*. Even in his youth, he was considered the outstanding disciple of Rav Ḥisda and eventually married the latter's daughter. Rami bar Ḥama also studied under Rav Naḥman and Rav Sheshet, and even engaged them in halakhic debate. He was known for his fierce intellect and his masterful memory of the oral tradition. He enjoyed a close relationship with his younger friend and colleague Rava, and after Rami bar Ḥama's death Rava married his widow, the daughter of Rav Ḥisda. The daughter of Rami bar Ḥama's wife was the mother of the *amora* Ameimar.

Rav Avya – רַב אַוְיָא: A fourth-generation Babylonian *amora*, Rav Avya was a prominent disciple of Rav Huna but he also studied in Eretz Yisrael with Rabbi Ami and Rabbi Yoḥanan. Rav Huna respected him greatly and valued his comments and questions. He married the sister of Rami bar Ḥama and some of his children became *amora'im* themselves, the most famous of whom, Rav Aḥa, son of Rav Avya, is quoted many times in the Talmud as a disciple of Rav Ashi.

הָשְׁתָּא, וּמָה הָתָם דִּדְלְמָא פָּחֲתֵי – חָיֵישׁ רַבִּי יוֹסֵי, הָכָא דְּוַדַּאי קָא פָּחֲתָה – לֹא כָּל שֶׁכֵּן?! הָכִי הָשְׁתָּא? הָתָם – לָא יָדְעָה דְּתָחֵיל, הָכָא – יָדְעָה וְקָא מָחֲלָה.

Now that the meaning of the *baraita* has been clarified, the Gemara asks: **Just as there,** in the case of movable property, where **perhaps it** will **be devalued, Rabbi Yosei is concerned** that the wife might not receive the full value of her marriage contract, **here,** where it **will definitely be devalued,** is it **not all the more so** clear that he would be concerned? The Gemara responds: **How can** these cases **be compared? There, she does not know** if her marriage contract will be devalued, and there is no reason to suppose **that she will waive** his obligation to her. But **here, she knows and she waived** it.

אַחֲתֵיהּ דְּרָמִי בַּר חָמָא הֲוַת נְסִיבָא לְרַב אַוְיָא,

The Gemara relates: **The sister of Rami bar Ḥama**[P] **was married to Rav Avya.**[P]

Perek **V**
Daf **57** Amud **a**

אִירְכַּס כְּתוּבָּתָהּ. אָתוּ לְקַמֵּיהּ דְּרַב יוֹסֵף, אֲמַר לְהוּ: הָכִי אֲמַר רַב יְהוּדָה אֲמַר שְׁמוּאֵל: זוֹ דִּבְרֵי רַבִּי מֵאִיר,

Her marriage contract was lost, and the woman and her husband **came before Rav Yosef** to ask what they should do. **He said to them: This is** what **Rav Yehuda said** that **Shmuel said: That** ruling, that if someone reduces his wife's marriage contract by even a small amount, their marriage amounts to licentious sexual intercourse, **is the statement of Rabbi Meir.**[N] According to that opinion, the husband and wife were forbidden to each other because she was not in possession of a valid marriage contract.

אֲבָל חֲכָמִים אוֹמְרִים: מַשְׁהֶא אָדָם אֶת אִשְׁתּוֹ שְׁתַּיִם וְשָׁלֹשׁ שָׁנִים בְּלֹא כְּתוּבָּה. אֲמַר לֵיהּ אַבָּיֵי: וְהָא אֲמַר רַב נַחְמָן אֲמַר שְׁמוּאֵל: הֲלָכָה כְּרַבִּי מֵאִיר בְּגִיטֵּי חֲתָיו! אִי הָכִי, זִיל כְּתוֹב לָהּ.

But the Rabbis say: Since the woman relies on the fact that she will eventually collect payment for her marriage contract, **a man may maintain his wife for** as long as **two or three years without** a written **marriage contract.** There is no urgent need to write a new one, since the husband's obligation remains intact. **Abaye said to him:** But **didn't Rav Naḥman say** that **Shmuel said** that the ***halakha* is in accordance with** the opinion of **Rabbi Meir** with regard to all of **his decrees?** Since Rabbi Meir's statement about marriage contracts was a form of decree, the *halakha* should be in accordance with his opinion. Rav Yosef responded: **If so, go and write her**[H] a new marriage contract.

NOTES

That ruling is the statement of Rabbi Meir – זוֹ דִּבְרֵי רַבִּי מֵאִיר: The Rivan explains that since Rabbi Meir is of the opinion that if someone reduces the amount of the marriage contract it is as if he engaged in licentious sexual intercourse, he would hold this all the more so with regard to a woman who does not have a marriage contract at all. Rabbi Aharon HaLevi further explains, based on one of Rashi's comments, that when one reduces the amount of the marriage contract, although the stipulation is null and void, Rabbi Meir believes that the woman does not feel confident that she can collect the full sum in case of divorce. Consequently, from her perspective, all sexual intercourse in this marriage is licentious, as she is lacking the financial commitment from her husband which is inherent in a proper marriage. This is even truer when she is not in possession of a marriage contract at all. Although she is entitled to receive payment even without a written marriage contract because there is a stipulation of the court obligating the husband to pay, she does not feel confident that she can collect the money.

HALAKHA

Go and write her – זִיל כְּתוֹב לָהּ: If someone wrote a marriage contract for his wife and it was lost or she waived her right to the payment for the marriage contract by writing a receipt stating that he had paid her, he must write her another document for at least the main sum of the marriage contract, as a man is prohibited from living with his wife for even a short time without a marriage contract. This ruling is in accordance with the opinion of Rabbi Meir, as the *halakha* is in accordance with all of his decrees.

The commentaries add that the ruling that the husband's obligation to write a replacement document does not require him to replace the additional sum of the marriage contract refers only to a situation where the wife waived her rights. But if she lost her marriage contract, he must write her a new document equivalent to the first one, including any additional sum (Rambam *Sefer Nashim*, *Hilkhot Ishut* 10:10; *Shulḥan Arukh*, *Even HaEzer* 66:3, and *Ḥelkat Meḥokek* and *Beit Shmuel* there).