מתני׳ הָאִשָּׁה שֶׁנָּפְלוּ לָהּ נְכָסִים עַד שֶׁלֹּא תִּתְאָרֵס – מוֹדִים בֵּית שַׁמַּאי וּבֵית הִלֵּל שֶׁמּוֹכֶרֶת וְנוֹתֶנֶת וְקַיָּים. נָפְלוּ לָהּ מִשֶּׁנִּתְאָרְסָה – בֵּית שַׁמַּאי אוֹמְרִים: תִּמְכּוֹר, וּבֵית הִלֵּל אוֹמְרִים: לֹא תִּמְכּוֹר. אֵלּוּ וְאֵלּוּ מוֹדִים שֶׁאִם מָכְרָה וְנָתְנָה – קַיָּים.

MISHNA With regard to a **woman to whom property was bequeathed before she was betrothed,** and she was then betrothed, **Beit Shammai and Beit Hillel agree that she may sell or give** the property as a gift, **and** the transaction **is valid.** However, if the property **was bequeathed to her after she was betrothed,**[H] **Beit Shammai say: She may sell** it as long as she is betrothed, **and Beit Hillel say: She may not sell** it.[N] Both **these,** Beit Shammai, **and those,** Beit Hillel, **agree that if she sold** it **or gave** it away as a gift, the transaction is **valid.**

אָמַר רַבִּי יְהוּדָה: אָמְרוּ חֲכָמִים לִפְנֵי רַבָּן גַּמְלִיאֵל: הוֹאִיל וְזָכָה בָּאִשָּׁה לֹא יִזְכֶּה בִּנְכָסִים? אָמַר לָהֶם: עַל הַחֲדָשִׁים אָנוּ בוֹשִׁים, אֶלָּא שֶׁאַתֶּם מְגַלְגְּלִין עָלֵינוּ אֶת הַיְשָׁנִים?!

Rabbi Yehuda said that **the Sages said before Rabban Gamliel: Since he acquired the woman** herself through betrothal, will he **not acquire the property** from the moment of their betrothal? Why, then, is her transaction valid? Rabban Gamliel **said to them: With regard to the new** property that she inherited after marriage, **we are ashamed,**[N] because it is unclear why she cannot sell it, as it is hers; **and you** also seek to **impose upon us** a prohibition with regard to **the old** property that she owned beforehand?

נָפְלוּ לָהּ מִשֶּׁנִּשֵּׂאת – אֵלּוּ וְאֵלּוּ מוֹדִים, שֶׁאִם מָכְרָה וְנָתְנָה – שֶׁהַבַּעַל מוֹצִיא מִיַּד הַלָּקוֹחוֹת. עַד שֶׁלֹּא נִשֵּׂאת, וְנִשֵּׂאת – רַבָּן גַּמְלִיאֵל אוֹמֵר: אִם מָכְרָה וְנָתְנָה – קַיָּים. אָמַר רַבִּי חֲנִינָא בֶּן עֲקַבְיָא: אָמְרוּ לִפְנֵי רַבָּן גַּמְלִיאֵל: הוֹאִיל וְזָכָה בָּאִשָּׁה לֹא יִזְכֶּה בִּנְכָסִים? אָמַר לָהֶם: עַל הַחֲדָשִׁים אָנוּ בוֹשִׁים, אֶלָּא שֶׁאַתֶּם מְגַלְגְּלִין עָלֵינוּ אֶת הַיְשָׁנִים?!

If the property **was bequeathed to her after she was married,**[B] both **these,** Beit Shammai, **and those,** Beit Hillel, **agree that if she sold** the property **or gave** it away, **the husband may repossess** it **from the purchasers.** If she inherited the property **before she was married and** then **was married, Rabban Gamliel says: If she sold or gave** the property away,[N] the transaction is **valid. Rabbi Ḥanina ben Akavya said** that the Sages **said before Rabban Gamliel: Since he acquired the woman** through marriage, will he **not acquire the property?** Rabban Gamliel **said to them: With regard to the new** property **we are ashamed, and you** also seek to **impose upon us** a prohibition with regard to **the old** property?

רַבִּי שִׁמְעוֹן חוֹלֵק בֵּין נְכָסִים לִנְכָסִים; נְכָסִים הַיְדוּעִין לַבַּעַל – לֹא תִּמְכּוֹר, וְאִם מָכְרָה וְנָתְנָה – בָּטֵל. שֶׁאֵינָן יְדוּעִין לַבַּעַל – לֹא תִּמְכּוֹר, וְאִם מָכְרָה וְנָתְנָה – קַיָּים.

Rabbi Shimon distinguishes between one type of **property and** another type of **property: Property that is known to the husband she may not sell** once she is married, **and if she sold** it **or gave** it away, the transaction is **void.** Property **that is unknown to the husband she may not sell, but if she sold** it **or gave** it away, the transaction is **valid.**[H]

HALAKHA

Property was bequeathed to her after she was betrothed – נָפְלוּ לָהּ נְכָסִים מִשֶּׁנִּתְאָרְסָה: If a betrothed woman inherited property after her betrothal, she should not sell it *ab initio*, but if she did so or gave it away as a gift, her transaction is valid, in accordance with the opinion of Beit Hillel (Rambam *Sefer Nashim*, *Hilkhot Ishut* 22:8; *Shulḥan Arukh*, *Even HaEzer* 90:11).

Known and unknown property – נְכָסִים הַיְדוּעִים וְשֶׁאֵינָם יְדוּעִים: The *halakha* that a husband may repossess the property sold by his wife applies only to property of which he was aware at the time. However, if she came into possession of property that he knew nothing about, she should not sell it *ab initio*, but if she sold it before he became aware of the property, her transaction is valid. This ruling is in accordance with the opinion of Rabbi Shimon, as the discussion of the Gemara is in accordance with his opinion (Rambam *Sefer Nashim*, *Hilkhot Ishut* 22:8; *Shulḥan Arukh*, *Even HaEzer* 90:11).

BACKGROUND

Betrothal and marriage – אֵירוּסִין וְנִישּׂוּאִין: The effecting of Jewish marriage is divided into two distinct parts. In the first stage, betrothal, the bond created between the man and woman is so strong that afterward a woman would require a divorce before she would be permitted to marry another man. Similarly, sexual relations between a betrothed woman and another man are considered adulterous and are punishable by death. At this stage, the betrothed couple may not yet live together as man and wife, and most of the couple's mutual obligations do not yet apply. The second stage of the marriage process follows the betrothal. Marriage takes effect by means of the wedding ceremony, when the bride and groom come under the bridal canopy and enter their home or spend a few private minutes secluded together, symbolizing their union. This immediately confers both the privileges and the responsibilities associated with marriage upon the newlywed couple. After marriage, if one spouse dies, all the *halakhot* of mourning for a close blood relative apply to the surviving spouse. If the wife of a priest dies, he is permitted to contract ritual impurity in order to bury her. In addition, all the monetary rights and obligations applying to married couples take effect after marriage. Nowadays betrothal and marriage are both performed in a single ceremony, but in talmudic times there was usually a yearlong gap between the two.

NOTES

She may sell it…she may not sell it – תִּמְכּוֹר...לֹא תִּמְכּוֹר: Several commentaries are puzzled by the fact that the dispute in the mishna focuses on a sale but omits any mention of a gift, and yet the *tanna* subsequently states that if she sold the property or gave it away as a gift her action is binding (*Mishne LaMelekh*). One explanation is that there is a difference between a sale and a gift: In the case of a sale, the woman receives money from the purchaser. The husband may then use that money to buy land after their marriage and use the produce. In the case of a gift, though, the woman receives nothing in return. Therefore, even Beit Shammai may agree that she should not give the property as a gift *ab initio*, and they consequently disputed only the *halakha* of a sale. However, after the fact, everyone agrees that both a sale and a gift are valid. This suggestion would also explain why the mishna states: These and those agree, rather than: Beit Hillel agree (*Shevet Sofer*). See also *Likkutei Ḥever ben Ḥayyim*, which discusses this issue. The *Ḥatam Sofer* suggests a different distinction between a sale and a gift based on *Tosefot Yom Tov* that it is not actually prohibited for her to sell the property; rather, the purchaser is prohibited from buying it, a distinction that is not applicable to a gift.

With regard to the new we are ashamed – עַל הַחֲדָשִׁים אָנוּ בוֹשִׁים: In the Jerusalem Talmud it is explained that new property refers to property that came into her possession after her marriage, while old property refers to that which she inherited before her marriage. See the comments of Rabbeinu Tam in *Tosafot*, as well as the *Shita Mekubbetzet*, for other explanations of new and old property. Some explain that Rabban Gamliel maintains: We are ashamed of the new property in a case where the sale is void because the husband benefits on a regular basis from the rights to the produce of his wife's property, which were granted to him by the Sages. In contrast, his obligation to ransom her if she is taken captive, which the Sages imposed on him in exchange for these rights, is a rare occurrence. Others contend that the phrase we are ashamed is relevant because in the case of new property, the land itself is seized from the purchaser even though the husband has rights to the produce alone (*Shita Mekubbetzet*), or because this is the *halakha* despite the fact that the money the woman receives is transferred to the possession of her husband in any case (*Ayyelet Ahavim*).

Rabban Gamliel says: If she sold or gave away – רַבָּן גַּמְלִיאֵל אוֹמֵר אִם מָכְרָה וְנָתְנָה: *Tosafot* and some other early authorities have an alternative version that reads: She may sell and give away, and it is valid. This alternative reading is rejected by Rashi. However, the text of the Jerusalem Talmud is similar to the alternative version, and the Ramban notes that the text of the Jerusalem Talmud is generally highly reliable, as it was not corrected by editors based on their own reasoning.

גמ׳ מַאי שְׁנָא רֵישָׁא דְּלָא פְּלִיגִי וּמַאי שְׁנָא סֵיפָא דְּפְלִיגִי?

GEMARA The Gemara asks: **What is different** in the **first clause** of the mishna, when she inherited property before she was betrothed, such **that** Beit Shammai and Beit Hillel **do not disagree, and what is different** in **the latter clause,** when she inherited property after betrothal, such **that they disagree?** If the dispute concerns the right to her property after she is betrothed, what difference does it make whether her ownership began before or after the betrothal?

אָמְרִי דְּבֵי רַבִּי יַנַּאי: רֵישָׁא – בִּזְכוּתָהּ נָפְלוּ, סֵיפָא – בִּזְכוּתוֹ נָפְלוּ.

The Gemara answers that the Sages **of the school of Rabbi Yannai say: In the first clause,** where she inherited the property before her betrothal, the inheritance **was bequeathed** to her during a period when **she** had **rights** to her property, whereas **in the latter clause,** the inheritance **was bequeathed** to her during a period when **he** had **rights** to her property.

אִם בִּזְכוּתוֹ נָפְלוּ, כִּי מָכְרָה וְנָתְנָה אַמַּאי קַיָּים? אֶלָּא: רֵישָׁא וַדַּאי בִּזְכוּתָהּ נָפְלוּ, סֵיפָא – אֵימַר בִּזְכוּתָהּ אֵימַר בִּזְכוּתוֹ. לְכַתְּחִלָּה – לֹא תִּמְכּוֹר, אִם מָכְרָה וְנָתְנָה – קַיָּים.

The Gemara raises a difficulty: **If,** in the latter clause the property **was bequeathed** to her when **he** had **rights** to it, **why** is the transaction **valid when she sold** it **or gave** it away? **Rather,** in **the first clause,** where she inherited the property before her betrothal, it **certainly was bequeathed** to her when **she** had **rights** to it and it therefore fully belongs to her. However, in **the latter clause,** where she inherited it after her betrothal, one can **say** that perhaps during this time **she has rights** to it, or **say** that perhaps during this time **he has rights** to it.[N] Since the ownership of the property is a matter of uncertainty, Beit Hillel rule that **she may not sell *ab initio*,** but **if she sold** it **or gave** it away, the transaction is **valid.**

״אָמַר רַבִּי יְהוּדָה אָמְרוּ לִפְנֵי רַבָּן גַּמְלִיאֵל״. אִיבַּעְיָא לְהוּ: רַבִּי יְהוּדָה אַלְכַּתְּחִלָּה אוֹ אַדִּיעֲבַד?

§ The mishna states that **Rabbi Yehuda said** that the Sages **said before Rabban Gamliel:** Since he acquired the woman herself through betrothal, will he not acquire the property from the moment of their betrothal? **A dilemma was raised before** the Sages: When **Rabbi Yehuda** cited this question of the Sages, was he referring **to** her selling the property ***ab initio*,** which is permitted only according to Beit Shammai, **or** was he referring **to** the sale **after the fact,**[N] which is valid even according to Beit Hillel?

NOTES

Say she has rights to it, say he has rights to it – אֵימַר בִּזְכוּתָהּ אֵימַר בִּזְכוּתוֹ: Rashi explains that at the time of the betrothal the husband's ownership is in doubt, as he may or may not marry her.

However, according to the Ra'avad, the Gemara's statement: Say she has rights to it, does not refer to uncertainty with regard to whether he will marry her; rather, the uncertainty is with regard to the legal rights of the woman and her husband when they are betrothed. On the one hand, a husband is not entitled to the produce of his wife's property until they are married, which indicates that the property is in her possession. On the other hand, since she will soon be married and he will gain rights to the use of all her property, she may not do as she pleases with the property. In the Jerusalem Talmud, it is stated that during their betrothal, she and he both have rights to it, which appears to parallel the Ra'avad's interpretation.

Was he referring to selling the property *ab initio* or to the sale after the fact – אַלְכַּתְּחִלָּה אוֹ אַדִּיעֲבַד: There are several different interpretations of this question, which are closely related to the various versions of the text of both the mishna and the Gemara. An additional relevant feature of this discussion is that the early commentaries had a manuscript version of Rashi that included an alternative explanation, but there are different versions of this manuscript as well. Rashi's explanation as it appears in the printed text, which is the second interpretation cited by *Tosafot* as well as what appears to be the interpretation of the Rif, is that the question is whether the Sages were referring to Beit Shammai's opinion that she may sell *ab initio*, or to the later clause that says that if she sold or gave it away her act is binding after the fact according to Beit Hillel as well.

Rashi's explanation cited from other manuscripts is that the Gemara's question refers to the first case of a woman who was not betrothed and sold or gave away property: Do the Sages mean that she should not sell it *ab initio*, but if she did both Beit Shammai and Beit Hillel agree the transaction is valid, or do they mean that even after the fact the sale is invalid? The Rivan cites a third opinion in the name of Rashi that the question refers to Rabban Gamliel's statement that we are ashamed about the old property: Does Rabban Gamliel agree with Beit Shammai that she may sell it *ab initio*, or does he accept Beit Hillel's ruling that only after the fact if she sold it her act is binding? See the Ritva and the Rivash, who both offer slight variations of this interpretation.

Rabbeinu Tam contends that the issue is whether the question of: Since he acquired the woman herself through betrothal, will he not acquire the property from the moment of their betrothal, is meant *ab initio*: Do they maintain that even a woman who inherited property before her betrothal should not sell it in that situation, or are they questioning the *halakha* concerning one who inherited and then sold property after she was betrothed? In other words, although the mishna states that if she sold her property after she was already betrothed, both Beit Shammai and Beit Hillel agree that the transaction is valid, perhaps, according to the second opinion, the Sages who posed this question believe that it should rightfully be void, like a sale performed by a married woman. This interpretation is accepted by the Rashba and the Ritva, and it is also the opinion of the *Ba'al HaMaor*.

תָּא שְׁמַע: דְּתַנְיָא, אָמַר רַבִּי יְהוּדָה: אָמְרוּ לְפָנֵי רַבָּן גַּמְלִיאֵל: הוֹאִיל וְזוֹ אִשְׁתּוֹ וְזוֹ אִשְׁתּוֹ, זוֹ מְכָרָהּ בָּטֵל – אַף זוֹ מְכָרָהּ בָּטֵל! אָמַר לָהֶן: עַל הַחֲדָשִׁים אָנוּ בּוֹשִׁים, אֶלָּא שֶׁאַתֶּם מְגַלְגְּלִים עָלֵינוּ אֶת הַיְשָׁנִים?! שְׁמַע מִינָּהּ: דְּיֵעֲבֵד קָאָמַר, שְׁמַע מִינָּהּ.

The Gemara replies: **Come** and **hear** an answer to this question, **as it is taught** in a *baraita*: **Rabbi Yehuda said** that **they said before Rabban Gamliel: Since this** one, when she is fully married, is legally **his wife, and that one,** when she is merely betrothed, is legally **his wife,** therefore, just as for **this** married one **her sale is void, so** too, for **this** betrothed one **her sale** should be **void.** Rabban Gamliel **said to them: With regard to the new** property, which she inherited after marriage, **we are ashamed** of this ruling, **while you** seek to **impose upon us** the same ruling even with regard to **the old** property that she owned beforehand? **Learn from this** that Rabbi Yehuda **stated** his question with regard to the *halakha* of a case brought **after the fact,** as they claim that the sale should be void. The Gemara concludes: Indeed, **learn from this** that it is so.

תַּנְיָא, אָמַר רַבִּי חֲנִינָא בֶּן עֲקַבְיָא: לֹא כָּךְ הֵשִׁיבָן רַבָּן גַּמְלִיאֵל לַחֲכָמִים, אֶלָּא כָּךְ הֵשִׁיבָן: לֹא אִם אֲמַרְתֶּם בְּנִשּׂוֹאָה – שֶׁכֵּן בַּעְלָהּ זַכַּאי בִּמְצִיאָתָהּ וּבְמַעֲשֶׂה יָדֶיהָ וּבַהֲפָרַת נְדָרֶיהָ, תֹּאמְרוּ בַּאֲרוּסָה שֶׁאֵין בַּעְלָהּ זַכַּאי לֹא בִּמְצִיאָתָהּ וְלֹא בְּמַעֲשֶׂה יָדֶיהָ וְלֹא בַּהֲפָרַת נְדָרֶיהָ!

It is taught in a *baraita*: **Rabbi Ḥanina ben Akavya said** that **Rabban Gamliel did not respond to the Sages in that** manner.[N] **Rather, this** is what **he replied to them: No, if you said** that the sale is void **with regard to a married** woman, concerning whom the husband has many rights, **as her husband is entitled to** items she has **found and to her earnings and to** the right to **nullify her vows, will you say** the same **with regard to a betrothed woman, whose husband is not entitled to** items she has **found, nor** to **her earnings, nor** to the right of **nullification of her vows?**

אָמְרוּ לוֹ: רַבִּי, מָכְרָהּ לָהּ עַד שֶׁלֹּא נִשֵּׂאת, נִשֵּׂאת וְאַחַר כָּךְ מָכְרָהּ – מַהוּ? אָמַר לְהוּ: אַף זוֹ מוֹכֶרֶת וְנוֹתֶנֶת וְקַיָּים. אָמְרוּ לוֹ: הוֹאִיל וְזָכָה בְּאִשָּׁה לֹא יִזְכֶּה בַּנְּכָסִים?! אָמַר לָהֶם: עַל הַחֲדָשִׁים אָנוּ בּוֹשִׁין, אֶלָּא שֶׁאַתֶּם מְגַלְגְּלִין עָלֵינוּ אֶת הַיְשָׁנִים?!

The Sages **said to him: My teacher,** this reasoning is accepted if **she sold** it **for herself before she was married,** but if **she was married and afterward sold** the property she had earlier inherited, **what is** the *halakha*? Rabban Gamliel **said to them: Even this one may sell** the property **and gives** it away, **and** her action is **valid. They said to him: Since he acquired the woman, will he not acquire the property? He said to them: With regard to the new** property she inherited later **we are ashamed, and** now **you impose upon us the old** property?

וְהָאָנַן תְּנַן: עַד שֶׁלֹּא נִשֵּׂאת וְנִשֵּׂאת, רַבָּן גַּמְלִיאֵל אוֹמֵר: אִם מָכְרָה וְנָתְנָה – קַיָּים!

The Gemara raises a difficulty: **But didn't we learn** in the mishna: If she inherited property **before she was married and was** later **married, Rabban Gamliel says: If she sold** it **or gave** the property away, the transaction is **valid.** The wording of the *baraita*, in contrast, indicates that she may sell or give the property away *ab initio*.

אָמַר רַב זְבִיד: תְּנִי: מוֹכֶרֶת וְנוֹתֶנֶת וְקַיָּים. רַב פַּפָּא אָמַר: לָא קַשְׁיָא; הָא – רַבִּי יְהוּדָה אַלִּיבָּא דְּרַבָּן גַּמְלִיאֵל, הָא – רַבִּי חֲנִינָא בֶּן עֲקַבְיָא אַלִּיבָּא דְּרַבָּן גַּמְלִיאֵל. וְרַבִּי חֲנִינָא בֶּן עֲקַבְיָא כְּבֵית שַׁמַּאי? הָכִי קָאָמַר: לֹא נֶחְלְקוּ בֵּית שַׁמַּאי וּבֵית הִלֵּל עַל דָּבָר זֶה.

Rav Zevid said: Teach the text of the mishna as follows: **She may sell and give** away the property, **and** her transaction is **valid. Rav Pappa stated** another answer: This is **not difficult,** as **this** mishna is consistent with the opinion of **Rabbi Yehuda according to** the opinion of **Rabban Gamliel,** but **that** *baraita* is consistent with the opinion of **Rabbi Ḥanina ben Akavya according to** the opinion of **Rabban Gamliel.** The Gemara poses a question: If so, then apparently **Rabbi Ḥanina ben Akavya** agrees **with Beit Shammai,** as Beit Hillel maintain that she may not sell the property *ab initio* even while she is betrothed; yet it is well known that the *halakha* is ruled in accordance with the opinion of Beit Hillel. The Gemara answers: **This is what** Rabbi Ḥanina **is saying: Beit Shammai and Beit Hillel did not disagree with regard to this matter** of property that a woman inherited before marriage, as they agree she may sell it *ab initio*.

רַב וּשְׁמוּאֵל דְּאָמְרִי תַּרְוַיְיהוּ: בֵּין שֶׁנָּפְלוּ לָהּ נְכָסִים עַד שֶׁלֹּא נִתְאָרְסָה, בֵּין שֶׁנָּפְלוּ לָהּ נְכָסִים מִשֶּׁנִּתְאָרְסָה וְנִיסֵּת – הַבַּעַל מוֹצִיא מִיַּד הַלָּקוֹחוֹת.

The Gemara cites the opinions of **Rav and Shmuel, who both say: Whether property was bequeathed to her before she was betrothed,** or **whether property was bequeathed to her after she was betrothed and she was** then **married,** and after her marriage she sold it or gave it away, **the husband may repossess** the property **from the purchasers.**

NOTES

Rabban Gamliel did not respond to the Sages in that manner – לֹא כָּךְ הֵשִׁיבָן רַבָּן גַּמְלִיאֵל לַחֲכָמִים: According to Rashi and *Tosafot*, the main addition of Rabbi Ḥanina ben Akavya's statement is that Rabban Gamliel did not suffice with his response: We are ashamed of the first ones, etc., but also provided a good reason to distinguish between a betrothed and a married woman. Other commentaries, however, maintain that the novelty of Rabbi Ḥanina ben Akavya's statement is his citation of Rabban Gamliel that the woman may sell or give away property even *ab initio*.

כְּמַאן? דְּלָא כְּרַבִּי יְהוּדָה וְלָא כְּרַבִּי חֲנִינָא בֶּן עֲקַבְיָא! אֵינְהוּ דְּאָמְרִי כְּרַבּוֹתֵינוּ. דְּתַנְיָא: רַבּוֹתֵינוּ חָזְרוּ וְנִמְנוּ: בֵּין שֶׁנָּפְלוּ לָהּ עַד שֶׁלֹּא תִּתְאָרֵס, וּבֵין שֶׁנָּפְלוּ לָהּ מִשֶּׁנִּתְאָרְסָה וְנִיפֵּת – הַבַּעַל מוֹצִיא מִיַּד הַלָּקוֹחוֹת.

The Gemara asks: **According to whose** opinion was this stated? It is **not in accordance with** the opinion of **Rabbi Yehuda and not in accordance with** the opinion of **Rabbi Ḥanina ben Akavya,** who both maintain that the sale is valid. The Gemara answers: **They,** i.e., Rav and Shmuel, **say** so, **in accordance with** the opinion of **our Rabbis. As it is taught** in a *baraita*: **Our Rabbis returned and voted** after discussing this issue and decided that **whether property was bequeathed to her before she was betrothed,** or **whether property was bequeathed to her after she was betrothed and she was** subsequently **married, the husband may repossess** it **from the purchasers.**

״מִשֶּׁנִּיפֵּת אֵלּוּ וְאֵלּוּ מוֹדִים״. לֵימָא תָּנֵינָא לְתַקָּנַת אוּשָׁא? דְּאָמַר רַבִּי יוֹסֵי בְּרַבִּי חֲנִינָא: בְּאוּשָׁא הִתְקִינוּ: הָאִשָּׁה שֶׁמָּכְרָה בְּנִכְסֵי מְלוֹג בְּחַיֵּי בַּעְלָהּ, וּמֵתָה – הַבַּעַל מוֹצִיא מִיַּד הַלָּקוֹחוֹת!

§ It was taught in the mishna that if she inherited the property **after she was married,** both **these,** Beit Shammai, **and those,** Beit Hillel, **agree** that the husband may repossess it from the buyers. The Gemara comments: **Let us say** that **we** already **learned** in the mishna about **the** rabbinic **ordinance** instituted in **Usha.**[B] As **Rabbi Yosei, son of Rabbi Ḥanina, said: In Usha they instituted** an ordinance that in the case of **a woman who sold her usufruct property,** i.e., property that she alone owns and her husband benefits only from the dividends, **in her husband's lifetime and** then **died, the husband repossesses** it **from the purchasers.** This appears to be the same *halakha* stated by the mishna.

מַתְנִיתִין – בְּחַיֶּיהָ וּלְפִירוֹת, תַּקָּנַת אוּשָׁא – בְּגוּפָהּ שֶׁל קַרְקַע, וּלְאַחַר מִיתָה.

The Gemara responds: This is not so, as **the mishna** is discussing the husband's claim **during her lifetime, and** it is referring only **to** the value of **the produce** that the husband collects from the purchasers if she sold the land during their marriage, as the produce of usufruct property belongs to him but the land itself remains fully in the possession of the buyer. **The ordinance of Usha,** in contrast, applies even **to the land itself, and** even **after** the **death** of his wife he may repossess it because he inherits it.[H]

״רַבִּי שִׁמְעוֹן חוֹלֵק בֵּין נְכָסִים״. אֵלּוּ הֵן יְדוּעִין וְאֵלּוּ הֵן שֶׁאֵינָן יְדוּעִין? אָמַר רַבִּי יוֹסֵי בְּרַבִּי חֲנִינָא: יְדוּעִין – מְקַרְקְעֵי, שֶׁאֵינָן יְדוּעִין – מִטַּלְטְלִין. וְרַבִּי יוֹחָנָן אָמַר: אֵלּוּ וְאֵלּוּ יְדוּעִין הֵן. וְאֵלּוּ הֵן שֶׁאֵינָן יְדוּעִין – כָּל שֶׁיּוֹשֶׁבֶת כָּאן, וְנִפְלוּ לָהּ נְכָסִים בְּמְדִינַת הַיָּם.

§ The mishna further taught that **Rabbi Shimon distinguishes between property**[N] that is known to the husband and property that is unknown to him. The Gemara asks: **Which** properties **are** deemed **known and which** properties **are** deemed **unknown?**[N] **Rabbi Yosei, son of Rabbi Ḥanina, said:** Property that is **known** is referring to **land,**[N] which cannot be concealed. The husband knew that she would inherit it, and he married her with the intention of using its produce. Property **that is unknown** is referring to **movable property. And Rabbi Yoḥanan said:** Both **these,** land, **and those,** movable property, **are** deemed **known** property. **And these are unknown** properties: They are properties in **any** case **where she resides here and property was bequeathed to her overseas.**[HN] Since the husband did not consider this property when marrying her, the sale is binding after the fact.

BACKGROUND

The ordinances of Usha – תַּקָּנוֹת אוּשָׁא: The town of Usha in the Galilee was, for a time, the seat of the Sanhedrin. According to the Gemara (*Rosh HaShana* 31a), the Sanhedrin was exiled multiple times beginning shortly before the destruction of the second Temple, and continuing for many years afterward. It was initially relocated within the city of Jerusalem, and ultimately to the Galilee. Upon being exiled from Jerusalem, the Sanhedrin functioned initially in Yavne, and from there was transferred to Usha, Shefaram, Beit She'arim, Tzippori, and Tiberias. While in Usha, the Sanhedrin instituted many ordinances relating to various areas of *halakha*, including ritual purity and monetary laws. Although the Sages disagreed with regard to the exact date of the Usha ordinances, since the Sanhedrin's stay there was interrupted, it would seem that these ordinances were instituted after the failure of the bar Kokheva revolt, approximately seventy years after the destruction of the Temple.

HALAKHA

The mishna and the ordinance of Usha – הַמִּשְׁנָה וְתַקָּנַת אוּשָׁא: If a woman sold her usufruct property after her marriage, even if she inherited the property before she was betrothed, nevertheless the husband may seize the produce from the purchasers throughout her lifetime, although the purchasers retain the land itself. If she passed away before him, he may claim the property itself without payment. This is the ruling of the Rambam. The Rosh and the *Tur* maintain that even during her lifetime he may extract the property from the purchasers. If the money she received from the purchasers is still intact, or if money is found in her possession that may be from the purchasers, it can be assumed that it was in fact received from them (*Tur*, citing Rosh) and must be returned to them (Rambam *Sefer Nashim*, *Hilkhot Ishut* 22:7; *Shulḥan Arukh*, *Even HaEzer* 90:9).

Property that is unknown – נְכָסִים שֶׁאֵינָם יְדוּעִים: Unknown property refers to anything that the wife inherited overseas and of which the husband was unaware. The *halakha* is ruled in accordance with the opinion of Rabbi Yoḥanan, in opposition to Rabbi Yosei, son of Rabbi Ḥanina (Rambam *Sefer Nashim*, *Hilkhot Ishut* 22:8; *Shulḥan Arukh*, *Even HaEzer* 90:11).

NOTES

Rabbi Shimon distinguishes between property, etc. – רַבִּי שִׁמְעוֹן חוֹלֵק בֵּין נְכָסִים וכו׳: Early commentaries dispute the parameters of Rabbi Shimon's distinction: According to the Ra'ah, Rabbi Shimon refers only to property that was bequeathed to her before marriage, but if she inherited it after marriage then he too agrees that there is no difference between these types of property. According to other opinions, Rabbi Shimon refers to property she inherited after marriage (Rabbeinu Yehonatan). Yet others contend that Rashi and the Rivan hold that Rabbi Shimon's ruling applies to both cases (*Shita Mekubbetzet*).

Properties that are unknown – נְכָסִים שֶׁאֵינָם יְדוּעִים: The commentaries indicate that the reason the husband acquires known property is that he married her with the intention of acquiring it; therefore, she cannot separate him from that property. The Rosh writes, citing Rabbi Meir HaLevi, that Rabbi Shimon's reason is as follows: The husband's right to the produce of his wife's property was enacted to ensure that he will ransom her should she be kidnapped (see *Ketubot* 47b). Would he not be entitled to her produce, he would say she should ransom herself with her own assets. Accordingly, the connection between these rights is relevant only if the husband is aware of the existence of the property.

Land – מְקַרְקְעֵי: The *Tosefot Rid* explains that since the woman cannot hide her land, it is invariably considered known property. In contrast, movable objects can be concealed, and it is therefore assumed that he is not concerned with them from the outset. According to this explanation, it does not matter whether or not the husband was actually aware of the existence of such objects, as everything depends on the nature of the property in question.

Overseas – בְּמְדִינַת הַיָּם: Some commentaries understand that this principle is specific to cases similar to property overseas, where the husband does not know of its existence and does not expect that his wife will inherit it. However, property located nearby with which the husband is familiar would not be included, even if he is unaware that it currently belongs to his wife (Rosh). For this reason, many early commentaries write that the sale of unknown property is valid only before the husband became aware of its existence. However, the Ri Migash and the Ritva, among others, maintain that the same principle applies to any gift or other item that she received without her husband's knowledge, even if he knows of its existence, and the case of overseas property is used only as an illustration.

תַּנְיָא נַמִּי הָכִי: אֵלּוּ הֵן שֶׁאֵינָן יְדוּעִין – כָּל שֶׁיּוֹשֶׁבֶת כָּאן וְנָפְלוּ לָהּ נְכָסִים בִּמְדִינַת הַיָּם.

The Gemara comments: **That** opinion **is also taught** in a *baraita*. The *baraita* states: **These are unknown** properties: They are properties in **any** case **where she resides here and property was bequeathed to her overseas.**

הַהִיא אִיתְּתָא דְּבָעְיָא דְּתַבְרְחִינְהוּ לְנִכְסָהּ מִגַּבְרָהּ, כְּתַבְתִּינְהוּ לִבְרַתָּהּ, אִינְסִיבָה וְאִיגְּרֵשָׁה.

The Gemara relates: There was **a certain woman** who was about to remarry after she was divorced or widowed, **who sought to distance** the rights to **her property from her** future **husband.**[N] **She** therefore **wrote** a document stipulating that her property be given as a gift **to her daughter** before marriage. Ultimately, the daughter **was married and** then **divorced.** She wanted her daughter to return the property, and her daughter claimed that it was given to her as a gift.

NOTES

Who sought to distance her property from her future husband – דְּבָעְיָא דְּתַבְרְחִינְהוּ לְנִכְסָהּ מִגַּבְרָהּ: Rashi explains that this woman had previously informed witnesses that she was giving the gift only for this purpose. Most early authorities, such as *Tosafot,* reject this interpretation for the following reasons: First, it is unlikely that Rav Anan would have complained (see 79a) if she had explicitly made her intentions clear. Second, the Gemara in 79a indicates that all agree that if she made her intentions clear, a document of evasion is of no avail.

Many commentaries instead accept the opinion of the Ri Migash, who states that the woman's intentions are certainly considered if she issued an announcement in the presence of witnesses, as well as if she expressly stated without witnesses that she is giving the gift only due to her impending marriage. The Ri Migash claims that even if she was silent, it can still be assumed that she gave her property away only in order to keep it from her husband. Admittedly, there is a principle that unspoken words are not binding (see *Kiddushin* 49b), but many commentaries accept the opinion of the Rashba that in a situation where anyone would have the same unspoken thoughts, then they are binding. Therefore, in this case as well, her unspoken intention is accepted because everyone is aware that she would not give away all her property to someone else during her lifetime. The Ramban compares this case to that of a gift given by one on his deathbed, where it is not necessary to specify that he is distributing his property only because he does not expect to survive.

Perek **VIII**
Daf **79** Amud **a**

אֲתַאי לְקַמֵּיהּ דְּרַב נַחְמָן, קָרָעִיהּ רַב נַחְמָן לִשְׁטָרָא. אֲזַל רַב עָנָן לְקַמֵּיהּ דְּמָר עוּקְבָא, אָמַר לֵיהּ: חֲזִי מָר מַחְמָן חַקְלָאָה הֵיכִי מְקָרַע שְׁטָרֵי דְּאֵינָשֵׁי! אָמַר לֵיהּ: אֵימָא לִי אֵיזִי, גּוּפָא דְּעוּבְדָא הֵיכִי הֲוָה?

The mother **came before Rav Naḥman** for judgment. **Rav Naḥman tore the document,** accepting her claim that she did not intend to transfer ownership of her property. **Rav Anan went before Mar Ukva,** the Exilarch, and **said to him:** Let **the Master observe Naḥman the farmer, how** he **tears people's documents.** Rav Anan was upset that Rav Naḥman destroyed a legitimate document. **Mar Ukva said to him: Tell me, please, what was the actual incident?**

אָמַר לֵיהּ: הָכִי וְהָכִי הֲוָה. אָמַר לֵיהּ: שְׁטַר מַבְרַחַת קָא אָמְרַתְּ? הָכִי אָמַר רַב חֲנִילַאי בַּר אִידִי אָמַר שְׁמוּאֵל: מוֹרֶה הוֹרָאָה אֲנִי: אִם יָבֹא שְׁטַר מַבְרַחַת לְיָדִי – אֶקְרָעֶנּוּ.

Rav Anan **said to** Mar Ukva: **This and that transpired;** i.e., he apprised him of all the details. Mar Ukva **said to him: Are you saying** it was **a document of evasion?**[H] **This** is what **Rav Ḥanilai bar Idi said** that **Shmuel said: I am** an authority who **issues rulings** and have issued the following directive: **If a document of evasion comes to my hand, I will tear it,** as it is clear that it was not intended for the actual transfer of property but merely to distance it from someone else.

HALAKHA

A document of evasion – שְׁטַר מַבְרַחַת: If a woman wrote a document granting all her property to another before she married, whether or not the recipient was a relative of hers, her husband has no rights to the produce of that property. However, her gift is annulled if she was widowed or divorced. Furthermore, if she died before him, he does not inherit her. This ruling is in accordance with the opinion of Shmuel and Rav Naḥman with regard to a document of evasion (Rambam *Sefer Nashim, Hilkhot Ishut* 22:9 and *Sefer Kinyan, Hilkhot Zekhiya UMattana* 6:12; *Shulḥan Arukh, Even HaEzer* 90:7).