לֹא יֹאמַר לָהּ ״הֲרֵי כְּתוּבָּתֵיךְ מוּנַּחַת עַל הַשֻּׁלְחָן״ אֶלָּא כָּל נִכְסָיו אַחֲרָאִין לִכְתוּבָּתָהּ. וְכֵן לֹא יֹאמַר אָדָם לְאִשְׁתּוֹ ״הֲרֵי כְּתוּבָּתֵיךְ מוּנַּחַת עַל הַשֻּׁלְחָן״ אֶלָּא כָּל נִכְסָיו אַחֲרָאִין לִכְתוּבָּתָהּ.

Therefore, the *yavam* **may not say to her: Your marriage contract is placed on the table.** He may not set aside a designated sum of money for this payment. **Rather, all** of the first husband's **property is mortgaged for her marriage contract** as long as he has not divorced her. **And similarly,** in general **a man may not say to his wife: Your marriage contract is placed on the table. Rather, all his property is mortgaged for her marriage contract.**

גֵּירְשָׁהּ – אֵין לָהּ אֶלָּא כְּתוּבָּה, הֶחֱזִירָהּ – הֲרֵי הִיא כְּכָל הַנָּשִׁים, וְאֵין לָהּ אֶלָּא כְּתוּבָּה בִּלְבַד.

If the *yavam* **divorced her** after performing levirate marriage, **she has only her marriage contract,** as she does not retain any rights to the rest of her first husband's property. If he subsequently **remarried her, she is like all women, and she has nothing but her marriage contract.** In this case, the property of her first husband is no longer pledged for the payment of her marriage contract.

**גמ׳** אִיבַּעְיָא לְהוּ: שׁוֹמֶרֶת יָבָם שֶׁמֵּתָה, מִי קוֹבְרָהּ? יוֹרְשֵׁי הַבַּעַל קָבְרֵי לָהּ – דְּקָא יָרְתֵי כְּתוּבָּה, אוֹ דִּלְמָא יוֹרְשֵׁי הָאָב קָבְרֵי לָהּ – דְּקָא יָרְתֵי נָכְסִים הַנִּכְנָסִין וְהַיּוֹצְאִין עִמָּהּ? אֲמַר רַב עַמְרָם: תָּא שְׁמַע: דְּתַנְיָא, שׁוֹמֶרֶת יָבָם שֶׁמֵּתָה

**GEMARA** **A dilemma was raised before** the Sages: In the case of **a widow awaiting her *yavam* who dies, who buries her?** Who is obligated to bear the expenses of her burial? Must the **husband's heirs bury her, as they inherit the marriage contract, or perhaps** her **father's heirs** are obligated to **bury her, as they inherit** the **property that comes and goes with her? Rav Amram said: Come** and **hear** a solution. **As it is taught** in a *baraita*: In the case of **a widow waiting for her *yavam* who dies,**

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יוֹרְשֶׁיהָ יוֹרְשֵׁי כְתוּבָּתָהּ חַיָּבִין בִּקְבוּרָתָהּ, אֲמַר אַבַּיֵי: אַף אֲנַן נַמִּי תָּנֵינָא: אַלְמָנָה נִיזּוֹנֶת מִנִּכְסֵי יְתוֹמִין, וּמַעֲשֵׂה יָדֶיהָ שֶׁלָּהֶן, וְאֵין חַיָּבִין בִּקְבוּרָתָהּ. יוֹרְשֶׁיהָ יוֹרְשֵׁי כְתוּבָּתָהּ חַיָּבִין בִּקְבוּרָתָהּ. וְאֵיזוֹהִי אַלְמָנָה שֶׁיֵּשׁ לָהּ שְׁנֵי יוֹרְשִׁין – הֱוֵי אוֹמֵר: זוֹ שׁוֹמֶרֶת יָבָם.

**her heirs,** i.e., **the heirs of her marriage contract,**[H] **are obligated in her burial.** This indicates that her husband's heirs, who inherit her marriage contract, must attend to her burial. **Abaye said: We too learn** in a mishna (95b): **A widow is sustained from the property of the orphans, and her earnings are theirs, and** they **are not obligated in her burial.** Instead, **her heirs, the heirs of her marriage contract, are obligated in her burial. And who is the widow who has two** sets of **heirs,** necessitating the ruling that only the heirs of her marriage contract are obligated in her burial? **You must say** that **this** is **a widow waiting for her *yavam*,** as the *yavam* inherits her marriage contract.

אֲמַר רָבָא: וְלֵימָא: אָח אֲנִי יוֹרֵשׁ, אִשְׁתּוֹ אֵין אֲנִי קוֹבֵר! אֲמַר לֵיהּ אַבַּיֵי: מְשׁוּם דְּבָאִין עָלָיו מִשְּׁנֵי צְדָדִין: אִם אָחִיו יוֹרֵשׁ – יִקְבּוֹר אֶת אִשְׁתּוֹ, אִם אֵינוֹ קוֹבֵר אָת אִשְׁתּוֹ – יִתֵּן כְּתוּבָּתָהּ.

**Rava said: But let** the *yavam* **say: I inherit** my **brother,**[N] and I am therefore entitled to this marriage contract as my brother's heir, while **his wife I** am **not** obligated to **bury,** as I have no connection to her. **Abaye said to him:** This claim is not valid **because they come upon him from two sides,**[N] by force of two complementary claims: **If he inherits his brother** he should inherit his duties as well as his rights, and **he should bury his wife. If he does not bury his wife,** as he does not wish to take his brother's place, **he should give her marriage contract** to her.

**HALAKHA**

**Her heirs, the heirs of her marriage contract – יוֹרְשֶׁיהָ יוֹרְשֵׁי כְתוּבָּתָהּ:** If a widow died while she was waiting for her *yavam*, then the husband's heirs, who take the main sum and the additional part of her marriage contract, are obligated to pay for her burial (Rambam *Sefer Nashim*, *Hilkhot Ishut* 22:10; *Shulḥan Arukh*, *Even HaEzer* 160:7).

**NOTES**

**I inherit my brother – אָח אֲנִי יוֹרֵשׁ:** The early commentaries note that this claim is consistent with the opinion that the husband's heirs receive only the marriage contract itself but not the wife's guaranteed property from her dowry. However, according to Rabbeinu Tam, who maintains that the heirs of the husband receive half of her guaranteed property, this assertion is difficult to understand. *Tosafot* explain that the claim of the *yavam* is that he receives the money directly from his brother, while the duty of her burial was never his responsibility initially. Or, as the Ritva phrases it, the principle that an individual is inherited by his brother is biblical in origin, while the obligation to bury a wife is imposed on the husband by rabbinic law. Some early commentaries contend that the brother is not trying to avoid all payment for the burial but is simply suggesting that since he must share her inheritance with her heirs, according to this opinion, they too should cover part of the expenses. The Ramban and the Rashba, though, consider this explanation far-fetched (see Rivash).

**Because they come upon him from two sides – מְשׁוּם דְּבָאִין עָלָיו מִשְּׁנֵי צְדָדִין:** The expression: They come upon him from two sides, is more forceful than: Whichever way you look at it [*mima nafshakh*], as here there is an actual claim from the other side, i.e., the woman's heirs. The early commentaries explain the discussion in the Gemara as follows: At first it was assumed that Rava's difficulty was that the *yavam* can claim that while he inherits his brother's money, he is under no obligation toward a woman who is a stranger to him. Abaye answered that the woman's heirs can retort that upon the death of the first husband the obligation to pay her the marriage contract was already in place, and consequently he must pay it despite his lack of connection with the woman. Rava therefore amends his argument and states that the *yavam* is saying the following: Although I stand in my brother's place and therefore inherit him, with regard to the claim of the marriage contract, I was willing to marry her during her lifetime without having to pay the marriage contract, and therefore her heirs have no claim against me after her death (see Rivan).

אֲמַר לֵיהּ: הָכִי קָא אָמִינָא: אָח אֲנִי יוֹרֵשׁ, אֶת אִשְׁתּוֹ אֵין אֲנִי קוֹבֵר. וְאִי מִשּׁוּם כְּתוּבָּה – לֹא נִיתְּנָה כְּתוּבָּה לִגְבּוֹת מֵחַיִּים.

Rava **said to him: I say as follows:** The *yavam* claims that **I inherit** my **brother,** and **his wife I** will **not bury,** as this is not my responsibility. **And if** the brother should be responsible **due to** her **marriage contract, a marriage contract cannot be collected during** the husband's **lifetime**[H] but only after his death. The *yavam* is the first husband's replacement, as he is prepared to perform levirate marriage with the woman, and therefore she is not entitled to her marriage contract, which means he is also not obligated to bury her. This assumption that a marriage contract may not be claimed during the husband's lifetime is derived from a close reading of the wording of the marriage contract, which states: When you may marry another you may claim this marriage contract, which indicates that if the woman is unable to marry another man because her husband is still alive she is not entitled to her marriage contract.

מַאן שָׁמְעַתְּ לֵיהּ דְּאִית לֵיהּ מִדְּרַשׁ כְּתוּבָּה – בֵּית שַׁמַּאי, וְשָׁמְעִינַן לְהוּ לְבֵית שַׁמַּאי דְּאָמְרִי: שְׁטָר הָעוֹמֵד לִגְבּוֹת – כְּגָבוּי דָּמֵי.

The Gemara asks: **Who did you hear who is of** the opinion that **one expounds the marriage contract**[N] and infers *halakhot* from its exact language, like expositions from the Torah? It is the opinion of **Beit Shammai, and** yet **we have heard that Beit Shammai say a document that is ready to be collected is considered collected.** Here too, it should be considered as though she had already claimed her marriage contract, and he cannot claim to be acting as his brother's heir.

דִּתְנַן: מֵתוּ בַּעֲלֵיהֶן עַד שֶׁלֹּא שָׁתוּ, בֵּית שַׁמַּאי אוֹמְרִים: נוֹטְלוֹת כְּתוּבָּה וְלֹא שׁוֹתוֹת, וּבֵית הִלֵּל אוֹמְרִים: אוֹ שׁוֹתוֹת אוֹ לֹא נוֹטְלוֹת כְּתוּבָּה.

The proof of this is **as we learned** in a mishna (*Sota* 24a): **If the husbands** of women suspected of being unfaithful **died before** their wives **drank**[H] from the bitter waters in accordance with the *halakha* of a *sota*,[B] and it was never established whether they had engaged in relations with another man, **Beit Shammai say: They take the marriage contract and do not drink, and Beit Hillel say: Either they drink or they do not take the marriage contract.**

אוֹ שׁוֹתוֹת?! ״וְהֵבִיא הָאִישׁ אֶת אִשְׁתּוֹ אֶל הַכֹּהֵן״ אָמַר רַחֲמָנָא, וְלֵיכָא! אֶלָּא: מִתּוֹךְ שֶׁלֹּא שׁוֹתוֹת – לֹא נוֹטְלוֹת כְּתוּבָּה,

The Gemara digresses to express puzzlement at the wording of this mishna: **Either they drink?** How can they drink the bitter waters? **The Merciful One states: "Then shall the man bring his wife to the priest"** (Numbers 5:15), **and there is no** way to fulfill that verse after the husband has died. **Rather,** Beit Hillel's ruling should be understood as follows: **Since they do not drink,**[N] as they have no husband who can compel them to drink the waters, **they do not take the marriage contract,** in case they were in fact unfaithful.

בֵּית שַׁמַּאי אוֹמְרִים: נוֹטְלוֹת כְּתוּבָּה וְלֹא שׁוֹתוֹת. וְאַמַּאי? סְפֵיקָא הוּא, סָפֵק זְנַאי סָפֵק לָא זְנַאי, וְקָאָתֵי סָפֵק וּמוֹצִיא מִידֵי וַדַּאי!

That mishna stated that **Beit Shammai say: They take the marriage contract and do not drink. But why** do they collect the marriage contract? **It is a** case of **uncertainty: Perhaps she committed adultery; perhaps she did not commit adultery.** If she was unfaithful she is not entitled to the marriage contract, **and** yet, although her position cannot be verified, Beit Shammai maintain that her **uncertain** claim **comes and supersedes** the **certain** claim of the heirs, as they are certainly the rightful heirs of their father.

**HALAKHA**

**A marriage contract cannot be collected during the husband's lifetime – לֹא נִיתְּנָה כְּתוּבָּה לִגְבּוֹת מֵחַיִּים:** A marriage contract is like a promissory note that can be claimed only after a period of time, which in this case would be following the couple's divorce or the death of the husband (Rambam *Sefer Nashim*, *Hilkhot Ishut* 16:3; *Shulḥan Arukh*, *Even HaEzer* 93:1).

**If the husbands died before their wives drank, etc. – מֵתוּ בַּעֲלֵיהֶן עַד שֶׁלֹּא שָׁתוּ וכו':** In the case of a wife who was warned by her husband not to seclude herself with a certain man, and she did so anyway, if the husband died before she drank from the bitter waters, she does not drink them and does not collect her marriage contract (Rambam *Sefer Nashim*, *Hilkhot Sota* 2:7; *Shulḥan Arukh*, *Even HaEzer* 178:1).

**NOTES**

**Who is of the opinion that one expounds the marriage contract – דְּאִית לֵיהּ מִדְּרַשׁ כְּתוּבָּה:** According to some early commentaries, Beit Hillel maintain that the language of the marriage contract is not expounded at all. Although it appears that Beit Hillel agree with Beit Shammai with regard to a certain *halakha* that is based on an exposition of the marriage contract, they accept this opinion for a different reason. However, Rabbeinu Tam, in *Sefer HaYashar* and elsewhere, claims that although Beit Hillel do not expound to the same extent as Beit Shammai, they admit that an exposition of this kind is possible in principle, and they too rely on it in certain cases. See also *Tosafot*, who suggest that Beit Hillel ultimately accepted Beit Shammai's opinion entirely, and therefore they too infer *halakhot* from the wording of the marriage contract.

**Rather, since they do not drink – אֶלָּא מִתּוֹךְ שֶׁלֹּא שׁוֹתוֹת:** The Rivash writes that the Gemara is not emending the text of the mishna but explaining it: These women are supposed to drink, and since they are unable to do so, they forfeit their right to the marriage contract. Similar cases can be found elsewhere in which the Sages dispute the *halakha* concerning one who has a halakhic obligation to perform an action that he cannot perform for some reason beyond his control.

**BACKGROUND**

***Sota* – סוֹטָה:** The Torah (Numbers 5:11–31) describes the procedure governing a woman suspected of adultery [*sota*]: First, her husband warns her in the presence of witnesses against secluding herself with a specific man about whom he is suspicious. If she disobeys this warning and is observed secluding herself that man, even though there is no concrete evidence that she actually committed adultery, she and her husband may no longer live together as a married couple until she has undergone the following ordeal to determine whether she committed adultery.

The woman, accompanied by her husband and two Torah scholars, is taken to the Temple in Jerusalem and forced by the priests to stand in a public place while holding the special meal-offering that she is required to bring. There she is once again questioned about her behavior. If she continues to protest her fidelity and takes an oath to that effect, a scroll is brought and the curses mentioned in the biblical passage cited above are written on it. If she does not admit to committing adultery, the scroll is submerged in a clay vessel filled with water taken from the Temple basin and some earth from the Temple floor, and the scroll's writing is dissolved in the water. She is then forced to drink that water.

If the husband's allegation is true, then, in the words of the Torah: "Her belly shall swell and her thigh shall fall away" (Numbers 5:27), until ultimately she dies from the water's curse. If she is innocent, the water will bring her blessing and it is permitted for her to resume normal marital relations with her husband.

**PERSONALITIES**

Rabbi Abba – רַבִּי אַבָּא: There is a tradition of the *ge'onim* that the Rabbi Abba mentioned here is the great *amora* Rav. Some versions of the text of the Gemara even read Rav Abba, instead of the letter *reish*, an abbreviation for Rabbi, or Rabbi Abba. This is also logical chronologically, as Sumakhos was the main disciple of Rabbi Meir and a contemporary of Rabbi Yehuda HaNasi, Rav's teacher. In this *baraita* he is not called Rav, the name he was called in Babylonia to reflect that he was appointed rabbi of all Babylonian Jewry, but by his real name, Rabbi Abba. This also explains an expression found in several places in the Gemara: Rav is a *tanna* and argues, which indicates that he was one of the later *tanna'im*.

קָסָבְרִי בֵּית שַׁמַּאי: שְׁטָר הָעוֹמֵד לִגְבּוֹת כְּגָבוּי דָּמֵי.

It must therefore be concluded that **Beit Shammai maintain: A document that is ready to be collected is considered collected.** Consequently, the sum of the marriage contract is already considered in the woman's possession, which means that when the heirs do not wish to pay the sum of the marriage contract they are actually trying to claim money due to an uncertainty.

וְהָא בָּעֵינַן "כְּשֶׁתִּנָּשֵׂאי לְאַחֵר תִּטְּלִי מַה שֶּׁכָּתוּב לַיכִי", וְלֵיכָּא!

The Gemara questions the earlier statement that the marriage contract may not be collected during the husband's lifetime due to the exposition of the language of the document: **But** even if the language of a marriage contract is not expounded, the simple meaning of its words indicates that she may not claim it during the lifetime of the *yavam*, as **we require** the fulfillment of the clause: **When you** may **marry**[N] **another you** may **take that which is written to you, and this is not** the case here, as the *yevama* may not marry anyone else before she takes part in *ḥalitza*. How, then, can the two claims come upon him, as Abaye suggested?

אֲמַר רַב אַשִׁי: יָבָם נַמִּי כְּאַחֵר דָּמֵי.

**Rav Ashi said:** The ***yavam* is also considered like another**[N] man, and it is as though she were about to marry another. Therefore, she is entitled to the marriage contract.

שָׁלַח לֵיהּ רָבָא לְאַבַּיֵי בְּיַד רַב שְׁמַעְיָה בַּר זֵירָא: וּמִי נִתְנָה כְּתוּבָּה לִגְבּוֹת מֵחַיִּים?

The above discussion took place when Abaye and Rava were learning this *halakha* together. Sometime later, **Rava sent Abaye** the following related difficulty **by way of Rav Shemaya bar Zeira: And can** the **marriage contract** of a *yevama* **be collected during** his **lifetime?**

וְהָתַנְיָא: רַבִּי אַבָּא אוֹמֵר: שָׁאַלְתִּי אֶת סוּמָכוֹס: הָרוֹצֶה שֶׁיִּמְכּוֹר בְּנִכְסֵי אָחִיו כֵּיצַד הוּא עוֹשֶׂה? אִם כֹּהֵן הוּא – יַעֲשֶׂה סְעוּדָה וְיפַיֵּיס, אִם יִשְׂרְאֵל הוּא – מְגָרֵשׁ בְּגֵט וְיַחֲזִיר.

**But isn't it taught** in a *baraita*: **Rabbi Abba**[P] **says: I asked Sumakhos:** With regard to a *yavam* **who wants to sell his brother's property**[N] but is unable to do so because all his brother's possessions are mortgaged to the *yevama*, **how can he proceed?** He replied: **If he is a priest,** who is prohibited from remarrying his divorced wife, **he should prepare a feast** for his wife after *yibbum* has been performed, **and** during the feast he should **persuade** her to allow him to sell the late brother's property. **If he is a** regular **Israelite,** who may remarry his divorced wife, he can **divorce** her **with a bill of divorce,** at which point he is obligated to pay her only the sum of her marriage contract, and the rest of the property is then no longer mortgaged for it. While they are divorced he may sell the property **and** subsequently **remarry** her.

**NOTES**

But we require fulfillment of the clause: When you marry, etc. – וְהָא בָּעֵינַן כְּשֶׁתִּנָּשֵׂאי וכו': Rashi states that this is another question raised against Abaye's first statement. According to this interpretation the query is a general one that applies to Beit Hillel as well. The Rivan and Rabbeinu Tam maintain that this question is a continuation of the discussion with regard to Beit Shammai's opinion: Although Beit Shammai rule that a document that is about to be collected is considered already collected, this applies only to cases like that of a *sota*, where the husband is dead and the woman is permitted to all men. In such a situation the marriage contract is considered as though it had been claimed by her. However, with regard to a widow waiting for her *yavam*, since she is unable to marry others the document cannot be considered collected (see *Tosafot* and other early commentaries).

The *yavam* is also considered like another – יָבָם נַמִּי כְּאַחֵר דָּמֵי: The Rivan writes that once Rav Ashi's solution is accepted, the previous answer that a document ready to be collected is considered collected is no longer needed. This is because if the *yavam* is considered like another man and not like a continuation of his brother, the woman had already acquired her marriage contract upon the death of her first husband, which means that the *yavam* inherits the marriage contract from her rather than from his brother.

A *yavam* who wants to sell his brother's property – הָרוֹצֶה שֶׁיִּמְכּוֹר בְּנִכְסֵי אָחִיו: Rashi discusses at length why the Sages were so stringent in their decree that the property of the late brother be entirely mortgaged for the marriage contract of the *yevama*, to the extent that the *yavam* may not sell it at all, while any sale of property that belongs to a regular husband is valid, despite the fact that his possessions are also mortgaged to the marriage contract. He explains that the *yevama* does not fully rely on the *yavam*, as he did not guarantee the payment of her marriage contract from his own property, in the manner of: That which I own and that which I will acquire in the future, as stated in the marriage contract, and she is therefore worried that the property might be entirely lost.

וְאִי סָלְקָא דַּעְתִּין נִתְּנָה כְּתוּבָּה לִגְבוֹת מֵחַיִּים – נַיְיחֵד לָהּ שִׁיעוּר כְּתוּבָּה, וְהַשְׁאָר לִיזְבִין! וּלְטַעֲמִיךְ – וְלוֹתְבָהּ מִמַּתְנִיתִין: לֹא יֹאמַר לָהּ הֲרֵי כְּתוּבָּתֵיךְ מוּנַּחַת לֵיךְ עַל הַשֻּׁלְחָן, אֶלָּא כָּל נְכָסָיו אַחֲרָאִין לִכְתוּבָּתָהּ!

**And if it enters our mind** that **a marriage contract can be collected during** his **lifetime,** why is all this necessary? **Let him set aside for her** part of the property that corresponds to **the amount of the marriage contract, and the rest let him sell.** Abaye replied: **And according to your reasoning,** rather than asking this question based on a *baraita*, **let him raise** this difficulty **from the mishna,** which teaches that **he may not say to her: Your marriage contract is placed on the table for you. Rather, all his property is mortgaged for her marriage contract.** Why can't he designate property equivalent to the sum of her marriage contract and sell the rest?

הָתָם עֵצָה טוֹבָה קָא מַשְׁמַע לָן. דְּאִי לָא תֵּימָא הָכִי – סֵיפָא דְּקָתָנֵי: וְכֵן לֹא יֹאמַר אָדָם לְאִשְׁתּוֹ ״הֲרֵי כְּתוּבָּתֵיךְ מוּנַּחַת לֵיךְ עַל הַשֻּׁלְחָן״ אֶלָּא כָּל נְכָסָיו אַחֲרָאִין לִכְתוּבַּת אִשְׁתּוֹ – אִי בָּעֵי לֵיהּ לְזַבּוּנֵי הָכָא נַמִּי דְּלָא מָצֵי מְזַבֵּין?! אֶלָּא, עֵצָה טוֹבָה קָמַשְׁמַע לָן. הָכָא נַמִּי – עֵצָה טוֹבָה קָא מַשְׁמַע לָן.

The Gemara answers: The *tanna* in the mishna **there teaches us good advice,**[N] i.e., that one should not do so *ab initio*, so as to ensure that the amount set aside for her marriage contract is not lost, which would necessitate writing a new marriage contract. However, it should not be inferred from the mishna that it is prohibited to do so. **As, if you do not say so,** that it is merely good advice, consider **the latter clause** of the mishna, **which teaches: And similarly, a man may not say to his wife: Your marriage contract is placed on the table. Rather, all his property is mortgaged for her marriage contract. If he wants to sell, here too, may he not sell? Rather,** in that case the *tanna* **teaches us good advice,** and therefore **here too,** with regard to a *yevama*, **he teaches us good advice.**

אֶלָּא דְּרַבִּי אַבָּא קַשְׁיָא! דְּרַבִּי אַבָּא נַמִּי לָא קַשְׁיָא: מִשּׁוּם אֵיבָה.

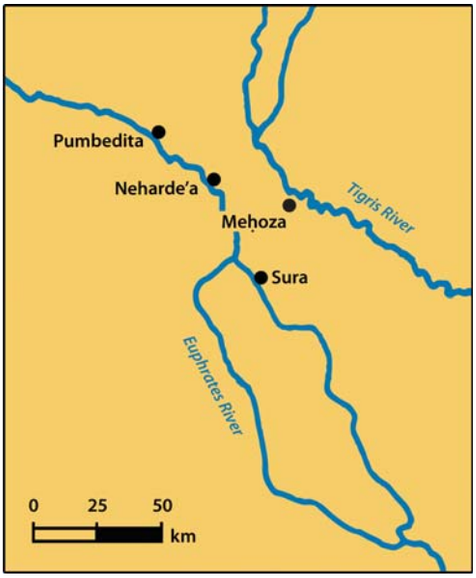
The Gemara asks: **But** if so, the question is raised once again, as the statement **of Rabbi Abba** said in the name of Sumakhos **is difficult.**[N] Why is it necessary for the husband to divorce his wife when he can set aside the sum of her marriage contract? The Gemara answers: That teaching **of Rabbi Abba** is **also not difficult,** as the reason one may not do so is not that he cannot designate a sum as her marriage contract but **due to enmity.** If he were to set aside a certain portion for her marriage contract, she would perceive this as a sign that he desires to be rid of her. If he divorces and remarries her, she would realize it is only a ploy to allow him to sell the property and does not indicate his desire to divorce her.

הַהוּא גַּבְרָא דְּנָפְלָה לֵיהּ יְבָמָה בְּפוּמְבְּדִיתָא, בָּעֵי אֲחוּהּ לְמִפְסְלָהּ בְּגִיטָּא מִינֵּיהּ,

The Gemara relates: **A certain man had a *yevama* who happened** before **him**[N] for levirate marriage **in** the city of **Pumbedita.**[B] **His brother wanted to disqualify her from him by** means of **a bill of divorce,** as the *halakha* is that if one of the potential *yevamin* gives the *yevama* a bill of divorce she may no longer enter into levirate marriage with the others.

**BACKGROUND**

**Pumbedita – פּוּמְבְּדִיתָא:** A city on the Euphrates River northwest of Neharde'a, Pumbedita was an important center of the Babylonian Jewish community for many generations. As early as the Second Temple period Pumbedita was called the Diaspora, as it was considered the center of Babylonian Jewry. After the destruction of Neharde'a, some scholars from its yeshiva relocated to Pumbedita, and from then on Torah study continued there without interruption until the end of the geonic period. The scholars of Pumbedita were particularly famous for their acumen. The most famous heads of the yeshiva in Pumbedita were its founder, Rav Yehuda; Rabba; Rav Yosef; Abaye; Rav Naḥman bar Yitzhak; Rav Zevid; and Rafram bar Pappa. The yeshiva was very prominent in the geonic period as well, often overshadowing the yeshiva in Sura. The last heads of the yeshiva in Pumbedita were the renowned *ge'onim* Rav Sherira Gaon and his son, Rav Hai Gaon.



Location of Pumbedita

**NOTES**

**The *tanna* there teaches us good advice – הָתָם עֵצָה טוֹבָה קָא מַשְׁמַע לָן:** There are various opinions with regard to the nature of this good advice. Rashi's opinion, which is the second explanation of the Rivan, is that concern exists that these objects set aside for her marriage contract might be lost, and therefore he would have to give her others (see *Tosafot*). The Rivan and *Tosafot* explain that the good advice is that he should not be so hasty in divorcing her. Rabbi Shimshon of Saens, in his own commentary and cited in *Tosafot*, maintains that the good advice concerns the fact that if he designates a particular item for her marriage contract he may no longer give it away or sell it, whereas under normal circumstances he retains control of all his property. However, according to the *Shita Mekubbetzet* and later commentaries, this advice applies only to the marriage contract of a regular woman, but not that of a *yevama*. In the latter case, the reason is that the woman prefers that all the property be mortgaged for her marriage contract, not merely part of it, as she has more she can rely on in case of loss (see *Tosafot*). It is further explained in the *Shita Mekubbetzet* that according to this interpretation, it is understandable why the mishna separates the *halakha* of a *yevama* from that of a regular wife, as the reasoning behind the *halakha* differs in each case.

**But the statement of Rabbi Abba is difficult – אֶלָּא דְּרַבִּי אַבָּא קַשְׁיָא:** Rashi, as understood by other commentaries, explains that the Gemara's answer that the *tanna* is giving good advice is logical in the context of the mishna's recommendation of what should ideally be done with the marriage contract. However, this is certainly an insufficient explanation of Rabbi Abba's suggestion for the husband to divorce his wife. Rather, there must be a more persuasive reason why Rabbi Abba's recommends that he give a bill of divorce.

**A *yevama* who happened before him, etc. – נָפְלָה לֵיהּ יְבָמָה וכו':** A few background *halakhot* of levirate marriage are necessary to understand this case. The main obligation of levirate marriage is upon the oldest brother. If he does not wish to perform this duty, one of the other brothers may marry the *yevama*. The levirate bond itself, however, applies to all the brothers, and therefore if one of them performed levirate betrothal with the *yevama*, she is forbidden to all the brothers apart from him. If one of them gave her a bill of divorce, none of the others may perform levirate marriage with her; rather, she must receive *ḥalitza*. The status of a *yavam* who performs *ḥalitza* is different from that of a *yavam* who performs levirate marriage. When performing levirate marriage, the *yavam* replaces his deceased brother and, according to most authorities, inherits all his property, whereas if he performs *ḥalitza*, all the brothers share the inheritance equally.

אָמַר לֵיהּ: מַאי דַּעְתֵּיךְ – מִשּׁוּם נִכְסֵי, אֲנָא בְּנִכְסֵי פָּלֵיגְנָא לָךְ.

The brother who wished to perform levirate marriage **said to him: What is your opinion?** Why are you doing this? Is it **due to the property,** as you are jealous that his property will belong to me, in accordance with the *halakha* that the brother who performs levirate marriage inherits the late brother's property, whereas if the *yevama* receives *ḥalitza* or a bill of divorce all the brothers share the inheritance equally? **I will divide the property with you.** Upon hearing this, the brother consented to him performing levirate marriage. However, when he married the woman, the husband refused to give his brother anything, and the case came before the court.

אָמַר רַב יוֹסֵף: כֵּיוָן דַּאֲמוּר רַבָּנַן לָא לִיזְבִּין, אַף עַל גַּב דְּזַבֵּין – לָא הֲוָה זְבִינֵיהּ זְבִינֵי. דְּתַנְיָא: מִי שֶׁמֵּת וְהִנִּיחַ שׁוֹמֶרֶת יָבָם, וְהִנִּיחַ נְכָסִים בְּמֵאָה מָנֶה, אַף עַל פִּי שֶׁכְּתוּבָּתָהּ אֵינָהּ אֶלָּא מָנֶה – לֹא יִמְכּוֹר, שֶׁכֹּל נְכָסָיו אֲחֵרִים לִכְתוּבָּתָהּ.

**Rav Yosef said: Since the Sages** have **said**[H] that one **may not sell** the property of a widow waiting for her *yavam* before marrying her, **although he sold** it, **his sale is not** a valid **sale.**[N] So too, his promise to give half the property to his brother, which is equivalent to a sale in this case, is of no consequence. **As it is taught** in a *baraita*: With regard to **one who died and left a widow waiting for her *yavam* and** also **left** behind **property** worth the value of **one hundred *maneh*,** equivalent to ten thousand dinars, **although her marriage contract is** worth **only** one ***maneh*,** or one hundred dinars, the *yavam* **may not sell** any part of his possessions, **as all of his property is mortgaged for her marriage contract.** The Sages prohibited him from selling it. Therefore, if he did so the transaction is void.

אָמַר לֵיהּ אַבַּיֵי: וְכָל הֵיכָא דַּאֲמוּר רַבָּנַן לָא לִיזְבִּין, אַף עַל גַּב דְּזַבֵּין לָא הֲוָה זְבִינֵיהּ זְבִינֵי? וְהָתְנַן, בֵּית שַׁמַּאי אוֹמְרִים: תִּמְכּוֹר, וּבֵית הִלֵּל אוֹמְרִים: לֹא תִמְכּוֹר. אֶלָּא וְאֵלּוּ מוֹדִים שֶׁאִם מָכְרָה וְנָתְנָה – קַיָּים! שְׁלָחוּהָ לְקַמֵּיהּ דְּרַבִּי חֲנִינָא בַּר פַּפִּי. שְׁלָחָהּ: כְּדְרַב יוֹסֵף.

**Abaye said to** Rav Yosef: **And anywhere that the Sages said** that one **may not sell,** is it the *halakha* that **although he sold, his sale is no sale? But didn't we learn** in the mishna (78a) with regard to a betrothed woman selling property: **Beit Shammai say: She may sell, and Beit Hillel say: She may not sell;** both **these,** Beit Shammai, **and those,** Beit Hillel, **agree that if she sold** it **or gave** it away, the transaction is **valid?** Evidently, even Beit Hillel agree that despite the violation of the Sages' injunction, the sale is valid. Abaye therefore rejects Rav Yosef's ruling. **They sent** this problem **before Rabbi Ḥanina bar Pappi,** who **sent** back the following reply: The *halakha* is **in accordance with** the opinion **of Rav Yosef.**

אָמַר אַבַּיֵי: אַטּוּ רַבִּי חֲנִינָא בַּר פַּפִּי כֵּיפֵי תָּלֶה לָהּ? שְׁלָחוּהָ לְקַמֵּיהּ דְּרַב מְנִיוּמִי בְּרֵיהּ דְּרַב נַחוּמִי, שְׁלָחָהּ: כְּדְאַבַּיֵי, וְאִי אָמַר בָּהּ רַב יוֹסֵף טַעֲמָא אַחֲרִינָא – שְׁלְחוּ לִי.

**Abaye said** in response: **Is that to say** that **Rabbi Ḥanina bar Pappi has hung jewelry upon it,** i.e., this ruling? His blunt declaration that the *halakha* is in accordance with Rav Yosef's opinion without a logical explanation adds nothing to the discussion, and his decision should be rejected. **They sent** this inquiry **before Rav Minyumi, son of Rav Naḥumi,** who **sent** back the following written reply: The *halakha* is **in accordance with** the opinion **of Abaye, but if Rav Yosef states a different reason for it, send** his reasoning **to me** and I will reconsider the matter.

נָפַק רַב יוֹסֵף דַּק וְאַשְׁכַּח, דְּתַנְיָא: הֲרֵי שֶׁהָיָה נוֹשֶׁה בְּאָחִיו וּמֵת, וְהִנִּיחַ שׁוֹמֶרֶת יָבָם: לֹא יֹאמַר ״הוֹאִיל וְשֶׁאֲנִי יוֹרֵשׁ – הֶחְזַקְתִּי״ אֶלָּא מוֹצִיאִין מִיָּבָם, וְיִקַּח בָּהֶן קַרְקַע וְהוּא אוֹכֵל פֵּירוֹת.

**Rav Yosef went, examined** the *mishnayot* carefully, **and found** the following source for his opinion. **As it is taught** in a *baraita*: **If one claimed** money **from his brother** that he had previously lent him, **and** then the lender **died and left** behind **a widow waiting for her *yavam*,** then the *yavam* who borrowed money **may not say: Since I inherit**[N] my brother's property by means of the *yevama*, **I** may also **take possession** of the debt, and I do not have to restore it to the other brothers. **Rather, one appropriates** the sum of the debt **from the *yavam*, and he purchases land with it** for the woman's marriage contract, **and he eats the produce.**[H] This serves as proof for Rav Yosef's opinion that a *yavam* may not sell his brother's property or take possession of a debt he owed his brother.

אָמַר לֵיהּ אַבַּיֵי: דִּלְמָא דְּטָבָא לֵיהּ עָבְדוּ לֵיהּ? אָמַר לֵיהּ: תַּנָּא תָּנֵי ״מוֹצִיאִין״, וְאַתְּ אָמְרַתְּ דְּטָבָא לֵיהּ עָבְדוּ לֵיהּ?

**Abaye said to him: Perhaps they did for him** that **which is good for him.** In other words, the *baraita* that states that one should purchase land and eat the produce is merely good advice to prevent the money from being lost. Rav Yosef **said to him: The *tanna* teaches: One appropriates,** i.e., against his will, **and you say that they did for him** that **which is good for him?** The language indicates that this is an obligation, not a matter of advice.

**HALAKHA**

**Since the Sages said, etc. – כֵּיוָן דַּאֲמוּר רַבָּנַן וכו':** A widow waiting for her *yavam* collects her marriage contract from her husband's property. Consequently, it is not permitted for the *yavam* to sell his late brother's possessions either before or after levirate marriage. If he sold or gave them away as a gift or divided the property of the deceased with his brothers, his action is of no effect, as this property is mortgaged for the widow's marriage contract, as stated by Rav Yosef (Rambam *Sefer Nashim*, *Hilkhot Ishut* 22:11; *Shulḥan Arukh*, *Even HaEzer* 168:3).

**The lien of movable property on the marriage contract – שִׁעְבּוּד מְטַלְטְלִין לִכְתוּבָּה:** If a man died, leaving his wife in need of levirate marriage, and he left detached produce or other movable property, it should be sold and the proceeds used for the purchase of land, the produce of which belongs to the *yavam*. If the *yavam* owed his deceased brother money and he took possession of this sum, it is removed from him. Some authorities rule that this *halakha* applies only to land, but nowadays, when a marriage contract is written and collected even from movable property, everyone agrees that land should be bought with it, and the *yavam* eats the produce (Rambam *Sefer Nashim*, *Hilkhot Ishut* 22:13; *Shulḥan Arukh*, *Even HaEzer* 168:5).

**NOTES**

**His sale is not a valid sale – לָא הֲוָה זְבִינֵיהּ זְבִינֵי:** The later commentaries discuss the reasoning behind Rav Yosef's ruling that the sale is entirely void. Some claim that Rav Yosef agrees with the opinion of Rava in tractate *Temura* (4b) that performing a forbidden action is ineffective. They add that according to this opinion it is clear why Abaye disagrees with Rav Yosef, as he expressly takes issue with Rava in the Gemara there, arguing that even when one violates a prohibition, his action is still valid. In the *Kovetz Shiurim*, this explanation is rejected because the *baraita* that Rav Yosef finds later in the Gemara to support his position that the sale is invalid is not a situation where the *yavam* did anything wrong. Other commentaries write that according to Rav Yosef, in this instance the Sages reinforced their ordinance to a greater extent than Torah law by insisting that the sale should not be valid at all. According to the *Ayyelet Ahavim*, the reason for this is that since the *yavam* can perform levirate marriage with the *yevama* against her will, there is a concern that he may be interested only in acquiring the money, and therefore the Sages decreed that he have no access to the property of the deceased.

**Since I inherit, etc. – הוֹאִיל וְשֶׁאֲנִי יוֹרֵשׁ וכו':** *Tosafot* ask the following question: Can't he waive the debt himself, like anyone who receives a document of debt to collect from another? Several answers have been offered. One possibility is that he does not inherit the debt himself but only via the woman, who does not want the debt to be waived. Alternatively, he would in any case have to pay the sum of the debt he waived due to the *halakha* of indirect damage. The Ramban, followed by the Ra'ah, suggests that one cannot forgive his own debt. The Ramban also suggests that perhaps a clever brother-in-law can in fact avail himself of this option of waiving the debt, but not everyone is aware of this possibility.

הֲדוּר שְׁלָחוּהָ קַמֵּיהּ דְּרַב מְנְיוּמִי בְּרֵיהּ דְּרַב נַחוּמֵי. אֲמַר לְהוּ: הָכִי אֲמַר רַב יוֹסֵף בַּר מְנְיוּמִי אֲמַר רַב נַחְמָן: זוֹ אֵינָהּ מִשְׁנָה.

**They** once **again sent** this question **before Rav Minyumi, son of Rav Naḥumi. He said to them: So said Rav Yosef bar Minyumi** that **Rav Naḥman said: This** *baraita* **is not a mishna**[N] and therefore is not authoritative. Consequently, no proof may be adduced from it.

מַאי טַעֲמָא? אִילֵימָא מִשּׁוּם דְּהָווּ לְהוּ מִטַּלְטְלֵי, וּמִטַּלְטְלֵי לִכְתוּבָּה לָא מְשַׁעְבְּדִי – דְּלְמָא רַבִּי מֵאִיר הִיא, דַּאֲמַר: מִטַּלְטְלֵי מְשַׁעְבְּדִי לִכְתוּבָּה.

The Gemara inquires: **What is the reason** that this *baraita* is rejected? **If we say** it is **because** the money he owes **is** considered **movable property,** as it is not present, **and movable property is not mortgaged to a marriage contract,** as only land can be mortgaged for this purpose, such an argument does not negate the *baraita*. **Perhaps it is** in accordance with the opinion of **Rabbi Meir,**[N] **who said** that **movable property is mortgaged to a marriage contract.**

וְאֶלָּא מִשּׁוּם דַּאֲמַר לָהּ: אַתְּ לָאו בַּעֲלַת דְּבָרִים דִּידִי אַתְּ,

**Rather,** the reason for doubting the reliability of the *baraita* is **because he says to her: You are not my litigant.** There is no legal dispute between the man and the *yevama*. He claims that she is not a party to this suit, as he owes money to his late brother. Therefore, she cannot claim the money from him by arguing that it is mortgaged for her marriage contract.

**NOTES**

**Is not a mishna – אֵינָהּ מִשְׁנָה:** Although elsewhere Rashi explains this expression differently, his interpretation here seems the most likely one. He states that this phrase means that the text of the *baraita* is corrupt and was never taught this way at all. Therefore, it cannot be cited as proof (see *Shita Mekubbetzet*).

**Perhaps it is in accordance with Rabbi Meir – דִּלְמָא רַבִּי מֵאִיר הִיא:** The Ritva states simply that proving this teaching to be in accordance with the opinion of one *tanna* suffices to negate the assumption that it is not a mishna. Rashi and *Tosafot* add that not only is this a valid mishna, but it can even serve as proof of the *halakha*. This is because even if the *halakha* is not in accordance with Rabbi Meir with regard to movable property, and for such property the *baraita* would in fact not be authoritative, nevertheless, there is no reason to reject the principle that the act of a *yavam* who sells property that is mortgaged to the marriage contract is of no consequence. Since the incident in Pumbedita involved land, which everyone agrees is mortgaged to the marriage contract, the sale should be void, as stated by Rav Yosef.

Perek **VIII**
Daf **82** Amud **a**

דִּלְמָא רַבִּי נָתָן הִיא, דְּתַנְיָא, רַבִּי נָתָן אוֹמֵר: מִנַּיִן לְנוֹשֶׁה בַּחֲבֵירוֹ מָנֶה, וַחֲבֵירוֹ בַּחֲבֵירוֹ, מִנַּיִן שֶׁמּוֹצִיאִין מִזֶּה וְנוֹתְנִין לְזֶה – תַּלְמוּד לוֹמַר "וְנָתַן לַאֲשֶׁר אָשַׁם לוֹ".

However, this still does not prove conclusively that the *baraita* is corrupt, as **perhaps it is** the opinion of **Rabbi Natan. As it is taught** in a *baraita* that **Rabbi Natan says: From where** is it derived **that** in the case of one who **claims one hundred dinars of another,**[H] **and the other** claims money **of another, that one appropriates** the money **from this one,** the last borrower, **and gives it to this one,** the first lender, without each party claiming the money from the one with whom he did business? **The verse states: "And he shall give it to him in respect of whom he has been guilty"** (Numbers 5:7). The words "whom he has been guilty" are expounded to mean that the borrower pays the one who is owed by his creditor, since the borrower is a party to this case despite the fact that he never incurred direct liability to him. It is possible to explain the *baraita* cited by Rav Yosef based on this reasoning as well.

אֶלָּא, לָא אַשְׁכַּחַן תַּנָּא דְּמַחְמִיר תְּרֵי חוּמְרֵי בִּכְתוּבָּה, אֶלָּא – אִי כְּרַבִּי מֵאִיר, אִי כְּרַבִּי נָתָן.

**Rather,** a different justification exists for rejecting the *baraita*: **We have not found a *tanna* who is stringent** with these **two stringencies with regard to a marriage contract. Rather,** one rules **either in accordance with** the opinion of **Rabbi Meir** that movable property is mortgaged for a marriage contract, **or in accordance with** the opinion of **Rabbi Natan.** No one accepts both of these stringencies, and yet this *baraita* can be explained only by a combination of the two opinions. It must therefore be rejected as non-authoritative.

**HALAKHA**

**One who claims one hundred dinars of another, etc. – הַנּוֹשֶׁה בַּחֲבֵירוֹ מָנֶה וכו׳:** If Levi owes Shimon one hundred dinars and Shimon owes Reuven the same sum, the money is collected from Levi and transferred directly to Reuven. It makes no difference whether Levi owed Shimon at the time when Shimon became indebted to Reuven or afterward. In this regard the *halakha* of a verbal loan is the same as that of a document. This *halakha* also applies to all other obligations, whether in the form of a loan, a sale, or a hiring, in accordance with the statement of Rabbi Natan (Rambam *Sefer Mishpatim*, *Hilkhot Malve VeLoveh* 2:6; *Shulḥan Arukh*, *Ḥoshen Mishpat* 86:1).