וְסָבַר רַב תְּנָאוֹ קַיָּים? וְהָא אִיתְּמַר: הָאוֹמֵר לַחֲבֵירוֹ ״עַל מְנָת שֶׁאֵין לְךָ עָלַי אוֹנָאָה״. רַב אָמַר: יֵשׁ לוֹ עָלָיו אוֹנָאָה, וּשְׁמוּאֵל אָמַר: אֵין לוֹ עָלָיו אוֹנָאָה.

The Gemara asks: **And** does **Rav** actually **hold** that if one stipulates counter to Torah law, **his condition is valid? But it was stated: One who says to another:** I am selling this to you **on the condition that you have no** claim of **fraud against me,**[H] i.e., though there is a prohibition against fraud by Torah law, the purchaser agrees to forgo his right to register a complaint on this basis. **Rav said: He does have** the right to a claim of **fraud against him,** and therefore the seller must reimburse the purchaser, as he cannot abrogate the Torah prohibition "And you shall not wrong one another" (Leviticus 25:17). **And Shmuel said: He does not have** the right to a claim of **fraud against him.** It is evident from here that according to Rav, one cannot make a stipulation that contradicts Torah law.

אֶלָּא: הֲלָכָה כְּרַבָּן שִׁמְעוֹן בֶּן גַּמְלִיאֵל דְּאָמַר: הַמַּתָּנָה עַל מָה שֶּׁכָּתוּב בַּתּוֹרָה תְּנָאוֹ בָּטֵל, וְלָאו מִטַּעֲמֵיהּ; דְּאִילּוּ רַבָּן שִׁמְעוֹן בֶּן גַּמְלִיאֵל סָבַר: מָתָה – יוֹרְשָׁנָּה. וְרַב סָבַר: מָתָה – לֹא יוֹרְשָׁנָּה.

Rather, Rav said: **The *halakha* is in accordance with** the opinion of **Rabban Shimon ben Gamliel, who said: One who stipulates counter to that which is written in the Torah, his condition is void, but not** because of **his** line of **reasoning. As Rabban Shimon ben Gamliel holds** that if the wife **died, he inherits** from **her, and Rav holds** that if **she died he does not inherit from her.**

הַאי מִטַּעֲמֵיהּ וְלָא כְּהִילְכָתֵיהּ הוּא!

The Gemara asks: If this is what Rav meant, he should have said the opposite of what he said. **This** statement would be because of **his** line of **reasoning but not in accordance with his *halakha,*** whereas Rav said that the *halakha* is in accordance with the opinion of Rabban Shimon ben Gamliel but not because of his line of reasoning.

אֶלָּא: הֲלָכָה כְּרַבָּן שִׁמְעוֹן בֶּן גַּמְלִיאֵל דְּאָמַר: אִם מֵתָה יוֹרְשָׁנָּה. וְלָאו מִטַּעֲמֵיהּ, דְּאִילּוּ רַבָּן שִׁמְעוֹן בֶּן גַּמְלִיאֵל סָבַר: בְּדְאוֹרַיְיתָא – תְּנָאוֹ בָּטֵל, הָא בִּדְרַבָּנַן – תְּנָאוֹ קַיָּים. וְרַב סָבַר אֲפִילּוּ בִּדְרַבָּנַן תְּנָאוֹ בָּטֵל.

Rather, Rav said: **The *halakha* is in accordance with** the opinion of **Rabban Shimon ben Gamliel, who said** that **if she died he inherits** from **her, but not** because of **his** line of **reasoning. As Rabban Shimon ben Gamliel holds** that **in** a case where one stipulated counter to **Torah** law **his condition is void,** indicating that **in** a case where his stipulation was counter to **rabbinic** law **his condition is valid; and Rav holds** that **even in** a case where one stipulated counter to **rabbinic** law, **his condition is void.**[N]

הַאי כְּטַעֲמֵיהּ וּכְהִילְכָתֵיהּ הוּא, וְרַב מוֹסִיף הוּא!

The Gemara asks: **This** statement would be **in accordance with his** line of **reasoning and in accordance with his *halakha*, and Rav is** merely **adding** a detail to the *halakha* of Rabban Shimon ben Gamliel.

אֶלָּא, הֲלָכָה כְּרַבָּן שִׁמְעוֹן בֶּן גַּמְלִיאֵל דְּאָמַר: אִם מֵתָה יוֹרְשָׁנָּה. וְלָאו מִטַּעֲמֵיהּ, דְּאִילּוּ רַבָּן שִׁמְעוֹן בֶּן גַּמְלִיאֵל סָבַר: יְרוּשַׁת הַבַּעַל דְּאוֹרַיְיתָא, וְכָל הַמַּתָּנָה עַל מָה שֶּׁכָּתוּב בַּתּוֹרָה – תְּנָאוֹ בָּטֵל. וְרַב סָבַר: יְרוּשַׁת הַבַּעַל דְּרַבָּנַן, וַחֲכָמִים עָשׂוּ חִיזּוּק לְדִבְרֵיהֶם כְּשֶׁל תּוֹרָה.

Rather, Rav said: **The *halakha* is in accordance with** the opinion of **Rabban Shimon ben Gamliel,**[N] **who said** that **if she died he inherits** from **her, but not** because of **his** line of **reasoning. As Rabban Shimon ben Gamliel holds** that **the inheritance of a husband** is **by Torah** law, **and whoever stipulates counter to that which is written in the Torah, his condition is void; and Rav holds** that **the inheritance of a husband** is **by rabbinic** law, but his stipulation is nevertheless void, as **the Sages reinforced their pronouncements with** the severity **of Torah law** and ruled that their laws cannot be abrogated.

HALAKHA

On the condition that you have no claim of fraud against me – עַל מְנָת שֶׁאֵין לְךָ עָלַי אוֹנָאָה: If one negotiates a business transaction and stipulates that: The transaction will take place on the condition that you have no claim of fraud against me, then, if there was fraud, the stipulation was meaningless. This is certainly the case if he stipulates that: The sale will take place on the condition that fraud does not apply to it. The *halakha* here is in accordance with the opinion of Rav, because the dispute between Rav and Shmuel concerns whether this type of statement will result in the transgression of a prohibition, and in cases of prohibitions the *halakha* is in accordance with the opinion of Rav (*Haggahot Maimoniyyot*).

This *halakha*, however, applies only in a case where the seller said this statement without further specification, as the other party does not know what he is agreeing to forgo. However, if the seller makes clear what he means, then the condition is valid. For example, if the seller says: I am selling you this object for two hundred dinars, though it is worth no more than one hundred, and the sale is on the condition that you may not claim fraud, then the purchaser has been made fully aware of the details and has shown that he agrees to the terms (Rambam *Sefer Kinyan*, *Hilkhot Mekhira* 13:3; *Shulḥan Arukh*, *Ḥoshen Mishpat* 227:21).

NOTES

Even where one stipulated counter to rabbinic law his condition is void – אֲפִילּוּ בִּדְרַבָּנַן תְּנָאוֹ בָּטֵל: Rashi explains that according to this opinion, Rav holds that any condition that contradicts a *halakha* of the Sages is void, including one that refers to the produce of the property. *Tosafot* question Rashi's opinion, explaining that this would constitute a new opinion, different from all of the opinions cited in the mishna. *Tosafot* contend that even Rav agrees that the husband may stipulate with regard to the produce, as this condition is uncommon, and the Sages did not strengthen their decrees in unusual cases. Rabbeinu Crescas Vidal, citing the Rashba, agrees with the conclusion of *Tosafot*, but for a different reason. He argues that since the inheritance of a husband is similar to a Torah law, the Sages did not allow him to make a contrary stipulation, whereas there is nothing in Torah law comparable to his condition concerning the produce.

The *halakha* is in accordance with Rabban Shimon ben Gamliel – הֲלָכָה כְּרַבָּן שִׁמְעוֹן בֶּן גַּמְלִיאֵל: The *ge'onim* disagree as to the halakhic ruling, and the early commentaries continue the dispute. Rabbeinu Ḥananel and the Rambam rule in accordance with the opinion of Rabban Shimon ben Gamliel, either because the *halakha* always follows his opinion whenever it appears in a mishna, or because Rav ruled in his favor here. Conversely, the Rif and many other early commentaries rule in accordance with the unattributed opinion in the mishna. First, they do not accept the principle that the *halakha* always follows Rabban Shimon ben Gamliel (see Meiri). Second, and more important, the *halakha* is that a stipulation involving monetary matters is valid even if it contradicts Torah law (see Ramban and Ra'ah). Rabbeinu Tam also rules in accordance with the opinion of Rabban Gamliel, but not for the same reason. He maintains that a stipulation with regard to the inheritance of a husband is ineffective because there is nothing to forgive here, as this inheritance is by Torah law, and it enters his possession automatically because of his status as the legal heir.

וְרַב סָבַר יְרוּשַּׁת הַבַּעַל דְּרַבָּנַן? וְהָתְנַן: רַבִּי יוֹחָנָן בֶּן בְּרוֹקָא אוֹמֵר: הַיּוֹרֵשׁ אֶת אִשְׁתּוֹ – יַחֲזִיר לִבְנֵי מִשְׁפָּחָה, וְינַכֶּה לָהֶן מִן הַדָּמִים.

The Gemara asks: **And** does **Rav hold** that **the inheritance of a husband** is **by rabbinic** law? **But didn't we learn** in a mishna (*Bekhorot* 52b) that **Rabbi Yoḥanan ben Beroka says: One who inherits** from **his wife must return** the property **to** her **family members**[N] in the Jubilee Year **and deduct for them** part **of the monetary** value of the property? He can claim only part, but not all, of the property's value from the wife's relatives.

וְהָוֵינַן בָּהּ: מַאי קָסָבַר? אִי קָסָבַר יְרוּשַּׁת הַבַּעַל דְּאוֹרַיְיתָא – אַמַּאי יַחֲזִיר? וְאִי דְּרַבָּנַן – דָּמִים, מַאי עֲבִידְתַּיְיהוּ?

And we discussed this *halakha*: **What does** Rabbi Yoḥanan ben Beroka **hold? If** he **holds** that that **the inheritance of a husband** is **by Torah** law, **why must he return** the property to his wife's relatives? An inheritance is not given back in the Jubilee Year. **And if** he holds that the inheritance is **by rabbinic** law, **what is the purpose of** the **money** that he receives from his wife's relatives in exchange for the land? By Torah law, the property belongs to the woman's family and they should not have to pay him anything.

וַאֲמַר רַב: לְעוֹלָם קָסָבַר יְרוּשַּׁת הַבַּעַל דְּאוֹרַיְיתָא, וּכְגוֹן שֶׁהוֹרִישְׁתּוֹ אִשְׁתּוֹ בֵּית הַקְּבָרוֹת; מִשּׁוּם פְּגַם מִשְׁפָּחָה אֲמוּר רַבָּנַן: לִישְׁקוֹל דְּמֵי וְלִיהַדַּר.

And Rav said: Actually, he **holds** that **the inheritance of a husband** is **by Torah** law, **and** he is discussing a case **where his wife bequeathed to him** her family's **graveyard. Due to** the need to avoid **a family flaw,** i.e., harm to the family name if the wife's family would have to be buried in plots belonging to others, **the Sages said** that **he should take compensation** from them **and return** the graveyard to them.

וּמַאי יְנַכֶּה לָהֶן מִן הַדָּמִים? דְּמֵי קֶבֶר אִשְׁתּוֹ. כִּדְתַנְיָא: הַמּוֹכֵר קִבְרוֹ, וְדֶרֶךְ קִבְרוֹ, מְעָמְדוֹ, וּמְקוֹם הֶסְפֵּידוֹ – בָּאִין בְּנֵי מִשְׁפָּחָה וְקוֹבְרִין אוֹתוֹ בְּעַל כָּרְחוֹ, מִשּׁוּם פְּגַם מִשְׁפָּחָה.

The Gemara continues: **And what is** the meaning of: **And deduct for them** part **of the monetary** value of the property? This is referring to the **monetary** value **of his wife's grave.** A husband is obligated to pay for his wife's burial, and therefore he must deduct the value of her burial plot from the value of the field. **As it is taught** in a *baraita* that there are *halakhot* connected with burial to uphold family honor: In the case of **one who sells his grave,**[H] **or** the **path** to **his grave,** or **the place** where visitors would **stand** to comfort the mourners, **or the place of his eulogies, the members** of his **family may come and bury him** in his ancestral plot **against** the purchaser's **wishes due to** the need to avoid **a family flaw,** i.e., harm to the family name if a member of their family had to be buried in a graveyard of strangers. In any case, it is evident from here that Rav believes that the inheritance of a husband is by Torah law, in contrast to what the Gemara had said earlier.

רַב לְטַעֲמֵיהּ דְּרַבִּי יוֹחָנָן בֶּן בְּרוֹקָא קָאָמַר, וְלֵיהּ – לָא סְבִירָא לֵיהּ.

The Gemara answers: This is not proof that Rav himself is of the opinion that the inheritance of a husband is by Torah law, as **Rav spoke in accordance with the reasoning of Rabbi Yoḥanan ben Beroka.** In other words, he was explaining the reason for the ruling of the *tanna*, **but he himself does not hold accordingly.**

מתני׳ מִי שֶׁמֵּת וְהִנִּיחַ אִשָּׁה וּבַעַל חוֹב וְיוֹרְשִׁין, וְהָיָה לוֹ פִּקָּדוֹן אוֹ מַלְוֶה בְּיַד אֲחֵרִים. רַבִּי טַרְפוֹן אוֹמֵר: יִנָּתְנוּ לַכּוֹשֵׁל שֶׁבָּהֶן. רַבִּי עֲקִיבָא אוֹמֵר: אֵין מְרַחֲמִין בַּדִּין, אֶלָּא יִנָּתְנוּ לַיּוֹרְשִׁין – שְׁכוּלָּן צְרִיכִין שְׁבוּעָה, וְאֵין הַיּוֹרְשִׁין צְרִיכִין שְׁבוּעָה.

MISHNA With regard to **one who died and left** behind **a wife, and a creditor** to whom he owed money, **and heirs,** all of whom claim payment from his property, **and he had a deposit or a loan in the possession of others, Rabbi Tarfon**[P] **says:** The deposit or the loan **will be given to the weakest** one **of them,** i.e., the one most in need of the money. **Rabbi Akiva says: One is not merciful in judgment.** If the *halakha* is that it belongs to one party, one follows the *halakha* and leaves aside considerations of mercy. **Rather,** the *halakha* is that the money **will be given to the heirs, as all** people who wish to exact payment from orphans **require an oath**[N] before they collect their debt, **but the heirs do not require an oath.** They therefore have a more absolute right than the others to their father's property.

NOTES

Must return it to her family members – יַחֲזִיר לִבְנֵי מִשְׁפָּחָה: Some early commentaries have an alternative version of the text, which states: He must return it in the Jubilee, and although Rashi and *Tosafot* may not have had this phrase in the text, they too explain that the reference is to the Jubilee Year. Others are of the opinion that the word Jubilee does not belong in the text, as the continuation of the Gemara rules that if someone sells his grave, the purchaser must return the land to the members of the family, without regard for the Jubilee Year (see *Tosafot*).

As all require an oath – שְׁכוּלָּן צְרִיכִין שְׁבוּעָה: The reason is ostensibly that all of the others must provide additional proof. Accordingly, and according to the opinions of some early commentaries, in a situation where no one is obligated to take an oath, the heirs lose their special status. This issue is discussed in the Jerusalem Talmud, where the question is raised: What would be the *halakha* if the man wrote that he waives the obligation to take an oath? The answer offered there is that the main reason that the heirs have a special status is not that the others need to take an oath, but that this is Torah and this is not Torah. In other words, the right of inheritance is from the Torah, and it takes precedence over a right based on a document or an agreement. Likewise, the Ran states that this is Rabbi Akiva's reasoning.

HALAKHA

One who sells his grave, etc. – הַמּוֹכֵר קִבְרוֹ וכו׳: If someone sold his grave, or the path to his grave, or the place where visitors would stand to comfort the mourners, or the place where eulogies were said, his family members may come and bury him in his ancestral plot against the purchaser's wishes and refund the purchaser's money, as stated in the *baraita* quoted in the Gemara (Rambam *Sefer Kinyan*, *Hilkhot Mekhira* 24:17; *Shulḥan Arukh*, *Ḥoshen Mishpat* 217:7).

PERSONALITIES

Rabbi Tarfon – רַבִּי טַרְפוֹן: Rabbi Tarfon was one of the great *tanna'im* in the generation following the destruction of the Second Temple. Rabbi Tarfon was a priest, and although he was young in the days when the Temple still stood, it appears that he served there as a priest. Apparently, he lived in the town of Lod. It seems that he was the same age as the students of Rabbi Yoḥanan ben Zakkai and perhaps even studied under him. He is also said to have been on close terms with Rabbi Eliezer and Rabbi Yehoshua, with the latter calling him: Tarfon, my brother. He was often in the great academy of Yavne, engaged in Torah discussions with its important Sages. It is likely that he first served as a kind of teacher to Rabbi Akiva before becoming his colleague after Rabbi Akiva grew in stature. Rabbi Akiva and Rabbi Tarfon were regularly engaged in Torah discussions, and Rabbi Tarfon honored and esteemed him greatly. Several of the Sages of the next generation were disciples of Rabbi Tarfon's, with Rabbi Yehuda being his chief disciple.

הִנִּיחַ פֵּירוֹת תְּלוּשִׁין מִן הַקַּרְקַע – כָּל הַקּוֹדֵם בָּהֶן זָכָה בָּהֶן. זָכְתָה אִשָּׁה יוֹתֵר מִכְּתוּבָּתָהּ, וּבַעַל חוֹב יוֹתֵר עַל חוֹבוֹ, הַמּוֹתָר; רַבִּי טַרְפוֹן אוֹמֵר: יִנָּתְנוּ לַכּוֹשֵׁל שֶׁבָּהֶן, רַבִּי עֲקִיבָא אוֹמֵר: אֵין מְרַחֲמִין בַּדִּין, אֶלָּא יִנָּתְנוּ לַיּוֹרְשִׁין – שֶׁכּוּלָּם צְרִיכִין שְׁבוּעָה, וְאֵין הַיּוֹרְשִׁין צְרִיכִין שְׁבוּעָה.

If the deceased **left** behind **produce** that was **detached from the ground, whoever first** took possession **of them** as compensation for what was owed, whether the creditor, the wife, or the heirs, **acquired** the produce. If the **wife acquired** this produce and it was worth **more than** the payment of **her marriage contract, or the creditor** acquired this produce and it was worth **more than** the value of **his debt,** what should be done with **the surplus? Rabbi Tarfon says:** It **will be given to the weakest** one **of them,** either the creditor or the wife, depending on the circumstances. **Rabbi Akiva says: One is not merciful in judgment. Rather, it will be given to the heirs, as all** people who wish to exact payment from orphans **require an oath** before they collect their debt, **but the heirs do not require an oath.**

גמ׳ לָמָּה לִי לְמֵיתְנֵי מִלְוֶה, לָמָּה לִי לְמֵיתְנֵי פִּקָּדוֹן? צְרִיכָא, דְּאִי תָּנָא מִלְוֶה – בְּהָא קָאָמַר רַבִּי טַרְפוֹן, מִשּׁוּם דְּמִלְוֶה לְהוֹצָאָה נִיתְּנָה. אֲבָל פִּקָּדוֹן, דְּאִיתֵיהּ בְּעֵינֵיהּ – אֵימָא מוֹדֵי לֵיהּ לְרַבִּי עֲקִיבָא.

GEMARA The Gemara asks about the wording of the mishna: **Why do I** need the *tanna* **to teach** this *halakha* in the case of **a loan,** and **why do I** need him **to teach** it in the case of **a deposit?** Either example alone would have sufficed. The Gemara explains: It is **necessary** to teach the *halakha* in both cases, **for if he** had **taught** the *halakha* only in the case of **a loan,** one could have said: **In that** case **Rabbi Tarfon says** what he says **due to** the fact that **a loan is given to be spent.** Since there is no already existing property here, but only an obligation to pay back the loan, it can be given to the weakest party. **However,** in the case of **a deposit, which exists in its pure,** unadulterated form and not just as an obligation, one might **say** that **he concedes to Rabbi Akiva** that it belongs to the heirs.

וְאִי תָּנָא הָא – בְּהָא קָאָמַר רַבִּי עֲקִיבָא, אֲבָל בְּהָךְ – אֵימָא מוֹדֵי לְרַבִּי טַרְפוֹן, צְרִיכָא.

And conversely, **if** the *tanna* had **taught that** *halakha* **only** in the case of a deposit, one could have said that **in that** case **Rabbi Akiva says** his ruling that the deposit belongs to the heirs. However, **in this** case of a loan, one could **say that he concedes to Rabbi Tarfon** that the loan is given to the weakest party. It is therefore **necessary** for the *halakha* to be taught in both cases.

מַאי לַכּוֹשֵׁל? רַבִּי יוֹסֵי בְּרַבִּי חֲנִינָא אוֹמֵר: לַכּוֹשֵׁל שֶׁבִּרְאָיָה. רַבִּי יוֹחָנָן אָמַר: לִכְתוּבַּת אִשָּׁה, מִשּׁוּם חִינָּא.

The mishna taught that according to Rabbi Tarfon, the money should be given to the weakest party. The Gemara asks: **What** is the meaning of: **To the weakest? Rabbi Yosei, son of Rabbi Ḥanina, says:** It means that the money is given **to the one** whose **proof** is the **weakest,**[N] i.e., the one with the latest date on the document attesting to the debt. His document is the weakest, as one can collect from property that was sold by the deceased only if it was sold subsequent to his incurring the debt. Therefore, the others can collect from property that has been sold before the date listed on his document. **Rabbi Yoḥanan says:** It is referring **to the wife's marriage contract.** The Sages instituted *halakhot* in marriage contracts that were to the advantage of women and to make them feel more secure in their marriages, **due to** the fact that they wanted men to find **favor**[N] in the eyes of women.

כְּתַנָּאֵי: רַבִּי בִּנְיָמִין אוֹמֵר: לַכּוֹשֵׁל שֶׁבִּרְאָיָה, וְהוּא כָּשֵׁר. רַבִּי אֶלְעָזָר אוֹמֵר: לִכְתוּבַּת אִשָּׁה, מִשּׁוּם חִינָּא.

The Gemara comments: This discussion is **like** a dispute between ***tanna'im*: Rabbi Binyamin says:** The money is given **to the one** whose **proof** is the **weakest, and this is** the **proper** way to act. **Rabbi Elazar says:** It is referring **to the wife's marriage contract, due to** the fact that they wanted men to find **favor** with women.

״הִנִּיחַ פֵּירוֹת הַתְּלוּשִׁין״. וְרַבִּי עֲקִיבָא, מַאי אִירְיָא מוֹתָר? כּוּלְּהוּ נַמִּי דְּיוֹרְשִׁין הָווּ! אִין הָכִי נַמִּי, וְאַיְידֵי דְּאָמַר רַבִּי טַרְפוֹן ״מוֹתָר״ – תָּנָא אִיהוּ נַמִּי ״מוֹתָר״.

§ The mishna taught that if the husband **left** behind **produce that was detached,** the claimant who first seizes it acquires it, and there is a dispute as to what should be done with the surplus. The Gemara asks: **And** according to **Rabbi Akiva, why** discuss **specifically** this case of the **surplus? All** of the produce, not only the surplus, **also** belongs to **the heirs,** as he holds that the entire property goes to the heirs, even if the others took possession of it first. The Gemara answers: **Yes, it is indeed so.** Certainly Rabbi Akiva does not distinguish between a deposit and detached produce, **but since Rabbi Tarfon spoke** of **a surplus, he also taught** his *halakha* with regard to **a surplus.** However, according to Rabbi Akiva, the *halakha* is the same with regard to detached produce.

NOTES

To the one whose proof is the weakest – לַכּוֹשֵׁל שֶׁבִּרְאָיָה: According to Rashi, the one whose proof is the weakest is the one with the most recently dated document. However, the Rivan and the Rambam write that the weakest is the creditor. The Rif, who accepts this opinion, explains that the creditor is considered the weakest because he has to prove his case, whereas the wife does not have to bring the document of the marriage contract as proof. Rabbeinu Yehonatan maintains that the expression should be read as: The one who is seen as the weakest, and it refers to the creditor, as he is in the weakest position, having given his own money to the deceased.

In the Jerusalem Talmud, where this statement of Rabbi Yosei, son of Rabbi Ḥanina, is also cited, it is explained that he is referring to the one who possesses the weakest form of evidence. For example, if two creditors came forward, one who had loaned money and had a promissory note and one who had loaned money in the presence of witnesses, the latter has the weaker evidentiary status, as he must produce the witnesses in court. The Ra'ah and the Ritva cite an explanation from the Jerusalem Talmud, that the one with the latest document is the weakest, just as Rashi explained. Many early commentaries accept this explanation.

It is also explained in the Jerusalem Talmud that Rabbi Yoḥanan was referring to the one who is the weakest physically, and he means not only the frailest litigant, but also the poorest. The early commentaries cite the proof offered in the Jerusalem Talmud that a pauper is called *koshel*, weak, from the verse "And He brought them fourth with silver and gold, and there was not one weak one [*koshel*] among His tribes" (Psalms 105:37).

Due to the fact that they wanted favor – מִשּׁוּם חִינָּא: Rashi explains that the Sages wanted women to be assured that they could rely on their marriage contracts, and as a result they would view men favorably and be motivated to marry. *Tosafot*, citing Rabbeinu Ḥananel, writes that the aim was that women find favor in the eyes of men, as the men would be more eager to marry a widowed or divorced woman if she had received payment of a marriage contract.

וְרַבִּי עֲקִיבָא – תְּפִיסָה לָא מְהַנְיָא כְּלָל? אָמַר רָבָא אָמַר רַב נַחְמָן: וְהוּא שֶׁתָּפַס מֵחַיִּים.

The Gemara asks: **And** according to **Rabbi Akiva,** is the **seizure** of a debtor's assets by a creditor, though there are others who have a more immediate right to the assets, **not effective at all? Rava said** that **Rav Naḥman said: And this,** that Rabbi Akiva agrees that the seizure of assets is effective, is the case **provided that one seized** the property **from** the debtor while he was **alive.**[H] However, after his death the assets belong to the heirs.

וְלִרַבִּי טַרְפוֹן, דְּמַנְחֵי הֵיכָא? רַב וּשְׁמוּאֵל דְּאָמְרִי תַּרְוַיְיהוּ: וְהוּא שֶׁצְּבוּרִין וּמוּנָּחִין בִּרְשׁוּת הָרַבִּים, אֲבָל בְּסִימְטָא – לָא. וְרַבִּי יוֹחָנָן וְרֵישׁ לָקִישׁ דְּאָמְרִי תַּרְוַיְיהוּ: אֲפִילּוּ בְּסִימְטָא.

The Gemara asks: **And according to Rabbi Tarfon,** who holds that whoever first takes possession of the produce has acquired it, **where was** this produce **placed?** The Gemara presents a dispute: There is the opinion of **Rav and Shmuel, who both say: And this,** that whoever first takes possession of the produce has acquired it, is the *halakha* **provided that** the produce is **arranged in a pile and placed in the public domain.** Since the public domain is not a suitable location for an act of acquisition, anyone can take the produce and acquire it. **However,** if it is situated **in an alley** [*simta*],[L] a place adjacent to the public domain that is rarely frequented by the public, the produce does **not** belong to the first one who obtains it. Because an acquisition can be performed in an alley, any items that had belonged to the deceased are immediately acquired by the heirs. **And** there is the opinion of **Rabbi Yoḥanan and Reish Lakish, who both say: Even** if one seizes produce left **in an alley,** he acquires it.

דִּין דַּיָּנֵי כְּרַבִּי טַרְפוֹן, וַאֲהַדְּרֵיהּ רֵישׁ לָקִישׁ לְעוֹבָדָא מִינַּייהוּ. אֲמַר לֵיהּ רַבִּי יוֹחָנָן: עָשִׂיתָ כְּשֵׁל תּוֹרָה,

The Gemara relates: There were **judges** who **judged** a case of this kind **in accordance with** the opinion of **Rabbi Tarfon, and Reish Lakish reversed their action.** He dismissed the judges' decision and restored the money to the heirs, in accordance with the opinion of Rabbi Akiva. **Rabbi Yoḥanan** criticized his ruling and **said to him: You acted** in this case **like** one acts with regard to a ruling **of Torah** law, where any incorrect action taken by the court must be corrected.

לֵימָא בְּהָא קָמִיפַּלְגִי; דְּמָר סָבַר: טָעָה בְּדָבָר מִשְׁנָה – חוֹזֵר, וּמָר סָבַר: טָעָה בְּדָבָר מִשְׁנָה – אֵינוֹ חוֹזֵר?

The Gemara suggests: **Let us say that they disagree about this: That** one **Sage,** Reish Lakish, **holds** that if one **erred in a matter** that appears in the **Mishna,** the decision is **revoked.**[H] **And** one **Sage,** Rabbi Yoḥanan, **holds** that if one **erred in a matter** that appears in the **Mishna,** the decision is **not revoked.**

לָא, דְּכוּלֵי עָלְמָא טָעָה בְּדָבָר מִשְׁנָה – חוֹזֵר. וְהָכָא בְּהָא קָמִיפַּלְגִי; מָר סָבַר: הֲלָכָה כְּרַבִּי עֲקִיבָא מֵחֲבֵירוֹ, וְלֹא מֵרַבּוֹ. וּמָר סָבַר: הֲלָכָה אֲפִילּוּ מֵרַבּוֹ.

The Gemara refutes this suggestion: **No,** it can be explained that according to **everyone,** where the judge **erred in a matter** that appears in the **Mishna,** the decision is **revoked, and here they disagree about this:** One **Sage,** Rabbi Yoḥanan, **holds** that the ***halakha*** is **in accordance with** the opinion of **Rabbi Akiva** in his disputes with **his colleague, but not** in his disputes with **his teacher,** and Rabbi Tarfon was Rabbi Akiva's teacher. **And** one **Sage,** Reish Lakish, **holds** that the ***halakha*** is in accordance with the opinion of Rabbi Akiva **even** in his disputes with **his teacher.**

וְאִיבָּעֵית אֵימָא: דְּכוּלֵי עָלְמָא: הֲלָכָה כְּרַבִּי עֲקִיבָא מֵחֲבֵירוֹ וְלֹא מֵרַבּוֹ, וְהָכָא בְּהָא קָמִיפַּלְגִי; מָר סָבַר: רַבִּי טַרְפוֹן רַבּוֹ הֲוָה, וּמָר סָבַר: חֲבֵירוֹ הֲוָה.

And if you wish, say instead **that everyone** agrees that the ***halakha*** is **in accordance with** the opinion of **Rabbi Akiva** in his disputes with **his colleague but not** in his disputes with **his teacher. And here they disagree about this:** One **Sage,** Rabbi Yoḥanan, **holds** that **Rabbi Tarfon was** Rabbi Akiva's **teacher, and** one **Sage,** Reish Lakish, **holds** that Rabbi Tarfon **was his colleague.**

וְאִיבָּעֵית אֵימָא: דְּכוּלֵי עָלְמָא חֲבֵירוֹ הֲוָה, וְהָכָא בְּהָא קָמִיפַּלְגִי; מָר סָבַר: "הֲלָכָה" אִיתְמַר, וּמָר סָבַר: "מַטִּין" אִיתְמַר.

And if you wish, say instead **that everyone** agrees that Rabbi Tarfon **was** Rabbi Akiva's **colleague, and here they disagree about this:** One **Sage,** Reish Lakish, **holds** that the principle that the law is in accordance with the opinion of Rabbi Akiva **was stated** as the ***halakha.*** **And** one **Sage,** Rabbi Yoḥanan, **holds** that what **was stated** was that **one is inclined** to follow the opinion of Rabbi Akiva. Therefore, although Rabbi Akiva's opinion is followed *ab initio*, the *halakha* was never established conclusively in accordance with it. As such, if judges went against the principle that the *halakha* follows Rabbi Akiva in opposition to his colleague, the Sages do not revoke their decision.

HALAKHA

Provided that one seized the property from the debtor while he was alive – וְהוּא שֶׁתָּפַס מֵחַיִּים: It is a mitzva for orphans to pay off their father's debt, even from the movable property that their father left behind. If an heir does not wish to do so, the court does not force him. If the creditor seized hold of property during the father's lifetime, he may collect his debt from it.

In the present, after the enactment of the *ge'onim* that one is able to collect payment from heirs even from movable property, if a creditor seized movable property, even after the death of the father, his action is effective. Even if he does not have witnesses that he is owed money, he may take an oath and claim the money from the property in his possession (Rambam *Sefer Mishpatim*, *Hilkhot Malve VeLoveh* 11:8; *Shulḥan Arukh*, *Ḥoshen Mishpat* 107:5).

If one erred in a matter in the Mishna, the decision is revoked – טָעָה בְּדָבָר מִשְׁנָה חוֹזֵר: If a judge in a monetary case made a mistake with regard to something obvious and well known, such as an explicit *halakha* in the Mishna or Gemara, the verdict is revoked, and he must restore matters to the state of affairs that previously existed (Rambam *Sefer Shofetim*, *Hilkhot Sanhedrin* 6:1; *Shulḥan Arukh*, *Ḥoshen Mishpat* 25:1).

LANGUAGE

Alley [*simta*] – סִימְטָא: From the Latin semita, meaning a path or a small alleyway.

קְרִיבֵיהּ דְּרַבִּי יוֹחָנָן תִּפּוּס פָּרָה דְּיָתְמֵי מִסִּימְטָא. אֲתוּ לְקַמֵּיהּ דְּרַבִּי יוֹחָנָן. אֲמַר לְהוּ: שַׁפִּיר תְּפַסְתּוּהָ. אֲתוּ לְקַמֵּיהּ דְּרַבִּי שִׁמְעוֹן בֶּן לָקִישׁ. אֲמַר לְהוּ: זִילוּ אַהֲדּוּר. אֲתוּ לְקַמֵּיהּ דְּרַבִּי יוֹחָנָן. אֲמַר לְהוּ: מָה אֶעֱשֶׂה? שֶׁכְּנֶגְדִּי חָלוֹק עָלַי.

The Gemara relates: **The relatives of Rabbi Yoḥanan seized a cow of orphans from an alley** because the orphans' father owed them money. **They came before Rabbi Yoḥanan**[N] for judgment, and **he said to them:** It **is well** that **you seized** the cow and it is yours, in accordance with the ruling of Rabbi Tarfon. **They** subsequently **came before Rabbi Shimon ben Lakish,** who **said to them: Go** and **return** the cow to the orphans. **They** again **came before Rabbi Yoḥanan,** complaining that Reish Lakish had told them they must give back the cow, in opposition to Rabbi Yoḥanan's ruling. **He said to them: What can I do, as one whose** stature **corresponds to my** stature **disagrees with me,** and I cannot dismiss his opinion.

הַהוּא בַּקָּרָא דְּיָתְמֵי דְּתָפְסֵי תּוֹרָא מִינַּיְיהוּ. בַּעַל חוֹב אֲמַר: מֵחַיִּים תָּפֵיסְנָא לֵיהּ, וּבַקָּרָא אֲמַר: לְאַחַר מִיתָה תָּפֵיסְנָא. אֲתוּ לְקַמֵּיהּ דְּרַב נַחְמָן. אֲמַר לֵיהּ: אִית לָךְ סָהֲדֵי דְּתָפְסֵיהּ? אֲמַר לֵיהּ: לָאו. אֲמַר לֵיהּ: מְגוֹ דְּיָכוֹל לְמֵימַר "לָקוּחַ הוּא בְּיָדִי". יָכוֹל נַמִּי לְמֵימַר "מֵחַיִּים תָּפֵיסְנָא לֵיהּ".

The Gemara relates another incident: There was **a certain herdsman** caring for the cattle **of orphans from whom** a creditor **seized an ox** as payment for a debt of the orphans' father. The **creditor said: I seized it from** the herdsman **while** the debtor was still **alive.** In such a case, the action is effective even according to Rabbi Akiva, as stated earlier. **And the herdsman said: He seized it after** the debtor's **death. They came before Rav Naḥman** for a ruling. Rav Naḥman **said to** the herdsman: Do **you have witnesses that he seized** the ox **from you? He said to him: No.** Rav Naḥman **said to him:** In that case, **since** the claimant **can say:**[H] **It** is **in my possession** because **it was purchased** by me, as there is no proof that he gained possession of the ox unlawfully, **he can also say: I seized it from** the herdsman **while** the deceased was still **alive.**

וְהָאָמַר רֵישׁ לָקִישׁ: הַגּוֹדְרוֹת אֵין לָהֶן חֲזָקָה! שָׁאנֵי תּוֹרָא, דִּמְסִירָה לְרוֹעֶה.

The Gemara asks: **But didn't Reish Lakish say** that **moving livestock,** e.g., sheep and oxen, provide **no presumption**[H] of ownership to whoever is in possession of them? Since they wander from place to place, a person cannot claim that his mere possession of livestock demonstrates ownership, because it may have wandered into his property on its own. The Gemara answers: **An ox is different** from other livestock, **as** it **is handed over to a shepherd,** who does not let it wander off. Consequently, possession of an ox does establish a presumption of ownership.

דְּבֵי נְשִׂיאָה תְּפוּס אַמְתָא דְּיָתְמֵי מִסִּימְטָא. יְתֵיב רַבִּי אַבָּהוּ וְרַבִּי חֲנִינָא בַּר פַּפִּי וְרַבִּי יִצְחָק נַפָּחָא, וְיָתֵיב רַבִּי אַבָּא גַּבַּיְיהוּ, אֲמַר לְהוּ: שַׁפִּיר תְּפַסְתּוּהָ. אֲמַר לְהוּ רַבִּי אַבָּא: מִשּׁוּם דְּבֵי נְשִׂיאָה נִינְהוּ מַחְנְפִיתוּ לְהוּ? וְהָא דַּיְינֵי דְּבֵי טַרְפוֹן וַאֲהַדְּרֵיהּ רֵישׁ לָקִישׁ עוּבְדָא מִינַּיְיהוּ!

The Gemara relates another incident: The members of **the house of the prince** of Eretz Yisrael **seized** hold of **a maidservant of orphans in an alley,** as payment for a debt owed to them by the orphans' father. **Rabbi Abbahu and Rabbi Ḥanina bar Pappi and Rabbi Yitzḥak Nappaḥa were sitting** as judges, **and Rabbi Abba was sitting with them.** Rabbi Abbahu **said to them:** It **is well** that **you seized** the maidservant. **Rabbi Abba said to** the judges: Just **because they are** members of **the house of the prince, will you curry favor with them** by rendering an incorrect verdict? Isn't it the *halakha* that there were **judges** who **judged** a case of this kind **in accordance with** the opinion of **Rabbi Tarfon, and Reish Lakish reversed their action,** indicating that the *halakha* is not in accordance with the opinion of Rabbi Tarfon?

NOTES

They came before Rabbi Yoḥanan – אֲתוּ לְקַמֵּיהּ דְּרַבִּי יוֹחָנָן: *Tosafot* are puzzled by Rabbi Yoḥanan's response. Since he agrees that we are inclined to accept Rabbi Akiva's ruling and rule in accordance with his opinion *ab initio*, why did he say that it is well that they seized the cow? *Tosafot* suggest that because Rabbi Yoḥanan's relatives had already seized the cow, it is already after the fact.

The Ritva explains that perhaps they had already eaten the cow, which would certainly make this a ruling after the fact. Reish Lakish's instructions to return the cow would have been referring to the value of the cow and not the animal itself. Ya'avetz explains that since they were Rabbi Yoḥanan's relatives, they certainly did not formally appear before him in court. What he said to them was not a formal verdict but simply advice. For this reason, the actual court case appeared before Reish Lakish (see *Beit Aharon*).

HALAKHA

Since the claimant can say, etc. – מִיגּוֹ דְּיָכוֹל וכו': In a case where someone seized assets from an heir in order to recover a debt from the heir's father, if the creditor claims to have seized the money during the father's lifetime, while the heir claims that he did so after his father's death, the heir must bring proof for his claim. This ruling is in accordance with the opinion of Rav Naḥman (Rambam *Sefer Mishpatim*, *Hilkhot Malve VeLoveh* 11:8).

Moving livestock provide no presumption – הַגּוֹדְרוֹת אֵין לָהֶן חֲזָקָה: In general, one in possession of a movable object is deemed credible when he claims to be its owner. This principle, however, does not apply to domesticated and wild animals, because they are mobile. It is conceivable that they entered someone's domain on their own or were snatched while they were walking.

If a claimant has witnesses and brings a case against someone, claiming that the defendant has taken his animals into his possession, and the defendant denies this claim, then the claimant takes an oath of inducement, and the animals are given to him. This is an oath instituted by the Sages for cases where a defendant completely denies a claim. If the claimant does not have witnesses, the defendant, who is in possession of the animal, keeps it after taking an oath of inducement.

However, the Rema cites an opinion that if one has been in possession of an animal for three years, he is considered its owner (*Tur*, based on Rashbam and *Tosafot*). With regard to the *halakhot* of livestock, if the custom of a place is to deliver them to shepherds and not allow them to wander off on their own, then they are comparable to other movable objects for the purposes of this *halakha*, in accordance with the Gemara's answer (Rambam *Sefer Mishpatim*, *Hilkhot To'en VeNitan* 10:1; *Shulḥan Arukh*, *Ḥoshen Mishpat* 135:1).

יֵימָר בַּר חָשׁוּ חַוָה מַסִּיק בֵּיהּ זוּזֵי בְּהַהוּא גַּבְרָא. שְׁכִיב, וְשָׁבִיק אַרְבָּא. אָמַר לֵיהּ לְשׁלּוּחֵיהּ: זִיל תָּפְסָהּ נִיהֲלֵיהּ. אֲזַל תָּפְסָהּ. פָּגְעוּ בֵּיהּ רַב פַּפָּא וְרַב הוּנָא בְּרֵיהּ דְּרַב יְהוֹשֻׁעַ, אָמְרוּ לֵיהּ: אִתְּ תּוֹפֵס לְבַעַל חוֹב בְּמָקוֹם שֶׁחָב לַאֲחֵרִים, וְאָמַר רַבִּי יוֹחָנָן: הַתּוֹפֵס לְבַעַל חוֹב בְּמָקוֹם שֶׁחָב לַאֲחֵרִים

The Gemara relates another incident: A man called **Yeimar bar Ḥashu was owed money by a certain man** who **died and left** behind **a boat.** Yeimar bar Ḥashu **said to his agent: Go** and **seize** the boat **for me.** The agent **went** and **seized it. Rav Pappa and Rav Huna, son of Rav Yehoshua, encountered him. They said to him: You are seizing** assets **for a creditor in a situation** where your action will cause **a disadvantage for others,** as the debtor owed money to other people as well. **And Rabbi Yoḥanan said** that **one who seizes** assets **for a creditor in a situation** that will result in **a disadvantage for others**[H]

HALAKHA

One who seizes assets for a creditor in a situation that will result in a disadvantage for others – הַתּוֹפֵס לְבַעַל חוֹב בְּמָקוֹם שֶׁחָב לַאֲחֵרִים: If someone borrowed money from several people and is unable to pay them all back, and someone else seizes his movable property with the intention of acquiring it for one of the creditors, his action is not effective. This is because one who seizes assets for a creditor in a situation that will result in a disadvantage for others has not acquired the property, as stated by Rabbi Yoḥanan. In this regard, even if the one who seized the property was acting as the creditor's agent, and even if the creditor authorized him to do so, he has not acquired the object. A steward, however, is considered an extension of the creditor, and he can therefore acquire the property on his behalf (Rambam *Sefer Mishpatim*, *Hilkhot Malve VeLoveh* 20:2; *Shulḥan Arukh*, *Ḥoshen Mishpat* 105:1).

Perek **IX**
Daf **85** Amud **a**

לֹא קָנָה. תְּפָסוּהָ אִינְהוּ, רַב פַּפָּא מִימַלַּח מַלּוּחֵי, רַב הוּנָא בְּרֵיהּ דְּרַב יְהוֹשֻׁעַ מַמְתַּח לָהּ בְּאַשְׁלָא. מָר אָמַר: אֲנָא קָנֵינָא לָהּ לְכוּלָּהּ, וּמָר אָמַר: אֲנָא קָנֵינָא לָהּ לְכוּלָּהּ.

has not acquired[N] it. He cannot act to the detriment of others without their consent, and his acquisition harms the other creditors. Those Sages were also owed money by that same man, so **they** both **seized** the boat for himself. **Rav Pappa steered** it **with an oar,** while **Rav Huna, son of Rav Yehoshua, pulled it with a rope.** This **Sage said: I acquired all of it; and** that **Sage said: I acquired all of it.**

פָּגַע בְּהוּ רַב פִּנְחָס בַּר אַמִּי, אָמַר לְהוּ: רַב וּשְׁמוּאֵל דְּאָמְרִי תַּרְוַיְיהוּ: וְהוּא שֶׁצִּבּוּרִין וּמוּנָּחִין בִּרְשׁוּת הָרַבִּים. אָמַר לְהוּ: אֲנַן נַמִּי מֵחֲרִיפוּתָא דְּנַהֲרָא תָּפֵיסְנָא.

Rav Pineḥas bar Ami encountered them and **said to them:** What of the opinion of **Rav and Shmuel, who both say: And this,** that whoever first takes possession has acquired them, is the *halakha* **provided that** the items are **arranged in a pile and placed in the public domain,** which is not the case with this boat? **They said to him: We too seized it from the current of the river,** i.e., the middle of the river, which has the status of a public domain.

אָתוּ לְקַמֵּיהּ דְּרָבָא. אֲמַר לְהוּ: קָאקֵי חִיוְרֵי מְשַׁלְּחֵי גְּלִימֵי דְּאֵינָשֵׁי! הָכִי אֲמַר רַב נַחְמָן: וְהוּא שֶׁתְּפָסָהּ מֵחַיִּים.

They came before Rava to ask him who had acquired the boat. **He said to them:** You are **white geese** [*kakei ḥivvarei*],[L] in reference to their white beards, **who remove people's cloaks,** i.e., your actions were unlawful from the start. **This is what Rav Naḥman said: And this,** that whoever takes possession has acquired them, is the *halakha* **provided that one seized** them **from** the debtor **while** he was **alive.** In this case, however, the boat was seized after the debtor's death, when the heirs had already taken possession of it.

אֲבִימִי בְּרֵיהּ דְּרַבִּי אַבָּהוּ הָוֹו מַפְקֵי בֵּיהּ זוּזֵי בֵּי חוֹזַאי. שָׁדְרִינְהוּ בְּיַד חָמָא בְּרֵיהּ דְּרַבָּה בַּר אַבָּהוּ. אֲזַל פָּרְעִינְהוּ, אֲמַר לְהוּ: הָבוּ לִי שְׁטָרָא! אָמְרוּ לֵיהּ: סִיטָרָאֵי נִינְהוּ.

The Gemara relates another incident: **Avimi, son of Rabbi Abbahu, owed money** to people from **Bei Ḥozai. He sent** the money **in the possession of Ḥama, son of Rabba bar Abbahu,** who **went** and **paid** the money that Avimi, son of Rabbi Abbahu, owed, and he then **said to** the people from Bei Ḥozai: **Give me** back **the document** that shows that the person who sent me owes you money. **They said to him:** The money that you paid us **was for side** debts,[H] i.e., money from a different debt, which was not written in a document. We accepted the money from you as payment of that debt. We will therefore not return the document to you, as he has yet to pay off the debt listed in the document.

HALAKHA

They said to him, the money was for side debts, etc. – אָמְרוּ לֵיהּ: סִיטָרָאֵי נִינְהוּ וכו׳: Someone presents a ratified document stating that another owes him money, and the defendant says that he paid the debt. In such a case, if the claimant admits that he received the money but says it was for a different loan, given by oral agreement, and the document still records an unpaid debt, then, if the money was not returned in the presence of witnesses, the claimant is deemed credible. The document is still valid and can be used to collect money without an oath if the document grants credibility, or with an oath if it does not. This *halakha* is in accordance with Rabbi Abbahu's ruling.

However, the debtor can later sue the creditor for taking money from him unlawfully, in which case the creditor must take an oath of inducement (Rambam *Sefer Mishpatim*, *Hilkhot Malve VeLoveh* 14:9; *Shulḥan Arukh*, *Ḥoshen Mishpat* 58:1).

NOTES

Has not acquired – לֹא קָנָה: Rabbeinu Tam and *Tosafot* state that in general one is able to acquire something on behalf of someone else based on a *miggo* claim. Since one can acquire something for himself, he can also do so for others. Here, however, such a claim does not apply. *Tosafot* note that this appears to contradict Rabbi Yoḥanan's own ruling that if one lifts a found item on behalf of another, the other acquires the item. The Ramban and the Ran explain in greater detail the answer alluded to by *Tosafot*: A found item is ownerless, and one who lifts it can therefore acquire it either for himself or for others. Here, however, since the item is also liened for other debts, the agent cannot acquire it for himself, as he has no rights to it. Consequently, he also cannot acquire it on behalf of someone else.

LANGUAGE

White geese [*kakei ḥivvarei*] – קָאקֵי חִיוְרֵי: Rashi translates *kakei* as geese. However, as explained in the *Arukh*, this word has a different meaning, at least in the *Targum*. *Targum Yonatan*, the *Targum* of Eretz Yisrael, explains that the non-kosher bird called the *ka'at* (Deuteronomy 14:17) is the *kaka ḥiurta*. There are also several opinions concerning the precise identification of the *ka'at*. Some assert that it is the pelican, while others claim that it is one of the nocturnal birds of prey, e.g., the owl.