תִּיזִיל וְתֵיחֲלֵהּ לִכְתוּבְתָּהּ דְּאִמָּהּ לְגַבֵּי אֲבוּהָ, וְתֵירְתָהּ מִינֵּיהּ. שָׁמְעָה, אָזְלָה, אֲחֵילְתָהּ.

that **she should go and forgive her mother's marriage contract for her father, and she** will subsequently **inherit** the sum of the marriage contract **from him?** The marriage contract is a document of the debt owed by her father to her mother. The daughter, who has inherited the document from her mother, can forgo her father's obligation, so rendering nugatory the right of the purchasers. The father then retains the amount owed to the purchasers of the marriage contract, and his daughter will inherit that amount when he dies. The daughter **heard** this, and **went and forgave** her father's obligation in the marriage contract, as recommended by Rav Naḥman.

אָמַר רַב נַחְמָן: עָשִׂינוּ עַצְמֵינוּ כְּעוֹרְכֵי הַדַּיָּינִין. מֵעִיקָּרָא מַאי סָבַר וּלְבַסּוֹף מַאי סָבַר? מֵעִיקָּרָא סָבַר ״וּמִבְּשָׂרְךָ לֹא תִתְעַלָּם״, וּלְבַסּוֹף סָבַר: אָדָם חָשׁוּב שָׁאנֵי.

Rav Naḥman later **said** in regret: **We have made ourselves like advisors of judges.** We have acted like lawyers who give practical advice to litigants rather than like independent judges. The Gemara asks: **At the outset, what did he hold** when he intended the daughter to hear his advice, **and ultimately, what did he hold** that made him regret his action? The Gemara explains: **At the outset, he held** that the verse teaches: **"And you should not hide yourself from your own flesh"** (Isaiah 58:7), and therefore it is correct to give help and advice to relatives. **And ultimately he held that** in the case of **an important person** who must be very careful to avoid any impression of having favored his family in judgment, the situation **is different.**

גּוּפָא, אֲמַר שְׁמוּאֵל: הַמּוֹכֵר שְׁטַר חוֹב לַחֲבֵירוֹ, וְחָזַר וּמְחָלוֹ – מָחוּל. וַאֲפִילּוּ יוֹרֵשׁ מוֹחֵל. אֲמַר רַב הוּנָא בְּרֵיהּ דְּרַב יְהוֹשֻׁעַ: וְאִי פִּקֵּחַ הוּא – מְקַרְקֵשׁ לֵיהּ זוּזֵי, וְכָתַב לֵיהּ שְׁטָרָא בִּשְׁמֵיהּ.

Since the Gemara had previously mentioned a *halakha* stated by Shmuel, it turns its attention to **the** matter **itself. Shmuel said:** With regard to **one who sells a promissory note to another, and** the seller **went back and forgave** the debtor his debt, **it is forgiven,** since the debtor essentially had a non-transferable obligation to the creditor alone, **and even** the creditor's **heir can forgive** the debt. **Rav Huna, son of Rav Yehoshua, said: And if** the purchaser of the document **is perspicacious,** and is wary of such a ploy, he should **jangle** [***mekarkesh***][L] **dinars**[H] in the debtor's ears, i.e., he should pay the debtor or promise him money, **and** the debtor will **write for him** a new promissory **note in** the purchaser's **name,** thereby preventing the latter from losing out.

אֲמַר אַמֵּימָר: מַאן דְּדָאֵין דִּינָא דְּגַרְמֵי – מַגְבֵּי בֵּיהּ דְּמֵי שְׁטָרָא מַעֲלְיָא, מַאן דְּלָא דָּאֵין דִּינָא דְּגַרְמֵי – מַגְבֵּי בֵּיהּ דְּמֵי נְיָירָא בְּעָלְמָא.

Ameimar said: One who judges cases of liability for indirect damage and maintains that someone whose actions cause damage is obligated to pay, even if he has not directly harmed another, **collects in this** case **the value** of **the proper document.**[NH] Since by forgiving the loan the creditor voided the document and caused the purchaser financial loss, he must compensate the purchaser for the amount recorded in the document. **One who does not judge cases of liability for indirect damage collects in this** case **only the value of the paper**[N] on which the document was written.

הֲוָה עוּבְדָא, וְכַפְייֵהּ רַפְרָם לְרַב אַשִׁי, וְאַגְבֵּי בֵּיהּ כִּי כְּשׁוּרָא לְצַלְמֵי.

The Gemara relates that **there was an incident** like this one, **and Rafram pressured Rav Ashi** by means of verbal persuasion to render an unequivocal ruling in this matter, **and** Rav Ashi **collected in this** case **as** if he damaged **a beam** used **for** crafting **a sculpture,** i.e., the full value of the debt listed in the promissory note.

HALAKHA

Jangle dinars – מְקַרְקֵשׁ לֵיהּ זוּזֵי: One who has purchased a promissory note and seeks to prevent the creditor or his heir from forgiving the loan should persuade the debtor to draft for him a new document in the purchaser's own name. Alternatively, the debtor can accept it upon himself by means of an act of acquisition or by stating in the presence of witnesses that it is a separate debt, which means that the creditor can no longer forgive the loan (*Shulḥan Arukh*, *Ḥoshen Mishpat* 66:23).

Collects in this case the value of the proper document – מַגְבֵּי בֵּיהּ דְּמֵי שְׁטָרָא מַעֲלְיָא: If one sold a promissory note and then forgave the loan, although the debtor is exempt from payment, the purchaser can sue the seller, for he has effectively burned the purchaser's document. Consequently, the one who forgave the debt must pay the entire sum listed in the document from his best-quality land. The same ruling applies to an heir who forgives the debt. The *halakha* follows Ameimar, as there is a principle not to judge cases of indirect damages, in accordance with Rafram's statement below (Rambam *Sefer Nezikin*, *Hilkhot Ḥovel UMazik* 7:10; *Shulḥan Arukh*, *Ḥoshen Mishpat* 386:1).

LANGUAGE

Jangle [*mekarkesh*] – מְקַרְקֵשׁ: This word describes the sound made when things are shaken. It is probably the onomatopoeia for a jingling sound.

NOTES

Collects in this case the value of the proper document – מַגְבֵּי בֵּיהּ דְּמֵי שְׁטָרָא מַעֲלְיָא: Some *ge'onim* say that this means he has to reimburse the purchaser only for the amount he paid for the document. However, Rav Hai Gaon and Rabbeinu Ḥananel maintain that he must pay the entire sum stipulated in the promissory note. Many early commentaries say that he is not obligated to pay the full value listed in the document. Instead, he pays the amount that could actually be collected with the document, as there are many situations that prevent the full value from being collected, e.g., prior liens and situations where one has to collect from low-quality land (Rabbeinu Shimshon; Ra'ah; Ritva).

Only the value of the paper – דְּמֵי נְיָירָא בְּעָלְמָא: Most commentaries maintain that this expression is taken from the similar case of one who burns another's promissory note. According to those who do not judge cases of liability for indirect damage, one who burns another's promissory note need pay only the value of the paper he burned. In the context of the Gemara here, the expression: Only the value of the paper, is used as a way of saying that he does not have to pay anything, and the purchaser retains possession of the paper (Rabbeinu Shimshon). Others say that since the creditor is obliged to return a paid promissory note to the debtor, the purchaser loses possession of the paper. Another possibility is that the creditor must reimburse the purchaser for his expenses (see Rivan).

אָמַר אֲמֵימָר מִשְּׁמֵיהּ דְּרַב חָמָא: הַאי מַאן דְּאִיכָּא עֲלֵיהּ כְּתוּבַּת אִשָּׁה וּבַעַל חוֹב. וְאִית לֵיהּ אַרְעָא, וְאִית לֵיהּ זוּזֵי – לְבַעַל חוֹב מְסַלְּקִינַן לֵיהּ בְּזוּזֵי, לְאִשָּׁה מְסַלְּקִינַן לָהּ בְּאַרְעָא, הַאי כִּי דִּינֵיהּ, וְהַאי כִּי דִּינֵיהּ.

Ameimar said in the name of Rav Ḥama: With regard to **one who has** incumbent **upon himself** the obligation of his **wife's marriage contract and** also owes money to **a creditor,**[H] **and** he **possesses land and possesses money,** the obligation **to the creditor is settled with** the payment of **money,** whereas the debt **to the woman** of her marriage contract **is settled with** the payment of **land, this one in accordance with his law, and that one in accordance with her law.** Since the creditor gave him money, it is fitting that he should receive ready cash in return. The woman, in contrast, did not give him anything but relied upon the lien on his land, so she is therefore given land.

וְאִי לָא אִיכָּא אֶלָּא חַד אַרְעָא, וְלָא חַזְיָא אֶלָּא לְחַד – לְבַעַל חוֹב יָהֲבִינַן לֵיהּ, לְאִשָּׁה לָא יָהֲבִינַן לָהּ. מַאי טַעְמָא? יוֹתֵר מִמַּה שֶּׁהָאִישׁ רוֹצֶה לִישָּׂא, אִשָּׁה רוֹצָה לְהִנָּשֵׂא.

And if there is only one plot of **land, and** it is **adequate for** the payment of **only one** debt, **we give it to the creditor,**[N] and **we do not give it to the woman. What is the reason** for this? Even **more than a man wants to marry, a woman wants to be married.** Women do not get married because they wish to receive their marriage contract. It is better to give preference to the creditor so that he will not lose out, so as not to discourage people from lending money.

אָמַר לֵיהּ רַב פַּפָּא לְרַב חָמָא: וַדַּאי דְּאָמְרִיתוּ מִשְּׁמֵיהּ דְּרָבָא: הַאי מַאן דְּמַסְקֵי בֵּיהּ זוּזֵי, וְאִית לֵיהּ אַרְעָא וַאֲתָא בַּעַל חוֹב וְקָא תָּבַע מִינֵּיהּ: וַאֲמַר לֵיהּ: זִיל שְׁקוֹל מֵאַרְעָא, אָמְרִינַן לֵיהּ: זִיל זַבֵּין אַתְּ, וְאַיְיתֵי הַב לֵיהּ. אָמַר לֵיהּ: לָא.

Rav Pappa said to Rav Ḥama: Is it **correct that you say in the name of Rava:** With regard to **one who owes money**[H] **and has land, and the creditor comes and demands from him** his money, **and** the debtor **says to him: Go** and **take** the amount you are owed **from the land, we say to him: Go** and **sell the land yourself and give him** money? Rav Ḥama **said to him:** I did **not** say this in the name of Rava.

אֵימָא לִי גּוּפָא דְּעוּבְדָּא הֵיכִי הֲוָה? אָמַר לֵיהּ: תּוֹלֶה מְעוֹתָיו בְּגוֹי הֲוָה; הוּא עָשָׂה שֶׁלֹּא כַּהוֹגֶן לְפִיכָךְ עָשׂוּ בּוֹ שֶׁלֹּא כַּהוֹגֶן.

Rav Pappa replied: **Tell me the incident itself, what happened** and what exactly occurred that caused this opinion to be attributed to Rava. Rav Ḥama **said to him:** The debtor **was one who attached his money to a gentile.**[N] He possessed money, but he claimed that this money belonged to a gentile and therefore could not be demanded from him. **This** man **acted improperly,** and **consequently,** the Sages **acted improperly with him** by forcing him to sell the land.

אָמַר לֵיהּ רַב כָּהֲנָא לְרַב פַּפָּא: לְדִידָךְ דְּאָמְרַתְּ: פְּרִיעַת בַּעַל חוֹב מִצְוָה, אֲמַר: לָא נִיחָא לִי דְּאֵיעֲבֵיד מִצְוָה, מַאי? אָמַר לֵיהּ: תָּנֵינָא: בַּמֶּה דְּבָרִים אֲמוּרִים – בְּמִצְוֹת לֹא תַּעֲשֶׂה. אֲבָל בְּמִצְוֹת עֲשֵׂה, כְּגוֹן שֶׁאוֹמְרִין לוֹ "עֲשֵׂה סוּכָּה" וְאֵינוֹ עוֹשֶׂה: "לוּלָב" וְאֵינוֹ עוֹשֶׂה

Rav Kahana said to Rav Pappa: According to your opinion, **that you say the repayment of a creditor**[H] **is a mitzva,**[N] if the debtor **said: It is not amenable to me to perform a mitzva, what** would be the *halakha*? If there is no obligation to repay a loan other than to perform a mitzva, then what happens if someone is not interested in performing the mitzva? **He said to him: We** already **learned** this *halakha* in a *baraita*: **In what** case **is this statement said,** that one is liable to receive forty lashes for committing a transgression? It is said **with regard to negative mitzvot. However, with regard to positive mitzvot, for example, if** the court **says to** someone: **Perform** the mitzva of the ***sukka*, and he does not do** so, or: Perform the mitzva of the **palm branch, and he does not do** so,

HALAKHA

His wife's marriage contract and a creditor – כְּתוּבַּת אִשָּׁה וּבַעַל חוֹב: Someone divorced his wife, and she comes to collect her marriage contract, and a creditor comes demanding repayment of his loan. If he has enough money and land to both repay the debt and pay the marriage contract, the creditor takes the money while the woman receives her marriage contract in the form of land. If there is only land that does not suffice for both of them, and neither of them takes precedence, the creditor takes what is due to him, while the woman receives whatever remains. The same *halakha* applies if the husband died, leaving behind a wife, a creditor, and land to which neither takes precedence (Rambam *Sefer Nashim*, *Hilkhot Ishut* 17:4–5; *Shulḥan Arukh*, *Even HaEzer* 102:3–4).

One who owes money – מַאן דְּמַסְקֵי בֵּיהּ זוּזֵי: A debtor is obligated to repay his debts with money, and he cannot force the creditor to accept land or movable property. If he does not have money, the court does not compel him to sell his property, but he must give land or movable objects, in accordance with the creditor's preference. If he is not known to have money, or if he has money but says that it to belongs to someone else, rather than making him take an oath, the court declares an excommunication of anyone who knows he possesses money. If he claimed to have no money and was discovered to be lying, he is no longer believed with regard to this loan but must sell his property himself in order to provide the creditor with money. Similarly, if he says that the money in his possession belongs to a gentile, an excommunication is pronounced in the above manner. Some say that if he is a wealthy man the courts force him to give money. The Rema, citing the *Tur*, writes that the same *halakha* applies if the court believes that he has money that he does not wish to use as payment, in accordance with the conclusion of Rav Ḥama (Rambam *Sefer Mishpatim*, *Hilkhot Malve VeLoveh* 11:7; *Shulḥan Arukh*, *Ḥoshen Mishpat* 101:1–2, 7).

The repayment of a creditor – פְּרִיעַת בַּעַל חוֹב: Just as it is a mitzva for a debtor to repay his debts, it is a mitzva for the heirs to pay off their father's debts, and they can be forced to do so. This is true if the deceased left behind land. If, however, he left behind only movable property, the heirs are not forced to repay the debt, but it remains a mitzva for them to do so.

The *ge'onim* enacted that a creditor can claim from heirs even the movable property that they inherited from their father. Consequently, in the present, all debts may be collected from any part of the deceased's estate, both from land and from movable objects. However, if the heirs received no inheritance from their father, they are not obligated to repay his debts, and there is not even a mitzva for them to do so (Rambam *Sefer Mishpatim*, *Hilkhot Malve VeLoveh* 11:8; *Shulḥan Arukh*, *Ḥoshen Mishpat* 107:1).

NOTES

We give it to the creditor – לְבַעַל חוֹב יָהֲבִינַן: Rashi and Rabbeinu Ḥananel explain that both documents had the same date. The ruling is therefore left to the discretion of the court, which is instructed to pay the creditor, for the reasons stated here. The Rif, in contrast, maintains that the discretion of the court is not in effect here, as the same *halakha* applies whenever one document does not take precedence over another. For example, if one borrowed money on two occasions and then acquired property, the lien of both documents applies from that point in time. Most authorities concur with the Rif.

One who attached his money to a gentile – תּוֹלֶה מְעוֹתָיו בְּגוֹי: Rabbeinu Tam explains in his *Sefer HaYashar* that the debtor specifically stated that the money in his possession belongs to a gentile and therefore offered to give land instead. According to Rav Hai Gaon, the man said that his property belongs to a gentile or that a gentile has a claim to it. The creditor responded that he is afraid of trying to take the land from the debtor because it might involve dealing with a violent gentile. This is why Rava obligated the debtor to sell his land.

The repayment of a creditor is a mitzva – פְּרִיעַת בַּעַל חוֹב מִצְוָה: There is an amoraic dispute concerning whether by Torah law there is a lien on the property of a debtor, or whether there is merely a mitzva to pay off one's debts. The Ramban contends that even according to the opinion that repaying a debt is only a mitzva, the fact that one may be forced to repay a debt means that in any case his property is confiscated before physical punishment is inflicted on him, because his property acts as a guarantor for him. With regard to the source of this mitzva, Rashi states that it is derived from "a just *hin*" (Leviticus 19:36), which is expounded to mean that your yes [*hen*] must be just, i.e., one must fulfill his word and his obligations. Many early commentaries (Ramban; Ra'ah; Rashba) explain that this is referring only to one who says one thing while thinking something else, and therefore the derivation is referring only one who loans without intending to pay back. If, however, one borrows honestly and later fails to repay his loan, he has not violated the mitzva of "a just *hin*." These commentaries explain that the mitzva that he has transgressed is derived from the verse "and the man to whom you made the loan shall bring the pledge out to you" (Deuteronomy 24:11).

מַכִּין אוֹתוֹ עַד שֶׁתֵּצֵא נַפְשׁוֹ.

the court **strikes him** an unlimited number of times, even **until his soul departs,** in order to force him to perform the mitzva. The payment of a debt is a positive mitzva, and one who refuses to pay a debt can be compelled to do so in this manner.

בָּעָא מִינֵּיהּ רָמִי בַּר חָמָא מֵרַב חִסְדָּא: ״הֲרֵי זֶה גִּיטֵּיךְ, וְלֹא תִּתְגָּרְשִׁי בּוֹ אֶלָּא לְאַחַר שְׁלֹשִׁים יוֹם״ וְהָלְכָה וְהִנִּיחַתּוֹ בְּצִידֵי רְשׁוּת הָרַבִּים, מַהוּ?

§ **Rami bar Ḥama inquired of Rav Ḥisda:** If a man said to his wife: **This is your bill of divorce**[N] **but you are divorced with it only after thirty days,** and she took the bill of divorce **and went and placed it in the sides of the public domain,**[H] i.e., in a place that was open to the public domain but not an actual part of it, and the bill of divorce was still there after thirty days, **what is** the *halakha*? Is she divorced?

אֲמַר לֵיהּ: אֵינָהּ מְגוֹרֶשֶׁת, מִדְּרַב וּשְׁמוּאֵל. דְּרַב וּשְׁמוּאֵל דְּאָמְרִי תַּרְוַיְיהוּ: וְהוּא שֶׁצְּבוּרִין וּמוּנָּחִין בִּרְשׁוּת הָרַבִּים. וְצִידֵי רְשׁוּת הָרַבִּים – כִּרְשׁוּת הָרַבִּים דָּמוּ.

Rav Ḥisda **said to him: She is not divorced.** This *halakha* is learned **from** the opinion **of Rav and Shmuel, as** it is **Rav and Shmuel who both say** with regard to the mishna: Any of the creditors of a deceased person can seize items of his movable property **provided that they are arranged in piles and placed in the public domain,** as in that case the heirs of the deceased do not receive it as part of their inheritance. Similarly, the woman will not acquire the bill of divorce after thirty days if it is in that location. Rav Ḥisda adds: **And the sides of the public domain are considered like the public domain.**

אַדְּרַבָּה, מְגוֹרֶשֶׁת מִדְּרַב נַחְמָן, דְּאָמַר רַב נַחְמָן אָמַר רַבָּה בַּר אֲבוּהּ: הָאוֹמֵר לַחֲבֵירוֹ ״מְשׁוֹךְ פָּרָה זוֹ וְלֹא תִּהְיֶה קְנוּיָה לְךָ עַד לְאַחַר שְׁלֹשִׁים יוֹם״ – קָנָה, וַאֲפִילּוּ עוֹמֶדֶת בָּאֲגַם. מַאי לָאו – הַיְינוּ אֲגַם, וְהַיְינוּ צִידֵי רְשׁוּת הָרַבִּים! לָא, אֲגַם לְחוּד, וְצִידֵי רְשׁוּת הָרַבִּים לְחוּד.

Rami bar Ḥama responded: **On the contrary, she is divorced,** in accordance with the opinion **of Rav Naḥman, as Rav Naḥman said** that **Rabba bar Avuh said:** With regard to **one who says to his friend: Go** and **pull this cow** now **and it will be acquired by you only after thirty days, he has acquired** the cow. **And** this is true **even** if the cow **was standing** after those thirty days **in** an ownerless **meadow** [*agam*].[L] Since the acquisition began properly at the start of the thirty-day period, it applies even after the thirty-day period. **What, is it not** the case that **this is** the *halakha* of **a meadow and this is** also the *halakha* of **the sides of the public domain,** as the two places have a similar status? Rav Ḥisda rejects this argument: **No,** the case of **a meadow is discrete, and** the case of **the sides of the public domain is discrete,** as the latter is considered an actual part of the public domain, and an ownerless meadow is not.

אִיכָּא דְּאָמְרִי: אֲמַר לֵיהּ: מְגוֹרֶשֶׁת, מִדְּרַב נַחְמָן, וְצִידֵי רְשׁוּת הָרַבִּים – כַּאֲגַם דָּמוּ. אַדְּרַבָּה, אֵינָהּ מְגוֹרֶשֶׁת מִדְּרַב וּשְׁמוּאֵל, מַאי לָאו – הַיְינוּ רְשׁוּת הָרַבִּים וְהַיְינוּ צִידֵי רְשׁוּת הָרַבִּים! לָא, רְשׁוּת הָרַבִּים לְחוּד, וְצִידֵי רְשׁוּת הָרַבִּים לְחוּד.

Some say a different version of the dispute between Rami bar Ḥama and Rav Ḥisda, in which Rav Ḥisda **said to** Rami bar Ḥama: **She is divorced,** based on the ruling of **Rav Naḥman** pertaining to acquiring a cow, **and the sides of the public domain are considered like a meadow.** In this version, it was Rami bar Ḥama who replied: **On the contrary, she is not divorced,** as can be learned **from** the opinion of **Rav and Shmuel** pertaining to seizing objects in the public domain. **What, is it not** the case that **this is** the *halakha* of **the public domain and this is** similarly the *halakha* of **the sides of the public domain?** Rav Ḥisda responded: **No, the public domain is discrete and the sides of the public domain are discrete.**

NOTES

This is your bill of divorce, etc. – הֲרֵי זֶה גִּיטֵּיךְ וכו׳: Many early commentaries discuss this passage at length, although it appears that the Rif does not accept it as *halakha*. The first issue is what exactly the husband said to her. If he simply gave her a bill of divorce and said that she is not divorced with it until after thirty days, then the bill of divorce takes effect only after the thirty-day period. This means that if she placed it elsewhere, it is as though the document was never given to her and she merely picked it up from the ground. For this and other reasons, several commentaries explain that he said to her: This is your bill of divorce from now, but you are divorced with it only after thirty days (see *Tosafot* and Ra'avad). This interpretation also clarifies the connection between this case and Rav Naḥman's statement.

However, the Ramban raises a difficulty with this explanation as well, as in tractate *Kiddushin* it states that in a case where one says that a transaction should take effect: From now and after such and such a time, there is a dispute of *tanna'im* as to whether this is a condition or a retraction. Therefore, if after thirty days she is not in possession of the bill of divorce, she would be in a state of uncertainty as to whether the divorce took place or not. One suggestion to deal with the problem is to say that the Gemara here is referring to this state of uncertainty and is asking if there is uncertainty in this case as well or if everyone agrees that it is not a valid bill of divorce; however, this seems unlikely.

The Ramban therefore explains that the Gemara is not dealing with a case of a husband who said: This is your bill of divorce from now, but with a more standard case. Since the husband handed it to her himself, there is no problem with the actual transfer of the bill of divorce, even in the future. The only question is whether, as at the time the bill of divorce was to take effect it had not been in the possession of the husband, can this be considered as if the bill of divorce was given by the husband to the wife.

HALAKHA

Placed it in the sides of the public domain – הִנִּיחַתּוֹ בְּצִידֵי רְשׁוּת הָרַבִּים: If a man gave his wife a bill of divorce and said that she is divorced with it only after thirty days, and the woman placed it in the sides of the public domain, then even if it was stolen or lost after the period of thirty days, she is divorced. This is because the document was in existence on the day she was divorced, and she did not place it in the public domain. The *halakha* follows the latter version of the discussion in the Gemara (Rambam *Sefer Nashim*, *Hilkhot Geirushin* 9:3; *Shulḥan Arukh*, *Even HaEzer* 146:2).

LANGUAGE

Meadow [*agam*] – אֲגַם: In this context, as in most the places in the Talmud, *agam* means a pasture for animals. This is certainly true of some of the verses in which it is mentioned in the Bible (see Jeremiah 51:32). It is reasonable to assume that a pasture would be situated alongside sources of water and would be a muddy area not fit for planting, which, as such, would probably not belong to anyone.

מתני׳ הַמּוֹשִׁיב אֶת אִשְׁתּוֹ חֲנָוָונִית, אוֹ שֻׁמְּינָהּ אַפּוֹטְרוֹפְּיָא – הֲרֵי זֶה מַשְׁבִּיעָהּ כָּל זְמַן שֶׁיִּרְצֶה. רַבִּי אֱלִיעֶזֶר אוֹמֵר: אֲפִילּוּ עַל פִּילְכָּהּ וְעַל עִיסָּתָהּ.

MISHNA If there is **one who establishes his wife** as a **storekeeper**[H] in his store, **or** if **he appointed her** as a **steward** to handle his property and workers, **this** one, i.e., the husband, can **administer an oath to her,** having her state that she did not appropriate any of his possessions, **whenever he wants. Rabbi Eliezer says:** He can administer an oath **even with regard to** the products of **her spindle and for her dough,** which are matters related to the household, and not her function as a storekeeper.

גמ׳ אִיבַּעְיָא לְהוּ: רַבִּי אֱלִיעֶזֶר עַל יְדֵי גִּלְגּוּל קָאָמַר, אוֹ לְכַתְּחִלָּה קָאָמַר?

GEMARA **A dilemma was raised before** the Sages: When **Rabbi Eliezer** says that a husband can administer an oath to her with regard to any item, is **he saying** that this is **by means of extension**[N] of an oath, i.e., once he administers an oath to her in her capacity as his storekeeper he can extend the oath to cover other matters, **or,** is **he saying** that he can administer an oath to her ***ab initio*****?**

תָּא שְׁמַע: אָמְרוּ לוֹ לְרַבִּי אֱלִיעֶזֶר: אֵין אָדָם דָּר עִם נָחָשׁ בִּכְפִיפָה. אִי אָמְרַתְּ בִּשְׁלָמָא לְכַתְּחִלָּה – שַׁפִּיר, אֶלָּא אִי אָמְרַתְּ עַל יְדֵי גִּלְגּוּל – מַאי נָפְקָא לָהּ מִינָּהּ?

The Gemara suggests: **Come** and **hear** a solution from a *baraita*: The Rabbis **said to Rabbi Eliezer: A person does not reside in a basket with a snake.** A woman is not expected to live with a husband who constantly suspects her of stealing. The Gemara explains: **Granted, if you say** that Rabbi Eliezer is referring to an oath administered ***ab initio*,** the Rabbis spoke **well. However, if you say** that the husband can administer an oath to only **by means of an extension** of an oath, **what difference does it make to her?** As she must take an oath with regard to matters that concern the store, it does not cause any greater difficulty for her to take an oath with regard to the household matters.

דְּאָמְרָה לֵיהּ: כֵּיוָן דְּקַדְּיֵיקַתְּ בַּתְרַאי כּוּלֵּי הַאי – לָא מָצֵינָא דְּאָדוּר בַּהֲדָךְ.

The Gemara refutes this argument, as it is possible **that she says to him: Since you are so exacting with me, I cannot live with you.** Even if there is no additional oath, the sentiment engendered by his demand is grounds for dissatisfaction, and there is no proof that Rabbi Eliezer holds that he can administer an oath to her *ab initio*.

תָּא שְׁמַע: הֲרֵי שֶׁלֹּא פָּטַר אֶת אִשְׁתּוֹ מִן הַנֶּדֶר וּמִן הַשְּׁבוּעָה, וְהוֹשִׁיבָהּ חֲנָוָונִית אוֹ שֻׁמְּינָהּ אַפּוֹטְרוֹפְּיָא – הֲרֵי זֶה מַשְׁבִּיעָהּ כָּל זְמַן שֶׁיִּרְצֶה, לֹא הוֹשִׁיבָהּ חֲנָוָונִית וְלֹא מִינָּהּ אַפּוֹטְרוֹפְּיָא – אֵינוֹ יָכוֹל לְהַשְׁבִּיעָהּ.

The Gemara suggests another proof. **Come** and **hear** a proof from a *baraita*: With regard to **one who did not exempt his wife** in the marriage contract **from a vow and from an oath, and he established her** as his **storekeeper or appointed her** as his **steward, he** can **administer an oath to her whenever he wants.** If he **did not establish her** as his **storekeeper or appoint her** as his **steward,** he **cannot administer an oath to her.**

רַבִּי אֱלִיעֶזֶר אוֹמֵר: אַף עַל פִּי שֶׁלֹּא הוֹשִׁיבָהּ חֲנָוָונִית וְלֹא מִינָּהּ אַפּוֹטְרוֹפְּיָא – הֲרֵי זֶה מַשְׁבִּיעָהּ כָּל זְמַן שֶׁיִּרְצֶה, שֶׁאֵין לְךָ אִשָּׁה שֶׁלֹּא נַעֲשֵׂית אַפּוֹטְרוֹפְּיָא שָׁעָה אַחַת בְּחַיֵּי בַּעְלָהּ עַל פִּילְכָּהּ וְעַל עִיסָּתָהּ. אָמְרוּ לוֹ: אֵין אָדָם דָּר עִם נָחָשׁ בִּכְפִיפָה. שְׁמַע מִינָּהּ: לְכַתְּחִלָּה, שְׁמַע מִינָּהּ.

The *baraita* continues: **Rabbi Eliezer says: Although he did not establish her** as his **storekeeper or appoint her** as his **steward, he** can **administer an oath to her whenever he wants, as you have no wife who did not become a steward** for **one hour in her husband's lifetime** at least **for her spindle and for her dough.** The Rabbis **said to him: A person does not reside in a basket with a snake.** One can **conclude from this** that according to Rabbi Eliezer a husband can administer an oath to his wife with regard to her conduct, even ***ab initio*.** The Gemara concludes: **Conclude from it** that it is so.

HALAKHA

One who establishes his wife as a storekeeper, etc. – הַמּוֹשִׁיב אֶת אִשְׁתּוֹ חֲנָוָונִית וכו׳: If a man established his wife as his storekeeper or appointed her as his steward over his property, he can administer an oath to her to have her counter an uncertain claim, even if the claim concerns only two small coins. Some authorities rule that he can force her to take an oath only when she claims her marriage contract, while others maintain that he can force her to take an oath at any time. However, if his wife is occupied only with domestic matters, the husband cannot administer an oath to her on the basis of a claim of uncertainty, in accordance with the mishna (Rambam *Sefer Kinyan*, *Hilkhot Sheluḥin VeShutafin* 9:1, 4; *Shulḥan Arukh*, *Even HaEzer* 97:1–2 and *Ḥoshen Mishpat* 93:1).

NOTES

By means of extension, etc. – עַל יְדֵי גִּלְגּוּל וכו׳: *Tosafot* explain, with support from the parallel passage in the Jerusalem Talmud, that the reason the Rabbis hold that the husband cannot administer an oath to her with regard to matters not related to her acting as a storekeeper or as a steward is to prevent there being an ongoing feeling of enmity between the husband and wife.

מתני׳ כָּתַב לָהּ ״נֵדֶר וּשְׁבוּעָה אֵין לִי עָלַיִךְ״ – אֵין יָכוֹל לְהַשְׁבִּיעָהּ, אֲבָל מַשְׁבִּיעַ הוּא אֶת יוֹרְשֶׁיהָ וְאֶת הַבָּאִים בִּרְשׁוּתָהּ.

MISHNA If **one wrote to** his wife in the marriage contract: **I do not have** the right to administer **a vow or an oath upon you,** he **cannot administer an oath to her.However, he can administer an oath to her heirs, and to those who come on her authority,** either as her representatives or because they purchased her marriage contract.[H]

״נֵדֶר וּשְׁבוּעָה אֵין לִי עָלַיִךְ וְעַל יוֹרְשַׁיִךְ וְעַל הַבָּאִים בִּרְשׁוּתֵךְ״ – אֵינוֹ יָכוֹל לְהַשְׁבִּיעָהּ; לֹא הִיא, וְלֹא יוֹרְשֶׁיהָ, וְלֹא אֶת הַבָּאִים בִּרְשׁוּתָהּ. אֲבָל יוֹרְשָׁיו מַשְׁבִּיעִין אוֹתָהּ, וְאֶת יוֹרְשֶׁיהָ, וְאֶת הַבָּאִים בִּרְשׁוּתָהּ.

If the husband wrote: **I do not have** the right to administer **a vow or an oath upon you, or upon your heirs,**[H] **or upon those who come on your authority,** he **cannot administer an oath** to **her; not to her, nor her heirs, nor those who come on her authority. But** the husband's **heirs can administer an oath to her, and to her heirs, and to those who come on her authority.**

״נֵדֶר וּשְׁבוּעָה אֵין לִי וְלֹא לְיוֹרְשַׁי וְלֹא לַבָּאִים בִּרְשׁוּתִי, עָלַיִךְ וְעַל יוֹרְשַׁיִךְ וְעַל הַבָּאִים בִּרְשׁוּתֵיךְ״ – אֵינוֹ יָכוֹל לְהַשְׁבִּיעָהּ, לֹא הוּא וְלֹא יוֹרְשָׁיו וְלֹא הַבָּאִים בִּרְשׁוּתוֹ, לֹא אוֹתָהּ וְלֹא יוֹרְשֶׁיהָ, וְלֹא הַבָּאִים בִּרְשׁוּתָהּ.

If he wrote: **Neither I, nor my heirs,**[H] **nor those who come on my authority have** the right to administer **a vow or an oath upon you, or upon your heirs, or upon those who come on your authority,** he **cannot administer an oath** to **her** or to them; **not he, nor his heirs, nor those who come on his authority**[N] may administer an oath, **not to her, nor** to **her heirs, nor** to **those who come on her authority.**

הָלְכָה מִקֶּבֶר בַּעְלָהּ לְבֵית אָבִיהָ, אוֹ שֶׁחָזְרָה לְבֵית חָמִיהָ וְלֹא נַעֲשֵׂית אַפּוֹטְרוֹפְּיָא – אֵין הַיּוֹרְשִׁין מַשְׁבִּיעִין אוֹתָהּ. וְאִם נַעֲשֵׂית אַפּוֹטְרוֹפְּיָא – הַיּוֹרְשִׁין מַשְׁבִּיעִין אוֹתָהּ עַל הֶעָתִיד לָבֹא, וְאֵין מַשְׁבִּיעִין אוֹתָהּ עַל מַה שֶּׁעָבַר.

If a woman who was exempted from an oath by her husband **went from her husband's grave,**[H] immediately after her husband's death, **to her father's house,** without handling her late husband's property, **or** in a case **where she returned to her father-in-law's house and did not become a steward** over the property at all throughout this period, then **the heirs cannot administer an oath to her** with regard to her actions in their father's lifetime, as the husband exempted her from an oath to the heirs. **And if she became a steward, the heirs may administer an oath to her about the future,** i.e., anything she did with the property after the death of her husband, **but they cannot administer an oath to her with regard to what** took place **in the past,** during her husband's lifetime.

גמ׳ שְׁבוּעָה מַאי עֲבִידְתָּהּ? אָמַר רַב יְהוּדָה אָמַר רַב:

GEMARA The Gemara asks: **What is the purpose of an oath?** What oath can he administer to her that caused him add this condition to her marriage contract? **Rav Yehuda said** that **Rav said:**

NOTES

Those who come on his authority – הַבָּאִים בִּרְשׁוּתוֹ: Rabbeinu Ḥananel writes that this exemption frees her from being compelled to take an oath only by anyone who took over the husband's possessions after he wrote this clause. However, it does not apply to anyone who bought or inherited property from the husband beforehand.

HALAKHA

Exempted his wife from an oath – פָּטַר אִשְׁתּוֹ מִשְּׁבוּעָה: If a man exempted his wife from an oath, she may claim her marriage contract without having to take an oath. The extent of her exemption is based on his wording. If he wrote: I do not have the right to administer a vow or an oath upon you, he cannot administer on oath upon her, but he can impose an oath upon her heirs. He can also impose an oath upon others who stand in her stead, e.g., her representative or one who purchased her marriage contract (Rambam *Sefer Nashim*, *Hilkhot Ishut* 16:19 and *Sefer Mishpatim*, *Hilkhot Malve VeLoveh* 15:7; *Shulḥan Arukh*, *Even HaEzer* 98:1 and *Ḥoshen Mishpat* 71:1, 17).

Upon you or upon your heirs – עָלַיִךְ וְעַל יוֹרְשַׁיִךְ: If a man wrote to his wife: I do not have the right to administer a vow or an oath upon you, or upon your heirs, or upon those who come on your authority, he cannot force her, her heirs, or her representatives to take an oath. However, his heirs and representatives can administer an oath upon her or her representatives (Rambam *Sefer Nashim*, *Hilkhot Ishut* 16:20; *Shulḥan Arukh*, *Even HaEzer* 98:3 and *Ḥoshen Mishpat* 71:17).

Neither I nor my heirs, etc. – אֵין לִי וּלְיוֹרְשַׁי וכו׳: If he wrote: Neither I, nor my heirs, nor those who come on my authority have the right to administer a vow or an oath upon you, upon your heirs, or upon those who come on your authority, then neither he nor his representatives can administer an oath to her or her representatives (*Shulḥan Arukh*, *Even HaEzer* 98:4).

If she went from her husband's grave, etc. – הָלְכָה מִקֶּבֶר בַּעְלָהּ וכו׳: If a wife returned to her father's house immediately after her husband's death, without acting as a steward over his affairs, the exemption she had received from her husband prevents his heirs from administering an oath to her, even by means of extension. Some authorities maintain that even if her husband had not exempted her from an oath, the heirs cannot force her to take an oath with regard to the time she served as a steward over his property during his lifetime. However, if she was appointed the steward over his estate after his passing, his heirs can force her to take an oath concerning her conduct after her husband's death, but not before it (Rambam *Sefer Kinyan*, *Hilkhot Sheluḥin VeShutafin* 9:4; *Shulḥan Arukh*, *Even HaEzer* 98:4).